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Title 3—

The President

Proclamation 5991 of June 15, 1989

National Grasslands Week, 1989

By the President of the United States of America

A Proclamation

We Americans have been blessed with a fertile land of unparalleled beauty. It is the source of much of our country's strength and wealth. The great sweep of grasslands that crosses the continent—beginning below the border of Mexico and stretching into central Canada—is an ecological treasure.

Nearly 4,000,000 acres of grasslands, located in 11 States across the United States, are public property. These national grasslands constitute an invaluable resource for the American people. Archeologists, anthropologists, and rangeland ecologists have discovered enormous potential for scientific research in them. Careful management has made them a model of successful conservation policies and multiple-use of land. It has also enhanced public appreciation for the natural resources they contain. Throughout the national grasslands, innovative agricultural techniques—as well as sustained-yield management of oil, gas, timber, fish, wildlife, and forage for livestock—are being developed.

The national grasslands are home to a variety of plants, soils, minerals, and animals not found elsewhere. The lands are also a source of employment and economic stability for rural Americans, who benefit from the opportunities they provide in livestock grazing, energy development, tourism, and recreation.

Publicly owned and beneficial to all Americans, the national grasslands are a proud portion of our natural heritage. This week, let us renew our appreciation for them. Let us also remember our responsibility—as individuals and as a Nation—to cherish and protect the environment.

In recognition of the value of the national grasslands, the Congress, by Public Law 100-664, has designated the week of June 18 through June 24, 1989, as "National Grasslands Week" and has requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim June 18 through June 24, 1989, as National Grasslands Week and call upon the people of the United States to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of June, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and thirteenth.

George Bush

[FR Doc. 89-14760
Filed 6-19-89; 9:10 am]
Billing code 3195-01-M

Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 21

[Docket No. 89-5]

Reports of Crimes and Suspected Crimes

AGENCY: Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency ("OCC") is revising 12 CFR 21.11 regarding reports by a national bank in the event of known or suspected crimes. The final rule is intended to make report filing more efficient for banks and more useful for law enforcement agencies in identifying patterns of criminal activity and apprehending persons who commit crimes involving national banks.

This final rule finalizes revisions to the two criminal referral forms, raises the threshold for filing criminal referrals where no suspect has been identified, and clarifies the filing requirement as far as reporting financial crimes where no loss is incurred by the bank, such as money laundering, bank bribery, and Bank Secrecy Act violations. These revisions are intended to clarify the filing requirement for these reports and will tend to reduce the overall number of criminal referral reports to be filed by national banks.

EFFECTIVE DATE: July 20, 1989.

ADDRESS: Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, DC 20219.

FOR FURTHER INFORMATION CONTACT: Joel Miller, Attorney, Enforcement and Compliance Division, (202) 447-1818.

SUPPLEMENTARY INFORMATION:

Background

The OCC is charged with safeguarding the safety and soundness of national banks and pursuant to that authority is responsible for ensuring that national banks apprise other Federal law enforcement authorities of any actual or suspected violations of criminal statutes. Employee fraud, abusive insider transactions, check kiting schemes, money laundering and the like can be serious threats to a bank's security and may undermine the confidence and trust that individuals and businesses place in the banking industry. The OCC is primarily concerned with criminal transactions sufficient in size or number to impact the safety and soundness of the bank, patterns of criminal offenses, crimes committed by bank officials, and the adequacy of the bank's security systems and internal controls. The law enforcement community needs to receive reports, shortly after a crime or suspected crime has been discovered, which contain sufficient information to determine whether the matter warrants investigation and prosecution.

A working group was formed in December 1984 to address problems and promote cooperation toward the goal of improving the federal government's response to white collar crime in federally-regulated financial institutions. The working group is composed of senior officials of the federal financial institution regulatory agencies and the Justice Department. The working group monitors the criminal referral process and has recommended further improving and coordinating the criminal referral system now in use by all federally-insured financial institutions and the regulatory agencies.

On July 17, 1986, the OCC published a final rule in the **Federal Register** (50 FR 34857) pertaining to 12 CFR Part 21—Minimum Security Devices and Procedures and Reports of Crimes and Suspected Crimes. That final rule eliminated the former 12 CFR Part 7 reporting requirement and imposed a new Part 21 criminal referral reporting requirement upon all national banks. Based upon the OCC's experience over the past two years, certain needed revisions and clarifications were incorporated into an interim rule which became effective April 11, 1988. (53 FR 7881.) After reviewing the comments received in response to the interim rule, OCC has determined to formally adopt the interim rule as a final rule. The Discussion of Comments section below summarizes the comments received and provides additional interpretive analysis for national banks.

The goals of this final rule are to improve the information quality of criminal referrals, making the referrals more useful, to clarify the requirement for reporting financial crimes that result in no direct loss to the bank, and to raise certain of the thresholds for reporting requirements for national banks, making the reporting process more efficient and economical for the banks. These changes are designed to facilitate the assessment and investigation of possible criminal matters, aid in the identification of patterns of criminal misconduct, and improve the OCC's ability to track the disposition of criminal referrals.

Criminal Referral Forms (Short and Long)

Section 21.11 requires a bank to file a Criminal Referral Form to report known or suspected crimes to the OCC. The OCC Criminal Referral Form has two formats—a short form (CC-8010-08) and a long form (CC-8010-09). The "short form" requires a bank to report the basic facts of the known or suspected criminal transaction: the approximate date and dollar amount of the known or suspected criminal transaction, the type of crime (embezzlement, check kiting, money laundering etc.), a brief summary of the violation, and where known, the identity of any person suspected. The "long form," an expanded and more detailed report, is required only in those situations where the transaction or suspected violation exceeds $10,000, or for any transaction involving a bank insider (i.e., an executive officer, director, or principal shareholder) as defined at 12 CFR 215.2.

It is estimated that the short form will be used for 75% of the reports submitted. This estimated percentage on the use of short forms has declined from the 95% figure cited in the July 1986 final regulation, due to the OCC's decision to raise the threshold reporting requirement (from $2,500 to $5,000) for the reporting of mysterious disappearances, unexplained shortages, and known or suspected crimes where no suspect has been identified.

Discussion of Comments

The OCC received six comments on the interim rule: five from national

banks and one from a bank trade association. While the comments generally welcomed the changes made in the reporting requirements, (particularly OCC raising the threshold from $2500 to $5000 for the reporting of suspected crimes where a bank has no suspect), several areas of concern were raised by the commenters which are addressed and clarified below. The major focus of the commenters' concerns was:

(a) Clarifying the reporting requirements concerning known or suspected violations of the money laundering and bank secrecy statutes;

(b) Reducing the overall criminal referral reporting burden on national banks;

(c) Minimizing potential bank liability under the Right to Financial Privacy Act (RFPA); and

(d) Providing more information to national banks on the nature and scope of the underlying criminal violations upon which the banks are obligated to prepare criminal referrals.

Money Laundering/Bank Secrecy Referrals

Several commenters sought additional clarification concerning OCC's new requirement that national banks file criminal referrals in situations where, although no loss has been recognized by the bank, violations of the money laundering and/or Bank Secrecy statutes are known or suspected to have occurred, with the bank being used as a conduit for those currency transactions. Two commenters expressed concern that this new OCC filing requirement will duplicate the Currency Transaction Report ("CTR") filings already required by the Treasury Department, particularly in situations where money laundering is suspected.

Under this final regulation, banks are required to file criminal referrals only where there is a reasonable basis to believe a criminal violation has occurred. The fact that a customer engages in sizable cash transactions at a bank does not, in and of itself, provide a reasonable basis for concluding that a money laundering or currency structuring crime has been perpetrated. The bank must consider the size, frequency, and nature of these transactions and conclude, on a case by case basis, whether there is a reasonable basis to believe that a violation of the money laundering or Bank Secrecy statutes has occurred. CTRs must be filed based solely on a determination by the bank of the dollar volume of currency transactions conducted by a particular customer on each business day. Criminal referral forms, on the other hand, must be filed regardless of the dollar amount of the cash transactions, where the bank has a reasonable basis for suspecting a criminal transaction has occurred.

Financial institutions serve a critical role in the detection and reporting of money laundering crimes. Due to the inherent nature of money laundering and currency structuring, without input from banks, the law enforcement community would be severely hampered in investigating and prosecuting violators of the money laundering statutes. The objective of this regulation is not to "deputize" every teller in every national bank, nor is it to place the bank in a position of reporting every customer that looks "suspicious" or deals in large amounts of cash. Rather, the regulation is intended to focus the bank's attention on the reality that these crimes may be occurring at their institutions and to require criminal referrals where bank personnel have a reasonable basis for believing that a bank customer is engaged in activities that may violate the money laundering or Bank Secrecy statutes.

Where a bank has a reasonable basis for suspecting a customer is engaged in money laundering or currency structuring, the bank must file a criminal referral. While there is no requirement that the bank immediately cease engaging in business with that customer or that the bank close out that customer's accounts, the Bank should be aware of the potential civil and criminal liability it may face if it is linked to money laundering or structuring of currency transactions. A bank that suspects a customer of structuring or money laundering should ensure that it does not serve as a conduit for any additional suspected criminal transactions. Where a bank suspects or identifies a pattern of money laundering transactions, or otherwise considers immediate action to be appropriate, prudent action includes immediately contacting the IRS at 1–800–BSA–CTRS, or the Criminal Investigation Division of the bank's local IRS office, placing them on notice that this activity is occurring, and obtaining their input concerning how best to handle the situation.

National banks are not required to report every act that has some potential to be a crime. The regulation requires the bank to decide if there is a reasonable basis to believe a crime has been committed, and if so, determine whether that suspected criminal transaction meets one of the criteria requiring the filing of a referral.

Reducing the Filing Burden

Several commenters urged the OCC to further elevate its reporting threshold in order to further reduce the burden of preparing and filing criminal referrals on national banks. In this final rule, OCC has again modestly raised the threshold triggering its reporting requirements. OCC is concerned with the burden of these filings and expects the final rule to result in a net decline in a bank's reporting obligation.

The OCC could not raise the thresholds higher because the information currently collected is being utilized by the OCC, Department of Justice and the IRS. Particularly in light of the FBI's computerized retrieval system for tracking criminal activity, it is increasingly likely that individuals who perpetrate even relatively small dollar crimes at different financial institutions will be tracked and may be prosecuted. Of course, not every criminal referral will result in a prosecution. However, the more detailed the referral, the more useful the information will be for law enforcement purposes.

Right to Financial Privacy Act (RFPA) Concerns

Two commenters expressed RFPA concerns about the interim rule. One sought inclusion of the names of the various agencies that may receive the criminal referral forms in the regulation rather than just in the distribution lists on the criminal referral forms. The commenter also sought the inclusion of additional government agencies (especially U.S. Customs) in the regulation and on the distribution list. The second commenter requested that an explicit reference to the RFPA be included on the forms, particularly 12 U.S.C. 3403(c) which exempts financial institutions from RFPA liability if they notify Government authorities of possible violations of any statute or regulation.

The first commenter raises an important point. Namely, that the distribution list on the forms is not all inclusive. National banks are encouraged by both this final rule and section 1103(c) of the RFPA, 12 U.S.C. 3403(c), to notify all governmental authorities, federal, state and local, of possible criminal violations. Under the express language of 12 U.S.C. 3403(c):

> Nothing in this chapter shall preclude any financial institution, or any officer, employee, or agent of a financial institution, from notifying a Government authority that such institution, or officer, employee, or agent has information which may be relevant to a possible violation of any statute or regulation. Such information may include only the name or other identifying information concerning any individual or account involved in and the nature of any suspected illegal activity. Such information may be disclosed notwithstanding any constitution, law, or regulation of any State or political subdivision thereof to the contrary. Any financial institution, or officer, employee, or agent thereof, making a disclosure of information pursuant to this subsection, shall not be liable to the customer under any law or regulation of the United States or any constitution, law, or regulation of any State or political subdivision thereof, for such disclosure or for any failure to notify the customer of such disclosure.

The fact that the RFPA provides this "safe harbor" allows banks to turn over certain pertinent information to all relevant government agencies including U.S. Customs. OCC does not require distribution to every agency that may share an interest in obtaining information about suspected crimes at a bank (e.g. U.S. Customs, Small Business Administration, or the Department of Housing and Urban Development). Rather, OCC encourages banks, where appropriate, to voluntarily disseminate information to additional local, state and federal agencies. To mandate further distributions in some situations would be confusing and would impose an additional reporting burden on the banks.

Insofar as explicitly referencing RFPA on the forms is concerned, the OCC does not view that proposal as adding any legal weight to this mandatory reporting requirement. OCC considers the role of bank counsel and bank management to be one of providing guidelines to bank personnel concerning RFPA considerations and restrictions.

The most recent amendments to the RFPA, (which are incorporated in the Anti-Drug Abuse Act, Pub. L. No. 100–690), provide additional authority for financial institutions making criminal referrals. In particular, referrals pertaining to either crimes against financial institutions or Bank Secrecy Act violations that are committed by directors, officers, employees, or controlling shareholders of, or by major borrowers from, a financial institution, now explicitly fall within the "good faith defense" to the RFPA. Under the latest amendments to the RFPA, 12 U.S.C. 3413(1) and 3417(c), financial institutions disclosing financial records pertaining to insider abuse, in good faith, are now provided a defense against all actions brought against the institution under the RFPA, the constitution of any State, or any other State or local statute or regulation.

Additional Information on Potential Crimes

One commenter sought additional information on the forms concerning the nature and scope of the underlying criminal violations upon which banks are obligated to prepare criminal referrals. The criminal referral forms already provide summaries of those crimes banks are most likely to encounter. OCC believes those summaries offer enough of an outline for a bank employee to evaluate a suspected crime. OCC encourages bank employees to discuss suspected criminal activities with bank counsel, or representatives of the FBI, the IRS, U.S. Attorney's Office, or local law enforcement, as appropriate. OCC believes additional explanations of the infinite permutations of white collar criminal conduct are unnecessary. The more detailed the list of crimes, the more likely it is that a crime omitted from that list would be considered nonreportable.

Submission of Criminal Referral Forms Threshold Amounts

The final rule requires that a national bank submit a criminal referral form upon the discovery of any known or suspected criminal violation committed against the bank or involving a financial transaction involving bank personnel. A report must be filed where bank personnel are believed to be involved regardless of the dollar amount of bank funds involved.

The final rule also sets forth more general guidelines for the reporting of known or suspected criminal violations of the U.S. Code, or regulations promulgated thereunder, where a violation is committed against the bank or where a criminal transaction is undertaken using the bank to facilitate that transaction. The bank must report all criminal transactions involving $1,000 or more where it has a substantial basis for identifying a possible suspect or group of suspects.

For a criminal violation not involving bank personnel and involving a transaction of $1,000 or less, a bank must file a criminal referral only when that transaction appears to be part of a pattern of criminal activity committed by one or more identifiable individuals and the aggregate value of the transactions totals $1,000 or more. For example, a series of forged signatures appearing on credit card purchase receipts must be reported if the bank has reason to believe one identifiable individual, or a group of identifiable individuals acting in concert, has perpetrated the forgeries, and the aggregate dollar loss is $1,000 or more. For those situations (such as money laundering or false statements on credit applications) where the bank does not incur a "loss", the $1,000 test applies in that the bank must evaluate whether the transaction either involved, or had the potential to involve, $1,000 or more.

In those situations where there is no substantial basis for the bank to identify a possible suspect or group of suspects, a bank must report a known or suspected criminal violation only when it involves $5,000 or more. For example, where a bank is unable to identify a suspect as the perpetrator of a check fraud, the bank need not file a referral until the loss on any given account exceeds $5,000. In addition, the final rule provides that a bank must report mysterious disappearances or unexplained shortages of bank funds or other assets only when they amount to $5,000 or more.

Where a bank suspects it has been used as a conduit for a violation of the money laundering statutes there will, of course, be no loss. As discussed above, national banks are now required to report suspected violations of the money laundering and Bank Secrecy statutes where they have a reasonable basis for believing a violation has occurred regardless of the dollar amount of the transaction.

What Triggers the Reporting Requirement

In order to clarify what constitutes a reportable "known or suspected criminal violation," the OCC will continue to incorporate into its Criminal Referral Forms (CC–8010–08 and 8010–09) a listing and description of the most common federal crimes involving financial institutions, their personnel, or their customers, accounts. Using this list as a base, bank personnel should, in most instances, be able to determine whether a particular situation gives rise to the reporting requirement. Of note, the revised Criminal Referral Forms which were issued concurrently with the interim regulation in March 1988, include reference to three additional federal criminal statutes: (1) 18 U.S.C. 1956; (2) 18 U.S.C. 1957; and (3) 31 U.S.C. 5324. Banks are encouraged to file referrals whenever they suspect criminal transactions in violation of any of the cited statutes.

Suspected Violations

The reporting requirement imposes an obligation to report all "known or suspected criminal violations" that meet specified criteria. By "suspected violation" the OCC is referring to a

transaction or series of transactions for which there is a reasonable basis to believe that a criminal violation has occurred. The OCC cannot quantify the precise amount of evidence needed to trigger the reporting requirement any more than it can delineate all the relevant factors that a bank must consider in deciding whether or not to report a suspicious or otherwise irregular transaction.

In many instances the suspicious nature of the transaction is a function not only of the transaction itself and its context but also of the bank's experience with the individuals associated with the transaction, either as employees or customers of the bank. In many situations, the bank will be able to discern the "intent" of those involved in a suspicious transaction. Invariably, however, the pivotal question of criminal intent will be left for the determination of law enforcement authorities. In those situations, the bank should make a practical assessment of the suspicious transaction based upon a good faith examination of all the relevant factors. Clearly, the more serious the irregularity, particularly if it involves a bank insider, the greater the obligation upon the bank to fully explore the matter.

Revised Threshold Amounts For Filing Reports

OCC has no desire to place unnecessary reporting burdens on national banks; however, it is interested in furthering crime detection and prevention in cooperation with other law enforcement agencies. OCC has determined, based upon its experience with the criminal referrals made over the past year, that where a bank has no apparent basis for identifying a possible suspect or group of suspects involved with a known or suspected criminal violation, a minimum reporting amount of $5,000 is appropriate. The commenters to the interim regulation universally endorsed the increase in this reporting threshold.

OCC has further determined, based upon its experience with past referral forms, that where the bank has a reasonable basis for identifying a possible suspect or group of suspects, it is important that every crime of $1,000 or more be reported. In addition, crimes of less than $1,000 are to be reported where a bank has reason to believe that one or more identifiable individuals has committed a series of crimes which, when aggregated, total $1,000 or more. Where a bank employee, officer, director, or shareholder is suspected of criminal activity, all bank related crimes must be reported, regardless of the dollar amount involved.

Reporting Period

The final rule continues to impose a 30-calendar day reporting period, commencing from the date of detection, during which a bank must file a criminal referral. In those situations where the transaction requires immediate attention or where the violation is ongoing, OCC strongly encourages the bank to notify the appropriate law enforcement agencies and the appropriate OCC Office by telephone. The bank's oral notification should be followed by a timely written report.

In those situations where a bank is not obligated to file a report, (e.g. an unexplained shortage of less than $5,000), but facts subsequently come to light revealing information identifying the individual(s) known or suspected of having committed or attempting to commit a criminal act, the 30-calendar day reporting period commences from the date that reportable information, such as the identity of a suspect, first comes to light.

Penalty for Failure to Report

The final rule states when a civil money penalty may be assessed by OCC against a bank, its officers or its directors for failure to file a report. Penalties may be assessed where a violation is willful or demonstrates a careless disregard for compliance. Assessments are likely to be made where it is established that a bank officer, director or other employee intentionally has attempted to cover up a defalcation, significant loss, pattern of criminal transactions, or has intentionally failed to file a criminal referral form.

If a question exists as to whether to report an incident, OCC recommends that a criminal referral be submitted providing at least the nature of the transaction, relevant account numbers and the identities of those suspected. For example, where a bank has a substantial basis to suspect that an individual has engaged in a pattern of criminal conduct, such as a series of transactions that appear to violate the money laundering statutes, the bank should file a criminal referral describing that pattern of criminal conduct. Additionally, banks are encouraged to report suspected violations, regardless of amount, to either state or local law enforcement authorities, whenever a violation of state or local law is suspected.

Exceptions to Reporting Requirements

The final rule in § 21.11(f) continues to provide two exceptions to the reporting requirements: one for robberies and burglaries and the other for lost or missing securities. These exceptions are provided because of the OCC's recordkeeping requirement in § 21.5(c) which requires a bank to keep a record of all crimes of violence on file, and because of the Securities and Exchange Commission's reporting requirements set forth at 17 CFR 240.17f–1 which requires the reporting of all lost and missing securities.

Regulatory Flexibility Act

Pursuant to section 605[b] of the Regulatory Flexibility Act [Pub. L. 96–354m, 5 U.S.C. 601], the Comptroller of the Currency has certified that this final rule will not have a significant economic impact on a substantial number of small banks or other small entities.

Executive Order 12291

The OCC has determined that this final rule is not a "major rule" and therefore does not require a regulatory impact analysis.

Paperwork Reduction Act

The collection of information requirements contained in this final rule have been submitted to and approved by the Office of Management and Budget under section 3504(h) of the Paperwork Reduction Act. OMB Control No. 1557–0069 was assigned. The estimated average burden associated with the collections of information contained in this final rule is one-half hour per respondent. The burden per respondent may vary depending on individual circumstances and on whether the long or short form must be filed.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to: Legislative and Regulatory Analysis Division, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, DC 20219 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention Treasury Desk Officer.

List of Subjects in 12 CFR Part 21

National banks, Criminal referrals, Insider abuse, Theft, Embezzlement, Check kiting, Defalcations, Money laundering, Criminal transactions.

Authority and Issuance

For the reasons set out in the preamble, Part 21 of Chapter I of Title 12 of the Code of Federal Regulations is amended as follows:

PART 21—[AMENDED]

1. The authority citation for Part 21 is revised to read as follows:

Authority: 12 U.S.C. 93a, 1818, 1881–1884, and 3401–3422.

2. Section 21.11 is revised to read as follows:

§ 21.11 Reports of crimes and suspected crimes.

(a) *Purpose.* This section applies to known or suspected crimes involving national banks. This section ensures that the appropriate federal regulatory and law enforcement agencies are notified when unexplained losses or known or suspected criminal acts are discovered. Based on these reports, the OCC maintains a data base for monitoring certain individuals suspected of having committed crimes against banks.

(b) *Reports Required.* A national bank shall file OCC Criminal Referral Form (CC–8010–08 or CC–8010–09) in accordance with the instructions on the form, in case of:

(1) Any mysterious disappearance or unexplained shortage of bank funds or other assets of $5,000 or more.

(2) Any known or suspected criminal violation, or pattern of criminal violations, of any section of the United States Code, or any regulation promulgated thereunder, committed against the bank or involving a financial transaction conducted through the bank, where the bank has a substantial basis for identifying responsible bank personnel.

(3) Any known or suspected criminal violation, or pattern of criminal violations, of any section of the United States Code, or any regulation promulgated thereunder, committed against the bank or involving a financial transaction conducted through the bank and involving or aggregating $1,000 or more in bank funds or other assets, where the bank believes, in good faith, that it was either an actual or potential victim of a criminal violation, or series of criminal violations, or that the bank was used to facilitate a criminal transaction, and the bank has a substantial basis for identifying a possible suspect or group of suspects.

(4) Any known or suspected criminal violation of any section of the United States Code, or any regulation promulgated thereunder, committed against the bank and involving or aggregating $5,000 or more in bank funds or other assets, where the bank believes, in good faith, that it is either an actual or potential victim of a criminal violation, or series of criminal violations, or that the bank was used to facilitate a criminal transaction, even though there is no substantial basis for identifying a possible suspect or group of suspects.

(c) *Time for Reporting.* (1) A national bank shall file, no later than 30 calendar days after the date of detection of the loss or known or suspected criminal violation, any report required pursuant to paragraph (b) of this section. Where a report becomes necessary because a possible suspect or group of suspects is finally identified, the 30-calendar day reporting period commences with the identification of the suspect or group of suspects.

(2) Where a pattern of crimes committed by an identifiable individual is detected by a bank, a report shall be filed no later than 30 calendar days after the aggregate amount of the crimes exceeds $1,000.

(3) In situations involving violations requiring immediate attention or where a reportable violation is ongoing, the bank should immediately notify, by telephone, the offices set forth on the forms. Banks shall timely file, after telephone notification, the required written reports.

(d) *Reporting to Federal, State and Local Authorities.* Banks are strongly encouraged to file Criminal Referral Forms or to otherwise report crimes or suspected criminal activity to federal, state and local law enforcement authorities in those situations where the facts provide a reasonable basis for concluding that a violation of law has occurred.

(e) *Manner of Reporting.* A bank may elect to file its reports on the appropriate OCC Criminal Referral Form, a legible photocopy thereof, or on a facsimile of the appropriate OCC form.

(f) *Exemptions.* (1) Banks need not file Criminal Referral Forms for those robberies and burglaries explicitly covered by the recordkeeping requirements of § 21.5(b), committed or attempted at a banking office of a bank.

(2) Banks need not file Criminal Referral Forms for lost, missing, counterfeit or stolen securities if a report is filed pursuant to the reporting requirements of 17 CFR 240.17f–1.

(g) *Notification of Board of Directors.* The Bank shall have effective procedures ensuring that the board of directors of the bank is notified, not later than at their next meeting, of the filing of any report hereunder.

(h) *Penalty.* Willful failure to file or careless disregard in filing reports may subject the bank, its officers, and/or its directors to civil money penalties.

(i) As used in this section, the term "suspected" refers to all matters, including unexplained losses, for which there is a known factual basis for concluding that a crime has been or may have been committed.

(Approved by the Office of Management and Budget under Control Number 1557–0069.)

Date: June 13, 1989.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 89–14512 Filed 6–19–89; 8:45 am]

BILLING CODE 4810–33–M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. C–3100]

Canada Cement Lafarge Ltd. et al.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: This order reopens the proceeding and modifies Paragraph VIII of the Commission's consent order (48 FR 1486) by deleting the requirement for prior approval of acquisitions in the state of Florida. The modifying order is the result of the Commission granting in part and denying in part the respondents' requests for modifications of the terms of the original order.

DATES: Consent Order issued December 21, 1982. Modifying Order issued April 4, 1989.

FOR FURTHER INFORMATION CONTACT: Jane Seymour, FTC/S–2115, Washington, DC 20580. (202) 326–2687.

SUPPLEMENTARY INFORMATION: In the Matter of Canada Cement Lafarge Ltd., et al. The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, as set forth at 48 FR 1486, are deleted in part.

List of Subjects in 16 CFR Part 13

Cement, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

UNITED STATES OF AMERICA BEFORE FEDERAL TRADE COMMISSION

Commissioners: Daniel Oliver, Chairman, Terry Calvani, Mary L. Azcuenaga, Andrew J. Strenio, Jr., Margot E. Machol.

Order Granting in Part and Denying in Part Request To Reopen and Modify Order Issued December 21, 1982

On December 5, 1988, Lafarge Corporation ("Lafarge") filed a

Supplemental Petition To Reopen and Modify Consent Order ("Supplemental Petition") and asked that its original Petition to Reopen and Modify Consent Order ("Petition") filed August 11, 1988, be deemed refiled. Under the order, Lafarge is the successor to Canada Cement Lafarge Ltd. ("CCL"). Pursuant to section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and § 2.51 of the Commission's Rules of Practice, the Supplemental Petition asks the Commission to reopen and modify the order in Docket No. C-3100. Lafarge requests that the order be modified by setting aside Paragraph VIII to relieve it of the need to obtain prior Commission approval for acquisitions of cement assets. The Petition and the Supplemental Petition were placed on the public record for thirty days, pursuant to § 2.51 of the Commission's Rules. No comments were received.

The complaint in this case was issued under section 7 of the Clayton Act, 15 U.S.C. 18, and section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, and alleged anticompetitive effects arising from the acquisition by CCL of General Portland Inc. ("GPI") in October 1981. 100 F.T.C. 583 (1982). According to the complaint, the relevant geographic markets were the Inland Market and the Florida Market. The "Inland Market" was defined as northern and eastern Alabama, Georgia, southeastern Tennessee and northern Florida. The "Florida Market" was defined as the peninsular region of the State of Florida. 100 F.T.C. at 584. Paragraph VIII of the order, which was issued by the Commission on December 21, 1982, prohibits respondents for a ten year period ending on January 10, 1993, from acquiring without the prior approval of the Commission, any cement manufacturing or grinding plant or distribution terminal in South Carolina, Georgia, Alabama, Tennessee, and Florida or in any Plant Areas in which respondents, at the time of the acquisition, are then engaged in the manufacture of cement. 100 F.T.C. at 570. The order defines "Plant Area" as each area in the United States within a 300 miles radius of any cement plant owned or leased by respondents in either the United States or Canada.

Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), provides that the Commission shall reopen an order to consider whether it should be modified if the respondent "makes a satisfactory showing that changed conditions of law or fact require such order to be altered, modified, or set aside in whole or in part." A satisfactory showing sufficient to require reopening is made when a request to reopen identifies significant changes in circumstances and shows that the changes eliminate the need for the order to make continued application of the order inequitable or harmful to competition. *Louisiana-Pacific Corp.*, Docket No. C-2956, Letter to John C. Hart (June 5, 1986), at 4.

If the Commission determines that the petitioner has made the required showing of changed conditions, the Commission must reopen the order to consider whether modification is required and, if so, the nature and extent of the modification. The Commission is not required to reopen the order, however, if the petitioner fails to meet its burden of making the satisfactory showing required by the statute. The petitioner's burden is not a light one given the public interest in the repose and finality of Commission orders. *See Federated Department Stores v. Moitie*, 425 U.S. 394 (1981) (strong public interest considerations support repose and finality).

The Commission may also modify an order pursuant to section 5(b) when, although changed circumstances would not require reopening, the Commission determines that the public interest warrants such action. Section 2.51 of the Commission's Rules invites respondents in petitions to reopen to show how the public interest warrants the requested modification. 16 CFR 2.51. In the case of a request for modification based on this latter ground, a petitioner must demonstrate as a threshold matter some affirmative need to modify the order. *Damon Corp.*, Docket No. C-2916, Letter to Joel E. Hoffman, Esq. (March 29, 1983), at 2. If the showing of need is made, the Commission will balance the reasons favoring the requested modification against any reasons not to make the modification. *Id.* The Commission will also consider whether the particular modification sought is appropriate to remedy the identified harm.

Whether the request to reopen is based on changed conditions or on public interest considerations, the burden is on the respondent to make the requisite satisfactory showing. The language of section 5(b) plainly anticipates that the petitioner must make a "satisfactory showing" of changed conditions to obtain reopening of the order. The legislative history also makes clear that the petitioner has the burden of showing, other than by conclusory statements, why an order should be modified. The Commission may properly decline to reopen an order if a request is "merely conclusory or otherwise fails to set forth specific facts demonstrating in detail the nature of the changed conditions and the reasons why these changed conditions require the requested modification of the order." S. Rep. No. 96-500, 96th Cong., 1st Sess. 9-10 (1979).

The Commission has determined that reopening the order and modifying Paragraph VIII by deleting the State of Florida from the geographic coverage of the prior approval provision are warranted by changed conditions of fact. Lafarge has demonstrated changes in the Florida Market, resulting from technological and other developments, that have led to significantly increased cement imports. These changes, which have occurred in the northern part of Florida as well, remove any significant concerns that any Lafarge acquisition in Florida might raise antitrust concerns and so should be subject to prior approval. Developments in unloading technology have lowered water transportation costs, and reduced world-wide demand has caused foreign producers to ship more cement into Florida. As a result, Florida is likely a part of a broader geographic market including western Europe and Latin America. It is unlikely that any acquisition in that broader geographic market would warrant antitrust scrutiny.

After carefully considering the remainder of Lafarge's request for relief from the prior approval requirement, the Commission has concluded that Lafarge has not made a satisfactory showing that changed conditions of fact or the public interest require Paragraph VIII to be further modified. After reviewing Lafarge's Petition and Supplemental Petition, as well as the affidavits and economic analyses supplied therewith, it does not appear that Lafarge has shown that changed conditions eliminate the need for the prior approval requirement or that any injury from the prior approval requirement outweighs the need for the order.

Lafarge has not shown that the same changes that have eliminated the need to review acquisitions in Florida have affected the Inland Market or other regional markets to the same extent. Indeed, whatever changes in imports that have occurred in those areas do not appear to have been significant. Lafarge concedes that the factual changes alleged in the Inland Market and in Plant Areas were possibly foreseeable and have been less extreme than in Florida, and Lafarge recognizes that its evidence of changed conditions in those markets may not be sufficient to meet its burden of proving changed factual circumstances. Petition at 7, 16. Lafarge has also not shown changes of fact that demonstrate that the Inland Market is not a relevant geographic market.[1] The Commission has therefore concluded that Lafarge has not shown changed conditions that eliminate the need for a prior approval provision in these areas.

Lafarge also asserts in its Petition that the changes related to the Inland Market and to the markets where the Plant Areas are located, though possibly foreseeable, have so altered the public interest balance that the prior approval requirement should be removed under the public interest standard. Lafarge contends that "the public interest is harmed by continuation of the prior approval requirement because Lafarge is unable to compete in the market for cement-producing and distributing assets, even if no significant antitrust risk is created by the potential acquisition." Petition at 19. The Petition and the Economic Report submitted with the Petition [2] identified three instances in which the prior approval requirement allegedly prevented or inhibited Lafarge's ability to acquire certain cement assets.[3] Those, however, are instances in which it was clearly foreseeable that the order's prior approval provision would apply. It was also foreseeable at the time the respondents agreed to the order that the prior approval requirement would impose costs upon such acquisitions by Lafarge, and it was equally foreseeable that Lafarge's competitors would not be subject to similar requirements. The costs identified by Lafarge do not ordinarily provide a sufficient basis to justify termination of a prior approval provision in an order. *See* Order Reopening and Setting Aside Order Issued on April 21, 1981, *Albertson's, Inc.*, Docket No. C-3064, July 1, 1987, at 4. Unlike the showing in *Albertson's*, Lafarge has failed to show that no acquisition or series of acquisitions that it might make over the next four years would raise competitive concerns. The Commission has therefore determined that Lafarge has failed to make the threshold showing of injury under the public interest standard.

Additionally, even if Lafarge had met its threshold burden of showing a need for relief from the prior approval provision for acquisitions in the Inland Market and in Plant Areas, Lafarge has not established that the reasons for making the modification outweigh the continuing need for the order's prior approval requirements. In the Petition and the Economic Report, Lafarge alleges that while changes in the Inland Market may not be sufficient to establish changed conditions of fact necessitating reopening the order, the facts do establish that under current merger analysis, the Inland Market, as defined in the complaint, never existed or no longer is a relevant market. Petition at 16, Economic Report at 29. Lafarge claims that since the Inland Market, as redefined by Lafarge, is no longer concentrated, the public interest requires elimination of the prior approval requirement for acquisitions in that area. After reviewing Lafarge's Supplemental Petition and supporting documents, the Commission has concluded that Lafarge has failed to show that there is no continuing need for the order in the Inland Market defined in the complaint. In addition, absent extraordinary circumstances, the Commission will not reconsider whether the markets alleged in the complaint are valid. Lafarge chose not to contest the complaint. Absent a showing of changed conditions or a threshold showing of injury, the Commission will not revisit issues that could have been, but were not contested.

Lafarge's claims relating to the lack of a continuing need for prior approval of acquisitions within 300 miles of Lafarge's currently existing cement plants are mainly based on the same factual allegations as its arguments relating to the Inland Market. It claims that, due to changes in transportation regulation and technology, it is now economically feasible to ship cement longer distances than at the time of the order and that as a result, cement markets are geographically broader and less concentrated. It also claims that the changes in the technology of shipping cement by water have opened the U.S. markets to imports, obviating the need to be concerned about possible anticompetitive activity by domestic producers.

Lafarge has failed to demonstrate that there are no geographic markets within the United States in which any possible acquisition by Lafarge would warrant the Commission's scrutiny. As noted previously, Lafarge's cement market studies may not accurately depict the appropriate geographic market in which to review acquisitions in Plant Areas, and thus fail to demonstrate that no acquisition in any Plant Areas would warrant scrutiny by the Commission.[4] Lafarge's proposed acquisition of the Huron Division from National Gypsum is an example of a recent transaction subject to the order that raised significant antitrust issues and required extensive scrutiny before the Commission granted approval.[5]

The Petition requests that if the prior approval provision is not set aside, the Commission substitute a prior notification requirement for the prior approval requirement for acquisitions made in Plant Areas. Because the Commission has determined that Lafarge has failed to show that there is no longer a continuing need for prior approval of acquisitions by Lafarge in Plant Areas and because prior notification would not be an adequate substitute for the Commission's review under a prior approval provision, this request is also denied.

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[1] Lafarge's analysis of the Inland Market in its cement market studies may not accurately depict the appropriate geographic market because its assessment of the supply response of firms on the fringe of the postulated markets may be overstated. Moreover, the deregulation of railroad rates, which is a basis for Lafarge's analysis of geographic markets, occurred prior to the date of the issuance of this order and therefore is not a changed condition.

[2] Michael W. Klass, "Economic Analysis of the Proposed Relaxation of the Prior Approval Provision of the Consent Order Governing Lafarge Corporation's Acquisition of United States Cement Assets," August 11, 1988 ("Economic Report").

[3] The first instance involved GPI's attempt to acquire a cement terminal in West Palm Beach, Florida, from Ideal Basics Industries in November 1982, while the consent order in this matter was pending. According to Lafarge, Ideal backed out of the transaction because of the need for GPI to obtain prior Commission approval of the sale—"a time consuming process." Petition at 13-14. Subsequently, in 1984, Lafarge desired to lease a West Palm Beach terminal, but instead entered into an allegedly more costly through-put arrangement because it was uncertain if the lease of the terminal was subject to the prior approval requirement. In neither instance did Lafarge seek prior approval from the Commission.

The second instance involved a cement plant in Seattle, which was sold at auction. Lafarge claims that the prior approval requirement prevented it from bidding on those assets. Petition at 19-20. The third situation cited by Lafarge involved its acquisition of the Huron Division of National Gypsum Company. Lafarge alleges that the costs of the acquisition were raised by the legal and economic expert fees it incurred to seek prior approval and by the 11 month wait for the Commission's prior approval process to be concluded. Petition at 20-21. The Commission notes, however, that Lafarge did make that acquisition, and notes further that Lafarge's delay in responding to the staff's requests for information contributed to the time needed to decide Lafarge's request.

[4] Because neither the complaint nor the order define the geographic market for acquisitions in Plant Areas, the Commission will determine the appropriate market analysis at the time any request for prior approval is made.

[5] Even Lafarge's demonstration that water-based terminals can be constructed in Florida within a two-year time frame does not demonstrate that such terminals could be constructed anywhere on the United States coastline. The permitting process varies from jurisdiction to jurisdiction, and Lafarge has not shown that a terminal could be built within two years in other Plant Areas. Therefore, Lafarge has not shown that acquisitions in Plant Areas that include deep water ports should be removed from order coverage.

The Commission, therefore, has determined to grant Lafarge's request to reopen and modify Paragraph VIII of the order to delete the requirement for prior approval of acquisitions in the State of Florida. Further, the Commission has determined to deny Lafarge's request in all other respects.

Accordingly, it is ordered that this matter be reopened and that Paragraph VIII of the Commission's order in Docket No. C–3100 be modified, as of the date of service of this order, to read as follows:

VIII

It is further ordered, That for a period of ten years Respondents shall not acquire, without the prior approval of the Commission, any cement manufacturing or grinding plant or distribution terminal in South Carolina, Georgia, Alabama and Tennessee or in any Plant Areas (other than in Florida) in which Respondents, at the time of the acquisition, are then engaged in the manufacture of cement.

By the Commission.

Donald S. Clark,

Secretary.

Separate Statement of Chairman Oliver in the Matter of Canada Cement Lafarge, Ltd.

I concur in Commission's decision to grant Lafarge's request to reopen and modify Paragraph VIII of the order, by deleting the requirement for prior approval of acquisitions in the State of Florida, and to deny Lafarge's request in all other respects. However, in reaching this conclusion, I do not join in imposing the standard espoused in *Damon Corp.*, Docket No. C–2916, Letter to Joel E. Hoffman, Esq. (March 29, 1983), at 2, that petitioner demonstrate some "affirmative need" for modification when invoking the public interest. The "affirmative need" standard is required neither by section 5(b) of the Federal Trade Commission Act nor by Rule 2.51 of the Commission's Rules of Practice, and the Commission should not impose this additional hurdle. The "affirmative need" standard creates no discernible benefits. Nevertheless, in my view, the public interest is served by continuing to impose the prior approval requirement for acquisitions in the Inland Market and Plant Areas outside of Florida.

[FR Doc. 89–14568 Filed 6–19–89; 8:45 am]

BILLING CODE 6750–01–M

16 CFR Part 113

[Docket No. C–3252]

Coleco Industries, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a West Hartford, CT, corporation from claiming that any computer-related product is or will be available for sale, or has or will have any capability, unless the product actually is available or has that capability, or the company has a reasonable basis for saying it will be available or will have that capability.

DATE: Complaint and Order issued May 18, 1989.[1]

FOR FURTHER INFORMATION CONTACT: Don M. Blumenthal, Cleveland Regional Office, Federal Trade Commission, 668 Euclid Ave., Suite 520–A, Cleveland, Ohio 44114. (216) 522–4210.

SUPPLEMENTARY INFORMATION: On Wednesday, January 18, 1989, there was published in the **Federal Register**, 54 FR 1948, a proposed consent agreement with analysis In the Matter of Coleco Industries, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form or order.

A comment was filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely Or Misleadingly: § 13.10 Advertising falsely or misleadingly; § 13.10–1 Availability of merchandise and/or services; § 13.175 Quality of product or service. Subpart—Corrective Actions And/Or Requirements: Corrective actions and/or requirements; § 13.533–20 Disclosures; § 13.533–45 Maintain records; § 13.533–45(a) Advertising substantiation; § 13.533–50 Maintain means of communication. Subpart—Misrepresenting Oneself And Goods:—Goods: § 13.1572 Availability of advertised merchandise and/or facilities; § 13.1590–20 Federal Trade Commission Act; § 13.1710 Qualities or properties.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

List of Subjects in 16 CFR Part 13

Computer games, Modules, Toys, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 89–14567 Filed 6–19–89; 8:45 am]

BILLING CODE 6750–01–M

RAILROAD RETIREMENT BOARD

20 CFR Part 344

RIN 3220–AA78

Contributions Under Special Transition Rule for Public Commuter Railroads

AGENCY: Railroad Retirement Board.

ACTION: Temporary rule.

SUMMARY: The Railroad Retirement Board (Board) hereby amends Chapter II of Title 20 of the Code of Federal Regulations by adding a new Part 344. Part 344 sets forth Board procedures for collecting contributions under the Railroad Unemployment Insurance Act from public commuter railroads under the special transition rule that was added to that Act by section 7102(a) of the Railroad Unemployment Insurance and Retirement Improvement Act of 1988 (Title VII, Subtitle A of Pub. L. 100–647). The special transition rule will be applicable to calendar years 1989 and 1990 and will then cease to be effective.

EFFECTIVE DATE: This part will become effective June 20, 1989. However, the Board will consider comments received by July 20, 1989.

ADDRESS: Office of Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, General Attorney, Bureau of Law, Railroad Retirement Board, Chicago, Illinois 60611; (312) 751–4513 (FTS 386–4513).

SUPPLEMENTARY INFORMATION: Each railroad employer currently pays unemployment insurance contributions equal to 8 percent with respect to each employee's compensation that is not in excess of the monthly compensation base under section 1(i) of the Railroad Unemployment Insurance Act. Such contributions are collected by the Railroad Retirement Board in accordance with Part 345 of this chapter. A portion of the amount collected from each employer is used to pay the Board's expenses in administering the Railroad Unemployment Insurance Act.

In addition, each railroad employer pays a tax under the Railroad Unemployment Repayment Tax Act (RURT) (26 U.S.C. 3321–3323).

Under the Railroad Unemployment Insurance and Retirement Improvement Act of 1988 (1988 Act), the current uniform contribution rate now applicable to all railroad employers will be phased out and replaced by a system under which each railroad employer will have an experience-rated contribution rate with respect to compensation paid in calendar years after 1990. The purpose of the experience rating provisions of section 8 of the Railroad Unemployment Insurance Act, as amended, is to hold base year employers more directly liable for benefit costs in the ensuring benefit year. However, section 7102(a) of the 1988 Act provides a special transition rule for public commuter railroads. Under this rule, such railroads are excused from paying the 8 percent contribution rate applicable to other railroad employers for 1989 and 1990, but instead are required to pay contributions equal to the entire cost of unemployment and sickness benefits attributable to such railroads, plus an additional amount for administrative expenses. Pulbic commuter railroads will continue to pay the RURT tax in the same manner as other railroad employers. After 1990, public commuter railroads will pay experience-rated unemployment insurance contributions on the same basis as other railroad employers.

The Board has determined that this is not a major rule for purposes of Executive Order 12291. Therefore, no regulatory analysis is required. The information collection imposed by this part has been approved by the Office of Management and Budget under control number 3220–0012.

List of Subjects in 20 CFR Part 344

Railroad employers, Railroad unemployment benefits, Railroad employees.

1. For the reasons set out in the preamble, Title 20, Chapter II of the Code of Federal Regulations, is amended by adding Part 344 to read as follows:

PART 344—CONTRIBUTIONS UNDER SPECIAL TRANSITION RULE FOR PUBLIC COMMUTER RAILROADS

Sec.

344.1 Purpose.
344.2 Employers subject to this part.
344.3 Attributable benefits.
344.4 Quarterly computation of contributions; Notice to public commuter railroad.
344.5 Filing of contribution report and payment of contributions.
344.6 Sunset provision.

Authority: 45 U.S.C. 362(i) and 362(l).

§ 344.1 Purpose.

This part implements section 8(a)(1)(B)(vi) of the Railroad Unemployment Insurance Act, as added by section 7102(a) of the Railroad Unemployment Insurance and Retirement Improvement Act of 1988 (Title VII, Subtitle A of Pub. L. 100–647). Section 7102(a) amended section 8 of the Railroad Unemployment Insurance Act (45 U.S.C. 358) to provide that the unemployment insurance contributions required to be paid by public commuter railroads for 1989 and 1990 shall be computed under a special transition rule. Under the special transition rule, the contributions to be paid to the Railroad Retirement Board for 1989 and 1990 shall be equal to the amount of unemployment and sickness benefits paid by the Board to employees of public commuter railroad employers during those two years, if such benefits are attributable to such employers. Benefit payments will be attributable to a public commuter railroad under the circumstances described in § 344.3 of this part. The special transition rule also requires public commuter railroads to pay the Board an additional amount to cover the Board's administrative expenses. Accordingly, this part describes the Board's procedures for assessing and collecting contributions and administrative expenses under the special transition rule.

§ 344.2 Employers subject to this part.

(a) This part applies to public commuter railroads that provide commuter passenger service by rail and that employ individuals to carry out such service. A railroad is a public commuter railroad if on November 10, 1988, it was and continues to be publicly funded and publicly operated. The term "commuter service" means short-haul rail passenger service operated in metropolitan and suburban areas, whether within or across the geographical boundaries of a state, and is usually characterized by reduced fare, multiple-ride, and commutation tickets, and by morning and evening peak periods of operations and ridership. The term "public commuter railroad" does not include any privately-owned railroad, or any portion of such railroad's operations, that provides commuter service pursuant to a contract with a commuter authority.

(b) Public commuter railroads subject to this part are the Long Island Railroad Company, the New Jersey Transit Corporation, the Metro-North Commuter Railroad Company, the Southeastern Pennsylvania Transportation Authority, the Port Authority Trans-Hudson Corporation, the Northeast Illinois Regional Commuter Railroad Corporation, and the Staten Island Rapid Transit Operating Authority.

(c) Any railroad employer not named in paragraph (b) of this section that believes it is subject to this part should request the Deputy General Counsel of the Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611 to make a determination as to whether it is an employer covered under this part. Such a request shall be treated as a request for a determination under § 259.1 of this chapter.

§ 344.3 Attributable benefits.

(a) *General rule.* Benefits paid during 1989 and 1990 to an employee of a public commuter railroad, after adjustment in accordance with § 344.4(c) of this part, will be attributed, in whole or in part, to the public commuter railroad or railroads that employed such employee during the base year applicable to the benefit year with respect to which the benefit payments were made. The term "base year" means the completed calendar year immediately preceding the beginning of the benefit year. The term "benefit year" means the 12-month period beginning July 1 of any year and ending June 30 of the next year, except that a registration period beginning in June and ending in July shall be deemed to be in the benefit year ending in such month of June. If an employee's only base year employer was a public commuter railroad, all of the benefits paid to such employee during 1989 or 1990 will be attributed to such base year public commuter railroad. If an employee had more than one base year public commuter railroad employer, benefit payments will be attributed in accordance with paragraph (b) of this section.

(b) *Multiple base year public commuter railroad employers.* All benefits paid to an employee who had more than one base year public commuter railroad employer shall be attributed to such base year employers as follows:

(1) *Employer at time of claim was last base year employer.* Benefits are first attributed to this employer up to the amount of compensation paid by this employer in the base year. Any benefits not attributed to this employer are then attributed to the employee's previous employer(s) in the base year in reverse order of employment with those

employers. However, if the benefits attributable under this provision exceed the employee's total base year compensation, the amount of the attributable benefits in excess of the total base year compensation shall be attributed to each base year employer in the same ratio as the compensation paid to such employee by the employer bears to the total of such compensation paid to such employee by all such employers in the base year.

Example. An employee was successively employed by two public commuter railroads in the base year, during which the employee received a total of $5,000 in compensation, $2,000 from the first employer and $3,000 from the second. Subsequently, the employee was furloughed by employer 2 and then claimed unemployment benefits. During the benefit year covered by the claim, the employee received $6,500 in unemployment benefits. The first $3,000 in benefits paid are attributed to employer 2. The next $2,000 in benefits are attributed to employer 1. The remaining $1,500 is attributed as follows:
Employer 1:

$$\frac{\$1500 \times \$2000}{\$5000} = \$600$$

Employer 2:

$$\frac{\$1500 \times \$3000}{\$5000} = \$900$$

(2) *Employer at time of claim not last base year employer.* Benefits are attributed to each base year employer in the same ratio as the compensation paid to such employee by the employer bears to the total of such compensation paid to such employee by all such employers in the base year.

Example: If, in the example above, after the base year the employee was employed by a third employer and then was furloughed, benefits are attributed to the two base year employers as follows:
Employer 1:

$$\$6500 \times \frac{(\$2000)}{(\$5000)} = \$2600$$

Employer 2:

$$(\$6500) \times \frac{\$3000}{(\$5000)} = (\$3900)$$

(c) *Other base year employer.* If a public commuter railroad employee's base year compensation includes compensation paid by a railroad employer other than a public commuter railroad, as well as compensation paid by public commuter railroad(s), the benefits paid to such employee to be attributed to the public commuter railroad will be determined in the same manner as under paragraphs (b)(1) and (b)(2) of this section treating for purposes of such determination the non-public commuter railroad employer(s) as if it were a public commuter railroad employer(s).

(d) *Amount to be attributed.* The amount of benefits to be attributed under this part is the gross amount of benefits payable to an employee with respect to a registration period, as computed prior to the deduction of:

(1) Any tax imposed under the Internal Revenue Code of 1986,

(2) The amount of any attachment under Part 350 of this chapter, or

(3) The amount recovered by application of § 340.6 of this chapter (Recovery by setoff).

§ 344.4 Quarterly computation of contributions; Notice to public commuter railroad.

(a) *Amount of contribution.* The amount of the contribution due under this part from a public commuter railroad shall consist of:

(1) The amount of benefits attributable to such railroad pursuant to § 344.3 of this part, as adjusted pursuant to paragraph (c) of this section, plus

(2) An additional amount to cover the Board's administrative expenses, as computed under paragraph (d) of this section.

(b) *Quarterly computation and billing of attributable benefits.* With respect to each calendar quarter beginning January 1, 1989, the Director of Unemployment and Sickness Insurance shall compute the gross amount of all benefits attributable to each public commuter railroad in accordance with § 344.3 of this part. The Director shall make such computation within 15 calendar days of the close of each quarter and shall issue a notice to each such railroad in accordance with paragraph (e) of this section.

(c) *Adjustments.* The amount of benefits attributed and billed to each public commuter railroad on a quarterly basis shall be reduced to reflect the amounts of any benefits recovered during such quarter if such benefits were attributed to such railroad in an earlier calendar quarter. If the Board recovers attributable benefits after December 31, 1990, and is unable to reflect the recovery on the billing for the last quarter of 1990, the Board will treat the recovery as a subtraction from the railroad's cumulative benefit balance under section 8(a)(7) of the Railroad Unemployment Insurance Act.

(d) *Administrative expenses.* In addition to the amount computed under paragraph (b) of this section, each public commuter railroad shall be liable to the Board for payment of a contribution for administrative expenses. Such contribution shall be equal to 0.65 percent of the total compensation paid by such railroad on which the railroad's contribution would be based under section 8(a)(1)(B)(i) of the Railroad Unemployment Insurance Act, if the railroad's contribution were determined under that provision.

(e) *Notice.* Notice to each public commuter railroad of the amount of benefits attributed with respect to a particular calendar quarter shall be by Form DC–1/PCRR reflecting the net amount of attributable benefits for which the public commuter railroad is to pay a contribution under this part.

§ 344.5 Filing of contribution report and payment of contributions.

(a) *Requirement.* Each public commuter railroad that is subject to this part shall pay contributions to the Railroad Retirement Board in the amount computed in accordance with § 344.4 of this part.

(b) *Payment.* Payment of the amount due shall be made in accordance with § 345.10 of this chapter.

(c) *Payment and Form DC–1/PCRR due date.* Each public commuter railroad paying contributions under this part shall both remit payment of the amount due and file Form DC–1/PCRR within 30 days of the date on which the Director of Unemployment and Sickness Insurance notifies each such railroad of the amount of benefits attributed to it.

(d) *Remedies.* All provisions of section 8 of the Railroad Unemployment Insurance Act and Part 345 of this chapter that are not inconsistent with this part shall apply with respect to the contributions required by this part.

§ 344.6 Sunset provision.

This part shall be effective with respect to contributions to be paid for calendar years 1989 and 1990 and shall cease to be effective with respect to contributions payable for periods after December 31, 1990.

Dated: June 12, 1989.
By authority of the Board.
Beatrice Ezerski,
Secretary to the Board.
[FR Doc. 89–14549 Filed 6–19–89; 8:45 am]
BILLING CODE 7905–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 436

[Docket No. 89N–0052]

Antibiotic Drugs; Vancomycin Hydrochloride for Injection; Correction

AGENCY: Food and Drug Administration.
ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the final rule that amended the antibiotic drug regulations to provide for the inclusion of accepted standards for a new dosage form of vancomycin hydrochloride, vancomycin hydrochloride for injection (54 FR 20382; May 11, 1989). The text of the amendment inadvertently used the word "months" after the number "6" in the sentence "Resolution compound 2 is eluted between 3 and 6 months after the start of the period when the percentage of mobile phase B is increasing from 0 percent to 100 percent." This document corrects the word "months" to read "minutes".

EFFECTIVE DATE: The effective date for the amendment to 21 CFR Part 436 continues to be June 12, 1989.

FOR FURTHER INFORMATION CONTACT: Peter A. Dionne, Center for Drug Evaluation and Research (HFD–520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4290.

§ 436.366 [Corrected]

In FR Doc. 89–11244, appearing at page 20382 in the **Federal Register** of Thursday, May 11, 1989, the following correction should be made to § 436.366(g)(3): On page 20384, second column, paragraph "(3)", line 5, the word "months" is corrected to read "minutes".

Dated: June 13, 1989.
Daniel L. Michels,
Director, Office of Compliance, Center for Drug Evaluation and Research.
[FR Doc. 89–14559 Filed 6–19–89; 8:45 am]
BILLING CODE 4160–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–89–10]

Special Local Regulations; Fourth of July Fireworks Display; Parker Island, Little Egg Harbor, NJ

AGENCY: Coast Guard, DOT.
ACTION: Final rule.

SUMMARY: Permanent special local regulations are adopted for the annual Fourth of July fireworks display launched from Parker Island, Little Egg Harbor, New Jersey. These regulations restrict vessel navigation in the regulated area during the event. Notice of the precise date and times these regulations are effective will be published in the Local Notice to Mariners and by **Federal Register** Notice. These special local regulations are considered necessary to control vessel traffic and to provide for safety of life and property on the navigable waters within the immediate vicinity of this event.

EFFECTIVE DATE: June 20, 1989. Compliance with these regulations will be required on different dates and times. The Fifth Coast Guard District Commander will publish notices in the Local Notice to Mariners and **Federal Register** announcing the date and times when these regulations are in effect.

FOR FURTHER INFORMATION CONTACT: Billy J. Stephenson, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, (804) 398–6204.

SUPPLEMENTARY INFORMATION: The Coast Guard published a notice of proposed rulemaking concerning these regulations in the **Federal Register** on March 30, 1989 (54 FR 13079). Interested persons were requested to submit comments. No comments were received, however an error was discovered in § 100.514(b)(2)(ii). The requirement stated in this paragraph should have been limited to persons on board vessels displaying the Coast Guard ensign, as in § 100.514(b)(2)(i). Several editorial changes also have been made in paragraph 100.514(c).

Drafting Information

The drafters of this notice are Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Lieutenant Commander Robin K. Kutz, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Comments and Final Rule

No comments were received in response to the notice of proposed rulemaking. The area covered by this proposal is the same as that covered by the special local regulations issued for the Fourth of July Celebration held on July 4, 1988. The Fourth of July Celebration is an annual event expected to draw from 300 to 1,000 spectator craft. The waters enclosed by a circle drawn around the island's center with a radius of 1,000 feet will be closed to waterborne traffic during the fireworks display. Vessels transiting the area will not be inconvenienced since the deep-water channel will remain open.

Because of the nature of these regulations, and the fact that the regulations need to be in place for the upcoming July 4, 1989 celebration, the Coast Guard has determined that good cause exists to make this rulemaking effective in less than 30 days following publication in the **Federal Register**.

Economic Assessment and Certification

These regulations are not considered to be major under Executive Order 12291 on Federal Regulation nor significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact is expected to be so minimal that a full regulatory evaluation is unnecessary. Since the impact of this rule is expected to be minimal, the Coast Guard certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Impact

This final rule has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and has been placed in the rulemaking docket.

BEST COPY AVAILABLE

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water)

Final Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A new § 100.514 is added to read as follows:

§ 100.514. Fourth of July Fireworks Display; Parker Island, Little Egg Harbor, New Jersey.

(a) *Definitions*—(1) *Regulated Area.* The waters of Little Egg Harbor bounded by the arc of a circle with a radius of 1,000 feet and with its center located at latitude 39°34'18.0" North, longitude 74°14'43.0" West.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Group Cape May, New Jersey.

(b) *Special Local Regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the immediate vicinity of this area shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(3) Any spectator vessel may anchor outside of the regulated area specified in paragraph (a)(1) of these regulations but may not block a navigable channel.

(c) *Effective Period.* The Commander, Fifth Coast Guard District will publish a Notice in the Federal Register and in the Fifth Coast Guard District Local Notice to Mariners announcing the date and times that this section is in effect.

Dated: June 2, 1989.

A. D. Breed,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 89-14489 Filed 6-19-89; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[1OOD 05-89-45]

Special Local Regulations for Marine Events; Fourth of July Fireworks Display; Parker Island, Little Egg Harbor, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of 33 CFR 100.514.

SUMMARY: This notice implements 33 CFR 100.514 for the Fourth of July Fireworks Display; Parker Island, Little Egg Harbor, New Jersey. The regulations in 33 CFR 100.514 are needed to control vessel traffic within the immediate vicinity of this event. The regulations restrict vessel traffic in the area for the safety of life and property on the navigable waters during the event.

EFFECTIVE DATE: The regulations in 33 CFR 100.514 become effective on July 4, 1989, at 8:00 p.m. and terminate on July 4, 1989 at 11:30 p.m. In case of postponement due to inclement weather this regulation will take effect on July 5, 1989 at 8:00 p.m. and terminate on July 5, 1989 at 11:30 p.m.

FOR FURTHER INFORMATION CONTACT: Billy J. Stephenson, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004 (804) 398-6204.

Drafting Information:

The drafters of this notice are Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Lieutenant Commander Robin K. Kutz, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

The Red, White and Blue Committee, Ltd., Beach Haven, New Jersey is sponsoring this celebration, which will consist of a fireworks display launched from Parker Island, Little Egg Harbor, New Jersey. The waters of Little Egg Harbor enclosed by a circle around the island's center with a radius of 1000 feet will be closed to waterborne traffic during the event. Vessels transiting the area will not be inconvenienced since the deep water channel will remain open.

Date: June 2, 1989.

A.D. Breed,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 89-14490 Filed 6-19-89; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[OPTS-400022A; FRL-3604-3]

Sodium Sulfate; Toxic Chemical Release Reporting; Community Right-To-Know

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is deleting sodium sulfate solution (Na_2SO_4) from the list of toxic chemicals under section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA). Title III of SARA is also referred to as the Emergency Planning and Community Right-to-Know Act. By promulgating this rule, EPA is relieving facilities of their obligation to report releases of Na_2SO_4 that occurred during the 1988 calendar year, and releases that will occur in the future. This relief applies only to reporting requirements under section 313 of Title III of SARA.

DATES: This rule is effective June 20, 1989.

FOR FURTHER INFORMATION CONTACT: Robert Israel, Petition Coordinator, Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, 401 M St., SW., Mail Stop OS-120, Washington, DC 20460, Toll free: 800-535-0202, in Washington, DC and Alaska, (202) 479-2449.

SUPPLEMENTARY INFORMATION:

I. Description of Petition and Regulatory History

EPA received a section 313(e) petition to delete Na_2SO_4, CAS No. 7757-82-6, from the list of toxic chemicals in 40 CFR 372.65. The petition from Hoescht Celanese Corporation was received on August 9, 1988.

After reviewing the petition and additional related information, EPA concluded that Na_2SO_4 did not meet the listing criteria related to acute human health effects, chronic health effects, or environmental toxicity. These criteria for listing chemicals are in section 313(d) of Title III of SARA. It is EPA's determination that available data do not demonstrate that Na_2SO_4 causes or can reasonably be anticipated to cause significant adverse health or environmental effects. Therefore, EPA issued a proposed rule in the Federal Register of February 17, 1989 (54 FR 7218), granting the petition and announcing EPA's proposal to delete Na_2SO_4 from the section 313 list.

The proposed rule contains a detailed summary of EPA's review of the petition to delete Na_2SO_4 as well as additional information on the petition process under section 313 of Title III of SARA.

As of April 26, 1989, EPA had received 32 comments on the proposed rule to delete Na_2SO_4. Thirty-one comments favoring the proposed deletion were received from industry, industry associations, and a Federal agency (the United States Departments of the Interior, Bureau of Mines). One comment opposing the deletion was received from the Miami Group of the Ohio Chapter of the Sierra Club.

The commenter contended that Na_2SO_4 is capable of harming or killing fish and wildlife but did not provide any evidence to support this statement. As discussed above, EPA conducted a petition review which included a toxicity evaluation of Na_2SO_4 and concluded that existing evidence does not demonstrate that Na_2SO_4 causes or can reasonably be anticipated to cause significant adverse health or environmental effects, including harm to fish and wildlife, as set forth in the listing criteria found in section 313(d). Details of this review can be found in the proposed rule.

The commenter also mentioned the large volume of Na_2SO_4 discharged, particularly to public sewer systems, and expressed a concern that these discharges could combine with other substances in the sewer system to create "an even greater threat" to the environment and the sewage treatment process. EPA's review of Na_2SO_4 included an assessment of the environmental fate of Na_2SO_4 following discharge to sewage treatment systems as well as directly to surface waters. Again, EPA found no evidence of significant toxicity of Na_2SO_4 and does not feel the chemical represents a significant threat to the environment or the sewage treatment process. The commenter did not provide any evidence or references to contradict this finding. EPA also notes that, in the absence of significant toxicity concerns, volume alone is not sufficient reason to list a chemical under section 313.

Finally, the commenter stated that communities should be able to track all toxic chemicals released into their environment, in order to allow the communities to make risk determinations themselves. EPA does not disagree with this comment. However, EPA reiterates that no evidence was found to demonstrate toxicity of Na_2SO_4 sufficient to meet the listing criteria under section 313.

Based upon an evaluation of the petition, available toxicity and exposure information, and the comments, EPA affirms its determination that Na_2SO_4 does not meet any of the listing criteria contained in section 313(d). Therefore, EPA is deleting Na_2SO_4 from the list of chemicals subject to reporting under section 313 of Title III of SARA. As a result of this action, facilities will not be required to report releases of Na_2SO_4 that occurred during the 1988 calendar year, and releases that will occur in the future.

II. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore, requires a Regulatory Impact Analysis. EPA has determined that this rule is not a "major rule" because it will not have an effect on the economy of $100 million or more. This rule will decrease the impact of the section 313 reporting requirements on covered facilities and will result in cost-savings to industry, EPA, and States.

This rule was submitted to the Office of Management and Budget (OMB) under Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980, EPA must conduct a small business analysis to determine whether a substantial number of small entities will be significantly affected. Because the rule will result in cost savings to facilities, EPA certifies that small entities will not be significantly affected by this rule.

C. Paperwork Reduction Act

This rule relieves facilities from having to collect information on the use and releases of Na_2SO_4. Therefore, there were no information collection requirements for OMB to review under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 372

Community right-to-know, Environmental protection, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: June 9, 1989.

Victor J. Kimm,

Acting Assistant Administrator, Office of Pesticides and Toxic Substances.

Therefore, 40 CFR Part 372 is amended as follows:

PART 372—[AMENDED]

1. The authority citation for Part 372 continues to read as follows:

Authority: 42 U.S.C. 11013 and 11028.

§ 372.65 [Amended]

2. Section 372.65(a) and (b) are amended by removing the entire entry for sodium sulfate (solution) under paragraph (a) and removing the entire CAS No. entry for 7757-82-6 under paragraph (b).

[FR Doc. 89-14581 Filed 6-15-89; 4:57 pm]

BILLING CODE 4560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

RIN 1004-AB46

43 CFR Parts 2800, 2810, 2880, 9230, and 9260

[AA-320-09-4211-02-NCPJ; Circular No. 2619]

Rights-of-way, Trespass, and Law Enforcement—Criminal; Amendment To Provide Procedures for Action on Unauthorized Use, Occupancy, or Development of Public Lands for Transportation etc.

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking provides procedures for addressing the unauthorized use, occupancy, or development of the public lands for uses and facilities that require authorization pursuant to Title V of the Federal Land Policy and Management Act (43 U.S.C. 1761-1771), the Act of August 28, 1937 (43 U.S.C. 1181a and 1181b), or section 28 of the Mineral Leasing Act (30 U.S.C. 185). These procedures will enhance protection for public lands and resources from unauthorized use and assure a proper monetary return for use, occupancy, or development of the public lands and resources as well as provide a penalty for violation.

EFFECTIVE DATE: July 20, 1989.

ADDRESS: Inquiries or suggestions should be sent to: Director (320), Bureau of Land Management, U.S. Department of the Interior, 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Oscar Anderson, (202) 343-5441.

SUPPLEMENTARY INFORMATION: This rulemaking, which would provide procedures for addressing unauthorized use, occupancy, and development of the public lands for uses and facilities that require authorization pursuant to Title V of the Federal Land Policy and Management Act (43 U.S.C. 1761-1771), the Act of August 28, 1937 (43 U.S.C. 1181a and 1181b), or Section 28 of the

Mineral Leasing Act (30 U.S.C. 185), was published as a proposed rulemaking in the Federal Register on September 28, 1988 (53 FR 37319), with a 60-day comment period. A notice of correction was published in the Federal Register on October 6, 1988 (53 FR 39403). During the comment period, nine comments were received, six from Federal agencies, one from an association of county governments, one from an individual and one from a public utility.

Part 2800—Definitions

Two comments suggested that the definition of trespass, as provided in the proposed rulemaking at 43 CFR 2800.0–5(u), be expanded to address uses allowed by prior statute. These suggestions are consistent with the Bureau's intent to safeguard uses allowed by prior statute, and the final rulemaking adopts the suggestions by expanding § 2800.0–5(u) to include uses allowed by prior statute.

One comment suggested that unnecessary and undue degradation be considered a trespass even when associated with a Revised Statute (RS) 2477 right-of-way or grant of easement to mining and settlement claims. The proposed definition provided in 43 CFR 2800.0–5(u) classifies all unnecessary and undue degradation as a trespass without excluding trespasses associated with an RS 2477 right-of-way or grant of easement to mining and settlement claims. The final rule is, therefore, unchanged.

One comment suggested that the proposed definition for "willful trespass" as defined in the proposed rulemaking and "knowing and willful" as defined in 43 CFR 2920 be consistent. Since it is our intent that these terms and their definitions be synonymous, the definition in 43 CFR 2920 will be revised when those regulations are amended.

One comment suggested that trespass should not be considered "willful" where it is "virtually impossible for a person to identify or locate the public lands." The Bureau believes such a situation would qualify as a trespass committed by "mistake or inadvertence," which is criteria for nonwillful trespass as proposed and therefore, the final rule is unchanged.

One comment recommend that a definition of "current use fee, amortization fee, and maintenance fee" be included in final rulemaking. The Bureau recognizes the value in this suggestion and therefore, a definition has been added in the final rule as § 2800.0–5(z).

Unauthorized Use, Occupancy or Development

One comment requested clarification as to whether penalties for unauthorized use, occupancy or development outlined in § 2801.3(c) are to be applied in addition to the actions identified in § 2801.3(b). The penalties are to be applied in addition to the actions identified in § 2801.3(b). 43 CFR 2801.3(b) lists the liabilities of anyone determined by the authorized officer to have trespassed as provided in § 2801.3(a). 43 CFR 2801.3(c) lists the penalties an authorized officer shall apply depending on whether the trespass is determined to be either willful, repeated nonwillful, or not resolved within 30 days after receipt of a written demand.

One comment suggested that 43 CFR 2801.3 (unauthorized use, occupancy or development) as proposed failed to recognize types of right-of-way trespass other than road use. Reference to other kinds of trespass, i.e., for uses requiring authorization pursuant to the regulations in 43 CFR 2800 and 2880, include all types of uses requiring rights-of-way or permits under Title V of the Federal Land Policy and Management Act and the Mineral Leasing Act, as amended. Therefore, the final rule is not changed as suggested.

One comment requested that the starting point of the 30-day period in § 2801.3(c)(1) be identified. The proposed rulemaking identifies the beginning of the 30 day period to be the date of receipt of a written demand. The Bureau recognizes the inherent ambiguity in the term "receipt of a written demand". Therefore, a definition of "written demand" is added as paragraph (y) under § 2800.0–5 and means a written demand in the form of a billing notice for payment of trespass liability which in no case will be less than the minimum amount as identified in § 2801.3(d) and will be delivered by certified mail, return receipt requested, or personally served.

Three comments suggested that the time period for which trespass damages are computed in the proposed rulemaking is inconsistent with 43 CFR 2920.1–2(b). Since the Bureau of Land Management is required by the FLPMA to receive fair market value for the use of the public lands and their resources for the period of use, the 6 year period is not included in the rulemaking.

Two comments recommended increasing the grace period (allowed for nonwillful trespass before assessing penalties) to 45 or 60 days after receipt of a written demand in order to provide adequate time for reaching an amicable settlement. One comment recommended deleting the requirement that penalties for a nonwillful trespass be assessed if the trespass is not resolved within the 30 day period. A definition of "written demand" has been added as § 2800.0–5(y) which will clarify at what time the 30 day period begins. The written demand is the culmination of fact finding meetings and investigation by field officials. The written demand is issued after the trespasser and the authorized officer have finished resolution meetings and the authorized officer has determined the amount of liability due the United States based upon information provided by the trespasser and facts provided from the trespass investigation. The trespasser has 30 days to pay the damages due as identified in the written demand; a penalty is applied if payment is not received within those 30 days. This penalty is provided to insure a timely final resolution to the trespass. Penalty is avoided when one of the three conditions in § 9239.7–1 of this title have been satisfied. Provisions are also allowed in item (c) of 43 CFR 9239.7–1 for the authorized officer to "determine in writing" that a legitimate dispute exists. The authorized officer therefore has the authority at any time prior to issuance of the written demand for payment to adjust liabilities and any time during the 30 day period to acknowledge a legitimate dispute to prevent the penalty assessment. Doubling the rental value as penalty for an excessive delay in resolution is also provided in 43 CFR 2920. Therefore, these comments were not adopted in the final rulemaking.

One comment stated that the proposed rulemaking did not provide for a timeframe to resolve repeated nonwillful or willful trespass. The "30 day" timeframe in the proposed rulemaking at § 2801.3(c)(1) is the measure of time after which penalties for nonwillful trespass are to be addressed for failure to satisfy liabilities by meeting one of the conditions in § 9239.7–1, not the time allowed to resolve a trespass. No specific time period is identified for total trespass investigation and resolution. A clarification is included in § 2801.3(c)(1) and 2800.0–5(y) of the final rulemaking.

One comment suggested allowing the discretionary increase of penalties by 3 to 5 times the rental or road use, amortization and maintenance charges when trespass is repeated. The proposed rulemaking provides for penalties on repeated trespass which we believe are adequate. The suggestion to provide discretionary authority to increase the penalty for repeated trespass to 5 times the rental value is considered harsh, is inconsistent with existing 43 CFR 2920 regulations, and, therefore, is not adopted.

One comment suggested that the phrase "inception of trespass" in subparagraphs 2801.3(c)(1) and (2) could be interpreted to mean either the date the trespass began or the date a trespass was discovered and a case established. The Bureau believes that the term "inception of trespass" generally is understood to mean the date on which a trespass began (as can be proven by methods normally used in establishing a period in time, such as by photos, witnesses, evidence, admission, etc.). Therefore, the final rule is unchanged.

One comment suggested that the reimbursement of costs incurred by the United States in investigation and termination of a trespass be recovered by utilizing the fee schedule found in 43 CFR 2808.3 and 3808.4 to determine liability for administrative costs. As no trespass cases have been completed by which an average of administrative costs can be determined, the suggested average fee schedule cannot be used at this time. Actual costs determined by accurate record keeping will be needed until a determination can be made as to whether an average fee schedule is proper. Therefore, this suggestion is not adopted in the final rulemaking.

One comment suggested that the requirement of a minimum settlement fee as required in § 2801.3(e) of the proposed rulemaking would hinder resolving trespass and may cost more to collect than an amount which otherwise could be collected. The State Director presently has the authority, with concurrence of the Field Solicitor, to compromise or write off trespass liability up to $20,000 and to suspend collection action (write off) uncollectable trespass liability claims of up to $600. The FLPMA requires receipt of fair market value for use of public lands and resources unless otherwise provided for by statute such as in the Federal Claims Collection Standards. Collection of administrative costs has been upheld, see *Henry Deaton* (101 IBLA 177), and also is provided for in 43 CFR 2920 and 43 CFR 4150. Based upon studies conducted for right-of-way applications, processing a case costs, at a minimum, the amount identified for a Category I (all information contained in the office and no field trips involved) right-of-way application. In light of minimum right-of-way case processing costs and the State Director's authority to compromise or write off debts up to $20,000 for good cause, the concerns of this suggestion are met by existing mechanisms. The suggestion to eliminate the minimum fee requirement in the final rulemaking is not adopted.

One comment suggested that the term "other lands use request" as used in § 2801.3(e) be clarified. The authorities for the final rulemaking may be found at 43 U.S.C. 1181a, 1181b, 1733, 1740, 1761–1771 and 30 U.S.C. 185. These authorities include rights-of-way and permits under Title V of FLPMA, the Mineral Leasing Act, and Tram Roads on the Revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands (O&C). Lands actions which may be authorized by other authorities are not included in this final rulemaking, and no further explanation is required.

One comment suggested changing the wording in 43 CFR 2801.3(g) and 43 CFR 9262.1 to "knowing and willful trespassers shall be tried" before a United States Magistrate rather than "may be tried." The wording "may be tried" is consistent with wording in the Federal Land Policy and Management Act (43 U.S.C. 1733). Therefore, this suggestion is not adopted in the final rulemaking.

One comment suggested that public utilities providing service to parties accused of trespass be allowed to remain in service until the party receiving the services is legally judged to be in trespass. In the instance described, both the public utility and the party being served would be in trespass, i.e., the utility company is in trespass for service lines and the party served by the utility company is in trespass for the utilities to which the utility lines run. The utility and the party being served are legally judged to be in trespass only after the appeal period for a notice of trespass has expired without appeal, decision on appeal has been made, or the trespasser judged to be in trespass in court proceedings. The utility may file a use permit or right-of-way application requesting authorization to continue service pending the outcome of all appeals to satisfy any concern. Therefore, the suggested change is not adopted as no removal is required until a use, occupancy or development is considered a trespass in accordance with existing law.

One comment suggested that an authorized officer be able to resolve an unauthorized use, occupancy, or development through an amicable settlement, by giving the trespasser a grant for his unauthorized use and not require a formal trespass procedure. As stated previously, provisions are available which allow the State Director to compromise or write off debts of up to $20,000. This allows the flexibility suggested where cause exists. Also, without formal notice, a trespasser is not legally notified of his liability. Therefore, this suggestion is not adopted in the final rulemaking.

One comment suggested that a trespasser not be allowed to file a bond, conditioned upon payment of the damages due, as provided in § 9239.7–1 item (b) in order to be eligible for a new permit, license, authorization or grant. The rulemaking should allow new authorizations to any trespasser who has filed a bond to compensate the United States for outstanding trespass liabilities. The allowance provides for issuance of new authorizations pending payment of outstanding liabilities yet assures that the United States will recover just compensation. This provision will allow timely completion of multiple applications in progress. Additional penalties for willful trespass are provided in § 9262.1. Therefore, this suggestion is not included in the final rulemaking.

One comment suggested clarification of § 9239.7–1 (rights-of-way trespass on public lands) for the types of uses which shall not be allowed to a party with an unresolved trespass. Existing rules provide that no new right-of-way or permit under 43 CFR Parts 2800, 2810 or 2880 may be issued to a trespasser until one of the conditions identified in Section 9239.7–1 is met. Therefore, the final rulemaking is unchanged.

One comment suggested that the rule should be revised to delete from § 9239.7–1 the words "and received by the applicant." In most cases, it is difficult to determine when a letter has been received by the addressee. It is not unusual for weeks to pass before proof of delivery has been received by the Bureau. Therefore, the final rule is changed to state that the grant takes effect on the date of the authorized officer's signature.

Part 9260—Law Enforcement—Criminal

One comment asked whether a trial before a United States Magistrate as specified in 43 CFR Part 9262–1 and provision for fine and/or imprisonment are pursued in addition to rent and other charges imposed under § 2801.3. Criminal penalties are applied in addition to civil penalties, where the trespasser is convicted in a criminal prosecution. Such prosecution may be brought independently of civil damage recovery proceedings.

The principal author of this final rulemaking is Oscar Anderson, Division of Lands and Realty, Bureau of Land

Management, assisted by the Division of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this final rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The changes made by this final rulemaking will not have an effect upon the legitimate users of the public lands and resources. The changes made by the final rulemaking will provide procedures for processing cases involving instances of illegal use of the public lands for rights-of-way and road use purposes, for recovering fair market value of the use of public lands and resources for right-of-way and road use purposes, for providing penalties for repeated and willful illegal use, for recovering adminstrative costs for processing these cases, and for rehabilitation costs of public lands and resources damaged through illegal use. The impact of the final rulemaking will be the same, regardless of the size of the entity involved in an illegal use.

The rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

For the reasons set out above, 43 CFR Parts 2800, 2810, 2880, 9230, 9260 are amended as set forth below:

James M. Hughes,

Deputy Assistant Secretary of the Interior.

May 25, 1989.

PART 2800—RIGHTS-OF-WAY, PRINCIPLES AND PROCEDURES

1. The authority citation for Part 2800 is revised to read:

Authority: 43 U.S.C. 1733, 1740, and 1761–1771.

2. Section 2800.0–3 is revised to read:

§ 2800.0–3 Authority.

Sections 303, 310, and 501–511 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733, 1761–1771) authorize the Secretary of the Interior to issue regulations providing for the use, occupancy, and development of the public lands through permits, easements, and rights-of-way.

3. Section 2800.0–5 is amended by adding the definition of "trespass" as subparagraph (u), "willful trespass" as subparagraph (v), "nonwillful trespass" as subparagraph (w), and "unnecessary or undue degradation" as subparagraph (x), "written demand" as (y) and "road use, amortization and maintenance" as (z).

§ 2800.0–5 Definitions.

* * * * *

(u) "Trespass" means any use, occupancy or development of the public lands or their resources without authorization to do so from the United States where authorization is required, or which exceeds such authorization or which causes unnecessary or undue degradation of the land or resources.

(v) "Willful trespass" means the voluntary or conscious trespass as defined at § 2801 of this title. The term does not include an act made by mistake or inadvertence. The term includes actions taken with criminal or malicious intent. A consistent pattern of trespass may be sufficient to establish the knowing or willful nature of the conduct, where such consistent pattern is neither the result of mistake or inadvertence. Conduct which is otherwise regarded as being knowing or willful does not become innocent through the belief that the conduct is reasonable or legal.

(w) "Nonwillful trespass" means a trespass, as defined at § 2801.3(a) of this title, committed by mistake or inadvertence.

(x) "Unnecessary or undue degradation" means surface disturbance greater than that which would normally result when the same or a similar activity is being accomplished by a prudent person in a usual, customary, and proficient manner that takes into consideration the effects of the activity on other resources and land uses, including those resources and uses outside the area of activity. This disturbance may be either nonwillful or willful as described in § 2800.0–5(v) through (w), depending upon the "circumstances",

(y) "written demand" means a request in writing for payment and/or rehabilitation in the form of a billing delivered by certified mail, return receipt requested or personally served.

(z) "road use, amortization and maintenance charges" means the fees charged for commercial use of a road owned or controlled by the Bureau of Land Management. These fees normally include use fees, amortization fees and maintenance fees.

4. Section 2801.3 is revised to read:

§ 2801.3 Unauthorized use, occupancy, or development.

(a) Any use, occupancy, or development of the public lands that requires a right-of-way, temporary use permit, or other authorization pursuant to the regulations of that part and that has not been so authorized, or that is beyond the scope and specific limitations of such an authorization, or that causes unnecessary or undue degradation, is prohibited and shall constitute a trespass as defined in Section 2800.0–5.

(b) Anyone determined by the authorized officer to be in violation of paragraph (a) of this section shall be notified in writing of such trespass and shall be liable to the United States for:

(1) Reimbursement of all costs incurred by the United States in the investigation and termination of such trespass;

(2) The rental value of the lands, as provided for in § 2803.1–2 of this title, for the current year and past years of trespass, or where applicable, the cumulative value of the current use fee, amortization fee, and maintenance fee as determined by the authorized officer for unauthorized use of any road administered by the BLM; and

(3) Rehabilitating and stabilizing any lands that were harmed by such trespass. If the trespasser does not rehabilitate and stabilize the lands within the time set by the authorized officer in the notice, he/she shall be liable for the costs incurred by the United States in rehabilitating and stabilizing such lands.

(c) In addition to amounts due under the provisions of paragraph (b) of this section, the following penalties shall be assessed by the authorized officer:

(1) For all nonwillful trespass which is not resolved by meeting one of the conditions identified in § 9239.7–1 within 30 days of receipt of a written demand under paragraph (b) of this section—an amount equal to the rental value and for roads, an amount equal to the charges for road use, amortization and maintenance which have accrued since the inception of the trespass;

(2) For repeated nonwillful or willful trespass—an amount that is 2 times the rental value and for roads, an amount 2 times the charges for road use, amortization and maintenance which have accrued since the inception of the trespass.

(d) In no event shall settlement for trespass computed pursuant to paragraphs (b) and (c) of this section be less than the processing fee for a Category I application for provided for in § 2808.3–1 of this title for nonwillful trespass or less than 3 times this value for repeated nonwillful or knowing and willfull trespass. In all cases the trespasser shall pay whichever is the higher of the computed penalty or minimum penalty amount.

(e) Failure to satisfy the requirements of § 2801.3(b) of this title shall result in the denial of any right-of-way, temporary land use, road use application or other lands use request filed by not yet granted until there has been compliance with the provisions of § 9239.7–1 of this title.

(f) Any person adversely affected by a decision of the authorized officer issued under this section may appeal that decision under the provisions of Part 4 of this title.

(g) In addition to the civil penalties provided for in this part, any person who knowingly and willfully violates the provisions of § 2801.3(a) of this title may be tried before a United States magistrate and fined no more than $1,000 or imprisoned for no more than 12 months, or both, as provided by section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)) and § 9262.1 of this title.

PART 2810—TRAMROADS AND LOGGING ROADS

1. The authority citation for Part 2810 is revised to read:

Authority: 43 U.S.C. 1181a, 1181b, 1732, 1733, and 1740.

2. Section 2812.0–3 is revised to read:

§ 2812.0–3 Authority.

Sections 303 and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732, 1733, and 1740), and the Act of August 28, 1937 (43 U.S.C. 1181a and 1181b), provide for the conservation and management of the Oregon and California Railroad lands and the Coos Bay Wagon Road lands and authorize the Secretary of the Interior to issue regulations providing for the use, occupancy, and development of the public lands through permits and rights-of-way.

3. Section 2812.1–3 is revised to read:

§ 2812.1–3 Unauthorized use, occupancy, or development.

Any use, occupancy, or development of the Revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands (O & C) lands (as is defined in 43 CFR 2812.0–5(e)), for tramroads without an authorization pursuant to this subpart, or which is beyond the scope and specific limitations of such an authorization, or that cause unnecessary or undue degradation, is prohibited and shall constitute a trespass as defined in § 2800.0–5. Anyone determined by the authorized officer to be in violation of this section shall be notified of such trespass in writing and shall be liable to the United States for all costs and payments determined in the same manner as set forth at § 2801.3, Part 2800 of this title.

PART 2880—RIGHTS-OF-WAY UNDER THE MINERALS LEASING ACT

1. The authority citation for Part 2880 is revised as follows:

Authority: 30 U.S.C. 185, Section 28, unless otherwise noted.

2. Section 2881.3 is revised to read:

§ 2881.3 Unauthorized use, occupancy or development.

Any use, occupancy, or development of the public lands that requires a right-of-way, temporary use permit, or other authorization pursuant to the regulations in this part, and that has not been so authorized, or that is beyond the scope and specific limitations of such authorization, or that causes unnecessary or undue degradation, is prohibited and shall constitute a trespass as defined in § 2800.0–5. Anyone determined by the authorized officer to be in trespass on the public lands shall be notified in writing of such trespass and shall be liable to the United States for all costs and payments determined in the same manner as set forth at § 2801.3, Part 2800 of this title.

PART 9230—TRESPASS

1. The authority citation for Part 9230 is revised to read:

Authority: 43 U.S.C. 1732, 1733, 1740, and 1761–1771.

2. Section 9239.7–1 is revised to read:

§ 9239.7–1 Public lands.

The filing of an application under Part 2800, 2810, or 2880, of this chaper does not authorize the applicant to use or occupy the public lands for right-of-way purposes, except as provided at §§ 2800.0–5(m), 2802.1(d) and 2882.1, until written authorization has been issued by the authorized officer. Any unauthorized occupancy or use of public lands or improvements for right-of-way purposes constitutes a trespass against the United States for which the trespasser is liable for costs, damages, and penalties as provided in §§ 2801.3, 2812.1–3, and 2881.3, of this title. No new permit, license, authorization or grant of any kind shall be issued to a trespasser until:

(a) The trespass claim is fully satisfied; or

(b) The trespasser files a bond conditioned upon payment of the amount of damages determined to be due the United States; or

(c) The authorized officer determines in writing that there is a legitimate dispute as to the fact of the trespasser's liability or as to the extent of his liability and the trespasser files a bond in an amount determined by the authorized officer to be sufficient to cover payment of a future court judgment in favor of the United States.

PART 9260—LAW ENFORCEMENT—CRIMINAL

The authority citation for Part 9260 is revised to read:

Authority: 16 U.S.C. 433; 16 U.S.C. 460l–6a; 16 U.S.C. 670j; 16 U.S.C. 1246(i); 16 U.S.C. 1338; 18 U.S.C. 1851–1861; 43 U.S.C. 315(a); 43 U.S.C. 1061, 1063; 43 U.S.C. 1733.

2. Subpart 9262 is revised to read:

§ 9262.0 Authority.

43 U.S.C. 1732, 1733, 1740, 1761–1771.

§ 9262.1 Penalties for unauthorized use, occupancy, or development of public lands.

Under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)) any person who knowingly and willfully violates the provisions of §§ 2801.3(a), 2812.1–3, 2881.3, or 2920.1–2(a) of this title, by using public lands without the requisite authorization, may be tried before a United States magistrate and fined no more than $1,000 or imprisoned for no more than 12 months, or both.

[FR Doc. 89–14561 Filed 6–19–89; 8:45 am]

BILLING CODE 4310–84–M

43 CFR Public Land Order 6730

[CO–930–09–4214–10; C–45714]

Withdrawal of National Forest System Land for Protection of Recreational Values; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws approximately 374 acres of National Forest System lands from mining for a period of 50 years for the protection of existing and planned recreational facilities near Aspen, Colorado. The lands have been and remain open to such other forms of disposition as may by law be made of National Forest System Lands and to mineral leasing.

EFFECTIVE DATE: June 20, 1989.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, Bureau of Land Management, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076, 303–236–1768.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System lands, which are under the jurisdiction of the Secretary of Agriculture, are hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2) to protect existing and planned recreational values which are a part of the Aspen Mountain Ski Area:

Sixth Principal Meridian

White River National Forest

T. 10 S., R. 84 W.,
- Sec. 18, S½SE¼NW¼NW¼, SW¼NW¼, W½SW¼, and W½E½SW¼, excluding patented lands;
- Sec. 19, W½E½W½, W½W½, W½SE¼NE¼NW¼, W½E½SE¼NW¼, E½E½SW¼, W½SW¼NW¼SE¼, W½NW¼SW¼SE¼, and SW¼SW¼SE¼, excluding patented lands;
- Sec. 30, W½W½NE¼, W½E½SW¼NE¼, NW¼, N½N½NE¼SW¼, SW¼NW¼NE¼SW¼, SW¼NE¼NE¼SW¼, N½NE¼NW¼SW¼, and N½NW¼NW¼SE¼, excluding patented lands.

T. 10 S., R. 85 W.,
- Sec. 13, SE¼NE¼, E½SW¼NE¼, E½W½SE¼, and E½SE¼, excluding patented lands;
- Sec. 24, E½E½ and E½W½NE¼, excluding patented lands;
- Sec. 25, NE¼NE¼, NE¼SE¼NE¼, and NE¼SE¼SE¼NE¼, excluding patented lands.

The areas described aggregate approximately 374 acres in Pitkin County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of National Forest System lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 50 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Date: June 13, 1989.

Ralph W. Tarr,

Solicitor.

[FR Doc. 89–14513 Filed 6–19–89; 8:45 am]

BILLING CODE 4310–JB–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 76

[Gen. Docket No. 87–24; DA 89–542]

Cable Television Services; Program Exclusivity in the Cable and Broadcast Industry; Technical Amendment and Correction.

AGENCY: Federal Communications Commission.

ACTION: Final rule; technical amendment and correction.

SUMMARY: The Commission is correcting errors, by technical amendment, in the preamble, ordering clause and regulatory text of the summarized *Report and Order* (*R&O*), Gen. Docket 87–24, which appeared in the **Federal Register** on July 19, 1988 (53 FR 27167). The correction to the regulatory text is presented as a technical amendment to the Code of Federal Regulations (CFR), because the codified text of the rule is being corrected after the revision date of its CFR title. In addition, the Commission is correcting errors in the summary contained in the supplementary information section, ordering clauses and regulatory text of the summarized *Memorandum Opinion and Order* (*MO&O*), Gen. Docket No. 87–24, which appeared in the **Federal Register** on March 29, 1989 (54 FR 12913).

EFFECTIVE DATES: The effective date for this technical amendment and correction is June 12, 1989. The effective date for §§ 76.92–76.95 revised at 53 FR 27171 is changed to August 18, 1988.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: David E. Horowitz, Mass Media Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION: In the *R&O*, the Commission reinstituted syndicated exclusivity rules applicable to cable systems, and modified existing network non-duplication rules. In brief, the syndicated exclusivity rules permit broadcasters to negotiate with their program suppliers for exclusive exhibition rights with respect to syndicated (*i.e.*, non-network) programming carried by cable systems located within certain geographic parameters. Similarly, the network non-duplication rules permit network-affiliated broadcasters to contract for exclusive exhibition *vis-a-vis* cable, but with respect to network programming. In response to various petitions for reconsideration, the Commission adopted the *MO&O*, which amended the syndicated exclusivity rules in certain regards and further modified the network non-duplication rules. The summarized versions appearing in the **Federal Register** of both the *R&O* (53 FR 27167) and the *MO&O* (54 FR 12913) contained errors which are discussed briefly below and are corrected by technical amendment (in the case of the *R&O*) or by this notice (in the case of the *MO&O*).

Technical Amendments to the Summarized Report and Order

The following technical amendments are made in FR Doc. 88–16187, *Cable Television Services; Program Exclusivity in the Cable and Broadcast Industry*, published in the **Federal Register** on July 19, 1988 (53 FR 27167).

1. The information set forth under the "Effective Date" caption of the preamble on page 27167, third column, erroneously included an exception for §§ 76.92–76.95 from the August 18, 1988, effective date. This exception is deleted and the information under the "Effective Date" caption is revised to read as follows: "August 18, 1988.".

2. Under the "Ordering Clause" heading on page 27170, in the third column, in the second full paragraph (numbered 27), lines 1–3, which read, "Accordingly, IT IS ORDERED THAT, under the authority contained in sections 4(i), 4(g), 302, 303(a) and 604 of", are revised to read as follows: "Accordingly, IT IS ORDERED THAT, under the authority contained in sections 4(i), 4(j), 301, 303, 601(4) and 624 of".

Technical Amendment of Program Exclusivity Rules

List of Subjects in 47 CFR Part 76:

Cable television.

Technical Amendment

Part 76 of Title 47 of the Code of Federal Regulations is amended to read as follows:

1. The authority citation for Part 76 continues to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085; 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309.

2. Section 76.5 of the rules is amended by revising paragraph (nn) to read as follows:

§ 76.5 Definitions.

* * * * *

(nn) A "syndicated program" is any program sold, licensed, distributed or offered to television station licensees in more than one market within the United States other than as network programming as defined in § 76.5(o).

Corrections of the Summarized Memorandum Opinion and Order

The following corrections are made in FR Doc. 89–7386, *Cable Television Services; Program Exclusivity in the Cable and Broadcast Industry*, published in the **Federal Register** on March 29, 1989 (54 FR 12913).

1. On page 12917, first column, third full paragraph (numbered 31), line 3, change "require that" to "allow".

2. On page 12917, first column, third full paragraph (numbered 31), line 6, change "this *MO&O*" to "the amendments adopted by this *MO&O* to".

3. On page 12917, first column, third full paragraph (numbered 31), line 12, change "this *MO&O*," to "the amendments adopted by this *MO&O*,".

4. Under the "Ordering Clauses" heading on page 12918, second column, third full paragraph (numbered 46), line 3, change "302" to "301".

§ 76.94 [Corrected]

5. On page 12918, third column, paragraph (b) of § 76.94, line 6, change "contract." to "contract; provided, however, that for such contracts signed before May 5, 1989, a broadcaster may provide notice on or before June 19, 1989.".

§ 76.97 [Corrected]

6. On page 12919, second column, § 76.97, first line of text, change "provisions" to "network non-duplication protection and exceptions thereto".

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89–14428 Filed 6–19–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 97

[PR Docket No. 88–139; FCC 89–180]

Reorganization and Deregulation of Part 97, Rules Governing the Amateur Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rules.

SUMMARY: This action amends the amateur service rules by reorganizing them to accommodate technological advances and changes in operating practices. It also eliminates unnecessary, obsolete and redundant rules. The rule amendments are necessary to foster a regulatory environment that promotes maximum operator flexibility and innovative experimentation. The effect of the rule amendments is to provide the flexibility needed by amateur operators in order to achieve the objectives of the service.

EFFECTIVE DATE: September 1, 1989.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554, (202) 632–4964.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, adopted May 31, 1989, and released June 9, 1989. The complete text of this Commission action, including the rule amendments, is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this Report and Order, including the rule amendments, may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

1. The amateur service rules have been amended by restructuring them to provide a more meaningful, easy-to-use body of regulations for present and future amateur operators. Unnecessary, obsolete, and redundant rule provisions have been deleted.

2. The emission designators were simplified into a simple system based upon nine terms that are already familiar to amateur operators, such as phone, RTTY, and CW. This makes it possible for amateur operators to understand immediately their authorized emissions. It also promotes flexibility and experimentation by clarifying the wide range of emission types available.

3. The existing language for the quiet hours rule has been retained. This will alleviate the concerns of the commenters in this proceeding who felt that the proposed rule would broaden the Commission's authority to restrict amateur station operations.

4. In addition to the foregoing, these final rules clarify and codify amateur service policies and practices. For example, the exceptions to the prohibitions against transmission of business communications and against broadcasting have been codified.

5. The amended rules are set forth at the end of this document.

6. Pursuant to section 605 of the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, the Commission certifies that these rules will not have a significant economic impact on a substantial number of small entities, because these entities may not use the amateur radio services for commercial radiocommunication. Morever, these rules will not require the use of or significantly enhance the sale of any additional amateur service apparatus.

7. These rules have been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and found to decrease the information collection burden that the Commission imposes on the public. This proposed reduction in information collection burden is subject to approval by the Office of Management and Budget as prescribed by the Act.

8. The amended rules are issued under the authority of 47 U.S.C. 154(i) and 303(r).

List of Subjects in 47 CFR Part 97

Amateur radio, Antennas, Emissions, Third-party traffic.

Donna R. Searcy,

Secretary.

Part 97 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended, as follows:

PART 97—AMATEUR RADIO SERVICE

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97.7 Control operator required.
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97.17 Application for new license.
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97.101 General standards.
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97.111 Authorized transmissions.
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97.201 Auxiliary station.
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97.211 Telecommand station.
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Subpart D—Technical Standards

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97.303 Frequency sharing requirements.
97.305 Authorized emission types.
97.307 Emission standards
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97.311 SS emission types.
97.313 Transmitter power standards.
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97.317 Standards for type acceptance of external RF power amplifiers.

Subpart E—Providing Emergency Communications

97.401 Operation during a disaster.
97.403 Safety of life and protection of property.
97.405 Station in distress.
97.407 Radio amateur civil emergency service.

Subpart F—Qualifying Examination Systems

97.501 Qualifying for an amateur operator license.
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97.507 Preparing an examination.
97.509 Administering an examination.
97.511 Technician, General, Advanced, and Amateur Extra Class operator license examination.
97.513 Novice Class operator license examination.
97.515 Volunteer examiner requirements.
97.517 Volunteer examiner conduct.
97.519 Coordinating examination sessions.
97.521 VEC qualifications.
97.523 Question pools.
97.525 Accrediting VEs.
97.527 Reimbursement for expenses.

Appendix 1 Places Where the Amateur Services is Regulated by the FCC

Appendix 2 VEC Regions

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

Subpart A—General Provisions

§ 97.1 Basis and purpose.

The rules and regulations in this Part are designed to provide an amateur radio service having a fundamental purpose as expressed in the following principles:

(a) Recognition and enhancement of the value of the amateur service to the public as a voluntary noncommercial communication service, particularly with respect to providing emergency communications.

(b) Continuation and extension of the amateur's proven ability to contribute to the advancement of the radio art.

(c) Encouragement and improvement of the amateur service through rules which provide for advancing skills in both the communication and technical phases of the art.

(d) Expansion of the existing reservoir within the amateur radio service of trained operators, technicians, and electronics experts.

(e) Continuation and extension of the amateur's unique ability to enhance international goodwill.

§ 97.3 Definitions.

(a) The definitions of terms used in Part 97 are:

(1) *Amateur operator.* A person holding a written authorization to be the control operator of an amateur station.

(2) *Amateur radio services.* The amateur service, the amateur-satellite service and the radio amateur civil emergency service.

(3) *Amateur-satellite service.* A radiocommunication service using stations on Earth satellites for the same purpose as those of the amateur service.

(4) *Amateur service.* A radiocommunication service for the purpose of self-training, intercommunication and technical investigations carried out by amateurs, that is, duly authorized persons interested in radio technique solely with a personal aim and without pecuniary interest.

(5) *Amateur station.* A station in an amateur radio service consisting of the apparatus necessary for carrying on radiocommunications.

(6) *Automatic control.* The use of devices and procedures for control of a station when it is transmitting so that compliance with the FCC Rules is achieved without the control operator being present at a control point.

(7) *Auxiliary station.* An amateur station transmitting communications point-to-point within a system of cooperating amateur stations.

(8) *Bandwidth.* The width of a frequency band outside of which the mean power of the total emission is attenuated at least 26 dB below the mean power of the total emission, including allowances for transmitter drift or Doppler shift.

(9) *Beacon.* An amateur station transmitting communications for the purposes of observation of propagation and reception or other related experimental activities.

(10) *Broadcasting.* Transmissions intended for reception by the general public, either direct or relayed.

(11) *Control operator.* An amateur operator designated by the licensee of a station to be responsible for the transmissions from that station to assure compliance with the FCC Rules.

(12) *Control point.* The location at which the control operator function is performed.

(13) *CSCE.* Certificate of successful completion of an examination.

(14) *Earth station.* An amateur station located on, or within 50 km of, the Earth's surface intended for communications with space stations or with other Earth stations by means of one or more other objects in space.

(15) *EIC.* Engineer in Charge of an FCC Field Facility.

(16) *External RF power amplifier.* A device capable of increasing power output when used in conjunction with, but not an integral part of, a transmitter.

(17) *External RF power amplifier kit.* A number of electronic parts, which, when assembled, is an external RF power amplifier, even if additional parts are required to complete assembly.

(18) *FAA.* Federal Aviation Administration.

(19) *FCC.* Federal Communications Commission.

(20) *Frequency coordinator.* An entity, recognized in a local or regional area by amateur operators whose stations are eligible to be auxiliary or repeater stations, that recommends transmit/receive channels and associated operating and technical parameters for such stations in order to avoid or minimize potential interference.

(21) *Harmful interference.* Interference which endangers the functioning of a radionavigation service or of other safety services or seriously degrades, obstructs or repeatedly interrupts a radiocommunication service operating in accordance with the Radio Regulations.

(22) *Indicator.* Words, letters or numerals appended to and separated from the call sign during the station identification.

(23) *Information bulletin.* A message directed only to amateur operators consisting solely of subject matter of direct interest to the amateur service.

(24) *International Morse code.* A dot-dash code as defined in International Telegraph and Telephone Consultative Committee (CCITT) Recommendation F.1 (1984), Division B, I. Morse code.

(25) *ITU.* International Telecommunication Union.

(26) *Line A.* Begins at Aberdeen, WA, running by great circle arc to the intersection of 48°N, 120°W, thence along parallel 48°N, to the intersection of 95°W, thence by great circle arc through the southernmost point of Duluth, MN, thence by great circle arc to 45°N, 85°W, thence southward along meridian 85°W, to its intersection with parallel 41°N, thence along parallel 41°N, to its intersection with meridian 82°W, thence by great circle arc through the southernmost point of Bangor, ME, thence by great circle arc through the southernmost point of Searsport, ME, at which point it terminates.

(27) *Local control.* The use of a control operator who directly manipulates the operating adjustments in the station to achieve compliance with the FCC Rules.

(28) *National Radio Quiet Zone.* The area in Maryland, Virginia and West Virginia Bounded by 39° 15'N on the north, 78° 30'W on the east, 37° 30'N on the south and 80° 30'W on the west.

(29) *Question pool.* All current examination questions for a designated written examination element.

(30) *Question set.* A series of examination on a given examination selected from the question pool.

(31) *Radio Regulations.* The latest ITU *Radio Regulations* to which the United States is a party.

(32) *RACES* (radio amateur civil emergency service). A radio service using amateur stations for civil defense communications during periods of local, regional or national civil emergencies.

(33) *Remote control.* The use of a control operator who indirectly manipulates the operating adjustments in the station through a control link to achieve compliance with the FCC Rules.

(34) *Repeater.* An amateur station that automatically retransmits the signals of other stations.

(35) *Space station.* An amateur station located more than 50 km above the Earth's surface.

(36) *Spurious emission.* An emission, or frequencies outside the necessary bandwidth of a transmission, the level of which may be reduced without affecting the information being transmitted.

(37) *Telecommand station.* An amateur station that transmits communications to initiate, modify or terminate functions of a space station.

(38) *Third party communications.* A message from the control operator (first party) of an amateur station to another amateur station control operator (second party) on behalf of another person (third party).

(39) *VE.* Volunteer examiner.

(40) *VEC.* Volunteer-examiner coordinator.

(b) The definitions of technical symbols used in this Part are:

(1) *EHF* (extremely high frequency). The frequency range 30–300 GHz.

(2) *HF* (high frequency). The frequency range 3–30 MHz.

(3) *Hz.* Hertz.

(4) *m.* Meters.

(5) *MF* (medium frequency). The frequency range 300–3000 kHz.

(6) *PEP* (peak envelope power). The average power supplied to the antenna transmission line by a transmitter during one RF cycle at the crest of the modulation envelope taken under normal operating conditions.

(7) *RF.* Radio frequency.

(8) *SHF* (super-high frequency). The frequency range 3–30 GHz.

(9) *UHF* (ultra-high frequency). The frequency range 300–3000 MHz.

(10) *VHF* (very-high frequency). The frequency range 30–300 MHz.

(11) *W.* Watts.

(c) The following terms are used in this Part to indicate emission types. Refer to § 2.201 of the FCC Rules, *Emission, modulation and transmission characteristics*, for information on emission type designators.

(1) *CW.* International Morse code telegraphy emissions having designators with A, C, H, J or R as the first symbol; 1 as the second symbol; A or B as the third symbol; and emissions J2A and J2B.

(2) *Data.* Telemetry, telecommand and computer communications emissions having designators with A, C, D, F, G, H, J or R as the first symbol; 1 as the second symbol; D as the third symbol; and emission J2D. Only a digital code of a type specifically authorized in this Part may be transmitted.

(3) *Image.* Facsimile and television emissions having designators with A, C, D, F, G, H, J or R as the first symbol; 1, 2 or 3 as the second symbol; C or F as the third symbol; and emissions having B as the first symbol; 7, 8 or 9 as the second symbol; W as the third symbol.

(4) *MCW.* Tone-modulated international Morse code telegraphy emissions having designators with A, C, D, F, G, H or R as the first symbol; 2 as the second symbol; A or B as the third symbol.

(5) *Phone.* Speech and other sound emissions having designators with A, C, D, F, G, H, J or R as the first symbol; 1, 2 or 3 as the second symbol; E as the third symbol. Also speech emissions having B as the first symbol; 7, 8 or 9 as the second symbol; E as the third symbol. MCW for the purpose of performing the station identification procedure, or for providing telegraphy practice interspersed with speech. Incidental tones for the purpose of selective calling or alerting or to control the level of a demodulated signal may also be considered phone.

(6) *Pulse.* Emissions having designators with K, L, M, P, Q, V or W as the first symbol; 0, 1, 2, 3, 7, 8, 9 or X as the second symbol; A, B, C, D, E, F, N, W or X as the third symbol.

(7) *RTTY.* Narrow-band direct-printing telegraphy emissions having designators with A, C, D, F, G, H, J or R as the first symbol; 1 as the second symbol; B as the third symbol; and emission J2B. Only a digital code of a type specifically authorized in this Part may be transmitted.

(8) *SS.* Spread-spectrum emissions using bandwidth-expansion modulation emissions having designators with A, C, D, F, G, H, J or R as the first symbol; X as the second symbol; X as the third symbol. Only a SS emission of a type specifically authorized in this Part may be transmitted.

(9) *Test.* Emissions containing no information having the designators with N as the third symbol. Test does not include pulse emissions with no information or modulation unless pulse emissions are also authorized in the frequency band.

§ 97.5 Station license required.

(a) When a station is transmitting on any amateur service frequency from a geographic location within 50 km of the Earth's surface where the amateur service is regulated by the FCC, the person having physical control of the apparatus must hold an FCC-issued written authorization for an amateur station.

(b) When a station is transmitting on any amateur service frequency from a location within 50 km of the Earth's surface and aboard any vessel or craft that is documented or registered in the United States, the person having physical control of the apparatus must hold an FCC-issued written authorization for an amateur station.

(c) When a station is transmitting on any amateur-satellite service frequency from a location more than 50 km above the Earth's surface aboard any craft that is documented or registered in the United States, the person having physical control of the apparatus must hold an FCC-issued written authorization for an amateur station.

(d) The types of written authorizations that permit amateur station operation where the amateur service is regulated by the FCC are:

(1) An operator/primary station license (FCC Form 660) issued to the person by the FCC. A primary station license is issued only to a person, together with an operator license on the

same document. Every amateur operator licensed by the FCC must have one, but only one, primary station license. Except a representative of a foreign government, any person who qualifies by examination is eligible to apply for an operator/primary station license.

(2) A club station license (FCC form 660) issued to the person by the FCC. A club station license is issued only to the person who is the license trustee designated by an officer of the club. The trustee must hold an FCC-issued Amateur Extra, Advanced, General, or Technician operator license. The club must be composed of at least two persons and must have a name, a document of organization, management and a primary purpose devoted to amateur service activities consistent with this Part.

(3) A military recreation station license (FCC Form 660) issued to the person by the FCC. A military recreation station license is issued only to the person who is the license custodian designated by the official in charge of the United States military recreational premises where the station is situated. The custodian must not be a representative of a foreign government. The custodian need not hold an amateur operator license.

(4) A RACES station license (FCC Form 660) issued to the person by the FCC. A RACES station license is issued only to the person who is the license custodian designated by the official responsible for the governmental agency served by that civil defense organization. The custodian must not be a representative of a foreign government. The custodian must be the civil defense official responsible for coordination of all civil defense activities in the area concerned. The custodian need not hold an amateur operator license.

(5) A reciprocal permit for alien amateur licensee (FCC Form 610–AL) issued to the person by the FCC. A reciprocal permit for alien amateur licensee is issued only to a person who is a citizen of a country with which the United States has arrangements to grant reciprocal operating permits to visiting alien amateur operators. The person must be a citizen of the same country that issued the amateur service license. No person who is a citizen of the United States, regardless of any other citizenship also held, is eligible for a reciprocal permit for alien amateur licensee. No person holding an FCC-issued amateur service license will be issued a reciprocal permit for alien amateur license.

(6) An amateur service license issued to the person by the Government of Canada. The person must be a Canadian citizen.

(e) The written authorization for an amateur station authorizes the use in accordance with the FCC Rules of all transmitting apparatus under the physical control of the station licensee at points where the amateur service is regulated by the FCC. The original written authorization document or a photocopy thereof must be retained at the station.

§ 97.7 Control operator required.

When transmitting, each amateur station must have a control operator. Only a person holding one of the following documents may be the control operator of a station:

(a) An operator/primary station license (FCC Form 660) issued to the person by the FCC.

(b) A reciprocal permit for alien amateur licensee (FCC Form 610–AL) issued to the person by the FCC.

(c) An amateur service license issued to a Canadian citizen by the Government of Canada.

§ 97.9 Operator license.

(a) There are 5 classes of operator licenses: Novice, Technician, General, Advanced and Amateur Extra. An operator license authorizes the holder to be the control operator of a station with the privileges of the operator class specified on the license. The license document or a photocopy thereof must be in the personal possession of the licensee at all times when the person is the control operator of a station.

(b) A person holding a Novice, Technician, General, or Advanced Class operator license who has properly filed with the FCC an application for a higher operator class which has not yet been acted upon, and who holds a CSCE indicating that the person completed the necessary examinations within the previous 365 days is authorized to exercise the rights and privileges of the higher operator class.

§ 97.11 Stations aboard ships or aircraft.

(a) The installation and operation of an amateur station on a ship or aircraft must be approved by the master of the ship or pilot in command of the aircraft.

(b) The station must be separate from and independent of all other radio apparatus installed on the ship or aircraft, except a common antenna may be shared with a voluntary ship radio installation. The station's transmissions must not cause interference to any other apparatus installed on the ship or aircraft.

(c) The station must not constitute a hazard to the safety of life or property. For a station aboard an aircraft, the apparatus shall not be operated while the aircraft is operating under Instrument Flight Rules, as defined by the FAA, unless the station has been found to comply with all applicable FAA Rules.

§ 97.13 Restrictions on station location.

(a) Before placing an amateur station on land of environmental importance or that is significant in American history, architecture or culture, the licensee may be required to take certain actions prescribed by §§ 1.1305–1.1319 of the FCC Rules.

(b) A station within 1600 m (1 mile) of an FCC monitoring facility must protect that facility from harmful interference. Failure to do so could result in imposition of operating restrictions upon the amateur station by an EIC pursuant to § 97.121 of this Part. Geographical coordinates of the facilities that require protection are listed in § 0.121(c) of the FCC Rules.

§ 97.15 Station antenna structures.

(a) Unless the amateur station licensee has received prior approval from the FCC, no antenna structure, including and radiating elements, tower, supports and all appurtenances, may be higher than 61 m (200 feet) above ground level at its site.

(b) Unless the amateur station licensee has received prior approval from the FCC, no antenna structure, at an airport or heliport that is available for public use and is listed in the *Airport Directory* of the current *Airman's Information Manual* or in either the *Alaska* or *Pacific Airman's Guide and Chart Supplement*; or at an airport or heliport under construction that is the subject of a notice or proposal on file with the FAA, and except for military airports, it is clearly indicated that the airport will be available for public use; or at an airport or heliport that is operated by the armed forces of the United States; or at a place near any of these airports or heliports, may be higher than:

(1) 1 m above the airport elevation for each 100 m from the nearest runway longer than 1 km within 6.1 km of the antenna structure.

(2) 2 m above the airport elevation for each 100 m from the nearest runway longer than 1 km within 3.1 km of the antenna structure.

(3) 4 m above the airport elevation for each 100 m from the nearest landing pad within 1.5 km of the antenna structure.

(c) An amateur station antenna structure no higher than 6.1 m (20 feet) above ground level at its site or no higher than 6.1 m above any natural object or existing manmade structure, other than an antenna structure, is exempt from the requirements of paragraphs (a) and (b) of this section.

(d) Further details as to whether an aeronautical study and/or obstruction marking and lighting may be required, and specifications for obstruction marking and lighting, are contained in Part 17 of the FCC Rules, *Construction, Marking, and Lighting of Antenna Structures*. To request approval to place an antenna structure higher than the limits specified in paragraphs (a), (b), and (c) of this section, the licensee must notify the FAA on FAA Form 7460–1 and the FCC on FCC Form 854.

(e) Except as otherwise provided herein, a station antenna structure may be erected at heights and dimensions sufficient to accommodate amateur service communications. [State and local regulation of a station antenna structure must not preclude amateur service communications. Rather, it must reasonably accommodate such communications and must constitute the minimum practicable regulation to accomplish the state or local authority's legitimate purpose. [*See* PRB–1, 101 FCC 2d 952 (1985) for details.]

§ 97.17 Application for new license.

(a) Any qualified person is eligible to apply for an amateur service license.

(b) Each application for a new operator/primary station license must be made on FCC Form 610. Each application for a reciprocal permit for alien amateur licensee must be made on FCC Form 610–A. No new license for a club, military recreation, or RACES station will be issued.

(c) Each application for a new operator/primary station license and each application involving a change in operator class must be submitted to the VEs administering the qualifying examination.

(d) Any qualified person is eligible to apply for a reciprocal permit for alien amateur licensee. The application must be submitted to the FCC, P.O. Box 1020, Gettysburg, PA 17326.

(e) No person shall obtain or attempt to obtain, or assist another person to obtain or attempt to obtain, an operator license or reciprocal permit for alien amateur licensee by fraudulent means.

(f) A call sign will be assigned systematically to each station. The FCC will issue public announcements detailing the policies and procedures of the call sign assignment system. The FCC will not grant any request for a specific call sign.

§ 97.19 Application for a renewed or modified license.

(a) Each application for a renewed or modified operator/primary station license must be made on FCC Form 610. Each application for a renewed or modified club, military recreation or RACES station license must be made on FCC Form 610–B. A reciprocal permit for alien amateur licensee is not renewable. A new reciprocal permit may be issued upon proper application.

(b) Each application for a renewed or modified amateur service license must be accompanied by a photocopy of the license document or the original document. Each application for a modified operator license involving a change in operator class must be submitted to the VEs administering the qualifying examination. All other applications must be submitted to: FCC, P.O. Box 1020, Gettysburg, PA 17326.

(c) When the licensee has submitted a timely application for renewal of an unexpired license (between 60 and 90 days prior to the end of the license term is recommended), the licensee may continue to operate until the disposition of the application has been determined. If a license expires, application for renewal may be made during a grace period of 2 years after the expiration date. During this grace period, the expired license is not valid. A license renewed during the grace period must be dated as of the date of the renewal.

§ 97.21 Mailing address and station location.

Each application for an amateur service license and each application for a reciprocal permit for alien amateur licensee must show a mailing address and a station location (the addresses may be the same) in an area where the amateur service is regulated by the FCC. The mailing address must be one where the licensee can receive mail delivery by the United States Postal Service. The station location must be a place where a station can be physically located. [A Postal Service box, RFD number, or general delivery is unsuitable as a station location.]

§ 97.23 License term.

(a) An amateur service license is normally issued for a 10-year term.

(b) A reciprocal permit for alien amateur licensee is normally issued for a 1-year term.

§ 97.25 FCC modification of station license.

(a) The FCC may modify a station license, either for a limited time or for the duration of the term thereof, if it determines:

(1) That such action will promote the public interest, convenience and necessity; or

(2) That such action will promote fuller compliance with the provisions of the Communications Act of 1934, as amended, or of any treaty ratified by the United States.

(b) When the FCC makes such a determination, it will issue an order of modification. The order will not become final until the licensee is notified in writing of the proposed action and the grounds and reasons therefor. The licensee will be given reasonable opportunity of no less than 30 days to protest the modification; except that, where safety of life or property is involved, a shorter priod of notice may be provided. Any protest by a licensee of an FCC order of modification will be handled in accordance with the provisions of 47 U.S.C. 316.

§ 97.27 Replacement license.

Each licensee or permittee whose original document is lost, mutilated or destroyed must request a replacement. The request must be made to: FCC, P.O. Box 1020, Gettysburg, PA 17326. A statement of how the document was lost, mutilated or destroyed must be attached to the request. A replacement license must bear the same expiration date as the license that it replaces.

Subpart B—Station Operation Standards

§ 97.101 General standards.

(a) In all respects not specifically covered by FCC Rules each amateur station must be operated in accordance with good engineering and good amateur practice.

(b) Each station licensee and each control operator must cooperate in selecting transmitting channels and in making the most effective use of the amateur service frequencies. No frequency will be assigned for the exclusive use of any station.

(c) At all times and on all frequencies, each control operator must give priority to stations providing emergency communications, except to stations transmitting communications for training drills and tests in RACES.

(d) No amateur operator shall willfully or maliciously interfere with or cause interference to any radio communication or signal.

§ 97.103 Station licensee responsibilities.

(a) The station licensee is responsible for the proper operation of the station in accordance with the FCC Rules. When the control operator is a different amateur operator than the station

licensee, both persons are equally responsible for proper operation of the station.

(b) The station licensee must designate the station control operator. The FCC will presume that the station licensee is also the control operator, unless documentation to the contrary is in the station records.

(c) The station licensee must make the station and the station records available for inspection upon request by an FCC representative. When deemed necessary by an EIC to assure compliance with the FCC Rules, the station licensee must maintain a record of station operations containing such items of information as the EIC may require in accord with § 0.314(x) of the FCC Rules.

§ 97.105 Control operator duties.

(a) The control operator must ensure the immediate proper operation of the station, regardless of the type of control.

(b) A station may only be operated in the manner and to the extent permitted by the privileges authorized for the class of operator license held by the control operator.

§ 97.107 Alien control operator privileges.

(a) The privileges available to a control operator holding an amateur service license issued by the Government of Canada are:

(1) The terms of the *Convention Between the United States and Canada (TIAS No. 2508) Relating to the Operation by Citizens of Either Country of Certain Radio Equipment or Stations in the Other Country;*

(2) The operating terms and conditions of the amateur service license issued by the Government of Canada; and

(3) The applicable provisions of the FCC Rules, but not to exceed the control operator privileges of an FCC-issued Amateur Extra Class operator license.

(b) The privileges available to a control operator holding an FCC-issued reciprocal permit for alien amateur licensee are:

(1) The terms of the agreement between the alien's government and the United States;

(2) The operating terms and conditions of the amateur service license issued by the alien's government;

(3) The applicable provisions of the FCC Rules, but not to exceed the control operator privileges of an FCC-issued Amateur Extra Class operator license; and

(4) None, if the holder of the reciprocal permit has obtained an FCC-issued operator/primary station license.

(c) At any time the FCC may, in its discretion, modify, suspend, or cancel the amateur service privileges within or over any area where radio services are regulated by the FCC of any Canadian amateur service licensee or alien reciprocal permittee.

§ 97.109 Station control.

(a) Each amateur station must have at least one control point.

(b) When a station is being locally controlled, the control operator must be at the control point. Any station may be locally controlled.

(c) When a station is being automatically controlled, the control operator need not be at the control point. Only stations specifically designated elsewhere in this Part may be automatically controlled. Automatic control must cease upon notification by an EIC that the station is transmitting improperly or causing harmful interference to other stations. Automatic control must not be resumed without prior approval of the EIC.

(d) No station may be automatically controlled while transmitting third-party traffic, except a station retransmitting digital packet radio communications on the 6 m and shorter wavelength bands. Such stations must be using the American Radio Relay League, Inc. *AX.25 Amateur Packet-Radio Link-Layer Protocol, Version 2.0,* October 1984 (or compatible). The retransmitted messages must originate at a station that is being locally or remotely controlled.

§ 97.111 Authorized transmissions.

(a) An amateur station may transmit the following types of two-way communications:

(1) Transmissions necessary to exchange messages with other stations in the amateur service, except those in any country whose administration has given notice that it objects to such communications. The FCC will issue public notices of current arrangements for international communications;

(2) Transmissions necessary to exchange messages with a station in another FCC-regulated service while providing emergency communications;

(3) Transmissions necessary to exchange messages with a United States government station, necessary to providing communications in RACES; and

(4) Transmissions necessary to exchange messages with a station in a service not regulated by the FCC, but authorized by the FCC to communicate with amateur stations. An amateur station may exchange messages with a participating United States military station during an Armed Forces Day Communications Test.

(b) In addition to one-way transmissions specifically authorized elsewhere in this Part, an amateur station may transmit the following types of one-way communications:

(1) Brief transmissions necessary to make adjustments to the station;

(2) Brief transmissions necessary to establishing two-way communications with other stations;

(3) Transmissions necessary to remotely control a device from a distant location;

(4) Transmissions necessary to providing emergency communications;

(5) Transmissions necessary to assisting persons learning, or improving proficiency in, the international Morse code; and

(6) Transmissions necessary to disseminate information bulletins.

§ 97.113 Prohibited transmissions.

(a) No amateur station shall transmit any communication the purpose of which is to facilitate the business or commercial affairs of any party. No station shall transmit communications as an alternative to other authorized radio services, except as necessary to providing emergency communications. A station may, however, transmit communications to:

(1) Facilitate the public's safe observation of, or safe participation in, a parade, race, marathon or similar public gathering. No amateur station shall transmit communications concerning moving, supplying and quartering observers and participants for any sponsoring organization unless the principal beneficiary of such communications is the public and any benefit to the sponsoring organization is incidental.

(2) Inform other amateur operators of the availability of apparatus normally used in an amateur station, including such apparatus for sale or trade. This exception is not authorized to any person seeking to derive a profit by buying or selling such apparatus on a regular basis.

(b) No station shall transmit messages for hire or for material compensation, direct or indirect, paid or promised. The control operator of a club station, however, may accept compensation for such periods of time during which the station is transmitting telegraphy practice or information bulletins provided that:

(1) The station transmits the telegraphy practice and information bulletins for at least 40 hours per week;

(2) The station schedules operations on all amateur service MF and HF bands using reasonable measures to maximize coverage;

(3) The schedule of normal operating times and frequencies is published at least 30 days in advance of the actual transmissions; and

(4) The control operator does not accept any direct or indirect compensation for periods during which the station is transmitting any other material.

(c) No station shall transmit communications in order to engage in any form of broadcasting, nor to engage in any activity related to program production or newsgathering for broadcasting purposes. A station may, however, transmit communications to convey news information about an event for dissemination to the public when the following conditions are present:

(1) The information involves the immediate safety of life of individuals or the immediate protection of property;

(2) The information is directly related to the event;

(3) The information cannot be transmitted by any other means because normal communications systems have been disrupted or because there are no other communication systems available at the place where the information is originated; and

(4) Other means of communication could not be reasonably provided before or at the time of the event.

(d) No station shall transmit: music; radiocommunications or messages for any purpose, or in connection with any activity, that is contrary to federal, state, or local law; messages in codes or ciphers where the intent is to obscure the meaning (except where specifically excepted elsewere in the Part); obscene, indecent, or profane words, language, or meaning; and/or false or deceptive messages or signals.

(e) No station shall retransmit programs or signals emanating from any type of radio station other than an amateur station, except communications originating on United States Government frequencies between a space shuttle and its associated Earth stations. Prior approval for such retransmissions must be obtained from the National Aeronautics and Space Administration. Such retransmissions must be for the exclusive use of amateur operators.

(f) No amateur station, except an auxiliary, repeater or space station, may automatically retransmit the radio signals of other amateur stations.

§ 97.115 Third party communications.

(a) An amateur station may transmit messages for a third party to:

(1) Any station within the jurisdiction of the United States.

(2) Any station within the jurisdiction of any foreign government whose administration has made arrangements with the United States to allow amateur stations to be used for transmitting international communications on behalf of third parties. No station shall transmit messages for a third party to any station within the jurisdiction of any foreign government whose administration has not made such an arrangement. This prohibition does not apply to a message for any third party who is eligible to be a control operator of the station.

(b) The third party may participate in stating the message where:

(1) The control operator is present at the control point and is continuously monitoring and supervising the third party's participation; and

(2) The third party is not a prior amateur service licensee whose license was revoked; suspended for less than the balance of the license term and the suspension is still in effect; suspended for the balance of the license term and relicensing has not taken place; or surrendered for cancellation following notice of revocation, suspension or monetary forfeiture proceedings. The third party may not be the subject of a cease and desist order which relates to amateur service operation and which is still in effect.

(c) At the end of an exchange of international third party communications, the station must also transmit in the station identification procedure the call sign of the station with which a third party message was exchanged.

§ 97.117 International communications.

Transmissions to a different country, where permitted, shall be made in plain language and shall be limited to messages of a technical nature relating to tests, and, to remarks of a personal character for which, by reason of their unimportance, recourse to the public telecommunications service is not justified.

§ 97.119 Station identification.

(a) Each amateur station, except a space station or telecommand station, must transmit its assigned call sign on its transmitting channel at the end of each communication, and at least every 10 minutes during a communication, for the purpose of clearly making the source of the transmissions from the station known to those receiving the transmissions. No station may transmit unidentified communications or signals, or transmit as the station call sign, any call sign not authorized to the station.

(b) The call sign must be transmitted with an emission authorized for the transmitting channel in one of the following ways:

(1) By a CW emission. When keyed by an automatic device used only for identification, the speed must not exceed 20 words per minute;

(2) By a phone emission in the English language. Use of a phonetic alphabet as an aid for correct station identification is encouraged;

(3) By a RTTY emission when all or part of the communications are transmitted in the same digital code as the station identification, or when the communications consist of a data emission transmitted on the VHF 6 m or shorter wavelength band;

(4) By an image emission conforming to the applicable transmission standards, either color or monochrome, of § 73.682(a) of the FCC Rules when all or part of the communications are transmitted in the same image emission; or

(5) By a CW or phone emission during SS emission transmission on a narrow bandwidth frequency segment. Alternatively, by the changing of one or more parameters of the emission so that a conventional CW or phone emission receiver can be used to determine the station call sign.

(c) An indicator may be included with the call sign. It must be separated from the call sign by the slant mark or by any suitable word that denotes the slant mark.

(d) When the operator license class held by the control operator exceeds that of the station licensee, an indicator consisting of the call sign assigned to the control operator's station must be included after the call sign.

(e) When the control operator is using privileges on the basis of holding a CSCE, an indicator must be included after the call sign as follows:

(1) KT for Technician Class operator;

(2) AG for General Class operator;

(3) AA for Advanced Class operator; or

(4) AE for Amateur Extra Class operator.

(f) When the station is transmitting under the authority of a reciprocal permit for alien amateur licensee, an indicator consisting of the appropriate letter-numeral designating the station location must be included before the call sign issued to the station by the licensing country. When the station is transmitting under the authority of an amateur service license issued by the

Government of Canada, a station location indicator must be included after the call sign. At least once during each intercommunication, the identification announcement must include the geographical location as nearly as possible by city and state, commonwealth or possession.

(g) A self-assigned indicator may be included after the call sign. The identifier must not conflict with any other indicator specified by the FCC Rules or by a prefix assigned to another country.

§ 97.121 Restricted operation.

(a) If the operation of an amateur station causes general interference to the reception of transmissions from stations operating in the domestic broadcast service when receivers of good engineering design, including adequate selectivity characteristics, are used to receive such transmissions, and this fact is made known to the amateur station licensee, the amateur station shall not be operated during the hours from 8 p.m. to 10:30 p.m., local time, and on Sunday for the additional period from 10:30 a.m. until 1 p.m., local time, upon the frequency or frequencies used when the interference is created.

(b) In general, such steps as may be necessary to minimize interference to stations operating in other services may be required after investigation by the FCC.

Subpart C—Special Operations

§ 97.201 Auxiliary station.

(a) Any amateur station licensed to a holder of a Technician, General, Advanced or Amateur Extra Class operator license may be an auxiliary station. A holder of a Technician, General, Advanced or Amateur Extra Class operator license may be the control operator of an auxiliary station, subject to the privileges of the class of operator license held.

(b) An auxiliary station may transmit only on the 1.25 m and shorter wavelength bands, except the 220.0–220.5 MHz, 431–433 MHz and 435–438 MHz segments.

(c) Where an auxiliary station causes harmful interference to another auxiliary station, the licensees are equally and fully responsible for resolving the interference unless one station's operation is recommended by a frequency coordinator and the other station's is not. In that case, the licensee of the non-coordinated auxiliary station has primary responsibilty to resolve the interference.

(d) An auxiliary station may be automatically controlled only when it is part of a system that includes a repeater station also being automatically controlled.

(e) An auxiliary station may transmit one-way communications.

§ 97.203 Beacon station.

(a) Any amateur station licensed to a holder of a Technician, General, Advanced or Amateur Extra Class operator license may be a beacon. A holder of a Technician, General, Advanced or Amateur Extra Class operator license may be the control operator of a beacon, subject to the privileges of the class of operator license held.

(b) A beacon must not concurrently transmit on more than 1 channel in the same amateur service frequency band, from the same station location.

(c) The transmitter power of a beacon must not exceed 100 W.

(d) A beacon may be automatically controlled while it is transmitting on the 28.20–28.30 MHz, 50.06–50.08 MHz, 144.05–144.06 MHz, 220.05–220.06 MHz, 222.05–222.06 MHz or 432.07–432.08 MHz segments, or on the 33 cm and shorter wavelength bands.

(e) Before establishing an automatically controlled beacon in the National Radio Quiet Zone or before changing the transmitting frequency, transmitter power, antenna height or directivity, the station licensee must give written notification thereof to the Interference Office, National Radio Astronomy Observatory, P.O. Box 2, Green Bank, WV 24944.

(1) The notification must include the geographical coordinates of the antenna, antenna ground elevation above mean sea level (AMSL), antenna center of radiation above ground level (AGL), antenna directivity, proposed frequency, type of emission, and transmitter power.

(2) If an objection to the proposed operation is received by the FCC from the National Radio Astronomy Observatory at Green Bank, Pocahontas County, WV, for itself or on behalf of the Naval Research Laboratory at Sugar Grove, Pendleton County, WV, within 20 days from the date of notification, the FCC will consider all aspects of the problem and take whatever action is deemed appropriate.

(f) A beacon must cease transmissions upon notification by an EIC that the station is operating improperly or causing undue interference to other operations. The beacon may not resume transmitting without prior approval of the EIC.

(g) A beacon may transmit one-way communications.

§ 97.205 Repeater station.

(a) Any amateur station licensed to a holder of a Technician, General, Advanced or Amateur Extra Class operator license may be a repeater. A holder of a Technician, General, Advanced or Amateur Extra Class operator license may be the control operator of a repeater, subject to the privileges of the class of operator license held.

(b) A repeater may receive and retransmit only on the 10 m and shorter wavelength frequency bands except the 28.0–29.5 MHz, 50.0–52.0 MHz, 144.0–144.5 MHz, 145.5–146.0 MHz, 220.0–220.5 MHz, 431.0–433.0 MHz and 435.0–438.0 MHz segments.

(c) Where the transmissions of a repeater cause harmful interference to another repeater, the two station licensees are equally and fully responsible for resolving the interference unless the operation of one station is recommended by a frequency coordinator and the operation of the other station is not. In that case, the licensee of the non-coordinated repeater has primary responsibility to resolve the interference.

(d) A repeater may be automatically controlled.

(e) Ancillary functions of a repeater that are available to users on the input channel are not considered remotely controlled functions of the station. Limiting the use of a repeater to only certain user stations is permissible.

(f) Before establishing a repeater in the National Radio Quiet Zone or before changing the transmitting frequency, transmitter power, antenna height or directivity, or the location of an existing repeater, the station licensee must give written notification thereof to the Interference Office, National Radio Astronomy Observatory, P.O. Box 2, Green Bank, WV 24944.

(1) The notification must include the geographical coordinates of the station antenna, antenna ground elevation above mean sea level (AMSL), antenna center of radiation above ground level (AGL), antenna directivity, proposed frequency, type of emission, and transmitter power.

(2) If an objection to the proposed operation is received by the FCC from the National Radio Astronomy Observatory at Green Bank, Pocahontas County, WV, for itself or on behalf of the Naval Research Laboratory at Sugar Grove, Pendleton County, WV, within 20 days from the date of notification, the FCC will consider all aspects of the problem and take whatever action is deemed appropriate.

§ 97.207 Space station.

(a) Any amateur station licensed to a holder of an Amateur Extra Class operator license may be a space station. A holder of any class operator license may be the control operator of a space station, subject to the privileges of the class of operator license held by the control operator.

(b) A space station must be capable of effecting a cessation of transmissions by telecommand whenever such cessation is ordered by the FCC.

(c) The following frequency bands and segments are authorized to space stations:

(1) The 15 m, 12 m, 10 m, 6 mm, 4 mm, 2 mm and 1 mm bands; and

(2) The 7.0–7.1 MHz, 14.00–14.25 MHz, 144–146 MHz, 2400–2450 MHz, 3.40–3.41 GHz, 5.83–5.85 GHz, 10.45–10.50 GHz and 24.00–24.05 GHz segments.

(d) A space station may automatically retransmit the radio signals of Earth stations and other space stations.

(e) A space station may transmit one-way communications.

(f) Results of measurements made in the space station, including those related to the function of the station, transmitted by a space station may consist of specially coded messages intended to facilitate communications.

(g) The licensee of each space station must give two written, pre-space station notifications to the Private Radio Bureau, FCC, Washington, DC 20554. Each notification must be in accord with the provisions of Articles 11 and 13 of the Radio Regulations.

(1) The first notification is required no less than 27 months prior to initiating space station transmissions and must specify the information required by Appendix 4 and Resolution No. 642 of the Radio Regulations.

(2) The second notification is required no less than 5 months prior to initiating space station transmissions and must specify the information required by Appendix 3 and Resolution No. 642 of the Radio Regulations.

(h) The licensee of each space station must give a written, in-space station notification to the Private Radio Bureau, FCC, Washington, DC 20554, no later than 7 days following initiation of space station transmissions. The notification must update the information contained in the pre-space notification.

(i) The licensee of each space station must give a written, post-space station notification to the Private Radio Bureau, FCC, Washington, DC 20554, no later than 3 months after termination of the space station transmissions. When the termination is ordered by the FCC, notification is required no later than 24 hours after termination.

§ 97.209 Earth station.

(a) Any amateur station may be an Earth station. A holder of any class operator license may be the control operator of an Earth station, subject to the privileges of the class of operator license held by the control operator.

(b) The following frequency bands and segments are authorized to Earth stations:

(1) The 15 m, 12 m, 10 m, 6 mm, 4 mm, 2 mm and 1 mm bands; and

(2) The 7.0–7.1 MHz, 14.00–14.25 MHz, 144–146 MHz, 435–438 MHz, 1260–1270 MHz and 2400–2450 MHz, 3.40–3.41 GHz, 5.65–5.67 GHz, 10.45–10.50 GHz and 24.00–24.05 GHz segments.

§ 97.211 Telecommand station.

(a) Any amateur station designated by the licensee of a space station is eligible to transmit as a telecommand station for that space station, subject to the privileges of the class of operator license held by the control operator.

(b) A telecommand station may transmit special codes intended to obscure the meaning of telecommand messages to the station in space operation.

(c) The following frequency bands and segments are authorized to telecommand stations:

(1) The 15 m, 12 m and 10 m bands, 6 mm, 4 mm, 2 mm and 1 mm bands; and

(2) The 7.0–7.1 MHz, 14.00–14.25 MHz, 144–146 MHz, 435–438 MHz, 1260–1270 MHz and 2400–2450 MHz, 3.40–3.41 GHz, 5.65–5.67 GHz, 10.45–10.50 GHz and 24.00–24.05 GHz segments.

(d) A telecommand station may transmit one-way communications.

§ 97.213 Remote control of a station.

An amateur station may be remotely controlled where:

(a) There is a radio or wireline control link between the control point and the station sufficient for the control operator to perform his/her duties. If radio, the control link must use an auxiliary station. A control link using a fiber optic cable or another telecommunication service is considered wireline.

(b) Provisions are incorporated to limit transmission by the station to a period of no more than 3 minutes in the event of malfunction in the control link.

(c) The station is protected against making, willfully or negligently, unauthorized transmissions.

(d) A photocopy of the station license and a label with the name, address, and telephone number of the station licensee and at least one designated control operator is posted in a conspicuous place at the station location.

§ 97.215 Remote control of model craft.

An amateur station transmitting signals to control a model craft may be operated as follows:

(a) The station identification procedure is not required for transmissions directed only to the model craft, provided that a label indicating the station call sign and the station licensee's name and address is affixed to the station transmitter.

(b) The control signals are not considered codes or ciphers intended to obscure the meaning of the communication.

(c) The transmitter power must not exceed 1 W.

Subpart D—Technical Standards

§ 97.301 Authorized frequency bands.

The following transmitting frequency bands are available to an amateur station located within 50 km of the Earth's surface, within the specified ITU Region and outside any area where the amateur service is regulated by another country or another United States government agency.

(a) For a station having a control operator holding a Technician, General, Advanced or Amateur Extra Class operator license:

Wavelength band	ITU—Region 1	ITU—Region 2	ITU—Region 3	Sharing requirements see § 97.303 (Paragraph)
VHF	MHz	MHz	MHz	
6 m		50–54	50–54	(a)
2 m	144–146	144–148	144–148	(a).
1.25 m		220–225		(a), (b), (e).
UHF	MHz	MHz	MHz	
70 cm	430–440	420–450	430–440	(a), (b), (f).

Wavelength band	ITU—Region 1	ITU—Region 2	ITU—Region 3	Sharing requirements see § 97.303 (Paragraph)
33 cm		902–928		(a), (b), (g).
23 cm	1240–1300	1240–1300	124–1300	(j).
13 cm	2300–2310	2300–2310	2300–2310	(a), (b), (j).
do	2390–2450	2390–2450	2390–2450	(a), (b), (j).
SHF	**GHz**	**GHz**	**GHz**	
9 cm		3.3–3.5	3.3–.5	(a), (b), (k), (l).
5 cm	5.650–5.850	5.650–5.925	5.650–5.850	(a), (b), (m).
3 cm	10.00–10.50	10.00–10.50	10.00–10.50	(a), (c), (i), (n).
1.2 cm	24.00–24.25	24.00–24.25	24.00–24.25	(a), (b), (i), (o).
EHF	**GHz**	**GHz**	**GHz**	
6 mm	47.0–47.2	47.0–47.2	47.0–47.2	
4 mm	75.5–81.0	75.5–81.0	75.5–81.0	(b), (c), (h).
2.5 mm	119.98–120.02	119.98–120.02	119.98–120.02	(k), (p).
2 mm	142–149	142–149	142–149	(b), (c), (h), (k).
1 mm	241–250	241–250	241–250	(b), (c), (h), (q).
	above 300	above 300	above 300	(k).

(b) For a station having a control operator holding an Amateur Extra Class operator license:

Wavelength band	ITU—Region 1	ITU—Region 2	ITU—Region 3	Sharing requirements. See § 97.303 (Paragraph)
MF	**kHz**	**kHz**	**kHz**	
160 m	1810–1850	1800–2000	1800–2000	(a), (b), (c).
HF	**MHz**	**MHz**	**MHz**	
80 m	3.50–3.75	3.50–3.75	3.50–3.75	(a).
75 m	3.75–3.80	3.75–4.00	3.75–3.90	(a).
40 m	7.0–7.1	7.0–7.3	7.0–7.1	(a).
30 m	10.10–10.15	10.10–10.15	10.10–10.15	(d).
20 m	14.00–14.35	14.00–14.35	14.00–14.35	
17 m	18.068–18.168	18.068–18.168	18.068–18.168	
15 m	21.00–21.45	21.00–21.45	21.00–21.45	
12 m	24.89–24.99	24.89–24.99	24.89–24.99	
10 m	28.0–29.7	28.0–29.7	28.0–29.7	

(c) For a station having a control operator holding an Advanced Class operator license:

Wavelength band	ITU—Region 1	ITU—Region 2	ITU—Region 3	Sharing requirements See § 97.303, (Paragraph)
MF	**kHz**	**kHz**	**kHz**	
160 m	1810–1850	1800–2000	1800–2000	(a), (b), (c).
HF	**MHz**	**MHz**	**MHz**	
80 m	3.525–3.750	3.525–3.750	3.525–3.750	(a).
75 m	3.775–3.800	3.775–4.000	3.775–3.900	(a).
40 m	7.025–7.100	7.025–7.300	7.025–7.100	(a).
30 m	10.10–10.15	10.10–10.15	10.10–10.15	(d).
20 m	14.025–14.150	14.025–14.150	14.025–14.150	
Do	14.175–14.350	14.175–14.350	14.175–14.350	
17 m	18.068–18.168	18.068–18.168	18.068–18.168	
15 m	21.025–21.200	21.025–21.200	21.025–21.200	
Do	21.30–21.45	21.30–21.45	21.30–21.45	
12 m	24.89–24.99	24.89–24.99	24.89–24.99	
10 m	28.0–29.7	28.0–29.7	28.0–29.7	

(d) For a station having a control operator holding a General Class operator license:

Wavelength band	ITU–Region 1	ITU–Region 2	ITU–Region 3	Sharing requirements. See § 97.303 (Paragraph)
MF	**kHz**	**kHz**	**kHz**	
160 m	1810–1850	1800–2000	1800–2000	(a), (b), (c).

Wavelength band	ITU–Region 1	ITU–Region 2	ITU–Region 3	Sharing requirements. See § 97.303 (Paragraph)
HF	**MHz**	**MHz**	**MHz**	
80 m	3.525–3.750	3.525–3.750	3.525–3.750	(a).
75 m		3.85–4.00		(a).
40 m	7.025–7.100	7.025–7.100	7.025–7.100	(a).
Do		7.225–7.300		(a).
30 m	10.10–10.15	10.10–10.15	10.10–10.15	(d).
20 m	14.025–14.150	14.025–14.150	14.025–14.150	
Do	14.225–14.350	14.225–14.350	14.225–14.350	
17 m	18.068–18.168	18.068–18.168	18.068–18.168	
15 m	21.025–21.200	21.025–21.200	21.025–21.100	
Do	21.30–21.45	21.30–21.45	21.30–21.45	
12 m	24.89–24.99	24.89–24.99	24.89–24.99	
10 m	28.0–29.7	28.0–29.7	28.0–29.7	

(e) For a station having a control operator holding a Technician or Novice Class operator license:

Wavelength band	ITU—Region 1	ITU—Region 2	ITU—Region 3	Sharing requirements. See § 97.303 (Paragraph)
HF	**MHz**	**MHz**	**MHz**	
80 m	3.70–3.75	3.70–3.75	3.70–3.75	(a).
40 m	7.050–7.075	7.10–7.15	7.050–7.075	(a).
15 m	21.10–21.20	21.10–21.20	21.10–21.20	
10 m	28.1–28.5	28.1–28.5	28.1–28.5	

(f) For a station having a control operator holding a Novice Class operator license:

Wavelength band	ITU–Region 1	ITU–Region 2	ITU–Region 3	Sharing requirements. See § 97.303 (Paragraph)
VHF	**MHz**	**MHz**	**MHz**	
1.25 m		222.10–223.91		(a), (b), (e).
UHF	**MHz**	**MHz**	**MHz**	
23 cm	1270–1295	1270–1295	1270–1295	(i).

§ 97.303 Frequency sharing requirements.

The following is a summary of the frequency sharing requirements that apply to amateur station transmissions on the frequency bands specified in § 97.301 of this Part. (For each ITU Region, each frequency band allocated to the amateur service is designated as either a secondary service or a primary service. A station in a secondary service must not cause harmful interference to, and must accept interference from, stations in a primary service. See §§ 2.105 and 2.106 of the FCC Rules, *United States Table of Frequency Allocations* for complete requirements.)

(a) Where, in adjacent ITU Regions or Subregions, a band of frequencies is allocated to different services of the same category, the basic principle is the equality of right to operate. The stations of each service in one region must operate so as not to cause harmful interference to services in the other Regions or Subregions. (See ITU *Radio Regulations*, No. 346 (Geneva, 1979).)

(b) No amateur station transmitting in the 1900–2000 kHz segment, the 1.25 m band, the 70 cm band, the 33 cm band, the 13 cm band, the 9 cm band, the 5 cm band, the 3 cm band, the 24.05–24.24 GHz segment, the 76–81 GHz segment, the 144–149 GHz segment and the 241–248 GHz segment shall cause harmful interference to, nor is protected from interference due to the operation of, the Government radiolocation service.

(c) No amateur station transmitting in the 1900–2000 kHz segment, the 3 cm band, the 76–81 GHz segment, the 144–149 GHz segment and the 241–248 GHz segment shall cause harmful interference to, nor is protected from interference due to the operation of, stations in the non-Government radiolocation service.

(d) No amateur station transmitting in the 30 meter band shall cause harmful interference to stations authorized by other nations in the fixed service. The licensee of the amateur station must make all necessary adjustments, including termination of transmissions, if harmful interference is caused.

(e) The 1.25 m band is allocated to the amateur, fixed and mobile services in the United States on a co-primary basis. The basic principle that applies is the equality of right to operate. Amateur, fixed and mobile stations must operate so as not to cause harmful interference to each other.

(f) In the 70 cm band:

(1) No amateur station shall transmit from north of Line A in the 420–430 MHz segment.

(2) The 420–430 MHz segment is allocated to the amateur service in the United States on a secondary basis, and is allocated in the fixed and mobile (except aeronautical mobile) services in the International Table of allocations on a primary basis. No amateur station transmitting in this band shall cause harmful interference to, nor is protected from interference due to the operation of, stations authorized by other nations in the fixed and mobile (except aeronautical mobile) services.

(3) The 430–440 MHz segment is allocated to the amateur service on a secondary basis in ITU Regions 2 and 3. No amateur station transmitting in this band in ITU Regions 2 and 3 shall cause

harmful interference to, nor is protected from interference due to the operation of, stations authorized by other nations in the radiolocation service. In ITU Region 1, the 430–440 MHz segment is allocated to the amateur service on a co-primary basis with the radiolocation service. As between these two services in this band in ITU Region 1, the basic principle that applies is the equality of right to operate. Amateur stations authorized by the United States and radiolocation stations authorized by other nations in ITU Region 1 shall operate so as not to cause harmful interference to each other.

(4) No amateur station transmitting in the 449.5–450 MHz segment shall cause interference to, nor is protected from interference due to the operation of stations in, the space operation service and the space research service or Government or non-Government stations for space telecommand.

(g) In the 33 cm band:

(1) No amateur station shall transmit from within the States of Colorado and Wyoming, bounded on the south by latitude 39°N., on the north by latitude 42°N., on the east by longitude 105°W., and on the west by longitude 108°W. This band is allocated on a secondary basis to the amateur service subject to not causing harmful interference to, and not receiving protection from any interference due to the operation of, industrial, scientific and medical devices, automatic vehicle monitoring systems or Government stations authorized in this band.

(2) No amateur station shall transmit from those portions of the States of Texas and New Mexico bounded on the south by latitude 31°41'N., on the north by latitude 34°30'N., on the east by longitude 104°11'W., and on the west by longitude 107°30'W.

(h) No amatuer station transmitting in the 23 cm band, the 3 cm band, the 24.05–24.25 GHz segment, the 76–81 GHz segment, the 144–149 GHz segment and the 241–248 GHz segment shall cause harmful interference to, nor is protected from interference due to the operation of, stations authorized by other nations in the radiolocation service.

(i) In the 1240–1260 MHz segment, no amateur station shall cause harmful interference to, nor is protected from interference due to the operation of, stations in the radionavigation-satellite service.

(j) In the 13 cm band:

(1) The amateur service is allocated on a secondary basis in all ITU Regions. In ITU Region 1, no amateur station shall cause harmful interference to, and is not protected from interference due to the operation of, stations authorized by other nations in the fixed service. In ITU Regions 2 and 3, no station shall cause harmful interference to, and is not protected from interference due to the operation of, stations authorized by other nations in the fixed, mobile and radiolocation services.

(2) In the United States, 2300–2310 MHz segment is allocated to the amateur service on a co-secondary basis with the Government fixed and mobile services. In this segment, the fixed and mobile services must not cause harmful interferenee to the amateur service. No amateur station transmitting in the 2400–2450 MHz segment is protected from interference due to the operation of industrial, scientific and medical devices on 2450 MHz.

(k) No amateur station transmitting in the 3.332–3.339 GHz and 3.3458–3525 GHz segments, the 2.5 mm band, the 144.68–144.98 GHz, 145.45–145.75 and 146.82–147.12 GHz segments and the 343–348 GHz segment shall cause harmful interference to stations in the radio astronomy service. No amateur station transmitting in the 300–302 GHz, 324–326 GHz, 345–347 GHz, 363–365 GHz and 379–381 GHz segments shall cause harmful interference to stations in the space research service (passive) or Earth exploration-satellite service (passive).

(l) In the 9 cm band:

(1) In ITU Regions 2 and 3, the band is allocated to the amateur service on a secondary basis.

(2) In the United States, the band is allocated to the amateur service on a co-secondary basis with the non-Government radiolocation service.

(3) In the 3.3–3.4 GHz segment, no amateur station shall cause harmful interference to, nor is protected from interference due to the operation of, stations authorized by other nations in the radiolocation service.

(4) In the 3.4–3.5 GHz segment, no amateur station shall cause harmful interference to, nor is protected from interference due to the operation of, stations authorized by other nations in the fixed and fixed-satellite service.

(m) In the 5 cm band:

(1) In the 5.650–5.725 GHz segment, the amateur service is allocated in all ITU Regions on a co-secondary basis with the space research (deep space) service.

(2) In the 5.725–5.850 GHz segment, the amateur service is allocated in all ITU Regions on a secondary basis. No amateur station shall cause harmful interference to, nor is protected from interference due to the operation of, stations authorized by other nations in the fixed-satellite service in ITU Region 1.

(3) No amateur station transmitting in the 5.725–5.875 GHz segment is protected from interference due to the operation of industrial, scientific and medical devices operating on 5.8 GHz.

(4) In the 5.650–5.850 GHz segment, no amateur station shall cause harmful interference to, nor is protected from interference due to the operation of, stations authorized by other nations in the radiolocation service.

(5) In the 5.850–5.925 GHz segment, the amateur service is allocated in ITU Region 2 on a co-secondary basis with the radiolocation service. In the United States, the segment is allocated to the amateur service on a secondary basis to the non-Government fixed-satellite service. No amateur station shall cause harmful interference to, nor is protected from interference due to the operation of, stations authorized by other nations in the fixed, fixed-satellite and mobile services. No amateur station shall cause harmful interference to, nor is protected from interference due to the operation of, stations in the non-Government fixed-satellite service.

(n) In the 3 cm band:

(1) In the United States, the 3 cm band is allocated to the amateur service on a co-secondary basis with the non-government radiolocation service.

(2) In the 10.00–10.45 segment in ITU Regions 1 and 3, no amateur station shall cause interference to, nor is protected from interference due to the operation of, stations authorized by other nations in the fixed and mobile services.

(o) No amateur station transmitting in the 1.2 cm band is protected from interference due to the operation of industrial, scientific and medical devices on 24.125 GHz. In the United States, the 24.05–24.25 GHz segment is allocated to the amateur service on a co-secondary basis with the non-government radiolocation and Government and non-government Earth exploration-satellite (active) services.

(p) The 2.5 mm band is allocated to the amateur service on a secondary basis. No amateur station transmitting in this band shall cause harmful interference to, nor is protected from interference due to the operation of, stations in the fixed, inter-satellite and mobile services.

(q) No amateur station transmitting in the 244–246 GHz segment of the 1 mm band is protected from interference due to the operation of industrial, scientific and medical devices on 245 GHz.

§ 97.305 Authorized emission types.

(a) An amateur station may transmit a CW emission on any frequency authorized to the control operator.

(b) A station may transmit a test emission on any frequency authorized to the control operator for brief periods for experimental purposes, except that no pulse modulation emission may be transmitted on any frequency where pulse is not specifically authorized.

(c) A station may transmit the following emission types on the frequencies indicated, as authorized to the control operator, subject to the standards specified in § 97.307(f) of this Part.

Wavelength band	Frequencies	Emission types authorized	Standards see § 97.307(f), paragraph:
MF:			
160 m	Entire band	Phone image, RTTY, data	(1), (2), and (3).
HF:			
80 m	Entire band	RTTY, data	(3), (9).
75 m	Entire band	Phone, image	(1), (2).
40 m	7.000–7.075 MHz	RTTY, data	(c), (9).
40 m	7.075–7.100 MHz	Phone, image	(1), (2), (9) and (11).
40 m	7.10–7.15 MHz	RTTY, data	(1), (9).
40 m	7.15–7.30 MHz	Phone, image	(1), (2).
30 m	Entire band	RTTY, data	(3).
20 m	14.00–14.15 MHz	RTTY, data	(3).
20 m	14.15–14.35 MHz	Phone, image	(1), (2).
17 m	18.068–18.110 MHz	RTTY, data	(3).
17 m	18.110–18.168 MHz	Phone, image	(1), (2).
15 m	21.0–21.2 MHz	RTTY, data	(3), (9).
15 m	21.20–21.45 MHz	Phone, image	(1), (2).
12 m	24.89–24.93 MHz	RTTY, data	(3).
12 m	24.93–24.99 MHz	Phone, image	(1), (2).
10 m	28.0–28.3 MHz	RTTY, data	(4).
10 m	28.3–29.5 MHz	Phone, image	(1), (2), and (10).
10 m	28.5–29.0 MHz	Phone, image	(1), (2).
10 m	29.0–29.7 MHz	Phone, image	(1).
VHF:			
6 m	50.1–51.0 MHz	MCW, phone, image, RTTY, data	(2), (5).
5 m	51.0–54.0 MHz	MCW, phone, image, RTTY, data, test	(2), (5), and (8).
2 m	144.1–148.0 MHz	MCW, phone, image, RTTY, data, test	(2), (5), and (8).
1.25 m	Entire band	MCW, phone, image, RTTY, data, test	(2), (5), and (8).
70 m	Entire band	MCW, phone, image, RTTY, data, test	(6), (8).
33 m	Entire band	MCW, phone, image, RTTY, data, test, pulse	(7), (8), and (12).
23 m	Entire band	MCW, phone, image, RTTY, data, SS, test	(7), (8), and (12).
13 m	Entire band	MCW, phone, image, RTTY, data, SS, test, pulse	(7), (8), and (12).
SHF:			
9 m	Entire band	MCW, phone, image, RTTY, data, SS, test, pulse	(7), (8), and (12).
5 m	Entire band	MCW, phone, image, RTTY, data, SS, test, pulse	(7), (8), and (12).
3 m	Entire band	MCW, phone, image, RTTY, data, SS, test	(7), (8), and (12).
1.2 m	Entire band	MCW, phone, image, RTTY, data, SS, test, pulse	(7), (8), and (12).
EHF:			
6 m	Entire band	MCW, phone, image, RTTY, data, SS, test, pulse	(7), (8), and (12).
4 m	Entire band	MCW, phone, image, RTTY, data, SS, test, pulse	(7), (8), and (12).
2.5 m	Entire band	MCW, phone, image, RTTY, data, SS, test, pulse	(7), (8), and (12).
2 m	Entire band	MCW, phone, image, RTTY, data, SS, test, pulse	(7), (8), and (12).
1 m	Entire band	MCW, phone, image, RTTY, data, SS, test, pulse	(7), (8), and (12).
—	Above 300 GHz	MCW, phone, image, RTTY, data, SS, test, pulse	(7), (8), and (12).

§ 97.307 Emission standards.

(a) No amateur station transmission shall occupy more bandwidth than necessary for the information rate and emission type being transmitted, in accordance with good amateur practice.

(b) Emissions resulting from modulation must be confined to the band or segment available to the control operator. Emissions outside the necessary bandwidth must not cause splatter or keyclick interference to operations on adjacent frequencies.

(c) All spurious emissions from a station transmitter must be reduced to the greatest extent practicable. If any spurious emission, including chassis or power line radiation, causes harmful interference to the reception of another radio station, the licensee of the interfering amateur station is required to take steps to eliminate the interference, in accordance with good engineering practice.

(d) The mean power of any spurious emission from a station transmitter or external RF power amplifier transmitting on a frequency below 30 MHz must not exceed 50 mW and must be at least 40 dB below the mean power of the fundamental emission. For a transmitter of mean power less than 5 W, the attenuation must be at least 30 dB. A transmitter built before April 15, 1977, or first marketed before January 1, 1978, is exempt from this requirement.

(e) The mean power of any spurious emission from a station transmitter or external RF power amplifier transmitting on a frequency between 30–225 MHz must be at least 60 dB below the mean power of the fundamental. For a transmitter having a mean power of 25 W or less, the mean power of any spurious emission supplied to the antenna transmission line must not exceed 25 μW and must be at least 40 dB below the mean power of the fundamental emission, but need not be reduced below the power of 10 μW. A transmitter built before April 15, 1977, or first marketed before January 1, 1978, is exempt from this requirement.

(f) The following standards and limitations apply to transmissions on the frequencies specified in § 97.305(c) of this Part.

(1) No angle-modulated emission may have a modulation index greater than 1 at the highest modulation frequency.

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(2) No non-phone emission shall exceed the bandwidth of a communications quality phone emission of the same modulation type. The total bandwidth of an independent sideband emission (having B as the first symbol), or a multiplexed image and phone emission, shall not exceed that of a communications quality A3E emission.

(3) Only a RTTY or data emission using a specified digital code listed in § 97.309(a) of this Part may be transmitted. The symbol rate must not exceed 300 bauds, or for frequency-shift keying, the frequency shift between mark and space must not exceed 1 kHz.

(4) Only a RTTY or data emission using a specified digital code listed in § 97.309(a) of this Part may be transmitted. The symbol rate must not exceed 1200 bauds, or for frequency-shift keying, the frequency shift between mark and space must not exceed 1 kHz.

(5) A RTTY, data or multiplexed emission using a specified digital code listed in § 97.309(a) of this Part may be transmitted. The symbol rate must not exceed 19.6 kilobauds. For frequency-shift keying, the frequency shift between mark and space must not exceed 1 kHz. A RTTY, data or multiplexed emission using an unspecified digital code under the limitations listed in § 97.309(b) of this Part also may be transmitted. The authorized bandwidth is 20 kHz.

(6) A RTTY, data or multiplexed emission using a specified digital code listed in § 97.309(a) of this Part may be transmitted. The symbol rate must not exceed 56 kilobauds. For frequency-shift keying, the frequency shift between mark and space must not exceed 1 kHz. A RTTY, data or multiplexed emission using an unspecified digital code under the limitations listed in § 97.309(b) of this Part also may be transmitted. The authorized bandwidth is 100 kHz.

(7) A RTTY, data or multiplexed emission using a specified digital code listed in § 97.309(a) of this Part or an unspecified digital code under the limitations listed in § 97.309(b) of this Part may be transmitted.

(8) A RTTY or data emission having designators with A, B, C, D, E, F, G, H, J or R as the first symbol; 1, 2, 7 or 9 as the second symbol; and D or W as the third symbol is also authorized.

(9) A station having a control operator holding a Novice or Technician Class operator license may only transmit a CW emission using the international Morse code.

(10) A station having a control operator holding a Novice or Technician Class operator license may only transmit a CW emission using the international Morse code or phone emissions J3E and R3E.

(11) Phone and image emissions may be transmitted only by stations located in ITU Regions 1 and 3, and by stations located within ITU Region 2 that are west of 130° West longitude or south of 20° North latitude.

(12) Emission F8E may be transmitted.

§ 97.309 RTTY and digital emission codes.

(a) Where authorized by §§ 97.305(c) and 97.307(f) of this Part, an amateur station may transmit a RTTY or data emission using the following specified digital codes:

(1) The 5-unit, start-stop, International Telegraph Alphabet No. 2, code defined in International Telegraph and Telephone Consultative Committee Recommendation F.1, Division C, and extensions as provided for in CCITT Recommendation T.61 (Malaga-Torremolinos, 1984).

(2) The 7-unit code specified in International Radio Consultative Committee Recommendation CCIR 476-1 (1978) 476-3 (1982), 476-4 (1986) or 625 (1986).

(3) The 7-unit code defined in American National Standards Institute X3.4-1977 or International Alphabet No. 5 as defined in International Telegraph and Telephone Consultative Committee Recommendation T.50 or in International Organization for Standardization, International Standard ISO 646 (1983).

(b) Where authorized by §§ 97.305(c) and 97.307(f) of this Part, a station may transmit a RTTY or data emission using an unspecified digital code, except to a station in a country with which the United States does not have an agreement permitting the code to be used. RTTY and data emissions using unspecified digital codes must not be transmitted for the purpose of obscuring the meaning of any communication. When deemed necessary by an EIC to assure compliance with the FCC Rules, a station must:

(1) Cease the transmission using the unspecified digital code;

(2) Restrict transmissions of any digital code to the extent instructed;

(3) Maintain a record, convertible to the original information, of all digital communications transmitted.

§ 97.311 SS emission types.

(a) SS emission transmissions by an amateur station are authorized only for communications between points within areas where the amateur service is regulated by the FCC. SS emission transmissions must not be used for the purpose of obscuring the meaning of any communication.

(b) Stations transmitting SS emission must not cause harmful interference to stations employing other authorized emissions, and must accept all interference caused by stations employing other authorized emissions. For the purposes of this paragraph, unintended triggering of carrier operated repeaters is not considered to be harmful interference.

(c) Only the following types of SS emission transmissions are authorized (hybrid SS emissions transmissions involving both spreading techniques are prohibited):

(1) Frequency hopping where the carrier of the transmitted signal is modulated with unciphered information and changes frequency at fixed intervals under the direction of a high speed code sequence.

(2) Direct sequence where the information is modulo-2 added to a high speed code sequence. The combined information and code are then used to modulate the RF carrier. The high speed code sequence dominates the modulation function, and is the direct cause of the wide spreading of the transmitted signal.

(d) The only spreading sequences that are authorized are from the output of one binary linear feedback shift register (which may be implemented in hardware or software).

(1) Only the following sets of connections may be used:

Number of stages in shift register	Taps used in feedback
7	7,1.
13	13,4, 3, and 1.
19	19, 5, 2, and 1.

(2) The shift register must not be reset other than by its feedback during an individual transmission. The shift register output sequence must be used without alteration.

(3) The output of the last stage of the binary linear feedback shift register must be used as follows:

(i) For frequency hopping transmissions using x frequencies, n consecutive bits from the shift register must be used to select the next frequency from a list of frequencies sorted in ascending order. Each consecutive frequency must be selected by a consecutive block of n bits. (Where n is the smallest integer greater than $\log_2 x$.)

(ii) For direct sequence transmissions using m-ary modulation, consecutive blocks of $\log_2 m$ bits from the shift register must be used to select the transmitted signal during each interval.

(e) The station records must document all SS emission transmissions and must be retained for a period of 1 year following the last entry. The station records must include sufficient information to enable the FCC, using the information contained therein, to demodulate all transmissions. The station records must contain at least the following:

(1) A technical description of the transmitted signal;

(2) Pertinent parameters describing the transmitted signal including the frequency or frequencies of operation and, where applicable, the chip rate, the code rate, the spreading function, the transmission protocol(s) including the method of achieving sychronization, and the modulation type;

(3) A general description of the type of information being conveyed, (voice, text, memory dump, facsimile, television, etc.);

(4) The method and, if applicable, the frequency or frequencies used for station identification; and

(5) The date of beginning and the date of ending use of each type of transmitted signal.

(f) When deemed necessary by an EIC to assure compliance with this Part, a station licensee must:

(1) Cease SS emission transmissions;

(2) Restrict SS emission transmissions to the extent instructed; and

(3) Maintain a record, convertible to the original information (voice, text, image, etc.) of all spread spectrum communications transmitted.

(g) The transmitter power must not exceed 100 W.

§ 97.313 Transmitter power standards.

(a) An amateur station must use the minimum transmitter power necessary to carry out the desired communications.

(b) No station may transmit with a transmitter power exceeding 1.5 kW PEP. Until June 2, 1990, a station transmitting emission A3E is exempt from this requirement provided the power input (both RF and direct current) to the final amplifying stage supplying RF power to the antenna feed line does not exceed 1 kW, exclusive of power for heating the cathodes of vacuum tubes.

(c) No station may transmit with a transmitter power exceeding 200 W PEP on:

(1) The 3.70–3.75 MHz, 7.10–7.15 MHz, 10.10–10.15 MHz and 21.1–21.2 MHz segments;

(2) The 28.1–28.5 MHz segment when the control operator is a Novice or Technician operator; or

(3) The 7.050–7.075 MHz segment when the station is within ITU Regions 1 or 3.

(d) No station may transmit with a transmitter power exceeding 25 W PEP on the VHF 1.25 m band when the control operator is a Novice operator.

(e) No station may transmit with a transmitter power exceeding 5 W PEP on the UHF 23 cm band when the control operator is a Novice operator.

(f) No station may transmit with a transmitter power exceeding 50 W PEP on the UHF 70 cm band from an area specified in footnote US7 to § 2.106 of the FCC Rules, unless expressly authorized by the FCC after mutual agreement, on a case-by-case basis, between the EIC of the applicable field facility and the military area frequency coordinator at the applicable military base. An Earth station or telecommand station, however, may transmit on the 435–438 MHz segment with a maximum of 611 W effective radiated power (1 kW equivalent isotropically radiated power) without the authorization otherwise required. The transmitting antenna elevation angle between the lower half-power (−3 dB relative to the peak or antenna bore sight) point and the horizon must always be greater than 10°.

(g) No station may transmit with a transmitter power exceeding 50 W PEP on the 33 cm band from within 241 km of the boundaries of the White Sands Missile Range. Its boundaries are those portions of Texas and New Mexico bounded on the south by latitude 31° 41′ North, on the east by longitude 104° 11′ West, on the north by latitude 34° 30′ North, and on the west by longitude 107° 30′ West.

§ 97.315 Type acceptance of external RF power amplifiers.

(a) No more than 1 unit of 1 model of an external RF power amplifier capable of operation below 144 MHz may be constructed or modified during any calendar year by an amateur operator for use at a station without a grant of type acceptance. No amplifier capable of operation below 144 HMz may be constructed or modified by a non-amateur operator without a grant of type acceptance from the FCC.

(b) Any external RF power amplifier or external RF power amplifier kit (see § 2.815 of the FCC Rules), manufactured, imported or modified for use in a station or attached at any station must be type accepted for use in the amateur service in accordance with Subpart J of Part 2 of the FCC Rules. This requirement does not apply if one or more of the following conditions are met:

(1) The amplifier is not capable of operation on frequencies below 144 HMz. For the purpose of this part, an amplifier will be deemed to be incapable of operation below 144 HMz if it is not capable of being easily modified to increase its amplification characteristics below 120 MHz and either:

(i) The mean output power of the amplifier decreases, as frequency decreases from 144 HMz, to a point where 0 dB or less gain is exhibited at 120 MHz; or

(ii) The amplifier is not capable of amplifying signals below 120 MHz even for brief periods without sustaining permanent damage to its amplification circuitry.

(2) The amplifier was manufactured before April 28, 1978, and has been issued a marketing waiver by the FCC, or the amplifier was purchased before April 28, 1978, by an amateur operator for use at that amateur operator's station.

(3) The amplifier was:

(i) Constructed by the licensee, not from an external RF power amplifier kit, for use at the licensee's station; or

(ii) Modified by the licensee for use at the licensee's station.

(4) The amplifier is sold by an amateur operator to another amateur operator or to a dealer.

(5) The amplifier is purchased in used condition by an equipment dealer from an amateur operator and the amplifier is further sold to another amateur operator for use at that operator's station.

(c) A list of type accepted equipment may be inspected at FCC headquarters in Washington, DC, or at any FCC field location. Any external RF power amplifier appearing on this list as type accepted for use in the amateur service may be marketed for use in the amateur service.

§ 97.317 Standards for type acceptance of external RF power amplifiers.

(a) To receive a grant of type acceptance, the amplifier must satisfy the spurious emission standards of § 97.307(d) or (e) of this Part, as applicable, when the amplifier is:

(1) Operated at its full output power;

(2) Placed in the "standby" or "off" positions, but still connected to the transmitter; and

(3) Driven with at least 50 W mean RF input power (unless higher drive level is specified.)

(b) To receive a grant of type acceptance, the amplifier must not be capable of operation on any frequency or frequencies between 24 MHz and 35 MHz. The amplifier will be deemed incapable of such operation if it:

(1) Exhibits no more than 6 dB gain between 24 MHz and 26 MHz and between 28 MHz and 35 MHz. (This gain will be determined by the ratio of the

input RF driving signal (mean power measurement) to the mean RF output power of the amplifier); and

(2) Exhibits no amplification (0 dB gain) between 26 MHz and 28 MHz.

(c) Type acceptance may be denied when denial would prevent the use of these amplifiers in services other than the amateur service. The following features will result in dismissal or denial of an application for type acceptance:

(1) Any accessible wiring which, when altered, would permit operation of the amplifier in a manner contrary to the FCC Rules;

(2) Circuit boards or similar circuitry to facilitate the addition of components to change the amplifier's operating characteristics in a manner contrary to the FCC Rules;

(3) Instructions for operation or modification of the amplifier in a manner contrary to FCC Rules;

(4) Any internal or external controls or adjustments to facilitate operation of the amplifier in a manner contrary to the FCC Rules;

(5) Any internal RF sensing circuitry or any external switch, the purpose of which is to place the amplifier in the transmit mode;

(6) The incorporation of more gain in the amplifier than is necessary to operate in the amateur service; for purposes of this paragraph, the amplifer must:

(i) Not be capable of achieving designed output power when driven with less than 40 W mean RF input power;

(ii) Not be capable of amplifying the input RF driving signal by more than 15 dB, unless the amplifier has a designed transmitter power of less than 1.5 kW (in such a case, gain must be reduced by the same number of dB as the transmitter power relationship to 1.5 kW; This gain limitation is determined by the ratio of the input RF driving signal to the RF output power of the amplifier where both signals are expressed in peak envelope power or mean power);

(iii) Not exhibit more gain than permitted by paragraph (c)(6)(ii) of this Section when driven by an RF input signal of less than 50 W mean power; and

(iv) Be capable of sustained operation at its designed power level;

(7) Any attenuation in the input of the amplifier which, when removed or modified, would permit the amplifier to function at its designed transmitter power when driven by an RF frequency input signal of less than 50 W mean power; or

(8) Any other features designed to facilitate operation in a telecommunication service other than the Amateur Radio Services, such as the Citizens Band (CB) Radio Service.

Subpart E—Providing Emergency Communications

§ 97.401 Operation during a disaster.

(a) When normal communication systems are overloaded, damaged or disrupted because a disaster has occurred, or is likely to occur, in an area where the amateur service is regulated by the FCC, an amateur station may make transmissions necessary to meet essential communication needs and facilitate relief actions.

(b) When normal communication systems are overloaded, damaged or disrupted because a natural disaster has occurred, or is likely to occur, in an area where the amateur service is not regulated by the FCC, a station assisting in meeting essential communication needs and facilitating relief actions may do so only in accord with ITU Resolution No. 640 (Geneva, 1979). The 80 m, 75 m, 40 m, 30 m, 20 m, 17 m, 15 m, 12 m, and 2 m bands may be used for these purposes.

(c) When a disaster disrupts normal communication systems in a particular area, the FCC may declare a temporary state of communication emergency. The declaration will set forth any special conditions and special rules to be observed by stations during the communication emergency. A request for a declaration of a temporary state of emergency should be directed to the EIC in the area concerned.

(d) A station in, or within 92.6 km of, Alaska may transmit emissions J3E and R3E on the channel at 5.1675 Mhz for emergency communications. The channel must be shared with stations licensed in the Alaska-private fixed service. The transmitter power must not exceed 150 W.

§ 97.403 Safety of life and protection of property.

No provision of these rules prevents the use by an amateur station of any means of radiocommunication at its disposal to provide essential communication needs in connection with the immediate safety of human life and immediate protection of property when normal communication systems are not available.

§ 97.405 Station in distress.

(a) No provision of these rules prevents the use by an amateur station in distress of any means at its disposal to attract attention, make known its condition and location, and obtain assistance.

(b) No provision of these rules prevents the use by a station, in the exceptional circumstances described in paragraph (a) of this section, of any means of radiocommunications at its disposal to assist a station in distress.

§ 97.407 Radio amateur civil emergency service.

(a) No station may transmit in RACES unless it is an FCC-licensed primary, club, or military recreation station and it is certified by a civil defense organization as registered with that organization, or it is an FCC-licensed RACES station. No person may be the control operator of a RACES station, or may be the control operator of an amateur station transmitting in RACES unless that person holds a FCC-issued amateur operator license and is certified by a civil defense organization as enrolled in that organization.

(b) The frequency bands and segments and emissions authorized to the control operator are available to stations transmitting communications in RACES on a shared basis with the amateur service. In the event of an emergency which necessitates the invoking of the President's War Emergency Powers under the provisions of Section 706 of the Communications Act of 1934, as amended, 47 U.S.C. 606, RACES stations and amateur stations participating in RACES may only transmit on the following frequencies:

(1) The 1800–1825 kHz, 1975–2000 kHz, 3.50–3.55 MHz, 3.93–3.98 MHz, 3.984–4.000 MHz, 7.079–7.125 MHz, 7.245–7.255 MHz, 10.10–10.15 MHz, 14.047–14.053 MHz, 14.22–14.23 MHz, 14.331–14.350 MHz, 21.047–21.053 MHz, 21.228–21.267 MHz, 28.55–28.75 MHz, 29.237–29.273 MHz, 29.45–29.65 MHz, 50.35–50.75 MHz, 52–54 MHz, 144.50–145.71 MHz, 146–148 MHz, 2390–2450 MHz segments;

(2) The 1.25 m, 70 cm and 23 cm bands; and

(3) The channels at 3.997 MHz and 53.30 MHz may be used in emergency areas when required to make initial contact with a military unit and for communications with military stations on matters requiring coordination.

(c) A RACES station may only communicate with:

(1) Another RACES station;

(2) An amateur station registered with a civil defense organization;

(3) A United States Government station authorized by the responsible agency to communicate with RACES stations;

(4) A station in a service regulated by the FCC whenever such communication is authorized by the FCC.

(d) An amateur station registered with a civil defense organization may only communicate with:

(1) A RACES station licensed to the civil defense organization with which the amateur station is registered;

(2) The following stations upon authorization of the responsible civil defense official for the organization with which the amateur station is registered:

(i) A RACES station licensed to another civil defense organization;

(ii) An amateur station registered with the same or another civil defense organization;

(iii) A United States Government station authorized by the responsible agency to communicate with RACES stations; and

(iv) A station in a service regulated by the FCC whenever such communication is authorized by the FCC.

(e) All communications transmitted in RACES must be specifically authorized by the civil defense organization for the area served. Only civil defense communications of the following types may be transmitted:

(1) Messages concerning impending or actual conditions jeopardizing the public safety, or affecting the national defense or security during periods of local, regional, or national civil emergencies;

(2) Messages directly concerning the immediate safety of life of individuals, the immediate protection of property, maintenance of law and order, alleviation of human suffering and need, and the combating of armed attack or sabotage;

(3) Messages directly concerning the accumulation and dissemination of public information or instructions to the civilian population essential to the activities of the civil defense organization or other authorized governmental or relief agencies; and

(4) Communications for RACES training drills and tests necessary to ensure the establishment and maintenance of orderly and efficient operation of the RACES as ordered by the responsible civil defense organization served. Such drills and tests may not exceed a total time of 1 hour per week. With the approval of the chief officer for emergency planning in the applicable State, Commonwealth, District or territory, however, such tests and drills may be conducted for a period not to exceed 72 hours no more than twice in any calendar year.

Subpart F—Qualifying Examination Systems

§ 97.501 Qualifying for an amateur operator license.

An applicant must successfully pass an examination for the issuance of a new amateur operator license and for each change in operator class. Each applicant for the class of operator license specified below must pass, or otherwise receive examination credit for, the following examination elements:

(a) Amateur Extra Class operator: Elements 1(C), 2, 3(A), 3(B), 4(A), and 4(B);

(b) Advanced Class operator: Elements 1(B) or 1(C), 2, 3(A), 3(B), and 4(A);

(c) General Class operator: Elements 1(B) or 1(C), 2, 3(A), and 3(B);

(d) Technician Class operator: Elements 1(A) or 1(B) or 1(C), 2, and 3(A);

(e) Novice Class operator: Elements 1(A) or 1(B) or 1(C), and 2.

§ 97.503 Element standards.

(a) A telegraphy examination must be sufficient to prove that the examinee has the ability to send correctly by hand and to receive correctly by ear texts in the international Morse code at not less than the prescribed speed, using all the letters of the alphabet, numerals 0–9, period, comma, question mark, slant mark and prosigns ar, bt, and sk.

(1) Element 1(A): 5 words per minute;

(2) Element 1(B): 13 words per minute;

(3) Element 1(C): 20 words per minute.

(b) A written examination must be such as to prove that the examinee possesses the operational and technical qualifications required to perform properly the duties of an amateur service licensee. Each written examination must be comprised of a question set as follows:

(1) Element 2: 30 questions concerning the privileges of a Novice Class operator license. The minimum passing score is 22 questions answered correctly.

(2) Element 3(A): 25 questions concerning the additional privileges of a Technician Class operator license. The minimum passing score is 19 questions answered correctly.

(3) Element 3(B): 25 questions concerning the additional privileges of a General Class operator license. The minimum passing score is 19 questions answered correctly.

(4) Element 4(A): 50 questions concerning the additional privileges of an Advanced Class operator license. The minimum passing score is 37 questions answered correctly.

(5) Element 4(B): 40 questions concerning the additional privileges of an Amateur Extra Class operator license. The minimum passing score is 30 questions answered correctly.

(c) The topics and number of questions required in each question set are listed below for the appropriate examination element:

Topics	Element 2	3(A)	3(B)	4(A)	4(B)
(1) FCC rules for the amateur radio services	10	5	4	6	8
(2) Amateur station operating procedures	2	3	3	1	4
(3) Radio wave propagation characteristics of amateur service frequency bands	1	3	3	2	2
(4) Amateur radio practices	4	4	5	4	4
(5) Electrical principles as applied to amateur station equipment	4	2	2	10	6
(6) Amateur station equipment circuit components	2	2	1	6	4
(7) Practical circuits employed in amateur station equipment	2	1	1	10	4
(8) Signals and emissions transmitted by amateur stations	2	2	2	6	4
(9) Amateur station antennas and feed lines	3	3	4	5	4

§ 97.505 Element credit.

(a) The administering VEs must give credit as specified below to an examinee holding any of the following documents:

(1) An unexpired (or within the grace period) FCC-issued amateur operator license: The least elements required for the license held. For a Technician Class operator license issued before March 21, 1987, credit must also be given for Element 3(B).

(2) A CSCE: Each element the CSCE indicates the examinee passed within the previous 365 days.

(3) A photocopy of a FCC Form 610 which was submitted to the FCC indicating the examinee qualified for a Novice Class operator license within the previous 365 days: Elements 1(A) and 2.

(4) An unexpired (or expired less than 5 years) FCC-issued commercial

radiotelegraph operator license or permit: Element 1(C).

(b) No examination credit, except as herein provided, shall be allowed on the basis of holding or having held any other license.

§ 97.507 Preparing an examination.

(a) Each telegraphy message and each written question set administered to an examinee must be prepared by a VE holding an FCC-issued Amateur Extra Class operator license. A telegraphy message or written question set, however, may also be prepared for the following elements by a VE holding an FCC-issued operator license of the Class indicated:

(1) Element 3(B): Advanced Class operator.

(2) Elements 1(A) and 3(A): Advanced or General Class operator.

(3) Element 2: Advanced, General or Technician Class operator.

(b) Each question set administered to an examinee must utilize questions taken from the applicable question pool.

(c) Each telegraphy message and each written question set administered to an examinee for a Technician, General, Advanced, or Amateur Extra Class operator license must be prepared, or obtained from a supplier, by the administering VEs according to instructions from the coordinating VEC.

(d) The preparation of each telegraphy message and each written question set administered to an examinee for a Novice Class operator license is the responsibility of the administering VEs. The telegraphy message and written question set may be obtained by the administering VEs from a supplier.

(e) A telegraphy examination must consist of a message sent in the international Morse code at no less than the prescribed speed for a minimum of 5 minutes. The message must contain each required telegraphy character at least once. No message known to the examinee may be administered in a telegraphy examination. Each 5 letters of the alphabet must be counted as 1 word. Each numeral, punctuation mark and prosign must be counted as 2 letters of the alphabet.

§ 97.509 Administering an examination.

(a) Each examination for an amateur operator license must be administered at a location and a time specified by the administering VEs. Each administering VE must be present and observe the examinee throughout the entire examination. The administering VEs are responsible for the proper conduct and necessary supervision of each examination. The administering VEs must immediately terminate the examination upon failure of the examinee to comply with their instructions.

(b) Each examinee must comply with the instructions given by the administering VEs.

(c) No examination that has been compromised shall be administered to any examinee. Neither the same telegraphy message nor the same question set may be readministered to the same examinee.

(d) Passing a telegraphy receiving examination is adequate proof of an examinee's ability to both send and receive telegraphy. The administering VEs, however, may also include a sending segment in a telegraphy examination.

(e) Upon completion of each examination element, the administering VEs must immediately grade the examinee's answers. The administering VEs are responsible for determining the correctness of the examinee's answers.

(f) When the examinee is credited for all examination elements required for the operator license sought, the administering VEs must certify on the examinee's application form that the applicant is qualified for the license and report the basis for the qualification.

(g) When the examinee does not score a passing grade on an examination element, the administering VEs must return the application form to the examinee and inform the examinee of the grade.

(h) The administering VEs must accommodate an examinee whose physical disabilities require a special examination procedure. The administering VEs may require a physician's certification indicating the nature of the disability before determining which, if any, special procedures must be used.

(i) The FCC may:

(1) Administer any examination element itself;

(2) Readminister any examination element previously administered by VEs, either itself or under the supervision of VEs designated by the FCC; or

(3) Cancel the operator and station licenses of any licensee who fails to appear for readministration of an examination when directed by the FCC, or who does not successfully complete any required element which is readministered. In an instance of such cancellation, the person will be issued operator and station licenses consistent with completed examination elements that have not been invalidated by not appearing for, or by failing, the examination upon readministration.

§ 97.511 Technician, General, Advanced and Amateur Extra Class operator license examination.

(a) Each session where an examination for a Technician, General, Advanced or Amateur Extra Class operator license is administered must be coordinated by a VEC. Each administering VE must be accredited by the coordinating VEC.

(b) Each examination for a Technician Class operator license must be administered by 3 administering VEs, each of whom must hold an FCC-issued Amateur Extra or Advanced Class operator license.

(c) Each examination for a General, Advanced or Amateur Extra Class operator license must be administered by 3 administering VEs, each of whom must hold an FCC-issued Amateur Extra Class operator license.

(d) The administering VEs must make a public announcement before administering an examination for Technician, General, Advanced or Amateur Extra Class operator license. The number of candidates at any examination may be limited.

(e) The administering VEs must issue a CSCE to an examinee who scores a passing grade on an examination element.

(f) Within 10 days of the administration of a successful examination for the Technician, General, Advanced or Amateur Extra Class operator license, the administering VEs must submit the application to the coordinating VEC.

§ 97.513 Novice Class operator license examination.

(a) Each examination for a Novice Class operator license must be administered by 2 VEs. The VEs do not have to be accredited by a VEC. Each administering VE must hold a current FCC-issued Amateur Extra, Advanced or General Class operator license.

(b) Within 10 days of the administration of a successful examination for a Novice Class operator license, the administering VEs must submit the application to: FCC, P.O. Box 1020, Gettysburg, PA 17326.

§ 97.515 Volunteer examiner requirements.

(a) Each administering VE must be at least 18 years of age.

(b) Any person who owns a significant interest in, or is an employee of, any company or other entity that is engaged in the manufacture or distribution of equipment used in connection with amateur station transmissions, or in the preparation or distribution of any publication used in preparation for obtaining amateur licenses, is ineligible to be an administering VE. An employee who does not normally communicate with that part of an entity engaged in the manufacture or distribution of such equipment, or in the preparation or distribution of any publication used in preparation for obtaining amateur operator licenses, is eligible to be an administering VE.

(c) No person may be a VE if that person's amateur station license or amateur operator license has ever been revoked or suspended.

(d) No VE may administer an examination to that VE's spouse, children, grandchildren, stepchildren, parents, grandparents, stepparents, brothers, sisters, stepbrothers, stepsisters, aunts uncles, nieces, nephews, and in-laws.

§ 97.517 Volunteer examiner conduct.

No VE may administer or certify any examination by fraudulent means or for monetary or other consideration including reimbursement in any amount in excess of that permitted. Violation of this provision may result in the revocation of the VE's amateur station license and the suspension of the VE's amateur operator license.

§ 97.519 Coordinating examination sessions.

(a) A VEC must coordinate the efforts of VEs in preparing and administering examinations.

(b) At the completion of each examination session coordinated, the coordinating VEC must collect the applications and test results from the administering VEs. The coordinating VEC must screen and forward all applications for qualified examinees within 10 days of their receipt from the administering VEs to: FCC P.O. Box 1020, Gettysburg, PA 17326.

(c) Each VEC must make any examination records available to the FCC, upon request

§ 97.521 VEC qualifications.

No organization may serve as a VEC unless it has entered into a written agreement with the FCC. The VEC must abide by the terms of the agreement. In order to be eligible to be a VEC, the entity must:

(a) Be an organization that exists for the purpose of furthering the amateur service;

(b) Be capable of serving as a VEC in at least the VEC region (see Appendix 2) proposed;

(c) Agree to coordinate examinations for Technician, General, Advanced, and Amateur Extra Class operator licenses;

(d) Agree to assure that, for any examination, every examinee qualified under these rules is registered without regard to race, sex, religion, national origin or membership (or lack thereof) in any amateur service organization;

(e) Not be engaged in the manufacture or distribution of equipment used in connection with amateur station transmissions, or in the preparation or distribution of any publication used in preparation for obtaining amateur licenses, unless a persuasive showing is made to the FCC that preventive measures have been taken to preclude any possible conflict of interest.

§ 97.523 Question pools.

All VECs must cooperate in maintaining one question pool for each written examination element. Each question pool must contain at least 10 times the number of questions required for a single examination. Each question pool must be published and made available to the public prior to its use for making a question set. Each question on each VEC question pool must be prepared by a VE holding the required FCC-issued operator license. See § 97.507(a) of this Part.

§ 97.525 Accrediting VEs.

(a) No VEC may accredit a person as a VE if:

(1) The person does not meet minimum VE statutory qualifications or minimum qualifications as prescribed by this Part;

(2) The FCC does not accept the voluntary and uncompensated services of the person;

(3) The VEC determines that the person is not competent to perform the VE functions; or

(4) The VEC determines that questions of the person's integrity or honesty could compromise the examinations.

(b) Each VEC must seek a broad representation of amateur operators to be VEs. No VEC may discriminate in accrediting VEs on the basis of race, sex, religion or national origin; nor on the basis of membership (or lack thereof) in an amateur service organization; nor on the basis of the person accepting or declining to accept reimbursement.

§ 97.527 Reimbursement for expenses.

(a) VEs and VECs may be reimbursed by examinees for out-of-pocket expenses incurred in preparing, processing, administering, or coodinating an examination for a Technician, General, Advanced, or Amateur Extra operator license.

(b) The maximum amount of reimbursement from any one examinee for any one examination at a particular session regardless of the number of examination elements taken must not exceed that announced by the FCC in a Public Notice. (The basis for the maximum fee is $4.00 for 1984, adjusted annually each January 1 thereafter for changes in the Department of Labor Consumer Price Index.)

(c) No reimbursement may be accepted by any VE for preparing, processing, or administering an examination for a Novice operator license.

(d) Each VE and each VEC accepting reimbursement must maintain records of out-of-pocket expenses and reimbursements for each examination session. Written certifications must be filed with the FCC each year that all expenses for the period from January 1 to December 31 of the preceding year for which reimbursement was obtained were necessarily and prudently incurred.

(e) The expense and reimbursement records must be retained by each VE and each VEC for 3 years and be made available to the FCC upon request.

(f) Each VE must forward the certification by January 15 of each year to the coordinating VEC for the examinations for which reimbursement was received. Each VEC must forward all such certifications and its own certification to the FCC on or before January 31 of each year.

(g) Each VEC must disaccredit any VE failing to provide the certification. The VEC must advise the FCC on January 31 of each year of any VE that it has disaccredited for this reason.

Appendix 1—Places Where the Amateur Service is Regulated by the FCC

In ITU Region 2, the amateur service is regulated by the FCC within the territorial limits of the 50 United States, District of Columbia, Caribbean Insular areas [Commonwealth of Puerto Rico, United States Virgin Islands (50 islets and cays) and Navassa Island], and Johnston Island (Islets East, Johnston, North and Sand) and Midway Island (Islets Eastern and Sand) in the Pacific Insular areas.

In ITU Region 3, the amateur service is regulated by the FCC within the Pacific Insular territorial limits of American Samoa (seven islands), Baker Island, Commonwealth of Northern Mariana Islands, Guam Island, Howland Island, Jarvis Island, Kingman Reef, Palmyra Island (more than 50 islets) and Wake Island (Islets Peale, Wake and Wilkes).

Appendix 3—VEC Regions

1. Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont.
2. New Jersey and New York.
3. Delaware, District of Columbia, Maryland and Pennsylvania.
4. Alabama, Florida, Georgia, Kentucky, North Carolina, South Carolina, Tennessee and Virginia.
5. Arkansas, Louisiana, Mississippi, New Mexico, Oklahoma and Texas.
6. California.
7. Arizona, Idaho, Montana, Nevada, Oregon, Utah, Washington and Wyoming.
8. Michigan, Ohio and West Virginia.
9. Illinois, Indiana and Wisconsin.
10. Colorado, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota and South Dakota.
11. Alaska.
12. Caribbean Insular areas.
13. Hawaii and Pacific Insular areas.

[FR Doc. 89-14433 Filed 6-19-89; 8:45]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 90515-9115]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of reopening.

SUMMARY: NOAA announces the reopening of the ocean commercial salmon fishery in the exclusive economic zone (EEZ) from the Queets River, Washington, to Cape Falcon, Oregon, for three days on June 13–15, 1989. This fishery closed at midnight, June 8, 1989. Evaluation of landing data following closure of the fishery indicates that sufficient chinook salmon remain to allow three additional days of fishing. This action is intended to maximize the harvest of chinook salmon in this subarea without exceeding the ocean share of salmon allocated to the commercial fishery.

EFFECTIVE DATE: Reopening of the EEZ to commercial salmon fishing between the Queets River, Washington, and Cape Falcon, Oregon, is effective from 0001 hours local time June 13, 1989, through 2400 hours local time June 15, 1989. Actual notice to affected fishermen was given prior to that time through a special telephone hotline and U.S. Coast Guard Notice to Mariners broadcasts as provided by 50 CFR 661.20, 661.21, and 661.23 (as amended May 1, 1989).

ADDRESS: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115–0070. Information relevant to this notice has been compiled in aggregate for and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR Part 661 specify at § 661.21(a)(2):

"If a fishery is closed under a quota before the end of a scheduled season based on overestimate of actual catch, the Secretary will reopen that fishery in as timely a manner as possible for all or part of the remaining original season provided the Secretary finds that a reopening of the fishery is consistent with the management objectives for the affected species and the additional open period is no less than 24 hours."

Management measures for 1989 were effective on May 1, 1989 (54 FR 19798, May 8, 1989). The 1989 commercial fishery for all salmon except coho in the subarea from the Queets River, Washington, to Cape Falcon, Oregon, commenced on May 1, 1989, and closed at midnight, June 8, 1989, upon the projected attainment of a subarea quota of 39,500 chinook salmon. Subsequent evaluation of landing data indicates that this closure was based on an overestimate of actual catch.

According to the best available information, commercial catches through June 8 totaled 35,000 chinook salmon, leaving 4,500 chinook salmon available for harvest in the subarea chinook quota. This amount of available chinook salmon has been determined to be sufficient for three additional days of fishing. This action is being taken in as timely a manner as possible for all of the remaining original season, which would have ended no later than June 15, 1989. Reopening of the commercial fishery in this subarea is consistent with the management objectives for chinook salmon in this subarea. As in the original season (May 1–June 15) Conservation Zone 1, the Columbia River mouth, will be closed (54 FR 19798, May 8, 1989).

In accordance with the revised inseason notice procedures of 50 CFR 661.20, 661.21, and 661.23, actual notice to fishermen was given prior to 0001 hours local time, June 13, 1989, by telephone hotline number (206) 526–6667 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF–FM and 2182 KHz. NOAA issues this notice of the reopening of the commercial salmon fishery in the EEZ from the Queets River, Washington, to Cape Falcon, Oregon, which was effective at 0001 hours local time, June 13, 1989. This notice does not apply to treaty Indian fisheries or to other fisheries which may be operating in other areas.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Washington Department of Fisheries, and the Oregon Department of Fish and Wildlife regarding this reopening. The States of Washington and Oregon will manage the commercial fishery in State waters adjacent to this area of the EEZ in accordance with this federal action.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted for 15 days after filing with the Office of the Federal Register, through June 30, 1989.

Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

(16 U.S.C. 1801 *et seq.*)

Dated: June 14, 1989.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-14516 Filed 6-15-89; 8:45 am]

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Proposed Rules

Federal Register
Vol. 54, No. 117
Tuesday, June 20, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

RAILROAD RETIREMENT BOARD

20 CFR Parts 320 and 340

RIN 3220-AA77

Initial Determinations Under the Railroad Unemployment Insurance Act and Reviews of and Appeals From Such Determinations; Recovery of Benefits

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) hereby proposes to amend its regulations by adding two instances in which recoveries of overpayments of benefits under the Railroad Unemployment Insurance Act will not be subject to waiver, and to clarify certain procedures relating to the recovery of overpayments under that statute.

DATE: Comments must be received by the Secretary to the Board on or before July 20, 1989.

ADDRESS: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, General Attorney, Bureau of Law, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4513 (FTS 386–4513).

SUPPLEMENTARY INFORMATION: Section 2(d) of the Railroad Unemployment Insurance Act (RUIA) (45 U.S.C. 352(d)) provides that an overpayment of benefits under that Act may be waived if the overpaid individual was not at fault in causing the overpayment and recovery of the overpayment would be contrary to the purpose of the RUIA (financial hardship test) or would be against equity or good conscience.

On January 28, 1988, (53 FR 2485), the Board published regulations explaining how an overpaid individual may request waiver and how the Board applies waiver under the RUIA. 20 CFR Parts 320 and 340. Section 340.10(e) provides that an overpayment will not be waived when the recovery of the overpayment is sought from an individual other than the overpaid employee. The Board proposes to add two situations in which waiver also will not be available. Proposed § 340.10(e)(2) provides that where the overpayment is equal to or less than 10 times the current maximum daily benefit rate under the RUIA (presently $30) such an overpayment will not be waived even though the overpaid employee was not at fault in causing the overpayment. In such cases the overpaid employee is hard pressed to show that recovery of the overpayment, for example by installment payments, would cause him or her financial hardship or would be against equity or good conscience. The Board proposes that where the overpayment is equal to or less than 10 times the daily benefit rate that there be a conclusive presumption that it is not contrary to the purpose of the RUIA or against equity or good conscience to recover such payments. Consequently, in such an instance there will be no right to request waiver of the overpayment.

Proposed § 340.10(e)(3) provides that there shall be no waiver where the overpayment of RUIA benefits may be recovered from an accrual of a retroactive award of annuities under the Railroad Retirement Act (RRA). A sick or disabled railroad employee who is receiving benefits under the RUIA may eventually become entitled to a disability annuity under the RRA with the annuity commencing the day after the employee left railroad employment. In such an instance an overpayment of benefits under the RUIA is created since section 4(a–1)(ii) of the RUIA (45 U.S.C. 345(a–1)(ii)) prohibits the payment of benefits under that statute for any period in which the employee is also receiving benefits under the RRA. In such an instance the Board usually recovers the overpaid benefits under the RUIA from the accrual of benefits under the RRA. The Board proposes that where the overpayment of benefits under the RUIA may be recovered in such a manner there shall be no right to waiver by the overpaid employee. In such a case the employee cannot show that recovery of the overpayment will cause financial hardship since no future benefits are being taken away nor is he or she being asked to pay anything out-of-pocket. His or her accrual of benefits under the RRA is simply being reduced to recover the overpayment. Likewise, the employee can never show that it is against equity or good conscience to recover the overpayment in this manner, since the employee is hard pressed to argue on equitable grounds that he or she deserves a windfall by being permitted to receive benefits under both statutes for the same time period where the law prohibits such dual entitlement. Of course, in instances in which the overpayment is not entirely offset by the accrual, the employee would be able to request waiver of the remaining overpayment subject to the provisions of § 320.11.

Finally, the Board proposes to modify §§ 320.11 (a) and (b) to conform to the proposed revisions in § 340.10(e). In addition, the Board proposes to revise § 340.7 to make it clear that all overpayments, even those waived under this part, are still deducted from any residual lump sum death payment under the Railroad Retirement Act. Section 340.8 is proposed to be revised to clarify when recovery by actuarial adjustment is effective to recover an overpayment. Finally, § 340.10 is proposed to be revised by changing the word "and" in the phrase "equity and good conscience" to "or" to conform to the language in the RUIA.

The Board has determined that this is not a major rule for purposes of Executive Order 12291. Therefore, no regulatory impact analysis is required by the Regulatory Flexibility Act (5 U.S.C. 601–611). In addition, no requirements for the collection of information within the meaning of the Paperwork Reduction Act of 1980 are imposed.

List of Subjects in 20 CFR Parts 320 and 340

Railroad employees, Railroad unemployment insurance.

For reasons set out in the preamble, Title 20, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 320—INITIAL DETERMINATIONS UNDER THE RAILROAD UNEMPLOYMENT INSURANCE ACT AND REVIEWS OF AND APPEALS FROM SUCH DETERMINATIONS

1. The authority citation for Part 320 is revised to read as follows:

Authority: 45 U.S.C. 362(l).

2. Section 320.11 is amended by revising paragraph (a) and by revising paragraph (b)(1) as follows:

§ 320.11 Request for waiver of recovery.

(a) *Time limitation.* If a claimant requests waiver of recovery of an erroneous payment, he or she shall be given an opportunity for a hearing on his or her request provided, however, that where an erroneous payment is not subject to waiver in accordance with section 340.10(e) of this chapter, no hearing will be held and recovery will not be stayed. The claimant shall have 30 days from the date of the notification of the erroneous payment determination in which to file a request for waiver and if he or she so desires, a request for a hearing. Such requests shall be made in writing and be filed by mail or in person at any Board office. If the claimant does not elect to have an oral hearing with respect to his or her request for waiver of recovery he or she may, along with the request, submit any evidence and argument which he or she would like to present in support of his or her case.

(b) * * *

(1) The erroneous payment is not subject to waiver in accordance with § 340.10(e) of the Chapter;

* * * * *

PART 340—RECOVERY OF BENEFITS

3. The authority for Part 340 continues to read as follows:

Authority: 45 U.S.C. 362(l).

4. Section 340.7 is revised to read as follows:

§ 340.7 Deduction in computation of death benefit.

In computing the residual lump sum provided for in Part 234, Subpart D, of this chapter, the Board shall include in the benefits to be deducted from the gross residual all amounts recoverable under this part, but not recovered, including amounts where recovery was waived, that were paid to the individual or paid to others as benefits accrued to the individual but not paid at death.

5. Section 340.8 is revised to read as follows:

§ 340.8 Recovery by adjustment in connection with subsequent payments under the Railroad Retirement Act.

Recovery under this part may be made by permanently reducing the amount of any annuity payable to the overpaid individual (or an individual receiving an annuity based upon the same compensation record as that of the overpaid individual) under the Railroad Retirement Act. This method of recovery is called an actuarial adjustment of the annuity. The Board cannot require any individual to take an actuarial adjustment in order to recover an overpayment nor is an actuarial adjustment available as a matter of right. An actuarial adjustment does not become effective until the overpaid individual negotiates the first annuity check which reflects the annuity rate after actuarial adjustment.

Example. An individual agrees to recovery of a $5,000 overpayment made to him by actuarial adjustment to an annuity awarded him under the Railroad Retirement Act. However, he dies before negotiating the first annuity check reflecting his actuarially reduced rate. The $5,000 is not considered recovered.

6. Section 340.10 is amended by revising paragraphs (d) and (e) to read as follows:

§ 340.10 Waiver of recovery of erroneous payments.

* * * * *

(d) *When recovery is against equity or good conscience.* Recovery is considered to be against equity or good conscience when a person, in reliance on such payments or on notice that such payment would be made, relinquished a valuable right or changed his or her position for the worse.

(e) Recoveries not subject to waiver.

(1) Where an amount is recoverable pursuant to section 2(f) of the Act from remuneration payable to an employee by a person or company, or where a lien for reimbursement of sickness benefits has arisen pursuant to section 12(o) of the Act, and in either case recovery is sought from a person other than the employee, no right to waiver of recovery exists.

(2) Where the amount recoverable is equal to or less than 10 times the current maximum daily benefit rate under the Railroad Unemployment Insurance Act it shall not be considered contrary to the purpose of the Act or against equity or good conscience to recover such payment. Consequently, the amount recoverable is not subject to waiver under this part.

(3) Where the amount recoverable is the result of an overpayment of benefits payable under the Railroad Unemployment Insurance Act due to entitlement of annuities under the Railroad Retirement Act for the same days for which such benefits were payable, and recovery of such overpayment may be made by offset against an accrual of the annuities, it shall not be considered contrary to the purpose of the Act or against equity or good conscience to recover the erroneous payment by offset against such accrual. Consequently, the amount recoverable is not subject to waiver under this part.

Dated: June 12, 1989.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 89-14550 Filed 6-19-89; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[PS-229-84]

RIN 1545-AH26

Treatment of Partnership Liabilities Allocations Attributable to Nonrecourse Liabilities;

AGENCY: Internal Revenue Service, Treasury.

ACTION: Extension of time for submitting comments and requests for a public hearing.

SUMMARY: This document provides notice of an extension of time for submitting comments and requests for a public hearing with respect to proposed regulations relating to the treatment of partnership liabilities and the allocation of deductions attributable to nonrecourse debt that were published in the **Federal Register** for Friday, December 30, 1988 (53 FR 53174). The regulations reflect changes to the applicable tax law made by section 79 of the Tax Reform Act of 1984. The Internal Revenue Service anticipates issuing amendments to these regulations in the near future and this extension is necessary in order to allow taxpayers to comment on the regulations as amended. Therefore, the current dealine of June 28, 1989, is extended until a document is published in the **Federal Register** giving notification of a deadline.

DATES: The time for submission of comments and requests for a public hearing is extended until a document is published in the **Federal Register** giving notification of the deadline.

ADDRESSES: Send comments and requests for a public hearing to Commissioner of Internal Revenue, P.O. Box 7604, Ben Franklin Station, Attn: CC: CORP:T:R, (PS-229-84), Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Mary Munday, 202-377-9470 (not a toll-free number).

SUPPLEMENTARY INFORMATION: By a cross-reference notice of proposed rulemaking to temporary regulations published in the **Federal Register** for Friday, December 30, 1988 (53 FR 53174), comments and requests for a public hearing with respect to the proposed rules were to be mailed or delivered by March 30, 1989. This date was later extended to June 28, 1989 (54 FR 12925, March 29, 1989). The time for submission of comments and requests for a public hearing is extended until a document is published in the Federal Register giving notification of the deadline.

Dale D. Goode,

Chief, Regulations Unit Associate Chief Counsel (Corporate).

[FR Doc. 89-14485 Filed 6-19-89; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Part 1

[PS-217-84]

RIN 1545-AH49

Golden Parachute Payments

AGENCY: Internal Revenue Service, Treasury.

ACTION: Corrections to notice of proposed rulemaking.

SUMMARY: This document contains corrections to the **Federal Register** publication for Friday, May 5, 1989, at 54 FR 19390 of the notice of proposed rulemaking. The proposed rules relate to golden parachute payments.

FOR FURTHER INFORMATION CONTACT: Stuart Wessler, (202) 566-6016, or Robert Misner, (202) 566-4752 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking that is the subject of these corrections contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 280G of the Internal Revenue Code of 1986.

Need for Corrections

As published, the notice of proposed rulemaking contains omitted lines and typographical errors which may prove to be misleading and are in need of clarification.

Corrections

Accordingly, the publication of the proposed rule which was the subject of FR Doc. 89-10603, is corrected as follows:

§ 1.280G-1 [Corrected]

Paragraph 1. In § 1.280G-1, A-7 (e), page 19395, second column, Example (1), line four, the language ", who owns the remaining 24 percent." is added immediately following the language "an individual".

Par. 2. In § 1.280G-1, A-24 (e), page 19400, second column, Example (5), line thirteen, the mathematical calculation "$110,000 (1% × 22" is corrected to read "$115,000 (1% × 23".

Par. 3. In § 1.280G-1, A-24 (e), page 19400, second column, Example (5), line seventeen, the monetary figure "$203,162" is corrected to read "$208,162".

Par. 4. In § 1.280G-1, A-24 (e), page 19400, second column, Example (5), line eighteen, the monetary figure "$110,000" is corrected to read "$115,000".

Par. 5. In § 1.280G-1, A-24 (e), page 19400, second column, Example (6) (i), line seventeen, the language "period. On January 15, 1988, a change in the" is corrected to read "period. On January 15, 1989, a change in the".

Par. 6. In § 1.280G-1, A-24 (e), page 19400, second column, Example (6) (ii), line fifteen, the language "present value" is removed and the language "amount" is added in its place.

Par. 7. In § 1.280G-1, A-24 (e), page 19400, second column, Example (6) (ii), line twenty-three, the word "have" is added immediately following the language "value of the stock would".

Par. 8. In § 1.280G-1, A-24 (e), page 19400, second column, Example (6) (ii), second to the last line, the mathematical calculation "$110,000 (1% × 22 months" is corrected to read $115,000 (1% × 23 months".

Par. 9. In § 1.280G-1, A-24 (e), page 19400, third column, Example (7) (ii), line ten, the word "or" is corrected to read "on".

Par. 10. In § 1.280G-1, A-24 (e), page 19400, third column, Example (7) (ii), second to the last line, the mathematical calculation "$60,000 (1% × 10" is corrected to read $66,000 (1% × 11".

Par. 11. In § 1.280G-1, A-24 (e), page 19401, first column, Example (8) (ii), line five, the language "continue to" is added immediately after the language "reflecting the lapse of the obligation to".

Par. 12. In § 1.280G-1, A-24 (e), page 19401, first column, Example (8) (ii), second to the last line, the mathematical calculation "$20,000 (1% × 10 months" is corrected to read $22,000 (1% × 11 months".

Par. 13. In § 1.280G-1, A-27 (d), page 19402, second column, Example (4), lines seven and eight, the language "Corporation O" is removed and the language "Corporation Q" is added in its respective places.

Par. 14. In § 1.280G-1, A-32, page 19403, third column, line eleven, the language "determined. See Q/As 24 and 35." is removed and the language "determined. See Q/As 31 and 32." is added in its place.

Dale D. Goode,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 89-14486 Filed 6-19-89; 8:45 am]

BILLING CODE 4830-01-M

FEDERAL MEDIATION AND CONCILIATION SERVICE

29 CFR Part 1401

Freedom of Information Reform Act; Revision of Fee Schedule and Fee Waiver Policy

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Proposed rule.

SUMMARY: The Federal Mediation and Conciliation Service (FMCS or the Agency) proposes to amend its Freedom of Information Act (FOIA) Regulations, 29 CFR 1401.36, pursuant to the Freedom of Information Reform Act provisions (Pub. L. 99-570, section 1803) regarding fees and fee waivers. As required by the Act, the Office of Management and Budget has issued guidelines (at 52 FR 10012, March 27, 1987) to which these proposed rules conform.

DATE: Comments on this proposed change must be received by August 31, 1989.

ADDRESS: Written comments should be submitted in duplicate to Ted M. Chaskelson, General Counsel, Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington, DC 20427.

FOR FURTHER INFORMATION CONTACT: Ted M. Chaskelson, General Counsel, Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington, DC 20427. Telephone: (202) 653-5305.

SUPPLEMENTARY INFORMATION: On October 27, 1986, the President signed the Freedom of Information Reform Act of 986 (Pub. L. 99-570). This legislation amended the Freedom of Information Act [FOIA] to provide broader exemption protection for law enforcement information, and modified the Act's fee and fee waiver provisions. The Reform Act required the Office of Management and Budget (OMB) to develop and issue guidelines, pursuant to notice and public comment, for fee

schedules and the processing of FOIA requests. The Act also required individual agencies to promulgate regulations, pursuant to notice and public comment, specifying fee schedules and procedures for waiving of reducing fees.

Pursuant to these directions, FMCS proposes to replace the current provisions appearing at 29 CFR 1401.36, with the text which appears below. None of the fee amounts shown in the current provisions at 29 CFR 1401.36 have been changed by this proposed revision; rather, the criteria for charging, reducing and waiving fees have been revised to conform to the Act and OMB guidance.

Executive Order 12291

This proposed rule is not a "major rule" under Executive Order 12291 because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) a significant decline in productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Regulatory Flexibility Act Certification

The FMCS finds that this proposed rule will have no significant economic impact upon a substantial number of small entities within the meaning of section 3(a) of the Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1164 (5 U.S.C. 605(g)), and will so certify to the Chief Counsel for Advocacy of the Small Business Administration. This conclusion has been reached because the proposed rule does not impose any significant economic requirements upon small entities. Accordingly, no regulatory flexibility analysis is required.

List of Subjects in 29 CFR Part 1401

Administrative practice and procedure, Labor management Relations, Freedom of Information Reform Act.

Accordingly, 29 CFR Part 1401 is amended as follows:

PART 1401—PUBLIC INFORMATION

1. The authority citation for Part 1401 is revised to read as follows:

Authority: Sec. 202, 61 Stat. 136, as amended; 5 U.S.C. 552.

2. Section 1401.36 is revised to read as follows:

§ 1401.36 Freedom of Information Reform Act Fee Schedules and Waivers.

(a) Definitions. For purposes of section 1401.36, the following definitions apply:

(1) "Direct costs" means those expenditures which are actually incurred in searching for and duplicating and, in the case of commercial use requesters, reviewing documents to respond to a FOIA request.

(2) "Search" includes all time spent looking for material that is responsive to a request, including page-by-page and line-by-line identification of material within documents. Searches may be done manually or by computer.

(3) "Duplication" refers to the process of making a copy of a document necessary to respond to a FOIA request. Copies may be in various forms including machine readable documentation (e.g. magnetic tape or disk) among others. The copy provided shall be in a form that is reasonably usuable by the requester.

(4) "Review" refers to the process of examining documents located, in response to a request that is for commercial use, to determine whether a document or any portion of any document located is permitted to be withheld. It includes processing any documents for disclosure to the requester, e.g. doing all that is necessary to excise them or otherwise prepare them for release.

(5) "Commercial use request" refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial trade or profit interests of the requester or the person on whose behalf the request is made.

(6) "Educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate or professional education, or an institution of vocational education, which operates a program or programs of scholarly research.

(7) "Representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a reasonable expectation of publication through that organization, even though not actually employed by it.

(8) "Non-commercial scientific institution" refers to an institution that is not operated on a commercial basis as defined under "commercial use request" in paragraph (a)(5) of this section, and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(b) Fee Schedules and Waivers. Requests submitted shall be subject to direct costs, including search, duplication and review, in accordance with the following schedules, procedures and conditions.

(1) Schedule of charge—(i) *Clerical time.* For each one-quarter hour or portion thereof of clerical time, $2.25.

(ii) *Professional time.* For each one-quarter hour of portion thereof of professional time, $7.00.

(iii) *Duplication.* For each sheet of duplication (not to exceed 8½ by 14 inches) of requested records, $.20.

(iv) *Computer time.* For computer time, $3.00 per minute of time expended for production programming, searching and production of any record. Computer time expressed in fractions of minutes will be rounded to the next whole minute.

(v) *Certification or authentication or records.* The fee per certification or authentication is $2.00.

(vi) *Forwarding material to destination.* Postage, insurance, and special fees will be charged on the basis of actual costs.

(vii) Other costs. All other direct costs of preparing a response to a request shall be charged to the requester in the same amount as incurred by the Agency. Charges may also be assessed for searches even if the records requested are not found, or the records are determined to be exempt from disclosure.

(2) *Rules of construction.* In providing the foregoing fee schedules pursuant to the provisions of 5 U.S.C. 552(4)(a), it is the intent of FMCS to apply 29 CFR Part 70 and the user charge statute, 31 U.S.C. 9701, to cover those situations where the Agency is performing for a requester services which are not required under the Freedom of Information Act.

(3) *Payment of fees.* Payments shall be made by check or money order payable to "Federal Mediation and Conciliation Service," and shall not be sent to Director, Financial Management Staff, Federal Mediation and Conciliation Service, 2100 K Street, NW, Washington, DC 20427.

(4) *Fee Categories.* Fees incurred in responding to requests shall be charged in accordance with the following categories of requesters:

(i) Commercial use requesters will be assessed charges to recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. This includes the full direct costs of computer production programming, searching and production of records. Commercial use requesters are not entitled to 2 hours of free search time nor 100 free pages of reproduction of documents, as described below.

(ii) Educational and non-commercial scientific institution requesters will be assessed charges for the cost of duplication alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made under the auspices of a qualifying institution and that the records are not sought for commercial use, but are sought in furtherance of scolarly research.

(iii) Requesters who are representatives of the news media will be assessed charges for the cost of duplication alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must meet the criteria in paragraph (a)(7) of this section, and the request must not be made for commercial use. In reference to this class of requester, a request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for commercial use.

(iv) All other requesters will be assessed charges to recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, including costs of computer production programming, searching and production, except that the first 100 pages of reproduction and the first 2 hours of search time shall be furnished without charge.

(v) In no event shall fees be charged when the total charges are less than $50.00 which is the Agency cost of collecting and processing the fee itself.

(vi) If the Agency has reason to believe that a requester or several requesters whose interests are aligned are breaking up a request into several smaller requests for the purpose of avoiding the imposition of fees that would otherwise be charged, the Agency may, after notification, aggregate the requests and impose fees in accordance with this schedule of charges.

(vii) Documents are to be furnished without charge or at reduced levels if disclosure of the information is in the public interest; that is, because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester.

(viii) If a requester fails to pay chargeable fees that were incurred as a result of this Agency's processing of the information request, the Agency beginning on the 31st day following the date on which the notification of charges was sent, may assess interest charges against the requester in the manner prescribed in 31 U.S.C. 3717.

(c) Advance Payment. (1) FMCS may require a requester to make an advance payment of anticipated fees under the following circumstances:

(i) If the anticipated charges are likely to exceed $250, FMCS shall notify the requester of the likely cost and obtain satisfactory assurance of full payment when the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment.

(ii) If a requester has previously failed to pay fees that have been charged in processing a request, within 30 days of the date when the notification of fees was sent, the requester will be required to:

(A) Pay the entire amount of fees that are owed, plus any applicable interest as provided for in paragraph (b)(4)(viii) of this section, and

(B) To make an advance payment of the full amount of the estimated fee before the Agency will process the new pending request.

(2) The Agency may use the provisions of the Debt Collection Act of 1982 (Pub. L. 97-365, 29 CFR Part 1450) including disclosure to consumer reporting agencies, for the purpose of obtaining payment.

Date: June 6, 1989.

Robert P. Baker,

Acting Director.

[FR Doc. 89-14547 Filed 6-19-89; 8:45 am]

BILLING CODE 6732-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 104

RIN 1219-AA04

Pattern of Violations; Extension of Comment Period

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Mine Safety and Health Administration (MSHA) is extending the period for public comment regarding the Agency's proposed rule for criteria and procedures for identifying mines with a "pattern of violations" of mandatory standards.

DATE: Written comments on the proposed rule for pattern of violations must be received on or before August 31, 1989.

ADDRESSES: Send comments to the Office of Standards, Regulations and Variances; MSHA; Room 631, Ballston Tower No. 3; 4015 Wilson Boulevard; Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, phone (703) 235-1910.

SUPPLEMENTARY INFORMATION: On May 30, 1989, (53 FR 23156) MSHA published a proposed safety standard that would identify mines with a "pattern of violations" of mandatory standards that significantly and substantially contribute to safety or health hazards. The proposed rule would implement section 104(e) of the Federal Mine Safety and Health Act of 1977. The comment period for the proposed rule was to remain open until July 31, 1989 (53 FR 23156), but in response to requests from the mining community, MSHA is extending the comment period to August 31, 1989. All interested parties are encouraged to submit comments prior to this date.

David C. O'Neal,

Assistant Secretary for Mine Safety and Health.

Date: June 14, 1989.

[FR Doc. 89-14558 Filed 6-19-89; 8:45 am]

BILLING CODE 4510-43-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 10 and 15

[CGD 81-059a]

RIN 2115-AB91

Licensing of Officers and Operators for Mobile Offshore Drilling Units

AGENCY: Coast Guard, DOT.

ACTION: Notice of extension of comment period.

SUMMARY: On May 17, 1989, the Coast Guard published a Supplemental Notice of Proposed Rulemaking regarding Licensing of Officers and Operators for Mobile Offshore Drilling Units (54 FR 21246). The comment period was to end

on June 16, 1989. This notice extends the comment period to July 31, 1989.

DATE: Comments must be received on or before July 31, 1989.

ADDRESSES: Comments should be submitted to: The Executive Secretary, Marine Safety Council (G–LRA–2) (CGD 81–059a) U.S. Coast Guard, Washington, D.C. 20593–0001. Between 8:00 a.m. and 3:00 p.m., Monday through Friday, comments may be delivered to and will be available for inspection or copying at the Marine Safety Council (G–LRA–2), Room 3600, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: LCDR Gerald D. Jenkins, Project Manager, Office of Marine Safety, Security and Environmental Protection, (G–MVP). Phone (202) 267–0224.

SUPPLEMENTARY INFORMATION: The Coast Guard has received a request from the International Association of Drilling Contractors that the comment period be extended thirty days to accommodate detailed analysis and comment. In consideration of the broad representation of the mobile offshore drilling industry by that organization and anticipated valuable contributions to the rulemaking, the Coast Guard is extended the comment period.

Dated: June 14, 1989.

J. D. Sipes,

Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89–14565 Filed 6–19–89; 8:45 am]

BILLING CODE 4910–14–M

Notices

Federal Register
Vol. 54, No. 117
Tuesday, June 20, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Working Group on Model Rules; Public Meetings

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Working Group on Model Rules of the Administrative Conference of the United States. The committee will meet as part of an ongoing effort to develo model rules of practice and procedure which can be used by Federal agencies in formal adjudications.

DATES: Friday, July 28, 1989; Friday, September 8, 1989.

Time: 12 Noon.

Location: Administrative Conference of the United States Library, 2120 L Street, N.W., Suite 500, Washington, DC.

Contract: Gary J. Edles or Jeffrey Lubbers, (202) 254–7020.

Public Participation: Attendance at the committee meeting is open to the public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days in advance of the meeting. The committee chairman may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with a committee before, during, or after a meeting. Minutes of the meeting will be available upon request.

June 12, 1989.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 89–14492 Filed 6–19–89; 8:45 am]

BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Privacy Act of 1974, System of Records

AGENCY: Department of Agriculture.

ACTION: Notice of deletions and revisions of Privacy Act Systems of Records.

SUMMARY: Notice is hereby given that the United States Department of Agriculture (USDA) proposed to delete four notices and revise five notices describing Privacy Act systems of records maintained by the Office of Finance and Management (OFM).

EFFECTIVE DATE: This notice will be adopted without further publication in the **Federal Register** on August 4, 1989, unless modified by a subsequent notice to incorporate comments received from the public. Comments must be received by the contact person listed below on or before July 20, 1989, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Anita Smith, Freedom of Information Act/Privacy Act Coordinator, OFM, USDA, New Orleans, Louisiana 70160; telephone (504) 255–5220.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act, 5 U.S.C. 552a, USDA is taking the following action:

I. The following systems of records are duplications and are hereby deleted in their entirety:

(1) USDA/O&F–1, "Administrative Billings and Collections;"

(2) USDA/O&F–2, "Travel and Transporation System;"

(3) USDA/O&F–3, "Imprest Fund Payment System;"

(4) USDA/O&F–4, "Uniform Allowance System;"

II. It is proposed that five systems of records maintained by OFM be revised as follows:

(1) USDA/OAS–1,2,3,4 and 5 would be redesignated as USDA/OFM–3,4,5,6 and 7 due to an internal reorganization.

(2) USDA/OFM–3,4,5,6 and 7, as redesignated, would be revised to:

(a) Replace all references to OAS with OFM;

(b) Add information on safeguards regarding on-line acces to information;

(c) Provide information regarding change in the retention period for magnetic tapes;

(d) Add a new routine use for releasing records to agencies invovled in investigating, prosecuting or otherwise enforcing the law;

(e) Add new routine uses concerning the release of records to the Department of Justice and in proceedings before a court or adjudicative body. These new uses are being promulgated to address concerns expressed by the district court in *Krohn vs. Department of Justice*, Civil No. 78–1536 (D.D.C. March 19, 1984). In Krohn, an FBI routine use providing for disclosure "during appropriate legal proceedings" was held to be "vague and capable of being construed so broadly as to encompass all legal proceedings * * * (and) would make disclosure as a routine use the rule rather than the exception and thus subvert the purposes of the (Privacy) Act." The new routine uses are designed to restrict the amount of information released during litigation; and

(f) Add a new routine use for disclosure to a congressional office.

(3) USDA/OFM–3 would be revised to add the "claims data base" to categories of records; add information concerning forwarding of data to consumer reporting agencies pursuant to 31 U.S.C. 3711(f), to debt collection agencies pursuant to 31 U.S.C. 3718, and to the Internal Revenue Service pursuant to 31 U.S.C. 3720A; add a routine use for referral of information to Department of Defense and the United States Postal Service for use in computer matches; and to make minor changes to previously published information regarding retrievability and safeguarding of records.

(4) USDA/OFM–4 would be revised to add to the categories of individuals covered by the system.

(5) USDA/OFM–6 would be revised to reduce the categories of individuals covered by the system.

A "Report on New System," required by 5 U.S.C. 552a(r), as implemented by OMB Circular No. A–130, was sent to the President of the Senate, the Speaker of the House of Representatives, and the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget on June 8, 1989.

Signed at Washington, DC, on June 8, 1989.

Clayton Yeutter,

Secretary of Agriculture.

USDA/OFM–3

SYSTEM NAME:

Administrative Billings and Collections, USDA/OFM.

SYSTEM LOCATION:

National Finance Center, OFM, USDA, New Orleans, Louisiana 70160.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals (including current and former USDA employees) who are indebted to the Department for any reason.

CATEGORIES OF RECORDS IN THE SYSTEM:

This automated system establishes a master file containing the debtor's name, address, social security number of assigned vendor number, amount of indebtedness, amount of current collection, and amount of total billing. Eventually, these records are transferred to a history file for inquiry use. Information regarding debts subject to IRS offset, claims on travel advances, and delinquent debtor names and social security numbers used in computer matches with the Department of Defense and the United States Postal Service are kept separate from the administrative billings and collections data base in a manually updated claims data base.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 3711 through 3719; 4 CFR Chapter II.

PURPOSE:

The records in this system are used to issue bills and collect funds due to the Government in compliance with the Debt Collection Act of 1982, Pub. L. No. 97-365, 96 Stat. 1749, as amended by Pub. L. No. 98-167, 97 Stat. 1104.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, or rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto.

(2) Referral to the Department of Justice when (a) the agency, or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her indvidual capacity where the Department of Justice has agreed to represent the employee; or (d) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to the litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, providing, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information that is compatible with the purpose for which the records were collected.

(3) Disclosure in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when (a) the agency, or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency where the Department of Justice has agreed to represent the employee; or (d) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to the litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, providing, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information that is compatible with the purpose for which the records were collected.

(4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made on behalf of the individual.

(5) Information will be forwarded to another Federal agency when a USDA employee accepts employment with another Federal agency.

(6) Referral of information regarding indebtedness to the Defense Manpower Data Center, Department of Defense, and the United States Postal Service for the purpose of conducting computer matching programs to identify and locate individuals receiving Federal salary or benefit payments and who are delinquent in their payments of debts owed to the U.S. Government in order to collect debts by voluntary repayment, administrative or salary offset procedures under the provisions of 5 U.S.C. 5514, or through collection agencies under the provisions of 31 U.S.C. 3718.

(7) Information contained in this system of records may be disclosed to a debt collection agency, when USDA determines such referral is appropriate for collecting the debtor's account as provided for in U.S. Government contracts with collection agencies executed pursuant to 31 U.S.C. 3718.

(8) Where prior collection efforts have failed, the USDA will refer to the Internal Revenue Service (IRS) information from this system of records concerning past-due legally enforceable debts for offset against tax refunds that may become due the debtors for the tax year in which referral is made, in accordnace with IRS regulation at 26 CFR 301.6402-6T, Offset of Past-due Legally Enforceable Debt Against Overpayment, and under the authority contained in 31 U.S.C. 3720A.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Information contained in this system of records may be disclosed to a consumer reporting agency in accordance with 31 U.S.C. 3711(f).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORING:

Records are maintained on magnetic tape files, disk files, and in file folders at the National Finance Center addressed above.

RETRIEVABILITY:

Records in the administrative billings and collections data base are retrieved by social security number and by name of individual; equivalent identifying number in case of non-USDA employees. Records in the claims data base are retrieved by claim number.

SAFEGUARDS:

Magnetic tape files and disk files are kept in a locked computer room and tape library which can be accessed by authorized personnel only. File folders are maintained in secured areas with access by authorized personnel only. Disk files are password protected to limit access to authorized personnel only. On-line access by National Finance Center and other agency personnel is password protected.

RETENTION AND DISPOSAL:

Master history magnetic tapes are retained in accordance with a tape library management schedule. Manual records are transferred to the Federal Records Center for storage and disposition in accordance with General Services Administration regulations.

SYSTEM MANAGER(S) AND ADDRESS:

Director, National Finance Center, OFM, USDA, P.O. Box 60,000, New Orleans, Louisiana 70160.

NOTIFICATION PROCEDURE:

Any indivdiual may request information regarding this system of records, or information as to whether the system contains records pertaining to him/her from the System Manager. A request for information pertaining to an individual should be in writing and should contain: Name, address, social security number and particulars involved (i.e., dates of claims, copies of correspondence, etc.).

RECORD ACCESS PROCEDURES:

Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him/her by submitting a written request to the System Manager.

CONTESTING RECORD PROCEDURES:

Any individual may obtain information as to the procedures for contesting a record in the system which pertains to him/her by submitting a written request to the System Manager.

RECORD SOURCE CATEGORIES:

Information in this system comes primarily from USDA employees, former USDA employees, non-USDA employees, agency claimants, and USDA or other investigative personnel.

USDA/OFM-4

SYSTEM NAME:

Travel and Transportation System, USDA/OFM.

SYSTEM LOCATION:

National Finance Center, OFM, USDA, New Orleans, Louisiana 70160.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have funds advanced to them for official travel use, individuals who have U.S. Government Transportation Requests assigned to them for purchasing tickets to be used for official travel, approving officials, and individuals who perform official USDA travel and are reimbursed with Government funds are included in this system.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of complete files on advances to and repayments by individuals, assignment and use of Government Transportation Requests by individuals, and payments for official travel to individuals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. Chapter 57; FPMR 101-7.

PURPOSE:

The records in this system are used to process employee travel advances and reimbursements and to process payments for services provided by common carriers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, or rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto.

(2) Referral to the Department of Justice when (a) the agency, or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (d) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to the litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, providing, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information that is compatible with the purpose for which the records were collected.

(3) Disclosure in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when (a) the agency, or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (d) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to the litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, providing, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information that is compatible with the purpose for which the records were collected.

(4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made on behalf of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORING:

Records are maintained on computer tapes, disks and in file folders at the National Finance Center addressed above.

RETRIEVABILITY:

Records are retrieved by Social Security Number and by name of individual.

SAFEGUARDS:

Magnetic tape files and disk files are kept in a locked computer room and tape library which can be accessed by authorized personnel only. File folders are maintained in secured areas with access by authorized personnel only. Disk files are password protected to limit access to authorized personnel only. On-line access by National Finance Center and agency personnel is password protected.

RETENTION AND DISPOSAL:

Master history magnetic tapes are retained in accordance with a tape library management schedule. Manual records are transferred to the Federal Records Center for storage and disposition in accordance with General Services Administration regulations.

SYSTEM MANAGER(S) AND ADDRESS:

Director, National Finance Center, OFM, USDA, P.O. Box 60,000, New Orleans, Louisiana 70160.

NOTIFICATION PROCEDURE:

Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him/her from the System Manager. A request for information pertaining to an individual should be in writing and should contain: Name, address, social security number and particulars involved.

RECORD ACCESS PROCEDURES:

Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him/her by submitting

a written request to the System Manager.

CONTESTING RECORD PROCEDURES:

Any individual may obtain information on procedures for contesting a record in the system that pertains to him/her by submitting a written request to the System Manager.

RECORD SOURCES CATEGORIES:

Information in this system comes primarily from individuals who request advances prior to travel, submit Travel Vouchers for reimbursement after travel is performed, or request Government Transportation Requests for use in purchasing passenger tickets. Some of the information is obtained from the payroll and personnel systems maintained by the National Finance Center.

USDA/OFM-5

SYSTEM NAME:

Imprest Fund Payment System, USDA/OFM.

SYSTEM LOCATION:

National Finance Center, OFM, USDA, New Orleans, Louisiana 70160.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All USDA imprest cashiers and alternates and USDA employees designated as chiefs of field party.

CATEGORIES OF RECORDS IN THE SYSTEM:

This automated system establishes master files containing the name, social security number, employment address and telephone, and amount of advance for each cashier, alternate cashier, and chief of field party. It also includes records of disbursements, reimbursements, accountability reports and verification, and audit of funds.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 3322, and 3321; I TFM 4–3000.

PURPOSE:

The records in this system are used to process advances and reimbursement vouchers for imprest fund cashiers and chiefs of field parties.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, or rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto.

(2) Referral to the Department of Justice when (a) the agency, or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (d) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to the litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, providing, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information that is compatible with the purpose for which the records were collected.

(3) Disclosure in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when (a) the agency, or any component thereof; or (b) any employee of the agency in his or her individual capacity; or (c) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (d) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to the litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, providing, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information that is compatible with the purpose for which the records were collected.

(4) Disclosure may be made to a congressional office from the record of an individual in response to any inquiry from the congressional office made on behalf of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORING:

Records are maintained on microfilm cartridges, magnetic tape files, disk files, and file folders.

RETRIEVABILITY:

Records are retrieved primarily by social security number of the individual cashier, alternate cashier, or chief of party; and secondarily by imprest fund number.

SAFEGUARDS:

Magnetic tapes files and disk files are kept in a locked computer room and tape library which can be accessed by authorized personnel only. File folders are maintained in secured areas with access by authorized personnel only. Disk files are password protected to limit access to authorized personnel only. On-line access by National Finance Center and agency personnel is password protected.

RETENTION AND DISPOSAL:

Master history magnetic tapes are retained in accordance with a tape library management schedule. Manual records are transferred to the Federal Records Center for storage and disposition in accordance with General Services Administration regulations.

SYSTEM MANAGER(S) AND ADDRESS:

Director, National Finance Center, OFM, USDA, P.O. Box 60,000, New Orleans, Louisiana 70160.

NOTIFICATION PROCEDURE:

Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him/her from the System Manager. A request for information pertaining to an individual should be in writing and should contain: Name, address, social security number and particulars involved (i.e., date and type of document in question, etc.).

RECORD ACCESS PROCEDURES:

Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him/her by submitting a written request to the System Manager.

CONTESTING RECORD PROCEDURES:

Any individual may obtain information on procedures for contesting a record in the system that pertains to him/her by submitting a written request to the System Manager.

RECORD SOURCE CATEGORIES:

Information in this system is derived from documents submitted by USDA agencies.

USDA/OFM-6

SYSTEM NAME:

Uniform Allowance System, USDA/OFM.

SYSTEM LOCATION:

National Finance Center, OFM, USDA, New Orleans, Louisiana 70160.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All USDA employees (except Forest Service) entitled to and receiving allowances for the purchase of uniforms. Forest Service employees are covered by another system of records, USDA/FS–3, Uniform Allowance System, published in the **Federal Register** on October 20, 1986 (Vol. 51, No. 202 p. 37208).

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of complete files on advances, accruals, and payments to individuals within the Department for uniform allowances.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and 5 U.S.C. 5901 through 5903.

PURPOSE:

The records in this system are used to process advances, accruals, and payments of uniform allowance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto.

(2) Referral to the Department of Justice when (a) the agency, or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (d) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to the litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, providing, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information that is compatible with the purpose for which the records were collected.

(3) Disclosure in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when (a) the agency, or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (d) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to the litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, providing, however, that in each case, the agency determines that dislcosure of the records to the Department of Justice is a use of the information that is compatible with the purpose for which the records were collected.

(4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made on behalf of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on computer tapes, disks and in file folders at the National Finance Center addressed above.

RETRIEVABILITY:

Records are indexed by name and social security number of individual employee.

SAFEGUARDS:

Magnetic tape files and disk files are kept in a locked computer room and tape library which can be accessed by authorized personnel only. File folders are maintained in secured areas with access by authorized personnel only. Disk files are password protected to limit access to authorized personnel. On-line access by National Finance Center and agency personnel is password protected.

RETENTION AND DISPOSAL:

Master history magnetic tapes are retained in accordance with a tape library management schedule. Manual records are transferred for storage and disposition to the Federal Records Center in accordance with General Services Administration regulations.

SYSTEM MANAGER(S) AND ADDRESS:

Director, National Finance Center, OFM, USDA, P.O. Box 60,000, New Orleans, Louisiana 70160.

NOTIFICATION PROCEDURE:

Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him/her from the System Manager. A request for information pertainig to an individual should be in writing and should contain: Name, address, social security number and particulars involved.

RECORDS ACCESS PROCEDURES:

Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him/her by submitting a written request to the System Manager.

CONTESTING RECORD PROCEDURES:

ANY INDIVIDUAL MAY OBTAIN INFORMATION AS TO THE PROCEDURES FOR CONTESTING A RECORD IN THE SYSTEM WHICH PERTAINS TO HIM/HER BY SUBMITTING A REQUEST TO THE SYSTEM MANAGER.

RECORD SOURCE CATEGORIES:

Information in this system comes from USDA agency records.

USDA/OFM-7

SYSTEM NAME:

SF–1099 Reporting System, USDA/OFM.

SYSTEM LOCATION:

National Finance Center, OFM, USDA, New Orleans, Louisiana 70160.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals (excluding USDA employees) who receive payments in the form of rents, royalties, prizes or awards; individuals (excluding USDA employees) who receive payments for non-personal service contracts, commissions, or compensation for services which are subject to SF–1099 reporting requirements.

CATEGORIES OF RECORDS IN THE SYSTEM:

The automated system establishes a master file containing the individual's name, address, social security number (or employer identification number), ZIP code, amount of payment, and other

information necessary to accurately identify covered payment transactions applicable to SF–1099 reporting requirements.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 U.S.C. 6011 and 6109, and 26 CFR 301.6109–1.

PURPOSE:

The records in this system are used to accumulate payments made to individuals that are subject to Form 1099 tax reporting.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, or rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto.

(2) Referral to the Department of Justice when (a) the agency, or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (d) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to the litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, providing, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information that is compatible with the purpose for which the records were collected.

(3) Disclosure in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when (a) the agency, or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (d) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to the litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, providing, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information that is compatible with the purpose for which the records were collected.

(4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made on behalf of the individual.

(5) Information from this system of records will be forwarded to the Internal Revenue Service for income tax purposes.

(6) Release of information to other USDA agencies for internal processing purposes.

POLICIES AND PRACTCES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORING:

Records are maintained on computer tapes, disks and in file folders at the National Finance Center addressed above.

RETRIEVABILITY:

Records are retrieved by social security or employee identification number.

SAFEGUARDS:

Magnetic tape files and disk files are kept in a locked computer room and tape library which can be accessed by authorized personnel only. File folders are maintained in secured areas with access by authorized personnel only. Disk files are password protected to limit access to authorized personnel only. On-line access by National Finance Center and agency personnel is password protected.

RETENTION AND DISPOSAL:

Master history magnetic tapes are retained in accordance with a tape library management schedule. Manual records are transferred to the Federal Records Center for storage and disposition in accordance with General Services Administration regulations.

SYSTEM MANAGER(S) AND ADDRESS:

Director, National Finance Center, OFM, USDA, P.O. Box 60,000, New Orleans, Louisiana 70160.

NOTIFICATION PROCEDURE:

Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him/her from the System Manager. A request for information pertaining to an individual should be in writing and should contain: Name, address, social security number and particulars involved (i.e., transaction dates, copies of relevant transaction documentation, etc.).

RECORD ACCESS PROCEDURES:

Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him/her by submitting a written request to the System Manager.

CONTESTING RECORD PROCEDURES:

Any individual may obtain information as to the procedures for contesting a record in the system which pertains to him/her by submitting a written request to the System Manager.

RECORD SOURCE CATEGORIES:

Information in this system comes primarily from individuals who provide covered goods or services to USDA agencies.

[FR Doc. 89–14562 Filed 6–19–89; 8:45 am]

BILLING CODE 3410–90–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket No. 90526–9126]

Foreign Availability Assessment; Optical Fiber Characterization Systems

AGENCY: Office of Foreign Availability, Bureau of Export Administration, Commerce.

ACTION: Notice of foreign availability determination.

SUMMARY: The Office of Foreign Availability (OFA) of the Bureau of Export Administration is required by section 5(f) and (h) of the Export Administration Act of 1979 (EAA), as amended, to initiate and review claims of foreign availability on items controlled for export for national security purposes.

OFA has completed an assessment on optical fiber characterization systems controlled under Export Control Commodity Number 1353A of the Commodity Control List, a listing of items controlled for export by the Department of Commerce. Based on this assessment, the Department of Commerce has not found foreign availability for this commodity.

FOR FURTHER INFORMATION CONTACT: Randy Pratt, Office of Foreign Availability, Department of Commerce, Washington, DC 20230, Telephone: (202) 377–5953.

SUPPLEMENTARY INFORMATION:

Background

The Office of Foreign Availability (OFA) of the Bureau of Export Administration is required by section 5(f) and (h) of the EAA to initiate and review claims of foreign availability of items controlled for national security purposes. Part 791 of the Export Administration Regulations establishes the procedures and criteria for determining foreign availability. The Secretary of Commerce is authorized by statute to determine foreign availability and has delegated this authority to the Assistant Secretary for Export Administration.

In any case in which the Assistant Secretary determines that an item of comparable quality to a U.S. item controlled for national security purposes is available-in-fact to a controlled country from a foreign source in quantities sufficient to render the control ineffective in meeting its purposes, the Assistant Secretary may not require a validated license for its export.

In 1988, OFA formally undertook an assessment of optical fiber characterization systems. OFA has completed the assessment of the availability from foreign sources of the above-mentioned equipment as defined by law. The Departments of Defense and State, as well as other interested agencies of the U.S. Government, have reviewed the report of the assessment. Based upon the assessment and the statutory criteria, the Assistant Secretary has determined that foreign availability of such equipment does not exist within the meaning of Section 5(f) of the EAA.

If the Office of Foreign Availability receives substantive new evidence affecting this foreign availability determination, the assessment will be re-evaluated. Inquiries concerning the scope of this assessment may be directed to the Office of Foreign Availability.

Dated: June 15, 1989.

James M. LeMunyon,

Acting Assistant Secretary for Export Administration.

[FR Doc. 89–14551 Filed 6–19–89; 8:45 am]

BILLING CODE 3510–DT–M

National Institute of Standards and Technology

[Docket No. 90638–9138]

National Voluntary Laboratory Accreditation Program; Publication of Directory Supplement

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Publication of NVLAP Directory Supplement.

SUMMARY: The National Institute of Standards and Technology (NIST) announces 101 additional laboratory accreditation actions for asbestos fiber analysis taken during the second quarter of 1989. The accompanying table supplements the notice published in the **Federal Register** on April 26, 1989. The table lists testing laboratories receiving initial accreditation to perform bulk asbestos analysis in accordance with 40 Code of Federal Regulations Chapter I (1–1–87 edition) Part 763, Subpart F, Appendix A pages 293–299 or the current U.S. Environmental Protection Agency method for the analysis of asbestos in building materials by polarized light microscopy.

FOR FURTHER INFORMATION CONTACT: John L. Donaldson, Manager, Labatory Accreditation, Building 411, Room A124, National Institute of Standards and Technology, Gaithersburg, MD 20899, (301) 975–4016. Also current information can be obtained by communicating by computer with the NVLAP computer electronic bulletin board on 301–948–2058.

SUPPLEMENTARY INFORMATION: The National Institute of Standards and Technology periodically publishes supplements to the NVLAP Directory of Accredited Laboratories. This supplement is issued at this time to announce the large number of new actions taken and is published pursuant to § 7.6(b) of the National Voluntary Laboratory Accreditation Program Procedures (Title 15, Part 7, of the Code of Federal Regulations).

Raymond G. Kammer,

Acting Director.

Date: June 14, 1989.

Laboratories Accredited by NVLAP to Perform Bulk Asbestos Analysis (Alphabetically Listed by State)

Professional Contract Services, Inc., 1105 Fitzpatrick Avenue, P.O. Box 2605, Opelika, AL 36803, Phone: 205–749–2636

EEG, Inc., 220A N. Knoxville, Russellville, AR 72801, Phone: 501–968–6767

Microprobe, 5104 East Burns Street, Tucson, AZ 85711, Phone: 602–745–1189

University Associates, Ltd., 2425–A N. Nuachuca Drive, Tucson, AZ 85745, Phone: 602–624–8366

Aerojet Solid Propulson Co., Hazel and Highway 50, Sacramento, CA 95852, Phone: 916–355–4051

Associated Safety Consultants, 13363 Saticoy Street, Suite 204, North Hollywood, CA 91605, Phone: 818–513–0471

Clark Geological Services, 3479 Edison Way, Fremont, CA 94538, Phone: 415–659–1784

Esstek, 3045 Teagarden Street, San Leandro, CA 94577, Phone: 303–425–0013

McCrone Environmental Services—Calif., 120 Newport Center Drive, Suite 240, Newport Beach, CA 92660, Phone: 714–759–6619

Testwell Craig Labs of Connecticut, Inc., 25 Henry Street, Bethel, CT 06801, Phone: 203–743–7281

ATEC Associates, Inc., 4845 Rosselle Street, Jacksonville, FL 32205, Phone: 904–387–6104

ATEC Environmental Consultants, 1535 Cogswell Street, Suite A5, Rockledge, FL 32955, Phone: 407–639–9089

Briggs Associates, Inc., 4401 Vineland Road, Suite A9, Orlando, FL 32811, Phone: 407–422–3522

Pensacola P.O.C., Inc., 109 South Second Street, Pensacola, FL 32507, Phone: 904–458–4406

Testwell Craig Labs of Florida, Inc., 7104 Northwest 51st Street, Miami, FL 33166, Phone: 305–593–0561

Testwell Craig Labs of Tampa, Inc., 11553 U.S. Highway 41, South, Gibsonton, FL 33534, Phone: 813–667–0242

Applied Environmental Testing Labs., Inc., 680 Thornton Way, Suite 202, P.O. Box 959, Lithia Springs, GA 30057, Phone: 404–948–4919

GTRI Microscopy Research Laboratory, 151 Sixth Street, O'Keefe Building, Atlanta, GA 30332, Phone: 404–894–3806

Geo-Environmental Services, Inc., 141 West Wieuca Road, Suite 200A, Atlanta, GA 30342, Phone: 404–257–9303

Law Associates, Inc., 1386 Mayson Street, Atlanta, GA 30144, Phone: 404–892–3200

McCrone Environmental Services, Inc., 1412 Oakbrook Dr., Suite 100, Norcross, GA 30093, Phone: 404–368–9600

HAZTOX, Inc., 820 North Linder Road, Meridian, ID 83642, Phone: 208–888–7121

Air Tech Associates, Inc., 4100 Madison Lower Level 4, Hillside, IL 60162, Phone: 312–547–8117

BCA Laboratories, 1102 S. Main St., Bloomington, IL 61701, Phone: 309–828–7772

Garnow, Conibear & Associates, Ltd., 333 W. Wacker Drive, Suite 1400, Chicago, IL 60606, Phone: 312–782–4486

Micro-Fiber Laboratories, Inc., 605 Landwehr Road, Northbrook, IL 60062, Phone: 312–498–4127

TEM, Inc., 443 Duane Street, Glen Ellyn, IL 60137, Phone: 312–790–0880

United Analytical Services, Inc., 4410 W. Roosevelt Road, Suite 101, Hillside, IL 60162, Phone: 312–449–0070

ATEC Associates, Inc., 5150 East 65th Street, Indianapolis, IN 46220, Phone: 317–849–4990

ATEC Associates, Inc., 1501 E. Main Street, Griffith, IN 46319, Phone: 219–924–6690

BEST COPY AVAILABLE

Cole Associates, Inc., 2211 East Jefferson Boulevard, South Bend, IN 46615, Phone: 219-236-4400
Zimmerlin Consulting Group, 3430 East 98th Street, Suite A, Indianapolis, IN 46240, Phone: 317-574-0848
ACT, 14953 West 101 Terrace, Lenexa, KS 66215, Phone: 913-492-1317
Chemalytics, Inc., 33 East 7th Street, Covington, KY 31011, Phone: 606-431-6224
Sunbelt Associates, Inc., 8901 Mayo Blvd., New Orleans, LA 70126, Phone: 504-286-8786
Weintritt Testing Laboratories, Inc., 305 Andrew Guidry Road, Lafayette, LA 70503, Phone: 318-981-1560
Briggs Associates, Inc., 400 Hingham Street, Roadland, MA 02370, Phone: 617-871-6040
Hygienetics Analytical Services, Inc., 150 Causeway Street, Boston, MA 02114, Phone: 617-723-4664
AMA Analytical Services, Inc., 4475 Forbes Boulevard, Lanham, MD 20706, Phone: 800-458-2640
Briggs Associates, Inc., 8300 Guilford Road, Suite E, Columbia, MD 21046, Phone: 301-381-4434
Maryland Department of Health and Mental Hygiene, 201 W. Preston Street, P.O. Box 2355, Baltimore, MD 21203, Phone: 301-225-6212
Alderink & Associates, Inc., 3221 3 Mile Road NW., Grand Rapids, MI 49504, Phone: 616-791-6730
Environmental Evaluation and Lab Serv., 225 Parsons St., Box 1665, Kalamazoo, MI 49007, Phone: 616-385-8009
IHI-KEMRON, 32740 Northwestern Hwy, Farmington Hills, MI 48018, Phone: 313-626-2426
Industrial Environmental Consult., Ltd., East Line Office Park, 1760 East Grand River, East Lansing, MI 48823, Phone: 517-351-4982
Applied Environmental Sciences, Inc., 511 11th Ave. S., Box 220, Minneapolis, MN 55415, Phone: 612-339-5559
Baird Scientific, 221 W. Fourth Street, P.O. Box 842, Carthage, MO 64836, Phone: 417-358-5507
Carolina Environmental, 5104 Suite 201-C Western Boulevard, Raleigh, NC 27606, Phone: 919-859-0677
Quality Analytical Services, Inc., 709 West Johnson St., Raleigh, NC 27603, Phone: 919-839-0757
Roberts Environmental Services, Inc., P.O. Box 368, Swansboro, NC 28584, Phone: 919-393-8565
Amoco Oil Company Mandan Refinery, Mandan Avenue and Old Red Trail, Mandan, ND 58554, Phone: 701-667-2463
Applied Occupational Health Systems, 29 River Road, Suite 18, Concord, NH 03301, Phone: 603-228-3610
Balsam Environmental Consultants, Inc., 58 Stiles Road, Salem, NH 03079, Phone: 603-893-0616
Briggs Associates, Inc., 381 Hanover Street, Portsmouth, NJ 03801, Phone: 603-431-2870
PMK Engineering & Testing Inc., 516 Bloy Street, Hillside, NJ 07205, Phone: 201-686-0044
Testwell Craig Labs of New Jersey, Inc., 50 Passaic Avenue, Fairfield, NJ 07006, Phone: 201-882-8377
Testwell Craig Testing Labs, Inc., 565 East Harding Highway, Mays Landing, NJ 08330, Phone: 609-625-1700
ASTECO, Incorporated, 4287 Witmer Road, Niagara Falls, NY 14305, Phone: 716-297-5992
ATC Environmental, Inc., 104 East 25th Street, 10th Floor, New York City, NY 10010, Phone: 212-353-8280
Adirondack Environmental Services, Inc., 298 Riverside Avenue, P.O. Box 205, Rensselaer, NY 12144, Phone: 518-785-0128
Brad Associates, 1 Rosanne Court, Lake Ronkonkoma, NY 11779, Phone: 516-467-4539
Buffalo Testing Laboratories, Inc., 902 Kenmore Avenue, Buffalo, NY 14216, Phone: 716-873-2302
Chenango Environmental Laboratory, Inc., 350 State Street, Binghamton, NY 13901, Phone: 607-723-8175
Hazardous Waste Engineering, Consultants, Inc., 47 Hudson St., Ossining, NY 10562, Phone: 914-762-9000
Industrial Testing Laboratories, 50 Madison Avenue, New York, NY 10010, Phone: 212-685-8785
KEMRON Environmental Services, Inc., 755 New York Avenue, Huntington, NY 11743, Phone: 516-427-0950
Laboratory Testing Services, 75 Urban Avenue, Westbury, NY 11590, Phone: 516-334-7770
Lozier Laboratories, Inc. 23 North Main Street, Fairport, NY 14450, Phone: 716-388-0050
Monroe Monitoring & Analysis, 215 Alexander Street, Rochester, NY 14607, Phone: 716-546-8580
National Testing Laboratories, Inc., 27-14 39th Avenue, Long Island City, NY 11101, Phone: 718-784-2626
Professional Service Industries, Inc., Pittsburgh Testing Laboratory Division, 423A New Karner Road, Albany, NY 12205, Phone: 518-452-0777
Testwell Craig Laboratories, Inc., 47 Hudson Street, Ossining, NY 10562, Phone: 914-736-1776
Testwell Craig Labs of Albany, Inc., 518 Clinton Avenue, Albany, NY 12206, Phone: 518-436-4114
Testwell Craig Peters, Inc., 127 Seeley Road, Syracuse, NY 13224, Phone: 315-446-0008
Alloway Testing, 1325 N. Cole St., Lima, OH 45801, Phone: 419-223-1362
DataChem, Inc., 4388 Glendale-Milford Road, Cincinnati, OH 45242, Phone: 513-733-5336
Hayden Environmental Group, Inc., 6015 Manning Road, Miamisburg, OH 45342, Phone: 513-866-5908
National Petrographic Services, 4484 Willowbrook Road, Columbus, OH 43220, Phone: 614-459-7360
Wadsworth/Alert Laboratory, 5405 E. Schaaf Rd., P.O. Box 31454, Cleveland, OH 44131, Phone: 216-642-0151
Zimmerlin Consulting Group, 3062 Brown Park Drive, Suite D, Hilliard, OH 43026, Phone: 614-876-1153
Occupational Safety and Health Consultants Incorporated, 208 N. Armstrong, Bixby, OK 74008, Phone: 918-366-4834
Marine and Environmental Testing, Inc., P.O. Box 1142, Beaverton, OR 97075, Phone: 503-296-2950
Professional Service Industries, Inc., 611 S.E. Harrison Street, Portland, OR 97214, Phone: 503-232-2183
BCM Engineers Inc., One Plymouth Meeting, Plymouth Meeting, PA 19462, Phone: 215-825-3800
BCM Engineers Inc., 5777 Baum Boulevard, Pittsburgh, PA 15206, Phone: 412-361-6000
Lancaster Laboratories, Inc., 2425 New Holland Pike, Lancaster, PA 17601, Phone: 717-858-2301
Lehigh Valley Analytics, a division of Laboratory Resources, Inc., 60 West Broad Street, Bethlehem, PA 18018, Phone: 215-866-4434
Professional Service Industries, Inc., Pittsburgh Testing Laboratory Division, 850 Poplar Street, Pittsburgh, PA 15220, Phone: 412-922-4000
Certified Engineering & Testing Co., Inc., 2600 Poplar Avenue, Suite 314, Memphis, TN 38112, Phone: 901-458-6860
ATEC Associates, Inc., 11356 Mathis Avenue, Dallas, TX 75229, Phone: 219-243-8931
Hanby Analytical Laboratories, Inc., 4400 S. Wayside, Suite 107, Houston, TX 77087, Phone: 713-649-4500
Hanby Analytical Laboratories, Inc., Mobile Unit, 4400 S. Wayside, Suite 107, Houston, TX 77087, Phone: 713-649-4500
University of Texas, Health Center, Dept. of Cell Biology & Enviro. Sciences, P.O. Box 2003, Tyler, TX 75710, Phone: 214-877-7554
DataChem, Inc., 960 West LeVoy Drive, Salt Lake City, UT 84123, Phone: 801-266-7700
Dixon Information Inc., 76 West 2400 South, South Salt Lake City, UT 84115, Phone: 801-485-0800
A.F. Meyer and Associates, Inc., 6849 Old Dominion Drive, Suite 228, McLean, VA 22101, Phone: 703-734-9093
Hess Oil Virgin Islands Corp. (HOVIC), P.O. Box 127, Kingshill, St. Croix, VI 00850, Phone: 809-778-4314
Esstek, 12822 Gateway Drive, Seattle, WA 98168, Phone: 303-425-0013
Wausau Insurance Companies, Environmental Health Laboratory, 2000 Westwood Drive, Wausau, WI 54401, Phone: 715-842-6810
Asbestos Laboratory Division-P.H.I., 132 Oakwood Road, Charleston, WV 25314, Phone: 304-342-8424
McMaster University, Occup. Health Lab., 1200 Main Street West, Hamilton, Ontario, L8N 3Z5, CANADA, Phone: 416-525-9140.

[FR Doc. 89-14588 Filed 6-19-89; 8:45 am]
BILLING CODE 3570-13-M

National Oceanic and Atmospheric Administration

Sea Grant Review Panel Meeting

AGENCY: National Oceanic and Atmospheric Administration.

ACTION: Notice of Open Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Sea Grant Review Panel. The meeting will have several purposes. Panel members will provide and discuss follow-up reports of business transacted at the last Sea Grant Review Panel Meeting in the areas of artificial intelligence, transition activities, budget status, the fellowship program, new panel candidates, developing new business initiatives with the Sea Grant Program for enhancement of Department of Commerce goals, and new business including installation of Panel officers. The panel members will also participate in a joint session with the Sea Grant Director's Council.

DATES: The announced meeting is scheduled during two days: Monday, July 17, 1989, 2:00-5:00 p.m. and Tuesday, July 18, 1989, 10:30 a.m.-12:00 p.m. and 1:30-4:00 p.m.

ADDRESS: Red Lion Motor Inn-Portland Center, Pyramid Lake Room, 310 S.W. Lincoln, Portland, Oregon 97201.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Shephard, National Sea Grant College Program, National Oceanic & Atmospheric Administration, 6010 Executive Boulevard, Room 812, Rockville, Maryland 20852, (301) 443-8925.

SUPPLEMENTARY INFORMATION: The Panel, which consists of balanced representation from academia, industry, state government, and citizens groups, was established in 1976 by Section 209 of the Sea Grant Improvement Act (Public Law 94-461, 33 U.S.C. 1128) and advises the Secretary of Commerce, Under Secretary, NOAA, and the Director of the National Sea Grant College Program with respect to operations under the act, and such other matters as the Secretary refers to the Panel for review and advice. The agenda for the meeting is:

Monday, July 17, 1989—2:00-5:00 p.m.

Status of Budget, Management, et al.
Cooperative Extension Committee Task Force Report
New Panel Member Report
Subcommittee on National Office
Subcommittee on Law & Policy
Use of Advisory Committees Nationwide
Business Initiatives Committee
AI Workshop Report
Special Focus Programs
Sea Grant Fellows Update
Marketing of Sea Grant
NOAA and OAR Update
New Panel Officers

Tuesday, July 1, 1989—10:30 a.m.-12:00 p.m.

Follow-on meeting of unfinished business
Lunch

1:30 p.m.-4:00 p.m.

Follow-on meeting of unfinished business

The meeting will be open to the public.

Alan R. Thomas,
Acting Assistant Administrator, Oceanic and Atmospheric Research.
Date: May 24, 1989.

[FR Doc. 89-14546 Filed 6-19-89; 8:45 am]
BILLING CODE 3510-12-M

National Oceanic and Atmospheric Administration

Marine Mammals; Application for Permit; Romberg Tiburon Centers (P442); Correction

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Marine mammals; Notice of correction.

SUMMARY: The National Marine Fisheries Service is correcting the notice of application for a permit for Audrey Dianne Kopec, Romberg Tiburon Center (P442). In notice document 89-11125, issued on Wednesday, May 10, 1989, beginning on page 20174, column 2, delete paragraph 3, and replace with new paragraph 3 as follows:

3. *Name and Number of Marine Mammals:* Harbor seal, (*Phoca vitulina richardsi*). A maximum 100 seals will be tagged annually. Of these 100 seals, radio transmitters will be attached to a maximum of 30 seals and blood samples will be taken from the radio-tagged seals. Up to 120 additional seals may be harassed during the tagging operations.

Dated: June 13, 1989.

Nancy Foster,
Director, Office of Protected Resources and Habitat Programs

[FR Doc. 89-14517 Filed 6-19-89; 8:45 am]
BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of the Coverage of Group II and the Wool Subgroup to Include Certain Wool, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Indonesia

June 14, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending coverage of group II and its subgroup.

EFFECTIVE DATE: June 21, 1989.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

As a result of category reclassification under the Harmonized Commodity Code, the current coverage of group II, and its wool subgroup, is being amended.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also 53 FR 24476, published on June 29, 1988.

Auggie D. Tantillo,
Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreement

June 14, 1989.

Commissioner of Customs,
Department of the Treasury, Washington D.C. 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive amends, but does not cancel, the directive of June 24, 1988 issued to you by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the period which began on July 1, 1988 and extends through June 30, 1989.

Effective on June 21, 1989, the directive on June 24, 1988, as amended, is being amended further to include wool, silk blend and other vegetable fiber textile products in Categories 439 and 839, produced or manufactured in Indonesia and exported during the period January 1, 1989 through June 30, 1989 in the Current Group II limit. Category 439 also shall be subject to the wool subgroup limit in Group II. The current Group II limit and subgroup limit, as previsouly adjusted, shall remain the same.

There are no imports in Categories 439 and 839 for the period January 1, 1989 through March 31, 1989.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Auggie D. Tantillo,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-14501 Filed 6-19-89; 8:45 am]
BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

Action: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the

Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Audit of Billing for Medical Care Coordination of Benefits; DD Form X007; and No OMB Control Number.

Type of Request: New.

Average Burden Hours/Minutes Per Response: 1 hour.

Frequency of Response: One response per respondent.

Number of Respondents: 3,000.

Annual Burden Hours: 3,000.

Annual Responses: 3,000.

Needs and Uses: Pub. L. 99-272 gives the Government the right to collect payment from private insurance companies for inpatient medical care provided to dependents, retirees and retirees' dependents at military treatement facilities. The questionnaire will be used to collect information regarding private insurance coverage, evaluate procedures, and practices used by the Military to collect and to project the total dollars available for collection.

Affected Public: Individual or households; Federal agencies or employees.

Frequency: On occasion.

Respondents Obligation: Voluntary.

OMB Desk Officer: Dr. J. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 13, 1989.

[FR Doc. 89-14503 Filed 6-19-89; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Defense Science Board Task Force on Army Subgroup on Low Observable Technologies

ACTION: Cancellation of meeting.

SUMMARY: The meeting notice for the Defense Science Board Task Force on Army Subgroup on Low Observable Technologies scheduled for March 30, 1989 as published in the **Federal Register** (Vol. 53, No. 238, Page 49907, Monday, December 12, 1988, FR Doc 88-28507) has been cancelled.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 14, 1989.

[FR Doc. 89-14504 Filed 6-19-89; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Defense Industrial Cooperation With Pacific Rim Nations

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Defense Industrial Cooperation with Pacific Rim Nations will meet in closed session on July 6, 1989 at the Hughes Corporation, Rosslyn, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will examine the potential for achieving US security objectives in the Pacific Rim area through defense industrial cooperation with the nations of that area.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. § 552b(c)(1)(1982), and that accordingly this meeting will be closed to the public.

June 14, 1989.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-14505 Filed 6-19-89; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board 1989 Summer Study on Improving Test and Evaluation Effectiveness

ACTION: Cancellation of meeting.

SUMMARY: The meeting notice for the Defense Science Board 1989 Summer Study on Improving Test and Evaluation Effectiveness scheduled for June 21-22, 1989 as published in the **Federal Register** (Vol. 54, No. 70, Page 14833-14834, Thursday, April 13, 1989, FR Doc 89-8806) has been cancelled.

June 14, 1989.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-14507 Filed 6-19-89; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Low Observable Technology

ACTION: Change in date of Advisory Committee meeting notice.

SUMMARY: The meeting of the Defense Science Board Task Force on Low Observable Technology scheduled for June 7-8 and June 27-28, 1989 as published in the **Federal Register** (Vol. 54, No. 96, Page 21648, Friday, May 19, 1989, FR Doc. 89-12018) will be held on July 27-28 and August 23-24, 1989.

June 14, 1989.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-14508 Filed 6-19-89; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on SDIO Technology Assessment

ACTION: Change in date of Advisory Committee meeting notice.

SUMMARY: The meeting of the Defense Science Board Task Force on SDIO Technology Assessment scheduled for April 5-6, 1989 as published in the **Federal Register** (Vol. 54, No. 51, Page 11263, Friday, March 17, 1989, FR Doc. 89-6295) will be held on July 6-7, 1989. This notice supercedes the change previously submitted in **Federal Register** (Vol. 54, No. 78, Page 16155, Friday, April 21, 1989, FR Doc. 89-9625).

June 14, 1989.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-14509 Filed 6-19-89; 8:45 am]

BILLING CODE 3810-01-M

Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, July 11, 1989; Tuesday, July 18, 1989; and Tuesday, July 25, 1989 at 10:00 a.m. in Room 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Pub. L. 92-392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92-463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and priviledged or confidential" (5 U.S.C. 552b.(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b.(c)(2)), and the detailed wage data considered from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, The Pentagon, Washington, DC 20301.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 14, 1989.

[FR Doc. 89-14506 Filed 6-19-89; 8:45 am]

BILLING CODE 3810-01-M

U.S. Court of Military Appeals Code Committee Meeting

ACTION: Notice of Public Hearing.

SUMMARY: This notice announces the forthcoming public meeting of the Code Committee established by Article 67(g), Uniform Code of Military Justice, 10 U.S.C. 867(g), to be held at 10:00 a.m. on June 27, 1989, in the Judge William Holmes Cook Conference Room at the Courthouse of the United States Court of Military Appeals, 450 E Street, Northwest, Washington, DC 20442-0001. The agenda for this meeting will include consideration of the proposed changes to the Manual for Courts-Martial, United States, 1984, as well as other matters relating to the operation of the Uniform Code of Military Justice throughout the Armed Services.

DATE: June 27, 1989.

FOR FURTHER INFORMATION CONTACT: Thomas F.Granahan, Clerk of Court, United States Court of Military Appeals, 450 E Street, Northwest, Washington, DC 20442-0001; telephone (202) 272-1448.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 14, 1989.

[FR Doc. 89-14502 Filed 6-19-89; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Federally Funded Research and Development Center (FFRDC)

AGENCY: United States Army, Armanent, Munitions and Chemical Command; Armament Research, Development and Engineering Center.

SUMMARY: Notice is hereby given that, in accordance with OFPP Policy Letter 84-1, Appendix III, 4 April 1984, the U.S. Army intends to establish a Federally Funded Research and Development Center (FFRDC) for a long term research program to advance the state-of-the-art in areas of electromechanics and hypervelocity testing as applicable to future weapon systems.

Program Requirements: This program will include basic research, analysis, design, fabrication, experimentation and training in these and related areas. The electromechanics area will include but not be limited to compact pulse power supplies, advanced electric launchers and related materials research. Hypervelocity testing research will include but not be limited to compatible launch package design and interface, impact characterization, test planning, instrumentation, impact testing, data reduction/analysis and related materials research. An FFRDC is an activity that is operated, managed and/or administered by either a univerity or consortium of universities, other nonprofit organization or industrial firm as an autonomous organization or as an identifiable separate operating unit of a parent organization.

ADDRESS: Send inquiries to Commander, U.S. Army AMCCOM, ATTN: AMSMC-PCW-D(D), Robert Wisser, Picatinny Arsenal, New Jersey 07806-5000.

FOR FURTHER INFORMATION CONTACT: Robert Wisser, Contract Specialist, Research, Development and Engineering Center on (201) 724-4074.

John O. Roach, II

Army Liaison Officer with the Federal Register.

[FR Doc. 89-14495 Filed 6-19-89; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Supplement to the Final Environmental Impact Statement (FEIS) for Proposed Navigation Improvements and Small Boat Harbor at Olcott on Lake Ontario, Niagara County, NY

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The proposed action involves construction of protective rubblemound breakwaters with embayments, and extension of entrance navigation channels by dredging. The action is necessary because of navigation and development opportunity problems including: wave and surge action problems in the lake entrance channel, lack of well protected docking facilities, constricted navigation and crowded conditions within the existing harbor, and a need for increased public (fisherman) access to the harbor area. The proposed action would alleviate these problems by providing a well protected harbor, including embayment(s) for docking facilities, improved navigation channels, and public (fisherman) breakwater access. The community will develop associated upland facilities.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and Draft Supplement can be directed to: Tod Smith, (716) 876-5454, Ext. 2173, U.S. Army Corps of Engineers, Buffalo District, Environmental Analysis Branch, 1776 Niagara Street, Buffalo, New York 14207-3199.

SUPPLEMENTARY INFORMATION:

Previous Report: Final Environmental Impact Statement, Small Boat Harbor, Olcott Harbor, Niagara County, New York, Office of the Chief of Engineers, Department of the Army, Washington, DC 20314, November 1978. Filed with USEPA, 5 October 1979.

Authority: These project supplemental studies were authorized by the Water Resources Development Act of 1986, Public Law 99-662, November 1986.

Proposed Action: The proposed action involves construction of protective rubblemound breakwaters incorporating pedestrian (fisherman) access. The breakwaters would protect the harbor entrance channels and provide protected embayment area(s) for additional docking facilities. Harbor entrance navigation channels would be extended by dredging. The local sponsors would develop associated facilitative developments including: access, parking, boat ramp, marina, and sanitary facilities.

Alternatives: The U.S. Army Corps of Engineers, Buffalo District has investigated concerns and potential alternative measures for Olcott through a series of progressive studies. Some 12 breakwater and channel improvement alternative plans were developed and evaluated for engineering and economic feasibility, and environmental and social acceptability, and overall in best meeting developed project objectives. With conclusion of the feasibility study (1979), Plan 10 consisting of rubblemound breakwaters with some pedestrian (fisherman) access, an east outer harbor embayment, channel improvements, and associated dock and upland facilities development (local sponsor responsibility) was recommended pending supplemental finalization studies.

Several concerns needed to be addressed in finalizing the proposed Olcott Harbor plan. Supplemental studies needed to be conducted pertaining to project optimization, effects of breakwater configuration on the harbor area, dredging and dredged material disposal procedures, fish access impacts, water quality impacts, pedestrian (fisherman) access, and facilitative developments (i.e., access, marina facilities, parking, sanitary facilities, etc.). Supplemental study and plan optimization authority and funding was approved in 1986 and 1988. Supplemental investigations are being conducted and results will be presented in the supplemental reports.

Scoping Process: Scoping coordination has been conducted for each phase of this study. Study activities are coordinated with government agencies, interest groups, and the general public. The general intent is to gain assistance in: identifying and scoping problems, needs, and concerns; developing feasible alternative solutions; and in assessing, evaluating, and identifying preferred and selected plans. The study public involvement process incorporates written correspondence, telephone communication, public meetings/workshops, and draft and final report review procedures. Additional scoping input from potentially affected Federal, State, and local agencies or interests is invited by this notice.

Significant issues to be analyzed in depth in this supplement include those "concerns needed to be addressed" under Alternatives.

The study shall be conducted so as to comply with the various Federal and State Environmental Statutes and Executive Orders and associated review procedures. When the Feasibility Report and accompanying Supplement to the EIS are completed for review, the combined document will be filed with the U.S. Environmental Protection Agency to be coordinated and reviewed under the National Environmental Policy Act procedures.

Scoping Meeting: Since Federal, State, and local interests have been involved in the reformulation of the authorized project; and adequate coordination is already being conducted, no further formal scoping meeting is anticipated.

Availability: The combined document consisting of a project Feasibility Report and Supplement to the Environmental Impact Statement will be made available to the public about December 1989. A local public meeting will likely be scheduled after coordination of the draft reports.

Date: May 31, 1989.

Hugh F. Boyd III,

Colonel, U.S. Army, Commanding.

[FR Doc. 89-14493 Filed 6-19-89; 8:45 am]

BILLING CODE 3710-GP-M

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Proposed Flood Damage Reduction Project Along Tonawanda Creek in Niagara and Erie Counties, NY

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The proposed action involves channelization and/or clearing and snagging along sections of Tonawanda Creek and Ransom Creek a tributary; construction of a diversion channel; and some diversion of high flows to the Erie Barge Canal. The action is necessary in order to alleviate floording problems within the project area. It is expected that the proposed project would substantially reduce flooding problems and damages to residential, commercial, and public properties.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be directed to: Tod Smith, (716) 876-5454, Ext. 2173, U.S. Army Corps of Engineers, Buffalo District, Environmental Analysis Branch, 1776 Niagara Street, Buffalo, New York 14207-3199.

SUPPLEMENTARY INFORMATION:

Authority: This study is being conducted under the authority of the Buffalo Metropolitan Area Study (Lower Tonawanda Creek).

Proposed Action: The proposed action involves channelization and/or clearing and snagging along sections of Tonawanda Creek and Ransom Creek a tributary; construction of a diversion channel; and some diversion of high flows to the Erie Barge Canal.

Alternatives: The U.S. Army Corps of Engineers, Buffalo District has investigated concerns and potential alternative measures for the lower Tonawanda Creek and tributaries. Twelve alternative plans including: no-action, non-structural, clearing and snagging, channelization, berm/levees, and diversion measures were developed and evaluated for engineering and economic feasibility, environmental and social acceptability, and overall in best meeting developed project objectives. The proposed plan is considered to be the plan which best meets the developed planning objectives. Study findings will be presented in the ensuing reports.

Scoping Process: Study activities are coordinated with government agencies, interest groups, and the general public. The general intent is to gain assistance in: identifying and scoping problems, needs, and concerns; developing feasible alternative solutions; and in assessing, evaluating, and identifying prefered and selected plans. The study public involvement process incorporates written correspondence, telephone communications, public meetings/workshops, and draft and final report review procedures.

An initial local scoping meeting for this project was conducted in November of 1987. Additional initial scoping letters for this project were coordinated with agencies and interest groups known to have an interest in the project in December of 1988 and January of 1989. Several subsequent workshops and additional correspondence have followed. A public workshop is planned for June of 1989. Additional scoping input from potentially affected Federal, State, and local agencies or interests is invited by this notice.

Significant issues to be analyzed in depth in the DEIS include: flooding problems, flood damage reduction measures, and potential impacts of the most feasible measure upon the natural and human environment—to include: water quality, fish and wildlife (aquatic, wetland, riparian, terrestrial habitat), community and regional growth, aesthetics, farmland, and cultural resources.

The study shall be conducted to comply with the various Federal and State Environmental Statutes and Executive Orders and associated review procedures. When the Feasibility Report and accompanying DEIS are completed for review, the combined document will be filed with the U.S. Environmental Protection Agency to be coordinated and reviewed under the National Envorinmental Policy Act procedures.

Scoping Meeting: Since Federal, State, and local interests have been involved during formulation of the proposed project and adequate coordination is already being conducted, no further formal scoping meeting is anticipated.

Availability: The combined document consisting of the Draft Feasibility Report and Draft Environmental Impact Statement will be made available to the public about April 1990.

Date: May 31, 1989.

Hugh F. Boyd III,

Colonel, U.S. Army Commanding.

[FR Doc. 89-14494 Filed 6-19-89; 8:45 am]

BILLING CODE 3710-GP-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER 89-479-000 et al.]

Nevada Power Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

June 13, 1989.

Take notice that the following filings have been made with the Commission:

1. Nevada Power Company

[Docket No. ER89-479-000]

Take notice that on June 2, 1989, Nevada Power Company (Nevada) tendered for filing an agreement entitled Interconnection Agreement Between Nevada Power Company and Lincoln County District No. 1 (Lincoln) hereinafter the "Agreement." The primary purpose of the Agreement is to establish the terms and conditions for the interchange of economy, emergency, and banked energy and for other power transactions that may be possible through the Parties' interconnected systems or through the systems of third Parties.

Nevada states that copies of the filing were served upon Lincoln.

Comment date: June 27, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Kansas City Power & Light Company

[Docket No. ER89-477-000]

Take notice that on June 2, 1989, Kansas City Power & Light Company (KCPL) tendered for filing an Amendatory Agreement No. 1 to Municipal Participation Agreement, between KCPL and the City of Ottawa, Kansas dated May 3, 1989. KCPL states that the Amendatory Agreement provides for an extension of the contract term and a modified rate design for firm power service.

KCPL requests an effective date of June 1, 1989, and therefore requests waiver of the Commission's notice requirements.

Comment date: June 27, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Nevada Power Company

[Docket No. ER89-478-000]

Take notice that on June 2, 1989, Nevada Power Company (Nevada) tendered for filing an agreement entitled Interconnection Agreement Between Nevada Power Company and City of Boulder City, Nevada (Boulder) hereinafter the "Agreement." The primary purpose of the Agreement is to establish the terms and conditions for the interchange of economy, emergency, and banked energy and for other power transactions that may be possible through the Parties' interconnected systems or through the systems of third Parties.

Nevada states that copies of the filing were served upon Boulder.

Comment date: June 27, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Public Service Company of Oklahoma

[Docket No. ER89-476-000]

Take notice that on June 2, 1989, Public Service Company of Oklahoma ("PSO") tendered for filing a Transmission Service Agreement (the "Agreement") between KAMO Electric Cooperative, Inc. ("KAMO") and PSO. PSO proposes that the Agreement be made effective as of June 1, 1989 and accordingly seeks waiver of the Commission's notice requirements.

Copies of the filing have been sent to the Oklahoma Corporation Commission and to KAMO.

Comment date: June 27, 1989, in accordance with Standard Paragraph E at the end of this notice.

5. Delmarva Power & Light Company

[Docket No. ER89-473-000]

Take notice that on June 2, 1989, Delmarva Power & Light Company ("Delmarva") tendered for filing proposed Supplement No. 4 to its FERC Rate Schedule No. 38. This Supplement, filed at the request for The City of Dover, Delaware ("Dover"), provides for an additional point of 138 kV interconnection south of College Road adjacent to the Conrail Railroad.

Copies of this filing were served upon The City of Dover, the Mayor of the City of Dover and Delaware Public Service Commission.

Comment date: June 27, 1989, in accordance with Standard Paragraph E at the end of this notice.

6. Pennsylvania Power & Light Company

[Docket No. ER89-474-000]

Take notice that on June 1, 1989 Pennsylvania Power & Light Company (PP&L) tendered for filing a Supplement, dated as of the 31st day of May, 1989 ("Second Supplemental Agreement"), to Capacity and Energy Sales Agreement, dated as of the 28th day of January 1988 ("Basic Agreement"), supplemented by an Agreement dated as of the 10th day of August, 1988 ("First Supplemental Agreement") between PP&L and Baltimore Gas and Electric Company (BG&E). The Basic Agreement, as supplemented, is on file with the Commission as the Company's Rate Schedule FERC No. 92.

The Second Supplemental Agreement provides that, beginning June 1, 1989, PP&L will transfer to BG&E 200 MW of Supplemental Daily Generating Capacity Megawatts for use by BG&E in PJM Interconnection accounted-for installed capacity accounting. In addition, it reflects a recent increase in the PJM installed capacity rate, used for certain billings under the Agreement.

Copies of the filing were served upon BG&E, the Pennsylvania Public Utility Commission, and the Maryland Public Service Commission.

Comment date: June 27, 1989, in accordance with Standard Paragraph E at the end of this notice.

7. Southwestern Public Service Company

[Docket No. ER89-481-000]

Take notice that on June 5, 1989, Southwestern Public Service Company (Southwestern) tendered for filing an extension to the Experimental Interruptible Irrigation Rider applicable to three of its full requirements customer's FERC Electric Service Tariffs, specifically Bailey County

Electric Cooperative Association (FERC Rate Schedule No. 86), South Plains Electric Cooperative, Inc. (FERC Rate Schedule No. 96) and Roosevelt County Electric Cooperative, Inc. (FERC Rate Schedule No. 95).

In 1986, Southwestern Bailey County Electric Cooperative Association (Bailey) and South Plains Electric Cooperative, Inc. (South Plains) determined that an experimental interruptible service rider may be beneficial to all parties and that a one-year experiment to test the efficacy of an interruptible rate was appropriate. These two riders have been subsequently extended through 1988. In 1988, a rider was implemented for Roosevelt County Electric Cooperative, Inc., (Roosevelt). Presently, Southwestern wishes to extend these three experimental riders for another year.

Copies of the filing were served upon Bailey County, South Plains, Roosevelt, the Public Utility Commission of Texas, and the New Mexico Public Service Commission.

Comment date: June 27, 1989, in accordance with Standard Paragraph E at the end of this notice.

8. Utah Power & Light Company

[Docket No. ER89-480-000]

Take notice that on June 5, 1989, Utah Power & Light Company (Utah) tendered for filing a Notice of Cancellation between Strawberry Water Users Association and Utah Power & Light Company.

Utah requests that the notice requirements of 18 C.F.R. § 35.3 be waived as provided in 18 C.F.R. § 35.11, and that the Notice of Cancellation be made effective retroactively as of October 1, 1987, the date service was terminated.

Copies of this filing were served on Strawberry Water Users Association and the Utah Public Service Commission.

Comment date: June 27, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-14532 Filed 6-19-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-1474-000 et al.]

K N Energy, Inc. et al.; Natural Gas Certificate Filings

June 13, 1989.

Take notice that the following filings have been made with the Commission:

1. K N Energy, Inc.

[Docket No. CP89-1474-000]

Take notice that on May 22, 1989, K N Energy, Inc., (K N) P.O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP89-1474-00 a request pursuant to sections 7(b) and 7(c) of the Commission's Regulations under the Natural Gas Act, as amended for authorization to relocate, abandon, construct, and operate certain facilities and to make a sale for resale of natural gas to The City of Colorado Springs, Colorado (The City), all as more fully set forth in the request on file with the Commission and open to public inspection.

K N proposes to sell up to 42,500 Mcf per day of gas to The City and to deliver the gas from its pipeline system to Colorado Interstate Gas Company for The City's account. These purchases would be used to supplement The City's general system supply for service to its existing customers, it is asserted.

Specifically, K N explains that in order to make the proposed sale, it would install two 0.5 mile segments of 12-inch pipeline, relocate an existing 600-hp compressor unit, install a new 600-hp compressor unit, and install various measurement and appurtenant facilities.

Comment date: July 5, 1989 in accordance with Standard Paragraph F at the end of the notice.

2. Transcontinental Gas Pipe Line Corporation

Docket No. CP89-1591-000]

Take notice that on June 9, 1989, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP89-1591-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Chevron U.S.A., Inc. (Chevron), under the blanket certificate issued in Docket No. CP88-328-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Transco states that pursuant to a service agreement dated March 20, 1989, under its Rate Schedule IT, it proposes to transport up to 45,000 dekatherms (dt) per day equivalent of natural gas for Chevron. Transco states that it would transport the gas from a receipt point located offshore Louisiana, and would deliver the gas to various delivery points in Louisiana, Alabama, Georgia and New Jersey.

Transco advises that service under Section 284.223(a) commenced May 5, 1989, as reported in Docket No. ST89-3745-000. Transco further advises that it would transport 5,000 dt on an average day and 1,825,000 dt annually.

Comment date: July 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89-1593-000]

Take notice that on June 9, 1989, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP89-1593-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to proivde an interruptible transportation service for Enron Gas Marketing, Inc. (Enron), under the blanket certificate issued in Docket No. CP88-328-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Transco states that pursuant to a service agreement dated March 9, 1989, under its Rate Schedule IT, it proposes to transport up to 68,000 dekatherms (dt) per day equivalent of natural gas for Enron. Transco states that it would transport the gas from various receipt points located offshore Texas and would deliver the gas to a delivery point also located offshore Texas.

Transco advises that service under Section 284.223(a) commenced May 1, 1989, as reported in Docket No. ST89-3865-000. Transco further advises that it would transport 25,000 dt on an average day and 9,125,000 dt annually.

Comment date: July 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-14533 Filed 6-19-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-1494-000 et al.]

Panhandle Eastern Pipe Line Co. et al.; Naural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1494-000]

June 12, 1989.

Take notice that on May 23, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1494-000 a request, as supplemented on June 7, 1989, pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to perform a firm transportation service for the Village of Westville, Illnois (Westville), a local distribution company, under Panhandle's blanket certificate issued in Docket No. CP86-585-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle states that pursuant to a transportation agreement dated April 1, 1989, it proposes to transport on a firm basis up to 1,916 dt equivalent of natural gas per day for Westville from specified receipt points located in Custer and Dewey Counties, Oklahoma to a specified delivery point in Vermilion County, Illinois. Panhandle also states that Westville may nominate quantities from interruptible points of receipt on Panhadle's system as long as the sum of the volumes nominated from such interruptible points together with the sum of the quantities nominated from firm points of receipt shall not exceed the contract quantity of the transportation agreement for service under Rate Schedule PT. It anticipates transporting on a peak and average day 1,916 dt equivalent of natural gas and 699,340 dt equivalent of natural gas on an annual basis.

It is stated that on April 1, 1989, Panhandle commenced a 120-day transportation service for Westville under § 284.223(a) as reported in Docket No. ST89-3182-000. Panhandle proposes to charge the rates and abide by the terms and conditions of its Rate Schedule PT. Panhandle further states that no facilities need be constructed to implement the service. It is also indicated that Panhandle would provide the service for a term expiring ten years from the initial date for service and thereafter until terminated by either Panhandle or Westville upon at least six months prior notice to the other.

Comment date: July 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. United Gas Pipe Line Company

[Docket No. CP89-1555-000]

June 13, 1989.

Take notice that on May 30, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1555-000 a request, pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to provide interruptible transportation service on behalf of Amoco Production Company (Amoco), a producer of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Pursuant to a gas transportation agreement dated July 21, 1988, United proposes to transport up to 51,500 MMBtu of natural gas per day, on an interruptible basis, for Amoco. United states that such gas would be transported from various existing receipt points along its system in Texas to various existing delivery points in Louisiana, Mississippi and Texas. Amoco has informed United that it expects to have the full 51,500 MMBtu transported on an average day and, based thereon, estimates that the annual transportation quantity would be 18,797,000 MMBtu. United advises that the transportation service commenced on March 1, 1989, as reported in Docket No. ST89-3552-000, pursuant to § 284.223(a) of the Commission's Regulations.

Comment date: July 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Northern Natural Gas Company Division of Enron, Corp.

[Docket No. CP89-1584-000]

June 13, 1989.

Take notice that on June 7, 1989, Northern Natural Gas Company Division of Enron Corp. (Northern) 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-1584-000 a request pursuant to

§§ 157.206 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide transportation service for Hunt Oil Company (Hunt), a gas producer, under Northern's blanket transportation certificate issued in Docket No. CP86-435-000 on December 22, 1986, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern proposes, pursuant to a transportation agreement dated May 1, 1989, to transport natural gas for Hunt from a receipt point in Pecos County, Texas, and deliver the gas to West Texas Utilities, for the account of Hunt, also in Pecos county, Texas. Northern states that it proposes to transport up to 4,000 MMBtu of gas on a peak day and approximately 3,000 MMBtu and 1,460,000 MMBtu of gas on an average day and annually, respectively. Northern states that transportation service under § 284.223(a) commenced on May 1, 1989, as reported in Docket No. ST89-3708-000 on May 31, 1989.

Comment date: July 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Stingray Pipeline Company

[Docket No. CP89-1574-000]

June 13, 1989.

Take notice that on June 5, 1989, Stingray Pipeline Company, (Stingray), P.O. Box 1642, Houston, Texas, 77251-1642, filed in Docket No. CP89-1574-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Entrade Corporation (Entrade), a marketer, under the blanket certificate issued by the Commission's Order No. 509, pursuant to section 7 of the Natural Gas Act, corresponding to the rates, terms and conditions filed in Docket No. RP89-70-000, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Stingray states that pursuant to a Transportaiton Agreement dated March 23, 1989 between Stingray and Entrade (Transportation Agreement), it proposes to transport 250,000 dt per day on an interruptible basis on behalf of Entrade. The Transportation Agreement provides for Stingray to receive gas from various existing points of receipt on its system. Stingray will then transport and redeliver subject gas, less fuel used and unaccounted for line loss, to Holly Beach and OXY-NGL Plan located in Cameron Parish, Louisiana and Stingray—HIOS Exchange (EHI-A330) located offshore Texas

Stingray advises that service under § 284.223(a) commenced April 18, 1989, as reported in Docket No. ST89-3602. Stingray further states that it would transport on an average day 75,000 dt and 27,375,000 dt annually.

Comment date: July 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Natural Gas Pipeline Company of America

[Docket No. CP89-1567-000]

June 13, 1989.

Take notice that on June 8, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89-1567-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Amoco Production Company (Amoco), a producer, under the blanket certificate issued in Docket No. CP86-582-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Natural states that pursuant to a transportation agreement dated March 25, 1988, as amended August 9, 1988, under its Rate Schedule ITS, it proposes to transport up to 400,000 MMBtu per day equivalent of natural gas for Amoco. Natural states that it would transport the gas (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS) from multiple receipt points in Oklahoma, Texas, Offshore Texas, Illinois, Louisiana, Offshore Louisiana, Iowa, New Mexico, Missouri, Kansas, Arkansas, Nebraska and Wyoming, as shown in Exhibit "A" of the transportation agreement, and would deliver the gas to multiple delivery points in Texas, Illinois, Louisiana, Oklahoma, New Mexico and Nebraska, as shown in Exhibit "B" of the agreement.

Natural advises that service under § 284.223(a) commenced April 5, 1989, as reported in Docket No. ST89-3846-000. Natural further advises that it would transport 100,000 MMBtu on an average day and 36,500,000 MMBtu annually.

Comment date: July 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraph

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-14534 Filed 6-19-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP89-35-000]

Utah Department of Natural Resources; Preliminary Findings on Incomplete Notices of Well Category Determinations

June 9, 1989

The Utah Department of Natural Resources (Utah) notified the Commission of affirmative determinations under section 503 of the Natural Gas Policy Act of 1978 (NGPA) [1] for gas from two wells operated by different producers. One applicant, Del-Rio Resources, Inc. (Del-Rio), applied for a new onshore well category determination under section 102(c) of the NGPA for its Agency Draw #23-24 well located in Uintah County, Utah. On November 6, 1984, the Commission received notice from Utah concerning the Del-Rio well and assigned the notice FERC No. JD85-05181. The other applicant, Belco Development Corporation, now Enron Oil and Gas Company, applied for a "stripper well" determination under section 108 of the NGPA for its Natural Buttes Unit #43-36B well also located in Uintah County, Utah. On August 18, 1986, the Commission received notice of determination for the Natural Buttes well and assigned it FERC No. JD86-31316.

Under § 275.202 of the Commission's regulations, a well category determination becomes final 45 days after the date on which the Commission receives notice of the determination if the Commission takes no action with respect to the notice. 18 CFR

[1] 15 U.S.C. 3413 (1982).

275.202(a)(1988). However, § 275.202(b) provides that the 45-day period for Commission review does not begin if the Commission notifies the jurisdictional agency, the purchaser, and all parties that the notice is incomplete. 18 CFR 275.202(b)(2988). Within 45 days of receiving each notice of determination, the Commission advised Utah and each applicant that the notice was incomplete.[2] The Commission explained that the notices did not include all of the information required to complete the application [3] nor did it include an explanatory statement sufficient to enable a person examining the notice to ascertain the basis for the determination. On May 10, 1988, the Commission sent a follow-up letter to Utah and the applicants advising that if the required information was not received the Commission could reverse the determinations and noted that refunds could be due. The required information has not been furnished and thus the determinations have not become final.

Under § 275.202(a), 18 CFR 275.202(a)(1988), the Commission may, before any determination becomes final, make a preliminary finding that the determination is not supported by substantial evidence in the record. Based on the foregoing facts and circumstances, the Commission hereby makes a preliminary finding that the subject determinations submitted by Utah are not supported by substantial evidence. Any state or federal agency or any person may within 30 days after issuance of a preliminary finding, submit written comments and may request an informal conference with the Commission pursuant to § 275.202(f) of the regulations, 18 CFR 275.202(a)(1988).

The Commission Orders

(A) Under § 275.202(a) of the Commission's regulations, the Commission finds that the two affirmative notices of determination (JD No. 85-05181 and JD No. 86-31316) submitted by Utah are not supported by substantial evidence in the record on which the determinations were made.

(B) Within 30 days from the date of this order, Utah, Del-Rio Resources, Inc., Enron Oil and Gas Company, or any other interested party may submit comments or request an informal conference with Commission staff.

[2] The Commission issued its tolling letter to Utah and the applicants on December 20, 1984, and September 16, 1988, respectively.

[3] The filing requirements for applications for determination are contained in Subpart B of Part 274 of the regulations.

By direction of the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-14491 Filed 6-19-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89-3-1-000]

Alabama-Tennessee Natural Gas Co.; Proposed Change in FERC Gas Tariff

June 13, 1989.

Take notice that on June 7, 1989, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), Post Office Box 918, Florence, Alabama 35631, tendered for filing Substitute Second Revised Sheet No. 4A to its FERC Gas Tariff, First Revised Volume No. 1. Such tariff sheet is proposed to become effective July 1, 1989.

Alabama-Tennessee states that the filing is to adjust the currently effective take-or-pay surcharge rates to its customers to reflect increases in the amount being billed to by Tennessee Gas Pipeline Company. Alabama-Tennessee asserts that the allocation methodology utilized is that approved by the Commission in Docket Nos. RP88-205-001 and TM89-1-1-000. Alabama-Tennessee further states that such filing is being made pursuant to § 26.1(a) of its tariff.

Alabama-Tennessee states it is amortizing the increased take-or-pay costs over a thirty-six (36) month period. According to Alabama-Tennessee, that is the maximum amortization period allowed by this Commission in FERC Docket No. RP88-191.

Alabama-Tennessee has requested any necessary waivers of the Commission's Regulations in order to permit the tariff sheets to become effective as proposed.

Alabama-Tennessee states that copies of the tariff filing have been mailed to all of its jurisdictional customers and affected State Regulatory Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 or Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 20, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspections.

Lois D. Cashell,

Secretary.

[FR Doc. 89-14527 Filed 6-19-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-6-4-001]

Granite State Gas Transmission, Inc.; Compliance Tariff Filing

June 13, 1989.

Take notice that on June 7, 1989, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021, tendered for filing Substitute Twenty-Sixth Revised Sheet No. 7 in its FERC Gas Tariff, First Revised Volume No. 1, containing changes in rates for effectiveness May 1, 1989.

According to Granite State, the revised rates are submitted in compliance with a condition in a Letter Order, dated May 31, 1989, accepting an out-of-cycle purchased gas cost adjustment filed on May 1, 1989. Granite State further states that the revised rates are applicable to jurisdictional sales services rendered to its two affiliated distribution company customers: Bay State Gas Company and Northern Utilities, Inc.

It is further stated the May 1, 1989 out-of-cycle purchased gas cost adjustment filing reflected costs for the purchase of Rate Schedule CD-6 gas from Tennessee Gas Pipeline Company (Tennessee) for storage injections by its customers because of concerns for Tennessee's authority to transport third party gas for storage. Following the filing, the Commission resolved the third party gas issue in approving an interim settlement in Tennessee's rate proceeding, Docket No. RP88-228-000, *et al.*, according to Granite State. The Letter Order of May 31, 1989, accepting the out-of-cycle filing directed Granite State to refile its rates to reflect the changed circumstances following the Commission's approval of the interim settlement.

According to Granite State, copies of its filing were served upon its customers, Bay State Gas Company and Northern Utilities, Inc. and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and

Procedure (18 CFR 385.211, 385.214). All such protests should be filed on or before June 20, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-14528 Filed 6-19-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-7-4-000]

Granite State Gas Transmission, Inc.; Proposed Changes in Rates

June 13, 1989.

Take notice that on June 7, 1989, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021, tendered for filing with the Commission Twenty-Seventh Revised Sheet No. 7 in its FERC Gas Tariff, First Revised Volume No. 1, containing changes in rates for effectiveness on July 1, 1989.

According to Granite State, the revised rates reflect projected gas costs for the third quarter of 1989 and are applicable to jurisdictional sales services rendered to its two affiliated distribution company customers: Bay State Gas Company and Northern Utilities, Inc.

Granite State further states that copies of its filing were served upon its customers and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 20, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-14529 Filed 6-19-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP89-43-000]

Hilliard Oil & Gas, Inc. v. Southern Natural Gas Co.; Complaint

June 15, 1989.

On May 15, 1989, Hilliard Oil & Gas, Inc. (Hilliard) filed a complaint pursuant to 18 CFR 271.1105(d)(3)(ii) and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206. Hilliard requests that the Production-Related Costs Board (Board) determine whether the Adema Realty #1 and C.V. Fox #1 wells meet the "Commingling Rule".

Hilliard states that by invoice dated January 3, 1989, Southern Natural Gas Company (Southern) was billed $167,763.61 for production-related costs due under a contract dated September 25, 1981, covering the Adema Realty #1 and C.V. Fox #1 wells located in Plaquemines Parish, Louisiana. Hilliard claims that Southern in a March 15, 1989 letter stated that these two wells do not qualify under the "Commingling Rule". Hilliard states that Southern agrees that the wells meet all the qualifications with the exception of the "Commingling Rule".

Hilliard asserts that the Commission has stated in the preamble to the interim rule that the gas must be delivered to a point where entry causes commingling with "other gas". Hilliard further asserts that the term "other gas" means any gas other than the gas from a single well or separator and that "other gas" includes the gas delivered from other wells and the gas in a purchaser's main line. Hilliard contends that a single-well delivery line to the final first sale location at which point the gas from that well is combined with gas from other wells, or to a point in the pipeline's main line, qualifies a first seller for the allowance; and that the seller has performed a gathering or delivery function and incurred costs doing so, before the gas transfer for value to the buyer. Hilliard states that it believes the subject wells qualify under the "Commingling Rule".

Hilliard requests that the Board issue an order finding that the Adema Realty #1 and the C.V. Fox #1 wells meet the Commingling Rule and that the invoice of $167,713.61 is payable under FERC Rules and Regulations.

Under Rules 206(b) and 213(a), 18 CFR 385.206(b) and 385.213(a), Southern must file an answer to Hilliard's complaint with the Commission unless otherwise ordered by the Commission. Under Rule 213(e), 18 CFR 385.213(e), any person failing to answer a complaint may be considered in default, and all relevant facts stated in such complaint may be deemed admitted. Southern shall file its answer with the Commission not later than 15 days after publication of this notice in the **Federal Register**.

Any person desiring to be heard or to protest said filing should file a protest or a motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214, 18 CFR 385.211 and 385.214. All such protests or motions should be filed not later than 15 days after publication of this notice in the **Federal Register**. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-14530 Filed 6-19-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 4706-000]

Northern States Power Co.; Withdrawal of Application for License

June 13, 1989.

Take notice that Northern States Power Company, applicant for the proposed Hatfield Project No. 4706, has requested that its application for license be withdrawn. The application was filed on May 21, 1981, and is currently competing with the application for license for Project No. 4096-001 filed by Wisconsin Public Power, Inc. and the City of Black River Falls, Wisconsin.

The applicant filed the request on December 22, 1987, and the acceptance of the withdrawal of its application for license for Project No. 4706 shall be effective with the issuance of this notice.

Lois D. Cashell,

Secretary.

[FR Doc. 89-14535 Filed 6-19-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-137-003]

Northwest Pipeline Corp.; Compliance Filing

June 13, 1989.

Take notice that on May 30, 1989, Northwest Pipeline Corporation (Northwest) filed certain revised tariff sheets to its FERC Gas Tariff, to be effective April 1, 1989.

Northwest states that this filing is in compliance with the Commission's order of April 28, 1989, and supports its March 31, 1989 filing, as corrected on May 19, 1989, to recover take-or-pay buyout and buydown costs associated with supplier settlements.

Northwest states that this filing, excluding the confidential portion, is being served on all parties. Northwest states that the confidential portion of its filing contains proprietary and confidential information that could cause Northwest substantial competitive harm if publicly disclosed. Accordingly, Northwest states that Item No. 5 of its submission (related to take-or-pay exposure by settlement year) is submitted only for inclusion in its confidential Volume No. II for confidential treatment under § 388.112 of the Commission's regulations.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such protests should be filed on or before June 20, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-14531 Filed 6-19-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-3-40-000]

Raton Gas Transmission Co.; Filing

June 13, 1989.

Take notice that on June 8, 1989, Raton Gas Transmission Company (Raton) filed Thirteenth Revised Sheet No. 4 to its FERC Gas Tariff, Original Volume No. 1, to be effective July 1, 1989.

Raton states that this filing is made to track supplier, Colorado Interstate Gas Company (CIG) filing to incorporate changed Demand Charges and Cost Allocations required by FERC orders. The filing reflects a Demand Charge decrease of one cent per MCF and Commodity Charge decrease of 0.43 cents per MCF.

Raton states that a copy of this filing has been mailed to its two customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such motions or protests should be filed on or before June 20, 1989.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-14532 Filed 6-19-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3604-2]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382-2740).

DATE: Comments must be submitted on or before July 20, 1989.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Survey of Private Sector Radon Reduction Contractors (EPA ICR # 1418) (New collection).

Abstract: This canvass of radon reduction contractors will collect information on technologies being employed for radon reduction in structures as well as the use, effectiveness, and cost of the techniques. EPA will communicate the results of this survey to States, radon reduction contractors, and the public. EPA will use these data to improve and target its radon reduction programs.

Burden Statement: The estimated average public burden for this collection of information is 2 hours per response per respondent. This estimate includes all aspects of the information collection including time for reviewing instructions and gathering the data needed.

Respondents: Radon reduction contractors.

Estimated No. of Respondents: 1360.

Estimated Total Annual Burden on Respondents: 2,720 hours.

Frequency of Collection: One time only.

Send comments regarding the burden estimate, or any other aspect of these information collections, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street SW., Washington, DC 20460

and

Nicolas Garcia, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place NW., Washington, DC 20530.

Date: June 9, 1989.

Paul Lapsley,

Director, Information and Regulatory Systems Division.

[FR Doc. 89-14562 Filed 6-19-89; 8:45 am]

BILLING CODE 6560-50-M

[FRI-3603-9]

Science Advisory Board; Executive Committee Open Meeting—July 17-18, 1989

Under Pub. L 92-463, notice is hereby given that the Executive Committee of the Science Advisory Board (SAB) will meet on July 17 from 8:30 a.m. to 5:00 p.m. and on July 18 from 8:30 a.m. to 3:00 p.m. in the U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC. North Conference Center, Room #3.

The purpose of the meeting is to enable the Executive Committee to act on reports from its subcommittees and standing committees that have been completed since the last meeting and receive status reports from each of the committees. In addition, the SAB will be

given an update on the Agency's request for advice in the areas of relative risk reduction. The Board will engage in extended discussion about the current and future mission and functions of the SAB.

The meetings are open to the public. Any member of the public wishing to attend should notify Joanna Foellmer or Dr. Donald G. Barnes, Director, Science Advisory Board, at 202–382–4126 by July 13, 1989.

Donald G. Barnes,

Director, Science Advisory Board.

Date: June 13, 1989.

[FR Doc. 89–14563 Filed 6–19–89; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3604–4]

Availability and Review of Proposed Consent Decree and Enforcement Agreement; Ocean Dumping of Sewage Sludge

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and review.

SUMMARY: EPA announces the availability of a proposed judicial consent decree and enforcement agreement (Agreement) for public review and comment in accordance with the requirements of the Ocean Dumping Ban Act of 1988.

EPA has received a complete application from Nassau County Department of Public Works for issuance of a special permit to transport and dispose of sewage sludge under the Marine Protection, Research, and Sanctuaries Act of 1972, 33 U.S.C. 1401. In conjunction with preparing permit conditions for this applicant and making a tentative determination to issue the permit for a term ending on March 17, 1991, EPA has drafted this Agreement to ensure that the applicant aggressively pursues the implementation of alternative disposal methods as required by the Ocean Dumping Ban Act. Nassau County has accepted this Agreement, and EPA has accepted its cessation schedules.

DATE: Comments must be received on or before July 11, 1989.

ADDRESSES: Send comments to: Bruce Kiselica, Chief, Ocean Dumping Task Force, EPA, Region II, 26 Federal Plaza, Room 813, New York, New York 10278–0090.

This proposed Agreement is available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Bruce Kiselica, Chief Ocean Dumping Task Force, EPA, Region II, 26 Federal Plaza, Room 813, New York, New York 10278–0090, (212) 264–5693.

SUPPLEMENTARY INFORMATION: The Ocean Dumping Ban Act of 1988 (the Act) amends the Marine Protection, Research, and Sanctuaries Act (MPRSA) regarding cessation of ocean disposal of sewage sludge. The Act establishes a framework for ending the ocean disposal of sewage sludge and prohibits the dumping of sewage sludge after August 14, 1989 unless the applicant has received a permit and has entered into an Agreement with EPA and the State in which the dumper is located that includes a schedule to end the dumping. The Act makes it unlawful to ocean dump sewage sludge after December 31, 1991. It requires that EPA report to Congress annually on the progress being made in implementing the schedules to end ocean disposal.

Ocean disposal of municipal sewage sludge has occurred since the 1920's. The dumping has occurred at the proposed site designated by EPA, the Deepwater Municipal Sludge Dump Site (the "106-Mile Site"), since March 17, 1988. Previous ocean dumping permits, allowing disposal at the 12-Mile Site, expired on January 9, 1981. Nassau County and all other municipal sewage sludge dumpers are currently using the Deepwater Municipal Sludge Dump Site pursuant to the Judicial Decrees entered as a result of the 1982 final judgment in *City of New York* v. *EPA*, 543 F. Supp. 1084 (1981).

Alternative disposal methods to ocean disposal include incineration, recycling operations, and landfilling. The Act mandates that the applicants implement land-based alternatives. However, such alternatives are not immediately available to the County. For the term of the proposed permit, and beyond if necessary, Nassau County shall aggressively pursue the implementation of alternative disposal methods under this separate proposed Agreement with EPA and the State of New York. In fact, the County and State must enter into such an Agreement with EPA prior to obtaining a permit.

As required by the Act, the proposed Agreement includes schedules with key milestone dates for the implementation of alternatives to ocean dumping, including interim disposal measures as necessary, reporting requirements for monitoring implementation progress, and provisions for payment of ocean dumping fees/penalties. In addition, the proposed Agreement provides for payment of stipulated penalties by the applicant for any violation of the Agreement.

Regarding the specific interim schedules for ceasing ocean disposal and long term schedules for implementing final alternatives to ocean disposal, Nassau County has developed the following plans as part of this Agreement. The County proposed to dewater an out-of-state landfill or use a private vender on an interim basis. It is investigating the full range of sludge management alternatives for use on a long term basis. Nassau County proposes to implement its plans by the following dates:

Interim plan	Long term plan
50%—6/30/91 (phase-out) 100%—12/31/91 (cessation)	12/31/94

The Act established fees for ocean disposal prior to the Decembr 3, 1991 deadline and civil penalties for dumpers who continue dumping after the deadline. The fees are $100, $150, and $200 for each dry ton dumped in 1989 after August 14th, in 1990, and in 1991, respectively. The penalties increase each year starting from $600 per dry ton in 1992. Eighty-five percent of the fees and a portion of the penalties, beginning with 90% in 1992 and declining by 5% each year thereafter, must be deposited in trust accounts to be established by the dumpers. A portion of the remaining funds ($15) goes to EPA, the U.S. Coast Guard, and the National Oceanic and Atmospheric Administration to cover the coss of administering the Act, including the conducting of a monitoring program. Any further available funds go to New York State for specified activities.

The trust account can be used by Nassau County, with EPA's approval, to implement alternatives to ocean disposal. Funds remaining in the trust account after the dumper has ceased dumping are returned to the County to be used for compliance with the Clean Water Act and for reducing debt incurred for compliance, including operations and maintenance costs, with this Act and the Clean Water Act.

New York State is required to make available ten percent of the capitalization grant payments made to it in FY–1990 and 1991 for its State revolving fund under the Federal Water Pollution Control Act and ten percent of the associated State matching funds to assist its ocean dumpers in finding and implementing alternatives to dumping.

The proposed judicial consent decree and enforcement agreement may be inspected, and arrangements made for copying at the above office between 9:00 a.m. and 4:00 p.m., Monday through Friday, except federal holidays. The file supporting the related proposed permits required under the Marine Protection, Research, and Sanctuaries Act is also available for public inspection at the above address. The proposed permits were similarly available during a separate comment period, which closed on April 28, 1989.

Dated: June 14, 1989.

William J. Muszynski, P.E.,

Acting Regional Administrator for Region II.

[FR Doc. 89–14566 Filed 6–19–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL ELECTION COMMISSION

Filing Dates for Florida Special Election

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for Florida special election.

SUMMARY: Florida has scheduled special elections in the 18th Congressional District to fill the seat that was held by the late Representative Claude Pepper. There are three possible special elections, but only two may be necessary.

- Primary Election: August 1, 1989.
- Possible Runoff Election: August 15, 1989. If no candidate wins a majority of votes in his/her party's primary, the two top vote-getters in that party's primary will participate in a runoff election.
- General Election: August 29, 1989

FOR FURTHER INFORMATION CONTACT: Ms. Bobby Werfel, Public Information Office, 999 E Street, NW., Washington, DC 20463, Telephone: (202) 376–3120; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION: Principal campaign committees of candidates who participate in these Florida Special elections must file reports according to the schedules given in charts 1 through 4. The committee treasurer should consult the chart that corresponds to the candidate's situation. Party committees and PACs that make contributions or expenditures in connection with the special elections during the coverage dates listed in the charts must file the appropriate reports. Monthly filers, however, do not file special pre- and post-election reports.

CALENDAR OF REPORTING DATES FOR FLORIDA SPECIAL ELECTION

Report	Period covered	Reg./cert. mailing date [1]	Filing date
Chart 1: Committees involved in only the Special Primary (6/1/89):			
Pre-Primary and Mid-Year [2]	[3]–07/12/89	07/17/89	07/20/89
Year-End	07/13/89–12/31/89	01/31/90	01/31/90
Chart 2: Committees involved in *only* the Special Primary (6/1/89) and Special General (8/29/89):			
Pre-Primary and Mid-Year [2]	[3]–07/12/89	07/17/89	07/20/89
Pre-General	07/13/89–08/09/89	08/14/89	08/17/89
Post-General	08/10/89–09/18/89	09/28/89	09/28/89
Year-End	09/19/89–12/31/89	01/31/90	01/31/90
Chart 3: Committees involved in *both* the Special Primary (6/1/89) and Special Runoff (8/15/89):			
Pre-Primary and Mid-Year [2]	[3]–07/12/89	07/17/89	07/20/89
Pre-Runoff	07/13/89–07/26/89	[4] 08/03/89	08/03/89
Year-End	07/27/89–12/31/89	01/31/90	01/31/90
Chart 4: Committees involved in the Special Primary (6/1/89), Special Runoff (8/15/89) and Special General (8/29/89)			
Pre-Primary and Mid-Year [2]	[3]–07/12/89	07/17/89	07/20/89
Pre-Runoff	07/13/89–07/26/89	[4] 08/03/89	08/03/89
Pre-General	07/27/89–08/09/89	[5] 08/17/89	08/17/89
Post-General	08/10/89–09/18/89	09/28/89	09/28/89
Year-End	09/19/89–12/31/89	01/31/90	01/31/90

Note: If no candidate achieves a majority of the vote in his/her party's Special Primary Election, the top two vote getters from that party's primary go to a Special Runoff Election.

[1] Reports sent by registered or certified mail must be postmarked by the mailing date. Otherwise, they must be received by the filing date.
[2] Commitees may file a consolidated Pre-Primary and Mid-Year Report, provided the report is filed by 7/20/89.
[3] The close of books of the last report filed or the date of the committee's first activity, if no previous reports filed.
[4] Committees involved in the Runoff Election may use the August 3 filing date as the mailing date for their Pre-Runoff Report.
[5] Committees involved in the Runoff and General Elections may use the August 17 filing date as the mailing date for their Pre-General Report.

Dated: June 13, 1989.

Lee Ann Elliott,

Vice-Chairman, Federal Election Commission.

[FR Doc. 89–14500 Filed 6–19–89; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Listing of Controlled Carriers Under the Shipping Act of 1984

AGENCY: Federal Maritime Commission.

ACTION: Amendments to List of Controlled Carriers.

SUMMARY: The Federal Maritime Commission has removed Neptune Orient Lines and Empresa Maritima del Estado from the list of controlled carriers. Information received by the Commission indicates that they no longer meet the definition of a controlled carrier pursuant to section 3(8) of the Shipping Act of 1984. Also, the Commission is adding Tientsen Marine Shipping Company, Chu Kong Shipping Co., Ltd., and Societe Nationale Malgache de Transports Maritimes to the list of controlled carriers, subject to the advance tariff filing and other regulatory requirements of section 9 of the Shipping Act of 1984.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street NW., Washington, DC 25073, (202) 523–5740.

SUPPLEMENTARY INFORMATION: Sections 3 (8) and 9 of the Shipping Act of 1984

("1984 Act"), 46 U.S.C. app. 1702(8) and 1708, provide for the identification and regulation of certain state-controlled carriers operating in the waterborne foreign commerce of the United States. The Commission has determined to delete Neptune Orient Lines ("NOL") and Empresa Maritima, formerly named Empresa Maritima del Estado ("Empremar"), from the list of controlled carriers, because they no longer meet the definition of a controlled carrier set forth at section 3(8) of the 1984 Act.

Information was submitted to the Commission that the Government of Singapore's ("GOS") ownership interest in NOL has been reduced from 100 percent to 47.23 percent as of January 31, 1989, pursuant to a government privatization program. It was reported that, as a result of the state ownership changes, the GOS neither elects a majority of NOL's board of directors, nor controls the appointment of its chief executive officer. The Commission has determined that, because GOS neither owns a majority interest in NOL nor has the right to appoint or disapprove the appointment of a majority of its directors, or its chief executive officer, NOL no longer meets the definition of a controlled carrier and is, therefore, being deleted from the list of controlled carriers.

Empremar submitted information establishing that, although it is owned and controlled by the Government of Chile, it does not operate any vessels under Chilean registry. Further, Empremar reported that it has no plans in the future to operate any vessels under Chilean registry. The Commission determined that, because Empremar is not directly or indirectly owned or controlled by the government under whose registry its vessels operate, it does not meet the definition of a controlled carrier and is, therefore, being deleted from the list of controlled carriers.

Further, the Commission has determined that Tientsin Marine Shipping Company ("Tientsin"), Chu Kong Shipping Company, Ltd. ("Chu Kong"), and Societe Nationale Malgache de Transports Maritimes ("SMTM") meet the definition of a controlled carrier under section 3(8) of the 1984 Act, and are, therefore, being added to the list of controlled carriers.

Upon inquiry by the Commission, Tientsin responded that all of its assets and vessels are indirectly owned and controlled by the Tian Jin Municipality of the Government of the People's Republic of China. Further, it was reported that the Tian Jin Municipality appoints or disapproves the appointment of Tientsin's board of directors, managers and other principal officials. In addition, Tientsin confirmed that it operates Chinese-flag vessels.

Chu Kong responded that it is owned and controlled indirectly by the Government of the People's Republic of China. Further, Chu Kong stated that it owns and operates Chinese-flag vessels.

SMTM admitted that it meets the statutory definition of a controlled carrier. The main shareholder in SMTM is reported to be the Government of Malagasy (Madagascar). SMTM indicated that the Government of Malagasy has the right to appoint or disapprove the appointment of a majority of its directors or its chief operating officer. Further, SMTM submitted that it owns and operates vessels flying the Malagasy flag. One of the vessels operated by SMTM is reportedly owned directly by the Government of Malagasy.

The Commission's list of controlled carriers was previously published in the **Federal Register** on June 1, 1988 [53 FR 20017]. The amended list is shown below:

Baltic Shipping Co.—U.S.S.R.
Bangladesh Shipping Corp.—Bangladesh
Black Sea Shipping Company—U.S.S.R.
Black Star Line—Ghana
Ceylon Shipping Corporation—Sri Lanka
China Ocean Shipping Co.—People's Republic of China
China Resources Transportation & Godown Co., Ltd.—People's Republic of China
Chu Kong Shipping Co., Ltd.—People's Republic of China
Compagnie Maritime Zairoise—Zaire
Compagnie Marocaine de Navigation (COMANAV)—Morocco
Compagnie Nationale Algerienne de Navigation—Algeria
Companhia de Navegacao Lloyd Brasileiro—Brazil
Compania Anonima Venezolana de Navegacion (Venezuelan Line)—Venezuela
Compania Peruana de Vapores (Peruvian State Line)—Peru
Egyptian National Line—Egypt
Far East Enterprising Co. (H.K.), Ltd. (Farenco)—People's Republic of China
Far Eastern Shipping Co.—U.S.S.R.
Flota Bananera Ecuatoriana S.A.—Ecuador
Guangdong International Shipping Co., Ltd.—People's Republic of China
MISR Shipping Company—Egypt
Murmansk Shipping Co. (Arctic Line)—U.S.S.R.
National Shipping Corporation of the Philippines—Philippines
Nauru Pacific Line—Nauru
Nigerian National Shipping Line Limited—Nigeria
P.T. Djakarta Lloyd—Indonesia
Pakistan National Shipping Corporation—Pakistan
Pharaonic Shipping Co. (S.A.E.)—Egypt
Polish Ocean Lines—Poland
Romanian Shipping Company Constanta (NAVROM)—Romania
Shipping Corporation of India—India
Societe Nationale Malgache de Transports Maritimes (SMTM)—Madagascar
Sudan Shipping Line Limited—Sudan
Tientsin Marine Shipping Company—People's Republic of China
Transportes Navieros Ecuatorianos (Transnave)—Ecuador
Zhu Sheng Transportation Co., Ltd.—People's Republic of China

The process of identification and classification of controlled carriers is continuous. This list as shown will be amended as circumstances warrant.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 89-14554 Filed 6-19-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Cascade Bancorporation, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the the Bank Holding Company Act (12 U.S.C. 1842) and 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in action on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 7, 1989.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South La Salle Street, Chicago, Illinois 60690:

1. *Cascade Bancorporation, Inc.,* Altoona, Iowa; to Acquire 90 percent of the voting shares of Wabeno Bancorporation, Inc., Altoona, Iowa, and thereby indirectly Acquire State Bank of Wabeno, Wabeno, Wisconsin.

2. *Illinois Valley Banschares, Inc.,* Elmhurst, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Colonial Trust & Savings Bank, Peru, Illinois, and thereby indirecty acquire Illinois Regional Bank, Bureau County, Princeton, Illinois.

3. *M.O.I. Inc.,* Janesville, Wisconsin; to become a bank holding company by acquiring 84.2 percent of the voting shares of State Bank of Mount Horeb, Mount Horeb, Wisconsin; and 24 percent of the voting shares of State Bank of Argyle, Argyle, Wisconsin.

4. *Wabeno Bancorporation, Inc.,* Altoona, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of State Bank of Wabeno, Wabeno, Wisconsin.

B. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Interstate Bancshares, Inc., Houston, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of interstate Bank North, Houston, Texas.

Board of Governors of the Federal Reserve System, June 14, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-14540 Filed 6-19-89; 8:45 am]

BILLING CODE 6210-01-M

Community National Bancorp. Inc., Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.21(a)(1) of the Board's regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.23(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound "banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 7, 1989.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Community National Bancorp, Inc.,* Staten Island, New York; to engage *de novo* through its subsidiary, Community Mortgage Corporation of New York, New York, New York, in making, acquiring, and servicing loans or other extensions of credit directly or for the account of others, such as would be made by a mortgage company pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 14, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-14541 Filed 6-19-89; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies; Robert J. Schmillen

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and section 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 5, 1989.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South La Salle Street, Chicago, Illinois 60690:

1. *Robert J. Schmillen,* Wenona, Illinois; to increase his ownership to 20.6 percent of the voting shares of Wenona Bancorp, Inc., Wenona, Illinois, as the result of a stock redemption and thereby indirectly acquire Wenona State Bank, Wenona, Illinois.

Board of Governors of the Federal Reserve System, June 14, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-14539 Filed 6-19-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89F-0177]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe, increased use of ethylenebis(oxyethylene)-bis-(3-*tert*-butyl-4-hydroxy-5-methylhydrocinnamate) as a stabilizer for polyoxymethylene copolymers and homopolymers intended for food-contact use.

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (section 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 9B4147) has been filed by Ciba-Geigy Corp., Seven Skyline Dr., Hawthorne, NY 10532-2188, proposing

that § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provide for the safe, increased use of ethylenebis(oxyethylene)-bis-(3-*tert*-butyl-4-hydroxy-5-methylhydrocinnamate) as a stabilizer for polyoxymethylene copolymers and homopolymers intended for food-contact use.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: June 12, 1989.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-14560 Filed 6-19-89; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Announcement and Proposed Criteria for Demonstration of Joint Nursing Graduate Education Program Projects

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) in coordination with the Health Care Financing Administration (HCFA) announces its intent to implement section 8411(a) of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100-647) authorizing a Demonstration of Joint Nursing Graduate Education Programs. Medicare reimbursement rules are modified to promote graduate clinical training opportunities jointly developed by hospitals and educational institutions.

This is a demonstration designed to allow a hospital to be reimbursed for reasonable costs incurred pursuant to a written agreement with an educational institution for certain activities conducted as part of an approved educational program that involves a substantial clinical component (as determined by the Secretary) and leads to a master's or doctoral degree in nursing. For the purpose of these projects, payments for costs incurred will be reimbursed on the same basis as if they were allowable direct costs of a hospital-operated approved educational program (other than an approved graduate medical education program), or as otherwise justified, but only to the extent that such activities are directly related to the operation of the educational program conducted under the written agreement between the hospital and the educational institution. The amount paid under a demonstration project to a hospital for a cost reporting period may not exceed $200,000. Five hospitals are to be selected for participation in this Program and fiscal intermediaries will be authorized to reimburse clinical education costs for reporting periods beginning on or after July 1, 1989, and before July 1, 1994.

For the duration of the project, Medicare will reimburse for reasonable costs incurred by the sponsoring hospital in the provision of clinical experiences for graduate level nursing students at the hospital. The hospital will be required to account separately for the costs of the demonstration project. Medicare will reimburse the hospital for Medicare's share of the additional costs the hospital incurs in connection with the project under the reasonable cost authority in section 1861(v) of the Social Security Act (the Act).

In this demonstration, an emphasis is being placed on cost effectiveness of the projects. Costs are to be estimated for each of the years during which the demonstration project is conducted. The cost and the cost-effectiveness of a proposed project will be considered during the review of applications.

A report to Congress by January 1, 1995 is required on the results of these demonstration projects. Therefore, the sponsoring hospitals will be required to provide both cost-related and programmatic evaluative data on the supply and characteristics of nurses trained under the demonstrations. Sponsors of proposed projects must describe and document areas of additional educational costs associated with the project and these may be reimbursed under section 8411(a) of Pub. L. 100-647. These costs are to be estimated for each of the years of the demonstration project. Additional costs may include: Nursing student stipends; salaries of supervisors of the clinical experience provided to graduate nursing students at the hospital; travel for students and supervisors if the clinical site is remote from the educational institution and/or the hospital itself; and classroom costs. Any reimbursement requests for additional costs will require review by the Medicare intermediaries to determine the accuracy and reasonableness of the claims. Hospitals wishing to apply should note that Medicare will reimburse the hospital only for Medicare's share of the cost. The hospital will be free to seek reimbursement from other payers for costs of the demonstration related to non-Medicare patients. Sponsors are to provide prescribed programmatic data such as the number of students assisted, the nature and type of clinical experience provided, demographic characteristics of the students involved and the employment positions taken by students immediately following graduation.

This Notice invites interested persons to comment on the proposed criteria for the projects which are intended to assist hospitals to provide clinical experience to graduate nursing students. The Notice also requests hospitals interested in entering into an agreement with the Department to notify the Health Resources and Services Administration.

DATES: (1) Written comments from interested persons must be received on or before July 20, 1989, in order to be considered.

(2) To receive consideration to enter into an agreement with the Department to conduct a demonstration project, an expression of interest must be received on or before July 20, 1989. Materials regarding entry into an agreement will be sent only to hospitals making a request.

ADDRESSES: Written comments and requests for information on entering into an agreement and other questions should be directed to: Chief, Advanced Nursing Education Branch, Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 5C-26, 5600 Fishers Lane, Rockville, Maryland 20857. For more information call the Chef, Advanced Nursing Education Branch at (301) 443-6333.

Supplementary Information: On November 10, 1988, the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, was signed into law. Section 8411(a) of Pub. L. 100-647, authorizing Demonstration of Joint Nursing Graduate Education Program Projects, requires the Secretary of Health and Human Services to enter into demonstration agreements with five hospitals which currently receive payments under Medicare. Eligible hospitals may be public or private entities, non profit or for profit. These projects will begin on or after July 1, 1989 and extend through June 30, 1994, and are intended to assist hospitals to provide clinical experience for graduate nursing students. The agreements will be entered into only after proposals for participation are received and a merit review is conducted by the Department. The review of proposals under this demonstration is not subject to the requirements of Executive Order 12372.

Under the agreements, each of the sponsoring hospitals will make arrangements with one or more contracting educational institutions to provide clinical experience for master's and/or doctoral students in those schools. The number of students, the duration of the clinical experience, the geographic location of the experience, the method of student evaluation, the nature of the clinical experience as it relates to the total curriculum, and the proposed nature of any exchange of services or monies between the hospital and the educational institution are to be a part of the written agreement between the sponsoring hospital and the contracting educational institution(s).

Section 8411(a) of Pub. L. 100-647 requires that the contracting educational institution provide an approved education program that (a) involves a substantial clinical component (as described by the Secretary) and (b) leads to a master's or doctoral degree in nursing. For purposes of these projects, a "substantial clinical component" is described as a period of directed clinical experience provided as a component of a graduate course in nursing, which is intended to prepare the graduate as a specialist in a clinical area of nursing, rather than in a functional area, such as nursing education, nursing administration or nursing research. The Secretary's Commission on Nursing has reported that the greatest nursing shortage exists in in-patient adult and critical care units in hospitals (Final Report, Vol. I, December, 1988).

Proposed Project Criteria

The Department proposes to establish the following criteria for the Demonstration of Joint Nursing Graduate Education Programs:

(1) For the purpose of this demonstration, only hospitals participating in the Medicare Program are eligible for consideration as sponsoring hospitals.

(2) Only students enrolled in a master's or doctoral program designed to prepare specialists in clinical areas of nursing would be eligible for participation in the demonstration projects. Students must be licensed to practice as registered nurses in the state in which the sponsoring hospital is located.

(3) Contracting educational institutions must be state approved schools of nursing.

(4) Only hospitals submitting cost related and programmatic evaluative data necessary to allow the Secretary to determine the cost effectiveness of the Program will be considered.

Interested persons are invited to comment on the proposed criteria for the demonstration projects. Normally, the comment period would be 60 days. However, due to the need to implement the projects as quickly as possible, the comment period has been reduced to 30 days. All comments received on or before July 20, 1989, will be considered before final project criteria are established.

All comments received will be available for public inspection and copying at the Division of Nursing, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted), between the hours of 8:30 a.m. and 5:00 p.m.

Dated: June 14, 1989

John H. Kelso,

Acting Administrator.

[FR Doc. 89-14555 Filed 6-19-89; 8:45 am]

BILLING CODE 4160-15-M

Public Health Service

Centers for Disease Control; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HC (Centers for Disease Control) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772-67776, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 53 FR 46944, November 21, 1988) is amended to reflect the following organizational changes within the Public Health Practice Program Office:

1. Revision of the functional statement for the *Office of the Director (HCH1).*

2. Revision of the functional statements and changes in the titles of the three Divisions.

Section HC-B, Organization and Functions, is hereby amended as follows:

After the heading and mission statement for the *Public Health Practice Program Office (HCH),* delete in their entirety the headings and functional statements for the *Office of the Director (HCH1),* the *Division of Assessment and Management Consultation (HCH2),* the *Division of Training (HCH3),* and the *Division of Technical Services (HCH4)* and substitute the following:

Office of the Director (HCH1). (1) Directs and coordinates the activities of the Public Health Practice Program Office (PHPPO): (2) develops long-range plans, sets annual objectives and monitors progress toward their achievement, and evaluates results; (3) provides leadership and scientific oversight; (4) coordinates PHPPO collaborative activities with other CDC components, other Federal agencies, States, professional societies and private health organizations, and international health organizations; (5) serves as a focal point for policy regarding the memorandum of understanding with the Health Care Financing Administration; (6) interacts with public, private, academic, and voluntary sectors of the health community to foster consensus development and adoption of public health practices and laboratory practices which are consistent with other Centers, Institute, and Offices of CDC and which provide for effective responses to the Nation's health problems; (7) along with other Centers, Institute, and Offices, serves as an advisor to the Director, CDC, in matters relating to public health systems, laboratory systems, and training communications; (8) monitors legislative interests relative to Program activities and develops initiatives consistent with public health needs; (9) establishes policies and provides guidance in support of the Program's operational needs; (10) provides administrative and support services to PHPPO.

Division of Public Health Systems (HCH5). (1) Assesses and monitors the capacity of State and local Public Health agencies to carry out their primary roles of assessment, policy development, and assurance; (2) promotes the development and adoption of performance standards for the practice of public health; (3) identifies planning, management, evaluation and training needs of State and local public health agencies and disseminates assessment results; (4) provides technical assistance, consultation, and training to improve the capacity of State and local health agencies to establish and apply effective management systems; (5) evaluates the effectiveness of PHPPO's assistance, consultation, and training efforts; (6) fosters the enhanced role of academic institutions and health centers in prevention research and the practice of public health and preventive medicine; (7) facilitates the integration of prevention research findings into health care delivery and public health practice; (8) conducts demonstration projects to strengthen the capacity of State and local health agencies to carry out their primary roles of assessment,

policy development, and assurance; (9) develops strategies which promote the transfer of effective management technology; (10) in carrying out the above functions, collaborates with other components of PHPPO and with other Centers, Institute, and Offices of CDC, and where another Center, Institute, or Office has the lead responsibility, provides support to and works in conjuction with the other Centers, Institute, or Offices.

Division of Laboratory Systems (HCH6). (1) Encourages the establishment and adoption of performance standards for laboratory practice; (2) develops, evaluates, and implements systems for measurement and assessment of laboratory quality; (3) develops, promotes, implements, and evaluates intervention strategies to correct general performance deficiencies in health laboratory systems and workers; (4) provides a forum for exchange of general information about laboratory practice and research and development activities to promote the coordination of Federal, State, and private laboratory improvement efforts; (5) facilitates and conducts research and demonstration (a) to support the scientific development of performance standards, evaluation systems, and regulatory standards, and (b) to assess the efficacy of established standards; (6) promotes, develops, and implements training needs assessment methodology to establish priorities for training interventions; (7) develops and conducts training to facilitate the timely transfer of newly emerging laboratory technology and standards for laboratory practice; (8) provides technical assistance, consultation, and training for trainers to improve the capacity and capability of regional organizations and State health agencies to develop and maintain decentralized training networks for laboratory professionals; (9) coordinates and conducts activities that provide technical and scientific support to HCFA in its evaluation, development, and revision of standards and guidelines; (10) in carrying out the above functions, collaborates with other components of PHPPO and with other Centers, Institute, and Offices of CDC, and where another Center, Institute, or Office has the lead responsibility, provides support to and works in conjunction with the other Center, Institute, or Office.

Division of Media and Training Services (HCH7). (1) Fosters the development and adoption of quality standards for CDC media and instructional products; (2) assists in the definition and analysis of training needs of public health workers, and develops and evaluates instructional products designed to meet those needs; (3) collaborates in the development of communication systems between CDC and other public health organizations; (4) designs and produces a variety of visual materials for instructional and presentational activities; (5) designs, produces, and delivers informational and instructional television products; (6) provides scientific and general photographic services; (7) manages the Self-study Instruction Program; (8) manages the inventory and distribution of selected presentational products; (9) manages the CDC learning environment through classroom and meeting support for Atlanta facilities; (10) provides conference consultation and administers the Conference Support Grant Program; (11) registers participants of laboratory and public health courses offered by PHPPO; (12) coordinates the collection, analysis, and dissemination of data on CDC's public health training activities; (13) in carrying out the above functions, collaborates with other components of PHPPO and with other Centers, Institute, and Offices of CDC, and where another Center, Institute, or Office has the lead responsibility, provides support to and works in conjunction with the other Center, Institute, or Office.

Effective Date: June 8, 1989.

James O. Mason,

Assistant Secretary for Health.

[FR Doc. 89-14564 Filed 6-19-89; 8:45 am]

BILLING CODE 4160-18-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-89-2005]

DART Associates, Inc.; Hearing

AGENCY: Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of hearing in the matter of DART Associates, Inc., HUDALJ 89-02-MH.

SUMMARY: A hearing pursuant to 24 CFR 3282.152(g) will commence at 9:30 a.m. on July 10, 1989 in Room 2155, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, on the Secretary of Housing and Urban Development's determination that DART Associates, Inc. will be suspended on September 1, 1989 from acting as a Production Inspection Primary Inspection Agency, pursuant to 24 CFR 3282.355(d), and, on the preliminary determination that DART Associates, Inc. should be disqualified as a Production Inspection Primary Inspection Agency pursuant to 24 CFR 3282.356(a).

FOR FURTHER INFORMATION CONTACT: Honorable Alan W. Heifetz, Administrative Law Judge, U.S. Department of Housing and Urban Development, Room 2156, 451 Seventh Street SW., Washington, DC 20410, Telephone: (202) 755-2540.

SUPPLEMENTARY INFORMATION: The Secretary of Housing and Urban Development (Secretary) administers the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5401 *et seq.* (the Act) and its regulations, 24 CFR Part 3282. Based on monitoring reports and on information available to him through the Office of Manufactured Housing and Regulatory Functions, he has determined that DART Associates, Inc. (DART) has been performing its functions as a Production Inspection Primary Inspection Agency (PIPIA) inadequately. Based upon this determination, the Secretary has suspended DART as a PIPIA effective September 1, 1989. This suspension is made pursuant to 24 CFR 3282.355(d). In addition, the Secretary has made a preliminary determination that DART should be disqualified as a PIPIA under 24 CFR 3282.356(a). Upon the request of DART, the Secretary is giving DART a Formal Presentation of Views as set out in 24 CFR 3282.152(g). Following the Presentation of Views, the Administrative Law Judge will determine whether it is appropriate to lift the suspension so that DART will remain a PIPIA or whether it is appropriate to disqualify DART. The Secretary's actions are based on his findings that DART has failed to comply with the PIPIA requirements set forth in 24 CFR 3282.353, 3282.351(b)(3), 3282.351(b)(4), 3282.358(a), 3282.362(a)(1)(i), 3282.362(a)(1)(ii), 3282.362(a)(1)(iii), 3282.362(a)(1)(v), 3282.362(b)(1) and 3282.362(c)(1).

A Presentation of Views will be held under the authority of the Act and 24 CFR Part 3282, Subpart D. The parties to this proceeding are the Secretary and DART. The purpose of this proceeding is to determine whether DART has failed to comply with the indicated regulations and whether suspension and disqualification actions are appropriate.

This Presentation of Views will be held in accordance with the provisions of 24 CFR 3282.152(g). Administrative Law Judge Alan W. Heifetz is hereby designated as the presiding officer for the proceedings. All inquiries concerning these proceedings should be directed to Judge Heifetz. The Presentation of Views will commence at 9:30 a.m. on July 10, 1989 in Room 2155, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

In determining that the requirements of 25 CFR 3282.152(g) shall apply in this case, the Secretary has considered the factors set forth at 24 CFR 3282.152(c)(4) and the request by DART that the Presentation of Views be formal.

Further, this is an important case which may have serious economic consequences for DART, thereby justifying a formal due process hearing. This case also involves complex technical issues and differing interpretations of the HUD Standards (24 CFR Part 3280), and under such circumstances, an adversary proceeding with cross-examination and sworn testimony available under 24 CFR 3282.152(g) is appropriate. In view of these factors, the Secretary has determined that a Presentation of Views under 24 CFR 3282.152(g) is appropriate.

Interested persons may participate in writing and in the oral portion of the Presentation of Views pursuant to 24 CFR 3282.153. The presiding officer may determine that such participation should be limited or barred so as not to unduly prejudice the rights of the parties involved or unnecessarily delay the proceedings.

Issued at Washington, DC, on June 13, 1989.

Stephen A. Martin,

Acting Deputy Assistant Secretary for Single-Family Housing.

[FR Doc. 89-14499 Filed 6-19-89; 8:45 am]

BILLING CODE 4210-27-M

[Docket No. N-89-2005]

DART Associates, Inc.; Hearing

AGENCY: Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of Hearing In the Matter of DART Associates, Inc. HUDALJ 89-01-MH.

SUMMARY: A hearing pursuant to 24 CFR 3282.152(g) will commence at 9:30 a.m. on July 10, 1989 in Room 2155, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, on the Secretary of Housing and Urban Development's determination that DART Associates, Inc. will be suspended on September 1, 1989 from acting as a Design Approval Primary Inspection Agency, pursuant to 24 CFR 3282.355(d), and, on the preliminary determination that DART Associates, Inc. should be disqualified as a Design Approval Primary Inspection Agency pursuant to 24 CFR 3282.356(a).

FOR FURTHER INFORMATION CONTACT: Honorable Alan W. Heifetz, Administrative Law Judge, U.S. Department of Housing and Urban Development, Room 2156, 451 Seventh Street, SW., Washington, DC 20410, Telephone: (202) 755-2540.

SUPPLEMENTARY INFORMATION: The Secretary of Housing and Urban Development (Secretary) administers the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5401 et seq. (the Act) and its regulations, 24 CFR Part 3282. Based on monitoring reports and on information available to him through the Office of Manufactured Housing and Regulatory Functions, he has determined that DART Associates, Inc. (DART) has been performing its functions as a Design Approval Primary Inspection Agency (DAPIA) inadequately. Based upon this determination, the Secretary has suspended DART as a DAPIA effective September 1, 1989. This suspension is made pursuant to 24 CFR 3282.355(d). In addition, the Secretary has made a preliminary determination that DART should be disqualified as a DAPIA under 24 CFR 3282.356(a). Upon the request of DART, the Secretary is giving DART a Formal Presentation of Views as set out in 24 CFR 3282.152(g). Following the Presentation of Views, the Administrative Law Judge will determine whether it is appropriate to lift the suspension so that DART will remain DAPIA or whether it is appropriate to disqualify DART. The Secretary's actions are based on his findings that DART has failed to comply with the DAPIA requirements set forth in 24 CFR 3282.353, 3282.351(b)(1), 3282.358(a), 3282.361(a)(1), 3282.361(b)(1), 3282.361(b)(2), 3282.361(b)(3), 3282.361(b)(4) and 3282.361(c)(3).

A Presentation of Views will be held under the authority of the Act and 24 CFR Part 3282 Subpart D. The parties to this proceeding are the Secretary and DART. The purpose of this proceeding is to determine whether DART has failed to comply with the indicated regulations and whether suspension and disqualification actions are appropriate.

This Presentation of Views will be held in accordance with the provisions of 24 CFR 3282.152(g). Administrative Law Judge Alan W. Heifetz is hereby designated as the presiding officer for the proceedings. All inquiries concerning these proceedings should be directed to Judge Heifetz. The Presentation of Views will commence at 9:30 a.m. on July 10, 1989 in room 2155, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

In determining that the requirements of 24 CFR 3282.152(g) shall apply in this case, the Secretary has considered the factors set forth at 24 CFR 3282.152(c)(4) and the request by DART that the Presentation of Views be formal.

Further, this is an important case which may have serious economic consequences for DART, thereby justifying a formal due process hearing. This case also involves complex technical issues and differing interpretations of the HUD Standards (24 CFR Part 3280), and under such circumstances, an adversary proceeding with cross-examination and sworn testimony available under 24 CFR 3282.152(g) is appropriate. In view of these factors, the Secretary has determined that a Presentation Views under 24 CFR 3282.152(g) is appropriate.

Interested persons may participate in writing and in the oral portion of the Presentation Views pursuant to 24 CFR 3282.153. The presiding officer may determine that such participation should be limited or barred so as not to unduly prejudice the rights of the parties involved or unnecessarily delay the proceedings.

Issued at Washington, DC., on June 13, 1989.

Stephen A. Martin,

Acting Deputy Assistant Secretary for Single Family Housing.

[FR Doc. 89-14498 Filed 6-19-89; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-930-09-4212-22]

Filing of Plats of Survey; Nevada

June 9, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the latest filing of Plats and Survey in Nevada.

BEST COPY AVAILABLE

EFFECTIVE DATES: Filings were effective at 10:00 a.m. on June 7, 1989.

FOR FURTHER INFORMATION CONTACT: Lacel Bland, Chief, Branch of Cadastral Survey, Bureau of Land Management, (BLM), Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520, 702–328–6341.

SUPPLEMENTARY INFORMATION: The Plats of Survey of lands described below were officially filed at the Nevada State Office, Reno, Nevada on the date indicated.

Mount Diablo Meridian, Nevada

	Group No.
T. 16 S., R. 65 E.—Dependent Resurvey and Survey	638
T. 17 S., R. 65 E.—Dependent Resurvey	638
T. 17 S., R. 66 E.—Dependent Resurvey	638
T. 18 N., R. 66 E.—Dependent Resurvey	653
T. 16 N., R. 67 E.—Dependent Resurvey	653
T. 17 N., R. 67 E.—Dependent Resurvey	653

All the surveys were accepted on May 30, 1989. The surveys in Group 653 were executed to meet certain administrative needs of the Bureau of Land Management. The surveys in Group 638 were executed to meet certain administrative needs of the Bureau of Indian Affairs.

All of the above-listed surveys are now the basic record for describing the lands for all authorized purposes. The surveys will be placed in the open files in the BLM Nevada State Office and will be available to the public as a matter of information. Copies of the surveys and related field notes may be furnished to the public upon payment of the appropriate fee.

Fred Wolf,

Associate State Director, Nevada.

[FR Doc. 89–14580 Filed 6–19–89; 8:45 am]

BILLING CODE 4310–HC–M

Minerals Management Service

Official Protraction Diagrams Publication; Notice of Availability

AGENCY: Minerals Management Service.

ACTION: Publication of revised outer continental shelf official protraction diagrams.

SUMMARY: Notice is hereby given that effective with this publication, the following OCS Official Protraction Diagrams, last revised on April 27, 1989, or May 2, 1989, are on file and available for information only, in the Gulf of Mexico OCS Regional Office, New Orleans, Louisiana. In accordance with Title 43, Code of Federal Regulations, these Official Protraction Diagrams are the basic record for the description of mineral and oil and gas lease sales in the geographic areas they represent.

REVISED MAPS [1]

Description	Latest Revision Date
Port Isabel, NG 14–6	Apr. 27, 1989.
Alaminos Canyon, NG 15–4	Apr. 27, 1989.
Keathley Canyon, NG 15–5	Apr. 27, 1989.
NG 15–8	Apr. 27, 1989.
NG 15–9	Apr. 27, 1989.
NG 16–7	Apr. 27, 1989.
Rankin, NG 16–12	May 2, 1989.

[1] Changes include relabeling of the maritime boundary, and/or wording of notes. There are no changes in block acreages or shapes.

ADDRESSES: Copies of these Official Protraction Diagrams may be purchased for $2.00 each from Public Information Unit (OPS–3–4), Minerals Management Service, Gulf of Mexico OCS Regional Office, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394 (504) 736–2519.

Technical comments or questions pertaining to these maps should be directed to Office of Leasing and Environment, Supervisor, Sales and Support Unit (504) 736–2761.

Date: June 6, 1989

J. Rogers Pearcy,

Regional Director, Minerals Management Service, Gulf of Mexico OCS Region.

[FR Doc. 89–14497 Filed 6–19–89; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 10, 1989. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by July 5, 1989.

Carol D. Shull,

Chief of Registration, Notionol Register.

CALIFORNIA

Los Angeles County

Ramsay-Durfee Estate, 2425 S. Western Ave., Los Angeles, 89000621

Marin County

Station KPH Operating Station, 18500 CA 1, Marshall, 89000619

Station KPH—Marconi Wireless Telegraph Company of America, 18500 CA 1, Marshall, 89000620

San Diego County

Mission Brewery, 1715 Hancock St., San Diego, 89000805

GEORGIA

Crisp County

Cordele Commercial Historic District, Roughly bounded by Sixth Ave., Sixth St., Ninth Ave., and Fourteenth St., Cordele, 89000803

Fulton County

Hotel Row Historic District, 205–235 Mitchell St., Atlanta, 89000802

Washington County

North Harris Street Historic District, Roughly bounded by First Ave., Washington Ave., E. McCarty St., N. Harris St., Malone St., and Warthen St., Sandersville, 89000801

IOWA

Lee County

St. John's Episcopal Church and Parish Hall, 4th and Concert, Keokuk, 89000806

KANSAS

Saline County

US Post Office and Federal Building—Salina (Kansas Post Offices with Artwork, 1936–1942 MPS), 211 W. Iron, Salina, 89000793

Sedgwick County

US Post Office and Federal Building—Wichita (Kansas Post Offices with Artwork, 1936—1942 MPS), *401 N. Market, Wichita, 89000792*

MARYLAND

Baltimore County

Choate House, 9600 Liberty, Randallstown vicinity, 89000807

Half-Way House (Boundary Increase), York Rd. and Weisburg Rd., Parkton vicinity, 89000809

MONTANA

Custer County

Main Street Historic District, Roughly Main St. from Praire Ave. to Fourth St., Miles City, 89000808

NEBRASKA

Franklin County

Lincoln Hotel, 519 15th Ave., Franklin, 89000799

NEW JERSEY

Atlantic County

Linwood Historic District, Roughly Shore Rd. from Royal Ave. to Sterling Ave., Linwood, 89000800

Monmouth County

Coward—Smith House, Burlington Path Rd., Upper Freehold, 89000804

SOUTH CAROLINA

Union County

East Main Street—Douglas Heights Historic District (Union MPS), Roughly bounded by Perrin Ave., S. Church St., and E. Main St., and 100–121 Douglas Heights, Union, 89000796

South Street Historic District (Boundary Increase) (Union MPS), Roughly S. Church St. from South St. to Henrietta St., Union, 89000798

Union Downtown Historic District (Union MPS), Roughly bounded by E. Academy, N. Church, Main, and N. Herndon Sts., Sharpe Ave., and N. Gadberry St., Union, 89000795

Union High School—Main Street Grammar School (Union MPS), E. Main and N. Church Sts., Union, 89000797

WYOMING

Campbell County

Mine Mile Segment, Bozeman Trail (48CA264) (Bozeman Trail in Wyoming MPS), Address Restricted, Pine Tree Junction vicinity, 89000813

Converse County

Antelope Creek Crossing (48C0171 and 48C0165) (Bozeman Trail in Wyoming MPS), Address Restricted, City Unavailable, 89000816

Holdup Hollow Segment, Bozeman Trail (48C0165) (Bozeman Trail in Wyoming MPS), Address Restricted, City Unavailable, 89000818

Ross Flat Segment, Bozeman Trail (48C0165) (Bozeman Trail in Wyoming MPS), Address Restricted, City Unavailable, 89000611

Sage Creek Station (48C0104) (Bozeman Train in Wyoming MPS), Address Restricted, Glenrock vicinity, 89000812

Stinking Water Gulch Segment, Bozeman Trail (48C0165) (Bozeman Train in Wyoming MPS), Address Restricted, City Unavailable, 89000817

Johnson County

Lake Desmet Segment, Bozeman Trail (Bozeman Trail in Wyoming MPS), Address Restricted, City Unavailable, 89000814

Powder River Station—Powder River Crossing (48J0134 and 48J0801) (Bozeman Trail in Wyoming MPS), Address Restricted, Sussex vicinity, 89000610

Trabing Station—Crazy Woman Crossing (Bozeman Trail in Wyoming MPS), Address Restricted, City Unavailable, 89000815

[FR Doc. 89–14580 Filed 6–19–89; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Public Information Collection Requirements Submitted to OMB for Review

The Agency for International Development (A.I.D.) submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry no later than ten days after publication. Comments may also be addressed to, and copies of the submissions obtained from the Reports Management Officer, John H. Elgin, (703) 875–1608, IRM/PE, Room 1100B, SA–14, Washington, DC 20523–1407.

Date Submitted: June 7, 1989.

Submitting Agency: Agency for International Development.

OMB Number: 0412–0003.

Form Number: AID–1550–3.

Type of Submission: Extension.

Title: Title II, Pub. L. 480 Commodities-Annual Estimate of Requirements—FY 19—.

Purpose: The AER is used by the Office of Food for Peace to obtain information critical for the planning and budgeting cycle of the Pub. L. 480 Title II Program. The AERs include planned recipient and ration levels, number of distributions, operating reserves that are needed and inventories on hand.

Reviewer: Donald Arbuckle (202) 395–7340, Office of Management and Budget, Room 3201, New Executive Office Building, Washington, DC 20503.

Date: June 6, 1989.

Wayne H. Van Vechten,

Planning and Evaluation Division.

[FR Doc. 89–14496 Filed 6–19–89; 8:45 am]

BILLING CODE 6116–01–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–55 (Sub-No. 297X); Docket No. AB-290 (Sub-No. 67X]

CSX Transportation, Inc., and Southern Railway, Company—Abandonment Exemption—Between Burnside and Fort Jackson, in Richland County, SC

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904, the abandonment by CSX Transportation, Inc., and Southern Railway Company of their jointly owned 1.52-mile line of railroad in Richland County, SC, subject to standard labor protective conditions.

DATE: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 20, 1989. Formal expressions of intent to file an offer[1] of financial assistant under 49 CFR 1152.27(c)(2) must be filed by June 30, 1989, petitions to stay must be filed by July 5, 1989, and petitions for reconsideration must be filed by July 17, 1989. Requests for a public use condition must be filed by June 30, 1989.

ADDRESSES: Send pleadings referring to Docket Nos. AB–55 (Sub-No. 297X) and AB–290 (Sub-No. 67X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423 and

(2) Petitioners' representatives: Patricia Vail, CSX Transportation, Inc., 500 Water Street—J150, Jacksonville, FL 32202

F. Blair Wimbush, Southern Railway Company, 3 Commercial Place, Norfolk, VA 23510–2191

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275–7245. [TDD for hearing impaired: (202) 275–1721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202 289–4357/4359. [Assistance for hearing impaired is available through TDD services (202) 275–1721.]

Decided: June 12, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89–14578 Filed 6–19–89; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31448]

Joint Use by CSX Transportation, Inc., and Burlington Northern Railroad Co. of Facilities at Memphis, TN—Petition for Exemption Under 49 U.S.C. 10505

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505 the Interstate Commerce Commission

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the Federal Register of December 22, 1987 (52 FR 48440–48446).

exempts Burlington Northern Railroad Company and CSX Transportation, Inc., from the prior approval requirements of 49 U.S.C. 11343, *et seq.*, for their joint use of certain track and facilities at Memphis, TN. The exemption is subject to employee protective conditions.

DATES: This exemption is effective on June 27, 1989. Petitions for reconsideration must be filed by July 17, 1989.

ADDRESSES: Send pleadings referring to Finance Docket No. 31448 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioners' representatives: Lawrence H. Richmond, 100 North Charles Street, Baltimore, MD 21201 and Ethel A. Allen, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275-7245. [TDD for hearing impaired: (202) 275-1721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services, (202) 275-1721.]

Decided: June 12, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89-14579 Filed 6-19-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Information Collection(s) Under Review

June 15, 1989.

The Office of Management and Budget (OMB) has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories. Each entry contains the following information: (1) The title of the form or collection; (2) the agency form number, if any and the applicable component of the Department sponsoring the collection; (3) how often the form must be filled out or the information is collected; (4) who will be asked or required to respond, as well as a brief abstract; (5) an estimate of the total number of respondents and the amount of estimated time it takes each respondent to respond; (6) an estimate of the total public burden hours associated with the collection; and, (7) an indication as to whether section 3504(h) of Pub. L. 96-511 applies. Comments and/or questions regarding the item(s) contained in this notice, especially regarding the estimated response time, should be directed to the OMB reviewer, Mr. Edward Clarke, on (202) 395-7340 AND to the Department of Justice's Clearance Officer. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should so notify the OMB reviewer AND the Department of Justice's Clearance Officer of your intent as soon as possible. The Departmernt of Justice's Clearance Officer is Mr. Larry E. Miesse who can be reached on (202) 633-4312.

New Collection Note

An expedited OMB review after a ten day public comment period has been requested. A copy of the form is included in this notice.

(1) Application for Employment Authorization.

(2) I-765, Immigration and Naturalization Service.

(3) On occasion.

(4) Individuals or households. This information will be used by the Immigration and Naturalization Service to determine eligibility for employment authorization under 8 CFR 2777a.12(a) or (c). The issuance of employment authorization documentation will also be based upon information provided.

(5) 1,000,000 respondents at 1 hour each.

(6) 1,000,000 estimated annual public burden hours.

(7) Not applicable under 3504(h).

Larry E. Miesse,

Department Clearance Officer, Department of Justice.

BILLING CODE: 4410-10-M

DRAFT

U. S. Department of Justice
Immigration and Naturalization Service

Application for Employment Authorization

How to File:
A separate application must be filed by each applicant. Applications must be typewritten or clearly printed in ink and completed in full. If extra space is needed to answer any item, attach a continuation sheet and indicate your name, A-number (if any) and the item number. **Note:** It is recommended that you retain a complete copy of your application for your records.

Where should you file this application?
Applications must be presented in person to the nearest Immigration and Naturalization Service (INS) Office that processes employment authorization applications within the jurisdiction over your place of residence. Please bring your INS Form I-94 and any document issued to you by the INS granting you previous employment authorization.

What is the fee?
Applicants must pay a fee of $35.00 to file this form unless otherwise noted on the reverse of the form. Please refer to page 3. If required, the fee will not be refunded. Pay by cash or money order in the exact amount. All money orders must be payable in U.S. currency in the United States. Make check or money order payable to "Immigration and Naturalization Service." However, if you live in Guam make it payable to "Treasurer, Guam," or if you live in the U.S. Virgin Islands make it payable to "Commissioner of Finance of the Virgin Islands."

Basic Criteria to Establish Economic Necessity:
Title 45 - Public Welfare, Poverty Guidelines, 45 CFR 1060.2 shall be used as the basic criteria to establish eligibility for employment authorization when the applicant's economic necessity is identified as a factor. The applicant shall include a statement listing all of his or her assets, income, and expenses as evidence of his or her economic need to work.

Note: Not all applicants are required to establish economic necessity. Carefully review the eligibility section of the application. Only aliens who are filing for employment authorization under CFR 274a.12(c), (10), (13), or (14) are required to furnish this information. This information must be furnished on attached sheet(s) and submitted with this application.

What is our authority for collecting this information?
The authority to require you to file Form I-765, Application for Employment Authorization, is contained in the "Immigration Reform and Control Act of 1986." This information is necessary to determine whether you are eligible for employment authorization and for the preparation of your Employment Authorization Document if you are found eligible. Failure to provide all information as requested may result in the denial or rejection of this application.

The information you provide may also be disclosed to other federal, state, local and foreign law enforcement and regulatory agencies during the course of the investigation required by this Service.

What are the penalties for submitting false information?
Title 18, United States Code, Section 1001 states that whoever willfully and knowingly falsifies a material fact, makes a false statement, or makes use of a false document will be fined up to $10,000 or imprisoned up to five years, or both.

Title 18, United States Code, Section 1546(a) states that whoever makes any false statement with respect to a material fact in any document required by the immigration laws or regulations, or presents an application containing any false statement shall be fined or imprisoned or both.

Please Complete Both Sides of Form.

Reporting Burden:
Public reporting burden for this collection of information is estimated to average sixty (60) minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: U.S. Department of Justice, Immigration and Naturalization Service, Room 2011, Washington, D.C. 20536; and to the Office of Management and Budget, Paperwork Reduction Project: OMB No. 1115-XXXX, Washington, D.C. 20503.

Form I-765 (6/15/89) Page 1

U.S. Department of Justice
Immigration and Naturalization Service

DRAFT

OMB # 1115-XXXX
Application for Employment Authorization

Do Not Write in This Block — **Please Complete Both Sides of Form**

Case ID#	Action Stamp	Fee Stamp
A#		
Applicant is filing under 274a.12 ____		Remarks

☐ Application Approved. Employment Authorized / Extended (Circle One) until _____ (Date).
Subject to the following conditions: _____

☐ Application Denied.
☐ Failed to establish eligibility under 8 CFR 274a.12 (a) or (c).
☐ Failed to establish economic necessity as required in 8 CFR 274a.12(c), (10), (13), (14).

I am applying for: ☐ Permission to accept employment
☐ Replacement (of lost employment authorization document).
☐ Extension of my permission to accept employment (attach previous employment authorization document).

1. Name (Family Name in CAPS) (First) (Middle)

2. Other Names Used (Include Maiden Name)

3. Address in the United States (Number and Street) (Apt. Number)

(Town or City) (State/Country) (ZIP Code)

4. Country of Citizenship

5. Place of Birth (Town or City) (State/Province) (Country)

6. Date of Birth (Month/Day/Year) 7. Sex ☐ Male ☐ Female

8. Marital Status ☐ Married ☐ Single ☐ Widowed ☐ Divorced

9. Social Security Number (Include all Numbers you have ever used)

10. Alien Registration Number (A Number) or I-94 Number (if any)

11. Have you ever before applied for employment authorization from INS? ☐ Yes (If yes, complete below) ☐ No
Which INS Office? Date(s)
Results (Granted or Denied - attach all documentation)

12. Date of Last Entry into the U.S. (Month/Day/Year)

13. Place of Last Entry into the U.S.

14. Manner of Last Entry (Visitor, Student, etc.)

15. Current Immigration Status (Visitor, Student, etc.)

16. Go to the Eligibility Section on the reverse of this form and check the box which applies to you. In the space below, place the number of the box you selected on the reverse side:
Eligibility under 8 CFR 274a.12
( ) ( )

Complete the reverse of this form before signature.

Your Certification: I certify, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct. Furthermore, I authorize the release of any information which the Immigration and Naturalization Service needs to determine eligibility for the benefit I am seeking. I have read the reverse of this form and have checked the appropriate block, which is identified in item #16, above.

Signature Telephone Number Date

Signature of Person Preparing Form if Other Than Above: I declare that this document was prepared by me at the request of the applicant and is based on all information of which I have any knowledge.

Print Name Address *Signature* Date

Initial Receipt	Resubmitted	Relocated		Completed		
		Rec'd	Sent	Approved	Denied	Returned

Form I-765 (06/15/89) Page 2

Eligibility

Pursuant to federal regulations at 8 CFR 274a.12 (a) and any statutory or regulatory references cited, if you are within one of the following classes, you are authorized to be employed in the United States without restrictions as to location or type of employment as a condition of your admission or subsequent change to one of the indicated classes. Upon a determination that you are a member of one of the classes listed in 8 CFR 274a.12 (a) (3) through (11), employment authorization may be granted for the period of time that you are in that status or classification. (Note that 8 CFR 274a.12 (a) (1) and (2) classes already have documentation that confers work authorization.) **Place an "X" in the block next to the number that describes your status or classification.**

☐ (a)(3) Admitted to the United States as a refugee pursuant to section 207 of the Immigration and Nationality Act (INA). (Fee Required for Extension or Replacement)

☐ (a)(4) Paroled into the United States as a refugee. (Fee Required for Extension or Replacement)

☐ (a)(5) Granted asylum under section 208 of the INA. (Fee Required for Extension or Replacement)

☐ (a)(6) Admitted to the United States as a nonimmigrant fiance or fiancee pursuant to section 101 (a) (15) (K) of the INA, or admitted as the child of such nonimmigrant fiance or fiancee. (Fee Required for Replacement)

☐ (a)(7) Admitted as a parent (N-8) or dependent child (N-9) of an alien granted permanent residence under section 101 (a) (27) (I) of the INA. (Fee Required for Extension or Replacement)

☐ (a)(8) Admitted to the United States as a citizen of the Federated States of Micronesia (CFA/FSM) or of the Marshall Islands (CFA/MIS) pursuant to agreements between the United States and the former trust territories. (Fee Required for Extension or Replacement)

☐ (a)(9) Granted suspension of deportation under section 244 (a) of the INA. (Fee Required)

☐ (a)(10) Granted withholding of deportation under section 243 (h) of the INA. (Fee Required)

☐ (a)(11) Granted extended voluntary departure by the Attorney General as a member of a nationality group pursuant to a request by the Secretary of State. (Fee Required)

Pursuant to 8 CFR 274a.12 (c), the following classes of individuals must apply for work authorization. If authorized, as a member within one of these classes, you may accept employment subject to any time limitations and/or employer or type of employment restrictions indicated in the regulations or cited on the Employment Authorization Document. The Employment Authorization Document will be valid only while you maintain status, or for no longer than the specific time period authorized by the Service. **Place an "X" in the block next to the number that describes your status or classification.**

☐ (c)(1) The spouse or unmarried dependent son or daughter of a foreign government official (A-1 or A-2) pursuant to 8 CFR 214.2 (attach Form I-566 and evidence required by that form). (No Fee)

☐ (c)(2) The spouse or unmarried dependent son or daughter of an employee of the Coordination Council for North American Affairs (E-1) pursuant to 8 CFR 214.2 (e). (Fee Required)

(c)(3) A nonimmigrant (F-1) student who:

☐ (c)(3)(i) Is seeking off-campus employment authorization due to economic necessity pursuant to 8CFR 214.2 (f). Note: Off campus employment for economic necessity is prohibited during the first year of study in the United States. Attach I-20 ID. (Fee Required)

☐ (c)(3)(ii) Is seeking employment for purposes of practical training pursuant to 8 CFR 214.2 (f). The student may be employed only in an occupation which is directly related to his or her course of studies. (First period - attach I-20 ID; second period - attach I-20 ID and Form I-538). (Fee Required)

☐ (c)(3)(iii) Has been offered employment under the sponsorship of an international organization within the meaning of the International Organization Immunities Act (59 Stat. 669), if such international organization provides written certification to the district director having jurisdiction over the intended place of employment that the proposed employment is within the scope of the organization's sponsorship. (Attach Form I-538). (Fee Required)

☐ (c)(4) The spouse or unmarried dependent son or daughter of an officer or employee of an international organization (G-1 or G-4) pursuant to 8 CFR 214.2 (g). (Attach Form I-566 and evidence required by that form.) (No Fee)

☐ (c)(5) The spouse or minor child of an exchange visitor (J-2) pursuant to 8 CFR 214.2 (j). (Fee Required)

☐ (c)(6) A nonimmigrant (M-1) student seeking employment for practical training purposes pursuant to 8 CFR 214.2(m). Practical training may only be authorized after completion of the student's course of studies. The student may be employed only in an occupation which is directly related to his or her course of studies. (Attach Form I-538.) (Fee Required)

☐ (c)(7) A dependent of an individual classified as NATO-1 through NATO 7 pursuant to 8 CFR 214.2 (n). (Fee Required)

☐ (c)(8) Any individual who has filed a non-frivolous application for asylum pursuant to section 208 of the INA. Employment authorization shall be granted in increments not exceeding one year during the period the application is pending (including any period when an administrative appeal or judicial review is pending) and shall expire on a specified date. (Fee Required for Extension or Replacement)

☐ (c)(9) Any individual who has filed an application for adjustment of status to lawful permanent resident pursuant to section 245 of the INA. Employment authorization shall be granted in increments not exceeding one year during the period the application is pending (including any period when an administrative appeal or judicial review is pending) and shall expire on a specified date. (Fee Required)

☐ (c)(10) Any individual who has filed an application for suspension of deportation pursuant to section 244 of the INA, if the person establishes an economic need to work. Employment authorization shall be granted in increments not exceeding one year during the period the application is pending (including any period when an administrative appeal or judicial review is pending) and shall expire on a specified date. A showing of economic necessity is a factor in determining eligibility for employment. See instructions concerning "Basic Criteria to Establish Economic Necessity." (Fee Required)

☐ (c)(11) Any individual paroled into the United States temporarily for emergent reasons or reasons deemed strictly in the public interest pursuant to 8 CFR 212.5. (Fee Required)

☐ (c)(12) A deportable individual granted voluntary departure, either prior to or after hearing, for reasons set forth in 8 CFR 242.5 (a) (2) (v), (vi), or (viii), may be granted permission to be employed for that period of time prior to the date set for voluntary departure including any extension granted beyond such date. Factors which may be considered in the adjudication of the employment application of an individual within this classification are the following:
(i) The length of voluntary departure granted;
(ii) The existence of a dependent spouse and/or children in the United States who rely on the applicant for support;
(iii) Whether there is a reasonable chance that legal status may ensue in the near future; and
(iv) Whether there is a reasonable basis for consideration of discretionary relief." (Fee Required)

☐ (c)(13) Any individual against whom exclusion or deportation proceedings have been instituted, who does not have a final order of deportation or exclusion and who is not detained, may be granted temporary employment authorization if the district director determines that employment is appropriate. Factors which may be considered in the adjudication of the employment application of such an individual are the following:
(i) The existence of an economic necessity;
(ii) The existence of a dependent spouse and/or children in the United States who rely on the applicant for support;
(iii) Whether there is a reasonable chance that legal status may ensue in the near future; and
(iv) Whether there is a reasonable basis for consideration of discretionary relief. A showing of economic necessity is a factor in determining eligibility for employment. See instructions concerning "Basic Criteria to Establish Economic Necessity." (Fee Required)

☐ (c)(14) An individual who has been granted deferred action, an act of administrative convenience to the government which gives some cases lower priority, if the person establishes an economic necessity for employment. A showing of economic necessity is a factor in determining eligibility for employment. See instructions concerning "Basic Criteria to Establish Economic Necessity." (Fee Required)

(c)(15) A nonimmigrant whose application for extension of stay has not been adjudicated within the 120-day period as set forth within the following classes:

☐ (c)(15)(i) A temporary worker or trainee (H-1, H-2A, H-2B, or H-3), pursuant to 8 CFR 214.2 (h). A person in this status may be employed only by the petitioner through whom the status was obtained. (Fee Required)

☐ (c)(15)(ii) An exchange visitor (J-1), pursuant to 8 CFR 214.2(j). A person in this status may be employed only by the exchange visitor program sponsor or appropriate designee and within the guidelines of the program approved by the United States Information Agency. (Fee Required)

☐ (c)(15)(iii) An intra-company transferee (L-1), pursuant to 8 CFR 214.2 (l). A person in this status may be employed only by the petitioner through whom the status was obtained. (Fee Required)

[FR Doc. 89-14543 Filed 6-19-89; 8:45 am]
BILLING CODE 4410-10-C

DRAFT

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application

Pursuant to Section 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on March 23, 1988, Sterling Drug, Inc., 33 Riverside Avenue, Rensselaer, New York 12144, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule II controlled substance meperidine (pethidine) (9230).

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than (30 days from publication).

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

Dated: June 13, 1989.

[FR Doc. 89-14552 Filed 6-19-89; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration

By Notice dated January 14, 1988, and published in the Federal Register on December 15, 1987, (52 FR 47643), Norac Company, Inc., 405 South Motor Avenue, Azusa, California 91702, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of tetrahydrocannabinols (7370), a basic class of controlled substance listed in Schedule I.

No comments or objections have been received. Therefore, pursuant to Section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

Dated: June 13, 1989.

[FR Doc. 89-14553 Filed 6-19-89; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.
The title of the recordkeeping/reporting requirement.
The OMB and Agency identification numbers, if applicable.
How often the recordkeeping/reporting requirement is needed.
Who will be required to or asked to report or keep records.
Whether small businesses or organizations are affected.
An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.
The number of forms in the request for approval, if applicable.
An abstract describing the need for and uses of the information collection.

Comments andQuestions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503, (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Employment and Training Administration
Unemployment Insurance Automation Support Account Field Memorandum
As needed
State or local governments
32 respondents; 9,600 total hours; 150 hours per response; no forms
Issues procedures for State UI agencies to use when applying for UI automation funds and issues guidelines for Regional Offices to follow in reviewing proposals.

Extension

Employment Standards Administration
Bona Fide Profit-Sharing Plan or Trust (29 CFR Part 549; Disclosure Requirement (29 CFR 549.1(d)(2))
1215-0122
Recordkeeping
Businesses or other for profit; small businesses or organizations
25 respondents; 3 total hours; 5 min. per response
Section 7(e)(3)(b) of the Fair Labor Standards Act permits the exclusion from an employee's regular rate of pay of payments on behalf of an employee to a "bona fide" profit sharing plan. Regulations 29 CFR Part 549, set forth the requirements for a bona fide profit sharing plan.

Revision

Bureau of Labor Statistics
Employee Benefits Survey
1220-0084; BLS 3111
Annually, but coverage varies:
State and local governments and small private establishments in even-numbered years; medium and large private establishments in odd-numbered years; business or other for-profit organizations, including small businesses; non-profit institutions
1990, 1992: 3300 responses; 4225 hours; 1 hour 17 minutes per respondent; 1 form
1991: 1900 responses; 2375 hours; 1 hour 15 minutes per respondent; 1 form

The revised Employee Benefits Survey will present data on employee benefits in small (1-99 employees) private firms and in state and local governments beginning in 1990, and in medium and large private firms in alternate years. The current EBS, which covers State and local governments and medium and large firms in private industry, is used by Federal agencies and the Congress to determine policy affecting benefits of all workers; and by the private sector and State and local governments in benefits administration, union negotiations, and research.

Extension

Pension and Welfare Benefits Administration
DOL Prohibited Transaction Class Exemption 76-1
Businesses or other for-profit; small businesses or organizations; non-profits
3075 responses, 770 hours, .25 hours per response

The paperwork requirement included in this prohibited transaction class exemption is maintenance of written records documenting the agreement between a plan and a participating employer concerning payment of delinquent plan contributions; the agreement between a plan and participating employer regarding the terms under which a plan makes a loan to the employer for construction; and, the agreement concerning the leasing of office space, provision of administrative services or sale/leasing of goods by a plan to an employer.

Extension

Pension and Welfare Benefits Administration
Prohibited Transaction Class Exemption 81-8
Other
Business and other for-profit
58,210 response; 9702 hours, 10 minutes per response

This class exemption exempts from the prohibited transaction restrictions of ERISA the investment of plan assets which involve the purchase or other acquisition, holding, sale, exchange or redemption by or on behalf of an employee benefit plan of certain types of short-term debt obligations.

Extension

Employment and Training Administration
Application for Alien Employment Certification (ETA 750 A & B)
1205-0015; 1 form
On occasion
Individuals or households; Businesses or other for-profit
54,000 respondents; 135,000 total hours; 2½ hrs. per response; 1 form

The Application for Alien Labor Certification serves as the basic application for labor certification and is used by DOL to fulfill its obligations under 20 CFR 621 and 656.

Extension

Employment Standards Administration
Medical Travel Refund Request
1215-0054; CM-957
On occasion
Individuals or households
23,500 respondents; 6666 total hours; 10 minutes per response; 1 form

The miner medical refund request is used by miners (claimants and beneficiaries) who are seeking reimbursement for out-of-pocket expenses incurred when they traveled to undergo diagnostic medical testing (claimants) or treatment for their black lung disease (beneficiaries).

Signed at Washington, DC this 14th day June, 1989.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 89-14573 Filed 6-19-89; 8:45 am]

BILLING CODE 4510-29-M

Employment and Training Administration

Atlas Wireline Service (Formerly Dresser Atlas) and Atlas Wireline McCullough (Formerly NL Industries); Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of TA-W-20,980 Alice, Texas, TA-W-20,982 Laredo, Texas, TA-W-20,982A all other locations in Texas, TA-W-20,982B all locations in North Dakota, TA-W-20,982C all locations in New Mexico, TA-W-20,982D all locations in Utah, TA-W-20,982E all locations in California, TA-W-20,982F all locations in Oklahoma, TA-W-20,982G all locations in Louisiana, TA-W-20,982H all locations in Mississippi, TA-W-20,982I all locations in Colorado, TA-W-20,982J all locations in Illinois, TA-W-20,982K all locations in Kentucky, TA-W-20,982L all locations in Alaska; TA-W-20,981 Alice, Texas, TA-W-20,983 Laredo, Texas, TA-W-20,983A all other locations in Texas, TA-W-20,983B all locations in North Dakota, TA-W-20,983C all locations in New Mexico, TA-W-20,983D all locations in Utah, TA-W-20,983E all locations in Oklahoma, TA-W-20,983F all locations in California, TA-W-20,983G all locations in Louisiana, TA-W-20,983H all locations in Mississippi, TA-W-20,983I all locations in Colorado.

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 14, 1988 applicable to all workers of Atlas Wireline Service and Atlas Wireline McCullough both in Alice and Laredo, Texas.

The certification is being amended to properly reflect the correct worker group. New information from the company shows that worker separations occurred in several other States not originally included in the Department's initial certification. The notice, therefore is amended by including all locations in the following States for workers of Atlas Wireline Service and Atlas Wireline McCullough: North Dakota, New Mexico, Utah, Oklahoma, California, Louisiana, Mississippi and Colorado and in other locations in Texas. Additionally, worker separations occurred in Illinois, Kentucky and Alaska for Atlas Wireline Service. It was the Department's intent to include all workers of Atlas Wireline Service and Atlas Wireline McCullough.

The amended notice applicable to TA-W-20,980; TA-W-20,981; TA-W-20,982 and TA-W-20,983 is hereby issued as follows:

"All workers of the Atlas Wireline Service, formerly Dresser Atlas, in Alice and Laredo, Texas and in all other locations of Texas and in all locations in the States of North Dakota, New Mexico, Utah, California, Oklahoma, Louisiana, Mississippi, Colorado, Illinois, Kentucky and Alaska who became totally or partially separated from employment on or after October 1, 1985 and all workers of Atlas Wireline McCullough (formerly NL Industries) in Alice and Laredo, Texas and in all other locations of Texas and in all locations in the States of North Dakota, New Mexico, Utah, California, Oklahoma, Louisiana, Mississippi and Colorado who became totally or partially separated on or after January 1, 1988 are eligible to apply for adjustment assistance under Section 222 of the Trade Act of 1974."

Signed at Washington, DC, this 9th day of June 1989.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-14569 Filed 6-19-89; 8:45 am]

BILLING CODE 4510-30-M

Dresser Industries, Incorporated Guiberson Division; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In the matter of TA-W-22,355 Houston, Texas, TA-W-22,394 Dallas, Texas, TA-W-22,394A all other locations in Texas, TA-W-22,394B all locations in Wyoming, TA-W-22,394C all locations in Illinois, TA-W-22,394D all locations in Kansas, TA-W-22,394E all locations in Louisiana, TA-W-22,394F all locations in Oklahoma, TA-W-22,394G all locations in New Mexico, TA-W-22,394H all locations in California, TA-W-22,394I all locations in Alaska.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 10, 1989 applicable to all workers of the Guiberson Division of Dresser Industries, Inc. The certification was amended on May 5, 1989 to include locations in additional States.

Based on additional information from the company, worker separations occurred at various locations in New Mexico, California and Alaska during the period applicable to the petition.

The notice, therefore, is amended by including all locations of the Guiberson Division of Dresser Industries, Inc., in the States of New Mexico, California and Alaska.

The amended notice applicable to TA-W-22,355 and TA-W-22,394 is hereby issued as follows:

"All workers of the Guiberson Division of Dresser Industries, Inc., in Houston and Dallas, Texas and in all other locations of Texas and in all locations in the States of Wyoming, Illinois, Kansas, Louisiana, Oklahoma, New Mexico, California and Alaska who became totally or partially separated from employment on or after August 1, 1988 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC, this June 9, 1989.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-14570 Filed 6-19-89; 8:45 am]

BILLING CODE 4510-30-M

Levelor Lorentzen, Incorp.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of TA-W-22,240 Warehouse, Parsippany, New Jersey, TA-W-22, 240A Corporate HQ., Parsippany, New Jersey.

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 23, 1989 applicable to all workers of Levelor Lorentzen, Inc., Warehouse in Parsippany, New Jersey.

The certification is being amended to properly reflect the correct worker group. New information from the company shows that worker separations at the corportate headquarters also in Parsippany, New Jersey were directly related to the layoffs at the warehousing operation. The notice, therefore, is amended by including the corporate headquarters in Parsippany, New Jersey.

The amended notice applicable to TA-W-22,240 is hereby issued as follows:

"All workers of Levelor Lorentzen, Inc., Warehouse and Corporate Headquarters, Parsippany, New Jersey who became totally or partially separated from employment on or after November 10, 1987 and before January 31, 1989 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 8th day of June 1989.

Barbara Ann Farmer,

Director, Office of Program Management.

[FR Doc. 89-14571 Filed 6-19-89; 8:45 am]

BILLING CODE 4510-30-M

Resources Investment Corp. Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of TA-W-21,382 Denver, Colorado, TA-W-21,382B Great Bend, Kansas, TA-W-21,382C Brownfield, Texas, TA-W-21,382A Energy Investment Corporation, Denver, Colorado.

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 13, 1988 applicable to all workers of Resources Investment Corporation and Energy Investment Corporation both in Denver, Colorado.

Based on new information from the company, additional workers were separated from Resources Investment Corporation in Great Bend, Kansas and Brownfield, Texas. The notice, therefore is amended by including all locations of Resources Investment Corporation.

The amended notice applicable to TA-W-21,382 is issued as follows:

"All workers of Resources Investment Corporation, Denver, Colorado; Great Bend, Kansas and Brownfield, Texas and all workers of Energy Management Corporation Denver, Colorado who became totally or partially separated from employment on or after October 4, 1987 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 7th day of June, 1989.

Barbara Ann Farmer,

Director, Office of Program Management, UIS.

[FR Doc. 89-14572 Filed 6-19-89; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-89-82-C]

Preece Processing, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Preece Processing, Inc., P.O. Box 449, Turkey Creek, Kentucky 41570 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Mine No. 1 (I.D. No. 15-16441) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The mine height ranges from 30 to 50 inches.

3. The use of cabs or canopies on the mine's electric face equipment would result in a diminution of safety for the miners affected because the cabs or canopies would:

(a) Rub the top of the mine, pulling out roof bolts and loose rock;

(b) Cause the operator to lean outside of the scoop to operate it; and

(c) Limit the equipment operator's vision.

4. For these reasons petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 20, 1989. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: June 13, 1989.

[FR Doc. 89-14575 Filed 6-19-89; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that an ad-hoc meeting on Challenge III guidelines will be held on July 5, 1989, from 1:00 p.m.-5:00 p.m. in Room M-14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topics for discussion will include policy and guidelines for Challenge III grants.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89-14726 Filed 6-19-89; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) and Advisory Committee on Nuclear Waste (ACNW); Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the ACRS full Committee, and of the ACNW, the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published May 17, 1989 (54 FR 21295). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the Federal Register approximately 15 days (or more) prior to the meeting. It is expected that sessions of ACRS full Committee and ACNW meetings designated by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee and ACNW meetings begin at 8:30 a.m. and ACRS Subcommittee meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during ACRS full Committee and ACNW meetings and when ACRS Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the July 1989 ACRS full Committee and the ACNW meetings can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone: 301/ 492-7288, ATTN: Barbara Jo White) between 7:30 a.m. and 4:15 p.m., Eastern Time.

ACRS SUBCOMMITTEE MEETINGS

Materials and Metallurgy, June 20, 1989, Bethesda, MD. The Subcommittee will review low upper shelf fracture energy concerns of reactor pressure vessels.

Mechanical Components, June 21, 1989, Bethesda, MD. The Subcommittee will review and discuss: (1) Bechtel/ KWU Alliance Program on MOV operability, (2) concerns on the reliability of check valves, and (3) other related matters.

Extreme External Phenomena, June 22, 1989, Bethesda, MD. The Subcommittee will review the proposed resolution of USI A-40, "Seismic Design Criteria Short Term Program."

Generic Items, July 12, 1989, Bethesda, MD. The Subcommittee will discuss the Multiple System Responses Program (MSRP).

Auxiliary and Secondary Systems, July 12, 1989, Bethesda, MD. The Subcommittee will review the adequacy of the staff's proposed plans to implement the recommendations resulting from the Fire Risk Scoping Study and other matters related to fire protection systems.

B&W Reactor Plants (Rancho Seco), July 25, 1989, Sacramento, CA—CANCELLED.

Regulatory Policies and Practices, August 9, 1989, Bethesda, MD. The Subcommittee will discuss integration of the regulatory process.

Regional Programs, August 29-30, 1989, King of Prussia, PA (Region I Office). The Subcommittee will review the activities under the purview of the NRC Region I Office.

Regulatory Policies and Practices, September 6, 1989, Bethesda, MD. The Subcommittee will review the staff's proposed rule on license renewal/ extension.

Advanced Pressurized Water Reactors, Date to be determined (July/ August), Bethesda, MD. The Subcommittee will discuss the licensing review bases document being developed for Combustion Engineering's Standard Safety Analysis Report-Design Certification (CESSAR-DC).

Advanced Pressurized Water Reactors, Date to be determined (July/ August), Bethesda, MD. The Subcommittee will discuss the licensing review bases document being developed for Combustion Engineering's Standard Safety Analysis Report-Design Certification (CESSAR-DC).

Advanced Pressurized Water Reactors, Date to be determined (July/ August), Bethesda, MD. The Subcommittee will discuss the comparison of WAPWR (RESAR SP/90) design with other modern plants (in U.S. and abroad).

Severe Accidents, Date to be determined (July/August), Bethesda, MD. The Subcommittee will discuss the NRC Severe Accident Research Program (SARP) plan.

Severe Accidents, Date to be determined (July/August), Bethesda, MD. The Subcommittee will discuss the NUMARC Accident Management guideline document and the NRC research program in the accident management area.

Joint Severe Accidents and Probabilistic Risk Assessment, Date to be determined (July/August), Location to be determined. The Subcommittees will discuss the second draft of NUREG-1150, "Severe Accident Risks: An Assessment for Five U.S. Nuclear Power Plants."

Joint Containment Systems and Structural Engineering, Date to be determined (July/August), San Francisco, CA area. The Subcommittees will discuss containment design criteria for future plants with invited speakers from industry.

Thermal Hydraulic Phenomena, Date to be determined (July/August), Bethesda, MD. The Subcommittee will review the NRC staff's proposed resolution of Generic Issue 84, "CE PORVs."

Decay Heat Removal Systems, Date to be determined (July/August), Bethesda, MD. The Subcommittee will review the proposed resolution of Generic Issue 23, "RCP Seal Failures."

Thermal Hydraulic Phenomena, Date to be determined (August), Bethesda, MD. The Subcommittee will review the proposed experimental program to investigate specific thermal hydraulic phenomena of the B&W OTSG.

Joint Thermal Hydraulic Phenomena and Core Performance, Date to be determined (September). Bethesda, MD. The Subcommittees will continue their review of boiling water reactor core power stability pursuant to the core power oscillation event at LaSalle County Station, Unit 2.

Decay Heat Removal Systems, Date to be determined. Bethesda, MD. The Subcommittee will explore the issue of the use of feed and bleed for decay heat removal in PWRs.

Thermal Hydraulic Phenomena, Date to be determined. Bethesda, MD. The Subcommittee will discuss the status of Industry best-estimate ECCS model submittals for use with the revised ECCS Rule.

Auxiliary and Secondary Systems, Date to be determined. Bethesda, MD. The Subcommittee will discuss the: (1) Criteria being used by utilities to design Chilled Water Systems, (2) regulatory requirements for Chilled Water Systems design, and (3) criteria being used by the NRC staff to review the Chilled Water Systems design.

Extreme External Phenomena, Date to be determined. Bethesda, MD. The Subcommittee will review planning documents on external events.

Reliability Assurance, Date to be determined. Bethesda, MD. The Subcommittee will discuss the status of implementation of the resolution of USI A-46, "Seismic Qualification of Equipment in Operating Plants," and other related matters.

Joint Regulatory Activities and Containment Systems, Date to be determined. Bethesda, MD. The Subcommittees will review the proposed final revision to Appendix J to 10 CFR Part 50, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors."

ACRS Full Committee Meetings

351st ACRS Meeting, July 13–15, 1989—Items are tentatively scheduled.

*A. *Containment Performance Improvement Program (Open)*—Briefing by NRC staff regarding the status of this program.

*B. *Seismic Design Criteria (Open)*—ACRS review and report regarding the proposed resolution of USI A-40, "Seismic Design Criteria—Short Term Program."

*C. *Advanced Light-Water Reactors (Open)*—Review of proposed EPRI requirements for design of advanced LWRs.

*D. *Commanche Peak Nuclear Station, Units 1 and 2 (Open)*—Briefing by NRC staff regarding issuance of an operating license for this nuclear facility.

*E. *Nuclear Power Plant Operations (Open)*—Briefing by representatives of the NRC staff regarding spin-off from the Chernobyl nuclear power plant accident related to human factors and performance.

*F. *Multiple System Responses Program (Open)*—Review and report on the status of this program.

*G. *Fire Risk Scoping Study (Open)*—Review and report on the NRC program to implement the recommendations resulting from the Fire Risk Scoping Study (NUREG/CR-5088).

*H. *Technical Specification Improvements (Open)*—Briefing by representatives of the NRC staff regarding development of improved Technical Specifications for nuclear power plants.

*I. *ACRS Subcommittee Activities (Open)*—Reports by members of the designated subcommittee related to assigned areas including:

1. Proposed power level increase for the Indian Point Nuclear Power Station, Unit 2.

2. ACRS evaluation of nuclear power plant operating experience and incidents.

*J. *Nomination of ACRS Members (Open/Closed)*—Discuss qualifications of candidates nominated for consideration for appointment to the ACRS.

*K. *Future Activities (Open)*—Discuss anticipated ACRS subcommittee activities and items proposed for consideration by the full Committee.

*L. *Meeting with NUMARC (Open)*—Discuss items of mutual interest.

352nd ACRS Meeting, August 10–12, 1989—Agenda to be announced.

353rd ACRS Meeting, September 7–9, 1989—Agenda to be announced.

ACNW Full Committee Meetings

12th ACNW Meeting, June 28–30, 1989—The purpose of this meeting includes: completion of the ACNW review of the Site Characterization Analysis, a discussion of reporting mishaps in the management of low-level wastes, a status report on cementitious waste forms, a discussion of the approach to performance assessment for the high-level waste repository and status of activities, a discussion of research related to nuclear waste, and an administrative session to discuss anticipated and proposed Committee activities, future meeting agenda, and organizational matters.

13th ACNW Meeting, July 26–27, 1989—The Committee will discuss: an EPA Low-Level Waste Standard, the status of NRC/DOE Interactions on DOE quality assurance programs, performance assessment for LLW disposal, discussion of a scoping PRA for the high-level waste repository, and meeting with Commissioners.

ACNW Working Group Meeting on Mixed Wastes, August 4–5, 1989—Agenda to be announced.

14th ACNW Meeting, September 13–15, 1989—Agenda to be announced.

Date: June 14, 1989.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 89-14488 Filed 6-19-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-255]

Consumers Power Co.; Notice of Consideration of Issuance of Amendment to Provisional Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisions Operating License No. DPR-20, issued to Consumers Power Company (the licensee), for operation of the Palisades Plant located in Van Buren County, Michigan.

The proposed amendment would add new Table 3.6.1 to identify all containment isolation values needed to isolate automatically upon receipt of a containment high radiation or containment high pressure signal. The proposed changes would (1) allow for manual operation of certain containment isolation valves for the purpose of sampling the safety injection tanks while the reactor is at power, (2) provide consistency with the Standard Technical Specifications with respect to containment isolation value requirements, and (3) reflect the present containment vent pathway.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By July 20, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject provisional operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any other which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first perhearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington. DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is required that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Lawrence A. Yandell: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Judd L. Bacon, Esq., Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presideing Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated September 15, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the Van Zoeren Library, Hope College, Holland, Michigan 49423.

Dated at Rockville, Maryland, this 9th day of June.

For the Nuclear Regulatory Commission.

Lawrence A. Yandell,

Acting Director, Project Directorate III-1, Division of Reactor Projects—III, IV, V & Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-14563 Filed 6-19-89; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[34-26916; NSCC-89-6]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by National Securities Clearing Corporation Relating to a Modification to NSCC's Fees For Trade Correction

June 12, 1989.President

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 26, 1989 NSCC filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which items have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would modify NSCC's Rules and Procedures as per Exhibit A.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The purpose of the proposed rule change is to modify NSCC's fee schedule to accommodate the earlier comparison of transactions. Under NSCC's fee schedule a charge is imposed for corrections made on T+2 and thereafter because, prior to the earlier comparison systems being initiated, no trade correction occurred prior to T+2. However, the acceleration of the OTC Comparison Cycle (see SR-NSCC-89-2) and the Listed Comparison Cycle (see SR-NSCC-89-4) will permit trade corrections to occur on T+1. Therefore, NSCC is revising the terminology in the

fee schedule to permit the fee to be imposed "on the first day an advisory appears on a contract sheet" and the first day other changes can be submitted, rather than tying the fee to specific days. This change is effective concurrent with the implementation of the OTC acceleration and will accommodate Listed processing now, as well as after Listed acceleration is implemented. (b) The proposed rule change relates to the equitable allocation of fees among NSCC Members and is, therefore, consistent with the requirements of the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to NSCC.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule change and Timing for Commission Action

The foregoing rule change has become effective, pursuant to section 19(b)(3) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change that are filed with Commission, and all written communciations relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 11, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Amend NSCC's Fee Structure as follows:

* indicates previously italicized material

[Brackets] indicate deletions

Italics indicate additions

I. Trade Comparison and Recording Service Fees*

. . . . . .

B. Trade Correction Fees: (1)

1. Stamped Advisory submitted on:
   a. [T+2] *The first day the advisory appears on the contract sheet*—$.20 per stamped advisory.
   b. [T+3] *The second day the advisory appears on the contract sheet*—$.35 per stamped advisory.

. . . . . .

4. QT (Questioned Trade) and DK (Don't Know) input by non-originating party:
   a. [T+3] *The first day the QT/DK input can be entered into the system*—$.35 per QT/DK.
   b. [T+N] *The second day or thereafter the QT/DK input can be entered into the system*—$.50 per QT/DK.
5. All other input [after T+1] (CHC, As Of, Demand As Of, Withhold, Demand Withhold):
   a. [T+2] *The first day all other input can be entered into the system*—$.20 per side.
   b. [T+3] *The second day all other input can be entered into the system*—$.35 per side.
   c. [T+N] *The third day or thereafter all other input can be entered into the system*—$.50 per side.

. . . . . .

[FR Doc. 89-14520 Filed 6-19-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26914; File No. SR-NYSE-89-12]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval to Proposed Rule Change by New York Stock Exchange, Inc. Relating to Auxiliary Closing Procedures for "Expiration Fridays"

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) ("Act"), notice is hereby given that on June 8, 1989, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of a change in the cut-off time for the entry of certain market-at-the-close orders in so-called "Pilot Stocks" on "Expiration Fridays" from 3:30 p.m. to 3:00 p.m. Information as to imbalances of 50,000 shares or more, which is currently disseminated as soon as possible after 3:30 p.m., would be disseminated as soon as possible after 3:00 p.m. At 3:30 p.m., or as soon as possible thereafter, the procedure would be repeated. For any stock for which an imbalance had been previously published, a subsequent imbalance message would be disseminated indicating whether an imbalance of 50,000 shares or more exists and, if so, the size of the imbalance. The Exchange is requesting that the Commission approve the proposed rule change on an accelerated basis prior to the June 16, 1989 "Expiration Friday."

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

In September 1986, the Exchange adopted auxiliary closing procedures for use on days when stock index options and options on stock index futures expire concurrently. These procedures currently apply to 52 stocks (the so-called "Pilot Stocks", comprised of the 50 highest capitalized stocks among the S&P 500 stocks, and two component stocks of the Major Market Index that are not among the S&P top 50) for all monthly expiration days. They require the entry of all market-at-the-close orders in positions relating to any strategy involving any stock index futures, stock index options, or options on stock index futures by 3:30 p.m. These procedures also require the specialist to make public market-at-the-close order imbalances of 50,000 shares or more in these stocks as soon as possible after 3:30 p.m. In addition, the procedures prohibit the entry of market-at-the-close orders that do *not* offset a published imbalance.

The proposed change moves the cut-off time for the above procedures from 3:30 to 3:00 p.m., with imbalance information to be disseminated as soon as possible after 3:00 p.m. At 3:30 p.m., or as soon as possible thereafter, the procedure would be repeated. For any stock for which an imbalance had been previously published, a subsequent imbalance message would be disseminated indicating whether an imbalance of 50,000 shares or more exists and, if so, the size of the imbalance. The same order entry restrictions vis-a-vis the imbalance would apply.

The purpose of the proposed rule change is to allow for more "sunshine" on market conditions for the Pilot Stocks, by moving the cut-off time for current procedures, as described above, from 3:30 to 3:00 p.m. and by requiring the publication of updated imbalances at 3:30 p.m. This extra half-hour, along with the additional imbalance information, will allow market participants more time to respond to published market-at-the-close imbalances, which should further reduce end-of-day market volatility.

(b) Statutory Basis

The basis under the Act for this proposed rule change is section 6(b)(5), which requires that rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments regarding this proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a securities exchange, and in particular, the requirements of section 6 and the rules and regulations thereunder. The proposed rule change should enhance the market-on-close procedures that have been utilized on prior expirations. The new procedure would allow for more time to disseminate MOC imbalances, and thereby facilitate the attraction of contra-side interest.

The Commission finds good cause for approving this rule change prior to the thirtieth day after the date of publication of notice of filing thereof in order to implement these procedures on the upcoming June 16, 1989 expiration. Moreover, the procedures contain only a minor change from the procedures utilized by the NYSE on earlier expirations, and are intended to reduce excessive market volatility at the close.[1]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. The persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to the file number in the caption above and should be submitted by July 11, 1989.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Jonathan G. Katz,

Secretary.

June 9, 1989.

[FR Doc. 89-14521 Filed 6-19-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26910; File No. SR-PHLX-89-29]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change By the Philadelphia Stock Exchange, Inc. Relating to Postponement of the Effectiveness of the CIP Fee Schedule

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 22, 1989, the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. (the "PHLX" or the "Exchange"), pursuant to Rule 19b-4 of the Securities Exchange Act of 1934 (the "Act"), hereby submits this proposed rule change postponing the effectiveness of the schedule of fees applicable to the trading of Cash Index Participations ("CIPs") from the date of this filing until June 30, 1989. Accordingly, no CIP transaction value, transaction or brokerage assessment charge will be

[1] No comments were received for proposed rule changes containing almost the same procedures on prior expiration Fridays.

imposed by the Exchange on any member during this period.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

On April 26, 1989, the PHLX filed SR-PHLX-89-08 with the Commission which established a schedule of CIP fees. The proposal will postpone the effectiveness of that fee schedule from the date of this filing until June 30, 1989.

The proposed rule change is consistent with section 6(b)(4) of the Act, in that it provides for no CIP fees being imposed on any member during a promotional period which introduces a competitive new product.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 11, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

Dated: June 9, 1989.

[FR Doc. 89-14522 Filed 6-19-89; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-26915; File No. SR-NASD-89-13]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Providing Broader Access to Information Contained on Form U-5

The National Association of Securities Dealers, Inc. ("NASD") submitted on March 21, 1989, and amended on April 25, 1989, a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder to amend Article IV, section 3 of the NASD By-Laws and Article III, section 27(e) of the Rules of Fair Practice. The proposal requires NASD members to provide a copy of the Form U-5, the Uniform Termination Notice for Securities Industry Registration, to persons who terminate or are terminated by members and requires members seeking to associate persons in a registered capacity to use reasonable efforts to obtain the most recent Form U-5 from those persons.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 26772, May 1, 1989) and by publication in the Federal Register (54 FR 19822, May 8, 1989). No comments were received with respect to the proposed rule change.[1]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Jonathan G. Katz,
Secretary.

Dated: June 12, 1989.

[FR Doc. 89-14523 Filed 6-19-89; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. IC-16996; 812-7209]

Daily Money Fund et al.; Application

June 9, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: Daily Money Fund; Daily Tax-Exempt Money Fund; Equity Portfolio: Growth; Equity Portfolio: Income; Fidelity California Tax-Free

[1] After the filing of the proposed rule change with the Commission, the NASD received a comment letter, dated April 4, 1989, from Robert F. Price, Chairman, Federal Regulation Committee, and O. Ray Vass, Chairman, Self Regulation and Supervisory Practices Committee, of the Securities Industry Association, New York, New York. The letter expresses concerns about litigation risks in connection with the dissemination of information about current and former employees and suggests a clarification to the policy statement prefacing and explaining the proposed amendments. In an April 28, 1989, letter, Dennis C. Hensley, Vice President and Deputy General Counsel of the NASD, indicated that attorneys from the General Counsel's office would contact the commentators regarding an NASD response and expressed his personal view that a properly worded Notice to Members, issued at the time the proposed rule change is promulgated, would achieve the commentators' goals. These letters are available for inspection and copying in the Commission's Public Reference Room.

Fund; Fidelity Capital Trust; Fidelity Cash Reserves; Fidelity Charles Street Trust; Fidelity Congress Street Fund; Fidelity Contrafund; Fidelity Corporate Trust; Fidelity Court Street Trust; Fidelity Daily Income Trust; Fidelity Destiny Portfolios, Fidelity Devonshire Trust; Fidelity Exchange Fund; Fidelity Financial Trust; Fidelity Fixed-Income Trust; Fidelity Fund; Fidelity Government Securities Fund; Fidelity Growth Company Fund; Fidelity Income Fund; Fidelity Institutional Cash Portfolios; Fidelity Institutional Tax-Exempt Cash Portfolios; Fidelity Institutional Trust; Fidelity Intermediate Bond Fund; Fidelity Investment Trust; Fidelity Limited Term Municipals; Fidelity Magellan Fund; Fidelity Massachusetts Tax-Free Fund; Fidelity Money Market Trust; Fidelity Municpal Trust; Fidelity New York Tax-Free Fund; Fidelity Puritan Trust; Fidelity Qualified Dividend Fund; Fidelity Securities Fund; Fidelity Select Portfolios; Fidelity Special Situations Fund; Fidelity Summer Street Trust; Fidelity Tax-Exempt Money Market Trust; Fidelity Trend Fund; Financial Reserves Fund; Income Portfolios; The North Carolina Cash Management Trust; Plymouth Fund; Plymouth Investment Series; Plymouth Securities Trust; Fidelity New Jersey Tax-Free Portfolio, L.P.; Fidelity Yen Performance Portfolio, L.P.; Fidelity Deutsche Mark Performance Portfolio, L.P.; Fidelity Sterling Performance Portfolio, L.P.; Fidelity U.S. Investments -Government Securities Fund, L.P.; Fidelity U.S. Treasury Money Market Fund, L.P.; Tax-Exempt Portfolios; Variable Insurance Products Fund; Variable Insurance Products Fund II; Zero Coupon Bond Fund (collectively, the "Funds"); and Fidelity Management & Research Company ("FMR") and Fidelity Distributors Corporation ("Distributors") and on behalf of future investment companies for which FMR serves as investment adviser or Distributors serves as distributor.

Relevant 1940 Act Sections: Exemption requested under sections 6(c) and 17(b) of the 1940 Act from the provisions of sections 17(a)(1), 17(a)(2) and 17(e)(1) of the 1940 Act.

Summary of Application: Applicants seek to amend a prior order (Investment Company Act Release No. 12912, Dec. 21, 1982) ("Prior Order") to permit the Funds to engage in certain securities transactions with Affiliated Banks (as defined below) and to permit such Affiliated Banks to receive certain compensation as described below.

Filing Dates: The application was filed on December 30, 1988, and an amendment thereto was filed on May 15, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 3, 1989, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Fidelity Management & Research Company, 82 Devonshire Street (F5E), Boston, MA 02109, Attention: Arthur S. Loring, Esq.

FOR FURTHER INFORMATION CONTACT: James E. Banks, Staff Attorney (202) 272-3026, or Brion R. Thompson, Branch Chief (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. The Prior Order under sections 6(c) and 17(b) of the 1940 Act grants exemptions from section 17(a)(1), 17(a)(2), and 17(e)(1) to permit the Funds to engage in certain securities transactions with "Affiliated Banks" subject to the conditions set forth in the application for the Prior Order. *In the Matter of Fidelity Fund,* Investment Company Act Release No. 12851 (Nov. 24, 1982). As defined in the Prior Order, Affiliated Banks are banks, bank holding companies, or affiliates thereof which directly or indirectly (1) own, control, or hold five percent or more of the outstanding voting securities of any of the Funds, or (2) act as investment adviser to any of the Funds.

2. The types of securities transactions covered by the Prior Order include: (i) Short-term obligations of an Affiliated Bank that is one of the 50 largest United States banks (measured by deposits), their bank that companies or affiliates thereof; (ii) repurchase agreements with an Affiliated Bank that also serves as a custodian to one or more of the Funds; and (iii) tax exempt obligations. The Prior Order also permits an Affiliated Bank to accept compensation within the limitations of 17(e)(2) of the 1940 Act where it acts as agent for any Fund in a permitted transaction.

3. Applicants now seek an amendment to the Prior Order granting Applicants the same relief granted in subsequent orders involving similar issues. *See In the Matter of A.T. Ohio Tax-Free Money Market Fund,* Investment Act Release No. 16002 (Oct. 18, 1988) and *In the Matter of Alex. Brown Cash Reserve Fund, Inc.,* Investment Company Act Release No. 14259 (Nov. 30, 1984).

4. Specifically, Applicants request relief to (1) engage in purchase and sale transactions of both long-term and short-term United States government securities with Affiliated Banks which are primary dealers in these securities ("Affiliated Dealers"), (2) permit such Affiliated Dealers to accept compensation within the limitations of section 17(e)(2) of the 1940 Act for acting as agent for any Fund in connection with the purchase or sale of such United States government securities, and (3) enter into repurchase agreement transactions with an Affiliated Bank if such bank is one of the 50 largest United States banks, measured by deposits.

Applicants' Legal Conclusions

1. The requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. In addition, the terms of the proposed transactions are (1) reasonable and fair and do not involve overreaching on the part of any person, (2) consistent with the policy of each registered investment company concerned, and (3) consistent with the general purposes of the 1940 Act.

2. In purchasing and selling United States government securities, it is critical that the Funds obtain prompt execution of their transaction at a competitive price. Each primary dealer represents a significant portion of the United States government securities market. There are occasions, especially in the disposition of portfolio securities in weak markets, when each primary dealer offers the most favorable price and execution as against the other dealers. Inability to trade with one or more Affiliated Banks will deprive the Funds of the most favorable price and execution on the occasion when those dealers have the best overall offer for a transaction. Further, because the United States government securities market is

highly competitive, removing one or more primary dealers from the Funds' market may deprive the Funds of the most favorable price and execution even when dealing with other dealers. Consequently, the shareholders' return from their investment in the Funds may be reduced if the Funds' access to the primary dealers is restricted.

3. Applicants further assert that it is in the interests of Fund shareholders to permit the Funds to engage in repurchase agreement transactions with banks on an approved list of banks, which present minimal credit risk. In addition, Applicants believe that there may be increased risks of loss and that return to Fund shareholders may be reduced if the Funds are not permitted to engage in repurchase agreement transactions with major United States banks that become affiliated with the Funds.

Applicants' Proposed Conditions

If the requested order is granted, the Applicants agree to the following conditions:

1. The Board of Trustees or General Partners of each of the Funds (1) will adopt procedures, pursuant to which transactions may be effected for the Funds, that are reasonably designed to provide that all the conditions in paragraphs 2 through 6 below and the requirements of Investment Company Act Release No. 13005 (Feb. 2, 1983) have been complied with, (2) will review no less frequently than annually such procedures for their continuing appropriateness, and (3) will determine no less frequently than quarterly that such transactions made during the preceding quarter were effected in compliance with such procedures. These procedures will also be approved by a majority of the disinterested trustees or General Partners of the Funds. The investment adviser of each Fund will implement those procedures and make decisions necessary to meet these conditions subject to the direction and control of the Board of Trustees or General Partners of each Fund.

2. No Fund will engage in securities transactions with a primary dealer that is a bank serving as investment adviser to such Fund or affiliated with such a bank. No Fund will enter into repurchase agreements with an Affiliated Bank if, as a result, five percent of its total assets would be invested in repurchase agreement with such bank.

3. The Funds (1) will maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in paragraph 1, and (2) will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any transactions occurred, the first two years in an easily accessible place, a written record of each such transaction setting forth a description of the security purchased or sold, the identity of the person on the other side of the transaction, the terms of the purchase or sale transaction, and the information or materials upon which the determinations described below were made.

4. The security to be purchased or sold by a Fund will be consistent with the investment objectives and policies of that Fund as recited in the Fund's registration statement, and will be consistent with the interests of that Fund and its shareholders. Further, the security to be purchased or sold by that Fund must be comparable in terms of quality, yield, and maturity to other similar securities that are appropriate for the Fund and that are being purchased or sold by that Fund must be comparable in terms of quality, yield, and maturity to other similar securities that are appropriate for the Fund and that are being purchased or sold during a comparable period of time.

5. The terms of the transaction must be reasonable and fair to the shareholders of that Fund and cannot involve overreaching of that Fund or its shareholders on the part of any person concerned. In considering whether the price to be paid or received for the security is reasonable and fair, the price of the security will be analyzed with respect to comparable transactions involving similar securities being purchased or sold during a comparable period of time. Before any transaction in United States government securities may be conducted pursuant to the exemption, the Funds or their advisers must obtain such information as they deem necessary to determine that the price to be paid or received for the security is at least as favorable as that available from other sources. The Funds or their advisers must obtain and document competitive quotations from at least two other dealers with respect to the specific proposed transaction, except that if quotations are unavailable from two such dealers, only one other competitive quotation is required. With respect to prospective purchases of securities, these dealers must be those who have securities of the categories and the type desired in their investors and who are in a position to quote favorable prices with respect thereto. With respect to the prospective disposition of securities, these dealers must be those who, in the experience of the Funds and their adviser, are in a position to quote favorable prices.

6. The commission, fee, spread, or other remuneration to be received by the Affiliated Dealer must be reasonable and fair compared to the commission, fee, spread, or other remuneration received by other brokers or dealers in connection with comparable transactions involving similar securities being purchased or sold during a comparable period of time, but in no event will such fee, commission, spread or other remuneration exceed that which is stated in section 17(e)(2) of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-14524 Filed 6-19-89; 8:45 am]

BILLING CODE 8010-01-M

[34-26918; MCC-89-5]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Midwest Clearing Corporation Relating to a Modified Fee Schedule For Odd Lot Transactions

June 12, 1989.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given than on June 6, 1989, the Midwest Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement on the Terms of Substance of the Proposed Rule Change

Midwest Clearing Corporation ("MCC") proposes to modify its fee schedule for odd lot transactions, effective June 1, 1989 as follows:

(*Additions italicized* [Deletions Bracketed]).

Trade Recording

* * * [In addition, a] *A* discount of $0.15 per trade side recorded will be applied to the trade recording fees for trades of 1,000 shares and larger when a *P*[p]articipant exceeds 10,000 recorded trade sides each month. *In addition, a discount of $0.15 per trade side recorded will be applied to the trade recording fees for trades of 1 thru 99 shares when a Participant exceeds 1,000 recorded odd lot trade sides each month.*

II. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments is received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change

The new odd lot fees schedule to take effect June 1, 1989 is designed as an incentive for customers to do a greater volume of odd lot business with Midwest Clearing Corporation.

The revised fee schedule is consistent with section 17A of the Securities Exchange Act of 1934 as amended (the "Act") in that it provides for the equitable allocation of reasonable dues, fees and other charges among MCC's Participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Clearing Corporation does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit writtenj data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to File No. SR-MCC-89-05 and should be summitted by July 11, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-14519 Filed 6-19-89; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATE: Comments should be submitted on or before July 20, 1989. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: William Cline, Small Business Administration, 1441 L Street, NW., Room 200, Washington, DC 20416, Telephone: (202) 653-8538.

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395-7340.

Title: Supervisory Assessment of Traits Relative to Promotion/Placement

Form Number: SBA Form 1238

Frequency: On occasion

Description of Respondents: Supervisors of applicants for positions within SBA to evaluate abilities.

Annual Responses: 3600

Annual Burden Hours: 1800

William Cline,

Chief, Administrative Information Branch.

[FR Doc. 89-14511 Filed 6-19-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 1111]

Discretionary Grant Programs; Application Notice Establishing Closing Date for Transmittal of Certain Fiscal Year 1990 Applications

AGENCY: The Department of State invites applications from national organizations with interest and expertise in conducting research and training concerning the USSR and Eastern Europe to serve as intermediaries administering national competitive programs under the Soviet and Eastern European Research and Training Act. All grants will be annual and based on an open, national competition among applying organizations.

Authority for this program is contained in the Soviet-Eastern European Research and Training Act of 1983.

SUMMARY: The purpose of this application notice is to inform potential applicant organizations of fiscal and programmatic information and closing dates for transmittal of applications for awards in Fiscal Year 1990 under a program administered by the Department of State.

Organization of Notice: This notice contains three parts. Part I lists the closing date covered by this notice. Part II consists of a statement of purpose and

priorities of the program. Part III provides the fiscal data for the program.

Part I

Closing Date for Transmittal of Applications

An application for an award must be mailed or hand-delivered by September 29, 1989.

Applications Delivered by Mail

An application sent by mail must be addressed to Kenneth E. Roberts, Executive Director, Soviet-Eastern European Studies Advisory Committee, Suite 233, 1730 K Street NW., Washington, DC 20006.

An applicant must show proof of mailing consisting of *one* of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial center.

(4) Any other proof of mailing acceptable to the Department of State.

If an application is sent through the U.S. Postal Service, the Department of State does not accept either of the following as proof of mailing: (1) a private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with the local post office.

An applicant is encouraged to use registered or at least first class mail. Late applications will not be considered and will be returned to the applicant.

Applications Delivered by Hand

An application that is hand-delivered must be taken to the Department of State, INR/RES, Soviet-Eastern European Studies Advisory Committee, Suite 233, 1730 K Street NW., Washington, DC.

The Soviet-Eastern European Studies Advisory Committee will accept hand-delivered applications between 9:00 a.m. and 4:00 p.m. (Washington, DC time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand-delivered will not be accepted after 4:00 p.m. on the closing date.

Part II

Program Information

In the Soviet-Eastern European Research and Training Act of 1983 the Congress declared that independently verified factual knowledge about the countries of that area is "of utmost importance for the national security of the United States, for the furtherance of our national interests in the conduct of foreign relations, and for the prudent management of our domestic affairs." Congress also declared that the development and maintenance of such knowledge and expertise "depends upon the national capability for advanced research by highly trained and experienced specialists, available for service in and out of Government." The Act authorizes the Secretary of State to provide financial support for advanced research, training and other related functions.

The full purpose of the Act and the eligibility requirements are set forth in Pub. L. 98-164, Title VIII, 97 Stat. 1047-50. Under Title VIII, the countries include Albania, Bulgaria, Czechoslovakia, German Democratic Republic, Hungary, Poland, Romania, USSR, and Yugoslavia.

The Act establishes an Advisory Committee to recommend grant policies and recipients. The Secretary of State, after consultation with the Advisory Committee, approves policies and makes final determination on awards.

Applications for funding under the Act are invited from organizations prepared to conduct competitive programs in the field of Soviet and Eastern European and related studies. Applying organizations or institutions should have the capability to conduct *competitive award programs that are national in scope.* Programs of this nature are those that make awards which are based upon an open, nationwide competition incorporating peer group review mechanisms. Applications sought are those that would contribute to the development of a stable, long-term, national program of unclassified, advanced research and training on the Soviet Union and Eastern Europe by proposing:

(1) *National programs* which award contracts or grants to American institutions of higher education or not-for-profit corporations in support of postdoctoral or equivalent level research projects, such contracts or grants to contain shared-cost provisions;

(2) *National programs* which offer graduate, postdoctoral and teaching fellowships for advanced training in Soviet and Eastern European and related studies, including training in the languages of the Soviet Union and Eastern Europe, such training to be conducted, on a shared-cost basis, at American institutions of higher education;

(3) *National programs* which provide fellowships and other support for American specialists enabling them to conduct advanced research in the field of Soviet, Eastern European and related studies; and those which facilitate research collaboration between Government and private specialists in these fields;

(4) *National programs* which provide advanced training and research on a reciprocal basis in the Soviet Union and in the countries of Eastern Europe by facilitating access for American specialists to research facilities and resources in those countries;

(5) *National programs* which facilitate public dissemination of research methods, data and findings; and those which propose to strengthen the national capability for advanced research or taining on the Soviet Union and Eastern Europe in ways not specified above.

Note: The Advisory Committee will not consider applications from individuals to further their own training or research, or from institutions or organizations whose proposals are not for competitive award programs that are national in scope as defined above. Moreover, support for publications, library activities, and conferences, will be constrained by the following policies:

—*Publications.* Title VIII funds should not be used to subsidize journals, newsletters and other periodical publications except in unique or special circumstances, in which cases the funds should be supplied by peer-review organizations with national competitive programs.

—*Library Activities.* Title VIII funds should not be used for library preservation, cataloging or modernization. However, a national peer-review organization with Title VIII funds could offer modest support to efforts directed toward developing an effective, long-term and well-coordinated strategy to address the serious library needs of the field.

—*Conferences.* Proposals for conferences, like those for research projects and training programs, should be assessed according to their relative contribution to the advancement of knowledge and to the qualitative improvement of the professional cadres in the field. Therefore, Title VIII grants generally should not be made solely to support a particular conference or series of conferences. Rather conference funding should come from one or more of the national peer-review organizations receiving Title VIII funds, with proposed conferences being evaluated competitively against research, fellowship or other proposals for achieving the purposes of the grant.

In making its recommendations, the Committee will seek to encourage a coherent, long-term, and stable effort directed toward developing and maintaining a national capability in Soviet and Eastern European studies. Program proposals can be for the conduct of any of the functions enumerated, but in making its recommendations, the Committee will be concerned to develop a balanced national effort which, over the life of the Act, will ensure attention to all the countries of the area.

Part III

Available Funds

The President has requested for Fiscal Year 1990 $4.6 million for the Title VIII program. However, the amount available for awards (if any) will not be known until legislative action is complete on the bills authorizing and appropriating funds for the Department of State.

The Department legally cannot commit funds that may be appropriated in subsequent fiscal years. Thus multi-year projects cannot receive assured funding unless such funding is supplied out of a single year's appropriation. Generally, grant agreements will permit the expenditure from a particular year's grant to be made over two or more years.

Applications

Applications must be prepared and submitted in 20 copies in the form of a statement, the narrative part of which should not exceed 20 double-spaced pages. This must be accompanied by a one page executive summary, a budget, and vitae of professional staff. Proposers may append other information they consider essential, though bulky submissions are discouraged.

Applicants who have received a Title VIII grant in the previous fiscal year competition should provide detailed information on the peer evaluation and review procedures followed, and awards made, including where applicable, names/affiliations of recipients, and amounts and types of awards. If an applicant also received Title VIII support prior to last year, a summary of those awards would be helpful.

Descriptions of competitive fellowships and other award programs should specify the applicant to award ratios.

Plans for evaluating and selecting applicants to receive awards should be described in detail.

A description of affirmative action policies and practices should be included in the application.

Applicants should include certification of compliance with the provisions of the Drug-Free Workplace Act (PL 100-690), in accordance with Appendix C of 22 CFR Part 127, Subpart F.

Budget

Applicants should familiarize themselves with OMB Circular A-110, "Grants and Agreements with Institutions of Higher Education * * * Uniform Administrative Requirements," and indicate or provide the following information:

(1) Whether the organization falls under OMB Circular No. A-21, "Cost Principles for Educational Institutions," or OMB Circular No. A-122, "Cost Principles for Nonprofit Organizations;"

(2) A budget request containing total amount, a detailed program budget indicating direct expenses by program element, and indirect costs. NB: Indirect costs are limited to 10 percent of total direct program costs. Applicants who are requesting Title VIII funds to supplement a program having other sources of support should submit a current budget for the total program and an estimated future budget for it showing how specific lines in the budget would be affected by the allocation of requested Title VIII grant funds;

(3) The applicant's cost-sharing proposal, if applicable, containing appropriate details and cross references to the requested budget;

(4) Whether payment is requested on a reimbursable basis or by advance methods; re the latter for grants above $120,000, advance funds will be made through a letter of credit, but if less than $120,000 advance of funds will be made by Treasury checks through wire transfers;

(5) The organization's most recent audit report (the most recent U.S. Government audit report if available) and the name, address and point of contact of the audit agency.

Technical Review

The Soviet-Eastern European Studies Advisory Committee will evaluate applications on the basis of the following criteria:

(1) Reponsiveness to the substantive provisions set forth above in *Part II, Program Information* (40 points);

(2) The professional qualifications of the applicant's key personnel and their experience conducting national competitive award programs of the type the applicant proposes in the Soviet-Eastern European field (40 points); and

(3) Budget and cost effectiveness (20 points).

Further Information

For further information, contact Kenneth E. Roberts, Executive Director, Soviet-Eastern European Studies Advisory Committee, INR/RES, Department of State, Suite 233, 1730 K Street, NW., Washington, DC 20006. Telephone: (202) 632-6060 or 632-6203.

Dated: June 9, 1989.

Kenneth E. Roberts,

Executive Director, Soviet-Eastern European Studies Advisory Committee.

[FR Doc. 89-14545 Filed 6-19-89; 8:45 am]

BILLING CODE 4710-32-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements; Submittals to OMB on June 12, 1989

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation on June 12, 1989, to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

FOR FURTHER INFORMATION CONTACT: John Chandler, Annette Wilson, or Cordelia Shepherd, Information Requirements Division, M-34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, telephone, (202) 366-4735, or Gary Waxman or Edward Clarke, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503, (202) 395-7340.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial, approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirement. OMB approval of an information collection requirement must be renewed at least once every three years.

BEST COPY AVAILABLE

Information Availability and Comments

Copies of the DOT information colection requests submitted to OMB may be obtained from the DOT officials listed in the "For Further Information Contact" paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the "For Further Information Contact" paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB on June 12, 1989.

DOT No.: 3223.
OMB No.: 2130–0502.
Administration: Federal Railroad Administration.
Title: Filing of Dedicated Cars.
Need for Information: Regulations require that freight cars assigned to dedicated service be so stencilled. To assure compliance FRA must be notified by written description.
Proposed Use of Information: FRA uses the information to determine that the equipment is safe to operate and qualifies for dedicated service.
Frequency: On occasion.
Burden Estimate: 6 hours.
Respondents: 6 Railroads.
Form(s): N/A.
Average Burden Hours Per Respondent: 1 hour.

DOT No.: 3224.
OMB No.: 2127–0046.
Administration: National Highway Traffic Safety Aministration.
Title: 49 CFR Part 552, Petitions for Rulemaking, Defect, and Noncompliance Orders.
Need for Information: To identify and respond on a timely basis to petitions for rulemaking or defect or noncompliance determination and to inform the public of the procedures following in response to such petitions.
Proposed Use of Information: This regulation establishes procedures for filing petitions with the agency to commence rulemaking or to make a defect or noncompliance determination.
Frequency: On occasion.
Burden Estimate: 100 hours.
Respondents: Individuals, businesses or small businesses.
Form(s): None.
Average Burden Hours Per Respondent: 60 minutes.

DOT No.: 3225.
OMB No.: 2127–0025.
Administration: National Highway Traffic Safety Administration.
Title: 49 CFR Part 512, Confidential Business Information.
Need for Information: To ensure confidential treatment to motor vehicle manufacturers.
Proposed Use of Information: This regulation sets forth the procedures to be followed by vehicle and equipment manufacturers, when they are requesting confidential treatment of information they have submitted to the agency.
Frequency: On occasion.
Total Estimated Burden: 600 hours.
Respondents: Motor vehicle manufacturers.
Form(s): None.
Estimated Average Per Response: .2 hours.

DOT No.: 3226.
OMB No.: 2127–0542.
Administration: National Highway Traffic Safety Administration.
Title: 49 CFR Part 543, Petitions for Exemption from the Vehicle Theft Prevention Standard.
Need for Information: To set procedures to be followed by manufacturers in preparing and submitting and processing petitions for exemption.
Proposed Use of Information: Manufacturers of passenger automobiles may petition the Secretary for an exemption from the theft prevention standard if a line/lines of vehicles are equipped with an anti-theft device, which is standard equipment and is determined by the Secretary to be as effective as the theft prevention standard.
Frequency: One-time only.
Burden Estimate: 96 hours.
Respondents: Businesses-cargo air carriers.
Form(s): None.
Average Burden Hours Per Respondent: 24 minutes.

DOT No.: 3227.
OMB No.: New.
Administration: U.S. Coast Guard.
Title: Emergency Evacuation Plans for Manned OCS Facilities.
Need for Information: This information collection requirement is needed to comply with section 5201 of the Omnibus Budget Reconciliation Act of 1986, and the recommendations from the National Transportation Safety Board.
Proposed Use of Information: Coast Guard will use the information to ensure that the plans comply with the regulations. The plans will also be used by the persons on board the facility for evacuation purposes in emergency situations.
Frequency: On occasion.
Burden Estimate: 45,612.
Respondents: Operators of manned OCS facilities.
Form(s): N/A.
Average Burden Hours Per Respondent: 40 hours for reporting and 2 hours for recordkeeping.

DOT No.: 3228.
OMB No.: 2132–0513.
Administration: Urban Mass Transportation Administration.
Title: Letter of Credit Application.
Need for Information: The information provides UMTA with data on the organization authorized to execute requests for payments under the letter of credit.
Proposed Use of Information: The information is used to establish a letter of credit for a particular grantee or other qualifying recipient of Federal funds.
Frequency: On occasion.
Burden Estimate: 200 hours.
Respondents: 400.
Form(s): None.
Average Burden Hours Per Respondent: 30 minutes.

DOT No.: 3229.
OMB No.: 2133–0013.
Administration: Maritime Administration.
Title: Monthly Report of Ocean Shipments Moving Under Export, Import Bank Financing.
Need for Information: To document compliance with certain cargo preference statutes.
Proposed Use of Information: To evaluate documentation describing compliance with certain cargo preference statutes.
Frequency: Monthly.
Burden Estimate: 126 hours.
Respondents: Shipowners, ship operators.
Form(s): MA–518.
Average Burden Hours Per Respondent: 30 minutes.

DOT No.: 3230.
OMB No.: 2115–0552.
Administration: U.S. Coast Guard.
Title: Liquefied Natural Gas Waterfront Facilities.
Need for Information: Coast Guard needs this information collection requirement to prevent or mitigate the results of an accidental release of liquefied natural gas (LNG) waterfront facility.
Proposed Use of Information: Coast Guard uses this information to the requirements in 33 CFR 127 are complied with and to determine the suitability of the waterway on which the LNG waterfront facility is located, for LNG marine traffic.
Frequency: On occasion.
Burden Estimate: 76.
Respondents: Owners/Operators for LNG facilities.
Form(s): None.
Average Burden Hours Per Response: Reporting burden is 5 hours; recordkeeping burden is 28 hours.

DOT No.: 3231.
OMB No.: 2125–0525.
Administration: U.S. Coast Guard.
Title: Subchapter Q Manufacturers Test Reports.
Need for Information: This requirement is needed to determine compliance of the safety equipment and material with the technical requirements contained in the individual specifications.
Proposed Use of Information: The information is used to determine whether the items meet minimum levels of safety and performance, and for identification purposes.
Frequency: On occasion.
Burden Estimate: 112.
Respondents: Manufacturers of safety valves and flame arrestors.
Form(s): None.
Average Burden Hours Per Respondent: Reporting burden is 15 hours and 30 minutes; recordkeeping is 54 minutes.

DOT No.: 3232.
OMB No.: 2115–0071.
Administration: U.S. Coast Guard.
Title: Official Logbook.
Need for Information: Coast Guard needs this requirement to comply with the commercial vessel safety statutes. This information is needed to keep a consolidated official record of all voyages as well as load line and testing records.
Proposed Use of Information: Coast Guard uses this information to determine compliance with the commercial vessel safety program and to examine incidences of shipboard misconduct. Other Federal agencies, maritime casualty investigators and federal and civil courts use this information in cases of injury or litigation between seamen and shipping companies. The seamen use this information to verify employment and wages.
Frequency: On occasion.
Burden Estimate: 1750.
Respondents: Merchant Mariners and Shipping Companies.
Form(s): CG–706B.
Average Burden Hours Per Respondent: 1 hour.

DOT No.: 3233.
OMB No.: 2106–0031.
Administration: Office of the Secretary.
Title: Part 298—Air Taxi Operator and Commuter Carrier Registration/ Operator Policies of Insurance for Aircraft Bodily Injury and Property Damage Liability.
Need for Information: Air Taxi operators and commuter air carriers must register and otherwise comply with Part 298 to obtain exemptions from some of the regulatory provisions of Title IV of the Federal Aviation Act of 1958.
Proposed Use of Information: To maintain a current accurate accounting of all air taxis which have economic authority from the DOT to operate and to assure that operators maintain the prescribed minimum liability insurance coverage.
Frequency: Air taxis must register with DOT before they begin operations and file certification of liability insurance coverage. Operational changes will require amendments to be filed.
Burden Estimate: 3,486 hours annually.
Respondents: 6971.
Form(s): OST Forms 4507 and 4521.
Average Burden Hours Per Respondent: 30 minutes.

DOT No.: 3234.
OMB No.: 2130–0520.
Administration: Federal Railroad Administration.
Title: Stenciling Reporting Mark, Car Number, etc., on Freight Cars.
Need for Information: Reporting marks and car numbers are required to be stenciled on freight cars for identification purposes.
Proposed Use of Information: The information is used solely to identify freight cars. Federal Inspectors utilize the markings to monitor a railroad's compliance with safety regulations.
Frequency: Recordkeeping—when freight car is built or rebuilt.
Burden Estimate: 23,588 hours.
Respondents: 400 Railroads.
Form(s): N/A.
Average Burden Hours Per Respondent: 59 hours.

DOT No.: 3235.
OMB No.: New.
Administration: Federal Aviation Administration.
Title: Survey of AME Computer Capability.
Need for Information: FAA office of Aviation Medicine is conducting a prototype test to determine the feasibility of electronic transmissions of airman medical certification application data, between the FAA designated Aviation Medical Examiners (AMEs) and the Aeromedical Certification Division.
Proposed Use of Information: The information obtained will be used to determine the impact, cost/benefit, design and system requirement for potential full system implementation.
Frequency: One time survey.
Burden Estimate: 500 hours.
Respondents: FAA designated Airmen Medical Examiners.
Form(s): FAA Form 8500–XX.
Average Burden Hours Per Respondent: It is estimated that it will take an average of 15 minutes per person to complete the survey.

DOT No.: 3236.
OMB No.: New.
Administration: Federal Highway Administration.
Title: Fatigue and Driver Alertness Study.
Need for Information: To collect and analyze data on commercial driver fatigue.
Proposed Use of Information: To improve the safety of trucking operations in response to Congress' report for FHWA to evaluate the impact of driver fatigue on commercial vehicle accidents.
Frequency: One-time administrative.
Burden Estimate: 467 hours.
Respondents: Businesses.
Form(s): None.
Average Burden Hours Per Respondent: The average time of response for this information collection is 20 minutes per response.

Issued in Washington, DC, on June 12, 1989.

Robert J. Woods,
Director of Information, Resource Management.

[FR Doc. 89–14538 Filed 6–19–89; 8:45 am]
BILLING CODE 4910–62–M

[Docket 37554]

Notice of Order Adjusting the Standard Foreign Fare Level Index

The International Air Transportation Competition Act (IATCA), Pub. L. 96–192, requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in acutal operating costs per available seat-mile. Order 80–2–69 established the first interim SFFL and Order 89–4–11 set the currently effective two-month SFFL applicable through May 31, 1989.

In establishing the SFFL for the two-month period beginning June 1, 1989, we have projected nonfuel costs based on the year ended December 31, 1988 data, and have determined fuel prices on the basis of the latest experienced monthly

fuel cost levels as reported to the Department.

By order 89–6–31 fares may be increased by the following factors over the October 1, 1979, level:

Atlantic	1.2556
Canada	1.3302
Pacific	1.7511
Canada	1.3504

For further information contact: Keith A. Shangraw (202) 366–2439.

By the Department of Transportation: June 13, 1989.

Patrick V. Murphy, Jr.,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 89–14537 Filed 6–19–89; 8:45 am]

BILLING CODE 4910–62–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 117
Tuesday, June 20, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

INTERNATIONAL TRADE COMMISSION

[USITC SE–89–23]

TIME AND DATE: Thursday, June 29, 1989 at 11:00 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints:
   Certain Imported Artificial Breast Prostheses and the Manufacturing Process Thereof (D/N 1513).
5. Inv. 731–TA–434 (P) (12-Volt Motorcycle Batteries from Korea)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, (202) 252–1000.

Kenneth R. Mason,

Secretary.

June 13, 1989.

[FR Doc. 89–14677 Filed 6–16–89; 12:19 pm]

BILLING CODE 7020–02–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of June 19, 26, July 3, and 10, 1989.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of June 19

Tuesday, June 20

10:00 a.m.
Briefing on the Application of the Severe Accident Policy to the Lead Application for Advanced Light Water Reactors (Public Meeting).

Thursday, June 22

10:00 a.m.
Briefing on Status of Proposed Rule for License Renewal (Public Meeting).

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting).
a. Final Rule for Revisions to 10 CFR Part 2 to Improve the Hearing Process (Tentative).

Week of June 26—Tentative

Wednesday, June 28

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed).

Week of July 3—Tentative

Thursday, July 6

10:00 a.m.
Briefing on Study of Adequacy of Regulatory Oversight of Materials Under General License (Public Meeting).

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed).

2:00 p.m.
Briefing on Agency Human Factors Initiatives (Public Meeting).

Week of July 10—Tentative

Monday, July 10

2:00 p.m.
Briefing on Classification and Disposal of the Hanford Tank Waste (Public Meeting).

Tuesday, July 11

10:00 a.m.
Briefing on Staff Comments on DOE Site Characterization Plan for Yucca Mountain (Public Meeting).

2:00 p.m.
Briefing on Policy Statement on Rules for Exemption from Regulatory Control (Public Meeting).

Friday, July 14

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed).

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (301) 492–0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

William M. Hill, Jr.

Office of the Secretary

June 15, 1989.

[FR Doc. 89–14700 Filed 6–16–89; 2:08 pm]

BILLING CODE 7590–01–M

Corrections

Federal Register
Vol. 54, No. 117
Tuesday, June 20, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

Correction

In the issue of Friday, June 2, 1989, on page 23739, in the first column, in the correction to rule document 89-12380, amendatory instruction 1 was inaccurately printed and should have appeared as follows:

1. On page 22465, in the third column, under the table heading "Periods to be reviewed", the third, fourth, and fifth entries should read "04/01/88-11/20/88", "04/01/88-11/20/88", and "4/01/88-03/31/89" respectively.

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

International Trade Administration

LeHigh University; Decision on Application for Duty-Free Entry of Scientific Instrument

Correction

In notice document 89-14047 appearing on page 25148 in the issue of Tuesday, June 13, 1989, make the following corrections:

1. In the second column, in the fifth line, insert "into" between "take account".

2. In the same column, in the first complete paragraph, in the sixth line, the third word should read "received".

BILLING CODE 1505-01-D

DEPARTMENT OF INTERIOR

Bureau of Land Management

[WY-040-09-4200-00; WYW-89429]

Realty Action; Wyoming

Correction

In notice document 89-13103 beginning on page 23714 in the issue of Friday, June 2, 1989, make the following corrections:

1. On page 23714, in the third column, under "T. 36 N., R. 110 W.,", the second line should read "E½SW¼NE¼SW¼ SE¼, SE¼"; and the fourth line should read "SE¼, E½SW¼SW¼SW¼SE¼, SE¼".

2. On page 23715, in the first column, the signature should read "David E. Harper".

BILLING CODE 1505-01-D

federal register

Tuesday
June 20, 1989

Part II

Securities and Exchange Commission

17 CFR Parts 229, 230, 239, 240, and 249
Registration and Reporting Requirements for Employee Benefit Plans; Proposed Rule and Form

Forms Under Review by the Office of Management and Budget

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229, 230, 239, 240, and 249

[Release Nos. 33-6838; 34-26917; File No. S7-16-89]

RIN: 3235-AB79

Registration and Reporting Requirements for Employee Benefit Plans

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule and form.

SUMMARY: The Commission is publishing for comment rule and form proposals that would revise registration and reporting requirements relating to employee benefit plans to reduce costs and expedite the effectiveness and updating of Form S-8 registration statements relating to such plans, including: (1) Amendment of Form S-8 to streamline registration procedures under the Securities Act of 1933; (2) amendment of Form 11-K under the Securities Exchange Act of 1934 to eliminate the requirement for the annual description of the plan's operations; and (3) related new rules and rule amendments.

DATE: Comments should be received by August 15, 1989.

ADDRESS: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-6009. Comment letters should refer to File No. S7-16-89. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Larisa Dobriansky or Elizabeth Murphy, Office of Disclosure Policy, Division of Corporation Finance, at (202) 272-2589, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is publishing for comment: (1) Proposed amendment of Forms S-8,[1] S-3 [2] and F-3 [3] under the Securities Act of 1933 ("Securities Act"); [4] (2) proposed new Rules 416A, 428 and 462 to be added to Regulation C under the Securities Act [5] and revisions to Rules 424,[6] 457,[7] and 475a[8] under Regulation C;

(3) proposed amendment of Item 512 [9] of Regulation S-K;[10] and

(4) proposed amendment of Form 11-K[11] and Rule 15d-21[12] under the Securities Exchange Act of 1934 ("Exchange Act").[13]

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[1] 17 CFR 239.16b.
[2] 17 CFR 239.13.
[3] 17 CFR 239.33.
[4] 15 U.S.C. 77a, *et seq.*
[5] 17 CFR 230.400—230.499.
[6] 17 CFR 230.424.
[7] 17 CFR 230.457.
[8] 17 CFR 230.475a.
[9] 17 CFR 229.512.
[10] 17 CFR 229.10—229.802.
[11] 17 CFR 249.311.
[12] 17 CFR 240.15d-21.
[13] 15 U.S.C. 78a, *et seq.*

I. Executive Summary

The Commission is proposing major revisions to the procedures for registering employee benefit plan securities on Form S-8. These proposals are intended to reduce costs to registrants by eliminating the need to prepare and file separate documents for federal securities law purposes that duplicate information otherwise provided to plan participants, while assuring timely delivery of information necessary for participants to make informed investment decisions.

Under the proposed approach, the plan information (excluding plan financial statements) and a statement of documents available upon request to plan participants,[14] currently required to be set forth in the Form S-8 registration statement, would be required to be delivered to participants, but would not be included in the Form S-8 registration statement and would not be required to be filed with the Commission pursuant to Rule 424. The information delivered to participants would not be required to be in the form of a customary prospectus. Instead, the information could be provided in one or several documents prepared in the ordinary course of employee communications, giving registrants the flexibility to use material written by company compensation or personnel specialists to advise employees about their benefits. Registrants also could use material required to be prepared for plan participants by the Employee Retirement Income Security Act ("ERISA"),[15] provided that the information is current for federal securities law purposes.

The plan information required to be delivered to participants, a written statement advising participants of the availability upon request of documents incorporated by reference in the registration statement and prospectus, and the documents incorporated by reference would constitute the prospectus satisfying the requirements of Securities Act Section 10(a) [16] pursuant to proposed new Rule 428. The documents containing registrant and plan financial information would be included in both the prospectus and registration statement through incorporation by reference of Exchange Act filings. The registrant would continue to be required to deliver the documents incorporated by reference upon a participant's request.[17]

Many employee benefit plans involve the registration not only of employer securities, but also of interests in the plan constituting separate securities.[18] To simplify the process of registering and reporting on plan interests, the Commission proposes to: (1) Amend Form 11-K, the annual report for employee benefit plans, to require only plan financial statements; (2) permit Securities Act registration of an indeterminate amount of plan interests; [19] and (3) simplify the calculation of filing fees by specifically providing that there are no additional fees for registered plan interests.[20]

In addition, the Commission proposes to relax the eligibility requirements for use of Form S-8. As proposed, the form could be used by any registrant reporting under the Exchange Act, rather than only those that have been reporting for 90 days. In lieu of a Rule 14a-3 annual report to security holders, registrants would be permitted to deliver to plan participants other documents containing substantially the same information.[21] Form S-8 also would be made available for securities issued pursuant to compensatory written contracts and for securities issued to compensate consultants and advisors employed by the registrant.

Other proposals to expedite employee benefit plan offerings and reduce costs and interpretive questions include: automatic effectiveness of Form S-8 registration statements upon filing; [22] clarification of filing fees for employee benefit plans; [23] simplification of procedures for the registration of additional plan securities; [24] modification of the Form S-8 disclosure requirements; and reorganization and amendment of the Form S-8's provisions for resale.[25]

Part IV of the release contains two charts, the first showing proposed changes to Form S-8 and the second comparing the current undertakings to deliver information required pursuant to Item 512(f) of Regulation S-K, which would be rescinded, to the proposed requirements of Rule 428(b).

II. Background

Form S-8, for registration of securities offered pursuant to employee benefit plans,[26] has an abbreviated disclosure format reflecting the Commission's historic distinction between offerings made to employees primarily for compensatory and incentive purposes and offerings made to raise capital to finance a registrant's business. Securities offerings under employee benefit plans are undertaken to attract, compensate, and retain qualified employees. Recognizing the benefits to employees of participating in such plans, the Commission traditionally has exercised its rulemaking authority to reduce the costs and burdens incident to registration, where consistent with investor protection.[27]

A. Common Provisions of Plans Using Form S-8

Form S-8 is available to a wide range of employee benefit plans that offer employer securities to employees upon specified terms.[28] The following discusses the provisions commonly included in plans pursuant to which securities are registered on Form S-8.

1. Stock Acquisition Plans

Form S-8 is used most frequently to register common stock that is to be issued in connection with stock option plans. Stock options typically are granted to select groups of management or highly compensated employees, giving the holder the right to acquire employer stock at a fixed price for a stated period of time. Such executive compensation plans generally provide for either incentive stock options ("ISO"), which receive special tax treatment, or nonqualified stock options,[29] or allow the company the flexibility to grant either or both. Qualifying ISO plans meet the requirements of Section 422A of the Internal Revenue Code ("Code"), which among other things, sets limitations on the exercise price of the option at the time of the grant and on the holding period of the underlying stock following exercise of the ISO.[30] Neither the grant nor the exercise of ISOs is a taxable event for the employee.[31] In contrast,

[14] For purposes of this release, the terms "plan participants," "participants," and "employees" refer to employees eligible to participate in a benefit plan, and with respect to the proposals, include consultants and advisors. *See* Section III.D.3., *infra*, regarding the proposed availability of Form S-8 for the issuance of securities to consultants and advisors.
[15] Pub. L. No. 93-406, 88 Stat. 832 (codified at 29 U.S.C. 1001, *et seq.*).
[16] 15 U.S.C. 77j(a).
[17] Both new and existing requirements to deliver information to employees would be set forth in proposed Rule 428(b), rather than as undertakings. Accordingly, the undertakings currently required by Item 512(f) of Regulation S-K would be rescinded.
[18] *See* n. 42, *infra*.
[19] Proposed new Rule 416A.
[20] Proposed Rule 457(h)(2).
[21] 17 CFR 240.14a-3.
[22] Proposed new Rule 462.
[23] Proposed revisions to Rule 457(h).
[24] Proposed General Instruction E.
[25] Proposed revisions to General Instruction C.
[26] Securities Act Rule 405 [17 CFR 230.405] defines "employee benefit plan" as any purchase, savings, option, bonus, appreciation, profit sharing, thrift, incentive, pension or similar plan solely for employees, directors, trustees or officers. *See* Release Nos. 33-3480 (June 16, 1953) [18 FR 3688], 33-4533 (Aug. 30, 1962) [27 FR 9213] and 33-5767 (Nov. 22, 1976) [41 FR 52862].
[27] This form first was made available for registering certain securities offerings to employees in 1953. (Release No. 33-3480). Significant releases issued to amend and interpret Form S-8 are as follows: For rulemaking actions adopting Form S-8 and extending its availability to different types of securities and plans, *see*: Release No. 33-4533; and 33-5767. Release No. 33-5767 also provided for a reoffer prospectus to be used by selling employees. *See also* Release No. 33-4328 (Feb. 20, 1961) [26 FR 1756] providing that registrants need not transmit shareholder communications and other reports to employees that already receive such material. The release further states that such registrant information need not be furnished to the Commission if otherwise furnished pursuant to different requirements. Of particular significance are the steps taken in Release No. 33-6190 (Feb. 22, 1980) [45 FR 13438] permitting automatic effectiveness of initial filings on the twentieth day after filing and automatic effectiveness of post-effective amendments on filing, and Release No. 33-6202 (April 2, 1980) [45 FR 23853] extending the principles of incorporation by reference to Form S-8. *See also* Release No. 33-6188 (Feb. 1, 1980) [45 FR 8960] analyzing the application of the Securities Act to employee benefit plans; Release No. 33-6281, pt. IV(C) (Jan. 15, 1981) [46 FR 8446] outlining staff interpretive positions regarding the incorporation by reference in a Form S-8 prospectus of plan information contained in an ERISA Summary Plan Description and updating techniques; and Release No. 33-6371 (Dec. 23, 1981) [46 FR 63437] reminding Form S-8 registrants of the requirements regarding signatures and experts' consents.
[28] Depending on the nature of the plan, an employee may have the opportunity to invest money in employer securities either directly or through an intermediary, *e.g.*, a trust fund. As a general rule, registration under the Securities Act is required for offerings of interests or participations in pooled investment vehicles, as in the case of thrift or savings plans, where the plan is both voluntary and contributory on the part of the employee and permits the investment of employee money in the issuer's securities. (*See* Release No. 33-6188, pt. II(A)).
[29] Nonqualified stock options are also known as nonstatutory stock options.
[30] 26 U.S.C. 422A. Code Section 422A(b) [26 U.S.C. 422A(b)] mandates the features of an ISO plan. That section provides, in part, that the exercise price of an ISO must not be less than the fair market value of the underlying stock at the time of grant under a plan approved by the granting corporation's shareholders. Pursuant to Code Section 422A(a) [26 U.S.C. 422A(a)], an employee may not dispose of stock acquired under the plan within two years from the grant of the option or within one year after its exercise. An ISO plan is not subject to ERISA [Dept. of Labor Advis. Op. 79-50A (1979-1981 Transfer Binder) Pension Plan Guide (CCH) ¶25,413].
[31] Code Section 422A(a). The sale of the underlying stock is a taxable event for the employee; the granting corporation does not receive a deduction.

non-qualified plans are not subject to the limitations applicable to ISO plans and exercise of the option generally is a taxable event for the employee, but the granting corporation receives a corresponding deduction.

Stock acquisition plans using Form S–8 also may provide for the grant of options to all employees in compliance with Code Section 423.[32] Code Section 423 stock purchase plans must satisfy requirements similar to certain of those applicable to ISOs in order to receive special tax treatment with respect to the options issued.[33] However, unlike ISO plans designed to compensate key personnel, Section 423 plans must grant options to all employees of the registrant on a nondiscriminatory basis.[34]

Finally, plans using Form S–8 commonly contain provisions for the grant or sale of "restricted" stock.[35] Under such arrangements, the corporation may give stock outright for no consideration, receive partial or full consideration from the employee or reserve the flexibility to set the consideration within a broad range. Similarly, the corporation may reserve the right to establish the conditions that must be satisfied before the employee may exercise all ownership rights with respect to the securities.

2. ERISA Deferred Compensation Plans

A considerable number of plans that use Form S–8 are deferred compensation plans subject to ERISA. All of these ERISA plans are defined contribution plans [36] that provide for an employee's systematic deferral of income. Plan contributions are made to a trust, managed by a trustee, bank, investment advisor or employer. The trust may contain a single pool of securities or several investment funds with plan assets invested in a variety of investment media in addition to employer securities (such as fixed income government securities or a diversified portfolio of equity or debt securities).

ERISA plans are subject to reporting and disclosure requirements [37] and must adhere to fiduciary standards governing transactions between plans and interested persons.[38] The ERISA plans registered on Form S–8 generally qualify for preferential tax status [39] under Code Section 401(a) ("qualified plans").[40] Qualified plans must satisfy coverage, participation, vesting and benefit accrual standards that are intended to assure that plans are established for the exclusive benefit of employees and prevent discrimination in favor of highly compensated individuals.

The ERISA plans that register on Form S–8 generally are "thrift" or "savings" plans including a Code Section 401(k) [41] salary reduction arrangement, which allows employees to contribute part of their pretax earnings through payroll deductions. Employer contributions to thrift/savings plans usually are allocated in proportion to the amounts that are contributed by employees.

B. Current Form S–8 Requirements

1. Eligibility

Form S–8 may be used to register offers and sales of: (1) securities of an eligible issuer to its employees, or to employees of its subsidiaries or parents, pursuant to any employee benefit plan; and (2) interests in such plans that constitute separate securities and are required to be registered under the Securities Act.[42] Issuers [43] are eligible to use Form S–8 if, at the time of filing a registration statement on that form, they (a) have been subject to Exchange Act Section 13 or 15(d) [44] reporting requirements for at least 90 days; (b) have filed all required reports during the previous 12 months (or such shorter period as they have been required to file); and (c) have furnished or will furnish to security holders an annual report containing substantially the

[32] 26 U.S.C. 423.

[33] Code Section 423(b) [26 U.S.C. 423(b)] stipulates, in part: The option price may not be less than the lesser of 85% of the fair market value of the underlying stock determined either (i) at the time of grant of the option or (ii) at the time of exercise of the option; while options must grant the same rights and privileges to each employee, the number of shares covered by the options may vary according to a uniform relationship to total compensation; and an employee cannot receive options with respect to stock with a fair market value in excess of $25,000 during any calendar year.

[34] Id.

[35] In this context, "restricted" refers to the fact that employee rights in the stock are contingent upon a future event and therefore have not vested.

[36] A defined contribution plan requires specified or determinable contributions. The amount of benefits paid depends, in addition to the level of contributions, on the degree of investment success and the amount of non-vested benefits allocated from employees whose interests terminate. Each employee in this type of plan has a separate account reflecting his or her interest in the plan investments.

[37] ERISA requires that financial and other plan information be reported to the Internal Revenue Service and the Department of Labor and disclosed to plan participants and their beneficiaries. Among other things, such requirements are intended to give plan participants information about their benefit rights and access to plan financial information. ERISA Section 101(b) [29 U.S.C. 1021(b)] requires the administrator of an ERISA plan to file with the Secretary of Labor an annual report, a summary plan description ("SPD"), a report of modifications and changes in the plan, and additional reports upon the termination of the plan. Under ERISA Section 104 [29 U.S.C. 1024], the administrator must furnish the SPD to each participant and each beneficiary who is receiving benefits under the plan. The SPD is, essentially, a written report describing the most significant features of a plan. The administrator also is required under that section to furnish participants a summary of the financial statements and schedules included in the annual report and such other information as is necessary to summarize that data fairly ("summary annual report"). The actual statements and schedules must be provided upon request. *See* n.73, *infra*, for ERISA timing requirements for the delivery of SPDs to participants.

[38] Part 4 of Title I of ERISA.

[39] An employer sponsoring a qualified retirement plan may deduct contributions to the plan in the year such contributions are made, subject to the limits of Section 404 of the Code [26 U.S.C. 404]. The employee on whose behalf such contributions are made will not realize gross income until such amounts are distributed. Finally, the trust itself is not taxed.

[40] 26 U.S.C. 401(a). Securities Act Section 3(a)(2) [15 U.S.C. 77c(a)(2)] exempts from registration under Section 5 of that Act [15 U.S.C. 77e] interests or participations in plans qualified under Internal Revenue Code Section 401 [26 U.S.C. 401], except such plans under which an amount in excess of the employer's contribution is allocated to the purchase of employer securities. Securities Act Release No. 33–6188, at pt. IV(B)(2); *Amicus curiae* brief filed by Commission in October, 1980 in *Newkirk* v. *Electric Co.*, No. 80–4302 (9th Cir.) (on appeal from 1979–1980 Fed. Sec. L. Rep. (CCH) ¶ 97,216 (N.D. Cal. 1979) (settled before decided on appeal)). Plans qualified under Section 401(a) are exempt from the provisions of the Investment Company Act of 1940 pursuant to Section 3(c)(11) of that Act [15 U.S.C. 80a–3(c)(11)].

[41] 26 U.S.C. 401(k). A 401(k) plan in which employee monies, including voluntary salary reductions or deferrals, may be used to purchase employer securities is contributory on the part of employees and the employer's offer and sale of its securities must be registered or exempt from registration. Further, the plan interests are themselves securities and the Section 3(a)(2) exemption for interests in the plan is unavailable. *See* letter re *Diasonics, Inc.*, available Dec. 29, 1982. In that event, the offer and sale of plan interests must be registered or otherwise exempt from registration.

In the event that the 401(k) plan is a profit sharing or stock bonus plan that only provides for employer contributions and employees may elect annually either (1) to receive currently the employer's contribution or (2) to defer receipt and have the funds invested in the trust for distribution upon retirement, interests in the plan are not subject to the Securities Act even if the trust invests the deferred employer contribution in employer securities. This type of plan is not considered to be contributory on the part of employees because it does not involve out-of-pocket investments by employees of their own funds. For that reason, Securities Act registration is not required with respect to these plans. *See* Release No. 33–6281, pt. II[B].

[42] Whether a separate security in the form of a plan interest exists depends upon the facts and circumstances of the particular plan. Securities Act Release Nos. 33–6188, pt. II(A) and 33–6281, pts. I and II discuss some of the criteria to be considered in making such a determination. An employee's interest in an involuntary, non-contributory defined benefit plan is not a security. *International Brotherhood of Teamsters* v. *Daniel*, 439 U.S. 551 (1979).

[43] As used in Form S–8, the term "issuer" means the person whose securities are to be offered pursuant to the plan, *i.e.*, the employer or its parent or subsidiary. Form S–8 as revised would use the term "registrant" to be consistent with other forms and rules.

[44] 15 U.S.C. 78m and 78o(d).

information required by Exchange Act Rule 14a–3.[45]

Where plan interests are being registered, Form S–8 requires the plan, at the time of filing, either to (a) have been subject to Exchange Act Section 15(d)[46] for at least 90 days and be current in its filings thereunder; or (b) file, concurrently with the filing of the Form S–8 registration statement, an annual report on Form 11–K for its latest fiscal year (or, if the plan has not yet completed its first fiscal year, for a period ending not more than 90 days prior to the filing date). However, the requirement to file an annual report on Form 11–K does not apply if the plan was established less than 90 days prior to the Form S–8 filing date.[47] Therefore, the form may be used for the initial registration of interests in a newly established plan.

2. Disclosure Requirements

Form S–8 requires registrants to deliver information to employees concerning an employee benefit plan and the securities offered pursuant to the plan. The form requires specific information to be furnished participants concerning the terms, salient features and administration of the plan.[48] Registrant and plan financial information are included in the prospectus through the incorporation by reference of documents that the registrant and plan are required to file under the federal securities laws.[49] Updating of registrant information and plan financial statements generally is accomplished through incorporating subsequently filed Exchange Act reports by reference in the prospectus. Plan amendments and changes in plan information concerning investment results, tax consequences, and the number of eligible and actual participants ordinarily are disclosed in prospectus supplements or replacement pages, frequently referred to in the employee benefit plan context as "appendices."[50]

3. Delivery Requirements

Form S–8 requires that the registrant undertake to deliver to eligible employees, along with the prospectus, its annual report to security holders for its last fiscal year.[51] The registrant also undertakes to furnish to plan participants, who do not otherwise receive the documents, all reports, proxy statements, and other communications distributed to its shareholders at the time such materials are sent to the shareholders.[52] In addition, documents incorporated by reference in the prospectus must be furnished to participants upon request.[53] Prospectus appendices containing updated plan information may be furnished separately to employees who previously have received a prospectus, rather than being redelivered with the prospectus.[54] Appendices containing substantive changes must be filed with the Commission pursuant to Rule 424(b)(3).[55]

4. Automatic Effectiveness of Form S–8 Registration Statements

The Commission has provided for the automatic effectiveness of filings on Form S–8.[56] An initial filing on Form S–8 becomes effective automatically 20 days following the date of filing.[57] A post-effective amendment to a Form S–8 registration statement becomes effective automatically on the date of filing.[58]

III. Proposed Changes to Registration and Reporting Requirements

A. General

The changes proposed in this release are designed to facilitate further the registration of securities issued under employee benefit plans for compensatory and incentive purposes.[59] The principal difference from the current approach would be in the treatment of non-financial plan information. The proposed amendments to Form S–8 would eliminate the requirement that registrants prepare a separate document for federal securities law purposes in order to convey plan information to employees in connection with offers and sales of securities being made under an employee benefit plan. Instead, based on a recognition that materials containing plan information generally are prepared by personnel and employee relations offices, the proposals would require that complete and current plan information be delivered to employees in a timely fashion, but would not specify a legal format for that information, which could be contained in one or more documents provided to plan participants.[60] Furthermore, it

[45] This information consists of audited financial statements, other specified financial information, management's discussion and analysis of financial condition and results of operations (Item 303 of Regulation S–K [17 CFR 229.303]), and other information about the company's business, management and securities.

[46] A plan becomes subject to Exchange Act Section 15(d) when plan interests are registered under the Securities Act. Plan interests generally are exempt from registration under Section 12(g) of the Exchange Act [15 U.S.C. 78l(g)] pursuant to Rule 12h–1 [17 CFR 240.12h–1].

[47] Where a plan, whose interests are exempt from registration pursuant to Section 3(a)(2) of the Securities Act, is amended to allow employee contributions for the purchase of employer securities, the exemption is no longer available. In essence, such amendment is viewed as tantamount to the termination of the exempt plan and its replacement by a new plan. As a result, the plan would not be required to file an annual report at the time its securities are registered on Form S–8, if established within the previous 90 days. *See* letter re *Eastman Kodak Company*, available Feb. 6, 1984.

[48] The staff has permitted an issuer that prepares an SPD under ERISA to file that description as an exhibit to a Form S–8 registration statement and incorporate that document by reference into the prospectus in response to the form's requirements with respect to disclosure about the particulars of the plan. Letter re *Shop & Go, Inc.*, available Aug. 18, 1980. The proposed amendments would continue to permit registrants' use of information required to be prepared by ERISA, provided that such information is current for purposes of offers and sales under the federal securities law.

[49] Current Item 15 of Form S–8. The following documents must be incorporated into the prospectus by reference:

(1) the issuer's and, where plan interests are being registered, the plan's latest annual report filed pursuant to Exchange Act Sections 13 or 15(d), or, in the case of the issuer, the most recent prospectus filed pursuant to Securities Act Rule 424(b) [17 CFR 230.424(b)] containing certified financial statements for the issuer's latest fiscal year;

(2) all other reports filed pursuant to Exchange Act Sections 13(a) or 15(d) since the end of the fiscal year covered by the annual reports or prospectus referred to in (1) above;

(3) if capital stock to be offered is registered under Exchange Act Section 12 [15 U.S.C. 78l], the description of that class contained in the Exchange Act registration statement, including any amendment or report updating the description; and

(4) all documents filed subsequently pursuant to Exchange Act Sections 13(a), 13(c), 14 and 15(d) [15 U.S.C. 78m (a) and (c), 78n, and 78o(d), respectively].

[50] Letters re *Crocker National Corporation*, available Oct. 27, 1980 and *Allis-Chalmers*, available April 20, 1981.

[51] Item 512(f)(1) of Regulation S–K [17 CFR 229.512(f)(1)].

[52] Item 512(f)(2) of Regulation S–K [17 CFR 229.512(f)(2)].

[53] Item 2 of Form S–6; Item 502(c) of Regulation S–K [17 CFR 229.502(c)].

[54] *See* Release No. 33–6714, n.92 (May 27, 1987) [52 FR 21252].

[55] 17 CFR 230.424(b)(3).

[56] The Commission determined that eliminating routine staff review of Form S–8 filings would have little impact on the quality of disclosure in such filings, and accordingly reallocation of such resources would be in the public interest. *See* Release Nos. 33–6151 (November 19, 1979) [44 FR 67671], and 33–6190.

[57] Current General Instruction D to Form S–8. No delaying amendments are permitted for Form S–8 registration statements (Rule 473(d) [17 CFR 230.473(d)]), and no requests for acceleration of the 20-day period are entertained. Rule 475a provides that a pre-effective amendment to Form S–8 is deemed to have been filed with the consent of the Commission, so the original 20 day period does not recommence when such an amendment is filed.

[58] Rule 464 [17 CFR 230.464].

[59] As proposed, Form S–8 would be available for compensatory written contracts, see Section III.D.3, *infra*.

[60] *See* Release No. 33–6844 (August 5, 1988) [31 FR 10067] requesting registrants to use clear and understandable language in disclosing plan

Continued

would no longer be necessary to file this plan information with the Commission, either as part of the registration statement or pursuant to Rule 424.

As more fully discussed below, under the proposed amendments, a registrant would continue to be required to take three steps to disseminate material information to plan participants in connection with the offer and sale of employee benefit plan securities: (1) deliver to participants, and update as necessary, specified non-financial plan information; (2) accompany or precede the plan information with an annual report to security holders or other document containing audited financial statements and other specified information for the registrant's latest fiscal year;[61] and (3) notify participants of the availability, upon request, of documents containing registrant information and, if applicable, plan financial statements that are incorporated by reference in the Form S–8 registration statement.

In formulating the proposed amendments to Form S–8, the staff has benefited from the recommendations submitted by the American Society of Corporate Secretaries ("ASCS")[62] and the American Bar Association ("ABA").[63] The ASCS suggested eliminating the Form S–8 prospectus requirement with registrants undertaking in the registration statement to provide disclosure relating to such plans to all plan participants and to update such information.

The ABA also recommended the elimination of the Form S–8 prospectus in its current form but would substitute therefor a disclosure document that the issuer would otherwise distribute to eligible employees: an SPD for ERISA plans, and a plan document for non-ERISA plans. The disclosure document would have to be filed as an exhibit to the registration statement and distributed to all plan participants. Thereafter, issuers would disseminate updated plan information pursuant to undertakings in the registration statement. The ABA further recommended that the registration of interests in employee benefit plans no longer be required.[64]

B. Prospectus Requirements

1. Section 10(a) Prospectus Content, Delivery and Updating; Exemption from Rule 424

Proposed Form S–8 would dispense with the use of a customary prospectus filed with the registration statement as the means of providing disclosure to plan participants. In its place, registrants would meet their Securities Act Section 5 [65] prospectus delivery obligations by providing plan participants: (1) document(s) containing the plan information required by Form S–8, updated as necessary; [66] and (2) a written statement advising participants of the availability, upon request, of the documents incorporated by reference in the registration statement and stating that those documents are incorporated by reference in the prospectus.[67] These delivered documents, together with the documents incorporated by reference,[68] would constitute, pursuant to paragraph (a)(1) of proposed new Rule 428, a prospectus meeting the requirements of Section 10(a) of the Securities Act ("Section 10(a) prospectus").[69] The Section 10(a) prospectus would not be required to be filed with the Commission pursuant to Rule 424, as proposed to be amended. Paragraph (b) of proposed Rule 428 would specify the mechanics of disseminating and updating the required plan information.[70] Finally, paragraph (c) of proposed Rule 428 would define the terms "employee" and "employee benefit plan" in the same manner as Form S–8, as proposed to be revised.

Comment is requested on whether only required plan information contained in each of the delivered documents, rather than the entire document, should be deemed part of the Section 10(a) prospectus. If the Section 10(a) prospectus were to contain only required portions of the documents, an adequate means of identification of such portions, for liability purposes, would be necessary. Therefore, commentators favoring a Section 10(a) prospectus covering only required information, rather than the entire document, should recommend a practical means for identification of this information.

Under the proposals, a registrant could deliver to plan participants information concerning the plan, its operation and participants' rights and obligations under the plan in one or more documents that the registrant prepares in the ordinary course of

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information in the prospectus. The release noted that a booklet describing a plan in simple, non-technical terms might be substituted for a portion of the prospectus, or expanded to serve as the prospectus.

[61] *See* Section III.D.2., *infra*.

[62] Letters to Catherine C. McCoy, Associate Director, Division of Corporation Finance, from Merry W. McDaniel and Karl R. Barnickel, Members, S–8 Subcommittee of ASCS Securities Law Committee, American Society of Corporate Secretaries, Inc. (December 21, 1984 and November 27, 1985, respectively).

[63] Letter to Catherine C. McCoy, Associate Director, Division of Corporation Finance, from William J. Rainey, Chairman, ABA Task Force on Registration of Employee Benefit Plans, American Bar Association (June 10, 1985).

[64] *See* Section III.D.3 and III.E, *infra*, for proposals streamlining the registration of plan interests and the plan annual report on Form 11–K.

[65] Securities Act Section 5(b)(2) [15 U.S.C. 77e(b)(2)] requires that a Section 10(a) prospectus accompany or precede the delivery for sale or after sale of any security with respect to which a registration statement has been filed.

[66] Part I, Item 1 of proposed Form S–8. *See* Section III.D.7, *infra*, for a discussion of the modification of the disclosure requirements of current Form S–8.

[67] Part I, Item 2 of proposed Form S–8.

[68] Part II, Item 3 of proposed Form S–8 would retain current requirements (*see* n.40, *supra*, for the current requirements); documents would be incorporated by reference in the registration statement as well as in the prospectus. In addition, proposed Item 3 would permit incorporation by reference of an effective Exchange Act registration statement on Form 10 [17 CFR 249.210] or 20–F [17 CFR 249.220f] as an alternative to an annual report or Rule 434(b) prospectus. The following documents would be incorporated by reference into the registration statement and Section 10(a) prospectus:

(1) The registrant's latest annual report and, where plan interests are being registered, the plan's latest annual financial report filed pursuant to Exchange Act Section 13(a) or 15(d), or specified other documents containing audited financial statements for the registrant's latest fiscal year.

(2) All other reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the document referred to in (1) above;

(3) If the class of securities to be offered is registered under Exchange Act Section 12, the description of that class contained in a registration statement filed thereunder, including any amendment or report filed for the purpose of updating that description; and

(4) All documents filed subsequently by the registrant pursuant to Exchange Act Sections 13(a), 13(c), 14 and 15(d).

An accountant's consent would continue to be required with respect to audited financial statements incorporated by reference. The consent would be filed initially as an exhibit to the registration statement, and then as an exhibit to each subsequently filed annual report on Form 10–K [17 CFR 249.310] or 11–K incorporated by reference. *See* Rule 439 [17 CFR 230.439].

[69] Section 10(a) of the Securities Act requires that, except as provided in other paragraphs of Section 10, a prospectus shall contain specified Schedule A [15 U.S.C. Schedule A] information contained in the registration statement. The information required by Schedule A generally would be included in proposed Form S–8 to the same extent as in current Form S–8. Paragraph (c) of Section 10 [15 U.S.C. 77j(c)] allows the Commission to include in a prospectus additional information, as necessary or appropriate in the public interest or for the protection of investors. Accordingly, although plan information would not be contained in a Form S–8 registration statement, the Commission is requiring plan information to be a part of the Section 10(a) prospectus, pursuant to proposed new Rule 428(a)(1).

[70] Proposed Rule 428(b) would address the registrant's requirements concerning the delivery of non-financial plan information required by Part I of Form S–8 and the delivery, upon request, of registrant (and plan, if applicable) information incorporated by reference in Part II of the registration statement. Other information delivery requirements relating to Form S–8 now required as undertakings pursuant to Item 512(f) of Regulation S–K would be revised as appropriate and moved to Rule 428(b). Item 512(f) would be rescinded.

business. A registrant could, of course, elect to prepare and deliver a single document resembling a customary prospectus, but the new Form S–8 would permit a variety of other approaches. For example, one document might set forth the terms and salient features of the plan, while a separate written statement would discuss current tax information.[71] Registrants could use SPDs as the basic disclosure document, as permitted currently.[72] However, although ERISA allows several months after commencement of a plan for preparation of an SPD,[73] it might have to be completed prior to the ERISA deadline in order to be available for use in connection with offers and sales of securities under the plans.

Because the plan document(s) and required written statement concerning availability of information would not be filed with the Commission, registrants would be required to date each such document and include a printed or stamped legend stating: "This material constitutes part of the prospectus covering these securities, which have been registered under the Securities Act of 1933."[74] Registrants also would be required to maintain a file of the legended documents for three years after the securities had been offered or sold and to furnish a copy of those materials to the Commission or its staff upon request.[75] Comment is requested on whether the three year file maintenance requirement is adequate or the period should be longer, such as five or seven years.

If questions should arise as to the adequacy of the plan information constituting part of the Section 10(a) prospectus, the legending and file maintenance requirements should facilitate identification of those communications that constitute the Section 10(a) prospectus and minimize disputes about the registrant's intention to rely on a particular document to meet its Section 5 prospectus delivery obligation. Of course, any delivered plan information which is not made a part of the Section 10(a) prospectus would continue to be subject to the antifraud provisions of the federal securities laws.[76]

Pursuant to Securities Act Section 12(2),[77] a registrant would be required to deliver current and complete plan information. Accordingly, documents containing plan information would have to be updated to reflect material changes.[78] The plan information could be updated simply by providing plan participants with a letter or memorandum. Of course, care would have to be taken that the information is presented in an organized and understandable fashion. As with information initially furnished, the updated information would have to be stamped with the same statement indicating that such information constituted part of the Section 10(a) prospectus. Existing participants would be furnished the updating material; the registrant would be required to re-deliver previously furnished document(s) only upon a participant's request. If updates become so numerous that they obscure plan disclosures, for new plan participants, a registrant would be required to revise the original plan document(s).[79] Comment is requested on whether the proposed approach for delivery of plan information is a practical method and provides employees with adequate safeguards under the federal securities laws.

2. Section 10(a) Prospectus Liability

Under the proposed amendments, the narrative plan information would continue to be subject to Section 12(2) of the Securities Act, as well as Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act, but would not be subject to Securities Act Section 11.[80] Section 11, as well as the other civil liability and antifraud provisions, would continue to apply to the registrant's and the plan's filings that are incorporated by reference in the Form S–8 registration statement.

The compensatory nature of security offerings under employee benefit plans and the relationship between registrants and plan participants provide incentives for the preparation and distribution of accurate and complete plan information even though the registrant would no longer be subject to strict liability with respect to that information.[81] Further, Section 12(2) and the antifraud provisions would continue to apply to the information. Accordingly, the proposed approach should not increase the risk of inadequate disclosure to plan participants.

C. Registration Statement Requirements

The Form S–8 registration statement, as proposed, would no longer contain narrative plan information or the Section 10(a) prospectus in any form.[82] While Part I of Form S–8 would continue to set forth requirements for disclosure of information about the plan, documents containing that information would not be filed with the Commission, as noted above. In essence, the registration statement as filed would consist of: the facing page; enumeration of documents incorporated by reference (proposed Item 3); description of securities (proposed Item 4); interests of named experts and counsel (proposed Item 5); indemnification of directors and officers (proposed Item 6); exhibits (proposed Item 7); undertakings (proposed Item 8);[83] and the signature page. As currently, registrant (and plan, if applicable) documents incorporated by reference would not be filed with the registration statement, but Section 11 liability would continue to apply to this information.

Documents containing registrant information or plan financial statements incorporated by reference in the registration statement would continue to be subject to the updating requirements

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[71] Tax information is currently required by Item 4 of Form S–8 and the proposals would retain that disclosure requirement. *See* proposed new Item 1(a)(3).

[72] *See* n.46, *supra*.

[73] ERISA requires the plan administrator to furnish an SPD to each plan participant either within 90 days after an employee becomes participant or within 120 days after the plan becomes subject to ERISA [29 U.S.C. 1024(b)(1)].

[74] Proposed Rule 428(b)(1).

[75] Proposed Rule 428(a)(2). The three-year period comports with the statute of limitations in Section 13 of the Securities Act [77 U.S.C. 77m].

[76] Securities Act Section 17(a), (15 U.S.C. 77q(a); Exchange Act Section 10(b) (15 U.S.C. 78j(b) and Rule 10b–5 thereunder [17 CFR 240.10b–5].

[77] 15 U.S.C. 77*l*(2).

[78] The updating procedures for plan and other information are briefly described in proposed General Instruction G to Form S–8.

[79] Proposed Rule 428(b)(1). Cf. *In re Franchard Corp.*, 42 S.E.C. 163, 184–85 (1964). *See also* Release No. 33–6844, requesting the cooperation of registrants in improving the clarity of prospectuses used in connection with securities registered on Form S–8.

[80] 15 U.S.C. 77k. Section 11 of the Securities Act imposes liability for material misstatements or omissions contained in a registration statement when it becomes effective. That section imposes strict liability on the issuer. Section 11 also imposes liability on a wide variety of other defendants, such as persons who signed the registration statement, directors of the issuer at the time the statement is filed, persons who consented to be named in the statement, experts who consented to be named in the statement, and underwriters.

[81] A review of the reported cases asserting liability under the federal securities laws in connection with employee benefit plans indicates that they have been based upon Sections 17(a) and 12(2) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b–5 thereunder, rather than Section 11.

[82] Section 7 of the Securities Act [15 U.S.C. 77g] permits the Commission to exclude information or documents from the registration statement.

[83] While Item 512(f) of Regulation S–K which currently requires undertakings applicable to Form S–8, would be rescinded, other undertakings would continue to be required as specified in proposed Item 8.

of Item 512(a) of Regulation S–K.[84] As is currently the case, such documents would be updated automatically through the forward incorporation of subsequently filed Exchange Act reports into the registration statement. Pursuant to proposed Rule 428, these documents would constitute part of the Section 10(a) prospectus as well.[85]

The registrant would be required to describe any material changes in the registrant's affairs that have occurred since the end of the latest fiscal year, but have not been previously included in Exchange Act reports, in an Exchange Act filing, which would be incorporated by reference into the registration statement. This would preserve Section 11 liability on all registrant information. This procedure would differ from the current Form S–8 provisions, which permit such information to be set forth in the prospectus as an alternative to being disclosed in an Exchange Act filing.[86]

D. Other Proposed Amendments to Form S–8

In addition to revising the system for delivery of nonfinancial plan information and eliminating its filing with the Commission, the Commission also is proposing other amendments to Form S–8 and related rules. Generally, the proposed amendments relax conditions to the use of Form S–8, simplify the registration process, and streamline further the form's disclosure requirements. This section describes the procedural and substantive changes being proposed.[87]

1. Elimination of Ninety-Day Eligibility Requirement

The proposed amendments to Form S–8 would eliminate the requirement that a registrant be subject to the reporting requirements of Exchange Act Section 13 or 15(d) for 90 days prior to filing a registration statement on Form S–8.[88] As proposed, registrants would need only to be subject to those reporting obligations prior to the time the Form S–8 registration statement was filed, and to have filed all required reports during the preceding year or such shorter period that the registrant was subject to those reporting requirements.[89]

Retention of the requirement that Form S–8 registrants be subject to Exchange Act reporting obligations would provide for current public information. Information in an effective Securities Act or Exchange Act registration statement would be available to the marketplace and the registrant would be subject to the continuous reporting system under the Exchange Act. As a result, the business and financial information regarding the registrant would be available to employees. Comment is requested on whether there is any need to retain the 90-day eligibility requirement for using Form S–8.

2. Requirements for the Delivery of Registrant Information

Currently, to be eligible to use Form S–8, a registrant must either have furnished, at the time of filing a Form S–8 registration statement, an annual report to security holders for its latest fiscal year containing substantially the information required by Exchange Act Rule 14a–3, or furnish such a report after the filing of the registration statement.[90] Whenever the prospectus is delivered to participants, the annual report to security holders must accompany it, unless previously furnished.[91]

The Commission proposes to rescind the mandated use of the annual report to security holders and provide flexibility by permitting a registrant to use any one of several documents to provide this information to participants in lieu of an annual report to security holders: [92] a Securities Act Rule 424(b) prospectus, an annual report on Form 10–K or 20–F,[93] or an effective registration statement filed on Form 10 or 20–F under the Exchange Act.[94] A registrant would be required to deliver any one of these documents, containing audited financial statements for its latest fiscal year, to participants along with the non-financial plan information. Thus, a registrant not subject to the annual report to security holders requirement of Rule 14a–3 or Rule 14c–3,[95] and not choosing to prepare such a report, would nonetheless be eligible to use Form S–8.

Finally, the proposals would continue to obligate a Form S–8 registrant to furnish on a continuing basis shareholder communications and other reports to plan participants who do not otherwise receive such information.[96] However, participants in a plan who elect not to invest in employer securities do not have the same need for these shareholder communications; therefore, the Commission is proposing to codify staff interpretation by requiring delivery of such information only to those who are participating in plan funds that invest in employer securities or those who request that information.[97] In addition, registrants would no longer be required under the proposals to deliver shareholder communications and other reports "in the same manner" as those materials are sent to shareholders. This change would permit registrants to deliver such information by any means reasonably calculated to reach plan participants, provided that delivery is no less prompt than for shareholders. For example, "desk-top" delivery would be permissible.[98]

3. Use of Form S–8 for Securities Issued Pursuant to Compensatory Contracts; to Consultants and Advisors; and to Former Employees

Several changes to Form S–8 are proposed in order to permit its use for a wider universe of plan participants and employee compensatory arrangements. First, the proposed amendment to General Instruction A.1(a) would specify that the form is available not only for securities offered pursuant to an employee benefit plan, but also for securities offered pursuant to compensatory arrangements that take the form of individually negotiated written contracts.

Further, proposed Form S–8 could be used by registrants for offerings to consultants or advisors pursuant to compensatory benefit plans or written contracts. General Instruction A.1(a) of Form S–8 would define the term "employee" to include consultants or advisors, provided that bona fide services are rendered by such persons to a registrant in connection with its business and such services are not in connection with the offering or sale of securities in a capital-raising transaction. This proposed amendment is based on the conditions set forth in Securities Act Rule 701[99] for exempting from registration offers and sales of securities by non-reporting companies pursuant to certain compensatory benefit plans or written contracts.[100] Securities issuances to consultants and advisors were included within the scope of that exemption in response to public comments.[101] Commentators argued that if securities issuances to such parties are primarily compensatory rather than for capital-raising purposes, there is no meaningful basis for distinguishing between issuances to regular employees and those to consultants or advisors employed by the registrant. Comment is requested on the advisability of making Form S–8 available for offerings to consultants and advisors and on the appropriateness of the proposed standard that would apply to such issuances.

In addition, the Commission is proposing to codify the staff's interpretive position regarding the availability of Form S–8 for certain transactions involving former employees who had been granted stock options.[102] Form S–8 would be available for the exercise of non-transferable employee benefit plan stock options and the subsequent sale of the securities[103] even if the participant were no longer employed at the time of exercise of sale, so long as such exercises were not prohibited under the plan.

4. Immediate Effectiveness of Form S–8 Registration Statements

Proposed new Rule 462 would provide for the automatic effectiveness of a Form S–8 registration statement upon filing.[104] Based on its experience with the 20-day waiting period currently required, as well as the automatic effectiveness of post-effective amendments on Form S–8, the Commission believes that eliminating the waiting period would have little impact on the quality of disclosure in such filings and would not be detrimental to plan participants, and that the public interest would be served by prompt effectiveness of such filings.[105]

5. Automatic Registration of Plan Interests; Method of Calculating Fees

The Commission is proposing to add new Rule 416A to provide that a registration statement covering both registrant securities offered pursuant to an employee benefit plan and plan interests that constitute separate securities would be deemed to cover such plan interests in an indeterminate amount.[106] The facing page of Form S–8 would be modified to require registrants to include a statement, where appropriate, indicating that the registration statement covers an indeterminate amount of plan interests. In effect, plan interests would be automatically registered together with the other securities being offered. Proposed Rule 416A, along with the revision of the filing fee rule to clarify that no separate fee is payable with respect to plan interests, as discussed below, should reduce interpretive questions and practical difficulties associated with the mechanics of registering plan interests.

A proposed revision of Rule 457(h) [107] would clarify and simplify the method for calculating the aggregate offering price and the amount of the registration fee for Form S–8 registration statements. Currently, the aggregate offering price and the amount of the registration fee for such offerings is computed with respect to the aggregate contributions of employees, except that employer contributions are included if employees may choose the medium in which the employer's contributions are to be invested. The proposal would base the registration fee on the aggregate offering price for the maximum amount of the registrant's securities (other than plan interests) covered by the registration statement.[108] If the offering price per share (or the option price) were unknown, the fee would be calculated on the basis of the market price of registrant securities of the same class as those to be offered, as determined in accordance with paragraph (c) of Rule 457.[109] There would be no separate fee calculation for plan interests.[110] A paragraph would be added to clarify that the inclusion of a reoffer prospectus on Form S–8 for employer securities issued and sold to employees under that registration statement does not result in an additional filing fee. As currently, a fee would have to be paid for additional securities registered for resale that had been sold to an employee in reliance on an exemption from registration.[111]

6. Registration of Additional Securities

When a registrant increases the number of securities that may be issued pursuant to an existing plan, it is required to file a new registration statement to cover the additional securities.[112] Currently, when such a new registration statement is filed, Rule 429 [113] allows the previously registered securities to be offered and sold through the delivery of the current prospectus filed as part of the new registration statement. The prospectus must include all information required by Form S–8 for the securities covered by both the earlier registration statement and the later one. Thus, a registrant can disseminate to employees a single prospectus in connection with offerings of employee benefit plan securities registered under several registration statements.

The procedure specified by Rule 429, which contemplates the filing of a prospectus, would not be available for registration statements on proposed Form S–8. Use of a combined prospectus

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[84] 17 CFR 229.512(a). *See* the proviso following Item 512(a)(1) [17 CFR 229.512(a)(1).]

[85] *See* Section III.B.1., *supra.*

[86] Current Item 18 of Form S–8.

[87] The proposals also include changes in wording and arrangement to clarify requirements and maintain consistency.

[88] General Instruction A(1) to current Form S–8.

[89] General Instruction A.1 to proposed Form S–8.

[90] General Instruction A(1) to current Form S–8.

[91] Current Item 512(f)(1) of Regulation S–K. *See* n.45, *supra*, for the information required by Rule 14a–3.

[92] Proposed Rule 428(b)(2).

[93] The Commission proposes to rescind current Item 512(f)(4) of Regulation S–K, relating to the use of Form 20–F by foreign private issuers in lieu of the annual report to security holders, because proposed Rule 428(b)(2) would specifically permit such issuers to use Form 20–F or Form F–1. In addition, current Instruction E to Form S–8, relating to foreign private issuers, is proposed to be rescinded as unnecessary because the use of Form 20–F would be provided for in proposed Rule 428(b)(2) and the second part of the Instruction, concerning reoffers, would be dealt with in General Instruction C (*see* Section III.D.6, *infra*).

[94] The documents used would have to contain substantially the same information as required by Rule 14a–3, particularly the management's discussion and analysis, except for certain documents delivered by foreign private issuers using Form 20–F (Forms F–1 [17 CFR 239.31] and 20–F) and registrants complying with the requirements of Form S–18 [17 CFR 239.28] (Forms S–18 and 10–K), which would contain the textual and financial information appropriate to those forms.

[95] 17 CFR 240.14c–3.

[96] Proposed Rule 428(b)(5): current Item 512(f)(2) of Regulation S–K.

[97] Letter re *Union Carbide*, available Dec. 14, 1981.

[98] Letter re *Revlon, Inc.*, available July 6, 1984.

[99] 17 CFR 230.701.

[100] Release No. 33–6788 (April 14, 1988) [53 FR 12918].

[101] Rule 701 was initially proposed in Release No. 33–6683 (January 16, 1987) [52 FR 3015].

[102] Proposed General Instruction A.1(a) to Form S–8. *See* Letters to Donald W. Glazer, Co-Chairman, Subcommittee on Employee Benefits and Executive Compensation, American Bar Association from William E. Morley, Associate Director (Legal), Division of Corporation Finance, Feb. 14, 1989 and May 1, 1989.

[103] *See* Section III.D.8, *infra*, for discussion of the resale provisions in Form S–8.

[104] Rule 475a would be amended to remove the reference to pre-effective amendments to Form S–8, since there would be none. Post-effective amendments would continue to be effective upon filing as provided by Rule 464.

[105] General Instruction D to Form S–8 would be revised to state that registration statements become effective on filing and eliminate the references to pre-effective amendments. In addition, this Instruction would be modified to: (1) clarify that requests for confidential treatment of portions of Exchange Act documents incorporated by reference into the Form S–8 be treated in the same manner as such requests made with respect to the Form S–8 under the Securities Act; and (2) remove as unnecessary the requirements to furnish the Commission copies of amendments marked to show changes and copies of documents incorporated by reference.

[106] Proposed new General Instruction F would direct registrants' attention to the Rule.

[107] 17 CFR 230.457(h).

[108] Proposed Rule 457(h)(1).

[109] 17 CFR 230.457(c). Rule 457(c) describes the method for valuing securities that are subject to market fluctuations.

[110] Proposed Rule 457(h)(2).

[111] Proposed Rule 457(h)(3). The circumstances under which securities may be registered on Form S–8 for resale without the original issuance to employees having been registered on Form S–8 are addressed in Section III.D.8, *infra*.

[112] The Securities Act does not provide for registration of additional securities by post-effective amendment, as provided in the Investment Company Act of 1940 [15 U.S.C. 80a–1, *et seq.*]. *See* current Rule 413.

[113] 17 CFR 230.429.

would be possible, however, without the Rule 429 procedure, because registrants would have the flexibility to modify prospectuses without filing them. Proposed General Instruction E to Form S–8 would provide a procedure for the filing of a simplified registration statement covering additional securities to be used in connection with the same employee benefit plan. The registration statement would not need to repeat previously filed information, and could consist only of the facing page; a statement indicating that the contents of the earlier registration statement, identified by file number, are incorporated by reference; the signature page; the legality opinion;[114] the consents of the accountant and counsel [115] and any additional required information not filed earlier.[116] No prospectus would be filed, except for a reoffer prospectus, if it differed substantively from the one used in connection with the earlier registration statement. Registrants would continue to update the Section 10(a) prospectus by delivery of plan information to employees. A filing fee would be paid only with respect to the additional securities being registered.

7. Modification of Disclosure Requirements

The wording and arrangement of the disclosure requirements of Form S–8 would be revised to reflect the basic approach underlying the proposed amendments, clarify and simplify disclosure requirements, and facilitate the use of SPDs or plan documents to the maximum extent in furnishing plan information to participants. Apart from editorial changes, the proposed amendments also would effect the substantive revisions discussed below.

Form S–8, as proposed, would not contain the requirements called for by current Items 1–3. These items require the information specified by Items 501, 502 and 503 of Regulation S–K.[117] This information generally is either inapplicable to employee benefit plans or does not need to be included in a Section 10(a) prospectus structured as an informal group of documents. The only requirement in Items 1–3 proposed to be retained is that calling for the information in Item 502(c), which requires the registrant to include an undertaking to provide upon request copies of documents incorporated by reference. Rather than implementing this requirement through an undertaking, the Commission proposes to include it among the delivery requirements mandated by proposed Rule 428(b),[118] and require that employees be given a written statement that the documents incorporated by reference are available upon request.[119]

Current Items 4–13 call for plan information and would be regrouped as new Item 1. This Item would continue to require that the essential plan information be given to participants.[120] While many of the items remain intact, the proposals delete unnecessary requirements,[121] eliminate the requirement to present information about outstanding options with different prices and expiration dates,[122] and eliminate the need for certain disclosure regarding aspects of ERISA plans that are substantively regulated pursuant to ERISA requirements.[123] Comment is requested on whether the proposed plan information requirements provide sufficient information for participants to make investment decisions, and on whether Item 1 could be further streamlined to delete any requirements as generally unnecessary, or as not useful for ERISA plans because the substantive requirements of ERISA duplicate the disclosure. Commentators also are requested to address whether it would be practical to include the specified information in documents not specifically tailored to comply with these requirements, as is contemplated by the proposed scheme. Finally, the Commission requests comment on whether plan disclosure requirements should be much more general, with each registrant having the flexibility to provide plan information which in its opinion is material to participants under the circumstances.

Currently, Item 12 of Form S–8 requires registrants to provide five-year financial data in tabular form about each investment medium, if participants can direct all or any part of the assets under a plan to two or more investment media. The proposals would eliminate the specific time period of the information but would continue to require that registrants set forth financial data which, in the opinion of the registrant, would enable participants to make informed investment decisions concerning the investment media. The financial data could be in tabular form or other meaningful presentation. Registrants would be required to provide performance information in sufficient detail to apprise participants of material trends and significant changes in the performance of alternative investment vehicles and to enable them to make meaningful comparisons. Comment is solicited on whether it would be preferable to specify a definite time period for disclosing performance data and what the appropriate length of time should be, for example 5 years, 3 years or 2 years.

Item 14 of current Form S–8 requires either a description of the securities being offered as called for by Item 202 of Regulation S–K,[124] or, if such securities constitute capital stock registered under section 12 of the Exchange Act, that the description be incorporated by reference from Exchange Act documents. This requirement would be moved to Part II of the proposed Form S–8, and the incorporation by reference of the description of section 12 securities would no longer be limited to capital stock.[125] However, unless capital stock were being offered, delivered plan documents also would be required to contain a description of the material characteristics of the securities.[126]

Current Item 15, "Incorporation of Certain Documents by Reference," would be moved to Part II and thus would incorporate the documents by reference in the registration statement (as well as the prospectus, as currently).[127] As discussed above, the list of documents permitted to be incorporated by reference would be expanded to include an effective registration statement on Form 10 or 20–F.[128] Current Item 16, "Additional Information," would be rescinded because such information would be required to be included in Exchange Act reports.[129] Current Item 17, "Interests of Named Experts or Counsel," would be moved to Part II.[130]

Form S–8 would no longer require that registrants disclose to employees the Commission's position on indemnification for Securities Act liabilities (current Item 18), but instead would require registrants to include in their registration statements the undertaking contained in Item 512(i) of Regulation S–K, to be redesignated as Item 512(h).[131] By the terms of that undertaking, a registrant agrees to submit to a court of appropriate jurisdiction, in connection with any claim for indemnification against liability under the Securities Act, the question of whether such indemnification is against public policy under the Act. This revision would comport with the staff's current interpretive position that Form S–8 registrants may include the undertaking in Part II rather than provide the Item 18 information on indemnification in the prospectus. In addition, Form S–8 would continue to require disclosure in Part II of the registration statement of a registrant's policies and arrangements with respect to the indemnification of its directors and officers (current Item 19, proposed Item 6).

The proposals would not modify any of the exhibit requirements for registration statements on Form S–8,[132] but comment is solicited on whether any are unnecessary and should be rescinded. Since Form 10–K also requires the exhibits called for by Item 601(b)(4) of Regulation S–K, instruments defining the rights of security holders, and Item 601(b)(29), information furnished to state insurance regulatory authorities,[133] comment is particularly requested on whether these exhibits should be retained.

Finally, Instruction 1 to the Form S–8 signature requirements would be amended to restore the requirement that the chief financial officer sign the registration statement, which was mistakenly omitted when the form was amended.[134]

8. Reoffers and Resales

General Instruction C to Form S–8 would be revised to clarify, and in some cases modify, the procedures for registering on that form reoffers and resales of employee benefit plan securities. Such offerings would continue to be made through a separate reoffer prospectus in customary format filed under cover of Form S–8 but containing the disclosure specified in Part I of Form S–3.[135] Certain volume limitations would continue to apply if the registrant did not meet the registrant requirements of Form S–3.[136]

Generally, current requirements for resales registered on Form S–8 would be retained but clarified and restructured to make more understandable the distinction between treatment of control securities (securities issued under an employee benefit plan registered on the Form S–8 to be reoffered by affiliates) [137] and restricted securities [138] (previously unregistered securities issued under an employee benefit plan pursuant to a Securities Act exemption to affiliates or non-affiliates).[139] Three notable changes are proposed.

First, restricted securities could be registered for reoffer in any amount, provided they have been acquired by the employee prior to the filing of the registration statement. Currently, General Instruction C limits the amount of restricted securities registered for resale to ten percent of the total number of shares issuable under the plan to which the Form S–8 registration statement relates.[140] The Commission believes this limitation is unnecessary, particularly as each seller of either restricted securities or control stock would continue to be subject to Rule 144(e) volume limitations, unless the registrant was eligible to use Form S–3 or F–3. However, comment is solicited on whether the volume limitation for restricted securities should be retained, but raised above the current ten percent level to for example, 20% or 50%.

Second, the proposed instruction would specifically permit registrants to refer generically to selling security holders of control securities in the reoffer prospectus, provided that the names of those intending to resell were not known at the time of filing the Form S–8 registration statement. Later, as the names become known, registrants would be required to supplement the prospectus with that information and file the supplement as required by Rule 424(b).[141] This procedure would not be available for sellers of restricted securities, since their identity should be known at the time the reoffer transaction is registered.

Third, General Instruction C would be revised to specify less burdensome procedures for reoffers by employees of foreign private issuers filing on Form 20–F. Current General Instruction E specifies that resales by employees of

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[114] Item 601(b)(5) of Regulation S–K [17 CFR 229.601(b)(5)].

[115] Item 601(b)(24) of Regulation S–K [17 CFR 229.601(b)(24)].

[116] For example, if an exhibit not required in the earlier registration statement was required in the later one, the latter would have to include the new exhibit in Part II.

[117] 17 CFR 229.501, 502, 503; "Forepart of Registration Statement and Outside Front Cover Page of Prospectus," "Inside Front and Outside Back Cover Pages of Prospectus," and "Summary Information, Risk Factors and Ratio of Earnings to Fixed Charges."

[118] Proposed Rule 428(b)(3).

[119] Proposed Item 2 of Form S–8.

[120] *See* Section IV.A, *infra*, for a chart describing the changes with particularity.

[121] *E.g.*, the requirements to provide the number of employee participants and the number eligible to participate (current Item 4(d)).

[122] Current Item 6.

[123] Part 4 of Title I of ERISA; *see* n.37, *supra*. *See* current Items 11 and 12 relating to administration of the plan and investment of funds, and their analogues in proposed Items 1(h)(1), 1(h)(2), 1(i)(2), and 1(i)(3), which require disclosure only for a plan not subject to ERISA. ERISA sections 103 (b) and (c) [29 U.S.C. 1023 (b) and (c)] require information in a plan annual report that is comparable to those required by these items.

[124] 17 CFR 229.202.

[125] Proposed Items 3(c) and 4 of Form S–8.

[126] Proposed Item 1(b)(2) of Form S–8.

[127] Proposed Item 3.

[128] *See* n.68, *supra*.

[129] *See* Section III.C, *supra*, and proposed General Instruction G.2.

[130] Proposed Item 5.

[131] 17 CFR 229.512(i). The undertaking is proposed to be revised to indicate its applicability to Form S–8.

[132] *See* Item 601 of Regulation S–K [17 CFR 229.601]. The exhibits applicable to registration statements on Form S–8 are: Instruments defining the rights of security holders including indentures; opinion re legality; letter re unaudited interim financial information; consents of experts and counsel; power of attorney; additional exhibits; and information from reports furnished to state insurance regulatory authorities.

[133] 17 CFR 229.601(b) (4) and (29).

[134] *See* Release No. 33–6465 (April 22, 1983) [48 FR 19873]. Section 6 of the Securities Act [15 U.S.C. 77f] specifies the parties required to sign a registration statement.

[135] In addition to revising General Instruction C, an amendment is proposed to the last sentence of General Instruction B.3 on both Forms S–3 and F–3 in order to clarify that the sentence is merely a cross-reference to the reoffer procedure provided in Form S–8.

[136] Current General Instruction C(1)(b) and proposed General Instruction C.2(b) restrict each seller, and any other person with whom he or she is acting in concert, to the amount specified in Rule 144(e) [17 CFR 230.144(e)] during any three-month period.

[137] Rule 405 of Regulation C [17 CFR 230.405] defines "affiliate" as a person that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified. Generally, officers and directors of the registrant are deemed affiliates of the registrant.

[138] "Restricted securities" are defined in Rule 144(a)(3) [17 CFR 230.144(a)(3)] as securities that are acquired directly or indirectly from the issuer, or from an affiliate of the issuer, in a transaction or chain of transactions not involving any public offering, or securities acquired from the issuer that are subject to the resale limitations of Regulation D [17 CFR 230.501–230.508] or Rule 701(c) [17 CFR 230.701(c)] under the Securities Act, or securities that are subject to the resale limitations of Regulation D and are acquired in a transaction or chain of transactions not involving any public offering.

[139] In a number of no-action letters issued over the last several years, the staff of the Division of Corporation Finance has taken the position that securities issued to senior level executives participating in "top hat" stock option plans would not be deemed to be restricted securities. *See* letters re *Hal Roach Studios, Inc.*, available Jan. 14, 1988; *Lotus Development Corp.*, available April 9, 1987; *Chi-Chi's, Inc.*, available Jan. 22, 1987; *Electromagnetic Sciences, Inc.*, available May 16, 1988; *Synbiotics Corporation*, available Aug. 22, 1985. That position was incorrect because the securities issued in connection with those plans are sold to executives pursuant to section 4(2) [15 U.S.C 77d(2)] under the Securities Act or Regulation D thereunder. Securities issued pursuant to those provisions are defined as "restricted securities" in Rule 144 [17 CFR 230.144]. Notwithstanding any previous position expressed by the Division in its no-action or interpretive letters, the position set forth in this release will become effective as of the date of publication in the **Federal Register** with respect to all future issuances of securities under such plans.

[140] The staff currently does not object to registration of restricted securities in an amount up to ten percent of shares issuable under all plans whose securities are registered.

[141] Currently, the Instruction states that registrants must specify the names of selling persons and file either a post-effective amendment or a Rule 424(b) prospectus to add names to the reoffer prospectus.

such issuers may be made as described in General Instruction C except that a prospectus on either Form F-2 or F-3 may be used by an issuer eligible to use the respective form. General Instruction E would be rescinded [143] and General Instruction C would be revised to substitute Form F-3 for S-3 wherever applicable. Thus, the reoffer prospectus for such an offering would comply with the requirements of Form F-3, whether or not the registrant were eligible to use that form, just as the Form S-3 prospectus is available for domestic registrants. Similarly, if the foreign private issuer were eligible to use Form F-3, reoffers could be made without the volume limits, just as for a domestic registrant meeting the registrant requirements of Form S-3.

E. Changes to Form 11-K

The Commission is proposing to revise Form 11-K, the annual report required to be filed by employee benefit plans subject to Exchange Act Section 15(d) where plan interests are separate securities registered under the Securities Act.[144] The proposed change would revise Form 11-K to eliminate the non-financial disclosure requirements, leaving only the requirement to file annual plan financial statements 90 days after the close of the plan's fiscal year. The Commission believes there is no need to require the filing of annual non-financial plan information, since updated plan information would be delivered to employees, as discussed above.

Currently, Form 11-K specifies the plan information, financial statements and exhibits that must be included in annual reports for plans that are subject to section 15(d) reporting requirements. Form S-8 requires that reports filed on Form 11-K be incorporated by reference into the registration statement.[145] Under the proposed amendments, plan annual reports, containing audited plan financial statements, would continue to be incorporated by reference into a Form S-8 filing where plan interests are being registered.[146] This requirement is being retained in order to preserve section 11 liability for this "expertized" portion of the registration statement. In adddition, under the current and proposed rules, the plan annual report must be delivered to participants upon request.[146]

Current Form 11-K requirements with respect to the contents and preparation of financial statements, as well as the fiscal years to be covered, would be retained.[147] Form 11-K, as revised, would continue to permit the incorporation by reference into a report on that form of financial statements contained in any annual report to employees covering the latest fiscal year of the plan, provided that the statements substantially meet the requirements of Form 11-K and the report to employees is filed as an exhibit. Rule 15d-21 would continue to allow the annual financial statements to be filed as part of a registrant's annual report on Form 10-K, or as an amendment thereto, instead of Form 11-K.[148] Such statements would have to be filed as part of the Form 10-K within 120 days after the end of the plan's fiscal year. Comment is requested on whether such period should be reduced to 90 days to conform to the filing requirements of Form 11-K.

In addition, comment is solicited on the need for retaining current requirements for the filing, contents and preparation of financial statements for ERISA plans. Currently, the plans filing on Form 11-K are predominantly ERISA plans, and ERISA requirements for filing plan annual reports differ from current Form 11-K requirements in two noteworthy respects. First, the filing deadlines differ in that an ERISA plan administrator must file a plan annual report with the Secretary of Labor within 210 days after the close of the plan year.[149] Second, the time periods covered differ in that the ERISA report regarding plans with 100 or more participants must contain an audited balance sheet and an audited income statement for the last plan year.[150]

F. Transition to New System

If the amendments to Form S-8 and related changes are adopted as proposed, any registration statement on Form S-8 would be subject to the new rule and form requirements after the effective date of the amendments. A registrant with an ongoing offering of securities on Form S-8 wishing to follow the new system could revise its section 10(a) prospectus format as permitted, and would be subject to new Rule 428 and the other changes.[151] No additional filing would be required unless needed to add newly required Part II information that had not previously been filed.[152] This additional information would be included in either Form 8-K, which is incorporated by reference in the registration statement, or a post-effective amendment (which would not need to repeat previously filed information).

A registrant not choosing to take advantage of the new system for an ongoing offering would nevertheless become subject to the new forms and rules when it filed its next annual report on Form 10-K after the effective date. This filing would constitute an amendment updating the registration statement as required by section 10(a)(3) of the Securities Act, and thus trigger the requirements of Rule 401(b) [153] regarding compliance with new requirements.

IV. Charts Showing Proposed Changes

The following charts highlight the proposed substantive changes to Form S-8 and the requirements to deliver information. Editorial and clarifying changes are not noted.

[143] *See* n.99 *supra*.

[144] *See* n.42, *supra*.

[145] *See* n.98, *supra*.

[146] Current Item 512(f)(3) of Form S-K and proposed Rule 428(b)(4). As proposed, the language of the requirement would be simplified.

[147] A registrant would continue to be required to prepare an audited statement of financial condition for each of the latest two fiscal years of a plan (or such lesser period as the plan has been in existence) and an audited statement of income and changes in plan equity for each of the latest three fiscal years of the plan (or such lesser period as the plan has been in existence). These statements would have to be prepared in accordance with the applicable provisions of Article 6A of Regulation S-X [17 CFR 210.6A-06—210.6A-05].

[148] Rule 15d-21 would be modified as necessary to reflect the change to Form 11-K. A $250 fee is required with the filing of a Form 11-K, but if the required disclosure is instead included as part of a report on Form 10-K, there is no separate filing fee in addition to the $250 Form 10-K filing fee. This would continue to be the case.

[149] ERISA Section 104(a)(1); 29 U.S.C. 1024(a)(1).

[150] ERISA Section 103(b)(3) (A) and (B); 29 U.S.C. 1023(b)(3) (A) and (B). The balance sheet would need to reflect beginning and end of plan year balances. The balance sheet and income statement contained in ERISA annual reports regarding plans with less than 100 participants need not be audited.

[151] *See* Rule 401(f)(2) [17 CFR 230.401(f)(2)].

[152] The proposals would add one undertaking not currently required by Item 512 of Regulation S-K: The undertaking concerning indemnification set forth in Item 512(i), to be redesignated 512(h). Many registrants now include this undertaking voluntarily rather than make the corresponding disclosure in the prospectus (current Item 19), and thus would not have to make an addditional filing to add the undertaking.

[153] 17 CFR 230.401(b).

A. Proposed Changes to Form S-8

Current Form S-8	Proposed Form S-8
Facing page	Adds legend stating that the registration statement also covers an indeterminate number of plan interests.
General Instruction A(1)—Rule as to Use of Form S-8	Deletes 90 day reporting requirement and requirement to furnish an annual report to security holders. Provides that the form may be used to register not only securities issued pursuant to an employee benefit plan, but also those issued pursuant to compensatory written contracts. Defines "employee" to include certain advisors or consultants, and also certain former employees exercising stock options or selling securities acquired on exercise of options. "Registrant" defined and used throughout form instead of "issuer."
General Instruction B—Application of Rules and Regulations	Definitions removed to General Instruction A.1.
General Instruction C—Reoffers and Resales	Restructured for clarity. Provides that previously unregistered employee benefit plan shares may be included without limit if the registrant is eligible for Form S-3 or F-3; otherwise, each seller must comply with the Rule 144(e) volume limitation. Rescinds the current provision that previously unregistered shares may be registered for resale only in an amount up to 10% of shares issuable under the plan being registered. For foreign private issuers filing on Form 20-F, substitutes Form F-3 for S-3, thereby liberalizing the treatment of such issuers set forth in current General Instruction E. Clarifies method of naming selling security holders.
General Instruction D—Filing and Effectiveness, etc.	States that a registration statement becomes effective upon filing, rather than in 20 days. Removes references to pre-effective amendments. Adds reference to requests for confidential treatment under the Exchange Act for reports incorporated by reference. Removes requirement to furnish copies of amendments marked to show changes and copies of documents incorporated by reference.
General Instruction E—Foreign Registrant	Deleted. Requirements moved to Rule 428(b)(1) (delivery of annual report on Form 20-F) and General Instruction C (use of the reoffer prospectus by foreign private issuer).
. . . .	New General Instruction E—Procedure for registering additional securities relating to the same employee benefit plan.
. . . .	New General Instruction F—Refers to new Rule 416A for the registration of plan interests.
. . . .	New General Instruction G—Specifies procedures for updating (replaces current Instruction to Part II).
Part I—Information Required in the Section 10(a) Prospectus	New headnote added setting forth the overall approach.
Item 1—Forepart of Prospectus and Outside Front Cover Page	Deleted.
Item 2—Inside Front and Outside Back Cover Pages of Prospectus	Deleted, except that requirement to deliver, upon request, documents incorporated by reference (currently required by Item 502(c) of S-K through Item 2 of S-8) is moved to Rule 428(b)(3). The statement to employees that such information is available upon request is located in new Item 2 of S-8.
Item 3—Summary Information, etc.	Deleted.
Item 4—General Information Regarding the Plan	Retained as new Item 1(e), with the following exceptions: 1. Deletion of the requirement in current Item 4(a) that an exhibit be filed naming subsidiaries. 2. Deletion of requirement in current Item 4(b) to state when plan was created, the parties thereto, and the manner of its creation. 3. Deletion of current Item 4(d) (number of employees participating and eligible). 4. Deletion of second sentence of current Item 4(e) (protective provisions of ERISA not applicable to registrant). 5. Deletion of current Item 4(f) (certain risks to participants).
Item 5—Securities to be Offered and Employees Who May Participate in the Plan	Retained as new Item 1(b), with the following exceptions: 1. Deletion of second sentence of Item 5(a) (limitation on amount of securities to be offered). 2. Deletion of current Item 5(d) (maximum and minimum amounts of securities); requirement to describe terms regarding the amount of securities that can be purchased is included in new Item 1(c). 3. Addition of requirement to briefly describe securities being offered, if not capital stock (new Item 1(b)(2)).
Item 6—Purchase of Securities Pursuant to the Plan	Retained as Item 1(c), with deletion of requirement for tabular information about options (current Instructions 1-4) and addition of requirement to describe terms regarding the amount of securities that can be purchased (see discussion of current Item 5).
Item 7—Payment for Securities Offered	Retained as Item 1(d).
Item 8—Contributions Under the Plan	Retained as Item 1(e).
Item 9—Withdrawal from the Plan—Assignment of Interest	Retained as Item 1(f).
Item 10—Defaults Under the Plan	Retained as Item 1(g).
Item 11—Administration of the Plan	Retained as Item 1(h), except that certain disclosure is not required for ERISA plans.
Item 12—Investment of Funds	Retained as Item 1(i), except that: 1. Requirement to present 5-year tabular information for alternative investment media is replaced by requirement to furnish financial data that will enable employees to make informed investment decisions. 2. Certain disclosure is not required for ERISA plans. 3. Deletion of current Item 12(d) (brokers and their commissions).
Item 13—Charges and Deductions and Liens therefor.	Retained as Item 1(j).
Item 14—Description of Registrant's Securities.	Replaced by requirement to briefly describe securities, if not capital stock (new Item 1(b)(2)). Requirement to incorporate by reference description of securities (if a section 12 class) or provide a description as required by Item 202 of S-K (if not a section 12 class) moved to Part II (new Items 3(c) and 4). Ability to incorporate by reference description of securities no longer limited to capital stock.

Current Form S-8	Proposed Form S-8
Item 15—Incorporation of Certain Documents by Reference	Moved to Part II, new Item 3. Documents are incorporated by reference in the registration statement, as well as the prospectus as currently. Enumerated documents expanded to include effective registration statement on Form 10 or 20-F.
Item 16—Additional Information	Deleted; additional information about the registrant required in Exchange Act reports, as explained in new General Instruction G.
Item 17—Interests of Named Experts and Counsel	Moved to Part II, new Item 5.
Item 18—Disclosure of Commission Position on Indemnification, etc.	Replaced by requirement to include undertaking on indemnification in Part II (new Item 8; Item 512(i), redesignated as 512(h), of Regulation S-K).
Part II—Information Not Required in Prospectus	Retitled, "Information Required in the Registration Statement."
Item 19—Indemnification of Directors and Officers	Retained as Item 6.
Item 20—Exhibits	Retained as Item 7.
Item 21—Undertakings	Retained as Item 8, which specifically enumerates required undertakings.
Instruction to Part II regarding	Deleted; replaced by new General Instruction G.
Signatures	Requirement that principal financial officer sign registration statement added to Instruction 1.

B. *Proposed Changes to Requirements to Deliver Information* (currently undertakings specified by Item 512(f) of Regulations S-K—to be mandated by proposed Rule 428(b))

Current Undertakings	Proposed Rule
512(f)(1)—Delivery of annual report to security holders	Rule 428(b)(2)—Retained, but expanded to permit delivery of other documents instead of the annual report to security holders.
512(f)(2)—Delivery of shareholder communications	Rule 428(b)(5)—Changed to require delivery only to participants who invest in registrant's securities or who so request. Deletes requirement to furnish information "in the same manner" as furnished to other shareholders.
512(f)(3)—Delivery upon request of annual report of the plan	Rule 428(b)(4)—Retained, but simplified.
512(f)(4)—Delivery of Form 20-F by foreign private issuer in lieu of annual report to security holders.	Deleted, but included in Rule 428(b)(2).
• • • •	Rule 428(b)(3)—Delivery upon request of information incorporated by reference (currently in Item 502(c) of S-K through Item 2 of Form S-8).
• • • •	Rule 428(b)(1)—Delivery and updating of plan information and other Part I information, dated and legended to indicate that it constitutes part of the Section 10(a) prospectus. Requires revision of documents containing plan information if they become so numerous they obscure contents.

V. Cost-Benefit Analysis

To evaluate the costs and benefits associated with the proposed rule and form changes contained in this release, the Commission requests commentators to provide views and data as to the costs and benefits associated with these proposals. For the reasons set forth below, it is expected that the proposed changes to registration and reporting requirements would decrease significantly the time and expense incurred by reporting companies in registering employer securities pursuant to employee benefit plans. Furthermore, these proposals would achieve cost savings while preserving the availability of information to investors and investor protection under the federal securities laws.

The proposed amendments to Form S-8 would reduce substantially prospectus preparation, printing and distribution costs by relying on employer communications to convey material information about employee benefit plans. Elimination of requirements for filing non-financial plan information with the Commission also would reduce costs associated with the issuance of securities. The relief would extend to offerings of securities issued by both ERISA and non-ERISA plans. The proposed simplified registration form would be available to more issuers because it would no longer require that a registrant be subject to the reporting requirements of Exchange Act Section 13 or 15(d) for 90 days prior to filing a Form S-8 registration statement. Its use also would be expanded because offerings pursuant to compensatory contracts, and to consultants and advisors, could be included under specified conditions. The proposals to make Form S-8 registration statements effective upon filing, to simplify the method of calculating filing fees, and simplify the procedures for the registration of additional securities and plan interests should further alleviate costs and burdens associated with the registration process. Finally, the proposed amendment of Form 11-K to eliminate the requirement for non-financial plan information would reduce substantially the costs of complying with reporting obligations of plans that are subject to Exchange Act Section 15(d).

VI. Summary of Initial Regulatory Flexibility Analysis

An Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 has been prepared concerning the proposed amendments to Forms S-8, S-3, F-3 and 11-K, and the related new rules and rule amendments. The analysis notes that the proposed rule and form changes relating to employee benefit plans are intended to expedite the filing, effectiveness and updating of Form S-8 registration statements and to reduce Exchange Act reporting obligations.

As discussed more fully in the analysis, the proposed changes would affect persons that are small entities, as defined by the Commission's rules. It is expected that the overall effect of the proposed amendments would be to decrease significantly the impact of reporting, recordkeeping, and compliance requirements upon registrants and plans registering securities on Form S-8. As the analysis indicates, several possible significant alternatives to the proposals were considered, including, among others, establishing different compliance or reporting requirements for small entities or exempting them from all or part of the proposed requirements. As more fully discussed in the analysis, implementing any of the alternatives would be either duplicative of the proposed changes or not consistent with the purposes of the Securities Act.

Comments are encouraged on any aspect of the analysis. A copy of the analysis may be obtained by contacting Larisa Dobriansky or Elizabeth Murphy, Office of Disclosure Policy, Division of Corporation Finance, at (202) 272-2589, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

VII. Request for Comments

Any interested persons wishing to submit written comments on the proposed rule and form changes to the registration and reporting requirements relating to employee benefit plans, as well as on other matters that might have an impact on the proposals contained herein, are requested to do so. Commentators are requested to address the proposed changes both from the perspective of the registrant and that of the plan participants. The Commission also requests comment on whether the proposals, if adopted, would have an adverse effect on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under Section 23(a) of the Exchange Act.[154]

VIII. Statutory Basis of Rule and Form Proposals

New Rules 416A, 428 and 462, amendments to Rules 424, 457(h), and 475a, Item 512 of Regulation S-K, and Forms S-8, S-3 and F-3 are being proposed by the Commission pursuant to Sections 6, 7, 8, 10 and 19 of the Securities Act.[155] The amendments to Form 11-K and Rule 15d-21 are being proposed pursuant to Sections 15(d) and 23(a) of the Exchange Act.[156]

List of Subjects in 17 CFR 228, 230, 239, 240 and 249

Prospectus delivery requirements, Reporting and recordkeeping requirements, Registration requirements, Securities.

[154] 15 U.S.C. 78w(a).
[155] 15 U.S.C. 77f, 77g, 77h, 77j and 77s.
[156] 15 U.S.C. 78o(d), 78w(a).

IX. Text of Rule Proposals

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S-K

1. The authority citation for Part 229 continues to read as follows:

Authority: Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 12, 13, 14, 15(d), 23(a), 48 Stat. 892, 894, 901; secs. 205, 209, 48 Stat. 906, 908; sec. 203(a), 49 Stat. 704; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; sec. 301, 54 Stat. 857; secs. 8, 202, 68 Stat. 685, 688; secs. 3, 4, 5, 6, 78 Stat. 565–568, 569, 570–574; sec. 1, 79 Stat. 1051; secs. 1, 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3–5, 28(c), 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 11, 18, 89 Stat. 117, 118, 119, 155; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78*l*, 78*l*(d), 78m, 78n, 78w(a), unless otherwise noted. Section 229.512 also issued under section 6, 15 U.S.C. 77f, 7, 15 U.S.C. 77g, and 8, 15 U.S.C. 77h.

2. By removing paragraph (f) of § 229.512; redesignating paragraphs (g), (h), (i) and (j) as (f), (g), (h) and (i); and revising newly redesignated paragraph (h) introductory text as follows:

§ 229.512 (Item 512) Undertakings.

* * * * *

(h) *Request for acceleration of effectiveness or filing of registration statement on Form S-8.* Include the following if any acceleration is requested of the effective date of the registration statement pursuant to Rule 461 under the Securities Act (§ 230.461 of this chapter), or if the registration statement is filed on Form S-8, and:

* * * * *

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

The authority citation for Part 230 is amended by adding the following citations: (citations before * * * indicate general rulemaking authority).

Authority: Sec. 19, 48 Stat. 85, as amended; 15 U.S.C. 77s * * * Section 230.416A also issued under sections 6, 15 U.S.C. 77f, 7, 15 U.S.C. 77g and 10, 15 U.S.C. 77j. Section 424 also issued under sections 2(10), 15 U.S.C. 77b(10) and 10, 15 U.S.C. 77j. Section 230.428 also issued under section 10, 15 U.S.C. 77j. Section 230.457(h) also issued under sections 6, 15 U.S.C. 77f, 7, 15 U.S.C. 77g, 8, 15 U.S.C. 77h, and 10, 15 U.S.C. 77j. Section 230.462 also issued under sections 6, 15 U.S.C. 77f, and 8(a), 15 U.S.C. 77h(a). Section 230.475a also issued under sections 6, 15 U.S.C. 77f, 7, 15 U.S.C. 77g, 8, 15 U.S.C. 77h, and 10, 15 U.S.C. 77j.

2. By adding new § 230.416a to read as follows:

§ 230.416a Interests to be issued pursuant to certain employee benefit plans.

Where a registration statement on Form S-8 relates to securities to be offered pursuant to an employee benefit plan, including interests in such plan that constitute separate securities required to be registered under the Act, such registration statement shall be deemed to register an indeterminate amount of such plan interests.

3. By amending paragraph (b) of § 230.424 by adding a clause after the U.S.C. cite "(15 U.S.C. 77j)," in the first sentence to read as follows:

§ 230.424 Filing of prospectuses, number of copies.

* * * * *

(b) * * * except for documents constituting a prospectus pursuant to Rule 428(a) (§ 230.428(a) of this chapter), * * *

* * * * *

4. By adding new § 230.428 to read as follows:

§ 230.428 Documents constituting a section 10(a) prospectus for a registration statement on Form S-8; requirements relating to offerings of securities on Form S-8.

(a)(1) Where securities are to be offered pursuant to a registration statement on Form S-8 (§ 239.16b of this chapter), the document(s) containing the employee benefit plan information required by Item 1 of that form; the statement of availability of registrant information, employee benefit plan annual reports and other information required by Item 2; and the documents containing registrant information and employee benefit plan annual reports that are incorporated by reference into the registration statement pursuant to Item 3, taken together, shall constitute a prospectus that meets the requirements of section 10(a) of the Act.

(2) The registrant shall maintain a file of the documents that, pursuant to paragraph (a) of this section, at any time are part of the section 10(a) prospectus, during the period in which offers or sales are being made and until three years after either the securities have been offered or sold or the offering has been terminated and the securities have been deregistered. Upon request, the registrant shall furnish to the

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Commission or its staff a copy of the file containing these documents.

(b) Where securities are offered pursuant to a registration statement on Form S–8:

(1)(i) The registrant shall deliver or cause to be delivered, to each employee who is eligible to participate (or selected to participate, in the case of a stock option or other plans with selective participation) in an employee benefit plan to which the registration statement relates, the information required by Part I of Form S–8. The information shall be in written form and shall be updated in a timely manner for any material changes during any period in which offers or sales are being made. When updating information is furnished, documents previously furnished need not be re-delivered, but the registrant shall furnish promptly without charge to each employee, upon written or oral request, a copy of all documents containing the information required by Part I that then constitute part of the section 10(a) prospectus.

(ii) The registrant shall date any document constituting part of the section 10(a) prospectus and include the following printed or stamped legend on such material:

This material constitutes part of the prospectus covering these securities, which have been registered under the Securities Act of 1933.

(iii) The registrant shall revise the document(s) containing the plan information furnished to new employees pursuant to paragraph (b)(1)(i) of this section, if plan amendments become so numerous that the amendments would obscure the readability of the contents of such document(s).

(2) The registrant shall deliver or cause to be delivered with the document(s) containing the information required by Part I of Form S–8, to each employee to whom such information is sent or given, a copy of either:

(i) The registrant's annual report to security holders containing the information required by Rule 14a–3(b) (§ 240.14a–3(b) of this chapter) under the Securities Exchange Act of 1934 ("Exchange Act") for its latest fiscal year;

(ii) The registrant's annual report on Form 10–K (§ 249.310 of this chapter), U5S (§ 259.5s of this chapter), or 20–F (§ 249.220f of this chapter) for its latest fiscal year;

(iii) The latest prospectus filed pursuant to Rule 424(b) (§ 230.424(b) of this chapter) under the Act that contains audited financial statements for the registrant's latest fiscal year, provided that such prospectus contains substantially the information required by Rule 14a–3(b) or the registration statement was on Form S–18 (§ 239.28 of this chapter) or F–1 (§ 239.31 of this chapter); or

(iv) The registrant's effective Exchange Act registration statement on Form 10 (§ 249.210 of this chapter) or 20–F containing audited financial statements for the registrant's latest fiscal year. If an employee previously has received a copy of such document for the latest fiscal year, it need not be re-delivered, but in this case the registrant shall furnish promptly, without charge, a copy of such document on written or oral request of the employee. If the latest fiscal year of the registrant has ended within 120 days prior to the delivery of the documents containing the information specified by Part I of Form S–8, the document delivered may contain financial statements for the previous fiscal year, and within such 120 day period a document containing financial statements for the latest fiscal year shall be furnished to each employee.

(3) The registrant shall deliver or cause to be delivered promptly, without charge, to each employee to whom information is required to be delivered, upon written or oral request, a copy of the information that has been incorporated by reference pursuant to Item 3 of Form S–8 (not including exhibits to the information that is incorporated by reference unless such exhibits are specifically incorporated by reference into the information that the registration statement incorporates).

(4) Where interests in a plan are registered, the registrant and plan shall deliver or cause to be delivered promptly, without charge, to each employee to whom information is required to be delivered, upon written or oral request, a copy of the then latest annual report of the plan filed pursuant to section 15(d) of the Exchange Act, whether on Form 11–K (§ 249.311 of this chapter) or included as part of the registrant's annual report on Form 10–K.

(5) The registrant shall deliver or cause to be delivered to all employees participating in a plan fund that invests in registrant securities (and other plan participants who request such information orally or in writing) who do not otherwise receive such material as security holders of the registrant, at the time such material is sent to its security holders, copies of all reports, proxy statements and other communications distributed to its security holders generally.

(c) As used in this Rule, the terms "employee" and "employee benefit plan" are defined as in General Instruction A.1 of Form S–8.

5. By revising paragraph (h) of § 230.457 to read as follows:

§ 230.457 Computation of fee.

* * * * *

(h)(1) Where securities are to be offered to employees pursuant to an employee benefit plan, the aggregate offering price and the amount of the registration fee shall be computed with respect to the maximum number of the registrant's securities issuable under the plan that are covered by the registration statement. If the offering price is not known, the fee shall be computed upon the basis of the price of securities of the same class, as determined in accordance with paragraph (c) of this section. In the case of an employee stock option plan, the aggregate offering price and the fee shall be computed upon the basis of the price at which the options may be exercised, or, if such price is not known, upon the basis of the price of securities of the same class, as determined in accordance with paragraph (c) of this section. If there is no market for the securities to be offered, the book value of such securities computed as of the latest practicable date prior to the date of filing the registration statement shall be used.

(2) If the registration statement registers securities of the registrant and also registers interests in the plan constituting separate securities, no separate fee is required with respect to the plan interests.

(3) Where a registration statement includes securities to be offered to employees pursuant to an employee benefit plan and covers the resale of the same securities, no additional filing fee shall be paid with respect to the securities to be offered for resale. A filing fee shall be paid with respect to any additional securities to be offered for resale, which shall be determined in accordance with paragraph (c) of this section.

* * * * *

6. By adding new § 230.462 to read as follows:

§ 230.462 Effective date of a registration statement filed on Form S–8.

A registration statement on Form S–8 (§ 239.16b of this chapter) shall become effective upon filing with the Commission.

7. By revising the section heading and introductory phrase up to the second "|" in § 230.475a to read as follows:

§ 230.475a Certain pre-effective amendments on Forms S–3, S–4, F–2, F–3 and F–4 deemed filed with the consent of Commission.

Amendments to a registration statement on Form S–3, F–2, or F–3 (§ 239.13, § 239.32 or § 239.33 of this chapter) relating to a dividend or interest reinvestment plan; * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

1. The authority citation for Part 239 continues to read, in part, as follows:

Authority: The Securities Act of 1933, 15 U.S.C. 77a, *et seq.*, * * *

2. By revising the last sentence of General Instruction I.B.3 of Form F–3 (§ 239.33) to read as follows:

Note—The text of Form F–3 is not and the amendment will not be included in the Code of Federal Regulations.

Instructions and Form

Form F–3—Registration Statement Under the Securities Act of 1933

* * * * *

General Instructions

* * * * *

I.B.3. * * * (In addition, attention is directed to General Instruction C to Form S–8 (§ 239.16b) for the registration of employee benefit plan securities for resale.)

* * * * *

3. By revising the last sentence of General Instruction I.B.3 of Form S–3 (§ 239.13) to read as follows:

Note—The text of Form S–3 is not and the amendment will not be included in the Code of Federal Regulations.

Instructions and Form

Form S–3—Registration Statement Under the Securities Act of 1933

* * * * *

General Instructions

* * * * *

I.B.3. * * * (In addition, attention is directed to General Instruction C to Form S–8 (§ 239.16b) for the registration of employee benefit plan securities for resale.)

* * * * *

4. By revising § 239.16b to read as follows:

§ 239.16b Form S–8, for registration under the Securities Act of 1933 of securities to be offered to employees pursuant to employee benefit plans.

Any registrant that, immediately prior to the time of filing a registration statement on this form, is subject to the requirement to file reports pursuant to Sections 13(a) or 15(d) of the Securities Exchange Act of 1934, and has filed all reports and other materials required to be filed by such requirements during the preceding 12 months (or for such shorter period that the registrant was required to file such reports and materials), may use this form for registration under the Securities Act of 1933 (the "Act") of the following securities:

(a) Securities of such registrant to be offered pursuant to any employee benefit plan to its employees, employees of its subsidiaries or parents, or any written contract relating to the compensation of employees.

(b) Interests in the above plans, if such interests constitute securities and are required to be registered under the Act. (See Release No. 33–6188 (February 1, 1980) and Section 3(a)(2) of the Act.)

5. By revising the text of Form S–8 (§ 239.16b) to read as follows:

Note—The text of Form S–8 is not and the amendments will not be included in the Code of Federal Regulations.

Instructions and Form

Form S–8—Registration Statement Under the Securities Act of 1933

(Exact name of registrant as specified in its charter)

(State or other jurisdiction of incorporation or organization)

(I.R.S. Employer Identification No.)

(Address of Principal Executive Offices) (Zip Code)

(Full title of the plan)

(Name and address of agent for service)

(Telephone number, including area code, of agent for service)

CALCULATION OF REGISTRATION FEE

Title of securities to be registered	Amount to be registered	Proposed maximum offering price per share	Proposed maximum aggregate offering price	Amount of registration fee

(If plan interests are being registered, include the following: In addition, pursuant to Rule 416A under the Securities Act of 1933, this registration statement also covers an indeterminate amount of interests to be offered or sold pursuant to the employee benefit plan(s) described herein.)

General Instructions

A. Rule as to Use of Form S–8

1. Any registrant that, immediately prior to the time of filing a registration statement on this form, is subject to the requirement to file reports pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934 ("the Exchange Act"), and has filed all reports and other materials required to be filed by such requirements during the preceding 12 months (or for such shorter period that the registrant was required to file such reports and materials), may use this form for registration under the Securities Act of 1933 (the "Act") of the following securities:

(a) Securities of such registrant to be offered pursuant to any employee benefit plan to its employees or employees of its subsidiaries or parents. For purposes of this form, the term "employee benefit plan" is defined as any employee benefit plan pursuant to Rule 405 of Regulation C (§ 230.405) or any written contract relating to the compensation of employees. For purposes of this form, the term "employee" is defined as any director, trustee (where the registrant is a business trust), officer or other employee, and includes consultants or advisors who render bona fide services to the registrant or its parents or subsidiaries in connection with their business, provided that such services must not be in connection with the offer or sale of securities in a capital-raising transaction. The term "employee" also includes former employees, but only to permit registration on Form S–8 of the exercise of non-transferable employee benefit plan stock options and the subsequent sale of the securities, even if the participant is no longer employed at the time of exercise or sale, provided that such exercises are not prohibited

under the terms of the plan. The term "registrant" as used in this form means the person whose securities are to be offered pursuant to the plan.

(b) Interests in the above plans, if such interests constitute securities and are required to be registered under the Act. (See Release No. 33-6188 (February 1, 1980) and section 3(a)(2) of the Act.)

2. Where interests in a plan are being registered and the plan's latest annual report filed pursuant to section 15(d) of the Exchange Act is to be incorporated by reference pursuant to the requirements of Form S-8, the plan shall either: (i) Have been subject to the requirement to file reports pursuant to section 15(d) and shall have filed all reports required to be filed by such requirements during the preceding 12 months (or for such shorter period that the plan was required to file such reports); or (ii) if the plan has not previously been subject to the reporting requirements of section 15(d), concurrently with the filing of the registration statement on Form S-8, the plan shall file an annual report for its latest fiscal year (or if the plan has not yet completed its first fiscal year, then for a period ending not more than 90 days prior to the filing of this registration statement), provided that if the plan has not been in existence for at least 90 days prior to the filing date, the requirement to file an employee plan annual report shall not apply.

B. Application of General Rules and Regulations

1. Attention is directed to the General Rules and Regulations under the Act, particularly those comprising Regulation C thereunder (§ 230.400 to § 230.499). That Regulation contains general requirements regarding the preparation and filing of registration statements. However, any provision in this form covering the same subject matter as any such requirement shall be controlling unless otherwise specifically provided in the sections of Regulation C (see § 230.400).

2. Attention is directed to Regulation S-K (§ 229) for the requirements applicable to the content of the non-financial portions of registration statements under the Act. Where this form directs the registrant to furnish information required by any item of Regulation S-K, information need only be furnished to the extent appropriate.

C. Reoffers and Resales

1. *Securities.* Reoffers or resales of the following securities may be made pursuant to a registration statement on this form under Rule 415 (§ 230.415) by means of a separate prospectus ("reoffer prospectus"), which is prepared in accordance with the requirements of Part I of Form S-3 (or, if the registrant is a foreign private issuer filing on Form 20-F, in accordance with Part I of Form F-3), and filed with the registration statement on Form S-8 or, in the case of control securities, a post-effective amendment thereto:

(a) *Control securities*, which are defined for purposes of this General Instruction C as securities acquired under the registration statement on Form S-8 held by affiliates of the registrant as defined in Rule 405 (§ 230.405)). Control securities may be included in a reoffer prospectus only if they have been or will be acquired by the selling security holder pursuant to an employee benefit plan that is the subject of the registration statement; or

(b) *Restricted securities*, which are defined for purposes of this General Instruction C as securities issued under any employee benefit plan of the registrant meeting the definition of "restricted securities" in Rule 144(a)(3) (§ 230.144(a)(3)). Restricted securities may be included in a reoffer prospectus only if they have been acquired by the selling security holder prior to the filing of the registration statement.

2. *Limitations.* The reoffer prospectus may be used as follows:

(a) If the registrant, at the time of filing such prospectus, satisfies the registrant requirements for use of Form S-3 (or if the registrant is a foreign private issuer filing on Form 20-F, the registrant requirements for use of Form F-3), then the above securities may be reoffered or resold without any limitations.

(b) If the registrant, at the time of filing such prospectus, does not satisfy the registrant requirements for use of Form S-3 or F-3, as appropriate, then the following limitation shall apply with respect to both control securities and restricted securities: the amount of securities proposed to be reoffered or resold by means of the reoffer prospectus, by each person, and any other person with whom he or she is acting in concert for the purpose of selling securities of the registrant, may not exceed, during any three month period, the amount specified in Rule 144(e), calculated as of the date of filing such prospectus.

3. *Selling Security Holders.*

(a) *Control Securities.* If the names of the security holders who intend to resell are not known by the registrant at the time of filing the Form S-8 registration statement, the registrant may either: (1) Refer to the selling security holders in a generic manner in the reoffer prospectus; later, as their names and the amounts of securities to be reoffered become known, the registrant must supplement the reoffer prospectus with that information; or (2) name in the reoffer prospectus all persons eligible to resell and the amounts of securities available to be resold, whether or not they have a present intent to do so; any additional persons must be added by prospectus supplement. Prospectus supplements must be filed with the Commission as required by Rule 424(b) (§ 230.424(b)). The registrant may file a reoffer prospectus covering control securities by means of a post-effective amendment to the Form S-8 registration statement rather than filing it as part of the initial registration statement.

(b) *Restricted Securities.*

(A) All persons (including non-affiliates) holding restricted securities to be reoffered or resold pursuant to a reoffer prospectus are to be named as selling shareholders in the reoffer prospectus; *provided, however,* that any non-affiliate who holds less than the lesser of 400 shares or 1% of the shares issuable under the plan to which the Form S-8 registration statement relates need not be named if the reoffer prospectus indicates that certain unnamed non-affiliates, each of whom may sell up to that amount, may use the reoffer prospectus for reoffers and resales. The reoffer prospectus must be filed with the initial registration statement that registers the securities to be reoffered and the reoffer transaction.

(B) With respect to restricted securities to be reoffered or resold, the registrant shall file as an exhibit to the registration statement a statement indicating the section of the Act or Rule of the Commission under which exemption from registration was claimed and setting forth briefly the facts relied upon to make the exemption available.

Notes to General Instruction C

1. The term "person" as used in this General Instruction C shall be the same as set forth in Rule 144(a)(2)(§ 230.144(a)(2)).

2. If the conditions of this General Instruction C are not satisfied, registration of reoffers or resales must be made by means of a separate registration statement using whichever form is applicable.

D. Filing and Effectiveness of Registration Statement; Requests for Confidential Treatment; Number of Copies

A registration statement on this Form S-8 will become effective automatically (Rule 462, § 230.462) upon filing (Rule 456, § 230.456). In addition, post-effective amendments on this form shall become effective upon filing (Rules 464, § 230.464 and 456). Delaying amendments are not permitted in connection with any registration statement on this form (Rule 473(d), § 230.473(d)), and any attempt to interpose a delaying amendment of any kind will be ineffective. All filings made on or in connection with this form become public upon filing with the Commission. As a result, requests for confidential treatment made under either Rule 406 (§ 230.406), or Exchange Act Rule 24b-2 (§ 240.24b-2) in connection with documents incorporated by reference, must be processed with the Commission staff prior to the filing of the registration statement. The number of copies of the filings required by Rules 402 and 472 (§ 230.402, § 230.472) shall be filed with the Commission; *provided, however,* that the number of additional copies referred to in Rule 402(b) may be reduced from ten to three and the number of additional copies referred to in Rule 472(a) may be reduced from eight to three, none of which need be marked to show changes. The requirement in Rule 402(b) and Rule 472(a) to furnish copies of documents incorporated by reference is inapplicable to Form S-8.

E. Registration of Additional Securities

With respect to the registration of additional securities of the same class as other securities for which a registration statement filed on this form relating to the same employee benefit plan is effective, the registrant may file a registration statement consisting only of the following: the facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions and consents; the signature page; and any information required in the new registration statement that is not in the earlier registration statement. If the new registration statement covers securities being offered for resale, it shall be deemed to include the reoffer prospectus filed in connection with the earlier registration statement; *provided, however,* that a revised reoffer prospectus shall be filed, if the reoffer prospectus is substantively different from that filed in the earlier registration statement. The filing fee required by the Act and Rule 457 (§ 230.457) shall be paid with respect to the additional securities only.

F. Registration of Plan Interests

Where a registration statement on this form relates to securities to be offered pursuant to an employee stock purchase, savings, or similar plan, the registration statement shall be deemed to register an indeterminate amount of interests in such plan that are separate securities and required to be registered under the Securities Act (Rule 416A, § 230.416A).

G. Updating

Updating of information constituting the Section 10(a) prospectus pursuant to Rule 428(a) (§ 230.428(a)) during the offering of the securities shall be accomplished as follows:

(1) Plan information specified by Item 1 of Form S-8 required to be delivered to employees shall be updated by providing employees with documents describing material changes, as specified in Rule 428(b)(1) (§ 230.428(b)(1)). Such information need not be filed with the Commission.

(2) Registrant information shall be updated by the filing of Exchange Act reports, which are incorporated by reference in the registration statement and constitute part of the Section 10(a) prospectus. Any material changes in the registrant's affairs not required to be included in a specific Exchange Act report shall be reported on Form 8-K pursuant to Item 5 thereof.

(3) An employee plan annual report incorporated by reference in the registration statement from Form 11-K (or Form 10-K, as permitted by Rule 15d-21 (§ 240.15d-21)) shall be updated by the filing of a subsequent plan annual report on Form 11-K or 10-K.

Part I—Information Required in the Section 10(a) Prospectus

Note: The document(s) containing the information specified in this Part I will be furnished to employees as specified by Rule 428(b)(1) (§ 230.428(b)(1)). Such documents need not be filed with the Commission either as part of this registration statement or as prospectuses or prospectus supplements pursuant to Rule 424 (§ 230.424). These documents and the documents incorporated by reference in the registration statement pursuant to Item 3 of Part II of this form, taken together, will constitute a prospectus meeting the requirements of Section 10(a) of the Securities Act. See Rule 428(a)(1) (§ 230.428(a)(1)).

Item 1. Plan Information

The registrant shall deliver or cause to be delivered to each participant in the plan the applicable information specified in (a) through (j) below. The information may be in one or several documents, provided that it is presented in a clear, concise and understandable fashion. See Rule 421 (§ 230.421).

(a) *General Plan Information* (1) Give the title of the plan, the name of the registrant whose securities are to be offered pursuant to the plan, and the name of each company whose employees are entitled to participate in the plan. If employees of all subsidiaries and parents of the registrant are entitled to participate in the plan, a statement to that effect will suffice without naming them.

(2) State the nature and general purpose of the plan, its duration, and any provisions for its modification, earlier termination or extension.

(3) Describe briefly the tax effects that may accrue to employees as a result of participation in the plan, the tax effects, if any, upon the registrant, and whether or not the plan is qualified under Section 401(a) of the Internal Revenue Code.

Note: If the plan is not qualified under Section 401 of the Internal Revenue Code of 1954, as amended, consideration should be given to the applicability of the Investment Company Act of 1940. See Securities Act Release No. 4790 (July 12, 1965).

(4) Briefly indicate whether the plan is subject to any provisions of the Employee Retirement Income Security Act of 1974 ("ERISA"), and those provisions to which it is subject.

(b) *Securities To Be Offered and Employees Who May Participate in the Plan.* (1) State the title and total amount of securities to be offered pursuant to the plan.

(2) Describe the material characteristics of the securities to be offered except that if capital stock is offered, such description is unnecessary.

(3) Describe briefly any restrictions on resale of the securities purchased under the plan which may be imposed upon the employee purchaser.

(4) Indicate each class or group of employees who may participate in the plan, and the basis upon which the eligibility of employees to participate therein is to be determined.

(c) *Purchase of Securities Pursuant to the Plan.* State the period of time within which employees may elect to participate in the plan, the price at which the securities may be purchased or the basis upon which such price is to be determined, and any terms regarding the amount of securities that an eligible employee can purchase.

(d) *Payment for Securities Offered.* (1) State when and the manner in which employees are to pay for the securities purchased pursuant to the plan. If payment is to be made by payroll deductions or other installment payments, state the percentage of wages or salaries or other basis for computing such payments, and the time and

manner in which an employee may alter the amount of such deduction or payment.

(2) State the nature and frequency of any reports to be made to participating employees as to the amount and status of their accounts.

Instruction. If the plan is one under which credit is extended to finance the acquisition of securities and Regulation G (12 CFR 207) or T (12 CFR 220) is applicable, it should be noted whether the respective requirements of Regulation G or T have been met.

(e) *Contributions Under the Plan.* (1) If contributions are to be made under the plan by the registrant or any employer, state who is to make such contributions, when they are to be made and the nature and amount of each contribution. If such contributions are not a fixed amount, state the basis for computing contributions.

(2) State the amount each employee is required or permitted to contribute or, if not a fixed amount, the percentage of wages or salaries or other basis of computing contributions.

(f) *Withdrawal from the Plan; Assignment of Interest.* (1) Describe the terms and conditions under which a participating employee may (i) withdraw from the plan and terminate his or her interest therein, or (ii) withdraw funds or investments held for the employee's account without terminating his or her interest in the plan.

(2) State whether, and the terms and conditions upon which, the plan permits an employee to assign or hypothecate his or her interest in the plan.

(g) *Defaults Under the Plan.* Describe briefly every event of default under the plan with which a participating employee or employer may be charged and the consequences thereof, including any forfeiture or penalty that may be thereby incurred.

(h) *Administration of the Plan.* (1) Give the name and complete address of persons who administer the plan, the capacity in which they act (such as trustee or managers) and the functions that they perform. If the plan is not subject to ERISA, state the nature of any material relationship between the administrators and the employees, the registrant or its affiliates.

(2) If the plan is not subject to ERISA, describe the manner in which the administrators of the plan are selected, their term of office and the manner in which they may be removed from office.

(i) *Investment of Funds.* (1) If participating employees may direct all or any part of the assets under the plan to two or more investment media, furnish a brief description of the provisions of the plan with respect to the alternative investment media; and provide a tabular or other meaningful presentation of financial data that, in the opinion of the registrant, will enable such employees to make informed investment decisions.

(2) In the case of a plan that is not subject to ERISA, if any person other than a participating employee has discretion with respect to the investment of all or any part of the assets of the plan in one or more investment media, name such person and describe the policies followed and to be followed with respect to the type and proportion of securities or other property in which the funds of the plan may be invested.

(3) If the plan is not subject to ERISA, state whether securities are to be purchased under the plan in the open market or otherwise. If they are not to be purchased in the open market, then state from whom they are to be purchased and describe the fees, commissions or other charges paid. If the employer or any of its affiliates, or any person having a material relationship with the employer or any of its affiliates, directly or indirectly, receives any part of the aggregate purchase price (including fees, commissions or other charges), explain the basis for the compensation.

(j) *Charges and Deductions and Liens Therefor.* (1) Describe all charges and deductions (other than deductions described in paragraph (d) and taxes) that may be made against employees participating in the plan or against funds, securities or other property held under the plan and indicate who will receive, directly or indirectly, any part thereof. Such description should include charges and deductions that may be made upon the termination of an employee's interest in the plan, or upon partial withdrawals from the employee's account thereunder.

(2) State whether or not under the plan, or pursuant to any contract in connection therewith, any person has or may create a lien on any funds, securities or other property held under the plan. If so, describe fully the circumstances under which the lien was or may be created.

Item 2. Registrant Information and Employee Plan Annual Information

The registrant shall provide a written statement to employees advising them of the availability without charge, upon written or oral request, of the documents incorporated by reference in Item 3 of Part II of the registration statement, and stating that these documents are incorporated by reference into the prospectus. The statement also shall indicate the availability without charge, upon written or oral request, of other documents required to be delivered to employees pursuant to Rule 428(b) (§ 230.428(b)). The statement shall include the address (giving title or department) and telephone number to which the request is to be directed.

Part II—Information Required in the Registration Statement

Item 3. Incorporation of Certain Documents by Reference

The registrant, and where interests in the plan are being registered, the plan, shall state that the documents listed in (a) through (c) below are incorporated by reference in the registration statement; and shall state that all documents subsequently filed by it pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, prior to the filing of a post-effective amendment which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in the registration statement and to be part thereof from the date of filing of such documents. Copies of these documents are not required to be filed with the registration statement.

(a) The registrant's latest annual report, and where interests in the plan are being registered, the plan's latest annual report, filed pursuant to Sections 13(a) or 15(d) of the Exchange Act, or in the case of the registrant either: (1) the latest prospectus filed pursuant to Rule 424(b) under the Act that contains audited financial statements for the registrant's latest fiscal year for which such statements have been filed, or (2) the registrant's effective registration statement on Form 10 or 20–F filed under the Exchange Act containing audited financial statements for the registrant's latest fiscal year.

(b) All other reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the registrant document referred to in (a) above.

(c) If the class of securities to be offered is registered under Section 12 of the Exchange Act, the description of such class of securities contained in a registration statement filed under such Act, including any amendment or report filed for the purpose of updating such description.

Item 4. Description of Securities

If the class of securities to be offered is not registered under Section 12 of the Exchange Act, furnish the information required by Item 202 of Regulation S–K (§ 229.202).

Item 5. Interests of Named Experts and Counsel

Furnish the information required by Item 509 of Regulation S–K (§ 209.509 of this chapter).

Item 6. Indemnification of Directors and Officers

Furnish the information required by Item 702 of Regulation S–K (§ 229.702 of this chapter).

Item 7. Exhibits

Furnish the exhibits required by Item 601 Regulation S–K (§ 229.601).

Item 8. Undertakings

Furnish the undertakings required by Item 512(a), (b) and (h) of Regulation S–K (§ 229.512(a), (b) and (h)), as well as any other applicable undertakings in Item 512.

Signatures

The Registrant. Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S–8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of _____, State of _____ on _____, 19____

(Registrant)

By (Signature and Title)

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the date indicated.

(Signature)

(Title)

(Date)

The Plan. Pursuant to the requirements of the Securities Act of 1933, the trustees (or other persons who administer the employee benefit plan) have duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of _____, State of _____ on the _____ day of _____ 19____

(Plan)

By (Signature and Title)

Instructions. 1. The registration statement shall be signed by the registrant, its principal executive officer or officers, its principal financial officer, its controller or principal accounting officer, and by at least a majority of the board of directors or persons performing similar functions. Where interests in the plan are being registered, the registration statement shall be signed by the plan. If the signing person is a foreign person, the registration statement shall also be signed by its authorized representative in the United States. Where the signing person is a limited partnership, the registration statement shall be signed by a majority of the board of directors of any corporate general partner signing the registration statement.

2. The name of each person who signs the registration statement shall be typed or printed beneath the signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which he or she signs the registration statement. Attention is directed to Rule 402 concerning manual signatures and Item 601 of Regulation S–K concerning signatures pursuant to powers of attorney.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 is amended by adding the following citations: (citations before * * * indicate general rulemaking authority).

Authority: Sec. 23, 48 Stat. 901, as amended, 15 U.S.C. 78w. * * *

2. By amending § 240.15d–21 by adding the word "and" at the end of (a)(1), removing (a)(3), and revising paragraphs (a)(2) and (b) (introductory clause before parenthetical text) to read as follows:

§ 240.15d–21 Reports for employee stock purchase, savings and similar plans.

(a) * * *

(2) Such registrant furnishes, as a part of its annual report on such form or as an amendment thereto, the financial statements required by Form 11–K with respect to the plan.

(b) If the procedure permitted by this rule is followed, the financial statements required by Form 11–K * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 249 continues to read as follows:

Authority: The Securities Exchange Act of 1934, 15 U.S.C. 78a, *et seq.*, * * *

2. By revising the text of Form 11–K (§ 249.311) to read as follows:

Note—The text of Form 11–K is not and the amendments will not be included in the Code of Federal Regulations.

Instructions and Form

FORM 11–K—For Annual Reports of Employee Stock Purchase, Savings and Similar Plans Pursuant to Section 15(d) of the Securities Exchange Act of 1934

General Instructions

A. Rule as to Use of Form 11–K

This form shall be used for annual reports pursuant to section 15(d) of the Securities Exchange Act of 1934 ("Exchange Act") with respect to employee stock purchase, savings and similar plans, interests in which constitute securities registered under the Securities Act of 1933. Such a report is required to be filed even though the registrant of the securities offered to employees pursuant to the plan also files annual reports pursuant to section 13(a) or 15(d) of the Exchange Act. However, attention is directed to Rule 15d–21 (§ 240.15d–21), which provides that in certain cases the information required by this form may be furnished with respect to the plan as a part of the annual report of such registrant. Reports on this form shall be filed within 90 days after the end of the fiscal year of the plan.

B. Application of General Rules and Regulations

(a) The General Rules and Regulations under the Exchange Act contain requirements applicable to reports on any form. These general requirements should be carefully read and observed in the preparation and filing of reports on this form.

(b) Particular attention is directed to Regulation 12B, which contains general requirements regarding matters such as the kind and size of paper to be used, the legibility of the report, and the filing of the report. The definitions contained in Rule 12b–2 (§ 240.12b–2) should be especially noted. See also Regulation 15D.

(c) Four complete copies of each report on this form, including exhibits and all papers and documents filed as a part thereof, shall be filed with the Commission. At least one of the copies filed shall be manually signed. Copies not manually signed shall bear typed or printed signatures.

C. Preparation of Report

This form is not to be used as a blank form to be filled in, but only as a guide in the preparation of the report on paper

meeting the requirements of Rule 12b–12 (§ 240.12b–12). The report may omit the text of Form 11–K specifying the information required provided the answers thereto are prepared in the manner specified in Rule 12b–13 (§ 240.12b–13).

D. Incorporation of Information in Report to Employees

Any financial statements contained in any plan annual report to employees covering the latest fiscal year of the plan may be incorporated by reference from such document in response to part or all of the requirements of this form, provided such financial statements substantially meet the requirements of this form and provided that such document is filed as an exhibit to this report on Form 11–K.

Form 11–K—Annual Report

Pursuant to Section 15(d) of the Securities Exchange Act of 1934
For the fiscal year ended

A. Full title of the plan and the address of the plan, if different from that of the issuer named below:

B. Name of issuer of the securities held pursuant to the plan and the address of its principal executive office:

Required Information

The following financial statements shall be furnished for the plan:

1. An audited statement of financial condition as of the end of the latest two fiscal years of the plan (or such lesser period as the plan has been in existence).

2. An audited statement of income and changes in plan equity for each of the latest three fiscal years of the plan (or such lesser period as the plan has been in existence). The statements required by this Item shall be prepared in accordance with the applicable provisions of Article 6A of Regulation S–X (§ 210).

Note: A written consent of the accountant is required with respect to the plan annual financial statements which have been incorporated by reference in a registration statement on Form S–8 under the Securities Act of 1933. The consent should be filed as an exhibit to this annual report. Such consent shall be currently dated and manually signed.

Signatures

The Plan. Pursuant to the requirements of the Securities Exchange Act of 1934, the trustees (or other persons who administer the employee benefit plan) have duly caused this annual report to be signed on its behalf by the undersigned hereunto duly authorized.

Date _____

_____
(Name of Plan)

_____
(Signature)*

* Print name and title of the signing official under the signature.

Jonathan G. Katz,
Secretary.

[FR Doc. 89–14371 Filed 6–19–89; 8:45 am]
BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Revision Form S–8; File No. 270–63]

Forms Under Review of Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash (202) 272-2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Public Reference Branch, Washington, DC 20549–1002.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for OMB approval proposed revisions to Form S–8, used to register securities issued pursuant to employee benefit plans under the Securities Act of 1933.

It is estimated that approximately 2,854 Form S–8 registration statements would be filed under the proposed revisions and the estimated average burden hours would be reduced to 49 burden hours per form. The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–6004 and Gary Waxman, Clearance Officer, Office of Management and Budget (Paperwork Reduction Project 3235–0066), New Executive Office Building, Room 3208, Washington, DC 20503.

Jonathan G. Katz,
Secretary.

June 12, 1989.

[FR Doc. 89–14445 Filed 6–19–89; 8:45 am]
BILLING CODE 8010–01–M

federal register

Tuesday
June 20, 1989

Part III

Department of Housing and Urban Development

Office of the Secretary, Federal Housing Commissioner

24 CFR Part 812 et al.

Loans for Housing for Elderly and Nonelderly Handicapped Families and Individuals; Final Rule and Notice of Fund Availability

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 812, 813, 885, 912 and 913

[Docket No. R-89-1418; FR-2476]

RIN 2502-AE47

Loans for Housing for the Elderly or Handicapped; Section 202; Projects for Nonelderly Handicapped Families and Individuals

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: Section 202 of the Housing Act of 1959 authorizes HUD to provide direct loans for the development of projects to serve elderly or handicapped families and individuals. Section 202 was amended by section 162 of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988) to ensure that the section 202 program will meet the special housing and related needs of nonelderly handicapped families and individuals. The revised program authorizes a new type of project assistance payment to replace assistance payments made under section 8 of the United States Housing Act of 1937. This final rule implements the new program.

DATE: This rule is effective on August 4, 1989.

FOR FURTHER INFORMATION CONTACT: Margaret Milner, Office of Policy, Financial Management and Administration, Room 9106, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 755-3287 or 755-6135. The TDD number is 755-6781. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Information Collection Requirements

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and have been assigned OMB control numbers 2502-0044, 2502-0187, 2502-0287 and 2502-0371. Public reporting burden for this collection of information is estimated to include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading *Other Matters*. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., Room 10276, Washington DC 20410 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Background

Section 202 of the Housing Act of 1959 authorizes HUD to provide direct loans for the development of projects to serve elderly or handicapped families and individuals. In previous years, projects selected for section 202 loans also received commitments for rental assistance payments under section 8 of the United States Housing Act of 1937. To improve the direct loan program and to better serve the special housing and related needs of nonelderly handicapped families and individuals, section 162 of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988) (1987 Act) amended section 202. Section 162 includes a new type of assistance payments to replace section 8 assistance payments made in connection with section 202 projects for handicapped families and individuals. Projects for elderly families will continue to be processed under the original section 202/8 program and will receive section 8 assistance.

On November 2, 1988 (53 FR 44288), HUD published a notice of proposed rulemaking to implement the new program. HUD received 38 comments to the proposed rule. These comments are summarized below.

Procedural Matters

Issuance of Final Rule. Several commenters warned that HUD must act immediately to issue a NOFA and obligate funds by the end of the fiscal year to avoid what they considered to be an "illegal sequestration" of Federal funds. The Department is taking every step possible to ensure the timely obligation of program funds by the close of the fiscal year.

Compliance with the Federal Advisory Committee Act. Section 202(h)(3)(A) provides that in adopting standards and procedures for allocating funds and processing loans and assistance payments for the program, HUD shall ensure adequate participation by representatives of the disability community through the provisions available under the Federal Advisory Committee Act. The proposed rule announced HUD's intention to establish and consult with an advisory committee in accordance with FACA requirements in the development of the final rule.

Commenters genreally supported HUD's formation of an Advisory Committee to assist in program development. Commenters, however, suggested that membership in the committee should include: representatives from high-cost urban areas; individuals familiar with prices under the existing cost containment guidelines; Sponsors; industry trade associations; and development team members (including consultants, architects, attorneys and contractors).

On January 24, 1989 (54 FR 3541), HUD published its notice of intent to establish an Advisory Committee under FACA. This notice provided that the membership of the committee would include members of the disability community and persons who have been involved in the provision of housing for handciapped persons. While the committee did not include all of the specific interests suggested by the commenters, HUD is confident that the experience and expert knowledge of the committee members was sufficient to ensure the development of distinct and appropriate standards and procedures for the new program and that these standards and procedures adequately reflect the differences between such housing and housing for elderly families developed under section 202.

On March 21, 1989 (54 FR 11573), HUD announced that the Advisory Committee would meet on April 7, 1989 at HUD headquarters to review the Department's rules for the new program. The review included a discussion of the public comments, a presentation by the architect of the group home design on which development cost limits will be based, and a discussion of the FY-1989 funding schedule and procedures. The meeting was open to the public. The record of the proceedings is available to the public for review and copying at the Office of the Rules Docket Clerk.

The comments and suggestions raised by the committee are discussed in the public comment section below.

Prototype Demonstration. Section 202(h)(3)(B) of the Act provides that the Secretary may, on a demonstration basis, determine the feasibility and desirability of reducing processing time and costs for housing for handicapped families and individuals by limiting project design to a small number of prototype designs. In the preamble, HUD stated that it would announce the prototype requirements in a separate

notice if it decides to pursue the demonstration, and encouraged comments addressing the demonstration.

Many commenters supported the demonstration as long as the use of such designs is voluntary. Commenters recommended various procedures for expedited processing of such projects and made suggestions regarding prototype design. HUD is continuing to examine the feasibility of developing the prototype program. If a demonstration is conducted, these comments will be considered in drafting prototype requirements.

Organization of final rule. The final rule is substantially reorganized as follows:

—The final rule organizes the provisions applicable to the section 202/8 program (currently Subparts B and D) into one Subpart B. (The current section numeration is retained to avoid confusion).

—The new programs, originally proposed as Part 885, Subpart G, is now added as Subpart C.

—Under the final rule, many of the proposed definitions are applicable only to the new handicapped program (*e.g.*, definitions for "agreement to enter into project assistance contract", "annual income", "assisted unit", "project assistance payment", "PAC", etc.). Generally, these definitions are applicable to the PAC contract and management. A related rule to add HAP contract and management regulations for the section 202/8 program is currently pending issuance as a final rule. (See proposed rule published December 9, 1987, 52 FR 46614). When that rule is issued, similar definitions will be added to Subpart B.

—Section 202/8 provisions have been revised to delete references that are solely applicable to the handicapped program. (For example, acquisition with or without moderate rehabilitation is applicable only to group homes for the non-elderly handicapped and all references to such housing have been deleted from Subpart B.

Public Comments on Regulatory Provisions

I. Policy

A. *Flexibility of approach.* Commenters argued that the proposed regulations are inconsistent with new directions in the field of mental health which emphasize: integration into the community; supportive services tailored to the individual's needs and available over the long-term and without regard to where the individual lives; and consumer choice with regard to housing and service programs. To better serve these goals, the commenters argued that HUD should: (1) Provide supports that are attached to individuals not to specific housing (*e.g.*, one commenter suggested that handicapped individuals be provided with Section 8 Certificates and Housing Vouchers); and (2) permit greater integration of handicapped individuals into the community (suggestions included lower limitations on project size, the development of small scattered site developments, and the development of projects that include units for handicapped and nonhandicapped families.)

The emphasis of the new program is primarily on the range of services provided to handicapped families, the opportunities for independent living and participation in normal activities, and access by the handicapped families to the community at large and to employment opportunities. Consistent with this emphasis, the final regulations endeavored to promote the integration of handicapped individuals into the community to the extent consistent with the statute. HUD notes that many of the proposed changes are not permissible under the section 202 program (*i.e.*, the provision of Section 8 Housing Vouchers or Certificates and the development of housing and related facilities that are intended to be occupied, in part, by nonhandicapped families).

The Advisory Committee generally supported the Department's policies on the section 202 program and recognized that the section 202 program is only one component addressing the comprehensive housing needs of handicapped people. However, the committee strongly recommended that the Department use all of its programs to provide a full spectrum of housing opportunities for this population.

B. *Purpose and policy (§ 885.1).* Proposed § 885.1(a) describes the general purpose of the section 202 program and states that section 202 projects shall provide necessary services. While the provision of meal and nutritional services is not prohibited under the program, the list of permitted services in this section did not include food services. In response to a commenter's request, meal and nutritional services have been added to the list of illustrative services.

C. *Definitions (§ 885.5)*—1. *Borrower and Sponsor.* Under the proposed rule, PHAs may not participate as Sponsor or Borrower. Two commenters supported such participation by PHAs because non-profit corporations may not have the capital, reserves and experience to meet the stringent requirements of the new program. The commenters also noted that new construction money for public housing units is virtually non-existent, and that this change would provide PHAs with an avenue for obtaining such funds.

The definitions of Sponsor and Borrower have not been amended. Every appropriations act since 1976 has limited participation in the section 202 program to nonprofit organizations. (See Department of Housing and Urban Development—Independent Agencies Appropriation Act, 1989 (Pub. L. 100-404, approved August 19, 1988) which provides that commitments for direct loans under section 202 shall be available only to qualified nonprofit sponsors.) Should Congress decide to revise this policy of 13 years, HUD will make appropriate changes to its regulations.

One commenter argued that there is no need for a separate Borrower corporation. The final rule does not incorporate this comment. The requirement for a separate Borrower corporation was originally imposed in the section 202/8 program to permit the participation of religious organizations, consistent with the requirements of the First Amendment of the Constitution. The requirement was extended to all Sponsors in recognition of other requirements that, in practice, compelled the formation of separate Borrower. These include prohibitions against the Borrower engaging in any other business or activity or incurring any liability or obligation not related to the proposed project.

2. *Handicapped family.* The proposed rule defined handicapped family as: (1) Families of two or more persons the head of which (or his or her spouse) is handicapped; (2) the surviving member or members of such a family living in an assisted unit with the deceased member of the family at the time of his or her death; (3) a single handicapped person between the ages of 18 and 62; or (4) two or more handicapped persons living together, or one or more such persons living with another person who is determined by HUD to be essential to their care or well-being.

One commenter argued that the definition of handicapped family should be expanded to include families with children with disabilities. The proposed definition reflected the definition of elderly or handicapped family contained in section 202(d)(4). Under this statutory definition, a family would not qualify as a handicapped family because it includes children that are handicapped.

In order to ensure that single handicapped persons will be admitted to housing assisted under the new program, numerous commenters urged HUD to change references to "handicapped families" or "families" to "the handicapped" or to the "persons with handicaps". Under the proposed definition, a single handicapped person would qualify as a handicapped family. The definition has not been changed. However, since the title of the new subpart for the program may be misleading to single handicapped individuals, it has been retitled.

Additionally, the final definition of handicapped family has been revised to provide that single handicapped individuals must be over 18 years old. (The proposed rule required that such individuals be between 18 and 62 years of age.)

3. *Handicapped person or individual.* HUD adopted the definition of handicapped person or individual contained in section 202. Several commenters urged HUD to adopt the definition of handicapped person contained in section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). The commenters argued: (1) The section 504 definition would help the Department to avoid the overly narrow admission criteria applied in the section 202/8 program (*e.g.*, the exclusion of mentally handicapped and developmentally disabled persons from elderly section 202 projects); (2) nothing in section 202 requires the definition of developmentally disabled person to exclude others with disabilities; and (3) the use of the section 504 definition would ensure a consistency of approach among the various agencies.

HUD's regulation implementing section 504 prohibits discrimination against qualified individuals with handicaps. While the definition of individual with handicaps is broader than the proposed definition of handicapped person or individual, the section 504 definition of "qualified individual with handicaps" recognizes that persons with handicaps may be denied benefits, such as occupancy of a dwelling unit in a HUD-assisted housing project, on the basis of failure to meet basic requirements that govern eligibility for admission, care or service. The preamble to the section 504 regulation specifically addressed commenter's arguments objecting to the exclusion of handicapped persons from elderly housing under the section 202 program. At 53 FR 20216–19, HUD stated, "For example, in a section 202 project a person is ineligible for housing for elderly persons if the person does not meet the age requirement for admission to the program." The proposed change has not been made.

HUD has consistently denied applications for projects solely for persons who are alcoholics or drug addicts. In recognition of this policy, the proposed rule stated that alcoholism and drug addiction are not included within the definition of chronic mental illness. HUD is concerned that the language of the proposed rule could be misinterpreted to permit the exclusion of individuals otherwise qualified for admission to a project, based solely on their status as alcoholics or drug addicts. A handicapped person suffering from alcoholism or drug addiction may be excluded from a project based on behavior that would exclude any other individual, even if the behavior is related to the person's drug addiction or alcoholism (*e.g.*, the illegal sale or use of drugs).

Borrowers must make decisions on each applicant's qualifications on a case-by-case basis during the course of ordinary eligibility determinations. Because HUD believes that the language in the proposed rule might have misled some Borrowers into excluding all persons suffering from a drug addiction or from alcoholism without an examination of each individual's qualifications for the program, the language excluding alcoholism and drug addiction from the definition of chronic mental illness has been deleted. A new provision has been substituted stating that a person whose sole impairment is alcoholism or drug addiction will not be considered to be handicapped for the purposes of the section 202 program. To assure the availability of this discussion to interested persons in the future, it will be codified as an appendix to the final rule.

As a related matter, the final rule revises definitions of disabled person contained in Parts 812, 813, 912 and 913 to reflect changes made by section 170(c) of the Housing and Community Development Act of 1987 (Pub. L. 100–242, approved February 5, 1988). The 1987 Act amended section 3(b)(3)(A) of the United States Housing Act of 1937, which defined person under a disability. The 1987 Act deleted the reference to disabilities as defined in section 102 of the Developmental Disabilities Services and Facilities Construction Amendments of 1970, and substituted references to developmental disabilities as defined in section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act.

4. *Housing and related facilities.* Existing section 202 regulations define housing and related facilities as rental or cooperative housing structures. One commenter asked whether the acquisition of newly constructed or rehabilitated condominium buildings would be permitted under the program. Another commenter was concerned that the proposed rule would prohibit the development of projects on scattered sites.

Recently constructed condominium or cooperative buildings will not be approved for acquisition (with or without moderate rehabilitation) under this program. Facilities for such a project must be at least three years old (see definition of housing and related facilities). Similarly, it is highly unlikely that a recently constructed condominium or cooperative building would qualify as a substantial rehabilitation project. Substantial rehabilitation of a project involves the improvement of the condition of the property from a deteriorated and substandard condition to a good condition. Relatively few newly constructed condominium or cooperative buildings should be in this condition.

HUD recognizes that the use of scattered sites (*i.e.*, small projects developed on separated sites involving a single project number) will promote the integration of handicapped individuals into the community. Nothing in the rule would preclude the development of such projects. However, the acquisition of individual units in a condominium or cooperative building as a scattered site project would not be permitted. Experience in the section 202 program has demonstrated that the provisions of governing condominium and cooperative documents (By-Laws, Articles of Incorporation, Covenants, etc.) often conflict with HUD's program requirements and the regulatory agreement. Unless a substantial percentage of the units in the condominium or cooperative are purchased, the Sponsor is powerless to effect changes to the documents or to prevent changes in these documents that would conflict with HUD's requirements.

The existing definition of "housing and related facilities" excludes all intermediate care facilities. Section 885.710(b)(4)(vii) permits the development of intermediate care facilities funded by the Health Care Financing Administration and serving the mentally retarded and persons with related conditions (ICF). Such facilities may be developed if the Sponsor demonstrates that the proposed project will primarily provide housing rather than medical facilities, is or will be licensed by appropriate State agencies, and will receive funding from sources other than HUD for the costs of the intermediate care. The definition of "housing and related facilities" has been revised in this final rule to permit the development of such intermediate care facilities.

5. *Acquisition with or without moderate rehabilitation.* Under the existing definition of acquisition with or without moderate rehabilitation, the cost of moderate rehabilitation included within development cost may not exceed the higher of 15 percent of the loan amount or $3,000 per unit. Since group homes are considered to be a single unit under this rule, the $3,000 per unit restriction has been eliminated in the final rule.

II. Application Procedures and Program Requirements

A. *Allocation of authority (§ 885.702).* The proposed rule for the section 202 handicapped program did not require a specific allocation to nonmetropolitan areas. By contrast, 20 to 25 percent of available funds must be allocated to nonmetropolitan areas under the section 202/8 program.

Numerous commenters supported the elimination of the nonmetropolitan area allocation. Several others argued that the final rule should reflect the section 202/8 allocation requirements. These commenters argued that the preamble incorrectly implied that only large metropolitan areas offer adequate services for the disabled. Commenters suggested that if the need in nonmetropolitan areas within an allocation area is insufficient (as demonstrated by no or few applications), the regional office could reallocate unused funds to metropolitan areas.

Contrary to the allegation contained in the comments, the Department did not base its decision on any perceived inadequacy of services within nonmetropolitan areas. Rather, HUD found that the emphasis of the program is primarily on the range of services to be provided to handicapped families, the opportunities for independent living and participation in normal activities, and access by handicapped families to the community at large and to employment activities. The Department determined that it is in the best interest of the program to fund the highest ranked applications serving these goals without regard to the location of the project in a nonmetropolitan or metropolitan area. The final rule does not preclude nonmetropolitan areas from participation in the program. Moreover, if the applications from such nonmetropolitan areas receive high ranking, it is possible for projects in nonmetropolitan areas to receive awards totaling more than 25 percent of the allocated funds.

Under the proposed rule, the allocation of loan authority to allocation areas would be based on a formula that weighs the relative needs of the area as reflected in available Census data. Because Census data is updated every ten years, one commenter urged HUD to consider more current statistics. While HUD would prefer to use updated data in the allocation of funds, there is no reliable nationwide source of population data available for such an update. The final rule continues to provide for the allocation of loan authority based on available Census data.

One commenter observed that the amount of funding to be provided is not addressed in the proposed rule and that the program will assist the development of housing only if there is sufficient funding. As provided in § 885.705, HUD will make an annual announcement of funds availability in the **Federal Register** based on the annual appropriations made by Congress.

B. *Application contents (§ 885.710).* The commenters raised the following issues regarding the application content requirements.

1. *Narrative description.* Under proposed § 885.710(b)(4), the Sponsor is required to submit a narrative description of the project including:

—A description of the development method to be used (§ 885.710(b)(4)(ii));

A description of the number and type of structures, the number of stories, and the number of units by size (independent living complexes) or the number of bedrooms (group home) (§ 885.710(b)(4)(iii), (iv), and (v));

A demonstration of compliance with cost containment and modest design requirements (§ 885.710(b)(4)(vi));

A demonstration that proposed ICF facilities for the mentally retarded and persons with related conditions will primarily provide housing rather than medical facilities, will be licensed by appropriate State agencies, and will receive funding from sources other than HUD for the cost of intermediate care (§ 885.710(b)(4)(vii)).

Commenters stated that responses to these requirements will depend on the site and design of the project. Since site and design information is not required until fund reservation, commenters argued that the submission of this information at the application stage would be meaningless. Commenters urged HUD to defer the submission of this information and to permit the Sponsor to certify that it is aware of, and will comply with, the various program requirements.

While this information may be subject to modification once the site is selected and the project design is finalized, HUD requires approximate data at the application stage in order to determine the proper amount of the fund reservation, to ensure that the proposed project is likely to meet the proposed occupancy requirements and project requirements, and to ensure that the Sponsor is aware of all program requirements, has analyzed their effect on the planned project, and has presented a thorough, well-developed proposal. These requirements have been retained.

Commenter thought that the retention of these requirements would foreclose changes when the site is obtained and the design is finalized. For example, commenters feared that the Sponsor would be bound to use the development method identified in the application. HUD will permit Sponsors to make changes if the change will not increase the fund reservation, conflict with the program requirements, or substantially alter the proposed project concept. For example, a proposed new construction project could be changed to substantial rehabilitation or acquisition after the site is selected (since the fund reservations would be the same). On the other hand, a proposal to change from an independent living complex to a group home, or a proposal to change the project occupancy requirements would substantially alter the project concept and would not be allowed.

2. *Project occupancy requirements.* Proposed § 885.710(b)(5)(i) stated that the Sponsor must propose project occupancy requirements that limit occupancy to one or more of the following groups: the chronically mentally ill, the developmentally disabled; or the physically handicapped. The Advisory Committee supported the Department's policy of developing housing for specific disability groups.

Several commenters supported limiting tenancy in small group living arrangements to specific disability groups. These commenters, however, argued that such limitations should not apply to larger housing projects developed with section 202 funds. The commenters suggested that HUD's regulations must be clarified to state that people with disabilities are eligible to live in highrise and garden projects of more than 24 units developed for persons who are elderly and disabled. These comments address well-settled occupancy requirements for section 202/

8 projects. Changes to such requirements are beyond the scope of this rulemaking.

3. *State and local plans and policies.* Under proposed § 885.710(b)(5)(ii), the Sponsor must demonstrate that the proposal does not conflict with State or local plans and policies governing the development and operation of facilities serving handicapped individuals meeting the proposed project occupancy requirements. The purpose of the requirement was to ensure that proposed projects using State or local funds for the provision of services will not conflict with State and local funding requirements. For example, if a project will receive State funding for services in connection with a group home for the developmentally disabled, and State policies prohibit the funding of group homes serving more than four persons, HUD will reject a group home application proposing to serve a greater number of residents. If no State and local service funding will be provided for the project, however, the project will not be required to adhere to State funding requirements. The final rule clarifies this requirement. The requirement is relocated in the final rule to § 885.710(b)(6) (supportive service plan description).

One commenter feared that States may use this requirement to provide a preference to certain types of projects rather than reflect the actual needs of their handicapped population. The final rule recognizes that State and local funding agencies may have certain prerequisites for the provision of service funding. The rule would not foreclose a project that conflicts with the policies of State and local funding agencies if that project will receive all service funds from other sources.

Commenters noted that State and local funding sources will be reluctant to state that the project complies with local plans and policies without a review of architectural and site plans. The commenter asserted that this requirement is more appropriate at the conditional commitment stage. The rule recognizes that at the application stage, it may be impossible to determine that a project will ultimately comply with State and local requirements. The rule merely requires a threshold demonstration that the project, as proposed in the application, does not conflict with these requirements.

One commenter suggested that HUD should require a proposed project to support the goals and objectives of the State developmental disability plan. HUD does not believe that it is appropriate for the Department to go beyond a determination that the project does not conflict with funding policies that are in effect. Our objective under the section 202 program is to provide housing to meet the specific needs of handicapped families and individuals. This objective is not necessarily linked to goals and objectives of a State policy making body such as the State developmental disabilities council which may change its goals and priorities from year-to-year.

4. *Supportive service plan description.* Proposed § 885.710(b)(6) contained requirements for a service plan description.

(a) *In general.* Several commenters objected to the supportive service plan description requirement. These commenters noted that Sponsors will not know who will reside in the project before the housing is ready for occupancy. Since services must be developed based on individual need, the commenters argued that it will be impossible for Sponsors to forecast what services must be provided. The Advisory Committee expressed similar reservations.

Initially, HUD notes that the requirements for the submission of a service plan description are similar to the requirements that were imposed on Sponsors of projects for chronically mentally ill individuals under the existing section 202/8 program. These requirements have worked well in that program and HUD intends to continue to apply them in the new program for handicapped individuals. Moreover, HUD notes that the commenters have misinterpreted the purpose of the service plan description. It is not intended to require the submission of individual plans for specific residents. Rather, the plans should describe the range of services to be provided for residents. HUD has made minor revisions to the text of the final rule to clarify this point.

Another commenter emphasized that HUD should promote the provision of flexible and ongoing support to individuals, rather than the provision of such support in connection with facilities. The commenter argued that when an individual no longer needs the intensity or types of support attached to a facility, that individual must not lose his or her home when support needs change. Under HUD's rules, the supportive services are not "attached" to the facility. A plan is required to assure that residents are not placed into a community without the necessary support to live in the setting. There is no HUD requirement that residents participate in particular services.

Instead of a plan description, a commenter would permit Sponsors to provide certain assurances for the provision of services. The provision of a service plan description containing the elements described in the proposed regulation is a statutorily imposed application requirement. The suggested certifications cannot be substituted.

(b) *Funding.* The final rule at § 885.710(b)(6)(ii) requires the Sponsor to submit evidence of funding sources for supportive services that will be provided for compensation, including State and local funds available to assist in the provision of such services, or evidence of commitment to provide the supportive services from agencies that will not be compensated. Numerous commenters supported the emphasis on the supportive service funding mechanism, provided that HUD recognizes the degree to which various States are unable to commit their funds to projects that are not in operation. The commenters suggested that HUD should not give a preference to a project located in a State that is able to make such commitments over projects in States that cannot make commitments.

HUD recognizes that public bodies generally are unable to make long-term commitments for support of services linked to a project that is not yet operational. They can, however, indicate whether funding is anticipated, given the availability of appropriations. In those States where, because of fiscal or other constraints, the State indicates that funds cannot be made available for services, the Sponsor must secure and provide documentation of other funding sources to meet the anticipated needs of residents. There is no penalty for having private, as opposed to public, funding sources.

Another commenter supported the requirement for supportive service programs, but argued that the programs must be *provided with* sufficient funds through State, Federal and local allotments to secure their success. Funds for providing the assured range of services cannot be included in the computation of the project assistance payment under the section 202 housing program (see section 202(h)(4)(B)). The extent to which other governmental funds are available to assist the provision of services is beyond HUD's jurisdiction.

One commenter argued that the regulations do not maximize and enhance State initiatives for the development of housing for persons with special needs. The commenter argued that States should be able to use section 202 funds in combination with other State capital funds to develop a variety of integrated housing options. Under the current statutory authority, section 202 funds can be used only for direct loans to nonprofit Sponsors. States can and do use capital funds to develop complementary types of housing to ensure that handicapped citizens have a variety of housing options to meet varying housing needs.

(c) *Review.* Several commenters asked how HUD, an agency whose primary responsibility is financing housing rather than service delivery, is qualified to evaluate the service plan description. Commenters suggested that HUD involve the disability community in the process. Other commenters argued that decisions regarding the necessity of services must be left to the Borrower. Another urged HUD to develop guidelines and evaluation criteria for the service plan description.

HUD will determine if the supportive service plan description is directed to the needs of the individuals with the type of disability the project proposes to serve and demonstrates that the Sponsor is able to provide or assure the provision of the proposed services. HUD intends to evaluate the service plan for the appropriateness of services in relation to the objectives of the section 202 program, the quality of the management plan for providing or coordinating the provision of supportive services including the capability and commitment of the service provider, and the strength of the funding sources for the supportive services that will be provided for compensation. HUD will supplement its own experience in the evaluation of supportive services by including the appropriate State agency with regard to the proposed project occupancy group in the review of the application for fund reservation. The State agency's comments will be considered in the preparation of HUD's analysis of the service plan description.

5. *Effective demand.* Proposed § 885.710(b)(7) required the Sponsor to provide evidence that there is an unmet need for the proposed housing in the area to be served by the project and that this need is likely to continue throughout the term of the project. This provision has been revised for clarity in the final rule to require evidence of an effective demand for the proposed housing.

A commenter noted that section 202 development has created a surplus of units in some areas. The commenter suggested that the final rule require the Sponsor to coordinate its application with the local PHA. Under the commenter's proposal, any current PHA unit availability or vacancy rates less than 95 percent in elderly or handicapped apartments would be reasons for disapproval of the application.

Public housing units in the area to be served by the project represent only a portion of the supply of housing units for handicapped individuals. Since PHAs' past participation in the provision of handicapped housing has been limited and because the current availability of PHA housing for the elderly may not be relevant to the demand for handicapped housing, HUD has not included a requirement for PHA participation in the application process. HUD will continue to conduct its independent review of the market demand for projects by considering the availability of all units to serve the needs of the proposed occupancy group.

6. *Other applications.* The section 202/8 program limits the number of units for which a sponsor may apply. The proposed rules for housing for handicapped families did not include this limitation. Numerous commenters supported the absence of the unit limitations—if HUD assures that there will not be an over-concentration of units with one Sponsor or in one application.

Under § 885.710(b)(8), the application would include a statement whether the Sponsor or any affiliated entity is planning to submit other applications during the fiscal year. HUD will use this information and other data submitted by the Sponsor to determine whether the Sponsor has sufficient financial and management capabilities to carry its proposed projects through to completion. This will avoid an overconcentration of units in one Sponsor. The project size limitations (see § 885.720) will ensure that there will not be an overconcentration of units in one application.

7. *Sponsor abilities.* A commenter argued that proposed §§ 885.710(b) (14), (15), and (17) should be consolidated with other similar requirements.

The proposed requirements are identical to requirements currently contained in the section 202/8 program. Each of these requirements, while asking for information that is similar to other submission requirements, serves a distinct purpose, as follows:

—Proposed § 885.710(b)(14) requires a description of any other housing projects or medical facilities sponsored, owned or operated by the Sponsor. The purpose of this exhibit is to permit the assessment of the Sponsor's ability to provide housing services.

—Proposed § 885.710(b)(15) requires a description of the Sponsor's past or current involvement in any programs, or of its provision of services, other than housing, that demonstrates its management capabilities and experience, including a description of the Sponsor's experience in contracting with minority business enterprises or minority groups. This requirement addresses the Sponsor's experience in the provision of services other than housing. This provides important information to assist in the evaluation of Sponsors with no previous experience as housing providers. The final rule has been revised slightly to emphasize this point. (The commenter also claimed that this requirement duplicated information required in the service plan description. However, the service plan description merely describes the services to be provided in connection with the project, and does not address the Sponsor's ability to provide such services.)

—Proposed § 885.710(b)(17) requires the submission of a description of the Sponsor's ability and willingness to sponsor and to assist the Borrower to develop, own, manage and provide appropriate services in connection with the proposed housing. This addresses the Sponsor's commitment to assist the Borrower to carry the program through to long-term operation.

A commenter argued the description of the Sponsor's management abilities and experience in contracting for services with minority enterprises should be deferred until the conditional commitment stage. This information is necessary to determine whether the Sponsor has demonstrated its capacity and commitment to assist and carry the project through to long term operation (a technical review criterion under § 885.750(b)(1)(i)(A)); to determine the extent to which the Sponsor has demonstrated this capacity (a ranking criterion under § 885.750(c)(1)(i)); and to determine the degree to which the application supports minority enterprises (a ranking criterion under § 885.750(c)(1)(ii)). The proposed change has not been made.

Finally, a commenter suggested that HUD develop a list of specific questions under each of these requirements, rather than rely on a Sponsor-generated format. Due to the various levels of experience and commitment that Sponsors may bring to the program, HUD does not believe that the sought information can be obtained through the suggested method.

8. *Consultant's certificate.* Proposed § 885.710(b)(20) required the Sponsor to submit the housing consultant's certificate and contract if consultant services were used. This requirement has been changed to reflect current HUD practice. The final rule requires the

Sponsor to submit the housing consultant's resume and a copy of the proposed consultant's contract. A copy of the contract executed by the Borrower and an Identity of Interest and Disclosure Certification signed by the consultant will be required with the request for Borrower eligibility.

9. *Intergovernmental review.* Proposed § 885.710(b)(21) required the Sponsor to demonstrate that it has submitted copies of the application to the State single point of contact (SPOC) for intergovernmental review. Commenters suggested that HUD defer intergovernmental review until the conditional commitment stage. HUD is required to consult with the State and local officials as early in the program planning process as is reasonably feasible to explain specific plans and actions. This section is unchanged in the final rule.

The proposed rule required the submission of the application to the SPOC. A commenter noted that the cost of such a submission would be approximately $200. HUD did not intend to require Sponsors to submit the entire application package to the SPOC. Rather, Sponsors are required to submit all information required by the applicable State. Generally, the submission may be limited to a brief synopsis of the application. The final regulation has been clarified.

III. Program Requirements

A. *General.* One of the major obstacles to the development of housing for handicapped families under the section 202/8 program was the requirement that HUD conduct a detailed architectural and cost containment review of all projects. The detailed reviews often delayed the construction of housing and, in many cases, unduly limited the flexibility of the project design. To remedy this problem, the proposed rules modified the design review. Cost containment was to be achieved through the establishment of development cost limits for projects and the application of certain cost containment and modest design standards applicable to all projects. In addition to the cost containment requirements, certain specified requirements (*i.e.*, HUD's minimum property standards, accessibility requirements, group home requirements, project size limitations, and site and neighborhood standards) were imposed.

Commenters generally supported the elimination of the detailed review. However, several commenters felt that HUD's review should be more limited than that proposed. These commenters argued that some of the program requirements may be contrary to State and local requirements. The commenters urged that the architectural and cost containment review should be limited to review for compliance with minimum property standards. Commenters' specific concerns were whether HUD could dictate whether garages may be provided, how many bathrooms may be provided, and how square footage should be allocated.

HUD continues to believe that the requirements imposed in the rules are the minimum necessary to ensure that projects provide an acceptable environment for handicapped residents. To HUD's knowledge, none of the specifically imposed requirements are in conflict with State and local requirements. In most cases the specifically imposed requirements exceed State and local standards.

With regard to the commenter's specific concerns, we note that if the project falls within the established development cost limits, HUD will impose no prohibition against the provision of garages. Similarly, the square footage requirements and bathroom requirements for group homes are minimum standards which may be exceeded as long as the project falls within the established development cost limits. (These minimum standards were developed based on HUD's experiences with the development of group homes, a review of available publications addressing such matters, and a survey of group home standards established in 22 States.) While HUD will establish limitations on the number of bathrooms in units for independent living complexes as a cost containment measure, these limitations may be exceeded under certain circumstances (see § 885.725(d)).

Other commenters suggested that HUD establish abbreviated design reviews for certain types of projects (*i.e.*, projects that do not exceed 115% of the minimum square footage requirements for group homes). HUD's review requirements are intended to expedite development to the greatest extent possible and, as noted above, to impose the least intrusive design requirements. Consistent with statutory requirements that the program be designed to meet the special housing and related needs of nonelderly handicapped families, HUD does not believe that it can further truncate the procedures. The Advisory Committee urged HUD to emphasize the quality of the project design, rather than to focus solely on cost containment, and concurred in HUD's determination that design review should not be further reduced.

Specific issues regarding each of the program requirements are discussed below.

B. *Project standards (§ 885.717).* This section provided that all projects must comply with minimum property standards; established minimum group home standards; and included accessibility requirements.

1. *Minimum group home standards.* Proposed § 885.717(b) stated that each group home must provide a minimum of 290 square feet of pro rated living space for each resident, including a minimum of 80 square feet for each resident in a shared bedroom and a minimum of 100 square feet for a single occupant bedroom; at least one full bathroom for every four residents; space for recreation at indoor and outdoor locations on the project site; and sufficient storage for each resident in the bedroom and other storage space necessary for the operation of the home.

Several commenters, while supporting the group home project standards, argued that the final rule should clearly state that the group homes standards are a *minimum*, and encouraged HUD to permit local flexibility above these minimums. The proposed rule is sufficiently clear on this point. The proposed rule states, for example, that *at least* one bathroom is required for each four residents. This would not prohibit a Sponsor from providing more bathrooms, if necessary for the residents served. The minimum standards, however, assure that the Sponsor did not do so at the expense of reducing bedrooms to an unacceptable size. No revision has been made in the final rule.

The Advisory Committee was concerned that the minimum square footage requirements would not ensure that bedrooms are fully accessible to persons in wheelchairs. The committee urged HUD to impose minimum square footage requirements for bedrooms that are required to be accessible. Commenters suggested other methods to ensure accessibility. (*E.g.*, commenters suggested that this section should be revised to state that the minimum square footage requirement is exclusive of closet space.)

The proposed revisions have not been included in the final rule. Initially, HUD notes that the revisions are unnecessary in light of § 885.717(c)(1) which requires compliance with Uniform Federal Accessibility Standards (24 CFR Part 40)(Subpart A)(UFAS). Moreover, the proposed revisions would not always serve the commenter's purposes since the amount of space required to ensure wheelchair accessibility will vary with such factors as the shape of the

bedroom, the amount and location of furniture, and the number and location of closets and doors.

One commenter objected to the reference to shared bedrooms. The commenter stated that the regulations must *ensure* that each resident in group homes has a private bedroom and is afforded a minimum amount of privacy. In some programs, double occupancy in bedrooms is considered to be a benefit. In other projects, private bedrooms may promote a program goal. HUD does not choose to limit Sponsor flexibility in this matter. The reference to shared bedrooms has not been eliminated from the regulation.

2. *Accessibility requirements (§ 885.717(c)).*—(a) *Compliance with Federal requirements.* The proposed rule required compliance with UFAS and section 504 regulations (24 CFR Part 8). One commenter recommended that the final rule should require all units to be fully accessible to ensure compliance with section 504 and the Fair Housing Amendments Act of 1988. The final rule has been revised to refer to HUD's regulations implementing section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (section 504), as well as the Fair Housing Act (42 U.S.C. 3601–3619).

For new federally assisted housing, unless HUD prescribes a higher percentage, section 504 requires that at least five percent of the total dwelling units or at least one unit in a multifamily housing project (defined as a project containing five or more dwelling units), whichever is greater, be made accessible for persons with mobility impairments and that an additional two percent (but not less than one unit) be accessible for persons with hearing or vision impairments (see 24 CFR 8.22). (24 CFR Part 8 was added by a final rule published June 2, 1988 (53 FR 20238).) These sections have not, as yet, been included in the bound version of the Code of Federal Regulations). Conformance with sections three through eight of UFAS (Appendix A to 24 CFR Part 40) is sufficient to make the dwelling unit accessible (see 24 CFR 8.32).

With respect to alterations to existing housing, section 504 requires that if the alterations are substantial (*i.e.*, if the cost is 75 percent or more of the replacement cost of the completed facility, and the project has 15 or more units), the requirements applicable to new housing apply. With respect to other alterations to existing housing, section 504 requires that alterations to dwelling units and common areas be made accessible to and usable by individuals with handicaps to the maximum extent feasible. Unless HUD prescribes a higher percentage, once five percent of the dwelling units in a project are readily accessible to and usable by individuals with mobility impairments, no additional dwelling units are required to be made accessible (24 CFR 8.23). Finally, section 504 requires that existing housing programs be operated so that, when viewed in their entirety, they are readily accessile to and usable by individuals with handicaps (24 CFR 8.24).

The Fair Housing Act sets forth accessibility requirements which apply to all new "covered multifamily dwellings" for first occupancy after March 13, 1991. "Covered multifamily dwellings" are defined as buildings consisting of four or more dwelling units if the building has at least one elevator, and ground floor dwelling units in other buildings consisting of four or more dwelling units. (A final rule implementing the Fair Housing Act was published January 23, 1989 (54 FR 3232).) The accessibility requirements for these new covered multifamily dwellings require that public and common use areas be readily accessible to and usable by handicapped persons, that doors be sufficiently wide to allow passage into and within all premises by persons in wheelchairs, and that individual dwelling units contain four features of adaptive design (54 FR 3289–90). These requirements are, in some respects, more modest than the section 504 accessibility requirements, but they apply to a greater percentage of dwelling units in covered buildings. With respect to existing units, in contrast to section 504, the Fair Housing Act does not apply to alterations. However, it does prohibit people from refusing to permit handicapped persons to make reasonable modifications to existing premises which are necessary to afford the handicapped person full enjoyment of the premises. Such modifications are made at the handicapped person's own expense.

(b) *Accessibility of dwelling units.* Proposed § 885.717(c)(3) provided that in projects for individuals with chronic mental illness, a minimum of 10 percent of all dwelling units in an independent living complex (or 10 percent of all bedrooms and bathrooms in a group home), but at least one of each such space, must be designed to be accessible or adaptable for persons with physical handicaps. Paragraph (c)(4) provided that in projects for persons with developmental disabilities or physical handicaps, all dwelling units in an independent living complex (or all bedrooms and bathrooms in a group home) must be designed to be accessible or adaptable for persons with physical handicaps. Commenters proposed that the standards set forth in paragraph (c)(4) should apply to all CMI projects.

These requirements reflect the fact that the accessibility needs of the chronically mentally ill population are substantially the same as those of the population at large. The proposed accessibility requirement was, therefore, based on a percentage of units. (This is the same approach used in accessibility requirements for dwelling units under section 504 and the Architectural Barriers Act of 1968.) By contrast, physically handicapped and developmentally disabled populations have greater need for increased accessibility. It is important to note that 10 percent is a minimum. In some circumstances more than 10 percent of the dwelling units must be made accessible. For example, if a project for individuals with chronic mental illness has an elevator and meets the definition of "covered multifamily dwelling," all units must satisfy the accessibility requirements contained in the Fair Housing Act. If the project does not have an elevator and meets the definitions of "covered multifamily dwelling", then the ground floor units must meet the accessibility requirements in the Fair Housing Act. The final rule is adopted as proposed.

One commenter urged HUD to clarify whether handicapped-accessible means wheelchair-accessible. The commenter noted that Sponsors serving a specialized handicapped population (*e.g.*, persons with visual or hearing impairments) have specific needs that are not necessarily related to wheelchair accessibility. The final rule has been revised to clarify that accessibility, as used in § 885.717(c) (2) through (4), means a project or dwelling unit that complies with the Uniform Federal Accessibility Standards. These standards are not limited to wheelchair accessibility, but rather specify features for people with all types of disabilities that may affect the use of their environment. Sponsors serving populations with distinct needs may provide additional special equipment or features. Such special adaptations are not appropriate for a general program standard.

The Advisory Committee expressed approval of the proposed accessibility requirements for projects serving different handicapped populations and urged the Department to develop design guidance for assuring that projects provide accessibility and usability for all disabilities as well as providing examples of different ways of achieving accessibility. HUD is considering the

provision of such guidance through administrative issuances.

(c) *Other accessibility proposals.* Commenters urged the addition of various other accessibility requirements. (*E.g.*, all dwelling units in buildings with elevators must be adaptable and at least one dwelling unit, but not less than 25 percent of the total number of dwelling units in buildings without an elevator which have dwelling units on the ground floor and which contain three or more units, shall be adaptable.) HUD believes that the accessibility requirements in UFAS, the section 504 regulations, the Fair Housing Amendments Act of 1988, and the additional adaptability and accessibility requirements contained in paragraphs (c) (2) through (4) are sufficient to ensure the development of projects that will address the needs of the handicapped populations to be served. No further revisions have been made.

A commenter argued that the final rule should state that the need for cost containment will not override accessibility requirements. The proposed rule permits only one exception to the prescribed accessibility requirements. Under paragraph (c)(4), projects for persons with developmental disabilities and physical handicaps may provide a lesser number of accessible and adaptable bedrooms and bathrooms if the project involves acquisition, the cost of providing full accessibility makes the project financially infeasible, less than one-half of the intended occupants are expected to have mobility impairments, and the project complies with the requirements of 24 CFR 8.23. HUD believes that this exception is necessary to permit the use of acquired properties. The final rule is unchanged.

C. *Project size limitations (885.720).* Proposed § 885.720 established maximum project size limitations of: 15 persons on one site (group homes); 20 persons on one site (independent living complexes for chronically mentally ill people); and 24 units per site (independent living complexes for handicapped families in the developmental disability or physically handicapped occupancy categories). HUD received comments supporting higher and lower limitations.

Commenters supporting lower limitations argued that the proposed rule would encourage the development of institutions, rather than homes. The project size limitations reflect the Department's policy of encouraging the development of operationally feasible housing that ensures the integration of nonelderly handicapped individuals into the community. HUD emphasizes that the regulation sets maximum, not minimum, requirements. Thus, Sponsors are free to develop smaller projects within the regulatory constraints. For example, the Sponsor may propose a lower limitation if it believes that such a project will enhance the integration of handicapped individuals into the community or where other constraints such as State and local requirements apply.

Commenters supporting higher limits focused on the independent living complex limitations. Commenters argued that these limitations do not reflect the population and density of larger cities; do not permit the best use of limited funds; and may not permit the provision of needed housing for people with physical disabilities. Two commenters noted that this change would negatively affect those Sponsors who, based on past section 202 practices, have acquired sites that permit the development of up to 40 units.

The reduction of the independent living complex size limitation was proposed in recognition of past marketing problems associated with larger projects. Upon reconsideration and with the Advisory Committee's support, HUD has revised the final rule to recognize that there may be circumstances where larger projects should be permitted. Accordingly, HUD will, on a case-by-case basis, approve larger independent living complexes where the Sponsor demonstrates that: a greater number of units is necessary for the economic feasibility of the project; the project size is compatible with other residential development and the population density of the area in which the project is to be located; a project of the size proposed can be successfully integrated into the community; and a project of the size proposed is marketable in the community.

Under the section 202/8 program, project size limitations for independent living complexes for handicapped families in the developmental disability or physically handicapped occupancy categories were stated as unit *and* household limitations. For example under the Announcement of Fund Availability for the FY-1988 section 202/8 program published April 13, 1988 (53 FR 12270), these independent living complexes were limited to 40 units per site and no more than 40 households could be served on any one site. For the purpose of this limitation, a household had the same meaning as handicapped family, except that unrelated handicapped individuals sharing a unit (other than a handicapped person living with another person who is essential to the handicapped person's well-being) were counted as separate households. Additionally to foreclose the development of independent living complexes serving large numbers of single unrelated persons, large bedroom units (*i.e.*, units with three or more bedrooms) could only be developed to serve handicapped families consisting of one or two parents with children. This final rule clarifies that these same policies will apply to independent living complexes developed for families in the developmental disability or physically handicapped occupancy categories. Consistent with the limitation on number of units, the number of households permitted on a site will be set at 24.

The proposed rule would permit HUD to impose additional project size limitations in the annual NOFA. Based on the difficulty of amending rules, several commenters recommended the deletion of the project size limitations in the rule in favor of including all project size limitations in the annual NOFA. Commenters argued that this approach would enable HUD to respond quickly to predicted trends toward smaller residences. Another commenter opposed an annual announcement. This commenter feared that Sponsors obtaining sites in advance of the NOFA and in reliance on past year's limitations would be harmed by the provision.

HUD believes that the NOFA provisions provide HUD with sufficient flexibility to respond to housing trends for handicapped individuals while providing Sponsors with consistency over the life of the program. The final rule is unchanged.

D. *Cost containment and modest design standards (§ 885.725).* The proposed cost containment and modest design standards included restrictions on amenities, limitations on unit sizes, and limitations on the cost of construction of special spaces and accommodations. Many commenters supported this section. Specifically, commenters supported: (1) The exclusion from "amenities" of durable materials to control or reduce maintenance, repair and replacement costs; (2) provisions that permit 10 percent of the construction funds to be used for special spaces and accommodations; and (3) provisions permitting the Sponsor to pay for features that exceed the cost containment and modest design features.

Upon reconsideration, HUD has modified the list of amenities to permit funding of space and mechanical hook-ups for washers and dryers in individual units in independent living complexes based on their value in assisting people with mobility impairments to live independently. Washers or dryers, however, are included on the list of amenities that HUD will not fund. No other changes have been made to this section.

Section 885.725(c) would permit HUD to approve projects that do not comply with cost containment and modest design standards under certain circumstances. A commenter argued that HUD should also expand this provision to permit the approval of projects that do not meet the requirements of this section where exemption is necessary to comply with State and local requirements. As noted above, the minimum project standards and requirements meet or exceed all State and local standards that HUD was able to identify. Accordingly, HUD does not believe that a cost containment and modest design standard exemption should be included.

E. *Prohibited facilities (§ 885.727).* The rule prohibits commercial spaces, infirmaries, nursing stations, spaces dedicated to the delivery of medical treatment or physical therapy, padded rooms, or space for respite care or sheltered workshops. Other types of facilities such as cafeterias, dining rooms, community rooms, and other similar facilities are not foreclosed. One commenter argued that space for the provision of services to the residents should be permitted.

The use of facilities for the provision of supportive services is not foreclosed under the rule. For example, a community room may be occasionally used for counseling. The rule prohibits the provision of facilities that are dedicated to such uses since these facilities would be contrary to the residential nature of the housing and would create institutional surroundings.

Several commenters argued that the rule should not prohibit respite care facilities. The commenters argued that if short-term respite care is provided, the provision of permanent and more costly housing could be avoided. At a minimum, commenters argued that such space should be permitted if the Sponsor agrees to pay for the space and the additional operating costs. One commenter urged HUD to define respite care. Respite care seems to have two accepted meanings in the industry. These include: the temporary provision of accommodations and services to an individual, and the provision of services to a resident designed to prevent institutionalization of the individual (such services include nursing care, physical therapy, etc.) Under either of the accepted meanings, respite care facilities cannot be provided in association with the program. Respite care in the form of temporary housing and services is excluded because section 202 is intended to provide permanent housing for program beneficiaries (see section 202(c), which precludes the use of section 202 projects for transient or hotel purposes defined as rental for any period less than thirty days.) The provision of space for respite care for the provision of services to prevent institutionalization is prohibited for the reasons cited in the previous paragraph.

The facilities prohibitions do not specifically address living space for attendants or caregivers (*e.g.*, semi-independent apartment and cooperative family arrangements where case monitoring personnel live in one of the apartments or with mentally ill individuals). Commenters suggested that the rule should not prohibit such facilities since live-in personnel may be necessary for independent living and integration into community life. The final rule allows for the provision of such facilities, as long as other program requirements are met.

F. *Site and neighborhood standards (§ 885.730).* Proposed § 885.730 addressed site and neighborhood standards. The proposed rule provided, in part, that projects may not be located adjacent to certain facilities (schools or day care centers for handicapped persons, workshops, medical facilities or other housing primarily serving handicapped individuals) or in areas where such facilities are concentrated. Some commenters argued that this provision would undermine the Department's goal of increased housing opportunities for persons with disabilities. These commenters proposed that HUD study the impact of this provision before it is permanently applied to the program. The cited prohibition has been applied to the section 202/8 program since its inception and has been successful in discouraging the concentration of handicapped individuals in areas. HUD does not believe that further study of this prohibition is necessary.

The Advisory Committee and commenters encouraged HUD to permit waiver of this provision. In making a waiver determination, the committee urged HUD to consider the comparative advantages offered by an otherwise prohibited site over other available sites. A commenter would permit waiver where Sponsors have no other suitable site options. It is unnecessary to include a waiver provision since the prohibition, like other regulatorily imposed requirements of the section 202 program, is subject to Part 899 which permits the Secretary, upon a determination of good cause, to waive nonstatutory limitations. The Department can waive this prohibition on a case-by-case basis and may take into consideration the factors cited by the committee and by the commenter in determining if good cause exists.

This proposed section stated that projects may be located adjacent to other housing primarily serving handicapped persons if the projects together do not exceed the project size limitations of § 885.720(a). One commenter argued that the final rule should permit a group home and an independent living complex to be combined in one project. The commenter asserted that such combinations would permit provision of short-term support for clients moving to greater independence. The rule does not foreclose such innovative programs where the program objectives are served and the group home and independent living complex are included in one application. However, where such projects are proposed, the project size requirements of the independent living complex would apply to the project size as a whole, and the group home limitation would apply to the number of persons that may reside in the group home portion of the project.

The proposed rule merely cited the site and neighborhood standards contained in Parts 880 and 881. These standards have been specified in the final rule and the citation to Parts 880 and 881 has been eliminated. In addition, paragraph (c), which addresses the acceptability of new construction sites in areas of minority concentration and in racially mixed areas, is derived from existing policies, but provides greater detail on how the standards are to be applied.

G. *Prohibited relationships (§ 885.735).* Proposed § 885.735 addressed prohibited relationships including conflicts of interest. The proposed rule provides that management contracts (including associated management fees) entered into by the Borrower with the Sponsor or the Sponsor's affiliate will not constitute a conflict of interest if no more than one person salaried by the Sponsor or management affiliate is on the Borrower's board of directors. A commenter asked why officers and directors of the Sponsor may enter into management contracts with the Borrower, while officers and directors of the Borrower may not.

Initially, HUD notes that the cited provision does not permit officers or directors of the Sponsor to enter into management contracts with the Borrower. This exception is only

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applicable to management contracts between the Sponsor (or the Sponsor's nonprofit affiliate) and the Borrower. As explained in the interim rule amending the section 202/8 program that was published April 10, 1986 (51 FR 12308), this exception to the general conflict of interest prohibition recognizes: (1) That one of the ranking and rating factors used by HUD to evaluate applications is the management capacity of the Sponsor; (2) that permitting Sponsors with management skills to manage section 202 projects is a longstanding HUD practice; and (3) that many Sponsors that are national organizations have salaried officers or directors. Consequently, many Sponsors have developed significant management experience. HUD believed that it would be inappropriate and contrary to the best interest of the program to bar such Sponsors from entering into management contracts.

In response to commenters, the limitation on the number of salaried employees or officers of the Sponsor that may serve on the board of a Borrower with whom the Sponsor has a management contract has been increased from one to two. Additionally, the prohibition has been clarified to state that these two members of the board must be nonvoting members. This is consistent with the policy recently adopted for the section 202/8 program.

This section also limits the housing consultant's participation in outside business ventures with other development team members. A commenter noted that this provision, when combined with HUD's low fee maximums, will make it difficult for Sponsors to find individuals to provide consultant services. To address this problem, the commenter proposed a higher fee schedule. HUD does not believe that higher maximum fees are needed in light of the number of consultants that are available to provide services to Sponsors and Borrowers under the section 202 program under the current fee schedules. In any event, consultant fees are not established by regulation and, therefore, are not addressed in this rule.

H. *Other Federal Requirements (§ 885.740)*—1. *Davis-Bacon Act.* Under proposed § 885.740(d), the Davis-Bacon wage rate requirements would apply to projects designed for dwelling use by 12 or more handicapped families. Several commenters argued that the Davis-Bacon Act wage rates exception should be extended to all projects, or to specific sizes of projects. The proposed changes are contrary to HUD's statutory authority and have not been included.

HUD does, however, believe that the applicability standard stated in the proposed rule and the statute is ambiguous and has clarified this provision in the final rule. The statute and the proposed rule stated that Davis-Bacon wage rate provisions apply to projects "designed for dwelling use by 12 or more *families*." The final rule states that these provisions will apply to independent living complexes that contain 12 or more units and that group homes are not covered. This determination is based upon the definition of elderly or handicapped families contained in section 202(d)(4) which provides, in part, that elderly or handicapped families may include two or more elderly or handicapped persons living together; and upon HUD's treatment of similar family thresholds as unit thresholds for Davis-Bacon purposes (*e.g.*, CDBG-funded rehabilitation of personal care residences). HUD notes that the threshold will be easier to administer and avoids problems associated with attempts to determine whether units are designed for more than one family.

Numerous commenters argued that the Davis-Bacon requirements should be lifted immediately for smaller section 202/8 projects that have not reached initial loan closing before the effective date of the final rule. The applicability of the Davis-Bacon wage rate provisions to section 202/8 programs will be addressed in a separate rulemaking.

2. *Relocation assistance.* When the proposed rule was published, HUD (with the Department of Transportation as the lead agency) was preparing uniform government-wide regulations for Federal and Federally assisted programs implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601) (URA), as amended by the Uniform Relocation Act Amendments of 1987, Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Pub. L. 100–17, approved April 2, 1987). Effective April 2, 1989, certain relocation assistance requirements apply to programs and projects that involve acquisition, rehabilitation, or demolition and receive Federal financial assistance. The proposed rule (§ 885.740(e)) stated that the URA and the government-wide implementing regulations (49 CFR Part 24) would apply to the program. The final government-wide rule was published on March 2, 1989 (54 FR 8912).

HUD does not anticipate that the development of housing for handicapped families and individuals will cause a significant amount of displacement since relocation payments will be funded by the Sponsor and not from the section 202 loan proceeds. To the extent that displacement may occur, the following relocation provisions have been included in the final rule at § 885.740(e):

—The URA and government-wide implementing regulations at 49 CFR Part 24 set forth relocation assistance requirements that apply to the displacement of any person (family, individual, business, nonprofit organization or farm) as a direct result of acquisition, rehabilitation or demolition for a project assisted under this part.

—For projects involving applications that are submitted without evidence of control of an approvable site, a displacement from the real property is covered by the URA if it occurs on or after the date that the Sponsor obtains control of an approvable site. For projects involving applications that are submitted with evidence of control of an approvable site, a displacement from the real property is covered by the URA if it occurs on or after the date that the application is submitted. Displacements occuring on or after these dates, however, may not be covered if: (i) The person has been evicted for cause based upon a serious or repeated violation of the material terms of the lease or occupancy agreement and HUD determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance; (ii) The person moved into the real property after the date specified above, but received prior written notice of the expected displacement; (iii) The person is an owner-occupant and has been informed that the real property will not be acquired for the project under the threat of eminent domain; or (iv) The Sponsor (Borrower) determines that the displacement did not occur as a direct result of acquisition, rehabilitation, or demolition for the project and HUD concurs in that determination.

—If a person is displaced from the real property before the date specified above and either HUD or the Sponsor (Borrower) determines that the displacement was a direct result of acquisition, rehabilitation, or demolition, the person shall be eligible for relocation assistance as a displaced person.

—The Borrower (Sponsor) may, at any time, request a HUD determination whether a displacement will be covered by the URA and the implementing regulations.

—A displaced person's eligibility for relocation assistance is subject to the requirements in 49 CFR Part 24.

3. *Floodplains.* The proposed rule stated that all projects would be treated as critical actions requiring consideration of the 500-year floodplain for the purposes of Executive Order No. 11988, Floodplain Management. This required HUD to comply with an eight-step public notification and decision-making process to determine if sites located in a 500-year floodplain are acceptable.

A similar provision was included in a related notice announcing changes to the Supportive Housing Demonstration Program and soliciting comments on those changes (see 54 FR 736, published January 9, 1989). A commenter to that notice argued that the floodplain requirement conflicts with section 504 and the Fair Housing Act.

Upon reconsideration, HUD has amended the floodplain requirements. Under the final rule, only applications for intermediate care facilities for the mentally retarded and individuals with related conditions (see § 885.710(b)(4)(vii)) will be treated as critical actions requiring consideration of the 500-year floodplain. The residents of these projects will be the most vulnerable of the handicapped population to be served by the program. Their handicaps are of such a nature that they may require continuous active treatment programs and high staffing levels. HUD notes that projects for the elderly under the section 202/8 program are not critical actions subject to the 500-year floodplain requirements. Accordingly, HUD believes that there is a sufficient basis for a determination that intermediate care facilities are likely to contain occupants some of whom may not be sufficiently mobile to avoid loss of life or injury during flood or storm events. HUD has a proposed rule pending to provide an agency-wide floodplain regulation. When this rule is published, HUD will seek public comment on the scope of the definition of critical action.

IV. Selection of Applications and Duration of Fund Reservation

A. *Review of applications for fund reservation (§ 885.750).* HUD's review of applications for fund reservation consists of three stages: preliminary evaluation, technical review processing, and ranking.

1. *Preliminary evaluation.* Preliminary review would include a review of the receipt, timeliness and completeness of the application, the eligibility of the Sponsor and the project, and the supportive services plan. The proposed rule provided no opportunity for the submission of missing documents or to overcome defects in the original submission.

A commenter urged HUD to provide an opportunity for Sponsors to provide missing documents and to overcome minor defects in the original submission. The final rule has been revised to permit the submission of erroneously omitted documents or exhibits. Under the final rule, if an application is determined to be missing documents, the Sponsor will be advised in writing of the omissions and that additions will be be accepted if they are received on or before a specified date, generally 10 calendar days from the date of the request for additional information.

One commenter urged HUD to provide sufficient time between training sessions and application due dates to permit Sponsors to thoroughly review applications for errors. The timing of the training sessions and the application due dates are addressed in the annual NOFA. HUD's NOFAs attempt to provide Sponsors with the maximum amount of time for the preparation of applications consistent with the constraints imposed by the annual funding cycle and the need to provide sufficient time for HUD review and selection.

2. *Technical review processing.* HUD would perform a technical review of each application that is found to be acceptable under preliminary evaluation. Comments addressing specific aspects of technical review were addressed under the related application requirements above.

3. *Ranking.* HUD would assign a rating to each application that is found to be approvable under technical review and rank all applications in order of their assigned ratings within each allocation area. Rating points would be assigned based on several factors, including the Sponsor's ability to provide or facilitate the provision of the proposed supportive services to handicapped individuals meeting the proposed occupancy requirements. This ranking factor has been clarified. In the final rule, this ranking factor will include the consideration of the Sponsor's experience serving minority handicapped persons.

The ranking factors also included an assessment of the special needs (see proposed § 885.750(c)(1)(ii)). The special needs included in the proposed rule were those listed in section 213(d)(4) of the Housing and Community Development Act of 1974 that HUD believed were relevant to the program. (These included the degree to which the application supports minority enterprise, involves a small research or demonstration project, or provides an innovative housing program or alternative method of meeting lower-income housing need.) Upon review of the section 213 special needs factors, the final rule has been revised to permit HUD to consider additional special needs including the degree to which the application meets unforseeable housing needs, especially those brought on by natural disasters or special relocation requirements, and lower-income housing needs described in housing assistance plans.

Commenters addressed the following issues with regard to the ranking procedure.

(a) *Site control.* The proposed rule stated that HUD may assign additional rating points to applications with satisfactory evidence of an approvable site. The provision has been clarified in the final rule to provide that HUD may assign additional points to applications that include satisfactory evidence of control of an approvable site.

This section was supported by the Advisory Committee. One commenter, however, argued that the assignment of additional points for approvable sites would penalize projects serving persons with chronic mental illness since local zoning ordinances place fewer restrictions on the location of housing for developmentally disabled and physically handicapped persons.

In FY–1989, Congress directed HUD to fund 950 units serving deinstitutionalized homeless chronically mentally ill people. The announcement of funds availability for FY–1989 stated that approximately 40 percent of the funds available in each region would be designated for this population. Accordingly, projects proposing to serve persons with chronic mental illness will not compete against projects serving other disability groups and, thus, should not be adversely affected by this requirement during this funding cycle. The pool of applications received this year will permit HUD to determine whether it is substantially more difficult for such projects to present satisfactory evidence of an approvable site. Future decisions to award additional points to projects with approvable sites will be based, in part, on this analysis.

One commenter argued that HUD must develop a method to ensure that the site is adequate to support the intended project. As noted in the proposed rule, in order to be awarded additional points under this criterion, the Sponsor must submit the evidence described in § 885.705(a). The adequacy of this evidence is judged under the

criteria described in § 885.705 (b) and (c).

Several commenters thought that applicants providing site information should not be penalized in the ranking process if HUD does not approve the site. HUD does not intend to penalize such applications. If the site is not approvable and the Sponsor has indicated a willingness to develop the project on a different site, the project will be rated as if no site information was submitted.

A commenter argued that HUD should require assurances that Sponsors will adhere to the proposal for which they receive extra points. It may be necessary occasionally to permit the substitution of a site following selection. This occurs from time to time in the section 202/8 program for the elderly when site control is required at the time of the application, and site and architectural design are significant rating factors. Before a substitute site will be approved, HUD will review the site to ensure that it would have received an equal or better approval rating under the criterion for the award of additional points.

(b) *Acquisition projects.* The proposed rule stated that HUD may also assign additional points for group homes using acquisition as the development method. This provision was also supported by the Advisory Committee. One commenter complained that HUD, at the ranking stage, will not have cost data demonstrating that acquisition would be more cost effective than new construction.

HUD's decision to permit the assignment of additional points for acquisition projects was not based solely on anticipated cost savings, but also upon the time savings that are generally realized in the development of such projects. The provision of additional points for such projects would, thus, further the goal of expedited development.

(c) *Number of points to be awarded.* A commenter asked how many additional points will be assigned to applications with site control. If additional points for satisfactory evidence of control of an approvable site (or for group homes using the acquisition method) are to be awarded, the announcement of funds availability will describe the maximum number of points that will be awarded under the factor. For FY–1989, HUD intends to award up to 10 points to applications with satisfactory evidence of control of an approvable site. Applications receiving points for site control and proposing to develop a group home by acquisition with or without moderate rehabilitation will receive up to five additional points.

B. *Duration of Section 202 fund reservations (§ 885.770).* This section contained provisions for extension and cancellation of the fund reservation and for appeal of HUD decisions to cancel the fund reservation. The proposed rule provided that the duration of the initial reservation is 18 months and that extensions of up to 36 months may be obtained.

One commenter argued that the duration of the fund reservation should be extended beyond the proposed 36-month period to reflect the actual experience of projects in large urban centers. In enacting section 162 of the 1987 Act, Congress found that the use of the section 202/8 program for the development of housing for nonelderly handicapped families was unnecessarily time-consuming (see section 162(a)(1)(F)). The procedures contained in the proposed rule were designed, in part, to expedite development by improving the efficiency of the process. HUD has reconsidered the proposed 36-month extension period. In light of the intent of the legislation to expedite the development of handicapped projects and the anticipated efficiency of the process under the new rules, HUD will permit extensions of 24 months, the extension period that is currently allowed under the section 202/8 program. HUD notes that projects for handicapped people developed under the more time-consuming section 202/8 procedures have reached initial loan closing in less time and that 12 months is not an unusual period. HUD believes that projects under this new program should be able to reach initial loan closing within this 24-month time period.

Some commenters asked HUD to explain what will happen if delays caused by zoning problems and other legal difficulties prevent initial closing by the extended time periods. If a Borrower is unable to complete the required actions within the time extensions provided under § 885.770(a), HUD will issue a notice of loan cancellation. If the Borrower fails to appeal the cancellation notice, or if the appeal is disapproved, the fund reservation will be cancelled. If HUD Headquarters approves the appeal, HUD will issue a written notice indicating the extended duration of the fund reservation.

C. *Transition (§ 885.775).* Under proposed § 885.775, recipients of section 202/8 fund reservations for projects for nonelderly handicapped families would be permitted to request project assistance payments under the new program if initial loan closing has not occurred. If the project is eligible for assistance under the new program and is financially infeasible with contract rents limited by section 8 FMRs (or the substitution would otherwise facilitate the development of the project in a timely manner), the request will be granted to the extent that funds are available.

Commenters generally supported the transition provision. Several commenters urged HUD to facilitate the substitution of section 202/8 projects and to expand the scope of the transition provision. (For example, commenters argued the HUD should apply the new program to *all* previously approved section 202 reservations or should permit all Sponsors with such pipeline projects to elect the new program.) Others urged HUD to seek additional authority from Congress to permit the transitions.

Under current Appropriation Act restrictions, it is not possible to convert projects with section 8 commitments to the new program without the loss of the section 8 fund reservation. Since no funds have been appropriated for assistance to previously selected projects, it is not currently possible to implement the transition provisions. Given Federal budget constraints, the Department believes that it is appropriate to utilize reserved section 8 funds as originally intended, rather than to seek new appropriations, HUD's Advisory Committee agreed with this position, but stated its strong support that HUD take further action to assure implementation of the transition provision.

Some commenters sought clarification of the transition provision. For example, commenters suggested the HUD should fully describe how funds will be made available and the procedures for review of transition applications. HUD will clarify such procedures as appropriate when funds become available for this purpose.

V. Direct Loan Processing Procedures

A. *Submission of site information (§ 885.780).* Under the proposed rule, the Sponsor is not required to submit site information until the fund reservation is issued. The fund reservation would include a deadline for the submission of this information. A commenter asked what actions HUD would take if this deadline is not met. HUD will provide appropriate extensions of the deadlines set in the notice of fund reservation. However, failure to submit the information within the described time periods may be an element in HUD's determination that the Borrower is not making satisfactory progress toward the start of construction, rehabilitation or acquisition and may result in the cancellation of the fund reservation under § 885.770.

Upon reconsideration, HUD has made three revisions to the site information submission provision. These include:

—The Sponsor is required to provide documentary evidence of site control with the submission of site information. The proposed rule provided for the submission of site control information at the conditional commitment stage.

—HUD has revised paragraph (c)(1) to reflect the requirements of section 213(b)(1) of the Housing and Community Development Act of 1974. Under the final rule, HUD is not required to forward applications involving 12 or fewer units for local government review and comment.

—Provisions governing HUD's review of the site information are revised to state that HUD will consider the suitability of the site for its intended use.

One commenter suggested that the final rule should require HUD to supply a site appraisal when it approves the site under § 885.780(d). It is not feasible for HUD to perform a complete site appraisal before it approves the site. While the final rule provides for site appraisal at conditional commitment, HUD will endeavor to perform the site appraisal as soon as possible following the submission of site information and before the conditional commitment stage.

B. *Request for direct loan financing (§ 885.800).*—1. *Request for determination of Borrower eligibility.* Simultaneously with the request for direct loan financing, the Borrower must submit a request for determination of Borrower eligibility. Commenters addressed the following requirements.

(a) *Board certification.* Proposed § 885.800(b)(1)(i) required certain certifications from officers and directors of the Sponsor and Borrower. This section has been revised slightly for clarity.

(b) *Composition of Board.* Proposed § 885.800(b)(2)(iii)(E) stated that the Borrower's board must be composed of seven persons. A commenter argued that the size of the Board is irrelevant to HUD. Based on the paperwork burdens imposed by the appointment of each member, the commenter argued that the number should be left to State law and the Sponsor. HUD agrees. This provision has been eliminated from the final rule.

(c) *Sole purpose Borrower.* Under proposed § 885.800(b)(2)(iv), the Borrower must demonstrate that it is not authorized to engage in any other business or activity (including the operation of another rental property) or to incur any liability or obligation that is not related to the project. Numerous commenters suggested that the final rule should permit the Borrower to operate other section 202 projects.

The purpose of this provision is to give HUD sole claim to the assets of the Borrower corporation in case of default under the regulatory agreement; to ensure that the financial problems of one section 202 project will not affect the financial integrity of another; and to limit the impact of a Borrower's financial problems to one section 202 project. The final rule has been revised to clarify that the Borrower may not have engaged in any other business or activity or incurred any liability or obligation that is not related to the project, prior to the submission of the request for determination of Borrower eligibility.

(d) *Borrower eligibility.* The Borrower is required to submit a request for preliminary determination of eligibility as a mortgagor on a form prescribed by HUD (§ 885.800(b)(2)(vi)). One commenter was concerned that the form would contain additional eligibility requirements. HUD's form reflects the Borrower eligibility requirements contained in the final rule and will not impose additional eligibility requirements.

2. *Conditional commitment processing.* Under proposed § 885.800(c)(3), the Borrower would be required to submit a statement describing any proposed methods to be used in construction and rehabilitation that will promote construction efficiencies. One commenter urged the deletion of this requirement, arguing that Borrower's submissions under this provision will be recitals of the regulatory cost containment requirements. The Advisory Committee supported the retention of this requirement.

Compliance with cost containment requirements is one method of limiting project development costs and is required of every project. The purpose of this provision is to encourage Sponsors and Borrowers to identify and use other methods of limiting construction cost, such as new construction technologies. Accordingly, the provision has been retained. Since such information is relevant to the project selection process, this submission will be required in the application rather during conditional commitment processing.

3. *Firm commitment processing.* Under § 885.780(d), HUD would permit a Borrower to submit a request for firm commitment without previous conditional commitment processing under certain circumstances. The Advisory Committee supported the elimination of the two-stage commitment processing procedures for most projects. Other commenters urged the elimination of the two-stage procedure where the original application included acceptable site control information. (The commenters noted that Sponsors often have trouble extending site options and that the two-stage commitment process would unduly delay such projects.)

Many elements are reviewed during conditional commitment processing. These include: Determination of Borrower eligibility, establishment of initial contract rents, review of design, establishment of land value, review of overall project feasibility, and evaluation of the fair housing marketing plan. Accordingly, HUD does not believe that it is appropriate to allow for one-stage processing as a general rule or to permit all projects with approved sites to proceed directly to firm commitment.

The final rule has been revised, however, to permit more projects to bypass conditional commitment. One of the major obstacles to the issuance of a final commitment is the development of a project design that is acceptable to HUD on an architectural and engineering basis. The development of a project design is a time-consuming process often involving a continuing series of discussions between HUD architects and engineers and the Borrower. HUD believes that projects with designs that have been developed through this continuing design consultation can be processed on an expedited basis. Accordingly, the final rule has been revised to permit projects to proceed directly to firm commitment where HUD has issued written architectural and engineering approval of preliminary design plans and specifications. At this stage, the Borrower will have filed for a determination of eligibility, established site control and received a site appraisal, and reached an agreement with HUD staff on the preliminary drawings.

C. *Operating cost standard (§ 885.807).* Under proposed § 885.807, HUD would annually establish operating cost standards based on the average annual operating cost of comparable housing for handicapped families in each field office jurisdiction. The operating cost standard is used to determine the amount of project assistance reserved for a project under § 885.755(a)(3) and to

review the reasonableness of operating costs for the establishment of initial contract rents (§ 885.800(c)). Numerous commenters supported the elimination of the link between operating costs and FMRs, and between FMRs and rents.

1. *Costs included in the computation.* Commenters warned that it is imperative that the operating cost standard permit adequate rents and draw a clear line between project expense (operation of the facilities) and program expenses (provision of supportive services to the residents).

Under the proposed rule, operating costs were defined as administrative expenses (including salary and management expenses related to the provision of shelter), maintenance expenses, security expenses, utility expenses, taxes and insurance, and allowances for reserves. Operating costs specifically excluded expenses related to administering, or managing the provision of, supportive services. These costs will take into account all necessary and reasonable costs of operating the project. The amount of the initial contract rents plus any utility allowances will be sufficient to meet the annual reasonable and necessary operating cost of the project plus the annual debt service on the amount of the section 202 loan.

Commenters asked whether operating expenses would include costs associated with professional management consultants during rent-up, the initial year of operations and occupancy, and retraining periods when a Sponsor has a turnover of trained personnel. Administrative expenses (including salary and management expenses) are included in the computation of the operating cost standard and may include the cost of a management consultant.

Since the term "operating costs" is used elsewhere in the regulations (see § 885.975), the final rule has moved the provision defining operating costs from § 885.807(b) to the definitions section for the new program.

2. *Procedures for development of standards.* One commenter suggested that the operating cost standards should be developed with industry participation. The commenter suggested that the Advisory Committee, Sponsors, and other members of the private sector could serve as resources. HUD intends to develop the cost standards at HUD Headquarters based on information submitted by the field offices. Currently, HUD does not anticipate the participation of other entities.

D. *Amount and terms of financing (§ 885.810).*—1. *Development cost limit.* Proposed § 885.810(c) established a total development cost limit based on per unit cost limits (for independent living complexes) and provided that cost limitations would be published (for group homes). Numerous commenters supported the elimination of the link between the development cost limitations and FMRs.

(a) *Independent living complexes.* Several commenters feared that the proposed per unit cost limitations for independent living complexes would not cover development costs in some areas, particularly larger metropolitan areas. (Commenters argued that the per unit cost limits were suitable only for multifamily buildings with no special features and do not reflect the cost of building and maintaining small fireproof elevator buildings for physically handicapped residents in such areas). Commenters urged greater flexibility in order to adequately reflect disparate development costs. Suggestions included: (1) The waiver of the limitations in central city areas and other areas of high density, if the structure is designed economically and meets HUD standards; and (2) the inclusion of primary metropolitan statistical areas of two million or more (or specific areas such as New York City) as high cost adjustment areas under § 885.810(c)(3)(ii) (currently these areas include Guam, Alaska and Hawaii). One commenter urged HUD to develop independent living complex cost limits by using a methodology similar to that proposed for group homes (see discussion below). The Advisory Committee was also concerned that the unit cost limits would not be high enough to fund construction for handicapped people and urged HUD to review this issue carefully.

After consideration of these comments, HUD has retained the proposed per unit cost limits for independent living complexes. The proposed limits are based upon the same limitations prescribed under the section 202/8 program and reflect the unit limitations of section 221(d)(3) of the National Housing Act. In FR-2445—Miscellaneous Revisions to FHA Single Family and Multifamily Mortgage Insuring Authorities; Section 202 Per Unit Cost Limits published March 18, 1988 (53 FR 8674), the section 202 per unit cost limitations were increased and HUD's authority to raise the limitation in high cost areas was increased from 75 to 110 percent. In that rule, HUD determined that these limitations sufficiently took into account design features necessary to meet the needs of elderly or handicapped residents and reflect the cost of providing features as required by section 202(i)(3). Given the fact that these limitations were recently found to be sufficient to support the objective of encouraging the construction and substantial rehabilitation of multifamily residences for lower income handicapped families, HUD will not revise these limits in this rule. HUD notes that these limits have not, as yet, served as an effective mortgage restriction since the amount of most section 202/8 loans was limited by the amount of debt service that could be supported under the applicable Fair Market Rents, rather than the per unit cost limit. (Indeed, the elimination of the FMR-imposed loan limitation was one of the primary reasons for the enactment of section 162). Further, HUD believes that the economic feasibility of projects in large metropolitan areas will be improved by the provisions of this final rule which permit the development of independent living complexes that exceed the project size limitations under certain circumstances (see § 885.720(c)).

HUD intends to study the impact of these limits on development of independent living complexes under the section 202 handicapped program during the initial years of the program, particularly in light of commenters' allegations regarding higher costs in some metropolitan areas. If the limits prove to be inadequate to ensure the development of satisfactory housing under the program, HUD may make appropriate revisions and adjustments to the limits in a later rule.

(b) *Group homes.* Proposed § 885.810(c)(2) provided that HUD would periodically establish cost limits for various sizes of group homes. The cost limits would reflect those costs reasonable and necessary to develop a project of a size that will accommodate the specified number of residents, and comply with HUD's minimum property standards, the minimum square footage requirements, bathroom and recreational area requirements, cost containment and modest design standards, and other design requirements applicable to group homes. Commenters generally supported the development of the group home cost limit.

A commenter was concerned that the group home limit would reflect only the minimum requirements prescribed under the regulations (*e.g.*, the minimum square footage requirements). This was not HUD's intent. The final rule has been clarified to indicate that the cost limit will reflect those costs reasonable and necessary to develop a group home of modest design that, at a minimum, complies with the cited requirements.

Commenters suggested that HUD's calculation should include adjustments for: number of individuals that will be served; local characteristics such as State and local building code requirements; the severity of the disabilities of the handicapped population proposed to be served; and regional cost differences. HUD intends to include appropriate adjustments in the group home cost limits. The final rule has been modified for clarity.

Some commenters asked whether specific design features will be considered in the calculation of HUD's group home limits. These included live-in managers' units, staff offices and garages. The modest design currently under consideration by HUD includes a staff office and an efficiency apartment for staff, but does not include a garage. HUD notes that the modest design that it uses does not require a Borrower to provide all facilities included in the design, or preclude the provision of facilities that are not included in the design, as long as the minimum requirements of this rule are met and the costs of the project are within the group home limit.

2. *Increased mortgage limits.* Proposed § 885.810(c)(3) included provisions for increased cost limits for group homes and independent living complexes in high cost areas. The rule stated that the Assistant Secretary may increase the cost limits by up to 110 percent in any geographic areas where the cost levels require, and may increase the cost limit by up to 140 percent on a project-by-project basis. (Additional adjustments are permitted for projects in Guam, Alaska and Hawaii.)

HUD notes that the group home limitations will already be adjusted to reflect such factors as the disabilities of the handicapped population proposed to be served and State and local building codes. Accordingly, the Department does not anticipate that it will be necessary to grant increases to the cost limits for group homes on a project-by-project basis (*i.e.*, increases between 110 and 140 percent).

One commenter thought that this section did not clearly indicate whether the maximum limits under § 885.810(c)(3) were 140 percent or 240 percent of the published limits. The cited provision, which made only minor modifications to a similar provision contained in the section 202/8 regulations, adequately reflects HUD's decision to permit mortgages of up to 240 percent of the published limitation. (*E.g.*, if the applicable published limit for an independent living complex is $300,000, HUD may increase the limit to $630,000 based on the geographic area modification, and to $720,000 based on the project-by-project modification.) The text of this rule is unchanged.

Another commenter alleged that it takes approximately 60 to 90 days to process increased mortgage limit requests on a project-by-project basis under similar section 202/8 regulations. The commenter asserted that the chief cause of this delay is design review. The commenter suggested that HUD field offices should be authorized to approve up to the maximum limits without Headquarters review where a Borrower uses a design that complies with cost containment requirements.

Contary to the commenter's allegations, the duration of HUD Headquarter's review of requests is generally limited to two weeks. While HUD may later decide to delegate greater responsibility for such requests to the field offices, HUD will continue to review requests at Headquarters during the first few years of the program. The consideration of requests at HUD Headquarters will provide the most effective means of analyzing the appropriateness of the development cost limitations during the first few years of program operations.

3. *Cost savings incentives.* In the preamble, HUD stated that it was concerned that the proposed rule offered no incentive to keep costs below the maximum development cost limit. The Department suggested that the final rule may allow Borrowers to retain some portion of the savings in a development contingency account where the total development cost is less than the development cost limit. Several commenters endorsed a provision that would permit Borrowers to retain up to 50 percent of the cost savings for use for project-related expenditures or to construct additional units of housing in the project.

HUD also invited comments on awarding additional rating points to Sponsors whose prior projects were developed within the development cost limits. A commenter did not believe that it is possible to prepare development cost limitations that adequately and fairly adjust costs between geographic areas and argued that this proposal, thus, may not result in the selection of projects in communities that have the greatest need.

HUD continues to believe that cost saving incentives may have merit for the section 202 handicapped program. However, HUD is not prepared to implement an incentive at this time. In the initial years of this new program's operation, HUD intends to study the development cost limits for group homes and independent living complexes to determine if they adequately reflect development costs of such projects. As HUD gathers information concerning the adequacy of the limitations and makes appropriate revisions, HUD intends to reconsider the cost saving incentive. The Advisory Committee supported the development of such cost saving incentives.

4. *Mortgage amounts; acquisitions.* Several commenters supported the elimination of the 25 percent reduction in mortgage amounts for acquisitions and supported other provisions designed to encourage acquisition as a development method (see § 885.810(d)).

Section 885.810(d)(1) of the proposed rule stated that if a Sponsor is the fee simple owner of property unencumbered by a mortgage, the maximum loan amount may not exceed 100 percent of the proposed cost of rehabilitation. Paragraph (d)(2) stated that if the Sponsor owns property subject to an outstanding indebtedness that is to be refinanced with the section 202 loan, the maximum loan amount may not exceed the cost of rehabilitation plus the portion of the outstanding indebtedness that does not exceed the fair market value of the land and improvements before rehabilitation. One commenter argued that this section encourages Sponsors who own property in fee simple to obtain mortgages in order to circumvent the intent of the program.

When property to be rehabilitated is subject to an existing mortgage, the indebtedness is refinanced (up to the Fair Market Value) in order to bring the property under a single mortgage held by HUD. To avoid the situation cited by the commenter, the mortgage credit review of the project includes an investigation of any outstanding indebtedness recently placed against the property to ensure that it was not created in an attempt to circumvent this section.

5. *Loan interest rate.* Proposed § 885.810(f) addressed the calculation of the annual loan interest rate and the availability of an optional interest rate. The proposed rule stated that if initial loan closing did not occur within 18 months of the notice of fund reservation, HUD would cancel the election of the optional rate and use the annual loan interest rate for the loan. A commenter noted that the majority of projects do not close within 18 months of the fund reservation and, thus, it will be extremely difficult for most Borrowers to use the optional interest rate. The commenter urged HUD to eliminate the 18-month limitation.

The loan interest rate provisions incorporated in the proposed rule were

identical to those contained in the section 202/8 interim rule published on June 1, 1988 (53 FR 19899). In that interim rule, HUD noted that the existing regulations permit the cancellation of the fund reservation if it can be established that the Borrower is not making satisfactory progress toward the start of construction, rehabilitation or acquisition; or if construction, substantial rehabilitation or acquisition is not begun within 18 months after the issuance of the initial fund reservation. (A substantially identical provision is included in this final rule at § 885.770(a).) While section 202 does not provide an expiration date for the optional interest rate, HUD concluded that it would be contrary to the goal of encouraging reasonable progress toward project operation to permit the optional rate to apply to the duration of an extended fund reservation. While HUD announced that it would continue to provide appropriate extensions of time for fund reservations, it stated that it would not permit the Borrower to receive the benefits of the optional rate during the period of the extension. The final rule here adopts this same policy.

(Note: A final rule on loan interest rate provisions for the section 202/8 program was published on November 9, 1988 (53 FR 45285). The interim rule was adopted without change.)

6. *Announcement of loan interest rate.* Under proposed § 885.810(g), the annual interest rate would be announced in the **Federal Register** and the optional interest rate would be made available at the Borrower's request. One commenter argued that HUD should automatically notify the Borrower of the current optional interest rate. HUD's current policy is to advise all Borrowers that are eligible to use the optional rate whenever the rate falls below the statutory ceiling. (The statutory ceiling is currently 9.25 percent.) HUD does not believe that it is necessary to incorporate this practice into the final regulations.

7. *Minimum capital investment.* Proposed § 885.810(h) would require Borrowers to provide a minimum capital investment of one-half of one percent of the mortgage amount committed to be disbursed, not to exceed $10,000. This amount would be placed in escrow at the initial loan closing and held for three years following initial occupancy. A commenter suggested that HUD should release unexpended minimum capital investment funds at final closing. This change would provide an incentive to Borrowers to proceed to final loan closing.

The purpose of the escrow account is to assure the Borrower's continued commitment to the development, management and operation of the project. Accordingly, HUD does not believe that it is appropriate to release unexpended minimum capital investment funds at final closing. This position was supported by the Advisory Committee.

E. *Loan disbursement procedures (§ 885.820).* Under the proposed rule, disbursements to the Borrower would be made on a periodic basis, in amounts not to exceed the HUD-approved cost of the portion of work completed and in place, minus an appropriate holdback. One commenter alleged that processing of a loan disbursement takes three and one-half weeks and that this delay is difficult for small contractors. The commenter urged HUD to revise its procedures to permit Borrowers to draw down the entire amount of the loan at initial loan closing. Payments to the contractor would be based on the percentage of completion certified by the HUD inspector.

HUD is implementing a new procedure that will permit disbursements to be made by wire transfer. This new procedure should be available within one year and is expected to reduce the processing time for loan disbursements by one-half. In light of this new procedure and to ensure that disbursements will not be made until work is completed, HUD has not made the proposed change.

F. *Completion of cost certification (§ 885.825).* Proposed § 885.825(b) addressed required cost certifications at final loan closing. In response to commenters, HUD has revised cost certification procedures to address the various responsibilities of Borrowers and construction contractors, including the availability of short-form cost certification procedures and the requirements for verification by an independent public accountant. Under the final rule:

—Where the construction contract was a cost-reimbursement contract with a ceiling price: (1) The Borrower must certify, on a form prescribed by HUD, as to the actual cost to the Borrower of the construction contract, architectural, legal, organizational, off-site costs and all other items of legitimate expense; and (2) the general contractor (and such subcontractors, material suppliers, and equipment lessors as HUD may require) must certify, on a form prescribed by HUD, as to the actual cost paid for labor, materials, and subcontract work under the general contract. The certificates must not include as actual costs any kickbacks, rebates, trade discounts, or other similar payments to the Borrower or to any of its officers, directors, or members. For projects with a mortgage of $750,000 or more, the certificates must be verified by an independent public accountant acceptable to the field office.

—Where the construction contract required the contractor to furnish all labor, materials, equipment and services required to construct and complete the project for a specified and firm fixed price, the Borrower must submit a simplified short-form cost certification on a form prescribed by HUD, and no certification is required from the contractor. For projects with a morgage of $750,000 or more, the cost certification must be verified by an independent public accountant acceptable to the field office.

One commenter argued that cost certification requirements should be tied to the amount of the construction contract, not the size of the mortgage. The purpose of the cost certification is to have verification of the total development costs of the project including all items of legitimate expense, not only the amount of the construction contract. The final rule is unchanged on this point.

Another commenter suggested various revisions that would allow qualified consulting firms to perform, and receive a fee for, the cost certification for projects with mortgages of under $750,000. The commenter would also permit payment of such a fee to the Sponsor where the Sponsor is able to perform this audit in-house. HUD will permit consulting firms to perform such cost certifications on behalf of the Borrower. However, the fee for such services must be included under the consultation agreement. HUD will not permit the consultant to collect a fee in addition to fees provided under the consultation agreement for such services. Sponsors will be prohibited from receiving such payments (see § 885.735, which addresses prohibited relationships).

G. *Additional provisions.* In addition to the comments discussed above, commenters argued that HUD should follow additional procedures to expedite the processing of applications and the development of projects. Suggested procedures included the establishment of management goals similar to those that have previously been imposed in the section 202/8 program, requirements for development conferences and adherence to development schedules by the Borrower and the HUD staff; and HUD supervision of the builder to ensure the total compliance with plans and specifications. These suggested procedures are already followed under the section 202 program and HUD intends to continue to use them under the new program for housing for handicapped people. HUD does not believe that these procedures must be incorporated in the regulations.

VI. Project Assistance Contract

There were no comments addressing §§ 885.900 through 885.930.

VII. Project Management

A. *Responsibilities of Borrower (§ 885.940).* Proposed § 885.940 described the Borrower's marketing, management and fiscal responsibilities.

1. *Marketing responsibilities.* In response to commenters, HUD has added an additional requirement to the marketing responsibilities listed under § 885.940(a). The commenters noted that surveys have demonstrated that the number of homeless individuals with disabilities is larger than previously reported. The commenters argued that it is important to identify these individuals and provide them with permanent housing opportunities. Accordingly, the final rule requires the Borrower to provide a notice of the availability of housing to operators of temporary housing for the homeless in the same housing market.

2. *Management responsibilities.* The proposed rule provided that the Borrower is responsible for all management functions. A commenter suggested that where the Borrower wishes to self-manage, HUD should recommend a consulting arrangement for outside management expertise on a menu basis. The commenter believed that such arrangements would assist managers who lack experience in business or accounting procedures.

Subject to restrictions governing prohibited contractual relationships (see § 885.735) and HUD approval, the Borrower may contract with a private or public entity for performance of all or any part of its marketing, management and maintenance duties. While HUD will not recommend specific management agents, nothing precludes the field office from providing a list of available management agents to Borrowers upon request.

3. *User of project funds.* Under § 885.940(e), the Borrower is required to maintain a project fund account in a HUD-approved depository and to deposit all rents, charges, income and revenues arising from project operation or ownership to this account. The proposed rule stated that project funds must be used for the operation of the project, to make required principal and interest payments on the section 202 loan and to make required deposits to the replacement reserve. The final rule clarifies that payments for required insurance coverage are for the operation of the project and may be made from project funds.

The proposed rule provided that any funds remaining in the project fund account following the expiration of a fiscal year shall be deposited in the replacement reserve account under § 885.945. The final rule has been revised to conform to the practices applied in the section 202/8 program. Under the section 202/8 program, remaining funds are deposited in an interest-bearing residual receipts account. Withdrawals from this account are made for project purposes and with the approval of HUD.

B. *Selection and admission of tenants (§ 885.950).* Proposed § 885.950 governed the selection and admission of tenants.

1. *Exclusion of applicants.* To be eligible for admission to a section 202 project for handicapped families, an applicant-family must meet the definition of handicapped family, must meet project occupancy requirements as approved by HUD, and must be a lower-income family. The preamble noted that in addition to the admission requirements governing handicap and income, Borrowers would be permitted to develop and implement additional family selection criteria. As an example, the preamble stated that a Borrower could refuse to admit an otherwise eligible applicant, if the applicant is unable to live independently in the project without the support services that he or she needs, but which are not available.

Two commenters argued that this example is inconsistent with HUD's section 504 regulation. The preamble to the section 202 rule reflected the proposed rule implementing section 504 which defined qualified handicapped person, in part, with regard to the person's capacity for independent living. In the final section 504 rule published June 2, 1988 (53 FR 20216), HUD dropped references to the ability to live independently from the definition of qualified individual with handicaps. The definition was revised to focus on the capacity to comply with all obligations of occupancy either without supportive services or with supportive services provided by persons other than the recipient. Thus, Borrowers must make a determination whether the applicant can fulfill all obligations of occupancy. In a project that does not provide supportive services, it is irrelevant whether the obligations of tenancy are met by the individual alone or with assistance that the individual with handicaps arranges. Further, in making eligibility determinations, a presumption in favor of the individual's own assessment of his or her capabilities is warranted in the absence of evidence to the contrary.

A commenter suggested that HUD require Borrowers to notify local developmental disability councils when an individual with a developmental disability is excluded because of a lack of needed supportive services. While HUD agrees that such a requirement would assist the councils in identifying gaps in services and support in local communities, the proposed requirement is one which is best implemented by the developmental disability councils on a local or State basis, rather than through a Federal requirement.

2. *Income determination.* A commenter stated that it is looking forward to reviewing and commenting on a proposed rule implementing the new subsidy mechanism. The commenter specifically hoped that the new subsidy mechanism would eliminate burdensome documentation (*e.g.*, monthly forms reporting minor changes in income experienced by people who are irregularly employed or who work in sheltered or supported employment). The new subsidy mechanism is fully implemented by this final rule and further comments are not being solicited. As to the commenter's specific questions regarding income determination, current procedures allow for annualized income estimates for such situations, and establish standards for determining when interim adjustments to income calculations are required. The basic reporting forms for annual recertification that are used in other subsidized housing programs will apply to this program.

Under section 1619(b) of the Social Security Act, income that is provided as part of a plan for self-support may be excluded from a person's income for the purposes of determining SSI eligibility. Two commenters argued that HUD must exclude income covered under such an SSA plan when determining eligibility and rent. Exclusion of such income is addressed in the rule. Under the final rule, the definition of annual income refers to Part 813 calculations. Under § 813.106(c)(8)(ii), such income is excluded from the calculation.

3. Preferences. Two commenters made suggestions indicating that they believed that section 206 of the Housing and Community Development Amendments of 1979 (Pub. L. 96-153, section 206, 93

Stat. 1108 (1979)) as amended by section 203 of the Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98-181, section 203, 97 Stat. 1178 (1983) (preference requirements)) applies to the section 202 handicapped program. (*i.e.*, the commenters argued that HUD should specifically define substandard housing to include an individual living in inaccessible housing where he or she cannot use the bathroom or other facilities.)

On January 15, 1988, HUD published FR-1597—Preference in the Provision of Housing for Families Who Are Occupying Substandard Housing, Involuntarily Displaced, or Paying More Than 50 Percent of Family Income for Rent (53 FR 1122). This rule addressed preference requirements for most programs, including the section 8 new construction program. In a related final rule published May 4, 1988 (53 FR 15818), HUD added § 885.7. Section 885.7 stated that the preference provisions governing newly constructed section 8 projects applied to projects assisted under Part 885.

Because the section 202 program for handicapped families is not assisted under any of the statutory authorities to which the preference requirements are applicable, no preference provisions have been included under Subpart C. Because the preference requirements are applicable to projects receiving section 8 assistance, preference provisions are included for section 202/8 projects developed under Subpart B.

C. *Lease requirements (§ 885.965).* Proposed § 885.965 addressed lease requirements. Paragraph (c) would permit the Borrower to enter the leased premises without advance notice if an emergency exists or the health or safety of a family member is endangered. Numerous commenters suggested that the final rule require the Borrower to have objective evidence upon which to base the decision to enter.

The final rule has not been revised. The proposed rule required that the Borrower have reasonable cause to enter the premises. This reasonable cause requirement adequately balances the need to intercede on behalf of a person who may be endangered against the family's privacy, and ensures that Borrowers will have sufficient justification for the entry.

One commenter noted that facilities for on-site managers or supervisors are covered under the loan and should be subject to inspection along with the apartments of tenants. The lease requirements of this section address only the relationship between the Borrower and the tenant. The regulatory agreement between the Borrower and HUD will require the Borrower to maintain the mortgaged premises in good and substantial repair and condition. HUD anticipates that Borrowers will include appropriate provisions in their agreements with their managers and supervisors to assure that responsibilities with regard to the mortgaged premises are fulfilled.

D. *Adjustment of rents (§ 885.975).* Adjustments of the contract rents are provided at §§ 885.975. The proposed rule provided that HUD would compute the contract rent adjustments based on the sum of the budgeted project operating costs and debt service, with adjustments for vacancies, the project's non-rental income, and other factors. A commenter also suggested that HUD should set a ceiling on operating costs after a five-year history of the project is established.

HUD must ensure that contract rents reasonably reflect the total actual reasonable costs of developing and operating the project over the 20-year term of the project assistance contract. Accordingly, this proposal cannot be incorporated into the final rule.

Findings and Certifications

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410-0500.

This rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule does not affect the amount of funds available under the section 202 program. Rather, the rule modifies and updates the program requirements to implement recent statutory revisions designed to ensure that the program will meet the special housing and related needs of nonelderly handicapped families. While the rule will modify the subsidy mechanism and the development procedures for the section 202 program, HUD does not believe that the economic impact on small entities will be substantial.

The General Counsel, as the Designated Official under Executive Order No. 12606—The Family, has determined that the rule will likely have a significant, beneficial impact on family formation, maintenance, or well-being. The program is a benefit to families because it assists eligible handicapped families to afford decent, safe and sanitary housing and services appropriate for dealing with the specialized needs of the physically impaired, the developmentally disabled, and the chronically mentally ill.

The General Counsel, as the Designated Official under section 6(a) of Executive Order No. 12611—Federalism, has determined that the final rule does not involve the preemption of State law by Federal statute or regulation and does not have federalism implications. The rule provides for State and local participation in the selection of projects and provides for the imposition of State and local standards governing the development and operation of handicapped housing. While the rule encourages State and local governments to provide funds for the provision of supportive services for the handicapped in connection with section 202 housing, the rule to the maximum extent possible defers to State and local policies with regard to service funding decisions.

This rule was listed as item 962 in the Department's Semiannual Agenda of Regulations published on April 24, 1989 (54 FR 16706, 16730) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers is 14.157, Housing for the Elderly or Handicapped.

The collection of information requirements contained in this rule have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980. The sections identified in the matrix below have been determined by the Department to contain collection of information requirements. Information on these requirements is provided as follows:

Description of information collection	Section of CFR affected	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours
Application submission, initial loan closing (2502-0267)	885.710, 885.815	450	1	450	27	12,150.0
Request for projects exceeding size limits (2502-0267)	885.720	10	1	10	2	20
Affirmative fair housing marketing (2502-0267)	885.740(a)(6)	450	1	450	(1)	(1)
Fair housing advertising and poster (2502-0267)	885.740(a)(7)	450	1	450	(1)	(1)
Davis-Bacon labor standards (2502-0267)	885.740(d)	450	1	450	(1)	(1)
Relocation assistance (2502-0267)	885.740(e)	450	1	450	(1)	(1)
Inspection for lead-based paint hazards	885.740(f)	10	1	10	2	20
Borrower's appeal of loan cancellation (2502-0267)	885.770(b)(2)	10	1	10	(1)	(1)
Request to substitute Subpart B assistance payments for Subpart C assistance payments.	885.775	10	1	10	1	10
Site information (2502-0267)	885.780	200	1	200	(1)	(1)
Request for direct loan processing (2502-0267)	885.800	150	1	150	11.2	1680
		50	1	50	8.2	410
Request for loan disbursement (2502-0187)	885.820	200	12	2,400	.5	1,200
Cost certification (2502-0044)	885.825	200	1	200	56	11,200
Project Assistance Contract	885.900	200	1	200	5	1,000
Leasing to eligible families (2502-0371)	885.915	200	1	200	.1	20
Notice upon PAC expiration	885.930	0	(2)	0	0	0
FHEO marketing plan and requirements (2502-0371)	885.940(a)(2)	200	1	200	.75	150
List of leased and unleased units and justification (2502-0371).	885.940(a)(3)	200	12	2,400	.25	600
HUD approval of contract for services (2502-0037)	885.940(c)(1)	50	1	50	1	50
Promotion of minority and women's business enterprises (2502-0371).	885.940(c)(2)	200	1	200	1	200
Audited financial statements (2502-0371)	885.940(d)	200	1	200	2	400
Maintenance of records of racial, ethnic, gender and place of previous residency (2502-0371).	885.940(f)	200	1	200	.75	50
Administration of reserve (2502-0371)	885.945(d)	200	1	200	.5	100
Application for admission (2502-0371)	885.950(e)	200	1	3,600	.25	900
Waiting list (2502-0371)	885.950(b)(2)	200	12	2,400	.25	600
Notification of rejection due to ineligibility and review (2502-0371).	885.950(b)(3)	50	1	50	.25	12.5
Reexamination of family income (2502-0371)	885.950(c)	200	1	3,600	.25	900
Obligation of family (2502-0371)	885.955	200	1	3,600	.1	360
Lease (2502-0371)	885.965	200	1	3,600	.1	360
Security deposits (2502-0371)	885.972	200	1	3,600	.1	360
Justification for rent adjustment (2502-0371)	885.975	20	1	20	2	40
Analysis of utility cost increase (2502-0371)	885.980	200	1	200	2	400
Conditions for release of vacancy payments (2502-0371)	885.985	10	1	10	.5	5
Total annual burden						33,187.5

The annual reporting burden itemized for OMB clearance numbers (2502-0267), (2502-0187), (2502-0044), and (2502-0371) on this table was included in the calculation of annual burden at the most recent approval of each, and therefore does not represent an increase in the HUD information collection inventory. The burden hours for the items marked (1) are included under application submission requirements. The burden hours for the item marked (2) will not be incurred until the end of the 20 year PAC contract.

List of Subjects

24 CFR Part 812

Low and moderate income housing.

24 CFR Part 813

Low and moderate income housing.

24 CFR Part 885

Aged, Grant programs, housing and community development, Handicapped, Loan programs: housing and community development, Low- and moderate-income housing.

24 CFR Part 912

Low and moderate income housing.

24 CFR Part 913

Public housing.

For the reasons set forth in the preamble, Title 24 of the Code of Federal Regulations is revised to read as follows:

PART 812—DEFINITION OF FAMILY AND OTHER RELATED TERMS; OCCUPANCY BY SINGLE PERSONS

1. The authority citation for Part 812—Definition of Family and Other Related Terms; Occupancy by Single Persons, continues to read as follows:

Authority: Sec. 3, United States Housing Act of 1937 (42 U.S.C. 1437a); sec. 7(d); Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. The definition of disabled person in § 812.2 is revised to read as follows:

§ 812.2 Definitions.

* * * * *

Disabled person. A person who is under a disability as defined in section 223 of the Social Security Act (42 U.S.C. 423), or who has a developmental disability as defined in section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(7)).

* * * * *

PART 813—DEFINITION OF INCOME, INCOME LIMITS, RENT AND REEXAMINATION OF FAMILY INCOME FOR SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS AND RELATED PROGRAMS

3. The authority citation for Part 813—Definition of Income, Income Limits, Rent and Reexamination of Family Income for the Section 8 Housing Assistance Payments Programs and Related Programs, is revised to read as follows:

Authority: Secs. 3, 5(b), 8, 16, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f, 1437n); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

4. Section 813.101 is revised to read as follows:

§ 813.101 Purpose and applicability.

This part establishes definitions, policies and procedures related to income limits and the determination of

eligibility, income and rent for applicants and tenants in housing assisted under section 8 of the United States Housing Act of 1937 ("the 1937 Act"). However, § 813.107 and the definitions of Tenant Rent, Total Tenant Payment, Utility Allowance and Utility Reimbursement found in § 813.102 do not apply to families assisted under the Housing Voucher Program (24 CFR Part 887). The definitions, policies and procedures also apply to projects that are assisted with loans under section 202 of the Housing Act of 1959 and that receive housing assistance payments under section 8 of the 1937 Act (see 24 CFR Part 885, Subpart B) or project assistance payments under section 202(h) of the Housing Act of 1959 (see 24 CFR Part 885, Subpart C). (See 24 CFR Part 913 for the analogous rule applicable to the Public Housing and Indian Housing Programs.)

5. In § 813.102, the definitions of disabled person, owner and utility allowance are revised to read as follows:

§ 813.102 Definitions.

* * * * *

Disabled person. A person who is under a disability as defined in section 223 of the Social Security Act (42 U.S.C. 423), or who has a developmental disability as defined in section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(7)).

* * * * *

Owner. The meaning ascribed to such term in the pertinent program regulations. As used in this part, where appropriate, Owner shall also include a Borrower, as defined in 24 CFR Part 885.

* * * * *

Utility Allowance. If the cost of utilities (except telephone) and other housing services for an assisted unit is not included in the Contract Rent but is the responsibility of the Family occupying the unit, an amount equal to the estimate made or approved by a PHA or HUD under applicable sections of these regulations (see 24 CFR Parts 860, 861, 862, 883, 884, 885, and 886) of the monthly costs of a reasonable consumption of such utilities and other services for the unit by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment. (In the case of shared housing, the amount of the Utility Allowance for an assisted Family is calculated by multiplying the Utility Allowance for the entire unit by the ratio derived by dividing the number of bedrooms in the Assisted Family's private space by the number of bedrooms in the entire unit. In the case of an assisted individual sharing a one-bedroom unit with another person, the amount of the Utility Allowance for the assisted individual is one-half of the Utility Allowance for the entire unit).

* * * * *

6. Section 813.109(a) is revised to read as follows:

§ 813.109 Initial determination, verification, and reexamination of Family income and composition.

(a) *Responsibility for initial determination and reexamination.* The Owner or PHA shall be responsible for determination of eligibility for admission, for determination of Annual Income, Adjusted Income and Total Tenant Payment, and for reexamination of Family income and composition at least annually, as provided in pertinent program regulations and handbooks (see, *e.g.*, Part 880, Subpart F and Part 881, Subpart F, which, for the purposes of this Part shall apply, as appropriate, to projects developed under Part 885, Subpart B; Part 882, Subparts B and E; Part 883, Subpart C; Part 884, Subpart B; Part 885, Subpart C; Part 886, Subparts A and C; and Part 887, Subpart H). As used in this part, the "effective date" of an examination or reexamination refers to (1) in the case of an examination for admission, the effective date of initial occupancy, and (2) in the case of a reexamination of an existing tenant, the effective date of the redetermined Total Tenant Payment.

* * * * *

PART 885—LOANS FOR HOUSING FOR THE ELDERLY OR HANDICAPPED

7. The authority citation for 24 CFR Part 885 is revised to read as follows:

Authority: Sec. 202, Housing Act of 1959 (12 U.S.C. 1701q); sec. 6, United States Housing Act of 1937 (42 U.S.C. 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

8. Section 885.1 is revised to read as follows:

§ 885.1 Purpose and policy.

(a) *Purpose.* The program under this part provides direct Federal loans under section 202 of the Housing Act of 1959 (42 U.S.C. 1701q) for housing projects serving elderly or handicapped families and individuals. The housing projects shall provide the necessary services for the occupants which may include, but are not limited to: Health, continuing education, welfare, informational, recreational, homemaking, meal and nutritional services, counseling, and referral services, as well as transportation where necessary to facilitate access to these services.

(b) *General policy.* A loan made under this part shall be used to finance the construction or the substantial rehabilitation of projects for elderly or handicapped families, or for the acquisition with or without moderate rehabilitation of existing housing and related facilities for group homes for nonelderly handicapped individuals.

(c) *Applicability.* (1) Subpart B of this part applies to projects for elderly or handicapped families that receive loans under section 202 of the Housing Act of 1959 and housing assistance payments under section 8 of the United States Housing Act of 1937. No project for handicapped (primarily nonelderly) families is eligible for loans or housing assistance payments under Part B, except under a reservation of loan and contract authority made before October 1, 1988.

(2) Subpart C of this part applies to projects for nonelderly handicapped families receiving loans under section 202 and project assistance payments under section 202(h) of the Housing Act of 1959. Subpart C may also apply to projects for handicapped families that received a reservation of loan authority under Subpart B under the circumstances described in § 885.775.

9. In § 885.5, the definition of "Elderly or Handicapped Family" is removed; the definitions of "Acquisition with or without moderate rehabilitation", "Application", "Handicapped person" and "Housing and Related Facilities" are revised; and definitions for "Elderly Family", "Field Office", "Handicapped Family", "Independent Public Accountant" and "Nonelderly Handicapped Families" are added, in alphabetical order, to read as follows:

§ 885.5 Definitions.

Acquisition with or without moderate rehabilitation means the acquisition of existing housing and related facilities to be used as group homes for the nonelderly handicapped. The development cost of such group homes may not include moderate rehabilitation costs (including expenditures for the rehabilitation alteration, conversion, or improvement of the housing and related facilities) in excess of 15 percent of the loan amount.

* * * * *

Application means the application for a section 202 fund reservation, including all required forms and exhibits submitted in response to an invitation for such applications, or a request for admission to a project made by a family on a form prescribed by HUD.

* * * * *

Elderly family means:

(a) Families of two or more persons the head of which (or his or her spouse) is 62 years of age or older;

(b) The surviving member or members of any family described in paragraph (a) of this definition living in a unit assisted under this part with the deceased member of the family at the time of his or her death;

(c) A single person who is 62 years of age or older; or

(d) Two or more elderly persons living together, or one or more such persons living with another person who is determined by HUD, based upon a licensed physician's certificate provided by the family, to be essential to their care or well being.

Field office means any HUD Area, Insuring or Regional Office which is delegated authority to process applications under the section 202 program.

Handicapped family means:

(a) Families of two or more persons the head of which (or his or her spouse) is handicapped;

(b) The surviving member or members of any family described in paragraph (a) of this definition living in a unit assisted under this part with the deceased member of the family at the time of his or her death;

(c) A single handicapped person over the age of 16; or

(d) Two or more handicapped persons living together, or one or more such persons living with another person who is determined by HUD, based upon a licensed physician's certificate provided by the family, to be essential to their care or well being.

Handicapped person or individual means any adult having an impairment which is expected to be of long-continued and indefinite duration, is a substantial impediment to his or her ability to live independently, and is of a nature that such ability could be improved by more suitable housing conditions. A person shall also be considered handicapped if he or she is developmentally disabled, *i.e.*, if he or she has a severe chronic disability that (a) is attributable to a mental or physical impairment or combination of mental and physical impairments; (b) is manifested before the person attains age twenty-two; (c) is likely to continue indefinitely; (d) results in substantial functional limitations in three or more of the following areas of major life activity: (1) Self-care, (2) receptive and responsive language, (3) learning, (4) mobility, (5) self-direction, (6) capacity for independent living, and (7) economic self-sufficiency; and (e) reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated. A person shall also be considered to be handicapped if he or she has a chronic mental illness, *i.e.*, if he or she has a severe and persistent mental or emotional impairment that seriously limits his or her ability to live independently (*e.g.*, by limiting functional capacities relative to primary aspects of daily living such as personal relations, living arrangements, work, recreation, etc.), and whose impairment could be improved by more suitable housing conditions. A person whose sole impairment is alcoholism or drug addition will not be considered to be handicapped for the purposes of the section 202 program.

Housing and related facilities means rental or cooperative housing structures constructed or substantially rehabilitated as permanent residences for use by elderly or handicapped families, or acquired with or without moderate rehabilitation for use by nonelderly handicapped families as group homes. The term includes structures suitable for use by families residing in the project or in the area, such as cafeterias or dining halls, community rooms, or buildings, or other essential service facilities. In the case of acquisition with or without moderate rehabilitation, at least three years must have elapsed from the later of the date of completion of the project or the beginning of occupancy to the date of the application for a section 202 fund reservation. Except for intermediate care facilities for the mentally retarded and individuals with related conditions (see § 885.710(b)(4)(vii)), this term does not include nursing homes, hospitals, intermediate care facilities, or transitional care facilities.

Independent public accountant means a certified public accountant or a licensed or registered public accountant, having no business relationship with the Borrower or Sponsor except for the performance of audit, systems work and tax preparation. If not certified, the independent public accountant must have been licensed or registered by a regulatory authority of a State or other political subdivision of the United States on or before December 31, 1970. In States that do not regulate the use of the title "public accountant", only certified public accountants may be used.

Nonelderly handicapped family means a handicapped family where the head of the family (and spouse, if any) is less than 62 years of age at the time of the family's initial occupancy of a project.

§ 885.7 [Removed]

10. Section 885.7 is removed.

11. The heading of Subpart B is revised to read as follows:

Subpart B—Section 202 Projects for the Elderly or Handicapped—Section 8 Assistance

12. In § 885.200, the introductory text in paragraph (b), and paragraph (c), are revised to read as follows:

§ 885.200 Allocation of loan fund authority.

* * * * *

(b) Field Office Directors will determine the amount of section 202 loan authority available under this subpart to be allocated to each allocation area in accordance with 24 CFR 791.404. In determining the number of units to be allocated to a specific allocation area, the Field Office Director must consider the three-year goals set forth in Housing Assistance Plans and the proportionality requirements with respect to housing type and household type. Where loan fund authority allocated to an allocation area would not be adequate for a feasible project, the Field Office Director may either:

* * * * *

(c) Field Office Directors will set aside sufficient contract authority for the Section 8 Housing Assistance Payments Program for use in connection with projects to be financed under this subpart.

13. In § 885.205, paragraph (b) is revised; paragraph (c)(3) is removed; and paragraphs (c)(4), (5) and (6) are redesignated as (c)(3), (4) and (5). Revised paragraph (b) reads as follows:

§ 885.205 Announcement of fund availability and invitations for applications for section 202 fund reservations.

* * * * *

(b) Each field office shall publish a single invitation in newspapers of general circulation serving the allocation areas in which the housing is desired at least once a week for two consecutive weeks. The field office shall also notify minority media, minority organizations involved in housing and community development, and groups with a special interest in housing for the elderly and physically handicapped. Copies of the invitation shall be available in the field office.

* * * * *

14. In §885.210, paragraph (b)(22) is removed; paragraphs (b)(23) and (24) are redesignated as paragraphs (b)(22) and (b)(23) respectively; the reference to § 885.205(c)(6) in undesignated paragraph after paragraph (b)(13) is revised to refer to § 885.205(c)(5); and paragraphs (b)(5), (b)(6), (b)(13)(i), (b)(19), the introductory text to the redesignated paragraph (b)(22), and redesignated paragraph (b)(22)(iv) and (vii) are revised to read as follows:

§885.210 Contents of applications.

* * * * *

(b) * * *

(5) A narrative description of the anticipated occupancy (elderly and physically handicapped).

(6) A statement whether the Borrower (or Sponsor) has submitted or is planning to submit other applications under this part during the current fiscal year. The Borrower must indicate the city and State where any other proposed project will be located, the number of units requested, and the field office where the proposal was or will be submitted.

* * * * *

(13) * * *

(i) Have the necessary legal authority to finance, construct or substantially rehabilitate and maintain the project and to apply for and receive the proposed loan.

* * * * *

(19) A description of the Borrower's capability to sponsor, develop, own, manage and provide appropriate services in connection with the proposed project.

* * * * *

(22) The following specific information with respect to the proposed project:

* * * * *

(iv) Evidence that the proposed construction or substantial rehabilitation is permissible under applicable zoning ordinances or regulations, or a statement of the proposed action to make the construction or substantial rehabilitation permissible and the basis for belief that the proposed action will be completed successfully before the receipt of the conditional commitment for direct loan financing (*e.g.*, a summary of the results of any recent requests for rezoning on land in similar zoning classifications and the time required for such rezoning, preliminary indications of acceptability from zoning bodies, etc.).

* * * * *

(vii) A statement that gross rents (contract rents plus any utility allowance) will not exceed the applicable fair market rents by more than the amount allowed under §880.204(b)(1) or §881.204(b)(1). The applicable fair market rents are those published in accordance with §888.105.

* * * * *

15. The introductory paragraph to §885.215 is revised to read as follows:

§885.215 Limitation on number of units.

No organization shall participate as Sponsor, Cosponsor, or Borrower in the filing of an application or applications for a reservation of section 202 funds under this Subpart in a single region in a single fiscal year in excess of that necessary to finance the construction or substantial rehabilitation of 300 units of housing and related facilities.

* * * * *

16. In §885.220, paragraph (f) is revised to read as follows:

§885.220 Review of application for fund reservation.

* * * * *

(f) The ranking list developed under paragraph (e) of this section may be modified by the Field Office Director if selection solely on the basis of the ranking would result in a violation of site and neighborhood standards.

17. In §885.225, paragraph (a)(1) is revised to read as follows:

§885.225 Approval of applications.

(a) * * *

(1) The amount of the Section 202 Fund Reservation, the number and mix of units, and the location of the proposed project.

* * * * *

18. Section 885.230 is revised to read as follows:

§885.230 Duration of section 202 fund reservations.

The Field Office Manager, subject to the approval of the Assistant Secretary, may cancel a fund reservation at any time if it can be established that the Borrower is not making satisfactory progress toward the start of construction or substantial rehabilitation and shall cancel any reservations of Section 202 loan funds for projects for which the construction or substantial rehabilitation is not begun within 18 months after the notice of section 202 fund reservation is issued, unless an extension of time, not to exceed six months is requested of and granted by the Field Office Manager.

§§ 885.400–885.425 [Added to Subpart B; Subpart D heading removed]

19. Sections 885.400, 885.405, 885.410, 885.412, 885.415, 885.416, 885.420, and 885.425 retain their current section designations and are moved from Subpart D and are added to Subpart B; the heading of Subpart D is removed.

§§ 885.410 [Amended]

20. In § 885.410, paragraphs (b) (4) and (5) and paragraphs (c) (4) and (5) are removed.

21. In § 885.415, paragraphs (m), (n), and (p) are revised to read as follows:

§ 885.415 Requirements prior to initial loan closing.

* * * * *

(m) Construction or Substantial Rehabilitation Contract between the Borrower and General Contractor. See § 885.416 for contract award requirements.

(n) Assurance of Completion of Construction or Substantial Rehabilitation Contract in the form of corporate surety bond for payment and performance, each in the amount of 100 percent of the amount of the HUD-estimated construction or substantial rehabilitation cost, or a cash escrow in the amount of 25 percent of the HUD-estimated construction or substantial rehabilitation cost. All surety companies issuing bonds must be satisfactory to the Assistant Secretary.

* * * * *

(p) Contractor's and Subcontractor's Certifications Concerning Labor Standards and Prevailing Wage Requirements.

22. The heading of Section 885.425 is revised and paragraph (a) of the section is revised to read as follows:

§ 885.425 Completion of construction and substantial rehabilitation, execution of HAP contract, and cost certification and approvals by HUD.

(a) The Borrower must satisfy the requirements for completion of construction and substantial rehabilitation and approvals by HUD before submission of a final requisition for disbursement of loan proceeds.

* * * * *

23. A new § 885.427 is added to read as follows:

§ 885.427 Federal preferences.

The provisions of § 880.613 of this chapter are applicable to projects assisted under this Subpart B.

24. Subpart C is added to read as follows:

Subpart C—Section 202 Projects for Nonelderly Handicapped Families and Individuals—Section 162 Assistance

Definitions

Sec.

885.700 Definitions.

Application Procedures and Program Requirements

885.702 Allocation of authority.
885.705 Announcement of fund availability and invitation for applications.
885.710 Application contents.
885.717 Project standards.
885.720 Project size limitations.
885.725 Cost containment and modest design standards.
885.727 Prohibited facilities.
885.730 Site and neighborhood standards.
885.735 Prohibited relationships.
885.740 Other Federal requirements.

Selection of Applications and Duration of Fund Reservation

885.750 Review of applications for fund reservation.
885.755 Approval of applications.
885.770 Duration of section 202 fund reservation.
885.775 Transition.

Direct Loan Financing Procedures

885.780 Submission of site information.
885.800 Request for direct loan processing.
885.805 Approval of requests for direct loan financing.
885.807 Operating cost standard.
885.810 Amount and terms of financing.
885.812 Prepayment of loans.
885.815 Requirements prior to initial loan closing.
885.816 Requirements for awarding construction contracts.
885.820 Loan disbursement procedures
885.825 Completion of cost certification.

Project Assistance Contract

885.900 Project Assistance Contract.
885.905 Term of PAC.
885.910 Maximum annual commitment and project account.
885.915 Leasing to eligible families.
885.920 PAC administration.
885.925 Default by Borrower.
885.930 Notice upon PAC expiration.

Project Management

885.940 Responsibilities of Borrower.
885.945 Replacement reserve.
885.950 Selection and admission of tenants.
885.955 Obligations of the family.
885.960 Overcrowded and underoccupied units.
885.965 Lease requirements.
885.970 Termination of tenancy and modification of lease.
885.972 Security deposits.
885.975 Adjustment of rents.
885.980 Adjustment of utility allowances.
885.985 Conditions for receipt of vacancy payments for assisted units.

Subpart C—Section 202 Projects for Nonelderly Handicapped Families and Individuals—Section 162 Assistance

Definitions

§ 885.700 Definitions.

As used in this Subpart C:

Agreement to enter into project assistance contract (PAC) means the agreement between the Borrower and HUD which provides that, upon satisfactory completion of the project, HUD will enter into the PAC with the Borrower.

Annual income is defined in Part 813 of this chapter. In the case of an individual residing in an intermediate care facility for the mentally retarded that is assisted under Title XIX of the Social Security Act and this part, the annual income of the individual shall exclude protected personal income as provided under that Act. For the purposes of determining the total tenant payment, the income of such individuals shall be imputed to be the amount that the family would receive if assisted under Title XVI of the Social Security Act.

Assisted unit means a dwelling unit that is eligible for assistance under a PAC.

Contract rent means the total amount of rent specified in the PAC as payable by HUD and the family to the Borrower for an assisted unit or residential space.

Family (eligible family) means a handicapped family (as defined in § 885.5) that meets the project occupancy requirements approved by HUD and, if the family occupies an assisted unit, meets the lower-income requirements described in § 813.102 of this chapter, as modified by the definition of annual income in this section.

Gross rent is defined in Part 813 of this chapter.

Group home means a single family residential structure designed or adapted for occupancy by nonelderly handicapped individuals.

Housing for handicapped families means housing and related facilities occupied by handicapped families that are primarily nonelderly handicapped families.

Independent living complex means a project designed for occupancy by nonelderly handicapped families in separate dwelling units where each dwelling unit includes a kitchen and a bath.

Operating costs means expenses related to the provision of housing and excludes expenses related to administering, or managing the provision of, supportive services. Operating costs include:

(a) Administrative expenses, including salary and management expenses related to the provision of shelter.

(b) Maintenance expenses, including routine and minor repairs and groundskeeping.

(c) Security expenses.

(d) Utilities expenses, including gas, oil, electricity, water, sewer, trash removal, and extermination services. Operating costs exclude telephone services for families.

(e) Taxes and insurance.

(f) Allowances for reserves.

Project account means a specifically identified and segregated account for each project which is established in accordance with § 885.910(b) out of the amounts by which the maximum annual commitment exceeds the amount actually paid out under the PAC each year.

PAC (project assistance contract) means the contract entered into by the Borrower and HUD setting forth the rights and duties of the parties with respect to the project and the payments under the PAC.

Project assistance payment means the payment made by HUD to the Borrower for assisted units as provided in the PAC. The payment is the difference between the contract rent and the tenant rent. An additional payment is made to a family occupying an assisted unit in an independent living complex when the utility allowance is greater than the total tenant payment. A project assistance payment, known as a "vacancy payment", may be made to the Borrower when an assisted unit (or residential space in a group home) is vacant, in accordance with the terms of the PAC.

Rent, in the case of a unit in a cooperative project, means the carrying charges payable to the cooperative with respect to occupancy of the unit.

Tenant rent means the monthly amount defined in, and determined in accordance with Part 813 of this chapter.

Total tenant payment means the monthly amount defined in, and determined in accordance with Part 813 of this chapter.

Utility allowance is defined in Part 813 of this chapter and is determined or approved by HUD.

Utility reimbursement is defined in Part 813 of this chapter.

Vacancy payment means the project assistance payment made to the Borrower by HUD for a vacant assisted unit (or residential space in a group home) if certain conditions are fulfilled, as provided in the PAC. The amount of the vacancy payment varies with the

length of the vacancy period and is less after the first 60 days of any vacancy.

Application Procedures and Program Requirements

§ 885.702 Allocation of authority.

(a) *Headquarters Reserve.* Up to 15 percent of the section 202 loan authority made available for the development costs of housing for handicapped families under this section may be retained by the Assistant Secretary for subsequent allocation to specific areas and communities under section 213(d)(4) of the Housing and Community Development Act of 1974.

(b) *Allocations.* The Assistant Secretary will allocate the amounts available for development costs of housing for handicapped families, less any amounts made available for the Headquarters Reserve under paragraph (a) of this section and amendments under § 885.755(e), to allocation areas. The size of the allocation area will depend on the amount of loan authority available for allocation and the number of feasible projects the loan authority will support. The amount of the allocations will be based on the relative needs of the allocation areas as reflected in available census data on the number of the handicapped individuals in the areas and will be adjusted to take into consideration the relative differences between the areas in the costs of providing housing. Funds allocated to an allocation area may be reallocated to another area under the circumstances described at § 885.750(d)(2).

(c) *Availability of loan authority for housing for the elderly.* If the approvable applications under this Subpart require less than the loan authority that is made available for development costs of housing under this Subpart, the remaining loan authority shall be made available for housing for the elderly under Subpart B of this part, to the extent that housing assistance under section 8 of the United States Housing Act of 1937 is available in connection with such loan authority.

§ 885.705 Announcement of fund availability and invitation for applications.

(a) *Announcement of fund availability.* Following an allocation of authority under § 885.700 above, HUD will publish an announcement of fund availability in the **Federal Register**. The announcement will indicate:

(1) The amount of loan authority (and approximate number of units) made available for housing for handicapped families within each allocation area;

(2) The deadline for receipt of applications; and

(3) Other appropriate guidance to prospective Sponsors.

(b) *Invitation for applications.* Each field office shall publish an invitation for applications for section 202 fund reservation in newspapers of general circulation serving the field office jurisdiction. The field office shall also notify minority media, minority organizations involved in housing and community development, and groups with special interest in housing for handicapped families. Copies of the invitation will be available in the field office.

§ 885.710 Application contents.

(a) *Application.* Each application must include all of the information, materials, forms, and exhibits listed in paragraph (b) of this section. In addition, the application may include site information specified under § 885.780. HUD will review applications and make selections under § 885.750 based on information provided in the application.

(b) *Application contents.* Each application must include:

(1) The name, address, and telephone number of the Sponsor.

(2) The name, title, address, and telephone number of the officer or member of the board of directors of the Sponsor to whom communications should be addressed.

(3) The dollar amount of the section 202 direct loan requested.

(4) A narrative description of the proposed housing, consistent with requirements of §§ 885.717 through 885.727, including:

(i) The name of the locality in which the proposed project is to be developed;

(ii) The development method proposed to be used (new construction, substantial rehabilitation, or, if a group home, acquisition with or without moderate rehabilitation). If the project will be developed using innovative construction or rehabilitation methods or technologies that promote construction efficiencies, the proposed methods or technologies should be identified;

(iii) Number and types of structures;

(iv) Number of stories;

(v) Number of units by size (number of bedrooms) for an independent living complex, or the number of bedrooms and the number of residents housed in each group home;

(vi) Special amenities or features. If the narrative description indicates that the housing would not comply with the cost containment and modest design standards of § 885.725 (a) through (c), the Sponsor must submit evidence demonstrating that the proposed housing is eligible for an exception from these standards under § 885.725(d).

(vii) For intermediate care facilities that are funded by the Health Care Financing Administration that serve the mentally retarded and individuals with related conditions, evidence demonstrating that the proposed project will primarily provide housing rather than medical facilities, is or will be licensed by appropriate State agencies, and will receive funding from sources other than HUD for a rent contribution and for the costs of the intermediate care, and such other information as HUD may require to determine the feasibility of the intermediate care facility.

(5) A narrative description of the anticipated occupancy. The Sponsor must propose project occupancy requirements that limit occupancy to one or more of the following categories: Persons with chronic mental illness, developmental disabilities, or physical handicaps. The Sponsor must demonstrate a capacity to serve the proposed occupancy group or groups.

(6) A service plan description that includes:

(i) A description of the range of supportive services proposed to be provided to the families in the occupancy category identified by the Sponsor under § 885.710(b)(5) above, including:

(A) The name(s) of the agency(s) will be responsible for providing supportive services and, if an agency is not the Sponsor, a letter of intent from the agency indicating its willingness and ability to provide the services;

(B) The manner in which such services will be provided;

(C) The services that will be provided on- and off-site; and

(D) The staffing plan including residential supervision (if any) and other staff necessary to provide the proposed supportive services.

(ii) Evidence of funding sources for the supportive services that will be provided for compensation, including State and local funds available to assist in the provision of such services, or evidence of commitment to provide the supportive services from agencies that will not be compensated. If State and local funds will be used, the application must demonstrate that the proposal does not conflict with State or local plans and policies governing the development and operation of facilities to serve handicapped individuals meeting the proposed project occupancy requirements.

(7) Evidence demonstrating that there is an effective demand for the proposed housing in the areas to be served by the project and demonstrating that this demand is likely to continue through the term of the loan.

(8) A statement whether the Sponsor or any affiliated entity has submitted or is planning to submit other applications as a Sponsor or Cosponsor under this part during the current fiscal year. The Sponsor must also indicate the city and State where any other proposed project will be located, the number of units requested, and the field office where the proposal was or will be submitted.

(9) A request for preliminary determination of eligibility as a nonprofit Sponsor, on a form prescribed by HUD.

(10) A statement describing the Sponsor's ties to the community including any statements of support for the project by members of the community in which the project is to be located and State and local organizations familiar with the needs of handicapped individuals meeting the proposed occupancy requirements.

(11) The names and addresses of the officers and directors of the Sponsor, and such other information as required by HUD, together with a resolution, on a form prescribed by HUD, adopted by the Sponsor's board of directors, agreeing that all officers and directors of the Sponsor and the Borrower will be required to submit conflict of interest certifications.

(12) Satisfactory evidence that the Sponsor: (i) Has the necessary legal authority to sponsor the project and to assist the Borrower to finance, acquire (with or without moderate rehabilitation), construct or substantially rehabilitate and maintain the project, and to apply for and receive the proposed loan; (ii) has an effective tax exemption ruling from the Internal Revenue Service, is a nonprofit corporation organized in the Commonwealth of Puerto Rico that is exempt from income taxation under Puerto Rican law, or is a nonprofit consumer cooperative that is exempt from income taxation under State law, has never been liable for the payment of Federal income taxes, and does not pay patronage dividends; and (iii) will form a Borrower (as defined in § 885.5) after the issuance of the section 202 fund reservation, will cause the Borrower to file a request for determination of eligibility and a request for direct loan financing under § 885.800, and will provide sufficient resources to the Borrower to ensure the development and long-term operation of the project.

(13) Evidence of previous participation in HUD programs, if any, by the Sponsor, its officers or directors, on such form as may be prescribed by HUD, and identification of all section 202 fund reservations issued to the Sponsor or any entity affiliated with the Sponsor since May 1, 1976.

(14) A description of any other rental housing projects or any medical facilities sponsored, owned or operated by the Sponsor.

(15) A description of the Sponsor's past or current involvement in any programs other than housing (including its provision of services) that demonstrates the Sponsor's management capabilities and experience, including a description of the Sponsor's experience in contracting for services with minority business enterprises or minority groups.

(16) A description of any financial default, modification of terms and conditions of financing, or legal action taken or pending against the Sponsor or its officers, directors, or trustees in their corporate capacity.

(17) A description of the Sponsor's ability and willingness to sponsor and to assist the Borrower to develop, own, manage, and provide appropriate services in connection with housing for the nonelderly handicapped.

(18) An estimate of start-up expenses and the source of funds to meet these expenses. If the Sponsor plans to use section 106(b) seed money loans, an application for such loan must be submitted, with required attachments.

(19) Evidence of the Sponsor's financial ability and willingness to fund the minimum capital investment under § 885.810(i) and to ensure the development and long-term operation of the project, including copies of balance sheets and statements of income and expenses for each of the past three years that the Sponsor has operated.

(20) The housing consultant's resume and a copy of the consultant contract (if consultant services have been used by the Sponsor).

(21) Evidence that the Sponsor has notified the State single point of contact of the application for review and comment under 24 CFR Part 52 and Executive Order No. 12372—Intergovernmental Review of Federal Programs.

(22) A signed certification of the Sponsor's intention to comply with the nondiscrimination and equal opportunity requirements of § 885.740(a).

(23) A demonstration that the Sponsor meets all other requirements imposed by HUD. Notice of such requirements will be made available to Sponsors before submission of their applications.

§ 885.717 Project standards.

(a) *Property standards.* Projects under this Subpart must comply with HUD Minimum Property Standards.

(b) *Minimum group home standards.* Each group home must provide a minimum of 290 square feet of pro rated space for each resident, including a minimum area of 80 square feet for each resident in a shared bedroom (with no more than two residents occupying a shared bedroom) and a minimum area of 100 square feet for a single occupant bedroom; at least one full bathroom for every four residents; space for recreation at indoor and outdoor locations on the project site; and sufficient storage for each resident in the bedroom and other storage space necessary for the operation of the home.

(c) *Accessibility requirements.* (1) Projects under this Subpart must comply with the Uniform Federal Accessibility Standards (24 CFR Part 40, Appendix A). HUD's regulations implementing section 504 of the Rehabilitation Act of 1973 (24 CFR Part 8) and HUD's regulations implementing the Fair Housing Act (24 CFR Part 100)

(2) All entrances, common areas, units to be occupied by a residential supervisor, and amenities must be readily accessible to and usable by persons with physical handicaps.

(3) In projects for chronically mentally ill individuals, a minimum of ten percent of all dwelling units in an independent living complex (or ten percent of all bedrooms and bathrooms in a group home), but at least one of each such space, must be designed to be accessible or adaptable for persons with physical handicaps.

(4) In projects for developmentally disabled or physically handicapped individuals, all dwelling units in an independent living complex (or all bedrooms and bathrooms in a group home) must be designed to be accessible or adaptable for persons with physical handicaps. A project involving substantial rehabilitation or an acquisition with or without moderate rehabilitation may provide a lesser number if: (i) The cost of providing full accessibility makes the project financially infeasible; (ii) less than one-half of the intended occupants have mobility impairments; and (iii) the project complies with the requirements of 24 CFR 8.23.

(5) For the purposes of paragraphs (c) (2), (3) and (4) of this section, "Accessible" and "adaptable" are defined in 24 CFR Part 40, Appendix A.

§ 885.720 Project size limitations.

(a) *Maximum project size.* Projects under this subpart are subject to the following project size limitations:

(1) Group homes may not be designed to serve more than 15 persons on one site;

(2) Independent living complexes for chronically mentally ill individuals may not be designed to serve more than 20 persons on one site; and

(3) Independent living complexes for handicapped families in developmental disability or physically handicapped occupancy categories may not have more than 24 units nor more than 24 households on one site. For the purposes of this section, household has the same meaning as handicapped family, except that unrelated handicapped individuals sharing a unit (other than a handicapped person living with another person who is essential to the handicapped person's well-being) are counted separate households. For independent living complexes for handicapped families in the developmental disability or physically handicapped occupancy categories, units with three or more bedrooms may only be developed to serve handicapped families of one or two parents with children.

(b) *Additional limitations.* Based on the amount of loan authority appropriated for a fiscal year, HUD may impose additional limitations on the number of units or residents that may be proposed under an application for section 202 loan fund reservation. This unit limitation will be published in the annual announcement of fund availability or the invitation for section 202 fund reservation under § 885.705.

(c) *Exemptions.* On a case-by-case basis, HUD may approve independent living complexes that do not comply with the project size limitations prescribed in paragraphs (a)(2), (a)(3) or (b) of this section. HUD may approve such projects if the Sponsor demonstrates:

(1) The increased number of units is necessary for the economic feasibility of the project;

(2) A project of the size proposed is compatible with other residential development and the population density of the area in which the project is to be located;

(3) A project of the size proposed can be successfully integrated into the community; and

(4) A project of the size proposed is marketable in the community.

§ 885.725 Cost containment and modest design standards.

(a) *Restrictions on amenities.* Projects must be modest in design. Except as provided in paragraph (d) of this section below, amenities must be limited to those amenities, as determined by HUD, that are generally provided in unassisted decent, safe and sanitary housing for lower income families in the market area. Amenities not eligible for HUD funding include balconies, atriums, decks, bowling alleys, swimming pools, saunas and jacuzzis. Dishwashers, trash compactors, and washers and dryers in individual units will not be funded in independent living complexes. The use of durable materials to control or reduce maintenance, repair and replacement costs is not an excess amenity.

(b) *Unit sizes.* For independent living complexes, HUD will establish limitations on the size of units and number of bathrooms, based on the number of bedrooms that are in the unit.

(c) *Special spaces and accommodations.* The costs of construction of special spaces and accommodations may not exceed 10 percent of the total cost of construction, except as provided in paragraph (d) of this section below. Special spaces and accommodations include multipurpose rooms; game rooms; libraries; lounges; and, in independent living complexes, central kitchens and dining rooms. Special spaces and accommodations exclude offices, halls, mechanical rooms, laundry rooms, and parking areas, and (1) dwelling units and lobbies in independent living complexes; and (2) bedrooms, living rooms, dining and kitchen areas, shared bathrooms, and resident staff dwelling units in group homes.

(d) *Exceptions.* HUD may approve a project that does not comply with the cost containment and modest design standards of paragraphs (a) through (c) of this section if:

(1) The Sponsor demonstrates a willingness and ability to contribute the incremental development cost and continuing operating costs associated with the additional amenities or design features; or

(2) The proposed project involves substantial rehabilitation or acquisition with or without moderate rehabilitation, the additional amenities or design features were incorporated into the existing structure before the submission of the application, and the total development cost of the project with the additional amenities or design features does not exceed the cost limits described in § 885.810.

§ 885.727 Prohibited facilities.

Project facilities may not include commercial spaces, infirmaries, nursing stations, spaces dedicated to the delivery of medical treatment or physical therapy, padded rooms, or space for respite care or sheltered workshops. Except for office space used by the Borrower exclusively for the administration of the project, project facilities may not include office space.

§ 885.730 Site and neighborhood standards.

(a) The site must be adequate in size, exposure and contour to accommodate the number and type of units proposed, and adequate utilities (water, sewer, gas and electricity) and streets must be available to service the site.

(b) The site and neighborhood must be suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Order 11063 and implementing HUD regulations.

(c) New construction sites must meet the following requirements.

(1) The site must not be located in an area of minority concentration except as permitted under paragraph (c)(2) of this section, and must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area.

(2) A project may be located in an area of minority concentration only if:

(i) Sufficient, comparable opportunities exist for housing for minority families, in the income range to be served by the proposed project, outside areas of minority concentration (see paragraph (c)(3) of this section for further guidance on this criterion); or

(ii) The project is necessary to meet overriding housing needs that cannot otherwise feasibly be met in that housing market area (see paragraph (c)(4) of this section for further guidance on this criterion).

(3)(i) "Sufficient" does not require that in every locality there be an equal number of assisted units within and outside of areas of minority concentration. Rather, application of this standard should produce a reasonable distribution of assisted units each year which over a period of several years will approach an appropriate balance of housing opportunities within and outside areas of minority concentration. An appropriate balance in any jurisdiction must be determined in light of local conditions affecting the range of housing choices available for lower income minority families and in relation to the racial mix of the locality's population.

(ii) Units may be considered to be "comparable opportunities" if they have the same household type and tenant type (owner/renter); require approximately the same tenant contribution towards rent; serve the same income group; are located in the same housing market; and are in standard condition.

(iii) Application of this sufficient, comparable opportunities standard involves assessing the overall impact of HUD assisted housing on the availability of housing choices for lower income minority families in and outside areas of minority concentration, and must take into account the extent to which the following factors are present, along with any other factor relevant to housing choice.

(A) A significant number of assisted housing units are available outside areas of minority concentration.

(B) There is significant integration of assisted housing projects constructed or rehabilitated in the past ten years, relative to the racial mix of the eligible population.

(C) There are racially integrated neighborhoods in the locality.

(D) Programs are operated by the locality to assist minority families who wish to find housing outside areas of minority concentration.

(E) Minority families have benefitted from local activities (e.g., acquisition and write-down of sites, tax relief programs for homeowners, acquisitions of units for use as assisted housing units) undertaken to expand choice for minority families outside of areas of minority concentration.

(F) A significant proportion of minority households have been successful in finding units in non-minority areas under the Section 8 Certificate and Housing Voucher programs.

(G) Comparable housing opportunities have been made available outside areas of minority concentration through other programs.

(4) Application of the "overriding housing needs" criterion, for example, permits approval of sites that are an integral part of an overall local strategy for the preservation or restoration of the immediate neighborhood and of sites in a neighborhood experiencing significant private investment that is demonstrably changing the economic character of the area (a "revitalizing area"). An "overriding housing need", however, may not serve as the basis for determining that a site is acceptable if the only reason the need cannot otherwise be feasibly met is that discrimination on the basis of race, color, creed, sex, or national origin renders sites outside areas of minority concentration unavailable or if the use of this standard in recent years has had the effect of circumventing the obligation to provide housing choice.

(d) The site must promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons.

(e) The neighborhood must not be one which is seriously detrimental to family life or in which substandard dwellings or other undesirable conditions predominate, unless there is actively in progress a concerted program to remedy the undesirable conditions.

(f) The housing must be accessible to social, recreational, educational, commercial, and health facilities and services, and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unassisted, standard housing of similar market rents.

(g) Travel time and cost via public transportation or private automobile, from the neighborhood to places of employment providing a range of jobs for lower-income workers, must not be excessive.

(h) Projects must be located in neighborhoods where other family housing is located. Except as provided below, projects may not be located adjacent to the following facilities, or in areas where such facilities are concentrated: schools or day-care centers for handicapped persons, workshops, medical facilities, or other housing primarily serving handicapped persons. Projects may be located adjacent to other housing primarily serving handicapped persons if the projects together do not exceed the project size limitations under § 885.720(a).

§ 885.735 Prohibited relationships.

(a) *Conflicts of interest.* Officers, directors, trustees, members, stockholders and authorized representatives of the Borrower, and officers and directors of the Sponsor may not have any financial interest in any contract in connection with the rendition of services, the provision of goods or supplies, project management, procurement of furnishings or equipment, construction of the project, procurement of the site or other matters related to the development and operation of the project. Management contracts (including associated management fees) entered into by the Borrower with the Sponsor or the Sponsor's nonprofit affiliate will not constitute a conflict of interest if no more than two persons salaried by the Sponsor or management affiliate serve as nonvoting members on the Borrower's board of directors.

(b) *Interest in earnings.* No part of the net earnings of the Borrower or Sponsor may inure to the benefit of any private shareholder, contributor, or individual.

(c) *Control of Borrower or Sponsor.* Neither the Borrower nor the Sponsor may be controlled by, or under the direction of, persons or entities seeking to derive profit or gain as a result of activities undertaken by the Borrower or Sponsor.

(d) *Provision of services.* A person or an entity (including an affiliated entity) may not provide services to a project in more than one of the following capacities: attorney, architect, contractor, housing consultant, management agent, or seller of the site for the project, except that the same person or entity may serve a project as management agent and housing consultant.

§ 885.740 Other Federal requirements.

(a) *Nondiscrimination and equal opportunity.* Participation in this program requires compliance with:

(1) The requirements of Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601–19) (Fair Housing Act) and its implementing regulations; Executive Order No. 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR Part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations at 24 CFR Part 1.;

(2) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR Part 146, and the prohibitions against discrimination against otherwise qualified individuals with handicaps under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR Part 8.

(3) The requirements of Executive Order No. 11246 (Equal Employment Opportunity) and the regulations issued under the Order at 41 CFR Chapter 60;

(4) The requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects) and the implementing regulations at 24 CFR Part 135;

(5) The requirements of Executive Order Nos. 11625, 12432, and 12138 (Minority and Women's Business Enterprises);

(6) The affirmative fair housing marketing requirements of 24 CFR Part

200, Subpart M and the implementing regulations at 24 CFR Part 108.

(7) The fair housing advertising and poster guidelines, 24 CFR Parts 109 and 110.

(b) *Environmental.* The National Environmental Policy Act of 1969, HUD's implementing regulations at 24 CFR Part 50, including the related authorities described in 24 CFR 50.4, and the Coastal Barrier Resources Act of 1982 (16 U.S.C. 3601) apply to this program. For the purposes of Executive Order No. 11988, Floodplain Management, all applications for intermediate care facilities for the mentally retarded and individuals with related conditions (see § 885.710(b)(4)(vii)) shall be treated as critical actions requiring consideration of the 500-year flood plain.

(c) *Flood insurance.* The Flood Disaster Protection Act of 1973 (42 U.S.C. 4001) applies to this program.

(d) *Labor standards.* (1) For projects that are designed for dwelling use by 12 or more handicapped families (other than projects acquired without rehabilitation), participation in this program is subject to the following requirements.

(i) Not less than the wages prevailing in the locality, as determined by the Secretary of Labor under the Davis-Bacon Act (40 U.S.C. 276a–276a–5), must be paid to all laborers and mechanics employed in the construction or rehabilitation of the project. HUD may waive the Davis-Bacon requirements if laborers or mechanics voluntarily donate their services without full compensation for the purposes of lowering the costs of construction or rehabilitation; the laborers or mechanics are not otherwise employed in the construction or rehabilitation of projects that are assisted under this part and designed for dwelling use by 12 or more families; and HUD determines that any amounts saved are fully credited to the Borrower undertaking the construction or rehabilitation.

(ii) Except where the Davis-Bacon requirements have been waived under paragraph (c)(1) of this section, contracts involving employment of laborers and mechanics shall be subject to the provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333).

(iii) Sponsors, Borrowers, contractors and subcontractors must comply with all related rules, regulations, and requirements.

(2) For the purposes of this paragraph (d), an independent living complex is designed for use by 12 or more families if the complex includes 12 or more units. This paragraph (d) does not apply to group homes.

(e) *Displacement and relocation assistance.* (1) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601) as amended by the Uniform Relocation Assistance Amendments of 1987, Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Pub. L. 100–17, approved April 2, 1987) (URA) and government-wide implementing regulations at 49 CFR Part 24 set forth relocation assistance requirements that apply to the displacement of any person (family, individual, business, nonprofit organization or farm) as a direct result of acquisition, rehabilitation or demolition for a project assisted under this part.

(2) For projects involving applications that are submitted without evidence of control of an approvable site, a displacement from the real property is covered by the URA if it occurs on or after the date that the Sponsor obtains control of an approvable site. For projects involving applications that are submitted with evidence of control an approvable site, a displacement from the real property is covered by the URA if it occurs on or after the date that the application is submitted. Displacements occurring on or after these dates, however, may not be covered if:

(i) The person has been evicted for cause based upon a serious or repeated violation of the material terms of the lease or occupancy agreement and HUD determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(ii) The person moved into the real property after the date specified above, but received prior written notice of the expected displacement;

(iii) The person is an owner-occupant and has been informed that the real property will not be acquired for the project under the threat of eminent domain; or

(iv) The Sponsor (Borrower) determines that the displacement did not occur as a direct result of acquisition, rehabilitation, or demolition for the project, and HUD concurs in that determination.

(3) If a person is displaced from the real property before the date specified above and either HUD or the Sponsor (Borrower) determines that the displacement resulted from acquisition, rehabilitation, or demolition, the person shall be eligible for relocation assistance as a displaced person.

(4) The Sponsor (Borrower) may, at any time, request a HUD determination whether a displacement will be covered by the URA and the implementing regulations.

(5) A displaced person's eligibility for relocation assistance is subject to the requirements in 49 CFR Part 24.

(f) *Lead-based paint.* (1) The requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846) and implementing regulations at 24 CFR Part 35 (except as superseded in paragraph (f)(2) of this section) apply to the dwellings (except zero-bedroom dwelling units) in housing assisted under this subpart which (i) was constructed or substantially rehabilitated before 1978 and (ii) in which any child under seven years of age resides or is expected to reside.

(2)(i) This paragraph implements the provisions of section 302 of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4822, by establishing procedures to eliminate, as far as practicable, the hazards of lead-based paint poisoning with respect to covered structures for which assistance is provided under this program. This paragraph is promulgated under 24 CFR 35.24(b)(4) and supersedes, with respect to the program, the requirements prescribed in Subpart C of 24 CFR Part 35.

(ii) The following definitions apply to this paragraph (f):

Applicable surface means all intact and nonintact painted interior and exterior surfaces of a residential structure.

Chewable surface means all chewable protruding painted surfaces up to five feet from the floor or ground, which are readily accessible to children under seven years of age, e.g., protruding corners, windowsills and frames, doors and frames, and other protruding woodworks.

Defective paint surfaces means paint on applicable surfaces that is cracking, scaling, chipping, peeling, or loose.

Elevated blood lead level or EBL means excessive absorption of lead: that is, a confirmed concentration of lead in whole blood of 25 μg/dl (micrograms of lead per deciliter of whole blood) or greater.

Lead-based paint surface means a paint surface, whether or not defective, identified as having a lead content greater than or equal to 1 mg/cm².

(iii) In the case of a structure constructed before 1978 or substantially rehabilitated prior to 1978, the Sponsor must inspect the structure for defective paint surfaces before it submits site information under § 885.780. If defective paint surfaces are found, treatment in accordance with 24 CFR 35.24(b)(2)(ii) is required. Correction of defective surfaces found during the initial inspection must be completed before initial occupancy of the project. Correction of defective paint conditions discovered at periodic inspection must be completed within 30 days of their discovery. When weather conditions prevent completion of repainting of exterior surfaces within the 30-day period, repainting may be delayed, but covering or removal of the defective paint must be completed within the prescribed period.

(iv) In the case of a structure constructed before 1978 or substantially rehabilitated prior to 1978, if the Borrower is presented with test results that indicate that a child under the age of seven years occupies the structure and has an elevated blood lead level (EBL), the Borrower must cause the unit to be tested for lead-based paint on chewable surfaces. Testing must be conducted by a State or local health or housing agency, by an inspector certified or regulated by a State or local health or housing agency, or an organization recognized by HUD. Lead content shall be tested by using an X-ray fluorescence analysis (XRF) or other method approved by HUD. Test readings of 1 mg/cm² or higher using an XRF shall be considered positive for presence of lead-based paint. Where lead-based paint on chewable surfaces is identified, covering or removal of the paint surface in accordance with 24 CFR 35.24(b)(2)(ii) is required.

(v) Where abatement will result from rehabilitation activities planned (*i.e.*, where all applicable surfaces will be replaced, covered or otherwise abated as described in this part), these surfaces need not be tested.

(vi) In lieu of the procedures set forth in the preceding clause, the Borrower may, at its discretion, abate all interior and exterior chewable surfaces in accordance with the methods set out at 24 CFR 35.24(b)(2)(ii).

(vii) The Borrower must take appropriate action to protect tenants from hazards associated with abatement procedures.

(viii) The Borrower must keep a copy of each inspection report for at least three years. If a unit requires testing, or treatment of chewable surfaces based on the testing, the Borrower must keep the test results, and, if applicable, the certification of treatment indefinitely. The records must indicate which chewable surfaces in the units have been tested or treated. If records establish that certain chewable surfaces were tested, or tested and treated, in accordance with the standards prescribed in this section, these surfaces do not have to be tested or treated at any subsequent time.

(g) *Intergovernmental review.* The requirements for intergovernmental review in Executive Order No. 12372 and the implementing regulations at 24 CFR Part 52 are applicable to this program.

Selection of Applications and Duration of Fund Reservation

§ 885.750 Review of applications for fund reservation.

(a) *Preliminary evaluation.* (1) HUD will perform a preliminary review of every application. To be eligible for technical review, the application must meet each of the criteria described below.

(i) The application must be received by HUD at the appropriate address within the time period specified in the invitation, and must be complete. If an application is determined to be missing documents, however, the Sponsor shall be advised in writing of the omissions and that additions will be accepted if they are received on or before a specified date.

(ii) The Sponsor must be eligible to participate in the program.

(iii) The proposed facilities and proposed occupancy requirements must be eligible under the program.

(iv) The application must include a supportive services plan meeting the requirements of § 885.710(b)(6).

(2) Following the completion of the preliminary evaluation of all applications, HUD will notify Sponsors of applications that are found to be unapprovable. The notification will be in writing and will explain the reasons for HUD's action.

(b) *Technical review processing.* (1) HUD will perform a technical review of each application that is found to be acceptable under the preliminary evaluation. Technical review processing will consist of the following:

(i) HUD will review the application to determine if:

(A) The Sponsor has demonstrated financial and management capability to carry the project through to completion.

(B) The Sponsor has previous experience in developing or operating housing, medical, or other facilities, or experience in providing supportive services to individuals of the disability group(s) proposed to be housed.

(C) The Sponsor has made a commitment and will be able to provide the preliminary development costs and the minimum capital investment.

(D) The narrative description submitted under § 885.710(b)(4) is appropriate for handicapped individuals meeting the proposed project occupancy requirements, and indicates that the proposed project is likely to comply with the project standards described in § 885.717, the project size limitations of § 885.720, the modest design and cost containment standards, of § 885.725, and the facility prohibitions of § 885.727.

(E) The locality (or the site, if the Sponsor has submitted evidence under § 885.780) is likely to meet the site and neighborhood standards of § 885.730. If the Sponsor has submitted evidence of site control with the application, HUD will also determine if the site is acceptable under § 885.780, including environmental review and flood hazard requirements. If a Sponsor has provided evidence of site control and HUD determines that the site is unacceptable, HUD will process the application as if no site evidence has been submitted provided the Sponsor has indicated a willingness to develop on another site.

(F) The service plan description under § 885.710(b)(6) is directed to the needs of individuals with the type of disability the project proposes to serve, and demonstrates the Sponsor's ability to provide or assure the provision of the proposed supportive services to such individuals.

(G) To the extent that supportive services will be funded by State or local agencies, the proposed project does not conflict with State or local plans and policies governing the development and operation of facilities to serve individuals with the type of disability the project proposes to serve.

(H) There is evidence of effective demand for the proposed project.

(I) The Sponsor is in compliance with nondiscrimination and equal opportunity requirements.

(J) The application is otherwise responsive to the invitation for applications and the requirements of this part.

(ii) During technical review processing, HUD will also review the comments (if any) received from the State single point of contact, and will determine if the proposed project is located in a locality that is acceptable under § 885.780(c)(3)(i).

(2) Based on the factors set forth in this paragraph (b), HUD will determine which applications are approvable. Selections will be made in accordance with paragraphs (c) and (d) of this section.

(c) *Ranking.* (1) HUD wil' assign a rating to each application found to be approvable under technical review processing, based upon HUD's assessment of:

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(i) The degree to which the Sponsor has demonstrated, relative to other proposals: (A) Its capacity and commitment to assist the Borrower to carry the project through to long-term operation; (B) the Sponsor's ability and commitment to provide the Borrower with the financial resources to establish and ensure the long-term operation of the proposed project; (C) the need in the locality for a project serving handicapped individuals meeting the proposed project occupancy requirements; (D) support for the proposed project from the local community, including State and local organizations familiar with the needs of handicapped individuals meeting the proposed project occupancy requirements; and (E) the Sponsor's ability to provide or facilitate the provision of the proposed supportive services to handicapped individuals meeting the proposed project occupancy requirements (including experience serving minority handicapped persons).

(ii) The degree to which the application meets unforeseeable housing needs, especially those brought on by natural disasters or special relocation requirements; supports minority enterprise; involves a small research or demonstration project; meets lower-income housing needs described in housing assistance plans; or provides an innovative housing program or alternative method of meeting lower income housing needs.

(2) HUD may also assign additional rating points to applications that include satisfactory evidence of control of an approvable site (see § 885.780) or, for group homes, that also propose to use acquisition with or without moderate rehabilitation as the development method. If additional points for these factors will be awarded, the announcement of funds availability under § 885.705 will include the maximum number of points that may be awarded under each factor.

(3) Within each allocation area, HUD shall rank all approvable applications in order of their rating scores.

(d) *Selection.* (1) Based on the ranking under paragraph (c) of this section, HUD shall select applications in the descending order of funding priority that most closely approximates the loan authority provided to the allocation area.

(2) If the amount of loan authority allocated to an area exceeds the amount necessary to fund all approvable applications in that area, the Department shall transfer the unused loan authority from the area to another area or areas in which there is insufficient loan authority for all approvable applications.

(3) After selection of applications that can be funded with the loan authority allocated to the allocation areas, HUD may select unfunded but otherwise approvable applications for funding from amounts in the Headquarters Reserve.

(4) Following the selection of applications, HUD will notify the Sponsors of applications that are not approvable after technical review processing under paragraph (b) of this section, and the Sponsors of applications that are not selected for funding under this paragraph (d). The notification will be in writing and will explain the reasons for HUD's action.

§ 885.755 Approval of applications.

(a) *Notice of fund reservation.* A Sponsor whose application is approved will be issued a notice of section 202 fund reservation in a format prescribed by HUD. The notice of fund reservation will specify:

(1) The number and mix of units for an independent living complex or the number of residents approved for a group home, the locality of the proposed project (or, where the Sponsor presented satisfactory evidence of control of an approvable site, the location of the site), and the project occupancy requirements approved by HUD;

(2) The amount of the section 202 fund reservation based on the development cost limit computed under § 885.810(c);

(3) The amount of annual project assistance reserved for the project equal to the sum of the operating cost standard developed under § 885.807 plus the annual debt service on the amount of the section 202 fund reservation (computed at an annual interest rate equal to the loan interest rate under § 885.810(f)(1) in effect on the date the notice is issued);

(4) The deadline for the Sponsor to return a copy of the notification to HUD with an indication of its acceptance;

(5) If the Sponsor did not submit the site information required under § 885.760 with the application or if the Sponsor submitted the site information but HUD determined that the site was not approvable, the deadline for the Sponsor to submit such information and the reasons for the rejection of any proposed site;

(6) The deadline for the Borrower to submit a request for direct loan financing and a request for determination of Borrower eligibility under § 885.800; and

(7) Other guidance to Sponsors and Borrowers (including any additional evidence required under § 885.800(b)(2)(vii)).

(b) *Withdrawal of approval.* If the Sponsor does not accept the notification by the date specified in the notice of fund reservation, HUD may notify the Sponsor that approval of the application is withdrawn.

(c) *Transfer of reservation.* Except for a transfer of loan fund reservation from the Sponsor to the HUD-approved borrower established by the Sponsor, no part of the loan fund reservation may be transferred.

(d) *Use of loan funds.* A section 202 fund reservation may be used only for the project that has been approved under the application.

(e) *Amendments.* Subject to the availability of funds, HUD may amend the amount of a fund reservation approved under paragraph (a)(1) of this section at any time before the final closing of a loan.

§ 885.770 Duration of section 202 fund reservations.

(a) *Extension and cancellation of fund reservation.* The duration of the initial fund reservation is 18 months from the date of issuance of the notice under § 885.755. Subject to the approval of the Assistant Secretary:

(1) The field office may, at any time, issue a notice of loan cancellation if the field office determines that the Borrower is not making satisfactory progress toward the start of construction, rehabilitation, or acquisition.

(2) The field office shall issue a notice of loan cancellation if the construction, substantial rehabilitation, or acquisition with or without moderate rehabilitation of a project is not begun within 18 months after the notice of section 202 fund reservation under § 885.755(a) is issued. This 18-month time period may be extended if HUD determines that the Borrower is making satisfactory progress toward the start of construction, rehabilitation or acquisition with or without rehabilitation. HUD may extend this time period up to 24 months after the notice of section 202 fund reservation is issued. A fund reservation extension may affect the interest rate to be paid on the section 202 loan if the Borrower has made an election of the optional rate (see § 885.810(f)(2)(iv)).

(b) *Notification procedures.* (1) If HUD determines that a fund reservation must be cancelled under paragraph (a) of this section, the field office shall mail a notice of loan cancellation to the Borrower by certified mail, return receipt requested. The notice of loan cancellation must:

(i) Describe the reasons for the cancellation of the loan authority; and

(ii) Advise the Borrower that it may file an appeal of the cancellation with the field office within 30 days of the receipt of the cancellation notice, and that the failure to file an appeal will result in the cancellation of the fund reservation upon the expiration of the 30-day period.

(2) If the Borrower fails to file an appeal of the loan cancellation within 30 days of the receipt of the cancellation notice, the field office shall cancel the fund reservation and provide a written notice of the cancellation to the Borrower.

(3) If the Borrower files an appeal within 30 days of the receipt of the cancellation notice, HUD Headquarters will review the appeal and will issue a decision on the appeal within 45 days of the receipt of the appeal. HUD will approve the appeal if the Borrower demonstrates that it is making satisfactory progress toward the start of construction, rehabilitation, or acquisition with or without moderate rehabilitation.

(i) If HUD approves the appeal, it shall provide a written notification of the approval to the Borrower. The notification shall indicate the duration of the extended fund reservation.

(ii) If HUD disapproves the appeal, it shall notify the Borrower in writing of the determination, and cancel the fund reservation.

§ 885.775 Transition.

At any time before intitial loan closing, a Sponsor or Borrower that received a reservation of loan authority under section 202 of the Housing Act of 1959 and a reservation of contract authority for housing assistance payments under section 8 of the United States Housing Act of 1937 for a project for nonelderly handicapped families may submit a request to HUD to substitute project assistance payments under this Subpart C for the section 8 housing assistance payments. After HUD completes its selections for funding in a fiscal year and to the extent that funds are available for the substitution of project assistance, HUD may approve a request if: (a) The project is eligible for assistance under the requirements of this Subpart C; and (b) the project is financially infeasible with contract rents limited by the section 8 Fair Market Rents or the substitution would otherwise facilitate the development of the project in a timely manner.

Director Loan Financing Procedures

§ 885.780 Submission of site information.

(a) *Required information.* The following information with respect to the proposed project is not required with the application, but must be provided within the time period specified in § 885.755(a)(5).

(1) Documentary evidence that the Sponsor has control of the site.

(2) A map showing the location of the site and the racial composition of the neighborhood, with any area of racial concentration delineated.

(3) Evidence that the proposed acquisition, construction or rehabilitation is permissible under applicable zoning ordinances or regulations, or a description of the actions required to make the acquisition, construction or rehabilitation permissible under such laws and ordinances and the basis for the Sponsor's belief that proposed actions will be completed successfully before the receipt of commitment for direct loan financing (e.g., a summary of the results of any recent requests for rezoning classifications and the time required for such rezoning, preliminary indications of acceptability from zoning bodies, etc.).

(4) A statement whether the proposed project will displace site occupants. If so, the proposal must state the number of families, individuals, and business concerns to be displaced (identified by race or minority group, and status as owners of renters); must demonstrate that relocation is feasible; and must explain how necessary relocation payments, if any, will be funded. Relocation payments may not be funded from loan proceeds.

(5) A showing that the proposal meets any special requirements or restrictions necessary for compliance with the local HAP.

(b) *HUD review of site information.* HUD will review the Sponsor's submission under paragraph (a) of this section. A site may be approved if it meets the additional site requirements described in paragraph (c) of this section below, and:

(1) The site meets the site and neighborhood standards of § 885.730.

(2) The Sponsor has demonstrated that the development of the site is permissible under applicable local zoning ordinances or regulations or will be permissible under such ordinances and regulations before the receipt of the commitment for direct loan financing;

(3) The site is suitable for its intended use;

(4) Any proposed relocation is feasible and necessary relocation payments will be funded from sources other than section 202 loan proceeds.

(c) *Additional site requirements.*—(1) *HAP consistency.* (i) When site-specific information is received for a project involving more than 12 units, HUD will forward (if not previously submitted by the Sponsor) a notification, in the form prescribed by HUD, to the chief executive officer (or such persons as that office may designate) of the unit of general local government in which the proposed housing is to be located, and shall invite a response within 30 calendar days from the date of the notification letter.

(ii) HUD will analyze the proposal and review the comments, if any, received during the response period from the appropriate unit of general local government to determine if the proposed site for the project is approvable under section 213 of the Housing and Community Development Act of 1974.

(2) *Environmental review.* HUD will complete an environmental review in compliance with the National Environmental Policy Act of 1969 and the related authorities in 24 CFR Part 50.

(3) *Flood insurance.* Assistance will not be provided for the acquisition, construction, reconstruction, repair, or improvement of a building located in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards unless (i)(A) the community in which the area is situated is participating in the National Flood Insurance Program in accordance with 44 CFR Parts 59–79, or (B) less than a year has passed since FEMA notification to the community regarding such hazards; and (ii) flood insurance on the structure is obtained in accordance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001).

(4) *Coastal barriers.* Assistance will not be provided for projects in an undeveloped coastal barrier designated under the Coastal Barrier Resources Act of 1982 (16 U.S.C. 3601).

(d) *HUD approval.* (1) If HUD determines that a site is approvable under this section, HUD will notify the Sponsor of the approval, including a statement of any specific environmental conditions that must be met as a condition of HUD approval. The Sponsor must obtain site approval under this section before it applies for conditional commitment under § 885.800(c).

(2) If HUD determines that a site is not approvable under this section, HUD will notify the Sponsor of the disapproval and the reasons for disapproval. If a site

is disapproved, the Sponsor may, consistent with its application under § 885.710, obtain a new site and resubmit a request for site approval under this section.

§ 885.800 Request for direct loan financing.

(a) *Request for direct loan financing.* A Borrower established by a Sponsor receiving a fund reservation must submit a request for direct loan financing within the time limit specified in the notice of section 202 fund reservation to the field office serving the area in which the proposed project will be located.

(b) *Request for determination of Borrower eligibility.* Simultaneously with the request for direct loan financing, the Borrower must submit a request for determination of eligibility, on a form or forms prescribed by HUD.

(1) The Borrower will be required to submit the information required of Sponsors under §§ 885.710(b) (1), (2), (11), (12) (ii) and (iii), (13) and (16), as modified by this paragraph:

(i) Borrowers may omit the board of director's resolution required under § 885.710(b)(11), but will be required to submit certifications signed by all officers and directors of the Sponsor and the Borrower certifying that they have not had and will not have any financial interest in any contract, or in any firm or corporation that has a contract, with the Borrower in connection with the rendition of services, the provision of goods or supplies, procurement of furnishings and equipment, construction of the project, procurement of the site, or other matters whatsoever. In the case of officers and directors of the Sponsor, this certification does not apply to management contracts as described in § 885.735(a).

(ii) A Borrower will meet the requirements for a tax exemption ruling under § 885.710(b)(12)(ii) if it demonstrates that it applied for a tax exemption ruling under section 501(c) (3) or (4) before filing the request for determination of Borrower eligibility.

(2) Borrowers will be required to submit sufficient evidence to demonstrate:

(i) The Borrower is a nonprofit corporation incorporated separately from the Sponsor;

(ii) The Borrower has the necessary legal authority to finance, acquire (with or without moderate rehabilitation), construct, or substantially rehabilitate and maintain the project, and to apply for and receive the section 202 loan.

(iii) The Borrower meets all corporate organization requirements that HUD may impose, including requirements that: (A) The purposes of the Borrower include the promotion of the welfare of handicapped families; (B) the articles of incorporation and by-laws do not include any references to religion or religious purposes; (C) the articles of incorporation must provide that upon the dissolution of the Borrower, its assets remaining after payment of all debts and liabilities will be conveyed or distributed only to an organization created and operated for nonprofit purposes similar to the Borrower, other than one created for a religious purpose; and (D) the articles of incorporation must permit the Sponsor to appoint and remove a majority of the voting members of the Borrower's board of directors.

(iv) The Borrower has not engaged and is not authorized to engage in any other business or activity (including the operation of another rental property), and has not incurred and is not authorized to incur any liability or obligation not related to the project.

(v) The Sponsor has fulfilled its commitment to provide resources to the Borrower, as described in the Sponsor's application under § 885.710(b) (12)(iii) and (19).

(vi) The Borrower has submitted a request for preliminary determination of eligibility as a mortgagor, on a form prescribed by HUD.

(vii) The Borrower has submitted such additional evidence as HUD may require in the notice of section 202 fund reservation under § 885.755.

(3) If housing consultant services were used by the Sponsor, the Borrower must execute the housing consultant contract. The contract and an Identity of Interest and Disclosure Certificate signed by the housing consultant must be submitted with the request for determination of Borrower eligibility.

(c) *Conditional commitment processing.* The request for conditional commitment processing must be on a form or forms prescribed by HUD and must include all required exhibits. During conditional commitment processing, HUD will:

(1) Determine whether the Borrower has established its eligibility under paragraph (b) of this section.

(2) Establish the amount of the initial contract rents and any initial utility allowances to be provided in independent living complexes.

(i) The amount of the initial contract rent plus any utility allowances shall not exceed the annual reasonable and necessary operating costs of the project plus the debt service on the amount of the section 202 loan.

(ii) Operating cost standards developed under § 885.807 are used to evaluate the reasonableness of the operating costs of the proposed project. HUD may approve operating costs that exceed the applicable operating cost standard (including adjustments under § 885.807(a)).

(iii) If the cost of utilities (except telephone) and other housing services are not included in the initial contract rent for an independent living complex, HUD will establish initial utility allowances for the project based on the monthly cost of a reasonable consumption of utilities and other services for the unit by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment. The cost of utilities and other housing services for group homes will be included in the initial contract rent.

(3) Review the site and project design to determine if the Borrower has presented adequate evidence of site control, and the proposed project complies with the project standards described in § 885.717, the project size limitations of § 885.720, the modest design and cost containment standards of § 885.725, and the facility prohibitions of § 885.727. To assist in this review, Borrowers will be required to submit the following information with their request for conditional commitment:

(i) A sketch of the site plan showing the general development of the site including the location of the proposed buildings, streets, parking areas and drives, service areas, and unusual site features, and architectural sketches of typical unit plans (including the square feet per unit), floor plans for typical units, floor plans showing special spaces, accommodations and common areas, and the main elevation of each building.

(ii) If the proposed housing does not comply with the cost containment and modest design standards of § 885.725 (a)–(c), evidence demonstrating that the proposed housing is eligible for an exception from these standards under § 885.725(d).

(4) Establish land value.

(5) Evaluate the overall financial feasibility of the project.

(6) Evaluate the adequacy of the Borrower's affirmative fair housing marketing plan.

(d) *Firm commitment processing.* The request for firm commitment processing must be on a form or forms prescribed by HUD and must include all required exhibits. Processing of a request for a firm commitment will include review of the final plans and specifications, review of environmental conditions to site approval, review of the contractor/Borrower's cost estimate, and a review of the conclusions reached during conditional commitment processing. HUD will perform firm commitment processing without previous conditional commitment processing if HUD has issued architectural and engineering approval of the preliminary designs. HUD may also permit the Borrower to submit a request for firm commitment processing without previous conditional commitment processing under certain other circumstances (e.g., where the project involves an acquisition with or without moderate rehabilitation, or construction projects utilizing designs that have been previously submitted to and approved by HUD). Where single-step commitment processing is permitted, the steps set forth in paragraph (c) of this section, will be performed during firm commitment processing.

(e) *Loan interest rate.* When the request for conditional or firm commitment for direct loan financing is submitted, the Borrower may request that the loan interest rate be computed at the optional interest rate as provided under § 885.810(f)(2). If the Borrower makes such a request, the loan interest rate used for the processing of the request for conditional or firm commitment under paragraph (c) or (d) of this section shall be the optional loan interest rate. If the Borrower does not make a request for the optional rate, the interest rate used for processing the request shall be the interest rate computed under § 885.810(f)(1).

(f) *Modification of contract rents.* Contract rents proposed by a Borrower may be modified by HUD at any time before execution of the agreement to enter into a project assistance contract.

§ 885.805 Approval of requests for direct loan financing.

HUD will review the request for direct loan financing (including the request for determination of Borrower eligibility) and all required exhibits and will notify the Borrower of its approval by issuance of a conditional or firm commitment, as appropriate, or of its disapproval of the request.

(a) *Issuance of conditional commitment.* A conditional commitment will include the following:

(1) The estimated cost of the project;

(2) The land value fully improved (with offsite improvements installed) and, if the proposal involves the rehabilitation of a project, the "as is" value of the site;

(3) The detailed estimates of operating expenses;

(4) The financial requirements;

(5) The loan amount;

(6) The interest rate used in processing the request;

(7) The approved contract rents and utility allowances; and

(8) The deadline for the submission of the Borrower's request for a firm commitment for direct loan financing.

(b) *Issuance of firm commitment.* A firm commitment will include the following:

(1) Approval of the final plans and specifications;

(2) A statement that the contractor/Borrower's cost estimates have been reviewed;

(3) Reaffirmation of the conclusions reached during conditional commitment processing or a statement describing the approved changes to earlier conclusions;

(4) The interest rate used in the processing of the request.

If the Borrower was permitted to apply for a firm commitment without going through conditional commitment processing, the items listed in paragraph (a) of this section shall be included in the issuance of the firm commitment for direct loan financing. Issuance of a firm commitment evidences HUD's approval of the request for direct loan financing, and sets forth the terms and conditions upon which the loan shall be made and the loan proceeds disbursed.

(c) *Cancellation.* If a request for Borrower eligibility or a request for conditional or firm commitment for direct loan financing is not submitted within the time periods specified in the notice of section 202 fund reservation or in the conditional commitment (as appropriate), HUD may cancel the fund reservation under § 885.770.

§ 885.807 Operating cost standard.

At least annually, HUD shall establish operating cost standards based on the average annual operating cost of comparable housing for handicapped families in each field office. The operating cost standards shall be developed for group homes based on the number of residents, and for independent living complexes based on the number of units. HUD may adjust the operating cost standard applicable to an approved project to reflect such factors as differences in costs based on location within the field office jurisdiction. The operating cost standard will be used to determine the amount of the project assistance reserved for a project under § 885.755(a)(3) and to review the resonableness of operating costs for the establishment of initial contract rents at the time of issuance of the conditional commitment under § 885.800(a).

§ 885.810 Amount and terms of financing.

(a) *Amount of financing.* The amount of financing approved shall be the amount stated in the notice of fund reservation, including any increase approved by HUD before the final closing of a loan. The amount of financing may not exceed the smallest of the amounts provided in paragraphs (b) through (e) of this section.

(b) *Estimated development cost.* The amount of the loan may not exceed the total estimated development cost of the project (as determined by HUD), less the incremental development cost and capitalized operating costs associated with excess amenities and design features to be paid for by the Sponsor under § 885.725(d)(1).

(c) *Development cost limit.* (1) For independent living complexes, the total development cost of the property or project attributable to dwelling use (less the incremental development cost and capitalized operating costs described in paragraph (b) of this section may not exceed:

(i) For independent living complexes without elevators:

(A) $28,032 per family unit without a bedroom;

(B) $32,321 per family unit with one bedroom;

(C) $38,979 per family unit with two bedrooms;

(D) $49,893 per family unit with three bedrooms;

(E) $55,583 per family unit with four or more bedrooms.

(ii) For independent living complexes with elevators:

(A) $29,500 per family unit without a bedroom;

(B) $33,616 per family unit with one bedroom;

(C) $41,120 per family unit with two bedrooms;

(D) $53,195 per family unit with three bedrooms;

(E) $58,392 per family unit with four or more bedrooms.

(2) For group homes, the total development cost of the project (less the incremental development cost and capitalized operating costs described in paragraph (b) of this section may not exceed the cost limit for the project. HUD will periodically establish cost limits for various sizes of group homes by publishing a notice of the cost limits in the **Federal Register**. The cost limits will reflect those costs reasonable and necessary to develop a project of modest design that complies with HUD minimum property standards; the minimum group home requirements of § 885.717(b); the accessibility requirements of § 885.717(c); cost

containment and modest design standards of § 885.725 and other design requirements applicable to group homes under this part. HUD will provide factors for adjusting the group home standard to reflect such factors as the design requirements of the specific handicapped population to be served and State and local requirements. To develop the cost limit for group homes, HUD will use commercially available construction cost indices and construction cost data for recently completed comparable group homes.

(3) Increased mortgage limits.

(i) The Assistant Secretary may increase the cost limits set forth in paragraphs (c) (1) and (2) of this section by up to 110 percent in any geographic area where the cost levels require, and may increase the cost limits by up to 140 percent on a project-by-project basis.

(ii) If the Assistant Secretary finds that high construction costs in Alaska, Guam or Hawaii make it infeasible to construct dwellings, without the sacrifice of sound standards of construction, design, and livability, within the cost limits provided in this paragraph (c), the principal amount of mortgages may be increased to compensate for such costs. The increase may not exceed the limitations established under this section (including any high cost area adjustment) by more than 50 percent.

(d) *Rehabilitation projects—additional limits.* A loan that involves a project to be rehabilitated is subject to the following additional limitations:

(1) Property held in fee. If the Sponsor is the fee simple owner of a property unencumbered by a mortgage, the maximum loan amount may not exceed 100 percent of the cost of the proposed rehabilitation.

(2) Property subject to existing mortgage. If the Sponsor owns the property subject to an outstanding indebtedness that is to be refinanced with part of the section 202 loan, the maximum loan amount may not exceed the cost of rehabilitation plus the portion of the outstanding indebtedness that does not exceed the fair market value of the land and improvements before the rehabilitation, as determined by HUD.

(3) Property to be acquired. If the property is to be acquired by the Borrower from an entity other than the Sponsor, and the purchase price is to be financed with a part of the section 202 loan, the maximum loan amount may not exceed the cost of the rehabilitation plus the portion of the purchase price that does not exceed the fair market value of such land and improvements before the rehabilitation, as determined by HUD.

(e) *Leaseholds.* If a loan is secured by a leasehold estate rather than by a fee simple estate, the amount of the loan attributable to the cost of the property may not exceed the value of the leasehold estate.

(f) *Loan interest rate.* The loan is made on the date of the initial loan closing under § 885.815. Loans shall bear interest at a rate determined by HUD in accordance with this section.

(1) Annual interest rate. Except as provided under paragraph (f)(2) of this section, loans shall bear interest at the rate in effect at the time the loan is made. The loan interest rate shall not exceed:

(i) The average yield on the most recently issued 30-year marketable obligations of the United States during the three-month period immediately preceding the fiscal year in which the loan is made (adjusted to the nearest one-eighth of one percent), plus an allowance to cover administrative costs and probable losses under the program; and

(ii) Any applicable statutory ceiling on the loan interest rate including the allowance to cover administrative costs and probable losses.

(2) Optional interest rate. The Borrower may elect an optional loan interest rate. To elect the optional rate, the Borrower must request that HUD determine the loan interest rate at the time of the Borrower's request for conditional or firm commitment for direct loan financing under § 885.800.

(i) If the Borrower elects the optional loan interest rate, the loan interest rate shall not exceed:

(A) The average yield on the most recently issued 30-year marketable obligations of the United States during the three-month period immediately preceding the fiscal year in which the request for commitment is submitted (adjusted to the nearest one-eighth of one percent), plus an allowance to cover administrative costs and probable losses under the program;

(B) The average yield on the most recently issued 30-year marketable obligations of the United States during the one-month period immediately preceding the month in which the request for commitment is submitted (adjusted to the nearest one-eighth of one percent), plus an allowance to cover the administrative costs and probable losses under the program; and

(C) Any applicable statutory ceiling on the loan interest rate including an allowance to cover administrative costs and probable losses under the program.

(ii) The date of submission of a request for conditional or firm commitment is the date that the Borrower submits the complete and acceptable request to HUD under § 885.800. The date of the submission of a request for commitment will not be affected by any subsequent resubmission of the request by the Borrower or by any reprocessing of the request by HUD.

(iii) The Borrower may withdraw its election of the optional interest rate at any time before initial loan closing. If the Borrower elected the optional interest rate with its request for conditional commitment and withdraws its election, the loan will bear interest at the rate determined under paragraph (f)(1) of this section, unless the Borrower elects an optional interest rate with its request for firm commitment. If the Borrower withdraws its election after the date of submission of its request for firm commitment, the loan will bear interest at the rate determined under paragraph (f)(1) of this section.

(iv) If initial loan closing has not occurred within 18 months after the Notice of Section 202 Fund Reservation is issued, the Borrower's election of the optional rate will be cancelled and the loan will bear interest at the rate determined under paragraph (f)(1) of this section.

(3) Allowance for administrative costs and probable losses. For the purpose of computing the loan interest rate under paragraphs (f) (1) and (2) of this section, the allowance to cover administrative costs and probable losses under the program is one-fourth of one percent (.25%) per annum for both the construction and permanent loan periods.

(g) *Announcement of interest rates.* (1) HUD will annually announce the loan interest rate determination under paragraph (f)(1) of this section by publishing notice of the rate in the **Federal Register**. The **Federal Register** notice will include a statement explaining the basis for the interest rate determination.

(2) Upon the Borrower's request, HUD will provide available current information concerning the determination of the interest rate under paragraph (f)(2) of this section.

(h) *Security for loan.* The loan will be secured by a first mortgage on real estate in fee simple or a long-term leasehold. The mortgage will be repayable during a term not to exceed 40 years and will be subject to such terms and conditions as HUD may prescribe.

(i) *Minimum capital investment.* Borrowers must provide a minimum capital investment of one-half of one percent (0.5%) of the mortgage amount committed to be disbursed, not to exceed $10,000. Loans made under section 106 of the Housing Act of 1968 may not be used to meet the minimum capital investment requirement. The minimum capital investment will be placed in escrow at the initial closing of the section 202 loan and will be held by HUD or by a HUD-approved escrow agent. HUD or the escrow agent will hold escrowed funds for not less than three years following the date of initial occupancy. The escrow account may be used for operating expenses or deficits as may be directed by HUD. Any unexpended balance remaining in the minimum capital investment account at the end of the escrow period will be returned to the Borrower.

§ 885.812 Prepayment of loans

(a) *Prepayment prohibition.* the prepayment (whether in whole or in part) or the assignment or transfer of physical and financial assets of any section 202 project is prohibited, unless the Assistant Secretary gives prior written approval.

(b) *HUD-approved prepayment.* Approval for prepayment or transfer will not be granted unless HUD determines that the prepayment or transfer of the loan is a part of a transaction that will ensure the continued operation of the project until the original maturity date of the loan in a manner that will provide rental housing for the handicapped families on terms at least as advantageous to existing and future tenants as the terms required by the original section 202 loan agreement and any other loan agreements entered into under other provisions of law.

§ 885.815 Requirements prior to initial loan closing.

Before the initial loan closing, the Borrower must furnish such executed documents in such form as HUD may require, including the following:

(a) Agreement to enter into a project assistance contract.

(b) Certificate of incorporation of the Borrower as required by applicable State or local law.

(c) Internal Revenue Service Section 501(c)(3) or (4) tax exemption ruling.

(d) Certification of relationships and nonprofit motives of the Borrower.

(e) Attorney's opinion as to the legal status of the Borrower, building permit, and compliance with zoning laws and requirements.

(f) Regulatory agreement for nonprofit section 202 Borrowers

(g) Borrower's oath that the project will not be used for hotel or transient purposes.

(h) Agreement and certification to certify actual costs and as to any financial and family relationships between the Borrower, the architect, general contractor and subcontractors.

(i) Assurance of compliance with nondiscrimination and equal opportunity requirements (see § 885.740(a)).

(j) Note and first mortgage or deed of trust.

(k) A title policy insuring that the mortgage constitutes a first lien on the project.

(l) Building loan agreement setting forth the conditions for loan disbursement.

(m) Construction, moderate rehabilitation or substantial rehabilitation contract between the Borrower and the general contractor (see § 885.816 for contract award requirements).

(n) Assurance of completion of construction, moderate rehabilitation or substantial rehabilitation contract in the form of corporate surety bonds for payment and performance, each in the amount of 100 percent of the amount of the HUD-estimated construction or rehabilitation cost, or a cash escrow in the amount of 25 percent of the HUD-estimated construction or rehabilitation cost. The corporate surety bond must be issued by a surety company that is satisfactory to HUD.

(o) Escrow agreement in the amount of the cost of any off-site facilities funded by a cash deposit or letter of credit to assure completion of the facilities.

§ 885.816 Requirements for awarding construction contracts.

(a) *Construction contract award.* Awards shall be made only to responsible contractors that possess the potential ability to perform successfully under the terms and conditions of a proposed construction contract. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(b) *Negotiated noncompetitive construction contracts.* Competitively bid contracts are not required. Negotiated noncompetitive contracts must be cost-reimbursement contracts with a ceiling price, and may provide an incentive payment to the contractor for early completion.

§ 885.820 Loan disbursement procedures.

(a) *General.* Disbursements of loan proceeds shall be made directly by HUD to or for the account of the Borrower and may be made through an approved lender, mortgage servicer, title insurance company, or other agent satisfactory to the Borrower and HUD.

(b) *Timing and amount of disbursement.* Disbursements to the Borrower will be made on a periodic basis, and in amounts not to exceed the HUD-approved cost of the portions of construction or rehabilitation work complete and in place (except as modified in paragraph (d) of this section), minus the appropriate holdback, as determined by HUD.

(c) *Content of disbursement requisition.* Requisitions for loan disbursements must be submitted by the Borrower on forms prescribed by HUD and must be accompanied by such additional information as HUD may require in order to approve loan disbursements under this part, including but not limited to evidence of compliance with the labor standards described at § 885.740(d), Department of Labor regulations, all zoning, building and other governmental requirements, and such evidence of continued priority of the Borrower's mortgage as HUD may prescribe.

(d) *Disbursements for building components stored off-site.* In loan disbursements for building components stored off-site, the term "building component" will mean any manufactured or pre-assembled part of a structure as defined by HUD and which HUD has designated for off-site storage because it is of such size or weight that storage of the components required for timely construction progress at the construction site is impracticable, or because weather damage or other adverse conditions prevailing at the construction site would make storage at the site impracticable or unduly costly. Each building component must be specifically identified for incorporation into the property as provided under paragraph (d)(1)(ii) of this section.

(1) *Storage.* (i) A loan disbursement may be made for up to 90 percent of the invoice value (to exclude cost of transportation and storage) of the building components stored off-site if the components are stored at a location approved by HUD.

(ii) Each building component shall be adequately marked to be readily identifiable in the inventory of the off-site location. It shall be kept together with all other building components of the same manufacturer intended for use in the same project for which loan

disbursements have been made and separate and apart from similar units not for use in the project.

(iii) Storage costs, if any, shall be borne by the general contractor.

(2) *Responsibility for transportation, storage and insurance of off-site building components.* The general contractor of the project shall have the responsibility for (i) insuring the components in the name of the Borrower while in transit and storage; and (ii) delivering or contracting for the delivery of the components to the storage area and to the construction site, including the payment of freight.

(3) *Loan disbursements.* (i) Before a loan disbursement for a building component stored off-site is made, the Borrower shall:

(A) Obtain a bill of sale for the component;

(B) Provide HUD with a security agreement pledged by a first lien on the building components with the exception of such other liens or encumbrances as may be approved by HUD; and

(C) File a financing statement in accordance with the Uniform Commercial Code.

(ii) Before each loan disbursement for building components stored off-site is made, the manufacturer and the general contractor shall certify to HUD that the components, in their intended use, comply with HUD-approved contract plan and specifications.

(iii) Loan disbursements may be made only for components stored off-site in a quantity required to permit the uninterrupted installation on the site.

(iv) The outstanding amount of advances for building components stored off-site may not exceed 50 percent of the total estimated construction cost for the project as specified in the construction contract.

(v) Payments for building components stored off-site will not be approved unless the contractor has a corporate surety bond for payment and performance each in the amount of 100 percent of the amount of the construction contract.

(vi) No single loan disbursement shall be made in an amount less than $10,000.

§ 885.825 Completion of cost certification.

(a) *Requisition for final disbursement.* The Borrower must satisfy the requirements for completion of construction, substantial rehabilitation, or acquisition with or without moderate rehabilitation and receive all required approvals from HUD before submitting a final requisition for disbursement of loan proceeds.

(b) *Cost certification.* The Borrower shall submit to the field office all documentation required for final disbursement of the loan including the following cost certifications.

(1) If the construction contract was a cost-reimbursement contract with a ceiling price:

(i) The Borrower must certify, on a form prescribed by HUD, as to the actual cost to the Borrower of the construction contract, architectural, legal, organizational, off-site costs, and all other items of eligible expense; and

(ii) The general contractor (and such subcontractors, material suppliers, and equipment lessors as HUD may require) must certify, on a form prescribed by HUD, as to the actual cost paid for labor, materials, and subcontract work under the general contract.

The certificate shall not include as actual costs any kickbacks, rebates, trade discounts, or other similar payments to the Borrower or to any of its officers, directors, or members. For projects with a mortgage of $750,000 or more, the certifications shall be verified by an independent public accountant acceptable to the field office.

(2) If the construction contract required the contractor to furnish all labor, materials, equipment, and services required to construct and complete the project for a specified and firm price, the Borrower will be required to submit a simplified short-form cost certification on a form prescribed by HUD. For projects with a mortgage of $750,000 or more, the certifications shall be verified by an independent public accountant acceptable to the field office.

(c) *Reduction of loan amount and contract rents.* If the certified costs provided under paragraph (b) of this section and approved by HUD are less than the loan amount established under § 885.805, the loan amount and the contract rents will be reduced accordingly.

(d) *Recovery of overpayment.* If the contract rents are reduced under paragraph (c) of this section, the maximum annual commitment under the PAC will be reduced. If contract rents are reduced based on cost certifications made after PAC execution, any overpayment after the effective date of the contract will be recovered from the Borrower by HUD.

Project Assistance Contract

§ 885.900 Project assistance contract.

(a) *Project assistance contract (PAC).* The PAC sets forth rights and duties of the Borrower and HUD with respect to the project and the project assistance payments.

(b) *PAC execution.* (1) Upon satisfactory completion of the project, the Borrower and HUD shall execute the PAC on the form prescribed by HUD.

(2) The effective date of the PAC may be earlier than the date of execution, but no earlier than the date of HUD's issuance of the permission to occupy.

(3) If the project is completed in stages, the procedures of this paragraph (b) shall apply to each stage.

(c) *Project assistance payments to owners under the PAC.* The project assistance payments made under the PAC are:

(1) Payments to the Borrower to assist eligible families leasing assisted units. The amount of the project assistance payment made to the Borrower for an assisted unit (or residential space in a group home) that is leased to an eligible family is equal to the difference between the contract rent for the unit (or pro rata share of the contract rent in a group home) and the tenant rent payable by the family.

(2) Payments to the Borrower for vacant assisted units ("vacancy payments"). The amount of and conditions for vacancy payments are described in § 885.905.

The project assistance payments are made monthly by HUD upon proper requisition by the Borrower, except payments for vacancies of more than 60 days, which are made semiannually by HUD upon requisition by the Borrower.

(d) *Payment of utility reimbursement.* Where applicable, a utility reimbursement will be paid to a family occupying an assisted unit in an independent living complex as an additional project assistance payment. The PAC will provide that the Borrower will make this payment on behalf of HUD. Funds will be paid to the Borrower in trust solely for the purpose of making the additional payment. The Borrower may pay the utility reimbursement jointly to the family and the utility company, or, if the family and utility company consent, directly to the utility company.

§ 885.905 Term of PAC.

The term of the PAC shall be 20 years. If the project is completed in stages, the term of the PAC for each stage shall be 20 years. The term of the PAC for stages of a project shall not exceed 22 years.

§ 885.910 Maximum annual commitment and project account.

(a) *Maximum annual commitment.* The maximum annual amount that may be committed under the PAC is the total of the initial contract rents and utility allowances for all assisted units in the project.

(b) *Project account.* (1) HUD will establish and maintain a specifically identified and segregated project account for each project. The project account will be established out of the amounts by which the maximum annual commitment exceeds the amount actually paid out under the PAC each year. HUD will make payments from this account for project assistance payments as needed to cover increases in contract rents or decreases in tenant income and other payments for cost specifically approved by the Secretary.

(2) If the HUD-approved estimate of required annual payments under the PAC for a fiscal year exceeds the maximum annual commitment for that fiscal year plus the current balance in the project account, HUD will, within a reasonable time, take such steps authorized by section 202(h)(4)(A) of the Housing Act of 1959, as may be necessary, to assure that payments under the PAC will be adequate to cover increases in contract rents and decreases in tenant income.

§ 885.915 Leasing to eligible families.

(a) *Availability of assisted units for occupancy by eligible families.* During the term of the PAC, a Borrower shall make all units (or residential spaces in a group home) available for eligible families. For purposes of this section, making units or residential spaces available for occupancy by eligible families means that the Borrower (1) is conducting marketing in accordance with § 885.940(a); (2) has leased or is making good faith efforts to lease the units or residential spaces to eligible and otherwise acceptable families, including taking all feasible actions to fill vacancies by renting to such families; and (3) has not rejected any such applicant family except for reasons acceptable to HUD. If the Borrower is temporarily unable to lease all units or residential spaces to eligible families, one or more units or residential spaces may, with the prior approval of HUD, be leased to otherwise eligible families that do not meet the income requirements of Part 813, as modified by § 885.5. Failure on the part of the Borrower to comply with these requirements is a violation of the PAC and grounds for all available legal remedies, including an action for specific performance of the PAC, suspension or debarment from HUD programs, and reduction of the number of units (or in the case of group homes, reduction of the number of residential spaces) under the PAC as set forth in paragraph (b) of this section.

(b) *Reduction of number of units covered by the PAC.* HUD may reduce the number of units (or in the case of group homes, the number of residential spaces) covered by the PAC to the number of units or residential spaces available for occupancy by eligible families if:

(1) The Borrower fails to comply with the requirements of paragraph (a) of this section; or

(2) Notwithstanding any prior approval by HUD, HUD determines that the inability to lease units or residential spaces to eligible families is not a temporary problem.

(c) *Restoration.* HUD will agree to an amendment of the PAC to provide for subsequent restoration of any reduction made under paragraph (b) of this section if:

(1) HUD determines that the restoration is justified by demand;

(2) The Borrower otherwise has a record of compliance with the Borrower's obligations under the PAC; and

(3) Contract and budget authority is available.

(d) *Occupancy by families that are not handicapped.* HUD may relieve the Borrower of the requirement that all units in the project (or residential spaces in a group home) must be leased to handicapped families if: (1) The Borrower has made reasonable efforts to lease to eligible families; (2) the Borrower has been granted HUD approval under paragraph (a) of this section; and (3) the Borrower is temporarily unable to achieve or maintain a level of occupancy sufficient to prevent financial default and foreclosure under the section 202 loan documents. HUD approval under this paragraph will be of limited duration. HUD may impose terms and conditions to this approval that are consistent with program objectives and necessary to protect its interest in the section 202 loan.

§ 885.920 PAC administration.

HUD is responsible for the administration of the PAC.

§ 885.925 Default by Borrower.

(a) *PAC provisions.* The PAC will provide:

(1) That if HUD determines that the Borrower is in default under the PAC, HUD will notify the Borrower of the actions required to be taken to cure the default and of the remedies to be applied by HUD including an action for specific performance under the PAC, reduction or suspension of project assistance payment and recovery of overpayments, where appropriate; and

(2) That if the Borrower fails to cure the default, HUD has the right to terminate the PAC or to take other corrective action.

(b) *Loan provisions.* Additional provisions governing default under the section 202 loan are included in the regulatory agreement and other loan documents described in § 885.215.

§ 885.930 Notice upon PAC expiration.

The PAC will provide that the Borrower will, at least 90 days before the end of the PAC contract term, notify each family occupying an assisted unit (or residential space in a group home) of any increase in the amount the family will be required to pay as rent as a result of the expiration. The notice of expiration will contain such information and will be served in such manner as HUD may prescribe.

Project Management

§ 885.940 Responsibilities of Borrower.

(a) *Marketing.* (1) The Borrower must commence and continue diligent marketing activities not later than 90 days before the anticipated date of availability for occupancy of the group home or the anticipated date of availability of the first unit in an independent living complex. Market activities shall include the provision of notices of the availability of housing under the program to operators of temporary housing for the homeless in the same housing market.

(2) Marketing must be done in accordance with the HUD-approved affirmative fair housing marketing plan and all fair housing and equal opportunity requirements. The purpose of the plan and requirements is to achieve a condition in which eligible families of similar income levels in the same housing market have a like range of housing choices available to them regardless of their race, color, creed, religion, sex or national origin.

(3) At the time of PAC execution, the Borrower must submit to HUD a list of leased and unleased assisted units (or in the case of a group home, leased and unleased residential spaces) with a justification for the unleased units or residential spaces, in order to qualify for vacancy payments for the unleased units or residential spaces.

(b) *Management and maintenance.* The Borrower is responsible for all management functions. These functions include selection and admission of tenants, required reexaminations of incomes for families occupying assisted units or residential spaces, collection of rents, termination of tenancy and eviction, and all repair and maintenance functions (including ordinary and extraordinary maintenance and

replacement of capital items). All functions must be performed in compliance with equal opportunity requirements.

(c) *Contracting for services.* (1) With HUD approval, the Borrower may contract with a private or public entity for performance of the services or duties required in paragraphs (a) and (b) of this section. However, such an arrangement does not relieve the Borrower of responsibility for these services and duties. All such contracts are subject to the restrictions governing prohibited contractual relationship described in § 885.735 (These prohibitions do not extend to management contracts entered into by the Borrower with the Sponsor or its non-profit affiliate).

(2) Consistent with the objectives of Executive Orders 11625, 12432 and 12138, the Borrower will promote awareness and participation of minority and women's business enterprises in contracting and procurement activities.

(d) *Submission of financial and operating statements.* The Borrower must submit to HUD:

(1) Within 60 days after the end of each fiscal year of project operations, financial statements for the project audited by an independent public accountant and in the form required by HUD, and

(2) Other statements regarding project operation, financial conditions and occupancy as HUD may require to administer the PAC and to monitor project operations.

(e) *Use of project funds.* The Borrower shall maintain a project fund account in a HUD-approved depository and shall deposit all rents, charges, income and revenues arising from project operation or ownership to this account. Project funds must be used for the operation of the project (including required insurance coverage), to make required principal and interest payments on the section 202 loan, and to make required deposits to the replacement reserve under § 885.945, in accordance with HUD-approved budget. Any remaining project funds account following the expiration of the fiscal year shall be deposited in an interest-bearing residual receipts account. Withdrawals from this account may be made only for project purposes and with the approval of HUD.

(f) *Reports.* The Borrower shall submit such reports as HUD may prescribe to demonstrate compliance with applicable civil rights and equal opportunity requirements.

§ 885.945 Replacement reserve.

(a) *Establishment of reserve.* The Borrower shall establish and maintain a replacement reserve to aid in funding extraordinary maintenance, and repair and replacement of capital items.

(b) *Deposits to reserve.* The Borrower shall make monthly deposits to the replacement reserve. The amount of the deposits for the initial year of operation shall be an amount equal to 0.6 percent of the cost of the total structures (for new construction projects), 0.4 percent of the cost of the initial mortgage amount (for all other projects), or such higher rate as required by HUD. For the purposes of this section, total structures include main buildings, accessory buildings, garages and other buildings. The amount of the deposits will be adjusted each year by the amount of the annual adjustment factor as described in Part 888 of this chapter.

(c) *Level of reserve.* The reserve must be built up to and maintained at a level determined by HUD to be sufficient to meet projected requirements. Should the reserve reach that level, the amount of the deposit to the reserve may be reduced with the approval of HUD.

(d) *Administration of reserve.* Replacement reserve funds must be deposited with HUD or in a HUD-approved depository in an interest-bearing account. All earnings including interest on the reserve must be added to the reserve. Funds may be drawn from the reserve and used only in accordance with HUD guidelines and with the approval of, or as directed by, HUD.

§ 885.950 Selection and admission of tenants.

(a) *Application for admission.* The Borrower must accept applications for admission to the project in the form prescribed by HUD. Applicant families applying for assisted units (or residential spaces in a group home) must complete a certification of eligibility as part of the application for admission. Both the Borrower and the applicant family must complete and sign the application for admission. On request, the Borrower must furnish copies of all applications for admission to HUD.

(b) *Determination of eligibility and selection of tenants.* The Borrower is responsible for determining whether applicants are eligible for admission and for the selection of families. To be eligible for admission, an applicant family must be a handicapped family as defined in § 885.5, must meet any project occupancy requirements approved by HUD under § 885.755(a)(1), and must be a lower income family as defined in § 813.102, as modified under § 885.5. Under certain circumstances, HUD may permit the leasing of units (or residential space in a group home) to ineligible families under § 885.915.

(1) Local residency requirements are prohibited. Local residency preferences may be applied in selecting tenants only to the extent that they are not inconsistent with affirmative fair housing marketing objectives and the Borrower's HUD-approved affirmative fair housing marketing plan. Preferences may not be based on the length of time the applicant has resided in the jurisdiction. With respect to any residency preference, persons expected to reside in the community as a result of current or planned employment will be treated as residents.

(2) If the Borrower determines that the family is eligible and is otherwise acceptable and units (or residential spaces in a group home) are available, the Borrower will assign the family a unit or residential space in a group home. If the family will occupy an assisted unit the Borrower will assign the family a unit of the appropriate size in accordance with HUD standards. If no suitable unit (or residential space in a group home) is available, the Borrower will place the family on a waiting list for the project and notify the family when a suitable unit or residential space may become available. If the waiting list is so long that the applicant would not be likely to be admitted for the next 12 months, the Borrower may advise the applicant that no additional applications for admission are being considered for that reason.

(3) If the Borrower determines that an applicant is ineligible for admission or the Borrower is not selecting the applicant for other reasons, the Borrower will promptly notify the applicant in writing of the determination, the reasons for the determination, and that the applicant has a right to request a meeting to review the rejection, in accordance with HUD requirements. The review, if requested, may not be conducted by a member of the Borrower's staff who made the initial decision to reject the applicant. The applicant may also exercise other rights if the applicant believes the applicant is being discriminated against on the basis of race, color, creed, religion, sex, handicap or national origin.

(4) Records on applicants and approved eligible families, which provide racial, ethnic, gender and place of previous residency data required by HUD, must be maintained and retained for three years.

(c) *Reexamination of family income and composition—(1) Regular reexaminations.* If the family occupies an assisted unit (or residential space in a group home), the Borrower must reexamine the income and composition of the family at least every 12 months. Upon verification of the information, the Borrower shall make appropriate adjustments in the total tenant payment in accordance with Part 813, as modified by § 885.5 and determine whether the family's unit size is still appropriate. The Borrower must adjust tenant rent and the project assistance payment and must carry out any unit transfer in accordance with HUD standards.

(2) *Interim reexaminations.* If the family occupies an assisted unit (or residential space in a group home) the family must comply with provisions in the lease regarding interim reporting of changes in income. If the Borrower receives information concerning a change in the family's income or other circumstances between regularly scheduled reexaminations, the Borrower must consult with the family and make any adjustments determined to be appropriate. Any change in the family's income or other circumstances that results in an adjustment in the total tenant payment, tenant rent and project assistance payment must be verified.

(3) *Continuation of project assistance payment.* (i) A family occupying an assisted unit (or residential space in a group home) shall remain eligible for project assistance payment until the total tenant payment equals or exceeds the gross rent (or a pro rata share of the gross rent in a group home). The termination of subsidy eligibility will not affect the family's other rights under its lease. Project assistance payment may be resumed if, as a result of changes in income, rent or other relevant circumstances during the term of the PAC, the family meets the income eligibility requirements of Part 813 (as modified in § 885.5) and project assistance is available for the unit or residential space under the terms of the PAC. The family will not be required to establish its eligibility for admission to the project under the remaining requirements of paragraph (b) of this section.

(ii) A family's eligibility for project assistance payment also may be terminated in accordance with HUD requirements for such reasons as failure to submit requested verification information.

§ 885.955 Obligations of the family.

(a) *Requirements.* The family shall:

(1) Pay amounts due under the lease directly to the Borrower.

(2) Supply such certification, release, information or documentation as the Borrower or HUD determines to be necessary. (For families occupying assisted units (or residential spaces in a group home), this will include submissions required for an annual or interim reexamination of family income and composition.)

(3) Allow the Borrower to inspect the dwelling unit or residential space at reasonable times and after reasonable notice.

(4) Notify the Borrower before vacating the dwelling unit or residential space.

(5) Use the dwelling unit or residential space solely for residence by the family, and as the family's principal place of residence.

(b) *Prohibitions.* The family shall not:

(1) Assign the lease or transfer the unit or residential space.

(2) Occupy, or receive assistance for the occupancy of, a unit or residential space governed under this part while occupying, or receiving assistance for occupancy of, another unit assisted under any Federal housing assistance program, including any section 8 program.

§ 885.960 Overcrowded and underoccupied units.

If the Borrower determines that because of change in family size, an assisted unit is smaller than appropriate for the eligible family to which it is leased, or that the assisted unit is larger than appropriate, project assistance payment with respect to the unit will not be reduced or terminated until the eligible family has been relocated to an appropriate altenate unit. If possible, the Borrower will, as promptly as possible, offer the family an appropriate alternate unit. The Borrower may receive vacancy payments for the vacated unit if the Borrower complies with the requirements of § 885.985.

§ 885.965 Lease requirements.

(a) *Term of lease.* The term of the lease may not be less than one year. Unless the lease has been terminated by appropriate action, upon expiration of the lease term, the family and Borrower may execute a new lease for a term not less than one year, or may take no action. If no action is taken, the lease will automatically be renewed for successive terms of one month.

(b) *Termination by the family.* All leases may contain a provision that permits the family to terminate the lease upon 30 days advance notice. A lease for a term that exceeds one year must contain such provision.

(c) *Form.* The form of lease must contain all required provisions, and none of the prohibited provisions specified in HUD handbooks. In addition to required provisions in the handbook governing the Borrower's entry onto the leased premises during tenancy, the Borrower may include a provision in the lease permitting the Borrower to enter the leased premises, at any time, without advance notice where there is reasonable cause to believe that an emergency exists or that health or safety of a family member is endangered.

§ 885.970 Termination of tenancy and modification of lease.

The provisions of Part 247 of this title apply to all decisions by a Borrower to terminate the tenancy or modify the lease of a family residing in a unit (or residential space in a group home).

§ 885.972 Security deposits.

(a) *Collection of security deposit.* At the time of the initial execution of the lease, the Borrower: (1) Will require each family occupying an assisted unit (or residential space in a group home) to pay a security deposit in an amount equal to one month's total tenant payment or $50, whichever is greater; and (2) may require each family occupying an unassisted unit (or residential space in a group home) to pay a security deposit equal to one month's rent payable by the family. The family is expected to pay the security deposit from its own resources and other available public or private resources. The Borrower may collect the security deposit on an installment basis.

(b) *Security deposit provisions applicable to assisted and unassisted units.—(1) Administration of security deposit.* The Borrower must place the security deposits in a segregated interest-bearing account. The Borrower shall maintain a record of the amount in this account that is attributable to each family in residence in the project. Annually for all families, and when computing the amount available for disbursement under paragraph (b)(3) of this section, the Borrower shall allocate to the family's balance, the interest accrued on the balance during the year. Unless prohibited by State or local law, the Borrower may deduct for the family, from the accrued interest for the year, the administrative cost of computing the allocation to the family's balance. The amount of the administrative cost adjustment shall not exceed the accrued interest allocated to the family's balance for the year. The amount of the segregated, interest-bearing account maintained by the Borrower must at all times equal the total amount collected from the families then in occupancy plus any accrued interest and less allowable administrative cost adjustments. The Borrower must comply with any

applicable State and local laws concerning interest payments on security deposits.

(2) *Family notification requirement.* In order to be considered for the refund of the security deposit, a family must provide the Borrower with a forwarding address or arrange to pick up the refund.

(3) *Use of security deposit.* The Borrower, subject to State and local law and the requirements of this paragraph, may use the family's security deposit balance as reimbursement for any unpaid family contribution or other amount which the family owes under the lease. Within 30 days (or shorter time if required by State or local law) after receiving notification under paragraph (b)(2) of this section the Borrower must:

(i) Refund to a family owing no rent or other amount under the lease the full amount of the family's security deposit balance;

(ii) Provide to a family owing rent or other amount under the lease a list itemizing any unpaid rent, damages to the unit, and estimated costs for repair, along with a statement of the family's rights under State and local law. If the amount which the Borrower claims is owed by the family is less than the amount of the family's security deposit balance, the Borrower must refund the excess balance to the family. If the Borrower fails to provide the list, the family will be entitled to the refund of the full amount of the family's security deposit balance.

(4) *Disagreements.* If a disagreement arises concerning reimbursement of the security deposit, the family will have the right to present objections to the Borrower in an informal meeting. The Borrower must keep a record of any disagreements and meetings in a tenant file for inspection by HUD. The procedures of this paragraph do not preclude the family from exercising its rights under State or local law.

(5) *Decedent's interest in security deposit.* Upon the death of a member of a family, the decedent's interest, if any, in the security deposit will be governed by State or local law.

(c) *Reimbursement by HUD for assisted units.* If the family's security deposit balance is insufficient to reimburse the Borrower for any unpaid tenant rent or other amount which the family owes under the lease for an assisted unit or residential space and the Borrower has provided the family with the list required by paragraph (b)(3)(ii) of this section, the Borrower may claim reimbursement from HUD for an amount not to exceed the lesser of:

(1) The amount owed the Borrower, or

(2) One month's contract rent, minus the amount of the family's security deposit balance. Any reimbursement under this section will be applied first toward any unpaid tenant rent due under the lease. No reimbursement may be claimed for unpaid rent for the period after termination of the tenancy. The Borrower may be eligible for vacancy payments following a vacancy in accordance with the requirements of § 885.985.

§ 885.975 Adjustment of rents.

(a) *Contract rents.* HUD will calculate contract rent adjustments based on the sum of the project's operating costs and debt service (as calculated by HUD), with adjustments for vacancies, the project's non-rental income, and other factors that HUD deems appropriate. The calculation will be made on the basis of information provided by the Borrower on a form prescribed by HUD.

(b) *Rent for unassisted units.* The rent payable by families occupying units or residential spaces that are not assisted under the PAC shall be equal to the contract rent computed under paragraph (a) of this section.

§ 885.980 Adjustment of utility allowances.

In connection with adjustments of contract rents as provided in § 885.975(a), the Borrower must submit an analysis of any utility allowances applicable in an independent living complex. Such data as changes in utility rates and other facts affecting utility consumption should be provided as part of this analysis to permit appropriate adjustments in the utility allowances for assisted units. In addition, when approval of a utility rate change would result in a cumulative increase of 10 percent or more in the most recently approved utility allowances, the Borrower must advise HUD and request approval of new utility allowances. Whenever a utility allowance for an assisted unit is adjusted, the Borrower will promptly notify affected families and make a corresponding adjustment of the tenant rent and the amount of the project assistance payment.

§ 885.985 Conditions for receipt of vacancy payments for assisted units.

(a) *General.* Vacancy payments under the PAC will not be made unless the conditions for receipt of these project assistance payments set forth in this section are fulfilled.

(b) *Vacancies during rent-up.* For each unit (or residential space in a group home) that is not leased as of the effective date of the PAC, the Borrower is entitled to vacancy payments in the amount of 80 percent of the contract rent (or pro rata share of the contract rent for a group home) for the first 60 days of vacancy, if the Borrower:

(1) Conducted marketing in accordance with § 885.940(a) and otherwise complied with § 885.940;

(2) Has taken and continues to take all feasible actions to fill the vacancy; and

(3) Has not rejected any eligible applicant except for good cause acceptable to HUD.

(c) *Vacancies after rent-up.* If an eligible family vacates an assisted unit (or residential space in a group home) the Borrower is entitled to vacancy payments in the amount of 80 percent of the contract rent (or pro rata share of the contract rent in a group home) for the first 60 days of vacancy if the Borrower:

(1) Certifies that it did not cause the vacancy by violating the lease, the PAC, or any applicable law;

(2) Notified HUD of the vacancy or prospective vacancy and the reasons for the vacancy immediately upon learning of the vacancy or prospective vacancy;

(3) Has fulfilled and continues to fulfill the requirements specified in § 885.940(a) (2) and (3) and § 885.985(b) (2) and (3); and

(4) For any vacancy resulting from the Borrower's eviction of an eligible family, certifies that it has complied with § 885.970.

(d) *Vacancies for longer than 60 days.* If an assisted unit (or residential space in a group home) continues to be vacant after the 60-day period specified in paragraph (b) or (c) of this section, HUD may approve additional vacancy payments for 60-day periods up to a total of twelve months in an amount equal to the principal and interest payments required to amortize that portion of the debt service attributable to the vacant unit (or, in the case of group homes, the residential space). Such payments may be approved if:

(1) The unit was in decent, safe and sanitary condition during the vacancy period for which payment is claimed;

(2) The Borrower has fulfilled and continues to fulfill the requirements specified in paragraph (b) or (c) of this section, as appropriate; and

(3) The Borrower has demonstrated to the satisfaction of HUD that:

(i) For the period of vacancy, the project is not providing the Borrower with revenues at least equal to project expenses (exclusive of depreciation) and the amount of payments requested is not more than the portion of the deficiency attributable to the vacant unit (or residential space in a group home) and

(ii) The project can achieve financial soundness within a reasonable time.

(e) *Prohibition of double compensation for vacancies.* If the Borrower collects payments for vacancies from other sources (tenant rent, security deposits, payments under § 885.972(c), or governmental payments under other programs), the Borrower shall not be entitled to collect vacancy payments to the extent these collections from other sources plus the vacancy payment exceed contract rent.

25. Appendix A is added to Part 885 to read as follows:

Appendix A—Handicapped Person or Individual

HUD adopted the definition of handicapped person or individual contained in section 202. Several commenters urged HUD to adopt the definition of handicapped person contained in section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). The commenters argued: (1) The section 504 definition would help the Department to avoid the overly narrow admission criteria applied in the section 202/8 program (e.g., the exclusion of mentally handicapped and developmentally disabled persons from elderly section 202 projects); (2) nothing in section 202 requires the definition of developmentally disabled person to exclude others with disabilities; and (3) the use of the section 504 definition would ensure a consistency of approach among the various agencies.

HUD's regulation implementing section 504 prohibits discrimination against qualified individuals with handicaps. While the definition of individual with handicaps is broader than the proposed definition of handicapped person or individual, the section 504 definition of "qualified individual with handicaps" recognizes that persons with handicaps may be denied benefits, such as occupancy of a dwelling unit in a HUD-assisted housing project, on the basis of failure to meet basic requirements that govern eligibility for admission, care or service. The preamble to the section 504 regulation specifically addressed commenter's arguments objecting to the exclusion of handicapped persons from elderly housing under the section 202 program. At 53 FR 20218–19, HUD stated, "For example, in a section 202 project a person is ineligible for housing for elderly persons if the person does not meet the age requirement for admission to the program." The proposed change has not been made.

HUD has consistently denied applications for projects solely for persons who are alcoholics or drug addicts. In recognition of this policy, the proposed rule stated that alcoholism and drug addiction are not included within the definition of chronic mental illness. HUD is concerned that the language of the proposed rule could be misinterpreted to permit the exclusion of individuals otherwise qualified for admission to a project, based solely on their status as alcoholics or drug addicts. A handicapped person suffering from alcoholism or drug addiction may be excluded from a project based on behavior that would exclude any other individual, even if the behavior is related to the person's drug addiction or alcoholism (e.g., the illegal sale or use of drugs).

Borrowers must make decisions on each applicant's qualifications on a case-by-case basis during the course of ordinary eligibility determinations. Because HUD believes that the language in the proposed rule might have misled some Borrowers into excluding all persons suffering from a drug addiction or from alcoholism without an examination of each individual's qualifications for the program, the language excluding alcoholism and drug addiction from the definition of chronic mental illness has been deleted. A new provision has been substituted stating that a person whose sole impairment is alcoholism or drug addiction will not be considered to be handicapped for the purposes of the section 202 program.

PART 912—DEFINITION OF FAMILY AND OTHER RELATED TERMS; OCCUPANCY BY SINGLE PERSONS

26. The authority citation for Part 912—Definition of Family and Other Related Terms; Occupancy by Single Persons, continues to read as follows:

Authority: Sec. 3, United States Housing Act of 1937 (42 U.S.C. 1437a); sec. 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

27. The definition of disabled person in § 912.2 is revised to read as follows:

§ 912.2 Definitions.

Disabled person. A person who is under a disability as defined in section 223 of the Social Security Act (42 U.S.C. 423), or who has a developmental disability as defined in section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(7)).

* * * * *

PART 913—DEFINITION OF INCOME, INCOME LIMITS, RENT AND REEXAMINATION OF FAMILY INCOME FOR THE PUBLIC HOUSING AND INDIAN HOUSING PROGRAMS

28. The authority citation for Part 913—Definition of Income, Income Limits, Rent and Reexamination of Family Income for the Public Housing and Indian Housing Programs, is revised to read as follows:

Authority: Secs. 3, 6, 16, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437d, 1437n); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

29. The definition of disabled person in § 913.102 is revised to read as follows:

§ 913.102 Definitions.

* * * * *

Disabled person. A person who is under a disability as defined in section 223 of the Social Security Act (42 U.S.C. 423), or who has a developmental disability as defined in section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(7)).

* * * * *

Date: June 13, 1989.

Jack Kemp,

Secretary.

[FR Doc. 89–14435 Filed 6–19–89; 8:45 am]

BILLING CODE 4210–32

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing

Federal Housing Commissioner

[Docket No. N-89-1986; FR 2635]

Section 202 Loans for Housing for Nonelderly Handicapped Families and Individuals; Announcement of Fund Availability, Fiscal Year 1989

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of fund availability.

SUMMARY: HUD is announcing the availability of Fiscal Year 1989 loan authority under the section 202 Direct Loan Program for Housing for Nonelderly Handicapped Families and Individuals. This notice announces loan authority to be used to provide direct Federal loans for a maximum term of 40 years under section 202 of the Housing Act of 1959 to assist private, nonprofit corporations and nonprofit consumer cooperatives in the development of housing and related facilities to serve nonelderly handicapped residents. The Department of Housing and Urban Development—Independent Agencies Appropriations Act, 1989 (Pub. L. 100-404, approved August 19, 1988) (Fiscal Year 1989 Appropriations Act) requires that 25 percent of the direct loan authority appropriated for Fiscal Year 1989 shall be used only to provide housing for handicapped people, with priority for housing homeless chronically mentally ill people. Submission and review requirements are discussed below. Loan authority to support development of housing and related facilities to serve the elderly was announced in the **Federal Register** on April 17, 1989 at 54 FR 15270.

EFFECTIVE DATE: June 20, 1989.

FOR FURTHER INFORMATION CONTACT: The HUD Field Office for your jurisdiction.

SUPPLEMENTARY INFORMATION: Notice is hereby given under Title 24 Code of Federal Regulations Part 885, that the Department of Housing and Urban Development will be accepting Applications for Fund Reservations from eligible Sponsors (see 24 CFR 885.5 for the definition of "Sponsor" and other terms) for direct loans for the construction or substantial rehabilitation of housing and related facilities for section 202 housing for nonelderly handicapped families and individuals. Applications will also be accepted for loans for acquisition, with or without moderate rehabilitation, of housing and related facilities for use as group homes.

The Assistant Secretary for Housing is assigning a portion of Fiscal Year 1989 section 202 loan authority designated for projects for nonelderly handicapped people to the HUD Regional Offices identified below. While the precise number of units to be funded depends upon the number of approvable applications received, the following distribution plan shows the estimated numbers of units and Fiscal Year 1989 loan authority under which applications may be funded in each Regional Office jurisdiction.

FISCAL YEAR 1989 SECTION 202 HOUSING FOR HANDICAPPED PEOPLE DISTRIBUTION PLAN BY HUD REGIONAL OFFICE JURISDICTION

	Estimated No. of units	Estimated loan authority
Boston Regional Office	104	$5,733,000
New York Regional Office	201	12,282,000
Philadelphia Regional Office	238	11,082,000
Atlanta Regional Office	518	20,109,000
Chicago Regional Office	370	16,373,000
Fort Worth Regional Office	247	8,885,000
Kansas City Regional Office	106	3,796,000
Denver Regional Office	52	1,978,000
San Francisco Regional Office	232	13,208,000
Seattle Regional Office	65	2,555,000
National Total	2,135	96,000,000

The foregoing distribution plan is a guide for prospective Sponsors. It estimates the loan authority that is expected to be available in each HUD Regional Office jurisdiction. Each HUD Field Office has published an Invitation for Applications for section 202 Fund Reservation (Invitation) for its jurisdiction indicating the amount of loan authority available in the Region for housing for handicapped people and the maximum number of units this amount is expected to assist. (A separate invitation announced the amount available for housing for the elderly.)

The loan authority available in each Region will not have a specific percentage designated for use in metropolitan or nonmetropolitan areas. The emphasis of this program is primarily on the range of services provided to the handicapped residents in the projects, the opportunities for independent living and participation in normal activities, and access by the handicapped residents to the community at large and to employment opportunities. HUD believes that it is in the best interest of the program to fund the highest-ranked applications designed to meet these objectives, regardless of whether the location of the project is in a nonmetropolitan or metropolitan area. Accordingly, the program regulations do not include a nonmetropolitan allocation requirement.

In accordance with the Appropriations Act reference to providing priority for homeless chronically mentally ill people and an accompanying Congressional directive to fund 950 units for deinstitutionalized chronically mentally ill people, a proportionate share of the funds available in each Region will be designated to serve that population. For this purpose, the term "homeless chronically mentally ill people" includes deinstitutionalized persons and those who are at risk of becoming homeless.

Applications for projects to serve homeless chronically mentally ill people will compete against each other; similarly, applications for projects to serve people with all other handicaps will compete against each other. If a Region has insufficient approvable applications in either category, it may make selections from the other category.

Schedule for Section 202 Invitations, Workshops and Application Deadline

To be considered for FY 1989 funding, applications for projects for nonelderly physically handicapped, developmentally disabled or chronically mentally ill people must be submitted under this Notice of Fund Availability. Sponsors must identify proposed project occupancy requirements that limit occupancy to one or more of the eligible groups. Proposals to serve more than one occupancy group in a single project require Headquarters review for approval.

All applications for section 202 Fund Reservations must be filed with the appropriate HUD Field Office by eligible sponsors as defined in 24 CFR 885.5 and must contain all exhibits and additional information as required by the regulation at Section 885.710.

HUD Field Offices have published a one-time Invitation in newspapers of general circulation, and in minority newspapers serving the Field Office jurisdiction. Field Offices will accept applications after publication of the Invitation. Applications must be received at the appropriate Field Office by its regular closing time on July 6, 1989, unless that time is extended by Notice published in the **Federal Register**. Applications received after that date and time will not be accepted, even if postmarked by the deadline date.

Organizations interested in applying for a Section 202 Fund Reservation should provide the appropriate Field Office with their names, addresses and telephone numbers, advise the Field Office whether they wish to attend the workshop described in the following paragraph, and secure the Housing Notice and Application Package. HUD encourages minority organizations to participate in this program as Sponsors.

Field Offices are conducting workshops to explain the Section 202 program and the Seed Money Loan program under Section 106(b) of the Housing and Urban Development Act of 1968. Under this latter program, HUD makes direct, interest-free loans to approved nonprofit Section 202 eligible Borrowers to cover certain pre-construction expenses. At the workshops, Application Packages will be distributed, application procedures and requirements (including the Department's equal opportunity, design and cost containment guidance and required exhibits) will be discussed, and concerns such as local market conditions, building codes, zoning and housing costs will be addressed. HUD strongly recommends that prospective Sponsors attend the local Field Office workshop. More detailed information covering the time and place of the particular workshops are provided in the Field Office Invitation. Interested disabled persons should contact the Field Office to assure that any necessary arrangements can be made for them to be able to attend and participate in the workshop.

Additional Information

(1) Elsewhere in today's **Federal Register**, HUD has published a final rule implementing Section 162 of the Housing and Community Development Act of 1987. This section amended Section 202 of the Housing Act of 1959 as it applies to development of housing for nonelderly handicapped people. The Fiscal Year 1989 funding selections will be governed by the new regulation, codified at 24 CFR Part 885, Subpart C.

(2) Because of the concern expressed by Congress for homeless chronically mentally ill people, Sponsors serving primarily this population are encouraged to submit applications under this NOFA.

(3) In evaluating applications for Section 202 Fund Reservations for housing for handicapped residents, only those proposals that meet certain threshold scores on the standard ranking format will be considered for funding. However, Headquarters may waive the threshold score in order to fund proposals to the extent necessary to meet the requirement that not less than 25 percent of the loan authority be reserved for applications for housing for nonelderly people with handicaps and to fulfill the goal of 950 units for homeless or deinstitutionalized chronically mentally ill people. The threshold requirement will be included in the Section 202 Application Package available at the local HUD Field Office. The Section 202 workshops will include discussions of this and other application requirements.

(4) Applications that meet the following optional criteria will be eligible for additional points on the standard ranking format:

(a) Applications that include evidence of control of an approvable site under § 885.780 will be awarded up to 10 points.

(b) Applications receiving points for site control and which propose to use acquisition with or without moderate rehabilitation will receive up to five additional points.

(5) HUD unit limits for housing for nonelderly handicapped people (other than the chronically mentally ill) permit group homes to serve up to 15 persons on one site, and independent living complexes to include up to 24 units serving no more than 24 households on one site. For purposes of this requirement, a household is a family or any individual. Two unrelated individuals sharing a two bedroom unit will be counted as two households in calculating the 24 household limit. Independent living complexes comprised of three or more bedroom units may be developed only to serve one or two parents or guardians with children; these complexes may not be developed to serve large numbers of single unrelated persons.

(6) Projects designed exclusively for chronically mentally ill people are eligible under the same conditions and criteria as other projects designed solely for nonelderly handicapped people, except that only group homes for up to 15 persons and independent living complexes to serve up to 20 persons may be proposed for the chronically mentally ill.

(7) To be responsive to the Invitation, an application must not request more units in a given Region than advertised for that Region in the Invitation. Applications exceeding these limits will be rejected.

(8) Sponsors will be required to complete a Service Plan Description, describing how their proposed projects will be linked to supportive services needed to maintain their handicapped residents in the community. Since funds for such services cannot be provided from the rental assistance subsidy, evidence of other funding sources must be provided, with assurances that the funds will be secured by the time the project is ready for occupancy and will continue to be available for a reasonable time thereafter. Sponsors are advised that if at any time these supporting funds are not available, the project will have to be converted to occupancy by handicapped persons or families capable of living independently without the supportive services. To assist HUD in evaluating the Sponsor's capabilities with regard to supportive services for the residents of group homes or independent living complexes, HUD will invite a representative from the State Mental Health Agency (SMHA), the State Rehabilitation Agency, or the State Administrative Agency for Developmental Disabilities, as appropriate, to evalaute and make recommendations about the Service Plan Description. To this end, prospective Sponsors may be required to submit a copy of the Application to the appropriate State Agency. The HUD Field Office will advise prospective Sponsors of further details in this regard. Since the review and evaluation is at the option of the State Agency, HUD will conduct its own independent review for those States that do not wish to participate.

(9) Section 202 loans may be used for the acquisition of existing housing and related facilities, with or without moderate rehabilitation ("acquisition") for group homes for the nonelderly handicapped. Proposals involving housing units already owned and operated by the Sponsor as group homes for handicapped residents at the time Applications are submitted (often referred to as "refinancing") are not eligible for acquisition or rehabilitation under the Section 202 program.

(10) Where the proposed project site is being optioned or acquired from a general contractor or its affiliate, the Section 202 Borrower will be prohibited from selecting that contractor to construct the project for which an Application for funding is being made. Further, the proposed contractor may not be the attorney, architect, housing consultant or management agent for the project. This prohibition extends to any firm or subsidiary having an identity-of-interest with the contractor.

(11) Religious bodies may serve as project Sponsors, but must establish a

Borrower corporation as a separate legal entity to be the owner, prior to the submission of a loan commitment application. When the Borrower corporation is created, no reference to religion or religious purposes may be included in the Articles of Incorporation or By-Laws of that corporation. The mere recital on a Borrower's Articles of Incorporation that it is organized exclusively for religious, charitable, scientific, literary or educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code will not by itself make a Borrower ineligible. However, the dissolution clause must provide that, upon dissolution or winding up of the corporation, its assets remaining after payment of all debts and liabilities shall be distributed to a nonprofit fund, foundation or corporation, other than one created for a religious purpose, which has established its tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.

(12) Sponsors, including churches, must have a current IRS nonprofit tax exemption ruling.

(13) Because of the nonprofit nature of the Section 202 program, no officer or director of the Sponsor or Borrower, or trustee, member, stockholder or authorized representative of the Borrower is permitted to have any financial interest in any contract in connection with the provision of services, the provision of goods or supplies, project management, procurement of furnishings and equipment, construction of the project, procurement of the site or other matters whatsoever, except that this prohibition does not apply to management contracts (or management fees associated therewith) entered into by the Borrower with the Sponsor or its nonprofit affiliate.

(14) 24 CFR 885.810(i) contains a minimum capital investment requirement. This requirement applies to all Section 202 projects receiving fund reservations in Fiscal Year 1989. The minimum capital investment is currently established at one-half of 1 percent (0.5%) of the total HUD-approved mortgage amount, not to exceed $10,000. Section 106(b) Seed Money Loan Funds, under 24 CFR Part 271, may not be used to satisfy the minimum capital investment requirement.

(15) Applications missing two or more exhibits will be rejected. If Applications are found to have incomplete exhibits, the Sponsor will be advised in writing of the deficiencies and that missing documents will be accepted on or before a specified date. Further, all necessary actions (*e.g.*, adoption of corporate resolutions) must have been taken on or before the deadline date for filing applications. Sponsors may be contacted if clarification of any part of the application is needed in order to evaluate the application.

(16) HUD will make contract and budget authority under Section 202(h)(4) of the Housing Act of 1959 available for successful Sponsors, subject to the availability of funds.

(17) A notice of approval will be sent to the Sponsors selected in accordance with the requirements of 24 CFR 885.750 (Review of Application for Fund Reservation) and on the basis of information furnished by the Sponsors as set forth in the Field Office Application Package.

(18) To the extent that funds are available to fund new projects for handicapped people from the Headquarters Reserve (which Reserve shall constitute no more than 15 percent of the Section 202 Fiscal Year 1989 loan authority designated for projects for handicapped people), applications which are otherwise approvable but not funded by the Regional Offices from the field allocation may be considered for Headquarters funding on the basis of support for the needs of the handicapped, one of the conditions set forth in Section 213(d)(4) of the Housing and Community Development Act of 1974.

(19) Sponsors are invited to submit applications for Section 202 Fund Reservations for housing for nonelderly handicapped persons in accordance with this Notice and with 24 CFR Part 885.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations which implement Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during business hours (7:30 a.m. to 5:30 p.m. weekdays) in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–220), the information collection requirements contained in these Section 202 application requirements have been assigned OMB control number 2502–0267.

The General Counsel, as the Disignated Official under Executive Order No. 12606—The Family, has determined that the notice will not have a significant impact on family formation, maintenance or well being.

The General Counsel, as the Deisgnated Official under setion 6(a) of Executive Order No. 12611—Federalism, has determined that the notice does not involve the preemption of State law by Federal statute or regulation and does not have federalism impacts.

The Catalog of Federal Domestic Assistance Program number and title is 14.157, Housing for the Elderly or Handicapped.

(Sec. 202, Housing Act of 1959 (12 U.S.C. 1701q as amended by Sec. 162, Housing and Community Development Act of 1987 (Pub. L. 100–242, Feb. 5, 1988)), Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: May 9, 1989.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 89–14434 Filed 6–19–89; 8:45 am]

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federal register

Tuesday
June 20, 1989

Part IV

Department of Education

34 CFR Part 654

Robert C. Byrd Honors Scholarship Program; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 654

RIN 1840-AB08

Robert C. Byrd Honors Scholarship Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues regulations to govern the actions of State educational agencies (SEAs) in their administration of the Robert C. Byrd Honors Scholarship Program (the Byrd Scholarship Program), authorized by Title IV of the Higher Education Act of 1965, as amended (HEA). These regulations specify the role of the Secretary and the responsibilities of the SEAs in the administration of the program and also describe the responsibilities of the scholarship recipients.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if Congress takes certain adjournments. A document announcing the effective date will be published in the Federal Register. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Fred Sellers or Stephen Wingard, Office of Postsecondary Education, U.S. Department of Education (Room 4018, ROB-3), 400 Maryland Avenue, SW., Washington, DC 20202-5447. Telephone (202) 732-4507.

SUPPLEMENTARY INFORMATION: The Byrd Scholarship Program is a federally funded program authorized under Title IV, Part A, Subpart 6 of the HEA. The purpose of the program is to promote student excellence and achievement and to recognize exceptionally able students who show promise of continued academic achievement. Nonrenewable scholarships of $1,500 are awarded to students on the basis of merit for the first year of study at an institution of higher education.

Byrd Scholarships were awarded for the first time in the spring of 1987, for study in academic year 1987-88. Because the Secretary has not previously issued specific regulations for this program, administration of the program to date has been governed by the General Education Provisions Act, Education Department General Administrative Regulations (EDGAR), applicable provisions of the program statute, and notices of final procedures published in the Federal Register. The publication of notices of final procedures was necessitated in fiscal years 1987 and 1988, and again in the current fiscal year, due to language in the Department's appropriation acts for those years which superseded certain provisions of the Byrd statute. Barring the enactment of superseding appropriations language in future years, the issuance of these regulations is intended to remove the need for annual notices of final procedures, by providing permanent guidance to States in their administration of the program.

On September 30, 1988, the Secretary published a notice of proposed rulemaking (NPRM) for the Robert C. Byrd Honors Scholarship Program in the Federal Register (53 FR 38660).

Changes Resulting From Public Comment

In addition to a number of editorial and technical revisions which have been made to these final regulations as a result of the comments received on the NPRM and as discussed in detail in the Analysis of Comments and Changes section which follows, the Secretary has also made the following significant changes:

1. The term "calendar year" in §§ 654.10(b)(3)(v) and 654.41(a)(1) has been replaced with the term "secondary academic year." The specific time frames which are to be associated with the term "secondary academic year" shall be determined by each SEA. (The term "secondary academic year" is to be distinguished from the term "academic year" which refers to the postsecondary academic year and is defined in § 654.5.)

2. The heading in § 654.2 has been changed to read, "Who is eligible to apply for an award?" This change and a concomitant change to § 654.2(b) were made in order to clarify that those students who have applied to an institution of higher education are eligible to apply for a Byrd Scholarship even if they have not yet been accepted for enrollment by an institution of higher education.

3. Section 654.41(b)(2) was added to provide that a Byrd Scholar may, without forfeiting his or her scholarship award, postpone enrollment in an institution of higher education for up to one year after receipt of the scholarship award, in accordance with such program guidelines and standards as each SEA may establish.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, nine parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows. Substantive issues are discussed under the section of the regulations to which they pertain.

Section 654.2 Who is eligible to apply for an award?

Comment: One commenter requested that the Secretary change § 654.2(b) of the NPRM to permit secondary school students who have not yet been accepted for enrollment at institutions of higher education to apply for Byrd Scholarships. The commenter requested this change because he stated that applicants do not receive acceptances from most colleges and universities until April, and it would be very late for students to begin the application process for the Byrd Scholarship in April.

Discussion: Although section 419F(a) of the HEA requires that a student be accepted for enrollment to be awarded a Scholarship, there is no statutory requirement that a student be accepted for enrollment in order to apply for a Byrd Scholarship. If an applicant applies for and subsequently does not accept the Scholarship or subsequently is not accepted for enrollment in an institution of higher education, then the SEA must award the Scholarship to another applicant from a list of alternates. The Secretary agrees that a change is necessary to clarify the purpose of the section, which is to state the requirements that must be met by students who wish to apply for an award under the Robert C. Byrd Honors Scholarship Program.

Changes: The Secretary has changed the title of § 654.2 to read, "Who is eligible to apply for an award?". The Secretary has also changed § 654.2(b) to allow a secondary school graduate who has applied but has not yet been accepted for enrollment at an institution of higher education to apply for a Byrd Scholarship. The change does not make the student eligible to receive the scholarship prior to acceptance for enrollment at an institution of higher education. (See the first comment and discussion regarding § 654.41 for a discussion of another commenter's related concern about a student's eligibility to apply for a Scholarship.)

Section 654.10 What must a State do to receive a grant under this program?

Comment: Five commenters requested that the Secretary make the awards ceremony required in § 654.10(b)(2)(v) and § 654.50(a)(4) optional or permit the ceremony to be at the discretion of the SEA. One of the commenters stated that he conducted an elaborate awards ceremony for the 1987 Byrd Scholars and invited the entire Congressional delegation to the event. Only one member of the House of Representatives was able to appear. Several other commenters also stated that a single ceremony was very difficult to schedule with the complex schedules of the Members of Congress and logistically difficult for States to administer. The commenters also mentioned that for the first two years of the program, and now for the third year, language in the ED appropriations legislation has eliminated the statutory requirement for an awards ceremony.

Discussion: Section 654.50(a)(4) instructs SEAs to "make arrangements, *to the extent possible,* to have awards presented to the scholars during a ceremony at a convenient location * * *" (emphasis added). Thus, this section already affords SEAs discretion in choosing the type and location of their award ceremonies, and the Secretary finds there is no need to change the section. In accordance with § 654.50(a)(4), the Secretary encourages SEAs to invite the appropriate Congressional representatives to participate in any ceremony that is held pursuant to this section. As an alternative to holding a formal awards ceremony, the Secretary encourages SEAs to provide Members of the Senate and House of Representatives with lists of the Byrd Scholars from their districts along with the suggestion that they acknowledge formally the scholars' accomplishments, either in a letter to the scholar or by other means available to the Members.

Changes: None.

Section 654.40 What are the selection criteria and procedures?

Comment: One commenter asked what happens to the funds if fewer than ten applications are received from a Congressional district. He also asked if the excess funds could be awarded to applicants from other Congressional districts.

Discussion: Section 654.40(b)(1) requires each SEA to select ten scholars from among the residents of each Congressional district of the State for each award period. This regulatory requirement implements the statutory requirement that is in section 419G(b) of the program statute and cannot be changed absent an amendment to the statute. If the SEA receives fewer than ten applications from eligible students in a particular Congressional district, the Secretary suggests that it contact the secondary schools in that Congressional district to encourage the submission of additional applications. As a practical matter, however, the Secretary considers it highly unlikely that an SEA would receive fewer than ten eligible applications from each Congressional district.

In any event, for fiscal years 1987, 1988, and 1989 section 419G(b) has been superseded by language in the Department of Education appropriations acts for those fiscal years. Thus, for fiscal year 1989 (as in the past two fiscal years) grantees are not required to comply with § 654.40(b)(1) on the application process, but rather with the provisions of the notice of final procedures published in the Federal Register on March 27, 1989 (54 FR 12549).

Changes: None.

Comment: One commenter requested that § 654.40(b)(2) and all other appropriate sections include a prohibition against the awarding of scholarships solely on the basis of college admissions test scores. The commenter considered college admissions tests to be biased on the basis of race, gender, and socioeconomic status, and was of the opinion that for this reason SEAs should not be permitted to use them to award scholarships. The commenter recommended the use of high school grades as a selection criterion, because the commenter believed that they are a better predictor of college performance than college admissions test scores.

Discussion: The program statute does not specify which selection criteria SEAs must use in determining the selection of Byrd Scholars. Rather, section 419G(a) authorizes SEAs to "* * * establish the criteria for the selection of scholars. * * *" Therefore, the Secretary cannot prohibit SEAs from considering college admissions test results as one of their criteria. However, the SEAs are required, under § 654.40(b)(2), to select the scholars on the basis of outstanding academic achievement prior to their graduation from high school as well as on the basis of the promise of continued academic achievement. The Secretary considers it unlikely that an SEA could use a "college admissions test" as the sole criterion in scholar selection without bringing into question the SEA's compliance with the requirements of § 654.40(b)(2). The SEA would have to be able to show that the test had been designed to test prior academic achievement and not just to predict college performance. The Secretary encourages all SEAs that use college admissions test scores as a selection criterion to use other criteria as well, so as to ensure generally that SEAs award scholarships to the most qualified scholars.

Changes: None.

Comment: Two commenters were concerned about § 654.40(b)(2)(ii) which requires the SEA to select scholars without regard to whether the secondary schools they attend are within or outside their Congressional districts or States of residency. One commenter had previously interpreted the statute to require scholars to be graduating or have graduated from a secondary school within the State to which the scholar makes application for a Byrd Scholarship. An additional concern was that this requirement would add confusion to the program by requiring the SEA to have proof of residency from parents when applicants are nominated by out-of-State secondary schools.

Discussion: Section 419G(b) of the program statute requires SEAs to select scholars from "among residents of each congressional district in a State. * * *" Sections 654.40(b)(1) and 654.40(b)(2)(ii) maintain the statutory emphasis on the district or State of a student's residency. Doing otherwise would render students ineligible for Byrd scholarships in their State simply because they attend out-of-State schools, such as Department of Defense overseas schools or out-of-State boarding schools. The Secretary can find nothing in the statute or in the legislative history to support such a result. Under these regulations, a student who is attending a secondary school outside his or her State of residency applies for a Byrd Scholarship through the SEA of his or her State of residency and is counted in the appropriate Congressional district as indicated by his or her residency documentation.

Changes: None.

Section 654.41 What are the requirements for a student to receive assistance under this program?

Comment: One commenter expressed concern with proposed § 654.41(a)(1) which requires a scholar to graduate from a secondary school or to receive a recognized equivalent of a high school diploma in the same calendar year in which the SEA awards the Byrd Scholarship. The commenter was concerned that students who receive a recognized equivalent of a high school diploma before the beginning of the "calendar year" would be denied the opportunity to apply for the scholarship. The commenter recommended that the section be modified to allow applications from students who receive a recognized equivalent of a high school diploma within six months preceding the start of the calendar year in which scholarships are to be awarded.

Discussion: The Secretary agrees that the use of "calendar year" would deny this type of student the opportunity to apply for the scholarship, and that such denial is not in keeping with the intent of the program.

Changes: The Secretary has revised § 654.41(a)(1) to replace the term "calendar year" with the statutory term "secondary academic year," found in section 419I(b) of the program statute. The specific time frame associated with the secondary academic year in each State shall be determined by each State. (Note: the term "secondary academic year" is to be distinguished from the term "academic year," which is the postsecondary academic year as defined in § 654.5.)

Comment: A commenter was concerned that § 654.41(a)(1)(ii) requires a student to graduate from secondary school and enter an institution of higher education during the same calendar year. The commenter requested a modification that would permit a Byrd Scholar some options in enrollment in higher education. In the commenter's opinion, this section would reduce the range of options, such as foreign exchange programs that would postpone college enrollment by one year, that some outstanding students want to pursue. The commenter stated that in the first year of the Byrd Scholarship Program a recipient from his State had to postpone enrollment in an institution of higher education until the second semester due to an operation. He believed that the scholar would have been unable to receive the scholarship if the proposed regulations were in effect at that time.

Discussion: Section 654.41(a)(1)(ii) of the NPRM requires only that a scholar be accepted for enrollment at an institution of higher education during the same secondary academic year (referred to as "calendar year" in the NPRM) as the scholarship is to be awarded. Thus, in response to the commenter's concern, the Secretary does not interpret either the statute or § 654.41(a)(1)(ii) of the NPRM as requiring enrollment during the same year as the scholarship is awarded. Rather, the Secretary considers a delay of enrollment for up to one year, as is suggested by the commenter, to be authorized under the statute although he would consider any delay lasting more than one year to be inconsistent with the purpose of the program.

Changes: The Secretary has renumbered § 654.41(b) so that it is now § 654.41(b)(1) and has added § 654.41(b)(2) to provide that a scholar may postpone enrollment in an institution of higher education for up to one year after receipt of a Byrd Scholarship award. However, the new § 654.41(b)(2) also authorizes an SEA to develop and apply program guidelines and standards to the review of any scholar's request for a postponement of enrollment, in accordance with the program administration authority provided to the SEA by section 419E(1) of the Byrd Scholarship Program statute.

Comment: One commenter requested that an SEA collect the Statement of Registration Status required in § 654.41(a)(4). The commenter believed that this procedure is proper since the SEA makes the award to qualified recipients prior to their actual enrollment in a postsecondary institution.

Discussion: The requirement that recipients of aid under Title IV of the HEA who are required to register with Selective Service file a Statement of Registration Status with the postsecondary institution which they plan to attend (rather than the SEA as suggested by the commenter) is statutory (see 50 U.S.C. App. 462) and the Secretary cannot change the requirement.

Changes: None.

Section 654.50 What requirements must a State meet in the administration of this program?

Comment: One commenter expressed concern that § 654.50(a)(4) and § 654.50(a)(5) in combination with the requirements in § 654.41 would delay the awards ceremony and the disbursement of funds until after the student has begun his or her initial term in postsecondary education. The commenter was further concerned that § 654.50(a)(7) would delay the disbursement of funds until the institution of higher education has certified all requirements in § 654.41.

Discussion: There is no requirement that the Statement of Registration Status must be filed prior to the SEA's awarding of the scholarships during an awards ceremony. Under § 654.50(a)(5), the SEA may decide for itself when to disburse the funds. The fact that neither the Statement of Registration Status nor the confirmation of enrollment is obtained before the actual enrollment of a scholar in a postsecondary institution need not delay the award of the scholarship. The Secretary interprets section 419I(b) of the program statute to require each SEA to make each award before the last date on which any secondary school in the State completes its secondary academic year. However, these regulations do not require the SEA to disburse the awards at that time. Under § 654.50(a)(5), each SEA may hold the funds until after the awards ceremony and following confirmation that the student has met the requirements in § 654.41. Although, § 654.50(a)(5) permits an SEA to delay the disbursement of funds until after it has confirmed that the scholar has met the requirements of § 654.41, it does not require the SEA to do so. If the SEA chooses to disburse the scholarship funds at the awards ceremony, as it is also authorized to do under § 654.50(a)(5), it is then required, under § 654.50(a)(7), to collect any funds disbursed to students who fail to meet the requirements of § 654.41.

Changes: None.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Assessment of Educational Impact

In the notice of proposed rulemaking the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the responses to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 654

Education, grant programs, Education, State-administered Education, student aid.

Dated: May 25, 1989.

Lauro F. Cavazos,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.165—Robert C. Byrd Honors Scholarship Program)

The Secretary amends Title 34 of the Code of Federal Regulations by adding a new Part 654, to read as follows:

PART 654—ROBERT C. BYRD HONORS SCHOLARSHIP PROGRAM

Subpart A—General

Sec.

654.1 What is the Robert C. Byrd Honors Scholarship Program?
654.2 Who is eligible to apply for an award?
654.3 What kinds of activities does the Robert C. Byrd Honors Scholarship Program assist?
654.4 What regulations apply?
654.5 What definitions apply to the Robert C. Byrd Honors Scholarship Program?

Subpart B—How Does a State Apply for a Grant?

654.10 What must a State do to receive a grant under this program?

Subpart C—How Does the Secretary Make a Grant to an SEA?

654.20 How Does the Secretary allot funds to an SEA?

Subpart D—How Does an Individual Apply to an SEA for a Scholarship?

654.30 How does an individual apply for a scholarship?

Subpart E—How Does an SEA Award a Scholarship to an Applicant?

654.40 What are the selection criteria and procedures?
654.41 What are the requirements for a student to receive assistance under this program?

Subpart F—What Postaward Conditions Must an SEA Meet?

654.50 What requirements must an SEA meet in the administration of this program?

Authority: 20 U.S.C. 1070d–31 to 1070d–41, unless otherwise noted.

Subpart A—General

§ 654.1 What is the Robert C. Byrd Honors Scholarship Program?

(a) Under the Robert C. Byrd Honors Scholarship Program, the Secretary makes available, through grants to the States, scholarships to exceptionally able students for study at institutions of higher education in order to recognize and promote student excellence and achievement.

(b) This program is known as the "Byrd Scholarship Program" and scholarship recipients are known as "Byrd Scholars."

(Authority: 20 U.S.C. 1070d–31, 1070d–33)

§ 654.2 Who is eligible to apply for an award?

(a) States are eligible to apply for grants under this program.

(b) Outstanding high school graduates who have been accepted or have applied for enrollment at institutions of higher education are eligible to apply to their respective States of residence for scholarships under this program.

(Authority: 20 U.S.C. 1070d–33)

§ 654.3 What kinds of activities does the Robert C. Byrd Scholarship Program assist?

(a) An SEA may use its allotment under § 654.20(a) only for making payments to scholars.

(b) An SEA may use its allotment under § 654.20(b) for covering costs incurred in administering the program, as determined in accordance with 34 CFR Part 80, or for making payments to scholars.

(Authority: 20 U.S.C. 1070d–35, 1070d–36)

§ 654.4 What regulations apply?

The following regulations apply to the Robert C. Byrd Honors Scholarship Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 76 (State-Administered Programs), Part 77 (Definitions that Apply to Department Regulations), Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), and Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(b) The regulations in this Part 654.

(Authority: 20 U.S.C. 1070d–31 *et seq.*)

§ 654.5 What definitions apply to the Robert C. Byrd Honors Scholarship Program?

(a) *Definitions in the Act.* The following terms used in this part are defined in section 419B of the Act:

Secondary school
State

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

EDGAR
Secretary
State educational agency (SEA)

(c) *Other definitions.* The following definitions also apply to this part:

With respect to the postsecondary academic year, "academic year" means—

(1) A period of time in which a full-time student is expected to complete the equivalent of at least two semesters, two trimesters, or three quarters at an institution that measures academic progress in credit hours and uses a semester, trimester, or quarter system;

(2) A period of time in which a full-time student is expected to complete at least 24 semester hours or 36 quarter hours at an institution that measures academic progress in credit hours but does not use a semester, trimester, or quarter system; or

(3) At least 900 clock hours at an institution that measures academic progress in clock hours.

"Act" means the Higher Education Act of 1965, as amended.

"Award period" means the period of time from April 1 of one year through March 31 of the following year.

"Institution of higher education" means any public or private nonprofit institution of higher education as defined in 34 CFR 600.4 of the Institutional Eligibility regulations.

"Recognized equivalent of a high school diploma" means—

(1) A General Education Development (GED) Certificate; or

(2) A State certificate received by a student after the student has passed a State authorized examination that the State recognizes as the equivalent of a high school diploma.

"Scholar" means a Byrd Scholarship recipient.

"Scholarship" means an award made to an individual under this part.

(Authority: 20 U.S.C. 1070d–31 to 1070d–41)

Subpart B—How Does a State Apply for a Grant?

§ 654.10 What must a State do to receive a grant under this program?

(a) To receive a grant under the Byrd Scholarship Program, a State shall submit a participation agreement to the Secretary for review and approval.

(b) The Secretary approves a participation agreement if the agreement—

(1) Provides that the State, through its SEA, agrees to administer the Byrd Scholarship Program in accordance with the requirements in this part;

(2) Describes the criteria and procedures that the SEA uses in the selection of scholars in sufficient detail for the Secretary to determine the degree to which they satisfy the provisions of this part; and

(3) Provides assurances that—

(i) The SEA will make no changes in the criteria and procedures to be used in the selection of scholars without the prior written approval of the Secretary;

(ii) Each student receiving a Byrd Scholarship will meet the eligibility requirements described in § 654.41;

(iii) The SEA will select scholars solely on the basis of criteria and procedures established in accordance with the provisions of § 654.40;

(iv) The SEA will conduct outreach activities to publicize the availability of Byrd Scholarships to all seniors attending secondary schools in the State, with particular emphasis on activities designed to ensure that students from low-income and moderate-income families know about their opportunity for full participation in the program;

(v) The SEA will issue an award for $1,500 to each Byrd Scholar during an awards ceremony to be held before the latest date on which any secondary

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school in the State completes its secondary academic year; and

(vi) The SEA will expend the amount of Federal funds allotted to it for this program only as described in § 654.3.

(c) Upon the Secretary's approval of its agreement, an SEA need not submit additional agreements in order to be considered for funding under this program in subsequent years.

(Approved by the Office of Management and Budget under control number 1840–0612)

(Authority: 20 U.S.C. 1070d–33, 1070d–35 to 1070d–39)

Subpart C—How Does the Secretary Make a Grant to an SEA?

§ 654.20 How does the Secretary allot funds to an SEA?

From the funds appropriated for the Byrd Scholarship Program, the Secretary allots to each SEA having an approved participation agreement under § 654.10—

(a) $1,500 multiplied by the number of scholars the SEA may select under § 654.40(b)(1); and

(b) $10,000 plus 5 percent of the amount for which the SEA is eligible under paragraph (a) of this section.

(Authority: 20 U.S.C. 1070d–34)

Subpart D—How Does an Individual Apply to an SEA for a Scholarship?

§ 654.30 How does an individual apply for a scholarship?

To apply for a scholarship, an individual shall follow the application procedures established by the SEA in the State in which the individual resides.

(Authority: 20 U.S.C. 1070d–33, 1070d–35)

Subpart E—How Does an SEA Award a Scholarship to an Applicant?

§ 654.40 What are the selection criteria and procedures?

(a) The SEA shall establish criteria and procedures for the selection of scholars after consultation with school administrators, school boards, teachers, counselors, and parents.

(b) The SEA shall design the selection criteria and procedures to ensure that it—

(1) Selects ten scholars from among the residents of each Congressional district of the State for each award period for which funds are received, with the exception of the District of Columbia and the Commonwealth of Puerto Rico, which shall each establish procedures for the selection of 10 scholars from among its respective resident students for each year for which funds are received;

(2) Selects scholars solely on the basis of demonstrated outstanding academic achievement, promise of continued achievement; and the geographic consideration described in paragraph (b)(1) of this section, and—

(3) Selects scholars—

(i) Without regard to whether the secondary schools they attend are within or outside the scholars' Congressional districts or States of residency;

(ii) Without regard to whether the institutions of higher education they plan to attend are public or private or are within or outside the scholars' Congressional districts or States of residency;

(iii) Without regard to sex, race, handicapping condition, creed, or economic background; and

(iv) Without regard to their educational expenses or financial need.

(Authority: 20 U.S.C. 1070d–33, 1070d–35 to 1070d–37)

§ 654.41 What are the requirements for a student to receive assistance under this program?

(a) To receive scholarship assistance, a student must—

(1) During the same secondary academic year in which the scholarship is to be awarded—

(i) Graduate from a secondary school, or receive a recognized equivalent of a high school diploma; and

(ii) Be accepted for enrollment at an institution of higher education;

(2) Be a resident of the State to which he or she is applying for a scholarship;

(3)(i) Be a U.S. citizen or national; or

(ii) Provide evidence from the U.S. Immigration and Naturalization Service that he or she—

(A) Is a permanent resident of the United States; or

(B) Is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident;

(4) File with the institution he or she plans to attend or is attending, a Statement of Selective Service Registration Status if required by the institution in accordance with the provisions of 34 CFR Part 668 of the Student Assistance General Provisions regulations; and

(5) Pursue a course of study at an institution of higher education, as described in paragraph (b) of this section.

(b)(1) For purposes of paragraph (a)(5) of this section, a scholar is deemed to be pursuing a course of study if he or she is enrolled at an institution of higher education as at least a half-time student, as determined by the institution he or she is attending under standards applicable to all students enrolled in that scholar's course of study.

(2) In accordance with such guidelines and standards as may be established by an SEA, a scholar who has been accepted for enrollment at an institution of higher education may, without forfeiting his or her scholarship, postpone his or her enrollment at the institution of higher education for up to a period of one year beginning on the date the scholar otherwise would have enrolled in the institution after the SEA awarded him or her the scholarship.

(Authority: 20 U.S.C. 1070d–36 to 1070d–38, 50 U.S.C. App 462)

Subpart F—What Postaward Conditions Must an SEA Meet?

§ 654.50 What requirement must an SEA meet in the administration of this program?

(a) To continue to receive payments under this part, an SEA shall—

(1) Provide scholarship assistance only to students who meet the requirements in § 654.41;

(2) Select scholars in accordance with the provisions in § 654.40;

(3) Award to each scholar only one scholarship in the amount of $1,500 to be used for the first academic year of study at an institution of higher education;

(4) Make arrangments, to the extent possible, to have scholarship awards presented to the scholars during a ceremony at a convenient location by Members of the Senate and Members of the House of Representatives who represent the State (or by the Delegate in the case of the District of Columbia or the Resident Commissioner in the case of the Commonwealth of Puerto Rico);

(5) Disburse the scholarship proceeds, in the form of a warrant, voucher, or check payable to the student or copayable to the student and an official of the institution of higher education in which the student enrolls, during the awards ceremony or after confirming that the scholar has met the requirements described in § 654.41;

(6) Make no adjustments to the student's award because of the student's educational expenses or financial need;

(7) Collect any scholarship funds disbursed to a student who fails to meet the requirements of § 654.41;

(8) Make reports to the Secretary that are necessary to carry out the Secretary's functions under this part; and

(9) Except as provided in paragraph (b) of this section, expend all funds received from the Secretary for scholarships during the award period specified by the Secretary with regard to those funds.

(b)(1) After awarding all scholarships during an award period, as required by paragraph (a)(9) of this section, an SEA may reserve for scholarship expenditures in the following award period any funds that have been awarded but are subsequently returned or recovered.

(2) An SEA may reserve for administrative costs or scholarship expenditures in the following award period any funds from its administrative cost allotment that remains unexpended at the end of the award period for which the funds were granted.

(Authority: 20 U.S.C. 1070d–33, 1070d–36, 1070d–38 to 1070d–40)

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federal register

Tuesday
June 20, 1989

Part V

The President

Proclamation 5992—National Scleroderma Awareness Week, 1989

Federal Register
Vol. 54, No. 117
Tuesday, June 20, 1989

Presidential Documents

Title 3—

The President

Proclamation 5992 of June 16, 1989

National Scleroderma Awareness Week, 1989

By the President of the United States of America

A Proclamation

Each year, thousands of Americans suffer from a rare but serious disease known as scleroderma. We must call national attention to this mysterious ailment and the ongoing efforts to find a cure for it.

Scleroderma, which literally means "hard skin," is a painful and debilitating connective tissue disease characterized by excessive deposits of collagen in the skin. While the hallmark of this disease is skin thickening, scleroderma can affect other organs of the body, such as the stomach, lungs, heart, or kidneys.

Although the disease can strike at any age, it usually affects people in their most productive years, and women more frequently than men. New research findings and new approaches to diagnosis and treatment are being developed to combat scleroderma. Studies on scleroderma include investigations into various causes of the disease, research on vascular alterations and regulation of collagen synthesis, and development of diagnostic probes. Such studies may lead to new and improved treatments that will effectively eliminate the disease itself.

In order for this work to continue and in order to take advantage of the knowledge we have already gained, public awareness of scleroderma and of the importance of scientific research must be increased. The Federal Government and private voluntary organizations are thus working together to promote education and research on scleroderma.

To enhance public understanding of scleroderma and to recognize the important efforts to combat this disease, the Congress, by House Joint Resolution 274, has designated the week beginning June 11, 1989, as "National Scleroderma Awareness Week" and has authorized and requested the President to issue a proclamation in observance of this occasion.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week beginning June 11, 1989, as National Scleroderma Awareness Week. I urge the people of the United States and educational, philanthropic, scientific, and medical organizations and professionals to participate in activities designed to further public awareness of the causes and treatment of scleroderma.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of June, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and thirteenth.

George Bush

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 522

[No. 89-1584]

Election of Directors of the Federal Home Loan Banks

Dated: June 14, 1989.

AGENCY: The Federal Home Loan Bank Board.

ACTION: Temporary rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") is issuing a temporary rule to implement special procedures for the election of directors to the boards of the Federal Home Loan Banks ("Banks") during calendar year 1989. The rule will modify the schedule for election of directors set forth in 12 CFR Part 522 in view of pending legislation to restructure the entities regulating the thrift industry. Specifically, the beginning of the election process for Bank directorship positions for 1989 will be delayed from June 15, 1989, until either thirty days after the enactment of the legislation or September 15, 1989, depending on the progress of the legislation. Once the election process begins, the remaining steps will occur according to the time schedule set forth in the temporary rule, but will otherwise proceed as described in 12 CFR Part 522. According to the schedule set forth in the temporary rule, the election process will end by December 31, 1989.

EFFECTIVE DATE: June 21, 1989. Section 522.30 will expire on June 14, 1990.

FOR FURTHER INFORMATION CONTACT: William Carey, (202) 906–6656, Director, Bank Liaison Division, or Patrick Berbakos, (202) 906–6720, Director, Office of District Banks, Federal Home Loan Bank Board 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Senate and House versions of pending legislation restructuring the entities regulating the thrift industry would abolish the Board and remove the regulation of the election of Bank directors to the jurisdiction of a new agency with oversight authority over the Banks.[1] Accordingly, the Board believes it is appropriate to delay the beginning of the election process until after the enactment of the legislation. At that time, elections could be supervised by the agency with oversight over the Banks. Consequently, the Board is issuing a temporary rule, § 522.30, to implement special scheduling procedures for the 1989 election of Bank directors. The rule delays the beginning of the election process from June 15, 1989, which is the date required pursuant to § 522.25(a). If legislation is enacted restructuring the entities regulating the thrift industry but retaining the Board's jurisdiction over the election process, the election process could begin not later than thirty days after the enactment of the legislation. However, the Board believes that for the election process to conclude by the end of this calendar year in time to fill vacancies created by the expiration of existing terms of directorships, the process must begin no later than September 15, 1989.[2] Consequently the rule provides that in any event the process would begin no later than September 15, 1989. Moreover, in order to conclude the election process by the end of the year, the Board is also providing that if legislation is not enacted by September 15, 1989, the election process must begin by that date. The Board also is setting forth an alternative schedule for the election process in the new § 552.30.

The Board is adopting this temporary rule to reduce the likelihood that the ongoing election process might be interrupted by the passage of legislation, while retaining an election process that the Board can implement if no legislation is passed by a certain date or if jurisdiction is not removed from the Board by any such legislation. Alternatively, if jurisdiction over the process is given to another entity, the schedule and process included in the Board's regulation, at the option of such entity, could be used to facilitate the election of new directors. This could enable the District Bank boards to continue conducting business with a minimum of disruption while at the same time allowing the new regulatory entity adequate time to promulgate its own regulations by either permanently adopting the Board's process or setting up a new mechanism for election of directors.

The Board's action today is taken pursuant to its broad statutory powers and obligations to establish and oversee the Federal Home Loan Bank System, including its express responsibility for overseeing the election and appointment of directors to the boards of the District Banks. 12 U.S.C. 1427, 1437. Pursuant to this statutory authority, the Board is issuing new § 522.30 which will operate in conjunction with the existing provisions of § 522.25–26 which generally govern the conduct of the election of directors. However, the special provisions of § 522.30 will govern the scheduling of elections for Bank directorship positions in 1989 only.

Specifically, if legislation restructuring the entities regulating the thrift industry is enacted and jurisdiction over the election process is retained by the Board, the first step in the election process, the Board's notification of members of their rights to nominate candidates for elective directorships, would begin not later than thirty days after the enactment of legislation or by September 15, 1989, if legislation is enacted within thirty days prior to that date, and will otherwise proceed as required by § 522.25(a). Alternatively, if no legislation is enacted by September 15, 1989, the election process will begin on that date. The second step in the election process, the members' nomination of candidates, will be completed not later than sixty days after the enactment of legislation, or, if the election process begins on September 15, 1989, not later than October 15, 1989, and will otherwise proceed as required by § 522.25(b). The next step, the Board's notification of nominees, will occur not later than seventy days after the enactment of legislation, or, if the election process begins on September 15, 1989, not later than October 25, 1989, and will otherwise proceed as required

[1] *See, e.g.*, S. 774, as passed by the Senate on April 19, 1989, 135 Cong. Rec. S4351 (daily ed. April 19, 1989), and H.R. 1278, (Star Print).

[2] The Federal Home Loan Bank Act, 12 U.S.C. 1427, limits the term of each elective directorship to two years. Accordingly, in the absence of elections, the boards of directors of the Banks would be forced to conduct business with a reduced number of voting directors on the boards.

by § 522.25(c), except that the date for receipt of an appointed director's notice of intention to be a candidate for an elective directorship will occur no later than sixty days after enactment of the legislation, or, if the election process begins on September 15, 1989, not later than October 15, 1989. The next step, the Office of District Bank's ("ODB's") receipt of the nominees' completed questionnaires, will conclude not later than eighty-five days after the enactment of the legislation, or, if the election process begins on September 15, 1989, not later than November 9, 1989, and will otherwise proceed as required by § 522.25(c).

Next, the Board's mailing of ballot materials to members, will occur not later than one hundred days after the enactment of legislation, or, if the election process begins on September 15, 1989, not later than November 24, 1989, and will otherwise proceed as required by § 522.26(a). ODB's subsequent receipt of ballot materials from members must be completed not later than one hundred and twenty-one days after the enactment of legislation, or, if the election process begins on September 15, 1989, not later than December 15, 1989, and will otherwise proceed as required by § 522.26(c). Finally, the Board's declaration of elected candidates will occur not later than December 31, 1989, and will otherwise proceed as required by § 522.26(d).

In sum, under the new § 522.30, if legislation restructuring the entities regulating the thirft industry is enacted and jurisdiction over the election process is retained by the Board, the election process will begin not later than thirty days after the enactment of legislation or September 15, 1989, whichever comes first. If no legislation is enacted by September 15, 1989, then the election process will begin on that date. If legislation is enacted and jurisdiction of the election process is given to another entity, then that entity will have the option of using the election schedule and process included in the regulation to facilitate the election of new directors. The Board notes that the expedited schedule included in the new § 522.30 primarily diminishes the time periods applicable to the Board's actions and leaves the time periods allowed for various actions by members and nominees substantially unchanged from those set forth in §§ 522.25 and 522.26. The time period for members' return of their ballots to the Board, however, has been decreased from thirty days to twenty-one days.

The specific action taken today in the form of new § 522.30 will be of limited duration and effect. By its terms, the new rule affects only the elections held under the jurisdiction of the Board in 1989 and will expire by June 14, 1990, the day before which next year's elections could begin if the current regulations remain in effect. The Board understands the possibility that any successor agency with jurisdiction over the election of Bank directors may or may not choose to utilize the election schedule set forth here and that such agency may undertake additional regulatory action that may be of broader scope and effect than the temporary measure taken today.

Since the limited action taken herein pertains to rules for the internal organization, practice, and procedures of the Federal Home Loan Bank System, specifically those rules implementing procedures for the elections of Bank directors, the Board finds that a notice and comment procedure is not necessary under the Administrative Procedure Act ("APA"), 5 U.S.C. 553, and that the APA's thirty-day delayed effective date requirement does not apply.

Assuming *arguendo* that the APA's notice and comment and delayed effective date requirements do apply, those requirements may be waived for "good cause". 5 U.S.C. 553(b)(3)(B), 553(d)(3). *See also* 12 CFR 508.11, 508.14. The Board finds that good cause exists in this case for suspension of notice and comment and of the usual thirty-day delayed effective date. In the absence of this new regulation, the process for election of District Bank directors would begin as early as June 15, 1989, pursuant to § 522.25(a). As discussed above, the Board believes it is impracticable and contrary to the public interest to begin that election process at this time in view of the legislation pending before Congress to restructure the entities that regulate the thrift industry. Moreover, the action taken does not result in any additional burdens to third parties outside the Bank System, and is the alternative least disruptive to the internal operation of the System. Accordingly, the Board finds that the imminence of the beginning of the nominating process at a time when major restructuring legislation is expected to pass the Congress for Bank directors constitutes "good cause" for suspension of the APA's delayed effective date requirement and for adopting the following regulatory amendment effective immediately.

List of Subjects in 12 CFR Part 522

Conflicts of interest, Federal home loan banks.

Accordingly, the Board hereby amends Part 522, Subchapter B, Chapter V of Title 12, *Code of Federal Regulations*, as set forth below.

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

PART 522—ORGANIZATION OF THE BANKS

1. The Authority citation for Part 522 continues to read as follows:

Authority: Section 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); secs. 6–7, 47 Stat. 727, 730, as amended (12 U.S.C. 1426–1427); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402–403, 407, 48 Stat. 1256–1257, 1260, as amended (12 U.S.C. 1725–1726, 1730); sec. 207, 62 Stat. 692, as added by sec. 1a, 76 Stat. 1123, as amended (18 U.S.C. 207); sec. 602, 92 Stat. 2115, as amended (42 U.S.C. 8101 *et seq.*); Reorg. Plan No. 6 of 1961, *reprinted in* 12 U.S.C.A. 1437 App. (West Supp. 1986).

2. A new § 522.30 is added to Subpchapter B, Part 522 which will read as follows:

§ 522.30 Special scheduling provisions for election of directors during calendar year 1989.

(a) This section shall apply to the election of directors of the Banks during calendar year 1989 if the Board retains jurisdiction over that election process. As described herein, this section shall operate in conjunction with §§ 522.25 through 522.26 which generally govern the election of directors. However, the special provisions of this section shall govern the scheduling of elections for Bank directorship positions for 1989 in the case of any conflict with the provisions of §§ 522.25 through 522.26. This § 522.30 will expire on June 14, 1990.

(b) Not later than thirty days after the enactment of legislation restructuring the entities regulating the thrift industry or September 15, 1989, whichever comes first, the Board will take the actions specified in § 522.25(a) of this part.

(c) Not later than sixty days after the enactment of the legislation referred to in paragraph (b) of this section or October 15, 1989, whichever comes first, each member's nominating certificate must be received in the Board's Office of District Banks pursuant to the requirements of § 522.25(b) of this part.

(d) Not later than seventy days after the enactment of the legislation referred to in paragraph (b) of this section or October 25, 1989, whichever comes first, the Board will take the actions specified in § 522.25(c) of this part; except that no such letter referred to in § 522.25(c) of this part will be sent to any nominee holding an appointive directorship unless the Office of District Banks has received from him, not later than sixty days after the enactment of the legislation referred to in paragraph (b) of this section or October 15, 1989, whichever comes first, notice of his intention to be a candidate for a directorship.

(e) Not later than eighty-five days after the enactment of the legislation referred to in paragraph (b) of this section or November 9, 1989, whichever comes first, the completed questionnaire referred to in § 522.25(c) of this part must be received in the Office of District Banks.

(f) Not later than one hundred days after the enactment of the legislation referred to in paragraph (b) of this section or November 24, 1989, whichever comes first, the Board will mail to each member in each state for which an elective directorship is to be filled a set of ballot materials in a form prescribed by the Board's Office of District Banks pursuant to the requirements of § 522.26(a) of this part.

(g) Not later than one hundred and twenty-one days after the enactment of the legislation referred to in paragraph (b) of this section or December 15, 1989, whichever comes first, the ballot materials described in § 522.26(a) of this part shall be received by the Office of District Banks pursuant to the requirements of § 522.26(c) of this part. Election ballots will not be opened until after 5 p.m., e.s.t., on that date pursuant to the requirements of § 522.26(c) of this part.

(h) Not later than December 31, 1989, the Board will declare the candidates elected as directors pursuant to the requirements of § 522.26(d) of this part.

(i) If any date specified in paragraphs (b) through (h) of this section occurs on a Saturday, Sunday, or holiday, the next business day shall be included in the time allowed pursuant to the requirements of § 522.26(f) of this part.

§ 522.30 [Removed]

3. Effective on June 14, 1990, § 522.30 is removed.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-14592 Filed 6-20-89; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-216-AD; Amendment 39-6247]

Airworthiness Directives; Boeing Model 737-300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Boeing Model 737-300 series airplanes equipped with CFM International CFM56-3 and -3B engines, which requires the deletion of the paragraph from the FAA-approved Airplane Flight Manual (AFM) which permits operations over a route that contains a point farther than one hour flying time at the normal one-engine inoperative cruise speed (in still air) from an adequate airport in deviation from § 121.161 of the Federal Aviation Regulations (FAR), referred to as "extended range," "EROP," or "ETOP" operations. This amendment is prompted by reports of partial and total loss of thrust occurring during operations in moderate to heavy precipitation. This condition, if not corrected, could result in total loss of thrust and could prevent the continued safe flight and landing of the airplane.

EFFECTIVE DATE: July 27, 1989.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Simonson, Propulsion Branch, ANM-140S; telephone (206) 431-1965). Mailing address: FAA Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 737-300 series airplanes, which deletion of the paragraph requires from the FAA-approved Airplane Flight Manual (AFM) which permits operations over a route that contains a point farther than one hour flying time at the normal one-engine inoperative cruise speed (in still air) from an adequate airport in deviation from § 121.161 of the Federal Aviation Regulations (FAR), referred to as "extended range," "EROP," or "ETOP" operations, was published in the **Federal Register** on February 14, 1989 (54 FR 6691).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

All of the commenters opposed the proposed rule, claiming it to be unnecessary on the basis of mitigating circumstances or possible alternate procedures, as follows:

Two commenters suggested that one alternate method of accomplishing the same result intended by the proposal would be to deny individual operators' requests for changes in their operation specification until such time as engine improvements are incorporated. The FAA disagrees. Advisory Circular (AC) 120-42A, "Extended Range Operations with Two-Engine Airplanes (ETOPS)," paragraph 7(F), explicitly states that approval for extended range operations consists of two phases: (1) Type Design Approval—a finding by the FAA that the type design of the airplanes is sufficiently reliable for extended range operations; and (2) In-service Experience Approval—each operator desiring approval for extended range operations to show that it has obtained sufficient maintenance and operations familiarity with that particular eligible airplane/engine combination to safely conduct these operations. This airworthiness directive action concerns a problem identified with a specific engine/airplane combination that, had the problems with it been known at the initial request for type design approval for extended range operations, would have resulted in that request being denied.

Several commenters suggested that AD 88-13-51 R1, Amendment 39-6088 (53 FR 49978; December 13, 1988), concerning this same problem, is adequate and that the exposure to severe weather in terminal areas is independent of the type of mission. The FAA disagrees. The main requirement of AD 88-13-51 R1 is the avoidance of operations in adverse weather. In an ETOPS situation, however, avoidance of adverse weather may not be possible because of the relatively small number of adequate alternate airports, thereby making it very difficult to comply with the primary requirement of that AD.

Several commenters commented that the reliability of the CFM56-3 series

engine has not significantly changed and that the in-flight shutdown rate of this engine is much lower than that required by AC 120-42A. The FAA agrees with the comment, but the individual propulsion system reliability and in-flight shutdown rates are not at issue here. As stated in the NPRM, the FAA has identified an unsafe condition relating to Model 737 series airplanes equipped with those engines, and, as stated above, has determined that the only currently identified corrective action for that condition (avoidance of precipitation) may not be available for airplanes engaged in ETOP operations. Therefore, until other corrective action is identified, ETOP operations must be prohibited.

One commenter stated that there have not been any reports of loss of engine thrust during high altitude enroute flight segments. The FAA agrees, but this comment, while true, does not address the fact that, given a single engine failure in flight for whatever reason, the safety of the diversion to an alternate airport is entirely dependent on the integrity of the remaining engine. In addition, due to single engine operating altitude, etc., the diversion could be conducted in weather which could induce the flameout problem.

Another commenter stated that the power levels during single engine operation are sufficiently high to protect the engine from the flameout problem. The FAA disagrees, since the possibility must be considered that the remaining engine during diversion (i.e., flight path adjustment to ATC direction, etc.) might inadvertently have its power reduced below 45% N_1. Again, the FAA has determined that an unsafe condition exists with respect to this engine, for which no remedy is presently available other than the operational limitations required by AD 88-13-51 R1.

Another commenter suggested that the weather radar allows the crew to chart the best course through adverse weather conditions. The FAA disagrees. Due to the lack of suitable alternate airports during an ETOP mission, it may be impossible to avoid the adverse weather.

Several commenters suggested that adoption of the proposed rule would impose an adverse economic burden on foreign operators. The FAA recognizes this possibility; however, foreign operators are not necessarily bound to the requirements of this rule. Under existing bilateral airworthiness agreements, the FAA is obligated, through the AD process, to advise foreign airworthiness authorities of unsafe conditions relating to products produced in the United States, and to provide instructions determined necessary to correct the unsafe condition addressed. If, based on this action, those authorities adopt similar restrictions for aircraft over which they have authority, those restrictions may have an adverse economic effect on the affected operators. The FAA also recognizes that alternate means of compliance with the intent of this rule may also exist; a provision for approval of such means is contained in paragraph B. of the final rule.

Two commenters state that ETOP approval was a factor in selecting the Boeing Model 737-300 series airplane, and that withdrawal of this approval would severely penalize operators who had selected their airplanes on that basis. The FAA recognizes the validity of this statement. However, it is not the intent of the FAA to permanently revoke ETOP approval for this airplane. When other corrective action for the unsafe condition is identified, the FAA will consider revising this AD to reinstate ETOP approval for this airplane upon the accomplishment of that action.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 600 Model 737-300 series airplanes of the affected design in the worldwide fleet. It is estimated that there are 257 airplanes of U.S. registry; however, no U.S. operator currently has authorization for extended range operations. There would be no cost impact of this AD on those airplanes which have no reference to extended range operations in their AFM. However, for those airplanes with AFM authorization for extended range operation, approximately 1 manhour would be necessary to accomplish the actions required by this AD, and the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on an affected operator is estimated to be $40 per airplane.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities, under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regultory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Part 39 of the Federal Aviation Regulations (14 CFR Part 39) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 737-300 series airplanes, certificated in any category. Compliance required within 30 days after the effective date of this AD, unless previously accomplished.

To prevent the risk of total engine thrust loss due to unavoidable severe weather penetration during a single engine diversion or an extended range flight, accomplish the following:

A. Delete, from the FAA-approved Airplane Flight Manual (AFM), any reference to approval of suitability of the Model 737-300 airplane for use in extended range operation. This may be accomplished by deleting the existing AFM statement containing the Extended Range Operations suitability and adding a copy of this AD to the AFM. If the existing AFM does not contain such a statement, no action is necessary.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Operations Inspector (POI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington, 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective July 27, 1989.

Issued in Seattle, Washington, on June 12, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-14623 Filed 6-20-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-184-AD; Amendment 39-6240]

Airworthiness Directives; Boeing Model 737-300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Boeing Model 737-300 series airplanes, which requires repetitive inspections for chafing between the number two engine throttle cables and adjacent right wing front spar bracket. This amendment is prompted by reports of a significant number of the cables inspected and found to be worn or frayed. This condition, if not corrected, could result in throttle cable separations and subsequent loss of engine throttle control.

EFFECTIVE DATE: July 24, 1989.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen S. Bray, Propulsion Branch, ANM-140S; Telephone (206) 431-1969. Mailing address: FAA Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 737-300 series airplanes, which requires a repetitive inspection of the number two engine throttle cable, located near the right wing front spar, for chafing, was published in the Federal Register on January 13, 1989 (54 FR 1387).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The Air Transport Association (ATA) of America, on behalf of its members, requested that the initial compliance time be increased from 150 to 300 flight hours to allow operators to inspect the cable during scheduled main base maintenance where facilities are available to change the cable, if necessary. The FAA concurs that safety will not be adversely impacted and has changed the initial inspection from 150 to 300 flight hours.

ATA also requested that operators be given credit for cable inspections accomplished prior to the effective date of this AD. The FAA concurs. This was the FAA's intent by including the statement "* * * unless previously accomplished" in the applicability statement of the proposed rule. Paragraph A. of the final rule, however, has been revised to clarify this item.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described above. These changes will neither increase the economic burden on any operator nor increase the scope of the AD.

This rule is considered an interim action. The FAA may consider further rulemaking once the manufacturer has developed a modification which would prevent the cable wear.

There are approximately 500 Model 737-300 series airplanes of the affected design in the worldwide fleet. It is estimated that 175 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $14,000.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities, under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Part 39 of the Federal Aviation Regulations (14 CFR Part 39) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 737-300 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To minimize the potential for cable separation due to the number two engine throttle cable chafing against the right wing front spar bracket, accomplish the following:

A. Prior to the accumulation of 300 flight hours after the effective date of this AD, unless previously accomplished within the last 700 flight hours, and thereafter at intervals not to exceed 1,000 flight hours, gain access to the fuel shut-off cable pulley bracket near the right wing front spar station 124 and inspect the number two engine throttle cable for wear. Replace the cable, before further flight, if cable wear exceeds acceptable wear limits specified in section 20-20-31 of the Model 737 Maintenance Manual.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective July 24, 1989.

Issued in Seattle, Washington, on June 8, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-14630 Filed 6-20-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-196-AD; Amdt. 39-6241]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Boeing Model 757 series airplanes, equipped with steel brakes or interim carbon brake control systems, which requires the replacement of aluminum brake control shafts with steel brake control shafts. This amendment is prompted by reports of four brake control shafts failing in service. This condition, if not corrected, could result in the loss of braking to one side of the airplane or, potentially, the complete loss of braking.

EFFECTIVE DATE: July 24, 1989.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. David M. Herron, Systems and Equipment Branch, ANM-130S, telephone (206) 431-1949. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 757 series airplanes, equipped with steel brakes or interim carbon brake control systems, which requires the replacement of aluminum brake control shafts with steel brake control shafts, was published in the **Federal Register** on March 2, 1989 (54 FR 8758).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter had no objection to the rule as proposed.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 110 Boeing Model 757 series airplanes of the affected design in the worldwide fleet. It is estimated that 76 airplanes of U.S. registry will be affected by this AD, that it will take approximately 16 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $48,640.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities, under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Part 39 of the Federal Aviation Regulations (14 CFR Part 39) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 757 series airplanes, listed in Boeing Service Bulletin 757-32-0063, dated December 15, 1988, certificated in any category. Compliance required within the next 750 landings after the effective date of this AD or prior to the accumulation of 10,000 landings, whichever occurs later, unless previously accomplished.

To prevent the partial loss of braking and, potentially, the complete loss of braking, accomplish the following:

A. Replace aluminum brake metering valve actuation shafts with steel shafts, in accordance with Boeing Service Bulletin 757-32-0063, dated December 15, 1988.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective July 24, 1989.

Issued in Seattle, Washington, on June 8, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-14631 Filed 6-20-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-193-AD; Amdt. 39-6242]

Airworthiness Directives; Boeing Model 767 Series Airplanes Equipped With General Electric CF6 Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to Boeing Model 767 series airplanes equipped with General Electric CF6 engines, which requires the replacement of aluminum brackets with inconel brackets at three locations in each engine strut area to support the hydraulic pressure line. This amendment is prompted by reports that the manufacturer subsequently delivered six airplanes with aluminum brackets that were not included in the applicability of the original AD. This condition, if not corrected, could result in abrasion of the fuel line wall, creating a fuel leak.

EFFECTIVE DATE: July 24, 1989.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. David M. Herron, Systems and Equipment Branch, ANM-130S, telephone (206) 431-1949. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to amend an existing airworthiness directive, applicable to Boeing Model 767 series airplanes equipped with General Electric CF6 engines, which requires the replacement of aluminum brackets with inconel brackets at three locations in each engine strut area to support the hydraulic pressure line, was published in the **Federal Register** on March 2, 1989 (54 FR 8759).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter had no objections to the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are 6 additional Boeing Model 767 series airplanes of the affected design in the worldwide fleet. It is estimated that 1 airplane of U.S. registry will be affected by this AD, that it will take approximately 16 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $640.

The regulations adopted herein will have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities, under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Part 39 of the Federal Aviation Regulations (14 CFR Part 39) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by revising AD 87-18-05, Amendment 39-5722 (52 FR 34631; September 14, 1987) to read as follows:

Boeing: Applies to Model 767 series airplanes, equipped with General Electric CF6 engines, listed in Boeing Service Bulletin 767-29-0032 dated January 15, 1987, and airplanes Serial Numbers 22322, 23431, 23432, 23494, 23623, and 23624, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent cracking of the hydraulic pressure line aluminum support brackets in the engine strut, and possible fuel line penetration, accomplish the following:

A. For airplanes listed in Boeing Service Bulletin 767-29-0032, dated January 15, 1987: Within the next 3,000 hours time-in-service after October 7, 1987 (which is the effective date of Amendment 39-5722), replace aluminum brackets with inconel brackets at three locations in each engine strut area to support the hydraulic pressure line, in accordance with that service bulletin.

B. For all other airplanes: Within the next 3,000 hours time-in-service after the effective date of this amendment, replace aluminum brackets with inconel brackets at three locations in each engine strut area to support the hydraulic pressure line in accordance with Boeing Service Bulletin 767-29-0032, Revision 1, dated June 16, 1988.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment amends Amendment 39-5722, AD 87-18-05.

This amendment becomes effective July 24, 1989.

Issued in Seattle, Washington, on June 8, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-14632 Filed 6-20-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-202-AD; Amendment 39-6239]

Airworthiness Directives; McDonnell Douglas Model DC-9-81, -82, and -87 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to McDonnell Douglas Model DC-9-81, -82, and -87 series airplanes equipped with certain Loral Aircraft Braking Systems main landing gear wheels, which requires inspection of the main landing gear wheels, and modification or replacement of cracked wheels. This amendment is prompted by reports of cracks found in wheels. This condition, if not corrected, could result in wheel failure and potential damage to adjacent tires, engines, or the airplane.

EFFECTIVE DATE: July 24, 1989.

ADDRESSES: The applicable service information may be obtained from Loral Aircraft Braking Systems, 1204 Massillon Road, Akron, Ohio 44306-4186, Attention: Manager of Product Integrity, Mr. J.B. Wright. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Stacho, Aerospace Engineer, System and Equipment Branch, ANM-130L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; telephone (213) 988-5338.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to McDonnell Douglas DC-9-81, -82, and -87 series airplanes equipped with certain Loral Aircraft Braking Systems main landing gear wheels, which requires inspection of the wheels, and modification or replacement of cracked wheels, was published in the **Federal Register** on March 1, 1989 (54 FR 8544).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter requested a certain part number key boss screw be included in the AD as an alternate installation. The FAA does not concur since the commenter did not submit the data necessary for the FAA to determine if the alternate part is acceptable. However, under the provisions of paragraph C. of this AD, any operator may apply for approval of an alternate means of compliance which provides an acceptable level of safety, by submitting the necessary data to the FAA.

One commenter requested the repetitive inspection of paragraph B. of the proposed AD be revised from every fourth tire change or 1,500 landings, whichever occurs first, to every fifth tire change or 2,000 landings. The commenter contends that the initial inspection will eliminate cracked wheels from in-service airplanes and the new key boss screw installation will reduce the tendency for cracks to initiate. The FAA does not concur with this request. Although the new key boss screw installation does reduce the tendency for crack initiation, the FAA has determined that inspection of the key boss screw holes for corrosion at fixed intervals is necessary. In developing an appropriate compliance time for this AD action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the practical aspect of incorporating the required inspections into affected operators' maintenance schedules in a timely manner. FAA has reviewed data submitted by the airframe and wheel manufacturers as to the recommended inspection intervals and has determined that the inspection intervals as proposed are necessary to provide an acceptable level of safety.

One commenter recommended the proposed AD not be made mandatory, but if adopted, require a one-time inspection only. The commenter contends that operators are now inspecting the key boss screw holes (not previously addressed in the wheel manufacturer's maintenance manual) and, since the maintenance manual is being changed to address this, adherence to the maintenance manual will ensure inspection for cracked wheels. The FAA does not concur. As discussed above, the FAA has determined that it is necessary to require both the initial and the repetitive inspections to ensure that cracks are found and that corrective action is taken. While the revision to the manufacturer's maintenance manual describes these inspections, it is not, by itself, mandatory. Therefore, the AD is necessary to ensure that the inspections are performed.

Since issuance of the proposal, Loral Aircraft Braking Systems has issued Revision 1 to Service Bulletin MD-81-32-1, MD-82-32-1, and MD-87-32-1, dated November 18, 1988. This revision provides for an additional optional key boss screw to be used when replacement is necessary, and includes additional clarifying changes. The final rule has been revised to reference this later revision of the service bulletin.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 170 Model DC-9-81, -82, and -87 series airplanes of the affected design in the worldwide fleet. It is estimated that 32 airplanes of U.S. registry will be affected by this AD, that it will take approximately 10 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $12,800.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities, under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Part 39 of the Federal Aviation Regulations, (14 CFR Part 39) as follows:

PART 39 [AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [AMENDED]

2. Section 39.13 is amended by adding the following new airworthiness directive;

McDonnell Douglas: Applies to Model DC-9-81, -82, and -87 series airplanes, equipped with Loral Aircraft Braking Systems main landing gear wheels, Part Number 5004320-2, -3, -4, -5, -6, and -7, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent wheel failure, accomplish the following

A. Prior to the accumulation of 2,000 landings on the wheel or within the next 350 landings after the effective date of this AD, whichever occurs later, unless the wheel was inspected within the last 700 landings, inspect the wheel assembly for cracks in accordance with Loral Service Bulletin MD 61-32-1, MD-82-32-1, and MD-87-32-1, Revision 1, dated November 15, 1988.

1. If no cracks are found, replace the key boss screws in accordance with the Loral Service Bulletin.

2. If crack(s) are found, replace the wheel before further flight.

B. Within 90 days after the effective date of this AD, revise the FAA-approved maintenance program to include inspection of the wheel assembly, and replacement, if necessary, as specified in paragraph A., above, at every fourth tire change or every 1,500 landings, whichever occurs first.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who, will either concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Loral Aircraft Braking Systems, 1204 Massillon Road, Akron, Ohio 44306-4186, Attention: Manager of Product Integrity, Mr. J.B. Wright. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This amendment becomes effective July 24, 1989.

Issued in Seattle, Washington, on June 8, 1989.

Darrell M. Pederson,

Acting Manager Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-14633 Filed 6-20-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 10

[Docket No. 81146-9134]

RIN 0651-AA41

Exhaustion of Administrative Remedies in Patent and Trademark Office Disciplinary Proceedings

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: This final rule sets forth amendments to 37 CFR 10.155 and 10.157. The purpose of the amendments is to clarify that a respondent dissatisfied with the initial decision by the administrative law judge in a Patent and Trademark Office (PTO) disciplinary proceeding must exhaust available administrative remedies, i.e., appeal to the Commissioner of Patents and Trademarks, before seeking judicial review under 35 U.S.C. 32.

EFFECTIVE DATE: August 1, 1989.

FOR FURTHER INFORMATION CONTACT: Harris A. Pitlick by telephone at (703) 557-4035 or by mail marked to his attention and addressed to Box 8, Commissioner of Patents and Trademarks, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: It is possible that present rules may be interpreted not to explicitly require a respondent dissatisfied with the decision of the administrative law judge (initial decision) in a PTO disciplinary proceeding to file an appeal with the Commissioner of Patents and Trademarks as a condition precedent to filing a petition for review in the United States District Court for the District of Columbia under 35 U.S.C. 32.

Under 37 CFR 10.154(a), in the absence of an appeal to the Commissioner, the initial decision, without further proceedings, becomes the decision of the Commissioner thirty (30) days therefrom. Local Rule 213 of the United States District Court for the District of Columia, 37 CFR 10.157 and 35 U.S.C. 32, together provide for review of the final decision of the Commissioner by a petition in that court within 30 days of the date of that decision. Thus, the rules could be construed to permit a respondent dissatisfied with the initial decision to bypass review by the Commissioner and directly seek judicial review within 60 days of the date of the initial decision.

The purpose of 37 CFR 10.154-10.157 is to outline the steps for seeking review of an initial decision in a disciplinary proceeding. There is no provision for bypassing a determination by the Commissioner unless both parties accept the decision and do not desire any further review of the initial decision. Sections 10.155 and 10.157 have been amended to clarify that a respondent must exhaust available administrative remedies by appeal to the Commissioner before judicial review can be considered ripe.

Subsequent to a notice of proposed rulemaking setting forth the proposed amendments now adopted by this Final Rule, an amendment to 37 CFR 10.156 was adopted. *See* 54 FR 6659 (February 14, 1989). Section 10.156 now explicitly permits the respondent or the Director to make a single request for reconsideration or modification of the Commissioner's decision on appeal from an initial decision. Nothing in that rule, or in the rules adopted by this Final Rule, requires a respondent dissatisfied with the Commissioner's decision to seek reconsideration thereof. Thus, a respondent dissatisfied with the

Commissioner's decision may directly seek judicial review under 35 U.S.C. 32. In other words, for purposes of 37 CFR Part 10, exhaustion of administrative remedies is complete upon appeal to the Commissioner from the initial decision.

A notice of proposed rulemaking was published in the **Federal Register** on December 28, 1988 (53 FR 52436) and the *Official Gazette* on January 17, 1989 (1098 O.G. 327). Interested parties were requested to submit written comments on or before February 27, 1989. Comments from two (2) sources were received. None of the suggestions made in the comments have been adopted. A detailed analysis of the comments follows:

Comment: The proposed rules do not go quite far enough in order to comply with 5 U.S.C. 704, which specifies that—

> agency action otherwise final is final for purposes of this section whether or not there has been presented or determined an application * * * unless the agency otherwise requires by rule and provides that the action meanwhile is inoperative, for an appeal to superior agency authority.

Since no rule specifies that the initial decision of the administrative law judge shall be inoperative, a sentence should be added to the end of 37 CFR 10.154(a) stating that pending an appeal to the Commissioner in accordance with § 10.155 the decision of the administrative law judge will be inoperative. This would assure compliance with 5 U.S.C. 704 and remove any concern by practitioners subject to disciplinary proceedings that the initial decision has any binding effect prior to action by the Commissioner.

Response: The suggestion has not been adopted since it is not necessary. The above-quoted language from 5 U.S.C. 704 first appeared as part of section 10(c) of the original Administrative Procedure Act, 5 U.S.C. 1009(c) (Act of June 11, 1946, ch. 324, 10(c), 60 Stat. 243). The meaning of the language in that section is explained in the Attorney General's Manual on the Administrative Procedure Act (1947) at 101–05. The purpose of the language quoted in the comment was to provide for judicial review at the time when agency action becomes operative, rather than at some later time, such as when further review available in the agency became exhausted. Under the regulatory scheme for review following an initial decision in a PTO disciplinary proceeding, agency action—i.e., imposition of discipline on a practitioner before the Office—cannot become operative before 20 days after the date of entry of the Commissioner's decision under 37 CFR 10.156(a) or, if a request for reconsideration has been filed within those 20 days, before the date of entry of the decision on reconsideration under 37 CFR 10.156(c). In other words, the initial decision cannot become operative until such time that judicial review becomes available to the affected practitioner. The suggested change to 37 CFR 10.154(a) is, hence, unnecessary.

Comment: The evidence upon which the General Counsel has certified to the Chief Counsel for Advocacy, Small Business Administration that this proposed rule change is not expected to have a significant adverse economic impact on a substantial number of small entities has not been disclosed to the public for review and comment.

Response: No law requires that such evidence, if any, be disclosed to the public for review and comment. *See* 5 U.S.C. 605(b). The basis for the certification was that the proposed rule changes would merely make explicit what was implicitly intended by the rules as originally constituted.

Comment: The proposed rule change will have a significant adverse economic impact on a substantial number of small entities because it prolongs the time for judicial review for a person who has been refused registration to practice before the Office.

Response: Both the proposed rule changes and the rules affected thereby relate solely to practitioners already registered or otherwise permitted to practice before the Office and who have been subject to a PTO disciplinary proceeding. The rules and rule changes have no impact, economic or otherwise, on persons refused registration or permission to practice before the Office.

Other Considerations

The rule change is in conformity with the requirements of the Regulatory Flexibility Act (Pub. L. 96–354), Executive Orders 12291 and 12612 and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

The General Counsel has certified to the Chief Counsel for Advocacy, Small Business Administration that this rule change is not expected to have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, Pub. L. 96–354) because it merely makes explicit what was implicitly intended by the rules as originally constituted. Additionally, no more than a few small entities in a given year out of over 13,000 registered patent attorneys and agents and an unknown number of trademark attorneys are expected to be subject to an initial decision in a PTO disciplinary proceeding. Whatever the number of small entities, however, there would not be expected to be a significant impact on them because agency action does not take effect until after a final decision is made by the Commissioner.

The Patent and Trademark Office has determined that this proposed rule change is not a major rule under Executive Order 12291. The annual effect on the economy will be less than $100 million. There will be no major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. There will be no adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Patent and Trademark Office has also determined that this notice has no federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

This rule change does not contain a collection of information subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 37 CFR Part 10

Administrative practice and procedure, Courts, Inventions and patents, Lawyers, Trademarks.

For the reasons set out in the preamble and under the authority granted to the Commissioner of Patents and Trademarks by 35 U.S.C. 6, the Patent and Trademark Office amends 37 CFR Part 10 as follows:

PART 10—REPRESENTATION OF OTHERS BEFORE THE PATENT AND TRADEMARK OFFICE

1. The authority citation for 37 CFR Part 10 continues to read as follows:

Authority: 5 U.S.C. 500; 15 U.S.C. 1123; 35 U.S.C. 6, 31, 32, 41.

2. Section 10.155 is amended by adding new paragraph (d) as follows:

§ 10.155 Appeal to the Commissioner.

* * * * *

(d) In the absence of an appeal by the Director, failure by the respondent to appeal under the provisions of this section shall be deemed to be both acceptance by the respondent of the initial decision and waiver by the respondent of the right to further administrative or judicial review.

3. Section 10.157 is amended by revising paragraph (a) as follows:

§ 10.157 Review of Commissioner's final decision.

(a) Review of the Commissioner's final decision in a disciplinary case may be had, subject to § 10.155(d), by a petition filed in the United States District Court for the District of Columbia. See 35 U.S.C. 32 and Local Rule 213 of the United States District Court for the District of Columbia.

* * * * *

Dated: May 26, 1989.

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 89–14673 Filed 6–20–89; 8:45 am]

BILLING CODE 3510–16–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 1 and 2

Inventions and Patents, Authority Delegations

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The Department of Veterans Affairs (VA) amends its regulations to implement Executive Order 12591 which requires that the heads of Federal Agencies delegate authority to their government-owned, government-operated Federal laboratories to enter into cooperative research and development and licensing agreements with other Federal laboratories, State and local governments, universities, and the private sector. These final regulations effectuate the requisite delegation of authority to directors of VA Medical Centers, as heads of VA laboratories, to enter into such agreements.

EFFECTIVE DATE: June 21, 1989.

FOR FURTHER INFORMATION CONTACT: Diana M. Bloss, Deputy Assistant General Counsel (024B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–3651.

SUPPLEMENTARY INFORMATION: Executive Order 12591 was issued in response to the Federal Technology Transfer Act of 1986, Pub. L. 99–502, which gave discretionary authority to heads of Federal agencies to allow directors of Federal laboratories to enter into cooperative research and development and licensing agreements. VA Medical Centers are considered Federal laboratories under the Act. In conformance with Executive Order 12591 and the Federal Technology Transfer Act of 1986, this final regulation amends existing regulations to delegate authority to Directors of VA medical centers, to enter into cooperative research and development and licensing agreements consistent with the Executive Order and the Act. The delegation in question is a rule of VA organization, procedure, or practice, therefore, notice of proposed regulatory development and delayed effective date is unnecessary in this instance (5 U.S.C. 553(d)(3); 38 CFR 1.12).

Since notice of proposed rulemaking is unnecesary and will not be published, these amendments do not come within the term "rule" as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2), and are therefore not subject to the requirements of the Act. Nevertheless, these amendments will not have a significant economic effect on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612.

The Secretary of Veterans Affairs hereby certifies that these regulations do not contain a major rule as the term is defined by Executive Order 12291, Federal Regulation. These regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs and prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete in domestic or export markets.

These amdnemdnts do not impose any additional reporting or recordkeeping requirements on the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501 et. seq.

List of Subjects

38 CFR Part 1

Administrative practice and procedure, inventions and patents.

38 CFR Part 2

Authority delegations.

Approved: June 14, 1989.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR Part 1, General, and 38 CFR Part 2, Delegations of Authority, are amended as follows:

PART 1—[AMENDED]

1. Section 1.653 is revised to read as follows:

§ 1.653 Delegation of authority.

The General Counsel is authorized to act for the Secretary of Veterans Affairs in matters concerning patents and inventions, unless otherwise required by law. The Directors of VA Medical Centers are delegated the authority to enter into cooperative research and development and license agreements under the Federal Technology Transfer Act of 1986, Pub. L. 99–502. The determination of rights to invention as between the Government and the employee where there is no cooperative research and development agreement shall be made by the General Counsel, in accordance with 37 CFR Part 500.

(Authority: E.O. 12591)

§§ 1.654, 1.655 [Amended]

2. In §§ 1.654 and 1.655 remove the words "Veterans Administration" wherever they appear and add, in their place, the words "Department of Veterans Affairs".

PART 2—[AMENDED]

3. Section 2.83 is revised to read as follows:

§ 2.83 General Counsel is authorized to act for the Secretary of Veterans Affairs in matters concerning patents and inventions, unless otherwise required by law. The Directors of VA Medical Centers are delegated the authority to enter into cooperative research and development and licensing agreements under the Federal Technology Transfer Act of 1986, Pub. L. 99–502. The determination of rights to an invention as between the Government and the employee where there is no cooperative research and development agreement shall be made by the General Counsel in accordance with 37 CFR Part 500.

This delegation of authority is identical to § 1.653 of this chapter.

(Authority: E.O. 12591)

[FR Doc. 89–14621 Filed 6–20–89; 8:45 am]

BILLING CODE 8320–01–M

38 CFR Part 3

RIN 2900–AD53

Diseases Subject to Presumptive Service Connection, and Payment of the Special Allowance Under Section 156 of Pub. L. 97–377

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The Department of Veterans Affairs (VA) has amended two regulations to implement recently enacted legislation. The chronic

diseases subject to presumption of service connection and the diseases subject to presumption of service connection for certain prisoners of war (POWs) are expanded. Presumptions of service connection are established for certain cancers for radiation-exposed veterans. The prohibition against payments under the Restored Entitlement Program for Survivors (REPS) for one group of claimants has been removed. The intended effect of these changes is to expand eligibility for certain claimants in accordance with the law.

EFFECTIVE DATE: These changes are effective May 20, 1988, the date of enactment of Pub. L. 100-322, except for § 3.309(d) which is effective May 1, 1988, in accordance with Pub. L. 100-321.

FOR FURTHER INFORMATION CONTACT: Joel Drembus, Legal Consultant, Regulations Staff, Compensation and Pension Service (211B), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-3005.

SUPPLEMENTARY INFORMATION: On pages 50547-50550 of the **Federal Register** of December 16, 1988, VA published proposals to amend §§ 3.309 and 3.812 to implement Pub. L. 100-321 and Pub. L. 100-322. A correction was published on page 733 of the **Federal Register** of January 9, 1989. Interested persons were invited to submit comments, suggestions, or objections by January 17, 1989. Three comments were received.

One commenter noted that should the amendments to §§ 3.309 and 3.111b (the latter having been published on pages 48551-48552 of the **Federal Register** of December 1, 1988) become final, five of the 13 diseases that could be service-connected by presumption (lymphomas (except Hodgkin's disease), and cancers of the pharynx, small intestine, bile ducts, and gall bladder) would not be considered to be "radiogenic" in § 3.311b(b)(2). It was suggested that the five diseases be added to the list of "radiogenic" diseases in § 3.311b(b)(2) as there is sound scientific and medical evidence to do so.

As the suggested additions to the list of "radiogenic" diseases are outside the scope of the original proposal and have not been subject to public comment, they will be given separate consideration. We will consult with the Veterans' Advisory Committee on Environmental Hazards and will consider whether there is sound scientific and medical evidence to warrant our adding any or all of the five diseases to the list of "radiogenic" diseases. Should we conclude that any or all of the five should be "radiogenic," we will implement a new rulemaking procedure for the further amendment of § 3.311b(b)(2).

Another commenter suggested that § 3.309(d) be amended to include participation in atmospheric nuclear tests conducted by nations other than the United States. We do not concur as the congressional intent expressed in the introductory paragraph to Pub. L. 100-321, in pertinent part, was to provide a presumption of service connection to veterans who participated in atmospheric or underwater nuclear tests as part of the United States nuclear weapons testing program. We have amended § 3.309(d)(4)(ii)(A) to reflect such congressional intent.

A third commenter suggested that the term, "radiation-risk activity," be amended to include the following: (1) Members of any crew aboard a ship or aircraft not assigned to the primary test site who participated in support activities related to the atmospheric testing of nuclear weapons; (2) Members of any military organization involved in the transportation, handling, maintenance, arming of nuclear weapons and/or investigation of nuclear accidents; and (3) Any person who participated in human experimentation involving the use of any radioactive material. As to the first group, such persons are included in § 3.309(d)(4)(iv). We do not concur with including the second and third groups as such persons' exposure is not included in the statutory definition of "radiation-risk activity."

That commenter also referred to diseases, other than the 13 listed in Pub. L. 100-321, which should be included, and objected to the imposition of mandatory latency periods. The commenter recognized, however, that VA cannot enlarge or expand upon statutory criteria, and stated such comments were included "to complete the record."

The same commenter also suggested that prisoners of war who were not interned within 75 miles of Hiroshima or 150 miles of Nagasaki, but who were forced to work at factories within those areas at the time the atomic bombs were dropped on those cities, should be included in the regulation. We concur and have amended § 3.309(d)(4)(vii) to include former prisoners of war who, while not interned within 75 miles of Hiroshima or 150 miles of Nagasaki, can affirmatively show they worked within those areas.

Athough we received no comments regarding our proposed amendment of § 3.812, our review noted that section 1403 of Pub. L. 100-687 amended Subchapter II of Chapter 13, Title 38, United States Code, by adding section 418 and striking out section 410(b). We are therefore making a technical amendment to § 3.812(c)(2) by deleting "410(b)" and inserting "418."

We appreciate the comments and suggestions of those who responded to publication of the proposed rules. The proposed rules are adopted with the amendments noted above. The final rules are set forth below.

The Secretary hereby certifies that these final regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. The reason for this certification is that these final regulations would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these regulations are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, we have determined that these final regulations are non-major for the following reasons:

(1) They will not have an annual effect on the economy of $100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program numbers are 64.101, 64.109, and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: May 24, 1989.

Edward J. Derwinski,

Secretary of Veterans Affairs.

PART 3—[AMENDED]

38 CFR Part 3, Adjudication, is amended as follows:

1. In § 3.309(b), in the list of diseases, remove the word "Filiariasis" and add, in its place, the word "Filariasis".

2. In § 3.309, paragraphs (a) and (c) are amended by adding to the list of diseases contained in those paragraphs and paragraph (d) is added, to read as follows:

§ 3.309 Disease subject to presumptive service connection.

(a) * * *

Anemia, primary.
Arteriosclerosis.
Arthritis.
Atrophy, progressive muscular.
Brain hemorrhage.
Brain thrombosis.
Bronchiectasis.
Calculi of the kidney, bladder, or gallbladder.

Cardiovascular-renal disease, including hypertension. (This term applies to combination involvement of the type of arteriosclerosis, nephritis, and organic heart disease, and since hypertension is an early symptom long preceding the development of those diseases in their more obvious forms, a disabling hypertension within the 1-year period will be given the same benefit of service connection as any of the chronic diseases listed.)

Cirrhosis of the liver.
Coccidioidomycosis.
Diabetes mellitus.
Encephalitis lethargica residuals.
Endocarditis. (This term covers all forms of valvular heart disease.)
Endocrinopathies.
Epilepsies.
Hansen's disease.
Hodgkin's disease.
Leukemia.
Lupus erythematosus, systemic. * * *

* * * * * *

(c) * * *

Avitaminosis.
Beriberi (including beriberi heart disease).
Chronic dysentery.
Helminthiasis.
Malnutrition (including optic atrophy associated with malnutrition).
Pellagra.
Any other nutritional deficiency.
Psychosis.
Any of the anxiety states.
Dysthymic disorder (or depressive neurosis).

Organic residuals of frostbite, if it is determined that the veteran was interned in climatic conditions consistent with the occurrence of frostbite.

Post-traumatic osteoarthritis.
Irritable bowel syndrome.
Peptic ulcer disease.
Peripheral neuropathy except where directly related to infectious causes.

(Authority: 38 U.S.C. 312)

(d) *Diseases specific to radiation-exposed veterans.* (1) The diseases listed in paragraph (d)(2) of this section shall be service-connected if they become manifest in a radiation-exposed veteran as defined in paragraph (d)(4) of this section to a degree of 10 percent or more within the presumptive period specified in paragraph (d)(3) of this section, provided the rebuttable presumption provisions of §3.307 of this part are also satisfied.

(2) The diseases referred to in paragraph (d)(1) of this section are the following:

(i) Leukemia (other than chronic lymphocytic leukemia).
(ii) Cancer of the thyroid.
(iii) Cancer of the breast.
(iv) Cancer of the pharynx.
(v) Cancer of the esophagus.
(vi) Cancer of the stomach.
(vii) Cancer of the small intestine.
(viii) Cancer of the pancreas.
(ix) Multiple myeloma.
(x) Lymphomas (except Hodgkin's disease).
(xi) Cancer of the bile ducts.
(xii) Cancer of the gall bladder.
(xiii) Primary liver cancer (except if cirrhosis or hepatitis B is indicated).

(3) The presumptive period referred to in paragraph (d)(1) of this section is:

(i) In the case of leukemia (other than chronic lymphocytic leukemia), the 30-year period beginning on the last date on which the veteran participated in a radiation-risk activity.

(ii) In the case of other disease listed in paragraph (d)(2) of this section, the 40-year period beginning on the last date on which the veteran participated in a radiation-risk activity.

(4) For purposes of this section:

(i) The term "radiation-exposed veteran" means a veteran who, while serving on active duty, participated in a radiation-risk activity.

(ii) The term "radiation-risk activity" means:

(A) Onsite participation in a test involving the atmospheric detonation of a nuclear device by the United States.

(B) The occupation of Hiroshima or Nagasaki, Japan, by United States forces during the period beginning on August 6, 1945, and ending on July 1, 1946.

(C) Internment as a prisoner of war in Japan (or service on active duty in Japan immediately following such internment) during World War II which resulted in an opportunity for exposure to ionizing radiation comparable to that of the United States occupation forces in Hiroshima or Nagasaki, Japan, during the period beginning on August 6, 1945, and ending on July 1, 1946.

(iii) The term "atmospheric detonation" includes underwater nuclear detonations.

(iv) The term "onsite participation" means:

(A) During the official operational period of an atmospheric nuclear test, presence at the test site, or performance of official military duties in connection with ships, aircraft or other equipment used in direct support of the nuclear test.

(B) During the six month period following the official operational period of an atmospheric nuclear test, presence at the test site or other test staging area to perform official military duties in connection with completion of projects related to the nuclear test including decontamination of equipment used during the nuclear test.

(C) Service as a member of the garrison or maintenance forces on Eniwetok during the periods June 21, 1951 through July 1, 1952, August 7, 1956 through August 7, 1957 or November 1, 1958 through April 30, 1959.

(D) Assignment to official military duties at Naval Shipyards involving the decontamination of ships that participated in Operation Crossroads.

(v) The term "operational period" means:

(A) For Operation *TRINITY* the period July 16, 1945 through August 6, 1945.

(B) For Operation *CROSSROADS* the period July 1, 1946 through August 31, 1946.

(C) For Operation *SANDSTONE* the period April 15, 1948 through May 20, 1948.

(D) For Operation *RANGER* the period January 27, 1951 through February 6, 1951.

(E) For Operation *GREENHOUSE* the period April 8, 1951 through June 20, 1951.

(F) For Operation *BUSTER-JANGLE* the period October 22, 1951 through December 20, 1951.

(G) For Operation *TUMBLER-SNAPPER* the period April 1, 1952 through June 20, 1952.

(H) For Operation *IVY* the period November 1, 1952 through December 31, 1952.

(I) For Operation *UPSHOT-KNOTHOLE* the period March 17, 1953 through June 20, 1953.

(J) For Operation *CASTLE* the period March 1, 1954 through May 31, 1954.

(K) For Operation *TEAPOT* the period February 18, 1955 through June 10, 1955.

(L) For Operation *WIGWAM* the period May 14, 1955 through May 15, 1955.

(M) For Operation *REDWING* the period May 5, 1956 through August 6, 1956.

(N) For Operation *PLUMBBOB* the period May 28, 1957 through October 22, 1957.

(O) For Operation *HARDTACK I* the period April 28, 1958 through October 31, 1958.

(P) For Operation *ARGUS* the period August 27, 1958 through September 10, 1958.

(Q) For Operation *HARDTACK II* the period September 19, 1958 through October 31, 1958.

(R) For Operation *DOMINIC I* the period April 25, 1962 through December 31, 1962.

(S) For Operation *DOMINIC II/ PLOWSHARE* the period July 6, 1962 through August 15, 1962.

(vi) The term "occupation of Hiroshima or Nagasaki, Japan, by United States forces" means official military duties within 10 miles of the city limits of either Hiroshima or Nagasaki, Japan, which were required to perform or support military occupation functions such as occupation of territory, control of the population, stabilization of the government, demilitarization of the Japanese military, rehabilitation of the infrastructure or deactivation and conversion of war plants or materials.

(vii) Former prisoners of war who had an opportunity for exposure to ionizing radiation comparable to that of veterans who participated in the occupation of Hiroshima or Nagasaki, Japan, by United States forces shall include those who, at any time during the period August 6, 1945, through July 1, 1946:

(A) Were interned within 75 miles of the city limits of Hiroshima or within 150 miles of the city limits of Nagasaki, or

(B) Can affirmatively show they worked within the areas set forth in paragraph (d)(4)(vii)(A) of this section although not interned within those areas, or

(C) Served immediately following internment in a capacity which satisfies the definition in paragraph (d)(4)(vi) of this section, or

(D) Were repatriated through the port of Nagasaki.

(Authority: 38 U.S.C. 312)

3. In § 3.812, paragraph (c)(2) is revised, paragraph (c)(3) is removed and old paragraph (c)(4) is redesignated as new paragraph (c)(3) to read as follows:

§ 3.812 Special allowance payable under section 156 of Pub. L. 97-377.

* * * * *

(c) * * *

(2) Claimants eligible for death benefits under 38 U.S.C. 418. The deaths in such cases are not service connected.

(3) Claimants whose claims are based on an individual's service in:

(i) The Commonwealth Army of the Philippines while such forces were in the service of the Armed Forces pursuant to the military order of the President dated July 26, 1941, including recognized guerrilla forces (see 38 U.S.C. 107).

(ii) The Philippine Scouts under section 14, Pub. L. 190, 79th Congress (see 38 U.S.C. 107).

(iii) The commissioned corps of the Public Health Service (specifically excluded by section 156 of Pub. L. 97-377), or

(iv) The National Oceanic and Atmospheric Administration (specifically excluded by section 156 of Pub. L. 97-377).

* * * * *

[FR Doc. 89-14622 Filed 6-20-89; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. 97; FRL-3602-4]

Approval and Promulgation of Implementation Plans; Revision to the State of New York Implementation Plan for Ozone

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is approving the State Implementation Plan (SIP) revision submitted by the State of New York. These revisions will reduce emissions of volatile organic compounds from gasoline by limiting the Reid Vapor Pressure (RVP) of gasoline sold between June 30 and September 15 in 1989 and between May 1 and September 15 of each year thereafter to 9 pounds per square inch. EPA is also finding that the New York RVP regulations are "necessary to achieve" the national ambient air quality standard (NAAQS) for ozone and are therefore excepted from preemption under section 211 of the Clean Air Act. The intended effect of this action is to make necessary progress towards attainment of the ozone standard as expeditiously as practicable as required under the Clean Air Act.

EFFECTIVE DATE: This action will be effective June 30, 1989.

ADDRESSES: Copies of the State submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, 26 Federal Plaza, Room 1005, New York, New York 10278.

Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW, Washington, DC 20460.

New York State Department of Environmental Conservation, Division of Air Resources, 50 Wolf Road, Albany, New York 12233.

FOR FURTHER INFORMATION CONTACT: Mr. William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, 26 Federal Plaza, Room 1005, New York, New York 10278, (212) 264-2517.

SUPPLEMENTARY INFORMATION:

Introduction

This notice describes EPA's decision to approve revisions to the New York SIP which limit the volatility of gasoline from June 30 to September 15 in 1989 and from May 1 to September 15 every year thereafter. The remainder of this preamble is divided into four sections. The first provides the background for this action, with respect to both chronology and the broad issues involved. The second section presents today's action and EPA's rationale. The third section summarizes the comments received on the proposed action and EPA's responses to them. The final section discusses the enforceability of New York's regulation with regard to the test methods as discussed in EPA's proposed rulemaking notice.

Background

On November 12, 1987, the Commissioners of the Northeast States for Coordinated Air Use Management (NESCAUM) signed a Memorandum of Understanding expressing their intention to reduce the Reid Vapor Pressure (RVP) of gasoline to 10 pounds per square inch (psi) starting in the summer of 1988 and to 9 psi in the summer of 1989 and continuing every ozone season thereafter. Since there were delays in adopting necessary regulations, the 1988 limit of 10 psi was eliminated and New York passed a regulation limiting the RVP of gasoline to 9 psi from May 1 to September 15 starting in 1989 and continuing each year thereafter. On January 31, 1989, New York submitted a SIP revision to EPA for approval to implement this provision.

On March 22, 1989, EPA published a **Federal Register** notice (54 FR 11868) taking final action on national regulation of RVP, to take effect this summer. The maximum allowed summertime RVP in New York under the federal regulation is 10.5 psi. Under section 211(c)(4)(A) of the Clean Air Act (the Act), EPA's final action preempted inconsistent state control of RVP, except in California. In its final action, EPA noted that states could be exempted from preemption

only if EPA finds it is "necessary" to achieve the NAAQS as provided in section 211(c)(4)(C) of the Act. Section 211(c)(4)(C) of the Act states: "A state may prescribe and enforce, for purposes of motor vehicle emission control, a control or prohibition respecting the use of a fuel or fuel additive in a motor vehicle or motor vehicle engine if an applicable implementation plan for such State under section 110 so provides. The Administrator may approve such provision in an implementation plan, or promulgate an implementation plan containing such a provision, only if he finds that the State control or prohibition is necessary to achieve the national primary or secondary ambient air quality standard which the plan implements." In its March 22, 1989 notice, EPA made specific note of the NESCAUM states' initiatives and the conditions for EPA approval of state RVP regulations.

On March 28, 1989, EPA published a **Federal Register** notice (54 FR 12856) proposing approval of the New York SIP revision. EPA also proposed to find that these revisions were "necessary" to achieve the NAAQS for ozone within the meaning of section 211(c)(4)(C) of the Act and, thus, meet the requirements for an exception to Federal preemption.

Description of Today's Action

EPA today approves revisions to the New York SEP which limit gasoline volatility to 9 psi between June 30 and September 15 in 1989 and between May 1 and September 15 in each year thereafter. The New York program includes authority for the State to issue waivers to invididual suppliers if necessary to avoid supply dislocations. EPA is approving the program as a whole, including any waivers the State might issue under this authority. This aspect of EPA's approval is discussed in full under section 9 of the next portion of this notice describing EPA's response to comments.

EPA is also explicitly finding that the New York revisions are "necessary to achieve" the NAAQS within the meaning of section 211(c)(4)(C) of the Act. This means that New York's RVP regulations are not preempted by the Federal RVP regulations promulgated on March 22, 1989.

EPA's rationale for this action and its effective date are presented below. In this context many issues raised by commenters on the proposal will be addressed. The remaining comments will be discussed in the next portion of this notice.

In approving the New York RVP SIP revisions, EPA must consider requirements imposed by two different sections of the Clean Air Act. As with all SIP revisions, section 110 provides the requirements for approval into the SIP. In this case, since EPA has promulgated Federal RVP regulations, section 211(c)(4)(A) preempts inconsistent State control. However, section 211(c)(4)(C) provides that the Administrator may except a State RVP control program from preemption if he finds it is "necessary" to achieve the NAAQS. Thus, the New York revisions must satisfy both section 110 and section 211 requirements to gain approval.

EPA has concluded that the New York RVP regulations are "necessary" to achieve the ozone NAAQS. In reaching this conclusion EPA has followed the test first articulated in approving the Maricopa County, Arizona SIP (53 FR 17413 (May 19, 1988) and 53 FR 30228 (August 10, 1988)) and later presented in the proposed approval of the New York revisions. EPA stated that if, after accounting for the possible reductions from all other reasonable control measures, New York could demonstrate that RVP controls are still required to achieve the standard, then RVP controls are necessary within the meaning of section 211(c)(4)(C). EPA will not interpret that provision to require a State to impose more drastic measures such as driving prohibitions or source shutdowns before it can adopt its own fuel control program.

As discused in the notice of proposed rulemaking (NPR), the record indicates that the New York City Metropolitan Area (NYCMA) needs VOC emission reductions on the order of at least 33.8 percent from 1987 inventory levels to achieve the standard. The State reviewed approximately 25 measures suggested by EPA as reasonable in addition to RVP control to 9 psi and found they could together potentially achieve an 11.7 percent reduction from 1987 levels in the NYCMA. Enhancements to the State's vehicle inspection and maintenance (I/M) program could produce an additional 2.4 percent reduction. As indicated at proposal, while EPA's regulation of gasoline to 10.5 psi reduces the emission reduction attributable to the State regulation, it does not affect the bottom line, a shortfall will still exist. EPA's technical review of the data presented in the State submission and by the commenters affirms the conclusion that a shortfall will exist even with all reasonable State and Federal measures.

EPA continues to believe that the fact that the State RVP regulation might not by itself fill the shortfall and hence by itself achieve the standard does not mean the rule is not "necessary to achieve" the NAAQS. It is simple logic that "necessary" is not the same as "sufficient". EPA believes that the "necessary to achieve" standard must be interpreted to apply to measures which are needed to reduce ambient levels when no other measures that EPA or the State has found reasonable are available to achieve this reduction. Beyond such identified "reasonable" measures, EPA need look at other measures before RVP control, only if it has clear evidence that RVP control would have greater adverse impacts than those alternatives. EPA has no such evidence here. Therefore, EPA can defer to New York's apparent view that RVP control is the next less costly (or is itself a reasonable) measure. Thus, EPA concludes that New York's RVP regulations are "necessary" to achieve the NAAQS.

Summary of Public Comments and EPA's Responses

The major issues discussed in the comments are: (1) What constitutes a finding of "necessary to achieve" the standard under section 211(c)(4)(C); (2) whether there has been an adequate technical demonstration that controlling RVP to 9 psi is "necessary" (i.e., whether the threshold for exemption from preemption has been crossed); (3) the scope of EPA's discretion assuming a finding that State RVP controls are necessary to achieve the standard; (4) what effect the 9 RVP limit in New York will have on the cost and supply of gasoline in the State and the Northeast; (5) driveability and safety concerns; (6) whether there is an ozone problem in New York; (7) whether the State has an adequate enforcement program or sufficient resources to implement the State regulations; (8) whether the State provided "reasonable opportunity" for public comment; (9) what exemptions or waivers from the State regulations should be allowed; (10) the appropriate timing for making the State regulation effective; and (11) whether EPA should withdraw or repropose this action or reopen the public comment period in light of EPA's recent promulgation of Federal RVP regulations and other alleged deficiencies in EPA's proposed action. Each issue is explored in detail below.

1. What constitutes a finding of "necessary to achieve" the standard under section 211(c)(4)(C) of the Act?

a. Making the "Necessary" Finding Without a Demonstration of Attainment

Comments. One group of comments questioned EPA's ability to make a

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finding that New York's RVP regulation is necessary to attain the ozone standard without going through the complete planning process involved in approving a state's response to EPA's finding that the current SIP is substantially inadequate to achieve the standard (the "SIP call"). Several comments stated that EPA cannot approve New York's RVP regulation as a SIP revision without finding that the SIP as a whole achieves attainment of the NAAQS for ozone. Related comments questioned EPA's ability to determine whether New York's RVP controls are necessary without a new updated inventory of VOC sources which EPA will require from the states with ozone nonattainment areas as part of their response to the SIP calls.

Response. Through its SIP calls, EPA has imposed on states like New York an obligation to revise their ozone SIPs and demonstrate attainment of the standard. The thrust of these comments is that EPA cannot make a finding of necessity without the state first having gone through the new planning process and developing a new demonstration of attainment. EPA does not interpret section 211(c)(4)(C) to require a complete demonstration of attainment in order to approve a measure which will contribute to attainment.

Forcing a state to demonstrate attainment before allowing it to adopt stricter fuel controls would yield perverse results. Areas with the worst ozone nonattainment problems, which have the most difficulty assembling a demonstration of attainment, would be disabled for perhaps several years from adopting clearly necessary, stricter than the national, RVP controls. Several commenters noted that New York so far has not been able to identify any combination of control measures which would bring the State into attainment. It is precisely in areas like New York, with an especially difficult nonattainment problem, where the expeditious implementation of new controls, and hence the finding of necessity under section 211(c)(4)(C), is most appropriate.

Beyond that, it is reasonable for EPA to use the best information it now has available to determine whether New York's RVP program will be necessary to achieve the standard without having to wait for New York to complete its planning response to the SIP call, including its updated inventory. As explained below, the VOC inventory and reduction figures New York submitted to EPA was based on reasonably reliable models EPA has used in the past. Such figures are always capable of refinement, but in the Agency's judgment the expenditure of time required to do so is not worth the marginally improved accuracy. *See Vermont Yankee Nuclear Power v. N.R.D.C.*, 435 U.S. 519, 544–555 (1978).

EPA has not yet set a date certain by which New York must attain the ozone standard. Congress may address the widespread nonattainment problem in the amendments to the Act now being considered. In the meantime EPA has also proposed its own policy for how to deal with SIP planning for nonattainment areas in the post-1987 period (52 FR 45104, November 24, 1987). The air quality analysis New York submitted made it clear that RVP control beyond the federal requirements will be necessary to any attainment plan, whether the attainment date that Congress or EPA selects is imminent or long-term. Moreover, there is widespread agreement among EPA and the States in the Northeast that major VOC reductions, probably exceeding the 33.8 percent estimated by EPA in this case, will be required to get close to attaining the ozone standard. Nothing in the air quality data from the summer of 1988, which have become available in quality-assured form since publication of the proposal, indicates that the reduction requirement projected by the New York analysis overstates the reduction necessary to achieve the standard. Beyond that, the history of ozone planning over the last decade makes it clear that reduction targets are seldom overestimated.

Furthermore, EPA's approval of this revision now is consistent with section 110(a)(2)(A) of the Act, which requires attainment "as expeditiously as practicable." Interpreting section 211(c)(4)(C) to require a complete attainment demonstration before EPA can approve (and a state can implement) a fuel control that the state has determined to be practicable and that would advance the attainment date would effectively put section 211(c)(4)(C) in conflict with section 110(a)(2)(A). It is doubtful that Congress intended EPA to choose an interpretation that would create such a conflict.

b. Upstate Nonattainment Areas

Comments. Several comments were received on the propriety of EPA's section 211(c)(4)(C) finding for upstate areas of New York which are in nonattainment, and EPA's finding that the application of the program statewide is necessary to achieve the ozone standard as expeditiously as practicable in all of the upstate and downstate nonattainment areas. One commenter stated that EPA has not issued a SIP call for the upstate areas pending analysis of the 1988 ozone data, therefore New York is not required to take action in the upstate areas. Another commenter suggested that it is impossible for EPA to evaluate the reductions claimed for the upstate areas since there is no inventory for this part of the State.

Response. The SIP call issued in May 1988 was based on air quality data through 1987 which indicated that the only upstate area in nonattainment was Jefferson County. During 1988, ozone violations indicating actual nonattainment were recorded in Erie, Niagara, Dutchess, Albany, Essex, Schenectady, Rensselaer, Saratoga, and Washington Counties. At the moment, EPA is quality-assuring this data. Once this process is complete, EPA anticipates that the State will be asked to revise its SIP accordingly to provide for mitigation strategies in these areas. It seems clear that the upstate areas are experiencing violations of the ozone standard, and thus must put in place such measures as are necessary to bring the areas into attainment of the standard. As EPA explained in its proposal, New York has indicated that no measures other than the RVP program could be implemented in the upstate areas rapidly enough to provide any emission reductions during the 1989 ozone season, and that available measures which would produce emission reductions of the magnitude of the RVP program could not be in place for several years. Moreover, the emissions reductions that the RVP program would achieve are so large that the program could very well produce attainment of the ozone standard during the 1989 ozone season in those areas. By this logic, and assuming, as New York has, that the RVP program is practicable, the program appears to be necessary to produce attainment in the upstate areas, "as expeditiously as practicable," as required by the Act. None of the comments submitted on this issue disputes these findings.

Beyond that, two of the comments supported EPA's proposed approval for the upstate areas in part because of the benefits that would result by reducing emissions transport to other downwind nonattainment areas. EPA is currently working with the Northeast States on a Regional Oxidant Modeling study on the Northeast transport (ROMNET) problem. As part of the study, the Agency hopes to quantify the extent to which transport from each State in the Northeast affects the air quality in the Northeast region. While this study is not yet complete, EPA and the Northeast States agree that transport is a special problem in the Northeast, and that New York State is one of the key states involved. In fact, what is known generally about ozone formation suggests that emissions from upstate New York may contribute to ozone formation in western New England, an area that has experienced ozone standard violations. This suggests that controlling upstate New York emissions may well be necessary for timely attainment in parts of New England. Thus, the commenters' claims on transport tend to confirm the appropriateness of EPA's proposed finding that the New York RVP program is necessary for timely attainment of the ozone standard.

For these reasons, EPA concludes that the RVP program is necessary to provide for timely attainment. It is therefore appropriate for the Agency to make a section 211(c)(4)(C) finding for the upstate areas.

As to the validity of the reductions claimed for the upstate areas, it is true that the State has not yet been required to develop and submit emission inventories as part of the SIP for the upstate areas. However, it should be noted that both New York and EPA maintain statewide emission inventory databases (respectively entitled the Source Management System and the National Emissions Data System) which are adequate to evaluate the reductions claimed for the upstate areas.

Finally, EPA noted a proposal that New York had made the RVP program effective on a statewide basis in order to ensure compliance with the program in all of the upstate and downstate nonattainment areas. None of the comments submitted disputed the necessity of this program coverage. New York did grant, a waiver to the western half of the state based on supply considerations. This waiver is discussed in more detail in sections 9 and 11 below.

c. The Standard EPA Has Applied To Determine Whether Fuel Controls Are Necessary Compared With Other Controls

Comments. Several commenters maintained that EPA had not adequately analyzed whether there are other control strategies reasonably available which New York should implement before resorting to RVP controls inconsistent with the federal regulation. EPA will address these comments in section 2c below. Other comments concerned the standard that EPA should use to determine whether RVP controls are necessary compared to other controls.

Response. In the proposal for this action, EPA used the approach it first announced when approving the Maricopa County, Arizona SIP (53 FR 17413 (May 19, 1988); 53 FR 30228 (August 10, 1988)) to determine whether RVP controls beyond the federal program are necessary to attain the ozone standard in New York. Under that approach, if after accounting for the possible reductions from all other reasonable control measures, New York could demonstrate that RVP controls are still required to achieve the standard, then RVP controls are necessary within the meaning of section 211(c)(4)(C). For the reasons stated in the Arizona action and the New York proposal, EPA will not interpret section 211(c)(4)(C) to require a state to impose more drastic measures such as driving prohibitions or source shutdowns before it can adopt its own fuel control program.

New York has demonstrated to EPA that implementing all the control measures which EPA now believes to be reasonably available to New York for VOC control (including measures that the State has already adopted and is now beginning to implement) would not achieve compliance with the ozone standard. The roster of control measures New York examined corresponds to the list of controls EPA has identified for states to implement in response to the ozone SIP calls, and represents EPA's best judgment as to the controls which could now be reasonably implemented. See EPA's proposed post-1987 ozone policy (52 FR 45104, appendix C, November 24, 1987). After examining all controls EPA has determined to be reasonable, a state is free to make its own determination as to what control measures should next be employed.

One commenter maintained that EPA's method for determining what is necessary is too vague because it would allow EPA to approve state fuel controls "simply because alternative measures are more inconvenient, unpopular, or costly." As discussed in section 2c below, EPA examined reasonable alternative controls which New York could implement and determined they would not achieve enough reduction to achieve the standard. EPA also has determined that remaining controls such as gas rationing, driving reductions, and source shutdowns are so drastic that the State may resort to fuel controls first. This judgment concerning what is too drastic is a complicated policy determination requiring the Administrator to weigh precisely those factors which the commenter would exclude from his consideration—whether the remaining alternatives are costly or unpopular. In *Amoco Oil Co.* v. *Environmental Protection Agency*, 501 F.2d 722, 740–741 the court distinguished between the factual foundation which EPA must provide in its administrative decisions and policy judgments which are an integral part of the findings Congress requires the Administrator to make under the Act:

> Where by contrast, the regulations turn on choices of policy, on an assessment of risks, or on predictions dealing with matters on the frontiers of scientific knowledge, we will demand adequate reasons and explanations, but not 'findings' of the sort familiar from the world of adjudication.

Id. at 741. EPA's and New York's analysis of reasonably available controls is based on a factual record supported by the best analytical tools the agencies had available to them at the time. EPA's judgment that State fuel regulation is a less drastic course than gas rationing and other unpopular controls so far not implemented in any SIP is clearly a matter on the frontier of air pollution control planning, and therefore cannot (and need not) be supported by the same technical record as, for example, EPA's determination that New York needs at least a 33.8 percent reduction from its 1987 inventory to attain the standard.

2. Have New York and EPA made an adequate technical demonstration that controlling RVP to 9 psi is "necessary" to atain the NAAQS?

a. Adequacy of Emission Inventory

Comments. Three petroleum industry commenters argued that the emission inventory used in the technical demonstration is inadequate. They pointed out that EPA has already requested that New York prepare a new inventory as part of its response to the SIP call. Therefore it is argued that New York's reliance on the old inventory is inappropriate.

Response. As described in EPA's Technical Support Document, the emission inventory used by New York and reviewed by EPA is based on EPA's "Compilation of Air Pollutant Emission Factors", known by its document number "AP–42." This document and its updates are EPA's longstanding guidance for determining emissions for inventory purposes and has served as the basis for ozone SIP inventories since the mid-1970s. Mobile source emissions were estimated using the then current version of EPA's mobile source emissions model, MOBILE 3, consistent with standard EPA guidance. While EPA has called for many states, including New York, to update their inventories

for post-1987 SIP planning purposes, the Agency has continued to use existing inventories in evaluating current control proposals. EPA expects the new New York inventory, not due until late 1989, to show higher emissions than the current inventory since it is expected to include more sources and improved quality assurance. Thus, if the current inventory is lacking, it understates current emissions and errs such that the likely percentage reduction needed to attain the standard is also understated.

As stated in the NPR, EPA believes that if there is an error in quantifying the emission reductions resulting from control to 9 psi, those reductions are understated. If the newly released mobile source emission model, MOBILE4, which includes the effects of running losses, were used, one would expect the reduction in tons of VOCs to increase significantly. Furthermore, contrary to the commenters' belief, the estimated emission reduction is based on reductions achieved during only the four and one-half months each year the regulation is effective. This approach may understate the reduction since 9 psi fuel may be in the distribution system up to two additional months on each end of the regulatory season.

Also contrary to the commenters' claim, EPA's Technical Support Document (TSD) does contain an estimate of the emission reduction achieved by going from EPA's 10.5 psi limit to New York's 9 psi limit. EPA estimated a 1.8 percent reduction from the 1987 inventory. This estimate does account for nonlinearity in emissions with decreasing RVP limits.

b. Appropriateness of the Modeling Demonstration

Comments. While some commenters agreed that modeling was necessary to evaluate the air quality benefit of the RVP reduction, they objected to EPA's reliance on the Regional Oxidant Model (ROM). The commenters also raised concerns about the appropriate hydrocarbon to nitrogen oxides (NO_x) ratios to be used in such modeling. A third modeling issue concerns New York's and EPA's inability to associate a quantified increment of improved air quality with the control of RVP to 9 psi.

Response. The claim that the ROM does not provide the spatial resolution needed for accurate prediction in individual urban areas loses sight of the fact that we are evaluating a statewide program. The Urban Airshed Model suggested by these commenters is appropriate for large urban areas but would have to be run over at least two different geographic domains to cover the entire State. Caught between the two available model scales, it is EPA's technical judgment that the ROM is an appropriate tool to use in evaluating future reductions needed for New York.

EPA understands the concern that past strategies have focused almost exclusively on controlling VOCs instead of NO_x. As indicated in EPA's proposed post-1987 ozone strategy, future control scenarios are likely to include NO_x. However, it is highly unlikely that NO_x control alone will suffice. The best technical information available to EPA at this time concerning the Northeast ozone problem points to the need for substantial VOC reductions and at least modest NO_x reductions in the future to attain the ozone standard.

The last modeling issue concerned New York's and EPA's inability to associate a quantified increment of improved air quality with the control of RVP to 9 psi. While such a modeling exercise would be ideal it is unlikely that one would have much confidence in the outcome of such a sensitivity test. The atmosphere's response to emission reductions of ozone precursors is highly nonlinear such that small increments of reduction may show little or no effect on their own. However, when the reductions from the State's many strategies are aggregated, the total impact becomes quantifiable. Thus, even though New York and EPA cannot pinpoint where the air quality will improve by what amount on what day, we are confident that there will be a net improvement in ozone levels if New York were to decrease VOC emissions by 1.8 percent.

c. Consideration of Other Alternatives

Comments. Commenters expressed concern that New York and EPA have failed to consider other significant alternative control measures that could lead to attainment, including Stage II vapor recovery systems, source categories that are listed in EPA's post-1987 strategy, more stringent motor vehicle standards, and a host of transportation control measures (TCMs).

Response. EPA believes that sufficient alternatives were considered. EPA and the State have considered the emission reduction potential of 23 different point and area source categories corresponding to those suggested by EPA in its proposed post-1987 ozone policy (52 FR 45104, Appendix C, November 24, 1987). Not surprisingly, some of the source categories are not relevant because there are no major sources in those categories in New York or because the State has already adopted controls for those categories. As noted in the proposal, most of the relevent categories have potential reductions that are very small and, when combined, total less than 1.5 percent of the 1987 inventory. Other strategies that the State committed to in its previous SIP but have yet fully implemented (including such extraordinary measures as architectural coatings, consumer/commercial solvents and auto refinishing) would produce emission reduction on the order of 10.2 percent, for a total reduction of 11.7 percent. This would still leave a shortfall of 22.1 percent.

Two commenters noted that the proposal did not account for the emissions reductions that are attributable to Stage II vapor recovery systems. While reductions due to Stage II were not mentioned in the NPR, the TSD did note that the reductions from RVP control (9,000 TPY) would be second only to Stage II controls (10,800 TPY). Since New York has already adopted and begun to implement Stage II controls, the shortfall discussed in the NPR was calculated above and beyond those reductions attributable to Stage II controls.

With respect to TCMs, the commenters failed to take account of the fact that the existing New York SIP (40 CFR 52.1670(c)(61)) contains provisions for the implementation of public transportation improvements in the NYCMA. It is true that New York has not implemented the types of TCMs suggested by EPA in its proposed post-1987 ozone strategy. However, based on EPA's experience with the implementation of these measures in other areas, we expect that New York would only achieve an additional two percent reduction by adopting similar strategies. New York would still have an estimated shortfall of approximately 20 percent.

While EPA recognizes that other TCMs may be needed in New York, the remainder are difficult to quantify, yield small reductions individually, and, as evidenced by the public reaction to the EPA-promulgated implementation plans containing such measures in the 1970's (see H.R. Rep. No. 95–294, 95 Cong. 1st Sess, reprinted in 4 Legislative History of the Clean Air Act Amendments of 1977, at 2748–55 (1978)), generally can be expected to have more significant adverse effects on the public as a whole than RVP controls would. To be sure, if there were sufficient evidence for EPA to conclude that the State's RVP controls would result in significantly more severe impacts than other measures that neither EPA nor the State has yet identified as "reasonable" for the State to implement, then it might well be appropriate for the Agency to account for the emission reductions that those other measures would achieve before determining the shortfall against which to judge the RVP controls. The Agency does not believe, however, that the State's RVP control would produce significantly more severe effects than such alternatives (e.g., than a trip reduction ordinance of the type that Arizona found reasonable for application in Phoenix and Tucson).

In sum, New York and EPA have indeed examined a broad range of potential emission reduction strategies and have still identified a significant shortfall in the level of emission reductions likely to be needed to achieve the ozone standard. As discussed above, in light of this significant shortfall EPA may approve the RVP program as necessary to achieve the standard without first requiring New York to implement other measures that EPA has not yet found reasonable for implementation, such as more stringent state motor vehicle standards.

3. What is the scope of EPA's discretion assuming a finding that State RVP controls are necessary to achieve the standard?

a. Permissible Bases for EPA's Decision To Approve State RVP Controls

Comments. Several comments asserted that even where EPA has determined that State fuel controls are necessary to achieve the standard, EPA may nevertheless disapprove those controls if EPA determines that the economic or fuel supply impacts of the State's regulation are unreasonable. These commenters suggested that EPA may give significant consideration to costs because section 211(c)(4)(C) provides that the Administrator "may" approve a SIP revision imposing state fuel controls once he makes the finding of necessity. Conversely, other commenters maintained that EPA may not disapprove the New York SIP revision based on economic grounds, once EPA has made the finding of necessity.

Response. EPA believes that it must consider cost to some limited extent whenever the Administrator decides whether to make a finding under section 211(c)(4)(C) that a fuel measure is "necessary" for attainment. As discussed above, to determine whether state fuel controls are necessary, EPA must look first at whether other measures that it determines are reasonable (and, perhaps, other measures the state has adopted) will by themselves achieve timely attainment). Arguably, an alternative measure is "reasonable" only if its effects are less drastic than the effects of the fuel controls. Clearly the cost and supply impact of the state fuel controls will be a factor in any such judgment.

EPA does not interpret the use of "may" in section 211(c)(4)(C) to give the Administrator unfettered discretion to disapprove the SIP revision on economic grounds once he has made the finding that state fuel controls are necessary to achieve the standard. Section 211(c)(4)(C) must be read in the context of the preemption created in section 211(c)(4)(A), which prohibits states from adopting inconsistent fuel controls in their SIPs, or anywhere else, for air pollution control purposes. In the face of this prohibition, the sole effect of the "may" in section 211(c)(4)(C) is to authorize the Administrator to overcome a provision (section 211(c)(4)(A)) that would otherwise bar him from approving the SIP revision. The use of "may" in section 211(c)(4)(C) does not eliminate the obligation that section 110(a)(3)(A) places on the Administrator to approve the SIP revision, provided it meets the requirements of section 110(a)(2). *See Train* v. *Natural Resources Defense Council, Inc.*, 421 U.S. 60, 98 (1975). Section 110(a)(2) requires the Administrator to approve a SIP revision if, among other things, it may be necessary to insure attainment and maintenance of the standard. EPA may not consider the economic impact of a necessary SIP revision under section 110(a)(2); under that provision, it is for the state to determine what economic costs are appropriate to achieve the standards. *Union Electric Co.* v. *E.P.A.*, 427 U.S. 246, 256–258 (1976). Beyond that, it would be incongruous for Congress to give EPA more discretion to reject a SIP revision for reasons unrelated to the goal of achieving the standard as quickly as possible precisely where EPA has determined that a SIP revision is necessary to achieve the standard. Therefore, once EPA makes the finding that state fuel controls are necessary to achieve the standard, a finding which includes a determination that such fuel controls are more reasonable than other available measures, EPA may not reject a state's SIP proposal simply for economic reasons.

One commenter cited *Motor Vehicle Manufacturers Association* v. *E.P.A.*, 768 F.2d 385, 389–390 (DC Cir. 1985), for the proposition that the use of "may" under section 211 commits the decision to the discretion of the Administrator. In *MVMA* the court was examining EPA's decision to grant a waiver under section 211(f)(4) of the Act for the use of fuel additives not substantially similar to those in the fuel EPA uses to certify the emissions from automobiles. The court was not examining section 211(c)(4)(C), which allows EPA, upon making a particular finding not mentioned in section 211(f)(4), to act on a SIP revision submitted by a state after full hearing at the state level and subject to the requirements of sections 110(a)(2) and (3)(A).

b. Intent of Federal Preemption Under Section 211

Comments. Several comments insisted that EPA should disapprove New York's RVP controls because Congress intended to avoid a patchwork of different state fuel controls in favor of a uniformly regulated national market for fuels. These commenters expressed concern that the exception in section 211(c)(4)(C) to the rule of preemption under section 211(c)(4)(A) would eventually swallow the rule. Several comments urged EPA not to act inconsistently with its decision not to limit gasoline to 9 psi in 1989 in the federal RVP control program.

On the other hand, several comments urged EPA to support the regional approach to RVP control that the NESCAUM States are undertaking. One commenter pointed out that where Congress has not acted to address the ozone nonattainment problem, it is reasonable to let the States do all they can to attain.

Response. It is clear that section 211(c)(4)(A) indicates that Congress desired to maintain a nationally regulated market for fuels. It is equally clear that section 211(c)(4)(C) indicates Congress recognized that there will be states where the air quality problem is so severe that the interest in a nationally regulated market must bow to the need for additional state controls on fuel content. EPA has not been able to find any legislative history which illuminates with any detail beyond the language of the Act how EPA should strike this balance.

It is reasonable to infer that Congress was aware that the air quality needs of particular States might create varying fuel content requirements, and that Congress accepted that risk in favor of protecting the public health. Several commenters cited *Exxon Corp.* v. *City of New York*, 548 F.2d 1088 (2d Cir. 1977), as precedent that a uniformly regulated fuel market is the overriding purpose behind section 211(c)(4). In *Exxon* the court, however, was not faced with a claim for an exception to preemption under section 211(c)(4)(C), and specifically left it to EPA to determine

whether such an exception is appropriate:

> The Act sensibly provides for an exception from its comprehensive preemption of local regulation of motor vehicle fuels only when such regulation is a provision in a State implementation plan approved by the Administrator who has the competence to make the needed professional engineering and energy conservation decisions.

Id. at 1096. Once EPA has made a finding of necessity under section 211(c)(4)(C), it is reasonable for EPA to interpret the Act to place paramount importance on protecting public health and achieving the standard.

EPA believes that the oil industry's concern that the exception will swallow the rule is overstated. As described above, EPA will approve inconsistent state fuel controls only where the state can demonstrate that exhausting all other reasonable alternatives will not achieve the standard, taking costs into account in determining reasonableness. This demonstration is not a trivial hurdle, and it is highly unlikely that every state with an ozone nonattainment area could make such a showing. Furthermore, a State is unlikely to burden its citizens with the potentially higher cost of lower RVP fuel unless the air quality needs are compelling. Finally, regional initiatives such as NESCAUM's help avoid a wide variety among State controls. In this case, the New York RVP program is virtually identical to the RVP programs already approved for Massachussets, Rhode Island, and Connecticut, and thus, provides consistent supply requirements over a group of contiguous States.

EPA also believes that its decision not to impose a limit of 9 psi by 1989 in EPA's RVP control program does not preclude EPA from approving New York's SIP revision. When developing its federal RVP control program, EPA imposed controls across the nation, and had to determine the level of RVP control which supply sources for the entire continental United States could reasonably meet. Further, although EPA was able to make this determination as to particular regions within the country, EPA did not intend to account for the particular air quality needs of each state.

4. What effect will the 9 RVP limit in New York have on the cost and supply of gasoline?

Comments. Several commenters stated that if the 9 psi standard took effect in 1989 the distribution system would be strained and that there could be some significant supply dislocation and cost increases. Several other commenters were concerned about possible supply problems. Several stated that even if refiners had the capacity to produce 9 psi gasoline, there would be logistical problems requiring the need for additional storage tanks for the gasoline and excess butane. Other comments suggested that foreign imports at 9 psi might not be available. Most of the oil company commenters stated that there will be some need for capital improvements at refineries to meet the 9 psi standard. Several commenters stated that there will likely be a cost impact to the New York standard and other commenters stated that they were worried about the increased cost. One other comment stated that the estimates of increased cost do not reflect the extra cost increase that could accompany a significant supply disruption.

Proponents cited two studies as support for the position that supply is not a problem.

Response. The potential supply problems arise out of two factors. First, decreasing the volatility of gasoline requires increased refinery capacity. It is certain that implementation of 9 psi volatility in the NESCAUM States will create a refining capacity reduction in the amount of gasoline capable of being produced at each refinery. This is true of both domestic and foreign suppliers. Second, the problem may be further exacerbated by the expected increased demand for gasoline in the summer months.

Various studies have been conducted to determine how much refining capacity will be lost from implementation of 9 psi volatility in the NESCAUM states, how much demand for gasoline is likely to increase in the summer of 1989, and what effect these factors will have on gasoline supply capabilities. The two studies done for NESCAUM and the one done for EPA are inconclusive. There appear to be numerous factors which make precise prediction of these effects impossible. However, under the EPA study (Sobotka study), estimates indicate that the volatility standard may be feasible without serious supply problems.

The Sobotka study cites the Department of Energy (DOE) as predicting that demand for gasoline should increase only in the range of 1 to 1.5 percent this summer. This estimate is also supported by other studies including one reported at a National Petroleum Refiners Association conference. The study also estimates that approximately a five percent refining capacity shortfall will occur at domestic refineries because of the NESCAUM volatility regulations. The study estimates that with a 1.2 percent increase in demand for gasoline in the summer, U.S. refineries would be able to make up for a five percent domestic shortfall, and a ten percent import shortfall, without construction of new facilities or installation of additional equipment. Although various factors make it impossible to accurately predict the refining shortfall of imported gasoline, there is no strong evidence indicating that it will exceed ten percent. Thus, the Sobotka study suggests that it is likely that the resulting refinery capacity shortfalls from a 9 psi standard in 1989 should not result in supply shortfalls.

In the unlikely event of unforeseen supply disruptions, the State of New York has the authority to take immediate steps to provide needed waivers or exceptions to the program. In fact, the State has already exercised this authority by exempting several western counties from the 9 psi rule for 1989. It should be noted that the State based this decision solely on the potential for supply problems and not on any lack of air quality problems in these areas. The State has committed to carefully monitor the supply situation this year and take other appropriate actions, as may be necessary, to ensure that supply problems do not occur as a result of its State RVP control program. See also the response to section 9 later in this notice for more discussion of State waivers or exceptions.

5. What effect will 9 RVP gasoline have on driveability in cold weather and on vehicle safety?

Comments. Several commenters expressed concern that the 9 RVP fuel would cause hard starting, hesitation, and stalling in automobiles and farm equipment during the early spring and late fall. They stated that gasoline will have to enter the distribution system in March and will not be out until October in order to comply with the regulation. Other comments, including several from automobile manufacturers, indicated that there should be no adverse effect from the use of 9 RVP fuel.

Response. We believe that the nature of the gasoline distribution system makes it very unlikely that 9 RVP fuel will be available to consumers in March or early April, even if the blending-down process by that time has begun to reduce RVP. Continued availability of low-RVP fuel is even less likely by late October because the blending-up process will occur rapidly at the close of the control period. Nevertheless, the experience of California, which has required 9 RVP fuel for many years, appears to demonstrate that widespread driveability or fuel safety problems will not occur in the Northeast. We know of no evidence of extensive problems in California, despite significant operation at cool temperatures and high elevations.

As further evidence of this conclusion, one can compare the true vapor pressure (TVP) experienced in fuel tanks at different times during the year. For example, when corrected for elevation, gasoline in Billings, Montana at its January 1988 average RVP of 13.6 psi and at the historic low January temperature of −30 degrees Fahrenheit would result in a true vapor pressure of 1.0 psi. Similarly, for New York, the analogous RVP and temperature of 10.0 psi RVP and −12 degrees F. would also result in a TVP of 1.0 psi. In contrast, 8.5 psi RVP fuel at an analogous New York temperature of 18 degrees F. would result in a TVP of 1.8 psi, 80 percent higher than the winter figure. We conclude from this that if low-volatility fuel were to reach consumers during very low temperature weather, any degradation in driveability would be no greater (and would likely be less) than that experienced currently during the winter.

Conversely, low volatility fuel should improve vehicle driveability in very hot weather by reducing the occurrence of such conditions as vapor lock and fuel foaming.

6. Is there really a severe ozone problem in New York or the Northeast?

Comments. A number of industry commenters, in urging EPA to disapprove the SIP revision, claimed that the air is really becoming cleaner and cleaner over time and that the ozone standard is being met more than 99% of the year. Environmental groups countered these claims with data from 1987 and 1988 which show a worsening of the ozone problem since 1986. They noted that 1988 was one of the worst ozone seasons on record across the Northeast.

Response. EPA is firmly convinced that there is a serious ozone problem in the Northeast. EPA's conviction was evidenced by last year's SIP calls to New York and most other Northeast states. This SIP call was based on 1985–1987 ozone monitoring data which ranked New York among the worst ozone nonattainment areas in the country. EPA's concern is further heightened by the 1988 ozone season. The ozone standard was exceeded more frequently, at more sites, and at higher levels in 1988 than in 1987.

7. Has New York demonstrated that it has an adequate enforcement program or adequate resources to implement the RVP regulation, as required by section 110 of the Act?

Comments. One commenter questioned whether New York has developed an adequate program for enforcement of the regulation.

Response. EPA believes that the State has developed an adequate enforcement program for its RVP regulation. The State has trained enough personnel (with the help of NESCAUM and the State of California) to allow four teams to perform field inspections. Given that New York will be testing only at the primary distribution level and will be relying to some extent on examination of distributor records, EPA believes that the State has adequate personnel to carry out the RVP program as required by section 110(a)(2)(F) of the Act. In addition, the State has indicated that it will eventually tie in RVP sampling with Stage I inspections that the State has been regularly performing for several years at terminals and on gasoline tank trucks. Finally, it should be noted that retail outlets, which are not subject to enforcement under the State's rule, will be subject to EPA's national enforcement program. If gasoline that does not comply with New York's 9 psi limit is found at retailers in the State by EPA, we will surely share such evidence with the State.

EPA notes that in the comparable arena of enforcement through Delayed Compliance Orders (DCOs), courts have held that EPA may not second guess the state's choice of enforcement mechanisms so long as the chosen system is a reasonable one. *See Bethlehem Steel Corp.* v. *U.S. E.P.A.*, 638 F.2d 994, 1005–1006 (7th Cir. 1980); appealed, *Bethlehem Steel* v. *Gorsuch*, 726 F.2d 356 (7th Cir. 1984), reh. den., en banc, vacated on reh., 732 F.2d 97 (7th Cir. 1984), withdrawn and appealed, 742 F.2nd 1028 (7th Cir. 1984).

Furthermore, even if the New York rule's enforcement scheme were inadequate to support a finding, ultimately, that the state's eventually complete ozone SIP update meets all of the requirements in section 110(a)(2), EPA could still approve the rule under section 110(a)(3). That is because, even with an inadequate enforcement program, the rule would still strengthen the pre-existing SIP and hence, under the rationale in *Michigan* v. *Thomas*, 805 F.2d 176, 186 (6th Cir. 1986), be approvable for that limited purpose.

8. Has New York satisfied the Act's public notice and hearing requirements?

Comments. Several commenters questioned whether the New York SIP revision was adopted after "reasonable notice and public hearing." While acknowledging that public hearings were held, they alleged that the decision to limit RVP to 9 psi was actually made by NESCAUM some time before public hearings on the New York RVP regulation, and that therefore any hearing nominally provided was substantively inadequate. On the other hand, NESCAUM commented that ozone pollution problems, especially in the Northeast, are clearly regional problems and must therefore be dealt with through consistent regulations.

Other commenters questioned whether notice and hearing was provided on the SIP revision or just a State regulation. They believe that it was unclear from the public notices and materials available before the hearing that the RVP rule was actually intended to be submitted as a revision to the SIP.

Response. As to the first claim, EPA's TSD provides the date that the public notice was published and contains an itemization of the dates the public hearings were held. Although there is no summary statement that the public participation requirements for hearing and notice were met, the record does speak to that effect.

EPA finds concerns that the public hearings were largely meaningless and thus not "reasonable" to be misplaced. EPA is not convinced that New York and the other NESCAUM States had predetermined the outcome of the hearings beforehand and without regard to the hearings held in August 1988.

EPA acknowledges that New York did initiate rulemaking on RVP control pursuant to an agreement with the other northeastern states. However, having initiated the rulemaking on that basis, the State then proceeded to promulgate the regulations through its full administrative process, giving adequate notice and opportunity for public hearing on the proposed regulations.

As a policy matter EPA agrees that the ozone problem in the Northeast is a problem of regional magnitude and has held several meetings with top EPA and State environmental officials in EPA Regions I, II, and III to determine what concerted efforts the States could take on their own to deal with issues of regional, but not necessarily national, scope. Therefore EPA believes that it is appropriate for the northeastern states to regulate ozone precursors in a consistent fashion. However, each state

must provide for adequate public participation in the promulgation of individual regulations, including assessing and responding to all submitted comments, as New York has done in connection with its RVP regulations. As discussed more fully below, EPA reviewed New York's public participation procedure and determined that the State provided adequate opportunity for public input in connection with development of the RVP rule.

The commenters argued specifically that New York's hearing procedure was not adequate to comply with section 110 of the Act or EPA's hearing regulations at 40 CFR section 51.102. The operative language in both the statute and the regulation is "reasonable notice and public hearing." The commenters asserted that New York had predetermined its final decision on RVP regulation and thus the hearing provided was not reasonable.

However, EPA interprets the language of both the statute and the implementing regulations as requiring the state to provide, first, reasonable notice of a public hearing, and second, a public hearing. EPA does not believe that the law requires the Agency to review the hearing record and determine whether the hearing provided was itself "reasonable."

EPA's interpretation of the hearing requirement is clearly reflected in the regulations at 40 CFR 51.102. The regulations go into substantial detail on the manner in which states must provide notice of a hearing in order for that notice to be considered reasonable. See 40 CFR 51.102(d); see also 40 CFR 51.102(g)(2). However, the regulations make absolutely no mention of specific requirements for conduct of public hearings. The state need only certify that it in fact held a public hearing, which New York clearly did, and need not provide any detailed information on the conduct of the hearing.

This is appropriate because the reasonableness of public notice can be assessed objectively by reviewing the amount and variety of notice methods used. Assessing the reasonableness of a hearing on the other hand would be a highly subjective determination done restrospectively that would unnecessarily infringe on the State's discretion in conducting its hearings. Of course, if EPA received concrete evidence that the hearing did not provide adequate opportunity for public participation, it could find that the hearing did not meet the intent of EPA's regulation. One commenter claimed that New York failed to provide prior public hearing on the waiver provisions of its RVP program, and thus that the hearing did not in fact provide adequate opportunity for public participation. It is true that the August 1988 hearing did not cover the waiver provisions. However, New York held a separate hearing on the waiver provisions in particular on March 2, 1989. This hearing provided the required opportunity for public participation on the RVP program as a whole, including the waiver provisions.

The commenters further claimed that a state must specifically identify a proposed regulation as a future SIP revision prior to scheduling a public hearing on the regulation. However, neither the statute nor EPA's regulations contain any such explicit requirement. The purpose of a public hearing is to receive public input on the substance of proposed regulations, not on whether the state may or may not submit the regulations as a SIP revision. For years EPA has approved SIP revisions with no analysis of whether the state had publicly announced it intent to eventually submit a proposed regulation as a SIP revision at the state public hearing stage.

Generally it should be totally irrelevant to public commenters whether a regulation with which they will be required to comply as a matter of state law might also become an aspect of federal law. At the time New York held its public hearing on the RVP rule, prior to federal preemption, commenters should similarly have had no concern as to whether the proposed State rule would eventually become federal law as well. Only where a state regulation would otherwise be preempted by existing federal law and therefore unenforceable would the public have a need to know that the state intended to seek federal approval of the regulation for purposes of preemption waiver in preparing comments at the state hearing level. This was not the case at the time of the State hearing on New York's RVP rule. Moreover, given EPA's then outstanding proposal to regulate RVP and thus preempt state RVP regulation, it should have been apparent to commenters at the time of the public hearing that New York would submit the rule as a SIP revision to insure enforceability in the event of EPA final RVP regulation and preemption.

9. Should waivers or exemptions from the State regulations be granted to suppliers who cannot provide 9 RVP gasoline, and for alcohol blends of gasoline?

Comments. Several commenters expressed concern over the State's issuance of a waiver for western New York for 1989 since it introduces uncertainties about whether the volatility regulations will be applied fairly and equitably to all gasoline suppliers. They indicated that the use of supplier-specific waiver provisions could diminish the calculated benefits of the rule by allowing higher RVP gasoline into the system, and financially disadvantage those companies which are able to comply. In addition, commenters noted that the SIP revision submitted to EPA by the State, and EPA's subsequent **Federal Register** notice, failed to consider the State's decision to exempt western New York.

With specific regard to alcohol fuel exemptions, one commenter noted that the inconsistency between New York's and EPA's volatility programs appears "counterproductive," because, for example, ethanol blending increases volatility and therefore evaporative emissions increase. The commenter noted that in EPA's Notice of Proposed Rulemaking for a national RVP regulation (52 FR 31293, August 19, 1987), EPA concluded that gasohol usage results in a greater contribution to ozone formation than the gasoline which it replaces.

The commenters concluded that if waivers or exemptions are to be used, they must apply to all suppliers and significant penalties should be attached. In addition, one commenter noted that EPA has to consider how it will respond to supplier-specific waiver requests; and EPA "is urged to adopt a policy on waivers which is consistent with its own RVP regulatory program."

Response. EPA is aware that New York has granted a waiver for the western portion of the State and also intends to grant waivers to individual suppliers, if necessary, to avoid serious supply dislocations during the initial stages of the RVP program. Although EPA did not focus on this aspect of the program in its NPR, it is safe to conclude that commenters were also aware of the State's actions and intentions since the issue was fully aired in the public comments. EPA is approving the New York RVP program as a whole, which includes the ability of the State to issue waivers as appropriate. EPA is approving the waiver already issued for western New York and is in essence pre-approving any additional waivers that New York might grant as part of the overall RVP program being approved into the New York SIP today. New York will not be required to submit each waiver to EPA as a SIP revision before it may take effect.

EPA is currently able to pre-approve any waivers that New York may grant because the RVP program is a discretionary program that the State has submitted to generate additional emission reductions and move the State closer to attainment of the ozone NAAQS. EPA is not pre-approving waivers from a federally required program or a program to which EPA has already assigned specific emission reduction credits as part of an overall attainment demonstration. EPA could not pre-approve waivers in such situations because they would constitute SIP relaxations. Here, whatever emission reductions New York obtains from the RVP program, even after any waivers have been granted, will tighten the existing SIP and improve air quality.

EPA notes that its pre-approval of any waivers New York may grant under the RVP program differs dramatically from approval of a generic permitting program such as a new source review or bubble program. In those cases, EPA authorizes States to approve relaxations of otherwise applicable SIP requirements provided that the State follows SIP approved procedures calculated to insure that all such waivers are accounted for in the SIP attainment demonstration and are issued using replicable evaluation techniques. Here, since EPA is not currently relying on the New York RVP program for any defined emission reduction credit toward an approved attaintment demonstration, EPA need not now analyze the criteria by which New York will issue any waivers. New York is free to issue waivers on the basis of its own State criteria, consistent with any requirements of its State administrative procedure act.

Several commenters questioned the line New York drew in exempting the western half of the State, and argued that some inequities would result for suppliers doing business at the demarcation line. These are concerns to be addressed to the State since EPA is not at this time addressing the substance of New York's waiver criteria.

When New York does submit its completed post-1987 attainment demonstration, EPA will assign specific emission reduction credits to the RVP program, taking account of any supplier-specific waivers the State may have issued by that time. Once EPA has approved the New York post-1987 SIP, it will take whatever rulemaking action is necessary to ensure that any further waivers under the RVP program, which at that point would be considered SIP relaxations, would be submitted to EPA for approval as individual SIP revisions.

Finally, EPA notes that any suppliers who receive waivers from New York must still comply with the Federal RVP limit of 10.5 psi.

In its fuel volatility regulation, New York has included provisions which allow the Commissioner to grant an exception to suppliers of fuels which are composed of a blend of gasoline and simple alcohols upon showing that gasoline is not available that, when blended, would meet the 9 psi standard. With regard to this provision, it must be noted that: alcohol blends represent a small fraction of the State's fuel market; that such exemptions would help to avoid any impediments to the development of alternative fuels; and that these alcohol blends are not excluded from complying with the requirements for alcohol blends of gasoline set forth by EPA in its **Federal Register** Notice of March 22, 1989 (54 FR 11868) limiting the RVP of gasoline during the summer months to 10.5 psi (beginning 1989). The Federal rule requires that methanol blends meet the same RVP requirements of gasoline and that ethanol blends meet a RVP not more than 1 psi above the allowable RVP for gasoline. Thus there will be no loss in emission reductions relative to the Federal program, which is the only alternative to the New York program. EPA has no authority to disapprove the State's rule just because the additional "necessary" emission reductions that it would achieve are not as large as those that might be achieved through a rule tailored differently. Furthermore, EPA believes that concerns about alcohol blends in New York may be of little practical importance because field testing of gasoline by EPA throughout the summer of 1988 found virtually no alcohol in gasoline.

10. How soon after the date of final approval of the New York revisions should the RVP regulations be made effective?

Comments. A great deal of the comments received pertained to the timing of EPA's final action. Those favoring EPA approval of the SIP revision generally favored EPA acting quickly to take the regulations effective by their May 1 starting date or as close to that as possible. These commenters note that the Colonial Pipeline, which supplies 20 percent of the Northeast's gasoline, has been shipping 9 RVP fuel to the Northeast since March 1, 1989. They also pointed out that those suppliers who have made a good faith effort to comply with the May 1st date would be at a competitive disadvantage relative to those with cheaper, higher volatility gasoline if the date is extended.

Those opposing EPA approval of the SIP revision generally asked that if we did approve it we must provide the petroleum industry with realistic and sufficient leadtime to enable 9 psi gasoline to be distributed throughout the distribution system. These commenters cited EPA's allowing 70 and 100 days for the recently promulgated national regulations to become effective at the terminal and retail level respectively as precedent for such a decision. A third path, suggested by one commenter, would be for EPA to make its final approval conditional on the State's deferral of the compliance date for its regulation.

Response. The timing issue is one of the most difficult ones posed by this action. Since EPA has had control of the timing of the final federal RVP action, the decision on the previously granted Massachusetts, Rhode Island, Connecticut, and New Jersey RVP SIP revisions, and the decision on the New York RVP revision, it is important that we ensure that both the federal and state programs start with a maximum likelihood of success and a minimum possibility of supply disruption.

EPA must consider several issues in deciding when to make the rule effective. The first issue is when the industry was put on notice that it would have to supply 9 psi gasoline to New York. Since the New York rule was passed in 1988, the industry was on notice since then of the State's intention to control RVP to 9 psi. However, the New York rule was preempted on March 22, 1989 by the promulgation of the federal volatility requirements.

Another issue to consider is the lead-time that would be necessary to enable 9 psi gasoline to get through the distribution system. The record indicates that the industry thought that it would take from 60 to 70 days to achieve compliance at the terminals in New York. The record also indicates that the Colonial Pipeline, which supplies at least 20 percent of the gasoline in the Northeast, has been shipping 9 psi gasoline since March 1, 1989.

The final issue involves the air quality consequences of delaying the effective date. EPA should not delay action on a SIP revision in such a manner as would thwart the State's intent in requesting the SIP revision. New York's submittal of the RVP SIP revision in January was clearly aimed at getting its regulatory program in place for the 1989 ozone season. Thus, it is important to have the effective date as early as possible in order to maximize the air quality benefits of the program of 1989.

In deciding to make this action effective on June 30, 1989, EPA has attempted to balance these competing

interests. EPA believes the June 30 date will both minimize possible difficulties the industry might encounter with a shorter lead-time and provide citizens in the Northeast as much relief as is practical during most of the 1989 ozone season. Although some suppliers may have made a good faith effort to comply with the May 1 effective date specified in the New York proposal, they were under no obligation to do so once EPA preempted the New York requirement by promulgating federal RVP controls on March 22, 1989. The Agency cannot, therefore, select an earlier effective date for all suppliers based on the voluntary action of a few, especially considering that the time between the March 22 federal rulemaking and today's publication is critical to the refiner/supplier planning and implementation process regarding fuel delivery for the coming summer.

However, because refiners have already begun to prepare for the sale of 9 RVP fuel as a result of EPA's approval of the Massachusetts, Rhode Island, Connecticut, and New Jersey RVP SIPs and in light of the fact that these states share many links in the gasoline distribution network, the Agency does not believe that an additional 60 to 70 days lead-time is warranted. This starting date in New York, therefore, mirrors the starting date in Massachusetts, Rhode Island, Connecticut, and New Jersey.

11. Should EPA reopen the comment period or withdrawal and repropose this SIP revision in light of EPA's final action on the national RVP regulation, the court challenge to the rule and other alleged defects in the March proposal?

Comments. EPA received divergent comments on the appropriate process for and timing of a final action on New York's SIP revision. Several commenters argued that EPA should take final action as soon as possible. On the other hand, other commenters felt that because of numerous allegedly unresolved issues raised in their substantive comments, potential air quality implications of the waiver New York provided for the western portion of the State, and the pending American Petroleum Institute court challenge to the rule, EPA should at a minimum repropose action on the revision to deal with these issues before proceeding to final action.

Response. EPA concludes that given its interpretation of the relevant law and the seasonal nature of the New York revisions, the Agency should proceed expeditiously to final action based on the record currently before it. EPA is unpersuaded by the claim that circumstances have so changed since the proposed approval of the New York revisions that we should reopen the comment period or withdraw and repropose this action. EPA's NPR for the New York RVP program explicitly discussed EPA's final action on the national RVP program relevant to final action on the State program. EPA clearly presented the path which EPA proposed to follow and the conclusions which we proposed to reach in light of the final promulgation of federal RVP regulations. Furthermore, in the final **Federal Register** notice on the national RVP program EPA explicitly discussed consideration of different state RVP control programs.

In this case EPA concludes that it is not necessary to issue a reproposal prior to taking final action. EPA believes that it has adequately responded to all of the substantive comments raised by commenters in the substantive discussions presented above. Obviously, additional analysis on such technical issues could always be conducted. However, administrative agencies generally have the discretion to determine when issues have been aired sufficiently and to close the record and proceed to final action, consistent of course with the need to act in a reasoned, non-arbitrary fashion (*Vermont Yankee Nuclear Power* v. *N.R.D.C.*, 435 U.S. 519, 554–555 (1978)).

Commenters argued that the waiver granted by New York for the western portion of the State may have such significant air quality implications for the rest of the State that EPA should delay action while new air quality analyses are done to recalculate the emission reduction benefits of the RVP rule in the eastern portions of the State. However, New York's analyses were based on the effects of the RVP rule in each nonattainment area, such that application of the rule in only certain portions of the State will not affect the overall emission reductions to be achieved in any one area. EPA did indicate in its proposal that it believed New York had made the RVP rule effective on a statewide basis in order to ensure compliance in all of the relevant nonattainment areas in light of their scattered geographical distribution and the existing gasoline distribution system. New York in fact exempted the western portion of the State based upon supply problems particular to that region. New York believes that the separate distribution system that serves the eastern half of the State will have no problem supplying adequate quantities of 9 RVP fuel, and that application of the RVP rule throughout his area is necessary to ensure compliance. Given these facts EPA concludes that the waiver for the western half of the State does not require reproposal.

Further, EPA should not delay action on a SIP revision in such a manner that would thwart the State's intent in requesting the SIP revision. In this case, New York has submitted a seasonal requirement that since currently preempted must be approved in a timely fashion in order to effectuate the state's intent that the regulations provide emission reduction benefits in the upcoming summer ozone season. Therefore, EPA should make best efforts to act on the information available to it now to the extent that it is adequate or else the agency would thwart the State's intent with regard to the 1989 ozone season. Since EPA has concluded that the existing record is sufficient, EPA can proceed to final action at this time based on that record.

Finally, EPA finds no reason to delay its final action on this SIP revision due to the pending court challenge to the RVP program. The lawsuit is merely pending, and until such time, if any, as the court acts to overturn the program EPA believes it is appropriate to proceed with action on the program as with any SIP revision requested by a state.

Enforcement

EPA's proposal of the New York SIP revision indicated that there was a problem with the test method section. The regulation required that fuel sampling and testing shall be "by methods acceptable to the Commissioner." EPA stated that such methods must include the EPA recognized methods contained in EPA's national volatility rule. On April 27, 1989, EPA received comments from the New York State Department of Environmental Conservation which clarified the State's test method section. In these comments, the State identified the methods acceptable to the Commissioner as being identical to the EPA recognized methods and, in addition, committed to incorporating these specific methods into its SIP at a future date. EPA finds that its concerns related to the test methods were addressed sufficiently by the State and that the test methods section is approvable.

Final Action

EPA is approving this revision to the New York Ozone State Implementation Plan to control gasoline volatility, including any waivers New York may grant under the program. EPA has also made the finding that the New York SIP revision meets the requirements of section 211(c)(4)(C) of the Act for an exception to federal preemption.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit within 60 days of publication. This action may not be challenged later in proceedings to enforce its requirements [See section 307(b)(2)].

Effective Date

The Administrator has determined that there is good cause, within the meaning of 5 U.S.C. section 553(d)(3), to make this action effective less than 30 days after publication. The industry has been on notice since the Administrator approved the Massachusetts RVP SIP (54 FR 19173; May 3, 1989) that the Administrator was inclined to approve inconsistent state RVP rules to the extent necessary to provide for attainment. Making this action effective on the same date as the Massachusetts, Connecticut, Rhode Island and New Jersey RVP rules provides the industry with a uniform effective date for all of the state rules limiting RVP to 9.0 psi in the Northeast. In addition, postponing the effective date beyond June 30 would undermine the State's ability to achieve the reductions in 1989 summer ozone concentrations for which the RVP program was intended.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Ozone, and Incorporation by reference.

Note.— Incorporation by reference of the State Implementation Plan for the State of New York was approved by the Director of the Federal Register on July 1, 1982.

Authority: 42 U.S.C. 7401–7642.

EPA is today approving the New York SIP revision pertaining to its State gasoline volatility program.

Date: June 9, 1989.

William K. Reilly,

Administrator.

For the reasons set forth in the preamble, Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart HH—New York

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1670 is amended by adding paragraph (c)(79) to read as follows:

§ 52.1670 Identification of plan.

* * * * *

(c) * * *

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(79) Revisions to the New York State Implementation Plan (SIP) for ozone submitted on January 31, 1989 and March 13, 1989 by the New York State Department of Environmental Conservation (NYSDEC) for its state gasoline volatility control program, including any waivers under the program that New York may grant. In 1989, the control period will begin on June 30.

(i) *Incorporation by reference:* Subpart 225–3 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York entitled "Fuel Composition and Use—Volatile Motor Fuels," adopted on December 5, 1988, and effective on January 4, 1989.

(ii) *Additional material:* April 27, 1989 letter from Thomas Jorling, NYSDEC, to William Muszynski, EPA Region II.

3. The table in § 52.1679 is amended by adding a new entry Subpart 225–3 in numerical order to read as follows:

§ 52.1679 EPA—approved New York State regulations.

New York State regulation	State effective date	Latest EPA approved date	Comments
Subpart 225–3, "Fuel Composition and Use—Volatile Motor Fuels.".	1/4/89	FR date and citation of this document	Effective date 6/30/89.

[FR Doc. 89–14396 Filed 6–20–89; 8:45 am]
BILLING CODE 6560–50–M

40 CFR Parts 60 and 61

[FRL–3603–8]

Standards of Performance for New Stationary Sources and National Emission Standards for Hazardous Air Pollutants; Delegation of Authority to the State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation of authority.

SUMMARY: This notice announces an extension of previously-issued delegations of authority for the implementation and enforcement of the federal Standards of Performance for New Stationary Sources (commonly known as New Source Performance Standards or NSPS), 40 CFR Part 60, and the federal National Emission Standards for Hazardous Air Pollutants (NESHAP), 40 CFR Part 61. The action which involved EPA and the state of Iowa added two (2) NSPS and two (2) NESHAP categories to the delegations of authority. The state of Iowa also updated its previously-delegated NSPS categories to match current federal rules, incorporating any amendments or corrections published since original promulgation and slightly modifying the language contained in the state rules to match current federal regulations. The NSPS delegation now includes all categories except for grain elevators (Subpart DD) for which federal standards have been promulgated by the EPA through January 29, 1988. The NESHAP delegation now includes all categories promulgated through March 19, 1987, except for those covering radon (Subparts B and W), radionuclides (Subparts H, I, and K), and asbestos renovation and demolition (under Subpart M).

EFFECTIVE DATE: May 24, 1989.

ADDRESSES: All requests, reports, applications, submittals, and such other communications required to be submitted under 40 CFR Part 60 or Part 61, including notifications required to be submitted under Subpart A of the regulations, for affected facilities or activities in Iowa should be sent to Chief, Air Quality and Solid Waste Protection Bureau, Iowa Department of Natural Resources (IDNR), Henry A. Wallace State Office Building, 900 East Grand, Des Moines, Iowa 50319. A copy of all notices required by Subpart A also must be sent to Director, Air and Toxics

Division, U.S. EPA, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Whitmore, Chief, Air Compliance Section, Air Branch, U.S. EPA, Region VII, at the above address or by calling 913–236–2896 (FTS 757–2896).

SUPPLEMENTARY INFORMATION: Sections 111(c) and 112(d) of the Clean Air Act allow the Administrator of the EPA to delegate to any state government authority to implement and enforce the standards promulgated by the agency under 40 CFR Part 60 and Part 61, respectively. EPA retains concurrent authority to implement and enforce the delegated standards. On August 20, 1984, EPA and the state of Iowa entered into a delegation of authority agreement whereby Iowa automatically receives authority to implement and enforce federal NSPS and NESHAP standards upon the adoption of the standards by the state government. (See 50 FR 933.) Prior to August 20, 1984, EPA delegated to the state of Iowa authority to implement and enforce the standards for numerous categories in various delegation and extension of authority actions. The action described below does not affect these previous delegation or extension of authority actions.

On March 20, 1989, Iowa revised its rules to adopt, by reference, the standards for two (2) additional NSPS and two (2) additional NESHAP regulations promulgated by EPA. The adoption action and regulation changes became effective on May 24, 1989. The IDNR informed EPA of the adoption action in a letter dated April 25, 1989. EPA subsequently acknowledged the adoption and the corresponding delegation of authority in a letter to IDNR on May 10, 1989. The delegation occurred under the terms of the above-mentioned August 20, 1984, automatic delegation of authority agreement.

EPA hereby notifies interested individuals that, effective May 24, 1989, EPA delegates the authorization to implement and enforce the federally-established standards for the following additional or amended categories to the state of Iowa.

NSPS Adoptions

Subpart BBB—Rubber Tire Manufacturing Industry; and

Subpart TTT—Industrial Surface Coating: Plastic Parts for Business Machines.

NESHAP Adoptions

Subpart N—Inorganic Arsenic Emissions from Glass Manufacturing Plants; and

Subpart O—Inorganic Arsenic Emissions from Primary Copper Smelters.

Effective immediately, all reports, correspondence, and such other communications that are required to be submitted under the NSPS or NESHAP regulations for facilities or activities in Iowa affected by the amended delegations of authority should be sent to the Iowa Department of Natural Resources at the above address, except as noted below. A copy of each notification required to be submitted under Subpart A of 40 CFR Part 60 or 61 also must be sent to the Director, Air and Toxics Division, at the above address.

Each document and letter mentioned in this notice is available for public inspection at the EPA Region VII office.

This notice is issued under the authority of sections 111 and 112 of the Clean Air Act, as amended (42 U.S.C. 7411 and 7412).

Dated: May 26, 1989.

Morris Kay,

Regional Administrator.

[FR Doc. 89–14679 Filed 6–20–89; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 180

[PP 8E3619, 8E3645/R1028; FRL–3604–6]

Pesticide Tolerances for Iprodione

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule amends tolerances for residues of the fungicide iprodione, its isomer, and its metabolite in or on the raw agricultural commodities cherries (sweet), nectarines, peaches, and plums to allow residues of the pesticide in or on these commodities resulting from postharvest application. The amendments to the tolerances for iprodione were requested in petitions submitted by the Interregional Research Project No. 4 (IR–4).

EFFECTIVE DATE: June 21, 1989.

ADDRESS: Written objections, identified by the document control number [PP 8E3619, 8E3645/R1028], may be submitted to: Hearing Clerk (A–110), Environmental Protection Agency, Room 3708, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt Jamerson, Emergency Response and Minor Use Section (H7505C), Registration Division (TS–767C), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Office location and telephone number: Room 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–2310.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of April 26, 1989 (54 FR 17966), in which it was announced that the Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petitions 8E3619 and 8E3645 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR–4 Project, and the California Agricultural Experiment Stations.

The petitions requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose amendments to tolerances established for the combined residues of the fungicide iprodione [3-(3,5-dichlorophenyl)-*N*-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide], its isomer [3-(1-methylethyl)-*N*-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide], and its metabolite [3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide] in or on certain raw agricultural commodities. IR–4 requested that tolerances established for residues of iprodione in or on cherries (sweet), peaches (including nectarines), and plums be amended to allow residues resulting from postharvest application at the existing tolerance level of 20 parts per million (ppm), which is established for residues resulting from preharvest application of the fungicide to these commodities.

1. *PP 8E3619.* Petition submitted on behalf of the California Agricultural Experiment Station proposed amending the existing tolerance for residues of iprodione on sweet cherries at 20 parts per million (ppm) to allow residues resulting from postharvest use of the fungicide.

2. *PP 8E3645.* Petition submitted on behalf of the California Agricultural Experiment Station proposed amending the existing tolerance for residues of iprodione on peaches (including nectarines) and plums at 20 ppm to allow residues of the fungicide resulting from postharvest application of the herbicide.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and all other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 6, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR PART 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.399(a) is amended by revising the entries for cherries (sweet), nectarines, peaches, and plums, to read as follows:

§ 180.399 Iprodione; tolerances for residues.

(a) * * *

Commodities	Parts per million
* * * * *	
Cherries (sweet) (pre- and postharvest)	20.0
* * * * *	
Nectarines (pre- and postharvest)	20.0
* * * * *	
Peaches (pre- and postharvest)	20.0
* * * * *	
Plums (pre- and postharvest)	20.0
* * * * *	

[FR Doc. 89–14864 Filed 6–20–89 8:45 am]

BILLING CODE 6560–50–M

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40 CFR PART 180

[PP 9F3706/R1029; FRL–3604–5]

Pesticide Tolerances for 1-[[2-(2,4-Dichlorophenyl)-4-Propyl-1,3-Dioxolan-2-YL] Methyl]-1H-1,2,4-Triazole and its Metabolites

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This document establishes tolerances for residues of the fungicide 1-[[2-(2,4-dichlorophenyl]-4-propyl-1,3-dioxolan-2-yl] methyl]-1*H*-1,2,4-triazole and its metabolites determined as 2,4-dichlorobenzoic acid, in or on certain raw agricultural commodities. This regulation, to establish the maximum possible level for residues of the fungicide in or on the commodities, was requested by Ciba-Geigy Corp.

EFFECTIVE DATE: June 7, 1989.

ADDRESS: Written objections, identified by the document control number [PP 9F3706/R1029], may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Hearing Clerk (A–110), Environmental Protection Agency, Room 3708, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Susan Lewis, Acting Product Manager (PM) 21, Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Room 237, CM # 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1900.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of February 22, 1989 (54 FR 7597), which announced that Ciba-Geigy Corporation, P.O. Box 18300, Greensboro, NC 27419, had submitted a pesticide petition (9F3706) to EPA proposing that 40 CFR 180.434 be amended by establishing tolerances for the fungicide 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1-*H*-1,2,4-triazole and its metabolites determined as 2,4-dichlorobenzoic acid and expressed as parent compound, in or on the commodities grass hay at 5.0 parts per million (ppm) and grass forage at 0.5 ppm. EPA issued a notice, published in the **Federal Register** of April 19, 1989 (54 FR 15802), which announced that the petition was subsequently amended by Ciba-Geigy Corp. by retaining the previously proposed tolerances for grass hay and grass forage while proposing to increase the established tolerance level for kidney and liver of cattle, goats, hogs, horses, and sheep to 2.0 ppm. EPA issued a notice, published in the **Federal Register** of March 15, 1989 (54 FR 10715), which announced that Ciba-Geigy amended the petition by proposing a tolerance for residues of the fungicide for the commodity grass seed screenings at 10.0 ppm.

The data submitted in the petition and other relevant material have been evaluated. The data considered include:

1. Plant and animal metabolism studies.

2. Residue data for crop and livestock commodities.

3. Two enforcement methodologies and a multiresidue method of analysis.

4. A rat oral lethal dose (LD_{50}) with an LD_{50} 1,517 milligrams/kilogram (mg/kg) of body weight.

5. A 90-day rat feeding study with a no-observed-effect level (NOEL) of 12 mg/kg/day.

6. A 90-day dog feeding study with a NOEL of 1.25 mg/kg/day.

7. A rabbit teratology study with no maternal toxicity or developmental toxicity up to and including 180 mg/kg (highest dose).

8. A rat teratology study with a maternal toxicity NOEL of 100 mg/kg/day and no developmental toxicity up to and including 300 mg/kg/day (highest dose).

9. A two-generation rat reproduction study with a reproductive NOEL of 125 mg/kg/day (highest dose) and a developmental NOEL of 25 mg/kg/day.

10. A 1-year dog feeding study with a NOEL of 1.25 mg/kg of body weight (bw)/day.

11. A 2-year rat chronic feeding/oncogenicity study with a NOEL of 5 mg/kg/day with no oncogenic potential under the conditions of the study up to and including approximately 250 mg/kg, the highest dose tested.

12. A 2-year mouse chronic feeding/oncogenicity study with a NOEL of 15 mg/kg/day and with a statistically

significant increase in combined adenomas and carcinomas of the liver in male mice at approximately 375 mg/kg, the highest dose tested.

13. Ames test with and without activation, negative.

14. A mouse dominant-lethal assay, negative.

15. Chinese hamster nucleus anomaly, negative.

16. Cell transformation assay, negative.

Data currently lacking are additional animal metabolism and field residue studies.

The Agency carried out a weight-of-the-evidence review of all relevant data and concluded that the fungicide is a Category C oncogen (possible human carcinogen with limited evidence of carcinogenicity in animals in the absence of human data). This conclusion was based on a determination that there was evidence of oncogenicity in only a single species and sex. There was a statistically significant increase in combined adenomas and carcinomas of the liver in male mice at the highest dose tested. The Agency concludes that propiconazole was negative for oncogenicity in the rat.

The Agency has evaluated dietary exposure to the fungicide residues for the commodities proposed and for the commodities which have established tolerances using data on anticipated residues. Available data indicate that approximately 25 to 35 percent of the total U.S. grass grown for seed acreage is treated with the fungicide. The livestock dietary burden was calculated using anticipated residues in feed items multiplied by the expected percent contribution to the diet and the maximum percent of the crop that is treated. This dietary burden was then compared with available data from feeding studies to determine anticipated residues in meat and milk. Using an upper bound oncogenic potency estimate of 0.079 $(mg/k\ g/day)^{-1}$ developed from a Weibull 82 model, the upper limit on dietary oncogenic risk is calculated to be in the range of 1 incidence in a million (10^{-6}) using anticipated residues.

Based on the NOEL of 1.25 mg/kg bw/day in the 1-year dog study and a hundredfold safety factor, the acceptable daily intake (ADI) has been set at 0.013 mg/kg bw/day for the U.S. population. The theoretical maximum residue contribution (TMRC) of 0.001073 mg/kg bw/day was calculated from existing tolerances. The current action will increase the TMRC by 0.000038 mg/kg bw/day. These tolerances and previously established tolerances utilize a total of 8 percent of the ADI. The TMRC assumes that residue levels are at the established tolerances and that 100% of the crop is treated.

There are no regulatory actions pending against the registration of the fungicide. The metabolism of the fungicide in plants and animals is adequately understood for purposes of the tolerances set forth below. Two analytical methods, including gas liquid chromatography equipped with an electron capture detector, are available for enforcement purposes. Method AG-454A for crops and AG-517 for livestock commodities both determine the parent compound per se and metabolites as 2,4-dichlorobenzoic acid expressed as parent compound. Because of the long lead time from establishing these tolerances to publication of the enforcement methodologies in the "Pesticide Analytical Manual Volume II," the analytical methodologies are being made available in the interim to anyone interested in pesticide enforcement when requested by mail from:

Calvin Furlow, Public Information Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 242, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202. (703)-557-4437.

The pesticide is useful for the purpose for which the tolerances are sought. Based on the information cited above, the Agency has determined that establishing the tolerances for residues of the pesticide in or on the listed commodities will protect the public health. Therefore, tolerances are established as set forth below. These tolerances will expire 2 years from the date of publication of the final rule. Available data are inadequate to completely characterize metabolism in ruminants and residue data are considered inadequate due to insufficient geographic and grass species representation. The tolerance levels were calculated to assure tolerances would not be exceeded and residue data is available for Oregon where the majority of grass for seed is grown. Based on the review of the animal metabolism and field residue studies, the Agency will determine whether the issuance of a permanent tolerance is appropriate.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising toleance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect

List of Subjects in 40 CFR Part 180

Administrative practice and procedures, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 7, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.434 is amended by adding and alphabetically inserting entries for grass, forage; grass, hay; and grass screenings; and by revising the entries for kidney and liver of cattle, goats, hogs, horses, and sheep, to read as follows:

§ 180.434 1-[[2-(2,4-Dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1H-1,2,4-triazol; tolerances for residues.

* * * * *

Commodities	Parts per million	Expiration date
* *	*	* *
Cattle, kidney	2.0	[*Insert date 2 years from publication of final rule in* FEDERAL REGISTER]
Cattle, liver	2.0	Do.
* *	*	* *
Goats, kidney	2.0	[*Insert date 2 years from publication of final rule in* FEDERAL REGISTER]
Goats, liver	2.0	Do.
Grass, forage	0.5	Do.
Grass, hay	5.0	Do.
Grass, seed screenings	10.0	Do.
Hogs, kidney	2.0	Do.
Hogs, liver	2.0	Do.
Horses, kidney	2.0	Do.
Horses, liver	2.0	Do.
* *	*	* *
Sheep, kidney	2.0	[*Insert date 2 years from publication of final rule in* FEDERAL REGISTER].
Sheep, liver	2.0	Do.

[FR Doc. 89-14683 Filed 6-20-89; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF ENERGY

43 CFR Part 952

Acquisition Regulations; Government Travel Discounts to Cost Reimbursement Type Contractors

AGENCY: Department of Energy (DOE).

ACTION: Final Rule; correction.

SUMMARY: On April 25, 1989, at 54 FR 17734, the Department of Energy (DOE) published in the **Federal Register** regulations amending the Department of Energy Acquisition Regulation (DEAR). These regulations implemented General Services Administration (GSA) Bulletin Federal Property Management Regulations (FPMR) A-95, Availability of Government Travel Discounts to Cost Reimbursement Type Contractors. In that document the contract clause title and date were inadvertently omitted in section 952.251-70. This document corrects that omission.

EFFECTIVE DATE: April 25, 1989.

FOR FURTHER INFORMATION CONTACT: Gwen Cowan, Business and Financial Policy Division (MA-422), Office of the Deputy Assistant Secretary for Procurement and Assistance Management, Washington, DC 20585, (202) 586-8159.

List of Subjects in 48 CFR Part 952

Government procurement.

Berton J. Roth,

Deputy Assistant Secretary for Procurement and Assistance Management.

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

2. The authority citation for Part 952 continues to read as follows:

Authority: Section 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), and Section 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254).

2. In section 952.251-70, the introductory paragraph to the section, the title and date of the clause, and the introductory paragraph to the clause are corrected to read as set forth below:

952.251-70 Contractor employee travel discounts.

As prescribed in Subpart 951.70, the following provision/clause will be included in all cost-reimbursable solicitations and resulting contracts, or contract modifications, as applicable.

Contractor Employee Travel Discounts (April 1989)

Consistent with contract-authorized travel requirements, contractor employees shall make use of the travel discounts offered to Federal travelers, through use of contracted airlines discount air fares, hotels and motels lodging rates and car rental companies, when use of such discounts would result in lower overall trip costs and the discounted services are reasonably available to contractor employees performing official Government contract business. Vendors providing these services may require that the contractor employee traveling on Government business be furnished with a letter of identification signed by the authorized contracting officer.

* * * * *

[FR Doc. 89-14589 Filed 6-20-89; 8:45 am]

BILLING CODE 6450-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1152

[Ex Parte No. 274 (Sub-No. 20)]

Rail Abandonments—Avoidability of Property Tax Expense Under the Unit Method of Assessment

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Commission instituted this rulemaking proceeding in a decision served September 15, 1988 (53 FR 36081, September 16, 1988), to reconsider the avoidability of property taxes in abandonment and subsidy/purchase proceedings. Upon consideration of the comments, we have decided to adopt final rules as set forth below.

This action was necessary because our existing rules did not accurately reflect the tax consequences of an abandonment occurring in a State that taxes real property on a non-*ad valorem* basis. The rules were confusing and incomplete and to the carrier's evidentiary presentation and the options available to protestants.

The rules we are adopting clarify and simplify the existing rules and allocate the burden of proof. The intended effect is to allow a more accurate determination of the avoidable costs of rail operations in connection with rail abandonment and subsidy/purchase proceedings.

EFFECTIVE DATE: The rules are effective July 21, 1989.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245, [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: The final rules are set forth below. Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275-1721.].

This action will not have a significant economic impact on a substantial number of small entities. Small carriers will be least affected because they typically operate within the fewest number of States. Small protestants will benefit from our realignment of the evidentiary burden.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1152

Administrative practice and procedure; Railroads.

Authority: 5 U.S.C. 553 and 49 U.S.C. 10321, 10362, 10903, 10904, and 10905.

Decided: June 5, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips. Commissioner Andre concurred with a separate expression.

Commissioner Lamboley dissented in part with a separate expression.

Norita R. McGee,

Secretary.

For the reasons set forth in the preamble, Title 49, Chapter X, Part 1152 of the Code of Federal Regulations is amended as follows:

PART 1152—ABANDONMENT AND DISCONTINUANCE OF RAIL LINES AND RAIL TRANSPORTATION UNDER 49 U.S.C. 10903

1. The authority citation for Part 1152 continues to read as follows:

Authority: 5 U.S.C. 553, 559 and 704; 11 U.S.C. 1170; 16 U.S.C. 1247(d); and 49 U.S.C. 10321, 10362, 10505, 10903, 10904, 10905, 10906, 11161, 11162 and 11163.

§ 1152.31 [Amended]

2. Section 1152.32(j)(1) is amended by removing the last sentence and revising the first sentence to read as follows:

(j) * * *

(i) The assigned costs under this subsection shall be the net systemwide property tax savings resulting from the abandonment, calculated as set out below, if the applicant-carrier intends subsequently to sell or otherwise dispose of the abandoned properties.

* * *

3. Section 1152.32(j) (2), (3) and (4) are revised to read as follows:

§ 1152.32 Calculation of avoidable costs.

(j) * * *

(2) In States where a true *ad valorem* tax is levied on real property (such a track, land, buildings, and other facilities), applicant must affirm that the *ad valorem* method applies and must substantiate the amount of property taxes levied against the property on the line segment.

(3) In States where the *ad valorem* method is not employed, applicant must describe the applicable property tax methodology if it is claiming the local property tax as an avoidable cost of operations. Additionally, it must substantiate with evidence and computations the actual Statewide tax savings attributable to the abandonment.

(4) Any property tax properly substantiated under paragraphs (f)(2) or (3) of this section shall be presumed to represent systemwide savings to the carrier. Protestants may rebut this presumption by presenting evidence: (i) That property taxes in those States where the carrier operates that are not involved in the abandonment will increase significantly because of reassessments attributable to the abandonment; or (ii) that a significantly higher property tax will be levied against a retained portion of the abandoned property. If applicant does not refute protestant's evidence, it may claim avoidable property taxes only if, and to the extent, it proves systemwide property tax savings.

* * * * *

[FR Doc. 89-14655 Filed 6-20-89; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register

Vol. 54, No. 118

Wednesday, June 21, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-69-AD]

Airworthiness Directives; Boeing of Canada, Ltd., de Havilland Division, Model DHC-8-100 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposed to adopt a new airworthiness directive (AD), applicable to certain de Havilland Model DHC-8-100 series airplanes, which would require, as an interim measure, the installation of a placard on the door of certain wardrobe assemblies limiting the use of the wardrobe as a coat rack only, and subsequent modification of the door latch. This proposal is prompted by a report of a wardrobe door which became unlatched and allowed the contents to shift into the path of the flight crew door, preventing it from being opened. This condition, if not corrected, could hinder the emergency evacuation of the airplane.

DATE: Comments must be received no later than August 7, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-69-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing of Canada, Ltd., de Havilland Division, Garrett Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the FAA, New England Region, New York Aircraft Certification Office, ANE-173; telephone (516) 791-6420. Mailing address: FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue Room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. C. Kallis, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of a proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-69-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

Transport Canada, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain de Havilland Model DHC-8-100 series airplanes. There has been one report where an airplane experienced the collapse of the right main landing gear while taxiing to takeoff. This caused the wardrobe door to become unlatched and snap open. An improperly stowed ice chest then shifted and blocked the flight crew door. Further investigation revealed that the waist-high wardrobe door does not always latch properly, especially if the closing procedure consists of a gentle push at the top only. This condition, if not corrected, could result in the hindrance of an emergency evacuation.

Boeing of Canada, Ltd., de Havilland Division, has issued Service Bulletin No. 8-25-35, Revision B, dated January 27, 1989, which describes procedures for modification of the wardrobe door latch and strikers. This modification consists of an additional "¼-turn" latch and top and bottom modified striker-plates. Transport Canada has issued Airworthiness Directive CF-88-24 addressing this subject.

This airplane model is manufactured in Canada and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require, as an interim measure, installation of a placard to indicate restriction of the use of the wardrobe as a coat rack only, and subsequent modification of the door latch in accordance with the service bulletin previously described.

It is estimated that 42 airplanes of U.S. registry would be affected by this AD, that it would take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The required modification parts would be provided by the manufacturer at no cost to the operator. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $13,440.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1)

is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations (14 CFR Part 39) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing of Canada, Ltd., de Havilland Division: Applies to Model DHC–8–100 series airplanes, Serial Numbers 3 through 106 inclusive, equipped with wardrobe assembly 82520145, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent the wardrobe door from becoming unlatched and allowing the shifting of contents into the path of the flight crew door, thereby hindering emergency evacuation, accomplish the following:

A. Within 15 days after the effective date of this AD, install a placard on the wardrobe door, stating the following: "THIS WARDROBE IS RESTRICTED FOR USE AS A COAT/GARMENT RACK."

B. Within 60 days after the effective date of this AD, modify the wardrobe door latch and strikers, in accordance with Boeing of Canada, Ltd., de Havilland Division, Service Bulletin No. 8–25–35, Revision "B," dated January 27, 1989. Once this modification is accomplished, the placard required by paragraph A., above, may be removed.

C. An alternate means of compliance which provides an acceptable level of safety may be used when approved by the Manager, New York Aircraft Certification Office, FAA, New England Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Boeing of Canada, Ltd., de Havilland Division, Garrett Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

Issued in Seattle, Washington, on June 8, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–14627 Filed 6–20–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No 89–NM–83–AD]

Airworthiness Directives: Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to Boeing Model 727 series airplanes, which would require repetitive inspections and repair, if necessary, of the inboard trailing edge flaps inboard track. This proposal is prompted by reports of corrosion and/or cracking of the flap tracks. This condition, if not corrected, could lead to failure of the flap track and possible separation of the inboard trailing edge flap.

DATE: Comments must be received no later than August 8, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Dockets No. 89–NM–83AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Kathi N. Ishimaru, Airframe Branch, ANM–120S; telephone (206) 431–1525. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89–NM–83–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

There have been several incidents involving corrosion and/or cracking of the inboard trailing edge flaps inboard track on Model 727 airplanes. The reported incidents have been attributed to stress corrosion. These conditions if not corrected, could lead to failure of the flap track and possible separation of the affected inboard trailing edge flap.

The FAA has reviewed and approved Boeing Service Bulletin 727–57–0178, Revision 1, dated January 19, 1989, which describes procedures for inspection of the inboard trailing edge flaps inboard track for cracks and corrostion, and specific repair procedures.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require repetitive inspection, and repair, if necessary, of the inboard trailing edge flaps inboard track in accordance with the service bulletin previously described. If cracking or corrosion exceeds certain limits, the flap track would be required to be replaced.

The FAA has determined that long term continued operational safety will be better assured by actual modification of the airframe to remove the source of the problem, rather than by repetitive inspections. Therefore, the FAA has issued additional rulemaking which proposes to require operators to accomplish the modification identified in paragraph D. of this Notice and, thus, terminate the repetitive insepction requirement. The proposal, contained in Docket 89–NM–60–AD (54 FR 22302; May 23, 1989), is a result of the recommendations of the Aging Aircraft Task Force, sponsored by the Air Transport Association (ATA) of America, the Aerospace Industries Association (AIA), and the FAA; it proposes the installation of numerous terminating modifications related to a number of service bulletins applicable to Model 727 airplanes, to be accomplished within 4 years or 75,000 flight cycles, whichever occurs later.

There are approximately 1,695 Model 727 series airplanes of the affected design in the worldwide fleet. It is estimated that 1,172 airplanes of U.S. registry would be affected by this AD, that it would take approximately 29 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,359,520.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations (14 CFR Part 39) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 727 series airplanes certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent separation of an inboard trailing edge flap due to corrosion or cracking of the inboard track, accomplish the following:

A. For airplanes with flap tracks that have neither the repair nor the preventative modification installed, as specified in Boeing Service Bulletin 727–27–117, Revision 5, dated January 30, 1981, or earlier revisions, accomplish the following:

1. *Inspection*

a. Accomplish the following inspections prior to (1) or (2), below, whichever occurs later:

(1) prior to the accumulation of 7,000 flight cycles or 5 years since manufacture, whichever occurs first; or

(2) within the next 500 flight cycles or 6 months after the effective date of this AD, whichever occurs first.

b. Accomplish *either* of the following inspections:

(1) Perform a close visual inspection for cracks and corrosion of the inboard trailing edge flaps inboard track in the area where the flap tracks attach to the main landing gear beam. Repeat this inspection at intervals not to exceed 3,000 flight cycles or 18 months, whichever occurs first.

(2) Perform a visual and magnetic particle inspection for cracks and corrosion in the flap track, in accordance with Figure 1 of Boeing Service Bulletin 727–57–0178, Revision 1, dated January 19, 1989. Repeat these inspections at intervals not to exceed 9,000 flight cycles or 6 years, whichever occurs first.

2. *Repair*

a. If cracks or corrosion are detected as a result of the inspections required by paragraph A.1.b, above, and do not exceed the limits specified in Figures 1 or 3 of Boeing Service Bulletin 727–57–0178, Revision 1, dated January 19, 1989, prior to further flight, repair in accordance with the service bulletin. If the crack extends into the flap track web, inspect the crack using a borescope and conduct a close visual inspection in accordance with paragraph A.1.b(1), above, at intervals not to exceed 2,000 flight cycles or one year, whichever occurs first. If crack growth occurs, repair in accordance with this paragraph or A.2.b., below.

b. If cracks or corrosion are detected which exceed the limits specified in Figures 1 or 3 of Boeing Service Bulletin 727–57–0178, Revision 1, dated January 19, 1989, prior to further flight, replace the falp track.

B. For airplanes with flap tracks which have the preventative modfification installed in accordance with Boeing Service Bulletin 727–57–117, Revision 5, dated January 30, 1981, or earlier revisions, accomplish the following:

1. *Inspection*

a. Accomplish the following inspections prior to (1) or (2), below, whichever occurs later:

(1) within the next 9,000 flight cycles or 6 years since modification, whichever occurs first; or

(2) within the next 500 flight cycles or 6 months after the effective date of this AD, whichever occurs first.

b. Accomplish *either* of the following inspections:

(1) Perform a close visual inspection for cracks and corrosion of the inboard trailing edge flaps inboard track in the area where the flap tracks attach to the main landing gear beam. Repeat this inspection at intervals not to exceed 3,000 flight cycles or 18 months, whichever occurs first.

(2) Perform a visual and magnetic particle inspection for cracks and corrosion in the flap track, in accordance with Figure 1 of Boeing Service Bulletin 727–57–0178, Revision 1, dated January 19, 1989. Repeat this inspection at intervals not to exceed 9,000 flight cycles or 6 years, whichever occurs first.

2. *Repair*

a. If cracks or corrosion are detected as a result of the inspections required by paragraphs B.1.b., above, and do not exceed the limits specified in Figures 1 or 3 of Boeing Service Bulletin 727–57–0178, Revision 1, dated January 19, 1989, prior to further flight, repair in accordance with the service bulletin. If the crack extends into the flap track web, inspect the crack using a borescope and conduct a close visual inspection in accordance with paragraph B.1.b(1), above, at intervals not to exceed 2,000 flight cycles or one year, whichever occurs first. If crack growth occurs, repair in accordance with this paragraph or B.2.b., below.

b. If cracks or corrosion are detected which exceed the limits specified in Figures 1 or 3 of Boeing Service Bulletin 727–57–0178, Revision

1, dated January 19, 1989, prior to further flight, replace the flap track.

C. For airplanes with flap tracks that have been repaired with the splice plate in accordance with Boeing Service Bulletin 727-57-117, Revision 5, dated January 30, 1981, or earlier revisions, accomplish the following:

1. *Inspection*

a. Accomplish the following prior to (1) or (2), below, whichever occurs later:

(1) within the next 9,000 flight cycles or 6 years since modification, whichever occurs first; or

(2) within the next 500 flight cycles or 6 months after the effective date of this AD, whichever occurs first.

b. Perform a visual and magnetic particle inspection for cracks and corrosion in the flap track, in accordance with Figure 1 of Boeing Service Bulletin 727-57-0178, Revision 1, dated January 19, 1989.

2. *Repair*

a. Remove the repaired parts installed in accordance with Boeing Service Bulletin 727-57-117, and repair, prior to further flight, in accordance with paragraph D.1. or D.2.a. of the Accomplishment Instructions of Boeing Service Bulletin 727-57-0178, Revision 1, dated January 19, 1989. If the crack extends into the flap track web, inspect the crack using a borescope and conduct a close visual inspection in accordance with paragraph B.1.b.(1), above, at intervals not to exceed 2,000 flight cycles or one year, whichever occurs first. If crack growth occurs, repair in accordance with this paragraph or C.2.b., below.

b. Replace the flap track prior to further flight if any of the following occur:

(1) The cracks exceed the limits specified in Figure 1 of Boeing Service Bulletin 727-57-0178, Revision 1, dated January 19, 1989.

(2) The crack length is within the short limits specified in Figure 1 of Boeing Service Bulletin 727-57-0178, Revision 1, dated January 19, 1989, and the crack runs toward the flap track integral rib.

(3) The crack length is between the short limits and the maximum limits specified in Figure 1 of Boeing Service Bulletin 727-57-0178, Revision 1, dated January 19, 1989.

(4) The corrosion exceeds the limits specified in Figure 3 of Boeing Service Bulletin 727-57-0178, Revision 1, dated January 19, 1989.

D. Modification in accordance with Figure 2 or repair in accordance with Figure 3 of Boeing Service Bulletin 727-57-0178, Revision 1, dated January 19, 1989, terminates the inspection requirements of this AD. Repair in accordance with Figures 4 or 5 of the service bulletin terminates the inspection requirements, if a crack does not extend into the flap track web.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on June 9, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-14624 Filed 6-20-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-72-AD]

Airworthiness Directives; Boeing Model 767 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to certain Boeing Model 767 airplanes, which currently requires inspection and/or replacement of certain check valves in the 8th stage bleed pneumatic system. This proposal is prompted by reports that operators are continuing to find cracks in check valves even though the valves have been modified in accordance with the existing AD. The proposed AD would require repetitive inspections on all Hamilton Standard check valves in the 8th stage bleed pneumatic system, and replacement, if necessary. Failure of the 8th stage bleed pneumatic system check valve allows high pressure air to enter the 8th stage of the engine under certain conditions, causing engine surge and compressor stall, leading to engine shudown. If pieces separate from the poppet, they may cause engine or bleed system damage.

DATE: Comments must be received no later than August 7, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-72-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124; or from Hamilton Standard, Division of United Technologies Corporation, Bradley Field Road, Windsor Locks, Connecticut 06096. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Henry A. Jenkins, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1947. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to the Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-72-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On June 11, 1987, the FAA issued AD 87-12-07, Amendment 39-5646 (52 FR 23641; June 24, 1987), to require inspection, repair, and/or replacement of certain Hamilton Standard, part number 773856, 8th stage bleed pneumatic system check valves on Model 767 airplanes. That AD requires different inspections and replacement, depending on the valve manufacture date and dash number configuration. Terminating action for the repetitive inspection requirements is provided by replacing the check valves with valves rebuilt to certain specifications described in Hamilton Standard service bulletins or production equivalents.

Since issuance of that AD, several operators of Boeing Model 767 airplanes have reported that Hamilton Standard 8th stage bleed pneumatic system check valves, part number 773856, replaced or rebuilt, which have been installed to comply with AD 87-12-07 as terminating action, are continuing to exhibit premature poppet cracks and other failures. Failure of this check valve allows high pressure air to enter the 8th stage of the engine when the high stage valve opens during low cruise or idle power operation, causing engine surge and compressor stall, leading to engine shutdown. If pieces separate from the poppet, they may cause engine or bleed system damage.

It has been determined that there are still several conditions/failure modes for the part number 773856 check valves that need to be inspected on a repetitive basis. These include: (1) Welded-on identification plates, (2) poppet cracks, (3) poppet rim clearance, (4) poppet/shaft side play, (5) poppet/shaft retention if product improvement L3 has not been incorporated, and (6) swaged collar condition if product improvement L4 has not been incorporated. The FAA has reviewed and approved Hamilton Standard Service Bulletin 36-2078, dated March 1, 1989, which describes procedures for these inspections.

Since this condition may exist or develop on other airplanes of the same type design, an AD is proposed which would supersede AD 87-12-07 to require initial and repetitive inspection of all Hamilton Standard 8th stage bleed pneumatic system check valves, part number 773856 of any dash number series, installed on Boeing Model 767 airplanes in accordance with the service bulletin previously described. This action is considered to be interim action until an improved part, which will preclude the addressed unsafe condition, is designed and approved. At that time, the FAA may consider further rulemaking action to require its installation.

There are approximately 245 Model 767 series airplanes of the affected design in the worldwide fleet. It is estimated that 106 airplanes of U.S. registry would be affected by this AD. It is estimated that 157 Hamilton Standard 8th stage bleed pneumatic system check valves of the affected part number are in service. It is estimated that it would take approximately 7 manhours to perform the required inspection. The average labor cost is estimated to be $40 per manhour. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $43,960 per inspection cycle.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations (14 CFR Part 39) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.31 [Amended]

2. Section 39.31 is amended by superseding AD 87-12-07, Amendment 39-5646 (52 FR 23641; June 24, 1987), with the following new airworthiness directive:

Boeing: Applies to Model 767 series airplanes, certificated in any category, equipped with Hamilton Standard 8th stage bleed pneumatic system check valve, part number 773856. Compliance is required as indicated, unless previously accomplished.

To preclude engine or pneumatic system damage caused by the failure of the pneumatic system 8th stage check valve, accomplish the following:

A. Within the next 500 hours time-in-service after the effective date of this AD, or prior to the accumulation of 1,200 hours time-in-service on the valve, whichever occurs later, and thereafter at intervals not to exceed 1,200 hours time-in-service, perform the inspections of the 8th stage bleed pneumatic system check valve, in accordance with Hamilton standard Service Bulletin 36-2078, dated March 1, 1989. Prior to further flight, repair or replace any check valves which do not pass all the required inspections.

B. Used check valves must be inspected and repaired, if necessary, in accordance with Hamilton Standard Service Bulletin 36-2078, dated March 1, 1989, prior to installation in any Model 767 series airplanes.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received copies of the service bulletins cited herein may obtain copies upon request from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124, or Hamilton Standard, Division of United Technologies Corporation, Bradley Field Road, Windsor Locks, Connecticut 06096. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on June 8, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-14625 Filed 6-20-89; 8:45 am]

BILLING CODE 4910-13-M

BEST COPY AVAILABLE

14 CFR Part 39

[Docket No. 89-NM-76-AD]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 767 airplanes, which would require initial and repetitive inspections of certain 8th stage bleed pneumatic system check valves, and repair or replacement of those valves, as necessary. This amendment is prompted by reports of premature wear and/or failure of these check valves when used on the Boeing Model 767 series airplanes. This condition, if not corrected, could result in engine shutdown, engine damage, and/or damage to the pneumatic systems.

DATE: Comments must be received no later than August 7, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-76-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Henry A. Jenkins, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1947. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administration before taking action on the proposed rule. The proposal contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenter wishing the FAA to acknowledge receipt of their comments submitted in response to the Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-76-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

Several operators of Boeing Model 767 airplanes have reported that the Allied-Signal 8th stage bleed pneumatic system check valve, part number 3202164-2 or -4, when used as an option in the 8th stage bleed air system, has exhibited premature fracture failure. Failure of the check valve allows high pressure air to enter the 8th stage of the engine when the high stage valve opens during low cruise or idle power operation, causing engine surge and compressor stall, leading to engine shutdown. If pieces separate from the poppet, they may cause engine or bleed air system damage.

The FAA has reviewed and approved Boeing Alert System Bulletin 767-36A0030, dated April 27, 1989, which describes inspection and replacement, if necessary, of the Allied Signal 8th stage check valves, part numbers 3202164-2 and -4.

Since this condition is likely to exist or develop on other airplanes of the same type design, an AD is proposed which would require initial and repetitive inspections of these check valves in accordance with the Boeing service bulletin previously described.

There are approximately 245 Model 767 series airplanes of the affected design in the worldwide fleet. It is estimated that 106 airplanes of U.S. registry would be affected by this AD. It is estimated that 49 Allied Signal 8th stage bleed pneumatic system check valves of the affected part number are in service. It is estimated that it would take approximately 7 manhours to perform the required inspection. The average labor cost is estimated to be $40 per manhour. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $13,720 per inspection cycle.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for the action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations (14 CFR Part 39) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to all Model 767 series airplanes, certificated in any category, equipped with Allied Signal 8th stage bleed system check valve, part number 3202164-2 or -4. Compliance is required as indicated, unless previously accomplished.

To preclude engine shutdown or damage, and/or pneumatic system damage, accomplish the following:

A. Within the next 250 hours time-in-service after the effective date of this AD, or prior to accumulating 600 hours total time-in-service on the valve, whichever occurs later, and thereafter at intervals not to exceed 600 hours, perform the inspections of the check valve in accordance with Boeing Alert System Bulletin 767-36A0030, dated April 27, 1989. Prior to further flight, repair or replace check valves which do not pass all required inspections.

B. Used check valves must be inspected and repaired, if necessary, in accordance with Boeing Alert Service Bulletin 767-36A0030 dated April 27, 1989, prior to installation in any Model 767 series airplane.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the inspections required by this AD.

All persons affected by this directive who have not already received copies of the service bulletins cited herein may obtain copies upon request from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on June 8, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-14626 Filed 6-20-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-87-AD]

Airworthiness Directives; British Aerospace Model BAe 125-800A Series Airplanes, Equipped with Grumman Aerospace Corporation Engine Exhaust Duct Part No. C46P13100-3 or C46P13100-103 (Not Applicable to Airplanes Equipped With Dee Howard Thrust Reversers)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe 125-800A series airplanes, which would require installation of a strengthened engine exhaust duct. This proposal is prompted by one report of the tail pipe collapsing inward due to compressor stall. This condition, if not corrected, could lead to loss of required engine power.

DATE: Comments must be received no later than August 7, 1989.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-87-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace, PLC, Service Bulletin Librarian, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 431-1565. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-87-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The United Kingdom Civil Aviation Authority (CAA), in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on British Aerospace Model BAe 125-800A series airplanes. There has been one report of the engine exhaust duct (tail pipe) collapsing inward due to compressor stall. When compressor stall occurs, the air pressure inside the tail pipe decreases and the outside fan pressure can pulse up, resulting in the tail pipe collapsing. Part number C46P13100-3 and C46P13100-103 tail pipes, currently installed on some of the affected airplanes, were not designed to withstand these kinds of loads. This condition, if not corrected, could lead to loss of necessary engine power.

British Aerospace has issued Service Bulletin 71-40-3213A, Revision 2, dated April 12, 1989, which describes procedures for replacing existing engine exhaust ducts with new stronger exhaust ducts. The United Kingdom CAA has classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require installation of the new stronger engine exhaust ducts in accordance with the service bulletin previously described.

It is estimated that 38 airplanes of U.S. registry would be affected by this AD, that it would take approximately 20 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The required parts would be provided by the manufacturer at no cost to the operator. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $30,400.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations (14 CFR Part 39) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Applies to Model BAe 125-800A series airplanes equipped with Grumman Aerospace Corporation Engine Exhaust Duct Part No. C46P13100-3 or C46P13100-103 (not applicable to airplanes with Dee Howard thrust reversers) certificated in any category. Compliance is required within 60 days after the effective date of this AD, unless previously accomplished.

To prevent collapse of the engine exhaust duct, accomplish the following:

A. Replace the left and right engine exhaust ducts in accordance with BAe 125 Service Bulletin 71-40-3213A, Revision 2, dated April 12, 1989.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Service Bulletin Librarian, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on June 8, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-14628 Filed 6-20-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-79-AD]

Airworthiness Directives; McDonnell Douglas Model DC-10-30 and KC-10A (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-10-30 series airplanes, which would require an inspection of the auxiliary hydraulic pump connector sockets to determine if the correct connector sockets are installed; if the incorrect sockets are present, they would be required to be replaced with those of the correct part number. This proposal is prompted by a report of auxiliary hydraulic pump connectors found to have incorrect sockets installed. This condition, if not corrected, could lead to sockets pulling out of the connector and shorting out of the auxiliary hydraulic pump circuit, which would result in the loss of the auxiliary hydraulic pump.

DATE: Comments must be received no later than July 27,1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-79-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Douglas Aircraft Company, P.O. Box 1771, Long Beach, California 90801. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Los Angeles Aircraft Certification Office.

FOR FURTHER INFORMATION CONTACT: Edward S. Chalpin, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5335.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-87-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

One operator of McDonnell Douglas Model DC-10-30 series airplanes has reported five instances of auxiliary hydraulic pump connectors with incorrect sockets installed. The incorrect sockets could cause shorting of the terminal pins and the inability to control the pump. No failures of the pump have yet occurred. The FAA has been advised that, during production, the pump connectors were replaced; however, incorrect sockets were reinstalled. This condition, if not corrected, could result in the loss of the auxiliary pump and result in the inability to control the airplane.

The FAA has reviewed and approved McDonnell Douglas Service Bulletin A29-127, dated March 3, 1989, which describes procedures for inspection to determine if the correct auxiliary hydraulic pump connector sockets are installed, and replacement, if necessary.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require an inspection of the auxiliary hydraulic pump connector sockets, and replacement, if necessary, in accordance with the service bulletin previously described.

There are approximately 107 McDonnell Douglas Model DC-10-30 and KC-10A series airplanes of the affected design in the worldwide fleet. It is estimated that 48 airplanes of the U.S. registry would be affected by this AD, that it would take approximately 2.5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $4,800.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the varous levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations (14 CFR Part 39) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Applies to Model DC-10-30 series and KC-10A (Military) airplanes, as listed in Service Bulletin A29-127, dated March 3, 1989, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent the loss of the use of the auxiliary hydraulic pumps, accomplish the following:

A. Within 30 days after the effective date of this Airworthiness Directive (AD), inspect the auxiliary hydraulic pumps 1 and 2 to determine if the correct connector sockets are installed, in accordance with the Accomplishment Instructions of McDonnell Douglas Service Bulletin A29-127, dated March 3, 1989. Any sockets detected which have the incorrect part number must be replaced, prior to further flight, with P/N DC65-8S sockets, in accordance with the service bulletin.

B. Within 15 days after the inspection required by paragraph A., above, submit a report of findings, positive or negative, to the Los Angeles Aircraft Certification Office, Attention: ANM-181L, FAA, Northwest Mountain Region, 3229 East Spring Street, Long Beach, California 90806-2425.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Douglas Aircraft Company, P.O. Box 1771, Long Beach, California 90801, Attn: Manager, Warranty 73-44 (DC-10 Service Bulletin A-29-127). These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

Issued in Seattle, Washington, on June 12, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-14629 Filed 6-20-89; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-26935; File No. S7-13-89]

Proprietary Trading Systems

AGENCY: Securities and Exchange Commission.

ACTION: Extension of comment period.

SUMMARY: The Securities and Exchange Commission is extending from June 19, 1989, to July 19, 1989, the date by which comments must be received on Securities Exchange Act Release No. 26708 (April 11, 1989), 54 FR 15429, concerning the regulation of proprietary securities trading systems. The Commission has received several requests from probable commentators that the comment period be extended to assist them in preparing complete and thorough responses to the questions raised in the release.

DATE: Comments should be received on or before July 19, 1989.

ADDRESS: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Mail Stop 6–9, Washington, DC 20549. Comment letters received should refer to file No. S7–13–89. All comment letters received will be made available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Gordon K. Fuller, Special Counsel, (202) 272–2414; or Eugene A. Lopez, Attorney, (202) 272–2828, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW., Mail Stop 5–1, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: In Securities Exchange Act Release No. 26708 (April 11, 1989), 54 FR 15429, the Commission published for public comment proposed Rule 15c2–10. The proposed rule would provide for Commission review of proprietary securities trading systems that are not operated as facilities of a registered national securities exchange or association and are not subject to Commission regulation as national securities exchanges or associations pursuant to section 6 or 15A of the Securities Exchange Act of 1934 ("Act"). Several potential commentators have indicated their need for additional time to prepare their comments. In order to receive the benefit of comments from the greatest number of interested persons, the Commission is extending the comment period on Securities Exchange Act Release No. 26708 from June 19, 1989 to July 19, 1989.

By the Commission.

Dated: June 15, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–14666 Filed 6–20–89; 8:45 am]

BILLING CODE 8010–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 8F3634/P478; FRL–3604–7]

Propionic Acid; Proposed Exemptions from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that exemptions from the requirement of a tolerance be established for residues of propionic acid in or on the following raw agricultural commodities: cottonseed, peanuts, rice grain, and soybeans. These exemptions are requested by Stop-Shock, Inc.

DATE: Comments, identified by the document control number [PP 8F3634/P478], must be received on or before July 5, 1989.

ADDRESS: By mail, submit written comments to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to Room 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Room 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Susan T. Lewis, Acting Product Manager (PM) 21, Registration Division (H7505C), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Office location and telephone number: Room 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557–1900.

SUPPLEMENTARY INFORMATION: Stop-Shock, Inc., of Dallas TX, has submitted pesticide petition (PP) 8F3634 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), propose that an exemption from the requirement of tolerance under § 180.1023 (40 CFR 180.1023) be established for residues of propionic acid in or on the following raw agricultural commodities: cottonseed, peanuts, rice grain, and soybeans.

Propionic acid is to be applied without dilution and immediately after harvest by use of low-pressure nozzles to achieve uniform coverage as the commodity passes by the spraying applicator. The purpose of the post-harvest application is to prevent fungal growth in and on the freshly harvested commodity.

According to the proposed dosage rate, the maximum residue of propionic acid in or on the proposed raw agricultural commodities, cottonseed, peanuts, rice grain, and soybeans, is estimated to be 300 ppm, which is far below the maximum 8,000 ppm residue level from existing post-harvest applications. The treated commodities are for use as animal feeds only.

Exemptions from the requirement of a tolerance for residues of propionic acid are currently established under 40 CFR 180.1023 in or on stored grains of barley, corn, oats, sorghum, and wheat with a maximum residue level of 8,000 ppm from post-harvest applications. Treated grains are for use as animal feed only.

Propionic acid occurs naturally as a compound in poultry and is an intermediate product of digestion. It is produced in large quantities in ruminants (1970, *J. Argic. Food Chem.*, 19:1204). In nonruminants, propionic acid is one of the metabolic products of the breakdown of several amino acids and is utilized in the fatty acid metabolism in the body. Propionic acid is a product of the fermentation process of wood pulp waste using bacteria (Wayman et. al., US Patent 3,067,107; 1967) and is a natural byproduct of alfalfa hay fermentation. The action of microorganisms on a variety of materials will yield propionic acid (Merck Index, 10th Ed., 1983, p. 1127). Propionic acid is also used in veterinary medicine as an antiketogenetic or glucogenci agent, for stimulation of rumen development in calves, as a topical antifungal agent in various dermatoses, and for treatement of dermatophytic infections. It is also used as a bee repellant. Propionic acid occurs naturally in swiss cheese at levels as high as 1.0 percent, and it is used as a synthetic flavor ingredient. Propionic acid derivatives are also used as drugs for humans, e.g, ibuprofen, fenprofen, flurbiprofen, ketoprofen, and naproxen. Ibuprofen is available over-the-counter in many forms.

Data submitted to the Agency on propionic acid indicate a Toxicity Category III for oral, dermal, and inhalation toxicity and primary eye irritation and a Toxicity Category IV for primary dermal irritation. Long-term feeding studies in the open literature found that propionic acid acted directly on the forestomach of rats in the region of the limiting ridge producing pronounced hyperplasia, hyperplastic ulcers, and papillomas when administered at high doses (Griem, *Bundesgesundheitsblatt*, 28, 11, 322–327, 1985; *Toxicology*, 38, 1, 103–117, 1986). No changes were observed in the

grandular stomach, and the human does not have a comparable region to the rat forestomach. Data from a preliminary report on a propionic acid 90-day study in dogs showed focal and diffused hyperplastic changes in the esophagus or exposed dogs. The results indicate that propionic acid can mechanically irritate esophageal tissue. Mutagenicity studies on propionic acid have not shown any mutagenic potential (Basler et. al., *Food Chem. Toxicol.*, 25(4), 287–290, 1987). The propionic acid derivatives such as ibuprofen have been shown to produce gastrointestinal (gastric, duodenal, and intestinal) erosions in experimental animals and are known to produce gastrointestinal side effects in humans (Goodman-Gilman, Pharmacological Basis of Therapeutics, Sixth Ed., 1980).

Extensive literature searches of open literature information data bases including TOXLINE, TOXLIT, TOXLIT65, MEDLINE, MEDLINE83, MEDLINE80, CANCERLIT, TOXNET (HSDB), RTECS(NIOSH) and TSCAINV have not indicated any special hazards relative to propionic acid.

In support of its request, the petitioner noted that propionic acid has been used on food crops for many years with no known toxicity problems. The U.S. Food and Drug Administration has granted a generally recognized as safe (GRAS) status to propionic acid as a chemical preservative, adjuvant to pesticide chemicals, and a food additive. These are referenced under 21 CFR 182.99, 184.1061, and 582.3061.

Sodium propionate (§ 180.1015) is also exempted from the requirement of a tolerance for residues when used as follows: (1) As a fungicide in the production of garlic and (2) for postharvest application as a preservative on salad greens and vegetables intended for consumption as salads.

Based on the above information considered by the Agency, the exemptions from the requirement of a tolerance for the residues of propionic acid in or on cottonseed, peanuts, rice grain, and soybeans would protect the public health. Therefore, it is proposed that the exemptions be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 15 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act. As provided for in the Administrative Procedure Act [5 U.S.C. 553(d)(3)], the comment period time is shortened to less than 30 days to allow for application to stored commodities harvested last season.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 8F3634/P478]. All written comments filed in response to this petition will be available in the Public Docket and Freedom of Information Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: June 8, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. In § 180.1023, by revising the section to set forth the commodities in columnar fashion and by adding and alphabetically inserting the raw agricultural commodities cottonseed, peanuts, rice grain, and soybeans, to read as follows:

§ 180.1023 Propionic acid; exemption from the requirement of a tolerance.

Post-harvest application of propionic acid or a mixture of methylene bispropionate and oxy(bismethylene) bisproprionate when used as a fungicide is exempted from the requirement of a tolerance for residues in or on the following raw agricultural commodities:

Commodities
Alfalfa (Post-H)
Barley grain (Post-H)
Bermuda grass (Post-H)
Bluegrass (Post-H)
Brome grass (Post-H)
Clover (Post-H)
Corn grain (Post-H)
Cottonseed (Post-H)
Cowpea hay (Post-H)
Fescue (Post-H)
Lespedeza (Post-H)
Lupines (Post-H)
Oat grain (Post-H)
Orchard grass (Post-H)
Peanut hay (Post-H)
Peanuts (Post-H)
Peavine hay (Post-H)
Rice grain (Post-H)
Rye grass (Post-H)
Sorghum grain (Post-H)
Soybean hay (Post-H)
Soybeans (Post-H)
Sudan grass (Post-H)
Timothy (Post-H)
Vetch (Post-H)
Wheat grain (Post-H)

[FR Doc. 89–14666 Filed 6–20–89; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 186

[FAP 6H5512/P489; FRL–3605–1]

Pesticide Tolerance for Diniconazole

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a feed additive regulation be established to permit the combined residues of the fungicide diniconazole (E)-(R)-1-(2,4-dicholorophenyl)-4,4-dimethyl-2-(1H-1,2,4-triazolo-1-yl)pent-1-en-3-ol and related isomers (calculated as diniconazole) in or on feed items. This proposal to establish temporary maximum permissible levels for combined residues of diniconazole was requested by Valent USA Corp. (acting as agent to Chevron Chemical Co.) to permit marketing of feed commodities, foraging and feeding vines excluded, from experimental use of the fungicide on peanuts.

DATE: Comments, identified by the document control number [FAP 6H5512/P489], must be received on or before July 21, 1989.

ADDRESS: By mail, submit written comments to: Information Services Section, Program Management and Support Division (H–7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW.,

Washington, DC 20460. In person, bring comments to: Room. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (H-7505C), Attention: Product Manager (PM) 21, Environmental Protection Agency, Office of Pesticide Programs, 401, M Street, SW., Washington, DC 20460. In person, contact: Susan Lewis (Acting PM 21), Room 227, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. (703) 557-1900.

SUPPLEMENTARY INFORMATION: On November 10, 1988, Valent USA Corp. submitted a feed additive petition (FAP 6H5512) proposing to establish a feed additive regulation for residues of diniconazole and related isomers in or on peanut oil at 0.25 part per million (ppm) and soapstock at 0.25 ppm. These proposed feed additive regulations are being established to permit processing of peanuts which have been treated in connection with proposed EPA Experimental Permit No. 239-EUP-112.

The scientific data reported and other relevant material have been evaluated. The toxicological data considered in support of these regulations include:

1. A 90-day rat feeding study with a no-observed-effect-level (NOEL) of 10 ppm at 0.71 mg/kg/day and a lowest effect level (LEL) at 100 ppm.

2. A 90-day dog feeding study with a NOEL of 40 mg/kg/day and LEL of 200 mk/kg/day.

3. An Ames mutagenicity study was negative at 1 to 500 μg/plate with and without activation.

4. A sister chormatid exchange mutgagenicity study was negative.

5. A study in mammalian cells, *in vitro* cytogenetics in Chinese Hamster Ovary Cells (CHO), is negative for chormosomal aberrations.

The nature of the residue is adquately understood, and an adequate analytical method is available for enforcement purposes.

Based on the information considered, the Agency concludes that the pesticide can be safely used in the prescribed manner when such use is in accordance with the label and labeling accepted in connection with the experimental use permit issued pursuant to the Federal insecticide, fungicide, and Rodenticide Act (FIFRA) as amended (86 Stat. 973, 7 U.S.C. 136 et seq.), and the regulations are proposed as set forth below. This regulation will expire on May 5, 1991.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments should bear a notation indicating the document control number (FAP 6H5512/P489). Written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirement of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new food and feed additive levels, or conditions for safe use of additives, or raising such food and feed additive levels do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subject in 40 CFR Part 186

Animal feeds, Pesticide and pests, Reporting and recordkeeping requirements.

Dated: June 8, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 186 be amended as follows:

PART 186—[AMENDED]

1. The authority citation for Part 186 continues to read as follows:

Authority: 7 U.S.C. 135c(b)

2. By adding new § 186.2375, to read as follows:

§ 186.2375 Diniconazole.

A feed additive regulation is established to permit residues of the fungicide diniconazole ((E)-(R)-1-(2,4,dichlorophenyl)-4,4-dimethyl-2-(1H-1,2,4-triazol-1-yl)pent-1-en-3-ol) and related isomers in or on the following processed feeds when present therein as a result of application to peanuts in connection with an experimental use program which expires on May 5, 1991.

Feeds	Parts per million
Peanut oil	0.25
Soapstock	0.25

This regulation expires on May 5, 1990.

[FR Doc. 89-14685 Filed 6-20-89; 8:45 am]

BILLING CODE 5560-50-M

Notices

Federal Register
Vol. 54, No. 118
Wednesday, June 21, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

June 16, 1989.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new propoals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Extension

- Animal and Plant Health Inspection Service

Witchweed Mail Survey
None
Annually
Farms; 2,800 responses; 1,400 hours; not applicable under 3504(h)
Anita McGrady (301) 436-7774

- Forest Service

Special-Use Application and Report
FS-2700, SF-299
On occasion
Individuals or households; State or local governments; Farms; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations; 4,500 responses; 18,000 hours; not applicable under 3504(h)
Ruben Williams (703) 235-2412

New Collection

- Food and Nutrition Service

Interim Rule: Special Supplemental Food Program for Women, Infants and Children (WIC): Implementation of Food-Cost-Cutting Systems
None
On occasion
Individuals or households; State or local governments; Business or other for-profit; 174 responses; 2,610 hours; not applicable under 3504(h)
Donna Hines (703) 756-3730

Donald E. Hulcher,

Acting Departmental Clearance Officer.

[FR Doc. 89-14667 Filed 6-20-89; 8:45 am]

BILLING CODE 3410-01-M

Agricultural Stabilization and Conservation Service

Commodity Credit Corporation

1989-90 National Marketing Quota and Price Support Level for Burley Tobacco

AGENCY: Agricultural Stabilization and Conservation Service (ASCS) and Commodity Credit Corporation (CCC), United States Department of Agriculture (USDA).

ACTION: Notice of determination.

SUMMARY: The purpose of this notice is to affirm determinations made by the Secretary of Agriculture with respect to the 1989 crop of burley tobacco in accordance with the Agricultural Adjustment Act of 1938, as amended, and the Agricultural Act of 1949, as amended. In addition to other determinations, the Secretary of Agriculture determined the 1989 marketing quota for burley tobacco to be 587.6 million pounds and that the price support level for the 1989 crop would be $1.532 per pound.

This notice also affirms the proclamation made by the Secretary on February 1, 1989 that marketing quotas will be in effect for burley tobacco for three marketing years beginning October 1, 1989 and sets forth the results of the referendum held during the period February 27-March 2, 1989, in which producers of burley tobacco approved marketing quotas for the 1989-90, 1990-91, and 1991-92 marketing years.

EFFECTIVE DATE: February 1, 1989.

FOR FURTHER INFORMATION CONTACT: Robert L. Tarczy, Agricultural Economist, Commodity Analysis Division, ASCS, Room 3736-South Building, P.O. Box 2415, Washington, DC 20013, (202) 447-5187. The Final Regulatory Impact Analysis describing the options considered in developing this notice and the impact of implementing each option is available on request from Robert L. Tarczy.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512-1 and has been classified "not major." This action has been classified "not major" since implementation of these determinations will not result in: (1) An annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographical region, or (3) significant adverse effects on competition, employment investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this notice applies are: Title—Commodity Loan and Purchases; Number 10.051, as set forth in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since neither the Agricultural Stabilization and Conservation Service (ASCS) nor the Commodity Credit Corporation (CCC) are required by 5 U.S.C. 553 or any provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice. This notice of determination is issued in accordance with the Agricultural Adjustment Act of 1938, as amended (the "1938 Act"), and the Agricultural Act of 1949, as amended (the "1949 Act"), in order to announce for the 1989 marketing year for burley tobacco the following:

1. The amount of domestic manufacturers' intentions;

2. The amount of the average exports for the 1986, 1987, and 1988 crop years;
3. The amount of the reserve stock level;
4. The amount of adjustment needed to maintain loan stocks at the reserve stock level;
5. The amount of the national marketing quota;
6. The national acreage reserve:
A. For establishing acreage allotments for new farms, and
B. For making corrections and adjusting inequities in old farms;
7. The national factor;
8. The price support level; and
9. The deficit reduction assessment.

Since the 1988–89 marketing year is the last of the three consecutive years for which marketing quotas previously proclaimed on a poundage basis will be in effect, section (319b) of the 1938 Act provides that the Secretary shall proclaim marketing quotas for burley tobacco on a poundage basis for the 1989–90, 1990–91, and 1991–92 marketing years.

The determinations set forth in this notice have been made on the basis of the latest available statistics of the Federal Government.

Marketing Quotas

Section 319 of the 1938 Act provides, in part, that the national marketing quota for a marketing year for burley tobacco is the quantity of such tobacco that is not more than 103 percent and not less than 97 percent of the total of: (1) The amount of burley tobacco that domestic manufacturers of cigarettes estimate they intend to purchase on U.S. auction markets or from producers, (2) the average quantity exported annually from the U.S. during the three marketing years immediately preceding the marketing year for which the determination is being made, and (3) the quantity, if any, necessary to adjust loan stocks to the reserve stock level. Section 319(a)(3)(B) further provides that, with respect to the 1986 through 1989 marketing years, any reduction in the national marketing quota being determined shall not exceed six percent of the previous year's national marketing quota. The "reserve stock level" is defined in section 301(b)(14)(D) of the 1938 Act as the greater of 50 million pounds or 15 percent of the national marketing quota for burley tobacco for the marketing year immediately preceding the marketing year for which the level is being determined.

Section 320A of the 1938 Act provides that all domestic manufacturers of cigarettes with more than 1 percent of U.S. cigarette production and sales shall submit to the Secretary a statement of purchase intentions for the 1989 crop of burley by January 15, 1989. Six such manufacturers were required to submit such a statement for the 1989 crop and the total of their intended purchases for the 1989 crop was 427.0 million pounds.

The three-year average of exports is 160.6 million pounds. This is based on 1986 Census-reported exports of 165.3 million pounds, 1987 Census-reported exports of 156.5 million pounds, and USDA-projected 1988 exports of 160 million pounds.

In accordance with section 301(b)(14)(D) of the 1938 Act, the reserve stock level is the greater of 50 million pounds or 15 percent of the 1988 marketing quota for burley tobacco. The national marketing quota for the 1988 crop year was 473.4 million pounds (53 FR 16113). Accordingly, the reserve stock level for use in determining the 1989 marketing quota for burley tobacco is 71 million pounds.

As of January 25, 1989 the two loan associations had in their inventory 59 million pounds of 1985, 1986, and 1987 crop burley tobacco which remained unsold (net of deferred sales). In addition, an estimated 12 million pounds of the 1988 crop was expected to be pledged as collateral for price support loans. This amount is equal to the desired reserve stock level. Therefore, there will be no adjustment to the reserve stock level.

The total of the three marketing quota components for the 1989–90 marketing year is 587.6 million pounds. Section 319 of the 1938 Act further provides that the Secretary may increase or decrease the total by 3 percent. Since the total supply of burley tobacco is considered normal, the Secretary did not exercise this discretion authority. Accordingly, the national marketing quota for the marketing year beginning October 1, 1989 for burley tobacco is 587.6 million pounds.

In accordance with section 319(c) of the 1938 Act, the Secretary is authorized to establish a national reserve from the national acreage allotment in an amount equivalent to not more than 1 percent of the national acreage allotment for the purpose of making corrections in farm acreage allotments, adjusting for inequities, and for establishing allotments for new farms. The Secretary has determined that a national reserve for the 1989 crop of burley tobacco of 1,066,000 pounds is adequate for these purposes.

Price Support

Price support is required to be made available for each crop of a kind of tobacco for which quotas are in effect, or for which marketing quotas have not been disapproved by producers, at a level which is determined in accordance with a formula prescribed in section 106 of the 1949 Act. With respect to the 1989 crop of burley tobacco, the level of support is determined in accordance with sections 106 (d) and (f) of the 1949 Act.

Section 106(f)(4) of the 1949 Act provides that the level of support for the 1989 crop of burley tobacco shall be: (1) The level in cents per pound at which the 1988 crop of burley tobacco was supported, plus or minus, respectively, (2) an adjustment of not less than 65 percent nor more than 100 percent of the total, as determined by the Secretary after taking into consideration the supply of the kind of tobacco involved in relation to demand, of:

(A) 66.7 percent of the amount by which:

(I) The average price received by producers for burley tobacco on the United States auction markets, as determined by the Secretary, during the 5 marketing years immediately preceding the marketing year for which the determination is being made, excluding the year in which the average price was the lowest in such period, is greater or less than

(II) The average price received by producers for burley tobacco on the United States auction markets, as determined by the Secretary, during the 5 marketing years immediately preceding the marketing year prior to the marketing year for which the determination is being made, excluding the year in which the average price was the highest and the year in which the average price was the lowest in such period; and

(B) 33.3 percent of the change, expressed as a cost per pound of tobacco, in the index of prices paid by burley tobacco producers from January 1 to December 31 of the calendar year immediately preceding the year in which the determination is made.

For the purpose of calculating the market-price component of the support level, the 1949 Act provides that the average market price be reduced 3.9 cents per pound for the 1985 marketing year and 30 cents per pound for prior marketing years.

The difference between the two 5-year averages (the difference between (A)(I) and (A)(II)) is 0.7 cents per pound. The difference in the cost index from January 1 to December 31, 1988 is 8.2 cents per pound.

Applying these components to the price support formula (0.7 cents per pound, two-thirds weight; 8.2 cents per pound, one-third weight) results in a 3.2 cent increase in the level of price support from the previous year.

Section 106(f)(8) of the 1949 Act provides that the price support level for the 1989 crop of burley tobacco will be reduced by 1.4 percent from the level otherwise determined in accordance with section 106 or that in lieu of such a reduction, an assessment be established in an amount that will realize a reduction in outlays which would have resulted from such a reduction in the price support level. On February 1, 1989, the Secretary announced that an assessment of .34 cents per pound would be imposed with producers and purchases of burley tobacco each being responsible for one-half of this amount. Accordingly, the 1989 crop of burley tobacco will be supported at 153.2 cents per pound.

The level of support and the national marketing quota for the 1989 burley marketing year was announced on February 1, 1989 by the Secretary of Agriculture. This notice affirms these determinations.

Determinations 1989–90 Marketing Year

Accordingly, the following determinations have been made for burley tobacco for the marketing year beginning October 1, 1989:

Proclamation of National Marketing Quotas

Since the 1988–89 marketing year in the last of three consecutive marketing years for which marketing quotas previously proclaimed will be in effect for burley tobacco, a national marketing quota for such kind of tobacco for each of the three marketing years beginning October 1, 1989, October 1, 1990, and October 1, 1991 is hereby proclaimed.

(a) Marketing quotas shall be in effect for the 1989–90 marketing year for burley tobacco. In a referendum held during the period February 27–March 2, 1989, 97.8 percent of producers of burley tobacco voted in favor of marketing quotas.

The following is a summary, by State, of the results of the referendum:

State	Votes cast	Percentage favoring quotas
Alabama	4	100
Arkansas	5	100
Georgia	14	100
Indiana	4,227	96.48
Illinois	0	0
Kansas	20	80.00
Kentucky	87,492	97.65
Missouri	712	95.00
North Carolina	5,708	97.07
Ohio	6,135	96.85
South Carolina	0	0
Tennessee	32,847	96.30
Virginia	9,757	97.21
West Virginia	1,416	96.68
Totals	146,937	97.76

(b) *Domestic manufacturers' intentions.* Manufacturers' intentions to purchase for the 1989 year totaled 427.0 million pounds.

(c) *3-year average exports.* The 3-year average of exports is 160.6 million pounds, based on exports of 165.3 million pounds, 156.5 million pounds and 160 million pounds for the 1986, 1987, and 1988 crop years, respectively.

(d) *Reserve stock level.* The reserve stock is 71 million pounds, based on 15 percent of 1988 national marketing quota of 473.4 million pounds.

(e) *Adjustment for the reserve stock level.* The adjustment for the reserve stock level is 0.0 million pounds, based on a reserve stock level of 71 million pounds less anticipated loan stocks of 71 million pounds.

(f) *National marketing quota.* The national marketing quota is 587.6 million pounds.

(g) *National reserve.* The national reserve for making corrections and adjusting inequities in old farm acreage allotments and for establishing allotments for new farms has been determined to be 1,066,000 pounds.

(h) *National acreage factor.* The national factor is determined to be 1.24.

(i) *Price support level.* The level of support for the 1989 crop of burley tobacco is 153.2 cents per pound.

Authority: 7 U.S.C. 1301, 1313, 1314c, 1375, 1445 1421.

Signed at Washington, DC, on June 6, 1989.

Keith D. Bjarke,

Administrator, Agricultural Stabilization and Conservation Service and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 89-14608 Filed 6-20-89; 8:45 am]

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Agricultural Stabilization and Conservation Service

Fire-Cured (Type 21), Fire-Cured (Types 22–23), Dark Air-Cured, Virginia Sun-Cured, and Cigar-Filler and Binder (Types 42, 43, 44, 53, 54 & 55) Tobaccos; 1989–90 Marketing Quotas and Acreage Allotments

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Notice of Determination of 1989–90 Marketing Quotas and Acreage Allotments.

SUMMARY: The purpose of this notice is to affirm determinations which were made by the Secretary of Agriculture on March 1, 1989, with respect to the 1989 crops of fire-cured (type 21), fire-cured (types 22–23), dark air-cured, Virginia sun-cured, and cigar-filler and binder tobaccos. In addition to other determinations, the Secretary declared national acreage allotments for the following kinds of tobaccos: Fire-cured (type 21), 4,838 acres; fire-cured (types 22–23), 14,319 acres; dark air-cured, 4,392 acres; Virginia sun-cured, 401 acres; and cigar-filler and binder (types 42–44 & 53–55), 11,095 acres.

This notice also affirms the proclamation made by the Secretary that marketing quotas will be in effect for Virginia sun-cured (type 37) tobacco for the three marketing years beginning October 1, 1989 and sets forth the results of the referendum held during the period March 27–30, 1989, in which producers of Virginia sun-cured tobacco approved marketing quotas for the 1989–90, 1990–91, and 1991–92 marketing years.

EFFECTIVE DATE: March 1, 1989.

FOR FURTHER INFORMATION CONTACT: Robert L. Tarczy, Agricultural Economist, Commodity Analysis Division, ASCS, Room 3736 South Building, P.O. Box 2415, Washington, DC 20013, (202) 447–8839. The Final Regulatory Impact Analysis describing the options considered in developing this notice and the impact of implementing each option is available on request from Robert L. Tarczy.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified "not major." This action has been classified "not major" since implementation of these determinations will not result in: (1) An annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographical regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this notice applies are: Title—Commodity Loans and Purchases; Number 10.051, as set forth in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not

applicable to this notice since the Agricultural Stabilization and Conservation Service (ASCS) nor Commodity Credit Corporation (CCC) are not required by 5 U.S.C. 553 or any provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

This program/activity is not subject to the provisions of the Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

The purpose of this notice is to affirm the determinations of the national marketing quotas for the 1989 crops of fire-cured (type 21), fire-cured (types 22–23), dark air-cured, sun-cured, and cigar-filler and binder (types 42–44 & 53–55) tobacco which were announced by the Secretary on March l, 1989 and to set forth certain other determinations with respect to these kinds of tobacco. On March 1, 1989 the Secretary also announced that a referendum would be conducted by mail with respect to sun-cured tobacco.

During the period March 27–30, 1989, eligible sun-cured producers voted in a referendum to determine whether such producers disapprove marketing quotas for the 1989–90, 1990–91, and 1991–92 marketing years for this tobacco. Of the producers voting, 100.0 percent favored marketing quotas for sun-cured tobacco. Accordingly, a quota for this kind is in effect for the 1989–90 marketing year.

In accordance with section 312(a) of the Agricultural Adjustment Act of 1938, as amended (the "Act"), the Secretary of Agriculture is required to proclaim not later than March 1 of any marketing year with respect to any kind of tobacco, other than burley and flue-cured tobacco, a national marketing quota for any such kind of tobacco for each of the next 3 marketing years if such marketing year is the last year of three consecutive years for which marketing quotas previously proclaimed will be in effect. With respect to sun-cured tobacco, the 1988–89 marketing year is the last year of three such consecutive years. Accordingly, a marketing quota for sun-cured tobacco is proclaimed for each of the three marketing years beginning October 1, 1989, October 1, 1990, and October 1, 1991. Sections 312 and 313 of the Act also provide that the Secretary shall announce the reserve supply level and the total supply of fire-cured (type 21), fire-cured (types 22–23), dark air-cured, Virginia sun-cured, and cigar-filler and binder (types 42–44 & 53–55) tobaccos for the marketing year beginning October 1, 1988, and the amounts of the national marketing quotas, national acreage allotments, and national acreage factors for apportioning the national acreage allotments (less reserves) to old farms, and the amounts of the national reserves and parts thereof available for (a) new farms and (b) making corrections and adjusting inequities in old farm allotments for fire-cured (type 21), fire-cured (types 22–23), dark air-cured, Virginia sun-cured, cigar-filler and binder (types 42–44 & 53–55) tobaccos for the 1989–90 marketing year.

Section 312(b) of the Act provides, in part, that the amount of the national marketing quota for a kind of tobacco is the total quantity of that kind of tobacco which may be marketed which will make available during such marketing year a supply of such tobacco equal to the reserve supply level. Since producers of these kinds of tobacco generally produce less than their respective national acreage allotments, it has been determined that a larger quota would be necessary to make available production equal to the reserve supply level. The amount of the national marketing quota so announced may, not later than the following March 1, be increased by not more than 20 percent if the Secretary determines that such increase is necessary in order to meet market demands or to avoid undue restriction of marketings in adjusting the total supply to the reserve supply level.

Section 301(B)(14)(B) of the Act defines "reserve supply level" as the normal supply, plus 5 percent thereof, to insure a supply adequate to meet domestic consumption and export needs in years of drought, flood, or other adverse conditions, as well as in years of plenty. The "normal supply" is defined in section 301(b)(10)(B) of the Act as a normal year's domestic consumption and exports, plus 175 percent of a normal year's domestic use and 65 percent of a normal year's exports as an allowance for a normal year's carryover. A "normal year's domestic consumption" is defined in section 301(b)(11)(B) of the Act as the average quantity produced and consumed in the United States during the 10 marketing years immediately preceding the marketing year in which such consumption is determined, adjusted for current trends in such consumption.

A "normal year's exports" is defined in section 301(b)(12) of the Act as the average quantity produced in and exported from the United States during the 10 marketing years immediately preceding the marketing year in which such exports are determined, adjusted for current trends in such exports.

On January 24, 1989, a Notice of Proposed Determination was published (54 FR 3503) in which interested persons were requested to comment with respect to these issues.

Discussion of Comments

Thirty-six written responses were received in response to the Notice of Proposed Determination. Some of these comments addressed the establishment of quotas with respect to more than one kind of tobacco. A summary of these comments by kind of tobacco is as follows:

Fire-cured (type 21) tobacco: One comment was received. It recommended that the marketing quotas established for this kind of tobacco be increased 10 percent from the 1988 marketing year.

Virginia sun-cured (type 37) tobacco: Two comments were received. Both recommended that marketing quotas established for this kind of tobacco be established at the same level which was applicable for the 1988 marketing year.

Fire-cured (types 22–23) tobacco: Twenty-three comments were received. Recommendations ranged from no change in quota to 50 percent increase from the 1988 marketing quota.

Dark air-cured tobacco: Thirteen comments were received. These comments ranged from a recommendation of no change in the marketing quota to an increase of 50 percent from the 1988 marketing year.

Cigar-filler and binder (types 42–44 & 53–55) tobacco: Ten comments were received. These comments ranged from a 30 percent increase in quota to a 60 percent increase in quota from the 1988 marketing year.

Based upon a review of these comments and the latest available statistics of the Federal Government, the following determinations have been made.

Fired-Cured (Type 21) Tobacco

The yearly average quantity of fire-cured (type 21) tobacco produced in the United States which is estimated to have been consumed in the United States during the 10 marketing years preceding the 1988–89 marketing year was approximately 2.2 million pounds. The average annual quantity of fire-cured (type 21) tobacco produced in the United States and exported from the United States during the 10 marketing years preceding the 1988–89 marketing year was 2.8 million pounds (farm sales weight basis). Domestic use has trended downward while exports have fluctuated erratically. Accordingly, a normal year's domestic consumption has been determined to be 1.2 million pounds and a normal year's exports have been determined to be 3.0 million pounds. Application of the formula prescribed by section 301(b)(14)(B) of the Act results in a reserve supply 1eve1 of 8.6 million pounds.

Manufacturers and dealers reported stocks of fire-cured (type 21) tobacco held on October 1, 1988, of 6.6 million pounds. The 1988 fire-cured (type 21) tobacco crop is estimated to be 3.0 million pounds. Therefore, the total supply of fire-cured (type 21) tobacco for the 1988–89 marketing year is 9.6 million pounds. During the 1988–89 marketing year, it is estimated that disappearance will total approximately 3.2 million pounds. By deducting this disappearance from the total supply, a carryover of 6.4 million pounds at the beginning of the 1989–90 marketing year is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1989 is 2.2 million pounds. This represents the quantity of fire-cured (type 21) tobacco which may be marketed which will make available during such marketing year a supply equal to the reserve supply level.

During the past 5 years, less than half of the announced national marketing quota has been produced. Accordingly, it has been determined that a national marketing quota of 4.97 million pounds is necessary to make available production of 2.2 million pounds. In accordance with section 312(b) of the Act, it has been further determined that the 1989–90 national. marketing quota must be increased by 20 percent in order to avoid undue restriction of marketings. This results in a national marketing quota for the 1989–90 marketing year of 5.96 million pounds.

In accordance with section 313(g) of the Act, the 1989–90 national marketing quota divided by the 1984–88 5-year national average yield of 1,232 pounds per acre results in a 1989 national acreage allotment of 4,837.66 acres.

Pursuant to the provisions of section 313(g) of the Act, a national acreage factor of 1.0 is determined by dividing the national acreage allotment, less a national reserve of 15.0 acres, by the total of 1989 preliminary farm acreage allotments. The preliminary farm acreage allotments reflect the factors specified in section 313(g) of the Act for apportioning the national acreage allotment, less the national reserve, to old farms.

Fire-Cured (Types 22–23) Tobacco

The yearly average quantity of fire-cured (types 22–23) tobacco produced in the United States which is estimated to have been consumed in the United States during the 10 years preceding the 1988–89 marketing year was approximately 17.5 million pounds. The average annual quantity of fire-cured (types 22–23) tobacco produced in the United States and exported during the 10 marketing years preceding the 1988–89 marketing year was 18.9 million pounds (farm-sales weight basis). Domestic use and exports have trended upward lately. Accordingly, a normal year's domestic consumption has been determined to be 21.0 million pounds and a normal year's exports have been determined to be 20.7 million pounds. Application of the formula prescribed by section 301(b)(14)(B) of the Act results in a reserve supply level of 96.6 million pounds.

Manufacturers and dealers reported stocks of fire-cured (types 22–23) tobacco on October 1, 1988, of 82.2 million pounds. The 1988 fire-cured (types 22–23) crop is estimated to be 24.0 million pounds. Therefore, the total supply of fire-cured (types 22–23) tobacco for the marketing year beginning October 1, 1988, is 106.2 million pounds. During the 1988–89 marketing year, it is estimated that disappearance will total approximately 36.0 million pounds. By deducting this disappearance from the total supply, a carryover of 70.2 million pounds at the beginning of the 1989–90 marketing year is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1989 is 26.4 million pounds. This represents the quantity of fire-cured (types 22–23) tobacco which may be marketed which will make available during the 1989–90 marketing year a supply equal to the reserve supply level. During the past 5 years, about 95 percent of the announced national marketing quota has been produced. Accordingly, it has been determined that a national marketing quota for the 1989–90 marketing year of 27.7 million pounds is necessary to make available production of 26.4 million pounds. In accordance with section 312(b) of the Act, it has been further determined that the 1989–90 national marketing quota must be increased by 10 percent in order to avoid undue restriction of marketings. This results in a national marketing quota for the 1989–90 marketing year of 30.5 million pounds.

In accordance with section 313(g) of the Act, the national marketing quota for the 1989–90 marketing year has been divided by the 1984–88, 5-year national average yield of 2,130 pounds per acre, to obtain a national acreage allotment of 14,319.25 acres, for the 1989–90 marketing year.

Pursuant to the provisions of section 313(g) of the Act, a national acreage factor of 1.2 is determined by dividing the national acreage allotment for the 1989–90 marketing year less a national reserve of 66 acres by the total of the 1989 preliminary farm acreage allotments. The preliminary farm acreage allotments reflect the factors specified in section 313(g) of the Act for apportioning the national acreage allotment, less the national reserve, to old farms.

Dark Air-Cured Tobacco

The yearly average quantity of dark air-cured tobacco produced in the United States which is estimated to have been consumed in the United States during the 10 years preceding the 1988–89 marketing year was approximately 12.5 million pounds. The average annual quantity produced domestically and exported during this period was 2.0 million pounds (farm-sales weight basis). Domestic use has trended upward while exports have been erratic. Accordingly, 13.1 million pounds have been used as a normal year's domestic consumption and 2.5 million pounds have been used as a normal year's exports. Application of the formula required by section 301(14)(B) of the Act results in a reserve supply level of 42.1 million pounds.

Manufacturers and dealers reported stocks of dark air-cured tobacco held on October 1, 1988, of 40.9 million pounds. The 1988 dark air-cured crop is estimated to be 7.7 million pounds. Therefore, the total supply for the market year beginning October 1, 1988, is 48.6 million pounds. During the 1988–89 marketing year, it is estimated that disappearance will total approximately 14.0 million pounds. By deducting this disappearance from the total supply, a carryover of 34.6 million pounds at the beginning of the 1989–90 marketing year is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1989 is 7.5 million pounds. This represents the quantity of dark air-cured tobacco which may be marketed which will make available during such marketing year a supply equal to the reserve supply level. During the last 5 years, about 90 percent of the announced national marketing quota has been produced. Accordingly, it has been determined that a national marketing quota for the 1989–90 marketing year of 8.3 million pounds is necessary to make available production of 7.5 million pounds. In accordance with section 312(b) of the Act, it has been further determined that the 1989–90

marketing quota must be increased by 10 percent in order to avoid undue restriction of marketings. This results in a national marketing quota for the 1989–90 marketing year of 9.1 million pounds.

In accordance with section 313(g) of the Act, the 1989–90 national marketing quota, divided by the 1984–88, 5-year national average yield of 2,072 pounds per acre, results in a national acreage allotment of 4,391.89.

Pursuant to the provisions of section 313(g) of the Act, a national acreage factor of 1.1 is determined by dividing the national acreage allotment, less a national reserve of 20.0 acres, by the total of the 1989 preliminary farm acreage allotments. The preliminary farm acreage allotments reflect the factors specified in section 313(g) for apportioning the national acreage allotment, less the national reserve, to old farms.

Virginia Sun-Cured Tobacco

The yearly average quantity of Virginia sun-cured tobacco produced in the United States which is estimated to have been consumed in the United States during the 10 marketing years preceding the 1988–89 marketing year was approximately 400 thousand pounds. The average annual quantity produced in the United States and exported during the same period was approximately 140 thousand pounds (farm-sales weight basis). Both domestic use and exports have shown a downward trend. Accordingly, a quantity of 202 thousand pounds has been determined to be a normal year's domestic consumption and a quantity of 134 thousand pounds has been determined to be a normal year's exports. Application of the formula prescribed by section 301(b)(14)(B) of the Act results in a reserve supply level of 816 thousand pounds.

Manufacturers and dealers reported stocks of Virginia sun-cured tobacco held on October 1, 1988 of 829 thousand pounds. The 1988 Virginia sun-cured tobacco crop is estimated to be 110 thousand pounds. Therefore, the total supply of Virginia sun-cured tobacco for the 1988–89 marketing year is 939 thousand pounds. During the 1988–89 marketing year, it is estimated that disappearance will total approximately 200 thousand pounds. By deducting this disappearanee from the total supply, a carryover of 739 thousand pounds at the beginning of the 1989–90 marketing year is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1989 is 77 thousand pounds. This represents the quantity of Virginia sun-cured tobacco which may be marketed which will make available during such marketing year a supply equal to the reserve supply level. During the last 5 years, less than one-fifth of the announced national marketing quota has been produced. Accordingly, it has been determined that a national marketing quota of 404 thousand pounds is necessary to make available production of 77 thousand pounds. Increasing the quota by 20 percent in accordance with section 312(b) of the Act to 485 thousand pounds is necessary to avoid undue restriction of marketings. This results in a national marketing quota for the 1989–90 marketing year of 485 thousand pounds.

In accordance with section 313(g) of the Act, the 1989–90 national marketing quota divided by the 1984–88 5-year national average yield of 1,210 pounds per acre results in a 1989 national acreage allotment of 400.83 acres.

Pursuant to the provisions of section 313(g) of the Act, a national acreage factor of 1.0 is determined by dividing the national acreage allotment, less a national reserve of 2.4 acres, by the total of the 1989 preliminary farm acreage allotments. The preliminary farm acreage allotments reflect the factors specified in section 313(g) of the Act for apportioning the national acreage allotment, less the national reserve, to old farms.

Cigar-Filler and Binder (Types 42–44 & 53–55) Tobacco

The yearly average quantity of cigar-filler and binder (types 42–44 & 53–55) tobacco produced in the United States which is estimated to have been consumed in the United States during the 10 years preceding the 1988–89 marketing year was approximately 22.2 million pounds. The average annual quantity of cigar-filler and binder (types 42–44 & 53–55) tobacco produced in the United States and exported from the United States during the 10 marketing years preceding the 1988–89 marketing year was very small. Domestic use has trended downward and exports are small. Accordingly, a normal year's domestic consumption has been established at 15.7 million pounds while a normal year's exports has been established at .06 million pounds. Application of the formula prescribed by section 301(b)(14)(B) the Act results in a reserve supply level of 45.5 million pounds.

Manufacturers and dealers report stocks of cigar-filler and binder (types 42–44 & 53–55) tobacco held on October 1, 1988 of 41.9 million pounds. The 1988 cigar-filler and binder crop is estimated to be 5.8 million pounds. Therefore, the total supply of cigar-filler and binder (types 42 44 & 53 55) tobacco for the 1988–89 marketing year is 47.7 million pounds. During the 1988–89 marketing year, it is estimated that disappearance will total about 19.0 million pounds. By deducting this disappearance from the total supply, a carryover of 28.7 million pounds at the beginning of the 1989–90 marketing year is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1989 is 16.8 million pounds. This represents the quantity of cigar-filler and binder tobacco which may be marketed which will make available during such marketing year a supply equal to the reserve supply level. It is expected that approximately 75 percent of the announced national marketing quota will be produced in the upcoming season. Accordingly, it has been determined that a 1989–90 national marketing quota of 22.4 million pounds is necessary to make available production of 16.8 million pounds. This results in a national marketing quota for the 1989–90 marketing year of 22.4 million pounds.

In accordance with section 313(g) of the Act, the 1989–90 national marketing quota of 22.4 million pounds divided by the 1984–88 5-year national average yield of 2,019 pounds per acre results in a 1989–90 national acreage allotment of 11,094.60 acres.

Pursuant to the provisions of section 313(g), a national acreage factor of 1.4 is determined by dividing the national acreage allotment, less a national reserve of 17 acres, by the total of the 1989 preliminary farm acreage allotments. The preliminary farm acreage allotments reflect the factors specified in section 313(g) for apportioning the national acreage allotment, less the national reserve, to old farms.

Accordingly, the following determinations announced by the Secretary of Agriculture on March 1, 1989 are affirmed:

Proclamations of National Marketing Quotas for Virginia Sun-Cured Tobacco

Since the 1988–89 marketing year is the last of 3 consecutive years for which marketing quotas previously proclaimed will be in effect for sun-cured tobacco, a national marketing quota for such kind of tobacco for each of the 3 marketing years beginning October 1, 1989, October 1, 1990, and October 1, 1991 is proclaimed.

Determinations for the 1989–91 Marketing Years of Fire-Cured (Type 21), Fire-Cured (Types 22–23), Dark Air-Cured, Virginia Sun-Cured, and Cigar-Filler and Binder (Types 42–44 and 53–55) Tobacco

Referendum Results

Marketing quotas shall be in effect for the 1989–90 marketing year for Virginia sun-cured tobacco. In a referendum held during the period March 27–30, 1989, 100.0 percent of producers of sun-cured tobacco voted in favor of marketing quotas.

The following is a summary, by State, of the results of each referendum:

	Total Votes	Yes Votes	No Votes	% Votes
Virginia	49	49	0	100.0

With respect to fire-cured (type 21) tobacco for the marketing year beginning October 1, 1989:

(a) *Reserve supply level.* The reserve supply level for fire-cured (type 21) tobacco is 8.6 million pounds.

(b) *Total supply.* The total supply of fire-cured (type 21) tobacco for the marketing year beginning October 1, 1988, is 9.6 million pounds.

(c) *Carryover.* The estimated carryover of fire-cured (type 21) tobacco for the marketing year beginning October 1, 1989, is 6.4 million pounds.

(d) National marketing quota. The 1989–90 national marketing quota for fire-cured (type 21) tobacco for the marketing year beginning October 1, 1989, is 5.96 million pounds.

(e) *National acreage allotment.* The national acreage allotment is 4,837.66 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments is 1.0.

(g) *National reserve.* The national acreage reserve is 15 acres of which 5 acres are made available for the 1989 new farms and 10 acres are made available for making corrections and adjusting inequities in old farm allotments.

With respect to fire-cured (types 22–23) tobacco for the marketing year beginning October 1, 1989:

(a) *Reserve supply level.* The reserve supply level for fire-cured (types 22–23) tobacco is 96.6 million pounds.

(b) *Total supply.* The total supply of fire-cured (types 22–23) tobacco for the marketing year beginning October 1, 1988, is 106.2 million pounds.

(c) *Carryover.* The estimated carryover of fire-cured (types 22–23) tobacco for the marketing year beginning October 1, 1989, is 70.2 million pounds.

(d) *National marketing quota.* The 1989–90 national marketing quota for fire-cured (types 22–23) tobacco for the marketing year beginning October 1, 1989, is 30.5 million pounds.

(e) *National acreage allotment.* The national acreage allotment is 14,319.25 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments for the 1989–90 marketing year is 1.2.

(g) *National reserve.* The national acreage reserve is 66 acres of which 10 acres are made available for 1989 new farms, and 56 acres are made available for making corrections and adjusting inequities in old farm allotments.

With respect to dark air-cured tobacco for the marketing year beginning October 1, 1989:

(a) *Reserve supply level.* The reserve supply level for dark air-cured tobacco is 42.1 million pounds.

(b) *Total supply.* The total supply of dark air-cured tobacco for the marketing year beginning October 1, 1988, is 48.6 million pounds.

(c) *Carryover.* The estimated carryover of dark air-cured tobacco for the marketing year beginning October 1, 1989, is 34.6 million pounds.

(d) *National marketing quota.* The 1989–90 national marketing quota for dark air-cured (types 35 & 36) tobacco for the marketing year beginning October 1, 1989, is 9.1 million pounds.

(e) *National acreage allotment.* The national acreage allotment is 4,391.89 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments for the 1989–90 marketing year is 1.1.

(g) *National reserve.* The national acreage reserve is 20 acres, of which 5.0 acres are made available for 1989 new farms and 15.0 acres are made available for making corrections and adjusting inequities in old farm allotments.

With respect to Virginia sun-cured tobacco for the marketing year beginning October 1, 1989:

(a) *Reserve supply level.* The reserve supply level for Virginia sun-cured tobacco is 816 thousand pounds.

(b) *Total supply.* The total supply of Virginia sun-cured tobacco for the marketing year beginning October 1, 1988 is 939 thousand pounds.

(c) *Carryover.* The estimated carryover of Virginia sun-cured tobacco for the marketing year beginning October 1, 1989, is 739 thousand pounds.

(d) *National marketing quota.* The national marketing quota for Virginia sun-cured (type 37) tobacco for the marketing year beginning October 1, 1989, is 485 thousand pounds.

(e) *National acreage allotment.* The national acreage allotment is 400.83 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments for the 1989–90 marketing year is 1.0.

(g) *National reserve.* The national acreage reserve is 2.4 acres, of which 1.0 acres are made available for 1989 new farms, and 1.4 acres are made available for making corrections and adjusting inequities in old farm allotments.

With respect to cigar-filler and binder (types 42–44 & 53–55) tobacco for the marketing year beginning October 1, 1989:

(a) *Reserve supply level.* The reserve supply level for cigar-filler and binder (types 42–44 & 53–55) tobacco is 45.5 million pounds.

(b) *Total supply.* The total supply of cigar-filler and binder (types 42–44 & 53–55) tobacco for the marketing year beginning October 1, 1988 is 47.7 million pounds.

(c) *Carryover.* The estimated carryover of cigar-filler and binder (types 42–44 & 53–55) tobacco for the marketing year beginning October 1, 1989 is 28.7 million pounds.

(d) *National marketing quota.* The amount of the national marketing quota for cigar-filler and binder (types 42–44, 53–55) tobacco for the marketing year beginning October 1, 1989, is 22.4 million pounds.

(e) *National acreage allotment.* The national acreage allotment is 11,094.60 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments for the 1989–90 marketing year is 1.4.

(g) *National reserve.* The national acreage reserve is 17.0 acres, of which 15.0 acres are made available for 1989 new farms, and 2.0 acres are made available for making corrections and adjusting inequities in old farm allotments.

Authority: 7 U.S.C. 1301, 1312, 1313, 1375.

Signed at Washington, DC on June 6, 1989.

Keith D. Bjerke,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 89–14609 Filed 6–20–89; 8:45 am]

BILLING CODE 3410–05–M

Agricultural Stabilization and Conservation Service 1989–90 National Marketing Quota for Cigar Filler, Maryland, and Cigar-Binder Tobaccos

AGENCY: Agricultural Stabilization and Conservation Service, United States Department of Agriculture (USDA).

ACTION: Notice of Determination of 1989–90 Marketing Quota.

SUMMARY: The purpose of this notice is to affirm determinations which were made by the Secretary of Agriculture on March 1, 1989, with respect to the 1989 crops of cigar-filler (type 41), Maryland, and cigar-binder tobaccos. In addition to other determinations, the Secretary declared national acreage allotments for the following kinds of tobacco: Cigar filler (type 41) 3,041 acres; Maryland, 12,813 acres; and cigar-binder (types 51–52), 0 acres.

This notice also affirms the proclamation made by the Secretary that marketing quotas will not be in effect for these kinds of tobacco for the three marketing years beginning October 1, 1989, and sets forth the results of the separate referenda held during the period March 27–30, 1989, in which producers of each of these kinds rejected marketing quotas for the 1989–90, 1990–91, and 1991–92 marketing years.

EFFECTIVE DATE: March 1, 1989.

FOR FURTHER INFORMATION CONTACT: Robert L. Tarczy, Agricultural Economist, Commodity Analysis Division, ASCS, Room 3730-South Building, P.O. Box 2415, Washington, DC 20013, (202) 447–8839.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major." This action has been classified "not major" since implementation of these determinations will not result in: (1) an annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographical region, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this notice applies are: Title—Commodity Loan and Purchases; Number 10.051, as set forth in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Notice of Determinations

A Notice of Proposed Determinations was published on January 24, 1989 (54 FR 3502) in which comments were requested with respect to the amount of the national marketing quota for the 1989–90 marketing year for cigar-filler (type 41), Maryland, and cigar-binder (types 51 & 52) tobaccos; the conversion of the national marketing quota into national acreage allotments; the amount of the national acreage allotment to be reserved for new farms and for adjustments; and the dates of the marketing quota referenda. No comments were received on any of these kinds of tobacco.

On March 1, 1989, the Secretary of Agriculture determined and announced the following national marketing quotas for the 1989–90 marketing year: (1) Cigar-filler (type 41) tobacco, 5.9 million pounds; (2) Maryland tobacco, 17.9 million pounds; and (3) cigar-binder tobacco, 0 million pounds. During the period March 27–30, 1989 three separate referenda were held. For cigar-filler tobacco 3.6 percent of those voting favored quotas; for Maryland 24.4 percent favored quotas; and for cigar-binder 8.7 percent of those voting favored quotas. Since none of the referenda had the 66.7 percent majority necessary to approve marketing quotas, the following determinations made on March 1, 1989, for these kinds of tobacco will not be used in establishing marketing quotas for the 1989 marketing year. However, such determinations are set forth herein as a matter of public record.

Quota Determinations for the 1989–90 Marketing Year

For cigar-filler (type 41) tobacco for the marketing year October 1, 1989:

(a) *Reserve supply level.* The reserve supply level for cigar-filler (type 41) tobacco is 22.7 million pounds.

(b) *Total supply.* The total supply of cigar-filler (type 41) tobacco for the marketing year beginning October 1, 1989 is 36.8 million pounds.

(c) *Carryover.* The estimated carryover of cigar-filler (type 41) tobacco for the marketing year beginning October 1, 1989 is 16.8 million pounds.

(d) *National marketing quota.* The amount of cigar-filler (type 41) tobacco which will make available during the marketing year beginning October 1, 1989, a supply of cigar-filler (type 41) tobacco equal to the reserve supply level of such tobacco is 5.9 million pounds, and a national marketing quota of such amount is hereby announced.

(e) *National acreage allotment.* The national acreage allotment is 3,041.24.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments for the 1989–90 marketing year is 1.0.

(g) *National reserve.* The national acreage reserve is 20.0 acres, of which 5.0 acres are made available for 1989 new farms, and 15.0 acres are made available for making corrections and adjusting inequities in old farm allotments.

For Maryland tobacco for the marketing year October 1, 1989:

(a) *Reserve supply level.* The reserve supply level for Maryland tobacco is 43.3 million pounds.

(b) *Total supply.* The total supply of Maryland tobacco is 55.4 million pounds.

(c) *Carryover.* The estimated carryover of Maryland tobacco for the marketing year beginning October 1, 1989 is 25.4 million pounds.

(d) *National marketing quota.* The amount of Maryland tobacco which will make available during the marketing year beginning October 1, 1989, a supply of Maryland tobacco equal to the reserve supply level of such tobacco is 17.9 million pounds and a national marketing quota of such amount is hereby announced.

(e) *National acreage allotment.* The national acreage allotment is 12,813.17.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments for the 1989–90 marketing year is 1.0.

(g) *National reserve.* The national acreage reserve is 52.0 acres of which 10.0 acres are made available for 1989 new farms, and 42.0 acres are made available for making corrections and adjusting inequities in old farm allotments.

For Cigar Binder (Types 51 and 52) tobacco for the marketing year October 1, 1989:

(a) *Reserve supply level.* The reserve supply level for cigar-binder is 5.6 million pounds.

(b) *Total supply.* The total supply of cigar-binder tobacco is 7.8 million pounds.

(c) *Carryover.* The estimated carryover of cigar-binder tobacco for the marketing year beginning October 1, 1989 is 5.6 million pounds.

(d) *National marketing quota.* The amount of cigar-binder (types 51 and 52) tobacco which will make available during the marketing year beginning October 1, 1989, a supply of cigar-binder tobacco equal to the reserve supply level of such tobacco is 0.0 million pounds. Accordingly, a national marketing quota of 0.0 million pounds has been determined.

(e) *National acreage allotment.* The national acreage allotment is 0.0 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments for the 1989–90 marketing year is 0.0.

(g) *National reserve.* The national acreage reserve is 0.0 acres.

Authority: 7 U.S.C. 1301, 1311, 1313, 1375.

Signed in Washington, DC, on June 6, 1989.

Keith D. Bjerke,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 89–14610 Filed 6–20–89; 8:45 am]

BILLING CODE 3410–05–M

Forest Service

Swamp Ridge Timber Sale; Clearwater National Forest; Clearwater County, ID

ACTION: Notice of Intent To Prepare an Environmental Impact Statement.

SUMMARY: The Forest Service will analyze and diclose the environmental impacts of a proposal to harvest and regenerate timber, reconstruct existing roads and construct new roads in portions of Sugar, Swamp and Pollock drainages on the North Fork Ranger District. This proposal area was originally part of the RARE II Hoodoo Roadless Area (#1301). An environmental impact statement (EIS) will be prepared which will document the analysis. This EIS will tier to the Clearwater National Forest Land and Resource Management Plan FEIS of September, 1987, which provides overall guidance in achieving the desired future condition for the area. The primary purpose and goal for the proposed action is to help satisfy short-term demands for timber and maintain a continuous supply of timber in the future, while maintaining high quality wildlife and fishery objective.

Some preliminary scoping was initiated for this project in January 1988. The Forest Service is seeking information and comments from Federal, State, local agencies and other individuals or organizations who may now be interested in or affected by the proposed actions. This input will be used in preparing the Draft EIS (DEIS). This process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Identification of additional reasonable alternatives.
5. Identification of potential environmental effects of the alternatives.
6. Determination of potential cooperating agencies.

The agency invites written comments and suggestions on the issues and management opportunities for the area being analyzed.

DATE: Comments concerning the scope of the analysis should be received by July 31, 1989 to receive timely consideration in the preparation of the Draft EIS.

ADDRESS: Send written comments to Arthur S. Bourassa, District Ranger, North Fork Ranger District, P.O. Box 2139, Orofino, ID 83544.

FOR FURTHER INFORMATION CONTACT: Dallas Emch, Swamp Ridge Interdisciplinary Team Leader, or Arthur S. Bourassa, District Ranger, North Fork Ranger District, Clearwater National Forest, P.O. Box 2139, Orofino ID 83544.

SUPPLEMENTARY INFORMATION: Management activities under consideration would occur in an area encompassing approximately 6500 acres, which includes 4200 acres of National Forest lands and 2300 acres of private ownership in the Sugar, Swamp and Pollock drainages on the North Fork Ranger District. These acres are within the original 247,647 acre Hoodoo Roadless area (#1301). This roadless area is often referred to as the "Great Burn" area due to the catastrophic fires which occurred in 1910 and 1934. Included in the area of analysis are all or portions of the following: sections 1, 2, 11, 12, 13, 23, 24, 25, 26 and 35, T. 40. N, R. 11. E and sections 5, 7, 8, 18, 19, 29 and 30, T. 40. N, R. 12. E, Boise Meridian.

The Land and Resource Management Plan for the Clearwater National Forest provides the overall guidance for management activities in the potentially affected area through its goals, objectives, standards, guidelines, and management area direction.

The areas of proposed harvest and reforestation for the Swamp Ridge project are within Management Areas E1, and C8S. Forest plan direction states that Management Area E1 consists of lands which are generally the most productive timber land in the Forest. The management goal is to provide optimium, sustained production of wood products in a cost effective manner as well as provide adequate protection of soil and water quality, manage viable elk populations, manage a range of fish habitat potential and manage a roaded natural setting for dispersed recreation.

Management Area C8S consists of lands of high value fishery streams, productive timber land, and key big-game summer range. The management goal is to maintain high quality wildlife and fishery objectives while producing timber from the productive forest land.

The analysis will consider a range of alternatives. One of these will be the "no-action" alternative in which all harvest and regeneration activities would not be implemented. Other alternatives will examine various levels and locations of harvest and regeneration to provide emphasis on differing mixes of timber and non-timber resource values.

The analysis will disclose the environmental effects of alternative ways of implementing the Forest Plan. The Forest Service will analyze and document the direct, indirect and cumulative environmental effects of the alternatives. In addition, the EIS will disclose the analysis of site specific mitigation measures and their effectiveness.

Public participation is especially important at several points of the analysis. People may visit with Forest Service officials at any time during the analysis and prior to the decision. However, two periods of time and identified for the receipt of comments on the analysis. The two public comments periods are during the scoping process (now through July 31, 1989) and during review of the Draft EIS in October 1989.

The U.S. Fish and Wildlife Service, Department of the Interior, will be informally consulted throughout the analysis. To meet the requirements of the Endangered Species Act, the U.S. Fish and Wildlife Service will review the EIS and Biological Assessment and, if necessary, render a format Biological Opinion of the effects on the Threatened and Endangered Species including the grizzly bear, and gray wolf.

The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review by September 30, 1989. At that time, the EPA will publish a notice of availability of the DEIS in the **Federal Register**. After a 45-day public comment period, the comments received will be analyzed and considered by the Forest Service in the final environmental impact statement (FEIS). The FEIS is scheduled to be completed by December 1989. The Forest Service will respond in the FEIS to the comments received on the DEIS. The District Ranger who is the responsible official for the EIS will make a decision regarding this proposal considering the comments, responses, environmental consequences discussed in the FEIS and the applicable laws, regulations and policies. The decision and reasons for the decision will be documented in a Record of Decision.

Arthur S. Bourassa, District Ranger for the North Fork Ranger District, Clearwater National Forest, is the Responsible Official.

Date: June 9, 1989.

Arthur S. Bourassa,

District Ranger, North Fork Ranger District, Clearwater National Forest.

[FR Doc. 89-14649 Filed 6-20-89; 8:45 am]

BILLING CODE 3410-11-M

Proposed Lake Catamount Resort; Routt National Forest, Routt County, CO; Extension of the Public Comment Period

In response to a Special Use Permit Application received from the Lake Catamount Joint Venture, the U.S. Department of Agriculture, Forest Service, has prepared a Draft Environmental Impact Statement (DEIS) for a proposal to permit the development of a ski area on the Hahns Peak and Yampa Ranger Districts of the Routt National Forest.

The DEIS was issued for public comment on March 10, 1989. As noted in the DEIS, the comment period was to be concluded by June 8, 1989.

The comment period is being extended to July 17, 1989. The notice of availability of the DEIS for review was published in the **Federal Register** on June 2, 1989 by the Environmental Protection Agency. All comments received by July 17, 1989 will be included in the official record and considered in the development of the Final Environmental Impact Statement.

Jerry E. Schmidt, Forest Supervisor, Routt National Forest, is the responsible official. All written comments should be sent to Jerry E. Schmidt, Forest Supervisor, Routt National Forest, 29587 West U.S. 40, Steamboat Springs, CO 80487.

Requests for copies of any questions concerning the DEIS should be directed to Dave Hackett, Routt National Forest, 29587 West U.S. 40, Steamboat Springs, CO 80487. His telephone number is (303) 879-1722.

Date: June 8, 1989.

Jerry E. Schmidt,

Forest Supervisor, Routt National Forest.

[FR Doc. 89-14596 Filed 6-20-89; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: Request for Address Location Information
Form Number: D-1012
Agency Approval Number: :None
Type of Request: New Collection
Burden: 240 hours
Number of Respondents: 3,600
Avg Hours Per Response: 4 minutes
Needs and Uses: The form will be used to collect address location information for a sample of addresses from the 1990 Advance Post Office Check. The intent is to measure the return rate of letters and to determine how often addresses can be geocoded in the office. Results will be used in planning for the year 2000 Census.
Affected Public: Individuals or households
Frequency: One time only
Respondent's Obligation: Mandatory
OMB Desk Officer: Don Arbuckle, 395-7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 15, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-14634 Filed 6-20-89; 8:45 am]

BILLING CODE 3510-07-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: Annual Survey of Government Employees
Form Number: E-1, E-2, E-3, E-4, E-6, E-7, E-9
Agency Approval Number: 0607-0452
Type of Request: Revision
Burden: 16,972 hours
Number of Respondents: 27,463
Avg Hours Per Response: 37 minutes
Needs and Uses: This survey provides data on government employment and payrolls by state, type of government and governmental functions. Results are used for other Federal statistical programs, such as computation of GNP, personal incomes, etc.; for determining Federal grant allocations; for legislative research; and for general statistical purposes.
Affected Public: State or local governments
Frequency: Annually
Respondent's Obligation: Voluntary
OMB Desk Officer: Don Arbuckle, 395-7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 15, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-14635 Filed 6-20-89; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: June 21, 1989.

FOR FURTHER INFORMATION CONTACT: Bernard T. Carreau or Richard W. Moreland, Office of Countervailing Compliance or Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-2786/2104.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce ("the Department") has received timely requests, in accordance with 19 CFR 353.22 (a)(1), (a)(2), (a)(3), and 355.22(a)(1), for administrative reviews of various antidumping and countervailing duty orders and findings.

Initiation of Reviews

In accordance with 19 CFR 353.22(c) and 355.22(c), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intended to issue the final results of these reviews no later than May 31, 1990.

Antidumping duty proceedings and firms	Periods to be reviewed
Brazil:	
Iron Construction Castings (A-351-503)	
Cosigua	5/1/88-4/30/89
Brazil:	
Orange Juice (A-351-605)	5/1/88-4/30/89
Citrosuco Paulista, S.A.	
Cargill Citrus Ltda.	
Montecitrus Trading, S.A.	
Coopercitrus Industrial	
Frutesp, S.A.	
Frutropic, S.A.	
Citrovale, S.A.	
Branco Peres Citrus, S.A.	
Brazil:	
Tubeless Steel Disc Wheels (A-351-606)	5/1/88-4/30/89
Borlem, S.A.	
India:	
Carbon Steel Pipes and Tubes (A-533-502)	5/1/88-4/30/89
Tisco	
India:	
Iron Construction Castings (A-533-501)	5/1/88-4/30/89
R. B. Agarwalla	
Carnation Enterprises	
Crescent Foundary	
Govind Steel	
Kejriwal	
Overseas Iron Foundary	
Select Steels	
Super Castings	
Tirupati Int'l.	
Uma Iron & Steel and Commex Corp.	
Japan:	
Portable Electric Typewriters (A-588-087)	5/1/88-4/30/89
Brother	
Canon	
Matsushita	
Nakajima	
Sharp	
Silver	
PRC:	
Iron Construction Castings (A-570-502)	5/1/88-4/30/89
China National Metals and Minerals Import and Export Corporation, including the Beijing, Guangdong, Liaoning (Dalian), Jilin, and Anhui Branches	
China National Machinery Import and Export Corporation (Machimpex)	
China National Machinery and Equipment Import and Export Corporation (CMEC)	
China National Light Industrial Products Import and Export Corporation	
Turkey:	
Carbon Steel Pipes and Tubes (A-489-501)	5/1/88-4/30/89
Borusan	

Countervailing duty proceedings	Periods to be reviewed
Mexico	
Bricks (C-201-017)	1/1/88-12/31/88
Mexico:	
Ceramic Tile (C-201-003)	1/1/88-12/31/88
Sweden:	
Viscose Rayon Staple Fiber (C-401-056)	1/1/88-12/31/88

Interested parties must submit applications for administative protective orders in accordance with §§ 353.34(b) or 355.34(b) of the Commerce Regulations.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and 19 CFR 353.22(c) and 355.22(c).

Joseph A. Spetrini.

Deputy Assistant Secretary for Compliance.

Date: June 15, 1989.

[FR Doc. 89-14606 Filed 6-20-89; 8:45 am]

BILLING CODE 3510-DS-M

New European Community Standards Development, Testing and Certification Procedures; Opportunity for Interested Parties to Comment

AGENCY: International Trade Administration, International Economic Policy, Commerce.

ACTION: Notice of hearing.

SUMMARY: This is to advise the public that the U.S. Government Working Group on European Community (EC) Standards, Testing and Certification Issues will be holding a public hearing to gather public comments, concerns and recommendations related to the EC's new approach on product standards and conformity assessment procedures. Interested persons are invited to present written and oral views regarding any issue which relates to this matter.

DATE: The hearing will be held at 9:30 a.m. on July 26, 1989.

FOR FURTHER INFORMATION CONTACT: Naomi Otterness or Mary Saunders, Office of European Community Affairs, Room 3036, International Economic Policy, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; (202) 377-5279 or (202) 377-5823.

SUPPLEMENTARY INFORMATION: The U.S. Working Group on EC Standards, Testing and Certification (part of the U.S. Government Interagency Task Force on the EC Internal Market) is holding a public hearing to solicit views relating to the development of new European standards, testing and certification procedures, their impact on U.S. business, and how the United States should respond.

At the request of the European Community, European standardization organization are developing industrial standards that correspond to EC-wide essential health and safety requirements stipulated by EC directives regulating certain product sectors. Areas subject to EC-wide regulations include: general machinery, agricultural machinery, appliances, certain automotive parts, construction products, cranes, hydraulic diggers, forklift trucks, lifting and loading equipment, electrical products, medical devices, toys, pressure vessels, non-automatic weighing instruments, appliances burning gaseous fuels, lawn mowers, earth moving and mobile machinery. In addition, there will be EC-wide requirements on chemicals, pharmaceuticals and other medicinal products, pesticides, fertilizers, emulsifiers, detergents, cosmetics,

processed foods, additives, preservatives and flavorings.

Existing national standards and regulations in the member countries for the products listed above would have to be replaced with the new European standards. For products that will not be subject to EC-wide regulations, the European Community is striving for a system of mutual recognition of existing national standards between the member countries.

The information and opinions obtained from the public hearing will be used to supplement the findings of the working group in determining the need for future U.S.-EC coordination on standards-related activities, establishing priorities for certain areas of greatest concern to the United States.

The hearing will be held at 9:30 a.m. on July 26, 1989, in Room 1412 at the Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Persons who wish to participate in the hearing must submit a written request to Charles Ludolph, Director, Office of European Community Affairs, Room 3036, Department of Commerce, Washington, DC, 20230, within 10 days of the publication of this notice. Requests should contain: (1) The person's name, address, telephone number, and affiliation; (2) the number of participants; (3) the reason for attending; and (4) a list of the points to be discussed. Oral presentations will be limited to those points raised in your written comments. Written comments from individuals unable to attend the hearing must be submitted to Charles Ludolph at the above address no later than July 26, 1989. Those persons wishing to appear at the hearing will be notified of the allocations for their presentations.

Richard L. Johnston,

Acting Assistant Secretary for International Economic Policy.

[FR Doc. 89-14606 Filed 6-20-89; 8:45 am]

BILLING CODE 3510-DA-M

Caribbean Basin Business Promotion Council; Open Meetings

July 14-15, 1989.

AGENCIES: International Trade Administration and the Office of the U.S. Trade Representative.

SUMMARY: The Caribbean Basin Business Promotion Council (Council) consists of 25 private sector members and nine U.S. Government representatives. The Council was established to advise the Secretary of Commerce on matters pertinent to implementation of the Caribbean Basin Initiative (CBI). The Council's advice is also forwarded to the interagency CBI Task Force.

In addition to the full Council meeting, there will be open meetings of the Council's 936, Education and Finance Subcommittees on the following day. The full Council will then reconvene to entertain reports from the Subcommittees.

Time and Place: The Caribbean Basin Business Promotion Council will meet on July 14 in Room 4830 of the U.S. Department of Commerce Building, 14th and Constitution Avenue, NW., Washington, DC from 9:00 a.m. to approximately 5:00 p.m.

The Council's 936, Education, and Finance Subcommittee meetings will be held on Saturday, July 15 from 9:00 a.m. to 11:00 a.m. at the U.S. Department of Commerce Building, 14th and Constitution Avenue, NW., Washington, DC. The full Council will reconvene on July 15 at 11:00 a.m. in Room 4830 to receive the reports of the subcommittees and to complete any unfinished business. The July 15 Subcommittee meeting schedules are as follows:

936 Subcommittee, Room 4830
Finance Subcommittee, Room 1413
Education Subcommittee, Room 1411

Please note that identification will be required to obtain entry into the building.

Proposed Agenda—Caribbean Basin Business Promotion Council

July 14

936 Subcommittee Report and Council's Tax Information Exchange Agreement policy statement;
Education Subcommittee report;
Council member country visit reports for Guyana, Grenada, Trinidad & Tobago, the Eastern Caribbean, Honduras, and El Salvador;
CBI Center Director report;
Update on OPIC activities; and
General discussion period for Council.

July 15

936 Subcommittee—Discussion of methods to promote the Caribbean Basin Development (936) program and progress review.

Financing Subcommittee—Examination of financial impediments to economic progress and discussion of financial mechanisms that may facilitate business development in the Caribbean Basin.

Education Subcommittee—Exploration of means to create and expand education opportunities for Caribbean Basin students.

Public Participation

All meetings will be open to public attendance and a period will be set aside for oral comments or questions from the public. Any member of the public may submit written comments concerning Subcommittee or Council affairs at any time before or after the meetings. Limited seating is available to the public.

FOR FURTHER INFORMATION CONTACT: Gordon Studebaker or Paul Bucher, Caribbean Basin Information Center, U.S. Department of Commerce, Main Commerce Building, Room 3203, Washington, DC 20230. Telephone (202) 377-0703. Copies of the minutes of the Council's meetings will also be available at the above office 30 days after the meetings.

Date: June 15, 1989.

Gordon Studebaker,

Director, CBI Center

[FR Doc. 89-14607 Filed 6-20-89; 8:45 am]

BILLING CODE 3510-FP-M

National Oceanic and Atmospheric Administration

Western Pacific Precious Corals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of issuance of two experimental fishing permits.

SUMMARY: The Regional Director of the Southeast Region of the National Marine Fisheries Service, acting for the Secretary of Commerce, has decided to issue two experimental fishing permits under the regulations implementing the Fishery Management Plan for the Precious Coral Fisheries of the Western Pacific Region (FMP). One permit will be issued to Maui Divers of Hawaii Ltd., which intends to harvest 50,000 kilograms (kg) of precious coral from the exclusive economic zone over a period of five years with a submersible vessel. The second permit will be issued to Aukai Fishing Company, Ltd., which intends to harvest 10,000 kg of precious coral over a two-year period with non-selective gear. Terms and conditions regulating the two fisheries have been transmitted to the permittees.

DATE: The permit for Maui Divers will be effective from January 1, 1990 through December 31, 1994. The permit for Aukai Fishing will be effective from June 1, 1989 through May 31, 1991.

FOR FURTHER INFORMATION CONTACT: Copies of the permits may be obtained from Doyle Gates, Pacific Islands Coordinator, 2570 Dole St., Room 106, Honolulu, Hawaii, 96822-2396, 808-955-8831, or James Morgan, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731, 213-514-6667.

SUPPLEMENTARY INFORMATION: Two applications for experiemental fishing permits to harvest precious coral in the western Pacific have been received, reviewed, and approved. An application from Maui Divers, Ltd. proposed to harvest 50,000 kg of precious coral over a period of five years, primarily from the exploratory areas of the western Pacific, with an unmanned submersible vessel (53 FR 48285, November 30, 1988). The second application was received from Aukai Fishing Company, Ltd., proposing to harvest 10,000 kg of precious coral from the Hawaiian exploratory area over a period of two years with non-selective gear (54 FR 7462, February 21, 1989).

Both applications were reviewed by the Western Pacific Fishery Management Council (Council). The Council recommended to the Regional Director that the permits be granted with appropriate terms and conditions.

As a part of the NMFS' review of the applications under 50 CFR Part 680 of the rules implementing the FMP, an environmental assessment was prepared on the proposal from Maui Divers (54 FR 11029, March 16, 1989) and on the proposal from Aukai Fishing (54 FR 15538, April 18, 1989). Following the end of the public review period, terms and conditions were developed, attached to the permits, and forwarded to the applicants to ensure protection of coral resources and to obtain important biological data. Some of the conditions imposed on the two operations are:

1. Maui Divers, Ltd.

(a) A total of 50,000 kg for all coral species combined may be taken over the 5 year period of the permit.

(b) A colony of pink coral (*Corallium secundum*) may be harvested at its base only if the colony is 10 inches vertical height or greater.

(c) A colony of deep-sea pink coral (*Corallium sp*) may be harvested at its base only if the colony is 7 inches vertical height or greater.

(d) The permittee must submit a proposed plan of operations 30 days prior to departure.

(e) A record of all dives of the submersible vessel will be maintained and all video tapes will be made available to the Regional Director.

(f) The Regional Director may assign an observer to any and all trips of the harvesting vessel.

2. Aukai Fishing Company, Ltd.

(a) A total of 10,000 kg for all coral species combined may be taken over the 2 year period of the permit.

(b) The permittee must submit a proposed plan of operations 30 days prior to departure.

(c) The Regional Director may assign an observer to any and all trips of the harvesting vessel.

(d) Harvesting on coral beds on which harvesting has taken place by other permit holders is prohibited without permission of the Regional Director.

(Specific directions for collecting fisheries data and for notifying the Regional Director of the departure and arrival of harvesting vessels also are included in the permits.

Authority: 16 U.S.C. 1801 et seq.

Dated: June 15, 1989.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-14620 Filed 6-20-89; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Intent To Grant Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Bristol-Myers Company, having a place of business in New York, NY, an exclusive license in the United States and certain foreign countries to practice the invention entitled "DNA Clone Encoding a Chimeric Toxin Composed of IL 6 and a Portion of Pseudomonas Exotoxin" U.S. Patent Application Serial Number 7-278,601. Prior to the grant of any license by NTIS, the patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments, and other materials relating to the proposed license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

A copy of the instant patent application may be purchased from the NTIS Sales Desk by telephoning (703) 487-4650 or by writing to the Order Department, NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 89-14652 Filed 6-20-89; 8:45 am]

BILLING CODE 3510-04-M

DELAWARE RIVER BASIN COMMISSION

Commission Meeting; Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, June 28, 1989 beginning at 1:30 p.m. in Room 5160, Secretary's Conference Room, at the Department of the Interior Building, "C" Street entrance between 18th and 19th Streets, Washington, DC. The hearing will be part of the Commission's regular business meeting which is open to the public.

An informal pre-meeting conference among the Commissioners and staff will be open for public observation at about 11:00 a.m. in Room 7000, Conference Room A, of the Interior Building.

The subjects of the hearing will be as follows:

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article II and/or Section 3.8 of the Compact:

1. Artesian Water Company, Inc. D-79-58 CP (Revised) RENEWAL. An application for the renewal of a ground water withdrawal project to supply up to 52 million gallons (mg)/30 days of water to the applicant's distribution system from Artisan's Village well field. Commission approval on May 23, 1984 was limited to five years and will expire unless renewed. The applicant requests that the total withdrawal from all wells and well fields remain limited to the quantities listed in Attachment "A Revised". The project is located in the City of Newark, New Castle County, Delaware.

2. Van Wingerden of Delaware, Inc. D-83-40 RENEWAL. An application for the renewal of a ground water withdrawal project to supply up to 25.5 mg/30 days of water to the applicant's agricultural irrigation system from Well Nos. 1 through 5. Commission approval on March 28, 1984 was limited to five years and will expire unless renewed. The applicant requests that the total withdrawal from all wells remain limited to 25.5 mg/30 days. The project

BEST COPY AVAILABLE

is located in New Castle County, Delaware.

3. Shieldalloy Metallurgical Corporation D–88–53. An application for approval of a ground water withdrawal project to supply up to 20.74 mg/30 days of water for the applicant's modified ground water decontamination system from new Well Nos. RW6S, RW6D and RIW2, and to increase the existing withdrawal limit of 1.5 mg/30 days from all wells to 20.74 mg/30 days. The recovery wells are located in the City of Vineland, Cumberland County, New Jersey and the applicant's manufacturing facility is in Newfield Borough, Gloucester County. The existing ion-exchange treatment system will be expanded to treat a design average flow of 480 gallons per minute (0.612 mgd). Initially, the supernatent and the pretreated process wastewater will be hauled to an undetermined publicly owned treatment works for final treatment. Currently, these treated waters are discharged to Hudson Branch which is tributary to Burnt Mill Branch in the Maurice River basin. Ultimately, the applicant plans to upgrade treatment, recover hexavalent chromium and reduce the need for off-site disposal of treated wastewaters.

4. Perkiomen Township Municipal Authority D–88–84 CP. An application for approval of a ground water withdrawal project to supply up to 1.950 mg/30 days of water to the Cranberry Development from new Well Nos. 2 and 3. The project is located in Perkiomen Township, Montgomery County, and is located in the Southeastern Pennsylvania Ground Water Protected Area. Well No. 2 is located 1000 feet southwest of the intersection of Wartman and Hagey Roads. Well No. 3 is located at the intersection of Wartman and Hagey Roads.

5. Borough of Collingswood D–89–3 CP. An application for approval of a ground water and surface water withdrawal project. The ground water withdrawal project is to supply water to the applicant's distribution system from existing wells. Total withdrawal from Well Nos. 2R, 3R, 4, 5, 6, 7 and 8 is not to exceed 155 mg/30 days. Due to restrictions imposed upon ground water withdrawal from the Potomac-Raritan-Magothy Aquifer, the applicant proposes to provide an alternate water source via an intake gallery on Newton Creek. The applicant is requesting an allocation of 44.8 mg/30 days from Newton Creek, but the total withdrawal from the combined ground water and surface water systems will not exceed 155 mg/30 days. The project is located in Collingswood Borough, Camden County, New Jersey.

6. Milford Township Water Authority D–89–29 CP. An application for approval of a ground water withdrawal project to supply up to 1.28 mg/30 days of water to the applicant's distribution system from existing Well No. 1. The project is located in Milford Township, Bucks County and is in the Southeastern Pennsylvania Ground Water Protected Area. Well No. 1 was previously owned by Community Health Services under Docket D–87–3 P.A.

7. Vacation Charters Ltd. D–89–31. A sewage treatment project to serve the Split Rock Westwood residential development located in Kidder Township, Carbon County, Pennsylvania. The proposed plant will be designed for tertiary treatment of 0.15 million gallons per day (mgd) average flow. An existing treatment facility, serving the development with a design capacity of 0.06 mgd (tertiary treatment), will remain operational until construction of the proposed plant is complete. The proposed plant will use the same discharge point as the existing plant, an unnamed tributary of Shingle Mill Run in the Tobyhanna Creek Watershed.

8. Borough of Allentown D–89–32 CP. An application for approval of a ground water withdrawal project to supply up to 9.0 mg/30 days of water to the applicant's distribution system from existing Well Nos. 1 and 2, and to limit the withdrawal from all wells to 9.0 mg/30 days. The project is located in Allentown Borough, Monmouth County, New Jersey.

Documents relating to these items may be examined at the Commission's offices. Prelimianry dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Public Information Notice

Water Quality Program

The Commission is preparing its water quality program for the fiscal year ending September 30, 1990. Notice of this action is given in accordance with the requirements of the Federal Clean Water Act, as amended. The proposed program will involve a variety of activities in the areas of planning, surveillance, compliance monitoring, regional coordination, water quality standards, wasteload allocations and public participation. While the proposed program is not subject to public hearing by the Commission, it will be available for examination and review by interested individuals at the Commission's offices upon request beginning July 5, 1989. The public review and comment period will end July 24, 1989. Contact Seymour P. Gross for further information.

Susan M. Weisman,

Secretary.

June 13, 1989.

[FR Doc. 89–14653 Filed 6–20–89; 8:45 am]

BILLING CODE 6360–01–M

DEPARTMENT OF DEFENSE

Department of the Air Force; USAF Scientific Advisory Board; Meeting

June 2, 1989.

The USAF Scientific Advisory Board AD Hoc Committee on Conventional Munitions will meet on 11–12 Aug. 1989 at the Pentagon, Washington, DC.

The purpose of this meeting is to brief the results of a study on air-to-surface conventional munitions. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register, Liaison Officer.

[FR Doc. 89–14650 Filed 6–20–89; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB)

Dates of Meeting: 13–14 July 1989

Time: 0800–1700 hours each day

Place: The Pentagon, Washington, DC

Agenda: The Army Science Board Ad Hoc Subgroup on Ballistic Missile Defense (Follow-On) will meet for classified briefings and discussions reviewing matters that are an integral part of or related to the issue of the study effort; i.e., penetration aid development, midcourse discrimination, and BM/C3. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., Appendix 2, subsection 10(d).

The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039/7046.

Richard E. Entlich,

Colonel, GS, Executive Secretary.

[FR Doc. 89–14651 Filed 6–20–89; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Notice was published June 7, 1989, at 54 FR 24380 that the Naval Research Advisory Committee Panel on Survivability of Navy Tactical Communications in a Hostile Environment will meet on June 21–22, 1989, at E Systems, MelPar Division, 7700 Arlington Blvd, Falls Church, Virginia. The meeting has been canceled. In accordance with 5 U.S.C. 552b(e)(2), the meeting cancellation is publicly announced at the earliest practical time.

Date: June 16, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89–14696 Filed 6–20–89; 8:45 am]

BILLING CODE 3810–AE–M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Research Advisory Committee Panel on Survivability of Navy Tactical Communications in a Hostile Environment will meet on July 13–14, 1989. The meeting will be held at the Center for Naval Analyses, 4401 Ford Avenue, Alexandria, Virginia. The meeting will commence at 9:00 a.m. and terminate at 4:00 p.m. on July 13 and 14, 1989. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to discuss issues related to the survivability of Navy tactical communications in a hostile environment. The agenda will consist of Executive Sessions which are devoted to writing a preliminary report of the panel's findings and recommendations. These discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive Order. The classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander L.W. Snyder, U.S. Navy, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217–5000, Telephone Number: (202) 696–4488.

Date: June 16, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89–14697 Filed 6–20–89; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER89–472–000 et al.]

Idaho Power Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

June 15, 1989.

Take notice that the following filings have been made with the Commission:

1. Idaho Power Company

[Docket No. ER89–472–000]

Take notice that on June 2, 1989 Idaho Power Company (Idaho Power) tendered for filing copies of an Agreement for Interim Transmission Service between The Washington Water Power Company (Washington) and Idaho Power. Idaho Power states that the transmission service will be made available to Washington from February 1, 1989 through May 31, 1989.

Idaho Power requests that the Requirements of prior notice be waived and the effective date be made retroactive to February 1, 1989.

Comment date: June 27, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. New York State Electric & Gas Corporation

[Docket No. ER88–488–000]

Take notice that on June 1, 1989, New York State Electric & Gas Corporation ("NYSEG") tendered for filing as an amended rate schedule a revised contract dated April 14, 1989 between NYSEG and the County of Erie, a municipal corporation of the State of New York, ("Erie County"). The contract is revised such as to permit delivery of amounts of preference Power as may be mutually agreed to by NYSEG and Erie County. All other terms of the initial contract remain unchanged and in effect. Service under this agreement shall commence on July 1, 1989.

NYSEG states that copies of this filing have been served by mail upon Erie County, the New York State Public Service Commission, the Municipal Electric Utilities Association of New York State, and the Power Authority of the State of New York, from whom Erie County is purchasing the hydroelectric power and energy to be sold by Erie County to its customers.

Comment date: June 27, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Citizens Power & Light Corporation

[Docket No. ER89–401–001]

Take notice that Citizens Power & Light Corporation (Citizens), on June 9, 1989, tendered for filing an amendment to its initial filing in this docket. Citizens requests a new effective date for Rate Schedule No. 1 of October 1, 1988. The revised effective date is necessary to account for certain transactions of Citizens that began on October 1, 1988.

Comment date: June 30, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Orange and Rockland Utilities, Inc.

[Docket No. ER89–486–000]

Take notice that on May 24, 1989, Orange and Rockland Utilities, Inc. ("Orange and Rockland") tendered for filing pursuant to the Federal Energy Regulatory Commission's order issued January 15, 1988 in Docket No. ER88–112–000, an executed Service Agreement between Orange and Rockland and Orange Development Corporation ("Orange Development").

Comment date: June 30, 1989, in accordance with Standard Paragraph E at the end of this notice.

5. The Kansas Power and Light Company

[Docket No. ER89–485–000]

Take notice that on May 26, 1989, The Kansas Power and Light Company (KPL) tendered for filing certain Rate Schedules under which KPL will transmit power and energy from the Jeffrey Energy Center, over its transmission facilities, to transmission interconnections with Kansas Gas and Electric Company, Centel Corporation-

Western Power Division, and Missouri Public Service Company.

Comment date: June 30, 1989, in accordance with Standard Paragraph end of this notice.

6. Alabama Power Company

[Docket No. ER89-467-000]

Take notice that on June 2, 1989, Alabama Power Company tendered for filing a Supplemental Contract between Alabama Power Company and the United States of America, Department of Energy, acting by and through the Southeastern Power Administration. The Supplemental Contract resolves certain interpretational disputes regarding the Contract between the parties dated January 29, 1965 and accepted for filing in Docket No. ER65-312-000.

Comment date: June 30, 1989, in accordance with Standard Paragraph E at the end of this notice.

7. Canal Electric Company

[Docket No. ER89-468-000]

Take notice that on June 8, 1989, Canal Electric Company ("Canal") tendered for filing a Power Contract (the "Power Contract") between itself, Cambridge Electric Light Company and Commonwealth Electric Company and a Summer Power Capacity Acquisition Commitment (the "Commitment"). The Power Contract implements the terms of the Capacity Acquisition Agreement (FERC Rate Schedule No. 21) and the Commitment. Such Power Contract recognizes the purchase of demand and related energy by Canal from Connecticut Light and Power Company and United Illuminating Company over the time period April 1, 1989 to October 31, 1989 and the sale of such power to Cambridge Electric Light Company and Commonwealth Electric Company. Canal has requested that the Commission's notice requirements with respect to the Power Contract and the Commitment be waived pursuant to Section 35.11 of the Commission's regulations in Order to allow the tendered Power Contract to become effective as of April 1, 1989.

Comment date: June 30, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-14619 Filed 6-20-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-1573-000 et al.]

CNG Transmission Corporation et al.; Natural Gas Certificate Filings

June 14, 1989.

Take notice that the following filings have been made with the Commission:

1. CNG Transmission Corporation

[Docket No. CP89-1573-000]

Take notice that on June 5, 1989, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26302, filed in Docket No. CP89-1573-000 a prior notice request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for various shippers under the certificate issued in Docket No. CP86-311-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

CNG proposes to transport gas for the shippers on an interruptible basis from various receipt points on its system to various interconnections between CNG and certain local distribution companies and pipelines. CNG lists for each shipper the receipt and delivery points, the maximum daily, average daily, and annual volumes, as well as the docket number related to the 120-day transportation service initiated by CNG (see attached appendix).

Comment date: July 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

APPENDIX

Docket No.	Shipper or customer	Commence date	Max. daily, Avg. daily, Est. annual	Receipt point	LDC
ST89-3629	Goetz Energy Corp	4/01/89	15,000 1,400 511,000	A	RG&E.
ST89-3630	Interstate Gas Marketing	4/20/89	1,060 1,000 365,000	D	Corning.
ST89-3636	O&R Energy Co	4/26/89	15,000 1,075 392,375	D	ECG.
ST89-3637	O&R Energy Co	4/26/89	15,000 275 100,375	D	PNG.
ST89-3635	Riley Natural Gas Company	4/26/89	1,000 1,000 365,000	B	HGI.
ST89-3641	Woodward Marketing	4/04/89	30,000 2,226 812,490	D	NIMO.
ST89-3642	TXG Marketing Co	3/24/89	100,000 25 9,125	A	Texas Gas.

Legend of LDC's or Delivery Points

HGI—Hope Gas, Inc.
NYSEG—New York State Electric Gas Corp.
RGE—Rochester Gas & Electric Corp.
EOG—East Ohio Gas Co.
PNG—Peoples Natural Gas Company
NIMO—Niagara Mohawk Power Corp.
NFG—National Fuel Gas Supply Corp.
Transco—Transcontinental Gas Pipeline Corporation
Corgas—Corgas Pipeline Company
North Penn—North Penn Gas Company
H&B—Hanley & Bird
Corning—Corning Natural Gas Corp.
Texas Gas—Texas Gas Transmission Corporation

Legend of Receipt Points

A—Various interconnects between Tennessee Gas Pipeline Company and CNG
B—Various receipt points in WV/PA/NY
C—Various interconnects between Texas Gas Transmission Corp. and CNG
D—Various interconnects between Texas Eastern Transmission Corp. and CNG

2. Natural Gas Pipeline Company of America

[Docket No. CP89-1569-000]

Take notice that on June 5, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89-1569-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Phillips Petroleum Company (Phillips), a producer of natural gas, under Natural's blanket certificate issued in Docket No. CP86-582-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Natural proposes to transport on an interruptible basis up to 50,000 MMBtu of natural gas on a peak day plus excess volumes pursuant to the overrun provisions of its Rate Schedule ITS, 12,000 MMBtu on an average day and 4,380,000 MMBtu on an annual basis for Phillips. It is stated that Natural would receive the gas for Phillips' account at existing receipt points in Louisiana, Texas, Offshore Texas, Oklahoma and New Mexico, and would deliver equivalent volumes at existing points on Natural's system in Texas, Offshore Texas and New Mexico. It is asserted that the transportation service would be affected using existing facilities and would require no construction of additional facilities. It is explained that the transportation service commenced April 1, 1989, under the automatic authorization provisions of Section 284.223 of the Commission's Regulations, as reported in Docket No. ST89-3782.

Comment date: July 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1512-000]

Take notice that on May 25, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1512-000, a request, as supplemental on June 7, 1989, pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for the Town of Vici Public Works Authority, Inc. Vici, Oklahoma (Vici), a shipper and local distribution company of natural gas, under Panhandle's blanket certificate issued in Docket No. CP89-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Panhandle states that pursuant to a Transportation Agreement dated April 1, 1989, between Panhandle and Vici (Agreement), Panhandle would transport up to 410 dekatherms (dt) per day equivalent of natural gas on a firm basis for Vici. Panhandle further states that the Agreement provides for it to receive the natural gas from Ringwood in Major County, Oklahoma. Panhandle would then transport and redeliver the natural gas, less fuel used and unaccounted for line loss, to Vici in Dewey County, Okahoma. Panhandle also states that Vici may nominate quantities from interruptible points of receipt on Panhandle's system as long as the sum of the volumes nominated from such points and the volumes nominated from firm points of receipt shall not exceed the contract quantity of the transportation agreement for service under Rate Schedule PT.

Panhandle states that Vici has indicated that the estimated daily and estimated annual quantities would be 410 dt and 149,650 dt, respectively.

Panhandle states that it commenced the transportation of natural gas for Vici on April 1, 1989, as reported in Docket ST89-3167, for a 120 day period pursuant to § 284.223(a) of the Commission's Regulations (18 CFR 284.223(a)).

Comment date: July 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1446-000]

Take notice that on May 19, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1446-000, a request, as supplemental on June 7, 1989, pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for the City of Hermann, Missouri (Hermann), a shipper and local distribution company of natural gas, under Panhandle's blanket certificate issued in Docket No. CP89-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Panhandle states that pursuant to a Transportation Agreement dated April 1, 1989, between Panhandle and Hermann (Agreement), it would transport up to 2,046 dekatherms (dt) per day equivalent of natural gas for Hermann. Panhandle further states that the Agreement provides for it to receive the natural gas from Arkla, Inc. and Transok in Custer County, Oklahoma and Oklahoma Natural Gas Company in Dewey County, Oklahoma. Panhandle would then transport and redeliver the natural gas, less fuel and unaccounted-for line loss, to Hermann in Audrain County, Missouri. Panhandle also states that Hermann may nominate quantities from interruptible points of receipt on Panhandle's system as long as the sum of the volumes nominated from such points and the volumes nominated from firm points of receipt shall not exceed the contract quantity of the transportation agreement for service under Rate Schedule PT.

Panhandle states that Hermann has indicated that the estimated daily and estimated annual quantities would be 2,046 dt and 746,790 dt, respectively.

Panhandle states that it commenced the transportation of natural gas for Hermann on April 1, 1989, as reported in Docket ST89-3168, for a 120-day period pursuant to Section 284.223(a) of the Commission's Regulations (18 CFR 284.223(a)).

Comment date: July 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Williams Natural Gas Company

[Docket No. CP89-1526-000]

Take notice that on May 25, 1989, Williams Natural Gas Company (Williams) P.O. Box 3288, Tulsa,

Oklahoma 74101, filed in Docket No. CP89–1586–000, a request, as supplemented on June 7, 1989, pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon 2.74 miles of 16-inch pipeline located in Sedgwick County, Kansas, under the authorization issued in Docket No. CP82–479–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

It is stated that pursuant to an order issued in Docket No. G–493, 3 FPC 598 (1943), Williams installed the section of 16-inch pipeline it now seeks to abandon. Williams avers that it proposes to replace the 2.74 miles of pipeline in Sedgwick County with 1.72 miles of 4-inch and 6-inch pipeline. Williams alleges that the proposed replacement pipeline would be constructed under the automatic provision of § 157.208(a) of the Commission's regulations. Williams asserts that KPL Gas Service (KPL) is the only customer being served by the section of pipeline to be abandoned and has agreed to the abandonment. Service to KPL would continue through the pipeline to be constructed under the automatic procedure, therefore there would be no abandonment of service. The cost to reclaim the facilities is estimated to be $500,000, the salvage value is estimated to be $33,000, and the sales price is $50.

Williams indicates that over the years, gas usage in the Wichita, Kansas area, has changed and the 16-inch pipeline to be abandoned is considered oversized for the volume of gas currently moving through it. It is alleged that the new 4-inch and 6-inch replacement pipeline, installed under the automatic procedure, would adequately serve the current gas needs and allow for increased operating flexibility. Williams avers that this proposal is not prohibited by an existing tariff and it has sufficient capacity to accomplish the deliveries without detriment or disadvantage to its other customers.

Comment date: July 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Mississippi River Transmission Corporation

[Docket No. CP89–1524–000]

Take notice that on May 26, 1989, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP89–1524–000 an application pursuant to section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon sales service to Panhandle Eastern Pipe Line Company (Panhandle) under MRT's Rate Schedule X–20 to become effective November 1, 1989, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

MRT states that pursuant to orders issued April 18, 1980, 11 FERC ¶61,054, April 13, 1987, 39 FERC ¶62,053, it is currently obligated to sell to Panhandle up to 12.5 percent of the volumes Panhandle transports for MRT under Panhandle's Rate Schedule T–38. It is alleged that Panhandle has never exercised this option to purchase gas and has requested MRT to file for abandonment of the sales service.

The gas transported by Panhandle is MRT's offsystem production from the North Reydon Field area in Oklahoma. MRT states that this gas is transported to its system using the facilities of K N Energy, Inc., Panhandle, and Trunkline Gas Company (Trunkline). It is alleged that Panhandle and Trunkline have concurrently filed to abandon their certificate transportation services for MRT effective November 1, 1989,[1] and would instead perform transportation service for MRT of the North Reydon Field production under their PT-Firm Tariffs pursuant to their open-access blanket transportation certificates. It is alleged that there would be no adverse impact on Panhandle's system supply or on Panhandle's ability to meet its sales obligations to its customers as a result of the termination of the MRT's X–20 sales service. It is claimed there would be no abandonment of facilities as a result of the termination of the T–38, T–60, and X–20 services.

Comment date: July 5, 1989, in accordance with Standard Paragraph F at the end of this notice.

7. Colorado Interstate Gas Company

[Docket No. CP89–1554–000]

Take notice that on June 1, 1989, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP89–1554–000 an application pursuant to sections 7(c) and 7(b) of the Natural Gas Act for a certificate of public convenience and necessity authorizing new storage services pursuant to two new rate schedules, Rate Schedules FS–1 (Firm Storage Service and IS–1 (Interruptible Storage Service) to be incorporated in a new CIG Original Volume No. 3 F.E.R.C. Gas Tariff, with pregranted abandonment, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CIG states that the proposed Rate Schedule FS–1 provides for firm service with an injection period between May 1 and October 31 and a withdrawal period between October 1 and April 30 with the month of October available for injection and or withdrawal. CIG states that firm storage service will be provided to certain firm sales customers with the right of first refusal subject to CIG's sole determination of storage capacity availability when such customer converts or reduces purchase obligations with the maximum daily withdrawal volume equaling not more than 20 percent of the conversion and/or reduction volume. It is further stated that provided the customer with the right of first refusal does not desire any or part of the firm storage capacity that may be available, CIG would offer such capacity through a 15-day open season. CIG explains that should the nominations for such capacity exceed the available capacity, capacity would be allocated on a pro rata basis. It is stated that the injection volume, maximum daily withdrawal volume and maximum available capacity would be specified in the FS–1 service agreement. CIG states that any request to exceed maximum daily or annual volumes would be accepted on an interruptible basis.

CIG states that the charge for FS–1 service would consist of a storage capacity rate, reservation rate and rates for injection and withdrawal. In addition, it is stated that there would be a provision for overrun rates plus the F.E.R.C. annual charge adjustment. CIG states that there is a maximum and minimum rate with a provision for discounting.

CIG states that the Rate Schedule IS–1 provides for an interruptible storage service that CIG would make available if it has storage capacity available after providing for firm obligations. CIG maintains that the charge for IS–1 service would consist of a volume injection rate. It is also stated that there would be a provision for overrun rates plus the F.E.R.C. annual charge adjustment, CIG states that there is a maximum and minimum rate with a provision for discounting.

CIG states that transportation service, in conjunction with the proposed storage service, would be provided pursuant to specific transportation service agreements under CIG's open-access

[1] Panhandle and Trunkline filed in Docket No. CP89–1522–000 to abandon transportation provided by MRT pursuant to Panhandle's Rate Schedule T–38 and Trunkline's Rate Schedule T–60.

transportation rate schedules with storage service being a "stop in time" of the transportation service.

Comment date: July 5, 1989 in accordance with Standard Paragraph F at the end of the notice.

8. Panhandle Eastern Pipe Line Company

[Docket No. CP89–1464–000]

Take notice that on May 22, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP89–1464–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas for the Village of Edinburg (Edinburg), a shipper and local distributor of natural gas, under Panhandle's blanket certificate issued in Docket No. CP86–585–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle proposes to transport, on a firm basis, up to 766 dt equivalent of natural gas on a peak day for Edinburg, 176 dt equivalent on an average day and 64,240 dt equivalent on an annual basis. It is stated that the transportation service would be effected using existing facilities and would not require any construction of additional facilities. It is explained that Panhandle would receive the gas in the Counties of Custer and Dewey, Oklahoma and would deliver equivalent volumes of gas less fuel used and unaccounted for line loss to the Village of Edinburg in Christian County, Illinois. It is explained that the service commenced April 1, 1989, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89–3112.

Comment date: July 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. Panhandle Eastern Pipe Line Company and Trunkline Gas Company

[Docket No. CP89–1522–000]

Take notice that on May 26, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, and Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP89–1522–000 a joint application pursuant to section 7(b) of the National Gas Act (NGA) for permission and approval to abandon two transportation and exchange agreements between Panhandle and Trunkline and Mississippi River Transmission Corporation (MRT), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that pursuant to a transportation and sales agreement, dated April 16, 1979, as amended June 18, 1986, filed in Docket No. CP79–376, and identified as Panhandle's Rate Schedules T–38 and T–60, Panhandle receives gas for MRT's account in Dewey County, Oklahoma and transports it to the point of interconnection with Trunkline for redelivery by Trunkline to MRT in Clay County, Illinois.

It is further stated that by transportation agreement dated October 12, 1978, filed in Docket No. CP79–98, and identified as Trunkline's Rate Schedules T–35 and T–54, Trunkline provides transportation service to move MRT's gas in and out of storage in ANR Storage Company's (ANR Storage) facilities in Kalkaska County, Michigan. It is alleged that during the period of April 1 to October 31, Trunkline reduces deliveries of gas to MRT in Clay County, Illinois and transports the gas to an interconnection with Panhandle. Panhandle then transports and redelivers the subject gas to ANR Pipe Line Company (ANRPL) in Defiance County, Ohio. For the period November 1 through April 30, Panhandle receives gas from ANR and Trunkline redelivers an equivalent volume of natural gas to MRT in Clay County, Illinois.

It is asserted that the transportation agreements were entered into to provide MRT with access to both field production in the North Reydon area of Roger Mills County, Oklahoma, which is distant from its system, and to storage capacity in the storage facilities of ANR Storage. MRT alleges that its North Reydon Field production has declined significantly and that MRT no longer has a present or future need for offsystem storage capacity in ANR Storage's facilities. It is claimed that Panhandle has a need for market area storage such as the type that can be provided by the ANR Storage facilities. Panhandle and MRT have reconstructed certain transportation and storage services. MRT has requested termination of transportation Rate Schedules T–35, T–38, T–54, and T–60 and has assigned its ANR Storage capacity to Panhandle.[1] It is claimed that simultaneously, MRT is executing new transportation agreements with both Panhandle and Trunkline for transportation services under Part 284 of the Commission's Regulations and the open access blanket transportation certificate programs of both Panhandle and Trunkline.

Trunkline and Panhandle request that the Commission issue an order effective November 1, 1989, authorizing abandonment of the transportation services provided to MRT pursuant to Commission order issued in CP79–376 and CP79–98 and Panhandle's Rate Schedules T–35 and T–38 and Trunkline's Rate Schedules T–54 and T–60. It is alleged that there would be no abandonment of facilities.

Comment date: July 5, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

10. ANR Pipeline Company

[Docket No. CP78–545–006]

Take notice that on May 26, 1989, ANR Pipeline Company (ANRPL), 500 Renaissance Center, Detroit, Michigan 48243, field in Docket No. CP78–545–006 a petition to amend the order issued July 23, 1979, in Docket No. CP78–545, 8 FERC ¶ 61,059, pursuant to section 7(c) of the Natural Gas Act so as to authorize ANRPL to assign to Panhandle Eastern Pipe Line Compay (Panhandle) storage-related transportation services performed under ANRPL's Rate Schedule X–94 for Mississippi River Transmission Corporation (MRT), effective April 1, 1980, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is alleged that ANRPL, pursuant to the July 23, 1979, order provides up to 6 Bcf per year of natural gas storage related transportation service for MRT (up to 3 Bcf in the summer months and up to 3 Bcf in the winter months). This service is rendered pursuant to the September 22, 1978, transportation agreement between ANRPL and MRT and contained in ANRPL's Rate Schedule X–84. It is alleged that ANRPL transports MRT's gas from an interconnect with the facilities of Panhandle in Defiance County, Ohio to an interconnect with the facilities of Michigan Consolidated Gas Company's Interstate Storage Division (Mich Con) in Washtenaw County, Michigan. Mich Con transports the gas from the

[1] It is alleged that related applications requesting authorization for the assignment of ANR Storage capacity and the assignment of storage-related transportation by ANRPL and Michigan Consolidated Gas Company (Mich Con) to Panhandle are being filed by ANR Storage in Docket No. CP78–432–009, ANRPL in Docket No. CP78–545–006, and Mich Con in CP89–1523–000. Additionally, MRT is filing in Docket No. CP89–1524–000 to abandon a transportation-related sale to Panhandle which was authorized in conjunction with Panhandle's rate schedule T–38 transportation to MRT.

Washtenaw County, Michigan interconnect to a point of interconnection with ANRPL's facilities in Mecosta County, Michigan. ANRPL then transports the gas to ANR Storage Company (ANR Storage) by causing Great Lakes Transmission Company (Great Lakes) to transport and redeliver the gas to ANR Storage at an interconnect between the facilities of Great Lakes and ANR Storage in Crawford County, Michigan. During the winter, the direction of flow is reversed as the gas is withdrawn from storage. It is stated that the September 22, 1978 transportation agreement provides for a fifteen-year primary term expiring April 1, 1995.

It is averred that ANRPL has agreed to the assignment of MRT's storage-related transportation service to Panhandle effective April 1, 1990. ANRPL states that it has agreed to the assignment from MRT to Panhandle of MRT's rights and obligations under ANRPL's Rate Schedule X-94. ANRPL seeks an amendment to the certificate issued July 23, 1979, in Docket No. CP78-545-000 to enable ANRPL to perform for Panhandle the storage-related transportation services currently performed for MRT, effective April 1, 1990.

Comment date: July 5, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

11. ANR Storage Company

[Docket No. CP78-432-009]

Take notice that on May 26, 1989, ANR Storage Company (ANR Storage), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP78-432-009 a petition to amend the order issued July 23, 1979, in Docket No. CP78-432-000, 8 FERC ¶61,059, pursuant to section 7(c) of the Natural Gas Act so as to authorize ANR Storage to provide to Panhandle Eastern Pipe Line Company (Panhandle) storage services performed under ANR Storage's Rate Schedule X-4 for Mississippi River Transmission Corporation (MRT), effective April 1, 1990, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is alleged that ANR Storage pursuant to the July 23, 1979, order provides up to 3 Bcf of natural gas storage capacity annually for MRT. The storage agreement entered into by ANR Storage and MRT provides for MRT to deliver prescribed volumes of natural gas to ANR Storage during the summer periods (April 1 through October 31) and for ANR Storage to make equivalent volumes of gas available for redelivery to MRT during the ensuing winter periods (November 1 through March 31). The storage service is rendered pursuant to a September 22, 1978 agreement between ANR Storage and MRT, which is contained in ANR Storage's tariff as Rate Schedule X-4.

ANR Storage asserts that it has agreed to the assignment from MRT to Panhandle of MRT's rights and obligations of storage capacity under ANR Storage's Rate Schedule X-4. ANR storage seeks an amendment to the certificate issued July 23, 1979, in Docket No. CP78-432-000 to enable ANR Storage to perform for Panhandle the storage service currently performed for MRT, to be made effective April 1, 1990.

Comment date: July 5, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

12. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1493-000]

Take notice that on May 23, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251, filed in Docket No. CP89-1493-000 a request as supplemented June 7, 1989, pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP86-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Panhandle proposes to transport natural gas on a firm basis for the City of Waverly, Illinois (Waverly). Panhandle explains that service commenced April 1, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-3303. Panhandle explains that the peak day quantity would be 915 Dt., the average daily quantity would be 915 Dt., and that the annual quantity would be 333,975 dekatherms. Panhandle explains that it would receive natural gas for Waverly's account from Producers Gas Company in Beckham County, Oklahoma. Panhandle also states that Waverly may nominate quantities from interruptible receipt points on Panhandle's system as long as the sum of the volumes nominated from such interruptible points together with the sum of the quantities nominated from firm receipt points would not exceed the contract quantity of the transportation agreement for service under Rate Schedule PT. Panhandle states that it would redeliver the gas to Waverly in Morgan County, Illinois.

Comment date: July 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1487-000]

Take notice that on May 22, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1487-000 a request, as supplemented June 2, 1989, pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide firm transportation service for Seiling Public Works Authority (Seiling), a shipper and local distribution company of natural gas, under Panhandle's blanket certificate issued in Docket No. CP86-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open for public inspection.

Panhandle states that it would transport, on a firm basis, up to a maximum of 400 dt equivalent of natural gas per day for Seiling. Panhandle states that it would receive the gas from Ringwood in Major County, Oklahoma and redeliver the gas, less fuel and unaccounted for line loss to Seiling. Panhandle also states that Seiling may also receive nominated quantities of gas at interruptible receipt points which are listed in Exhibit A. It is further stated that the sum of the volumes nominated from such interruptible receipt points, together with the sum of the quantities nominated from firm points, shall not exceed the contract quantity under Rate Schedule PT. Panhandle indicates that the total volume of gas to be transported for Seiling on a peak day would be 400 dt; on an average day would be 400 dt; and on an annual basis would be 146,000 dt. Panhandle indicates it would perform the proposed transportation service for Seiling pursuant to a service agreement dated April 1, 1989 between Panhandle and Seiling.

Panhandle states that it commenced the transportation of natural gas for Seiling on April 1, 1989, at Docket No. ST89-3165-000 for a 120-day period pursuant to § 284.223(a)(1) of the Commission's Regulations. Panhandle indicates that it proposes no new facilities in order to provide this transportation service.

Comment date: July 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

14. Northern Natural Gas Company, Division of Enron Corp.,

[Docket No. CP89-1576-000]

Take notice that on June 6, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-1576-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authority to transport natural gas, on an interruptible basis, on behalf of Dyco Gas Marketing (Dyco), a marketer of natural gas, under Northern's blanket certificate issued in Docket No. CP86-435-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern states that it would transport natural gas on behalf of Dyco from points of receipt located in the states of Iowa, Kansas, Minnesota, Nebraska, New Mexico, Oklahoma and Texas. Northern further states that the points of delivery would be located in the states of Illinois, Iowa, Kansas, Michigan, Minnesota, Nebraska, New Mexico, Oklahoma, South Dakota, Texas and Wisconsin. Northern indicates that the peak day, average day and annual transportation volumes would be 200,000 MMBtu, 150,000 MMBtu and 73,000,000 MMBtu, respectively. Northern states that construction of facilities would not be required to provide the proposed service.

Northern states that it commenced the transportation of natural gas for Dyco on May 1, 1989, as reported in Docket No. ST89-3541 for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations (18 CFR § 284.223(a)).

Comment date: July 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

15. Northwest Pipeline Corporation

[Docket No. CP89-1579-000]

Take notice that on June 6, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-1579-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of ARCO Oil & Gas Company, a Division of Atlantic Richfield Company (ARCO), a natural gas producer, under its blanket authorization issued in Docket No. CP86-578-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest would perform the proposed interruptible transportation service for ARCO, pursuant to an interruptible transportation service agreement dated March 14, 1989, as amended March 14, 1989. The transportation agreement is effective for a period of thirty days and month to month thereafter until terminated by either party on thirty days written notice. Northwest proposes to transport no more than 100,000 MMBtu on a peak day; approximately 8,500 MMBtu on an average day; and on an annual basis approximately 3,000,000 MMBtu of natural gas for ARCO. Northwest proposes to transport the subject gas through its transmission system from wells located in La Plata County, Colorado and San Juan County, County, New Mexico, to the Ignacio Plant located in La Plata County, Colorado and to the La Jara interconnection with El Paso Natural Gas Company (El Paso) in Rio Arriba County, New Mexico and various well interconnects with El Paso in San Juan County, New Mexico.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Northwest commenced such self-implementing service on April 5, 1989, as reported in Docket No. ST89-3502-000.

Comment date: July 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

16. Michigan Consolidated Gas Company, Interstate Storage Division

[Docket No. CP89-1523-000]

Take notice that on May 26, 1989, Michigan Consolidated Gas Company, Interstate Storage Division (Mich Con), 500 Griswold Street, Detroit, Michigan 48226, filed in Docket No. CP89-1523-000, an application pursuant to section 7(c) and (b) of the Natural Gas Act authority to amend its certificate of public convenience issued in Docket No. CP78-433-000 to effectuate the assignment from Mississippi River Corporation (MRT) to Panhandle Eastern Pipe Line Company (Panhandle) the transportation service it currently performs for MRT under Rate Schedule X-27, effective April 1, 1990, and for permission and approval to abandon service to MRT to effectuate the assignment of the X-27 service to Panhandle, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated the under the certificate issued in Docket No. CP78-433-000, 8 FERC ¶61,059 (1979) as amended at 9 FERC ¶61,030 (1979) and 15 FERC ¶62,367 (1981), Mich Con performs up to 6 Bcf of natural gas per year of storage-related transportation service for MRT, pusuant to Mich Con's Rate Schedule X-27. It is alleged that Mich Con is one of several transporting pipelines with which MRT entered into long term contract to move gas into and out of ANR Storage Company's (ANR Storage) facilities in Kalkaska County, Michigan. It is averred that ANR Storage, MRT and Panhandle have agreed to the assignment of MRT's storage capacity to Panhandle effective April 1, 1990, and that ANR Storage has filed an application for permission to assign MRT's storage capacity to Panhandle as of that date.[2] It is alleged that Mich Con has agreed to the assignment from MRT to Panhandle of MRT's rights and obligation under Mich Con's Rate Schedule X-27, and Mich Con accordingly seeks an amendment to the certificate issued in Docket No. CP78-433-000 and such abandonment authorization as may be deemed necessary to enable Mich Con to perform for Panhandle the transportation services previously performed for MRT, effective April 1, 1990. It is stated that there would be no abandonment of facilities.

Comment date: July 5, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

17. Colorado Interstate Gas Company

[Docket No. CP89-1553-000]

Take notice that on June 1, 1989, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP89-1553-000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for an order granting permission and approval to partially abandon and revise sales service and for a certifcate of public convenience and necessity authorizing a new agreement for the City of Colorado Springs (City), a jurisdictional sales customer, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CIG states that the current certificate authority for CIG's natural gas sales to the City was certificated in Docket No.

[2] ANR Storage filed its applicaiton in Docket CP89-432-000.

CP85-381-000, *et al.* (32 FERC ¶ 61,481), pursuant to order issued September 30, 1985. CIG further states that the City purchases natural gas from CIG under CIG's FERC Gas Tariff, Original Volume No. 1, Rate Schedules C-1, PS-1 and EX-1 pursuant to a September 1, 1987, service agreement between CIG and the City as approved by the Commission on December 15, 1987. CIG indicates that the changes in sales volume proposed would be delivered to the City at existing interconnections between CIG and the City at existing interconnections between CIG and the City located in El Paso County, Colorado. CIG states these facilities have sufficient capacity to accommodate the requested volumes which remain unchanged from the current service agreement, however, these proposed volumes would not include both sales and transportation delivery obligations at these delivery points.

CIG states that it proposes to decrease the general daily entitlement (GDE) and total annual entitlement (TAE) for the City. CIG indicates that the City has requested that CIG decrease the GDE from 90,000 Mcf per day to 51,000 Mcf per day, decrease the daily peaking service entitlement from 46,432 Mcf to 46,000 Mcf and increase the annual peaking service entitlement from 767 MMcf to 1,500 MMcf. CIG states the result of these changes would be a decrease of the annual entitlement from 22,228 MMcf to 11,212 MMcf. CIG proposes a new agreement for a term ending September 30, 1990, to be effective October 1, 1989. CIG also proposes to revise the maximum daily volume obligation at delivery point locations to include maximum sales and transportation volumes.

Comment date: July 5, 1989 in accordance with Standard Paragraph F at the end of the notice.

18. Natural Gas Pipeline Company of America

[Docket No. CP89-1581-000]

Take notice that on June 7, 1989, Natural Gas Pipeline Company of America (Natural), 701 E. 22nd Street, P.O. Box 1208, Lombard, Illinois 60148, filed in Docket No. CP89-1581-000 an application pursuant to section 7(c) of the Natural Gas Act Part 157 of the Commission's Regulations for a certificate of public convenience and necessity authorizing the construction and operation of approximately 3,600 horsepower of compression and related facilities on Natural's Louisiana Line in Cameron Parish, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural states that as an open-access pipeline it has been experiencing difficulty meeting interruptible and firm transportation demands from the Gulf Coast area. Natural's Louisiana Line is operating at virtually maximum capacity and has been unable to fulfill requests of transportation customers both firm and interruptible over the past year. Natural proposes therefore, to construct and operate approximately 3,600 horsepower of compression at an estimated cost of 5.047 million dollars. This additional compression will increase the capacity of Natural's Louisiana Line east of Stingray Pipeline Company (Stingray) by approximately 219,000 Mcf of gas per day, it is stated.

Comment date: July 5, 1989, in accordance with Standard Paragraph F at the end of this notice.

19. United Gas Pipe Line Company

[Docket No. CP89-1547-000]

Take notice that on May 31, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1547-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon certain facilities by sale to Pan American Gas Company (Pan American), all as more fully set forth in the application on file with the Commission and open to public inspection.

It is stated that United proposes to abandon in place approximately 8.07 miles of 20-inch pipeline, one 12-inch and one 16-inch orifice meter tube, a regulating station and appurtenances, such facilities known as the Oklahoma-Texas Line which extend from Beckham County, Oklahoma to Wheeler County, Texas. It is also stated that the pipeline proposed for abandonment, the Oklahoma-Texas Line, was originally installed in 1982 to comply with a gas purchase contract and a transportation agreement pursuant to Section 311 of the Natural Gas Policy Act of 1978, to connect Oklahoma Natural Gas Company to facilities owned by Red River Pipeline Company. It is explained that each contract was written with a term of two years, having commenced in 1984 and terminated in 1986. United states that subsequent to both contract terminations, the line has been used solely for interruptible Section 311 transportation.

It is stated that Pan American is acquiring the Oklahoma-Texas Line by Special Warranty Deed and Bill of Sale. It is further stated that Pan American's ownership of the line is contingent upon the issuance of an order as requested herein.

United states that the requested abandonment by sale to Pan American will result in lower system operating costs for United, benefiting both United and its customers. In addition, it is stated that since the abandonment involves facilities being left in place for use by Pan American, such abandonment of facilities by United will have no effect on the environment.

Comment date: July 5, 1989 in accordance with Standard Paragraph F at the end of the notice.

20. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1534-000]

Take notice that on May 30, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1534-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on a firm basis on behalf of the City of Monroe (Monroe) under its blanket certificate issued in Docket No. CP86-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Panhandle states that it proposes to transport natural gas for Monroe from various points of receipt on its system in Oklahoma to the City of Monroe in Audrain County, Missouri.

Panhandle further states that the maximum daily, average daily and annual quantities that it would transport for Monroe would be 1,916 dt equivalent of natural gas, 1,916 dt equivalent of natural gas and 699,340 dt equivalent of natural gas, respectively.

Panhandle indicates that in a filing made with the Commission in Docket No. ST89-3396, it reported that transportation service for Monroe had begun on April 1, 1989 under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: July 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

21. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1495-000

Take notice that on May 23, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-7642, filed in Docket No. CP89-1495-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on a firm basis on behalf of the City of Macon (Macon) under its blanket certificate issued in Docket No. CP86-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Panhandle states that it proposes to transport natural gas for Macon from various points of receipt on its system in Oklahoma to the City of Macon in Randolph County, Missouri.

Panhandle further states that the maximum daily, average daily and annual quantities that it would transport for Macon would be 4,471 dt equivalent of natural gas, 4,471 dt equivalent of natural gas and 1,631,915 dt equivalent of natural gas, respectively.

Panhandle indicates that in a filing made with the Commission in Docket No. ST89-3114, it reported that transportation service for Macon had begun on April 1, 1989 under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: July 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

22. National Fuel Gas Supply Gas Corporation

[Docket No. CP89-1582-000

Take notice that on June 7, 1989, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP89-1582-000 an application for a blanket certificate of public convenience and necessity authorizing the transportation of natural gas pursuant to § 284.221 of the Commission's Regulations, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

National Fuel states that it would comply with the conditions set forth in paragraph (c) of § 284.221 of the Commission's Regulations.

National Fuel states that it proposes to establish a new Rate Schedule FT for firm transportation service and new Rate Schedule IT for interruptible transportation service. National Fuel indicates that it has included in its application *pro forma* tariff sheets providing for the two new transportation rate schedules as well as the operating conditions and scheduling of transportation services on a first come/first serve basis.

National Fuel proposes to establish for its Rate Schedule FT maximum and minimum reservation charges of $2.8984 per dt equivalent of natural gas and 0 cents per dt equivalent of natural gas, respectively; maximum and minimum winter requirement quantity charges of 1.09 and 0.03 cents per dt equivalent of natural gas, respectively; maximum and minimum commodity charges of 13.43 and 1.97 cents per dt equivalent of natural gas, respectively; and maximum and minimum authorized overrun charges of 28.37 and 2.14 cents per dt equivalent of natural gas, respectively. National Fuel proposes to establish for its Rate Schedule IT the same commodity and authorized overrun rates it proposes for its Rate Schedule IT.

National Fuel also proposes a Gas Inventory Charge (GIC) which will provide for a monthly charge based on an estimated GIC amount computed on National's forecast of producer take-or-pay costs and the GIC charges associated with its upstream pipeline suppliers. Each buyer's GIC charge shall be computed as a percentage of its inventory determinants times the monthly estimated GIC. National Fuel's customers will nominate their inventory determinants, but at a level not less than the average of each customer's three-day peak purchases for the three preceding years.

Comment date: June 26, 1989, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-14614 Filed 6-20-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF88-165-001]

Multitrade Limited Partnership; Application for Commission Recertification of Qualifying Status of a Small Power Production Facility

June 15, 1989.

On June 6, 1989, Multitrade Limited Partnership (Applicant), c/o Multitrade Group, Inc., P.O. Box 717, Frith Drive, Martinsville Industrial Park, Ridgeway, Virginia 24148, submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The original application was filed on December 18, 1987, and granted on March 1, 1988, Multitrade Group, Inc., 42 FERC ¶62,184 (1988). The facility will be located near the Town of Hurt, in Pittsylvania County, Virginia. The recertification is requested due to an increase in the number of condensing turbine generators from one to two and an increase in the net electric power production capacity from 76 MW to 79.505 MW. In addition, the ownership

of the facility has been transferred to Multitrade Limited Partnership. In all other respects, the facility remains essentially the same as that set forth in the original application.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-14616 Filed 6-20-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES89-29-000]

Northwestern Public Service Co.; Application

June 15, 1989.

Take notice that on June 13, 1989, Northwestern Public Service Company filed an application with the Federal Energy Regulatory Commission (the "Commission"), pursuant to section 204 of the Federal Power Act, seeking authority to issue unsecured short-term promissory notes and commercial paper, such notes and commercial paper not to exceed in the aggregate $25,000,000 face value at any one time outstanding and to mature not later than August 1, 1992.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before July 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-14167 Filed 6-20-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2150-002]

Puget Sound Power & Light Co.; Availability of Environmental Assessment

June 15, 1989.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy and Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower licensing has reviewed the application for relocation of spawning beach facility for the Baker River Project and has prepared an Environmental Assessment (EA) for the proposed amendment. The project is located on the north end of Baker Lake, in the Mt. Baker Ranger District, Washington state. In the EA, the Commission has analyzed the potential environmental impacts of the proposed relocation and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 89-14618 Filed 6-20-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-50-001]

Southwest Gas Storage Co.; Proposed Changes in FERC Gas Tariff

June 15, 1989.

Take notice that Southwest Gas Storage Company (Southwest) on June 9, 1989, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Second Revised Sheet No. 4
Second Revised Sheet No. 16
Second Revised Sheet No. 17

The proposed effective date of these revised tariff sheets is June 1, 1989.

Southwest states that the above-referenced tariff sheets are being filed in compliance with the Commission's Order issued on May 26, 1989 directing Southwest to file reduced rates and charges to be effective June 1, 1989 as specified by the referenced Commission's Order.

Southwest states that copies of this filing have been served on Southwest's jurisdictional customer, the Commission's Staff, intervenors and the Presiding Judge designated in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before June 22, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-14615 Filed 6-20-89; 8:45 am]

BILLING CODE 6717-01-M

Morgantown Energy Technology Center; Grant; Financial Assistance Award to University of North Dakota

AGENCY: Morgantown Energy Technology Center, Department of Energy (DOE).

ACTION: Notice of acceptance of a non-competitive financial assistance application for grant award.

SUMMARY: Based upon a determination made pursuant to 10 CFR 600.7(b)(2) the DOE, Morgantown Energy Technology Center, gives notice of its plans to award a 12-month grant to the University of North Dakota, Energy and Mineral Research Center, Box 8213, University Station, Grand Forks, North Dakota 58202. The grantee is obtaining sponsors from approximately fifteen sources, which consist of utilities, industries and the Government. The DOE share of the project is $100,000. The pending award is based on an unsolicited application entitled "A CFBC Test Facility for Utility and Industrial Clients".

The objectives of the project are to design, construct, and operate a Circulating Fluidized-Bed Combustor (CFBC) pilot plant test facility and to provide participating sponsors with the opportunity to obtain needed design and operational information on how a CFBC system can be expected to perform with selected coals. This test facility will have the ability to operate with a wide variety of coals which makes it applicable to utility and industrial customers in all areas of the country. The grantee will address reported problems associated with the technology and provide a comprehensive, reliable, and assessable data base that the private sector can use in evaluating the various CFBC options available.

Because of the high potential of CFBC to meet the future energy needs and the user's need of having independent sources of technology assessment, the potential for benefit of this work is very great. The public will benefit from using less expensive energy that can be produced through the technology advancement. This project also has the potential to increase usage of U.S. coals.

FOR FURTHER INFORMATION CONTACT: Laura E. Brandt, I-07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507-0880, Telephone: (304) 291-4079, Procurement Request No. 21-89MC26050.000.

Dated: May 17, 1989.

Louie L. Calaway,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 89-14590 Filed 6-20-89; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[AD-FRL-3605-4]

Correction of Assessment of Sodium Hydroxide as a Potentially Toxic Air Pollutant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correction notice for assessment of sodium hydroxide as a potentially toxic air pollutant.

SUMMARY: This notice corrects a statement in the Assessment of Sodium Hydroxide as a Potentially Toxic Air Pollutant published in the **Federal Register** (54 FR 1440). The assessment notice incorrectly stated that sodium hydroxide had been removed from the list of compounds subject to the reporting requirements of the Toxic Chemical Release Reporting, Community Right-to-Know rule under section 313 of Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986. The correct status of this rulemaking is that sodium hydroxide has been proposed for removal from the SARA list. All entities subject to reporting sodium hydroxide under the authority of the reporting rule referenced above must continue to report emissions of sodium hydroxide until such time as sodium hydroxide is formally removed from the list of chemicals subject to this rule.

FOR FURTHER INFORMATION CONTACT: Timothy J. Mohin, Pollutant Assessment Branch (MD-13), Emission Standards Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711 (Telephone: (919) 541-5349; FTS 629-5349).

Date: June 15, 1989.

Don R. Clay,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 89-14667 Filed 6-20-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3605-9]

Environmental Assessment and Finding of No Significant Impact for Research Project in Prince William Sound, AK

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of an Environmental Assessment and a Finding of No Significant Impact issued by the Office of Research and Development (ORD) for an experimental field study on the shorelines of Prince William Sound, Alaska. The purpose of the study is to determine if techniques for accelerating the hydrocarbon biodegradation rates of natural microbial communities (bioremediation) can be used to help in the clean-up of the Prince Williiam Sound oil spill. The project proposal was developed by ORD scientists based on the results of an international scientific workshop attended by leading scientists from universities, industry, and Federal agencies.

ADDRESSES: Copies of the Environmental Assessment and the Finding of No Significant Impact for this study may be obtained upon request from: Mr. Richard Valentinetti, U.S. Environmental Protection Agency, Office of Research and Development (RD-681), 401 M Street, SW., Washington, DC, 20460.

FOR FURTHER INFORMATION CONTACT: Additional information may be received from, and comments may be directed to Richard Valentinetti at the address given above; telephone 202/382-2611, (FTS) 382-2611.

Date: June 14, 1989.

Erich Bretthauer,

Acting Assistant Administrator for Research and Development.

[FR Doc. 89-14688 Filed 6-20-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3604-1]

Hazardous Waste Management; Report to Congress; Management of Hazardous Wastes From Educational Institutions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of report to Congress on management of hazardous wastes from educational institutions.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is today announcing the availability of the Report to Congress on the management of hazardous wastes from educational institutions. EPA prepared this report in response to section 221(f) of the Hazardous and Solid Waste Amendments of 1984 (HSWA) to the Resource Conservation and Recovery Act (RCRA). The report identifies the problems associated with managing hazardous wastes from educational institutions. It presents an analysis of the feasibility and availability of environmentally sound methods for the treatment, storage, and disposal of such hazardous wastes. The report also recommends possible means for educational institutions to improve hazardous waste management and identifies possible regulatory changes to alleviate management problems.

ADDRESSES: This report is available for viewing at all EPA libraries and in the EPA RCRA docket room, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, from 9:30 a.m. to 3:30 p.m., Monday thru Friday, except legal holidays; telephone: (202) 475-9327. The public may copy a maximum of 50 pages of material from any regulatory docket at no cost. Additional copies cost 20 cents per page. The document may be purchased from the National Technical Information Service (NTIS), U.S. Department of Commerce, Springfield, Virginia 22161, at (703) 487-4600: "Report to Congress: Management of Hazardous Wastes from Educational Institutions," EPA/530-SW-89-040, NTIS No: PB89-187629.

FOR FURTHER INFORMATION CONTACT: For general information and/or a copy of the Executive Summary (EPA/530-SW-89-040A), call the RCRA Hotline at

(800) 424–9346 or (202) 382–3000. For technical information on the report, contact Filomena Chau, Office of Solid Waste (OS–332), U.S. Environmental Protection Agency, 401 M Street SW., Washington DC 20460, (202) 382–4795.

SUPPLEMENTARY INFORMATION: Section 221(f) of HSWA requires that EPA, in consultation with the Secretary of Education, the States, and appropriate educational associations, provide a Report to Congress containing the findings of the "study of problems associated with the accumulation, storage, and disposal of hazardous wastes from educational institutions." The statute defines "educational institution" as including secondary schools and institutions of higher education. At the request of the U.S. Department of Education, the report is also directed toward hazardous waste from adult education programs and programs of education of less than two years' duration. The term "hazardous waste," as used in the report, means any hazardous waste listed or identified under 40 CFR Part 261. The report does not, however, address management of infectious waste from educational institutions.

The report identifies the problems associated with managing hazardous waste from educational institutions. It presents an analysis of the feasibility and availability of environmentally sound methods for the treatment, storage, and disposal of such hazardous wastes. The report does not recommend that any regulatory changes are necessary; rather, it recommends possible means for educational institutions to improve hazardous waste management and identifies possible regulatory changes to alleviate management problems.

The report is in one volume, divided into five chapters. The report is based on the published literature and a report produced by Tufts University, which included a series of studies of hazardous waste management in schools. Chapter 1 introduces the areas to be addressed. Chapter 2 presents a general discussion of the background of RCRA, the hazardous waste management program, and HSWA, which expanded the scope of RCRA. Following that is a discussion of the specific RCRA regulatory requirements pertaining to schools and of the other regulatory programs that apply to hazardous waste management in schools. Chapter 3 analyzes information on the types and quantities of wastes at schools, current management practices, and the schools' awareness of the hazardous waste regulations. The schools are divided into secondary schools and higher educational institutions and, for each, the report discusses the quantity, type, and level of awareness of hazardous wastes and methods for their treatment, storage, and disposal. Chapter 4 discusses the problems related to handling hazardous wastes at educational institutions and the feasibility and availability of environmentally sound methods for the treatment, storage, and disposal of hazardous wastes at schools. Chapter 5 identifies possibilities for improving hazardous waste management at schools. Possible solutions to these problems are divided into those to be carried out within schools, between schools, through guidance from State and Federal regulatory agencies, and by regulatory change.

This report also includes six appendices. Appendix A summarizes information on the institutions interviewed in the Tufts University case studies. Appendix B includes information on RCRA requirements for treatment, storage, and disposal facilities, which may be applicable to some larger schools. Appendix C presents an example of information on how schools can identify and, in some cases, minimize the quantities of wastes they generate. Appendix D contains addresses and telephone numbers of national hotlines, and regional and State offices, as additional sources of information. Appendix E presents a list of those organizations commenting on this report. Appendix F contains responses to questions on EPA's existing regulations.

Dated: May 30, 1989.

Robert L. Duprey,

Acting Assistant Administrator for Solid Waste and Emergency Response.

[FR Doc. 89–14584 Filed 6–19–89; 8:45 am]

BILLING CODE 6560–50–M

[OPP–50691; FRL–3604–4]

Receipt of Notification of Intent To Conduct Small-Scale Field Testing; Genetically Altered Microbial Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a notification from Montana State University of intent to conduct small-scale field testing of three isolates of *Sclerotinia sclerotiorum* (one wild type and two chemical and UV inducted deletion mutants).

ADDRESS: By mail, submit written comments to: Public Docket and Freedom of Information Section, Field Operations Division (H–7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

In person, bring comments to: Room 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked, will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for the inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and all written comments will be available for public inspection in Room 246 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Susan T. Lewis, Acting Product Manager (PM) 21, Registration Division (H–7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Room 227, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703)–557–1900.

SUPPLEMENTARY INFORMATION: A notification of intent to conduct small-scale field testing pursuant to the EPA's "Statement of Policy; Microbial Products Subject to the Federal Insecticide, Fungicide, and Rodenticide Act and the Toxic Substances Control Act" of June 26, 1986 (51 FR 23313), has been received from the Montana State University. The purpose of the proposed testing is to evaluate the use of three isolates of *Sclerotinia sclerotiorum* as a mycoherbicide on turf grass against common broad leaf weeds. The proposed field tests would total fewer than 5 acres and would be located on two sites in Montana.

Following the review of the Montana State University application, EPA will decide whether or not an Experimental Use Permit is required.

Dated: June 7, 1989.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 89–14690 Filed 6–20–89; 8:45 am]

BILLING CODE 6560–01–M

[OPP–30300; FRL–3605–7]

E.I. du Pont de Nemours and Co., Inc.; Approval of Pesticide Product Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application submitted by E.I. du Pont de Nemours and Co., Inc. to register the pesticide product Dupont® Savey Miticide, containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: George LaRocca, Product Manager (PM) 15, Registration Division (H7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Room 204, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703–557–2400).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of August 6, 1985 (50 FR 31771), which announced that E.I. du Pont de Nemours and Co. Inc., Agricultural Products Dept. Walker's Mill Bldg., Barley Mill Plaza, PO Box 80038, Wilmington, DE 19898, had submitted an application to register the pesticide product DuPont® Savey Miticide, (EPA File Symbol 352–UUE), containing the active ingredient *trans*-5-(4-chlorophenyl)-*N*-cyclohexyl-4-methyl-2-oxothiazolidine-3-carboxamide at 50 percent to be used on apples; an ingredient not include in any previously registered product.

An application for the identical pesticide product "DuPont® Savey Miticide" containing the same active ingredient was subsequently submitted by the Company to EPA for registration. The product was approved on April 13, 1989, for the control of mites on pears, and was assigned EPA Registration No. 352–531.

The Agency has considered all required data on the risks associated with the proposed use of *trans*-5-(4-chlorophenyl)-*N*-cyclohexyl-4-methyl-2-oxothiazolidine-3-carboxamide, and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of *trans*-5-(4-chlorophenyl)-*N*-cyclohexyl-4-methyl-2-oxothiazolidine-3-carboxamide, when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects on the environment.

More detailed information on this registration is contained in a Chemical Fact Sheet on *trans*-5-(4-chlorophenyl)-*N*-cyclohexyl-4-methyl-2-oxothiazolidine-3-carboxamide.

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from Registration Division (H7505C), Environmental Protection Agency, Registration Support and Emergency Response Branch, 401 M Street, SW., Washington, DC 20460.

In accordance with section 3(c)(2) of the FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, Room 236, CM #2, Arlington, VA 22202 (703–557–3262). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 401 M Street, SW., Washington, DC 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

Dated: June 5, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 89–14691 Filed 6–20–89; 8:45 am]

BILLING CODE 6560–50–M

[OPP–180812; FRL–3605–6]

Emergency Exemptions; Glyphosate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests to the 27 States as listed below. Five crisis exemptions were initiated by various States, and one by the United States Department of Agriculture. A quarantine exemption was also granted to the United States Department of Agriculture. These exemptions, issue during the months of March and April, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. EPA has denied exemption requests from seven States. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific, crisis, and quarantine exemption for its effective date.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption of the name of the contact person. The following information applies to all contact persons: By mail: Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Office location and telephone number: Room 716, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–1806).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. California Department of Food and Agriculture for the use of glyphosate on dates to control Bermudagrass; March 29, 1989, to December 1, 1989. (Gene Asbury)

2. California Department of Food and Agriculture for the use of hexakis on sweet corn to control two-spotted spider mites; April 1, 1989, to February 28, 1990. (Gene Asbury)

3. California Department of Food and Agriculture for the use of avermectin B_1 on strawberries to control two-spotted spider mites; March 9, 1989, to March 8, 1990. A notice of receipt was published in the **Federal Register** of February 15, 1989 (54 FR 6957); no comments were received. The exemption was granted on the basis that there are no registered alternative pesticides which will provide adequate control of these pests on strawberries. A significant economic loss may result if an effective pesticide is not made available. Combined residues of avermectin B_1 and its delta 8,9 isomer are likely to exceed 0.02 ppm in or on strawberries as result of this use. This residue level can be toxicologically supported and will not pose a threat to the public health. The proposed use should not pose an unreasonable hazard to the environment or endangered species. The registrant is developing data with the intent of submitting a petition for tolerances in

connection with this use in the near future. (Libby Pemberton)

4. California Department of Food and Agriculture for the use of avermectin B_1 on pears to control mites; April 7, 1989, to September 15, 1989. (Libby Pemberton)

5. California Department of Food and Agriculture for the use of fosetyl-al (Aliette) on avocado trees to control avocado root rot (*Phytophthora cinnamomi*); April 27, 1989, to March 31, 1990. (Gene Asbury)

6. California Department of Food and Agriculture for the use of iprodione on sweet cherries (post harvest) to control fruit decay; April 13, 1989, to June 30, 1989. (Libby Pemberton)

7. Colorado Department of Agriculture for the use of chlorpyrifos on wheat to control the Russian wheat aphid; April 6, 1989, to December 15, 1989. (Robert Forrest)

8. Delaware Department of Agriculture for the use of cryolite on potatoes to control Colorado potato beetle; April 20, 1989 to October 31, 1989. (Libby Pemberton)

9. Delaware Department of Agriculture for the use of imazethapyr (Pursuit) on lima beans, snap beans, green peas, and blackeyed peas to control broadleaf weeds; March 3, 1989, to September 30, 1989. (Robert Forrest)

10. Delaware Department of Agriculture for the use of sethoxydim on green peas to control grasses; March 23, 1989, to August 1, 1989. (Jim Tompkins)

11. Florida Department of Agriculture and Consumer Services for the use of cyromazine on chrysanthemums (potmums, cut flowers, and stock plants) to control leafminers; March 3, 1989, to June 1, 1989. (Gene Asbury)

12. Florida Department of Agriculture and Consumer Services for the use of vinclozolin on blueberries to control grey mold; March 16, 1989, to July 1, 1989. Florida had initiated a crisis exemption for this use. (Libby Pemberton)

13. Idaho Department of Agriculture for the use of imazethapyr (Pursuit) on dry edible peas to control broadleaf weeds; March 3, 1989, to June 15, 1989. A notice of receipt was not published for Idaho in order to expedite processing. An identical request from Oregon Department of Agriculture was published in the Federal Register of February 6, 1989 (54 FR 5474). The Agency granted this request on the basis that imazethapyr is a replacement for dinoseb. The toxicology data base will support the proposed use. The proposed use is not expected to pose a hazard to the environment. (Jims Tompkins)

14. Idaho Department of Agriculture for the use of fluazifopbutyl on mint to control grassy weeds; April 18, 1989, to June 15, 1989. (Gene Asbury)

15. Idaho Department of Agriculture for the use of penimethalin on alfalfa grown for seed to control dodder; April 18, 1989 to April 30, 1989. (Jim Tompkins)

16. Illinois Department of Agriculture for the use of imazethapyr (Pursuit) on lima beans, snap beans, and green peas to control broadleaf weeds; March 2, 1989, to June 30, 1989. (Robert Forrest)

17. Illinois Department of Agriculture for the use of oxyfluorfen on horseradish to control weeds; April 21, 1989, to June 30, 1989. (Gene Asbury)

18. Maryland Department of Agriculture for the use of imazethapyr (Pursuit) on green peas, lima beans, and snap beans to control broadleaf weeds; March 1, 1989, to May 31, 1989. A notice of comments published in Federal Register of October 26, 1988 (53 FR 43269); and no comments were received. (Robert Forrest)

19. Massachusetts Department of Food and Agriculture for the use of metalaxyl on cranberries to control cranberry root rot (*Phytophthora cinnamomi*); April 27, 1989, to December 31, 1989. (Gene Asbury)

20. Minnesota Department of Agriculture for the use of tridiphane on sweet corn to control wild proso millet; April 13, 1989, to August 31, 1989. (Robert Forrest)

21. Mississippi Department of Agriculture for the use of imazethapyr (Pursuit) on southern peas to control weeds; March 25, 1989, to October 15, 1989. (Robert Forrest)

22. Missouri Department of Agriculture for the use of imazethapyr on southern peas to control broadleaf weeds (puncture vine); March 6, 1989, to July 15, 1989. (Robert Forrest)

23. Missouri Department of Agriculture for the use of metalaxyl on blueberries to control phytophthora root rot; March 1, 1989, to December 1, 1989. (Susan Stanton)

24. Montana Department of Agriculture for the use of terbufos on rape and mustard seeds to control flea beetles; April 15, 1989, to June 31, 1989. (Gene Asbury)

25. Nebraska Department of Agriculture for the use of chlorpyrifos on wheat to control Russian wheat aphid; April 6, 1989, to December 15, 1989. (Robert Forrest)

26. New Jersey Department of Environmental Protection for the use of fluazifop-butyl on parsley to control grassy weeds; March 30, 1989, to November 31, 1989. (Gene Asbury)

27. New Jersey Department of Environmental Protection for the use of cryolite on potatoes to control the Colorado potato beetle; April 20, 1989, to October 31, 1989. (Libby Pemberton)

28. New Jersey Department of Environmental Protection for the use of metalaxyl on cranberries to control *Phytophthora cinnamomi;* April 1, 1989, to December 31, 1989. (Gene Asbury)

29. New York Department of Environmental Conservation for the use of cryolite on potatoes to control the Colorado potato beetle; April 20, 1989, to October 31, 1989. (Libby Pemberton)

30. North Dakota Department of Agriculture for the use of terbufos on rape and mustard seed to control flea beetles; April 15, 1989, to June 31, 1989. (Gene Asbury)

31. Oklahoma Department of Agriculture for the use of chlorpyrifos on wheat to control Russian wheat aphid; March 3, 1989, to June 30, 1989. Oklahoma had initiated a crisis exemption for this use. (Robert Forrest)

32. Oklahoma Department of Agriculture for the use of imazethapyr (Pursuit) on southern peas to control puncture vine; April 20, 1989, to July 15, 1989. (Robert Forrest)

33. Oregon Department of Agriculture for the use of cyfluthrin on pears to control the pear psylla; March 13, 1989, to May 1, 1989. (Gene Asbury)

34. Oregon Department of Agriculture for the use of imazethapyr (Pursuit) on dry edible peas to control broadleaf weeds; March 3, 1989, to June 15, 1989. A notice of receipt was published in Federal Register of February 6, 1989 (54 FR 5674). The Agency granted this request on the basis that imazethapyr is a replacement for dinoseb. The toxicology data base will support the proposed use. The proposed use is not expected to pose a hazard to the environment. (Jim Tompkins)

35. Oregon Department of Agriculture for the use of pendimethalin on alfalfa grown for seed to control dodder; April 18, 1989, to April 30, 1989. (Jim Tompkins)

36. Oregon Department of Agriculture for the use of fenarimol on cherries to control powdery mildew; April 1, 1989, to August 30, 1989. (Gene Asbury)

37. Oregon Department of Agriculture for the use of avermectin B_1 on pears to control mites; April 7, 1989, to September 1, 1989. (Libby Pemberton)

38. Pennsylvania Department of Agriculture for the use of cryolite on potatoes to control the Colorado potato beetle; April 20, 1989, to October 31, 1989. (Libby Pemberton)

39. Rhode Island and Providence Plantations, Department of Environmental Management for the use of cryolite on potatoes to control the Colorado potato beetle; April 20, 1989, to October 31, 1989. (Libby Pemberton)

40. South Carolina, Division of Regulatory and Public Services, Programs, College of Agricultural Sciences, Clemson University for the use of acephate on fresh market tomatoes to control stinkbugs; April 7, 1989, to December 1, 1989. (Libby Pemberton)

41. South Dakota Department of Agriculture for the use of fenoxaprop-ethyl on spring wheat to control foxtail and volunteer wild proso millet; April 27, 1989, to July 15, 1989. (Libby Pemberton)

42. Tennessee Department of Agriculture for the use of imazethapyr (Pursuit) on snap beans, lima beans, and southern peas to control broadleaf weeds; March 3, 1989, to August 15, 1989. (Robert Forrest)

43. Utah Department of Agriculture for the use of carbaryl on barley to control cereal leaf beetles; March 29, 1989, to July 15, 1989. (Gene Asbury)

44. Washington Department of Agriculture for the use of fluazifop-butyl on mint to control grassy weeds; April 18, 1989, to June 15, 1989. (Gene Asbury)

45. Washington Department of Agriculture for the use of avermectin B_1 on pears to control spider mites and pear psylla; April 1, 1989, to September 1, 1989. A notice of receipt was published in the Federal Register of March 1, 1989 (54 FR 8595); no comments were received. The exemption was granted on the basis that there are no registered alternative pesticides which will provide adequate control on these pests on pears. A significant economic loss may result if an effective pesticide is not made available. This loss may be as great as $14.72 million. The proposed use should not pose an unreasonable hazard to the environment or non-target species. Combined residues of avermectin B_1 and its delta 8,9 isomer are not likely to exceed 0.025 ppm in or on pears as a result of the proposed use. This residue level can be toxicogically supported and will not pose a threat to the public health. (Libby Pemberton)

46. Washington Department of Agriculture for the use of fenarimol on cherries to control powdery mildew; April 1, 1989, to August 30, 1989. (Gene Asbury)

47. Washington Department of Agriculture for the use of imazethapyr (Pursuit) on succulent and dry edible peas to control broadleaf weeds; March 20, 1989, to June 15, 1989. (Robert Forrest)

48. Washington Department of Agriculture for the use of sethoxydim on green peas to control grasses; March 23, 1989, to July 1, 1989. (Jim Tompkins)

49. Wisconsin Department of Agriculture, Trade, and Consumer Protection for the use of metalaxyl on American ginseng to control phytophthora root rot; March 6, 1989, to August 30, 1989. (Jim Tompkins)

50. Wisconsin Department of Agriculture, Trade, and Consumer Protection for the use of mancozeb on ginseng *Phytophthora* leaf blight and *Alternaria* leaf and stem blight; March 6, 1989, to August 31, 1989. A notice of receipt of public comment published in the Federal Register of February 6, 1989 (54 FR 5674); no comments were received. The exemption was granted on the basis that no alternative fungicide is available that is effective. Dietary and non-dietary risks are acceptable for limited use under section 18. The proposed use is not expected to pose a risk to non-target organisms or the environment. (Jim Tompkins)

51. Wisconsin Department of Agriculture, Trade, and Consumer Protection for the use of fluazifop-butyl on mint to control grassy weeds; March 13, 1989, to June 15, 1989. (Gene Asbury)

52. Wyoming Department of Agriculture for the use of chlorpyrifos on wheat to control Russian wheat aphid; April 6, 1989, to November 1, 1989. (Robert Forrest)

Crisis exemptions were initiated by the:

1. Colorado Department of Agriculture on April 4, 1989, for the use of fenvalerate on small grains to control cutworms. Since it was anticipated that this program would be needed for more than 15 days, Colorado has requested a specific exemption to continue it. This program will last until July 1, 1989. (Libby Pemberton)

2. Kansas State Board of Agriculture on April 6, 1989, for the use of fenvalerate on small grains to control army cutworms. This program has ended. (Libby Pemberton)

3. Montana Department of Agriculture for the use of fenvalerate on small grains to control cutworms. Since it was anticipated that this program would be needed for more than 15 days, Montana has requested a specific exemption to continue it. The need for this program is expected to last until July 1, 1989. (Libby Pemberton)

4. Washington Department of Agriculture for the use of methyl bromide on watermelons to control nematodes, fungi, and weeds. This program has ended. (Libby Pemberton)

5. Wyoming Department of Agriculture for the use of fenvalerate on wheat and barley to control army cutworms. Since it was anticipated that this program would be needed for more than 15 days, Wyoming has requested a specific exemption to continue it. The need for this program is expected to last until June 16, 1989. (Libby Pemberton)

6. United States Department of Agriculture for the use of methyl bromide on plantains and melons to control various plant pests. Since it was anticipated that this program would be needed for more than 15 days, USDA has requested a specific exemption to continue it. The need for this program is expected to last until April 17, 1992. (Libby Pemberton)

EPA has denied requests from the:

1. Florida Department of Agriculture and Consumer Services for the use of avermectin B_1 on strawberries to control spider mites. A notice published in the Federal Register of March 15, 1989 (54 FR 10713); no comments were received. The Agency has denied the request on the basis that available information does not substantiate that an urgent non-routine situation exists as defined in 40 CFR 166.3(d) or that a significant economic loss will occur without the use of avermectin. (Libby Pemberton)

2. The following States were denied an emergency exemption for the use of propachlor on dry bulb onions to control a variety of broadleaf weeds. The Agency has denied requests on the basis that registered pesticides are available for both preemergent and postemergent control of broadleaf weeds in onions and it cannot be concluded that a significant economic loss will result without the availability of propachlor.

a. Idaho Department of Agriculture.

b. Minnesota Department of Agriculture.

c. New York Department of Environmental Conservation.

d. Oregon Department of Agriculture.

e. Wisconsin Department of Agriculture, Trade, and Consumer Protection. (Gene Asbury)

3. Wisconsin Department of Agriculture, Trade, and Consumer Protection fo the use of oxyfluorfen on horseradish to control broadleaf weeds. A notice was published in the Federal Register of March 1, 1989 (54 FR 8594); no comments were received. The Agency denied the exemption because it was unable to conclude that an emergency condition exists or is likely to exist. (Gene Asbury)

EPA has granted a quarantine exemption to the United States Department of Agriculture for the use of methyl bromide on pineapples (imported) to control internal and external plant feeding pests not currently established in the United States; March 9, 1989, to December 21, 1991. USDA had initiated a crisis

exemption for this use. (Libby Pemberton)

Authority: 7 U.S.C. 136.

Dated: June 12, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 89-14692 Filed 6-20-89 8:45 am]

BILLING CODE 6560-50-M

[PP 9G3350/T579; FRL-3605-6]

Carbon Disulfide; Renewal of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has renewed temporary tolerances for residues of the nematicide carbon disulfide in or on certain raw agricultural commodities.

DATES: These temporary tolerances expire November 15, 1989.

FOR FURTHER INFORMATION CONTACT: By mail: Susan Lewis, Acting Product Manager (PM) 21, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Room 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. (703) 557-1900.

SUPPLEMENTARY INFORMATION: EPA issued a notice, which was published in the **Federal Register** of June 23, 1986 (51 FR 23151), stating that a temporary tolerance had been established for residues of the nematicide carbon disulfide in or on the raw agricultural commodities grapefruit, grapes, oranges, and potatoes at 0.1 part per million (ppm) resulting from soil applications of the menaticide sodium tetrathiocarbonate. These tolerances were renewed in response to pesticide petition (PP) 6G3350, submitted by Union Chemicals Division, Unocal, c/o Delta Management Group, 1414 Fenwick Lane, Silver Spring, MD 20910.

The company has requested a 1-year renewal of the temporary tolerance to permit the continued marketing of the above raw agricultural commodities when treated in accordance with the provisions of experimental use permit 612-EUP-1, which is being renewed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that a renewal of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been renewed on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active nematicide to be used must not exceed the quantity authorized by the experimental use permit.

2. Unocal Corporation must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance, and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire November 15, 1989. Residues not in excess of this amount remaining in or on the above raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

Dated: June 8, 1989.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 89-14693 Filed 6-20-89; 8:45 am]

BILLING CODE 6560-50-M

[OPP-100065; FRL-3604-8]

Syracuse Research Corp.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Syracuse Research Corporation (SRC) has been awarded two contracts to perform work for the EPA Office of Environmental Criteria and Assessment and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to SRC consistent with the requirements of 40 CFR 2.307(h)(3) and 2.308(i)(2), respectively. This transfer will enable SRC to fulfill the obligations of the contracts and this notice serves to notify affected persons.

DATES: Syracuse Research Corporation will be given access to this information no sooner than June 26, 1989.

FOR FURTHER INFORMATION CONTACT: By mail: Catherine S. Grimes, Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 212, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557-4460.

SUPPLEMENTARY INFORMATION: This notice is to amend the list of chemicals in the **Federal Register** notices of August 17, 1988 (53 FR 31101), for Contract No. 68-C8-0004 and January 13, 1988 (53 FR 794), for Contract No. 68-03-3521. The pesticide chemicals listed below are in addition to those mentioned in the above **Federal Registers**. Other chemicals may be included in SRC's work later in these contracts. Readers may contact the person named above in approximately 1 year to learn if chemicals other than those on this list will be involved in these contracts.

EPA Contract No. 68-03-3521 (evaluation of health & environmental effects including aquatic toxicity, and environmental fate studies).

Aramite
Bis(2-chloroethoxy)methane
Butylbenzyl phthalate
Chlorodibenzodioxine
Chlorodifluromethane
Chlorophenol 2-
Chlorophenyl phenyl ether 4-
Di-n-octyl phthalate
Endosulfan
Hydrogen sulfide
Mechlorethamine
Methylene-bis-(2-chloroaniline)4,4-
Mustard 665
Octane
Sulfuric acid
Trans-dichloropropane 1,3-
Trichloro-1,1,2-trifluoroethane-1,2,2-
Trinitrophenylmethylnitramine
Trinitrotoluene
Tritium

EPA Contract No. 68-C8-0004 (assessment of the nature and degree of hazard/risk posed by chemical pollutants).

1,3-Dichloropropene (Telone II)
Dicamba
ETU (ethylene thiourea)

The Office of Environmental Criteria and Assessment and the Office of Pesticide Programs have jointly determined that Contract Nos. 68-C8-0004 and 68-03-3521, involve work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under these contracts. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and obtained under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3) and 2.308(i)(2) the contracts with SRA, prohibit use of the information for any purpose other than purposes specified in the contracts; prohibit disclosure of the information in any form to a third party without prior written approval from the Agency or affected business; and require that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, SRC has previously submitted for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. Records of information provided to this contractor will be maintained by the Project Officers for these contracts in the EPA Office of Environmental Criteria and Assessment. All information supplied to SRC by EPA for use in connection with these, contracts will be returned to EPA when SRC has completed its work.

Dated: June 12, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 89-14689 Filed 6-20-89; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-140114; FRL-3605-3]

Access to Confidential Business Information by Technical Resources Incorporated

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Technical Resources Incorporated (TRI) of Washington, DC for access to information which has been submitted to EPA under sections 5 and 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: Under contract number 68-02-4289, TRI, 1100 6th St., SW., Washington, DC, will assist the Office of Toxic Substances' Economics and Technology Division in analyzing the properties and uses of new and existing chemicals under sections 5 and 8 of TSCA. TRI will generate information on selected chemicals through literature search reviews and other activities. All access to TSCA CBI under this contract will take place at EPA Headquarters and TRI's facilities. Upon completing review of the CBI materials, TRI will return all transferred materials to EPA.

In accordance with 40 CFR 2.306(j), EPA has determined that TRI will require access to CBI submitted to EPA under sections 5 and 8 of TSCA to perform successfully work specified under this contract. EPA is issuing this notice to inform all submitters of information under sections 5 and 8 of TSCA that EPA may provide TRI access to these materials on a need-to-know basis. Authorization for access by TRI to TSCA CBI, under contract 68-02-4289, at EPA Headquarters only, was previously announced in the **Federal Register** of September 27, 1988 (53 FR 187). Under contract number 68-02-4289, TRI personnel will require access to CBI data at their Washington, DC address listed above, in addition to their access authorization at EPA Headquarters.

Clearance for access to TSCA CBI under this contract is scheduled to expire on September 30, 1990.

TRI has been authorized for access to TSCA CBI at its facilities under the EPA "Contractor Requirements for the Control and Security of TSCA Confidential Business Information" security manual. EPA has approved the TRI security plan, has performed the required inspection of its facilities, and has found them to be in compliance with the requirements of the manual. TRI personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: June 13, 1989.

Linda A. Travers,

Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 89-14694 Filed 6-20-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-009648A-046

Title: Inter-American Freight Conference ("Conference")

Parties:

A. Bottacchi S.A., de Navegacion C.F.I.e. I.
American Transport Lines, Inc.
A/S Ivarans Rederi
Companhia Maritima Nacional
Companhia de Navegacao Lloyd Brasileiro
Companhia de Navegacao Maritima Netumar
Empresa Lineas Maritimas Argentinas Sociedad Anonima (ELMA S/A)
Empresa de Navegacao Alianca S.A.
Frota Amazonica S.A.
Columbus Line
Van Nievelt Goudriaan & Co. B.V.
Reefer Express Lines PTY. Ltd.
Sea-Land Service, Inc.
Transportacion Maritima Mexicana

S.A.

Synopsis: The proposed modification would amend the Agreement to authorize sections of the Conference to enter into loyalty contracts in conformity with the antitrust laws and would also prohibit member lines from entering into or taking independent action on any service contract.

Agreement No.: 217-011245

Title: Euro-Gulf International, Inc./ Tecomar S.A., Space Charter Agreement

Parties: Euro-Gulf International, Inc. Tecomar S.A.

Synopsis: The proposed Agreement would authorize the parties to charter space on each other's vessels in the Agreement trade between ports in North Europe, and ports on the Atlantic and Gulf Coasts of Florida, and the United States Gulf Coast, and the Gulf Coast of Mexico, and between ports on the Atlantic and Gulf Coast of Florida, and the United States Gulf Coast, and ports on the Gulf Coast of Mexico.

By Order of the Federal Maritime Commission.

Dated: June 16, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-14665 Filed 6-20-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

[Docket No. R-0669]

RIN 7100-AA76

Proposals to Modify the Payments System Risk Reduction Program; Book-Entry Securities Transfers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Request for comment.

SUMMARY: The Board is requesting comment on a proposed policy to reduce the risks to the Federal Reserve arising from daylight overdrafts associated with transfers or book-entry securities on Fedwire. This policy is proposed in conjunction with the other requests for comments and policy statements regarding the Board's payments system risk reduction program, published elsewhere in today's Federal Register. The proposed policy would require depository institutions that frequently exceed their Fedwire caps by material amounts solely because of book-entry transfers to collateralize their total Fedwire overdrafts. The proposal sets guidelines regarding preferred types of collateral and identification of collateral and also establishes guidelines for the Reserve Banks to implement the policy.

DATES: Comments must be submitted on or before November 17, 1989.

ADDRESSES: Comments, which should refer to Docket No. R-0669, may be mailed to the Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551, Attention: Mr. William W. Wiles, Secretary; or may be delivered to Room B-2223 between 8:45 a.m. and 5:00 p.m. All comments received at the above address will be included in the public file and may be inspected at Room B-1122 between 8:45 a.m. and 5:15 p.m.

FOR FURTHER INFORMATION CONTACT: Edward C. Ettin, Deputy Director, Division of Research and Statistics (202/452-3368); Florence Young, Assistant Director, Division of Federal Reserve Bank Operations (202/452-3928); Oliver I. Ireland, Associate General Counsel (202/452-3625) or Stephanie Martin, Attorney (202/452-3198), Legal Division; for the hearing impaired *only*: Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION: This is one of three proposals regarding payments system risk that the Board is issuing for public comment today. The others concern pricing of overdrafts on the Federal Reserve's wire transfer system ("Fedwire") and related overdraft measurement and cap proposals (Docket No. R-0668) as well as the daylight overdraft policy for U.S. branches and agencies of foreign banks (Docket No. R-0670). The Board encourages all interested parties to comment on each of these proposals. The Board urges that in filing comments on these proposals, commenters prepare separate letters for each proposal, identifying the appropriate docket number on each. This procedure will facilitate the Board's processing and analysis of the comments on these proposals by ensuring that each comment is quickly brought to the attention of those responsible for analyzing each specific proposal. In addition, the Board encourages entities that plan to submit identical comments, such as affiliated institutions within a holding company, to consolidate their efforts; the Board will give equal consideration to one letter signed by a number of commenters as it would to numerous identical letters submitted by those commenters. Comments are due November 17, 1989, and the Board does not intend to extend the comment period beyond that date.

In addition to its requests for comment, the Board is also issuing today three risk-related policy statements regarding private delivery-against-payment systems (Docket No. R-0665), offshore clearing and netting systems (Docket No. R-0666), and rollovers and continuing contracts (Docket No. R-0667).

Background

The Board's current payments system risk reduction program establishes a maximum amount of intraday funds overdrafts that depository institutions are permitted to incur over both Fedwire and private large-dollar payments systems. The maximum, or cap, is a multiple of a depository institution's adjusted primary capital and is based on a self-evaluation of a depository institution's creditworthiness, credit policies, and operational controls. Since the initiation of the policy in 1986, the daylight overdrafts on Fedwire associated with book-entry transfers have been exempt from the cap limits, pending development of procedures to bring these extensions of credit by Reserve Banks within the ambit of the policy. (For additional background on the Board's payments system risk reduction program, see Docket No. R-0668, elsewhere in today's Federal Register.) For depository institutions that are major clearers of government securities, however, such caps would have to be sizeable to cover the overdrafts associated with the operations of an efficient market for U.S. government securities.[1] As described more fully below, the Board proposes changes to its payments system risk reduction program that will more fully secure the Reserve Banks, while continuing to provide flexibility to depository institutions engaged in clearing U.S. government securities.

Proposed policy regarding book-entry securities transfers. The Board is requesting comment on the following multi-faceted proposal to deal with book-entry overdrafts:

- To combine book-entry overdrafts with funds overdrafts to create a combined Fedwire overdraft within the existing cap structure;

[1] For foreign banks, caps that reflect their worldwide capital would allow overdrafts of a size that would be inappropriate given their U.S. assets subject to U.S. supervision and their U.S. funding capacity. (For the Board's proposals regarding foreign banks see Docket No. R-0670, elsewhere in today's Federal Register.) In the case of foreign banks, collateral has been looked to as the means to secure overdrafts above the cap level and has been considered in the past as a means of securing book-entry related overdrafts. In reviewing this policy, the Board has concluded that partial collateralization of Fedwire overdrafts is not desirable.

- To require depository institutions that frequently exceed their Fedwire cap by material amounts solely because of book-entry transfers to collateralize their total Fedwire exposure;
- To use discount window collateral not in use for that purpose held either by the Reserve Bank or the depository institution as the first preferred source of collateral and other assets held by the depository institution as the second preferred source of collateral; and
- To use as a final source of collateral, book-entry securities being transferred, in the interim marked on the depository institution's own books, and, in the long run, segregated and valued in real time on the books of the Reserve Bank.

As previously noted, the Board's current payments system risk reduction program exempts book-entry related daylight overdrafts from cross-system net debit caps. In making this decision, the Board realized that, for the vast majority of depository institutions, book-entry overdrafts are small in size and present limited risk to the Federal Reserve System. By far, the majority of book-entry overdrafts are concentrated in a few clearing banks which serve the major dealers and brokers in government securities. Restricting the overdrafts of these banks could impede the smooth functioning of the government securities market.

On two previous occasions the Board has issued for public comment proposals that would deal with the risks arising from book-entry overdrafts by requiring that such overdrafts be collateralized (50 FR 21132, May 22, 1985, and 51 FR 45046, December 16, 1986). On both occasions, commenters have agreed that the Federal Reserve should be protected by collateral but have argued that the means proposed to do so were too restrictive and rigid in nature. The previous proposals focused on the use of those book-entry securities in transit that give rise to the overdraft as collateral rather than on other possible types of collateral. Commenters argued that reliance on this collateral would burden book-entry processing with complex and costly control processes. As a result, a collateralization policy has not been adopted, though the underlying causes of book-entry overdrafts have been at least partially addressed by a limit on transaction size, increased scrutiny of dealer clearing practices, and issuance of guidelines for dealer clearance behavior.

These measures to control book-entry overdrafts have had some success, particularly as they relate to the value of overdrafts per dollar of securities transferred and to the size and timing of peak overdrafts at large clearing banks. Book-entry related overdrafts, however, still account for 60 percent of all Fedwire peak intraday overdrafts and have an average peak value of approximately $60 billion per day. Further, these overdrafts continue to be highly concentrated at a small number of depository institutions, primarily clearing banks located in New York City. The four largest clearing banks, while reducing their overdrafts for the reasons noted above, still account for about two-thirds of all book-entry related daylight overdrafts. The ten largest clearing banks account for approximately 80 percent of all such overdrafts. The government securities markets could be seriously disrupted if these institutions were significantly restricted in their ability to provide intraday credit to their customers. On the other hand, if one of these institutions were to experience a problem requiring overnight funding, the overdrafts involved could present considerable risk to its Reserve Bank. Thus, there continues to be a need to develop a program that will protect the Federal Reserve by collateralizing large book-entry overdrafts while at the same time recognizing the wide disparity among depository institutions incurring overdrafts and the types of business such overdrafts reflect.

In response to this need, the Board has developed a proposal that integrates book-entry overdrafts with funds overdrafts for measurement purposes and provides for flexible treatment of the relatively few institutions that incur very large overdrafts. This proposal has several aspects. First, it recognizes that book-entry overdrafts are similar to those created by funds transfers in that both expose the Federal Reserve to the risk of loss. Thus, there seems to be little reason to continue the policy of separating the two types of overdrafts and creating, at times, misleading the two types of overdrafts and creating, at times, misleading overdraft data for individual depository institutions. For the vast majority of depository institutions, combining book-entry and funds overdrafts under the current cap structure would have little effect. In the last quarter of 1988, only six depository institutions with assets over $1 billion and 41 with assets under $1 billion would have experienced increases in their cap utilization rates of more than 25 percent under such a program. Of those 47 depository institutions, only 15 would have exceeded their caps as a result of the inclusion of book-entry overdrafts. Five large depository institutions whose total overdrafts exceeded their caps because of their book-entry overdrafts are major clearing banks. The total Fedwire overdrafts of these depository institutions (all of which would be collateralized under the proposal, as discussed below) account for almost 40 percent of the aggregate Federal Reserve direct credit risks resulting from daylight overdrafts. The ten remaining banks that would exceed their cap due to book-entry overdrafts account for only 0.2 percent of total Fedwire overdrafts.

The Board believes that book-entry and funds overdrafts should be combined under the current cap program. The Board does not believe, however, that the few depository institutions severely affected should be required to reduce overdraft levels, as they would be if caps had been exceeded as a result of funds transfers. Rather, the Board proposes that these depository institutions be asked to collateralize the total exposure they create for Reserve Banks from funds and book-entry overdrafts. This collateralization policy will apply only to these depository institutions that frequently incur total Fedwire daylight overdrafts that, solely because of book-entry related overdrafts, are materially in excess of their Fedwire caps. All other depository institutions will be expected to manage their total overdrafts (funds and book-entry) within the existing cap system, with the exception of occasional, modest daylight overdrafts that are due solely to book-entry transfers.

A second aspect of the Board's proposal would provide that collateral cover the entire daylight overdraft of an affected depository institution, not just that created by book-entry overdrafts. This reflects the reality that, if Federal Reserve lending at the discount window is needed, the entire credit must be collateralized, not just that portion created by book-entry transfers or that amount in excess of the depository institution's cap.

The third aspect of the Board's proposal involves the type of collateral to be used to secure the overdraft. The Board believes that discount window and other pools of acceptable collateral, held either by the Reserve Bank or by the depository institution, should be relied upon, to the extent possible, to cover daylight overdrafts. Discount window collateral and portfolio pools of assets are more easily identified than the book-entry securities being transferred that are eligible for pledge to secure overdrafts. Such collateral would cover a large portion of many large depository institutions' overdrafts. Moreover, using existing discount

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window collateral and asset pools as a primary source of collateral for overdrafts minimizes the need to rely on book-entry securities being transferred as collateral and would help to avoid potential conflicting claims on these securities. Some depository institutions may be able to pledge the securities being transferred by some customers, primarily brokers and dealers, to cover the depository institution's book-entry overdrafts, but depending on the availability of discount window collateral and asset pools this may not be necessary in all cases. Any security agreement between a Reserve Bank and a depository institution will exclude collateral that the institution is not authorized to pledge. Each depository institution subject to this collateralization requirement will be expected to work with its Reserve Bank to develop the mix of discount window collateral, other asset pools, and incoming book-entry securities to be used as collateral. The resulting program of collateralization will thus be customized to the depository institution so as to accommodate its business needs as well as to provide adequate protection to the Reserve Bank.

The final aspect of the Board's collateralization proposal concerns the manner in which rights to collateral in the form of book-entry securities being transferred will be conveyed to Reserve Banks. Ideally, such securities would be segregated in real-time on Reserve Banks' books, valued at market price less appropriate haircuts, and released from pledge to the Reserve Banks only as daylight overdrafts are extinguished. Such a process would involve extensive operational changes at both depository institutions and Reserve Banks, requiring a long lead time for development and implementation. Thus, the Board believes that using incoming book-entry securities as collateral should be accomplished in two phases, interim and long run. In the interim, those depository institutions that would find it necessary to repledge customer securities to Reserve Banks would mark the repledged collateral on their own books and not segregate the collateral at the Reserve Bank. Unfortunately, under this arrangement, a Reserve Bank could not assure on a real-time basis that the total collateral actually pledged, i.e., discount window collateral, other asset pools, and securities being transferred and marked on the depository institution's books, would be sufficient to cover the depository institution's overdraft. However, as an interim measure, the intraday pledge of book-entry securities, recorded on the books of the overdrafting depository institution, would reduce the unsecured credit risk now incurred by the Reserve Banks.

In the long run, intraday on-line valuation and segregation capabilities, similar to the services clearing banks now provide their customers, will be available as a result of the Reserve Banks' decision to design and develop a new book-entry operating system. This effort is expected to take three to five years to implement and will require extensive changes by Reserve Banks, depository institutions, and the major government securities dealers. Concurrently, the Department of the Treasury is in the process of revising its regulations that govern the legal transfer of interests in U.S. government securities. The Reserve Banks will be working with all interested parties to assure that the future book-entry securities system not only provides the means of efficiently and prudently securing Fedwire book-entry daylight overdrafts, but also includes the capabilities, procedures, and protections that will serve the future needs of the clearing banks, the dealer community, and their customers.

The Board expects the Reserve Banks to implement the new book-entry securities program with considerable flexibility. Reserve Banks are to require any depository institution that frequently exceeds its Fedwire cap because of book-entry overdrafts to collateralize its entire overdraft. However, the specific application of the collateral requirement is to be worked out by the Reserve Bank and the depository institution on a case-by-case basis. Reserve Banks will determine the definition of "frequently and materially" on a flexible basis, and will work to perfect an interest in the types of collateral the depository institution can most easily provide. It would be expected that both the type and loan value of the collateral would be consistent with each Reserve Bank's discount window policies, even if the collateral used is not routinely taken for discount window purposes. Finally, if book-entry securites being transferred are needed as collateral, Reserve Banks will work with each depository institution to determine what internal processes are needed to ensure the best repledge of securities that can be effected.

To implement this proposal, Reserve Banks will:

- Work flexibly with each depository institution affected by the proposal;
- Accept only the type and loan value of collateral that would be broadly consistent with the Bank's discount window policies;
- Develop model agreements for pledging collateral held in the possession of Reserve Banks, held for discount window purposes by the depository institution, or repledged by the institution as a result of customer book-entry transfer business; and
- Develop a new book-entry system that will provide the means for segregation and valuation of book-entry securities being transferred on Reserve Bank books.

By order of the Board of Governors of the Federal Reserve System, June 15, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-14640 Filed 6-20-89; 8:45 am]

BILLING CODE 6210-01-M

[Docket No. R-0666]

RIN 7100-AA76

Interim Policy Statement on Offshore Netting and Clearing Arrangements

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim Policy Statement.

SUMMARY: The Board is issuing an interim policy statement to establish guiding principles for any offshore dollar clearing or settlement system settling directly or indirectly on Fedwire or CHIPS. The Board believes that adherence to the policy statement will result in a reduction in risk on large-dollar payments systems in the United States. This interim policy statement is issued in conjunction with the Board's requests for comments on proposals regarding its payments system risk reduction program and its policy statements regarding private delivery-against-payment systems and rollovers and continuing contracts, published elsewhere in today's Federal Register.

EFFECTIVE DATE: June 15, 1989.

FOR FURTHER INFORMATION CONTACT: Edward C. Ettin, Deputy Director, Division of Research and Statistics (202/452-3368) or Jeffrey C. Marquardt, Senior Economist, Division of International Finance (202-452-3687); for the hearing impaired only: Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202-452-3544).

SUPPLEMENTARY INFORMATION: The Board of Governors of the Federal Reserve System has issued the following policy statement concerning offshore netting and clearing arrangements. This policy statement is being issued in conjunction with the Board's requests for comments on proposals regarding its payments system risk reduction program and its policy statements regarding private delivery-against-payment systems and rollovers and continuing contracts, published elsewhere in today's Federal Register.

Interim Policy Statement on Offshore Dollar Clearing and Netting Systems

For some time, the Board has been sensitive to the risks associated with the actual and potential development of netting and clearing arrangements for U.S. dollar payments located outside of the United States. In particular, the Board has been concerned that the steps being taken to reduce systemic risk in U.S. large-dollar payments systems may themselves induce the further development of "offshore" dollar payments systems. These offshore systems can settle through payments on the Federal Reserve's wire transfer system ("Fedwire") or the New York Clearing House's Clearing House Interbank Payments System ("CHIPS"), but may operate without adequate procedures for the management of risks and without any form of official oversight. However, the Board recognizes that the development of offshore clearing and netting arrangements raises issues of concern which go beyond the immediate question of payment risks in the U.S. banking system.

Banks in all countries have been experiencing strong incentives to reduce payment flows and credit exposures. As an apparent consequence, there are an increasing number of proposed or actual interbank netting arrangements which affect an offset or netting of amounts due between banks, arising not only from payment instructions but also from the settlement of foreign exchange and other financial contracts, on either a bilateral or multilateral basis. When located outside of the country of issue of the currency subject to the netting, these arrangements have the potential to alter significantly the structure of the international interbank clearing and settlement process.

In response to these developments, the Group of Experts on Payments Systems from the G-10 central banks, meeting at the Bank for International Settlements ("BIS") in Basle, Switzerland, studied a variety of payment and currency netting arrangements. The BIS Payments Experts' "Report on Netting Schemes" primarily addresses the allocation of credit and liquidity risk in various netting structures and draws general conclusions as to whether these risks are increased or decreased by the different "institutional forms" of netting. The Board believes that, in so doing, the Report of the Payments Experts provides a valuable starting point for the consideration of risk in the international payment process.

In addition, the Report notes that a number of broader monetary, financial, and supervisory policy implications are associated with the further development of netting arrangements for interbank markets. Netting systems for foreign currency payments and contracts have the potential to create changes in the financial character of affected interbank markets, as well as in the cross-border relationships between national banking systems. These changes, in turn, raise questions about the extent and quality of central banks' oversight and supervision of settlements in their respective currencies, including the allocation of supervisory responsibility among various central banks and national supervisory authorities.

On the basis of this preliminary work, the Governors of the G-10 central banks have determined that a further study of these broader issues be undertaken with a view toward establishing an international understanding of the monetary, financial, and supervisory issues raised by the development of offshore or cross-border netting arrangements. The Board welcomes the development of a cooperative study of netting and offshore payments issues by the G-10 central banks. The Board hopes that this work can provide the foundation for a consensus, among central banks and national supervisory authorities, on the nature and extent of supervision appropriate for netting arrangements as well as on the monetary and financial policy issues associated with netting.

At the same time, however, the Board recognizes that the technological, market, and regulatory incentives that are giving rise to the growth of these arrangements will continue to operate. The Board believes that it is important, therefore, to begin to address the potential policy concerns raised by the further development of offshore netting and clearing systems for U.S. dollar payments and the risks that these systems may create. This is particularly the case in light of the significant steps that have been and are being taken by the Federal Reserve and the U.S. banking industry to address payment risk issues. These include both the Board's ongoing payments system risk reduction program and the efforts of the New York Clearing House Association to improve CHIPS participants' awareness of payment risks, to control the level of daylight exposures within CHIPS, and now to adopt settlement finality procedures.

Offshore clearing of U.S. dollar payments, for subsequent net settlement in the United States, may create transaction and other efficiencies for participants in such offshore systems. If, however, the allocation of credit and liquidity risks associated with the netting and settlement is not clearly understood or defined, offshore dollar clearing arrangements may well obscure, or even increase, the level of systemic risk in U.S. large dollar payments systems as well as in the international dollar settlement process generally. The BIS Report notes that this shifting of risk "can be particularly troubling where the transaction cost efficiencies are enjoyed by banks located in one country, but the credit and liquidity risks associated with the settlement of payments resulting from that netting system may be experienced in the banking system of another country." This is precisely what can happen when U.S. dollar payments are netted in systems outside of the United States and subsequently settled through CHIPS or Fedwire.

Because of the potential for offshore dollar clearing systems both to shift risk to U.S. large-dollar payments systems and to be used to avoid the Board's domestic risk reduction policies, the Board believes that it is appropriate for it to provide preliminary guidance on the framework within which offshore dollar systems should operate. The Board recognizes that the question of the degree of oversight and supervision of offshore clearing and netting systems can only be fully addressed on a cooperative basis among central banks and national bank supervisory authorities. However, pending the conclusion of the study of netting by the G-10 central banks and the outcome of any further international consultations, the Board's approach to offshore dollar clearing and netting systems will be guided by the following general principles:

1. An offshore dollar clearing or netting system, which settles directly or indirectly through CHIPS or Fedwire, should at a minimum be subject to oversight or supervision, as a system, by a relevant central bank or supervisory authority.

2. The participants should be responsible for clearly identifying the operational, liquidity, and credit risks created within the system and for

assuring the prudent management of these risks.

3. The system should have arrangements in place which provide for the finality of settlement obligations and the practical means to assure the timely satisfaction of these obligations.

4. The direct or indirect settlement of the system's obligations through CHIPS or Fedwire should be conducted by an identified settlement agent, in the United States, so that satisfaction of the settlement obligations can be readily ascertained by the participants, the Federal Reserve, and other relevant central banks and supervisory authorities.

Consistent with the foregoing interim principles, the Federal Reserve is prepared to work with the central bank and/or supervisory authorities of the country in which an offshore dollar clearing or netting system is located, on a cooperative basis, to assure the continuing adequacy of the system's procedures for controlling risk.

The Board believes that these interim principles are consistent with the concerns identified by the BIS Payments Experts Group. The minimal conditions that they would impose on offshore clearing and netting systems are similar to the risk-reduction procedures that have been established for CHIPS. These principles should not be regarded as establishing a policy of either encouraging or discouraging the operation of offshore dollar payments systems. Rather, they represent an initial attempt by the Board to indicate the minimum structural features that the Board believes are appropriate for offshore dollar clearing arrangements. These principles also presume a cooperative international approach to the supervision of offshore clearing and netting arrangements.

By order of the Board of Governors of the Federal Reserve System, June 15, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 14637 Filed 6-20-89; 8:45 am]

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[Docket No. R-0668]

RIN 7100-AA76

Proposals To Modify the Payments System Risk Reduction Program; Pricing, Overdraft Measurement, and Caps

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Request for comment.

SUMMARY: The Board is requesting comment on proposed changes to its payments system risk reduction program. The proposals would provide for a fee of 25 basis points, phased in over three years, for average daily consolidated funds and book-entry Fedwire overdrafts in excess of a deductible of 10 percent of risk-based capital. To accommodate pricing and reduce the administrative burden to depository institutions, the Board is also proposing various changes to the procedures used for measuring daylight overdrafts and the current cap structure. These proposals are being issued in conjunction with the other requests for comment and policy statements regarding the payments system risk reduction program published elsewhere in today's Federal Register.

DATES: Comments must be submitted on or before November 17, 1989.

ADDRESSES: Comments, which should refer to Docket No. R-0668, may be mailed to the Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, Attention: Mr. William W. Wiles, Secretary; or may be delivered to Room B-2223 between 8:45 a.m. and 5:00 p.m. All comments received at the above address will be included in the public file and may be inspected at Room B-1122 between 8:45 a.m. and 5:15 p.m.

FOR FURTHER INFORMATION CONTACT: Edward C. Ettin, Deputy Director, Division of Research and Statistics (202/452-3368); Bruce Summers, Associate Director (202/452-2231) or Florence Young, Assistant Director (202/452-3928), Division of Federal Reserve Bank Operations; Oliver I. Ireland, Associate General Counsel (202/452-3625) or Stephanie Martin, Attorney (202/452-3198), Legal Division; for the hearing impaired only: Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION: This is one of three proposals regarding payments system risk that the Board is issuing for public comment today. The others concern daylight overdrafts related to book-entry securities transfers (Docket No. R-0669) and the daylight overdraft policy for foreign banks with U.S. branches and agencies (Docket No. R-0670). The Board encourages all interested parties to comment on each of these proposals. The Board urges that, in filing comments on these proposals, commenters prepare separate letters for each proposal, identifying the appropriate docket number on each. This procedure will facilitate the Board's processing and analysis of the comments on these proposals by ensuring that each comment is quickly brought to the attention of those responsible for analyzing each specific proposal. In addition, the Board encourages entities that plan to submit identical comments, such as affiliated institutions within a holding company, to consolidate their efforts; the Board will give equal consideration to one letter signed by a number of commenters as it would to numerous identical letters submitted by those commenters. Comments are due November 17, 1989, and the Board does not intend to extend the comment period beyond that date.

In addition to its requests for comment, the Board is also issuing today three risk-related policy statements regarding private delivery-against-payment systems (Docket No. R-0665), offshore clearing and netting systems (Docket No. R-0666), and rollovers and continuing contracts (Docket No. R-0667).

Background

The Board has been concerned for some time about the risks associated with large-dollar payments systems. The Federal Reserve Banks would face direct risks of loss in the event that Fedwire users are unable to cover their intraday overdrafts by the end of the business day. Moreover, on a private large-dollar network that permits its participants to transmit payment messages throughout the day with settlement of net positions at the end of the day, the inability or unwillingness of a participant to settle its net debit position would expose the banking system to systemic risk. Systemic risk occurs when institutions unable to settle on private large-dollar payments networks cause their creditors on those networks, in turn, to be unable to settle their own commitments. As a result, serious repercussions could spread to other participants in the network, to other depository institutions not participating in the private network, and to the nonfinancial economy generally. In such circumstances, the Federal Reserve would bear an indirect risk if it sought to avoid or limit this systemic risk. Finally, on both private wire systems or Fedwire, depository institutions will face risk by permitting their customers, including other depository institutions, to make transfers against uncollected or insufficient balances in anticipation of their coverage before the end of the day.

In April 1985, the Board adopted a policy to reduce the risks that large-dollar payments systems, including Fedwire, present to the Federal Reserve, to the depository institutions using them, to the banking system, and to other sectors of the economy (50 FR 21120, May 22, 1985). This policy, in effect, established a maximum amount of intraday funds overdrafts, or intraday credit extensions, that depository institutions and other entitites, such as Edge corporations and foreign banks with U.S. branches and agencies (hereafter "depository institutions") are permitted to incur over both Fedwire and private large-dollar payments systems. The maximum, or cap, is a multiple of a depository institution's adjusted primary capital and is based on the depository institution's self-evaluation of its own creditworthiness, credit policies, and operational controls. The guidelines for performing the self-evaluation were established by the Board, and the documentation supporting each depository institution's rating is reviewed by the institution's primary supervisory agency examiners. In July 1987, the Board adopted a number of modifications to its daylight overdraft policy, including a two-step, 25 percent reduction in the cross-system net debit caps, thus reducing the maximum daylight overdraft permitted to an individual depository institution (52 FR 29255, August 6, 1987).

The Board's policy was designed to be binding only on depository institutions with the largest overdrafts, and, even after the reduction of caps that was effective in 1988, the use of intraday credit by virtually all depository institutions remained generally unconstrained. Only a very small number of the depository institutions required to file a cap incur overdrafts that amount to as much as 80 percent of their caps. However, overdraft levels have remained relatively stable, and overdrafts as a percentage of the dollars transferred over Fedwire have declined. Moreover, management of individual depository institutions and the Board's Large Dollar Payments System Advisory Group have indicated that, as a result of the Board's policy, senior managers of depository institutuions have focused on intraday credit risks. Reportedly, they have taken steps to eliminate many of the payment practices that had presented risk to depository institutions, the Federal Reserve, and the banking and payments systems in general.

In 1987, the Board's Payments System Policy Committee requested two studies to assist in its consideration of future payments system risk reduction policies. The Board's Large Dollar Payments System Advisory Group was specifically asked to propose policy recommendations, and a Federal Reserve System staff task force was asked to review options but to make no policy recommendations. Both reports were published by the Board in August 1988.[1]

To test the impact of pricing, posting rules, and cap changes, the Board used data from a survey for the two weeks ending February 10, 1988. This survey provided detailed transactions data for all depository institutions. Cap multiples in force in 1989 were applied to survey cap categories. The normal data flow for monitoring daylight overdrafts is reported only for depository institutions incurring overdrafts under present daylight overdraft measurement procedures and includes only summary level information on transactions processed. During the comment period, the Reserve Banks will provide individual depository institutions with information on their own overdraft profiles under both the current and proposed posting procedures as well as information on any fees that would be assessed to that each depository institution can determine for itself how the proposals would affect its position.

After reviewing the Advisory Group's and the staff's reports as well as the survey data, the Board developed a series of proposals to reduce the aggregate level of payments system risk further. These proposals assume private sector systemic risk will be reduced by the implementation of settlement finality on the New York Clearing House's Clearing House Interbank Payments System ("CHIPS") network and that other sources of systemic risk will be controlled by policy statements regarding private-sector delivery-against-payment systems and offshore netting and clearing arrangements (see Docket Nos. R-0665 and R-0666, elsewhere in today's Federal Register). Against this background, the Board's proposals seek to shift a higher proportion of risk to the private sector, reducing the share of such risk borne by Reserve Banks. Presented in this docket are proposals to establish a program for pricing the daily average value of all Fedwire overdrafts in excess of a deductible, to facilitate pricing by revising the defintion and measurement of daylight overdrafts, to exempt from caps those depository institutions with relatively small overdrafts, and to exclude from the cross-system net debit cap net debits on CHIPS after settlement finality is adopted on CHIPS.

Other proposals issued for comment today would apply the existing cap structure to all overdrafts, including Fedwire book-entry overdrafts, and would require collateral for all Fedwire overdrafts for (1) any depository institution whose total Fedwire overdrafts frequently and materially exceed its Fedwire cap solely because of book-entry overdrafts and (2) any foreign bank with a U.S. agency or branch whose Fedwire overdrafts exceed its cap multiple times its U.S. capital equivalency. (See Docket Nos. R-0669 and R-0670, elsewhere in today's Federal Register.)

As indicated above, all of these proposals should be evaluated in the context of settlement finality on CHIPS and the adoption of systemic risk-reducing policies on private-sector delivery-against-payment systems for securities activity, netting arrangements, and offshore dollar clearing systems. Moreover, proposed revisions in the rules on finality for automated clearing house ("ACH") transactions processed by the Reserve Banks should also be considered (see the Board's request for comment on ACH finality, 54 FR 8822, March 2, 1989). Proposals regarding daylight overdraft pricing, posting, and caps are discussed in detail below.

Pricing Fedwire Overdrafts

The Board is requesting public comment on a change in its payments system risk reduction policy that would provide for a fee of 25 basis points, phased in over three years in increments of 10, 10, and 5 basis points, for average daily consolidated funds and book-entry Fedwire overdrafts in excess of a deductible of 10 percent of risk-based capital. Explicit fees or charges for Fedwire daylight credit are expected to create incentives for depository institutions to reduce Fedwire overdrafts, thereby reducing direct Federal Reserve risk and contributing to economic efficiency. The Board expects that payments system participants as a result of the market incentives established by the combination of Fedwire daylight overdraft pricing and settlement finality on CHIPS, will lower the level and more efficiently allocate the distribution of Fedwire and private sector intraday credit flows.[2]

[1] *A Strategic Plan for Managing Risk in the Payments System: Report of the Large Dollar Payments System Advisory Group to the Payments System Policy Committee of the Federal Reserve System* (Washington, 1988) and *Controlling Risk in the Payments System: Report of the Task Force on Controlling Payments System Risk to the Payments System Policy Committee of the Federal Reserve System* (Washington, 1988) are available from the Secretary of the Board at the address noted above or from the Daylight Overdraft Liaison Officer of each Federal Reserve Bank.

[2] The Board believes that settlement finality and other risk-constraining steps on existing and evolving U.S. and offshore clearing and settlement systems will partially offset pricing-induced shifts of payments away from Fedwire and will reduce overall systemic risk. See Docket Nos. R-0665 and R-0666 elsewhere in today's Federal Register.

Application of Pricing to Total Fedwire Overdrafts. The Board is proposing that pricing apply to book-entry related overdrafts as well as funds overdrafts. The Board is requesting comment in a separate docket on the inclusion of book-entry securities in the total measure of overdrafts (see Docket No. R–0669). As in the case of funds overdrafts, pricing book-depository institutions to reduce these overdrafts. Moreover, failing to price book-entry overdrafts while pricing funds overdrafts would create incentives to avoid charges for funds overdrafts through manipulation of book-entry transfers. For example, depository institutions in funds overdraft could deliver book-entry securities to another depository institution in order to receive a credit from the Federal Reserve to offset their priced funds overdrafts. If book-entry overdrafts were not priced, the receiver of the securities would incur a book-entry overdraft that is free (but, perhaps, requiring the posting of collateral with the Reserve Bank) and could charge the sender of the securities any rate below the Federal Reserve charge on funds overdrafts. The loan could be secured by the securities being transferred.

Pricing of book-entry overdrafts is unlikely to disrupt the U.S. government securities market, to constrain open market operations, or to increase the cost of Treasury financing. Each 10 basis points of overdraft charge amounts to only $2.70 per million per day, and, on average, each dollar of book-entry overdrafts is associated with six or seven dollars of transfers. The increase in the cost of the average transfer of less than $10 million is thus consideably smaller than the traditional minimum market bid-ask spread for Treasury securities, which is 1/64th of a percentage point or about $165 per million dollars transferred.

Average Overdrafts. The Board is proposing that pricing be applied to the average level of total Fedwire overdrafts. Overdrafts would be measured at equally-spaced intervals throughout the day, and the average overdraft would be the sum of all of the overdraft measurements divided by the number of intervals.[3] Average overdraft pricing more closely reflects the Federal Reserve credit actually used during the day by individual depository institutions. Average overdraft pricing is also likely to induce depository institutions to focus on managing their overdraft positions more or less continuously over the day rather than concentrating on only the time periods when overdrafts are at or close to their peak. Average overdraft pricing also permits more flexibility to the depository institution in managing overdraft levels, a particularly important advantage if book-entry related overdrafts are priced because the overdrafting depository institution will not be able to control when securities are delivered and when such overdrafts occur with the same precision as is possible with funds overdrafts.

The Board considered but decided against pricing peak rather than average overdrafts. Peak pricing would levy a fee on the Reserve Banks' maximum exposure and would also be consistent with the debit caps applied to peak overdrafts. Peak pricing, however, would be unlikely to provide incentives for depository institutions to reduce their overdraft levels once the peak has been reached, depending on the dynamics of other depository institutions' responses to pricing. In addition, if fees were assessed only for the peak overdraft, the duration of the Reserve Banks' exposure would not be considered.

The Board believes that average overdraft pricing is, on balance, superior to peak overdraft pricing and proposes that the Reserve Banks assess daily fees for average total intraday Fedwire overdrafts. Daily and two-week average debit caps would continue to apply to peak intraday values of such overdrafts in excess of $10 million and 20 percent of capital (as discussed below).

Deductible. The Board proposes that the amount of overdrafts subject to pricing be decreased by a deductible of 10 percent of risk-based capital. The deductible amount would be subtracted from the average intraday total Fedwire overdraft (funds and book-entry) each day to determine the amount of such overdrafts subject to pricing. An important purpose of the deductible would be to provide a certain amount of free Fedwire overdrafts to offset, partially or in full, those overdrafts incurred due to circumstances beyond the control of the depository institution. The deductible would provide some liquidity to the payments mechanism and would address the inevitable lack of synchronization of payments in a complex economy.

The deductible would also offset, in part, the Fedwire charge for overdrafts that may be beyond the control of the depository institution because of a computer problem at a Reserve Bank. The downtime associated with such problems can artificially affect the overdraft of a depository institution as payments cannot be sent or received. Reserve Bank operating problems affect the distribution of daylight overdrafts among institutions, benefitting some and harming others. A fixed deductible, as proposed, provided each day to address unpredictable downtime would likely overcompensate on some days and undercompensate on others. Depository institutions benefitting from a deductible on some days may have to absorb any downtime effects on other days for which a charge might be levied. The Board believes that, on average, depository institutions would not be unfairly charged and that Reserve Banks could make adjustments in exceptional circumstances. The Board proposes that Reserve Banks be permitted to adjust the amount of overdrafts subject to pricing for individual depository institutions on a *ad hoc* basis to deal with unusual circumstances, such as extended operational difficulties. In general, however, the Reserve Banks should assume that the deductible is sufficient to offset all but very lengthy operating outages at Reserve Banks and other unusual events.

The deductible would also offset some of the impact on individual depository institutions of the loss of opening-of-day non-wire net credits under the new posting rules (see discussion below). For example, a deductibe could offset the end-of-day Federal Reserve recognition of credits for checks and commerical ACH, the proceeds of which depository institutions may be required to make available to their customers at the opening of the business day according to the provisions of Regulation CC (12 CFR Part 229) or the guidelines of the National Automated Clearing House Association ("NACHA").

Regulation CC requires depository institutions to make the proceeds of certain categories of checks deposited by 2:00 p.m. available to their customers for withdrawal at the opening of business on the business day following the banking day of deposit. These "next-day availability" checks include Treasury checks, Postal money orders, checks drawn on Federal Reserve Banks and Federal Home Loan Banks, cashier's, teller's, and certified checks, and state and local government checks. Similarly, NACHA guidelines encourage depository institutions to make ACH credit transactions available to consumers for withdrawal by opening of business on the settlement day.

[3] Currently, overdraft values are measured at 15-minute intervals for both average and peak overdrafts. Federal Reserve staff is reviewing the feasibility of measuring overdrafts at shorter intervals (e.g., by second or minute) and whether the averaging period should be fixed (e.g., the "normal" hours over which Fedwire is open) or the actual period Fedwire is open at each Reserve Bank.

Under the posting proposal, discussed below, depository institutions generally would not receive credit for overdraft measurement pruposes for "next-day availability" checks or for commercial ACH credit transactions by the time that the funds should be available to their customers for withdrawal under Regulation CC and NACHA guidelines. Consequently, these depository institutions may incur an overdraft. The Board believes that these types of overdrafts would be rare, in view of the fact that most of the withdrawals of the proceeds of "next-day availability" checks and commercial ACH credits are likely to be by check or by cash withdrawal. Check withdrawals would not affect a depository institution's intraday balance because the debits for the check presentments would be recognized after the close of Fedwire. Furthermore, cash withdrawls would not affect a depository institution's intraday reserve balance. The proposal would cause depository institutions to incur overdraft costs for these checks and ACH credits only if the proceeds were wired out on the settlement day. For most depository institutions, these overdraft costs would be covered by the deductible.

Another reason for a deductible is to exclude from pricing the large number of mainly smaller depository institutions that incur *de minimis* overdrafts. Among the over 5,000 depository institutions that incurred overdrafts on at least one day during the final quarter of 1988 (measured by the current posting rules), over 90 percent of total Fedwire (funds and book-entry) average overdrafts were incurred by the largest 50 overdrafters. The Board believes that the burden of imposing charges on the 4,500 to 5,000 depository institutions that present ony 1 or 2 percent of the risk exceeds the benefit of reducing this small amount of risk.

Depository institutions that choose to access Fedwire through multiple accounts would be required to allocate their deductible in the same proportion as the allocation of their caps. One administering Reserve Bank would still have overall risk management responsibility, even though each Reserve Bank would administer the charges for each overdrafting account.

The Board considered the impact of various deductibles (based on capital) during the test period. If there were no deductible, all 5,040 depository institutions incurring overdrafts in the test period would have been subject to pricing on their total average overdrafts, which amount to $37.3 billion. (During the same period, these depository institutions' daily peak overdrafts amounted to $120 billion.) A deductible of 10 percent would exempt 4,821 depository institutions from pricing, and only 219 would have been subject to pricing. These 219 depository institutions would have had $34.0 billion of average overdrafts but would have paid fees on only $25.5 billion of overdrafts, the difference being overdrafts at depository institutions subject to pricing that would be exempted by the deductible. The 4,821 totally exempt depository institutions would have incurred $3.3 billion of average overdrafts.

As the deductible rises, the number of depository institutions subject to pricing falls as do both the aggregate overdrafts at depository institutions subject to pricing and the amount of overdrafts actually priced. At a 20 percent deductible, for example, only 118 depository institutions would have been subject to pricing in the test period; these depository institutions would have accounted for almost 80 percent of all average overdrafts, but fees would have been assessed on only 50 percent of all average overdrafts.

The pricing deductible would be independent and separate from the test for exempotion from filing for a cap (discussed below). The cap exemption deals with intraday peak values and determines which depository institutions would be exempt from filing for a Fedwire net debit cap. The pricing deductible determines the amount of daily average intraday overdrafts subject to fees (if any) by Reserve Banks. A depository institution could be subject to a cap and operate close to its cap level for part of the day and not be subject to fees, depending on its intraday overdraft pattern. Similarly, a depository institution could conceivably be exempt from filing for a cap, but be subject to pricing because it had overdrafts for most of the day above the 10-percent-of-capital pricing deductible, even though its peak overdraft remained below the 20 percent of capital exemption-from-filing-for-cap level.

The Board specifically requests comment on whether deductible schemes other than the one proposed would be appropriate. In addition, the Board requests comment on whether there are any additional actions that could be taken by Reserve Banks or depository institutions to alleviate the problems caused by overdrafts beyond the control of depository institutions. For example, would it be feasible to accelerate lthe posting time, for overdraft measurement purposes, of those "next-day availability" checks that bear unique routing numbers, such as Treasury, Federal Reserve Bank, and Federal Home Loan Bank checks and U.S. Postal Service money orders?

Size of Charge. The Board is proposing an initial Fedwire overdraft charge of 25 basis points (annual rate) to be phased-in over three years, with the effective initial date 12 to 18 months after the Board's final adoption of a program to price Fedwire overdrafts.[4] The Board intends to implement pricing three to six months after new procedures for measuring daylight overdrafts are effective (see below). In setting the level of the Federal Reserve charge for priced Fedwire overdrafts, the Board seeks a price that is high enough to induce risk-reducing changes by depository institutions and their customers. The price should not be so high, however, as to slow payments flows or drastically increase the public's cost of making payments.

According to data collected during the test period, a fee of 25 basis points for daily average Fedwire overdrafts in excess of a 10 percent of capital deductible, before any response on the part of depository institutions to reduce their overdrafts, would result in the 15 largest overdrafters paying almost 90 percent of the total charges. (Sixty percent of the fees would have been levied against the four largest book-entry securities clearing banks.) By the 100th largest overdrafter, the annual fee would be less than $3,000 and by the 150th it would be about $400.

The Fedwire overdraft price will be applied only on business days; the actual annual cost to a depository institution of an explicit price is only a fraction of the annual percentage rate. The number of business days varies each year, but the fraction is approximately 251/365, or about 30 percent lower than an annual rate that levies fees for all calendar days. The actual rate each day is 1/365 of the annual rate fee. The Board requests comment on the level of the proposed fee as well as on the three-step phase-in schedule.

Defining Overdrafts and Application of Caps

Measuring Overdrafts

The Board's daylight overdraft pricing proposal would give funds an intraday value and, therefore, would require precision in measuring intraday

[4] The Federal Reserve will retain its current penalty for overnight overdrafts of 10 percent or the federal funds rate plus 2 percentage points, whichever is higher.

overdrafts. Such precision requires fixing the time at which all payment transactions by Reserve Banks are recognized to have occurred for daylight overdraft measurement purposes. The Board proposes that, for purposes of measuring daylight overdrafts, a depository institution's opening balance at the Reserve Bank be adjusted by (1) credits for U.S. Treasury and government agency book-entry securities interest payments; (2) credits for U.S. Treasury and government agency book-entry securities redemption proceeds; (3) credits for U.S. Treasury ACH recurring credit transactions; and (4) debits for new issues of U.S. Treasury book-entry securities. During the day, this adjusted opening balance would be adjusted for Fedwire funds and book-entry securities transactions as they occur. At 2:00 p.m. local time of the Reserve Bank, Treasury direct and special direct investment credits would be reflected. After the close of Fedwire, all non-wire and commercial ACH transactions would be included, regardless of whether the net of those transactions were a credit or A debit.[5] This overdraft measurement proposal would apply equally to all depository institutions with Reserve Bank accounts, including U.S. chartered banks, foreign banks with U.S. agencies and branches, thrifts, bankers' banks, limited purpose trust companies, nonbank banks, [6] and any other such entities.

The precise measurement of daylight overdrafts requires a set of rules to determine when during the day debits and credits to a depository institution's account at a Reserve Bank are determined to have occurred. "Posting" for the purpose of measuring daylight overdrafts is not necessarily synonymous with the time at which payments become final or the time at which the current rights to receive funds accrue, although finality of payment is one of the criteria the Board used to develop the daylight overdraft measurement rules. The actual timing of entering transactions on the Reserve Banks' books varies depending on operational procedures. Fedwire transactions, whether funds or book-entry transfers, are debited or credited as they are processed and are considered to be final payments when the receiver of funds is advised by the Reserve Bank of the credit. Rules governing non-wire payments transafers, however, generally are provisional for some period of time and refer to a particular "day" as the measuring unit of availability, without indicating the time during the day at which payment participants are either entitled to the use of the funds received or have been relieved of their payments obligation to the Federal Reserve.

Even if the Federal Reserve were not contemplating pricing Fedwire overdrafts, it would be desirable to clarify the time at which the debtor-creditor relationship between a depository institution and its Reserve Bank changes as the result of the recognition of a payment. Independent of overdraft pricing or cap policies in the United States, technology and the globalization of financial instruments and transactions are increasingly causing money, securities, and capital markets to operate on a 24-hour basis. In such an environment, trading in dollar instruments and dollar payments in one part of the world occurs while U.S. markets and Reserve Banks are closed and vice versa. In a 24-hour global market, depository institutions in the United States and abroad need to know more precisely the time of day that dollar payments are recognized to have occurred by the Federal Reserve. Even if such global developmetna were not in progress, a clarificaiton would permit depository institutions to ascertain their intraday rights and responsibilities vis-a-vis Reserve Banks and to evaluate their risks accordingly.

Under the current definition of daylight overdrafts, all non-ACH, non-wire transactions are netted at the end of the banking day; if the net is a crewdit, and if that net is a debit, the debit is deducted from the end-of-day position. The net of all ACH transactions is posted as if the transactions occurred at the opening of business, regardless of whether the net is a debit or a credit. This *ex post* measure thus allows a depository institution to use all of its non-wire net credits to offset any wire debits during the day, but postpones the need to cover non-wire, non-ACH net debits until the close of the day.

The current, transitional, system of posting debits and credits for daylight overdraft measurement purposes gives the benefit of the doubt to depository institutions. Two drawbacks of this system are that it creates intraday float in the measurement of daylight overdrafts in that depository institutions with net credits can use them before those with net debits are charged and many depository institutions are unable to monitor their overdraft levels effectively during the banking day. Because the Board's payments system risk reduction program is reaching maturity, the Board believes that the initial transaction posting procedures must be modified now.

In developing a proposal to establish the time at which non-wire transactions would be recognized for daylight overdraft measurement purposes (herein after referred to as "posting charges"), the Board was guided by a desire to eliminate intraday float and to keep the posting rules simple and easy to use. The Board believes that measurement procedures shoud not provide intraday float to payments system participants. Thus, the processing of a payment transaction should not result in a reduction of one depository institution's measured overdraft (or an increase in its credit balance) before another depository institution's overdraft is increased (or its credit balance reduced).

The principle of eliminating aggregate Federal Reserve intraday float is independent of the credit risk arising from the transactions. For example, there may be only minimal Federal Reserve risk resulting from granting early-in-the-day credit for checks collected through the Federal Reserve, even though the Reserve Banks do not charge paying institutions until late on the presentment day. However, by providing early-in-the-day credit to the collecting institution without an offsetting debit to the paying institution, the Federal Reserve would be permitting the collecting institution to use Federal Reserve credit without regard to that depository institution's cap, deductible, or any Reserve Bank fee. Furthermore, if explicit fees for overdrafts are adopted, and if the timing of debits and credits for each transaction were not nearly simultaneous at Reserve Banks, depository institutions would have an incentive to create float by writing each other checks to create free overdraft capacity. As intraday credit begins to have value, either through pricing or the evolution to 24-hour global markets, intraday Federal Reserve float becomes a taxpayer subsidy. Similar concerns were one reason that the Congress mandated, in Section 11A of the Federal Reserve Act, that Federal Reserve Banks should charge for float.

[5] Generally, credit for, and repayment of, discount window loans for healthy depository institutions would be included among the non-wire transactions posted for daylight overdraft measurement purposes at the end of the day. This treatment would assure that the discount window loans were not used to fund same-day daylight overdrafters and would make the discount rate a price for a 24-hour credit and, hence, more relevant for monetary policy purposes in conjunction with a 24-hour federal funds rate.

[6] The posting changes would not affect the overdraft restrictions for nonbank banks established by the Competitive Equality Banking Act of 1987.

In addition, the new daylight overdraft measure should be simple to understand and to use in controlling intraday overdrafts. If depository institutions are to be charged a fee for incurring a Fedwire overdraft, the procedures for measuring overdrafts should facilitate their ability to control their positions and determine their intraday balances accurately. Measures that would include transactions retroactively after the transaction day is complete do not meet this test.[7]

Treasury transactions. The proposed opening-of-day credits and debits for certain U.S. Treasury transactions reflect Treasury obligations and the mechanics of the book-entry system. Interest and redemption payments on the debt are due at the opening of business on the payment date. Similarly, institutions purchasing Treasury securities receive title to the securities at the opening of business on the settlement date and should pay for the securities upon receipt.

Treasury Department regulations for recurring ACH payments require depository institutions to make federal government direct deposit ACH payments available to consumers at the opening of business on the payment date, and the Board has provided for such credits to depository institutions in the proposal. Reserve Banks would modify their accounting systems to separate Treasury and commercial ACH credit transactions. Because the Treasury's account will be debited for ACH credit transactions at the same time that depository institutions will be credited for those transactions, this posting rule will not create intraday float. Treasury ACH payments can be distinguished from certain next-day availability checks, discussed above, which are also required by regulation to be made available for withdrawal by the opening of business. Unlike the Treasury ACH payments, posting the next-day availability check credits at the opening of the day would create intraday float because the checks will not have been presented to the paying institutions the opening of the day.

Under the Treasury's direct and special direct investment programs, excess balances are placed with designated depositories that pay interest on the deposits to the Treasury from the day of receipt until the day of withdrawal. Because depository institutions must pay interest from the transfer date, they should receive credit for the transafer early enough to be able to invest the funds that day without incurring an overdraft. Some depositories are advised of direct investments the day before the deposits are received, and others are advised on the day of deposit. While it might be feasible to grant credit for deposits known in advance at the opening of business, it is generally not possible to grant credit for same-day deposits until 2:00 p.m. local time. Because one posting time would be less complex and should not disadvantage depository institutions, the Board believes the credits for Treasury direct and special direct investments should be posted at 2:00 p.m. local time of the Reserve Bank. The repayment of these investments is effected by Treasury calls, and the Board proposes that debits for calls be posted after the close of Fedwire on the day of the Treasury call. To ensure that no intraday float is created, the Treasury's account would be debited or credited for book-entry, ACH, and direct investment transactions at the same time that depository institutions receive the corresponding debit and credit entries in their accounts.

Other Non-wire Transactions. For purposes of measuring daylight overdrafts, the Board proposes that all other non-wire and commercial ACH transactions be posted simultaneously, which eliminates the creation of intraday float, after the close of Fedwire. In addition to eliminating float, posting non-wire transactions at the end of the day would assure that the depository institutions on either side of a transaction would have complete information as to the amount and account to be debited or credited and that depository institutions would not incur daylight overdrafts subject to charges and caps that are due to debits that are only provisional and may not be binding if the institution fails.

The Board considered and rejected various other arguments for posting non-wire debits and credits earlier in the day. For example, although commercial ACH credit transactions are generally known in advance of settlement day and both the debit and credit for these transfers could be posted at the opening of business, the Board did not propose such a rule, in part because the opening-of-day debit might disadvantage originators that no longer obtain opening-of-day net credit for other non-ACH, non-wire transfers. Moreover, consumers typically withdraw cash or write checks on the proceeds of commercial ACH credit payments on settlement day, which, unlike funds transfers, would not affect a depository institution's intraday reserve balance. Thus, crediting receiving depository institutions at the close of Fedwire should not create significant costs.

Posting check transactions to the collecting and paying depository institutions' accounts after the close of Fedwire on the availability date is consistent with the elimination of intraday float and providing banks with information to enable them to manage their accounts. Although Reserve Banks present most checks to paying depository institutions in the morning, they present some checks as late as 2:00 p.m. for same-day payment. If an earlier posting time were established, paying depository institutions in the western time zones (Alaska, Hawaii, and the West Coast) might be debited before checks were presented to them and, therefore, before they were aware of the amount of the debit. Further, to avoid intraday float, if check debits and credits were to be recorded earlier than after the close of Fedwire, the time established must be a standard time nationwide. If the timing of the credits and debits were based on the local time of the Reserve Bank holding the depository institution's account, float would be created due to time zone differences. In addition, it is not operationally feasible to credit some checks, i.e., those that have been presented to paying depository institutions, earlier than other checks that are presented later in the day.

In addition, the Board believes it is important to establish a time at which a paying depository institution becomes obligated for a debit. Regulation J (12 CFR Part 210) requires a depository institution to pay for checks presented by a Reserve Bank by the close of the banking day on which the checks are presented. Debiting the paying depository institution for checks presented at an earlier time during the day might require a depository institution to pay for checks before they have been presented and before the depository institution has had an opportunity to verify the charge. Moreover, private sector collecting depository institutions are often not able to obtain same-day payment for checks presented to paying depository institutions without payment of a presentment fee; in some cases they are unable to do so even if presentment fees are offered. For these reasons, the Board does not believe that debiting institutions for checks presented earlier than the close of business would be an

[7] The Large Dollar Payments System Advisory Group noted that the inability of depository institutions to control their overdraft positions accurately would be inconsistent with a program of either binding caps or overdraft pricing.

equitable solution for either paying or collecting depository institutions.[8]

The new posting rules are intended to facilitate pricing of Fedwire overdrafts by allowing depository institutions to determine with certainty their account balance at the Reserve Bank at any time during the day. The Board does not anticipate that these posting rules will significantly increase the pricing burden on depositor institutions, particularly given the deductible equal to 10 percent of risk-based capital, which will provide some compensation for overdrafts directly caused by the new positing rules.

The Board recognizes that it is common practice for depository institutions to extend credit to creditworthy corporate customers by permitting them to use non-wire credits, such as check credits, on the availability/settlement date to cover funds transfers during the day. In such cases, depository institutions have determined that their customers are sufficiently creditworthy to recover any funds should the non-wire transactions be returned or not paid. Under the proposal, most depository institutions will have the option to continue their current practices of providing credit to customers in anticipation of later cover or collection of final funds. A small number of depository institutions, however, may incur a cost in the form of a Federal Reserve fee on average overdrafts above a deductible amount for using intraday Federal Reserve credit to finance the transactions. As discussed above, given the 10 percent pricing deductible proposed by the Board, the incidence of that higher cost is likely to extend to very few depository institutions.

In view of the lack of finality of most non-wire payments and the goals to eliminate Federal Reserve float and to provide depository institutions with an accurate measurement of their overdraft position throughout the day, the Board requests comment on whether it would be desirable to post certain non-wire transactions, such as commercial ACH, local clearinghouse, or other transactions earlier in the day.

Application of Cap

The Board is proposing that the current cap system continue, with certain modifications that would exempt small depository institutions from the requirement to file for a cap and make the *de minimis cap* more useful for some larger institutions. In addition, the Board proposes that CHIPS net debits be excluded from the cross-system debit cap once settlement finality is implemented on CHIPS. These changes are intended to facilitate compliance with the Board's overall risk policy. In a related proposal issued for comment today (see Docket No. R–0669 elsewhere in today's **Federal Register**) the Board has proposed that book-entry overdrafts be included within the current debit caps. While the Board believes that pricing should reduce Fedwire overdrafts significantly, until more experience is gained, it would be premature to remove caps or the self-evaluation process for depository institutions.

Exemption of small overdrafters. The Board proposes that depository institutions that only very rarely incur daily total peak Fedwire (funds and book-entry) overdrafts in excess of the lesser of $10 million or 20 percent of their risk-based capital be excused from performing self-evaluations or filing board-of-director's resolutions with their Reserve Banks. This exemption would, however, be granted at the discretion of each Reserve Bank. Reserve Banks would be expected to take the necessary steps (e.g., coordination and consultation with supervisory personnel within the Reserve Bank and at other agencies) to limit their risk exposures to those depository institutions under financial duress or in any other way presenting unusual risk to the Reserve Banks. This risk-exposure control could include real-time monitoring and imposition of lower caps or zero caps. Depository institutions, of course, would continue to be free to file for a cap if they chose to do so and would be required to do so if they began to exceed the exemption limits.

Currently, a depository institution that incurs Fedwire funds overdrafts infrequently is only required to file an annual board-of-directors resolution with the Reserve Bank authorizing the depository institution to incur occasional Fedwire overdrafts up to $500,000 or 20 percent of capital, whichever is less (the *de minimis* cap). All other depository institutions wishing to incur Fedwire overdrafts must conduct an annual self-evaluation, based on Federal Reserve criteria, obtain their board's resolution of approval, and maintain supporting files for examiner review. These procedures have focused director and senior management attention on the risks of daylight credit exposure and the need to adopt prudential internal control procedures and policies. A number of observers within and outside the Federal Reserve System, however, have questioned the need to apply the policy to all overdrafters.

The Board does not believe it would be prudent to excuse depository institutions with a small absolute level of overdrafts from the limits of the overdraft policy if the overdrafts are large relative to the depository institution's capital. Similarly, from a Federal Reserve risk perspective, large overdrafts should not be excluded from the policy just because such overdrafts are a small portion of the depository institution's capital. Both the prudential and Reserve Bank risk concerns could be addressed by a dual test that considered both the size of the overdraft and its relationship to the capital position of the depository institution incurring the overdraft.

Of the 5,040 depository institutions that would have incurred an overdraft under the proposed posting procedure in the February 1988 test period, about 4,600 had overdrafts that were both less than $10 million and 20 percent of the depository institution's capital. These overdrafts were neither large relative to the depository institution's capital nor to the risk exposure of Reserve Banks. These 4,600 depository institutions accounted for only $1.7 billion of Fedwire overdrafts, less than 1.5 percent of the total.[9] This exemption greatly reduces the administrative burden of the Board's payments system risk reduction policy, with only marginal increases in potential direct Federal Reserve risk.

[8] In April 1988, the Board published for comment a same-day payment concept, which would enable private sector collecting depository institutions to receive payment for checks presented to paying depository institutions prior to 2:00 p.m. in same-day funds, without the imposition of presentment fees. Adoption of the concept would provide private collecting depository institutions with the same presentment abilities Reserve Banks currently have (53 FR 11911, April 11, 1988). Board staff is currently analyzing the comments received and reviewing alternatives suggested by several commenters. If a viable alternative is developed and proposed for public comment, it could incorporate payment options, chosen at the discretion of the paying depository institution, that would provide for payment to the collecting bank after the close of Fedwire on the day of presentment. Thus, paying depository institutions would not be obligated to pay for checks presented by private collecting depository institutions earlier in the day than they would be debited for checks presented by Reserve Banks. The Board could also propose a similar change to Regulation CC regarding the timing of payment by a depositary bank for returned checks.

[9] Indicative of the large number of very small overdrafters, the number of depository institutions does not change significantly as the $10 million overdraft threshold is increased to $25 million (4,635), or decreased to $5 million (4,544). Similarly, changing the capital ratio has modest impact at the same dollar level: at a $10 million overdraft level, a 10 percent overdraft-to-capital ratio would exempt 4,363 depository institutions and a 30 percent ratio would exempt 4,708 depository institutions.

De Minimis Cap. Under the current *de minimis* cap, a depository institution may incur overdrafts up to the lesser of 20 percent of adjusted primary capital (or "U.S. capital equivalency" for foreign banks' overdrafts on Fedwire) or $500,000, so long as the institution does not incur daylight overdrafts on a regular basis. The depository institution must file a board-of-directors' resolution with its Reserve Bank approving its use of a *de minimis* cap but need not engage in a full self-evaluation process. The Board is proposing a new *de minimis* cap category with no frequency or dollar-limit tests, but still requiring a board-of-directors' resolution to obtain the 20 percent of capital cap.

A small number of depository institutions would benefit if the existing *de minimis* cap were modified to remove the $500,000 limit and the frequency test, retaining only the 20 percent of capital constraint. This modified cap category would differ from the exempt category in two ways: (1) While retaining a 20 percent of capital constraint, it would have no $10 million limit, and, hence, would be of value only to larger depository institutions; and (2) it would, like the present *de minimis* cap, require board-of-director filing, but not a self-evaluation. The modified *de minimis* cap would be a useful transition grouping for larger depository institutions between the proposed exempt-from-cap-filing category and the lowest cap requiring self-evaluation and board-of-directors' resolutions.

Exclusion of CHIPS Net Debits. Provided that settlement finality is implemented on CHIPS, the Board proposes that the cross-system sender net debit cap be eliminated, with the current cap multiples applied only to total Fedwire overdrafts. Under current procedures, Fedwire caps are reduced by any net debit on CHIPS. When these procedures were adopted, they were intended to control not only the use of Federal Reserve intraday credit, but also to serve as a check on systemic risk. With reasonable means of assuring settlement finality, the system risk associated with the potential failure of a CHIPS participant to settle should be reduced significantly. Each participant would have an increased incentive to be cautious in setting bilateral net credit limits for other participants. Moreover, shifts of Fedwire payments to CHIPS to avoid Fedwire overdraft fees would be likely to result in expanded exchanges of payments among the few largest CHIPs participants. If this assumption is correct, net debit positions subject to cross-system caps should not change significantly as participants both receive and send more on CHIPS. Finally, elimination of the cross-system cap would be consistent with the policy statement on private book-entry systems that the Board issued today (see Docket No. R–0665, elsewhere in today's Federal Register), which does not impose the cross-system cap on those systems that adhere to the policy statement on risk control and settlement finality.

CHIPS serves almost 140 participating banks. Twenty-two of these participants are settling banks, i.e., at the end of the day, they settle the day's transactions on a net basis both for their own account and as correspondents for non-settling participants. Settlement is effected at the end of the day when Fedwire payments by those settling depository institutions in debit position are made to a settlement account at the New York Reserve Bank, followed by Fedwire transfers from the settlement account to all settling depository institutions in net credit position.

The payments volume on CHIPS, more than three-quarters of which is associated with foreign exchange and Eurodollar transfers, is somewhat larger than Fedwire funds transfers (about $700 versus about $660 billion per day in the fourth quarter of 1988). However, the average aggregate peak intraday net debit position on CHIPS is smaller than Fedwire funds daylight overdrafts (about $45 billion per day versus $60 to $65 billion per day). Although less than Fedwire, the net daylight credit exposure on CHIPS still represents a potential major systemic risk should a CHIPS participant be unable to settle its net debit position.

To reduce the systemic risk on CHIPS, the Board in recent years has encouraged the NYCH to adopt risk-reducing measures. Thus, in 1984, the NYCH implemented a system of network bilateral credit limits, and in 1985 established CHIPS-specific sender net debit caps. The former requires each participant to make an assessment of the creditworthiness of its counterparty, and the latter establishes a limit on the total exposure any one bank can create on CHIPS.

Despite these steps, if a participant is unable to settle its debit position at the end of the day, the CHIPS rules provide that payments to and from that participant be "backed out" of the settlement and new net positions calculated for the remaining participants; the calculation of the new net positions could continue until settlement is achieved. Despite this potential for revised settlement, participants permit most of their customers to use credits for CHIPS payments during settlement day, while reserving the right to charge back such credits if the transferring bank does not settle its CHIPS position. Simulations of the impact of a CHIPS participant's inability to settle suggest that such failures to settle could drastically change the net position of other participants, inducing a series of failures to settle by them. Thus, the current CHIPS rules and the practices of participants could lead to the systemic failure of depository institutions and/or pressure on the Federal Reserve to provide liquidity assistance while losses and solvency problems are determined.

The Federal Reserve has encouraged the NYCH to adopt settlement finality for CHIPS. Settlement finality would assure that CHIPS payments will be settled each day, even if one large, or several smaller, participants are unable to settle. Thus, liquidity pressures will be dealt with immediately, while allocation of losses can be resolved at a later time. In response to these concerns, the NYCH has developed a plan to implement settlement finality in late 1990 or early 1991 based on the netting of payments and a formula for sharing the risk of the remaining uncovered net debits.

Settlement finality on CHIPS does not eliminate private direct credit risk. Under the NYCH plan, specified CHIPS participants must cover the net debit of the failed participant, but that share is of a size unlikely to cause the failure of any one of them. Although the NYCH plan would provide for settlement finality on the day of a participant's failure to settle, there is some uncertainty as to whether the calculated multilateral net positions are legally binding obligations. The Federal Reserve is encouraging the NYCH to explore means of assuring that certainty, but even with uncertainty, the proposed CHIPS settlement finality will produce a substantial reduction of systemic risk.

In addition, because of the added settlement obligation aspects of the NYCH plan for settlement finality on CHIPS, CHIPS bilateral credit limits may be reduced and some small participants can be expected to withdraw from CHIPS. The number of transactions and the dollar volume of payments on CHIPS is likely to decline only moderately after settlement finality, as long as those depository institutions leaving CHIPS can find correspondents willing to conduct business for them. In fact, volume could increase with shifts from Fedwire if Fedwire overdrafts are priced.

The exclusion of CHIPS net debits from caps would benefit the 35 CHIPS participants that have large net debits on that system. Elimination of the cross-system cap would increase their ability to conduct Fedwire activity within their cap. The CHIPS activity of the remaining 105 participants does not generally result in a high cross-system cap utilization rate, and thus elimination of the cross-system cap would not affect these institutions.

The approximately 50 foreign banks that incur net debits on CHIPS would be virtually unaffected by the elimination of cross-system caps. Currently, foreign banks are allowed to incur Fedwire overdrafts up to the amount of their Fedwire cap (based on U.S. capital equivalency), regardless of CHIPS debits. Foreign banks cross-system debit caps are based on world-wide capital, and they are permitted to incur Fedwire overdrafts above their Fedwire caps (up to their cross-system caps) by posting collateral for the amount of such overdrafts in excess of their Fedwire caps. Under the proposed revisions to the foreign bank overdraft policy, however, foreign banks exceeding their Fedwire cap would have to collateralize the entire amount of their Fedwire overdraft, not just the amount over their Fedwire cap. Under the proposal, foreign banks could have Fedwire overdrafts up to the amount of their cap multiplied by their world-wide capital if all of those overdrafts were collateralized. (See Docket No. R-0670, elsewhere in today's Federal Register.)

Capital

The Board proposes, for the purpose of determining caps, that all domestic depository institutions use the same definition of "capital" that bank supervisors will require U.S. commercial banks to use for meeting their risk-based capital requirements. Depository institutions that choose to access Fedwire through multiple accounts would continue to be required to allocate their capital for debit cap purposes to each Reserve Bank at which they incur overdrafts; one administering Reserve Bank would still have overall risk-management responsibilities.

If CHIPS overdrafts are excluded from caps, foreign banks would be relieved of reporting worldwide capital for the purpose of computing their cross-system debit cap. Under the proposal, the only foreign bank overdrafts subject to cap would be Fedwire overdrafts based on U.S. capital equivalency. If, however, the foreign bank overdraft policy is changed as discussed above, foreign banks would be required to report their wordwide capital if they wished to incur collateralized Fedwire overdrafts, which would be limited to their cap multiplied by their world-wide capital. In that case, those foreign banks whose home countries participated in the Basle Accord might, in the name of reduced burden, be given the option of reporting either their lower (but easier to report) world-wide equity capital for cap purposes or their capital in accordance with the Basle Accord as applied by home country supervisors.

The "capital" concept that has been used in the payments system risk reduction policy to determine the maximum permissible overdrafts (the cap multiple times capital) is primary capital less certain intangible assets. This "adjusted" primary capital concept for commercial banks is refined for other types of depository institutions to be consistent with the bank concept, given any special institutional characteristics of these depository institutions.[10]

In the past year, the U.S. bank supervisory agencies have adopted new risk-based capital requirements consistent with the Basle Accord. (See 54 FR 4186, January 27, 1989.) The new requirements will be phased in from 1990 through 1992. For consistency, it would be desirable if the capital base used for the Board's daylight overdraft policy were the same as that used for certain other supervisory purposes, such as the computation of risk-based capital.

The new international risk-based capital standard divides capital into two tiers. Tier I is composed of "pure equity" less goodwill.[11] Tier I alone would be smaller than adjusted primary capital for all depository institutions. Tier II (which cannot exceed Tier I) is composed of certain forms of hybrid capital, preferred stock, subordinated debt (up to 50 percent of Tier I capital), and loan loss reserves (up to 1.25 percent of risk-weighted assets).[12] For most banks, the sum of the two tiers exceeds their adjusted primary capital, as the inclusion of subordinated debt and hybrid capital in Tier II exceeds the reduction due to the limited inclusion of loan reserves now fully included in primary capital. The ratio of estimated risk-based capital to adjusted primary capital at the 286 U.S. chartered banks that, in the February 1988 test period, had overdrafts of sufficient size to require filing for a cap suggests, on average, that risk-based capital for U.S. banks incurring overdrafts subject to cap would be about 15 to 25 percent higher than adjusted primary capital, increasing maximum permissible overdrafts by that amount.

The Administration's proposal to address the thrift problem and to modify the regulatory structure of the thrift industry would apply bank capital standards to thrift institutions, other than credit unions, by 1991. In the test period, only 13 thrifts (excluding credit unions) incurred overdrafts above the exemption level. As might be expected, some of these entities would face larger increases in capital requirements than banks. About half of them, however, would have no increase in capital for overdraft purposes because most of the regulatory accounting adjustments are already eliminated from adjusted primary capital for thrifts.[13] In the aggregate, the 60 thrifts (including credit unions) with Fedwire overdrafts in excess of the exemption level incurred only about $300 million of overdrafts in the February 1988 test period, about 0.2 percent of total Fedwire overdrafts.

[10] "Primary" capital for commercial banks is common stock, perpetual preferred stock, surplus, undivided profits, contingency and other capital reserves, cumulative foreign currency transaction adjustments, qualifying mandatory convertible instruments, allowance for possible loans and lease loses (exclusive of any allocated transfer risk reserves), and minority interest in equity accounts of consolidated subsidiaries. Intangible assets are subtracted from this total to obtain "adjusted" primary capital. (Equity capital of Edge corporation subsidiaries is also subtracted from the parent's capital if the parent permits the subsidiary to incur its own overdrafts).

For savings and loan associations and federal savings banks, "primary" capital is composed of perpetual preferred stock, permanent reserves or guaranty stock, contributed capital, qualifying mutual capital certificates, net worth certificates, income capital certificates, retained earnings, and all general valuation allowances. From this total are deducted deferred net losses on loans and other assets sold, goodwill, and other intangible assets to obtain "adjusted" primary capital. Mutual savings banks' capital measures are similar.

[11] Common Stock, surplus, undivided profits, capital reserves, cumulative foreign currency translation adjustments, and the minority interest in consolidated subsidiaries. While goodwill is deducted, in general, mortgage servicing rights and other identifiable intangible assets are not.

[12] More specifically, hybrid capital is the sum of net equity contract notes and equity commitment notes; preferred stock must be noncumulative perpetual preferred, subordinated debt is the sum of limited life preferred and subordinated notes and debentures, and loan loss reserves must be general provisions and not for specific assets.

[13] Deferred net losses on loans and assets sold and goodwill are deducted from both current and proposed capital; risk-based capital would generally permit the inclusion of mortgage servicing rights and other intangibles (existing goodwill is grandfathered through 1992, and then excluded), while all forms of intangibles are now excluded from adjusted primary capital; net worth and income capital certificates are included in adjusted primary capital but would be excluded from the new capital standard; FSLIC and FDIC notes could serve to raise capital under both standards.

Impact of Proposal on Cap Utilization

According to the data collected during the February 1988 survey, under the current posting procedure, excluding book-entry overdrafts and with no exemptions or exclusions, 3,414 depository institutions with $92.7 billion of intraday peak overdrafts subject to cap would be covered by the current daylight overdraft policy. If book-entry overdrafts were added to the amount subject to cap assuming the current overdraft measurement methodology and no exemptions of small overdrafters or exclusions of CHIPS net debits, the number of overdrafters would have risen by only 100 or so depository institutions, but the amount of overdrafts subject to cap could have increased by over $40 billion to $133.6 billion. The proposed modification of posting procedures would have raised the total number of depository institutions with overdrafts by almost 1,600 depository institutions to 5,097,[14] and would have raised the aggregate level of overdrafts an additional $17 billion to $150.8 billion. This latter increase in overdrafts and overdrafters reflects the shift of non-wire net credits from opening-of-day to close-of-day posting for about 2,700 depository institutions that had such credits in the test period. It is this shift in posting that accounts for the large increase in the number of overdrafters. However, the inclusion of book-entry overdrafts accounts for two-thirds of the dollar increase in overdrafts.

If CHIPS net debits were removed from overdraft calculations and then smaller overdrafters were excused from filing for the Fedwire cap, the number of depository institutions that would have had to file for either a *de minimis* or other cap in the test period would fall to less than 450. However, the total Fedwire overdrafts at depository institutions subject to caps would have fallen only from $120.2 billion to $118.4 billion. Thus, with the small overdrafter exemption and the CHIPS exclusion, most depository institutions would not be directly affected by the change in the posting rules, and the amount of Fedwire overdrafts subject to the policy would be reduced by only a small amount.

One hundred forty-three depository institutions would have exceeded their cap during the test period under the proposed rules. Most of the overdrafts above cap are at a small number of depository institutions that exceed their caps because of book-entry overdrafts. In fact, the four major book-entry clearers accounted for virtually all of the overdrafts in excess of cap. As discussed in Docket No. R-0669, the Board is proposing that such depository institutions be permitted to exceed their cap, provided they post collateral. Thus, the cap per se is not a constraint for these depository institutions.

Most of the remaining overdrafts at depository institutions that would have exceeded their cap in the test period where at six large banks that would have exceeded their caps due to the proposed posting change. About one-half of the overdrafts at these six banks, and an even larger amount at other depository institutions (including some of the major book-entry clearers) was related to the settlement for maturing commercial paper.[15] The Depository Trust Company ("DTC") is expanding its existing same-day settlement system to include book-entry processing for commercial paper. Both the proposed posting procedures and pricing for overdrafts should accelerate this effort. The DTC book-entry system will virtually eliminate Fedwire overdrafts associated with commercial paper issuance, transfers, and redemption, removing a substantial part of the overdrafts above cap associated with the posting proposal.

During the test period, a significant part of the remaining overdrafts above cap, as well as those at a small number of other depository institutions with high cap utilization rates, were at correspondent banks that had only modest overdrafts under the current posting procedure. These depository institutions now benefit from opening-of-day posting of net credits for checks they collect on their own behalf and for respondents through the Federal Reserve and/or through local clearinghouses that settle on the books of the Reserve Banks. These credits would be recognized at the end of the day under the proposal.

Eighty-seven depository institutions incurred a modest level of overdrafts that exceeded their proposed 20-percent-of-capital *de minimis* caps because of the new posting rules. Some of these depository institutions could file for non-*de minimis* caps and operate with the new posting procedures.

Bankers' banks cannot avoid the impact of the posting proposal by filing for a cap. Bankers' banks are exempt from reserve requirements and, hence, do not have access to the discount window. Depository institutions without such access may not incur Fedwire overdrafts because they may, in some circumstances, have no other way to cover a daylight overdraft at the end of the day. Some bankers' banks may choose to become member banks in order to gain access to the discount window and thus avoid a restriction on the size of deposit a member bank may place with the bankers' bank.[16] However, Congress intended that discount window access be available only to a depository institution that is subject to reserves.[17] A bankers' bank eligible to become a member may have access to the discount window upon approval provided it agrees to maintain reserves. Nine bankers' banks have done so. Because the Board has ruled that credit unions may not become member banks, this access to the discounty window is not available to corporate credit unions.[18] Thus, bankers' banks organized as credit unions may not incur daylight overdrafts on Fedwire so long as they qualify as bankers' banks. They would have access, and would be subject to reserve requirements, if they fail to qualify as bankers' banks. For example, it may be possible for credit unions organized as bankers' banks to amend their charter so as to become depository institutions eligible for Federal Reseve credit. The Board requests comment on the effect of the risk proposals on bankers' banks and possible solutions to any problems.

During the test period, 43 bankers' banks, virtually all of which were corporate credit unions, incurred overdrafts under the proposal, mainly as the result of the loss of opening-of-day net credits for non-wire transactions.

[14] During the test period, about 2,100 depository institutions incurred overdrafts under the posting proposal that would not have done so under the current policy, but over 400 would have ceased overdrafting under the proposal because their current opening-of-day ACH debits and/or late afternoon non-wire net debits would not be posted until after the close of Fedwire.

[15] Maturing commercial paper is presented to paying agent depository institutions by custodian or collecting depository institutions. New York Clearing House members settle such paper, net, as part of the New York Clearing House net settlement on the books of the Federal Reserve Bank of New York. Those depository institutions in a net credit position on the net settlement now receive that credit at the opening of the day. Under the proposal, this credit would be received after the close of business. In addition, issuing agent depository institutions often provide the issuers with proceeds of new issues before investors have transferred funds to the issuing agent depository institution.

[16] Section 19(c) of the Federal Reserve Act provides that nonmember bank shall keep on deposit with any depository institution without access to the discount window under section 10(b) of that Act a sum in excess of 10 percent of the member bank's capital and surplus.

[17] Colloguy of Congressmen St. Germain and Wirth, 126 Cong. Rec. H2291 (March 27, 1980).

[18] See letter from Secretary of the Board to Federal Reserve Bank of Minneapolis, S-540, August 6, 1942.

While none incurred an overdraft as high as $50 million, the total overdrafts of such depository institutions were $200 million. Only three of the depository institutions could have met the exemption proposal if they were eligible for it. Relative to capital, their overdrafts under the proposed measuring procedure would in virtually all cases not permit them to operate within any cap constraint, if they were permitted to have a cap. Bankers' banks would thus, under the proposal, have to hold larger balances, reduce their federal funds sales, or take similar actions to reduce their wire payments relative to their wire inflows and balances.

In view of the proposal's impact on the overdraft level of various types of institutions, the Board requests comment on alternative approaches to the treatment of Fedwire overdrafts over cap. For example, should some level of overdrafts in excess of cap continue to be permitted in extraordinary cases at the discretion of the Fedeal Reserve Bank? Further, some overdrafts are readily secured and generally self-liquidating. For example, under the terms of Section 4–208 of the Uniform Commercial Code, depository institutions handling a check for collection may have a security interest in the check until payment is received. Overdrafts in excess of cap incurred in anticipation of check credits would be paid routinely when the credit is posted. Should such readily secured, self-liquidating overdrafts, or other secured overdrafts, in excess of cap be permitted? Who should bear the cost of maintaining collateral if collateralized overdrafts in excess of cap were permitted? Would permitting collateralized ovedrafts in excess of cap increase risks to other creditors of overdrafting depository institutions?

Federal Reserve Operational Modifications for Pricing

Federal Reserve operating outages could affect intraday liquidity in the banking system and thereby contribute to measured overdrafts at individual depository institutions. Therefore Fedwire's operating reliability is critical to the success of the payments system risk reduction program. To assure greater Fedwire reliability, the Federal Reserve Banks are improving overall Fedwire processing performance and developing and implementing disaster recovery capabilites for Fedwire operations.

Fedwire's reliability is high and has been improving steadily. The time Fedwire was unavailable during business hours, decreased sharply in 1988. Funds transfer downtime decreased by almost 50 percent and securities transfer downtime decreased by approximately 40 percent from the 1987 levels. In 1988, the funds transfer and securities transfer systems achieved 99.59 percent and 99.41 percent availability, respectively.

Hardware and software systems that will reduce the likelihood of Fedwire outages and facilitate more rapid recovery from operations problems are being implemented to improve reliability further. In addition, the Federal Reserve is strengthening its disaster recovery capabilities to minimize the likelihood of a prolonged service disruption. The New York Reserve Bank has demonstrated, in disaster recovery simulations at its dedicated contingency site, the ability to recover Fedwire operations, reconcile funds and securities transfers, and resume processing of new transfers within four hours of a disaster. The Chicago and San Francisco Reserve Banks also currently have, or are in the process of establishing, dedicated backup sites for Fedwire processing. The remaining Reserve Banks share a disaster recovery site located in Culpeper, Virginia.

Federal Reserve pricing for daylight overdrafts will require that reliable information be made available to depository institutions by their Reserve Banks regarding the depository institutions' payment activity affecting their reserve or clearing accounts during the day. The Reserve Banks have developed an Account Balance Monitoring System ("ABMS"), which will enable depository institutions to obtain their current account balance during the day. The ABMS will reflect the depository institution's opening balance, funds and securities transfers as they occur, and selected non-wire transactions that would be posted to the monitor periodically during the day consistent with this proposal. While some institutions may rely on ABMS exclusively, other institutions may use it in conjunction with their own internal monitoring systems. ABMS will be available to depository institutions before any pricing scheme in implemented.

Proposed Implementation Schedule

The Board proposes that the new payments system risk reduction policy be implemented in a series of staggered effective dates. As indicated on Docket No. R–0669, Fedwire debit caps would be applied to total Fedwire overdrafts (funds and book-entry), with collateral required for total Fedwire overdrafts exceeding the Fedwire cap because of book-entry securities transfers, in the second quarter of 1990. As indicated in Docket No. R–0670, the effective date for requiring collateral of all Fedwire overdrafts of foreign banks with Fedwire overdrafts exceeding their cap based on U.S. capital equivalency would also be in the second quarter of 1990.

The Board proposes that the use of risk-based capital to compute debit caps as well as the other cap and daylight overdraft measurement proposals become effective in late 1990 or early 1991. CHIPS settlement finality is also expected to occur within this time frame, and thus CHIPS net debits would be excluded from the cross-system net debit cap in late 1990 or early 1991.

Approximately three months after adoption of the overdraft measurement changes, Reserve Banks would begin sending mock bills to depository institutions as if pricing were being applied. The Board proposes that, by mid-1991, Reserve Banks would begin assessing the first 10 basis points of the 25 basis point charge. The second 10 basis points would be applied in mid-1992 and the final 5 basis points in mid-1993. The Board reserves the right to accelerate or extend the phase-in period, depending on market responses. The Board also reserves the right to terminate the phase-in at a lower price than 25 basis points or to continue the phase-in to a higher price, depending on market responses.

By order of the Board of Governors of the Federal Reserve System, June 15, 1989.

William W. Wiles,

Secretary of the Board.

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[Docket No. R–0665]

RIN 7100–AA76

Policy Statement on Private Delivery-Against-Payment Systems

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Policy statement.

SUMMARY: The Board is issuing a policy statement establishing guiding principles for reducing risk on delivery-against-payment systems that settle on a net same-day basis over the Federal Reserve's wire transfer system. The Board believes that adherence to the policy statement will reduce systemic risk for both the Federal Reserve and system participants. This policy statement is issued in conjunction with the Board's requests for comments on proposals regarding its payments system risk reduction program and its policy statements regarding offshore clearing systems and rollovers and continuing contracts, published elsewhere in today's Federal Register.

EFFECTIVE DATE: June 15, 1989.

FOR FURTHER INFORMATION CONTACT: Edward C. Ettin, Deputy Director, Division of Research and Statistics (202–452–3368); Oliver I. Ireland, Associate General Counsel (202–452–3625) or Stephanie Martin, Attorney (202–452–3198), Legal Division; for the hearing impaired *only:* Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202–452–3544).

SUPPLEMENTARY INFORMATION: The Board is concerned about the systemic risk associated with private large-dollar payments and clearing systems. The potential systemic risk caused by the failure of a private system participant to settle its obligations can be far broader than the direct credit risk exposure to the Federal Reserve if a depository institution were unable to settle its net debit position on the Federal Reserve's wire transfer system ("Fedwire"). The receiver of a Fedwire payment is insulated from any losses associated with the failure of the sender because the receiver of the transfer receives good funds from the Federal Reserve upon receipt of advice of the credit; the Federal Reserve absorbs the direct credit risk that otherwise would be borne by counterparties to Fedwire payments.[1] Thus, the repercussions of the failure of an overdrafting sender on Fedwire to settle its obligations end with the loss to the Federal Reserve; no systemic losses are incurred by direct or indirect creditors of the Federal Reserve. In contrast, the creditor of participants on private networks are subject to systemic risk. This risk occurs because the direct counterparties of a failing participant may bear losses that in turn may affect their ability to meet their own settlement and other obligations. Additional indirect credit relationships may exist among participants in a network or in interbank credit relationships outside of payments networks. These indirect credit relationships and their attendant credit risks increase systemic risks associated with the failure of a participant to settle on a private network.

[1] The private sector still faces credit losses outside of the payments system associated with a failing depository institution. Such indirect private-sector risks increase when the Reserve Banks reduce their direct credit risk by taking collateral to cover their daylight credit extensions. Failure of a sender would then cause no losses for Reserve Banks even though the receiver obtains full payment; other creditors of the failed depository institution, however, have fewer assets against which to make a claim.

The Board is issuing a policy statement to address intraday credit risks arising out of the delivery of securities against payment through systems other than Fedwire. The Board believes that private book-entry systems have the potential to (1) Reduce operating risk by supplanting separate physical delivery and wire payment for definitive instruments; (2) lower operational costs by setting net positions rather than each underlying transaction, which also reduces the volume of funds necessary for settlement; and (3) reduce credit exposures by reducing the volume of intraday credit extensions. In addition, such systems lend themselves to techniques that permit participants to establish credit discipline amoung themselves. With the proper safeguards, such as collateral, debit caps, bilateral credit limits, pre-arranged loss-allocation formulas, and legally binding netting and close-out arrangements (e.g., novation), these systems can also be risk-reducing. In addition, such risk-reducing safeguards would serve to focus the attention of system participants on their own risk exposure.

The Board's policy statement establishes general guidelines to ensure that settlement occurs in a timely fashion and that participants do not face excessive intraday risk. Guidelines are established in four areas: (1) Liquidity safeguards for ensuring settlement, (2) provisions for reversals, (3) credit safeguards, such as collateral and netting features, and (4) open settlement accounting. The rules and procedures of those delivery-against-payment systems that use the Federal Reserve's net settlement services would be subject to prior and ongoing review on a case-by-case basis by the Federal Reserve in accordance with the Board's policy statement.

Policy Statement On Private Delivery-Against-Payment Systems

Private delivery-against-payment securities systems that settle on a net, same-day basis entail credit and liquidity risks for their participants and for the payments system in general. This policy statement provides guidance on payment risk management for those delivery-against-payment systems that settle their end-of-day obligations directly or indirectly over Fedwire.

The policy specifically addresses intraday credit risks arising out of the delivery of securities against payment through systems other than the Federal Reserve's wire transfer system ("Fedwire"). These systems meet the criteria listed in the Board's definition of a large-dollar payments system, but generally will not be subject to the specific measures adopted as part of the Board's risk reduction program, such as cross-system debit caps, provided that these systems conform to the requirements of this policy statement.

The Board believes that these systems should include risk-controlling features if they are to rely on Fedwire for ultimate settlement. The need for such risk controls is becoming increasingly important in view of these systems' potential for growth and high volume and the possible future course of the Federal Reserve's payments system risk reduction program, e.g., pricing intraday Fedwire funds and book-entry overdrafts. The Board is, therefore, establishing the following general policy framework for the treatment of the payment risk in private-sector delivery-against-payment systems under its risk reduction program.

Delivery-against-payment securities systems, as described below, are expected to adopt appropriate liquidity and credit safeguards in order to ensure that settlement occurs in a timely fashion and that the participants do not face excessive intraday risks. In view of the continuing evolution of these systems, the Board has decided to establish general guidelines rather than to specify the exact form such safeguards should take. Reversals or "unwinds" of funds and securities transfers, however, are not considered appropriate liquidity control measures.

The policy addresses four issues: (1) Liquidity safeguards for ensuring settlement; (2) provisions for reversals; (3) credit safeguards, such as collateral and netting features; and (4) open settlement accounting. These components, and the scope and regulatory implications of this policy, are described below.

Scope of the Policy. This policy statement is specifically targeted at large-scale private delivery-against-payment securities systems that settle their obligations on a net, same-day basis over Fedwire, either directly or indirectly. These systems settle securities transactions for their participants by tranferring securities and the accompanying payments obligations on the books of a clearing corporation or a depository institution operating the system and arrange for final settlement of the funds positions on a net basis at the end of the processing day. Settlement on a "net basis" means that the funds obligations are netted among all participants, so that a participant can settle obligations to or from many counterparties by making a

single transfer to or from the system. "Same day" settlement means that the appropriate funds and securities transfers are settled on the day that a delivery-against-payment request is entered into the system. "Large-scale" systems are those systems that routinely process a significant number of individual transfers larger than $50,000 or that would permit any one participant to be exposed to a net debit position at the time of settlement in excess of its capital.

This policy applies to systems that function primarily as a means of transferring securities and funds between participants. If a firm or bank is providing clearing services to a customer, and these services focus primarily on the bilateral relation between the clearer and the customer, the firm or bank would not be viewed as a system under this policy. Moreover, at least initially, a system that is an integral component of a full service ban, such that obligations that settle on an item-by-item basis are the direct obligations of the bank, will not be subject to this policy because of the existing supervisory oversight of a bank's liquidity and credit resources.

This policy applies to systems in the United States that transfer debt and equity securities, including those not eligible for Fedwire. The policy does not apply to systems dealing with other financial instruments, such as futures and options.

This policy is directed at limiting the risks arising out of the intraday credit generated in private delivery-against-payment systems. The policy does not address other potential sources of risk in these systems, such as inadequate management or facilities. The Board expects that these systems will be subject to regulatory oversight because they are typically clearing agencies subject to supervision by the Securities and Exchange Commission, or because they are limited purpose trust companies subject to state or federal banking supervision, or both. These supervisors have broad responsibility for ensuring the safety and integrity of these systems.

Liquidity Safeguards. Because they give rise to intraday credit, private delivery-against-payment systems rely on payments by participants with net obligations to the system ("net debtor" participants) in order to make settlement payments to participants with net obligations due from the system ("net creditor" participants). In the absence of appropriate safeguards, failure by a single participant with a net debit position may delay all settlement transfers by the system. The result of a system's failure to settle in a timely manner will be that participants do not receive the transfers of funds and securities that they expected and that they may need to conclude transactions outside the system. Because settlement typically occurs at the end of the day, the system and net creditor participants will have relatively little time to react to any failure that may occur.

This policy seeks to ensure that these private systems settle in a timely manner, so that participants can rely on the funds or securities obtained as a result of transfers through the system. The importance of ensuring reliable transfers is due in part to the fact that these systems generally allow participants to re-transfer funds credits or securities acquired during the day. If, for example, a participant sold securities early in the day and later used his funds credits to purchase other securities, then a failure in the settlement of the earlier transaction could result in a failure of the settlement of the later transaction.

The Board believes that private systems should protect timely settlement by adopting safeguards that are commensurate with the risk of settlement failure. The Board recognizes that a private system relying on intraday credit will not be able to guarantee timely settlement of funds and securities transfers under all conceivable circumstances and, therefore, that such a system cannot make an absolute guarantee of settlement finality. At a minimum, however, a system must have sufficient safeguards so that it will be able to settle on time if any one of its major participants defaults. In addition, the Board strongly encourages systems to adopt settlement safeguards beyond this required minimum.

Liquidity arrangements that will enable a system to make end-of-day settlement payments are crucial settlement safeguards. Liquidity safeguards adopted by private delivery-against-payment systems should include provisions that give the system access to sources of readily available funding that will support timely settlement in case a participant is unable to settle its obligation. Funding sources could, for example, include prearranged lines of credit or a pool of funds contributed by the participants. The system should limit, on an intraday basis, the size of potential net debit positions to ensure that these liquidity sources will be adequate.

Because settlement risks and structure may vary in different systems, the Board does not consider it appropriate to specify the exact structure of acceptable safeguards. One example of an appropriate liquidity safeguard may be a cap on the net debit funds position that may be incurred by an individual participant, which is tied to the liquidity resources available to the system and/or to the participant. If such a cap is used, it may be appropriate for it to be administered in a flexible manner, with due regard for liquidity and credit risks and for the efficient operation of the system.

Generally, net debits incurred by a depository institution within the system will not be applied to cross-system net debit caps established under the risk reduction program, which are applicable to Fedwire or CHIPS, nor will net credits on these systems be available as offsets.

Reversals. Currently, certain systems permit reversals of transfers of funds and securities to facilitate settlement if a participant defaults. By reversing transactions, the systems try to reduce the obligations of the defaulting participant. However, settlement with reversals will not ease the liquidity problems caused by a default; reversals will simply transfer a liquidity shortfall from the defaulter to another participant and will do so at the end of the day, when it may be difficult to arrange for alternate sources of liquidity. The return of securities, with the resulting reversal of a funds credit, may cause the participant receiving the returned securities to default on its obligations. Thus, settlement using reversals will not achieve this policy's objective, because participants will not be able to rely on transfers of funds and securities if transfers may be reversed.

Because the Board does not view reversals as a satisfactory liquidity safeguard, the systems covered by this policy should not use reversals as a substitute for liquidity arrangements, such as those discussed above, in order to ensure timely settlement.

Credit Safeguards. As stated above, these systems effectively allow participants to use intraday credit when receiving securities. All participants may be affected by one participant's failure to repay this credit if the system's liquidity arrangements permit settlement. The Board, therefore, believes that these systems should adopt clear loss-allocation rules and should minimize credit risks incurred through the system. Methods of reducing credit risk may vary in different systems. Appropriate methods include requiring contributions by all participants to a fund that may be used in the event of a default or requiring the pledging of a sufficient volume of market-to-market collateral. The loss allocation schedule should not increase risks to the system. In particular, the system should calculate the loss resulting from a default on the basis of the net obligations of the defaulter rather than on the basis of the underlying gross obligations between the defaulter and its counterparties. Thus, the Board would find a loss allocation scheme to be unacceptable if it reversed all transactions between the defaulter and other participants.

It is worth noting that this policy statement, including the restriction on reversals, is not intended to prevent a system from allocating credit losses to the counterparty of a defaulter based on the business dealings between the counterparty and the defaulter. It may be appropriate and prudent for a system to have rules which would require participants who have dealt with the defaulter to be responsible, after settlement, for the related loss. These arrangements could well include returning securities to the counterparty to help absorb the loss.

Open Settlement Accounting. As the systems described in this policy grow in size and volume, the timely and orderly completion of end-of-day settlements take on an increased importance for the settlement of other large-dollar payments systems. As a general matter, the Board believes that it will be easier for market participants and supervisors to monitor and protect against settlement risks if current information is readily available. Participants in a delivery-against-payment system should therefore have up-to-date information on their net position and on the settlement progress of the system, and appropriate market supervisors should have ready access to current intraday information on both the system's settlement and participants' positions. For those systems wishing to use Fedwire payments as a means of settlement, the Board encourages the use of Federal Reserve Bank net settlement services rather than individual wire payments that cannot be distinguished from all other Fedwire payments. This policy is in no way intended to broaden access to Federal Reserve services; neither Fedwire nor net settlement services will be available, as a general matter, to non-member nondepository institutions.

By order of the Board of Governors of the Federal Reserve System, June 15, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-14636 Filed 6-20-89; 8:45 am]

BILLING CODE 6210-01-M

[Docket No. R-0667]

RIN 7100-AA76

Policy Statement on Rollovers and Continuing Contracts To Reduce Daylight Overdrafts

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Policy statement.

SUMMARY: The Board is issuing a policy statement encouraging the prudential use of rollovers and continuing contracts to reduce daylight overdrafts on Fedwire. The Board believes that the use of such arrangements is consistent with its overall payments system risk reduction program. This policy statement is being issued in conjunction with the Board's requests for comments on proposals regarding its payments system risk reduction program and its policy statements regarding private delivery-against-payment systems and offshore clearing systems, published elsewhere in today's **Federal Register**.

EFFECTIVE DATE: June 15, 1989.

FOR FURTHER INFORMATION CONTACT: Edward C. Ettin, Deputy Director, Division of Research and Statistics (202/452-3368) or Oliver I. Ireland, Associate General Counsel, Legal Division (202/452-3625); for the hearing impaired *only*: Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION: The Board of Governors of the Federal Reserve System has issued the following policy statement concerning rollovers and continuing contracts to reduce daylight overdrafts. This policy statement is being issued in conjunction with the Board's requests for comments on proposals regarding its payments system risk reduction program and its policy statements regarding private delivery-against-payment systems and offshore clearing systems, published elsewhere in today's **Federal Register**.

Policy Statement on Rollovers and Continuing Contracts To Reduce Daylight Overdrafts

The Board of Governors of the Federal Reserve System believes that the use of market innovations, such as federal funds or Eurodollar rollovers or continuing contracts, to reduce daylight overdrafts on the Federal Reserve's wire transfer system ("Fedwire") and the New York Clearing House's Clearing House Interbank Payments System ("CHIPS") is consistent with the Board's policy concerning daylight overdrafts. The Board urges market participants to consider using such innovations for these and other financial instruments where feasible. In doing so, participants should be mindful that implementing changes of this type may involve incremental costs, at least transitionally, and modified risk positions. Accordingly, participants should evaluate these factors and take them into account when selecting and negotiating with counterparties.

Many overnight interbank federal funds and other similar purchases and sales are negotiated in the morning with the funds being sent over Fedwire in the afternoon. Typically the previous day's overnight borrowings are returned to the seller in the early morning, thus leaving a midday time gap of three or more hours between the morning repayment and the receipt of that same day's new borrowing. Often these transactions are between the same two banks for the same amount. This funding time gap can contribute to daylight overdrafts of the borrowing institution and create risk to Reserve Banks.

Rollovers are interbank overnight transactions where the principal does not change and is not returned the next day to the seller but, instead, is rolled over for the next overnight period. The overnight interest rate is negotiated daily between buyer and seller. The maturity is one business day, or no maturity is specified, and the arangement may be cancelled at any time by either party. The Board understands that national bank lending limits would not apply to federal funds transactions that have a maturity of one business day or no stated maturity and require no advance notice for termination. Because the rollover procedure eliminates the daily movement of principal on Fedwire and the corresponding time gap that could otherwise exist between repayment of the previous day's borrowings and receipt of new reborrowing, daylight overdrafts are reduced.

Continuing contracts are similar to rollovers. With a rollover, the size of each day's sale is the same. With a continuing contract, the size of each day's sale can vary, and only the difference in principal from the previous day's borrowing is moved over Fedwire or CHIPS. Such arrangements reduce the size of the daily movement of principal on Fedwire and CHIPS and also eliminate the time gap that could otherwise exist between repayment of the previous day's borrowings and receipt of new reborrowing, thereby reducing Fedwire daylight overdrafts or net debits on CHIPS. When the same maturity conditions apply to a continuing contract as apply to a

rollover (one business day or unspecified maturity and cancellation at any time by either party) national bank lending limits do not apply.

An industry task force that evaluated alternatives for reducing the level of daylight overdrafts absorbed by the federal funds and Eurodollar markets sought to devise improved settlement practices, e.g., rollovers and continuing contracts, that sustain the present rate negotiation mechanism. Each participant should satisfy itself that it has the flexibility to negotiate amounts, rates, and maturity options before using these practices for federal funds, Eurodollars, or other financial instruments. Either of these practices, rollovers or continuing contracts, can reduce daylight overdrafts or intraday net debits, and their prudential use by the banking industry is consistent with the Federal Reserve's policy of reducing intraday exposures on Fedwire and CHIPS. When borrowing banks reduce their daylight overdrafts by use of these practices, some extra operational costs and risks may be incurred by either party compared to current arrangements in the overnight market. For example, sellers of federal funds and other instruments may have to develop alternative audit trail procedures and may accept some addition risk of repayment since funds would not be returned each day before they would be relent. In addition, buyers of federal funds and other instruments may experience some extra initial operating costs to set up rollover arrangements between themselves and lending banks and may have to pay a higher rate to induce lenders to commit their funds for a longer time. However, these costs and risks, if any, should be reflected in the rate or rate spread received and paid. On balance, however, it is unclear whether rates on interbank funds transferred daily over Fedwire and CHIPS will fall relative to rates paid for rollovers, continuing contracts, or term funds, or whether the reverse will occur. The Board believes that it is important that the negotiation of terms relative to the use of these arrangements be left to the free operation of the private market.

The Board also supports efforts to encourage timely return of overnight federal funds and other borrowings and encourages operational improvements that would consistently allow timely receipt of funds purchased soon after a seller negotiates a sale. Similar arrangements and industry standards were suggested for federal funds by the American Bankers Association in July 1986.

By order of the Board of Governors of the Federal Reserve System, June 15, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-14039 Filed 6-20-89; 8:45 am]

BILLING CODE 6210-01-M

[Docket No. R-0670]

RIN 7100-AA76

Proposals To Modify the Payments System Risk Reduction Program; U.S. Agencies and Branches of Foreign Banks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Request for comment.

SUMMARY: The Board is requesting comment on a proposed risk reduction policy that would require collateralization of all Fedwire overdrafts (funds and book-entry) of foreign banks operating through U.S. agencies and branches if such overdrafts exceed the banks' Fedwire cap. This policy is proposed in conjunction with the other requests for comment and policy statements regarding the Board's payments system risk reduction program, published elsewhere in today's **Federal Register**.

DATES: Comments must be submitted on or before November 17, 1989.

ADDRESSES: Comments, which should refer to Docket No. R-0670, may be mailed to the Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, Attention: Mr. William W. Wiles, Secretary; or may be delivered to Room B-2223 between 8:45 a.m. and 5:00 p.m. All comments received at the above address will be included in the public file and may be inspected at Room B-1122 between 8:45 a.m. and 5:15 p.m.

FOR FURTHER INFORMATION CONTACT: Edward C. Ettin, Deputy Director, Division of Research and Statistics (202/452-3368), Jeffrey C. Marquardt, Senior Economist, Division of International Finance (202/452-3697); for the hearing impaired *only*: Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION: This is one of three proposals regarding payments system risk reduction that the Board is issuing for public comment today. The others concern pricing of overdrafts on the Federal Reserve's wire transfer system ("Fedwire") and related overdraft measurement and caps proposals (Docket No. R-0668), as well as the inclusion of book-entry securities transfers in the measurement of Fedwire overdrafts (Docket No. R-0669). The Board encourages all interested parties to comment on each of these proposals. The Board urges that in filing comments on these proposals, commenters prepare separate letters for each proposal, identifying the appropriate docket number on each. This procedure will facilitate the Board's processing and analysis of the comments on these proposals by ensuring that each comment is quickly brought to the attention of those responsible for analyzing each specific proposal. In addition, the Board encourages entities that plan to submit identical comments, such as affiliated institutions within a holding company, to consolidate their efforts; the Board will give equal consideration to one letter signed by a number of commenters as it would to numerous identical letters submitted by those commenters. Comments are due November 17, 1989, and the Board does not intend to extend the comment period beyond that date.

In addition to its requests for comment, the Board is also issuing today three risk-related policy statements regarding private delivery-against-payment systems (Docket No. R-0665), offshore clearing and netting systems (Docket No. R-0666), and rollovers and continuing contracts (Docket No. R-0667).

In April 1985, the Board of Governors adopted a policy to reduce risk on large-dollar payments systems. This policy, which was implemented in March 1986, established a maximum amount of intraday funds overdrafts that depository institutions are permitted to incur over both Fedwire and private large-dollar payments systems. The maximum, or cap, is a multiple of a depository institution's adjusted primary capital and is based on a self-evaluation of a depository institution's creditworthiness, credit policies, and operational controls. In July 1987, the Board adopted a number of modifications to the daylight overdraft policy, including a two-step, 25 percent reduction in the cross-system net debit caps, thus reducing the maximum daylight overdrafts permitted to individual depository institutions.[1]

The Board has applied its daylight overdraft policy to foreign banks as well as domestic institutions in a manner consistent with the policy of "national treatment," i.e., applying similar rules to foreign entities operating within the United States as are applied to domestic institutions. In this regard, U.S.

[1] These reductions became effective in January and May 1988. See 52 FR 29255 (August 6, 1987).

subsidiary banks owned by foreign banks are treated identically to all other U.S. banks under the program. The policy for branches and agencies of foreign banks, however, of necessity, takes into account certain differences between these entities and domestically-chartered institutions, including the following: (1) Most of a foreign bank's assets and liabilities are located and controlled outside of the United States and only the operations of the U.S. branches and agencies are subject to supervisory review by U.S. authorities, and (2) for many foreign banks, the volume of dollar payments that would flow through their U.S. branch network is substantial relative to the level of their assets in the United States and their local dollar funding capacity. As such, there may be practical limits on the ability of branches and agencies of foreign banks to raise funds in the market, either through unsecured borrowings or by providing collateral in an acceptable form, to meet liquidity needs in the event of credit or operational problems.

In this initial policy, the Board based the cross-system cap (for Fedwire and CHIPS [2] combined) for branches of foreign banks on their world-wide capital, but based the Fedwire cap (for Fedwire funds overdrafts) on a surrogate for capital in the U.S. ("U.S. capital equivalency" [3]), which is significantly smaller than world-wide capital. Foreign banks with U.S. branches and agencies are permitted to incur Fedwire overdrafts above their Fedwire caps (up to the cross-system cap) by posting collateral for the amount of such overdrafts in excess of their Fedwire caps.

A few foreign banks operating through U.S. branches and agencies have indicated that Fedwire caps are too binding for their dollar payments business, that their Fedwire caps do not recognize their world-wide strength, and that their U.S. operations do not involve the kind of assets to permit the posting of collateral for larger Fedwire overdrafts. In the summer of 1987, the Board reconsidered its policy in light of these concerns and determined that the policy should not be changed. This decision was based in part on the fact that U.S. branches and agencies of foreign banks were generally operating well within their Fedwire caps and seemed to be able to obtain large volumes of private intraday credit on CHIPS.

Foreign bank representatives have noted that the Basle Accord capital standards should meet or alleviate the Board's concerns about the capital positions and supervision of foreign banks with U.S. branches and agencies. In early 1989, the Institute of International Bankers renewed its request that the Board permit world-wide capital to be used as the base for determining Fedwire caps for foreign banks operating in the U.S. through branches and agencies.

There continues to be little evidence, however, that foreign banks are seriously constrained in their access to U.S. payments systems, despite rapid growth in their overdrafts. Since the Board's policy was initiated, both Fedwire funds and CHIPS daily average peak overdrafts of U.S. branches and agencies of foreign banks have risen more rapidly than have those of U.S.-chartered entities. In the fourth quarter of 1988, 64 branches or agencies of foreign banks incurred $8.4 billion of Fedwire funds overdrafts, and 96 incurred $31.0 billion of CHIPS net debits. Very few of these entities use their Fedwire cap intensively, however the few who do exceed their Fedwire cap under the proposed policy would have to collateralize the total amount of their Fedwire overdraft.

The Board does not believe that the current daylight overdraft policy is causing a hardship for foreign banks. Moreover, given the lack of U.S. asset base and potential limits on dollar funding capacity that would apply to some foreign banks, the current policy appears to be sound. Including book-entry overdrafts under the cap policy (see Docket No. R-0669) would have virtually no impact on the Fedwire cap utilization of foreign banks operating through U.S. branches and agencies. However, the proposed collateral policy for book-entry overdrafters requires that collateral be posted by U.S.-chartered depository institutions for all Fedwire overdrafts if the Fedwire cap is exceeded because of book-entry overdrafts. A parallel policy for those U.S. branches and agencies of foreign banks that exceed their Fedwire cap based on U.S. capital equivalency would provide that collateral be posted equal to the total Fedwire overdrafts, not just the amount in excess of the cap. The current policy that permits U.S. branches and agencies of foreign banks to incur uncollateralized Fedwire overdrafts up to their Fedwire cap based on U.S. capital equivalency would not be changed. Under the proposal, foreign banks could have Fedwire overdrafts up to the amount of their cap multiplied by their world-wide capital if all of those overdrafts were collateralized.

At the current time, such a policy change would have virtually no impact on foreign banks, which use CHIPS much more than Fedwire and have relatively low Fedwire cap utilization rates. Such a change would also serve as better protection for Reserve Banks if large exposures do occur.

Accordingly, the Board is soliciting public comment on a proposal that would extend the collateral requirements to all Fedwire overdrafts (funds and book-entry) of foreign banks operating through U.S. branches and agencies if such overdrafts exceed their Fedwire cap. The Board also requests comment on the proposed general overdraft policy (see Docket No. R-0668) as it applies to these entities.[4] Specifically, the Board is requesting comment on the relative burdens and benefits of the proposed collateral policy versus maintaining the current policy (but including book-entry overdrafts in the total Fedwire overdrafts subject to cap).

The Board is also requesting comment on alternative definitions of U.S. capital equivalency, particularly in light of the recent international accord on the definition of bank capital. Commenters are asked to suggest alternative definitions that would provide a reasonable balance between the practical U.S. asset and dollar liquidity limits of foriegn banks and the interests of foreign banks in more flexible access to Fedwire.

By order of the Board of Governors of the Federal Reserve System, June 15, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-14041 Filed 6-20-89; 8:45 am]

BILLING CODE 6210-01-M

[2] "CHIPS" is the Clearing House Interbank Payments System, operated by the New York Clearing House.

[3] U.S. capital equivalency is defined as the greater of (1) the sum of the amount of capital (but not surplus) that would be required of a national bank being organized at each branch or agency location or (2) the sum of 5 percent of the total liabilities of each branch or agency, including acceptances, but excluding (a) accrued expenses and (b) amounts due and other liabilities to offices, branches, and subsidiaries of the foreign bank.

[4] Edge corporations would continue, as now, to be required to post collateral for all their Fedwire overdrafts. No change in policy is being proposed for these entities.

Caisse Nationale de Credit Agricole S.A. Paris, France; Proposal To Offer Investment Advice and Securities Brokerage Services on a Combined Basis to Institutional Customers and To Engage in Other Securities and Investment Advisory Activities

Caisse Nationale de Credit Agricole S.A., Paris, France ("Applicant"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (the "Act") (12 U.S.C. 1843(c)(8)) and 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), for permission to engage *de novo* through its wholly owned subsidiary, Bertrand Michel Securities, Inc., New York, New York ("Company"), in offering combined investment advice and securities brokerage services to institutional customers. Applicant also proposes that Company engage in investment advisory activities and securities brokerage activities on a separate basis pursuant to §§ 225.25(b)(4) and 225.25(b)(15) of the Board's Regulation Y, respectively (12 CFR 225.25(b)(4) and (b)(15)). Company would conduct the proposed activities throughout the United States and abroad.

Section 4(c)(8) of the Act provides that a bank holding company may, with prior Board approval, engage directly or indirectly in any activities "which the Board after due notice and opportunity for hearing has determined [by order of regulation]—to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." The Board has previously found the provision of combined investment advisory and securities brokerage services to institutional customers to be closely related and a proper incident to banking, subject to certain commitments. *See, e.g., Bankers Trust New York Company*, 74 Federal Reserve Bulletin 695 (1988).

A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity; that banks generally provide services that are operationally or functionally so similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n.* v. *Board of Governors*, 516 F.2d 1229, 1237 (DC Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 Federal Register 806 (1984).

In determining whether an activity meets the second, or proper incident to banking, test of section 4(c)(8), the Board must consider whether the performance of the activity by an affiliate of a holding company "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices."

Any views or requests for a hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than July 10, 1989. Any request for a hearing must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors of the Federal Reserve Bank of Chicago.

Board of Governors of the Federal Reserve System, June 15, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-14642 Filed 6-20-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Statement of Organization, Functions, and Delegations of Authority

Part A of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services is amended. Part A, Office of the Secretary, Chapter AP, Office of Public Affairs was last published at 51 FR 41158, November 13, 1986. This amendment in the Office of Public Affairs changes the titles of the Deputy Assistant Secretaries and moves one division from one Deputy Assistant Secretary to the other. The changes are as follows:

1. Chapter AP, Section AP.10 Organization is revised as follows:

The Office of the Assistant Secretary for Public Affairs, headed by the Assistant Secretary for Public Affairs, who reports to the Secretary, consists of the following organizations:

The Office of the Assistant Secretary for Public Affairs; The Office of the Deputy Assistant Secretary for Public Affairs (Policy and Communications)
FOIA/Privacy Act Division
Communications Services Division
The Office of the Deputy Assistant Secretary for Public Affairs (Media)
News Division
Speech and Editorial Division

2. Section AP.20 Functions, Paragraph "B. Office of the Principal Deputy Assistant Secretary for Public Affairs" is deleted and replaced with the following:

B. Office of the Deputy Assistant Secretary for Public Affairs (Policy and Communications).

Is responsible for policies and activities related to the Department's communications services, public affairs policy analysis, and oversight of Freedom of Information and Privacy Act Division and the Communications Services Division.

Provides advice and assistance on all public affairs matters, in consultation with the Assistant Secretary for Public Affairs. Provides management or coordination to high priority media campaigns and information programs in the Department.

Acts as liaison to private sector organizations, to the Operating and Staff Divisions, to the public affairs units in the HHS Operating Divisions and Regions, and to other Federal agencies, including OMB and the Office of Public Liaison at the White House.

Initiates, designs and effects outreach programs for all organizations, associations and individuals concerned with the broad range of policies, programs, and issues of the Department.

3. Section AP.20 Functions, delete paragraph "B.2 Speech and Editorial Division," in its entirety and renumber paragraph B.3 as B.2.

4. Section AP.20 Functions, Paragraph "C. Office of the Deputy Assistant Secretary for News" is deleted and replaced by the following:

C. Office of the Deputy Assistant Secretary for Public Affairs (Media)."

Is responsible for policies and activities related to the Department's speech and editorial services and to providing the public with information about the Department's policies and programs through the news media.

Provides advice and assistance on all public affairs matters, in consultation with the Assistant Secretary for Public Affairs. Provides management or coordination to high priority media campaigns and information programs in the Department.

Is responsible for management oversight of the Speech and Editorial Division and the Press Office.

Conducts an active communications program with the public on behalf of the Department through the media and other avenues of communication in order to further public understanding of its policies, programs and issues.

Coordinates press activities with the White House Press Office and other government departmental press operations.

Oversees the departmental message center, preparing Presidential and secretarial messages for deserving individuals and organizations.

Serves as a writing resource for the Secretary, a source of news clippings from major newspapers, a filing source for Secretarial materials, and a resource for public affairs preparation and planning.

5. Section AP.20 Functions, insert new paragraph C.2 after C.1 as follows:

C.2. Speech and Editorial Division

Serves as the principal resource within the Department for reviewing and editing written materials reflecting the views of the Secretary, Under Secretary and Chief of Staff.

Prepares speeches, statements, articles, and related material for the Secretary, Under Secretary, Chief of Staff and other top Departmental officials.

Researches and prepares Op Ed pieces, features, articles, and stories for the media.

Reviews all regulations and other policy memoranda, and advises the Deputy Assistant Secretary for Public Affairs of appropriate response.

Date: June 13, 1989.

Louis W. Sullivan,

Secretary.

[FR Doc. 89-14663 Filed 6-20-89; 8:45 am]

BILLING CODE 4110-60-M

Food and Drug Administration

[Docket No. 88N-0394]

Generic Animal Drug and Patent Term Restoration Act; Second Policy Letter and Draft Implementation Document; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a second policy letter, dated June 7, 1989, on the implementation of the Generic Animal Drug and Patent Term Restoration Act. The letter introduces a draft document entitled, "Generic Animal Drug and Patent Term Restoration Act—Implementation," which describes procedures proposed to be used by the Center for Veterinary Medicine (CVM) in implementing the new law. The agency is soliciting comments on the draft document.

DATES: Comments may be submitted at any time.

ADDRESSES: Submit written requests for single copies of the second policy letter and draft document "Generic Animal Drug and Patent Term Restoration Act—Implementation" to the Industry Information Staff (HFV-12), Center for Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send two self-addressed adhesive labels to assist the staff in processing your requests. Submit written comments on the letter and draft document to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. The letter and draft document are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Richard B. Talbot, Center for Veterinary Medicine (HFV-100), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4313.

SUPPLEMENTARY INFORMATION: On November 16, 1988, the President signed into law the Generic Aminal Drug and Patent Term Restoration Act (the new law) (Pub. L. 100-670, 102 Stat. 3971). The new law amends the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 et seq.) by extending the generic approval system to copies of new animal drugs that were approved after October 1962, and provides patent extension for certain animal drugs.

In the **Federal Register** of December 15, 1988 (53 FR 50460), FDA published a notice of availability of a policy letter, dated November 23, 1988, implementing certain aspects of the new law. The letter discusses the list of approved drugs that FDA must publish, patent certifications that generic applicants must make, the patent information that pioneer sponsors must submit, and the exclusivity claims pioneer sponsors may make.

FDA is now making available a second policy letter, dated June 7, 1989, which introduces a draft document entitled, "Generic Animal Drug and Patent Term Restoration Act—Implementation." This document addresses administrative procedurs CVM will use in processing abbreviated new animal drug applications (ANADA's), pre-ANADA submissions (i.e., suitability petitions, requests for waiver of in vivo testing, and protocols for bioequivalence studies), and the content of an ANADA. The document also includes a draft of CVM's manufacturing requirements for ANADA's, a draft Bioequivalence Guideline, and draft procedures for Environmental Review of Generic Animal Drugs. The agency anticipates that changes in this draft document will occur. When and if changes are made, the revised document will be placed on display in the Dockets Management Branch (address above) and a notice of availability will be published in the **Federal Register**.

Interested persons may, at any time, submit to the Dockets Management Branch written comments regarding this letter and draft document. Two copies of any comments should be submitted, except that individuals may submit one copy.

Dated: June 15, 1989.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-14645 Filed 6-20-89; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committee Meeting; Cancellation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is canceling the meeting of the Gastroenterology-Urology Devices Panel scheduled for June 23, 1989. The meeting was announced by notice in the **Federal Register** of May 19, 1989 (54 FR 21669).

FOR FURTHER INFORMATION CONTACT: Ruth W. Hubbard, Center for Devices and Radiological Health (HFZ-420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7750.

Dated: June 15, 1989.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-14646 Filed 6-20-89; 8:45 am]

BILLING CODE 4160-01-M

BEST COPY AVAILABLE

Health Resources and Services Administration Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of August 1989.

Name: Departments Review Committee.

Date and Time: August 14-15, 1989, 8:30 a.m.

Place: Conference Room I and J, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open on August 14, 8:30 a.m.-9:30 a.m.

Closed for Remainder of Meeting.

Purpose: The Departments Review Committee shall review applications that (1) either assist in meeting the cost of planning, developing and operating; or participating in approved predoctoral training programs in the field of family medicine; and (2) assist in meeting the costs of projects to establish, maintain, or improve academic administrative units (which may be departments, division, or other units) to provide clinical instruction in family medicine.

Agenda: The open portion of the meeting will cover welcome and opening remarks, financial management and legislative implementation updates, and overview of the review process. The meeting will be closed to the public on August 14, at 9:30 a.m. for the remainder of the meeting for the review of grant applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C. Code, and the Determination by the Acting Administrator, Health Resources and Services Administration, pursuant to Pub. L. 92-463.

Anyone requiring information regarding the subject Council should contact Mrs. Sherry Whipple, Executive Secretary, Departments Review Commitee, Room 4C-18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-5874.

Agenda Items are subject to change as priorities dictate.

Date: June 13, 1989.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 89-14591 Filed 6-20-89; 8:45 am]

BILLING CODE 4160-15-M

Office of Human Development Services

Agency Information Collection Under OMB Review

AGENCY: Office of Human Development Services, HHS.

ACTION: Notice.

Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Office of Human Development Services (OHDS) has submitted to the Office of Management and Budget (OMB) a request for an information collection approval for a Study of Short Term Foster Care.

ADDRESSES: Copies of the information collection request may be obtained from Larry Guerrero, OHDS Reports Clearance Officer, by calling (202) 245-6275.

Written comments and questions regarding the requested approval for information collection should be sent directly to Justin Kopca, OMB Desk Officer for OHDS, OMB Reports Management Branch, New Executive Office Building, Room 3208, 725 17th Street, NW., Washington, DC 20503, (202) 395-7316.

Information on Document

Title: Study of Short Term Foster Care.

OMB No.: N/A.

Description: Approximately 74,000 children left foster care in less than 90 days in 1985. This study will examine why children enter and leave care quickly to determine reasons and costs of placement, effects of placement and cost-effective alternatives.

Annual Number of Respondents: 788

Annual Frequency: 1

Average Burden Hours Per Response: 1.28

Total Branch Hours: 1,008

Dated: June 15, 1989.

Mary Sheila Gall,

Assistant Secretary for Human Development Services.

[FR Doc. 89-14604 Filed 6-20-89; 8:45 am]

BILLING CODE 4130-01-M

Agency Information Collection Under OMB Review

AGENCY: Office of Human Development Services, HHS.

ACTION: Notice.

Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Office of Human Development Services (OHDS) has submitted to the Office of Management and Budget (OMB) a request for an information collection approval for Supplemental Form to the Financial Status Report (SF-269), Title III of the Older Americans Act, Grants for State and Community Programs on Aging.

ADDRESSES: Copies of the information collection request may be obtained from Larry Guerrero, OHDS Reports Clearance Officer, by calling (202) 245-6275.

Written comments and questions regarding the requests approval for information collection should be sent directly to Justin Kopca, OMB Desk Officer for OHDS, OMB Reports Management Branch, New Executive Office Building, Room 3208, 725 17th Street, NW., Washington, DC 20503, (202) 395-7316.

Information on Document

Title: Supplemental Form to the Financial Status Report (SF-269), Title III of the Older Americans Act, Grants for State and Community Programs on Aging.

OMB No.: N/A.

Description: The information will be used by the Administration on Aging to effectively monitor the use of Title III program funds to the State Agencies on Aging.

Annual Number of Respondents: 59

Annual Frequency: 4

Average Burden Hours Per Response: 0.5

Total Burden Hours: 118

Dated: June 14, 1989.

Mary Sheila Gall,

Assistant Secretary for Human Development Services.

[FR Doc. 89-14597 Filed 6-20-89; 8:45 am]

BILLING CODE 4130-01-M

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

An amendment is hereby given to the notice of the Board of Scientific Counselors, Division of Cancer Biology and Diagnosis, meeting to be held June 21-22, 1989, which was published in the Federal Register (54 FR 20929) on May 15, 1989. The meeting will now be held at the Bethesda Hyatt Hotel, One Bethesda Metro Center, Bethesda, Maryland 20814 in the Embassy Room on June 21, and on June 22 in the Cartier/Tiffany Room. The open portion of the meeting, originally scheduled for Conference Room 2 at the National Institutes of Health, has been changed due to electrical problems.

In accordance with the provisions set forth in sec. 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, the meeting will be closed to the public on June 21 from 8 p.m. to approximately 10 p.m. for the review, discussion and evaluation of individual programs and projects conducted by the Division of Cancer Biology and Diagnosis. These programs, projects, and discussions could reveal personal information concerning individuals associated with the programs and projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dated: June 19, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-14854 Filed 6-20-89; 8:45 am]

BILLING CODE 4140-01-M

Social Security Administration

Social Security Disability Program Demonstration Project

SUMMARY: The Commissioner of Social Security announces the following demonstration project to be conducted under the authority of Pub. L. 96-265, section 505(a), as amended by Pub. L. 99-272, section 12101. The project, which will develop and test a special intervention model to help Social Security disability insurance (SSDI) beneficiaries with multiple sclerosis (MS) to return to and remain in competitive employment, will be funded under this section of the law. Section 222(a) of the Social Security Act (the Act) will be waived to conduct this project, permitting direct referral of SSDI beneficiaries from the Social Security Administration (SSA) or the State agencies that make disability determinations for SSA, to the organization. Additionally, the requirements in section 223(a) of the Act will be waived to the extent necessary to provide a lengthened extended period of eligibility (EPE) (an additional 10 years), and the requirements in section 226(b) will be waived to the extent necessary to provide 10 additional years of Medicare eligibility to disabled MS beneficiaries. In order to include in the demonstration project persons entitled to child's insurance benefits or window(er)'s insurance benefits based on disability, the pertinent EPE provisions of the Act applicable to those classes of benefits will be waived, i.e., section 202(d)(1)(G)(i) for child's insurance benefits, section 202(e)(1)(II) for window's insurance benefits, and section 202(f)(1)(II) for windower's insurance benefits. We are publishing this notice to comply with 20 CFR 404.1599, which requires publication of a notice in the Federal Register before starting certain demonstration projects.

FOR FURTHER INFORMATION CONTACT: Malcolm H. Morrison, Social Security Administration, Office of Disability, 2223 Annex, 6401 Security Boulevard, Baltimore, Maryland 21235 Phone (301) 965-0091

Background Information: The Social Security Disability Amendments of 1980, Pub. L. 96-265, section 505(a), as amended by Pub. L. 99-272, section 12101, directs the Secretary of Health and Human Services to develop and carry out experiments and demonstration projects designed to: (1) encourage disabled beneficiaries to return to work, and (2) accrue trust fund savings or otherwise promote the objectives or facilitate the administration of title II of the Act. Section 505 of Pub. L. 96-265, as amended by Pub. L. 99-272, section 12101, also authorizes the Secretary to waive compliance with the benefit requirements of titles II and XVIII of the Act as necessary to conduct these experiments and demonstration projects. This includes the authority to waive section 222(a) which requires SSA to refer disability beneficiaries directly to State vocational rehabilitation (VR) agencies, to waive sections 223(a), 202(d)(1)(g)(i), 202(e)(1)(II), and 202(f)(1)(II) which provide for an EPE for reinstatement of disability benefits without new application, and to waive requirements in section 226(b) which provides continued Medicare eligibility based on entitlement to disability benefits.

Overall Objectives: SSA wishes to assist SSDI beneficiaries in returning to competitive employment. SSA's focus is on significantly improved integration and use of VR and other employment program resources providing for more employment opportunities, better mechanisms for identifying and referring candidates for rehabilitation and other employment services, more effective incentives for rehabilitation and employment, increases access to employment service systems and networks, and more effective and efficient employment intervention for beneficiaries.

Description of Demonstration with The Development Team, Inc.; Arlington, Virginia; "Multiple Sclerosis Intervention Model;" Projected duration: 24 months. The project will develop and implement an effective return to work intervention model for SSDI beneficiaries with MS using an additional work incentive and a special set of employment services. The project will provide to 100 SSDI beneficiaries with MS an additional 10 years to the EPA (work incentive) to provide a lengthened period in which benefits can be reinstated without the need for new application—when beneficiaries are unable to work. Medicare eligibility will also be extended for 10 years. The project will be piloted in Chicago and then implemented in additional sites. Beneficiaries will be enrolled in the project through the use of an outreach program and SSA referrals. Participants will be provided information on and receive the work incentive. Job placement will be provided through Projects with Industry.

Statutory Provisions to be Waived: Section 222(a) of the Act is being waived for the purpose of conducting this demonstration project. Section 222(a) requires that SSA refer disabled persons to State VR agencies. This waiver authorizes SSA to refer SSDI beneficiaries to the funded organization. Section 223(a) of the Act provides for a 36-month EPE for SSDI beneficiaries who complete a trial work period and continue to have a disabling impairment. This provision is being waived for the purpose of adding an additional 10 years to the current 36-month EPE for beneficiaries participating in the demonstration project. In order to include in the demonstration project persons entitled to child's insurance benefits or window(er)'s insurance benefits based on disability, the pertinent EPE provisions of the Act applicable to those classes of benefits will be waived, i.e., section 202(d)(1)(G)(i) for child's insurance benefits, section 202(e)(1)(ii) for widow's insurance benefits, and section 202(f)(1)(II) for widower's insurance benefits. In general, section 226(b) of the Act provides for a continued period of Medicare eligibility for SSDI beneficiaries which roughly corresponds to the EPE. The requirements in section 226(b) are being waived insofar as necessary to provide 10 additional years of continued Medicare eligibility.

Authority: Section 505(a) of the Social Security Disability Amendments of 1980, Pub. L. 96-265, as amended by P.L. 99-272, section 12101.

Dated: April 18, 1989.

Dorcas R. Hardy,

Commissioner of Social Security.

[FR Doc. 89-14670 Filed 6-20-89; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-89-2007; FR-2582]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535d.

Date: June 14, 1989.

David S. Cristy,

Deputy Director, Information Policy and Management Division.

Proposal: Public Housing Drug Elimination Program FR-2592

Office: Public and Indian Housing

Description of the Need for the Information and its Proposed Use: This information collection is required to implement the Public Housing Drug Elimination Act of 1988. The Act authorizes HUD to make grants to Public Housing Agencies (PHA's) and Indian Housing Authorities (IHA's) for use in eliminating drug-related crime in public housing projects.

Form Number: None

Respondents: State or Local Governments and Non-Profit Institutions

Frequency of Submission: One-Time and Annually

Reporting Burden:

	No. of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Application	500		1		30		15,000
Plan	500		1		24		12,000
Annual reports	100		1		24		2,400
Comments	5,000		1		1		5,000

Total Estimated Burden Hours: 34,400

Status: New

Contact: Wayne Hunter, HUD, (202) 755-6713
John Allison, OMB, (202) 395-6880.

Date: June 14, 1989.

[FR Doc. 89-14699 Filed 6-20-89; 8:45 am]

BILLING CODE 4210-01-M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA-293]

Certain Crystalline Cefadroxil Monohydrate; Commission Decision To Vacate a Part of Determination on Temporary Relief

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to vacate the part of the presiding administrative law judge's (ALJ's) initial determination (ID) on temporary relief that discusses the issue of complainant's bond. The Commission has neither modified nor vacated the remainder of the ID.

ADDRESS: Copies of the non-confidential version of the ID and all other non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1000.

FOR FURTHER INFORMATION CONTACT: Tim Yaworski, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-252-1096. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

SUPPLEMENTARY INFORMATION: On February 1, 1989, Bristol-Myers Company (Bristol) filed a complaint and a motion for temporary relief with the Commission alleging violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation and sale of certain crystalline cefadroxil monohydrate (CCM), a prescription antibiotic medicine. Bristol alleged direct and induced infringement by respondents of Bristol's U.S. Letters Patent 4,504,657 (the '657 patent) which claims the product CCM.

Pursuant to Commission interim rule § 210.24(e)(8) (53 FR 33061 (Aug. 29, 1988)), the Commission provisionally accepted Bristol's motion for temporary relief at the Commission meeting on March 8, 1989. The Commission also instituted an investigation of Bristol's complaint. A notice of investigation was published in the **Federal Register** on March 15, 1989. 54 FR 10740. The notice named the following respondents: (1) Instituo Biochimico Italiano Industria Giovanni Lorenzini S.p.A. of Milan, Italy; (2) Kalipharma Inc. of Elizabeth, New Jersey; (3) Purepac, an unicorporated division of Kalipharma; (4) Biocraft Laboratories of Elmwood Park, New Jersey; (5) Institut Biochimique, S.A. of Massagno, Switzerland; (6) Gema S.A. of Barcelona, Spain.

The ALJ held an evidentiary hearing from April 24 through April 29, 1989. All respondents actively participated in the hearing. Although Commission interim rule § 210.24(e)(18)(ii) (53 Fed Reg 49133) (Dec. 6, 1988)), invites parties to file written submissions on the issues of remedy, the public interest, respondents' bond by the 60th day after institution, in this case by May 15, 1989, the Commission received no submissions on those issues from any party.[1] The Commission expects that, in the future, the parties to investigations in which temporary relief is requested will file written summissions in accordance with Commission interim rule § 210.24(e)(18)(ii).

On May 24, 1989, the ALJ issued her ID denying Bristol's motion for temporary relief. On June 1, 1989, all of the parties filed written comments concerning the ID as provided for by interim rule 210.24(e)(17)(iii). Responses to the comments were filed on June 5, 1989. No government agency comments were filed.

This action is taken under authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and § 210.24(e)(17)(ii) of the Commission's interim rules (53 FR 49133) (Dec. 6, 1988).

By order of the Commission.

Kenneth R. Mason.

Secretary.

Issued: June 13, 1989.

[FR Doc. 89-14676 Filed 6-20-89; 8:45 am]

BILLING CODE 7020-02-M

[1] Complainant Bristol included a section on respondents' bond in its comments concerning the ID which were filed on June 1, 1989. However, Bristol did not request leave for late filing of its comments on respondents' bond and so those comments were not properly before the Commission.

[Investigation No. 337-TA-300]

Certain Doxorubicin and Preparations Containing Same; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337 and provisional acceptance of motion for temporary relief.

SUMMARY: Notice is hereby given that a complaint and a motion for temporary relief were filed with the U.S. International Trade Commission on May 12, 1989, and that a supplement to the complaint was filed on June 5, 1989 under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Erbamont, Inc, Soundview Plaza, 1266 Main Street, Stamford, Connecticut 06902.

The complaint, as amended, alleges violations of subsection (a)(1)(B)(ii) of section 337 in the importation into the United States, the same for importation, or the sale within the United States after importation of certain doxorubicin and preparations containing the same alleged to be made abroad by a process covered by claims 1 or 2 of U.S. Letters Patent 3,803,124, and that an industry in the United States exists or is in the process of being established as required by subsection (a) (2) and (3) of section 337. The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

The motion for temporary relief requests that the Commission issue a temporary exclusion order and temporary cease and desist orders prohibiting the importation into the United States, the sale for importation, or the sale within the United States after importation of certain doxorubicin and preparations containing the same alleged to be made abroad by a process covered by claims 1 or 2 of U.S. Letter Patent 3,803,124, pending the entry of permanent relief.

ADDRESSES: The complaint, the supplement to the complaint, and the motion for temporary relief, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202-252-1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

FOR FURTHER INFORMATION CONTACT: George C. Summerfield, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-252-1582.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.12 of the Commission's Interim Rules of Practice and Procedure, 53 FR 33034, 33057 (Aug. 29, 1988). The authority for provisional acceptance of the motion for temporary relief is contained in § 210.24(e)(8) of the Commission's Interim Rules of Practice and Procedure, 53 FR 33034, 33061 (Aug. 29, 1988).

Scope of Investigation: Having considered the complaint, as amended, and the motion for temporary relief, the U.S. International Trade Commission, on June 12, 1989, *ordered that*

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B)(ii) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain doxorubicin and preparations containing the same made abroad by a process covered by claims 1 or 2 of U.S. Letters Patent 3,803,124, and whether an industry exists or is in the process of being established in the United States as required by subsection (a) (2) and (3) of section 337.

(2) Pursuant to Rule 210.24(e)(8) of the Commission's Interim Rules of Practice and Procedure, 53 FR 33034, 33061 (Aug. 29, 1988), the motion for temporary relief under subsection (e) of section 337 of the Tariff Act of 1930 be provisionally accepted and referred to an Administrative Law Judge for an Initial Determination pursuant to Interim Rule § 210.24(e)(17).

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Erbamont, Inc., Soundview Plaza, 1266 Main Street, Stamford, Connecticut 06902.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint and motion for temporary relief are to be served:

Meiji Seika Kaisha, Ltd., 2-4-16, Kyobashi, Chuo-Ku, Tokyo, 104, Japan.

Bristol-Myers Company, 345 Park Avenue, New York, New York 10154.

Cetus Corporation, 1400 53rd Street, Emeryville, California 94608.

Cetus Generic Corporation, 1400 53rd Street, Emeryville, California 94608.

Ben Venue Laboratories, Inc., 270 Northfield Road, Bedford, Ohio 44146.

Cetus-Ben Venue Therapeutics, 1400 53rd Street, Emeryville, California 94608.

Sicor-Societa Italiana Corticostriodi S.p.A., Via Senato 19, Milan, Italy.

Alco Chemicals, Ltd., 223 Regent Street, London, England W1R 7D8.

(c) George C. Summefield, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401F, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(4) For the investigation and temporary relief proceedings so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint, the supplement, the motion for temporary relief and the notice of investigation must be submitted by the named respondents in accordance with §§ 210.21 and 210.24 of the Commission's Interim Rules of Practice and Procedure, 53 FR 33034, 33059–33063 (Aug. 29, 1988) and 53 FR 49118, 49129–49133 (Dec. 6, 1988). Pursuant to §§ 201.16(d), 210.21(a), and 210.24(e)(9) of the Commission's Rules [19 CFR 201.16(d), 53 FR 33034, 33059 (Aug. 29, 1988) and 53 FR 49118, 49130–49131 (Dec. 6, 1988)], such responses will be considered by the Commission if received not later than ten (10) days after the date of service by the Commission of the complaint, the supplement, and the motion for temporary relief and the notice of investigation. Extensions of time for submitting responses to the complaint, the supplement, the motion for temporary relief and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint, in the motion for temporary relief and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint, the motion for temporary relief and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint, motion for temporary relief and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

By order of the Commission.

Issued: June 12, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-14673 Filed 6-20-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-286]

Certain Track Lighting System Components, Including Plugboxes; Commission Decision To Extend the Deadline by Which the Commission Must Determine Whether To Review an Initial Determination

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to extend the deadline by which the Commission must determine whether to review the initial determination (ID) issued by the presiding administrative law judge (ALJ) finding no violation of section 337 in the above-referenced investigation. The deadline is extended by eleven (11) days, i.e., until June 30, 1989.

ADDRESSES: Copies of the nonconfidential version of the ID, and all other nonconfidential documents filed in connection with this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1000.

FOR FURTHER INFORMATION CONTACT: George Thompson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone 202–252–1090.

Hearing-impaired individuals are advised that information about this matter can be obtained by contacting the Comission's TDD terminal, 202–252–1810.

SUPPLEMENTARY INFORMATION: On May 4, 1989, the presiding ALJ issued her final ID finding no violation of section 337 in this investigation. Pursuant to interim rule § 210.54(b)(1) (53 FR. 33071, Aug. 29, 1988), the Commission has determined to extend by eleven (11) days, i.e., until June 30, 1989, the deadline for determining whether to review the ID.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and § 210.54 of the Commission's Interim Rules of Practice and Procedure (53 FR. 33071, Aug. 29, 1988).

By order of the Commission.

Kenneth R. Mason,

Secretary

Issued: June 19, 1989.

[FR Doc. 89-14824 Filed 6-20-89; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that on June 8, 1989, a proposed consent decree in *United States* v. *Al-Cam Enterprises, Inc. and Family Affair Repair Shop, Inc.*, Civ. No. 86-2716 (RWS) was lodged with the United States District Court for the Southern District of New York. This consent decree settles a lawsuit filed against Al-Cam Enterprises, Inc. in 1986, and in which Family Affair Repair Shop, Inc. was joined as a defendant through an amended complaint filed simultaneously with the consent decree. The lawsuit, alleging violations under Section 301 of the Clean Water Act, 33 U.S.C. 1311, and Section 13 of the Rivers and Harbors Act, 33 U.S.C. 407, sought injunctive relief and civil penalties of up to $10,000 per day of illegal discharge. The 1986 complaint alleged, among other things, that Al-Cam Enterprises discharged and deposited pollutants into the Quassaic Creek, and onto its banks. The amended complaint alleges that both Al-Cam Enterprises and Family Affair Repair Shop discharged and deposited in such manner.

The consent decree requires Family Affair Repair Shop to pay a civil penalty of $8,000 for past violations of the Act, to obtain all Federal, State or local permits required for its business, and to refrain from further violations of either Act. The decree contains stipulated penalties for any further violations by Family Affair of either Act or failure to obtain such permits. By stipulation filed simultaneously with the decree, the parties agree that the Government's claims against Al-Cam Enterprises, Inc. may be dismissed.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, 10th and Pennsylvania Avenue NW., Washington, DC 20530. All comments should refer to *United States* v. *Al-Cam Enterprises, Inc. and Family Affair Repair Shop, Inc.*, DOJ Ref. No. 90-5-1-1-2576.

The proposed consent decree may be examined at the following offices of the United States Attorney and the Environmental Protection Agency ("EPA"):

United States Attorney's Office

Contact: Nancy Milburn, Esq., Assistant United States Attorney, Southern District of New York, One St. Andrews Plaza, New York, New York 10007, (212) 791-0914.

EPA Region II

Contact: William Tucker, Esq., Office of Regional Counsel, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, New York, New York 10278, (212) 264-3268.

Copies of the proposed consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1515, 10th and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy of the decree, please enclose a check for copying costs in the amount of $1.20 payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-14854 Filed 6-20-89; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-22-453]

Lorbrook Corp.; Hudson, New York; Negative Determination, Regarding Application for Reconsideration

By an application dated May 16, 1989, the Hudson Valley Area Joint Board of the Amalgamated Clothing and Textive Workers of America (ACTWA) requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on March 31, 1989 and published in the **Federal Register** on April 25, 1989 (54 FR 17837).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances;

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The ACTWU claims that Lorbrook's major customer curtailed its vinyl business with Lorbrook because of increased imports of automobiles with vinyl seatcovers. It is also claimed that two of Lorbrook's major customers increased their vinyl business with foreign companies.

Investigation findings show that the Lorbrook workers produce four products—vinyl rooftops and seatbacks, white felt, marine headlinging and polypropylene carpeting. The findings also show that decreases in production and sales occurred only in two products—rooftops and carpeting during the period applicable to the petition.

The Department's denial was based on the fact that production and sales of white felt and marine headlining increased in 1987 compared to 1986 and 1988 compared to 1987 and the fact that the "contributed importantly" test was not met for the workers producing vinyl rooftops, seatbacks and carpeting. The Department's survey of Lorbrook's major customers shows that those with decreased purchases from Lorbrook in 1987 and 1988 did not import vinyl rooftops, seatbacks and carpeting.

Further, under the Trade Act of 1974, only increased imports of articles like or directly competitive with the articles produced by the workers' firm or appropriate subdivision can be considered. Vinyl rooftops and seatbacks are not like or directly competitive with automobiles. This issue was addressed in *United Shoe Workers of American, AFL–CIO* v. *Bedell*, 506 F2d 174, (D.C. Cir. 1974). The court held that imported finished women's shoes were not like or directly competitive with shoe components—shoe counters. Similarly, vinyl rooftops and seatbacks incorporated in the finished article (automobiles) cannot be considered like or directly competitive with automobiles.

The two customers mentioned in the union's letter purchased only marine headlining, a product in which Lorbrook experienced increased sales and production during the period applicable to the petition. Lastly, profit margins are not criteria for certification under the Trade Act.

Conclusion

After review of the application and investigation findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 9th day of June 1989.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-14574 Filed 6-19-89; 8:45 am]

BILLING CODE 4510-30-M

Trade Adjustment Assistance for Workers; Financial Process for the Revised Trade Adjustment Assistance for Workers Program

AGENCY: Employment and Training Administration.

ACTION: Notice of change 1 to general administration letter No. 4–89.

SUMMARY: The Department of Labor publishes this notice and Change 1 to General Administration Letter (GAL) No. 4–89, to inform States and cooperating State agencies of the publication of additional financial policies and procedures for the revised Trade Adjustment Assistance Program, except Trade Readjustment Allowances, and of the 30-day period for commenting on these additional policies and procedures.

FOR FURTHER INFORMATION CONTACT: Jim Guiliano, Employment and Training Administration, Office of the Comptroller, Room C–5317, 200 Constitution Ave. NW., Washington, DC 20210, (202) 535–8767; this not a toll free telephone number. Comments may be made within 30 days of the date of publication of this notice. Comments may be sent or delivered to the above address.

SUPPLEMENTAL INFORMATION: On August 23, 1988 the President signed into law the "Omnibus Trade and Competitiveness Act of 1988." Part 3—Trade Adjustment Assistance, of Subtitle D of Title I of the Act concerns trade adjustment assistance for workers and firms.

The Department of Labor has issued operating instructions to the States and State agencies concerning trade adjustment assistance for workers. General Administration Letter (GAL) Nos. 7–88, Change 1 and 2 to 7–88, and 4–89, Training and Employment Information Notice (TEIN) Nos. 6–88, Change 1 to 6–88, and 17–88 and a proposed rule amending the regulations at 20 CFR Part 617 have been published in the **Federal Register.**

The purpose of Change 1 to GAL No. 4–89 published with this notice is to transmit additional national financial policies and procedures with which

these trade adjustment assistance activities will be administered. The policies and procedures set forth in this Change 1 supersede the policies and procedures in GAL No. 4–89 to the extent that the prior policies and procedures are not consistent with those in this Change 1.

For this reason, Change 1 to GAL No. 4–89 is published below, together with Change 1 to Training and Employment Information Notice No. 17–88.

Signed at Washington, DC, on June 15, 1989.

Roberts T. Jones,

Assistant Secretary of Labor.

BILLING CODE 4510-30-M

U.S. Department of Labor Employment and Training Administration Washington, D.C. 20210	CLASSIFICATION TAA
	CORRESPONDENCE SYMBOL TSCS
	DATE June 15, 1989

DIRECTIVE : GENERAL ADMINISTRATION LETTER NO. 4-89, CHANGE 1

TO : ALL STATE EMPLOYMENT SECURITY AGENCIES

FROM : DONALD J. KULICK
Administrator
Office of Regional Management

SUBJECT : Financial Process for the Revised Trade Adjustment Assistance (TAA) Program

1. Purpose. To clarify ETA policy on TAA administrative costs, explain the recently-financed TAA Coordinator positions and to outline the process for assessing State needs for additional TAA administrative funds.

2. References. Training and Information Notice No. 17-88 and General Administration Letter No. 4-89, dated January 9, 1989, and 54 FR 11580-11586, dated March 21 1989.

3. Background. The recent revisions to the TAA program, required by the Omnibus Trade and Competitiveness Act of 1988, provide for a new emphasis on TAA training. The 1988 amendments made training an entitlement and participation in training a requirement in order to receive trade readjustment allowances (TRA), unless waived. Remedial education was added as approvable training under Section 236 of the Act and States are not only allowed but strongly encouraged to obtain free training and to combine TAA funds with those from other Federal, State or private sources. Use of non-ETA funds for training along with delivery of training from non-TAA sources should necessarily be the result of the development and/or strengthening of existing linkages with Wagner-Peyser, JTPA Title III/EDWAA or other sources.

At training sessions on the 1988 amendments held earlier this year, DOL indicated that it would consider changes to its method of distributing administrative funds if experience warranted. On the basis of this experience ETA has recognized that recent legislative changes may warrant a review of the adequacy of existing resources and possible need for additional administrative funds.

RESCISSIONS	EXPIRATION DATE September 30, 1990

DISTRIBUTION

4. Policy and Procedures. (Note: The policies and procedures set forth in this Change 1 supersede the policies and procedures in GAL No. 4-89 to the extent that the prior policies and procedures are not consistent with those in this Change 1.)

In response to the administrative changes referenced above, the following measures are being taken.

a. Clarification of TAA Administrative Cost Charging. To ensure full and proper use of all funds available for TAA administrative activities, a clarification of administrative activity costs and their chargeable fund sources is provided below.

1) Costs Charged to JTPA, Wagner-Peyser and Other Program Funds. The costs of the basic employment services of initial intake, testing, counseling, assessment and placement should be charged to the Employment Service Allotment-to-States, Job Training Partnership Act allotments or other available funds. Section 235 of the Trade Act indicates that these services should be "...provided for under any other Federal law... through agreements with the States". The FY 1989 DOL Appropriation Act, which provides the resources available for Trade Act programs, does not authorize either State UI Contingency or Trade Act training funds to be used for these costs.

2) Costs Charged to UI Contingency. The costs of the TAA Training Coordinator position, processing TRA claims (initial, continued, nonmonetary, appeals and support), TRA benefit payment control, notification to workers of TAA benefits eligibility, and newspaper notices should be financed with UI Contingency funds. These types of services are referenced in Sections 225, 231-234, 243 and 244 of the Trade Act.

3) Costs Charged to Training, Job Search and Relocation Allowances Administration. The costs of developing training plans, contracts and agreements, referral to training, application for and payment administration of Job Search and Relocation allowances, the administration and control of TAA training and allowance payments, and the issuing, reviewing and revoking of training waivers should be charged to the TAA administration funds. These services are referenced in Sections 231 and 236-238 of the Trade Act.

4) Costs Charged to JTPA Title III/EDWAA. The costs of administration and training JTPA-eligible TAA claimants enrolled in JTPA training should be

charged to JTPA Title III/EDWAA.

b. TAA Coordinator. Each State has received additional FY 1989 UI Contingency funds to support a TAA Coordinator position. This position is being provided to strengthen each State's overall administration of TAA training and other adjustment services, to improve program coordination with Employment Service (ES), Unemployment Insurance (UI) and JTPA Title III/EDWAA programs, to ensure the ability to maintain a basic TAA administrative capability and to help defray costs of additional services provided to TAA eligibles.

c. Supplemental Budget Request (SBR) for Additional Administrative Funds. In addition to the UI Contingency-funded Coordinator position described above, additional administrative funds may be made available to States where individual circumstances warrant. While the 15% limit on administrative expenditures is being retained, DOL may provide up to an additional 5% in administrative funds in those instances where need can be completely documented. An FY 1989 supplemental request for an additional $34.6 million of TAA funds is now pending before Congress. The availability of additional TAA administrative funds is contingent upon enactment of this supplemental appropriation and State need documented through the procedures listed below.

Admin. SBRs for TAA program funds issued in FY 1989 or in future quarterly advance or supplemental funding procedures may be submitted. Should sufficient funds be available to permit quarterly advances, administrative funds equal to 15% of the program funds will be routinely provided, as previously announced in GAL 4-89. If additional administrative funds are required, Admin. SBRs may be submitted for up to an additional 5%. Supplemental fund requests submitted for additional program funding (with 15% administrative funds issued simultaneously) may be accompanied by Admin. SBRs for up to an additional 5% in administrative funds. If approved, TAA administrative funding will equal up to 20% of the program funds issued.

Admin. SBRs for up to an additional 5% in administrative funds will be considered for the funding of administrative shortfall of FY 1989 TAA financed activity based upon the exhaustion of all of the 15% TAA administrative funds received with 1989 program funds. These Admin. SBRs should include information which documents that: 1) all FY 1989 TAA administrative funds are being properly expended and assigned per the cost charging criteria stated above, 2) the TAA Coordinator position and inter-program linkages have

been developed and utilized to the fullest extent possible, and 3) if spending continues at the present rate, all FY 1989 TAA administrative funds received will be expended before the end of the year.

For all Admin. SBRs, the draft "Supplemental Budget Request (SBR) for Additional Administrative Funds", attached to this General Administration Letter must be completed to document the need for additional TAA administrative funds and should be prepared with the most current information available. (OMB approval of this draft Admin. SBR form is expected by September 1, 1989.) Decisions to fund these Admin. SBRs will be made to the extent that funds are available, based on the ETA Regional Office's recommendations and based on documented need for additional funds in the Admin. SBR. Documentation of need should be contained in "Part III - Narrative and Other Information", questions number 4 and 6, in the attached Admin. SBR, and should include an explanation, with supporting documentation, of the following items:

o that administrative costs have been appropriately charged as defined above,

o that the TAA Coordinator position and inter-program linkages have been fully developed and utilized and,

o that, even though compliance with the preceeding two requirements is affirmed, the level of the revised TAA program still necessitates additional financing in order to properly administer the required activities.

5. State Action. All Admin. SBRs should be submitted to the appropriate Regional Office: 1) as soon as possible following the receipt of funds from the related quarterly advance, 2) along with the related supplemental requests for TAA program funds, and 3) as soon as possible in the case of Admin. SBRs requesting FY 1989 administrative shortfall funding.

Also, States should ensure that the designated TAA program operating agency is promptly informed of the policy guidance contained in this Change 1 to General Administration Letter No. 4-89.

6. Inquiries. State questions should be directed to the appropriate Regional Office.

7. Attachment.
Draft "Supplemental Budget Request (SBR) for Additional Administrative Funds" (to be transmitted under separate cover)

U.S. Department of Labor Employment and Training Administration Washington, D.C. 20210	CLASSIFICATION TAA
	CORRESPONDENCE SYMBOL TSCS
	DATE June 15, 1989

TRAINING AND EMPLOYMENT INFORMATION NOTICE NO. 17-88, Change 1

TO : ALL STATE JTPA LIAISONS
STATE WAGNER-PEYSER ADMINISTERING AGENCIES
WORKER ADJUSTMENT LIAISONS

FROM : ROBERTS T. JONES
Assistant Secretary of Labor

SUBJECT : Financial Policy for the Revised Trade Adjustment Assistance (TAA) Program

1. Purpose. To announce Change 1 to General Administration Letter No. 4-89, which clarifies ETA policy on TAA administrative costs, explains the recently-financed TAA Coordinator positions and outlines the process for assessing State needs for additional TAA administrative funds.

2. Reference. Training and Information Notice No. 17-88 and General Administration Letter No. 4-89, dated January 9, 1989, and 54 FR 11580-11586, dated March 21, 1989.

3. Background. As a result of the Omnibus Trade and Competitiveness Act (OTCA) of 1988 amending the Trade Act and the issuance of other regulatory changes, several revisions to the financial operation of the TAA program were required. Now that the revised program has operated for a number of months, States have accumulated experience on the resultant changes in administrative workload. In many cases, those changes require administrative policy and resources in addition to those which were initially provided.

The measures taken to provide needed relief for these workload changes are contained in the attached Change 1 to General Administration Letter No. 4-89.

4. Action. The attached information should be provided to appropriate staff as soon as possible.

5. Inquiries. Inquiries should be directed to the appropriate Regional Office.

6. Attachment. Change 1 to General Administration Letter No. 4-89.

RESCISSIONS	EXPIRATION DATE Continuing

DISTRIBUTION

[FR Doc. 89-14672 Filed 6-20-89; 8:45 am]
BILLING CODE 4510-30-C

NUCLEAR REGULATORY COMMISSION

Special Committee To Review the Severe Accident Risks Report

In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App., and after consultation with the Administrator, General Services Administration, the Nuclear Regulatory Commission has determined that the establishment of the Special Committee (NRC) to Review the Severe Accident Risks Report is necessary and in the public interest in order to obtain expert advice and recommendations concerning the adequacy of NUREG–1150, "Severe Accident Risks: An Assessment for Five U.S. Nuclear Power Plants."

The purpose of the Committee is to provide the NRC with a technical peer review of the adequacy of the methods, insights, analyses and conclusions set forth in the April 1989 draft of NUREG–1150 including answers to particular questions posed by the Commission. It is anticipated that the revised draft NUREG–1150 report will be available to the public in late-June 1989.

The NUREG–1150 report presents the NRC's assessment of severe accident risks for five typical U.S. nuclear power plants, considering individual plants designs, operating practices and a state-of-the-art understanding of severe accident phenomenology. The NUREG–1150 report will serve as a major source of information to support the further development of NRC policies and regulations related to severe accidents applicable to the more than 100 operating nuclear reactors in the United States. The Committee will provide its conclusions and recommendations in a written consensus report.

The Special Committee will be composed of the following individuals:

Dr. H.J.C. Kouts, Chairman, Brookhaven National Laboratory
Dr. George Apostolakis, University of California, Los Angeles
Dr. E.H. Adolf Birkhofer, Society for Reactor Safety (GRS), Federal Republic of Germany
Dr. Lars Hoegberg, Swedish Nuclear Power Inspectorate (SKI)
Dr. William Kastenberg, University of California, Los Angeles
Dr. Leo LeSage, Argonne National Laboratory
Dr. Norman Rasmussen, Massachusetts Institute of Technology
Dr. John Taylor, Electric Power Research Institute
Dr. Harry Teague, United Kingdom Atomic Energy Authority

These individuals represent a broad cross section of technical expertise in the areas of severe reactor accident analysis, probabilistic risk assessment, and have familiarity with current national and international severe accident research and regulatory programs.

Date: June 16, 1989.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 89–14701 Filed 6–20–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–348–CivP and 50–364–CivP; ASLBP No. 89–591–01–CivP]

Alabama Power Co.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Comission dated December 29, 1972, published in the Federal Register, 37 FR 28710 (1972), and §§ 2.105, 2.700, 3.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding.

Alabama Power Company

Joseph M. Farley Nuclear Plant, Units 1 and 2 Facility Operating License Nos. NPF–2 and NPF–8 E. A. 88–113

This Board is being designated pursuant to request of the Licensee for and enforcement hearing regarding an Order issued by the Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations, and Research, dated March 28, 1989, entitled "Order Imposing Civil Monetary Penalty."

The Board is comprised of the following administrative judges:

Administrative Judge John H. Frye, III, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Administrative Judge James H. Carpenter, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Administrative Judge Walter H. Jordan, Atomic Safety and Licensing Board Panel, 881 W. Outer Drive, Oak Ridge, Tennessee 37830.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

Issued at Bethesda, Maryland, this 14th day of June 1989.

[FR Doc. 89–14702 Filed 6–20–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–416]

System Energy Resources, Inc., et al; Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by System Energy Resources, Inc. (the licensee) for an amendment to Facility Operating License No. NPR–29, issued to the licensee for operation of the Grand Gulf Nuclear Station, Unit 1, located in Claiborne County, Mississippi. Notice of Consideration of Issuance of this amendment was published in the Federal Register on September 8, 1988 (53 FR 37886).

The purpose of the licensee's amendment request was to revise the Technical Specifications (TS) to allow the fuel transfer gate to be in place during refueling when the reactor cavity is flooded and either the Emergency Core Cooling System (ECCS) or the suppression pool is inoperable.

The NRC staff has concluded that the licensee's request cannot be granted. The licensee was notified of the Commission's denial of the proposed change by letter dated June 13, 1989.

By July 21, 1989, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Nicholas S. Reynolds, Esquire, Bishop, Lieberman, Cook, Purcell and Reynolds, 1200 17th Street, Washington, DC 20036, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated August 31, 1988, and (2) the Commission's letter to the licensee dated June 13, 1989. These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the Hinds Junior College, McLendon Library, Raymond, Mississippi 39154. A copy of Item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland, this 13th day of June, 1989.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Director, Project Directorate II–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89–14674 Filed 6–20–89; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–26925; File No. SR–CBOE–89–09]

Self-Regulatory Organizations; Proposed Rule Change by Chicago Board Options Exchange, Inc., Relating to Margin Requirements

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 22, 1989 the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Margin Requirements

Rule 12.4 The Exchange has established and filed with the Securities and Exchange Commission margin monitoring procedures which are uniform with all other options self-regulatory organizations. The Exchange may increase or decrease option margin requirements through a rule filing made pursuant to Section 19(b)(3)(A) of the Act, provided the margin changes are within the parameters established by such procedures. The Exchange's Office of the Chairman, or its designee, shall have authority for determining changes to options margin levels in accordance with the parameters. Any modifications to the Exchange's margin monitoring procedures shall be filed with the Securities and Exchange Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

This proposed rule change authorizes the Exchange to change options margin requirements pursuant to a rule filing under Section 19(b)(3)(A) of the Act, provided such changes are based upon uniform margin monitoring procedures filed with the Securities and Exchange Commission by the options self-regulatory organizations. The montoring procedures are designed to ensure that prudent margin levels are maintained and to provide the options self-regulatory organizations the ability to modify margin on a timely basis using a consistent methodology. The procedures primarily rely upon statistical analysis conducted on a quarterly basis. Specifically, this analysis involves the computation of frequency distributions for seven (7) business day percentage price movements of the underlying instruments for the most recent five and one half month period to determine the degree of coverage the current margin levels provided. This is an established methodology for determining the adequacy of options margin levels. In addition, margin levels are monitored daily through the calculations of implied volatilities for all underlying securities and broad-based indicies. Attached is a more detailed description of the methodology for determining margin adequacy.

The Exchange believes that the proposed rule change is consistent with the provisions of the Securities Exchange Act of 1934 and, in particular, Section 6(b) thereof, in that the rule change is designed to protect investors and the public interest by setting options margin levels that will provide a reasonable amount of financial protection to the securities industry and not permit the excessive use of credit for the purchase or carrying of securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change will not impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and published its reasons for so finding or (ii) as to which the self-regulatory organization consents, the commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted on or before July 12, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 13, 1989.

Jonathan G. Katz,

Secretary.

Quarterly Review of Option Margin Levels

1. Following each three-month period as specified below frequency distributions shall be calculated based upon seven (7) business day interval percentage price changes for all of the stocks underlying listed options (defined as issued and guaranteed by the Options Clearing Corporation), and for each index underlying listed index options, for every trading day during the previous five and one-half (5½) month period. All reviews shall be conducted on a quarterly basis, encompassing a five and one-half (5½) month time period, beginning the first (1st) business day of the review period and ending with the tenth (10th) business day of the sixth (6th) month. For example, distributions would be calculated for the period of September 1, 1988 through February 14, 1989, and then again for the period of December 1, 1988 through May 14, 1989 and so on.

2. Cumulative distributions of percentage price changes shall be calculated for the option stocks combined and the broad market indices. In addition, the volatilities of the individual stocks shall be determined for the review period, and the stocks ranked by volatility from lowest to highest. The cumulative distribution of seven (7) business days, percent price changes for option stocks shall also be determined for the 25% of those stocks having the highest volatilities.

3. The degree of coverage based upon the existing option margin levels shall be determined for each of the groups listed above.

4. Margin levels shall be monitored daily through calculations of implied volatilities for each broad-based index and equity security that underlie listed options. An applicable margin percentage is then calculated based upon a twenty (20) day moving average, with the most recent days having the greater weight (see Appendix A).

5. For stock options, a margin increase shall be considered warranted when the current margin add-on provides a level of coverage of less than 92.5% of all observations *or* less than an 87.5% level of coverage for stocks in the highest volatility quartile during the five and one-half (5½) month review period.

A margin decrease shall be considered warranted when the current margin add-on provides a level of coverage in excess of 97.5% for all observations *and* over a 92.5% coverage level for stocks in the highest volatility quartile during the five and one-half (5½) month review period.

6. For index options, a margin increase shall be considered warranted when the current margin add-on provides a level of coverage of less than 92.5% of all observations during the five and one-half (5½) month review period.

A margin decrease shall be considered warranted where the current margin add-on provides a level of coverage in excess of 97.5% for all observations during the five and one-half (5½) month review period.

7. Margin changes shall be made uniformly for a product group (i.e., stock options *and* industry index options; broad-based index options). Margin changes shall be made in 1% increments, with no change being less than 2%. Margin changes shall not be made ordinarily in two (2) consecutive quarters and shall not exceed 5% in any one quarter.

8. Margin changes shall be filed pursuant to section 19(b)(3)(A) of the 1934 Act through a rule filing, which shall be made no later than five (5) business days subsequent to the close of the relevant review period. Margin changes shall become effective the business day immediately following the next month's expiration. Margin changes effected pursuant to a 19(b)(3)(A) rule filing shall not result in margin levels lower than 5% and 10% for index and equity options, respectively.

9. In determining whether to effect a margin change, in addition to the frequency distribution results, other relevant matters shall be considered such as current market conditions, member firm views and margin levels implied from options premiums where the results differ from the historical frequency distributions by two percent (2%) or more.

[FR Doc. 89-14601 Filed 6-20-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26923; File No. SR-MSE-89-3]

Self-Regulatory Organizations; Midwest Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Reduced Transaction Fees for Odd-lot Orders

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), and Rule 19b-4 thereunder, 17 CFR 240.19b-4, notice is hereby given that on June 8, 1989, the Midwest Stock Exchange, Inc. ("Midwest" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

(Additions italicized; deletions bracketed)

Item Charge	
[Round lot] Shares/trade	Rate
1-99	$.20 (per trade)
100 [0] -500	*$.20*[.0c] (per *100* shares)
501-over	$1.00 (per trade)

In addition, order entering member firms will receive a trade volume credit of *a)* 15.0c per round lot trade for trades executed on the floor above 3000 trades per month and *b) 20.0c per odd lot trade for trades executed on the floor above 1000 trades per month (no charge).*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements governing the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

The new odd lot fees schedule that took effect on June 1, 1989 is designed as an incentive for customers to do a greater volume of odd lot trading on the Midwest.

The revised fee schedule is consistent with Section 6(b)(4) of the Act in that it provides for the equitable allocation of reasonable dues, fees and other charges among the Midwest's members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Midwest does not believe that any burdens will be placed on competition as a result of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Midwest has neither solicited nor received any comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 under the Act. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filings will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted on or before July 12, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 13, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-14602 Filed 6-20-89; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Incorporated

June 13, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Advanced Micro Devices Inc.
Dept. Conv. Exch. Pfd Stock, No Par Value (File No. 7-4629)
Armco Inc.
$4.50 Cum. Conv. Pfd Stock, $1 Par Value (File No. 7-4630)
Copperweld Corp.
$2.48 Red. Cum. Conv. Pfd Stock, $1 Par Value (File No. 7-4631)
Environmental Systems Co.
$1.75 Cum. Conv. Exch. Pfd Stock, $1 Par Value (File No. 7-4632)
First City Bancorp of Texas
$5.50 Cum. Conv. B Pfd Stock, $.01 Par Value (File No. 7-4633)
First Fidelity Bancorp.
$2.15 Cum. Conv. B Pfd Stock, $1 Par Value (File No. 7-4634)
Integrated Resources, Inc.
$4.25 Cum. Conv. Pfd Stock, $1 Par Value (File No. 7-4635)
ITT Corp.
$5.00 Cum. Conv. Series O Pfd Stock, No Par Value (File No. 7-4636)
LTV Corp.
$5.25 Cum. Conv. Pfd Stock, $50 Par Value (File No. 7-4637)
Leisure & Technology Inc.
$2.25 Cum. Conv. Exch. Pfd Stock $.01 Par Value (File No. 7-4638)
National Semiconductor Corp.
$4.00 Cum. Conv. Exch. Dep. Pfd Stock (File No. 7-4639)
Quanex Corp.
Dep. Cum. Conv. Exch. Pfd Stock, No Par Value (File No. 7-4640)
Orion Capital Corp.
$2.125 Cum. Conv. Exch. Pfd Stock, $1 Par Value (File No. 7-4641)
Orion Capital Corp.
$1.90 Cum. Conv. Exch. Pfd Stock, $1 Par Value (File No. 7-4642)
Paine Webber Group Inc.
$1.375 Cum. Conv. Exch. Pfd Stock, $20 Par Value (File No. 7-4643)
Rymer Company
$1.175 Cum. Conv. Exch. Pfd Stock, $10 Par Value (File No. 7-4644)
Sea Containers LTD
$4.125 Cum. Conv. Pfd Stock, $.01 Par Value (File No. 7-4645)
Talley Industries, Inc.
$1.00 Conv. Pfd B Stock, $1 Par Value (File No. 7-4646)
Todd Shipyards Corporation
$3.08 Conv. Exch. A Pfd Stock, $1 Par Value (File No. 7-4647)
Crown Central Petroleum
$1.92 Cum. Conv. A Pfd Stock, No Par Value (File No. 7-4648)
Energy Service
$1.50 Cum. Conv. Exch. Pfd Stock, No Par Value (File No. 7-4649)
Hasbro, Inc.
8% Cum. Conv. Pfd Stock, $2.50 Par Value (File No. 7-4650)
I.C.H. Corp.
$1.75 Cum. Conv. Exch. Pfd Stock, No Par Value (File No. 7-4651)
Smith (A.O.) Corp.
$2.125 Cum. Conv. Exch. Pfd Stock, $1 Par Value (File No. 7-4652)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 5, 1989, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-14599 Filed 6-20-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26921; File No. SR-NYSE-89-10]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange, Inc., To Modify the Exchange's Procedures for Handling and Executing Market-On-Close Orders

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 2, 1989, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission

("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change modifies the Exchange's procedures for handling and executing market-on-close ("MOC") orders to provide (i) that such an order is to be executed in its entirety at the closing price on the Exchange and, if not so executed, is to be cancelled; and (ii) for the entry and execution of matched MOC orders.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Purpose—The purpose of the proposed rule change is to amend the Exchange's rules[1] to provide MOC orders with the closing price whenever practicable and to allow for the execution of matched MOC orders entered by the same firm. In addition, the Exchange is requesting an exemption from the short sale rule, Rule 10a–1 under the Act, for a MOC sell order when the order is entered with an off-setting MOC order and is part of a program trading strategy.

Changes to MOC Orders

Member firms have requested the Exchange to amend the MOC order execution process to assure that MOC orders will receive the closing price in a stock. They indicate that such pricing is necessary to facilitate program trading strategies such as "portfolio rebalancing" (where the firm buys from and sells to its customer certain securities to adjust the customer's portfolio so that it continues to mirror a particular index) and "Exchanges for Physicals" ("EFPs") (where a firm accommodates a customer who wishes to convert a futures position into a stock position by swapping futures for stocks).

Relatedly, member firms also have requested the Exchange to amend the MOC order execution procedures to provide for the execution of matched MOC buy and sell orders. The firms indicate that such an execution is necessary to meet regulatory requirements governing EFPs. The Exchange currently provides such a procedure only on "Expiration Fridays." [2] (These special procedures, which apply on the last business day prior to the expiration of options and futures contracts, will continue to apply on those days.)

This proposed rule change will modify the MOC order procedures to meet these needs of the member firms.[3] As proposed by the Exchange, MOC orders will be executed in full at the closing price or will be cancelled. The Exchange anticipates that the only time orders will be cancelled will be when an execution at the closing price is not possible, such as when trading has halted in the security, or when there are special conditions to the order (such as "buy-minus" or "sell-plus") that cannot be met. Furthermore, this proposed rule change will provide for the execution of matched MOC buy and sell orders entered by the same firm. Such matched orders will also be exempt from any other applicable Exchange limitations (such as the Expiration Friday deadlines for order entry.) [4]

Short Sale Rule

The application of the short sale rule to MOC buy and sell orders entered as pairs can result in partial executions of program trades. Because the Exchange does not believe that the execution of a MOC order to sell short offers the opportunity for price manipulation when the order is both entered and executed against an offsetting MOC buy order and is part of a program trading strategy, the Exchange believes that a limited exemption from the short sale rule for these orders is appropriate.

Pursuant to Rule 10a–1 and Exchange Rule 440B, a short sale on the Exchange may not be effected at a price either (1) below the last reported price or (2) at the last reported price unless that price is higher than the last reported different price. These limitations are intended to prevent a market participant who is short stock from leading or driving down the market price of the stock for the purpose of profiting later by "covering" the short position at a lower price. For a number of reasons, matched MOC orders entered to effect a program trading strategy inherently do not present the opportunity for this type of price manipulation.

As an initial matter, by limiting the exemption to the entry of two-sided orders, the exchange will preclude any opportunity to establish, or increase, a sell order imblance that would create downward pressure on the market. Indeed, paired MOC orders will not participate directly in the auction, but instead will be priced at the closing price established by order flow unrelated to the paired MOC orders.

Furthermore, by definition, the price given to the paired MOC orders will be the closing price on the Exchange. Thus, the print of the final sale can not have any effect on subsequent Exchange trading that day.

In addition to the inherent inability to manipulate prices by entering paired MOC orders, the Exchange is proposing to further circumscribe any manipulation potential by limiting the short sale exemption to only paired MOC orders relating to "program trading," as that term is used in NYSE Rule 80A.[5] Pursuant to this limitation, paired MOC orders must be part of a market strategy involving at least 15 stocks or be part of an index arbitrage strategy (which usually involves many more stocks) to be eligible for the short sale exemption. In such a situation, it is extremely unlikely that a seller would be attempting to depress the price of any single stock.

Because there is no potential for market manipulation or depressing the market price for a security in the circumstances described above, the Exchange requests the Commission to exempt from Rule 10a–1 a MOC order to sell short that is entered by a member firm where (i) the member firm has also entered an MOC order to buy the same amount of the stock, and (ii) both MOC orders are part of a program trading strategy by the member firm, and the orders are identified as such.[6]

Basis—The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) of the Act that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments regarding this proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. The persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–89–10 and should be submitted on or before July 12, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 13, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–14804 Filed 6–20–89; 8:45 am]

BILLING CODE 8010–01–M

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[1] The NYSE proposes to amend Rules 13, 116, and 123.

[2] *See* NYSE Rule 116.40.

[3] Currently, NYSE Rule 13 defines an "at the close" order as a "market order which is to be executed at or as near to the close as practicable." Similarly, NYSE Rule 123.43 currently provides that "[t]he acceptance of an 'at the close' order by a broker does not make him responsible for an execution at the closing price."

[4] *See, e.g.*, Securities Exchange Act Release No. 26403 (December 29, 1988), 54 FR 343 (approving File No. SR–NYSE–88–37).

[5] For the purposes of NYSE Rule 80A, "program trading" means either (A) index arbitrage or (B) any trading strategy involving the related purchase or sale of a "basket" or group of 15 or more stocks having a total market value of $1 million or more. Program trading includes the purchases or sales of stocks that are part of a coordinated trading strategy, even if the purchases or sales are neither entered or executed contemporaneously, nor part of a trading strategy involving options or futures contracts on an index stock group, or options on any such futures contracts, or otherwise relating to a stock market index.

[6] If the Commission believes that an exemption is not the appropriate procedural mechanism to grant regulatory relief from these restrictions, the Exchange requests, in the alternative, that Commission staff issue a no-action letter concerning the applicability of Rule 10a–1 in these circumstances.

[Release NO. 34–26922; File No. SR–PHLX–89–30]

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Persons To Serve as Trustees of the Stock Exchange Fund

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 26, 1989, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b–4, hereby proposes to amend its By-Law Article IX, Section 9–1 to permit a partner, officer, director or persons employed by or associated with a member or member organization to serve, if appointed, as a Trustee of the Stock Exchange Fund. The text of the proposed by-law amendment appears below (new language *underscored):*

Article IX

Trustees of Stock Exchange Fund

Trustees of Stock Exchange Fund—How Appointed

Section 9–1. There shall be no less than six nor more than eight trustees of the Stock Exchange Fund, composed of the Chairman of the Board of Governors, two Vice-Chairmen of the Board of Governors, and up to five members *and/or partners, officers, directors or persons employed by or associated with any member or member organization* of the Corporation. Each of the member *and/or member affiliated* trustees shall be appointed by the Board of Governors to serve for three years or until his successor is appointed.

No further changes.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed By-Law Amendment is to permit a partner, officer, director or persons employed by or associated with a member or member organization to serve, if appointed, as a Trustee of the Stock Exchange Fund. The expanded eligibility will allow the Chairman to recommend and the Board to appoint persons who are not members but possess significant investment advisory expertise to the position of Trustee. This By-Law Amendment will allow the Exchange to maximize the utilization and contribution of persons associated with members and member organizations for the benefit of the entire Exchange community.

The proposed rule change is consistent with section 6(b)(3) of the Exchange Act in that it promotes "fair representation of its members in the * * * administration of its affairs * * *"

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any burden on competiton.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Two written comments respecting the proposed By-Law Amendment were directed to the Office of the Secretary and presented to the Board of Governors for their consideration at their regular meeting held May 17, 1989.

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days or such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the safe-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted on or before July 12, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 13, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-14600 Filed 6-20-89; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

June 13, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Repsol, S.A.
American Depository Shares (File No. 7-4610)
R.O.C. Taiwan Fund
Shares of Beneficial Interest, $0.01 Par Value (File No. 7-4611)
Fischbach Corp.
Common Stock, $1 Par Value (File No. 7-4612)
Kemper Strategic Municipal Income Trust
Common Shares of Beneficial Interest (File No. 7-4613)
Putnam High Yield Municipal Trust
Shares of Beneficial Interest (File No. 7-4614)
Van Kampen Merritt Limited Term High Income Trust
Common Shares of Beneficial Interest, $0.01 Par Value (File No. 7-4615)
Kemper Corp.
Common Stock, $5 Par Value (File No. 7-4616)
United States Cellular Corp.
Common Stock, $1 Par Value (File No. 7-4617)
Belo (A.H.) Corporation
Class A Common Stock, $1.67 Par Value (File No. 7-4618)
Carolco Pictures Inc.
Common Stock, $0.01 Par Value (File No. 7-4619)
Data-Design Laboratories, Inc.
Common Stock, $0.33⅓ Par Value (File No. 7-4620)
Esterline Corporation
Common Stock, $0.20 Par Value (File No. 7-4621)
Farah Incomporated
Common Stock, $4 Par Value (File No. 7-4622)
Green Tree Acceptance, Inc.
Common Stock, $0.01 Par Value (File No. 7-4623)
Hills Department Stores, Inc.
Common Stock, $0.01 Par Value (File No. 7-4624)
Cabletron Systems, Inc.
Common Stock, $0.1 Par Value (File No. 7-4625)
A.L. Laboratories, Inc.
Class A Common Stock, $0.20 Par Value (File No. 7-4626)
Plum Creek Timber Co., L.P.
Depository Units (File No. 7-4627)
Science Management Corp.
Common Stock, $0.10 Par Value (File No. 7-4628)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 5, 1989, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-14600 Filed 6-20-89; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 2354; Amendment No. 3]

Louisiana (And Contiguous Counties in the States of Texas, Arkansas & Mississippi); Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with the Notice of Amendment to the President's declaration, dated June 8, 1989, to include the parishes of Acadia, East Feliciana, Franklin, Grant, LaSalle, Madison, St. Landry, and Vermillion, in the State of Louisiana, as a result of damages from severe storms and flooding which occurred May 4 through May 27, 1989.

In addition, applications for economic injury from small businesses located in the contiguous parishes of Avoyelles, East Baton Rouge, Iberia, Lafayette, Pointe Coupee, St. Helena, St. Martin, Tensas, and West Feliciana, in the State of Louisiana, and the counties of Amite, Issaquena, Warren, and Wilkinson, in the State of Mississippi, may be filed until the specified date at the previously designated location.

The number assigned to the State of Mississippi for economic injury is 677500.

Any counties contiguous to the above-named primary counties and not listed herein have previously been named as contiguous or primary counties for the same occurrence.

All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on July 18, 1989, and for economic injury until the close of business on February 20, 1990.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Date: June 13, 1989.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89-14613 Filed 6-20-89; 8:45 am]

BILLING CODE 8025-01-M

[License No. 06/06-0209]

Rust Capital, Ltd.; Application for Conflict of Interest Transaction

Notice is hereby given that Rust Capital, Ltd., 114 West 7th Street, Austin, Texas 78701, a Federal Licensee under the Small Business Investment Act of 1958, as amended (the Act), has filed an application with the Small Business Administration (SBA) pursuant to § 107.903(b)(1) of the Regulations governing small business investment companies (13 CFR 107.903(b)(1) (1989)) for an exemption from the provisions of the cited Regulations.

Rust proposes to invest $45,000 in CIMPOINT, 1807 W. Braker Lane, Suite S, Austin, Texas 78758.

The proposed financing is brought within the purview of § 107.903(b)(1) of the Regulations because Rust Ventures, L.P., an associate of Rust Capital, Ltd., owns 15% of CIMPOINT.

Notice is hereby given that any interested person may, not later than fifteen (15) days from the date of publication of this Notice, submit written comments on the proposed transaction to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L. Street, NW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in Austin, Texas.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: June 15, 1989.

[FR Doc. 89-19611 Filed 6-20-89; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 09/09-5382]

South Bay Capital Corp.; Application for a Small Business Investment Company License

An application for a license to operate as a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended, (15 U.S.C. 661. *et. seq.*) (the Act) has been filed by South Bay Capital Corporation (the Applicant), 18039 Crenshaw Blvd., Torrence, CA 90504 with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1989).

The officers, directors, and stockholders of the Applicant are as follows:

Name and address	Title	Percent of capital stock
Charles C. Chiang, 20610 Victor St., Torrence, CA 90503.	President, and chairman (full-time responsible manager).	5
Sun-Ju Hung, 21720 Madrona Ave., Torrence, CA 90503.	Vice president and director.	5
James S. Wu, 106 N. Bel Aire Dr., Burbank, CA 91504.	Vice president and director.	5
David Li, 440 Towne Ave., Los Angeles, CA 90013.	Chief financial officer and director.	5
Ho-Yuan Liu, 2045 Palma Dr., Rowland Hts., CA 91748.	Secretary	4
Toshi Chen, 2113 S. Vermont Ave., Torrence, CA 90502.	Director	3
Ying Min Cheng, 289 W. Buffington St., Upland, CA 91786.	Director	5
John C. Wang, 5610 Azure Wy., Long Beach, CA 90803.	Director	

There are twelve other stockholders each of whom own less than 10% of the outstanding capital stock.

The Applicant, a California Corporation, will begin operations wtih $1,000,000 of paid-in capital and paid-in surplus. The Applicant will conduct its activities primarily in the State of California but will consider investments in businesses in other areas of the United States.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the company under their management, including adequate profitability and financial soundness, in accordance with the Act and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communications should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" St., N.W., Washington, DC 20416.

A copy of this notice shall be published in a newspaper of general circulation in the Torrence, CA area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: June 15, 1989.

[FR Doc. 89-14612 Filed 6-20-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: June 15, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Comptroller of the Currency

OMB Number: 1557-0155.

Form Number: None.

Type of Review: Extension.

Title: Limitations on Payment of Dividends.

BEST COPY AVAILABLE

Description: This regulation prescribes limitations on the payment of dividends by national banks in relation to the bank's capital and earnings position and requires approval from the Comptroller of the Currency for dividend payments in excess of statutory limitations.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 115.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 115 hours.

Clearance Officer: John Ference (202) 447-1177, Comptroller of the Currency, 5th Floor, L'Enfant Plaza, Washington, DC 20219.

OMB Reviewer: Gary Waxman (202) 395-7340, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89-14643 Filed 6-20-89; 8:45 am]

BILLING CODE 4810-33-M

Public Information Collection Requirements Submitted to OMB for Review

Date: June 15, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0220.

Form Number: ATF F 5170.4.

Type of Review: Extension.

Title: Application for Importers and/or Wholesaler's Basic Permit Under Federal Alcohol Administration Act.

Description: Form 5170.4 is completed by persons intending to engage in the business of importing and/or wholesaling alcoholic beverages. The information provided allows ATF to identify the applicant and the location of the business and to determine whether the applicant qualifies for a basic permit under the Federal Alcohol Administration Act.

Estimated Number of Respondents: 1,300.

Estimated Burden Hours Per Response: 3 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 3,900 hours.

OMB Number: 1512-0366.

Form Number: ATF F 2093 (5200.3) and ATF F 2098 (5200.16).

Type of Review: Extension.

Title: Application for Permit Under 26 U.S.C. Chapter 52—Manufacturer of Tobacco Products or Proprietor of Export Warehouse and Application for Amended Permit Under 26 U.S.C. 5712—Manufacturer of Tobacco Products or Proprietor of Export Warehouse.

Description: These forms are used by tobacco industry members to obtain and amend permits necessary to engage in business as a Manufacturer of Tobacco Products or Proprietor of Export Warehouse.

Estimated Number of Respondents: 336.

Estimated Burden Hours Per Response: 1 hour 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 504 hours.

Clearance Officer: Robert Masarsky, (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 89-14644 Filed 6-20-89; 8:45 am]

BILLING CODE 4810-25-M

UNITED STATES SENTENCING COMMISSION

Public Access to Sentencing Commission Documents and Data

AGENCY: United States Sentencing Commission.

ACTION: Notice of proposed policy regarding public access to Sentencing Commission documents and data; interim adoption of policy.

SUMMARY: Pursuant to its authority under section 995(a) of Title 28, United States Code, the Sentencing Commission adopts as an interim policy and proposes for public comment the policy on public access to Sentencing Commission documents and data set forth below. The Commission invites comment on this proposal.

DATE: Comments should be received by the Commission no later than September 1, 1989.

ADDRESS: Comments should be sent to: United States Sentencing Commission, 1331 Pennsylvania Avenue, NW., Suite 1400, Washington, DC 20004, Attention: Public Access Comment.

FOR FURTHER INFORMATION CONTACT: Paul K. Martin, Communications Director for the Commission, telephone: (202) 662-8800.

SUPPLEMENTARY INFORMATION: Section 995(a)(1) of Title 28 authorizes the U.S. Sentencing Commission, an independent agency in the Judicial branch of government, to establish general policies and promulgate rules and regulations for the Commission as necessary to carry out the purposes of the Sentencing Reform Act of 1984.

Providing public access to non-confidential sentencing information is consistent both with the letter and spirit of the Sentencing Reform Act of 1984. The Act also envisions the Commission serving as a clearinghouse for information on Federal sentencing practices.

The Commission seeks to carry out its Congressional mandate in a manner that provides the most efficient use of government resources and is consistent with its agreement with the Administrative Office of the U.S. Courts regarding the confidentiality of certain documents pertaining to imposition of sentence in individual cases. To this end the commission proposes that Commission publications and other reports will be made available to the public through the Government Printing Office or other administratively efficient means. Statistical information contained in published and/or commission approved reports will be available upon request. Photocopies of documents exceeding five pages will be provided at fifteen (15) cents per page.

Access to Commission data in the form of comprehensive datasets will be provided through public use tapes provided to the Inter-university Consortium for Political and Social Research at the University of Michigan. Source documents in the Commission's possession, including presentence reports, plea agreements, and judgment and sentence orders, will not be made available to the public. Approved Commission minutes will be available for public inspection. Photocopies of the minutes will be available at a cost of fifteen (15) cents per page. The Commission's library is open to the public. Selected books and other documents may be borrowed and others may be photocopied at the user's expense.

The Commission has authority to enter into cooperative agreements with private individuals, firms, and organizations. Under certain circumstances the Commission may enter into cooperative agreements with private researchers to undertake an analysis of sentencing data. All confidentiality requirements pertaining to Commission staff shall apply to any party who enters into a cooperative agreement with the Commission. Proposals for such agreements shall be considered by the Commission on the basis of the nature of sponsorship, the purpose of the research, and the administrative burden it will impose.

Proposals will be reviewed by a group including the Commission's Staff Director (or his representative), the General Counsel (or his representative), and the Director of Monitoring. The group will forward its recommendation to the Commission after assessing the feasibility and appropriateness of the proposal. The Staff Director shall ensure consultation with representatives of the Administrative Office of the U.S. Courts with respect to the proposed cooperative agreement as it relates to confidentiality of sentencing data.

Authority: 28 U.S.C. 995(a)(1), Sentencing Reform Act of 1984 (Pub. L. 98-473, October 12, 1984).

William W. Wilkins, Jr.,

Chairman.

Public Access to Sentencing Commission Documents and Data

I. Introduction: General Purpose and Authorities

Providing public access to non-confidential sentencing information is consistent both with the letter and the spirit of the Sentencing Reform Act of 1984. Among the Commission's duties under the Act is to "establish sentencing policies and practices for the Federal criminal justice system that reflect, to the extent practicable, advancement in knowledge of human behavior as it relates to the criminal justice process." 28 U.S.C. 991(b)(1)(C). As part of that mandate, Congress envisioned that the Commission would "serv[e] as a clearinghouse and information center for the collection, preparation, and dissemination of information on Federal sentencing practices." 28 U.S.C. 995(a)(12)(A).

Consistent with its clearinghouse function, the Commission is required to provide certain information to the public regarding sentencing in the federal system. Thus, the Commission is resonsible for: (a) Collecting systematically the data obtained from studies, research, and the empirical experience of public and private agencies concerning the sentencing process (28 U.S.C. 995 (a)(13)); (b) publishing data concerning the sentencing process (28 U.S.C. 995(a)(14)); (c) collecting systematically and disseminating information concerning sentences actually imposed, and the relationship of such sentences to the statutory purposes of sentencing set forth in section 3553(a) of title 18, United States Code (28 U.D.C. 995(a)(15)); (d) collecting systematically and disseminating information regarding effectiveness of sentences imposed (28 U.S.C 995(a)(16)); and, (e) maintaining and making available for public inspection a record of the final vote of each member on any action taken by it (28 U.S.C. 995(e)).

The U.S. Sentencing Commission seeks to carry out its Congressional mandates in a manner that provides for the most efficient use of government resources and is consistent with its agreement with the Administrative Office of the U.S. Courts regarding the confidentiality of certain documents.

II. Public Access to Commission Publications and Other Reports

Publications. Official Commission publications are available to the public through the Government Printing Office or other administratively efficient means. Copies of all such documents are available in the Commission library for public review.

Other Reports. Requests for statistical information regarding federal sentencing practices will be limited to published and/or Commission approved reports. The reports produced from monitoring data collected by the Commission will ba available on an updated-monthly basis and photocopies of such reports may be requested from the Commission. Photocopied documents exceeding five pages are available at a cost of fifteen (15) cents per page.

III. Public Access to Commission Data

Comprehensive Datasets. The Commission will create a comprehensive dataset on federal sentencing practices under the Sentencing Guidelines that will be made available for public use through the Inter-university Consortium for Political and Social Research. The dataset, with information that specifically identifies an individual deleted, will be updated periodically. To ensure against the dissemination of confidential information, those receiving information from the consortium will be required to sign confidentiality agreements.

Source documents. Source documents, in general, will not be available to the public. Much of the information contained within individual files is of a confidential nature and is protected by an agreement entered into by the Commission with the Administrative Office of the U.S. Courts.

IV. Public Access to Commission Minutes and Library Services

Commisson Mintues. Approved minutes of Commission meetings are available for public inspection. Appointments to view the minutes must be coordinated through the Communications Director. Photocopies of minutes are also available at a cost of fifteen (15) cents per page.

Library Services. The public is afforded full access to the library and the documents contained therein. Selected books and other documents are available on a lend basis and other materials are available for photocopying. The expense of photocopying rests with the user.

V. Special Research Projects

Authority and Purpose. Under 28 U.S.C. 995(a) (6)-(7), the Commission has authority to enter into "cooperative agreements [] and other transactions * * * with any person, firm, association, corporation, educational institution, or nonprofit organization" and to "accept and employ * * * voluntary and uncompensated services." From time to time the Commission may enter into cooperative agreements with private researchers to undertake an analysis of sentencing data. The purpose of such agreements would be to further the Commission's duty to "establish sentencing policies and practices for the Federal criminal justice system that reflect, to the extent practicable, advancement in knowledge of human behavior as it relates to the criminal justice process." 28 U.S.C. 991(b)(1)(C).

Criteria and Requirements. Cooperative agreements, when entered into, will involve formal arrangements with outside persons or organizations. All requirements with respect to preserving the confidentiality of information that are applicable to the Commission and its staff will apply equally to any party who enters into a cooperative agreement with the Commission. Proposals for cooperative agreements will be considered by the Commission in light of the following criteria:

—Whether the proposed research is sponsored by a recognized academic institution, non-profit research organization, or government entity;
—The purpose of the research and extent to which the proposed project would advance the knowledge of human behavior as it relates to the criminal justice process; and
—The amount of data that is being requested and the administrative burden involved in providing such data.

Special Project Coordination and Feasibility. Proposals for special projects will be reviewed by the Staff Director (or his representative), the General Counsel (or his representative), and the Director of Monitoring of the Sentencing Commission, who shall report to the Commission on the feasibility and appropriateness of the proposal. The Staff Director shall ensure that a representative of the General Counsel's Office and of the Probation Division of the Administrative Office of the U.S. Courts are consulted with respect to the proposed cooperative agreement as it may relate to the Commission's obligations involving confidentiality of sentencing data.

Explanation

Section I.

This section sets forth the statutory authorities under which the Commission adopted a policy on public access.

Section II.

Publications. This section refers to official Commission publications such as the Guidelines Manual, the Supplementary Report on the Initial Sentencing Guidelines and Policy Statements, and the Annual Report that are currently available from the Government Printing Office (GPO). As new reports are produced and approved by the Commission for dissemination, they too will be made available through the GPO or other administratively efficient means. It is anticipated that the computer software developed to assist in application of the Sentencing Guidelines (ASSYST) will be made available to the general public through the National Technical Information Service.

Other Reports. This section provides that materials other than official publications will only be made available to the public upon specific approval by the Commission.

Section III.

Comprehensive Datasets. This section provides that comprehensive datasets of sentencing information will be made available through the Inter-university Consortium for Political and Social Research. Making information available to the public in that manner is consistent with the policies of other federal agencies conducting or administering research related to sentencing and other criminal justice issues. The dataset will contain complete information on cases sentenced under the guidelines with individual identifiers deleted.

Source Documents. This section states that source documents will not be made available to the public. The Commission takes this position relative to source documents for two reasons. First, in June of 1988 the Commission entered into an agreement with the Administrative Office of the U.S. Courts concerning the appropriate treatment of confidential sentencing data.[1]

This agreement places several limitations on the Commission in terms of the data collected by representatives of the U.S. Courts and provided by the Commission:

—It permits the use of confidential information "only in connection with" the Commission's "statutory duties;"
—It requires that "[n]o information that will identify an individual defendant or other person identified in the sentencing information" be released outside of the Commission without the express permission of the court for which the information was prepared and that public Commission reports or summaries containing sentencing information be free of confidential identifying information; and
—It requires the Commission to maintain administrative and physical security over the information and limits internal distribution of confidential sentencing information to Commissioners and Commission personnel with a "need for the information."

It is imperative that the Commission operate both by the letter and the spirit of the agreement with the Administrative Office. The cooperation of the Administrative Office in the collection of the data is essential to the Commission's ability to carry out its statutory mandate to "collect systematically and disseminate information regarding effectiveness of sentences imposed."

The second reason that the Commission is unable to make source documents available to the public relates to the physical and financial burden that such a policy would place on the Commission. In order to protect the confidentiality of information, photocopies of every non-confidential document would be required. Each photocopy would require inspection and removal of individual identifying information. Separate storage would be required for the desensitized documents in order to remove the potential of accidental availability of confidential documents or documents that contained individual identifiers. The Commission simply does not have the resources to provide such a service, particularly given that all information available from such source documents would be available through the dataset provided to ICPSR.

Section IV

Commission Minutes. Section 995(e) of title 28, United States Code, requires that a record of votes of each member of the Commission to be made available to the public. This policy is proposed in furtherance of that statutory requirement.

Library Services. The Commission is assembling a library that will contain books, academic journals and articles, government reports and documents, reports of varied studies on federal sentencing, and bibliographic materials on selected topics related to federal sentencing. As part of its clearinghouse function it is proposed that library materials be made available to the public for review on Commission premises, duplication at the users' expense, or, with respect to some materials, on a lend basis.

Section V

This section provides a formal structure under which the Commission may share information with outside researchers for mutually beneficial purposes. The Commission possesses the authority under statute to enter into "cooperative agreements" with private individuals and organizations and to accept voluntary, uncompensated services. This section anticipates situations where the Commission may wish to cooperate with outside research organizations in the interests of furthering "the advancement in knowledge of human behavior as it relates to the criminal justice process." 28 U.S.C. 991(b)(1)(C). It provides that such cooperative agreements be formal and that all requirements concerning the confidentiality of information be observed. Criteria for accepting a proposed project are provided. Further, a staff committee is required to access proposals for feasibility and appropriateness. It is also required that certain offices within the Administrative Office of the United States Courts be consulted with respect to any questions concerning the Commission's obligations involving the confidentiality of sentencing data as they may relate to a proposed cooperative agreement.

[1] Letter from L. Ralph Mecham, Director, Administrative Office of the U.S. Courts, to Honorable William W. Wilkins, Jr., Chairman, U.S. Sentencing Commission, June 22, 1988.

[FR Doc. 89-14585 Filed 6-20-89; 8:45 am]
BILLING CODE 2210-40-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-73]

Initiation of Section 302 Investigation and Request for Public Comment; Certain Import Restrictions in Brazil

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of initiation of investigation under section 302 of the Trade Act of 1974, as amended; request for written comments.

SUMMARY: The United States Trade Representative (USTR) has initiated an investigation under section 302 of the Trade Act of 1974, as amended ("the Trade Act") with respect to certain import restrictions maintained by the Government of Brazil. USTR invites written comments on the matter being investigated.

DATES: This investigation was initiated on June 16, 1989. Written comments from interested persons are due July 18, 1989.

ADDRESS: Comments should be addressed to the Chairwoman, Section 301 Committee, Office of the United States Trade Representative, Room 223, 600 17th St., NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Jon Huenemann, Director, Brazil and Southern Cone Affairs, (202) 395-5190, or Jane Bradley, Associate General Counsel, USTR, (202) 395-3432.

SUPPLEMENTARY INFORMATION: Under section 310 of the Trade Act of 1974, as amended (19 U.S.C. 2420), the USTR must identify as "priority practices" foreign trade barriers the elimination of which is likely to increase U.S. exports, either directly or through establishing a beneficial precedent. Accordingly, on May 26, 1989, the USTR identified as a "priority practice" certain quantitative import restrictions maintained by the Government of Brazil (54 FR 24438). Brazil maintains an import prohibition list which covers approximately 1,000 items, barring U.S. exports of agricultural items and manufactured goods, including meat, dairy products, plastics, chemicals, textiles, leather products, electronic items, motor vehicles, and furniture. Brazil also uses its licensing regime to implement company-specific and sectoral import quotas, which impede many important U.S. export items, including office machine parts, internal combustion engine parts, and electrical machinery. The lack of transparency of Brazil's licensing system creates uncertainty for U.S. exporters to Brazil and inhibits market access.

Investigation

Section 319(b) of the Trade Act requires the USTR to initiate an investigation, pursuant to section 302(b)(1)(A) of the Trade Act, of this "priority practice", in order to determine whether it is actionable under section 301 of the Trade Act.

Public Comment

The public is invited to comment on the policies and practices of the Government of Brazil that are the subject of this investigation, including (1) whether Brazil's import restrictions referred to above are actionable under section 301, including comments on whether they are inconsistent with a trade agreement; and (2) the amount of the burden or restriction on U.S. commerce caused by the Brazilian restrictions on particular U.S. products.

Interested persons must submit 20 copies of their written comments, in English, by 5:00 p.m. on July 18, 1989, to the Chairwoman of the Section 301 Committee at the address listed above. All submissions must be filed in accordance with 15 CFR part 2006.8, and will be placed in a file (Docket 301-73) open to public inspection pursuant to 15 CFR 2006.12 (except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15).

A. Jane Bradley,
Chairwoman, Section 301 Committee.

[FR Doc. 89-14720 Filed 6-20-89; 8:45 am]
BILLING CODE 3190-01-M

[Docket No. 301-78]

Initiation of Section 302 Investigation and Request for Public Comment: Insurance Market Barriers Maintained by the Government of India

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of initiation of investigation under section 302 of the Trade Act of 1974, as amended; request for written comments.

SUMMARY: The United States Trade Representative (USTR) has initiated an investigation under section 302 of the Trade Act of 1974, as amended ("the Trade Act") with respect to barriers to foreign insurance providers imposed by the Government of India. USTR invites written comments on the matter being investigated.

DATES: This investigation was initiated on June 16, 1989. Written comments from interested persons are due July 18, 1989.

ADDRESS: Comments should be addressed to the Chairwoman, Section 301 Committee, Office of the United States Trade Representative, Room 223, 600 17th Street NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Peter Collins, Director for Southeast Asian and Indian Affairs, (202) 395-6813, or Jane Bradley, Associate General Counsel, USTR, 395-3432.

SUPPLEMENTARY INFORMATION: Under section 310 of the Trade Act of 1974, as amended (19 U.S.C. 2420), the USTR must identify as "priority practices" foreign trade barriers the elimination of through establishing a beneficial precendent. Accordingly, on May 26, 1989, the USTR identified as a "priority practice" the barriers maintained by the Government of India with respect to sales of insurance in India by foreign insurance companies. Private insurance companies are not permitted to sell insurance in India. The state-owned General Insurance Company of India and its four subsidiaries have a monopoly on sales of general insurance, and the state-owned Life Insurance Corporation of India has a monopoly on the sale of life insurance in India.

Investigation

Section 310(b) of the Trade Act requires the USTR to initiate an investigation, pursuant to section 302(b)(1)(A) of the Trade Act, of this "priority practice", in order to determine whether it is actionable under section 301 of the Trade Act.

Public Comment

The public is invited to comment on the policies and practices of the Government of India that are the subject of this investigation, including (1) whether India's insurance market barriers are actionable under section 301; and (2) the amount of the burden or restriction on U.S. commerce caused by these policies and practices.

Interested persons must submit 20 copies of their written comments, in English, by 5:00 p.m. on July 18, 1989, to the Chairwoman of the Section 301 Committee at the address listed above. All submissions must be filed in accordance with 15 CFR part 2006.8, and will be placed in a file (Docket 301-76) open to public inspection pursuant to 15 CFR 2006.12 (except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15).

A. Jane Bradley,

Chairwoman, Section 301 Committee.

[FR Doc. 89-14725 Filed 6-20-89; 8:45 am]

BILLING CODE 3190-01-M

[Docket No. 301-77]

Initiation of Section 302 Investigation and Request for Public Comment; Trade-Related Investment Measures Maintained by the Government of India

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of initiation of investigation under section 302 of the Trade Act of 1974, as amended; request for written comments

SUMMARY: The United States Trade Representative (USTR) has initiated an investigation under section 302 of the Trade Act of 1974, as amended ("the Trade Act") with respect to trade-restricting measures imposed by the Government of India on foreign investors. USTR invites written comments on the matter being investigated.

DATES: This investigation was initiated on June 16, 1989. Written comments from interested persons are due July 18, 1989.

ADDRESS: Comments should be addressed to the Chairwoman, Section 301 Committee, Office of the United States Trade Representative, Room 223, 600 17th St., NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Peter Collins, Director for Southeast Asian and Indian Affairs, (202) 395-6813, or Jane Bradley, Associate General Counsel, USTR, 395-3432.

SUPPLEMENTARY INFORMATION: Under section 310 of the Trade Act of 1974, as amended (19 U.S.C. 2420), the USTR must identify as "priority practices" foreign trade barriers the elimination of which is likely to increase U.S. exports, either directly or through establishing a beneficial precedent. Accordingly, on May 26, 1989, the USTR identified as a "priority practice" the trade-restricting measures imposed by the Government of India upon foreign investors. (54 FR 24438). Government approval is required for all new or expanded foreign investment in India. Approval is conditioned upon a number of criteria, including limits on foreign equity participation. Where approval is granted, the Indian Government often requires investors is granted, the Indian Government often requires investors to use locally-produced foods in the items they produce in India, rather than allowing them to import the best quality and most cost-effective products. Some investors are also required to meet export targets. These and other requirements affect foreign investors, and result in significant trade distortions.

Investigation

Section 310(b) of the Trade Act requires the USTR to initiate an investigation, pursuant to section 302(b)(1)(A) of the Trade Act, of this "priority practice", in order to determine whether it is actionable under section 301 of the Trade Act.

Public Comment:

The public is invited to comment on the policies and practices of the Government of India that are the subject of this investigation, including (1) whether India's performance requirements and other trade-related investment measures are actionable under section 301; and (2) the amount of the burden or restriction on U.S. commerce caused by these policies and practices.

Interested persons must submit 20 copies of their written comments, in English, by 5:00 p.m. on July 18, 1989, to the Chairwoman of the section 301 Committee at the address listed above. All submissions must be filed in accordance with 15 CFR 2006.8, and will be placed in a file (Docket 301-77) open to public inspection pursuant to 15 CFR 2006.12 (except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15).

A. Jane Bradley,

Chairwoman, Section 301 Committee.

[FR Doc. 89-14724 Filed 6-20-89; 8:45 am]

BILLING CODE 3190-01-M

[Docket No. 301-74]

Initiation of Section 302 Investigation and Request for Public Comment; Ban on Government Procurement of Foreign Satellites by the Government of Japan

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of initiation of investigation under section 302 of the Trade Act of 1974, as amended; request for written comments.

SUMMARY: The United States Trade Representative (USTR) has initiated an investigation under section 302 of the Trade Act of 1974, as amended ("the Trade Act") with respect to the Government of Japan's ban on government procurement of foreign satellites. USTR invites written comments on the matter being investigated.

DATES: This investigation was initiated on June 16, 1989. Written comments by interested persons are due July 18, 1989.

ADDRESS: Comments should be addressed to the Chairwoman, Section 301 Committee, Office of the United States Trade Representative, Room 223, 600 17th Street, NW.; Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Glen Fukushima, Deputy Assistant U.S. Trade Representative for Japan and China, (202) 395-5070, or Holly Hammonds, Associate General Counsel, USTR, (202) 395-7305.

SUPPLEMENTARY INFORMATION: Under section 210 of the Trade Act of 1974, as amended (19 U.S.C. 2420), the USTR must identify as "priority practices" foreign trade barriers the elimination of which is likely to increase U.S. exports, either directly or through establishing a beneficial precedent. Accordingly, on May 26, 1989, the USTR identified as a "priority practice" the ban on government procurement of foreign satellites maintained by the Government of Japan (54 FR 24438). As part of a "long range vision on space development" Japan prohibits the procurement of foreign satellites by government entities if such a purchase interferes with "indigenous development objectives." Japan's policy of promoting indigenous production capability by prohibiting government procurement of foreign satellites applies to the entire range of satellites (broadcast, communications, earth resource, weather). The United States has long been the world leader in satellite production, and is thus denied significant market opportunities by this policy.

Investigation

Section 310(b) of the Trade Act requires the USTR to initiate an investigation, pursuant to section 302(b)(1)(A) of the Trade Act, of this "priority practice", in order to determine whether it is actionable under section 301 of the Trade Act.

Public Comment

The public is invited to comment on the policies and practices of the government of Japan that are the subject of this investigation, including (1) whether Japan's ban on government procurement of foreign satellites is actionable under section 301; and (2) the amount of the burden or restriction on U.S. commerce caused by these policies and practices.

Interested persons must submit 20 copies of their written comments, in English, by 5:00 p.m. on July 18, 1989, to the Chairwoman of the Section 301 Committee at the address listed above. All submissions must be filed in accordance with 15 CFR part 2006.8, and will be placed in a file (Docket 301-74) open to public inspection pursuant to 15 CFR 2006.12 (except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15).

A. Jane Bradley,

Chairwoman, Section 301 Committee.

[FR Doc. 89-14721 Filed 6-20-89; 8:45 am]

BILLING CODE 3190-01-M

[Docket No. 301-75]

Initiation of Section 302 Investigation and Request for Public Comment; Exclusionary Government Procurement of Supercomputers by the Government of Japan

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of initiation of investigation under section 302 of the Trade Act of 1974, as amended; request for written comments.

SUMMARY: The United States Trade Representative (USTR) has initiated an investigation under section 302 of the Trade Act of 1974, as amended ("the Trade Act") with respect to the Government of Japan's government procurement practices with respect to supercomputers. USTR invites written comments on the matter being investigated.

DATES: This investigation was initiated on June 16, 1989. Written comments from interested persons are due July 18, 1989.

ADDRESS: Comments should be addressed to the Members of the Section 301 Committee, Office of the United States Trade Representative, Room 223, 600 17th Street, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Joseph Massey, Assistant U.S. Trade Representative for Japan and China, (202) 395-3900, or Douglas Newkirk, Assistant U.S. Trade Representative for GATT Affairs, (202) 395-6843.

SUPPLEMENTARY INFORMATION: Under section 310 of the Trade Act of 1974, as amended (19 U.S.C. 2420), the USTR must identify as "priority practices" foreign trade barriers the elimination of which is likely to increase U.S. exports, either directly or through establishing a beneficial precedent. Accordingly, on May 26, 1989, the USTR identified as a "priority practice" the Government of Japan's exclusionary practices with respect to the government procurement of supercomputers (54 FR 24438). The United States supercomputer industry has been effectively denied access to the Japanese public sector market despite a 1987 agreement with Japan on supercomputers. The Government of Japan has engaged in a variety of practices affecting the procurement process which result in the purchase of supercomputers from indigenous producers. For example, U.S. supercomputer suppliers find themselves excluded from serious consideration in Japanese Government procurements due to technical specifications favoring incumbent Japanese suppliers. U.S. firms are further disadvantaged by extraordinarily low Japanese Government supercomputer budgets which require massive discounts of up to 80 percent off list price.

Investigation

Section 310(b) of the Trade Act requires the USTR to intitiate an investigation, pursuant to section 302(b)(1)(A) of the Trade Act, of this "priority practice", in order to determine whether it is actionable under section 310 of the Trade Act.

Public Comment

The public is invited to comment on the policies and practices of the Government of Japan that are the subject of this investigation, including (1) whether Japan's government procurement practices with respect to supercomputers are actionable under section 301; and (2) the amount of the burden or restriction on U.S. commerce caused by these policies and practices.

Interested persons must submit 20 copies of their written comments, in English, by 5:00 p.m. on July 18, 1989, to the Chairwoman of the Section 301 Committee at the address listed above. All submissions must be filed in accordance with 15 CFR 2006.8, and will be placed in a file (Docket 301-75) open to public inspection pursuant to 15 CFR 2006.12 (except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15).

A. Jane Bradley,

Chairwoman, Section 301 Committee.

[FR Doc. 89-14722 Filed 6-20-89; 8:45 am]

BILLING CODE 3190-01-M

[Docket No. 301-76]

Initiation of Section 302 Investigation and Request for Public Comment; Japanese Retrictions Affecting Imports of Forest Products

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of initiation of investigation under section 302 of the Trade Act of 1974, as amended; request for written comments.

SUMMARY: The United States Trade Representative (USTR) has initiated an investigation under section 302 of the Trade Act of 1974, as amended ("the Trade Act") with respect to the Government of Japan's policies and practices that restrict imports of forest products. USTR invites written comments on the matter being investigated.

DATES: This investigation was initiated on June 16, 1989. Written comments from interested persons are due July 18, 1989.

ADDRESS: Comments should be addressed to the Chairwoman, Section 301 Committee, Office of the United States Trade Representative, Room 223, 600 17th Street, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: John Melle, Office of the Assistant U.S. Trade Representative for Industry, (202) 395-6971, or Timothy Reif, Assistant General Counsel, USTR, (202) 395-6800.

SUPPLEMENTARY INFORMATION: Under section 310 of the Trade Act of 1974, as amended (19 U.S.C. 2420), the USTR must identify as "priority practices" foreign trade barriers the elimination of which is likely to increase U.S. exports, either directly or through establishing a beneficial precedent. Accordingly, on May 26, 1989, the USTR identified as a

"priority practice" the Government of Japan's policies and practices, including technical standards favoring Japanese producers, that restrict imports of forest products in Japan. (54 FR 24436). These practices include wood grading requirements as well as a variety of testing standards which impede U.S. exports.

Investigation

Section 310(b) of the Trade Act requires the USTR to initiate an investigation, pursuant to section 302(b)(1)(A) of the Trade Act, of this "priority practice", in order to determine whether it is actionable under section 310 of the Trade Act.

Public Comment

The public is invited to comment on the policies and practices of the Government of Japan that are the subject of this investigation, including (1) whether Japan's technical standards or other non-tariff measures affecting imports of forest products are actionable under section 301, including comments on whether they are inconsistent with a trade agreement; and (2) the amount of the burden or restriction on U.S. commerce caused by these policies and practices.

Interested persons must submit 20 copies of their written comments, in English, by 5:00 p.m. on July 18, 1989, to the Chairwoman of the Section 301 Committee at the address listed above. All submissions must be filed in accordance with 15 CFR 2006.8, and will be placed in a file (Docket 301–76) open to public inspection pursuant to 15 CFR 2006.12 (except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15).

A. Jane Bradley,

Chairwoman, Section 301 Committee.

[FR Doc. 89–14723 Filed 6–20–89; 8:45 am]

BILLING CODE 3190–01–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 118
Wednesday, June 21, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:12 p.m. on Thursday, June 15, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider (1) matters relating to the possible failure of an insured bank; and (2) matters relating to assistance agreements pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: June 16, 1989.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 89–14750 Filed 6–16–89; 5:06 pm]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, June 26, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 16, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–14743 Filed 6–16–89; 4:25 pm]

BILLING CODE 6210–01–M

U.S. NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE (NCLIS)

White House Conference Advisory Committee

PREVIOUSLY ANNOUNCED TIME AND DATE: 10:00 a.m.–4:40 p.m., June 21, 1989.

CHANGES IN THE MEETING: The meeting has been cancelled.

FOR FURTHER INFORMATION CONTACT: John W.A. Parsons, NCLIS Staff, 1111 18th Street NW., Suite 310, Washington, DC 20036, (1–202) 254–3100.

Dated: June 19, 1989.

John W.A. Parsons.

[FR Doc. 89–14805 Filed 6–19–89; 11:17 am]

BILLING CODE 7527–01–M

SECURITIES AND EXCHANGE COMMISSION

Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of June 12, 1989.

A closed meeting will be held on Wednesday, June 14, 1989, at 12:00 Noon.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A), and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Grundfest, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matters of the closed meeting scheduled for Wednesday, June 14, 1989, at 12:00 Noon, will be:

Settlement of injunctive action.
Litigation matter.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: John Kincaid at (202) 272–2467.

Jonathan G. Katz,

Secretary.

June 14, 1989.

[FR Doc. 89–14828 Filed 6–19–89; 12:56 pm]

BILLING CODE 8010–01–M

federal register

Wednesday
June 21, 1989

Part II

Environmental Protection Agency

40 CFR Part 303

Citizen Awards for Information on Criminal Violations Under Superfund; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 303

[FR 3541-3]

Citizen Awards for Information on Criminal Violations Under Superfund

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today publishes on a final basis a regulation in response to the requirements established by section 109(c) of the Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99-499). Codified as CERCLA section 109(d), it authorizes the President to pay an award of up to $10,000 to any individual for information leading to the successful prosecution of any person for a criminal violation of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. That Section also requires the President to prescribe, by regulation, criteria for such an award. By Executive Order No. 12580, the President, on January 23, 1987, delegated to the Administrator of EPA the authority to promulgate the regulation, and thereafter to carry out the section 109(d) award program. Today's notice sets forth who is eligible to file a claim for an award and who within EPA shall make the determination of eligibility for such an award, details procedures and requirements for filing a claim, and establishes the criteria for payment of an award. This notice also provides an assurance of confidentiality to those who provide such information on a confidential basis.

EFFECTIVE DATE: This final rule becomes effective June 21, 1989.

FOR FURTHER INFORMATION CONTACT: John Dugdale, Attorney-Adviser, Office of Criminal Enforcement Counsel (LE-134X), United States Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Phone: (202) 475-9666.

ADDRESS: The public docket for this final rule is located in Room NE-114, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays. Appointments to examine these docket materials may be made in advance by calling (202) 475-9660.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Response to Comments
III. Summary of Regulatory Analysis
IV. List of Subjects in 40 CFR Part 303

I. Introduction

The Deputy Assistant Administrator for Criminal Enforcement is authorized to exercise his discretion in paying up to $10,000 for information leading to the arrest and successful prosecution of any person for a criminal violation of CERCLA, as amended.

The environmental and public health dangers associated with the illegal disposal of hazardous materials have emerged as a matter of national interest and concern. In order to provide an incentive for individuals to come forward with information concerning such illegal practices, Congress has authorized EPA to establish a program to reward citizens for providing information useful in prosecuting those involved in illegal hazardous waste activity.

Because many informants are only available and reliable when they are given appropriate and efficacious assurances that their identity will be protected from disclosure, the security of assured confidentiality is necessary to protect their employment status or some other legitimate privacy interests. The award provision provides both the security of confidentiality and the incentive of a cash award for an informant to come forward with pertinent information on the criminal violations of CERCLA.

Both the initial determination of a claimant's eligibility for an award and the subsequent determination of any amount to be awarded to a claimant are matters vested by statute in the exclusive discretion of the Agency. These determinations entail subjective considerations relating to the sound administration of justice and to cooperation with EPA investigators and Department of Justice prosecutors. Providing information to the Agency by any private citizen does not create any obligation to pay compensation for such voluntary assistance. Law enforcement officials are not deemed to be "private citizens" as contemplated by this award program. Law enforcement official means any employee of the Federal government who takes part in, or is responsible for, the enforcement of Federal statutes and regulations governing the handling of hazardous substances or wastes.

Inasmuch as these decisions are made pursuant to the Deputy Assistant Administrator's discretionary grant authority under CERCLA section 109(d), they constitute final administrative action on any properly filed award claim. This award authority is properly deemed to constitute the making of a discretionary public grant. Because this rule relates to public grants, benefits, or contracts, it is exempt from all requirements of Section 553 of the Administrative Procedures Act including notice and opportunity for comment and delayed effective date.

EPA believes the program will lead to increased enforcement activity with greater deterrent impact. This program will also help the Agency attain its mandated goals of a cleaner environment and the earlier intervention of remedial resources, which will result in cost savings, enhanced public health protection and more expeditiously conducted cleanups. To expedite this process, EPA issued an interim-final rule in the **Federal Register** on May 5, 1988 (53 FR 16086), in which the Agency requested comments over a 120-day period that closed on September 2, 1988, and which became effective on the date of publication. Today's final rule is identical to the interim-final rule.

II. Response to Comments

The Agency received only two comments. One commenter protested that this rule constitutes imprudent governmental action and should be withdrawn because it encourages secret witnesses to make unfounded charges and, by granting the protection of confidentiality, the rule denies the falsely accused a cause of action for damages against its unknown detractor.

This commenter's policy concerns are deemed unpersuasive and unfounded. In particular, the Agency's trained investigators are fully qualified to discern early on, and reject, unsubstantiated allegations of wrongdoing, so that innocent persons or companies are not subjected to unwarranted government investigations or enforcement actions. Furthermore, in response to the commenter's overall policy concerns, the Agency notes that there are numerous other Federal agencies which provide awards on a similar basis in furtherance of specific statutory authority (*e.g.:* 18 U.S.C. 3056(c)(1)(D) (information concerning laws enforced by the Secret Service); 18 U.S.C. 1751(g) (information concerning Presidential assassination); 14 U.S.C. 643 (information concerning interference with aids to navigation); 50 U.S.C. 47a (information concerning nuclear material); 21 U.S.C. 886(a) (information concerning drugs and narcotics); 39 U.S.C. 404(a)(6) (information concerning postal laws); 18 U.S.C. 3059(a)(1) (information concerning violation of U.S. criminal law); 26 U.S.C. 7623 (information concerning internal revenue laws); 22 U.S.C. 2708(a) (information concerning acts of terrorism outside the United States); 18 U.S.C. 3071 (information concerning acts of terrorism within the United States); 10 U.S.C. 7209 (information concerning missing naval property); 16 U.S.C. 1540(d) (information concerning endangered species); 16 U.S.C. 3375(d) (information concerning fish and wildlife); and 16 U.S.C. 668(a) (information concerning the killing of bald eagles)). In deciding to establish such award programs in order to encourage submission of information which facilitates discovery of violations of Federal laws, Congress has determined that encouraging increased compliance with those laws outweighs policy concerns such as those raised by the commentor (*e.g.,* possibility of unfounded charges).

The Agency has determined that, as a practical matter, the provision of confidentiality is essential in order to provide private citizens with the incentive and reassurance needed to allow EPA to effectively carry out the award program. In line with expressed Congressional intent in CERCLA section 109(d) to institute a program which authorizes awards in appropriate circumstances to address criminal violations of the statute, the Agency will promulgate this final rule.

Another commenter raised the possibility of a disgruntled employee intentionally sabotaging equipment to cause a spill to go unreported or intentionally destroying required records, for which acts a responsible corporate official may be charged due to information provided by the employee-saboteur. The commenter recommended amending § 303.20(a) to include in the persons excluded from eligibility consideration those who were "involved" or "charged" in the case giving rise to an award claim to reduce the likelihood of sabotage by removing an employee saboteur from possible eligibility for an award.

The Agency agrees generally with the commenter's basic assertion that a criminal offender should not profit from his/her criminal conduct. Currently, § 303.20(a) specifically excludes such persons from eligibility for an award.

There may be situations, however, where it might be appropriate to grant an award to someone who is in some way connected with—but not actually convicted for—the underlying violation for which information is submitted. Thus, a person's responsibility or fault may be so minor, unwitting or unintentional as to be greatly outweighed by the fact that the information provided by the person is crucial to a successful prosecution of a truly significant violation, so that a small award might be justified. The Agency considers the scenario suggested by the commenter—a saboteur releasing a reportable quantity of hazardous substance, then providing information to the Agency if the person in charge fails to give proper notification—to be highly unlikely due to the potential for criminal liability for the saboteur for his actions under other environmental statutes such as the Clean Water Act and RCRA.

In any event, the Agency believes that such situations, while extremely rare, are most appropriately analyzed not in the context of eligibility, but rather in the context of § 303.30(d), dealing with "Criteria for Payment of Award." For example, that section of the rule expressly provides that "concealment of a person criminally culpable" and "existence of an organized criminal conspiracy"—including involvement of the informant—are both appropriate reasons for the Deputy Assistant Administrator in the exercise of his discretion to decide not to grant an award. As such, a person's actions and possible culpability would be weighed with the other factors set forth in § 303.30(d) of the rule in determining whether to make an award, as well as in setting an amount should one be made.

III. Summary of Regulatory Analyses

A. Executive Order No. 12291

Proposed regulations must be classified as major or non-major to satisfy the rulemaking protocol established by Executive Order No. 12291. According to Executive Order No. 12291, major rules are those that are likely to result in:

(1) An annual cost to the economy of $100 million or more; or

(2) A major increase in costs or prices for consumers or individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This final regulation provides an entirely voluntary procedure by which individuals who learn of potential criminal violations of the provisions of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, may disclose their information to EPA and apply for an award of up to $10,000. Because this final rulemaking imposes no new burdens of any nature upon any regulated entity and creates no additional regulatory entities, and since the maximum award is limited to $10,000, no formal Regulatory Impact Analysis is necessary. This final rule was submitted to the Office of Management and Budget (OMB) for its review as required by Executive Order No. 12291.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires that a Regulatory Flexibility Analysis be performed for all rules that are likely to have "significant economic impact on a substantial number of small entities." Because this rulemaking applies only to individuals who choose to volunteer information to the Agency regarding the criminal violations of CERCLA, it should have no effect upon any other organizations, entities, or businesses, either large or small. Therefore, EPA certifies that this proposed regulation will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1986 requires approval from the Office of Management and Budget (OMB) for information requests. Because the Act exempts from OMB clearance federal criminal matters or actions, and because this final rulemaking is related to federal criminal enforcement under CERCLA, the Paperwork Reduction Act requirements do not apply.

List of Subjects in 40 CFR Part 303

Law enforcement, Intergovernmental relations, Superfund, Crime, Awards, National Response Center notification of release, Destruction of records required to be retained.

William K. Reilly,

Administrator.

Date: June 12, 1989.

For the reasons set forth in the preamble, Part 303, Title 40 of the Code of Federal Regulations is revised to read as follows:

PART 303—CITIZEN AWARDS FOR INFORMATION ON CRIMINAL VIOLATIONS UNDER SUPERFUND

Subpart A—General

Sec.
303.10 Purpose.
303.11 Definitions.
303.12 Criminal violations covered by this award authority.

Subpart B—Eligibility to File a Claim for Award and Determination of Eligibility and Amount of Award

303.20 Eligibility to file a claim for award.
303.21 Determination of eligibility and amount of award.

Subpart C—Criteria for Payment of Award

303.30 Criteria for payment of award.
303.31 Assurance of claimant confidentiality.
303.32 Pre-payment offers.
303.33 Filing a claim.

Authority: 42 U.S.C. 9609(d), Executive Order No. 12580.

Subpart A—General

§ 303.10 Purpose.

This regulation implements the "citizen award" authority granted by Congress to the President in the 1986 Amendments to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), section 109(d). As authorized in the Superfund Amendments and Reauthorization Act of 1986 (SARA) section 109(c) and Executive Order No. 12580 (issued by the President on January 23, 1987), the Environmental Protection Agency is empowered to pay up to $10,000.00 from the Superfund to any individual who provides information leading to the arrest and conviction of any person for a violation subject to a criminal penalty under CERCLA as amended.

§ 303.11 Definitions.

(a) Arrest. Restraint of an arrestee's liberty or the equivalent through the service of judicial process compelling such a person to respond to a criminal accusation.

(b) Conviction. A judgment of guilt entered in U.S. District Court, upon a verdict rendered by the court or petit jury or by a plea of guilty, including a plea of *nolo contendere*.

(c) Individual. A natural person, not a corporation or other legal entity nor an association of persons.

§ 303.12 Criminal violations covered by this award authority.

(a) Failure to Give Required Notice of a Release of a Reportable Quantity of a Hazardous Substance, 42 U.S.C. 9603(a);

(b) Destruction or Concealment of Records Required under CERCLA to have been Retained, 42 U.S.C. 9603(d).

Subpart B—Eligibility to File a Claim for Award and Determination of Eligibility and Amount of Award

§ 303.20 Eligibility to file a claim for award.

(a) Any individual, except law enforcement officers and persons convicted in the case giving rise to the award claim and any persons identified in § 303.20(b) shall be eligible to file a claim for an award as provided for in § 303.33 of this subpart.

(b) No person who was an employee of or contractor for the United States Environmental Protection Agency at the time he or she came into possession of the information disclosed to other Agency officials (or is so employed at the time of disclosure), which information constitutes in whole or part the basis for an award claim, shall be eligible to file a claim for an award.

(c) To be eligible for an award, the informant must disclose the identity of person(s) [or other pertinent information that leads to the expeditious disclosure of the identity of said person(s)] criminally culpable for the violations set forth in § 303.12 of Subpart A. Disclosure of such pertinent information must be made to an employee, agent or representative of the United States Environmental Protection Agency.

§ 303.21 Determination of eligibility and amount of award.

The Agency's determinations as to eligibility and award amount shall constitute final Agency action as to either amount or eligibility. These determinations, consistent with the need to preserve from disclosure the identity of confidential informants (as noted in § 303.31) as well as to preserve from disclosure methods of Agency investigation, shall not be subject to administrative challenge by any person not making a claim to that award.

Note: It is the Environmental Protection Agency's view that such determinations also would not be subject to judicial challenge by such person.

Subpart C—Criteria for Payment of Award

§ 303.30 Criteria for payment of award.

Upon the filing of an eligible claim in accordance with the procedures as set forth in § 303.33, the Agency's Assistant Administrator for Enforcement and Compliance Monitoring, or his Deputy for Criminal Enforcement, in making the decision to grant an award, and if so, in what amount, shall consider all relevant criteria, giving such weight and importance to each separate criterion as appears warranted in his judgment alone. Relevant criteria include one or more of the following:

(a) Whether the claimant's information constituted the initial, unsolicited notice to the Government of the violation;

(b) Whether the Government would readily have obtained knowledge of the violation in a timely manner absent claimant's information;

(c) Importance of the case, egregiousness of the violation, potential for or existence of environmental harm;

(d) Concealment of a person criminally culpable or existence of an organized criminal conspiracy to conceal the offense(s) committed by the named defendant(s);

(e) Willingness of the claimant to assist the Government's prosecution of the offense(s), which assistance includes providing further information and grand jury testimony, participating in trial preparation, and trial testimony if consistent with the limits on claimant identity disclosure as set forth in § 303.31.

(f) Value of the claimant's assistance in comparison to that given by all other sources of information and evidence which led to arrest and conviction.

§ 303.31 Assurance of claimant confidentiality.

No person, except as authorized by the Agency's Office of Enforcement and Compliance Monitoring to have this knowledge, shall be given access to the identity of, or information that would lead to the identity of, a claimant who has requested anonymity prior to disclosing information to the Agency.

§ 303.32 Pre-payment offers.

Prior to the actual payment of an award, no employee of the United States Government, including any person purporting to act on behalf of the United States Environmental Protection Agency, is authorized by these regulations to make any promise, offer, or representation with respect to the Agency's grant of an award in exchange for information.

§ 303.33 Filing a claim.

(a) Any individual seeking an award under this regulation is required to file a claim for such an award with the Deputy Assistant Administrator for Criminal Enforcement not later than 45 days after the conviction of the person(s) involved in the prosecution in which the information was provided.

(b) The claim submission must provide, at a minimum, a summary of the information provided, the date the information was provided, and the name and title of the person to whom the information was provided.

(c) All claim submissions must be submitted to the Office of Criminal Enforcement Counsel (LE–134X), United States Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The claim envelope should also specify whether the information was submitted under a request for anonymity and whether such request is still in effect. All such externally identified claims shall be handled in accordance with the Agency procedures for maintaining informant confidentiality, as referenced in § 303.31 of this subpart.

[FR Doc. 89–14461 Filed 6–20–89; 8:45 am]
BILLING CODE 6560–50–M

federal register

Wednesday
June 21, 1989

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

Availability of Funding Under the Fair Housing Assistance Program; Non-Competitive Solicitation; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N-89-1988; FR-2654]

Availability of Funding Under The Fair Housing Assistance Program; Non-Competitive Solicitation

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of funding availability.

SUMMARY: HUD is soliciting applications from eligible State and local fair housing agencies for funding under the redesigned Fair Housing Assistance Program. Applications are solicited for Capacity Building and Incentive Funding only. Contributions agencies which are eligible only for complaint processing and training support need not submit an application. Agencies must meet the specific eligibility criteria set out in this announcement as well as the criteria in 24 CFR Part 111 in order to qualify for consideration under this program.

FOR FURTHER INFORMATION CONTACT: Maxine B. Cunningham, Director, Federal, State and Local Programs Division, Office of Fair Housing and Equal Opportunity, Room 5212, 451 Seventh Street, SW., Washington, DC 20410-2000. Telephone: (202) 755-0455 (V and TDD). (This is not a toll-free number.) Application kits are available to eligible State and local fair housing agencies upon written or telephone request. To ensure a prompt response, it is suggested that requests for application kits be made by telephone.

DATE: An application for funding under this notice must be submitted between June 21, 1989, and August 7, 1989. (No application received after the closing date will be considered unless it qualifies for a late application exception, as specified in the Application Kit.)

SUPPLEMENTARY INFORMATION: This announcement of solicitation of applications for capacity building and incentive funding under the Fair Housing Assistance Program (FHAP) is issued in accordance with 24 CFR Part 111. Interested agencies are urged to review 24 CFR Parts 111 and 115 and the information in this announcement to determine their eligibility to apply. (An agency is not eligible for capacity building and incentive funding at the same time.)

The FHAP has been redesigned to replace the administrative funding system of competitive and noncompetitive funding with a single noncompetitive funding approach. On May 8, 1989, HUD published a final rule (54 FR 20094) implementing the redesigned FHAP. This new comprehensive approach gives recipients an increased ability to plan a long-term program that is more suitable to their fair housing enforcement needs and gives HUD the ability to improve administration of the FHAP. The purpose of the funding program is to provide support for capacity building, complaint processing, training, technical assistance, data and information systems, and other fair housing projects. The intent of the program is to build a coordinated intergovernmental effort to further fair housing, and to encourage States and localities to assume a greater share of the responsibility for administering their fair housing laws.

Background

The Fair Housing Act (42 U.S.C. 3601-20) prohibits discrimination in the sale or rental of housing, in residential real-estate-related transactions, in the provision of brokerage services, and in other housing practices. Discrimination is prohibited on the basis of race, color, religion, sex, familial status, handicap, or national origin. Section 810(f) provides that, whenever a complaint alleges a discriminatory housing practice within the jurisdiction of a State or local public agency and the agency has been certified (for the referral of complaints of discriminatory housing practices), the Secretary shall refer such complaint to the certified agency before taking any action with respect to such complaint. Section 817 provides, among other things, that the Secretary may utilize the services of responsible State and local agencies in the enforcement of the Fair Housing laws, and "may reimburse such agencies and their employees for services rendered to assist him in carrying out" the Fair Housing Act. The FHAP was authorized by Congress to provide HUD with the resources to enhance the fair housing capabilities of State and local civil rights agencies.

FHAP Funding Requirements in This Announcement

I. Eligibility

To be eligible to apply for funds under the FHAP, an agency first must meet the criteria prescribed in 24 CFR 111.107. Specifically:

(a) The agency must be certified as a substantially equivalent agency under the standards set forth at 24 CFR Part 115, or the agency must have entered into a written agreement for interim referral or other utilization of services, as set forth at 24 CFR 115.11;

(b) The agency must have executed a written Memorandum of Understanding with the Department which, at a minimum, describes the working relationship to be in force between the agency and the Department. An agreement for interim referral of complaints in accordance with 24 CFR 115.11 may constitute such a Memorandum of Understanding;

(c) The agency must demonstrate to HUD that the agency has acceptable procedures for cooperating with other FHAP-funded agencies having concurrent jurisdiction;

(d) The agency must not unilaterally reduce the level of financial resources currently committed to fair housing complaint processing. Budget and staff reductions occasioned by legislative action outside the control of the agency will not, alone, result in a determination of ineligibility. However, HUD will take such actions into consideration in assessing the ongoing viability of an agency's fair housing program; and

(e) The agency must participate in training sponsored by HUD and designed in consultation with HUD staff and agency representatives to provide uniform skills and technical knowledge.

II. Additional Criteria for Incentive Funding

In addition to the criteria set forth in Section I above, an applicant for incentive funds must meet three additional criteria to qualify for funding under this solicitation:

(a) The agency must have processed a minimum number of dual-filed complaints in its best twelve consecutive months during the period April 1, 1987 through September 30, 1988. The minimum number for States is 20 and the minimum number for localities is 15. To be considered a processed complaint, a complaint must be cognizable under the Federal Fair Housing Act and accepted by the Regional Office as meeting the processing requirements under the Cooperative Agreement in effect during that time period;

(b) The agency must have engaged in comprehensive and thorough investigative activities relative to complaints dual-filed with HUD, as determined by HUD based on its most recent annual evaluation under 24 CFR Part 115 and through monitoring of FHAP Cooperative Agreements in effect during the period April 1, 1987 through September 30, 1988; and

(c) The agency must demonstrate (as certified by the head of the agency) that

during the agency's most recently concluded fiscal year, a minimum of 20 percent of the funds spent by the agency for fair housing activities was from non-Federal sources.

III. Eligible Activities

The primary purpose of Capacity Building and Incentive Funds is to support activities that produce increased awareness of fair housing rights and remedies. All activities proposed for funding must address, or have ultimate relevance to, matters affecting fair housing which are cognizable under the Fair Housing Act (42 U.S.C. 3601-3620). These activities include, but are not limited to, the following:

A. Activities designed to develop and implement outreach efforts to heighten public awareness of all forms of housing discrimination prohibited under the Fair Housing Act and to increase public awareness of fair housing rights and responsibilities.

B. Activities designed to create, modify, or improve local, regional, or national information systems concerned with fair housing matters.

C. Activities designed to improve an agency's capability to ensure fair housing through new or redirected approaches to the agency's internal structure or compliance techniques.

D. Activities to develop and conduct a testing or auditing program for specific protected classes or special market areas for fair housing enforcement or litigation.

E. Activities designed to identify new or subtle practices of housing discrimination and to implement programs to eliminate such practices.

F. Activities designed to address violence and intimidation affecting equal housing opportunity. These activities may include education, technical assistance, or the development of programs for prevention and response.

G. Activities designed to coordinate fair housing enforcement efforts of governmental enforcement agencies with various community resources which have an impact on the prevention or elimination of discriminatory housing practices.

H. Technical assistance activities to enable agencies to work with private fair housing groups, educational institutions, the real estate industry, and other private and governmental entities to eliminate or prevent housing discrimination.

I. Activities to provide services to aggrieved individuals, consistent with rights and remedies under applicable Federal, State, and local laws prohibiting discrimination in housing.

J. Affirmative marketing activities to inform persons of housing opportunities with respect to government-assisted housing and the private housing market.

K. Activities designed to improve investigations of systemic discrimination for further processing by State and local agencies, HUD, or the Department of Justice.

L. Fair housing training for enforcement agency staff.

M. Activities designed to create, modify, or improve an agency's complaint information and monitoring capacity, to make its system compatible with HUD's for internal monitoring of fair housing complaint activity.

IV. General Provisions Governing Applications for Assistance

Each application for Capacity Building or Incentive Funds must include:

A. A description of the applicant agency's proposed activities and objectives.

B. A schedule for completion and estimated cost of each proposed activity.

C. For all capacity building applicants, information to justify the amount of funds requested, including the need for activities proposed and the number of fair housing complaints processed during the previous fiscal year.

D. For all applicants for incentive funds, data from the agency's most recently concluded fiscal year showing the amount of funds spent on the applicant's fair housing program and the amount spent from non-Federal sources.

V. Certification

The applicant must certify that:

A. The submission of the application is authorized under State or local law (as applicable), and the applicant possesses the legal authority to carry out the activities proposed in the application.

B. The agency will adhere to a written agreement (Memorandum of Understanding or Interim Agreement) governing all fair housing referral activity and complaint processing between the agency and the appropriate HUD Regional Office.

C. An applicant for incentive funds must also certify, on the basis of the supporting documentation submitted, that 20 percent of the funds spent by the agency for fair housing activities in the agency's most recently concluded fiscal year was from non-Federal sources.

VI. Methods of Distribution

A. Scope: Applications are solicited for capacity building and incentive funding as described at 24 CFR 111.105. A total of $3.8 million is available under this Announcement.

B. Categories of Funding:

1. Capacity Building: Under 24 CFR 111.105(a), HUD will give $30,000, during the first two years of participation in the FHAP, to all capacity building agencies which submit an acceptable application. The application must demonstrate, in HUD's determination, that the agency has (or will receive) a sufficient volume of complaint activity to justify HUD's provision of funds for complaint processing activities. The application must state the objectives and activities to be carried out by the applicant, which must include participation in HUD-sponsored training, complaint monitoring and reporting systems (CMRS), case processing, and any other fair housing activities proposed by the applicant. (See Section III for types of eligible activities.) Agencies having current requisite CMRS capability, as described in the application kit, may meet the CMRS requirement by describing their capability.

2. Funding of Contributions Agencies. Agencies which have received two years of awards for Capacity Building are eligible to receive training funds, complaint processing funds and, for those agencies meeting the additional criteria specified in Section II above, incentive funds.

a. Training: All agencies eligible for their third-or-later year of non-competitive support (contributions agencies) will receive $3,000 to support participation of no fewer than 3 persons in HUD-sponsored or HUD-approved fair housing training. These funds are intended to support attendance at HUD-sponsored training at national and regional training sites. These monies may also be used to support additional in-house training by agencies for agency-specific problems, and for training of staff unable to attend national or regional training, subject to the approval of the HUD Government Technical Representative.

b. Complaint processing funds: Contributions agencies will receive support for complaint processing based solely on the number of dual-filed housing discrimination complaints actually processed by them during their best twelve consecutive months during the period beginning May 1, 1987 and ending September 30, 1988. (See 24 CFR 111.105(b)) (A dual-filed complaint is a complaint which has been docketed at both HUD and the agency.) The unit reimbursement level will be $650 per complaint.

c. Incentive funds: A contributions agency that meets the additional criteria for incentive funds set forth in Section III above may apply for incentive funds, describing those projects that would benefit its jurisdiction. The amount of funds awarded to an agency will be based on the population of the jurisdiction served by the agency, and on the projects proposed and the cost of implementing those projects. HUD will use 1988 U.S. census estimates to determine a jurisdiction's population. Population figures for counties will exclude population figures for substantially equivalent cities within those counties. The maximum amount of funds based on population ranges is as follows:

Population range	Maximum amount
Fewer than 1,500,000	$10,000
1,500,000 to 4,999,999	$15,000
5,000,000 and above	$20,000

C. Applications: To receive capacity building or incentive funding, applicants must submit all information required in the FHAP Application Kit. Agencies eligible for third-or-later-year funding for training and complaint processing activities will be sent a Cooperative Agreement. The Agreement will include the allotment for training and case processing support. With respect to agencies eligible for incentive funds, the amount approved also will be included in the Agreement. (Approved by the Office of Management and Budget under OMB control number 2529–0006.)

VII. Application Review, Notification and Award Procedures

A. Review: Applications for capacity building and incentive funding will be reviewed upon receipt for completeness and conformity with 24 CFR Part 111. With respect to any application for funding in which the responsible HUD Regional Office has found deficiencies, the Regional Office will notify the applicant in writing of the deficiencies found. The applicant must, within 20 days from receipt of the notification from the Regional Office, correct the deficiency or supply the additional information that the Regional Office requests. HUD may consider an applicant's failure to respond appropriately within the 20-day period as an abandonment of the application.

B. Appeal: If the applicant is notified by the Regional Office that, notwithstanding its attempt to correct the deficiency or supply the requested information, the applicant has failed to do so in the determination of the Regional Office, the applicant may appeal this determination to the Assistant Secretary for Fair Housing and Equal Opportunity.

C. Notification: An application for funding will be considered approved as of the date of HUD's written offer to the applicant to enter into a cooperative agreement.

D. Negotiations: After submission of the application, but before the award, HUD may require that applicants participate in negotiations and submit application revisions resulting from those negotiations. (HUD expects to make awards within four weeks after negotiations are successfully completed.)

E. Type of Funding Instrument: Applicants will be funded under fixed-price Cooperative Agreements.

The collection of information requirements contained in section VI of this Notice were submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980 and have been approved and assigned OMB control number 2529–0005.

The Catalog of Federal Domestic Assistance program number is 14.401.

Authority: Fair Housing Act (42 U.S.C. 3601–20); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: June 13, 1989.

Thomas D. Casey,

General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 89–14595 Filed 6–20–89; 8:45 am]

BILLING CODE 4210-28-M

federal register

Wednesday
June 21, 1989

Part IV

Department of Education

Office of Educational Research and Improvement

Library Programs; Applications for New Awards for Fiscal Year 1990; Notice

DEPARTMENT OF EDUCATION

Office of Educational Research and Improvement

Library Programs; Applications for New Awards for New Awards for Fiscal Year 1990

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year 1990

SUMMARY: The Secretary invites applications for new awards for fiscal year 1990 and announces closing dates for the transmittal of applications under the Library Services to Indian Tribes and Hawaiian Natives Program—Basic Grants, Library Career Training Program, Strengthening Research Library Resources Program, Library Literacy Program, College Library Technology and Cooperation Grants Program, Library Research and Demonstration Program, and Library Services to Indian Tribes and Hawaiian Natives Program—Special Projects Grants.

Organization of Notice. This notice contains two sections. Section I includes a chart listing closing dates in chronological order, and other pertinent information about programs covered by this notice. Section II consists of the individual application announcements for each program.

SUPPLEMENTARY INFORMATION: All programs announced in this notice, with the exception of the Library Services to Indian Tribes and Hawaiian Natives Program, including both Basic Grants and Special Projects Grants, are subject to the requirements of Executive Order 12372, Intergovernmental Review of Federal Programs. Information regarding applicable procedures under this order will be included in the application packages.

Any institution of higher education that wishes to apply for funds under one of the programs authorized by Title II of the Higher Education Act (HEA) (20 U.S.C. 1021 *et seq.*) must be an eligible institution under the terms of 20 U.S.C. 1201(a). If you wish to apply to the Department of Education for a determination of institutional eligibility, you may contact: Mr. Harry Cooley, U.S. Department of Education, Office of Postsecondary Education, DCMAS, Division of Eligibility and Certification, 400 Maryland Avenue, SW., Washington, DC 20202, (202) 732–3465.

DATES: The closing dates for transmitting applications under this notice are listed in Section I of this notice.

ADDRESSES: The addresses for obtaining applications for, or further information about, individual programs or competitions are in the respective announcements for those programs contained in Section II of this notice.

SECTION I.—PROGRAMS AND CLOSING DATES FOR LIBRARY PROGRAMS

Title of Program and CFDA Number	Applications available	Deadline for transmittal of applications	Deadline for intergovernmental review	Tentative award date	Estimated available funds	Estimated range of awards	Estimated size of awards	Estimated number awards	Project period in months
Library Services to Indian Tribes and Hawaiian Natives Program—Basic Grants (84.163A).	8/15/89	9/29/89	11/28/89	1/15/90	* $1,212,175	NA	$3,700	175	12
Library Career Training Program—Fellowship Awards (84.036).	8/15/89	10/10/89	12/10/89	2/9/90	277,600	$10,800–84,000	14,800	20	12
Library Career Training Program—Institute Awards (84.036).	8/15/89	10/10/89	12/10/89	2/9/90	122,167	25,000–125,000	43,000	1–5	12
Strengthening Research Library Resources Program (84.091).	8/7/89	10/31/89	1/5/90	6/1/90	5,675,000	40,000–500,000	145,000	39	12
Library Literacy Program (84.167)	9/6/89	11/9/89	1/9/90	5/25/90	4,730,000	1,000–25,000	23,000	200	12
College Library Technology and Cooperation Grants Program (84.197).	11/1/89	1/12/90	3/12/90	8/10/90	3,851,000	15,000–225,000	Type A—$30,000 B—125,000 C—25,000 D—100,000	A—20 B—15 C—5 D—10	12–36
Library Research and Demonstration Program (84.039).	11/15/89	2/1/90	4/1/90	6/1/90	309,000	50,000–100,000	70,000	3–5	12
Library Services to Indian Tribes and Hawaiian Natives Program—Special Projects Grants (84.163B).	2/14/90	3/30/90	5/29/90	8/3/90	1,240,000	20,000–165,000	67,000	17	12

Note: The Department is not bound by any estimates in this notice. Moreover, the Administration has proposed new legislation, the Library Services Improvement Act, which would, if enacted, replace the Library Services and Construction Act (including Titles IV and VI) and Title II of the Higher Education Act. These figures reflect fiscal year 1989 appropriation amounts for LSCA Titles IV and VI and HEA Title II. Thus, these estimated amounts are subject to change.

* Of this amount, approximately half will go to Indian tribes and half to Hawaiian Natives.

Section II—Application Notices

CFDA No. 84.163A—Library Services to Indian Tribes and Hawaiian Natives Program—Basic Grants (Library Services and Construction Act, Title IV).

Purpose: Provides basic grants to eligible Indian tribes and to eligible Hawaiian native organizations to establish or improve public library services for Indian tribes and Hawaiian natives.

Applicable Regulations: (a) The Basic Grants to Indian Tribes and Hawaiian Natives Program Regulations in 34 CFR Part 771; and (b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75, 77, 79, 80, 81, and 85.

For Applications or Information Contact: Frank A. Stevens, Director, or Beth Fine, Program Officer, Library Development Staff, Office of Library Programs, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 404, Washington, D.C. 20208–5571. Telephone: (202) 357–6319 or 357–6323, respectively.

Program Authority: 20 U.S.C. 351 *et seq.*

CFDA No. 84–036—Library Career Training Program—Fellowships and Institutes (Higher Education Act, Title II, Part B).

Purpose: Provides grants to train persons in librarianship through fellowships, institutes, and traineeships and to establish, develop, and expand programs of library and information science.

Applicable Regulations: (a) The Library Career Training Program Regulations in 34 CFR Part 776; and (b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, and 85.

Priorities: In accordance with § 776.5 of the program regulations, each year the Secretary may select one or more of the program's six established priorities and allocate funds to each selected priority. These priorities apply to both fellowships and institutes. For fiscal year 1990, the Secretary is particularly interested in applications that meet the following invitational priorities:

(a) To train or retrain library personnel in areas of library specialization where there are currently shortages, such as children's services, science reference, yound adult services, school media, and cataloging;

(b) To train or retrain library personnel in new techniques of information acquisition, transfer, and communication technology;

(c) To increase excellence in library education by encouraging study in librianship and related fields at the doctoral level; and

(d) To train or retrain library personnel to serve the information needs of the elderly, the illiterate, the disadvantaged, or residents of rural America.

However, under 34 CFR 75.105(c)(1), an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications.

For the purposes of this competition, the Secretary plans to allocate up to 30% of the available funds for institutes, if a sufficient number of institute applications merit funding. The remaining funds will be allocated for fellowships.

For Applications or Information Contact: Frank A. Stevens, Director, or Yvonne B. Carter, Program Officer, Library Development Staff, Office of Library Programs, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 404, Washington, DC 20208–5571. Telephone: (202) 357–6319 or 357–6320, respectively.

Program Authority: 20 U.S.C. 1021 *et seq.*

CFDA No. 84–091—Strengthening Research Library Resources Program (Higher Education Act, Title II, Part C).

Purpose: Provides grants to the Nation's major research libraries to maintain and strenghthen their collections and make their holdings available to other libraries whose users have need for research materials.

Applicable Regulations: (a) The Strengthening Research Library Resources Program Regulations in 34 CFR Part 778; and (b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, and 85.

For Applications or Information Contact: Frank A. Stevens, Director, or Louise Sutherland, Program Officer, Library Development Staff, Office of Library Programs, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 404, Washington, DC 20208–5571. Telephone: (202) 357–6319 or 357–6322, respectively.

Program Authority: 20 U.S.C. 1021 *et seq.*

CFDA No. 84.167—Library Literacy Program (Library Services and Construction Act, Title VI).

Purpose: Provides grants to State and local public libraries to support literacy projects. Grants may not exceed $25,000.

Applicable Regulations: (a) The Library Literacy Program Regulations in 34 CFR Part 769; and (b) the Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 75, 77, 79, 80, 81, and 85.

For Applications or Information Contact: Frank A. Stevens, Director, Carol Cameron or Barbara Humes, Program Officers, Library Development Staff, Office of Library Programs, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 404, Washington, DC 20208–5571. Telephone: (202) 357–6319, 357–6321, or 357–6376, respectively.

Program Authority: 20 U.S.C. 351 *et seq.*

CFDA No. 84.197—College Library Technology and Cooperation Grants Program (Higher Education Act, Title II, Part D).

Purpose: To encourage resource-sharing projects among the libraries of institutions of higher education through the use of technology and networking, to improve the library and information services provided to them by public and nonprofit private organizations, and to conduct research or demonstration projects to meet special needs in using technology to enhance library and information sciences.

Applicable Regulations: (a) The College Library Technology and Cooperation Grants Program Regulations in 34 CFR Part 779; and (b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 76, 77, 79, 80, and 85.

For Applications or Information Contact: Frank A. Stevens, Director, or Linda Loeb, Program Officer, Library Development Staff, Office of Library Programs, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 404, Washington, DC 20208–5571. Telephone (202) 357–6319 or 357–6902, respectively.

Program Authority: 20 U.S.C. 1021 *et seq.*

CFDA No. 84.039—Library Research and Demonstration Program (Higher Education Act, Title II, Part B).

Purpose: Provides grants to institutions of higher education and other public or private agencies, institutions, and organizations for research and demonstration programs related to the improvement of libraries, training in librarianship, and the dissemination of information derived from such projects.

Applicable Regulations: (a) The Library Research and Demonstration Program Regulations in 34 CFR Part 777; and (b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, and 85.

Priorities: For fiscal year 1990, the Secretary particularly invites applications that meet one or more of the following priorities:

(a) *Economics of Libraries and Library Funding.* To support one or more research projects to study:

- Factors influencing the funding of libraries;
- The contribution of library services to larger public goals (such as economic development, education, environmental protection);
- Cost benefit/effectiveness models; and
- Existing examples of innovative approaches to library funding.

(b) *Access to Information.* To support one or more projects for identifying:

- The potential effects of new methods of information transfer on user access to information; and
- The extent to which format affects access to and use of information.

(c) *Information Needs/Users.* To support one or more research projects to determine:

- What the needs of library users will be in 10–15 years;
- Which information needs of the community are met by public, academic, and school libraries;

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• How people learn about the existence of information and its availability; and

• What shapes user's perceptions of their own library/information needs and whether these perceptions can be influenced.

(d) *Libraries and Education (The Library's Role in Education).* To support one or more research projects addressing the educational, cultural, and intellectual role of the library in relation to other educational institutions in a community of which it is a part.

These priorities were developed in consultation with researchers, practitioners, civic and business leaders, policymakers, and professional associations, all of whom participated in a series of meetings sponsored by the Department to identify "Issues in Library Research—Proposals for the Nineties."

However, under 34 CFR 75.105(c)(1), an application that meets these invitational priorities does not receive competitive or absolute preference over other applications.

For Applications or Information Contact: Frank A. Stevens, Director, or Yvonne B. Carter, Program Officer, Library Development Staff, Office of Library Programs, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 404, Washington, DC 20208-5571. Telephone (202) 357-6319 or 357-6320, respectively.

Program Authority: 20 U.S.C. 1021 *et seq.*

CFDA No. 84.163B—Library Services to Indian Tribes and Hawaiian Natives Program—Special Projects Grants (Library Services and Construction Act, Title IV).

Purpose: With funds remaining after Basic Grants are awarded, the program makes awards to eligible Indian tribes and to eligible Hawaiian native organizations to establish or improve public library services for Indians and Hawaiian natives.

Applicable Regulations: (a) The Special Projects Grants to Indian Tribes and Hawaiian Natives Program Regulations in 34 CFR part 772; and (b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 75, 77, 79, 80, 81, and 85.

For Applications or Information Contact: Frank A. Stevens, Director, or Beth Fine, Program Officer, Library Development Staff, Office of Library Programs, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 404, Washington, DC 20208-5571. Telephone (202) 357-6319 or 357-6323, respectively.

Program Authority: 20 U.S.C. 351 *et seq.*

Dated: June 15, 1989.

Bruno V. Manno,

Acting Assistant Secretary for Education Research and Improvement.

[FR Doc. 89-14598 Filed 6-20-89; 8:45 am]

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federal register

Wednesday
June 21, 1989

Part V

Department of Housing and Urban Development

Office of the Secretary

24 CFR Parts 50 and 961

Public Housing Drug Elimination Program; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 50 and 961

[Docket No. R-89-1442; FR-2592]

RIN 2577-AA76

Public Housing Drug Elimination Program

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement the Public Housing Drug Elimination Act of 1988, which was enacted as Chapter 2 of Subtitle C of Title V of the Anti-Drug Abuse Act of 1988 (Pub. L. 100-690, approved November 18, 1988). The program would authorize HUD to make grants to public housing agencies (PHAs) and Indian Housing Authorities (IHAs) for use in eliminating drug-related crime in public housing projects. To receive funding under this program, PHAs and IHAs would be required to develop a plan for addressing drug-related crime, and to indicate how assisted activities would further the plan. Grant funds may be used for a number of activities designed to eliminate drug-related crime, including: (1) Employment of security personnel and investigators; (2) reimbursement of local law enforcement agencies for the cost of providing additional security and protective services; (3) physical improvements designed to enhance security in public housing projects; (4) support of public housing tenant patrols acting in cooperation with local law enforcement agencies; (5) innovative programs to reduce drug use in and around public housing projects; and (6) funding of Resident Management Corporations (RMCs) and Resident Councils (RCs) to develop security and drug abuse prevention programs involving site residents. Funds have not yet been appropriated by Congress for the grants under this program. When funds are appropriated, the Department will publish in the **Federal Register** a separate Notice of Fund Availability (NOFA) to inform PHAs and IHAs of application submission instructions. Grant applications should not be submitted until the NOFA is published.

DATE: Comments must be received by August 21, 1989.

ADDRESS: Interested persons are invited to submit comments on the proposed rule to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 755-2575. Only public comments of six or fewer total pages will be accepted via FAX transmittal. This limitation is necessary to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk ((202) 755-7084). Comments should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours (weekdays 7:30 a.m. to 5:30 p.m.) at the above address. (Neither of the telephone numbers listed in this paragraph is toll-free.)

FOR FURTHER INFORMATION CONTACT: Nancy Chisholm, Director, Office of Policy, Office of Public and Indian Housing, Room 4118, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755-6713. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. Public reporting burden for the collection of information requirements contained in this rule are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading, *Other Matters*. Send comments regarding this burden estimate, or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., Room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

I. Background

Congress authorized the Public Housing Drug Elimination Pilot Program under Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 (Pub. L. 100-690, approved November 19, 1988) ("the Act"). The program authorizes HUD to make grants to public housing agencies (PHAs) and Indian Housing Authorities (IHAs) to eliminate drug-related crime in selected public housing projects.

At the present time, no funding has been appropriated for this program. In the event that funding for the program becomes available before final regulations can be issued, the Department will publish a separate Notice of Fund Availability (NOFA) to allocate these funds. No applications under this program may be submitted until a NOFA is published.

II. Implementation of the Program

The program provides grant funds to PHAs and IHAs for a number of eligible activities designed to reduce the incidence of drug-related crime in public housing projects.

A. *Entities eligible to participate.* In general, a PHA or IHA may undertake any of the eligible activities under Part 961 or it may contract with a qualified third party, including Resident Management Corporations (RMCs) and Resident Councils (RCs).

An RMC or RC under this part must comply with the requirements of 24 CFR Part 964 (as amended on September 7, 1988, see 53 FR 34676). In the case of an IHA, the RMC or RC must meet the requirements of § 961.5. However, to facilitate the ability of PHAs to combat drug-related criminal activity in their projects, RCs as well as RMCs will be permitted to undertake any of the management functions specified in Part 961 (including any of the eligible activities at § 961.10) notwithstanding the otherwise applicable requirements of 24 CFR Part 964.

B. *Eligible activities.* Grant amounts may only be used for the following activities:

1. *Security personnel.* Security personnel may be employed under Part 961 to patrol public housing projects and to carry out security functions. While "drug-related crime" is defined by statute to mean, "the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use, of a controlled substance", HUD anticipates that there may be instances in which a security officer may be called upon to deal with a crime that is not "drug-related", as defined in the Act. Security personnel employed with assistance under Part 961 may respond to crimes that are not drug-related if they become aware of the crimes in the course of carrying out their drug-related crime duties.

2. *Additional security and protective services.* Grant funds may be used to reimburse local law enforcement agencies for the cost of providing additional security and protective services for public housing projects under this program. The Department construes "additional" to mean that Federal grant funds may not be used to supplant existing funding levels for security services to a project. Consequently, the security and protective services under this provision must be either:

(i) A service that no local law enforcement agency (or agencies) provided for public housing projects administered by the grantee immediately before the applicable Notice of Fund Availability under Part 961 was published in the **Federal Register**; or

(ii) A quantifiable increase in the level of an ongoing service above that which the local law enforcement agency (or agencies) provided for public housing projects administered by the grantee immediately before the applicable Notice of Fund Availability was published in the **Federal Register**.

An example of a service that might be encompassed under this provision is the reimbursement of local law enforcement agencies for extra patrols of a project.

Services to be provided with grant funds should be over and above those for which the local government is already contractually obligated under its Cooperation Agreement with the PHA. This requirement stems from the locality's obligation under the Cooperation Agreement to furnish to the PHA public services and facilities that are comparable to those provided at no cost or at a comparable cost to the general community. The execution of this Cooperation Agreement between the governing body and the PHA constitutes a condition for initial approval for project development and the Federal assistance commitments under the Annual Contributions Contract. (*See* 24 CFR 941.201(c) and the definition of "Cooperation Agreement" under 24 CFR 941.103.)

Consequently, applications for grants under this program must address the issue of whether the local governing body is meeting its obligations under the Cooperation Agreement, particularly as to law enforcement. While due consideration will be given to special circumstances, the Department will assess this factor in determining whether a locality supports the PHA's anti-drug related crime efforts. (See § 961.25(b)(4).)

3. *Physical improvements designed to enhance security.* The program authorizes the use of grant funds for physical improvements specifically designed to enhance security in public housing projects. These improvements might include (but are not limited to) the installation of lighting systems, bolts, or locks inside, or on the grounds of, selected projects, or the reconfiguration of common areas to discourage drug-related crime. Such improvements may not involve the demolition of any public housing units. A PHA may not use grant funds under this part for any physical improvements that would result in the displacement of persons.

It should be noted that under section 12 of the United States Housing Act of 1937, the employment of certain workers in connection with physical improvements relating to the development of a public housing project, or the employment of certain workers in connection with carrying out non-routine maintenance in a project, requires the PHA to pay certain prevailing wage rates. Section 961.40(a) of the proposed rule should be consulted for further guidance on these requirements.

4. *Employment of investigators.* Under Part 961, a PHA may employ individuals to investigate drug-related crime on or about the real property comprising the public housing project and to provide evidence relating to such crimes in any administrative or judicial proceedings.

5. *Public housing tenant patrols.* A PHA may use grant funds under Part 961 to provide training, communications equipment, and other related equipment (including uniforms), for use by voluntary public housing tenant patrols acting in cooperation with officials of local law enforcement agencies.

6. *Innovative programs to reduce the use of drugs.* Section 5124(6) of the Act provides for the use of grant funds for "innovative programs" to reduce the use of drugs in and around public housing projects. The Department would construe the term "innovative" to mean that the program uses a new or creative approach to accomplish this statutory objective. In addition to law enforcement activities, a PHA, RMC or RC may use grant funds under this section to develop and operate, or to contract for services to provide, innovative drug education and treatment, counseling, referral, and outreach efforts. Grant funds may also be used for innovative strategies to prevent drug-related crime, including recreational, vocational, educational and other constructive alternatives for youth.

7. *Resident Management Corporations and Resident Councils.* Grant funds may be provided by a grantee under Part 961 to RMCs and RCs to develop security and drug abuse prevention programs involving site residents. These programs may include (but are not limited to) the development of law enforcement strategies, drug education and treatment, counseling, referral, leadership training, security patrols, and outreach efforts.

IHAs that seek funding for this category of eligible activities must have in place an RMC or RC that meets the requirements specified at § 961.5 (see definitions of "Resident Management Corporation" and "Resident Council"). An RMC or RC established under this provision is cognizable only for purposes of funding under Part 961. Furthermore, the requirements established under this rule will be superseded by the final Indian tenant participation guidelines that HUD intends to publish.

III. Requirement of a Plan

As a condition of funding, section 5125(a) of the Act requires PHAs and IHAs to submit a grant application to HUD that includes a plan addressing the problem of drug-related crime on the premises of projects proposed for assistance under Part 961. (See § 961.15.)

While this plan is not intended to be an exhaustive document, it must address each of the following elements: (1) An assessment of the nature and extent of the problem of drug-related crime, and the problems associated with drug-related crime; (2) the current activities being undertaken by the PHA or IHA, the State or local government, and RMCs and RCs to address the drug-related crime problem; and (3) a realistic strategy for responding to the problem of drug-related crime.

It should be noted that while the Act refers to "drug-related crime" under the plan provision at section 5125(a), and simply to "crime" under the selection criteria at section 5125(b) (1), (2) and (4), the Department believes that Congress intended to limit the scope of the program to drug-related crime. As a result, the proposed rule generally reflects this interpretation.

One exception is that the plan asks for an assessment not only of the problem of drug-related crime, but also of the problems associated with drug-related crime. Such "associated" problems might include homicides, muggings, burglaries, and incidents of vandalism resulting from drug-related crime in the projects. The Department believes that this information is vital to

obtaining an accurate assessment of the drug-related crime problem in the projects proposed for assistance under this part.

IV. Rating Factors

To qualify for a grant under Part 961, PHAs and IHAs must submit an application that meets the requirements of § 961.20 (including the plan under § 961.15). Applications will be evaluated on the basis of the selective rating criteria at § 961.25(b). These criteria include: (1) The extent of the drug-related crime problem in the applicant's targeted projects; (2) the quality of the plan under § 961.15 (for PHA applicants, this criterion will also include an evaluation of the extent of RMC or RC involvement in the development of the grant application, and the extent to which an RMC or RC will have substantial management responsibilities under the PHA's plan); (3) the applicant's capability to carry out its plan; and (4) the extent to which the local government and local community support the applicant's anti-drug-related crime activities.

With respect to the third rating criterion, HUD will determine an applicant's capability to carry out its plan on the basis of several factors, including its administrative capability to manage its projects. Administrative capability will be determined in accordance with the requirements of the Annual Contributions Contract executed between HUD and the PHA or IHA, and the relevant program regulations (see 24 CFR Parts 905 and 941).

The second rating criterion assesses the quality of the applicant's plan based upon the extent to which the information provided by the applicant is accurate and complete, and the plan strategy is realistic and attainable. For PHA applicants, the Department will provide additional points under this criterion (see § 961.25(b)(2)(B)) based upon the extent of RMC or RC involvement in the development of the grant application, and the extent to which an RMC or RC will assume substantial management responsibilities under the PHA's plan. Since IHAs are not covered by the Department's existing tenant participation and management regulations (24 CFR Part 964), this additional criterion will not be applied to IHAs.

Until HUD issues final guidance on Indian tenant participation, the selection process under Part 961 will be as follows:

PHAs that submit grant applications under Part 961 would be evaluated on the four rating criteria of § 961.25(b), with each rating factor assigned up to a maximum of 25 points. A PHA applicant could obtain up to an additional 15 points under § 961.25(b)(2)(B) based upon the extent of RMC or RC involvement in the development of the grant application, and the extent to which an RMC or RC will assume substantial management responsibilities under the PHA's plan. Applicants would then be ranked based upon their total selective rating score.

IHAs would be evaluated on the four rating criteria of § 961.25(b), with each rating factor assigned up to a maximum of 25 points. However, an IHA would not be rated on the RMC/RC participation element under § 961.25(b)(2)(B). IHA applicants would be separately ranked based upon their total selective rating scores.

Grant awards would be made to the highest-ranked applicants, but under § 961.25(c) HUD may use its discretion to ensure an equitable distribution of grant funds among both pools of highest-ranking PHA and IHA applicants. In exercising its discretion under this section, HUD shall take into account the overall ratio of PHAs to IHAs; the ratio of fundable applicants submitted by PHAs and IHAs; and the extent of available grant funds under Part 961.

The Department may also exercise its discretion under § 961.25(d) to substitute one or more highly rated applications if the highest-ranked applications under the selection criteria do not ensure equitable geographical distribution, or distribution among PHAs and IHAs of varying sizes.

V. Encouragement of Resident Management Corporations and Resident Councils

While this program is intended to provide grants to PHAs and IHAs, the Department strongly encourages the participation of RMCs and RCs in the effort to combat drug-related crime. Specifically, § 961.25(b)(2)(B) of the proposed rule provides maximum rating points to a PHA that establishes that its grant application, including its plan, was prepared in cooperation with its RMC or RC, and that an RMC or RC will have substantial program management responsibilities under the PHA's plan.

The participation of RMCs and RCs is especially critical in implementing certain aspects of the program, including development of the security and drug abuse prevention programs under § 961.10(g), and implementation of the voluntary tenant patrols under § 961.10(e).

VI. Environmental Review

This rule proposes to amend 24 CFR Part 50 by adding a new categorical exclusion for grants under Part 961 from review under the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321). This exclusion would not eliminate review under related environmental authorities, such as the National Historic Preservation Act of 1966. The exclusion is premised on the fact that drug elimination grants typically would not involve a potential for significant impact to the physical environment. To the extent that grant funds are used for physical improvements to enhance security under § 961.10(c), that section provides that the improvements may not involve the demolition of any dwelling units in a project.

As a condition of grant approval, HUD will perform an environmental review under § 961.25(e) of this rule to the extent required under NEPA and applicable related authorities at 24 CFR Part 50.

Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50 implementing section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, 451 Seventh Street SW., Room 10276, Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of the Executive Order on Federal Regulations issued on February 17, 1989. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b), (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule would provide grants to PHAs and IHAs to eliminate drug-related crime in selected lower income housing projects. In certain instances, the PHA can provide grant funds under the program to nonprofit Resident Management Corporations and Resident Councils for certain eligible program activities. Although small entities could participate in the program, the rule would not have a significant economic impact on them.

Family Impact. The General Counsel, as the Designated Official for Executive Order 12606, *the Family*, has determined that the provisions of this rule have the potential for significant impact on family formation, maintenance and general well-being within the meaning of the Order. The proposed rule would implement a program that would encourage PHAs and IHAs to develop a plan for addressing the problem of drug-related crime, and to make available grants to help PHAs and IHAs to carry out this plan. As such, the program is intended to improve the quality of life of public housing project residents by reducing the incidence of drug-related crime and should have a strong positive effect on family formation, maintenance and general well-being for PHAs and IHAs selected for funding. Further review under the Order is not necessary, however, since the rule essentially tracks the authorizing legislation and involves little exercise of HUD discretion.

Federalism Impact. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the provisions of this rule have "federalism implications" within the meaning of the Order. The rule would implement a program that would encourage PHAs and IHAs to develop a plan for addressing the problem of drug-related crime, and to make available grants to PHAs and IHAs to help them carry out their plans. As such, the program would help PHAs and IHAs combat serious drug-related crime problems in their projects, thereby strengthening their role as instrumentalities of the States. Further review under the Order is unnecessary, however, since the rule generally tracks the statute and involves little implementing discretion. The rule's most significant exercise of discretion involves the establishment of selection preferences based upon the extent of RMC or RC involvement in the development of the grant application, and the extent to which RMCs and RCs have substantial management responsibilities under the plan. The involvement of these resident organizations should greatly increase the success of the anti-drug-related crime efforts and, therefore, should have positive effects on the PHAs.

This proposed rule was listed as Sequence No. 1020 in the Department's Semiannual Agenda of Regulations published on April 24, 1989 (54 FR 16708, 16714) under Executive Order 12291 and the Regulatory Flexibility Act.

The Public Housing Drug Elimination Program is not listed in the Catalog of Federal Domestic Assistance.

The collection of information requirements contained in this proposed rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Certain sections of this rule have been determined by the Department to contain collection of information requirements. Information on these requirements is provided as follows:

TABULATION OF ANNUAL REPORTING BURDEN—PROPOSED RULE—PUBLIC HOUSING DRUG ELIMINATION PROGRAM

Description of information collection	Section of 24 CFR affected	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours
Plan for addressing drug-related crime problem(s) includes assessment, current activities, strategy	961.15	500	1	500	24	12,000
Request for tenant comments on plan and application	961.18	5,000	1	5,000	1	5,000
Application requirements: SF-424, certifications, copies of tenant comments	961.20	500	1	500	30	15,000
Periodic reports on fund expenditures, data tracking drug-related crime	961.35	100	1	[1] 100	24	2,400
Total annual burden						34,400

[1] 3-year period.

List of Subjects

24 CFR Part 50

Environmental assessments, Environmental impact statements, Environmental policies and review procedures.

24 CFR Part 961

Grant programs: Housing and community development; low and moderate income housing; drugs.

Accordingly, the Department proposes to amend 24 CFR Part 50, and to add a new 24 CFR Part 961, to read as follows:

PART 50—PROTECTION AND ENHANCEMENT OF ENVIROMENTAL QUALITY

1. The authority citation for 24 CFR Part 50 would be revised to read as follows:

Authority: Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. Section 50.20 would be amended by adding a new paragraph (p) to read as follows:

§ 50.20 Categorical exclusions

* * * * *

(p) Grants under the Public Housing Drug Elimination Program (Pub. L. 100-690, 24 CFR Part 961).

3. A new Part 961 would be added to Title 24 of the Code of Federal Regulations, to read as follows:

PART 961—PUBLIC HOUSING DRUG ELIMINATION PROGRAM

Subpart A—General

961.1 Purpose.
961.3 Resident Management Corporations and Resident Councils
961.5 Definitions.

Subpart B—Eligible Activities

961.10 Eligible activities.

Subpart C—Application and Selection

961.15 Plan.
961.18 Resident participation.
961.20 Application requirements.
961.25 Application selection.

Subpart D—Grant Administration

961.30 Grant administration.
961.35 Periodic reports
961.40 Other Federal requirements.

Authority: Sec. 5127, Public Housing Drug Elimination Act of 1988 (Chapter 2, Subtitle C, Title V, Anti-Drug Abuse Act of 1988 (Pub. L. 100-690, approved November 18, 1988)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—General

§ 961.1 Purpose.

This part establishes the Public Housing Drug Elimination program. The

purposes of the program are to: (a) Encourage public housing agencies (PHAs) and Indian Housing Authorities (IHAs) to develop a plan for addressing the problem of drug-related crime on the premises of the public and Indian housing projects proposed for funding under this part; and (b) Make available Federal grants to help PHAs and IHAs carry out their plans.

§ 961.3 Resident Management Corporations and Resident Councils.

(a) The elimination of drug-related crime in public housing projects requires the active involvement and commitment of public housing residents and their organizations. To facilitate the ability of PHAs to combat drug-related criminal activity in their projects, Resident Councils (RCs) and Resident Management Corporations (RMCs) will be permitted to undertake management functions specified in this part, notwithstanding the otherwise applicable requirements of 24 CFR Part 964. The Department encourages PHAs to make Resident Management Corporations (RMCs) and Resident Councils (RCs) full partners in this effort. Areas in which this partnership can be particularly significant include (but are not limited to) the planning and execution of strategies and activities to eliminate drug-related crime in public housing projects, the funding of RMCs/RCs to carry out voluntary tenant patrols (§ 961.10(e)), and to develop security and drug-abuse prevention programs involving site residents (§ 961.10(g)). RMCs and RCs can also carry out eligible activities under § 961.10 on the grantee's behalf. To emphasize the importance that the Department attaches to full RMC/RC participation in activities assisted under this part, § 961.18 requires applicants to: (1) Give these organizations (as well as the residents of the targeted projects) a reasonable opportunity to comment on the application; and (2) Give serious consideration to these comments in developing the application.

(b) In addition, points will be awarded in the application selection process to PHA's (as provided by § 961.25(b)(2)(B)) based upon the extent of RMC or RC involvement in the development of the grant application, and the extent to which an RMC or RC will have substantial program management responsibilities under the PHA's plan. (This rating criterion will not be applied to IHA applicants, since IHAs are not covered by the Department's existing tentant participation and management regulations (24 CFR Part 964) and, hence, would be competitively disadvantaged. Until HUD promulgates final regulations on Indian tenant participation, applicants under this part will be selected in accordance with the requirements of § 961.25(a)).

§ 961.5 Definitions.

Applicant means a PHA or IHA that applies for a grant under this part.

Chief executive officer (CED) of a State or a unit of general local government means the elected official or the legally designated official, or his or her designee, who has the primary responsibility for the conduct of the entity's governmental affairs. Examples of the chief executive officer of a unit of general local government are: the elected mayor of a municipality; the elected county executive of a county; the chairperson of a county commission or board in a county that has no elected county executive; or the official designated pursuant to law by the governing body of the unit of general local government. The chief executive officer of an Indian tribe is the tribal governing official.

Controlled substance means a drug or other substance or immediate precursor included in schedule I, II, III, IV, or V of section 102 of the Controlled Substances Act (21 U.S.C. 802). The term does not include distilled spirits, wine, malt beverages or tobacco as those terms are defined in Subtitle E of the Internal Revenue Code of 1954.

Drug-Related crime means the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use, of a controlled substance.

Governmental jurisdiction means the unit of general local government, State, or Indian tribe in which the public housing project administered by the applicant is located.

Grantee means an applicant that executes a grant agreement with HUD under this part.

Hud or *Department* means the United States Department of Housing and Urban Development.

Indian means any person recognized as being an Indian or Alaska Native by an Indian tribe, the Federal Government, or any State.

Indian Housing Authority (IHA) means any entity that:

(a) Is authorized to engage in or assist in the development or operation of lower income housing for Indians; and

(b) Is established either by exercise of the power of self-government of an Indian tribe independent of State law, or by operation of State law providing specifically for housing authorities for Indians, including regional housing authorities in the State of Alaska.

Indian tribe means any tribe, band, pueblo, group, community, or nation of Indians or Alaska Natives.

Local law enforcement agency means a police department, sheriff's office, or other entity of the governmental jurisdiction that has law enforcement responsibilities for the community at large, including the public housing projects administered by the applicant. More than one law enforcement agency may have these responsibilities for the jurisdiction that includes the applicant's projects.

Public housing agency (PHA) means any State, county, municipality or other governmental entity or public body (or agency or instrumentality thereof) that is authorized to engage in or assist in the development or operation of housing for lower income families.

Public housing project or *project* means lower income housing and all necessary appurtenances developed, acquired, or assisted by a PHA or an IHA under the United States Housing Act of 1937 (other than under section 8). A project encompasses those buildings identified in the Annual Contributions Contract (ACC) that is executed between HUD and the PHA or IHA.

Resident Council (RC) means (a) An incorporated or unincorporated nonprofit organization or association that meets each of the following requirements:

(1) It must be representative of the tenants it purports to represent.

(2) It may represent tenants in more than one project or in all of the projects of a PHA, but it must fairly represent tenants from each project that it represents.

(3) It must adopt written procedures providing for the election of specific officers on a regular basis (but at least once every three years).

(4) It must have a democratically elected governing board. The voting membership of the board must consist of tenants of the project or projects that the tenant organization or resident council represents.

(b) For purposes of this part only, a Resident Council for an Indian Housing Authority means an incorporated or unincorporated nonprofit organization or association that meets the requirements of paragraph (a) (i) (1), (2), and (4) of this definition. In addition, the organization must ensure compliance with each of the following requirements:

(1) Tenants and the IHA must identify appropriate roles and responsibilities for creating and sustaining constructive tenant participation. Tenants should have the primary responsibility for determining their goals, organizational structure, and method of operating. An IHA should be willing to consider any reasonable request by tenants or tenant organizations to participate in management.

(2) A tenant organization may request that it be recognized as the official organization representing the tenants in meetings with the IHA or with other entities. An IHA should grant formal recognition of the tenant organization if it meets the requirements for such an organization under this part.

(3) At a minimum, the IHA and tenant organization should put in writing their understanding concerning the elements of their relationship.

Resident Management Corporation (RMC) means (a) the entity that proposes to enter into, or that enters into, a management contract with a PHA under 24 CFR part 964. The corporation must have each of the following characteristics:

(1) It must be a nonprofit organization that is incorporated under the laws of the State or Indian tribe in which it is located.

(2) It may be established by more than one tenant organization or resident council, so long as each such organization or council: (i) Approves the establishment of the corporation and (ii) has representation on the Board of Directors of the corporation.

(3) It must have an elected Board of Directors.

(4) Its by-laws must require the Board of Directors to include representatives of each tenant organization or resident council involved in establishing the corporation.

(5) Its voting members must be tenants of the project or projects it manages.

(6) It must be approved by the resident council. If there is no council, a majority of the households of the project must approve the establishment of such an organization to determine the feasibility of establishing a corporation to manage the project.

(7) It may serve as both the resident management corporation and the resident council, so long as the corporation meets the requirements of Part 964 for a resident council.

(b) For purposes of this part only, a Resident Management Corporation for an Indian Housing Authority means the entity that proposes to enter into, or that enters into, a management contract with an IHA under this part, and that otherwise meets the requirements of paragraphs (a)(1), (a)(2)(i), (a)(6) and (a)(7) of this definition. Under paragraph (a)(7) of this definition a Resident Management Corporation may serve as both the RMC and the RC so long as the corporation meets the requirements of this part.

State means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United State, and the Trust Territory of the Pacific Islands.

Unit of general local government means any city, county, town, township, parish, village, or other general purpose political subdivision of a State.

Subpart B—Eligible Activities

§ 961.10 Eligible activities.

Activities assisted under this part must be directed toward the elimination of drug-related crime in public housing projects, and may include only one or more of the following:

(a) *Security personnel.* Employment of security personnel in public housing projects.

(b) *Additional security and protective services.* Reimbursement of local law enforcement agencies for the cost of providing additional security and protective services for public housing projects. The security and protective services provided must be either:

(1) A service that no local law enforcement agency (or agencies) provided for public housing projects administered by the grantee immediately before the applicable Notice of Fund Availability under this part was published in the **Federal Register**; or

(2) A quantifiable increase in the level of an ongoing service above that which the local law enforcement agency (or agencies) provided for public housing projects administered by the grantee immediately before the applicable Notice of Fund Availability was published in the **Federal Register**.

(c) *Physical improvements.* Physical improvements in public housing projects that are specifically designed to enhance security. These improvements may include (but are not limited to) the installation of lighting systems, bolts, or locks, or the reconfiguration of common areas to discourage drug-related crime. Such improvements may not involve the demolition of any units in a project. A PHA may not use grant funds under this part for any physical improvements that would result in the displacement of persons.

(d) *Employment of investigators.* Employment of one or more individuals to:

(1) Investigate drug-related crime on or about the real property comprising any public housing project; and

(2) Provide evidence relating to any such crime in any administrative or judicial proceedings.

(e) *Tenant patrols.* The provision of training, communications equipment, and other related equipment (including uniforms), for use by voluntary public housing tenant patrols acting in cooperation with officials of local law enforcement agencies.

(f) *Innovative programs.* Innovative programs to reduce the use of drugs in and around public housing projects. A program will be considered "innovative" under this paragraph if it uses a new or creative approach to reducing the use of drugs in and around public housing projects. Activities that may be funded under this paragraph include (but are not limited to) innovative law enforcement, drug education, drug treatment, counseling, referral, outreach efforts, and programs to prevent drug-related crime involving recreational, vocational, and educational activities and other constructive alternatives for youth.

(g) *RMCs and RCs.* Funding of RMCs and RCs to develop security and drug abuse prevention programs involving site residents. Such programs may include (but are not limited to) law enforcement activities, drug education, drug treatment, counseling, referral, and outreach efforts.

Subpart C—Application and Selection

§ 961.15 Plan.

(a) *Requirement of plan.* Each application for a grant under this part must include a plan for addressing the problem of drug-related crime on the premises of the public housing projects proposed for funding under this part.

(b) *Plan content.* The plan referred to in paragraph (a) of this section must contain the following elements:

(1) *Assessment of problem.* The best available objective data on the nature and extent of the problem of drug-related crime, and the problems associated with drug-related crime, in the projects administered by the applicant that are proposed for funding under this part. These data should generally be derived from crime statistics from Federal, State, or local law enforcement agencies. If such data are not available at the project or precinct level, the applicant may use other reliable, objective data including (but not limited to) those derived from its records or those of RMCs or RCs. The data should be reported both in real numbers, and as a percentage of the tenants in each project (*e.g.*, 20 arrests

for distribution of heroin in a project with 100 residents reflects a 20% occurrence rate). The data should cover the past one-year period and, to the extent feasible, should indicate whether these data reflect a percentage increase or decrease in drug-related crime over the past several years.

(2) *Current activities to address problem.* A narrative discussion of the activities currently being undertaken, and a listing of the resources being provided, by the applicant, governmental entities, RMCs and RCs to address the problem of drug-related crime in the projects proposed for assistance under this part.

(3) *Strategy for addressing problem.* A narrative discussion of the applicant's strategy for addressing the problem of drug-related crime in each of the projects proposed for assistance under this Part 961. The discussion must offer a realistic approach for dealing with the applicant's drug-related crime problem, taking into account the nature and extent of the problem, and the funding and other resources that reasonably may be expected to be available to combat the problem. At a minimum, the discussion must include the following information for each of the projects proposed for assistance under this part:

(i) A description of each component of the applicant's strategy, including activities to be undertaken with funding under this part, and how these components interrelate. The applicant should indicate how such activities will complement, and be coordinated with, current services.

(ii) The anticipated cost of each component of the strategy, and the financial and other resources (including funding under this part) that may reasonably be expected to be available to carry out each component;

(iii) A timeframe for beginning and completing each component of the strategy;

(iv) An estimate of the results that each component of the strategy, as well as the overall strategy, is expected to achieve for each year that the strategy is in effect and upon its completion.

(v) The role of RMCs, RCs and any other entities (e.g., local and State governments and community organizations) in planning and carrying out the strategy. The applicant should also indicate the name of the RMC or RC that will develop any security and drug abuse prevention programs involving site residents under § 961.10(c).

(vi) If grant amounts under this part are to be used for physical improvements under § 961.10(c), a statement as to how these improvements will be coordinated with the applicant's modernization program under 24 CFR Part 968;

(vii) If grant amounts under this part are to be used for innovative programs to reduce the use of drugs in and around public housing projects under § 961.10(f), a statement by the applicant as to the nature of the program and how the program represents a new or creative approach to achieving this purpose.

§ 961.18 Resident participation.

The applicant must provide the residents of projects proposed for funding under this part, as well as any RMCs or RCs that represent those tenants (including any PHA-wide RMC or RC), with a reasonable opportunity to comment on its application under § 961.20 (including its plan under § 961.15). The applicant must give these comments careful consideration in developing its plan and application.

§ 961.20 Application requirements.

(a) *Application contents.* To qualify for a grant under this part, an applicant must submit an application to HUD that contains the following:

(1) Standard Grant Application Form SF–424;

(2) The plan referred to in § 961.15;

(3) Copies of any tenant comments submitted to the PHA under § 961.18;

(4) A certification by the applicant that:

(i) Grant amounts under this part will not substitute for activities currently being undertaken to address the problem of drug-related crime in the project(s) proposed for assistance; and

(ii) Any additional security and protective services to be assisted under § 961.10(b) meet the requirements of that section;

(5) If grant amounts under this part are to be used to establish voluntary tenant patrols under § 960.10(e), a certification by the applicant that the local law enforcement agency and the tenant patrols have entered, or will enter into, such agreements as are needed to ensure cooperation;

(6) A certification from the chief executive officer (or an official designated by the chief executive officer) of the Indian tribe, unit of general local government (or, for areas outside a unit of general local government, the State) in which the applicant is located that, to the best of its knowledge:

(i) The applicant's assessments of the drug-related crime problem, and the problems associated with drug-related crime, in the projects proposed for assistance under this part (as required by § 961.15(b)(1)), are based on the best available objective data, and are complete and accurate;

(ii) The applicant's descriptions of the current activities being undertaken to address the problem of drug-related crime in its projects (as required by § 961.15(b)(2)) are complete and accurate; and

(iii) The information provided by the applicant regarding its strategy under § 961.15(b)(3) is accurate and complete, and the strategy is realistic and attainable, given the nature and extent of the applicant's drug-related crime problem, the resources that the applicant expects to be available to address the problem, and the applicant's proposed timeframe for accomplishing the strategy;

(7) A certification form the chief executive officer (or an official designated by the CEO), that: (i) Grant amounts under this part will not substitute for activities currently being undertaken by the jurisdiction to address the problem of drug-related crime in projects proposed for assistance under this part; and (ii) any additional security and protective services to be assisted under § 961.10(b) meet the requirements of that section.

(8) A certification from the chief executive officer(s) (or an official designated by the CEO(s)) of the relevant governmental jurisdiction that it will take the actions described in the applicant's strategy under § 961.15(b)(3);

(9) A statement from the chief executive officer (or an official designated by the CEO) as to whether the relevant governmental jurisdiction is meeting its obligations under the Cooperation Agreement with the PHA, particularly with regard to law enforcement. If the jurisdiction is not meeting its obligations under this Agreement, it should identify any special circumstances relating to its failure to do so.

(10) If applicable, a certification from the chief of the local law enforcement agency that the agency has, or will, enter into such agreements as are needed to ensure cooperation with the voluntary tenant patrol under § 961.10(e);

(11) If applicable, a certification by the RMC or RC for a project proposed for funding under this part that the plan under § 961.15 was jointly prepared with the applicant, and a description of the activities it will implement under this part;

(12) A certification that the grantee will maintain a drug-free workplace in accordance with the requirements of the Drug-Free Workplace Act of 1988 (54 FR 4946, published January 31, 1989, effective March 18, 1989).

(b) *Notice of Fund Availability.* HUD will publish Notices of Fund Availability (NOFAs) in the **Federal Register** as appropriate to inform the public of the availability of grant amounts under this part. The Notices will provide specific guidance with respect to the grant process, including the timeframes for the submission and review of applications and the award of grant funds, the limits (if any) on maximum grant amounts, and the anticipated grant term.

§ 961.25 Application selection.

(a) *Ranking.* (1) Each application submitted by a PHA or IHA under this part that meets the application requirements under § 961.20(a) (including those specified in NOFAs under § 961.20(b)) will be evaluated in accordance with the selective rating criteria under paragraph (b) of this section.

(2) (i) Applications submitted by PHAs will be evaluated on the basis of the four rating criteria under paragraph (b) of this section, with each rating criterion assigned up to a maximum of 25 points. In addition, a PHA applicant may obtain up to an additional 15 points § 961.25(b)(2)(B) based upon the extent of RMC or RC involvement in the development of the grant application (including the plan under § 961.15), and the extent to which an RMC or RC will assume substantial management responsibilities under the PHA's plan. These applications will be ranked based upon their total rating score.

(ii) Applications submitted by IHAs will be evaluated on the basis of the four rating criteria under paragraph (b) of this section, with each rating criterion assigned up to a maximum of 25 points. IHAs will not be rated on the RMC/RC element under § 961.25(b)(2)(B). These applications will then be separately ranked based upon their total selective rating scores.

(3) Grant awards will be made to the highest-ranked applicants, except that HUD may exercise its discretion under paragraph (c) of this section, to ensure an equitable distribution of grant funds among both pools of highest-ranked PHA and IHA applicants. In exercising its discretion under this section, HUD shall take into account the overall ratio of PHAs to IHAs; the ratio of fundable applications submitted by PHAs and IHAs; and the extent of available grant funds under this part.

(4) HUD may substitute one or more highly ranked applications under paragraph (d) of this section, in order to obtain an equitable geographical distribution of grant funds, and distribution among PHAs and IHAs of varying sizes.

(5) Failure to address a required rating criterion under paragraph (b) of this section will result in an applicant's receiving *no* points for that element.

(b) *Selective rating criteria.* The selective rating criteria are:

(1) The extent of the problem of drug-related crime in the applicant's projects. (Maximum points: 25).

(2) (i) The quality of the plan under § 961.15, based upon the extent to which the information provided by the applicant under that section is accurate and complete; and the extent to which the applicant's strategy under that section is realistic and attainable, given (among other things) the nature and extent of the applicant's drug-related crime problem, and the funding and other resources that may reasonably be expected to be available to address the problem. (Maximum points: 25).

(ii) Applications submitted by PHAs will also be evaluated based upon the extent of RMC or RC involvement in the development of the grant application, and the extent to which an RMC or RC will assume substantial program management responsibilities under the PHA's plan. (Maximum points: 15).

(3) The applicant's capability to carry out its plan under § 961.15, as reflected by its ability to obtain funding or other commitments of support for each aspect of the plan; its administrative capability to manage its projects; and its degree of commitment to addressing the problem of drug-related crime. (Maximum points: 25).

(4) The extent to which the governmental jurisdiction, local law enforcement agencies, and the local community support the applicant's activities to eliminate drug-related crime. HUD may consider as evidence of such support whether the relevant governmental jurisdiction has met its obligations under the Cooperation Agreement with the applicant. (Maximum points: 25).

(c) *PHA/IHA distribution.* HUD may exercise its discretion under this paragraph to ensure an equitable distribution of grant funds among the highest-ranked applications submitted by PHAs and IHAs. In exercising its discretion under this paragraph, HUD shall take into account the overall ratio of PHAs to IHAs; the ratio of fundable applications submitted by PHAs to IHAs; and the extent of available grant funds under this part.

(d) *Geographical distribution.* HUD may substitute one or more highly ranked applications if the top rated applications under the selection criteria do not ensure equitable geographical distribution among urban and rural areas, and among PHAs to IHAs of varying sizes.

(e) *Environmental review.* Prior to an award of grant funds under this part, HUD will perform an environmental review to the extent required under the provisions of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321), applicable related authorities at 24 CFR Part 50.4, and HUD's implementing regulations at 24 CFR Part 50, including § 50.20(p).

Subpart D—Grant Administration

§ 961.30 Grant administration.

(a) *General.* The duty to use grant funds to eliminate drug-related crime in public housing projects in accordance with the requirements of this part will be incorporated in a grant agreement executed by HUD and the grantee.

(b) *Applicability of OMB Circulars.* The policies, guidelines, and requirements of 24 CFR Part 85 apply to the acceptance and use of assistance by grantees under this part; and OMB Circular Nos. A–110 and A–122 apply to the acceptance and use of assistance by private nonprofit organizations;

(c) *Obligation of grant funds.* Grantees may use grant amounts under this part over the period of time specified in the grant agreement. It is not required that the grantee obligate its funds within a particular fiscal year.

§ 961.35 Periodic reports.

Grantees must provide HUD with periodic reports that include the obligation and expenditure of grant funds for the eligible activities at § 961.10; the progress made by the grantee both in implementing the plan under § 961.15 (taking into account both assistance under this part and funds from other sources); and data tracking the incidence of drug-related crime in the projects assisted under this part since the date of execution of the grant agreement between HUD and the grantee.

§ 961.40 Other Federal requirements.

Use of grant funds under this part requires compliance with the following additional Federal requirements:

(a) *Labor standards.* Where grant funds are used to undertake physical improvements to increase security under § 961.10, the following labor standards apply:

(1) The PHA and its contractors and subcontractors must pay the following prevailing wage rates, and must comply

with all related rules, regulations and requirements:

(i) For laborers and mechanics employed in the development of the project, the wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a *et seq.*) to be prevailing in the locality with respect to such trades;

(ii) For architects, technical engineers, draftsmen and technicians employed in the development of the project, the HUD-determined prevailing wage rate; or

(iii) For laborers and mechanics employed in carrying out non-routine maintenance in the project, the HUD-determined prevailing wage rate. As used in this subsection, nonroutine maintenance means work items that ordinarily would be performed on a regular basis in the course of upkeep of a property, but have become substantial in scope because they have been put off, and that involve expenditures that otherwise materially distort the level trend of maintenance expenses. Non-routine maintenance may include replacement of equipment and materials rendered unsatisfactory because of normal wear and tear by items of substantially the same kind. Work that constitutes reconstruction, a substantial improvement in the quality or kind of original equipment and materials, or remodeling that alters the nature or type of housing units is not nonroutine maintenance.

(2) The employment of laborers and mechanics is subject to the provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333).

(b) *Nondiscrimination and equal opportunity.* The following nondiscrimination and equal opportunity requirements:

(1) The requirements of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3600–20 (Fair Housing Act) and implementing regulations issued at Subchapter A of Title 24 of the Code of Federal Regulations, as amended by 54 FR 3232 (published January 23, 1989); Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR Part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR Part 1;

(2) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR Part 146, and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR Part 8;

(3) The requirements of Executive Order 11246 (Equal Employment Opportunity) and the regulations issued under the Order at 41 CFR Chapter 60;

(4) The requirements of section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects); and

(5) The requirements of Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, recipients must make efforts to encourage the use of minority and women's business enterprises in connection with funded activities.

(c) *Use of debarred, suspended or ineligible contractors.* The provisions of 24 CFR Part 24 relating to the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

(d) *Flood insurance.* Grants will not be awarded for proposed projects that involve acquisition, construction, reconstruction, repair or improvement of a building or mobile home located in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards unless: (1)(i) The community in which the area is situated is participating in the National Flood Insurance Program in accordance with 44 CFR Parts 59–79; or (ii) less than a year has passed since FEMA notification to the community regarding such hazards; and (2) flood insurance on the structure is obtained in accordance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001).

(e) *Lead-based paint.* The provisions of section 302 of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4821–4846, and implementing regulations at 24 CFR Part 965, Subpart H (51 FR 27789–27791, August 1, 1986). This section is promulgated pursuant to the authority granted in 24 CFR 35.24(b)(4) and supersedes, with respect to all housing to which it applies, the requirements (not including definitions) prescribed by Subpart C of 24 CFR Part 35.

(1) *Applicability.* The provisions of this section shall apply to all projects constructed or substantially rehabilitated before January 1, 1978, and for which assistance under this part is being used for physical improvements to enhance security under § 961.10(c).

(2) *Definitions.* For purposes of paragraph (f) of this section, the term "applicable surfaces" means all intact and nonintact interior and exterior painted surfaces of a residential structure.

(3) *Exceptions.* The following activities are not covered by this section: (i) Installation of security devices; (ii) other similar types of single-purpose programs that do not involve physical repairs or remodeling of applicable surfaces of residential structures; or (iii) any non-single purpose rehabilitation that does not involve applicable surfaces and that does not exceed $3,000 per unit.

(f) *Conflicts of interest.* In addition to the conflict of interest requirements in 24 CFR Part 85, no person:

(1) Who is an employee, agent, consultant, officer, or elected or appointed official of the grantee, that receives assistance under the program and who exercises or has exercised any functions or responsibilities with respect to assisted activities; or

(2) Who is in a position to participate in a decisionmaking process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for him or herself or for those with whom he or she has family or business ties, during his or her tenure, or for one year thereafter.

(g) *Intergovernmental review.* The requirements of Executive Order 12372 and the regulations issued under the order at 24 CFR Part 52, to the extent provided by Federal Register notice in accordance with 24 CFR 52.3.

(h) *Indian preference.* The provisions of section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) apply to IHAs. These provisions require to the greatest extent feasible that preference and opportunities for training and employment be given to Indians and that preference in the award of subcontracts and subgrants be given to Indian Organizations and Indian Owned Economic Enterprises.

Dated: June 14, 1989.

Jack Kemp,

Secretary.

[FR Doc. 89-14594 Filed 6-20-89; 8:45 am]

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Wednesday
June 21, 1989

Part VI

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 511

Rental Rehabilitation Grants; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 511

[Docket No. R-89-1441; FR-2558]

RIN 2506-AA88

Rental Rehabilitation Grants

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule will implement sections 150(b) and 150(f) of the Housing and Community Development Act of 1987 (the 1987 Act). Section 150(b) amends the United States Housing Act of 1937 (the 1937 Act) to include as eligible projects, properties that will be privately owned upon completion of rehabilitation. Section 150(f) was intended to clarify when non-profit corporations are considered eligible to own rental rehabilitation grant-assisted projects. With respect to section 150(b), the proposed rule amends 24 CFR Part 511 to add provisions requiring grantees to submit schedules for project construction and for transfer to private ownership to the HUD Field Office for review and approval prior to drawing down construction funds for publicly-owned projects. Also, the rule sets deadlines after which grantees will be required to reimburse their grant accounts if projects are not completed and transferred to private ownership on or before the specified dates. With respect to section 150(f), the rule clarifies HUD's criteria for when a non-profit corporation is considered privately controlled and hence eligible to own rental rehabilitation grant-assisted projects.

DATE: Comment due date: August 21, 1989.

ADDRESS: Interested persons are invited to submit comments regarding this rule of the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, Washington, DC 20410-0500. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m. weekdays) at the above address.

As a convenience to commenters, the Rules Docket Clerk will accept public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 755-2575. (This is not a toll-free number.) Only public comments of six or fewer *total* pages will be accepted via the FAX transmittal. This limitation is necessary in order to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk, (202) 755-7084.

FOR FURTHER INFORMATION CONTACT: Mary Kolesar, Rehabilitation Management Division, Room 7174, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-7000, telephone (202) 755-5970. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Information Collection

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. Public reporting burdens for the collection of information requirements contained in this rule are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the preamble heading, "Other Matters".

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden (including the identifying docket number and title), to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., Room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC, Attention: Desk Officer for HUD.

Background

Sections 150(b) and 150(f) were enacted by Congress in response to specific cases in which questions of eligibility arose in the Rental Rehabilitation Program. As more fully explained below, section 150(b) originated from the need to dispose of "in rem" properties in New York City, and section 150(f) from a case in which a non-profit corporation in Seattle, Washington wished to receive RRP funds.

Sections 150(b) and 150(f) both purport to modify HUD's interpretation of section 17(a)(1)(A) of the 1937 Act, which authorizes RRP grants "to help support the rehabilitation of *privately-owned* of real property * * *" (emphasis added). Section 17(a)(1)(A) effectively prohibits the Federal Government, States, units of general local government, and other public bodies and instrumentalities from owning projects assisted with Rental Rehabilitation Program funds. By logical extension, HUD has also viewed other instrumentalities which are owned or controlled by a public body, even though they are organized under a State's general business corporation, partnership, or non-profit corporation law, as similarly barred from owning rental rehabilitation projects on the ground that the public body should not be able to accomplish indirectly through another form of organization what it cannot do directly. HUD views the "privately-owned real property" requirement not as a mere technicality, but as an important substantive requirement designed to target the Rental Rehabilitation Program to a particular need perceived as underserved by other programs—the need to provide workable incentives to private owners to rehabilitate their rental properties, in order to expand the supply of standard private housing available to lower-income families.

Although § 511.1 of the existing RRP regulations (24 CFR Part 511) repeats the language of section 17(a)(1)(A), the privately-owned real property requirement was not explicitly stated in Subpart B of Part 511, which contains the "Program Eligibility Requirements", as originally drafted. This proposed rule will correct this technical oversight by adding a new paragraph (1) to § 551.10(c) to make it clear that RRP grants are limited to rehabilitating projects which are in private ownership when the commitment of funds is made or projects which are publicly owned but will be transferred to private ownership within a period approved by HUD, based on a schedule submitted by the grantee. At § 551.10(c)(4), consistent with the period stated in section 15(c)(2)(G) and legal opinions interpreting current law and regulations, the proposed rule also adds language specifically requiring that the owner enter into a legally enforceable agreement to keep the property under private ownership and devoted to "primarily residential rental use" for at least ten years, beginning on the date on which the rehabilitation is completed or the project is transferred to private ownership (whichever is later), unless a hardship exception is granted by the grantee or the property is sold to another private owner who agrees to carry out the remainder of the ten year obligation.

As further background on the enactment of section 150(b), in New York City a substantial inventory existed of properties acquired by the City for delinquent taxes and assessments. These so-called "in rem" properties were in need of rehabilitation and were occupied by low-income tenants. The City wanted to rehabilitate the properties first itself, and then transfer the titles to private ownership (particularly tenant-owned cooperatives) upon completion of the rehabilitation. In a November, 1984 HUD opinion, the City of New York was granted permission to rehabilitate these in rem properties using Community Development Block Grant funds. The CDBG funds were subject to later reimbursement with RRP funds when the properties were transferred to private ownership, provided that the work had been performed in accordance with all RRP requirements and the project then met all RRP requirements. HUD is aware that New York City has experienced substantial difficulties in achieving the timely completion and transfer of these projects. In particular, there is a relatively high risk of failure to complete the rehabilitation or the transfer to private ownership for properties in the condition of those that are usually the subject of in rem tax deliquent acquisitions in New York. However, by enacting section 150(b), Congress clearly intended to permit RRP funds to be disbursed for rehabilitation while a property is publicly owned, subject to later transfer to private ownership.

In HUD's view, if a grantee desires to expend RRP funds for rehabilitation that is eligible only upon a contingent event occurring, that is, a transfer of the property to private ownership, the grantee must be willing to assure that this contingent event will indeed occur and to assume any risk that it might not. Therefore, if a project is not completed or the transfer of title does not occur within a reasonable period of time, as defined in § 511.10(c)(1)(ii), the proposed regulation expressly provides that the grantee must repay to its grant account in the C/MI System the amount disbursed for the rehabilitation of the property. The time allowed to complete the rehabilitation and transfer of the project to private ownership will be determined by a schedule that is reviewed and approved by the appropriate HUD Field Office.

HUD believes that the maximum permissible rehabilitation period should not be greater than two years from the date of the commitment of funds in the C/MI System, and the period allowed for the transfer of property to private ownership should not be greater than 60 days from the date of the final draw of RRP funds. The entire process of construction and transfer may not exceed two years and 60 days from the date of commitment of the RRP funds in the C/MI System. Furthermore, both the construction and transfer must occur within the time period allowed under 24 CFR 511.33(c). The HUD Field Office, of course, would have discretion not to approve the maximum two years and 60 days rehabilitation and transfer schedule, if it determines that the maximum schedule is not warranted under the standards in § 511.10(c)(i)(A) of the proposed rule.

The appropriate HUD Field Office will periodically review project progress against the approved schedule. Failure by the grantee to stay within the construction/transfer schedule would be grounds for HUD to place the grantee on suspension of further new project set-ups in the C/MI System pending submission of a revised schedule for the problem projects to assure their timely completion. The suspension imposed by HUD could cover all new projects of the grantee, or only some classes of projects, at HUD's discretion. A 60 day period will be allowed for the grantee to submit and receive approval of an acceptable revised schedule; failure to do so will result in cancellation of the projects which are behind schedule, and the grantee will be required to repay to HUD the amount disbursed for the project. Similar project cancellation and repayment requirements will also be in effect for failure to complete the rehabilitation and transfer the project to private ownership within the period specified in the original or revised schedule. HUD may also suspend the grantee from further C/MI set-ups and disbursements on all committed projects, or some classes of projects, until payment is received. Finally, if payment is still not received, HUD may proceed to deobligate all of the grantees' uncommitted rental rehabilitation grant amounts and will thereafter treat the grant amount that has not been repaid as a claim under 24 CFR 511.82(c)(4).

Finally, a technical amendment to the definition of "commitment to a specific local project" in § 511.2 is necessary to accommodate projects undertaken under the new publicly owned projects authority in § 511.10(c)(1)(ii). These projects do not have a private owner for the grantee to enter into a legally binding agreement with, as required by the current definition. The revised definition uses HUD approval of the rehabilitation and transfer schedule under § 511.10(c)(1)(ii) as the "commitment" for publicly-owned projects.

The existing New York in rem projects will be dealt with under the current regulations in 24 CFR Part 511. The proposed rule will affect projects committed in the Cash and Management Information System (C/MI) or on after the effective date of the rule with uncommitted Rental Rehabilitation Program funds from any fiscal year. Because HUD has determined that section 150(b) requires publication as a proposed rule for public comment, before final implementation, comments are solicited on whether projects that are currently committed in the Cash and Management Information (C/MI) System should also be subject to the proposed rule and what changes would be needed in the proposed rule if this were done.

One additional change is proposed in Part 511 which is related to the changes made to implement section 150(b) of the 1987 Act, although not required thereby. Under the special procedure developed for New York City to use CDBB funds to rehabilitate publicly-owned projects, subject to later reimbursement with RRP funds when the projects were transferred to private ownership, HUD permitted the projects in question to be set-up in the C/MI System before rehabilitation began, although no "commitment to a specific local project" then existed in the usual sense, and even though no RRP funds could be drawn down until the projects were finally sold to private owners at a later date. This made it possible for New York to avoid deobligation of funds under § 511.33(c) based on noncommitment in accordance with the progress schedule mandated by § 570.20(b)(9). It also served to identify the projects in question as rental rehabilitation projects for purposes of monitoring compliance with applicable program requirements. However, this approach led in practice to extraordinarily long periods without any drawdowns on allegedly committed projects, difficulty in monitoring project progress, and possible improper protection of grant funds from deobligation based on lack of progress by the City.

Since section 150(b), as implemented by the proposed rule, permits RRP fund to be drawn down to pay for

rehabilitation immediately if a rehabilitation/transfer schedule is approved by HUD, as described in the proposed rule, there is no longer a need for the special early commitment and set-up authority granted to New York City. However, the issue of when otherwise eligible costs which are incurred prior to set-up of a new project in the C/MI System may be recognized as part of the project cost for RRP purposes, has been of interest to other grantees and project owners. HUD's proposal to clarify that issue is set forth in proposed new paragraph (3) of § 511.10(g) in the proposed rule. The proposal is generally consistent with OMB Circular A–87, which permits Federal agencies to recognize so-called "preagreement costs" if the agency chooses to do so.

Proposed new § 511.10(g)(3) will permit grantees to include in project cost rehabilitation costs that are incurred prior to project set-up or commitment in the C/MI System if the grantee and owner so agreed in writing before the rehabilitation was undertaken, the rehabilitation was done after the Appropriation Act which made available the grant funds in question was enacted, and the costs otherwise meet all applicable program requirements. For other eligible costs (i.e., so-called "soft costs"), the grantee would have the additional option of recognizing the costs, which include such things as architectural and professional expenses, which are often incurred on a speculative basis before rehabilitation, when the grantee and owner enter into the final project commitment.

HUD believes that the clarifications in § 511.10(g)(3) will allow grantees to permit owners, when necessary and desirable, to incur precommitment costs and to begin rehabilitation in anticipation of the availability of grant funds, or before the full negotiation and execution of a project agreement, if they are willing to take the risk of possible nonfunding. At the same time, the proposal gives the grantee discretion as to the extent it wishes to recognize such percommitment costs, and it makes clear that any such costs, to be included in project costs under Part 511, must meet all other program requirements, including applicable Federal requirements under § 511.11. In particular, HUD approval of the grantee's certification of completion of environmental responsibilities, where required, must occur prior to execution of the written agreement to include the precommitment costs. Moreover, beginning rehabilitation early is not a permissible means of avoiding Davis-Bacon wage requirements. If a grantee authorizes an owner to begin rehabilitation before setting up the project in the C/MI System, the grantee should specifically advise the owner of Davis-Bacon applicability and immediately request a wage determination.

HUD also recognizes that, in limited cases, a project could be largely completed before the actual commitment of RRP funds is made. However, it is still up to the grantee to determine that there is a need for the RRP assistance, and the need for a prior agreement with respect to most precommitment costs protects against both grantees and owner abuse. Also, if grantees delay too long in making their final commitments, their funds may become subject to deobligation under § 511.33(c).

Section 150(f) of the 1987 Act was enacted specifically to benefit "Public Development Corporations" in Seattle, Washington. In 1985, a locally-chartered organization with some characteristics of both a public and private organization sought RRP assistance from the City, and HUD questioned the entity's eligibility to receive the funds. HUD did not take the position that all non-profit organizations were ineligible to receive RRP assistance; it only said that since this particular organization was described in a "public corporation" in the local ordinance authorizing its creation, it should be treated as a public body for RRP purposes. The Seattle organization appealed to Congress for a legislative amendment, and the Housing and Community Development Act of 1987 at section 150(f) eventually declared certain non-profit organizations eligible for RRP assistance. It is clear from the legislative history that section 150(f) was intended principally to benefit the Seattle non-profit organization. HUD believes that Congress did not intend that the provision have broader effect, although broader statutory language was used. See Report 100–21 of the Senate Committee on Banking, Housing and Urban Affairs, issued March 24, 1987, at page 16. The Senate Committee's bill on this point was identical to section 150(f) as later enacted.

In any event, after the 1985 case was considered, HUD's own criteria for determining the public or private character of a local entity had evolved. On the facts that existed in 1985, current policy would have found the Seattle corporation eligible independent of section 150(f), because in fact a majority of its directors were private individuals not bound to act on behalf of the grantee or any other public body. HUD's current criteria for determining that a nonprofit corporation is "privately controlled", and hence eligible for RRP assistance, are set forth in the proposed rule at § 511.10(c)(2).

With respect to the possibility of a different interpretation of section 150(f), HUD does not believe that Congress intended to eliminate the private control test for all non-profit corporations, since doing so would effectively eliminate the private ownership requirement for projects assisted under the Rental Rehabilitation Program. If the private control test were eliminated, all any grantee or other public body would need to do to effectively select and operate its own projects would be to form a corporation which it controlled and have the corporation apply for RRP assistance; HUD does not believe such a substantive and critical element of the design and philosophy of the Rental Rehabilitation Program as the private ownership requirement would have been impaired by Congress without more explicit legislative language.

On the other hand, HUD does not believe that the criteria used in section 150(f) to describe a non-profit organization, i.e.: "neighborhood-based" and "primary purpose is the provision and improvement of housing," were really meant to limit the type of organization that is eligible to own property assisted with RRP funds. Applying these tests literally would exclude larger scale, or multi-purpose, non-profit organizations that would otherwise be eligible under HUD's current interpretation of section 17, such as Neighborhood Housing Services or ACORN. Therefore, based on the legislative history and the foregoing considerations, HUD believes that section 150(f) was intended merely to change the result in the Seattle case, which HUD has in fact done independently of section 150(f). The amendments in § 511.10(c)(2) of the proposed rule, however, are necessary to clarify HUD's policy on private ownership or control of projects rehabilitated with rental rehabilitation funds.

Other Matters

The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980.

Section 511.10(c)(2) of this proposed rule has been determined by the Department to contain collection of information requirements. Information on these requirements is provided as follows:

Description of information collection, grantees who wish to engage in the rehabilitation of publicly-owned property will be required to submit to the appropriate HUD Field Office a schedule of the anticipated time it will take to complete the rehabilitation and transfer the property to private ownership. HUD expects that this schedule is already being done by grantees and that this requirement will not create any additional burden. The HUD Field Office will approve the schedule and use it to monitor construction progress; *number of respondents,* HUD believes this proposed rule will apply to only one grantee, New York City; *number of responses per respondent,* 40; *total annual responses,* 40; *hours per response,* 8; *total hours,* 320

A finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50 which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours (7:30 a.m. to 5:30 p.m. weekdays) in the Office of General Counsel, Rules Docket Clerk, at the above address.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291. Analysis of the rule indicates that it would not: (1) have an annual effect on the economy of $100 million or more; (2) cause major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with the provisions of 5 U.S.C. 605(b), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities, because statutorily eligible grantees and State recipient are relatively larger cities, urban counties, or States.

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism,* has determined that the policies proposed in this proposed rule would not have Federalism implications when implemented and, thus, are not subject to review under the Order. The proposed rule carries out the statutory amendments concerning the eligibility of publicly owned projects that will be privately owned upon completion of the rehabilitation and of non-profit organizations to own rental rehabilitation grant assisted projects.

The General Counsel, as the Designated Official under Executive Order 12606, *The Family,* has determined that this rule does not have potential significant impact on family formation, maintenance, and general well-being, and, thus is not subject to review under the Order.

This rule was listed as item 985 in the Department's Semiannual Agenda of Regulations published on April 24, 1989 (54 FR 16708, 16733).

List of Subjects in 24 CFR Part 511

Administrative practice and procedure, Grant programs-Housing and community development, Low and moderate income housing, Rental rehabilitation grants, Reporting and recordkeeping requirements.

Accordingly, 24 CFR Part 511 is proposed to be amended as follows:

PART 511—RENTAL REHABILITATION GRANT PROGRAM

1. The authority citation for Part 511 would continue to read as follows:

Authority: Sec. 17, U.S. Housing Act of 1937 (42 U.S.C. 1437o); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 511.2, the definition of "commit to a specific local project" would be revised to read as follows:

§ 511.2 Definitions.

* * * * *

"Commit to a specific local project", or "commitment", means: (i) With respect to a project which is privately owned when the commitment is made, a legally binding agreement between a grantee (or in the case of a State distributing rental rehabilitation grant amounts to units of local government, a State recipient) and the private owner under which the grantee or State recipient agrees to provide rental rehabilitation grant amounts to the owner for an identifiable rehabilitation project that can reasonably be expected to start construction within 90 days of the agreement and in which the owner agrees to start construction within that period; or

(ii) with respect to a publicly owned project, refers to HUD approval of a schedule for rehabilitation of the project and its transfer to private ownership pursuant to § 511.10(c)(1)(ii).

* * * * *

3. In § 511.10, paragraph (c) would be revised to read as follows:

§ 511.10 Program requirements.

* * * * *

(c) *Eligible and ineligible projects—*(1) *Privately owned real property.* (i) Rental rehabilitation grant amounts shall only be used to rehabilitate projects which are in private ownership at the time the commitment to a specific local project, as defined in § 511.2, is made and which are expected to remain in private ownership as required by § 511.10(c)(4), or projects for which a schedule for rehabilitation and transfer to private ownership has been approved, and remains approved, by HUD under § 511.10(c)(1)(ii).

(ii) Rental rehabilitation grant amounts may be used to assist publicly-owned projects under the following conditions:

(A) Prior to setting up the project in the C/MI System, authorized by § 511.74, the grantee shall submit a schedule to the appropriate HUD Field Office for its review and approval. The schedule shall specify the period needed to complete the rehabilitation as well as the period needed to transfer the project to private ownership. The construction/transfer schedule shall be reasonable and realistic given the size of the project, the complexity of the rehabilitation, the expected type of private owner, and other relevant factors. However, under no circumstances shall the construction phase of the schedule exceed two years and the transfer phase exceed 60 days, or the time remaining for expenditure of the rental rehabilitation grant amounts proposed to be used for the project, whichever is shorter. The Field Office shall approve or disapprove the schedule within 30 days after receipt.

(B) After the HUD Field Office approves the construction/transfer schedule under the standards in paragraph (c)(1)(ii)(A) of this section, grantee may set up the project in the RRP C/MI System authorized by § 511.74 and may draw down grant amounts for eligible costs in accordance with normal C/MI disbursement requirements.

(C) The Field Office shall periodically review project progress against the approved schedule.

(D) If the HUD Field Office determines that a project subject to a schedule approved under this subsection is not making acceptable progress or the grantee has failed to follow the actions outlined in the schedule, the Field Office, at its discretion, may suspend the grantee's authority to set up some or

all new projects in the C/MI System until an acceptable revised schedule is submitted and approved. Under no circumstances shall a revised schedule exceed the overall limit of two years and 60 days from the date of commitment in the C/MI System. If the grantee does not submit an acceptable revised schedule within 60 days after the suspension, HUD may cancel the project in the C/MI System. The grantee shall then be required to repay its C/MI grant account an amount equal to the rental rehabilitation amounts disbursed for the project. Any suspension against setting up new projects in the C/MI System shall terminate when the Field Office approves the revised schedule, when the grantee repays the amount described in the preceding sentence, or when the suspension is otherwise terminated by the HUD Field Office, at its discretion.

(E) If the grantee fails to complete construction or transfer ownership of the property within the period agreed in the approved schedule, whether original or revised, the grantee shall repay to its grant account in the C/MI System all rental rehabilitation grant amounts drawn down with respect to the project. If payment is not received within 60 days after the last day permitted for transfer of the property under the approved plan, then HUD may suspend the grantee's authority to set up any not previously suspended classes of projects in the C/MI System, as well as the grantees' authority to draw down funds under the C/MI System for some or all existing committed projects. If payment is still not received, HUD may proceed to deobligate up to the full amount of the grantees remaining undisbursed rental rehabilitation grant amounts, whether or not such grant amounts otherwise are available for deobligation under § 511.33(c). The suspension of drawndown authority in this paragraph shall terminate when the grantee repays its grant account as required by this paragraph, or the HUD Field Office lifts the suspension at its discretion, whichever is later.

(F) After the grantee has repaid the grant amounts to its grant account as provided in § 511.10(c)(1)(ii) (D) or (E), the grant amounts may be committed by the grantee for new projects, or deobligated by HUD under § 511.33 or § 511.82 to the same extent as any other grant amounts subject to this part. In addition, the grant amounts drawn down for the canceled projects and not repaid after the dates specified in paragraphs (c)(1)(ii) (D) and (E) of this section shall thereafter be treated as a Federal claim against the grantee subject to collection as described in § 511.82(c)(4). HUD may also condition future rental rehabilitation grants, or disapprove said grants, under § 511.21(c) or § 511.82(c) as a result of the grantee's poor performance with respect to projects under this § 511.10(c)(1)(ii).

(G) Both the projects' rehabilitation and its transfer to private ownership must occur within the time period allowed under 24 CFR 511.33(c).

(2) *Private, non-profit organizations.* Projects owned by non-profit organizations that are privately controlled are eligible to receive rental rehabilitation grant amounts under the same terms and conditions as any other private project owner under this part. For purposes of this requirement, non-profit organizations must have governing bodies which are controlled 51 percent or more by private individuals who are acting in a private capacity. For purposes of this provision, an individual is deemed to be acting in a private capacity if he or she is not legally bound to act on behalf of a public body (including the grantee), and is not being paid by a public body (including the grantee) while performing functions in connection with the non-profit organization.

(3) *Primarily residential rental use.* Rental rehabilitation grants shall only be used to rehabilitate projects to be used for "primarily residential rental" uses, as defined in this paragraph and paragraph (c)(4) of this section. For purposes of this part, a project is used for primarily residential rental purposes if at least 51 percent of the rentable floor space of the project is used for residential rental purposes after rehabilitation, except that in the case of a two-unit building, at least 50 percent of the rentable floor space after rehabilitation must be used for residential rental purposes. "Primarily residential rental" use also includes cooperative or mutual housing that has a resale structure that enables the cooperative to maintain rents affordable to lower income families.

(4) *Continued private, primarily residential rental use.* All projects must remain in private ownership and in primarily residential, rental use for a period of ten years after completion of the rehabilitation (or their transfer to private ownership for projects subject to paragraph (c)(1)(ii) of this section), unless the project is sold to another private owner who agrees to continue to manage the property in accordance with Rental Rehabilitation Program requirements for the remainder of the ten-year period, or a hardship exception is approved by the grantee for reasons that occur after completion of the rehabilitation. Each grantee shall execute an agreement with the owner to this effect on or before the date when rental rehabilitation grant amounts are committed to the project. The grantee shall ensure that the agreement is legally enforceable and that it contains remedies adequate to enforce its provisions. A remedy will be deemed adequate for purposes of this paragraph if it requires the entire amount of the rental rehabilitation grant assistance for the project to be a secondary lien secured by the property, repayable by the owner or any subsequent transferee upon a prohibited sale or use in an amount equal to the entire amount of such assistance, less 10 percent for each full year after completion of the project up to the time the prohibited sale or use occurs, except in the case of projects of 25 units or more, for which the entire grant amount shall be repaid if the project is sold or used in violation of this section during the ten year period. Such lien may not be subordinate to a lien in favor of the grantee, State recipient or any person with whom the owner has business or family ties, except as may be necessary to secure federally tax exempt financing for the project.

(5) *Substandard conditions.* Before rehabilitation, a project must have one or more substandard conditions. For purposes of this paragraph, substandard conditions are those housing conditions that do not meet applicable State or local housing codes or do not meet the Section 8 Housing Quality Standards for Existing Housing contained in 24 CFR 882.109. After rehabilitation, the project must meet the local rehabilitation standards required by § 511.10(f).

(6) *Ineligible projects.* Projects assisted, or for which a commitment for assistance has been entered into, under the United States Housing Act of 1937 (except projects assisted under the Rental Rehabilitation Program or the Section 8 Existing Housing Program under 24 CFR Part 882, Subparts A and B, or the Housing Voucher Program under 24 CFR Part 887), or projects assisted under section 221(d)(3) or 236 of the National Housing Act, or section 202 of the Housing Act of 1959, or section 312 of the Housing Act of 1964, are not eligible to receive rental rehabilitation grant amounts under this part.

* * * * *

§ 511.10 [Amended]

4. In § 511.10, a new paragraph (g)(3) would be added to read as follows:

* * * * *

(g) *Eligible rehabilitation costs.* * * *

(3)(i) Rehabilitation eligible under § 511.10(g)(1) is limited to work done after the commitment to the project (as defined in § 511.2) is made and the project is set up in the C/MI System under § 511.74, except to the extent that such costs also meet all of the following conditions:

(A) Prior to undertaking the precommitment rehabilitation, the owner and grantee agreed in writing to include identified precommitment rehabilitation costs in project cost, if and when the project was approved for assistance under this part;

(B) The precommitment costs were incurred by the owner after the date of the Appropriate Act which made available the grant amounts for the project in question;

(C) The precommitment costs meet all other requirements of this part, including compliance with the authorities cited in § 511.11, where applicable. In particular, HUD approval of the grantee's certification of completion of environmental responsibilities, when required, must occur prior to execution of the written agreement to include the costs.

(ii) Other project-related costs eligible under § 511.10(g)(2) are also limited to those costs incurred after the commitment to the project is made by the grantee and the project is set up in the C/MI System under § 511.74, except to the extent such costs also meet both of the following conditions:

(A) The grantee and the owner agreed in writing before the costs were incurred that such costs could be included in project cost if and when the project was approved for assistance under this part, or the grantee specifically agrees in writing to include such costs in project cost on or before the date the project is set-up on the C/MI System under § 511.74.

(B) The costs also meet the conditions stated in § 511.10(g)(3)(i) (B) and (C).

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Dated: May 30, 1989.

Audrey E. Scott,

General Deputy Assistant Secretary for Community Planning and Development.

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Part VII

Office of Personnel Management

5 CFR Parts 430 and 432

Reduction in Grade and Removal Based on Unacceptable Performance; Final Regulations

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 430 and 432

RIN 3206-AB21

Reduction in Grade and Removal Based on Unacceptable Performance

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: The Office of Personnel Management is issuing final Part 432 regulations governing reduction in grade and removal based on unacceptable performance (as well as conforming final revisions to two provisions of Part 430) in an effort to improve employee and agency understanding of the authorities, procedures and rights provided by the Civil Service Reform Act of 1978. With respect to reductions in grade and removals based on unacceptable performance, these regulations clarify pertinent terminology and definitions, set forth substantive procedural requirements, and specify agency authorities and obligations as well as employee rights and responsibilities. These regulations are being issued together with a Federal Personnel Manual Bulletin which provides detailed policy guidance on reductions in grade and removals based on unacceptable performance.

EFFECTIVE DATE: July 21, 1989.

FOR FURTHER INFORMATION CONTACT: Timothy M. Dirks or Mary Giallorenzi, (202) 653-8551.

SUPPLEMENTARY INFORMATION: On October 4, 1988, OPM published (at 53 FR 38954) reproposed regulations on reduction in grade and removal based on unacceptable performance. OPM received comments from 11 agencies and 3 labor unions. Following is a discussion of the comments received and OPM's response to these comments. The final regulations following the comment and response material.

1. Section 430.404 Definitions

Comment on definition of "Rating of record": One agency commented that it concurred with the proposed revision to the definition of "rating of record," which eliminates the requirement to assign an "unacceptable" rating before initiating an opportunity to improve for employees covered by the Performance Management and Recognition System (PMRS), but only with a related change made to 5 CFR 540.108(a). The suggested change would provide that if an employee covered by PMRS cannot be rated at the end of the appraisal period because he or she is serving under an opportunity to improve, he or she may not be granted a merit increase. The agency believes that to grant such an increase during an opportunity to improve would be inconsistent with the philosophy of pay-for-performance, and would undermine the agency's case for a performance-based action if the employee appeals to a third party.

Response: The revision to the definition of "rating of record," which eliminate the requirement to assign a rating of record when giving an employee a written notification of unacceptable performance, applies to those situations where the written notification occurs during the appraisal cycle. At the end of each appraisal cycle, a rating of record is required for PMRS employees in accordance with 5 CFR 430.406(a). Thus, if a PMRS employee is serving under an opportunity to improve at the end of the rating cycle, the agency is obligated to give a rating of record (unless the agency's performance appraisal system provides for extending the rating period under these circumstances). In most cases the rating of record given when an employee is undergoing an opportunity to improve would be "unacceptable." However, the agency may determine that, after viewing the employee's performance for the overall rating period, a higher rating is warranted under certain circumstances.

By adopting the agency's suggestion, OPM regulations would, in essence, require agencies to determine that an employee's performance would be "unacceptable" under the circumstances described. OPM believes that such a requirement might, in some cases, deter agencies from notifying and assisting employees in improving unacceptable performance at the earliest possible. time when there is the greatest chance for improvement. Moreover, OPM believes that agencies are in the best position to determine, on a case-by-case basis, how to rate the employee's overall performance for pay-for-performance purposes. For these reasons, OPM has not adopted the agency's proposal to make a change in Part 540.

2. Section 430.405 Agency Performance Appraisal Systems

Comment on paragraph (j)(3): One agency commented that the current wording of the provision which requires that a reassignment, reduction in grade or removal be initiated if an employee's performance is unacceptable after an opportunity to improve is inconsistent with OPM's position, as stated in the supplementary information of the reproposed regulations, that there are other alternatives available to an agency under these circumstances. The agency recommended that OPM change the word "must" to "may" in order to allow agencies to consider other alternatives.

Response: OPM agrees with the agency and believes that the language in the reproposed regulation is more restrictive than required by law. While agencies in the great majority of cases should reassign, reduce in grade or remove an employee whose performance is unacceptable at the conclusion of an opportunity to improve, OPM recognizes that legal authority exists which permits agencies to legitimately consider alternatives other than reassignment, reduction in grade or removal. Therefore, OPM has changed the regulation to reflect that an agency may reassign, reduce in grade or remove an employee if his or her performance is unacceptable at the conclusion of an opportunity to improve.

3. Section 432.103(b) Actions Excluded

Comment on Reassignments: A union suggested that this section list as an exclusion a lateral reassignment based on unacceptable performance to help clarify that reassignments are not covered by this part and to indicate that agencies have the choice of reassigning as well as reducing in grade or removing all employees who continue to perform unacceptably. An agency asked that OPM consider listing as an exclusion the reassignment into a supervisory position of an employee who subsequently fails the supervisory probationary period required under 5 U.S.C. 3321.

Response: OPM agrees with the union's position that the procedures of this part apply only to reductions in grade and removals based on unacceptable performance and that agencies do not have to reduce in grade or remove all employees who perform unacceptably. However, OPM believes that the title of the regulation, "Reductions in Grade and Removal Based on Unacceptable Performance," coupled with its sole focus on reductions in grade and removal actions, make clear that reassignment based on unacceptable performance are not included in the actions covered by this part. With respect to the agency's suggestion, OPM notes that this section already lists as an exclusion actions to demote supervisory employees from their positions based on their failure to complete satisfactorily the probationary period required under section 3321. In any event, lateral reassignments which place employees into supervisory positions, even if the employee fails to perform satisfactorily as a supervisor, are not reductions in grade or removals covered by this part. For these reasons, there is no need to change this section.

Comment on Involuntary Retirement: One agency pointed out that the reproposed regulation dropped the earlier proposed regulatory provision, paragraph (15) of § 432.102(b), which specifically excluded involuntary retirement because of disability under Part 831, and did not discuss a reason for not incorporating it in the current proposed regulations.

Respose: OPM notes that the omission was, as the agency surmised, accidential, and OPM is incorporating the paragraph in the final regulation.

Comment on Minimally Acceptable Performance/Non-Critical Elements: One agency recommended that actions based on minimally acceptable performance and on unacceptable performance of a noncritical element should be listed under the exclusions of actions despite OPM's earlier explanation for deleting these proposed exclusions.

Response: In its earlier explanation for deleting these actions, OPM pointed out that listing them as exclusions under Part 432 could imply that such actions might be possible under another regulatory authority. OPM explained that since this was not its intent, and that since such actions were clearly outside the domain of Part 432, it was removing them from the list of exclusions. OPM continues to believe that 5 U.S.C. 4301(3), along with the definition in § 432.103, make it clear that only actions based on unacceptable performance of one or more critical elements are covered under Part 432. Therefore, OPM does not agree that reinserting these actions as exclusions is necessary and, as stated in its earlier response, could lead to misunderstandings.

Comment on paragraph (b)(1): An agency recommended that § 432.102(b)(1) reflect that these regulations do not apply to the reduction in grade of a supervisor who is serving a supervisory probation except when the action is based on a critical element not related to supervisory responsibilities.

Response: 5 U.S.C. 3321(b), 5 CFR 315.907(a) and 315.909(b) make it clear that only reductions in grade based on unacceptable performance related to supervisory performance are excluded from Part 432 coverage. If an agency takes action against a probationary supervisor for unacceptable performance in a critical element which is unrelated to supervisory or managerial performance, the agency would use Part 432 procedures. Therefore, OPM is changing the regulation to clarify that only reductions in grade based on unsatisfactory supervisory or managerial performance are excluded from coverage.

Comment on paragraph (b)(3): One agency found this paragraph, which excludes actions against employees in the competitive service who have not completed 1 year of current continuous service, to be unclear. The agency recommended that the language be changed to: "an employee in the competitive service serving in an appointment that requires no probationary or trial period (i.e., temporary appointments pending establishment of a register (TAPER), status quo, or special tenure appointments) who has not completed 1 year of current continuous service in the same or similar position under other than a temporary appointment limited to 1 year or less."

Response: OPM agrees that the language recommended by the agency will help clarify employee coverage under Part 432 and has adopted the suggestion, except for the parenthetical language, which it believes is more appropriately discussed in FPM guidance.

Comment on paragraph (b)(11): One agency recommended listing as a new exclusion "a removal or reduction in grade made in accordance with the failure to comply with an enforceable settlement agreement." The agency believes that such an action is not necessarily covered by the exclusion of "voluntary actions" under § 432.102(b)(11) since the settlement may be alleged to be involuntary.

Response: OPM notes that under case law developed by MSPB and the courts, a settlement agreement is only enforceable if it is knowingly and voluntarily established. Thus, the exclusion the agency proposed is covered in fact by the exclusion of voluntary actions. If the employee believes the settlement agreement is not voluntary, he or she may challenge its validity or implementation before an appropriate third party. For these reasons OPM has not adopted the agency's suggestion.

Comment on paragraph (b)(13): A union recommended that OPM refrain from incorporating MSPB's holding in *Phipps* v. *Department of Health and Human Services* (that returns from temporary promotions are not covered under Part 432 even if the promotion has been extended for more than 2 years) since the union believes that this case law is not widely accepted and "deviates from the conventional wisdom."

Response: OPM believes that the Board's holding in *Phipps* is an accurate statement of the law. Further, OPM has earlier pointed out in its comments on both the reproposed regulations and on final published Part 752 regulations, that the MSPB has adopted the *Phipps* holding in subsequent decisions. Therefore, OPM cannot agree that the holding in *Phipps* are not now well-established.

4. Section 432.102(f)—Employees Excluded

Comment on categories of employes excluded: A union noted that OPM listed 12 categories of employees excluded that are not referenced in law or the current Code of Federal Regulations. It believes that OPM has expanded the categories of employees excluded from Part 432 coverage to cover more employees than are excluded by statute or current regulation.

Response: Contrary to the union's comment, all of the employee exclusions are listed in the law (5 U.S.C. 4301(2)) or current regulations (5 CFR Parts 430 and 432). OPM has merely incorporated them into one section in order to assist agencies and employees who use the regulations.

Comment on paragraph (f)(2): An agency recommended inclusion under Part 432 of employees who have not completed 1 year of current continuous employment but who have previously completed a probationary period.

Response: Employees meeting this description are individuals who previously served under appointments requiring a probationary period (career and career-conditional) but who now are serving under appointments not requiring one, such as TAPER and similar non-status appointees. Under current policy, to be accorded Part 432 coverage while serving under one of these appointments, an employee must have completed 1 year of current continuous service in the same or similar non-temporary positions regardless of their past employment. This policy is consistent with Civil Service Rule 1.3(e) which provides that tenure is governed by the type of appointment under which the employee is currently serving "without regard to whether he has competitive status or whether his appointment is to a competitive position or an excepted position." For this reason, the agency's suggestion was not adopted.

5. Section 432.103 Definitions

Comments on definition of "Acceptable performance": Four agencies asked that OPM further review and clarify the definition of "acceptable performance." The agencies noted that the definition requires only that employees meet "established standards" and fails to indicate what level of performance described by an employee's standards must be met in order to achieve acceptable performance.

Response: OPM agrees that the definition given in the reproposed regulations does not sufficiently clarify what level of performance is required to achieve acceptable performance. Accordingly, OPM is revising the definition to clarify that "acceptable performance," for the purpose of this part, means performance that meets an employee's performance requirement(s) or standard(s) at the level of performance above "unacceptable" in the critical element(s) at issue. Since each agency has the flexibility to develop performance appraisal systems to meet their particular needs, the acceptable level of performance may vary from one agency to another. For example, in agencies which have a performance appraisal system that provides for rating an employee's performance on individual performance elements at one of five levels, acceptable performance would be between the "fully successful" and "unacceptable" levels (e.g., performance which is "minimally satisfactory"). In agencies which have a performance appraisal system that provides for rating an employee's performance on an individual performance element at one of three levels, acceptable performance would be "fully successful" performance because there is no defined level of performance provided for between the "unacceptable" and "fully successful" levels in such a system. In revising the definition of acceptable performance, OPM has taken into account agencies' different performance appraisal systems and has attempted to clarify that, for the purpose of this part, acceptable performance is properly determined in reference to the level of performance at which individual performance elements may be rated.

Comments on definition of "Current continuous employment": A union stated that it disagrees with OPM's proposed definition of "current continuous employment" as defined in both the earlier and current reproposed regulations. It suggested that OPM not define this term, or else define it to conform to the Board's decision in *Roden* v. *Tennessee Valley Authority*, 25 M.S.P.R. 363 (1984). Along these lines, the union suggested defining current continuous employment as "the period of service which effectively enters the agency into a continuing employment contract with the employee, that, despite brief periods of breaks in service, lasts 1 year or more." An agency recommended adding language to make it clear that the definition applies only to appointments that require no probationary or trial period, for example, TAPER, status quo or special tenure appointments.

Response: The definition of "current continuous employment" suggested by the union is based on the union's interpretation of MSPB's decision in *Roden*. However, the Board's holding in *Roden*, which characterized a series of temporary limited appointments for excepted service employees as a "continuing employment contract" and allowed brief breaks in service (as opposed to allowing no break) in computing current continuous service, was based, in large part, on OPM's earlier FPM guidance which was in effect at the time of the *Roden* decision. This guidance was superseded by 5 CFR 752.402(b) which became effective on July 11, 1988. The regulation makes clear that OPM's policy governing the computation of current continuous employment allows for no break in Federal civilian employment. Since the definition suggested by the union for Part 432 is not consistent with established policy, OPM has not adopted the suggestion. Regarding the agency's comment that OPM should make it clear that the definition applies only to appointments that require no probationary or trial period, OPM notes that this is true only for competitive service appointments. Since the definition also applies to excepted service appointments, the agency's recommended change would not be a complete illustration of the appointments and positions covered by the definition. For this reason, OPM has not adopted the agency's suggestion to change the definition of current continuous employment.

Comment on definition of "Similar positions": An agency recommended defining "similar positions" as that term is currently defined in FPM chapter 752, i.e., positions which would fall in the same competitive level for purposes of a reduction in force under Part 351. The agency believes that if this recommendation were carried out, it would clarify that positions in the competitive service are not similar to positions in the excepted service and that various positions in different competitive levels would not be similar.

Response: OPM notes that its definition of "similar positions" in the reproposed regulations is the same as the definition in the recently published final Part 752 regulations. This definition, which focuses on the similarity of duties and qualifications for the positions in question, was developed after extensive opportunity for comment and consultation. The new definition in the Part 752 regulation superseded the language in FPM *chapter* 752. (OPM plans to issue a revised FPM chapter 752 in the near future to reflect all the changes in Part 752.) Contrary to the agency's understanding, OPM proposed to define "similar positions" so that positions in the excepted service meet the same test as those in the competitive service which require no probationary or trial period. For these reasons, OPM has not changed the definition of "similar positions" in these final regulations.

6. Section 432.104 Addressing Unacceptable Performance

Comments on notification of unacceptable performance: Two agencies commented that the current wording of the provision regarding notification of unacceptable performance could be construed incorrectly to mean that the agency is not required to notify the employee of unacceptable performance and inform the employee of the standards for retention. They recommended that OPM change the word "may" to "shall" in order to indicate that these steps are required. One union recommended that the notification should be at the earliest possible date after the supervisor becomes aware of the employee's work deficiencies and provide for assisting, counseling, and guidance to aid the employee in bringing his or her performance up to an acceptable level.

Response: OPM agrees with the agencies' comments and has adopted their suggestion to change the word "*may*" to "*shall*" in the final regulation in order to reflect OPM's intent that notifying the employee of the critical element(s) for which performance is unacceptable and informing the employee of the performance requirements or standard(s) that must be attained to demonstrate acceptable performance are steps that should be carried out as part of the notification process. Regarding the union's comment, OPM agrees that the notice of unacceptable performance should take place at the earliest possible time, although this is not a requirement.

However, OPM believes that the language in the proposed regulations, i.e., "At any time during the performance appraisal cycle that an employee's performance becomes unacceptable * * *" already allows for notification of unacceptable performance at an early point and that agencies are in the best position, on a case-by-case basis, to know when the employee should be put on notice of unacceptable performance. Therefore, OPM does not believe that the regulations should be changed. Regarding the union's comment that agencies should provide for assistance and guidance to employees in improving performance, OPM agrees with the union and requires in § 432.104 of the regulation that agencies offer assistance as a part of the employee's opportunity to demonstrate acceptable performance.

Comments on notification requirements for PMRS employees: One agency commented that it favored OPM's clarification that the notification of unacceptable performance for PMRS employees need not be an official "rating of record." A second agency suggested that the sentence regarding PMRS employees being provided written notice of the employee's unacceptable rating should be deleted and a corresponding change should be made to the definition in § 432.103(i) since OPM is removing the requirement for a "rating of record" if a PMRS employee's performance becomes unacceptable during the appraisal cycle. A third agency recommended that § 432.104 state that the agency "shall provide written notice of the employee's unacceptable *performance*" instead of "shall provide written notice of the employee's unacceptable *rating*."

Response: As stated in the supplementary information of the reproposed regulations, OPM believes that PMRS employees are entitled, under 5 U.S.C. 4302a(b)(6) to written notification of unacceptable performance on one or more critical elements, although the written notification need not be in the form of a "rating of record." The supplementary information further noted that as a conforming amendment, the requirement for a "rating of record" at times other than at the end of a rating cycle is being deleted from the Part 430 regulations. The provision to give a PMRS employee a written notice of the employee's unacceptable rating has remained in § 432.104 in order to make it clear that the notification of unacceptable performance must be in writing if it involves a PMRS employee and that it should be a determination made in reference to the employee's performance on individual critical element(s) (rather than a summary performance rating). Further, the definition section (432.103(i)) also explains that the meaning of the term "written notice of unacceptable rating," in the context of this part, consists of an agency's written notification (which need not be in the form of a performance rating) to an employee that his or her performance is unacceptable in one or more critical elements. Therefore, OPM believes that no change is necessary to the provision in the regulations regarding PMRS employees' entitlement to written notification of unacceptable performance.

Comment on Reassignments: One union commented that the proposed Part 432 regulations should include reassignments as an alternative to removal and reduction-in-grade actions based on unacceptable performance as provided in 5 U.S.C. 4302(b)(6). It suggested that § 432.104 include reassignment as one of the actions the agency may take if an employee's performance does not improve.

Response: OPM agrees with the union that reassignments are an alternative to removal and reduction in grade actions based on unacceptable performance. Other management actions are also possible when an employee's performance is determined to be unacceptable. However, consistent with 5 U.S.C. 4303, Part 432 deals only with removals and reductions in grade based on unacceptable performance. (Reassignments, as part of the performance management and appraisal process, are covered by Part 430. (See 5 CFR 430.204 and 430.405.)) Therefore, OPM has not adopted the recommendation.

Comment on assistance: One union commented that § 432.104 does not convey the idea that the employee's opportunity to improve is a time for the employer and employee to work together in an effort to assist the employee in performing up to his or her potential, but rather appears to be merely a step an agency must follow prior to initiating an unacceptable performance action. It also suggested that this section include specific examples of assistance, such as counseling and regular feedback, required of the employer.

Response: OPM agrees that the employee's opportunity to demonstrate acceptable performance is not merely a procedural step the agency must follow in route to initiating a removal or reduction-in-grade action. In this regard, the final regulations require agencies to give employees a "reasonable opportunity" to demonstrate acceptable performance prior to making a determination on whether to propose a reduction-in-grade or removal action. A requirement for agencies to offer employees assistance in improving their unacceptable performance is also included in regulation as a part of the opportunity to improve. In addition, the FPM guidance that is being issued concurrently with these regulations includes specific examples of assistance agencies should consider offering to employees to help them improve their unacceptable performance. For these reasons, OPM believes that the regulations and accompanying guidance satisfy the union's concerns.

Comments on length of the opportunity to improve: One union and one agency recommended that the regulations state a minimum length of time to be given to employees to demonstrate acceptable performance. The union stated that a minimum of 60 days is required but that the opportunity to improve time frame may be longer than 60 days. The agency urged that the concept of a time-bound opportunity to improve be put into the regulations since the agency believes that the governing statute requires the opportunity to be time-driven.

Response: OPM has not adopted the suggested changes for two reasons. First, applicable law does not require that time periods be set for the employee's opportunity to improve. 5 U.S.C. 4302(b)(6) merely requires an agency to afford an employee "an opportunity to demonstrate acceptable performance." Obviously, such an "opportunity" takes place over the course of time. But nowhere does the statute require or imply that OPM fix minimum or maximum time limits for a predetermined "opportunity period" that would apply rigidly to all covered employees in all job categories. In addition, experience has shown that not all opportunities to improve can easily be geared to predetermined time limits.

Second, OPM has determined that an efficient and effective Government would best be served by allowing agencies to tailor the opportunity to improve in such a way that the employee who is performing in an unacceptable manner will be given a reasonable change to meet the requirements of his or her position. Individual managers, and not OPM, are in the best position to understand the mission and requirements of their units and to exercise judgment in determining how to structure the employee's opportunity to improve.

Accordingly, although agencies remain free to establish minimum or maximum time frames, OPM will not require through regulation that an employee's opportunity to improve be a predetermined length of time or that agencies establish specific time frames in structuring an employee's opportunity to improve.

Comments on requirement that PMRS employees demonstrate performance at the "fully successful" level: Three agencies commented on the provision requiring PMRS employees to be provided a reasonable opportunity to demonstrate performance at the "fully successful" level or higher. One agency commented that under this requirement an opportunity to improve for an employee who improved his or her performance only to the minimally acceptable level could go on indefinitely. Another agency recommended that the regulations clarify that only PMRS employees who perform unacceptably may be required to demonstrate performance at the fully successful level. The third agency recommended that OPM spell out its intent to retain a PMRS employee in an opportunity to improve status until performance improves to level 3 or reverts to level 1 in a manner similar to the way it did in the Supplementary Information section of the reproposed regulations.

Response: The statute at 5 U.S.C. 4302a(b)(6) requires PMRS employees who perform unacceptably, and who are given an opportunity to improve, to demonstrate performance at the fully successful level or higher. Therefore, if a PMRS employee who has been given an opportunity, improves only to level 2 (minimally satisfactory), but not level 3 (fully successful), he or she has not fulfilled the statutory requirement to demonstrate performance at the successful level. As explained in the reproposed regulation, OPM sees no alternative course of action than continuing such an employee in an opportunity to improve status until such time as his or her performance improves to level 3 (fully successful) or reverts to level 1 (unacceptable). Thus, in terms of reduction in grade or removal under this part, if a PMRS employee's performance continues at or reverts to level 1 (unacceptable), once the employee has been given an opportunity to improve, the agency may propose a reduction-in-grade or removal action.

Comment on consideration of performance on all elements: One agency recommended that the regulations permit an employee to be advised at the start of an "opportunity period" of the requirements for acceptable performance for all his or her critical elements (regardless of whether the employee was performing unacceptably in all elements) and allow removal or reduction-in-grade action to be proposed if performance under any critical element is unacceptable at the end of the "opportunity period." In making its recommendation the agency stated that it seeks to resolve the problem of the employee who improves in the one critical element for which he or she was given an opportunity to improve only to fall down to an unacceptable level in another area. The agency does not believe that Congressional intent would be served by allowing a continuing series of element-by-element based "opportunity periods."

Response: OPM believes that the intent of the law in the area of taking performance-based actions under 5 U.S.C. Chapter 43 was to ensure that an employee is put on notice of his or her performance deficiencies in specific critical elements and given a chance to correct them prior to the agency making a decision on whether to remove, reduce in grade or take other action. In determining whether action is appropriate, the overall structure of the law, OPM's current regulations implementing the law, and applicable case law in this area focus on an employee's performance on individual critical elements. For example, the language of 5 U.S.C. 4320(b)(6) referring to removing or reducing in grade an employee who "continues to have unacceptable performance, but only after an opportunity to demonstrate acceptable performance * * *" strongly implies than the opportunity to improve is to be provided for the areas of performance which an employee is performing unacceptably (as opposed to all performance areas). 5 U.S.C. 4302(b)(5), which requires that agency performance appraisal systems provide for assisting employees in improving unacceptable performance, likewise implies that such assistance be given in areas of performance which the employee is performing unacceptably. Further, 5 U.S.C. 4303(b)(1)(A) (i) and (ii) require that a proposed action must be based on specific instances of unacceptable performance, with each instance being related to an individual critical element. The current regulation at 5 CFR 432.203(b), in effect since 1981, requires that an agency "* * * identify for the employee the critical element(s) for which performance is unacceptable and give the employee a reasonable time to demonstrate acceptable performance * * *." The merit system principle at 5 U.S.C. 2301(b)(6) requiring that "* * * inadequate performance should be corrected, and employees should be separated who cannot or will not improve their performance to meet required standards" also suggests that an employee be given a chance to correct inadequate performance in specific areas. While OPM sympathizes with the concerns of the agency, it believes that a reasonable interpretation of the laws governing the taking of performance-based actions precludes adoption of the agency's suggested change.

7. Section 432.105 Proposing and Taking Action Based on Unacceptable Performance

Comments on proposing action based on unacceptable performance following an employee's opportunity to improve: Two unions and five agencies commented on the provisions allowing agencies to propose a reduction-in-grade or removal action, subject to the 1-year limitation in 5 U.S.C. 4303(c)(2)(A), if an employee's performance again becomes unacceptable on the critical element(s) at issue after having been given an opportunity to demonstrate acceptable performance. One union believes that the reproposed regulation would allow an employee to be removed for failure to meet a critical element which is broadly written following an opportunity to improve even though the circumstances were totally different. It also claims that the applicable statute and case law entitle an employee to an opportunity to improve every time his or her performance falls to an unacceptable level (even after having been given a prior opportunity to improve). Another union claims that an employee whose performance improves to an acceptable level during an opportunity to improve has satisfied the requirement to demonstrate acceptable performance and, under 5 U.S.C. 4302(b)(6), cannot be reduced in grade or removed when the employee's acceptable performance does not continue. Two agencies endorsed the regulation as proposed. Three other agencies, while supporting the concept of requiring an employee to sustain improve performance, stated that the regulation as proposed was not clear on how long an employee could be required to sustain acceptable performance after having been given an opportunity to improve. These agencies contended that, read literally, the regulations could allow an agency to require an employee to sustain acceptable performance following an opportunity to improve for an indefinite period of time. One of these agencies suggested that the regulations state that an employee should be expected to sustain acceptable performance for a reasonable time, depending on the circumstances. Another agency suggested that OPM consider a time limit of some sort. The other agency suggested that, in the interest of equity, the employee should be required to sustain acceptable performance for 1 year commencing with the beginning of the employee's opportunity to improve.

Response: OPM has clarified that agencies may propose a reduction-in-grade or removal action when an employee resumes unacceptable performance after having been given an opportunity to improve, to address the problem of employees who improve their unacceptable performance only during a formal opportunity to demonstrate acceptable performance but who cannot or will not maintain that improved level of performance afterwards. This occurs, for example, when an employee improves his or her level of performance to an acceptable level, but does so only when threatened with removal or reduction in grade, or when an employee makes a good faith effort to improve, but can do so only for the period of time covered by the opportunity to improve by working extra hours or working only on the tasks assigned under the critical element(s) at issue. In other cases, an employee may be able to perform while being given specific assistance, but cannot independently perform acceptably on his or her own afterwards. Instead of requiring that employees be provided additional opportunities to improve in situations such as these (which necessarily means providing more time and assistance associated with additional opportunities to demonstrate acceptable performance),OPM is clarifying that agencies have the authority under 5 U.S.C. Chapter 43 to propose a reduction-in-grade or removal action when an employee performs unacceptably after having been given a reasonable opportunity to improve.

Congress, in creating the removal and reduction in grade provisions of chapter 43, sought to give agencies clear authority and make it easier to take actions against employees who continue to perform unacceptably after being given an opportunity to improve. This notion is reflected in the legislative history of the CSRA and the language of 5 U.S.C. 4302(b)(6). In line with this authority, OPM has concluded that implicit in the requirement that an agency provide an employee who is performing unacceptably with a reasonable opportunity to improve, is the corresponding responsibility of the employee to maintain any improved performance which results from the opportunity. An agency has a right to expect acceptable performance once it has identified the employee's performance deficiencies, informed the employee of the performance requirements or standards that must be attained in order to demonstrate acceptable performance in his or her position, and provided the employee with a reasonable opportunity to improve (which includes assistance in improving unacceptable performance). In this regard, OPM's regulation, developed consistent with congressional intent and action, clarifies that employees may be subject to removal or reduction in grade if acceptable performance demonstrated during the opportunity to improve is only short-term or temporary.

Regarding the agencies' comments that the reproposed regulations, read literally, could allow an agency to require an employee to sustain acceptable performance for an indefinite period of time without affording an additional opportunity to improve, OPM recognizes that the language in the reproposed regulations referring to a 1-year limit could be interpreted in such a way. This was not OPM's intent. Therefore, OPM is revising the regulation to clarify that an agency's proposed reduction in grade or removal action may be based on instances of unacceptable performance which occur within 1 year prior to the date of the proposed action and that action may be proposed if the employee's performance in one or more of the critical element(s) at issue is unacceptable during or following the employee's opportunity to improve. However, OPM, in exercising its regulatory discretion, has determined that if an employee had performed acceptably for 1 year from the beginning of an opportunity to demonstrate acceptable performance (in the critical element(s) for which he or she was afforded an opportunity to demonstrate acceptable performance), and the employee's performance again becomes unacceptable, the employee shall be afforded an additional opportunity to improve before the agency may determine whether to propose a Part 432 action. OPM believes that this change, which sets reasonable limits on requiring employees to improve unacceptable performance, is consistent with congressional intent and strikes a balance between the needs of agencies for an efficient and effective work force and the rights of employees to a reasonable chance to demonstrate they can overcome serious performance deficiencies.

Comment on advance notice and final written decision: An agency recommends that OPM delete the words "the instances of" and "those instances of" unacceptable performance from the subparagraphs relating to the advance notice and final written decision. While the agency notes that the law (5 U.S.C. 4303(b)(1)(A)(i)) uses the words "specific instances of unacceptable performance," the agency believes that these subsections interpret the legal language unnecessarily to require that specific examples of unacceptable performance be stated in the proposal and decision notices.

Response: OPM believes that the purpose of the legal requirement for agencies to specify the instances of unacceptable performance on which the action is based is to inform employees with sufficient specificity about the charges on which the action is based so that they may respond fully to those charges, both before an agency's final decision is made and afterwards if the employee chooses to appeal. Therefore, OPM has not deleted the language in these subsections as suggested by the agency.

Comment on representation: A union requested that OPM provide clarification on the issue of representation. It noted that this section of the regulation provides for employees to select their own representative but that agencies can disallow as an employee's representative an individual whose activities would cause a conflict of interest or whose release from his or her position for representation purposes would give rise to unreasonable costs or preclude the completion of priority assignments. The union stated that employees covered by a collective bargaining agreement are entitled to union representation and suggested that the regulation state that agencies do not have the authority to "disallow" such employees from participating as representatives.

Response: The provision of the regulations which permits an agency to disallow an employee's representative under limited circumstances has been in effect since 1979. OPM is aware of no problems with the administration of this provision and believes that there is good justification for circumscribing an employee's latitude in choosing a representative in certain limited situations. Further, OPM expects that agencies will continue to deny an employee's choice of representative only in the very limited circumstances

provided for in the regulation. This provision is not aimed at denying union representation of employees covered by collective bargaining agreements. The regulation is intended to provide agencies with the authority, in very limited circumstances, and in accordance with any applicable negotiated agreement, to disallow as an employee's representative an individual whose absence from the workplace would create serious disruption, be very costly, or raise a significant conflict of interest.

Comments on consideration of medical conditions: One agency stated its belief that the language in the reproposed regulation which allows employees to present pertinent medical information during the notice period before the agency decision, might be interpreted as relieving employees of any responsibility to raise medical issues earlier in the process if they wish the agency to consider it. It noted that, in practice, employees whose performance may be affected by a medical condition have ample opportunity to raise the condition before the notice period, and have it considered by the agency well before it has to decide whether to propose action. Further, it noted that the current regulation provides that if the employee wants the agency to consider a medical condition in connection with a performance deficiency, the employee should, whenever possible, raise the issue when the agency offers him or her an opportunity to improve. The agency also pointed out that the early identification of medical conditions also allows employees to be informed of disability retirement options before the notice of proposal. The agency stated that failure to require early submission of medical evidence and to inform the employee of disability retirement options would delay further what is already a long and cumbersome process. Another agency expressed concern that the reproposed regulation seems to require the agency to inform the employee in the notice of proposed action of the employee's right to raise a medical issue, thus shifting the burden from the employee to the agency to raise medical issues in connection with the employee's unacceptable performance. A third agency recommended that OPM change the language in this section from requiring that an agency "*shall be aware of* the affirmative obligations of 29 CFR 1613.704" to "*shall consider* the affirmative obligations of 29 CFR 1613.704."

Response: Although the reproposed regulation did not intend that employees wait until the notice period to raise medical issues, OPM agrees that the reproposed regulation could be interpreted in this manner. Accordingly, OPM has clarified its position along the lines of the requirements in the current Part 432 (and included in the initial proposed regulations) that employees should, whenever possible, raise medical issues (and supply appropriate medical documentation) at the time they are notified by the agency of unacceptable performance or at the latest, as part of the employee's response to a proposed reduction in grade or removal action. In addition, the regulation does not require agencies to inform the employee in a notice of proposed action of a right to raise a medical issue. OPM hopes the revisions to the regulation will clarify that employees who believe that medical issues may be contributing to their unacceptable performance have the responsibility to raise the issues at the earliest possible time.

Regarding the agency's recommendation to change the language from "shall be aware of the affirmative obligations of 29 CFR 1613.704" to "shall consider * * *," OPM notes that the affirmative obligations of 29 CFR 1613.704 require that an agency make reasonable accommodation to the known physical or mental limitations of a qualified handicapped employee unless the agency can demonstrate that the accommodation would impose an undue hardship on the operation of its program. Agencies need to be aware of these obligations so that they can consider whether reasonable accommodation is appropriate under the circumstances of the case. Thus, OPM continues to believe that the term "aware" is appropriate in the context of the regulation and has not adopted the agency's suggested change. (Note that this language is identical to the language in the current Part 432 as well as the current Part 752.)

8. Section 432.106 Appeal and Grievance Rights

Comment on appeal rights: An agency requested that OPM clarify appeal rights with regard to the coverage of those employees who were in the competitive service at the time their positions were first listed under Schedule A, B, or C and still occupy those positions.

Response: Employees who were in the competitive service at the time their positions were first listed under Schedule A, B, or C and still occupy those positions remain in the competitive service in accordance with 5 CFR 212.401(b). Since these employees are in the competitive service, they have appeal rights in accordance with 5 U.S.C. 4303(e).

Comments on grievance rights: Three unions and one agency commented on the regulation's exclusion of nonpreference eligible excepted service employees challenging removal or reduction-in-grade actions under negotiated grievance procedures. The commenters claim that 5 U.S.C. 7121 provides for negotiated grievance procedures to cover a broad variety of disputes with limited exceptions and that no specific restriction is stated for nonpreference eligible employees in the excepted service. One union stated that what may be appealed to the MSPB does not restrict what is grievable. Two unions stated that the FLRA, and not OPM, has the authority to determine what is grievable or not grievable. The unions cited *National Treasury Employees Union and Department of Health and Human Services, Region V, Chicago, Illinois*, 25 FLRA 94, in which the FLRA held that grievance rights can be negotiated to cover nonpreference excepted service employees, as support for their position.

Response: As stated in the reproposed regulations, OPM believes that it is helpful to the users of the regulations to set forth in one place the specific categories of employees who have appeal and grievance rights for challenging removal and reduction in grade actions taken under this part. In the Civil Service Reform Act, Congress enacted a comprehensive remedial plan which specified the rights of certain categories of employees to challenge certain personnel actions taken against them. The plan does not provide nonpreference eligibles in the excepted service the right to challenge adverse and performance-based actions. The reproposed regulations reflected the remedial framework set forth in the Civil Service Reform Act and thereby did not provide an appeal or grievance right for nonpreference eligibles in the excepted service. OPM's position reflected the United States Supreme Court's decision in the *United States* v. *Fausto*, 108 S.Ct. 668 (1988), which emphasized in particular the exclusivity of the remedies that the CSRA provides for employees in the excepted service. Specifically, in emphasizing the preferred position of competitive service employees over excepted service employees, the Supreme Court concluded that "[i]n the context of the entire statutory scheme, we think it [CSRA] displays a clear congressional intent to deny the excluded employees the protections of Chapter 75—including judicial review—for personnel actions covered by that chapter." 108 S.Ct. at 673.

Although OPM is aware that the FLRA, in *National Treasury Employees Union and Department of Health and Human Services, Region V, Chicago, Illinois*, 25 FLRA 94, held that grievance rights can be negotiated to cover nonpreference excepted service employees, this FLRA decision was reversed by the United States Court of Appeals for the Seventh Circuit in *FLRA* v. *HHS*, 858 F.2d 1278 (7th Cir. 1988). In reversing the FLRA decision, the Seventh Circuit relied heavily on the Supreme Court's decision in *U.S.* v. *Fausto*. The Seventh Circuit stated that the Supreme Court's reasoning in *Fausto* applies to the right to appeal an adverse action to an arbitrator even though that right comes under a different portion of the CSRA. The court stated that "arbitration * * * entails the same type of after-the-fact review * * * of an agency's decision as do the statutory appeals procedures. It simply substitutes an arbitrator for MSPB review." The Seventh Circuit concluded that the rights and remedies available to a nonpreference eligible excepted service employee when an agency takes an adverse action are "a maximum" and therefore are not conditions of employment subject to collective bargaining under 5 U.S.C. Chapter 71.

In addition, a decision of the U.S. Court of Appeals for the District of Columbia Circuit, *Department of the Treasury* v. *FLRA*, No. 88-1159 (D.C. Cir. May 2, 1989), also reversed the FLRA and ruled that nonpreference eligible employees in the excepted service have no right to arbitral review of Chapter 43 actions. The D.C. Circuit, as did the Seventh Circuit in *FLRA* v. *HHS* (discussed above), relied heavily on the Supreme Court's decision in *Fausto* to find that giving grievance/arbitration rights to nonpreference eligibles in the excepted service would be inconsistent with congressional intent in the CSRA to provide an "integrated scheme" for adjudicating employee appeals, and would run the risk of inverting the preference granted to competitive service employees and veterans. The court explained that arbitral review of cases involving nonpreference eligibles would not be subject to the substantive law requirements which bind MSPB and arbitrators ruling on parallel appeals by competitive service employees and veterans and would not be subject to Federal Circuit review.

Accordingly, OPM's reproposed regulation accurately reflect the uniform holdings of the courts which have addressed the issue of which categories of employees, against whom actions based on misconduct or unacceptable performance have been taken, are entitled to appeal and grievance rights under law. Therefore, the language in the final regulation is consistent with that in the reproposed regulation regarding grievance rights of bargaining unit employees who have been reduced in grade or removed under this part.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it applies only to Federal employees.

List of Subjects

5 CFR Part 430

Administrative practice and procedure, Government employees, Reporting requirements.

5 CFR Part 432

Administrative practice and procedure, Government employees.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM amends 5 CFR Parts 430 and 432 as follows:

PART 430—PERFORMANCE MANAGEMENT

1. The authority citation for Part 430 continues to read as follows:

Authority: 5 U.S.C. chapters 43, 45, 53, and 54.

2. In § 430.404, the definition of "Rating of record" is revised to read as follows:

§ 430.404 Definitions.

* * * * *

"Rating of record" means the summary rating, under 5 U.S.C. 4302a, required at the time specified in the performance management plan or at such other times as the plan specifies for special circumstances.

* * * * *

3. In § 430.405, paragraph (j)(3) is revised to read as follows:

§ 430.405 Agency performance appraisal systems.

* * * * *

(j) * * *

(3) If, at the conclusion of the opportunity to improve referred to in paragraph (j)(1) of this section, the employee's performance is "Unacceptable," the agency may reassign, reduce in grade, or remove the employee as provided by 5 U.S.C. 4302a(b)(6) and 4303(a).

* * * * *

4. Part 432 is revised to read as follows:

PART 432—REDUCTION IN GRADE AND REMOVAL BASED ON UNACCEPTABLE PERFORMANCE

Sec.

432.101 Statutory authority.
432.102 Coverage.
432.103 Definitions.
432.104 Addressing unacceptable performance.
432.105 Proposing and taking action based on unacceptable performance.
432.106 Appeal and grievance rights.
432.107 Agency records.

Authority: 5 U.S.C. 4305.

§ 432.101 Statutory authority.

This part applies to reduction in grade and removal of employees based solely on unacceptable performance. 5 U.S.C. 4305 authorizes the Office of Personnel Management to prescribe regulations to carry out the purposes of Title 5, Chapter 43, including 5 U.S.C. 4303, which covers agency actions to reduce in grade or remove employees for unacceptable performance. (The provisions of 5 U.S.C. 7501 *et. seq.*, may also be used to reduce in grade or remove employees. See Part 752 of this chapter.)

§ 432.102 Coverage.

(a) *Actions covered.* This part covers reduction in grade and removal of an employee based solely on unacceptable performance.

(b) *Actions excluded.* This part does not apply to:

(1) The reduction in grade of a supervisor or manager who has not completed the probationary period under 5 U.S.C. 3321(a)(2) if such a reduction is based on supervisory or managerial performance and the reduction is to the grade held immediately before becoming a supervisor or manager in accordance with 5 U.S.C. 3321(b);

(2) The reduction in grade or removal of an employee in the competitive service who is serving a probationary or trial period under an initial appointment;

(3) The reduction in grade or removal of an employee in the competitive service serving in an appointment that requires no probationary or trial period who has not completed 1 year of current continuous employment in the same or similar position under other than a

temporary appointment limited to 1 year or less;

(4) The reduction in grade or removal of an employee in the excepted service who has not completed 1 year of current continuous employment in the same or similar positions;

(5) An action imposed by the Merit Systems Protection Board under the authority of 5 U.S.C. 1206;

(6) An action taken under 5 U.S.C. 7521 against an administrative law judge;

(7) An action taken under 5 U.S.C. 7532 in the interest of national security;

(8) An action taken under a provision of statute, other than one codified in title 5 of the U.S. Code, which excepts the action from the provisions of title 5 of the U.S. Code;

(9) A removal from the Senior Executive Service to a civil service position outside the Senior Executive Service under Part 359 of this chapter;

(10) A reduction-in-force governed by Part 351 of this chapter;

(11) A voluntary action by the employee;

(12) A performance-based action taken under Part 752 of this chapter;

(13) An action that terminates a temporary or term promotion and returns the employee to the position from which temporarily promoted, or to a different position of equivalent grade and pay if the agency informed the employee that it was to be of limited duration;

(14) A termination in accordance with terms specified as conditions of employment at the time the appointment was made; and

(15) An involuntary retirement because of disability under Part 831 of this chapter.

(c) *Agencies covered.* This part applies to:

(1) The executive departments listed at 5 U.S.C. 101;

(2) The military departments listed at 5 U.S.C. 102;

(3) Independent establishments in the executive branch as described at 5 U.S.C. 104, except for a Government corporation;

(4) The Administrative Office of the U.S. Courts; and

(5) The Government Printing Office.

(d) *Agencies excluded.* This part does not apply to:

(1) A Government corporation;

(2) The Central Intelligence Agency;

(3) The Defense Intelligence Agency;

(4) The National Security Agency;

(5) Any executive agency or unit thereof which is designated by the President and the principal function of which is the conduct of foreign intelligence or counterintelligence activities;

(6) The General Accounting Office;

(7) The U.S. Postal Service; and

(8) The Postal Rate Commission.

(e) *Employees covered.* This part applies to individuals employed in or under a covered agency as specified at § 432.102(c) except as listed in § 432.102(f).

(f) *Employees excluded.* This part does not apply to:

(1) An employee in the competitive service who is serving a probationary or trial period under an initial appointment;

(2) An employee in the competitive service serving in an appointment that requires no probationary or trial period, who has not completed 1 year of current continuous employment in the same or similar positions under other than a temporary appointment limited to 1 year or less;

(3) An employee in the excepted service who has not completed 1 year of current continuous employment in the same or similar positions;

(4) An employee outside the United States who is paid in accordance with local native prevailing wage rates for the area in which employed;

(5) An individual in the Foreign Service of the United States;

(6) A physician, dentist, nurse, or other employee in the Department of Medicine and Surgery, Department of Veterans Affairs, whose pay is fixed under Chapter 73 of title 38, U.S. Code, except persons appointed under 38 U.S.C. 4104(3);

(7) An administrative law judge appointed under 5 U.S.C. 3105;

(8) An individual in the Senior Executive Service;

(9) An individual appointed by the President;

(10) An employee occupying a position in Schedule C as authorized under Part 213 of this chapter;

(11) A reemployed annuitant;

(12) A National Guard technican;

(13) An individual occupying a position in the excepted service for which employment is not reasonably expected to exceed 120 calendar days in a consecutive 12 month period;

(14) An individual occupying a position filled by Noncareer Executive Assignment under Part 305 of this chapter; and

(15) A manager or supervisor returned to his or her previously held grade pursuant to 5 U.S.C. 3321 (a)(2) and (b).

§ 432.103 Definitions.

For the purpose of this part—

(a) *"Acceptable performance"* means performance that meets an employee's performance requirement(s) or standard(s) at the level of performance above "unacceptable" in the critical element(s) at issue.

(b) *"Critical element"* means a component of a position consisting of one or more duties and responsibilities that contributes toward accomplishing organizational goals and objectives and that is of such importance that unacceptable performance on the element would result in unacceptable performance in the position.

(c) *"Current continuous employment"* means a period of employment or service immediately preceding an action under this part in the same or similar positions without a break in Federal civilian employment of a workday.

(d) *"Opportunity to demonstrate acceptable performance"* means a reasonable chance for the employee whose performance has been determined to be unacceptable in one or more critical elements to demonstrate acceptable performance in the critical element(s) at issue.

(e) *"Reduction in grade"* means the involuntary assignment of an employee to a position at a lower classification or job grading level.

(f) *"Removal"* means the involuntary separation of an employee from employment with an agency.

(g) *"Similar positions"* mean positions in which the duties performed are similar in nature and character and require substantially the same or similar qualifications, so that the imcumbents could be interchanged without significant training or undue interruption to the work.

(h) *"Unacceptable performance"* means performance of an employee that fails to meet established performance standards in one or more critical elements of such employee's position.

(i) *"Written notice of unacceptable rating"* means an agency's written notification to an employee that his or her performance is unacceptable in one or more critical elements.

§ 432.104 Addressing unacceptable performance.

At any time during the performance appraisal cycle that an employee's performance becomes unacceptable in one or more critical elements, the agency shall notify the employee of the critical element(s) for which performance is unacceptable and inform the employee of the performance requirement(s) or standard(s) that must be attained in order to demonstrate acceptable performance in his or her position. The agency may also inform the employee that unless his or her performance in the critical element(s) improves to and is sustained at an acceptable level, the employee may be reduced in grade or removed. (If the employee is covered under the Performance Management and Recognition System, the agency shall provide written notice of the employee's unacceptable rating as required by 5 U.S.C. 4302a(b)(6).) For each critical element in which the employee's performance is unacceptable, the agency shall afford the employee a reasonable opportunity to demonstrate acceptable performance, commensurate with the duties and responsibilities of the employee's position. (If the employee is covered under the Performance Management and Recognition System, the employee shall be provided a reasonable opportunity to demonstrate performance at the "fully successful" level or higher as required by 5 U.S.C. 4302a(b)(6).) As part of the employee's opportunity to demonstrate acceptable performance, the agency shall offer assistance to the employee in improving unacceptable performance.

§ 432.105 Proposing and taking action based on unacceptable performance.

(a) *Proposing action based on unacceptable performance.* (1) Once an employee has been afforded a reasonable opportunity to demonstrate acceptable performance pursuant to § 432.104, an agency may propose a reduction-in-grade or removal action if the employee's performance during or following the opportunity to demonstrate acceptable performance is unacceptable in 1 or more of the critical elements for which the employee was afforded an opportunity to demonstrate acceptable performance.

(2) If an employee has performed acceptably for 1 year from the beginning of an opportunity to demonstrate acceptable performance (in the critical element(s) for which the employee was afforded an opportunity to demonstrate acceptable performance), and the employee's performance again becomes unacceptable, the agency shall afford the employee an additional opportunity to demonstrate acceptable performance before determining whether to propose a reduction in grade or removal under this part.

(3) A proposed action may be based on instances of unacceptable performance which occur within a 1 year period ending on the date of the notice of proposed action.

(4) An employee whose reduction in grade or removal is proposed under this part is entitled to:

(i) *Advance notice.* (A) The agency shall afford the employee a 30 day advance notice of the proposed action that identifies both the specific instances of unacceptable performance by the employee on which the proposed action is based and the critical element(s) of the employee's position involved in each instance of unacceptable performance.

(B) An agency may extend this advance notice period for a period not to exceed 30 days under regulations prescribed by the head of the agency. An agency may extend this notice period further without prior OPM approval for the following reasons:

(*1*) To obtain and/or evaluate medical information when the employee has raised a medical issue in the answer to a proposed reduction in grade or removal;

(*2*) To arrange for the employee's travel to make an oral reply to an appropriate agency official, or the travel of an agency official to hear the employee's oral reply;

(*3*) To consider the employee's answer if an extention to the period for an answer has been granted (e.g., because of the employee's illness or incapacitation);

(*4*) To consider reasonable accommodation of a handicapping condition;

(*5*) If agency procedures so require, to consider positions to which the employee might be reassigned or reduced in grade; or

(*6*) To comply with a stay ordered by a member of the Merit Systems Protection Board under 5 U.S.C. 1208(b).

(C) If an agency believes that an extension of the advance notice period is necessary for another reason, it may request prior approval for such extension from the Chief, Employee Relations Division, Office of Employee and Labor Relations, Personnel Systems and Oversight Group, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

(ii) *Opportunity to answer.* The agency shall afford the employee a reasonable time to answer the agency's notice of proposed action orally and in writing.

(iii) *Representation.* The agency shall allow the employee to be represented by an attorney or other representative. An agency may disallow as an employee's representative an individual whose activities as a representative would cause a conflict of interest or position or an employee whose release from his or her official position would give rise to unreasonable costs to the Government or whose priority work assignment precludes his or her release from official duties.

(iv) *Consideration of medical conditions.* The agency shall allow an employee who wishes to raise a medical condition which may have contributed to his or her unacceptable performance to furnish medical documentation (as defined in § 339.102 of this chapter of the condition for the agency's consideration. Whenever possible, the employee shall supply this documentation following the agency's notification of unacceptable performance under § 432.104. If the employee offers such documentation after the agency has proposed a reduction in grade or removal, he or she shall supply this information in accordance with § 432.105(a)(4)(ii). In considering documentation submitted in connection with the employee's claim of a medical condition, the agency may require or offer a medical examination in accordance with the criteria and procedures of Part 339 of this chapter, and shall be aware of the affirmative obligations of 29 CFR 1613.704. If the employee who raises a medical condition has the requisite years of service under the Civil Service Retirement System or the Federal Employees Retirement System, the agency shall provide information concerning application for disability retirement. As provided at § 831.501(d) of this chapter, an employee's application for disability retirement shall not preclude or delay any other appropriate agency decision or personnel action.

(b) *Final written decision.* The agency shall make its final decision within 30 days after expiration of the advance notice period. Unless proposed by the head of the agency, such written decision shall be concurred in by an employee who is in a higher position than the person who proposed the action. In arriving at its decision, the agency shall consider any answer of the employee and/or his or her representative furnished in response to the agency's proposal. A decision to reduce in grade or remove an employee for unacceptable performance may be based only on those instances of unacceptable performance that occurred during the 1 year period ending on the date of issuance of the advance notice of proposed action under § 432.105(a)(4)(i). The agency shall issue written notice of its decision to the employee at or before the time the action will be effective. Such notice shall specify the instances of unacceptable performance by the employee on which the action is based and shall inform the employee of any applicable appeal and grievance rights.

§ 432.106 Appeal and grievance rights.

(a) *Appeal rights.* An employee covered under § 432.102(e) who has been removed or reduced in grade under this part may appeal to the Merit Systems Protection Board if the employee is:

(1) In the competitive service and has completed a probationary or trial period;

(2) In the competitive service serving in an appointment which is not subject to a probationary or trial period, and has completed 1 year of current continuous employment in the same or similar position under other than a temporary appointment limited to 1 year or less; or

(3) A preference eligible in the excepted service who has completed 1 year of current continuous employment in the same or similar position(s).

(b) *Grievance rights.* (1) A bargaining unit employee covered under § 432.102(e) who has been removed or reduced in grade under this part may file a grievance under an applicable negotiated grievance procedure if the removal or reduction in grade action falls within its coverage (*i.g.*, is not excluded by the parties to the collective bargaining agreement) and the employee is:

(i) In the competitive service and has completed a probationary or trial period.

(ii) In the competitive service serving in an appointment which is not subject to a probationary or trial period, and has completed 1 year of current continuous employment in the same or similar position under other than a temporary appointment limited to 1 year or less; or

(iii) A preference eligible in the excepted service who has completed 1 year of current continuous employment in the same or similar position(s).

(2) 5 U.S.C. 7114(a)(5) and 7121(b)(3), and the terms of an applicable collective bargaining agreement govern representation for employees in an exclusive bargaining unit who grieve a matter under this section through the negotiated grievance process.

(c) *Election of forum.* As provided at 5 U.S.C. 7121(e)(1), a bargaining unit employee who by law may file an appeal or a grievance, and who has exercised his or her option to appeal an action taken under this part to the Merit Systems Protection Board, may not also file a grievance on the matter under a negotiated grievance procedure. Likewise, a bargaining unit employee who has exercised his or her option to grieve an action taken under this part may not also file an appeal on the matter with the Merit Systems Protection Board.

§ 432.107 Agency records.

(a) *When the action is effected.* The agency shall preserve all relevant documentation concerning a reduction in grade or removal which is based on unacceptable performance and make it available for review by the affected employee or his or her representative. At a minimum, the agency's records shall consist of a copy of the notice of proposed action, the answer of the employee when it is in writing, a summary thereof when the employee makes an oral reply, the written notice of decision and the reasons therefor, and any supporting material including documentation regarding the opportunity afforded the employee to demonstrate acceptable performance.

(b) *When the action is not effected.* As provided at 5 U.S.C. 4303(d), if, because of performance improvement by the employee during the notice period, the employee is not reduced in grade or removed, and the employee's performance continues to be acceptable for 1 year from the date of the advance written notice provided in accordance with § 432.105(a)(4)(i), any entry or other notation of the unacceptable performance for which the action was proposed shall be removed from any agency record relating to the employee.

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Title 3—

The President

Proclamation 5993 of June 19, 1989

National Lighthouse Day, 1989

By the President of the United States of America

A Proclamation

Lighthouses, the buildings whose solitary beacons have helped guide countless ships through the perils of fog and darkness, are a cherished part of our Nation's heritage. These impressive structures have long symbolized safety, vigilance, and faithfulness. Often isolated and repeatedly tested by the ravages of storm and sea, lighthouses are also monuments to the courage and determination of the people who built them and the keepers who have maintained them.

Lighthouses claim an honored place in the maritime history of the United States. They have served as navigational aids indicating landfall, marking dangerous reefs, and identifying harbor entrances. Today, approximately 750 lighthouses remain in the United States, standing along the Atlantic, Pacific, and Gulf Coasts and throughout the Great Lakes. More than half of them are still used for navigation.

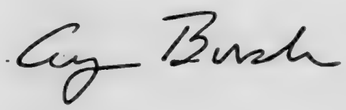
On August 7, 1989, we commemorate the 200th anniversary of the signing of the Lighthouse Act by our Nation's first President, George Washington. The Lighthouse Act established the Federal Government's role in the support, maintenance, and repair of these unique structures and commissioned the first Federal lighthouse.

By the end of this year, the United States Coast Guard will have completed the automation of all lighthouses it currently operates, bringing an end to the proud and colorful era of manned lighthouses. In cooperation with affected communities and concerned organizations, the Coast Guard is working to preserve the remaining structures and to educate the public on the role of lighthouses in our history and culture. These groups have succeeded in having more than 200 lighthouses listed on the National Register of Historic Places.

In recognition of the historic value of our Nation's lighthouses and the ongoing efforts to preserve them so that they might be opened to and enjoyed by the public, the Congress, by Public Law 100-622, has designated August 7, 1989, as "National Lighthouse Day" and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim August 7, 1989, as National Lighthouse Day. I call upon the people of the United States to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of June, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and thirteenth.



[FR Doc. 89-14907
Filed 6-20-89; 4:46 pm]

Rules and Regulations

Federal Register
Vol. 54, No. 119
Thursday, June 22, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 922

[Docket No. FV-89-059]

Apricots Grown in Designated Counties in Washington; Temporary Suspension of Grade Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule suspends, for the 1989 season only, the minimum grade requirement (Washington No. 1) currently in effect for fresh shipments of apricots grown in Washington. Handlers would be able to ship more fruit in fresh market channels, taking into consideration the abnormal growing conditions experienced by the Washington apricot industry this season. This action also would improve returns to producers.

DATES: The grade requirements specified in § 922.321 are suspended for the period June 19, 1989, through March 31, 1990. This interim rule is effective June 19, 1989, through March 31, 1990. Comments which are received by July 24, 1989, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the docket number, date, and page number of this issue of the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone: (202) 475–3918.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Marketing Order No. 922, both as amended [7 CFR Part 922], regulating the handling of apricots grown in designated counties in Washington. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 62 handlers of Washington apricots subject to regulation under the Washington apricot marketing order. In addition, there are approximately 190 apricot producers in Washington. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. A majority of these handlers and producers may be classified as small entities.

Minimum grade, maturity, color, and size requirements for Washington apricots regulated under this marketing order are specified in § 922.321 *Apricot Regulation 21* [7 CFR 922.321]. Section 922.321 provides that no handler shall handle any container of apricots unless such apricots grade not less than Washington No. 1, except for shipments subject to exemption under the regulation. In addition, the section provides that the Moorpark variety in open containers must be generally well matured. Also, that section provides that, with the exception of exempt shipments, apricots shipped must be reasonably uniform in color, and be at least 1⅝ inches in diameter, except for the Blenheim, Blenril, and Tilton varieties which must be at least 1¼ inches in diameter.

This rule amends paragraph (a)(1) of § 922.321 by temporarily suspending the minimum grade requirements for fresh shipments of apricots for the 1989 season only. The grade requirements currently specified in § 922.321 will resume April 1, 1990, for the 1990 and future seasons. The resumption of the grade requirements for the 1990 and future season shipments is based upon the grade and quality characteristics of Washington apricots during normal shipping seasons.

This action only suspends the grade requirements specified in § 922.321. Thus, the color and minimum size requirements for all varieties and the maturity requirements for the Moorpark variety would remain unchanged.

The Washington Apricot Marketing Committee (committee), which locally administers this marketing order, met May 24, 1989, and unanimously recommended this action. The committee has requested that this action be made effective by June 19, since the 1989 season apricot harvest is expected to begin at that time.

The committee meets prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Washington apricots which have been issued on a continuing basis. Committee meetings are open to the public and interested persons may express their views at these meetings. The U.S. Department of Agriculture (Department) reviews committee recommendations and information submitted by the committee and other available information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

The committee reports that the 1989 season apricot crop was severely damaged by a freeze last winter and by

recent hail storms. The committee estimates that only 1,100 tons of apricots will be shipped fresh during the 1989 season, even with the grade requirements suspended as requested. This amount is less than 25 percent of last season's fresh shipments of 4,405 tons. The committee estimates that only 700 tons of the available 1989 crop will meet the Washington No. 1 grade, since much of the fruit is misshapen and scarred from the hail.

This action will enable handlers to ship a larger portion of their crop to the fresh market this season, taking into account the abnormal growing and crop conditions, than they would be allowed if the minimum grade requirement were not suspended. This action would also improve returns to producers.

Suspension of the grade requirements for Washington apricots is intended to increase fresh shipments to meet consumer needs and improve returns to producers. It is the Department's view that the impact of this action upon producers and handlers would be beneficial because it will enable handlers to provide apricots consistent with 1989 season growing conditions.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other available information, it is found that the rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that, upon good cause, it is impracticable, unnecessary and contrary to the public interest to give notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action suspends the current grade requirements for Washington apricots; (2) Washington apricot handlers are aware of this action which was unanimously recommended by the committee at a public meeting and they need no additional time to comply with this action; (3) shipment of the 1989 season Washington apricot crop is expected to begin on or about June 19, 1989, and this action should apply to the entire season's shipments; and (4) the rule provides a 30-day comment period, and any comments received will be considered prior to issuance of a final rule.

List of Subjects in 7 CFR Part 922

Marketing agreements and orders, Washington, apricots.

For the reasons set forth in the preamble, 7 CFR Part 922 is amended as follows:

Note: These revisions will not appear in the Code of Federal Regulations.

PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

1. The authority citation for 7 CFR Part 922 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. The provisions of § 922.321 are amended by revising paragraph (a)(1) to read as follows:

§ 922.321 Apricot Regulation 21.

(a) * * *

(1) *Minimum grade and maturity requirements.* Such apricots that grade not less than Washington No. 1 and are at least reasonably uniform in color: *Provided,* That the grade requirement shall not apply to apricots handled during the 1989 season; *Provided further,* That such apricots of the Moorpark variety in open containers shall be generally well matured; and

* * * * *

Dated: June 19, 1989.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-14808 Filed 6-21-89; 8:45 am]

BILLING CODE 3410-02-M

Food Safety and Inspection Service

9 CFR Part 327

[Docket No. 88-023C]

Imported Canadian Products: Provision for "Streamlined" Inspection Procedures; Exemption From Official Mark of Inspection; Correction

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Interim rule with request for comments; correction.

SUMMARY: This document serves to correct an omission in the interim rule published (54 FR 273), on January 5, 1989, by the Food Safety and Inspection Service, which amended the Federal meat and poultry products inspection regulations to provide "streamlined" inspection procedures for the reinspection of Canadian meat and poultry products and to exempt all meat and poultry products imported from Canada from the requirement that such product or containers of product be marked with the official mark of inspection.

FOR FURTHER INFORMATION CONTACT: Patricia Stolfa, Deputy Administrator, International Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-3473.

SUPPLEMENTARY INFORMATION: On January 5, 1989, the Food Safety and Inspection Service published an interim rule (54 FR 273) which amended the Federal meat and poultry products inspection regulations by providing "streamlined" inspection procedures for the reinspection of Canadian meat and poultry products and by exempting all meat and poultry products imported from Canada from the requirement that such product or containers of product be marked with the official mark of inspection. These actions were a result of the United States-Canada Free-Trade Agreement and the United States-Canada Free-Trade Agreement Implementation Act of 1988, Pub. L. 100-449. Subsequent to publication of this interim rule, it was found that a portion of the interim rule had been inadvertently omitted: The words "adulterated or misbranded and to be" had been dropped from the first sentence of § 327.10(b) of the interim rule as published. This document serves to correct the omission and the affected paragraph (b) is reprinted below in its entirety.

Done as Washington, DC, on June 12, 1989.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

PART 327—[AMENDED]

The following correction is made in Docket No. 88-023I, Imported Canadian Product: Provision for "Streamlined" Inspection Procedures; Exemption from Official Mark of Inspection published in the **Federal Register** on January 5, 1989 (54 FR 273).

1. Section 327.10(b) at 54 FR 275, column 1, is correctly revised to read as follows:

§ 327.10 Samples; inspection of consignments; refusal of entry; marking.

* * * * *

(b) Except for product imported from Canada, the outside containers of all products offered for importation from any foreign country and accompanied with a foreign inspection certificate as required by this part, which, upon reinspection by import inspectors, are found not to be adulterated or misbranded and to be otherwise eligible for entry into the United States under this part, or the products themselves if not in containers, shall be marked with the official inspection legend prescribed in § 327.26 of this subchapter. Such inspection legend shall be placed upon the containers only after completion of official import inspection and product acceptance. Except for Canadian product, all other products so marked, in compliance with this part, shall be admitted into the United States, insofar as such admittance is regulated under the Act.

* * * * *

[FR Doc. 89-14846 Filed 6-21-89; 8:45 am]

BILLING CODE 3410-DM-M

FEDERAL TRADE COMMISSION

16 CFR Parts 13 and 15

Elimination of Prohibited Trade Practices, Affirmative Corrective Actions, and Advisory Opinions From the CFR

AGENCY: Federal Trade Commission.

ACTION: Removal of miscellaneous provisions from the CFR.

SUMMARY: Title 16 of the Code of Federal Regulations ("CFR") includes a list of prohibited trade practices and affirmative corrective actions in Part 13, and the text of advisory opinions issued between 1965 and 1974 in Part 15. The Commission is not required to publish these materials in the CFR, and more complete versions of these materials are publicly available elsewhere. Because there is little, if any, public benefit to justify the ongoing cost of publication, the Commission has determined to delete these two parts.

EFFECTIVE DATE: June 22, 1989.

FOR FURTHER INFORMATION CONTACT: Phillip S. Priesman, Attorney, Office of the General Counsel, Federal Trade Commission, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580 (202) 326-2484.

SUPPLEMENTARY INFORMATION: Part 13 of Title 16 of the CFR is a codified listing of prohibited trade practices and affirmative corrective actions. The text of each Commission order concerning prohibited trade practices and affirmative corrective actions is published in the **Federal Register** when it is issued. At present, the **Federal Register** notices accompanying these items identify the particular practice or conduct involved, and list the corresponding numerical citation provided for that practice in Part 13. The lists found in Part 13 can be used as an index to Commission decisions. Each Commission order published in the **Federal Register**, however, is also published by the Commission in a publicly-available set of volumes entitled "Federal Trade Commission Decisions." Each of these volumes includes an index to the decisions and orders contained therein. In addition, the Commission's Public Reference Room provides public access to all of the agency's decisions and orders. Thus, Part 13 of Title 16 of the CFR is being deleted as unnecessary.

Part 15 of Title 16 of the CFR contains the text of advisory opinions issued from November, 1965, to June, 1974. Opinions issued since June of 1974 have not been codified in the CFR, but are published in "Federal Trade Commission Decisions." Many of the opinions found in Part 15 address situations that are of little or no current interest, and others are too general to be useful to the public. Thus, Part 15 of Title 16 of the CFR is being eliminated.

List of Subjects in 16 CFR Parts 13 and 15

Trade practices, Administrative practice and procedure.

PARTS 13 and 15—[REMOVED]

In view of the foregoing considerations, the Commission removes Parts 13 and 15 of Title 16 of the Code of Federal Regulations.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 89-14678 Filed 6-21-89; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 635

RIN 2125-AC16

Contract Procedures—Advertising for Bids; Noncollusion Affidavit/ Declaration Requirement

AGENCY: Federal Highway Administration (FHWA) DOT.

ACTION: Final rule.

SUMMARY: The Federal Highway Administration (FHWA) is revising its regulation on contract procedures regarding advertising for bids. The revised regulation requires the State highway agencies (SHA's) to include noncollusion provisions in the advertised specifications which permit all bidders on a Federal-aid highway project to submit an unsworn noncollusion declaration, under penalty of perjury under the laws of the United States, as an alternative to the sworn noncollusion affidavit requirement of the existing regulation. This revision responds to a need for flexibility in the construction contract bidding process where time constraints often dictate that documents be executed and dispatched during other than normal business hours.

EFFECTIVE DATE: June 22, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. William A. Weseman, Chief, Construction and Maintenance Division, (202) 366-0392, or Mr. Wilbert Baccus, Office of Chief Counsel, (202) 366-0780, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: The requirement for the submission of a statement of noncollusion is necessary to protect the integrity of the Federal-aid highway program. The authority to issue and implement regulations necessary to carry out the statutory requirement of the program, 23 U.S.C. 112(c), has been delegated by the Secretary of Transportation to the Federal Highway Administrator.

The submission of a sworn noncollusion affidavit by the low bidder on a Federal-aid highway project had been a requirement of the FHWA for many years. However, as a result of widespread antitrust bid-rigging activities discovered in the 1970's, the Department of Transportation and the Department of Justice developed an affidavit in 1983 to be submitted by all bidders on Federal-aid airport and highway projects. The affidavit was designed to be a helpful tool in prosecuting cases involving construction contract bid-rigging. A notice of proposed rulemaking was published in the **Federal Register** on March 27, 1985, at 50 FR 12037 under Docket No. 85-17, in which the FHWA requested comments regarding the proposed regulatory revision to require submission of a sworn noncollusion affidavit from all bidders on Federal-aid highway projects.

A final rule was published in the **Federal Register** on August 1, 1986, at 51 FR 27532, which amended § 635.107(i) of Title 23, Code of Federal Regulations, to read as follows:

(i) The State highway agency shall include a statement substantially as follows in the advertised specifications:

Each bidder shall file a sworn statement executed by, or on behalf of the person, firm, association, or corporation submitting the bid, certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action, in restraint of free competitive bidding in connection with the submitted bid. This sworn statement shall be in the form of an affidavit executed and sworn to by the bidder before a person who is authorized by the laws of the State to administer oaths. The required form for the affidavit will be provided by the State to each prospective bidder. Failure to submit the sworn statement as part of the bid approval package will make the bid nonresponsive and not eligible for award consideration.

After publication of the final rule, the sworn affidavit requirement was challenged by several SHA's. Those SHA's had permitted bidders on Federal-aid highway contracts to submit, under penalty of perjury, an unsworn statement and contended that such a statement was permissible under 28 U.S.C. 1746, "Unsworn declaration under penalty of perjury." Section 1746 reads as follows:

Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, * * *

The FHWA in consultation with the Department of Justice has concluded that 28 U.S.C. 1746 applies to the FHWA statute, 23 U.S.C. 112(c), and the implementing regulation regarding noncollusion affidavits 23 CFR 635.107(i), which is being revised by this final rule.

This regulation, therefore, requires SHA's to include revised noncollusion provisions in the specifications in order to ensure that all bidders on a Federal-aid project are allowed to submit an unsworn noncollusion declaration, under penalty of perjury, as an alternative to the sworn affidavit requirement of the existing regulation. The required forms for the sworn affidavit and the unsworn declaration must be provided by the SHA's to each prospective bidder.

The reasoning favoring the alternate procedure is that an affidavit must be subscribed to under oath. This requires that the person signing the affidavit must be taken before someone legally authorized to administer oaths (usually a notary public). That can be inconvenient, since it may be necessary for the document to be executed during other than normal business hours. Certainly, the need for such flexibility is apparent in the construction contract bidding process where time constraints often dictate that documents be executed and dispatched during other than normal business hours.

The revision to the regulation, therefore, allows all bidders on Federal-aid highway construction projects to submit an unsworn declaration under penalty of perjury laws of the United States as an acceptable alternative to the sworn affidavit requirement of the 23 U.S.C. 112c and the current regulation 23 CFR 635.107(i).

The original purpose of sworn affidavits was to subject a false affiant to a charge of perjury. However, any person in any declaration, certificate, verification or statement under penalty of perjury as permitted under section 1746 of Title 28, United States Code, who willfully subscribes as true any material or information which he/she does not believe to be true, is guilty of perjury. Therefore, there seems to be little distinction between a sworn affidavit under the FHWA statute (23 U.S.C. 112(c)) and an unsworn declaration executed in accordance with the requirements of 28 U.S.C. 1746. The FHWA believes that the alternative provided to bidders regarding the use of unsworn declarations in lieu of sworn affidavits will not weaken the integrity of the Federal-aid highway program.

Regulatory Impact

The FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a significant regulation under the regulatory policies and procedures of the Department of Transportation. Since the revisions are being issued for the purpose of providing increased flexibility to the SHA's and bidders to comply with an existing regulatory requirement, public comment is impractical and unnecessary. The revisions are minor administrative adjustments and require no change in FHWA procedures concerning contract procedures and advertising for bids. Therefore, the FHWA finds good cause to make the revisions final without notice and opportunity for comment and without a 30-day delay in effective date under the Administrative Procedure Act (5 U.S.C. 553). Notice and opportunity for comment are not required under the regulatory policies and procedures of the Department of Transportation because it is not anticipated that such action could result in the receipt of useful information because of the ministerial nature of this rulemaking action. It is anticipated that the economic impact of this rulemaking will be minimal. Therefore, a full regulatory evaluation is not required. For this reason and under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511), the reporting or recordkeeping provisions that are included in this regulation are being submitted for approval to the OMB.

In consideration of the foregoing, the FHWA hereby amends Part 635, Subpart A of Chapter 1 of Title 23, Code of Federal Regulations, by revising § 635.107(i) to read as set forth below.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

List of Subjects in 23 CFR Part 635

Bidding procedures, Government contracts, Grants programs—Transportation, Highways and roads.

Issued on: June 13, 1989.

R.D. Morgan,

Executive Director.

The FHWA hereby amends Part 635, Subpart A of Chapter 1 of Title 23, Code of Federal Regulations, as follows:

PART 635—CONSTRUCTION AND MAINTENANCE

1. The Authority citation for Part 635 continues to read as follows:

Authority: 23 U.S.C. 112, 113, 114, 117, 128, and 315; 31 U.S.C. 6506; 42 U.S.C. 3334, 4601 *et seq*; 49 CFR 1.48(b).

Subpart A—Contract Procedures [Amended]

2. Section 635.107(i) is revised to read as follows:

§ 635.107 Advertising for bids.

* * * * *

(i)(1) The State highway agency shall include a noncollusion provision substantially as follows in the advertised specifications:

Each bidder shall file a sworn or unsworn statement executed by, or on behalf of the person, firm, association, or corporation submitting the bid certifying that such person, firm, association, or corporation has not either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action, in restraint of free competitive bidding in connection with the submitted bid. Failure to submit the sworn or unsworn statement as part of the bid proposal package will make the bid nonresponsive and not eligible for award consideration.

(2) The required forms for the sworn affidavit and the unsworn declaration will be provided by the State to each prospective bidder.

(3) The sworn statement shall be in the form of an affidavit executed and sworn to by the bidder before a person who is authorized by the laws of the State to administer oaths.

(4) As an alternative, the unsworn statement shall be in the form of a declaration executed under penalty of perjury under the laws of the United States.

[FR Doc. 89-14709 Filed 6-21-89; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 725

Release of Official Information for Litigation

AGENCY: Department of the Navy, DOD.

ACTION: Interim rule.

SUMMARY: This regulation assigns responsibilities to Department of the Navy (DON) personnel in responding to requests from members of the public for official DON information (testimonial, documentary, or otherwise) in connection with litigation. It does not apply to requests unrelated to litigation or pursuant to the Freedom of Information Act, 5 U.S.C. 552, or the Privacy Act, 5 U.S.C. 552a. The publication of this DON instruction will assist members of the public in submitting such requests. It implements Department of Defense Directive 5405.2 of July 23, 1985, codified in 32 CFR Part 97, regarding the release of official information in connection with litigation. It restates the requirements contained in Secretary of the Navy Instruction 5820.8 of August 11, 1987, and is intended to conform to that instruction in all respects.

EFFECTIVE DATE: Interim rule effective June 22, 1989. Consideration will be given only to comments received on or before July 24, 1989.

ADDRESSES: To help ensure that your comments are considered, send an original and three copies to CDR R.F. Walsh, JAGC, USN, (Program Officer for Litigation Requests), Offices of the Judge Advocate General, General Litigation Division, 200 Stovall Street, Alexandria, VA 22332-2400. Comments may be inspected at Room 9N17 of Hoffman Building II, 200 Stovall Street, Alexandria, VA 22332-2400 between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Commander R.F. Walsh, JAGC, USN, (Program Officer for Litigation Requests), Office of the Judge Advocate General, General Litigation Division 200 Stovall Street, Alexandria, VA 22332-2400. Telephone: (202) 325-9870.

SUPPLEMENTARY INFORMATION: This regulation establishes policy, assigns responsibilities, and prescribes procedures for responding to requests for the release of official DON information, including testimony by DON personnel as witnesses, in connection with actual or contemplated litigation. In addition to providing an orderly means for obtaining information needed in litigation to members of the public, its provisions also protect the interests of the United States, including the safeguarding of classified and privileged information. This regulation ensures that responses to litigation requests are provided in a manner that does not prevent the accomplishment of the mission of the command or activity affected. It sets forth the proper content of a request received from a member of the public for release of official DON information in connection with litigation and indicates the factors to be considered in deciding whether to authorize the release of official DON information or the testimony of DON concerning official information. It is not a "major rule" as defined by Executive Order 12291. Therefore, no regulatory impact analysis has been prepared. The DON certificates that this regulation will not have an impact on a significant number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Therefore, no regulatory flexibility analysis has been prepared. The regulation has no collection of information requirements and does not require the approval of OMB under 44 U.S.C. 3501 *et seq.* This regulation is not subject to the relevant provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347), and does not contain reporting or record-keeping requirements under the criteria of the Paperwork Reduction Act of 1980 (Pub. L. 96-511). Prior notice and other public procedures were unnecessary because the rule merely imposes technical requirements in which the public is not particularly interested or involved. There is good cause to make this rule effective upon publication of this interim rule in the **Federal Register**. We will consider comments received within 30 days after publication of this interim rule in the **Federal Register**, including a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

List of Subjects in 32 CFR Part 725

Courts, Government employees.

For the reasons set out in the preamble, Title 32, Chapter VI, Subchapter C, of the Code of Federal Regulations is amended by adding Part 725 to read as follows:

PART 725—RELEASE OF OFFICIAL INFORMATION IN LITIGATION AND TESTIMONY BY DEPARTMENT OF THE NAVY PERSONNEL AS WITNESSES

Sec.

725.1 Purpose.
725.2 Policy.
725.3 Authority to act.
725.4 Definitions.
725.5 Applicability.
725.6 Contents of a proper request or demand.
725.7 Considerations in responding to a request.
725.8 Responsibility of DON personnel.
725.9 Proper forwarding of a request.
725.10 Fees.

Authority: 5 U.S.C. 301, 10 U.S.C. 5013, 31 U.S.C. 9701, 32 CFR Part 97.

§ 725.1 Purpose.

This instruction implements 32 CFR Part 97 regarding the release of official Department of the Navy (DON) information and provision of testimony by DON personnel for litigation purposes, and prescribes conduct of DON personnel in response to a litigation request or demand. It restates

the information contained in Secretary of the Navy Instruction 5820.8 of August 11, 1967, and is intended to conform in all respects with the requirements of that instruction.

§ 725.2 Policy.

(a) It is DON policy that official factual information, both testimonial and documentary, should be made reasonably available for use in federal courts, state courts, foreign courts, and other governmental proceedings unless that information is classified, privileged, or otherwise protected from public disclosure.

(b) DON personnel, as defined in § 725.4(b), shall not provide such official information, testimony, or documents, submit to interview, or permit a view or visit, however, without the authorization required by this instruction.

(c) DON personnel shall not provide, with or without compensation, opinion or expert testimony concerning official DON or Department of Defense (DOD) information, subjects, personnel, or activities, except on behalf of the United States or a party represented by the Department of Justice, or with the written special authorization required by this instruction.

(d) Paragraphs (b) and (c) of this section constitute a regulatory general order, applicable to all DON personnel individually, and need no further implementation. A violation of those provisions is punishable under the Uniform Code of Military Justice for military personnel and is the basis for appropriate administrative procedures with respect to civilian employees. All DON personnel, military and civilian, present and former, are subject to prosecution under 18 U.S.C. 201–207 for certain violations of this instruction.

(e) Upon a showing by a requester of exceptional need or unique circumstances, and that the anticipated testimony will not be adverse to the interests of the DON, DOD, or the United States, the General Counsel of the Navy, the Judge Advocate General of the Navy, or their respective delegates may, in their sole discretion, and pursuant to the guidance contained in this instruction, grant such written special authorization for DON personnel to appear and testify as expert or opinion witnesses at no expense to the United States.

§ 725.3 Authority to act.

(a) The General Counsel of the Navy, the Judge Advocate General of the Navy, and their respective delegates (hereafter "determining authorities") described in §§ 725.8 and 725.9, shall respond to litigation requests or demands for official DON information or testimony by DON personnel as witnesses.

(b) If required by the scope of their respective delegations, determining authorities' responses may include: consultation and coordination with the Department of Justice or the appropriate United States Attorney as required; referral of matters proprietary to another DOD component to that component; determination whether official information originated by the Navy may be released in litigation; and determination whether DOD personnel assigned to or affiliated with the Navy may be interviewed, contacted, or used as witnesses concerning official DOD information or as expert or opinion witnesses. Following coordination with the appropriate commander, responses may further include whether installations, facilities, ships, or aircraft may be visited or inspected; what, if any, conditions will be imposed upon any release, interview, contact, testimony, visit, or inspection; what, if any, fees shall be charged or waived for access under the fee assessment considerations set forth in § 725.10; and what, if any, claims of privilege, pursuant to this instruction, may be invoked before any tribunal.

(c) The DOD General Counsel may notify DOD components that his or her office will assume primary responsibility for coordinating all litigation requests or demands for official DOD information or testimony of DOD personnel in litigation involving terrorism, espionage, nuclear weapons, and intelligence sources or means. Accordingly, determining authorities who receive requests pertaining to such litigation shall notify the DON Associate General Counsel (Litigation) or the Deputy Assistants Judge Advocate General for International Law or General Litigation, who shall consult and coordinate with DOD General Counsel prior to any response to such requests.

§ 725.4 Definitions.

(a) *Request or demand (legal process).* Subpoena, order, or other request by a Federal, state, or foreign court of competent jurisdiction, by any administrative agency thereof, or by any party or other person (subject to the exceptions stated in § 725.5) for production, disclosure, or release of official DOD information or for the appearance, deposition, or testimony of DON personnel as witnesses.

(b) *DON personnel.* Active duty and former military personnel of the naval service including retirees; personnel of other DOD components serving with a DON component; Naval Academy midshipmen; present and former civilian employees of the DON including non-appropriated fund activity employees; non-U.S. nationals performing services overseas for the DON under provisions of status of forces agreements; and other specific individuals or entities hired through contractual agreements by or on behalf of DON, or performing services under such agreements for DON (e.g., consultants, contractors and their employees and personnel).

(c) *Litigation.* All pretrial, trial, and post-trial stages of all existing or reasonably anticipated judicial or administrative actions, hearings, investigations, or similar proceedings before civilian courts, commissions, boards (including the Armed Services Board of Contract Appeals), or other tribunals, foreign and domestic. This term includes responses to discovery requests, depositions, and other pretrial proceedings, as well as responses to formal or informal requests by attorneys or others in situations involving, or reasonably anticipated to involve, litigation.

(d) *Official information.* All information of any kind, however stored, in the custody and control of the DOD and its components (including the DON); or relating to information in the custody and control of DOD or its components; or acquired by DOD personnel or its component personnel as part of their official duties or because of their official status within DOD or its components, while such personnel were employed by or on behalf of the DOD or on active duty with the United States Armed Forces. The determination of whether "official information" (as opposed to non-DOD information), in whole or part, is sought rests with the determining authority rather than the requester. The requester must still comply with the requirements of § 725.6 to support the contention that only non-DOD information is at issue.

(e) *Factual and expert or opinion testimony.* DON policy favors disclosure of factual information if disclosure does not violate the criteria stated in § 725.7 and is not classified, privileged, or otherwise subject to withholding under statute, executive order, or regulation. The distinction between factual matters, and expert or opinion matters (where DON policy favors non-disclosure), is not always clear and involves the exercise of discretion. The following considerations pertain:

(1) DON personnel may merely be percipient witnesses to an incident, in which event their testimony would be purely factual. On the other hand, they may be involved with the matter only through an after-the-event investigation (e.g., investigation under the Manual of the Judge Advocate General), and asking them to identify conclusions in their report would likewise constitute factual matters to which they might testify. In contrast, asking them to adopt or reaffirm their findings of fact, opinions, and recommendations, or asking them to form or express any other opinion, particularly one based upon matters submitted by counsel or going to the ultimate issue of causation or liability, would clearly constitute precluded testimony under the foregoing policy.

(2) DON personnel, by virtue of their training, often form opinions because they are required to do so in the course of their duties. If their opinions are formed prior to, or contemporaneously with, the matter in issue, and are routinely required of them in the course of the proper performance of their professional duties, they essentially constitute factual matters (i.e., the opinion they previously held). Opinions formed after the event in question, however, generally constitute the sort of opinion or expert testimony which this instruction is intended to restrict severely.

(3) Characterization of expected testimony by a requester as fact, opinion, or expert is not binding on the determining authority. When there is doubt as to whether or not expert or opinion (as opposed to factual) testimony is being sought, advice may be obtained informally from, or the request forwarded to, the Deputy Assistant Judge Advocate General (General Litigation) or the Associate General Counsel (Litigation) for resolution.

(f) *Determining authority.* The cognizant DON or DOD official designated to grant or deny a litigation request. In all cases in which the United States is, or might reasonably become, a party, or in which expert testimony is requested, the Judge Advocate General or the General Counsel of the Navy, depending on the subject matter of the request, will act as determining authority. In all other cases, the responsibility to act as determining authority has been delegated to certain commands and activities. Further guidance on the essential contents of a request and indicating where members of the public should forward litigation requests is contained in §§ 725.8 and 725.9.

§ 725.5 Applicability.

(a) *Applicable situations.* This instruction applies to the following personnel and situations:

(1) To all present and former civilian and military personnel of the DON whether employed by, or assigned to, DON, temporarily or permanently. Categories of personnel affected are defined more fully in § 725.4(b).

(2) This instruction applies only to situations involving existing or reasonably anticipated litigation, as defined in § 725.4(c), when DOD or DON information or witnesses are sought, whether or not the United States, the DOD, or its components are parties thereto. It does not apply to formal or informal requests for information in other situations.

(3) This instruction provides guidance for the operation of the DON and for present and former DON personnel in responding to litigation requests. It is not intended, does not, and may not be relied upon, to create any right or benefit, substantive or procedural, enforceable at law or equity against the United States, DOD, or DON.

(4) This instruction is not intended to infringe upon or displace the responsibilities committed to the Department of Justice in conducting litigation on behalf of the United States.

(5) This instruction does not supersede or modify existing laws, DOD or DON regulations, directives, or instructions governing testimony of DON personnel or release of official DOD or DON information during grand jury proceedings.

(6) This instruction does not control release of official information in response to requests unrelated to litigation or under the Freedom of Information Act (FOIA), 5 U.S.C. 552, or the Privacy Act, 5 U.S.C. 552a. It does not preclude treating any written request for DON records not in the nature of legal process as a request under the FOIA or Privacy Act. DON activities are encouraged to process requests for records under the FOIA or Privacy Act if they are invoked by the requester either explicitly or by fair implication as provided in 32 CFR 701.3(d) and 701.103(i).

(b) *Exceptions and exclusions.* This instruction does not apply to release of official information or testimony by DON personnel in the following situations:

(1) Before courts-martial convened by any DOD component, or in administrative proceedings conducted by, or on behalf of, such a DOD component;

(2) Under administrative proceedings conducted by, or on behalf of, the Equal Employment Opportunity Commission, the Merit Systems Protection Board, the Federal Labor Relations Authority, the Federal Services Impasse Panel, or under a negotiated grievance procedure under a collective bargaining agreement to which the Government is a party;

(3) In response to requests by Federal Government counsel, or counsel representing the interests of the Federal Government, in litigation conducted, in whole or in part, on behalf of the United States (e.g., Medical Care Recovery Act claims, affirmative claims, or subpoenas issued by, or concurred in by, Government counsel when the United States is a party);

(4) As part of the assistance required by the Defense Industrial Personnel Security Clearance Program under DOD Directive 5220.6;

(5) Release of copies of Manual of the Judge Advocate General (JAGMAN) investigations, to the next of kin (or their representatives) of deceased or incompetent Naval personnel;

(6) Release of information by DON personnel to counsel retained on their behalf for purposes of litigation, unless that information is classified, privileged, or otherwise protected from disclosure (In the latter event, compliance with 32 CFR Part 97 and this instruction is required);

(7) Cases involving garnishment orders for child support and/or alimony. The release of official information in these cases is governed by 5 CFR Part 581 and Secretary of the Navy Instruction 7200.16;

(8) Pursuant to release of information to federal, state, and local prosecuting and law enforcement authorities, in conjunction with an investigation conducted by a DOD component or DON criminal investigative organization.

(9) This instruction does not preclude official comment on matters in litigation in appropriate cases.

§ 725.6 Contents of a proper request or demand.

(a) *Written (i.e., routine) requests.* If official information, through testimony or otherwise, is sought, a detailed request must be submitted in writing to the appropriate determining authority far enough in advance to allow prompt and thorough evaluation of the request and avoidance of adverse effects on the mission of the command or activity which must respond. A request that is deficient in providing necessary information may be returned to the requester by the determining authority.

with an explanation of the deficiencies and a statement that no further action will be taken until they are corrected. If the circumstances so indicate, the determining authority should provide an information copy to the court issuing legal process as well. Litigation requests must provide the information—as applicable to the case under consideration—as follows:

(1) A statement as to whether the United States is, or is reasonably anticipated to become, a party to the matter;

(2) The caption of the case, including names of the parties, docket number, court, and date the action commenced;

(3) Name, address, and telephone number of all counsel to the parties, or to other persons likely to become parties;

(4) A brief summary of the facts of the case and the present posture of the case;

(5) A description, in as much detail as possible, of the documents, information, or testimony sought;

(6) A statement of whether factual, opinion, or expert testimony is sought;

(7) If expert or opinion testimony is sought, an explanation of why exceptional need or unique circumstances exist justifying such testimony, including why such testimony is not reasonably available from any other source;

(8) A statement of the relevance of the matters sought to the proceedings at issue;

(9) The name, address, and telephone number of the person, from whom the documents, information, or testimony is sought (if applicable);

(10) The date(s) on which the documents, information, or testimony sought must be produced; the requested location of production; and the estimated length of time that attendance of the DON personnel will be required (if applicable);

(11) A statement of the requester's willingness to pay in advance, in accordance with § 725.10, all reasonable expenses and costs of searching for and producing documents, information, or personnel, including travel expenses and accommodations (if applicable);

(12) A statement of understanding that the search and production will be at no expense to the Government;

(13) In cases in which deposition testimony is sought, a statement of whether later deposition testimony or attendance at trial is anticipated and requested;

(14) Agreement to notify the determining authority at least 10 days in advance of all interviews, depositions, or testimony. Additional time for notification may be required where the witness is located overseas;

(15) Agreement to conduct the deposition at the location of the witness, unless the witness and his commanding officer or cognizant superior, as applicable, stipulate otherwise;

(16) In the case of former DON personnel, a brief description of the length and nature of their duties while in DON employment, and a statement of whether such duties involved, directly or indirectly, the information or matters as to which the person will testify;

(17) An agreement to provide free of charge to any witness a signed copy of any written statement he or she may make in writing, or, in the case of an oral deposition, a copy of that deposition transcript (if taken by a stenographer) or a video tape copy if taken solely by video tape, if not prohibited by applicable rules of court;

(18) An agreement that if the local rules of procedure controlling the litigation so provide, the witness will be given an opportunity to read, sign, and correct the deposition at no cost to the witness or the Government; and

(19) A statement of understanding that the United States reserves the right to have a representative present at any interview or deposition.

(b) *Oral (i.e., emergency) requests.* Written requests allowing reasonable lead time for evaluation and processing are normally required. However, in emergency situations where response time is severely limited and a written request is impractical, the following procedures should be followed:

(1) The determining authority has discretion to waive the requirement of a written request and expedite a response in the event of a bona fide emergency under conditions which could not be anticipated in the course of proper pretrial planning and discovery. Oral (i.e., emergency requests) and subsequent determinations should be reserved for instances where factual matters are sought and insistence on compliance with the requirements of a proper written request would result in the effective denial of the request and cause an injustice in the outcome of the litigation for which the information is sought. No requester has a right to make an oral request and receive a determination, however. Whether to permit such an exceptional procedure is a decision within the sole discretion of the determining authority, unless overruled by the General Counsel or the Judge Advocate General, as appropriate.

(2) If the determining authority concludes that the request, or any portion of it, meets the foregoing criteria, the requester must agree to the applicable conditions set forth in paragraph (a) of this section and § 725.7(c). The determining authority will then orally advise the requester of the approval and seek written confirmation of the oral request. The determination authority will make a written record of the disposition of the oral request, including the grant or denial, the circumstances requiring the procedure, and the conditions to which the requester agreed.

(3) This emergency procedure should not be utilized where the requester refuses to agree to the appropriate conditions set forth in §§ 725.6(a) and 725.7(c) or indicates unwillingness to abide by the limits of the oral grant, partial grant, or denial.

(c) *Visits and views.* A request to visit a DON activity, ship, or unit, or to view materials or spaces located there, will be forwarded to the appropriate determining authority for resolution. Action taken by that authority will be coordinated with the commanding officer of the activity, ship, or unit affected, or with his or her staff judge advocate (if applicable). The authority of the commanding officer of any activity, ship, or unit at issue, over the personnel or property of that activity, ship, or unit is not limited by this instruction. Visits and views involving DON units and activities in connection with litigation requests should not be accompanied by interviews of personnel unless separately requeted and granted. The military mission of the unit shall normally take precedence over any visit or view. The commanding officer may independently prescribe reasonable conditions as to time, place, and circumstances to protect against compromise of classified or privileged material, intrusion into restricted spaces, and unauthorized photography.

(d) *Requests for interviews.* No witness may be required by legal process to submit to interview. DON personnel may voluntarily consent to be interviewed on official matters, with the permission of the appropriate determining authority. In deciding whether to agree to an interview, DON personnel should be advised that if a request for an interview is refused, the requester may seek to compel testimony at a deposition or at trial.

(e) *Requests for Privacy Act protected information.* In addition to complying with the requirements of this instruction, litigation requests for official DON records contained in a "system of records" must satisfy the requirements for release imposed by the Privacy Act, 5 U.S.C. 552a. See 32 CFR 701.100 through 701.120. Normally, this is accomplished by producing: (1) The written consent of the subject of the record, (2) a court order or subpoena from a court of competent jurisdiction signed by a state or Federal judge directing disclosure of the information, or (3) as indicated in 32 CFR 701.105, a demonstration of the applicability of some other Privacy Act exemption authorizing release of official DON records containing personal information to third parties. When records contained in a "system of records" are released, disclosure accounting requirements contained in 32 CFR 701.105(c) (Secretary of the Navy Instruction 5211.5C) must be complied with.

(f) *Service of process.* 10 U.S.C. 7861 provides that the Secretary of the Navy has custody and charge of all books, records, papers and property of the DON. Under 32 CFR 257.5(c), the Navy's sole delegate for service of process is the General Counsel of the Navy, whose address for this purpose is Office of the General Counsel, Department of the Navy, Washington, DC 20350–1000. To be effective for judicial enforcement purposes, all legal process for official DON documents must be served upon the General Counsel, who will in most cases refer the matter to the proper delegate for action. Process for DON documents directly served on a subordinate officer within any DON activity or command, not also properly served on the General Counsel, is insufficient to constitute an enforceable legal demand but shall be processed and acted upon by DON activities and determining authorities as a litigation request by counsel.

§ 725.7 Considerations in responding to a request.

(a) *General considerations.* In deciding whether to authorize release of official information and the testimony of DON personnel concerning official information (hereafter referred to as "the disclosure"), under a request satisfying the requirements of § 725.6, the determining authority shall consider the following factors:

(1) The DON policy regarding disclosure set forth in § 725.2 of this instruction;

(2) Whether the request or demand is unduly burdensome or otherwise inappropriate under applicable court rules;

(3) Whether disclosure, including release *in camera* (i.e., to the judge or court alone), is appropriate under procedural rules governing the case or matter in which the request or demand arose;

(4) Whether disclosure would violate or conflict with a statute, executive order, regulation, directive, instruction or notice. In this regard it is noted that this instruction is not intended to place unreasonable restraints upon the post-employment conduct of former military members and civilian employees of DON. Accordingly, requests for expert or opinion testimony by such personnel will normally be granted unless that testimony would constitute a violation of statute (e.g., 18 U.S.C. 201 *et seq.*), regulation (e.g., DOD Directive 5500.7 and Secretary of the Navy Instruction 5370.2H (Standards of Conduct)), or disclose properly classified or privileged information;

(5) Whether disclosure, in the absence of a court order or written consent would violate the Privacy Act, as explained previously in § 725.6(e);

(6) Whether disclosure, including release *in camera*, is appropriate or necessary under relevant substantive law concerning privilege (e.g., attorney-client, attorney work-product, deliberative process, or, in the case of civilian personnel, physician-patient);

(7) Whether disclosure, except when *in camera* and necessary to assert a claim of privilege, would reveal information properly classified pursuant to DOD Directive 5200.1–R (Information Security Program Regulation), unclassified technical data withheld from public release pursuant to DOD Directive 5230.25, privileged Naval Aviation Safety Program information (such as mishap investigation report witness statements), matters exempt from disclosure under the Privacy Act, or other matters exempt from unrestricted disclosure. Any consideration of release of classified information for litigation purposes, within the scope of this instruction, must be coordinated within the Office of the Chief of Naval Operations (OP–09N) in accordance with OPNAVINST 5510.1G.

(8) Whether disclosure would unduly interfere with ongoing law enforcement proceedings, violate an individual's constitutional rights, reveal the identity of an intelligence source, informant, or source of confidential information, conflict with United States obligations under international agreement, or would otherwise be inappropriate under the circumstances; and

(9) Whether attendance of the requested witness at deposition or trial will unduly interfere with the military mission of the command.

(b) *Considerations pertaining to medical records of civilian employees.* With respect to requests for medical and other records of civilian employees, production of medical certificates or other such records is controlled by the Federal Personnel Manual, Chapters 294 and Chapter 339.1–4. Records of civilian employees, other than medical records, may be produced upon receipt of a court order and a request complying with § 725.6, provided no classified or for-official-use-only information, such as loyalty or security records, are involved. Disclosure of records relating to compensation benefits administered by the Office of Workers' Compensation Programs of the Department of Labor are governed by Secretary of the Navy Instruction 5211.5C (Privacy Act implementation) and Secretary of the Navy Instruction 5720.42D (Freedom of Information Act implementation), as appropriate. The provisions of § 725.7(e) pertain to the release of original or copies of records in response to a court order, subpoena or litigation request.

(c) *Contents of responses to litigation requests.* (1) The determination letter should respond solely to the specific disclosures requested, stating a specific determination on each particular request. A denial of a request, in whole or part, should fully inform the requester—and ultimately a court if the denial is challenged—of the reasons underlying the determination.

(2) Whenever a litigation request, or compliance with a court order or subpoena duces tecum, is denied, a copy of the denial letter and all associated documents will be promptly forwarded to the appropriate Deputy Assistant Judge Advocate General (General Litigation) or to the Associate General Counsel (Litigation), as appropriate. Telephonic notification is particularly appropriate where a judicial challenge or contempt action is anticipated.

(3) The determination letter should state, or adopt by reference, conditions set forth in § 725.6(a) (11) through (19). Reiterating, it should advise the requester of the following conditions, as appropriate:

(i) All costs will be borne and advanced by the parties; no cost to the Government or the witness may result from the grant of disclosure;

(ii) The determination is solely as to the matters stated; no other determination is expressed or implied. No determination as to expert, opinion, or policy matters has been made if none has been requested or implicated;

(iii) Any deposition shall be at the witness's location unless otherwise agreed to by the witness and his or her commanding officer (if applicable);

(iv) The grant is for a single deposition or interview only; subsequent depositions are not encompassed or authorized and normally will not be granted. Permission for subsequent trial

testimony must be separately requested and determined;

(v) The determining authority shall be informed at least 10 working days prior to any interview, deposition, or testimony, and may appoint counsel therefor. No such deposition or interview may be conducted in the absence of that counsel unless an express waiver of this requirement has been obtained from the determining authority; and

(vi) Other counsel of record will be provided a copy of the determination so they may apply to participate or broaden the request. Failure to so apply within the stated 10 working day period shall constitute waiver of that right.

(vii) If the authority to whom the matter is referred determines that compliance with a court order or subpoena duces tecum is indicated, it will be effected by transmitting certified copies of records to the clerk of the court from which process issued. If, because of unusual circumstances, an original record must be produced by a DON custodian, the original will be retained in the custody of the person producing it, and copies should be placed in evidence.

§ 725.8 Responsibilities of DON personnel.

(a) *Matters proprietary to the DON.* If a litigation request or demand for official DOD information or for testimony concerning such information is presented, the individual to whom the request or demand is made will immediately notify the cognizant DON official, as indicated in this section, who will determine availability and respond to the request or demand.

(b) *Matters proprietary to another DOD component.* If a DON activity receives a litigation request or demand for official information originated by another DOD component or for personnel presently or formerly assigned to another DOD component, the DON activity will forward appropriate portions of the request or demand to the DOD component originating the information, to the components where the personnel are assigned, or to the components where the personnel were formerly assigned, for action under 32 CFR Part 97. The forwarding DON activity will also notify the requester and court (if appropriate), or other authority, of its transfer of the request or demand.

(c) *Litigation matters to which the United States is, or might reasonably become, a party and requests for expert or opinion testimony.* Such requests shall be forwarded for a determination to the Judge Advocate General or the General Counsel of the Navy according to their respective areas of cognizance as discussed in § 725.9 and, in more detail, in Secretary of the Navy Instruction 5820.8.

(d) *Litigation matters to which the United States is not, and is reasonably not expected to become a party.* (1) With respect to matters within the purview of the Judge Advocate General, such requests shall be forwarded to and determined by the Navy or Marine Corps officer exercising general court-martial jurisdiction in whose chain of command the prospective witness or requested documents lie. Further guidance in identifying the proper determining authorities can be found at § 725.9 and in Secretary of the Navy Instruction 5820.8.

(2) As to matters within the cognizance of the General Counsel, those requests involving issues of Navy policy shall be forwarded for determination to the Associate General Counsel (Litigation). All other requests shall be forwarded for determination to the respective counsel for Naval Sea Systems Command, Naval Air Systems Command, Naval Supply Systems Command, Military Sealift Command, Naval Facilities Engineering Command, Space and Naval Warfare Command, Office of the Navy Comptroller, Commandant of the Marine Corps, Office of the Chief of Naval Research, or Civilian Personnel Programs Division (OP–14L), Office of the Chief of Naval Operations, depending upon who has cognizance over the information or personnel as issue. Further guidance with respect to proper determining authorities can be found at § 725.9 and in Secretary of the Navy Instruction 5820.8.

3. The foregoing guidance shall not prevent a determining authority from referring requests or demands to another determining authority better suited under the circumstances to determine the matter and respond, but the requester shall be notified of the referral. Further, each determining authority specified in this paragraph may delegate his or her decisional authority to a principal staff member, staff judge advocate, or legal advisor.

(e) *Requirement for prompt determination.* A determination to grant or deny should be made expeditiously to provide the requester and the court with the information requested or with a statement of the reasons for denial. The decisioned period, absent exceptional or particularly difficult circumstances, should not exceed 10 workings days from receipt of a request complying with the requirements of § 725.6. The requester (and if circumstances so indicate, the court) should also be informed promptly of the referral of any portion of the request to another determining authority within DOD for determination.

(f) *Scope of disclosure.* DON personnel shall not produce, disclose, release, comment upon, or testify concerning any official DOD information in response to a litigation request or demand without prior written approval of an appropriate DON official. If a request has been made, and granted, in whole or in part under 32 CFR Part 97 and this instruction, DON personnel may only produce, disclose, release, comment upon, or testify concerning these matters specified in the request and properly approved by the determining authority designated.

(g) *Action pending determination.* If, after DON personnel have received a litigation request and submitted it to the appropriate determining authority, a response is required before a determination by the responsible official has been received, the Deputy Assistant Judge Advocate General or Associate General Counsel (Litigation) who has cognizance over the matter shall be notified. That official, as necessary, will furnish the requester, the court, or other authority with a copy of this regulation or Secretary of the Navy Instruction 5820.8, inform the requester, the court, or other authority that the request or demand is beig reviewed, and seek a stay pending a final determination.

(h) *Reponse to court order pending determination.* If a court of competent jurisdiction or other appropriate authority declines to stay the effect of the request or demand in response to action taken under paragraph (g) of this section, or if such court or other authority orders that the request or demand must be complied with, notwithstanding the final decision of the appropriate DON official, the DON personnel upon whom the request or demand was made will, if time permits, notify the determining authority of such ruling or order. That authority will notify the Deputy Assistant Judge Advocate General or the Associate General Counsel (Litigation) having cognizance over the matter. After due consultation and coordination with the Department of Justice, as required by the Manual of the Judge Advocate General, that official will determine whether the individual is required to comply with the request or demand and will notify the requester, the court, or other authority accordingly.

§ 725.9 Proper forwarding of a request.

As indicated in § 725.8(c), in all cases in which the United States is, or might reasonably become, a party, or in which expert or opinion testimony is requested, the Judge Advocate General or the General Counsel of the Navy will act as determining authority on litigation requests. In all other cases, the responsibility to act as determining authority has been delegated to certain subordinate commands and activities. Requests by members of the public for official DON information should be sent directly to the naval command or activity which holds the documents desired or all which the witness is employed or assigned for duty. The guidance contained in 32 CFR 701.31 regarding proper addresses for Freedom of Information Act requests for specific categories of records and information applies equally to litigation requests and should be consulted. The following guidelines also apply in ascertaining the proper addressee of a litigation request. If in doubt, however, requests may be forwarded to either the Associate General Counsel (Litigation) or the Deputy Assistant Judge Advocate General (General Litigation) depending on the subject matter and their respective areas of cognizance in providing legal advice to the DON.

(a) General counsel. Has cognizance over matters related to the employment and records of present and former DON civilian employees, litigation involving asbestos exposure, and business and commercial law aspects of DON operations including, but not limited to:

(1) Acquisition, custody, management, transportation, taxation, and disposition of real and personal property and the procurement of services for DON;

(2) Operations of the Military Sealift Command, Office of the Comptroller of the Navy, and the Naval Data Automation Command;

(3) All matters in the fields of patents, inventions, trademarks, copyrights, royalty payments, and similar matters;

(4) Procurement aspects of foreign military sales and matters related to the Arms Exports Control Act; and

(5) DON litigation before the Armed Services Board of Contract Appeals.

(b) Requests dealing with subjects under the cognizance of the General Counsel, or known to be within the purview of the commands listed in paragraph (b)(3) of this section, should be forwarded directly for determination to counsel in accordance with the following guidelines:

(1) In all requests involving issues of Navy policy, cases in which the United States or DON is a party, or if expert or opinion testimony is desired (or if in doubt about the proper addressee):

Office of the General Counsel, Department of the Navy, Litigation Office, Washington, DC 20360–5110.

(2) For matters involving asbestos litigation:

Office of Counsel, Navy Sea Systems Command Headquarters, Federal Litigation Section (Code OOLE), Washington, DC 20362–5101.

(3) When the request does not involve issues of Navy policy it should be forwarded directly for determination to one of the following commands having cognizance over the subject matter of the request:

Office of Counsel, Navy Air Systems Command Headquarters, Department of the Navy, Washington, DC 20362–5101.

Office of Counsel, Navy Air Systems Command Headquarters, Department of the Navy, Washington, DC 20361–0002.

Office of Counsel, Navy Supply Systems Command Headquarters, Department of the Navy, Washington, DC 20361–5000.

Office of Counsel, NAVFAC, Navy Facilities Engineering Command, 200 Stovall Street, Alexandria ,VA 22332–2300.

Office of Counsel, Space and Naval Warfare Systems Command, Washington, DC 20363–5100.

Office of Counsel, Naval Comptroller, Department of the Navy, Washington, DC 20350–1100.

Office of Counsel, Navy Research, Chief of Naval Research, Ballston Center Tower #1, 800 North Quincy Street, Arlington, VA 22217–5000.

Office of Counsel, Civilian Personnel Programs Division (OP–14L), Office of the Chief of Naval Operations, Department of the Navy, Washington, DC 20350–2000.

Commandant of the Marine Corps, Office of Counsel, Headquarters Marine Corps, Washington, DC 20380–0001.

Office of Counsel, Military Sealift Command, Department of the Navy, Washington Navy Yard, Bldg. 210, Washington, DC 20398–5100.

(4) For matters involving the Armed Forces Board of Contract Appeals, requests shall be forwarded for determination to the respective counsel set forth in paragraph (b)(3) of this section, except where the determination may involve the assertion of the deliberative process privilege before that Board. In that event, the matter shall be forwarded for determination to the Associate General Counsel (Litigation).

(c) Judge advocate general. Is responsible for providing legal advice in all matters related to the operations and administration of military shipboard and shore commands and present and former active-duty DON personnel and their records. Requests dealing with the following subjects or known to be within the purview of the following commands should be forwarded directly for determination to the following addresses:

(1) In all cases in which the United States or DON is a party or if expert or opinion testimony is desired (or if in doubt about the proper addressee):

Judge Advocate General, Department of the Navy, General Litigation Division, 200 Stovall St., Alexandria, VA 22332–2400.

(2) For medical, service, or pay records of former Navy and Marine Corps personnel:

Director, National Personnel Records Center, National Archives and Records Administration, 9700 Page Blvd., St. Louis, MO 63132.

The National Personnel Records Center will respond directly to such requests, including court orders and subpoenas duces tecum.

(3) For pay records of active-duty, reserve, or retired Navy members:

Commanding Officer, Navy Finance Center, Code OL, 1240 East 9th St., Cleveland, OH 44199–2055.

(4) For copies of reports of investigation conducted in accordance with the Manual of the Judge Advocate General (JAGMAN investigation reports):

Judge Advocate General, Investigation Division, Department of the Navy, 200 Stovall St., Alexandria, VA 22332–2400.

(5) The majority of Navy and Marine Corps Commanders in the United States and overseas have been designated as determining authorities. A complete listing of these authorities and their official addresses is contained in Secretary of the Navy Instruction 5820.8 and can be obtained by writing to the Judge Advocate General at the address indicated in paragraph (c)(1) of this section. Some determining authorities frequently called on to determine litigation requests include:

Chief of Naval Operations (OP–00J), Department of the Navy, Washington, DC 20350–2000.

Vice Chief of Naval Operations (OP–09BL), Navy Department, Washington, DC 20370–5000.

Commandant of the Marine Corps (Code JAR), Headquarters Marine Corps, Washington, DC 20380–0001.

Commander, Naval Medical Command (MEDCOM 00D3), Washington, DC 20372.

Commander, Naval Military Personnel Command (06), Washington, DC 20370–5000.

Commander, Naval Investigative Service Command, Washington, DC 20388–5000.

Commander in Chief, U.S. Atlantic Fleet, Norfolk, VA 23511.

Commander in Chief, U.S. Pacific Fleet, Pearl Harbor, HI 96860.

Commander, Naval Air Force, U.S. Atlantic Fleet, Norfolk, VA 23511.

Commander, Naval Air Force, U.S. Pacific Fleet, Naval Air Station, North Island, San Diego, CA 92135.

Commander, Naval Surface Force, U.S. Atlantic Fleet, Norfolk, VA 23511.

Commander, Naval Surface Force, U.S. Pacific Fleet, Naval Amphibious Base, Coronado, San Diego, CA 92155.

Commander, Submarine Force, U.S. Atlantic Fleet, Norfolk, VA 23511.

Commander, Submarine Force, U.S. Pacific Fleet, Pearl Harbor, HI 96860.

Commander, Naval Reserve Force, New Orleans, LA 70140.

Commanding General, Fleet Marine Force, Atlantic/Europe, Norfolk, VA 23511.

Commanding General, Fleet Marine Force, Pacific, Camp H.M. Smith, HI 96861.

§ 725.10 Fees.

The determining authority shall charge reasonable fees and expenses to parties seeking official DOD and DON information under this instruction. The following guidelines are prescribed for fee assessment:

(a) *Documents.* A complete list of applicable charges is established at 32 CFR 288.10. Fees shall be charged unless waived in accordance with paragraph (f) of this section.

(b) *Factual matters*—(1) *Deposition and testimony.* The requester shall pay to the witness the fee and expenses prescribed for attendance by the applicable rule of court. If no such fee is prescribed, the applicable Federal rule shall apply. No additional fee will be prescribed for the time spent while testifying or in attendance to do so.

(2) *Interviews.* The requester shall pay a fee calculated upon the total hourly pay of the witness (including all pay, allowances, and benefits) plus a three percent administrative surcharge as prescribed by 31 U.S.C. 9701.

(3) *Views and visits.* The requester shall pay a fee calculated to reimburse the command for any expense or effort incurred as a result of the view or visit. Such fees and expenses normally shall include the cost of escort personnel and special preparations (if any). Costs shall be calculated upon the full hourly pay of the personnel necessarily involved (including all pay, allowances, and benefits) plus a three percent administrative surcharge as prescribed by 31 U.S.C. 9701 and DOD Instruction 7230.7.

(4) *Travel.* Travel expenses of factual witnesses shall be fully reimbursed but shall not be assessed in an amount exceeding the applicable rule of court, or the Federal rule if there is no local rule. Joint Federal Travel Regulations and Navy Travel Instructions pertaining to entitlements of DON personnel summoned as witnesses should be consulted for guidance in ascertaining whether fees are payable by the United States and, if applicable, to which appropriation costs of travel should be charged.

(c) *Expert, opinion, and policy matters.* When a request is granted to permit DON personnel to testify in whole or in part as to expert, opinion, or policy matters, the requester shall pay to the Government a fee calculated to fully reimburse the cost of providing the witness. Fees and expenses shall include: (1) Costs of the time expended by DON employees to process and respond to the request or demand; (2) costs of attorney time expended in reviewing the request or demand and any information located in connection with the request or demand; (3) expenses generated by materials and equipment used to search for, produce, and copy the responsive information; and (4) costs of travel by the witness and attendance at trial. All costs for personnel shall be calculated on the hourly rate described in paragraph (b)(2) of this section, and shall include such hourly fee for each hour (or portion) of the normal work day when the witness is in travel, in attendance, or testifying.

(d) *Payment.* Fees for documents shall be paid directly to the DON. Witness fees for testimony shall be paid to the witness, who shall endorse the check "pay to the United States," and surrender it to his or her supervisor. It shall be deposited thereafter in the General Fund. Witnesses are expected to utilize a travel claim to obtain proper reimbursement from the Navy if applicable travel regulations allow use of government funds. In all other cases, the private party requesting a DON witness shall forward in advance necessary round trip tickets and all requisite travel and per diem funds and the DON witness shall be provided with permissive no-cost orders covering the period in which testimony will be provided.

(e) *Matters in which the United States is a party.* Fees or expenses, other than those permitted by the Federal Rules of Civil or Criminal Procedure and related case law, shall not be charged in matters to which the United States is a party.

(f) *Waiver.* A waiver of any fees in connection with a litigation request may be granted by the determining authority at his or her discretion provided that waiver is in the interest of the United States. Fee waivers shall not be routinely granted, nor shall they be granted under circumstances which might create the appearance that DON favors one private litigant over another.

Sandra M. Kay,

Alternate Federal Register Liaison Officer.

June, 19, 1989.

[FR Doc. 89-14835 Filed 6-21-89; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 09-89-15]

Special Local Regulations; Tug Across the Detroit River, Detroit, MI

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special Local Regulations are being adopted for the Tug Across the Detroit River. This event will be held on the Detroit River on 27 June 1989 from 11:30 a.m. e.d.s.t. until 12:30 p.m. The regulations are needed to provide for safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations become effective from 11:30 a.m. (local time) until 12:30 p.m. on 27 June 1989.

FOR FURTHER INFORMATION CONTACT: MST1 Scott E. Befus, Office of Search and Rescue, Ninth Coast Guard District, 1240 E. 9th St., Cleveland, OH 44199, (216) 522-4420.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable.

This has been an annual event for many years and no negative comments concerning it have been received. This event is included in the proposed rulemaking for permanent regulations of Great Lakes Annual Marine Events. See **Federal Register** of 7 April 1989 [54 FR 14100]. Those permanent regulations, however, will not be effective until after this event takes place, so this final rule is necessary.

Drafting Information

The drafters of this regulation are MST1 Scott E. Befus, project office, Office of Search and Rescue and LCDR C. V. Mosebach, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The Tug Across The Detroit River will be conducted on the Detroit River on 27 June 1989. This event will have a rope extended from the U.S. shoreline to the Canadian shoreline which may pose hazards to navigation in the area. Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (Commander, U.S. Coast Guard Group Detroit, MI).

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). Because of the short duration of these regulations, their economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary.

Since the impact of these regulations is expected to be minimal the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water).

Final Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 33—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35

2. Part 100 is amended to add a temporary § 100.35-0915 to read as follows:

§ 100.35-0915 Tug across the Detroit River, Detroit, MI.

(a) *Regulated area.* That portion of the Detroit River bounded on the south by the International Boundary, on the west by 083 degrees 03 minutes west, on the east by 083 degrees 02 minutes west, and on the north by the U.S. shoreline.

(b) *Special local regulations.* (1) The above area will be closed to all vessel navigation or anchorage from 11:30 a.m. (local time) until 12:30 p.m. on 27 June 1989.

(2) Vessels under 65 feet shall begin clearing the shipping channels at 12:30 p.m. (local) or when the Tug of War ends, whichever comes first.

(3) The Coast Guard will patrol the regatta area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander." Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum, and in a manner which will not endanger participants in the event or any other craft. The rules contained in the above two sentences shall not apply to participants in the event or vessels of the patrol operating in the performance of their assigned duties.

(4) The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regatta area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(5) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(6) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(7) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(c) This section is effective from 11:30 a.m. (local time) until 12:30 p.m. on 27 June 1989.

Dated: June 9, 1989.

D. H. Ramsden,

Capt, U.S. Coast Guard Acting Commander, Ninth Coast Guard District.

[FR Doc. 89-14747 Filed 6-21-89; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD1-89-023]

Temporary Drawbridge Operation Regulations; Kennebec River, ME

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: At the request of the Maine Department of Transportation (Maine DOT), the Coast Guard is issuing temporary regulations governing the Carlton drawbridge over Kennebec River, at mile 14.0, between Bath and Woolwich, Maine, to extend the closure period for the evening rush hour 45 minutes and to limit the openings for recreational vessels between 6 a.m. and 6 p.m. to twice a day at 10 a.m. and 2 p.m. for 60 days commencing 1 June through 30 July 1989. The temporary regulation is being made to examine the effect on vehicular and marine traffic during the above period. This action should accommodate the needs of vehicular traffic, while providing for the reasonable needs of navigation.

EFFECTIVE DATE: This temporary regulation is effective 1 June 1989 through July 30, 1989.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, First Coast Guard District, (212) 668-7170.

SUPPLEMENTARY INFORMATION: On May 10, 1989, the Coast Guard published a proposed temporary rule (54 FR 20149; May 10, 1989) concerning this amendment. The Commander, First Coast Guard District, also published the proposal as a Public Notice 1-687 dated May 9, 1989. In each notice, interested persons were given until May 25, 1989 to submit comments.

Drafting Information

The drafters of these regulations are Waverly W. Gregory, Jr., Project Officer, and Lieutenant Robert E. Korroch, Project Attorney.

Discussion of Comments

Three responses, two favoring and one opposing the proposed regulations, were received to the public notice. One respondent favoring the proposed regulations indicated that a Maine DOT phase 1 report stated the 1988 annual average daily traffic crossing the Carlton bridge between Bath and Woolwich and the Davey bridge in nearby Wiscaset, Maine, was 20,900 and 14,900, respectively, and steadily increasing. The respondent appreciated the need to accommodate navigational traffic, however, the bottleneck at the Carlton bridge has reached epidemic proportions. The other respondent indicated that the proposed regulation would appear to nicely balance the interests of both water and highway transportation. The one opposing respondent, as charter boat captain, stated that he did not think that the

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small amount of marine traffic at the bridge is a significant cause of the traffic problems, and that the marine traffic moves quickly through the bridge whenever it is opened, and it is the lift mechanism itself that causes the delays. He also requested that a public hearing be held.

Economic Assessment and Certification

These proposed temporary regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this temporary regulation is expected to be so minimal that a full regulatory evaluation is unnecessary. The intent of this temporary regulation is to collect information to assess how the regulations would accommodate vehicular traffic to and from Bath Iron Works and local parks in the summer when tourist traffic is at its peak. The draw will continue to open on signal for inbound commercial fishing vessels. Since the economic impact of this proposal is expected to be minimal the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Federalism Implication Assessment

This action has been analyzed under the principles and criteria in Executive Order 12612, and it has been determined that this proposed rule does not have sufficient federalism implications to warrant preparation of a Federalism assessment.

List of Subjects in 33 CFR Part 117

Bridges.

Temporary Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.525(a) is revised for the period of June 1, 1989 through July 30, 1989:

§ 117.525 Kennebec River.

(a) The draw of the Carlton highway-railroad bridge, mile 14.0 between Bath and Woolwich shall open as follows:

(1) On signal as soon as possible at all times for vessels owned or operated by the United States Government, State and local vessels used for public safety, vessels in distress, and inbound loaded commercial fishing vessels.

(2) Year-round the draw need not open from 6:30 a.m. to 7:30 a.m. and from 3:45 p.m. to 5:30 p.m., Monday to Friday excluding holidays except for vessels noted in paragraph (a)(1) of this section.

(3) From 1 June through 30 September: (i) On signal at all times for commercial vessels except as noted in paragraph (a)(2) of this section; (ii) For recreational vessels on signal except that from 6 a.m. to 6 p.m. openings only at 10 a.m. and 2 p.m.

(4) From 15 April through 30 May and 1 October through 15 November open on signal: (i) From 3 a.m. to 7 p.m., except as noted in paragraph (a)(2) of this section; (ii) From 7 p.m. to 3 a.m. if four hours notice is given.

(5) From 15 February through 14 April and 16 November through 15 December at all times on signal, if at least 4 hours notice is given.

(6) From 16 December through 14 February open on signal, except as noted in paragraph (a)(2) of this section, if 24 hours notice is given.

* * * * *

Dated: June 13, 1989.

R.I. Rybacki,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 89–14745 Filed 6–21–89; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[CGD7 88–21]

Security Zone; Port Canaveral Harbor, Cape Canaveral, FL; Correction

AGENCY: Coast Guard, DOT.

ACTION: Final rule; correction.

SUMMARY: The Coast Guard is clarifying the zone described in the final rule which appeared in the **Federal Register** on October 3, 1988 [53 FR 38718].

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander H. Henderson, Tel: (904) 791–2648, between 7:30 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The Coast Guard published the final rule on October 3, 1988 [53 FR 38718] which established a security zone at Cape Canaveral, Florida. The final rule improperly described the security zone which is clarified by this notice.

The following clarification is made in CGD7 87–38, the Regulations implementing the security zone at Cape Canaveral, Florida published in the **Federal Register** on October 3, 1988 [53 FR 38718].

1. On page 38718, third column, paragraph (a) of § 165.705 is correctly added to read as follows:

§ 165.705 Port Canaveral Harbor, Cape Canaveral, Florida.

(a) Security Zone A—East (Trident) Basin, Port Canaveral Harbor, at Cape Canaveral Air Force Station, Brevard County, Florida. All waters of the East Basin north of latitude 28°24'36"N.

* * * * *

Dated: May 2, 1989.

R. J. O'pezio,

Captain, U.S. Coast Guard, Captain of the Port, Jacksonville, Florida.

[FR Doc. 89–14746 Filed 6–21–89; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 144, 260, 264, and 270

[FRL–3606–3]

Hazardous Waste Miscellaneous Units; Standards Applicable to Owners and Operators; Correction

AGENCY: Environmental Protection Agency.

ACTION: Final rule; correction.

SUMMARY: This notice corrects the preamble discussion of a final rule under the Resource Conservation and Recovery Act (RCRA) that appeared in the **Federal Register** of Thursday, December 10, 1987, 52 FR 46946; and that discussed distance requirements for open burning/open detonation facilities.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline at (800) 424–9346 (toll free) or (202) 382–3000 in Washington, DC, or Chester J. Oszman, Jr., Office of Solid Waste (OS–343), U.S. Environmental Protection Agency, Washington, DC 20460, (202) 382–4500.

SUPPLEMENTARY INFORMATION: On December 10, 1987 (52 FR 46946–46965), EPA promulgated a new set of standards applicable to miscellaneous waste management units. The final rule was effective on January 11, 1989. Today, EPA is correcting one portion of the accompanying preamble by clarifying

the minimum safe distance requirements for open burning/open detonation facilities subject to the December 10 final rule.

In the preamble to the final rule on 40 CFR Part 264, Subpart X permitting requirements for miscellaneous units, the Agency stated on page 46952, third column, first paragraph, that the appropriate applicable portions of 40 CFR Part 265, Subpart P, including the minimum safe distance requirements, would be incorporated into the final RCRA permits granted to open burning/open detonation facilities covered by Subpart X. However, the basis for development of the tables in Subpart P of Part 265 is disposal of military explosives (Department of Defense's Army regulation AR–385–65 Ammunition and Explosive Safety Standard, Chapter 5). These tables do not necessarily apply to the open burning or open detonation of commercial explosives at Subpart X facilities. A permit may be issued with shorter distance provisions (e.g., based on the American Table of Distances for Commercial Explosives) as long as the Part 264 Subpart X environmental performance standards for protection of human health and the environment are met.

List of Subjects

40 CFR Part 144

Administrative practice and procedures, Hazardous materials, Waste treatment and disposal.

40 CFR Part 260

Administrative practice and procedures, Confidential business information, Hazardous materials, Waste treatment and disposal.

40 CFR Part 264

Hazardous materials, Packaging and containers, Reporting requirements, Security measures, Surety bonds, Waste treatment and disposal.

40 CFR Part 270

Administrative practice and procedures, Reporting and recordkeeping requirements, Hazardous materials, Waste treatment and disposal, Water supply, Confidential business information.

Robert L. Duprey,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

Dated: June 12, 1989.

[FR Doc. 89–14826 Filed 6–21–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MM Docket No. 88–526; RM–6122; FCC 89–128]

Radio Broadcasting Services; Modification of FM and TV Authorizations To Specify a New Community of License

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action adopts a procedure whereby an FM or television licensee or permittee may request modification of its authorization to a mutually exclusive allotment in a different community of license during the course of a rule making proceeding to amend the FM or television table of allotments, without risking loss of its existing authorization to competing applicants. The current procedure discourages changes in communities of license, even though a change may be beneficial to the community and to the licensee. This action will permit beneficial changes, resulting in a fairer, more equitable, and more efficient distribution of services.

EFFECTIVE DATE: July 31, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Michael Ruger, Mass Media Bureau, (202) 632–6302.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, MM Docket No. 88–526, adopted April 28, 1989, and released June 15, 1989. The full text of this Commission decision is available for inspection during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

1. The Commission amended § 1.420 of its Rules to establish a new procedure whereby FM and television licensees and permittees may request modification of their authorizations to a mutually exclusive allotment in a different community of license during the course of a rule making proceeding to amend the FM or television tables of allotments, §§ 73.202(b) and 73.606(b) of the Rules, respectively. The Commission will approve a modification so long as adoption of the proposed allotment plan would result in a net service benefit for the communities involved as compared to the existing state of allotments for the communities involved.

2. This proceeding was commenced in response to a petition for rule making filed by Christian Voice of Central Ohio ("petitioner"), an FM licensee. Petitioner proposed that the Commission amend its rules to permit FM licensees to upgrade facilities on higher class adjacent or co-channel frequencies, without entertaining competing expressions of interest or competing applications for the amended allotment, even if the upgrade would require modification of the licensee's community of license. In response to the petition, the Commission issued a Notice of Proposed Rule Making, 53 FR 50045 (Dec. 13, 1988), proposing to amend § 1.420 of the Commission's rules to provide a procedure whereby a licensee or permittee may petition the Commission for an amendment to the FM or television tables, and modification of its license accordingly, without placing its existing authorization at risk.

3. Comments filed in response to the Notice were predominantly favorable. Commenters noted that the present policy deters beneficial upgrades that would require a change in the community of license, and that the new procedure would enhance a licensee's flexibility in choosing and modifying facilities. Others noted that the proposal is consistent with earlier Commission actions to modify policies that frustrate the advancement of proposals that would serve the public interest, such as the *Report and Order* in MM Docket No. 85–313, *Modification of FM Broadcast Licenses to Higher Class Co-Channel or Adjacent Channels*, 51 FR 20290 (June 4, 1986). While one party suggested that the proposal might be contrary to the requirements of *Ashbacker Radio Corp. v. U.S.*, 326 U.S. 327 (1945), a number of commenters and reply commenters refuted that view. One commenter supported application of the proposal to intraband commercial/noncommercial channel exchanges, but another disapproved, fearing that intraband swaps could lead to loss of noncommercial service in some areas. Several commenters argued that the procedure could be abused by a licensee seeking to abandon its original community of license in order to serve a larger market without offering any tangible benefits to the new community. One commenter claimed the procedure is unnecessary for the television service, as a television station cannot obtain a

higher classification of service through a change in community of license. Another commenter expressed concern that a television licensee might use the procedure to move its station so as to circumvent syndicated exclusivity rules, a possibility considered unlikely by several reply commenters.

4. Several parties supported the tentative conclusion that the proposed procedure should be used only if an allotment to the new community would further the Commission's allotment priorities and policies as expressed in *Revision of FM Assignment Policies and Procedures*, 47 FR 26624 (June 21, 1982) and *Sixth Report and Order*, 17 FR 3905, 3912 (May 2, 1952). A number of commenters opposed the application of the allotment priorities to this procedure, claiming that a strict application of the priorities could prevent a change in community of license even though strong public interest benefits favored the change. Several commenters suggested a flexible application of the FM allotment criteria to acknowledge that many FM stations serve a larger geographic area than their communities of license, and to permit consideration of the many marketplace factors that may enter into a licensee's decision to change its community of license. Several commenters claimed that the television allotment priorities are outdated and do not account for the existence of alternative video delivery services such as cable television. Suggested alternatives to use of the allotment criteria for television stations included a mutual exclusivity requirement, and a showing of significant public interest benefits.

5. Among the alternative proposals advanced, several commenters suggested that, instead of applying the existing allotment priorities, the Commission require a station seeking to change its community of license to maintain some degree of service to its former community of license. Another suggested that the proposed rule state that the procedure will only be used to further section 307(b) of the Communications Act. A third proposal suggested a procedure that would allow the Commission to change a licensee's community of license and modify its license in a rule making proceeding if, after the licensee's request was placed on public notice, no bona fide expressions of interest in the new community of license were received. One commenter proposed that the Commission specify that the procedure would be available to licensees seeking to reassign to their allotted communities channels assigned elsewhere pursuant to the Commission's former "15-mile" rule.

6. After careful review of the comments, we are convinced that the Commission's current procedures for modification of FM and television authorizations to specify a new community of license should be amended. The present procedure discourages changes to the tables of allotments that would result in a better overall arrangement of allotments. Many licensees and permittees may be deterred from seeking improvements to technical facilities that would require a modification of its community of license, as they would be at risk of losing their authorizations in a comparative hearing. The procedure adopted herein is limited to situations in which the new allotment would be mutually exclusive with the existing allotment and will not apply to nonadjacent channel upgrades. The suggested alternative procedure is rejected, as it is similar to a procedure we determined in *Modification of FM Broadcast Licensee to Higher Class Co-Channel or Adjacent Channels* to be wasteful of Commission, petitioner, and commenter resources.

7. This amendment is not precluded by the *Ashbacker* doctrine. The Court of Appeals has noted in *Reuters Ltd.* v. *FCC*, 781 F.2d 946, 951 (D.C. Cir. 1986), that *Ashbacker* applies only to parties whose applications have been declared mutually exclusive, and not to prospective applicants. A party seeking to amend the tables of allotments is a prospective applicant until its application is submitted and accepted pursuant to Commission rules. Also, while as a general matter policy considerations may favor permitting the filing of competing applications, in this instance the public interest favors a different approach. Changing our rules will remove a disincentive to changes in communities of license. Potential applicants will not be deprived of opportunities for comparative consideration, as they are already effectively precluded from applying for these allotments due to mutual exclusivity with the existing allotments.

8. In order to amend an allotment using this procedure, we will compare the proposed allotment plan to the existing state of allotments for the communities involved. If adoption of the proposed allotment plan would result in a net service benefit for the communities involved (that is, if the plan would result in a preferential arrangement of allotments), we will adopt the proposal. The best way to ensure a preferential arrangement of allotments is to apply the relevant FM or television allotment priorities and policies. Continued use of the allotment criteria is consistent with the public interest and lends certainty to the process by retaining a body of precedent upon which a petition for change of the community of license can be analyzed. This will permit evaluation of all conflicting proposals, regardless of whether they involve a change in community of license, using the same priorities and policies. Commission policy is to apply the criteria in a flexible manner where circumstances warrant. We decline to take into account the degree of service a licensee will maintain to its original community of license as a factor in making our decision. Were we to do so, we would have to ensure that the coverage was provided to the original community in perpetuity, lest the licensee avoid one of the terms of its promise that allowed the move. On the other hand, we should not preclude a change in community of license that would result in a preferential arrangement of allotments solely because the licensee will no longer serve its original community of license.

9. There may be situations in which a licensee may try to increase its total population served by moving from a rural community to a suburban community. We do not believe that such a move necessarily constitutes abuse of process so long as the new community of license is preferable to the original community under our allotment criteria, although the result may be removal of some service from communities on the fringe of an urban area. The application of the allotment priorities and policies, in conjunction with the Commission's minimum distance separation requirements and the present intensive use of spectrum in urban areas, will act as a barrier to the clustering of stations in major metropolitan areas. We will, however, carefully monitor these situations, and will address the issue if necessary.

10. A licensee might want to use the rule in one of three circumstances. First, a licensee might propose a change in its community of license, but no change in its transmitter site or, for an FM station, its channel class. Second, a licensee might propose to change its transmitter site and community of license. Third, applicable only to the FM service, a licensee might propose to change its community of license and channel class, and possibly its transmitter site as well. However, in no case will we allow a broadcaster to use this procedure if the effect would be to deprive a community of its only local transmission service. In the first case, the question of whether the amended allotment would result in a preferred distribution of facilities under our allotment criteria will serve as a threshold test of the acceptability of the proposal. In the second and third situations, the preclusive effect of the allotment changes and it is possible that other changes mutually exclusive with the existing station could be advanced in the proceeding. Therefore, we will decide the proposal on a case by case basis, based on whether or not the proposed changes, taken as a whole, would advance our allotment priorities. We will be particularly hesitant to deprive an area of an existing first or second reception service.

11. We believe that it is unnecessary to include language in the new rule stating that the procedure will only be used to further section 307(b) priorities, as the rule merely reflects procedures for amending the tables of allotments in certain circumstances, and the substantive standards for allotments have been established by the Commission in policy statements and various Report and Orders. We will continue to apply those substantive standards in all proceedings pursuant to this rule. We will not specify that this procedure will be available to licensees seeking to return to their allotted communities channels assigned elsewhere pursuant to the Commission's former "15-mile" rule. The procedure we now adopt is limited to situations in which a licensee files a rule making petition and an associated request for modification of license simultaneously. The television table of allotments has not been modified to conform its provisions to the actual usage of channels under the "10-mile" and "15-mile" rules by licensees. Licensees seeking to modify their assignments to specify the allotted community listed in the tables may request to do so by filing an application for a modification of license, and we will grant the request where appropriate.

12. This procedure will be applicable to exchanges of intraband (that is, UHF–UHF or VHF–VHF) noncommercial and commercial channels, but not to interband channel exchanges. The Commission's Rules currently permit intraband exchanges, and the procedure should apply to exchanges consistent with our rules. The possibility of abuse of the new rule is minimal, because adherence to the allotment criteria will ensure that any exchange involving a change in the community of license will be made in the public interest and not solely in the financial interests of the participants. Furthermore, use of this procedure may allow either or both stations to offer upgraded service previously prohibited due to a mutually exclusive allotment.

13. We believe that the public may benefit from application of this procedure to the television service as well as to the FM service. A television licensee may, through a change in its community of license, be able to move its transmitter in order to improve service to the surrounding area in a manner consistent with our allotment priorities. As for the concern that this procedure could allow a television station to circumvent the Commission's programming exclusivity rules, we note that the incentives for moving a station in order to avoid these rules are not clear. A licensee that changes its community of license to escape programming exclusivity rules may lose its protection with respect to other licensees in its original community of license, thereby significantly diminishing the value of its programming. If a licensee moves to a suburban community to avoid the scope of the exclusivity rules, the amended allotment would not have been approved had it not resulted in a preferential arrangement of allotments under the allotment criteria.

14. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 604, a final regulatory flexibility analysis has been prepared. It is available for public viewing as part of the full text of this decision, which may be obtained from the Commission or its copy contractor.

15. The Rule contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements and will not increase or decrease burden hours imposed on the public.

Ordering Clause

Accordingly, *It is ordered*, That, under the authority contained in sections 1, 2, 4 (i) and (j), 303(r), 316, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154 (i), (j), 303(r), 316, 403, Part 1 of the Commission's Rules and Regulations is amended, effective July 31, 1989, as shown at the end of this document.

List of Subjects in 47 CFR Part 1

Radio, Television.

Part 1 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 1—[AMENDED]

16. The authority citation for Part 1 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154 and 303.

Section 1.420 is amended by adding new paragraph (i) as follows:

§ 1.420 Additional procedures in proceedings for amendment of the FM, television or air-ground table of assignments.

* * * * *

(i) In the course of the rule making proceeding to amend § 73.202(b) or § 73.606(b), the Commission may modify the license or permit of an FM or television broadcast station to specify a new community of license where the amended allotment would be mutually exclusive with the licensee's or permittee's present assignment.

Federal Communications Commission.
William Caton,
Acting Secretary.

[FR Doc. 89-14713 Filed 6-21-89; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 32

[DA 89-503]

Accounting Requirements for Telephone Companies

AGENCY: Federal Communications Commission.

ACTION: Revision of Annual Report Form M.

SUMMARY: The Chief, Common Carrier Bureau, has revised the Federal Communications Commission's Annual Report Form M (Form M) to reflect the changes in the Commission's accounting requirements for telephone companies adopted in Part 32 of its rules (47 CFR Part 32), which made the present Form M obsolete. The revisions are effective for the 1988 Annual Report Form M.

EFFECTIVE DATE: May 12, 1989.

FOR FURTHER INFORMATION CONTACT: Virginia Brockington, Ken Ackerman or John T. Curry, Accounting Systems Branch, Accounting and Audits Division, Common Carrier Bureau (202) 634-1861.

SUPPLEMENTARY INFORMATION: This is a summary of the Chief, Common Carrier Bureau, Memorandum Opinion and Order, DA 89-503, adopted April 27, 1989, and released May 12, 1989. The full text of this Order is available for inspection and copying during normal business hours in the Accounting and Audits Division, Room 812, 2000 L Street NW., Washington, DC. The complete

text may also be purchased from the Commission's copy contractor.

Summary of Memorandum Opinion and Order

On September 9, 1988, the Chief, Common Carrier Bureau, released an Order Inviting Comments (OIC) [1] proposing revisions of the Form M. The revisions were proposed because recent changes in the Commission's accounting requirements for telephone companies had made the existing Form M obsolete, and a significant volume of information contained therein, while still necessary for regulatory purposes, could not be accommodated in the automated reporting and management information system (ARMIS) the Commission had adopted in CC Docket 86-182, the docket which created certain automated reporting requirements for telephone companies.

This Order establishes the new Form M based on comments received in response to the proposal in the OIC. It eliminates 22 of the old Form M schedules, and the information contained on these schedules that is still needed for regulatory purposes has been condensed into six new replacement schedules. The schedules the Order eliminates from the Form M Report are Schedules 3, Board of Directors; 4, Principal General Officers; 10, Balance Sheet; 11, Income and Retained Earnings Statement; 12A, Analysis of Telephone Plant Accounts; 13A, Analysis of Telephone Plant Acquired; 15A, Analysis of Amortization Reserve; 15B, Bases of Annual Amortization Charges; 17, Investments; 20, Notes Receivable; 21, Accounts Receivable; 25, Capital Stock and Funded Debt Issued or Assumed During the Year; 27, Matured Long-term Debt; 31, Retained Earnings Reserved; 32, Dividends Declared; 33, Analysis of Entries in Other Capital and Retained Earnings Accounts; 34, Operating Revenues; 35, Operating Expenses; 36C, Federal Income Taxes; 57A, Overseas Telephone and Related Services; 60A, Relief and Pensions; and 60B, Pensions Paid.

Information on the board of directors and general officers are combined on a single schedule. Investments in affiliates are to be reported on two schedules. The other replacement schedules pertain to long-term debt, captital stock, and pension cost. Also, the Order does not include in the revised Form M highly detailed jurisdictional depreciation data that was proposed in the OIC, thus greatly reducing the volume of depreciation data originally proposed.

[1] Not published in the Federal Register.

The revised Form M contains three entirely new schedules dealing with capital leases, cash flows and asset sale transactions with affiliates. The balance sheet and income and retained earnings data will be reported on ARMIS Form 43-02, a paper copy of which carriers will be allowed to file as a part of the Form M.

The schedules' numbering system is changed to avoid any lingering confusion between old and new Form M schedules using the same number. In renumbering the schedules, alphabetical prefixes are used to designate the orientation of the schedules. For example, the prefix A is used for corporate and general information, B for balance sheet oriented schedules, I for income statement oriented schedules, and S for statistical schedules. The establishment of unique carrier code spaces will permit use of the same ARMIS study area codes prescribed for operating companies that were recently established in CC Docket 86-182 and thereby set the stage for future incorporation of additional schedules into ARMIS.

Ordering Clauses

Accordingly, *It is ordered,* pursuant to sections 4(i), 4(j), 201-205, 215, 219, and 220 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 201-205, 215, 219, and 220, that the revised Form M schedules Are Adopted.

It is further ordered, That subject carriers shall file a revised Form M within 60 days from release of this Memorandum Opinion and Order.

Gerald Brock,

Chief, Common Carrier Bureau.

[FR Doc. 89-14712 Filed 6-21-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-29; RM-4941 and RM-5999]

Radio Broadcasting Services; Greenup, KY and Athens, OH; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration; correction.

SUMMARY: This action corrects the correction to the Final Rule/ Reconsideration in MM Docket No. 87-29, 54 FR 23483, published June 1, 1989 [FR Doc. 89-12965]. The amendatory language for § 73.202 should be corrected to read as follows:

§ 73.202 [Corrected]

§ 73.202(b), the Table of FM Allotments is amended, under Ohio by removing Channel 288A and adding Channel 289B1 at Athens; and under Kentucky by removing Channel 289B1 and adding Channel 288A at Greenup.

EFFECTIVE DATE: June 12, 1989.

FOR FURTHER INFORMATION CONTACT: J. Bertron Withers, Jr., Mass Media Bureau, (202) 632-7792.

Federal Communications Commission.

Bradley P. Holmes,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-14714 Filed 6-21-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 201, 204, 206, 215, 216, 219, 225, 226, 232, 233, 234, 247, and 252

[Defense Acquisition Circular (DAC) 88-8]

Federal Acquisition Regulation Supplement; Regulatory and Miscellaneous Amendments

AGENCY: Department of Defense (DoD).

ACTION: Final rules.

SUMMARY: Defense Acquisition Circular (DAC) 88-8 amends the DoD FAR Supplement (DFARS) with respect to Restriction on Procurement from Toshiba Corporation and Kongsberg Vapenfabrikk (Cancellation of Interim Rule); Procurement Integrity; Small Business Competitiveness Demonstration Program; Small Business Participation in Dredging; Military Interdepartmental Purchase Requests (MIPR); English Translation of Contracts; Small Disadvantaged Businesses (SDBs), Historically Black Colleges and Universities (HBCUs), and Minority Institutions (MIs); Fixed-Price Contracts With Award Fees; Restrictions on the Acquisition of Values and Machine Tools from Foreign Sources; Canadian Commercial Corporation Endorsement; Progress Payments; Submission of Claims by Contractors; Returnable Gas Cylinders; Property Administration; and DD Form 1707, Information to Offerors or Quoters. This DAC also contains editorial corrections and a correction to DAC #88-7.

EFFECTIVE DATE: August 12, 1989, unless otherwise noted in the Supplementary Information.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, Defense Acquisition Regulatory Council, ODASD(P)/DARS, OASD(P&L), c/o OUSD(A) (M&RS), Room 3D139, The Pentagon, Washington, DC 20301-3062, telephone (202) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Background

The DoD FAR Supplement is codified in Chapter 2, Title 48 of the Code of Federal Regulations.

The October 1, 1987, revision of the CFR is the most recent edition of that title. It reflects amendments to the 1986 edition of the DoD FAR Supplement made by Defense Acquisition Circulars 86-1 through 86-5. Amendments made by DACs 86-6 through 86-16 were published in the **Federal Register** at 53 FR 38171, September 29, 1988, and will be included in the October 1, 1988 revision of the CFR.

B. Public Comments

DAC 88-8, Items I, IV, V, VI, VII, VIII, X, XII, XIV, and XV

Public comments are not solicited with respect to these revisions since such revisions do not alter the substantive meaning of any coverage in the DFARS having a significant impact on contractors or offerors, or do not have a significant effect beyond agency internal operating procedures.

DAC 88-8, Item II

A proposed rule with request for comments was published in the **Federal Register** on March 27, 1989 (54 FR 12566), and comments were considered in the development of this final rule.

DAC 88-8, Item III

An interim rule with request for comments was published in the **Federal Register** on January 27, 1989 (54 FR 4246), and comments were considered in the development of this final rule.

DAC 88-8, Item IX

An interim rule with request for comments was published in the **Federal Register** on February 21, 1989 (54 FR 7425). Comments were considered in the development of this final rule.

DAC 88-8, Item XI

An interim rule with request for comments was published in the **Federal Register** on September 14, 1988, and comments were considered in the development of this final rule.

DAC 88-8, Item XIII

A proposed rule with request for comments was published in the **Federal Register** on October 3, 1988 (53 FR 38753). No public comments were received.

DAC 88-8, Items XVI and XVII

Comments are not solicited with respect to these items because they provide editorial corrections.

C. Regulatory Flexibility Act

DAC 88-8, Items I, IV, V, VI, VII, VIII, X, XII, XIV and XV

These final rules do not constitute a significant revision within the meaning of Pub. L. 98-577 and publication for public comment is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately to the Executive Secretary, DAR Council, address as shown above, and cite DAR Case 89-610D in correspondence.

DAC 88-8, Item II

This final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because the revisions are internal to DoD. A Regulatory Flexibility Analysis has therefore not been performed. A proposed rule with request for comments was published in the **Federal Register** on March 27, 1989 (54 FR 12566). No comments were received which addressed the Regulatory Flexibility Act Statement.

DAC 88-8, Item III

As stated in the joint policy directive (53 FR 52889), the Office of Federal Procurement Policy and the Small Business Administration will prepare the appropriate regulatory flexibility analysis upon completion of the first quarterly review under the Program.

DAC 88-8, Item IX

This final rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 et seq., because this coverage restricts acquisition of valves and machine tools not manufactured in the United States or Canada. An Initial Regulatory Flexibility Analysis was not performed. No comments were received regarding the Regulatory Flexibility Statement.

DAC 88-8, Item XI

The Regulatory Flexibility Act, 5 U.S.C. 601 et seq., applies to this final rule. No comments were received regarding the Regulatory Flexibility Statement. A Final Regulatory Flexibility Analysis has been prepared and submitted to the Chief Counsel for Advocacy of the Small Business Administration.

DAC 88-8, Item XIII

This final rule is not a significant revision within the meaning of Pub. L. 98-577 in that it will not have a significant cost or administrative impact on contractors or offerors. The clause is already prescribed for use, when applicable, to contracts awarded using small purchase procedures. This rule only makes the clause available for use in all contracts. No comments were received regarding the Regulatory Flexibility Statement.

DAC 88-8, Items XVI and XVII

The Regulatory Flexibility Act does not apply to these items because they provide editorial changes.

D. Paperwork Reduction Act

DAC 88-8, Items I, II, and IV through XVII

The Paperwork Reduction Act does not apply because these rules do not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

DAC 88-8, Item III

The necessary approvals are being obtained by the Office of Federal Procurement Policy and the Small Business Administration.

List of Subjects in 48 CFR Parts 201, 204, 206, 215, 216, 219, 225, 226, 232, 233, 234, 247, and 252

Government procurement.

Charles W. Lloyd

Executive Secretary, Defense Acquisition Regulatory Council.

[Defense Acquisition Circular No. 88-8]

June 12, 1989.

Unless otherwise specified, all DoD FAR Supplement and other directive material contained in this Defense Acquisition Circular is effective August 12, 1989.

Defense Acquisition Circular (DAC) 88-8 amends the DoD Federal Acquisition Regulation Supplement (DFARS) 1988 edition and prescribes procedures to be followed. The following is a summary of the amendments and procedures.

Item I—Restriction on Procurement from Toshiba Corporation and Kongsberg Vapenfabrikk (Cancellation of Interim Rule) (Information Item)

Coverage on the Restriction on Procurement from Toshiba Corporation and from Kongsberg Vapenfabrikk was

published in the Federal Register as an interim rule on March 21, 1988 (53 FR 9116) and corrected on March 30, 1988 (53 FR 10250). That coverage was canceled because the coverage now appears in the Federal Acquisition Regulation (FAC 84-46, 54 FR 19812). A notice of cancellation was published in the Federal Register on May 23, 1989 (54 FR 22282). This item removes the interim rule from the DFARS.

Item II—Procurement Integrity (Final Rule)

Section 6 of the Office of Federal Procurement Policy (OFPP) Act Amendments of 1988 amended the OFPP Act by adding Section 27, Procurement Integrity. Section 27 contains prohibitions involving: (a) Conduct by offerors, contractors and Government procurement officials; (b) unauthorized disclosure of proprietary or source selection information; and (c) restrictions on Government officials and employees after they leave Government service. DFARS Parts 201, 203, and 208 were revised on May 16, 1989 to provide coverage implementing recent revisions to the Federal Acquisition Regulation regarding Procurement Integrity. The final rule was published in the Federal Register on May 16, 1989 (54 FR 21067), and corrected on May 23, 1989 (54 FR 22282). This final rule, making an editorial correction to 201.401, is effective July 16, 1989.

Item III—Small Business Competitiveness Demonstration Program (Final Rule)

DFARS Parts 204, 219, and 252 are revised to further implement FAR Subpart 19.10 and the December 22, 1988 Joint Office of Federal Procurement Policy (OFPP) and Small Business Administration (SBA) interim policy directive and test plan implemening Title VII of the "Business Opportunity Development Reform Act of 1988", Pub. L. 100-656 (53 FR 52889). An interim rule with request for comments was published in the Federal Register on January 27, 1989 (54 FR 4246), and corrected on February 3, 1989 (54 FR 5484) and February 17, 1989 (54 7191).

Item IV—Small Business Participation in Dredging (Final Rule)

DFARS 204 and 219 are revised to highlight a requirement placed on the Department of the Army by Section 722 of Pub. L. 100-656, Business Opportunity Development Reform Act of 1988, to expand small business participation in dredging.

Item V—Military Interdepartmental Purchase Requests (MIPR) (Final Rule)

The procedures of DFARS 208.70 for coordinated acquisitions have been changed to: (1) Require the MIPR to list used or reconditioned material, former Government surplus property and residual inventory anticipated to be used on the contract and the basis for determining such items acceptable for use; and (2) clarify procedures for the withdrawal of excess funds. Editorial changes also have been made.

Item VI—English Translation of Contracts (Final Rule)

The clause at 252.213-7000, Inconsistency Between English Version and Translation of Contracts, is deleted. The coverage will be transferred to the FAR in FAC 84-50.

Item VII—Small Disadvantaged Businesses (SDBs), Historically Black Colleges and Universities (HBCUs), and Minority Institutions (MIs) (Final Rule)

DFARS Parts 219, 226, and 234 are revised to further implement Section 1207 of Pub. L. 99-661 and Section 806 of Pub. L. 100-180. These statutes require DoD to establish a goal to award 5% of contract dollars to Small Disadvantaged Businesses (SDBs), Historically Black Colleges and Universities (HBCU's), and Minority Institutions (MIs) during fiscal years 1987-89. Section 844 of Pub. L. 100-456 extended the 5% goal through 1990. These changes are intended to facilitate DoD's efforts to accomplish the 5% goal.

Item VIII—Fixed-Price Contracts With Award Fees (Final Rule)

DFARS 216.403-70 is revised to provide for award fees as incentives in fixed price contracting.

Item IX—Restrictions on the Acquisition of Valves and Machine Tools from Foreign Sources (Final Rule)

Coverage with respect to restrictions on the acquisition of valves and machine tools from foreign sources was published in DAC #88-4 as an interim rule with request for comments in the Federal Register on February 21, 1989 (54 FR 7425). This DAC finalizes the coverage published in the interim rule, with only a minor editorial change.

Item X—Canadian Commercial Corporation Endorsement (Final Rule)

DFARS 225.7104(a)(2)(ii) is revised to clarify that failure to provide an endorsement by the Canadian Commercial Corporation on an offer by a Canadian firm is a minor irregularity that can be corrected after submission of offers but prior to contract award. This revision implements a GAO recommendation.

Item XI—Progress Payments (Final Rule)

DFARS Part 232 is revised to change progress payment rates on defense contracts to the levels currently provided in the FAR. Coverage was published in DAC #88-2 as an interim rule in the Federal Register on September 14, 1988 (53 FR 35511), with an effective date of October 1, 1988. As a result of public comments, this rule finalizes the interim rule and adds two sentences at 232.501-1(a), allowing the contracting officer, where appropriate, to utilize both the old rate and the new rate for different line items in the same contract.

Item XII—Submission of Claims by Contractors (Final Rule)

DFARS 233.204 is added to make contracting officers aware that they should obtain information on claims previously filed by contractors with other contracting officers before settling the current claim. This coverage is added to implement a DoDIG recommendation.

Item XIII—Returnable Gas Cylinders (Final Rule)

DFARS 247.305-70 is added to prescribe the use of DFARS 252.247-7201 (formerly 252.213-7001), Returnable Gas Cylinders. Revisions have been made to the redesignated clause.

Item XIV—Property Administration (Final Rule)

DFARS Supplement No. 3, S3-603(a), is revised to increase from 10 to 30 the number of days in which property administrators have to prepare and submit to the Defense Logistics Agency DD Form 1662, DoD Property in the Custody of contractors. Additionally, the revision permits electronic preparation of the report in lieu of manual preparation.

DD Form 1662 has been revised to add the Commercial and Government Entity (CAGE) Code, to eliminate two blocks recording additions and deletions of agency-peculiar (military) property, and to make conforming modifications in the instructions contained on the back of the form.

Note: DD Forms are not published in the Federal Register or the Code of Federal Regulations. A list containing DD Form numbers and titles follows section 253.204-70.

Note: DAR Supplement No. 3 is not codified in the Code of Federal Regulations, and it is not part of the subscription to the DoD FAR Supplement. It must be purchased separately from the Government Printing Office.

Item XV—DD Form 1707, Information to Offerors or Quoters (Final Rule)

DD Form 1707, Information to Offerors or Quoters, is revised to eliminate inconsistencies with the FAR as changed by FAC 84-5, dated December 20, 1984.

Item XVI—Editorial Corrections

(a) The title to DFARS 201.601 is revised to conform to the title in the FAR.

(b) DFARS 215.613(j) is revised to change the reference "15.1002" to read "215.1002."

Item XVII—Correction to DAC #88-7

In the instructions for replacement pages, under the heading "Remove the following pages:", "252.208-5 through 252.208-7" is changed to read "252-208-5 through 252-208-8".

Adoption of Amendments

Therefore, the DOD FAR Supplement is amended as set forth below:

1. The authority for 48 CFR Parts 201, 204, 208, 215, 216, 219, 225, 226, 232, 233, 234, 247, and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DOD Directive 5000.35, and DOD FAR Supplement 201.301.

PART 201—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. The final rule published on May 16, 1989 (54 FR 21067) and corrected on May 23, 1989 (54 22282) is corrected as follows:

201.403 [Corrected]

3. Section 201.403 is corrected by adding at the beginning of paragraph (b)(6) the word "Section".

201.601 [Amended]

4. Section 201.601 is amended by changing the title to read "General." in lieu of "Responsibility of Each Contracting Activity."

PART 204—ADMINISTRATIVE MATTERS

5. The interim rule published on January 27, 1989 (54 FR 4246) and corrected on February 3, 1989 (54 FR 5484) is adopted as final with the following changes:

204.671-5 [Amended]

6. Section 204.671-5 is amended by adding in parentheses after the title in paragraph (e) the words "(For Army, see also AFARS Part 19.10.)".

204.675-1 [Amended]

7. Section 204.675-1 is amended by adding in the second sentence between the word "groups" and the comma the words in parentheses "(for Army, includes dredging)".

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

208.7000 [Amended]

8. Section 208.7000 is amended by substituting in the first sentence the word "subpart" in lieu of the word "Part".

208.7001 [Amended]

9. Section 208.7001 is amended by substituting in the introductory paragraph the word "subpart" in lieu of the word "Part"; by substituting in the definition "Acceptance of MIPR" the word "Acquiring" in lieu of the word "Contracting"; by adding between the definitions "Acceptance of MIPR" and "Coordinated acquisition" the definition reading: " 'Acquiring Department' means the Department, Agency, or the General Services Administration which is assigned the responsibility for satisfying a purchase request."; by removing the definition entitled "Contracting department"; and by substituting in the definition "Reimbursable acquisition (Category I Method of Funding)" the word "Acquiring" in lieu of the word "Contracting".

208.7002 [Amended]

10. Section 208.7002 is amended by substituting in the introductory paragraph the word "Acquiring" in lieu of the word "Contracting".

208.7003-1 [Removed and reserved]

11. Section 208.7003-1 is removed and Reserved.

208.7003-3 [Amended]

12. Section 208.7003-3 is amended by substituting in the last sentence the word "Acquiring" in lieu of the word "Contracting".

208.7003-4 [Amended]

13. Section 208.7003-4 is amended by substituting in the first and second sentences the word "Acquiring" in lieu of the word "Contracting" in both places.

208.7003-5 [Amended]

14. Section 208.7003-5 is amended by substituting in the first sentence the word "Acquiring" in lieu of the word "Contracting"; and by substituting in the second sentence the word "Acquiring" in lieu of the word "Contracting" in both places.

208.7003-6 [Amended]

15. Section 208.7003-6 is amended by substituting in the second sentence the word "Acquiring" in lieu of the word "Contracting".

208.7005-1 [Amended]

16. Section 208.7005-1 is amended by substituting the word "Acquiring" in lieu of the word "Contracting".

208.7006-1 [Amended]

17. Section 208.7006-1 is amended by substituting in the first, second, and third sentences of paragraph (a) the word "Acquiring" in lieu of the word "Contracting".

208.7006-2 [Amended]

18. Section 208.7006-2 is amended by substituting in paragraph (b) the word "Acquiring" in lieu of the word "Procuring"; by adding a sentence at the end of paragraph (b) to read: "Blanket agreements may be used for this purpose."; and by substituting in the first sentence of paragraph (f) the word "Acquiring" in lieu of the word "Procuring".

208.7006-3 [Amended]

19. Section 208.7006-3 is amended by substituting in the first sentence of paragraph (b) the words "an Acquiring" in lieu of the words "a Contracting"; by substituting in paragraphs (b)(1)(i), (b)(1)(ii), and (b)(2) the word "Acquiring" in lieu of the word "Contracting"; by substituting in the first sentence of paragraph (c) the words "an Acquiring" in lieu of the words "a Contracting"; by substituting in paragraph (c)(2) the word "Acquiring" in lieu of the word "Contracting"; and by substituting in the last sentence of paragraph (d) the word "Acquiring" in lieu of the word "Procuring".

208.7006-4 [Amended]

20. Section 208.7006-4 is amended by substituting in the fourth sentence of paragraph (a) the word "Acquiring" in lieu of the word "Procuring"; and by substituting in the last sentence of paragraph (b) the word "Acquiring" in lieu of the word "Procuring".

208.7006-5 [Amended]

21. Section 208.7006-5 is amended by designating the existing paragraph as paragraph (a); by substituting in the first and second sentences of the redesignated paragraph (a) the word "Acquiring" in lieu of the word "Procuring"; and by adding paragraph (b), to read: "The Requiring Department shall furnish to the Acquiring Department a list of all persons who have had access to proprietary or source

selection information (see FAR 3.104-9(f))."

22. Section 208.7006-6 is added to read as follows:

208.7006-6 Acquiring used or reconditioned material, former Government surplus property, and residual inventory.

When used or reconditioned material, former Government Surplus Property and residual inventory is expected to be acceptable for use on a contract, the following information is to be provided by the Requiring Department in the MIPR: (a) a list of any supplies that need not be new; and (b) the basis for determining the acceptability of such supplies, which is to include an analysis of the factors at FAR 10.010(b). If the items are not acceptable for use on a contract, the Requiring Office shall note such a determination on the MIPR.

208.7007-1 [Amended]

23. Section 208.7007-1 is amended by substituting in the last sentence the word "Acquiring" in lieu of the word "Contracting".

208.7007-2 [Amended]

24. Section 208.7007-2 is amended by substituting in the introductory paragraph the word "Acquiring" in lieu of the word "Contracting" in both places; by substituting in paragraph (a) the word "Acquiring" in lieu of the word "Contracting"; by substituting in paragraph (b) the word "Acquiring" in lieu of the word "Contracting" in both places; and by substituting in paragraph (e) the word "Acquiring" in lieu of the word "Contracting".

208.7007-3 [Amended]

25. Section 208.7007-3 is amended by substituting in the first and second sentences the word "Acquiring" in lieu of the word "Contracting".

208.7008-1 [Amended]

26. Section 208.7008-1 is amended by substituting in the second sentence of paragraph (b)(2) the words "an Acquiring" in lieu of the words "a Contracting"; by substituting in the first sentence of paragraph (d) the word "Acquiring" in lieu of the word "Contracting"; by substituting in the last sentence of paragraph (e) the word "Acquiring" in lieu of the word "Contracting"; by substituting in the last sentence of paragraph (f)(1) the word "Acquiring" in lieu of the word "Contracting"; and by adding paragraph (i) to read: "The Requiring Activity shall include the name and telephone number of an individual who is thoroughly familiar with the MIPR, its attachments, and technical requirements.

208.7008-2 [Amended]

27. Section 208.7008-2 is amended by substituting in the second, third, fourth, and last sentences of paragraph (a) the word "Acquiring" in lieu of the word "Contracting"; and by substituting in the last sentence of paragraph (b) the word "Acquiring" in lieu of the word "Contracting".

208.7008-3 [Amended]

28. Section 208.7008-3 is amended by substituting in the first and second sentences the word "Acquiring" in lieu of the word "Contracting".

208.7008-4 [Amended]

29. Section 208.7008-4 is amended by substituting in the first and second sentences the word "Acquiring" in lieu of the word "Contracting".

208.7008-5 [Amended]

30. Section 208.7008-5 is amended by substituting in the second sentence of paragraph (a) the word "Acquiring" in lieu of the word "Contracting".

208.7008-6 [Amended]

31. Section 208.7008-6 is amended by substituting in the first and last sentences the word "Acquiring" in lieu of the word "Contracting".

208.7009 [Amended]

32. Section 208.7009 is amended by substituting in the first, third, and last sentences the word "Acquiring" in lieu of the word "Contracting".

208.7009-1 [Amended]

33. Section 208.7009-1 is amended by substituting in the first and second sentences the word "Acquiring" in lieu of the word "Contracting".

208.7009-2 [Amended]

34. Section 208.7009-2 is amended by substituting the word "Acquiring" in lieu of the word "Contracting".

208.7009-3 [Amended]

35. Section 208.7009-3 is amended by substituting in paragraphs (a)(4) and (a)(5) the word "Acquiring" in lieu of the word "Contracting".

36. Section 208.7009-4 is amended by substituting in the first and last sentences of paragraph (a) the word "Acquiring" in lieu of the word "Contracting"; by substituting at the end of the first sentence of paragraph (a) the word "the excess funds" in lieu of the words "such excess funds by MIPR amendment"; and by revising paragraph (b) to read as follows:

208.7009-4 Withdrawal of funds.

* * * * *

(b) When the Acquiring Department has accepted a MIPR for direct citation acquisition, and when all awards have been placed to satisfy the total MIPR requirement, any unused funds remaining on the MIPR become excess to the Acquiring Department. The Acquiring Department is to immediately notify the Requiring Department by submittal of a MIPR Amendment (DD Form 448-2) that these excess funds are available for recapture. This amendment is authorization for the Requiring Department to withdraw the funds. The Acquiring Department is prohibited from further use of such excess funds.

208.7010-3 [Amended]

37. Section 208.7010-3 is amended by substituting in the last sentence the word "Acquiring" in lieu of the word "Contracting".

208.7011 [Amended]

38. Section 208.7011 is amended by substituting in the reference after the title the words "(See 204.202.)" in lieu of the words "(See 204.201(c)(3).)"

208.7012 [Amended]

39. Section 208.7012 is amended by substituting in the first and second sentences of paragraph (a) the word "Acquiring" in lieu of the word "Contracting"; by substituting in the first and second sentences of paragraph (b) the word "Acquiring" in lieu of the word "Contracting"; and by substituting in paragraphs (c), (c)(1), and (c)(2) the word "Acquiring" in lieu of the word "Contracting".

208.7013 [Amended]

40. Section 208.7013 is amended by substituting in the first and second sentences the word "Acquiring" in lieu of the word "Contracting".

208.7015 [Amended]

41. Section 208.7015 is amended by substituting the word "Acquiring" in lieu of the word "Contracting".

208.7016 [Amended]

42. Section 208.7016 is amended by substituting in the first and second sentences of paragraph (a) the word "Acquiring" in lieu of the word "Contracting"; and by substituting in paragraph (b) the word "Acquiring" in lieu of the word "Contracting".

208.7017 [Amended]

43. Section 208.7017 is amended by substituting in the first sentence the word "Acquiring" in lieu of the word "Contracting".

PART 215—[AMENDED]

215.613 [Amended]

44. Section 215.613 is amended by changing the reference in paragraph (j) to read "215.1002" in lieu of "15.1002."

PART 216—TYPES OF CONTRACTS

45. Section 216.403-70 is added to read as follows:

216.403-70 Fixed-price contracts with award fees.

For the use of award fee provisions in fixed-price contracts, see 216.404-2(S-70).

PART 219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

46. Section 219.201 is amended by adding paragraph (b)(5) to read as follows:

219.201 General policy.

* * * * * *

(b) * * *

(5) Departmental Directors of Small and Disadvantaged Business Utilization shall establish a program to conduct reviews at a minimum of six subordinate activities per year and forward the results of such reviews to the activity for development of a plan to overcome noted deficiencies.

* * * * * *

47. Section 219.202-1 is amended by adding paragraph (S-70) (11) to read as follows:

219.202-1 Encouraging small business participation in acquisitions.

* * * * * *

(S-70) * * *

(11) where appropriate, hold quarterly briefings for SDBs and/or HBCUs/MIs on planned acquisitions and engage in other outreach activity such as providing information about specific programs, services and supply class items and minimizing use of sources sought synopsis to locate SDBs and HBCUs/MIs.

48. Section 219.705-6 is added to read as follows:

219.705-6 Postaward responsibilities of the contracting officer.

Upon receipt of a notice submitted in accordance with FAR 19.706(a)(5), the contracting officer shall take action necessary to enforce the terms of the contract. Such action shall include, as appropriate, issuance of cure or show cause notices, or initiation of default proceedings.

49. Section 219.708 is amended by adding in the first sentence of paragraph (c)(1) between the word "negotiation" and the comma and the word "the" the words "except as provided in (c)(2) below"; by adding a comma in the first sentence of paragraph (c)(1) after the word "Institutions"; and by adding paragraph (c)(2) to read as follows:

219.708 Solicitation provisions and contract clauses.

* * * * * *

(c)(2) For negotiated procurement of $10 million or more, the contracting officer may use an award fee provision, in lieu of the incentive provision required by (c)(1) above, in order to motivate and reward a contractor for exceeding established SDB, HBCU and MI subcontracting goals. Use of an award fee provision permits the contracting officer to consider the quality and amount of contractor effort put forth to meet these goals. The award fee rating plan included in the contract shall specify those factors against which the contractor's performance will be evaluated. When an award fee provision is included in a cost-reimbursement contract, total fee shall not exceed the limitations set forth in FAR 15.903(d), and the clauses at 252.219-7009 and FAR 52.219-10 shall not be used.

50. Section 219.803 is amended by redesignating paragraphs (c)(1) and (2) as paragraph (c)(S-70) (i) and (ii) and by adding paragraph (c) (S-71) to read as follows:

219.803 Selecting acquisitions for the 8(a) Program.

* * * * * *

(c) (S-71) Contracting activities should respond to SBA requests for contract support within 30 calendar days after receipt. To the maximum practical extent, 8(a) concerns should be provided an opportunity to give a technical presentation to appropriate personnel within the contracting activity before a decision not to use 8(a) contracting procedures is made on the request.

51. The interim rule published on January 27, 1989 (54 FR 4246) and corrected on February 3, 1989 (54 FR 5484) and February 17, 1989 (54 7191) is adopted as final with the following changes:

219.1005 [Amended]

52. Section 219.1005 is amended by adding paragraph (S-70) to read: "Army activities, see Army Supplement for additional requirements related to Dredging (SIC 1629, FPDS V216-Z216)."

219.1070-2 [Amended]

53. Section 219.1070-2 is amended by adding at the beginning of paragraph (a) the words "Notwithstanding FAR 13.105, 19.5 or 19.8," and changing the capital "A" in the first word to lower-case.

PART 225—FOREIGN ACQUISITION

54. The interim rule published on February 21, 1989 (54 FR 7425) is adopted as final without change.

225.7104 [Amended]

55. Section 225.7104 is amended by changing in paragraph (a)(2)(ii) the semicolon to a period after the word "directly" and by revising the remainder of the sentence to read: "The Canadian Commercial Corporation endorsement must be received by the contracting officer prior to contract award."

PART 226—OTHER SOCIOECONOMIC PROGRAMS

226.7004 [Amended]

56. Section 226.7004 is amended by substituting in the first sentence of paragraph (a) the words "research, studies, or services" in lieu of the words "research or studies".

PART 232—CONTRACT FINANCING

57. The interim rule published on September 14, 1988 (53 FR 35511), is adopted as final with the following change:

232.501-1 [Amended]

58. Section 232.501-1 is amended by adding text in paragraph (a) between the second and third sentences, to read: "If a contract is funded with FY 87 and other fiscal year appropriations, the contracting officer may either (1) apply the progress payment rate applicable to FY 87 appropriations to all line items in the contract, or (2) apply the rate applicable to FY 87 appropriations to only those line items funded with FY 87 appropriations and apply the higher rate to all other line items. However, if multiple progress payment rates are used in a single contract, the requirements of FAR 32.502-4(d) must be met."

PART 233—PROTESTS, DISPUTES, AND APPEALS

59. Section 233.204 is added to read as follows:

233.204 Policy

When appropriate, the contracting officer should obtain information on claims previously filed by the contractor with other contracting officers before settling the current claim.

PART 234—MAJOR SYSTEM ACQUISITION

234.005-70 [Amended]

60. Section 234.005-70 is amended by adding a sentence before the last

sentence to read: "See also 219.705-2(d) for special requirements related to evaluation of small disadvantaged business participation."

PART 247—TRANSPORTATION

61. Section 247.305-70 is added to read as follows:

247.305-70 Returnable gas cylinders

The contracting officer shall insert the clause at 252.247-7201, Returnable Gas Cylinders, in a solicitation and contract whenever the contract involves the purchase of gas in contractor-furnished returnable cylinders and the contractor retains title to the cylinders. The contracting officer may modify the 30-day time period specified in the clause to comply with customary commercial practice.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.213-7000 [Removed]

62. Section 252.213-7000 is removed.

252.247-7201 [Redesignated from 252.213-7001 and Amended]

63. Section 252.213-7001 is redesignated as 252.247-7201 and the redesignated section is amended by changing in the introductory paragraph the reference "at 213.505-2(S-73)(1)(xxxiii)" to read "in 247.305-70"; by changing the date of the clause to "JUN 1989" in lieu of the date "OCT 1988"; by removing the asterisk after the word "days" in the first sentence of paragraph (a) of the clause; by removing the footnote at the end of paragraph (a) of the clause; and the previous section 252.213-7001 is removed.

64. The interim rule published on January 27, 1989 (54 FR 4246) and corrected on February 3, 1989 (54 FR 5484) and February 17, 1989 (54 7191) is adopted as final without change.

[FR Doc. 89-14710 Filed 6-21-89; 8:45 am]

BILLING CODE 3810-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1053

Technical Amendment to the CFR

AGENCY: Interstate Commerce Commission.

ACTION: Technical amendment.

SUMMARY: Due to recent legislative amendments it is necessary to correct the statutory citation at 49 CFR 1053.1. This notice sets forth the correct statutory citation.

EFFECTIVE DATE: June 22, 1989.

FOR FURTHER INFORMATION CONTACT: Kathleen Gass (202) 275-6790.

SUPPLEMENTARY INFORMATION:

List of Subjects in 49 CFR Part 1053

Motor carriers.

PART 1053—CONTRACTS FOR TRANSPORTATION OF PROPERTY

1. The authority citation for Part 1053 continues to read as follows:

Authority: 5 U.S.C. 553, 559 and 49 U.S.C. 10321, 10764.

§ 1053.1 [Amended]

2. § 1053.1 the statutory citation is revised to read as follows: 49 U.S.C. 10102(15).

Noreta R. McGee,

Secretary.

[FR Doc. 89-14813 Filed 6-21-89; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 54, No. 119
Thursday, June 22, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1230

[No. LS-89-104]

Pork Promotion and Research

AGENCY: Agricultural Marketing Service.

ACTION: Proposed rule.

SUMMARY: Pursuant to the Pork Promotion, Research, and Consumer Information Act of 1985 and the Order issued thereunder, this proposed rule would decrease the amount of the assessment per pound due on imported pork and pork products to reflect a decrease in the 1988 seven market average price for domestic barrows and gilts and to bring the equivalent market value of the live animals from which such imported pork and pork products were derived in line with the market values of domestic procine animals.

DATE: Comments must be received by July 24, 1989.

ADDRESSES: Send two copies of comments to Ralph L. Tapp, Chief; Marketing Programs and Procurement Branch; Livestock and Seed Division; Agricultural Marketing Service, USDA, Room 2610-S; P.O. Box 96456, Washington, DC 20090-6456. Comments will be available for public inspection during regular business hours at the above office in Room 2610 South Building; 14th and Independence Avenue, SW.; Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ralph Tapp, Chief, Marketing Programs and Procurement Branch (202) 447-2650.

SUPPLEMENTARY INFORMATION: This action was reviewed under USDA procedures established to implement Executive Order No. 12291 and departmental Regulation 1512-1 and is hereby classified as a nonmajor rule under the criteria contained therein.

This action also was reviewed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.). The effect of the Order upon small entities was discussed in the September 5, 1986, issue of the **Federal Register** (51 FR 31898), and it was determined that the Order would not have a significant effect upon a substantial number of small entities. Many importers may be classified as small entities. This proposed rule would decrease the amount of assessments on all imported pork and pork products subject to assessment by three-to five-hundredths of a cent per pound, or as expressed in cents per kilogram, seven-to eleven-hundredths of a cent per kilogram. Adjusting the rate of assessments on imported pork and pork products will result in an estimated reduction in assessments of $375,000 over a 12-month period. Accordingly, the Administrator of the Agricultural Marketing Service [AMS] has determined that this action will not have a significant economic impact on a substantial number of small entities.

The Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801-4819) approved December 23, 1985, authorized the establishment of a national pork promotion, research, and consumer information program. The program is funded by an assessment rate of 0.25 percent of the market value of all porcine animals marketed in the United States and an equivalent amount of assessment on imported porcine animals, pork, and pork products. The final Order establishing a port promotion, research, and consumer information program was published in the September 5, 1986, issue of the **Federal Register** (51 FR 31898; as correct in 51 FR 36383) and assessments began on November 1, 1986.

The Order requires importers of porcine animals to pay the U.S. Customs Service (USCS), upon importation, the assessment of 0.25 percent of the animal's declared value and importers of pork and pork products to pay to the USCS, upon importation, the assessment of 0.25 percent of the market value of the live porcine animals from which such pork and pork products were produced. This proposed rule would decrease the assessment on all imported pork and pork products subject to assessment as published in the **Federal Register** on April 20, 1989, and effective on May 19, 1989 (54 FR 15913). In accordance with that final rule, the assessment on imported pork and pork products is to be expressed in cents per pound and per kilogram for each type of such pork or pork products. This decrease is consistent with the decrease in the annual average price of domestic barrows and gilts at the seven markets for calendar year 1988 as reported by the USDA, AMS, Livestock and Grain Market News Branch (LGMN). This decrease in assessments will make the equivalent market value of the live porcine animal from which the imported pork and pork products were derived reflect the recent decrease in the market value of domestic porcine animals, thereby promoting comparability between importer and domestic assessments. This proposed rule would not change the current assessment rate of 0.25 percent of the market value.

The methodology for determining the per-pound amounts for imported pork and pork products was described in the supplementary information accompanying the Order and published in the September 5, 1986, **Federal Register** at 51 FR 31901. The weight of imported pork and pork products is converted to a carcass weight equivalent by utilizing conversion factors which are published in the USDA Statistical Bulletin No. 616, "Conversion Factors and Weights and Measures." These conversion factors take into account the removal of bone, weight lost in cooking or other processing, and the nonpork components of pork products. Secondly, the carcass weight equivalent is converted to a live animal equivalent weight by dividing the carcass weight equivalent by 70 percent, which is the average dressing percentage of porcine animals in the United States. Thirdly, the equivalent value of the live porcine animal is determined by multiplying the live animal equivalent weight by an annual average seven market price for barrows and gilts as reported by the USDA, AMS, LGMN Branch. This average price is published on a yearly basis during the month of January in the LGMN Branch's publication "Livestock, Meat, and Wool Weekly Summary and Statistics." Finally, the equivalent value is multiplied by the applicable assessment rate of 0.25 percent due on imported pork or pork products. The end result is expressed in an amount per pound for each type of pork or pork product. In addition as stated in the final rule published in the April 20, 1989, issue of the **Federal Register** of 54 FR 15913, to

determine the amount per kilogram for pork and pork products subject to assessment under the Act and Order, the cent-per-pound assessments are multiplied by a metric conversion factor of 2.2046 and carried to the sixth decimal.

The formula in the preamble for the Order at 51 FR 31901 contemplated that it would be necessary to recalculate the equivalent live animal value of imported pork and pork products to reflect changes in the annual average price of domestic barrows and gilts to maintain equity of assessments between domestic porcine animals and imported pork and pork products.

In 1988, the average annual seven market price declined to $43.25, a decrease of about 15 percent of the 1987 per hundredweight price of $51.04, which results in a decrease in assessments for all Harmonized Tariff Systems (HTS) numbers listed in the table in § 1230.110 of an amount equal to three-hundredths to five-hundredths of a cent per pound, or as expressed in cents per kilogram, seven- to eleven-hundredths of a cent per kilogram. Based on Department of Commerce, Bureau of Census, data on the volume of imported pork and pork products for 1988, the proposed decreases in the assessment amounts would result in an estimated $375,000 reduction in assessments over a 12-month period.

List of Subjects in 7 CFR Part 1230

Administrative practive and procedure, Advertising, Agricultural research, Marketing agreement, Meat and meat products, Pork and pork products.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 1230 is amended as set forth below:

PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR Part 1230 continues to read as follows:

Authority: 7 U.S.C. 4801–4819.

2. Amend Subpart B—Rules and Regulations by revising § 1230.110 to read as follows:

§ 1230.110 Assessments on imported pork and pork products.

The following HTS categories of imported live porcine animals are subject to assessment at the rate specified.

Live porcine animals	Assessment
0103.10.00004	0.25 percent Customs Entered Value.
0103.91.00006	0.25 percent Customs Entered Value.
0103.92.00005	0.25 percent Customs Entered Value.

The following HTS categories of imported pork and pork products are subject to assessment at the rates specified.

Pork and pork products	Assessment	
	Cents/lb	Cents/kg
0203.11.00002	.15	.330690
0203.12.10009	.15	.330690
0203.12.90002	.15	.330690
0203.19.20000	.18	.396828
0203.19.40006	.15	.330690
0203.21.00000	.15	.330690
0203.22.10007	.15	.330690
0203.22.90000	.15	.330690
0203.90.20008	.18	.396828
0203.29.40004	.15	.330690
0206.30.00006	.15	.330690
0206.41.00003	.15	.330690
0206.49.00005	.15	.330690
0210.11.00003	.15	.330690
0210.12.00206	.15	.330690
0201.12.00404	.15	.330690
0201.19.00005	.18	.396828
1601.00.20007	.22	.485012
1602.41.20203	.23	.507058
1602.41.20409	.23	.507058
1602.41.90002	.15	.330690
1602.42.20202	.23	.507058
1602.42.20408	.23	.507058
1602.42.40002	.15	.330690
1602.49.20009	.22	.485012
1602.49.40005	.18	.396828

Done at Washington, DC, on June 19, 1989.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 89–14809 Filed 6–21–89; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 103

[Order No. 1353–89]

Powers and Duties of Service Officers; Availability of Service Records

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the fee schedule of the Immigration and Naturalization Service. This change will add fees for two new forms created as a result of the Immigration Marriage Fraud Amendments of 1986 (IMFA). These forms are the Joint Petition to Remove the Conditional Basis of Alien's Permanent Resident Status (Form I–751) and the Application for Waiver of Requirement to File Joint Petition for Removal of Conditions (Form I–752). The proposed charges reflect the estimated cost of providing the benefits and services to the public, taking into account public policy and other pertinent facts.

DATE: Written comments must be submitted on or before July 24, 1989.

ADDRESS: Please submit comments in duplicate to the Director, Office of Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Room 2011, Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT:

Charles S. Thomason, Systems Accountant, Finance Branch, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633–4705.

Michael L. Shaul, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633–3946.

SUPPLEMENTARY INFORMATION: On November 10, 1986 Pub. L. 99–639, the Immigration Marriage Fraud Amendments of 1986 (IMFA) was enacted. Among other things, IMFA created a conditional basis of lawful permanent residence for most aliens who immigrate to the United States based upon a marriage to a citizen or resident of the United States. IMFA also created a requirement whereby an alien in such conditional status must file a petition (jointly with his or her spouse) to remove the conditional basis of the residence, or (in certain situations) an application for waiver of the requirement.

On January 27, 1988 the Immigration and Naturalization Service ("the Service") published proposed regulations for implementation of IMFA at 53 FR 2426. Because the mandatory review process had not been completed when those proposed regulations were drafted, they did not set forth the fees required for filing of either the Joint Petition to Remove the Conditional Basis of Alien's Permanent Resident Status (Form I–751) or the Application for Waiver of Requirement to File Joint Petition for Removal of Conditions (Form I–752). Since that process has now been completed, the Service now proposes regulations setting forth fees for the filing of these two forms.

In proposing the fees the Service has complied with 31 U.S.C. 9701 and OMB Circular A–25, which require that a benefit or service provided to or for any person by a Federal agency be self-sustaining to the fullest extent possible. The charges are fair and equitable, and take into consideration the direct and indirect costs to the Government, the value to the recipient, the public policy or interest served, and other pertinent facts. The services provided to the public by the Service have been examined for applicability of user charges and the costs which should be recovered in order to be fair and equitable to the taxpayers and the recipients. The following proposed fees are based upon the principles set forth in the law and the circular:

1. A fee of $35.00 for filing Form I–751, Joint Petition to Remove the Conditional Basis of Alien's Permanent Resident Status.

2. A fee of $65.00 for filing Form I–752, Application for Waiver of Requirement to File Joint Petition for Removal of Conditions.

This rule is not a major rule for the purposes of E.O. 12291 (46 FR 13193, 3 CFR 1981 Comp., p. 127). As required by the Regulatory Flexibility Act, it is hereby certified that the rule will not have a significant impact on small business entities.

This rule contains information collection requirements which have been cleared by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. The Office of Management and Budget control numbers for these collections are contained in 8 CFR 299.5

List of Subjects in 8 CFR Part 103

Administrative practice and procedures, Archives and records, Authority delegation, Fees, Forms.

Accordingly, Chapter I of Title 8, Code of Federal Regulations, is amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for Part 103 is revised to read as follows:

Authority: 5 U.S.C. 522(a); 8 U.S.C. 1101, 1103, 1201, 1301–1305, 1351, 1443, 1454, 1455; 28 U.S.C. 1746; 7 U.S.C. 2243; 31 U.S.C. 9701; E.O. 12356; 3 CFR 1982 Comp., p 166; OMB Circular A–25.

2. In § 103.7, paragraph (b)(1) is amended by adding in numerical sequence the following:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

Form I–751, For filing joint petition for removal of conditional basis of residence on Form I–751 under section 216 of the Act—$35.00.

Form I–752, For filing application for waiver of requirement to file joint petition for removal of conditional basis of residency under section 216 of the Act—$65.00.

* * * * *

Dated: June 6, 1989.

Dick Thornburgh,

Attorney General.

[FR Doc. 89–14178 Filed 6–21–89; 8:45 am]

BILLING CODE 4410-10-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3606–2]

Approval and Promulgation of Implementation Plans, State of California; Fresno County Air Pollution Control District and South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: EPA is proposing to approve Rules 102, 111, 609, 613, 613.1, 613.2, 613.3, 613.4, and 614 as revisions to the California State Implementation Plan (SIP) for the Fresno County Air Pollution Control District (APCD), and Rule 209 for the South Coast Air Quality Management District (AQMD). The California Air Resources Board submitted these rules for incorporation into the SIP on June 4, 1986.

DATE: Comments must be received by July 24, 1989.

ADDRESSES: Written comments should be addressed to the EPA Region 9, Air Programs Branch (address below). Copies of the rules are available for public inspection during normal business hours at the EPA Region 9 office and at the following locations: California Air Resources Board, Stationary Source Division, Criteria Pollutants Branch, Industrial Section, 1025 "P" Street, Room 210, Sacramento, CA 95814; Fresno County Air Pollution Control District, 1221 Fulton Mall, Fresno, CA 93775; South Coast Air Quality Management District, 9150 Flair Drive, El Monte, CA 91731.

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, A–2–3, State Implementation Plan Section, Air Programs Branch, Air and Toxics Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974–7635.

SUPPLEMENTARY INFORMATION:

Background

On June 4, 1986, the California Air Resources Board submitted to EPA revisions to the California SIP for the Fresno County APCD and the South Coast AQMD. These revisions included Fresno County Rules 102, 111, 609, 613, 613.1, 613.2, 613.3, 613.4, and 614, and South Coast Rule 209.

On April 10, 1989 [54 FR 14224] EPA announced the availability of these SIP revisions for review along with revisions for one other county in California and took final action to approve them. In that notice, EPA advised the public that it was deferring the effective date of its approval for 60 days. EPA announced that if, within 30 days of the publication of the approval notice, EPA received notice that someone wished to submit adverse or critical comments, EPA would withdraw the approval and begin a new rulemaking by proposing the action and establishing a 30-day public comment period.

On May 8, 1989 two comment letters were received by EPA from Mark Abramowitz, and Jan Chatten-Brown, President, Coalition for Clean Air, on behalf of Citizens For A Better Environment, Clean Air Now and Group Against Smog Pollution, which objected to EPA's April 10, 1989 approval.

All commenters stated that the proposed revisions are in violation of the Clean Air Act, EPA regulations, and various court orders.

Discussion

Fresno County Rule 102, *Definitions*, consists of a recodification and Rule 111, *Arrests and Notices to Appear*, adds "Environmental Health Analyst" to list of employees of the Fresno County Department of Health. Rules 609, 613, 613.1, 613.2, 613.3, 613.4, and 614 concern air pollution control contingency plans required by 40 CFR 51.152, "Contingency plans", under Subpart H, "Prevention of Air pollution Emergency Episodes." The Fresno County rules listed above require control measures for stationary sources and traffic abatement plans during emergency episodes. The contingency plans are federally approvable once they are approved by the Air Pollution Control Officer. These rules are

generally equivalent to the existing federal requirements and meet, in part, the requirements of 40 CFR 51.152. Therefore, EPA is proposing to approve these rules under Section 110 of the Clean Air Act.

South Coast Rule 209, *Transfer and Voiding of Permits*, has added language indicating that incorporations by an individual owner, or by a partnership composed of individuals, shall not constitute a transfer or change of ownership. The rule strengthens the existing SIP and is being proposed for approval under section 110 of the Clean Air Act.

Proposed Action

EPA's review of these new and revised rules finds them consistent with the Clean Air Act, 40 CFR Part 51, and EPA policy. In accordance with the procedure described above, EPA proposes to approve Fresno County Rules 102, 111, 609, 613, 613.1, 613.2, 613.3, 613.4, and 611, and South Coast Rule 209. Interested persons are invited to submit comments on this proposed approval. EPA will consider all comments received within thirty days of the publication of this notice.

Regulatory Process

Elsewhere in today's **Federal Register**, EPA is taking final action County APCD Rules 102, 111, 609, 613, 613.1, 613.2, 613.3, 613.4, and 614 and South Coast AQMD Rule 209. Other rules addressed in the April 10, 1989 notice remain approved.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted these rules from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen oxide, Ozone, Particulate matter, and Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Date: June 14, 1989.

Daniel W. McGovern,

Regional Administrator.

[FR Doc. 89–14827 Filed 6–21–89; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

41 CFR Part 50–201

General Regulations Under the Walsh-Healey Public Contracts Act

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Proposed rule.

SUMMARY: The Department of Labor proposes to amend the Walsh-Healey Public Contracts Act (PCA) regulations to provide an alternative regular dealer definition for those "information systems integrator" firms that contract to provide fully operational information processing ("ADP") systems to the Federal Government. This alternative definition is being proposed in order to relieve potential contractors in this industry from having to maintain stock in a manner that is inconsistent with industry practices, to alleviate related Federal procurement problems, and to encourage more competition for Federal contracts.

DATE: Comments must be received on or before July 24, 1989.

ADDRESS: Address comments to Paula V. Smith, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Nancy M. Flynn, Deputy Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone: (202) 532–8305. (This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Walsh-Healey Public Contracts Act (PCA) provides labor standards for employees working on Federal Government contracts over $10,000 for the manufacturing or furnishing of materials, supplies, articles, or equipment. Section 1(a) of PCA provides that contracts subject to the Act may only be awarded to a manufacturer of, or a regular dealer in, the materials, supplies, articles, or equipment to be manufactured or used in the performance of the contract. "Regular dealer" is defined in 41 CFR 50–201.101(a)(2) as "a person who owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles, or equipment of the general character described by the contract are brought, kept in stock, and sold to the public in the usual course of business." As provided in 41 CFR 50–206.53(b)(2), the stock maintained by a regular dealer must be "a true inventory from which sales are made."

In addition to the exemptions from the eligibility requirements which have been granted for certain types of contracts (*see* 41 CFR 50–201.604), special alternate qualifications have been prescribed for regular dealers in particular products in recognition of commercial practices in those industries. These special qualifications are set forth in 41 CFR 50–201.101(a)(2)(i) through (xi). Characteristic of these alternative qualifications is the absence of a requirement that the dealer physically maintain a stock.

As the sophistication and uses of information processing technology have expanded, numerous Federal agencies have found it necessary and desirable to acquire fully operations systems, as opposed to procuring individual components. Information systems integrators typically do not maintain a stock of systems components and frequently do not manufacture such components. Rather, they possess specialized skills and expertise in selecting the most suitable system components from a variety of sources to satisfy a buyer's designated mission objectives. The systems integrator also has the ability to make commercially available systems compatible with one another, by making modificaitons to hardware, software, or related equipment. Thus, systems integrators do not simply select or order a complete, integrated system meeting customer specifications, but assemble components from multiple sources to meet the buyer's functional specifications and deliver fully operational information processing systems, assuming the risks for ensuring the viability of the entire system.

Information furnished by contracting agencies and representatives from the industry indicates that information systems integrators can play a crucial role in the economic and efficient acquisition of information processing resources by Federal agencies, and that uncertainty as to their eligibility under PCA could endanger agencies' operational capabilities that are heavily dependent upon the performance of advanced technology computer systems. Accordingly, the Department of Labor, pursuant to section 4 of the Walsh-Healey PCA (41 U.S.C. 38), proposes to amend 41 CFR 50–201.101 to provide an alternative regular dealer definition for information systems integrators.

The proposed information systems integrator definition is based in part on terms presently codified in the Federal Information Resources Management Regulations (FIRMR), issued by the General Services Administration (GSA), which are in the process of being revised to implement certain portions of the Paperwork Reduction Reauthorization Act of 1986 (see 53 FR 32085; August 23, 1988). GSA has proposed, among other changes, to revise FIRMR Part 201–2 (41 CFR 201–2) to establish a definition for ADP entitled "Federal information processing resources." This proposed new term adopts the definition of ADP equipment contained in the Brooks Act (40 U.S.C. 759(a)(2)). In implementing the final regulatory definition of systems integrator, the Department will give full consideration to final revisions to FIRMR Part 201–2 adopted by GSA in its rulemaking.

Executive Order 12291

This rule is not a "major rule" under Executive Order 12291 on Federal Regulations because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment productivity, innovation, or on the ability of United States-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Regulatory Flexibility Act

This rule, if promulgated, will have no "significant economic impact on a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act, Pub. L. 96–354, 91 Stat. 1164 (5 U.S.C. 605(b)). The Secretary of Labor has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. This conclusion is based on the fact that the revised rule would primarily impact larger entities, and would mostly involve procurements that are not commonly awarded to small businesses in significant amounts. For the contracts that may be awarded to small businesses, the revised rule would impose no additional recordkeeping requirements or cause any additional costs to be incurred in order to comply. Accordingly, no regulatory flexibility analysis is required. However, the proposed definition analysis is required. However, the proposed definition would relieve potential contractors in this industry, both large and small, from having to maintain stock in a manner that is inconsistent with industry practices.

Paperwork Reduction Act

This rule is not subject to section 3504(h) of the Paperwork Reduction Act, 44 U.S.C. 3504(h), since it does not involve the collection of information from the public.

This document was prepared under the direction and control of Paula V. Smith, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 41 CFR Part 50–201

Administrative practice and procedures, Child labor, Government contracts, Government procurement, Minimum wages, Penalties, Reporting and recordkeeping requirements, Wages.

Signed at Washington, DC, this 14th day of June, 1989.

Elizabeth Dole,

Secretary of Labor.

John R. Fraser,

Acting Assistant Secretary for Employment Standards.

Paula V. Smith,

Administrator, Wage and Hour Division.

PART 50–201—GENERAL REGULATIONS

41 CFR Part 50–201 is proposed to be amended as follows:

1. The authority citation for Part 50–201 continues to read as follows:

Authority: Sec. 4, 49 Stat. 2038; 41 U.S.C. 38. Interpret or apply sec. 6, 49 Stat. 2038, as amended; 41 U.S.C. 40.

2. In § 50–201.101, paragraph (a) is proposed to be amended by adding a new paragraph (a)(2)(xii) to read as follows:

§ 50–201.101 Manufacturer or regular dealer.

(a) Definitions. * * *

(2) * * *

(xii)(A) An "information systems integrator" is a person or firm that owns, operates or maintains an established business which is engaged in contracting to provide fully operational information processing systems, comprised of "information processing resources" as defined in 41 CFR 201–2.001, that meet the buyer's designated information processing functional ADP system specifications, as defined in 41 CFR 201–2.001. An "information systems integrator" may qualify as a regular dealer under contracts where, pursuant to contract requirements: (*1*) The government agency solicits to acquire a fully operational information processing system which meets functional ADP system specifications and mission objectives delineated by the solicitation and/or the contract, as opposed to a solicitation and/or contract describing only the specific make and model of the equipment required; (*2*) the contractor assumes the risks for designing, delivering, implementing, and testing (and, where required by the contract, maintaining) a fully operational information processing system that meets the buyer's designated functional specifications; and (*3*) the contractor is responsible to the buyer for correcting any system deficiencies or component failures regardless of the manufacturer of the component or components involved.

(B) An "information systems integrator" will, in accordance with the contract, perform substantially all of the following functions:

(*1*) Analyze the buyer's requirements and needs;

(*2*) Assess currently-available technological offerings and indentify/evaluate alternative system designs;

(*3*) Determine the composition of the system;

(*4*) Select and deliver the information processing resources;

(*5*) Customize, modify, or configure components (hardware, software, and supporting equipment) if necessary to satisfy inter-connectibility/compatibility requirements and the buyer's specialized information processing needs;

(*6*) Assemble, install, test, implement, and render operational the final information processing system.

* * * * *

[FR Doc. 89–14671 Filed 6–21–89; 8:45 am]

BILLING CODE 4510–27–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 336

RIN 3067–AB47

Predesignation of Nonindustrial Facilities (NIF) for National Security Emergency Use

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This rulemaking proposes to add a new Part 336 in Title 44 Code of Federal Regulations. Predesignation of

Nonindustrial Facilities for National Security Emergency Use, Chapter 1, Federal Emergency Management Agency, Subchapter E Preparedness. New Part 336 responds to Executive Order 12656 of November 18, 1988, which provides that the Director, FEMA, assists the National Security Council in the implementation of national security emergency preparedness policy and which delegates to the Director the responsibility for coordinating and supporting the initiation, development, and implementation of national security emergency preparedness programs and plans among the Federal departments and agencies. This part establishes guidance for Federal departments and agencies to determine which nonindustrial facilities meet essential Federal Government requirements during a national security emergency.

The Director, FEMA, is to provide policy guidance for use by Federal departments and agencies in their mobilization plans and programs. The Director is also to proivide the President with a periodic assessment of Federal, State, and local capabilities to respond to national security emergencies.

DATE: Comments are requested and should be submitted in writing to the address listed below no later than August 21, 1989.

ADDRESS: Submit written comments, in duplicate, on the proposed guidance, to the Rules Docket Clerk, Federal Emergency Management Agency, Room 840, 500 C Street, SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Henry Hyatt, Senior Planning Officer, Office of Mobilization Preparedness, Federal Emergency Management Agency, Room 618, 500 C Street, SW., Washington, DC 20472, Telephone (202) 646–3360.

SUPPLEMENTARY INFORMATION:

Regulatory Analysis

This proposed guidance is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. It will not have an annual effect on the economy of $100 million or more; will not result in a major increase in costs or prices to consumers, individual industries, Federal, State or local agencies, or geographic regions; and will not have a significant adverse impact on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

Regulatory Flexibility Certification

This part applies to Federal government agencies. In accordance with the Regulatory Flexibility Act of 1980, it is hereby certified that this proposed rule will not have a significant impact on a substantive number of small entities.

Paper Work Reduction Act

This rule does not contain information requirements that are subject to the Paper Work Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and OMB implementing regulations 5 CFR 1320.

List of Subjects in 44 CFR Part 336

National preparedness, Intergovernmental relations.

For the reasons set out in the preamble, Title 44, Chapter I, Subchapter E is proposed to be amended by adding a new Part 336 as follows:

PART 336—PREDESIGNATION OF NONINDUSTRIAL FACILITIES (NIF) FOR NATIONAL SECURITY EMERGENCY USE

Sec.

336.1 Purpose
336.2 Applicability and scope
336.3 Reference
336.4 Definitions
336.5 Background
336.6 NIF program
336.7 Responsibilities
336.8 State emergency planning considerations
336.9 Reporting

Authority: National Security Act of 1947, as amended, 50 U.S.C. 404; Defense Production Act of 1950, as amended, 50 U.S.C. App. 2061 *et seq*; E.O. 12148 of July 20, 1979, 3 CFR 1979 Comp., p. 412; E.O. 10480 of August 14, 1953, 3 CFR 1949–53 Comp., p. 962; and E.O. 12656 of November 18, 1988, 53 FR 47491.

§ 336.1 Purpose.

This part establishes policy and procedural guidance to assist the Federal departments and agencies in the development of plans for the predesignation and assignment of nonindustrial facilities to ensure that emergency requirements can be met in time of a national security emergency.

§ 336.2 Applicability and scope.

This part is applicable to all Federal departments and agencies and provides procedural guidance for carrying out the NIF program. The NIF program is a mechanism to ensure the ability to mobilize the essential nonindustrial facilities for Department of Defense (DOD)/essential civilian needs in the event of a national security emergency in the shortest period of time.

§ 336.3 Reference.

Department of Defense Directive 4165.6, Real Property Acquisition Management and Disposal, dated September 1, 1987, may be obtained from Headquarters, U.S. Forces Command, Fort McPherson, Georgia 30330–6000, Attn: FCEN–CDP.

§ 336.4 Definitions.

(a) *Agency.* Agency refers to all of the Federal departments and agencies and the State and local entities participating in the NIF program to predesignate nonindustrial facilities.

(b) *National security emergency.* A national security emergency is any occurrence, including natural disaster, military attack, technological emergency, or other emergency, that seriously degrades or seriously threatens the national security of the United States.

(c) *Nonindustrial facility.* Nonindustrial Facility refers to a unit of real property not used or suitable for research, development, production, or maintenance of materials, munitions equipment, supplies, goods, or other products; and nonindustrial facilities include hotels, motels, educational institutions, office buildings, and other real estate (excluding farms, churches or other places of worship, or private dwelling houses).

(d) *Predesignation*—(1) *Approval.* Approval means that a conflict of user requirements either does not exist or has been successfully resolved and the requestor can proceed with the arrangements for predesignation of the nonindustrial facility.

(2) *Denial.* Denial means that conflict of user requirements exist or a conflict between two or more requestors exist and the conflict has not been resolved by negotiation.

(3) *Assigned.* Assigned means the NIF predesignation has been granted to the requesting organization.

§ 336.5 Background.

(a) The purpose of the NIF program is to improve the Nation's ability to mobilize nonindustrial facilities for DOD and/or essential civilian needs in times of national security emergencies.

(b) Availability of adequate nonindustrial facilities can be crucial to responding decisively and effectively to emergency situations. In planning for a mobilization surge, military commanders have found housing and training facilities are not adequate to meet the demand of mission requirements. To meet these requirements, access to other facilities (nonindustrial) has been sought to supplement military installations. These nonindustrial facilities would accommodate the overflow from these military installations until the installation would have adequate facilities.

(c) Executive Order 12656 directs Federal Departments and agencies to prepare national plans and programs such as NIF, to ensure an appropriate state of readiness to respond to a national security emergency. The civil departments and agencies at the Federal, State and local levels may require additional facilities for maintaining operations during emergency situations. NIF is principally a Department of DOD program. However, the NIF Program permits the predesignation of those facilities for essential civilian use. Departments and agencies may request designation of facilities for use as housing, distribution centers or other purposes, as appropriate.

(d) In the development of the plans for use of these facilities, including privately-owned facilities, different requirements of a national mobilization must be considered. Such emergency conditions could create a conflicting requirement for the same facility by Government entities. To prevent this conflict, FEMA is to coordinate the NIF requests by DoD components and other Federal, State and local emergency users. This ensures that a conflict between civilian and military requirements can be avoided. Therefore, a predesignation of nonindustrial facilities for use in emergency situations is necessary.

§ 336.6 NIF program.

The NIF program is essentially designed to:

(a) Ensure that existing nonindustrial facilities are available for national defense needs in the event of a mobilization;

(b) Ensure military uses are consistent with national civil preparedness plans;

(c) Reduce DoD and civil agency requirements for new construction during periods of mobilization; and

(d) Provide facilities in a minimum period of time.

§ 336.7 Responsibilities.

(a) *Federal departments and agencies.* The heads of Federal departments and agencies are responsible for:

(1) Meeting their emergency preparedness requirements by developing programs for the selection and predesignation of nonindustrial facilities;

(2) Assess essential emergency requirements and plans for the use of alternative resources (nonindustrial facilities), to meet essential demands during and following national security emergencies;

(3) Filling out an application requesting facility clearances and submit to the FEMA Regional Director in the area where the facility is located (Copies of the applications and instructions may be obtained by writing Office of Mobilization Preparedness, Federal Emergency Management Agency, Room 622, 500 C Street, SW., Washington, DC 20472, Attn: NIF program).

(4) Designing preparedness measures to permit a rapid and effective transition from routine to emergency operations; and

(5) Making the necessary arrangements with the owners and operators of predesignated nonindustrial facilities.

(b) *The Federal Emergency Management Agency (FEMA).* The Director of the Federal Emergency Management Agency or designee, shall, for all appropriate emergency preparedness and response activities and functions:

(1) Convey national security emergency preparedness policies of the National Security Council and provide planning guidance and assistance to the Federal departments and agencies;

(2) Coordinate emergency planning, programs and national security emergency preparedness activities of the Federal Government;

(3) Provide procedures and guidance for coordinating the predesignation of nonindustrial facilities by identifying conflicting requests for, and resolving the conflicts;

(4) Advise and assist State and local governments and, as appropriate, private organizations in attaining the capability to provide an effective response to emergencies. Seek clearance with appropriate State authorities on facility selection for Federal use in their States. The FEMA Regional Directors are responsible for the area in which the facility is located and shall seek clearance with the appropriate State authorities; and

(5) Coordinate arrangements between Federal departments and agencies; and State authorities on facility designation.

§ 336.8 State emergency planning considerations.

(a) State emergency planning agencies have a crucial role to play in achieving a coordinated program to predesignate nonindustrial facilities to meet emergency requirements. Many states have the legal authority to requisition property for emergency needs and may find it necessary to pre-empt other planned emergency uses of a facility.

(b) It is essential that precise plans are developed for the conditions under which each facility is to be used in order to provide efficient and effective means to accommodate civilian and military requirements in accessing nonindustrial facilities in the event of disaster relocation, conventional mobilization, or nuclear conflict contingency.

§ 336.9 Reporting.

The Director of FEMA is required to submit a periodic report to the President on the Federal Government's capability to respond to national security emergencies. An evaluation of the programs of Federal departments and agencies to predesignate nonindustrial facilities will be included in this report.

Julius W. Becton, Jr.,
Director, Federal Emergency Management Agency.

Note: This appendix will not appear in the CFR.

Appendix I.—Instructions for Preparing and Reporting Predesignated Nonindustrial Facilities

a. *Purpose.* This instruction provides preparation guidance for Federal departments and agencies to report to the Federal Emergency Management Agency (FEMA) for purposes of coordinating the Nonindustrial Facilities (NIF) program.

b. *Applicability and scope.* The provisions of this instruction are applicable to all Federal departments and agencies and covers the preparation instructions for reporting predesignated nonindustrial facilities on DD Form 26–2. It outlines the point of contact in the FEMA regions where the facilities are located for forms and information.

c. *FEMA Regional Offices.* 1. The FEMA Regional Directors are responsible for carrying out the following:

A. Acting as a clearinghouse for all NIF requests and coordinating requests with the appropriate State agency.

B. Notifying the NIF requestor of receipt of request and the date the request was forwarded to State agency.

C. Acting as a liaison between the NIF and the State agency, ensuring prompt resolution of the request.

D. Notifying the NIF requestor of State agency decision concerning the request.

E. Maintaining current records indicating predesignated NIF's in the region.

F. Submitting an annual report to the Assistant Associate Director for Mobilization Preparedness to the

following address: National Preparedness Directorate, Office of Mobilization Preparedness, 500 C Street, SW., Room 622, Washington, DC 20472.

2. The addresses for the regional office contracts for FEMA Regions 1 through 10 are as follows:

FEMA Region I, Chief, Emergency Management and National Preparedness, Programs Division, J.W. McCormack Post Office and Courthouse Building, Room 442, Boston, MA 02109.

FEMA Region II, Chief, Emergency Management and National Preparedness Division, 26 Federal Plaza, Room 1338, New York, NY 10278.

FEMA Region III, Chief, Emergency Management and National Preparedness, Liberty Square Building (Second Floor), 105 South Seventh Street, Philadelphia, PA 19106.

FEMA Region IV, Chief, Emergency Management and National Preparedness Division, 1371 Peachtree Street, NE, Suite 700, Atlanta, GA 30309.

FEMA Region V, Chief, Emergency Management and National Preparedness Division, 175 West Jackson Blvd., 4th Floor, Chicago, IL 60604–2698.

FEMA Region VI, Chief, Emergency Management and National Preparedness Division, Federal Regional Center, 800 N. Loop 288, Denton, TX 76201–3698.

FEMA Region VII, Chief, Emergency Management and National Preparedness Division, 911 Walnut Street, Room 200, Kansas City, MO 64106.

FEMA Region VIII, Chief, Emergency Management and National Preparedness Division, Denver Federal Center, Building 710, Box 25267, Denver, CO 80225–0267.

FEMA Region IX, Chief, Emergency Management and National Preparedness Division, Building 105, Presidio of San Francisco, CA 94129.

FEMA Region X, Chief, Emergency Management and National Preparedness Division, 130 228th Street, Southwest, Federal Regional Center, Bothell, WA 98021–9796.

d. *Procedures.* 1. DoD NIF requests come from U.S. Army Forces Command (FORSCOM) at Fort McPherson, Georgia. Any requests received from DoD and not routed in this manner, should be returned to FORSCOM for DoD coordination prior to any action being taken by FEMA.

2. The requesting Department or Agency files a DD Form 26–2 (attachment A) with the FEMA Regional Director for the area in which the facility is located.

3. Before a region forwards a NIF request to the appropriate State agency, a search of regional records must be made. If the region has no record of a predesignation of the property requested, it should forward the request. If its records show a NIF has already been predesignated, the request should be sent back to the applicant informing them of the existing predesignation.

4. Regional offices should inform the applicant within 10 days of both the receipt and date the request was forwarded.

5. Attachment B contains step-by-step instructions for preparation of NIF requests.

e. *Application review.* 1. The NIF application review process should be completed within 60 days after receipt of the initial department or agency request.

2. The Regional Director will search the FEMA regional record and query the emergency coordinator of the State in which the facility is located concerning intended use or need of the facility by State or local entities.

3. If FEMA regional records show a NIF has already been predesignated, the request should be returned to the applicant informing them of the existing predesignation of the facility in question.

4. Upon notification from the State emergency coordinator, the Regional Director should notify the NIF applicant of the facility assignment or denial.

BILLING CODE 6718-01-M

Attachment A

1. AGENCY NUMBER	MOBILIZATION REQUIREMENTS OF THE DEPARTMENT OF DEFENSE NON-INDUSTRIAL FACILITY ALLOCATION	REPORT CONTROL SYMBOL
2. DEPARTMENT	ACTIVITY AND COMMAND WITH MAIL ADDRESS	
3. NAME AND ADDRESS OF FACILITY		
4. TYPE OF FACILITY AND PRESENT USAGE		
5. CIVIL DEFENSE SHELTER DESIGNATION		
6. FACILITY INCLUDES DESIGNATED SHELTER AREA (S) ☐ YES ☐ NO	8. RATED CAPACITY _____ SPACES	
6. CAPACITY		
7. PROPOSED USAGE AND JUSTIFICATION S A M P L E		
8. DATE	TYPED NAME, GRADE, ORGANIZATION OF REQUESTING OFFICIAL	SIGNATURE OF REQUESTING OFFICIAL
9. DATE	RECOMMEND APPROVAL (*Signature, ARLR*)	10. APPROVED (*Signature, PRLR*)
11. DATE TO OEP	12. SUSPENSE DATE	13. ALLOCATED (*Signature, title & date*) / 14. ALLOCATION NO.

DD FORM 1 DEC 64 26-2 REPLACES EDITION OF 1 JUN 52, WHICH IS OBSOLETE.

BILLING CODE 6718-01-C

BEST COPY AVAILABLE

Attachment B—Instructions for Preparation of DD 26–2, Nonindustrial Facility Allocation

1. *General.* NIF requests should be made using DD Form 26–2, illustrated in attachment A. NIF requests from FEMA and other Federal agencies (i.e., disaster relocation, etc.) should be made using this form.

2. *Item-By-Item Instructions For DD 26–2.*

a. *Item 1: Agency Number.* (Not applicable).

b. *Item 2: Department.* (FEMA or other Federal agency's name). *Activity And Command With Mailing Address.* FEMA or other Federal Agency's division, branch, section, street address, city, State, and Zip Code).

c. *Item 3: Name and Address of Facility.* (Example: name and address of hotel).

d. *Item 4: Type of Facility and Present Usage.* (Example: hotel, with 52 sleeping rooms).

e. *Item 5: Civil Defense Shelter Designation.* (a) Facility Includes Designated Shelter Area(s) Yes No (b) Rated Capacity _____ Spaces. (Number of rooms available).

f. *Item 6: Capacity.* (Total number of rooms available of facility).

g. *Item 7: Proposed Usage and Justification.* Describe the facility's characteristics and the requesting agency's emergency requirement on the application form. Essential physical data, such as space accommodations, utilities, capacities, and special features, may be best obtained by interviewing owners and managers of facilities for which there is a firm emergency requirement. Specify emergency use on the application form.

(i) Written questionnaires to facility owners or managers should not be used.

(ii) Rental terms of nature of the agency requirement for the facility should not be used or discussed with the facility owners or managers, and no commitment should be made before final approval and specific parent agency authorization.

h. *Item 8: Date.* (Month-Day-Year of initial agency request). *Typed Name, Grade, Organization of Requesting Official. Signature of Requesting Official.* (Self-explanatory).

[FR Doc. 89–14669 Filed 6–21–89; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL MARITIME COMMISSION

46 CFR Part 572

[Docket No. 88–26]

Agreements by Ocean Common Carriers and Other Persons Subject to the Shipping Act of 1984

AGENCY: Federal Maritime Commission.

ACTION: Withdrawal of proposed rule

SUMMARY: The Proposed Rule in this proceeding would amend the definitions of "Conference agreement" and "Joint service/consortium agreement" in the Federal Maritime Commission's rules governing the filing of agreements under the Shipping Act of 1984. After further consideration of the issues underlying the definition of these terms, the Federal Maritime Commission has determined to withdraw the Proposed Rule and to discontinue this proceeding, without prejudice to instituting a further proceeding to address these issues at a later date.

DATE: This action is effective upon publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Austin L. Schmitt, Director, Bureau of Trade Monitoring, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523–5787. Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523–5740.

SUPPLEMENTARY INFORMATION: The Federal Maritime Commission ("Commission") initiated this proceeding by notice published in the **Federal Register** of December 6, 1988 (53 FR 49210) ("Proposed Rule"). The Proposed Rule would amend the definitions of "Conference agreement" and "Joint service/consortium agreement" in 46 CFR Part 572, the Commission's rules governing the filing of agreements under the Shipping Act of 1984 ("1984 Act" or Act"), 46 U.S.C. app. 1701, *et seq.*

The proposed revised definition of "Conference agreement" was intended to codify the Commission's policy concerning what constitutes a conference agreement requiring the mandatory provisions prescribed for ocean common carrier conference agreements under section 5(b) of the Act, 46 U.S.C. app. 1704(b).[1] In addition, the Proposed Rule would make other clarifying revisions to the "Conference agreement" definition, and revise the definition of "Joint service/consortium agreement" in 46 CFR 572.104(n) (Joint service and consortium agreements are statutorily excluded from the definition of "conference" in section 3(7) of the Act).

Comments on the Proposed Rule were filed by (1) the Florida-Bahamas Shipowners and Operators Association Agreement; (2) the Asia North America Eastbound Rate Agreement, the South Europe/U.S.A. Freight Conference and the U.S. Atlantic and Gulf/Australia-New Zealand Conference; and (3) the U.S. Atlantic-North Europe Conference, the North Europe-U.S. Atlantic Conference, the North Europe-U.S. Gulf Freight Association, and the Gulf-European Freight Association.[2]

As noted on the Proposed Rule's Supplementary Information, in interpreting and applying the definitions of "conference" in section 3(7) of the 1984 Act[3] and "Conference agreement" in 46 CFR 572.104(f),[4] the Commission's policy has been not to require mandatory provisions in the case of strictly voluntary arrangements. This policy has been based on the 1984 Act's legislative history and the purposes of the mandatory provisions requirements of section 5(b) of the 1984 Act. However, further examination of this matter has led the Commission to the conclusion that the proposed rule may be inadequate to codify this policy in a manner that encompasses all instances properly subject to the Act's mandatory provisions, and that a different approach would require further review and analysis of the underlying issues. Therefore, the Commission has determined to withdraw the Proposed Rule and discontinue this proceeding at this time. This action is being taken without prejudice to instituting a further rulemaking proceeding to address these definitions at a later date. In the meantime, the Commission intends to continue to apply its existing policy of not requiring mandatory provisions for strictly voluntary agreements.

Therefore, it is ordered, That the Proposed Rule is withdrawn and this proceeding is discontinued.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 89–14731 Filed 6–21–89; 8:45 am]

BILLING CODE 6730–01–M

[1] Section 5(b) in its entirety requires each conference agreement to:

(1) State its purpose;

(2) Provide reasonable and equal terms and conditions for admission and readmission to conference membership for any ocean common carrier willing to serve the particular trade or route;

(3) Permit any member to withdraw from conference membership upon reasonable notice without penalty;

(4) At the request of any member, require an independent neutral body to police fully the obligations of the conference and its members;

(5) Prohibit the conference from engaging in conduct prohibited by section 10(c)(1) or (3) of the Act;

(6) Provide for a consultation process designed to promote—

(A) Commercial resolution of disputes, and

(B) Cooperation with shippers in preventing and eliminating malpractices;

(7) Establish procedures for promptly and fairly considering shippers' requests and complaints; and

(8) Provide that any member of the conference may take independent action on any rate or service item required to be filed in a tariff under section 8 (a) of the Act upon not more than 10 calendar days' notice to the conference and that the conference will include the new rate or service item in its tariff for use by that member, effective no later than 10 calendar days after receipt of the notice, and by any other member that notifies the conference that it elects to adopt the independent rate or service item on or after its effective date, in lieu of the existing conference tariff provision for that rate or service item.

[2] Because the discontinuance of this proceeding renders moot the comments filed on the Proposed Rule, they will not be further addressed here.

[3] Section 3(7) of the Act, 46 U.S.C. app. 1702(7), defines a "conference" as:

"An association of ocean common carriers permitted, pursuant to an approved or effective agreement, to engage in concerted activity and to utilize a common tariff; but the term does not include a joint service, consortium, pooling, sailing or transshipment agreement."

[4] The Commission's rules at 46 CFR 572.104(f) currently define "Conference agreement" as:

"An agreement between or among two or more ocean common carriers or between or among two or more marine terminal operators for the conduct or facilitation of ocean common carriage and which provides for: (1) The fixing of and adherence to uniform rates, charges, practices and conditions of service relating to the receipt, carriage handling and/or delivery of passengers or cargo for all members; (2) the conduct of the collective administrative affairs of the group; and (3) may include the filing of a common tariff in the name of the group and in which all the members participate, or in the event of multiple tariffs, each member must participate in at least one such tariff. The term does not include consortium, joint service, pooling, sailing or transshipment agreements."

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89–130, RM–6668]

Radio Broadcasting Services; Medical Lake, WA and Sandpoint, ID

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Larry and Sheryl Roberts, d/b/a/ Roberts Broadcasting, permittee of Station KAAR(FM), Channel 237A, Medical Lake, Washington, proposing the substitution of Channel 237C2 for Channel 237A at Medical Lake and the modification of its construction permit to specify the higher class co-channel. The proposal also requires the substitution of Channel 278A for Channel 237A at Sandpoint, Idaho and modification of the license of Station KPND(FM) in order to accomplish the co-channel upgrade at Medical Lake. The site restriction proposed for Channel 237C2 at Medical Lake is 14.8 kilometers (9.2 miles) northwest of the city, at coordinates 47–41–30 and 117–46–00. In addition, since the communities are located within 320 kilometers of the U.S.-Canadian border, the proposal requires concurrence of the Canadian government. Medical Lake could receive its first wide coverage area FM service.

DATES: Comments must be filed on or before August 7, 1989, and reply comments on or before August 22, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Clifford M. Harrington, Esquire, Fisher, Wayland, Cooper and Leader, 1255 23rd Street NW., Suite 800, Washington, DC 20037 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–130, adopted May 23, 1989, and released June 16, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rule Division, Mass Media Bureau.

[FR Doc. 89–14716 Filed 6–21–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 89–120, RM–6701]

Radio Broadcasting Services; Cuba, Northwye and Waynesville, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by CTC Communications, Inc., proposing the allotment of Channel 271A to Northwye, MO, as that community's first FM broadcast service. The coordinates for Channel 271A at Northwye are 37–58–30 and 91–45–48. To accommodate the channel at Northwye, two channel substitutions would be necessary. Channel 297A must be substituted for Channel 271A at Cuba, Missouri. An application for Channel 271A at Cuba has been filed by Lake Broadcasting, Inc. at coordinates 38–03–49 and 91–24–37 (881230MC). Channel 274A must be substituted for Channel 272A, Station KJPW–FM, at Waynesville, Missouri, at coordinates 37–49–09 and 92–09–06.

DATES: Comments must be filed on or before August 7, 1989, and reply comments on or before August 22, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Martin R. Leader, Ann K. Ford, John J. McVeigh, Fisher, Wayland, Cooper and Leader, 1255—23rd Street, NW., Suite 800, Washington, DC 20037–1125.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–120, adopted May 15, 1989, and released June 16, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-14717 Filed 6-21-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket Nos. 89-133—89-281, Inclusive]

Radio Broadcasting Services; Various Locations in the United States and its Territories

AGENCY: Federal Communications Commission.

ACTION: Proposed rules.

SUMMARY: This document is a combined notice of proposed rule making requesting comments. The FCC proposes to amend regulations on radio broadcast service at 149 locations nationwide. The proposals are made on the Commission's own motion. Concurrently, the Commission proposes to change the class of 149 separate stations from Class A to Class C3.

DATES: Comments must be filed on or before August 7, 1989, and reply comments on or before August 22, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner for the proposal on which they comment at the address listed below.

FOR FURTHER INFORMATION CONTACT: Allocations Branch, Mass Media Bureau, at (202) 634-6530, as follows: (1) Nancy Joyner for those stations in Alabama, Alaska, Arizona, Arkansas, California, Colorado, and Indiana; (2) Nancy Walls for those stations in Connecticut, Delaware, the District of Columbia, Florida, Georgia, Guam, Hawaii, Idaho, Illinois and Kentucky; (3) Kathleen Scheuerle for those stations in Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, and Montana; (4) Leslie Shapiro for those stations in Iowa, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode Island, Samoa, South Carolina and South Dakota; and (5) Patricia Rawlings for those stations in Louisiana, Tennessee, Texas, Utah, Vermont, Virginia, Virgin Islands, Washington, West Virginia, Wisconsin and Wyoming.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's combined Notice of Proposed Rule Making in the listed dockets, adopted May 31, 1989, and released June 16, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037. Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

In comments, interested parties should only reference the docket number for the proposal on which they comment. The following separate proposals are under consideration:

	Channel and status	Call sign	Location, coordinates, and licensee	Address
1.	MM Docket No. 89-133: 221 LIC	KSBS-FM	Pago Pago, AS, 14-17-41, 170-39-44	Samoa Technologies, P.O. Box 793, Pago Pago, AS 96799.
2.	MM Docket No. 89-134: 221 CP	KRBZ	Tusayan, AZ, 35-57-45, 112-04-45	Tusayan Broadcasting Company, Inc., P.O. Box 3085, Grand Canyon, AZ 86023.
3.	MM Docket No. 89-135: 221 LIC	KBLJ	La Junta, CO, 37-59-15, 103-34-2	La Junta Broadcasters, Inc., P.O. Box 485, La Junta, CO 81050.
4.	MM Docket No. 89-136: 221 LIC	WMMK	Destin, FL 30-23-8, 86-24-52	Gulfcoast Broadcasting, Inc., P.O. Box 817, Destin, FL 32541.
5.	MM Docket No. 89-137: 221 LIC	KOWO-FM	Waseca, MN, 44-02-45, 93-23-06	Waseca Communications, Inc., 22 North State, P.O. Box 505, Waseca, MN 56093.
6.	MM Docket No. 89-138: 221 LIC	KRRB	Dickinson, ND, 46-55-24, 102-43-35	Roughrider Broadcasting Co., 129 Third Ave., East, Dickinson, ND 58601.
7.	MM Docket No. 89-139: 221 LIC	KATK-FM	Carlsbad, NM, 32-27-2, 104-12-47	Radio Carlsbad, Inc., P.O. Box 70, Carlsbad, NM 88220.
8.	MM Docket No. 89-140: 221 LIC	KWJY	Woodward, OK, 36-24-2, 99-25-44	Dwaine T. Martin, P.O. Box 1600, Woodward, OK 73802.
9.	MM Docket No. 89-141: 221 LIC	KWVR-FM	Enterprise, OR, 45-19-1, 117-13-14	Wallowa Valley Radio Broadcasting Corp., 107 SW 1st Street, Enterprise, OR 97828.
10.	MM Docket No. 89-142: 224 LIC	KORT-FM	Grangeville, ID, 45-53-5, 116-06-30	4-K Radio, Inc., P.O. Box 936, Lewiston, ID 83501.
11.	MM Docket No. 89-143: 224 LIC	KYZZ	Wolf Point, MT, 48-11-9, 105-40-8	Wolf Point Broadcasting Co., Inc., 324 Main Street, Wolf Point, MT 59201.
12.	MM Docket No. 89-144: 224 LIC	KBRB-FM	Ainsworth, NE, 42-33-16, 99-49-52	KBRB Broadcasting Co., 122 East 2nd Street, Ainsworth, NE 69210.
13.	MM Docket No. 89-145: 224 LIC	KLBN	Albion, NE, 41-40-45, 98-00-43	Emanuel W. Skala, Box 122, Albion, NE 68620.
14.	MM Docket No. 89-146: 224 LIC	KMXQ	Socorro, NM, 34-02-43, 106-54-21	H & HSB Corporation, 2285 Schoernersville Rd., Bethlehem, PA 18017.
15.	MM Docket No. 89-147: 224 LIC	KQAY FM	Tucumcari, NM, 35-10-15, 103-42-25	Sagebrush Communciations, Inc., P.O. Box 668, Tucumcari, NM 88401.
16.	MM Docket No. 89-148: 224 LIC	KBXS	Ely, NV, 39-14-46, 114-55-39	KBXS Broadcasting, Inc., 484 Aultman St., Ely, NV 89301.
17.	MM Docket No. 89-149: 224 LIC	KPAH	Tonopah, NV, 38-04-22, 117-13-16	Roughrider Broadcasting, Inc., 3950 S. Eastern #180, Las Vegas, NV 89109.

	Channel and status	Call sign	Location, coordinates, and licensee	Address
18.	MM Docket No. 89-150: 224 LIC	KWNA-FM	Winnemucca, NV, 41-00-40, 117-45-59	Sheen Broadcasting Co., P.O. Box 591, Winnemucca, NV 89445.
19.	MM Docket No. 89-151: 224 LIC	KKBS	Guymon, OK, 36-42-43, 101-45-59	Panhandle Communications, Inc., 3125 Norcrest, Oklahoma City, OK 73121.
20.	MM Docket No. 89-152: 224 CP	KKRS	Burns, OR, 43-34-22, 119-07-50	Christine E. Paul, 20389 Barnard Ave., Walnut, CA 91789.
21.	MM Docket No. 89-153: 224 LIC	KGFX-FM	Pierre, SD, 44-22-15, 100-24-17	Robert E. Ingstad, Jr., 214 W. Pleasant Dr., Pierre, SD 10225.
22.	MM Docket No. 89-154: 224 LIC	KIQZ	Rawlins, WY, 41-46-16, 107-14-15	Elk Mountain Broadcasting, 415 West Buffalo, Rawlins, WY 82301.
23.	MM Docket No. 89-155: 228 CP	KDCZ	Delta Junction, AK, 64-03-42, 145-41-15	Delta Communications, Inc., P.O. Box 507, Delta Junction, AK 99737
24.	MM Docket No. 89-156: 228 LIC	KXAZ	Page, AZ, 36-46-42, 111-25-46	Stephan G. Paranto, Temp. Custodian, 91 N. 8th Avenue, Page, AZ 86040.
25	MM Docket No. 89-157: 228 LIC	KVWM-FM	Show Low, AZ, 34-13-14, 110-01-49	Dorothy Litchfield Woodworth, Box 970, Show Low, AZ 85901.
26.	MM Docket No. 89-158: 228 LIC	KALQ-FM	Alamosa, CO 37-28-20, 105-51-13	Community Broadcasting Company, P.O. Box 179, Alamosa, CO 81101.
27.	MM Docket No. 89-159: 228 NEW	850712U7	Port St. Joe, FL, 29-49-9, 85-15-34	Maryann Wetmore-Kodsh, H. Scott Wetmore, 5121 Ehrlich Rd., Suite 101A, Tampa, FL 33624.
28.	MM Docket No. 89-160: 228 LIC	KPOA	Lahaina, HI, 20-50-43, 156-54-4	KPOA Radio, A Hawaii Ltd. Partnership, P.O. Box 10712, Lahaina, Maui, HI 96761.
29.	MM Docket No. 89-161: 228 LIC	WZRK	Hancock, MI, 47-06-5, 88-35-26	Cooper Country Enterprises, Inc., 326 Quincy St., Hancock, MI 49930
30.	MM Docket No. 89-162: 228 LIC	KLAN	Glasgow, MT, 48-05-42, 106-37-8	H-Z Corporation, 504 Second Ave., South, Glasgow, MT 59230.
31.	MM Docket No. 89-163: 228 LIC	KWMG	Columbus, NE, 41-27-14, 97-24-20	Columbus Broadcasting Systems, Inc., 1418 25th Street, Columbus, NE 68601.
32.	MM Docket No. 89-164: 228 LIC	KBUY-FM	Ruidoso, NM, 33-23-12, 105-40-14	Walton Stations-New Mexico, Inc., P.O. Box 39, Ruidoso, NM 88345.
33.	MM Docket No. 89-165: 228 LIC	KQIK-FM	Lakeview, OR, 42-12-18, 120-19-39	KQIK, Ltd., HC 64 Box 46, Lakeview, OR 97630.
34.	MM Docket No. 89-166: 228 LIC	KROO	Breckenridge, TX, 32-45-31, 98-56-0	Breckenridge Broadcasting Company, Route 3, Box 14, Breckenridge, TX 76024.
35.	MM Docket No. 89-167: 232 LIC	KBUX	Quartzsite, AZ, 33-40-58, 114-13-59	Buck Burdette, P.O. Box 1, Quartzsite, AZ 85346.
36.	MM Docket No. 89-168: 232 LIC	KCRE-FM	Crescent City, CA, 41-45-34, 124-09-49	Ber-Tec Broadcasting, Inc., P.O. Box 1066, Crescent City, CA 95531.
37.	MM Docket No. 89-169: 232 LIC	KVIB	Makawao, HI, 20-50-48, 156-19-35	Encantada Broadcasting Corporation, 2000 Randolph Rd., S.E., Albuquerque, NM 87106.
38.	MM Docket No. 89-170: 232 LIC	KADQ-FM	Rexburg, ID, 43-48-56, 111-45-28	Ted W. Austin, Jr., Route 1, Box 215-6, St. Anthony, ID 83445.
39.	MM Docket No. 89-171: 232 LIC	KYEE	Alamogordo, NM, 32-56-42, 105-56-47	New West Broadcasting Company, 1065 South Main Street, Las Cruces, NM 88005.
40.	MM Docket No. 89-172: 232 LIC	KRTN-FM	Raton, NM, 36-53-8, 104-26-33	Raton Broadcasting Company, 1128 State St., Raton, NM 87740.
41.	MM Docket No. 89-173: 232 LIC	KYXX	Ozona, TX, 30-42-39, 101-07-34	The Foster Broadcasters, Inc., City Hall Plaza West, San Angelo, TX 76903.
42.	MM Docket No. 89-174: 237 LIC	KLRZ	Red Oak, IA, 41-01-0, 95-12-46	Montgomery County Broadcasting Co., Inc., P.O. Box 465, Red Oak, IA 51566.
43.	MM Docket No. 89-175: 237 LIC	KLER-FM	Orofino, ID, 46-28-45, 116-14-15	4-K Radio, Inc., P.O. Box 936, Lewiston, ID 83501.
44.	MM Docket No. 89-176: 237 CP	KECH-FM	Sun Valley, ID 43-39-42, 114-24-7	Ketchum Radio, Inc., P.O. Box 2158, Ketchum, ID 83340.
45.	MM Docket No. 89-177: 237 LIC	KKAN-FM	Phillipsburg, KS, 39-47-32, 99-19-55	Walter C. Seidel, P.O. Box 307, Phillipsburg, KS 67661.
46.	MM Docket No. 89-178: 237 LIC	KQKI-FM	Bayou Vista, LA, 29-39-28, 91-17-41	Teche Broadcasting Corporation, P.O. Box 847, Morgan City, LA 70380.
47.	MM Docket No. 89-179: 237 LIC	KKBC-FM	Baker, OR, 44-47-18, 117-48-35	Grande Radio, Inc., 2510 East Cove Ave., La Grande, OR 97850.
48.	MM Docket No. 89-180: 237 LIC	KURY-FM	Brookings, OR, 42-04-32, 124-18-52	KURY Radio, Inc., Radio Station KURY, Brookings, OR 97415.
49.	MM Docket No. 89-181: 237 LIC	KLXS-FM	Pierre, SD, 44-22-15, 100-24-17	Sorenson Broadcasting, 604 N. Kiwanis, Sioux Falls, SD 57104.
50.	MM Docket No. 89-182: 237 LIC	KMRE-	Dumas, TX, 35-51-51, 101-55-45	Dumas Broadcasters, Inc., 408 N. Dumas Avenue, Dumas, TX 79029.
51.	MM Docket No. 89-183: 237 LIC	KGHO-FM	Hoquiam, WA 46-55-53, 123-44-2	Trinity Broadcasting Network, P.O. Box C-11949, Santa Ana, CA 92711.
52.	MM Docket No. 89-184: 240 CP	KINQ-FM	Fairbanks, AK, 64-51-49, 145-45-6	The Greater Alaska Elec. Radio Co., Inc., 4600 Dale Road, Fairbanks AK. 99701.
53.	MM Docket No. 89-185: 240 CP	KKMX-FM	Hayden, CO, 40-31-15, 107-17-46	Radio Colorado Northwest, P.O Box QQ, Hayden, CO 81639

	Channel and status	Call sign	Location, coordinates, and licensee	Address
54.	MM Docket No. 89-186: 240 LIC	KBMG	Hamilton, MT, 46-13-46, 114-24-1	Benedict Communications Limited Partnership, 3805 Timberlane, Missoula, MT 59802.
55.	MM Docket No. 89-187: 240 LIC	KLVM	Lewistown, MT, 47-04-13, 109-24-26	Prunedale Educational Association, 8145 Prunedale North Rd., Prunedale, CA 93907.
56.	MM Docket No. 89-188: 240 CP	KHWY	Santa Rosa, NM, 34-57-50, 104-44-56	Don R. Davis, 3611 Altamonte Ave., N.E., Albuquerque, NM 87110.
57.	MM Docket No. 89-189: 240 LIC	KXIT-FM	Dalhart, TX, 36-05-45, 102-30-38	Dalhart Broadcasters, P.O. Box 1350, Dalhart, TX 79022.
58.	MM Docket No. 89-190: 240 CP	KDIU	Dimmit, TX, 34-35-11, 102-18-35	Collins Communications Company, P.O. Box 608, Dimmit, TX 79027.
59.	MM Docket No. 89-191: 240 LIC	KYXS-FM	Mineral Wells, TX, 32-48-42, 98-06-11	Jerry Snyder and Associates, Inc., Rt. 1, Radio Road, Mineral Wells, TX 76067.
60.	MM Docket No. 89-192: 244 LIC	KWCL-FM	Oak Grove, LA, 32-51-33, 91-21-26	Baker Broadcasting Co., 304 Cherry Lane, Mountain Home, AR 12653.
61.	MM Docket No. 89-193: 244 LIC	KGVW-FM	Belgrade, MT, 45-41-36, 110-58-54	Christian Enterprises, Inc., 100 N 24th St. W. Ste. B, Billings, MT 59102.
62.	MM Docket No. 89-194: 244 CP	KDRF	Deer Lodge, MT, 46-24-26, 112-43-8	Deer Lodge Broadcasting, Inc., P.O. Box 811, Deer Lodge, MT 59722.
63.	MM Docket No. 89-195: 244 LIC	KWDG	Idabel, OK, 33-52-54, 94-49-10	Idabel Broadcasting Company, P.O. Box 418, Idabel, OK 74745.
64.	MM Docket No. 89-196: 244 LIC	KXOX-FM	Sweetwater, TX, 32-29-16, 100-23-31	Stein Broadcasting Co., Inc., 1801 Hoyt Street, Sweetwater, TX 79556.
65.	MM Docket No. 89-197: 244 CP	KOPI	Moab, UT, 38-35-7, 109-33-44	Barkdale and Associates, 3210 North Brookside Drive, Provo, UT 84604.
66.	MM Docket No. 89-198: 249 LIC	KSPN-FM	Aspen, CO, 39-13-33, 106-50-0	Broadcasting Company of Palm Beach, Inc., 7301 South Dixie Highway, West Palm Beach, FL 33480-2153.
67.	MM Docket No. 89-199: 249 LIC	KGLM FM	Anaconda, MT, 46-06-7, 112-56-59	Howard M. Neckles, P.O. Box 772, Deer Lodge, MT 59772.
68.	MM Docket No. 89-200: 249 LIC	KSWW	Raymond, WA, 46-41-44, 123-46-16	Pacific Broadcasting Co., P.O. Box 628, Raymond, WA 98577.
69.	MM Docket No. 89-201: 250 CP	KTBA	Tuba City, AZ, 36-07-54, 111-14-59	Western Indian Ministries, Inc., P.O. Box F, Window Rock, AZ 86515.
70.	MM Docket No. 89-202: 250 CP	KPOD-FM	Crescent North, CA, 41-45-35, 124-11-28	Let's Talk Radio, Inc., 825 Mason Hall, P.O. Box 1915, Crescent City, CA 95531.
71.	MM Docket No. 89-203: 250 CP	KUDO	Milton-Freewater, OR, 45-54-13, 118-32-49	Nanette Markunas, P.O. Box 2576, Montauk, NY 11954.
72.	MM Docket No. 89-204: 251 CP	WMLB	Glen Arbor, MI, 44-49-2, 85-59-39	Michael E. Bradford, 1873 Crouch Road, Jackson, MI 49201.
73.	MM Docket No. 89-205: 252 LIC	KGUC-FM	Gunnison, CO, 38-31-22, 106-54-28	Gunnison Broadcasting Co., 113 East Georgia, Gunnison, CO 81230.
74.	MM Docket No. 89-206: 252 CP	WCMZ-FM	Sault Ste. Marie, MI, 46-29-10, 84-13-49	Central Michigan University, 3965 E. Broomfield Road, Mt. Pleasant, MI 48859.
75.	MM Docket No. 89-207: 252 LIC	KDBM-FM	Dillon, MT, 45-14-22, 112-40-3	Southwestern Broadcasting, Inc., 212 E. Bannock, Dillon, MT 59725.
76.	MM Docket No. 89-208: 252 CP	KIDD-FM	Bend, OR, 44-04-40, 121-19-49	KITSAP Communications Corp., P.O. Box 9010, Portland, OR 97207.
77.	MM Docket No. 89-209: 252 LIC	KFYZ-FM	Bonham, TX, 33-33-26, 96-13-13	Bonham Broadcasting Company, 903 E. Sam Rayburn Dr., Bonham, TX 75418.
78.	MM Docket No. 89-210: 252 LIC	KKHQ	Odem, TX, 27-53-31, 97-30-11	CAPI Spanish Broadcasting Inc., P.O. Box 637, Odem, TX 78370.
79.	MM Docket No. 89-211: 252 LIC	KPTX	Pecos, TX, 31-26-9, 103-30-14	PARDAY, Inc., 316 S. Cedar Street, Pecos, TX 79772.
80.	MM Docket No. 89-212: 252 LIC	KRDF-FM	Spearman, TX, 36-12-31, 101-09-31	Spearhead Broadcasting, Inc., 4545 Mingo, Tulsa, OK 74145.
81.	MM Docket No. 89-213: 252 LIC	KARB	Price, UT, 39-36-36, 110-48-52	Eastern Utah Broadcasting Company, P.O. Box AC, Price, UT 84501.
82.	MM Docket No. 89-214: 252 LIC	KERM	Torrington, WY, 41-59-41, 104-12-5	KATH Broadcasting, Inc., P.O. Box 670, Torrington, WY 82240.
83.	MM Docket No. 89-215: 253 CP	KCBZ	Clarksville, TX, 33-36-47, 95-01-3	Radio Station KCAR, Inc., 228 West Main Street, Clarksville, TX 75426.
84.	MM Docket No. 89-216: 257 CP	KVFC	Silverton, CO, 37-48-18, 107-38-3	San Juan Christian Broadcasting, 501 Riverside, Dolores, CO 81323.
85.	MM Docket No. 89-217: 257 LIC	WIGM-FM	Medford, WI, 45-07-55, 90-19-54	WIGM, Inc., P.O. Box 59, Medford, WI 54451.
86.	MM Docket No. 89-218: 259 CP	WWIS	Black River Falls, WI, 44-18-4, 90-54-22	WWIS Radio, Inc., P.O. Box 277, Black River Falls, WI 54615.
87.	MM Docket No. 89-219: 261 CP	KYKD	Bethel, AK, 60-48-20, 161-47-14	Arctic Broadcasting Association, P.O. Box 773527, Eagle River, AK 99577.
88.	MM Docket No. 89-220: 261 LIC	KWHQ-FM	Kenai, AK, 60-30-49, 151-11-19	KSRM, Inc., H.C. 2 Box 852, Soldotna, AK 99669.
89.	MM Docket No. 89-221: 261 LIC	KMXT	Kodiak, AK, 57-47-41, 152-23-28	Kodiak Public Broadcasting Corp., P.O. Box 484, Kodiak, AK 99615.
90.	MM Docket No. 89-222: 261 LIC	KMMR	Malta, MT, 48-15-17, 107-49-18	Malta Broadcasting Corp., P.O. Box 1073, Malta, MT 59538.

	Channel and status	Call sign	Location, coordinates, and licensee	Address
91.	MM Docket No. 89-223: 261 LIC	KZOQ	Missoula, MT, 46-52-56, 113-59-08	Spectrum Communications Corp., 2300 Regent Street, Missoula, MT 59601.
92.	MM Docket No. 89-224: 261 LIC	KATQ-FM	Plentywood, MT, 48-47-06, 104-32-0	Radio International-KATQ, Inc., 112 Third Ave., East, Plentywood, MT 59254.
93.	MM Docket No. 89-225: 261 CP	KDOT	Kimball, NE, 41-15-9, 103-39-49	James E. George, 6 White Surf Dr., Columbus, NE 68601.
94.	MM Docket No. 89-226: 261 LIC	KWRL	La Grande, OR, 45-20-54, 118-07-4	Grande Ronde Broadcasting, Inc., 105 Fir Street, La Grande, OR 97850.
95.	MM Docket No. 89-227: 262 LIC	KICY-FM	Nome, AK, 64-30-4, 165-24-39	Arctic Broadcasting Assoc., P.O. Box 820, Nome, AK 99762.
96.	MM Docket No. 89-228: 264 CP	KRJT-FM	Bowie, TX, 33-38-43, 97-49-8	Bowie-Nocona Broadcasting Co. Inc., Box 1080, Bowie, TX 76230.
97.	MM Docket No. 89-229: 265 LIC	KAKN	Naknek, AK, 58-44-33, 156-58-39	Bay Broadcasting Company, Inc., P.O. Box 111, Naknek, AK 99633.
98.	MM Docket No. 89-230: 265 LIC	KFSK	Petersburg, AK, 56-48-55, 132-57-12	Narrows Broadcasting Corp., P.O. Box 149, Petersburg, AK 99833.
99.	MM Docket No. 89-231: 265 LIC	KJCO	Yuma, CO, 40-00-32, 102-45-34	CEN-TEN Productions, Inc., Box 189, Yuma, CO 80759.
100.	MM Docket No. 89-232: 265 LIC	KXPO-FM	Grafton, ND, 48-23-53, 97-26-56	KGPC Company, 45 W. 6th, Grafton, ND 58237.
101.	MM Docket No. 89-233: 265 LIC	KOVC-FM	Valley City, ND, 46-54-24, 97-58-20	Ingstad Broadcasting, Inc., 232-3rd St., N.E., Valley City, ND 58072.
102.	MM Docket No. 89-234: 265 LIC	KFNC	Sulphur, OK, 34-32-57, 96-58-34	Murray County Broadcasting, Inc., 155 Broad Street, Milford, CT 06460.
103.	MM Docket No. 89-235: 265 LIC	KIXC-FM	Quanah, TX, 34-18-58, 99-44-49	Donald G. Navarro, Interim Trustee, 4027 W. Lovers Lane, Dallas, TX 75209.
104.	MM Docket No. 89-236: 266 CP	KSRL	Sutherlin, OR, 43-21-59, 123-18-56	Sutherlin Radio Limited Partnership, P.O. Box 574, Sutherlin, OR 97479.
105.	MM Docket No. 89-237: 269 LIC	KPEN-FM	Soldatna, AK, 60-30-40, 151-16-12	Peninsula Communications Incorp., Mi 1.8 Diamond Rd., Homer, AK 99603.
106.	MM Docket No. 89-238: 269 LIC	KSTK	Wrangell, AK, 56-27-14, 132-22-54	Wrangell Radio Group, P.O. Box 262, Wrangell, AK 99929.
107.	MM Docket No. 89-239: 269 LIC	KTNY	Libby, MT, 48-22-14, 115-32-19	Lincoln County Broadcasters, Inc., Cedar & S. Main, Box 730, Libby, MT 59923.
108.	MM Docket No. 89-240: 269 CP	KELY-FM	Ely, NV, 39-15-52, 114-53-35	Reed Communications, Inc., 807 Avenue F, Ely, NV 89301.
109.	MM Docket No. 89-241: 269 LIC	KACA	Prosser, WA, 46-12-5, 119-45-42	Cormac C. Thompson, Inc., P.O. Box 591, Prosser, WA 99350.
110.	MM Docket No. 89-242: 270 CP	KAQU	Huntington, TX	Huntington Broadcasting Corporation, Route 3, Box 515, Huntington, TX 75949.
111.	MM Docket No. 89-243: 271 NEW	880505ML	Basile, LA, 30-28-52, 92-35-5	Nezpique Communications, Ltd., 430 S. Fifth Street, Eunice, LA 70535.
112.	MM Docket No. 89-244: 272 LIC	KHNS	Haines, AK, 59-13-6, 135-25-29	Lynn Canal Broadcasting, Box 0, Twr Rd. & Thtr Rd., Haines, AK 99827.
113.	MM Docket No. 89-245: 272 CP	WAAH	Houghton, MI, 47-06-13, 88-34-4	WAAH Acquisition Partnership, 5820 Hamilton Rd. #210, Columbus, GA 31904.
114.	MM Docket No. 89-246: 272 LIC	WTKI-FM	Gulfport, MS, 30-22-28, 89-04-45	Holt Communications Corporation, 1 Tower Park, Rt. 9, Box 34, Winchester, VA 22601.
115.	MM Docket No. 89-247: 272 CP	KRNY	Kearney, NE, 40-42-35, 99-05-55	Polly A. Hays, Rt. 2, P.O. Box 339D, Kearney, NE 68847.
116.	MM Docket No. 89-248: 272 LIC	KWDQ	Woodward, OK, 36-24-2, 99-35-44	H. Grant Irwin, Jr., 2315 Downs Ave., Suite 200, Woodward, OK 73801.
117.	MM Docket No. 89-249: 276 LIC	KRWA-FM	Waldron, AR, 34-51-44, 94-04-26	Good News Broadcasting Corporation, Highway 71, Waldron, AR 72958.
118.	MM Docket No. 89-250: 276 LIC	KNDY-FM	Marysville, KS, 39-52-12, 96-44-45	Dierking Communications, Inc., 610 N. 12th Street, Marysville, KS 66508.
119.	MM Docket No. 89-251: 276 LIC	WGDN-FM	Gladwin, MI, 43-57-3, 84-30-34	Apple Broadcasting Company, Inc., 3601 W. Woods Rd., Gladwin, MI 48624.
120.	MM Docket No. 89-252: 276 CP	KKEI	Imperial, NE, 40-32-30, 101-42-30	Kathy J. Kautz, 4521 25th Street, Columbus, NE 68601.
121.	MM Docket No. 89-253: 276 LIC	KOFM	Enid, OK, 36-26-14, 97-55-15	Enid Quality Broadcasting Corp., P.O. Box 5736, Enid, OK 73702.
122.	MM Docket No. 89-254: 276 LIC	KRUN-FM	Ballinger, TX, 31-43-31, 99-57-42	Central West Broadcasting Co., U.S. Highway 67, Ballinger, TX 76821.
123.	MM Docket No. 89-255: 280 LIC	KSUA	College, AK, 64-51-32, 147-49-41	Student Media, Inc., P.O. Box 83831, Fairbanks, AK 99708.
124.	MM Docket No. 89-256: 280 LIC	KJFP	Yakutat, AK, 59-33-20, 139-44-32	Lakeside Broadcasting, Inc., Box 388, Yakutat, AK 99689.

	Channel and status	Call sign	Location, coordinates, and licensee	Address
125.	MM Docket No. 89-257: 290 LIC	KNEI-FM	Waukon, IA, 43-17-32, 91-27-35	David H. Hogendorn, P.O. Box 151, Waukon, IA 52172.
126.	MM Docket No. 89-258: 290 LIC	KNLV-FM	Ord, NE, 41-34-16, 98-55-29	KNLV, Inc., 205 S. 16th, Ord, NE 68862.
127.	MM Docket No. 89-259: 290 LIC	KVEZ	Smithfield, UT, 41-48-44, 111-47-31	Ronald Christner et. at., 1946 Metairie Road, Metairie, LA 70005.
128.	MM Docket No. 89-260: 290 LIC	KVXO	Spokane, WA, 47-41-52, 117-31-7	Pacific Metrocom Northwest, Inc., 205 Palmetto Ave., #307, Merritt Island, FL 32953.
129.	MM Docket No. 89-261: 292 LIC	KTOO	Juneau, AK, 58-18-4, 134-25-21	Capital Community Broadcasting, 224 Fourth Street, Juneau, AK 99801.
130.	MM Docket No. 89-262: 295 CP	KDOA	Tulia, TX, 34-25-45, 101-45-32	Dominion Communications, Inc., 230 W. 55th St., New York, NY 10020.
131.	MM Docket No. 89-263: 298 LIC	KWYD-FM	Security, CO, 38-44-40, 104-51-41	KWYD-FM Radio Partners, P.O. Box 5668, Colorado Springs, CO 80931.
132.	MM Docket No. 89-264: 298 LIC	KELR-FM	Chariton, IA, 41-00-50, 93-17-23	Dwaine F. Meyer, 810 Main Street, Pella, IA 50219.
133.	MM Docket No. 89-265: 298 LIC	KMAV-FM	Mayville, ND, 47-29-45, 97-21-3	KMAV Radio, Inc., P.O. Box 36 (Hwy 200 W), Mayville, ND 58257.
134.	MM Docket No. 89-266: 292 LIC	KSUP-FM	Juneau, AK, 58-18-6, 134-26-29	KINY Associates, 1107 W. 8th Street, Juneau, AK 99801.
135.	MM Docket No. 89-267: 292 LIC	KROS	Pagosa Springs, CO, 37-11-32, 107-05-55	ROD-MAR, Inc., Receiver, 702 S. Tenth Street, Pagosa Springs, CO 81147.
136.	MM Docket No. 89-268: 292 LIC	KRJB	Ada, MN, 47-18-41, 96-31-13	R & J Broadcasting, West Main Street, Ada, MN 56510.
137.	MM Docket No. 89-269: 292 LIC	WMFG-FM	Hibbing, MN, 47-24-30, 92-57-4	DNS Broadcasting, Inc., P.O. Box 829, Hibbing, MN 55746.
138.	MM Docket No. 89-270: 292 CP	WNMX	Newberry, SC, 34-19-38, 81-32-42	Professional Radio, Inc., 2022 Forrest Street, Newberry, SC 29108.
139.	MM Docket No. 89-271: 292 LIC	KTQN	Belton, TX, 31-03-46, 97-31-54	Heart of Texas Communications, Ltd., P.O. Box 240, Belton, TX 76513.
140.	MM Docket No. 89-272: 292 LIC	KPAN-FM	Hereford, TX, 34-47-33, 102-25-45	KPAN Broadcasters, Drawers 1757, Hereford, TX 79045.
141.	MM Docket No. 89-273: 292 LIC	KLEN	Cheyenne, WY, 41-08-8, 104-48-12	Blue Sky Broadcasting, Inc., 1416 Bradley Avenue, Cheyenne, WY 82001.
142.	MM Docket No. 89-274: 292 LIC	KOTB	Evanston, WY, 41-21-11, 110-54-28	Evanston Broadcasting, Co., Inc., P.O. Box 190, Evanston, WY 82930.
143.	MM Docket No. 89-275: 296 LIC	KCID-FM	Caldwell, ID, 43-39-51, 116-38-10	Twin Cities Broadcasting Co., 921 Cleveland Blvd., Caldwell, ID 83605.
144.	MM Docket No. 89-276: 296 LIC	KWLV	Many, LA, 31-36-36, 93-23-58	WLV-TV, Incorporated, 595 San Antonio Ave., Many, LA 71449.
145.	MM Docket No. 89-277: 296 LIC	KKDQ	Fosston, MN, 47-33-44, 95-43-30	North Country Radio, Inc., P.O. Box 218, Thief River Falls, MN 56701.
146.	MM Docket No. 89-278: 296 LIC	KLSM-FM	Louisville, MS, 33-07-20, 89-01-5	Winston Broadcasting, Inc., Hwy 15 Bypass, Drawer 30, Louisville, MS 39339.
147.	MM Docket No. 89-279: 296 LIC	KSTA-FM	Coleman, TX, 31-51-16, 99-25-36	Long Broadcasters, Inc., 2203 E. 13th, Odessa, TX 79761.
148.	MM Docket No. 89-280: 296 LIC	KWKQ	Graham, TX, 33-07-37, 98-35-35	KSWA, Inc., P.O. Box 1050, Graham, TX 76046.
149.	MM Docket No. 89-281: 300 CP	KBTB	Bethel, AK, 60-47-6, 161-47-54	Bethel Communications, Inc., 22105-23rd Drive, S.E., Bothell, WA 98021.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-14715 Filed 6-21-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 215 and 219

Department of Defense Federal Acquisition Regulation Supplement; Contracting With Small Disadvantaged Business Concerns, Historically Black Colleges and Universities, and Minority Institutions

AGENCY: Department of Defense (DoD).

ACTION: DFARS Implementation of section 1207 of Pub. L. 99-661 and section 806 of Pub. L. 100-180; Proposed rule with request for comment; correction.

SUMMARY: This document corrects a proposed rule on DFARS implementation of certain laws with respect to contracting with small disadvantaged business concerns, historically black colleges and universities, and minority institutions, which was published May 23, 1989 (54 FR 22337). This action is necessary to add text which was omitted.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD(P)/DARS, c/o OUSD(A) (M&RS), Room 3D139, The Pentagon, Washington, DC 20301-3062.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Accordingly, 48 CFR Part 215 and 219 are corrected as follows:

PART 215—[CORRECTED]

1. On page 22337, the amendatory language is corrected by adding immediately after the authority line, PART 215—CONTRACTING BY NEGOTIATION, and by adding a paragraph, to read as follows:

Section 215.605 is added to read as follows:

215.605 Evaluation factors.

(a) For major systems acquisitions and other complex or sensitive acquisitions involving formal or alternative source selection procedures, see 219.705-2(d).

2. On page 22338, the amendatory language is corrected by adding between the existing paragraphs 4. and 5., a paragraph to read as follows:

Section 219.705-2 is added to read as follows:

PART 219—[CORRECTED]

219.705-2 Determining the need for a subcontracting plan.

(d) for major systems acquisitions and other complex or sensitive acquisitions involving formal or alternative source selection procedures, the extent to which offerors specifically identify, and commit to, SDB participation in performance of the contract (whether as joint venture, teaming arrangement, or traditional subcontracting arrangement) shall be an evaluation factor for source selection.

[FR Doc. 89-14711 Filed 6-21-89; 8:45 am]

BILLING CODE 3810-01-M

Notices

Federal Register
Vol. 54, No. 119
Thursday, June 22, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atomspheric Administration.

Title: Fisheries Obligation Guarantee Program.

Form Number: NOAA Form 88–1; OMB—0648–0012.

Type of Request: Request for extension of OMB approval of a currently cleared collection.

Burden: 1,510 respondents; 12,080 reporting hours; average hours per response—8 hours.

Needs and Uses: Commercial fishermen may apply to obtain guaranteed financing under the Fisheries obligation Guarantee program. The information on the application is used to determine eligibility, and subsequent reports are used to monitor program participation.

Affected Public: Individual or households, business or other for profit, small businesses or organizations.

Frequency: On occasion, annual.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Russell Scarato, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Russell Scarato, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 15, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–14788 Filed 6–21–89; 8:45 am]

BILLING CODE 3510-CW-M

Bureau of Export Administration

[Docket No. 90530–9130]

Foreign Availability Assessments: Initiation of an Assessment on Prepreg Production Equipment

AGENCY: Office of Foreign Availability, Bureau of Export Administration, Commerce.

ACTION: Notice of initiation of an assessment.

SUMMARY: Pursuant to the receipt of an allegation of foreign availability, the Office of Foreign Availability is initiating an assessment to investigate the foreign availability of prepreg production equipment and is seeking public comments on the foreign availability of prepreg production equipment.

DATE: The period for submission of information will close July 24, 1989.

ADDRESSES: Submit information relating to the allegation of foreign availability to: Dr. Irwin M. Pikus, Office of Foreign Availability, Bureau of Export Administration, U.S. Department of Commerce, Room SB701, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

The public record concerning this notice will be maintained in the Bureau of Export Administration's Freedom of Information Record Inspection Facility, Room 4886, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Lisa Gimelli Hilliard, Office of Foreign Availability, Department of Commerce, Washington, DC 20230, Telephone: (202) 377–8074.

SUPPLEMENTARY INFORMATION: Under sections 5 (f) and (h) of the Export Administration Act of 1979, as amended, the Office of Foreign Availability (OFA) assesses claims of foreign availability. Part 791 of the Export Administration Regulations (EAR) establishes the procedures and criteria for initiating and reviewing claims of foreign availability on items controlled for national security purposes.

Pursuant to sections 5(f) (3) and (9) of the EAA, as amended by the Omnibus Trade and Competitiveness Act of 1988, OFA is publishing this notice:

On April 18, 1989, OFA accepted for filing an allegation of foreign availability for prepreg production equipment. This item is controlled for national security reasons under Export Control Commodity Number (ECCN) 1357A(e): Specially designed or adapted equipment for special fibre surface treatment or for producing prepregs and preforms covered by item ECCN 1763A(c).

After determining that we had received a completed company submission claiming foreign availability for prepreg equipment and that it was supported by reasonable evidence addressing the established criteria, the Office of Foreign Availability initiated an assessment on April 18, 1989. Consistent with the requirements of the EAA, the Department intends to publish in the **Federal Register** the results of the assessment by August 18, 1989.

To assist the Department in assessing the claim, the Office of Foreign Availability will receive any information regarding the foreign availability of prepreg production equipment. A person wishing to submit relevant information relating to this claim may submit it to the Office of Foreign Availability of the Department of Commerce.

Such relevant information may include, but is not limited to: foreign manufacturers' catalogues, brochures, or operations or maintenance manuals, articles from reputable trade publications, photographs, and depositions based upon eyewitness accounts. Supplement No. 1 to Part 791 provides additional examples of evidence that would be helpful to the investigation.

The Office of Foreign Availability will carefully and fully consider all information received. The Office will use information received to supplement other information to evaluate the claim of foreign availability.

The Department will also accept comments or information accompanied by a request that part or all of the material be treated confidentially because of its proprietary nature or for any other reason. The information for which confidential treatment is

requested should be submitted to the Bureau of Export Administration (BXA) separate from any non-confidential information submitted. The top of each page should be marked with the term "Confidential Information". The Bureau of Export Administration will either accept the submission in confidence, or if the submission fails to meet the standards for confidential treatment, will return it. A non-confidential summary must accompany such submissions of confidential information. The summary will be made available for public inspection.

Information accepted by the Bureau of Export Administration as privileged under section (b) (3) or (4) of the Freedom of Information Act (5 U.S.C. 552(b) (3) and (4)) will be kept confidential and will not be available for public inspection, except as authorized by law.

Communications between agencies of the United States Government and foreign governments will not be made available for public inspection.

All other information relating to the notice will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires written comments. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying.

The public record of information received on the allegation for foreign availability will be maintained in the Bureau of Export Administration's Freedom of Information Records Inspection Facility, Room 4886, Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copies in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations.

Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration, Freedom of Information Officer, at the above address or by calling (202) 377–2593.

Because of the strict statutory time limitations in which Commerce must make its determination, the period for submission of relevant information will close 30 days from the date of publication. The Department will consider all information received before the close of the comment period in developing the assessment. Information received after the end of the period will be considered if possible, but its consideration cannot be assured. Accordingly, the Department encourages persons who wish to provide information related to this allegation of foreign availability to do so at the earliest possible time to permit the Department the fullest consideration of the information.

Dated: June 19, 1989.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 89–14834 Filed 6–21–89; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

[A–580–501]

Photo Albums and Filler Pages From the Republic of Korea; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by petitioners, the Department of Commerce has conducted an administrative review of the antidumping duty order on photo albums and filler pages from the Republic of Korea. The review covers twenty-four manufacturers/exporters and five third-country resellers of this merchandise to the United States and the period July 16, 1985, through November 30, 1986. The review indicates the existence of dumping margins during this period.

As a result of the review, the Department has preliminarily determined to assess antidumping duties equal to the calculated differences between United States price and foreign market value. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: June 22, 1989.

FOR FURTHER INFORMATION CONTACT: Michael Rill or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2923.

SUPPLEMENTARY INFORMATION:

Background

On December 16, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 51273) an antidumping duty order on photo albums and filler pages from Korea. Petitioners SPM Manufacturing Co. and the Holson Company, four exporters and an importer requested in accordance with § 353.53a(a) of the Commerce Regulations (19 CFR 353.53a(a) (1988)) that we conduct an administrative review. On January 20, 1987, we published a notice of initiation of antidumping duty administrative review (52 FR 2123). On September 21, 1987, we published another notice of initiation of antidumping duty administrative review (52 FR 35466) covering additional firms. On April 3, 1989, the Department published the final results of its first antidumping duty administrative review, covering nineteen firms (54 FR 13399). The Department is now publishing the preliminary results with respect to the second group of firms in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by this review are shipments of photo albums and photo album filler pages from the Republic of Korea. During the review period, such merchandise was classifiable under item 256.60, 256.67, 256.90 or 774.55 of the Tariff Schedules of the United States. This merchandise is currently classifiable under HTS item 3920, 3921, 3926.90, 4819.50, 4820.50, 4820.90 or 4823.90. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The U.S. Customs Service has informed the Department of entries of unfinished photo album filler pages from Korea and has inquired whether this merchandise is within the scope of the order. Unfinished filler pages include, but may not be limited to, plastic tubular sheet or other plastic sheets containing pockets or formed into tubes and requiring only cutting, punching or other minor processing. We request interested parties to submit comments and supporting documentation on the issue of whether unfinished photo album filler pages from Korea are within the scope of the antidumping duty order on photo

albums and filler pages from Korea. Comments should be submitted not later than 30 days from the date of publication of this notice. We will make a determination outside the confines of this administrative review.

The review covers twenty-four manufacturers/exporters and five third-country resellers of photo albums and filler pages from the Republic of Korea and the period July 16, 1985 through November 30, 1986.

One manufacturer/exporter with shipments during the period, Dong In, responded adequately to our request for information. Only certain Dong In resales and sales to a reseller are covered by this review. With respect to the resales, Dong In's supplier did not respond to our questionnaire. With respect to Dong In's sales to a reseller, the reseller did not respond to our questionnaire. Therefore, we used the best information available for those sales. Other Dong In sales and resales were covered by the previous final results of antidumping duty administrative review covering this period (54 FR 13399, April 3, 1989). Twenty-four firms, including four third-country exporters, did not respond to our questionnaire; one firm is out of business; and one firm could not be located. Therefore, the Department used the best information available for these firms, which was the rate for all firms published in the antidumping duty order (50 FR 51273, December 16, 1985). One firm, Bowon, had no shipments of merchandise covered by the order during the period. This firm is not known to have been a manufacturer or exporter of merchandise covered by the order during or prior to the review period and will be regarded as a new exporter for any shipments after the review period. Another firm, Costco, resold to the United States merchandise that was previously imported into the United States by another firm and later purchased in, and exported from, the United States by Costco. We determined that no drawback of antidumping duties deposited when the merchandise first entered the United States was claimed for this merchandise. Therefore, we preliminarily determine not to assess additional antidumping duties on this merchandise exported by Costco.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following margins exist for the period July 1, 1985 through November 30, 1986:

Manufacturer/exporter/third-country reseller	Margin (percent)
Ace Trading	64.81
Ahjun	64.81
Bowon*	(*)
Chungwoo	64.81
Costco	**64.81
Daechun Silup	64.81
Daejin/Dong In	64.81
Deho	64.81
Dong In/Zhinham	64.81
Eun Jeong Trading	64.81
G.I. Corp	64.81
Gyeongjin	64.81
Hankook Trading	64.81
Hansang	64.81
Honey Stationery	64.81
J & C International	64.81
Korea Trading Int'l	64.81
Lee Tung	64.81
Metro Ind	64.81
Nam Doo Trading	64.81
Scandecor	64.81
Seoul General Stationery	64.81
Sinhan Trading	64.81
Sooter Studios	64.81
Sung Ill	64.81
Sungshim	64.81
Tradepower	64.81
Universal	64.81

*No shipments during the period. Not a known manufacturer or exporter.

**All shipments during the period were reimports not to be assessed additional antidumping duties.

Interested parties may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. Prehearing briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication. The Department will publish the final results of the administrative review, including the results of its analysis of any written or oral comments.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required. For any shipments from the remaining known manufacturers, exporters, and third-country resellers not covered by this review, the cash deposit will continue to be at the rates for each of those firms published in the final results of the latest administrative review covering the firm (54 FR 13399, April 3, 1989), or the antidumping duty order (50 FR 51273, December 16, 1985) if a review covering the firm has not been conducted.

For any future entries of this merchandise from a new exporter, whose first shipments occurred after November 30, 1986 and who is unrelated to any reviewed firm or any previously reviewed firm, a cash deposit of 6.37 percent shall be required. This rate, which is the highest rate for firms that provided an adequate verifiable response regarding shipments during this period, was published in the first final results of antidumping duty administrative review covering this period (54 FR 13399, April 3, 1989).

These deposit requirements are effective for all shipments of Korean photo albums and filler pages entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

The Department has received information indicating that shipments of photo albums and filler pages from certain third countries may be merchandise of Korean origin for antidumping duty order. In order to determine whether such merchandise is subject to antidumping duties, the Department requested the Customs Service to extend liquidation of entries of photo albums and filler pages exported from, or purported to be merchandise of, Taiwan, Singapore or Malaysia, and entries of photo albums and filler pages exported from Hong Kong but purported to be merchandise of another country. This extension of liquidation will remain in effect until we determine whether such merchandise is subject to the order.

In an effort to identify entries of Korean merchandise, we requested information from certain firms in Taiwan, Singapore, Malaysia, and Hong Kong. In the final results of the previous administrative review, we determined to suspend liquidation of, and to collect cash deposits of estimated antidumping duties for, all entries of photo albums and filler pages exported, or purported to be manufactured, by certain firms that did not respond or provided inadequate information. Additional firms listed below have not responded or have failed to provide adequate information. Unless we receive adequate and timely information, we will regard all photo albums and filler pages exported, or purported to be manufactured, by those firms as products of Korea and will instruct the Customs Service to begin collecting cash deposits of estimated antidumping duties on all photo albums and filler pages exported, or purported to be manufactured, by those firms. This deposit requirement is effective on the date of publication of the final results of this administrative review. Cash deposits of 64.81 percent will be required for the following firms:

Taiwan
B & P Ind.
Burt & Co.
Four Star Int'l Trading
Golden Ship
Linphant
Sovereign Enterprise
Tribrain

Hong Kong
Blossom Co.
Blossom Industrial Co.
Cowley Distributors
Great China Ind.
Hip Sing
Jetmax
Lauender
Preneba
Perfect Ind.
The Sincere Ind.
Tat Sang
Wing Shing Vinyl
Wiseman Plastic

Singapore
Accord Mfg.
Asahi Tsubo
Cornerfree
Peng Mfr.
Sin Chong
Tai On Loong
Terry Trading

Malaysia
Bungaraya Ind.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a (1988)).

Date: June 15, 1989.

[FR Doc. 89-14789 Filed 6-21-89; 8:45 am]

BILLING CODE 3510-DS-M

[C-557-804]

Preliminary Negative Countervailing Duty Determination: Certain Steel Wire Nails From Malaysia

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that no benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Malaysia of certain steel wire nails ("the subject merchandise"), as described in the "Scope of Investigation" section of this notice. If this investigation proceeds normally, we will make our final determination on or before August 29, 1989.

EFFECTIVE DATE: June 22, 1989.

FOR FURTHER INFORMATION CONTACT: Vincent Kane or Carole Showers, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-2815 or 377-3217.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based on our investigation, we preliminarily determine that no benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Malaysia of the subject merchandise.

Case History

Since the publication of the Notice of Initiation in the **Federal Register** (54 FR 15534, April 18, 1989), the following events have occurred. On April 21, 1989, we presented a questionnaire to the Government of Malaysia in Washington, DC, concerning petitioners' allegations. On May 30, 1989, we received responses from the Government of Malaysia and South Engineers Sdn. Bhd.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS sub-headings. The HTS sub-headings are provided for convenience and Customs purposes. The written description remains dispositive.

The products covered by this investigation are certain steel wire nails from Malaysia. These nails are: Steel wire nails of one-piece construction as currently provided for in HTS items 7317.00.5505, 7317.00.5510, 7317.00.5520, 7317.00.5530, 7317.00.5540, 7317.00.5550, 7317.00.5560, 7317.00.5570, 7317.00.5580, 7317.00.5590, and 7317.00.6560; steel wire nails of two-piece construction, as currently provided for in HTS item 7317.00.7500; and steel wire nails with lead heads, as currently provided for in HTS item 7317.00.7500.

Analysis of Programs

Consistent with our practice in preliminary determinations, when a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no presuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses, however, are subject to verification. If the response cannot be supported at verification, and the program is otherwise conuntervailable, the program will be considered a bounty or grant in the final determination.

For purposes of this preliminary determination, the period for which we are measuring bounties or grants ("the review period") is calendar year 1988, which corresponds to the fiscal year of the respondent company. Based upon our analysis of the petition and the responses to our questionnaires, we preliminarily determine the following:

I. Programs Preliminarily Determined Not To Be Used

We preliminarily determine that manufacturers, producers, or exporters in Malaysia of the subject merchandise did not receive benefits during the review period for exports of the subject merchandise to the United States under the following programs:

A. Export Tax Incentives

1. *Abatement of Taxable Income Based on the Ratio of Export Sales to Total Sales and an Abatement of Five Percent of the Value of Indigenous Materials Used in Exports.* The Investment Incentives Act of 1968 provided for an abatement of taxable income based on the ratio of export sales to total sales. This law was repealed effective January 1, 1986, and replaced by the Promotion of Investments Act of 1986. Among other incentives, the new law provides for an abatement of adjusted income for exports. The amount of adjusted income to be abated is: (1) A rate equivalent to 50 percent of the ratio of export sales to total sales; and (2) five percent of the value of indigenous Malaysian materials used in the manufacture of exported products. This program is not available to companies still participating in programs under the repealed Investment Incentives Act of 1968, including pioneer status, or to companies granted pioneer status or an investment tax allowance

under the Promotion of Investments Act of 1986.

2. *Allowance of a Percentage of Net Taxable Income Based on the F.O.B. Value of Export Sales.* Section 29 of the Investment Incentives Act of 1968, as amended in 1984, allows for a flat deduction of five percent of export revenues (based on f.o.b. value) from taxable income. This program has been superseded by section 39 of the Promotion of Investment Act of 1986. However, we are including this program in our investigation to determine whether companies received residual benefits during the review period from unused tax deuctions carried forward from years prior to 1986. This program is not available to companies still participating in other programs under the repealed Investment Incentives Act of 1968, including pioneer status, or to companies granted pioneer status or an investment tax allowance under the Promotion of Investments Act of 1986.

3. *Allowance of Taxable Income of Five Percent of the F.O.B. Value of Export Sales for Trading Companies Exporting Malaysian-made Products.* Section 39 of the Promotion of Investments Act of 1986 provides for an allowance of taxable income in the amount of five percent of the f.o.b. value of export revenues for trading companies and agricultural companies exporting Malaysian-made products. This program is not available to companies still participating in programs under the repealed Investment Incentives Act of 1968, including pioneer status, or to companies granted pioneer status or an investment tax allowance under the Promotion of Investments Act of 1986.

South Engineers claimed the allowance of taxable income of five percent of the f.o.b. value of export sales on its tax return filed during the review period. According to the response, the Malaysian Department of Inland Revenue rejected the claim because South Engineers is not a trading company. Consequently, the firm was precluded from using this program.

4. *Double Deduction for Export Credit Insurance Payments.* The Income Tax Act of 1967, as amended, provides for a deduction to be taken on a company's tax return for the cost of export credit insurance. The deduction on the tax return is in addition to the deduction taken in a company's financial statement, in effect providing a double deduction for this export-related expense.

5. *Double Deduction for Export Promotion Expenses.* Section 41 of the Promotion of Investments Act of 1986 allows companies to deduct expenses related to the promotion of exports twice, once on the financial statement and again on the income tax return.

6. *Industrial Building Allowance.* Sections 63–66 of the Income Tax Act of 1967, as amended, allow an income tax deduction for a percentage of the value of constructed or purchased buildings used in manufacturing. In 1984, this allowance was extended to include buildings used as warehouses to store finished goods ready for export or imported inputs to be incorporated into exported goods.

B. Other Export Incentives

1. *Export Credit Refinancing.* The Bank Negara Malaysia, the central bank of Malaysia, provides pre- and post-shipment financing of exports through commercial banks for periods of up to 120 and 180 days, respectively.

2. *Export Insurance Program.* Export credit insurance is provided by Malaysian Export Credit Insurance Bhd. (MECIB) at premium rates allegedly inadequate to cover long-term operating costs and losses. Established under the Malaysian Companies Act of 1965, MECIB is jointly owned by the Government of Malaysia and by commercial banks and insurance companies. MECIB provides insurance to cover commercial and political risks only.

C. Other Tax Incentives

1. *Pioneer Status Under the Investment Incentives Act of 1968.* Pioneer status under this Act, as amended, is available to companies producing a product (1) with favorable prospects for further development, including development for export, or (2) currently being produced in insufficient quantities to meet the development needs of Malaysia, including export. Benefits granted under pioneer status include exemptions on the portion of income derived from sales of the pioneer product from the following: (1) The 40 percent corporate income tax; (2) the five percent development tax; (3) the three percent excess profits tax; and (4) the 40 percent dividend tax. Pioneer status benefits are available for a period of up to five years and may be extended for up to an additional three years.

2. *Pioneer Status Under the Promotion of Investments Act of 1986.* As stated above, the Promotion of Investments Act of 1986 replaced the Investment Incentives Act of 1968. The primary changes in the pioneer status program under the new law are as follows: (1) The initial grant of pioneer status is five years for all companies, regardless of their level of investment; (2) the product must be on the "promoted product" or "promoted activities" list; (3) specific one-year extensions for location, priority products, and Malaysian content have been eliminated; (4) extensions are now granted for five years if the product is on the "promoted product" list for extensions and the company meets certain investment, employment, or development criteria; and (5) pioneer status may also be provided to non-corporate entities such as cooperative societies, associations, etc. This program is not available to companies granted pioneer status under the Investment Incentives Act of 1968.

3. *Investment Tax Allowance.* The Promotion of Investments Act of 1986 provides for an investment tax allowance in the amount of 15 to 100 percent of qualifying capital expenditures. Qualifying capital expenditures are those made to purchase capital goods used in the production of products which are included on the promoted products list. This program is not available to companies granted pioneer status under the Investment Incentives Act of 1968 or under the Promotion of Investments Act of 1986.

4. *Double Deduction for Operational Expenses.* Manufacturing companies may take a double deduction for income tax purposes for specific training related expenses approved by the government. The goal of this program is to encourage manpower development for the manufacturing sector including the development of skills required to manufacture new products and work with new technologies.

5. *Abatement of Five Percent of Adjusted Income.* Manufacturing companies located in designated "promoted industrial areas" are eligible to receive an abatement for income tax purposes in the amount of five percent of adjusted income. The abatement is given for a period of not less than five years.

6. *Reinvestment Allowance.* The Income Tax Act of 1967, as amended in 1979, provides for a reinvestment allowance of 40 percent for capital expenditures on a factory, plant or machinery for any approved expansion project. This program is not available to companies granted pioneer status under the Investment Incentives Act of 1968 or under the Promotion of Investments Act of 1986.

Petitioner included this program in its petition and we included it in our initiation in this investigation. Department practice requires that we not initiate on programs previously found not to be countervailable, unless changes in the program or its

administration justify further investigation. In *Certain Textile Mill Products and Apparel from Malaysia* (48 FR 9852, March 12, 1985) (Textiles), we determined that the reinvestment allowance was not a a bounty or grant. We have received no new information justifying a change in the *Textiles* determination. Therefore, we are rescinding the investigation as it relates to the reinvestment allowance.

D. Medium- and Long-term Government Financing

Medium- and long-term financing is provided by the following institutions:

- the Industrial Development Bank of Malaysia (IDBM)
- the Development Bank of Malaysia (DBM)
- the Borneo Development Corporation (BDC)
- the Sabah Development Bank (SDB)

IDBM, which is wholly owned by the Government of Malaysia, provides financing primarily to the shipping industry, whereas the main objective of DBM is to promote businesses owned by Bumiputras (native Malaysians not of Chinese or Indian descent). BDC was established to promote industrial development in the Sabah and Sarawak states; each state has a 50 percent ownership in the bank. SDB, wholly owned by the State of Sabah, was established to promote economic development in that state.

Verification

In accordance with section 776(b) of the Act, we will verify the information used in making our final determination.

Public Comment

In accordance with § 355.38, of the Commerce Regulations published in the **Federal Register** on December 27, 1989 (to be codified at 19 CFR 355.38), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination on August 11, 1989, at 2:00 p.m., at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Assistant Secretary for Import Administration, Room B–099, at the above address within ten days of the publication of this notice in the **Federal Register.**

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In accordance with 19 CFR 355.38 (c) and (d), case briefs and rebuttal briefs must be submitted to the Assistant Secretary in ten copies of the business proprietary version and seven copies of the nonproprietary version by August 4, 1989, and August 9, 1989, respectively. Oral presentations will be limited to issues raised in the briefs. In accordance with 19 CFR 355.38, written views will be considered if received not less than 30 days before the final determination is due or, if a hearing is held, within seven days after the hearing transcript is available.

This determination is published pursuant to section 703(f) of the Act [19 U.S.C. 1671b(f)].

June 14, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89–14790 Filed 6–21–89; 8:45 am]

BILLING CODE 3510–DS–M

The College of William and Mary et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 88–264. *Applicant:* The College of William and Mary in Virginia, Williamsburg, VA 23185. *Instrument:* Atomic Hydrogen Source/RF Generator, model SLEVIN. *Manufacturer:* Leisk Engineering Ltd., United Kingdom. *Intended Use:* See notice at 53 FR 37018, September 23, 1988. *Reasons for This Decision:* The foreign article provides an intense beam of hydrogen atoms.

Docket Number: 88–269. *Applicant:* The Pennsylvania State University, University Park, PA 16802. *Instrument:* Two (2) Crystal Growth Pulling Heads. *Manufacturer:* Crystalox Ltd., United Kingdom. *Intended Use:* See notice at 54 FR 4876, January 31, 1989. *Reasons for This Decision:* The foreign article provides precise automated rotation and translation modes of operation under vacuum.

Docket Number: 89–036. *Applicant:* University of Miami, Coral Gables, FL 33124. *Instrument:* Digital Controllers. *Manufacturer:* GDS Instruments Ltd., United Kingdom. *Intended Use:* See notice at 54 FR 4876, January 31, 1989. *Reasons for This Decision:* The foreign instrument provides precise regulation and measurement of liquid pressure (0–2000 kPa) and liquid volume change.

Docket Number: 89–037. *Applicant:* University of California, Lawrence Livermore National Laboratory, Livermore, CA 94550. *Instrument:* Universal Streak Camera, Model C–2830 with Accessories. *Manufacturer:* Hamamatsu Photonics, Japan. *Intended Use:* See notice at 54 FR 4876, January 31, 1989. *Reasons for This Decision:* The foreign instrument provides a temporal resolution of 2ps.

Docket Number: 89–038. *Applicant:* University of Nevada, Reno, NV 89512. *Instrument:* Time Domain Electromagnetic Ground Conductivity Meter, Model Protem I and II. *Manufacturer:* Geonics Ltd., Canada. *Intended Use:* See notice at 54 FR 4876, January 31, 1989. *Reasons for This Decision:* The foreign instrument provides high resolution shallow depth measurements of the subsurface.

Docket Number: 89–040. *Applicant:* Department of the Interior, U.S. Geological Survey, Menlo Park, CA 94025. *Instrument:* Mass Spectrometer, Model MAT 261. *Manufacturer:* Finnigan MAT, West Germany. *Intended Use:* See notice at 54 FR 4876, January 31, 1989. *Reasons for This Decision:* The foreign instrument provides a multicollector system capable of precise automated measurement of isotopic ratios of Ca, Rb, Sr, Sm, Nd, Pb, and U in both static and dynamic modes.

Docket Number: 89–041. *Applicant:* Franklin and Marshall College, Lancaster, PA 17604–3003. *Instrument:* Thermal Demagnetizer, Model MMTDI. *Manufacturer:* Magnetic Measurements, United Kingdom. *Intended Use:* See notice at 54 FR 4876, January 31, 1989. *Reasons for This Decision:* The foreign article is an ancillary device capable of providing a uniform degaussed magnetic field for the purpose of paleointensity experiments.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The capability of each of the foreign instruments described above is pertinent to each applicant's intended purposes. We know of no instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89–14791 Filed 6–21–89; 8:45 am]

BILLING CODE 3510–DS–M

The Johns Hopkins University et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 89–002. *Applicant:* The Johns Hopkins University, Baltimore, MD 21218. *Instrument:* Rapid Kinetics Instrument, Model SFM 3/PC. *Manufacturer:* Biologic Co., France. *Intended Use:* See notice at 53 FR 46106, November 16, 1988. *Reasons for This Decision:* The foreign instrument provides three independently movable syringes with programmable mixing ratios and multiple quench capability. *Advice Submitted By:* The National Institutes of Health, February 8, 1989.

Docket Number: 89–003. *Applicant:* The Catholic University of America, Washington, DC 20064. *Instrument:* Monochromator, Model 2000 with Accessories. *Manufacturer:* SOPRA, France. *Intended Use:* See notice at 53 FR 46106, November 16, 1988. *Reasons for This Decision:* The foreign instrument provides a 2.0 meter focal length for a resolution of 0.025 cm^{-1}. *Advice Submitted By:* The National Institutes of Health, February 8, 1989.

Docket Number: 89–005. *Applicant:* Florida Department of Business Regulation, Tallahassee, FL 32399–1039. *Instrument:* GC/Mass Spectrometer/DS, Model MAT 90. *Manufacturer:* Finnigan MAT, West Germany. *Intended Use:* See notice at 53 FR 46106, November 16, 1988. *Reasons for This Decision:* The foreign instrument provides: (1) Resolution to 50,000, (2) mass range to 17,500, (3) scan rates to 0.1 second per decade and (4) FAB capability. *Advice Submitted By:* The National Institutes of Health, February 8, 1989.

Docket Number: 89–007. *Applicant:* State University of New York at Albany, Albany, NY 12222. *Instrument:* Cryo-Stop-Flow Spectrofluorimeter, Model SF–41. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Intended Use:* See notice at 53 FR 46106, November 16, 1988. *Reasons for This Decision:* The foreign instrument provides rapid fluorescence measurement with (1) controlled temperature to −100.0 ° C and (2) anaerobic and high pressure handling capabilities. *Advice Submitted By:* The National Institutes of Health, February 8, 1989.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The National Institutes of Health advises that (1) The capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) if knows of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89–14792 Filed 6–21–89; 8:45 am]

BILLING CODE 3510–DS–M

Decision of Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 89–022. *Applicant:* U.S. Department of Commerce, National Institute of Science and Technology, Gaithersburg, MD 20899. *Instrument:* Time-of-Flight Secondary Ion Mass Spectrometer. *Manufacturer:* Kratos Analytical, United Kingdom. *Intended Use:* See notice at 54 FR 3636, January 24, 1989.

Comments: None received. *Decision:* Approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as it is intended to be used, could have been made available to the applicant without excessive delay within the meaning of § 301.5(d)(4) of the regulations at the time the foreign article was ordered (September 30, 1988).

Reasons: Section 301.5(d)(4), of the regulations provides as follows:

Excessive delivery time. Duty-free entry of the instrument shall be considered justified without regard to whether there is being manufactured in the United States an instrument of equivalent scientific value for the intended purposes if excessive delivery time for the domestic instrument would seriously impair the accomplishment of the applicant's intended purposes. * * * In determining whether the differences in delivery times cited by the applicant justifies duty-free entry on the basis of excessive delivery time, the Director shall take into account (A) the normal commercial practice applicable to the production of the general category of instrument involved; (B) the efforts made by the applicant to secure delivery of the instruments (both foreign and domestic) in the shortest possible time; and (C) such other factors as the Director finds relevant under the circumstances of a particular case.

In response to a request for proposal issued by the applicant on August 16, 1988, a domestic manufacturer quoted an instrument with a 12 month delivery schedule. The foreign manufacturer quoted delivery within 90 to 120 days. At the time of order, the foreign article was a standard catalog instrument, several of which had already been constructed, tested, and delivered. The instrument proposed by the domestic manufacturer was to be an adaptation of a related type of instrument, requiring extensive modification to accommodate the applicant's needs. The applicant identified important research commitments (requiring usable data by the end of FY 1989 in September, 1989) that would have been adversely affected by a delivery later than that quoted by the foreign supplier.

The National Institutes of Health in its memorandum dated February 8, 1989, advised that obtaining an instrument with guaranteed performance specifications with a 3 to 4 month delivery was a pertinent consideration.

Accordingly, we find that the domestic manufacturer's inability to deliver a comparable instrument within the time required by the applicant's project requirements amounts to "excessive delivery" within the meaning of § 301.5(d)(4). A delay of up to 8 months would have seriously impaired the accomplishment of the applicant's purposes.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89–14793 Filed 6–21–89; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The New England Fishery Management Council will meet on June 28–29, 1989, at the Colonial Hilton Inn, Routes 128/95, Wakefield, MA. The Council will meet on June 28 at 10 a.m., and will adjourn at approximately 5 p.m.

The meeting will reconvene on June 29 at 9 a.m., and will adjourn when the agenda items have been completed.

On the first day, discussions will include reports from the Groundfish, Scallop, and Large Pelagics Oversight Committees. There also will be updates on lobster, and surf clams/ocean quahogs, as well as reports on government support programs, and the Council's conservation engineering program. On the second day, discussions will include the Magnuson Fishery Conservation and Management Act reauthorization, the National Marine Fisheries Service's marine mammal exemption program, and Committee reports on habitat, herring, enforcement, and user fees. Also on the second day will be a discussion and a final vote on the Atlantic States Marine Fisheries Commission's Bluefish Plan, and an overview of the Canadian enforcement system.

For more information contact Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906; telephone: (617) 231–0422.

Date: June 16, 1989.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–14832 Filed 6–21–89; 8:45 am]

BILLING CODE 3510–22–M

North Pacific Fishery Management Council; Addition of Meeting Agenda Item

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

An item has been added to the agenda which was previously published in the **Federal Register** (54 FR 23680) for the North Pacific Fishery Management Council's public meeting in Anchorage, AK, on June 20–23, 1989. In addition, the council will consider an emergency action to provide for additional Pacific cod total allowable catch in the Western Gulf of Alaska.

For more information contact Steve Davis, Deputy Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271–2809.

Date: June 16, 1989.

David S. Crestin,

Acting Director, Office of Fisheries Conservation, and Management National Marine Fisheries Service.

[FR Doc. 89–14833 Filed 6–21–89; 8:45 am]

BILLING CODE 3510–22–M

COPYRIGHT ROYALTY TRIBUNAL

[CRT Docket No. 89–5–CRA]

Adjustment of Cable Royalty Rates

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice.

SUMMARY: The Tribunal has received a petition from the National Cable Television Association (NCTA) requesting the Tribunal to eliminate the syndicated exclusivity surcharge on the cable royalty rates paid by cable systems, and to reduce both the basic and 3.75% rates paid by cable systems. NCTA has petitioned the Tribunal in response to action taken by the FCC reinstituting its syndicated exclusivity blackout rules. The Tribunal is requesting comment on NCTA's petition. The Tribunal has decided to set the period for commenting on NCTA's petition at the same time as the period for commenting on the previously noticed CATA petition.

DATE: Comments on both NCTA's and CATA's petition are due August 1, 1989.

ADDRESS: An original and five copies of the comment should be addressed to: Chairman, Copyright Royalty Tribunal, 1111 20th Street, NW., Suite 450, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Robert Cassler, General Counsel, Copyright Royalty Tribunal, 11111 20th Street, NW., Suite 450, Washington, DC 20036, (202) 653–5175.

SUPPLEMENTARY INFORMATION: On June 15, 1989, the National Cable Television Association, Inc. (NCTA), a trade association which represents cable television owners and operators in the United States, filed a petition with the Copyright Royalty Tribunal. The petition asks the Tribunal to initiate a cable royalty rate adjustment proceeding to: Eliminate the syndicated exclusivity surcharge which some cable operators pay in addition to their basic royalty rate, reduce the basic rate paid by cable systems grossing more than $292,000 per half year, and reduce the 3.75% rate which those same cable systems pay for distant television signals newly-permitted to be imported after June 24, 1981.

The reason for eliminating the syndicated exclusivity surcharge given by NCTA is the since the Tribunal instituted the syndicated exclusivity surcharges to adjust for the loss of blackout protection for copyright owners tha occurred when the FCC deleted its syndicated program exclusivity protection rules, there is no longer any need for the surcharge now that the FCC has reinstituted those rules.

The reason for reducing the basic rate given by NCTA is that the new blackout rules are more extensive than the old ones. They apply with equal effect to systems lying within the second fifty television markets as well as to systems lying within the first fifty television markets, and they apply with equal effect to those systems lying outside of the top 100 television markets as well as to those systems lying within the top 100 television markets.

The reason given for reducing the 3.75% rate is that at the time the Tribunal adopted that rate it was for signals that were not subject to syndicated exclusivity blackout requests. Now that they will be subject to those requests, NCTA argues that a downward adjustment in the rate is warranted.

NCTA has also asked the Tribunal to establish a bifurcated proceeding. The first part of the proceeding would be a consideration of the elimination of the syndicated exclusivity surcharge, which NCTA believes would be relative simpler to elevate. The second part of the proceeding would be the consideration of the reduction of the basic and 3.75% rates, which NCTA believes would involve a more complex proceeding. NCTA's stated concern is to resolve the issue of the syndicated exclusivity surcharge before January 1, 1990 when the FCC rules become operational.

Prior to receiving NCTA's petition, the Tribunal received a petition from Community Antenna Television Association (CATA) which requested elimination of the syndicate exclusivity surcharge. The Tribunal published notice of CATA's petition in the **Federal Register** on June 9, 1989. 54 FR 24733. In that notice the Tribunal asked for comments on the petition and on nine questions which the Tribunal posed. Comments on CATA's petition were due July 24, 1989.

NCTA has requested that the Tribunal extend the deadline for comments on the CATA petition to August 1, 1989, and that the comments due on that date address not only the CATA petition, but the NCTA petition as well.

The Tribunal agrees with NCTA's procedural requests. The comment period for both the CATA petition and the NCTA petition will be August 1, 1989. Commenters may file one comment, but they should indicate clearly which petition they are addressing.

Concerning NCTA's petition, the Tribunal seeks comments on the same nine questions posed in the notice concerning CATA's petition. See, 54 FR

24734 (June 9, 1989). In addition, the Tribunal poses these additional questions:

1. Should NCTA's petition be consolidated with CATA's petition?
2. Should NCTA's request for a bifurcated proceding be granted?
3. Would a bifurcated proceeding pose any difficulty concerning the Tribunal's statutory requirement to complete its proceedings within one year of commencement?
4. Could the Tribunal have two "clocks" running in a bifurcated proceeding with regard to the one-year statutory deadline, one clock for the syndicated exclusivity surcharge, and the other for the basic and 3.74% rate?

Copies of CATA's petition, NCTA petition, and the Tribunal's Federal Register notice of June 9, 1989 are on file with the Tribunal and are available from the Tribunal upon request.

Edward W. Ray,
Chairman.
Dated: June 16, 1989.

[FR Doc. 89-14718 Filed 6-21-89; 8:45 am]
BILLING CODE 1410-09-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form and Applicable OMB Control Number: NROTC Applicant Questionnaire, Naval Reserve Officers Training Corps Scholarship Program; NAVCRUIT 1131/6; OMB CONTROL No. 0703-0028

Type of Request: Reinstatement

Average Burden Hours/Minutes per Response: .33 hours

Frequency of Response: Situation

Number of Respondents: 1 response per respondent

Annual Burden Hours: 13,300

Annual Responses: 40,000

Needs and Uses: An assessment of an Individual's basic eligibility for the NROTC Scholarship Program is necessary for the initial screening of prospective applicants. In order to pre-screen applicants it is necessary to have information concerning date of birth, citizenship, high school graduation date, etc. Address and phone number are needed to contact those individuals who are eligible and to inform those who are not. Information is provided to the individual who wishes to apply for for Four-Year NROTC Scholarship Program. The information gathered is used by Headquarters, Navy Recruiting Command to determine basic eligibility. Without this information, this could not be accomplished.

Affected Public: Individuals (potential applicants for NROTC scholarships)

Frequency: Annually

Respondent's Obligation: Required to assess eligibility

OMB Desk Officer: Dr. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DE 20503.

DOD Clearance officer: Ms. Pearl Rascoe-Harrison. Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
June 16, 1989.

[FR Doc. 89-14749 Filed 6-21-89; 8:45 am]
BILLING CODE 3810-01-M

Membership of the Performance Review Board, Office of the Inspector General

AGENCY: Office of the Inspector General, Department of Defense, (OIG, DOD).

ACTION: Notice of membership to the Performance Review Board.

SUMMARY: This notice announces the appointment of the members of the Performance Review Board (PRB) for the OIG, DOD as required by 5 U.S.C. 4314(c)(4). The PRB provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance and performance awards to the Inspector General.

EFFECTIVE DATE: July 1, 1989.

FOR FURTHER INFORMATION CONTACT: Ms. Dona Seracino, Chief, Management-Employee Relations and Development Division, Personnel and Security Directorate, Office of the Assistant Inspector General for Administration and Information Management, OIG, DOD, 400 Army Navy Drive, Arlington, VA, (202) 693-0257.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the appointed members of the PRB for the OIG, DOD are identified in the enclosures. They will serve a one year renewable term effective July 1, 1989.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
June 16, 1989.

1989 Performance Review Board, Office of the Inspector General, Department of Defense

Derek J. Vander Schaaf—Deputy Inspector General, OIG, DOD.
Nancy L. Butler—Director, Financial, Manpower & Security Assistance Programs, OAIG-AUD, DOD.
David A. Brickman—Director, Acquisition Support Programs, OAIG-AUD, DOD.
Stephen A. Whitlock—Assistant Inspector General for Special Programs, OIG, DOD.
Terry L. Brendlinger—Director, Contract Audit Programs, OAIG-AUD, DOD.
Katherine A. Brittin—Deputy Assistant Inspector General For Inspections, OAIG-INS, DOD.
Donald Mancuso—Assistant Inspector General for Investigations, OIG, DOD.
Nicholas T. Lutsch—Assistant Inspector General for Administration and Information Management, OIG, DOD.
Morris B. Silverstein—Assistant Inspector General For Criminal Investigations Policy & Oversight, OIG, DOD.
Paul A. Adams—Inspector General, Department of Housing and Urban Development.
Rosslyn S. Kleeman—Director, Federal Workforce, Future Issues, General Accounting Office.
Howard C. Robbins, Jr.—Associate Administrator for Management, National Aeronautics and Space Administration.
John C. Layton—Inspector General, Department of Energy.

[FR Doc. 89-14806 Filed 6-21-89; 8:45 am]
BILLING CODE 3810-01-M

Office of the Secretary

AGENCY: Defense Intelligence Agency Advisory Board.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Pub. L. 92-463, as amended by section 5 of Pub. L. 94-409, notice is hereby given that a closed meeting of the DIA Advisory Board has been scheduled as follows:

DATES: 12-13 September 1989, 9:00 a.m. to 5:00 p.m. each day.

ADDRESS: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John E. Hatlelid, USAF, Executive Secretary, DIA Advisory Board, Washington, DC 20340 (202/373-4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA on related scientific and technical intelligence matters.

Linda M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
June 16, 1989.

[FR Doc. 89-14807 Filed 6-21-89; 8:45 am]
BILLING CODE 3810-01-M

Department of the Navy

Finding of No Significant Impact for Proposed Operation of the Navy Electromagnetic Pulse Radiation Environment Simulator for Ships

Pursuant to the Council on Environmental Quality regulations (40 CFR Parts 1500-1508) implementing the procedural provisions of the National Environmental Policy Act (NEPA), the Department of the Navy gives notice that an Environmental Assessment (EA) has been prepared and that an Environmental Impact Statement is not being prepared for the proposed operation of the Navy Electromagnetic Pulse Radiation Environment Simulator for Ships (EMPRESS II) in an underway station-keeping configuration in the Atlantic Ocean (Virginia Capes Operating Area).

EMPRESS II is an Electromagnetic Pulse (EMP) simulator for testing U.S. Navy ships to assure that their ability to carry out their assigned missions will not be compromised as a result of exposure to EMP. EMP is a brief intense burst of electromagnetic energy of the kind that would be generated by a nuclear explosion. EMP from a high-altitude detonation is able to penetrate unprotected ships and upset or damage critical electronic systems from great distances. EMPRESS II only simulates the EMP output of a nuclear detonation, the other phenomena, i.e., blast energy, heat, and ionizing radiation, are not simulated by the test facility.

EMPRESS II is a transportable, barge-mounted, ocean-capable EMP simulator that is an essential element in identifying electronic systems that are vulnerable to EMP and in validating those systems for which EMP protection has been provided.

EMPRESS II has been operating periodically at a single-point moor at Latitude 36°28'00"N, Longitude 75°32'30"W following the completion of a Final Environmental Impact Statement (EIS) in April 1988 and a Record of Decision (ROD) issued on 27 May 1988.

The proposed action addressed in this EA is to operate EMPRESS II in both a single-point moor and an underway station-keeping configuration which is accomplished by towing the EMPRESS II vessel on a prescribed course wtihin the confines of a designated area while the ship under test maintains distance and aspect by maneuvering. Operating periods are anticipated to require up to approximately 10 hours a day for no more than 60 days a year during the months of June, July, and August.

From an operational viewpoint, the underway station-keeping configuration is clearly more desirable for testing than the single-point moor method of testing. The forward motion associated with the station-keeping configuration decreases the influence that wind and water forces may have on the ship allowing the ship's officers to more precisely maintain the ship in a position relative to the EMPRESS II vessel. This method of testing would provide for greater stability of both the EMPRESS II facility and the ship under test. It would allow operations in heavier sea states and permit more precise positioning of the ship under test, thus, a greater percentage of the pulses would result in usable data. This in turn would extend the intervals between EMPRESS II facility system refurbishment and reduce the cost of ship testing.

The operating area is rectangular in shape and is located in international waters approximately 20 nautical miles off the coast of North Carolina within warning area 72A. It lies in a region called the Virginia Capes Operating Area (VACAPES OPAREA). The proposed EMPRESS II operating area is specified by the latitude and longitude of its four corners:

Latitude	Longitude	VACAPES OPAREA Designation
36°30'00" N	75°30'00" W	Surface area 21A, 21B.
36°30'00" N	75°00'00" W	
36°15'00" N	75°30'00" W	
36°15'00" N	75°00'00" W	

This area is 15 nautical miles by 25 nautical miles and is located approximately 5 nautical miles farther from the North Carolina coastline than the current site.

During the EMPRESS II testing operations, a surface exclusion zone, two nautical miles in radius, will be established to ensure that electronic equipment aboard surface craft that are not a part of the EMPRESS II testing will not be subjected to potentially damaging EMP levels. This exclusion zone would move with the EMPRESS II as the operations are conducted along a prescribed course within the area. The surface exclusion zone equates to an area of 12.6 square nautical miles of water that will be restricted from general use during operations. The Fleet Area Control and Surveillance Facility (FACSFAC) maintains control of the surface waters in the proposed operating area.

In order to insure that damage will not occur to aviation electronics, an aircraft exclusion zone will be established from the surface to an altitude of 6000 feet over a two nautical mile radius area. However, administration of the air exclusion zone necessitates the restriction would apply over the full extent of the proposed operating area. Above 6000 feet, the energy from EMPRESS II would be too small to affect aviation electronics. The aircraft exclusion zone equates to a region 15 nautical miles by 25 nautical miles that will be restricted from general aviation use during operations.

FACSFAC maintains advisory control of the airspace in the proposed operating area.

Notification of the EMPRESS II testing schedule will be published in advance, as required by law. Procedural measures will preclude EMPRESS II operations should surface vessels or aircraft inadvertently enter the zones. Much of the area in and around that to be used for EMPRESS II operations has historically been restricted for military use and other potential users are aware of and respect the operational restrictions when imposed.

The following alternatives to the proposed action have been evaluated and rejected: (1) *No Action*—No action would result in the continuation of EMPRESS II operations at the single-point moor site as presently approved. Testing would be accomplished with more difficulty and at greater expense of both funds and time requiring more pulses be generated. (2) *Other Sites*—Other VACAPES sites were considered but they failed to meet critical siting

criteria, i.e., they may have: (a) Been prohibitively far from acceptable EMPRESS II berthing sites, Navy ships, and facilities; (b) water depths too deep to allow anchoring or too shallow to allow maneuvering of deep draft ships; (c) high densities of marine biota and therefore more commercial and recreational fishing activity; (d) higher densities of shipping, boating, and aviation in close proximity; (e) obstructions such as oil platforms, or Tactical Aircraft Training System (TACTS) towers, or; (f) been outside of a military use warning or restricted area.

The collective potential environmental impact of the proposed EMPRESS II action is determined to be minor. The potential environmental consequences associated with the proposed action (underway station-keeping and anchored configuration) have been considered with the knowledge gained to date from EMP related literature research, environmental experimentation, EMP simulation experience in general and specific experience gained from operating EMPRESS II at the single-point moor site. In connection with the EMPRESS II environmental assessment process, tests and observations have been conducted on a variety of plankton, shellfish, finfish, turtles, and birds over a 48-month period to determine if EMP has an effect on marine biota. In addition, the Navy distributed a letter, to interested and potentially affected parties on march 15, 1989, delineating the proposed action and soliciting comments, questions, and identification of topics of concern to be addressed in the EA.

Scientific evidence and analyses have indicated that field strengths of 100 kV/m will not affect human health. The limit for exposure to EMP which is generally accepted throughout industry is 100 kV/m. This limit has been adopted by the military services. This field strength would be exceeded only within 50 meters from the center of the EMPRESS II barge when the facility is operating at maximum intensity. EMPRESS II has been designed and is operated such that there will be no human exposure to fields in excess of 100 kV/m.

The testing program addressed the concerns of potential significant short and long-term effects on marine biota while developing a foundational database should mitigation be considered necessary. The elements of this program were designed by the University of Maryland and tempered by considerations provided through a series of Technical Information Exchange Meetings involving Federal and state environmental regulatory agencies. The experiments exposed, for extended periods of time, marine biota to an EMP pulse equivalent to that which would be experienced within 25 meters of the center of the barge. The experiments were intentionally designed to expose the biota to higher field strengths, and for longer periods of time, than they would normally be subjected to by EMPRESS II while in their natural environment.

After four years of testing by independent researchers, in the laboratories and in actual field conditions, no evidence has been found to indicate that EMP adversely affects the environment. That notwithstanding, the Navy implemented an additional field observation program during the summer 1988 operations. This program consisted of two basic elements:

Part 1: Observations of marine biota before, during, and following EMPRESS II operations with documentation of any effects.

Part 2: Monitoring the EMPRESS II generated electromagnetic field ashore.

The field observation program measurements taken at Corolla, Barco, and Currituck, North Carolina indicate that EMPRESS II electromagnetic field levels are sufficiently dissipated over the fifteen miles between the operational site and shore so as not to have an effect on anything on the coast. As a direct consequence of this finding and because the proposed operating area lies farther from the coast, only Part 1 of the program will continue in the future.

The Environmental Assessment for this action indicates that operating EMPRESS II in an underway station-keeping configuration within the confines of the designated operating area will not cause significant impacts on the environment.

The Environmental Assessment prepared by the Navy addressing this action is on file at the point of origin and may be reviewed by contacting: Program Manager, PMS–423, Naval Sea Systems Command, Washington, DC 20362–5101 (Attn: LT James Rose, Code 4232E), telephone (202) 746–1386. Additionally, a limited number of copies are available to fill single-copy requests.

A final decision by the Navy on this Finding of No Significant Impact will occur in 30 days from the **Federal Register** publication date. The public is invited to submit comments on the proposed action to the address given above prior to end of this period.

Date: June 15, 1989.

Thomas J. Peeling,

Special Advisor for Environmental Planning, Deputy Chief of Naval Operations (Logistics).

June 19, 1989.

[FR Doc. 89–14836 Filed 6–21–89; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Research Advisory Committee Panel on Determining the Impact of Directed Energy Weapons on Navy Warfare Mission Areas will meet on July 17–18, 1989. The meeting will be held at the Center for Naval Analyses, 4401 Ford Avenue, Alexandria, Virginia. The meeting will commence at 8:00 a.m. and terminate at 5:00 p.m. on July 17; and commence at 8:30 a.m. and terminate at 3:30 p.m. on July 18, 1989. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide briefings for the panel members related to the impact of Directed Energy Weapons on Navy warfare mission areas. The agenda will include briefings and discussions on the tactical and strategic directed energy threat, technology assessment and program overviews. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive Order. The classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c) (1) of Title 8, United States Code.

For further information concerning this meeting contact: Commander L. W. Snyder, U.S. Navy, Office of Naval Research, 800 North Quincy Street, Arlington,VA 22217–5000, Telephone Number: (202) 696–4488.

Dated: June 19, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89–14837 Filed 6–21–89; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Qualified Products Identification.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb, Office of Federal Acquisition and Regulatory Policy, (202) 523–3847.

SUPPLEMENTARY INFORMATION: a. *Purpose:* Under the Qualified Products Program, an end item, or a component thereof, may be required to be prequalified when any of the following conditions apply:

a. The time required to test the item for conformance to the specification exceeds 30 days (720 hours).

b. The tests would require equipment not commonly available.

c. The items are emergency lifesaving or survival equipment.

The contracting officer uses the information to determine eligibility for award when the clause at 52.209–1 is included in the solicitation. The offeror must insert the item name and test number to prove that the item offered is prequalified. Alternatively, items not yet listed may be considered for award upon the submission of evidence of qualification with the offer.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, *2,700;* responses per respondent, *10;* total annual responses, *27,000;* hours per response, *.17;* and total response burden hours, *4,590.*

Obtaining Copies of Proposals

Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0020, Qualified Products Identification.

Dated: June 16, 1989.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 89–14755 Filed 6–21–89; 8:45 am]

BILLING CODE 6820-JC-M

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a revision of a currently approved information collection requirement concerning SF 294, Summary Subcontract Report.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, Room 3201, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Victoria Moss, Office of Federal Acquisition and Regulatory Policy, (202) 523–5168.

SUPPLEMENTARY INFORMATION: a. *Purpose:* In accordance with the Small Business Act (15 U.S.C. 631, *et seq.*) contractors receiving a contract for more than $10,000 agree to have small and small disadvantaged business concerns participate in the performance of the contract as far as practicable. Contractors receiving a contract or a modification to a contract expected to exceed $500,000 ($1,000,000 for construction) must submit a subcontracting plan that provides maximum practicable opportunities for small and small disadvantaged business concerns. Specific elements required to be included in the plan are specified in section 8(d) of the Small Business Act and are implemented in FAR 19.7.

In conjunction with these plans, contractors must submit reports of their progress on SF 295, Summary Subcontract Report.

Information submitted on SF 295 is used to assess contractor's compliance with their subcontracting plans.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, *1,542;* responses per respondent, *3.61;* total annual responses, *5,568;* preparation hours per response, *16.21;* and total response burden hours, *90,282.*

c. *Annual recordkeeping burden:* The annual recordkeepiong burden is estimated as follows: Recordkeepers, *1,542;* hours per recordkeeper, *13.6;* and total recordkeeping burden hours, *20,971.*

Obtaining Copies of Proposals

Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0007, SF 295, Summary Subcontract Report.

Dated: June 16, 1989.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 89–14756 Filed 6–21–89; 8:45 am]

BILLING CODE 6820-JC-M

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Certification of Independent Price Determination and Parent Company and Identifying Data.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

BEST COPY AVAILABLE

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb, Office of Federal Acquisition and Regulatory Policy, (202) 523–3847.

SUPPLEMENTARY INFORMATION: a. *Purpose*: Agencies are required to report under 41 U.S.C. 252(d) and 10 U.S.C. 2305(d) suspected violations of the antitrust laws (e.g. collusive bidding, identical bids, uniform estimating systems, etc.) to the Attorney General. As a first step in assuring the Government contracts are not awarded to firms violating such laws, offerors on Government contracts must complete the certificate of independent price determination. An offer will not be considered for award where the certificate has been deleted or modified. Deletions or modifications of the certificate and suspected false certificates are reported to the Attorney General.

b. *Annual reporting burden*: The annual reporting burden is estimated as follows: Respondents, *64,250*; responses per respondent, *20*; total annual responses, *1,285,000*; hours per response, *.02*; and total response burden hours, *25,700*.

Obtaining Copies of Proposals

Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0018, Certification of Independent Price Determination and Parent Company and Identifying Data.

Dated: June 16, 1989.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 89–14757 Filed 6–21–89; 8:45 am]

BILLING CODE 6820–JC–M

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. John O'Neill, Office of Federal Acquisition and Regualtory Policy, (202) 523–3856.

SUPPLEMENTARY INFORMATION: a. *Purpose:* As a result of the Department of Commerce (DOC) publishing a final rule in the **Federal Register** implementing Pub. L. 98–620 (52 FR 8552, March 18, 1987), a revision to FAR Subpart 27.3 to implement the DOC regulation in the FAR was published in the **Federal Register** as an interim rule on June 12, 1989 (54 FR 25060).

A Government contractor must report all subject inventions to the contracting officer, submit a disclosure of the invention, and identify any publication, or sale, or public use of the invention (52.227–11(c); 52.228–12(c) and 52.227–13(e)(2)). Contractors are required to submit periodic or interim and final reports listing subject inventions (27.303(a)(2); 27.304–1(e)(1)(i) and (ii); 27.304–1(e)(2)(i) and (ii); 52.227–12(f)(7); 52.227–14(e)(3). In order to ensure that subject inventions are reported, the contractor is required to establish and maintain effective procedures for identifying and disclosing subject inventions (52.228–11, Alternate IV; 52.227–12(f)(5); 52.227–13(e)(1). In addition, the contractor must require his employees, by written agreements, to disclose subject inventions (52.227–11(f)(2); 52.227–12(f)(2); 52.227–13(e)(4). The contractor also has an obligation to utilized the subject invention, and agree eto report, upon request, the utilization or efforts to utilize the subject invention (27.302(e); 52.227–11(h); 52.227–12(h).

b. *Annual reporting burden.* The annual reporting burden is estimated as follows: Respondents, *1,200*; responses per respondent, *9.75*; total annual responses, *11,700*; hours per response, *3.9*; and total response burden hours, *45,630*.

Obtaining Copies of Proposals

Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0095, Commerce Patent Regulations.

Dated: June 16, 1989.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 89–14758 Filed 6–21–89; 8:45 am]

BILLING CODE 6820–JC–M

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Statement of Contingent or other Fees (representation and agreement) SF 119.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb, Office of Federal Acquisition and Regulatory Policy, (202) 523–3847.

SUPPLEMENTARY INFORMATION: a. *Purpose:* Contractor's arrangements to pay contingent fees for soliciting or obtaining Government contracts have long been considered contrary to public policy because such arrangements may lead to attempted or actual exercise of improper influence. By way of this representation prospective contractors are required to state whether or not they have used such an arrangement to obtain the contract.

The information is used by Government Contracting Officers to determine the appropriateness of awarding a contract to the submitting firm.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, *65,500*; responses per respondent, *20* total annual responses *1,310,000*; hours per response, *.0041*; and total response burden hours, *5,371*.

Obtaining Copies of Proposals

Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0003, Statement of Contingent or other Fees (SF 119).

Dated: June 16, 1989.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 89–14759 Filed 6–21–89; 8:45 am]

BILLING CODE 6820–JC–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CI89–428–000 et al.]

Union Texas Natural Gas Marketing Co. et al.; Applications for Blanket Certificates With Pregranted Abandonment [1]

June 15, 1989.

Take notice that each Applicant listed herein has filed an application pursuant to Section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for a blanket certificate with pregranted abandonment authorization for an unlimited term, all as more fully set forth in the applications which are on file with the Commission and open for public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before July 6, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

Docket No.	Date filed	Applicant
CI89–428–000	5–31–89	Union Texas Natural Gas Marketing Company, 1330 Post Oak Boulevard, 12th Floor, Houston, Texas 77056.
CI89–455–000 [1]	6–8–89	CMEX Energy, Inc., 17101 Preston Road, Suite 240, Dallas, Texas 75248.

[1] Applicant also requests authorization to resell gas purchased from interstate pipelines making sales of surplus gas on an interruptible basis.

[FR Doc. 89–14777 Filed 6–21–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP89–1616–000 et al.]

United Gas Pipe Line Company et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. United Gas Pipe Line Co.

[Docket No. CP89–1616–000]

June 14, 1989.

Take notice that on June 13, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP89–1616–000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to provide a transportation service for OXY USA, Inc. (OXY), a producer of natural gas, under United's blanket certificate issued in Docket No. CP88–6–000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to transport, on an interruptible basis, up to 1,030 MMBtu of natural gas equivalent per day for OXY pursuant to a transportation agreement dated January 6, 1989, between United and OXY. United would receive natural gas at various receipt points in Louisiana and redeliver equivalent volumes of gas, less fuel and company used gas, at a delivery point in Louisiana.

United further states that the estimated average daily and annual quantities would be 1,030 MMBtu and 375,950 MMBtu, respectively. Service under § 284.223(a) commenced April 1, 1989, as reported in Docket No. ST89–3778–000, it is stated.

Comment date: July 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Trunkline Gas Co.

[Docket No. CP89–1597–000]

June 15, 1989.

Take notice that on June 9, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP89–1597–000 a request pursuant to § 157.205 of the Commission's Regulations (18 CFR 157.205) for authorization to transport natural gas on behalf of PSI, Inc. (PSI), a marketer of natural gas, under Trunkline's blanket certificate issued in Docket No. CP86–586–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Trunkline proposes to transport, on an interruptible basis, up to 100,000 dt equivalent of natural gas on a peak day for PSI, 50,000 dt equivalent on an average day and 18,250,000 dt equivalent on an annual basis. It is stated that Trunkline would receive the gas for PSI's account at various designated points on Trunkline's system and would deliver equivalent volumes of gas, less fuel and unaccounted for line loss, to Southern Natural Gas Company in St. Mary Parish, Louisiana. It is asserted that the transportation service would be effected using existing facilities and that no construction of additional facilities would be required. It is explained that the transportation service commenced April 19, 1989, under the self-implementing authorization of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89–3463.

Comment date: July 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Northern Natural Gas Co., a Division of Enron Corporation

[Docket No. CP89–1596–000]

June 15, 1989.

Take notice that on May 17, 1989, Northern Natural Gas Company, a Division of Enron Corporation (Northern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP89–1596–000 a request pursuant to

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

§§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide transportation for Horizon Gas Company (Horizon), a marketer of natural gas, under Northern's blanket certificate issued in Docket No. CP86–435–000 under section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern states that it proposes to transport, on an interruptible basis, up to 1,650 MMBtu equivalent of natural gas per day for Horizon from various receipt points in Texas and to a delivery point in Wyoming. Northern anticipates transporting 1,238 MMBtu equivalent of natural gas on an average day and 602,250 MMBtu equivalent of natural gas on an annual basis. Northern also states that construction of facilities will not be required to provide the proposed service.

Northern states that the transportation of natural gas for Horizon commenced on April 19, 1989, as reported in Docket No. ST89–3461–000, for a 120-day period pursuant to § 284.223(a)(1) of the Commission's Regulations and the blanket certificate issued to Northern in Docket No. CP86–435–000.

Comment date: July 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Transcontinental Gas Pipe Line Corp.

[Docket No. CP89–1592–000]

June 15, 1989.

Take notice that on June 9, 1989, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP89–1592–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to perform an interruptible transportation service for PSI, Incl. (PSI) under Transco's blanket certificate issued in Docket No. CP88–328–000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Transco states that pursuant to a service agreement dated February 1, 1989, it proposes to receive up to 50,000 dt equivalent of natural gas per day or additional volumes if Transco has satisfied any pending requests for service under Rate Schedule IT, from PSI at specified receipt points located in the Matagorda Island Area, Offshore Texas and redeliver the gas at specified redelivery points located in the Brazos Area, Offshore Texas. Transco states that the peak day and average day volumes would be 50,000 dt equivalent of natural gas and that the annual volumes would be 36,500,000 dt equivalent of natural gas. It is stated that on May 1, 1989, Transco initiated a 120-day transportation service for PSI under § 284.223(a) as reported in Docket No. ST 89–3743–000.

Transco further states that no facilities need be constructed to implement the service. Transco states that the service would continue on a month to month basis unless terminated on 30 days written notice. Transco proposes to charge rates and abide by the terms and conditions of its Rate Schedule IT.

Comment date: July 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. K N Energy, Inc.

[Docket No. CP89–1590–000]

June 15, 1989.

Take notice that on June 9, 1989, K N Energy, Inc. (Applicant), P.O. Box 15265, Lakewood, Colorado, 80215, filed in Docket No. CP89–1590–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 205) for authorization to construct and operate five sales taps for delivery of gas to end users under Applicant's blanket certificate issued in Docket No. CP83–140–000, CP83–140–001 and CP83–140–002 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in request which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate five sales taps along its jurisdictional pipeline in the states of Kansas, Nebraska and Wyoming. Applicant states that the gas would be used for irrigation and domestic purposes with maximum daily and annual volumes of 34 Mcf and 1350 Mcf, respectively.

Applicant asserts that the proposed sales taps are not prohibited by any of its existing tariffs and that the additional taps will have no significant impact on Applicant's peak day and annual deliveries.

Comment date: July 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Western Gas Interstate Co.

[Docket No. CP89–1489–000]

June 15, 1989.

Take notice that on May 22, 1989, Western Gas Interstate Company (Western), 9390 Research Blvd., Kaleido I, Austin, Texas 78759, filed in Docket No. CP89–1489–000 an application pursuant to section 7(c) of the Natural Gas Act and § 284.221 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing the transportation of natural gas and pre-granted abandonment authorization to abandon self-implementing transportation services and sales services where its sales customers elect to convert sales entitlements to transportation services, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Western states the authorization requested in this blanket open-access transportation certificate is being filed concurrently with applications to institute two new contract demand firm sales services and a section 4(e) general rate filing. Western requests authorization to provide firm and interruptible transportation services for shippers on a nondiscriminatory basis under proposed Rate Schedules FT–N, FT–S, IT–N and IT–S, respectively. Western requests acceptance and approval of the new proposed Rate Schedules FT–N, FT–S, IT–N and IT–S along with new proposed General Terms and Conditions. Western states that the transportation rate schedules proposed herein incorporate the Commission's open-access provisions and comply with all sections of the Commission's Regulations and requirements set forth in Order Nos. 436/500. Western indicates that the transportation and sales rates proposed under these rate schedules would ultimately be established in Western's concurrently filed section 4(e) rate proceeding. Further, Western states that it would comply with the conditions in paragraph (c) of § 284.221.

Western requests pregranted abandonment authorization for firm sales entitlements that its customers elect to convert to firm transportation services pursuant to the terms of Western's FERC Gas Tariff proposed herein. Also, Western proposes certain changes to the General Terms and Conditions of its tariff establishing scheduling and curtailment priorities for firm and interruptible transportation.

Comment date: July 6, 1989, in accordance with Standard Paragraph F at the end of this notice.

7. Western Gas Interstate Co.

[Docket No. CP89–1488–000]

June 15, 1989.

Take notice that on May 22, 1989, Western Gas Interstate Company (Western), 9390 Research Blvd., Kaleido I, Austin, Texas 78759, filed in Docket No. CP89–1488–000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for permission and approval to abandon certain sales services authorized under Rate Schedules G–N and G–S and for a certificate of public convenience and necessity authorizing sales of natural gas on a firm contract demand basis under new Rate Schedules CD–N and CD–S, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Western proposes to abandon sales of natural gas to Southern Union Gas Company (Southern) and Gas Company of New Mexico (New Mexico) currently authorized under Rate Schedules G–N and G–S. Western proposes to replace Rate Schedules G–N and G–S by making firm sales of gas for resale in its Northern Division under a new Rate Schedule CD–N and in its Southern Division under Rate Schedule CD–S. Western states that if a blanket certificate is issued as concurrently requested, in Docket No. CP89–1489–000, the current sales services rendered under its Rate Schedules G–N and G–S would jeopardize Western's financial and operational viability. Western states that the rates for service under CD–N and CD–S reflect that purchasers would pay a three part rate consisting of a D–1 demand charge, a D–2 demand charge and a commodity charge.

Comment date: July 6, 1989, in accordance with Standard Paragraph F at the end of the notice.

8. Colorado Interstate Gas Co.

[Docket No. CP89–1622–000]

June 15, 1989.

Take notice that on June 13, 1989, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP89–1622–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of Santa Fe Minerals, a division of Santa Fe International Corporation (Santa Fe Minerals), a producer, under CIG's blanket certificate issued in Docket No. CP89–589, *et al.*, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request of file with the Commission and open to public inspection.

CIG proposes to transport up to 6,000 Mcf per day (plus any additional volumes accepted pursuant to the overrun provisions of CIG's Rate Schedule TI–1, or any effective superseding rate schedule on file with the Commission) for Santa Fe Minerals pursuant to a transportation agreement dated April 3, 1989, between CIG and Santa Fe Minerals. CIG would receive gas from an existing point of receipt on its system in Kansas, and redeliver the subject gas, less fuel gas and lost and unaccounted-for gas, for the account of, Santa Fe Minerals in Kearny County, Kansas.

CIG further states that the estimated average daily and annual quantities would be 3,000 Mcf and 1,095 Mcf, respectively. Service under § 284.233(a) commenced on April 6, 1989, as reported in Docket No. ST89–3126–000, it is stated.

Comment date: July 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. United Gas Pipe Line Co.

[Docket No. CP89–1589–000]

June 16, 1989.

Take notice that on June 8, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP89–1589–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations for authorization to construct and operate a sales tap on behalf of Entex Inc. for resale to an end-user in the Mississippi Gulf Coast Billing Area, under United's blanket certificate issued in Docket No. CP88–430–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that the new sales tap will enable United to supply an estimated average of 11,000 Mcf/d of natural gas to Extex Inc. for resale to one end-user located in Harrison County, Mississippi.

United further states it would construct and operate the proposed sales tap in compliance with 18 CFR Part 157, Subpart F, and that it has sufficient capacity to render the proposed service without detriment or disadvantage to its other existing customers. It is maintained that Entex Inc. would reimburse United for all associated costs.

Comment date: July 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. Northern Natural Gas Co.

[Docket No. CP89–1609–000]

June 16, 1989.

Take notice that on June 12, 1989, Northern Natural Gas Company, Division of Enron Corporation (Northern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP89–1609–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for permission and approval to abandon by reclaim measuring and appurtenant facilities serving 12 end users in the States of Minnesota, Iowa, South Dakota and Texas, under Northern's blanket certificate issued in Docket No. CP82–401–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to abandon the facilities in response to a request from Peoples Natural Gas Company, Division of Utilicorp United, Inc., stating that 12 of their small volume measuring station customers no longer desire natural gas service and wish to have their meters removed.

Comment date: July 31, 1898, in accordance with Standard Paragraph G at the end of this notice.

11. Northwest Pipeline Corp.

[Docket No. CP89–1603–000]

June 16, 1989.

Take notice that on June 12, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta, Way, Salt Lake City, Utah 84108, filed in Docket No CP89–1603–000 a request pursuant to § 157.205 (18 CFR 157.205) of the Commission's Regulations for authorization to transport natural gas on behalf of Northwest Natural Gas Company (Northwest Natural), a local distribution company, under Northwest's blanket certificate issued in Docket No. CP86–578–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest proposes to transport up to 250,000 MMBtu equivalent of natural gas on a peak day for Northwest Natural, 35,000 MMBtu equivalent on an average day and 12,775,00 MMBtu equivalent on an annual basis. It is stated that Northwest would receive the gas for Northwest Natural's account at existing points on Northwest's system in Colorado, Oklahoma, Oregon, Utah, Washington and Wyoming, and that Northwest would deliver equivalent volumes at existing points in Colorado, Idaho, New Mexico, Oklahoma, Utah, Washington and Wyoming. It is explained that the service commenced May 1, 1989, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89–3763.

Comment date: July 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. Southern Natural Gas Co.

[Docket No. CP89-1606-000]

June 16, 1989.

Take notice that on June 12, 1989, Southern Natural Gas Company (Southern) P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP89-1606-000 a request pursuant to §§ 157.205 and 284.223 (18 CFR 157.205 and 284.223) of the Commission's Regulations under the Natural Gas Act for authority to provide interruptible transportation service for Louisiana State Gas Corporation (Louisiana State), an intrastate pipeline, under Southern's blanket transportation certificate which was issued by Commission order on May 5, 1989, in Docket No. CP89-316-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern states that it will receive the gas from various points in, offshore Louisiana and the states of Texas, Louisiana, Mississippi and Alabama for delivery to Atlantic Steel in Fulton and Floyd counties, Georgia.

Southern proposes to transport on an interruptible basis up to 20,000 MMBtu of gas equivalent on a peak day and 10,000 MMBtu on an average day and approximately, 3,650,000 MMBtu of gas annually. Southern states that the transportation service commenced under the 120-day automatic authorization of § 284.223(a) of the Commission's Regulations on April 21, 1989, pursuant to a transportation agreement dated April 3, 1989. Southern notified the Commission of the commencement of the transportation service in Docket No. ST89-3530-000 on March 15, 1989.

Comment date: July 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. Texas Gas Transmission Corp.

[Docket No. CP89-1600-000]

June 16, 1989.

Take notice that on June 12, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-1600-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide interruptible transportation service for Bishop Pipeline Corporation (Bishop Pipeline) under the blanket certificate issued in Docket No. CP88-686-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Gas requests authorization to transport on a peak day up to 50,000 MMBtu of natural gas for Bishop Pipeline, with an estimated average daily quantity of 10,000 MMBtu. On an annual basis, Bishop Pipeline estimates a volume of 3,650,000 MMBtu. Bishop Pipeline has identified the ultimate recipients of the gas as three hopsital complexes.

Transportation service for Bishop Pipeline commenced April 18, 1989, under the 120-day automatic provisions of section 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-3428.

Comment date: July 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

14. Northern Natural Gas Co. Division of Enron Corp.

[Docket No. CP89-1588-000]

June 16, 1989.

Take notice that on June 8, 1989, Northern Natural Gas Company, Division of Enron Corporation, (Northern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP89-1588-000, a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to operate and maintain one (1) existing delivery point and appurtenant facilities for the various end users in and near Rosemount, Minnesota and one (1) existing delivery point and appurtenant facilities for Clausen Koch Corporaton (Clausen Koch) and a residential trailer park in Haskell County, Kansas to facilitate the delivery of sales gas to Peoples Natural Gas Company (Peoples), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern explains that the two delivery points were initially constructed to facilitate a transportation service that was provided to Peoples under section 311(a) of the Natural Gas Policy Act. Northern further explains that the instant proposal is prompted by Peoples' desire to also receive sales service at these delivery points. Northern estimates that the peak day and annual sales deliveries to Rosemount would be 2,064 and 96,300 Mcf, respectively, while such deliveries to Clausen Koch would be 450 and 114,900 Mcf, respectively. Northern states that the sales volumes delivered to Rosemount and Clausen Koch would be served from the existing firm entitlements of Peoples. Accordingly, Northern does not expect the proposal to have an adverse impact on its total peak day and annual deliveries.

Comment date: July 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

15. Texas Gas Transmission Corp.

[Docket No. CP89-1613-000]

June 16, 1989.

Take notice that on June 13, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Ownesboro, Kentucky 42301, filed in Docket No. CP89-1613-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Baltimore Specialty Steels Corporation (Baltimore Steels), under the blanket certificate issued in Docket No. CP88-686-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Gas states that pursuant to a transportation agreement dated January 30, 1989, under its Rate Schedule IT, it proposes to transport up to 3,000 MMBtu per day equivalent of natural gas for Baltimore Steels. Texas Gas states that it would transport the gas from multiple receipt points as shown in Exhibit "B" of the transportation agreement and would deliver the gas to delivery points in Warren County, Ohio, as shown in Exhibit "C" of the agreement.

Texas Gas advises that service under § 284.223(a) commenced May 1, 1989, as reported in Docket No. ST89-3551-000. Texas Gas further advises that it would transport 2,500 MMBtu on an average day and 912,500 MMBtu annually.

Comment date: July 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

15. Northwest Pipeline Corp.

[Docket No. CP89-1605-000]

June 16, 1989.

Take notice that on June 12, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-1605-000 a request pursuant to § 157.205 (18 CFR 157.205) of the Commission's Regulations for authorization to transport natural gas on behalf of Koch Hydrocarbon Company (Koch), a producer of natural gas, under Northwest's blanket certificate issued in Docket No. CP89-578-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest proposes to transport on a daily basis up to 11,000 MMBtu equivalent of natural gas on a peak day for Koch, 5,000 MMBtu equivalent on an average day and 1,825,000 MMBtu equivalent on an annual basis. It is stated that Northwest would receive the gas for Koch's account at existing points on Northwest's system in San Juan County, New Mexico, and Mesa County, Colorado, and that Northwest would deliver equivalent volumes at existing points in New Mexico and Colorado. It is explained that the service commenced April 5, 1989, under the automatic authorization provisions of Section 284.223 of the Commission's Regulations, as reported in Docket No. ST89-3764.

Comment date: July 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

17. Texas Eastern Transmission Corporation

[Docket No. CP89-1572-000]

June 16, 1989.

Take notice that on June 6, 1989, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 2521, Houston, Texas 77252, filed in Docket No. CP89-1572-000 a request for declaratory order with respect to Order No. 490 and an application pursuant to section 7(b) of the Natural Gas Act for an order permitting and approving the partial abandonment of its purchase of gas from United Gas Pipe Line Company (United) under United's Rate Schedule PL-N effective November 1, 1988, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Eastern requests that the Commission issue such declaratory order and abandonment authorization as necessary to reflect the contractual reduction of the Maximum Daily Quantity (MDQ) under the service agreement between Texas Eastern and United under United's Rate Schedule PL-N from the currently authorized MDQ of 400,000 Mcf to 300,000 Mcf effective November 1, 1988. Also, in conjunction with such MDQ reduction, Texas Eastern requests that the applicable D-1 billing determinants, used in part to determine the demand charge, be reduced from 400,000 Mcf to 300,000 Mcf, effective retroactive to November 1, 1988, with interest.

Texas Eastern states that United was authorized to sell gas to Texas Eastern pursuant to the Commission's order issued September 30, 1985, in Docket No. CP85-368-000 and that pursuant to such authorization, United and Texas Eastern entered into a service agreement dated October 28, 1985, and a letter agreement, also dated October 28, 1985. Texas Eastern states that under the service agreement, United is authorized to sell gas to Texas Eastern at interconnections between the systems of Texas Eastern and United near Kosciusko, Mississippi; West Monroe, Ouachita Parish, Louisiana; Longview, Gregg County, Texas, and at six secondary delivery points.

Texas Eastern asserts that pursuant to the terms of the service agreement, it is contractually entitled to the reduction in the MDQ that it is requesting. It is indicated that Paragraph b. of Article III of the service agreement provides that either

Comment date: July 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

18. Northwest Pipeline Corp.

[Docket No. CP89-1604-000]

June 16, 1989.

Take notice that on June 12, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-1604-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Apache Corporation (Apache), a natural gas producer, under its blanket authorization issued in Docket No. CP86-578-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest would perform the proposed interruptible transportation service for Apache, pursuant to an interruptible transportation service agreement dated January 19, 1989. The transportation agreement is effective for a term continuing to March 1, 1991, and month to month thereafter until terminated by either party or thirty days written notice. Northwest proposes to transport no more than 50,000 MMBtu on a peak day; approximately 100 MMBtu on an average day; and on an annual basis approximately 36,500 MMBtu of natural gas for Apache. Northwest proposes to transport the subject gas from any transportation receipt point on its system.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Northwest commenced such self-implementing service on May 8, 1989, as reported in Docket No. ST89-3815-000.

Comment date: July 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

19. Paiute Pipeline Co.

[Docket No. CP89-1596-000]

June 16, 1989.

Take notice that on June 12, 1989, Paiute Pipeline Company (Paiute), P.O. Box 94197, Las Vegas, Nevada 89193-4197, filed in Docket No. CP89-1596-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of IGI Resources, Inc. (IGI), a natural gas marketer, under Paiute's blanket certificate issued in Docket No. CP87-309-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Paiute requests authorization to transport, on an interruptible basis, up to a maximum of 31,700 MMBtu of natural gas per day for IGI from a point of receipt at the Idaho-Nevada order to delivery points located in Douglas, Washoe, Pershing, Carson City, Churchill, Lyon and Humboldt Counties, Nevada. Paiute anticipates transporting, on an average day 5,000 MMBtu and an annual volume of 1,825,000 MMBtu.

Paiute states that the transportation of natural gas for IGI commenced April 16, 1989, as reported in Docket No. ST89-3542-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Paiute in Docket No. CP87-309-000.

Comment date: July 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

20. Northern Natural Gas Co.

[Docket No. CP89-1595-000]

June 16, 1989.

Take notice that on June 9, 1989, Northern Natural Gas Company, Division of Enron Corp., (Northern) 1400 Smith Street, Houston, Texas 77251, filed in Docket No. CP89-1595-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas under its blanket authorization issued in Docket No. CP86-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which

is on file with the Commission and open to public inspection.

Northern proposes to transport natural gas on an interuptible basis for Amax Oil & Gas, Inc. (Amax). Northern explains that the service commenced under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-3231. Northern proposes to transport on a peak day up to 36,825 MMBtu; on an average day up to 27,620 MMBtu; and on an annual basis up to 13,441,125 MMBtu. Northern proposes to receive and deliver the gas at various points in Texas.

Comment date: July 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

21. United Gas Pipe Line Co.

[Docket No. CP89-1618-000]

June 16, 1989.

Take notice that on June 13, 1989, United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1618-000 a request pursuant to §§ 157.2054 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to perform an interruptible transportation service for Kogas, Inc. (Kogas), a marketer, under United's blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United states that pursuant to a transportation service agreement dated October 4, 1988, it proposes to receive up to 200,000 Mcf per day from Kogas at specified points located in Texas, Mississippi, and onshore and offshore Louisiana, and redeliver the gas at specific delivery points located in Mississippi and Louisiana. United states that the peak day and average day volumes would be 208,000 million Btu, and that the annual volumes would be 75,190,000 million Btu. It is stated that on May 10, 1989, United initiated a 120-day transportation service for Kogas under § 284.223(a) as reported in Docket No. ST89-3619-000.

United further states that no facilities need be constructed to implement the service. United states that the primary term of the transportation service would expire one month from the date of first delivery but that the service would continue on a month to month basis until terminated. United proposes to charge rates and abide by the terms and conditions of its Rate Schedule ITS.

Comment date: July 31,1989, in accordance with Standard Paragraph G at the end of this notice.

22. Trunkline Gas Co.

[Docket No. CP89-1611-000]

June 16, 1989.

Take notice that on June 13, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas, 77251, filed in Docket No. CP89-1611-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon an exchange service being provided to Exxon Company, U.S.A. (Exxon), formerly Humble Oil and Refining Company, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Trunkline states that by letter dated June 15, 1988, Exxon has given notice of its intent to terminate the exchange service being provided pursuant to an agreement dated October 28, 1968, under Trunkline's Rate Schedule E-1 of its FERC Gas Tariff, Original Volume No 2, on the basis that the service is no longer necessary. Trunkline further states that the service involves the exchange of up to 28,000 Mcf per day of natural gas which is received from Exxon at the tailgate of the Kelsey Plant in Brooks County, Texas, and redelivered to Tennessee Gas Pipeline Company for Exxon's account in Hildalgo County, Texas, and was authorized under the certificate issued in Docket No. CP69-159 on October 14, 1969. Trunkline advises that there would be no abandonment of facilities.

Comment date: July 7, 1989, in accordance with Standard Paragraph F at the end of this notice.

23. Northern Natural Gas Co.; Division of Enron Corp.

[Docket No. CP89-1586-000]

June 16, 1989.

Take notice that on June 7, 1989, Northern Natural Gas Co., Division of Enron Corp., (Northern) 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188 filed in Docket No. CP89-1586-000, a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Vintage Pipeline Systems, Inc. (Vintage), under the authorization issued in Docket No. CP86-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern would perform the proposed interruptible transportation service for Vintage, a marketer of natural gas, pursuant to an interruptible transportation agreement. IT-1 dated May 1, 1989 (transportation agreement number 72266). The term of the transportation agreement is for one year from the date of initial delivery, and month to month thereafter unless terminated upon 30 days prior written notice to the other party. Northern proposes to transport on a peak day up to 5,000 MMBtu; on an average day up to 3,750 MMBtu; and on an annual basis of 1,825,000 MMBtu of natural gas for Vintage. It is stated that unless Northern agrees in writing to a lower rate, Vintage shall pay Northern each month for transportation service at the maximum rates or charges in effect from time to time under Rates Schedule IT-1, or any effective superseding rate schedule on file with the Commission. Northern proposes to receive the subject gas from various existing receipt points on its system for transportation to various existing delivery points on its system. Northern avers that construction of facilities would not be required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's regulations. Northern commenced such self-implementing service on May 31, 1989, as reported in Docket No. ST89-3706-000.

Comment date: July 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

24. Southern Natural Gas Co.

[Docket No. CP89-1607-000]

June 16, 1989.

Take notice that on June 12, 1989, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP89-1607-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for TXG Gas Marketing Company (TXG), a marketer of natural gas, under Southern's blanket certificate issued in Docket No. CP88-316-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern proposes to transport on an interruptible basis up to 100,000 MMBtu of natural gas on a peak day, 3,500 MMBTU on an average day and 1,277,500 MMBtu on an annual basis for TXG. Southern states that it would perform the transportation service for TXG under Southern's Rate Schedule IT. Southern indicates that it would transport the gas from receipt points in offshore Texas, offshore Louisiana, Texas, Louisiana, Alabama and Mississippi, to various delivery points in Louisiana.

It is explained that the service commenced April 18, 1989, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-3304. Southern indicates that no new facilities would be necessary to provide the subject service.

Comment date: July 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

25. ANR Pipeline

[Docket No. CP89-1576-000]

June 16, 1989.

Take notice that on June 6, 1989, ANR Pipeline Company, (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-1576-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation service for Northern Natural Gas Company (Northern), all as more fully set forth in the applicable which is on file with the Commission and open to public inspection.

It is stated that pursuant to a transportation service agreement, dated May 22, 1978, between ANR and Northern, ANR agreed to take delivery of up to 350 Mcf of natural gas per day for the account of Northern at the production platform at Ship Shoal Area Block 291, and redeliver the gas to the Patterson Station in St. Mary Parish, Louisiana. It is further stated that this agreement is filed as Rate Schedule X-75 under Original Volume No. 2 of ANR's FERC Gas Traffic. ANR in addition, it is said, by letter by letter agreement dated May 22, 1978, agreed to transport the volumes of gas from the Patterson Station. ANR further states that this agreement is filed as Rate Schedule X-76 under Original Volume No. 2 of ANR's FERC Gas Tariff.

ANR states that by letter dated December 21, 1988, Northern advised ANR that it washed to terminate the service designated as Rate Schedule X-75 at the end of its primary term, effective July 13, 1989. ANR states further that Northern, by letter dated February 23, 1989, notified ANR of its intention to terminate the service designated as Rate Schedule X-76 as well.

Comment date: July 7 1989 in accordance with Standard Paragraph F at the end of the notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intevention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-14776 Filed 6-21-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-193-000]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

June 16, 1989.

Take notice that ANR Pipeline Company ("ANR") on June 9, 1989 tendered for filing as a part of its Original Volume Nos. 1, 1-A and 2 of its FERC Gas Tariff, certain tariff sheets.

ANR states that the above-referenced tariff sheets are being filed under § 2.104 of the Commission's Regulations to implement partial recovery of $86.6 million of additional buyout buydown costs and to establish a volumetric buyout buydown surcharge applicable to such additional buyout buydown costs. The filing is made pursuant to the litigation exception of Order No. 500. Under the proposed filing, ANR is proposing to absorb twenty five percent of its buyout buydown costs, to recover twenty five percent of such costs through a fixed monthly charge applicable to its Rate Schedules CD-1, MC-1 and SGS-1 sales customers and to recover fifty percent of such costs through a volumetric buyout buydown surcharge of 1.56¢ per dth applicable to each sales and transportation Rate Schedule under Original Volume Nos. 1, 1-A and 2 of ANR's FERC Gas Tariff.

ANR has requested that the Commission accept this filing, to become effective July 10, 1989.

ANR states that copies of the filing were served upon all of its Volume Nos. 1, 1-A and 2 customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commisson, 825 North Capitol Street, NE., Washington, DC 20426 by June 23, 1989 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are

on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-14778 Filed 6-21-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA89-1-61-000]

Bayou Interstate Pipeline System; Proposed Change in Rates

June 15, 1989.

Take notice that on June 7, 1989, Bayou Interstate Pipeline System (Bayou) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, (Tariff) Eleventh Revised Sheet No. 4 to be effective August 1, 1989.

Bayou states that the proposed tariff sheet is filed pursuant to the Purchased Gas Cost Adjustment provisions contained in section 15 of Bayou's tariff. A copy of this filing is being mailed to Bayou's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211. All such motions or protests must be filed on or before July 6, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-14779 Filed 6-21-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-14-007 TA88-1-45-004 TQ89-1-45-003]

Inter-City Minnesota Pipelines Ltd., Inc.; Compliance Filing

June 16, 1989.

Take notice that on June 12, 1989, Inter-City Minnesota Pipelines Ltd., Inc., 245 Yorkland Boulevard, North York, Ontario, Canada M2J 1R1 ("Inter-City") tendered for filing revised tariff sheets to its FERC Gas tariff:

Original Volume No. 1

Third Substitute First Revised Thirty-First Revised Sheet No. 4

Fourth Substitute First Revised Thirty-First Revised Sheet No. 4

Original Volume No. 2

Second Substitute Sixth Revised Sheet No. 11

Inter-City states the revised tariff sheets are filed in compliance with an Order issued in this proceeding on January 30, 1989. That order required Inter-City to revise its test period adjustments to the extent necessary to reflect only the annualization of charges that occurred during the base period.

Inter-City states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commisson, 825 North Capitol Street, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before June 23, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-14780 Filed 6-21-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ST85-1706-000 and ST89-1775-000]

Louisiana Intrastate Gas Corp.; Staff Panel

June 15, 1989.

Pursuant to the Commission's orders [1] in the above-captioned dockets, a Staff Panel (Panel) shall be convened to allow opportunity for written comments and for the oral presentation of views, data, and arguments regarding the fair and equitable incremental rate that should be established for service on the Eloi system of Louisiana Intrastate Gas Corporation. The Panel will not be a judicial or evidentiary-type hearing and there will be no cross-examination of persons presenting statements. Members participating on the Panel before whom the presentations are made may ask questions. If time permits, Panel members may also ask such relevant questions as are submitted to them by participants. Other procedural rules relating to the Panel will be announced at the time the proceeding commences.

The Staff Panel will be held on Thursday, June 22, 1989 at 1:30 p.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Any questions regarding these proceedings should be directed to Mary Doyle, at (202) 357-8927. All interested persons and staff may attend the proceeding.

Lois D. Cashell,

Secretary.

[FR Doc. 89-14781 Filed 6-21-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-192-000]

Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

June 15, 1989.

Take notice that on June 9, 1989, Southern Natural Gas Company (Southern) tendered for filing Fourth Revised Sheet No. 4J and Fifth Revised Sheet No. 4J to Sixth Revised Volume No. 1 of its FERC Gas Tariff, with a proposed effective date of April 1, 1989, and May 1, 1989, respectively.

Southern states that the proposed tariff sheets are being submitted in order to revise the rates applicable to Southern's Rate Schedule IS to reflect Southern's currently effective cost of gas and proposed revision to its volumetric take-or-pay surcharge. Southern further states that the filing is necessitated because in its previous filings to revise its cost of gas and volumetric surcharge, it inadvertently omitted the subject sheet.

Any person desiring to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before June 22, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-14782 Filed 6-21-89; 8:45 am]

BILLING CODE 6717-01-M

[1] *See* Louisiana Intrastate Gas Corp., 47 FERC ¶ 61,048 (1989), and 47 FERC ¶ 61,336 (1989).

[Docket No. RP89-194-000]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

June 16, 1989.

Take notice that on June 13, 1989, Texas Gas Transmission Corporation (Texas Gas) tendered for filing the following tariff sheets to its FERC Gas Tariff:

FERC Gas Tariff, Original Volume No. 1

Seventh Revised Sheet No. 1
Seventeenth Revised Sheet No. 10
Seventeenth Revised Sheet No. 10A
First Revised Sheet No. 76A
First Revised Sheet No. 128
First Revised Sheet No. 129
Original Sheet No. 130

FPC Gas Tariff, Original Volume No. 2

Tenth Revised Sheet No. 82
Twenty-Sixth Revised Sheet No. 333
Third Revised Sheet No. 484
Eleventh Revised Sheet No. 547
Seventh Revised Sheet No. 558
Fifth Revised Sheet No. 591
Eleventh Revised Sheet No. 919
Thirteenth Revised Sheet No. 982
Eleventh Revised Sheet No. 1005
Fourth Revised Sheet No. 1065
Fourth Revised Sheet No. 1123
Third Revised Sheet No. 1180

FERC Gas Tariff, Original Volume No. 2-A

Second Revised Sheet No. 10
Second Revised Sheet No. 11
Second Revised Sheet No. 14
Second Revised Sheet No. 60
Second Revised Sheet No. 108
Original Sheet No. 109

FERC Gas Tariff, Original Volume No. 3

Fifth Revised Sheet No. 21
Fifth Revised Sheet No. 22
Third Revised Sheet No. 23

Texas Gas states that these tariff sheets are filed to incorporate a volumetric surcharge designed to recover take-or-pay (TOP) costs to be billed to Texas Gas by ANR Pipeline Company (ANR). ANR's filing was accepted by Federal Energy Regulatory Commission (FERC) Order issued April 28, 1989, in Docket No. RP89-127, to be effective, subject to refund and other certain conditions, on May 1, 1989.

Texas Gas states that on March 31, 1989, ANR filed in the above referenced Docket to initiate the recovery of an additional $160.1 million of TOP buyout and buydown costs and to establish a volumetric surcharge of 2.65¢ per dth on each sale and transportation rate schedule to recover 50 percent of those costs. ANR proposed to absorb 25 percent and direct bill 25 percent to its sales customers.

Copies of the revised tariff sheets are being mailed to Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rule and Regulations. All such motions or protests should be filed on or before June 23, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-14783 Filed 6-21-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-138-000 et al.]

United Gas Pipe Line Co.; Compliance Filing

June 15, 1989.

Take notice that on May 30, 1989, United Gas Pipe Line Company (United) submitted for filing certain workpapers with narrative descriptions in response to the Commission's April 20, 1989 Order in this proceeding.

United states that certain workers and supporting narrative descriptions are being submitted under seal and subject to § 388.112 of the Commission's regulations. United states that since the proceeding in Docket No. RP89-138 has been consolidated with Docket Nos. RP88-27 and RP88-264, and since the Protective Order issued in Order No. RP88-27 has been extended to Docket No. RP89-138, United will make this information available to all eligible persons who have executed a non-disclosure certificate pursuant to the Protective Order.

United states that the workpapers and supporting narrative description will be available for review by appointment in United's Houston, Texas or Washington, DC offices.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, in such accordance with §§ 285.214 and 385.211 of the Commission's regulations. All such motions of protest should be filed on or before June 28, 1989.

Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-14784 Filed 6-21-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-147-003]

United Gas Pipe Line Co.; Compliance Filing

June 15, 1989.

Take notice that on June 9, 1989, United Gas Pipe Line Company (United) submitted for filing the following tariff sheets and certain workpapers with narrative descriptions in response to the Commission's May 10, 1989 Letter Order (May 10, 1989 Order) in this proceeding:

Effective May 1, 1989

Substitute Original Sheet No. 4-M
Substitute Original Sheet No. 4-N
Substitute Original Sheet No. 4-O
Substitute Original Sheet No. 4-P
Substitute Original Sheet No. 4-Q
Original Sheet No. 4-Q1
Substitute Original Sheet No. 4-R

United states that the filing is being made without waiver of its right to seek further review of the May 10, 1989 Order, and will be served upon all parties listed on the official service list in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, in accordance with §§ 285.214 and 385.211 of the Commission's regulations. All such protests should be filed on or before June 22, 1989.

Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-14785 Filed 6-21-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-3-35-000]

West Texas Gas, Inc.; Filing

June 15, 1989.

Take notice that on June 7, 1989, West Texas Gas, Inc. (WTG) filed Fifteenth Revised Sheet No. 3a to its FERC Gas Tariff, Original Volume No. 1, proposed to be effective April 1, 1989. This tariff sheet was filed by WTG in accordance with the Commission's purchased gas adjustment regulations.

Copies of the filing were served upon WTG's customers and interested state commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.21 and 385.214 (1987)). All such motions or protests should be filed on or before June 22, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must filed a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-14780 Filed 6-21-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-258-002]

West Texas Gas, Inc.; Compliance Filing

June 16, 1989.

Take notice that on June 9, 1989, West Texas Gas, Inc. (WTG) filed Substitute Eleventh Revised Sheet No. 3a to its FERC Gas Tariff, Original Volume No. 1, to be effective October 21, 1988.

WTG states that this filing complies with the Commission's order of October 28, 1988. WTG states that this filing is a revision to its May 18, 1989 filing to put the rates in effect.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such protests should be filed on or before June 23, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-14787 Filed 6-21-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-68016; FRL-3607-4]

Receipt of Uniroyal Chemical Co. Request To Delete Daminozide Product Use

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This Notice announces EPA's receipt of a request from Uniroyal Chemical Company to amend the registration of the B-Nine SP label (EPA Reg. No. 400-110) to delete the tomato transplant use. This Notice is published in accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT:

Robert J. Taylor, Product Manager (PM) 25, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Room 245, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, 703-557-1800.

SUPPLEMENTARY INFORMATION: On June 15, 1989, EPA received a request from Uniroyal Chemical Company, 74 Amity Road, Bethany, Connecticut, 06525, to amend its B-Nine SP registration to delete the tomato transplant use from the subject product label. The active ingredient of B-Nine SP is daminozide. In the Federal Register of May 24, 1989 (54 FR 22558), EPA published its preliminary determination to cancel all food uses of daminozide based on its conclusion that use of daminozide posed an unreasonable increased lifetime cancer risk from dietary exposure. No regulatory action was proposed for the non-food uses of daminozide on ornamentals and bedding plants. The only food use on the B-Nine SP label is the tomato transplant use.

Uniroyal requested the deletion of the tomato transplant use as a result of an agreement it signed with EPA on June 2, 1989. In addition to deleting the tomato transplant use from the B-Nine SP label, Uniroyal agreed, among other things, to immediately cease all sale and distribution of daminozide products bearing food uses on the label and to conduct a recall of these products.

This Notice of receipt of Uniroyal's request to delete the tomato use from the B-Nine SP label is published in accordance with FIFRA section 6(f)(1). EPA intends to approve this registration amendment immediately after the date of publication of this Notice in the **Federal Register.**

Dated: June 19, 1989.

Franklin D.R. Gee,

Registration Division.

[FR Doc. 89-14884 Filed 6-21-89; 8:45 am]

BILLING CODE 6560-50-M

FARM CREDIT ADMINISTRATION

Financially Related Services; Public Hearing; Extension of Comment Period

AGENCY: Farm Credit Administration.

ACTION: Public hearing; comment period extension.

SUMMARY: On June 14, 1989, the Farm Credit Administration (FCA) held a public hearing concerning the availability and offering of financially related services to Farm Credit borrowers. (54 FR 13948, April 6, 1989) The FCA hereby gives notice that the period to submit comments on this matter is extended.

DATE: The period for receipt of written comments is extended to July 14, 1989.

ADDRESS: All comments should be submitted in writing, in triplicate, to David A. Hill, Secretary, Farm Credit Administration Board, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

FOR FURTHER INFORMATION CONTACT:

David A. Hill, Secretary of the Farm Credit Administration Board, Farm Credit Administration, McLean, Virginia 22102-5090, (703) 883-4003, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: Due to the potential impact that the availability of financially related services could have on Farm Credit borrowers, institutions, and other parties, it was determined that a comment period extension to solicit views on the various issues concerning these services would be beneficial in ensuring that all interested parties have an opportunity to comment. Accordingly, the period for submitting comments on financially related services has been extended until July 14, 1989.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 89-14753 Filed 6-21-89; 8:45 am]

BILLING CODE 6705-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-828-DR]

Amendment to Notice of a Major Disaster Declaration; Texas

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA-828-DR), dated May 19, 1989, and related determinations.

DATED: June 15, 1989.

FOR FURTHER INFORMATION CONTACT:

Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Texas, dated May 19, 1989, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 19, 1989:

The counties of Archer, Clay, Hale, Knox, Marion, Rockwall, Taylor, Titus, and Trinity for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89-14816 Filed 6-21-89; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-828-DR]

Amendment to Notice of a Major Disaster Declaration; Texas

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA-828-DR), dated May 19, 1989, and related determinations.

DATED: June 16, 1989.

FOR FURTHER INFORMATION CONTACT:

Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (292) 646-3614.

Notice

The notice of a major disaster for the State of Texas, dated May 19, 1989, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 19, 1989:

The counties of Sabine and Shelby for Individual Assistance.

Notice is also hereby given that the incident period for this disaster is closed effective June 15, 1989.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89-14817 Filed 6-21-89; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Title: Georgia Ports Authority Terminal Agreement.

Parties: Georgia Ports Authority; Ocean Star Container Line.

Synopsis: The Agreement provides Hanjin a 15-year preferential assignment of approximately 45 acres commonly referred to as the Seventh Street Peninsula to be used for the operation of a marine container terminal. The City intends to deliver possession of the premises for Hanjin's use upon completion of construction of the facility by November 1, 1990.

Title: City of Long Beach Terminal Agreement.

Parties: City of Long Beach (City); Hanjin Shipping Company, Ltd. (Hanjin).

Synopsis: The Agreement amends the Schedule of Rates to reflect a reduction in the consolidation rate per container from $123.76 to $102.00 and provide that all other charges not listed in the Schedule of Rates shall be at 80% of the Port's Terminal Tariff No. 1-F.

By Order of the Federal Maritime Commission.

Dated: June 16, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-14732 Filed 6-21-89; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-007540-051.

Title: United States Atlantic & Gulf/Southeastern Caribbean Conference.

Parties: Puerto Rico Maritime Shipping Authority; Sea-Land Service, Inc.; Shipping Corporation of Trinidad and Tobago Ltd.

Synopsis: The proposed modification would amend the Agreement to prohibit independent action on loyalty contracts.

Agreement No.: 202-010424-018.

Title: United States Atlantic & Gulf Hispaniola Steamship Freight Conference.

Parties: Crowley Caribbean Transport, Inc./CTMT, Inc./Trailer Marine Transport Corporation (As One Party); Puerto Rico Maritime Shipping Authority; Sea-Land Service, Inc.; Shipping Corporation of Trinidad and Tobago Ltd.

Synopsis: The proposed modification would delete the Shipping Corporation of Trinidad and Tobago Ltd., as a party to the Agreement and would also prohibit members from taking independent actions to enter into service or loyalty contracts or to take

independent action with respect to any existing service contract.

Agreement No.: 213-010972-002.

Title: Three Lines' Far East-Atlantic Coast Space Charter and Sailing Agreement.

Parties: Mitsui O.S.K. Lines, Ltd.; Nippon Yusen Kaisha; Nippon Liner System, Ltd.; Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: The proposed modification deletes Yamashita-Shinnihon Steamship Co., Ltd., as a party to the Agreement. It would also permit the parties to extend the Agreement's term through October 19, 1992, and authorize withdrawal at any time by any party upon giving six months' prior written notice.

By Order of the Federal Maritime Commission.

Dated: June 19, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-14775 Filed 6-21-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

[Docket No. R-0656]

Private Sector Adjustment Factor

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board has approved revisions to the methodology for computing the Private Sector Adjustment Factor ("PSAF"). The PSAF is a computation of imputed costs that takes into account the taxes that would have been paid and the return on capital that would have been provided had the Federal Reserve's priced services been furnished by a private business firm. The revisions will reduce volatility and the need for ad hoc adjustments in the PSAF and will modify certain calculations to conform more closely with commercial bank practices.

EFFECTIVE DATE: June 16, 1989.

FOR FURTHER INFORMATION CONTACT: Clyde H. Farnsworth, Director (202/452-2787) or Paul Bettge, Program Leader (202/452-3174), Division of Federal Reserve Bank Operations; for the hearing impaired *only:* Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION:

Background

The Monetary Control Act of 1980 requires that fee schedules for the Federal Reserve's priced services include an allocation of imputed costs for "taxes that would have been paid and the return on capital that would have been provided had the services been furnished by a private business firm." These imputed costs, referred to as the private sector adjustment factor ("PSAF"), are incorporated into the cost base on which fees for Federal Reserve priced services are established.

The current methodology used to compute capital costs in the PSAF involves three steps. The first step is to detemine the value of Federal Reserve assets that will be used directly in producing priced services during the coming year, including the net effect of assets planned to be acquired or disposed of during the year. The second step is to determine the financing method. Short-term assets are assumed to be financed by short-term liabilities; long-term assets are assumed to be financed by a combination of long-term debt and equity. Third, imputed capital costs are determined by applying short and long-term interest rates and a rate of return on equity derived from a sample of bank holding companies ("BHCs") to the assumed debt and equity values. The consolidated financial data for the BHCs are drawn from the 25 largest BHCs (in terms of asset size), with all factors except the short-term debt rate averaged over three years. Because short-term debt, by definition, matures within one year, only data for the most recent year are used for computing the short-term debt rate. Capital costs, together with imputations for estimated sales taxes, FDIC insurance assessment on clearing accounts (or the clearing portion of mixed reserve/clearing accounts) held with the Federal Reserve to settle transactions, and expenses of the Board of Governors related to priced services, comprise the PSAF.

Discussion

In January the Board requested comment on four proposed revisions to the methodology for computing the PSAF (54 FR 4074, January 27, 1989):

1. Increasing the size of the BHC sample from the 25 largest BHCs to the 50 largest BHCs;

2. Extending the sample period from three years to five years;

3. Ensuring that sufficient capital is imputed to meet the risk-based capital guidelines of 8 percent capital to risk-weighted assets, including in assets a computation of gross cash items in the process of collection; and

4. Calculating the imputed FDIC insurance assessment on the basis of clearing balances plus an esimate of deferred credits calculated on a basis similar to a commercial bank.

The Board received seven public comments in response to the proposals, two from trade associations and five from bank holding companies. The Board has considered the comments and has approved the revisions to the PSAF methodology as proposed with one modification. The Board has approved the inclusion of gross cash items in the process of collection ("CIPC"), rather than net CIPC as proposed, measured on a basis comparable with commercial bank on the pro forma priced services balance sheet. These revisions will become effective with the computation of the PSAF for 1990.

Expansion of Sample Size and Period. The Board has revised the PSAF methodology to extend the sample period to five years and increase the sample size to include the 50 largest bank holding companies each year. The commenters generally endorsed both expanding the sample size of BHCs used in the PSAF calculation from the 25 to the 50 largest privately-owned BHCs in each year and averaging the most recent five years of BHC data to determine the pre-tax return on equity, the long-term debt rate, and the ratio of long-term debt and equity used to compute the PSAF. Two commenters disagreed with the use of a historic five year sample period. As an alternative, one commenter suggested that the Board use projected data, and the other proposed using five years of data but eliminating the highest and lowest years and averaging the three remaining years to minimize disruptions and neutralize the effect those years have on the data. The Board believes that use of historical data is appropriate because it captures the underlying long-term trend of industry rates of return. To measure the long-term results of BHC operations, the Board believes it is necessary to reflect the activities of all years. In addition, because the Monetary Control Act requires that fees be set to recover costs over the long run, the use of historical data in the PSAF computation will, over time, include the results of each year and fees will be established appropriately. The Board believes that only historical data should be used in the computation as it is more objective than the use of projections and allows verification of the Board's computations.

The expansion of the sample size and period should significantly reduce the volatility of the PSAF, as each BHC will have a less dramatic impact upon the overall average. This change should reduce the frequency of ad hoc adjustments. The larger sample size will also serve to include a number of regional correspondent banks and will increase the geographical diversity of the group.

Two commenters suggested that the BHC model provides an inappropriate basis for determining the components of the PSAF. Public comment on this issue has been requested on two prior occasions. On both occasions, the Board considered the comments offered and decided that the BHC model was the most appropriate. The Board, however, again considered alternative models upon which to base the PSAF and determined that none offered clear benefits over the BHC model and, in some instances, introduced additional implementation difficulties. The Board continues to believe that the BHC model is appropriate because BHCs offer services most comparable to those offered by the Federal Reserve Banks. The two commenters generally endorse the plan to expand both the sample size and period if the Board continues use of the BHC model.

Two commenters also suggested that the sample for the PSAF be comprised of the 50 largest check processors and BHCs that provide check collection services. Specific data clearly identifying these organizations does not appear to be readily available. Using the largest banks, in terms of domestic correspondent balances, as a proxy for these organizations, the Board has found that there is a great deal of overlap between the two samples. Further, the Board believes the 50 largest BHCs is the appropriate sample because these organizations, as well as the Reserve Banks, provide payments services other than check collection.

Capital Adequacy. The Board has determined that the Federal Reserve will meet the risk-based capital guideline of 8 percent capital to risk-weighted assets and that the Federal Reserve will disclose on its pro forma priced services balance sheet gross CIPC, a basis comparable with a commercial bank. Commenters endorsed the proposal that the Federal Reserve meet the Board's risk-based capital guideline of 8 percent capital to risk-weighted assets for state member banks and BHCs. In meeting this guideline, the Board proposed that the Federal Reserve include in assets a computation of CIPC on a basis comparable to a commercial bank. On this basis, the amount of capital imputed for the 1989 PSAF totaled nearly 22 percent of risk-weighted assets. Had the newly-approved modifications to the PSAF been used for 1989, this percentage would have been nearly 25 percent.

The Board had proposed that net, rather than gross, CIPC should be included on the Federal Reserve's consolidated pro forma priced services balance sheet because the balance sheet is intended to identify priced services assets, and only the net amount of CIPC (float) requires financing. Some commenters suggested that gross CIPC should be reflected on the priced services balance sheet because generally accepted accounting principles require such treatment by the BHCs.

The Board believes that reflecting gross CIPC on the pro forma priced services balance sheet is acceptable, as long as readers of the statements understand that the majority of gross CIPC is offset by deferred credits. The portion of CIPC not offset by deferred credits represents float and, as required by the Monetary Control Act, is valued at the Federal funds rate for recovery and does not affect the PSAF. In determining the amount of CIPC to be shown on the pro forma priced services balance sheet, the same adjustments should be made to gross CIPC as discussed in the FDIC assessment section below. That is, CIPC arising from central bank activities, items that would otherwise be double-counted on a consolidated Federal Reserve balance sheet, and items that have been recorded prior to actual receipt and processing would be excluded from gross CIPC.

In the past, some groups have suggested that the Federal Reserve should impute a level of equity on its pro forma priced services balance sheet sufficient to meet the current equity to total assets ratio including CIPC, stated on a basis similar to that reported by commercial banks. The Federal Reserve imputes equity for priced services by assuming that long-term assets are financed by long-term debt and equity in the proportion of long-term debt and equity of the BHCs in the model. Using the proposed sample size and sample period, this imputation will result in over 70 percent of depreciable priced services assets being financed by equity. Because of the high percentage of depreciable assets that will be financed with equity, the Board believes that the current methodology for imputing equity capital is appropriate and results in a level of equity capital that is sufficient to support priced services operaitons.

FDIC Assessment. The Board has approved a modification, as proposed, to calculate the imputed FDIC assessment on the basis required of a commercial bank. The computation will include applying the required FDIC assessment rate to the projected level of clearing balances held with the Federal Reserve plus a projection of deferred credits. Accordingly, the following deferred credits will be excluded: intra-System deferred credits that would otherwise be double-counted on a consolidated Federal Reserve balance sheet; deferred credits associated with nonpriced items, such as deferred credits to government agencies; and deferred credits associated with providing fixed availability or credit prior to receipt and processing of items. In general, the commenters endorsed the conceptual approach to the calculation of the imputed FDIC insurance assessment.

This change in methodology for computing the FDIC insurance and calculation of a consolidated priced CIPC amount will result in an increase to the PSAF amount to be recovered. One commenter suggested that the Board "phase-in this increase over a three year period to avoid unnecessary volatility in a component of the PSAF and be more consistent with the Board's intention of decreasing overall volatility of the PSAF." The Board believes that, although the percentage increase in this one component of the PSAF will be quite large, the dollar impact of making this change on the overall PSAF will be fairly small, and should not result in significant price changes. Therefore, the Board will not phase-in the modification.

By order of the Board of Governors of the Federal Reserve System, June 16, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-14744 Filed 6-21-89; 8:45 am]

BILLING CODE 6210-01-M

Rules of Organization; Technical Amendments

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Technical amendments.

SUMMARY: The Secretary of the Board has approved technical amendments to the Board's Rules of Organization to reflect organizational changes. The amendments will bring descriptions of the functions of various offices and divisions of the Board up to date.

EFFECTIVE DATE: June 1, 1989.

FOR FURTHER INFORMATION CONTACT: Jennifer J. Johnson, Associate Secretary (202-452-3259), or Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf (202-452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The Board's Rules of Organization is an uncodified regulation issued as required by section (a)(1) of the Freedom of Information Act, 5 U.S.C. 552(a)(1). Copies are available from the Board's Publications Section, Washington, DC 20551, (202) 452-3245.

Rules of Organization

1. Section 3 of the Board's Rules of Organization is amended by revising paragraph (b), redesignating paragraph (r) as paragraph (s), and adding a new paragraph (r), to read as follows:

SECTION 3—Central Organization

* * * * *

(b) *Division of Monetary Affairs*, headed by a director, is responsible for planning and coordinating programs, memoranda, and analyses and presenting decision-making options in areas of monetary and closely related financial policies. Responsibilities are carried out through various staff activities, including preparation of position papers and other documents on monetary policy issues such as open market, discount and reserve requirement policy; performance of secretariat functions for the Federal Open Market Committee, including administration and record preparation and maintenance; coordination of regulatory and statistical issues closely related to monetary policy, including publication and interpretation of a variety of statistical series on money, reserves, and interest rates; and liaison with the trading desk at the Federal Reserve Bank of New York in connection with open market operations and market developments.

* * * * *

(r) *Office of Inspector General* is an independent office that operates under Pub. L. 100-504 and Board charter. It conducts and supervises audits, operations reviews, and investigations relating to the functions of the Board; recommends and provides leadership and coordination for activities that promote economy, efficiency, and effectiveness within the Board's programs and operations; detects and prevents fraud, waste, and abuse in the Board's programs and operations; and keeps the chairman and Congress fully informed about problems and deficiencies relating to the Board's programs and operations and the necessity for, and progress of, corrective actions.

By order of the Board of Governors of the Federal Reserve System, June 16, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-14767 Filed 6-21-89; 8:45 am]

BILLING CODE 6210-01-M

Barclays PLC, London, England; Proposal To Underwrite and Deal in All Types of Debt Securities to a Limited Extent

Barclays PLC and Barclays Bank PLC both of London, England, and Barclays USA Inc., Wilmington, Delaware (collectively "Barclays"), have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) ("BHC Act") and § 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)), for permission for its subsidiary Barclays de Zoete Webb Government Securities, Inc., New York, New York ("Company"), to underwrite and deal in, to a limited degree, all types of debt securities.

Company is currently authorized to: (1) underwrite and deal in securities that state member banks are authorized to underwrite and deal in under 12 U.S.C. 24 (Seventh) and 335 pursuant to 12 CFR 225.25(b)(16); (2) provide investment or financial advice solely in connection with its bank-eligible underwriting and dealing activity pursuant to 12 CFR 225.25(b)(4); and (3) act as a futures commission merchant pursuant to 12 CFR 225.25(b)(18).

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." The Board has previously determined that underwriting and dealing in debt securities that are not eligible to be underwritten and dealt in by member banks ("ineligible securities") are closely related and proper incidents to banking, subject to certain conditions. *J.P. Morgan & Co. Incorporated, The Chase Manhattan Corporation, Bankers Trust New York Corporation, Citicorp and Security Pacific Corporation*, 75 Federal Reserve Bulletin 192 (1989) ("*Morgan*").

Barclays has proposed to underwrite and deal in ineligible debt securities under limitations that differ from those approved by the Board in its *Morgan* Order. Generally, Barclays proposes that the framework of limitations established by the Board in the *Morgan* Order should not apply to its operations outside the United States. For example, under the terms of its proposal, Barclays, which is a foreign bank as well as a bank holding company, would be permitted to lend to and in support of Company, including lending from its branch office in New York. Barclays has made other commitments as alternatives to those approved in the *Morgan* Order.

Barclays has proposed to underwrite and deal in ineligible debt securities under limitations that differ from those approved by the Board in its *Morgan* Order. Generally, Barclays proposes that the framework of limitations established by the Board in the *Morgan* Order should not apply to its opeations outside the United States. For example, under the terms of its proposal, Barclays, which is a foreign bank as well as a bank holding company, would be permitted to lend to and in support of Company, including lending from its branch office in New York. Barclays ahs made other commitments as alternatives to those approved in the *Morgan* Order.

Barclays has also requested additional authority for Company to underwrite and deal in securities representing interests in, or secured by, obligations originated or sponsored by an affiliate if such security is rated by a nationally-recognized rating agency or is issued or guaranteed by, or represents an interest in a security issued or guaranteed by, a U.S. government agency or a U.S. government-sponsored agency. Barclays' commitments and application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

In publishing the proposal for comment, the Board does not take any position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the BHC Act or the Glass-Steagall Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than July 19, 1989. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Board of Governors of the Federal Reserve System, June 16, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-14768 Filed 6-21-89; 8:45 am]

BILLING CODE 6210-01-M

Capital City Bank; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 89-14099) published at page 25345 of the issue for Wednesday, June 14, 1989.

Under the Federal Reserve Bank of San Francisco, the entry for Capital City Bank Profit Sharing Plan is amended to read as follows:

1. *Capital City Bank Employee Stock Option Plan*, Salt Lake City, Utah; to acquire 15.9 percent of the voting shares of Capital Bancorp, Salt Lake City, Utah, and thereby indirectly acquire Capital Bank, Salt Lake City, Utah.

Comments on this application must be received by July 6, 1989.

Board of Governors of the Federal Reserve System, June 16, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-14770 Filed 6-21-89; 8:45 am]

BILLING CODE 6210-01-M

Compagnie Financiere de Suez; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 89-10299) published at page 18597 of the issue for Monday, May 1, 1989.

Under the Federal Reserve Bank of New York, the entry for Compagnie Financiere de Suez is amended to read as follows:

1. *Compagnie Financiere de Suez*, Paris, France, and Banque Indosuez, Paris, France; to engage in a joint venture through Daniel Breen & Company, Houston, Texas, and thereby engage in providing portfolio investment advice pursuant to § 225.25(b)(4) of the Board's Regulation Y.

Comments on this application must be received by July 7, 1989.

Board of Governors of the Federal Reserve System, June 16, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-14771 Filed 6-21-89; 8:45 am]

BILLING CODE 6210-01-M

One American Corp.; Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 14, 1989.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *One American Corp.*, Vacherie, Louisiana; to engage *de novo* through its subsidiary, One American Agency, Inc., Vacherie, Louisiana, in the business of leasing personal or real property or acting as agent, or broker, or advisor in leasing, pursuant to § 225.25(b)(5) of the Board's Regulation Y. These activities will be conducted throughout the State of Louisiana.

Board of Governors of the Federal Reserve System, June 16, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-14772 filed 6-21-89; 8:45 am]

BILLING CODE 6210-01-M

Peoples Heritage Financial Group, Inc.; Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 12, 1989.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Peoples Heritage Financial Group, Inc.*, Portland, Maine; to engage *de novo* through its subsidiaries, Mortgage Capital Corporation, Portland, Maine,

and Mortgage Capital Associates, Inc., Portland, Maine, in mortgage banking and loan brokerage activities involving the coinsurance programs of the United States Department of Housing and Urban Development pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y

Board of Governors of the Federal Reserve System, June 16, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-14773 Filed 6-21-89; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 5, 1989.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Roger & Barbara Brandt,* Silvis, Illinois, to acquire 14.58 percent; Jay M. & Judy B. Hanson, Geneseo, Illinois, to acquire 8.51 percent; Priscilla Hanson Middleton & Barry L. Middleton, Orlando, Florida, to acquire 4.86 percent; Max & Ruth Vandiver, Geneseo, Illinois, to acquire 9.12 percent; Lyle D. Wade and Sandra Wade, Prophetstown, Illinois, to acquire 12.88 percent; Lorraine Crandall & Sandra Wade, to acquire 1.46 percent; Lorraine Crandall & Mark Yuskis, to acquire 1.46 percent; Dale A. Dykstra to acquire 1.22 percent; Leon Gibson, to acquire 2.43 percent; Kathleen Hanson, to acquire 2.43 percent; Larry & Connie VenHuizen, to acquire 1.22 percent; Jon Woodburn, to acquire 1.22 percent; and Leland Woodburn, to acquire 2.43 percent of the voting shares of Hilladale Development Corporation, Davenport, Iowa, and thereby indirectly acquire Old Farmers & Merchants State Bank, Hilladale, Illinois.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Winston R. Lauder,* Ketchum, Idaho; to acquire between 80 and 100 percent of the voting shares of Idaho State Bank, Glenns Ferry, Idaho.

Board of Governors of the Federal Reserve System, June 16, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-14760 Filed 6-21-89; 8:45 am]

BILLING CODE 6210-01-M

Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 89-14099) published at page 25345 of the issue for Wednesday, June 14, 1989.

Under the Federal Reserve Bank of Chicago, the entry for Roger L. Siegert is amended to read as follows:

1. *Roger L. Siegert,* Plymouth, Wisconsin, and Barbara A. Siegert, Plymouth, Wisconsin, both individually and as Trustee of the Plymouth Veterinary Center Profit Sharing Trust, Plymouth, Wisconsin; to increase their percent of the ownership to 15.63 percent of Eastern Wisconsin Bancshares, Howards Grove, Wisconsin, as a result of a stock redemption, and thereby indirectly acquire State Bank of Howards Grove, Howards Grove, Wisconsin.

Comments on this application must be received by July 6, 1989.

Board of Governors of the Federal Reserve System, June 16, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-14774 Filed 6-21-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Injury Research Grant Review Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control (CDC) announces the following Committee meeting:

Name: Injury Research Grant Review Committee

Time and Date: 8:00 a.m.-5:00 p.m.—July 10-12, 1989

Place: Colony Square Hotel, 188 14th Street, NE., Atlanta, Georgia 30361

Status: Open 8:00 a.m.-9:30 a.m., July 10, 1989; Closed 10:00 a.m., July 10—5:00 p.m. July 12, 1989

Purpose: This Committee is charged with advising the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the scientific merit and technical feasibility of grant applications relating to the support of injury control research and demonstration projects and injury prevention research centers.

Matters to be Discussed: Agenda items for the meeting will include announcements, discussion of review procedures, future meeting dates, and review of grant applications. Beginning at 10:00 a.m., July 10, through 5:00 p.m., July 12, the Committee will conduct its review of grant applications. This portion of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(6), Title 5 U.S. Code, and the Determination of the Acting Director, Centers for Disease Control, pursuant to Pub. L. 92-463.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Thomas Bartenfeld, Acting Grants Manager, Division of Injury Epidemiology and Control, Center for Environmental Health and Injury Control, CDC, 1600 Clifton Road, NE., Mailstop F36, Atlanta, Georgia 30333, telephones: FTS: 236-4690; Commercial: 404/639-4690.

Dated: June 16, 1989.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 89-14763 Filed 6-21-89; 8:45 am]

BILLING CODE 4160-18-M

Injury Research Grant Review Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control (CDC) announces the following Committee meeting:

Name: Injury Research Grant Review Committee

Time and Date: 8:00 a.m.-5:00 p.m.—July 24-25, 1989; 8:00 a.m.-12:00 noon—July 26, 1989.

Place: Colony Square Hotel, 188 14th Street, NE., Atlanta, Georgia 30361

Status: Open 8:00 a.m.-9:30 a.m., July 24, 1989; Closed 10:00 a.m., July 24—12:00 noon, July 26, 1989

Purpose: This Committee is charged with advising the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the scientific merit and technical feasibility of grant applications relating to the support of injury control research and demonstration projects and injury prevention research centers.

Matters to be Discussed: Agenda items for the meeting will include announcements, discussion of review procedures, future meeting dates, and review of grant applications. Beginning at 10:00 a.m., July 24, through 12:00 noon, July 26, the Committee will conduct its review of grant applications. This portion of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(6), Title 5 U.S. Code, and the Determination of the Acting Director, Centers for Disease Control, pursuant to Pub. L. 92-463.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Thomas Bartenfeld, Acting Grants Manager, Division of Injury Epidemiology and Control, Center for Environmental Health and Injury Control, CDC, 1600 Clifton Road, NE., Mailstop F36, Atlanta, Georgia 30333, telephones: FTS: 236-4690; Commercial: 404/639-4690.

Dated: June 16, 1989.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 89-14764 Filed 6-21-89; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 89N-0206]

Animal Drug Export; Albendazole Suspension

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Norden Laboratories, Inc., has filed an application requesting approval for export of the animal drug albendazole suspension to Canada.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact persons identified below. Any future inquiries concerning the export of animal drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Beverly E. Bartolomeo, Center for Veterinary Medicine (HFV-142), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2855.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Norden Laboratories, Inc., Lincoln, NE 68501, has filed an application requesting approval for export to Canada of the animal drug albendazole suspension. The drug is intended for use as an anthelmintic for sheep. The application was received and filed in the Center for Veterinary Medicine on June 15, 1989, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by July 3, 1989, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.44).

Dated: June 16, 1989.

Robert C. Livingston,

Deputy Director, Office of New Animal Drug Evaluation Center for Veterinary Medicine.

[FR Doc. 89-14706 Filed 6-21-89; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Hearing: Reconsideration of Disapproval of Oregon 1915(d) Waiver Amendment Number 60001.01

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on August 8, 1989 in Seattle, Washington to reconsider our decision to disapprove Oregon's 1915(d) waiver amendment, number 60001.01.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk July 7, 1989.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, HCFA Hearing Staff, 300 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 966-4471.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove an Oregon 1915(d) Waiver Amendment Number 60001.01.

Sections 1915(d)(6)(A) and 1116 of the Social Security Act (the Act) and 42 CFR Part 430 govern Department procedures that provide an administrative hearing for reconsideration of a disapproval of a 1915(d) waiver. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish a notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained in 42 CFR 430.76(c).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

Oregon requested an amendment (number 60001.01) to its waiver approved under section 1915(d) of the

Act. This amendment would revise the provider payment policy under the waiver to make Medicaid payment directly to recipients of the services for living costs which are incurred by live-in providers. These costs represent the provider's share of rent and food costs for the household.

The issues in this matter are whether the Medicaid statute permits direct payment to recipients under the waiver and whether costs which represent a live-in provider's share of rent and food costs are excluded as medical assistance under section 1915(d)(1) of the Act because they constitute "room and board."

Section 1915(d)(3) of the Act provides the authority for the Secretary to waive Section 1902(a)(1) of the Act (relating to statewideness), section 1902(a)(10)(B) (relating to comparability), and section 1902(a)(1)(C)(i)(III) (relating to income and resource rules applicable in the community). However, section 1915(d) does not provide the authority to waive sections 1905(a) or 1902(a)(32) of the Act. Section 1905(a) of the Act generally authorizes Medicaid payments only "*for* individuals" (emphasis added). The Medicaid statute permits direct payments to beneficiaries in only a few prescribed instances, not applicable here. It authorizes payments "*to* individuals" (emphasis added) only with respect to certain defined individuals and then only if the payment is for physicians' and dental services and the State includes the policy in its State plan. Consistent with section 1905(a), section 1902(a)(32) also specifically permit direct payments to individuals, but the scope of that subsection is restricted to payments for physicians' and dental services and depends upon certain prescribed requirements being met. Oregon, however, defines a system in which payment would be made to the individual recipients for a service other than physicians or dental services. Thus, HCFA has determined that direct payment under the waiver to recipients for living costs incurred by live-in providers is not consistent with the statute.

Section 1915(d)(1) of the Act provides that Medicaid payment may be made under a home and community-based services waiver for the elderly for "part or all of the cost of home or community-based services (*other than room and board*)" (emphasis added). Oregon, however, proposes to make Medicaid payment for "the provider's share of rent and food costs for the household." HCFA has construed "rent and food" to fall within the statutory language "room and board," which is not covered as medical assistance.

The notice to Oregon announcing an administrative hearing to reconsider the disapproval of its amendment to its approved 1915(d) waiver reads as follows:

Mr. Richard C. Ladd,
Administrator Senior Services Division, Oregon Department of Human Services, 313 Public Service Building, Salem, Oregon 97310.

Dear Mr. Ladd: I am approving your request for reconsideration of the decision to disapprove the amendment (number 60001.01) to your waiver approved under the authority of section 1915(d) of the Social Security Act (the Act). This request was received on May 16, 1989. This amendment would revise the provider payment policy under the 1915(d) waiver to make Medicaid payments directly to recipients of the services for living costs which are incurred by live-in providers.

There are two issues in this matter. They are: (1) Whether the Medicaid statute permits direct payment to recipients under the waiver, and (2) whether costs which represent a live-in provider's share of rent and food are excluded as medical assistance under section 1915(d)(1) of the Act because they constitute "room and board."

I am scheduling a hearing on your request for reconsideration of the disapproval of amendment number 60001.01 to your 1915(d) waiver. The hearing is scheduled to be held on August 8, 1989 at 10 a.m. in Room 301, 2201 Sixth Avenue, Seattle, Washington. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed in 42 CFR Part 430.

I am designating Mr. Stanley Katz as the presiding officer. If these arrangements present any problems, please contract the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 966-4471.

Sincerely,

Louis B. Hays,

Acting Administrator.

(Sections 1915(d)(6)(A) and 1116 of the Social Security Act (42 U.S.C. 1396n(d) and 1316); 42 CFR 430.18)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: June 15, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 89-14625 Filed 6-21-89; 8:45 am]

BILLING CODE 4120-03-M

Health Resources and Services Administration

Program Announcement, Proposed Funding Categories, Proposed Review Criteria and Proposed Funding Preference for Training Grants for Acquired Immunodeficiency Syndrome (AIDS) Regional Education and Training Centers Program

The Health Resources and Services Administration (HRSA), announces that Fiscal Year (FY) 1989 funds are available for training grants to develop AIDS Regional Education and Training Centers (ETCs). These centers will provide training for health care personnel in the care of people with Acquired Immunodeficiency Syndrome (AIDS) and other conditions related to infection with the Human Immunodeficiency Virus (HIV). The goal of the training is to prepare community primary care providers, including health care workers in Federal health facilities, health professional trainees, and faculty, to be able to counsel, diagnose, and manage such patients and to prepare selected trainees to act as instructors in their local areas. The centers will operate in collaboration with health professions schools, community hospitals, health departments, and other organizations involved in the provision of care to people with HIV related conditions. Comments are invited on the proposed funding categories, proposed review criteria and proposed funding preference.

Program Objectives

The purpose of the training grant program is to support the development of AIDS Regional Education and Training Centers (ETCs) for the health provider community. The program objectives for each center are to: (1) Provide multidisciplinary education and training to primary care providers, health professional trainees, and faculty on prevention and treatment of HIV infection and its implications, with particular emphasis on ambulatory care settings; (2) provide guidance in the development of a multidisciplinary approach to the management of HIV infection; (3) select and provide additional training to certain participants to qualify them for extending the training to others in their community; (4) develop multidisciplinary curricula for care of the HIV infected, including culturally relevant materials; (5) provide updates of new and timely information about HIV infection to primary and secondary health care providers; (6) serve as the support system for area health professionals through regional hotlines, clearinghouses, and referral activities, and (7) provide information on the availability of clinical trial opportunities in order to assist patients to gain access to such trials.

Proposed Funding Categories

Funds were appropriated for these purposes by Pub. L. 100-436. Approximately $3.3 million will be available in Fiscal Year (FY) 1989 for competitive grants.

1. Applications (new or supplemental) will be accepted for the expansion of existing ETCs and/or the development of additional ETCs. For the purpose of this announcement, high incidence is defined as more than 400 new AIDS cases from February 6, 1988 to February 6, 1989 as indicated in the Centers for Disease Control *AIDS Weekly Surveillance Report* dated February 6, 1989. Approximately $1.1 million will be available for this purpose to support an estimated 2 new ETC centers.

2. Supplemental applications from established ETCs will be accepted to enhance efforts to train workers in federally funded comprehensive health care services projects and develop and introduce AIDS curricula in health professions schools. Approximately $2.0 million will be awarded for these activities ($1.3 million for training and $700,000 for curriculum development). These funds are being made available only to existing ETCs because their expertise and community experience make it more efficient for prompt initiation of both of these activities. In addition, providing supplemental funding for the ETCs ongoing activities is the most expedient and cost effective mechanism to achieve the maximum results with the funds available.

3. Supplemental applications from established ETCs will be accepted to conduct specialized training of health professionals regarding alcohol and other drug abuse, with an emphasis on the effects of alcohol and other drug abuse on the prevention and management of the HIV epidemic. In the conduct of this training, the provider should utilize previously developed health professions training materials dealing with the abuse of alcohol and other drugs and HIV infection. Approximately $275,000 will be available for this effort which is to provide funding for 2-3 substantive, coordinated activities. Funds for this effort are made available only to the existing ETCs because of their experience in training primary care providers in the management of HIV patients. They have an established training process which can quickly reach primary care health professionals. In addition, utilization of existing ETCs for this purpose avoids needless and inefficient duplication of effort.

All public and nonprofit private entities are eligible to apply for new grants. Eligible entities may include, but are not limited to, schools in academic health science centers; professional associations; consortia of health care and community organizations, e.g., Area Health Education Centers (AHECS); public or nonprofit private hospitals; and health departments which could develop AIDS education and training programs for health care providers.

Proposed Review Criteria

Applications for new training grants will be reviewed and rated according to the applicant's ability to meet the following proposed review criteria:

1. The degree to which the project plan adequately provides for meeting the project specifications;

2. The potential effectiveness of the project in carrying out the purposes of the grant program;

3. The capability of the applicant to conduct the proposed activities in a cost efficient manner;

4. The soundness of the fiscal plan for assuring effective utilization of grant funds; and

5. The potential of the project to continue on a self-sustaining basis after the period of grant support.

In addition, the following mechanisms may be applied in determining the funding of approved applications.

1. Funding preferences—funding of a specific category or group of approved applications ahead of other categories or groups of applications, such as competing continuations ahead of new projects.

2. Funding priorities—favorable adjustment of review scores when applications meet specified objective critieria.

3. Special considerations—enhancement of priority score by merit reviewers based on the extent to which applicants address special areas of concern.

Proposed Funding Preference

A funding preference will be accorded an applicant proposing a center in a State where no federally funded ETC program office exists. This preference is to foster coordination within a State and to maximize limited Federal financial resources.

Interested persons are invited to comment on the proposed funding categories, proposed review criteria, and proposed funding preference. Normally the comment period would be 60 days but due to the need to implement any changes for the Fiscal Year 1989 award cycle, this comment period has been reduced to 30 days. All comments received on or before July 24, 1989 will be considered before the final funding categories, final review criteria and final funding preference are established. No funds will be allocated or final selections made until a final notice is published stating whether the final funding categories, final review criteria and final funding preference will be applied.

Written comments should be addressed to: Director, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 4C-25, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Medicine, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

The application deadline date is July 21, 1989. Applications shall be considered as meeting the deadline if they are either

1. *Received on* or before the deadline date; or

2. *Postmarked on* or before the deadline date and received in time for submission to the review committee. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be acceptable as proof of timely mailing. Applications received after the deadline will be returned to the applicant.

Requests for technical or programmatic information should be directed to: AIDS Regional Education and Training Centers Program, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 4C-03, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443-6364.

Training grant application form (PHS 6025-1, approved under OMB number 0915-0060) and additional information regarding business, administrative and fiscal issues related to the awarding of grants under this notice may be requested from: Grants Management Officer (BRT), Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C-22, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443-6857.

Completed applications should be forwarded to the Grants Management Officer at the above address.

BEST COPY AVAILABLE

This program is listed at 13.145 in the Catalog of Federal Domestic Assistance and is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR Part 100).

Dated: June 16, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89-14707 Filed 6-21-89; 8:45 am]

BILLING CODE 4160-16-M

National Institutes of Health

National Institute of Environmental Health Sciences; Advisory Council on Hazardous Substances Research and Training Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting to be held at the National Institutes of Health, Building 31A, Conference Room 7, Bethesda, Maryland on July 26 and 27, 1989. The meeting will begin at 9 a.m. on July 26 and end at 11:30 a.m. on July 27.

The Superfund Amendments and Reauthorization Act of 1986 (SARA) established a university-based, basic research and education program and a hazardous waste worker training program within NIEHS. The purpose of the meeting is to provide the Advisory Council on Hazardous Substances Research and Training the opportunity to learn the status of these programs, which were previously described in the Federal Register of November 28, 1986 (51 FR 43089-43092), December 19, 1986 (51 FR 45556-45559) (working training program), and March 9, 1987 (52 FR 7218-7223) respectively.

Topics to be discussed during the meeting may include but are not limited to: The role of research in the last two years of the Superfund authorization; professional education and development for persons working in hazardous materials management and public health programs; hazardous waste destruction, detoxification, and biodegradation research and demonstration; the status of basic and applied research programs funded by the Hazardous Substances Trust Fund; and public, private, and academic activities in risk communication.

Attendance is limited only by space available. For further information regarding the meeting, please contact Mr. Daniel C. VanderMeer, Executive Secretary, NIEHS, P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541-3484 or FTS 629-3484. The official government representative for this meeting will be Dr. Anne P. Sassaman.

(Catalog of Federal Domestic Assistance Program No. 13.143, NIEHS Superfund Hazardous Substances Basic Research Program, NIH, and Program No. 13.142, NIEHS Hazardous Waste Worker Health and Safety Training, NIH)

Dated: June 14, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH

[FR Doc. 89-14719 Filed 6-21-89; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D-89-889; FR-2640]

Delegation of Authority

AGENCY: Department of Housing and Urban Development (HUD), Office of the Secretary.

ACTION: Notice of delegation of authority.

SUMMARY: This Notice announces an amendment to the recently-published Delegation of Authority to the Assistant Secretary for Policy Development and Research and the General Deputy Assistant Secretary for Policy Development and Research.

EFFECTIVE DATE: June 13, 1989.

FOR FURTHER INFORMATION CONTACT: Judith V. May, 755-5426.

SUPPLEMENTARY INFORMATION: The Delegation of Authority to the Assistant Secretary and Deputy Assistant Secretary for Policy Development and Research, published December 2, 1988 (53 FR 48730), is amended by substituting in lieu of Item 14, regarding the Home Equity Conversion Mortgage Program, the following language:

14. With respect to the Home Equity Conversion Mortgage Program under section 255 of the National Housing Act, 12 U.S.C. 1715z-20, certain authority is delegated to the Assistant Secretary and General Deputy Assistant Secretary for Policy Development and Research, with other authority reserved to the Secretary or delegated to other officials within the Department. Therefore, the power and authority of the Secretary for the following responsibilities, and only the following responsibilities, under the Home Equity Conversion Mortgage Program is delegated to the Assistant Secretary and General Deputy Assistant Secretary for Policy Development and Research, and to each of them.

a. Provide, or cause to be provided, training for housing counseling agencies who are approved by the Secretary as responsible and able to provide the information to mortgagors required by section 255(f).

b. Make investigations and studies of data, and publish and distribute reports in accordance with section 255(h)(2).

c. Prepare and submit to Congress an interim report, a preliminary evaluation, and annual reports, as provided in section 255(k).

d. Enter into such contracts and agreements as may be necessary or desirable to assist in carrying out the responsibilities delegated above, with the exception of procurement contracts.

This Delegation is effective upon execution and until such time as it may be expressly superseded or terminated.

Authority: Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Washington, DC, June 13, 1989.

Jack Kemp,

Secretary.

[FR Doc. 89-14647 Filed 6-21-89; 8:45 am]

BILLING CODE 4210-32-M

Office of Assistant Secretary for Policy Development and Research

[Docket No. D-89-899; FR-2643]

Redelegation of Authority

AGENCY: Department of Housing and Urban Development (HUD), Office of Assistant Secretary for Policy Development and Research.

ACTION: Notice of redelegation of authority.

SUMMARY: This Notice announces a redelegation of certain responsibilities under section 255 of the National Housing Act to officials of the Office of the Assistant Secretary for Policy Development and Research.

EFFECTIVE DATE: June 14, 1989.

FOR FURTHER INFORMATION CONTACT: Judith V. May 755-5426.

SUPPLEMENTARY INFORMATION: The Deputy Assistant Secretary for Economic Affairs is delegated the power and authority of the Assistant Secretary for Policy Development and Research with respect to the following functions and responsibilities under section 255 of the National Housing Act, 12 U.S.C. 1715Z-20. This authority may be redelegated to employees of the Department.

1. Provide or cause to be provided, training for housing counseling agencies who are approved by the Secretary as responsible and able to provide the information to mortgagors as specified in section 255(f).

2. Make investigations and studies, and publish and distribute reports in accordance with section 255(h)(2).

3. Prepare for submittal by the Assistant Secretary to Congress an interim report, a preliminary evaluation, and annual reports, as provided in section 255(k).

This Redelegation is effective upon execution and until such time as it may be expressly superseded or terminated.

Authority: Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Washington, DC, June 14, 1989.

Thomas M. Humbert,

Deputy Assistant Secretary for Policy Development.

[FR Doc. 89-14648 Filed 6-21-89; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-940-09-5410-10-ZBAO; CACA 25073]

Conveyance of Mineral Interests in California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of segregative effect—conveyance of the reserved mineral interests.

SUMMARY: The private lands described in this notice will be examined for suitability for conveyance of the reserved mineral interests pursuant to section 209(b) of the Federal Land Policy and Management Act of October 21, 1976.

The mineral interests will be conveyed in whole or in part upon favorable mineral examination.

FOR FURTHER INFORMATION CONTACT: JOAN MANGOLD, California State Office, 2800 Cottage Way, Room E-2845, Federal Office Building, Sacramento, California 95825, (916) 978-4820.

The purpose is to allow consolidation of surface and subsurface ownership, for the lands described below, where there are no known mineral values or in those instances where the reservation of ownership of the mineral interest in the United States interferes with or precludes appropriate non-mineral development of the lands and such development would be a more beneficial use of the lands than its mineral development.

San Bernardino Meridian

CACA 25073

T. 6 S., R. 1 E.,
Sec. 5, NW¼SE¼.

The area described contains 40.00 acres in Riverside County. Currently, 100 percent of the mineral interest in these lands is owned by the United States.

The application was filed on May 26, 1989.

Upon publication of this Notice of Segregative Effect in the **Federal Register** as provided in 43 CFR 2091.3-1(c) and 43 CFR 2720.1-1(b), the mineral interests owned by the United States in the private lands covered by the application shall be segregated to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate by publication of an opening order in the **Federal Register** specifying the date and time of opening; or upon issuance of a patent or other document of conveyance to such mineral interests; or upon final rejection of the application; or two years from the date of filing of the application, whichever occurs first.

Date: June 14, 1989.

Nancy J. Alex,

Chief, Lands Section, Branch of Adjudication and Records.

[FR Doc. 89-14798 Filed 6-21-89; 8:45 am]

BILLING CODE 4310-40-M

[AZ-010-09-4332-11]

Vermillion Resource Area, Arizona Strip District, Arizona; Wilderness Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of draft wilderness management plan for Mt. Trumbull and Mt. Logan Wilderness areas.

SUMMARY: The draft wilderness management plan (WMP) for the Mt. Trumbull and Mt. Logan Wilderness Areas, Vermillion Resource Area, Arizona Strip District is available for distribution to the public, federal, state and local agencies, and Indian tribes. The WMP will guide management of the wilderness resources as well as other uses in the two areas for the next ten years.

The draft WMP would provide comprehensive management direction and objectives, as well as specific management actions for a total of 22,500 acres of statutory wilderness in northern Mohave County, Arizona.

A 45-day public comment period on the draft WMP will commence with publication in the **Federal Register** of this Notice of Availability.

FOR FURTHER INFORMATION CONTACT: Robert D. Roundabush, Vermillion Resource Area, BLM, 390 North 3050 East, St. George, Utah 84770: (801) 628-4491.

SUPPLEMENTARY INFORMATION: The Mt. Trumbull and Mt. Logan Wilderness Areas were incorporated into the *National Wilderness Preservation System* on August 28, 1984, by the *Arizona Wilderness Act of 1984* (Pub. L. 98-406) after almost six years of inventory and study. The WMP incorporates the Limits of Acceptable Change (LAC) system, which provides direction for much of the wilderness monitoring and effectively focuses BLM activities to areas where management attention is most needed. The WMP includes an Environmental Assessment of the proposed plan and alternatives, as well as a draft Fire Managment Plan for the two areas.

G. William Lamb,

District Manager.

[FR Doc. 89-14799 Filed 6-21-89; 8:45 am]

BILLING CODE 4310-32-M

[NM-932-09-4332-09]

New Mexico; Public Review Period for USGS/USBM "Mineral Survey Reports"; Wilderness Study Areas

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The New Mexico Bureau of Land Management (BLM) is requesting the public to review combined U.S. Geological Survey (USGS) and U.S. Bureau of Mines (USBM) "Mineral Survey Reports" which have been completed for preliminary suitable Wilderness Study Areas (WSAs). If the public identifies significant differences in interpretation of the data presented in the reports or submits significant new minerals data for consideration, the BLM will request USGS/USBM evaluate these comments in relation to their final Mineral Survey Report. The BLM will consider the USGS/USBM evaluations as well as the Mineral Survey Report in developing final wilderness suitability recommendations. Copies of the WSA reports can be reviewed in BLM offices in Santa Fe, Albuquerque, Taos, Farmington, Las Cruces, Socorro, Roswell, Carlsbad, Tulsa and Oklahoma City.

DATE: New information will be accepted on the reports enumerated in this notice until August 21, 1989.

ADDRESS: Send information on reports to Deputy State Director, Mineral

Resources, Bureau of Land Management, New Mexico State Office, P.O. Box 1449, Santa Fe, NM 87504–1449.

FOR FURTHER INFORMATION CONTACT: Powell King, BLM, New Mexico State Office, Division of Mineral Resources, (505) 988–6166.

SUPPLEMENTARY INFORMATION: Section 603 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2785, directed the Secretary of the Interior to inventory lands having wilderness characteristics as described in the Wilderness Act of September 3, 1964, and from time to time report to the President his recommendations as to the suitability or non-suitability of each area for preservation as wilderness. The USGS and USBM are charged with conducting mineral surveys for areas that have been preliminarily recommended suitable for inclusion into the wilderness system, to determine the mineral values, if any, that may be present in such areas.

To ensure that all available minerals data are considered by the Bureau of Land Management prior to making its final wilderness suitability recommendations to the Secretary of the Interior, the State Director, New Mexico is providing this public review and comment period. Usually there is a one to two year lag time between actual field work and final printing of a mineral survey report. New information may have been collected by the public during this lag time or the public may have a new interpretation of the data presented in the mineral survey reports. Any new data or new interpretations of data in the reports will be screened for its significance and validity by the Bureau of Land Management. Significant new minerals data or new interpretations of the minerals data will be forwarded to the U.S. Geological Survey and U.S. Bureau of Mines for further consideration. Evaluations received by the Bureau of Land Management from the U.S. Geological Survey and U.S. Bureau of Mines will be considered by the State Director in the final wilderness suitability recommendations.

Information requested from the public via this invitation is not limited to any specific energy or mineral resource. Information can be in the form of a letter and should be as specific as possible and include:

1. The name and number of the subject Wilderness Study Area and Mineral Survey Report.

2. Mineral(s) of interest.

3. A map or land description by legal subdivision of the public land surveys or protracted surveys showing the specific parcel(s) of concern within the subject Wilderness Study Area.

4. Information and documents that depict the new data or reinterpretation of data.

5. The name, address and phone number of the person who may be contacted by technical personnel of the Bureau of Land Management, U.S. Geological Survey or U.S. Bureau of Mines assigned to review the information.

Geologic maps, cross sections, drill hole records and sample analyses, etc., should be included. Published literature and reports may be cited. Each comment should be limited to a specific Wilderness Study Area. All information submitted and marked confidential will be treated as proprietary data and will not be released to the public without consent.

The following is a list of available Mineral Survey Reports by Wilderness Study Area (WSA) on which new information will be accepted.

WSA No.	Name	Report No.
010–020	Ignacio Chaves	BU 1733–D
020–014	Petaca Pinta	BU 1734–H
020–016	Sierra Ladrones	BU 1734–F
030–007	Cowboy Spring	BU 1735–F
030–074	Organ Mountains	BU 1735–D
060–109/110A	Little Black Peak/ Carrizozo Lava Flow.	BU 1734–E

Reports available for review in BLM offices will not be available for sale or removal from the office. Copies of the listed reports may be purchased from: U.S. Geological Survey, Books and Open File Reports, Box 25425, Federal Center, Denver, Colorado 80225.

Date: June 15, 1989.

Gilbert O. Lockwood,

Deputy State Director, Mineral Resources.

[FR Doc. 89–14762 Filed 6–21–89; 8:45 am]

BILLING CODE 4310–FB–M

Minerals Management Service

Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Hall-Houston Oil Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 10541, Block 57, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on June 9, 1989. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: June 9, 1989.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89–14800 Filed 6–21–89; 8:45 am]

BILLING CODE 4310–MR–M

INTERSTATE COMMERCE COMMISSION

Motor Carrier Applications To Consolidate, Merge or Acquire Control

The following Applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by 49 CFR 1182.1.

Persons wishing to oppose an application must follow the rules under 49 CFR 1182.2. If the protest includes a request for oral hearing, the request shall meet the requirements of 49 CFR 1182.3 and shall include the required certification. Failure seasonable to oppose will be construed as a waiver of opposition and participation in the proceeding.

In the absence of legally sufficient protests as to the finance application or to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Findings

The findings for these applications are set forth at 49 CFR 1182.6.

MC–F–19405, filed May 4, 1989. Greyhound Lines, Inc. (GLI) (Suite 2400, 901 Main Street, Dallas, TX 75202)—Purchase (Portion)—Kerrville Tours, Inc. (KTI) (429 Sidney Baker Street, Kerrville, TX 78029–0172); Kerrville Tours, Inc.—Purchase (Portion)—Greyhound Lines, Inc.; and Kerrville Bus Company, Inc. (KBCI) (same address as KTI)—Purchase (Portion)—Greyhound Lines, Inc. Applicants' representatives: Fritz R. Kahn, William C. Evans, and Mark J. Andrews, Suite 700, 901 Fifteenth Street NW., Washington, DC 20005–2301, attorneys for GLI.

GLI, KTI, and KBCI, motor carriers of passengers, seek approval for a route exchange transaction in which GLI will acquire certain interstate and intrastate regular-route motor carrier authorities from KTI, and, in turn, KTI and KBCI will acquire certain such authorities from GLI, without cash consideration in either direction. GLI would acquire KTI's authority covering operations east of Shreveport, LA; KTI would acquire certain of GLI's authority covering operations between eastern Texas and western Louisiana points; and KBCI would acquire GLI's authority covering operations between Houston and Austin, TX, and between Austin and Columbus, TX.

GLI would acquire KTI's operating authority under MC–12907 to provide service: (1) Between Shreveport and Lafayette, LA (Sub-No. 3); and (2) between Meeker and Opelousas, LA, over U.S. Hwy 167 (Sub-No. 6); (3) between Opelousas and Baton Rouge, LA, over U.S. Hwy 190 (Sub-No. 7); (4) between Shreveport and Meridian, MS, over Interstate Hwy 20 (portion of Sub-No. 8); and (5) between Meridian and Montgomery, AL, over U.S. Hwy 80 (part (1) of Sub-No. 9).

KTI would acquire GLI's operating authority under MC–109780 to provide service: (1) Between Texarkana, AR–TX, and Shreveport, LA (Sub-No. 97, sheet 2, portion of route 6, and sheet 9, portion of route 6); (2) between Shreveport and Houston, TX, via Logansport, LA, and Nacogdoches and Lufkin, TX (Sub-No. 79, portion of sheets 16 and 17); (3) between Houston and Humble, TX (Sub-No. 97, sheet 18, portion of route (8)); and (4) between Beaumont and Henderson, TX, via Nacogdoches, San Augustine, and Bronson, TX (Sub-No. 79, portion of sheet 16).

KBCI would acquire GLI's operating authority under MC–109780 to provide service between Austin and Columbus, TX, over Texas Hwy 71, and between Austin and Houston, TX, over U.S. Hwy 290 (Sub-No. 128, portions of sheet 13).

The involved certificates of KTI, with the exception of the Sub-No. 9 certificate, authorize intrastate service corresponding to the described interstate service. GLI holds Texas intrastate authority, in RCT 00007BD5C, Certificate 7B, and RCT 003979A6C, Certificate 3979, approximately corresponding to the interstate authority described above. Applicants would transfer the pertinent intrastate rights along with the interstate rights described above. *See* No. MC–C–30122, Thurston Motor Lines, Inc., Brown Transport Co., Inc., and Brown Transport Truckload, Inc.—Petition for Declaratory Order—Transfer of Intrastate Rights Under 49 U.S.C. 11343 (a) and (e) (not printed), served January 13, 1989.

GLI is a wholly-owned subsidiary of noncarrier GLI Bus Operations Holding Company which, in turn, is a wholly-owned subsidiary of noncarrier GLI Holding Company which, in turn, is controlled through stock ownership by Fred G. Currey, Craig R. Lentzsch, and Anthony P. Lannie, noncarrier individuals, of Dallas, TX. Certain affiliations of GLI with other carriers have been approved in other proceedings and would not be affected by the instant transaction. Common control of GLI with BusLease Contract Services, Inc. (MC–193190), Texas, New Mexico & Oklahoma Coaches, Inc. (MC–161120), and Vermont Transit Co., Inc. (MC–45626) was approved in MC–F–18260. Acquisition by GLI of the former 50 percent stock interest of Trailways Lines, Inc., in Continental Panhandle Lines, Inc. (MC–8742) was approved in MC–F–18505. Collectively, GLI and its affiliates currently hold and exercise, and will continue to hold and exercise, authority encompassing regular-route interstate and intrastate operations throughout the 48 contiguous States and DC, interstate charter and special operations in DC and every State except HI, and package express operations nationwide.

KTI is a wholly-owned subsidiary of KBCI, which also owns all the stock of passenger motor carriers Custom Convention Services, Inc. (MC–180463), North Texas Lines, Inc. (MC–191219), and Painter Bus Lines, Inc. (MC–57676). The controlling shareholder of KBCI is F.E. Kaiser, a noncarrier individual, of Kerrville, TX. Collectively, KBCI, KTI, and their affiliates currently provide regular route, charter, and package express service in interstate and intrastate commerce throughout most of TX, and regular-route service eastward to Baton Rouge, LA, and Montgomery, AL. Applicants state that the proposed route exchange would not affect any of KBCI's of KTI's existing service between Shreveport, LA, and points west thereof, including points in TX.

By decision served June 15, 1989, the Commission has granted applicants' petition for waiver of the otherwise applicable information requirements of Appendices A–6/AA–6/AAA–6, A–7/AA–7/AAA–7, B–4/BB–4, C–2, C–5, and C–6 of the OP–F–44 application form.

Applicants have been granted temporary authority to lease the pertinent operating rights pending final disposition of the finance application.

Decided: June 16, 1989.

By the Commission, Motor Carrier Board.

Noreta R. McGee,

Secretary.

[FR Doc. 89-14815 Filed 6-21-89; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 290; Sub No. 5; 89-3]

Quarterly Rail Cost Adjustment Factor

AGENCY: Interstate Commerce Commission.

ACTION: Notice.

SUMMARY: The Commission has approved the third quarter 1989 rail adjustment factor (RCAF) and cost index filed by the Association of American Railroads. The third quarter RCAF (Unadjusted) is 1.057. The third quarter RCAF (Adjusted) is 1.058, an increase of 1.0 percent over the second quarter RCAF (Adjusted) of 1.048. Maximum third quarter RCAF rate levels may not exceed 101.0 percent of maximum second quarter 1989 RCAF rate levels.

DATE: Effective July 1, 1989.

FOR FURTHER INFORMATION CONTACT: William T. Bono (202) 275-7354; Robert C. Hasek (202) 275-0938; TDD for hearing impaired (202) 275-1721.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone (202) 289-4357 or 4359. Assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup from Dynamic Concepts, Inc., Room 2229 at Commission Headquarters.

This action will not significantly affect either the quality of the human environment or energy conservation. It will not have a significant impact on a substantial number of small entities.

Decided: June 15, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips. Commissioner Lamboley concurred in the result with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 89-14751 Filed 6-21-89; 8:45 am]

BILLING CODE 7035-01-M

Release of Waybill Data for Use by Freight Equipment Management Research-Demonstration Program Association of American Railroads

The Commission has received a request from the Freight Equipment Management, Research-Demonstration Program of the Association of American Railroads (AAR) for permission to use certain data from the Commission's 1988 ICC Waybill Sample. Excluded from the request is any cost or revenue information contained in the sample data. The data will be used to support a variety of studies, such as:

1. *Tank Car Safety Research*—investigates safety related issues in the management of the tank car fleet.

2. *Freight Car Utilization*—investigates car utilization issues across a variety of car types (e.g., mileage savings expected with pooling)

The Commission requires rail carriers to file waybill sample information if in any of the past three years they terminated on their lines: (1) 4,500 revenue carloads or (2) 5 percent of revenue carloads in any one State (49 CFR Part 1244). From the waybill information, the Commission has developed a Public Use Waybill File that has satisfied the majority of all our waybill data request while protecting the confidentiality of proprietary data submitted by the railroads. However, if confidential waybill data are requested, as in this case, we will consider releasing the data only after certain protective conditions are met and public notice is given. More specifically, under the Commission's current policy for handling waybill requests, we will not release any confidential waybill data until after: (1) Public notice is provided so affected parties have an opportunity to object and (2) certain requirements designed to protect the data's confidentiality are agreed to by the requesting party (Ex Parte No. 385; Sub-No. 2; 52 FR 12415, April 16, 1987).

Accordingly, if any parties object to this request, they should file their objections (an original and 2 copies) with the Director of the Commission's Office of Transportation Analysis (OTA) within 14 calendar days of the date of this notice. They should also include all grounds for objections to the full or partial disclosure of the requested data. The Director of OTA will consider these objections in determining whether to release the requested waybill data. Any parties who objected will be timely notified of the Director's decision.

Contact: James A. Nash, (202) 275-6864.

Noreta R. McGee,

Secretary.

[FR Doc. 89-14812 Filed 6-21-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55; Sub-No. 300X]

CSX Transportation, Inc.—Abandonment Exemption—in Lewis County, WV

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 5.60-mile line of railroad between milepost 23.88 at Deanville to milepost 29.98 at Ben Dale and milepost 24.64 at MacPelah to milepost 27.14 at Keeley No. 4, in Lewis County, WV.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user or rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 22, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by July 3, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by July 12, 1989, with Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Patricia Vail, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by June 27, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kasier, Acting Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes availble to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: June 15, 1989.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-14657 Filed 6-21-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55; Sub-No. 302X]

CSX Transportation, Inc.—Abandonment Exemption—in Lewis County, WV

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 0.99-mile line of railroad between milepost 17.94 at Good Hope Junction and the end of the line at milepost 18.93, in Lewis County, WV.

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C.2d 400 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440-48446).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

[Docket No. AB-55; Sub-No. 303X]

CSX Transportation, Inc.—Abandonment Exemption—Between Gaston Junction and Willard in Harrison and Marion Counties, WV

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon 18.72 miles of line in Harrison and Marion Counties, WV: (1) Between milepost 1.08 at Gaston Junction and milepost 15.01 at Willard; (2) between milepost 0.0 and 3.88, the Bingamon Branch; and (3) between milepost 0.0 and milepost 0.91, the Killarm Industrial Track.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee *Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 22, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by July 3, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by July 12, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Patricia Vail, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environmental (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by June 27, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Acting Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: June 15, 1989.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-14656 Filed 6-21-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55; Sub-No. 303X]

CSX Transportation, Inc.—Abandonment Exemption—Between Gaston Junction and Willard in Harrison and Marion Counties, WV

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon 18.72 miles of line in Harrison and Marion Counties, WV: (1) Between milepost 1.08 at Gaston Junction and milepost 15.01 at Willard; (2) between milepost 0.0 and 3.88, the Bingamon Branch; and (3) between milepost 0.0 and milepost 0.91, the Killarm Industrial Track.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee *Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C.2d 400 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440-48446).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 22, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by July 3, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by July 12, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representatives: Patricia Vail, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by June 27, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Acting Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: June 14, 1989.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-14659 Filed 6-21-89; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31452]

Indiana Hi-Rail Corp.—Lease and Trackage Rights Exemption—Southern Railway Co. Certain Southeastern Indiana Lines

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemptions.

SUMMARY: Under 49 U.S.C. 10505, the Commission exempts: (1) From the prior approval requirements of 49 U.S.C. 11343, *et seq.*, the lease by Indian Hi-Rail Corporation (IHR) from Southern Railway Company (SR) of 54.8 miles of rail and rail related property between (a) Rockport and Rockport Junction, IN; (b) Cannelton and Lincoln City, IN; and (c) Huntingburg and Dubois, IN; subject to standard employee protective conditions; and (2) from the provisions of 49 U.S.C. 10761, 10762 and 11145, IHR's operations over (a) the same lines described in (1) above, and (b) the 14.8-mile line described below. IHR will acquire from SR trackage rights between Rockport Junction and Huntingburg. This trackage rights transaction is exempt under the class exemption in 49 CFR 1180.2(d)(7) and is subject to similar employee protective conditions.

DATES: These exemptions will be effective on June 29, 1989. Petitions for reconsideration must be filed by July 12, 1989.

ADDRESSES: Send pleadings referring to Finance Docket No. 31452 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioners' representatives:

Indiana Hi Rail Corporation: John D. Heffner, Gerst, Heffner, Foldes & Podgorsky, Suite 1107, 1700 K Street, NW., Washington, DC 20006

Southern Railway Company: Mark D. Perreault, Three Commercial Place, Norfolk, VA 23510-2191

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275-7245 [TDD for hearing impaired (202) 275-1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone (202) 289-4537/4539. [Assistance for the hearing impaired is available through TDD services (202) 275-1721].

Decided: June 7, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips. Commissioner Lamboley concurred in part, and dissented in part with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 89-14752 Filed 6-21-89; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31484]

Southeast Shortlines, Inc., D/B/A Thermal Belt Railway—Lease, Operation and Acquisition Exemption—A Rail Line in Rutherford County, NC

Southeast Shortlines, Inc., d/b/a, Thermal Belt Railway (Railway) has filed a notice of exemption for the lease, operation and possible future acquisition of a line extending from south of Forest City, NC at milepost SB 175.5 to north of Gilkey, NC at milepost SB 188.34, a distance of 12.84 miles. The Rutherford Railroad Development Corporation (RRDC) is in the process of purchasing the line from the Southern Railway Company (Southern).[1] After the acquisition, Railway expects to lease the line from RRDC. Railway is currently negotiating the terms of the lease, including an option to purchase the line in the future. The transaction is expected to be consummated on or before June 8, 1989. The transaction involves the issuance of exempt securities.

Any Comments must be filed with the Commission and served on John D. Heffner, Gerst, Heffner, Foldes & Podgorsky, 1700 K Street, NW., Washington, DC 20006.

Applicant must preserve intact all sites and structures more than 50 years old until compliance with the requirements of section 106 of the National Historic Preservation Act, 16 U.S.C. 470, is achieved. *See Class Exemption—Acq. & Oper. of R. Lines Under 49 U.S.C. 10901*, 4 I.C.C.2d 305 (1988).[2]

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[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C. 2d 400 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d 164 (1987), and final rules published in the Federal Register on December 22, 1987 (52 FR 48440-48446).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

[1] Southern was authorized to abandon the line in Docket No. AB-290 (Sub-No. 36), *Southern Railway—Carolina Division and Southern Railway Company—Abandonment and Discontinuance of Service—In Cleveland and Rutherford Counties, NC* (not printed), served October 17, 1988.

[2] Applicant has certified to the North Caroline State Historic Preservation Officer that no

Continued

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: June 15, 1989.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-14656 Filed 6-21-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on June 16, 1989 a proposed consent decree was lodged with the United States District Court for the District of Maryland in *United States* v. *Allied-Signal Inc.*, Civil Action No. R89-1804. The proposed consent decree addresses surface water and ground water contamination at a facility located at the intersection of Block and Wills Streets in Baltimore, Maryland (the "Site"). The decree requires the defendant, Allied-Signal Inc. ("Allied"), to conduct certain studies to further define the nature and extent of the endangerment at the Site. Allied also will implement measures to prevent further contamination of surface water and ground water at the Site and further migration of hazardous wastes from the Site.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Allied-Signal Inc.*, DJ Ref. 90-7-1-478.

The proposed consent decree may be examined at the Office of the United States Attorney, District of Maryland, U.S. Courthouse, 8th Floor, 101 West Lombard Street, Baltimore, Maryland, and at the Region III office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania. Copies of the consent decree may be examined at the offices of the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1647, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice. In requesting a copy, please enclose a check in the amount of $23.00 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-14754 Filed 6-21-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Joint Stipulation Pursuant to Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Joint Stipulation in *United States* v. *General Electric Company*, Civil Action No. 88-C-2564, was lodged with the United States District Court for the Northern District of Illinois on June 2, 1989. The Complaint filed by the United States alleged violation of section 113 of the Clean Air Act for failure by defendant to comply with applicable provisions of the Illinois State Implementation Plan ("SIP"), relating to emissions of volatile organic compounds ("VOCs"), at defendant's Cicero, Illinois manufacturing plant.

The proposed Joint Stipulation requires defendant to pay a civil penalty of $150,000 for alleged past violations of the Clean Air Act and the SIP, and also provides that the action shall be dismissed without prejudice.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Joint Stipulation. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *General Electric Company*, D.J. Reference No. 90-5-2-1-1090.

The proposed Joint Stipulation may be examined at the office of the United States Attorney, Northern District of Illinois, Everett McKinley Dirkson Building, 219 South Dearborn Street, Chicago, Illinois 53202, and at the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 111 West Jackson Street, Chicago, Illinois 60604. Copies of the proposed Joint Stipulation may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1647, Ninth Street and Pennsylvania Avenue, NW., Washington, DC. A copy of the proposed Joint Stipulation may be obtained in person from the above address or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-14801 Filed 6-21-89; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—CAD Framework Initiative, Inc.; Antitrust Division

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), CAD Framework Initiative, Inc. ("CFI") on May 17, 1989, has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in the membership of CFI. The additional written notification was filed for the purpose of extending the protections of section 4 of the Act, limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On December 30, 1988, CFI filed its original notification pursuant to section 6(a) of the Act. That filing was amended on February 7, 1989. The Department of Justice published a notice in the Federal Register pursuant to section 6(b) of the Act on March 13, 1989, 54 FR 10456, as corrected by 54 FR 16013.

The changes consist of the following: (1) The addition of corporate members: International Business Machines (IBM), Mitsubishi Electronic Corp., Philips Research Laboratories, Plessey Semiconductors Ltd., and Zycad Corp.; and (2) the addition of associate members: Gateway Design Automation Corp., Timothy Andrews, Hong-Tai Chou, Daniel Daly, Alan Ford, Arding Hsu, Marlene Kasmir, Mitch Morey, and Dyson Wilkes.

The following entities are Corporate Members of the CAD Framework Initiative, Inc.:

Advanced Micro Devices, Inc.
Alcatel NV

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properties qualifying for inclusion in the *National Register of Historic Places* will be transferred as a result of this transaction.

Apollo Bell Laboratories
Bull, S.A.
CADENCE Design Systems, Inc
Control Data Corp.
Daisy Systems Corp.
Digital Equipment Corporation
EDA Systems, Inc.
GE Aerospace
General Motors/Delco Electronics
Harris Corp.
Hewlett-Packard Company
Honeywell, Inc.
IMEC, VZW
Intergraph Corp.
International Business Machines (IBM)
International Computers Ltd.
Mentor Graphics Corporation
Microelectronics and Computer Technology Corporation
Mitsubishi Electronic Corp.
Motorola, Inc.
NCR Corp.
Nixdorf Computer AG
Object Design, Inc.
Objectivity, Inc.
Philips Research Laboratories
Plessey Semiconductors Ltd.
Robert Bosch GbmH
SCME Foundation Centers For Micro-Electronics
SGS Thomson Microelectronics
Siemens AG
Sony Corporation
Sun Microsystems
Texas Instruments, Inc.
Valid Logic Systems, Inc.
VIEWLOGIC Systems, Inc.
VLSI Technology
Westinghouse Electric Corp.
Zycad Corp.

The following entities and individuals are Associate Members of the CAD Framework Initiative Inc.:

Delft University of Technology
Frauhofer AIS
Gateway Design Automation Corp.
Gesellschaft fur Mathematik und Datenverarbeitung mbH (GMD)
Intel Corp.
PTT Research Neher Laboratories
Semiconductor Research Corporation
Timothy Andrews
Kenneth Bakalar
Hong-Tai Chou
Daniel Daly
Alan Ford
Bill Harding
Arding Hsu
David Jakopac
Marlene Kasmir
Mitch Morey
Moe Shahdad
Erwin Warshawsky
Dyson Wilkes

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89-14602 Filed 6-21-89; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984—UNIX International, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), UNIX International, Inc. on May 4, 1989, filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in the membership of UNIX International, Inc. The additional written notification was filed for the purpose of extending the protections of section 4 of the Act, limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On January 30, 1989, UNIX International, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act of March 1, 1989, 54 FR 8608.

As of April 26, 1989, the following have become members of UNIX International, Inc.:

Acer
ASCII
AVCOM
C. Itoh
Concurrent
Dell Computer
Dupont Fibers
EMSCA
EDS/GM
Encore
ERSO–ITRI
Informix
Locus
Micro Focus
Modcomp
Nihon Unisys
Nippon Steel
Omron
Phoenix Technologies
Prisma
Sequent
Sequoia
Silicon Graphics
Sony
Stellar
Tandem
Tata Consultancy
Texas Instruments
Thomson-CETIA
Wang
Xerox

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89-14603 Filed 6-21-89; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[App. No. D-7550 et al.]

Proposed Exemptions; ALTA Health Strategies, Inc., et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N–5671, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–5570, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

ALTA Health Strategies, Inc. (ALTA) and ALTA Reinsurance Company (ALTA Re) Located in Salt Lake City, Utah

[App. No. D–7550]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a) of the Act shall not apply to the reinsurance of group health, life, and accidential death and dismemberment risks, and the receipt of premiums therefrom, by ALTA Re pursuant to reinsurance arrangements with Issuing Carriers in connection with stop-loss insurance contracts sold to employee welfare benefit plans for which ALTA serves as a third party administrator or provides brokerage services (the Plans), provided the following conditions are satisfied:

(1) The plans pay no more than adequate consideration for the insurance contracts;

(2) The transactions covered by the proposed exemption will be offered as an option to be considered by the Plan fiduciary described in 2(d) below, only when each of the following conditions are satisfied: (a) The Plans for which the transactions are presented as an option have 100 or more participants; (b) ALTA concludes, on the basis of its analysis, that the stop-loss insurance arrangement covered by this exemption is consistent with the insurance needs of the Plans; (c) ALTA concludes that the proposed transactions would be less expensive than conventional stop-loss insurance offered by comparable primary insurers and reinsurers having the equivalent reserves and Best's ratings; further, ALTA will not offer this option unless it concludes that, based on a review of the available data concerning the insurance market, stop-loss insurance consistent with this exemption will, in fact, be more beneficial to the Plans than comparable coverage not subject to this exemption; (d) ALTA determines that, in accordance with the procedures described in (e), below, the decision to utilize the option covered by this exemption is being made by a fiduciary of the Plan who is independent of ALTA and ALTA Re, who is capable of making an independent decision, and who is sufficiently knowledgeable with respect to the Plan, and administrative, benefits, and funding matters related thereto, to make an informed decision concerning the option covered by this exemption; and (e) with respect to the determinations made by ALTA pursuant to (d), above, ALTA maintains a written procedure under which criteria are established for making such determinations. Pursuant to such precedure, each determiniation, and the basis therefore, shall be documented and, thereafter, approved by an officer of ALTA who was not involved in the presentation of the options to the Plan fiduciary. Such documentation shall, among other things, include: written representations provided by the fiduciary or plan sponsor supporting such determinations, the qualifications of the fiduciary on which ALTA based its determination, and any other factors which ALTA took into account in making its determination, and the relevance of such factors. Such documentation shall be retained for a period of six years from the date that the transaction was entered into pursuant to this exemption. Similarly, a copy of the procedure shall be retained during any period for which documentation is required to be retained. Both the procedure and documentation shall be unconditionally available at ALTA's principal place of business for examination during working hours by any duly authorized employee or representative of the Department;

(3) ALTA provides to the fiduciary described in 2(d) above a complete description of all services, commissions, fees, contracts or arrangements and relationships between ALTA, ALTA Re and any other party, and will provide a complete description of the insurance arrangements offered by the direct insurers, and the fiduciary acknowledges in writing the receipt of such information and that the decision to select an option (including the proposed option) is a decision made in its fiduciary capacity;

(4) No commissions will be paid with respect to the reinsurance of the risks by ALTA Re;

(5) No single group of affiliated Plans will represent more than 5 percent of the total premiums written pursuant to the subject transactions;

(6) ALTA will follow its standard claims processing practices regarding any claims submitted with respect to Plans engaging in the subject transactions;

(7) ALTA will not offer any incentives to any of its emloyees with respect to the stop-loss option covered by the proposed exemption and in all cases the compensation paid with respect to employees or other persons acting on behalf of ALTA will be paid in the same manner regardless of the option selected;

(8) ALTA Re will comply with all applicable requirements of the law of its domiciliary state, Arizona, regarding its operations and reserves; and

(9) ALTA Re will be subject to a financial audit by the Arizona Department of Insurance no less frequently than once every three years.

Summary of Facts and Representations

1. ALTA is a third party contract administrator (TPA), headquartered in Salt Lake City, Utah, which provides services to self-insured health plans throughout the United States.[1] ALTA is as successor organization to the TPA and healt claims business previously conducted by Fred S. James & Company, Inc. ALTA Re is a wholly owned subsidiary of ALTA licensed to do business as a reinsurance company by the State of Arizona.

2. ALTA currently provides its plan sponsor customers with plan design and administrative services in connection with the operation of their health and life programs. Such administrative services include health claims processing, benefit disbursement, preadmission and outpatient surgery claims review, negotation of preferred provider organization (PPO) agreements and the implementation of PPOs networks within geographical areas. ALTA dose not act as plan administrator and it is intended and

[1] According to the applicants, ALTA acts through a number of wholly-owned subsidiaries throughout the country. Accordingly, all references to ALTA shall, for purposes of this exemption, include such subsidiaries (other that ALTA Re).

agreed between ALTA and the plan sponsors it serves that ALTA does not have final authority to authorize or disallow benefit payments. All decisions of ALTA are tentative decisions subject to review by plan sponsors.

3. ALTA also currently provides insurance brokerage in connection with the placement of life insurance or stop-loss insurance coverage for self-insured health plans. In this regard, ALTA has structured its agreements with plan sponsors to come within the safeguards of Prohibited Transaction Exemption (PTE) 84–24 (49 FR 13208, April 3, 1984). ALTA, on behalf of its plan sponsor customers, currently deals with 28 different insurance carriers. Annually, ALTA negotiates health plan excess stop-loss coverages with premiums over $14 million and negotiates group life premiums associated with stop-loss coverages of over $8 million. The life insurance carriers and the excess stop-loss insurance carriers almost universally act as Issuing Carriers (also referred to as "primary" insurers). That is, such carriers deal with reinsurers, with respect to whom the Issuing Carriers "lay off" (i.e., reinsure) substantial portions of the risk on a straight percentage of layer basis.

4. ALTA has recently completed an analysis of the current insurance and reinsurance arragements for various welfare plans. On the basis of this analysis and survey of the activities of other TPAs, ALTA has determined that a consolidation of its insurance arrangements with five or six insurance carriers will benefit the Plans. These primary insurance carriers are unrelated to ALTA. The applicants represented that this will increase ALTA's bargaining power on behalf of the Plans by increasing the preimum volumes with these carriers. It will also reduce the insurance carriers' home office overhead by simplifying insurance arrangements and making them more uniform. In addition, ALTA's survey of existing insurance carrier arrangements has also convinced ALTA that it can provide certain of the activities currently performed by the home office of insurance carriers more cost effectively, through the elimination of the current duplication of underwriting and marketing activities. For the same reasons, ALTA has determined that reinsurance arrangements may be streamlined to the benefit of the Plans. ALTA believes that its bargaining power with those selected insurance carriers will be further enhanced if it offers a ready source of reinsurance on behalf of the Plans.

5. The applicants have requested an exemption to permit the reinsurance by ALTA Re of group health, life, and accidental death and dismemberment risks for a premium pursuant to reinsurance arrangements with Issuing Carriers for employee welfare plans with respect to which ALTA provides other services.[3] ALTA Re would reinsure these coverages under terms attractive to the Issuing Carrier as well as the Plans. The precise amount of reinsurance ceded to ALTA Re would be the result of an arms-length negotiation on the part of the Issuing Carrier and ALTA Re. The issuing Carrier remains 100 percent liable for all insured risks, including the insurance risks ceded to ALTA Re or other reinsurance carriers. ALTA believes that by offering an expanded package of underwriting, insurance administration and reinsurance services and products, it will be in a position to negotiate group life and self-insured excess stop-loss insurance arrangements which will be more beneficial to the Plans than insurance arrangements that do not involve ALTA and ALTA Re. In this regard, the applicants represent that the proposed arrangement will be less expensive than conventional stop-loss insurance offered by comparable Issuing Carriers and reinsurers. In addition to the direct cost savings of the Plans, the applicants represent that participants will be directly benefited by the lower plan costs in that most plans charge employees a portion of the cost of coverage, which factors in the costs attributable to stop-loss insurance premiums.

6. The applicants represent that, in addition to compliance with all applicable insurance laws of the State of Arizona, including capitalization, surplus, and underwriting requirements, ALTA Re, with respect to the transactions which are the subject of this exemption, will comply with reserve and other requirements imposed by Issuing Carriers, and will include a requirement that all Issuing Carriers be domestic companies with a Best rating of "A" and minimum assets of $100 million. The applicants represent that ALTA Re will provide, as a reserve, a fully secured Letter of Credit in the minimum amount of $500,000 with respect to coverages provided through each Issuing Carrier. This reserve is designed to provide an additional guarantee prior to the issuance of the first dollar of coverage. ALTA will guarantee these initial reserves. The Issuing Carriers will not be affiliates of ALTA or ALTA Re.

7. The applicants represent that the transactions which are the subject of this exemption will be presented as an option to be considered by the Plan fiduciary only when each of the following conditions are satisfied: (a) The Plans for which the transactions are presented as an option have 100 or more participants; (b) ALTA concludes, on the basis of its analysis, that the stop-loss insurance arrangement covered by this exemption is consistent with the insurance needs of the Plans; (c) ALTA concludes that the proposed transactions would be less expensive than conventional stop-loss insurance offered by comparable primary insurers and reinsurers having the equivalent reserves and Best's ratings; in this regard, the applicants represent that ALTA will not offer this option unless it concludes that, based on a review of the available data concerning the insurance market, that stop-loss insurance consistent with this exemption will, in fact, be more beneficial to the Plans than comparable coverage not subject to this exemption; (d) the decision to utilize the option covered by this exemption is being made by a fiduciary who is independent of ALTA and ALTA Re, and who exhibits a capability for independent decision making; and (e) ALTA institutes and maintains a procedure for determining that such fiduciary is independent of ALTA and ALTA Re, and sufficiently knowledgeable to make an informed decision regarding the transaction (as described in condition 2(e), above).

8. The applicants represent that no more than 5 percent of the total premiums written by ALTA Re pursaunt to the transactions covered by the proposed exemption will be derived from any one single group of affiliated Plans.

9. The applicants represent that, in presenting options to the Plan fiduciary, ALTA will provide the fiduciary with as complete a description of the options satisfying the fiduciary's objectives as possible, given the prevailing conditions of the insurance market. As part of this presentation, ALTA will provide a thorough description of all services, commissions, contracts and other arrangements between ALTA, ALTA Re and any other party and will provide a complete description of the insurance arrangements offered by the primary insurers. This disclosure will include details regarding commissions, fees, relationships between the parties and

[3] In this proposed exemption the Department is not providing relief for the receipt of fees with respect to other services provided by ALTA. In this regard, see section 408(b)(2) of the Act and PTE 84–24.

disclosures required by PTE 84–24.[3] In addition, the fiduciary will acknowledge in writing the receipt of such information and that the decision to select an option, including the proposed option, is a decision made in a fiduciary capacity.

10. Following the presentation of options, the plan fiduciary will be free to select from among the available options. The options presented will include options in addition to the transactions covered by this exemption. The plan fiduciary is free to decline any options presented and request ALTA to pursue additional options.[4] If the plan fiduciary selects an option covered by the proposed exemption, ALTA will only engage in the transactions if it has received clear and unequivocal evidence that such fiduciary is aware that it is acting in a fiduciary capacity and is responsible for selection of the insurance company and approval of the proposed transactions.[5]

11. The applicants represent that ALTA has a standard operating procedure whereby all claims received by ALTA are expected to be processed within five working days. While this standard is occasionally not satisfied because of factors beyond the control of ALTA or its plan customers, on average ALTA has been successful in maintaining this standard. ALTA is committed to maintaining its standard claims processing practices with respect to any claims submitted with respect to plans which participate in the stop-loss insurance arrangements covered by this proposed exemption. Under these procedures, benefit payments are determined based on the date services are "incurred", not the date the claim is processed. The applicants represent that ALTA's claims processing procedures and its commitment to maintain its regular five-day processing cycle create a situation in which ALTA cannot manipulate plan experience in order to indirectly benefit ALTA Re. The only claims that would affect stop-loss coverage would be large catastrophic claims or smaller claims under a plan which has accumulated other major catastrophic claims during the period. In all such cases, claims denials which affect stop-loss coverage are immediately brought to the attention of the plan fiduciary for decision. Following payment of a claim, a claim subject to stop-loss coverage may be disputed by the primary carrier. To the extent such a dispute arises, it would not be ALTA's role nor would ALTA engage in the role of resolving such dispute. Such a dispute would be resolved as a matter of interpretation of the contract between the primary carrier and the customer. Moreover, ALTA provides its customers with a complete report of all claims processed so that all of its decisions implementing plan provisions may be audited in an ongoing manner by its customers. ALTA understands that most of its customers routinely audit those reports as they are received. In addition, all of ALTA's customers whose plans cover more than 100 or more employees engage the services of an independent auditor as required by section 103(a)(3) of the Act. Each of these auditors annually engage in a thorough and detailed audit of ALTA's performance of its claims handling responsibilities.

12. The applicants represent that neither ALTA's claims processing personnel nor its customer service representatives have any economic incentive in the form of additional compensation or incentive pay which could affect their objective performance of their jobs. In this regard, the applicants represent that ALTA will not offer any incentives to any of its employees with respect to the stop-loss option covered by this proposed exemption. The applicants further represent that in all cases the compensation paid with respect to employees or other persons acting on behalf of ALTA will be paid in the same manner regardless of the option selected.

13. In summary, the applicants represent that the proposed transactions satisfy the criteria of section 408(a) of the Act because, among other things: (a) The subject transactions will be offered as an option to fiduciaries of the Plans only if ALTA concludes that the subject transactions would be less expensive than conventional stop-loss insurance offered by comparable primary insurers and reinsurers; (b) the decisions to enter the transactions are made by informed, knowledgeable, independent fiduciaries of the Plans, each of the Plans having at least 100 participants; (c) ALTA will institute and maintain a written procedure (as described in condition 2(e), above) establishing criteria for determining that the Plan fiduciaries are independent of ALTA and ALTA Re, and sufficiently knowledgeable to make an informed decision regarding the transaction; (d) the independent fiduciaries will be making their decisions after a complete disclosure by ALTA of all fees, commissions, and relationships of the parties, and after consideration of options to the subject transactions; (e) ALTA has established claims processing procedures which are subject to audit and verification by the Plans; (f) ALTA will not offer any incentives to any of its employees with respect to the stop-loss option covered by the proposed exemption and in all cases the compensation paid with respect to employees or other persons acting on behalf of ALTA will be paid in the same manner regardless of the option selected; and (g) no more than 5 percent of the total premiums written by ALTA Re pursuant to the subject transactions will be derived from any one single group of affiliated Plans.

FOR FURTHER INFORMATION CONTACT: Gary Lefkowkitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Bear Lumber Company, Inc./Bear Brothers, Inc. Second Amended and Restated Profit Sharing Plan (the Plan) Located in Montgomery, Alabama

[App. No. D–7794]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set

[3] PTE 84–24 exempts certain transactions relating to purchases with plan assets of investment company securities or insurance contracts, and the payment of sales commissions in conjunction with such purchases. Among the conditions required by PTE 84–24 is the disclosure of various information to an independent plan fiduciary by parties in interest who will be relying on the exemption. Such disclosure includes, among other things, the relationship of the party in interest to the insurance company selling the contract, the sales commission, expressed as a percentage of gross annual premiums, that will be paid by the insurance company to the party in interest, and a description of any charges, fees, discounts, penalties or adjustments which may be imposed under the contract.

[4] The Department notes that the exemption proposed herein does not apply to the general fiduciary responsibility provisions of section 404 of the Act.

[5] Because of the various administrative and other services provided by ALTA to the Plans, ALTA may be considered to be a fiduciary or other party in interest with respect to such Plans. However, the applicants represent that ALTA will not use any of the authority, discretion, or influence which might cause it to be a fiduciary with respect to the Plan to cause the Plan to engage in the transactions covered by this proposed exemption.

The Department notes that, to the extent that ALTA is considered to be a fiduciary by virtue of rendering investment advice, as described in 29 CFR 2550.3–21(c)(ii)(B), the presence of an unrelated second fiduciary acting on the investment advisor's recommendations on behalf of the plan is not sufficient to insulate the investment advisor from fiduciary liability under section 406(b) of the Act. (*See:* Advisory Opinion Nos. 84–03A and 84–04A.) The Department is unable to conclude that fiduciary self-dealing of this type (if present) is in the interest or protective of plans and their participants and beneficiaries. Accordingly, the Department has limited relief for the proposed transactions to section 406(a) of the Act.

forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale for cash by the Plan of certain real property to Bear Lumber Company, Inc., the Plan sponsor, for $415,000, provided that the price paid is no less than the fair market value of the real property on the date of sale.

Summary of Facts and Representations

1. The Plan is a profit sharing plan which terminated effective December 31, 1988. The Plan is sponsored by Bear Lumber Company, Inc. and Bear Brothers, Inc., building materials suppliers doing business in Montgomery, Alabama. As of October 19, 1988, the Plan had 27 participants. As of August 8, 1988 the Plan had total assets of $1,390,271.06.

2. The Plan purchased a warehouse (the Real Property) located in Columbus, Georgia, from officers of the Plan sponsors on March 31, 1980 for $185,000 by paying $40,000 in cash and financing the remainder at 5% interest. All outstanding mortgage indebtedness on the Real Property was satisfied in 1982. At the time of the purchase of the Real Property, the Plan leased the Real Property to Sears, Roebuck and Company (Sears) for a period of twenty years plus four five-year renewal options. In 1988, additions to the warehouse were made at Sears' request, and additional property was leased to Sears beginning in 1972. The applicant represents that Sears is unrelated to the Plan and its sponsors.

3. Because the Plan is now terminated, the Plan proposes to sell the Real Property for $415,000 in cash to Bear Lumber Co., Inc., one of the Plan's sponsors. The applicant represents that attempts to find an unrelated third party to purchase the Real Property have failed. The applicant believes it to be in the best interest of the Plan's participants and beneficiaries for them to receive a distribution of their benefits in cash through sale of the Real Property rather than a distribution in kind.

4. On May 31, 1988, Harry F. Boyce, MAI, SRDA, of Valuation Services, Inc., real estate appraisers, consultants and analysts, doing business in Columbus, Georgia, an independent and qualified appraiser, valued the Real Property at between $173,000 and $567,000. The spread between these two figures depends upon whether Sears renews its lease on the Real Property for any or all renewal periods.

5. On December 1, 1988, AmSouth Bank, N.A., of Birmingham, Alabama (AmSouth), an unrelated third party, acting as independent fiduciary to the Plan, stated that in view of the fact the appraisal referred to in paragraph 4 valued the Real Property at $173,000 if Sears renews its lease to the extent permitted under the lease, and in view of the fact that such renewal seems likely (since the terms of the lease are so favorable to Sears), the proposed cash payment to the Plan of $415,000 is not less than the fair market value of the Real Property and should be accepted. In addition, Mr. Boyce, the real estate appraiser, states that the proposed price of $415,000 is more than could be reasonably expected if the Real Property was offered for sale on the open market. AmSouth further states that the terms of the proposed sale of the Real Property compare favorably with the terms of similar transactions between unrelated parties. Finally, as attempts to find an unrelated purchaser for the Real Property have failed, and as it is in the best interest of the Plan's participants to receive distributions in cash rather than an in kind distribution of the Real Property upon Plan termination, AmSouth believes the proposed transaction to be in the best interest and protective of the Plan's participants. AmSouth has undertaken the responsibility to monitor the proposed transaction on behalf of the Plan and to take appropriate actions to safeguard the Plan's interests.

6. In summary, the applicant represents that the proposed transaction will satisfy the criteria of section 408(a) of the Act because, among other things: (a) The sale represents a one-time transaction for cash, which can be easily verified; (b) the Plan's independent fiduciary has determined that the price to be paid for the Real Property is not less than fair market value, that the terms of the sale compare favorably with the terms of similar transactions between unrelated parties and that the proposed transaction is prudent and in the interest and protective of the Plan's participants; and (c) the participants of the Plan will receive distribution of their benefits in cash rather than in kind.

FOR FURTHER INFORMATION CONTACT: Joseph L. Roberts III of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Frank W. Hilliard, D.D.S., M.S.D., Inc. Profit Sharing Plan and Trust (the Plan) Located in Arlington, Texas

[Application No. D–7821]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply, effective June 30, 1984, to the past and proposed lease by the individual account of Frank W. Hilliard, D.D.S., M.S.D. (Dr. Hilliard), in the Plan of certain real property (the Land) to Frank W. Hilliard, D.D.S., M.S.D., Inc. (the Employer), the sponsor of the Plan; provided that all terms of such transaction have been and will be at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party.

Effective Date: This exemption, if granted, shall be effective as of June 30, 1984.

Summary of Facts and Representations

1. The Plan is an indivdual-account defined contribution plan with twelve participants and total net assets of $1,513,189 as of September 30, 1988. The trustee of the Plan is the Texas Commerce Bank (the Trustee) in Arlington, Texas. The Employer is a Texas closely-held professional services corporation engaged in the general practice of dentistry and is wholly owned by Dr. Hilliard, an officer/employee of the Employer and a participant in the Plan. The Plan provides for individual participant direction of the investments of the individual participant accounts in the Plan.

2. Among the assets in Dr. Hilliard's individual account (the Account) in the Plan is the Land, a rectangular parcel of real property located at 711 North Fielder Road in Arlington, Texas, consisting of approximately 22,695 square feet. The Employer has leased the Land from the Account continuously since the Account acquired it on March 22, 1974, pursuant to directions of Dr. Hilliard. The Employer represents that its lease of the Land from the Account prior to June 30, 1984 (the Prior Lease) satisfied the requirements of section 414(c)(2) of the Act and, therefore, was exempt until June 30, 1984 from the prohibitions of section 406 of the Act.[6] The land serves as the site of the Employer's principal place of business (the Building), a 2,800 square-foot dental office facility and related improvements constructed on the Land by the Employer from April to November in 1974. The Trustee represents that the Employer constructed the Building on the Land pursuant to provisions in the Prior Lease granting the Employer the right to add and remove improvements of the Property. As of October 12, 1984 the Land had a fair market value of $90,800, according to Thomas S. Hanes, MAI, SRPA (Hanes), an independent professional real estate appraiser in Arlington, Texas. As of July 1, 1987, Hanes determined the Land's fair market value to be $96,450. Each of Hanes' appraisals included determinations that the fair market rental value of the Land was equal to 12 percent of the Land's fair market value. The Trustee represents that the Land's fair market value has constituted and continues to constitute less than 10 percent of the total assets in the account.

Effective July 1, 1984, the Employer and the Trustee, on behalf of the Account and pursuant to directions of Dr. Hilliard, executed a new lease agreement (the New Lease) providing for the continuation of the Employer's lease of the Land from the Account after June 30, 1984. The Employer is requesting an exemption for the continuation of the Employer's lease of the Land from the Account under the New Lease after June 30, 1984 and for its proposed continuation under terms and conditions described herein.

3. The New Lease is a triple net lease under which the Employer is obligated for all costs of maintenance and repair, all utilities and all taxes with respect to the Land. The interests of the Account under the New Lease are represented for all purposes by the Trustee. The New Lease provides for an initial term of thirty six months, renewable upon approval of the Trustee for no more than four successive renewal terms of thirty six months each. Pursuant to such renewal provisions, the Trustee approved the first renewal of the New Lease on July 1, 1987. Rentals under the New Lease are paid monthly in the amount of no less than the land's fair market rental value as determined at the commencement of the thirty six month term by an independent appraiser selected by the Trustee. Under the New Lease the Employer agrees to indemnify and hold harmless the Account against any and all claims arising from the Employer's use of the Land.

4. The Trustee states that it has represented the interests of the Account continuously since June 30, 1984 in all matters relating to the Employer's lease of the Land from the Account. According to its representations, the Trustee made an independent determination that the Account's lease of the Land to the Employer should continue after June 30, 1984 under the provisions of the New Lease effective July 1, 1984 because it was in the best interests and protective of the Account. The Trustee maintains that factors which figured prominently in this determination included the proven financial success of the lease as an investment for the Account, the creditworthiness of the Employer as a tenant, the alternative investments available to the Account, the size of the transaction in relation to total Account assets and the fact that the transaction involved only one individual account in the Plan. The Trustee represents that for the same reasons it made an independent determination as of July 1, 1987 to permit a renewal of the New Lease for a renewal term of thirty six months. The Trustee represents that rentals paid by the Employer since June 30, 1984 have been determined by Hanes' appraisals and have provided the Account with rentals of no less than fair market value. For the duration of the New Lease and any renewals thereof, the Account will be represented thereunder for all purposes by the Trustee.

5. In summary, the applicant represents that the criteria of section 408(a) of the Act are satisfied in the Account's lease of the Land to the Employer under the New Lease for the following reasons: (1) The New Lease affects only the Account in the Plan, an individually-directed account of a participant who desires to continue the subject transaction as an investment of the Account; (2) The interests of the Account have been and will remain represented under the New Lease for all purposes by the Trustee, which is independent of the Employer; (3) The Trustee determined that the continuation of the Employer's lease of the Land from the Account after June 30, 1984, and the renewal of the New Lease on July 1, 1987, were in the best interests and protective of the Account and that rentals paid under the New Lease have been no less than the fair market rental value of the Land; (4) The New Lease provides the Account with an absolute net return and requires the Employer to assume responsibility for all costs of maintenance, repair, utilities and taxes with respect to the Land; and (5) The New Lease ensures that the Account will receive rentals for the Land of no less than the Land's fair market rental value as determined by an appraiser selected by the Trustee.

Notice to Interested Persons: Because Dr. Hilliard is the sole shareholder of the Plan sponsor and the only Plan participant whose account in the Plan will be affected by the transaction, it has been determined that there is no need to distribute the notice of pendency to interested persons. Comments and requests for a hearing must be received by the Department within 30 days of the date of publication of this notice of proposed exemption.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

J. Lee Milligan, Inc. Profit Sharig Plan and Trust (the Plan) Located in Amarillo, Texas

[App. No. D–7838]

Proposed Exemption

The Department is considering graning an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale by the Plan for cash of certain real property (the Real Property) to J. Lee Milligan, Inc., the Plan sponsor, provided that the price paid for the Real Property be no less than the greater of the fair market value of the Real Property as of the date of sale, as determined by an independent and qualified appraiser, or the total outlay by the Plan in connection with its acquisition and retention of the Real Property to the date of sale.

Summary of Facts and Representations

1. The Plan is a defined contribution plan sponsored by J. Lee Milligan, Inc. (the Employer), a Texas corporation the primary business of which is paving construction, having its principal office in Amarillo, Potter County, Texas. As of May 31, 1988 the Plan had 13 participants. As of September 30, 1988, the Plan assets were $612,414.

[6] In this proposed exemption the Department expresses no opinion as to whether the Employer's lease of the Land from the Account satisfied the requirements of section 414(c)(2) of the Act.

2. On November 14, 1975 the Plan purchased the Real Property, Tracts Number 1 and 2 of "66" Village, a subdivision of a part of survey number 73, block number 2, ABE&M survey, Potter County, Texas, consisting of 2.066 acres occupied by a single family residence, from Margaret Wurger, an unrelated third party, for $18,000. The Real Property is now free and clear of all liens and encumbrances. The Employer owns 10.38 acres of land contiguous (the Continguous Land) to the Real Property acquired in 1985 from the Plan pursuant to an order by the Department to take corrective action with respect to an on-going prohibited transaction consisting in the lease of the Contiguous Land to the Employer. The Employer's offices and storage and equipment facilities are located on the Contiguous Land.

3. The Real Property has been occupied for the past two years by David Langford (Mr. Langford), an employee of the Plan sponsor. Mr. Langford pays $200 per month under a month-to-month rental contract. The applicant represents that Mr. Langford is not a participant in the Plan, nor is he a disqualified person with respect to the Plan as described in section 4975(e)(2)(A) through (I) of the Code.[7] The Real Property was previously rented by an unrelated party.

4. On April 27, 1989, Kenneth E. Lard, SRA (Mr. Lard), an independent and qualified appraiser in Amarillo, Texas, stated that the fair market value of the Real Property was $19,000, taking into account the fact that the Employer owns the Contiguous Land. Mr. Lard also estimated that the fair market rental value of the Real Property is $200 per month.

5. The Employer wishes to terminate the Plan and distribute the Plan's assets among the participants. Accordingly, in order to facilitate the distribution of assets, the Plan proposes to sell the Real Property to the Employer for cash for the higher of the fair market value of the Real Property as of the date of sale or the total outlay by the Plan in connection with its acquisition and holding of the Real Property.

6. In summary, the applicant represents that the proposed tranaction will meet the statutory criteria of section 408(a) of the Act because: (a) The Real Property will be sold for the higher of its fair market value as of the date of sale as established by an independent and qualified appraiser or the Plan's total expense in acquiring and holding the Real Property; (b) the Plan will not incur any loss in connection with its outlay for repairs and maintenance of the Real Property; (c) the proposed sale represents a one-time transaction for cash, which can be readily verfified; (d) the Plan will pay no fees, taxes, or other transfer costs in connection with the proposed sale; (e) the proposed sale will enable the Plan to terminate and make full distribution to participants of benefits; and (f) the Plan's trustees have determined that the proposed sale is in the best interest and protective of the Plan and its partcipants and beneficiaries.

For Further Information Contact: Joseph L. Roberts III of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Marlin D. Grant Individual Retirement Account (the IRA) Located in Bloomington, Minnesota

[App. No. D-7865]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the proceures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed purchase by the IRA of a contract for deed (the Contract) from Marvin H. Anderson Construction Company (the Company), a disqualified person with respect to the IRA, provided that the IRA pays the lesser of $64,412.00 or the fair market value of the Contract at the time of the sale.[8]

Summary of Facts and Representations

1. The IRA is an individual retirement account which was created approximately 10 years ago. Mr. Marlin D. Grant (Mr. Grant) is the sponsor of the IRA. The applicant represents that as of January 31, 1989, the total assets of the IRA were $435,160. The proposed transaction would involve approximately 15% of the IRA assets. Mr. Grant is the president and the majority owner of the Company.

2. The Company, which is in the construction business in Minneapolis, Minnesota sold a house on March 2, 1988 (the House) to an unrelated third party for $132,961. The down payment in the amount of $62,961 as paid to the Company by the purchaser. For the remaining $70,000 of the purchase price the Company extended credit to the purchaser via the 24 month Contract with a 10.5% fixed interest rate. Beginning from the Contract's origination date of Setpember 22, 1988, monthly minimum payments of interest and principal are to be $650.00 commencing November 1, 1988 and continuing until November 1, 1990, at which time the unpaid balance together with interest shall be paid in full. Out of each monthly payments, interest shall be first deducted and the balance applied to principal. The payment due November 1, 1990 is a balloon payment of approximately $69,000.

3. The Company proposes to sell the Contract to the IRA for a purchase price of $64,412 or the fair market value at the time of the sale. The Purchase price represents a discount of 7.85% which was established by an appraisal dated December 22, 1988, conducted by Mark Terfehr, an independent appraiser with the Noteworthy Investment Company of Minneapolis (the Terfer appraisal). The applicant states that the Discount will create an effective yield for the IRA of approximately 15 percent, which is a higher rate of return than is currently available through other investments.

4. An appraisal of the House, dated March 10, 1988, was completed by L. John Lundquist, a licensed real estate broker in the state of Minnesota for the past 30 years. Mr. Lundquist represents that he is qualified and independent. He concludes that the House has a fair market value of $133,500.

5. The applicant represents that the transaction is desirable for the IRA. It will be a one time cash sale and the IRA will bear no costs associated with the sale. The applicant represents that the transaction is in the best interest of the IRA. If the purchaser defaults on the Contract it can be foreclosed rapidly and repossession of the underlying real property can occur within 90 days. The Contract allows for a short processing period. It is also protective of the IRA as the Contract is adequately secured by the value of the House and a $62,961 down payment. The Discount will further increase investment return.

6. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 4975(c)(2) of the Code because:

(a) The proposed sale will be a one-time cash transaction;

(b) The price paid by the IRA will be $64,412 or the fair market value at the time of the sale, whichever is less;

(c) The IRA will pay no expenses associated with the sale; and

(d) Mr. Grant as the sole participant of the IRA, would be the only individual affected by the transaction.

Notice to Interested Persons

Because Mr. Grant is the sole participant of the IRA, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and request for a hearing are due 30 days from the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department at (202) 523-8194 (this is not a toll-free number).

Washington Mortgage Company, Inc. (WMC) Located in Seattle, Washington

[App. No. D-7891 and D-7892]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975) as follows:

I. If the exemption is granted the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to: (1) The sale, exchange or transfer between WMC and its affiliates and certain employee benefit plans (the Plans) of certain construction loans or participation interests therein to non-party in interest entities; and (2) the sale, exchange or transfer between WMC and its affiliates and the Plans of any construction or permanent loan made by a Plan to a party in interest, and the resulting extension of credit thereform, provided that:

(a) The terms of the transactions are not less favorable to the Plans than the terms generally available in arm's-length transactions between unrelated parties;

(b) Such sales, exchanges or transfers are expressly approved by a Plan fiduciary independent of WMC and its affiliates who has authority to manage or control those Plan assets being invested in mortgages or participation interests therein;

(c) No investment management, advisory, underwriting fee or sales commission or similar compensation is paid to WMC or any of its affiliates with regard to such sale, exchange or transfer;

(d) The decision to invest in a loan or a participation interest therein is not part of an arrangement under which a fiduciary of a Plan, acting with the knowledge of WMC or its affiliate, causes a transaction to be made with or for the benefit of a party in interest (as defined in section 3(14) of the Act) with respect to the Plan;

(e) At the time of its acquisition of a loan or participation therein, no Plan will have more than 25% of its assets invested in construction or permanent mortgages;

(f) WMC and its affiliates do not and will not act as fiduciaries with regard to any Plan investing in permanent and construction loans and interests therein as described in this proposed exemption; and

(g) WMC shall maintain or will cause to be maintained, for the duration of any loan or participation therein sold to a Plan pursuant to this proposed exemption, such records as are necessary to determine whether the conditions of this exemption have been met. The records mentioned above must be unconditionally available at their customary location for examination for purposes reasonably related to protecting rights under the Plans, during normal business hours, by: Any trustee, investment manager, employer of Plan participants, employee organization whose members are covered by a Plan, participant or beneficiary of a Plan.

II. If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to any transactions to which such restrictions or taxes would otherwise apply merely because WMC or any of its affiliates is deemed to be a party in interest with respect to a Plan by virtue of providing services to the Plan in connection with the subject loan transactions (or because it has a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act), solely because of the ownership of a loan or participation interest therein as described in this exemption by such Plan.

III. Definitions. For purposes of this exemption,

(a) An "affiliate" of WMC includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with WMC,

(2) Any officer, director, employee, relative of, or partner in any such person, and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(b) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

Temporary Nature of Exemption: This exemption, if granted, will be effective only for those transactions entered into within five years of the date on which the Final Grant of this proposed exemption is published in the **Federal Register**.

Summary of Facts and Representations

1. WMC has originated income property (commercial and multifamily) loans since 1949 for major institutional buyers, including pension funds, life insurance companies and thrift institutions. In 1982, WMC was acquired by Puget Sound Bancorp (Bancorp), as a wholly owned subsidiary. Bancorp also has four bank subsidiaries. In all, the assets of Bancorp are currently in the range of $3.6 billion. WMC has averaged in excess of $300 million in loan originations per year over the past 8 years. WMC has offices in Seattle and Tacoma, Washington, and Portland, Oregon.

2. WMC works on behalf of the borrower/developer in putting together construction and permanent financing for commercial and multifamily residential real estate projects. The role of WMC is to provide or arrange for all of the construction financing and to arrange a negotiated permanent commitment, so that construction financing is paid off when the building is completed. In some cases, WMC or its affiliates also participate in funding the construction or permanent loans. WMC works on behalf of the borrower/developer to secure permanent financing alternatively by: (1) Committing directly to the borrower for permanent financing, with the intention of later securing a permanent lender; (2) committing to the borrower based on a commitment for permanent financing provided by another lending institution to WMC; or (3) securing for the borrower, directly, a commitment from another lending institution for the permanent financing, with such a commitment going directly from the lender to the borrower, but assigned to WMC during the construction phase as additional collateral and security for the construction loan.

3. WMC's affiliate, Puget Sound Mortgage Servicing Corporation (PSMS), is responsible for servicing all permanent real estate loans originated by WMC. PSMS typically services the

[7] The Department is not providing exemptive relief under Title I of the Act for the lease of the Real Property to Mr. Langford.

[8] Pursuant to 29 CFR 2510.3-2(d), there is no jurisdiction with respect to the IRA under Title I of the Act. However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

permanent loan for a fee of ⅛ of 1% per annum on the outstanding principal balance of the loan. Servicing fees for construction loans are determined as a percentage of the outstanding balance of the loans. The applicants represent that all fees and charges are set in advance in accordance with prevailing market conditions.[9]

4. WMC currently sells permanent loans to Plan. The applicants represent that, in doing so, WMC does not act in a fiduciary capacity to any Plans. Rather, all decisions by Plans to purchase permanent loans from WMC are made by the Plan trustees or by investment advisers independent of WMC, acting on behalf of the Plans. Before its acquisition by Bancorp in 1982, WMC entered into loan servicing agreements with Plans which purchased permanent loans from WMC, and WMC thus became a "service provider" as described in section 3(14)(B) of the Act. In order to avoid prohibited transactions resulting from the sale of mortgage loans to the same Plans for which servicing was being done, WMC obtained an exemption from the Department (PTE 85–1, 50 FR 1004, January 8, 1985). Although PSMS now does the servicing of loans originated by WMC and funded by Plans, in all other material respects WMC still operates its permanent loan business with respect to Plans in the manner described in the proposed exemption for PTE 85–1 (49 FR 44034, November 1, 1984).

5. The loans which are the subject of this proposed exemption fall into categories which are not expressly covered by PTE 85–1. These are: (1) Construction loans to non-party in interest entities; and (2) construction or permanent loans to a party in interest which would usually be a contributing employer to a multi-employer plan or an affiliate of such contributing employer.[10] In all of these cases, WMC and its affiliates would continue to act as a non-fiduciary in originating, selling and servicing these loans. Any decision to acquire the subject loan or participation interests therein will be made by a plan fiduciary independent of WMC and its affiliates. Any loan or participation interest sold to a Plan will conform to WMC's standards for making such a loan. In the case of construction loans, it is anticipated that loan servicing would be done by WMC itself instead of PSMS.

6. With regard to the construction loans, there are some differences in the administration or servicing of these loans from that involved in permanent loans. Specifically, WMC would be charged with responsibility for the following: (1) Releasing construction loan draws and hold backs as various conditions of the construction loan are satisfied; (2) adjustment of hard-line cost items in the construction loan budget to reflect actual costs; (3) making certain the borrower corrects any non-monetary defaults; (4) implementing borrower-requested change orders approved by WMC staff or independent inspectors; (5) clearing mechanics' liens placed on the property during the course of construction; and (6) insuring general compliance by all parties with a construction loan agreement and related agreements.

7. As in the case of permanent loans, administration of construction loans which are in default would involve an independent Plan fiduciary making decisions on behalf of the Plans at the time of the default, or by WMC in accordance with pre-approved guidelines set forth in the loan participation agreement. Such guidelines would be approved in advance of the loan purchase by the independent Plan fiduciary. The Plan, acting through its own independent fiduciary, would also retain the ability (with the consent of WMC) to transfer, assign or otherwise dispose of its interest in the construction loans to a third party without the payment of any fee or penalty. The applicants represent that with respect to the servicing of the construction loans, as in the case of the permanent loans, WMC and its affiliates will not be acting as fiduciaries with respect to the investing Plans.

8. As in the case of permanent loans, Plans purchasing construction loan interests would not pay WMC an investment management, investment advisory, sales commission or similar fee. In addition, as in the case of permanent loans, such Plans would not pay more for their participation interest in any construction loan than would be paid by an unrelated party in an arm's-length transaction.

9. With respect to construction or permanent loans which are made to parties in interest, the applicants represent that any decision to invest in such loans will be made by a plan fiduciary independent of WMC and its affiliates, and also independent of the party in interest receiving the proceeds of the loan. If construction is to be performed by a contributing employer or other party in interest, WMC would require a written statement executed by the independent fiduciary that its decision to invest was not influenced or controlled by the borrower or any other party in interest.[11]

10. WMC represents that as a result of being a party in interest with respect to Plans by virtue of servicing the subject loans or participations purchased thereby, WMC would be prohibited from engaging in other commercial transactions with these Plans, such as the making of loans, which transactions have nothing to do with the mortgages or participation interests held by the Plans. The Department has considered WMC's request for relief for such transactions and has decided that because the servicing relationship is established as a necessary result of the purchase of a mortgage or participation interest by a Plan, subsequent transactions between the parties otherwise prohibited by section 406(a) are not likely to present an inherent abuse potential. Accordingly, the Department had determined it would be appropriate to propose the relief from section 406(a) contained in Part II of the proposed exemption.

11. In summary, the applicants represent that the proposed transactions satisfy the criteria of section 408(a) of the Act because:

(a) The Plans will pay no more for the mortgages and participation interests therein than would be paid by an unrelated party in an arms'-length transaction;

(b) All Plan decisions to invest in mortgages and participation interests therein will be made by a Plan fiduciary independent of WMC and its affiliates;

(c) At the time of its acquisition of a loan or a participation therein, no Plan will have more than 25% of its assets invested in construction or permanent mortgages;

(d) The terms of the construction or permanent loans will not be less favorable to the Plans than the terms generally available in arms'-length transactions with unrelated parties; and

(e) No investment management, advisory, underwriting fee or sales commission will be paid to WMC or any of its affiliates with regard to such sale, exchange or transfer.

Notice to Interested Persons: In addition to the notice requirement outlined in the general provisions of this notice, WMC agrees to provide a copy of the notice of proposed exemption and any subsequent grant of such exemption to all employee benefit plans with whom WMC may contract in the future to provide services as described herein. Such notification will be provided prior to WMC entering into a contract to provide such services.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 16th Day of June, 1989.

Robert J. Doyle,

Director of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 89–14704 filed 6–21–89; 8:45 am]

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[9] The Department is not proposing any relief herein for the receipt of fees beyond that which is provided by the statutory exemption contained in section 408(b)(2) of the Act.

[10] The applicants represent that no loan acquired by a Plan which is made to a party in interest will be a loan to a fiduciary or an affiliate thereof. In this regard, the Department notes that any such loan would involve violations of section 406(b) of the Act for which no relief is being proposed herein.

The applicants represent that, with respect to the subject loans, construction and other services related to the project may or may not be performed by a party in interest. The Department further notes, as it did in the proposal to PTE 85–1, that where the construction on the property which secures the loan is by a contributing employer to the Plan and a principal of such employer exercises fiduciary authority in approving the Plan's investment in the loan, a separate prohibited transaction under section 406(b) of the Act may occur, which transaction would not be covered by this proposed exemption. See also condition (d) of Part I of this proposed exemption which has the effect of precluding relief under section 406(a) of the Act for certain transactions undertaken for the benefit of parties in interest.

[11] The Department is not proposing exemptive relief herein for any violation of section 406(b) of the Act resulting from the provision of such construction services. See footnote 10, *supra*.

[Prohibited Transaction Exemption 89–53; Exemption App. Nos. L–7657, L–7658 et al.]

Grant of Individual Exemptions; Northwest Ironworkers—Employees Vacation Trust Fund and the Pacific Northwest Ironworkers and Employers Apprenticeship and Training Trust Fund, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing the held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Northwest Ironworkers—Employers Vacation Trust Fund (the Vacation Trust) and the Pacific Northwest Ironworkers and Employers Apprenticeship and Training Trust Fund (the Training Trust; together, the Trusts) Located in Seattle, Washington

[Prohibited Transaction Exemption 89–53; Exemption Application Nos. L–7657 and L–7658]

Exemption

The restrictions of section 406(b)(2) of the Act shall not apply to the proposed transfer of $235,000 in unclaimed, surplus funds from the Vacation Trust to the Training Trust.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on February 24, 1989 at 54 FR 8022.

Written Comments: The Department received three comment letters with respect to the notice of proposed exemption (the Notice).

Two of the comment letters were from individuals who are participants in the Vacation Trust and members of Iron Workers Local Union No. 86 (Local 86) of the International Association of Bridge, Structural, Reinforcing Steel and Ornamental Iron Workers, Riggers and Machinery Movers (the Union). These individuals opposed the proposed

transfer of funds from the Vacation Trust to the Training Trust because they believed that the funds could be put to better uses in other employee benefit plans sponsored by the Union. In addition, these individuals requested that a hearing be held on the proposed transaction and claimed that insufficient information was given to the Union's membership to allow the membership to oppose the proposed transaction.

The remaining comment letter was from William D. Glockner (Mr. Glockner), an officer of Local 86, which stated that the Local 86 membership unanimously opposed the proposed transaction at a meeting held on March 16, 1989.

By letter dated May 1, 1989, the applicant responded to the comment letters.

The applicant's representative states that he has spoken with Mr. Glockner and the other individuals and that they are concerned that if there are other transfers of funds from the Vacation Trust in the future, an exemption for the proposed transaction will constitute a favorable precedent for such additional transfers of funds. However, the applicant states that assurances have been made to these individuals, as well as the other members of Local 86, that future transfers of funds from the Vacation Trust will have to be justified on their own merits, regardless of whether the proposed exemption is granted. In addition, a decision regarding what to do with future surplus funds will have to be made by the board of trustees of the Vacation Trust (the Vacation Trust Trustees) at a later date before any additional transactions can take place.

The applicant represents that with respect to the present transaction, the Vacation Trust Trustees by unanimous action, including the Vacation Trust Trustees from Local 86, voted to transfer the surplus funds to the Training Trust. The applicant states that even though the surplus funds could be put to other uses which would also serve the participants of the Trusts, the Vacation Trust Trustees determined that the interests of the participants would be best served by using such funds for training and retraining ironworkers who are participants in the Training Trust. Thus, the applicant asserts that the comment letters represent merely a disagreement by the Local 86 membership with a decision of the Vacation Trust Trustees regarding the proposed use of the funds. The applicant maintains that such a disagreement with the Vacation Trust Trustees, half of whom are duly elected representatives of the Union membership, does not provide sufficient grounds for the Department to deny the requested exemption.

The applicant states that diligent efforts have been and continue to be made to locate those participants who have unclaimed funds in the Vacation Trust. Paragraph 7 of the Notice states that the Vacation Trust Trustees and the board of trustees of the Training Trust (together, the Trustees) have executed an indemnification agreement (the Agreement). The Agreement provides that the Training Trust will indemnify the Vacation Trust in an amount up to $235,000 for any unclaimed Vacation Trust contributions that are required to be paid to the participants of the Vacation Trust which have accumulated as of the date that the Vacation Trust transfers to the Training Trust the unclaimed, surplus funds.

Paragraph 4 of the Notice also states that a contribution of $1.00 per hour is made by an employer to the Vacation Trust for each hour of covered work performed by an employee. The applicant wishes to clarify for the record that the contribution rate to the Vacation Trust since June 1, 1988 has been $1.50 per hour.

With respect to the issues raised by the comment letters, the Department does not believe that a hearing on the proposed exemption is necessary. In this regard, the Department notes that by letter dated March 7, 1989, the applicant acknowledged that all the Union Locals, including Local 86, were notified by the deadline for the notice to interested persons, were provided with a copy of the Notice, and posted the Notice in accordance with ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). All interested persons were informed that they had 30 days to comment on the proposed exemption.

With respect to the concerns raised by Mr. Glockner and the other individuals regarding possible future transfers of funds from the Vacation Trust, the Department would point out that the present transaction concerns a one-time transfer of funds from the Vacation Trust to the Training Trust. The Department notes that in the event of any future transfers of funds by the Trustees from the Vacation Trust to the Training Trust, or to any other employee benefit plan that has trustees in common with the Vacation Trust, such transfers would be considered a separate prohibited transaction under the Act and would properly be the subject of another exemption application which would require the Department's review and approval.

Finally, with respect to the appropriateness of the proposed transfer of funds, the Department notes that the Trustees, as the responsible decision-makers and plan fiduciaries, have determined that the proposed transaction is in the best interests of the participants of the Trust.

Accordingly, after consideration of the entire record, the Department has determined to grant the exemption.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

Green Mountain Radiology Profit Sharing Plan (the Plan) Located in Montpelier, Vermont

[Prohibited Transaction Exemption 89–54; Exemption App. No. D-7904]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to a proposed cash sale by the Plan of certain parcel of unimproved land to Dr. James R. Chandler, a party in interest with respect to the Plan, provided that the Plan receives the greater of $16,000 or the fair market value at the time of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to notice of proposed exemption published on April 26, 1989 at 54 FR 18046.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Hanson, Toller, and Lockwood M.D.'s Profit Sharing Plan and Trust (the Plan) Located in Yuba City, California

[Prohibited Transaction Exemption 89–55; App. No. D-7828]

Exemption

The restrictions of section 406(a), (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the Plan's proposed sale (the Sale) of the Lakeridge Athletic Club (the Club) located in El Sobrante, California, to Dr. John W. Lockwood and his wife Julia, parties in interest with respect to the Plan, for a total Sale price of $2,200,000 in cash; provided this amount is not less than the appraised fair market value of the Club at the time of Sale and provided further that the terms and conditions of the Sale are at least as favorable to those obtainable by the Plan in an arm's length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on April 4, 1989 at 54 FR 13589.

FOR FURTHER INFORMATION CONTACT: Mrs. B.S. Scott of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Ralph Wilson Plastics Employees Retirement Plan (the Plan) Located in Temple, TX

[Prohibited Transaction Exemption 89–56; Exemption App. No. D-7921]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale by the Plan of a parcel of unimproved real property (the Property) to Ralph Wilson Plastics Company, a party in interest, provided the sales price for the Property is not less than the greater of: (a) The fair market value of such Property on the date of sale; or (b) the Plan's total acquisition and holding costs with respect to the Property.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 26, 1989 at 54 FR 18050.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 523–8881. This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 16th day of June, 1989

Robert J. Doyle,

Director of Regulations and Interpretations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 89–14705 Filed 6–21–89; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 89–48]

NASA Advisory Council (NAC), Space Systems and Technology, Advisory Committee (SSTAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee, Ad Hoc Review Team on Technology Requirements for Human Performance on Long Space Missions.

DATE: July 18, 1989, 1 p.m. to 5 p.m.

ADDRESS: National Aeronautics and Space Administration, Federal Building 10B, Room 625, 600 Independence Avenue, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. James P. Jenkins, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453–2750.

SUPPLEMENTARY INFORMATION: The NAC Space Systems and Technology Advisory Committee (SSTAC) was established to provide overall guidance to the Office of Aeronautics and Space Technology (OAST) on space systems and technology programs. Special ad hoc review teams are formed to address specific topics. The Ad Hoc Review Team on Technology Requirements for Human Performance on Long Space Missions, chaired by Dr. Gerald P. Carr, is comprised of eight members. The meeting will be open to the public up to the seating capacity of the room (approximately 40 persons including the team members and other participants).

Type of Meeting:

Open.

Agenda:

July 18, 1989.

1 p.m.—OAST Programs Discussion: Pathfinder, Space Human Factors, Extravehicular Activity Suits, and Base Research and Technology Program.

3 p.m.—Discussion on Proposed Committee Activities.

5 p.m.—Adjourn.

June 15, 1989.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 89–14703 Filed 6–21–89; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

Issues Related to Comments Concerning the U.S. Office of Technology Assessment's Report Informing the Nation

AGENCY: U.S. National Commission on Libraries and Information Science.

ACTION: Notice of public hearing.

SUMMARY: In late 1988, the U.S. Office of Technology Assessment released its report entitled *Informing the Nation: Federal Information Dissemination in an Electronic Age.* The report discusses alternatives concerning the roles and responsibilities of several agencies involved with the dissemination of federal information. The purpose of this hearing is to gather comments from the public and private sector information communities concerning reactions to the report and its recommendations. This notice announces the public hearing designed to elicit views, comments and information from interested organizational representatives. The

BEST COPY AVAILABLE

Commission's hearings are authorized under Pub. L. 91-345.

DATE/LOCATION: The hearing will be held July 13, 1989 in Auditorium (A-5) of the Martin Luther King, Jr. Memorial Library, 901 G Street, NW., Washington, DC, 9:30 a.m.-4:30 p.m.

Anyone desiring to testify should submit a written request, which should be received no later than July 1, 1989. Twenty copies of the written statements must be received in the NCLIS office by 4:00 p.m. on July 6, 1989.

Supplemental or reply statements will become part of the record if received by 4:00 p.m. on July 21, 1989. Twenty copies of such statements should be submitted.

ADDRESS: Written requests to present testimony and twenty copies of all statements should be submitted to: U.S. National Commission on Libraries and Information Science, 1111 18th Street, NW., Suite 310, Washington, DC 20036.

All requests to testify should clearly identify the individual or group desiring to testify. The NCLIS office will attempt to contact all requestors to confirm their appearances.

Special provisions will be made for handicapped individuals by calling Jane McDuffie (202) 254-3100, no later than one week in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Robert Dugan, Research Associate, U.S. National Commission on Libraries and Information Science, (202) 254-3100.

Dated: June 16, 1989.

Jane D. McDuffie,

Staff Assistant.

[FR Doc. 89-14684 Filed 6-21-89; 8:45 am]

BILLING CODE 7527-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted by July 24, 1989.

ADDRESSES: Send comments to Mr. Jim Houser, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3002, Washington, DC 20503 (202-395-7316).

In addition, copies of such comments may be sent to Mrs. Anne C. Doyle, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202-682-5401).

FOR FURTHER INFORMATION CONTACT: Mrs. Anne C. Doyle, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests a review of a new collection of information. This entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per reponse; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: FY 90 Inter-Arts Program Application Guidelines Artists' Projects: New Forms

Frequency of Collection: One-time

Respondents: Non-profit institutions

Use: Guideline instructions and applications elicit relevant information from non-profit organizations that apply for funding under the Artists' Projects: New Forms category. This information is necessary for the accurate, thorough, and fair consideration of competing proposals in the peer review process.

Estimated Number of Respondents: 400

Average Burden Hours per Response: 30

Total Estimated Burden: 12,000

Anne C. Doyle,

Administrative Services Division, National Endowment for the Arts.

[FR Doc. 89-14730 Filed 6-21-89; 8:45 am]

BILLING CODE 7537-01-M

Dance Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Dance Companies Section) to the National Council on the Arts will be held on July 17-20, 1989, from 9:00 a.m.-6:00 p.m. and July 21, 1989, from 9:00 a.m.-3:00 p.m. in Room M07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on July 21, 1989, from 3:00 p.m.-5:00 p.m. The topics for discussion will be policy issues.

The remaining portion of this meeting on July 17-20, 1989, from 9:00 a.m.-6:00 p.m. and July 21, 1989, from 9:00 a.m.-3:00 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89-14728 Filed 6-21-89; 8:45 am]

BILLING CODE 7537-01-M

Inter-Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Inter-Arts Advisory Panel (New Forms Regional Initiative Section) to the National Council on the Arts will be held on July 11, 1989, from 9:00 a.m.-5:30 p.m. in Room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on July 11, 1989, from 4:00 p.m.-5:30 p.m. The topics for discussion will be policy issues.

The remaining portion of this meeting on July 11, 1989, from 9:00 a.m.-4:00 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Martha Y. Jones,

Acting Director Council and Panel Operations National Endowment for the Arts.

[FR Doc. 89-14727 Filed 6-21-89; 8:45 am]

BILLING CODE 7537-01-M

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Challenge III Section) to the National Council on the Arts will be held on July 12, 1989, from 9:00 a.m.-4:30 p.m. in Room M14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on July 12, 1989, from 3:30 p.m.-4:30 p.m. The topics for discussion will be policy issues and guidelines.

The remaining portion of this meeting on July 12, 1989, from 9:00 a.m.-3:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89-14729 Filed 6-21-89; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Informal Science Education Panel; Meeting

The National Science Foundation announces the following meeting:

Name: Informal Science Education Panel Meeting.

Date and Time: July 12-14, 1989, from 8:30 a.m. to 5:00 p.m.

Place: Museum of Science, Science Park Boston, MA 02114.

Type of Meeting: Closed Meeting.

Contact Person: Michael Templeton or Kenneth Starr, National Science Foundation, 1800 G St., NW., Washington, DC 20550, Informal Science Education, Room 635-A, Phone (202) 357-7076.

Summary of Minutes: May be obtained from the Contact persons at the above address.

Purpose of Meeting: To provide advice and recommendations concerning Informal Science Education proposals.

Agenda: To review and evaluate Informal Science Education proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a propriety or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

June 16, 1989.

[FR Doc. 89-14823 Filed 6-21-89; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Niagara Mohawk Power Corp.; Environmental Assessment and Finding of No Significant Impact

[Docket No. 50-220]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuing an exemption from certain requirements of 10 CFR part 50, Appendix J, to the Niagara Mohawk Power Corporation (the licensee), for the Nine Mile Point Nuclear Station, Unit 1 (NMP-1), located at the licensee's site in Scriba, New York.

Environmental Assessment

Identification of Proposed Action

The proposed action would exempt the licensee from meeting certain requirements of 10 CFR 50, Appendix J, until startup following the next refueling outage. Appendix J requires containment isolation valves to be Type C leakage tested. In the past the licensee has not included the four containment isolation valves in the shutdown cooling system suction and return line (38-01, -02, 38-12, -13) in the Type C testing program. The licensee did not consider them to be containment isolation valves. However, by letter dated May 6, 1988 the NRC transmitted to the licensee a safety evaluation (SE) concerning the licensee's leakage rate testing program. In that SE the staff stated its finding that the subject values needed to be included in the Type C testing program. Recent attempts by the licensee to perfrom the Type C tests have resulted in the isolation valve leak rates exceeding Appendix J criteria. The licensee has determined that the valves can not be made sufficiently leak-tight to meet Appendix J criteria.

The licensee has proposed that a schedular exemption be granted from the requirement to perform Type C leakage testing of the shutdown cooling system isolation valves (38-01, -02, -12, and -13) and from the requirement that the leakage of these valves be included in the 0.60L_a acceptance criteria for Type B and Type C tests. The requested exemption is for the period up to and including the next refueling outage. The

schedular exemption was requested to allow time to procure needed hardware and to develop and install the necessary changes to meet the requirement of 10 CFR 50, Appendix J.

The licensee's request for this exemption, and the basis therefor are contained in its letter dated November 22, 1988.

The Need for the Proposed Action

The exemption is required in order to permit the licensee to startup from the current outage and operate the plant while the necessary changes are developed and the necessary hardware is procured. Without this exemption the restart and operation of this plant would be delayed until the necessary changes and testing were completed.

Environmental Impacts of the Proposed Action

The exemption would allow the changes needed to the isolation valves on the shutdown cooling system suction and return lines to meet the requirements of 10 CFR 50, Appendix J, to be completed during the next refueling outage. The exemption would allow the plant to be operated during the period of time necessary to determine the necessary changes and procure the necessary hardware.

The effect of leakage from the shutdown cooling system isolation valves has been evaluated with respect to normal operation, shutdown and accident conditions. Each case indicates that leakage is into a closed loop or the leakage through the valve is minor. The leakage will not affect the processing of effluents, including radiological effluents during normal operation. During accident conditions, leakage through the valves will be into a closed system and will be further restricted by the other isolation valves in the process stream prior to its release back into the Reactor Coolant System inside the primary containment. If a break occurs in the shutdown cooling system, any leakage into it from the reactor coolant system would be minimized by the valves themselves and core uncovery or fuel failure is not expected. Therefore, leakage from the valves will not significantly contribute to the radiological release to the environment following a design basis loss of coolant accident (LOCA).

The licensee has stated the exemption would not increase the probability of an accidental release of radioactivity. The exemption would not increase the probability of fuel clad failure or decrease the mitigation effects of the emergency core cooling systems nor decrease the decay heat removal process. The exemption will not affect normal radiological plant effluents or increase normal occupation exposures.

Therefore, based on the considerations discussed above, the staff concludes that granting the proposed exemption will not increase the probability of an accident and will not result in any post-accident radiological releases significantly in excess of those previously determined for Nine Mile Point Nuclear Station, Unit 1. Moreover, the proposed exemption would not otherwise affect radiological plant effluents, nor result in any significant occupational exposure. Likewise, the exemption does not affect non-radiological plant effluents and has no other environmental impact.

Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

The staff has concluded that there is no measurable impact associated with the proposed exemption. Therefore, alternatives to the exemption will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested exemption. Such action would not reduce environmental impacts of the Nine Mile Point Nuclear Station, Unit 1 operations and would result in unwarranted delays in plant startup and operation.

Alternative Use of Resources

These actions associated with the granting of the proposed exemption as detailed above do not involve the use of resources not previously considered in connection with the "Final Environmental Statement Related to Operation of Nine Mile Point Nuclear Station, Unit No. 1," dated January 1974.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's submittal that supports the proposed exemption discussed above. The NRC staff did not consult other agencies or persons.

Findings of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed aciton will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for the exemption as listed herein, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Penfield Library, State University College, Oswego, New York 13126.

Dated at Rockville, Maryland, this 14th day of June 1989.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Director, Project Directorate I–1, Division of Reactor Projects I/II.

[FR Doc. 89–14820 Filed 6–21–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–374]

Commonwealth Edison Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 48 to facility Operating License No. NPF–18 issued to Commonwealth Edison Company, which revised the Technical Specifications for operation of the LaSalle County Station, Unit 2, located in LaSalle County, Illinois. The amendment was effective as of the date of its issuance.

The amendment issued revised the Technical Specifications to allow the licensee to increase the spent fuel pool storage capacity from 1120 to 4078 fuel assemblis.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the Federal Register on November 16, 1987 (52 FR 43810). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has concluded that an environmental impact statement is not warranted because there will be no environmental impact attributable to the action beyond that which has been predicted and described in the Commission's Final Environmental Statement related to the Operation of LaSalle Project, Units 1 and 2 dated November 1978.

For further details with respect to the actions see: (1) The application for amendment dated September 16, 1986, supplemented August 18, November 5, 24, 1987, May 17, 1988, and June 6, 1989, (2) Amendment No. 48 to License NPF–18, and (3) the Commission's related Safety Evaluation and Environmental Assessment and Finding of No Significant Impact. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348. A copy of items (2), and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Dated at Rockville, Maryland, this 15th day of June 1989.

For the Nuclear Regulatory Commission.

Paul C. Shemanski,

Acting Director, Project Directorate III–2, Division of Reactor Projects III, IV, V, and Special Projects.

[FR Doc. 89–14818 Filed 6–21–89; 8:45 am]

BILLING CODE 7590–01–M

Maine Yankee Atomic Power Co.;

[Docket No. 50–309]

Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–36 issued to Maine Yankee Atomic Power Company, (the licensee), for operation of the Maine Yankee Atomic Power Station, located in Lincoln County, Maine. The amendment will uprate the Cycle 11 power level to 2700 MWt.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the provisions in the Technical Specification (TS) to reflect the operating limits for the Cycle 11 operation at a power level of 2700 MWt.

The proposed action is in accordance with the licensee's application for amendment dated December 28, 1988 and as clarified May 30, 1989. The May 30, 1989 clarification, regarding component cooling water heat loads, did not significantly change the December 28, 1988 submittal.

The Need for the Proposed Action

The proposed change to the TS is required in order to provide for the operation of the plant at 2700 MWt during the remainder of operating Cycle 11 and beyond. Maine Yankee is currently in Cycle 11 operation, operating the facility with a limiting power level of 2630 MWt.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the Technical Specifications. The proposed revision would allow the licensee to operate the plant at 2700 MWt for he remainder of Cycle 11 and beyond.

The licensee has performed an assessement of the environmental impact resulting from operation at 2700 MWt. It has been concluded that, because improvements to the plant thermal efficiency made during the recent past more than offset the slight increase in the heat rejection rate, the environmental limits will not change as a result of this uprate.

The only environmental impact of this uprate will be due to a slightly higher heat rejection to the environment through the offshore diffuser located in Montsweag Bay. THis increased heat rejection has been estimated by MYAPCo to increase the cooling water temperature by 0.7°F. However, because the typical dilution of the thermal plume in the diffuser mixing zone is 10 to 1, the impact of this uprate to Montsweag Bay will be to raise the temperature in the mixing zone by approximately 0.1°F.

Based on this information, the staff concludes that the environmental impacts of the increase in power to 2700 MWt are not significantly changed from previous operating cycles, and therefore, are acceptable.

With regard to potential nonradiological impacts, the proposed change to the TS involves systems located within the restricted area as defined in 10 CFR 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the Federal Register. No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Maine Yankee Atomic Power Station dated July 1972.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Findings of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated December 28, 1988 and clarifying letter, dated May 30, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Local Public Document Room, Wiscasset Library, High Street, P. O. Box 367, Wiscasset, Maine 04578.

Dated at Rockville, Maryland, this 15th day of June 1989.

For the Nuclear Commission.

Patrick M. Sears,

Acting Director, Project Directorate I–3, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89–14819 Filed 6–21–89; 8:45 am]

BILLING CODE 7590–01–M

RAILROAD RETIREMENT BOARD

Computer Matching and Privacy Protection Act of 1988; RRB Records Used in Computer Matching

AGENCY: Railroad Retirement Board (RRB).

ACTION: Notice of records used in computer matching programs, notification to individuals who are

beneficiaries under the Railroad Retirement Act on or after July 19, 1989.

SUMMARY: As required by the Computer Matching and Privacy Protection Act of 1988, RRB is issuing public notice of its use and intent to use, in ongoing computer matching programs, information obtained from the Social Security Administration of the amount of wages reported to the Social Security Administration and the amount of benefits paid by that agency.

The purpose of this notice is to advise individuals applying for or receiving benefits under the Railroad Retirement Act of the use made by RRB of this information obtained from the Social Security Administration by means of a computer match.

ADDRESSES: Interested parties may comment on this publication by writing to Mr. Steven A. Bartholow, Deputy General Counsel, 844 N. Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Mr. Steven A. Bartholow, Deputy General Counsel, 844 N. Rush Street, Chicago, Illinois 60611, telephone number (312) 751–4935.

SUPPLEMENTARY INFORMATION: The Computer Matching and Privacy Protection Act of 1988, Pub. L. 100–503, requires a Federal agency participating in a computer matching program to publish a notice regarding the establishment of a matching program.

Name of Participating Agencies: Social Security Administration and Railroad Retirement Board.

Purpose of the Match: The RRB will on a daily basis obtain from the Social Security Administration a record of the wages reported to the Social Security Administration of applicants and the amount of benefits paid by that agency to applicants or beneficiaries for benefits under the Railroad Retirement Act. That wage information is needed to compute the amount of the tier I annuity component provided by sections 3(a), 4(a) and 4(f) of the Railroad Retirement Act (45 U.S.C. 231b(a), 45 U.S.C. 231c(a) and 45 U.S.C. 231c(f)). This information is available from no other source.

Authority for Conducting the Match: Section 7(b)(7) of the Railroad Retirement Act (45 U.S.C. 231f(h)(7)) provides that the Social Security Administration shall supply information necessary to administer the Railroad Retirement Act.

Categories of Records and Individuals Covered: All applicants for benefits under the Railroad Retirement Act and current beneficiaries will have a record of their wages and the amount of their social security benefits requested from the Social Security Administration.

Inclusive Dates of the Matching Program: These matches will be done on a daily basis commencing on July 19, 1989 for the full 18 months of the agreement.

The notice we are giving here is in addition to any individual notice.

A copy of this notice has been or will be furnished to both Houses of Congress and OMB.

Dated: June 16, 1989.

By authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 89–14796 Filed 6–21–89; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–26939; File No. SR–Amex–89–09]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Accelerated Approval to Proposed Rule Change

On April 17, 1989, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4[2] thereunder, a proposed rule change to amend Amex Rule 905F to provide for additional circumstances under which the case value of the proportionate number of shares of the index underlying an Amex equity index participation ("EIP"), or any component thereof, will be paid to an EIP holder exercising the physical delivery privilege.

Currently, pursuant to Amex Rule 905F, IP holders exercising the physical delivery privilege will receive cash in lieu of actual shares: (1) If the number of shares of a particular stock to be delivered is fewer than ten; (2) to compensate for fractional shares since no partial shares will be delivered and the number of deliverable shares is rounded down to the nearest whole share; and (3) if a component stock does not open for trading on the delivery date, in which case the cash value of the otherwise deliverable shares would be paid to the exercising IP holder. The Amex proposes to amend Exchange Rule 905F by adding new paragraphs (e) and (f).

Proposed new paragraph (e) of Exchange Rule 905F provides that the cast value of the proportionate number of shares of stock of the index underlying an Amex EIP, which would otherwise be delivered, may be paid to an exercising EIP holder in lieu of the physical delivery of the shares if it is determined by the Amex or the Options Clearing Corporation ("OCC") that: (1) Any component stock is ineligible for secondary trading under the securities laws of any U.S. jurisdiction; (2) such stock is ineligible for settlement under the rules of a correspondent clearing corporation; or (3) other extraordinary circumstances make delivery of such stock impossible or impractical. In this regard, proposed new paragraph (f) of Exchange Rule 905F provides that the OCC, in accordance with its rules, shall pay the cash-out value[3] to holders exercising for physical delivery if a physical delivery facilitator[4] on the Exchange is unavailable to make delivery to holders on the quarterly delivery date because the facilitator's status as an OCC clearing member has been terminated or suspended before the opening of trading on such date, and another physical delivery facilitator has not been designated by the Exchange. Cash will be paid in lieu of physical delivery under the immediately aforementioned circumstance only if the number of delivery units of a particular class of EIPs for which delivery has been requested exceeds the number of delivery units of such class made available by persons with short positions.

The Amex states that the proposed rule change is designed to conform to OCC Rules 1905(c)(2) and 1907(b)(9) and will permit the Amex to inform Exchange members and the physical delivery facilitator, as far as is practicable in advance of the first delivery date, of additional circumstances under which cash rather than shares may be delivered to EIP holders exercising for physical delivery.

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1988).

[3] The cast-out value of an EIP trading unit (100 EIPs) is an amount in dollars equal to the number of trading units times the applicable multiplier (1/10) times the settlement value of the underlying index (based on opening stock prices) on the business day following the day on which the EIP is exercised.

[4] The term "physical delivery facilitator" means a member or member organization designated by the Amex to make physical delivery of the component stocks of the index underlying an Amex EIP, at delivery times, to EIP holders who exercise the delivery privilege, in the event that the number of delivery units (25,000 EIPs for the XMI EIP and 50,000 EIPs for the S&P 500 EIP) for which holders have requested physical delivery exceeds the number of delivery units offered for physical delivery by persons holding short positions.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6 and the rules and regulations thereunder. Modifying the circumstances under which the case value of the proportionate number of shares of the index underlying an Amex EIP will be paid to an EIP holder exercising the physical delivery privilege, so as to conform with existing OCC rules regarding such cash delivery, should ameliorate any possible investor confusion regarding physical delivery in advance of the first anticipated delivery date. Moreover, the proposed rule change is reasonably designed to improve the physical delivery process.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication in the Federal Register because proposed new paragraphs (e) and (f) to Amex Rule 905F simply conform Rule 905F to OCC Rules 1907(b)(9) and 1905(c)(2), respectively. Further, the changes are intended to accommodate the first EIP quarterly delivery date, June 16, 1989.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 13, 1989.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change be, and hereby, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Shirley E. Hollis,

Assistant Secretary.

Dated: June 15, 1989.

[FR Doc. 89–14733 Filed 6–21–89; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. 78s(b)(2) (1982).

[6] 17 CFR 200.30–3(a)(12) (1988).

[Release No. 34–26934; File Nos. SR–Amex–88–35; SR–CBOE–88–26; SR–NYSE–88–42; SR–Phlx–89–26; and PSE–88–29]

Self-Regulatory Organizations; American Stock Exchange, Inc., et al; Order Granting Permanent Approval to Proposed Rule Changes

On December 19, 21, and 27, 1988, respectively, the American ("Amex"), Philadelphia ("Phlx"), and Pacific ("PSE") Stock Exchanges, and the Chicago Board Options Exchange ("CBOE"), (Collectively, the "Exchanges") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4[2] thereunder, proposed rule changes requesting extensions of the Exchanges' pilot programs providing for four expiration months for stock options, including two near-term months, until April 30, 1989.[3] In April, at the request of Commission staff, the Exchanges amended their original filings to request an additional extension of the pilots until June 30, 1989, and permanent approval prior to expiration of the pilots at that time.[4] This Order approves the Exchanges' near-term options expiration pilot programs on a permanent basis.

In 1985 the options exchanges implemented stock option pilot programs for certain January cycle stock options. Under the terms of the pilots, the traditional January trading cycle was altered to ensure that (i) One-month and two-month options were made available for trading at all times and (ii) four expiration months were outstanding at all itmes. Since that time, the pilot programs have been extended and expanded to all equity options on all three expiration cycles.

The purpose of the pilot programs was to determine whether a near-term expiration cycle, featuring four expiration months, would improve investors' interest in such stock options. After monitoring the programs since their inception and receiving highly favorable comments from both on-floor and off-floor market participants, the Exchanges believe the pilots have improved investors' interest in trading such options.

The Exchanges believe the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Exchanges because they perfect the mechanism of a free and open market by making permanent a pilot program tailored to meet investors[1] preferences for stock options with near-term expiration cycles.

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to securities exchanges, and in particular, the requirements of section 6 and the rules and regulations thereunder. The Commission believes that the proposed rule changes will benefit public customers by providing investors with broad investment choices through the establishment, on a permanent basis of programs designed to meet investors' preferences for stock options with near-term expiration cycles.

In connection with their monitoring of the pilot programs, Commission staff asked the Exchanges to compile data providing daily open interest and volume, aggregated by monthly expiration, for each class of equity options for a one week period in January, February and March. After reviewing the data, the Exchanges reported that there is significant volume and open interest in the additional near-term month.[5] An independent review of the data by commission staff supports this conclusion. The Commission, therefore, is satisfied that the program meets investors' preferences for trading near-term options. Moreover, the Commission notes that the current pilot programs have operated effectively and

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1988).

[3] *See* Securities Exchange Act Release No. 26413 (December 30, 1988), 54 FR 723, granting partial approval of File Nos. SR–Amex–88–35; SR–CBOE–88–26; SR–Phlx–88–43; and SR–PSE–88–29. In a separate filing, the New York Stock Exchange ("NYSE") requested and received Commission approval of an extension of the NYSE near-term options expiration pilot program until June 30, 1989. *See* Securities Exchange Act Release No. 26360 (December 16, 1988), 53 FR 51941.

[4] *See* Securities Exchange Act Release No. 26782 (May 3, 1989), 54 FR 20228.

[5] *See* Letters to Judith Poppalardo, Attorney, SEC, from Barbara D. Salmanson, Special Counsel, AMEX, dated June 6, 1989; Robert P. Ackerman, Vice President Legal Services, CBOE, dated April 25, 1989; James E. Buck, Senior Vice President and Secretary, NYSE, dated June 1, 1989; Craig R. Carberry, Director, Options Compliance, PSE, dated April 25, 1989; and Amy L. Kitzen, Market Surveillance, PHLX, dated May 3, 1989.

generally have been well received. In addition, the Commission solicited comments on these near-term expiration pilot programs on a number of occasions and has not received any negative comments on their operation.

Finally, in light of problems experienced during the October 1987 market break, the Commission staff requested the Exchanges to respond to the possibility that the additional expiration month could lead to an unmanageable proliferation of strike prices in a volatile market. The Exchanges represent that they have upgraded their systems since the market break and, therefore, proliferation of series is not a systems impact problem. Nevertheless, the Commission expects that the Exchanges will to monitor their capacity and the capacity of vendors supplying price information to handle a considerable increase in strike prices which could be exacerbated by trading in an additional near-term month.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule changes (File Nos. SR-Amex-88-35; SR-CBOE-88-26; SR-NYSE-88-42; SR-Phlx-88-26 and SR-PSE-88-29) be, and hereby are, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 14, 1989.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89-14734 Filed 6-21-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26924; File No. SR-CBOE-89-04]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc., Order Approving Proposed Rule Change

On February 2, 1989, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder, [2] a proposal that narrows the bid-ask differentials for certain option quotations and obliges the trading crowd to make ten-up markets for option series that the Exchange includes in a pilot program.

The proposed rule change was published for comment in Securities Exchange Act Release No. 26570 (February 24, 1989), 54 FR 8857 (March 2, 1989). No comments were received on the proposed rule change.

The Exchange proposes, among other things, [3] to narrow the maximum permissible spread between bids and offers for certain option contracts.[4] Specifically, the Exchange proposes to permit bidding and offering so as to create a difference of no more than ¼ or $1 between the bid and offer for each option contract for which the prevailing bid is less than $2. At present, the ¼ of $1 differential is only applicable if the prevailing bid is $1 or less; and accordingly the proposal will result in narrower spreads for bids and offers greater than $1 but less than $2.

The Exchange also proposes to modify the permissible bid-ask differential provisions for options that are in-the-money. Currently, the bid-ask differential provisions apply to in-the-money options except that the differential for option series that are ten or more dollars in-the-money may be as wide as the differential between the bid and offer quotation of the underlying security. The Exchange proposes to extend this exemption from the normal bid-ask differentials to all in-the-money options and permit such options to have a bid-ask differential equalling the bid-ask differential in the underlying security.[5] The Exchange, in support of its proposal, submitted data demonstrating that only a small portion of those options series that trade for less than ten dollars in-the-money would be affected by the proposal.[6]

Additionally the Exchange proposes to establish a pilot program to ensure that the trading crowd fills public customer orders to a minimum depth of ten contracts at the best bid or offer. Currently, under normal market conditions a market maker's bid or offer is for five contracts unless a smaller or larger size is specified. The Exchange proposal requires the trading crowd, for options series included in the pilot, to execute at least ten public customer orders at the best bid or offer. All orders, other than a market maker order represented by a floor broker, will impose an obligation upon the market makers comprising the trading crowd to execute ten contracts at the best bid or offer.[7]

The Market Performance Committee ("MPC") will determine the options series included in the pilot program. The ten-up requirement does not apply during rotation or if a "fast market" has been declared by the Exchange. In addition, the MPC may grant exemptions, for an options class or a series within an options class, if it believes an exemption is warranted or if an obvious error occurs in a posted market quote.

The Exchange believes that the proposed rule changes will promote just and equitable principles of trade and are designed to remove inpediments to and perfect the mechanism of a free and open market.

The Commission believes that narrowing the maximum allowable bid-ask differentials for an options contract bid greater than $1 and less than $2 will result in improved price continuity and tighter, more liquid markets. All orders, including public customer orders, will benefit from the narrow bid-ask differentials. Additionally, the CBOE proposal will provide public customers with the benefits of ten-up markets.[8] Specifically, public customers, for the options included in the pilot program, can be assured order execution to a minimum depth of ten contracts at the best bid or offer. In addition, the proposal should encourage market makers to become more competitive in making size markets, thereby facilitating transactions in securities and contributing to a more free and open market. Finally, as the Commission has not received any negative comments from market makers potentially affected by the proposal, the Commission has no reason to believe that the ten-up

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[1] 15 U.S.C. 78s(b)(1) (1984).

[2] 17 CFR 240.19B-4 (1988).

[3] The Exchange proposal additionally changes the format of Chapter VIII of the Exchange rules. Certain rules will be renumbered in order to divide the chapter into three sections, one each for market makers, trading crowds and modified trading systems.

[4] The present rule requires market makers to bid or offer for options contracts within certain bid-ask differentials. The maximum allowable differential increases as the dollar value of the bid increases.

[5] Notwithstanding this exemption, Exchange market makers would be required to make bids or offers calculated to contribute to the maintenance of a fair and orderly market. *See* CBOE Rule 8.7(a).

[6] *See supra* Exchange Act Release No. 26570, Exhibit A.

[7] Market maker orders for less than ten contracts that are represented in the crowd by a floor broker will not be reflected in the displayed market quote.

[8] Other exchanges also have extended or are proposing to extend the benefits of ten-up markets to public customer orders. The Commission approved a Philadelphia Stock Exchange Inc. ("PHLX") proposal in June 1987 requiring PHLX specialists to provide ten-up markets for options series that are at, just in, and just out-of-the money. *See* Securities Exchange Act Release No. 24580 (June 11, 1987), 52 FR 23120 (June 17, 1987). Moreover, the Commission approved a rule change by the Phlx in February 1989 to extend the ten-up requirements to all options series. *See* Securities Exchange Act Release No. 26669 (March 27, 1989), 54 FR 13282 (March 31, 1989). Additionally, the American Stock Exchange, Inc. recently proposed to require specialists to make ten-up markets. *See* Securities Exchange Act Release No. 26834 (May 18, 1989) 54 FR 22843 (May 25, 1989).

requirement will be particularly burdensome on them.

Accordingly, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular sections 6 and 11A.[9] Specifically, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act because it will promote just and equitable principles of trade, protect investors, and promote the public interest by assuring narrower bid-ask differentials and a minimum ten contract execution of public customers' orders. Also, the Commission finds that the proposal is consistent with Section 11A(a)(1) (ii) and (iv) because it will promote "fair competition among brokers and dealers" and "the practicability of brokers executing investors' orders in the best market." While extending the underlying spread exemption to all in-the-money options will increase the instances that the narrower bid-ask differentials will be bypassed, in light of the narrower bid-ask differentials and ten contract execution guarantee it is reasonable to permit in-the-money options quotations to reflect the market condition of the underlying securities. Moreover, the CBOE has provided data to indicate that this increase will be small.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change is approved.

For the Commission, by the Divisions of Market Regulation, pursuant to delegated authority.[11]

Jonathan G. Katz,

Secretary.

Dated: June 13, 1989.

[FR Doc. 89-14735 Filed 6-21-89; 8:45 am]

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[Release No. 34-26938; File No. SR-CBOE-87-30]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change Relating to Options on Treasury Measures

Pursuant to section 19 (b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange"), on July 28, 1987, submitted to the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change to allow the Exchange to list two interest rate measure option contracts. On November 6, 1987, the CBOE submitted Amendment No. 1 to its proposal. On February 16, 1989, the CBOE submitted Amendment No. 2 to its proposal. On May 30, 1989, the CBOE submitted Amendment No. 3 to its proposal.

The CBOE's proposal was published for comment in Securities Exchange Act Release No. 25350 (February 12, 1988), 53 FR 5235. The Commission received one comment letter regarding the proposed rule change.

I. *Description of the Contracts*

The CBOE proposes to list options on two interest rate measures.[3] The short-term interest rate measure would be based on the most recently-auctioned 13-week bill issued by the U.S. Department of the Treasury ("Treasury"). Because 13-week Treasury bills are auctioned weekly, the bill used to calculate the short-term interest rate measure generally would change weekly. The newly-auctioned bill would replace the previous bill on the first business day following the auction.[4]

A designated reporting authority appointed by the CBOE would calculate and update the current value of the short-term interest rate measure during the CBOE trading day.[5] The reporting authority would calculate the current annualized discount yield of the most recently-auctioned 13-week Treasury bill pursuant to specific procedures and based on quotations of primary dealers of Treasury instruments.[6] The current annualized discount yield of the 13-week bill then would be multiplied by ten to arrive at the current value of the short-term interest rate measure. If, for example, the current discount yield were 8.534%, the current value of the short-term interest rate measure would be 85.34. The current value would be updated as frequently throughout the trading day as the information used by the reporting authority to calculate it changed.[7] The multiplier for the option on the short-term measure would be 100, so that each 1/10 point move in the discount yield (after being multiplied by ten) would move the aggregate exercise price $100.

The long-term interest rate measure would be based on the most recently-auctioned seven- and ten-year Treasury notes and 30-year Treasury bonds.[8] In particular, the long-term measure would be calculated from the average of the yields to maturity of two securities from each of the three maturities. Treasury securities of each of these three maturities usually are auctioned quarterly, and these are the only long-term issues in which the Treasury holds auctions.[9] A newly-auctioned issue would replace the earliest-dated issue in the relevant maturity on the first business day following the auction.[10]

The designated reporting authority also would calculate and update the long-term interest rate measure during the CBOE trading day. The reporting authority would calculate the current bids and asks for the six issues pursuant to specific procedures and based on primary dealer quotations. The reporting authority then would use the arithmetic average of the midpoint between the bid and ask for each of the six issues to calculate an average yield to maturity for the issues (to three decimals, using the Securities Industry Association method [11]), and then would multiply this average by ten to arrive at the current value of the long-term measure. If, for example, the average yield to maturity were 9.534%, the current value of the long-term interest rate measure would be 95.34. As with the short-term measure, the current value of the long-term measure would be updated as frequently throughout the trading day as the information used by the reporting authority to calculate it changed. The multiplier for the option on the long-term

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[1] 15 U.S.C. 78f and 78k-1 (1984).

[2] 17 CFR 240.19b-4 (1988).

[3] The Exchange proposes to add Chapter 23 to its rules to govern trading of interest rate measure options. Proposed Chapter 23 was included as Appendix A in the release publishing the CBOE proposal for comment. *See* 53 FR 5236.

[4] If an auction were not held on or near the normally scheduled date, the Exchange would either substitute the existing Treasury bill having nearest to 13 weeks to maturity or continue to use as the underlying security the most recently-auctioned 13-week bill.

[5] The CBOE plans initially to designate Telerate Systems, Inc. as the reporting authority.

[6] Telerate's New York newsroom reporters are in regular contact with approximately two dozen primary dealers.

[7] Telerate generally receives quotes and updates the interest rate measures every one to three minutes.

[8] The Treasury currently auctions a total of seven notes and bonds on a regular basis, with maturities of two, three, four, five, seven, ten and 30 years. Of these, the seven-, ten-, and 30-year issues generally are considered long-term.

[9] The CBOE would substitute another issue if the Treasury were to add or delete an issue or otherwise revise its auction schedule.

[10] Such a procedure would ensure that the long-term interest rate measure would consist only of recent issues, the markets for which generally are the most liquid.

[11] The Securities Industry Association method for calculating yield from prices is widely-used and somewhat less complex than an alternative method employed by the Federal Reserve System.

[9] 15 U.S.C. 78s(b)(2) (1984).

[10] 17 CFR 200.30-3(a)(12) (1988).

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1989).

measure also would be 100, so that each 1/10 point move in the average yield to maturity [after being multiplied by ten) would move the aggregate exercise price $100.

Both proposed option contracts would be cash-settled and feature European-style exercise.[15] Position and exercise limits would be 25,00 contracts for long-term options and 5,000 contracts for short-term options. The margin requirement for a short position in either contract would be 100% of the current market value of the contract plus the product of 10% of the current value of the relevant interest rate measure times the multiplier (100 for both contracts), less the out-of-the-money amount. In no event, however, could the margin maintained fall below 100% of the current market value of the contract plus the product of 5% of the current value of the interest rate measure times the multiplier.[16] In addition, the Exchange would determine fixed exercise price intervals for call and put interest rate options, with a minimum $2.50 interval between strike prices.

Expiration of short- and long-term contracts would fall on the Saturday following the third Friday of the month and would occur either quarterly on the December cycle or monthly.[14] The exercise settlement values of both interest rate measures would be determined by the CBOE pursuant to a polling procedure conducted at or near the close of the last trading day.[15] The CBOE would conduct a random sampling of 12 primary dealers of U.S. Treasury securities [16] to obtain bid and ask quotations for the relevant 13-week Treasury bill and for each of the relevant six long-term notes and bonds. For each of the 12 bid-ask quotations a midpoint would be calculated, the two lowest and two highest midpoint quotations would be dropped, and the remaining eight quotes would be used to calculate a mean quotation for the respective issue which would be used to compute the exercise settlement value.

Consistent with the manner in which Treasury bills are quoted in the secondary market, the quotations supplied to the Exchange for the short-term composite would be in the form of annualized discount yields (to one basis point). The closing value of the short-term interest rate measure would be calculated by multiplying the mean quotation by ten.

For the long-term measure, the Exchange would use the mean quotation of each of the underlying six issues to calculate the yield-to-maturity (rounded to three decimals) of each issue. The closing value of the long-term interest rate measure then would be calculated by averaging the yields-to-maturity of the six issues and multiplying this average by ten. The closing values would be disseminated publicly immediately following their calculation and would be used to settle the short- and long-term contracts.

In order to test the accuracy and to maintain the efficient functioning of its closing value polling procedures, the CBOE proposes to conduct such a polling on a weekly basis. In order to facilitate comparison of these weekly polling results with the current interest rate measure values calculated and disseminated by the designated reporting authority, the CBOE has agreed to publish its polling results in its weekly bulletin to members.[17]

II. Basis and Purpose of the Contracts

In support of its proposal, the Exchange argues that there is significant investor interest in options on interest rate measures. Because both the short- and long-term interest rate measures would be expressed in terms of yield, both measures would rise as interest rates increase. Accordingly, "[m]arket participants will be able to think in terms of buying calls (selling puts) when interest rates go up and selling calls (buying puts) when interest rates go down." [18]

The CBOE asserts that public investors are interested in an option on a short-term measure due to the volatility of short-term interest rates. The 13-week Treasury bill was chosen as the underlying instrument for the short-term contract because it is the "most liquid and widely followed short-term Treasury security." [19] In contrast, the long-term contract is designed for hedging in "the long sector of the yield curve, where price movement substantially exceeds that of shorter maturities." [20] As noted above, the seven- ten-, and 30-year Treasury instruments were chosen as components of the long-term measure because they generally are considered to be long-term instruments.

The CBOE believes that its proposed position and exercise limits are reasonable in relation to the overall value of outstanding short- and long-term Treasury securities. In addition, the CBOE asserts that its proposed margin requirements for short interest rate option contracts currently are adequate to provide more than a 95% level of coverage for a seven-day period for both composites.[21] Last, the CBOE notes that registered representatives would have to complete the General Securities Registered Representative Examination (Series 7) prior to accepting interest rate option orders.

III. Comment Letter

The Commission received one comment letter regarding the CBOE proposal.[22] The commentator expressed support for the CBOE's proposed interest rate measure contracts, noting the potential usefulness of such products to swap market participants and fixed income traders and investors. In particular, the commentator stressed the need for an exchange-traded options contract overlying debt instruments with different maturities than those subject to trading of options on futures on the Chicago Board of Trade ("CBT") and the Chicago Mercantile Exchange ("CME").[23] In addition, the commentator emphasized the value of a portfolio hedging device that would correlate closely to a basket of five-, seven-, ten-, and 30-year Treasury issues, which are "the issues most frequently traded by the primary dealers, interest rate swap groups and large fixed income traders and investors." [24]

[14] Proposed Rule 23.5(b) would permit the Exchange to place the options on either a monthly or quarterly expiration cycle, with a maximum of six expiration months. The CBOC would submit to the Commission a rule filing describing its peopoesd expiration cycle prior to listing the interest rate measure contracts.

[15] A description of the CBOE's polling procedures was filed with the Commission in Amendment No. 1 to the CBOE proposal. The CBOE noted in its original filing that a similar procedure has been used for cash-settled Eurodollar futures. File No. SR-CBOE-87-30 (Revised), at 12.

[16] The 12 primary dealers polled would be selected from a universe of at least 24 primary dealers that have agreed to supply quotes to the CBOE.

[17] Telephone conversation between Joseph Furey, Branch Chief, and David Underhill, Attorney, Division of Market Regulation, SEC, and Nancy Crossman, General Counsel, CBOE, on November 28, 1988.

[18] File No. SR-CBOE-87-30 (Revised), at 11.

[19] *Id.* at 12.

[20] *Id.*

[21] Letter from Margaret Wiermanski, Manager, Department of Financial Compliance, CBOE, to David Underhill, Division of Market Regulation, SEC, dated May 30, 1989.

[22] Letter from Jack Rhoades, Editor, Financial Futures (Data Lab Corp.), to Brandon Becker, Associate Director, Division of Market Regulation, SEC, dated April 15, 1988 ("Comment Letter").

[23] In particular, the commentator noted the options on ten- and 30-year Treasury instrument futures traded on the CBT and the options on Eurodollar futures traded on the CME.

[24] Comment Letter, *supra* note 22, at 1.

IV. Discussion

In order to grant approval to exchange rules governing trading of new options,[25] the Commission must determine that the rules are designed, among other things, to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, and maintain fair and orderly markets.[26] In the case of options on Treasury instruments, the Commission and the options exchanges have applied a number of standards designed to ensure that the trading of such options is consistent with these goals. For example, the exchanges (including the CBOE) that currently trade options on Treasury and other debt securities have attempted to ensure that options only are traded on Treasury instruments that are widely-held, actively-trade, and recently-issued.[27]

As with Treasury security and index options, the Commission's analysis of the CBOE proposal begins with an analysis of the characteristics of the securities underlying the interest rate measure options, and, because the options would be cash-settled, the formula for determining the exercise settlement values of the interest rate measures.[28] The Commission believes that the CBOE proposal is adequate in these two areas.

First, the CBOE interest rate measure contracts would be based on Treasury securities that are among the most widely-held and actively-traded securities in the world.[29] In addition, by the terms of the CBOE proposal the underlying Treasury securities would be the most recently-issued in their respective maturities. Finally, in support of its decision to limit the short-term measure to a single Treasury bill, the CBOE argues that the 13-week bill is a well-publicized barometer of short-term interest rates and is the "basis for interest received on savings and variable interest paid on loans." [30]

Second, the Commission has examined closely the pricing procedures for such options. In particular, the Commission has examined carefully the procedures pursuant to which the interest rate measures would be calculated and maintained during the trading day by the designated reporting authority and the polling procedures to be employed by the CBOE to establish the closing value of the interest rate measures. While the Commission traditionally has believed that indexes based on transaction prices generally are more reliable than index values based on dealer quotations,[31] it recognizes that for certain securities there are no last sale prices or quotations disseminated publicly. For this reason, the Commission did not object to the listing of futures on three securities indexes that are calculated on the basis of polling procedures designed specifically to ensure accuracy and prevent manipulation.[32]

Although the COBE's proposed cash-settled options on Treasury measures present the same issue with regard to reliance on polling procedures for pricing purposes, the Commission believes that the CBOE and the designated reporting authority have designed polling procedures adequate to guard against unreliable or manipulated quotes. For example, the CBOE would determine the settlement values of the interest rate measures by conducting a random sampling of 12 primary dealers of U.S. Treasury securities (out of a universe of 24 potential dealers) to obtain bid and ask quotations for the relevant 13-week Treasury bill and for each of the relevant six long-term notes and bonds. For each of the 12 bid-ask quotations a midpoint would be calculated, the two lowest and two highest midpoint quotations would be dropped, and the remaining eight quotes would be used to calculate a mean quotation for the respective issue.

Unlike the three index futures contracts noted above, the CBOE's Treasury measures would be calculated on an intra-day basis and for settlement purposes by different entities and pursuant to different procedures. Based on a comparison of test results produced by the designated reporting authority and the CBOE to date, however, the Commission believes that the procedures to be used by the designated reporting authority and the CBOE to calculate the daily and closing interest rate measures would yield accurate and reliable results.[33]

In addition to options design and pricing, the CBOE's proposed rules governing the trading of interest rate measure options should ensure that such trading is conducted in a fair and orderly manner. In particular, the Commission believes that the proposed position and exercise limits [34] applicable to interest rate measure options are reasonable and sufficient to protect investors. In addition, the Commission believes that the proposed margin levels applicable to the interest rate contracts would be adequate for prudential purposes, in that they are designed to "protect broker-dealers * * * and clearing corporations from investor and trade defaults on their margin obligations." [35] Indeed, those limits and margin requirements in general are at least as stringent as those applicable to options and futures on individual Treasury securities. In addition, the Commission is satisfied that the CBOE has in place adequate surveillance procedures for listed options in general and that the CBOE also will monitor actively any interest rate options trading conducted by primary dealers that are polled by the

[25] Of course, the Commission notes that both the short-term and long-term interest rate measure options are securities within the defintion of section 3(a)(1) of the Securities Exchange Act of 1934. More specifically, these interest rate measure instruments fall within the Act's definition of security because they are an option on a security or a "group or index of securities (including any interest therein or based on the value thereof)" * * *. 15 U.S.C. 78c(a)(1) 1982.

[26] *See* Sections 6 and 11A of the Act, 15 U.S.C. §§ 78f and 78k-1 (1982).

[27] *See e.g.*, Amex Rule 917; CBOE Rule 21.7. Currently, the CBOE trades options on five-year Treasury notes and 30-year Treasury bonds. The Amex's 13-week Treasury bill and ten-year Treasury note options are inactive.

[28] Any manipulation of the proposed contracts would be more likely to occur at settlement, when positions are unwound automatically.

[29] For example, during February 1989, the average daily trading volume for Treasury bills, in terms of par value was nearly $34 billion. The most recently-auctioned 13-week bill accounted for a sizable proportion of this volume. Board of Governors of the Federal Reserve System, *Federal Reserve Bulletin* (May 1989), at A31.

[30] Letter from Nancy R. Crossman, First Vice President, Legal Services, CBOE, to Howard Kramer, Assistant Director, Division of Market Regulation, SEC, dated September 12, 1988, at 1.

[31] *See* letter from Jonathan G. Katz, Secretary, SEC, to Paula Tosini, Director, Division of Economic Analysis, Commodity Futures Trading Commission ("CFTC"), dated August 24, 1987, at 5–8 (CBT Long-Term Corporate Bond Index future); letter from Jonathan G. Katz, Secretary, SEC, to Paula Tosini, Director, Division of Economic Analysis, CFTC, dated August 24, 1987, at 6–10 (Commodity Exchange Moody's Investment Grade Corporate Bond Index future).

[32] *Id. See also* letter from George A. Fitzsimmons, Secretary SEC, to Paula Tosini, Director, Division of Economics and Education, CFTC, dated July 23, 1984 (CBT Bond Buyer Municipal Bond Index future).

[33] The most recent figures supplied to the Commission indicate average variations between the CBOE and reporting authority figures of .10 points ($10.00 per contract) for the short-term measure and .09 points ($9.00 per contract) for the long-term measure. *See* letter from Frederick E. Rohrbach, Director, New Product Planning, CBOE, to David Underhill, Staff Attorney, Division of Market Regulation, SEC, dated December 19, 1988.

[34] The Exchange originally had proposed a 15,000-contract position and exercise limit for the short-term contract. In order to allay any concerns that such a limit would enable market participants to hold positions that were equivalent to a very large percentage of the total cash market for the underlying 13-week Treasury bills, the CBOE reduced the limit to 5,000 contracts. *See* Amendment No. 2 to the CBOE filing (letter from Robert P. Ackermann, Vice President, Legal Services, CBOE, to Joseph Furey, Division of Market Regulation, SEC, dated February 16, 1989).

[35] *Interim Report of the Working Group on Financial Markets* (May 1988), at 5.

CBOE to establish the closing interest rate values.[36]

The trading of listed options on short-term and long-term interest rate measures should provide investors with hedging and risk-shifting vehicles that reflect accurately the overall movement of short- and long-term interest rates. Indeed, Treasury instrument yields are viewed as a key barometer of overall U.S. interest rates, while Treasury instruments are very widely-held by institutional and individual investors alike. Investors with substantial investments in Treasury instruments would be able to use the CBOE interest rate measure contracts to hedge their exposure to interest rates or to supplement income by writing interest rate option calls.[37]

While it is unclear whether options on short-term and long-term interest rate measures would attract widespread retail investor participation, the Commission accepts the CBOE's representation that interest rate composite options would serve an economic function by allowing investors to hedge portfolios of Treasury securities or other interest rate-sensitive investments and to take positions with respect to short- and long-term interest rate movements.[38] Although the proposed options could attract significant speculative interest, thereby raising potential sales practice concerns, the Commission believes that the CBOE rules described above, as well as the CBOE sales practice and trading rules applicable to all options, should help to minimize abuses associated with marketing and trading of interest rate measure options.[39]

For the reasons described above, the Commission finds that the CBOE's proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 [40] and the rules and regulations thereunder. In particular, the availability of options on short- and long-term interest rate measures should marketing and trading of interest rate measure options. In addition, the Exchange's proposed rules governing interest rate measure options trading are designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest.

It therefore is ordered, Pursuant to section 19(b)(2) of the Act,[41] that the proposed rule change is approved.

By the Commission.

Dated: June 15, 1989.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89-14736 Filed 6-21-89; 8:45 am]

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[36] The Commission notes that staff of the Federal Reserve Bank of New York ("New York Fed"), in discussions with SEC staff, raised several concerns regarding the CBOE's proposed interest rate measure contracts. In particular, the New York Fed questioned the hedging value of the CBOE's proposed contracts and expressed concern that the short-term measure contract could be susceptible to manipulation in light of the large position limit proposed initially for that contract (*see* note 34, *supra*), as well as the fact that it would be based on a single Treasury instrument. *See* letter from Barbara Walter, Vice President, Dealer Surveillance Function, New York Fed, to Brandon Becker, Associate Director, Division of Market Regulation, SEC, dated June 16, 1989; letter from Frank Keane, Senior Financial Analyst, Dealer Surveillance Function, New York Fed, to David Underhill, Attorney, Division of Market Regulation, SEC, dated November 9, 1988. The New York Fed's position limit concerns were addressed by the CBOE's agreement to reduce to 5,000 contracts the position limit applicable to the short-term measure contract. For the reasons described above, the Commission also believes that the New York Fed's concerns regarding the hedging value of the contracts and the fact that the short-term measure would be based on a single Treasury bill have been addressed adequately by the CBOE. Last, the New York Fed agreed that the differences between the polling results produced by the CBOE and the designated reporting authority have been reduced to an acceptable level.

[37] Unlike the regulations under the Commodity Exchange Act, the Federal securities laws do not contain an explicit "economic purpose" test for new options products. Nevertheless, to approve a new options proposal the Commission must be satisfied that its introduction is in the public interest. *See* section 6(b)(5) of the Act, 15 U.S.C. 78f(b)(5) (1982). Such a finding would be difficult with respect to an options product that served no hedging or other economic function, because any benefits that might be derived by market participants would likely be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other concerns that the Commission is instructed to consider by the terms of the Exchange Act.

[38] *See* File No. SR-CBOE-87-20 [Revised], at 11.

[39] In this connection, the Commission notes that the Options Disclosure Document distributed to options customers already has been amended to include a discussion of interest rate measure options.

[40] 15 U.S.C. 78f (1982).

[41] 15 U.S.C. 78s(b)(2) (1982).

[Release No. 34-26937; File No. SR-MSRB-89-1]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change Amending the MSRB's Arbitration Code Concerning Small Claims

On March 3, 1989, the Municipal Securities Rulemaking Board ("MSRB") submitted a proposed rule change (File No. SR-MSRB-89-1) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") to amend MSRB rule G-35, the Arbitration Code, to permit the Director of Arbitration to assign cases that do not exceed $30,000 to a single arbitrator (either a public arbitrator for customer cases or an industry arbitrator for industry cases).

Notice of the proposed rule change was given in Securities Exchange Act Release No. 26765 (April 27, 1989), 54 FR 19479 (May 5, 1989). The Commission received no comments on the proposal. This order approves the proposal.

Currently, section 12 of MSRB rule G-35 provides that arbitration cases over $10,000 are decided by a panel of three arbitrators.[1] The proposed rule change would revise rule G-35 to permit the Director of Arbitration to assign cases that do not exceed $30,000 to a single arbitrator (either a public arbitrator for customer cases or an industry arbitrator for industry cases). At the request of a party in its initial complaint or answer, or at the request of the designated arbitrator, the Director of Arbitration would be required to designate a panel of three arbitrators. All cases over $30,000 would continue to be decided by a panel of three arbitrators.

In its filing with the Commission, the MSRB stated that of the 115 arbitration cases received by the Board in 1988, claimants in 64 cases, asked for under $10,000 in damages and under Sections 34 and 35, these cases would have been decided by one arbitrator under the small claims procedure, usually without a hearing. The MSRB further stated that claimants in another 20 cases asked for damages between $10,000 and $30,000 and that these cases were decided at hearings by panels of three arbitrators.

The MSRB believes that the proposed rule change would reduce costs and delays in arbitration proceedings, while preserving the opportunity to be heard before a three-person panel upon timely motion of a party or the designated arbitrator. The MSRB believes that if the parties agree to have cases involving claims between $10,000 and $30,000 decided by only one arbitrator at a hearing, then the administrative burdens of a case, as well as arbitrator transportation costs, would be dramatically reduced. The MSRB further believes that scheduling problems would be lessened when only one arbitrator's schedule must be considered, and that the proposed rule change will reduce the demand on the Board's arbitrator pool.

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[1] There are two exceptions, however: in certain complicated cases, the Director of Arbitration may appoint a panel of five arbitrators to hear the case and cases under $10,000 are decided by one arbitrator, usually without a hearing, under the Board's small claims procedure.

The Commission agrees with the MSRB that the amendment would reduce the costs and delays in arbitration proceedings involving claims that do not exceed $30,000, while preserving the opportunity to be heard before a three-person panel. Thus, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB. In particular the Commission finds that the proposal is consistent with section 15B(b)(2)(C), which requires MSRB rules to, among other things, "promote just and equitable principles of trade * * * to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest * * *" The Commission also believes that the proposal is consistent with Section 15B(b)(2)(D), which states that the Board shall, if it deems appropriate,

> provide for the arbitration of claims, disputes, and controversies relating to transactions in municipal securities: Provided, however, That no person other than a municipal securities broker, municipal securities dealer, or person associated with such a municipal securities broker or municipal securities dealer may be compelled to submit to such arbitration except at his instance and in accordance with section 29 of this title.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that File No. SR-MSRB-89-1, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(12).

Dated: June 15, 1989.

Shirley E. Hollis,

Assistant Secretary.

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[Release No. 34-26920; File No. SR-NASD-88-26]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change

The National Association of Securities Dealers, Inc. ("NASD") filed a proposed rule change on September 29, 1988, [1] pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [2] and Rule 19b-4 [3] thereunder to establish a new registration category for Assistant Representative—Order Processing ("AR-OP").

Notice of the proposed rule change together with the substance of the terms of the proposed rule change was provided by the issuance of a Commission release (Securities Exchange Act Release No. 26202, October 19, 1988) and by publication in the **Federal Register** (53 FR 43063, October 25, 1988.) The Commission received seven comment letters regarding the proposed rule change.[4] The NASD, in turn, has responded to the concerns addressed in the comment letters.[5]

I. Background

Schedule C to the NASD's By-Laws contains the requirements for registration with the NASD of persons associated with a member firm, including the requirement that an appropriate qualifications examination be taken. In general, prior to the rule change discussed in this order, Schedule C required that associated persons, with some exceptions, take and pass the General Securities Representative (Series 7) examination to qualify for registration. The Series 7 exam is the most comprehensive exam that the NASD uses to test registered representatives. The NASD also has several categories that permit registered representatives to function in limited capacities. These categories are: (1) Investment Company and Variable Contracts Products (Series 6); (2) Direct Participation Program (Series 22); and (3) Corporate Securities (Series 62).[6] Qualification as a limited representative in any of these categories permits and associated person to sell a limited range of securities products.[7]

The impetus for the instant proposed change to Schedule C arose out of a series of letters between the Commission and the NASD over recent years and a 1986 decision by the Fourth Circuit Court of Appeals.[8] The letters and the court's decision discussed the appropriate qualifications standards for associated persons who accept unsolicited customer orders and provide certain related information services. In particular, the need for a rule arose out of the continuing development of personnel practices at discount brokerage firms that hire personnel for the limited purpose of accepting unsolicited customer orders.

Developments involving the rule change proceeded along two separate but related tracks. In 1986, the Fourth Circuit affirmed a 1985 Commission decision that upheld an NASD determination requiring the associated persons of Exchange Services, Inc., a discount broker, to register as General Securities Representatives. Exchange Services hired persons to take, on a regular basis, unsolicited orders from the firm's customers. When the broker requested that these order takers be exempted from the requirement of registration as General Securities Representatives, the NASD informed the broker that its order takers did not fall within any exemption to the Schedule C requirements [9] and, therefore, its order

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[1] The NASD originally submitted the proposed rule change on July 1, 1988, and an amendment on August 30, 1988.

[2] 15 U.S.C. 78s(b)(1) (1982).

[3] 17 CFR 240.19b-4 (1988).

[4] The comment letters were as follows: (1) letter from James B.G. Hearty, Chairman, Municipal Securities Rulemaking Board ("MSRB") to Jonathan G. Katz, Secretary, Securities and Exchange Commission ("SEC") (August 17, 1988); (2) letter from Gary C. Liddicoat, Attorney, Edward D. Jones & Co. ("Jones") to Jonathan G. Katz (November 8, 1988); (3) letter from Colleen Curran Harvey, Counsel, IDS Financial Services, Inc. ("IDS") to Jonathan G. Katz (November 11, 1988); (4) letter from Craig S. Tyle, Assistant General Counsel, Investment Company Institute ("ICI") to Jonathan G. Katz (November 15, 1988); (5) letter from Henry H. Hopkins, Vice President, T. Rowe Price Associates, Inc. ("T. Rowe Price") to Jonathan G. Katz (November 18, 1988); (6) letter from Manuel R. Ojeda, Vice President, Shearson Lehman Hutton, Inc. ("Shearson") to Jonathan G. Katz (December 9, 1988); and (7) letter from Edward I. O'Brien, President, Securities Industry Association ("SIA"), to Jonathan G. Katz (January 19, 1989).

[5] *See* letters from: (1) Jacqueline D. Whelan, Senior Attorney, NASD, to Eugene A. Lopez, Attorney, OTC Branch, Division of Market Regulations, SEC (November 30, 1988); and (2) Jacqueline D. Whelan to Katherine A. England, Branch Chief, OTC Branch, SEC (May 17, 1989).

[6] In addition, the Municipal Securities Rulemaking Board requires that associated persons take and pass an NASD-administered examination to become municipal securities representatives. *See* Rule G-3(e), *MSRB Manual* ¶ 3511. Passage of the Series 7 exam also entitles a registered representative to sell municipal securities.

[7] *See* Schedule C, Part III, Sections 2 (b), (c) and (e), *NASD Securities Dealers Manual*, ¶ 1785. In addition, the NASD is developing a limited examination for Registered Options Representatives. (*See* Securities Exchange Act Release No. 26695 (April 4, 1989), 54 FR 14718; File No. SR-NASD-89-16.) Once all four of these exams are available, the NASD will permit associated persons to take and pass either the Series 7 exam or each of the four exams plus the municipal securities exam to qualify as a general securities representative and be able to sell the full range of securities products.

[8] *Exchange Services, Inc.* v. *SEC*, 797 F.2d 188 (4th Cir. 1986), *aff'g In re* Exchange Services, Inc., Securities Exchange Act Release No. 22245 (July 10, 1985); and letters from: (1) Richard T. Chase, Associate Director, Division of Market Regulation, SEC, to Frank J. McAuliffe, Vice President, Qualifications, NASD, dated April 5, 1985; (2) Richard T. Chase to Frank J. McAuliffe, dated July 5, 1985; (3) Frank J. Wilson, General Counsel, NASD, to Michael J. Simon, Assistant Director, SEC, dated February 18, 1986; (4) Richard G. Ketchum, Director, Division of Market Regulation, SEC, to Gordon Macklin, President, NASD, dated April 8, 1987; and (5) Frank J. McAuliffe to Richard G. Ketchum, dated April 14, 1987.

[9] *See* Schedule C, Part V, Section 1(a), *NASD Securities Dealers Manual*, ¶ 1787. This Section

Continued

takers must take and pass the Series 7 exam. When Exchange Services sought a waiver of the examination requirement pursuant to Part VI of Schedule C to the NASD By-Laws, the NASD denied the waiver request. Exchange Services appealed that determination to the Commission.

After the Commission affirmed the NASD determination,[10] the broker petitioned the court for review. Although the court affirmed the Commission's decision requiring that order takers take the Series 7 examination, the court, in *dicta*, commented that "Exchange Services' argument is not without merit" [11] and suggested that it might be appropriate for the NASD to consider development of a new, less comprehensive exam for order takers.

Simultaneous with, and subsequent to, the review of the NASD's determination in the Exchange Services matter, the Commission staff and the NASD exchanged a series of letters regarding the appropriateness of the Series 7 exam for order takers. In April 1985, July 1985, and again, in April 1987, the staff of the Division of Market Regulation stated its preliminary belief that the NASD should consider developing a limited examination category for those persons, such as order takers, who perform restricted functions in connection with securities transactions.[12] In response to these letters and subsequent discussions with the staff, the NASD agreed to develop such a category and an appropriate examination.[13]

As a result of these discussions and letters, the NASD proposed the instant rule change to Schedule C of its By-Laws. The rule change establishes a new category of registration and permits associated persons who pass a newly designed qualifications examination to register with the NASD and to act on behalf of the member in performing certain limited functions.

Specifically, the new category of AR–OP is strictly limited to accepting unsolicited customer orders on behalf of existing accounts. The rule specifically proscribes certain activities, including the solicitation of orders, opening new accounts whether solicited or unsolicited, rendering investment advice, making recommendations to customers regarding the appropriateness of securities transactions or effecting transactions in securities on behalf of members. AR–OPs may not be registered consurrently in any other category.

Further, the AR–OPs may be compensated only on an hourly wage or salary basis; compensation may not be based, directly or indirectly, on the number or size of the transactions effected for customers, although, if the firm has a bonus plan or profit-sharing plan in effect for all firm employees, the AR–OPs may participate in such plan.[14] Finally, AR–OPs may engage in permissible activities only at business locations of the member that are under the direct supervision of an appropriately registered principal.

II. Comments

The NASD solicited comment on the proposed rule change in Notice To Members 87–47. Out of 97 responses received by the NASD, 34 favored the proposal and 58 expressed some form of opposition.[15] In general, those favoring the proposal expressed support because the category establishes an appropriate level of examination and registration for those persons at discount brokerage and other firms who engage in limited activities and the category would promote efficiency and facilitate cost savings. Those opposed to the new category expressed concern that the category may be difficult to supervise and could lead to the lowering of the standards in the industry. Further, some believed that discount brokerage firms could obtain a competitive advantage with the new category.

After publication in the **Federal Register** of notice of the proposed rule change, the Commission received seven comment letters, all expressing some form of opposition to the proposed rule change. In general, six comment letters did not object specifically to the concept of establishing a new category of registration; instead, the commentators' concerns focused on the particular manner in which the rule could be applied. One comment letter, submitted by the SIA and discussed more fully below, objected to the proposed rule change and requested that the Commission institute proceedings to determine whether the proposed rule change should be disapproved.[16]

The MSRB also submitted a comment regarding its concerns with the proposed rule change. The MSRB's primary concern with the rule change is that, if individuals covered by the new category were not supervised or inspected properly, such individuals, to the extent registered as AR–OP's at integrated, general securities firms that sell municipal securities as well as other securities, may improperly transact business related to municipal securities. Such a result, the MSRB argued, "can undermine qualifications standards in the municipal securities industry."

III. Discussion

Initially, it should be noted that the NASD's establishment of this new category and its concomitant exam requirement does not affect the MSRB's rules regarding its registration requirement. The MSRB rules plainly require that associated persons be qualified as municipal securities representatives or principals or as general securities representatives in order to sell municipal securities.

Further, the NASD states that it has developed a three-faceted plan to ascertain compliance with the restrictions of the new category.[17] Included in this plan are: (1) NASD monitoring of registrations for the AR–OP examination and investigation of suspicious activities related to such registration; [18] (2) development of an examination module [19] for the category; and (3) when branch office examinations by the NASD are conducted, inspection for compliance with AR–OP restrictions, in addition to other possible compliance problems.[20] The Commission believes that this combination of actions addresses the MSRB's concerns regarding any potential spillover effect on the purchase or sale of municipal securities.

The MSRB also expressed concern that it would be inappropriate for an AR–OP to accept any municipal securities order because the person accepting such order "must have knowledge of municipal securities and the market, including availability of securities with specific characteristics and this information must be verified with the customer."[21] In its response the NASD notes that the rule contemplates that AR–OPs will be able to accept municipal securities orders only in very limited circumstances such as when the customer specifies the "bond and quantity desired such that the [AR–OP] has merely to make a record of the order * * *." [22]

The Commission believes that, in most circumstances, firms may not permit AR–OPs to accept municipal securities orders because such orders usually will require discussion of information and rendering of advise regarding the order; such activity by an AR–OP is clearly outside the scope of the category. The only instances in which AR–OPs will be able to accept municipal securities orders will be when such activity is consistent with the MSRB's clerical and ministerial exemption.[23] Presently, persons covered by the exemption are subject to no registration or examination requirements. Any other orders must be handled by qualified registered representatives and firms must ensure that AR–OPs are instructed in the limited scope of this category and properly supervised to ensure no excursions beyond the category's narrow boundaries.

Three commentators were concerned that the establishment of the AR–OP category would encompass mutual fund organization personnel who currently engage in ministerial or clerical functions and that the establishment of the AR–OP category would force the industry's ministerial personnel to register as AR–OPs and to take the examination.[24] The mutual fund commentators represent that these ministerial persons assist in accepting telephone purchases by existing shareholders, telephone exchanges between funds in the same mutual fund organization and telephone redemption of shares of the fund. The proposal, however, is not intended to cover such personnel. In its statement of the purpose of the proposed rule, the NASD specifically explained that the AR–OP category was intended to apply to "persons employed by members for the sole or primary purpose of accepting unsolicited customer orders—for example, in a discount brokerage operation." [25] Moreover, the NASD reaffirmed the continuing availability of the "ministerial" exemption from registration found in Part V of Schedule C to its By-Laws.[26] In its November 30, 1988 letter, the NASD stated:

> It was not the intent of the Qualifications Committee or the Board of Governors, in adopting the amendments set forth in the rule filing, to bring within their scope these clerical and ministerial functions. The NASD, therefore, does not intend to take regulatory action against investment companies who use such personnel in the manner set forth in the IDS and ICI letters.[27]

In a comment letter addressing similar concerns involving the employment of personnel performing clerical and ministerial functions, Shearson raised two concerns: first, that the new category would force Shearson's Sales Assistants and some of its experienced secretaries to register under the new category; and, second, that the new category imposes an increased burden of supervision and liability on members. The Commission believes that the response to the mutual fund organizations' concerns applies with similar force here. As stated previously regarding the clerical and ministerial function exception to registration, the proposed rule change was not intended to alter the existing exemption. Personnel that do not fall within the exemption, however, must be registered in the appropriate category.[28] Indeed, based on the holding in Exchange Services, the issues raised by the Shearson letter are not applicable to the instant rule filing. Under current law, either an employee is properly classified as "clerical and ministerial" or an employee is not. If properly classified, the AR–OP category would have no bearing on the employee's status. If improperly classified, the employee would be considered in violation of the registration requirements and the AR–OP category would provide only an alternative mechanism to achieve compliance.

Regarding the second concern involving supervision of the new category, the Commission believes that the new category can be adequately supervised. Indeed, as discussed in the Shearson letter, firms already have personnel with differing levels of registration and apparently are able to supervise them. In addition, as discussed above, the NASD's three-faceted plan to ascertain compliance with the category's restriction should assist in ensuring proper conduct.

One comment letter expressed concern about whether the rule permitted AR–OPs to accept unsolicited new accounts and suggested that the language of the rule be clarified to permit such actions. The rule and its accompanying filing, however, do not permit an AR–OP to open new accounts.

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contains an exemption from the NASD's registration requirements for associated persons who perform solely clerical or ministerial functions.

[10] The Commission's determination was based, in part, on the existing regulatory structure. The NASD's rules provided only two alternatives: the order takers could either register as general securities representatives and take the Series 7 exam or be deemed to perform solely clerical or ministerial functions, and consequently not be subject to any examination requirement.

[11] The essence of Exchange Service's argument was that the Series 7 exam was not an appropriate exam to measure the ability of the order takers to perform their job. Exchange Services asserted that much of the material covered by the exam was not relevant to the functions performed by the order takers. *See* Exchange Services Inc., *supra* note 8.

[12] *See* letters, *supra* note 8.

[13] *See* letters, *supra* note 8.

[14] The rule's limitation on compensation methods for AR–OPs is not intended to restrict a member's ability to evaluate an employee's prompt, efficient and expeditious performance of tasks as an AR–OP.

[15] *See* File No. SR–NASD–88–28, Amendment No. 2, dated April 17, 1988. Five letters did not express any opinion.

[16] The SIA comment letter filed with the Commission did not specify its objections to the new category. Instead, the SIA letter attached its September 24, 1987 comment letter to the NASD's Notice to Members 87–47, wherein the SIA stated its opposition to the proposed rule change. *See* note 4, *supra*.

It should also be noted that two other commentators, IDS and Sherson, requested that the Commission institute proceedings to disapprove the proposed rule change. These requests, however, were in the alternative and were dependent upon the manner in which the NASD proposed to apply its new category.

[17] *See* letter from Jacqueline D. Whelan, Senior Attorney, NASD, to Katherine England, Branch Chief, OTC Branch, Division of Market Regulation, SEC, dated August 29, 1988. Regarding the MSRB's concern about the ability to supervise the new registration category, the Commission finds that the rule change, together with the NASD's plans to monitor its use, provides a clear standard which the NASD can enforce. Of course, the Commission in its oversight capacity will scrutinize application of the rule.

[18] The NASD states that it has the computerized capability to determine which offices of brokerage firms are employing the various registration categories of Schedule C. By monitoring such registrations, the NASD can evaluate whether the potential for abuse of a particular category exists.

[19] An examination module consists of a checklist used by examiners to assist them during their inspections of member firms to determine a firm's compliance with the federal securities laws and regulations and the rules of the self-regulatory organization.

[20] The NASD does not plan to conduct, on a regular basis, inspections of branch offices to determine whether the new category is being supervised properly. Instead, the NASD stated that, if a branch office is inspected for other reasons, the branch office's AR–OPs will also be scrutinized to determine whether the branch was complied with the rule. *See* letters from: (1) Jacqueline Whelan to Eugene A. Lopez, *supra*, note 5; and (2) Jacqueline Whelan to Katherine England, *supra* note 16.

[21] *See* letter from MSRB at 4, *supra*, note 4.

[22] *See* letter from Jacqueline Whelan to Eugene A. Lopez, *supra* note 5.

[23] *MSRB Manual*, "Interpretive Notice of Professional Qualifications," at 3355–6. Because the MSRB has jurisdiction with respect to qualifications of persons who sell municipal securities, this proposed rule change does not alter the MSRB examination requirement with respect to such persons. Unless they are within the MSRB's clerical and ministerial exemption, persons selling municipal securities will have to qualify as prescribed by the MSRB. Further, because the NASD's proposed rule does not permit concurrent registration in any other category, an AR–OP may not register as a municipal securities representative.

[24] *See* letters from: (1) ICI; (2) IDS; and (3) T. Rowe Price, *supra* note 4.

[25] *See* File No. SR–NASD–88–28 Amendment No. 1 at 3.

[26] *See* Schedule C, Part V, Section (1)(a), *NASD Securities Dealers Manual*, ¶ 1787.

[27] *See* letter from Jacqueline D. Whelan to Eugene A. Lopez *supra*, note 5. *See also* letter from Jacqueline D. Whelan to Katherine A. England *supra*, note 5.

[28] The determination regarding the classification of the duties of a particular associated person as a general securities representative, an AR–OP, or as a person exempt from registration under Schedule C, Part V is fact specific and must be made on a case-by-case basis. In this connection, in light of the number of changes adopted recently regarding supervision and new categories of registration, it may be beneficial for member firms to review their operations to ascertain whether they are in compliance with the appropriate NASD rules.

Continued

As clearly stated in the filing,[29] the NASD intended that "[u]nder no circumstances would [AR–OPs] be permitted to * * * solicit or accept new accounts * * *." Further, in its response to the comment letters, the NASD plainly stated that the AR–OP category is intended to be limited to the acceptance of unsolicited orders for existing accounts.[30] Thus, the commentator's suggestion for expansion of the language in the rule runs directly contrary to the express intent of the rule.[31] The Commission agrees with the NASD's view and believes that the commentator's expansive interpretation would be inappropriate in that it would open the rule to the possibility of impermissible conduct by an AR–OP and could affect adversely the NASD's "know your customer" rule. For example, NASD rules require that a registered representative obtain information about a customer prior to effecting a first transaction for that customer.[32] Given the limited discretion permitted to the AR–OP, the Commission believes that the category cannot and should not be expanded to permit the AR–OP to open new accounts for customers.

As noted previously, the SIA objected to the proposed rule change and requested that the Commission institute disapproval proceedings. The SIA believes that the new category could lead some AR–OPs to exceed the limits of the category. Specifically, the SIA believes that the new category could detract from the concept of high-quality, complete brokerage service and that the establishment of the new category could create problems in determining whether a customer's order was solicited or unsolicited. The SIA believes that it could be difficult to prevent the solicitation of orders by AR–OPs. As stated above, however, the Commission believes that the NASD's plan to monitor compliance with the limits of the new category should control the potential for such problems. In view of the NASD's intent to perform such monitoring function and for the above-mentioned reasons, the Commission does not believe it necessary to institute disapproval proceedings.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, and, in particular, with the requirements of section 15A and the rules and regulations thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change, SR–NASD–88–28, be, and hereby, is approved. The NASD intends to submit to the Commission the examination for this category in June of 1989. Therefore, the rule change shall become effective 30 days after approval of the exam, when, as, and if the examination is approved by the Commission.

By the Commission.

Jonathan G. Katz,

Secretary.

Dated: June 12, 1989.

[FR Doc. 89–14738 Filed 6–21–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–26940; File No. SR–NYSE–89–06]

Self-Regulatory Organization; Notice and Order Granting Accelerated Approval of Proposed Rule Change by New York Stock Exchange, Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 1, 1989, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify Rule 717.10(c) so that the time at which the closing rotation for stock options is implemented on the business day before option expiration is at 4:10 p.m. instead of 4:00 p.m.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The Exchange has utilized 4:00 p.m. as the time option specialists can commence the closing rotation for equity options on the business day prior to expiration. Other option exchanges have changed from 4:00 p.m. to 4:10 p.m. As the later time is becoming the industry standard, the Exchange is seeking approval to modify its Rule 717.10(c) so that it is in conformity with the other option exchanges.

(b) The statutory basis of the proposed rule change is section 6(b) of the Securities Exchange Act of 1934 (the "Act") in general and, in particular, paragraph (5) of section 6(b), which requires that the rules of a national securities exchange be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests accelerated effectiveness of the proposed rule change pursuant to section 19(b)(2) of the Act. Accelerated approval of the Exchange's proposal will enable the Exchange to maintain both continuity in its monthly expirations program for stock option series and, since the Exchange anticipates that similar proposals have or will be filed by the other options exchanges, uniformity among exchange rules.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rule and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rule and regulations thereunder. By permitting trading in expiring stock options to continue until 4:10 p.m., rather than 4:00 p.m., on the Friday prior to expiration, the Exchange will conform its procedures with those of the CBOE, PHLX, PSE, and AMEX and eliminate the possibility of investor confusion. In addition, continuing trading until 4:10 will provide the NYSE with additional time to receive closing stock prices for the purpose of pricing expiring stock options.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof. In particular, the CBOE, PHLX, PSE, and AMEX already have implemented identical provisions. In addition, accelerated approval will permit the Exchange to implement its revised trading procedures on June 16, 1989, the next Expiration Friday.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 13, 1989.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[1] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Dated: June 15, 1989.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89–14739 Filed 6–21–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–26941; File No. SR–OCC–88–04]

Self-Regulatory Organizations; Options Clearing Corporation, Inc.; Ordering Approving Proposed Rule Change

The Options Clearing Corporation ("OCC") on May 5, 1988, submitted a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"). The proposal would authorize yield-based options on United States Treasury securities. Notice of the proposal appeared in the **Federal Register** on July 14, 1988, to solicit comments, from interested persons.[1] No comments were received. This order approves the proposed rule change.

I. Description

The proposed rule change would authorize OCC to issue, clear and settle options that are based upon the annualized yield to maturity of U.S. Treasury securities (or based upon the annualized discount to maturity in the case of U.S. Treasury bills), to be known as the "yield-based Treasury option" ("YBTO").[2] YBTOs would be cash-settled,[3] European-style options.[4]

The proposed rule change also would amend OCC's By-laws and rules to clarify the rights and obligations of OCC and clearing members with respect to YBTOs. Under the terms of the proposed rule change, OCC will classify YBTO's as index options, so that as a general rule, existing OCC by-laws and rules that govern OCC index options also would apply to YBTOs. OCC's proposal, however, would establish several provisions that would apply only to YBTOs, including: (1) Definitions of particular YBTO terms, (2) YBTO general rights and obligations, and (3) YBTO exercise and settlement procedures.

A. Definitions

OCC would amend Article I (Definitions) of its By-Laws as follows: (1) The existing term "option contract" would be modified to include YBTOs; (2) the new term "cash-settled option contract" would mean an index option contract or a YBTO contract; and (3) "index clearing member," also a new term, would mean a clearing member approved by OCC to clear transactions in cash-settled options.

Additionally, OCC would add a new Article XVI, captioned "Yield-Based Treasury Options," to its By-Laws. Article XVI's Section 1 would define 14 new YBTO terms, including the following: (1) "Underlying yield" would mean the YBTO annualized yield to maturity (or annualized discount in the case of Treasury bills); (2) "settlement value" would mean the current underlying yield (a percentage figure) on the last trading day prior to expiration of the option; (3) "multiplier," the equivalent to number of units in other forms of options, would mean the dollar amount by which the settlement value (a percentage figure) must be multiplied to obtain the aggregate settlement value of a contract; (4) "aggregate settlement value" (*i.e.,* the multiplier times the settlement value) would mean the value required to be delivered to [by] the holder of a call [put] (against payment of the exercise price) upon the valid exercise of a YBTO; (5) "exercise price" (a percentage figure) would mean the specified value of the underlying yield at which, under the terms of the option contract, the settlement value theoretically could be purchased [sold] in the case of a call [put] upon the exercise of such option; [5] (6) "aggregate

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[29] File No. SR–NASD–88–28 at 4.

[30] *See* letter from Jacqueline Whelan to Eugene A. Lopez, *supra* note 5.

[31] The commentator, Jones, also commented about compensation for AR–OP employees. Jones sought further clarification in the rule that permissible AR–OP participation in profit-sharing arrangements includes participation in arrangements which are based on the member's overall profitability. The NASD agrees that the rule language encompasses such plans, provided that the plan: (1) covers all firm employees similarly situated; (2) is an established aspect of the firm's compensation program with established standards for implementation; and (3) does not act as an incentive to AR–OPs to exceed their permitted functions. *See* letter from Jacqueline Whelan to Eugene A. Lopez, *supra* note 5. The Commission believes that the proposed language of the rule includes such compensation arrangements and sees no need to change the language.

Similarly, regarding the concerns of mutual fund organizations involving compensation for its service personnel, because those personnel performing clerical and ministerial functions are not covered by the rule change, the new category's restrictions on compensation do not apply to such personnel.

[32] *See* Article III, Section 21(c), Rules of Fair Practice *NASD Securities Dealer Manual* ¶ 2171.

[1] 15 U.S.C. 78s(b)(2) (1982).

[2] 17 CFR 200.30–3(a)(12) (1988).

[1] *See* Securities Exchange Act Release No. 25885 (July 6, 1988), 53 FR 16701.

[2] OCC notes in the filing that YBTOs, theoretically, could be classified within the broader non-equity option categories of the interest rate option contracts and Treasury securities option contracts, but that, for the purposes of OCC's rules, YBTOs will be classified as a new and separate form of non-equity option contract.

[3] The term "case settlement" means that settlement would be in case rather than in the assets underlying the option. Index options, as well as index futures, already are subject to cash settlement. *See* D. Scott *Wall Street Words*, 52 (1988).

[4] A "European option" or "European-style option" is a security option that can be exercised only on its expiration date, in contrast to the most security options available in the United States (American-style options) that can be exercised at any time up to and including the expiration date. *See id.* at 121.

[5] A YBTO's "exercise price," which would be set by the exchanges where they are traded, would be a percentage figure and would have to be multiplied by the multiplier (a dollar amount) to produce the "aggregate exercise price," also a dollar amount.

exercise price" (*i.e.*, the multiplier times the exercise price) would mean the exercise price at which the aggregate settlement value may be purchased [sold] in the case of a call [put]; and (7) the "exercise settlement amount" would mean the amount to be paid in settlement of the exercises of such option.

B. General Terms

The general terms of the proposal governing YBTOs are found in proposed Article XVI, Section 2 through 5. Sections 2, the rights and obligations of YBTO holders and writers, provides that on, but only on, the contract's expiration date (until 10:59 p.m. Central Time): (1) The holder of a YBTO in the case of a call [put] would have the right to purchase from [sell to] OCC at the aggregate exercise price the aggregate settlement value of the underlying yield; and (2) the writer of a YBTO would have the obligation, in event of assignment to it of an exercise notice of such contract, in the case of a call [put] to sell to [buy from] OCC at the aggregate settlement value of the underlying yield.

Proposed Article XVI, Section 3 provides that OCC could adjust the terms YBTOs in event the U.S. Treasury Department were to change the terms, the issuance schedule, or stop issuing a Treasury security of a particular maturity underlying a class of YBTOs. In such event, OCC could make such adjustments as it determines, in its sole discretion, to be fair to the parties.[6]

Proposed Article XVI, Section 4 provides that the settlement value of the underlying yield of any series of YBTOs, as initially reported by the reporting authority,[7] shall be conclusively presumed to be accurate except where OCC determines otherwise. If, however, OCC determines that such settlement value is clearly erroneous, unreported, or otherwise unavailable for the purpose of calculating the settlement amount for exercised contracts, OCC may: (1) postpone settlement obligations until such information becomes available, or (2) set the settlement amount based on the best information available.[8]

Proposed Article XVI, Section 5 provides that the exchange where a YBTO is traded will specify by contract the time of day and method by which settlement values for YBTOs are to be determined. Any changes in such terms may be made applicable to outstanding YBTOs if the exchange so specifies.

Margin requirements on YBTOs would be governed by existing OCC Rule 602A (Margins on Positions in Non-Equity Options). Additionally, Rule 602A(b)(6)(B), as proposed, would define the marking price for YBTOs as the YBTO's "underlying yield as reported by the reporting authority."

C. Premiums and Margin

The proposal would require clearing members to pay OCC, prior to 9 a.m. (CST), all premiums due in respect of exchange transactions in YBTOs. Under existing OCC Rules 501 and 502, OCC would be authorized to net YBTO premiums with other exchange transactions. Under those rules, OCC would be obligated to pay to clearing members any credits payable in respect of premiums on exchange transactions in YBTOs. The YBTO premium would be defined as an amount equal to the per-unit price of each option, as agreed upon by the purchaser and seller in an exchange transaction, times the multiplier and the number of options subject to the transactions.

The proposal also would authorize OCC to collect margin from clearing members who write YBTO options or who hold short positions in YBTO options. Under the proposal, OCC would treat YBTOs as non-equity options, and will calculate margin on YBTOs as separate product groups and class groups. Generally, OCC will determine each clearing member's net YBTO position, and charge clearing members premium and additional margin based on their net short positions in YBTOs.

D. Exercise and Settlement

Proposed OCC Rules 1701 through 1705 govern exercise and settlement. Proposed Rule 1701 provides that OCC Rules 610 and 612, permit clearing members to deposit underlying securities and Treasury bills in lieu of margin,[9] would not apply to YBTOs. OCC states that inasmuch as YBTOs are to be settled in cash and not by delivery of securities, Rules 610 and 612 would be inapplicable to YBTOs.[10]

Proposed OCC Rule 1702 provides that the expiration date procedures set forth in existing OCC Rule 805 (Expiration Date Exercise Procedures) also would apply to YBTOs, except that Rule 805, paragraph (f)(2), which sets forth the qualifying prices for existing option exercises, would not apply. Instead, under Rule 1702, each OCC clearing member would be deemed to have tendered to OCC on the expiration date, immediately prior to expiration time a proper exercise notice for each YBTO contract for which the aggregate exercise price is below [above] in the case of a call [put] the aggregate settlement value of the underlying yield (*i.e.*, in the money) by at least $25.00 for a YBTO contract carried in a customer's account or at least $1.00 for a YBTO contract in any other account.

Proposed OCC Rule 1703 provides that the settlement date for exercised YBTOs would be the business day following the expiration date. Additionally, Rule 1703 would authorize OCC's Board of Directors to extend such settlement dates whenever, in its opinion, such action is required in the public interest or to meet unusual conditions. Proposed OCC Rule 1704(a) provides for settlement of YBTOs by the exchange of payments between OCC and its clearing members for: (1) Exercised YBTOs (*i.e.*, long YBTO positions that have been exercised for the holder), and (2) YBTO short positions to which exercise notices have been assigned. In the case of an exercised call [put] option contract, if the aggregate settlement value is: (1) greater [less] than the aggregate exercise price, OCC would pay the exercise settlement amount to the exercising clearing member, and the assigned clearing member would pay such amount to OCC; and (2) less [greater] than the aggregate exercise price, OCC would pay the exercise settlement amount to the assigned clearing member, and the assigned clearing member would pay such amount to OCC.

Proposed OCC Rule 1704(b) provides that prior to 7:00 a.m. Central Time on each YBTO exercise settlement date, OCC would: (1) Determine, for each account of each OCC clearing member, the number of exercised and assigned contracts of each series of YBTOs for which the current business day is the exercise date; (2) net the exercise settlement amounts payable by each clearing member to OCC against the exercise settlement amounts payable by OCC to the clearing membr to obtain a single net amount for YBTOs with respect to each account of each clearing member; and (3) issue to each clearing member a report showing the results of the YBTO netting.

Proposed Rule 1704(c) provides that by 9:00 a.m. Central Time on each YBTO exercise settlement date, each OCC clearing member must pay to OCC any net settlement amount in any account of such clearing membr due to OCC per the daily reports provided under Rule 1704(b) and that OCC either may withdraw such amount from the clearing member's bank account, or offset such amount against any credit balance due to the clearing member by OCC.

Proposed OCC Rule 1704(d) provides that b 10:00 a.m. Central Time (11:00 a.m. Eastern Time) on each YBTO exercise settlement date, OCC must pay each OCC clearing member (provided the member is properly margined) the net settlement amount in any account shown to be due from OCC per the daily reports provided under Rule 1704(b).

Finally, proposed Rule 1705, which supplements OCC Rule1104 (Creation of a Liquidation Settlement Account) provides that exercised YBTOs, to which an OCC clearing member is a party either as an exercising member or as assigned member, shall be settled pursuant to Rule 1704, provided that the net settlement amounts in respect of such contracts shall be paid from or credited to the Liquidated Settlement Account of such member pursuant to OCC Rule 1104. Under Rule 1705, OCC must effect settlement with all clearing members that: (1) Have been assigned an exercise notice filed by a suspended clearing member or (2) have filed exercise notices that were assigned to a suspended clearing member without regard to the suspension.[11]

II. OCC's Rationale

OCC states in its filing the purpose of the filing is to permit the issuance, clearance, and settlement of cash-settled, European-style options covering the annualized yield to maturity of U.S. Treasury securities. OCC further states that the proposal is intended to permit the trading of such options, which it notes has been proposed by the Chicago Board Options Exchange, Inc. ("CBOE").

OCC believes that the proposal is consistent with the Act, particularly Section 17A of the Act, in that the YBTO proposal would: (1) Facilitate the prompt and accurate clearance and settlement of transactions in yield-based options on U.S. Treasury securities; and (2) conform with OCC's existing standards for protecting funds and securities for which OCC has responsibility by authorizing a system of safeguards, including margin and clearing fund requirements, which would be substantially the same as OCC currently uses for other option securities.

III. Discussion

The Commission believes that OCC's proposal to issue, clear and settle YBTO options is consistent with the Act. In particular, the Commission believes that the proposal is consistent with OCC's obligation to safeguard funds and securities and to promote prompt and accurate clearance and settlement of securities transactions.

The Commission recently approved a CBOE proposal to trade interest rate measure options, which OCC classifies under the current proposal as YBTO contracts. The Commission is satisfied that OCC's by-laws, rules and procedures, as modified by the proposed rule change, will provide for safe and efficient processing of YBTO transactions, including settlement of exercises and assignments of YBTO transactions. For example, exchanges will use existing systems to report opening and closing trades in YBTO contracts, and OCC will maintain records and process opening and closing transactions, will process exercises and assignments, and will effect net settlement daily with its clearing members for YBTO contracts and other options and cleared securities.

Because YBTOs will be cash-settled, index options, the Commission notes that OCC will be dependent upon the CBOE and its reporting authority, for timely and accurate pricing data in computing, among other things, clearing member margin and exercise settlement obligations. As discussed in Release No. 34–16938 (June 15, 1989), the Commission has examined carefully the procedures CBOE will use to determine the interest rate measure and the formula for determining the exercise settlement value of those options and is satisified that those procedures will yield accurate and reliable data. Accordingly, the Commission believes that OCC/s reliance on this data is consistent with the Act.

The Commission notes that similar option products already have been approved by the Commission. In 1985, for example, the Commission approved OCC's proposals to issue, clear and settle European-style options,[12] and in 1986 it approved OCC's proposals to issue, clear and settle Eruopean-style Treasury options.[13]

IV. Conclusion

For the reasons discussed in this order, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b) of the Act, that the above-mentioned proposed rule change (SR–OCC–88–04) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: June 16, 1989.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89–14829 Filed 6–21–89; 8:45 am]

BILLING CODE 8010–01–M

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[6] Any such adjustments would be effected by OCC's Securities Committee as provided in OCC's existing By-Laws, Article IV, Section 11, as supplemented by the proposed Section 3 of Article XVI. For the operation of Article IV, Section 11, *see* Securities Exchange Act Release 24024 (January 23, 1987), 52 FR 3184.

[7] Proposed OCC By-Law, Article XVI, Section 1(e) would provide: The term "reporting authority" means the institution or reporting service designated by the Exchange as the official source for the current value of settlement value of the underlying yield for a particular class of yield-based Treasury options.

[8] OCC states in the filing that it will not adjust officially reported settlement values, even if erroneous, except in extraordinary circumstances (*e.g.*, the value is clearly erroneous and inconsistent with earlier reports of the same trading day), and (2) completed settlements due to errors in reported settlement values.

[9] Rule 610 authorizes the deposit of underlying securities in lieu of margin on call options, and Rule 612 authorizes the deposit of Treasury bills in lieu of margin on put options.

[10] OCC emphasizes in its filing that Rules 610 and 612 would remain applicable to certain other Treasury options as provided in OCC'S By-Laws (*e.g.*, Article XIV—Treasury Security Options, which are settled through the delivery of underlying securities), but that the rules would not apply to YBTOs.

[11] OCC notes in the filing that, for the purpose of YBTOs, its proposed Rule 1705 would supplement OCC Rule 1104 and replace OCC Rule 1107.

[12] *See* Securities Exchange Act Release No. 22389 (March 20, 1985), 50 FR 35178 (File No. SR–OCC–85–09). At that time, the Commission found that proper safeguards were in place for OCC to process European-style options. OCC had amended its By-Laws and Rules to: (1) Provide definitions of the new trading terms; (2) define the rights and obligations of holders and writers, and (3) clarify the new exercise procedures.

[13] *See* Securities Exchange Act Release No. 23004 (March 12, 1986), 51 FR 9563 (File No. SR–OCC–85–16).

[Rel. No. IC–17006; 812–7194]

The Arch Fund, Inc., et al.; Application

June 14, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for approval under the Investment Company Act of 1940 ("1940 Act").

Applicants: The Arch Fund, Inc. (consisting of The Arch Money Market Portfolios, Class A and Class B; The Arch Capital Appreciation Portfolio; and The Arch Short Government Portfolio), The Arch Tax-Exempt Trust (consisting of the Arch Tax-Exempt Money Market Portfolios, Class A and Class B, and The Arch Long-Term Tax-Exempt Portfolio) (collectively, "Funds"), and TBC Funds Distributor, Inc. (the "Distributor") and on behalf of each future investment company for which the Distributor (or

its subsidiaries or affiliates) serves as distributor.

Relevant 1940 Act Section: Section 11(a) of the 1940 Act.

Summary of Application: Applicants seek an order approving certain offers of exchange of shares on a basis other than their relative net asset values per share at the time of the exchange.

Filing Dates: The application was filed on December 12, 1988, and an amendment thereto was filed on June 6, 1989. A letter was also submitted on March 6, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 10, 1989, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest , the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicants, c/o Drinker Biddle & Reath, 1100 PNB Building, Broad & Chestnut Streets, Philadelphia, PA 19107. Attention: W. Bruce McConnel, III, Esq. or Keith A. Weller, Esq.

FOR FURTHER INFORMATION CONTACT: James E. Banks, Staff Attorney (202) 272–3026, or Brion R. Thompson, Branch Chief (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations

1. Each Fund is registered under the 1940 Act as an open-end management investment company. The Arch Money Market Portfolios, Class A and Class B and the Arch Tax-Exempt Money Market Portfolios, Class A and Class B are no-load funds (the "No-Load Funds"). The Arch Capital Appreciation Portfolio, The Arch Diversified Fixed Income Portfolio, The Arch Short Government Portfolio and The Arch Long-Term Tax-Exempt Portfolio are load funds (the "Load Funds"). The Distributor distributes shares of each Load Fund and No-Load Fund. Shares of the No-Load Funds are also sold at net asset value without a sales charge. Shares of the Load Funds are offered at net asset value plus a front-end sales load. None of the Funds currently charges a contingent deferred sales load or a redemption fee.

Applicants' Analysis

1. Applicants state that the purpose of their proposed exchange offers is to permit simultaneous, voluntary redemption and purchase transactions initiated solely at a shareholder's request. Applicants state that certain share exchange transactions may not comply with section 11(a) of the 1940 Act because they could be interpreted to be on a basis other than relative net asset value. Applicants are concerned, however, that if exchanges are always made at the relative net asset values of the shares involved in the exchanges without the imposition of any sales load, the distribution system of the Load Funds would be distrupted because an investor could easily avoid the sales load by acquiring No-Load Fund shares and immediately exchanging the shares for Load Fund shares.

2. Existing shareholders of the Funds would not be harmed by the proposed exchange offers. The proposed exchange offers would not impose a redemption fee, an administration fee or a deferred sales load. The granting of the requested order upon the terms and conditions as stated in the application would eliminate any ambiguity concerning the Funds' ability to offer certain exchanges. Instead of being harmed by the proposed exchange offers, the Funds' shareholders would be benefited by being able to exchange shares of any Fund for the shares of any other Fund on a fair and equitable basis, where market, tax considerations, and changes in the shareholder's investment objective might warrant such an exchange. Applicants assert further that the arrangements described in the application are substantially identical to those that have been the subject of other applications granted by the SEC and are consistent with the requirments of revised proposed Rule 11a–3 under the 1940 Act.

3. Accordingly, Applicants submit that the granting of their request is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Applicants' Conditions

If the requested Order is granted, Applicants agree to the following conditions:

1. Applicants will comply with the requirements of revised proposed Rule 11a–3 under the 1940 Act, Investment Company Act Release No. 16504 (July 20, 1988), 53 FR 30299 (August 11, 1988), as it currently exists and as it may be further revised or adopted. Applicants acknowledge that they bear the burden of ensuring that the exchange offer complies with this requirement.

2. Applicants will obtain an amended order prior to any modification of the exchange offer in a manner inconsistent with the provisions of revised proposed Rule 11a–3, except that an amended order is not required to terminate the exchange offer.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–14740 Filed 6–21–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–17009; 811–4666]

The Endowment and Annuity Trust; Application for Deregistration

June 14, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "1940 Act").

Applicant: The Endowment and Annuity Trust ("Applicant").

Relevant 1940 Act Section: Section 8(f) and Rule 8f–1.

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company under the 1940 Act.

Filing Dates: The application on Form N–8F was filed on February 24, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 10, 1989, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicant, 60 State Street, Boston, MA 02109.

FOR FURTHER INFORMATION CONTACT: Patricia Copeland, Legal Technician, (202) 272–3009, or Brion Thompson, Branch Chief, (202) 272–3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant is a business trust organized under the laws of the Commonwealth of Massachusetts. Applicant is registered under the 1940 Act as an open-end, diversified management investment company. On May 30, 1986, Applicant filed a Notification of Registration pursuant to section 8(a) of the 1940 Act on Form N–8A. On the same date, Applicant filed a registration statement under the Securities Act of 1933 on Form N–1A which was declared effective on August 11, 1986. However, Applicant has never made a public offering of its securities.

2. Applicant has no shareholders, assets or liabilities. Applicant is not a party to any litigation or administrative proceeding.

3. Applicant is not engaged, nor does it propose to engage in any business activities other than those necessary to wind up its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–14741 Filed 6–21–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IA–1170; 803–63]

Smith Breeden Associates, Inc.; Application

June 14, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the investment Advisers Act of 1940 (the "Advisers Act").

Applicant: Smith Breeden Associates, Inc.

Relevant Sections of the Advisors Act: Exemption requested under section 206A from the provisions of section 205(a)(1).

Summary of Application: Applicant seeks an order permitting it to receive an incentive fee for the disposition of certain assets of a failed thrift. These assets are now held in the securities portfolio of a federally-insured thrift institution, and the fee and the assets are subject to an assistance agreement with the Federal Savings and Loan Insurance Corporation ("FSLIC").

Filing Date: The application was filed on January 26, 1989, and amended on April 12, 1989. In addition, letters dated January 25, 1989, and May 22, 1989, were submitted by FSLIC as exhibits to the application.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 10, 1989, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certficate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o V. Diana Pitts, Esq., Jenkens & Gilchrist, P.C., 1445 Ross Avenue, Suite 3200, Dallas, Texas 75202.

FOR FURTHER INFORMATION CONTACT: Victor R. Siclari, Staff Attorney, at (202) 272–3567 or Stephanie M. Monaco, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier which can be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant is a registered investment adviser under the Advisers Act. Applicant has entered into an agreement (the "Agreement") with the FSLIC, as receiver, for an insolvent thrift association. Under the Agreement, Applicant has been retained to value the collateralized mortgage obligation securities portfolio (the "CMO Assets") of the failed thrift; to develop, implement, and maintain a hedging strategy with respect to the CMO Assets; and to recommend, from time to time, the disposition of the CMO Assets. FSLIC has transferred its interest, as receiver, in the CMO Assets to a newly-formed, federally-insured thrift institution ("Thrift"), and entered into an assistance agreement with the Thrift. Under the assistance agreement, FSLIC will provide loss coverage to the Thrift if the proceeds from the dispositon of the CMO Assets are less than their book value.

2. The Agreement provides for the payment to Applicant of an incentive disposition fee (the "Incentive Fee") upon the sale of any CMO Asset, in addition to a monthly, flat fee for Applicant's valuation and analysis. The Incentive Fee is calculated as a percentage of the excess of the amount realized from the sale of the CMO Asset over either the basis of the fair value of the Asset as of the disposition date, depending upon the extent to which FSLIC and the Thrift direct Applicant to hedge the Asset. Under the Agreement, the fair value is calculated by discounting ther future anticipated cash flow from the Asset at an option-adjusted spread to Treasury security rates, and the basis is calculated as the value of the discounted cash from the Asset, adjusted for any cash inflows or outlays, interest costs, and gains or losses on the hedge position on the Asset. The FSLIC will review all calculations relating to the Incentive Fee.

3. Under the Agreement, FSLIC and the Thrift must authorize and approve Applicant's decisions to dispose any of the CMO Assets, except when the amount realized from the sale is equal to or greater than a price determined by a specified calculation (the "Preauthorized Dispositions"). The Agreement requires that FSLIC be notified of any proposed disposition of a CMO Asset, including Preauthorized Dispositions, so that FSLIC may bid on that CMO Asset. The Agreement also gives FSLIC and the Thrift the right to initiate the disposition of a CMO Asset upon notice to Applicant, who will then take and evaluate bids for its purchase. In addition, the Agreement requires Applicant to report monthly to, and to attend a monthly portfolio review meeting with, FSLIC and the Thrift.

Applicant's Legal Conclusions

Applicant states that an exemption from the performance fee prohibitions of section 205(a)(1) is necessary or

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appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Advisers Act for the following reasons.

1. The section was designed to avoid any conflicts of interest with regard to risk and to protect the interest of investors. Applicant argues that FSLIC and the Thrift are not the type of investment advisory clients needing the protection of section 205(a)(1) because of their significant level of sophistication regarding financial markets and their control over Applicant's decisions to dispose of the CMO Assets. Also, through effective management, Applicant will seek to reduce risk and FSLIC's exposure under the assistance agreement with the Thrift. In addition, Applicant will be mangaging a pre-existing portfolio of securities, rather than investing in high risk/high reward securities to increase its fee. Furthermore, FSLIC and the Thrift must approve all of Applicant's decisions to dispose of the CMO Assets, and FSLIC will review the Incentive Fee calculations.

2. Applicant also submits that the Incentive Fee is justified because of the complexity and illiquid nature of the CMO Assets and the skill required to dispose of them profitably. In addition, FSLIC uses an incentive based fee arrangement in its Standard Asset Management Contract for the management and disposition of real estate, and FSLIC desires to use the Incentive Fee here to increase the returns on the CMO Assets.

3. Finally, Applicant maintains that the exemption is in the public interest since use of the Incentive Fee will allow implementation of a Federal agency's program—the salvaging of a failed thrift's assets—that is important to that agency and the Federal budget.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-14742 Filed 6-21-89; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2360; Amdt 1]

North Dakota; (And Contiguous Counties in the State of South Dakota); Declaration of Disaster Loan Area

The above-numbered Declaration (54 FR 22390) is hereby amended to include Steele County, in the State of North Dakota, which was inadvertently omitted as a contiguous county, as a result of damages from flooding which began on March 29, 1989.

Applications for economic injury from small businesses located in the above-named county may be filed until the specified date at the designated location. All other information remains the same.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: May 12, 1989.

Alfred E. Judd,

Acting Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89-14761 Filed 6-21-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: June 16, 1989.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0233
Form Number: 7004
Type of Review: Revision
Title: Application for Automatic Extension of Time To File Corporation Income Tax Return
Description: Form 7004 is used by corporations and certain non-profit institutions to request an automatic 6-month extension of time to file their income tax returns. The information is needed by IRS to determine whether Form 7004 was timely filed so as not to impose a late filing penalty in error and also to insure that the proper amount of tax was computed and deposited.
Respondents: Farms, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations
Estimated Number of Respondents: 1,097,748
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping: 5 hours 30 minutes
Learning about the law or the form: 46 minutes
Preparing the form: 1 hour 49 minutes
Copying, assembling, and sending the form to IRS: 16 minutes
Frequency of Response: Annually
Estimated Total Recordkeeping/Reporting burden: 9,177,173 hours
Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 89-14794 Filed 6-21-89; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF VETERANS AFFAIRS

Special Medical Advisory Group, Meeting

The Department of Veterans Affairs gives notice under Pub. L. 92-463 that a meeting of the Special Medical Advisory Group will be held on July 13-14, 1989. The session on July 13 will be held at the Capital Hilton Hotel, 16th and "K" Streets, NW., Washington, DC 20036, and the session on July 14 will be held in the Omar Bradley Conference Room (10th floor) at the Department of Veterans Affairs Central Office, 810 Vermont Avenue, NW., Washington, DC 20420. The purpose of the Special Medical Advisory Group is to advise the Secretary and Chief Medical Director relative to the care and treatment of disabled veterans, and other matters pertinent to the Department's Veterans Health Services and Research Adminstration. The session on July 13 (held at the Capital Hilton Hotel) will convene at 6 p.m. and the session on July 14 will convene at 8 a.m. All sessions will be open to the public up to the seating capacity of the rooms. Because this capacity is limited, it will be necessary for those wishing to attend to contact Lorri Fertal, Office of the Chief Medical Director, Department of Veterans Affairs (phone 202/233-3985) prior to July 7, 1989.

Dated: June 13, 1989.

By direction of the Secretary.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 89-14766 Filed 6-21-89; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 119
Thursday, June 22, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 2:00 p.m., Thursday, June 29, 1989.

PLACE: 2033 K St., NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Application of the Chicago Mercantile Exchange for designation as a contract market in:

—Euromark forward spread agreements
—Eurosterling forward spread agreements
—Euroyen forward spread agreements
—Options on physical British pounds sterling

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89-14890 Filed 6-21-89; 8:45 am]

BILLING CODE 6351-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:07 a.m. on Monday June 19, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider (1) a recommendation concerning an administrative enforcement proceeding; and (2) matters relating to assistance agreements pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room on the sixth floor of the FDIC Building located at 550-17th Street, NW., Washington, DC.

Dated: June 19, 1989.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 89-14891 Filed 6-21-89; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, June 27, 1989, 10:00 a.m.

PLACE: 999 E. Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, June 29, 1989, 10:00 a.m.

PLACE: 999 E. Street, NW., Washington, DC (Ninth Floor)

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Draft Advisory Opinion 1989-08:
Grant A. Billingsley on behalf of Insilco Corp.
Final Audit Report—Albert Gore, Jr., for President Committee, Inc.
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 89-14885 Filed 6-21-89; 8:45 am]

BILLING CODE 6715-01-M

federal register

Thursday
June 22, 1989

Part II

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 52 and 53
Federal Acquisition Regulation (FAR); Computer Generation of Forms by the Public; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 52 and 53

Federal Acquisition Regulation (FAR); Computer Generation of Forms by the Public

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering revisions to the Federal Acquisition Regulation (FAR) to revise 53.105 and to add 53.111 and a clause at 52.253–1 to provide that forms prescribed by the FAR or by agency supplements to the FAR may be computer generated by the public.

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before August 21, 1989 to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 89–45 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523–4755.

SUPPLEMENTARY INFORMATION:

A. Regulatory Flexibility Act

The proposed changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because this proposed rule will apply to all small businesses that do business or wish to do business with the Government. This rule is expected to have a beneficial impact on those firms. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. Comments are invited.

Comments from small entities concerning the affected FAR subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite section 89–610 (FAR Case 89–45) in correspondence.

B. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) is deemed to apply because the proposed rule contains information collection requirements. This proposed rule is expected to reduce the burden associated with several currently approved collections of information. However, the extent of the reduction cannot be determined at this time. Consequently, while this rule is being submitted to OMB for approval, submission of the revised burden estimated under existing clearances will not take place until the public has had an opportunity to use the computer generated forms. A request for approval of a new information collection requirement concerning Computer Generated Forms is being submitted to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* Public comments concerning this request will be invited through a subsequent **Federal Register** notice.

List of Subjects in 48 CFR Parts 52 and 53

Government procurement.

Dated: June 12, 1989.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, 48 CFR Parts 52 and 53 are amended as set forth below:

1. The authority citation for 48 CFR Parts 52 and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

2. Section 52.253–1 is added to read as follows:

52.253–1 Computer generated forms.

As prescribed in FAR 53.111, insert the following clause:

Computer Generated Forms (Jun 1989)

(a) Any data required to be submitted on a Standard or Optional Form prescribed by the Federal Acquisition Regulation (FAR), or on a form prescribed by an agency supplement to the FAR, may be submitted on a computer generated version of the form, *provided* there is no change to the name, content, or sequence of the data elements on the form, and *provided* the form carries the Standard or Optional Form or agency form number and edition date.

(b) If the Contractor submits a form that is different than the required form, then the rights and obligations of the parties will be determined based on the content of the required form.

(End of clause)

PART 53—FORMS

3. Section 53.105 is amended by designating the existing text as paragraph (a) and by adding a paragraph (b) to read as follows:

53.105 Computer generation.

* * * * *

(b) The forms prescribed by this regulation may be computer generated by the public. Unless prohibited by agency regulations, forms prescribed by agency FAR supplements may also be computer generated by the public. Computer generated forms shall not change the name, content, or sequence of the data elements, and shall carry the Standard or Optional Form or agency number and edition date (see 53.111).

4. Section 53.111 is added to read as follows:

53.111 Contract clause.

Contracting officers shall insert the clause at 52.253–1, Computer Generated Forms, in solicitations and contracts that require the contractor to submit data on Standard or Optional Forms prescribed by this regulation or, unless prohibited by agency regulations, forms prescribed by agency supplements.

[FR Doc. 89–14795 Filed 6–21–89; 8:45 am]

BILLING CODE 6820–JC–M

federal register

Thursday
June 22, 1989

Part III

Department of Education

34 CFR Part 303

Early Intervention Program for Infants and Toddlers With Handicaps; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 303

RIN 1820-AA49

Early Intervention Program for Infants and Toddlers With Handicaps

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues final regulations for the program for infants and toddlers with handicaps that was established under the 1986 amendments to the Education of the Handicapped Act (EHA). These regulations are intended to assist States in applying for funds under this authority, and to ensure that an effective early intervention program is established in each participating State.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments, with the exception of the following sections: § 303.113(b); §§ 303.141 through 303.146; §§ 303.148 through 303.150; § 303.151(b)(4); § 303.152; §§ 303.160 through 303.175; §303.301; § 303.341; § 303.344; § 303.403; § 303.420; § 303.510; § 303.520; § 303.540; and § 303.653. These provisions of the regulations will become effective after the information collection requirements contained in the provisions have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Thomas B. Irvin, Office of Special Education Programs, Department of Education, 400 Maryland Avenue SW. (Switzer Building, Room 4618 M/S 2313–4600), Washington, DC 20202. Telephone: (202) 732–1114.

SUPPLEMENTARY INFORMATION:

A. Background

The Education of the Handicapped Act Amendments of 1986 (Pub. L. 99–457) added a new formula grant program to assist States in establishing a statewide, comprehensive system of early intervention services for infants and toddlers with handicaps and their families. This new program (designated as Part H of the EHA) provides a phase-in period for States to develop the statewide system, including (1) adopting a policy that incorporates all of the components of the statewide system, as part of a State's third year application; (2) having the system in effect no later than the beginning of the fourth year of participation; and (3) providing appropriate early intervention services to all eligible children and their families no later than the beginning of the fifth year.

The following is a list of the components of the statewide system and the sections or subparts in which the components are included in these regulations:

(1) State definition of developmental delay (§§ 303.160 and 303.300);

(2) Central directory of information (§§ 303.161 and 303.301);

(3) Timetables for serving all eligible children (§§ 303.162 and 303.302);

(4) Public awareness program (§§ 303.163 and 303.320);

(5) Comprehensive child find system (§§ 303.164 and 303.321);

(6) Evaluation and assessment (§§ 303.165 and 303.322);

(7) Individualized family service plans (§§ 303.166 and 303.340 through 303.346);

(8) Comprehensive system of personnel development (§§ 303.167 and 303.360);

(9) Personnel standards (§§ 303.168 and 303.361);

(10) Procedural safeguards (§ 303.169 and Subpart E);

(11) Lead agency designation and responsibilities (§§ 303.142, 303.170 through 303.174, and Subpart F);

(12) Policy for contracting or otherwise arranging for services (§§ 303.174 and 303.526);

(13) Procedure for timely reimbursement of funds (§§ 303.172, 303.527(b), 303.528); and

(14) Data collection (§§ 303.175 and 303.540).

Part H is the only grant program within the Federal government that focuses exclusively on the provision of services to children with handicaps from birth through age two. However, in enacting Part H, the Congress made clear that the success of the program is dependent upon interagency coordination—both in providing and paying for appropriate early intervention services. The statute includes a number of requirements that are directed toward ensuring a coordinated approach to the provision and financing of services, including (1) interagency agreements that define the financial responsibility of each agency, (2) a State Interagency Coordinating Council to assist the lead agency in identifying and coordinating financial resources, and (3) nonsubstitution of funds and non-reduction of benefits.

Regarding the need for shared financial responsibility, the Report of the House of Representatives on Pub. L. 99–457 states:

> Thus, it is our intent that other funding sources continue; that there is greater coordination among agencies regarding the payment of costs; and that funds under Part H be used only for direct services for handicapped infants and toddlers that are not otherwise provided from other public or private sources * * * (House Rpt. No. 99–860, 15 (1986).)

Part H is designed to build upon existing State systems of early intervention services, and to facilitate development of systems in those States desiring to serve young children with handicaps from birth through age two. The program enables States to use funds under this part to develop a statewide system that fits their own characteristics.

During the initial years of participation under Part H, it is expected that, to the extent appropriate, States will continue, or capitalize on, the planning, development, and implementation efforts that were started under the EHA amendments of 1983 (Pub. L. 98–199). Under those amendments, a State grant provision was added to the Handicapped Children's Early Education Program (section 623(b) of the EHA) to assist States in establishing a comprehensive delivery system for providing special education and related services to children with handicaps from birth through age five. The 1983 amendments also added a provision that permitted States to use funds under the preschool incentive grant program (section 619 of the EHA) to serve children from birth through two, as well as three through five.

With the enactment of Pub. L. 99–457, (1) the State grant provision under section 623(b) was eliminated, and Part H was added, and (2) section 619 was amended to only permit direct services for children three through five. However, under the new section 619 (Preschool Grants program), States may still use a portion of their annual grant funds (up to 20%) for planning and developing a comprehensive delivery system of services for children from birth through five.

Part H substantially expands the State grant provisions that were initiated under Pub. L. 98–199, but limits the age range of children to be served by the program to children from birth through two. Thus, activities under Part H must be directed to infants and toddlers with handicaps—including activities to prepare for the transition of these children as they reach age three to preschool services under Part B of the EHA or other appropriate services (see § 303.344(h)).

B. Analysis of Comments and Changes

In the November 18, 1987, NPRM, the Secretary allowed 60 days for interested parties to comment on the proposed regulations. At public request, that period was extended for an additional 30 days.

Over 2,500 written comments were received on the NPRM from a variety of agencies, individuals, and organizations. An analysis of the comments and of the changes that have been made in the regulations since publication of the NPRM is included in Appendix A to these final regulations.

A technical change has been made to § 303.4, due to the publication in the Federal Register (53 FR 8033 through 8103, March 11, 1988) of the new 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments). Part 80 is a part of the Education Department General Administrative Regulations (EDGAR). Effective October 1, 1988, Part 80 and not Part 74 applies with respect to grants and cooperative agreements to State and local governments.

An additional technical change has been made to § 303.4 to reference the new 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Work Place (Grants)) published May 26, 1988 (53 FR 19190 through 19193, 19204 through 19211). Part 85 is also a part of EDGAR and became effective October 1, 1988.

Another technical change has been made to § 303.4 to eliminate the references to Part 78 (Education Appeal Board). Section 3501 of the Hawkins-Stafford Elementary and Secondary School Improvement Amendments of 1988 amended Part E of the General Education Provisions Act (GEPA) to provide for new enforcement procedures that became effective October 25, 1988. The amended Part E requires the Secretary to establish an Office of Administrative Law Judges (OALJ) to replace the existing Education Appeal Board, and sets out new hearing procedures. 20 U.S.C. 1234 through 1234i.

On May 5, 1989, the Department published final regulations (54 FR 19512 through 19522) adding a new Part 81 to Title 34 of the Code of Federal Regulations and establishing general procedural rules for proceedings before the OALJ and specific rules for OALJ hearings for recovery of funds. A reference to the new Part 81 has been added to these regulations.

The drafters of the NPRM for this part contemplated that the State complaint procedures contained in the Education Department General Administrative Regulations (EDGAR) at 34 CFR 76.780 through 76.782 would be applicable to this program. (The NPRM at § 303.4(a)(1) made 34 CFR Part 76 applicable to the Part H program.) A number of commenters, however, requested that the final regulations specifically include State procedures for resolving complaints under the Part H program.

In addition, subsequent to the publication of the NPRM for this program, the Department published an NPRM proposing changes to EDGAR. *See* 53 FR 31580 through 31606 (August 18, 1988). One of those proposed changes was the removal of the State complaint procedures in 34 CFR 76.780 through 76.782 of EDGAR and the transfer of those procedures, with some modification, to the regulations implementing Part B of the Education of the Handicapped Act, which had shown the greatest need for the complaint procedures. In response to comments on the EDGAR NPRM, the Secretary is reconsidering whether to remove the complaint procedures from EDGAR. Since no final action has yet been taken on the changes proposed to EDGAR, and in light of the Secretary's determination that the EDGAR procedures needed some minor adjustments to accommodate distinctive features of the Part H program, the Secretary has included the State complaint procedures from EDGAR, with appropriate minor modifications, in these Part H regulations.

C. Major Changes in the Regulations

1. General and Organizational Changes

A number of changes have been made in the regulations as a result of the comments received. For example, additional guidance has been added in the text of the regulations and in the explanatory notes throughout the document to address the large number of requests for that guidance. Other changes have been made to clarify and unify treatment of common issues.

The term "infants and toddlers with handicaps," as used throughout the NPRM, has generally been replaced in these final regulations with the term "children eligible under this part."

Some major organizational changes have also been made, as indicated below:

- The five subparts in the NPRM have been reorganized into seven subparts, as follows: The requirements on procedural safeguards and State administration have been moved from Subpart D and made into separate subparts (i.e., "Procedural Safeguards" and "State Administration"). Subpart D has been retitled "Program and Service Components of a Statewide System of Early Intervention Services."
- The section numbers have been changed, so that each subpart begins with the next one hundred number (e.g., Subpart A begins with § 303.1, Subpart B with § 303.100, and Subpart C with § 303.200).

2. Redesignation Table

To assist readers in finding where each section from the NPRM is located in the final regulations, a redesignation table has been included in Appendix B to these final regulations.

3. Changes in Subpart A (General)

Some of the changes that have been made in Subpart A are:

- The term "case management" has been added to the regulations. The term "case management services" has been retained, and a distinction has been made between the two terms. "Case management" is a coordinative function that includes activities that are designed to assist and enable an eligible child and the child's family to obtain appropriate early intervention services (see § 303.6). On the other hand, "case management services" are included under the definition of early intervention services (see § 303.12(c)(2)).
- A definition of "early intervention program" (§ 303.11) has been added to clarify that services and funding from other agencies and programs are important in meeting the needs of eligible children and their families.
- The reference to the related services definitions in Part B of the EHA (§ 303.16) has been dropped. New definitions for each of the early intervention services in Part H, which conform to professionally accepted definitions, have been added at § 303.12.
- Several new definitions have been added to the regulations, including "days" (§ 303.9), "include-including" (§ 303.15), "multidisciplinary" (§ 303.17), "parent" (§ 303.18), "policies" (§ 303.19), "public agency" (§ 303.20), "qualified" (§ 303.21), "State" (§ 303.22), and "transportation" (§ 303.23).
- Clarifying notes have been added to the definitions of "early intervention services," "health services," and "infants and toddlers with handicaps."

4. Changes in Subpart B (State Application for a Grant)

Some of the changes that have been made in Subpart B are:

- A subheading has been added on "Public participation." All substantive requirements concerning public participation have been consolidated under that subheading (see §§ 303.110 through 303.113).
- The section on fourth year applications (§ 303.150) has been revised to include a requirement that information on each component of the statewide system must be included in the application for that year.
- A new subheading has been added to specify what information must be in a State's fourth year application for each component in the statewide system (see §§ 303.160 through 303.175).
- The section on fifth year applications (§ 303.152) has been revised to require that a State's application for that year must include (a) a policy that, no later than the beginning of the fifth year of the State's participation, appropriate early intervention services will be available to all eligible children in the State and their families, and (b) a description of the services to be provided no later than the beginning of the fifth year.
- A provision regarding payments to the Secretary of the Interior, that was in Subpart C (§ 303.52(a)) of the NPRM, has been moved to Subpart B under the section entitled, "Eligibility of the Secretary of the Interior for assistance."

5. Changes in Subpart C

The following changes have been made in Subpart C (Procedures for Making Grants to States):

- The section on "Distribution of allotments for non-participating States" (§ 303.201) has been changed to clarify that all funds will be allotted.
- The statutory definition of "infants and toddlers" that is used for the purpose of alloting funds has been added. The definition has been modified to clarify that the term means "children from birth through age two in the general population, based on the most recent satisfactory data as determined by the Secretary."

6. Changes in Subpart D

In response to public comments on Subpart D (Program and Service Components of a Statewide System of Early Intervention Services), additional guidance has been added to most of the sections in that subpart, including the provisions on the central directory, public awareness program, comprehensive child find system, evaluation and assessment, and individualized family service plans (IFSPs). Some of the changes that have been made are:

- A timeline of 45 days has been established for an agency, upon receiving a referral, to (a) complete the evaluation and assessment process and (b) hold an IFSP meeting (see §§ 303.321 and 303.322).
- The decision-making role of the family in the family assessment has been strengthened (see § 303.322).
- A new section has been added on "Nondiscriminatory procedures" (§ 303.323).
- The provisions on individualized family service plans have been reorganized and greatly expanded, including adding (a) a definition of IFSP (§ 303.340(b)), (b) requirements about IFSP meetings and participants at those meetings (§§ 303.342 and 303.343), and (c) conditions regarding the provision of services before assessment is completed (§ 303.345).
- The section on "Content of IFSPs" has been expanded to (a) distinguish between early intervention services and other services that a child may need, but that are not required under this part, and (b) provide other guidance and clarifying information.
- A note has been added following § 303.344 to stress the need for lead agencies to adopt a process for ensuring the effective transition of children from the program under Part H to preschool services under Part B of the Act.
- The requirements regarding "personnel standards" (§ 303.380) have been changed to reflect the comments received on the regulations for both this part and Part B of the Act.

7. Subpart E (Procedural Safeguards)

The procedural safeguards provisions in the NPRM have been reorganized and new provisions have been added to address the comments received. Some of the changes that have been made are:

- The requirements on native language that are in the Part B regulations (34 CFR Part 300) have been incorporated into the regulations for this part and expanded (§ 303.403(b)). The following other provisions from the Part B regulations have been added to this part with adaptations: Parental consent (§ 303.404), surrogate parents (§ 303.405), and parental rights in administrative hearings (§ 303.422).
- The confidentiality of information requirements under Part B (34 CFR 300.560 through 300.576) have been adopted (and referenced) as the procedures for States to follow under Part H (see § 303.460). A note has been added following that section to clarify that the regulations in 34 CFR Part 99 (Privacy Rights of Parents and Students), which are incorporated by reference in the Part B confidentiality regulations, also apply to Part H.
- The provision in the NPRM that gave States the option of adopting the procedural safeguards under Part B, adopting selected parts of the Part B safeguards and developing new procedures for the remaining safeguards required by Part H, or establishing new safeguards has been changed to limit the options to (a) adopting the due process procedures in Part B (34 CFR 300.506 through 300.513), or (b) developing new impartial procedures for resolving individual child complaints under this part.

8. Subpart F (State Administration)

The provisions on State administration have been reorganized and expanded. They now include:

- Requirements adapted from EDGAR regarding lead agency procedures for resolving complaints (including systemic complaints).
- Clarifying provisions related to financial matters, including sections on fees (§ 303.521), identification and coordination of resources (§ 303.522), interagency agreements (§ 303.523), and payor of last resort (§ 303.527).
- A new § 303.560 has been added to clarify that lead agencies may use funds under this part for administering the State's early intervention program.

9. Subpart G (State Interagency Coordinating Council)

The subpart on the Council has been reorganized and expanded to address the comments received. The following are some of the changes that have been made:

- Clarifying notes have been added to the sections on establishment and composition of the Council (§§ 303.601 and 303.602).
- The provisions related to the conduct of Council meetings (§ 303.603) have been expanded.
- The functions of the Council have been expanded to clarify that the Council plays an important role in ensuring the effective implementation of this part within each State, especially in identifying and developing policies and procedures for coordinating payments for services, and promoting interagency agreements (§§ 303.650 through 303.653).

D. Use of Notes in the Regulations

In the text of these final regulations, a series of notes has been included following selected sections. These notes provide explanatory material or suggestions for meeting specific legal requirements. Where a note sets forth a permissible course of action, a State may either rely upon the note or take any other course of action that meets the applicable requirements.

Executive Order 12606

Part H recognizes the unique and critical role that families play in the development of infants and toddlers who are eligible under this Part. It is clear, both from the statute and the legislative history of the Act, that the Congress intended for families to play an active, collaborative role in the planning and provision of early intervention services. Thus, these regulations, which are consistent with the requirements of Executive Order 12606—The Family—should have a positive impact on the family, because they strengthen the authority and encourage the increased participation of parents in meeting the early intervention needs of their children.

Executive Order 12612

These final regulations have been developed (1) to be responsive to the overarching request by hundreds of commenters that more guidance be provided in all major areas under this part, and (2) to be consistent with the principles of Executive Order 12612—Federalism. Every effort has been made to ensure that, to the extent possible, each State has the authority and flexibility to implement the provisions of this part in accordance with that State's own unique situation; and that decisions related to the planning, development, and implementation of the statewide system of early intervention services remain with the State.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster intergovernmental partnership and a strengthened Federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the NPRM, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by any other agency or authority of the United States.

Based on the response to the NPRM and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 303

Education, Education of the handicapped, Grant program education, medical personnel, State educational agencies.

Dated: May 12, 1989.

(Catalogue of Federal Domestic Assistance Number 84.181; Early Intervention Programs for Infants and Toddlers with Handicaps)

Lauro F. Cavazos,

Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations by adding a new Part 303 to read as follows:

PART 303—EARLY INTERVENTION PROGRAM FOR INFANTS AND TODDLERS WITH HANDICAPS

Subpart A—General

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303.166 Individualized family service plans.
303.167 Comprehensive system of personnel development (SCPD).
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303.169 Procedural safeguards.
303.170 Supervision and monitoring of programs.
303.171 Lead agency procedures for resolving complaints.
303.172 Policies and procedures related to financial matters.

303.173 Interagency agreements; resolution of individual disputes.
303.174 Policy for contracting or otherwise arranging for services.
303.175 Data collection.

Participation by the Secretary of the Interior

303.180 Eligibility of the Secretary of the Interior for assistance.

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Authority: 20 U.S.C. 1471–1485, unless otherwise noted.

Subpart A—General

Purpose, Eligibility, and Other General Provisions

§ 303.1 Purpose of the early intervention program for infants and toddlers with handicaps.

The purpose of this part is to provide financial assistance to States to—

(a) Develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency program of early intervention services for infants and toddlers with handicaps and their families;

(b) Facilitate the coordination of payment for early intervention services from Federal, State, local, and private sources (including public and private insurance coverage); and

(c) Enhance the States' capacity to provide quality early intervention services and expand and improve existing early intervention services being provided to infants and toddlers with handicaps and their families.

(Authority: 20 U.S.C. 1471)

§ 303.2 Eligible applicants for an award.

Eligible applicants include the 50 States, Puerto Rico, the District of Columbia, the Secretary of the Interior, and the following jurisdictions: Guam, American Samoa, the Virgin Islands, the Republic of Palau, and the Commonwealth of the Northern Mariana Islands. The future eligibility of the Republic of Palau will be governed by the terms of the Compact of Free Association.

(Authority: 20 U.S.C. 1484)

§ 303.3 Activities that may be supported under this part.

Funds under this part may be used for the following activities:

(a) To plan, develop, and implement a statewide system of early intervention services for children eligible under this part and their families.

(b) For direct services for eligible children and their families that are not otherwise provided from other public or private sources.

(c) To expand and improve on services for eligible children and their families that are otherwise available, consistent with § 303.527.

(Authority: 20 U.S.C. 1473, 1479)

§ 303.4 Applicable regulations.

(a) The following regulations apply to this part:

(1) The Education Department General Administrative Regulations (EDGAR), including—

(i) Part 76 (State Administered Programs), except for § 76.103;

(ii) Part 77 (Definitions that Apply to Departmental Programs);

(iii) Part 79 (Intergovernmental Review of Department of Education Programs and Activities);

(iv) Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments);

(v) Part 81 (Grants and Cooperative Agreements under the General Education Provisions Act); and

(vi) Part 85 (Governmentwide Debarment and Suspension (Non-procurement) and Governmentwide Requirements for Drug-Free Work Place (Grants)).

(2) The regulations in this Part 303.

(3) The following regulations in 34 CFR Part 300 (Assistance to States for Education of Handicapped Children): §§ 300.560 through 300.576, and §§ 300.581 through 300.586.

(b) In applying the regulations cited in paragraphs (a)(1) and (a)(3) of this section, any reference to—

(1) "State educational agency" means the lead agency under this part; and

(2) "Special education," "related services," "free public education," or "education" means "early intervention services" under this part.

(Authority: 20 U.S.C. 1401–1418; 1420; 1483)

Definitions

Note: Sections 303.5–303.23 include definitions that are used throughout these regulations. Other terms are defined in the specific subparts in which they are used. Below is a list of those terms and the specific sections in which they are defined:

Aggregate amount (§ 303.200(b)(1))
Appropriate professional requirements in the State (§ 303.361(a)(1))
Assessment (§ 303.322(b)(2))
Consent (§ 303.401(a))
Evaluation (§ 303.322(b)(1))
Frequency and intensity (§ 303.344(d)(2)(i))
From the profession most immediately relevant to the child's or family's needs (§ 303.344(g)(3))
Highest requirements in the State applicable to a profession or discipline (§ 303.361)(a)(2))
Individualized family service plan and IFSP (§ 303.340(b))
Impartial (§ 303.421(b))
Location (§ 303.344(d)(2)(ii))
Method (§ 303.344(d)(iii))
Native language (§ 303.401(b))
Personally identifiable (§ 303.401(c))
Primary referral sources (§ 303.321(d)(3))
Profession or discipline (§ 303.361(a)(3))
Special definition of "infants and toddlers" (§ 303.200(b)(2))
Special definition of "State" (§ 303.200(b)(3))
State approved or recognized certification, licensing, registration, or other comparable requirements (§ 303.361(a)(4))
Statement of assurances (§ 303.120)

§ 303.5 Act.

As used in this part, "Act" means the Education of the Handicapped Act.

(Authority: 20 U.S.C. 1401 *et seq.*)

§ 303.6 Case management.

(a) *General.* (1) As used in this part, "case management" means the activities carried out by a case manager to assist and enable a child eligible under this part and the child's family to receive the rights, procedural safeguards, and services that are authorized to be provided under the State's early intervention program.

(2) Each child eligible under this part and the child's family must be provided with one case manager who is responsible for—

(i) Coordinating all services across agency lines; and

(ii) Serving as the single point of contact in helping parents to obtain the services and assistance they need.

(3) Case management is an active, ongoing process that involves—

(i) Assisting parents of eligible children in gaining access to the early intervention services and other services identified in the individualized family service plan;

(ii) Coordinating the provision of early intervention services and other services (such as medical services for other than diagnostic and evaluation purposes) that the child needs or is being provided;

(iii) Facilitating the timely delivery of available services; and

(iv) Continuously seeking the appropriate services and situations necessary to benefit the development of each child being served for the duration of the child's eligibility.

(b) *Specific case management activities.* Case management activities include—

(1) Coordinating the performance of evaluations and assessments;

(2) Facilitating and participating in the development, review, and evaluation of individualized family service plans;

(3) Assisting families in identifying available service providers;

(4) Coordinating and monitoring the delivery of available services;

(5) Informing families of the availability of advocacy services;

(6) Coordinating with medical and health providers; and

(7) Facilitating the development of a transition plan to pre-school services, if appropriate.

(c) *Employment and assignment of case managers.* (1) Case managers may be employed or assigned in any way that is permitted under State law, so long as it is consistent with the requirements of this part.

(2) A State's policies and procedures for implementing the statewide system of early intervention services must be designed and implemented to ensure that case managers are able to effectively carry out on an interagency basis the functions and services listed under paragraphs (a) and (b) of this section.

(d) *Qualifications of case managers.* Case managers must be persons who, consistent with § 303.344(g), have demonstrated knowledge and understanding about—

(1) Infants and toddlers who are eligible under this part;

(2) Part H of the Act and the regulations in this part; and

(3) The nature and scope of services available under the State's early intervention program, the system of payments for services in the State, and other pertinent information.

Authority: 20 U.S.C. 1472(2))

Note: If States have existing case management systems, the States may use or adapt those systems, so long as they are consistent with the requirements of this part.

§ 303.7 Children.

As used in this part, "children" means "infants and toddlers with handicaps" as that term is defined in § 303.16.

(Authority: 20 U.S.C. 1472(1))

§ 303.8 Council.

As used in this part,"Council" means the State Interagency Coordinating Council.

(Authority: 20 U.S.C. 1472(4))

§ 303.9 Days.

As used in this part, "days" means calendar days.

(Authority: 20 U.S.C. 1471–1485)

§ 303.10 Developmental delay.

As used in this part, "developmental delay" has the meaning given to that term by a State under § 303.300.

(Authority: 20 U.S.C. 1472(3))

§ 303.11 Early intervention program.

As used in this part, "early intervention program" means the total effort in a State that is directed at meeting the needs of children eligible under this part and their families.

(Authority: 20 U.S.C. 1471 *et. seq.*)

§ 303.12 Early intervention services.

(a) *General.* As used in this part, "early intervention services" means services that—

(1) Are designed to meet the developmental needs of each child eligible under this part and the needs of the family related to enhancing the child's development;

(2) Are selected in collaboration with the parents;

(3) Are provided—

(i) Under public supervision;

(ii) By "qualified" personnel, as defined in § 303.21. including the types

of personnel listed in paragraph (e) of this section.

(iii) In conformity with an individualized family service plan; and

(iv) At no cost, unless, subject to § 303.520(b)(3), Federal or State law provides a system of payments by families, including a schedule of sliding fees; and

(4) Meet the standards of the State, including the requirements of this part.

(b) *Location of services.* To the extent appropriate, early intervention services must be provided in the types of settings in which infants and toddlers without handicaps would participate.

(c) *General role of service providers.* To the extent appropriate, service providers in each area of early intervention services included in paragraph (d) of this section are responsible for—

(1) Consulting with parents, other service providers, and representatives of appropriate community agencies to ensure the effective provision of services in that area;

(2) Training parents and others regarding the provision of those services; and

(3) Participating in the multidisciplinary team's assessment of a child and child's family, and in the development of integrated goals and outcomes for the individualized family service plan.

(d) *Types of services; definitions.* Following are types of services included under "early intervention services," and, if appropriate, definitions of those services:

(1) "Audiology" includes—

(i) Identification of children with auditory impairment, using at risk criteria and appropriate audiologic screening techniques;

(ii) Determination of the range, nature, and degree of hearing loss and communication functions, by use of audiological evaluation procedures;

(iii) Referral for medical and other services necessary for the habilitation or rehabilitation of children with auditory impairment;

(iv) Provision of auditory training, aural rehabilitation, speech reading and listening device orientation and training, and other services;

(v) Provision of services for prevention of hearing loss; and

(vi) Determination of the child's need for individual amplification, including selecting, fitting, and dispensing appropriate listening and vibrotactile devices, and evaluating the effectiveness of those devices.

(2) "Case management services" means assistance and services provided by a case manager to a child eligible under this part and the child's family that are in addition to the functions and activities included under § 303.6.

(3) "Family training, counseling, and home visits" means services provided, as appropriate, by social workers, psychologists, and other qualified personnel to assist the family of a child eligible under this part in understanding the special needs of the child and enhancing the child's development.

(4) "Health services" (See § 303.13).

(5) "Medical services only for diagnostic or evaluation purposes" means services provided by a licensed physician to determine a child's developmental status and need for early intervention services.

(6) "Nursing services" includes—

(i) The assessment of health status for the purpose of providing nursing care, including the identification of patterns of human response to actual or potential health problems;

(ii) Provision of nursing care to prevent health problems, restore or improve functioning, and promote optimal health and development; and

(iii) Administration of medications, treatments, and regimens prescribed by a licensed physician.

(7) "Nutrition services" includes—

(i) Conducting individual assessments in—

(A) Nutritional history and dietary intake;

(B) Anthropometric, biochemical, and clinical variables;

(C) Feeding skills and feeding problems; and

(D) Food habits and food preferences;

(ii) Developing and monitoring appropriate plans to address the nutritional needs of children eligible under this part, based on the findings in paragraph (b)(7)(i) of this section; and

(iii) Making referrals to appropriate community resources to carry out nutrition goals.

(8) "Occupational therapy" includes services to address the functional needs of a child related to the performance of self-help skills, adaptive behavior and play, and sensory, motor, and postural development. These services are designed to improve the child's functional ability to perform tasks in home, school, and community settings, and include—

(i) Identification, assessment, and intervention;

(ii) Adaptation of the environment, and selection, design and fabrication of assistive and orthotic devices to facilitate development and promote the acquisition of functional skills; and

(iii) Prevention or minimization of the impact of initial or future impairment, delay in development, or loss of functional ability.

(9) "Physical therapy" includes—

(i) Screening of infants and toddlers to identify movement dysfunction;

(ii) Obtaining, interpreting, and integrating information appropriate to program planning, to prevent or alleviate movement dysfunction and related functional problems; and

(iii) Providing services to prevent or alleviate movement dysfunction and related functional problems.

(10) "Psychological services" includes—

(i) Administering psychological and developmental tests, and other assessment procedures;

(ii) Interpreting assessment results;

(iii) Obtaining, integrating, and interpreting information about child behavior, and child and family conditions related to learning, mental health, and development; and

(iv) Planning and managing a program of psychological services, including psychological counseling for children and parents, family counseling, consultation on child development, parent training, and education programs.

(11) "Social work services" includes—

(i) Making home visits to evaluate a child's living conditions and patterns of parent-child interaction;

(ii) Preparing a psychosocial developmental assessment of the child within the family context;

(iii) Providing individual and family-group counseling with parents and other family members, and appropriate social skill-building activities with the child and parents;

(iv) Working with those problems in a child's and family's living situation (home, community, and any center where early intervention services are provided) that affect the child's maximum utilization of early intervention services; and

(v) Identifying, mobilizing, and coordinating community resources and services to enable the child and family to receive maximum benefit from early intervention services.

(12) "Special instruction" includes—

(i) The design of learning environments and activities that promote the child's acquisition of skills in a variety of developmental areas, including cognitive processes and social interaction;

(ii) Curriculum planning, including the planned interaction of personnel, materials, and time and space, that leads to achieving the outcomes in the child's individualized family service plan;

(iii) Providing families with information, skills, and support related to enhancing the skill development of the child; and

(iv) Working with the child to enhance the child's development.

(13) "Speech-language pathology" includes—

(i) Identification of children with communicative or oral pharyngeal disorders and delays in development of communication skills, including the diagnosis and appraisal of specific disorders and delays in those skills;

(ii) Referral for medical or other professional services necessary for the habilitation or rehabilitation of children with communicative or oral pharyngeal disorders and delays in development of communication skills; and

(iii) Provision of services for the habilitation, rehabilitation, or prevention of communicative or oral pharyngeal disorders and delays in development of communication skills.

(14) "Transportation" (see § 303.23).

(e) *Qualified personnel.* Early intervention services must be provided by qualified personnel, including—

(1) Audiologists;
(2) Nurses;
(3) Nutritionists;
(4) Occupational therapists;
(5) Physical therapists;
(6) Physicians;
(7) Psychologists;
(8) Social workers;
(9) Special educators; and
(10) Speech and language pathologists.

(Authority: 20 U.S.C. 1472(2))

Note 1: With respect to the requirement in paragraph (b) of this section, the appropriate location of services for some infants and toddlers might be a hospital setting—during the period in which they require extensive medical intervention. However, for these and other eligible children, it is important that efforts be made to provide early intervention services in settings and facilities that do not remove the children from natural environments (e.g., the home, day care centers, or other community settings). Thus, it is recommended that services be community-based, and not isolate an eligible child or the child's family from settings or activities in which children without handicaps would participate.

Note 2: The list of services in paragraph (d) of this section is not exhaustive and may include other types of services, such as vision services, and the provision of respite and other family support services. There also are other types of personnel who may provide services under this part, including vision specialists, paraprofessionals, and parent-to-parent support personnel.

§ 303.13 Health services.

(a) As used in this part, "health services" means services necessary to enable a child to benefit from the other early intervention services under this part during the time that the child is receiving the other early intervention services.

(b) The term includes—

(1) Such services as clean intermittent catheterization, tracheotomy care, tube feeding, the changing of dressings or osteotomy collection bags, and other health services; and

(2) Consultation by physicians with other service providers concerning the special health care needs of eligible children that will need to be addressed in the course of providing other early intervention services.

(c) The term does not include the following:

(1) Services that are—

(i) Surgical in nature (such as cleft palate surgery, surgery for club foot, or the shunting of hydrocephalus); or

(ii) Purely medical in nature (such as hospitalization for management of congenital heart ailments, or the prescribing of medicine or drugs for any purpose).

(2) Devices necessary to control or treat a medical condition.

(3) Medical-health services (such as immunizations and regular "well-baby" care) that are routinely recommended for all children.

(Authority: 20 U.S.C. 1472(2))

Note: The definition in this section distinguishes between the health services that are required under this part, and the medical-health services that are not required. The IFSP requirements in Subpart D provide that, to the extent appropriate, these other medical-health services are to be included in the IFSP, along with the funding sources to be used in paying for the services. Identifying these services in the IFSP does not impose an obligation to provide the services if they are otherwise not required to be provided under this part. (See § 303.344(e), and the note following that section.)

§ 303.14 IFSP.

As used in this part, "IFSP" means the individualized family service plan, as that term is defined in § 303.340(b).

(Authority: 20 U.S.C. 1477)

§ 303.15 Include; including.

As used in this part, "include" or "including" means that the items named are not all of the possible items that are covered whether like or unlike the ones named.

(Authority: 20 U.S.C. 1484)

§ 303.16 Infants and toddlers with handicaps.

(a) As used in this part, "infants and toddlers with handicaps" means individuals from birth through age two who need early intervention services because they—

(1) Are experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in one or more of the following areas:

(i) Cognitive development;

(ii) Physical development, including vision and hearing;

(iii) Language and speech development;

(iv) Psychosocial development; or

(v) Self-help skills; or

(2) Have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay.

(b) The term may also include, at a State's discretion, children from birth through age two who are at risk of having substantial developmental delays if early intervention services are not provided.

(Authority: 20 U.S.C. 1472(1))

Note 1: As used in paragraph (a)(2) of this section, "high probability" is not intended to be viewed as a statistical term. Rather, the phrase "have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay" applies to conditions with known etiologies and developmental consequences. Examples of these conditions include Down Syndrome and other chromosomal abnormalities, sensory impairments, including vision and hearing, inborn errors of metabolism, microcephaly, severe attachment disorders, including failure to thrive, seizure disorders, and fetal alcohol syndrome.

Note 2: With respect to paragraph (b) of this section, children who are at risk may be eligible under this part if a State elects to extend services to that population, even though they have not been identified as handicapped.

Under this provision, States have the authority to define who would be "at risk of having substantial developmental delays if early intervention services are not provided." In defining the "at risk" population, States may include well-known biological and other factors that can be identified during the neonatal period, and that place infants "at risk" for developmental delay. Commonly cited factors relating to infants include low birth weight, respiratory distress as a newborn, lack of oxygen, brain hemorrhage, and infection. It should be noted that these factors do not predict the presence of a barrier to development, but they may indicate children who are at higher risk of developmental delay than children without these problems.

§ 303.17 Multidisciplinary.

As used in this part, "multidisciplinary" means the involvement of two or more disciplines or professions in the provision of integrated and coordinated services, including evaluation and assessment activities in § 303.322, and development of the IFSP in § 303.342.

(Authority: 20 U.S.C. 1478(b)(3); 1477(a))

§ 303.18 Parent.

As used in this part, "parent" means a parent, a guardian, a person acting as a parent of a child, or a surrogate parent who has been appointed in accordance with § 303.406. The term does not include the State if the child is a ward of the State.

(Authority: 20 U.S.C. 1477)

Note: The term "parent" has been defined to include persons acting in the place of a parent, such as a grandparent or stepparent with whom a child lives, as well as persons who are legally responsible for the child's welfare. The definition in this section is identical to the definition used in the Part B regulations (34 CFR 300.10.)

§ 303.19 Policies.

(a) As used in this part, "policies" means State statutes, regulations, Governor's orders, directives by the lead agency, or other written documents that represent the State's position concerning any matter covered under this part.

(b) State policies include—

(1) A State's commitment to develop and implement the statewide system (see § 303.148);

(2) A State's definition of "developmental delay" (see 303.303);

(3) A State's position regarding the provision of services to children who are at risk;

(4) A statement that—

(i) Provides that, subject to § 303.520(b)(3), services under this part will be provided at no cost to parents, except where a system of payments is provided for under Federal or State law; and

(ii) Sets out what fees (if any) will be charged for early intervention services, and the basis for those fees;

(5) A State's standards for personnel who provide services to children eligible under this part (see 303.361);

(6) A State's position and procedures related to contracting or making other arrangements with service providers under Subpart F; and

(7) Other positions that the State has adopted related to implementing any of the other requirements under this part.

(Authority: 20 U.S.C. 1471–1485)

§ 303.20 Public agency.

As used in this part, "public agency" includes the lead agency and any other political subdivision of the State that is responsible for providing early intervention services to children eligible under this part and their families.

(Authority: 20 U.S.C. 1471–1485)

§ 303.21 Qualified.

As used in this part, "qualified" means that a person has met State approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which the person is providing early intervention services.

(Authority: 20 U.S.C. 1472(2))

Note: These regulations contain the following provisions relating to a State's responsibility to ensure that personnel are qualified to provide early intervention services:

1. Section 303.12(a)(4) provides that early intervention services must meet State standards. This provision implements a requirement that is similar to a longstanding provision under Part B of the Act (i.e., that the State educational agency establish standards and ensure that those standards are currently met for all programs providing special education and related services).

2. Section 303.12(a)(3)(ii) provides that early intervention services must be provided by qualified personnel.

3. Section 303.361 requires States to establish policies and procedures related to personnel standards.

§ 303.22 State.

Except as provided in § 303.200(b)(2), "State" means each of the 50 States, Puerto Rico, the District of Columbia, and the jurisdictions of Guam, American Samoa, the Virgin Islands, the Republic of Palau, and the Commonwealth of the Northern Mariana Islands.

(Authority: 20 U.S.C. 1402(a)(6))

§ 303.23 Transportation.

As used in this part, "transportation" includes the cost of travel (e.g., mileage, or travel by taxi, common carrier, or other means) and related costs (e.g., tolls and parking expenses) that are necessary to enable a child eligible under this part and the child's family to receive early intervention services.

(Authority: 20 U.S.C. 1472(2))

§ 303.24 EDGAR definitions that apply.

The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Award
Contract
Department
EDGAR
Fiscal year
Grant
Grantee
Grant period
Private
Public
Secretary

(Authority: 20 U.S.C. 1471 *et seq.*)

Subpart B—State Application for a Grant

General Requirements

§ 303.100 Conditions of assistance.

(a) In order to receive funds under this part for any fiscal year, a State shall—

(1) Have an approved application that contains the information required in this subpart for the year in which the State is applying; and

(2) Have on file with the Secretary the statement of assurances required under §§ 303.120 through 303.127.

(b) For years one through five, a State must submit an annual application. Thereafter, a State may submit a three-year application.

(Authority: 20 U.S.C. 1478)

§ 303.101 How the Secretary disapproves a State's application or statement of assurances.

The Secretary follows the procedures in 34 CFR 300.580 through 300.586 before disapproving a State's application or statement of assurances submitted under this part.

(Authority: 20 U.S.C. 1478)

Public Participation

§ 303.110 General requirements and timelines for public participation.

(a) Before submitting to the Secretary its application under this part, and before adopting a new or revised policy that is not in its current application, a State shall—

(1) Publish the application or policy in a manner that will ensure circulation throughout the State for at least a 60-day period, with an opportunity for comment on the application or policy for at least 30 days during that period;

(2) Hold public hearings on the application or policy during the 60-day period required in paragraph (a)(1) of this section; and

(3) Provide adequate notice of the hearings required in paragraph (a)(2) of this section at least 30 days before the dates that the hearings are conducted.

(b) A State may request an exemption from the timelines in paragraph (a) of this section if the State can demonstrate that—

(1) There are circumstances that would warrant such an exception; and

(2) The timelines that were followed provided an adequate opportunity for public participation and comment.

(Authority: 20 U.S.C. 1478(a)(4))

§ 303.111 Notice of public hearings and opportunity to comment.

The notice required in § 303.110(a)(3) must—

(a) Be published in newspapers or announced in other media, or both, with coverage adequate to notify the general public throughout the State about the hearings and opportunity to comment on the application or policy; and

(b) Be in sufficient detail to inform the public about—

(1) The purpose and scope of the State application or policy, and its relationship to Part H of the Act;

(2) The length of the comment period, and the date, time, and location of each hearing; and

(3) The procedures for providing oral comments or submitting written comments.

(Authority: 20 U.S.C. 1478(a)(4)(A))

§ 303.112 Public hearings.

Each State shall hold public hearings in a sufficient number and at times and places that afford interested parties throughout the State a reasonable opportunity to participate.

(Authority: 20 U.S.C. 1478(a)(4))

§ 303.113 Reviewing and reporting on public comments received.

(a) *Review of comments.* Before adopting its application, and before the adoption of a new or revised policy not in the application, the lead agency shall—

(1) Review and consider all public comments; and

(2) Make any modifications it deems necessary in the application or policy.

(b) *Reporting on comments to the Secretary.* In submitting the State's application or policy to the Secretary, the lead agency shall include—

(1) A summary of the public comments received as a result of the activities required in §§ 303.110 through 303.112;

(2) The State's responses to those comments; and

(3) Copies of news releases, advertisements, and announcements used to provide notice.

(Authority: 20 U.S.C. 1478(a))

Statement of Assurances

§ 303.120 General.

(a) A State's statement of assurances must contain the information required in §§ 303.121 through 303.127.

(b) Unless otherwise required by the Secretary, the statement is submitted only once, and remains in effect throughout the term of a State's participation under this part.

(c) A State may submit a revised statement of assurances if the statement is consistent with the requirements in §§ 303.121 through 303.127.

(Authority: 20 U.S.C. 1478(b))

§ 303.121 Reports and records.

The statement must provide for—

(a) Making reports in such form and containing such information as the Secretary may require; and

(b) Keeping records and affording access to those records as the Secretary may find necessary to assure compliance with the requirements of this part, the correctness and verification of reports, and the proper disbursement of funds provided under this part.

(Authority: 20 U.S.C. 1478(b)(4))

§ 303.122 Control of funds and property.

The statement must provide assurance satisfactory to the Secretary that—

(a) The control of funds provided under this part, and title to property acquired with those funds, is in a public agency for the uses and purposes provided in this part; and

(b) A public agency administers the funds and property.

(Authority: 20 U.S.C. 1478(b)(3))

§ 303.123 Prohibition against commingling.

The statement must include an assurance satisfactory to the Secretary that funds made available under this part will not be commingled with the State funds.

(Authority: 20 U.S.C. 1478(b)(5)(A)

Note: As used in this part, "commingle" means depositing or recording funds in a general account without the ability to identify each specific source of funds for any expenditure. Under that general definition, it is clear that commingling is prohibited. However, to the extent that the funds from each of a series of Federal, State, local, and private funding sources can be identified—with a clear audit trail for each source—it is appropriate for those funds to be consolidated for carrying out a common purpose. In fact, a State may find it essential to set out a funding plan that incorporates, and accounts for, all sources of funds that can be targeted on a given activity or function related to the State's early intervention program.

Thus, the assurance in this section is satisfied by the use of an accounting system that includes an "audit trail" of the expenditure of funds awarded under this part. Separate bank accounts are not required.

§ 303.124 Prohibition against supplanting.

(a) The statement must include an assurance satisfactory to the Secretary that Federal funds made available under this part will be used to supplement and increase the level of State and local funds expended for children eligible under this part and their families and in no case to supplant those State and local funds.

(b) To meet the requirement in paragraph (a) of this section—

(1) The total amount of State and local funds budgeted for expenditures in the current fiscal year for early intervention services for children eligible under this part and their families must be at least equal to the total amount of State and local funds actually expended for early intervention services for these children and their families in the most recent preceding fiscal year for which the information is available. Allowance may be made for—

(i) Decreases in the number of children who are eligible to receive early intervention services under this part; and

(ii) Unusually large amounts of funds expended for such long-term purposes as the acquisition of equipment and the construction of facilities; and

(2) Funds under this part must not be used to displace State or local funds for any particular cost.

(Authority: 20 U.S.C. 1478(b)(5)(B))

Note: The nonsupplanting requirement in this section prohibits a State from supplanting State and local funds on either an aggregate basis or for a given expenditure. Thus, under Part H, whether supplanting has occurred is evaluated on the basis of two tests, as follows:

(1) First, whether State and local expenditures budgeted for the current fiscal year for early intervention services are at least equal to expenditures from the most recent fiscal year for which they are available. (This means that if a State spent $1,000,000 for early intervention services in FY–1, the State must budget at least $1,000,000 in FY–2, unless one of the conditions in paragraph (b)(1) of this section applies.).

(2) Second, whether Part H funds are used to pay for a particular activity that was previously supported with State or local funds. Thus, if a hospital-based project was supported entirely by State and local funds in FY–1, Part H funds could not be used to support that project in FY–2. However, to the extent that new services are added to the hospital project in FY–2, those new services could be paid for with Part H funds.

§ 303.125 Fiscal control.

The statement must provide assurance satisfactory to the Secretary that such fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under this part.

(Authority: 20 U.S.C. 1478(b)(6))

§ 303.126 Payor of last resort.

The statement must include an assurance satisfactory to the Secretary that the State will comply with the provisions in § 303.527, including the requirements on—

(a) Nonsubstitution of funds; and

(b) Non-reduction of other benefits.

(Authority: 20 U.S.C. 1476(b)(2))

§ 303.127 Assurance regarding expenditure of funds.

The statement must include an assurance satisfactory to the Secretary that the funds paid to the State under this part will be expended in accordance with the provisions of this part, including the requirements in § 303.3.

(Authority: 20 U.S.C. 1476(b)(1))

General Requirements for a State Application

§ 303.140 General.

A State's application under this part must contain the information required in §§ 303.141 through 303.146.

(Authority: 20 U.S.C. 1478(a))

§ 303.141 Information about the Council.

Each application must include information demonstrating that the State has established a State Interagency Coordinating Council that meets the requirements of Subpart G.

(Authority: 20 U.S.C. 1478(a)(2))

§ 303.142 Designation of lead agency.

Each application must include a designation of the lead agency in the State that will be responsible for the administration of funds provided under this part.

(Authority: 20 U.S.C. 1478(a)(1))

§ 303.143 Assurance regarding use of funds.

Each application must include an assurance that funds received under this part will be used to assist the State to plan, develop, and implement the statewide system required under Subparts D through F.

(Authority: 20 U.S.C. 1475, 1478(a) (2), (3))

§ 303.144 Description of use of funds.

(a) *General.* Each application must include a description of how a State proposes to use its funds under this part for the fiscal year covered by the application. The description must be presented separately for the lead agency and the Council, and include the information required in paragraphs (b) through (d) of this section.

(b) *Administrative positions.* Each application must include—

(1) A list of administrative positions, with salaries, and a description of the duties for each person whose salary is paid in whole or in part with funds awarded under this part; and

(2) For each position, the percentage of salary paid with those funds.

(c) *Planning, development, and implementation activities.* Each application must include—

(1) A description of the nature and scope of each major activity to be carried out under this part in planning, developing, and implementing the statewide system of early intervention services; and

(2) The approximate amount of funds to be spent for each activity.

(d) *Direct services.* (1) Each application must include a description of any direct services that the State expects to provide to eligible children and their families with funds under this part, consistent with §§ 303.521 and 303.527.

(2) The description must include information about each type of service to be provided, including—

(i) A summary of the methods to be used to provide the service (e.g., contracts or other arrangements with specified public or private organizations); and

(ii) The approximate amount of funds under this part to be used for the service.

(e) *Activities by other agencies.* If other agencies are to receive funds under this part, the application must include—

(1) The name of each agency expected to receive funds;

(2) The approximate amount of funds each agency will receive; and

(3) A summary of the purposes for which the funds will be used.

(Authority: 20 U.S.C. 1478 (a)(3), (a)(5))

§ 303.145 Information about public participation.

Each application must include the information on public participation that is required in § 303.113(b).

(Authority: 20 U.S.C. 1478(a)(4))

§ 303.146 Equitable distribution of resources.

(a) Each application must include a description of the procedures used by the State to ensure an equitable distribution of resources made available under this part among all geographic areas within the State.

(b) In determining equitable distribution of resources, a State must take into account the need for services across all geographical areas within the State.

(Authority: 20 U.S.C. 1478(a)(6))

Specific Application Requirements for Years One Through Five and Thereafter

§ 303.147 Application requirements for first and second years.

A State's annual application for the first and second years of participation under this part must contain the information required in §§ 303.141 through 303.146.

(Authority: 20 U.S.C. 1475; 1478(a))

§ 303.148 Third year applications.

(a) *General.* A State's third year application under this part must contain the following:

(1) The information required in §§ 303.141 through 303.146.

(2) Either—

(i) The information and assurances regarding the statewide system of early intervention services, as required in paragraph (b) of this section; or

(ii) If the State is eligible for a waiver, a request for a waiver, in accordance with the requirements in § 303.149.

(3) Other information that the Secretary may require.

(b) *Adoption of policy on statewide system.* Each third year application must include information and assurances demonstrating to the satisfaction of the Secretary that—

(1) It is the policy of the State to develop and implement a statewide, comprehensive, coordinated, interagency, multidisciplinary system for providing early intervention services to all children eligible under this part and their families;

(2) The policy in paragraph (b)(1) of this section incorporates all of the components of the statewide system of early intervention services that are required under this part; and

(3) Subject to § 303.341(a), the statewide system will be in effect no later than the beginning of the State's fourth year of participation under this part.

(Authority: 20 U.S.C. 1475(b); 1478(a))

§ 303.149 Waiver of the policy adoption requirement for the third year.

The Secretary may award a grant to a State under this part for the third year even if the State has not adopted the policy required in § 303.148(b), if the State, in its third year application, includes a statement requesting a waiver, including—

(a) Information demonstrating that the State has made a good faith effort to adopt a policy that meets the requirements in § 303.148 (b)(1) and (b)(2);

(b) The reasons why the State was unable to meet the timeline for policy adoption, and the steps remaining before the policy will be adopted; and

(c) An assurance that, except as provided in § 303.341(a), the policy required in § 303.148 (b)(1) and (b)(2) will be adopted and go into effect no later than the beginning of the State's fourth year of participation under this part.

(Authority: 20 U.S.C. 1475(b)(2))

Note: An example of when the Secretary may grant a waiver is a situation in which a State's policy is awaiting action by the State legislature, but the legislative session does not commence until after the State's application must be submitted.

§ 303.150 Fourth year applications.

A State's application for the fourth year of participation under this part must contain—

(a) The information required in §§ 303.141 through 303.146;

(b) Information and assurances to demonstrate that—

(1) The requirements in § 303.148 (b)(1) and (b)(2) are met; and

(2) Subject to § 303.341(a), the statewide system of early intervention services is in effect, or will be in effect no later than the beginning of the fourth year of the State's participation under this part;

(c) Information and assurances about each component of the statewide system, as required in §§ 303.160 through 303.175; and

(d) Other information that the Secretary may require.

(Authority: 20 U.S.C. 1475(b), 1478(a))

§ 303.151 States with mandates as of September 1, 1986 to serve children with handicaps from birth.

(a) Subject to the requirements in paragraph (b) of this section, a State that has in effect a State law, enacted before September 1, 1986, that requires the provision of a free appropriate public education to children with handicaps from birth through two is eligible for a grant under this part for the first through the fourth year of its participation.

(b) A State meeting the conditions in paragraph (a) of this section must—

(1) Have on file with the Secretary a statement of assurances containing the information required in §§ 303.121 through 303.127;

(2) Submit an annual application for years one through four that contains the information in §§ 303.141 through 303.146;

(3) Meet the public participation requirements in §§ 303.110 through 303.113; and

(4) Provide a copy of the State law that requires the provision of a free appropriate public education to children with handicaps from birth through age two.

(c) In order to receive funds under this part for the fifth and succeeding years, the State must submit an application that meets the requirements in § 303.152.

(Authority: 20 U.S.C. 1475(d))

§ 303.152 Applications for year five and each year thereafter.

(a) *Fifth year application.* A State's application for the fifth year of its participation under this part must contain—

(1) The information required in §§ 303.141 through 303.146, and 303.160 through 303.175;

(2) Information and assurances demonstrating to the satisfaction of the Secretary that the statewide system of early intervention services required in this part is in effect;

(3) A policy that, no later than the beginning of the fifth year of the State's participation, appropriate early intervention services will be available to all children in the State who are eligible under this part and their families;

(4) A description of the services to be provided no later than the beginning of the fifth year, in accordance with the timetables under § 303.302; and

(5) Other information that the Secretary may require.

(b) *Applications for succeeding years.* A State's applications for the succeeding years of participation under this program must contain information and assurances demonstrating to the satisfaction of the Secretary that the State will continue to meet all applicable conditions in paragraph (a) of this section.

(Authority: 20 U.S.C. 1475(c); 1478(a); 1476(b)(2))

Application Requirements for Years Four, Five, and Thereafter Related to Components of a Statewide System

§ 303.160 State definition of developmental delay.

Each application must include the State's definition of "developmental delay." The definition must include the information required in § 303.300.

(Authority: 20 U.S.C. 1476(b)(1))

§ 303.161 Central directory.

Each application must include information and assurances demonstrating to the satisfaction of the Secretary that the State has developed a central directory of information that meets the requirements in § 303.301.

(Authority: 20 U.S.C. 1476(b)(7))

§ 303.162 Timetables for serving all eligible children.

Each application must include an assurance that the timetables required in § 303.302 have been established and will be met.

(Authority: 20 U.S.C. 1476(b)(2))

§ 303.163 Public awareness program.

Each application must include information and assurances demonstrating to the satisfaction of the Secretary that the State has established a public awareness program that meets the requirements in § 303.320.

(Authority: 20 U.S.C. 1476(b)(6))

§ 303.164 Comprehensive child find system.

Each application must include—

(a) The policies and procedures required in § 303.321(b);

(b) Information demonstrating that the requirements on coordination in § 303.321(c) are met;

(c) The referral procedures required in § 303.321(d), and either—

(1) A description of how the referral sources are informed about the procedures; or

(2) A copy of any memorandum or other document used by the lead agency to transmit the procedures to the referral sources; and

(d) The timelines in § 303.321(e).

(Authority: 20 U.S.C. 1476(b)(5))

§ 303.165 Evaluation, assessment, and nondiscriminatory procedures.

Each application must include information to demonstrate that the requirements in §§ 303.322 and 303.323 are met.

(Authority: 20 U.S.C. 1476(b)(3), 1477 (a)(1), (d)(2), (d)(3))

§ 303.166 Individualized family service plans.

Each application must include—

(a) An assurance that the IFSP requirements in § 303.341 will be met; and

(b) Information demonstrating that—

(1) The State's procedures for developing, reviewing, and evaluating IFSPs are consistent with the requirements in §§ 303.340, 303.342, 303.343, and 303.345; and

(2) The content of IFSPs used in the State is consistent with the requirements in § 303.344.

(Authority: 20 U.S.C. 1476(b)(4); 1477(d))

§ 303.167 Comprehensive system of personnel development (CSPD).

Each application must include the following:

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(a) Information to show that the requirements in § 303.360(a) are met. A State meets this requirement by either—

(1) Incorporating the State's CSPD procedures under Part B of the Act (34 CFR 300.380 through 300.387); or

(2) Including procedures that the State has developed.

(b) An assurance that the State's personnel development system will meet the requirements in § 303.360(b).

(Authority: 20 U.S.C. 1476(b)(6))

§ 303.166 Personnel standards.

(a) Each application must include policies and procedures that are consistent with the requirements in § 303.361.

(Authority: 20 U.S.C. 1476(b)(13))

§ 303.169 Procedural safeguards.

Each application must include procedural safeguards that—

(a) Are consistent with §§ 303.400 through 303.405, 303.420 through 303.425, and 303.460; and

(b) Incorporate either—

(1) The due process procedures in 34 CFR 300.506 through 300.512; or

(2) The procedures that the State has developed to meet the requirements in §§ 303.420(b) and 303.421 through 303.425.

(Authority: 20 U.S.C. 1476(b)(12))

§ 303.170 Supervision and monitoring of programs.

Each application must include information to show that the requirements in § 303.501 are met.

(Authority: 20. U.S.C. 1476(b)(9)(A))

§ 303.171 Lead agency procedures for resolving complaints.

Each application must include procedures that are consistent with the requirements in §§ 303.510 through 303.512.

(Authority: 20 U.S.C. 1476(b)(9))

§ 303.172 Policies and procedures related to financial matters.

Each application must include—

(a) Funding policies that meet the requirements in §§ 303.520 and 303.521;

(b) Information about funding sources, as required in § 303.522;

(c) Procedures to ensure the timely delivery of services, in accordance with § 303.525; and

(d) A procedure related to the timely reimbursement of funds under this part, in accordance with §§ 303.527(b) and 303.528.

(Authority: 20 U.S.C. 1476(b)(9)(D); (E); (b)(11); 1481)

§ 303.173. Interagency agreements; resolution of individual disputes.

Each application must include—

(a) A copy of each interagency agreement that has been developed under § 303.523; and

(b) Information to show that the requirements in § 303.524 are met.

(Authority: 20 U.S.C. 1476(b)(9)(E))

§ 303.174 Policy for contracting or otherwise arranging for services.

Each application must include a policy that meets the requirements in § 303.526.

(Authority: 20 U.S.C. 1476(b)(10))

§ 303.175 Data collection.

Each application must include procedures that meet the requirements in § 303.540.

(Authority: 20 U.S.C. 1476(b)(14))

Participation by the Secretary of the Interior

§ 303.180 Eligibility of the Secretary of the Interior for assistance.

(a) The Secretary is authorized to make payments to the Secretary of the Interior according to the need for assistance for the provison of early intervention services to children with handicaps and their families on reservations served by the elementary and secondary schools operated for Indians by the Department of the Interior.

(b) The Secretary of the Interior may receive an award under this part only after submitting an application that—

(1) Meets the conditions of assistance required by § 303.100; and

(2) Is approved by the Secretary.

(Authority: 20 U.S.C. 1484(b))

Subpart C—Procedures for Making Grants to States

§ 303.200 Formula for State allocations.

(a) For each fiscal year, from the aggregate amount of funds available under this part for distribution to the States, the Secretary allots to each State an amount that bears the same ratio to the aggregate amount as the number of infants and toddlers in the State bears to the number of infants and toddlers in all States.

(b) For the purpose of allotting funds to the States under paragraph (a) of this section—

(1) "Aggregate amount" means the amount available for distribution to the States after the Secretary determines the amount of payments to be made to the Secretary of the Interior under § 303.203 and to the jurisdictions under § 303.204;

(2) "Infants and toddlers" means children from birth through age two in the general population, based on the most recently satisfactory data as determined by the Secretary; and

(3) "State" means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Authority: 20 U.S.C. 1484(c))

§ 303.201 Distribution of allotments from non-participating States.

If a State elects not to receive its allotment, the Secetary reallots those funds among the remaining States, in accordance with § 303.200(a).

(Authority: 20 U.S.C. 1484(d))

§ 303.202 Minimum grant that a State may receive.

No State receives less than 0.5 percent of the aggregate amount available under § 303.200.

(Authority: 20 U.S.C. 1484(d))

§ 303.203 Payments to the Secretary of the Interior.

Subject to § 303.180(a), the amount of payment to the Secretary of the Interior for any fiscal year is 1.25 percent of the aggregate amount available to States after the Secretary determines the amount of payments to be made to the jurisdictions under § 303.204.

(Authority: 20 U.S.C. 1484(b))

§ 303.204 Payments to the jurisdictions.

From the sums appropriated to carry out this part for any fiscal year, the Secretary may reserve up to 1 percent for payments to the jurisdictions listed in § 303.2 in accordance with their respective needs.

(Authority: 20 U.S.C. 1484(a))

Subpart D—Program and Service Components of a Statewide System of Early Intervention Services

General

§ 303.300 State definition of developmental delay.

Each statewide system of early intervention services (system) must include the definition of "developmental delay" that will be used by the State in carrying out programs under this part. The State's definition must—

(a) Specify that a child may be determined to be eligible if the child has a delay, in accordance with paragraphs (b) and (c) of this section, in one or more of the following developmental areas: Cognitive development; physical development, including vision and hearing; language and speech development; psychosocial development; or self-help skills;

(b) Designate the levels of functioning, or other criteria, that will be used in determining a child's eligibility as a result of developmental delay; and

(c) Describe the procedures the State will use to determine the existence of a developmental delay in each developmental area included in paragraph (a) of this section.

(Authority: 20 U.S.C. 1472(1), 1476(b)(1))

Note: Under § 303.322(c)(3), States are required to ensure that informed clinical opinion is used in determining a child's eligibility under this part. Informed clinical opinion is especially important if there are no standardized measures, or the standardized procedures are not appropriate for a given age or developmental area. If a given standardized procedure is considered to be appropriate, a State's criteria could include percentiles or percentages of levels of functioning on standardized measures.

§ 303.301 Central directory.

(a) Each system must include a central directory of information about—

(1) Public and private early intervention services, resources, and experts available in the State;

(2) Research and demonstration projects being conducted in the State; and

(3) Professional and other groups that provide assistance to children eligible under this part and their families.

(b) The information required in paragraph (a) of this section must be in sufficient detail to—

(1) Ensure that the general public will be able to determine the nature and scope of the services and assistance available from each of the sources listed in the directory; and

(2) Enable the parent of a child eligible under this part to contact, by telephone or letter, any of the sources listed in the directory.

(c) The central directory must be—

(1) Updated at least annually; and

(2) Accessible to the general public.

(d) To meet the requirements in paragraph (c)(2) of this section, the lead agency shall arrange for copies of the directory to be available—

(1) In each geographic region of the State, including rural areas; and

(2) In places and a manner that ensure accessibility by persons who are handicapped.

(Authority: 20 U.S.C. 1476(b)(7))

Note: Examples of appropriate groups that provide assistance to eligible children and their families include parent support groups and advocate associations.

§ 303.302 Timetables for serving all eligible children.

Each system must include timetables for ensuring that appropriate early intervention services will be available to all infants and toddlers with handicaps no later than the beginning of the fifth year of the State's participation under this part.

(Authority: 20 U.S.C. 1476(b)(2))

Identification and Evaluation

§ 303.320 Public awareness program.

Each system must include a public awareness program that focuses on the early identification of children who are eligible to receive early intervention services under this part. The public awareness program must provide for informing the public about—

(a) The State's early intervention program;

(b) The child find system, including—

(1) The purpose and scope of the system;

(2) How to make referrals; and

(3) How to gain access to a comprehensive, multidisciplinary evaluation and other early intervention services; and

(c) The central directory.

(Authority: 20 U.S.C. 1476(b)(6))

Note 1: An effective public awareness program is one that does the following:

1. Provides a continuous, ongoing effort that is in effect throughout the State, including rural areas;

2. Provides for the involvement of, and communication with, major organizations throughout the State that have a direct interest in this part, including public agencies at the State and local level, private providers, professional associations, parent groups, advocate associations, and other organizations;

3. Has coverage broad enough to reach the general public, including those who are handicapped; and

4. Includes a variety of methods for informing the public about the provisions of this part.

Note 2: Examples of methods for informing the general public about the provisions of this part include: (1) Use of television, radio, and newspaper releases, (2) pamphlets and posters displayed in doctor's offices, hospitals, and other appropriate locations, and (3) the use of a toll-free telephone service.

§ 303.321 Comprehensive child find system.

(a) *General.* (1) Each system must include a comprehensive child find system that is consistent with Part B of the Act (see 34 CFR 300.128), and meets the requirements in paragraphs (b) through (e) of this section.

(2) The lead agency, with the advice and assistance of the Council, shall be responsible for implementing the child find system.

(b) *Procedures.* The child find system must include the policies and procedures that the State will follow to ensure that—

(1) All infants and toddlers in the State who are eligible for services under this part are identified, located, and evaluated; and

(2) An effective method is developed and implemented to determine which children are receiving needed early intervention services, and which children are not receiving those services.

(c) *Coordination.* (1) The lead agency, with the assistance of the Council, shall ensure that the child find system under this part is coordinated with all other major efforts to locate and identify children conducted by other State agencies responsible for administering the various education, health, and social service programs relevant to this part, including efforts in the—

(i) Assistance to States Program under Part B of the Act;

(ii) Maternal and Child Health program under Title V of the Social Security Act;

(iii) Medicaid's Early Periodic Screening, Diagnosis and Treatment (EPSDT) program under Title XIX of the Social Security Act;

(vi) Developmental Disabilities Assistance and Bill of Rights Act; and

(v) Head Start Act.

(2) The lead agency, with the advice and assistance of the Council, shall take steps to ensure that—

(i) There will not be unnecessary duplication of effort by the various agencies involved in the State's child find system under this part; and

(ii) The State will make use of the resources available through each public agency in the State to implement the child find system in an effective manner.

(d) *Referral procedures.* (1) The child find system must include procedures for use by primary referral sources for referring a child to the appropriate public agency within the system for—

(i) Evaluation and assessment, in accordance with §§ 303.322 and 303.323; or

(ii) As appropriate, the provision of services, in accordance with § 303.342(a) or § 303.345.

(2) The procedures required in paragraph (b)(1) of this section must—

(i) Provide for an effective method of making referrals by primary referral sources; and

(ii) Ensure that referrals are made no more than two working days after a child has been identified.

(3) As used in paragraph (d)(1) of this section, "primary referral sources" includes—

(i) Hospitals, including prenatal and postnatal care facilities;
(ii) Physicians;
(iii) Parents;
(iv) Day care programs;
(v) Local educational agencies;
(vi) Public health facilities;
(vii) Other social service agencies; and
(viii) Other health care providers.

(e) *Timelines for public agencies to act on referrals.* Once the public agency receives a referral, it shall, within 45 days—

(i) Complete the evaluation and assessment activities in § 303.322; and

(ii) Hold an IFSP meeting, in accordance with § 303.342.

(Authority: 20 U.S.C. 1476(b)(3))

Note: In developing the child find system under this part, States should consider (1) tracking systems based on high-risk conditions at birth, and (2) other activities that are being conducted by various agencies or organizations in the State.

§ 303.322 Evaluation and assessment.

(a) *General.* (1) Each system must include the performance of a timely, comprehensive, multidisciplinary evaluation of each child, birth through age two, referred for evaluation, including assessment activities related to the child and the child's family.

(2) The lead agency shall be responsible for ensuring that the requirements of this section are implemented by all affected public agencies and service providers in the State.

(b) *Definitions of evaluation and assessment.* As used in this part—

(1) "Evaluation" means the procedures used by appropriate qualified personnel to determine a child's initial and continuing eligibility under this part, consistent with the definition of "infants and toddlers with handicaps" in § 303.16, including determining the status of the child in each of the developmental areas in paragraph (c)(3)(ii) of this section.

(2) "Assessment" means the ongoing procedures used by appropriate qualified personnel throughout the period of a child's eligibility under this part to identify—

(i) The child's unique needs;

(ii) The family's strengths and needs related to development of the child; and

(iii) The nature and extent of early intervention services that are needed by the child and the child's family to meet the needs in paragraphs (b)(2)(i) and (b)(2)(ii) of this section.

(c) *Evaluation and assessment of the child.* The evaluation and assessment of each child must—

(1) Be conducted by personnel trained to utilize appropriate methods and procedures;

(2) Be based on informed clinical opinion; and

(3) Include the following:

(i) A review of pertinent records related to the child's current health status and medical history.

(ii) An evaluation of the child's level of functioning in each of the following developmental areas:

(A) Cognitive development.

(B) Physical development, including vision and hearing.

(C) Language and speech development.

(D) Psychosocial development.

(E) Self-help skills.

(iii) An assessment of the unique needs of the child in terms of each of the developmental areas in paragraph (c)(3)(ii) of this section, including the identification of services appropriate to meet those needs.

(d) *Family assessment.* (1) Family assessments under this part must be designed to determine the strengths and needs of the family related to enhancing the development of the child.

(2) Any assessment that is conducted must be voluntary on the part of the family.

(3) If an assessment of the family is carried out, the assessment must—

(i) Be conducted by personnel trained to utilize appropriate methods and procedures;

(ii) Be based on information provided by the family through a personal interview; and

(iii) Incorporate the family's description of its strengths and needs related to enhancing the child's development.

(e) *Timelines.* (1) Except as provided in paragraph (e)(2) of this section, the evaluation and initial assessment of each child (including the family assessment) must be completed within the 45-day time period required in § 303.321(e).

(2) The lead agency shall develop procedures to ensure that in the event of exceptional circumstances that make it impossible to complete the evaluation and assessment within 45 days (e.g., if a child is ill), public agencies will—

(i) Document those circumstances; and

(ii) Develop and implement an interim IFSP, to the extent appropriate and consistent with § 303.345 (b)(1) and (b)(2).

(Authority: 20 U.S.C. 1476(b)(3), 1477 (a)(1), (d)(2), (d)(3))

Note: This section combines into one overall requirement the provisions on evaluation and assessment under the following sections of the Act: (1) Section 676(b)(3) (timely, comprehensive, multidisciplinary evaluation), and (2) Section 677(a)(1) (multidisciplinary assessment).

The section also requires that the evaluation-assessment process be broad enough to obtain information required in the IFSP concerning (1) the family's strengths and needs related to the development of the child (section 677(d)(2)), and (2) the child's functioning level in each of the five developmental areas (section 677(d)(1)).

§ 303.323 Nondiscriminatory procedures.

Each lead agency shall adopt nondiscriminatory evaluation and assessment procedures. The procedures must provide that public agencies responsible for the evaluation and assessment of children and families under this part shall ensure, at a minimum, that—

(a) Tests and other evaluation materials and procedures are administered in the native language of the parents or other mode of communication, unless it is clearly not feasible to do so;

(b) Any assessment and evaluation procedures and materials that are used are selected and administered so as not to be racially or culturally discriminatory;

(c) No single procedure is used as the sole criterion for determining a child's eligibility under this part; and

(d) Evaluations and assessments are conducted by qualified personnel.

(Authority: 20 U.S.C. 1476(b)(3), 1477 (a)(1), (d)(2), (d)(3))

Individualized Family Service Plans (IFSPs)

§ 303.340 General.

(a) Each system must include policies and procedures regarding individualized family service plans (IFSPs) that meet the requirements of this section and §§ 303.341 through 303.346.

(b) As used in this part, "individualized family service plan" and "IFSP" mean a written plan for providing early intervention services to a child eligible under this part and the child's family. The plan must—

(1) Be developed jointly by the family and appropriate qualified personnel involved in the provision of early intervention services;

(2) Be based on the multidisciplinary evaluation and assessment of the child, and the assessment of the child's family, as required in § 303.322; and

(3) Include services necessary to enhance the development of the child and the capacity of the family to meet the special needs of the child.

Lead agency responsibility. The lead agency shall ensure that an IFSP is developed and implemented for each eligible child, in accordance with the requirements of this part. If there is a dispute between agencies as to who has responsibility for developing or implementing an IFSP, the lead agency shall resolve the dispute, or assign responsibility.

(Authority: 20 U.S.C. 1477)

Note: In instances where an eligible child must have both an IFSP and an individualized service plan under another Federal program, it may be possible to develop a single consolidated document, provided that it (1) contains all of the required information in § 303.344, and (2) is developed in accordance with the requirements of this part.

§ 303.341 Meeting the IFSP requirements for years four and five.

(a) *Fourth year requirements.* No later than the beginning of the fourth year of a State's participation under this part, the State shall ensure that—

(1) Evaluations and assessments are conducted in accordance with § 303.322

(2) An IFSP is developed, in accordance with §§ 303.342(a) and 303.343 (a), for each child determined to be eligible under this part and the child's family; and

(3) Case management services are available to each eligible child and the child's family.

(b) *Requirements for the fifth year.* No later than the beginning of the fifth year of a State's participation under this part, a current IFSP must be in effect and implemented for each eligible child and the child's family.

(Authority: 20 U.S.C. 1476 (b)(2), (b)(4), 1477 (a)(2), (c))

§ 303.342 Procedures for IFSP development, review, and evaluation.

(a) *Meeting to develop initial IFSP; timelines.* For a child who has been evaluated for the first time and determined to be eligible, a meeting to develop the initial IFSP must be conducted within the 45 day time period in § 303.321(e).

(b) *Periodic review.* (1) A review of the IFSP for a child and the child's family must be conducted every six months, or more frequently if conditions warrant, or if the family requests such a review. The purpose of the periodic review is to determine—

(i) The degree to which progress toward achieving the outcomes is being made; and

(ii) Whether modification or revision of the outcomes or services is necessary.

(2) The review may be carried out by a meeting or by another means that is acceptable to the parents and other participants.

(c) *Annual meeting to evaluate the IFSP.* A meeting must be conducted on at least an annual basis to evaluate the IFSP for a child and the child's family, and, as appropriate, to revise its provisions. The results of any current evaluations conducted under § 303.322(c), and other information available from the ongoing assessment of the child and family, must be used in determining what services are needed and will be provided.

(d) *Accessibility and convenience of meetings.* (1) IFSP meetings must be conducted—

(i) In settings and at times that are convenient to families; and

(ii) In the native language of the family or other mode of communication used by the family, unless it is clearly not feasible to do so.

(2) Meeting arrangements must be made with, and written notice provided to, the family and other participants early enough before the meeting date to ensure that they will be able to attend.

(Authority: 20 U.S.C. 1477)

Note: The requirement for the annual evaluation incorporates the periodic review process. Therefore, it is necessary to have only one separate periodic review each year (i.e., six months after the initial and subsequent annual IFSP meetings), unless conditions warrant otherwise.

Because the needs of infants and toddlers change so rapidly during the course of a year, certain evaluation procedures may need to be repeated before conducting the periodic reviews and annual evaluation meetings in paragraphs (b) and (c) of this section.

§ 303.343 Participants in IFSP meetings and periodic reviews.

(a) *Initial and annual IFSP meetings.* (1) Each initial meeting and each annual meeting to evaluate the IFSP must include the following participants:

(i) The parent or parents of the child.

(ii) Other family members, as requested by the parent, if feasible to do so;

(iii) An advocate or person outside of the family, if the parent requests that the person participate.

(iv) The case manager that has been working with the family since the initial referral of the child for evaluation, or that has been designated by the public agency to be responsible for implementation of the IFSP.

(v) A person or persons directly involved in conducting the evaluations and assessments in § 303.322.

(vi) As appropriate, persons who will be providing services to the child or family.

(2) If a person listed in paragraph (a)(1)(v) of this section is unable to attend a meeting, arrangements must be made for the person's involvement through other means, including—

(i) Participating in a telephone conference call;

(ii) Having a knowledgeable authorized representative attend the meeting; or

(iii) Making pertinent records available at the meeting.

(b) *Periodic review.* Each periodic review must provide for the participation of persons in paragraphs (a)(1)(i) through (a)(1)(iv) of this section. If conditions warrant, provisions must be made for the participation of other representatives identified in paragraph (a) of this section.

(Authority: 20 U.S.C. 1477(b))

§ 303.344 Content of IFSP.

(a) *Information about the child's status.* (1) The IFSP must include a statement of the child's present levels of physical development (including vision, hearing, and health status), cognitive development, language and speech development, psychosocial development, and self-help skills.

(2) The statement in paragraph (a)(1) of this section must be based on professionally acceptable objective criteria.

(b) *Family information.* With the concurrence of the family, the IFSP must include a statement of the family's strengths and needs related to enhancing the development of the child.

(c) *Outcomes.* The IFSP must include a statement of the major outcomes expected to be achieved for the child and family, and the criteria, procedures, and timelines used to determine—

(1) The degree to which progress toward achieving the outcomes is being made; and

(2) Whether modifications or revisions of the outcomes or services are necessary.

(d) *Early intervention services.* (1) The IFSP must include a statement of the specific early intervention services necessary to meet the unique needs of the child and the family to achieve the outcomes identified in paragraph (c) of this section, including—

(i) The frequency, intensity, location, and method of delivering the services; and

(ii) The payment arrangements, if any.

(2) As used in paragraph (d)(1)(i) of this section—

(i) "Frequency" and "intensity" mean the number of days or sessions that a service will be provided, the length of time the service is provided during each session, and whether the service is

provided on an individual or group basis;

(ii) "Location" means, subject to § 303.12(b), where a service is provided (e.g., in the child's home, early intervention centers, hospitals and clinics, or other settings, as appropriate to the age and needs of the individual child); and

(iii) "Method" means how a service is provided.

(e) *Other services.* (1) To the extent appropriate, the IFSP must include—

(i) Medical and other services that the child needs, but that are not required under this part; and

(ii) If necessary, the steps that will be undertaken to secure those services through public or private resources.

(2) The requirement in paragraph (e)(1) of this section does not apply to routine medical services (e.g., immunizations and "well-baby" care), unless a child needs those services and the services are not otherwise available or being provided.

(f) *Dates; duration of services.* The IFSP must include the projected dates for initiation of the services in paragraph (d)(1) of this section, and the anticipated duration of those services.

(g) *Case manager.* (1) The IFSP must include the name of the case manager from the profession most immediately relevant to the child's or family's needs, who will be responsible for the implementation of the IFSP and coordination with other agencies and persons.

(2) In meeting the requirements in paragraph (g)(1) of this section, the public agency may—

(i) Assign the same case manager to be responsible for implementing a child's and family's IFSP who was appointed at the time that the child was initially referred for evaluation; or

(ii) Appoint a new case manager.

(3) As used in paragraph (g)(1) of this section, the term "profession" includes "case management."

(h) *Transition at age three.* (1) The IFSP must include the steps to be taken to support the transition of the child, upon reaching age three, to—

(i) Preschool services under Part B of the Act, to the extent that those services are considered appropriate; or

(ii) Other services that may be available, if appropriate.

(2) The steps required in paragraph (h)(1) of this section include—

(i) Discussions with, and training of, parents regarding future placements and other matters related to the child's transition;

(ii) Procedures to prepare the child for changes in service delivery, including steps to help the child adjust to, and function in, a new setting; and

(iii) With parental consent, the transmission of information about the child to the local educational agency, to ensure continuity of services, including evaluation and assessment information required in § 303.322, and copies of IFSPs that have been developed and implemented in accordance with §§ 303.340 through 303.346.

(Authority: 20 U.S.C. 1477(d))

Note 1: Throughout the process of developing and implementing IFSPs for an eligible child and the child's family, it is important for agencies to recognize the variety of roles that family members play in enhancing the child's development. It also is important that the degree to which the needs of the family are addressed in the IFSP process are determined in a collaborative manner with the full agreement and participation of the parents of the child. Parents retain the ultimate decision in determining whether they, their child, or other family members will accept or decline services under this part.

Note 2: The early intervention services in paragraph (d) of this section are those services that a State is required to provide to a child in accordance with § 303.12.

The "other services in paragraph (e) of this section are services that a child or family needs, but that are neither required nor covered under this part. While listing the non-required services in the IFSP does not mean that those services must be provided, their identification can be helpful to both the child's family and the case manager, for the following reasons: First, the IFSP would provide a comprehensive picture of the child's total service needs (including the need for medical and health services, as well as early intervention services). Second, it is appropriate for the case manager to assist the family in securing the non-required services (e.g., by (1) determining if there is a public agency that could provide financial assistance, if needed, (2) assisting in the preparation of eligibility claims or insurance claims, if needed, and (3) assisting the family in seeking out and arranging for the child to receive the needed medical-health services).

Thus, to the extent appropriate, it is important for a State's procedures under this part to provide for ensuring that other needs of the child, and of the family related to enhancing the development of the child, such as medical and health needs, are considered and addressed, including determining (1) who will provide each service, and when, where, and how it will be provided, and (2) how the service will be paid for (e.g., through private insurance, an existing Federal-State funding source, such as Medicaid or EPSDT, or some other funding arrangement).

Note 3: Although the IFSP must include information about each of the items in paragraphs (b) through (h) of this section, this does not mean that the IFSP must be a detailed, lengthy document. It might be a brief outline, with appropriate attachments that address each of the points in the paragraphs under this section. It is important for the IFSP itself to be clear about (a) what services are to be provided, (b) the actions that are to be taken by the case manager in initiating those services, and (c) what actions will be taken by the parents.

Note 4: It is important for the lead agency to take steps to ensure a smooth and effective transition of children eligible under this part to special education and related services under Part B of the Act. This is especially critical if the lead agency and the State educational agency (SEA) are not the same agency in a State. In this situation, agreement between the two agencies regarding the responsibilities of each agency during the transition period is very important. Agreements could be in the form of existing or new interagency agreements. Examples of important areas that might be addressed in such agreements include the following:

1. The assignment of financial and other responsibilities during transition, including the (a) performance of evaluations, (b) development of individualized education programs (IEPs) that meet the requirements in 34 CFR 300.340 through 300.349, if appropriate, and (c) provision of services on a continuous, uninterrupted basis.

2. Procedures to ensure a smooth transfer of responsibilities from local service providers to local educational agencies (LEAs), including any requirements for continued services under this part that are the responsibility of the LEAs.

3. Other provisions necessary to ensure effective transition of children under this part to preschool services under Part B of the Act. Agreements that are made between the two agencies need to be flexible enough to ensure that gaps in services will not occur.

§ 303.345 Provision of services before evaluation and assessment are completed.

Early intervention services for an eligible child and the child's family may commence before the completion of the evaluation and assessment in § 303.322, if the following conditions are met:

(a) Parental consent is obtained.

(b) An interim IFSP is developed that includes—

(1) The name of the case manager who will be responsible, consistent with § 303.344(g), for implementation of the interim IFSP and coordination with other agencies and persons; and

(2) The early intervention services that have been determined to be needed immediately by the child and the child's family.

(c) The evaluation and assessment are completed within the time period required in § 303.322(e).

(Authority: 20 U.S.C. 1477(c))

Note: This section is intended to accomplish two specific purposes: (1) To facilitate the provision of services in the event that a child has obvious immediate needs that are identified, even at the time of referral (e.g., a physician recommends that a child with cerebral palsy begin receiving physical therapy as soon as possible); and (2) to ensure that the requirements for the timely evaluation and assessment are not circumvented.

§ 303.346 Responsibility and accountability.

Each agency or person who has a direct role in the provision of early intevention services is responsible for making a good faith effort to assist each eligible child in achieving the outcomes in the child's IFSP. However, Part H of the Act does not require that any agency or person be held accountable if an eligible child does not achieve the growth projected in the child's ISFP.

(Authority: 20 U.S.C. 1477)

Personnel Training and Standards

§ 303.360 Comprehensive system of personnel development.

(a) Each system must include a comprehensive system of personnel development. Subject to paragraph (b) of this section, a State's current personnel development system required under Part B of the Act (34 CFR 300.380 through 300.387) may be used to satisfy this requirement.

(b) The personnel development system under this part must—

(1) Provide for preservice and inservice training to be conducted on an interdisciplinary basis, to the extent appropriate;

(2) Provide for the training of a variety of personnel needed to meet the requirements of this part, including public and private providers, primary referral sources, paraprofessionals, and persons who will serve as case managers; and

(3) Ensure that the training provided relates specifically to—

(i) Meeting the interrelated psychosocial, health, developmental, and educational needs of eligible children under this part; and

(ii) Assisting families in enhancing the development of their children, and in participating fully in the development and implementation of IFSPs.

(Authority: 20 U.S.C. 1476(b)(8))

§ 303.361 Personnel standards.

(a) As used in this part—

(1) "Appropriate professional requirements in the State" means entry level requirements that—

(i) Are based on the highest requirements in the State applicable to the profession or discipline in which a person is providing early intervention services; and

(ii) Establish suitable qualifications for personnel providing early intervention services under this part to eligible children and their families, who are served by State, local, and private agencies.

(2) "Highest requirements in the State applicable to a specific profession or discipline" means the highest entry-level academic degree needed for any State approved or recognized certification, licensing, registration, or other comparable requirements that apply to that profession or discipline.

(3) "Profession or discipline" means a specific occupational category that—

(i) Provides early intervention services to children eligible under this part and their families;

(ii) Has been established or designated by the State; and

(iii) Has a required scope of responsibility and degree of supervision.

(4) "State approved or recognized certification, licensing, registration, or other comparable requirements" means the requirements that a State legislature either has enacted or has authorized a State agency to promulgate through rules to establish the entry-level standards for employment in a specific profession or discipline in that State.

(b)(1) Each statewide system must have policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained.

(2) The policies and procedures required in paragraph (b)(1) of this section must provide for the establishment and maintenance of standards that are consistent with any State approved or recognized certification, licensing, or other comparable requirements that apply to the profession or discipline in which a person is providing early intervention services.

(c) To the extent that a State's standards for a profession or discipline, including standards for temporary or emergency certification, are not based on the highest requirements in the State applicable to a specific profession or discipline, the State's application for assistance under this part must include the steps the State is taking, the procedures for notifying public agencies and personnel of those steps, and the timelines it has established for the retraining or hiring of personnel that meet appropriate professional requirements in the State.

(d)(1) In meeting the requirements in paragraphs (b) and (c) of this section, a determination must be made about the status of personnel standards in the State. That determination must be based on current information that accurately describes, for each profession or discipline in which personnel are providing early intervention services, whether the applicable standards are consistent with the highest requirements in the State for that profession or discipline.

(2) The information required in paragraph (d)(1) of this section must be on file in the lead agency, and available to the public.

(e) In identifying the "highest requirements in the State" for purposes of this section, the requirements of all State statutes and the rules of all State agencies applicable to serving children eligible under this part and their families must be considered.

(Authority: 20 U.S.C. 1476(b)(13))

Note: This section requires that a State use its own existing highest requirements to determine the standards appropriate to personnel who provide early intervention services under this part. The regulations do not require States to set any specified training standard, such as a master's degree, for employment of personnel who provide services under this part.

The regulations permit each State to determine the specific occupational categories required to provide early intervention services to children eligible under this part and their families, and to revise or expand these categories as needed. The professions or disciplines need not be limited to traditional occupational categories.

Subpart E—Procedural Safeguards

General

§ 303.400 General responsibility of lead agency for procedural safeguards.

Each lead agency shall be responsible for—

(a) Establishing or adopting procedural safeguards that meet the requirements of this subpart, and

(b) Ensuring effective implementation of the safeguards by each public agency in the State that is involved in the provision of early intervention services under this part.

(Authority: 20 U.S.C. 1480)

§ 303.401 Definitions of consent, native language, and personally identifiable information.

As used in this subpart—

(a) "Consent" means that—

(1) The parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language or other mode of communication;

(2) The parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

(3) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time;

(b) "Native language," when used with reference to persons of limited English proficiency, means the language or mode of communication normally used by the parent of a child eligible under this part;

(c) "Personally identifiable" means that information includes—

(1) The name of the child, the child's parent, or other family member;

(2) The address of the child;

(3) A personal identifier, such as the child's or parent's social security number; or

(4) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

(Authority: 20 U.S.C. 1480)

§ 303.402 Opportunity to examine records.

In accordance with the confidentiality procedures in the regulations under Part B of the Act (CFR 300.560 through 300.576), the parents of a child eligible under this part must be afforded the opportunity to inspect and review records relating to evaluations and assessments, eligibility determination, development and implementation of IFSPs, individual complaints dealing with the child, and any other area under this part involving records about the child and the child's family.

(Authority: 20 U.S.C. 1480(3))

§ 303.403 Prior notice; native language.

(a) *General.* Written prior notice must be given to the parents of a child eligible under this part a reasonable time before a public agency or service provider proposes, or refuses, to initiate or change the identification, evaluation, or placement of the child, or the provision of appropriate early intervention services to the child and the child's family.

(b) *Consent of notice.* The notice must be in sufficient detail to inform the parents about—

(1) The action that is being proposed or refused;

(2) The reasons for taking the action; and

(3) All procedural safeguards that are available under this part.

(c) *Native language.* (1) The notice must be—

(i) Written in language understandable to the general public; and

(ii) Provided in the native language of the parents, unless it is clearly not feasible to do so.

(2) If the native language or other mode of communication of the parent is not a written language, the public agency, or designated service provider, shall take steps to ensure that—

(i) The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;

(ii) The parent understands the notice; and

(iii) There is written evidence that the requirements of this paragraph have been met.

(3) If a parent is deaf or blind, or has no written language, the mode of communication must be that normally used by the parent (such as sign language, braille, or oral communication).

(Authority: 20 U.S.C. 1480 (5), (6))

§ 303.404 Parent consent.

(a) Written parental consent must be obtained before—

(1) Conducting the initial evaluation and assessment of a child under § 303.322; and

(2) Initiating the provision of early intervention services for the first time (i.e., at the time that the initial IFSP is developed).

(b) If consent is not given, the public agency shall make reasonable efforts to ensure that the parent—

(1) Is fully aware of the nature of the evaluation and assessment or the services that would be available; and

(2) Understands that the child will not be able to receive the evaluation and assessment or services unless consent is given.

(Authority: 20 U.S.C. 1480)

Note 1: In addition to the consent requirements in this section, other consent requirements (regarding personally identifiable information) are included in the confidentiality requirements in the regulations under Part B of the Act (34 CFR 300.571), and in 34 CFR Part 99 (Privacy Rights of Parents and Students), both of which apply to this part.

Note 2: The Part B regulations contain procedures to enable public agencies to initiate a due process hearing or use other procedures to override a parent's refusal to consent to the initial evaluation of the parent's child. Those procedures apply to eligible children under this part, since the Part B evaluation requirement applies to all handicapped children in a State, including infants and toddlers.

§ 303.405 Surrogate parents.

(1) *General.* Each lead agency shall ensure that the rights of children eligible under this part are protected if—

(1) No parent (as defined in § 303.18) can be identified;

(2) The public agency, after reasonable efforts, cannot discover the whereabouts of a parent; or

(3) The child is a ward of the State under the laws of that State.

(b) *Duty of lead agency and other public agencies.* The duty of the lead agency, or other public agency under paragraph (a) of this section, includes the assignment of an individual to act as a surrogate for the parent. This must include a method for—

(1) Determining whether a child needs a surrogate parent; and

(2) Assigning a surrogate parent to the child.

(c) *Criteria for selecting surrogates.* (1) The lead agency or other public agency may select a surrogate parent in any way permitted under State law.

(2) Public agencies shall ensure that a person selected as a surrogate parent—

(i) Has no interest that conflicts with the interests of the child he or she represents; and

(ii) Has knowledge and skills that ensure adequate representation of the child.

(d) *Non-employee requirement; compensation.* (1) A person assigned as a surrogate parent may not be an employee of any agency involved in the provision of early intervention or other services to the child.

(2) A person who otherwise qualifies to be a surrogate parent under paragraph (d)(1) of this section is not an employee solely because he or she is paid by a public agency to serve as a surrogate parent.

(e) *Responsibilities.* A surrogate parent may represent a child in all matters related to—

(1) The evaluation and assessment of the child;

(2) Development and implementation of the child's IFSPs, including annual evaluations and periodic reviews;

(3) The ongoing provision of early intervention services to the child; and

(4) Any other rights established under this part.

(Authority: 20 U.S.C. 1480(4))

Impartial Procedures for Resolving Individual Child Complaints

§ 303.420 Administrative resolution of individual child complaints by an impartial decision-maker.

Each system must include written procedures for the timely administrative resolution of individual child complaints by parents concerning any of the matters in § 303.403(a). A State may meet this requirement by—

(a) Adopting the due process procedures in 34 CFR 300.506 through 300.512; or

(b) Developing procedures that—

(1) Meet the requirements in §§ 303.421 through 303.425; and

(2) Provide parents a means of filing a complaint.

(Authority: 20 U.S.C. 1480(1))

Note 1: Sections 303.420 through 303.425 are concerned with the adoption of impartial procedures for resolving individual child complaints (i.e., complaints that generally affect only a single child or the child's family). These procedures require the appointment of an impartial decision-maker, who is not an employee of any agency involved in the provision of early intervention services, to resolve a dispute between the parent and the public agency. The agency is bound by the decision of the impartial decision-maker, and is required to implement the decision, unless it is reversed on appeal.

A different type of administrative procedure is included in §§ 303.510 through 303.512 of Subpart F. Under those procedures, the lead agency is responsible for (1) investigating any complaint that it receives (including individual child complaints, and those that are systemic in nature), and (2) resolving the complaint, if the agency determines that a violation has occurred.

Note 2: It is important that the administrative procedures developed by a State be designed to result in speedy resolution of complaints. An infant's or toddler's development is so rapid that undue delay could be potentially harmful.

In an effort to facilitate resolution, States may wish, with parental concurrence, to offer mediation as an intervening step prior to implementing the procedures in this section. Although mediation is not required under either Part B or Part H of the Act, some States have reported that mediations conducted under Part B have led to speedy resolution of differences between parents and agencies, without the development of an adversarial relationship and with minimal emotional stress to parents.

While a State may elect to adopt a mediation process, the State cannot require that parents use that process. Mediation may not be used to deny or delay a parent's rights under this part. The complaint must be resolved, and a written decision made, within the 30-day timeline in § 303.423.

§ 303.421 Appointment of an impartial person.

(a) *Qualifications and duties.* An impartial person must be appointed to implement the complaint resolution process in this subpart. The person must—

(1) Have knowledge about the provisions of this part, and the needs of, and services available for, eligible children and their families; and

(2) Perform the following duties:

(i) Listen to the presentation of relevant viewpoints about the complaint, examine all information relevant to the issues, and seek to reach a timely resolution of the complaint.

(ii) Provide a record of the proceedings, including a written decision.

(b) *Definition of impartial.* (1) As used in this section, "impartial" means that the person appointed to implement the complaint resolution process—

(i) Is not an employee of any agency or program involved in the provision of early intervention services or care of the child; and

(ii) Does not have a personal or professional interest that would conflict with his or her objectivity in implementing the process.

(2) A person who otherwise qualifies under paragraph (b)(1) of this section is not an employee of an agency solely because the person is paid by the agency to implement the complaint resolution process.

(Authority: 20 U.S.C. 1480(1))

§ 303.422 Parent rights in administrative proceedings.

(a) *General.* Each lead agency shall ensure that the parents of children eligible under this part are afforded the rights in paragraph (b) of this section in any administrative proceedings carried out under § 303.420.

(b) *Rights.* Any parent involved in an administrative proceeding has the right to—

(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services for children eligible under this part;

(2) Present evidence, and confront, cross-examine, and compel the attendance of witnesses;

(3) Prohibit the introduction of any evidence at the proceeding that has not been disclosed to the parent at least five days before the proceeding;

(4) Obtain a written or electronic verbatim transcription of the proceeding; and

(5) Obtain written findings of fact and decisions.

(Authority: 20 U.S.C. 1480)

§ 303.423 Convenience of proceedings; timelines.

(a) Any proceeding for implementing the complaint resolution process in this subpart must be carried out at a time and place that is reasonably convenient to the parents.

(b) Each lead agency shall ensure that not later than 30 days after the receipt of a parent's complaint, the impartial proceeding required under this subpart is completed and a written decision mailed to each of the parties.

(Authority: 20 U.S.C. 1480(1))

Note: Under Part B of the Act, States are allowed 45 days to conduct an impartial due process hearing (i.e., within 45 days after the receipt of a request for a hearing, a decision is reached and a copy of the decision is mailed to each of the parties). (See 34 CFR 300.512.) Thus, if a State, in meeting the requirements of § 303.420, elects to adopt the due process procedures under Part B, that State would also have 45 days for hearings. However, any State in that situation is encouraged (but not required) to accelerate the timeliness for the due process hearings for children who are eligible under this part—from 45 days to the 30-day timeline in this section. Because the needs of children in the birth through two age range change so rapidly, quick resolution of complaints is important.

§ 303.424 Civil action.

Any party aggrieved by the findings and decision regarding an administrative complaint has the right to bring a civil action in State or Federal court under section 680(1) of the Act.

(Authority: 20 U.S.C. 1480(1))

§ 303.425 Status of a child during proceedings.

(a) During the pendency of any proceeding involving a complaint under this subpart, unless the public agency and parents of a child otherwise agree, the child must continue to receive the appropriate early intervention services currently being provided.

(b) If the complaint involves an application for initial services under this part, the child must receive those services that are not in dispute.

(Authority: 20 U.S.C. 1480(7))

Confidentiality

§ 303.460 Confidentiality of information.

(a) Each State shall adopt or develop policies and procedures that the State will follow in order to ensure the protection of any personally identifiable information collected, used, or maintained under this part.

(b) These policies and procedures must meet the requirements in 34 CFR 300.560 through 300.576, with the following modifications:

(1) Any reference to the "State educational agency" means the lead agency under this part.

(2) Any reference to "education of handicapped children," "education of all handicapped children," or "provision of free public education to all handicapped children" means the provision of services to children eligible under this part and their families.

(3) Any reference to "local educational agencies" and

"intermediate educational units" means local service providers.

(4) Any reference to 34 CFR 300.128 means §§ 303.164 and 303.321.

(5) Any reference to 34 CFR 300.129 means this section (§ 303.460).

(Authority: 20 U.S.C. 1480(2), 1483)

Note: With the modifications in paragraphs (b)(1) through (b)(5) of this section, the confidentiality requirements in the regulations implementing Part B of the Act (34 CFR 300.560 through 300.576) are to be used by public agencies to meet the confidentiality requirements under Part H of the Act and this section (303.460).

The Part B provisions incorporate by reference the regulations in 34 CFR Part 99 (Privacy Rights of Parents and Students); therefore, those regulations also apply to this part.

Subpart F—State Administration

General

§ 303.500 Lead agency establishment or designation.

Each system must include a single line of responsibility in a lead agency that—

(a) Is established or designated by the Governor; and

(b) Is responsible for the administration of the system, in accordance with the requirements of this part.

(Authority: 20 U.S.C. 1476(b)(9))

§ 303.501 Supervision and monitoring of programs.

(a) *General.* Each lead agency is responsible for the general administration, supervision, and monitoring of programs and activities receiving assistance under this part, to ensure compliance with the provisions of this part.

(b) *Methods of administering programs.* In meeting the requirement in paragraph (a) of this section, the lead agency shall adopt and use proper methods of administering each program, including—

(1) Monitoring of agencies, institutions, and organizations receiving assistance under this part;

(2) Enforcement of any obligations imposed on those agencies under Part H of the Act and these regulations;

(3) Providing technical assistance, if necessary, to those agencies, institutions, and organizations; and

(4) Correction of deficiencies that are identified through monitoring.

(Authority: 20 U.S.C. 1476(b)(9)(A))

Lead Agency Procedures for Resolving Complaints

§ 303.510 Adopting complaint procedures.

Each lead agency shall adopt written procedures for—

(a) Receiving and resolving any complaint that one or more requirements of this part are not being met; and

(b) Conducting an independent on-site investigation of a complaint if the lead agency determines that an on-site investigation is necessary.

(Authority: 20 U.S.C. 1476(b)(9))

Note: Because of the interagency nature of Part H of the Act, complaints received under these regulations could concern violations by (1) any public agency in the State that receives funds under this part (e.g., the lead agency and the Council), (2) other public agencies that are involved in the State's early intervention program, or (3) private service providers that receive Part H funds on a contract basis from a public agency to carry out a given function or provide a given service required under this part. These complaint procedures are in addition to any other rights under State or Federal law. Complaints under these procedures are filed with the lead agency.

§ 303.511 An organization or individual may file a complaint.

An individual or organization may file a written signed complaint with the lead agency. The complaint must include—

(a) A statement that the State has violated a requirement of Part H of the Act or the regulations in this part; and

(b) The facts on which the complaint is based.

(Authority: 20 U.S.C. 1476(b)(9))

§ 303.512 Minimum complaint procedures.

Each lead agency shall include the following in its complaint procedures:

(a) A time limit of 60 days after the agency receives the complaint—

(1) To carry out an independent on-site investigation, if necessary; and

(2) To resolve the complaint.

(b) An extension of the time limit under paragraph (a) of this section only if exceptional circumstances exist with respect to a particular complaint.

(c) The right to request the Secretary to review the final decision of the lead agency.

(Authority: 20 U.S.C. 1476(b)(9))

Policies and Procedures Related to Financial Matters

§ 303.520 Policies related to payment for services.

(a) *General.* Each lead agency is responsible for establishing State policies related to how services to children eligible under this part and their families will be paid for under the State's early intervention program. The policies must—

(1) Meet the requirements in paragraph (b) of this section; and

(2) Be reflected in the interagency agreements required in § 303.523.

(b) *Specific funding policies.* A State's policies must—

(1) Specify which functions and services will be provided at no cost to all parents;

(2) Specify which functions or services, if any, will be subject to a system of payments, and include—

(i) Information about the payment system and schedule of sliding fees that will be used; and

(ii) The basis and amount of payments; and

(3) Include an assurance that—

(i) Fees will not be charged for the services that a child is otherwise entitled to receive at no cost to parents; and

(ii) The inability of the parents of an eligible child to pay for services will not result in the denial of services to the child or the child's family.

(c) *Procedures to ensure the timely provision of services.* No later than the beginning of the fifth year of a State's participation under this part, the State shall implement a mechanism to ensure that no services that a child is entitled to receive are delayed or denied because of disputes between agencies regarding financial or other responsibilities.

(Authority: 20 U.S.C. 1476(b)(9))

§ 303.521 Fees.

(a) *General.* A State may establish, consistent with § 303.12(a)(3)(iv), a system of payments for early intervention services, including a schedule of sliding fees.

(b) *Functions not subject to fees.* The following are required functions that must be carried out at public expense by a State, and for which no fees may be charged to parents:

(1) Implementing the child find requirements in § 303.321;

(2) Evaluation and assessment, as included in § 303.322, and including the functions related to evaluation and assessment in § 303.12.

(3) Case management, as included in §§ 303.6 and 303.344(g).

(4) Administrative and coordinative activities related to—

(i) The development, review, and evaluation of IFSPs in §§ 303.340 through 303.346; and

(ii) Implementation of the procedural safeguards in Subpart E, and the other components of the statewide system of early intervention services in Subparts D and F.

(c) *States with mandates to serve children from birth.* If a State has in effect a State law requiring the provision of a free appropriate public education to children with handicaps from birth, the State may not charge parents for any

services (e.g., physical or occupational therapy) required under that law that are provided to children eligible under this part and their families.

(Authority: 20 U.S.C. 1472(2))

§ 303.522 Identification and coordination of resources.

(a) Each lead agency is responsible for—

(1) The identification and coordination of all available resources for early intervention services within the State, including those from Federal, State, local, and private sources; and

(2) Updating the information on the funding sources in paragraph (a)(1) of this section, if a legislative or policy change is made under any of those sources.

(b) The Federal funding sources in paragraph (a)(1) of this section include—

(1) Title V of the Social Security Act (relating to Maternal and Child Health);

(2) Title XIX of the Social Security Act (relating to the general Medicaid Program, and EPSDT);

(3) The Head Start Act;

(4) Parts B and H of the EHA;

(5) Subpart 2 of Part D of Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, as amended;

(6) The Developmentally Disabled Assistance and Bill of Rights Act (Pub. L. 94–103); and

(7) Other Federal programs.

(Authority: 20 U.S.C. 1476(b)(9)(B))

§ 303.523 Interagency agreements.

(a) *General.* Each lead agency is responsible for entering into formal interagency agreements with other State-level agencies involved in the State's early intervention program. Each agreement must meet the requirements in paragraphs (b) through (d) of this section.

(b) *Financial responsibility.* Each agreement must define the financial responsibility of the agency for paying for early intervention services (consistent with State law and the requirements of this part).

(c) *Procedures for resolving disputes.* (1) Each agreement must include procedures for achieving a timely resolution of intra- and interagency disputes about payments for a given service, or disputes about other matters related to the State's early intervention program. Those procedures must include a mechanism for making a final determination that is binding upon the agencies involved.

(2) The agreement with each agency must—

(i) Permit the agency to resolve its own internal disputes (based on the agency's procedures that are included in the agreement), so long as the agency acts in a timely manner; and

(ii) Include the process that the lead agency will follow in achieving resolution of intra-agency disputes, if a given agency is unable to resolve its own internal disputes in a timely manner.

(d) *Additional components.* Each agreement must include any additional components necessary to ensure effective cooperation and coordination among all agencies involved in the State's early intervention program.

(Authority: 20 U.S.C. 1476(b)(9)(F))

Note: A State may meet the requirement in paragraph (c)(1) of this section in any way permitted under State law, including (1) providing for a third party (e.g., an administrative law judge) to review a dispute and render a decision, (2) assignment of the responsibility by the Governor to the lead agency or Council, or (3) having the final decision made directly by the Governor.

§ 303.524 Resolution of disputes.

(a) Each lead agency is responsible for resolving individual disputes, in accordance with the procedures in § 303.523(c)(2)(ii).

(b) (1) During the pendency of a dispute, the lead agency shall—

(i) Assign financial responsibility to an agency, subject to the provisions in paragraph (b)(2) of this section; or

(ii) Pay for the service, in accordance with the "payor of last resort" provisions in § 303.527.

(2) If, in resolving the dispute, the lead agency determines that the assignment of financial responsibility under paragraph (b)(1)(i) of this section was inappropriately made, the lead agency shall—

(i) Reassign the responsibility to the appropriate agency; and

(ii) Make arrangements for reimbursement of any expenditures incurred by the agency originally assigned responsibility.

(c) To the extent necessary to ensure compliance with its action in paragraph (b)(2) of this section, the lead agency shall—

(1) Refer the dispute to the Council or the Governor; and

(2) Implement the procedures in § 303.525.

(Authority: 20 U.S.C. 1476(b)(9)(E))

§ 303.525 Delivery of services in a timely manner.

Each lead agency is responsible for the development of procedures to ensure that services are provided to eligible children and their families in a timely manner, pending the resolution of disputes among public agencies or service providers.

(Authority: 20 U.S.C. 1476(b)(9)(D))

§ 303.526 Policy for contracting or otherwise arranging for services.

Each system must include a policy pertaining to contracting or making other arrangements with public or private service providers to provide early intervention services. The policy must include—

(a) A requirement that all early intervention services must meet State standards and be consistent with the provisions of this part;

(b) The mechanisms that the lead agency will use in arranging for these services, including the process by which awards or other arrangements are made; and

(c) The basic requirements that must be met by any individual or organization seeking to provide these services for the lead agency.

(Authority: 20 U.S.C. 1476(b)(10))

Note: In implementing the statewide system, States may elect to continue using agencies and individuals in both the public and private sectors that have previously been involved in providing early intervention services, so long as those agencies and individuals meet the requirements of this part.

§ 303.527 Payor of last resort.

(a) *Nonsubstitution of funds.* Except as provided in paragraph (b)(1) of this section, funds under this part may not be used to satisfy a financial commitment for services that would otherwise have been paid for from another public or private source but for the enactment of Part H of the Act. Therefore, funds under this part may be used only for early intervention services that an eligible child needs but is not currently entitled to under any other Federal, State, local, or private source.

(b) *Interim payments; reimbursement.* (1) If necessary to prevent a delay in the timely provision of services to an eligible child or the child's family, funds under this part may be used to pay the provider of services, pending reimbursement from the agency or entity that has utlimate responsibility for the payment.

(2) Payments under paragraph (b)(1) of this section may be made for—

(i) Early intervention services, as described in § 303.12;

(ii) Eligible health services (see § 303.13); and

(iii) Other functions and services authorized under this part, including child find, and evaluation and assessment.

(3) The provisions of paragraph (b)(1) of this section do not apply to medical

services or "well-baby" health care (see § 303.13(c)(1)).

(c) *Non-reduction of benefits.* Nothing in this part may be construed to permit a State to reduce medical or other assistance available or to alter eligibility under Title V of the Social Security Act (SSA) (relating to maternal and child health) or Title XIX of the SSA (relating to Medicaid for children eligible under this part) within the State.

(Authority: 20 U.S.C. 1481)

Note: The Congress intended that the enactment of Part H not be construed as a license to any agency (including the lead agency and other agencies in the State) to withdraw funding for services that currently are or would be made available to eligible children but for the existence of the program under this part. Thus, the Congress intended that other funding sources would continue, and that there would be greater coordination among agencies regarding the payment of costs.

The Congress further clarified its intent concerning payments under Medicaid by including in section 411(k)(13) of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100-360) an amendment to Title XIX of the Social Security Act. That amendment states, in effect, that nothing in this title shall be construed as prohibiting or restricting, or authorizing the Secretary of Health and Human Services to prohibit or restrict, payment under subsection (a) for medical assistance for covered services furnished to a handicapped infant or toddler because such services are included in the child's IFSP adopted pursuant to Part H of the EHA.

§ 303.526 Reimbursement procedure.

Each system must include a procedure for securing the timely reimbursement of funds used under this part, in accordance with § 303.527(b).

(Authority: 20 U.S.C. 1476(b)(11))

Reporting Requirements

§ 303.540 Data collection.

(a) Each system must include the procedures that the State uses to compile data on the statewide system. The procedures must—

(1) Include a process for—

(i) Collecting data from various agencies and service providers in the State;

(ii) Making use of appropriate sampling methods, if sampling is permitted; and

(iii) Describing the sampling methods used, if reporting to the Secretary; and

(2) Provide for reporting the data required under section 676(b)(14) of the Act, and other information that the Secretary may require, including information required under section 618 of the Act.

(b) The information required in paragraph (a)(2) of this section must be provided at the time and in the manner specified by the Secretary.

(Authority: 20 U.S.C. 1476(b)(14))

Use of Funds for State Administration

§ 303.560 Use of funds by the lead agency.

A lead agency may use funds under this part that are reasonable and necessary for administering the State's early intervention program for infants and toddlers with handicaps.

(Authority: 20 U.S.C. 1473; 1476(b)(9))

Subpart G—State Interagency Coordinating Council

General

§ 303.600 Establishment of Council.

(a) A State that desires to receive financial assistance under this part shall establish a State Interagency Coordinating Council composed of 15 members.

(b) The Council and the chairperson of the Council must be appointed by the Governor. The Governor shall ensure that the membership of the Council reasonably represents the population of the State.

(Authority: 20 U.S.C. 1462(a))

Note: The number of members on the Council was established by statute. However, to the extent that a State determines that full and effective representation requires more than 15 members, it would be appropriate for the Council to request the Governor to appoint additional members of an ex officio basis, or, with the permission of the Governor, for the Council chairperson to take that action.

In addition to appointing ex officio members to the Council, consideration might be given to establishing (1) regional committees, or (2) special committees to address key issues related to the effective implementation of this part.

To the extent that additional members are added—either on an ex officio basis or through the establishment of regional or special committees—the Council may wish to ensure that the general proportion of parents on the Council (as specified in § 303.601(a)) is maintained. However, to avoid a potential conflict of interest, it is recommended that parent representatives who are selected to serve on the Council not be employees of any agency involved in providing early intervention services.

In any deliberations by the Council for increasing the number of people who have a role in Council activities, it is suggested that consideration be given to maintaining an appropriate balance between the urban and rural communities of the State.

§ 303.601 Composition.

The Council must be composed of the following:

(a) At least—

(1) Three members who are parents of infants and toddlers with handicaps or of handicapped children aged three through six;

(2) Three public or private providers of early intervention services;

(3) One representative from the State legislature; and

(4) One person in personnel preparation.

(b) Other members representing each of the appropriate agencies involved in the provision of or payment for early intervention services to eligible children and their families, and others selected by the Governor.

(Authority: 20 U.S.C. 1462(b))

Note: In order to enhance the effectiveness of the Council in carrying out its functions under this part, it is recommended that efforts be made to include representatives of each State agency or other major service provider that has a role in the State's early intervention program, such as the state health and education departments, health care providers, and other key providers. It is important for State agency representatives to have the authority to effectively represent their agencies.

A representative of the SEA who is responsible for, or knowledgeable about, the Preschool Grants Program under Section 619 of the Act (34 CFR Part 301) would be an appropriate person to be appointed as a regular member of the Council. Inclusion of such a person will help to ensure the smooth transition of children under this part who will require special education and related services under this program.

It is recommended that the person selected to represent the field of personnel preparation have expertise in early intervention programs for children eligible under this part and their families.

§ 303.602 Use of funds by the Council.

(a) *General.* Subject to the approval by the Governor, the Council may use funds under this part to hire staff and obtain the services of professional, technical, and clerical personnel, as may be necessary to carry out the performance of its functions under this part.

(b) *Compensation and expenses of Council members.* (1) Except as provided in paragraph (b)(2) of this section, Council members shall serve without compensation from funds available under this part, but the Council shall reimburse its members for reasonable and necessary expenses for attending meetings and performing Council duties. Funds provided under this part may be used for this purpose.

(2) Funds under this part may be used to pay compensation if—

(i) A Council member is not employed; or

(ii) A Council member must forfeit wages from other employment when participating in official Council functions.

(Authority: 20 U.S.C. 1479; 1482(c), (d))

§ 303.603 Meetings.

(a) The Council shall meet at least quarterly and in such places as it deems necessary.

(b) The meetings must—

(1) Be publicly announced sufficiently in advance of the dates they are to be held to ensure that all interested parties have an opportunity to attend; and

(2) To the extent appropriate, be open and accessible to the general public.

(c) Interpreters for persons who are deaf and other necessary services must be provided at Council meetings, both for Council members and participants. The Council may use funds under this part to pay for those services.

(Authority: 20 U.S.C. 1482(c), (d))

§ 303.604 Conflict of interest.

No member of the Council may cast a vote on any matter that would provide direct financial benefit to that member or otherwise give the appearance of a conflict of interest.

(Authority: 20 U.S.C. 1842(f))

Functions of the Council

§ 303.650 General.

Each Council shall—

(a) Advise and assist the lead agency in the development and implementation of the policies that constitute the statewide system;

(b) Assist the lead agency in achieving the full participation, coordination, and cooperation of all appropriate public agencies in the State;

(c) Assist the lead agency in the effective implementation of the statewide system, by establishing a process that includes—

(1) Seeking information from service providers, case managers, parents, and others about any Federal, State, or local policies that impede timely service delivery; and

(2) Taking steps to ensure that any policy problems identified under paragraph (c)(1) of this section are resolved; and

(d) To the extent appropriate, assist the lead agency in the resolution of disputes.

(Authority: 20 U.S.C. 1482(e))

§ 303.651 Advising and assisting the lead agency in its administrative duties.

Each Council shall advise and assist the lead agency in the—

(a) Identification of sources of fiscal and other support for services for early intervention programs under this part;

(b) Assignment of financial responsibility to the appropriate agency; and

(c) Promotion of the interagency agreements under § 303.523.

(Authority: 20 U.S.C. 1482(e)(1))

§ 303.652 Applications.

Each Council shall advise and assist the lead agency in the preparation of applications under this part, and amendments to those applications.

(Authority: 20 U.S.C. 1482(e)(2))

§ 303.653 Annual report to the Secretary.

(a) Each Council shall—

(1) Prepare an annual report to the Governor and to the Secretary on the status of early intervention programs operated within the State for children eligible under this part and their families; and

(2) Submit the report to the Secretary by a date that the Secretary establishes.

(b) Each annual report must contain the information required by the Secretary for the year for which the report is made.

(Authority: 20 U.S.C. 1482(e)(3))

Existing Councils

§ 303.670 Use of existing councils.

If a State established a Council before September 1, 1986, that is comparable to the requirements for a Council in this subpart (e.g., in terms of its composition, meetings, and functions), that Council is considered to be in compliance with these requirements. However, within four years after the date that a State accepts funds under this part, the State shall establish a Council that complies in full with the requirements of this subpart.

(Authority: 20 U.S.C. 1482(g))

Note: This Appendix will not appear in the Code of Federal Regulations.

Appendix A—Analysis of Comments and Changes

The following is an analysis of the comments received on the Notice of Proposed Rulemaking (NPRM), and the changes made in the regulations since publication of the NPRM. Substantive issues, including comments on the preamble that applied to the text of the regulations, are included under the subpart, subheading, and section to which they pertain in these final regulations. Therefore, unless otherwise indicated, all section numbers used in the Appendix refer to sections in the final regulations. Technical and other minor changes are not addressed.

To assist readers in finding where each section in the NPRM is located in the final regulation, a redesignation table has been included in Appendix B.

Subpart A—General

Purpose of the early intervention program for infants and toddlers with handicaps (§303.1)

Comment: There was a general theme throughout the comments that the regulations should express the broader purposes of the Act (e.g., those related to improving the total functioning of eligible children, and enhancing the abilities of parents and other family members to meet the developmental needs of their children).

Discussion: The Secretary believes that these final regulations provide the background and context for the implementation of this program, and reflect the broader purposes of the Act, especially in terms of supporting the role of parents and other family members in enhancing the development of infants and toddlers with handicaps.

Change: No change has been made in § 303.1. However, throughout these final regulations, greater emphasis has been given to (1) the importance of families of eligible children in enhancing the development of their children (see, for example, §§ 303.22(2), 303.340(b), and 303.344(b)), and (2) parents as decision-makers in determining the extent to which they, their eligible children, and other family members accept or decline services under this part (see, for example, §§ 303.345, 303.404, and 303.422).

Eligible applicants for an award (§ 303.2)

Comment: Some commenters recommended that the Department of Defense Schools (DODS) be listed specifically as an eligible applicant in this section to ensure that children whose families are in the military receive early intervention services.

Discussion: The list of eligible applicants for an award is taken from the Act, and includes the 50 States, Puerto Rico, the District of Columbia, and eligible territories. There is no statutory basis for adding other applicants for an award. Eligible children whose families are in the military will be able to receive services based upon where they are domiciled.

Change: No change has been made with respect to children of military families. However, a sentence has been added to § 303.2 to clarify that the future eligibility of the Republic of Palau will

be governed by the terms of the Compact of Free Association.

Activities that may be supported under this part (§ 303.3)

Comment. A few commenters requested that this section be amended to permit funds under this part to be used in coordination with funds under the Preschool Grants program, 34 CFR Part 301, for the planning and development of a statewide comprehensive delivery system for children from birth through age five.

Discussion: Although funds under this part must be used only for activities related to infants and toddlers with handicaps, a broader provision is contained under the Preschool Grants program. Under that authority, States may use up to 20% of their annual grant funds (1) for planning and developing a comprehensive delivery system of services for children from birth through five, and (2) for providing direct and support services to children with handicaps, aged three through five (see 34 CFR 301.30).

Funds under this part may be used in coordination with the Preschool Grant funds for planning and implementation activities for children from birth through age five, so long as (1) there is a clear audit trail on each funding source, and (2) the funds under this part are used only for activities for children birth through age two.

Change: None.

Comment: Commenters requested that a definition of "direct services" be added. Commenters also asked for guidance about what would constitute allowable administrative costs for activities to plan, develop, and implement the statewide system.

Discussion: Information about allowable administrative costs is included in the EDGAR regulations, 34 CFR Part 80. With respect to "direct services," the Secretary feels that a definition in the regulations is not necessary. Direct services are those that would be provided directly to a child (e.g., physical therapy or occupational therapy), or to the family (e.g., counseling or transportation).

Change: None.

Comment: A commenter stated that the use of the term "private sources" in the Act should not be construed to require private nonprofit organizations to maintain their fiscal effort or to prevent States from using funds under this part if those funds are withdrawn. The commenter further stated that the inclusion of "private sources" was intended as an expression of insurers continue to pay for early intervention services.

Discussion: The Secretary agrees, that, although private organizations are encouraged to continue to provide early intervention services to eligible children and their families, they cannot be required to do so. States are not prohibited from using funds under this part to pay for services to children and families that were previously funded by private organizations, if the private funds are withdrawn.

Change: None.

Applicable regulations (§ 303.4)

Comment: May commenters requested that the applicable provisions from other regulations (i.e., the Education Department General Administrative Regulations (EDGAR), and those implementing Part B of the EHA) be incorporated in this part, rather than making reference to those provisions, as was done in the NPRM. Some of the commenters stated that having a self-contained set of regulations would facilitate administration of the program. A few commenters pointed out that simply referencing the other regulations places an undue burden on parents, because they are forced to search out the other documents. Other commenters recommended that certain of the Part B definitions that were referenced in § 303.16 of the NPRM (e.g., "public agency," "qualified," and certain related services definitions) be modified to reflect the special needs of infants and toddlers.

Discussion: The Secretary agrees with commenters that, to the extent possible, these regulations should contain all relevant information within one document. The Secretary has determined that complaint procedures, like those in EDGAR, should be added in this part, because the Department has proposed to delete those procedures from Part 76. However, it is not feasible to include all applicable provisions of EDGAR.

The Secretary believes that the EDGAR definition of "State" that was referenced in §303.15 of the NPRM should be deleted, and that the definition of "State" in section 602(a)(6) of the Act should be added to these regulations, because that definition includes the specific States and jurisdictions covered under this part for program operation purposes. Thus, each "State" included in the definition must meet all substantive requirements under this part. A special definition of "State" is included in §303.200(b)(2) for the purpose of making grants under this

Although it is not feasible to include all of the applicable provisions of Part B, the Secretary has determined that a number of provisions should be added, particularly all definitions that were incorporated by reference in §303.16 of the NPRM, and certain procedural requirements. To the extent appropriate, modifications have been made in those provisions to reflect the special requirements of infants and toddlers with handicaps and their families.

Change: The following changes have been made: (1) Minimum State complaint procedures, similar to those in EDGAR, have been added at §§303.510 through 303.512; (2) The EDGAR definition of "State", as referenced in §303.15 of the NPRM, has been deleted; (3) The definition of "State" from Section 602(a)(6) of the Act has been added at §303.22 with appropriate modifications; and (4) A number of provisions from the Part B regulations have been added to this part, including (a) certain procedural safeguards that have either been adopted with modifications or adapted (see discussion on §303.400 in this Appendix), (b) definitions that have been adopted verbatim (i.e., "include; including" (§303.15), and "parent" (§303.18)), and (c) definitions that have been adapted (i.e., "public agency" (§303.20), and "qualified" (§303.21)).

Definitions of related services that were referenced in §303.16 of the NPRM have also been adapted and included under this part (see discussion on §303.12 in this Appendix).

Definitions

Case management (§303.6)

Comment: Many commenters recommended that the term "enable" be used in the definition of case management to emphasize the need to strengthen the ability of families to carry out discussion and functions related to case management.

Discussion: The Secretary agrees that "enable" connotes an active role for families and should be included in the regulations.

Change: The definition of case management has been amended to include "enable."

Comment: A number of commenters requested that the specific case management activities described in the legislative history of Pub. L. 99-457 be added to the case manager's duties and responsibilities in §303.6. These included: (1) assuring the timely delivery of services, (2) informing parents of the availability of advocacy services, and

active, ongoing process of continuously seeking the appropriate services or situations to benefit the development of each infant or toddler being served for the duration of the child's eligibility.

Discussion: The Secretary agrees that the specific case management activities included in the legislative history of the Act should be added to the definition in §303.6, in order to reflect more accurately the duties and responsibilities of case managers under this part.

Change: Section 303.6 has been amended to include the requested activities.

Comment: Many commenters requested that the final regulations include additional clarification regarding the role of parents in terms of case management activities.

Discussion: The Secretary agrees that more clarification is needed. Under this part, case managers, as public agency employees, serve as "system advocates" for families, and function in a facilitating role, as needed (e.g., to assist parents in obtaining services for their child and other family members). However, case management is not a static function, nor is it expected to be the same at every stage of a child's development or for every family. The kinds of assistance that a family needs during the neonatal stage of a child's development may be different than their needs later in the child's life; and some parents may want, and be able, to play a more active role than others. Effective case management must be responsive to individual differences and family needs.

Case management will be most effective if case managers and parents are able to work cooperatively together. For this reason, States should take all responsible efforts to ensure that a well-functioning collaborative working relationship is created.

Change: None.

Comment: Some commenters requested that the regulations provide that parents be appointed as case managers for their children.

Discussion: The Secretary believes that the Congress included the requirements for case managers and case management in order to ensure that, because of the interagency, multidisciplinary nature of Part H, the burden of seeking out and obtaining services guaranteed under this program would be placed upon appropriate public agencies in the State and not on the parents of eligible infants and toddlers. Thus, the statute requires that each IFSP must include "the name of the case manager from the profession most immediately relevant to the infants and toddlers or family's needs who will be responsible for the implementation of the plan and coordination with other agencies and persons."

The Secretary believes that the statutory requirements evidence a clear congressional intent that the responsibility for "case management," as that term is defined in § 303.6, be assigned to an appropriate, qualified public agency employee. It is also clear that the Congress did not intend for parents to have to assume this responsibility.

Although parents may not be named as case managers, the Secretary recognizes that parents (1) must be actively involved in making sure that their eligible children and other family members receive all of the services and protections that they are entitled to under this part, and (2) are major decision-makers in deciding the extent to which they will participate in, and receive services under, this program.

Change: None.

Comment: Several commenters asked for regulations or clarifying notes that provide for case managers to (1) coordinate services across agencies, and (2) have the authority to ensure services. Some commenters requested that language be added specifying that it is not necessary to develop a new case management system if a system is already in place.

Discussion: The Secretary believes that it is the lead agency's responsibility, with the assistance of the Council, to ensure that (1) services are coordinated across agencies, and (2) case managers are able to carry out case management on an interagency basis, as needed. The Secretary agrees that case managers, because of their facilitating role, must be able to coordinate services for a child across agencies, in order to ensure the timely delivery of those services. He also agrees that new case management systems do not need to be developed, if a system that meets the requirements of this part is already in place.

Change: A provision has been added at § 303.6(c)(2) to require that States design their policies and procedures to enable case managers to effectively carry out case management functions on an interagency basis.

Comment: A number of commenters requested that provisions be added to ensure that case managers have the necessary qualifications to carry out effectively their responsibilities under this part.

Discussion: The Secretary agrees that, because of the crucial role that case managers play under this program, the qualifications for case managers should be added to the regulations. The Secretary believes that, to perform effectively the tasks required of them, case managers should have demonstrated knowledge and understanding about (1) the children who are eligible under this part, (2) the provisions of this part, and (3) the State's early intervention service delivery system.

Change: Section 303.6 has been amended to include the qualifications of case managers.

Comment: Several commenters recommended that additional duties be added to case management, including (1) offering guidance to families regarding financial planning and payment, and (2) continuing case management throughout and beyond the transition period when a child moves to services under Part B.

Discussion: In carrying out case management responsibilities under this part, it is expected that case managers would provide guidance to families, as needed, regarding financial planning and payment to enable a child to receive early intervention services. Thus, an additional requirement is not necessary in the regulations. Case managers are responsible for assisting families in planning services for the transition to services under Part B. Part H does not authorize the continuation of case management beyond the transition period when a child moves to services under Part B. (See comments and discussion on § 303.344 in this Appendix.)

Change: None.

Children (§ 303.7)

Comment: Some commenters expressed concern that the term "infants and toddlers with handicaps," as used throughout the NPRM and in the definition of "children," could unnecessarily stigmatize children, especially "at risk" children who might be eligible for services, but are not handicapped.

Discussion: The Secretary believes that the commenters' concerns are valid, because of the potential for children to be stigmatized.

Change: Beginning with § 303.1, and throughout the final regulations, the term "children eligible under this part" has generally replaced the term "infants and toddlers with handicaps." A note has been added to § 303.16 to address the concern raised by the commenters.

Council (§ 303.8)

Comment: One commenter recommended that the name of the State Interagency Coordinating Council be changed to Coordinating Council on Early Intervention Services.

Discussion: The name of the Council is statutory; there is no basis for a change.

Change: None.

Early intervention program (§ 303.11)

Comment: A number of commenters recommended that the regulations acknowledge that a comprehensive system of early intervention services should encompass all appropriate services needed by an eligible child and the child's family, not just those under Part H of the Act.

Discussion: The Secretary believes that the Congress intended that the early intervention program established under this part should encompass activities that extend beyond the provision of discrete early intervention services. He believes that the program should include the total effort in a State that is directed toward meeting the needs of children eligible under this part and their families, including (1) those functions that must be carried out as part of a State's responsibilities under this part (e.g., evaluation and assessment activities, case management, and administrative-coordinative activities related to the development, review, and evaluation of IFSPs, and implementation of the procedural safeguards); (2) specific early intervention services, as defined in § 303.12; and (3) medical and other services that an eligible child and the child's family may need, but which are not required under this part.

Change: A definition of "early intervention program" has been added at § 303.11.

Early intervention services (§ 303.12)

Comment: Several commenters asked for clarification about the sliding fees provision in the definition of early intervention services. Clarification was specifically requested regarding whether some services, such as identification, assessment, and screening, are excluded from the system of payments. Some commenters stated that early intervention services that are presently provided at no cost to parents in States with mandates should continue to be provided at no cost to parents. Another commenter requested that a minimum level of services be established for all eligible children that would be provided at no cost to parents.

Discussion: Since any system of payments, including a schedule of sliding fees, will in part depend on the laws of individual States, the Secretary intends to leave decisions regarding the establishment of applicable criteria to the States. The Secretary believes, however, that there are certain activities and functions (e.g., case management) that are not subject to a system of payments, and must be provided at no cost to parents. Also, to the extent that early identification, screening, and assessment services are required under the identification, location, and evaluation provision of Part B of the Act, those services must be provided at no cost.

In States with mandates to provide free appropriate public education (FAPE) to children from birth, those services included under part B that are applicable to children under Part H (e.g., physical and occupational therapy) must also be provided at no cost under this part.

Change: Section 303.521 has been added to delineate requirements related to the charging of fees.

Comment: Commenters requested that the definition of "early intervention services" be amended to state that early intervention services are designed to meet the needs of the family related to enhancing the child's development and are chosen in collaboration with parents.

Discussion: The Secretary agrees that, because of the nature of the program, the definition of early intervention services should be revised as recommended by the commenters.

Change: A change has been made at § 303.12(a) (1) and (2).

Comment: Many commenters stated that definitions of certain related services in the Part B regulations are not directly applicable to infants and toddlers with handicaps, and recommended that separate definitions of early intervention services be developed for this part. Commenters requested that the lists of early intervention services and personnel be expanded. Some commenters noted that "nutrition" was omitted as an early intervention service in the NPRM, even though the statute included nutritionists in the list of qualified personnel, and they recommended that it be included in the final regulations. Many commenters requested that services relating to identifying and serving children with vision and hearing disorders be added to the regulations. Other commenters requested an expanded list of types of services, such as transportation, transition, and home and family support services.

Discussion: The Secretary agrees that the definitions of related services in the Part B regulations are not directly applicable to this part, and that specific definitions of early intervention services should be added. He believes that these definitions should be based on current definitions used by practitioners. The Secretary also believes that the regulations should specify the general role and responsibilities of service providers that apply to each area of early intervention services (i.e., (1) consulting with parents, other service providers, and representatives of appropriate community agencies to ensure the effective provision of services in that area, (2) training parents and others regarding the provision of those services, and (3) participating in the multidisciplinary team's assessment of a child and the child's family, and in the development of integrated goals and outcomes for the IFSP).

The Secretary believes that nutrition should be added to the list of early intervention services, because of its importance to infants and toddlers with handicaps, and because nutritionists are included in the statute's list of qualified personnel. In addition, he believes that, because of the particular importance of transportation and its impact on access to other services, transportation should be included in the list of early intervention services. The Secretary agrees with commenters that other types of services and personnel are also important, but does not believe that it is necessary to add all potential services and personnel to the list. The lists of early intervention services and personnel are not exhaustive and may include other services and personnel (e.g., vision and hearing services). This is made clear in a note following the sections in both the NPRM and these final regulations.

Change: The following changes have been made: (1) Section 303.16 of the NPRM, which incorporated by reference applicable definitions from the Part B regulations, has been deleted; (2) a paragraph has been added at § 303.12(c) describing the general role of service providers; (3) a definition of each early intervention service in Section 672(2) of the Act has been added at § 303.12(d); (4) nutrition and transportation have also been added; (5) a definition of transportation has been added at § 303.23 and (6) a note has been added following § 303.12 to include examples of other early intervention services and personnel.

Comment: Some commenters were concerned that the Part B definition of "qualified" that was incorporated by reference in the NPRM was not appropriate, because of the reference to special education and State educational agency standards.

Discussion: The Secretary agrees that the Part B definition of "qualified" is not entirely appropriate for this part, and that it should be revised to specifically address the provision of early intervention services.

Change: The reference to the Part B definition of "qualified" has been deleted. A definition of "qualified" that is appropriate to this part has been added at § 303.21.

Comment: Many commenters (1) Expressed concern that the NPRM did not include a provision related to "least restrictive environment" (LRE) and to the providing of services in integrated settings with children who are not handicapped, and (2) requested that a statement concerning the provision of services in community-based settings be added under the definition of early intervention services.

Discussion: The Secretary agrees with the commenters that the final regulations should address the concept of providing services to infants and toddlers and their families in settings that do not isolate the child or family members from activities or settings in which children without handicaps and their families participate.

Change: Section 303.12(b), which requires services to be provided in an integrated setting, to the extent appropriate, has been added. A note regarding this provision has been added following the section.

Comment: Several commenters recommended that the definition of special instruction in § 303.14 of the NPRM be revised to describe more effectively the services to be provided. A few commenters questioned the appropriateness of "instruction" with infants. One commenter suggested deleting the entire section, because the commenter considered it to be redundant, confusing, and unnecessary. Several commenters recommended that the definition make clear that the community and the home are the preferred settings for special instruction.

Discussion: The Secretary believes that a separate section to define special instruction is not necessary. Since special instruction is one of the early intervention services included in the Act, it should be defined in the section on "Early intervention services." Section 303.12(b) of the final regulations contains provisions on the location of all early intervention services.

Change: The definition of special instruction has been revised and included with the other definitions of early intervention services (see § 303.12(d)(12)).

Health services (§ 303.13)

Comment: A number of commenters requested further guidance regarding what types of services are included as "health services." Commenters recommended specific items and services to be added, such as (1) Presently allowable services under Part B (e.g., clean intermittent catheterization); (2) health management services that accompany surgical or purely medical procedures, including consultations with medical personnel; (3) prescribed devices necessary for the control or treatment of a medical condition such as ventilators and gavage equipment; and (4) services that occur during the actual time a child participates in a center-based early intervention program.

Discussion: The Secretary agrees that needed health services should be made available during the time other early intervention services are provided, so that a child can benefit from the other early intervention services. Examples of necessary health services include tracheostomy care, tube feeding, and the changing of dressings or osteotomy bags. In addition, consultation by medical providers with other early intervention personnel may be necessary, so that a child can benefit from the provision of early intervention services. However, the Secretary does not believe that the costs of medical-health services, such as immunizations and regular "well-baby" care, are allowable under this part, because they are services that are routinely recommended for all children. Though not covered under this part, these medical-health services are essential for all infants and toddlers. The Secretary believes that, to the extent appropriate, these services should be included in the IFSP, along with the funding sources to be used in paying for the services. However, the Secretary does not believe that the provision of a device necessary for the control or treatment of a medical condition can be included as health services, since the statute limits coverage of medical services to those necessary for diagnostic and evaluation purposes only.

Change: Section 303.13 has been expanded to include the following: (1) Language clarifying that "health services" means those services necessary to enable a child to benefit from the other early intervention services the child is receiving under this part during the time that the child is receiving the other services; (2) examples of health services that a State is required to provide; (3) a paragraph regarding allowable consultation services; and (4) examples of medical-health services that are not required. The note following § 303.13 has been revised to clarify that, to the extent appropriate, medical-health services are to be included in the IFSP, along with the funding sources to be used in paying for those services. (See comment on medical-health services on § 303.344 in this Appendix.)

Infants and toddlers with handicaps (§ 303.16)

Comment: Many commenters asked that vision and hearing be included as areas of development in the definition of "infants and toddlers with handicaps". Several other commenters recommended expanding the definition of "physical development" to include other components (e.g., neurological development).

Discussion: The Secretary agrees that vision and hearing should be added to the definition of infants and toddlers with handicaps to highlight the importance of sensory impairments in the development of the child. However, he does not believe that further expansion of this definition is necessary, since neurological development is commonly understood to be a component of physical development.

Change: Vision and hearing have been added to the area of "physical development" in § 303.16 and to other appropriate sections in this part.

Comment: One commenter stated that the term "appropriate diagnostic instruments and procedures" was too vague, and recommended that "standardized instruments" be used instead. Other commenters recommended that informal assessments and professional clinical judgment, including the observations of multidisciplinary assessment teams, should be required, because appropriate standardized instruments do not exist at this time that accurately measure developmental delay in infants and toddlers with handicaps.

Discussion: The Secretary believes that the concerns raised by commenters about the methods used to determine developmental delay in infancy should be addressed. Since standardized diagnostic instruments are generally unavailable for use with infants and toddlers with handicaps, the Secretary believes that the evaluation of children under this part must be based on informed clinical opinion.

Change: No change has been made in § 303.16. However, § 303.300 has been revised to require States to include the procedures that will be used to identify developmental delay in the State definition of "developmental delay." A note has been added following § 303.300 that addresses the use of standardized procedures with infants. A provision requiring evaluations and assessments

to be based on informed clinical opinion has been added at § 303.322(c)(2).

Comment: Several commenters stated that the term "high probability" should not be viewed as a statistical concept and that the term should be more precisely defined. One commenter suggested that conditions resulting in developmental problems, rather than delays, was a more appropriate definition for this population. Some commenters suggested adding examples of conditions that could be included in this category.

Discussion: The Secretary agrees that the term "high probability" should not be viewed as a statistical concept. The presence of a diagnosed condition is the key concept in the phrase "have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay."

Change: Language has been added to the note following § 303.16 to clarify what is meant by the term "high probability."

Comment: A number of comments were received regarding the criteria for "at risk" in the definition of infants and toddlers with handicaps. Several commenters suggested that the "at risk" condition not be viewed as an indicator of developmental delay. Commenters also recommended adding examples of possible "at risk" criteria. Other commenters felt that an "at risk" determination should not be made based upon factors such as socio-economic status, sex, creed, religion, and racial or ethnic background.

Discussion: The criteria for identifying "at risk" children must be developed at the State level, since the serving of these children is at State discretion. However, the Secretary believes that it would be appropriate to provide some guidance about the kinds of conditions that States may want to consider in identifying children at risk for developmental delay.

Change: A note has been added following § 303.16 that describes examples of "at risk" factors that States could consider if they choose to serve infants or toddlers at risk for developmental delay.

Subpart B—State Application for a Grant

Public participation (§§ 303.110 through 303.113)

Comment: A number of commenters stated that a provision in section 678(a)(4)(B) of the Act requiring a summary of public comments and the State's responses had been omitted from the NPRM and should be added to the final regulations. Some commenters wanted the public participation requirements in §§ 303.21 and 303.36 of the NPRM to be grouped together in the final regulations. Some commenters requested more guidance about the public participation requirements. The commenters asked that the regulations specify the length of the comment period and the procedures for providing comments, so as to ensure a fair opportunity for public review and comment. Some commenters felt that, under the notice of hearing requirements in § 303.21(b) of the NPRM, the term "sufficiently in advance of the hearing" is too vague, and that the States need definitive timelines in order for the requirements to be effectively implemented. Several commenters recommended a 30-day timeline.

Discussion: The provision on public comments and State responses was included under § 303.36 in the NPRM. However, based on the comments received, the Secretary believes that this provision, and all other substantive requirements on public participation, should be grouped together in the final regulations. He also agrees that further guidance is needed regarding the public participation requirements, including specifying the length of the period for public review and comment on State applications and policies required under this part. The Secretary believes that while a definitive timeline requirement, in general, could be helpful to States, States should have some flexibility with regard to public notice and comment periods in order to respond to unforeseen circumstances in their jurisdictions.

Change: A new subheading on "public participation" has been added to Subpart B. All substantive requirements on public participation have been included under that subheading at §§ 303.110 through 303.113. Additional guidance has been added concerning the procedures for use in ensuring that the general public has an opportunity to review and comment on appropriate required documents. Language has been added at § 303.113(a)(2) that enables the lead agency to make any modifications it deems necessary in the application or policy after public review. A provision has been added at § 303.110(a)(3) to require that notice of public hearings be provided at least 30 days before the dates that the hearings are conducted. A provision has been added at § 303.110(b) to permit States to request exemptions from the timeframes when circumstances warrant.

Comment: One commenter requested that the regulations require only one public hearing, in order to be consistent with the hearing requirements under other Federal programs.

Discussion: Section 678(a)(4)(A) of the Act requires "hearings." Moreover, the public hearing provisions under the EDGAR regulations also require "hearings." Although the number of hearings may vary from State to State, depending on geographical and demographical considerations, every State must hold at least two.

Change: A provision has been added at § 303.112 requiring each State to hold a sufficient number of public hearings at times and places to afford interested parties throughout the State a reasonable opportunity to participate.

Comment: Several commenters requested that a provision be added requiring the lead agency to give written notice about the State application and public hearings to advocacy associations, parent groups, and service providers who are interested in early intervention services.

Discussion: Based upon experience with Part B of the Act, the Secretary believes that effective notice can be given without requiring written notice to specific groups.

Change: None.

Statement of Assurances

General (§ 303.120)

Comment: Some commenters were concerned that the provision requiring statements of assurances to be submitted only once would not allow States to amend the information under the assurances.

Discussion: States are required to submit statements of assurances only once. The Secretary agrees, however, that States should be able to revise their statements of assurances, as long as the revisions are consistent with this part.

Change: A new provision has been added to permit States to submit a revised statement of assurances, as long as the revised statement is consistent with the requirements of this part (see § 303.120).

Reports and records (§ 303.121)

Comment: A commenter requested that more guidance be provided on the types of information and records that must be maintained.

Discussion: The Secretary agrees that additional guidance should be provided to ensure that appropriate information is maintained.

Change: A change has been made in § 303.121 to require that records be maintained to demonstrate compliance with the requirements of this part.

Control of funds and property (§ 303.122)

Comment: A commenter asked for guidance regarding the use and administration of funds under this part by the lead agency and State Interagency Coordinating Council.

Discussion: The Secretary agrees that guidance is needed on the use of funds under this part by the lead agency and the Council to facilitate the administration of the program.

Change: Two new sections have been added to the regulations: § 303.560 (Use of funds by the lead agency), and § 303.602 (Use of funds by the Council).

Comment: A commenter requested that the provision on public control of funds and property be clarified regarding the use of those funds by private agencies.

Discussion: The statutory provision in Part H regarding public control of funds and property is common to most formula grant programs in the Department of Education. Procedures for implementing that provision are contained in the EDGAR regulations at 34 CFR Parts 76 and 80. Thus, the Secretary does not believe that additional guidance is necessary.

Change: None.

Prohibition against commingling (§ 303.123)

Comment: One commenter stated that the provision dealing with the prohibition against commingling could be confusing to providers, given the multiple sources of funds that are used by States to provide early intervention services. The commenter suggested that a note be added providing additional guidance.

Discussion: Because the statute requires that funds from a variety of Federal, State, local and private sources be used to implement the program, the Secretary agrees that guidance would be helpful. The Secretary believes that it is appropriate for funds from various sources to be consolidated, as long as there is a clear audit trail for each source.

Change: A note has been added following § 303.123 to provide additional guidance.

Prohibition against supplanting (§ 303.124)

Comment: Several commenters requested additional clarification and guidance on the prohibition against supplanting provision. Some commenters recommended that the fiscal year beginning October 1, 1986, be used as the base year for establishing maintenance of effort.

Discussion: The Secretary agrees that guidance should be provided on the non-supplanting requirement. With respect to the use of 1986 as the base year, maintenance of effort is always dependent upon the most recent previous year for which the fiscal data are available. Therefore, it would not be appropriate to use any given year as a permanent "base year" for meeting this requirement.

Change: Section 303.124 has been revised to provide additional guidance, and a note describing the application of the provision has been added.

Assurance regarding use of funds (§ 303.127)

Comment: Several commenters stated that the language in this section was vague and confusing. They recommended that the section incorporate language from section 679 of the Act.

Discussion: The assurance in § 303.127 (§ 303.30 in the NPRM) is based on section 678(b)(1) of the Act, which provides that a State must "assure that funds paid to the State under section 673 will be expended in accordance with this part." Although the language in section 678(b)(1) is broad enough to encompass the use of funds provision in section 679 of the Act, the Secretary (1) believes that it is important to give specific emphasis to that provision, and (2) agrees with commenters that the assurance in § 303.127 should be amended by adding a reference to section 679 (i.e., § 303.3 of these regulations).

In the NPRM, §§ 303.30 and 303.34 were inadvertently given the same title ("Assurance regarding use of funds"). This has been corrected in these final regulations.

Change: Section 303.127 has been amended by (1) changing the title to "Assurance regarding expenditure of funds," and (2) adding a reference to section 679 of the Act (i.e., § 303.3).

Description of use of funds (§ 303.144)

Comment: One commenter felt that this section did not directly reflect the statutory language and that further guidance was needed. Another commenter requested that "children and families" be added to the paragraph regarding direct services.

Discussion: Given the variety of agencies that could be potential recipients of the funds, the Secretary agrees that this section needs to be more precise, in order to help States account for and make the most effective use of funds. The Secretary also believes that providing additional guidance will assist States in avoiding future audit problems. The Secretary agrees that the phrase "children and families" should be added under direct services.

Change: Section 303.144 has been revised to reflect the need for greater precision and to add "children and their families" to paragraph (d)(1).

Specific Requirements for the Years One Through Five and Thereafter

Comment: Several commenters requested that the sections on application requirements be reorganized, so that they include a complete listing of the requirements for each year.

Discussion: The Secretary recognizes that the way the requirements were organized in the NPRM made it unnecessarily difficult for States to determine what all the application requirements are for each year of participation. Therefore, he agrees that the changes proposed by the commenters should be made.

Change: Section 303.148 and §§ 303.150 through 303.151, regarding applications for years three through five, have been revised to list the requirements for each year. All application requirements related to the components of the statewide system, as included under Subpart D in the NPRM, have been moved to Subpart B and grouped together under a new subheading (see §§ 303.160 through 303.175).

Equitable distribution of resources (§ 303.146)

Comment: One commenter recommended that incidence of handicapping condition be considered in the determination of an equitable distribution of resources in addition to geographical considerations. Other commenters asked that public agencies allow public scrutiny of the methods to ensure that funds are distributed equally to all service providers and that participation on the Council should include representatives from "resource poor" areas.

Discussion: The Secretary believes that the basis for determining an equitable distribution of resources should include a consideration of relative need within the geographical areas of a State. Provisions to ensure an opportunity for public comment on the State's application under this part are in § 303.110 of these regulations. The statute does not require provisions requiring representation on the Council beyond those in section 682(2)(b).

Change: Language has been added to this section specifying that a State must take into account the need for services across all geographic areas within the State.

Third year applications (§ 303.148)

Comment: Several commenters asked for clarification about what constitutes a "policy" in the requirements for third year applications.

Discussion: The Secretary agrees with commenters that clarification is needed regarding the meaning of "policy," as that term is used in this section and in other provisions under this part. A definition of "policies" was included under the public participation requirements in § 303.21 of the NPRM. However, the definition included only a partial listing of required policies under this part, and did not appropriately clarify the meaning of the term. Therefore, the Secretary believes that the definition of "policies" in the NPRM should be replaced with a new definition that includes a more comprehensive list of applicable policies under this part. This definition is consistent with the term "policy", as used in the Part B regulations. The Secretary believes that the definition should be included with the other definitions of general applicability that are in Subpart A of these regulations.

Change: A new definition of "policies," which replaces the definition that was in the NPRM, has been added at § 303.19.

Fourth year applications (§ 303.150)

Comment: Commenters asked that requirements for fourth year applications be amended to include an assurance that the statewide system is in effect in the State, except for full implementation of IFSPs for children.

Discussion: Section 675(b)(1) of the Act requires that a State include in its third and fourth year applications information and assurances that, except for full implementation of IFSPs, the statewide system will be in effect no later than the beginning of the fourth year. The Secretary agrees with the commenters that specific information and assurances should be required in the fourth year applications to demonstrate that the statewide system is in effect, or will be in effect no later than the beginning of the fourth year of the State's participation under this part.

The phrases "before the beginning", "by the beginning", and "no later than the beginning" of a specific year are used interchangeably in the statute to specify the timeliness for phasing-in a statewide comprehensive early intervention system. For purposes of clarity, the Secretary believes that using the phrase "no later than the beginning" uniformly in the regulations will avoid confusion.

Change: Section 303.150 has been amended to include the requested assurance that the statewide system is in effect. The phrase "no later than the beginning" has been uniformly used throughout the regulations.

States with mandates as of September 1, 1986 to serve children with handicaps from birth (§ 303.151)

Comment: A commenter requested that a note be added to this section urging States with mandates from birth (who are exempt from submitting substantive requirements until the fifth year) to meet the same requirements for the third and fourth year that other States must meet, in order to guarantee their compliance at the beginning of the fifth year.

Discussion: The Secretary expects that, as required by the Act, States with mandates from birth, will carry out planning and development activities to ensure that the statewide system is in effect no later than the beginning of the fifth year of their participation. Therefore, a note is not necessary. Further, the note following this section in the NPRM restates requirements that are included in another section in the regulations and is not needed.

Change: The note that accompanied this section in the NPRM has been deleted.

Applications for year five and each year thereafter (§ 303.152)

Comment: Some commenters pointed out that the provision requiring a description of the appropriate early intervention services that will be provided before the beginning of the fifth year was omitted in the requirements for the fifth year application. Commenters also requested that the regulations clarify that the provision requiring the availability of appropriate early intervention services to "all" eligible children is not limited to those children who receive Part H funded services, but includes all children who meet the definition under § 303.16.

Discussion: The provision requiring a description of services to be provided in the fifth year was inadvertantly omitted from the NPRM, and is included in these final regulations. The Secretary agrees that these provisions require States to make available appropriate early intervention services to all eligible children and their families, not just children and families receiving services funded under this part. The determination of what services are appropriate for an individual child is made through the IFSP process.

Change: Section 303.152 has been revised to require (1) a description of the services to be provided no later than the beginning of the fifth year, and (2) a policy that appropriate early intervention services will be available to all children in the State who are eligible under this part and their families.

Comment: A commenter requested further clarification regarding what States must do to meet the requirements for the fifth year. The commenters asked, "If all agencies refuse to pay for a service and parents can't afford the cost, must the service be paid for by the lead agency and what is the ultimate responsibility?" The commenter also asked for the meaning of the terms "appropriate" and "make available," as used in the section (i.e., "make available appropriate services for all infants and toddlers with handicaps") and "in effect," as used in the fifth year application (i.e., "that the State has in effect the statewide system * * *").

Discussion: The legislative history of Pub. L. 99-457 makes clear (1) that the responsibility for the provision of early intervention services rests with the lead agency, not the parents, and (2) that no child is to be denied services because the family cannot afford to pay. As used in the requirement for the fifth year, "in effect" means that (1) all components of the statewide system are being implemented, and (2) each eligible child and the child's family are receiving early intervention services in accordance with a currenty IFSP.

Change: No change has been made in § 303.152. However, in a new section on "Policies related to payment for services" (§ 303.520), a provision has been added that requires a State's funding policies to include an assurance that the inability of the parents of an eligible child to pay will not result in the denial of services to the child or the child's family.

Subpart C—Procedures for Making Grants to States

Formula for State allocations (§ 303.200)

Comment: A commenter recommended that the allocation formula reflect the additional children to be served if the State includes "at risk" in its definition.

Discussion: The formula for State allocations, which uses the number of children from birth through age two in the general population as the basis for determining State allotments, is statutory. There is no basis for a change.

The special definition of "infants and toddlers" from section 684(c)(2)(A) of the Act, which is used for determining

State allocations, was inadvertantly omitted from the NPRM.

Change: No change was made in the formula. However, the statutory definition of "infants and toddlers" that is to be used for determining allocations under this part has been added at § 303.200(b)(2).

Distribution of allotments from non-participating States (§ 303.201)

Comment: A number of commenters were concerned about what action the Secretary might take in distributing funds not awarded to a State if that State did not participate in the program. The commenters recommended that the language in the regulations be changed from "may allot" (as stated in the NPRM) to "shall allot," to be consistent with section 684(d) of the Act.

Discussion: The use of "may" in the NPRM was not intended to imply that reallotment of funds under this part is a decision left to the discretion of the Secretary.

Change: The regulations have been amended by replacing "the Secretary may allot," with "the Secretary reallots" (see § 303.201).

Payments to the jurisdictions (§ 303.204)

Comment: One commenter recommended that the amount allocated to the jurisdictions should be 1.25 percent instead of "up to 1 percent."

Discussion: The maximum percentage that may be allocated to the jurisdictions is established by section 684(a) of the Act. The Secretary does not have the authority to increase the percentage of funds allocated to the jurisdictions.

Change: None.

Subpart D—Program and Service Components of a Statewide System of Early Intervention Services

State definition of developmental delay (§ 303.300)

See comments on § 303.16 in this Appendix (Infants and toddlers with handicaps).

Central directory (§ 303.301)

Comment: Several commenters requested that additional resources, such as professional associations, parent support groups, and advocacy associations, be included in the regulations. Commenters requested that the central directory be made the responsibility of the lead agency and that it describe the nature and scope of early intervention services. Some commenters also stated that the regulations should require that the directory be available on a regional basis and in language other than English.

Discussion: The Secretary agrees that it is appropriate to add "professional and other groups * * *" to the text of the regulations, and to retain, in the note following the section, the examples from the NPRM. The Secretary also agrees that further guidance is necessary to ensure that the directory is accessible to all members of the general public, and that it describes the nature and scope of the early intervention program under this part.

Change: "Professional and other groups" has been added to § 303.301. That section also has been revised to provide guidance on how to make the central directory accessible to the general public.

Identification and Evaluation

Public awareness program (§ 303.320)

Comment: Many commenters asked that the regulations contain more guidance on the public awareness program, including the purpose and scope of the program, and the methods that should be used to inform the public about the statewide system of early intervention services.

Discussion: The Secretary believes that an effective public awareness program is critical to the successful implementation of the State's statewide system of early intervention services. However, he believes that the regulations should focus on the provisions that must be addressed by a State's public awareness program.

Change: Section 303.320 has been revised to add provisions that must be addressed by the public awareness program. Notes have been added to describe effective methods to implement the public awareness program.

Comprehensive child find system (§ 303.321)

Comment: Many commenters asked that the final regulations (1) stress the importance of the child find system being coordinated with all other child find efforts in the State that are conducted under other Federal and State programs, and (2) include more guidance about the system.

Discussion: The Secretary recognizes that Federal and State agencies may have overlapping responsibilities in this area. For example, under Part B, State educational agencies have the responsibility to "identify, locate, and evaluate" children with handicaps from birth through age 21; and the Maternal and Child Health Services Block Grant (Title V of the Social Security Act) requires States to "locate and identify" children with special health care needs. The Secretary believes that the child find system cannot be successful without interagency collaboration and the expansion of present efforts (e.g., the use of newborn screening and tracking systems). The Secretary agrees with commenters that, in order to develop and implement an effective child find system under this part, the system must effectively coordinate with all other child find efforts in the State.

Change: A paragraph on coordination has been added at § 303.321 that requires the lead agency, with the assistance of the Council, to ensure that the child find system under this part is coordinated with all other major child find efforts conducted by other State agencies. A note has been added concerning coordination with other child find systems.

Comment: Several commenters requested (1) that additional referral sources be added to this section (e.g., local educational agencies, and parent education and family support programs) and (2) that more information be provided about procedures and timelines for making referrals. Many commenters expressed concern about the note dealing with the timelines for acting on a referral. Because these comments also concerned the timeline for evaluation and assessment, they are addressed in the discussion concerning § 303.322.

Discussion: The Secretary agrees (1) that examples of other primary referral sources would be helpful, and (2) that more specific information is needed about making a timely referral under this part. Because of the rapidly changing needs of infants and toddlers, the Secretary believes that it is important to establish a very short timeline for referring a child for evaluation or services.

Change: New provisions have been added at § 303.321(d) to (1) include additional referral sources, and (2) require procedures for referring a child to the appropriate public agency within two working days after the child has been identified as needing an evaluation or early intervention services.

Evaluation and Assessment (§ 303.322)

Comment: A large number of comments were received regarding the 30 calendar day timeline in the NPRM (i.e., in the second note following § 303.64, and in § 303.65(d)). Most of the commenters asked that the timeline be extended. They cited the following factors that make the completion of an evaluation within 30 days difficult: (1) Frequent illness among eligible children,

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(2) scheduling delays for evaluations from primary referral sources, (3) large distances for travel in rural areas, (4) the need to hold several meetings over time to adequately assess the strengths and needs of families, and (5) 30 "calendar" days translates to 20 "working" days. Suggested timelines ranged from 45 to 90 days. A small number of commenters requested that the timeline *not* be extended, because of the potential harm that might result from delaying the completion of the evaluation process and the provision of early intervention services.

Discussion: The Secretary recognizes that, because the needs of infants and toddlers change so rapidly, a timeline that extends the evaluation and assessment process beyond 30 days must be examined carefully. However, as the factors raised by commenters indicate, a 30-day timeline for completing the evaluation and assessment process may not be realistic. The Secretary believes that a 45 calendar day timeline would provide the best balance between the need for a timely evaluation and the factors that need to be taken into consideration in the evaluation and assessment process. Because there may be exceptional circumstances that could mitigate against the completion of the evaluation and assessment, and preparation of the IFSP within 45 days, the Secretary believes that special procedures should be developed in order to ensure that an eligible child would not be denied needed services as a result of a delay in completion of the full evaluation and assessment process.

Change: The following changes have been made: (1) The second note under § 303.64 in the NPRM has been deleted; (2) § 303.321(e) has been added, which establishes a 45-day timeline for a public agency to act on a referral (i.e., to complete the initial evaluation and assessment activities and hold the initial IFSP meeting); (3) § 303.322(e), which replaces the timeline in § 303.65 of the NPRM and includes a reference to the 45-day timeline in § 303.321(e), has been added; (4) a requirement has been added at § 303.322(e)(2) to ensure that the lead agency adopts procedures for developing an interim IFSP in exceptional circumstances when public agencies cannot complete the evaluation and assessment process within 45 days; and (5) the term "days" has been defined as calendar days (see § 303.9).

Comment: Several commenters recommend that "interdisciplinary" or "transdisciplinary" be used instead of "multidisciplinary," when referring to evaluation and assessment requirements, because the former terms imply greater interaction and coordination among team members than "multidisciplinary." Other commenters recommended that "multidisciplinary" be used, because that term appears in the statute.

Discussion: The Secretary agrees that teams providing evaluations and assessments and developing IFSPs should function in a coordinated, integrated, and comprehensive manner consistent with the overall purpose of the program. However, he believes (1) that the term "multidisciplinary" should be used, since it is the statutory term, and (2) that a definition of "multidisciplinary" would assist States in understanding how the term is used under this part.

Change: A definition of "multidisciplinary" has been added at § 303.17.

Comment: A number of commenters addressed the issue of participation by families of eligible infants and toddlers in the evaluation and assessment process. The commenters (1) recommended that parental consent be required at all stages, (2) stated that it would be appropriate to base the assessment of families on information provided by the families themselves, and (3) suggested that requirements be added to ensure that the family assessment is conducted by trained personnel utilizing appropriate methods and procedures, and that a family's participation in the assessment be voluntary.

Discussion: The Secretary is committed to ensuring that the families of children eligible under this part are able to assume a full and active role in the provision of early intervention services to their children. The Secretary believes that consent requirements, like those under Part B, afford important protections to parents and their children. The Secretary is also committed to ensuring that family assessments involve the actual participation of the families.

Change: A provision has been added at § 303.322(d) that clarifies the purpose of, and procedures for, the family assessment requirements. A new section on parental consent has been added at § 303.404.

Comment: Some commenters requested that clarification be provided regarding what is meant by a one and two step process in the note following § 303.65 in the NPRM. Other commenters asked for more information about the meaning of the terms, "evaluation" and "assessment," pointing out that the terms were used interchangeably by Congress. Another commenter favored the use of the term "assessment" for families rather than "evaluation", because the latter term connotes a value judgment being made by a professional about the family.

Discussion: The Secretary recognizes that the terms "evaluation" and "assessment" are sometimes used interchangeably in the Act. However, "evaluation" is most often used in the context of conducting a multidisciplinary evaluation to determine if a child is entitled to services, and "assessment" is generally used in the context of planning services for the IFSP. Therefore, the Secretary believes that it is important to distinguish between the meanings of these terms. The Secretary agrees that the use of the term "family assessment" is more appropriate, because determining family needs and strengths is meant to identity the family services necessary for the child to benefit from early intervention services. The Secretary recognizes that there are many steps in the evaluation and assessment process, and agrees that explanatory notes describing this effort as a one or two step process may be confusing.

Change: The terms "evaluation" and "assessment" have been defined at § 303.322(b). The discussion of the one or two step process has been deleted.

Comment: Several commenters requested that specific areas, including hearing, vision, and health status, be included in the requirements for evaluation and assessment.

Discussion: Vision and hearing have been included as part of physical development in the list of required developmental areas, as a result of comments to this and other sections. Since a child's health status can affect all other areas of development, the Secretary agrees that obtaining information about the child's health status should be part of the evaluation.

Change: The five areas of development referenced in the NPRM have been specifically listed in § 303.322(c)(3)(ii), and vision and hearing have been added to physical development in that list. A requirement that the child's evaluation and assessment include a review of all pertinent medical and health records has been added at § 303.322(c)(3)(1).

Comment: A number of commenters recommended that a provision be added to (1) require that all evaluation and assessment procedures be nondiscriminatory, and (2) stress the importance of using culturally appropriate methods and procedures.

The commenters were concerned that without such protections children would be improperly labeled as handicapped.

Discussion: The Secretary agrees that a provision on non-discriminatory evaluation procedures should be added. Experience with Part B has demonstrated the importance of these protections in avoiding misclassification.

Change: A new section on nondiscriminatory procedures in evaluation has been added at § 303.323.

Individualized Family Service Plans

General (§ 303.340)

Comment: Several commenters asked that the role of the family in the development of the IFSP be more explicit. A few commenters recommended that a definition of "family" be added to the revised regulations.

Discussion: The Secretary agrees that more precise information is needed about the role of the family in the development of the IFSP. However, he does not believe that it is appropriate to include a definition of "family" in the regulations, because to do so could limit the authority of participating States to respond to diverse familial patterns as the States may find necessary to further the provision of early intervention services to infants and toddlers eligible under this part.

Change: A provision stating that IFSPs must be developed jointly by the agency and the family has been added (see § 303.340(b)).

Meeting the IFSP requirements for years four and five (§ 303.341)

Comment: Several commenters responded to the note discussing the timing of the IFSP meeting (see § 303.66 in the NPRM) by suggesting that there be one timeline for completing the evaluation and assessment and another for holding the IFSP meeting.

Discussion: The Secretary believes that it is preferable to require a single timeline for both completing the evaluation and assessment process and conducting the initial IFSP meeting (i.e., the 45-day timeline in §§ 303.321 and 303.322).

Change: The note in the NPRM regarding the timing of the IFSP has been deleted. A single timeline of 45 days has been established for completing the evaluation and assessment process for conducting the initial IFSP meeting.

Comment: Several commenters asked that the regulations provide specific guidance regarding who should and can participate in IFSP meetings.

Discussion: The Secretary agrees that more information should be provided regarding the participants in IFSP meetings.

Change: Section 303.343, which lists the participants in IFSP meetings and describes the circumstances under which information from an absentee participant is obtained, has been added.

Procedures for IFSP development, review, and evaluation (§ 303.342)

Comment: A number of commenters asked for more guidance on the periodic review and annual evaluation of the IFSP. They asked how the meetings would be conducted, who should participate, and whether meetings should be held if a child or family's needs change.

Discussion: The Secretary believes that the IFSP review and evaluation process should provide opportunities for all necessary participants to review or revise the IFSP, if appropriate, based upon child and family needs. The six-month interval is a minimum requirement, since the needs of some children may require more frequent meetings. The Secretary agrees that more guidance is needed about this process.

Change: Section 303.342 has been revised to specify the procedures for IFSP development, review, and evaluation. A note has been added to clarify that the annual review meeting incorporates the periodic review.

Content of IFSP (§ 303.344)

Comment: A number of commenters requested that additional aspects of physical development be included in the IFSP (e.g., vision and hearing, and a statement of the child's health status).

Discussion: The Secretary agrees that the child's health status (which can directly affect the child's development) and vision and hearing should be included in the IFSP.

Change: The requested changes have been added at § 303.344(a).

Comment: A number of comments were received about the provision requiring the IFSP to include a "statement of the family's strengths and needs." Some commenters recommended a more explicit role for family members in the determination of the family's strengths and needs. Commenters recommended incorporating the following concepts: (1) That the family's level of participation should not be the basis for services, (2) that families should be able to elect to receive some services and not others, and (3) that the regulations should be flexible enough to permit families to participate to different degrees according to their own needs.

Discussion: The Secretary is sensitive to the many issues raised by the commenters regarding the rights of parents and other family members in the process of conducting the family assessment and developing the IFSP, and believes that the regulations should be amended to reflect those rights. In addition, the Secretary believes that more guidance should be given to the variety of roles that family members play in enhancing their child's development.

Change: New provisions that stress the "concurrence" of the family in determining its strengths and needs related to enhancing the development of the child have been added at § 303.322(d) and § 303.344(b). A note has been added following § 303.344 to emphasize that public agencies should be sensitive to the variety of roles that family members play in enhancing the development of the child.

Comment: Some commenters felt that agencies should not be responsible for family needs that extend beyond those that pertain to an eligible child's handicapping condition. Other commenters stated that a family's socio-economic status, social support networks, and cultural norms are important considerations in planning for services.

Discussion: The Secretary believes that agencies are not responsible for family needs that are not related to the needs of the child as identified in the IFSP. The Secretary recognizes that it is important for public agencies to consider any area related to the family's ability to enhance the development of the eligible child in planning services.

Change: None.

Comment: Several commenters stated that medical and other services that are not required under this part may be important to enable a child to benefit from the provision of early intervention services. The commenters recommended that, to the extent appropriate, those services be identified in the child's IFSP, even though they will be paid for from other funding sources (e.g., private insurance, and Titles V and XIX of the Social Security Act).

Discussion: The Secretary agrees that, to the extent appropriate, the IFSP should include the medical and other services that a child needs but that are not required under this part. The Congress recognized the importance of coordinating all health and medical services when it stated in the House Report that one function of case management is to "cooordinate the

provision of early intervention services with other services (e.g., medical services for other than diagnostic and evaluation purposes)."

Change: The following changes have been made: (1) A note has been added following § 303.13 (Health services) to encourage States to identify all of the services that the child needs, including funding sources for these services; (2) a provision regarding coordination of early intervention services with other services has been added to the definition of case management in § 303.6; and (3) section 303.344 has been amended to require that the IFSP include a list of "other services" that may be needed.

Comment: Commenters recommended adding various requirements about the statement of major outcomes in the IFSP. These ranged from adding statement about strategies and options for procuring services to using descriptive or narrative approaches rather than traditional objective criteria. One commenter stated that family goal statements could be misinterpreted if families were told by professionals that they needed to meet certain goals.

Discussion: The Secretary recognizes that there are various ways of projecting outcomes in the IFSP to meet the unique needs of an eligible child and the child's family. The Secretary does not believe it is appropriate to specify particular methods for projecting outcomes, since no one method would apply in all circumstances.

Change: None.

Comment: Some commenters asked for further guidance about the meaning of the terms "frequency," "intensity," and "method," and requested that a provision be added requiring the IFSP to include a description of where services are to be provided.

Discussion: The Secretary agrees that more information is needed about the meaning of the terms, "frequency," "method," and "intensity," and that the location of services should be added.

Change: The term "location" has been added to "frequency," "intensity," and "method," at § 303.344(d)(i). Definitions of these terms have been added at § 303.344(d)(2).

Comment: A number of comments were received about the provision requiring that the IFSP include "the name of the case manager from the profession most immediately relevant to the child's or family's needs * * *" Some commenter stated that the case manager should be a person employed by the lead agency. Other commenters suggested that case managers be independent from agencies providing early intervention services. One commenters stated that case management could be considered a profession.

Discussion: The Secretary believes that case management can be carried out in a variety of ways that are consistent with the provisions of this part and existing State law, including the designation of case management as a profession.

Change: The following changes have been made: (1) A paragraph has been added to § 303.6(c), which states that case managers may be appointed in any way permitted under State law, so long as it is consistent with the requirements of this part; and (2) a new provision has been added at § 303.344(g)(3) to clarify that "profession" includes case management.

Comment: Many commenters requested further guidance on the steps required in the IFSP to support the transition of children upon reaching age three to preschool services under Part B or other services. Some commenters called for a formal transition plan that would include parental education, support networks, and specification of the services necessary to facilitate the transition into a preschool program where the child is integrated with non-handicapped peers. Other commenters asked that additional consideration be given to transitions to other services in typical child care settings, and for services to ensure continuity for "the child who experiences frequent hospitalizations."

Discussion: The Secretary agrees that more guidance should be provided regarding the steps to be taken to facilitate the transition of a child from Part H to Part B upon turning three years of age, or to other appropriate placements. The IFSP requirements in the Act specifically call for the identification of steps to be taken to support the transition of a toddler with handicaps to services provided under Part B to the extent that such services are considered appropriate. The Secretary recognizes, however, that some children who are eligible for services under this part might not be found to be "handicapped" under the definition of handicapping conditions under Part B. Therefore, it is important to plan transitions for children who will not be entering the Part B program.

Change: Additional guidance has been added at § 303.344(h) regarding the steps to be taken to support the transition of a child from early intervention services to preschool services under Part B or other appropriate placements. A note has been added to that section stressing the importance of a coordinated effort during the transition period.

Comment: Many of the comments that were received on the NPRM for the Preschool Grants program (section 619 of the EHA) requested more information about the requirements for transition when a child moves from services under Part H to Part B. Commenters recommended that provisions be added to ensure that a child turning three years of age during a school year would not have to wait until the beginning of the following year to receive services under Part B. Commenters asked that guidelines be provided for the transition period, in order to eliminate disruptions in services and properly assign financial responsibility to appropriate agencies prior to and after a child turns three years of age.

Discussion: The Secretary agrees that a smooth transition from the Part H to the Part B program is very important. Since the statute limits the use of Part H funds to children birth through two, the Secretary cannot authorize the use of Part H funds after a child turns three. States are encouraged to take steps to facilitate a smooth transition of children from Part H to Part B.

Change: A note has been added following § 303.344 that provides information regarding the use of interagency agreements to help ensure the smooth transition of children from services under Part H to services under Part B.

Provision of services before evaluation and assessment are completed (§ 303.345)

Comment: Many commenters supported the provision that services could be initiated before the evaluation and assessment process is completed. One commenter suggested that evaluation and assessment be considered a part of the services offered, and therefore, services could be planned while the evaluation and assessment are in progress. Some commenters, however, were concerned about the provision of services without the benefit of a comprehensive evaluation and assessment. The commenters suggested that, if services are provided before the evaluation and assessment process is completed, consent be obtained from the parents, and an interim IFSP be developed. Commenters requested that more guidance be provided regarding implementation of this provision.

Discussion: The Secretary agrees that more guidance is needed regarding the conditions under which services may be provided if the evaluation and assessment process is delayed. If services are initiated, the evaluation and assessment process must continue in a timely fashion.

Change: Section 303.345 has been revised to clarify what conditions must be met if services are to be provided before the evaluation and assessment is completed. The note following that section has been revised to clarify the intent of the section.

Personnel Training and Standards

Comprehensive system of personnel development (§ 303.360)

Comment: Several commenters expressed concern about incorporating provisions from the Part B comprehensive system of personnel development (CSPD) under this part unless requirements related to training early intervention personnel can be clearly met. One commenter suggested that this section include an additional requirement to ensure that training under the Part H CSPD be specifically related to the interrelated psychosocial, health, developmental, and educational needs of eligible children, and to the continuing role of the family. Several commenters recommended inservice and preservice strategies to meet the provisions requiring that training occur on an interdisciplinary basis and include parents, professionals from a variety of disciplines, and paraprofessionals.

Discussion: The Secretary agrees that the content of the training provided under the Part H CSPD should be related to the specialized training needs of all personnel providing early intervention services, and that training should be provided on an interdisciplinary basis.

Change: A new provision has been added at § 303.360(b)(3) to require that training provided under this part be designed to (1) meet the interrelated psychosocial, health, developmental and educational needs of infants and toddlers with handicaps, and (2) assist families in enhancing the development of their eligible children.

Personnel standards (§ 303.361)

Comment: A significantly large number of comments were received on the personnel standards provision. Most of the commenters requested that the "alternative standards" provision in the NPRM be deleted, in order to ensure that early intervention personnel would meet the "highest requirements" in the State applicable to their given profession or discipline. Some commenters stated that standards must be related specifically to competencies needed to serve children eligible under this part and their families. Commenters from several different disciplines stated that a field, such as "psychology", is too broad to be treated as one profession or discipline (e.g., the "highest requirements" may be different for school psychologists than for clinical psychologists).

Discussion: The statutory provision on personnel standards is virtually the same under both Parts B and H. Because of this, most of the comments related to personnel standards that were received on each NPRM apply to both programs. The Part H NPRM, which was published on November 18, 1987, included an alternative standards provision. On the basis of extensive public comment calling for deletion of the alternative standards provision, that provision was not included in the Part B NPRM published on March 14, 1988. A large number of comments were received on the personnel standards provision in the Part B NPRM. An analysis of those comments and the changes made since publication of that NPRM are included in the preamble to the final regulations for Part B published on April 27, 1989 (54 FR 18248 through 18256). The provision on personnel standards in the final regulations for both Part B and Part H are virtually identical. The Secretary agrees with commenters that, in a broad occupational field, such as psychology, there may not be one "highest requirement". Thus, the Secretary recognizes that school psychologists are members of a specific occupational category who have training requirements appropriate for their responsibilities under Part B and Part H of the Act.

Change: The personnel standards requirements in the Part B final regulations have been incorporated into these regulations, but have been modified to apply to the program under this part.

Subpart E—Procedural Safeguards

General responsibility of lead agency for procedural safeguards (§ 303.400)

Comment: Many commenters stated that the Safeguards under Part H and Part B should be identical. Commenters were concerned that the safeguards in the NPRM were inadequate and did not offer the same degree of protection as those under Part B, expecially in terms of general rights in the redress of grievances. Some commenters felt that it would be confusing for parents to have to adapt to a new set of safeguards when their children changed programs at age three. In addition, many commenters requested that the requirements from Part B related to parental consent and other parental rights be incorporated into the procedural safeguards under this part. A few commenters felt that the Part B due process procedures did not allow for the quick resolution of disputes necessary for infants and toddlers.

Discussion: The Report of the House of Representatives on Pub. L. 99-457 states that it is "* * * the Committee's intent that the procedures developed by a State result in speedy resolution of complaints because an infant's development is rapid and therefore undue delay could be relatively harmful." However the Report adds that the Secretary may approve any system that includes the full set of safeguards contained in Part B.

In the NPRM, the Department of Education attempted to balance the congressional intent for streamlined procedures under this program with the need to protect the rights of parents and children. The provision in the NPRM gave the States the option of adopting the Part B safeguards, adopting selected parts of the Part B safeguards and developing new procedures for the remaining safeguards required under Part H, or establishing new safeguards.

Based upon the weight of the comments, the Secretary has determined that parental consent and certain of the parent and child rights specified in the Part B regulations are basic procedural safeguards that should apply to all children, including those eligible under this part, with appropriate modifications for the Part H program.

Because many of the procedural safeguards in the Part B regulations have been adapted and added to this part, the provision in the NPRM regarding State options related to procedural safeguards has been changed to limit the options to either (a) adopting the due process procedures in the Part B regulations (34 CFR 300.506 through 300.513), or (b) developing new impartial procedures for resolving individual child complaints, as required in §§ 303.420 through 303.424. Even within these options there is considerable overlap. The main distinctions between the two are that the provisions in §§ 303.420 through 303.424 of this part (1) are less formal, and (2) are designed to result in a more streamlined, time-saving resolution of an individual child complaint (e.g., a 30-day timeline versus 45 days under Part B, and no administrative appeal procedures).

Change: The provisions on procedural safeguards in the new Subpart E have been reorganized and expanded. They include additional requirements concerning parental rights, and incorporate certain provisions from the Part B regulations, with appropriate modifications for the Part H program.

including (1) the definitions of consent, native language, and personally identifiable information at § 303.401, (2) parental consent at § 303.404 and (3) parental rights in administrative proceedings at § 303.422.

Language has also been added to § 303.402 to make clear that requirements related to the opportunity to examine records is in accordance with the confidentiality procedures under Part B, and that those parent rights with regard to records extend to all areas under this part that involve records about the child and the child's family.

A change has been made at § 303.420 to give States the option of (1) adopting the due process procedures in 34 CFR 300.506 through 300.512, or (2) developing procedures that meet requirements in §§ 303.421 through 303.425 and provide parents an easy and simple means of filing a complaint.

Comment: Several commenters felt that the regulations should add a provision to clarify that the lead agency is ultimately responsible for ensuring implementation of the procedural safeguards, even though the lead agency may designate another agency to conduct hearings and implement the requirements.

Discussion: The lead agency is statutorily responsible for ensuring the effective implementation of all provisions under the statewide system of early intervention services, including procedural safeguards in Subpart E. However, the Secretary agrees that the regulations should specifically state that the lead agency remains responsible for procedural safeguards.

Change: A provision has been added to clarify the lead agency's responsibility. (See § 303.400)

Prior notice; native language (§ 303.403)

Comment: With respect to the requirement that the notice be written in the native language of the family, some commenters requested that the qualifying phrase "unless it is clearly not feasible to do so" be deleted.

Discussion: The qualifying phrase was intended to apply in situations where it is not possible to find someone with the knowledge or skills needed to translate a notice, or where there is no written language. The provisions on prior notice and native language in the Part B regulations describe the steps to be taken should such a situation occur. The Secretary believes that the addition of the Part B language in these regulations would clarify what action should be taken where it is not feasible to provide written notice.

Change: Language from the Part B regulations, regarding the steps to take where it is not feasible to provide notice in the native language, has been added at § 303.403(c).

Surrogate parents (§ 303.405)

Comment: Several commenters expressed concern about the prohibition against a surrogate parent being an employee of "a State agency providing services to the child." They recommended that "State" be deleted from the requirement, so that the prohibition would include employment in any agency providing services to the child. Other commenters felt that a surrogate parent should only be chosen by the biological parents of a child. Some commenters requested more clarification on the surrogate parent role.

Discussion: The Secretary agrees that there is a potential for conflict-of-interest if a surrogate parent is an employee of any agency providing services to the child. A provision requiring only the biological parent to designate the surrogate parent would not be appropriate because the purpose of the surrogate parent provision is to ensure that the child has an adult to represent the child's interests when the parents are unknown or unavailable. The Secretary agrees that more guidance is needed to ensure the effective implementation of this provision.

Change: The Part B procedures, which include the role of a surrogate parent, have been adapted and added at § 303.405. A provision has been added to those procedures that prohibits a surrogate parent from being an employee of any agency involved in the provision of early intervention or other services to the child.

Comment: A commenter requested that language be added to clarify the criteria and procedures for an agency to follow in determining that a child's parents are "unavailable."

Discussion: The Secretary's experience under Part B is that additional guidance is not necessary.

Change: None.

Administrative resolution of individual child complaints by an impartial decision-maker (§ 303.420)

Comment: A number of commenters stated that the note on mediation following § 303.76 of the NPRM should be revised to ensure that mediation is not used to deny or delay the resolution of a complaint or the provision of early intervention services. Commenters recommended (1) that the regulations clarify that parents are not required to participate in mediation, and (2) that agencies be held to the 30-day timeline for resolving complaints.

Discussion: The Secretary believes that mediation is often a helpful tool for quickly resolving many complaints and that it should be retained as an option for parents. However, he agrees with commenters that mediation cannot be used to delay or deny the resolution of a complaint or the provision of services, and that the participation by parents must be voluntary.

Change: The second note following § 303.420 has been revised to include the requested changes.

Comment: Some commenters requested that the provisions relating to the payment of attorneys' fees under Part B of the Act be incorporated in this part, in order to ensure greater legal protection for parents.

Discussion: The attorneys' fees provision in section 615 of the Act applies only to those rights established under Part B. In those cases where a child is eligible under both Part B and Part H, if a child's parent chooses to use the Part B procedures under section 615, the attorneys' fees provision would apply. An example of an item that would be covered under both Part B and Part H is evaluation. In States that have a mandate to serve children from birth, any rights covered by that mandate can be the subject of a due process hearing under section 615 of the Act.

Change: None.

Comment: Several commenters requested that complaint procedures, similar to the EDGAR complaint procedures, be added. Commenters were particularly concerned about having procedures for systemic complaints.

Discussion: The Secretary agrees that it is important to have procedures for resolving complaints. The NPRM incorporated by reference the EDGAR complaint procedures (34 CFR 76.780 through 76.782). However, since the publication of this NPRM, the Department has published an NPRM on the EDGAR regulations that proposes to remove the complaint procedures from Part 76. The complaint procedures that have been included in this part conform to the procedures that have been proposed for inclusion in the Part B regulations.

Change: Complaint procedures have been added at §§ 303.510 through 303.512.

Comment: One commenter noted that the NPRM did not include procedures, similar to those under Part B, that allow agencies to use the due process procedures to override a parent's refusal to consent to an initial evaluation of any potentially handicapped child.

Discussion: Regulations under Part B of the Act contain procedures to enable a public agency to initiate a due process hearing or use other procedures to override a parent's refusal to consent to an initial evaluation of the infant or toddler. Because of the unique nature of Part H, and the fact that the Part B override procedures may be used for initial evaluations, the Secretary does not believe that a specific consent override should be included in this part.

Change: A note has been added to § 303.404 (Parent Consent) indicating that the Part B override procedures for initial evaluations apply to eligible children under this part.

Appointment of an impartial person (§ 303.421)

Comment: One commenter asked for additional information on the meaning of the "record of the proceedings."

Discussion: The Secretary's experience under Part B of the Act, which uses the same phrase, is that the meaning is clear. Therefore, additional guidance in these regulations is not necessary.

Change: None.

Comment: Some commenters requested that the phrase "to the child involved in the complaint" be deleted from the requirement that an impartial person not be "an employee of any agency involved in providing early intervention services to the child involved in the complaint."

Discussion: To ensure objectivity in the complaint resolution process, the Secretary believes that the impartial person should not be an employee of any agency or program involved in the provision of early intervention services or the care of the child, especially since the entire Part H program is a State-run program under the responsibility of the lead agency.

Change: The phrase "to the child involved in the complaint" has been deleted, and a prohibition against the use of an employee of any agency or program involved in the provision of early intervention services or in the care of the individual child has been added at § 303.421(b)(1)(i).

Convenience of proceedings; timelines (§ 303.423)

Comment: A commenter requested clarification about whether a State that adopts the Part B safeguards must follow the 30-day timeline in Part H, or the 45-day timeline in Part B. One commenter stated that States should be allowed 60 days.

Discussion: A State that develops new procedures under this part must follow the 30-day timeline under § 303.423. States that adopt the due process procedures under Part B are permitted 45 days to conduct a due process hearing. However, because the needs of infants and toddlers with handicaps change so quickly, the Secretary encourages those States that elect to use the Part B due process procedures to accelerate the timeline to 30 days.

Change: A note has been added following § 303.423 to (1) clarify that States adopting the Part B due process hearing procedures have 45 days to complete a hearing, and (2) encourage those States to meet the 30-day timeline under this part.

Comment: A few commenters requested that "reasonably" be deleted in the phrase referring to times and places to hold administrative proceedings. One commenter stated that, in order to ensure that proceedings are convenient for parents, agencies must be willing to meet in the evening or on weekends.

Discussion: The Secretary agrees with commenters that public agencies must attempt to conduct administrative proceedings at times and places that enable parents to participate. The Secretary believes that this goal can be accomplished within the existing language in this section.

Change: None.

Status of child during proceedings (§ 303.425)

Comment: A commenter asked what would happen if the parent and public agency were unable to agree on any initial services.

Discussion: If all services are in dispute, then no services can be initiated. However, if there is agreement about one or more service, the service or services agreed upon can be initiated.

Change: None.

Confidentiality of information (§ 303.460)

Comment: Many commenters stressed the importance of having strong confidentiality protections for children and families under this part. Some commenters requested that the regulations that implement the Family Education Rights and Privacy Act (FERPA) (34 CFR Part 99), or regulations similar to those in Part B, be incorporated in the requirements under this part. One commenter recommended that parents have the right to exclude information from the records that they feel is not pertinent to development of the IFSP.

Discussion: The Secretary agrees with the commenters' concerns about the need for strong safeguards to protect the privacy of families and the need to incorporate these requirements in this part. The Secretary has determined that the Part B standards should be adopted for the program. Part B standards address parents' rights to exclude information from their child's records.

Change: The confidentiality requirements under Part B of the Act (34 CFR 300.560 through 300.576) have been incorporated by reference in these final regulations. The Part B requirements reference the FERPA requirements. Thus, both the Part B and FERPA requirements in Part 99 apply to this part.

Comment: One commenter felt that the confidentiality provision should be deleted. Another commenter recommended that direct service agencies be exempt from the confidentiality requirements, because the requirements "have been a major deterrent to team delivery of services, cause delays in essential services, and often lead to duplicative efforts among agencies."

Discussion: The Secretary believes that the rights of families must be fully protected; therefore, it would be inappropriate either to delete the confidentiality provisions or to exempt service providers from those provisions. If there are problems in effectively implementing the confidentiality provisions at either the State or local level, it would be appropriate for corrective actions to be initiated on an interagency basis.

Change: None.

Subpart F—State Administration

Lead agency establishment or designation (§ 303.500)

Comment: Many commenters requested that the provision stating that the lead agency is responsible for the general administration, supervision, and monitoring of programs and activities receiving assistance under this part be revised to specifically encompass all programs and activities within the statewide system of early intervention services, regardless of whether they receive funds under this part.

Discussion: Section 300.500 incorporates language from section 676(b)(9)(A) of the Act. Therefore, the Secretary had determined that no change should be made. However, it is clear from the other duties and responsibilities included under section 676(b)(9) that the lead agency has a broad coordinative role that applies to

all public agencies in the State that are involved in the early intervention program, regardless of whether those agencies receive funds under this part.

The Report of the House of Representatives on Pub. L. 99-457 states the following regarding the need for final responsibility to be in a lead agency:

> Without this critical requirement, there is an abdication of responsibility for the provision of early intervention services for handicapped infants and toddlers. Although the bill recognizes the importance of interagency responsibility for providing or paying for appropriate services, it is essential that ultimate responsibility remain in a lead agency so that buck passing among State agencies does not occur to the deteriment of the handicapped infant or toddler. (House Report No. 99-860, 14 (1986).)

Change: None.

Comment: A number of commenters asked that the regulations provide guidance concerning the authority and responsibility of the lead agency and other State agencies in the establishment of interagency agreements and in the resolution of disputes.

Discussion: The Secretary agrees that it is important for the regulations to provide additional guidance on interagency agreements and the responsibilities of the lead agency in resolving disputes, in order to enable agencies to develop and implement effective interagency agreements. The Secretary believes that, with respect to intra-agency disputes, the lead agency must ensure that interagency agreements include a process that (1) permits each agency to resolve its own internal disputes, and (2) provides a mechanism for the lead agency to follow in the event that an agency is unable to resolve its own dispute in a timely manner. In this case, the lead agency may use any mechanism permitted under State law to ensure that the intra-agency dispute is resolved.

Change: Two sections have been added to address the above concerns: (1) section 303.523 (Interagency agreements), and (2) § 303.524 (Resolution of disputes).

Comment: Several commenters requested that the regulations clarify that the State Interagency Coordinating Council can serve as the lead agency.

Discussion: The statute makes it clear that a State must have two separate and distinct entities: (1) A lead agency that is responsible for the general administration of the program under this part (section 676(b)(9)), and (2) a State Interagency Coordinating Council that is responsible for advising and assisting the lead agency in the performance of its responsibilities. Thus, it is not possible, under the Act, for the Council to serve as the lead agency.

Change: None.

Policies and Procedures Related to Financial Matters

Policies related to payment for services (§ 303.520)

Comment: Many commenters requested that the regulations provide specific guidance about the conditions under which agencies can charge families for services under this part. Some commenters were concerned that the sliding fees provision would be used to deny services to families. Another commenter stated that States will need assistance and guidance in deciding how to utilize funds most appropriately from various sources in supporting early intervention programs. Other commenters recommended that the regulations specify that early intervention services "are provided at no cost, unless Federal or State laws existing prior to enactment of Pub. L. 99-457 provides for a system of payments by families including a schedule of sliding fees."

Discussion: The Secretary recognizes that the question of payment for early intervention services is one of the most critical implementation issues under this part. The Secretary agrees with commenters that additional guidance is needed regarding policies and procedures related to financial matters. He believes that, among other things, a State's policies must include (1) a list of those functions and activities that must be carried out at public expense (see § 303.521(b)), (2) a statement consistent with congressional intent that no children are to be denied service because of their parents' inability to pay (see § 303.520(b)(3)(ii)), and (3) a list of services that may be subject to a system of payments, including a schedule of sliding fees (see §§ 303.12(a)(3)(iv) and 303.521(a)).

The legislative history of the Act contains several statements about the "sliding fees" provision in §§ 303.12(a)(3)(iv) and 303.521(a), including the following:

> This [provision] is not intended to signal congressional toleration of undue financial burdens on parents. States participating in this program accept responsibility for providing early intervention services. This legislation recognizes that universal access to services gives the States—not the parents—the chief responsibility for the provision of services required by the Act. The services * * * must be made available to handicapped infants and toddlers on the basis of their need and not on the basis of a family's ability to pay. It must be understood that the act bars the reliance on such laws if they create a financial barrier to infants receiving the required services. (Cong. Rec. S. 13504, Senator Weicker (September 24, 1986))
>
> [T]his provision should not be construed as permitting a State to charge a parent for particular services if such services must be provided to them free of charge under a separate federal or state law. That is, this law is not designed to supersede provisions included in other laws. (Cong. Rec. H. 7903, Congressman Williams (September 23, 1986))

The Secretary believes that (1) any system of payments must conform to the laws of individual States, and (2) while there are only certain activities for which fees can be charged, States should have the ability within those limitations to develop fee systems that are responsive to their own needs. Therefore, the Secretary believes that a State's ability to develop such a fee system should not be limited solely to those statutes that were in place prior to the enactment of Pub. L. 99-457.

The Secretary agrees with commenters that specific guidance is also needed concerning the identification and coordination of funding resources from Federal, State, local and private sources.

Change: The information concerning policies related to financial matters in §§ 303.83 through 303.85 of the NPRM has been reorganized and expanded, including the addition of sections to provide guidance concerning: (1) Policies related to payment for services (§ 303.520), (2) the charging of fees (§ 303.521), and (3) lead agency responsibility for the identification and coordination of resources (§ 303.522).

Policy for contracting or otherwise arranging for services (§ 303.526)

Comment: Many commenters requested that (1) a provision be added to ensure that contracted services meet State standards, and (2) a note be added to clarify the intent of Congress that existing public and private early intervention programs and services be used to the extent possible. Another commenter asked that the policies by which contracts for services are awarded be made available to providers. Other commenters asked for the inclusion of procedures to challenge the adequacy of lead agency funding of service providers.

Discussion: The Secretary believes that it would be helpful to state specifically in § 303.526 that all services provided by contract or other means must meet State standards. The Secretary believes that the policy for contracting or otherwise arranging for services should describe how the awarding process works. He also agrees with commenters on the importance of clarifying congressional intent that lead agencies use existing sources of early intervention services to the extent possible. However, the Secretary believes that the language of the NPRM needs to be revised to correct implications in the NPRM that, because of the use of the words "application" and "apply," lead agencies have the authority to make subgrants under this program. In contrast to many other Federal special education laws, the statute for this program neither specifically authorizes subgrants nor does it identify any eligible subgrantees. The Secretary also believes that each lead agency must have reasonable flexibility to enter into contractual or other arrangements that are responsive to the variety of services that may be needed and the diversity of situations and needs throughout the State. The ambiguous language of the NPRM could be read as requiring absolute uniform contract terms or requirements for other arrangements across all situations in a State. The Secretary believes that the State's policy with regard to contracting or otherwise arranging for early intervention services should describe the methods and processes used to make awards or other arrangements and the general provision or conditions or terms that would have to be met by any provider seeking to provide early intervention services for the lead agency. Service providers should not be entitled to any special mechanism to challenge lead agency funding decisions under this part, outside of those otherwise available to a potential or actual participant in a contract or other arrangements.

Change: Section 303.526 has been revised to provide that a State's policy must include (1) a requirement that all early intervention services must meet State standards and be consistent with the provisions of this part, (2) the mechanisms used and the processes followed for awarding funds or making other arrangements for the provision of early intervention services, and (3) the basic requirements that must be met by any service provider in order to receive funds available under this part. A note has been added following the section regarding congressional intent that existing services be utilized by the lead agencies to the extent possible.

Payor of last resort (§ 303.527)

Comment: Commenters asked for guidance on how the lead agency responsibilities for identifying and coordinating all funding sources and assigning financial responsibility related to the payor of last resort provision. One commenter pointed out that because of the importance of using all existing funding sources, including those under other Federal programs, it is essential that the regulations provide guidance as to how this is to be accomplished. Some commenters thought that certain provisions regarding the "payor of last resort" in section 681 of the Act, had been omitted and should be addressed. They requested that a provision be added allowing States to use funds under this part to prevent a delay in the provision of services.

Discussion: It is clear from the statute and the legislative history of the Act that successful implementation of a statewide system is dependent upon (1) the coordinated use of funds from a variety of Federal, State, and other sources, and (2) the measures taken to ensure that agencies will not reduce the amount of funds that they had been spending for services to this target population, because of the enactment of Part H. Thus, several provisions in the Act are directed toward ensuring that these two funding issues are appropriately addressed. The Secretary agrees with commenters on the need for more guidance on the payor of last resort provision, including specification of the kinds of services that may be covered and those that are not covered. Further, the Secretary believes that the statutory provisions requiring the lead agency to ensure that services are provided in a timely manner, pending the resolution of disputes among public agencies or service providers, and to have a procedure for securing the timely reimbursement of funds should be included in the regulations.

New legislation containing a specific provision relating to other early intervention funding sources (i.e., the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100-360)) will affect this provision.

Change: The section in the NPRM on "Timely reimbursement; nonsubstitution" has been reorganized and renamed, as follows: The section, now titled "Payor of last resort," includes (1) revised provisions on nonsubstitution of funds and non-reduction of benefits, and (2) a new paragraph on "Interim payments; reimbursement." That paragraph specifies the kinds of services covered under the payor of last resort provision.

A note has been added that describes (1) congressional intent regarding the payor of last resort provision, as evidenced by the Report of the House of Representatives on Pub. L. 99-457, and (2) a provision in the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100-360) that addresses the use of Medicaid funds for covered services furnished to an infant or toddler with handicaps under an IFSP. A reference to § 303.527 has been added to § 303.3, which addresses activities that can be supported with Part H funds, to reinforce the "payor of last resort" limitation.

Two new sections have been added related to the "Payor of last resort" provision: § 303.525 (Delivery of services in a timely manner) and § 303.528 (Reimbursement procedure).

Data collection (§ 303.540)

Comment: A number of commenters requested that the data collection requirements in the final regulations be more specific. Several commenters stated that a requirement should be added regarding the collection of information on the location in which early intervention services are delivered.

Discussion: The Secretary believes that § 303.540, which requires the lead agency to provide data required under section 618 and section 676(b)(4) of the Act and such other information as the Secretary may require, provides sufficient authority for the Secretary to collect information on the location of services. However, he believes that the most appropriate place for providing detailed information and guidance about the data requirements under this part would be in the reporting forms and instructions, and not in these final regulations.

Change: No change has been made in response to the comments. A technical change has been made by cross referencing the requirements in section 676(b)(4) of the Act instead of listing them in the regulations.

Subpart G—State Interagency Coordinating Council

Establishment of Council (§ 303.600)

Comment: Many commenters expressed concern about limiting the number of members on the Council to 15, and requested that the regulations permit a State to include as many members as necessary to ensure that the Council is appropriately representative.

Discussion: The number of members on a State's Council is established by statute. Section 682(a) of the Act provides that "Any State which desires to receive financial assistance under section 618 and section 673 shall establish a State Interagency Coordinating Council composed of 15 members." Although the 15 member requirement cannot be changed, the Secretary believes that

guidance should be provided regarding how States could broaden participation.

Change: A note has been added following § 303.600 that includes suggestions that States might use to provide broader participation, while meeting the 15 member Council requirement.

Composition (§ 303.601)

Comment: A number of commenters requested changes in this section. One commenter asked that the personnel preparation representative on the Council have expertise in early intervention. Some commenters requested that advocacy associations be represented. Other commenters asked that a note be added stating that "parent representatives should not be employees of early intervention agencies to prevent conflict of interest." Several commenters asked that a note be added which suggests that persons representing State agencies should have sufficient authority to make decisions for their agencies.

Discussion: The Secretary agrees with commenters that the personnel preparation representative on the Council should have expertise in early intervention. The Secretary also agrees that (1) parent representative should not be employees of agencies providing early intervention services, in order to prevent a conflict of interest, and (2) the Council representatives from key State agencies should have the authority to effectively represent their agencies.

Change: A note has been added to § 303.601 that provides guidance regarding the composition of the Council, the expertise which should be required of Council members representing personnel preparation, and the authority to be expected of State agency representatives. A note has been added to § 303.600 concerning conflicts of interest specific to parent representation.

Use of funds by the Council (§ 303.602)

Comment: A commenter asked that the final regulations provide that Council members who are parents be permitted to receive "necessary expenses and reimbursements, including public transportation costs, mileage, parking, tolls, and child care expenses." Other commenters stated that parents should receive compensation for participating in Council activities, since they are not paid for their participation from other sources.

Discussion: The Secretary believes that all Council members should be reimbursed for appropriate expenses incurred in the performance of their Council duties. However, he believes that, in general, Council members should serve without compensation from funds available under this part, except under special circumstances (i.e., if a member is not employed, or must forfeit wages in order to perform Council functions).

Change: A new section on "Use of funds by the Council" has been added (see § 303.602). The section includes (1) the provision from section 682(d) of the Act regarding the use of funds for employing staff and consultants, and (2) a new paragraph regarding "Compensation and expenses of Council members."

Meetings (§ 303.603)

Comment: Commenters recommended changes that would make Council meetings more accessible to the general public, including (1) deleting the phrase "to the extent appropriate" that was in the NPRM, and (2) requiring that adequate notice be provided to the public before a Council meeting.

Discussion: The term "to the extent appropriate" is included in section 682(c) of the Act. However, the Secretary believes that there should be few, if any, instances in which it would not be appropriate to have meetings open and fully accessible to the public. Therefore, the Secretary believes that the regulations should address the concerns of commenters related to making the meetings accessible.

Change: Section 303.603 has been expanded to clarify the requirements for public access to Council meetings.

Functions of the Council (§§ 303.650 through 303.653)

Comment: Several commenters requested that a note be added reflecting congressional intent that the Council play a central role in accomplishing the goal of a statewide system of early intervention services. Some commenters recommended that the regulations specify that the Council's role is more active than that of advising and assisting the lead agency.

Discussion: The legislative history of the Act makes it clear that the Congress intended for the Council to play an important role in the implementation of a State's early intervention program. The Secretary believes that the Council's role is critical to achieving the full participation and cooperation of all appropriate agencies in the State and to carrying out on-going planning and oversight regarding the State's early intervention program.

Change: Additional information has been added under a new subheading ("Functions of the Council") to describe more fully the various responsibilities of the Council. (See §§ 303.650 through 303.653.)

Comment: Some commenters requested that the planning activities and functions of the Council be expanded to include children aged three through five years. One of the commenters suggested that this could be accomplished by using some of the funds under the Preschool Grants program (Section 619 of the Act) to support the functions of the Council.

Discussion: The Council can be assigned additional functions beyond the scope of its responsibilities under this part, so long as those functions (1) are supported by funds from other programs, and (2) do not interfere with the Council's ability to carry out its obligations under this part. If a State chooses to have the Council carry out additional functions, it must make sure that appropriate financial records are maintained.

Change: None.

Note.—This appendix will not appear in the Code of Federal Regulations.

APPENDIX B—REDESIGNATION TABLE

(This appendix shows sections of the Notice of Proposed Regulations and comparable sections of the Final Regulations.)

Part 303—Early Intervention Program for Infants and Toddlers with Handicaps

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H.J. Res. 274/Pub. L. 101-38

To designate the week beginning June 11, 1989, as "National Scleroderma Awareness Week". (June 19, 1989; 103 Stat. 78; 1 page) Price: $1.00

S.J. Res. 63/Pub. L. 101-39

Designating June 14, 1989, as "Baltic Freedom Day", and for other purposes. (June 19, 1989; 103 Stat. 79; 2 pages) Price: $1.00

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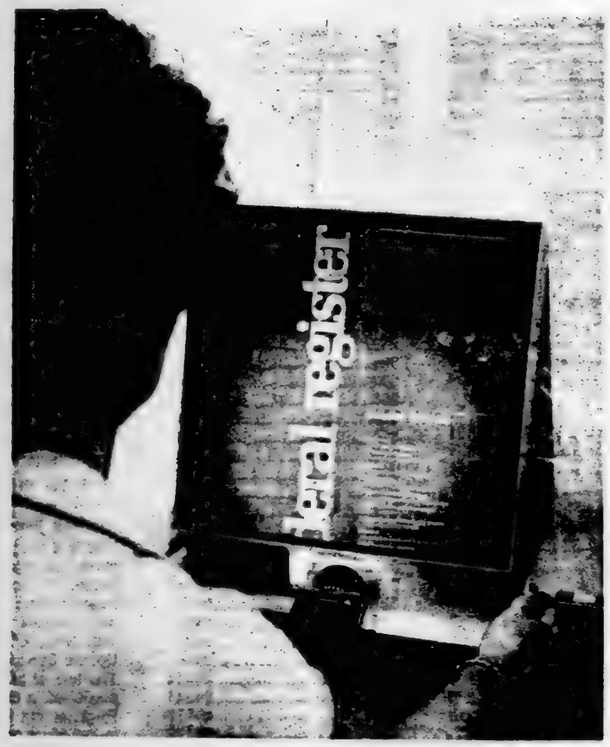
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Packers and Stockyards Administration

9 CFR Parts 201 and 203

Regulations and Policy Statements; Addition of OMB Control Numbers of Reporting and Recordkeeping Requirements

AGENCY: Packers and Stockyards Administration, USDA.

ACTION: Final rule; technical amendment.

SUMMARY: The Packers and Stockyards Administration, in accordance with the Paperwork Reduction Act of 1980, is adding to the regulations and a policy statement the control numbers previously assigned by the Director of the Office of Management and Budget upon approval of the reporting and recordkeeping requirements.

EFFECTIVE DATE: June 23, 1989.

FOR FURTHER INFORMATION CONTACT: Calvin W. Watkins, Deputy Administrator, Packers and Stockyards Administration, U.S. Department of Agriculture, Room 3039, South Building, Washington, DC 20250–2800, (202) 447–7063.

SUPPLEMENTARY INFORMATION: This action only adds Office of Management and Budget control numbers to regulations and a policy statement previously issued under the Packers and Stockyards Act, to comply with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), and does not impose any requirements on the affected public, therefore:

(a) It is not a "major rule" under the requirements of E.O. 12291;

(b) It will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act;

(c) It does not have implications of federalism under the criteria of E.O. 12612;

(d) It does not impact on family formation under the criteria of E.O. 12606;

(e) Notice and public procedure on it are unnecessary as in 5 U.S.C. 553(b)(B) so notice of proposed rulemaking is not required by 5 U.S.C. 553(b); and

(f) Good cause is hereby found for making it effective in less than 30 days as in 5 U.S.C. 553(d)(3).

List of Subjects in 39 CFR Parts 201 and 203

Reporting and recordkeeping requirements, Packers, Stockyards, Dealers and market agencies.

Accordingly, Parts 201 and 203, Chapter II of Title 9 of the Code of Federal Regulations are amended as set forth below:

PART 201—REGULATIONS UNDER THE PACKERS AND STOCKYARDS ACT

1. The authority citation for Part 201 continues to read as follows:

Authority: 7 U.S.C. 222, 228(a), 7 CFR 2.17(e), 2.56.

2. Sections 201.34, 201.42, 201.44, 201.94, and 201.95 are amended by adding the OMB control number at the end.

§ 201.34 Termination of market agency, dealer and packer bonds.

* * * * *

(Approved by the Office of Management and Budget under control number 0590–0001)

§ 201.42 Custodial accounts for trust funds.

* * * * *

(Approved by the Office of Management and Budget under control number 0590–0001)

§ 201.44 Market agencies to render prompt accounting for purchases on order.

* * * * *

(Approved by the Office of Management and Budget under control number 0590–0001)

§ 201.94 Information as to business; furnishing of by packers, live poultry dealers, stockyard owners, market agencies, and dealers.

* * * * *

(Approved by the Office of Management and Budget under control number 0590–0001)

§ 201.95 Inspection of business records and facilities.

* * * * *

(Approved by the Office of Management and Budget under control number 0590–0001)

3. Section 201.45 is amended by changing the OMB control number to read as follows:

§ 201.45 Market agencies to make records available for inspection by owners, consignors and purchasers.

* * * * *

(Approved by the Office of Management and Budget under control number 0590–0001)

PART 203—STATEMENTS OF GENERAL POLICY UNDER THE PACKERS AND STOCKYARDS ACT

4. The authority citation for Part 203 continues to read as follows:

Authority: 7 CFR 2.17(e), 2.56.

5. Section 203.19 is amended by adding the OMB control number at the end.

§ 203.19 Statement with respect to packers engaging in the business of livestock dealers or buying agencies.

* * * * *

(Approved by the Office of Management and Budget under control number 0590–0001)

Done at Washington, DC, this 19th day of June 1989.

B.H. (Bill) Jones,

Administrator, Packers and Stockyards Administration.

[FR Doc. 89–14908 Filed 6–22–89; 8:45 am]

BILLING CODE 3410–KD–M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 509 and 512

[No. 89–1586]

RIN 3068–AA64

Rules of Practice and Procedure

Date: June 14, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") is amending 12 CFR Parts 509 and 512, respectively, its regulations governing the rules of practice and procedure in adjudicatory proceedings and investigative and formal examination proceedings. The

revisions to Part 509 are designed to streamline prehearing procedures with a view toward expediting the proceedings, to clarify the authority of Administrative Law Judges appointed to conduct the proceedings, and to add several new provisions. The revisions to Part 512, which are of a clarifying and technical nature, update several provisions of the rules relating to the conduct of investigative and formal examination proceedings.

The Board expects that legislation pending before Congress will, if enacted, affect these rules directly by expanding the types of administrative proceedings available to the agency and making the Board's successor subject to new statutory enforcement provisions. However, these anticipated changes do not affect the need for the substantive amendments made by this final rule. Therefore, the Board has determined to adopt this rule and, if necessary, later to amend Parts 509 and/or 512 to reflect changes in names, statutory citations, and other procedural corrections that may be necessitated by the statutory amendments.

EFFECTIVE DATE: June 14, 1989. These rules will apply to all adjudicatory proceedings in which the notice initiating the proceeding is issued after June 23, 1989.

FOR FURTHER INFORMATION CONTACT: Gary A. Gegenheimer, Senior Attorney, Office of Enforcement (202) 906–7170; or Rosemary Stewart, Director, Office of Enforcement, (202) 906–7622.

SUPPLEMENTARY INFORMATION: On October 17, 1988, the Board published for comment in the **Federal Register** proposed revisions to its Rules of Practice and Procedures that govern adjudicatory proceedings authorized by the National Housing Act of 1934, 12 U.S.C. 1730 ("NHA"), the Home Owners' Loan Act of 1933, 12 U.S.C. 1464 ("HOLA"), the Change in Savings and Loan Control Act, 12 U.S.C. 1730(a) (the "Control Act"), and the Savings and Loan Holding Company Act, 12 U.S.C. 1730a (the "Holding Company Act"). 53 FR 40432 (October 17, 1988). These proposed revisions contained provisions revising prehearing procedures with a view toward streamlining adjudicatory proceedings and eliminating the need for unnecessary proof, clarifying the authority of Administrative Law Judges designated to conduct such proceedings, clarifying when depositions may be taken in connection with adjudicatory proceedings, and instituting a new procedure for summary disposition where no genuine issue of material fact exist. In addition, the Board proposed certain technical amendments to its Rules for Investigative Proceedings and Formal Examination Proceedings. *Id.*

After further consideration, including review of comments received on the proposal, the Board has decided to adopt the revisions substantially as proposed.

I. Revisions To Part 509

Part 509 was originally promulgated in 1967, following the enactment of the Financial Institutions Supervisory Act of 1966, Pub. L. No. 89–695, 80 Stat. 1028 ("FISA"). 32 FR 6764 (May 3, 1967); 32 FR 8889 (June 22, 1967). The FISA granted the Board and its fellow financial institution regulatory agencies the authority to issue cease-and-desist orders against financial institutions and removal/prohibition orders against management officials who were found to have engaged in conduct that provided the grounds for such actions as set out in the FISA.

Subsequently, following the enactment of the Financial Institutions Regulatory and Interest Rate Control Act of 1978, Pub. L. No. 95–630, 92 Stat. 3641, which amended the Board's enforcement authority in several significant ways, Part 509 was amended in 1979 with minor revisions. 44 FR 62479 (October 31, 1979). Thus, with minor changes, the rules have remained essentially unchanged since 1967.

In the 22 years that Part 509 has been in existence, the number and complexity of the adjudicatory proceedings initiated by the Board have increased significantly. Particularly since the enactment of the Garn-St Germain Depository Institutions Act of 1982, Pub. L. No. 97–320, 96 Stat. 1469, enforcement actions involving complex loan and investment transactions involving tens of millions of dollars, have become the rule rather than the exception. At the same time, conversions from mutual to stock form of ownership, increasing activities of insured institutions in the securities area, and heightened interest in acquisitions of control of insured institutions have increased the possibilities for adjudicatory proceedings under the Control and the Holding Company Acts, as well as the provisions of the federal securities laws to which insured institutions and related persons are subject. While, as in the past, most adjudicatory proceedings are settled prior to the hearing stage, the number of litigated proceedings is steadily increasing. Because of the increasing complexity of most of these cases, the Board believes that it is appropriate to revise Part 509 to reflect the altered character of the cases and to streamline and clarify the procedures as much as possible. The Board notes that the Federal Deposit Insurance Corporation ("FDIC"), which has similar enforcement authority with respect to federally insured banks, recently adopted extensive revisions to its own rules of practice and procedure. See 53 FR 51656 (December 22, 1988). The Board's staff has been in contact with the FDIC staff about our common interests in revising and updating the hearing procedures for both agencies. Many of the revisions being adopted by the Board today closely resemble the rules adopted by the FDIC. The principal changes that are being adopted are summarized below.

A. Comment Summary

The Board received one comment letter on its October 1988 proposal. In addition, the Board staff obtained and reviewed the comment letters filed with the FDIC regarding its own proposal to revise its hearing rules. In general, the comments favored the undertakings of the Board and the FDIC in substantially revising the rules applicable to adjudicatory proceedings. The comments also raised certain questions and objections, some of which overlapped. The issues addressed by the comments, including the comments on the FDIC's proposal that also pertain to the Board's proposal, are incorporated into the discussion below.

B. Specific Items Raised and Suggested Changes

(1) Several of the commenters on the FDIC's proposal suggested that Rule 403 of the Federal Rules of Evidence ("FRE") should be incorporated into the agency's rules of procedure. FRE Rule 403 permits the exclusion of evidence where its probative value is outweighed by other factors, such as the undue consumption of time. The rationale for this suggestion was that rules of evidence utilized by the agency, which track the language of the Administrative Procedure Act governing admissibility, did not provide sufficient guidance to Administrative Law Judges on the admissibility of evidence.

(2) Objections were raised to permitting depositions solely in instances where witnesses would be unavailable to testify at the hearing.

(3) One commenter on the FDIC's proposal questioned the process of filing exceptions to recommended decisions as being archaic and cumbersome. This commenter suggested, as an alternative, that briefs be utilized setting out a statement of facts and reference to the record.

(4) Some commenters on the FDIC's proposal suggested that the decision of

the Administrative Law Judge should be treated as an initial decision of the agency, which would become final unless appealed to and reversed by the FDIC's Board of Directors, instead of being considered a recommended decision requiring a final decision by the agency.

(5) With respect to subpoenas, it was suggested by one commenter on the FDIC's proposal that subpoenas be standardized into a simple format and pre-printed. It was also suggested that subpoenas be pre-signed by an authorized official and issued by the Office of the Executive Secretary (the FDIC's equivalent to the Board's Secretariat). The rationale for the pre-signing suggestion was that the role of the Administrative Law Judge should be limited to ruling on disputes concerning subpoenas. The same commenter also recommended that when an issue was raised as to whether top agency officials could be subject to subpoena by respondents, the Administrative Law Judge should determine in the first instance whether the subpoena could be issued. The commenter opined that this procedure would prevent abuse of process by respondents who unnecessarily sought to subpoena senior agency officials.

(6) One commenter suggested that the FDIC's proposal to prohibit any material *ex parte* communications was overly broad and that a provision prohibiting only *ex parte* communications pertaining to the merits of the proceeding at issue would be sufficient. On the other hand, the commenter on the Board's proposal argued that the proposal did not go far enough, suggesting that all *ex parte* contacts should be prohibited and that the "housekeeping" matters such as scheduling of prehearing conferences be handled by a "hearing clerk" designated by the agency. The commenter on the proposed rule suggested that, while consultations between counsel for the parties and the administrative law judge on administrative matters may appear to be innocuous, clever counsel on either side may be able to utilize such opportunities to "sensitize" the Administrative Law Judge to certain factors favorable to their theory of the case. In order to avoid this possibility, the commenter recommended that all such administrative matters be handled by a clerk who would not be in a position to render a final disposition of the proceeding. In addition, the Board's comment letter took issue with the proposal's provision that counsel for the Office of Enforcement may advise the Board with regard to proposed rules or other legal proceedings involving analogous factual or legal issues. The commenter suggested that if the Board or Administrative Law Judge needs guidance with respect to case law or legal precedent in an attempt to resolve an issue under consideration, it would be more appropriate to have counsel for both sides submit briefs specifying what the proper legal treatment of that issue should be.

(7) A commenter on the FDIC's proposal opined that the provision for summary suspension of attorneys by the Administrative Law Judge for contemptuous conduct may be too harsh and recommended an interlocutory appeal process as a means of ameliorating this situation.

(8) Several of the FDIC's comment letters questioned whether respondents should be provided with a "Wells" type submission process, similar to that employed by the Securities and Exchange Commission. Two commenters recommended that the FDIC implement such a process, while one opposed it. The comment letter to the Board did not address this issue.

(9) The commenter on the Board's proposal suggested that the Board, along with the banking regulatory agencies, attempt to obtain a "pool" of administrative law judges that have had some exposure to or experience in Federal banking law. This suggestion was based on the experience of the Board and the banking agencies in obtaining the services of judges from other agencies with widely different backgrounds and experience, resulting in the possibility of inconsistent decisions on substantially similar facts and circumstances. The commenter therefore suggested that a provision be incorporated into the Board's rules to provide for more uniformity in the selection of administrative law judges.

(10) The Board's comment letter recommended that the provision regarding oral argument before the Board, which would require that parties requesting oral argument show good cause why their arguments were not, or could not be, presented adequately in writing, be eliminated. The commenter believed that this proposal would discourage oral argument, which in turn, the commenter believed, is inconsistent with fundamental fairness.

(11) Finally, the Board's comment letter suggested that a provision be added permitting the filing of *amicus curiae* briefs in enforcement proceedings. The commenter opined that such submissions can provide additional legal expertise and further elucidate issues that the Administrative Law Judge or the Board may fail to fully appreciate.

Analysis of Comments and Modifications

(1) The Board believes that the present version of § 509.24, which contains the standard for admissibility of evidence set forth in the Administrative Procedure Act, provides sufficient guidance to Administrative Law Judges on this issue. Therefore, the Board does not believe that it is necessary to adopt language from Rule 403 of the Federal Rules of Evidence on this matter.

(2) Regarding the suggestion that depositions be permitted in more circumstances than set forth under the proposal, the Board disagrees. First, there is no general right to pretrial discovery in administrative proceedings. See, e.g., *Silverman* v. *Commodity Futures Trading Commission*, 549 F.2d 28, 33 (7th Cir. 1977); *NLRB* v. *Interboro Contractors, Inc.*, 432 F.2d 854, 858 (2d Cir. 1970); 4 Stein, Mitchell, & Mezines, Administrative Law § 23.01[1] at 23–7 (1987) and cases cited therein. Second, one of the principal purposes of the revisions to Part 509 is to streamline and shorten the proceedings. This is consistent with both the language and legislative history of the NHA and the HOLA, which generally require that hearings be commenced 30 to 60 days following the issuance of a Notice. See S. Rep. No. 1482, 89th Cong., 2d Sess., reprinted in 1966 U.S. Code Cong. and Admin. News 3532, 3537. The deposition process for general discovery purposes (as opposed to preserving testimony where the witness will be unavailable to testify at the hearing) would be inconsistent with this statutory mandate. Accordingly, the Board has elected to retain the provision allowing for depositions only upon satisfaction of the prerequisites set forth in the rule. The FDIC reached the same conclusion on this issue. See 53 FR 51658. The Board is, however, adopting a provision permitting limited document discovery in certain circumstances.

(3) Section 557(c) of the Administrative Procedure Act, 5 U.S.C. 557(c), specifically authorizes parties to adjudicatory proceedings to have a reasonable opportunity to file exceptions with administrative law judges. This procedure has been utilized for many years at many administrative agencies. While the commenter opined that the exception process was archaic, burdensome, and time consuming, the Board believes that this procedure assures the parties that a fair, just, and detailed review of the record and of the

recommended decision will be undertaken. Under the rules, exceptions generally are to be filed within 30 days of service of the recommended decision, so that lengthy delays should not occur. Accordingly, the Board believes that it is appropriate to continue to utilize the exception process set forth in the Administrative Procedure Act. The FDIC reached the same conclusion on this issue. See 53 FR at 51658.

(4) The Administrative Procedure Act provides that the individual who presides at a hearing may issue an initial decision or a recommended decision. The difference between the two types of decisions is that an initial decision becomes the final agency decision unless one of the parties appeals the decision to the agency or unless the agency undertakes to review the initial decision on its own. A recommended decision, on the other hand, does not become a final agency action unless the agency specifically adopts the recommended decision, requiring some formal action by the agency in every adjudicated case.

The Board has determined to maintain the present two-tier approach to its administrative enforcement proceedings of a recommended decision of the Administrative Law Judge followed by a review and final decision and order by the Board. The Board believes that this approach provides the parties to such proceedings with due process protections by providing a review of the findings, conclusions, admissions of evidence, and any other rulings made by the Administrative Law Judge. Additionally, the Board believes that it is unlikely that many parties who had been willing to proceed through the hearing process would fail to appeal an adverse initial decision to the Board. Thus, the change suggested by the commenter does not appear likely to expedite the entry of final agency decisions in most proceedings. The FDIC reached the same conclusion. See 53 FR at 51659.

(5) Regarding subpoenas, the Board notes that it already utilizes a standard preprinted subpoena form in connection with its adjudicatory proceedings. The suggestion that an authorized official of the Secretariat execute and issue subpoenas, however, would not be practical under the present system, in which Administrative Law Judges must be "borrowed" from other agencies. Accordingly, the Board has determined to maintain the existing practice of having subpoenas issued by the Administrative Law Judge upon application by any party.

(6) Although the Board is sensitive to the concerns of the commenter in the area of *ex parte* communications and believes that the suggestion regarding designation of an administrative clerk has some appeal, it also does not believe that such a suggestion is practical given the present structure of the adjudicatory apparatus. The problem stems principally from the fact that all administrative law judges utilized in the Board's adjudicatory proceedings are employed by other agencies, and the level of support staffs available at those agencies differs considerably. Unlike Federal district court judges, many administrative law judges do not have law clerks to handle routine matters. Furthermore, because the administrative law judges handling the Board's proceedings are disbursed in agency offices throughout the country, it would not be practical to designate clerks at the Board to handle such matters. Accordingly, the Board has decided to adopt the rule as proposed. The Board does encourage parties to adjudicatory proceedings to utilize the services of administrative law judge's clerks or support staff to handle routine matters whenever possible.

Regarding the proposal's language that counsel for the Office of Enforcement is permitted to advise the Board on settlement proposals and on other unrelated legal proceedings, the Board believes that the commenter apparently misunderstood both the language and intent of the proposal in this area. The Board does not intend—and does not believe that the language of the rule contemplates—that counsel for the Office of Enforcement should advise the Board on matters regarding an adjudicatory proceeding under consideration by the Board except on notice to all other parties to the proceeding and opportunity for other parties to be heard. Rather, it is the Board's view that OE counsel should have the freedom to advise the Board on other matters, such as the adoption of proposed regulations or other enforcement proceedings (such as injunctive actions in Federal district court to which the Board may be a party) that may arguably involve similar factual or legal issues without running afoul of the *ex parte* rule. Obviously, if the administrative law judge or the Board needs legal guidance in a particular adjudicatory proceeding, the proper procedure is for the parties to make their views known to the Board in accordance with the rules. The Board does not believe that the limited provision allowing OE counsel to advise the Board on other arguably analagous matters in any way compromises the general rule.

(7) Regarding suspension of attorneys from particular proceedings, the Board notes that the relevant case law has consistently upheld the authority of administrative agencies to set standards for admission to practice before them as well as to establish criteria for suspension, debarment or other sanctions for misconduct. The provisions of Part 509 on this issue, as well as the provisions of Part 513, include sufficient due process protections including notice, an opportunity for a hearing and a right of review. The Board believes that these provisions will contribute to a fair, expeditious, and just resolution of enforcement proceedings and, accordingly, has decided to adopt them as proposed. The FDIC reached the same conclusion on this issue. See 53 FR at 51659.

(8) There has been much discussion recently concerning whether a formal or informal procedure, such as the SEC's "Wells" procedure should be implemented to permit potential respondents in enforcement actions to have an opportunity to persuade the agency that official enforcement action against them is not warranted before any action is actually taken. One study, a report commissioned by the Administrative Conference of the United States, while making no formal recommendation regarding the adoption of any such procedure for the banking agencies, did note that such a procedure would be of limited utility in the process of bank supervision and enforcement. The rationale for this position is that the supervisory apparatus already provides numerous informal opportunities for the exchanges of views in the normal course of the examination and supervisory process before a formal enforcement action is commenced. *See* Malloy, *Report to the Administrative Conference of the United States on Adjudication Practices and Procedures of the Federal Bank Regulatory Agencies* (1987) at 53, n. 197. The Board is in agreement with this position. The informal mechanisms already in place for resolving regulatory problems (*i.e.*, the opportunity to consent voluntarily to a resolution of supervisory concerns by entering into consent orders or otherwise) normally provide potential respondents with an opportunity for presenting their positions, while at the same time allowing the agency to move swiftly and efficiently to correct problems discovered during examinations of insured institutions. Accordingly, the Board has determined that it will not adopt a formal or informal Wells-type submission procedure. The FDIC reached an identical conclusion. See 53 FR 51659.

(9) The Board believes that while it would be desirable, through the use of a "pooling" arrangement with the other banking agencies or otherwise, to endeavor to ensure more uniformity in the selection of administrative law judges, that goal cannot adequately be addressed in this document. The Board must necessarily rely on the availability of administrative law judges at any given time and, unfortunately, has no control over whether the available judges will have significant expertise in banking matters. In order to remedy the possible problem of inconsistent decisions on similar factual and legal issues, the Board has sought, through the publication of these rules, to provide as much guidance as possible to administrative law judges (while allowing them sufficient flexibility to deal with unique or unusual circumstances that may arise). The Board does look forward to working with the other banking regulatory agencies to address the perceived concern raised by the commenter.

(10) After careful consideration, the Board has decided to retain the provision regarding oral argument as proposed. The Board believes that there is ample opportunity for the parties to make their views known through the submission of written materials, briefs, live testimony of witnesses, and, in many cases, oral argument before the Administrative Law Judge. In those cases in which one party's views could not have been adequately presented in writing prior to the final decision stage, the rules provide a means for scheduling oral argument. The Board believes that this provides sufficient protection for all parties and that a presumption in favor of granting oral argument would therefore be cumbersome and unnecessary.

(11) The Board has decided not to adopt the commenter's suggestion regarding limited participation and the submission of *amicus* briefs. In the Board's view, if a significant number of limited participants were to raise collateral issues in administrative enforcement proceedings, the proceedings may become unmanageable and too time-consuming. The Board also notes that the presumption in enforcement proceedings is, and for many years has been, that they will remain private and confidential unless the Board determines otherwise in the public interest; permitting participation by other parties, even on a limited basis short of full intervention, could seriously undermine this presumption. Accordingly, the Board has decided not to include a provision allowing limited participation.

Section-by-Section Summary and Discussion

A. Subpart A: General

1. Appointment of Administrative Law Judges

Unlike the majority of federal departments and agencies that conduct adjudicatory proceedings, the federal banking regulatory agencies (including the Board) do not have their own administrative law judges on their staffs. As a result, the Board must request that the Office of Personnel Management ("OPM") arrange for other agencies or departments to "loan" the services of their administrative law judges to conduct adjudicatory proceedings on a case-by-case basis. OPM selects administrative law judges for these proceedings on a case-by-case basis from a "pool" of available candidates. Section 509.3 codifies the existing procedure. In this regard, the former definition of "presiding officer," which meant alternatively the Board or any person actually conducting a proceeding, is being eliminated. Under the revisions adopted today, the term "Administrative Law Judge" is specifically defined to mean an administrative law judge appointed or detailed as specified in Title 5 of the United States Code to conduct an adjudicatory proceeding. The term also refers to the Board where an administrative law judge has not yet been appointed, where his services have ended, or where he is otherwise unavailable.

2. Appearance and Practice in Adjudicatory Proceedings

Section 509.5, concerning appearance and practice in adjudicatory proceedings, makes several changes to the prior § 509.3. First, any appearance by an attorney or duly authorized official of a corporation, partnership, or government unit is subject to the provisions governing conflicts of interest, as well as those concerning suspension and debarment (Part 513). Second, § 509.5(a)(2) provides that any person who is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth, or the District of Columbia and who has not been suspended or debarred from practice before the Board in accordance with the provisions of Part 513 and has not been excluded or suspended from a particular proceeding pursuant to § 509.5(c) may represent parties in that proceeding. The attorney is required to file a notice of appearance at the outset of the proceeding, stating that he is qualified to represent others in accordance with § 509.5(a)(2) and disclosing whether he has ever been suspended or debarred from practice by the bar of any State, territory, Commonwealth or the District of Columbia, and, if so, the dates of such suspensions or disbarments and a description of the surrounding facts and circumstances.

The new disclosure requirement represents a change from the proposed rule in this area in that under the proposal, an attorney who had been suspended or debarred in any State or other political entity listed in the rule would have been automatically precluded from representing parties in an adjudicatory proceeding before the Board, irrespective of the possibility that he may have been a member in good standing of some other bar. Upon reconsideration of this issue, the Board has decided to retain the language of the existing rule while adding a disclosure requirement regarding any suspensions or disbarments to which an attorney is subject. Such suspensions or disbarments may, in appropriate cases, be grounds for commencement of separate proceedings under Part 513.

Section 509.5(d) also provides for representation of non-parties appearing to give testimony at depositions by their own attorneys.

3. Good Faith Certification

Rule 11 of the Federal Rules of Civil Procedure provides the basis for § 509.6, the "good faith certification." This is a new provision. Like Rule 11, the proposed rule requires that every written presentation made by a party after the issuance of the notice must be signed by that party or the attorney for the party. A signature on a post-notice written presentation constitutes a certification that the attorney or party has read the written presentation, that the presentation is well grounded in fact and warranted by existing law or a good faith argument for extending or modifying existing law, and that it is not interposed for any improper purpose to the best of that party's or attorney's knowledge, information, and belief formed after reasonable inquiry. Failure to sign a written presentation will result in its being stricken from the record unless it is signed promptly after the signature omission is brought to the attention of the attorney or party. The making of an oral motion or argument constitutes the same certification as the signing of a written presentation. The Administrative Law Judge or the Board

has the authority to impose sanctions under Part 509 or under Part 513 upon the attorney, the party, or both, for violations of the good faith certification requirements.

4. *Ex parte* Communications

Section 509.7 is new, but it embodies existing law in the area of *ex parte* communications. It defines, generally prohibits, and provides for sanctions in the event of improper *ex parte* communications. Paragraph (a) of the rule defines an "ex parte communication" as any material oral or written communication concerning the merits of a proceeding, which takes place between a party, his counsel, or any other person interested in the proceeding and the Administrative Law Judge, the Board, any member of the Board, or any person assisting or advising the Board concerning the preparation of a decision with respect to the proceeding and which was neither on the record nor on reasonable notice to all parties. It prohibits *ex parte* communications from the time the notice is served (or, if a party learns that the notice has been approved by the Board, from the time that information is acquired) until the Board serves its final decision. Paragraph (d) prohibits the Administrative Law Judge from consulting with anyone within the Board on the merits of an adjudicatory proceeding except on reasonable notice and opportunity for all parties to participate, and provides that the Administrative Law Judge shall not be responsible to or subject to the supervision or direction of any officer, employee, or agent of the Board engaged in the performance of investigatory or adjudicatory functions in connection with an adjudicatory proceeding.

Paragraph (c) of the rule sets forth a procedure to be followed in the event that an *ex parte* communication is received by the Administrative Law Judge, a Board Member, or other person described in paragraph (a). If the communication is in writing, the person receiving the communication will be required to cause a copy of the communication to be served on every party to the proceeding. If the communication is oral, a memorandum setting forth the substance of the communication must be served on each party. All parties will then have 10 days to file with the Administrative Law Judge or the Board a response to the *ex parte* communication, including any recommendation for sanctions they believed to be appropriate under the circumstances. Sanctions may be imposed for knowing violations of the rule. Such knowing violations may be grounds for a decision adverse to the party violating the rule or suspension or debarment of the person engaging in such conduct under the procedures set forth in Part 513.

Communications between the Administrative Law Judge and parties or their counsel involving routine non-substantive matters such as scheduling of conferences or meetings, requests for copies of documents, or brief extensions of time are not considered to be communications concerning the merits of the proceeding and are not considered to be within the scope of the rule. In addition, the rule does not preclude counsel for the Office of Enforcement from advising the Board on settlement proposals submitted pursuant to § 509.22, or on matters (such as proposed regulations or other legal proceedings) that involve analogous factual or legal issues but are not related to the proceeding at issue.

5. Maintenance of the Record, Service, Filing of Papers, and Copies

"Housekeeping" matters concerning maintenance of the record, service, and filing of papers are covered in §§ 509.8, 509.9, 509.10, and 509.11. Section 509.8 provides that the Board's Office of the Secretary ("Secretariat") shall maintain the official record in each proceeding. Section 509.9 amends the prior provision governing service by the parties to clarify that service is deemed to have been accomplished at the time of personal service, upon deposit in the United States mail of the document or paper required to be served or by delivery of the document or paper to an express mail delivery service. The revised rule thus adopts the provision of Rule 5(b) of the Federal Rules of Civil Procedure that service by mail is complete upon mailing. The rule also reduces the number of copies of papers that must be filed in adjudicatory proceedings and clarifies the requirements as to filing of papers with the Secretariat. Under § 509.10, the original and one copy of all papers required to be served on other parties to the proceeding will be filed with the Secretariat at the time of service or within a reasonable time thereafter, but no event later than 3 business days following service on the other parties. A copy must also be served on the Administrative Law Judge at the time of service on the other parties.

The prior rule provided that materials required to be filed with the Secretariat be received by the office in Washington, DC on or before the applicable filing deadline. This could lead to a situation in which a party would be required to send materials to the Secretariat prior to the time he was required to serve the opposing parties in order to ensure that the Secretariat would receive the materials by the appointed date. In order to rectify this situation, the Board has adopted a system similar to that employed under Rule 5(d) of the Federal Rules of Civil Procedure, pursuant to which materials may be filed before service or within a reasonable time thereafter. The prior rules also were potentially confusing in that the rule governing motions, former § 509.10, provided that once a presiding officer was appointed, all motions were "filed" with the presiding officer. Moreover, while § 509.19 required that seven copies accompany the original of any document required to be filed with the Secretariat, this requirement was not applicable after a presiding officer was appointed and prior to the filing of exceptions to the recommended decision, because all motions and other papers were filed with the presiding officer. The former rules did not specify any number of copies that must accompany originals filed with presiding officers, and the practice of Administrative Law Judges on this point may vary considerably. The Board believes that, while the Administrative Law Judge must necessarily receive copies of all motions and other significant papers filed in connection with a proceeding, the proper custodian of the official record in an adjudicatory proceeding should be the Board's Secretariat, not the Administrative Law Judge. The Board believes that the rules adopted today will eliminate any uncertainty by providing that the Secretariat will maintain the official record and will receive the original and one copy of all filings (functioning, in essence, in a manner analogous to a "clerk of the court") and that a copy of all such filings will be furnished to the Administrative Law Judge. This is consistent with the procedure recently adopted by the FDIC governing filing of papers and maintenance of the official record. The rule does not apply to the transcript of testimony or exhibits adduced at the hearing or to proposed exhibits submitted to the Administrative Law Judge prior to a hearing in accordance with a prehearing order issued pursuant to § 509.21.

6. Amending Pleadings

The Board is adopting a procedure, similar to that utilized by other administrative agencies, that permits the notice and answer to be amended by leave of the Administrative Law Judge or by the express or implied consent of the parties without formal amendment.

Previously, a notice could be amended only by the Board, and there were no formal procedures for amending an answer. The Board is making this change in order to reduce further the number of routine matters upon which it is required to rule prior to a final disposition of a proceeding. The change is not intended to constitute a substantive departure from the former § 509.4, under which matters of fact and law alleged in a notice could be amended at any stage of the proceedings. Accordingly, the Board is including language similar to that employed under Rule 15 of the Federal Rules of Civil Procedure, which mandates that leave to amend pleadings shall be freely given where justice so requires. This amendment is virtually identical to the rule governing amendments of pleadings recently adopted by the FDIC. 12 CFR 308.22, 53 FR at 51674.

7. Consolidation and Severance

Section 509.16, concerning consolidation and severance of proceedings, is entirely new and closely resembles the FDIC's amendments on these issues. 12 CFR 308.24, 53 FR 51674. Section 509.16(a) addresses circumstances that may arise when more than one action is taken that arise out of the same transaction or occurrence and involve common questions of law or fact and when a proceeding is instituted seeking the same remedy against two or more respondents based on the same transaction or occurrence. In these circumstances, proceedings generally should be consolidated unless it would cause undue delay or manifest injustice.

Section 509.16(b) provides that a proceeding involving two or more respondents may be severed on the motion of any party or upon the initiative of the Administrative Law Judge or by resolution of the Board. Severance may be appropriate if the proceeding against one or more of the respondents is being settled or stayed, if severance may promote prompt resolution of the proceedings, or if severance would be required to prevent manifest injustice.

8. Interlocutory Review

Section 509.18 is a new provision that permits parties to a proceeding to appeal rulings on motions by the Administrative Law Judge only in very limited circumstances. Interlocutory appeals are permitted only in extraordinary circumstances that warrant the Board's prompt review. Any party desiring to appeal a ruling of the Administrative Law Judge on an interlocutory basis will be required to submit a motion to the Administrative Law Judge requesting certification to the Board for interlocutory review. Exceptions will be available in cases of rulings by the Administrative Law Judge suspending an attorney from further participation in a particular proceeding or denying a motion for summary disposition. Upon certification by the Administrative Law Judge, notice of a denial of a request for certification that a party believes was clearly erroneous, or notice of a ruling that may be appealed without certification, a party may file with the Secretariat a petition for interlocutory review of the contested ruling. The petition must include a copy of the order from which interlocutory appeal was being sought and a statement of the factual and legal bases for interlocutory review. Any party will be permitted to serve a response to a petition for review within 10 days of service of the petition. The Board will determine whether to grant the petition and will decide the issue without oral argument or further written submissions unless it otherwise orders. Unless otherwise ordered by the Administrative Law Judge or the Board, no motion for certification, petition for review, or granting thereof will operate as a stay of the proceedings. Any stay of longer than 30 days requires specific Board approval.

The Administrative Law Judge may certify a ruling to the Board only upon the motion of a party and a determination by him that the ruling involves a controlling question of law or policy as to which substantial grounds exist for a difference of opinion and that an immediate appeal from the ruling may materially advance the ultimate conclusion of the proceeding. These criteria are modeled upon Rule 5 of the Federal Rules of Appellate Procedure, which concerns interlocutory appeals by permission pursuant to 28 U.S.C. 1292(b). The Board has the authority to dismiss an interlocutory appeal if it determines that the Administrative Law Judge's certification was erroneously granted or that prompt consideration of the appeal was not warranted under the above criteria.

9. Prehearing Procedures

A number of new provisions are being added with the aim of simplifying proceedings by narrowing factual and legal issues to be determined, resolving as many factual issues as possible prior to commencement of the hearing, and providing for the exchange of information by the parties in advance of the hearing so that only disputes regarding genuine, material, factual, or legal issues need to be resolved through the hearing process. In this regard, the new rules contain provisions for the exchange of lists of witnesses expected to testify at the hearing together with a summary of each witness' expected testimony prior to the proceeding, copies of all exhibits that each party intends to introduce as evidence at the hearing, and stipulations as to factual matters. In addition, any party may serve (and the Administrative Law Judge may require all parties to serve) a prehearing brief outlining the applicable legal principles and what the party believes the evidence will demonstrate. The new procedures closely resemble those recently adopted by the FDIC, 12 CFR 308.33, 53 FR 51678, and codify existing practice in most Board adjudications today.

The Board believes that these new provisions will streamline its proceedings considerably. Resolving as many evidentiary, factual, and legal issues as possible in advance of the hearing will narrow the focus and shorten the time required for the hearing by ensuring that only those matters that are genuinely contested need to be established before the Administrative Law Judge. Prehearing identification of exhibits will give each party the opportunity to know in advance what materials the opposing party plans to introduce. This will give each party the chance to formulate any applicable objections to the introduction of such materials and submit those objections to the Administrative Law Judge prior to the actual hearing, thereby eliminating the need for time-consuming arguments regarding the admissibility of documents at the hearing. It is contemplated by the proposed rule that objections to the introduction of exhibits and rulings thereon will be handled in this fashion during the prehearing stage, so that all exhibits to which objection has not been taken, or that the Administrative Law Judge determines should be admitted into evidence, may simply be considered part of the hearing record and utilized by the parties at the hearing without the need for document-by-document introduction by counsel or an individual ruling by the Administrative Law Judge on each exhibit. In this regard, the Board notes that authenticity of documents should seldom be an issue in administrative proceedings. This is especially true because many of the documents to be introduced in the Board's proceedings will consist of records of the insured institution to which the particular proceeding pertains, reports or other materials filed by the institution with the Board

pursuant to its regulations, other records of which the Board may take official notice, or public records. Furthermore, even where a document does not fall into one of the above categories, the Board believes that authenticity should become an issue only if there is a good faith reason to doubt the genuineness of a document. The Board is of the opinion that the prehearing procedures adopted today will permit the parties to eliminate as many problems and needless time delays as possible in this area.

10. Discovery

New § 509.21 provides for limited discovery. Paragraph (a) states the general rule that discovery may be obtained only through the production of documents and in accordance with the procedures set forth in § 509.21 and through no other means. Privileged documents are not discoverable.

A party seeking to obtain discovery must serve a motion for discovery setting forth the reasons that discovery is necessary. The request must set forth facts and arguments sufficient to demonstrate that the documents sought are relevant and material to the party's case or defense, that the party has substantial need for the materials, and that the location and production of the materials will not result in any undue burden to any other party or in any undue delay in the proceeding. Upon a clear showing that these criteria have been satisfied, the Administrative Law Judge may grant all or such part of the party's request as he deems appropriate under the circumstances. The party from whom the documents are sought has 20 days to furnish the documents to the requesting party unless the parties agree on a different time or the Administrative Law Judge sets a different time for good cause shown. Failure to comply with an order of the Administrative Law Judge granting a discovery request within the prescribed time period is a ground for a motion to compel production of the documents and may result in the imposition of sanctions by the Administrative Law Judge pursuant to his authority under § 509.5(c). Upon a showing that discovery is being conducted in bad faith or in such a manner as unreasonably to annoy, oppress, or embarrass any party, the Administrative Law Judge may order that discovery be terminated or may limit the scope and/or manner of discovery. All discovery, including all responses to discovery requests, must be completed not less than 30 days prior to the date scheduled for the commencement of the hearing unless the Administrative Law Judge finds on the record that good cause clearly exists for an exception to this requirement.

As noted above, the Board has long taken the position that there is no general right to prehearing discovery for respondents in administrative enforcement proceedings, and the case law supports this view. The Board is, however, adopting this amendment in response to commentary, principally from the private bar, that some form of discovery should be available to respondents as a matter of fairness. *See, e.g.*, Shockey, *Discovery in Bank Regulatory Agency Enforcement Actions*, 42 Bus. Law. 91 (1986). While the Board is sensitive to this concern, it also believes that it is imperative that discovery be limited to only those materials that are truly necessary for a party adequately to prepare its case or defense. In particular, the Board is concerned that discovery provisions not become vehicles for "fishing expeditions" whose principal purpose is to delay the proceedings, delve into matters that would yield materials of little or no legal relevance in the preparation of a party's case or defense, or probe the mental processes of the agency's decision makers. Accordingly, the Board believes that it is appropriate to require that parties seeking discovery be required to demonstrate a clear need for the materials sought and that opposing parties have the opportunity to respond to these contentions.

The Board notes that the prehearing procedures being adopted today, such as the prehearing exchange of exhibits, witness lists, testimony summaries, and prehearing memoranda should give each party a sufficient opportunity well in advance of the hearing to know the basis of each claim or defense to be asserted by the opposing party. These procedures contain significant provisions for the prehearing exchange of information by the parties, so that in normal circumstances, additional formal discovery should seldom be necessary. An example of an appropriate discovery request might be a request for copies of pertinent portions of transcripts of testimony of witnesses taken during a formal examination or investigative proceeding prior to the commencement of the adjudicatory proceeding and who are expected to testify at the hearing, together with the exhibits to those transcripts.

11. Subpoenas

Section 509.22 contains technical and clarifying amendments to the Board's procedural rule governing subpoenas requiring the attendance of witnesses and the production of physical evidence. It makes clear that subpoenas are to be issued only to require witnesses to testify and produce documents at the hearing, rather than as discovery devices to require prehearing depositions and the production of documents in advance of the hearing. A separate provision, § 509.23, addresses the taking of depositions for purposes of preserving the testimony of witnesses who will be unavailable to testify at the hearing. Moreover, because of the requirements of § 509.19 that proposed exhibits be provided to the opposing party and submitted to the Administrative Law Judge in advance of the hearing, and of § 509.21 providing for orders to compel the production of documents in the discovery process, there should seldom, if ever, be a need for subpoenas for the production of documents in advance of the hearing. The portion of the rule governing document production is primarily intended to cover instances in which, for example, a party knows of the existence of a material document in the possession of a prospective nonparty witness but has been unable to obtain a copy of the document voluntarily. In that event, the Board believes that the party should have the ability to require the witness to appear at the hearing and produce that document despite the general requirement that all exhibits or a list thereof be submitted in advance. The rule is not, however, intended to require a witness to produce at or prior to a hearing a voluminous amount of material that has not been identified in advance of the hearing and may be of little or no relevance.

The rule also lengthens from 5 days to 10 days the time within which a person to whom a subpoena is directed may move to quash the subpoena and clarifies that the party at whose request the subpoena is issued is responsible for serving the subpoena once it is executed by the Administrative Law Judge.

12. Depositions

Section 509.23 sets forth the procedures for the taking of depositions in adjudicatory proceedings. The rule requires that a party desiring to take the deposition of a witness first apply to the Administrative Law Judge setting forth the reasons that the deposition is necessary. Any party may serve a response to such an application within 10 days of receipt of a copy of the application. The Administrative Law Judge may permit the deposition to be taken only upon a showing that the prospective deponent will be or is likely to be unavailable to testify at the hearing, the testimony will be relevant and material to the proceeding, *and* the taking of the deposition will not result in any undue burden to any other party or in undue delay in the proceeding.

The requirement of prior application to the Administrative Law Judge has existed in the Board's procedural rules for many years. Previously, § 509.8 set forth a procedure for depositions only in connection with hearings provided for in Part 509a (which are not conducted under the Administrative Procedure Act), Part 565, or § 583.26, but did not apply to other hearings conducted pursuant to Part 509. See former 12 CFR 509.8(a) and (b). New § 509.23 will apply to any hearing conducted under part 509. The new provision will not apply to hearings conducted under Part 509a, as these hearings are not conducted under the Administrative Procedure Act. Furthermore, the references to Part 565 and § 583.26(d) are being eliminated as unnecessary, as hearings conducted pursuant to these provisions are already expressly covered by Part 509. See § 509.1(d) (termination of insurance) and § 509.1(e) (hearings under the Savings and Loan Holding Company Act). This procedure maintains the Board's existing position regarding general discovery in administrative enforcement proceedings, while permitting depositions for the limited purpose of preserving testimony where a material witness will be unavailable.

13. Official Notice

A new provision, § 509.24(b), permits the Administrative Law Judge or the Board to take official notice of any material fact that might be judicially noticed by a district court of the United States and of any material information in the official public records of the Board. The Board believes that this revision will likewise expedite proceedings by eliminating the need to "prove" obvious facts. If any party requests that official notice be taken of any fact, other parties to the proceeding will be afforded the opportunity to establish the contrary.

14. Public and Private Hearings

Section 509.25 combines the provisions of former § 509.6(c) and § 509.21 and adds a new provision. It provides that, unless a public hearing is ordered by the Board in the public interest, all hearings shall be private and attended only by the parties, their representatives or counsel, witnesses while testifying, and other persons having an official interest in the proceeding. The entire record in the proceeding is to remain confidential unless otherwise ordered by the Board or required by law. The new provision permits the Administrative Law Judge to take appropriate steps in public hearings to protect the reputations and integrity of nonparties to the proceeding, including closing portions of such hearings to the public and admitting materials into the record under seal.

15. Summary Disposition

The Board is adopting a procedure, similar to those utilized by a number of other administrative agencies, for summary disposition of proceedings in which the material facts are undisputed.[1] Under new § 509.26, any party who believes that there is no genuine dispute as to the material facts of an adjudicatory proceeding and that he is entitled to judgment as a matter of law may move for summary disposition of all or any part of the proceeding. That party will then be required to submit a statement of the material facts he contends are not in dispute, accompanied by a brief in support of his contention that he is entitled to judgment as a matter of law. Any other party may then submit an opposition to the motion for summary disposition and/or may countermove for summary disposition. Upon receipt of the parties' papers, the Administrative Law Judge may require additional briefing or schedule oral argument on the motion or motions. Thereafter, if the Administrative Law Judge determines that there is no dispute as to the material facts in the proceeding, that a hearing to adduce further facts is unnecessary, and that any party is entitled to a decision in his favor as a matter of law, he will submit a recommended decision to the Board pursuant to § 509.27(c). The case then proceeds as set out in new §§ 509.29 to 509.32. No such recommendation to the Board is required if the Administrative Law Judge determines that no party is entitled to summary disposition. In addition, if the Administrative Law Judge determines that a party is entitled to judgment only on certain claims but not on all claims on which he has moved for summary disposition, the Administrative Law Judge is not required to submit a recommended decision to the Board until after the hearing had been concluded. Instead, he may issue a prehearing order stating that the identified matters upon which the party is entitled to judgment will not need to be addressed at the hearing. Following the hearing, the Administrative Law Judge will simply incorporate his findings of fact and conclusions of law on the claims summarily disposed of into his recommended decision to the Board. Alternatively, the Administrative Law Judge may find that an order should be entered based on the presence of all of the necessary statutory elements regarding certain transactions or occurrences only, while not necessarily making a similar finding with respect to other transactions or occurrences alleged in a notice. Thus, for example, in a removal/prohibition proceeding, the Office of Enforcement may move for summary disposition based on allegations concerning two loan transactions. If the Administrative Law Judge found that one, but not both, of the transactions contained no dispute as to the material facts and that all of the elements required under the NHA or the HOLA to support a removal/prohibition order were present, he could recommend to the Board that a removal/prohibition order be issued based on that transaction, thereby obviating the need for a fact finding hearing on either transaction.

In moving for or opposing summary disposition, a party may not rely on mere allegations, but must submit documentary evidence, stipulations, admissions in pleadings, and/or deposition testimony in support of his contention.

The Board is adopting this procedure in order to provide a mechanism for futher shortening and streamlining of proceedings, thereby saving the parties, the Board, and its staff considerable time and expense. The Board wishes to emphasize that the proposed summary disposition procedure is not intended to deprive any respondent of the opportunity to appear before the Administrative Law Judge to present its case. Rather, the board is providing an alternative mechanism whereby a "fact trial" may be dispensed with, and written submissions and/or an oral argument on the law substituted, where there are no disputed material facts. The Board does not believe that such a procedure will deprive a respondent of any "hearing" to which he is entitled under the HOLA, the NHA, or any of the Board's other enabling statutes. Instead, it merely provides that the hearing could take a different form: instead of a lengthy "trial" to determine the facts, the hearing may consist of oral argument and/or legal briefing as to the proper application of relevant legal principles to the uncontested facts. The board therefore believes that the new procedure is fully in accordance with the requirements of the Administrative Procedure Act and due process of law.

[1] *See e.g.*, 7 CFR 10.91 (Commodity Futures Trading Commission); 16 CFR 3.24 (Federal Trade Commission).

16. Review by the Board on its Own Initiative

Section 509.29, dealing with exceptions to the recommended decision of the Administrative Law Judge, is unchanged from the prior provision in this area with one exception. New § 509.29(c) permits the Board, on its own initiative, to review all or any part of a recommended decision of an Administrative Law Judge within 30 days after the recommended decision has been served on all parties. Notice of any order of the Board directing review on its own initiative will be served on all parties by the Secretariat. This provision is intended to permit the Board to review any aspect of a recommended decision that it may deem appropriate, irrespective of whether the parties have filed exceptions to that portion of the recommended decision.

17. Oral Argument Before the Board

Section 509.30 revises former § 509.14 concerning oral argument before the Board on the recommended decision of the Administrative Law Judge and the findings of fact and conclusions of law upon which the recommended decision was based. The principal change from the prior provision is that any party requesting oral argument before the Board must show good cause as to why oral argument is necessary, including the reasons that any argument proposed to be presented orally was not, or could not be, adequately presented in writing.

18. Decison of the Board

Section 509.32 adds a provision to the former § 509.16, regarding the decision of the Board, providing that employees of the Board who have not engaged in any way in the performance of investigatory or adjudicatory functions in connection with a proceeding may, pursuant to delegated authority, advise and assist the Board in its consideration of that proceeding. This provision is intended to apply to those situations in which matters must be decided by the Board itself, rather than the Administrative Law Judge hearing the case. Included in this category would be motions submitted to the board prior to the appointment of the Administrative Law Judge, motions to dismiss a proceeding (which only the Board may decide), and the final decision of the board following the Administrative Law Judge's recommended decision.

B. Subpart B: Assessment of Civil Money Penalties

A new Subpart B sets forth specific procedures for proceedings to determine whether and to what extent civil money penalties should be assessed against insured institutions, their affiliates, service corporations, savings and loan holding companies, subsidiaries thereof, and/or related officials against whom the board has the authority to impose civil money penalties. These provisions, as well as the provisions of Subpart A, apply to these proceedings.

Proceedings to assess civil money penalties will commence with the issuance of a notice of assessment of civil money penalty. The notice is to contain a statement of the facts constituting the grounds for the assessment of the penalty, the amount of the penalty, the date by which the penalty is to be paid, and a statement informing the party being assessed the penalty of its right to request a hearing to contest the assessment of the penalty within 10 days after service of the notice. A party requesting a hearing is additionally required to file an answer as prescribed in proposed § 509.14 within 20 days of service of the notice of assessment. Upon receipt of a request for a hearing, the Board will serve the party afforded the hearing with notice of the time and place for the hearing. The hearing will be scheduled at least 30 days, but not more than 60 days, following the service of the notice of hearing, and will be conducted in accordance with the procedural provisions of Subpart A. A party requesting a hearing need not pay the penalty until after the hearing has been conducted.

Upon service of the Board's final decision and order, if adverse to the respondent, (or in the event that the respondent consents to the assessment of the penalty), payment of the penalty will be made as provided in § 509.38. In determining the amount of the penalty to be assessed, the Board will consider the financial strength and good faith of the person or entity being assessed, the seriousness of the violation, any previous violations, and any other matters that the interests of justice may require.

II. Revisions To Part 512

The Board is also adopting several technical changes to Part 512, its Rules for Investigative Proceedings and Formal Examination Proceedings. The revisions are summarized below.

The definition of "formal examination proceeding" contained in § 512.2(c) is being revised to reflect the clarification of the Board's authority provided by the Competitive Equality Banking Act of 1987, Pub. L. No. 100–86, 101 Stat. 552 ("CEBA"). The CEBA clarifies that the Board may conduct investigations of persons seeking to acquire control of insured institutions pursuant to the Control Act and may utilize its formal examination authority in doing so, as well as in investigating other possible violations of the Control Act.

Section 512.3 is being amended to state simply that all materials gathered during the course of any formal examination proceeding or investigative proceeding are confidential. This is simply a grammatical change, and the Board does not intend any substantive departure form its current practice in this area.

Section 512.4 is being revised to provide that the Director or any Deputy Director of the Office of Enforcement may approve the release of transcripts of a witness' own testimony to that witness or his counsel. Previously, the regulation provided that this authorization could be given only by the Board; in practice, however, the director of the Office of Enforcement performed this function pursuant to a delegation of authority from the Board. The amendment therefore simply codifies the agency's present practice and reduces the number of routine, nonsubstantive matters with which the Board must deal.

Section 512.5 is being amended in three respects. Paragraph (b)(1) provides that an attorney who has been suspended or debarred from practice by the highest court of any state, commonwealth, territory, possession or the District of Columbia, or by the Board in accordance with Part 513 is precluded from representing other persons before the Board in investigative and formal examination proceedings. Previously, the only basis for such preclusion under § 512.5 was suspension or debarment by the Board pursuant to Part 513. Additionally, paragraph (b)(2) is being amended to make it clear that only the attorney actually personally representing a witness (as distinguished from attorneys for the institutions that are the subjects of investigative or formal examination proceedings or for other witnesses or interested persons) may accompany that witness during the taking of that witness' testimony. Again, this is the practice that has been followed by the Board for many years in this area, and the amendment is of a clarifying nature only.

Former § 512.5(c) is being deleted. That paragraph provided that in a public investigative proceeding conducted under the Holding Company Act, if the record contained allegations of wrongdoing by any individual, the person had the right to appear on the record and to cross-examine witnesses and produce rebuttal testimony and documentary evidence. The Board is deleting this provision for a number of reasons. First, in the nearly 20 years that the rule had been in existence, the Board and its staff had no record of the Board's ever having conducted a "public investigative proceeding." Second, the whole notion of cross-examination and the presentation of "rebuttal" testimony and documentary evidence is inconsistent with the function of an investigation: the purpose of an investigative proceeding is to develop facts in order to determine whether violations of laws, rules, or regulations have occurred and whether an insured institution and individuals therein have engaged in unsafe or unsound practices with respect to the institution, its subsidiaries, or its affiliates, thereby providing a basis for future enforcement action. It does not, however, determine rights or results in the issuance of orders. Permitting individuals to present "rebuttal" evidence during the course of an investigation fundamentally alters the nature of the proceeding by converting the investigation into a trial. This, in turn, can result in substantial delays with little or no benefit to the decision making process. In fact, the FDIC, having experienced precisely these sorts of pointless delays and arguments in connection with its own investigations, recently deleted its own analogous provision, former 12 CFR 308.51(d). See 53 FR 51168. In the preamble to its amendments, the FDIC observed that rather than producing useful rebuttal information, § 308.51(d) had proven confusing and unworkable. *Id.* Of course, the deletion of § 512.5(c) does not preclude designated representatives conducting investigations and formal examinations from using their discretion to seek out evidence or testimony rebutting or otherwise relating to any apparent wrongdoing. Likewise, no individual is ever precluded from providing information relevant to an investigation or an explanation of his actions to the Board staff if he believes that circumstances so require.

Section 512.7, relating to the service of subpoenas, is being amended to add a provision that would permit service by an express delivery service and remove any language implying that a subpoena could be issued at the instance of anyone other than the Board official(s) conducting the investigative or formal examination proceeding. [2] In this regard, new paragraph (a) removes the reference to the tender of fees and mileage at the time a subpoena is served, and a new separate paragraph (d) provides simply that witnesses summoned to appear in any investigative or formal examination proceeding will be paid the same fees and mileage paid to witnesses in United States district courts. Paragraph (b) is being revised to provide that all motions to quash subpoenas issue in any investigative or formal examination proceeding must be addressed to and decided by the Director or any Deputy Director of the Office of Enforcement. Finally, paragraph (c) is being amended to provide that foreign nationals are subject to service of subpoenas if service is made upon a duly authorized agent of that person located in the United States. Again, this revision comports with the Board's current interpretation and practice on this issued and does not represent a substantive change.

[2] The former version of § 512.7 implied that a subpoena could be issued by and served at the instance of a person calling "rebuttal" witnesses pursuant to § 512.5(c). However, in view of the deletion of § 512.5(c) announced today, any such implication would be unnecessary and inappropriate.

Final Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 604, the Board is providing the following regulatory flexibility analysis:

1. *Need for and objectives of the rules.* These elements are incorporated above in SUPPLEMENTARY INFORMATION.

2. *Issues raised by comments and agency assessment and response.* These elements are incorporated above in the SUPPLEMENTARY INFORMATION.

3. *Significant alternatives minimizing small-entity impact and agency response.* The Rules of Practice and Procedure and Rules for Investigative Proceedings and Formal Examination Proceedings apply equally to all insured institutions. The rules impose no new recordkeeping requirements or other additional administrative burden on any insured institution.

List of Subjects in 12 CFR Parts 509 and 512

Administrative practice and procedure, Investigations.

Accordingly, the Board hereby proposes to amend Parts 509 and 512, Subchapter A, Chapter V, Title 12, *Code of Federal Regulations*, as set forth below.

1. Part 509 is revised to read as follows:

SUBCHAPTER A—GENERAL

PART 509—RULES OF PRACTICE AND PROCEDURE IN ADJUDICATORY PROCEEDINGS

Subpart A—General

Sec.
509.1 Scope of regulations.
509.2 Definitions.
509.3 Appointment of Administrative Law Judge.
509.4 Authority of the Administrative Law Judge.
509.5 Appearance and practice in adjudicatory proceedings.
509.6 Good faith certification.
509.7 Ex parte communications.
509.8 Maintenance of the record.
509.9 Service.
509.10 Filing of papers.
509.11 Formal requirements as to papers filed.
509.12 Computing time.
509.13 Notice.
509.14 Answer.
509.15 Amending pleadings.
509.16 Consolidation and severance of proceedings.
509.17 Motions.
509.18 Interlocutory review.
509.19 Prehearing conference and exchange of information.
509.20 Opportunity for informal settlement.
509.21 Discovery.
509.22 Subpoenas for documentary or physical evidence or for witness attendance.
509.23 Depositions.
509.24 Conduct of hearings.
509.25 Private and public hearings.
509.26 Summary disposition.
509.27 Proposed findings of fact and conclusions of law and recommended decision.
509.28 Briefs.
509.29 Exceptions.
509.30 Oral argument before the Board.
509.31 Notice of submission to the Board.
509.32 Decision of the Board.

Subpart B—Assessment of Civil Money Penalties

509.33 Scope.
509.34 Notice of assessment; request for hearing; answer.
509.35 Notice of hearing.
509.36 Assessment orders.
509.37 Payment of civil penalty.
509.38 Relevant considerations.

Authority: Sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended (12 U.S.C. 1725, 1726, 1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); sec. 12, 48 Stat. 892, as amended (15 U.S.C. 78*l*); Reorg. Plan No. 3 of 1947, 3 CFR, 1943–1948 Comp.

Subpart A—General

§ 509.1 Scope of regulations.

This part prescribes rules of practice and procedure applicable to

adjudicatory proceedings as to which hearings are provided by the following statutory provisions:

(a) Hearings under section 6(i) of the Federal Home Loan Bank Act, as amended, 12 U.S.C. 1426(i), to determine whether cause exists for the removal of any member of a Federal Home Loan Bank from membership or for depriving any non-member borrower of the privilege of obtaining advances from a Federal Home Loan Bank;

(b) Hearings in cease and desist proceedings under section 5(d)(2) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(2) ("HOLA") and section 407(e) of the National Housing Act, as amended, 12 U.S.C. 1730(e) ("NHA");

(c) Hearings under section 5(d)(4) of the HOLA, 12 U.S.C. 1464(d)(4), and section 407(g) of the NHA, 12 U.S.C. 1730(g), to determine whether a director, officer, or other person should be removed from office and/or prohibited from further participation in the conduct of the affairs of an insured institution;

(d) Hearings under section 407(b) of the NHA, 12 U.S.C. 1730(b), to determine whether cause exists for the termination of the insured status of any institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation;

(e) Hearings under section 408(a)(2)(D) of the NHA, 12 U.S.C. 1730a(a)(2)(D), to determine whether any person directly or indirectly exercises a controlling influence over the management or policies of an insured institution or any other company;

(f) Hearings under section 407(k)(3) of the NHA, 12 U.S.C. 1730(k)(3), section 408(j)(4)C) of the NHA, 12 U.S.C. 1730a(j)(4)(C), and section 5(d)(8)(B) of the HOLA, 12 U.S.C. 1464(d)(8)(B), to determine whether and/or to what extent civil penalties should be assessed against institutions, affiliates, service corporations, savings and loan holding companies, subsidiaries thereof and/or related officials in violation of any order issued under the Board's cease-and-desist authority or any provision of section 408 of the NHA, 12 U.S.C. 1730a, or any regulation (see Parts 583 and 584 of Subchapter F of this chapter) or order issued pursuant thereto;

(g) Hearings under section 408(h)(5)(A) of the NHA, 12 U.S.C. 1730a(h)(5)(A), to determine whether to terminate certain activities by savings and loan holding companies or to terminate ownership or control of a non-insured savings and loan holding company subsidiary;

(h) Hearings under section 407(q)(4) of the NHA, 12 U.S.C. 1730(q)(4), to determine whether the Federal Savings and Loan Insurance Corporation should issue an order to approve or disapprove a person's proposed acquisition of an insured institution and/or savings and loan holding company; and

(i) Hearings under section 15(c)(4) of the Securities Exchange Act of 1934, 15 U.S.C. 78o(c)(4) (the "Exchange Act"), to determine whether any institution or person subject to the jurisdiction of the Board pursuant to section 12(i) of the Exchange Act, 15 U.S.C. 78*l*(i), has failed to comply with the provisions of sections 12, 13, 14(a), 14(c), 14(d), or 14(f) of the Exchange Act.

§ 509.2 Definitions.

As used in this part:

(a) The term "adjudicatory proceeding" means a proceeding conducted pursuant to this part and leading to the formulation of a final order other than a regulation.

(b) The term "institution" means a Federally-chartered association within the meaning of section 5(d) of the HOLA, 12 U.S.C. 1464(d), an institution whose accounts are insured by the Federal Savings and Loan Insurance Corporation ("insured institution") within the meaning of section 401(a) of the NHA, 12 U.S.C. 1730(a), a subsidiary of an insured institution, a savings and loan holding company within the meaning of section 408(a)(1)(D) of the NHA, 12 U.S.C. 1730a(a)(1)(D), and a subsidiary of a savings and loan holding company within the meaning of section 408(a)(1)(H) of the NHA, 12 U.S.C. 1730a(a)(1)(H).

(c) The term "Board" means the Federal Home Loan Bank Board or, where appropriate, the Federal Savings and Loan Insurance Corporation.

(d) The term "Secretariat" means the Office of the Secretary to the Federal Home Loan Bank Board, including any Acting or Assistant Secretary to the Board, as defined at § 500.11 of this subchapter.

(e) The term "Administrative Law Judge" means an administrative law judge appointed pursuant to section 3105 or detailed to the Board pursuant to section 3344 of Title 5 of the United States Code to preside at a hearing conducted in accordance with this part. As used in this part, the term also shall refer to the Board or any person to whom the Board has delegated authority to act when an Administrative Law Judge has not been appointed or is unavailable.

(f) The term "party means an institution or person named as a respondent in any adjudicatory proceeding. The Office of Enforcement of the Board also is deemed to be a party to all proceedings under this part.

(g) The term "Respondent" means any institution or person against whom the Board seeks relief in the notice commencing the adjudicatory proceeding.

(h) The term "notice" means the notice that commences the adjudicatory proceeding, is served upon the Respondent by the Board, and designates a date, time, and place for the hearing to be conducted in connection with the allegations in the notice.

(i) Any use of a masculine, feminine, or neuter gender shall be deemed to encompass whichever usage would be appropriate under the circumstances, in accordance with § 500.6 of this subchapter.

§ 509.3 Appointment of Administrative Law Judge.

(a) *Appointment.* Unless otherwise directed by the Board, all hearings under this part shall be conducted by an Administrative Law Judge appointed by the United States Office of Personnel Management.

(b) *Procedures.* (1) Following the issuance and service of a notice, the Board or any person designated by the Board shall promptly request the appointment of an Administrative Law Judge to conduct the proceeding.

(2) Upon notification that an Administrative Law Judge has been appointed, the Board or any person designated by the Board shall advise the parties in writing of such appointment.

(3) If for any reason the designated Administrative Law Judge is unable to conduct or complete the proceeding for which he was appointed, a successor Administrative Law Judge shall be requested and appointed.

§ 509.4 Authority of the Administrative Law Judge.

All hearings governed by this part shall be conducted in accordance with the provisions of Chapter 5 of Title 5 of the United States Code. The Administrative Law Judge designated pursuant to this part to preside at any such hearing shall be in charge of the hearing and shall have the duty to conduct it in a fair and impartial manner and to take all action to avoid unnecessary delay in the disposition of the proceeding. Such Administrative Law Judge shall have all powers necessary to that end, including the following powers:

(a) To administer oaths and affirmations;

(b) To issue subpoenas and subpoenas duces tecum, as authorized by this part, and to revoke, quash, or modify any such subpoenas;

(c) To receive relevant evidence and to rule upon the admission of evidence and offers of proof;

(d) To take or cause depositions to be taken as authorized by this part;

(e) To regulate the course of the hearing and the conduct of the parties and their counsel;

(f) To hold conferences for the settlement or simplification of issues or for any other proper purpose;

(g) As justice may require, to consider and rule upon all procedural and other motions appropriate in an adversarial proceeding, except that only the Board shall have the power to grant any motion to dismiss the proceeding or to decide any other motion that results in final determination of the merits of the proceeding; and

(h) To prepare and present to the Board a recommended decision as provided herein.

Without limitation on the foregoing, the Administrative Law Judge shall, subject to the provisions of this part, have all the authority of section 556(c) of Title 5 of the United States Code.

§ 509.5 Appearance and practice in adjudicatory proceedings.

(a) *Appearance before the Board*—(1) *By non-attorneys.* An individual may appear on his own behalf; an authorized member of a partnership may represent the partnership; a bona fide and duly authorized officer of a corporation, trust, or association may represent the corporation, trust, or association; and an official or employee of any governmental unit, agency, or authority may represent that unit, agency, or authority before the Board (including representation before the Administrative Law Judge appointed to conduct the proceeding), unless such individual, partner, officer, or employee has been suspended or debarred from practice in accordance with the provisions of Part 513 of this subchapter or excluded or suspended from the proceeding pursuant to paragraph (c) of this section.

(2) *By attorneys.* Any person who is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth, or the District of Columbia and who has not been suspended or debarred from practice before the Board in accordance with the provisions of Part 513 of this subchapter or excluded or suspended from a particular proceeding in accordance with paragraph (c) of this section may represent parties or other persons in such adjudicatory proceeding. An attorney representing a party in an adjudicatory proceeding shall file a notice of appearance with the Secretariat, containing a written declaration that he is currently qualified to practice before the Board as provided by this paragraph (a)(2) and is authorized to represent the particular party on whose behalf he acts. Included in the notice of appearance shall be a written disclosure as to whether the attorney has ever been suspended or debarred from practice by the bar of any State, territory, Commonwealth, or the District of Columbia and, if so, the date(s) of any such suspension or debarment and a description of the facts and circumstances surrounding the same.

(b) *Conflict of interest in representation.* An individual shall not represent another person in an adjudicatory proceeding if it reasonably appears that such representation may be affected by that individual's responsibilities to a third person or by the individual's own interests. The Administrative Law Judge may take corrective measures at any stage of a proceeding to cure a conflict of interest in representation, including the issuance of an order disqualifying an individual from appearing in a representative capacity for the duration of the proceeding.

(c) *Sanctions.* Dilatory, obstructionist, egregious, contemptuous, or contumacious conduct at any phase of any adjudicatory proceeding under this part, as determined in the sole discretion of the Administrative Law Judge, may be grounds for exclusion therefrom and suspension for the duration of the proceeding and may be grounds for suspension or debarment pursuant to Part 513 of this subchapter.

(d) *Representatives of nonparties.* A nonparty who is required or requested to testify at a prehearing deposition pursuant to § 509.23 may be represented by any person qualified to represent a party before the Board. Anyone representing a nonparty in such a situation need not file a notice of appearance unless expressly ordered to do so by the Administrative Law Judge, but may be required by the Administrative Law Judge or any party to state on the record or in writing the information required in a notice of appearance. No attorney or other representative who refuses to provide such information shall be permitted to represent any person in the proceeding.

§ 509.6 Good faith certification.

(a) *General requirement.* After the issuance of the notice, every subsequent written presentation by a party represented by an attorney shall be signed by at least one attorney of record in that attorney's individual name and shall state the attorney's business address and telephone number. A party who is not represented by an attorney shall sign his presentations and shall include his address and telephone number.

(b) *Effect of signature.* (1) The signature of an attorney or party constitutes a certification by the signer that the attorney or party has read the presentation; that, to the best of his knowledge, information, and belief formed after reasonable inquiry, the presentation is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(2) If a presentation is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant.

(d) *Effect of making oral motion or argument.* The act of making any oral motion or oral argument by any attorney or party constitutes a certification by the attorney or party that, to the best of his knowledge, information, and belief formed after reasonable inquiry, his statements are well grounded in fact and are warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law and are not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(d) *Sanctions for violation.* If a presentation is made in violation of this section, the Administrative Law Judge may, on motion of any party or on his own motion, impose upon the attorney, represented party, or both any appropriate sanction authorized by this part.

§ 509.7 Ex parte communications.

(a) *Definition.* "Ex parte communication" means any material oral or written communication concerning the merits of an adjudicatory proceeding that takes place between a party, his counsel, or another person interested in the proceeding and the Administrative Law Judge handling that proceeding, the Board, any member of the Board, or any person who may reasonably be expected to be involved in assisting or advising the Board with respect to the preparation of a decision with respect to that proceeding and that was neither on the record nor on reasonable prior notice to all parties

(d) *Prohibition of ex parte communications.* From the time the notice is served, or from the date that a party learns that a notice has been approved by the Board, whichever is applicable, until the date that the Board serves its final decision pursuant to § 509.32, no person, including any person involved in the decisional process concerning the proceeding, shall knowingly make or cause to be made an ex parte communication concerning the merits of the proceeding.

(e) *Communications involving the Administrative Law Judge.* (1) The Administrative Law Judge shall not consult anyone within the Board on the merits of an adjudicatory proceeding, except upon notice and opportunity for all parties to participate in such consultation. This section shall not be construed as prohibiting the Administrative Law Judge from consulting with employees or agents of the Board on procedural matters.

(2) The Administrative Law Judge shall not be responsible to, nor subject to the supervision or direction of, any officer, employee, or agent of the Board engaged in the performance of investigatory or adjudicatory functions.

(d) *Procedure upon occurrence of ex parte communication.* If an ex parte communication is received by the Administrative Law Judge, the Board, any member of the Board, or other person identified in paragraph (a) of this section, that person shall cause all such written communications (or, if the communication is oral, a memorandum stating the substance of the communication) to be placed on the record of the proceeding and served on all parties. All other parties to the proceeding shall have an opportunity, within 10 days of receipt of service of the ex parte communication to file responses thereto and to recommend any sanctions that they believe to be appropriate under the circumstances. The Administrative Law Judge shall then determine whether any action should be taken concerning the ex parte communication and, if so, what that action should be.

(e) *Sanctions.* To the extent consistent with the interests of justice and the policy of the NHA, the HOLA, and/or the Federal Home Loan Bank Act, knowing violation of this section may be a ground for a decision adverse to a party who violates this section or may be a ground for suspension or debarment of any person engaging in such conduct under the procedures set forth in § 509.5(c) herein or in Part 513 of this subchapter.

§ 509.8 Maintenance of the record.

The transcript of testimony and exhibits, together with all papers and requests (including motions, stipulations, exceptions, rulings, pleadings, briefs, and other materials filed in connection with the proceeding) shall constitute the exclusive record for decision in accordance with this part. The Secretariat shall maintain the official record of all papers filed in each proceeding under this part. Upon appointment of the Administrative Law Judge, the Secretariat shall forward to the Administrative Law Judge a copy of the existing record of the proceeding.

§ 509.9 Service.

(a) *By the Board.* All documents or papers required to be served by the Board upon any party afforded a hearing shall be served by the Secretariat unless some other person shall be designated for such purpose by the Board. Such service, except for service on counsel for the Office of Enforcement, shall be made by personal service or by registered or certified mail, addressed to the last known address of such party, or on the attorney or representative of record of such party, provided that if there is no attorney or representative of record, such service shall be made upon such party at the last known address of such party. Such service may also be made in such other manner reasonably calculated to give actual notice as the Board may by regulation or otherwise provide.

(b) *By the parties.* Except as otherwise expressly provided in this part, all documents or papers filed in a proceeding under this part shall be served by the party filing the same upon the attorneys or representatives of record of all other parties to the proceeding or, if any party is not so represented, then upon such party. Such service may be made by personal service, by registered, certified, or regular first-class mail, or by an express delivery service addressed to the last known address of such parties or to their attorneys or representatives of record. Service shall be deemed to have been made at the time of personal service, upon deposit in the United States mails of a properly addressed and postage-paid document, or upon delivery of such document to an express delivery service. All such documents or papers shall include a certificate, signed by the person making service and stating that such service on other parties has been made and indicating the date and method of such service.

(c) *By the Administrative Law Judge.* Copies of all orders and rulings on motions by the Administrative Law Judge shall be served on all parties to the proceeding in the same manner as described in paragraph (b) of this section. The Administrative Law Judge shall file the original of all rulings and orders by him with the Secretariat.

§ 509.10 Filing of papers.

(a) Unless otherwise specifically provided in the notice or by the Administrative Law Judge, an original and one copy of all documents and papers required to be served under this part shall be filed with the Secretariat, with a copy to the Administrative Law Judge after he is designated. This rule shall not apply to the transcript of testimony and exhibits adduced at the hearing or to proposed exhibits submitted in advance of the hearing pursuant to an order of the Administrative Law Judge pursuant to § 509.19.

(b) All material required to be filed with the Board or the Secretariat shall be filed with the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552. Any such filing with the Secretariat shall be made at the time of service or within a reasonable time thereafter, but must be received by the Secretariat in Washington, DC, within three business days of service on the other parties.

§ 509.11 Formal requirements as to papers filed.

(a) *Form.* All papers filed under this part shall be double spaced and printed or typewritten on 8½ by 11 inch paper. All copies shall be clear and legible.

(b) *Signature.* The original of all papers filed by a party shall be signed by such party of by the duly authorized agent or attorney of such party and must show the address of the signer. Counsel for the Office of Enforcement shall sign the original of all papers filed by that Office.

(c) *Caption.* All papers filed must include at the head thereof, or on the title page, the name of the Board or FSLIC, the name of the party afforded the hearing, the number of the resolution giving notice of the hearing, and the subject matter of the particular paper.

§ 509.12 Computing time.

(a) *General rule.* In computing any period of time prescribed or allowed by this part, the date of the act, event, or default from which the designated period of time begins to run is not to be included. The last day so computed shall be included, unless it is a Saturday, Sunday, or federal holiday, in which event the period shall run until the end of the next day that is neither a Saturday, Sunday, nor such federal holiday. When the period of time prescribed or allowed is 10 days or less, intermediate Saturdays, Sundays, and such federal holidays shall be excluded in the computation.

(b) *Service by mail.* Whenever any party has the right or is required to do some act within a period of time prescribed in this part after the service upon him of any document or other paper of any kind, and such service is made by mail, three days shall be added to the prescribed period; *Provided, however,* That if an overnight mail service is used, only one day shall be added to the prescribed period.

(c) *Change of time limits.* Except as otherwise provided by law, the Administrative Law Judge may, at the request of the parties or *sua sponte,* extent the time limits prescribed by these rules or by any notice or order issued in the proceedings for good cause shown. Prior to the appointment of an Administrative Law Judge and after the filing of a recommended decision pursuant to § 509.27(d), the Board or any person designated by the Board may grant such extensions for good cause shown.

§ 509.13 Notice.

Whenever a hearing is ordered by the Board in any proceeding provided for in this part, a notice shall be served by the Secretariat, or other person designated for such purpose by the Board, upon the party or parties afforded the hearing. Such notice shall state the time, place, and nature of the hearing, the legal authority and jurisdiction under which the hearing is to be held, and, if an Administrative Law Judge has been designated to preside at the hearing, the name and address of such Administrative Law Judge. Such notice shall also contain a statement of the matters of fact and law constituting the grounds for the hearing.

§ 509.14 Answer.

(a) *When required.* In any notice commencing an adjudicatory proceeding, the Board shall direct the party or parties afforded the hearing to file an answer to the allegations contained in the notice. Except where a different period of not less than 10 days after service of a notice is specified by the Board, a party shall file an answer with the Secretariat within 20 days after service upon him of the notice.

(b) *Requirements of answer; effect of failure to deny.* An answer filed under this section shall concisely state any defenses and specifically admit or deny each allegation in the notice, unless the party is without knowledge or information, in which case his answer shall so state and such statement shall have the effect of a denial. Any allegation not denied shall be deemed to be admitted. When a party contends in good faith that part of an allegation is false, he shall specify so much of it as is true and shall deny only the remainder.

(c) *Admitted allegations.* If a party filing an answer under this section elects not to contest any of the allegations of fact set forth in the notice, his answer shall consist of a statement that he admits all of the allegations to be true. Such answer shall constitute a waiver of hearing as to the facts alleged in the notice. All parties will then have an opportunity to serve proposed findings of fact, conclusions of law, and a discussion of the appropriate remedy under the circumstances, together with supporting briefs, with copies to the Administrative Law Judge. These filings, together with the notice, shall provide a record basis on which the Administrative Law Judge shall file with the Secretariat his recommended decision in accordance with section 557 of Title 5 of the United States Code.

(d) *Effect of failure to answer.* Failure of a party to file an answer required by this section within the time provided shall be deemed to constitute a waiver of his right to appear and contest the allegations in the notice. If no answer is filed, the Administrative Law Judge, without further notice to the party, may receive proposed findings of fact, conclusions of law, and a recommended order from the Office of Enforcement and, based thereon, may find the facts to be as alleged in the notice and file with the Secretariat a recommended decision containing such findings and appropriate conclusions. The Administrative Law Judge may, for good cause shown, permit the filing of a delayed answer after the time for filing the answer has expired, provided that a request to file such a delayed answer is made to the Administrative Law Judge within the time prescribed for the filing of the answer. No request to file a delayed answer will be considered after the time for filing the answer has expired.

§ 509.15 Amending pleadings.

(a) *Amendments.* The notice or answer may be amended or supplemented at any stage of the proceeding by leave of the Administrative Law Judge. Such leave shall be freely given. The respondent shall answer an amended notice within the time remaining for the respondent's answer to the original notice, or within ten days after service of the amended notice, whichever period is longer, unless the Administrative Law Judge orders otherwise for good cause shown.

(b) *Amendments to conform to the evidence.* When issues not raised in the notice or answer are tried at the hearing by express or implied consent of the parties, they shall be treated in all respects as if they have been raised in the notice or answer and no formal amendments shall be required. If evidence is objected to at the hearing on the ground that it is not within the issues raised by the notice or answer, the Administrative Law Judge may allow the notice or answer to be amended and shall do so freely when the presentation of the merits of the action will be served thereby and the objecting party fails to satisfy the Administrative Law Judge that the admission of such evidence would unfairly prejudice that party's action or defense upon the merits. The Administrative Law Judge may grant a continuance to enable the objecting party to meet such evidence.

§ 509.16 Consolidation and severance of proceedings.

(a) *Consolidation.* On motion of any party, or upon the initiative of the Administrative Law Judge, or by resolution of the Board:

(1) Any two or more proceedings may be consolidated for some or all purposes if each proceeding involves or arises out of the same transaction or occurrence, or series of transactions or occurrences, and material common questions of law or fact will arise in each of the proceedings, unless such consolidation would cause unreasonable delay or injustice.

(2) Any two or more proceedings against the same or at least one common respondent that involve or arise out of the same transaction or occurrence, or series of transactions or occurrences, and involve common questions of law or fact may be consolidated for some or all purposes, unless such consolidation would cause unreasonable delay or manifest injustice.

(b) *Severance.* On the motion of any party or upon the initiative of the Administrative Law Judge, or by resolution of the Board, a proceeding involving two or more respondents may be severed for some or all purposes if:

(1) Severance is appropriate because the proceeding against one or more respondents is settled, stayed, or cannot proceed; or

(2) Severance will promote prompt resolution of the proceeding as to one respondent, or as to some or all respondents; or

(3) Severance is otherwise required to prevent manifest injustice.

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§ 509.27 Motions.

(a) *In writing.* An application or request for an order or ruling not otherwise specifically provided for in this part shall be made by motion. After an Administrative Law Judge has been designated to preside at a hearing and before the filing with the Secretariat of his recommended decision, all such motions shall be filed with the Secretariat, with a copy to the Administrative Law Judge, as provided in § 509.10. At all other times motions shall be addressed to the Board and filed with the Secretariat. In either case, a copy shall also be served on every other party to the proceeding. Motions shall be in writing, except that a motion made at a session of a hearing may be made orally on the record unless the Administrative Law Judge directs that it be reduced to writing. All written motions shall state with particularity the order or relief sought and the grounds therefor.

(b) *Responses.* Within 15 days after service of any written motion, or within such other period of time as may be fixed by this part or by order of the Administrative Law Judge, any party may file a written response to such motion. The moving party shall have no right to reply to such response except as expressly permitted by this part or by order of the Administrative Law Judge. The Administrative Law Judge may waive the requirements of this section as to motions for brief extensions of time and may rule upon such motions after receiving an oral response from the opposing party.

(c) *Dilatory motions not permitted.* Repetitive or numerous motions that raise the same issues or arguments or deal with the same subject matter as previously-decided motions shall not be permitted. Such dilatory motions may form the basis for sanctions under § 509.5(c) of this part or Part 513 of this subchapter. The Administrative Law Judge may assess costs attendant to responding to or ruling on such motions against parties who file such dilatory motions.

(d) *Supporting papers.* Written memoranda or briefs may be filed with motions or responses thereto, stating the points and authorities relied upon in support of the position taken.

(e) *Oral argument.* No oral argument will be heard on motions except as directed by the Administrative Law Judge.

(f) *Rulings on motions.* Except as otherwise provided in this part, the Administrative Law Judge shall rule promptly upon all motions properly served upon him and upon such other motions as the Board may direct, except that if the Administrative Law Judge finds that a prompt decision by the Board on a motion is essential to the proper conduct of the proceeding, he may refer such motion to the Board for decision. The original of all rulings and orders on motions by the Administrative Law Judge shall be filed by him with the Secretariat, and copies served by the Administrative Law Judge on all parties to the proceeding.

(g) *Continuation of proceeding.* Unless otherwise ordered by the Administrative Law Judge or the Board, the proceeding, including the hearing, shall continue pending the determination of any motion that must be decided by the Board.

§ 509.18 Interlocutory review.

(a) *General rule.* The Board will review a ruling of the Administrative Law Judge prior to the submission of the Administrative Law Judge's recommended decision only in extraordinary circumstances that warrant the Board's prompt review and in accordance with the procedures set forth in this section.

(b) *Scope of review.* An interlocutory appeal may be permitted, in the discretion of the Board, under the following circumstances:

(1) Appeal from a ruling pursuant to § 509.5 suspending an attorney or other representative from participation in a particular proceeding;

(2) Appeal from an order denying a motion for summary disposition;

(3) On certification by the Administrative Law Judge in accordance with paragraph (c) of this section;

(4) Upon any other interlocutory ruling where certification has been denied by the Administrative Law Judge. Interlocutory review shall not be granted under this paragraph (b)(4) unless the Board determines that the Administrative Law Judge's failure to certify the matter was clearly erroneous.

(c) *Certification by Administrative Law Judge.* (1) Any party may move that the Administrative Law Judge certify and permit an appeal of a contested ruling to the Board. Such a motion shall be served within 10 days of the Administrative Law Judge's notification to the parties of the contested ruling; *Provided, however,* That if such a motion is made during the hearing, the Administrative Law Judge may permit the motion and responses thereto to be made orally. The motion for certification must state the grounds relied upon, including the reasons for permitting the interlocutory review, in accordance with the criteria set forth in paragraph (c)(2) of this section. Any party may serve a response to a motion for certification within 10 days after service of the motion.

(2) The Administrative Law Judge shall certify a ruling for interlocutory review to the Board only upon a motion by a party and a determination by the Administrative Law Judge that (i) the ruling involves a controlling question of law or policy as to which substantial grounds exist for a difference of opinion and (ii) an immediate appeal from the ruling may materially advance the ultimate conclusion of the proceeding. Any certification to the Board shall be in writing and shall set forth the relevant issues, an explanation of the ruling on the issues, and specific reasons for the granting of the moving party's request for review by the Board.

(d) *Procedure.* Where certification is not required under paragraph (b) of this section of where the Administrative Law Judge certifies a ruling for interlocutory review by the Board, or where a party believes that a denial of certification by the Administrative Law Judge was clearly erroneous, a petition for interlocutory review may be filed within 10 days after notice of the Administrative Law Judge's ruling or certification. The petition shall include or have attached thereto a copy of the ruling or portion thereof from which appeal is being sought and present the points of fact and law relied upon in support of the position taken. Any party may serve a response to a petition for interlocutory review within 10 days of service of the petition. The Board shall determine whether to grant interlocutory review based upon the petition for review and any responses thereto without oral argument or further written submissions unless the Board shall otherwise direct.

(e) *Dismissal of interlocutory appeal by the Board.* The Board may dismiss an interlocutory appeal if it finds that the Administrative Law Judge's certification was erroneously granted or if it finds that prompt consideration of the appeal is not warranted under the standards set forth above in paragraph (c)(2) of this section.

(f) *Notification by the Secretariat.* Neither a motion to the Administrative Law Judge for interlocutory review, nor a petition to the Board for interlocutory review, nor the granting of such a motion or petition under this section shall suspend or stay the proceeding unless otherwise ordered by the Administrative Law Judge or the Board. Any stay of longer than 30 days must be specifically approved by the Board.

§ 509.19 Prehearing conference and exchange of information.

(a) *Prehearing conference.* The Administrative Law Judge may, on his own initiative or at the request of any party, direct counsel for all parties to meet with him at a specified time and place prior to the hearing (in person or by telephone) and/or submit prehearing memoranda to him in writing, to address any or all of the following:

(1) Simplification and clarification of the issues;

(2) Stipulations, admissions of fact, and the contents, authenticity and admissibility into evidence of documents;

(3) Matters of which official notice will be taken;

(4) Limiting the number of witnesses; and

(5) Such other matters as may aid in the orderly disposition of the proceeding.

(b) *Witnesses.* Within a period of time established by the Administrative Law Judge and prior to the date scheduled for the hearing, each party shall serve a written list of witnesses to be called to testify at the hearing. The list shall contain the name and address of each witness and a brief summary of the testimony expected of each witness. The Administrative Law Judge shall not allow any witness to testify at the hearing who is not included on any party's witness list except for good cause shown.

(c) *Exhibits.* Within a period of time established by the Administrative Law Judge and prior to the date scheduled for hearing, each party shall serve a written list of exhibits to be offered into evidence at hearing together with a copy of each proposed exhibit. The Administrative Law Judge shall not allow any exhibit to be accepted into evidence at the hearing that is not listed and copied in accordance with the provisions of this paragraph except for good cause shown.

(d) *Stipulations.* Within a period of time established by the Administrative Law Judge and prior to the date scheduled for the hearing, the parties shall by written stipulation agree upon as many pertinent facts as practicable. The parties may also stipulate to any other pertinent facts orally at the hearing. When stipulations are accepted by the Administrative Law Judge, they shall be binding on the parties.

(e) *Prehearing brief.* Any party may serve, and the Administrative Law Judge may require all parties to serve, a prehearing brief or legal memorandum in advance of the hearing date.

(f) *Prehearing order.* At or within a reasonable time following the conclusion of a prehearing conference, the Administrative Law Judge shall file with the Secretariat and serve upon each party a prehearing order setting forth agreements reached and any procedural determinations made. Any agreements reached among the parties at the prehearing conference or otherwise shall become part of the record and shall be binding on the parties unless the Administrative Law Judge permits otherwise for good cause shown.

§ 509.20 Opportunity for informal settlement.

(a) Any respondent may at any time unilaterally submit to the Secretariat, for consideration by the Board of its designee, with copies to all other parties, written offers or proposals for settlement of a proceeding, without prejudice to the rights of the parties. Other parties to the proceeding may respond to the settlement offer within 20 days of service of such settlement offer. Unless the Office of Enforcement recommends to the Board or its designee that it accept the submitted settlement offer, submission of a settlement offer shall not provide a basis for adjourning or otherwise delaying all or any portion of a proceeding under this subpart. No such settlement offer or proposal shall be admissible in evidence over the objection of any party in any hearing in connection with such proceeding.

(b) Upon receipt of a settlement offer, the Board, its designee, or any person selected by the Board or its designee may consult with the parties about the settlement offer by convening a settlement conference with the parties or by requiring the submission of such additional information as the Board or such other person may deem, appropriate for consideration of the settlement offer.

(c) The Board shall notify the parties of is decision whether to accept the settlement offer within 60 days of its receipt of such settlement offer, unless extended in writing for good cause.

§ 509.21 Discovery.

(a) *General rule.* Parties to proceedings under this part may obtain discovery only through the production of documents and only by order of the Administrative Law Judge in accordance with the procedures set forth in this paragraph. Except as otherwise expressly authorized by this part, no other form of discovery shall be allowed.

(b) *Criteria.* Discovery shall be permitted only upon a clear showing that:

(1) The documents being sought are relevant and material to the requesting party's case or defense;

(2) The party seeking discovery has substantial need for the materials for the preparation of its case or defense; and

(3) The location and production of the documents will not result in any undue burden to any other party or in any undue delay in the proceeding.

(c) *Procedure.* Any party seeking to obtain discovery shall serve a motion for discovery containing facts and arguments sufficient to demonstrate that the criteria set forth in paragraphs (b)(1), (2), and (3) of this section have been satisfied. The motion shall identify with reasonable particularity the documents requested, either by individual item or by category. Any party may serve a response to the motion within 10 days of service thereof. Upon a clear showing that the criteria set forth in paragraphs (b)(1), (2), and (3) of this section have ben satisfied, the Administrative Law Judge may grant all or such part of such discovery request as he may deem appropriate under the circumstances.

(d) *Response.* In the event that the Administrative Law Judge grants all or part of a discovery request, the party from whom the documents were requested shall furnish the documents within 20 days of service of the decision of the Administrative Law Judge, unless the parties agree on a different time or the Administrative Law Judge orders a different time for good cause shown. If any documents are withheld on the basis of privilege of any kind as provided by paragraph (e) of this section, the responding party shall provide a written list of the documents withheld, the privilege claimed with respect to each document, and the basis for the claim of privilege.

(e) *Privileged documents.* Privileged documents are not discoverable. Applicable privileges include the attorney-client privilege, the attorney work product privilege, the governmental deliberative process privilege, and other such privileges as the United States Constitution, applicable acts of Congress, or principles of the common law may provide.

(f) *Motions to compel production.* If any party fails to comply with an order of the Administrative Law Judge granting a discovery request within the prescribed time for response, or withholds documents without a valid privilege claim, the requesting party may move for an order of the Administrative Law Judge compelling production of the documents. The Administrative Law Judge may impose sanctions under

§ 509.5(c) for failure to comply with a discovery order.

(g) *Protective orders.* Upon a showing that discovery is being conducted in bad faith or in such a manner as unreasonably to annoy, oppress, or embarrass any party, the Administrative Law Judge may order discovery terminated or may limit the scope or manner of discovery. Grounds for terminating or limiting discovery include persistent requests for privileged documents, repeated inquiries into areas that are neither relevant nor likely to lead to the discovery of relevant information, and unwarranted attempts to pry into a party's preparation for trial.

(h) *Time limits.* All discovery, including all responses to discovery requests, shall be completed at least 30 days prior to the date scheduled for the commencement of the hearing. No exceptions to this rule shall be permitted unless the Administrative Law Judge finds on the record that good cause clearly exists for waiving the requirements of this subsection.

§ 509.22 Subpoenas for documentary or physical evidence or for witness attendance.

(a) *Issuance.* The Administrative Law Judge shall issue subpoenas, as authorized by law, at the request of any party, requiring the attendance of witnesses at the hearing to be held in connection with an adjudicatory proceeding and/or the production of documentary or physical evidence at such hearing. Where it appears to the Administrative Law Judge that the subpoena may be unreasonable, oppressive, excessive in scope, or unduly burdensome, the party seeking the subpoena may be required, as a condition precedent to the issuance of the subpoena, to show the general relevance and reasonable scope of the testimony or other evidence sought. In the event the Administrative Law Judge, after consideration of all the circumstances, determines that the subpoena or any of its terms are unreasonable, oppressive, excessive in scope, or unduly burdensome, he may refuse to issue the subpoena, or may issue it in modified form upon such conditions as justice requires.

(b) *Motion to quash.* Any person to whom a subpoena is directed may, prior to the time specified therein for compliance but in no event more than 10 days after the date of service of such subpoena, serve a motion, in accordance with the provisions of § 509.17 of this part, to revoke, quash, or modify such subpoena, accompanying such application with a statement of the reasons therefor.

(c) *Service of subpoena.* The party seeking the subpoena is responsible for effecting service thereof. Service of a subpoena upon a person named therein shall be made by delivering a copy of the subpoena by personal service, certified or registered mail, or an express delivery service to such person and by tendering the fees for one day's attendance and the mileage as specified in paragraph (d) of this section, except that when a subpoena is issued at the instance of the Office of Enforcement, fees and mileage need not be tendered at the time of service of the subpoena. If service is made by a United States Marshall, his deputy, or an employee of the Board, such service shall be evidenced by his return thereon. If made by any other person, such person shall make affidavit thereto, describing the manner in which service is made, and return such affidavit on or with the original subpoena.

(d) *Attendance of witnesses.* The attendance of witnesses and the production of documents pursuant to a subpoena issued in connection with a hearing provided for in this part may be required from any place in any State, Commonwealth, possession, territory, or the District of Columbia at any designated place where the hearing is being conducted. Witnesses subpoenaed in any proceeding under this part shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States.

§ 509.23 Depositions.

(a) *Prerequisites.* Oral depositions shall be permitted in adjudicatory proceedings under this part only upon a showing that:

(1) The proposed deponent is or is likely to be unavailable to attend the hearing because of age, illness, infirmity or other cause beyond the control of the deponent;

(2) The testimony of the proposed deponent will be relevant and material to the proceeding; and

(3) The taking of the deposition will not result in any undue burden to any other party or in undue delay in the proceeding.

(b) *Procedure.* Any party desiring to take the oral deposition of a witness shall serve a written motion setting forth facts sufficient to demonstrate that the prerequisites set forth in paragraph (a) of this section have been satisfied. The motion shall include the name and address of the proposed deponent and a statement setting forth the matters upon which the proposed deponent will be questioned, the materiality and relevance of the deponent's testimony, the need for the deposition, and the proposed time and place for the deposition. Any party may serve a response to the motion within 10 days after service thereof. Failure of a party to respond to such a motion within 10 days will be deemed to constitute a waiver of objection to the deposition.

(c) *Decision.* Upon a showing that the prerequisites set forth in paragraph (a) of this section have been satisfied, the Administrative Law Judge may, by subpoena or subpoena duces tecum, order that such oral deposition be taken. If, after consideration of all circumstances, the Administrative Law Judge determines that the deposition or its location, in whole or in part, is unnecessary, unreasonable, oppressive, excessive in scope, or unduly burdensome, he may refuse to grant the motion or may grant it only upon such conditions as justice requires. The Administrative Law Judge shall serve a notice of the action taken on the motion upon each of the parties. Service shall be accomplished under the procedures of § 509.9 of this part. Service shall be completed at least 10 days in advance of the date and time fixed for the taking of the deposition.

(d) *Motion to quash.* A person named in a subpoena or subpoena duces tecum to take evidence by oral deposition who is not a party to the proceeding may move to revoke, quash, or modify the subpoena. Such motion shall be accompanied by a statement of the reasons therefor and a copy of the motion shall be served upon the party requesting the subpoena. The motion must be made prior to the time for compliance specified in the subpoena and not more than 10 days after the date of service of the subpoena, except for good cause shown.

(e) *Procedure on deposition; objections.* Each witness testifying upon oral deposition shall be duly sworn, and all other parties shall have the right to cross-examine. Objections to questions or evidence shall be in short form, stating the grounds of objection, unless a valid privilege is asserted. If the deponent refuses to answer a question posed at a deposition, the deposition may be adjourned or completed at the option of the party who requested the deposition, except as to the unanswered question, and an oral or written request may be made to the Administrative Law Judge to compel an answer.

(f) *Protective orders.* At any time during the taking of a deposition, on motion of the deponent or of any party, and upon a showing that the deposition is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the Administrative Law Judge may order the termination of the deposition or may limit the scope and manner of the taking of the deposition. Grounds for terminating or limiting a deposition include persistent questioning on privileged matters, repeated inquiries into areas that are neither relevant nor likely to lead to the discovery of relevant information, or unwarranted attempts to pry into a party's preparation for trial. The physical condition of the witness and the adequacy of the examination that has already taken place also may be considered.

(g) *Introduction as evidence.* If the deposition or any portion of the deposition is offered at the hearing, the Administrative Law judge shall then consider any objections raised, provided that those objections were made during the deposition and, at that time, may refuse to allow reading of the answer to any question found to be objectionable. Subject to appropriate rulings on such objections to questions or evidence as were noted at the time the deposition was taken or as would be valid were the witness personally present and testifying, the deposition or any part thereof may be submitted into evidence by any party to the proceeding. Only that part of a deposition that is received in evidence at a hearing shall constitute a part of the record in such proceeding upon which a decision may be based.

(h) *Payment of fees.* The fees of the witness and of there porter shall be paid by the person upon whose application the deposition was taken.

§ 509.24 Conduct of hearings.

(a) *Hearing rules.* Every party shall have the right to present its case or defense by oral and documentary evidence and to conduct such cross-examination as may be required for full disclosure of the facts. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. Objections to the admission or exclusion of evidence shall be concise and, together with rulings thereon, become part of the record. Argument on objections may, at the discretion of the Administrative Law Judge, take place off the record. Failure to object to admission or exclusion of evidence or to any ruling shall constitute a waiver of the objection. The privileges of witnesses or parties shall be governed by the principles of the common law as such principles may be interpreted by the courts of the United States in light of reason and experience.

(b) *Official notice.* Official notice may be taken of any material fact that might be judicially noticed by a district court of the United States and of any material information in the official public records of the Board. All matters officially noticed by the Administrative Law Judge shall appear on the record. If official notice is requested or taken of any fact, the parties, upon timely request, shall be afforded an opportunity to establish the contrary.

(c) *Transcript of testimony.* Hearings shall be recorded and transcripts will be made available to any party upon payment of the cost thereof. A copy of the transcript of the testimony taken at the hearing, duly certified by the reporter, together with all exhibits, shall be filed with Administrative Law Judge, who shall file such materials with the Secretariat at the time he submits his recommended decision. The Administrative Law Judge shall have the authority to rule upon motions to correct the record.

(d) *Continuances and changes or extensions of time and changes of place of hearing.* Prior to the appointment of an Administrative Law Judge and after the filing of a recommended decision pursuant to § 509.27 of this part, except as otherwise expressly provided by law, the Board may in the notice or any subsequent order provide time limits different from those specified in this part and may, on its own initiative or for good cause shown, change or extend any time limit prescribed by these rules or the notice, or change the time and place for any hearing hereunder. The Administrative Law Judge may, as permitted by law, change the time for beginning any hearing, continue or adjourn a hearing from time to time, and change the location of the hearing.

(e) *Call for further evidence, oral arguments, briefs, or reopening of hearing.* The Administrative Law Judge may call for the production of further evidence upon any issue, may permit oral argument and submission of briefs at or following the hearing, and, upon appropriate notice, may reopen the hearing at any time prior to the filing of his recommended decision with the Secretariat.

§ 509.25 Private and public hearings.

(a) All hearings shall be private and shall be attended only by the parties, their representatives or counsel, witnesses while testifying, and other persons having an official interest in the proceeding unless the Board determines that a public hearing should be held pursuant to this section. Unless an exception is granted by the Administrative Law Judge in response to a motion by a party, all witnesses shall be sequestered.

(b) Unless otherwise ordered by the Board as provided in paragraph (c) of this section or required by law, the entire record in any proceeding under this part, including, but not limited to, the notice, answer, the transcript, exhibits, proposed findings of fact and conclusions of law, briefs, recommended decision of the Administrative Law Judge, exceptions thereto, the decision and order of the Board, and any other papers and documents that are filed in connection with the proceeding shall not be made public, and shall be for the confidential use only of the Board and its staff, the Administrative Law Judge, the parties, and appropriate supervisory authorities.

(c) Where the Board, in its discretion, after fully considering the views of the party afforded the hearing, determines that a public hearing is necessary to protect the public interest, the Board may order that the hearing be public. In any public hearing, the Administrative Law Judge shall have the authority to take all appropriate steps, including closing portions of the hearing to the public and admitting materials into the record under seal, to protect the reputation and integrity of any nonparties to the proceeding.

§ 509.26 Summary disposition.

(a) *Filing of motions and responses.* Any party who believes that there is no genuine issue of material fact to be determined and that he is entitled to a decision as a matter of law may move for summary disposition in his favor of all or any part of the proceeding. Such motion may be filed at any time. Any party, within 20 days after service of such a motion, or within such further time period as the Administrative Law Judge may allow, may serve an opposition to such motion and/or may countermove for summary disposition. Following receipt of a motion for summary disposition and all responses thereto and any further written submission and/or oral argument he deems appropriate, the Administrative Law Judge shall submit a recommended decision to the Board in accordance with the provisions of § 509.27(c) and of paragraph (d) of this section if he finds that summary disposition is warranted. No such recommended decision need be filed with the Board if the Administrative Law Judge finds that no party is entitled to summary disposition. If the Administrative Law Judge determines that a party is entitled to summary disposition as to certain claims only, he may defer submitting a recommended decision as to those claims until he files his recommended decision at the conclusion of the hearing. If the Administrative Law Judge

determines that a party is entitled to an order based on the presence in one or more transaction(s) or occurrence(s) of all statutory elements necessary to support such an order, he may recommend that the Board issue such an order based on such transaction or occurrence even though he may make no such finding with respect to other transactions or occurrences contained in the notice.

(b) *Supporting papers.* A motion for summary disposition shall be accompanied by a statement of the material facts as to which the moving party contends there is no genuine issue, supported by documentary evidence, admissions in pleadings, stipulations, depositions, and any other evidentiary materials that the moving party contends support his position. The motion shall also be accompanied by a brief containing the points and authorities in support of the contention of the party making the motion. Any party opposing a motion for summary disposition shall file a statement setting forth those material facts as to which he contends a genuine dispute exists, supported by evidence of the same type required to be submitted with the motion for summary disposition and a brief containing the points and authorities in support of the contention that summary disposition would be inappropriate. A party opposing a motion for summary disposition may argue that, although there is no dispute as to the material facts, the law is unclear or contrary to the position urged by the moving party or that the circumstances are such that a different remedy or result is appropriate. In this event, the party's submission shall clearly set forth such legal differences or circumstances and a discussion of the appropriate result or remedy.

(c) *Hearing on motion.* At the request of any party or *sua sponte*, the Administrative Law Judge may convene a hearing on any motion for summary disposition for the purpose of receiving oral argument on the motion.

(d) *Recommended decision on motion.* The Administrative Law Judge shall recommend that the Board issue a final order granting a motion for summary disposition if the undisputed pleaded facts, admissions, stipulations, documentary evidence, deposition transcripts, matters as to which official notice may be taken, and any other evidentiary materials properly submitted in connection with the motion show that: (1) There is no genuine issue as to any material fact; (2) there is no necessity that further facts be developed on the record; and (3) the moving party is entitled to a decision in his favor as a matter of law.

§ 509.27 Proposed findings of fact and conclusions of law and recommended decision.

(a) *Proposed findings of fact and conclusions of law.* Each party shall have a period of 30 days after the submission of the hearing transcript to the Administrative Law Judge following the close of the hearing, or such further time as the Administrative Law Judge for good cause may allow, to serve proposed findings of fact and conclusions of law, which may be accompanied by a brief in support thereof. Such proposals shall be supported by citation of such statutes, decisions and other authorities, and page references to such portions of the record as may be relevant. Each party may serve a reply brief within 20 days of service of the other parties' proposed findings of fact and conclusions of law and accompanying briefs. All such proposals and briefs shall become a part of the record.

(b) *Recommended decision and filing of record.* The Administrative Law Judge shall, within 30 days after the expiration of the time allowed under paragraph (a) of this section, or within such further time as the Board for good cause may allow, file with the Secretariat and certify to the Board for decision the entire record of the hearing, which shall include his recommended decision in accordance with section 557 of Title 5 of the United States Code, the transcript, and the exhibits (including, on request of any of the parties, any exhibits excluded from evidence or tenders of proof), exceptions, rulings, and all pleadings, briefs, and other materials filed in connection with the hearing. Promptly upon such filing, the Secretariat shall serve upon each party to the proceeding a copy of the recommended decision. The provisions of this paragraph (b) shall not apply in any case where the hearing was held before the Board.

§ 509.28 Briefs.

(a) *Contents.* All briefs shall be confined to the particular matters in issue. Each proposed finding of fact, conclusion of law, or exception that is briefed shall be supported by a concise argument and by citation of such statutes, decisions, and other authorities and by page references to such portions of the record as may be relevant. If the exception relates to the admission or exclusion of evidence, the substance of the evidence admitted or excluded shall be set forth in the brief with appropriate references to the transcript.

(b) *Reply briefs.* Reply briefs may be served within 20 days after service of original briefs of opposing parties, or such further time as the Administrative Law Judge may permit, and shall be confined to matters in opening briefs. Further briefs may be filed only with the express permission of the Administrative Law Judge.

(c) *Delayed filing.* Briefs not served on or before the time fixed in this part will be received only upon special permission of the Administrative Law Judge.

§ 509.29 Exceptions.

(a) *Filing.* Within 30 days after service of the recommended decision of the Administrative Law Judge or such further time as the Board for good cause shall allow, any party (other than a party who has not filed an answer in accordance with § 509.14(a)), may serve and file with the Secretariat exceptions thereto or to any portion thereof, or the failure of the Administrative Law Judge to make any recommendation, finding, or conclusion, or to the admission or exclusion of evidence, or to any other ruling of the Administrative Law Judge supported by such brief as may appear advisable.

(b) *Waiver.* Failure of a party to serve and file exceptions to the recommended decision of the Administrative Law Judge or any portion thereof, or to his failure to adopt a proposed finding or conclusion, or to the admission or exclusion of evidence, or to any other ruling of the Administrative Law Judge within the time allowed under paragraph (a) of this section, shall be deemed to be a waiver of objection thereto.

(c) *Review by the Board on its own initiative.* The Board may, on its own initiative, undertake review of a recommended decision of an Administrative Law Judge within 30 days after the recommended decision has been served on all parties. Notice of any order of the Board directing review on its own initiative shall be served on all parties by the Secretariat.

§ 509.30 Oral argument before the Board.

Upon the Board's own initiative or upon the written request of any party made within the time for filing exceptions to the recommended decision (or any part thereof) of the Administrative Law Judge, the Board or its designee(s) may order and hear oral argument on all or any part of the recommended decision and the findings and conclusions on which the recommended decision or such part thereof is based. Such written request must show good cause for oral argument, including reasons why arguments have not been or cannot be, presented adequately in writing. Oral argument before the Board shall be recorded by the Secretariat.

§ 509.31 Notice of submission to the Board.

Upon the filing of the record with the Secretariat, and upon the expiration of the time for the filing of exceptions and all briefs, including reply briefs or any further briefs permitted by the Board, and upon the hearing of any oral argument ordered by the Board, the Secretariat shall notify the parties in writing that the case has been sumbitted to the Board for final decision.

§ 509.32 Decision of the Board.

(a) Employees of the Board who have not engaged in any way in the performance of investigatory or adjudicatory functions in connection with a proceeding may advise and assist the Board in the consideration of the proceeding. The Board shall consider the recommeded decision and the whole record on review and shall base its determination thereon.

(b) The Board shall render its final decision within 90 days after the Secretariat has notified the parties, pursuant to § 509.31 of this part, that the case has been submitted to the Board for final decision, unless within such 90-day period the Board shall order that such notice be set aside and the case reopened for further proceedings. Copies of the decision and order of the Board shall be served by the Secretariat upon each party to the proceeding and, if directed by the Board or required by statute, upon any appropriate State supervisory authority.

Subpart B—Assessment of Civil Money Penalties

§ 509.33 Scope.

The rules and procedures in this Subpart and in subpart A shall apply to proceedings under section 407(k)(3) of the NHA, 12 U.S.C. 1730(k)(3), section 408(j)(4)(C) of the NHA, 12 U.S.C. 1730a(j)(4)(C), and section 5(d)(8)(B) of the HOLA, 12 U.S.C. 1464(d)(8)(B), to determine whether and/or to what extent civil penalties should be assessed against insured institutions, their affiliates, service corporations, savings and loan holding companies, subsidiaries thereof, and/or related officials in violation of any order issued under the Board's cease-and-desist authority or any provision of section 408 of the NHA, 12 U.S.C. 1730a *et seq.* or any regulation (see Parts 583 and 584 of this Subchapter F of this chapter) or order issued pursuant thereto.

§ 509.34 Notice of assessment; request for hearing; answer.

Proceedings to assess civil money penalties shall be commenced by service of a notice of assessment of civil money penalty. The notice shall contain a statement of the facts constituting the grounds for the assessment of the penalty, the amount of the civil money penalty being assessed, and the date by which the penalty must be paid and shall inform the party being assessed of its right to request a hearing to challenge the assessment of the penalty within 10 days of service of the notice. If a hearing is not requested within the prescribed 10 day period, the assessment shall constitute a final and unappealable order of the Board. A party requesting a hearing shall file an answer as prescribed in § 509.14.

§ 509.35 Notice of hearing.

A party requesting a hearing shall be informed by notice of the time and place set for the hearing. The notice of hearing shall be served at least 30 days in advance of the date set for the hearing and shall order the hearing to commence within 60 days after receipt of the request for a hearing. Any party afforded a hearing who does not appear at the hearing personally or through a duly authorized representative shall be deemed to have consented to the issuance of an assessment order.

§ 509.36 Assessment orders.

In the event of consent, or if upon the record developed at the hearing, the Board finds that any of the grounds specified in the notice of assessment has been established, the Board may serve an order of assessment of civil money penalty upon the party concerned. An assessment order shall be effective immediately upon service or upon such other date as may be specified therein and shall remain effective and enforceable until it is stayed, modified, terminated, or set aside by the Board or by a reviewing court.

§ 509.37 Payment of civil penalty.

(a) Civil penalties assessed pursuant to this Subpart B are payable and to be collected within 60 days after the issuance of the notice of assessment, unless the Board fixes a different time for payment where it determines that the purpose of the penalty would be better served thereby: *Provided, however,* That if a party has made a timely request for a hearing to challenge the assessment of the penalty, the party shall not be required to pay such penalty until the Board has issued a final order of assessment following the hearing. In such cases, the penalty shall be paid within 60 days of service of such order unless the Board fixes a different time for payment.

(b) Checks in payment of civil penalties shall be made payable to the Treasurer of the United States and sent to the Controller's Division of the Board. Upon receipt, the Board shall forward the check to the Treasury of the United States.

§ 509.38 Relevant considerations.

In determining the amount of the penalty to be assessed in any proceeding under this part, the Board shall consider the financial strength and good faith of the party against whom the penalty is to be assessed, the gravity of the violation, any previous violations, and such other matter as justice may require.

PART 512—RULES FOR INVESTIGATIVE PROCEEDINGS AND FORMAL EXAMINATION PROCEEDINGS

2. The authority citation for Part 512 is revised to read as follows:

Authority: Sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402, 407, 48 Stat. 1256, 1260, as amended (12 U.S.C. 1725, 1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); sec. 12, 48 Stat. 892, as amended (15 U.S.C. 78*l*); Reorg. Plan. No. 3 of 1947; 3 CFR 1943–1948 Comp.

3. Section 512.1 is revised to read as follows:

§ 512.1 Scope of part.

This part prescribes rules of practice and procedure applicable to the conduct of investigative proceedings under section 408(h)(2) of the National Housing Act, as amended, 12 U.S.C. 1730a(h)(2) ("Act") and to the conduct of formal examination proceedings with respect to insured institutions and their affiliates under section 407 (m)(2) or (q)(16) of the Act, as amended, 12 U.S.C. 1730 (m)(2) or (q)(16). This part does not apply to adjudicatory proceedings as to which hearings are required by statute, the rules for which are contained in Part 509 of this subchapter.

4. Section 512.2(c) is revised to read as follows:

§ 512.2 Definitions.

* * * * *

(c) "Formal examination proceeding" means the administration of oaths and affirmations, taking and preserving of testimony, requiring the production of books, papers, correspondence,

memoranda, and all other records, the issuance of subpoenas, and all related activities in connection with examination of insured institutions and their affiliates conducted pursuant to section 407 (m)(2) or (q)(15) of the Act; and

* * * * *

5. Section 512.3 is revised to read as follows:

§ 512.3 Confidentiality of proceedings.

All formal examination proceedings shall be private and, unless otherwise ordered by the Board, all investigative proceedings shall also be private. Unless otherwise ordered or permitted by the Board, or required by law, and except as provided in §§ 512.4 and 512.5, the entire record of any investigative proceeding or formal examination proceeding, including the resolution of the Board or its delegate(s) authorizing the proceeding, the transcript of such proceeding, and all documents and information obtained by the designated representative(s) during the course of said proceedings shall be confidential.

6. Section 512.4 is revised to read as follows:

§ 512.4 Transcripts.

Transcripts or other recordings, if any, of investigative proceedings or formal examination proceedings shall be prepared solely by an official reporter or by any other person or means authorized by the designated representative. A person who has submitted documentary evidence or given testimony in an investigative proceeding or formal examination proceeding may procure a copy of his own documentary evidence or transcript of his own testimony upon payment of the cost thereof; *Provided*, That a person seeking a transcript of his own testimony must file a written request with the Director or any Deputy Director of the Office of Enforcement stating the reason he desires to procure such transcript, and said persons may for good cause deny such request. In any event, any witness (or his counsel) shall have the right to inspect the transcript of the witness' own testimony.

7. Sections 512.5(b)(1) and (b)(2) are revised to read as follows:

§ 512.5 Rights of witnesses.

* * * * *

(b) * * *

(1) Such attorney shall be a member in good standing of the bar of the highest court of any State, Commonwealth, possession, territory, or the District of Columbia, who has not been suspended or debarred from practice by the bar of any such political entity or before the Board in accordance with the provisions of Part 513 of this subchapter and has not been excluded from the particular investigative proceeding or formal examination proceeding in accordance with paragraph (b)(3) of this section.

(2) Such attorney may advise the witness before, during, and after the taking of his testimony and may briefly question the witness, on the record, at the conclusion of his testimony, for the sole purpose of clarifying any of the answers the witness has given. During the taking of the testimony of a witness, such attorney may make summary notes solely for his use in representing his client. All witnesses shall be sequestered, and, unless permitted in the discretion of the designated representative, no witness or accompanying attorney may be permitted to be present during the taking of testimony of any other witness called in such proceeding. Neither attorney(s) for the institution(s) that are the subjects of the investigative proceedings or formal examination proceedings, nor attorneys for any other interested persons, shall have any right to be present during the testimony of any witness not personally being represented by such attorney.

* * * * *

§ 512.5 [Amended]

8. Section 512.5 is amended by removing paragraph (c).

9. Section 512.7 is revised to read as follows:

§ 512.7 Subpoenas.

(a) *Service.* Service of a subpoena in connection with any investigative proceeding or formal examination proceeding shall be effected in the following manner:

(1) *Service upon a natural person.* Service of a subpoena upon a natural person may be affected by handing it to such person; by leaving it at his office with the person in charge thereof, or, if there is no one in charge, by leaving it in a conspicuous place therein; by leaving it at his dwelling place or usual place of abode with some person of suitable age and discretion then residing therein; by mailing it to him by registered or certified mail or by an express delivery service at his last known address; or by any method whereby actual notice is given to him.

(2) *Service upon other persons.* When the person to be served is not a natural person, service of the subpoena may be effected by handing the subpoena to a registered agent for service, or to any officer, director, or agent in charge of any office of such person; by mailing it to any such representative by registered or certified mail or by an express delivery service at his last known address; or by any method whereby actual notice is given to such person.

(b) *Motions to quash.* Any person to whom a subpoena is directed may, prior to the time specified therein for compliance, but in no event more than 10 days after the date of service of such subpoena, apply to the Director or any Deputy Director of the Office of Enforcement to quash or modify such subpoena, accompanying such application with a statement of the reasons therefor. The Director or the Deputy Director, as appropriate, may: (1) Deny the application; (2) quash or revoke the subpoena; (3) modify the subpoena; or (4) condition the granting of the application on such terms as the Director or Deputy Director determines to be just, reasonable, and proper.

(c) *Attendance of witnesses.* Subpoenas issued in connection with an investigative proceeding or formal examination proceeding may require the attendance and/or testimony of witnesses from any State or territory of the United States and the production by such witnesses of documentary or other tangible evidence at any designated place where the proceeding is being (or is to be) conducted. Foreign nationals are subject to such subpoenas if such service is made upon a duly authorized agent located in the United States.

(d) *Witness fees and mileage.* Witnesses summoned in any proceeding under this part shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-14821 Filed 6-22-89; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-176-AD; Amdt. 39-6243]

Airworthiness Directives; Lockheed Model L-188A and L-188C Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Lockheed Model L-188A and L-188C series airplanes, which requires inspection and rework or replacement, if necessary, of the flap asymmetry shutoff valve; inspection and rework or replacement, if necessary of the flap asymmetry universal joints; and modification of the annunciator light wiring. This amendment is prompted by reports of flap asymmetry. This condition, if not corrected, could lead to control difficulties at low altitude on takeoff or landing.

EFFECTIVE DATE: July 24, 1989.

ADDRESSES: The applicable service information may be obtained from Lockheed Aeronautical Systems Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Order Administration, Dept. 65-33, U-33, B-1. This information may be examined at the FAA, Transport Airplane Directorate, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. William Roberts, Aerospace Engineer, Airframe Branch, ANM-121L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5228.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include a AD, applicable to Lockheed L-188A and L-188C series airplanes, which requires inspection of flap asymmetry system components, and rework or replacement, if necessary, was published in the **Federal Register** on December 8, 1988 (53 FR 49558).

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The manufacturer stated that, because there have been very few service problems over the years related to the unsafe condition addressed, the proposed AD is not justified. The manufacturer indicated that the incident which occurred in May 1988 was the only recent problem reported in a number of years, and the only one of its type. The FAA does not agree. The May 1988 incident is the third report of flap asymmetry problems. During this incident, the pilot-in-command on a training flight experienced flap asymmetry and, because the annunciator light did not function, could not locate the source of the problem in time to prevent loss of roll control at low altitude. The FAA has determined this to be an unsafe condition and, therefore, considers this AD action justified.

The manufacturer requested the paragraph A.2. be revised with an objective to provide positive engagement to the splined ends of the torque tubes. The change would modify the valve by adding pins through each side (two per joint); modified joints may then be returned to service. The manufacturer requested that this procedure, which has the advantage of salvaging existing parts, be considered as an acceptable alternative method to that proposed in the Notice. The FAA concurs with the commenter and has determined that this alternate procedure has the same objective as the proposed requirements of paragraph A.2. The final rule has been revised to include a new paragraph A.3. which contains the alternate procedure.

The manufacturer also requested that the portions of proposed paragraph B.1. concerning inspections of *torque tubes and bearings* be deleted, since there is no evidence to show that current maintenance plans are inadequate so as to require a special system check. The FAA concurs with the commenter. After further evaluation, the FAA finds that there is no service history to indicate a need for inspection of torque tubes and bearings. Accordingly, this proposed requirement has been deleted from the final rule. (The portions of proposed paragraph B.1. concerning inspections to determine *spline engagement* are retained in a separate paragraph).

The manufacturer suggested that the proposed compliance time of 90 days was restrictive and should be extended, since it did not match the time when valves would be available from the supplier. The manufacturer's informal quotations from the valve supplier indicate that it would require a minimum of 150 to 180 days after receipt of an order to obtain valve modification parts kits (not including valve body modification), or 210 to 330 days to obtain new valves. The manufacturer stated that in either case, an operator with a discrepant valve could face a potential aircraft grounding action. In light of this time involved for replacement of a valve, the manufacturer also requested that paragraph B.2. be clarified to define an acceptable repair procedure. The FAA does not concur with the suggestion to extend the compliance time. Operators have several options to choose from in complying with the AD; specifically, compliance can be achieved by replacement with a new valve, refurbishment with a parts kit, or disassembly, repair, and reassembly. The repair can consist of rebuilding or replacing unserviceable parts. In developing and appropriate compliance time for this AD action, the FAA considered not only the degree of urgency associated with correcting the unsafe condition, but the practical aspect of obtaining and installing required parts, and scheduling required repairs. Based on the data available to the FAA, concern by the commenter that airplanes could be grounded is not the burden it is represented to be, since the option is present to repair the valve independently of parts obtained from the valve supplier. The FAA has determined that 90 days after the effective date of this final rule is sufficient time to perform the valve teardown, repair, and reassembly. Further, under the provisions of paragraph E., operators are also offered the opportunity to propose an alternate means of compliance.

Another commenter, an operator, proposed that the wording in paragraph B. regarding the requirement for verifying spline engagement be revised to indicate that engagement must be ".375-inch, as specified in the maintenance manual." This operator also noted that the distance between torque tube shoulders (5.50 to 5.87 inches, for example), which is a second method of controlling spline engagement, was only an approximation. The FAA concurs and has revised the final rule to include both methods for determining acceptable spline engagement.

The operator also noted that the phrase, "approved by the Manager, Los Angeles Aircraft Certification Office [ACO]," references gaining approval for something not already approved in any source document, such as a service bulletin, and requested that the rule specify exactly what constitutes such an approval. The operator questioned the means by which the Manager approves repairs and modifications, and the appropriateness of this procedure. The operator suggested that problems will arise if each operator must have its own method of complying with each portion of the proposed AD approved personally by the Manager of the ACO. The FAA does not concur with the commenter's concerns as to the appropriateness of this requirement. It is the obligation of the FAA to address identified unsafe conditions, and notify affected operators by way of AD rulemaking. At the time this rulemaking was initiated, the FAA alerted the manufacturer that appropriate service information would be required. In cases where a manufacturer's service information has

not been released by the time an AD is issued, the FAA has determined that, in the interim, it is necessary to require necessary action or modification "in a manner approved by the FAA." Although the relevant rework drawings or service bulletins for this final rule are not available from the manufacturer at this time, operators should find that, on the first occurrence of their need for the data, the manufacturer will have completed its preparation of the service information. Operators are also offered the opportunity to propose alternate means of compliance, as provided by paragraph E.

The operator also requested clarification of which inspections may be terminated when replacement of the wing flap asymmetry shutoff valve is accomplished. The final rule has been clarified accordingly to show that replacement with shutoff valve, P/N 668225-1 (the same part number as the current valve) is not terminating action, and continued repetitive inspections would be required. Replacement with a modified or new valve, P/N 668225-101, constitutes terminating action for the repetitive inspections of the valves required by paragraph C of the final rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the following rule with the changes previously described. These changes will neither increase the economic burden on any operator nor increase the scope of the rule.

It is estimated that there are approximately 97 Model L-188 series airplanes of the affected design in the worldwide fleet. It is estimated that 45 airplanes of U.S. registry will be affected by this AD, that it will take approximately 140 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $252,000.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities, under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Section 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. Section 39.13 is amended by adding the following new airworthiness directive:

§ 39.13 [Amended]

Lockheed Aeronautical Systems Company: Applies to Lockheed Model L-188A and L-188C series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent airplane control difficulties due to flap asymmetry, accomplish the following:

A. Within 90 days after the effective date of this AD, inspect the flap universal joints to determine if they are splined without a stop.

Note: Flap universal joints that are splined without a stop are easily detected by the lack of a screw and washer that holds the pins in place.

If they do not have a stop, accomplish one of the following:

1. Remove from service any flap universal joints that are splined without a stop and install universal joints that are splined with a stop; or

2. Cut a circumferential groove into the splines of the torque tube shafts on each side of the universal joints (1 inch from the end of the shaft) and install a snap ring, in a manner approved by the Manager, Los Angeles Aircraft Certification Office, Northwest Mountain Region. The snap ring is to eliminate the possibility of spline disengagement. The snap ring should completely encircle the shaft; or

3. Modify each universal joint by drilling a hole and installing a ⅛-inch diameter steel pin through each side (two per joint). Locate the pin from .7- to .8-inch from each end, and locate so as to intersect the spline centerline. Peen both pin ends. This modification must be accomplished in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office, Northwest Mountain Region.

Note: Local spotfacing may be necessary on pins located at maximum dimension.

B. Within 90 days after the effective date of this AD and thereafter at intervals not to exceed one year, verify proper torque tube-to-universal joint engagement of .375-inch, as specified in Detail E of the L-188 Maintenance Manual, Section 27-6-8, Figure 201; and verify that the distance between the edges of the torque tube shoulders at BL55 is 5.5 to 5.87 inches (universal joints with internal stop), or 6.0 to 6.6 inches for universal joints reworked with added stop pins.

C. Within 90 days after the effective date of this AD and thereafter at intervals not to exceed one year, inspect the wing flap asymmetry shutoff valves, P/N 668225-1, to ascertain whether the valves hang up or respond slowly (greater than 1 second).

1. If the valves hang up or respond slowly, prior to further flight, install a functioning serviceable valve of the same part number (P/N 668225-1) and repeat the inspections at intervals not to exceed one year.

2. Installation of modified valve, P/N 668225-101, or a new valve, P/N 668225-101, in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office, Northwest Mountain Region, constitutes terminating action for the repetitive inspections of the wing flap asymmetry shutoff valves required by paragraphs C. and C.1., above.

D. Within 90 days after the effective date of this AD, rewire the flap asymmetry annunciator light in the cockpit to trigger the annunciator, in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office, Northwest Mountain Region, so that the light in the cockpit will illuminate when the asymmetry detector is tripped and not be dependent on the shutoff valve.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a base to accomplish the actions required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Lockheed Aeronautical Systems Company, P.O. Box 551, Burbank, California 91520, Attn: L-188 Commercial Support Contracts, Dept. 63-11, Unit 33. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 3229 East Spring Street, Long Beach, California.

This amendment becomes effective July 24, 1989.

Issued in Seattle, Washington, on June 8, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-14904 Filed 6-22-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89-AGL-3]

Establishment of Transition Area; Chetek, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to establish the Chetek, WI, transition area to accommodate a new VOR/DME Runway 17 Standard Instrument Approach Procedure (SIAP) to Chetek Municipal-Southworth Airport, Chetek, WI. The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

EFFECTIVE DATE: 0901 u.t.c., September 21, 1989.

FOR FURTHER INFORMATION CONTACT: Harold G. Hale, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION:

History

On Friday, February 24, 1989, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a transition area airspace near Cheteck, WI (54 FR 7952), as corrected on Friday, April 7, 1989, (54 FR 14098). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice as corrected. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations establishes a transition area airspace near Chetek, WI. The development of a new VOR/DME Runway 17 SIAP requires that the FAA designate airspace to insure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined areas which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES; CONTROLLED AIRSPACE, AND REPORTING POINTS.

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Chetek, WI [New]

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Chetek Municipal-Southworth Airport (lat. 45° 18' 24" N., long. 91° 38' 16" W.); within 4.75 miles each side of the Rice Lake VOR/DME (lat. 45° 28' 33" N., long. 91° 43' 30" W.) 159 radial extending from the 5-mile radius to 12.5 miles northwest of the Chetek Municipal-Southworth Airport, excluding that portion which overlies the Rice Lake, WI, transition area.

Issued in Des Plaines, Illinois on June 12, 1989.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 89-14900 Filed 6-22-89; 8:45 am]

BILLING CODE 4910-13-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3606-1]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Fresno County Air Pollution Control District and South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of final rules.

SUMMARY: The purpose of this action is to withdraw approval of revisions to the California State Implementation (SIP) for the Fresno County Air Pollution Control District (APCD) and the South Coast Air Quality Management District (AQMD). These revisions consist of rules which were approved on April 10, 1989 (54 FR 14224). The intent of this action is to provide a public comment period for the revisions. EPA is publishing a notice of proposed rulemaking elsewhere in today's Federal Register on these rules. EPA is taking this action in accordance with the procedures described in the April 10, 1989, final rulemaking notice.

DATE: This action is effective June 23, 1989.

ADDRESSES: Copies of the Fresno County APCD and South Coast AQMD submittal are available for public inspection during normal business hours at the EPA Region 9 office and the following locations:

California Air Resources Board, Stationary Source Division, Criteria Pollutants Branch, Industrial Section, 1025 "P" Street, Room 210, Sacramento, CA 95814.

Fresno County Air Pollution Control District, 1221 Fulton Mall, Fresno, CA 93775.

South Coast Air Quality Management District, 9150 Flair Drive, El Monte, CA 91731.

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, A-2-3, State Implementation Plan Section, Air Programs Branch, Air and Toxics Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974-7635.

SUPPLEMENTARY INFORMATION:

Background

On June 4, 1986, the California Air Resources Board officially submitted to EPA a set of revisions to the California SIP. These revisions included Fresno County Rules 102, 111, 609, 613, 613.1, 613.2, 613.3, 613.4, and 614 and South Coast Rule 209.

On April 10, 1989, EPA approved these submittals as a revision to the California SIP. (For further information about these revisions, see 54 FR 14224.)

In the approval notice EPA advised the public that the effective date of approval would be deferred for 60 days to provide an opportunity to submit comments on the revisions. EPA announced that, if, within 30 days of the publication of the approval notice, EPA received notice that someone wished to submit an adverse or critical comment, it would withdraw its approval and begin a new rulemaking by proposing the action and establishing a 30-day comment period.

Comments were received by EPA concerning the rule revisions listed above. Therefore, in accordance with the procedures described above, EPA is today withdrawing its April 10, 1989 approval of these revisions and is proposing to approve the Fresno Rules and the South Coast Rule elsewhere in today's **Federal Register**.

EPA is withdrawing the original approval without providing prior notice and opportunity to comment because it finds there is good cause within the meaning of 5 U.S.C. 553(b) to do so. Notice and comment would be impractical because EPA needs to withdraw its approval quickly in order to consider the comments which members of the public want to submit. In addition, further notice is not necessary because EPA has already informed the public that it would follow this procedure if notice were received that adverse or critical comments will be submitted. For the same reasons, EPA finds it has good cause under 5 U.S.C. (b) to make this withdrawal immediately effective.

The Office of Management and Budget has exempted this action from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen oxide, Ozone, Particulate matter, and Reporting and recordkeeping requirements.

Dated: June 14, 1989.

Daniel W. McGovern,

Regional Administrator.

Subpart F of Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart F—California

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.220 is amended by removing and reserving paragraph (c)(169) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(169) [Reserved]

[FR Doc. 89-14670 Filed 6-22-89; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 81

[FRL-3606-7]

Designation of Areas for Air Quality Planning Purposes; Attainment Status Designations: Wisconsin

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Notice of final rulemaking.

SUMMARY: In a November 7, 1988 (53 FR 44912), notice, USEPA proposed to disapprove a request from the State of Wisconsin to revise the attainment status designation, at 40 *Code of Federal Regulations* (CFR) 81.350, for a sub-city area of Racine, Racine County, Wisconsin, from secondary nonattainment to attainment relative to the former total suspended particulates (TSP) National Ambient Air Quality Standards (NAAQS). Under the Clean Air Act (CAA) and USEPA's transitional particulate matter policy (July 1, 1987, 52 FR 24682), TSP designations can continue to be changed if sufficient data are available to warrant such a change. USEPA continues to process TSP redesignation requests, because various regulatory provisions remain tied to the TSP attainment status.

USEPA is disapproving Wisconsin's redesignation request because the Wisconsin Department of Natural Resources (WDNR) failed to provide sufficient evidence that (1) the monitoring data were representative of worst-case ambient concentrations, (2) emission reductions were federally approved, permanent, and resulted in the decrease in ambient concentrations, and (3) dispersion techniques were not responsible for the improvement in air quality. These redesignation criteria are contained in an April 21, 1983, memorandum entitled "Section 107 Designation Policy Summary" from Sheldon Meyers, then Director, Office of Air Quality Planning and Standards (OAQPS), and a September 30, 1985, memorandum entitled "Total Suspended Particulate (TSP) Redesignations" from Gerald A. Emison, Director, OAQPS.

DATE: This final rulemaking becomes effective July 24, 1989.

ADDRESSES: Copies of the redesignation request, technical support documents and the supporting air quality data are available at the following addresses:

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604.

Wisconsin Department of Natural Resources, Bureau of Air Management, 101 South Webster, Madison, Wisconsin 53707.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, (312) 886-6031.

SUPPLEMENTARY INFORMATION: Under section 107(d) of the CAA, the Administrator of USEPA has promulgated the NAAQS attainment status designations for all areas within each State. For Wisconsin, see 43 FR 8962 (March 3, 1978), 43 FR 45993 (October 5, 1978), and 40 CFR 81.350. These area designations are subject to revision whenever sufficient data become available to warrant a redesignation. A sub-city area of Racine, Wisconsin, was designated as not attaining the secondary TSP standard. On July 23, 1987, pursuant to section 107(d)(5) of the CAA, the WDNR requested that the sub-city nonattainment area of Racine [1] be redesignated to attainment of the TSP NAAQS.

For areas designated nonattainment for TSP, a TSP State Implementation Plan (SIP) was required which satisfied the requirements of section 110(a) and Part D of the CAA, including assuring the attainment and maintenance of the TSP NAAQS. USEPA revised the particulate matter standard on July 1, 1987 (52 FR 24634), and eliminated the TSP ambient air quality standard. The revised standard is expressed in terms of particulate matter with nominal diameter of 10 micrometers or less (PM_{10}). USEPA will continue to process redesignations of areas from nonattainment to attainment for TSP in keeping with past policy, because various regulatory provisions such as new source review and prevention of significant deterioration are keyed to the attainment status of areas. The July 1, 1987, notice (page 24682, column 1) described USEPA's transition policy regarding TSP redesignations. According to USEPA's transition policy, TSP redesignation requests are to be reviewed for compliance with USEPA's redesignation policies issued in memoranda on April 21, 1983, and September 30, 1985. These are: (1) Eight consecutive quarters of the most recent air quality data must reveal no violation of the TSP NAAQS and the monitoring data must be representative of worst-case ambient concentrations, (2) improvement in monitored readings for TSP must be attributable to implementation of a USEPA approved control strategy, (3) emission reductions and improvements must be permanent, and (4) dispersion techniques must not be responsible for the improvement in air quality.

USEPA proposed to disapprove Wisconsin's redesignation request on November 7, 1987. No comments on this notice of proposed rulemaking were received.

Conclusion

USEPA is disapproving the redesignation request for a sub-city nonattainment area of Racine, Wisconsin, because the WDNR did not (1) submit sufficient documentation as to the reasons for air quality improvement in Racine, (2) make a finding as to whether current air quality will be maintained, or (3) address dispersion techniques.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 22, 1989. This action may not be challenged later in the proceedings to enforce its requirements. (See 307(b)(2).)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 81

Air pollution control, Environmental protection, National parks, Wildnerness areas.

Authority: 42 U.S.C. 7401-7642.

Date: June 7, 1989.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 89-14915 Filed 6-22-89; 8:45 am]

BILLING CODE 6560-50-M

[1] The Racine sub-city nonattainment area is defined as follows: North—Douglas Avenue north from Marquette Street to Rapids Drive, northwest on Rapids Drive to intersection with Forest Street west to intersection with west boundary. West—North from corner of Grange Avenue and Washington Avenue north to Prarie Avenue north to intersection with north boundary. South—Washington Avenue west from Grange Avenue to Marquette Street. East—Marquette Street north from Washington Avenue to Douglas Avenue.

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40 CFR Part 81

[FRL-3606-6]

Designation of Areas for Air Quality Planning Purposes; Attainment Status Designations; Wisconsin

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Notice of final rulemaking.

SUMMARY: In a June 29, 1988 (53 FR 24459), notice, USEPA proposed to disapprove a request from the State of Wisconsin to revise the attainment status designation, at 40 *Code of Federal Regulations* (CFR) 81.350, for a sub-city area in the City of Beloit, Rock County, Wisconsin, from secondary nonattainment to attainment relative to the former total suspended particulates (TSP) National Ambient Air Quality Standards (NAAQS). Under the Clean Air Act (CAA) and USEPA's transitional paticulate matter policy (July 1, 1987, 52 FR 24682), TSP designations can continue to be changed if sufficient data are available to warrant such a change. USEPA continues to process TSP redesignation requests, because various regulatory provisions remain tied to the TSP attainment status.

In today's final notice USEPA is instead approving Wisconsin's redesignation request because the Wisconsin Department of Natural Resources (WDNR) provided during the public comment period sufficient evidence that (1) eight consecutive quarters of the most recent air quality data revealed no TSP NAAQS violations and the monitoring data were representative of worst-case ambient concentrations, (2) the decrease in ambient TSP concentrations is as attributed to an implemented SIP and permanent emission reductions, and (3) dispersion techniques were not responsible for the improvement in air quality. These redesignation criteria are contained in an April 21, 1983, memorandum entitled "Section 107 Designation Policy Summary" from Sheldon Meyers, then Director, Office of Air Quality Planning and Standards (OAQPS), and a September 30, 1985, memorandum entitled "Total Suspended Particulate (TSP) Redesignations" from Gerald A. Emison, Director, OAQPS.

Although USEPA has previously proposed rulemaking on this package, it is treating it today as a "direct final" rulemaking, because its earlier proposal was a proposal to disapprove Wisconsin's redesignation request. Thus, this action will be effective August 22, 1989, unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

DATE: Any adverse comments must be submitted by July 24, 1989. This final rulemaking becomes effective August 22, 1989. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the redesignation request, technical support documents and the supporting air quality data are available at the following addresses.

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604

Wisconsin Department of Natural Resources, Bureau of Air Management, 101 South Webster, Madison, Wisconsin 53707.

Adverse comments on this proposed rule, if any, should be addressed to: (Please submit an original and three copies, if possible)

Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, (312) 886-6031.

SUPPLEMENTARY INFORMATION: Under section 107(d) of the CAA, the Administrator of USEPA has promulgated the NAAQS attainment status for all areas within each State. For Wisconsin, see 43 FR 8962 (March 3, 1978), 43 FR 45993 (October 5, 1978), and 40 CFR 81.350. These area designations are subject to revision whenever sufficient data become available to warrant a redesignation. A sub-city area of Beloit, Wisconsin, was designated as not attaining the secondary TSP standard. On July 23, 1987, pursuant to section 107(d)(5) of the CAA, the WDNR

requested that the sub-city nonattainment area of Beloit [1] be redesignated to attainment of the TSP NAAQS.

For areas designated nonattainment for TSP, a TSP State Implementation Plan (SIP) was required which satisfied the requirements of Section 110(a) and Part D of the CAA, including assuring the attainment and maintenance of the TSP NAAQS. USEPA revised the particulate matter standard on July 1, 1987, (52 FR 24634) and eliminated the TSP ambient air quality standard. The revised standard is expressed in terms of particulate matter with a nominal diameter of 10 micrometers or less (PM_{10}). USEPA will continue to process redesignations of areas from nonattainment to attainment for TSP in keeping with past policy, because various regulatory provisions such as new source review and prevention of significant deterioration are keyed to the attainment status of areas. The July 1, 1987, notice (page 24682, column 1) described USEPA's transition policy regarding TSP redesignations. According to USEPA's transition policy, TSP redesignation requests are to be reviewed for compliance with USEPA's redesignation policies issued in memoranda on April 21, 1983, and September 30, 1985. They are: (1) Eight consecutive quarters of the most recent air quality data reveal no violation of the TSP NAAQS; (2) improvement in monitored readings for TSP must be attributable to the implementation of a USEPA approved control strategy; (3) emission reductions and improvements in air quality must be permanent and not merely the result of economic down turn or temporary; and (4) dispersion techniques must not be responsible for the improvement in air quality.

USEPA proposed to disapprove Wisconsin's redesignation request on June 29, 1988. Comments on this notice of proposed rulemaking were received from WDNR. These comments and USEPA's responses are provided below:

Criterion 1

Violation-free monitoring data—Eight consecutive quarters of the most recent air quality data must reveal no violation of the TSP NAAQS. Monitors must be placed at the points of expected maximum TSP impact.

WDNR's Submittal

On June 27, 1988, WDNR submitted the 1987 monitoring data for three sites in Beloit. These data all indicated attainment as they are below the NAAQS. The 1987 data combined with the 1986 violation-free data submitted by the WDNR on July 1, 1987, provided eight quarters of violation-free data. The most recent violations of the secondary NAAQS were monitored in 1985. USEPA notes that one of the two 1985 exceedances occurred on May 31, 1985, on which day high TSP levels were measured across Wisconsin, Michigan, northern Ohio and Illinois. Because WDNR already has collected 2 years of violation-free data since 1985, it is not relying on excluding the possible exceptional event in 1985.

WDNR justified the location of the monitors in their July 27, 1988, submittal. The three monitors in Beloit have operated continuously since 1978, although not all at the same locations. The Beloit College and Beloit City Hall monitors were located in the nonattainment area as a result of a WDNR modeling analysis of potential annual TSP exceedances (*Total Suspended Particulate, Air Quality Analysis for the Beloit Nonattainment Area*, WDNR, April 1979). The Beloit College monitor has remained at the same location in the nonattainment area. The City Hall monitor was relocated several times since 1984 due to building demolitions and an effort to monitor near additional sources. The third monitor was located to the east of the current nonattainment area. USEPA agrees that WDNR has sited two of their three Beloit monitors in areas of expected maximum concentrations. The current Beloit College monitor is sufficient to indicate attainment in the current ½ mile by ½ mile secondary nonattainment area.

Criterion 2

Implementation of USEPA-approved control strategy—The USEPA approved control strategy (i.e., SIP) must have been implemented. The improvement in monitored readings for TSP (since the base year used for nonattainment designation) must be attributable to enforceable or permanent emission reductions implemented since that year.

WDNR's Submittal

In 1979, Wisconsin approved NR 154.11 (now NR 415.05 and NR 415.06) which limited particulate emissions from sources located inside, and those sources which are not located inside but whose emissions nonetheless significantly affected, primary and secondary nonattainment areas. Four facilities in Beloit were identified and had to control their TSP emissions further than statewide particulate limits through the application of reasonably available control technology (RACT). USEPA approved Wisconsin's RACT TSP rules for ROCK County on March 9, 1983 (48 FR 9761). That is, Rock County has an approved Part D SIP. As of December 1988, there were no "violators" present on USEPA's significant violators list, and WDNR commented that all sources are in compliance. Thus, Beloit has fulfilled the requirement for an implemented SIP.

The four facilities which were required to be controlled to RACT TSP emission limits were:

1. Beloit Corporation-St. Lawrence Plant,
2. Beloit Corporation-Eddy Street Plant,
3. Colt Industries, and
4. Wisconsin Power and Light-Blackhawk.

The total emissions from these four facilities have decreased from approximately 900 tons per year in 1976 to approximately 40 tons per year in 1987. These emission reductions were the result of RACT emission limits and the permanent source closings discussed in the next section. USEPA agrees that WDNR has submitted justification for the air quality improvement in Beloit.

Criterion 3

Permanent emission reductions—Emission reductions and improvement in air quality must not be merely the result of economic downturn or temporary.

WDNR's Submittal

The RACT requirements for Beloit sources have been federally approved and as such, are permanent. In addition to RACT, two permanent shutdowns have occurred. In 1987, the Beloit Corporation (St. Lawrence Plant) removed the majority of its air sources. These sources have been deleted from the Wisconsin emission inventory such that the removal is considered permanent for new source review purposes. The removal of the St. Lawrence Plant is significant to this redesignation because the WDNR 1979 report noted that, even with RACT, emissions from the Plant could result in secondary nonattainment. The permanent shutdowns at the St. Lawrence Plant support the redesignation. Also, Colt Industries discontinued their foundry operation in 1984. The emissions from the foundry have also been deleted from the Wisconsin emission inventory, and the removal is considered permanent for new source review purposes. USEPA agrees that the reduction in emissions in Beloit are permanent and not temporary.

Criterion 4

Dispersion techniques—Dispersion techniques, which are not creditable according to the revised section 123 regulations (50 FR 278992), cannot be responsible for the improvement in air quality.

WDNR's Submittal

In their July 27, 1988, submittal, WDNR stated that the modeling conducted for the 1979 WDNR report did not contain any combined stacks for any source studied. Additionally, the WDNR verified that no source has increased its stack height.

Conclusion

WDNR has satisified the requirements for the TSP redesignation. Therefore, USEPA is approving as a direct final [2] rulemaking the redesignation of a subcity area in the City of Beloit, Rock County, Wisconsin, from secondary nonattainment to attainment relative to the former TSP NAAQS.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 22, 1989. This action may not be challenged later in the proceedings to enforce its requirements. (See section 307(b)(2).)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under 5 U.S.C. 605(b), I certify that approving this redesignation request will not have a significant economic impact on a number of small entities because it imposes no new requirements on anyone. (See 46 FR 8709).

List of Subjects in 40 CFR Part 81

Air pollution control, Environmental Protection, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401–7642.

Date: June 6, 1989.

Valdas V. Adamkus,

Regional Administrator.

For the reasons set forth in the preamble, Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. In § 81.350, the TSP table is amended by revising the entry for "Rock County" under AQCR 73 to read as follows:

§ 81.350 Wisconsin.

* * * * *

WISCONSIN–TSP

Designation /Area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
AQCR 73				
Rock County				X

[1] The Beloit sub-city nonattainment area is defined as follows:

North: Portland Avenue east from Fourth Street to the intersection with Woodward Avenue, Woodward Avenue east to Park Avenue.

West: Fourth Street north from Board Street to Portland Avenue.

South: Broad Street west from Park Avenue to Fourth Street.

East: Park Avenue south from Woodward Avenue to Board Street.

[2] January 19, 1989, (54 FR 2214) Federal Register notice.

[FR Doc. 89–14914 Filed 6–22–89; 8:45 am]
BILLING CODE 4560–50–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 16

[CGD 88–067]

Programs for Chemical Drug and Alcohol Testing of Commercial Vessel Personnel; Suspension of Implementation Date

AGENCY: Coast Guard, DOT.

ACTION: Final rule, suspension of implementation date.

SUMMARY: This final rule suspends the implementation date for pre-employment drug testing by marine employers have 50 or more employees. The U.S. District Court for the District of Columbia has requested a delay to allow for consideration of the pending cases in light of recent Supreme Court decisions and anticipated decisions of the Circuit Court of Appeals for the District of Columbia Circuit.

EFFECTIVE DATE: This rule is effective on June 21, 1989.

FOR FURTHER INFORMATION CONTACT: Commander John Koski, Project Manager, Marine Investigation Division (G–MMI), Office of Marine Safety Security and Environmental Protection, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, (202) 267–2215.

SUPPLEMENTARY INFORMATION: On June 21, 1989, a hearing was held in the U.S. District Court for the District of Columbia in the case of *Transportation Institute, et al.*, v. *United States Coast Guard and Samuel K. Skinner, Secretary of Transportation*. At the conclusion of the hearing the court requested a voluntary suspension of that portion of the Coast Guard's drug testing rules which require marine employers to implement pre-employment drug testing commencing June 21, 1989. Section 16.205 of Title 46, Code of Federal Regulations, promulgated on November 21, 1988, 53 FR 47064, requires each employer who employs more than 50 employees required to be tested under Part 16 to implement pre-employment drug testing under § 16.210 not later than June 21, 1989. All other testing required under Part 16 has implementation dates of December 21, 1989 or later.

This final rule amends § 16.205(a) to delay implementation of pre-employment drug testing by those employers having more than 50 employees until July 21, 1989.

This amendment to the drug testing rules is needed immediately to delay the compliance date specified in the final rule. Under the implementation schedule published in the **Federal Register** on November 21, 1988, certain marine

employers would have been required to begin testing on June 21, 1989. The U.S. District Court for the District of Columbia has requested a delay to allow for consideration of the pending cases in light of recent Supreme Court decisions and anticipated decisions of the Circuit Court of Appeals for the District of Columbia Circuit. For these reasons the Coast Guard has determined that good cause exists for promulgating this final rule without notice and opportunity for comment and for making this rule effective in less than thirty days after publication.

Regulatory Assessment

This final rule merely extends for a limited period one of the compliance dates in the final rule published on November 21, 1988, and does not change the basic regulatory structure in that rule. The economic impact of this extension is so minimal that further evaluation is not necessary.

Regulatory Flexibility Determination

The amendments in this final rule extend the compliance date only for employers who have 50 or more employees. The compliance dates for smaller entities are not affected. Therefore the Coast Guard certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This final rule does not amend the recordkeeping and reporting requirements of the final rule published on November 21, 1988.

Environmental Assessment

The Coast Guard has considered the environmental impact of this amendment to the rules promulgated on November 21, 1988, and concluded that, under section 2.B.2.1 of Commandant Instruction M16475.1B, they will have no significant environmental impact and are categorically excluded from further environmental documentation.

Federalism Implications

In accordance with Executive Order 12612, the Coast Guard has determined that this final rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects in 46 CFR Part 16

Seamen, Marine safety, Navigation (Water), Alcohol and alcoholic beverages, Drugs.

Final Rule

For the reasons set forth in the preamble, Title 46, Chapter I, of the Code of Federal Regulations is amended as follows:

PART 16—[AMENDED]

1. The authority citation for Part 16 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 7101, 7301 and 7701; 49 CFR 1.46.

2. Section 16.205 is amended by revising paragraph (a) to read as follows:

§ 16.205 Implementation of chemical testing programs.

(a) Each employer who employs more than 50 employees required to be tested under this part shall implement the pre-employment testing program required in § 16.210 not later than July 21, 1989. All other employer testing programs required by this part shall be implemented not later than December 21, 1989.

* * * * *

Dated: June 21, 1989.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89-15074 Filed 6-21-89; 2:45 pm]

BILLING CODE 4910-14-M

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1-229]

Organization and Delegation of Powers and Duties; Delegation of Authority to the Commandant of the United States Coast Guard

AGENCY: Office of the Secretary, Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The Secretary of Transportation has delegated authority to the Commandant, United States Coast Guard, to provide assistance to film producers and to accept reimbursement for costs connected with such assistance. The Code of Federal Regulations does not reflect this delegation, and therefore a change is necessary.

EFFECTIVE DATE: June 7, 1989.

FOR FURTHER INFORMATION CONTACT: Samuel E. Whitehorn, Office of the General Counsel, C-50, (202) 366-9307, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Secretary Skinner has delegated to the Commandant, United States Coast Guard, authority under 14 U.S.C. 659 to conduct operations with Coast Guard Vessels, aircraft, facilities and personnel to provide assistance to film producers; to accept reimbursement for costs, other than those that would be incurred in Coast Guard Operations or training; to reimburse the money collected to Coast Guard appropriations; and to waive costs not exceeding $200 for one production and other costs related to noncommercial productions which are determined to be in the public interest.

The *Code of Federal Regulations* does not reflect this delegation, and therefore a change is necessary.

Since this amendment relates to departmental management, procedures, and practice, notice and comment on it are unnecessary and it may be made effective in fewer than thirty days after publication in the **Federal Register.** The Delegation is effective immediately.

In accordance with the Secretary's authority, the following change is made.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended to read as follows:

PART 1—[AMENDED]

1. The authority citation for part 1 continues to read as follows:

Authority: 49 U.S.C. 322.

2. Section 1.46 is amended by adding a new paragraph (qq) to read as follows:

§ 1.46 Delegations to Commandant of the Coast Guard.

* * * * *

(qq) Carry out the functions and exercise the authority vested in the Secretary by 14 U.S.C. 659 relating to providing assistance to film producers and obtaining reimbursement for assistance provided.

Issued on: June 7, 1989.

Samuel K. Skinner,

Secretary of Transportation.

[FR Doc. 89-14840 Filed 6-22-89; 8:45 am]

BILLING CODE 4910-62-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1016

[Ex Parte No. 55 (Sub-No. 52)]

Special Procedures Governing the Recovery of Expenses by Parties to Commission Adjudicatory Proceedings

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: In 1981, the Commission adopted rules at 49 CFR Part 1916 implementing the Equal Access to Justice Act. By its own terms, the Act was repealed on October 1, 1984. In 1985, the Act was recodified with certain amendments (Pub. L. No. 99-80, 99 Stat. 183) and made effective for cases begun on or after October 1, 1984. The Commission adopts a final rule implementing the recodified and amended Equal Access to Justice Act.

EFFECTIVE DATE: July 23, 1989.

FOR FURTHER INFORMATION CONTACT: Richard R. Hartley, 202-275-7786; or, Richard B. Felder, 202-275-7691. (TDD for hearing impaired: 202-275-1721.)

SUPPLEMENTARY INFORMATION: On February 21, 1989, the Commission proposed to amend its rules to reflect the recodified and amended Equal Access to Justice Act (EAJA). 54 FR 7454. Only one comment was received. It requests a grandfather provision to exclude a pending EAJA proceeding from any narrowing effect of the changes in the regulations, but to apply any benefits that might result from those changes to that proceeding.

The proposed addition to 49 CFR 1016.102 reflects the fact that prior law applies to cases pending on October 1, 1981. That is, the amended EAJA specifically provides that its pre-recodification provisions apply through final disposition of any adversary adjudication initiated before the date of repeal (October 1, 1984). Therefore, to the extent our new rules are inconsistent with the prior law, they may not be applied to proceedings begun in the 1981-1984 period. Conversely, where the new rules reflect interpretations that were available under prior law, they may and will be applied in future decisions affecting 1981-1984 cases. With this clarification, the proposed rules are adopted as final rules.

These rules will not significantly affect either the quality of the human environment or the conservation of energy resources. It is hereby certified that these rules will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 1016

Claims, Equal access to justice, Lawyers.

Decided: June 15, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

For the reasons set forth in the preamble, Title 49, Chapter X, Part 1016 of the Code of Federal Regulations is amended as follows:

PART 1016—SPECIAL PROCEDURES GOVERNING THE RECOVERY OF EXPENSES BY PARTIES TO COMMISSION ADJUDICATORY PROCEEDINGS

1. The authority citation for Part 1016 is revised to read as follows:

Authority: 49 U.S.C. 10321, 5 U.S.C. 504(c)(1), and 5 U.S.C. 553.

2. Section 1016.102 is revised to read as follows:

§ 1016.102 When the Act applies.

The Act applies to any adversary adjudication pending before the Commission after October 1, 1981. This includes proceedings begun before October 1, 1981, if final Commission action has not been taken before that date, regardless of when they were initiated or when final Commission action occurs. These rules incorporate the changes made in Pub. L. No. 99-80, 99 Stat. 183, which applies generally to cases instituted after October 1, 1984. If awards are sought for cases pending on October 1, 1981 or filed between that date and September 30, 1984, the prior statutory provisions (to the extent they differ from the existing ones, and our implementing rules) apply.

§ 1016.104 [Amended]

3. Section 1016.104 is amended by removing the words "an initial" and "initial" before "decision", respectively, in the two places the phrase appears.

§ 1016.105 [Amended]

4. Section 1016.105, paragraph (a) is amended by changing the United States Code citation to 5 U.S.C. 504(b)(1)(B).

5. Section 1016.105, paragraph (b) is revised to read as follows:

§ 1016.105 Eligibility of applicants.

* * * * *

(b) The types of eligible applicants are as follows:

(1) An individual whose net worth did not exceed $2 million at the time the adversary adjudication was initiated;

(2) Any owner of an unincorporated business, or any partnership, corporation, association, unit of local government, or organization whose net worth does not exceed $7 million and which had no more than 500 employees at the time the adversary adjudication was initiated;

(3) Any organization described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)(3)) exempt from taxation under section 501(a) of such Code, or a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)), may be a party regardless of the net worth of such organization or cooperative association.

* * * * *

§ 1016.105 [Amended]

6. Section 1016.105, paragraph (d), is removed and paragraphs (e) through (g) are redesignated paragraphs (d) through (f).

7. Section 1016.106, paragraph (a), is revised to read as follows:

§ 1016.106 Standards for awards.

(a) A prevailing applicant may receive an award for fees and expenses incurred in connection with a proceeding, or in a significant and discrete substantive portion of the proceeding, unless the position of the agency over which the applicant has prevailed was substantially justified. Whether or not the position of the agency was substantially justified shall be determined on the basis of the administrative record made in the adversary adjudication for which fees and other expenses are sought. The burden of proof that an award should not be made to an eligible prevailing applicant is on the agency counsel, which may avoid an award by showing that its position was reasonable in law and fact.

* * * * *

8. Section 1016.107, paragraph (b) is revised to read as follows:

§ 1016.107 Allowable fees and expenses.

* * * * *

(b) No award for the fee of an attorney or agent under these rules may exceed $75.00 per hour, unless a higher fee is justified. 5 U.S.C. 504(b)(1)(A). However, an award may also include the reasonable expenses of the attorney, agent, or witness as a separate item, if the attorney, agent, or witness ordinarily

charges clients separately for such expenses.

* * * * *

§ 1016.108 [Removed]

9. Section 1016.108 is removed.

10. Section 1016.201, paragraph (b), is revised to read as follows:

§ 1016.201 Contents of application.

* * * * *

(b) The application shall also include a statement that the applicant's net worth does not exceed $2 million (if an individual) or $7 million (for all other applicants, including their affiliates). However, an applicant may omit this statement if:

(1) It attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) exempt from taxation under section 501(a) of such Code; or

(2) It states that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)).

* * * * *

§ 1016.202 [Amended]

11. Section 1016.202, paragraph (a) is amended by deleting the words "except a qualified tax-exempt organization or cooperative association" in the first sentence.

12. Section 1016.202, paragraph (b) is revised to read as follows:

§ 1016.202 Net worth exhibit.

* * * * *

(b) Ordinarily, the net worth exhibit will be included in the public record of the proceeding. However, an applicant that objects to public disclosure of information in any portion of the exhibit and believes that there are legal grounds for withholding it from disclosure may file a motion to withhold the information from public disclosure. The burden is on the moving party to justify the confidentiality of the information.

§ 1016.301 [Amended]

13. Section 1016.301, paragraph (c) is amended by removing the reference "§ 1100.98" and adding the references "§§ 1115.2 and 1115.3", in its place.

§ 1016.303 [Amended]

14. Section 1016.303, paragraph (b) is amended by removing the last 3 lines and adding "be granted as justified."

§ 1016.305 [Amended]

15. Section 1016.305 is amended by removing the last sentence and adding the sentence "A commenting party may not broaden the issues."

16. Section 1016.307, paragraph (a) is revised to read as follows:

§ 1016.307 Further proceedings.

(a) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or agency counsel or on his or her own initiative, the adjudicative officer may order further proceedings when necessary.

* * * * *

§ 1016.308 [Amended]

17. Section 1016.308 is amended by substituting the phrase "a decision" for "an initial decision."

18. Section 1016.309 is revised to read as follows:

§ 1016.309 Agency review.

In the event the adjudicative officer is not the entire Commission, the applicant or agency counsel may seek review of the initial decision on the fee application, or the Commission may review the decision on its own initiative, in accordance with § 1115.2. If no appeal is taken, the initial decision becomes the action of the Commission 20 days after it is issued. If the adjudicative officer is the entire Commission, § 1115.3 applies.

[FR Doc. 89-14855 Filed 6-22-89; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 81132-9033]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the total allowable catch (TAC) of "other rockfish" in the Eastern Regulatory Area of the Gulf of Alaska has been reached. The Secretary of Commerce (Secretary) is prohibiting directed fishing for and further retention of "other rockfish" by vessels fishing in this area from 12:00 noon, Alaska Daylight Time (A.d.t.), on June 19, 1989, through December 31, 1989.

DATES: Effective from 12:00 noon, A.d.t., on June 19, until midnight, Alaska Standard Time, December 31, 1989. Comments must be submitted on or before July 5, 1989.

ADDRESSES: Comments should be addressed to Steven Pennoyer, Director, Alaska Region (Regional Director), National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802-1668.

FOR FURTHER INFORMATION CONTACT: Janet E. Smoker, Fishery Management Biologist, 907-586-7230.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) governs the groundfish fishery in the exclusive economic zone in the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act. Regulations implementing the FMP are at 50 CFR Part 672. Section 672.20(a) of the regulations establishes an optimum yield (OY) range of 116,000-800,000 metric tons (mt) for all groundfish species in the Gulf of Alaska. Total allowable catches (TACs) for target species and species groups are specified annually within the OY range and apportioned among the regulatory areas and districts.

The 1989 TAC specified for "other rockfish" in the Eastern Regulatory area is 5,774 mt (54 FR 6524, February 13, 1989). The Regional Director reports that vessels have landed 4,844 mt of "other rockfish" through June 3 in the Eastern Regulatory Area. At recent catch and effort rates, the entire TAC will be harvested by June 19.

Therefore, pursuant to § 672.20(c)(2)(i), the Secretary is prohibiting further fishing for and retention of "other rockfish" effective 12:00 noon, A.d.t., June 19, 1989. Any "other rockfish" caught in the Eastern Regulatory area after that must be treated as prohibited species and discarded at sea. The category "other rockfish" is defined for the West Yakutat and East Yakutat District of the Eastern Regulatory area as all fish of the genus *Sebastes* except pelagic shelf rockfish, and for the Southeast Outside District as all fish of the genus *Sebastes* except pelagic shelf and demersal shelf rockfish. See 54 FR 6524 (February 13, 1989) for further information concerning the species included in the "other rockfish" category.

Overharvesting of "other rockfish" will result unless this notice takes effect promptly. Therefore, NOAA finds for good cause that prior opportunity for public comment on this notice is contrary to the public interest and its effective date should not be delayed.

Public comments on the necessity for this action are invited for a period of 15 days after the effective date of this notice and may be submitted to the Regional Director at the address above until July 5, 1989. If written comments are received which oppose or protest

this action, the Secretary will reconsider the necessity of this action, and, as soon as practicable after that reconsideration, will publish in the **Federal Register** a notice either of continued effectiveness of the adjustment, responding to comments received, or modifying or rescinding the adjustment.

Classification

This action is taken under §§ 672.22 and 672.24, and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801, *et seq.*

Dated: June 19, 1989.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-14856 Filed 6-20-89; 8:45 am]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 120
Friday, June 23, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV-89-063]

Proposed Expenses and Assessment Rate for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish assessment rates under Marketing Order Nos. 916 and 917 (California nectarines, plums and peaches) for the 1989–90 fiscal year which began March 1, 1989. The proposal is needed for the Nectarine Administrative Committee, and the Plum and Peach Commodity Committees established under these orders to incur operating expenses during the 1989–90 fiscal year and to collect funds during that year to pay those expenses. This would facilitate program operations. Funds to administer these program are derived from assessments on handlers.

DATES: Comments must be received by July 3, 1989.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, USDA, AMS, Fruit and Vegetable Division, P.O. Box 96456, Room 2525–S, Washington, DC, 20090–6456. Comments should reference the docket number, date and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: George J. Kelhart, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. box 96456, Room 2525–S, Washington, DC 20090–6456, telephone: (202) 475–3919.

SUPPLEMENTARY INFORMATION:

This rule is proposed under Marketing Order Nos. 916 (7 CFR Part 916) regulating the handling of nectarines grown in California and 917 (7 CFR Part 917) regulating the handling of fresh pears, plums, and peaches grown in California. These orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 650 handlers of California plums, peaches and nectarines subject to regulations under these marketing orders (7 CFR Parts 916 and 917), and there are approximately 2,030 producers of these commodities in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having averge gross annual revenues for the last three years of less than $500,000. Small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

Each marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessale commodities handled from the begining of such year. An annual budget of expenses is prepared by each administrative committee and submitted to the U.S. Department of Agriculture for approval. The members of the Committees are primarily handlers and producers of the regulated commodities. They are familiar with the committees' needs and with the costs for goods, services and personnel in their local areas, and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each committee is derived by dividing anticipated expenses by expected shipments of the commodity. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committees' expected expenses. Recommened budget and rates of assessment are usually acted upon by the committees shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committees will have funds to pay their expenses.

The Nectarine Administrative Committee met May 3, 1989, and unanimously recommended 1989–90 marketing order expenditures of $3,515,037 and an assessment rate of $0.185 per 25-pound package or equivalent. For comparison, 1988–89 fiscal year actual expenditures were $2,787,093 and the assessment rate was $0.18 cents per package or equivalent. Major expenditure categories projected for 1989–90 with actual 1988–89 expenditures in parenthesis are: Salaries and employee benefits, $193,191 ($177,712); consultant fees, $45,000 ($53,179); production research, $86,587 ($87,403); market development and promotion, $2,076,100 ($1,494,762); and inspection, $907,500 ($871,209). With the execption of $65,000 budgeted for uncollected assessment accounts, the remaining expenses are for program administration.

Estimated total income for 1989–90 of $3,824,490 includes projected assessment income of approximately $3,101,155 based on anticipated shipments of 16,763,000 packages of fresh nectarines, carryover income from 1987–88 of $620,085, anticipated income from export development and research subsidies from state and federal agencies of $70,250 and interest income totalling $33,000. This income will cover anticipated expenditures for 1989–90 and provide an adequate carryover to meet authorized committee expenses

until 1990–91 assessment funds are collected. Committee operating reserves are within the limits authorized under the program.

The Plum Commodity Committee met May 3, 1989, and unanimously recommended 1989–90 marketing order expenditures of $3,154,353 and an assessment rate of $0.21 per 25-pound package or equivalent. For comparison, 1988–89 fiscal year expenditures were $3,090,663 and the assessment rate was $0.19 per 25-pound package or equivalent. Major expenditure categories projected for 1989–90 with actual 1988–89 expenditures in parenthesis are: Salaries and employee benefits, $193,190 ($168,713); consultant fees, $5,000 (nothing budgeted); production research, $67,091 ($77,302); market development and promotion, $1,749,883 ($1,679,526); and inspection, $1,078,000 ($1,038,355). With the exception of $85,000 budgeted for uncollected assessment accounts, the remaining expenses are for program administration.

Total income for 1989–90 would amount to $3,402,340, including projected assessment income of $2,969,190 based on shipments of 14,139,000 packages of fresh plums at $0.21 per 25-pound package or equivalent. Assessment income would be supplemented with unexpended 1988–89 funds ($311,650), interest income ($20,000) and export subsidies ($101,500) from state and federal agencies. This income will cover the anticipated expenditures for 1989–90 and provide an adequate carryover to meet authorized committee expenses until 1990–91 assessment funds are collected. Committee reserves are within limits authorized under the program.

The Peach Commodity Committee met May 4, 1989, and unanimously recommended 1989–90 marketing order expenditures of $2,849,419 and an assessment rate of $0.185 cents per 25-pound package or equivalent. For comparison, 1988–89 fiscal year expenditures were $2,269,778 and the assessment rate was $0.18 per 25-pound package or equivalent. Major expenditure categories projected for 1989–90 with actual 1988–89 expenditures in parenthesis are: Salaries and employee benefits, $182,282 ($159,261); consultant fees, $5,000 (nothing budgeted); production research, $61,087 ($61,902); market development and promotion, $1,546,700 ($1,073,846); and inspection, $864,000 ($863,223). With the exception of $50,000 budget for uncollected assessment accounts, the remaining expenses are for program administration.

Total income for 1989–90 would amount to $3,218,650, including projected assessment income of approximately $2,572,740, based on shipments of 13,904,000 packages of fresh peaches at $0.185 per 25-pound package or equivalent. Assessment income would be supplemented with unexpended 1988–89 funds ($564,660), interest income ($24,000) and export subsidies ($57,750) from state and federal agencies. This income will cover the anticipated expenditures for 1989–90 and provide an adequate carryover to meet authorized committee expenses until 1990–91 assessment funds are collected. Committee reserves are within limits authorized under the program.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the levels of expenses and assessment rates for these programs should be expedited. The committees need to have sufficient funds to pay their expenses, which are incurred on a continuous basis.

List of Subjects in 7 CFR Parts 916 and 917

Marketing agreements and orders, Nectarines, Plums, Peaches and Pears, California.

For the reasons set forth in the preamble, it is proposed that 7 CFR Parts 916 and 917 be amended as follows:

1. The authority citation for 7 CFR Parts 916 and 917 continues to read as follows:

Authority: Sections 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 916—NECTARINES GROWN IN CALIFORNIA

2. A new § 916.227 is added to read as follows:

§ 916.227 Expenses and assessment rate.

Expenses of $3,515,037 by the Nectarine Administrative Committee are authorized, and an assessment of $0.185 per 25-pound package or equivalent of assessable nectarines is established for the fiscal period ending February 28, 1990. Unexpended funds may be carried over as a reserve.

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

3. A new § 917.250 is added to read as follows:

§ 917.250 Expenses and assessment rate.

Expenses of $3,154,353 by the Plum Commodity Committee are authorized, and an assessment of $0.21 per 25-pound package or equivalent of assessable plums is established for the fiscal period ending February 28, 1990. Unexpended funds may be carried over as a reserve.

4. A new § 917.251 is added to read as follows:

§ 917.251 Expenses and assessment rate.

Expenses of $2,849,419 by the Peach Commodity Committee are authorized, and an assessment of $0.185 per 25-pound package or equivalent of assessable peaches is established for the fiscal period ending February 28, 1990. Unexpended funds may be carried over as a reserve.

Dated: June 19, 1989.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–14850 Filed 6–22–89; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 1250

[Docket No. PY–89–003]

Egg Research and Promotion

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the American Egg Board's (the Board) rules and regulations governing the collection of egg research and promotion assessments. The proposal would increase the rate of assessment for the activities of the Board from 2.5 cents per 30-dozen case of eggs marketed to 5 cents. This action is proposed to enable the Board to strengthen the research and promotion activities authorized by the Egg Research and Consumer Information Act. An additional change would establish procedures for obtaining a one-time refund or pro rata share of assessments collected and held in an interest-bearing escrow account in accordance with the Egg Research and Consumer Information Act Amendments

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of 1988. Refunds would be dispersed only if elimination of the refund provision from the Egg Research and Promotion Order would not be approved by producers voting in a referendum. This change is proposed to implement amendments to the Order which became effective January 1.

DATES: Comments must be submitted on or before August 7, 1989.

ADDRESSES: Written comments are to be mailed to Janice L. Lockard, Chief, Standardization Branch, Poultry Division, AMS, USDA, Room 3944–South, P.O. Box 96456, Washington, DC 20090–6456. Written comments received may be reviewed in the Washington, DC, Standardization Branch office during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janice L. Lockard, 202–447–3506.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This action was reviewed in accordance with Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be non-major because it does not meet the criteria contained therein. It will not result in an annual effect on the economy of $100 million or more or in a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. It also will not have a significant impact on competition, employment, investment, productivity, innovation, or in the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Effect on Small Entities

The Administrator of the Agricultural Marketing Service has determined that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). The purpose of the RFA is to fit regulatory action to the scale of businesses subject to such action in order that small businesses will not be unduly or disproportionately burdened.

The majority of egg handlers and producers under the Egg Research and Consumer Information Act may be characterized as small entities. Many egg producers are also handlers of eggs. Pursuant to regulation, handlers are responsible for collecting assessments from producers. There are an estimated 723 handlers and 1,869 producers under the program. Currently, egg producers must pay a mandatory assessment of 2.5 cents per 30-dozen case of eggs marketed to fund the research and promotion activities authorized by the Act. The present assessment of 2.5 cents per 30-dozen case is equivalent to approximately 0.128 percent of the wholesale price of a 1-dozen carton of Large eggs. A 5-cent assessment rate would be equivalent to approximately 0.25 percent of the wholesale price of a 1-dozen carton of Large eggs. This is based on the Economic Research Service's 3-year average wholesale price for New York City Grade A Large cartoned eggs (1986–88) of 65 cents per dozen. The Board collects approximately $3.7 million annually from the 2.5-cent assessment and it is estimated that it would collect $7.4 million for a 5-cent assessment. It is estimated that any additional costs would be offset by the benefits to be derived from strengthened research and promotion programs.

Background and Proposed Changes

1. Increase in the Rate of Assessment

The Egg Research and Promotion Order in § 1250.347 (7 CFR 1250.347) authorizes the American Egg Board to collect assessments at the rate of 5 cents per 30-dozen case of eggs, or the equivalent thereof, or such lower amount to cover expenses and expenditures as approved by the Secretary of Agriculture. The Order also authorizes the Board to make rules and regulations to effectuate the terms and provisions of the Order. Following the recommendation of the Board, an amendment to the rules and regulations became effective on September 1, 1987 (52 FR 36907), lowering the assessment rate from 5 cents per 30-dozen case of eggs marketed to 2.5 cents. This action was taken at a time when egg producers were experiencing unfavorable net returns due to low prices which, in part, caused an erosion of financial support for Board activities. The decrease in the assessment was successful in lowering the refund rate, thus, gaining a broader base of producer support for national-level programs such as egg nutrition and education, foodservice promotion, consumer education, and new product development.

The 2.5-cent assessment was refundable until January 1, 1989. At that time, amendments to the Order eliminating the refund provision became effective and were published in the **Federal Register** (54 FR 98). Such amendments would not be subject to a producer referendum until the end of an 18-month period from the effective date of the amendments, January 1, 1989. This amendatory action to eliminate the refund provision was required by the Egg Research and Consumer Information Act Amendments of 1986 (Pub. L. 100–575), effective October 31, 1988. At the same time, individual producers and producer groups petitioned the Board to consider raising the assessment rate to 5 cents. The Board collects approximately $3.7 million annually from a 2.5-cent assessment. It is estimated that with the 5-cent assessment, the Board would collect $7.4 million annually. With the proposed increase, ongoing activities could be funded at current levels and paid advertising, including television, could be resumed at a level as approved by the Board and the Secretary. The Board subsequently polled all eligible producers to determine whether such an increase for this purpose would be supported. The results showed that 57 percent of those voting, representing 72 percent of egg production voting, would support such an increase. Based on this response and a review of current and prospective market conditions, the Board voted unanimously to recommend a proposal to increase the assessment rate from 2.5 cents to 5 cents.

2. Procedure for Obtaining One-Time Refund

The 1988 amendments to the Act require the Board to place into an interest-bearing escrow account 10 percent of the assessments received from egg producers beginning January 1, 1989, until approval by producer referendum of the amendment to the Order eliminating producer refunds. If the amendment to the Order is not approved in the referendum, the escrow account will be used to pay refunds to eligible egg producers who requested a refund pursuant to regulation changes proposed herein. If the escrow account does not contain sufficient amounts to refund all eligible producers demanding a refund, the Board will prorate the amount of refunds demanded by eligible producers. If the amendment to the Order is approved, the amount in the escrow account will be used by the Board in accord with the purposes set forth in the Act.

The amended Act specifies that refunds "shall be made in accordance with regulations, on a form, and within a time period prescribed by the Egg Board." Accordingly, an amendment to § 1250.523 is proposed to provide a procedure for obtaining a one-time refund. The procedure would require egg producers to file an application to obtain a refund of assessments paid or a pro rata share from the escrow account maintained by the Board. It is estimated that this application form will take 10 minutes to complete. Refund application forms for this purpose would be filed within 90 days following the effective date of the amended rules and regulations proposed herein. The number of the approximately 1,869 producers who would file refund requests pursuant to the proposed regulation is not known.

Paperwork Reduction

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the new information collection requirements that are included in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB). The requirements are not effective until OMB approval has been obtained.

Existing information collection requirements and recordkeeping provisions contained in 7 CFR Part 1250 have been approved by OMB and have been assigned No. 0581–0098.

List of Subjects in 7 CFR Part 1250

Egg research and promotion.

For the reasons set forth in the preamble, Title 7, CFR Part 1250 is proposed to be amended as follows:

PART 1250—EGG RESEARCH AND PROMOTION

1. The authority citation of Part 1250 continues to read as follows:

Authority: Pub. L. 93–428, 88 Stat. 1171, as amended; 7 U.S.C. 2701–2718.

2. Section 1250.514 is revised to read as follows:

§ 1250.514 Levy of assessments.

An assessment of 5 cents per case of commercial eggs is levied on each case of commerical eggs handled for the account of each producer. Each case of commercial eggs shall be subject to assessment only once. The following shall be exempt from the provisions of this section:

(a) Any egg producer whose aggregate number of laying hens at any time during the 3-consecutive-month period immediately prior to the month in which assessments are due and payable has not exceeded 3,000 laying hens, and

(b) Any flock of breeding hens whose production of eggs is primarily utilized for the hatching of baby chicks.

3. In § 1250.523, the introductory text is revised and paragraph (d) is added to read as follows:

§ 1250.523 Procedure for obtaining refunds.

Except as provided in paragraph (d) of this section, each egg producer against whose eggs an assessment was levied and collected may obtain a refund of the assessment amount for any calendar month in the following manner:

* * * * *

(d) Effective January 1, 1989, producer refunds as provided in paragraphs (a), (b), and (c) of this section are eliminated. If elimination of the refund provision is not approved pursuant to a referendum, as required by the Egg Research and Consumer Information Act Amendments of 1988, any egg producer who is responsible for paying assessments to the Board under this subpart and who is not in favor of supporting the program established under the Order (§§ 1250.301 through 1250.363) shall have the right to demand and receive from the Board a one-time refund of such assessments or to pro rata share thereof collected from such producer and deposited into an interest-bearing escrow account pursuant to § 1250.336(g) of the Order in the following manner:

(1) *Application forms.* Refund application forms shall be provided by the Egg Board.

(2) *Submission of refund application to Egg Board.* Any producer requesting a one-time refund or pro rata share from the interest-bearing escrow account shall mail an application on the prescribed form to the Egg Board. The refund application shall contain the following information:

(i) Producer's name and full mailing address;

(ii) Farm or firm name;

(iii) Assigned identification number;

(iv) Date of application; and

(v) Signature of producer or authorized representative of producer.

(3) *Time limit for submission of refund application to Board.* All refund applications must be mailed to the Board within 90 days following the effective date of this amended subpart. Validation of filing will be the envelope bearing the postmark date in which the application is mailed. No refund applications will be validated after the 90-day dead-line, except that any producer entering the business after that date must submit a refund application within 90 days after first collection or sale of assessable eggs, but in no case after the date of the producer referendum.

(4) *Payment of refund.* If producers voting in a referendum do not favor elimination of the refund provision, the Egg Board shall pay refund requests or a pro rate share thereof within 60 days of the date the referendum results are released by the Secretary.

Done at Washington, DC, on June 19, 1989.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 89–14810 Filed 6–22–89; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM–38; Notice No. SC–89–3–NM]

Special Conditions; Aerospatiale/Aeritalia ATR–72, Lightning and Radio Frequency (RF) Energy Protection

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Aerospatiale/Aeritalia ATR–72 airplane. This airplane will have a novel or unusual design feature associated with a multipurpose computer system which performs critical and essential functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of the multipurpose computer system from the effects of lightning and susceptibility to external radio frequency (RF) energy sources. This notice contains the safety standards which the Administrator finds necessary to ensure that the critical and essential functions this system performs in the ATR–72 are maintained.

DATE: Comments must be received on or before August 7, 1989.

ADDRESS: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM–7), Docket No. NM–38, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked: Docket No. NM–38. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Gene Vandermolen, Flight Test and Systems Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, FAA, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168, telephone (206) 431–2157.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on this proposal. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM-88." The postcard will be date/time stamped, and returned to the commenter.

Background

On January 24, 1986, Aerospatiale applied for an amendment to their Type Certificate No. A53EU to include the Aerospatiale/Aeritalia ATR-72 airplane. The Aerospatiale/Aeritalia ATR-72 is a derivative of the Aerospatiale/Aeritalia ATR-42 airplane, and will incorporate a multipurpose computer system comprising two computers which provide critical and essential functions.

Lightning Protection

The Aerospatiale/Aeritalia ATR-72 airplane is designed with multipurpose computers which perform critical and essential functions, such as control of stick pusher, pitch trim, flaps, propeller feathering, crew altering, deice and antiice, electrical power, door monitoring, landing gear monitoring, propeller brake, air conditioning, and pressurization, etc. These computers, which are designed to perform critical or essential functions, are susceptible to disruption to both the command/response signals and the operational mode logic as a result of electrical and magnetic interference. This disruption of signals could result in functions failing to be properly provided when needed.

To ensure that a level of safety is achieved equivalent to that of existing operating airplanes, special conditions are needed which require that the computers, associated relays, and wiring will be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of lightning. To provide a means of compliance with the proposed special conditions, a clarification on the threat definition for lightning is needed.

The following "threat definition," based on Society of Automotive Engineers (SEA) Report No. AE4L-87-3, is proposed as a basis to use in demonstrating compliance with the proposed lightning protection special condition.

The lightning current waveforms (Components A, D, and H) defined below, along with the voltage waveforms in Advisory Circular (AC) 20-53A, will provide a consistent and reasonable standard which is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. How these threats affect the airplane and its systems depend upon the system's installation configuration, materials, shielding, airplane geometry, etc.; therefore, tests (including tests on the completed airplane or an adequate simulation) and/or a verified analysis need to be conducted in order to obtain the resultant internal threat to the installed systems. The multipurpose computer system may then be evaluated with this internal threat in order to determine its susceptibility to upset and/or malfunction.

To evaluate the induced effects to these systems, three considerations are required:

1. *First Return Stroke:* (Severe Strike—Component A, or Restrike—Component D). This external threat needs to be evaluated to obtain the resultant internal threat and to verify that the level of the induced currents and voltages is sufficiently below the equipment "hardness" level;

2. *Multiple Stroke Flash.* (⅛ Component D). A lightning strike is often composed of a number of successive strokes, referred to as a multiple stroke. Although multiple strokes are not necessarily a salient factor in a damage assessment, they can be the primary factor in a system upset analysis. Multiple strokes can induce a sequence of transients over an extended period of time. While a single event upset of input/output signals may not affect system performance, multiple signal upsets over an extended period of time (2 seconds) may affect the systems under consideration. Repetitive pulse testing and/or analysis need to be carried out in response to the multiple stroke environment to demonstrate that the system response meets the safety objective. This external multiple stroke environment consists of 24 pulses and is described as a single Component A followed by 23 randomly spaced restrikes of ⅓ magnitude of Component D (peak amplitude of 50,000 amps), all within 2 seconds. An analysis or test needs to be accomplished in order to obtain the resultant internal threat environment for the system under evaluation;

3. *Multiple Burst.* (Component H). In-flight data-gathering projects have shown bursts of multiple, low amplitude, fast rates of rise, short duration pulses accompanying the airplane lightning strike process. While insufficient energy exists in these pulses to cause direct (physical damage) effects, it is possible that indirect effects resulting from this environment may cause upset to some digital processing systems.

The representation of this interference environment is a repetition of low amplitude, high peak rate of rise, double exponential pulses which represent the multiple bursts of current pulses observed in these flight data gathering projects. This component is intended for an analytical (or test) assessment of functional upset of the system. Again, it is required that this component be translated into an internal environmental threat in order to be used. This "Multiple Burst" consists of 24 random sets of 20 strokes within a period of 2 seconds. Each set of 20 strokes is made up of 20 "Multiple Burst" waveforms randomly distributed within a period of one millisecond. The individual "Multiple Burst" waveform is defined below.

The following current waveforms constitute the "Severe Strike" (Component A), "Restrike" (Component D), "Multiple Stroke" (⅛ Component D), and the "Multiple Burst" (Component H). These components are defined by the following double exponential equation:

$$i(t) = I_o (e^{-at} - e^{-bt})$$

where:

t = time in seconds,

i = current in amperes, and

		Severe strike (component A)	Restrike (component D)	Multiple stroke (⅛ component D)	Multiple burst (component H)
$I_o$amp	=	218,810	109,405	54,703	10,572
a, sec^{-1}	=	11,354	22,708	22,708	187,191
b, sec^{-1}	=	647,265	1,294,530	1,294,530	19,105,100

This equation produces the following characteristics:

ipeak	=	200 KA	100 KA	50 KA	10 KA
and,					
(di/dt)max(amp/sec)	=	1.4×10^{11} @t=0+sec	1.4×10^{11} @t=0+sec	0.7×10^{11} @t=0+sec	2.0×10^{11} @t=0+sec
di/dt, (amp/sec)	=	1.0×10^{11} @t=.5 us	1.0×10^{11} @T=.25 us	$0.5 \times 0.5 \times 10^{11}$ @t=.25 us	
di/dt, (amp/sec)	=	1.0×10^{11}	1.0×10^{11}	0.5×10^{11}	
Action Integral (amp^2 sec)	=	2.0×10^6	0.25×10^6	$.0625 \times 10^6$	

Protection from Unwanted Effects of Radio Frequency (RF) Energy

Airplane designs which utilize metal skins and mechanical command and control means have traditionally been shown to be immune from the effects of FR energy from ground-based transmitters. With the trend toward increased power levels from these sources, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of the airplane to RF energy must be established. No universally accepted guidance to define the maximum energy level in which civilian airplane system installations must be capable of operating safely has been established.

It is not possible to precisely define the RF energy to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for RF energy. Furthermore, coupling to cockpit installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing RF emitters, an adequate level of protection exists when compliance with the RF special condition is shown with paragraphs 1 or 2 below:

1. A minimum RF threat of 100 volts per meter average electric field strength from 10 KHz to 20 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. An RF threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Average (V/m)	Peak (V/m)
10 KHz—3 MHz	100	100
3 MHz—30 MHz	1,000	1,000
30 MHz—100 MHz	100	100
100 MHz—200 MHz	200	3,000
200 MHz—1 GHz	2,000	6,000
1 GHz—2 GHz	2,000	14,000
2 GHz—8 GHz	600	14,000
8 GHz—10 GHz	2,000	14,000
10 GHz—40 GHz	1,000	8,000

To establish the values in paragraph 2 above, an analysis was performed using a model of U.S. airspace and the Electromagnetic Compatibility Analysis Center (ECAC) data base, which contains the characteristics of all U.S. emitters. This analysis assumed a minimum separation distance between the airplane and emitters as follows: In the airport environment, 250 ft. for fixed emitters and 50 ft. for mobile emitters; for the air-to-air environment, 50 ft. from interceptor aircraft and 500 ft. from non-interceptor aircraft; for the ground-to-air environment, 500 ft.; and for the ship-to-air environment, 1,000 ft. The results of this analysis were then combined with the results of a study of emitters in European countries. The above values are therefore believed to represent the worst case external threat levels to which an airplane would be exposed in the operating environment.

Type Certification Basis

Under the provisions of § 21.101 of the Federal Aviation Regulations (FAR), Aerospatiale/Aeritalia must show that the Model ATR-72 meets the applicable provisions of the regulations incorporated by reference in Type Certificate No. A53EU, or the applicable regulations in effect on the date of application for the Model ATR-72. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis."

The type certification basis for the Aerospatiale/Aeritalia ATR-72 airplanes includes certain European airworthiness requirements and specific sections of Part 25 of the FAR. Collectively, these requirements, which are listed in Type Certificate Data Sheet No. A53EU, have been found equivalent to Part 25 of the FAR, as amended by Amendments 25-1 through 25-54. In addition the type certification basis includes § 25.904, as amended by Amendments 25-1 through 25-62; Special Federal Aviation Regulation (SFAR) 27, including all amendments effective on or before the ATR-72 TC date; Part 36 of the FAR, including all amendments effective on or before the ATR-72 TC date; FAA Exemption 4385 (NM-104) regarding § 25.571(e)(2), granted April 19, 1984; a finding of regulatory adequacy pursuant to the "Noise Control Act of 1972"; an FAA finding of equivalent safety for § 25.773(b)(2) of the FAR; ice protection provisions of JAR 25.1419; appropriate FAA Advisory Circulars on precision approach and landing; and the special conditions proposed herein.

If the Administrator finds that the applicable airworthiness regulations (i.e., Part 25 as amended) do not contain adequate or appropriate safety standards for the Model ATR-72 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations. Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101.

Conclusion: This action affects only certain unusual or novel design features on one model series of airplanes. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Aerospatiale/Aeritalia ATR-72 airplane.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2); 42 U.S.C. 1857f-10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

1. *Lightning Protection.*

a. Each electronic system which performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these systems to perform critical functions are not affected when the airplane is exposed to lightning.

b. Each essential function of new or modified electronic systems or installations must be protected to ensure that the function can be recovered in a timely manner after the airplane has been exposed to lightning.

2. *Protection from Unwanted Effects of Radio Frequency (RF) Energy.* The Multipurpose Computer System must be designed and installed to ensure that the operation and operational capabilities of this system to perform critical functions are not adversely affected when the airplane is exposed to high energy RF fields.

3. For the purpose of these special conditions, the following definitions apply:

Critical Functions. Functions whose failure would contribute to or cause a failure condition which would prevent the continued safe flight and landing of the airplane.

Essential Functions. Functions whose failure would contribute to or cause a failure condition which would significantly impact the safety of the airplane or the ability of the flightcrew to cope with adverse operating conditions.

Issued in Seattle, WA, on June 2, 1989.

Darrell M. Pederson,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-14903 Filed 6-22-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-89-AD]

Airworthiness Directives; Empresa Brasileira de Aeronautica, S.A. (EMBRAER) Model EMB-120 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new airworthiness directive (AD), applicable to EMBRAER Model EMB-120 series airplanes, which would require the modification of the landing gear aural warning system in order to alert the crew on approach that the landing gear is not down. This proposal is prompted by two recent inadvertent gear-up landings wherein the aural warning device did not sound. This condition, if not corrected, could result in an inadvertent gear-up landing.

DATE: Comments must be received on or before August 14, 1989.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-89-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from EMBRAER, 276 SW. 34th Street, Fort Lauderdale, Florida 33315. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the FAA Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Mr. William H. Trammell, Aerospace Engineer, ACE-130A, FAA, Central Region, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349; telephone (404) 991-3020.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments sumbitted will be available, both before and after the closing date for comments in the Regional Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to Notice must submit a self-addressed, stamped post card on which the following statement is made: Comments to Docket Number 89-NM-89-AD. The post card will be date/time stamped and returned to the commenter.

Discussion

There have been two reports of accident involving Model EMB-120 series airplanes wherein the crew failed to place the landing gear in the down position prior to landing. Both accidents occurred during crew training sessions while simulating various emergencies during approach to include loss of flaps at low aircraft gross weights. The resulting minimal approach power adjustment was such that the landing gear warning system was never re-armed after the initial power reduction and muting of the gear warning horn by the crew. The cause was determined to be the lack of switches representing the Electronic Engine Control (EEC) "ON" operating condition. This condition, if not corrected, could lead to an inadvertent gear-up landing.

EMBRAER has issued Service Bulletin No. 120-032-0055, dated March 16, 1989, for airplanes without a radio altimeter, which describes procedures to modify the landing gear up aural warning system, to alert the crew on approach when the land gear is not down.

EMBRAER has also issued Service Bulletin No. 120-032-0052, dated March 15, 1989, for airplanes with radio altimeters, which describes procedures to similarly modify the landing gear warning system.

This airplane is manufactured in Brazil and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require modification of the landing gear warning system, in accordance with the service bulletins previously described.

It is estimated that 60 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 24 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The estimated cost for parts is $490 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $87,000 (or $1,450 per airplane).

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendent

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Empresa Brasileira De Aeronautica, SA (EMBRAER): Applies to Model EMB-120 series airplanes; Serial numbers 120004, 120006 through 120070, 120072 through 120080, and 120082 through 120099; certificated in any category. Compliance is required within 50 days after the effective date of this AD, unless previously accomplished.

To prevent a gear-up landing due to malfunction of the landing gear aural warning system, accomplish the following:

A. For airplanes not equipped with radio altimeters, modify the landing gear aural warning system and calibrate new switches, in accordance with EMBRAER Service Bulletin No. 120-032-0055 dated March 16, 1989.

B. For airplanes equipped with radio altimeters, modify the landing gear warning system, in accordance with EMBRAER Service Bulletin 120-032-0052, dated March 15, 1989.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Atlanta Aircraft Certification Office, FAA, Central Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Atlanta Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to EMBRAER, 276 SW. 34th Street, Fort Lauderdale, Florida 33315. These documents may be examined at the FAA Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle Washington, or the FAA, Central Region, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia.

Issued in Seattle, Washington, on June 14, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-14899 Filed 6-22-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-86-AD]

Airworthiness Directives; Empresa Brasileira de Aeronautica, S.A. (EMBRAER) Model EMB-120 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Empresa Brasileira de Aeronautica, S.A. (EMBRAER) Model EMB-120 series airplanes, which would require replacement of certain glide slope antennae. This proposal is prompted by numerous reports of erratic glide slope data during instrument flight rules (IFR) approaches. This condition, if not corrected, could result in airplaines receiving inaccurate glide slope data when landing in instrument weather conditions.

DATES: Comments must be received no later than August 7, 1989.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-86-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from EMBRAER, 276 SW. 34th Street, Fort Lauderdale, Florida 33315. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Mr. A. E. Clark, Systems and Equipment Branch, ACE-130A; telephone (404) 991-3020. Mailing Address: FAA, Atlanta Aircraft Certification Office, Small Airplane Directorate, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing data for comments specified above will be considered by the

Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-86-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

There have been several reports of erratic glide slope data on EMBRAER Model EMB-120 series airplanes equipped with a Chelton antenna, P/N 17-21F6P3. Further investigation revealed that glide slope oscillation has occurred due to the accumulation of moisture in the Chelton antenna. Attempts to seal the radome and antenna to prevent moisture accumulation have been unsuccessful. This condition, if not corrected, could result in airplanes receiving inaccurate glide slope data when landing in instrument weather conditions.

EMBRAER has issued Service Bulletin 120-034-0072, dated April 14, 1989, which describes procedures to replace the Chelton glide slope antenna with a Collins glide slope antenna type 37P5, P/N 522-0700-023, and to install a pedestal type support P/N 120-47294-001. The Collins antenna has had no reported glide slope problems.

This airplane model is manufactured in Brazil and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require replacing the Chelton glide slope antenna with a Collins glide slope antenna and installing a pesdestal type support, in accordance with the service bulletin previously described.

It is estimated that 80 airplaines of U.S. registry would be affected by this AD, that it would take approximately 3 manhours per airplaine to accomplish the required actions, and that the average labor cost would be $40 per manhour. The estimated cost for parts is $510. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $50,400.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Empresa Brasileira De Aeronautica, S.A. (Embraer): Applies to Model EMB-120 series airplanes, as listed in EMBRAER Service Bulletin 120-034-0072, dated April 14, 1989, certificated in any category. Compliance is required within 30 days after the effective date of this AD, unless previously accomplished.

To prevent erratic glide slope information during IFR approaches, accomplish the following:

A. Replace the Chelton glide slope antenna, P/N 17-21F6P3, with a Collins glide slope antenna type 37P5, P/N 522-0700-023, and install a pedestal-type support, P/N 120-47294-001, in accordance with EMBRAER Service Bulletin 120-034-0072, dated April 14, 1989.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to EMBRAER, 276 SW. 34th Street, Fort Lauderdale, Florida 33315. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Atlanta Aircraft Certification Office, Small Airplane Directorate, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia.

Issued in Seattle, Washington, on June 8, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-14695 Filed 6-22-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-95-AD]

Airworthiness Directives: Fokker Model F-27 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Fokker Model F-27 series airplanes, which would require a one-time inspection for cracks of the fuselage external skin riveted connections between fuselage Station 1400 and the partial pressure bulkhead, and repair, if necessary. This proposal is prompted by reports of cracks found in several parts of the external skin due to fatigue cracking of the dimpled rivet holes. This condition, if not corrected, could lead to reduced structural capability of the fuselage and subsequent decompression of the airplane.

DATES: Comments must be received no later than August 14, 1989.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-95-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicble service information may be obtained from Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113; telephone (206) 431-1978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington.

SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-95-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority of the Netherlands, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain Fokker Model F-27 series airplanes. There have been two reports of the fuselage skin rupturing between Station 3820 and Station 4240 along the rivet row of stringers 34 and 35. This condition, if not corrected, could lead to reduced structural capability of the fuselage and subsequent decompression of the airplane.

Fokker has issued Service Bulletin F27/53-108, dated February 3, 1989, which prescribes procedures for a one-time visual inspection for cracks in the fuselage external skin riveted connections between fuselage Station 1400 and the partial pressure bulkhead, and repair, if necessary. The RLD has classified the service bulletin as mandatory, and has issued the Netherlands Airworthiness Directive BLA No. 89-20 to address this subject.

This airplane model is manufactured in the Netherlands and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require an inspection for cracks in the fuselage external skin riveted connections between fuselage Station 1400 and the partial pressure bulkhead, and repair, if necessary, in accordance with the service bulletin previously described.

This is considered to be interim action. The manufacturer is currently attempting to determine the extent and nature of the addressed damage, and is developing an appropriate repetitive inspection schedule and/or modification that will preclude the need for repetitive inspections. Once these are developed, the FAA may consider further rulemaking to revise this AD to require additional necessary action.

It is estimated that 33 airplanes of U.S. registry would be affected by this AD, that it would take approximately 4 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $5,280.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker: Applies to Model F-27 series airplanes, Serial Number 10202, 10105 through 10684, 10686, 10687, and 10689 through 10692, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent reduced structural capability of the fuselage and subsequent decompression of the airplane, accomplish the following:

A. For airplanes in post-Service Bulletin F27/21-30 configuration, within 30 days after the effective date of this AD or upon the accumulation of 30,000 landings, whichever occurs later, inspect the external skin at the riveted connections between fuselage Station 1400 and the partial pressure bulkhead, in accordance with Fokker Service Bulletin F27/53-108, dated February 3, 1989. If cracks are found, repair prior to further flight, in accordance with the service bulletin.

B. For airplanes in pre-Service Bulletin F27/21–30 configuration, within 30 days after the effective date of this AD or upon the accumulation of 50,000 landings, whichever occurs later, inspect the external skin at the riveted connections between Fuselage Station 1400 and the partial pressure bulkhead in accordance with Fokker Service Bulletin F27/53–108, dated February 3, 1989. If cracks are found, repair prior to further flight, in accordance with the service bulletin.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through a FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle Washington 98168

Issued in Seattle, Washington, on June 14, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–14896 Filed 6–22–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 89–ANE–12]

Airworthiness Directives; Garrett Engine Division (Hereinafter Called "Garrett"), Allied-Signal Incorporated, Models TFE731–3, –3A, –3AR and –3R Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt an airworthiness directive (AD) that would require the removal of suspect high pressure turbine rotor (HPTR) discs within 150 operating cycles, after the effective date of the AD, on certain Garrett turbofan engine models. The proposed AD is needed to prevent additional uncontained turbine rotor failures due to low cycle fatigue from an inclusion of foreign material within the disc.

DATES: Comments must be received on or before August 25, 1989.

ADDRESSES: Comments on the proposal may be mailed in duplicate to Federal Aviation Administration, New England Region, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 89–ANE–12, 12 New England Executive Park, Burlington, Massachusetts 01803, or delivered in duplicate to Room 311, at the above address.

Comments delivered must be marked: Docket No. 89–ANE–12.

Comments may be inspected at the New England Region, Office of the Assistant Chief Counsel, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable engine manufacturer's service bulletin may be obtained from Garrett General Aviation Service Division, Distribution Center, 2340 East University, Phoenix, Arizona 85034; telephone (602) 225–2548, or may be examined in the Regional Rules Docket.

FOR FURTHER INFORMATION CONTACT: Joseph Costa, Aerospace Engineer, Propulsion Branch, ANM–140L, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (213) 988–5246.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA before any final action is taken on the proposed rule. The proposal contained in this notice may be changed in light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket at the address given above, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: Comments to Docket No. 89–ANE–12. The postcard will be date/time stamped and returned to the commenter.

The FAA has determined that a Garrett TFE731–3 engine incurred an uncontained HPTR disc failure after 2,764 cycles due to low cycle fatigue from an inclusion of stainless steel in the disc bore area. This foreign material contamination occurred during the pre-forging remelt process. It has been determined that during subsequent forging operations additonal discs could contain the foreign material. A non-destructive inspection technique conducted by Garrett will confirm the discs acceptability for conitinued service. This proposed AD requires removal of the 49 suspect discs. Since this condition is likely to exist in other engines of the same type design, the proposed AD would require the removal of suspect discs in accordance with Garrett Alert Service Bulletin (SB) TFE731–A72–3388, dated February 28, 1989, to correct the unsafe condition.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this proposed regulation involves only 49 engines at a negligible cost due to Garrett's incentive program. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12921; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, and Incorporation by reference.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the FAA proposes to amend Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.85.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

Garrett Engine Division (hereinafter called "Garrett"), Allied-Signal Incorporated: Applies to models TFE731–3, –3A, –3AR, and –3R turbofan engines equipped with high pressure turbine rotor (HPTR) discs, part numbers 3072316–2, –3, and 3073110–1, –2.

Compliance is required as indicated, unless already accomplished.

To prevent an uncontained engine failure, accomplish the following:

(a) Remove and replace with a serviceable part, specific serial number HPTR discs in accordance with the accomplishment instructions in Garrett Alert Service Bulletin (SB) TFE731–A72–3388, dated February 28, 1989, at next access to the turbine rotor assembly or within 150 operating cycles after the effective date of this AD or prior to June 1, 1990, whichever occurs first.

Note: For the purpose of the AD, access to the turbine rotor assembly is defined as whenever the N_1 turbine module is separated from the engine.

(b) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(c) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, the Manager, Los Angeles Aircraft Certification Office, Federal Aviation Administration, Transport Airplane Directorate, Aircraft Certification Service, 3229 East Spring Street, Long Beach, California 90806–2425, may approve an equivalent means of compliance or an adjustment of the compliance schedule which provides an equivalent level of safety.

Issued in Burlington, Massachusetts, on June 14, 1989.

Arthur J. Pidgeon,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 89–14897 Filed 6–22–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 89–ANE–11]

Airworthiness Directives; Teledyne Continental Motors (TCM) Engines, Models TSIO–520B, BB, D, DB, E, EB, J, JB, K, KB, N, NB, UB, and VB

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt an Airworthiness Directive (AD) that would require a one time inspection and, if necessary, replacement of the scavenge oil pump gears on certain TCM engines, models TSIO–520B, BB, D, DB, E, EB, J, JB, K, KB, N, NB, UB, and VB. This proposed AD is needed to prevent possible loss of the scavenge pump which could result in total loss of engine power.

DATES: Comments must be received on or before August 25, 1989.

ADDRESSES: Comments on the proposal may be mailed in duplicate to Federal Aviation Administration, New England Region, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 89–ANE–11, 12 New England Executive Park, Burlington, Massachusetts 01803, or delivered in duplicate to Room 311, at the above address.

Comments delivered must be marked: Docket No. 89–ANE–11.

Comments may be inspected at the New England Region, Office of the Assistant Chief Counsel, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The applicable service bulletin (SB) No. M89–4, dated February 9, 1989, may be obtained from Teledyne Continental Motors, P.O. Box 90, Mobile, Alabama 36601, or may be examined in the Regional Rules Docket.

FOR FURTHER INFORMATION CONTACT: Jerry Robinette, Aerospace Engineer, Propulsion Branch, ACE–140A, Atlanta Aircraft Certification Office, Federal Aviation Administration, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349; telephone (404) 991–3810.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the agency before any final action is taken on the proposed rule. The proposal contained in this notice may be changed in light of comments.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket at the address given above, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self addressed, stamped postcard on which the following statement is made: Comments to Docket No. 89–ANE–11. The postcard will be date/time stamped and returned to the commenter.

The FAA has determined that there have been 39 service difficulty reports (since 1983) of scavenge pump gear failures on certain TCM engines, models TSIO–520B, BB, D, DB, E, EB, J, JB, K, KB, N, NB, UB, and VB. Failure of the scavenge pump gears results in total loss of engine power due to lack of lubrication. This problem is addressed in TCM SB M89–4 which recommends a one time inspection of marked gears and replacement of any unmarked gears or any gear which fails the inspection. The gears, part numbers (P/N's) 635334 and 639388, have a shallow hardness depth, and wear or pressure abrasive cleaning procedures can destroy the hardened layer. TCM introduced carburized gears which have much greater resistance to wear. However, they did not mark the early production gears P/N's 649157 and 649159; therefore, there are unidentifiable carburized gears in use. Later carburized gears have a drill point for identification. These carburized gear (P/N's 649157 and 649159) are to replace P/N's 635334 and 639388, and unmarked gears P/N's 649157 and 649159. Since this condition is likely to exist or develop on other engines of the same type design, the proposed AD would require a one time inspection of the gears and, if necessary, replacement of certain scavenge oil pump gears.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal

would not have sufficient federalism implications to warrant the preparation of a Federal Assessment.

The FAA has determined that this proposed regulation involves 8481 engines and the approximate cost would be $310 per engine. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (Z44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, and Incorporation by reference.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) proposes to amend Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

Teledyne Continental Motors (TCM): Applies to TCM engines, models TSIO-520B, BB, D, DB, E, EB, J, JB, K, KB, N, NB, UB, and VB, equipped with scavenge oil pump gears Part Numbers (P/N's) 635334, 639388, 648157, and 649159.

Compliance is required within 500 flight hours of the effective date of this AD, or at any maintenance event during which the scavenge oil pump gears are removed from the engine, whichever occurs first, unless already accomplished.

To prevent possible failure of scavenge oil pump gears which could result in total loss of engine power, accomplish the following:

(a) Remove the scavenge oil pump gears (P/N's 635334, 639388, 649157 or 649159) from the scavenge oil pump housing, inspect the gear teeth for a drill point as shown in Figure 1 of TCM Service Bulletin (SB) No. M89-4, dated February 9, 1989.

(1) If the drill point is present, inspect the gears in accordance with the inspection procedures outlined in SB M89-4.

(2) If the drill point is not present or the gears fail the inspection specified in SB M89-4, replace the gears with P/N 649157 and/or 649159 gears having the drill point marking.

(b) Make appropriate log book entry showing compliance with this AD.

(c) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(d) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, the Manager, Atlanta Aircraft Certification Office, Federal Aviation Administration, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349, may approve an equivalent means of compliance or an adjustment of the compliance schedule specified in this AD, which provides an equivalent level of safety.

Issued in Burlington, Massachusetts, on June 14, 1989.

Arthur J. Pidgeon,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 89-14898 Filed 6-22-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 211

[Docket No. 86N-0320]

Current Good Manufacturing Practice in Manufacture, Processing, Packing, or Holding; Proposed Revision of Certain Labeling Controls

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the current good manufacturing practice (CGMP) regulations for human and veterinary drug products to revise certain labeling control provisions. The changes are intended to reduce the frequency of drug product mislabeling. The proposal specifies conditions for the use of gang-printed or cut labeling, exempts from CGMP labeling reconciliation requirements manufacturers that employ 100-percent drug product label inspection systems, and requires manufacturers to identify filled drug product containers that are not immediately labeled. These actions are based upon findings of a recent agency study of drug product recalls.

DATE: Comments by August 22, 1989.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Robert J. Meyer, Center for Drug Evaluation and Research (HFD-362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8046.

SUPPLEMENTARY INFORMATION:

I. Introduction

Because of the persistent problem of drug product mislabeling and of class I recalls in fiscal year 1987 due to drug product mislabeling, FDA undertook an extensive review of labeling procedures under the CGMP regulations with a view toward modifying labeling control requirements to reduce the frequency of drug product mislabeling. The proposed rule, which would modify specific sections of the packaging and labeling control subpart of the CGMP regulations, is intended to encourage desirable labeling operations and to contribute measurably to preventing drug product mislabeling.

The agency action is based on a recent study conducted by FDA that examined all recalls due to drug product mislabeling that have occurred over the last 5 fiscal years (fiscal year 1983 through fiscal year 1987). A copy of this study is on file with the Dockets Management Branch (address above) under the docket number found in brackets in the heading of this document, and may be seen there between 9:00 a.m. and 4:00 p.m., Monday through Friday.

The agency's study demonstrated that approximately one-quarter of all drug product recalls over the past 5 fiscal years were due to drug product mislabeling. The study identified four primary causes of these mislabeling-related recalls: Label mixups, product mixups, label printing errors, and product label versus container label errors. Of these causes, the study identified label mixups as the leading cause of recall incidents involving mislabeled products. Such a mixup occurs when an incorrect label is applied to a correctly identified drug product.

FDA analyzed recall incidents attributed to label mixups. The analysis showed that the use of cut labels, labels of similar size, shape or color, and deviations from existing CGMP labeling requirements were the leading causes of such mixups. The following three label control practices were not involved in any of the recalls attributed to label mixups: The use of labels differentiated by size, shape, or color; the use of dedicated packaging lines; and the use of electronic label verification systems that validate the labeling of each product during finishing operations (100-percent label inspection).

II. Proposed Revisions to the Regulations

Based on the review of this study, the agency is proposing to revise the labeling control requirements of the CGMP regulations—

1. To prohibit gang printing of labeling to be used for different drug products or different strengths or net contents (see proposed § 211.122(f)) of the same drug product, unless the labeling from gang-printed sheets is adequately differentiated by size, shape, or color;

2. To allow manufacturers to use cut labels if labeling and packing lines are dedicated to each different drug product or different strengths of the same drug products, or if a 100-percent examination for correct labeling is conducted by the use of appropriate electronic or electromechanical equipment during or after completion of finishing operations;

3. To exempt manufacturers from the requirement for label reconciliation if a 100-percent drug product label inspection system is employed during or after completion of finishing operations; and

4. To require manufacturers to incorporate into their written labeling procedures a provision for identification and handling of filled drug product containers that are not immediately labeled, in order to preclude mislabeling of individual containers, lots, or portions of lots. Such identification is to be sufficient to determine name, strength, quantity of contents, lot or control number, and expiration date of the drug product.

III. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(10) that this proposed action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Economic Impact

The agency has considered the economic impact of this proposed rule and has determined that it requires neither a regulatory impact anlaysis as specified in Executive Order 12291 nor a regulatory flexibility analysis as defined in the Regulatory Flexibility Act (Pub. L. 96-354). Specifically, the proposal would establish additional conditions for the use of certain types of labeling and for the control of packaged drug products that will be labeled at a later date. In addition, the proposal would provide an exemption from an existing label control requirement when certain conditions are met. The agency believes that the overall cost impact of these proposed changes would be minimal. For example, a significant number of firms already use some type of electronic or electromechanical equipment to inspect all labeling. Therefore, under this proposed rule, there would be a cost savings for certain operations for manufacturers who use a 100-percent drug product label inspection system because the proposal would exempt these manufacturers from the current label reconciliation requirements and the new control procedures for cut labels. Although there may be additional costs to some manufacturers, many firms already meet some or all of these proposed requirements, or would meet the conditions for exemption from certain requirements.

In summary, the agency concludes that the proposed rule is not a major rule inasmuch as the proposed labeling control revisions would not result in a significant overall cost to manufacturers. Moreover, the proposed rule is intended to reduce the frequency of mislabeling-related recalls and thus be more cost efficient, since its cost impact is minimal relative to the cost associated with a drug product recall. For these reasons, therefore, the agency has determined that this proposed rule is not a major rule as defined in Executive Order 12291. Further, the agency certifies that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act.

V. Request for Comments

Interested persons may, on or before August 22, 1989, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 211

Drugs, Labeling, Laboratories, Packaging and containers, Prescription drugs, Reporting and recordkeeping requirements, Warehouses.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that Part 211 be amended as follows:

PART 211—CURRENT GOOD MANUFACTURING PRACTICE FOR FINISHED PHARMACEUTICALS

1. The authority citation for 21 CFR Part 211 continues to read as follows:

Authority: Secs. 201(n), 501, 502, 505, 506, 507, 701 (21 U.S.C. 321(n), 351, 352, 355, 356, 357, 371); 21 CFR 5.10, 5.11.

2. Section 211.122 is amended by revising paragraph (f), by redesignating paragraph (g) as paragraph (h), and by adding new paragraph (g) to read as follows:

§ 211.122 Materials examination and usage criteria.

* * * * *

(f) Use of gang-printed labeling for different drug products, or different strengths or net contents of the same drug product, is prohibited unless the labeling from gang-printed sheets is adequately differentiated by size, shape, or color.

(g) If cut labels are used, packaging and labeling operations shall include one of the following special control procedures:

(1) Dedication of labeling and packaging lines to each different drug product or different strength of the same drug product; or

(2) Use of appropriate electronic or electromechanical equipment to conduct a 100-percent examination for correct labeling during or after completion of finishing operations.

* * * * *

3. Section 211.125 is amended by revising paragraph (c) to read as follows:

§ 211.125 Labeling issuance.

* * * * *

(c) Procedures shall be utilized to reconcile the quantities of labeling issued, used, and returned, and shall require evaluation of discrepancies found between the quantity of drug product finished and the quantity of labeling issued when such discrepancies are outside narrow preset limits based on historical operating data. Such discrepancies shall be investigated in accordance with § 211.192. Label reconciliation is waived if a 100-percent examination for correct labeling is performed in accordance with § 211.122(g)(2).

* * * * *

4. Section 211.130 is amended by redesignating paragraphs (b), (c), and (d) as paragraphs (c), (d), and (e), respectively, and by adding new paragraph (b) to read as follows:

§ 211.130 Packaging and labeling operations.

* * * * *

(b) Identification and handling of filled drug product containers that are not immediately labeled, to preclude mislabeling of individual containers, lots, or portions of lots. Identification shall be sufficient to determine name, strength, quantity of contents, lot or control number, and expiration date of the drug product.

* * * * *

Dated: April 24, 1989.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-14671 Filed 6-22-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE-128-86]

RIN 1545-AK41

Minimum Coverage Requirements; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Corrections to notice of proposed rulemaking.

SUMMARY: This document contains corrections to the **Federal Register** publication for Thursday, May 18, 1989, at 54 FR 21437 of the notice of proposed rulemaking. The proposed rules relate to the minimum coverage requirements of section 410(b) of the Internal Revenue Code of 1986.

FOR FURTHER INFORMATION CONTACT: Nancy J. Marks, 202-343-8954 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking that is the subject of these corrections provides the public with guidance needed to comply with the law and would affect sponsors of the participants in pension, profit-sharing and stock bonus plans and certain other employee benefit plans.

Need for Correction

As published, the May 18, 1989, notice contains errors that, if not corrected, might cause confusion to taxpayers and practitioners.

Correction of Publication

Accordingly, the publication of the proposed rule (FR. Doc. 89-11613) is corrected as follows:

Paragraph 1. On page 21440, column 1, in the preamble, under the subheading "4. Definition of Plan and Rules and Plan Aggregation and Disaggregation", the reference to "section 41D(b)" should read "section 410(b)".

1.401(b)-3 [Corrected]

Par. 2. On page 21444, column 2, under 1.401(b)-3(d), Example 2., line 12 of the column, the word "but" should be removed.

1.410(b)-6 [Corrected]

Par. 3. On page 21447, column 3, under 1.410(b)-6(f), Example 2, line 15 of (iii), the language "employees (100 out of 100 of nonhighly" should read "employees (100 out of 100 nonhighly".

1.410(b)-7

Par. 4. On page 21449, column 2, fourth line under 1.410(b)-7(e)(2), the language "paragraph (c) (1), (2), (3), (5) or (6) of this" should read "paragraph (c) (1), (2), (5) or (6) of this".

Dale D. Goode,

Chief, Regulations Unit Assistant Chief Counsel (Corporate).

[FR Doc. 89-14642 Filed 6-22-89; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

Montana Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: OSMRE is announcing receipt of additional explanatory information and revisions pertaining to a previously proposed amendment to the Montana permanent regulatory program (hereinafter, the "Montana program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The additional explanatory information and revisions pertain to repair of rills and gullies, and protection of archeological resources. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards, incorporate the additional flexibility afforded by the revised Federal regulations, provide additional safeguards, clarify ambiguities, improve operational efficiency, and achieve use of the best technology currently available.

This notice sets forth the times and locations that the Montana program and proposed amendment to that program are available for public inspection and the reopened comment period during which interested persons may submit written comments on the proposed amendment.

DATES: Written comments must be received by 4:00 p.m., m.d.t. July 10, 1989.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. Jerry R. Ennis at the address listed below.

Copies of the Montana program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSMRE's Casper Field Office.

Mr. Jerry R. Ennis, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East B Street, Room 2128, Casper, WY 82601-1918, Telephone: (307) 261-5776

Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, Room 5131, 1100 L Street NW., Washington, DC 20240, Telephone: (202) 343-5492

Gary Amestoy, Administrator, Montana Department of State Lands Reclamation Division, Capitol Station, 1625 Eleventh Avenue, Helena, Montana 59620, Telephone: (406) 444-2074

FOR FURTHER INFORMATION CONTACT: Mr. Jerry R. Ennis, Director, Casper Field Office, (307) 261-5776.

SUPPLEMENTARY INFORMATION:

I. Background on the Montana Program

On April 1, 1980 the Secretary of the Interior conditionally approved the Montana program. General background information on the Montana program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Montana program can be found in the April 1, 1980 **Federal Register** (45 FR 21560). Subsequent actions concerning Montana's program and program amendments can be found at 30 CFR 926.15 and 926.16.

II. Proposed Amendment

By letter dated December 21, 1988 (administrative record No. MT-5-1), Montana submitted a proposed amendment to its program pursuant to SMCRA. Montana submitted the proposed amendment in response to a July 2, 1985 letter that OSMRE sent in accordance with 30 CFR 732.17(c). The regulations that Montana proposes to amend are: Definitions and strip mine permit application requirements, Administrative Rules of Montana (ARM) 26.4 sub-chapter 3; mine permit and test pit prospecting permit procedures, ARM 26.4 sub-chapter 4; backfilling and grading requirements, ARM 26.4 sub-chapter 5; transportation facilities, use of explosives, and hydrology, ARM 26.4 sub-chapter 6; topsoiling, revegetation, and protection of wildlife and air resources, ARM 26.4 sub-chapter 7; alluvial valley floors, prime farmlands, alternate reclamation, and auger mining ARM 26.4 sub-chapter 8; underground coal and uranium mining, ARM 26.4 sub-chapter 9; prospecting, ARM 26.4 sub-chapter 10; bonding, insurance, reporting, and special areas, ARM 26.4 sub-chapter 11; special departmental procedures, ARM 26.4 sub-chapter 12, and miscellaneous provisions, ARM 26.4 sub-chapter 13.

OSMRE published a notice in the January 9, 1989 **Federal Register** (54 FR 632) announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (administrative record No. MT-5-16). The public comment period ended February 8, 1989.

On March 20, 1985 OSMRE notified the State by letter, of its concerns with the proposed amendment to the Montana program (administrative record No. MT-5-15). Montana responded to these concerns on April 27, 1989 with additional explanatory information and revisions (administrative record No. MT-5-20). OSMRE published a notice in the May 17, 1989 **Federal Register** (54 FR 21228) announcing receipt of the additional explanatory information and revisions and reopening the public comment period (administrative record No. MT-5-25). The public comment period ended June 1, 1989.

During its review of the explanatory information and revisions, OSMRE identified two additional concerns relating to protection of archeological resources, ARM 26.4.404(5)(d), and repair of rills and gullies, ARM 26.4.721(2). OSMRE notified Montana of these concerns by letter dated May 17, 1989 (administrative record No. MT-5-24). Montana responded in a letter dated June 1, 1989 by submitting additional explanatory information and a revised amendment package (administrative record No. MT-5-30).

III. Public Comment Procedures

OSMRE is reopening the comment period on the proposed Montana program amendment to provide the public an opportunity to reconsider the adequacy of the amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSMRE is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Montana program.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **"DATES"** or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

List of Subjects in 30 CFR Part 926

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

Date: June 14, 1989.

[FR Doc. 89-14887 Filed 6-22-89; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 3 and 36

RIN 2900-AE01 and 2900-AD30

Duty Periods; Loan Guaranty: Processing Assumptions of VA Guaranteed Home Loans

AGENCY: Department of Veterans Affairs.

ACTION: Correction; Proposed Regulations.

SUMMARY: On June 6, 1989, commencing on page 24212 (54 FR 24212); the Department of Veterans Affairs published a proposed rule to amend its regulation for classification of training performed by members of the Senior Reserve Officers' Training Corps. In the amendatory language, it stated that § 3.6(d)(2) was being revised. In fact, § 3.6(d)(2) is not being revised and is correct as it appears in the current (revised as of July 1, 1988) of Title 38, Code of Federal Regulations. However, in the copy printed June 6, 1989, four words in paragraph (d)(2) were inadvertently left out. To avoid any confusion, VA is printing the correct paragarph (d)(2). It is the same as the current paragraph in 38 CFR and there is no revision planned at this time.

On June 15, 1989, commencing on page 25469 (54 FR 25469), the Department published a proposed rule to amend its regulations for processing assumptions of VA guaranteed home loans. Under the proposed rule, VA loan holders will now be permitted to charge either the purchaser or the seller of property purchased subject to assumption of the loan a fee, not to exceed the lesser of $300 and the actual cost of required credit reports or a maximum charge prescribed by State law, for processing an assumption approval.

The $300 figure was correct in the preamble to the document, but another figure was inadvertently printed in the text of the proposed regulation.

VA regrets the errors, this notice hereby corrects the errors and the corrections are published below.

FOR FURTHER INFORMATION CONTACT: Part 3: Mr. Bill Leonard, 202-233-3005; Part 36: Mr. Leonard Levy, 202-233-6376.

List of Subjects

38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

38 CFR Part 36

Condominiums, Handicapped, Housing loan programs-housing and community development, Manufactured homes, Veterans.

Dated: June 19, 1989.

Charles A. Fountaine III,

Chief, Directives Management Division.

1. In 38 CFR Part 3, § 3.6, paragraph (d)(2) is republished as it appears in the 1988 edition of the Code of Federal Regulations read as follows:

§ 3.6 Duty periods.

* * * * *

(d) * * *

(2) Special additional duties authorized for Reserves (including commissioned officers of the Reserve Corps of the Public Health Service) by an authority designated by the Secretary concerned and performed by them on a voluntary basis in connection with the prescribed training or maintenance activities of the units to which they are assigned; and

* * * * *

§§ 36.4275, 36.4312, 36.4508 [Corrected]

2. In §§ 36.4275(a)(3)(iii), 36.4312(d)(8), and 36.4508(a)(2)(iii), remove the words "$500" wherever they appears and add, in their place, the words "$300".

[FR Doc. 89-14631 Filed 6-22-89; 8:45 am]

BILLING CODE 3820-01-M

Notices

Federal Register
Vol. 54, No. 120
Friday, June 23, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COMMITTEE ON FEDERAL PAY

Meetings

The Advisory Committee on Federal Pay announces that public discussions of the adjustment in Federal white-collar employee pay for Fiscal Year 1990 have been scheduled for Tuesday, July 25, in Suite 600, 1730 K Street NW., Washington, DC. They will start at 1:30 p.m.

These discussions are intended to give organizations representing Federal employees or any interested government employees an opportunity to express their views regarding the Pay Agent's proposals. Those wishing to discuss the Agent's proposals with the Committee should notify the Committee by July 21. The telephone number is 653-6193. Written comments should also reach the Committee by July 21—Suite 205, 1730 K Street NW., Washington, DC 20006. Both written submissions and requests for an opportunity to discuss the issues should include a telephone number where the organization or official can be reached.

The Advisory Committee on Federal Pay, established as an independent agency by Section 5306 of Title 5, United States Code (Pub. L. 91-656, the Federal Pay Comparability Act), is charged with assisting the President in carrying out the policies of Section 5301 of Title 5, United States Code. The Committee's fundamental obligation is to present the President with an independent recommendation on Federal pay for the 1.4 million white-collar workers and other employees whose pay is linked to the General Schedule. Section 5306 of Title 5 requires the Committee to make findings and recommendations to the President on the annual adjustment in Federal pay after considering the written views of employee organizations, the President's Agent, other officials of the Government of the United States, and such experts as the Committee may consult.

Lucretia Dewey Tanner,
Executive Director.

[FR Doc. 89-14933 Filed 6-22-89; 8:45 am]

BILLING CODE 6820-43-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. 90642-9142]

Memorandum of Understanding Between the Patent and Trademark Office and the Animal and Plant Health Inspection Service

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: The Patent and Trademark Office (PTO) is providing notice of a memorandum of understanding (MOU) between the PTO and the Animal and Plant Health Inspection Service (APHIS). The MOU establishes procedures whereby APHIS assists PTO in determining a product's eligibility for patent term extension under 35 U.S.C. 156, as amended by the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670, 102 Stat. 3971 (1988)). Procedures are also described for exchanging information between APHIS and PTO regarding regulatory review period determinations and the processing of due diligence petitions.

DATE: The memorandum of understanding became effective June 15, 1989.

I. Purpose

This agreement establishes the procedures whereby the Animal and Plant Health Inspection Service (APHIS) assists the Patent and Trademark Office (PTO) in determining a product's eligibility for patent term restoration under 35 U.S.C. 156. It also establishes procedures for exchanging information between APHIS and PTO regarding regulatory review period determinations, due diligence petitions and informal APHIS hearings under the law.

II. Background

The patent term restoration portion of the "Generic Animal Drug and Patent Term Restoration Act" of 1988 (the Act) (Pub. L. 100-670) was designed to create new incentives for research and development of certain products which are subject to premarket government approval. These provisions enable the owners of patents on certain animal drugs and veterinary biological products, and the owners of patents on methods of using or manufacturing such drug products, (as "drug product" is defined in the Act), to attempt to restore to the terms of those patents some of the patent time lost while awaiting premarket government approval.

Under the patent term restoration sections of the Act, a patent which claims a veterinary biological product that is subject to the Virus-Serum-Toxic Act (21 U.S.C. 151-159) and has been approved for marketing, or a method of using or manufacturing such a product, which has been approved for use, may qualify for patent term extension. Regardless of whether the patent claims a product, or a method of using or manufacturing a product, the applicant for a patent term extension must establish that:

(1) The patent has not expired (35 U.S.C. 156(a)(1));

(2) The patent has never been extended (35 U.S.C. 156(a)(2));

(3) The application for extension is submitted by the owner of record of the patent or the owner's agent and includes details relating to the patent and regulatory review time spent in securing APHIS approval (35 U.S.C. 156(a)(3));

(4) The product has been subject to a regulatory review period within the meaning of 35 U.S.C. 156(g) before its commercial marketing or use (35 U.S.C. 156(a)(4));

(5) The permission for commercial marketing or use;

(A) Is the first permitted commercial marketing or use of the product (35 U.S.C. 156(a)(5)(A)); or

(B) In the case of a veterinary biological product which has received permission for commercial marketing or use in both non-food-producing animals and food-producing animals, and has not yet been subject to a regulatory review period which is the basis for an extension in non-food-producing animals, the permission for commercial

marketing or use of the product after the regulatory review period for use in food-producing animals is the first permitted commercial marketing or use of the product for administration to food-producing animals (35 U.S.C. 156(a)(5)(C); and

(6) The application for extension of the term of the patent was submitted to PTO within 60 days of APHIS approval of the commercial marketing or use application (35 U.S.C. 156(d)(1)).

While it is the responsibility of the Commissioner of Patents and Trademarks (Commissioner) to decide whether an applicant has satisfied these six conditions, APHIS has certain direct responsibilties under 35 U.S.C. 156 for determining the length of the regulatory review period. Consequently, to facilitate eligibility decisions and permit APHIS and PTO to carry out their responsibilities under 35 U.S.C. 156, APHIS and PTO have entered into this agreement.

Under this agrement, APHIS, upon receipt of a written request from PTO, will inform PTO whether, with regard to eligibility for extension, a veterinary biological product has undergone a regulatory review period within the meaning of 35 U.S.C. 156(g) prior to commercialization. Under this agreement, APHIS will also, upon request by PTO and receipt of a copy of the application for patent term extension, determine the length of the regulatory review period for the approved veterinary biological product.

The procedures covered by this agreement extend from the date of PTO's request for information on eligibility to the resolution of due diligence petitions and informal hearings. The regulatory review period determination is not final until due diligence petitions and informal hearings, if any, have been resolved. A certificate for extension of the term of a patent may not issue from PTO until the regulatory review period determination if final, unless an interim extension appears warranted under 35 U.S.C. 156(e)(2).

III. Subetance for the Agreement: Patent Term Extension Applications Under 35 U.S.C. 156

A. Eligibility Determination Assistance

1. Upon deciding that a patent term extension application is complete and meets basic formal requirements, PTO will send a written request to APHIS requesting the APHIS:

a. Verify whether the veterinary biological product was subject to a regulatory review period within the meaning of 35 U.S.C. 156(g) prior to its commercial marketing or use; and if so, whether it was the first permitted commercial marketing or use of the veterinary biological product for administration to a food producing animal; and

b. Inform PTO whether the patent term restoration application was submitted within 60 days after the product was approved.

2. Additionally, PTO, in its written request, shall clearly state that it is not requesting determination at this time of the regulatory review period applicable to the product.

3. APHIS will consult its records and experts and, through Biotechnology, Biologics, and Environmental Protection (BBEP) will issue a written response to the Deputy Solicitor of the PTO on each of these questions.

4. APHIS, upon written request, will also provide assistance to PTO in petitions before the Commissioner regarding eligibility determinations.

B. Regulatory Review Period Determinations

1. Should PTO decide that the veterinary biological product or method of using or manufacturing a product is eligible for patent term restoration, it will send APHIS a copy of the application for patent term restoration and a written request to determine the length of the applicable regulatory review period. The copy and request will be sent to APHIS within 60 days of the application's receipt by PTO.

2. APHIS will consult its records, determine the length of the applicable regulatory review period, and, through BBEP, issue a written statement of that determination to the Commissioner. Within 30 days after receipt of the application and written request from PTO, the determination will be made and APHIS will publish it in the **Federal Register**.

C. Due Diligence Petitions and Hearing Requests

1. Due diligence petitions must be filed at APHIS within 180 days after publication of the regulatory review period in the **Federal Register**.

a. If no due diligence petition is received by APHIS within the 180 day filing period, APHIS will promptly notify PTO in writing that the regulatory review period determination is final.

b. If a due diligence petition which satisfies statutory and regulatory requirements is received by APHIS:

(1) APHIS will promptly notify PTO in writing of the receipt of the petition;

(2) PTO will refrain from issuing a certificate of extension pending a final determination of the regulatory review period, unless an interim extension appears warranted under 35 U.S.C. 156(e)(2);

(3) APHIS will determine within 90 days after receipt of such a petition and will send written notification to the Commissioner as to any modification in the length of the regulatory review period; and

(4) APHIS will also publish its due diligence determination, together with the full factual and legal bases for its decision, in the **Federal Register**.

2. Requests for an informal hearing on APHIS's due diligence determination must be received by APHIS within 60 days of the publication of the due diligence determination in the **Federal Register**.

a. If APHIS does not receive any request for an informal hearing within the 60 day filing period, APHIS will notify PTO in writing that the regulatory review period determination, as modified, if at all, by the due diligence determination, is final.

b. If APHIS receives a request for an informal hearing within the 60 day filing period:

(1) APHIS will notify PTO in writing of the hearing request;

(2) APHIS will hold a hearing as prescribed under 35 U.S.C. 156(d)(2)(B)(ii);

(3) PTO will refrain from issuing a certificate of extension pending final determination of the regulatory review period unless an interim extension appears warranted under 35 U.S.C. 156(e)(2); and

(4) Within 30 days after completion of the hearing, APHIS will affirm or revise the determination that was the subject of the hearing, will notify the Commissioner in writing of any revision and whether the determination of the regulatory review period is now final, and will publish any revision in the **Federal Register**.

D. Supplemental Information

Should either agency receive information which is relevant to the patent term restoration of a patent during any stage of these eligibility or regulatory review period determinations, that agency will promptly notify the other and provide documentation as available.

E. Availability of Information

Copies of all letters required by this agreement and exchanged between PTO and APHIS will be placed in the file for each product subject to patent term restoration. These files are available for review at APHIS, Biotechnology, Biologics, and Environmental Protection, Rm. 850, 6505 Belcrest Road, Federal Building, Hyattsville, MD 20782, and at the Patent and Trademark Office, Crystal Plaza Building 2–5C15, 2011 Jefferson Davis Highway, Arlington, VA 22202.

IV. Names and Addresses of Participating Parties

A. Patent and Trademark Office, Washington, DC 20231.

B. Animal and Plant Health Inspection Service, 6505 Belcrest Road, Hyattsville, MD 20782

V. Liaison Officers

A. Liaison Officer for the Patent and Trademark Office:

Deputy Solicitor (currently Charles E. Van Horn, Esq.,), Patent and Trademark Office, Washington, DC 20231, (703) 557–3637.

B. Liaison Officer for the Animal and Plant Health Inspection Service

Deputy Director, Biotechnology Coordination and Technical Assistance (currently Michael A. Lidsky, Esq., Acting Deputy Director), Animal and Plant Health Inspection Service, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–5862.

VI. Period of Agreement

This agreement, when accepted by both parties, will be effective indefinitely. It may be modified by mutual written consent or terminated by either party upon a thirty day advance written notice to the other party.

Approved and Accepted for the Patent and Trademark Office

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

Date: June 15, 1989.

Approved and Accepted for the Animal and Plant Health Inspection Service

Samuel V. Ladd,

Acting Administrator, Animal and Plant Health Inspection Service.

Date: May 25, 1989.

[FR Doc. 89–14848 Filed 6–22–89; 8:45 am]

BILLING CODE 3510–16–M

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Loan and Purchase Programs

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of final determination.

SUMMARY: This notice affirms the final determinations concerning the price support levels for pulled wool and mohair for the 1989 marketing year. These determinations are required to be made pursuant to the National Wool Act of 1954, as amended.

EFFECTIVE DATE: April 3, 1989.

ADDRESS: Bruce R. Weber, Director, Commodity Analysis Division, USDA-ASCS, Room 3741, South Building, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Janise A. Zygmont, Agricultural Economist, Commodity Analysis Division, USDA-ASCS, Room 3760, South Building, P.O. Box 2415, Washington, DC 20013 or call (202) 447–6734. A Final Regulatory Impact Analysis has been prepared and is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation No. 1512–1 and has been designated as "major." It has been determined that these proposed determinations will result in an annual effect on the economy of $100 million or more.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since there is no requirement that the Commodity Credit Corporation (CCC) publish a notice of proposed rulemaking in accordance with 5 U.S.C. 553 or any other provision of law with respect to the subject matter of this notice.

It has been determined by the environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

The title and number of the Federal assistance program to which this notice applies are: National Wool Act Payments, 10.059, as found in the Catalog of Federal Domestic Assistance.

Section 703(a) of the National Wool Act of 1954, as amended ("Wool Act"), provides that the Secretary of Agriculture shall support the prices of wool and mohair to producers by means of loans, purchases, payments, or other operations. The Secretary of Agriculture has determined that the prices of wool and mohair will be supported for the 1986 and 1990 marketing years by means of payments to producers (51 FR 28852, August 12, 1986).

Section 703(b) of the Wool Act provides that the level of support for shorn wool for each of the marketing years 1982 through 1987 and marketing year 1990 shall be 77.5 percent and, for marketing years 1988 and 1989, 76.4 percent of an amount which is determined by multiplying 62 cents (the support price in 1965) by the ratio of: (1) The average parity index (the index of prices paid by farmers, including commodities and services, interest, taxes, and farm wage rates) for the three calendar years immediately preceding the calendar year in which such support price is being determined and announced to (2) the average parity index for the three calendar years 1958, 1959, and 1960, rounding the result to the nearest full cent.

Section 703(c) of the Wool Act provides that the support prices for pulled wool and for mohair shall be established at such levels, in relationship to the support price for shorn wool, as the Secretary of Agriculture determines will maintain normal marketing practices for pulled wool, and as the Secretary determines is necessary to maintain approximately the same percentage of parity for mohair as for shorn wool. Section 703(c) further provides that the support price for mohair must be within a range of 15 per centum above or below the comparable percentage of parity at which shorn wool is supported.

On November 28, 1988, a notice of proposed determinations was published at 53 FR 47838, requesting comments concerning the method of calculating the price support levels for pulled wool and for mohair for the 1989 marketing year. The notice also indicated that the 1989 shorn wool support price (grease basis) would be $1.77 per pound.

Discussion of Comments

A total of 241 comments were submitted. Three comments did not contain specific recommendations. All of the remaining comments addressed the mohair support price. None made reference to the pulled wool (unshorn lamb) formula.

Eighty-nine percent of respondents recommended that mohair be supported at 100 percent of the percentage of parity at which shorn wool is supported. Another 9 percent of respondents recommended that mohair be supported at 115 percent (maximum) of the wool parity percentage. These comments on the proposed determinations were not adopted.

The remaining 2 percent favored supporting mohair at 85 percent (minimum) of the wool parity percentage and it has been determined that mohair will be supported at a level of 85 percent of the percentage of parity at which shorn wool is supported. Current estimates indicate that at this minimum level of support, producers would receive nearly 45 percent of their income from mohair in the form of Government payments. To support mohair at a higher level would be inconsistent with recent Government efforts to increase reliance by all agricultural sectors on the free market.

After taking the foregoing comments into consideration, and in order to implement the statutory requirement that the Secretary shall support the prices of wool and mohair for the 1986 through 1990 marketing years, the following determinations have been made with respect to the wool and mohair price support programs for the 1989 marketing year. The determinations affirm 1989 support prices of $1.77 per pound for shorn wool and $4.588 per pound for mohair as announced by the Secretary of Agriculture in a press release issued on April 3, 1989. The pulled wool support rate will continue to be calculated as it has been in previous years.

Final Determinations

A. Support Price—Shorn Wool

The average parity index for the 3-year period 1985–87 is 1110.3 The average parity index for the 3-year base period of 1958–60 is 297.3. The ratio of these indices is 3.7346. The result of multiplying 3.7346 by the 1965 support price of $0.62 per pound is $2.3155. Applying the formula indicated in section 703(b) of the Wool Act, 76.4 percent of $2.3155 is $1.77, when rounded to the nearest full cent.

B. Support Price—Pulled Wool

The support price for pulled wool for the 1989 marketing year cannot be determined until the 1989 national average market price for shorn wool is calculated, which would occur by April 1990. The method for calculating the support price for pulled wool shall be as follows:

Once the 1989 national average market price for shorn wool is determined, the support price for pulled wool will be determined by taking 80 percent of the difference between the 1989 support price for shorn wool and the 1989 average market price for shorn wool, multiplied by 5 pounds (the amount of wool pulled from the pelt of an average 100-pound unshorn lamb).

C. Support Price—Mohair

The support price for mohair for the 1989 marketing year shall be 85 percent of the percentage of parity at which shorn wool is supported, or $4.588 per pound. The calculation is as follows:

The October 1988 parity prices for shorn wool and for mohair are $2.89 and $8.62 per pound, respectively. The support price for shorn wool for the 1989 marketing year as calculated in accordance with the formula set forth in section 703(b) of the Wool Act is $1.77 per pound or 61.2 percent of the October 1988 parity price for shorn wool. The price support level for mohair for the 1989 marketing year is equal to 85 percent of 61.2 percent (the percentage of parity at which shorn wool is supported), which is equal to 52.02 percent. Accordingly, 52.02 percent of the October 1988 parity price for mohair results in a support price for mohair for the 1989 marketing year of $4.588 per pound.

The support programs conducted pursuant to the Wool Act are subject to the provisions of the Balanced Budget and Deficit Reduction Act of 1985, as amended. As a result, the program support levels announced in this notice may be recalculated to comply with this Act.

Authority: Secs. 4 and 5, 62 Stat. 1070, as amended (15 U.S.C. 714b and c); secs. 702–708, 68 Stat. 910–912, as amended (7 U.S.C. 1781–1787).

Signed at Washington, DC on June 19, 1989.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 89-14907 Filed 6-22-89; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF DEFENSE

Department of Army

Intent (NOI); Environmental Impact Statement (EIS); Proposed Construction of a New Headquarters for the Army Materiel Command (AMC); Fort Belvoir, VA

AGENCY: DOD, U.S. Army Materiel Command, Alexandria, Virginia.

SUMMARY: Currently, AMC is located in leased space within the city of Alexandria, VA. The facility currently leased for AMC is no longer economically, spatially or functionally adequate. Locating the AMC at Ft. Belvoir in Fairfax County would consolidate AMC staff and related activities as well as enhancing planning, coordination, and operational control by providing contiguous facility space. AMC proposes to construct a new administrative facility for approximately 2500 personnel. Parking areas, roadways, utilities, and security berms will also be provided. The proposed location for this construction will be within Ft. Belvoir.

Alternatives

Alternatives to be considered in the EIS will include:

a. No Action; remain in existing facility
b. Relocate to larger, existing facility; leasing existing office space
c. Construction of a new AMC Headquarters elsewhere

The EIS process will be conducted in accordance with the National Environmental Policy Act (NEPA), the implementing Army Regulation 200–2, and the provisions of the Council on Environmental Quality, 40 CFR Part 1500. An EIS for relocation of other Army activities to the Ft. Belvoir area under the Base Realignment and Closure Act is currently in progress. Although it is a separate EIS, scoping meetings will be held for both EISs during similar or the same time frames.

Scoping: The Army will conduct public meetings to aid in determining the critical issues and possible alternatives which need to be addressed in the EIS. The public, as well as federal, state, and local agencies are encouraged to participate in the scoping process by submitting comments and identifying relevant issues to be addressed in the EIS. The Army anticipates initiation of the scoping meetings during August 89. Advance public notice of the scoping meetings will be announced in the local media in the near future. Questions and comments regarding the scope of the environmental analysis, as well as requests to be placed on the mailing list, should be forwarded to: Director of Engineering and Housing, ATTN: Mr. Pat McLaughlin, Ft. Belvoir, Virginia 22060.

Comments and suggestions should be received not later than 15 days following the public scoping meeting to be considered for incorporation in the Draft Environmental Impact Statement.

Lewis D. Walker,

Deputy for Environment, Safety and Occupational Health OASA (I&L).

June 20, 1989.

[FR Doc. 89-14936 Filed 6-22-89; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Open Meetings on Recompetition of Regional Educational Laboratories

SUMMARY: This notice provides the schedule and background information for five open meetings being conducted in preparation for the recompetition of regional educational laboratories funded by the Office of Educational Research and Improvement (OERI).

DATES, ADDRESSES AND TIMES:

June 26, 1989, OERI, 555 New Jersey Avenue NW., Room 326, Washington, DC, 9:00 a.m. to 11:45 a.m.
June 27, 1989, OERI, 555 New Jersey Avenue NW., Room 326, Washington, DC, 9:00 a.m. to 11:45 a.m.
July 19, 1989, Kansas City Airport Marriott Hotel, 775 Brasilia Avenue, Kansas City, Missouri, 9:00 a.m. to 12:00 Noon; 1:00 p.m. to 4:00 p.m.
July 19, 1989, OERI, 555 New Jersey Avenue NW., Room 326, Washington, DC, 9:00 a.m. to 12:00 Noon; 1:00 p.m. to 4:00 p.m.
July 21, 1989, San Francisco Airport Hilton Hotel, San Francisco (California) International Airport, 9:00 a.m. to 12:00 Noon; 1:00 p.m. to 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Ms. Adria White, Office of Educational Research and Improvement, U.S. Department of Education, 555 New Jersey Avenue NW., Room 502, Washington, DC 20208–5644, Telephone (202) 357–6181.

SUPPLEMENTARY INFORMATION: The Office of Educational Research and Improvement (OERI) is preparing for a recompetition of regional educational laboratories in 1990. In preparation for this competition, OERI is seeking views and advice from the field about educational needs and problems in the United States and how laboratories can help respond to them.

OERI will hold five open meetings to help plan for the recompetition. Representatives of major educational associations and other organizations have been invited to present their individual views about the future of the regional laboratory program at the meetings to be held at OERI on June 26 and June 27. These two meetings will be identical in purpose and format, but the invited participants will be different.

The next three meetings, two on July 19 and one on July 21, will be non-invitational, at which members of the public, including State and local officials, educators, and private citizens, may present statements to OERI officials about the regional laboratory program. Written statements from the public forwarded directly to OERI by July 21, 1989, in response to this announcement also will be considered in planning for the recompetition.

Format of the Meetings

At the two invitational meetings on June 26 and June 27, OERI officials will make brief introductory statements. Invited representatives of the educational associations and organizations will make statements about the laboratories, reflecting the views of their various constituencies. (Further details about issues which may be discussed are provided below.) The public may attend and listen to the presentations made in these two meetings.

At the three non-invitational meetings on July 19 and July 21, following introductory statements by OERI officials, members of the public will make statements about the laboratories. All public statements will be limited to 10 minutes each. Persons speaking will be asked to submit written copies of their statements at the meetings. (Written statements from persons not attending the meetings may also be submitted directly to OERI, as indicated above.)

How To Participate

Persons wishing to attend any of these meetings, or participate in the non-invitational meetings, should contact the OERI meeting coordinator. Ms. Adria White, at (202) 357–6181, or write to her at the address above. Anyone appearing at a non-invitational meeting to speak without previously scheduling a time in advance with Ms. White will be assigned a 10 minute time interval that day, if time is available.

Major Issues

OERI is seeking views and advice from the public, especially on the following questions:

1. What activities conducted by regional educational laboratories have been most valuable in the past 2–3 years?
2. How can regional laboratories contribute to improving performance of our educational system—what are the key issues and problems they should focus on in the future?
3. What kinds of laboratory activities and strategies (e.g., syntheses and other research and development (R&D) products, direct technical assistance, training and capacity building, etc.) would be most beneficial in the future?
4. What form of relationship(s) between laboratories and organizations or other persons seeking improvement in schools would be most effective?

OERI will also accept advice on other issues related to the future of the laboratory progam.

Additional Information That Will Be Available

The U.S. Department of Education plans to issue a solicitation late in 1989 for proposals to operate regional laboratories in the funding period beginning December 1, 1990. Proposals will be due in the early Spring, 1990. The exact dates for these events will be announced later this Summer. This and other information related to OERI's planning for the regional laboratory recompetition may be obtained as it becomes available by contacting Ms. Adria White at the address or telephone number provided above. Among the items to be made available are:

1. Commissioned papers and reports about the regional laboratory program (some are currently available);
2. A written synthesis and verbatim transcripts of the two invitational meetings, plus verbatim transcripts and statements submitted to OERI in connection with the non-invitational meetings;
3. Final announcement of the solicitation and award schedule and a copy of the solicitation itself.

Information About the Laboratory Program

The regional laboratory program was established in 1965 to help get the best available knowledge about improved practices and methods into the nation's classrooms. Laboratories were to develop and disseminate this knowledge and provide training and technical assistance in its application. Twenty laboratories were originally established, although there was no systematic delineation of the regional boundaries for their services. At present, nine regional laboratories serve all 50 States, the District of Columbia, Puerto Rico, the Virgin Islands and Pacific Island entities.

The program is now authorized by section 405(d)(4) of the General Education Provisions Act (GEPA), as amended (20 U.S.C. 1221e). Section 405(d)(4)(A)(i) of GEPA provides that regional laboratories must be "established by public agencies or private nonprofit organizations to serve the needs of a specific region of the nation under the governance of a regionally representative governing board * * *." The regulations for the program are contained in 34 CFR Parts 706 and 707 (53 FR 30790 (August 15, 1988)).

BEST COPY AVAILABLE

After extensive consultation during 1984–85 in preparation for a recompetition of then-existing awards, the Department established six "premises", or principles on which laboratories should operate. As stated in OERI's 1985 solicitation of proposals, these premises were that the laboratories would: (1) Focus on school and classroom improvement; (2) emphasize dissemination and technical assistance; (3) engage in applied research and development to the extent that these strengthen laboratory efforts at school improvement; (4) serve designated regions; (5) have independent governing boards; and (6) be part of a nationwide system.

These premises and related policies adopted in 1985 brought two particularly significant changes in the laboratory program. The first was that the large scale product development and applied R&D that the laboratories had participated in were deemphasized. Rather, dissemination and technical assistance were emphasized. Second, a substantial portion of laboratories' work towards school improvement was directed to be delivered in accordance with an indirect service strategy.

Laboratory services delivered pursuant to this strategy since 1985 have been directed "with and through" a variety of service improvement and intermediary organizations (e.g. State education agencies, education service agencies and professional associations), rather than directly to schools and classrooms. The reasoning underlying this strategy has been that there are too many school districts, schools and classrooms in the country for laboratories to work with even a significant portion of them directly. Working with intermediaries through the indirect strategy has thus been designed to leverage and extend the benefits of laboratory funding. However, not all laboratory work is delivered through the indirect strategy. Laboratories may work with local districts and schools under specified conditions; they also serve State decisionmaker needs directly with a portion of their funds. The various strategies for delivery of lab services will be reconsidered as part of planning for the recompetition.

Fiscal Year 1989 funding for the program is $22.1 million. This amount includes $5.1 million in special appropriations for a laboratory rural initiative. The present laboratory contracts expire on November 30, 1990. The forthcoming recompetition wil determine what organizations will operate laboratories in the funding period beginning December 1, 1990.

The laboratory regions and the present contractors are listed below.

Regions	Present Contractors
Northeastern (CT, MA, ME, NH, NY, RI, VT, Puerto Rico, and Virgin Islands).	Regional Laboratory for Educational Improvement of the Northeast and Islands, Andover, Massachusetts.
Mid-Atlantic (DE, DC, MD, NJ, and PA).	Research for Better Schools, Inc., Philadelphia, Pennsylvania.
Appalachian (KY, TN, VA, and WV).	Appalachia Educational Laboratory, Inc., Charleston, West Virginia.
Southeastern (AL, FL, GA, MS, NC, and SC).	Southeastern Educational Improvement Laboratory, Research Triangle Park, N.C.
Central (CO, KS, MO, NE, ND, SD, and WY).	Mid-continent Regional Educational Laboratory, Aurora, Colorado.
Southwestern (AR, LA, NM, OK, and TX).	Southwest Educational Development Laboratory, Austin, Texas.
Midwestern (IL, IN, IA, MI, MN, OH, WI).	North Central Regional Educational Laboratory, Elmhurst, Illinois.
Western (AZ, CA, NV, and UT).	Far West Laboratory for Educational Research and Development, San Francisco, California.
Northwestern (AK, ID, MT, OR, and WA).	Northwest Regional Educational Laboratory, Portland, Oregon.
Pacific Basin* (HA and Pacific Insular Areas).	Northwest Regional Educational Laboratory, Portland, Oregon.

*A tenth region to serve the State of Hawaii and other Pacific jurisdictions was established in 1985; however, the Northwest Laboratory was designated to serve this region during 1985–90 and support preparations there for a new laboratory. It is expected that a separate award to serve this region will be made in the 1990 recompetition.

Authority: 20 U.S.C. 1221e.

Dated: June 21, 1989.

Bruno V. Manno,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 89–15109 Filed 6–22–89; 8:45 am]

BILLING CODE 400-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER89–1–001, et al.]

Wisconsin Power & Light Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Wisconsin Power & Light Company

[Docket No. ER89–1–001]

June 16, 1989.

Take notice that on May 24, 1989, Wisconsin Power & Light Company tendered for filing its compliance refund report. WPL states that prior to the Commission's approval of the Settlement Agreement there was no collection of rates for transactions subject to the tariff in excess of the rates provided for in the Settlement Agreement.

Comment date: June 30, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Arkansas Power & Light Company

[Docket No. ER89–417–000]

June 16, 1989.

Take notice that on May 25, 1989 Arkansas Power & Light Company (AP&L) tendered for filing documents to reflect the correction of an error in the calculation of variable D in the cost of capital included in AP&L's May 8, 1989 filing in this docket.

Comment date: June 30, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Louisville Gas & Electric Company

[Docket Nos. EC89–13–000 and ER89–482–000]

June 19, 1989.

Take notice that Louisville Gas and Electric Company (Louisville) on June 5, 1989, tendered for filing a Seventh Supplemental Agreement dated March 14, 1989, to the Interconnection Agreement between Louisville and East Kentucky Power Cooperative (East Ky.).

The purpose of the supplement is to provide the parties with a coordinated, interconnected operation that provides for the sale, purchase and interchange of electric power and energy.

Copies of the filing were served on east Ky. and the Public Service Commission of Kentucky.

The supplement to the Interconnection Agreement provides for service schedules that are designated:

I. Service Schedule A—Emergency Energy
II. Service Schedule B—Interchange Energy
III. Service Schedule C—Short Term Power
IV. Service Schedule D—Seasonal Power
V. Service Schedule E—Limited Term Power
VI. Service Schedule F—Diversity Power

Comment date: July 3, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Texas Utilities Electric Company

[Docket No. ER82–545–002]

June 19, 1989.

Take notice that on May 31, 1989, Texas Utilities Electric Company ("Texas Utilities") tendered for filing unexecuted Transmission Service Agreements ("TSAs") between itself and various operating companies of the Central and Southwest holding company system ("the CSW Operating Companies"). Texas Utilities states that the TSAs are required by the Commission in a previous order in this docket. Texas Utilities further states that the TSAs implement the transmission arrangements offered by Texas Utilities pursuant to its FERC Electric Tariff governing service to, from and over certain HVDC Interconnections.

Comment date: July 3, 1989, in accordance with Standard Paragraph E at the end of this notice.

5. Southern California Edison Company

[Docket No. ER89–225–000]

June 19, 1989.

Take notice that on June 14, 1989, Southern California Edison Company (Edison) tendered for filing a supplement to its initial rate schedule filing regarding the following Power Sale Agreement, executed on August 10, 1988, by the respective parties:

Edison-SMUD Power Sale Agreement Between Southern California Edison Company (Edison) and Sacramento Municipal Utility District (SMUD)

Edison and SMUD executed an Agreement under which Edison will sell 300 megawatts of capacity and associated energy to SMUD from January 1, 1990, through December 31, 1999. AT SMUD's option, 250 megawatts of this capacity may be taken from May 15 through September 15 (summer capacity). SMUD also has an option to purchase, on a year-round basis, up to 400 megawatts of additional capacity and associated energy. The supplemental filing provides traditional information requested by the FERC staff.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all intervenors.

Comment date: July 3, 1989, in accordance with Standard Paragraph E at the end of this notice.

6. Commonwealth Electric Company v. Boston Edison Company

[Docket No. EL88–3–002 and EL88–56–002]

June 19, 1989.

Take notice that on June 13, 1989, the Boston Edison Company of Boston, Massachusetts 02199 (Edison) filed with the Commission a refund report in accordance with the requirements of the Commission's orders of June 24, 1988, February 27, 1989, and April 27, 1989, in the above-referenced proceeding. Edison states that copies of the filing have been served on all persons listed on the Commission's official service list.

Comment date: July 3, 1989, in accordance with Standard Paragraph E at the end of this notice.

7. Montana Power Company

[Docket No. ER89–343–000]

June 19, 1989.

Take notice that on May 22, 1989, the Montana Power Company (Montana) tendered an Amendment to its filing in Docket No. ER89–343–000. Montana submitted an amended Index of Purchasers, identified as Twelfth Revised Sheet No. 10 under FERC Electric Tariff, 2nd Revised Volume No. 1, which has been amended to show an effective date of January 1, 1988 for the service agreement with Seattle City Lights.

Montana requests waiver of the Commission's notice requirements to allow the agreement to be effective on such date.

Comment date: July 3, 1989, in accordance with Standard Paragraph end of this notice.

8. Tucson Electric Power Company

[Docket No. ER89–471–000]

June 19, 1989.

Take notice that on May 31, 1989, Tucson Electric Power Company (Tucson) tendered for filing a short term power sale agreement between Tucson and Arizona Public Service Company.

Comment date: July 3, 1989, in accordance with Standard Paragraph E at the end of this notice.

9. Idaho Power Company

[Docket No. ER89–484–000]

June 19, 1989.

Take notice that on June 5, 1989, Idaho Power Company (Idaho Power) tendered for filing, notice of approval of Idaho Power's application for membership in the WSPP. Rates, Terms and Conditions of participation in the WSPP are contained in the WSPP Agreement dated November 1, 1986, and approved by Federal Energy Regulatory Commission Order dated March 12, 1987, in Docket No. ER87–97–001.

Idaho Power requests that the requirements of prior notice be waived and an effective date of June 1, 1989 be given to this proposed rate schedule.

Comment date: July 3, 1989, in accordance with Standard Paragraph E at the end of this notice.

10. Hennepin Energy Resource Co., Limited Partnership

[Docket No. ER89–462–000]

June 19, 1989.

Take notice that on June 13, 1989 Hennepin Energy Resource Co., Limited Partnership tendered for filing a letter submitting the initial rate schedule that was inadvertently omitted from the May 26, 1989 filing in this docket.

Comment date: July 3, 1989, in accordance with Standard Paragraph end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–14843 Filed 6–22–89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89–634–000, CP89–615–000, CP89–629–000]

Iroquois Gas Transmission System; Tennessee Gas Pipeline Co.; Information Notice Regarding Intent to Study Alternative Routes in the Draft Environmental Impact Statement for the Proposed Iroquois/Tennessee Pipeline Project

June 19, 1989.

Introduction

On February 17, 1989, the Federal Energy Regulatory Commission (FERC or Commission) issued a *Notice of Intent to Prepare a Draft Environmental Impact Statement for the Iroquois/Tennessee Pipeline Project and Request for Comments on Its Scope* (NOI). This supplemental notice identifies two major alternative routes through New York and Massachusetts that will be addressed in the environmental impact statement (EIS).

Background

On January 17, 1989, Iroquois Gas Transmission System (Iroquois) and Tennessee Gas Pipeline Company (Tennessee) filed applications before the FERC in the above-referenced dockets, under section 7 of the Natural Gas Act, for authorization to construct facilities and transport up to 533,900 Mcfd (thousands of cubic feet per day) of Canadian natural gas received from TransCanada Pipelines Limited. The gas would be delivered to local distribution companies (LDCs) and cogeneration customers in New York, New Jersey, and Connecticut. Iroquois would also deliver gas to Tennessee near Wright, New York and Stratford, Connecticut, and to Algonquin Gas Transmission Company (Algonquin) near Brookfield, Connecticut for redelivery to certain LDCs, cogeneration, and power generation customers in Connecticut, Massachusetts, New Hampshire, and Rhode Island.

Description of Alternative Routes

The staff is presently analyzing an alternative route to the proposed Iroquois route called the Greater Northeast route.[1] This alternative route would deviate from the proposed Iroquois route near Canajoharie, New York (milepost 156) and head in an easterly direction to the vicinity of Greenfield, Massachusetts. See figure 1. From Greenfield the Greater Northeast route would turn east-southeasterly to Mendon, Massachusetts. All deliveries of natural gas would be made to Tennessee at Mendon.

Figure 1 shows all the facilities needed for this alternative route that are not already being analyzed as part of the Iroquois proposal. These facilities would include approximately 199 miles of new 36-inch-diameter pipeline in New York and Massachusetts. Other facilities not shown for this routing of the Iroquois pipeline include delivery mainlines to Long Island Lighting Company and to Central Hudson Gas & Electric Corporation. These delivery mainlines would be constructed along the same identical routes as the Iroquois proposal, which was discussed in the February 17, 1989 NOI. The complete alternative will be discussed in the EIS.

The staff's plan to study this routing was announced at the scoping meetings which were held in Albany, New York and Danbury, Connecticut on March 15 and 16, 1989, in conjunction with the Iroquois/Tennessee Pipeline Project. It was also announced in Keene, New Hampshire, Rutland, Vermont, and Fitchburg, Massachusetts on March 21, 22, and 23, 1989, in conjunction with the scoping meetings on the Champlain Pipeline Company Project.

Another alternative which the staff will review is similar to the Greater Northeast route except that the 199 miles of new route in New York and Massachusetts would be replaced by a route adjacent to Tennessee's existing pipeline from Wright, New York east across Massachusetts.

Comment Procedure

This notice is to provide greater public awareness of the staff's intention to examine these routings as part of its EIS. Anyone wishing to file comments with the Commission regarding the environmental issues on these alternative routes should do so as soon as possible, but within 30 days from the date this notice is published in the Federal Register.

A copy of this notice has been distributed to Federal, state, and local agencies, public interest groups, libraries, newspapers, parties in this proceeding, and other interested individuals. A general map of the Greater Northeast route has been mailed to everyone on the environmental document mailing list. Detailed maps of the Greater Northeast route have been provided to the Board of Selectmen and Planning Commission of each affected town identified in table 1.

Written comments concerning significant issues or concerns related to the alternative routes should contain supporting documentation and rationale. Written comments must be filed by July 24, 1989. The comments should reference Docket No. CP89-634-000, and be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington DC 20426. A copy of the comments should also be sent to the FERC project manager identified below.

Additional information about the alternatives is available from Mr. Mark Jensen, Project Manager, Environmental Policy and Project Analysis Branch, Office of Pipeline and Producer Regulation, Room 7312, 825 North Capitol Street, NE., Washington, DC 20426, telephone (202) 357-9021 or FTS 357-9021.

Lois D. Cashell,

Secretary.

[1] This route was originally proposed by the Greater Northeast Pipeline Corporation and Algonquin Gas Transmission Corporation in Docket Nos. CP88-191-000 and CP88-192-000 in the Commission's Northeast open season proceeding. These dockets were dismissed by the Commission's *Order Denying Rehearing and Terminating Dockets* on May 2, 1989.

TABLE 1.—GREATER NORTHEAST PIPELINE ALTERNATIVE FACILITY LOCATIONS

Proposed facilities	Map lengths (miles)	State	County	Towns or cities
Mainline	15.8	NY	Montgomery	Canajoharie, Charleston, Florida Glen, Root.
Mainline	14.1	NY	Schenectady	Duanesburg, Princetown, Rotterdam.
Mainline	24.5	NY	Rensselaer	East Greenbush, Nassau, North Greenbush, Sand Lake, Stephentown.
Mainline	22.0	NY	Albany	Albany, Bethlehem, Guilderland, New Scotland.
Mainline	21.4	MA	Berkshire	Cheshire, Dalton, Hancock, Hinsdale, Lanesborough, Peru, Windsor.
Mainline	27.0	MA	Franklin	Ashfield, Conway, Deerfield, Leverett, Shutesburg, Sunderland.
Mainline	24.0	MA	Hampshire	Plainfield, Belchertown, Pelham, Ware.
Mainline	47.2	MA	Worcester	Auburn, Blackstone, East Brookfield, Leicester, Mendon, Millbury, Millville, Northbridge, North Brookfield, Spencer, Sutton, Uxbridge, West Brookfield.

[FR Doc. 89-14845 Filed 6-22-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-34-008]

Northwest Alaskan Pipeline Co.; Extension of Tariff Provisions

June 16, 1989.

Take notice that on June 16, 1989, Northwest Alaskan Pipeline Company ("Northwest Alaskan") tendered for filing in Docket No. RP87-34-008 the following tariff sheets:

Rate Schedule

X-3

Tariff Sheets Number

Original Sheet No. 308BBB.1
Original Sheet No. 308FFF.1
Original Sheet No. 358VV.1
Original Sheet No. 358AAA.1

Northwest Alaskan proposed that these tariff sheets be effective on July 1, 1989.

Northwest Alaskan states that these tariff sheets would continue in effect certain aspects of the current interim settlement agreement among Northwest Alaskan, United Gas Pipe Line Company ("United") and Pan-Alberta Gas Ltd. ("Pan-Alberta"), which would otherwise expire on June 30, 1989, from July 1, 1989 through the earlier of (a) October 31, 1989 or (b) the date on which a long-term settlement becomes effective (the "Extended Interim Period"). The current interim settlement agreement (the "Interim Settlement") consists of the Tenth Amendment to the Gas Purchase Agreement between United and Northwest Alaskan, the Twentieth Amending Contract to the Gas Sales Contract between Northwest Alaskan and Pan-Alberta, and the marketing and Transportation Agreement between United and Pan-Alberta, which are contained in Northwest Alaskan's FERC Gas Tariff Original Volume No. 2, Rate Schedule X-3 at tariff sheets numbered 30800 through 308FFF and 358HH through 358AAA.

Northwest Alaskan states that the provisions of the Interim Settlement to be extended for the Extended Interim Period are paragraphs 5(b), 7, 7(a), 8(b), 7(c), 7(d), 7(e), 7(f), 7(h), 7(i), 8, 9, 9(b), 11, 12, 13, 14, 17 and 18 of the Tenth Amendment and the Twentieth Amending Contract and paragraphs 3(a), 3(b), 5(a), 5(b), 6, 7, and 8 of the Marketing and Transportation Agreement.

United and Pan-Alberta have entered into an agreement that sets forth, among other things, the basic principles upon which definitive agreements shall be reached to settle and permanently resolve their ongoing disputes with respect to the purchase, sale and transportation of Canadian gas. The purpose of the requested extension is to preserve the status quo and to grant the parties an opportunity to finalize and obtain necessary approvals of the longterm settlement.

Northwest Alaskan has requested that the Commission approve the requested extension of the Interim Settlement provisions of Northwest Alaskan's tariff to be effective on July 1, 1989 and find that the extension is just and reasonable, prudent and in the public interest.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before June 23, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-14844 Filed 6-22-89; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed the Week of March 10 Through March 17, 1989

During the Week of March 10 through March 17, 1989, the applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from an earlier list have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

June 13, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of March 10 Through March 17, 1989]

Date	Name and Location of applicant	Case No.	Type of submission
Aug. 23, 1988	Getty/Smallwood Oil Co., St. Louis, Missouri	RR265-2	Request for Modification/Rescission. If granted: The August 19, 1988 Decision and Order (Case No. RF265-2727) issued to Smallwood Oil Company would be modified regarding the firm's Application for Refund in the Getty refund proceeding.
Nov. 23, 1988	Economic Regulatory Admin., Washington, DC	KRZ-0526	Interlocutory. If granted: Russell B. Newton would be dismissed as a party in the Proposed Remedial Order proceeding involving Kem Oil & Refining Company (Case No. KRO-0520).
Feb. 27, 1989	Murphy Oil Corp., Washington, DC	KFX-0063	Supplemental. If granted: Murphy Oil Corporation would receive refund monies issued to certain applicants in the Murphy Oil refund proceeding (KEF-0095) in satisfaction of judgments which Murphy has obtained against these customers.
Mar. 15, 1989	Marathon/Township Oil Co., Washington, DC	RF250-8	Request for Modification/Rescission. If granted: The November 22, 1988 Decision and Order (Case No. RR250-4) issued to Township Oil Company would be modified regarding the firm's application for refund submitted in the Marathon refund proceeding.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund application	Case No.
03/10/89 thru 03/17/89	Gulf Oil Refund, Applications Received	RF300-10732 thru RF300-10737
03/10/89 thru 03/17/89	Crude Oil Refund, Applications Received	RF272-75379 thru RF272-75400
03/10/89 thru 03/17/89	Murphy Refund, Applications Received	RF309-965 thru RF309-1013
03/10/89 thru 03/17/89	Atlantic Richfield Refund, Applications Received	RF304-8072 thru RF304-8154
03/10/89 thru 03/17/89	Exxon Refund, Applications Received	RF307-9648 thru RF307-9684
03/10/89 thru 03/17/89	Shell Refund, Applications Received	RF315-4419 thru RF315-4684

Name of firm	Case No.	Received
Iowa Power & Light	RA272-5	03/15/89
Liberty Crown	RF313-93	03/15/89
T.E. Enterprises, Inc.	RF313-94	03/15/89
Tutcher Magic Gas Company, Inc.	RF317-5	03/15/89
K & J	RF316-5	03/16/89
Service Distributing Company, Inc.	RF313-95	03/16/89
Donald Kraft	RA272-7	03/16/89
Pine Beach Crown	RF313-96	03/16/89
Brick Crown	RF313-97	03/16/89
David S. Horner	RF313-98	03/17/89
Payne Service Station	RF313-99	03/17/89
Belair Road Crown	RF313-100	03/17/89

[FR Doc. 89-14926 Filed 6-22-89; 8:45 am]
BILLING CODE 6450-01-M

Office of Hearings and Appeals

Cases Filed the Week of March 24 Through March 31, 1989

During the Week of March 24 through March 31, 1989, the submissions listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

June 13, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of March 24 through March 31, 1989]

Date	Name and location of applicant	Case No.	Type of submission
Jan. 23, 1989	Oasis Petroleum Corporation, Culver City, California	KEZ-0094	Interlocutory. If granted: The Office of Hearings and Appeals would reconsider those portions of the August 22, 1988 Decision and Order which are not the subject of Oasis Petroleum Corporation's motion to strike (KEZ-0095).
Jan. 23, 1989	Oasis Petroleum Corporation, Culver City, California	KEZ-0095	Interlocutory. If granted: The Office of Hearings and Appeals would strike certain portions of the August 22, 1988 Decision and Order (Case Nos. HEG-0031, KEX-0071 and KEX-0018) issued to Lucky Stores, Inc. and Research Fuels, Inc.
Mar. 28, 1989	Aminoil/Plymouth LP Gas Corporation, St. Louis, Missouri.	RR139-70	Request for Modification/Rescission. If granted: The January 31, 1989 Decision and Order (Case No. RF139-126) issued to Plymouth LF Gas Corporation would be modified regarding the firm's application for refund submitted in the Aminoil refund proceeding.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/Name of refund application	Case No.
03/24/89 thru 03/31/89	Crude Oil Refund, Applications Received	272-75412 thru RF272-75423
03/24/89 thru 03/31/89	Murphy Oil Refund, Applications Received	RF309-1065 thru RF309-1158
03/24/89 thru 03/31/89	Atlantic Richfield, Applications Received	RF304-8210 thru RF304-8280
03/24/89 thru 03/31/89	Shell Refund, Applications Received	RF315-4868 thru RF315-5017

Name of firm	Case No.	Received
Gate Petroleum Company	RF313-107	03/27/89
Crown Service, Inc.	RF313-108	03/27/89
William C. Walton	RF313-109	03/27/89

Name of firm	Case No.	Received
6th Street Crown	RF313-110	03/28/89
Dearybury Oil Company, Inc.	RF313-111	03/28/89
H. Braunes, Inc	RF313-112	03/28/89
S.W. Duke Oil Distributor	RF313-113	03/28/89
Tri-Valley Growers, Inc	RC272-35	03/29/89
Harold W. Marks	RA272-8	03/29/89
T.J. Huskey	RF313-114	03/30/89
Southern California Edison Company	RC272-36	03/30/89
Consolidated Edison Company of NY	RC272-37	03/30/89
Long Island Lighting Company	RC272-38	03/30/89
San Diego Gas & Electric Company	RC272-39	03/30/89
Orange & Rockland Utilities Co	RFRC272-40	03/30/89
Pacific Gas & Electric Company	RFRC272-41	03/30/89
Biltmore Oil Company, Inc.	RF313-115	03/31/89

[FR Doc. 89-14927 Filed 6-22-89; 8:45 am]
BILLING CODE 6450-01-M

Office of Hearings and Appeals

Issuance of Proposed Decision and Order Issued the Period of March 27 Through May 12, 1989

During the period of March 27 through May 12, 1989, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

June 13, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

North Georgia Petroleum Company Gainesville, GA; KEE-0172

The North Georgia Petroleum Company (NGPC) filed an Application for Exception from the provisions of Energy Information Administration (EIA) reporting requirements. The exception request, if granted, would relieve NGPC of the requirement to file Form EIA-782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." On May 9, 1989, the Department of Energy issued a Proposed Decision and Order which tentatively denied the exception request.

[FR Doc. 89-14928 Filed 6-22-89; 8:45 am]
BILLING CODE 6450-01-M

Notice of Issuance of Decisions and Order for Week of March 27 through March 31, 1989

During the week of March 27 through March 31, 1989, the decisions and orders summarized below were issued with respect to applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Salomon, Inc., 3/27/89, KFA-0271

The OHA considered a Freedom of Information Act Appeal filed by Salomon, Inc. Salomon claimed that the Economic Regulatory Administration (ERA) had failed to conduct an aequate search of over 300 files. In addition, Salomon claimed that the DOE had improperly withheld documents under Exemptions 5 and 7. In its Decision, the DOE considered many issues. Among the more important issues considered were (1) the scope and application of the Deliberative Process Privilege, (2) the scope and application of the Attorney Client Privilege, (3) the scope and application of the Attorney Work-Product Privilege, and (4) the application of Exemption 7A to ERA enforcement and audit files. The DOE found that the ERA's search had been adequate. However, the DOE conducted a de novo review of the withheld documents and granted the appeal in part.

The Augusta Chronicle Augusta Herald, 3/31/89, KFA-0264

The Augusta Chronicle/Augusta Herald (the Chronicle) filed an Appeal from a denial by the Denying Official of the Savannah River Operations Office (Savannah River) of the Department of Energy (DOE) of a Request for Information which it had submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE found that the requested commercial material was not confidential and therefore releasable under the FOIA. Additionally, the DOE found that identifying personnel information must be deleted and withheld from the documents released to the Chronicle.

Refund Applications

Atlantic Richfield Company/Palm Desert ARCO, 3/27/89, RF304-1503

The DOE issued a Decision and Order concerning an Application for Refund filed in the Atlantic Richfield Company (ARCO) special refund proceeding. The applicant documented the volume of his ARCO purchases and submitted documentation that he did not transfer the right to refund when he sold his business. As a retailer requesting a refund of less than $5,000, the applicant was presumed injured. The refund granted in this Decision totaled $4,300 ($3,350 in principal and $950 in interest).

Crown Central Petroleum Corporation/General Oil Distributors, Inc., et al., 3/28/89, RF313-79, et al.

The DOE issued a Decision and Order granting applications filed by six purchasers of Crown refined petroleum products in the Crown Central Petroleum Corporation special refund proceeding. According to the procedures set forth in *Crown Central Petroleum Corp.*, 18 DOE 85,326 (1988), each applicant was found to be eligible for a refund based on the volume of products it purchased from Crown. The total amount of refunds approved in this Decision was $27,443, representing $23,637 in principal plus $3,806 in accrued interest.

Crown Central Petroleum Corporation/ Southeastern Energy Corp., et al., 3/27/89, RF313–73, et al.

The DOE issued a Decision and Order granting applications filed by seven purchasers of Crown refined petroleum products in the Crown Central Petroleum Corporation special refund proceeding. According to the procedures set forth in *Crown Central Petroleum Corp.*, 18 DOE ¶ 85,326 (1988), each applicant was found to be eligible for a refund based on the volume of products it purchased from Crown. The total amount of refunds approved in this Decision was $32,072, representing $27,625 in principal plus $4,447 in accrued interest.

Crown Central Petroleum Corporation/ T.C. Enterprises, Inc., et al., 3/30/89 RF313–34, et al.

The DOE issued a Decision and Order granting applications filed by five purchasers of Crown refined petroleum products in the Crown Central Petroleum Corporation special refund proceeding. According to the procedures set forth in *Crown Central Petroleum Corp.*, 18 DOE ¶ 85,326 (1988), each applicant was found to be eligible for a refund based on the volume of products it purchased from Crown. The total amount of refunds approved in this Decision was $41,940, representing $36,123 in principal plus $5,817 in accrued interest.

Crown Central Petroleum Corporation/ Virginia Electric and Power Company, 3/27/89, RF313–78

The DOE issued a Decision and Order granting an application filed by Virginia Electric and Power Company, a purchaser of Crown refined petroleum products, in the Crown Central Petroleum Corporation special refund proceeding. According to the procedures set forth in *Crown Central Petroleum Corp.*, 18 DOE ¶ 85,326 (1988), the applicant was found to be eligible for a refund based on the volume of products it purchased from Crown. The total amount of the refund approved in this Decision was $20,488, representing $17,647 in principal plus $2,841 in accrued interest.

Dorchester E–Z Mart Stores, Inc., 3/27/89, RF253–31

The DOE issued a Decision granting an Application for refund in the Dorchester Gas Corporation refund proceeding. E–Z Mart is a retailer of Dorchester petroleum products. E–Z Mart adequately established that it purchased 1,157,704 gallons of Dorchester product. Although E–Z Mart's allocable share exceeds $5,000, it has elected to limit its claim to the $5,000 threshold amount. Therefore, E–Z Mart is not required to provide a detailed demonstration of injury and is eligible for its full allocable share. The total refunds approved in this Decision is $7,286, including both interest and principal.

Exxon Corporation/Dick's Enterprises, et al., 3/29/89, RF307–5257, et al.

The Office of Hearings and Appeals of the Department of Energy issued a Decision and Order granting 42 Applications for Refund from consent order funds obtained from Exxon Corporation. Each Applicant sought a refund of less than $5,000, and was therefore presumed to have suffered injury as a result of Exxon's alleged overcharges. The sum of the refunds granted is $27,032.

Exxon Corporation/Hilltop Exxon, et al., 3/28/89, RF307–2026, et al.

The DOE issued a Decision and Order concerning 34 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the Applicants purchased directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $20,749 ($17,686 principal plus $3,063 interest).

Exxon Corporation/Koloup Service Center, Inc., 3/29/89, RF307–1848, RF307–7066

The DOE issued a Decision and Order considering Applications for Refund filed in the Exxon Corporation special refund proceeding by both a former owner (Case No. RF307–7066) and the current owner (Case No. RF307–1848) of Koloup Service Center, Inc. (Koloup). The former owner operated Koloup as a retail service station during the period August 19, 1973, through January 27, 1981. The DOE found that the former owner did not transfer the right to any refunds in the 1984 sale of the station. Accordingly, the application filed by the current owner was denied, and that filed by the former owner was granted. Since the former owner purchased directly from Exxon, and its allocable share is less than $5,000, it is eligible to receive a refund equal to its full allocable share. The refund amount granted in this Decision is $1,137 ($969 principal plus $168 interest).

Exxon Corporation/Pickens Propane Gas Co., et al., 3/30/89, RF307–2672, et al.

The DOE issued a Decision and Order concerning 30 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the Applicants purchased directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE found that each applicant is eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $21,410 ($18,250 principal plus $3,160 interest).

Exxon Corporation/Tolberts Exxon Station, et al., 3/28/89, RF307–1788, et al.

The Office of Hearings and Appeals of the Department of Energy issued a Decision and Order granting 45 Applications for Refund from consent order funds obtained from Exxon Corporation. Each Applicant sought a refund of less than $5,000, and was therefore presumed to have suffered injury as a result of Exxon's alleged overcharges. The sum of the refunds granted is $24,994.

Exxon Corporation/W. L. Graben, et al., 3/28/89, RF307–5415, et al.

The Office of Hearings and Appeals of the Department of Energy issued a Decision and Order granting 50 Applications for Refund from consent order funds obtained from Exxon Corporation. Each Applicant sought a refund of less than $5,000, and was therefore presumed to have suffered injury as a result of Exxon's alleged overcharges. The sum of the refunds granted is $43,538.

Exxon Corporation/William L. Goodwin Exxon, et al., 3/27/89, RF307–276, et al.

The DOE issued a Decision and Order concerning six Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the Applicants purchased directly from Exxon and was either an end-user or a reseller whose allocable share is less than $5,000. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $2,385 (2,033 principal plus $352 interest).

Gulf Oil Corporation/Beatties FD. Gulf, et al., 3/30/89, RF300–322, et al.

The DOE issued a Decision and Order concerning eight Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $12,856.

Gulf Oil Corporation/Farmers Union Central Exchange, Inc., 3/27/89, RF300–7879

The DOE issued a Decision and Order concerning an Application for Refund submitted by Farmers Union Central Exchange, Inc. (Cenex) in the Gulf Oil Corporation special refund proceeding. As an end-user of Gulf products, Cenex was granted a refund based on its full allocable share. Under the procedures established in *Gulf Oil Corporation*, 16 DOE ¶ 85,381 for agricultural cooperatives, Cenex also certified that it would pass through any refund received to its members. The refund granted in this Decision is $17,922.

Gulf Oil Corporation/H.S. Bunting Estate, 3/30/89, RF300–710

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding by H.S. Bunting Estate (Bunting). Bunting applied as both a consumer and a retailer of Gulf refined products. Since Bunting did not submit information indicating that a refund under the end-user presumption was appropriate, the OHA utilized the reseller presumption in considering the Bunting Application. Bunting did not attempt to demonstrate injury and was awarded a refund under the 40 percent presumption. The total refund granted in this Decision is $9,638.

Gulf Oil Corporation/Jerry Huck, 3/27/89, RF300–6862, RF300–6863

The DOE issued a Decision and Order concerning two Applications for Refund submitted by Jerry Huck in the Gulf Oil Corporation refund proceeding. The sum of the principal refunds of Mr. Huck's applications was greater than $5,000. The DOE ruled that, because the applications were related, they would be considered as one, and that the applicant would need to show injury in order to receive a refund of his full allocable share. The applicant had elected the small claims presumption and thus was approved a refund of $5,000 principal plus $1,484 interest. The sum of the refunds granted in this Decision is $6,484.

Gulf Oil Corporation/Jimmy's Gulf Service, et al., 3/28/89, RF300–219, et al.

The DOE issued a Decision and Order concerning 15 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. The applications were approved using a presumption of injury. The sum of the refunds granted in this Decision, including accrued interest, is $27,976.

Gulf Oil Corporation/Lowry Gulf Station, et al., 3/30/89, RF300–237, et al.

The DOE issued a Decision and Order concerning six Applications for Refund submitted by indirect purchasers in the Gulf Oil Corporation special refund proceeding. Because the DOE had not received Refund Applications from any of the indirect purchasers' suppliers, the direct purchasers from Gulf, the indirect purchasers' Applications were approved under the same procedures used to evaluate direct purchasers claiming under a presumption of injury. The sum of the refunds granted in this Decision, including accrued interest, is $14,595.

Gulf Oil Corporation/Luis R. Santini, et al., 3/28/89, RF300–7855, et al.

The DOE issued a Decision and Order concerning 17 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, including accrued interest, is $55,574.

Gulf Oil Corporation/Pride Petroleum, Inc., et al., 3/27/89, RF300–6412, et al.

The DOE issued a Decision and Order concerning 14 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, including accrued interest, is $146,433.

Gulf Oil Corporation/Ralph D. Weaver, Inc., et al., 3/27/89, RF300–5740, et al.

The DOE issued a Decision and Order concerning 12 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, including accrued interest, is $126,765.

Gulf Oil Corporation/S. W. Rawls, Inc., et al., 3/27/89, RF300–5652, et al.

The DOE issued a Decision and Order concerning eight Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, including accrued interest, is $101,591.

Gulf Oil Corporation/Timbercreek Oil Co., et al., 3/28/89, RF300–5012, et al.

The DOE issued a Decision and Order concerning six Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, including accrued interest, is $13,480.

Gulf Oil Corporation/Warner Oil Company, 3/29/89, RF300–5703

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding by Warner Oil Company (Warner). Warner purchased 18,803,657 gallons of Gulf refined product as a reseller and distributed 758,000 gallons of Gulf refined product as a consignee. Warner did not demonstrate injury and was awarded a refund under the 40 percent presumption of injury for its reseller gallons. Warner received a refund of $6,484 ($5,000 principal plus $1,484 interest).

Standard Oil Co. (Indiana/New Mexico Standard Oil Co. (Indiana) /New Mexico Coline Gasoline Corp./New Mexico National Helium Corp./ New Mexico Belridge Oil Co./New Mexico Perry Gas Processors, Inc., New Mexico, 3/28/89, RM 21–147, et al.

The DOE issued a Decision and Order approving a Motion for Modification filed by the State of New Mexico in the Amoco I, Amoco II, Coline, National Helium, Belridge, and Perry Gas special refund proceedings. New Mexico wished to use $202,429 (plus any accrued interest) in previously-approved second-stage refund monies for the promotion of four ridesharing programs within the state. In *Standard Oil Co. (Indiana)/ New Mexico*, 18 DOE ¶ 85,073 (1988), the DOE had approved the use of these funds for only two ridesharing programs. The DOE found that the proposed modification of the State's original plan would provide restitution to injured consumers of petroleum products. Accordingly, the DOE approved New Mexico's request.

State Escrow Distribution, 3/30/89, RF302–6

The Office of Hearings and Appeals ordered the DOE's Office of the Controller to distribute $81,000,000.00 to the State Governments. Those funds had been set aside for distribution to the States in *Getty Oil Co.*, 16 DOE ¶ _____, No. KEF-0124 (March 21, 1989). The use of the funds by States is governed by the Stripper Well Settlement Agreement.

Suburban Propane Gas Corporation/ Luci Petroleum, Inc., 3/28/89, RF299-42

The DOE issued a Decision and Order denying an Application for Refund filed by Luci Petroleum, Inc., a reseller of petroleum products, in the Suburban Propane Gas Corporation special refund proceeding. Luci was found to have been a spot purchaser of Suburban products. Because it could not successfully demonstrate that it was not a spot purchaser, and because it made no attempt to rebut the spot purchaser presumption of non-injury, Luci was found not to have been injured by Suburban's alleged overcharges, and was therefore ineligible for a refund.

Suburban Propane Gas Corp./Musolino & Sons, Inc., 3/31/89, RF299-87

The DOE issued a Decision and Order granting an Application for Refund filed by Musolino & Sons, Inc. in the Suburban Propane special refund proceeding. Musolino estimated its purchase volumes for the consent order period by prorating its actual purchase volumes for three months in 1978 over the entire period. We asked for further evidence indicating that these three months were indicative of Musolino's general purchase patterns. Musolino supplied additional records indicating that this was the case. Therefore, according to the procedures set forth in *Suburban Propane Gas Corporation*, 16 DOE ¶ 85,382 (1987), Musolino's original submission was approved. The total refund granted in this Decision was $248, consisting of $200 in principal plus $48 in accrued interest.

Total Petroleum, Inc./Herb's Oil Company, et al., 3/28/89, RF321-194, et al.

The DOE issued a Decision and Order concerning 15 Applications for Refund filed by purchasers of motor gasoline and/or No. 2 oils from Total Petroleum, Inc. The applicants sought a portion of the settlement fund obtained by the DOE through a consent order entered into with Total. Each of the applicants was a reseller whose allocable share is less than, or equal to $5,000. Under the standards established in *Total Petroleum, Inc.*, 17 DOE ¶ 85,542 (1988), the DOE granted refunds in this proceeding which total $32,923 ($28,193 principal plus $4,730 interest).

DISMISSALS

The following submissions were dismissed.

Name	Case no.
Andrews Oil Co.	RF309-902 RR309-1
Bayshore Service Station	RF304-6399
Beall Oil Company	RF313-29
Beswick ARCO	RF304-3716
Cat Creek Party Store	RF3310-71
City of Bridgeport	RF272-56097
Crowders Gulf	RF300-7305
Echols Oil Company, Inc.	RF313-38
Edgecomb Metals Company	RF307-4793
Ellis Exxon Service Station	RF307-273
Elmer Kant	RF309-784
F. O. Earle Jr. Oil Co.	RF307-7150
Gary Pearson Amoco Service #2	RF272-62422
J. B. Black, Jr. Trucks	RF272-72451
J&B Oil Co.	RF310-2
Jack's Party Store	RF310-54
Jewish Home & Hospital for Aged	RF272-71715
Jim's Total Service	RF3310-61
Joe E. Brown ARCO	RF304-3658
Kivett Oil Company	RF313-12
Landry's Exxon	RF307-7242
Maholtz ARCO *et al.* (See Attached List).	RF304-3479
Mini-Serve	RF300-2669
Oliver Gulf/J.L. Oliver	RF300-10633
PotwinService	RF310-64
Richland Apco	RF310-22
Skelton Bros. Oil Co.	RF307-1798
Total Car Care, Inc.	RF310-41
Vera Johnson Service Grocery	RF300-2873
W. C. Rice Oil Co., Inc.	RF313-45
Ward Transport, Inc.	RF272-75366

Appendix

March 27, 1989.

Case No.	Applicant name
FR304-3479	Maholtz ARCO
FR304-3503	Spusta's ARCO Service
FR304-3512	Poulton's Service Station
FR304-3522	Kocika ARCO Service
FR304-3526	Newsome Town and Country Market
FR304-3528	Watson, Inc.
FR304-3531	Taylor ARCO
FR304-3549	Charles Service Center
FR304-3635	Joe's ARCO
FR304-3640	Mahan Fuel Co., Inc.
FR304-3642	Key ARCO, Inc.
FR304-3648	Lin's ARCO
FR304-3656	Jerry's ARCO Station
FR304-3669	Maurles Service Station
FR304-3672	A M P Mini Market
FR304-3687	Key ARCO, Inc.
FR304-3688	Key ARCO, Inc.
FR304-3691	Joe's ARCO
FR304-3714	Mayton Brothers Service Station
FR304-3725	Mike's ARCO
FR304-3746	K & B Service Station
FR304-3747	Maines ARCO
FR304-3849	Kalil Mikallas ARCO
FR304-3954	MCO ARCO
FR304-4131	Lee's ARCO Service
FR304-4132	Van Sickle ARCO Service
FR304-4136	Migas ARCO Service
FR304-4343	Carl's ARCO Service
FR304-6387	Teo's ARCO
FR304-6391	Meyer's Town Pump
FR304-6395	Temple ARCO
FR304-6402	Mel's ARCO AM-PM

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

June 13, 1989.

George B. Breznay

Director, Office of Hearings and Appeals.

[FR Doc. 89-14929 Filed 6-22-89; 8:45 am]

BILLING CODE 6450-01-M

Notice of Issuance of Decisions and Orders for Week of April 3 Through April 7, 1989

During the week of April 3 through April 7, 1989, the decisions and orders summarized below were issued with respect to applications for refund filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Refund Applications

Atlantic Richfield Company/Abendroth Water Conditioning, Inc., et al., 4/5/88, RF304-156, et al.

The DOE issued a Decision and Order concerning 62 Applications for Refund filed in the Atlantic Richfield Company (ARCO) special refund proceeding. As reseller/retailers claiming refunds of less than $5,000 in principal or end users, each applicant is presumed to have been injured by ARCO's alleged overcharges. After examining the applications and supporting documentation, the DOE determined that the firms should receive refunds totaling $94,445, representing $73,398 in principal and $21,047 in interest.

Atlantic Richfield Company/Larry's ARCO Service, et al., 4/5/89, RF304-2478, et al.

The DOE issued a Decision and Order concerning forty-five Applications for Refund filed in the Atlantic Richfield Company special refund proceeding. All of the applicants were either end-users or reseller/retailers that applied for small claims. In addition, each applicant documented the volume of its purchases from ARCO and, therefore, was presumed to have been injured and entitled to a refund. The DOE concluded that the applicants should receive refunds totalling $64,712, representing $50,289 in principal and $14,423 in accrued interest.

Atlantic Richfield Company/Lyon's ARCO, et al., 4/3/89, RF304-1519, et al.

The DOE issued a Decision and Order concerning forty-two Applications for Refund filed in the Atlantic Richfield Company (ARCO) special refund proceeding. All of the applicants documented the volume of their ARCO purchases and were end-users or reseller/retailers requesting refunds of $5,000 or less. Therefore, each applicant was presumed injured. The refunds granted to this Decision totaled $54,719 ($42,529 in principal and $12,190 in interest).

Emmett Elliott, 4/7/89, RC272-44.

On August 22, 1988, the DOE issued a Decision and Order granting a refund to Emmett Elliott (Elliott), Case No. RF272-36184). *Lake Villa School District, et al.*, (Case Nos. RF272-36001, *et al.*) (August 22, 1988). The DOE determined that this refund was a duplicate of the refund granted to Elliott, Case No. RF272-30375), on July 28, 1988. *Michael D. Lyons, et al.*, (Case Nos. RF272-30200, *et al.*) (July 28, 1988). Accordingly, the DOE issued a Supplemental Order rescinding the refund granted to Elliott in *Lake Villa School District, et al.*

Exxon Corporation/Car Rentals, Inc., et al., 4/3/89, RF307-2238, et al.

The DOE issued a Decision and Order concerning 43 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either a reseller whose allocable share was less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $33,135 ($28,237 in principal and $4,898 in interest).

Exxon Corporation/Freeman Oil Co., et al., 4/3/89, RF307-4707, et al.

The DOE issued a Decision and Order granting a refund to eight resellers of refined petroleum products in the Exxon Corporation Special refund proceedings. Because each firm chose to limit its refund claim to the greater of $5,000 or 40 percent of its volumetric refund amount, each firm was presumed to have been injured by Exxon's alleged overcharges. The refunds granted in this Decision totaled $47,296, including $6,989 in accrued interest.

Exxon Corporation/John Holton Oil Co., et al., 4/4/89, RF307-5511, et al.

The Office of Hearings and Appeals of the Department of Energy issued a Decision and Order granting 49 Applications for Refund in the Exxon Corporation special refund proceeding. Each Applicant sought a refund of less than $5,000 and was therefore presumed to have been injured. The sum of the refunds granted is $39,587.

Gerald Zimmerman, 4/7/89, RC272-43

On March 20, 1989, the DOE issued a Decision and Order granting a crude oil refund to Gerald Zimmerman (Zimmerman), Case No. RF272-49731. *Thomas L. Miller, et al.*, (Case Nos. RF272-49601, *et al.*) (March 20, 1989). The DOE determined that this refund was a duplicate of one granted to Zimmerman on January 13, 1989 (Case No. RF272-46870). *Charlie Alexander, et al.*, (Case Nos. RF272-46800, *et al.*) Accordingly, the DOE rescinded the second refund granted in *Thomas L. Miller, et al.*

Gulf Oil Corporation/Bonds Oil Company Tom M. Bonds, 4/7/89, RF300-302, RF300-3182, RF300-3188.

The DOE issued a Decision and Order concerning three Applications for refund submitted in the Gulf Oil Corporation special refund proceeding by Tom M. Bonds, a reseller and consignee of Gulf products. Because Mr. Bonds' allocable share was less than $5,000, no demonstration of injury was required. Accordingly, on the basis of documentation of Mr. Bonds' volume of Gulf purchasers, the applications were approved under the 10 percent and small claims presumptions of injury. The amount of the refund granted in this Decision is $3,906.

Gulf Oil Corporation/Certified Gulf Car Care, Memorial Gulf Car Care, 4/3/89, RF300-62, RF300-180

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding by Acadiana Energy for its subsidiaries Certified Gulf Car Care and Memorial Gulf Car Care. Both Certified and Memorial are gas stations which operated independently as sole proprietorships during the refund period and had been purchased by Acadiana after the refund period in 1986. The OHA determined that when Acadiana purchased the stations, the assets so transferred did not include potential refunds. Therefore, the Applications were denied.

Gulf Oil Corporation/Jenkins Gulf Station, et al., 4/5/89, RF300-200, et al.

The DOE issued a Decision and Order Concerning twenty-four Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. The Applications were approved using a presumption of injury. The sum of the refunds granted in this Decision, including accrued interest, is $39,314.

Gulf Oil Corporation/Lawrence Stuardi, 4/7/89, RF300-4637, RF300-4682, RF300-5705, RF300-10757

The DOE issued a Decision and Order concerning four Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding by Lawrence Stuardi. Because each applicant firm was owned by Mr. Stuardi during the consent order period, the applicants were considered to be a single firm for purposes of the Gulf proceeding. Because their collective total maximum refund exceeded $5,000, and no demonstration of injury was made the Applications were approved under the 40 percent presumption of injury. The refund granted in this Decision, including accrued interest, is $6,484.

Gulf Oil Corporation/Metropolitan Edison Company, 4/3/89, RF300-7943

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Metropolitan Edison Company (Met-Ed) in the Gulf Oil Corporation special refund proceeding. As an end-user of Gulf products, Met-Ed was granted a refund based on its full allocable share. Under the procedures established in *Gulf Oil Corporation*, 16 DOE ¶ 85,381 (1987) for regulated utilities, Met-Ed also certified that it would notify the appropriate regulatory body of any refund received and pass through any refund received to its customers. The refund granted in this Decision is $20,928.

Gulf Oil Corporation/Penn Central Transportation Company, Southern Pacific Transportation Company, 4/5/89, RF300-7771, RF300-8083

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each

application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $95,367.

Gulf Oil Corporation/Peoples Petroleum Co., Inc., et al., 4/3/89, RF300-7611, et al.

The DOE issued a Decision and Order concerning 10 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $84,840.

Gulf Oil Corporation/Peterson Petroleum, Inc., 4/3/89, RF300-4296

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding. The Application was approved using a presumption of injury. The total refund granted in this Decision, including accrued interest, is $37,357.

Gulf Oil Corporation/Terry's Service Station, Inc., et al., 4/5/89, RF300-291, et al.

The DOE issued a Decision and Order concerning nine Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. The Applications were approved using a presumption of injury. The sum of the refunds granted in this Decision, including accrued interest, is $18,846.

Gulf Oil Corporation/Thermagas, Inc., 4/7/89, RF300-357

The DOE issued a Decision and Order concerning an Application for Refund submitted by Thermagas, Inc. in the Gulf Oil Corporation special refund proceeding. Thermagas requested a refund which exceeded $5,000, and supported its claim with a demonstration that during the refund period it accumulated banks of unrecouped increased product costs which exceeded its potential refund, and that it did not pass through those costs to its customers. Accordingly, Thermagas was granted a refund amount of $8,203.

James W. Tate, 4/4/89, RC272-42

On August 12, 1988, the DOE issued a Decision and Order granting a crude oil proceeding refund to James W. Tate (Tate), Case No. RF272-34608. *Dennis Hart, et. al.*, (Case Nos. RF272-34600, *et al.*) (August 12, 1988). The DOE determined that this refund was a duplicate of one previously granted to Tate (Case No. RF 272-14179). *E.Y. Trucking, et al.*, (Case Nos. RF272-14001, *et al.*) (June 24, 2988). Accordingly, the DOE issued a Supplemental Order rescinding the second refund.

MCO Holdings, MGPC, Inc./Petrolane Gas Services, Ltd., 4/6/89, RF312-8

The DOE issued a Decision and Order granting an Application for Refund in the MCO Holdings, MGPC special refund proceeding. Petrolane was a reseller of MGPC propane and butane and submitted a cost bank which indicated that it had banked costs well in excess of its volumetric allocation. Additionally, Petrolane provided market price data from the Energy Information Administration (EIA) to indicate that it was competitively disadvantaged by its purchases from MGPC. The DOE rejected the firm's use of EIA pricing information in determining if it was competitively disadvantaged and determined that the use of pricing information in *Platt's Oil Handbook and Oilmanac* was a more appropriate source of market information for comparison. Because neither *Platt's* nor EIA had price information regarding butane during the period Petrolane purchased this product from MGPC (May 1974 through June 1975), the DOE presumed that purchases of butane followed a similar pricing pattern as purchases of propane from MGPC. Using this information, the DOE determined that Petrolane was competitively disadvantaged in its purchases from MGPC and was injured to the full extent of its allocable share of the consent order fund. After examining the firm's Application and supporting documentation, the DOE determined that the firm should receive a refund totaling $35,728 ($30,457 principal and 5,269 interest).

Murphy Oil Corporation/Board of Light & Power, City of Marquette, 4/5/89, RF309-271

The DOE issued a Decision and Order granting an Application for Refund filed by the Board of Light & Power, City of Marquette, Michigan (Marquette) in the Murphy Oil Corporation special refund proceeding. The applicant, a public utility, purchased directly from Murphy and is considered an end-user of Murphy products. Marquette filed a statement certifying that it would pass through any refund received to its customers and that it would notify the appropriate regulatory agency. Accordingly, Marquette was granted its full allocable share of $736 ($639 in principal plus $97 in interest).

Southern California Edison Co., et al., 4/5/89, RC272-36, et al.

The DOE issued a Supplemental Order modifying the terms of each Decision and Order in which any of the six utility claimants under consideration were granted refunds in the Crude Oil Subpart V refund proceeding. Originally, the Decisions and Orders specified that each of the claimants would be paid by check made payable to and sent to their attorney. These Decisions and Orders were modified to provide that the refund checks be made payable to the applicants and forwarded by electronic wire transfer in accordance with instructions submitted by each applicant to the DOE.

Transit Authority, City of Omaha, 4/7/89, RC272-45

On August 30, 1988, the DOE issued a Decision and Order granting a refund of $2,205 to the Transit Authority, City of Omaha (Omaha), Case No. RF272-13447. *G.T. Hamilton, Jr., et al.*, (Case Nos. RF272-13423, *et al.*) (August 30, 1988). The DOE determined that this refund was a duplicate of one granted to Omaha, Case No. RF272-5693, on August 16, 1988. *Eugene D. Gott, et al.*, (Case Nos. RF272-4261, *et al.*) (August 16, 1988). Accordingly, the DOE issued a Supplemental Order rescinding the refund granted to Omaha in *Eugene D. Gott, et al.*

Tri Valley Growers, Inc., 4/5/89, RC 272-35

The DOE issued a Supplemental Order concerning a Subpart V crude oil refund previously granted to Tri/Valley Growers, Inc. (Tri/Valley). *See Durand Area Schools*, 17 DOE ¶ 85,737 (1988). After the refund was paid, the DOE learned that Tri-Valley had filed a validly executed Refiners Escrow Release of Claims and had received a refund from the Refiners Escrow Account pursuant to the Stripper Well Settlement Agreement. In view of this fact, the DOE determined that Tri/Valley was ineligible to receive any refund in the Subpart V proceedings. Accordingly, the DOE rescinded the refund previously granted to the firm, and ordered Tri/Valley to remit to the DOE the amount of the refund, $1,920.

Dismissals

The following submissions were dismissed.

Name	Case No.
AM-PM Mini-Mart	RF304-3785
Ashdale Plaza Road Co	RF304-4221
Atlantic Aviation Corporation	RF300-8650
Balducci Service Station	RF300-8578
Bluewell Auto Center	RF300-2313
Brantley Gulf	RF300-8626
Campbell Oil Co., Inc	RF300-7672
Clifford Baker	RF307-2054
Cooks Getwell Gulf	RF300-7715
Crawford Oil Co	RF300-8948
D&J Oil Co	RF309-284
Deaton, Inc	RF309-214
Dick Kelly's ARCO	RF304-4214
E.G. Bradford & Sons, Inc	RF309-226
Eddie Truck Stop	RF300-9983
Farmland Industries, Inc	RF195-9
Flaughs Service	RF300-8603
Frank's Exxon	RF307-2072
George Hornbuckle	RF309-765
Jarrell Oil Co., Inc	RF313-3
Joe's ARCO	RF304-4228
Joseph Erpenbeck	RF304-1745
Ken Jones	RF307-2066
Knox Fuel Stop MN #77B	RF272-74323
Knox Fuel Stop MN #487	RF272-74324
Knox Fuel Stop MN #723	RF272-74325
Knox Fuel Stop MN #364A	RF272-74326
Knox Fuel Stop MN #410	RF272-74327
Knox Fuel Stop MN #258	RF272-74329
Knox Fuel Stop MN #487	RF300-10393
Knox Fuel Stop MN #77B	RF300-10394
Knox Fuel Stop MN #364A	RF300-10395
Knox Fuel Stop MN #723	RF300-10396
Knox Fuel Stop MN #258	RF300-10397
Knox Fuel Stop MN #410	RF300-10398
Knox Fuel Stop MN #487	RF300-10401
Knox Fuel Stop MN #410	RF300-10405
Knox Fuel Stop MN #77B	RF300-10407
Knox Oil of Texas	RF272-74328
Knox Oil of Texas	RF300-10399
Knox Truck Wash	RF272-74322
Knox Truck Wash	RF300-10392
Levy Gulf	RF300-7735
Lindsey Oil Co	RF300-7660
M and M Gulf Service	RF300-8488
M and M Oil, Inc	RF300-8500
Mobil Oil Corporation	RF195-11
Mount Home Exxon	RF307-5844
O'Neill Tire & Supply Co	RF304-4227
Parker Energy & Petroleum Co., Inc.	RF309-243
Pre Fab Transit	RF300-8446
Public Oil Co	RF309-226
Reds Oil Co	RF300-9989
Ron's ARCO Service 66	RF304-185
Saddle River Exxon	RF307-1793
Sysco Food System	RF300-7030
Vincents Bros. Service	RF304-3787
Webb's Oil Corporation	RF309-216

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

June 13, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 89-14930 Filed 6-22-89; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3607-2]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075. Availability of Environmental Impact Statements Filed June 12, 1989 Through June 16, 1989 Pursuant to 40 CFR 1506.9.

EIS No. 890156, Final, FHW, VA, VA-265/Danville Expressway Completion, US-58 to US-29, Funding and 404 Permit, City of Danville, Pittsylvania County, VA, Due: July 24, 1989, Contact: James Tumlin (804) 771-2371.

EIS No. 890157, Draft, COE, GU, Agana Bayfront Area Typhoon and Storm Surge Protection Facilities (Guam Comprehensive Study), Construction, Anigua to Dungca's Beach, GU, Due: August 7, 1989, Contact: James Maragos (808) 438-2263.

EIS No. 890158, Draft, FHW, HI, Kahekili Highway/US-83 Widening, Likelike Highway/US-83 to Kamehameha Highway and Interchange Construction at Likelike Highway/US-63, Funding, Island of Oahu, City and County of Honolulu, HI, Due: August 21, 1989, Contact: William Lake (808) 541-2700.

EIS No. 890159, Draft, FHW, VA, VA-31/James River Crossing Improvement, VA-10 to VA-5, Funding, Section 10 and 404 Permits, Coast Guard Permits, Surry, James City and Charles City Counties, VA, Due: August 7, 1989, Contact: James Tumlin (804) 771-2371.

EIS No. 890160, Draft, SCS, MS, Long Beach Watershed Plan, Flood Damage Reduction, Funding, Harrision County, MS, Due: August 7, 1989, Contact: Pete Heard (601) 965-5202.

EIS No. 890161, Draft, USA, TT, Kwajalein Atoll Ongoing and Strategic Defense Initiative Activities, Test Range Facility Construction and Support Services, Republic of the Marshall Islands, Due: August 7, 1989, Contact: LTC Keglovits (205) 895-3616.

EIS No. 890162, Draft, AFS, PA, Allegheny Reservoir Motel-Restaurant Complex, Site Selection and Construction, Allegheny National Forest, Warren County, PA. Due: August 14, 1989, Contact: David Wright (814) 723-5150.

EIS No. 890163, Draft, COE, MA, Saugus River and Tributaries Flood Damage Reduction Plan, Implementation, Lynn, Malden, Revere and Saugus Communities, Essex, Middlesex and Suffolk Counties, MA, Due: August 7, 1989, Contact: Joseph Horowitz (617) 647-8518.

EIS No. 890164, Draft, FHW, NC, Northern Wake Expressway, Construction, NC-55 Near Morrisville to US 64 Near Knightdale, Funding and 404 Permit Wake and Durham Counties, NC, Due: August 14, 1989, Contact: Kenneth Bellamy (919) 790-2859.

EIS No. 890165, Final, COE, IA, Mississippi River Flood Damage Reduction Facilities, Construction, Coon Rapids Dam to Ohio River, Muscatine and Louisa Counties, IA, Due: July 24, 1989, Contact: Robert Vanderjack (309) 788-6361.

EIS No. 890166, Final, BLM, CA, PLES I Geothermal Project, Geothermal Wellfield Development and 10 MWe Powerplant Construction/Operation, Plan of Operation, Utilization and Injection, Approval, Inyo National Forest, Mono County, CA, Due: July 24, 1989, Contact: Mike Ferguson (619) 872-4881.

Amended Notices

EIS No. 890149, Final, SFW, MA, RI, CT, NH, VT, ME, New England Atlantic Salmon Restoration Activities 1989-2021, Implementation, Connecticut, Pawcatuck, Merrimack, Saco, Union, Androscoggin, Kennebec, Penobscot, St. Croix, Meduxnekeag and Aroostook Rivers, CT, RI, MA, NH, VT and ME, Due: August 15, 1989, Contact: Dan Kimball (617) 965-5100. Inadvertently omitted from the 6-16-89 **Federal Register.**

Dated: June 20, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89-14934 Filed 6-22-89; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3607-3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared June 5, 1989 through June 9, 1989 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 7, 1989 (54 FR 15006).

Draft EISs

ERP No. D–AFS–J61074–MT, Rating EC2, White Stallion Timber Sale Management, Implementation, Darby Range District, Bitterroot National Forest, Ravalli County, MT.

Summary: EPA believes that the draft EIS does not support selection of Alternative B as the preferred alternative and requests that the final EIS provide the rationale for selecting Alternative B. EPA has concerns regarding the limited monitoring proposed for the timber sale and requests that the final EIS provides specific information on planned monitoring and feedback mechanisms.

ERP No. D–AFS–L82010–00, Rating LO, Pacific Northwest Region National Forests, Nursery Pest Management Control Plan, Implementation, Skamania County, WA and Lane, Douglas, Deschutes and Jackson Counties, OR.

Summary: EPA has no objections to the preferred alternatives as described in the draft EIS.

ERP No. D–NPS–L67023–AK, Rating E01, Wrangell-St. Elias National Park and Preserve, Mining Operations Management Plan, Implementation, AK.

Summary: EPA determined that the proposed action entails significant cumulative environmental impacts to wetlands and wildlife habitat that must be avoided through appropriate controls. The draft EIS adequately addresses potentially significant environmental impacts. However, further explanation of the relative impacts and controls for each alternative should be provided.

ERP No. D–NPS–L67024–AK, Rating E01, Denali National Park and Preserve, Mining Operations Management Plan, Implementation, AK.

Summary: EPA determined that the proposed action entails significant cumulative environmental impacts to wetlands and wildlife habitat that must be avoided through appropriate controls. The draft EIS adequately addresses potentially significant environmental impacts. However, further explanation of the relative impacts and controls for each alternative should be provided.

Final EISs

ERP No. F–FHW–K40162–CA, Ventura County Routes 23 and 118 Freeway Gap Closure, Rt–23 Freeway at New Los Angeles Avenue to Rt–118 Freeway at College View Avenue, Funding, 404 Permit, Moorpark City, Ventura County CA.

Summary: EPA requested that two features be added to the wetlands mitigation proposal to ensure that wetlands mitigation areas are protected for the life of the project and that the mitigation plan contains specific criteria for evaluating the success of mitigation habitats.

Dated: June 20, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89–14935 Filed 6–22–89; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3606–9]

Small Business Competitiveness Demonstration Program; Plan for Expansion in Targeted Industry Categories

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: This notice invites public comment on EPA's proposed plan to expand small business participation in 10 industry categories pursuant to Title VII of the "Business Opportunity Development Reform Act of 1988", Pub. L. 100–565.

DATE: Comments are due in writing on or before July 24, 1989.

ADDRESS: Comments should be addressed to: Environmental Program Agency, Office of Small and Disadvantaged Business Utilization (A–149C), 401 M Street, SW., Washington, DC 20460. ATTN: Margie A. Wilson.

FOR FURTHER INFORMATION CONTACT: Margie A. Wilson, at (703) 557–7305 (FTS 557–7305).

SUPPLEMENTARY INFORMATION: Title VII of the "Business Opportunity Development Reform Act of 1988" seeks to demonstrate whether targeted goaling and management techniques can expand Federal contract opportunities for small business in industry categories where such opportunities historically have been low despite adequate numbers of small business contractors in the economy. EPA has been identified as a participant in the demonstration program. For purposes of expansion of the demonstration program EPA has targeted the following industries:

Description	Product/Service Code
(1) ADP Facilities Management Services	R301
(2) Other ADP Services	R399
(3) Other Environmental Services, Studies & Analytical Support	F999
(4) Other Research & Development	A211
(5) Water Pollution Research & Development	AH31
(6) Water Quality Support Services	F103
(7) Other Natural Resources Management Services	F099
(8) Air Quality Support Services	F101
(9) Other Management Support Services	R799
(10) Other Business Consultant Services	R421

EPA's Plan to Expand Small Business Participation in 10 Industry Categories EPA has three major buying facilities located in Washington, DC; Cincinnati, Ohio; and Research Triangle Park, North Carolina. A small business representative is assigned to each buying facility to assist and promote small business, including small disadvantaged, and women-owned businesses in obtaining acquisition opportunities with EPA. EPA plans to increase small business participation in the 10 selected categories through its outreach efforts which include the following:

—Selecting the ten (10) industry categories amenable to increase small business participation.
—Developing an instructional program to train the Agency's procurement personnel in their roles and responsibilities in implementing the provisions under the law.
—De-emphasizing, within the technical evaluation criteria, the corporate history requirement, and substituting technical and professional qualifications whenever possible.
—Breaking out requirements to allow more participation by small businesses in areas where their participation has been historically low or nonexistent.
—Making sure that copies of solicitations are mailed directly to small businesses.
—Developing outreach programs to help small businesses become more competitively involved in the Agency acquisition activities.

Date: June 19, 1989.

John M. Ropes,

Director, Office of Small and Disadvantaged Business Utilization.

[FR Doc. 89–14916 Filed 6–22–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act.

SUMMARY: The submission is summarized as follows:

Type of Review: Extension of expiration date without any change in substance or method of collection
Title: Reports of Indebtedness of Executive Officers and Principal Shareholders to Correspondent Banks and to Own Bank
Form Number: FFIEC 004
OMB Number: 3064–0023
Expiration Date of Current OMB Clearance: September 30, 1989
Frequency of Response: Annually
Respondents: Insured State nonmember banks and their executive officers and principal shareholders
Number of Respondents: 33,516
Number of Responses Per Respondent: 1
Total Annual Responses: 33,516
Average Number of Hours Per Response: 2
Total Annual Burden Hours: 67,032
OMB Reviewer: Gary Waxman (202) 395–7340, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office building, Washington, DC 20503
FDIC Contact: John Keiper, (202) 898–3810, Assistant Executive Secretary, Room 6069, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429
Comments: Comments on this collection of information are welcome and should be submitted on or before August 21, 1989.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed. Comments regarding the submission should be addressed to the OMB reviewer listed. The FDIC would be interested in receiving a copy of the comments.

SUPPLEMENTARY INFORMATION: The FDIC is requesting OMB approval to extend the use of form FFIEC 004 which is designed to assist executive officers and principal shareholders of FDIC-supervised banks in meeting statutory reporting requirements as implemented by FDIC regulation 12 CFR Part 349. According to 12 CFR Part 349, if during any calendar year an executive officer or principal shareholder of an insured State nonmember bank or a related interest of such a person has outstanding an extension of credit from a correspondent bank, the executive officer or principal shareholder must make a written report to the board of directors of the insured State nonmember bank on or before January 31 of the following year. Also, upon receipt of a written request, the bank is required to disclose to the requester the identity of bank insiders whose indebtedness to the bank exceeds certain amounts.

Dated: June 16, 1989.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 89–14883 Filed 6–22–89; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200237–001
Title: City of Long Beach Terminal Agreement.
Parties: City of Long Beach (City), Lucky Cement Corporation (LCC).
Synopsis: The Agreement amends the basic agreement (Agreement No. 224–200237) which provides for LCC's use of certain premises on Pier A, Berth 209, harbor of the City of Long Beach for use as a ground slag-cement facility. It provides for LCC to pay, subject to a reimbursement from the City, for demolishing, removing and disposing of all structures and improvements on the premises except for the asbestos roof on the structures and the Rapistan conveyor sortation system.

Agreement No.: 224–003930–002.
Title: Port Authority of New York & New Jersey Terminal Agreement.
Parties: Port Authority of New York & New Jersey Universal Maritime Service Corp.
Synopsis: The Agreement provides that the unit rate for handling copper in breakbulk at the Red Hook Terminal shall be an amount equal to the wharfage charge for "all cargo" as published in Port Authority's Marine Terminal Tariff PA–9. The Agreement revises the method of calculating the usage rental and container rental and revises Agreement provisions involving the minimum limits of liability insurance.

By Order of the Federal Maritime Commission.

Ronald D. Murphy,

Assistant Secretary.

Dated: June 20, 1989.

[FR Doc. 89–14886 Filed 6–22–89; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency For Toxic Substances and Disease Registry

[ATSDR–10]

Availability of Final Versions of First 25 Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Services (PHS), Department of Health and Human Services (DHHS).

ACTION: Notice.

SUMMARY: This notice announces the availability of five of the final versions of the first 25 toxicological profiles prepared by ATSDR.

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund), as amended by the Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99–499) requires that ATSDR compile a priority list of at least 100 hazardous substances most commonly found at facilities on the CERCLA National Priorities List (NPL), and which are determined to pose the most significant potential threat to human health. The list identifying the first 100 hazardous substances was published in the **Federal Register** on April 17, 1987 (52 FR 12866), as required by CERCLA section 104(i)(2)(A). Section 104(i)(3) of CERCLA further requires that the Administrator of ATSDR prepare toxicological profiles for the hazardous substances included on the priority list.

Notice of the availability of the first 25 draft toxicological profiles for public review and comment was published in the **Federal Register** on October 15, 1987 (52 FR 38340), with notice that a 90-day public comment period would be provided for each profile, starting from the actual release date. Following the close of each comment period, chemical

specific comments were addressed, and where appropriate, changes were incorporated into each profile. The public comments, the classification of and response to those comments, and other data submitted in response to the Federal Register notice bear the docket control number ATSDR–2. This material is available for public inspection at ATSDR, Trailer 11, 4770 Buford Highway, Chamblee, GA 30341 between 8:00 a.m. and 4:30 p.m. Monday through Friday except legal holidays.

Availability

This notice is to announce the availability of five of ATSDR's final toxicological profiles for the first 25 substances as mandated by CERCLA. Additional final profiles will be announced in the **Federal Register** as they become available. The following toxicological profiles are now available through the U.S. Department of Commerce, National Technical Information Service, Springfield, VA 22161:

Toxicological profile	Document number	CAS #
Arsenic	ATSDR/TP–88/02	7440–38–2
Cadmium	ATSDR/TP–88/08	7440–43–9
Heptachlor/Heptachlor Epoxide	ATSDR/TP–88/16	76–44–8/1024–57–3
Methylene Chloride	ATSDR/TP–88/16	75–09–2
Di(2-ethylhexyl)phthalate	ATSDR/TP–88/15	117–81–7

Dated: June 16, 1989.

Walter R. Dowdle,

Acting Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 89–14657 Filed 6–22–89; 8:45 am]

BILLING CODE 4160–70–M

Family Support Administration

Forms Submitted to the Office of Management and Budget for Clearance

The Family Support Administration (FSA) will publish on Fridays information collection packages submitted to the Office of Management and Budget (OMB) for clearance, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Since the last scheduled publication for June 9, 1989, the following package was submitted to OMB: For a copy of package, call the FSA, Reports Clearance Officer on 202–252–5598.

FSA Grantee Survey of the Low Income Home Energy Assistance Program (Forms FSA–283 and FSA–284) are used to obtain preliminary and updated estimates of sources and uses of federal and nonfederal LIHEAP funds, and households to be assisted during the fiscal year.

Form FSA–283, Winter Telephone Survey (0970–0063)—Respondents: State or local governments; Number of Respondents: 51; Frequency of Response: 1; Average Burden per Response: 3.25 hours; Estimated Burden: 166 hours.

Form FSA–284, Summer Telephone Survey (0970–0076)—Respondents: State or local governments; Number of Respondents: 51; Frequency of Response: 1; Average Burden per Response: 3.00 hours; Estimated Burden: 153 hours.

OMB Desk Clearance Officer: Justin Kopca.

Written comments and recommendations for the proposed information collections should be sent directly to the OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3201, 725 17th Street, NW., Washington, DC 20503.

Date: June 15, 1989.

Sylvia E. Vella,

Deputy Associate Administrator, Office of Management and Information Systems, FSA.

[FR Doc. 89–14822 Filed 6–22–89; 8:45 am]

BILLING CODE 4150–04–M

Forms Submitted to the Office of Management and Budget for Clearance

The Family Support Administration (FSA) will publish on Fridays, information collection packages submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Following is the **Federal Register** submission by FSA:

(For a copy of package, call the FSA, Reports Clearance Officer on 202–252–5598).

Title IV–F Jobs Expenditure Report, FSA–331—This form is used to issue quarterly State grant awards under the JOBS program effective July 1, 1989. It also tracks matching rate provisions of section 403(k) and 403(l) of the Social Security Act as amended.

Respondents: State Agencies.

Number of Respondents: 55.

Frequency of Response: Quarterly.

Average Burden per Response: 1.75 hours.

Estimated Annual Burden: 385 hours.

OMB Desk Officer: Justin Kopca.

Written comments and recommendations for the proposed information collection should be sent directly to the OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3201, 1725 17th Street, NW., Washington, DC 20503.

Date: June 14, 1989.

Naomi B. Marr,

Associate Administrator, Office of Management and Information Systems.

[FR Doc. 89–14668 Filed 6–22–89; 8:45 am]

BILLING CODE 4150–04–M

Food and Drug Administration

Advisory Committees; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings: The following advisory committee meetings are announced:

Radiologic Devices Panel

Date, time and place. July 10 and 11, 1989, 9 a.m., Rm T–416, Twinbrook Bldg. No. 4, 12720 Twinbrook Parkway, Rockville, MD.

Type of meeting and contact person. Open public hearing, July 10, 1989, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 4 p.m.; closed presentation of data, 4 p.m. to 5 p.m.; open public hearing, July 11, 1989, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 4 p.m.; closed presentation of data, 4 p.m. to 5 p.m.; Adrianne Galdi, Center for Devices and Radiological Health (HFZ–430), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7514.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before June 26, 1989, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss premarket approval applications (PMA's) for hyperthermia devices. The committee may also discuss clinical study requirements.

Closed presentation of data. The committee may review and/or discuss trade secret and/or confidential commercial information relevant to PMA's. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Neurological Devices Panel

Date, time, and place. July 14, 1989, 9 a.m., Rm. T–416, Twinbrook Bldg. No. 4, 12720 Twinbrook Parkway, Rockville, MD.

Type of meeting and contact person. Open committee discussion, 9 a.m. to 10 a.m.; closed presentation of data, 10 a.m. to 11 a.m.; open public hearing, 11 a.m. to 12 m., unless public participation does not last that long; open committee discussion, 1 p.m. to 3 p.m.; Robert Munzner, Center for Devices and Radiological Health (HFZ–430), Food and Drug Administration 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7226.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before July 7, 1989, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss processed human dura mater that is used for cranial surgery and make recommendations regarding classification. The committee will also discuss a premarket approval application (PMA) for a cerebrospinal fluid (CSF) shunt valve.

Closed presentation of data. The committee will discuss trade secret and/or confidential commercial information regarding the PMA for the CSF shunt valve. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Vaccines and Related Biological Products Advisory Committees

Date, time, and place. July 20 and 21, 1989, 8:30 a.m., Lister Hill Auditorium, National Institutes of Health, Bldg. 38A, 8600 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, July 20, 1989, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 3:30 p.m.; closed committee deliberations, 3:30 p.m. to 5:30 p.m.; closed committee deliberations, July 21, 1989, 8:30 a.m. to 2:30 p.m.; Jack Gertzog, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs for use in the diagnosis, prevention, or treatment of human diseases. The committee also reviews and evaluates the quality and relevance of FDA's research program which provides scientific support for the regulation of these products.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before July 6, 1989, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On July 20, 1989, the committee will discuss *Hemophilus influenzae* Type B Conjugate Vaccines.

Closed committee deliberations. On July 20, 1989, and on July 21, 1989, the committee will review trade secret or confidential commercial information relevant to pending license applications and investigational new drugs in the Center for Biologics Evaluation and Research. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Anesthesiology and Respiratory Therapy Devices Panel

Date, time, and place. July 27, 1989, 9 a.m., Rm. 416, Twinbrook Bldg. No. 4, 12720 Twinbrook Parkway, Rockville, MD.

Type of meeting and contact person. Open committee discussion, 9 a.m. to 9:15 a.m.; open public hearing, 9:15 a.m. to 10:15 a.m., unless public participation does not last that long; open committee discussion, 10:15 a.m. to 11 a.m.; closed presentation of data, 11 a.m. to 11:30 a.m.; closed committee deliberations, 11:30 a.m. to 12 m.; Diane Minear, Center for Devices and Radiological Health (HFZ–430), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–8014.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before July 14, 1989, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss a premarket approval application (PMA) for an infant high frequency ventilator.

Closed presentation of data. The committee may discuss trade secret and/or confidential commercial information regarding the above PMA. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Closed committee deliberations. The committee will discuss trade secret or confidential commercial information regarding the PMA listed above. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee

deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedure for electronic media coverage of FDA's public administrative proceedings, including hearing before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, Rm. 12A–16, 5600 Fisher Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fisher Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94–409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: June 14, 1989.

James S. Benson,

Acting Commissioner of Food and Drugs.

[FR Doc. 89–14872 Filed 6–22–89; 8:45 am]

BILLING CODE 4160–01–M

Public Health Service

Office of the Assistant Secretary for Health, Native Hawaiian Health Care Act of 1988; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of authority of May 26, 1989 from the Secretary of Health and Human Services to the Assistant Secretary for Health, the Assistant Secretary for Health has redelegated all of the authorities delegated to him under the Native Hawaiian Health Care Act of 1988, as amended hereafter, to the Administrator, Health Resources and Services Administration. Excluded was the authority to issue regulations and to submit reports to the Congress.

Redelegation

These authorities may be redelegated.

Effective Date

This delegation became effective on June 14, 1989.

James O. Mason,

Assistant Secretary of Health.

Date: June 14, 1989.

[FR Doc. 89–14839 Filed 6–22–89; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N–89–1917; FR–2606]

Unutilized and Underutilized Federal Buildings and Real Property Determined by HUD to Be Suitable for Use for Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

DATE: June 23, 1989.

ADDRESS: For further information, contact Morris Bourne, Director, Transitional Housing Development Staff, Room 9140, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 755–9075; TDD number for the hearing- and speech-impaired (202) 426–0015. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 1, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD is publishing this Notice to identify Federal buildings and real property that HUD has determined are suitable for use for facilities to assist the homeless. The Notice also clarifies the process to be used by homeless assistance providers in applying for use of the properties determined suitable by HUD. The properties described in this Notice were identified from information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies.

The Order requires HUD to take certain steps to implement section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), which sets out a process by which unutilized or underutilized Federal properties may be made available to the homeless. Under section 501(a), HUD is to collect information from Federal landholding agencies about such properties and then to determine, under criteria developed in consultation with the Department of Health and Human Services (HHS) and the Administration of General Services (GSA), which of those properties are suitable for facilities to assist the homeless. The Order requires HUD to publish, on a weekly basis, a **Federal Register** Notice identifying property determined suitable. HUD published the first Notice on January 9, 1989 (54 FR 667).

The properties identified in this Notice may ultimately be available for use by the homeless, but they are first subject to review by the landholding agencies pursuant to the court's Memorandum of December 14, 1988 and section 501(b) of the McKinney Act. Section 501(b) requires HUD to notify each Federal agency with respect to any property of such agency that has been identified as suitable. Within 30 days from receipt of such notice from HUD, the agency must transmit to HUD: (1) Its intention to declare the property excess to the agency's need or to make the property available on an interim basis for use as facilities to assist the homeless; or (2) a statement of the reasons that the property cannot be declared excess or made available on an interim basis for use as facilities to assist the homeless.

First, if the landholding agency decides that the property cannot be declared excess or made available to the homeless for use on an interim basis, the property will no longer be available.

Second, if the landholding agency declares the property excess to the agency's need, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law and the December 12, 1988 Order and December 14, 1988 Memorandum, subject to screening by other Federal agencies that may wish to make use of the property.

Finally, in lieu of declaring any particular property as excess, the landholding agency may decide to make the property available to the homeless for use on an interim basis.

Prior to May 20, 1989, in weekly **Federal Register** Notices, HUD stated that: (1) For properties determined as suitable for facilities to assist the homeless, and about which either the landholding agencies had stated an intent to declare them excess or which GSA had subsequently accepted as excess, applications by homeless providers to utilize the properties must be submitted to HHS; but (2) for properties that landholding agencies had stated an intent to make available on an interim basis, the applications must be submitted directly to the agencies, rather than to HHS. A Court Order issued on May 22, 1989 in *National Coalition for the Homeless* v. *Veterans Administration* now requires HUD to accept and process applications for all properties determined suitable by HUD.

As of the date of this Notice, any homeless assistance provider interested in any property identified in the **Federal Register** as suitable should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HUS, Room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. If an applicant is interested in specific details regarding a particular property (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), the applicant should consult with the contact person at the landholding agency whose name is listed in the **Federal Register** Notice.

In order to maximize the opportunity to utilize a suitable property, homeless assistance providers should submit expressions of interest within 30 days from the date of publication in the **Federal Register** that the property has been determined suitable. For this 30-day period, during which the landholding agencies, pursuant to section 501(b), state their intentions with regard to the properties determined as suitable, the landholding agencies are prohibited by the December 12, 1988 Order from transferring or disposing of these properties. Furthermore, if HHS receives an expression of interest on a property, and the landholding agency has stated an intent to declare it excess or make it available on an interim basis, the Order prohibits the landholding agencies from transferring or disposing of the property until after HHS has completed procedssing the application. Conversely, after the 30-day period, if HHS has not received any expression of interest in the property from a homeless assistanced provider, the landholding agency is free to retain, transfer, or dispose of the property in accordance with applicable law, even if it has stated an intent to declare a property excess or make it available for use on an interim basis.

If an applicant submits an expression of interest within the 30 days after the determination of suitability and before the landholding agency's statement of intention about the property, HHS will notify the applicant of the option chosen by the landholding agency as soon as HHS receives the information. If the landholding agency states an intent to declare the property excess or make it

available on an interim basis, HHS will process an application. If the landholding agency states that it will not declare the property excess or make it available on an interim basis, HHS will provide that information to the applicant and will not process any application.

Applicants wishing to submit applications after the 30-day period should contact HHS to determine if the landholding agency stated an intent to declare the property excess or make it available on an interim basis; if so, applicants should consult with the contact person at the landholding agency whose name is listed in the **Federal Register** to confirm that the agency has not retained, transferred, or disposed of the property.

In accordance with the December 12, 1988 Order, HHS will evaluate, within 15 days of receipt, a complete application and issue a recommendation on whether the application is approvable. If, upon completion of its review, HHS determines that an application is approvable, it will notify the landholding agency (in the case of a property declared available for interim use) or GSA (in the case of a property accepted as excess), which will decide whether to lease, license, or permit the property to the applicant. If the landholding agency agrees to make the property available: (1) In the case of "interim use" properties, the agency will take final action regarding the lease, license, or permit document, in consultation with the applicant; (2) in the case of "excess" properties, HHS will enter into a lease agreement with the applicant, once assignment is received from GSA.

If HHS receives a complete competing application for a suitable property within a reasonable time after receipt of the first complete application (approximately five days) HHS will evaluate and rank each approvable application. HHS will forward its recommendation to the landholding agency, listing the approvable applications that have been received and their relative ranks. The landholding agency will be responsible for making a final decision regarding whether to lease, license, or permit the property. If HHS receives approvable applications for a property subsequent to submission to the landholding agency of other approvable applications, HHS will review, process, and forward the new applications to the landholding agency for its action, but will not attempt to rate the application against the previously submitted application(s).

If HHS does not approve an application, HHS will so notify the applicant and the landholding agency. If HHS disapproves all applications, it will notify the landholding agency, which may then retain, transfer, or dispose of the property in accordance with applicable law.

Homeless assistance provides may also submit to HHS applications for suitable properties listed in **Federal Register** Notices published between February 7, 1989 and May 20, 1989, for which landholding agencies had stated an intent to make them available on an interim basis. Landholding agencies are encouraged to hold these properties available for expressions of interest from homeless assistance providers for 30 days from the date of this Notice. (Providers should, in advance of submission of any expression of interest, consult with the contact person at the landholding agencies listed in the **Federal Register** Notices to confirm that a property has not been retained, transferred, or disposed of by the agency.)

Public bodies and private nonprofit organizations wishing more information about a particular property identified in today's Notices should contact the appropriate landholding agency at the following addresses: U.S. Air Force: Bill Kimball, HQ–USAF/LEER, Washington, DC 20332–0500 (202) 767–4384; GSA: James Folliard, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405 (202) 535–7067; Dept. of Veterans Affairs: Linda Tribby, 084A, Real Property Program Management, 810 Vermont Ave. NW., Washington, DC 20420 (202) 233–5028; U.S. Navy: Andrea Wohfeld, Code 20 YAW, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332 (202) 325–7342; U.S. Army: (Military Facilities) HQ–DA, Attn: DAEN–ZCI–P–Robert Conte; Room 1E671 Pentagon, Washington, DC 20360–2600 (202) 693–4583; (Corps of Engineers civil works projects) Bob Swieconek, HQ–US Army Corps of Engineers, Attn: CERE–MN, 20 Massachusetts Avenue NW, Washington, DC 20415–1000 (202) 272–1750. (These are not toll-free numbers).

Date: June 16, 1989.

James E. Schoenberger,

General Deputy, Assistant Secretary for Housing—Federal Housing Commissioner.

Suitable Land (By State)

(Number of properties ( ))

Arkansas

Lock & Dam 5 (1)
Wrightsville Park
Arkansas River, AR
Landholding Agency: ARMY COE
Location: Jefferson and Pulaski Cos.
Comment: 144 acres, Boat Ramp

Beaver Lake (1)
Pine Tap
Rogers, AR
Landholding Agency: ARMY COE
Comment: 17 acres

Slate Gap (1)
Beaver Lake
Rogers, AR
Landholding Agency: ARMY COE
Comment: 288 acres

Alpine
Beaver Lake
Rogers, AR
Landholding Agency: ARMY COE
Comment: 49 acres

Ventris
Beaver Lake
Rogers, AR
Landholding Agency: ARMY COE
Comment: 73 acres and Boat Ramp

Blue Springs (1)
Beaver Lake
Rogers, AR
Landholding Agency: ARMY COE
Comment: 66 acres and Boat Ramp

Indian Point (1)
Bull Shoals Lake
Mountain Home, AR
Landholding Agency: ARMY COE
Location: White River—Arkansas Mountain
Comment: 400 acres

Eagle Nest (1)
Bull Shoals Lake
Mountain Home, AR
Landholding Agency: ARMY COE
Location: White River—Arkansas and Mo.
Comment: 50 acres

Fairview (1)
Bull Shoals Lake
Mountain Home, AR
Landholding Agency: ARMY COE
Comment: 70 acres

Gulley Spring (1)
Bull Shoals Lake
Mountain Home, AR
Landholding Agency: ARMY COE
Comment: 35 acres

Horse Shoe Band (1)
Bull Shoals Lake
Mountain Home, AR
Landholding Agency: ARMY COE
Comment: 615 acres

Sister Creek (1)
Bull Shoals Lake
Mountain Home, AR
Landholding Agency: ARMY COE
Comment: 480 acres

Yocum Creek (1)
Bull Shoals Lake
Mountain Home, AR
Landholding Agency: ARMY COE
Comment: 90 acres

Sugar Loaf (1)
Bull Shoals Lake
Mountain Home, AR
Landholding Agency: ARMY COE
Comment: 50 acres

Group Use (1)
Bull Shoals Lake
Mountain Home, AR
Landholding Agency: ARMY COE
Comment: 165 acres

Damsite East (1)
David D. Terry Lock & Dam
Pulaski County, AR
Landholding Agency: ARMY COE
Comment: 45 acres, pav, boat ramp, sealed toilet

Brush Lake (1)
Nimrod Lake
Perry & Yell Counties, AR
Landholding Agency: ARMY COE
Comment: 128 acres

Hogan Creek (1)
Nimrod Lake
Perry & Yell Counties, AR
Landholding Agency: ARMY COE
Comment: 129 acres

Rover (1)
Nimrod Lake
Perry & Yell Counties, AR
Landholding Agency: ARMY COE
Comment: 232 acres

Nimrod Lake (1)
Highway 27
Perry & Yell Counties, AR
Landholding Agency: ARMY COE
Comment: 48 acres

Salt Creek Park (1)
Greers Ferry Lake
Heber Springs, AR
Landholding Agency: ARMY COE
Comment: 107 acres

French Creek (1)
Gillham Lake
Gillham, AR
Landholding Agency: ARMY COE
Comment: 430 acres—Rd. owned by Weyerhauser

Mail Ford Panther Creek (1)
Dierks Lake
Deirks, AR
Landholding Agency: ARMY COE
Comment: 210 acres

Quarry Bluff (1)
Blue Mountain Lake
Logan & Yell Counties, AR
Landholding Agency: ARMY COE
Comment: 252 acres

Baird Mountain (1)
Table Rock Lake
Branson, AR
Landholding Agency: ARMY COE
Comment: 90 acres

California

Norton AFB Communication (1)
6 & Central Highland
San Bernardino, CA
Landholding Agency: AIR FORCE
Location: Lease expires 12/31/89 30.3 AC 5–6 acres used by little league baseball
Comment: Lease expires 12/89—30 days notice

Colorado

Bennett Army National Guard Site (1)
Arapaho, CO
Landholding Agency: ARMY
Location: 30 miles S.E. of Denver—Silos and underground rooms 242 acres
Comment: Scheduled for disposal under base closure and realignment out

Georgia

U.S. Honor Faim £1 (1)
McDonald Blvd
Atlanta, GA
Landholding Agency: GSA
Location: 24.25 Fee Acres

Indiana

Cecil M. Harden Lake—Walker Ramp (1)
Route 1, Box 129
Rockville, IN 47872–
Landholding Agency: ARMY COE
Comment: 20% in floodway 30 acres

Cecil Harden Lake—Hollandburg Site (1)
RR1, Box 129
Rockville, IN 47872–
Landholding Agency: ARMY COE
Comment: 43 acres

Brookville Lake—Battlepoint Site (1)
P.O. Box 230
Brookville, IN
Landholding Agency: ARMY COE
Comment: 10% in floodway—680 acres

Kentucky

Buckhorn Lake (1)
Trace Branch Road
Hyden, KY
Landholding Agency: ARMY COE
Comment: 12 plus vacant acres

Massuchusetts

Otis Air National Guard Base (1)
Cape Cod, MA
Landholding Agency: AIR FORCE
Location: Land 119.5 acres. Parcel "I" 5700 Block

Otis Air National Guard Base (1)
Cape Cod, MA
Landholding Agency: AIR FORCE
Location: Land 130.2 acres

Otis Air National Guard Base (1)
Cape Cod, MA
Landholding Agency: AIR FORCE
Location: 15.7 acres w/barracks building 425
Comment: Land suitable

Otis Air National Guard Base (1)
Cape Cod, MA
Landholding Agency: AIR FORCE
Location: Property 2406 Building 154 acres. Friable asbestos present
Comment: Land is suitable

Otis Air National Guard Base (1)
Cape Cod, MA
Landholding Agency: AIR FORCE
Location: 27.9 acres

Minnesota

Land (1)
Fort Snelling
St. Paul, MN
Landholding Agency: DOVA
Number of Properties: 1
Comment: 5.76 acres surrounds bldgs £227–229, 240–249, and 253 one building occupied

Dept. of Veterans Affairs (1)
5629 Minnehaha Avenue
Minneapolis, MN
Landholding Agency: DOVA
Comment: 12.1 used for parking until 1990

Missouri

Clearwater Lake (1)
Riverside
Piedmont, MO
Landholding Agency: ARMY COE
Comment: 244 acres

Clearwater Lake (1)
Funk Branch
Piedmont, MO
Landholding Agency: ARMY COE
Comment: 30 acres

Clearwater Lake (1)
Thurman Pt.
Piedmont, MO
Landholding Agency: ARMY COE
Comment: 64 acres with boat ramp

Coombs Ferry (1)
Table Rock Lake
Branson, MO
Landholding Agency: ARMY COE
Location: Also in Arkansas. Paved boat ramp, sealed toilet, picnic tables
Comment: 66 acres

Washington

Reston Way National Guard Site (1)
3001 Starr Street
Tacoma, WA
Landholding Agency: ARMY
Comment: 5.5 acres

West Virginia

Morgantown L/D Monongahela Rivers (2)
Box 3, R.D £2
Morgantown, WV
Landholding Agency: ARMY COE
Location: 2 Parcels
Comment: 15.& acres, 10% in Floodway

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Suitable Buildings (by State)

(Number of Properties ( ))

Alabama

Coffeeville Lock & Dam (1)
Star Route, Box 11
Blandon Springs, AL 36919–
Landholding Agency: ARMY COE
Location: Property TV–15
Comment: Adjacent to lock dam where 1,000 ton vessels transport hazardous flammable mat.

Selden Lock & Dam (3)
Route 21
Sawyerville, AL 36776–
Landholding Agency: ARMY COE
Location: Property TV–21, TV–22, TV–24

Claiborne Lock & Dam (1)
Route 1, Box 50
Franklin, AL
Landholding Agency: ARMY COE
Location: Property 39

Millers Ferry Lock & Dam (1)
Route 1, Box 102
Camden, AL
Landholding Agency: ARMY COE
Location: Property TU–48

Henry Lock & Dam (1)
Route 1, Box 474
Lowndesboro, AL 36752–
Landholding Agency: ARMY COE
Location: Property TV–49

Arkansas

Hot Springs National Park (1)
116 Sleepy Valley Road
Hot Springs, AR
Landholding Agency: GSA
Location: Property 7–I–AR–415–S
Detached Home—for off-site removal only.
Comment: Building must be removed from present site.

Hot Springs National Park (1)
213 Congress
Hot Springs, AR
Landholding Agency: GSA
Location: Property 7–I–AR–415–S
Detached Home—for off-site removal only.
Comment: Building must be removed from present site.

Hot Springs National Park (1)
120 Clinton
Hot Springs, AR
Landholding Agency: GSA
Location: Property 7–I–AR–415–S
Detached Home—for off-site removal only.
Comment: Building must be removed from present site.

Hot Springs National Park (1)
113 Clinton
Hot Springs, AR
Landholding Agency: GSA
Location: Property 7–I–AR–415–S
Detached Home—for off-site removal only.
Comment: Building must be removed from present site.

Hot Springs National Park (1)
203 Congress
Hot Springs, AR
Landholding Agency: GSA
Location: Property 7–I–AR–415–S
Detached Home—for off-site removal only.
Comment: Building must be removed from present site.

Hot Springs National Park (1)
840 Music Mtn. Road
Hot Springs, AR
Landholding Agency: GSA
Location: Property 7–I–AR–415–S
Comment: Building must be removed from present site.

California

Pasadena Detachment Off. Naval Research (1)
1030 E. Green Street
Pasadena, CA
Landholding Agency: NAVY
Comment: Asbestos present vacant building 41,000 square feet

Edwards AFB (1)
Edwards AFB, CA
Landholding Agency: AIR FORCE
Location: Property 513 water supply building
Comment: small building—unknown contaminates

Georgia

Fort Benning (1)
Trainee Barracks
Muscogee, GA
Landholding Agency: ARMY
Location: Property 4903

Fort Benning (1)
Trainee Barracks
Muscogee, GA
Landholding Agency: ARMY
Location: Property 4904

Fort Benning (1)
Trainee Barracks
Muscogee, GA
Landholding Agency: ARMY
Number of Properties: 1
Location: Property 4905

Fort Benning (1)
Det. Day Room
Muscogee, GA
Landholding Agency: ARMY
Location: Property 4906

Fort Benning (10)
Enlisted personnel dining room
Muscogee, GA
Landholding Agency: ARMY
Location: Property 4907

Fort Benning (1)
Enlisted personnel dining room
Muscogee, GA
Landholding Agency: ARMY
Location: Property 4908

Fort Benning (1)
Det Day Room
Muscogee, GA
Landholding Agency: ARMY
Location: Property 4909

Fort Benning (1)
Trainee Barracks
Muscogee, GA
Landholding Agency: ARMY
Location: Property 4910

Fort Benning (1)
Trainee Barracks
Muscogee, GA
Landholding Agency: ARMY
Location: Property 4911

Fort Benning (1)
Trainee Barracks
Muscogee, GA
Landholding Agency: ARMY
Location: Property 4912

Fort Benning (1)
Arms Building
Muscogee, GA
Landholding Agency: ARMY
Location: Property 4914

Fort Benning (1)
Company Headquarters Building
Muscogee, GA
Landholding Agency: ARMY
Location: Property 4915

Fort Benning (1)
General Storehouse
Muscogee, GA
Landholding Agency: ARMY
Location: Property 4916

Fort Benning (1)
Arms Building
Muscogee, GA
Landholding Agency: ARMY
Location: Property 4917

Fort Benning (1)
Trainee Barracks
Muscogee, GA
Landholding Agency: ARMY
Location: Property 4918

Fort Benning (1)
Trainee Barracks
Muscogee, GA
Landholding Agency: ARMY
Location: Property 4919

Fort Benning (1)
Trainee Barracks
Muscogee, GA
Landholding Agency: ARMY
Location: Property 4920

Fort Benning (1)
Trainee Barracks
Muscogee, GA
Landholding Agency: ARMY
Location: Property 4921

Fort Benning (1)
Det. Day Room
Muscogee, GA
Landholding Agency: ARMY
Location: Property 4922

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Fort Benning (1)
Enlisted Personnel Dining Room
Muscogee, GA
Landholding Agency: ARMY
Location: Property 4924

Fort Benning (1)
Det. Day Room
Muscogee, GA
Landholding Agency: ARMY
Location: Property 4925

Fort Benning (1)
Battalion Classroom
Muscogee, GA
Landholding Agency: ARMY
Location: Property 4926

Fort Benning (1)
Battalion Classroom
Muscogee, GA
Landholding Agency: ARMY
Location: Property 4927

Fort Benning (1)
Trainee Barracks
Muscogee, GA
Landholding Agency: ARMY
Location: Property 4928

Fort Benning (1)
Trainee Barracks
Muscogee, GA
Landholding Agency: ARMY
Location: Property 4929

Fort Benning (1)
Trainee Barracks
Muscogee, GA
Landholding Agency: ARMY
Location: Property 4931

Fort Benning (1)
General Storehouse
Muscogee, GA
Landholding Agency: ARMY
Location: Property 4932

Fort Benning (1)
Enlisted Barracks
Muscogee, GA
Landholding Agency: ARMY
Location: Property 4933

Fort Benning (1)
Arms Building
Muscogee, GA
Landholding Agency: ARMY
Location: Property 4930

Fort Benning (1)
Det. Day Room
Muscogee, GA
Landholding Agency: ARMY
Location: Property 4934

Fort Benning (1)
Enlisted Barracks
Muscogee, GA
Landholding Agency: ARMY
Location: Property 4935

Fort Benning (1)
Enlisted Barracks
Muscogee, GA
Landholding Agency: ARMY
Location: Property 4936

Fort Benning (1)
Enlisted Personnel Dining Room
Muscogee, GA
Landholding Agency: ARMY
Location: Property 4937

Fort Benning (1)
Administration and Supply Building
Muscogee, GA
Landholding Agency: ARMY
Location: Property 4938

Fort Benning (1)
Battalion
Muscogee, GA
Landholding Agency: ARMY
Location: Property 4939

Fort Benning (1)
General Storehouse
Muscogee, GA
Landholding Agency: ARMY
Location: Property 4951

Fort Benning (1)
General Storehouse
Muscogee, GA
Landholding Agency: ARMY
Location: Property 4953

Fort Benning (1)
Recreation Building
Muscogee, GA
Landholding Agency: ARMY
Location: Property 5363

Fort Benning (1)
Service Club
Muscogee, GA
Landholding Agency: ARMY
Location: Property 5362
Comment: 5500 square feet

Fort Benning (12)
Ft. Benning Mil. Reserv.
Muscogee, GA
Landholding Agency: ARMY
Location: Property 5279, 5278, 5276, 5274, 5273, 5272, 5271, 5270, 5269, 5268, 5267, 5266, 5277, 5275
Comment: 4248 square feet

Fort Benning (1)
Ft. Benning Mil. Reserv.
Muscogee, GA
Landholding Agency: ARMY
Location: Property 4954
Comment: 3776 square feet

Massachusetts

Camp Edwards (6)
Army National Guard Trng. Site
Barnstable Co., MA
Landholding Agency: ARMY COE
Location: Property 1508, 1511, 1514, 1517, 1520, 1523
Comment: 6 vacant buildings 8496 square feet each

Otis Air National Guard Case (1)
Cape Cod, MA
Landholding Agency: AIR FORCE
Location: Property 921 Friable asbestos
Comment: Asbestos; 4720 square feet; 90% vacant

Otis Air National Guard (1)
Cape Cod, MA
Landholding Agency: AIR FORCE
Location: 38.9 acres 3100 Block

Otis Air National Guard Base (1)
Cape Cod, MA
Landholding Agency: AIR FORCE
Location: Property 111FH building and 130.2 ACS
Comment: building impacted by asbestos; not usable

Minnesota

Land (1)
5629 Minnehaha
Minneapolis, MN
Landholding Agency: DOVA
Comment: 12.1 acres used for parking until 1990

Laundry Plant (1)
5629 Minnehaha Avenue
Minneapolis, MN
Landholding Agency: DOVA
Location: Property 15
Comment: Friable asbestos present vacant bldg 6050 square feet

Boiler House (1)
5629 Minnehaha Avenue
Minneapolis, MN
Landholding Agency: DOVA
Location: Property 16
Comment: Friable asbestos present; vacant bldg 6,000 square feet.

Storage Building (1)
5629 Minnehaha Avenue
Minneapolis, MN
Landholding Agency: DOVA
Location: Property 21
Comment: Quonset (prefab) vacant building; 3,100 square feet

Incinerator (1)
5629 Minnehaha Avenue
Minneapolis, MN
Landholding Agency: DOVA
Location: Property 48
Comment: Asbestos present. Vacant building 2000 square feet

Storage Building (1)
5629 Minnehaha Avenue
Minneapolis, MN
Landholding Agency: DOVA
Location: Property 64
Comment: Small vacant storage building 350 square feet

Storage Building (1)
5269 Minnehaha Avenue
Minneapolis, MN
Landholding Agency: DOVA
Location: Property T–10
Comment: Prefab building 1800 square feet

Missouri

St. Joseph Material Yard (1)
4th & Duncan Street
St. Joseph, MO
Landholding Agency: ARMY COE

Location: 1 off Trailer (poor condition) 1 Pump House (poor condition)
1 Gas & Oil House (poor condition)—on leased land
Comment: All buildings must be moved from site.
Building (1)
607 Hardesty Street
Kansas City, MO
Landholding Agency: GSA
Location: Property 9 Space is committed to H.H.S., no longer available
Comment: Space not available; committed to H.H.S.

North Carolina

VA Medical Center (1)
506 Fulton Street
Durham, NC
Landholding Agency: DOVA
Comment: Building needs repairs will be vacant summer '89 2,490 square feet

New Mexico

Kirtland AFB (1)
Wyoming Avenue
Albuquerque, NM
Landholding Agency: AIR FORCE
Location: Property 00029 portable building
Comment: vacant 520 square feet
Kirtland AFB (1)
Wyoming Avenue
Albuquerque, NM
Landholding Agency: AIR FORCE
Location: Property 00023 portable building
Comment: Vacant 596 feet
Kirtland AFB (1)
Wyoming Avenue
Albuquerque, NM
Landholding Agency: AIR FORCE
Location: Property 00018 portable building—latrine
Comment: Must be relocated vacant latrine facility 707 square feet

Texas

Veterans Center (1)
1901 S. First Street
Temple, TX
Landholding Agency: DOVA
Location: Property 24
Comment: Asbestos present; will be vacant Summer '89; 10,000 square feet
Veterans Center (1)
1901 S. First Street
Temple, TX
Landholding Agency: DOVA
Location: Property 25
Comment: Asbestos present; will be vacant Summer '89; 10,000 square feet
Veterans Center (1)
1901 S. First Street
Temple, TX
Landholding Agency: DOVA
Location: Property 26
Comment: Asbestos present; will be vacant Summer '89; 10,000 square feet

Virginia

Fort Lee (1)
SHOP Road
Fort Lee, VA
Landholding Agency: ARMY
Location: Property 6001 Building must be moved
Comment: Damaged floor; 9460 square feet building must be removed from site
Fort Lee (1)
SHOP Road
Fort Lee, VA
Landholding Agency: ARMY
Location: Property 6002; Building must be moved, 7660 square feet
Comment: Deteriorated roof and floor; Asbestos in mech. room
Fort Lee (1)
SHOP Road
Fort Lee, VA
Landholding Agency: ARMY
Location: Property 6005, 6011
Comment: Structurally deteriorated; 2550 feet; each building must be removed from site
Fort Lee (2)
SHOP Road
Fort Lee, VA
Landholding Agency: ARMY
Location: Property 6012, 6013, 6006
Comment: Structurally deteriorated building must be removed from site
Fort Lee (24)
SHOP Road
Fort Lee, VA
Landholding Agency: ARMY
Location: Property 6003
Comment: Building must be removed from site

Unsuitable Land (by State)

(Number of Properties ( ))

Arkansas

Lake Dardanelle (1)
Illinois Bayou
Arkansas River, AR
Landholding Agency: ARMY COE
Reason: Not accessible by road
Comment: 70 acres—1 mile to RD.
Lake Dardanelle (1)
Dike View
Arkansas River, AR
Landholding Agency: ARMY COE
Reason: Not accessible by road
Location: Dardanelle County
Comment: 85 acres—1 mile from RD.
Lick & Dam £5 (1)
Brodie Pike
Arkansas River, AR
Landholding Agency: ARMY COE
Reason: Not accessible by road
Location: Jefferson & Pulaski Counties
Comment: 347 acres—1 mile from Rd.
Bear Creek Island (1)
Beaver Lake
Rogers, AR
Landholding Agency: ARMY COE
Reason: Not accessible by road
Comment: 301 Acre—1 mile form Rd.
Jimmie Creek Island (1)
Bull Shoals Lake
Mountain Home, ARMY COE
Landholding Agency: ARMY COE
Reason: Not accessible by road
Location: White River—Arkansas & Mo.
Comment: 270 acres—1 miles to Rd.
Marineers Island (1)
Bull Shoals Lake
Mountain Home, AR
Landholding Agency: ARMY COE
Reason: Not accessible by road
Comment: 25 acres
Music Creek (1)
Bull Shoals Lake
Mountain Home, AR
Landholding Agency: ARMY COE
Reason: Not accessible by road
Comment: 325 acres—1 mile from road
Noe Creek (1)
Bull Shoals Lake
Landholding Agency: ARMY COE
Reason: Not accessible by road
Comment: 80 acres
Red Wolfe (1)
Bull Shoals Lake
Mountain Home, AR
Landholding Agency: ARMY COE
Reason: Not accessible by road
Comment: 50 acres
Risley Hollow (1)
Bull Shoals Lake
Mountain Home, AR
Landholding Agency: ARMY COE
Reason: Not accessible by road
Comment: 60 acres

California

Mather AFB (1)
Sacramento, CA
Landholding Agency: AIR FORCE
Reason: Within 2000 ft. from flammable or explosive material
Comment: Firing range explosive demolition area

Georgia

Ft. McPherson (1)
Atlanta, GA
Landholding Agency: ARMY
Location: Land occupied by non-government owned structures
Comment: Totally occupied by Marta Station, Rd 5, etc.

Indiana

Cecil Harden Lake-Mansfield Ramp (1)
Route 1, Box 129
Rockville, IN 47872–
Landholding Agency: ARMY COE

Reason: Floodway
Comment: 100% in floodway

Massachusetts

Otis Air National Guard Base (1)
Cape Cod, MA
Landholding Agency: AIR FORCE
Reason: Not accessible by road
Location: 18.69 acres w/base roads and sidewalks no utilities 600
Otis Air National Guard Base (1)
Cape Cod, MA
Landholding Agency: AIR FORCE
Reason: Not accessible by road
Reason: Within airport runway clear zone
Location: Land 33.8 acres block 500

Missouri

Rosecans ANG Base (1)
Rosecrans Memorial Airport
St. Joseph, MO
Landholding Agency: AIR FORCE
Reason: Floodway
Location: Ballfield 5.1 acres located in floodway

Utah

Hill, AFB (1)
Utah, UT
Landholding Agency: AIR FORCE
Reason: Not accessible by road
Reason: Other
Location: Property Hill AFB
Comment: Playground under menor of understanding

West Virginia

Hildebrand L/D Monogahela River (1)
Box 870 Route 2
Morgantown, WV
Landholding Agency: ARMY COE
Reason: Not accessible by road
Comment: 1.6 acres

Unsuitable Buildings (By State)

(Number of Properties ( ))

Alaska

Kotzebue AFB (1)
Elmendorf, AK
Landholding Agency: AIR FORCE
Reason: Isolated area
Reason: Contamination
Location: Property 204 Radome towers
Comment: Secured area
Kotzebue AFB (1)
Elmendorf, AK
Landholding Agency: AIR FORCE
Reason: Isolated area
Reason: Contamination
Reason: Other
Location: Property 205 Gym
Comment: Secured area
Sparrevohn AFB (1)
Elmendorf, AK
Landholding Agency: AIR FORCE
Reason: Isolated area
Reason: Contamination
Location: Property 130 Warehouse
Comment: Severe arctic weather conditions possible asbestos
Sparrevohn A.F. Station (1)
Covered Storage
Elmendorf, AK
Landholding Agency: AIR FORCE
Reason: Isolated area
Reason: Contamination
Location: Property 150
Comment: Severe arctic weather conditions possible asbestos
Sparrevohn A.F. Station (1)
Elmendorf, AK
Landholding Agency: AIR FORCE
Reason: Isolated area
Reason: Contamination
Reason: Other
Location: Property 165 weather building
Comment: Secured area
Tin City, A.F. Station (1)
Elmendorf, AK
Landholding Agency: AIR FORCE
Reason: Isolated area
Reason: Contamination
Reason: Other
Location: Property 113 Water supply building
Comment: Secured area
Tin City A.F. Station (1)
Elmendorf, AK
Landholding Agency: AIR FORCE
Reason: Isolated area
Location: Property 203 Dormitory
Comment: Severe arctic weather conditions possible asbestos PCB's

Arizona

Davis—Monthan AFB (1)
Tucson, AZ
Landholding Agency: DOD DMAFB
Reason: Contamination
Reason: Other
Location: Property 5142
Comment: Secured area possible friable asbestos facility used to store insecticide
Camp Roberts (1)
47 Mess Halls—2543 square ft. per bldg
San Luis Opispo, CA
Landholding Agency: ARMY
Comment: 2543 square feet per building
Camp Roberts (1)
San Luis Opisbo, CA
Landholding Agency: ARMY
Location: 178 Barracks Buildings 3984 square feet each
Comment: 3984 square feet per building
Oakland Army Base (1)
Oakland, CA
Landholding Agency: Army
Reason: Other
Location: Property 780,640,780
Comment: Secured area
Travis AFB (1)
Perimeter Rd.
Solano Co., CA
Landholding Agency: AIR FORCE
Reason: Within airport runway clear zone
Reason: Other
Location: Property 1182 Sewage Treatment Facility
Comment: Secured area
Travis AFB (1)
Dixon Ragasdale Sts.
Solano Co., CA
Landholding Agency: AIR FORCE
Reason: Within 2000 ft. from flammable or explosive material
Reason: Other
Location: Property 915 Concrete block building—Explosive ordinance within 500'
Comment: Secured area
Travis AFB (1)
Broadway Street
Solano City, CA
Landholding Agency: AIR FORCE
Reason: Other
Location: Property 152
Comment: Noise level is excess of 80 Decibles
Travis AFB (1)
Broadway Street
Solano City, CA
Landholding Agency: AIR FORCE
Reason: Other
Location: Property 159
Comment: Noise level in excess of 80 decibles
Edwards AFB (1)
Edwards, CA
Landholding Agency: AIR FORCE
Reason: Within 2000 ft. from flammable or explosive material
Location: Property 8102
Comment: Water supply building close to rocket propulsion research area
Edward AFB (1)
Traffic Checkhouse—Within 2000 feet
Edwards, CA
Landholding Agency: AIR FORCE
Reason: Contamination
Reason: Other
Location: Property 8476
Comment: Secured area leaking underground tank adjacent to building 8476
McClellan AFB (1)
Sacramento, CA
Landholding Agency: AIR FORCE
Reason: Within airport runway clear zone; Asbestos-present no clean up planned
Location: Property 494
Comment: Environmental analysis is pending
Norton AFB (1)
San Bernardino, CA
Landholding Agency: AIR FORCE
Reason: Contamination; Base hazardous storage facility

Location: Property 23
Comment: Secured area
Norton AFB (1)
San Bernardino, CA
Landholding Agency: AIR FORCE
Reason: Contamination: Base harzardous storage facility
Location: Property 502
Comment: Secured area
Norton AFB (1)
San Bernardino, CA
Landholding Agency: AIR FORCE
Reason: Contamination: Base harzardous storage facility
Location: Property 575
Comment: Secured area
Travis AFB (1)
Broadway
Solano Co., CA
Landholding Agency: AIR FORCE
Reason: Within 2000 ft. from flammable or explosive material
Location: Property 123 Trailer—located near hazardous storage site close to noise of aircraft
Comment: Secured Area
Travis AFB (1)
Hospital Drive
Solano Co., CA
Landholding Agency: AIR FORCE
Reason: Within 2000 ft. from flammable or explosive material
Location: Property 371 Trailer—within 1440 feet of 10,000 barrel above ground fuel storage tank
Comment: Secured area
Travis AFB (1)
Hospital Drive
Solano, CA
Landholding Agency: AIR FORCE
Reason: Within 2000 ft. from flammable or explosive material
Location: Property 375 Trailer—with 1,000 of 10,000 barrel above-ground fuel tank
Comment: Secured area
Edwards AFB (1)
Research Equipment Storage
Edwards AFB, CA
Landholding Agency: AIR FORCE
Location: Property 4310
Comment: Secured area

Colorado

Buckley Air National Guard Base (1)
Aurora, CO
Landholding Agency: AIR FORCE
Location: Property 24
Comment: Secured area friable asbestos 18 miles from Denver
Buckley Air National Guard Base (1)
Aurora, CO
Landholding Agency: AIR FORCE
Location: Property 738
Comment: Secured area

Florida

Jacksonville Comm. Facility Annex (GATR) (2)
Fleming Island, Hwy 17 S.
Clay Co., FL
Landholding Agency: AIR FORCE
Location: 2 buildings—Generator, Equipment building U.S. Fish & Wildlife restrictions apply RE: Eagles's Nest site will be cleaned up by 1/1/90
Comment: Secured area

Maine

Loring AFB (1)
Dormitory
Limestone, ME
Landholding Agency: AIR FORCE
Location: Property 6100
Comment: Secured area
Loring AFB (1)
Former dispensary
Landholding Agency: AIR FORCE
Location: Property 5200
Comment: Secured area friable asbestos
Loring AFB (1)
Former Commissary
Limestone, ME
Landholding Agency: AIR FORCE
Reason: Contamination
Reason: Other
Location: Property 5301
Comment: Secured area

Maryland

Brandywine Defense Reutilization Mar Off (2)
Rte 381, Brandywine Road
Brandywine, MD
Landholding Agency: AIR FORCE
Location: 2 Building in P.G. County (warehouse) 8 acres, Estimated cost of clean-up 7 million—plans for funding
Comment: PBC's and Asbestos
Camp Edwards (7)
Barnstable, MA
Landholding Agency: AIR FORCE
Reason: Other
Location: Property 4609, 4608, 46907, 4606, 4605, 4604, 4603
Comment: Secured area
Camp Edwards (13)
Barnstable, MA
Landholding Agency: AIR FORCE
Reson: Other
Location: Property 3668, 3666, 3663, 3661, 3645, 3643, 3633, 3632, 3631, 3602 3599
Comment: Asbestos present in boiler room
Camp Edward (5)
Barnstable, MA
Landholding Agency: AIR FORCE
Reason: Other
Location: Property 3556, 3554, 3534, 3533
Comment: Secured area; asbestos present boiler room
Camp Edwards (51)
Barnstable, MA
Landholding Agency: AIR FORCE
Number of Properties: 51
Reason: Other
Location: Property 3462, 1710, 1519, 1640, 1235, 1258 3441, 3442, 3443, 3651, 3658, 3662, 3664, 3665, 3667, 3634, 3635, 3603, 3604, 3612, 3447, 3549, 3551, 3553, 3555, 3521, 3522, 3524, 3512, 3513, 1508 1511, 1514, 1517, 1520, 1523, 1131, 1163, 1305, 1306, 1307, 3631, 3632, 3643, 3645, 3663, 3661, 3666, 3668, 4603
Comment: Secured area.
Camp Edwards (7)
Army National Trng. Site
Barstable, MA
Landholding Agency: ARMY COE
Reason: Other
Location: Property 3543, 3545, 3547, 3549, 8551, 3553, 3557
Comment: Secured Area
Camp Edwards (2)
Army National Guard Trng. Site
BArnstable Co., MA
Landholding Agency: ARMY COE
Location: Property 3651, 3658
Comment: Friable asbestos in furn. room 2 vacant bldgs 2780 square feet each
Camp Edwards (2)
Army National Guard Trng. Site
Barnstable Co., MA
Landholding Agency: ARMY COE
Location: Property 3634, 3635
Comment: Friable asbestos in furn room. f3634 2 vacant buildings 589 square ft. each
Camp Edwards (3)
Army National Guard Trng. Site
Barnstable Co., MA
Landholding Agency: ARMY COE
Location: Property 3603, 3604, 3612
Comment: Friable asbestos in furn. room 3 vacant buildings 15,340 square feet each
Camp Edwards (2)
Army National Guard Trng. Site
Barnstable Co., MA
Landholding Agency: ARMY COE
Location: Property 1131, 1163
Comment: 2 vacant buildings 1080 square feet each
Camp Edwards (2)
Army National Guard Trng. Site
Barnstable Co., MA
Landholding Agency: ARMY COE
Location: Property 3512, 3513
Comment: 2 vacant buildings 15,340 square feet each
Camp Edwards (4)
Army National Guard Trng. Site
Barnstable Co., MA
Landholding Agency: ARMY COE
Location: Property 3521, 3522, 3523, 3521.
Comment: 4 vacant buildings 1976 square feet each
Camp Edwards (1)
Army National Guard Trng. Site
Barnstable Co., MA
Landholding Agency: ARMY COE
Location: Property 4610

Comment: vacant building 80 square feet
Camp Edwards (1)
Army National Guard Trng. Site
Barnstable Co., MA
Landholding Agency: ARMY COE
Location: Property 4609
Comment: Vacant building 1460 square feet
Camp Edwards (1)
Army National Guard Trng. Site
Barnstable Co., MA
Landholding Agency: ARMY COE
Location: Property 4608
Comment: 1 vacant building 816 square feet
Camp Edwards (1)
Army National Guard Trng. Site
Barnstable Co., MA
Landholding Agency: ARMY COE
Location: Property 3633
Comment: Friable asbestos in furn. room 1 vacant building 840 square feet
Camp Edwards (1)
Army National Guard Trng. Site
Barnstable Co., MA
Landholding Agency: ARMY COE
Location: Property 3613
Comment: Friable asbestos in furn. room 1 vacant building 5410 square feet
Camp Edwards (1)
Army National Guard Trng. Site
Barnstable Co., MA
Landholding Agency: ARMY COE
Location: Property 3602
Comment: Friable asbestos in furn. room 1 vacant building 16,526 square feet
Camp Edwards (1)
Army National Guard Trng. Site
Barnstable Co., MA
Landholding Agency: ARMY COE
Location: Property 3599
Comment: Friable asbestos in furn. room 1 vacant building 5,520 square feet
Camp Edwards (1)
Army National Guard Trng. Site
Barnstable Co., MA
Landholding Agency: ARMY COE
Location: Property 3953
Comment: Friable asbestos in furn. room 1 vacant building 3,108 square feet
Camp Edwards (1)
Army National Guard Trng. Site
Barnstable Co., MA
Landholding Agency: ARMY COE
Location: Property 3556
Comment: Friable asbestos in furn. room 1 vacant building 2208 square feet
Camp Edwards (1)
Army National Guard Trng. Site
Barnstable Co., MA
Landholding Agency: ARMY COE
Location: Property 3554
Comment: Friable asbestos in furn. room 1 vacant building 2208 square feet
Camp Edwards (1)
Army National Guard Trng. Site
Barnstable Co., MA
Landholding Agency: ARMY COE
Location: Property 3534
Comment: 2331 friable asbestos in furn. room 1 vacant building 2331 square feet
Camp Edwards (1)
Army National Guard Trng. Site
Barnstable Co., MA
Landholding Agency: ARMY COE
Location: Property 3533
Comment: Friable asbestos in furn. room 1 vacant building 3663 square feet
Camp Edwards (1)
Army National Guard Trng. Site
Barnstable Co., MA
Landholding Agency: ARMY COE
Location: Property 3493
Comment: 1 vacant building 800 square feet
Camp Edwards (1)
Army National Guard Trng. Site
Barnstable Co., MA
Landholding Agency: ARMY COE
Location: Property 3462
Comment: 1 vacant building 575 square feet
Camp Edwards (1)
Army National Guard Trng. Site
Barnstable Co., MA
Landholding Agency: ARMY COE
Location: Property 1519
Comment: 1505 square feet 1 vacant building
Otis Air National Guard Base (1)
Cape Cod, MA
Landholding Agency: U.S. AIR FORCE
Reason: Within airport runway clear zone
Reason: Other
Location: Property 3012 Building—Friable asbestos
Otis Air National Guard Base (1)
Cape Cod
Barnstable, MA
Landholding Agency: AIR FORCE
Reason: Within airport runway clear zone
Reason: Other environmental
Otis Air National Guard Base (1)
Cape Cod, MA
Landholding Agency: AIR FORCE
Reason: Contamination
Reason: Other
Location: Property 3187 Comment: Secured area
Otis Air National Guard Base (1)
Cape Cod, MA
Landholding Agency: AIR FORCE
Reason: Contamination
Reason: Within airport runway clear zone
Reason: Other
Location: Property 125 runway clear zone
Comment: Secured area
Otis Air National Guard Base (1)
Cape Cod, MA
Landholding Agency: AIR FORCE
Reason: Within airport runway clear zone
Reason: Other
Location: Property 3146 located near taxi way
Comment: Secured area
Otis Air National Guard Base (1)
Cape Cod, MA
Landholding Agency: AIR FORCE
Reason: Contamination
Reason: Within airport runway clear zone
Location: Property 3107 Friable asbestos
Comment: Located on flight line
Otis Air National Guard Base (1)
Cape Cod, MA
Landholding Agency: AIR FORCE
Reason: Within airport runway clear zone
Reason: Other
Location: Property 3117 Friable asbestos
Comment: Secured area
Otis Air National Guard Base (1)
Cape Cod, MA
Landholding Agency: AIR FORCE
Reason: Within airport runway clear zone
Location: Property 425 Barracks supply storage
Comment: Too close to airfield for occupancy.

Michigan

Selfridge ANG Base (1)
Macomb, MI
Landholding Agency: AIR FORCE
Reason: Floodway
Reason: Other
Location: Property 5658, 5670 Radar Towers Bases
Comment: Secured area
Selfridge ANG Base (1)
Macomb, MI
Landholding Agency: MACOMB
Reason: Within 2000 ft. from flammable or explosive material
Reason: Floodway
Reason: Other environmental
Reason: Other
Location: Property 560, 580 Observation Towers
Comment: Secured area
Selfridge ANG Base (1)
Macomb, MI
Landholding Agency: AIR FORCE
Reason: Contamination
Reason: Within 2000 ft. from flammable or explosive material
Reason: Other
Location: Property 1005 Heating Plant
Comment: Secured area
Selfridge ANG Base (2)
Macomb, MI
Landholding Agency: AIR FORCE
Reason: Floodway
Reason: Other

Location: Property 1688, 1689
Comment: Secured area
Selfridge ANG Base (2)
Macomb, MI
Landholding Agency: AIR FORCE
Reason: Within 2000 ft. from flammable or explosive material
Reason: Other
Location: Property Property 1412, 1434 Hydrant Fuel Facilities close to explosives
Comment: Secured area
Selfridge ANG Base (1)
Macomb, MI
Landholding Agency: AIR FORCE
Reason: Contamination
Reason: Within 2000 ft. from flammable or explosive material
Reason: Other
Location: Property 1041 Rada Tower
Comment: Secured area
Selfridge ANG Base (1)
Macomb, MI
Landholding Agency: AIR FORCE
Reason: Within 2000 ft. from flammable or explosive material
Reason: Other
Location: Property Property 1012 Dormitory—no planned clean-up
Comment: Secured area friable asbestos—1350 from Munitions
Selfridge ANG Base (1)
Macomb, MI
Landholding Agency: AIR FORCE
Reason: Contamination
Reason: Within 2000 ft. from flammable or explosive material
Reason: Other
Location: Property 856 Engine Test Cell—1280 to munitions
Comment: Secured area

Minnesota

Smoke Stock (1)
5629 Minnehaha Avenue
Minneapolis, MN
Landholding Agency: DOVA
Reason: Other
Location: Property 36
Comment: Building is a smoke stock

Missouri

Malmstron AFB (1)
Malmstron, MO
Landholding Agency: AIR FORCE
Reason: Other
Location: Property 230 CE water shop and transcient alert far.
Comment: Secured area

Nebraska

Offutt AFB (1)
Omaha, NE
Landholding Agency: AIR FORCE
Reason: Other
Location: Trailer 10x944

Comment: Secured area

New Hampshire

Pease AFB (1)
Newington, NH
Landholding Agency: AIR FORCE
Reason: Other
Location: Traffic check house
Comment: Building is top small 38 square feet. Secured area
Pease AFB (1)
Newington, NH
Landholding Agency: AIR FORCE
Reason: Contamination
Reason: Within 2000 ft. from flammable or explosive mataerial
Reason: Other
Location: Vehicle Fuel Station
Comment: Secured area
Pease AFB (1)
Newington, NH
Landholding Agency: AIR FORCE
Reason: Other
Location: Pass and ID check
Comment: Secured area

New Mexico

Kirtland AFB (1)
Wyoming Avenue
Albuquerque, NM
Landholding Agency: AIR FORCE
Reason: Other
Location: Property 00013 Portable structure
Comment: Noise level 75 to 80 DB
Kirtland AFB (1)
Wyoming Avenue
Albuquerque, NM
Landholding Agency: AIR FORCE
Reason: Other
Location: Property 0004
Comment: Noise level 75 to 80 DB
Kirtland AFB (1)
Wyoming Avenue
Albuquerque, NM
Landholding Agency: AIR FORCE
Reason: Isolated area
Reason: Within 2000 ft. from flammable or explosive material
Location: Property 30145 building
Comment: High voltage security fence 10'
Kirtland AFB (1)
Wyoming Avenue
Albquerque, NM
Landholding Agency: AIR FORCE
Reason: Contamination
Reason: Other
Location: Property 00607 unsafe for occupancy
Comment: Building is in hazardous condition

Ohio

Wright-Patterson AFB (1)
Greene City, OH
Landholding Agency: AIR FORCE
Reason: Other
Location: Property 30092 temporary pumping station
Comment: Secured area
Wright-Patterson (1)
Greene City, OH
Landholding Agency: AIR FORCE
Reason: Other
Location: Property 30205 Flight surgeon clinic—semi permanent
Comment: Secured area
Newark AFB (1)
Irvington Dr.
Heath, OH
Landholding Agency: AIR FORCE
Reason: Other
Trailer—located in petroleum storage area.
Comment: Secured area

Oklahoma

Vance AFB (4)
Office Building
Enid, OK
Landholding Agency: AIR FORCE
Reason: Other
Location: Property 286,512,290,604
Comment: Secured area
Vance AFB (1)
Enid, OK
Landholding Agency: AIR FORCE
Reason: Contamination
Reason: Other
Location: Property 110 liquid Fuel pumping station
Comment: Secured area
Vance AFB (1)
Enid, OK
Landholding Agency: AIR FORCE
Reason: Within 2,000 ft. from flammable or explosive material
Reason: Other
Location: property 262 warehouse
Comment: Secured area

Puerto Rico

Punta Salinas Radar Site (1)
Toa Baja, PR
Land holding Agency: AIR FORCE
Reason: Other
Location: Property Building 10 Recreational area
comments: Secured area

South Dakota

Renel Heights Housing (56)
Ellworths AFB—9116A, 9121, 9123
Ellworth, SD
Landholding Agency: AIR FORCE
Reason: Other
Location: Property 8533BC, 8534CD, 8536C, 8540CD, 8542B, 8546A, 8552, 8554A, 8566B, 8574C, 8583D, 8594B, 8604A, 8607A, 8609, 8610, 8612, 8615A, 8617, 8623ABC, 8703A, 8705, 8706B, 8711, 8713, 8714B, 8716, 8721B, 8722A, 8727D, 8730C, 8802B, 8803A, 8806B, 8807A, 8809B, 8811B, 8813, 8815BCD, 8817BC, 8901, 8903, 8905, 8910, 8911, 8916, 8918, 8923, 8926, 9103, 9107, 9108A, 9111A,
Comment: Unsafe condition due to shift in foundations.
Skyway Housing (9)
Ellsworth AFB
Ellsworth, SD
Landholding Agency: AIR FORCE
Reason: Other
Location: Property 8473, 8440, 8438, 8433, 8425, 8421, 8406, 8412
Comment: Unsafe—danger of fire 9 buildings ground shifting has undermined foundations

Utah

Hill Air Force Base (25)
Munition Storage Site
Hill AFB, UT
Landholding Agency: AIR FORCE
Reason: Other
Location: Property 204, 2008, 2122, 2126, 2144, 2216, 2224, 882, 2225, 2226, 2243, 2244, 2245, 2249, 2310, 2313, 2315, 2316, 2317, 2331, 2334, 2336, 2337, 2338, 2007
Comment: Secured area

Virginia

Fort Lee (3)
Byrd Avenue
Fort Lee, VA
Landholding Agency: ARMY
Reason: Other
Location: Property 4100, 4101, 4103, Building must be moved half already demolished removing asbestos
Comment: Severly determined/partially demolished

Washington

62nd Military Airlift Wing (1)
McCord AFB
Pierce, WA
Landholding Agency: AIR FORCE
Reason: Other
Location: Property 128 Scheduled for demolition with six months 2—Just outside run away clear zone property can be moved.
Comment: Secured area
Fairchild AFB (1)
Pump House—asbestos present
Spokane, WA
Landholding Agency: AIR FORCE
Reason: Other
Location: Property 151
Comment: Secured area
62 Military Airlift Wing (1)
McCord AFB
Pierce, WA
Landholding Agency: AIR FORCE
Reason: Other
Location: Property 508 Abestos present no clean-up planned
Comment: Secured area
62 Military Airlift Wing (1)
McCord AFB
Pierce, WA
Landholding Agency: ARMY
Reason: Other
Location: Property 554 Property scheduled for demolition but can be moved
Comment: Secured area
62 Military Airlift Wing (1)
McCord AFB
Pierce, WA
Landholding Agency: AIR FORCE
Reason: Other
Location: Property 850 wood and cinder block
Comment: Secured area

[FR Doc. 89-14830 Filed 6-22-89; 8:45 am]
BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-040-09-4351-08-SPCA; FES 89-14]

Availability of Final Environmental Impact Statement for the San Pedro River Riparian Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Bureau of Land Management (BLM) has prepared a final environmental impact statement (FEIS) for a proposed management plan for the San Pedro River Riparian EIS Area in southeastern Arizona. The proposal involves kinds and levels of use permitted to maintain or improve the riparian ecosystem presently found in the EIS area. The proposal prohibits the use of vehicles off designated roads, and provides for the development of a limited number of recreational facilities, as well as research and administrative facilities. A portion of the EIS area will be closed to the discharge of firearms.

SUPPLEMENTARY INFORMATION: A limited number of copies of the management plan/FEIS are available upon request from the Safford District Office, Bureau of Land Management, 425 East 4th Street, Safford, Arizona 85546, telephone (602) 428-4040; or the San Pedro Project Office, Bureau of Land Management, Box 9853, RR 1, Huachuca City, Arizona 85616, telephone (602) 457-2265; or the Arizona State Office, Bureau of Land Management, 3707 North 7th Street, Phoenix, Arizona 85011, telephone (602) 241-5552. Public reading copies will be available at these locations.

DATE: The public comment period will end 30 days following notification of availability of this document by the Environmental Protection Agency (EPA) in the **Federal Register** EPA published their notice on June 16, 1989.

ADDRESS: Comments should be sent to the Safford District Manager at the address below.

FOR FURTHER INFORMATION CONTACT: Vernon L. Saline, San Simon Area Manager, 425 East 4th Street, Safford, Arizona 85546, Telephone (602) 428-4040.

Phillip D. Moreland,
Chief, Branch of Planning, Environment, Lands and Recreation.

[FR Doc. 89-14861 Filed 6-22-89; 8:45 am]
BILLING CODE 4310-32-M

Alaska State Office; Proposed Reinstatement of a Terminated Oil and Gas Lease

June 14, 1989.

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease AA-48203-BC has been received covering the following lands:

Seward Meridian, Alaska

T. 31 N., R. 11 E.,
Section 21, NWNE.
40 acres

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from January 1, 1989, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA-48203-BC as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective January 1, 1989, subject to the terms and conditions cited above.

Ruth Stockie,
Chief, Branch of Mineral Adjudication.

[FR Doc. 89-14862 Filed 6-22-89; 8:45 am]
BILLING CODE 4310-JA-M

[NV-943-09-3111-15; N-46706]

Proposed Reinstatement of a Terminated Oil and Gas Lease

June 13, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice proposes Class II reinstatement of oil and gas lease N-46706.

EFFECTIVE DATE: February 1, 1989.

FOR FURTHER INFORMATION CONTACT: Jack Lewis, Bureau of Land Management, (BLM), Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520, 702-328-6338.

SUPPLEMENTARY INFORMATION: Under provisions of Pub. L. 97-451, petition for reinstatement of oil and gas lease N-46706 for lands in Clark County, Nevada, was timely filed and was accompanied by all required rentals and royalties accruing from February 1, 1989, the date of termination.

No valid lease has been issued affecting the lands. The Lessee has agreed to new lease terms for rentals and royalties at rates of $5.00 per acre and 16⅔ percent respectively. Payment of a $500.00 administrative fee has been made.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease effective February 1, 1989, subject to the increased rental and royalty rates cited above and the original terms and conditions of the lease and the reimbursement for cost of publication of this notice.

Maria B. Bohl,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 89-14853 Filed 6-22-89; 8:45 am]

BILLING CODE 4310-HC-M

[AZ-020-09-4212-12; A 20346-Q]

Realty Action; Exchange of Public Lands, Pima County, Arizona

BLM proposes to exchange public land in order to achieve more efficient management of the public land through consolidation of ownership.

The following public land is being considered for disposal by exchange pursuant to the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

Gila and Salt River Meridian, Arizona

T. 17 S., R. 10 E.,
sec. 23, lots 1, 2, NW¼NE¼, W½;
sec. 27, S½;
sec. 34, N½.
T. 18 S., R. 12 E.,
sec. 11, lots 1, 2, S½NE¼, E½NW¼, NE¼ SW¼, N½SE¼;
sec. 13, all unpatented land.
Containing approximately 1600 acres.

Final determination on disposal will await completion of an environmental analysis.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this Notice will segregate the affected public lands from appropriation under the public land laws, including the mining laws, but not the mineral leasing laws or Geothermal Steam Act.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication in the **Federal Register** of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

For a period of forty-five (45) days, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Charles R. Frost,

Associate District Manager.

Date: June 16, 1989.

[FR Doc. 89-14863 Filed 6-22-89; 8:45 am]

BILLING CODE 4310-32-M

[MT-070-09-4050-91-M74131]

Realty Action; Montana

AGENCY: Bureau of Land Management, Butte District Office.

ACTION: Amendment of Notice of Realty Action for M74131, exchange of public lands and private lands in Missoula, Granite, Powell, and Lewis and Clark counties.

SUMMARY: This notice amends the original Notice of Realty Action for M74131 published on July 2, 1987 (Vol. 52 No. 127 page 25085). In exchange for the public lands listed in the notice, the United States will acquire certain private lands from Champion International. Publication of the notice in the **Federal Register** segregated the public lands from settlement, sale, location and entry under the public land laws, including the mining laws but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976. This segregative effect is extended and will expire two years from the date of publication of this notice or when patent issues whichever occurs first.

June 15, 1989.

J.A. Moorhouse,

District Manager.

[FR Doc. 89-14864 Filed 6-22-89; 8:45 am]

BILLING CODE 4310-DN-M

[NV-930-09-4212-14; N-50987]

Realty Action; Nevada

DATE: Effective July 24, 1989.

ACTION: Realty action; Non-competitive sale of public land in Humboldt County, Nevada.

SUMMARY: This notice supercedes **Federal Register** Document 89-11192 published in the **Federal Register** on Wednesday, May 10, 1989 (54 FR 20211). Notice is hereby given that pursuant to the Act of October 21, 1976 (43 U.S.C. 1713, section 203), the Bureau of Land Management will sell at fair market value the following described parcel of public land by non-competitive land sale procedures.

Mount Diablo Meridian, Nevada

T. 44 N., R. 31 E.,
Section 20, E½NE¼SE¼NE¼SE¼,NE¼ SE¼SE¼NE¼SE¼,E½E½NE¼NE¼ SE¼,SE¼SE¼SE¼NE¼SE¼.
Containing 5 acres.

For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, Bureau of Land Management, 705 E. 4th St., Winnemucca, NV 89445.

FOR FURTHER INFORMATION CONTACT: Hal Green, District Realty Specialist, Bureau of Land Management, Winnemucca District Office, 705 E. 4th St., Winnemucca, NV 89445 (702) 623-3676.

SUPPLEMENTARY INFORMATION: This non-competitive sale will resolve the unauthorized use and occupancy of public lands located in northern Humboldt County, Nevada. Competitive interest could not be determined at the time of sale preparation. In order to eliminate conflicts of interest in land ownership, non-competitive land sale procedures have been used.

Publication of this notice in the **Federal Register** shall segregate the public lands to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. Any subsequent application shall not be considered as filed and shall be returned to the applicant. This segregative effect of the Notice of Realty Action shall terminate upon issuance of the patent or other document of conveyance to such land, upon publication in the **Federal Register** of a termination of the segregation, or 270 days from the date of publication, whichever occurs first.

Payment of the property shall be by cash, certified check, postal money order, bank draft, or cashier's check made payable to the Dept. of the Interior-BLM.

The Authorized Officer may withdraw the parcel from sale if it is determined that consummation of the sale would be inconsistent with the provisions of existing law or policy.

The land sale is consistent with federal regulations contained in Title 43 CFR, specifically:

43 CFR 2710.0-6(3)(iii) Direct sale as provided for in 2711.3-3 of this title may be used when the lands offered for sale are completely surrounded by lands in one ownership with no public access, or where the lands are needed by State or local governments or nonprofit corporations, or where necessary to protect existing equities in the lands or resolve inadvertent unauthorized use or occupancy of said lands.

Reservations to the Federal Government

1. Rights-of-way for ditches and canals constructed under the authority of the United States, Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

2. *All mineral deposits together with the right to prospect for, mine, and remove the same.

3. Patent, when issued, will be subject to the following right-of-way of record: N-1461, 24.9 kv powerline Harney Electric Cooperative, Inc.

Ronald B. Wenker,

District Manager, Winnemucca.

Dated: June 14, 1989.

[FR Doc. 89-14865 Filed 6-22-89; 8:45 am]

BILLING CODE 4310-HC-M

[WY-060-09-4212-14, WYW-101839]

Realty Action; Direct Sale of Public Land in Johnson County, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Direct sale of land parcel (WYW-101839) in Johnson County, Wyoming.

SUMMARY: The Bureau of Land Management has determined that the lands described below are suitable for public sale. Section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976 (90 Stat. 2750; 43 U.S.C. 1713) requires the BLM to receive fair market value for the land sold and any bid for less than fair market value will be rejected. The BLM may accept or reject any and all offers, or withdraw any land or interest on the land for sale if the sale would not be consistent with FLPMA or other applicable law. This disposal action is consistent with the Buffalo Resource Area's Resource Management Plan.

The planning document, environment assessment/land report, and memorandums and letters of Federal, state, and local contacts concerning the sale are available for review at the Bureau of Land Management, Buffalo Resource Area Office. All bids and requests for information should be sent to BLM, Buffalo Resource Area, 189 North Cedar Street, Buffalo, Wyoming 82834 (phone (307) 684-5586).

Parcel

Serial No.	Legal description	Acreage	Appraised value
WYW-101839	T. 41 N., R. 79 W., 6th P.M. Section 5: SE¼SE¼	40.00	$1,400,000

The publication of this Notice of Realty Action in the **Federal Register** shall segregate the above public lands from appropriation under the public land laws, including the mining laws. Any subsequent application shall not be accepted, shall not be considered as filed and shall be returned to the applicant if the Notice segregates the land from the use applies for in the application. The segregation effect of this Notice will terminate upon issuance of a conveyance document, 270 days, or when a cancellation Notice is published, which ever occurs first.

Sale Procedures

The land described above will be offered for sale directly to the adjoining landowner. The adjoining landowner submitting a bid must provide evidence of adjoining landownership before the bid will be accepted. A bid will also constitute an application for conveyance of those mineral interests offered for conveyance in the sale. The mineral interests being offered have no known mineral values. At the time of the sale, the purchaser will be required to pay a $50.00 nonreturnable filing fee (in addition to their bid) for all unreserved mineral interests.

The "total" purchase amount must be received in the Buffalo Resource Area Office on Wednesday, August 23, 1989 by 4:30 p.m. Full payment must be by certified check, money order, bank draft, or cashier's check made payable to the Department of the Interior, BLM. The envelope containing the payment must be marked in the front lower left-hand corner with the words "Public Land Sale, (identify parcel serial number), Sale Held *(date)*."

To successfully purchase land, the purchaser must be a U.S. citizen 18 years of age or older, a corporation authorized to own real estate in the State of Wyoming, a State, State instrumentality or political subdidivsion authorized to hold property, or an entity legally capable of conveying and holding land or interests in Wyoming.

Patent Terms and Conditions:

Any patents issued will be subject to all valid existing rights. Specific patent reservations include:

1. A reservation for ditches or canals by authority of the United States, Act of August 30, 1989 (26 Stat. 391; 43 U.S.C. 945).

2. Minerals Reservation:

The United States reserves the oil and gas in the lands subject to this conveyance together with the rights to prospect for, mine, and remove the minerals. All other mineral estates will be sold together with the surface estate for an additional $50 fee. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at the Buffalo Resource Area Office.

3. The following oil and gas leases will remain in effect on the applicable parcel until terminated by the operation of the existing laws.

Oil and Gas Lease Number: W-75040

For a period of 45 days from the date of this Notice published in the **Federal Register**, interested parties may submit commens to the District Manager, Casper District Office, 17091 East "E" Street, Casper, Wyoming 82601. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of

*The mineral deposits or interests having no known mineral value will be conveyed simultaneously with the surface estate at the time of sale. The purchaser will be required to remit a $50.00 nonrefundable fee. Failure to do so will result in the cancellation of the sale.

any action by the State Director, this realty action will become final.

James W. Monroe,

Casper District Manager.

Date: May 24, 1989.

[FR Doc. 89-14837 Filed 6-22-89; 8:45 am]

BILLING CODE 4310-22-M

[ID-942-09-4703-12]

Idaho; Filing of Plats of Survey

The plat of survey of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 10:00 a.m., June 13, 1989.

The plat representing the dependent resurvey of portions of the north boundary and subdivisional lines; the subdivision of sections 4 and 9, and the survey of certain lots in sections 4 and 9, T. 9 N., R. 27 E., Boise Meridian, Idaho, Group No. 773 was accepted June 12, 1989.

This survey was executed to meet certain administrative needs of this Bureau.

Inquiries about this land should be sent to the Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

June 13, 1989.

[FR Doc. 89-14866 Filed 6-22-89; 8:45 am]

BILLING CODE 4310-GG-M

Fish and Wildlife Service

Availability of the Draft Environmental Assessment; Proposed St. Catherine's Creek National Wildlife Refuge, Adams County, MS

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of the draft environmental assessment for the proposed establishment of St. Catherine's Creek National Wildlife Refuge.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service, Southeast Region, proposes to establish a national wildlife refuge in the vicinity of St. Catherine's Creek in Adams County, Mississippi. The purpose of the proposal is to provide protection and management for wintering waterfowl and other wildlife on approximately 15,000 acres of wetland and associated habitats in the area. A Draft Environmental Assessment has been developed by Service biologists in coordination with the State of Mississippi, other Federal agencies, and private groups to consider the biological, environmental, and socioeconomic effects of acquiring 15,000 acres of waterfowl habitat in the area and establishing a national wildlife refuge. Written comments or recommendations concerning the proposal are welcomed, and should be sent to the address below.

DATES: Land acquisition planning for the project is currently underway. The draft assessment will be available to the public as of June 16, 1989. Written comments must be received no later than July 24, 1989, to be considered.

ADDRESSES: Comments and requests for copies of the assessment and further information should be addressed to: Mr. Charles Danner, Chief, Project Development Branch, Office of Refuges and Wildlife, U.S. Fish and Wildlife Service, 75 Spring Street, SW., Room 1240, Atlanta, Georgia 30303.

SUPPLEMENTARY INFORMATION: The primary objectives of the proposal are to preserve wintering habitat for mallard, pintail, blue-winged teal, and wood duck; and preserve production habitat for wood duck to help meet the habitat goals presented in the North American Waterfowl Management Plan. Establishment of a refuge and proper management would provide excellent wintering waterfowl habitat and a needed waterfowl refuge in the Lower Mississippi River Valley. Secondary compatible uses would possibly include public outdoor activities such as hunting, fishing, research, and environmental education.

The St. Catherine's Creek area is significant to wintering waterfowl due to: (1) Geographic location in the Mississippi Flyway, (2) habitat diversity, and (3) seasonal flooding. The bottomland hardwood forests, the converted wetlands, and associated habitats also provide habitat for a great diversity of other wildlife. Big game species including deer and turkey are abundant. Small game and furbearers prevalent on the area are rabbit, coyote, beaver, otter, mink, nutria, raccoon, gray fox, red fox, bobcat, and opossum. Doves, quail, raptors, and wading birds are also common on the area. Endangered species likely to occur on the area are wintering bald eagles and occasionally migrating peregrine falcons.

The proposed area is located adjacent to the Mississippi River in western Adams County, Mississippi, approximately 7 miles south of Natchez and three miles west of U.S. Highway 61. Catahoula National Wildlife Refuge lies 35 miles to the west, and Tensas River National Wildlife Refuge lies 50 miles north of the proposed refuge. The two major landowners within the proposed refuge are willing sellers and support establishment of a refuge in the area.

Service biologists have developed a draft environmental assessment in coordination with the State of Mississippi, other Federal agencies and private groups to consider the biological, environmental, and socioeconomic effects of acquiring 15,000 acres of waterfowl habitat in the area and establishing a national wildlife refuge. Three alternatives and their potential impacts on the environment are presented and evaluated. The Service believes the preferred alternative, Acquisition and Management by the Fish and Wildlife Service, is a positive step in preventing the loss of additional acres needed to support populations in the Lower Mississippi River Valley.

June 9, 1989.

James W. Pulliam, Jr.,

Regional Director.

[FR Doc. 89-14860 Filed 6-22-89; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that ARCO Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 7682, Block 105, Vermilion Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Sabine Pass, Texas.

DATE: The subject DOCD was deemed submitted on June 16, 1989. Comments must be received on or before July 10, 1989 or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: June 16, 1989.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89-14867 Filed 6-22-89; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that ODECO Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 6813, Block 159, Lease OCS-G 5245, Block 160, Lease OCS-G 5703, Block 161, Lease OCS-G 7809, Block 163, Main Pass Area, and Lease OCS-G 5746, Block 41, Chandeleur Area, offshore Louisiana and Mississippi. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on June 9, 1989. Comments must be received on or before July 10, 1989, or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert, Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit, Telephone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: June 15, 1989.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89-14868 Filed 6-22-89; 8:45 am]

BILLING CODE 4310-MR-M

Bureau of Mines

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request extending the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and to the Office of Managment and Budget, Paperwork Reduction Project (1032-0090), Washington, DC 20503, telephone 202-395-7340.

Title: Production Estimate.

OMB Approval Number: 1032-0090.

Abstract: The collection is needed to provide data on mineral production for the Secretary's Annual Report. It is used as an annual production estimate. The data are published by commodity for use by Government agencies, industry, education programs and the general public. The respondents are producers of Ferrous Metals, Industrial Minerals and Nonferrous Metals.

Bureau Form Number: 6-1209-A and 6-1209-AA.

Frequency: Quarterly and annually.

Estimated Completion Time: 15 minutes.

Annual Responses: 7,150.

Annual Burden Hours: 1,788.

Bureau clearance officer: James T. Hereford 202-634-1125.

April 7, 1989.

Robert F. Fagin,

Acting Director, Bureau of Mines.

[FR Doc. 89-14869 Filed 6-22-89; 8:45 am]

BILLING CODE 4310-53-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage In Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Weis Markets, Inc., 1000 South Second Street, Sunbury, PA 17801–0471.

2. Wholly owned subsidiary which will participate in the operations: Weis Food Service, Incorporated in the State of Pennsylvania, P.O. Box 151, Rt. 11, Northcumberland, PA 17857.

Noreta R. McGee,

Secretary.

[FR Doc. 89–14931 Filed 6–22–89; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31466]

The Atchison, Topeka and Santa Fe Railway Co.—Trackage Rights Exemption—Burlington Northern Railroad Co.; Exemption

Burlington Northern Railroad Company (BN) has agreed to grant overhead trackage rights to The Atchison, Topeka and Santa Fe Railway Company (Santa Fe) between BN milepost Z801.8, at Avard, OK, and BN milepost G423.3, at Tulsa, OK, a distance of 178.5 miles in Woods, Alfalfa, Garfield, Noble, Pawnee, Creek, and Tulsa Counties. Santa Fe will have the right to operate trains between Avard and Perry, OK, and between Perry and Tulsa, but not through Perry except under certain terms and conditions. The trackage rights became effective on or after June 12, 1989.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Michael W. Blaszak, The Atchison, Topeka and Santa Fe Railway Company, 80 East Jackson Boulevard, Chicago, IL 60604.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: June 20, 1989.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–15053 Filed 6–22–89; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–55 (Sub-No. 288X)]

CSX Transportation, Inc.—Abandonment Exemption—at South Parkersburg in Wood County, WV

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904 the abandonment by CSX Transportation, Inc., of 2.8 miles of rail line in Wood County, WV, subject to standard labor protective conditions and under the condition that CSXT continue operations until the line is sold to another entity for continued rail service.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 24, 1989. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by July 3, 1989, petitions to stay must be filed by July 10, 1989, and petitions for reconsideration must be filed by July 18, 1989.

ADDRESSES: Send pleadings referring to Docket No. AB–55 (Sub-No. 288X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Lawrence H. Richmond, CSX Transportation, 100 North Charles Street, Baltimore, MD 21201.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. (TDD for hearing impaired: (202) 275–1721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275–1721.)

Decided: June 16, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89–14932 Filed 6–22–89; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31427 (Sub-No. 1)]

Merchants Management Corp.—Continuance in Control Exemption—Railroad Switching Service of Missouri, Inc.; Exemption

Merchants Management Corp. (MMC), a noncarrier, has filed a notice of exemption under 49 CFR 1180.4(g) regarding its continuance in control of Railroad Switching Service of Missouri, Inc. (Switching), upon the commencement of rail operations by Switching. Switching, a noncarrier, has filed concurrently a notice of exemption in Finance Docket No. 31428 *Railroad Switching Service of Missouri, Inc.—Lease and Operation Exemption—Norfolk and Western Railway Company*, in which it seeks an exemption to acquire by lease from the City of St. Louis, MO and to operate a line of railroad, extending between milepost 0.00 (Valuation Station 0+0) and milepost 1.88 (Valuation Station 100+0), in St. Louis, MO. MMC presently controls the Poseyville and Owensville Railroad Company (P&O). Thus, as a result of the involved transaction, MMC will control two rail carriers, P&O and Switching.

MMC indicates that: (1) P&O and Switching will not connect with each other; (2) the continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other; and (3) the transaction does not involve a Class I carrier. Therefore, this transaction involves the continuance in control of a nonconnecting carrier, and is exempt from the prior review requirements of 49 U.S.C. 11343. *See* 49 CFR 1180.2(d)(2).

As a condition to the use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Any comments must be filed with the Commission and served on: John T. Sullivan, Peper, Martin, Jensen, Maichel and Hetlage, 1875 Eye Street, NW., Suite 1200, Washington, DC 20006–5475.

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440–48446).

Decided: June 20, 1989.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–15054 Filed 6–22–89; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31476]

Adelaide McHugh, et al.; Exemption; Continuance in Control

On May 25, 1989, Adelaide McHugh, Edward L. McHugh, Gerard J. McHugh, and William B. McNulty (applicants) filed a notice of exemption under 49 CFR 1180.2(d)(2) to continue in control of Tyburn Railroad Company (Tyburn) (a noncarrier) upon the commencement of rail operations by Tyburn. A comment was submitted by the Railway Labor Executives' Association. The Railway Labor Executives' Association filed comments.

Applicants and James C. McHugh now jointly control McHugh Brothers Heavy Hauling, Inc., a carrier operating as New Hope and Ivyland Railroad Company (NHIR). Applicants propose to form and control a new corporation, Tyburn. It will become a carrier upon commencement of its operation of a rail line leased from Consolidated Rail Corporation (Conrail) at Morrisville, Pennsylvania. Tyburn has filed concurrently a notice of exemption in Finance Docket No. 31457, *Tyburn Railroad Company—Acquisition and Operation—Line of Consolidated Rail Corporation*. There, Tyburn seeks an exemption under 49 CFR 1150.31 to operate about 3,040 feet of railroad of Conrail, between Conrail's track, line code 1121 (milepost 45.4) and facilities currently leased from Conrail by Tyburn.[1] This line is presently operated by NHIR.

Applicants indicate that: (1) NHIR and Tyburn will not connect with each other or any railroad in their corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (3) the transaction does not involve a Class I carrier. Therefore, this transaction involves the continuance in control of a nonconnecting carrier, and exempt from the prior review requirements of 49 U.S.C. 11343. *See* 49 CFR 1180.2(d)(2).

As a condition to the use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

Any comments must be filed with the Commission and served on applicant's representative, William P. Quinn, Esquire, Rubin Quinn Moss & Heaney, 1800 Penn Mutual Tower, 510 Walnut Street, Philadelphia, Pennsylvania 19106–3619, (215) 925–8300.

If the notice contains false or misleading information, the exemption is void *ab initio*. A petition to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: June 7, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–14660 Filed 6–22–89; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–14 (Sub-No. 6X)]

Northwestern Pacific Railroad Company—Discontinuance Exemption—Operations in Marin County, CA; Corrected Notice of Exemption [1]

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances* to discontinue service over its 9.95-mile line of railroad between milepost 25.821 at or near Ignacio, CA and milepost 15.71 at or near San Rafael, CA, in Marin County, CA.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 9, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[3] must be filed by June 19, 1989. Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by June 29, 1989 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: John MacDonald Smith, Gary A. Laakso, Southern Pacific Building, One Market Plaza, San Francisco, CA 94105.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by June 14, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Acting Chief, SEE at (202) 275–7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be

[1] Tyburn has filed a petition to revoke the exemption and has raised arguments concerning this agency's jurisdiction over this line. That issue will be addressed in Finance Docket No. 31475.

[1] The notice of exemption served and published in the **Federal Register** on June 9, 1989 (54 FR 24766) contained an error in the pertinent dates for petitions to stay and for petitions for reconsideration. The correct dates are June 19, 1989, for petitions to stay and June 29, 1989, for petitions for reconsideration.

[2] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C.2d 400 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[3] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440–48446).

imposed, where appropriate, in a subsequent decision.

Decided: June 16, 1989.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-14611 Filed 6-22-89; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket 31426 Sub-No. 1]

Railroad Switching Service of Missouri, Inc.—Lease and Operation Exemption—Norfolk and Western Railway Co; Exemption

Railroad Switching Service of Missouri, Inc. (Switching), a non-carrier, has filed a notice of exemption to acquire by lease and to operate 1.89 miles of railroad, extending between milepost 0.00 (Valuation Station 0+0) and milepost 1.89 (Valuation Station 100+0), in St. Louis, MO. In accordance with an agreement enetered into with Norfolk and Western Railway Company, (N&W), the City of St. Louis, MO will acquire the line and immediatley lease it to Switching. The agreement is expected to be consummated on or after June 15, 1989. A transaction relating to the continuance in control of Switching by Merchants Management Corp. is the subject of a notice of exemption filed concurrently in Finance Docket No. 31427 (Sub-No. 1), *Merchants Management Corp.—Continuance in Control Exemption—Railroad Switching Service of Missouri, Inc.*

Any comments must be filed with the Commission and served on John T. Sullivan, Peper, Martin, Jensen, Maichel and Hetlage, 1875 Eye Street, NW., Suite 1200, Washington, DC 20006-5475

Switching must preserve intact all sites and structures more than 50 years old until compliance with the requirements of Section 106 of the National Historic Preservation Act, 16 U.S.C. 470, is achieved. *See Class Exemption—Acq. & Oper. of R. Lines Under 49 U.S.C. 10901*, 4 I.C.C.2d 305 (1988).[1]

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

[1] Switching has certified to the Missouri State Historic Preservation Officer that no sites or structures listed or qualifying for inclusion in the *National Register of Historic Places* will be transferred as a result of this transaction.

Decided: June 20, 1989.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-15055 Filed 6-22-89; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31475]

Tyburn Railroad Co.; Exemption; Operation and Acquisition

Decided: June 7, 1989.

Tyburn Railroad Company (Tyburn), a noncarrier, has filed a notice of exemption under 49 CFR 1150.31 to operate a line of railroad between Consolidated Rail Corporation's (Conrail) track, line code 1121 (milepost 45.4) and facilities currently leased from Conrail by Tyburn, a total of 3,040 feet of rail line. Tyburn also filed a petition to revoke the exemption, requesting the Commission to resolve whether it has jurisdiction over this line. The transaction will be consummated on or about the seventh day following filing of the Notice of Exemption. The Railway Labor Executives' Association filed comments seeking imposition of labor protective conditions.

The line is currently operated by New Hope and Ivyland Railroad Company (NHIR), which has some of the same owners as Tyburn. A transaction relating to the continuance in control of Tyburn is the subject of a notice of exemption filed in Finance Docket No. 31476, *Adelaide McHugh, et al.—Continuance in Control Exemption—Tyburn Railroad Company*.[1]

Tyburn is the current lessee of these rail facilities. NHIR provides services under rail contracts (49 U.S.C. 10713) and for a single shipper. NHIR will cease operations when Tyburn begins its operations. While Tyburn initially plans to serve only the present shipper, it intends to market its rail services to other shippers.[2]

[1] Tyburn will be formed by Adelaide McHugh, Edward McHugh, Gerard McHugh, and William McNulty (applicants in Finance Docket No. 31476, *infra*). Applicants and James McHugh now jointly control McHugh Brothers Heavy Hauling, Inc., which operates NHIR.

[2] Tyburn has filed a petition to revoke this exemption, asking the Commission to resolve the issue of whether, when it markets its service to other shippers, this line would become a line of railroad subject to agency jurisdiction or whether it would remain an industrial spur. This notice does not resolve that question, but is issued because Tyburn has otherwise met the requirements of 49 CFR 1150.31. The Commission will address the petition to revoke in a separate decision.

Comments must be filed with the Commission and served on applicant's representative, William P. Quinn, Esquire, Rubin Quinn Moss & Heaney, 1800 Penn Mutual Tower, 510 Walnut Street, Philadelphia, Pennsylvania 19106-3619, (215) 925-8300.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. A petition to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

The involved property does not contain any sites or structures: (a) Listed in the National Register of Historical Places; or (b) 50 years old or older.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-14661 Filed 6-22-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Information Collection(s) Under Review

June 19, 1989.

The Office of Management and Budget (OMB) has been sent the following proposals for the collection of information for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act. Entries are grouped into submission categories. Each entry contains the following information:

(1) The title of the form or collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of estimated time it takes each respondent to respond;

(6) An estimate of the total public burden hours associated with the collection; and,

(7) An indication as to whether section 3504(h) of Pub. L. 96-511 applies.

Comments and/or questions regarding the item(s) contained in this notice, especially regarding the estimated response time, should be directed to the OMB reviewer, Mr. Edward Clarke, on (202) 395-7340 AND to the Department of Justice's Clearance Officer. If you anticipate commenting on a form/

collection, but find that time to prepare such comments will prevent you from prompt submission, you should so notify the OMB reviewer AND the Department of Justice's Clearance Officer of your intent as soon as possible. The Department of Justice's Clearance Officer is Mr. Larry E. Miesse who can be reached on (202) 633-4312.

All entries in this notice are for extensions of the expiration dates of currently approved collections without any change in the substance or in the method of collection.

(1) Application for Certificate of Citizenship.
(2) N-600. Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. Information is required to determine eligibility for issuance of a Certificate of Citizenship to a person who claims to have derived such citizenship under the authority of Section 341 of the Immigration and Nationality Act.
(5) 32,000 estimated annual respondents at one hour each.
(6) 32,000 estimated annual burden hours.
(7) Not applicable under 3504(h)

(1) Document Verification Request.
(2) G-845. Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. This form is an integral part of the Systematic Alien Verification for Entitlement (SAVE) Program and provides direct access to the INS Alien Status Verification Index.
(5) 200,000 annual respondents at .083 hours each.
(6) 16,600 estimated annual burden hours.
(7) Not applicable under 3504(h)

(1) Application for Permanent Residence.
(2) I-485. Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. Data is required from applicants to adjust status to that of a lawful permanent resident of the United States under Sections 245 and 249 of the Immigration and Nationality Act.
(5) 180,000 estimated annual respondents at .5 hours each.
(6) 90,000 estimated annual burden hours.
(7) Not applicable under 3504(h)

(1) Application for Suspension of Deportation.
(2) I-256A. Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. Form is used by aliens in deportation proceedings who seek to have their deportation suspended by the Attorney General and to acquire lawful permanent resident status.
(5) 574 estimated annual respondents at one hour each.
(6) 574 estimated annual burden hours.
(7) Not applicable under 3504(h)

(1) Application for Change of Nonimmigrant Status.
(2) I-506. Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. Data is needed to comply with Section 248 of the Immigration and Nationality Act by collecting adequate information to determine eligibility for nonimmigrant status and change of nonimmigrant status.
(5) 55,000 estimated annual respondents at .5 hours each.
(6) 27,500 estimated annual burden hours.
(7) Not applicable under 3504(h)

(1) Application by Nonimmigrant Alien for Replacement of Arrival Document.
(2) I-102. Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. Used by an alien to request replacement of nonimmigrant arrival document that has been lost, stolen, mutilated or destroyed. The information provided is used to verify status and to determine eligibility.
(5) 20,000 estimated annual respondents at .25 hours each.
(6) 5,000 estimated annual burden hours.
(7) Not applicable under 3504(h)

(1) Application for Issuance of Permit to Reenter the United States.
(2) I-131. Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. Section 223 of the Immigration and Nationality Act provides for issuance of a permit to aliens lawfully admitted, who intend to temporarily depart. The information given on the form will enable an officer of the service to render a decision as to whether the alien is eligible to receive such a document.
(5) 150,000 estimated annual respondents at .5 hours each.
(6) 75,000 estimated annual burden hours.
(7) Not applicable under 3504(h)

(1) Application for Issuance of a Refugee Travel Document (Article 28, United Nations Convention of July 28, 1951, and Protocol of 1967 Relating to Status of Refugees, 8 CFR 223a).
(2) I-570. Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. Form is used to obtain necessary data for determination of applicant's eligibility for issuance of a refugee travel document. Form is filed by alien physically present in the United states, whose presence is lawful and who is a refugee under Section 101(a)(42)(A) of the Immigration and Nationality Act.
(5) 6,000 estimated annual respondents at one hour each.
(6) 6,000 estimated annual burden hours.
(7) Not applicable under 3504(h).

(1) Canadian Border Boat Landing Card.
(2) I-68. Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. This information allows certain persons who enter the United States from Canada by small craft to be inspected only once during the navigational season.
(5) 7,500 estimated annual respondents at .166 hours each
(6) 1,245 estimated annual burden hours.
(7) Not applicable under 3504(h).

(1) Questionnaire submitted by Petitioner at Final Naturalization Hearing.
(2) N-445. Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. Data is required to determine petitioner's eligibility for naturalization in order to make appropriate recommendation by INS to the naturalization court.
(5) 240,000 estimated annual respondents at .083 hours each.
(6) 20,000 estimated annual burden hours.
(7) Not applicable under 3504(h).

(1) Request that an Applicant Appear for an Interview.
(2) N-430. Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. The data collected on this form is needed to prepare a Certificate of Naturalization for an eligible petitioner for naturalization as proscribed in Section 338 of the Immigration and Nationality Act.
(5) 350,000 estimated annual respondents at .083 hours each.
(6) 29,050 estimated annual burden hours.
(7) Not applicable under 3504(h).

(1) Alien Change of Address Card.

(2) AR–11. Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. Section 265 of the Immigration and Nationality Act requires aliens in the United States to inform the INS of any change of address.
(5) 250,000 estimated annual respondents at .083 hours each.
(6) 20,750 estimated annual burden hours.
(7) Not applicable under 3504(h).

(1) Arrival Information.
(2) N–14A. Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. Used by INS to identify arrival records of aliens applying for benefits. Data is needed primarily to identify arrival information for arrivals prior to 1924.
(5) 1,000 estimated annual respondents at .25 hours each
(6) 250 estimated annual burden hours.
(7) Not applicable under 3504(h).

(1) Biographic Information.
(2) G–325. Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. Used when it is necessary to check other Federal records on applications or petitions submitted by applicants for benefits under the Immigration and Nationality Act. Form is also required of applicants for adjustment to permanent resident status and applicants for naturalization.
(5) 500,000 estimated annual respondents at .25 hours each.
(6) 125,000 estimated annual burden hours.
(7) Not applicable under 3504(h).

(1) Alien Registration Fingerprint Chart.
(2) AR–4. Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. 8 CFR 264.1(e), 264.4, 261, 262, 263 and 264 of the Immigration and Nationality Act provide for the fingerprinting of nonimmigrants who have failed to maintain status.
(5) 200,000 estimated annual respondents at .25 hours each.
(6) 50,000 estimated annual burden hours.
(7) Not applicable under 3504(h).

Larry E. Miesse,
Departmental Clearance Officer, Department of Justice.

[FR Doc. 89–14847 Filed 6–22–89; 8:45 am]
BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersede as decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I:

New York
NY89–18 (Jan. 6, 1989) ..... pp. 827–836b
8989–19 (Jan. 6, 1989) ..... pp. 836c–836h
Pennsylvania
PA89–1 (Jan. 6, 1989) ..... pp. 838, 840
PA89–2 (Jan. 6, 1989) ..... pp. 950–951
PA89–8 (Jan. 6, 1989) ..... pp. 916–918
pp. 920–921
PA89–9 (Jan. 6, 1989) ..... p. 926
PA89–11 (Jan. 6, 1989) ..... p. 938
PA89–13 (Jan. 6, 1989) ..... p. 946
PA89–16 (Jan. 6, 1989) ..... p. 962
PA89–19 (Jan. 6, 1989) ..... p. 978
8989–20 (Jan. 6, 1989) ..... pp. 964–965

Volume II:

Iowa
IA89–1 (Jan. 6, 1989) ..... pp. 22–25
8989–7 (Jan. 6, 1989) ..... p. 56
Illinois
8989–14 (Jan. 6, 1989) ..... pp. 192, 194
8989–15 (Jan. 6, 1989) ..... pp. 202–204
Minnesota
MN89–12 (Jan. 6, 1989) ..... p. 611

Volume III:

California
CA89–4 (Jan. 6, 1989) ..... pp. 72, 91

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, This 6 Day of June 1989.

Robert V. Setera,
Acting Director, Division of Wage Determinations.

[FR Doc. 89–14765 Filed 6–22–89; 8:45 am]
BILLING CODE 4510–27–M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the request shown below, not later than July 3, 1989.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 3, 1989.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 5th day of June 1989.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

Appendix

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Amoco Production Co. (company)	Denver, CO	6/5/89	5/19/89	22,983	Oil and gas.
Amoco Production Co. (company)	Chicago, IL	6/5/89	5/19/89	22,984	Oil and gas.
Amoco Production Co. (company)	Tulsa, OK	6/5/89	5/19/89	22,985	Oil and gas.
Amoco Production Co. (workers)	Houston, TX	6/5/89	5/19/89	22,986	Oil and gas.
Amoco Production Co. (company)	New Orleans, LA	6/5/89	5/19/89	22,987	Oil and gas.
AT&T Dallas Works (CWA)	Mesquite, TX	6/5/89	5/8/89	22,988	Comm. equipment.
Baldwin & Miller, In. (company)	Newark, NJ	6/5/89	5/20/89	22,989	Holloware and Flatware.
Bancroft & Martin (company)	S. Portland, ME	6/5/89	5/9/89	22,990	Steel.
Bayonne Fashions (ILGWU)	Bayonne, NJ	6/5/89	5/15/89	22,991	Women's lingerie.
Bendix Safety Restraint Systems (ACTWU).	Knoxville, TN	6/5/89	4/21/89	22,992	Seat belts.
Continental Laboratories, Inc.	Billings, MT	6/5/89	5/15/89	22,993	Mudlogging.
Control Data (workers)	Arden Hills, MN	6/5/89	5/15/89	22,994	Computers.
Control Data (workers)	Minneapolis, MN	6/5/89	5/15/89	22,995	Computers.
Crescent Foods, Inc. (company)	Seattle, WA	6/5/89	5/9/89	22,996	Spices.
DL Mud, Inc. (workers)	New Orleans, LA	6/5/89	5/19/89	22,997	Oil and gas.
Du Pont Co. (company)	Pompton Lakes, NJ	6/5/89	5/16/89	22,998	Electric blasting caps.
Everseal Mfg. (IBPAT)	Ridgefield, NJ	6/5/89	5/22/89	22,999	Paints.
GTE Halls Station (workers)	Muncy, PA	6/5/89	5/11/89	23,000	Printed circuit boards.
Getter Trucking, Inc. (workers)	Gillette, WY	6/5/89	5/12/89	23,001	Oil and Gas.
Gruss Petroleum Management, Inc. (company).	Midland, TX	6/5/89	5/18/89	23,002	Oil and Gas.
Gruss Petroleum Management, Inc. (company).	New York, NY	6/5/89	5/18/89	23,003	Oil and Gas.
H&H Atlas, Inc. (ILGWU)	Bronx, NY	6/5/89	5/15/89	23,004	Ladies' bathingsuits.
Haake Buchler Instruments, Inc. (company).	Fort Lee, NJ	6/5/89	5/12/89	23,005	Scientific instruments.
High Mountain Inspection Service, Inc. (workers).	Mills,WY	6/5/89	5/17/89	23,006	Oil and gas.
Hunt Energy Corp. (company)	Dallas, TX	6/5/89	5/2/89	23,007	Oil and gas.
J.G. Carmel, Inc. (company)	Midland, TX	6/5/89	5/18/89	23,008	Oil and gas.
Jerry Scott Drilling Co. (workers)	Seminole, OK	6/5/89	5/16/89	23,009	Oil and gas.
Jorgruss Oil Corp. (company)	Midland, TX	6/5/89	5/18/89	23,010	Oil and gas.
L & S Sales, Inc. (workers)	Caribou, ME	6/5/89	5/10/89	23,011	Frozen foods.
Mamary Brothers, Inc. (company)	New York, NY	6/5/89	5/9/89	23,012	Ladies' sleepwear.
Mereve Oil Corp. (company)	Midland, TX	6/5/89	5/18/89	23,013	Oil and gas.
Maxim Drilling & Exploration	Gillette, WY	6/5/89	4/18/89	23,014	Oil and gas.
Pegasus Holding Corp. (company)	Midland, TX	6/5/89	5/18/89	23,015	Oil and gas.

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Stackpole Carbon Co. (IUE)	St. Marys, PA	6/5/89	5/18/89	23,016	Molded Graphite and Brushes.
Stryker Machine Products (IUE)	Trenton, NJ	6/5/89	5/18/89	23,017	Component parts.
Tiara, Mfg. (workers)	Potosi, MO	6/5/89	5/19/89	23,018	Medical uniforms and supplies.
U.S. Enerteck, Bolts Unlimited (workers).	Farmington, NM	6/5/89	5/7/89	23,019	Oil and gas.
Vortex (company)	Wharton, NJ	6/5/89	5/22/89	23,020	Wallpaper.
Wells Lamont Corp. (workers)	Oak Grove, LA	6/5/89	5/17/89	23,021	Gloves.
Witco Corp.-Richardson Battery Parts Div. (workers).	Clark, NJ	6/5/89	5/16/89	23,022	Battery containers.

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Signed at Washington, DC this 12th day of June 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition number	Articles produced
BHP Petroleum (Americas, Inc.) (company)	Midland, TX	6/12/89	3/27/89	23,023	Oil and gas.
Bison Drilling, Inc. (workers)	Wakeeney, KS	6/12/89	5/22/89	23,024	Oil and gas.
CDI Corporation (workers)	Secaucus, NJ	6/12/89	5/23/89	23,025	Computers.
C&H Transportation Co., Inc.	Dallas, TX	6/12/89	5/22/89	23,026	Oil and gas.
Challenger Circle F (company)	Trenton, NJ	6/12/89	5/23/89	23,027	Wire devices.
Champion Spark Plug Co. (UAW)	Toledo, OH	6/12/89	5/10/89	23,028	Spark plugs.
Champion Spark Plug Co. (UAW)	Detroit MI	6/12/89	5/10/89	23,029	Spark plugs.
Champion Spark Plug Co. (UAW)	Cambridge, OH	6/12/89	5/10/89	23,030	Spark plugs.
Champion Spark Plug Co. (UAW)	Burlington, IA	6/12/89	5/10/89	23,031	Spark plugs.
Chrysler Corp. (UAW)	Kenosha, WI	6/12/89	5/24/89	23,032	Cars.
Copperweld Steel Co., Inc. (USWA)	Warren, OH	6/12/89	5/27/89	23,033	Steel bars.
Cravat Coal Co. (company)	Cadiz, OH	6/12/89	5/16/89	23,034	Bituminous coal.
Delsea Parker Corp (Iron Wkrs)	Millville, NJ	6/12/89	5/17/89	23,035	Steel.
Ellithorpe Well Control, Inc.	Odessa, TX	6/12/89	5/22/89	23,036	Oil and gas.
GNB, Inc. (IBEW)	Leavenworth, KS	6/12/89	5/18/89	23,037	Batteries.
Henkel Corp. (workers)	Harrison, NJ	6/12/89	5/19/89	23,038	Paper.
L&M Oil Co. (workers)	Dallas, TX	6/12/89	5/17/89	23,039	Oil and gas.
L.S. Thorsen Corp. (IUE)	Ellsworth, ME	6/12/89	5/23/89	23,040	Sheet Metal.
Meriden-Stirwhour Press (workers)	Meriden, CT	6/12/89	5/23/89	23,041	Books,
Metalurgical Exo-Products Corp. (Metscrap Div.) (IUMSB).	McKees Rock, PA	6/12/89	5/22/89	23,042	Aluminum.
Mueller Power Tongs, Inc. (workers)	Stanford, TX	6/12/89	5/21/89	23,043	Oil and gas.
Parkway Fabricators (workers)	South Amboy, NJ	6/12/89	5/25/89	23,044	Suits.
Scab Rock Feeders (workers)	Othello, WA	6/12/89	5/19/89	23,045	Beef Products.
Signetics Corp (workers)	Orem, UT	6/12/89	5/20/89	23,046	Computers chips.
Tapley Rutter (workers)	Moonachie, NJ	6/12/89	5/25/89	23,047	Bibles.
Unisys Corp (workers)	Secaucus, NJ	6/12/89	5/23/89	23,048	Computers.
WCI Major Appliance Group (workers)	Newark, OH	6/12/89	5/18/89	23,049	Appliance parts.

[FR Doc. 89-14919 Filed 6-22-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-22,163]

Micro Energy International, Inc.; Roswell, NM; Termination of Investigation

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) as amended by the Omnibus Trade and Competitiveness Act of 1988 (Pub.L. 100-418), the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

The investigation was initiated in response to a petition received on November 18, 1988 and filed on behalf of workers employed at Micro Energy International in Roswell, New Mexico to develop an energy source product.

Micro Energy International, Incorporated, Roswell, New Mexico was a start-up company which was formed to produce and market an energy source product. The company was incorporated in August 1985 and was dissolved in November 1985. The product was not marketed during the short term of Micro Energy's operation.

The retroactive provisions of section 1421 (a)(1)(B) of the Omnibus Trade and Competitiveness Act of 1988 do not apply to workers who are engaged in the production of an article if such workers were eligible to be certified for benefits under the Trade Act prior to the implementation of the retroactive provisions.

All workers were separated from the subject firm more than one year prior to the date of the petition. Section 223 of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 16th day of February 1989.

Marvin M. Fooks,

Trade Adjustment Assistance.

[FR Doc. 89-14920 Filed 6-22-89; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of May 1989.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivion thereof, have become totally or partially separated,

(2) That sales or produciton, or both, of the firm or subdivision have decreased absolutely, and

(2) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-22,507; Texas Meridian Production Co., Houston, TX

TA-W-22,666; Fashion Craft Industries, Henryetta, OK

TA-W-22,461; R.E. Smith Interests, Inc., Snyder, TX

TA-W-22,656; Wellington Leather Goods, Inc., New York, NY

TA-W-22,674; Lucky Star, Brooklyn, NY

TA-W-22,667; Fisher Scientific Co., Indiana, PA

TA-W-22,693; E.P. Manufacturing, Inc., Rochester, NY

TA-W-22,714; Sanyo E & E Corp., Richmond, IN

TA-W-22,718; Shelley Manufacturing Co., Miami, FL

TA-W-22,487; Jersild Knitting Corp., Neenah, WI

TA-W-22,639; Nat Kaplan, New York, NY

TA-W-22,468; Andrew Harris, Inc., Philadelphia, PA

TA-W-22,561; Bates Fabrics, Inc., Lewiston, ME

TA-W-22,589; Mary D. Knitting Mills, Inc., Glendale, NY

TA-W-22,611; United Steel & Wire Co., Inc., Pennsauken, NJ

TA-W-22,768; Eaton Corp., Specialty Castings Div., Marshall, MI

TA-W-22,605; SMS Automotive Product, Inc., Philadelphia, PA

TA-W-22,657; Willow & Reed, Inc., Elmhurst, NY

TA-W-22,595; National Semiconductor, South Portland, ME

TA-W-22,582; AKZO Salt, Inc., (Formerly International Salt Co) Williston, ND

TA-W-22,523; E & L Fashions, Paterson, NJ

TA-W-22,583; Jay Garment Co., Clarksville, TN

In the following cases, the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-22,689; Big Apple Knits Limited, Brooklyn, NY

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22,620; Decor Fur, Inc., New York, NY

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22,712; Regal Ware, Inc., Virginia Beach, VA

Increased import did not contribute importantly to workers separations at the firm.

TA-W-22,675; M. Goldstein, Brooklyn, NY

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22,708; Peerless Winsmith, Inc., Springville, NY

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-22,741; Speed Rack, Inc., Quincy, IL

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22,598; Pan American Tanning Corp., Gloversville, NY

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22,719; Standard Microsystems Corp., Hauppauge, NY

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-22,791; Spain Construction Service, Inc., St Elmo, IL

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-22,663; Damon Creations, Inc., North Bergen, NJ

The workers' firm does not produce an article as required for certification under Section 222 of theTrade Act of 1974.

TA-W-22,700; Hudson Shipping Co., Inc., New York, NY

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-22,702; Mac Originals, New York, NY

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-22,778; ICO Positive Seal, Odessa, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

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TA-W-22,779; ICO Spincoat, Odessa, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-22,750; Bill Miller, Inc., Henryetta, OK

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-22,571; Continental Trend Resources, Enid, OK

The investigation revealed that criterion (1) and (2) has not been met. Employment did not decline during the relevant period as required for certification. Sales or production did not decline during the relevant period as required for certification.

TA-W-22,705; Oneok Exploration, Great Bend KS

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22,577; Etienee Aigner, New York, NY

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22,630; Imprimis Technology, Inc., Bloomington, MN

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22,687; Andrea Products, New York, NY

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-22,690; Calvin Klein Collections, New York, NY

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-22,735; Iberia Petroleum Co., Houston, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-22,420; Walden Service, Inc., Odessa, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-22,692; Combustion Engineering, Inc., Lyndhurst, NJ

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-22,724; C.D.R. Footwear, Inc., Keene, NH

Aggregate U.S. imports of work footwear did not increase in 1988 compared to 1987 or in January 1989 compared to January 1988.

TA-W-22,668; H & E Pipe Service, Inc., Williston, ND

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-22,658; A.V. Well Service, Olney, IL

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-22,684; International Longshoremen, Local 854, Employed Through New Orleans Association, New Orleans, LA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-22,740; Siemens Transmissions Systems, El Paso, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-22,671; Lillian Vernon, Portchester, NY

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-22,672; Lillian Vernon, New Rochelle, NY

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-22,614; A.B.F., Long Island City NY

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-22,553A; Louisiana Intrastate Gas Corp., Alexandria, VA

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22,682; Sola Barnes-Hind, Phoenix, AZ

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22,730; Gold Circle Stores, Buffalo, NY

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-22,600; Phillips Petroleum Co., Headquarters, Bartlesville, OK

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22, 694; Exide Corp., Hays, KS

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22, 684; Teledyne Merla, Snyder, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-22, 626; Fort Hill Lumber Co., Grande Rhonde, OR

U.S. imports of Softwood lumber declined absolutely and relative to U.S. production 1988 compared to 1987.

TA-W-22, 645; Pico Products, Inc., OH

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22, 664; Delicia Sportswear, New York, NY

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-22, 628; Petromar Corp., Rockport, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-22, 646; Quality Plant Service, Inc., Yonkers, NY

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-22, 634; Leviton Manufacturing Co., Inc., Little Neck, NY

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-22, 570; The Computer Consulting Center, New York, NY

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-22, 594; Murphree Tool Co., Midland, TX

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22, 592; Max Murphy Tank Truck Service, Geff, IL

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-22, 564; Briggs and Stratton Corp. Headquarters-Engine Div., Milwaukee, WI

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22, 564A; Briggs and Stratton Corp. Key & Lock Div., Good Hope Rd Plant, Glendale, WI

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22, 564B; Briggs and Stratton Corp., Parts Div., Menomonee Falls, WI

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22, 564C; Briggs and Stratton Corp., West Allis Foundry, West Allis, WI

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22, 715; Shell Western E&P, Inc., Crew 120, Salt Lake City, UT

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22, 716; Shell Western E & P, Inc., Crew 266, Glendive, MT

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22, 717; Shell Western E & P, Inc., Crew 174, Bay City, MI

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22, 568; Cimarron Resources, Inc., Aurora, Co

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22, 652; Simco Awards, Inc., New York, NY

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22, 665; Edmond Stern, Inc., New York, NY

U.S. imports of knit fabric were negligible.

TA-W-22, 882; Lone Star Industries, Inc., New Orleans, LA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-22, 670; Kuehne & Nagel, Inc., New York, NY

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-22, 793; Technical Engineering Consulting, Inc., Ypsilante, MI

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-22, 618; Bushue Well Service, Effingham, IL

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-22, 622; Elmer Little & Sons, Johnstown, NY

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-22, 419; Union Pacific Resources, Houston, TX

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22, 419A; Union Pacific Resources, At Various Locations in The State of Texas

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22, 419B; Union Pacific Resoucres, At Various Locations in The State of Oklahoma

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22, 660; Arbeit Brothers, Inc., New York, NY

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22, 698; G & G Drill Collar Service Co., Inc., Abilene, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-22, 700; Hudson Shipping Co., Inc., New York, NY

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-22, 680; Schwerman Trucking Co., Maryneal, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-22, 781; LTV Energy Products, Bradford, PA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-22, 702; Mac Originals, New York, NY

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-22, 642; O'Donnell Coal Co., O'Donnell Mine #3, Indiana, PA

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22, 695; Fairchild Republic Co., Melville, NY

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22, 747; Teledyne Wisconsin Motor, West Allis, WI

The investigation revealed that criterion (1) has not been met. Employment did not decline during the relevant period as required for certification.

Affirmative Determination

TA-W-22, 703; Mitchell Corp., Cadillac, MI

A certification was issued covering all workers separated on or after March 15, 1988.

TA-W-22, 696; FEDCO Automotive Components Co., Buffalo, NY

A certification was issued covering all workers separated on or after March 8, 1988.

TA-W-22, 758; Bethlehem Steel Corp., Williamsport Wire Rope Div. Williamsport, PA

A certification was issued covering all workers separated on or after October 1, 1988.

TA-W-22, 777; Hummelstown Mfg., Elizabethtown, PA

A certification was issued covering all workers separated on or after March 29, 1988 and before May 7, 1989.

TA-W-22, 734; Hunt Oil Co., Western Div., Denver, CO

A certification was issued covering all workers separated on or after March 21, 1988.

TA-W-22, 723; Wes-Mor Drilling, Inc., Graham, TX

A certification was issued covering all workers separated on or after February 22, 1988 and before January 31, 1989.

TA-W-22, 644; Pan Canadian Petroleum Co., Denver, CO and Houston, TX

A certification was issued covering all workers separated on or after February 28, 1988.

TA-W-22, 720; Sunrise Undergarment Co., New York, NY

A certification was issued covering all workers separated on or after March 9, 1988.

TA-W-22, 683; Taylor's Casing Crews, Odessa, TX

A certification was issued covering all workers separated on or after February 14, 1988.

TA-W-22, 826; Operators, Inc., Located Throughout The State of North Dakota

A certification was issued covering all workers separated on or after October 1, 1988.

TA-W-22, 722; Weldon Miller Contractors, Inc., Morgan City, LA

A certification was issued covering all workers separated on or after March 16, 1988.

TA-W-22, 662; D & R Tong Service, Odessa TX

A certification was issued covering all workers separated on or after February 14, 1988.

TA-W-22,673; Longhorn Casing Crews, Odessa, TX

A certification was issued covering all workers separated on or after February 14, 1988.

TA-W-22,732; Houston Fluid & Leasing, Dallas, TX

A certification was issued covering all workers separated on or after February 22, 1988.

TA-W-22,732A; Houston Fluid & Leasing, Ranger, TX

A certification was issued covering all workers separated on or after February 22, 1988.

TA-W-22,669; Halliburton Services, Henderson, KY

A certification was issued covering all workers separated on or after March 9, 1988.

TA-W-22,647; R & C Drilling Co., Inc., Hays, KS

A certification was issued covering all workers separated on or after November 1, 1988.

TA-W-22,502; Post Manufacturing Co., Inc., New York, NY

A certification was issued covering all workers separated on or after February 3, 1988 and before February 28, 1989.

TA-W-22,654; Thomas Drilling Co., Duncan, OK

A certification was issued covering all workers separated on or after February 24, 1988.

TA-W-22,786; Pyramid Drilling Co., Abilene, TX

A certification was issued covering all workers separated on or after January 1, 1989.

TA-W-22,678; PEP Drilling Co., Mt. Vernon, IL

A certification was issued covering all workers separated on or after March 7, 1988.

TA-W-22,678A; PEP Drilling Co., Carrollton, OH

A certification was issued covering all workers separated on or after March 7, 1988.

TA-W-22,615; AT and T Technologies, Inc., General Markets Group, Westminster, CO

A certification was issued covering all workers separated on or after March 3, 1988.

TA-W-21,619; Chalmers Exploration Co., Abilene, TX

A certification was issued covering all workers separated on or after February 24, 1988.

TA-W-21,631; John Kiss & Sons, North Bergen, NJ

A certification was issued covering all workers separated on or after February 25, 1988.

TA-W-22,635; McAdams, Roux & Associates, Inc., Denver, CO

A certification was issued covering all workers separated on or after January 1, 1989.

TA-W-22,635A; McAdams, Roux & Associates, Inc., Gillete, WY

A certification was issued covering all workers separated on or after January 1, 1989.

TA-W-22,775; Harrell Exploration Co., Denver, CO

A certification was issued covering all workers separated on or after January 1, 1989.

TA-W-22,588; Mark Manufacturing Co., Fort Worth, TX

A certification was issued covering all workers separated on or after February 14, 1988 and before August 31, 1988.

TA-W-22,633; Kinney Shoe Corp., Romney Shoe Div., Romney, WV

A certification was issued covering all workers separated on or after January 1, 1989.

TA-W-22,569; Circle M Mud, Inc., Oklahoma, OK

A certification was issued covering all workers separated on or after February 22, 1988 and before May 30, 1989.

TA-W-22,616; Almond Jewelry, Inc., Westbury, NY

A certification was issued covering all workers separated on or after February 27, 1988.

TA-W-22,560; Animal Fair, Inc., Eden Valley, MN

A certification was issued covering all workers separated on or after February 10, 1988.

TA-W-22,580; Harry Levine, Long Island City, NY

A certification was issued covering all workers separated on or after February 14, 1988.

TA-W-22,567; Champion Garment Co., Rome, GA

A certification was issued covering all workers separated on or after August 1, 1988 and before December 31, 1988.

TA-W-22,628; Gearhart Industries, Inc., Abilene, TX

A certification was issued covering all workers separated on or after February 28, 1988 and before January 1, 1989.

TA-W-22,721; Waco Lehigh Portland Cement Co., Waco, TX

A certification was issued covering all workers separated on or after September 1, 1988.

TA-W-22,759; Blum & Fink, Inc., New York, NY

A certification was issued covering all workers separated on or after March 29, 1988.

TA-W-22,706; P and N Industries, Inc. New York, NY

A certification was issued covering all workers separated on or after March 1, 1988.

TA-W-22,676; New Venture Knitting Mills, Brooklyn, NY

A certification was issued covering all workers separated on or after February 28, 1988 and before April 30, 1989.

TA-W-22,799; Western Atlas International, Atlas Wireline Div., Indiana, PA

A certification was issued covering all workers separated on or after March 13, 1988 and before September 1, 1988.

TA-W-22,699; Howden Sirocco, Inc., Hyde Park, MA

A certification was issued covering all workers separated on or after March 16, 1988.

TA-W-22,679; Phentex USA, Inc., Plattsburgh, NY

A certification was issued covering all workers separated on or after March 16, 1988.

TA-W-22,948; Sherwood Medical Co., Sherburne, NY

A certification was issued covering all workers separated on or after January 1, 1989.

TA-W-22,681; Shar-Alan Oil Co., Denver, CO

A certification was issued covering all workers separated on or after February 22, 1988.

TA-W-22,681A; Shar-Alan Oil Co., At Various Locations in The State of CO

A certification was issued covering all workers separated on or after February 22, 1988.

TA-W-22,681B; Shar-Alan Oil Co., At Various Locations in The State of Oklahoma

A certification was issued covering all workers separated on or after February 22, 1988.

TA-W-22,681C; Shar-Alan Oil Co., At Various Locations in the State of Texas

A certification was issued covering all workers separated on or after February 22, 1988.

TA-W-22,596; Neil Scott Originals, New York, NY

A certification was issued covering all workers separated on or after June 1, 1988 and before July 31, 1988.

TA-W-22,637; Miller We; Service, Fairfield, IL

A certification was issued covering all workers separated on or after March 2, 1988.

TA-W-22,513; Wearwear Proctor Silex, Altoona, PA

A certification was issued covering all workers separated on or after January 26, 1988 and before February 1, 1989.

TA-W-22,492; Mark D. Knitting Mills, Philadelphia, PA

A certification was issued covering all workers separated on or after January 30, 1988.

TA-W-22,514; Wes-Tex Drilling Co., Abilene, TX

A certification was issued covering all workers separated on or after January 23, 1988.

TA-W-22,562; Benstock Co., Buffalo, NY

A certification was issued covering all workers separated on or after February 17, 1988.

TA-W-22,572; Cricketeer Manufacturing Co., Lawrenceburg, KY

A certification was issued covering all workers separated on or after March 16, 1988.

TA-W-22,648; Reliable Acid, Inc., Fairfield, IL

A certification was issued covering all workers separated on or after March 3, 1988 and before March 31, 1989.

TA-W-22,661; Apollo Drilling, Inc., Gillette, WY

A certification was issued covering all workers separated on or after March 5, 1988.

TA-W-22,661A; Apoll Drilling, Inc., Denver, CO

A certification was issued covering all workers separated on or after March 5, 1988.

TA-W-22,459; Phillips Petroleum, Western Div., Oklahoma City, OK

A certification was issued covering all workers separated on or after January 23, 1988.

TA-W-22,653; Sonat Offshore Drilling, Inc., New Orleans, LA

A certification was issued covering all workers separated on or after Janaury 1, 1989.

TA-W-22,370; See Land Drilling Co., Houma, LA

A certification was issued covering all workers separated on or after December 27, 1987 and before December 31, 1988.

TA-W-22,370A; See Land Drilling Co., Laurel, MS

A certification was issued covering all workers separated on or after December 27, 1987 and before December 31, 1988.

I hereby certify that the aforementioned determinations were issued during the month of May 1989. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213 during normal business hours or will be mailed to persons to write to the above address.

Dated: June 13, 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89-14921 Filed 6-22-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-22,609]

TGX Corp.; Westfield, NY; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at TGX Corporation, Westfield, New York. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-22,609; TGX Corporation Westfield, New York (June 9, 1989)

Signed at Washington, DC, this 14th day of June 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89-14922 Filed 6-22-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-21,999 et al.]

Western Oceanic, Inc., et al; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In the matter of Western Oceanic, Inc., TA-21,999, Houston, Texas, TA-W-21,999A, Lafayette, Louisiana; Western Oceanic, Services, Inc., TA-W-21,999B, Houston, Texas, TA-W-21,999C, Lafayette, Louisiana; North Star Drilling Company, TA-W-21,999D, Houston, Texas, TA-W-21,999E, Lafayette, Louisiana.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 25, 1989 applicable to all workers of Western Oceanic, Inc., Houston, Texas. The certification was amended on March 24, 1989 to include the Lafayette, Louisiana location.

The certification is being amended to properly reflect the correct worker group. New information from the company shows that Western Oceanic Services and North Star Drilling are domestic subsidiaries of Western Oceanic, Inc. Workers are transferred among Western Oceanic's subsidiaries to work on drilling rigs in the Gulf as needed. The employment and revenue data requested by the Department from Western Oceanic inlcudes the data from Western Oceanic Services and North Star Drilling.

The notice, therefore is amended by including Western Oceanic Services and North Star Drilling in Houston, Texas and Lafayette, Louisiana. It was the Department's intent to include all workers of Western Oceanic, Inc., Western Oceanic Services and North Star Drilling under TA-W-21,999.

The amended notice applicable to TA-W-21,999 is hereby issued as follows:

All workers of Western Oceanic, Inc.; Western Oceanic Services; and North Star Drilling, Houston, Texas and Lafayette,

Louisiana who became totally or partially separated on or after October 1, 1985 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 12th day of June 1989.

Stephen A Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-14923 Filed 6-22-89; 8:45 am]

BILLING CODE 4510-30-M

Disaster Unemployment Assistance; Change 1 to Unemployment Insurance Program Letter 16-89 for Implementing Statutory Amendments Affecting the Disaster Unemployment Assistance Program

On November 23, 1988, the President signed into law H.R. 2707, which in Title I contains the "Disaster Relief and Emergency Assistance Amendments of 1988" (the DREA) affecting the Disaster Unemployment Assistance (DUA) Program. On March 24, 1989, the Department published Unemployment Insurance Program Letter (UIPL) No. 16-89, dated February 10, 1989, and the preamble thereto in the **Federal Register** (54 FR 12295). The operating instructions contained in the UIPL superseded the prior provisions for the DUA Program and certain provisions of the regulations at 20 CFR Part 625 implementing the DUA Program, to the extent that the provisions of DREA were inconsistent with the Disaster Relief Act of 1974 (renamed the "Robert T. Stafford Disaster Relief and Emergency Assistance Act" by the DREA) and the regulations.

In this Change 1 to UIPL No. 16-89, the Department is providing further guidance and clarification to certain operating instructions contained in the UIPL where questions were raised by the States and the cooperating State agencies in implementing and administering the provisions of the DREA amendments.

Unemployment Insurance Program Letter No. 16-89, Change 1 is published below.

Signed at Washington, DC, on June 13, 1989.

Roberts T. Jones,

Assistant Secretary of Labor.

BILLING CODE 4510-30-M

U.S. Department of Labor Employment and Training Administration Washington, D.C. 20210	CLASSIFICATION UI/DUA
	CORRESPONDENCE SYMBOL TEUMI
	DATE June 15, 1989

DIRECTIVE : UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 16-89 CHANGE 1

TO : ALL STATE EMPLOYMENT SECURITY AGENCIES

FROM : DONALD J. KULICK
Administrator
for Regional Management

SUBJECT : Disaster Unemployment Assistance--Operating Instructions for Implementing the Statutory Amendments Affecting the Program

1. Purpose. To provide clarification of Section 4.A.1., "ADMINISTRATION", of UIPL 16-89, which sets forth the operating instructions implementing the statutory amendments affecting the Disaster Unemployment Assistance (DUA) Program.

2. References. UIPL No. 16-89; Section 410(a) of The Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act); and Section 106(f)(1) of the Disaster Relief and Emergency Assistance Amendments of 1988 (the DREA).

3. Background. Several State Employment Security Agencies (SESAs) have raised questions concerning Section 4.A.1. of UIPL 16-89. This section addresses Section 410(a) of the Stafford Act, which, as amended by Section 106(f)(1) of the DREA, provides that DUA is payable for a week of unemployment only if "the individual is not entitled to any other unemployment compensation ... or waiting period credit."

This directive provides clarification of, and answers to questions raised about, Section 4.A.1. of the Department of Labor's operating instructions.

4. Operating Instructions Clarification.

In Section 4.A.1., under the heading "ADMINISTRATION", the operating instructions state that under Section 410(a) of

RESCISSIONS	EXPIRATION DATE June 30, 1990

DISTRIBUTION

the Stafford Act, DUA is not payable if the individual is not entitled to a payment of unemployment compensation because the individual: 1) is under a disqualification, 2) has excessive disqualifying income, 3) is employed or is not able to work or available for work, or 4) for any other reason is ineligible for unemployment compensation or waiting period credit the individual otherwise would be entitled to but for such ineligible reason.

Section 410(a) of the Act provides "The President is authorized to provide to any individual unemployed as a result of a major disaster such benefit assistance as he deems appropriate while such individual is unemployed for the weeks of such unemployment with respect to which the individual is not entitled to any other unemployment compensation ... or waiting period credit."

Section 625.5 of 20 CFR sets forth the conditions that must be met for an individual's unemployment to be determined to be caused by a major disaster and 20 CFR 625.4 sets forth the eligibility conditions for receipt of DUA benefits. The qualifying requirements set forth in these regulations did not change as a result of the recent amendments by the DREA. Rather, Section 106(f)(1) of the DREA added one additional qualifying requirement in order to be eligible for the payment of DUA, i.e., that "the individual is not entitled to any other unemployment compensation ... or waiting period credit."

It was not the intent of Section 4.A.1. of the operating instructions to deny DUA benefits to any individual unemployed as a result of a major disaster, as determined under the regulations, as long as such individual is not entitled to unemployment compensation.

The following questions and answers provide guidance and clarification of the phrase "not entitled to any other unemployment compensation" as used in the statute.

Question 1. Is an individual under an unsatisfied voluntary quit disqualification for unemployment compensation eligible for DUA if he/she becomes unemployed due to the major disaster?

Answer. Yes. For example, if an individual quit a job prior to the disaster and was disqualified for unemployment compensation but subsequently obtained a job and was separated due to the disaster and if such wages, employment, length of employment or time period from the beginning date of the denial did not satisfy the disqualification, the individual would nevertheless be entitled to DUA because the most recent separation was due to the disaster.

Question 2. May an individual who is unemployed and injured as a result of the disaster still be paid DUA if such individual is denied unemployment benefits because the individual does not meet the State law able and available requirements?

Answer. Yes. If an individual becomes unemployed due to being injured as a result of the disaster (20 CFR 625.5(a)(5) and (b)(4)), the individual would meet the exception for being considered able and available for work under 20 CFR 625.4(g). If the individual were denied unemployment compensation as not being able or available for work under State law, such individual, if otherwise eligible, must be paid DUA benefits.

Another circumstance, related to availability, arises where an individual is unemployed because the individual cannot reach his/her place of employment as a direct result of the disaster (20 CFR 625.5(a)(2) and (b)(2)). If the individual is denied unemployment compensation under State law as not being available for work since the job is available, such individual may be paid DUA if the individual is otherwise eligible.

Question 3. May an individual be paid DUA where he/she starts receiving unemployment compensation after becoming unemployed due to the disaster and then becomes ineligible for such benefits for some reason?

Answer. No. For example, an individual who becomes unemployed due to a major disaster is entitled to unemployment compensation and subsequently, during the disaster assistance period, the individual obtains a suitable temporary job or partial employment and then quits. If the individual is disqualified for unemployment compensation because of the quit, such individual may not be paid DUA because the individual's most recent unemployment is not attributable to the disaster but due to a separation not caused by the disaster.

Another example is, an individual was entitled to unemployment compensation and became injured for any reason not related to the disaster and, under State law,

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the individual was denied benefits as not being able or available for work. Such individual could not receive DUA because the individual does not meet the eligibility exception provision since the injury was not caused by the disaster.

While a question was not specifically asked, from a standpoint of clarification and understanding, an individual determined ineligible for unemployment compensation because of the receipt of disqualifying income may not be paid DUA. Such individual is considered eligible for unemployment compensation or waiting period credit.

5. Action Required. This information should be provided to appropriate staff members.

6. Inquiries. States should direct inquiries to the appropriate Regional Office.

[FR Doc. 89-14925 Filed 6-22-89; 8:45 am]
BILLING CODE 4510-30-C

Occupational Safety and Health Administration

Wyoming State Standards; Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State Plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On May 3, 1974, notice was published in the **Federal Register** (39 FR 15394) of the approval of the Wyoming Plan and adoption of Subpart BB to Part 1952 containing the decision.

The Plan provides for the adoption of Federal Standards as State Standards by:

1. Advisory Committee coordination.
2. Publication in newspapers of general/major circulation with a 45-day waiting period for public comment and hearings.
3. Adoption by the Wyoming Health and Safety Commission.
4. Review and approval by the Governor.
5. Filing with Secretary of State and designation of an effective date.

OSHA regulations (29 CFR 1953.22 and 1953.23) require that States respond to the adoption of new or revised permanent Federal standards by State promulgation of comparable standards within six months of OSHA publication in the **Federal Register**, and within 30 days for emergency temporary standards. Although adopted State standards or revisions to standards must be submitted for OSHA review and approval under procedures set forth in Part 1953, they are enforceable by the state prior to federal review and approval. By letter dated October 21, 1988 from John T. Chambers, Former Assistant Administrator, Wyoming Occupational Health and Safety Division, to Byron R. Chadwick, OSHA Regional Administrator, the State submitted rules and regulations in response to the following Federal OSHA General Industry Standards (29 CFR 1910.1200: Hazard Communication 52 FR 31852, 8/24/87; 29 CFR 1910.1928: Benzene, 52 FR 34462, 9/11/87; 29 CFR 1910.268: Telecommunications, 52 FR 36384, 9/28/87). By letter dated January 11, 1989, from Stephan R. Foster, Assistant Administrator, Wyoming Occupational Health and Safety Division, to Byron R. Chadwick, OSHA Regional Administrator, the State submitted rules and regulations in response to the following Federal OSHA General Industry Standards (29 CFR 1910.1048: Formaldehyde, 52 FR 46168, 12/4/87; 29 CFR 1910.217, Mechanical Power Presses—Presence Sensing Device Initiation, 53 FR 8322, 3/14/88).

The above adoptions of Federal standards have been incorporated in the State Plan and are contained in the Wyoming Occupational Health and Safety Rules and Regulations for General Industry, as required by Wyoming Statute 1977, section 27-11-105(a)(viii).

State standards for 29 CFR 1910.1200: Hazard Communication were adopted by the Health and Safety Commission of Wyoming on February 5, 1988 (effective March 8, 1988); State standards for 29 CFR 1910.1028: Benzene were adopted by the Health and Safety Commission of Wyoming on February 5, 1988 (effective March 9, 1988); State standards for 29 CFR 1910.268: Telecommunications were adopted by the Health and Safety Commission of Wyoming on February 5, 1988 (effective February 19, 1988); State standards for 29 CFR 1910.1048: Formaldehyde and for 29 CFR 1910.217: Mechanical Power Presses—Presence Sensing Device Initiation were both adopted by the Health and Safety Commission of Wyoming on June 14, 1988 (effective August 4, 1988). Adoption of all these standards was pursuant to Wyoming Statute 1977, section 27-11-105. The State standards on Hazardous Communications, Benzene, Telecommunications, Formaldehyde, and Mechanical Power Presses—Presence Sensing Device Initiation are all substantially identical to the Federal Standards actions, with the only exceptions being paragraph numbering and minor wordage appropriate only to the Wyoming statutes.

According to Wyoming's Letter of May 19, 1989, to Byron R. Chadwick, Regional Administrator, the State will not have its own requirements for recognition of third-party validation organizations for the standard on presence sensing device initiation for mechanical power presses. Wyoming is instead relying on Federal OSHA's third-party recognition program as outlined in Appendix C. Applications will be filed with Federal OSHA in Washington, DC.

2. Decision

The above State Standards have been reviewed and compared with the relevant Federal Standards, and OSHA has determined that the State Standards are at least as effective as the comparable Federal Standards, as required by section 18(c)(2) of the Act. OSHA has also determined that the differences between the State and Federal Standards are minimal and that the Standards are thus substantially identical. OSHA therefore approves these standards; however, the right to reconsider this approval is reserved should substantial objections be submitted to the Assistant Secretary.

3. Location of Supplement for Inspection and Copying

A copy of the standards supplements, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Room 1576, Federal Office Building, 1961 Stout Street, Denver, Colorado 80294; the Occupational Health and Safety Department, 604 East 25th Street, Cheyenne, Wyoming 82002; and the Office of State Programs, Room N-3700, 200 Constitution Avenue, NW., Washington, DC. 20210.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for any other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplements to the Wyoming State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reason(s):

The standards were adopted in accordance with the procedural requirements of State law which included public comment, and further public participation would be repetitious. This decision is effective June 23, 1989.

Authority: Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667).

Signed at Denver, Colorado this 8th day of February, 1989.

Byron R. Chadwick,

Regional Administrator.

[FR Doc. 89-14924 Filed 6-22-89; 8:45 am]
BILLING CODE 4510-26-M

NATIONAL COMMISSION FOR EMPLOYMENT POLICY

Meeting

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463; 86 Stat. 770) notice is hereby given of a public meeting of the National Commission for Employment Policy at the Aristocrat Hotel, Dallas, Texas 75201.

DATE: Tuesday, July 11, 1989, 1:30 p.m. til 4:30 p.m.

Status: This meeting is to be open to the public

Matters to be discussed: The purpose of this public meeting is to enable the Commission members to discuss progress on the proposed research agenda, and to discuss findings received from the prior hearings.

FOR FURTHER INFORMATION CONTACT: Barbara C. McQuown, Director, National Commission for Employment Policy, 1522 K Street, NW., Suite 300, Washington, DC. 20005. Tel. (202) 724–1545.

SUPPLEMENTARY INFORMATION: The National Commission for Employment Policy was established pursuant to Title IV–F of the Job Training Partnership Act (Pub. L. 97–300). The Act charges the Commission with the broad responsibility of advising the President, and the Congress on national employment issues. Handicapped individuals wishing to attend should contact the Commission so that appropriate accommodations can be made. Minutes of the meeting and working papers will be available for public inspection at the Commission's headquarters, 1522 K Street, NW., Suite 300, Washington, DC 20005.

Signed at Washington, DC, this 19th day of June.

Barbara C. McQuown,

Director, National Commission for Employment Policy.

[FR Doc. 89–14909 Filed 6–22–89; 8:45 am]

BILLING CODE 4510-30-M

Meeting

ACTION: Notice of hearing.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463; 86 Stat. 770) notice is hereby given of a public hearing at the Dirksen Building, Ceremonial Courtroom, Rm. 2525, 219 South Dearborn, Chicago, Illinois, 60604.

DATE: Monday, July 10, 1989, 9:00–4:30.

Status: The hearing is to be open to the public.

Matters To Be Discussed: The purpose of this public hearing is to enable the Commission members to learn from various segments of the Job Training Partnership Act (JTPA) system their reactions to a draft Commission paper which examines possible explanations for the under-representation of Hispanics in JTPA. Persons invited to testify represent State and local government agencies that administer JTPA programs and organizations that provide training under JTPA.

Interested parties may submit written comments either prior to or after the official hearing date, but no later than August 15, 1989 to the Commission headquarters. Additional hearings will be conducted across the U.S. over the next few months. It is anticipated that the results of the hearings will be used to develop formal Commission recommendations.

FOR FURTHER INFORMATION CONTACT: Barbara C. McQuown, Director, National Commission for Employment Policy, 1522 K Street, NW., Suite 300, Washington, DC 20005, (202) 724–1545.

SUPPLEMENTARY INFORMATION: The National Commission for Employment Policy was established pursuant to Title IV–F of the Job Training Partnership Act (Pub. L. 97–300). The Act charges the Commission with the broad responsibility of advising the President, and the Congress on national employment issues. Handicapped individuals wishing to attend should contact the Commission so that appropriate accommodations can be made. Minutes of the hearing and written testimony submitted by witnesses will be available for public inspection at the Commission's headquarters, 1522 K Street, NW., Suite 300, Washington, DC 20005.

Signed at Washington, DC, this 19th day of June.

Barbara C. McQuown,

Director, National Commission for Employment Policy.

[FR Doc. 89–14910 Filed 6–22–89; 8:45 am]

BILLING CODE 4510-30-M

Meeting

ACTION: Notice of hearing.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463; 86 Stat. 770) notice is hereby given of a public hearing at Earl Campell Building, Room 7C 58, 7th Floor, 1100 Commerce, Dallas, Texas, 75242.

DATE: Wednesday, July 12, 1989, 9:00–4:30.

Status: The hearing is to be open to the public.

Matters To Be Discussed: The purpose of this public hearing is to enable the Commission members to learn from various segments of the Job Training Partnership Act (JTPA) system their reactions to a draft Commission paper which examines possible explanations for the under-representation of Hispanics in JTPA. Persons invited to testify represent State and local government agencies that administer JTPA programs and organizations that provide training under JTPA.

Interested parties may submit written comments either prior to or after the official hearing date, but no later than August 15, 1989 to the Commission headquarters. Additional hearings will be conducted across the U.S. over the next few months. It is anticipated that the results of the hearings will be used to develop formal Commission recommendations.

FOR FURTHER INFORMATION CONTACT: Barbara C. McQuown, Director, National Commission for Employment Policy, 1522 K Street, NW., Suite 300, Washington, DC 20005, (202) 724–1545.

SUPPLEMENTARY INFORMATION: The National Commission for Employment Policy was established pursuant to Title IV–F of the Job Training Partnership Act (Pub. L. 97–300). The Act charges the Commission with the broad responsibility of advising the President, and the Congress on national employment issues. Handicapped individuals wishing to attend should contact the Commission so that appropriate accommodations can be made. Minutes of the hearing and written testimony submitted by witness will be available for public inspection at the Commission's headquarters, 1522 K Street, NW., Suite 300, Washington, DC 20005.

Signed at Washington, DC, this 19th day of June

Barbara C. McQuown,

Director, National Commission for Employment Policy.

[FR Doc. 89–14911 Filed 6–22–89; 8:45 am]

BILLING CODE 4510-30-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8684]

Malapai Resources Co.; Final Finding of No Significant Impact Regarding the Termination of the Source and Byproduct Material License for Operation of Malapai Resources Co.; Willow Creek Research and Development Site in Campbell County, Wyo.

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of final finding of no significant impact.

1. Proposed Action

The proposed administrative action is to terminate the source and byproduct material license authorizing Malapai Resources Company to operate Willow Creek Research and Development Project facility located in Campbell County, Wyoming.

2. Reasons for Final Finding of No Significant Impact

An environmental assessment of the well-field restoration was prepared by the staff at the U.S. Nuclear Regulatory Commission (NRC) and issued by the Commission's Uranium Recovery Field Office, Region IV. The environmental assessment performed by the Commission's staff indicated that the ground water had been successfully restored. Soil sampling at the site has shown that no radiological release took place during the operation. The following documents were used in assessing the environmental impacts at the site:

- Environmental and operational information submitted by the licensee to the NRC during the operation of the research and development facility;
- Discussions and written correspondence with the Wyoming Department of Environmental Quality; and
- Information derived from professional papers, journals and textbooks; U.S. NRC regulations and regulatory guides; Federal, State and local agencies; and independent consultants.

Based on the review of these documents, the Commission has determined that no significant impact will result from the proposed action.

The following statements support the final finding of no significant impact and summarize the conclusions resulting from the environmental studies.

A. Site reclamation and decontamination will be incorporated as a requirement in Malapai Resources Company's commercial solution mining license, which has been amended to cover the site.

B. The ground-water quality at the site has been restored to required concentrations. However, future mining plans associated with the commercial operation of the Christensen Ranch Satellite facility will mine through the restored well fields. Therefore, Malapai Resources will be required to seek regulatory approval of the proposed activities.

In accordance with 10 CFR Part 51.33(a), the Director, Uranium Recovery Field Office, made the determination to issue a final finding of no significant impact in the Federal Register. Concurrent with this finding and in accordance with NRC regulations, Source Material License SUA–1337 will be terminated.

This finding, together with the environmental assessment of ground-water restoration, is available for public inspection and copying at the Commission's Uranium Recovery Field Office at 730 Simms Street, Golden, Clorado, and at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC.

Dated at Denver, Colorado, this 13th day of June 1989.

For the Nuclear Regulatory Commission.

Edward F. Hawkins,

Branch Chief, Uranium Recovery Field Office, Region IV.

[FR Doc. 89–14893 Filed 6–22–89; 8:45 am]

BILLING CODE 7590-01-M

Special Committee to Review the Severe Accident Risks Report; Meeting

The NRC Special Committee to Review the Severe Accident Risks Report (NUREG–1150) will hold its initial meeting on July 10, 11 and 12, 1989, at the Crowne Plaza Holiday Inn, 1750 Rockville Pike, Rockville, Maryland. Notice of establishment of this committee was published in the **Federal Register** on June 22, 1989.

The purpose of the Special Committee is to provide the NRC with a technical peer review of the adequacy of the methods, insights, analyses and conclusions set forth in the April 1989 draft of NUREG–1150 including answers to particular questions posed by the Commission. It is anticipated that the revised draft NUREG–1150 report will be available to the public in late-June 1989.

The entire meeting will be open to the public. Any member of the public wishing to file a written statement with the Committee may send the statement to Mr. Charles B. Bartlett, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

The agenda for the meeting will be essentially as follows, all times being approximate:

Monday, July 10, 1989

9:00 a.m. Committee discussion of internal practices and protocols.
10:00 a.m. Introductory remarks and report overview by NRC staff (report background, objectives, structure)
12:30 p.m. Lunch
1:30 p.m. Discussion of Risk Analysis Methods and Key Findings:
(1) Accident Frequency Analysis
3:00 p.m. Break
3:15 p.m. Accident Frequency Analysis (contd)
4:00 p.m. (2) Discussion of Accident Progression Analysis, including source term, consequence analysis and expert elicitation methods
5:30 p.m. Adjournment

Tuesday, July 11, 1989

9:00 a.m. Continuation of discussions on Accident Progression Analysis
10:00 a.m. Break
10:15 a.m. Accident Progression Analysis (contd)
12:00 a.m. Lunch
1:00 p.m. Continuation of discussions on Accident Progression Analysis
2:00 p.m. Uncertainty Analysis
3:00 p.m. Break
3:15 p.m. Uncertainty Analysis (contd)
4:00 p.m. Perspectives on Key Findings
4:30 p.m. General Discussion
5:30 p.m. Adjournment

Wednesday, July 13, 1989

9:00 a.m. Until the conclusion of business, the Committee will discuss and exchange preliminary views regarding the information presented.

Further information regarding the intital meeting can be obtained by calling Mr. Charles B. Bartlett (telephone 301/492–3604).

Dated: June 19, 1989.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 89–14838 Filed 6–22–89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-387 and 50-388]

Pennsylvania Power and Light Co.; Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by Pennsylvania Power and Light Company, (licensee) for an amendment to Facility Operating License Nos. NPF-14 and NPF-22 issued to the licensee for operation of the Susquehanna Steam Electric Station, Unit Nos. 1 and 2, located in Luzerne County, Pennsylvania. Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on August 4, 1988 (53 FR 29404).

The purpose of the licensee's amendment request was to revise Technical Specification (TS) 3/4.3.7.1, changing the requirements of Action 70.

The NRC staff has advised the licensee that the proposed amendment is generic in nature and cannot be processed on a plant-by-plant basis.

The licensee was notified of the Commission's denial of the proposed change by letter dated May 16, 1989.

By July 24, 1989, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date.

A copy of any petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, and to Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, Washington, DC 20037, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated April 6, 1988, and (2) the Commission's letter to the licensee dated May 16, 1989.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland, this 16th day of June 1989.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, Project Directorate I-2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-14892 Filed 6-22-89; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Services Policy Advisory Committee; Advisory Committee for Trade Policy and Negotiations Intergovernmental Policy Advisory Committee Investment Policy Advisory Committee; Meetings and Determination of Closing of Meetings

The meetings of the Services Policy Advisory Committee to be held July 12, 1989 from 9:30 a.m. to 12:00 Noon, in Washington, DC, the Advisory Committee for Trade Policy and Negotiations to be held July 18, 1989 from 2:00 p.m. to 4:30 p.m., in Washington, DC, the Intergovernmental Policy Advisory Committee to be held July 25, 1989 from 9:30 a.m. to 12:00 Noon, in Washington, DC, the Investment Policy Advisory Committee to be held July 26, 1989 from 9:30 a.m. to 12:00 Noon, in Washington, DC, will include the development, review and discussion of current issues which influence the trade policy of the United States. Pursuant to section 2155(f)(2) of Title 19 of the United States Code, I have determined that these meetings will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions.

Additional information can be obtained by contacting Yvonne Beeler, Office of Private Sector Liaison, Office of the United States Trade Representative, Executive Office of the President, Washington, DC 20506.

Carla A. Hills,

United States Trade Representative.

[FR Doc. 89-14888 Filed 6-22-89; 8:45 am]

BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-26942; File No. SR-Amex-89-14]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Notice of Filing and Order Granting Temporary Accelerated Approval to Proposed Rule Change Relating to Listing of Taxable Municipal Securities

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) ("Act"), notice is hereby given that on June 14, 1989, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends Section 104 (Bonds and Debentures) and 1003 (Application of Policies) of the Amex *Company Guide* to provide listing and delisting guidelines applicable to taxable municipal securities. New Rule 703 would provide that, notwithstanding Part IV of Amex rules, Exchange transactions in taxable municipal securities shall be cleared, compared and settled in accordance with applicable rules of the Municipal Securities Rulemaking Board ("MSRB").

The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Exchange is proposing to amend Section 104 of the *Company Guide* to provide that municipal securities, as defined by the Act,[1] are eligible for listing and registration. At this time, the Exchange will consider listing only those securities which are subject to federal taxation.

To be eligible for listing, a municipal security must be rated as investment grade by at least one nationally recognized rating service, and satisfy the Exchange's distribution criteria for bonds of issuers whose corporate securities are not listed on the Exchange, *i.e.*, the size of the issue must be at least $20 million principal amount/aggregate market value, with at least 100 holders. In addition, the Exchange may consider such other information as it deems necessary to evaluate the appropriateness of the issue for exchange trading, including the financing structure and/or arrangement of the issuer.

Municipal securities will be assigned to a specialist unit and traded in accordance with all Amex regulations otherwise applicable to the trading of corporate bonds. As with corporate bonds, trade reports and quotation information will be disseminated over Network B. However, to assure uniformity of practice within the securities industry, proposed Rule 703 provides that all aspects of the trade reconciliation process, including comparison, settlement, and clearing, will be governed by the applicable requirements of the MSRB.[2]

Further, the proposed rule changes are not intended to otherwise alter the existing regulatory framework and oversight applicable to municipal securities trading.[3]

Municipal securities will be subject to the same original and annual listing fees as apply to corporate debt securities.

Finally, the Exchange is proposing to amend its delisting guidelines to provide that a municipal security would be subject to delisting in the event it were no longer rated as investment grade by a nationally recognized rating service.

(2) Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in, securities, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a securities exchange, and, in particular, the requirements of section 6 and the rules and regulations thereunder. Only taxable municipal bond issuers that qualify under the Amex's existing non-listed corporate issuer distribution criteria will be considered for listing on the Exchange. These criteria, along with any other relevant information in determining whether the issue is appropriate for exchange trading, should ensure that only municipal bond issues that can support a liquid trading market will be listed on the Exchange. Moreover, the regulatory scheme in place for municipal securities now would continue to apply to Amex-listed municipal securities, except that the Amex surveillance program would cover the trading of the listed securities.

The Amex has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act for a period of 120 days. During this period, Amex would be able to list qualifying municipal securities. Also during this period, Amex will file an identical proposed rule change requesting permanent approval of the listing of municipal securities that would be subject to the full notice and comment period.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the proposal in the **Federal Register**. While the Commission is sensitive to concerns raised by granting approval to a proposal to list a new product before the expiration of the comment period, the Commission believes that accelerated approval is appropriate in this instance because, during the period of this temporary authorization, Amex trading will be subject to the traditional regulatory structure applicable to municipal securities. Moreover, the securities to be listed by the Amex are not a new product and indeed are comparable in all material respects to other municipal securities that are currently traded in other established and regulated markets. In addition, Amex-listed municipal securities will be traded like other Amex-listed bonds and will be subject to applicable MSRB rules.

Finally, because certain municipal securities for which a listing application is currently pending are likely to be issued prior to the thirtieth day following publication of notice of the proposed rule change, it is necessary to inform prospective issuers that their securities are eligible for listing and that the Exchange has in place guidelines and procedures applicable to such securities.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the

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[1] *See* Section 3(a)(29) of the Act, 15 U.S.C. 78c(a)(29) (1982).

[2] MSRB Rule G-3 provides specific qualification requirements for municipal securities principals and representatives. In light of the Amex's qualification requirements for specialists, the Commission believes it is appropriate solely for purposes of this temporary 120-day approval period for the Amex to rely on these requirements for its specialists in lieu of the Rule G-3 standards. It is important, however, that any specialist selected by the Amex for the listed municipal securities be familiar with the characteristics of municipal securities.

[3] The National Association of Securities Dealers ("NASD") has the authority to enforce the MSRB rules. The Commission notes that the Amex also will be responsible for enforcing MSRB rules for the listed municipal securities. The Amex enforcement in this regard will not preempt or limit in any manner the NASD's authority to act in this area.

Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing also will be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 14, 1989.

It therefore is ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change is approved for a 120-day period ending on October 14, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Dated June 16, 1989.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89-14912 Filed 6-22-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-17011; 812-7298]

The Lincoln National Life Insurance Co., et al.

June 15, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: The Lincoln National Life Insurance Company ("LNL"); Lincoln National Variable Annuity Account H ("Variable Account"); and American Funds Distributors, Inc. ("AFD").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from sections 26(a)(2) and 27(c)(2).

Summary of Application: Applicants seek an order to the extent necessary to permit LNL to deduct mortality and expense risk charges from the assets of the Variable Account.

Filing Date: The application was filed on April 17, 1989 and an amendment was filed on May 31, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on July 10, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Lincoln National Life Insurance Company, 1300 South Clinton Street, Fort Wayne, Indiana 46801; American Funds Distributors, Inc., 333 South Hope Street, Los Angeles, CA 90071.

FOR FURTHER INFORMATION CONTACT: Heidi Stam, Staff Attorney (202) 272-3017, or Clifford E. Kirsch, Special Counsel (202) 272-2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 253-4300).

Applicants' Representation

1. The Variable Account was established in connection with the proposed issuance of flexible premium variable annuity contracts ("Contracts").

2. The Variable Account will invest in shares of the American Variable Insurance Series ("Series Fund"). The Series Fund is an open-end, diversified management investment company with a number of series, or portfolios. The Variable Account has a number of subaccounts, each of which invests solely in a specific corresponding portfolio of the Series Fund.

3. LNL will deduct a contract maintenance charge of $35 per year to compensate LNL for administrative services provided to contract owners. LNL also deducts an administrative expense charge at an effective annual rate of .10% of the net assets of the Variable Account. LNL does not anticipate any profits from these charges.

4. A contingent deferred sales charge of up to 6% of purchase payments is imposed on certain full surrenders or partial withdrawals under the Contracts.

5. The administrative and contingent deferred sales charges under the Contracts may be waived or reduced under certain circumstances which are described more fully in the application.

6. LNL imposes a charge to compensate it for bearing certain mortality and expense risks under the Contracts. This charge is equal to an effective annual rate of 1.25% of the value of the net assets of the Variable Account. Of that amount, approximately .80% is attributable to mortality risks, and approximately .45% is attributable to expense risks.

7. The mortality risk borne by LNL arises from its obligation to make annuity payments regardless of how long all annuitants may live and from its obligation to pay a death benefit that may be higher than the Contract value. LNL's expense risk is that the deductions for administration costs under the Contracts may be insufficient to cover the actual future costs incurred by LNL.

8. If the mortality and expense risk charge is insufficient to cover actual costs and assumed risks, the loss will fall on LNL. Conversely, if the charge is more than sufficient to cover costs, any excess will be profit to LNL. LNL currently anticipates a profit from this charge.

9. LNL does not anticipate that the contingent deferred sales charge will generate sufficient funds to pay the cost of distributing the Contracts. If the distribution charges are insufficient to cover the expenses, the deficiency will be met from LNL's general account which may include amounts derived from the mortality and expense risk charge.

10. LNL states that the mortality and expense risk charge is a reasonable charge to compensate LNL for the risks assumed under the Contracts.

11. LNL represents that the charge of 1.25% for mortality and expense risks is within the range of industry practice with respect to comparable annuity products. This representation is based upon LNL's analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge level guarantees, and guaranteed annuity rates. LNL will maintain at its administrative offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

12. Applicants acknowledge that any profit realized from the mortality and expense risk charge may be viewed by the Commission as being offset by distribution expenses not reimbursed by the contingent deferred sales charge. LNL has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Variable Account and Contract owners. The basis for such conclusion is set forth in a memorandum which will be maintained by LNL at its administrative offices and will be available to the Commission.

13. LNL also represents that the Variable Account will only invest in management investment companies which undertake, in the event such company adopts a plan under Rule 12b-1 to finance distribution expenses, to have a board of directors (or trustees), a majority of whom are not interested persons of the company, formulate and approve any such plan under Rule 12b-1.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-14849 Filed 6-22-89; 8:45 am]

BILLING CODE 8010-01-M

[4] 17 CFR 200.30-3(a)(12) (1988).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2358]

Alaska; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on June 10, 1989, I find that all political jurisdictions and Alaska native villages along the Yukon and Kuskokwim Rivers and associated tributaries, in the State of Alaska, constitute a disaster loan area due to damages from flooding beginning on May 1, 1989. Eligible persons, firms, and organizations may file applications for physical damage until the close of business on August 11, 1989, and for economic injury until the close of business on March 12, 1990, at the address listed below: Disaster Area 4 Office, Small Business Administration, P.O. Box 13795, Sacramento, CA 95853-4795, or other locally announced locations. In addition, applications for economic injury from small businesses located in all organized boroughs in the State of Alaska, with the exception of Kodiak Island Borough, may be filed until the specified date at the above location.

The interest rates are:

Homeowners with Credit Available Elsewhere	8.000%
Homeowners with Credit Available Elsewhere	4.000%
Businesses with Credit Available Elsewhere	8.000%
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000%
Businesses and Non-Profit Organizations (EIDL) Without Credit Available Elsewhere	4.000%
Others (Including Non-Profit Organizations) with Credit Available Elsewhere	9.125%

The number assigned to this disaster for physical damage is 235806, and for economic injury the number is 677400.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: June 14, 1989.

Bernard Kulik,

Deputy Associate Administrator, for Disaster Assistance.

[FR Doc. 89-14877 Filed 6-22-89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Areas #2355 & #2356]

Michigan And Contiguous Counties in the State of Indiana; Declaration of Disaster Loan Area

St. Joseph County, and the contiguous counties of Branch, Calhoun, Cass, Kalamazoo, and Van Buren, in the State of Michigan, and Elkhart and Lagrange Counties, in the State of Indiana, constitute a disaster loan area as a result of damages from severe flooding which occurred May 30 through June 4, 1989. Applications for loans for physical damage may be filed until the close of business on August 14, 1989, and for economic injury until the close of business on March 15, 1990, at the address listed below: Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Floor, Atlanta, Georgia 30308, or other locally announced locations.

The interest rates are:

Homeowners With Credit Available Elsewhere	8.000%
Homeowners Without Credit Available Elsewhere	4.000%
Businesses With Credit Available Elsewhere	8.000%
Businesses and Non-Profit Organization Without Credit Available Elsewhere	4.000%
Businesses and Non-Profit Organization (EIDL) Without Credit Available Elsewhere	4.000%
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	9.125%

The numbers assigned to this disaster for the State of Michigan are 235506 for physical damage and 677000 for economic injury. For Indiana the numbers are 235606 for physical damage and 677100 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: June 15, 1989.

Susan Engeleiter,

Administrator.

[FR Doc. 89-14878 Filed 6-22-89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2357]

Ohio (And Contiguous Counties in the State of Indiana); Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on June 10, 1989, I find that the Counties of Butler, Cuyahoga, Geauga, Greene, Lake Lorain, Mercer, Montgomery, Preble, and Warren, in the State of Ohio, constitute a disaster loan area due to severe storms and flooding beginnng on May 23, 1989. Eligible persons, firms, and organizations may file applications for physical damage until the close of business on August 11, 1989, and for economic injury until the close of business on March 12, 1990, at the address listed below: Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Floor, Atlanta, Georgia 30308, or other locally announced locations. In addition, applications for economic injury from small businesses located in the contiguous counties of Ashland, Astabula, Auglaize, Clark, Clermont, Clinton, Darke, Erie, Fayette, Hamilton, Huron, Madison, Medina, Miami, Portage, Shelby, Summit, Trumbull, and Van Wert, in the State of Ohio, and the counties of Adams, Dearborn, Franklin, Jay, Union, and Wayne, in the State of Indiana, may be filed until the specified date at the above location.

The interest rates are:

Homeowners With Credit Available Elsewhere	8.000%
Homeowners Without Credit Available Elsewhere	4.000%
Businesses With Credit Available Elsewhere	8.000%
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000%
Businesses and Non-Profit Organizations (EIDL) Without Credit Available Elsewhere	4.000%
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	9.125%

The number assigned to this disaster for physical damage is 235706 for the State of Ohio. For economic injury the numbers are 677200 for the State of Ohio, and 67730 for the State of Indiana.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: June 14, 1989.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89-14880 Filed 6-22-89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2351; Amendment No. 1]

North Carolina (And Contiguous Counties in the States of South Carolina & Virginia); Declaration of Disaster Loan Area

The above-numbered Declaration (54 FR 24068) is hereby amended in accordance with the Notice of Amendment to the President's declaration, dated May 21, 1989, to include Anson and Rutherford Counties, and the contiguous counties of Buncombe, Henderson, McDowell, and Richmond, in the State of North Carolina, and Marlboro County, in the State of South Carolina, as a result of damages from tornadoes which occurred on May 5, 1989.

All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on July 17, 1989, and for economic injury until the close of business on February 20, 1990.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Date: May 25, 1989.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89-14879 Filed 6-22-89; 8:45 am]

BILLING CODE 8025-01-M

[Delegation of Authority No. 1-A (Revision 15)]

Delegation of Authority; General Counsel, et al.

Delegation of Authority No. 1-A (Revision 15) is hereby revised to read as follows:

(a) Pursuant to authority vested in me by the Small Business Act, of 1958, 72 Stat. 384, as amended, authority is hereby delegated to the following officials in the following order:

(1) General Counsel.

(2) Associate Deputy Administrator for Management and Administration.

(3) Associate Deputy Administrator for Special Programs to perform, in the event of the absence or incapacity of the Administrator and the Deputy Administrator any and all acts which the Administrator is authorized to perform, including but not limited to authority to issue, modify, or revoke delegations of authority and regulations, except exercising authority under sections 9(d) and 11 of the Small Business Act, as amended.

(b) An individual acting in any of the positions in paragraph (a) remains in the line of succession only if he or she has been designated acting by the Administrator or Acting Administrator due to a vacancy in the position.

(c) This delegation is not in derogation of any authority residing in the above listing officials relating to the operations of their respective programs nor does it affect the validity of any delegations currently in force and affect and not revoked or revised herein.

EFFECTIVE DATE: June 23, 1989.

Dated: June 16, 1989.

Susan Engelster,

Administrator.

[FR Doc. 89-14861 Filed 6-22-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended June 16, 1989

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 46342

Date Filed: June 11, 1989.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 10, 1989.

Description: Application of American Airlines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Rules of Practice applies for amendment of its certificate of public convenience and necessity for Route 137 so as to authorize all-cargo service between the United States and the Federal Republic of Germany.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 89-14841 Filed 6-22-89; 8:45 am]

BILLING CODE 4910-62-M

Coast Guard

[CGD 89-049]

Lower Mississippi River Waterway Safety Advisory Committee Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App I) notice is hereby given of a meeting of the Lower Mississippi River Waterway Safety Advisory Committee. The meeting will be held on Tuesday, July 11, 1989, in the 29th Floor Boardroom of the World Trade Center, 2 Canal Street, New Orleans, LA at 9:00 a.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Minutes of the 18 April 1989, meeting.
3. Report by the Coast Guard on items discussed from 18 April 1989, meeting.
   a. Report and comments from the Coast Guard concerning the grounding of the M/V Marshall Konyev.
   b. Proposal for definition of Channel 67 radio boundaries.
   c. Update on Anchorage/Revetment Study.
   d. Formation of Navigational Subcommittee to partiicpate in Waterways Anaylsis Management Study.
4. New Business
5. Adjournment

The purpose of this Advisory Committee is to provide consultation and advice to the Commander, Eight Coast Guard District on all areas of maritime safety affecting this waterway.

The meeting is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Commander G. A. Bird, USCG, Executive Secretary, Lower Mississippi River Waterway Safety Advisory Committee, c/o Commander Coast Guard District (oan) Room 1141, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130-3396, telephone number (504) 589-6234.

Dated: June 1, 1989.

W.F. Merlin,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 89-14873 Filed 6-22-89; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Noise Exposure Map; Waukegan Regional Airport; Waukegan, IL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Waukegan Port District for Waukegan Regional Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is June 5, 1989.

FOR FURTHER INFORMATION CONTACT: Prescott C. Snyder, Federal Aviation Administration, Great Lakes Region, Airports Divison, AGL-611.1, 2300 East Devon Avenue, Des Plaines, Illinois 60018, (312) 694-7538.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Waukegan Regional Airport are in compliance with applicable requirements of Part 150, effective June 5, 1989.

Under section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related description submitted by the Waukegan Port District. The specific maps under consideration are the noise exposure maps: 1986 Noise Exposure Map (Figure A), page v and 1991 Noise Exposure Map (Figure B), page vi (both showing unabated contours), in the submission. The FAA has determined that these maps for Waukegan Regional Airport are in compliance with applicable requirements. This determination is effective on June 5, 1989. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps.

Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue SW., Room 617, Washington, DC 20591

Federal Aviation Administration, Great Lakes Region, Airports Divison Office, 2300 East Devon Avenue, Room 269, Des Plaines, Illinois 60018

Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Room 268, Des Plaines, Illinois 60018

Waukegan Port District, Administrative Offices, 55 South Harbor Place, P.O. Box 620, Waukegan, Illinois 60079.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Des Plaines, Illinois on June 5, 1989.

Larry H. Ladendorf,

Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 89-14902 Filed 6-22-89; 8:45 am]

BILLING CODE 4910-13-M

Maritime Administration

[Docket S-850]

Ocean Chemical Carriers, Inc., et al.; Application For Permission To Operate Five T-5 Tankers in the Domestic Intercoastal and Coastwise Trades

By letter dated June 15, 1989, Ocean Chemical Carriers, Inc. and Ocean Transport, Inc. (Applicants) requested written permission pursuant to section 805(a) of the Merchant Marine Act 1936, as amended (Act) for affiliated companies to operate five T-5 petroleum product tankers under long-term charter to the Military Sealift Command (MSC) in the domestic intercoastal and coastwise trades. In 1984, Ocean Carriers, Inc. received a similar permission and the Applicants desire approval for additional affiliations.

The JULIUS HAMMER and the FRANCES HAMMER (Vessels) are receiving subsidy pursuant to Operating-Differential Subsidy Agreement (ODSA), Contract MA/MSB-440 and MA/MSB-442, respectively. Seabulk Transmarine I, Inc. is currently operating the JULIUS HAMMER under a Sub-Bareboat Charter Agreement with Suwannee River Lines, Inc. Seabulk Transmarine III, Inc. is operating the FRANCES HAMMER under a Sub-Bareboat Charter Agreement with Suwannee River Phosphate Lines, Inc. The Vessels are in turn each time chartered by the Seabulk companies to Suwannee River Chartering, Inc. The Time Charter Agreements provide Suwannee River Chartering, with the consent of Suwannee River Lines and Suwannee River Phosphate Lines, with the contractual right to appoint a successor operator for the Vessels. Suwannee River Chartering has made a decision to seek a new operator for the Vessels, and has formally requested all necessary

approvals of the Act from the Maritime Administration. The Applicants have reached an agreement with Suwannee River Chartering to assume the operation of the Vessels from the Seabulk companies.

The Applicants aver that they are not affiliated in any manner with Suwannee River Chartering. The Applicants note that they are, however, wholly owned by Joe Vaughan. Mr. Vaughan in turn holds the majority interest in the five tanker companies each currently operating T–5 petroleum product tankers for the MSC (T–5 Operators). The five companies operating the T–5 tankers are (1) Ocean Freedom Shipping, Inc., M/V PAUL BUCK; (2) Ocean Triumph Shipping, Inc. M/V SAMUEL COBB; (3) Ocean Champion Shipping, Inc., M/V GUS W. DARNELL; (4) Ocean Star Shipping, Inc., M/V GIANELLA; and (5) Ocean Spirit Shipping, Inc., M/V MATTHIESEN. An affiliation would therefore exist between the Applicants as new subsidized operators and the T–5 Operators.

The Maritime Administrator has already granted section 805(a) permission for affiliated companies owned by Mr. Vaughan to operate both subsidized vessels and the T–5 tankers (Docket S–729). In 1984, Ocean Carriers received permission from the Maritime Administrator under section 805(a) and section II–13(a) of ODSA Contract MA/MSB–167 to enable the affiliated T–5 Operators to operate the T–5 tankers under long-term charter to the MSC in the domestic intercoastal and coastwise trade. The Maritime Administrator granted 805(a) permission after determining that such approval would not result in unfair competition to coastwise or intercoastal operators, or cause prejudice to the objects and policies of the Act. Additionally, according to the Applicants, the corporate structures of the companies were modified to eliminate the possibility of subsidy diversion.

The Applicants state that there has been no change of circumstances since the Maritime Administrator granted section 805(a) permission to Ocean Carriers, Inc. The operation of the Vessels, according to the Applicants, would not create any new issues relating to affiliation since the coastwise vessels in question remain the T–5 tankers. The domestic operations of the T–5 Operators would continue to be totally separate from the Applicants' proposed subsidized operations.

The T–5 tankers are under long-term charter to the MSC. The T–5 Operators do not have the right to carry private commercial cargo in either the domestic or foreign commerce. The Applicants emphasize that this eliminates any possibility of competition with coastwise tanker operators, rendering moot all section 805(a) issues relating to the objects and policies of the Act.

The Applicants contend that the facts underlying the instant section 805(a) request are essentially identical in form to those involving Ocean Carriers, Inc.'s existing section 805(a) permission. The Applicants therefore request section 805(a) approval with respect to the T–5 tankers on an expedited basis.

Any person, firm, or corporation having any interest in the application for section 805(a) permission and desiring to submit comments concerning the application must file written comments in triplicate, to the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590, by the close of business 5:00 p.m. on June 30, 1989. If such comments deal with section 805(a) issues, they should be accompanied by a petition for leave to intervene. The petition should state clearly and concisely the grounds of interest and the alleged facts relied on for relief.

If no petitions for leave to intervene on section 805(a) issues are received within the specified time, or if it is determined that petitions filed do not demonstrate sufficient interest to warrant a hearing, the Maritime Administration will take such action as may be deemed appropriate. In the event petitions regarding the relevant section 805(a) issues are received from parties with standing to be heard, a hearing will be held, the purpose of which will be to receive evidence under section 805(a) relative to whether the proposed operations (a) could result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or international service, or (b) would be prejudicial to the objects and policy of the Act relative to domestic operations.

(Catalog of Federal Domestic Assistance Program Nos. 20.804 Operating-Differential Subsidies (ODS))

By Order of the Maritime Administrator.

Date: June 20, 1989.

James E. Saari,

Secretary.

[FR Doc. 89–14868 Filed 6–21–89; 8:45 am]

BILLING CODE 4910–81–M

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1988—Rev., Supp. No. 18]

Surety Companies Acceptable on Federal Bonds; Termination of Authority; Industrial Indemnity Co., et al.

In the matter of Industrial Indemnity Co., Industrial Indemnity Co. of the Northwest, International Insurance Co., North River Insurance Co., United States Fire Insurance Co.

Notice is hereby given that the Certificates of Authority issued by the Treasury to the companies names below, under the United States Code, Title 31, Section 9304–9308, to qualify as an acceptable surety on Federal bonds, are terminated effective today.

Company name	Last listed as an acceptable surety 7/1/88 at
Industrial Indemnity Co	53 FR 25068
Industrial Indemnity Co. of the Northwest.	53 FR 25066
International Insurance Co	53 FR 25066
North Rivere Insurance Co	53 FR 25070
United States Fire Insurance Co	53 FR 25078

With respect to any bonds currently in force, bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the Company. In addition, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20227, telephone (202) 287–3916.

Dated: June 16, 1989.

Mitchell A. Levine,

Assistant Commissioner, Comptroller Financial Management Service.

[FR Doc. 89–14882 Filed 6–22–89; 8:45 am]

BILLING CODE 4810–35–M

UNITED STATES INFORMATION AGENCY

Receipt of Cultural Property Request From the Government of Peru and Amendment to Agenda of Meeting of the Cultural Property Advisory Committee

Pursuant to section 303(f)(1) of the Convention on Cultural Property Implementation Act (19 U.S.C. 2602(f)(1)), notice is hereby given that the United States Government is in receipt of a request under section 303(a)(3) from the Government of Peru, a State Party to the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. The request from Peru is for U.S. import restrictions on certain archaeological material to assist Peru in protecting its cultural patrimony.

Peru's request will be transferred to the Cultural Property Advisory Committee for review at its meeting on June 22. Portions of the Cultural Property Advisory Committee meeting to be held in Room 840, 301 Fourth Street SW., was previously announced as open to the public; portions of the meeting were announced as closed to the public for reasons specified in **Federal Register** announcement of June 12, 1989, Vol. 54, No. 111, page 24977.

Also, public notice is given that due the receipt of an emergency request from the Government of Peru, the agenda of the Committee's meeting on June 23 will be altered so that the Committee may review the request.

9:00 am–9:30 am—Referral of request to the Cultural Property Advisory Committee by USIA Deputy Director Stone—closed to the public

9:30 am–10:30 am—Reports by the Legal and Communications Subcommittees—open to the public

10:30 am–11:00 am—Report of the Drafting Subcommittee—closed to the public

11 am–until adjournment—Review of Peru's request by the Committee—closed to the public

Those portions of the Committee's meeting involved with reviewing Peru's request will be closed to the public in accordance with the provisions of section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b(c)(9)(B). The session will be closed because the discussion will involve investigative techniques and information the premature disclosure of which would be likely to frustrate significantly implementation of proposed actions and policies. Disclosure of information at this time identifying specific cultural property is likely to frustrate the possible imposition of import restrictions on such cultural property. The Committee will discuss recommendations to the President as to appropriate U.S. action regarding Peru's request under the terms of the Convention on Cultural Property Act. For the foregoing reasons the closing of the meeting is authorized under section 10(d) of the FACA and 5 U.S.C. 552b(c)(9)(B).

Dated: June 21, 1989.

Marvin L. Stone,

Deputy Director, United States Information Agency.

Appendix—Determination To Close Portions of Meeting of the Cultural Property Advisory Committee

June 23, 1989.

Based on information provided to me by the Cultural Property Advisory Committee, I hereby determine that certain portions of the meeting of the Cultural Property Advisory Committee scheduled on June 23 may be closed to the public.

Due to the receipt of an emergency request from the Government of Peru, the Committee has requested that those portions of its meeting on June 23 be closed to the public that will involve discussion of investigative techniques and procedures for the handling of a State Party request submitted by the Government of Peru. There will be discussion of information, the premature disclosure of which, would be likely to frustrate significantly implementaiton of proposed actions and policies (5 U.S.C. 552b(c)(9)(B)).

Dated: June 21, 1989.

Marvin L. Stone,

Deputy Director, United States Information Agency.

[FR Doc. 89–15115 Filed 6–21–89; 4:41 pm]

BILLING CODE 8230–01–M

BEST COPY AVAILABLE

Sunshine Act Meetings

Federal Register
Vol. 54, No. 120
Friday, June 23, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 54 FR 24464.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 11:00 a.m., June 27, 1989.

CHANGES IN THE AGENDA: The Commodity Futures Trading Commission has cancelled the rule enforcement review previously scheduled for the closed meeting at 11:00 a.m., June 27, 1989. This review will be rescheduled for a July meeting.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, Secretary of the Commission

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89-15036 Filed 6-21-89; 1:01 pm]

BILLING CODE 6351-01-M

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

Meeting Notice

TIME AND DATE: 8:00 a.m., July 10, 1989.

PLACE: Uniformed Services University of Health Sciences, Room D3-001, 4301 Jones Bridge Road, Bethesda, Maryland 20814-4799.

STATUS: Open—under "Government in the Sunshine Act" (5 U.S.C. 552b(e)(3)).

MATTERS TO BE CONSIDERED:

8:00 a.m. MEETING—BOARD OF REGENTS

(1) Approval of Minutes—April 17, 1989; (2) Faculty Matters; (3) Report—Admissions; (4) Report—Associate Dean for Operations; (5) Report—Dean, Military Medical Education Institute; (6) Report—President, USUHS; (7) Comments—Members, Board of Regents; (8) Comments—Chairman, Board of Regents

New Business

SCHEDULED MEETINGS: October 16, 1989.

CONTACT PERSON FOR MORE INFORMATION: Charles R. Mannix, Executive Secretary of the Board of Regents, 202/295-3028.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 21, 1989.

[FR Doc. 89-15050 Filed 6-21-89; 1:02 pm]

BILLING CODE 3810-01-M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00, June 28, 1989.

PLACE: Hearing Room One—1100 L Street, NW., Washington, DC 20573-0001.

STATUS: Closed.

MATTERS TO BE CONSIDERED: 1. Service Contract Docket No. 89-05—U.S. Atlantic & Gulf/Australia-New Zealand Conference Correction of a Clerical Error in Confidential Service Contract S.C. No. 61.

CONTACT PERSON FOR MORE INFORMATION: Ronald D. Murphy, Assistant Secretary, (202) 523-5725.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 89-14996 Filed 6-21-89; 10:55 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, June 28, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: June 20, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-14991 Filed 6-21-89; 10:01 am]

BILLING CODE 6210-01-M

SECURITIES AND EXCHANGE COMMISSION

Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of June 26, 1989.

An open meeting will be held on Wednesday, June 28, 1989, at 1:00 p.m., in Room 1C30. Closed meetings will be held on Friday, June 30, 1989 at 10:00 a.m. and 2:00 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at closed meetings.

Chairman Ruder, as duty officer, voted to consider the items listed for the closed meetings in closed session.

The subject matter of the open meeting scheduled for Wednesday, June 28, 1989, at 1:00 p.m., will be:

1. Consideration of whether to adopt Rules 61-68 under the Rules of Practice regarding the payment of bounties in connection with insider trading litigation as authorized by Section 21A(e) of the Securities Exchange Act of 1934. For further information, please contact Kenneth Hall at (202) 272-2533.
2. Consideration of whether to adopt Rule 15c2-12, which would require underwriters of municipal securities to obtain review, and disseminate an official statement concerning the municipal securities they underwrite, and to modify the list of factors included in the Commission's interpretation of the responsibilities of underwriters of municipal securities that was published in Securities Exchange Act Release No. 26100 (Sept. 22, 1988), 53FR 37778 (1988). The commission will also consider whether to issue a release delegating authority to the Division of Market Regulation to grant exemptions from the rule. For further information, please contact Edward L. Pittman at (202) 272-2848.
3. Consideration of whether to adopt rule 15a-6, which would provide exemptions from broker-dealer registration for foreign broker-dealers engaged in specified activities involving the U.S. securities markets and certain institutional investors. In addition, the Commission will consider issuing a concept release that solicits comment on a conceptual approach to regulation of foreign broker-dealers that would recognize foreign regulation of broker-dealers. The Commission will also consider recommending to the U.S. Department of Treasury that consideration be given to similar regulation of foreign government securities broker-dealers. For further information, please contact John

Polanin, Jr. or Dan Gray at (202) 272-2848 regarding Rule 15a-6 or the proposed concept release, respectively.

4. Consideration of whether to publish for comment (1) proposed amendments to Form N-2, the registration form for closed-end management investment companies under the Securities Act of 1933 and the Investment Company Act of 1940, that would establish a two-part format for disclosure to prospective investors and update current disclosure requirements; (2) related rule amendments; and (3) guidelines to amend Form N-2. For further information, please contact Kenneth J. Berman at (202) 272-2107.
5. Consideration of whether to adopt Rule 11a-3 under the Investment Company Act of 1940. Rule 11a-3 would allow registered open-end investment companies ("funds") and their principal underwriters to make certain exchange offers to fund shareholders and to shareholders of other funds in the same group of funds. For further information, please contact Wendy B. Finck at (202) 272-3045.

The subject matter of the closed meeting scheduled for Friday, June 30, 1989, at 10:00 a.m., will be:

Settlement of injunctive actions.
Settlement of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Institution of administrative proceedings of an endorcement nature.
Discussion of investigation.

The subject matter of the closed meeting scheduled for Friday, June 30, 1989, at 2:00 p.m., will be:

Administrative proceeeings of an enforcement nature.
Litigation matters.
Opinion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Anthony Ain at (202) 272-2400.

Jonathan G. Katz,

Secretary.

June 21, 1989.

[FR Doc. 89-15110 Filed 6-21-89; 3:58 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 54, No. 120
Friday, June 23, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

Shelled Pistachio Nuts; Grade Standards

Correction

In proposed rule document 89-14137 beginning on page 25281 in the issue of Wednesday, June 14, 1989, make the following correction:

On page 25282, in the second column, in § 51.2559(a), in the fifth line, "paragraph" should read "subparagraph".

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 88-013]

Importation of Eggs Other than Hatching Eggs

Correction

In rule document 89-8775 beginning on page 14792 in the issue of Thursday, April 13, 1989, make the following correction:

In the second column, under **DATES** in the first line, "April 12, 1989" should read, "April 13, 1989."

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP89-1536-000, et al.]

Trunkline Gas Co. et al.; Natural Gas Certificate Filings

Correction

In notice document 89-14065 beginning on page 25328 in the issue of Wednesday, June, 14, 1989, make the following correction:

On page 25332 in the first column, under number 13. "[Docket No. CP89-156-000]" should read, "[Docket No. CP89-1546-000]".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[FRL-3527-7; KY-050]

Designation of Areas for Air Quality Planning Purposes; Kentucky: Redefinition of Attainment Area From Rest of State to County-by-County

Correction

In the issue of Monday, May 22, 1989, on page 22054-22060, beginning in the second column, in the correction to rule document 89-4297, a portion of the text that appeared is inaccurate. In the third column, item 4 is corrected to read as follows:

4. On the same page, in the table, in the same column, remove the "X" that appears in the eleventh line from the bottom (corresponding with McCreary County).

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30000/40A; FRL-3575-4]

Preliminary Determination To Cancel Certain Daminozide Product Registrations; Availability of Technical Support Document and Draft Notice of Intent To Cancel

Correction

In notice document 89-12560 beginning on page 22558 in the issue of Wednesday, May 24, 1989, make the following corrections:

1. On page 22564, in the third column, the second paragraph should be designated "(i)".

2. On the same page, in the same column, in the same paragraph, in the sixth line, insert "milk," after "meat,".

3. On page 22567, in the second table, in the third column, the first entry should read "1.8×10^{-9}".

4. On the same page, in the same table, in the same column, the next to the last entry should read "0.84×10^{-9}".

5. On the same page, in the second column, in the fourth line from the bottom, "very" should read "vary".

6. On page 22568, in the first table, in the heading, "Subjects" should read "Subsets".

7. On the same page, in the same table, in the third column, the last entry should read "5.9×10^{-7}".

8. On the same page, in the second column, in the equation, the second line should read "$70\times Q^{*}_{1}$".

9. On page 22571, in the 3rd column, in the 10th line "1988" should read "1989".

10. On page 22573, in the first column, under **VI. References**, in item (7), in the fourth line "Research" was misspelled.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51732; FRL-3577-7]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

Correction

In notice document 89-12788 beginning on page 22944 in the issue of Tuesday, May 30, 1989, make the following corrections:

1. On page 22946, in the first column under P 89-608, in the fourth line, "treatment" was misspelled.

2. On page 22947, in the second column, under P 89-641, in the second line "(G)" should read "(S)".

3. On the same page and same column, under P 89-642, the eighth line should read, "LD50>10G/KG species(Rat). Eye".

4. On the same page, in the third column, under P 89-651, the second line should read "*Chemical*(S) Phenol, 4, 4"-(oxybis(".

5. Also under P 89-651, the eighth line should read "LD50>5.0 G/KG species(Rat). Static".

6. On the same page, in the third column, under P 89-652, in the third line "Basse" should read "Based".

7. On page 22948, in the first column under P 89-655, the sixth line, should read "LD>5,000 MG/KG species(Rat). Eye".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89F-0157]

Ciba-Geigy Corp.; Filing of Food Additive Petition

Correction

In notice document 89-12979 appearing on page 23540 in the issue of Thursday, June 1, 1989, make the following correction:

In the second column, in the second line, the zip code should read "10532-2188".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Consumer Participation; Open Meetings

Correction

In notice document 89-13350 appearing on page 24265 in the issue of Tuesday, June 6, 1989, make the following correction:

On page 24265, in the second column, under **FOR FURTHER INFORMATION CONTACT**, at the end of the last line insert the following: "(617) 279-1479."

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89F-0167]

Michelman, Inc.; Filing of Food Additive Petition

Correction

In notice document 89-12980 appearing on page 23540 in the issue of Thursday, June 1, 1989, make the following corrections:

1. In the second column, under **SUMMARY**, in the seventh line, "ethylene" was misspelled.

2. In the same column, under **SUPPLEMENTARY INFORMATION**, in the fifth line, the parenthetical should read "(FAP 9B4146)".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 412

[BERC-630-P]

RIN 0938-AE02

Medicare Program; Changes to the Inpatient Hospital Prospective Payment System and Fiscal Year 1990 Rates

Correction

In proposed rule document 89-10781 beginning on page 19636 in the issue of Monday, May 8, 1989, make the following corrections:

1. On page 19691, in the last column, in the space above the second entry from the bottom (corresponding with the dotted lines), under "Wage index", insert "1.0521.

2. On page 19692, in the first column, in the second entry from the bottom, remove the asterisk.

3. On the same page, in the last column, the sixth entry, should read "0.9738".

4. On page 19693, in the first page column, under "Wage index",the seventh entry should read "1.0138".

5. On page 19694, in the third page column, under "County", in the fourth entry from the bottom, "VA" should read "WI".

6. On page 19709, in the second page column, under "Description", in the eighth entry, in the last line, "or" should read "and".

7. On the same page, in the same page column, under "Description", in the 12th entry, in the last line, "or" should read "and".

8. On page 19711, in the second page column, under "Description", in the eighth entry, beginning in the first line "hemorrhage" was misspelled.

9. On the same page, in the same page column, under "Description" in the 11th entry, in the first line, "Percutaneous" was misspelled.

10. On the same page, in the same page column, between the 19th and 20th entries insert the following:

"51.85 Endoscopic sphincterotomy and papillotomy Non-OR, 412".

11. On the same page, in the third page column, under "Procedure code", the 13th entry from the bottom, should read "89.10".

12. On the same page, in the same page column, under "Description", in the third entry from the bottom, in the second and third lines, "detoxification" was misspelled.

13. On page 19712, in the 2nd page column, under "Description", in the 11th entry from the bottom, in the 2nd line, "disease" should read "diseases".

14. On the same page, in the same page column, under "Description", in the eighth entry from the bottom, in the last line, "or" should read "of".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6696

[CO-930-09-4214-10; C-48465]

Withdrawal of Public Lands and Reserved Minerals for Protection of Scenic and Recreational Values in the Ruby Canyon of the Colorado River; Colorado

Correction

In the issue of Thursday, February 2, 1989, on page 5302 in the third column, a correction to FR Doc. 89-14 appeared. The third item, in the quotation should have read, "Sec. 19, lots 1,3,4, NW¼NE¼, N½SW¼NE¼".

BILLING CODE 1505-01-D

federal register

Friday
June 23, 1989

Part II

General Services Administration

48 CFR Chapter 5

General Services Administration Acquisition Regulation; Reissuance and Revision; Final Rule

GENERAL SERVICES ADMINISTRATION

48 CFR Chapter 5

General Services Administration Acquisition Regulation; Reissuance and Revision

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR), Chapter 5 (APD 2800.12A), is revised to reflect the results of a general review of the entire regulation conducted to assure the regulation is essential to implement Government-wide policies and procedures within GSA, needed to satisfy unique needs of the agency, and to ensure the regulation meets other statutory requirements. The current regulation (APD 2800.12) and Acquisition Circulars AC–88–2, AC–88–3 and AC–89–1 are canceled. The intended effect is to update and improve the regulatory coverage and provide guidance to GSA contracting personnel.

EFFECTIVE DATE: July 1, 1989.

FOR FURTHER INFORMATION CONTACT: Ida Ustad, Director of the Office of GSA Acquisition Policy and Regulations (VP), (202) 566–1224.

SUPPLEMENTARY INFORMATION:

A. Background

In March 1988, the Administrator of the Office of Federal Procurement Policy (OFPP) requested the heads of departments and agencies to review procurement related regulations of their agencies that purportedly implement or supplement the Federal Acquisition Regulation (FAR). The purpose of the review was to assure that agency issued procurement regulations are essential to implement Government-wide policies and procedures within the agency, needed to satisfy the unique needs of the agency, and meet other statutory requirements or limitations. In addition to reviewing the regulation for the purposes outlined by the OFPP, the GSA's review included a general review to update the regulation to reflect current organization titles, to update references to other directives and to ensure that the material was current and still needed. The issuance of the revised regulation represents the culmination of the review project.

B. Public Comments

The revisions to the regulation having a significant cost or administrative impact on contractors or offerors, or having a significant effect beyond the internal operating procedures of GSA were published in the **Federal Register** for public comment. Notices of proposed rulemaking were published in the **Federal Register** on December 24, 1987 (GSAR Notice No. 5–65 regarding utility contracts (52 FR 48729)); January 17, 1989 (GSAR Notice No. 5–230 regarding specifications, standards, purchase descriptions and the acquisition of commercial products (54 FR 1739)); January 17, 1989 (GSAR Notice No. 5–115 regarding the contractor's report of orders received clause for GSA schedule contracts (54 FR 1740)); January 25, 1989 (GSAR Notice No. 5–221 regarding improper business practices and personal conflicts of interest (54 FR 3627)); January 30, 1989 (GSAR Notice No. 5–236 regarding multiyear contracting and options (54 FR 4319)); February 3, 1989 (GSAR Notice No. 5–223 regarding publicizing and response times (54 FR 5516)); February 9, 1989 (GSAR Notice No. 5–227 regarding contractor qualifications and related solicitation provisions and clauses (54 FR 6308)); February 28, 1989 (GSAR Notice Nos. 5–233 and 5–234 regarding bid samples (54 FR 8362)); March 3, 1989 (GSAR Notice Nos. 5–242 and 5–356 regarding foreign acquisition and quality assurance (54 FR 9067)); and March 27, 1989 (GSAR Notice No. 5–228 regarding debarment, suspension and ineligibility (54 FR 12462)). Public comments and comments from various GSA offices have been considered and where appropriate incorporated in the final rule.

C. Executive Order 12291

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule.

D. Regulatory Flexibility Act

The GSA indicated in publishing GSAR Notice No. 5–115, regarding the Contractor's Report of Orders Received clause for GSA schedule contracts, that the proposed rule may have an economic effect on a substantial number of small entities and invited comments from the public. No comments were received on the impact of the proposed rule. The final regulatory flexibility analysis has been submitted to the Chief Counsel for Advocacy of the Small Business Administration. Copies of the final regulatory flexibility analysis are available from the office identified above. GSA certifies that the other revisions to the regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

E. Paperwork Reduction Act

All of the information collection requirements contained in the regulation have been submitted to and approved by the Office of Management and Budget under the Paperwork Reduction Act. Section 501.105 of the regulation lists the regulatory citation for each information collection requirement and the related OMB control number.

List of Subjects in 48 CFR Chapter 5

Government procurement.

Dated: June 2, 1989.

Richard H. Hopf, III,

Associate Director for Acquisition Policy.

The General Services Administration, Chapter 5, is revised to read as follows:

CHAPTER 5—GENERAL SERVICES ADMINISTRATION

Subchapter A—General

Part
501 General Services Administration Acquisition Regulation System.
502 Definitions of words and terms.
503 Improper business practices and personal conflicts of interest.
504 Administrative matters.

Subchapter B—Competition and Acquisition Planning

505 Publicizing contract actions.
506 Competition requirements.
507 Acquisition planning.
508 Required sources of supplies and services.
509 Contractor qualifications.
510 Specifications, standards, and other purchase descriptions.
511 Acquisition and distribution of commercial products.
512 Contract delivery or performance.

Subchapter C—Contracting Methods and Contract Types

513 Small purchase and other simplified purchase procedures.
514 Sealed bidding.
515 Contracting by negotiation.
516 Types of contracts.
517 Special contracting methods.
518 [Reserved]

Subchapter D Socioeconomic Programs

519 Small business and small disadvantaged business concerns.
520 Labor surplus area concerns—[Reserved]
521 [Reserved]
522 Application of labor laws to Government acquisitions.
523 Environment, conservation, and occupational safety.
524 Protection of privacy and freedom of information.
525 Foreign acquisition.
526 [Reserved]

Subchapter E General Contracting Requirements

527 Patents, data, and copyrights.
528 Bonds and insurance.
529 Taxes.
530 Cost accounting standards.
531 Contract cost principles and procedures.
532 Contract financing.
533 Protests, disputes, and appeals.

Subchapter F—Special Categories of Contracting

534 Major system acquisition.
535 Research and development contracting—[Reserved]
536 Construction and architect-engineer contracts.
537 Service contracting.
538 GSA schedule contracting.
539 Management, acquisition, and use of information resources.
540–541 [Reserved]

Subchapter G—Contract Management

542 Contract administration.
543 Contract modifications.
544 Subcontracting policies and procedures—[Reserved]
545 Government property—[Reserved]
546 Quality assurance.
547 Transportation.
548 Value engineering—[Reserved]
549 Termination of contracts.
550 Extraordinary contractual actions.
551 Use of Government sources by contractors—[Reserved]

Subchapter H—Clauses and Forms

552 Solicitation provisions and contract clauses.
553 Forms.

Subchapters I Through M—[Reserved]

Subchapter N—Special Contracting Programs

570 Acquisition of leasehold interests in real property.

Appendix A—Contracting Office Assignment Codes

SUBCHAPTER A—GENERAL

PART 501—GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION SYSTEM

Subpart 501.1—Purpose, Authority, Issuance

Sec.
501.102 Authority.
501.103 Applicability.
501.104 Issuance.
501.104–1 Publication and code arrangement.
501.104–2 Arrangement of regulations.
501.104–3 Copies.
501.105 OMB Approval under the Paperwork Reduction Act.
501.170 Other GSA publications.
501.170–1 GSA orders and handbooks.
501.170–2 Acquisition letters.

Subpart 501.4—Deviations from the FAR and GSAR

501.402 Policy.
501.403 Individual deviations.
501.404 Class deviations.

Subpart 501.6—Contracting Authority and Responsibilities

501.601 General.
501.602 Contracting officers.
501.602–1 Authority.
501.602–2 Responsibilities.
501.602–3 Ratification of unauthorized commitments.
501.603 Selection, appointment, and termination of appointment.
501.603–1 General.
501.603–3 Appointment.
501.603–4 Termination.
501.603–70 Contracting officer warrant program (COWP).
501.670 Legal review and assistance.
501.670–1 Policy.
501.670–2 Definitions.
501.670–3 Responsibilities.
501.670–4 Legal review.
501.670–5 Legal assistance.
501.670–6 Waivers.

Subpart 501–7—Determinations and Findings

501.700 Scope of subpart.
501.704 Content.
501.704–70 Sample formats.
501.707 Signatory authority.

Authority: 40 U.S.C. 486(c).

Subpart 501.1—Purpose, Authority, Issuance

501.102 Authority.

The General Services Administration Acquisition Regulation (GSAR) is issued and maintained by the Associate Administrator for Acquisition Policy under the authority of the Federal Property and Administrative Services Act of 1949, as amended.

501.103 Applicability.

(a) This regulation applies to contracts for supplies or services (including construction).

(b) Parts 501, 502, 503, 505, 506, 517, 533, 552, 553, 570 and Subparts 504.70, 507.1, 509.4, 515.1, 519.6, 519.7, 532.8, 532.9 and 543.1 apply to leases of real property. Other provisions do not apply to leases of real property unless a specific cross-reference is made in Part 570.

(c) This regulation applies to the disposal of real and personal property only to the extent explicitly stated. The portions of Subpart 501.6 regarding the Contracting Officer Warrant Program and legal review and assistance, and Subpart 504.70 on the uniform procurement instrument identification system apply to the disposal of real or personal property. Subpart 509.4 regarding suspension and debarment of contractors is applicable to contracts for the disposal of personal property (see FPMR Subpart 101–45.6).

(d) This regulation may deviate from the Federal Acquisition Regulation (FAR) when authorized. (See FAR Subpart 1.4 and Subpart 501.4.) When the GSAR does not implement the FAR, the FAR alone governs.

501.104 Issuance.

501.104–1 Publication and code arrangement.

The GSAR is published in the daily issue of the **Federal Register**, a cumulated form in the Code of Federal Regulations (CFR), and a separate loose-leaf edition.

501.104–2 Arrangement of regulations.

(a) The numbering system used in GSAR conforms to the FAR System. A particular policy or procedure is identified by the same number in both the FAR and GSAR.

(b) When the GSAR implements the FAR, the GSAR is numbered (and captioned) to correspond to the FAR part, subpart, section, or subsection being implemented.

(c) When the GSAR supplements the FAR by dealing with subject matter not in the FAR, numbers beginning with 70 are assigned to the supplementing part, subpart, section, or subsection.

(d) When the FAR requires no implementation, the GSAR will not contain corresponding citations. This will result in some gaps in the GSAR. In such cases, see the FAR for policies and procedures.

501.104–3 Copies.

Copies of the GSAR in CFR form may be purchased from the Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402.

501.105 OMB Approval under the Paperwork Reduction Act.

The following OMB control numbers apply:

GSAR reference	OMB Control Number
507.305	3090–0104
509.105–1(a)	3090–0007
510.004–70	3090–0203
512.104(a)(2)	3090–0204
512.104(a)(4)	3090–0204
514.201(7)(a)	3090–0200
515.406–2	3090–0199
516.203–4(b)	3090–0243
522.406–6	1215–0140
523.370	3090–0205
525.105–70(d)	3090–0196
525.205	3090–0240
528.202–71(a)	3090–0189
532.502–3	3090–0229
532.905–70	9000–0102
532.905–71	3090–0080
537.110(a)	3090–0197
537.110(b)	3090–0006

GSAR reference	OMB Control Number
53[illegible]-71	3090-0121
542.1107	3090-0027
546.302-70	3090-0027
546.302-71	3090-0027
546.570	3090-0227
552.207-70	3090-0104
553.210-74	3090-0203
552.212-1	3090-0204
552.212-71	3090-0204
552.214-75	3090-0200
552.215-75	3090-0199
552.216-71	3090-0243
552.223-71	3090-0205
552.225-70	3090-0198
552.225-75	3090-0240
552.228-74	3090-0189
552.232-74	3090-0229
552.232-79	3090-0060
552.237-70	3090-0197
552.237-71	3090-0006
552.238-72	3090-0121
552.242-70	3090-0027
552.246-70	3090-0027
552.246-71	3090-0027
552.249-71	3090-0227
GSA-72	3090-0121
GSA-72-A	3090-0121
GSA-527	3090-0007
GSA-618-D	1215-0149
GSA-1142	3090-0060
GSA-1364	3090-0086
GSA-1678	3090-0027
GSA-2419	9000-0102
570.802(c)	3090-0086

501.170 Other GSA publications.

501.170-1 GSA orders and handbooks.

Internal agency guidance, as described in FAR 1.301(a)(2), must be issued by heads of contracting activities in the form of a GSA order or handbook. GSA orders and handbooks must not unnecessarily repeat, paraphrase, or otherwise restate the FAR and GSAR. Policies and procedures for issuing GSA orders and handbooks are in the HB, Writing GSA Internal Directives (OAD P 1832.3).

501.170-2 Acquisition letters.

(a) Acquisition letters may be issued to provide coverage on an interim basis, pending incorporation of material in GSA orders or handbooks. Acquisition letters will be considered canceled after one year and therefore must be incorporated into the applicable order or handbook within that time period.

(b) The heads of contracting activities (HCA's) or their designees may issue acquisition letters. Normally no more than two officials within a contracting activity, as appropriate, may be designated to issue acquisition letters.

(c) Acquisition letters must be coordinated with appropriate offices including Acquisition Policy, Counsel, and the Inspector General. Proposed procedures affecting the operation of the small business program must be coordinated with the Office of Small and Disadvantaged Business Utilization (AU).

(d) Acquisition letters must be identified by a number assigned by the issuing activity. The number should begin with the correspondence symbol of the issuing office, followed by the last two digits of the calendar year in which it is issued and be numbered consecutively beginning with 1. For example, the number of the first letter issued by the Commissioner, Public Buildings Service, in calendar year 1989 will be P-89-1.

(e) The body of the acquisition letter should contain the following paragraphs, as appropriate:

(1) Purpose.
(2) Background.
(3) Effective date.
(4) Termination date.
(5) Cancellation.
(6) Applicability (offices to which acquisition letter is applicable).
(7) Reference to regulations (FAR or GSAR), handbooks, or orders.
(8) Instructions/procedures.

(f) The issuing office is responsible for distributing its acquisition letters to affected contracting activities, regional Acquisition Management Staffs (RAMS), the Office of Acquisition Policy, appropriate Central Office contracting activities, Associate General Counsels, Regional Counsels, Directives and Correspondence Management Branch in Central Office, and Information Management Branches in the regions. In Region 3, it is the Administrative Operations Branch.

(g) Each issuing office must report on acquisition letters issued and canceled on a quarterly basis so that the Office of Acquisition Policy can issue a consolidated index of all acquisition letters issued or canceled. The index will be distributed to GSA contracting activities.

Subpart 501.4—Deviations From the FAR and GSAR

501.402 Policy.

(a) In order to maintain maximum uniformity, deviations from the FAR and the GSAR must be kept to a minimum.

(b) A contracting activity may deviate from a regulatory provision which implements a statutory requirement provided the nature of the deviation does not violate the underlying statute.

(c) Deviations must not be used to defeat the FAR and GSAR approval requirements.

501.403 Individual deviations.

Individual deviations from the GSAR or the FAR must be approved by the head of the contracting activity. A copy of the deviation justification and approval must be furnished to the Office of Acquisition Policy (VP).

501.404 Class deviations.

(a) Class deviations from the FAR and GSAR must be approved by the Associate Administrator for Acquisition Policy (V).

(b) Class deviations from the GSAR will expire in 12 months if not extended. They may be rescinded earlier without prejudice to any action previously taken.

(c) Requests for class deviations must be supported by statements that fully disclose the need for and the nature of the deviation.

Subpart 501.6—Contracting Authority and Responsibilities

501.601 General.

Heads of contracting activities (see 502.1) are contracting officers by virtue of their position. Other contracting officers are appointed under FAR 1.603 and 501.603.

501.602 Contracting officers.

501.602-1 Authority.

Contracting authority is not required for:

(a) Using the imprest fund;
(b) Signing training authorizations for public course offerings;
(c) Signing travel documents;
(d) Ordering printing and duplicating services;
(e) Ordering supplies on Standard Form 344 or other FEDSTRIP forms;
(f) Signing Government Bills of Lading;
(g) Signing machine-loaded orders against established contracts for supplies to replenish warehouse stock;
(h) Signing machine-generated delivery orders against definite quantity contracts for motor vehicles;
(i) Signing memorandums of Agreement with other Federal agencies; and
(j) Authorizing interagency transfers of funds.

501.602-2 Responsibilities.

(a) *GSA revolving funds.* Unless otherwise notified, contracting officers may assume that sufficient funds are available for purchases payable from GSA revolving funds upon the receipt of a requisition signed by an authorized individual citing funds. Requisitions for requirement contracts, which provide for a guaranteed minimum, must cite funds adequate to cover the guaranteed minimum quantities.

(b) *GSA funds, other than revolving funds.* (1) A requisition signed by an authorized individual may be considered as evidence that funds cited are available for purchases payable from GSA funds other than revolving funds. Citation of additional funds must be obtained from the requisitioning activity before awarding a contract or purchase order when the purchase exceeds (by 10 percent or $50, whichever is greater) the amount cited on the purchase requisition.

(2) When a requisition is not used, e.g., lease of real property, the contracting officer must ensure funds are available before awarding the contract.

(c) *Other Federal agencies' funds.* On purchases for direct delivery to Federal agencies other than GSA, the receipt of a properly signed/approved purchase request is sufficient evidence that funds are available. Where, however, the agency's purchase request indicates that a specific dollar amount has been set aside for the acquisition, as in the case of a Project Implementation Order/Commodities (PIO/C) from the Agency for International Development, the buying activity must not exceed the fund limitation except to the extent authorized in supply support agreements. When the funds stated on the purchase request appear to be or are insufficient to cover costs for the acquisition, transportation, export surcharge, and any other expense involved in the delivery of material to designated consignees, additional funds must be obtained from the requiring agency before the acquisition is completed as indicated below:

(1) When requirements are submitted by agencies directly to a contracting division in the Central Office (regardless of where the procurement is actually made), the request for additional funds should be made by the Central Office contracting division.

(2) When requirements are submitted to a regional contracting division (regardless of where the acquisition is made), the request for additional funds will be made by the order processing and control activity in the region initially receiving the requirement.

501.602-3 Ratification of unauthorized commitments.

(a) *Authority.* Under FAR 1.602-3, contracting officers may ratify unauthorized contractual commitments if the HCA approves the ratification action. The HCA may not redelegate this authority.

(b) *Procedures.* (1) Generally, the Government is not bound by commitments made by persons who do not have contracting authority. Such unauthorized acts may violate laws or regulations. Therefore, unauthorized commitments should be considered as serious employee misconduct and consideration given to initiating disciplinary action. If suspected irregularities may involve fraud against the Government, or any type of misconduct that might be punishable as a criminal offense, either the employee's supervisor or the contracting officer must immediately report the matter to the Office of the Inspector General with a request for a complete investigation.

(2) The individual who made the unauthorized commitment shall furnish the appropriate contracting director all records and documents concerning the commitment and a complete written statement of facts, including, but not limited to, a statement as to why normal acquisition procedures were not followed, why the contractor was selected and a list of other sources considered, description of work or products, estimated or agreed-upon contract price, citation of appropriation available, and a statement regarding the status of the performance. Under exceptional circumstances, such as when the person who made the unauthorized commitment is no longer available to attest to the circumstances of the unauthorized commitment, the contracting director may waive the requirement that the responsible employee initiate and document the request for ratification, provided that a written determination is made stating that a commitment was in fact made by an employee, who must be identified in the determination.

(3) The contracting director will assign the request to a contracting officer for processing. The contracting officer shall prepare a summary statement of facts addressing the limitations in FAR 1.602-3(c) recommending whether or not the transaction should be ratified. Advice against express ratification should include a recommendation for other appropriate disposition. When ratification is not permissible due to legal improprieties in the procurement, the contracting officer may recommend that payment be made for services rendered on a quantum meruit basis (the reasonable value of work or labor) or for goods furnished on a quantum valebant basis (the reasonable value of goods sold and delivered) provided there is a showing that the Government has received a benefit. (See FAR 1.602-3(d).)

(4) The request for ratification, the information required by paragraph (b)(3) of this section and a recommendation for corrective action to preclude recurrence, must be forwarded, through appropriate channels to the HCA for consideration.

(5) The HCA shall approve the ratification in writing, or direct other disposition as appropriate. Acquisitions approved for ratification are returned to the contracting officer for issuance of the necessary contractual documents. If the request for ratification is not justified, the HCA will return the request without approval and provide a written explanation for the decision not to approve ratification.

(6) HCAs shall maintain a separate file containing a copy of each request for approval to ratify an unauthorized contractual commitment and a copy of the response. This file must be made available for review by the Office of Acquisition Policy and the Inspector General.

501.603 Selection, appointment, and termination of appointment.

501.603-1 General.

The contracting officer warrant program (COWP) is the system established for the selection, appointment, and termination of appointment of contracting officers.

501.603-3 Appointment.

(a) Heads of contracting activities (HCAs) may delegate authority to make purchases not to exceed $500 by memorandum to the employee. Requests for delegation of contracting authority at the $500 level may be made by memorandum and must include the candidate's name, title, and organizational location; a brief explanation of the need for authority; a brief description of the individual's qualifications; and a certification that the candidate has received the training required by 501.603-70(h)(1)(i).

(b) HCAs or Chairman of the COWP Board, if authorized by the HCA, may nominate contracting officer candidates for basic, intermediate, or unlimited warrants to the Associate Administrator for Acquisition Policy (see 501.603-70(c)). To nominate a candidate, the HCA or Chairman must submit a GSA Form 3410, Request for Appointment. The Request for Appointment must be accompanied by a GSA Form 3400, Personal Qualifications Statement for Appointment as a Contracting Officer, prepared and signed by the candidate.

(c) Candidates for basic, intermediate, or unlimited warrants who do not meet the minimum experience, certification and/or training requirements outlined in 501.603-70, may be appointed on an interim basis. Candidates for interim appointment at the intermediate warrant level must complete all the basic level courses and three intermediate level courses before the appointing official

will consider a request for appointment. Candidates for interim appointment at the unlimited warrant level must complete all the basic level courses and complete five intermediate level courses before the appointing official will consider a request for appointment. These restrictions do not apply to realty leasing or sales warrants. All minimum training requirements must be scheduled and met within a reasonable period of time. At least two of the required courses or equivalency tests must be completed each year after the date of appointment to avoid losing the warrant.

(d) The Associate Administrator for Acquisition Policy appoints contracting officers at the basic, intermediate or unlimited level using the Standard Form 1402, Certificate of Appointment. The original Certificate of Appointment (SF-1402) will be provided to the appointed contracting officer and should be displayed at the contracting officer's duty station. A copy of the Certificate of Appointment will be forwarded to the appropriate HCA or Chairman of the COWP Board and to the Office of Finance.

501.603-4 Termination.

(a) HCAs shall notify the Associate Administrator for Acquisition Policy by letter when a contracting officer—

(1) Resigns;

(2) Transfers to another agency or is reassigned to another office within GSA;

(3) Is terminated, or otherwise disciplined for malfeasance or incompetence; or

(4) No longer has a need for the appointment.

(b) HCAs may suspend a contracting officer's appointment for a temporary period not to exceed 30 days for failing to exercise sound business judgment or for other improprieties in carrying out the responsibilities incident to serving as a contracting officer. During the 30-day suspension period, the HCA shall either lift the suspension or recommend that the Associate Administrator for Acquisition Policy terminate the appointment.

501.603-70 Contracting officer warrant program (COWP).

(a) *General.* The objective of the COWP is to appoint as contracting officers individuals who are qualified and have valid organizational need for contracting authority. Factors to be considered in assessing the need for a contracting officer include volume of actions, complexity of work, and organizational structures.

(b) *Applicability.* The program applies to all contracting officers except those appointed under the Inspector General Act (Pub. L. 95-452).

(c) *Definitions.*

"Appointing official" means the Associate Administrator for Acquisition Policy or the head of the contracting activity (HCA).

"Contracting Officer Representative" (COR) means a Government employee designated in writing by the contracting officer (CO), by name and position title, who is authorized to take action for the contracting officer with specified limitations. A contracting officer may not authorize a COR to issue change orders or otherwise modify a contract unless the COR is a warranted contracting officer.

"Delivery order" means an order for supplies and/or services placed against an already established contract under the terms and conditions of the contract.

"Established source contract" means a contract established by GSA or another Federal agency that authorizes or requires GSA to place orders against the contract. (See Part 8 of the FAR.)

"Warrant Limitations" means limitations which, in addition to the FAR, GSAR, laws, Executive Orders, GSA Orders, and other applicable regulations, are imposed on the authority of contracting officers, and set forth in the Certificate of Appointment (Standard Form 1402). Warrant limitations may include but are not limited to requirements for prior reviews, approvals, and other controls.

(d) *Responsibilities*—(1) *Associate Administrator for Acquisition Policy.* As the Procurement Executive for GSA, the Associate Administrator for Acquisition Policy is responsible for providing management direction of the procurement system, maintaining a procurement career management program to ensure a professional workforce, and appointing contracting officers in accordance with FAR 1.603 and 501.603.

(2) *Heads of contracting activities.* The heads of contracting activities (HCAs) (see 502.1) are responsible for delegating authority to make purchases that do not exceed $500 and for conducting effective and efficient acquisition programs. HCAs must establish training plans for contracting personnel and budget for funds to implement such plans; monitor the performance of contracting officers; and establish controls to ensure compliance with applicable laws, regulations, procedures and the dictates of management practice. Central Office HCAs shall designate an official to serve as Chairman of the COWP board.

(3) *Contracting Officer Warrants Boards.* The HCA appoints the Chairman of the COWP Board. The Chairman appoints the board members and receives, evaluates, and processes requests for appointment of contracting officers under the COWP. The warrant board consists of supervisory personnel at the SES or GM/GS 14/15 levels representing contracting offices within the contracting activity and, in an advisory capacity, representatives of the Office of Personnel and the Office of General Counsel.

(4) *Regional Acquisition Management Staff (RAMS).* The RAMS shall assist the HCA in the administration of the COWP, issue procedures for the operation of the program at the regional level, recommend program changes when necessary, analyze proposed regional courses and training material and recommend them for fulfilling the requirements of the COWP, maintain detailed training records for each contracting officer, and ensure that appropriate forms required by the Office of Finance are provided to the Office of Finance and to the Office of Acquisition Policy (Attn: VF).

(e) *Types of appointments*—(1) *Interim.* An interim appointment is made to a candidate who does not meet the minimum requirements for a permanent appointment. Such appointments are for a specified time and provide for the scheduling and completion of required training within a reasonable period of time. At least two of the required courses or equivalency tests must be successfully completed each year after the date of appointment to avoid termination of the appointment. The Office of Acquisition Policy and the RAMS periodically review training records of individuals with interim appointments to determine whether they are making adequate progress towards completion of required training.

(2) *Permanent.* A permanent appointment is made to a candidate who meets all requirements for experience and training at the time the appointment is made. For those contract specialists mandated to be in the GSA Occupational Certification Program (OAD 9410.1), the candidate must be certified as a full-performance level contract specialist. Permanent appointments may be made for a specified period if the need for contracting authority is limited to a specific period of time.

(f) *Warrant levels.* The following warrant levels are equated with dollar value of individual transactions (e.g., contract, modification, supplemental agreement, etc.) and not the aggregate contract value:

$500—Up to and including $500 per open market purchase or per order placed against established source contract.
Basic—Up to and including $25,000 per open market purchase or the maximum order limitation for orders placed against established source contracts.
Intermediate—Up to and including $100,000 per contract or the maximum order limitation for orders placed against established source contracts.
Senior—Unlimited.

(g) *Experience requirements.* The following experience requirements apply to contracting officer candidates for the various warrant levels.

(1) *Basic.* Candidates must have at least 1 year of current (within last 5 years) contracting experience with progressive assignments leading to broader technical ability.

(2) *Intermediate.* Candidates must have at least 2 years of current (within last 5 years) contracting experience with progressive assignments leading to broader technical ability.

(3) *Senior.* Candidates must have at least 3 years of current (within last 5 years) contracting experience with progressive assignments and broader technical ability.

(h) *Training requirements*–(1) *Mandatory training to qualify for appointment.* A contracting officer candidate must complete the minimum core training requirements described below. To qualify for an intermediate level warrant, a candidate must complete the basic and intermediate level training. A candidate must complete the basic, intermediate, and senior level training in order to qualify for a senior level warrant. Supervisors are responsible for providing their employees with advice and assistance necessary to complete this required training. Mandatory training for a permanent warrant designation includes the following general topics as a minimum:

(i) *$500 Level.* Candidates for appointment must receive a minimum of 4 hours on-the-job orientation or formal training on small purchase procedures. Individuals that have taken formal training courses on small purchases or basic procurement meet the requirement for 4 hours of training. The training may be provided by contracting officers, senior procurement personnel, or a member of the RAMS staff on the basic principles of small purchasing, the requirements for use of established sources, and the responsibilities and obligations of contracting officers.

(ii) *Basic Level* (Does not apply to realty leasing & sales personnel).

(A) Small Purchases/Schedule Contracts—40 hours.

(B) Basic Procurement—40 hours.

(C) Contract Administration for Program Personnel—40 hours (Applicable to Buildings Managers Only).

(D) Basic Fleet Management Procurement—40 hours (*Only course* required for Fleet Managers).

(iii) *Non-1102 COs.* COs not classified as 1102 employees and who do not make open market purchases greater than small purchases will not be required to take the Basic Procurement course.

(iv) *Intermediate level* (Does not apply to realty leasing & sales personnel).

(A) Government Contract Law—80 hours.

(B) Contracting by Sealed Bidding—40 hours.

(C) Government Contract Negotiations—40 hours.

(D) Government Contract Negotiation Techniques—40 hours.

(E) Cost and Price Analysis—40 hours.

(F) GSA Price Analysis—40 hours.

(G) Government Contract Administration—40 hours.

(H) Government Contract Termination—40 hours.

(I) ADP Contracting—40 hours (applicable to ADP acquisition personnel only).

(J) Contracting for Services—40 hours.

(K) Public Utility Contracts—40 hours (applicable to personnel handling public utility procurements).

(L) Contracting for Architect/Engineer services—40 hours (applicable to personnel handling Architect/Engineer service procurements).

(M) Construction Contracting—40 hours (applicable to personnel handling procurement of construction).

(v) *Senior level (over $100,000).* (Does not apply to leasing and sales.)

(A) Executive Seminar in Acquisition—24–40 hours.

(B) Advanced Procurement Management—40 hours.

(C) Advanced Contract Administration—40 hours.

(vi) *Realty leasing personnel.* (A) Federal Real Property Leasing or Basic Lease Contracting—40 hours.

(B) Real Estate Law or Federal Real Property Lease Law—40 hours.

(C) Negotiation Techniques—40 hours.

(D) Cost and Price Analysis or Pricing of Lease Proposals—40 hours.

(E) Real Estate Appraisal Capitalization Theory and Techniques, Part A (AIREA or equivalent course)—40 hours.

(vii) *Sales Contracting personnel.* (A) Basic Procurement—40 hours (real property sales personnel only).

(B) Sales and Disposal of Government Property—40 hours (personal property sales personnel only).

(C) Government Contract Law—80 hours.

(D) Government Contract Negotiations—40 hours.

(E) Sales and Disposal of Real Property—40 hours or Personal Property Sales—80 hours. (Course selection dependent on type of property being disposed of.)

(viii) *Construction contracting officer representatives (CORs).* Individuals nominated for warrants limited to the issuance of change orders up to $25,000 are required to complete the Basic Procurement course and the Construction Contracting course. Special COR warrants above the basic level will require the completion of all courses required for construction contracting at the higher level.

(ix) *Motor Pool Disposal personnel.* Individuals nominated to dispose of Motor Pool Vehicles are required to complete the Basic Fleet Management Procurement course and the Personal Property Utilization and Disposal course.

(2) *Substitution of experience for training.* Individuals currently serving and classified in 1102 positions for an uninterrupted period of 3 years will not be required to take the basic level courses if they are proposed for intermediate or senior level warrants.

(3) *Substitute courses.* Training courses of equivalent content may be substituted with the written approval of the Office of Acquisition Policy. Courses from the following sources are considered to be equivalent provided the training meets the minimum hours required:

(i) Training from a Government-sponsored source, such as U.S. Army Logistics Management Center (ALMC).

(ii) Training from a source listed in the Defense Management Education and Training (DMET) Catalog or the Federal Acquisition Institute (FAI) Catalog.

(iii) Training provided by colleges or universities deemed equivalent by the Federal Acquisition Institute.

(4) *Refresher training.* Contracting officers in the Federal Supply Service are encouraged to attend the Contract Quality Assurance course (40 hours) in fulfilling the continuing education requirements.

(5) *Tests.* Tests administered either by the GSA Office of Personnel, DOD training facilities or other professional organizations may be taken as an alternative to training with the written approval of the Office of Acquisition Policy. The GSA training office may be

contacted for referral to DOD testing facilities such as Fort Lee, VA.

(6) *Mandatory training to retain contracting officer designation.* As a condition of continuing designation, all contracting officers, except those with a $500 level warrant or those on interim appointments, must complete 16 hours (for basic level warrants) or 40 hours (for intermediate or unlimited level warrants) of formal acquisition training every 3 years in order to maintain competency.

501.670 Legal review and assistance.

501.670–1 Policy.

The Office of General Counsel is responsible for ensuring compliance with the laws and regulations applicable to, and policies of, the agency. This section sets forth the responsibilities of legal counsel and agency personnel involved in any aspect of the contracting process (from policy and planning through contract completion or termination and closeout) in obtaining and providing legal review and assistance. It is agency policy that Office of General Counsel attorneys will be major participants in the contracting process. Subject to the provisions of this section 501.670, authority to make contracting decisions is vested in the contracting officer. Legal counsel is responsible for legal advice furnished by them and for the legal sufficiency of such contracting decisions. Contracting officers and other contracting personnel are entitled to rely upon legal counsel and technical and audit advice received from other appropriate agency experts but are solely responsible for all other aspects of their contracting decisions. Contracting officers and other contracting personnel shall not, absent prior legal review or assistance, as required, proceed with proposed actions requiring legal review or assistance pursuant to this section 501.670. Contracting officers and other contracting personnel may request, through the appropriate level official within their service or staff office, and are entitled to, review of legal advice at higher levels within the Office of General Counsel. Supervisory personnel are responsible for assuring that their subordinates comply with the provisions of this section.

501.670–2 Definitions.

"Contract" has the meaning ascribed to it in FAR 2.101, and includes real property leases.

"Contracting," as used in this section, means the acquisition or disposal by contract (includes small purchases and leases) of any services or interest in real or personal property. To the extent that specific language reflects terminology used in procurement, the counterpart terminology is intended for matters involving disposals.

"Legal assistance" means a process whereby legal counsel provides legal advice and guidance on questions or problems that arise during any phase of the acquisition process.

"Legal counsel" means the attorney employed by the Office of General Counsel (including offices of Regional Counsel) assigned to provide legal review or assistance.

"Legal review" means a formal process whereby legal counsel analyzes a matter to ensure legal sufficiency, i.e., that the proposed action is in compliance with applicable laws, regulations and policy and is prudent in light of related legal considerations, e.g., other contracts with the same or other contractor, or claims, disputes or litigation concerning the same or other contracts.

"Modification" means any deletion from, or alteration or change of, or addition or supplement to, a contract or solicitation.

"Offer" has the meaning ascribed to it in FAR 2.101.

"Solicitation," as used in this section, means solicitations for offers, invitations for bids, requests for proposals, and any other kind of document inviting, soliciting, or requesting the submission of a bid, offer, or proposal in connection with a procurement or disposal.

501.670–3 Responsibilities.

(a) Subject to the provisions of this section, contracting officers have the authority and responsibility for making contracting decisions. Agency personnel involved in any aspect of the contracting process (from policy and planning through contract completion or termination and closeout) shall:

(1) Obtain approval for legal sufficiency before taking actions that require legal review under this section.

(2) Obtain legal assistance before taking actions that require legal assistance under this section, provided this section shall not be construed as either (i) prohibiting contracting officers or other contracting personnel from proceeding, in contravention of advice of legal counsel, with an action requiring legal assistance or, (ii) as absolving contracting officers or other agency personnel from responsibility for so proceeding.

(3) Provide assigned legal counsel with all pertinent information including facts, points at issue and rationale for proposed action.

(4) Request legal review or assistance in a timely fashion so that legal counsel has time to respond.

(5) Document files to reflect legal counsel's concurrence and comment, if any.

(b) The Office of General Counsel is responsible for ensuring compliance with the laws and regulations applicable to, and policies of, the agency. Assigned legal counsel is responsible for—

(1) The legal review and assistance furnished and for the legal sufficiency of contracting decisions which result from same.

(2) Providing timely legal review and assistance on a broad range of legal and policy problems arising during the contracting process.

(3) Ensuring that proposed contractual actions and issuances comply with applicable laws, regulations and policy.

(c) Supervisory personnel are responsible for ensuring that their subordinates comply with this section.

501.670–4 Legal review.

(a) Absent legal counsel's prior written approval for legal sufficiency, or waiver of the requirement therefor, action must not be taken on the following matters (except as provided in 501.670–4(c) and 501.670–5(c)):

(1) With respect to the outleasing of real property that is not surplus, and the acquisition of areawide or single delivery point utility services in excess of $150,000, the (i) issuance of solicitations (including modifications thereof), and (ii) the award of contracts (and modifications thereof).

(2) With respect to the disposal (by sale, outlease or otherwise) of surplus real property, the (i) issuance of solicitations (and modifications thereof), (ii) the award of contracts (and modifications thereof), and (iii) the transmittal of explanatory statements.

(3) Award of any contract which requires pre-award or post-award clearance by the Office of Acquisition Policy or by a service or regional clearance office under GSA Order, Contract Clearance (APD 2800.1B), and modifications thereof.

(4) Determinations and findings required by the FAR, GSAR, or other appropriate authority (see FAR Subpart 1.7 and GSAR Subpart 501.7) and justifications to use other than full and open competition (see FAR Subpart 6.3).

(5) Solicitations which deviate from provisions or clauses prescribed by regulation or other appropriate authority, or which add additional provisions or clauses to those prescribed in the FAR or GSAR.

(6) Solicitations involving repurchase action against a defaulted contract.

(7) Decisions involving the nonapplication of, or any exemption to be taken from, the subcontracting plan requirements of Pub. L. 95–507.

(8) Late offers and modifications.

(9) Offers indicating that a contingent fee has been, or may be, paid.

(10) Alleged mistakes in offers.

(11) Protests, including small business size protests, filed with the agency, the General Accounting Office (GAO), General Services Administration Board of Contract Appeals (GSBCA), or the Small Business Administration.

(12) Matters involving the disclosure of offers before opening in sealed bidding or before award in negotiation.

(13) Proposed letter contracts.

(14) Ratification of unauthorized contractual commitments.

(15) Proposed determinations to reject all offers and cancel a solicitation for reasons other than unreasonable prices.

(16) Assignments of amounts due or to become due under contracts and change of name or novation agreements.

(17) Contract disputes, claims and final decisions of any nature, regardless of the contracting officer's proposed position.

(18) Memoranda of position and appeal files in cases appealed to the GSBCA or Claims Court.

(19) Matters relating to litigation before the courts or the GSBCA.

(20) Termination actions of any nature, including pretermination (i.e., "cure") letters.

(21) Assessments of costs, including administrative and excess reprocurement cost.

(22) Recommendations and other actions relative to suspending or debarring a concern or individual.

(23) Freedom of Information Act, Privacy Act, and standards of conduct matters.

(24) Proposed responses to Congressional inquiries, and to General Accounting Office (GAO) and Inspector General audit reports which pertain to the legality of proposed or past actions.

(25) Deviations from FAR, GSAR, or other directives.

(26) Regulations, orders, directives or other issuances affecting the acquisition process.

(27) Contracts for advisory and assistance services subject to GSA Order, Procurement of Advisory and Assistance Services (ADM 2800.12D).

(b) Agency officials, in conjunction with legal counsel, are encouraged to establish more stringent supplemental criteria for legal review when resources are available. Copies of supplemental criteria should be forwarded to the Associate Administrator for Acquisition Policy and to the General Counsel.

(c) Absent the consent of the submitting official or good cause shown by legal counsel, legal review of matters submitted therefor to legal counsel shall be deemed waived unless written approval or disapproval thereof is furnished to the submitting official by close of official business on the second full business day following legal counsel's receipt thereof.

(d) Nothing in 501.670–4(a) (1) through (3) requires post-award legal review of the following types of contract modifications:

(1) Administrative modifications (i.e., modifications that do not affect the contract term, price, quality or quantity or work, contract requirements, or the completion date/time of delivery).

(2) As to all contracts, modifications (i) to exercise options that were priced and evaluated, or (ii) to increase the estimated contract cost under the Limitation of Cost clause in cost-reimbursable contracts.

(3) As to real property leases, modifications (i) establishing occupancy dates, (ii) settling debits and credits under unit price allowances and ratios, (iii) for lease alterations not subject to clearance pursuant to APD 2800.1B if to be paid on a lump sum basis and not impacting operating cost or maintenance requirements, (iv) effecting tax or CPI operating cost escalations/de-escalations, or (v) changing the percentage of Government occupancy.

(4) As to FSS contracts, routine modifications (i) to Federal supply schedule contracts, (ii) to stock program contracts, or (iii) to special order program contracts.

(5) As to IRMS contracts, routine modifications to multiple award schedule contracts.

(e) As to FPRS real property disposal by competitive sale, no pre-award contract review is required where the solicitation and any modification thereof have been approved pursuant to 501.670–4(a)(2) and the proposed awardee's offer conforms in all respects to the terms of such solicitation.

501.670–5 Legal assistance.

(a) Agency personnel shall pay special attention to the following areas, present problems or questions to legal counsel and, when such problems or questions are presented, defer relevant action until legal assistance has been received and fully considered or waived:

(1) Preliminary questions or problems relating to matters requiring legal review.

(2) Questions concerning the proper use of appropriations or other funds and sensitive or confidential issues.

(3) Matters involving: (i) Application of the Buy American Act or related provisions of law, (ii) application of the labor statutes (e.g. Walsh-Healey Act, Service Contract Act, etc.), (iii) small business or labor surplus area concerns, (iv) consideration of subcontracting plans as required by Pub. L. 95–507, (v) withholding of payments to contractors for Department of Labor labor standards violations, (vi) the adequacy of bid guarantees and payment or performance bonds, (vii) competitive range determinations, or (viii) evaluation of offers.

(4) Matters relating to: (i) Nonresponsiveness of bids and nonresponsibility of contractors; (ii) contractor indebtedness, bankruptcy, or financing; (iii) use of special and directed sources of supply, e.g. procurement of supplies from Federal Prison Industries or of supplies or services from workshops for the blind and other severely handicapped; and (iv) eligibility to use GSA supply sources.

(5) When unusual or novel procurements are contemplated.

(6) Contract administration matters that involve legal issues or concerns.

(7) Questions raised during debriefing of offerors.

(8) When there is doubt or controversy as to the legal sufficiency of an action, or the interpretation or application of existing statutes, regulations and policies.

(9) Real property disposal plans.

(b) Agency personnel are urged to notify legal counsel in advance of meetings scheduled with legal representatives of outside parties, meetings where legal issues are likely to be discussed, and negotiations of complex contracts, and modifications thereto. Legal counsel shall, whenever feasible, attend such meetings and negotiations and furnish legal advice to the attending agency personnel.

(c) Legal assistance shall be furnished not later than the time specified in 501.670–4(c) or the requirements therefor shall be deemed waived.

501.670–6 Waivers.

The General Counsel or Deputy General Counsel may waive, in writing, legal review requirements on a case-by-case basis or class basis. An Associate General Counsel or Regional Counsel may waive, in writing, legal review requirements on a case-by-case basis. These authorities are not delegable.

Subpart 501.7—Determinations and Findings

501.700 Scope of subpart.

This subpart provides general information on the content and format of determinations and findings (D&Fs). Specific information on the various D&Fs can be found in the FAR or GSAR part that requires the D&F. This subpart is not an all-inclusive listing of D&F requirements.

501.704 Content.

501.704-70 Sample formats.

(a) *Type of contract*—(1) *Cost reimbursement contracts.* The following is prescribed for determinations required by FAR 16.301-3, 16.302, 16.303, 16.304, 16-305, 16.306, 16.403, and 16.404.

General Services Administration
Determinations and Findings

Authority to Use Cost Reimbursement Type Contract

Findings

I hereby find that:

(1) The (Service/Office title) proposes to contract for (describe work, service, or product) (identify program or project). The estimated cost is ($_____) (if contract is CPFF type, insert "plus a fixed fee of ($_____) which is ($_____) percent of the estimated cost exclusive of fee").

(2) (Explain why it is impracticable to secure property or services of the kind or quantity required without using the proposed type of contract or why the proposed method of contracting is likely to be less costly than other methods.)

(3) These findings are made pursuant to (cite appropriate statute and/or regulation).

Determinations

I hereby determine that:

On the basis of the above findings, it is impracticable to secure the property or services of the kind or quality required without using a (cost, cost-sharing, or cost-plus-a-fixed-fee*) type of contract, or the (cost, cost sharing, or cost-plus-a-fixed-fee**) method of contracting is likely to be less costly than other methods.*

Date: _____

(Signature)

* Use applicable word or statement.

** Use applicable words.

(2) *Time and material or labor-hour contracts.* The format prescribed by subparagraph (a)(1) of this section must be followed except that the final paragraph must read substantially as follows:

I hereby determine that:

On the basis of the above findings, no other type of contract is suitable for this procurement.

(3) *Letter contracts.* The following format is prescribed for determinations required by FAR 16.603-3:

General Services Administration
Determinations and Findings

Authority to Use a Letter Contract

Findings

I hereby find that:

(1) The (Service/Office title) proposes to contract for (describe the work, service, or product) (identify program or project). The estimated cost is $_____ (complete if possible).

(2) (Explain why no other contract is suitable. Explain why the Government's interests demand that the contractor be given a binding commitment so that work can start immediately, and why it is not possible to negotiate a definitive contract in time to meet the requirements.)

(3) These findings are made pursuant to (cite appropriate statute and/or regulations).

Determinations

I hereby determine that:

On the basis of the above findings, it is impracticable to secure the property or services of the kind or quality required within the timeframe required without the use of a letter contract.

Date: _____

(Signature)

(b) *Use of procedures that are less than full and open competition.* (1) *Exclusion of source(s).* The following format is prescribed for determinations and findings made under section 303(b)(1) of the Federal Property and Administrative Services Act (41 U.S.C. 253(b)(1)) and FAR 6.202.

General Services Administration
Determinations and Findings

Authority to Exclude Source(s) From Competition On An Individual Contract Under 41 U.S.C. 253(b)(1)

Findings

I hereby find that:

(1) The (Service/Office title) proposes to procure (describe work to be performed or product to be delivered) (identify program or project and state estimated contract price).

(2) (Explain why it is necessary to exclude a particular source(s) in order to establish or maintain an alternative source or sources for the supplies or services being acquired. Explain how this action will (a) increase or maintain competition and likely result in reduced overall costs, (b) be in the interest of national defense by having a facility available for furnishing the supplies or services in case of a national emergency or industrial mobilization, or (c) be in the interest of national defense by establishing or maintaining an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center.)

Determinations

I hereby determine that:

On the basis of the above findings, it is necessary to exclude (identify source(s)) from (identify the contract action) in order to establish or maintain an alternative source or sources for the supplies or services being acquired because to do so will (describe benefits as required by FAR 6.202).

Date: _____

(Signature)

(2) *Not in public interest.* The following format is prescribed for determinations and findings made under section 303(c)(7) of the Federal Property and Administrative Services Act (41 U.S.C. 253(c)(7)) and FAR 6.302-7:

General Services Administration
Determinations and Findings

Authority Not To Provide For Full and Open Competition On an Individual Contract Under 41 U.S.C. 253(c)(7)

Findings

I hereby find that:

(1) The (Services/Office title) proposes to produce (describe work to be performed or product to be delivered) (identify program or project and state estimated contract price).

(2) (The contents of the justification prepared by the contracting officer, in accordance with FAR 6.302-7 and 6.303-2, shall be included as a part of the findings to support the determination.)

Determinations

I hereby determine that:

On the basis of the above findings, it is not in the public interest to provide for full and open competition in the procurement of (describe work to be performed or product to be delivered) (identify program or project).

Date: _____

(Signature)

(c) *Advance payments.* The format for advance payment determinations and findings is set forth in FAR 32.410.

(d) *Buy American.* The prescribed format for nonavailability determinations and findings required by FAR 25.102(a)(4) and 25.202(a)(3) is set forth in 525.108-70.

(e) *Determinations pending decision on protest to GAO*—(1) *Protest filed before award.* The following format is prescribed for determinations and findings required by FAR 33.104(b):

General Services Administration
Determinations and Findings

Authority To Proceed With Award Pending a Decision by GAO on Protest Before Award

Findings

I hereby find that:

(1) The (Services/Office title) proposes to procure (describe work to be performed or product to be delivered). The estimated cost is _____.

(2) Solicitation (identify solicitation) was issued on _____ and bids/ proposals were received on _____.

(3) On _____ (insert date GAO received protest) (identify protestor by name) submitted a protest to GAO concerning the solicitation (identify solicitation).

(4) (Set forth urgent and compelling circumstances that significantly affect the interests of the United States and will not permit waiting for the decision of GAO on the protest).

(5) Award is anticipated within 30 calendar days from the date this determination and findings is signed.

(6) These findings are made pursuant to 31 U.S.C. 3553(c)(2) and FAR 33.104(b)(1).

Determinations

I hereby determine that:

On the basis of the above findings, urgent and compelling circumstances will not permit waiting for the decision of the GAO on the protest filed by (identify protestor and solicitation).

Date: _____

(Signature)

(2) *Protest filed after award.* The following format is prescribed for determinations and findings required by FAR 33.104(c):

General Services Administration
Determinations and Findings

Authority To Continue Contract Performance Pending a GAO Decision on Protest Filed After Award

Findings

I hereby find that:

(1) The (Services/Office title) awarded a contract to (name contractor) on _____ for furnishing of (identify product, service or work to be performed). The contract is valued at _____ and resulted from solicitation _____.

(2) On _____ (insert date GAO received protest) (identify protestor by name) submitted a protest to GAO concerning contract number _____.

(3) Explain that: (a) continued contract performance will be in the best interest of the United States; or (b) urgent and compelling circumstances exist that significantly affect the interests of the United States and will not permit waiting for the GAO's decision).

(4) These findings are made pursuant to 31 U.S.C. 3553(d)(2) and FAR 33.104(c)(2).

Determinations

I hereby determine that:

On the basis of the above findings, (either (a) continued contract performance will be in the best interest of the United States, or (b) urgent and compelling circumstances exist that will not permit waiting for the GAO's decision) and that, accordingly, contract performance under contract _____ may continue pending GAO's decision on the protest.

Date: _____

(Signature)

501.707 Signatory authority.

A D&F must be signed by the appropriate official in accordance with Table 501-1. The FAR frequently refers to determinations being made by the agency head. Section 309 of the Federal Property and Administrative Services Act defines agency head and provides that at the option of the Administrator, the term may include the chief official of any principal organizational unit of the GSA. The Administrator has authorized the heads of contracting activities to act as agency head to facilitate the procurement of property and services under Title III of the Federal Property and Administrative Services Act. (See GSA Delegation of Authority Manual, ADM P 5450.39C.) When the applicable statute precludes redelegation of the authority, the table provides for the Administrator to sign such D&Fs.

TABLE 501-1.—SIGNATORY AUTHORITY

D&F Requirement	Signatory authority
a. Determinations as to price or fee under a cost-plus-fixed-fee contract. (See FAR 15.903(d) and 16.306(c)(2).).	Individual D&Fs may be signed by the head of the contracting activity (HCA), as defined in 502.1, or a designee. Class D&Fs must be signed by the HCA.
b. Determinations that the use of a cost, cost-plus-fixed-fee contract or an incentive contract is likely to cost less than other methods, or that it is impractical to secure property or services of the kind and quality required without using one of these types of contracts. (See Far 16.301-3, 16.302, 16.303, 16.304, 16.305. 16.306(c)(1), 16.403, and 16.404).	Individual D&Fs may be signed by the HCA or a designee. Class D&Fs must be signed by the HCA.
c. Determinations to use a time-and-material or labor-hour contract. (See FAR 16.601 and 16.602).	Individual D&Fs must be signed by the contracting officer. Class D&Fs must be signed by the HCA.
d. Determinations to use a letter contract. (See FAR 16,603-3.).	Individual D&Fs must be signed by the HCA or a designee.
e. Determinations to exclude a particular source from a contract action in order to establish or maintain an alternative source or sources for supplies or services. (See 41 U.S.C. 253(b)(1) and FAR 6.202.).	Individual D&Fs must be signed by the HCA. Class D&Fs are not permitted.
f. Determinations that it is not in the public interest to use full and open competition. (See FAR 6.302-7.).	Individual D&Fs must be signed by the Administrator. This authority may not be redelegated. Class D&Fs are not permitted.
g. Determinations that the making of advance payments would be in the public interest. (See FAR 32.410.).	D&Fs must be signed by the HCA. Class D&Fs are not permitted.
h. Determinations with respect to waiving either the requirement for submission of certified cost or pricing data or for the inclusion of the clauses required by FAR 25.215-22 through 52.215-25 in contracts with foreign governments or agencies thereof. (See FAR 15.804-3(i).)	Individual D&Fs must be signed by the HCA. Class D&Fs are not permitted.
i. Determinations to omit the clause specified at FAR 52.215-1, Examination of Records by Comptroller General, from contracts with foreign contractors or subcontractors. (See 41 U.S.C 254(c) and FAR 15.106-1(b).)	Individual D&Fs must be signed by the Administrator with the concurrence of the Comptroller General or a designee.
k. Determinations regarding the exceptions to the restrictions of the Buy American Act. (See FAR Subpart 25.102(a)(4), 25.202(a)(3) and GSAR 525.108-70.	Individual D&Fs may be signed by the HCA or a designee.
l. Determinations under the Balance of Payments program. (See FAR 25.3.)	Individual D&Fs may be signed by the HCA or a designee.
m. Determinations under Section 302(b)(2) of the Trade Agreements Act. (See FAR Subpart 25.4 and GSAR Subpart 525.4.)	Individual D&Fs must be signed by the HCA in accordance with 525.402-71.
n. Determinations to proceed with an award or to continue contract performance pending a GAO decision on a protest. (See FAR 33.104 (b) and (c).)	Individual D&Fs must be signed by the HCA. Class D&Fs are not permitted.

PART 502—DEFINITIONS OF WORDS AND TERMS

Authority: 40 U.S.C. 486(c).

Subpart 502.1—Definitions

502.101 Definitions.

"Agency competition advocate" means the Director of the Office of Acquisition Management and Contract Clearance.

"Contracting activity competition advocate" means the (a) Director of Acquisition Management and Contract Clearance, (b) FSS Competition Advocate, Office of Commodity Management, (c) Director, Agency Liaison Officer Program Division, IRMS, (d) Special Assistant to the Director, Program Support Office, FPRS, and (e) Regional Director, Regional Acquisition

Management Staff for Regions 2, 3, 4, 5, 6, 7, 9, and the National Capital Region. The Director of Acquisition Management and Contract Clearance serves as the contracting activity competition advocate for Central Office contracting activities outside of FSS, IRMS, and FPRS.

"Contracting director" means directors of Central Office or regional office divisions that are responsible for performing contracting and/or contract administration functions except for FSS. "Contracting director" means directors of Commodity Centers and Federal Supply Service Bureaus in the FSS.

"Head of the contracting activity" (HCA) means the Associate Administrator for Acquisition Policy, Commissioner of the Federal Supply Service (FSS), Information Resources Management Service (IRMS), Public Buildings Service (PBS), Federal Property Resources Service (FPRS), or Regional Administrators (Regions 2, 3, 4, 5, 6, 7, 9, and the National Capital Region). The Associate Administrator for Acquisition Policy serves as the HCA for Central Office contracting activities outside of FSS, IRMS, PBS, and FPRS.

"Senior procurement executive" means the Associate Administrator for Acquisition Policy.

Part 503—Improper Business Practices and Personal Conflicts of Interest

Subpart 503.1—Safeguards

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503.101 Standards of conduct.
503.101–3 Agency regulations.

Subpart 503.3—Contractor Gratuities to Government Personnel

503.203 Reporting suspected violations of the Gratuities clause.
503.204 Treatment of violations.

Subpart 503.4—Contingent Fees

503.404 Solicitation provision and contract clause.
503.408 Evaluation of the SF 119.
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Subpart 503.5—Other Improper Business Practices

503.570 Advertising.
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Subpart 503.6—Contracts with Government Employees or Organizations Owned or Controlled by Them

503.602 Exceptions.
503.603 Responsibilities of the contracting officer.

Subpart 503.7—Voiding and Rescinding Contracts

503.702 Definitions.
503.705 Procedures.

Authority: 40 U.S.C. 486(c).

Subpart 503.1—Safeguards

503.101 Standards of conduct.

503.101–3 Agency regulations.

(a) GSA Standards of Conduct are in Part 105–735 of the General Services Administration Property Management Regulations (GSPMR) (ADM 7900.9). Authorized exceptions to FAR 3.101–2 are in GSPMR 105–735.202(e). Enforcement procedures are in GSPMR 105–735.101.

(b) The requirement for employee financial disclosure and restrictions on private employment for former Government employees are in GSPMR 105–735.4 and 105–735.6.

Subpart 503.2—Contractor Gratuities to Government Personnel

503.203 Reporting suspected violations of the Gratuities clause.

Employees shall immediately report any suspected violation of the Gratuities clause to the contracting officer, the Assistant Inspector General for Investigations or the Regional Inspector General for Investigations and to the Deputy Standards of Conduct Counselor in accordance with GSPMR 105–735.202(e)(4). The report must outline circumstances which indicate the Gratuities clause has been violated and include all pertinent documents. The Office of Inspector General will investigate and, if appropriate, forward a report and recommendation to the Department of Justice and/or the Office of Acquisition Policy, and/or the Office of Ethics and Civil Rights.

503.204 Treatment of violations.

(a) The Associate Administrator for Acquisition Policy or a designee shall make determinations under FAR 3.204.

(b) The Associate Administrator or designee, after coordinating the matter with legal counsel, may initiate proceedings under FAR 3.204(a) by notifying the contractor that action against the contractor for a violation of the Gratuities clause is being considered. Notice must be provided by means of a letter sent by certified mail to the last known address of a party, its counsel, or agent for service of process. In the case of a business, notice may be sent to any partner, principal officer, director, owner or co-owner, or joint venture. If no return receipt is received within 10 calendar days of mailing, receipt will be presumed.

(c) The contractor shall have 30 calendar days to exercise its rights under FAR 3.204(b), unless an extension is granted.

(d) The Associate Administrator or designee may refer a matter to an agency fact-finding official designated by the Chairman of the GSA Board of Contract Appeals, if a determination is made that there are disputes of fact material to making a determination under FAR 3.204(a). Referrals for fact-finding will not be made in cases arising from a conviction or indictment as defined in FAR 9.403. If a referral is made, the fact-finding official shall:

(1) Afford the contractor the opportunity to dispute material facts relating to the determinations under FAR 3.204(a) (1) and (2).

(2) Conduct the proceedings under rules that are consistent with FAR 3.204(b).

(3) Schedule a hearing within 20 calendar days of receipt of the referral. Extensions may be granted for good cause upon the request of the contractor or the agency.

(4) Deliver written findings of fact to the Associate Administrator or designee (together with a transcription of the proceedings, if made), within 20 calendar days after the hearing record closes. The findings must resolve any material disputes of fact by a preponderance of the evidence.

(e) The Associate Administrator or designee may reject the findings of the fact-finding official only if they are determined to be clearly erroneous or arbitrary and capricious.

(f) In cases arising from conviction or indictment, or in which there are no disputes of material fact, the Associate Administrator or designee shall conduct the hearing required by FAR 3.204(b).

(g) If it is determined that the Gratuities clause has been violated, the contractor may present evidence of mitigating factors to the Associate Administrator or designee, either orally or in writing, in accordance with a schedule established by the Associate Administrator or designee. The Associate Administrator or designee shall exercise the Government's rights under FAR 3.204(c) only after considering mitigating factors.

Subpart 503.3—Reports of Suspected Antitrust Violations

503.303 Reporting suspected antitrust violations.

Contracting officers shall report evidence of suspected antitrust violations in acquisitions to the Assistant Inspector General for Investigations or the Regional Inspector General for Investigations. The Office of Inspector General will investigate and prepare a report and recommendation to the Attorney General and to the Office of Acquisition Policy for suspension or debarment consideration.

Subpart 503.4—Contingent Fees

503.404 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 552.203–4, Contingent Fee Representation and Agreement, in solicitations and contracts for the acquisition of leasehold interests in real property.

(b) The contracting officer shall insert the provision at 552.203–5, Covenant Against Contingent Fees, in solicitations and contracts for the acquisition of leasehold interests in real property.

503.408 Evaluation of the SF 119.

503.408–1 Responsibilities.

The contracting officer's documentation of the evaluation, conclusion and any proposed action must be reviewed by assigned legal counsel and the contracting director.

503.409 Misrepresentations or violations of the Covenant Against Contingent Fees.

Employees who suspect or have evidence of violations of the Covenant Against Contingent Fees clause shall report the matter to the contracting officer as well as the Office of Inspector General. If appropriate, the Office of Inspector General will forward a report and recommendation to the Department of Justice.

Subpart 503.5—Other Improper Business Practices

503.570 Advertising.

503.570–1 Policy.

Contractors shall not refer to contracts awarded by GSA in commercial advertising in a manner which states or implies that the product or service provided is approved or endorsed by the Government or is considered by the Government to be superior to other products or services. This policy is intended to avoid the appearance of preference by the Government toward any product or service.

503.570–2 Contract clause.

The contracting officer shall insert the clause at 552.203–70, Restriction on Advertising, in solicitations and contracts for supplies or services when the contract amount is expected to exceed the small purchase limitation.

Subpart 503.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

503.602 Exceptions.

(a) The heads of contracting activities may authorize exceptions to the policy in FAR 3.601.

(b) Offers submitted by Government employees on solicitations issued under the Office of Management and Budget (OMB) Circular A–76 may be considered if the contracting officer complies with 503.603. When Government employees submit offers, they do so with the knowledge that if the contract is awarded, their Government employment will be terminated. The implementation of OMB Circular A–76 presents a unique situation which may be considered to be an exception to the policy in FAR 3.601. Contracts between the Government and its employees are not expressly prohibited except, where the employee acts for both the Government and the contractor in a particular transaction or where the service to be rendered is such as could be required of the contractor in his/her capacity as a Government employee.

503.603 Responsibilities of the contracting officer.

Before awarding a contract to a GSA employee who responded to an A–76 solicitation, the contracting officer shall:

(a) Obtain a written certification from the employee's supervisor that: the individual was not involved in the development of the solicitation or specifications, or in the preparation of the independent Government cost estimate or in-house cost comparison; had no advance knowledge of the details of the contents of the solicitation package; and was not otherwise involved in the contracting process.

(b) Refer the proposed award to assigned legal counsel for review and approval.

(c) Ascertain whether a reduction-in-force notice has been issued to the employee.

Subpart 503.7—Voiding and Rescinding Contracts

503.702 Definitions.

"Notice" means a letter sent by certified mail with a return receipt requested to the last known address of a party, its counsel, or agent for service of process. In the case of a business, such notice may be sent to any partner, principal officer, director, owner or co-owner, or joint venturer. If no return receipt is received within 10 calendar days of mailing, receipt will be presumed.

"Voiding and rescinding official" means the Associate Administrator for Acquisition Policy or a designee.

503.705 Procedures.

(a) Where a contract has been tainted by fraud, bribery, conflict of interest, or similar misconduct, the contracting officer should consult with counsel to determine if the Government has a common law remedy such as avoidance, rescision, or cancellation. Alternatively, the matter may be referred to the voiding and rescinding official under FAR 3.705, if there has been a final conviction for any violation of 18 U.S.C. 201–224.

(b) The contracting officer may postpone a decision to exercise the Government's common law right to void, rescind, or cancel a contract pending completion of legal proceedings against a contractor.

(c) A referral to the voiding and rescinding official should identify the final conviction and include the information required by FAR 3.705(d) (2) through (5). The contracting officer should coordinate the referral with the Office of Inspector General to ascertain if a debarment referral is contemplated.

(d) The voiding and rescinding official shall review the referral and coordinate the matter with assigned legal counsel and the contracting activity. If a determination is made to declare void and rescind a contract and to recover the amounts expended and the property transferred, the voiding and rescinding official shall issue the notice required by FAR 3.705, and conduct the hearing contemplated by FAR 3.705(c)(3). If the voiding and rescinding official determines that there is a genuine dispute of material fact regarding the agency decision, the voiding and rescinding official shall refer the matter to the fact-finding official designated by the Chairman of the GSA Board of Contract Appeals. Such a referral will be made if there is a dispute of fact that relates to:

(1) The contracts affected by the final conviction giving rise to the proposed action.

(2) The amounts expended and property transferred by the Government under the contracts covered by the proposed action.

(3) The identity and value of any tangible benefits received by the Government under the affected contracts.

(e) If a referral for fact-finding is made, the fact-finding official shall:

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(1) Afford the contractor the opportunity to dispute material facts relating to 503.704(d) (1) through (3).

(2) Conduct the proceedings under rules that are consistent with FAR 3.705(c)(3).

(3) Schedule a hearing within 20 calendar days of receipt of the referral. Extensions may be granted for good cause upon the request of the contractor or the agency.

(4) Deliver written findings of fact to the voiding and rescinding official (together with a transcription of the proceeding, if made) within 20 calendar days after the hearing record closes. The findings must resolve any material disputes of fact by a preponderance of the evidence.

(f) The voiding and rescinding official shall not issue the agency's final decision under FAR 3.705(e) until receipt of the fact-finding official's report, if any. The voiding and rescinding official may reject the findings of the fact-finding official only if they are determined to be clearly erroneous or arbitrary and capricious.

(g) In actions in which it is determined there are no material disputes of fact relating to the determinations required by FAR 3.705(d) (2), (4) and (5), the voiding and rescinding official will conduct the hearing contemplated by FAR 3.705(c)(3).

(h) The final decision must be coordinated with the contracting activity and a copy of the decision provided to the activity.

PART 504—ADMINISTRATIVE MATTERS

Subpart 504.1—Contract Execution

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504.101 Contracting officer's signature.
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504.7002 Procurement contract register.

Authority: 40 U.S.C. 486(c)

Subpart 504.1—Contract Execution

504.101 Contracting officer's signature.

Contracts and contract modifications must be signed personally and manually by the contracting officer. The contracting officer's name and title must be typed or stamped below the signature. In the absence of the designated contracting officer, another contracting officer may sign documents. However, in all cases the name and title of the individual actually signing the document must be typed or stamped on the document below the signature.

504.103 Contract clause.

Agency procedures do not require the use of the clause at FAR 52.204–1, Approval of Contract, in solicitations and contracts.

Subpart 504.2—Contract Distribution

504.201 Procedures.

A "Duplicate Original" of the contract or modification forwarded to the paying office must be certified as a true copy by the contracting officer's original handwritten signature, in ink, on the award or modification form (i.e., SF 26, 33, 1442 etc.). This requirement does not apply to:

(a) Leases of real property;

(b) Schedule contracts; or

(c) Standard or GSA multipage purchase/delivery order carbon forms.

Subpart 504.4—Safeguarding Classified Information Within Industry

504.402 General.

(a) This subpart prescribes procedures for safeguarding classified information required to be disclosed to contractors in connection with the solicitation of offers, and the award, performance, and termination of contracts. As used in this subpart, the term "contractor(s)" includes prospective contractors, subcontractors, vendors, and suppliers of any tier.

(b) This subpart implements the requirements of the Department of Defense's Industrial Security Regulation (ISR) and Industrial Security Manual for Safeguarding Classified Information (ISM). By agreement, the Department of Defense will act for and on behalf of GSA in rendering security services required for safeguarding classified information released by GSA to United States (U.S.) industry.

(c) As used in this subpart, the term "U.S. industry" pertains to those industries (including educational and research institutions) located within the United States, its possessions, and the Commonwealth of Puerto Rico.

504.470 Requests for release of classified information.

Prior to soliciting offers or entering into discussions or negotiations with any contractor involving the disclosure of classified information, the contracting officer shall prepare, in triplicate, Section I of GSA Form 1720, Request for Release of Classified Information to U.S. Industry (illustrated in Subpart 553.3). After signing as requesting officer and obtaining approval from the immediate supervisor, the contracting officer shall forward all copies of the completed form to the Audit Resolution and Internal Controls Division (CTR), Office of Management Services.

504.470–1 Authorization for release.

CTR, after determining that the contractor has been issued a Department of Defense facility security clearance, will complete the appropriate parts of Section II, of GSA Form 1720, and return the original and one copy to the contracting officer. Under no circumstances will classified information be disclosed or made accessible to any contractor until the completed form has been received from CTR. Where only Item 14b, Section II, of the form has been checked, the contracting officer's actions will be governed by the instructions on the reverse side of the form. When a contractor is found to be ineligible for a security clearance, CTR will advise the contracting officer.

504.470–2 Termination of authorization for release.

When circumstances support withdrawal or revocation of security clearance, CTR will advise the contracting officer of the termination of authorization to release classified information and include instructions concerning actions required to safeguard, withhold, or obtain the return of classified information. Reasons for such termination may include:

(a) Failure of the contractor to maintain the physical standards required by the ISM.

(b) Information indicating the contractor no longer (1) is eligible for clearance or (2) requires access to classified information.

504.471 Processing security requirements checklist (DD Form 254).

(a) Contracts involving access to classified information by the contractor require preparation of DD Form 254, Contract Security Classification Specification (illustrated in FAR 53.303–DD–254), to identify and indicate to Department of Defense (DOD) and contractors the areas of classified information involved. In the case of contracts for research, advisory and assistance services, graphic arts services, or other procurements of services, written notice of classification may be used in lieu thereof.

(b) Instructions or guidance on completing DD Form 254 may be obtained from CTR.

504.472 Periodic review.

Contracting officers shall review DD Form 254 whenever a change in the phase of performance occurs or at their own discretion, but in any event at least once a year, to determine whether the classified information can be downgraded or declassified. The contractor must be informed of the results of the review by issuance of a revised specification, or by written instructions instead of DD Form 254 (where authorized), or if the review results in no change in the classification specifications, by written notification to that effect. Upon termination or completion of the contract, a final checklist must be prepared.

504.473 Recurring procurement.

When procurement is of a recurring nature, a new DD Form 254 is not required if the end item is not changed and there is no change from the previous security classification.

504.474 Control of classified information.

(a) Classified information must be recorded, marked, handled, and transmitted in accordance with instructions contained in the handbook, Information Security (ADM P 1025.2C).

(b) When classified information is originated by another agency, the consent of the originating agency must be obtained prior to releasing the classified information to the contractor.

504.475 Return of classified information.

(a) Unless the classified information has been destroyed as provided in paragraph 19 of the ISM, the contracting officer must recover the information. When classified information is furnished to a GSA contractor by another Government agency, the return of such information is the responsibility of that agency.

(b) The contracting officer is responsible for insuring that classified information furnished to prospective offerors, offerors, or contractors is returned immediately:

(1) After bid opening or closing date for receipt of proposals from non-responding offerors;

(2) After contract award from unsuccessful offerors;

(3) Upon termination or completion of the contract;

(4) Upon notification that authorization to release classified information has been withdrawn;

(5) After notification that a facility (i) does not have adequate means for safeguarding classified information, or (ii) has had its security clearance revoked or inactivated; or

(6) Whenever otherwise instructed by the authority responsible for the security classification.

504.476 Breaches of security.

When an unauthorized disclosure of classified information is discovered, the contracting officer or other GSA employee responsible for the information shall promptly refer the facts of such breach or compromise to CTR.

Subpart 504.8—Contract Files

504.800 Scope of subpart.

This subpart prescribes requirements for using standard contract file format for all contracts, except leases of real property, that exceed the small purchase limitation. The application of this subpart to small purchases is optional.

504.802 Contract files.

(a) *Standardization of files.* Contract files must contain all necessary information and documentation required by FAR 4.802 and 4.803 and be organized in the standardized contract file format in 504.803.

(b) *Responsibility for contract files.* The contracting officer is responsible for the official file. All documents pertaining to the contract must be forwarded by those initiating them to the contracting officer for inclusion in this file. The contracting officer is also responsible for the accountability of contract files transferred to the records center and for knowing the location of the files as provided by the National Archives and Records Administration.

(c) *Transfer of responsibility for contract files.* (1) When responsibility for a contract is transferred from one contracting officer to another, e.g., transfer of assignments or redelegation of contract administration (intraoffice or interoffice), the contracting officer transferring the files shall prepare a detailed listing by file number and/or name to identify the file(s) to be transferred (see also FAR 42.206).

(2) If available, duplicates of the files to be transferred must be retained by the contracting officer until acknowledgement of receipt of the transferred files by the contracting officer is received.

(3) The original contracting officer transferring the files shall retain one copy of the listing and send a copy of the listing to the successor contracting officer under a separate mailing as advance notice of the files to be transferred.

(4) The files to be transferred to the successor contracting officer must be sent by certified mail, return receipt requested, when appropriate, or by another method so as to obtain a signature of the successor contracting officer for receipt of the contract files that are transferred. The transferred files must be accompanied by two copies of the listing to the successor contracting officer.

(5) The successor contracting officer, who becomes responsible for the files, shall sign one copy of the listing, certifying receipt of the files listed, and return the signed copy to the contracting officer transmitting the files.

504.803 Contents of contract files.

(a) The contract file must be numerically tabbed, filed in reverse order starting with item (1) on the bottom of the file and item (28) on the top. Documents within the tab should be filed chronologically with the most recent document on top. If any of the documents are too voluminous to be placed under the applicable tab, they should be included in a separate file and the tab annotated with the location of the file. All of the items described will not always be needed for each contract action. If a tab is not required for a particular action, it should be omitted from that contract file. The file must be tabbed as specified below:

(1) Requisition or request for contractual action. Where technical or requirements personnel recommend the use of other than full and open competition, the certification of the accuracy and completeness of the data to support the recommendation should be filed under this tab. (See FAR 6.303–1(b).)

(2) Specifications, drawings, and other technical documents.

(3) Acquisition plan including, where applicable, the determination required by OMB Circular A–76 and/or

concurrence of the cognizant competition advocate.

(4) Determination and findings required by FAR Subpart 1.7 and Subpart 501.7, or justification required by FAR 6.303, including the certification of accuracy and completeness of the justification.

(5) Department of Labor Wage Determination.

(6) Small business and labor surplus area determinations.

(7) Source list.

(8) Statement as to synopsis of proposed procurement under FAR Subpart 5.2 or other required advertisements.

(9) Presolicitation notice.

(10) IFB/RFP and amendments.

(11) Abstract of bids/proposals including identification of the low bidder/offeror, discounted price, etc.

(12) Cost or pricing data. Where the requirement for submission of cost or pricing data is waived, as provided in FAR 15.804–3, the waiver and documentation supporting the waiver should be filed under this tab.

(13) Field pricing report (see FAR 15.805–5 and 515.805–5). Where the requirement for a field pricing report of a price proposal is waived, as provided in FAR 15.805–5, the waiver and documentation supporting the waiver should be filed under this tab.

(14) Price or cost analysis report prepared under FAR 15.808. Supporting technical analyses, other than those supporting an audit report, should be filed under this tab. The profit or fee analysis required by FAR Subpart 15.9 should be made a part of the price or cost analysis report. In those cases where an independent Government estimate is prepared, it should also be made a part of the price or cost analysis report.

(15) A price negotiation memorandum, as required by FAR 15.808, must be written so as to permit reconstruction of all the major events of the acquisition and placed under this tab.

(16) Certificate of current cost or pricing data.

(17) Pre-award survey.

(18) EEO compliance review.

(19) "No bid" or "no proposal" correspondence.

(20) Unsuccessful bids or proposals. A copy of each rejected bid or unacceptable proposal also must be included in the file under this tab.

(21) Mistakes in bids and protests. This includes all correspondence and determinations relating to mistakes in bids disclosed before award and/or protests.

(22) Actions taken on late bids or proposals.

(23) Contractual action. Successful bid or proposal and all pertinent correspondence applicable to the contractual action. Subcontracting plans that are incorporated in and made a material part of a contract, as required by FAR 19.705(a)(5), should be filed under this tab.

(24) Evidence of concurrence for legal sufficiency of the appropriate counsel (if applicable).

(25) Any required approvals—GSA Form 1535, Recommendation for Award, or GSA Form 3584, Checklist for Review of Subcontracting Plan (as applicable).

(26) Any notices of award including Standard Form 99, Notice of Award of Contract (if applicable).

(27) SF 279, FPDS Individual Contract Action Report.

(b) An index of the file tabs should be placed in the file. Items which do not apply should be so marked, and if necessary, a brief explanation included. The GSA Form 3420, Contract/ Modification File Checklist, illustrated in 553.370–3420, must be used by the contracting officers in the Public Buildings Service. The form may be used by other offices or a standard contract file checklist, based on the requirements of 504.803(a), appropriate to that particular office may be prepared. The requirements of a particular office may provide for the inclusion of subheadings under a tab or additional items as appropriate.

504.804–5 Detailed procedures for closing out contract files.

When the statement required by FAR 4.804–5(b) is completed, the administrative contracting officer (ACO) shall forward the statement and the contract files to the cognizant procuring contracting officer (PCO). The ACO shall follow the procedures outlined in 504.802(c) when transferring the files to the PCO.

504.805 Disposal of contract files.

The contracting officer's accountability for contract files terminates at the end of their retention period when the notice of disposal is received from the National Archives and Records Administration, and disposal is approved by the appropriate records liaison officer whose organization has functional responsibility for the files.

Subpart 504.9—Information Reporting to the Internal Revenue Service

504.903 Procedures.

(a) The Office of Finance makes reports required by 26 U.S.C. 6041 and 6041A as implemented in 26 CFR to the IRS on payments made to certain contractors for services performed and to lessors for providing space in buildings. In order for Finance to make the required reports, contracting officers must indicate on obligating documents (e.g. purchase/delivery orders, contracts, or the GSA Form R–820 for leases) forwarded to Finance, the contractor's organization structure (e.g. corporation, partnerships, etc.) and for contractors that are not incorporated (except as provided in FAR 4.902(a)(1)(i)), the contractor's taxpayer identification number (TIN). When certified invoice procedures (see 513.70) are used, contracting officers must identify the organization structure for Finance.

(b) Reports required by 26 U.S.C. 6050M are made through the Federal Procurement Data System.

Subpart 504.70—Uniform Procurement Instrument Identification

504.7001 Uniform procurement instrument identification.

Except for real property leasing activities and procurement activities of the Federal Supply Service, the procedures in this subpart prescribed for the identification of contracts, orders, and other procurement instruments regardless of dollar threshold are applicable for all other contracting activities, including the Federal Supply Service, Property Management Division.

504.7001–1 Policy.

(a) The uniform procurement instrument identification system must be used for procurement instruments listed in paragraph (f) of 504.7001–2. The system does not apply to purchases made through certified invoice procedures (see 513.70) or to imprest fund purchases.

(b) Identification should be placed in the contract number block provided on the applicable forms. If a space is not reserved for the prescribed number, it should be placed in the upper right-hand corner of the form.

(c) Each contracting office shall maintain records to ensure continuity and control of procurement instrument identification numbers. (See 504.7002.)

504.7001–2 Basic procurement instrument identification number.

The basic procurement instrument identification number will normally be assigned at the time of award. However, the number may be assigned at the time a procurement request is received if assignment at that time will facilitate tracking of the procurement. The basic procurement instrument identification number does not change during the life of the particular instrument and consists of 14 alphanumeric characters as follows:

(a) Characters 1 and 2 of the basic procurement instrument identification number is the symbol "GS."

(b) The third and fourth characters reflect the region preparing the instrument as follows:

00 Central Office
01 Region 1
02 Region 2
03 Region 3
04 Region 4
05 Region 5
06 Region 6
07 Region 7
08 Region 8
09 Region 9
10 Region 10
11 National Capital Region

(c) The fifth character is a capital letter assigned to the service/office preparing the instrument as follows:

B Office of the Comptroller
D Federal Property Resources Service
F Federal Supply Service
G GSA Board of Contract Appeals
C Office of Administration
J Office of Inspector General
K Information Resources Management Service
L Office of General Counsel
P Public Buildings Service

(d) The sixth and seventh characters identify the fiscal year in which the number is assigned.

(e) The eighth and ninth characters identify the contracting office preparing the instrument. (These codes will be assigned to each GSA organization where a contracting officer is assigned.) See Appendix A for code assignment.

(f) The tenth character is a capital letter assigned to indicate the type of procurement instrument code as follows:

A Agreements, including basic agreements, basic ordering agreements, and blanket purchase agreements.
B Reserved
C Contracts, including letter contracts, contracts referencing basic agreements, or basic ordering agreements, excluding indefinite delivery type contracts.
D Indefinite delivery contracts, including definite quantity, requirements contracts and indefinite quantity contracts.
E Sales contracts.
F–L Reserved
M Purchase orders (open market small purchases)—manual
N Reserved
P Purchase orders—(open market small purchases)—automated.
Q Reserved
R Reserved
S Schedule contract
T–Z Reserved

(g) The eleventh through fourteenth characters reflect the serial number of the instrument. A separate series of numbers, maintained at the contracting office level, may be used for each type of instrument listed in paragraph (f) of 504.7001–2, depending upon procurement document volume. At the beginning of each fiscal year, these serial numbers will begin with the number 0001. Alphanumeric characters will be serially assigned, after all the numeric series are exhausted, i.e., 0001 through 9999, with an alpha as the first character, followed by three character numeric serial number. Each issuing office is responsible for controlling the serial number assignments. The following numeric and alphanumeric sequences, excluding alpha I and O, will be used:

0001 through 9999;
A001 through A999, B001 through B999; and so on to Z001 through Z999.

(h) An example of this procurement instrument identification number is:

1-2	The agency designation code	G	S										
3-4	A two-digit code identifying the region or Central Office			0	9								
5	A capital letter identifying the service/office					F							
6-7	The last two digits of the fiscal year						8	9					
8-9	A two-digit alpha code assigned to the contracting office								A	0			
10	A capital letter assigned to the type of instrument										C		
11-14	The four digit serial number											0	0	0	1

504.7001–3 Order and call instrument identification number.

Delivery orders under indefinite delivery contracts (orders), and orders under schedule contracts must be identified by an "11" character alphanumeric identification number placed in the order number block of the order form. The basic indefinite delivery or schedule contract number must be placed in the contract number block of the order form.

(a) The first character is a capital letter assigned to the office issuing the order. This code will be identical to those assigned in paragraph (c) of 504.7001–2.

(b) The second and third characters reflect the Region issuing the order. These identification codes will be identical to the codes assigned in paragraph (b) of 504.7001–2.

(c) The fourth and fifth characters identify the fiscal year in which the number is assigned.

(d) The sixth and seventh characters identify the contracting office preparing the order. These identification codes will be the same as the codes assigned in paragraph (e) of 504.7001–2.

(e) The eighth through the eleventh characters reflect the serial number of the order. Each contracting office maintains its own serial number. Alphanumeric numbers are used when more than 9999 numbers are required. Alphanumeric numbers are serially assigned with an alpha in the first position followed by the numeric serial number. The following sequences, excluding alpha I and O will be used:

0001 through 9999;
A001 through A999; and so on to Z001 through Z999.

(f) An example of a delivery order number is:

Positions

		P		0	1		8	4		P	B	0	0	0	1
1	Service/office issuing the order	P											
2-3	Region issuing the order			0	1								
4-5	Fiscal year						8	4					
6-7	A two-digit code assigned to contracting office									P	B		
8-11	Four digit serial number											0	0	0	1

504.7001–4 Supplemental procurement instrument identification number.

Modifications to the basic contract instrument and to call/order against contracts are numbered by use of a four character alphanumeric number.The supplemental identification numbering system applies to all modifications to contracts and to call/orders against contracts.

(a) The first character is a capital letter identifying the officeissuing the modification, as indicated below:

A Contract administration office modification (Administrative Components): or
P Purchasing office modification.

(b) The second character is a capital letter identifying the type of action, as follows:

A Administrative change.
C Change order.
O Other (includes exercise of options, price adjustments under escalation clauses and other changes made under specific contract clauses.)
S Supplemental agreement (bilateral signatures).

(c) The third and fourth characters reflect the serial number. Alphanumeric numbers are used when more than 99 numbers are required. Alphanumeric numbers are serially assigned with an alpha in the first position followed by a numeric number. If additional numbers are needed, alphas may be used in both positions. The following sequences, excluding alpha I and O, will be used:

01 through 99.
A1 through A9, and so on to Z1 through Z9.
AA through AZ, and so on to ZA through ZZ.

(d) An example of the supplemental procurement instrument identificationnumber is:

Positions		EXAMPLE: AS01
		|| |
1	Identifying office A or P.	|| |
2	Type action.	| |
3-4	The two-digit serial number.	|

504.7002 Procurement contract register.

GSA Form 2728, Procurement Contract Register, or an automated register must be used to ensure continuity and control of procurement instrument identification numbers.

PART 505—PUBLICIZING CONTRACT ACTIONS

Subpart 505.1—Dissemination of Information

Sec.

505.101 Methods of disseminating information.

Subpart 505.2—Synopses of Proposed Contract Actions

505.202 Exceptions.
505.203 Publicizing and response time.
505.204 Presolicitation notices.
505.204-70 Presolicitation notices used in connection with market searches for competitive sources.
505.207 Preparation and transmittal of synopses.
505.270 Synopsis of amendments to solicitations.

Subpart 505.3—Synopses of Contract Awards

505.303 Announcement of contract awards.
505.303-70 Notification of proposed substantial awards and awards involving Congressional interest.

Subpart 505.4—Release of Information

505.403 Requests from Members of Congress.

Subpart 505.5—Paid Advertisements

505.502 Authority.
505.503 Procedures.
505.504 Use of advertising agencies.

Authority: 40 U.S.C. 486(c)

Subpart 505.1—Dissemination of Information

505.101 Methods of disseminating information.

(a) Contracting offices located in the same geographic area as the Business Service Center (BSC) may post the notice required by FAR 5.101(a)(2) at the BSC.

(b) The appropriate BSC must be furnished a copy of solicitations (except solicitations for space in buildings) when the estimated contract amount is expected to exceed the small purchase limitation. The BSC will display the solicitation for public examination.

(c) Unless exempt under FAR 5.202 or 505.202, proposed acquisitions must be publicized in local newspapers when the acquisition is for:

(1) Real property appraisal services, estimated to cost $10,000 or more; or

(2) Leasehold interests in real property involving blocks of space of 10,000 square feet or more. Proposed leases of less than 10,000 square feet may be publicized when the contracting officer determines such advertising will serve to promote competition.

Subpart 505.2—Synopses of Proposed Contract Actions

505.202 Exceptions.

The Administrator has determined under section 18(c)(3) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 416(c)(3) and section 8(g)(3)) of the Small Business Act, as amended (15 U.S.C. 644(g)(3)) that:

(a) Advertising in local newspapers is more appropriate than synopsizing in the *Commerce Business Daily* (CBD) for proposed acquisitions of:

(1) Leasehold interests in real property (except lease construction on a designated site);

(2) Real property appraisal services (see 505.101); and

(b) It is not appropriate or reasonable to publish an advance notice of:

(1) Orders not exceeding $50,000 under GSA non-mandatory ADP and telecommunications schedule contracts;

(2) Acquisitions of works of art, including the design, execution and installation of the artwork, under the Art-in-Architecture Program; and

(3) Supplemental agreements to leases of real property involving:

(i) Building alterations (see 570.6);
(ii) Lease extensions (see 570.505); or
(iii) Expansion requests (see 570.503).

505.203 Publicizing and response time.

(a) When publicizing acquisitions of real property appraisal services and leasehold interests in real property is required (see 505.101 and 505.202), the notice must appear in local newspapers at least 3 calendar days before issuance of the solicitation. The solicitation must be issued at least:

(1) 10 calendar days before the date established for receipt of initial offers for real property appraisal services; or

(2) 20 calendar days before the date established for receipt of initial offers for leasehold interests in real property, unless the contracting officer makes a written determination that the urgency of the need necessitates a shorter time period.

(b) The publicizing and response times in paragraph (a) of this section do not apply to proposed acquisitions of leasehold interests in real property involving less than 10,000 square feet. In such cases, the contracting officer shall establish response times appropriate for the individual acquisition involved.

505.204 Presolicitation notices.

505.204-70 Presolicitation notices used in connection with market searches for competitive sources.

(a) The term "sources-sought synopsis" means the type of *Commerce Business Daily* (CBD) notice designed to identify potential sources for procurements. The sources-sought synopsis provides an opportunity for the marketplace to indicate its interest in submitting offers for future acquisitions. It is normally used to discover if more than one firm is interested and qualified to provide a particular product or service, although a solicitation is not yet available. This type of synopsis has particular application when one contractor is thought to be uniquely capable of meeting the Government's minimum requirements and verification of this opinion is needed.

(b) Sources-sought notices publicizing the Government's interest in anticipated supply or service procurements may be published in the CBD, using the general format outlined in 505.207, except where security considerations prohibit such publication. A sources-sought synopsis may be published in connection with

market searches for sources of supply or services, other than those discussed in FAR 5.205, when a sources-sought synopsis is required to test the marketplace for competitive sources. All potential contractors identified through the market search, including any concern which, as a result of a sources-sought synopsis, requests a copy of the solicitation must be solicited. In conjunction with that solicitation, the specific procurement of the supply or service must be publicized in the CBD as required by FAR 5.201.

505.207 Preparation and transmittal of synopses.

Notices described in 505.204-70 must include a statement similar to the following (modifications may be made to suit needs):

Concerns having the ability to furnish the following supplies (services) are requested to give written notification (including the telephone number for a point of contact) to the acquiring office listed in this notice within _____ calendar days (no less than 30 days should be entered) from the date of this synopsis:

(The contracting officer should describe the requirement so as to furnish a complete supply (service) description, and a condensation of other essential information, to provide concerns with an intelligible basis for judging whether they have an interest in the procurement. Such information may include a statement regarding the Government's belief that the supply or service may be available only from a sole source and the reasons for such belief.)

This is not a formal solicitation. However, concerns that respond should furnish detailed data concerning their capabilities and may request a copy of the solicitation when it becomes available.

505.270 Synopsis of amendments to solicitations.

All amendments to solicitations for offers increasing the anticipated value of the proposed acquisition above the dollar threshold requiring synopsis or altering the scope of the proposed acquisition so that increased interest of contractors can be reasonably anticipated must be published in the *Commerce Business Daily*.

Subpart 505.3—Synopses of Contract Awards

505.303 Announcement of contract awards.

By complying with 505.303-70 contracting officers automatically fulfill the reporting requirements of FAR 5.303(a).

505.303-70 Notification of proposed substantial awards and awards involving Congressional interest.

(a) *Applicability.* The notification procedures in (b), below, apply only to proposed award involving:

(1) A contract with the Small Business Administration (the 8(a) program).

(2) A supply contract exceeding or estimated to exceed $500,000 (except for (i) motor vehicles, (ii) products whose points of origin are not readily identifiable, or (iii) products involving foreign production points).

(3) A design (Architect/Engineer) contract or construction contract exceeding or estimated to exceed $500,000.

(4) Any other contract, or class of contract, in excess of $25,000 for which a Member of Congress has specifically requested notification of award.

(b) *Notification procedures.* (1) The Office of Congressional Affairs (S) will notify the heads of contracting activities in writing with the names of Members of Congress who wish to be notified of any or all contract awards in excess of $25,000 to contractors located within their district or State, as applicable. Upon such notification, the contracting activities will facsimile or hand deliver applicable notices of award to S. A copy of the submittal should be provided to the regional Congressional liaison office.

(2) Except for submittals hand delivered to S, the submittal must be made by facsimile transmission and, in the case of proposed 8(a) awards, on GSA Form 2677, Minority Contract Fact Sheet. Except for contracts awarded under unusual and compelling urgency, notification to S must be made 48 hours in advance of award. Notification to S of awards made under unusual and compelling urgency must be made at the same time notification is made to the contractor. If the 48 hour timeframe for advance notification to S cannot be met, the Contracting Director must notify S by telephone.

(3) The notification to S must:

(i) Describe the supplies or services acquired and the duration of the contract period.

(ii) Identify the type of contract and contractor using the following codes:

(A) *DQ* for definite quantity contract.
(B) *SC* for schedule contract.
(C) *TC* for indefinite delivery contract other than schedule.
(D) *S* for small business concern.
(E) *SD* for small disadvantaged business concern.
(F) *O* for other than a small business concern.
(G) *NLS* for not labor surplus area.
(H) *LS* for labor surplus area.

(iii) Include the contractor's name and address (including county and Congressional district, if known) and indicate the dollar value of the contract for each production point. When there are multiple production points and specific items, and their points of production are not shown, or when the number of production points exceed 10, write "multiple" and indicate immediately after, in parentheses, the total number of production points.

(iv) Indicate the quantity and unit, in parentheses, for definite quantity awards by production point. Indicate the name of the receiving agency next to the applicable quantity and identify the requirement or portion thereof for overseas use.

(v) Provide the name (where available) and telephone number for a point-of-contact for each award recipient and each production point.

(vi) Include the following statement when Congressional interest is involved.

"Congressional Interest: (*Name of Congressman/Senator*)
(*Indicate State/District*)
(*Describe interest*)"

(vii) Provide the contracting officer's name and telephone number for each award.

(4) The notification to S will contain sensitive preaward information and should be labeled accordingly. S and regional Congressional liaison offices will be responsible for the security of such information and will establish procedures governing the release of such information before official notification of award. Unless otherwise authorized by the contracting officer, the release of such information prior to award shall be limited to Members of Congress and their staff.

(c) *Release of awards.* (1) Release of notifications which require priority processing as determined by the Associate Administrator for Congressional Affairs will be accomplished at the time and date specified.

(2) Unless notified to the contrary, contracting activities may release awards of the type described in (a) and (b) of this section, or information pertinent thereto, upon the expiration of two full workdays (48 hours) after the time and date of notification to S established either by the facsimile transmission or hand delivery.

Subpart 505.4—Release of Information

505.403 Requests from Members of Congress.

When responding to a Congressional inquiry would result in disclosure of classified material, confidential business information, or information prejudicial to a competitive acquisition, the contracting officials shall consult with assigned legal counsel, refer the proposed reply to the head of the contracting activity (HCA), and inform the Office of Congressional Affairs of the action taken.

Subpart 505.5—Paid Advertisements

505.502 Authority.

(a) *Newspapers.* Written approval from the HCA or a designee is required for paid newspaper advertisements, except when such publication is required by the FAR or the GSAR (see 505.101(c)). The contracting officer shall document the contract file with the regulatory citation or written approval to support the use of paid newspaper advertisements.

(b) *Other media.* Advance approval is not required to place paid advertisements in media other than newspapers.

505.503 Procedures.

The GSA Form 300, Order for Supplies or Services, must be used instead of the Optional Form 347, Order for Supplies and Services, when the dollar amount of the acquisition does not exceed the small purchase limitation or when issuing a delivery order under a basic ordering agreement with an advertising agency for an advertisement.

505.504 Use of advertising agencies.

The services of commercial advertising agencies may be used whenever it is determined that the services rendered by those agencies can increase competition for contracts and improve the effectiveness of GSA advertising and marketing programs.

PART 506—COMPETITION REQUIREMENTS

Subpart 506.2—Full and Open Competition after Exclusion of Sources

Sec.
506.202 Establishing or maintaining alternative sources.

Subpart 506.3—Other Than Full and Open Competition

506.302 Circumstances permitting other than full and open competition.
506.302–1 Only one responsible source and no other supplies or services will satisfy agency requirements.
506.303 Justifications.
506.303–1 Requirements.
506.303–2 Content.
506.304 Approval of the justification.

Authority: 40 U.S.C. 486(c).

Subpart 506.2—Full and Open Competition After Exclusion of Sources

506.202 Establishing or maintaining alternative sources.

The heads of contracting activities (HCA's) sign determinations and findings under FAR 6.202.

Subpart 506.3—Other than Full and Open Competition

506.302 Circumstances permitting other than full and open competition.

506.302–1 Only one responsible source and no other supplies or services will satisfy agency requirements.

A class justification has been established for the acquisition of utility services (except electric utility services) that are available from only one source. A copy of the class justification may be obtained from the Office of GSA Acquisition Policy and Regulations (VP). The contract file for each action taken under the justification must contain a signed statement by the contracting officer that the action taken is within the scope of the class justification and approval.

506.303 Justifications.

506.303–1 Requirements.

(a) The contracting officer shall review the facts provided by technical and requirements personnel to support their recommendation to use other than full and open competition and must be satisfied that the facts are correct before proceeding with the acquisition.

(b) The contracting officer should determine whether the facts supporting other than full and open competition would be present in other GSA contracting activities. If the facts would be present, the contracting officer should recommend through appropriate channels that the Associate Administrator for Acquisition Policy approve a class justification for use by all GSA contracting activities.

506.303–2 Content.

Each justification for other than full and open competition must include the information required by FAR 6.302–2 (a)(1) through (12) and (b) in the same order as listed in the FAR using the following format:

General Services Administration

(Identify the contracting activity)

Justification for Other Than Full and Open Competition

Identification and description of action being approved.
Description of supplies or services required.
Identification of statutory authority.
Demonstration that the acquisition requires use of the authority cited.
Description of efforts to solicit as many offers as practicable.
Demonstration that the anticipated cost will be fair and reasonable.
Description of the market survey conducted.
Other facts supporting the use of other than full and open competition.
List of sources that expressed an interest in the acquisition.
Statement of actions to overcome barriers to competition.
Contracting Officer Certification.
Technical/Requirements Personnel Certification.
(Where technical or requirements data form the basis for the justification, a certification provided by technical or requirements personnel may either be referred to and a copy attached to the justification, or included as a part of the justification with a signature line for the technical or requirements official).
[Include appropriate signature blocks]

506.304 Approval of the justification.

The justification (except for contracts awarded under FAR 6.302–7) must be concurred in by assigned legal counsel and approved by:

(a) The contracting director for proposed contracts of $100,000 or less, unless the contract is exempt from the review and approval requirement by FAR 6.304(a)(1).

(b) The contracting activity competition advocate for contracts exceeding $100,000 but equal to or less than $1,000,000. The contracting director must concur in all justifications for contracts expected to exceed $100,000.

(c) The HCA for contracts exceeding $1,000,000 but equal to or less than $10,000,000. The contracting activity competition advocate must concur in all justifications for contracts expected to exceed $1,000,000.

(d) The senior procurement executive for contracts exceeding $10,000,000. The HCA and agency competition advocate must concur in all justifications before submitting them to the senior procurement executive for approval.

PART 507—ACQUISITION PLANNING

Subpart 507.1—Acquisition Plans

Sec.
507.100 Scope of subpart.
507.101 Definitions.
507.102 Policy.
507.104 General procedures.
507.105 Contents of written acquisition plans.

Subpart 507.3—Contractor Versus Government Performance

507.305 Solicitation provisions and contract clauses.
507.307 Appeals.

Authority: 40 U.S.C. 486(c).

Subpart 507.1—Acquisition Plans

507.100 Scope of subpart.

The subpart applies to all acquisitions including leasehold interests in real property.

507.101 Definitions.

"Comprehensive acquisition plan" means a plan which covers the acquisition process from identification of agency need through contract performance and administration.

"Limited acquisition plan" means a detailed plan which covers the acquisition process from receipt of a purchase request or advanced notice of the need by the contracting office through contract award.

507.102 Policy.

(a) All acquisitions exceeding the small purchase limitation must have a limited acquisition plan unless a comprehensive acquisition plan is required under GSA Order, Comprehensive Acquisition Planning (APD 2800.13). Priced options must be included when determining the dollar threshold. An acquisition plan must be prepared before exercise of unpriced and/or unevaluated options exceeding the small purchase limitation.

(b) No solicitation may be issued until either a comprehensive acquisition plan or a limited acquisition plan has been prepared or the requirement waived under GSA Order APD 2800.13 or 507.104(d). A contract may not be entered into without full and open competition on the basis of a lack of acquisition planning or concerns related to the amount of funds available for the acquisition.

507.104 General procedures.

(a) Policies and procedures for comprehensive acquisition plans are in GSA Order, Comprehensive Acquisition Planning (APD 2800.13).

(b) The contracting officer shall be responsible for preparing a limited acquisition plan. Limited plans must be reviewed and approved at least one level above the individual writing the plan unless the requirement is received in the last month of the fiscal year and award is anticipated during the same month. In those cases, the plan must be reviewed and approved at a level no lower than the contracting director. The head of the contracting activity (HCA) may require review and approval at a higher level.

(c) Limited plans for acquisitions over $100,000 must be in writing, unless waived under paragraph (d) of this section. HCA's may authorize oral plans for acquisitions not exceeding $100,000. For oral plans, the file must be documented with the name of the individual who approved the plan.

(d) The contracting director may waive the requirement for a written limited acquisition plan in cases of unusual or compelling urgency. The individual responsible for preparing the plan will present (at the minimum) an oral plan to at least the next higher level for approval. The file must be documented to show: the nature of the urgency, the content of the oral plan, and the name of the individual who approved it. This document may be prepared after award when preparation before award would unreasonably delay the acquisition. The documentation may be included in the justification required by FAR 6.302–2(c).

(e) Acquisition plans for contracts expected to exceed $100,000 which propose using other than full and open competition must be coordinated with and concurred in by the cognizant competition advocate unless the proposed contract will be awarded under the authority at FAR 6.302–5 or will be awarded under a class justification approved by the Associate Administrator for Acquisition Policy. HCA's may require coordination and concurrence of the cognizant competition advocate for contracts equal to or less than $100,000. The cognizant competition advocate is:

(1) The contracting activity competition advocate, as defined in Subpart 502.1, for contracts exceeding $100,000, but equal to or less than $10,000,000.

(2) The agency competition advocate, as defined in Subpart 502.1, for contracts exceeding $10,000,000. The contracting activity competition advocate shall concur in all plans before submission to the agency competition advocate.

507.105 Contents of written acquisition plans.

(a) The specific content of a plan will vary depending on the nature of the acquisition and the dollar value involved. HCA's may authorize:

(1) Development of standard plan outlines meeting the needs of individual programs;

(2) Substitution of automated plans which adequately address individual elements;

(3) Modification of the suggested information by deleting inapplicable elements or adding new ones as needed.

(b) GSA Order APD 2800.13, Appendix A, describes the information to be included in a comprehensive plan. It is suggested that a limited acquisition plan include the information cited below:

(1) Acquisition background and objectives; i.e., statement of need, applicable conditions and delivery or performance-period requirements. (See FAR 7.105(a) (1), (2) and (5).)

(2) Plan of action: i.e., sources, competition, contracting considerations, acquisition milestones, and individuals preparing the plan. (See FAR 7.105(b) (1), (2), (4), (18) and (19).)

Subpart 507.3—Contractor Versus Government Performance

507.305 Solicitation provisions and contract clauses.

The contracting officer shall insert the clause at 552.207–70, Report of Employment Under Commercial Activities, in solicitations which may result in a conversion from in-house performance to contract performance of work currently being performed by the Government and in contracts that result from the solicitations, whether or not a cost comparison is conducted.

507.307 Appeals.

Appeal procedures are in GSA Order, Implementation of the OMB Circular A–76 Productivity Improvement Program (ADM P. 5400.40).

PART 508—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart 508.3—Acquisition of Utility Services

Sec.
508.301 Definitions.
508.304 Acquiring utility services.
508.304–5 Agency acquisition.
508.307 Precontract acquisition reviews.
508.307–1 General.
508.370 Annual rate reviews.
508.371 GSA forms.

Subpart 508.6—Acquisition From Federal Prison Industries, Inc.

508.602 Policy.
508.604 Ordering procedures.
508.604–70 Delinquent delivery orders.
508.605 Clearances.

Subpart 508.7—Acquisition From the Blind and Other Severely Handicapped

508.705–70 Adding items to the Procurement List.
508.705–71 Workshop performance capability.
508.705–72 Allocations and orders.
508.705–74 Compliance with orders.
508.706 Purchase exceptions.

Subpart 508.8—Acquisition of Printing and Related Supplies

508.802 Policy.

Authority: 40 U.S.C. 486(c).

Subpart 508.3—Acquisition of Utility Services

508.301 Definitions.

"Utility service," as used in FAR 8.3 and this subpart, does not include snow or trash removal services. Such services are nonpersonal in nature and must be procured as such. (See 29 CFR 4.130(a)(43) and (51).)

508.304 Acquiring utility services.

508.304-5 Agency acquisition.

(a) Except as authorized by FAR 8.304-5 (g) and (h), contracting officers shall use the GSA Form 1533, Utility Contract, when awarding utility service contracts for specific facilities.

(b) Contracting officers shall notify the Public Utilities Services Division (PPU) in accordance with FAR 8.304-5(g), when a utility service supplier refuses to execute a contract.

508.307 Precontract acquisition reviews.

508.307-1 General.

GSA contracting officers shall submit proposed utility contracts that meet the criteria at FAR 8.307-1 to the Public Utilities Services Division (PPU) for review. Requests for precontract review must be prepared in accordance with FAR 8.307-4. In those instances where it is necessary to award a letter contract for utility services pursuant to FAR 16.603-2, and the annual cost exceeds the threshold for review in FAR 8.307-1, the requirement for a preaward review is waived. However, a copy of the letter contract and the related findings and determination must be submitted to PPU within 15 days of the award. The letter contract must be definitized in accordance with FAR 16.603-2(c) and submitted to PPU for precontract review and approval under FAR 8.307.

508.370 Annual rate reviews.

Contracting officers shall review or cause to have reviewed annually each utility service contract that exceeds $25,000 per annum to determine whether the services are being billed at the rates on the contractor's lowest applicable rate schedule available to any customer under like conditions of service. The annual review will be conducted by:

(a) Accumulating the 12 most recent monthly bills for the account under review and the contractor's current rate schedules.

(b) Comparing the rate schedule used for billing with other applicable rate schedules.

(c) Requesting the contractor to place the account reviewed under another rate schedule for billing purposes, if the review indicates the services are not being billed under the rate schedule that would result in the lowest cost.

508.371 GSA forms.

(a) The GSA Form 1533, Utility Contract, is for use in awarding utility service contracts for specific facilities.

(b) The GSA Form 1684, Technical Provisions (Electric Utility Contract) is for use in contracts for electric utility services.

(c) The GSA Form 3504, Service Contract Clauses, may be used in contracts for utility services.

Subpart 508.6—Acquisition From Federal Prison Industries, Inc.

508.602 Policy.

A contract for services may not be awarded to the Federal Prison Industries, Inc. (FPI) without providing for full and open competition unless the contracting officer justifies such action in accordance with FAR 6.302. FAR 6.302-5 may not be cited as justification for a sole source acquisition of services from FPI because 18 U.S.C. 4121-4128 does not authorize or require the procurement of services from FPI.

508.604 Ordering procedures.

508.604-70 Delinquent delivery orders.

(a) Contracting officers shall establish delivery schedules based on the lead time required by Federal Prison Industries (FPI). Modifications of orders to extend the delivery schedules for excusable or inexcusable delays will not provide for a price adjustment.

(b) Delinquent orders may indicate the need to request clearance to procure from other sources until FPI can make deliveries on time.

508.605 Clearances.

FPI clearance numbers must be cited in solicitations and subsequent award documents.

Subpart 508.7—Acquisition From the Blind and Other Severely Handicapped

508.705-70 Adding items to the procurement list.

(a) When a central non-profit agency (CNA) expresses an interest in a particular commodity or service being added to the Procurement List, the contracting officer shall provide the CNA with the most recent solicitations issued for the supply or service involved and the price(s) at which the item was awarded.

(b) The Committee for Purchase From the Blind and Other Severely Handicapped (the Committee), if requested by the CNA, may assign the supply or service to the CNA for development by a workshop and will list the item in the Preliminary Evaluation Record. A copy of the record, updated monthly, is maintained by the Office of Small and Disadvantaged Business Utilization (AU).

(c) Before issuing a solicitation, contracting officers shall request from the CNA, the status of any item previously identified as one in which the Committee has expressed interest.

(d) The Committee may request that a procurement be delayed pending Committee action. The contracting activity shall consult with AU before rejecting such a request.

508.705-71 Workshop performance capability.

In addition to the annual requirement, the purchase document must include an estimated monthly requirement. The contracting officer may verify the workshop's ability to satisfy the Government's anticipated requirement by requesting a preaward survey. If it is determined that the Government's estimated monthly requirement exceeds the workshop's ability to perform, a purchase exception may be requested only for those quantities which cannot be provided in a timely manner by the workshop.

508.705-72 Allocations and orders.

In addition to the requirements prescribed in FAR 8.705, requests for allocations and orders must indicate the packaging, packing, or marking required if it differs from the specification cited, or otherwise provided in the Procurement List. Pricing of nonstandard requirements is covered in FAR 8.707.

508.705-74 Compliance with orders.

(a) Contracting officers shall take appropriate action on delinquent delivery orders until all deliveries are made. In cases of excusable delays, contract delivery schedules should be extended without obtaining consideration. However, when the delay is inexcusable, normal procedures should be followed in reviewing and adjusting contract prices if appropriate.

(b) If the CNA delays acting on a request for or refuses to grant a purchase exception, the matter should be referred to the contracting director for expeditious resolution of the problem with the Committee.

508.706 Purchase exceptions.

CNA purchase exception numbers must be cited in solicitations and subsequent award documents.

Subpart 508.8—Acquisition of Printing and Related Supplies

508.802 Policy.

The Director of the Reproduction Services Division (CAR) is the central printing authority for GSA and serves as the liaison with the Joint Committee on Printing and the Public Printer on all matters related to printing.

PART 509—CONTRACTOR QUALIFICATIONS

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Authority: 40 U.S.C. 486(c).

Subpart 509.1—Responsible Prospective Contractors

509.105 Procedures.

509.105-1 Obtaining information.

(a) In making a determination of responsibility, the contracting officer may use the GSA Form 527, Contractor's Qualifications and Financial Information, to obtain information regarding financial capability from a prospective contractor.

(b) Advice should be obtained from all appropriate activities, including legal counsel, quality control, credit and finance, in arriving at a determination that an offeror qualifies as responsible under the standards set forth in FAR 9.104.

(c) The "auditor" in FAR 9.105-1(b)(2)(ii) is the Assistant Inspector General for Audits in the Central Office or the Regional Inspector General for Audits in the regions except for the evaluation of a prospective contractor's financial competence and credit needs, then it is the Chief, Credit and Finance Section, Region 6.

509.105-3 Disclosure of preaward information.

When an offer is rejected because of a determination by the contracting officer that the prospective contractor is not responsible, the contracting officer shall notify the prospective contractor by letter of the basis for the rejection. This will provide the offeror with the opportunity to cure the factors that lead to the nonresponsibility determination prior to the submission of offers in response to future solicitations.

509.106 Preaward surveys.

509.106-1 Conditions for preaward surveys.

(a) The contracting officer shall obtain a preaward survey, in accordance with FAR 9.106-1(a), when the contracting officer does not have sufficient information to make a determination regarding the offeror's responsibility. Factors to be considered in determining whether to initiate a preaward survey are:

(1) The experience and past performance record of the offeror and the dollar value of the procurement;

(2) The extent and currency of previous preaward surveys;

(3) Whether a bid guarantee is submitted and the type of guarantee submitted (i.e., corporate surety, individual surety, irrevocable letter of credit);

(4) Information as to the offeror's prior performance; and

(5) The adequacy of financial information submitted by the offeror (i.e., certified balance sheets and income statements, audited annual reports). Should a financial analysis be determined necessary, it should include a credit report to identify delinquent debts, especially those owed to the Federal Government.

(b) The preaward survey may be limited in scope under FAR 9.106-2(e) to those aspects of the responsibility determination for which the contracting officer is lacking information.

509.106-2 Requests for preaward surveys.

The contracting officer or a designee requests a preaward survey by forwarding the Standard Form 1403, Preaward Survey of Prospective Contractor (General), accompanied by the appropriate subparts of the preaward survey (Standard Forms 1404 through 1408) to the surveying activities. The Federal Supply Service is authorized to use GSA Form 353, Plant Facilities Report, for preaward surveys instead of Standard Forms 1403 through 1406. The contracting officer shall complete Section I of the GSA Form 353 in accordance with instructions in 553.370-353-I.

509.106-70 Disagreement with preaward survey recommendations.

When the contracting officer does not concur with the preaward survey recommendation, the contract file must be documented as to the basis of the determination of contractor responsibility. The concurrence of an official one level above the contracting director (see GSAR 502.101) must be obtained before awarding a contract to a firm which received an unfavorable preaward survey. The activity that prepared the preaward survey must be given a copy of the contracting officer's justification for overriding the preaward survey recommendation.

Subpart 509.2—Qualification Requirements

509.202 Policy.

(a) The Federal Supply Service Commodity Center Engineering Division Director shall prepare the written justification required by FAR 9.202(a)(1).

(b) The heads of contracting activities shall approve determinations under FAR 9.202(e) that a proposed procurement need not be delayed to comply with FAR 9.202(a).

509.204 Responsibility for establishment of a qualification requirement.

The Commodity Center Director shall make determinations under FAR 9.204(a)(2) that the Government should bear the cost of conducting specified testing and evaluation for a small business concern or a product manufactured by a small business concern.

509.206 Acquisitions subject to qualification requirements.

509.206-1 General.

The contracting director shall submit requests that a qualification requirement not be enforced in a particular acquisition to the Commodity Center Engineering Division Director under FAR 9.206-1(e)(3).

509.209-2 Solicitation provisions and contract clauses.

The contracting officer shall insert the clause at 552.209-73, Product Removal from Qualified Products List, in solicitations and contracts, when qualified products are to be acquired. The clause supplements the clauses at FAR 52.209-1 and 52.209-2.

Subpart 509.3-First Article Testing and Approval

509.302 General.

When first article testing and approval is appropriate for a procurement pursuant to FAR Subpart 9.3, the general policy of the Federal Supply Service (FSS) is to require:

(a) The contractor to perform required testing, unless after coordinating with the technical specialist and Quality Assurance Division (FQA) in the Office of Quality and Contract Administration the contracting officer determines that Government testing is in the best interest of the Government;

(b) That the first article be produced at the same facility where production quantities will be produced; and

(c) That the first article serve as the manufacturing standard.

509.303 Use.

The contracting officer shall coordinate all determinations to require first article testing and approval with the technical specialist and FQA. At the time of coordination, the contracting officer should obtain the following information from the technical specialist and FQA:

(a) The test requirements for inclusion in the solicitation as outlined in FAR 9.306 (a) and (b).

(b) Advice on whether the contractor or the Government should perform required testing.

(c) The information necessary to complete the fill-in requirements of FAR clauses 52.209-3 First Article Approval—Contractor Testing [and alternates], and 52.209-4 First Article Approval—Government Testing [and alternates].

509.306 Solicitation requirements.

The contracting officer shall insert the provision at 552.209-74, Waiver of First Article Testing and Approval Requirement, in solicitations that require first article testing and approval. Any determinations to waive first article testing under FAR 9.306(c) must be approved before award by the technical specialist and the Quality Assurance Division (FQA). The first article tests to be performed by the contractor or the Government must be set forth in the solicitation.

509.308 Contract clauses.

509.308-1 Testing performed by the contractor.

In accordance with FAR 9.308-1, the FSS contracting officers shall use the clause at FAR 52.209-3 with its Alternate I and the supplemental clause at 552.209-75, Supplemental Requirements for First Article Approval—Contractor Testing.

509.308-2 Testing performed by the Government.

In accordance with FAR 9.308-2, FSS contracting officers shall use the clause at FAR 52.209-4 with its Alternate I and the supplemental clause at 552.209-76, Supplemental Requirements for First Article Approval—Government Testing.

Subpart 509.4—Debarment, Suspension, and Ineligibility

509.401 Applicability.

This subpart applies to acquisitions of personal property, nonpersonal services (including construction), space in buildings, transportation services (FPMR Subpart 101-40.4), contracts for disposal of personal property (FPMR Subpart 101-45.6), and to covered transactions as defined at GSPMR 105-68.110(a).

509.403 Definitions.

"Debarring official" and "suspending official" mean the Associate Administrator for Acquisition Policy or a designee.

"Fact-finding official" means the Chairman of the Debarment and Suspension Board within the GSA Board of Contract Appeals or a designee.

"Notice" means a letter sent by certified mail, return receipt requested, to the last known address of a party, its counsel, or agent for service of process. In the case of a business, such notice may be sent to any partner, principal officer, director, owner or co-owner, or joint venturer. If no return receipt is received within 10 calendar days of mailing, receipt will then be presumed.

509.405 Effect of listing.

(a) Before initiating a pre-award survey or any procurement or disposal action, the contracting officer shall review the Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs, as well as the list of contractors proposed for debarment by GSA. Any contractor listed in the section entitled "Parties Excluded from Procurement Programs" must receive the treatment specified therein. The contracting officer shall also review the "Parties Excluded from Nonprocurement Programs" section of the list and, if appropriate, contact the listing agency for further information in order to determine whether the listed party is responsible.

(b) Bids received from any contractor listed in the "Parties Excluded from Procurement Programs" section or proposed for debarment by GSA will be opened, entered on the Abstract of Bids, and rejected unless the debarring or suspending official determines in writing that there is a compelling reason to consider the bid. Proposals, quotations or offers received from any such contractor must not be evaluated for award or included in the competitive range, and discussions must not be conducted with such offeror, unless the debarring or suspending official determines, in writing, that there is a compelling reason to do so.

509.405-1 Continuation of current contracts.

(a) Termination of current contracts should be considered under the circumstances set forth in (a) (1) and (2) of this section.

(1) When the circumstances giving rise to the debarment or suspension also constitute a default in the contractor's performance of the contract, termination for default under the contract's "Default" clause is appropriate.

(2) If the contractor presents a significant risk to the Government in completing a current contract, the contracting officer shall determine whether termination for convenience or cancellation under appropriate contract provisions is in the Government's best interest. In making this determination, the contracting officer shall consult with counsel and should consider the following factors:

(i) Seriousness of the cause for debarment or suspension;

(ii) Extent of contract performance;

(iii) Potential costs of termination and reprocurement;

(iv) Urgency of the requirement and the impact of the delay of reprocurement;

(v) Availability of other safeguards to protect the Government's interest until completion of the contract.

(b) The debarring or suspending official shall make determinations under FAR 9.405-1(b).

(c) The contracting officer should consult with legal counsel regarding the availability of remedies under FAR Subparts 3.2 and 3.7.

509.405-2 Restrictions on subcontracting.

The debarring or suspending official shall make determinations under FAR 9.405-2.

509.406 Debarment.

509.406-1 General.

The debarring official shall make determinations under FAR 9.406-1(c).

509.406-3 Procedures.

(a) *Investigation and referral.* (1) Any element of GSA, acting as a contracting activity, that becomes aware of circumstances which may serve as the basis for a debarment shall refer the matter to the debarring official for consideration. Circumstances that involve possible criminal or fraudulent activities must first be reported to the Office of the Inspector General (OIG) in accordance with GSPMR 105.735-216, Reporting Suspected Irregularities. If appropriate, the Inspector General will refer the matter to the debarring official.

(2) At a minimum, referrals for consideration of debarment action should include:

(i) The recommendation and rationale for the referral;

(ii) A statement of facts;

(iii) Copies of documentary evidence and a list of all witnesses, including addresses and telephone numbers, together with a statement concerning their availability to appear at a fact-finding proceeding and the subject matter of their testimony;

(iv) A list of parties including the contractor, principals, and affiliates (including last known home and business addresses, zip codes, and DUNS Number);

(v) GSA's acquisition history with the contractor, including recent experience under contracts and copies of the pertinent contracts;

(vi) A list of any known active or potential criminal investigations, criminal or civil proceedings, or administrative claims before the Board of Contract Appeals; and

(vii) A statement regarding the impact of the debarment action on GSA programs. This statement is not required for referrals by the Inspector General.

(3) Referrals may be returned to the originator for further information or development.

(b) *Decisionmaking process.* (1) Upon receipt of a referral, the debarring official will decide whether to initiate debarment action, after coordinating the matter with assigned legal counsel.

(2) Contracting activities will be notified of proposed debarments.

(3) Where a determination is made not to initiate action, notice will be given to the agency official who made the referral.

(4) If a response to the notice of proposed debarment is not received by the debarring official within 30 calendar days of a party's receipt of the notice, the debarment becomes final.

(5) If the party desires to present information and arguments in person to the debarring official, an oral presentation will be held within 20 calendar days of receipt of the request, unless a longer period of time is requested by the party. The oral presentation will be informally conducted and a transcript need not be made. The party may supplement the oral presentation with written information and arguments.

(6) In actions not based on a conviction or judgment, the party may request a fact-finding hearing to resolve a genuine dispute of material fact. The party shall identify the material facts in dispute and the basis for disputing the facts. If the debarring official determines that there is a genuine dispute of material fact, the debarring official shall refer the matter to the fact-finding official. The fact-finding official will schedule a hearing within 20 calendar days of receipt of the debarring official's request. Extensions may be granted for good cause upon the request of the party or the agency.

(7) The purpose of a fact-finding hearing is to:

(i) Afford the affected party the opportunity to dispute material facts relating to the proposed debarment through the submission of oral and written evidence;

(ii) Resolve facts in dispute and provide the debarring official with written findings of fact based on a preponderance of evidence; and

(iii) Provide the debarring official with a determination as to whether a cause for debarment exists, based on facts as found.

(8) Hearings will be conducted by the fact-finding official in accordance with rules consistent with FAR 9.406-3(b)(2) promulgated by that official.

(9) The fact-finding official will notify the affected parties of the schedule for the hearing. The fact-finding official shall deliver written findings of fact to the debarring official (together with a transcription of the proceeding, if made) within 20 calendar days after the hearing record closes. The findings must resolve any facts in dispute based on a preponderance of the evidence presented and determine whether a cause for debarment exists.

509.407 Suspension.

509.407-1 General.

The suspending official shall make determinations under FAR 9.407-1(d).

509.407-3 Procedures.

(a) *Investigation and referral.* The procedures in 509.406-3(a) apply to referrals for suspension.

(b) *Decisionmaking process.* (1) Upon receipt of a referral, the suspending official will decide whether to suspend, after coordinating the matter with assigned legal counsel.

(2) In cases not based on an indictment, the suspending official must, through OIG, coordinate with the Department of Justice, or state prosecutorial authority. On the basis of advice received, the suspending official shall determine whether substantial interests of the Federal or a state government would be impaired in fact-finding.

(3) A response to a suspension notice must be received by the suspending official within 30 calendar days of receipt by the parties to be considered.

(4) When requested, an oral presentation before the suspending official will be conduted as outlined in 509.406-3(b)(5).

(5) Fact-finding hearings will not be conducted in actions based on indictments, or in cases in which the suspending official determines pursuant to FAR 9.407-3(b)(2) not to refer a matter to the fact-finding official. A party may request a fact-finding hearing to resolve genuine disputes of material fact in other cases. The party shall identify the material facts in dispute and the basis for disputing the facts. If the suspending official determines that there is a genuine dispute of material fact, the suspending official shall refer the matter to the fact-finding official. The fact-finding official will schedule a hearing within 20 calendar days of receipt of the suspending official's request. Extensions may be requested by the party or the agency.

(6) The purpose of a fact-finding hearing is to:

(i) Afford the affected party the opportunity to dispute facts relating to the suspension action through the submission of oral and written evidence;

(ii) Determine whether, in light of the evidence presented, there is adequate evidence to suspect that the material allegations in the notice are true; and

(iii) Provide the suspending official with a determination as to whether the evidence is adequate to support a cause for suspension. Hearings will be conducted as outlined in 509.406-3(c).

Subpart 509.5—Organizational Conflicts of Interest

509.503 Waiver.

The Associate Administrator for Acquisition Policy approves requests to waive the general rules or procedures of FAR Subpart 9.5.

509.507 Procedures.

If a potential contractor disagrees with the contracting officer's resolution of a potential organizational conflict of interest (see FAR 9.507(b)(4)), the matter must be referred to the Associate Administrator for Acquisition Policy for a determination.

PART 510—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

Sec.

510.001 Definitions.
510.004 Selecting specifications or descriptions for use.
510.004–70 Solicitations, brand name or equal descriptions.
510.004–71 Offer evaluation and award, brand name or equal descriptions.
510.007 Deviations.
510.007–70 Responsibilities of the contracting officer.
510.011 Solicitation provisions and contract clauses.
510.070 Specifications.
510.070–1 Exceptions to mandatory use of Federal specifications.
510.070–2 Optional use of interim Federal specifications.
510.070–3 Use of Federal or interim Federal specifications and standards.
510.070–4 Other than Federal and interim Federal specifications.
510.071 Standards.

Authority: 40 U.S.C. 486(c).

510.001 Definitions.

"Specification Manager" means an official of the Federal Supply Service office responsible for Federal or Interim Federal Specifications (or the program office for other than Federal specifications) and for reviewing requests for a deviation from a specification.

510.004 Selecting specifications or descriptions for use.

(a) *Brand name products or equal*—(1) *Citing brand name products.* Brand name or equal purchase descriptions must cite all brand name products known to be acceptable and of current manufacture. The purchase description must be amended for future acquisitions to add additional acceptable brand name products or to delete brand names no longer applicable. Information on additions and deletions shall be immediately communicated to the specification manager.

(2) *Specifying essential characteristics.* Brand name or equal purchase descriptions must specify each physical or functional characteristic essential to the intended use of the product or a defective solicitation necessitating the resolicitation of the requirement may result. (See 510.004–71.) Characteristics that cannot be shown to materially affect the intended end use, and which unnecessarily restrict competition, must be avoided. When describing essential characteristics, permissible tolerances should be indicated.

(b) *Limitations on use of brand name or equal purchase descriptions.* (1) The use of brand name or equal purchase descriptions in solicitations is intended to encourage the offering of products that are equal in all material respects to brand name products cited in such descriptions. Identification by brand name does not indicate a preference for the products mentioned, but indicates the quality and salient characteristics of products that will meet the Government's minimum needs. Where a component of an item is described in the solicitation by a brand name or equal purchase description and the contracting officer determines that application of the clause at 552.210–74 would be impracticable, the requirement to include the entry described in 510.004–70(a) does not apply. If the clause is included in the solicitation for other reasons, a statement to identify either the component parts (described by brand name or equal descriptions) to which the clause applies, or those to which it does not apply, must be included in the solicitation. This also applies to accessories related to an end item where a brand name or equal purchase description of the accessories is a part of the description of an end item. Brand name or equal descriptions may not be used to procure a particular product under the guise of a competitive procurement to the exclusion of other products meeting minimum needs.

(2) In small purchases, brand name policies and procedures apply to the extent practical.

(3) A brand name or equal purchase description may not be used unless it is approved by the contracting director.

510.004–70 Solicitations, brand name or equal descriptions.

(a) An entry substantially as follows should be inserted in the item listing after each item or component part of an end item to which a brand name or equal purchase description applies.

Offering on:
Manufacturer's Name _____
Brand _____
No. _____

(b) Except when bid samples are requested for brand name or equal procurements, the following notice, substantially as shown, should be inserted in the item listing after each brand name or equal item (or component part) or at the bottom of each page listing several such items:

OFFERORS OFFERING OTHER THAN BRAND NAME ITEMS IDENTIFIED HEREIN SHOULD FURNISH WITH THEIR OFFERS ADEQUATE INFORMATION TO ENSURE THAT A DETERMINATION CAN BE MADE AS TO EQUALITY OF THE PRODUCT(S) OFFERED (SEE THE CLAUSE AT 552.210–74 BRAND NAME OR EQUAL OF THIS SOLICITATION).

510.004–71 Offer evaluation and award, brand name or equal descriptions.

An offer may not be rejected for failure of the offered product to equal a characteristic of a brand name product not specified in the brand name or equal description. Whenever it is determined after bid opening that the unspecified characteristic is essential to the intended end use, see 510.004(a)(2).

510.007 Deviations.

The head of the contracting activity shall ensure that deviations conform to the requirements of FAR 10.007 and this subpart.

510.007–70 Responsibilities of the contracting officer.

(a) The contracting officer shall obtain the concurrence of the specification manager in the Federal Supply Service (FSS) to deviate from a Federal specification before issuance of a solicitation or amendment of a solicitation. The contracting officer shall consider the following factors before forwarding a deviation request for evaluation:

(1) The impact that it might have on the ability of other offerors to furnish the item, and on future solicitations for the same item.

(2) Whether the item is the subject of a protest, is under litigation, or is sensitive or controversial.

(3) The timeliness of the deviation request.

(4) The urgency of the requirement.

(b) In addition to the information required at FAR 10.007(a)(4), a contracting officer's request to deviate from a Federal specification should include the effect of the deviation on the form, fit, or function of the item, if known.

510.011 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the clause at 552.210–70, Standard References, in solicitations and contracts for construction services when the contract amount is expected to exceed the small purchase limitation and when:

(1) Citing documents or publications not furnished with the solicitation, or

(2) Incorporating documents or publications by reference.

(b) The contracting officer shall insert the clause at 552.210–71, Reference to Specifications in Drawings, in solicitations and contracts citing Federal specifications which contain drawings.

(c) The contracting officer shall insert a clause substantially the same as the clause at 552.210–72, Acceptable Age of Supplies, or the clause at 552.210–73, Age on Delivery, in solicitations and contracts if the contractor will be required to furnish shelf-life items within a specified number of months from the date of manufacture or production of the supplies. (See 101–27.206–2 of the Federal Property Management Regulation.) The Acceptable Age of Supplies clause at 552.210–72 should be used when the required shelf-life period is 12 months or less, and lengthy acceptance testing may be involved. For items having a limited shelf-life, Alternate I to 552.210–72 must be substituted in the basic clause when requested by the director of the commodity center concerned and authorized by the Director, Operations Management Division. The Age on Delivery clause at 552.210–73 should be used when the required shelf-life period is more than 12 months, or when source inspection can be performed within a short time period.

(d) The contracting officer shall include the clause at 552.210–74, Brand Name or Equal, in solicitations and contracts using a brand name or equal purchase description.

(e) The contracting officer shall include the clause at 552.210–75, Marking, in requirements solicitations and contracts for supplies when deliveries may be made to civilian and military activities and the contract amount is expected to exceed the small purchase limitation. The clause may be used in definite quantity contracts when it is appropriate.

(f) The contracting officers shall insert the clause at 552.210–76, Charges for Marking, in solicitations and contracts that include the clause at 552.210–75 or a similar clause.

(g) The contracting officer shall include the clause at 552.210–77, Preservation, Packaging and Packing, in solicitations and contracts for supplies when the contract amount is expected to exceed the small purchase limitation. The contracting officer may include the clause in contracts awarded through small purchase procedures when appropriate.

(h) The contracting officer shall insert a clause substantially the same as the clause at 552.210–78, Charges for Packaging and Packing, in solicitations and contracts for supplies that are to be delivered to GSA distribution centers.

(i) The contracting officer shall include the clause at 552.210–79, Packing List, in solicitations and contracts for supplies including small purchases.

510.070 Specifications.

510.070–1 Exceptions to mandatory use of Federal specifications.

Contracting activities shall use an interim Federal specification when it is more suitable or there is no existing Federal specification.

510.070–2 Optional use of interim Federal specifications.

When a contracting activity finds an interim Federal specification is not practical, or that changes are desirable, the specification manager should be notified in writing of the recommended changes.

510.070–3 Use of Federal or interim Federal specifications and standards.

(a) Federal or interim Federal specifications and standards must be incorporated by reference into solicitations. The reference must identify the specifications or standard by series, i.e., Federal, military, or departmental (e.g., Forest Service), followed by the number and date. (The specification number includes the revision indicator.) Amendments must be identified, e.g., Federal Specification PPP–B–636G, dated February 17, 1972, and Interim Amendment 1, dated August 30, 1972.

(b) Specifications or standards which are canceled or superseded must not be used.

510.070–4 Other than Federal and interim Federal specifications.

(a) When the services or staff offices issue guide specifications that apply to the contracting offices within an organization, the head of the service or staff office may establish the review procedures for deviation requests.

(b) The contracting officer shall analyze requests for deviations in accordance with the requirements outlined in 510.007–70.

510.071 Standards.

The provisions of 510.070–1 and 510.070–2 regarding interim Federal specifications and the procedures and requirements concerning deviations in 510.070–4 also apply to Federal standards.

PART 511—ACQUISITION AND DISTRIBUTION OF COMMERCIAL PRODUCTS

Sec.

511.001 Definitions.
511.003 General.
511.070 Solicitation provision.

Authority: 40 U.S.C. 486(c).

511.001 Definitions.

"Commercial item description" (CID) is a simplified product description that describes by design, function, and/or performance the characteristics of available, acceptable, commercial supplies.

511.003 General.

(a) The specification manager with advice from the contracting officer, if necessary, shall determine if inclusion of a CID in a solicitation is the most appropriate way of describing the Government's needs.

(b) When the CID consists of only the minimum salient characteristics of the commercially available supplies (e.g., general requirements, test procedures), a commercial item certification must be included in the solicitation. (See 511.070.) Because the certification provision supplements and replaces the quality assurance provisions, the certification must be obtained to represent that the supplies being offered are of standard commercial quality.

(c) For CID's that incorporate specific salient characteristics including performance standards, packaging and packing requirements, quality assurance provisions (e.g., visual examination, sampling plans, test methods) the commercial item certification is not required. In this instance, the CID is the sole basis of determining whether the item meets the Government's needs.

511.070 Solicitation provision.

Except for supplies acquired using the Federal Prison Industries or Workshops as mandatory sources (see FAR Subparts 8.6 and 8.7), the contracting officer shall include the provision at 552.211–70, Commercial Item Certification, in solicitations for supplies when a basic or broad description of a standard commercially available product is used to describe the requirement.

PART 512—CONTRACT DELIVERY OR PERFORMANCE

Subpart 512.1—Delivery or Performance Schedules

Sec.
512.101 General.
512.104 Contract clauses.

Authority: 40 U.S.C. 486(c)

Subpart 512.1—Delivery or Performance Schedules

512.101 General.

(a) Normally, time of delivery in solicitations and contracts, except multiple award schedules, will be stated as "required" time of delivery (or shipment), expressed in specific periods from receipt by the contractor of a notice of award (or receipt of a delivery order). In multiple award schedule solicitations delivery times will usually be stated as "desired" and offerors will indicate a definite number of days for delivery.

(b) The contracting officer must be satisfied that the requisitioning office has justified, in writing, an unusually short time of delivery. This is particularly important where the time specified is so short that it may limit competition and possibly result in higher prices. Examples of justifications are:

(1) Furniture is required to outfit quarters scheduled for occupancy on a specific date;

(2) Construction material is required to meet job progress schedules; and

(3) Supplies are required at a port to meet scheduled ship departures.

(c) When a portion of the total delivery is needed early, the contracting officer should:

(1) Consider requiring that portion by the early date and the balance later; and

(2) Determine whether the portion required early and the balance should be included as separate items in the same solicitation or whether the two portions should be procured separately.

(d) When a solicitation contains a mixture of items that require different times for delivery, the delivery periods should be set forth separately and items with similar delivery time requirements should be grouped according to delivery times in the solicitation.

(e) In negotiations for multiple award schedules, the contracting officer should secure the best possible delivery time regardless of the "desired" delivery time(s) in the solicitation. For example, some offers comply with the Government's desired delivery time but others cite delivery times which are substantially shorter. The former should be negotiated to bring them in line with the latter. Variable delivery time offers (e.g., 30–90 days) should be negotiated to keep the timespan to a minimum. If the span applies to several items or several quantity breaks for one item, the items or item quantity breaks should be segregated into smaller groups which can be assigned more specific delivery times.

512.104 Contract clauses.

(a) *Supply contracts.* The contracting officer shall insert the clause at:

(1) 552.212–1(a), Time of Delivery, in solicitations and single award schedule contracts for supplies. If it is necessary to show different delivery times for different items or groups of items, use Alternate I.

(2) 552.212–1(b), Time of Delivery, in solicitations and multiple award schedule contracts for supplies. If the Government's desired delivery time is shown in the Schedule of Items, use Alternate I. If the same delivery time applies to all items, use Alternate II.

(3) 552.212–70, Time of Shipment, in solicitations and stock replenishment contracts that do not include the Availability for Inspection, Testing and Shipment/Delivery clause at 552.212–72 and require shipment within 45 calendar days after receipt of the order. If shipment is required in more than 45 days, use Alternate I.

(4) 552.212–71, Notice of Shipment, in solicitation and contracts for supplies when it is in the Government's interest to have the contractor furnish a notice of shipment.

(5) 552.212–72, Availability for Inspection, Testing and Shipment/Delivery, in solicitations and contracts that provide for source inspection by Government personnel and that require lengthy testing for which timeframes cannot be determined in advance. If the contract is for stock items, use Alternate I.

(b) *Construction contracts.* The contracting officer shall insert the clause at 552.212–74, Non-compliance with Contract Requirements, in solicitations and contracts for construction when the contract amount is expected to exceed the small purchase limitation.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 513—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

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513.7001 Certified invoice procedure for procurements not requiring a written purchase order.

Authority: 40 U.S.C. 486(c).

Subpart 513.1—General

513.106 Competition and price reasonableness.

(a) *Purchases over $1,000.* Solicitation of at least three sources in accordance with FAR 13.106(b)(5) may be considered to promote maximum competition if there is a reasonable expectation of obtaining two or more quotations that will be competitive in terms of market price. If there is no expectation of obtaining two or more competitive quotations, more than three sources should be solicited. If only one response is received, the purchase may be made if the price is reasonable and the contractor is responsible.

(b) *Oral solicitation.* Quotations may be solicited orally under the circumstances described in FAR 13.106(b)(2) unless:

(1) The acquisition includes a wage determination issued by the Department of Labor under the Service Contract Act; or

(2) The acquisition meets the requirements in FAR 5.101(a)(1) and must be synopsized in the Commerce Business Daily.

(c) *Data to support small purchases.* (1) When other than the lowest quotation is accepted, the basis for rejecting any lower quotation must be included in the purchase file.

(2) The GSA Form 2010, Small Purchases Tabulation Source List/ Abstract, or an automated equivalent which provides substantially the same documentation, must be used to document written and oral quotations.

513.106–70 Unusual and compelling urgency procurements.

When a procurement is of unusual and compelling urgency, competition may be solicited by having prospective sources visit the site together, orally informing them of the exact requirements, and requesting them to prepare quotations while written specifications are being prepared for inclusion in the contract. Unusual and compelling urgency, as used in this subsection, includes situations which, if not corrected immediately, will result in unnecessary expenditure of funds, property damage, personal injury, or interruption of agency functions.

513.107 Solicitation and evaluation of quotations.

GSA Form 3188, Request for Quotation, is authorized for use by the Federal Supply Service with the FSS–19 system instead of the Standard Form 18, Request for Quotations.

Subpart 513.2—Blanket Purchase Agreements

513.203 Establishment of Blanket Purchase Agreements.

513.203–1 General.

(a) *Document preparation.* Blanket purchase agreements (BPA's) must be prepared on a purchase order form or on a GSA Form 3521, Blanket Purchase Agreement.

(b) *Terms and conditions.* Each blanket purchase agreement should, when appropriate, specify the geographic area to be served under the BPA.

(c) *Placing orders under the BPA.* Only the contracting officer (CO) or officials authorized by a CO and designated in the BPA are authorized to place orders under the BPA. The GSA Form 2877, Non-Depot Item Requisition/ Order/ Receiving/Payment Record, is authorized for use by the Federal Supply Service in placing orders against BPA's for customer supply center items that are not available from Government supply depots. Before placing orders against the BPA, each requirement must be screened for availability from mandatory sources of supply. Necessary controls must be maintained by the person placing orders under the BPA to ensure that any limitation stated therein is not exceeded. The BPA number and purchase number should be specified each time an order is placed.

(d) *Delivery or service tickets.* Each delivery ticket, in addition to the requirements of FAR 13.203–1(j)(6), must contain the name of the person placing the order. The delivery ticket must be signed and dated by the individual receiving the items or services. The supplier and the receiving office must retain a copy of the delivery ticket.

(e) *Invoicing.* If a supplier will not accept one of the invoicing statements outlined in FAR 13.203–1(j)(7), the contracting officer is authorized to deviate from FAR 13.203(j)(7) in order to permit the submission and payment of invoices for each delivery under the BPA. Before authorizing submission and payment of invoices for individual deliveries, the contracting officer must make every effort to get the supplier to accept one of the FAR invoicing statements. The BPA file must document the contracting officer's efforts and the supplier's refusal to accept the FAR invoicing statements.

(f) *Processing invoices.* Invoices must be time-stamped by the designated billing office to indicate the date of receipt. Invoices received by ordering offices must be forwarded to the appropriate Finance Division for payment within 5 workdays of receipt of the invoice or acceptance of the supplies or services, whichever is later, unless the BPA provides for the accumulation of invoices as outlined in FAR 13.203–1(j)(7)(iii). If the BPA provides for accumulation of invoices by the ordering office for a specified period, the ordering office must forward the accumulated invoices to the appropriate Finance Division for payment within 5 workdays after the specified period for accumulation. All invoices should be marked to indicate that purchases were made under a BPA.

513.204 Purchases under Blanket Purchase Agreements.

(a) Individual purchases under BPA's may not exceed $10,000.

(b) Individual purchases under BPA's may exceed the $10,000 threshold in paragraph (a) of this section and the small purchase threshold (FAR 13.101) if the BPA has been established in accordance with FAR 13.203–1(f).

Subpart 513.3—Fast Payment Procedure

513.301 General.

The fast payment procedure is not authorized for use by GSA contracting activities.

Subpart 513.4—Imprest Fund

513.403 Agency responsibilities.

Imprest fund cashiers must be designated and will function in accordance with HB, Accounting Users Guide—Imprest Fund and Travelers Checks (COM P 4268.1) and FAR Subpart 13.4.

513.404 Conditions for use.

The per transaction limitation for cash payments made through imprest funds is $500 ($800 for emergency disbursements by imprest fund cashiers in Alaska).

513.405 Procedures.

The SF 1164, Claim for Reimbursement for Expenditures on Official Business, or SF 1165, Receipt for Cash—Subvoucher, will serve as the authorized purchase requisition for purchases made by offices maintaining their own imprest funds, e.g., Public Buildings Service Field Offices. Purchase requisitions such as the GSA Form 49, Requisition/Procurement Request for Equipment, Supplies or Services, may be used if required by contracting activity directives. If the GSA Form 49 is used, it must be endorsed "Payment to be made from imprest fund."

Subpart 513.5—Purchase Orders

513.501 General.

The Finance Divisions will not accept facsimile signatures on machine-produced purchase orders. An original or carbon copy (but not photocopied) handwritten signature is required to obligate funds for individual purchase orders except for machine-produced purchase orders generated by the FSS–19 system.

513.505 Purchase order and related forms.

513.505–2 Agency order forms in lieu of Optional Forms 347 and 348.

(a) Unless another form is prescribed, the GSA Form 300 or 300–1 (pin-feed format), Order for Supplies and Services, must be used instead of the OF 347, Order for Supplies or Services, when making purchases payable through the National Electronic Accounting and Reporting (NEAR) System. The forms may also be used to make other purchases when a specific form is not prescribed or as a delivery order to place orders under established contracts. The GSA Form 300 must be prepared and processed in accordance with the instructions at 553.370–300–I. GSA Form 300A or 300–A(1) (pin-feed format), order for Supplies or Services

(continuation), is available for use with GSA Form 300 or 300–1.

(b) The GSA Form 1458, Motor Vehicle Shop Work Order, Repair and Purchase Order, must be used instead of the OF 347 when making purchases in connection with the maintenance, servicing or repair of GSA fleet management vehicles.

(c) The GSA Form 3186, Order for Supplies or Services, must be used instead of the OF 347 when making purchases through the FSS–19 system.

(d) GSA Form 8002, Motor Vehicle Delivery Order, is used to order fleet management vehicles. This form is not intended for use as a purchase order for small purchases and does not include provisions and clauses on the reverse.

513.505–3 Standard Form 44, Purchase Order-Invoice-Voucher.

(a) *General.* Use of the Standard Form 44 will not serve the best interest of either the Government or business when the accounting system of the seller requires production of an invoice as a matter of routine. In these cases, other authorized methods of making small purchases should be used. Whenever possible, preference should be given to the use of imprest funds and blanket purchase agreements.

(b) *Issuance of books from stock.* SF 44 books will be issued to contracting directors or their designees. Contracting directors are responsible for the custody and issuance of books to the users.

513.505–70 Two-party contract forms.

(a) When a determination is made that it is in the Government's interest to negotiate a two-party contract (See FAR 13.104(f)) for building services, the GSA Form 3514, Solicitation, Offer and Award-Small Purchases, may be used together with the GSA Form 3519, Representations and Certifications.

(b) The GSA Form 3519, Representations and Certifications, may also be used with other two-party contract forms (e.g. SF–33 or SF–1442) when a determination is made that is in the Government's interest to use a two-party contract form.

Subpart 513.70—Certified Invoice Procedure

513.7001 Certified invoice procedure for procurements not requiring a written purchase order.

(a) When advantageous to the Government, supplies or services may be acquired on the open market from local suppliers at the work site or use point using vendors' invoices instead of purchase orders. Certified invoice procedures may not be used to place orders under established contracts unless authorized in the contract.

(b) Such purchases must comply with FAR Part 13 and Part 513, subject to the following:

(1) The amount of any one purchase is $2,000 or less.

(2) A purchase order is not required by either the supplier or the Government.

(3) Appropriate invoices can be obtained from the supplier.

(c) The items to be purchased must be domestic source end products, except as provided in FAR Subpart 25.1. For special rules governing purchases of hand and measuring tools and stainless steel flatware see 525.105–70 and 525.105–71.

(d) Use of the certified invoice procedure does not eliminate the requirements to:

(1) Reserve small purchases for small business in accordance with FAR 13.105, or document the file;

(2) Solicit competitive quotations in accordance with FAR 13.106;

(3) Certify that the quality and quantity of items/services furnished are in accordance with the verbal agreement made with the vendor;

(4) Document the record in accordance with FAR 13.106(c) and 513.106(c).

(e) Quotations may be solicited by authorized personnel without contracting officer warrants. Placement of any orders must be approved in advance by a contracting officer. The approval shall be in writing unless geographic distances make it impracticable to obtain a written approval on the GSA Form 2010 or other documentation. In those cases telephonic approval may be obtained and a notation of the approval recorded.

(f) Contracting officers using this purchasing technique shall require the suppliers to immediately submit properly prepared invoices which itemize property or services furnished.

(g) Upon receiving the invoice, the receiving office shall time-stamp the invoice to indicate the date of receipt, verify the arithmetic accuracy of the invoiced amount, and verify that the supplies and/or services have been received and accepted. The contracting officer or a designated representative shall obtain a certification of receipt and acceptance from the individual that actually inspected and accepted the supplies and/or services before certifying the invoice and forwarding to the appropriate Finance Division for payment. Supplies and/or services should be inspected and accepted or rejected within 5 workdays of delivery/completion. The invoice must be forwarded to the appropriate Finance Division for payment within 5 workdays after receipt of the invoice or acceptance of the supplies and/or services, whichever is later. Before forwarding the invoice to Finance, the contracting officer shall place the following statement on the invoice along with the gummed ACT label, accounting information and the type of business; i.e. corporation, sole proprietorship/partnership, or other. A stamp which provides the equivalent information may be used.

(Note: In some organizations, the gummed ACT label is affixed by a budget or executive office within the service or staff office.)

I certify that these goods and/or services were received on _____ (Date) and accepted on _____ (Date). An oral purchase was authorized and no confirming order has been issued.

Signature of Contracting/Ordering Officer

Print name and telephone No.

Second Certification (required by PBS)

Print name and telephone No.

Date Invoice received

PART 514—SEALED BIDDING

Subpart 514.2—Solicitation of Bids

Sec.

514.201 Preparation of invitations for bids.
514.201–1 Uniform contract format.
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514.272 Price list method.
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Subpart 514.3—Submission of Bids

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514.301–70 Facsimile transmission of bids.
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514.401 Receipt and safeguarding of bids.
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514.407 Award.
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514.407–6 Equal low bids.
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514.408–70 Restriction on disclosure of inspection or test data.
514.471 Multiple bidding.

Authority: 40 U.S.C. 486(c).

Subpart 514.2—Solicitation of Bids

514.201 Preparation of invitations for bids.

See 514.270 for information on specifying a minimum bid acceptance period.

514.201–1 Uniform contract format.

All solicitations must include the following notice:

The information collection requirements contained in this solicitation/contract, that are not required by regulation, have been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act and assigned OMB Control No. 3090–0163.

514.201–2 Part I—The Schedule.

Solicitations that include the Standard Form 33, Solicitation, Offer and Award, should include the following cautionary notice:

Offerors are reminded that block 13 of the Standard Form 33, Solicitation, Offer and Award, is to be used to offer prompt payment discounts. Payment terms are set forth in the Prompt Payment clause of this solicitation. Offerors are cautioned against inserting any statement in block 13 which indicates that payment is due sooner than the time stipulated in the Prompt Payment clause.

Example: Inserting "NET 20" in block 13 will cause the offer to be rejected as nonresponsive because the entry would be contrary to the 30 day payment terms specified in the Prompt Payment clause.

514.201–6 Solicitation provisions.

(a) The contracting officer shall insert the provision at 552.214–73, "All or None" Offers, in solicitations when all or none offers are considered. Alternate I should be used in requirements or indefinite quantity contracts.This provision must not be included in solicitations when the Government requires the bidder to submit bids on all items and will make only one award.

(b) The contracting officer may include the notice at 552.214–74, Solicitation Copies, in solicitations when it is necessary to reduce costs of printing solicitations.

514.201–7 Contract clauses.

(a) The contracting officer shall insert a clause substantially the same as the clause at 552.214–75, Progressive Awards and Monthly Quantity Allocations, in solicitations for stock replenishment contracts when it is determined that individual contractors may be unable to furnish the Government's monthly requirements and that it will be expedient to make progressive awards.

(b) The contracting officer shall insert the clause at 552.215–70, Examination of Records by GSA, in solicitations and contracts that (1) involve the use or disposition of Government-furnished property, (2) provide for advance payments, progress payments based on cost, or guaranteed loans, (3) contain a price warranty or price reduction clause, (4) contain an economic price adjustment clause, (5) are requirements, indefinite quantity or letter type contracts as defined in FAR Part 16, or (6) contain the provision at FAR 52.223–4, Recovered Materials Certification. The contracting officer may modify the clause to define the specific area of audit (e.g., the use or disposition of Government furnished property). Legal Counsel and the Assistant Inspector General-Auditing or Regional Inspector General-Auditing, as appropriate, must concur in any modifications to the clause.

514.201–70 GSA forms.

(a) The GSA Form 1602, Notice Concerning Your Solicitation for Offers, may be used to (1) describe the type of contract, the duration of the contract, and the type of supplies or services being procured; (2) direct the attention of prospective offerors to special requirements which, if overlooked, may result in rejection of the offer; (3) highlight significant changes from previous solicitations covering the same supplies or services; and (4) include other special notices, as appropriate.

(b) The GSA Form 3503, Representations and Certifications, may be used in solicitations and contracts, except contracts for utilities and leases of real property.

(c) The GSA Form 3501, Solicitation Provisions (Sealed Bid), may be used when bids are solicited using the Standard Form 33 or the Standard Form 1442.

(d) The GSA Form 3504, Service Contract clauses, the GSA Form 3506, Construction Contract Clauses, or the GSA Form 3507, Supply Contract Clauses, may be used in solicitations and contracts, as applicable.

514.201–71 Request for brand name information limitation.

When an item is described in a solicitation by a formal specification or a detailed purchase description (other than a brand name or equal purchase description), the solicitation may not require or request that bidders specify the brand names of the products offered. However, brand name information may be requested when—

(a) Descriptive literature for items is requested in accordance with FAR 14.202–5.

(b) First article testing is required.

(c) The procurement is for qualified products.

514.201–72 Fire or casualty hazards, or safety or health requirements.

(a) Specifications covering electrical equipment, building materials, etc., which involve fire or casualty hazards, or safety or health requirements, normally contain a clause requiring conformance to the standards of nationally recognized technical societies, associations, or laboratories, or other GSA-approved testing laboratories, regarding fire and casualty hazards, explosion protection, or safety or health requirements.

(b) When a specification is not available or the specification does not include a clause described in (a) of this section, technical advice shall be obtained from the appropriate program or technical office concerning the appropriateness for a clause. If the contracting officer then determines that the matter should be covered, an appropriate clause shall be included in the solicitation. The clause shall cite all standards that are acceptable.

514.202 General rules for solicitation of bids.

514.202-4 Bid samples.

(a) *Solicitation requirements.* (1) When a determination is made to require bidders to submit bid samples, the solicitation must include a provision incorporating the provision at FAR 52.214-20 and containing the information in FAR 14.202-4(e) and must require:

(i) Samples be from the production of the manufacturer whose products will be furnished under the resultant contract; and

(ii) Bidders use GSA Form 434, Sample Record Sheet, copies of which will be furnished with each solicitation.

(2) If a determination is made that bidders will be permitted to reapply samples furnished under a previous solicitation, FAR 52.214-20, Alternate II, shall be used.

(3) In addition to subjective characteristics of bid samples, objective characteristics may be used when it has been determined, on the basis of past experience or other valid considerations, that examination of such characteristics is necessary to determine the responsiveness of the bid. When both types of characteristics are listed in the solicitation, they must be listed separately under the headings "Subjective Characteristics" and "Objective Characteristics."

(4) Because of variations in circumstances and differences in commodities, no standard provision can be prescribed for use in all solicitations. The provision at 552.214-76, Bid Sample Requirements, is provided as an example and may be used in solicitations as shown or modified to fit the circumstances of the procurement.

(b) *Handling and disposition of samples.* (1)(i) Samples held during the period of contract performance may be disposed of after deliveries are completed and Government acceptance has occurred, in accordance with the instructions indicated on GSA Form 434.

(ii) If the contracting officer anticipates that there may be a future claim regarding a contract, the bid samples must be retained until the claim is resolved.

(2) All other bid samples should be held until awards are made and then disposed of in accordance with instructions indicated on GSA Form 434.

514.203 Methods of soliciting bids.

514.203-1 Mailing or delivery to prospective bidders.

(a) Active bidders (current contractors and bidders that responded to recent similar solicitations) should be provided with bid sets for the same or similar items. Active bidders' names should be checked against the bidders' mailing list and added if not already listed.

(b) Contracting officers shall ensure that all amendments to solicitations and related notices are furnished promptly to every addressee previously furnished a solicitation.

514.204 Records of invitations for bids and records of bids.

The contracting officer shall obtain from the Business Service Center (BSC) and include in the file the names and addresses of firms to whom the BSC furnished solicitations. Contracting officers shall furnish these firms with applicable amendments or supply the BSC with amendments for distribution.

514.205 Solicitation mailing lists.

514.205-1 Establishment of lists.

(a) Contracting officers within the Federal Supply Service (FSS) should use the computerized central solicitation mailing list maintained by Region 7 for supplies and services for all procurements expected to exceed the small purchase limitations. Other GSA contracting activities may maintain local lists. Contracting activities that maintain local mailing lists must inform the BSC of the list and provide related information regarding the list.

(b) Inquiries from or for business firms requesting inclusion on solicitation mailing lists should be referred to the BSC serving the geographic areas in which the firms are located. The BSC will assist firms to be included on the proper GSA mailing lists and will provide application forms and related information.

514.208 Amendment of invitation for bids.

The date set for bid opening must be extended when amendments relating to wage determinations issued under the Service Contract Act or the Davis-Bacon Act are issued less than 10 days before the scheduled bid opening date.

514.211 Release of acquisition information.

Before award, access to information concerning the Government cost estimate is limited to Government personnel whose official duties require knowledge of the estimate. After award, the total amount of the Government estimate may be revealed, upon request. The basis for calculating the estimate may not be released at any time.

514.270 Bid acceptance period.

(a) The 60-day period stipulated in the parenthetical statement in Item 12 of the Standard Form 33, Solicitation, Offer and Award, is neither a "standard" nor a request to bidders to allow such period.

(b) The contracting officer may specify a different minimum bid acceptance period and/or permit a bidder to insert a number of calendar days after bid opening, during which its bid is valid.

(c) When specifying a minimum bid acceptance period, the contracting officer shall:

(1) Insert in solicitations the provision at 552.214-16, Minimum Bid Acceptance Period, instead of the provision at FAR 52.214-16, and

(2) Mark Item 12 of SF 33 as follows to preclude a bidder from inadvertently rendering its bid nonresponsive by inserting a figure less than that stipulated by the Government in 552.214-16(c).

Note: Item 12 does not apply if the solicitation includes the provisions at 52.214.16, Minimum Bid Acceptance Period.

12. In compliance with the above, the undersigned agrees, if this offer is accepted within *N/A* * calendar days (60 calendar days unless a different period is inserted by the offeror) from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated points(s), within the time specified in the schedule. **See* Provision 552.214-16.

514.271 Aggregate awards.

514.271-1 General.

(a) *Definition.* "Aggregate award" means an arrangement, stipulated by the Government in the solicitation, whereby two or more separately-priced line items are combined for award to that bidder whose offer will result in the lowest overall cost to the Government for all of the line items within the group, without regard to whether the prices offered by the bidder are low on each item within the group. (See also the definition of a "line item" in FAR 3.302.)

(b) *Justification for use.* (1) While ordinarily prices are solicited on an individual line item basis, it sometimes may be in the Government's best interest to combine two or more line items for an aggregate award such as when—

(i) Uniformity of design, style, and finish is desired, as in the acquisition of suites of household furniture;

(ii) The articles being acquired will be assembled and used as a unit, and may not be interchangeable if acquired from different manufacturers;

(iii) The demand for certain articles is large, but the demand for other similar articles is not sufficient to attract competitive bids unless awarded in conjunction with the high-demand articles (e.g., various sizes of socket wrenches);

(iv) One location (delivery point) has a large requirement, and another location has a requirement that is too small to individually attract competitive bids; or

(v) It is impractical to award and administer numerous small contracts for similar articles or services.

(2) Before deciding to combine items for aggregate award, the contracting officer shall include in the contract file the rationale for establishing an aggregate award formula, which must:

(i) Address the capability of bidders to furnish the types and quantities of supplies or services in the aggregate as well as the impact on bidders if different delivery points are grouped; and

(ii) Be capable of accurately projecting the lowest overall cost to the Government.

(3) Line items may not be grouped for award on an aggregate basis when it would:

(i) Preclude a significant number of firms from bidding due to an inability to provide all the types or quantities of supplies or services or to make deliveries to the various delivery points included in the prospective aggregate group; or

(ii) Increase overall prices to the Government by restricting significantly the number of eligible bidders for any other reason (see also 514.271-3).

(4) To determine the lowest cost on an aggregate group of items, it is necessary to extend unit prices by accurate weight factors calculated to reflect the true or proportionate quantities that will be purchased under a resultant contract (see 514.271-2). If weight factors must be based upon unreliable or conjectural information, or where reliable estimates on anticipated quantities are not available, the price list method described in 514.272 should be considered.

(5) If accurate weight factors and pre-established list prices are not available, an aggregate award formula should not be used because it could result in unbalanced bids and/or award could not be assured to result in the lowest overall cost to the Government.

(c) *Evaluation factors for award.* When items will be awarded on an aggregate basis, the solicitation must clearly state the basis on which bids will be evaluated.

(1) If weight factors are used, bidders shall be required to submit a price on each item within the group with award to be made to the responsive and responsible bidder whose computed overall price for the aggregate group of items is actually the lowest or can accurately be projected to result in the lowest overall cost to the Government. Failure to submit a price on each item within a group will make the bid ineligible for award with regard to that group of items.

(2) If the price method is used, bidders shall be required to express prices as a percentage to be added to or subtracted from the list price for each group of items with award to be made to the responsive and responsible bidder whose percentage factor produces the most favorable price to the Government.

514.271-2 Weighting of items for aggregate award.

(a) Unless the same weight factor is applicable to all line items in the aggregate group, accurate weight factors are essential for determining which bid would result in the lowest overall cost to the Government for the aggregate group.

(b) While the phrase "lowest overall cost to the Government" is used in this regulation, it is not always necessary that an aggregate award formula be capable of projecting actual cost. It is sufficient if the relative proportionate cost between line items within the aggregate group can be projected accurately, i.e., actual quantities may not be available, but ratios of the requirements within the line items in the aggregate group are available.

(c) Estimated quantities that apply to indefinite quantity or requirements contracts may be reduced to smaller numbers by a common denominator to facilitate the computations involved in evaluating bids, if doing so does not sacrifice precision.

(d) Actual purchase quantities will be used as weight factors for definite quantity acquisitions because a bidder might include two or more aggregate groups, or an aggregate group and various individual line items, under an "all or none" qualification. Proportionate weight factors must not be used in the evaluation process where "all or none" qualifications are permitted.

(e) Weight factors may not be based on the estimated dollar value of purchases. If the dollar value of previous purchases is the only information available, and there is no recourse but to make award on an aggregate basis, the value of previous purchases must be converted to quantities for the purpose of establishing weight factors (i.e., divide total purchases of each item by the unit price to determine number of units purchased).

514.271-3 Grouping of line items for aggregate award.

(a) *General.* While paragraphs (b) and (c) pertain to supply contracts (articles and delivery points), the same principles apply to service contracts (types of services and service areas).

(b) *Grouping of different articles.* Only related articles, normally manufactured or produced by a majority of prospective bidders, should be included in an aggregate group. The grouping of unrelated articles usually is contrary to 514.271-1(b)(3).

(c) *Grouping of geographic locations or delivery point.* The contracting officer should consider the following guidelines before deciding to group different geographic locations or delivery points for aggregate award:

(1) If different delivery points have sufficient requirements so that individual shipments to each point will involve not only economic production runs, but carload or truckload quantities, these points should be listed as separate line items.

(2) The types of bidders (i.e., small or large firms, manufacturers or distributors, etc.) responding to previous solicitations are an important consideration. For example, if previous bidders are distributors having franchises within certain territories, the grouping of different territories would tend to restrict competition.

(3) The impact of transportation costs on competition and pricing, since transporation costs may constitute a signficant portion of the total delivered cost. Depending upon the supplies being acquired:

(i) Grouping widespread geographic locations or delivery points may reduce competition and/or result in higher prices due to the loss of "area pricing" advantages when a potential supplier has a single production point.

(ii) Conversely, for many smaller commercial items (hand tools, locks, etc.) manufacturers may quote the same price for delivery anywhere in the U.S.

(iii) Contracting officers should obtain the advice and assistance of transportation specialists before grouping geographic locations or delivery points, to include information regarding the location of tariff boundaries.

514.272 Price list method.

(a) *General.* The price list method may be used to avoid unbalanced bidding in requirements and indefinite quantity/indefinite delivery contracts when aggregate awards will be made and accurate estimates of anticipated quantities are unavailable. This method

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utilizes pre-established list prices for acquiring groups of similar items, services, or repairs and alterations. The following elements of the price list method must be included in the solicitation:

(1) A pre-established price list.

(2) An estimate of requirements, if available.

(3) A requirement that a bidder express its price as "net" or as a percentage added to or subtracted from the list prices for each group.

(4) The percentage factor in (a)(3) of this section is a price related factor, which must be identified in Section M of the Uniform Contract Format.

(b) *Development of pre-established list prices.* (1) Pre-established list prices may be developed by one or more of the following methods:

(i) Industry published prices.

(ii) Industry surveys.

(iii) Government cost estimates based upon knowledge of the supplies or services to be grouped and previous contract prices.

(2) When proposed list prices will be used for the first time, prospective bidders should be given an opportunity to review the proposed list and furnished information on how the list prices will be used. Copies of the draft solicitation may be provided.

(3) The contracting officer must ensure that items are properly grouped and that the list prices for the grouped items bear a reasonable and balanced relationship to one another. Before using prices resulting from awards made under the weighted item method to develop price lists, those prices must be reviewed to ensure that they did not result from unbalanced bidding.

514.272-1 Supply contracts.

(a) Estimated requirements for each item in a group or for the entire group must be shown in the solicitation. For contracts for store stock items, estimated quantities should be shown only if estimates of demand for each item within a group can be derived from Government records (or verified contractor sales reports). All the estimates must be current. If the Government's needs cannot be estimated, the solicitation may include past orders. (See CG Decision, B-209037, 82-2 CPD para 323 (1982).)

(b) The bidding schedule must clearly state that bidders must quote only one percentage factor for each group, which must be expressed as either "net" or as a deduction from or an addition to the listed prices.

(c) The following illustrates a bidding schedule arrangement for a group of items for aggregate award under the price list method:

Drills, Twist, High Speed, under Federal Specification (dated _____) and Amendment _____ (dated _____). Wire gauge sizes, straight shank, shortlength, Type C:

Item No.	National stock No.	Drill size	Est. quantity	Unit	List price
Group 1 (Items 1 through 5)					
1	5133-00-189-9246	1	2,800	Package	$11.16
2	5133-00-189-9247	2	2,400	Package	11.16
3	5133-00-189-9248	3	2,800	Package	10.44
4	5133-00-189-9249	4	1,600	Package	10.80
5	5133-00-189-9250	5	2,000	Package	10.80

The bid on each item above is the list price shown minus/plus _____ percent. (Bidder, insert "net" or a single percentage amount in the blank space and cross out minus or plus, as appropriate.)

514.272-2 Repair and alteration contracts.

(a) The solicitation shall:

(1) Contain a statement indicating the percentage of work anticipated to be performed during normal working hours;

(2) Define "normal" in terms of hours and days of the week; and

(3) List the quantities, if available, and unit prices for work performed during both normal working hours and outside of normal working hours.

(b) *Instructions, conditions, and notices to bidders.* (1)(i) Bidders should be advised of the previous year's total expenditures or portions of that total attributable to the listed items.

(ii) When estimates are provided, the solicitation must state that the quantity estimates are furnished for information only and are not to be construed as guarantees or commitments to order items under the contract.

(2) Bidders shall be instructed to quote two or more percentage factors to be applied as specified in (b)(2) (i) and (ii), of this section. The percentage factor(s) must be expressed as "net," or as an addition to or subtraction from the applicable unit prices.

(i) For the line item unit prices listed in the solicitation, two percentage factors must be solicited: one to be applied to the unit prices for the percentage of work performed during normal working hours and the second to be applied to the unit prices for the percentage of work performed outside of normal working hours.

(ii) When unit prices are further grouped by trade or business category, multiple percentages may be required.

(c) *Evaluation factors for award.* (1) When two percentage factors are solicited under (b)(2)(ii) of this section, the evaluated bid price is the sum of the percentage of work performed—

(i) During normal work hours multiplied by the Government's total estimate adjusted by the bidder's percentage factor for that portion of the work, and

(ii) During other than normal working hours multiplied by the Government's total estimate adjusted by the bidder's percentage factor for that portion of the work.

(2) Award must be made to the responsible and responsive bidder submitting the lowest evaluated bid price.

(3) When additional evaluation factors such as options are used, they must be identified in the solicitation.

Subpart 514.3—Submission of Bids

514.301 Responsiveness of bids.

514.301-70 Facsimile transmission of bids.

Bids, modifications, or withdrawals of bids transmitted through facsimile equipment may not be considered unless authorized by the solicitation. Facsimile bids, as used herein, refers to messages transmitted via facsimile equipment directly to a GSA office or facility. It does not include messages sent to commercial carriers for delivery to the office designated for receipt of bids (e.g. zap mail). Solicitations may not authorize the submission of facsimile bids unless the facsimile equipment is located in the office designated to receive bids so the incoming messages can be properly safeguarded. When authorizing the submission of facsimiles, the contracting officer must state in the solicitation that facsimile submissions are authorized, provide the telephone number of facsimile receiving equipment and compatibility characteristics (e.g., make and model number, receiving speed, communications protocol).

514.303 Modification or withdrawal of bids.

(a) When a telegraphic modification or withdrawal of a bid is received by telephone under the circumstances in FAR 14.303, the identity of the telegraph office employee telephoning the message should be obtained and recorded in the solicitation file.

(b) The receipt required by FAR 14.303(b) for withdrawal of a bid in person should be worded as follows:

I certify as a bona fide, agent for or representative of (Bidder's name and address), I am authorized to withdraw the bid on IFB No. _____ scheduled for opening on _____ and hereby acknowledge receipt of the unopened bid.

(Name and telephone no.)

(Date)

514.304 Late bids, late modifications of bids, or late withdrawal of bids.

514.304-1 General.

Upon receipt of a late bid, the bid custodian should record it on the duplicate copy of the list of bidders and immediately notify the responsible contracting officer that the bid has been received. The contracting officer will arrange for the bid to be picked up or delivered.

514.370 Copies of bids required in submission.

Bids must be submitted in an original and at least one copy. The original will be used by the contracting activity for the tabulation of bids. The copy will be retained by the BSC for public information until the bid abstract is available to replace it. Supplemental financial forms or other information submitted with a bid, must be retained by the contracting activity and must not be retained by the BSC for public information.

Subpart 514.4—Opening of Bids and Award of Contract

514.401 Receipt and safeguarding of bids.

(a) Except as otherwise provided in paragraph (c), bids and modifications must be received and safeguarded by the appropriate BSC until the time specified for opening. Bids received should be handled as follows:

(1) At the initial point of receipt, each envelope (or other covering) received by mail and identified as containing a bid should be immediately time-stamped or indicated thereon the place, date, and time of receipt by authorized personnel. Then the bid(s) should be delivered by special handling to the bid custodian in the Business Service Center.

(2) Mailed bids and modifications delivered to the bid custodian before bid opening time should be recorded on the bidder's list on the same day they are delivered and then placed in a suitable locked cabinet.

(3) Hand-carried bids delivered before bid opening time should be deposited in the locked bid box. In the event a hand-carried bid is not placed in the bid box by the bidder, but is handed to the bid custodian or other GSA employee, it should be time stamped immediately and then handled in the same manner as provided for mailed bids. At least once daily (and immediately preceding the time for each scheduled bid opening), the bid custodian should remove and time stamp the bids, record them and place them with any other bids previously received.

(4) Telegraphic or facsimile bid, if authorized, and modifications must be sealed in envelopes immediately upon receipt, appropriately identified, and handled in the same manner as bids submitted by mail.

(5) For each invitation, the bid custodian will prepare a list indicating the invitation number and listing on the GSA Form 1378, Record of, and Receipt for, Bids and Responses, or the appropriate bid abstract form, the name and address of all responses, including any bid modification, received before bid opening time. When a bid previously recorded on this list is withdrawn, the list will so indicate.

(b) At the scheduled bid opening time, the bid custodian will deliver all bids received in response to the invitation, together with the original and one copy of the GSA Form 1378, Record of, and Receipt for, Bids and Responses, or other appropriate bid list to the authorized bid opening official or designee, who will acknowledge receipt of the bids by signing the duplicate copy of the form and returning it to the bid custodian. The original list becomes part of the contract file.

(c) Business Service Center Directors may designate an individual(s) working at a PBS Facility Support Center or Enhanced Field Office as a bid custodian, provided: (1) Adequate space and facilities are available within the Facility Support Center or Enhanced Field Office, (2) the individual(s) has been trained and (3) the Facility Support Center or Enhanced Field Office has a Small Business Technical Advisor. If such designations are made, the designated bid custodian must submit monthly reports to the BSC Director for forwarding to the Office of Small and Disadvantaged Business Utilization (AU).

514.402 Opening of bids.

514.402-1 Unclassified bids.

(a) Public bid openings will be held in the BSC when the BSC is the bid custodian. When the bid opening will be held elsewhere, the contracting officer shall inform the BSC serving the geographic area in which the contracting office is located of the invitation number and the location where the public bid opening will be held.

(b) The assistant bid opening officer shall be a qualified employee of the contracting office. Upon authorization by the HCA and the Director of Small and Disadvantaged Business Utilization in Central Office or the Director of the Business Service Center in the region, bids may be opened by selected BSC personnel. Normally, this authorization will be requested only when the geographic distance separating the BSC where bids are to be delivered and the contracting office makes it impracticable for the bid opening officer or designee to be present to open bids. (See FAR 14.402-1(b).)

(c) Bid openings are open to business representatives, members of the press, and the general public.

(d) To ensure that bids will be opened at the exact time specified, the bid opening official will verify the accuracy of the timepiece to be used.

(e) For the information of those bidders present, approximately one-minute prior notice of bid opening will be announced audibly by the bid opening official.

(f)(1) The bid opening official shall take precaution to ensure that the exact time of opening has arrived and shall announce this fact audibly, citing the invitation or invitations scheduled for opening. The opening of bids will then proceed in full view of the parties present.

(2) For construction contracts that provide for bid alternates, the amount of funds available for the award will be announced before opening bids.

(g) In reading bids, the following information from each bid should be announced when considered practicable and feasible: The bidder's name, item and unit price bid, and other pertinent information, such as delivery and discount terms. A copy of each bid submitted in multiple copies should remain in the bid opening room until the bid abstract is substituted. For bids

submitted in an original only see FAR 14.402–1(c).

(h) No alterations or notations to any bid after it has been formally opened will be permitted.

(i) Negotiable instruments submitted as bid guarantees to meet solicitation requirements must be forwarded by the bid opening official to the Finance Division in accordance with procedures established by the Comptroller. When award is made, the solicitation is cancelled, or all bids are rejected, the contracting officer shall direct the Finance Division to refund the amount of the bid guarantee to the unsuccessful bidder(s). Bid guarantees may be returned before award when a bidder requests the guarantee be returned and the bidder is not in contention for the award. Other forms of bid guarantees (e.g., bid bonds, letters of credit, corporate and individual sureties, etc.), must be retained by the contracting officer and included in the contract file.

(j) A record, including at least the names of persons attending the bid opening and the firms or organizations they represent, should be made a part of the solicitation file.

(k) When multiple copies of bids are received, the bid opening official shall verify the entries on all copies. If there is a discrepancy between the copies of a bid, the contracting officer shall direct the bidder's attention to the suspected mistake and shall follow the procedures set forth in FAR 14.406 concerning mistakes in bids.

(l) Envelopes in which bids and bid modifications are received should be retained in a temporary file until after all awards have been made. At that time, those which bear notations concerning abnormal receipt or opening for identification should be made a part of the solicitation file and the remainder may be destroyed.

514.403 Recording of bids.

(a) A copy of the abstract of bids and any amendments must be furnished to the appropriate BSC as soon as practicable and be available for public examination for at least 30 calendar days. Late bids determined eligible for consideration must be included on the bid abstract form. If eligibility is established after delivery of the original tabulation, the bids are recorded separately and identified as an amendment to the original tabulation.

(b) Abstracts involving aggregate awards must record unit prices, weight factors and aggregate totals for each aggregate group in addition to any other information required for bid evaluation.

(c) For building services, the GSA Form 3471, Abstract of Offers, is authorized for use by contracting activities in the Public Buildings Service (PBS) instead of the Standard Form 1409, Abstract of Offers.

514.404 Rejection of bids.

514.404–1 Cancellation of invitations after opening.

(a) *Cancellation of invitations.* The HCA or a designee makes any determinations required by FAR 14.404–1.

(b) *Extension of time for bid acceptance.* (1) While the number of bidders requested to extend their bids as provided in FAR 14.404–1(d) is a matter of judgment on the part of the contracting officer, consideration should be given to requesting the extension from all bidders having a reasonable chance to receive an award.

(2) Requests for time extensions may be made using GSA Form 2961 and must specify a period reasonable under the circumstances.

(3) If time is critical, the contracting officer may request an extension by telephone, facsimile, or telegraph, but the bidder's response or confirmation must be in writing.

(4) If a Standard Form 24, Bid Bond, has been executed, the consent of the surety is necessary for any extension exceeding by more than 60 calendar days the period originally allowed for acceptance.

(5) If a bidder does not grant the additional bid acceptance time requested, special action should be taken to accomplish acceptance of the bid within the time allowed by the bidder. Should it be advisable to permit the bid to expire, the contracting officer shall promptly, before expiration of the bid, refer the case to the appropriate contracting director for a decision.

514.404–2 Rejection of individual bids.

(a) Individual bids rejected on the basis of responsiveness, responsibility, or eligibility and bids rejected because the bid after evaluation is no longer low shall be documented as provided in FAR 14.404–2(j) and noted in the "Remarks" block on GSA Form 1535, Recommendation for Award(s). Examples of bids which may no longer be low after evaluation include aggregate bids (see 514.271), "all or none" bids (see 552.214–73), and bids evaluated using Buy American differentials (see FAR 25.105 and 525.105–70).

(b) Explanations which involve cases of a sensitive or controversial nature must be accompanied by all supporting documentation to justify awards, such as copies of the offer to be rejected and the proposed awardee, statements from (or record of conversation with) the requisitioning activity, plant facilities and/or financial responsibility reports, and other relevant correspondence or reports (Certificates of Competency, copies of Congressional correspondence or other high level interest, etc.).

514.405 Minor informalities or irregularities in bids.

Failure to submit all of the pages of the solicitation is a minor informality or irregularity under FAR 14.405 when the bid as submitted indicates that the bidder takes no exception to the requirements of the solicitation and intends to be bound by all its terms in any resultant contract.

514.406 Mistakes in bids.

514.406–3 Other mistakes disclosed before award.

(a) *Delegations of authority by head of the agency.* In accordance with FAR 14.406–3(e), the heads of contracting activities (HCA's) are authorized, without power of redelegation, to make the determinations regarding corrections and/or withdrawals treated in FAR 14.406–3 (a), (b), and (c), and to make the corollary determinations not to permit withdrawal or correction for reasons indicated in FAR 14.406–3(d).

(b) *Format for Determinations.* Determinations under FAR 14.406–3 must be prepared in the following format.

Findings and Administrative Determination Alleged Mistake in Bid ("Prior to Award" or "After Award") by (Name of Bidder) (IFB No.)

Pursuant to Federal Acquisition Regulation 14.406 and General Services Administration Acquisition Regulation 514.406, I hereby make the following findings:

Findings

(List in chronological order the information required by FAR 14.406, including a numerical list of exhibits.)

Determination

Based on the above findings, I hereby determine in accordance with FAR (14.406–3 (a) or (b), (c), (d), (g) or 14.406–4) that (include an appropriate statement indicating the determination to permit withdrawal, correction, etc.).

Contracting Officer (Determinations under FAR 14.406–3(g)(5) or 14.406–4)

Date

Head of Contracting Activity (Determinations under FAR 14.406–3 (a), (b), (c), or (d)) or Contracting Director (Approved under 514.406–4)

Date

I reviewed the above case as to form, technical accuracy of the proposed determination, and the general accuracy of the supporting evidence and approve it as to legal sufficiency.

Assigned Counsel

Date

(c) *Legal review and approval.* Assigned counsel must approve determinations by the HCA and contracting officer regarding mistakes in bid.

514.406–4 Mistakes after award.

Determinations by the contracting officer must be prepared in the format at 514.406–3(b) and reviewed and approved by the Contracting Director and assigned counsel.

514.407 Award.

514.407–1 General.

(a) Notice of award may be made by facsimile transmission when approved by the HCA. Oral notices shall not be used.

(b) In addition to the requirements in FAR 14.407–1(c)(5), notice of award must identify the solicitation, the item(s) awarded, the contract number, and the effective date of the award.

(c) If partial award is made to a bidder and additional items are being withheld for possible subsequent award to the same bidder, any subsequent award during the bid acceptance period must be made using SF–30, Amendment of Solicitation/Modification of Contract (except see 519.502–3(b) regarding partial set-asides). The authority cited in paragraph 13D of SF–30 for the subsequent award will be FAR 14.407–1(c)(4).

514.407–2 Responsible bidder—reasonableness of price.

(a) A single bid, received in response to a solicitation, may be considered and accepted if (1) the specifications used in the invitation were not restrictive, (2) adequate competition was solicited, (3) the price is reasonable, and (4) the bid is otherwise consistent with the solicitation.

(b) The basis for price reasonableness must be established, if possible, from data or information which is available to the contracting officer without contacting the bidder.

514.407–6 Equal low bids.

In resolving a tie-bid situation, the status of the bidders (small/large/labor surplus area) on the date the bid was signed is controlling.

514.407–7 Documentation of award.

Documentation included in the contract file must include the number of firms solicited and the GSA Form 1535, Recommendation for Award(s), or similar document (see also 514.404–2).

514.407–70 Preaward inquiries.

(a) Responses to preaward inquiries should be limited to a statement that the award decision is pending and agency policy prohibits release of additional information.

(b) Actions or discussions that may create false impressions in the eyes of prospective contractors about pending awards must be avoided.

514.407–71 Awards involving related cases referred to higher authority.

When a case is to be or has been referred to higher authority for review, any action which might prejudice the freedom of the higher authority to act on that case must be avoided. This includes partial awards to the same bidder under the same solicitation.

514.407–72 Forms for recommending award(s) (Supplies and services).

GSA Form 1535, Recommendation for Award(s), and GSA Form 1535–A, Recommendation for Award(s), Continuation Sheet, must be used to document all proposed awards (except construction contracts) exceeding $25,000. The use of the form for awards of $25,000 or less is at the discretion of the contracting activity. One or more awards may be set forth on each form. All information pertinent to the recommendation must be furnished on the form. The checklist on the back of the form must be completed.

514.408 Information to bidders.

514.408–1 Award of unclassified contracts.

The GSA Form 3577, Notification of Contract Award, may be used to notify all unsuccessful bidders other than (a) any apparent low bidder(s) or (b) unsuccessful bidders from designated countries for acquisitions subject to the Trade Agreements Act.

514.408–70 Restriction on disclosure of inspection or test data.

Before award, no inspection or test data, whether prepared by the Government or an outside inspection or testing agency, shall be disclosed to anyone other than Government officials requiring access to such information in connection with bid evaluation. For requests received after award, see FAR 14.408–1(e).

514.471 Multiple bidding.

(a) All bids received from a person, firm, or its affiliates must be considered for award if responsive and otherwise acceptable.

(b) Any bid offering two or more products for the same item received from the same bidder may be accepted if it is the lowest received and meets all requirements of the solicitation.

PART 515—CONTRACTING BY NEGOTIATION

Subpart 515.1—General Requirements for Negotiation

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Authority: 40 U.S.C. 486(c).

Subpart 515.1—General Requirements for Negotiation

515.106 Contract clauses.

515.106-70 Examination of records by GSA clause.

The contracting officer shall insert the clause at 552.215-70, Examination of Records by GSA, in solicitations and contracts that (a) involve the use or disposition of Government-furnished property, (b) provide for advance payments, progress payments based on cost, or guaranteed loan, (c) contain a price warranty or price reduction clause, (d) involve income to the Government where income is based on operations that are under the control of the contractor, (e) include an economic price adjustment clause, (f) are requirements, indefinite-quantity, or letter type contracts as defined in FAR Part 16, (g) are subject to adjustment based on a negotiated cost escalation base or (h) contain the provision at FAR 52.223-4, Recovered Materials Certification. The contracting officer may modify the clause to define the specific area of audit (*e.g.*, the use or disposition of Government-furnished property, compliance with the price reduction clause). Counsel and the Assistant Inspector General—Auditing or Regional Inspector General—Auditing, as appropriate, must concur in any modifications to the clause.

515.170 Authorization and approval.

Requirements for review and approval of contracts are in GSA Order, Contract Clearance (APD 2800.1B).

Subpart 515.4—Solicitation and Receipt of Proposals and Quotations

515.402 General.

(a) An oral solicitation is not justified solely because the acquisition is being made under the authority of FAR 6.302-2, Unusual and Compelling Urgency.

(b) Oral solicitations, other than those authorized for small purchases (See 513.106(b) and 513.106-70), may only be used under the conditions prescribed in FAR 15.402(f), with prior approval of the contracting officer.

515.403 Solicitation mailing lists.

Source lists for negotiated acquisitions must be established, maintained, and used in accordance with FAR 14.205 and 514.205.

515.405 Solicitations for information or planning purposes.

515.405-1 General.

Solicitations for information or planning purposes must be approved by the contracting director.

515.406 Preparing requests for proposals (RFP's) and requests for quotations (RFQ's).

515.406-1 Uniform contract format.

(a) Contracts for utility services and leases of real property are exempted from the requirement for use of the uniform contract format.

(b) All contracts, including leases of real property, must include the following notice:

The information collection requirements contained in this solicitation/contract that are not required by regulation have been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act and assigned OMB Control No. 3090-0163.

515.406-2 Part I—The Schedule.

The contracting officer shall insert the provision at 552.215-75, Data Universal Numbering System (DUNS), in solicitations for supplies and services when the contract amount is expected to exceed the small purchase limitation.

515.407 Solicitation provisions.

(a) The contracting officer shall insert the provision at 552.215-73, Preparation of Offers—Construction, in solicitations for construction instead of the provision at FAR 52.215-13.

(b) The contracting officer shall insert the provision at 552.215-74, Contract Award—Negotiated-Construction, in solicitations for construction instead of the provision at FAR 52.215-16.

515.411 Receipt of proposals and quotations.

(a) Solicitations should provide for proposals and modifications to proposals to be submitted to the appropriate contracting office unless arrangements have been made with the local Business Service Center (BSC) for receipt and safeguarding of proposals by the BSC.

(b) Classified proposals and quotations must be handled under FAR 15.411, GSAR Subpart 504.4, and the requirements of GSA Order, Freedom of Information Act procedures (ADM 1035.11).

515.411-70 Recording of offers.

The GSA and/or Standard Forms prescribed for abstracting bids in sealed bidding may be used to abstract proposals or quotations submitted in connection with competitively negotiated procurements where more than one offer is received in response to the solicitation. (See FAR 4.803(a)(10).) The forms may be appropriately modified to include all of the information necessary for evaluation. Abstracts must not be provided to the Business Service Center or disclosed except as provided in 515.1070. See FAR 15.411, 15.413 and 15.1001 regarding disclosure of information.

515.412 Late proposals and modifications.

(a) Contracting officers in the Federal Supply Service have been authorized to deviate from the FAR provision at 52.215-10, Late Submissions, Modifications, and Withdrawals of Proposals in solicitations for multiple award schedules by deleting paragraph (a)(3). The effect of this deviation is to establish the closing date for receipt of proposals in block 9 of the Standard Form 33, Solicitation, Offer and Award, as a firm cut-off date for receipt of proposals. Any proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it qualifies under paragraph (a)(1), (a)(2), or (b) of FAR 52.215-10.

(b) When contracting officers deviate from the FAR provision as outlined in paragraph (a) of this section, no additional special item numbers may be added to the proposal after the firm cut-off date established for receipt of proposals. However, additional products and/or models may be added when the item offered falls under a Special Item Number originally submitted in a timely manner.

515.414 Forms.

When an award is made to an offeror for less than all of the items that may be awarded to that offeror and additional items are being withheld for subsequent award, the first award to that offeror must state that the Government may make subsequent awards on those additional items within the offeror's offer acceptance period. Subsequent awards to the offeror must be made using SF-30, Amendment of Solicitation/Modification of Contract (except see GSAR 519.502-3(b) regarding partial set-asides). The authority cited in paragraph 13D of SF-30 for subsequent awards will be GSAR 515.414.

515.414-70 GSA Forms.

(a) The GSA Form 1602, Notice Concerning Your Solicitation for Offers, may be used to (1) describe the type of contract, the duration of the contract, and the type of supplies or services being procured; (2) direct the attention of prospective offerors to special requirements that, if overlooked, may result in rejection of the offer; (3) highlight significant changes from previous solicitations covering the same supplies or service; and (4) include other special notices as appropriate. The GSA Form 1602 is not part of the solicitation or resulting contract.

(b) The GSA Form 3503, Representations and Certifications, may be used in solicitations and contracts, except contracts for utilities and leases of real property.

(c) The GSA Form 3502, Solicitation Provisions (Negotiated), may be used when offers are solicited using the Standard Form 33 or the Standard Form 1442.

(d) The GSA Form 3504, Service Contract Clauses, the GSA Form 3506, Construction Contract Clauses, or the GSA Form 3507, Supply Contract Clauses, may be used in solicitations and contracts, except small purchases, as applicable.

Subpart 515.5—Unsolicited Proposals

515.501 Definitions.

"Coordinating office," as used in this subpart, means the (a) Director of the Office of GSA Acquisition Policy and Regulations, (b) Assistant Commissioner, Office of Commodity Management, FSS, (c) Assistant Commissioner, Office of Information Resources Procurement, IRMS, (d) Assistant Commissioner, Office of Procurement, PBS, or (e) Director, Regional Acquisition Management Staff. The Director of the Office of GSA Acquisition Policy and Regulations serves as the coordinating office for Central Office activities outside of FSS, IRMS, and PBS.

515.504 Advance guidance.

Potential offerors should be encouraged to make preliminary contacts with coordinating offices before submitting a detailed unsolicited proposal or proprietary data.

515.506 Agency procedures.

Coordinating offices shall serve as contact points and establish procedures for controlling the receipt, evaluation, and timely disposition of proposals consistent with FAR 15.5.

515.506-1 Receipt and initial review.

The contact point shall promptly (a) acknowledge receipt of the proposal and provide the name, business address, and telephone number of the individual who will evaluate the proposal, or (b) notify the offeror that the proposal does not meet the requirements of FAR 15.506-1(a) and provide an opportunity to submit the data.

515.506-2 Evaluation.

The evaluation must be completed as soon as practicable (normally within 45 calendar days). The results of the evaluation should be communicated to the submitter with a copy to the coordinating office.

Subpart 515.6—Source Selection

515.608 Proposal evaluation.

515.608-70 Rejection of all proposals.

HCA may reject all proposals received in response to a solicitation under FAR 15.608(b). This authority may be redelegated. Written documentation citing the reasons for rejecting proposals must be included in the contract file.

515.608-71 Discounts for prompt payment.

The policy of not considering discounts in the evaluation of offers applies where there is direct competition between two or more offerors for a single award. It does not apply to procurements where the evaluation process involves a comparison of the offeror's price to the Government with the offeror's price to its other customers. Accordingly, the policy in FAR 14.407-3 does not apply to multiple award schedule solicitations except in those instances where offers are received on identical products. The clause at 552.232-8, Discounts for Prompt Payment, specifies the extent to which discounts for prompt payment will be considered in the evaluation for multiple award schedules. The formula for computing the annualized rate of return addressed in the clause at 552.232-8 is as follows:

$$\text{Discount (\%)} \times \frac{\text{Number of days in a year}}{\text{Total days to due date for payment*} - \text{Days to discount due date}} = \text{Rate of return}$$

*To determine the total number of days to the due date for payment, start with the date of the invoice and allow 3 days from the date of the invoice to receipt by the Government and assume that the invoice will be received after the supplies have been delivered and accepted by the Government. Normally, the contract will provide for payment in 30 days and the total number of days to the due date for payment will be 33 days.

Subpart 515.8—Price Negotiation

515.803 General.

Access to Government cost estimates is limited to Government personnel whose official duties require knowledge of the estimate. An exception to this rule may be made during contract negotiations to allow the contracting officer to identify a specialized task and disclose the associated cost breakdown figures in the Government estimate, but only to the extent necessary to arrive at a fair and reasonable price. After award, the total amount of the independent Government estimate may be revealed, upon written request, to those firms or individuals who submitted proposals.

515.804 Cost or pricing data.

515.804-2 Requiring certified cost or pricing data.

When determining the contract amount for purposes of applying the threshold at FAR 15.804-2 for requesting certified cost and pricing data, the value of the contract plus any priced options must be considered. Exercise of a priced option is not considered a price adjustment and does not require submission of cost and pricing data.

515.804–3 Exemptions from or waiver of submission of certified cost or pricing data.

(a) Under FAR 15.804–3(i), the HCA is authorized to waive the requirement for the submission of certified cost or pricing data.

(b) The request for waiver must include a draft determination and finding that addresses (1) pertinent circumstances of the procurement necessitating the waiver, (2) the price analysis techniques to be used if the award must be made (3) the steps taken by higher authority to obtain the certified cost or pricing data; and (4) the practicability of obtaining the Government's requirements from other sources.

515.804–6 Procedural requirements.

Whenever an offeror refuses to provide the required cost or pricing data, the contracting officer shall refer the matter to the contracting director for resolution. (See FAR 15.804–6(e).) The contracting director shall negotiate for the submission of the required cost or pricing data, unless the HCA determines, in writing, not to undertake such higher level negotiations and the determination is documented in the contract file.

515.805 Proposal analysis.

515.805–5 Field pricing support.

(a) "Field pricing support" is provided by the Assistant Inspector General-Auditing, or the Regional Inspector General-Auditing, as appropriate.

(b) When applying the threshold at FAR 15.805–5 for requesting field pricing support, the value of the proposal (including any priced options) must be used.

Subpart 515.9—Profit

515.902 Policy.

(a) *Structured approach for determining profit fee objectives.* The contracting officer's analysis of these profit factors is based on information available to the Government before negotiations. Such information is furnished in proposals, audit data, performance reports, preaward surveys and the like. The structured approach also provides a basis for documentation of a profit objective, including an explanation of any significant departure from this objective in reaching a final agreement. The extent of documentation should be directly related to the dollar value and complexity of the proposed procurement.

(b) *Exemptions from requirement to use the structured approach.* (1) Under exempted procurements, other methods for establishing profit objectives may be used. Generally, such methods will be supported in a manner similar to that used in the structured approach (profit factor breakdown and documentation of profit objective). However, factors within the structured approach considered inapplicable to the procurement may be excluded from the profit objectives. The following types of procurements are exempt from the structured approach:

(i) Management contracts for operation and/or maintenance of Government facilities;

(ii) Contracts primarily requiring delivery of material supplied by subcontractors;

(iii) Termination settlements;

(iv) Cost-plus-award-fee contracts;

(v) Contracts and contract modifications of $100,000 or less in value; and

(vi) Architect-engineer and construction contracts.

(2) Other exemptions may be made in the negotiation of contracts having unusual pricing situations where the structured approach is determined to be unsuitable. Such exemptions must be justified in writing and approved by the HCA.

515.905 Profit-analysis factors.

(a) The following factors must be considered whenever profit is to be negotiated. The weight ranges listed after each factor should be used when the structured approach is used.

Profit factors	Weight ranges in percent
Contractor Effort	
Material acquisition	1 to 4.
Conversion direct labor	4 to 12.
Conversion related indirect cost.	3 to 8.
	Other costs 1 to 3. General management 4 to 8.
Other Factors:	
Contract cost risk	0 to 7.
Capital investment	−2 to +2.
Cost-control and other past accomplishments.	−2 to +2.
Federal socio economic programs.	−5 to +.5.
Special situations and independent development.	−2 to +2.

(b) GSA Form 1786, Structured Approach Profit/Fee Objective, may be use to facilitate the profit objective computation. The contracting officer shall measure the Contractor Effort by the assignment of a profit percentage within the designated weight ranges to each element of cost recognized.

515.905–1 Common factors.

(a) The categories under Contractor Effort are broad and basic. Individual proposals may be in a different format.

(b) After computing a total dollar profit for Contractor Effort, the contracting officer shall calculate the specific profit dollars for the categories under other factors. This is done by multiplying the total Government cost objective, exclusive of any cost of money for facilities capital, by the specific weights assigned to the elements within the Other Factors category.

(c) In determining the value of each factor, the contracting officer should be governed by the definition, description, and purpose of the factors together with considerations for evaluating them as prescribed in FAR 15.905–1 and the following:

(1) *General management.* Management problems surface in various degrees and the management expertise exercised to solve them should be considered as an element of profit. For example, a new program for an item that involves advanced state of the art techniques may cause more problems and require more managerial time and abilities of a higher order than one that is a follow-on contract. If new contracts create more problems and require a higher profit weight, follow-ons should be adjusted downward, as many of the problems should have been solved. An evaluation should be made of the underlying managerial effort involved on a case-by-case basis.

(2) *Other-costs.* Include all other direct costs of contractor performance under this item (e.g., travel and relocation, direct support, and consultants). Analysis of these costs in assigning profit weights must include (i) their significance, (ii) their nature, and (iii) how much they contribute to contract performance.

(3) *Contract-cost-risk.* Where the proper contract type has been selected, the reward for risk by contract type would usually fall into the following ranges:

Cost-reimbursement type contracts	0–3%
Fixed-price type contracts	3–7%

(i) A cost-plus-a-fixed-fee contract normally would not justify a reward for risk in excess of 0 percent, unless the contract contains cost risk features such as ceilings on overheads. In such cases, up to 1 percent may be justified. Cost-plus-incentive-fee contracts fill the remaining portion of the 0 to 3 percent range with weightings directly related to such factors as confidence in target cost, share ratio of fee(s), etc. The weight range for fixed-price contracts is wide enough to accommodate the many types of fixed-price arrangements. Weighting should indicate the cost risk assumed, with only firm fixed-price contracts reaching the top end of the range.

(ii) The contractor's subcontracting program may significantly impact the contractor's risk under a contract. It could affect risk in terms of both cost and performance. This should be a part of the contracting officer's overall evaluation in selecting a weight for cost risk. The prime contractor may effectively transfer cost risk to a subcontractor and the risk evaluation may, as a result, be below the range that would otherwise apply for the contract type being proposed. The risk evaluation should not be lowered, however, merely because a substantial portion of the contract cost represents subcontracts without any substantial transfer of contractor's risk.

(iii) In evaluating risk in the definitization of letter contracts, unpriced change orders, and unpriced orders under basic ordering agreements, the effect on risk as a result of partial performance before definitization should be considered. Under some circumstances the total risk may have been effectively reduced. Under other circumstances, the contractor's risk may have remained substantially unchanged. To be equitable, the determination of a profit weight for all recognized costs, both those incurred and those yet to be expended, must be made with consideration to all attendant circumstances, not just to the portion of costs incurred or percentage of work completed before definitization.

(iv) Service contracts should have a weight range for cost risk of 0 to 4 percent. A firm fixed-price contract, which is not priced on a labor-hour method, may warrant additional consideration for contractor cost risk. In those circumstances, a weight of up to 4 percent is authorized. Conversely, a cost-plus-a-fixed-fee service contract normally warrants a zero cost risk factor.

(4) *Capital investment.* The evaluation of this factor for profit weights should include the following:

(i) *Facilities.* To evaluate how this factor contributes to the profit objective requires knowledge of the level of facilities use needed for contract performance, the source of financing of the facilities, and the overall cost effectiveness of the facilities offered. Contractors who furnish their own facilities that significantly contribute to lower total contract costs, should receive additional profit. Contractors who rely on the Government to provide or finance facilities should receive less profit. Situations between the above examples should be evaluated on their merits with either a positive or negative profit weight adjustment, as appropriate, being made. However, when a contractor who owns a large quantity of facilities is to perform a contract that does not benefit from these facilities, or where a contractor's use of its facilities has a minimum cost impact on the contract, profit need not be adjusted.

(ii) *Payments.* The frequency of payments by the Government to the contractor should be considered. The key to this weighting is the impact the contract will have on the contractor's cash flow. Generally, for payments more frequent than monthly, negative consideration should be given, with maximum reduction as the contractor's working capital approaches zero. Positive consideration should be given for payments less frequent than monthly with additional consideration given for payments less frequent than the contractor's or the industry's normal practice.

(5) *Cost control and other past accomplishments.* See FAR 15.905–1(e).

(6) *Federal socio economic programs.* See FAR 15.905–1(c).

(7) *Special situations and independent development.* See FAR 15.905–1(f).

515.905–70 Nonprofit organizations.

(a) The structured approach was designed for arriving at profit or fee objectives for other than nonprofit organizations. However, the structured approach as modified below, should also be used to establish fee objectives for nonprofit organizations. (See FAR 31.701.) The modifications should not be applied as deductions to historical fee levels, but rather, as a reduction in the fee objective calculated under the structured approach.

(b) For contracts with nonprofit organizations, an adjustment of up to 3 percent will be subtracted from the total profit-fee objective. In developing this adjustment, it will be necessary to consider the following factors:

(1) tax position benefits;

(2) granting of financing through letters of credit;

(3) facility requirements of the nonprofit organization; and

(4) other factors that may work to the advantage or disadvantage of the contractor as a nonprofit organization.

Subpart 515.10—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

515.1070 Release of information concerning unsuccessful offerors.

(a) GSA Order, GSA Freedom of Information Act (FOI) procedure (ADM 1035.11A), should be consulted to determine what information may be disclosed.

(b) When small purchase procedures are used, the names and dollar amounts of unsuccessful offerors may be released upon request without processing through the formal FOI procedures.

(c) When the contracting officer determines, in connection with negotiated procurements (other than small purchases), that the administrative time and workload of processing regular FOIA requests (see FAR 14.408–1(c)) is greater than the workload involved in preparing an abstract of offers to be displayed at an appropriate Business Service Center, the following rules apply:

(1) An abstract of offers may be prepared for display after award in the appropriate Business Service Center in addition to the notification required by FAR 15.1001(c).

(2) The abstract must include only the names, addresses, and "best and final" prices offered for unclassified acquisitions where the award is based on price and price-related factors. The successful offeror(s) must be identified.

(3) Abstracts must not contain information regarding failure to meet minimum standards of responsibility or other notations properly exempt from disclosure under FOI regulations.

(d) The information outlined in paragraph (c) of this section must not be disclosed when the contracting officer determines, on a case-by-case basis, that it is not in the best interest of the Government or when it may be competitively harmful to offerors such as when negotiations are in process for an item that was recently awarded under another solicitation.

Subpart 515.70—Use of Bid Samples

515.7000 Scope of subpart.

This subpart supplements the policies and procedures in FAR 14.202–4 and 514.202–4 regarding bid samples required in negotiated acquisitions.

515.7001 General.

Except as provided in 515.7002 and 515.7003, the basic policy and procedures in FAR 14.202–4 and 514.202–4 apply to negotiated acquisitions. When referring to FAR 14.202–4 and 514.202–4, the term "bid" means "offer" or

"proposal" and the terms "bidder" and "invitation" or "invitation for bids" are used synonymously with "offeror" and "solicitation" or "RFP" when contracting by negotiation.

515.7002 Policy.

(a) Since the terms "responsiveness" and "nonresponsive" do not apply to negotiated acquisitions, FAR 14.202–4(b)(2) and (4) do not apply when the use of bid samples is determined necessary under this subpart.

(b) Instead of FAR 14.202–4(b)(2) and (4), apply the following:

(1) Bid samples will be used in the technical evaluation of proposals to determine the acceptability of the samples to meet the Government's specification and to ensure compliance with the subjective and any objective characteristics listed in the solicitation.

(2) A proposal may be excluded from further consideration for award if after discussion with the offeror of any deficiencies found in the samples and after the offeror has been given an opportunity to correct those deficiencies, the sample still fails to conform to each of the characteristics listed in the solicitation. (See FAR 15.609.)

515.7003 Procedural requirements.

(a) *Unsolicited samples.* The reference to FAR 14.404–2(d) in FAR 14.202–4(g) is not applicable and the following is to be applied when contracting by negotiation:

Qualifications in the proposal that are at variance with the Government's requirements are deficiencies and must be resolved as provided for in FAR 15.610.

(b) *Solicitation requirements.* (1) When the clause at FAR 52.214–20 is used in a negotiated acquisition, the second sentence in paragraph (c) of the clause does not apply. A sentence substantially as follows must be substituted in the clause when contracting by negotiation.

Failure of the bid samples to conform to all of the required characteristics listed in the solicitation shall constitute a deficiency in the proposal and shall be resolved as provided for in FAR 15.610.

(2) In addition to listing subjective characteristics that cannot be equately described in the specification, objective characteristics may be sted in the solicitation and evaluated when it has been determined, on the basis of past experience or other valid considerations, that examination of such characteristics is essential to the acquisition of an acceptable product.

(c) Samples received after the time set for receipt of offers may be considered only if they meet the requirements of FAR 52.215–10.

PART 516—TYPES OF CONTRACTS

Subpart 516.2—Fixed-Price Contracts

Sec.
516.203 Fixed-price contracts with economic price adjustment.
516.203–4 Contract clauses.
516.203–70 EPA in FSS multiple award schedules.

Subpart 516.3—Cost-Reimbursement Contracts

516.301 General.
516.301–3 Limitations.
516.306 Cost-plus-fixed-fee contracts.

Subpart 516.4—Incentive Contracts

516.403 Fixed-price incentive contracts.
516.405 Contract clauses.

Subpart 516.6—Time-and-Materials, Labor-Hour, and Letter Contracts

516.603 Letter contracts.
516.603–3 Limitations.
516.603–70 Architect-Engineer services.

Authority: 40 U.S.C. 486(c).

Subpart 516.2—Fixed-Price Contracts

516.203 Fixed-price contracts with economic price adjustment.

516.203–4 Contract clauses.

(a) When the contracting officer decides to use a clause providing for adjustments based on cost indexes of labor or material under FAR 16.203–4, a clause must be prepared with the assistance of counsel and approved by the contracting director. The contract clause must describe:

(1) The type of labor and/or material subject to adjustment;

(2) The labor rates, including any fringe benefits and/or unit prices of materials that may be increased or decreased;

(3) The index(es) that will be used to measure changes in price levels and the base period or reference point from which changes will be measured; and

(4) The period during which the price(s) will be subject to adjustment.

(b) In Federal Supply Service (FSS) multiple award schedule (MAS) procurements, the contracting director will determine whether to use an Economic Price Adjustment (EPA) clause under FAR 16.203–2. The term of the resulting MAS contract will be considered in making this determination. An EPA clause will generally be included in multiyear contracts but not in 1-year contracts. When the contracting director decides to use an EPA clause in a 1-year contract and the prices are to be negotiated on the basis of discounts from established catalog prices of products sold in substantial quantities to the general public, the contracting officer shall include the basic clause at 552.216–71 in MAS solicitations and contracts. In multiyear contracts, the alternate clause will be used. These clauses are to be used instead of the FAR clauses at 52.216–2, –3, and –4.

516.203–70 EPA in FSS multiple award schedules.

(a) If the FSS multiple award schedule solicitation contains an EPA clause, the contracting officer should establish negotiation objectives reflecting the terms of the clause and seek appropriate discounts. If the clause is not included in the initial solicitation but is negotiated in, it must be added to the contracts at the time of award. Its inclusion is contingent on the approval of the contracting director, the need for an EPA clause, and the concessions granted by the offeror for its inclusion in the contract.

(b) The contract price ceiling may be raised during the contract period only under the following conditions:

(1) Analysis of the current market conditions, conducted in conjunction with the Office of Commodity Management (FC), reveals that the original contract price ceiling is inadequate.

(2) The causes which require an increase in the price ceiling are not unique to an individual contractor, but affect all suppliers for similar products.

(3) The HCA approves the determination to raise the ceiling.

Subpart 516.3—Cost-Reimbursement Contracts

516.301 General.

516.301–3 Limitations.

The required determination and findings (D&F) must be prepared in the format prescribed by 501.704–70(a)(1) and be signed by the appropriate official (see 501.702).

516.306 Cost-plus-fixed-fee contracts.

The required D&F must be signed by the appropriate official (see 501.707).

Subpart 516.4—Incentive Contracts

516.403 Fixed-price incentive contracts.

The required D&F must be prepared in the format prescribed by 501.704–70(a)(1) and be signed by the appropriate official (see 501.707).

516.405 Contract clauses.

Award fee clauses developed by contracting officers, under FAR 16.405(e), shall be prepared with the advice and assistance of counsel and be approved by the contracting director.

Subpart 516.6—Time-and-Material, Labor-Hour, and Letter Contracts

516.603 Letter contracts.

516.603–3 Limitations.

(a) When acquiring architect-engineer (A–E) services the proposed A–E must provide a price proposal for the non-design effort to be performed under the contract before the letter contract is awarded. The letter contract must:

(1) Not authorize the A–E to begin the design effort. The scope of the letter contract may include the design effort but the letter contract may only authorize the A–E to perform those services that are independent of the design effort (e.g., feasibility studies, existing facility surveys or site investigation, etc.) before the letter contract is definitized.

(2) Include a definitization schedule that outlines dates for submission of the design fee proposal, start of negotiations, and definitization. The schedule must provide for definitization of the contract within 90 days after the date of the letter contract instead of 180 days as outlined in FAR 16.603–2(c).

(3) Limit the Government's liability to the amount necessary for the non-design effort to be performed under the contract by inserting that amount in the clause at FAR 52.216–24, Limitation of Government Liability.

(b) If the contracting officer must issue a unilateral price decision for an A–E contract under FAR 16.603–2(c), the maximum contract amount must not exceed a reasonable price for the excludable items plus the 6 percent statutory fee limitation for the project.

PART 517—SPECIAL CONTRACTING METHODS

Subpart 517.1—Multiyear Contracting

Sec.
517.105 Solicitation provisions and clauses.

Subpart 517.2—Options

517.201 Definitions.
517.204 Contracts.
517.207 Exercise of options.

Authority: 40 U.S.C. 486(c).

Subpart 517.1—Multiyear Contracting

517.105 Solicitation provisions and contract clauses.

Inclusion of FAR clauses 52.217–1, Limitations of Price and Contractor Obligations, and 52.217–2, Cancellation of Items, is not required for multiyear contracts authorized by the Federal Property and Administrative Services Act for maintenance and repair of fixed equipment in Federally-owned buildings and utility services.

Subpart 517.2—Options

517.201 Definitions.

"Nonevaluated option" means an option that is not considered in the award evaluation.

"Unpriced option" means an option where the prices for the option quantities or performance periods are not specified in the contract at the time of award and are negotiated at the time the option is exercised.

517.204 Contracts.

The head of the contracting activity must approve exceeding the 5-year limitations specified in FAR 17.204(e) for individual contracts. The Associate Administrator for Acquisition Policy must approve requests to exceed the limitations for classes of contracts. The contract file for individual approvals and the requests for approval of classes of contracts must completely support the need to exceed the 5-year limitation.

517.207 Exercise of options.

(a) If the synopsis for the original contract described the option provisions in sufficient detail to comply with the requirements of FAR Part 5 and the option was evaluated as part of the original competition, a synopsis of the option before it is exercised is not required. If the synopsis of the original contract did not describe the option provisions or the option was unevaluated, the option must be synopsized in accordance with FAR 5.207 before the option can be exercised.

(b) Unpriced options and unevaluated options are considered new procurement and the justification requirements of FAR Subpart 6.3 must be complied with before the option is exercised.

PART 518—[RESERVED]

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 519—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

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519.001 Definitions.

Subpart 519.2—Policies

519.202 Specific policies.
519.202–2 Locating small business sources.
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Subpart 519.3—Determination of Status as a Small Business Concern

519.302 Protesting a small business representation.
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519.502 Setting aside acquisitions.
519.502–1 Requirements for setting aside acquisitions.
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519.503 Setting aside a class of acquisitions.
519.508 Solicitation provisions and contract clauses.

Subpart 519.6—Certificates of Competency and Determinations of Eligibility

519.602 Procedures.
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Subpart 519.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

519.701 Definitions.
519.702 Statutory requirements.
519.704 Subcontracting plan requirements.
519.705 Responsibilities of the contracting officer under the subcontracting assistance program.
519.705–2 Determining the need for a subcontracting plan.
519.705–4 Reviewing the subcontracting plan.
519.705–5 Awards involving subcontracting plans.
519.705–6 Postaward responsibilities of the contracting officer.
519.706 Responsibilities of the cognizant administrative contracting office.
519.706–70 Monitoring contractor compliance with subcontracting plans.
519.708 Solicitation provisions and contract clauses.
519.770 Reporting requirements under subcontracting assistance program.
519.770–1 Report forms.
519.770–3 Reporting on contractual actions under section 211 of Publ. L. 95–507.

Authority: 40 U.S.C. 486(c).

519.001 Definitions.

"Agency small business technical advisors" (SBTAs) as used in this part, means the directors of the Business Service Centers (or designees) in the regions and the individuals in FPRS, FSS, IRMS and PBS who have been designated to serve as SBTAs in the Central Office. In addition to the duties outlined at FAR 19.201(c), the agency small business technical advisors perform the functions of the small and disadvantaged business utilization specialist/representative described in FAR 19.506(a) and (b) and 19.705–4(d)(5).

Subpart 519.2—Policies

519.202 Specific policies.

519.202-2 Locating small business sources.

(a) Contracting officers should request assistance from SBTAs in locating small business sources.

(b) Business Service Centers (BSCs) will:

(1) Announce advance and current information about GSA business opportunities.

(2) Provide information, assistance, and counseling to enable small business concerns to take full advantage of business opportunities.

(3) Develop publications and public relations techniques designed to obtain maximum interest and participation of small business concerns. This activity will include, but not be limited to, the following:

(i) Arranging for and participating in meetings with business groups such as Chambers of Commerce, trade associations and similar organizations, State development corporations, Governors' and Mayors' advisory groups, local business and civic organizations, and small business councils.

(ii) Developing, preparing, and distributing informational material designed to stimulate the interest of small business concerns.

(iii) Developing interest and cooperation on the part of trade publications, the local press, and other media.

(c) BSC's will keep each other and the Office of Small and Disadvantaged Business Utilization (AU) informed on items of mutual interest regarding the small business programs.

519.202-5 Data collection and reporting requirements.

(a) Contracting officers shall submit a GSA Form 2677, Minority Contract Fact Sheet, to the SBTA when an 8(a) contract is awarded or modified.

(b) Each contracting office must submit the GSA Form 3077, FY 19____, Procurement Preference Program Goal Achievement, to the SBTA quarterly in accordance with GSA Order, GSA Form 3077, FY 19____ Procurement Preference Program Goal Achievement (ADM 2800.17).

Subpart 519.3—Determination of Status as a Small Business Concern

519.302 Protesting a small business representation.

If the Small Business Administration (SBA) determines that an offeror is not a small business and there is evidence that the offeror knowingly misrepresented itself as a small business, the contracting officer shall refer the matter to the Inspector General (J) for investigation.

519.304 Solicitation provisions.

(a) The contracting officer shall insert the provision at 552.219-1, Small Business Concern Representation, in all solicitations instead of the provision at FAR 52.219-1.

(b) The contracting officer shall insert a provision substantially the same as one of the provisions at 552.219-70, Standard Industrial Classification and Small Business Size Standard, in each solicitation, including requests for quotations issued under small purchase procedures (See FAR 19.102(b)(3) and 19.303(a)). The provision in paragraph (a) is for use when the same classification applies to all of the products or services being procured. The provision in paragraph (b) is for use when different classification codes apply to the various products or services being procured.

Subpart 519.5—Set-Asides for Small Business

519.500 Scope of subpart.

The requirements in this subpart for setting aside acquisitions and for reviewing non-set-aside determinations do not apply to construction, architectural and engineering, or trash/garbage collection services acquired under the Small Business Competitiveness Demonstration Program. (See FAR 19.10.)

519.502 Setting aside acquisitions.

519.502-1 Requirements for setting aside acquisitions.

Where a contracting officer determines that a small business set-aside of a procurement under FAR 19.5 is not feasible, the procedures in 519.502-70 must be followed. Contracting officers shall periodically review individual set-asides to identify commodities and services suitable for class set-asides.

519.502-3 Partial set-asides.

(a) *Initiating partial set-asides for stock items.* Partial set-asides for procurement of stock items may be made when the following Economic Order Quantity (EOQ) factors are present:

(1) For annual contracts, an EOQ factor not exceeding 3 months; and

(2) For 6-month contracts, an EOQ factor not exceeding 1 month.

(b) *Contract award.* When the set-aside portion of an item is awarded to the same concern as the corresponding non-set-aside portion, the award must be documented by issuing a separate contract or contract number for each group of items.

(c) *Partial coverage.* When only the non-set-aside portion of the procurement is awarded before the expiration of the current contract, contractual documents covering the transaction must be distributed to the ordering activities to provide at least partial coverage of the requirements.

(d) *Contract coding.* Information regarding partial or total set-asides must be included on GSA Form 1535, Recommendation for Award(s), as appropriate. Further, if a class set-aside is involved, the face of the GSA Form 1535 must be annotated as follows: "Class set-asides apply to items _____."

(e) *Ordering procedures.* The Inventory Manager shall ensure that the specified division of orders is made in accordance with the clause at 552.219-71 in those cases where two contractors are to supply the same item(s).

519.502-70 Review of non-set-aside determinations.

(a) If the contracting officer decides that a procurement that is expected to exceed $25,000 cannot be set aside for small business, the reasons for the decision must be recorded on the GSA Form 2689, Procurement Not Set Aside. The GSA Form 2689 must be submitted to the SBTA for review and coordination with the SBA.

(b) The SBTA will provide a copy of the GSA Form 2689 to the SBA representative as soon as possible so that the review can be made by GSA and SBA within the timeframe provided in (c) of this section.

(c) Review of the contracting officer's determination should normally be completed within 5 workdays. GSA and SBA reviewing officials should notify the contracting officer if additional time is needed and request an extension of time to complete the review.

(d) Before the GSA or SBA reviewing officials provide additional small business sources to the contracting officer when requesting reconsideration of the non-set-aside determination, the reviewing officials shall contact the sources to ensure the source is interested in submitting an offer and to obtain information regarding the capability of the source to fulfill the Government's requirements. The information obtained should be provided to the contracting officer for consideration.

(e) If the SBTA recommends that the contracting officer set the procurement aside and the contracting officer still believes the procurement should be unrestricted, the matter must be referred to the contracting director's first level supervisor for a decision.

(f) If the SBA representative recommends that the contracting officer set the procurement aside and the contracting officer rejects the recommendation, the contracting officer shall comply with FAR 19.505.

519.503 Setting aside a class of acquisitions.

(a) A class set-aside may consist of an item (or service), a group of related items under a Federal Supply Class (FSC), or a whole FSC when restricted to small business on more than a one-time basis, as distinct from a one-time basis. A single item or a group of items restricted to small business on more than a one time basis, even though constituting only a small portion of an FSC, is defined as a class set-aside.

(b) Class set-aside determinations must be documented in the following format:

Small Business Class Set-Aside Determination

In accordance with FAR 19.502-2, it is hereby determined that procurements by the (*name of contracting activity*) of the following items or services will be set aside for small business concerns on a class basis. This determination does not apply to any individual procurement for which small purchase procedures are to be used and applies only to the contracting activity named above.

(List items or services)

The above format must be appropriately modified with respect to any class of procurements proposed to be partially set-aside. It must be signed by the contracting officer having procurement responsibility for the class of items or services involved, approved by the appropriate contracting director or a designee, and placed in the contract file.

519.508 Solicitation provisions and contract clauses.

The contracting officer shall insert the clause at 552.219-71, Allocation of Orders—Partially Set-Aside Items, in solicitations and requirements type supply contracts that are partially set aside for small business.

Subpart 519.6—Certificates of Competency and Determinations of Eligibility

519.602 Procedures.

519.602-3 Resolving differences between the agency and the Small Business Administration.

(a) Within 5 working days or such longer period as may be agreed to after the contracting officer makes a request to the SBA Regional Office to appeal a notice of intention to issue a Certificate of Competency, the contracting office shall prepare and forward the following information to AU:

(1) Copies of all correspondence between GSA and SBA concerning the case, including initial notice to SBA that a small business had been found nonresponsible;

(2) Copies of all technical documents sent to SBA along with the notice (i.e., solicitation, preaward surveys, abstract of offers, if any, etc.);

(3) A fact sheet detailing all pertinent information to support an appeal action to SBA, including any new information and a justification of the contracting officer's decision to continue the appeal.

(b) If the SBA Central Office informs the contracting officer that it concurs with its Regional Office's intention to issue a COC, the documentation available clearly supports an appeal, and the contracting officer believes an appeal to be in the Government's interest, the contracting officer shall contact AU and request that office formally appeal the SBA decision on the agency's behalf. After considering all the facts and conferring with the applicable contracting activity, AU will decide whether or not to file a formal appeal. Before a decision is made not to appeal, AU shall notify the applicable Central Office Service. Once a decision is made regarding the appeal the contracting officer will be notified.

Subpart 519.7—Subcontracting with Small Business and Small Disadvantaged Business Concerns

519.701 Definitions.

"Commercial products plan" means an annual subcontracting plan effective during the offeror's fiscal year for all of the offeror's commercial products, and which has goals based on the offeror's production of both commercial and noncommercial products. This type of plan may apply to the production of the offeror's entire company, or it may be limited to a division or plant.

"Individual contract plan" means a subcontracting plan that applies to a specific contract and that has goals which are based upon the company's planned subcontracting and purchasing of supplies and services in support of the performance of a specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract. Individual contract plans may incorporate a master subcontracting plan.

"Master subcontracting plan" means a subcontracting plan which contains all of the required elements except goals, and which may be incorporated into an individual plan provided (a) the master plan has been approved by a Government contracting officer, (b) the offeror provides a copy of the approved master plan and evidence of its approval to the contracting officer and (c) goals and any deviations from the master plan are approved by the contracting officer. Master subcontracting plans are useful for offerors who anticipate receiving many Government contracts requiring individual subcontracting plans.

519.702 Statutory requirements.

(a) The Small Business Act treats contracts and modifications separately, not cumulatively. Accordingly, if a subcontracting plan is not required at the time of award because the value of the contract is below the threshold, a subcontracting plan will not be required if a subsequent modification increases the value of the contract to an amount which exceeds the threshold, unless the value of the modification itself exceeds $500,000 or $1 million for construction contracts.

(b) It is not necessary to obtain another subcontracting plan for a modification exceeding $500,000 ($1 million for construction contracts) if the contract already includes a subcontracting plan. Modifications may be incorporated into an existing plan and, upon approval, the original plan goals revised to include the new effort.

519.704 Subcontracting plan requirements.

(a) *Subcontracting goals.* (1) Positive subcontracting goals for small and small disadvantaged business concerns are required to establish a gauge for measuring results, and to provide an incentive for continuing efforts to increase the dollar value of contracts placed with small and small disadvantaged business concerns.

(2) Although there may be no known small or small disadvantaged business concerns that furnish the products or services required by a prospective contractor at the time a subcontracting plan is developed, a zero goal is not

acceptable because contractors are expected to make continuing efforts during the contract period to locate and identify newly emerging small and small disadvantaged business concerns as potential suppliers. In addition, there may be subcontracting opportunities in the area of indirect costs.

(3) Goals in individual plans for multiyear contracts or contracts with options to extend the period of performance may be established for a period less than the full term of the contract (including options) when it is impractical to establish goals for the full term if the plan includes a schedule for establishing goals for the balance of the term of the contract.

(b) *Types of plans.* For commercial products and public utility service contracts either a commercial products plan or an individual contract plan must be submitted. Individual contract plans must be submitted for all other contracts.

(c) *Duration of plans*— (1) *Individual plans.* The plan must cover the entire period of contract performance, including option periods (but see (a)(3), of this section, for goals).

(2) *Commercial products plans.* A commercial products plan is approved by the first Federal agency awarding a contract for commercial products during the contractor's fiscal year, and is applicable to every additional Federal contract for commercial products awarded to that contractor during the contractor's same fiscal year. If the approved plan is limited to a division or plant, it only applies to additional contracts for commercial products of that particular division or plant. The cutoff date for applying a previously approved commercial products plan to additional Federal contracts is the end of the company's fiscal year in which the plan was approved. If the contract extends beyond the contractor's fiscal year, the GSA contracting officer responsible for monitoring the existing plan, under 519.706–70(c), must request a new plan 30 days prior to the end of the contractor's fiscal year.

519.705 Responsibilities of the contracting officer under the subcontracting assistance program.

519.705–2 Determining the need for a subcontracting plan.

Before making a determination under FAR 19.705–2 that no subcontracting opportunities exist on a prospective contract, which meets the dollar threshold, the contracting officer must submit the determination to the SBTA for review and comments. The SBTA shall contact the Director, Office of Small and Disadvantaged Business Utilization (AU), and consider any comments or recommendations offered.

519.705–4 Reviewing the subcontracting plan.

(a) The GSA Form 3584, Checklist for Review of Subcontracting Plan, must be used by the procuring contracting officer (PCO) and small business technical advisor (SBTA) when reviewing subcontracting plans. Its use by SBA procurement center representatives is optional.

(b) In the goals section of the plan, small disadvantaged business goals are to be included in small business goals and, also, stated separately. If it is not clear from the plan that the offeror has done this, the contracting officer shall request clarification and have the offeror correct the goals, if necessary.

(c) The contracting officer shall question low subcontracting goals submitted by an offeror required to submit a subcontracting plan and shall require the offeror to document in its plan the steps it has taken to identify subcontracting opportunities for small and small disadvantaged business concerns.

(d)(1) Before determining the responsibility of an offeror on a contract requiring a subcontracting plan, the contracting officer shall review the offeror's compliance with previous subcontracting plans, if any, approved by the GSA contracting activity, including the contractor's performance in submitting subcontracting reports in a timely manner. The findings must be documented on the GSA Form 3584, Checklist for Review of Subcontracting Plan, in the "Remarks" block or on an attachment to the GSA Form 3584 before forwarding it to the SBTA and the SBA/PCR for review.

(2) In addition to (d)(1) of this section, PBS contracting officers must check the quarterly list of PBS contracts with plans provided by AU and contact all other GSA contracting activities holding contracts with the same contractor concerning compliance with the previous year's plan.

(3) When an offeror has consistently failed to submit SF 294 and SF 295 reports in a timely manner or has failed to make a good faith effort to meet its subcontracting goals on previous contracts with plans, the contracting officer shall include on the GSA Form 3584 in the "Remarks" block or in an attachment to the GSA Form 3584 the basis for finding the offeror responsible including the steps the offeror proposes to take that were not included in previous subcontracting plans to ensure compliance with the subcontracting program requirements on the proposed contract.

519.705–5 Awards involving subcontracting plans.

(a) In the event there is an unresolved disagreement with the SBTA and/or SBA/PCR on a proposed subcontracting plan, the contracting officer, prior to making an award, must contact the Director (AU) and consider any comments or recommendations offered.

(b) When a contractor has a commercial products plan previously approved by another GSA contracting activity or another Federal agency for the company's fiscal year, the GSA contracting officer shall request a copy of the plan and the agency approval document and include them in the contract file. The plan must also be included in and made a part of the resultant contract.

(c) When the contractor submits an individual contract plan, the contracting officer shall transmit copies of Standard Form 294, Subcontracting Report for Individual Contracts, and Standard Form 295, Summary Subcontract Report, to the contractor at the time of contract award. A letter substantially as follows must be used for this purpose.

Name
Address
City, State, Zip Code
Re: Subcontracting Plan Reports
Contract No._____
Dear _____:

Your individual contract plan, submitted under the Small Business and Small Disadvantaged Business Subcontracting Plan clause of your contract, has been approved. The clause also requires you to submit subcontracting reports on Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and Standard Form (SF) 295, Summary Subcontract Report.

The SF 294 report is used to report subcontracting activity under this contract. The report is due semiannually (within 25 days after March 31st and September 30th) and at contract completion.

The SF 295 report is used to report the aggregate of subcontracting activity under all your GSA contracts. The report is due quarterly (within 25 days after December 31st, March 31st, June 30th, and September 30th). The report is cumulative from quarter to quarter, and the final report for the year should cover the period from October 1-September 30, which is the Government fiscal year. A new reporting cycle begins October 1st of each year.

Please send the SF 294 report to: (*address of contracting office administering the contract*), and send a copy to: (*address of SBTA*).

Please send the SF 295 to the GSA Office of Small and Disadvantaged Business Utilization (AU), 18th and F Streets, NW., Washington, DC 20405.

The SF 294 and SF 295 report forms are enclosed.

Sincerely,
Contracting Officer
Enclosures (SF 294 and SF 295)

(d) When the contractor submits a commercial products plan, the contracting officer shall transmit copies of the Standard Form 295, Summary Subcontract Report, to the contractor at the time of contract award. (See 519.770–1(b)(2) for exception.) A letter substantially as follows must be used for this purpose:

Name
Address
City, State, Zip Code
Re: Subcontracting Plan Reports
Contract No._____
Dear _____:

Your commercial products plan, submitted under the Small Business and Small Disadvantaged Business Subcontracting Plan clause of your contract, has been approved by (*name, address, and telephone number of approving official*). The clause also requires you to submit subcontracting reports on Standard Form (SF) 295, Summary Subcontract Report.

The SF 295 is an annual report and is due on or before October 25th of each year. The reporting period is October 1-September 30, i.e., the Government fiscal year. The report should summarize subcontracting activity under plans for commercial products in effect during the reporting period.

Please send this report to: (*address of contracting office administering the contract*); and send a copy to the GSA Office of Small and Disadvantaged Business Utilization (AU), 18th and F Streets NW., Washington, DC 20405.

SF 295 report forms are enclosed.

Sincerely,
Contracting Officer
Enclosure (SF 295)

519.705–6 Postaward responsibilities of the contracting officer.

(a) In addition to the requirements of FAR 19.705–6, contracting officers shall notify the SBTA of each contract award or contract modification exceeding $500,000 ($1 million for construction) that contains a subcontracting plan within 5 work days of award. The notice of award must contain the following information:

(1) Contractor's name, address, phone number.

(2) Subcontracting plan administrator's name, address, phone number.

(3) Contract number.

(4) Place of performance.

(5) Dollar amount of contract award.

(6) Period of contract performance.

(7) Description of contract items.

(8) Contracting officer's name, address, phone number.

(9) Administrative contracting office address, phone number.

(10) Type of plan (individual or commercial products).

(b) The subcontracting plan checklist (GSA Form 3584) must be submitted as the notice of award, except in the case of a contract incorporating a previously approved commercial products plan. In this case, notice of award as described in paragraph (a) of this section, will be necessary as there will be no subcontracting plan checklist. The SBTAs shall forward a copy of notices and checklists to AU on a weekly basis and retain a file copy.

(c) AU will provide a report to Congress on subcontracting goals established for each contract.

519.706 Responsibilities of the cognizant administrative contracting officer.

519.706–70 Monitoring contractor compliance with subcontracting plans.

(a) Contract administration may be performed by the procuring contracting officer who awarded the contract or it may be delegated to an administrative contracting officer (ACO). When contract administration is delegated, the subcontracting plan must be included in the contract file transmitted to the contract administration office.

(b) The contracting officer administering contracts with subcontracting plans shall monitor receipt of SF 294 reports for individual contract plans and SF 295 reports for company-wide plans and review the reports for progress in meeting subcontracting plan goals by comparing the reports with the plan. If percentage goals are not met, the contractor must be required to explain the shortfall in the "Remarks" block on the subcontracting reports and may be required to submit evidence of their outreach efforts to locate and provide subcontracting opportunities to small business and small disadvantaged business concerns. The requirement for compliance with plans may be fulfilled by evidence of satisfactory outreach efforts, as described in the plan, as well as by meeting plan goals. The contracting officer responsible for monitoring receipt of the reports shall also obtain delinquent SF 295 reports from contractors for both individual and company-wide plans upon request from AU.

(c) After completion of contracts with individual contract plans, SBTA's shall forward a copy of the final SF 294 reports to AU within 20 days after the end of each quarter. If the contractors are delinquent in submitting the reports, the SBTA's shall request the contracting officers administering the contracts with the plans to obtain the reports and send them a copy.

(d) In the case of commercial products plans approved by GSA, the first contracting officer who enters into a contract with a company during the company's fiscal year approves the plan and monitors receipt of reports and compliance with the plan. This responsibility is generally assigned to the ACO if contract administration is delegated. Subsequent GSA contracts awarded during the company's same fiscal year and incorporating the previously approved plan will not require submission of subcontracting reports.

(e) In the case of commercial products plans approved by another agency, the first GSA contracting officer entering into a contract with the company during the company's same fiscal year in which the plan was approved requires the contractor to submit the SF 295 report and monitors receipt of the report. No other monitoring of this plan is required by GSA.

(f) Contractor compliance with plans must be documented in the contract file in accordance with FAR 19.706 and must be considered by the contracting officer when determining contractor responsibility for future awards. In case of noncompliance, the contracting officer shall notify AU through the SBTA.

(g)(1) Contractors who fail to submit SF 294 and SF 295 reports within 10 days of the due date must be reminded in writing that the report is past due.

(2) Contractors who do not respond to the first notice must be issued a second written notice by certified mail which must contain the following information:

(i) A statement that the named report has not been received.

(ii) A statement that failure to submit the report is a material breach of the contract (see FAR 52.219–9, Small Business and Small Disadvantaged Business Subcontracting Plan).

(iii) A statement that if the report is not received within 10 days from the date of the notice, the contracting officer will consider withholding payments as deemed appropriate under the circumstances until the report is received and may terminate the contract for default.

(iv) The contractor is also to be reminded that failure to submit the report may affect its ability to receive future awards from GSA (see FAR 9.104–3(c)) and that willful failure to perform or a history of failure to perform may result in debarment from future contracting with the Government for a period of time (see FAR 9.406–2(b)).

(v) The notice must also contain the address of the contracting officer or

administrative contracting officer to whom the report must be sent and instructions that a copy of the report must be sent to AU, if it is a SF 295 report, and to the appropriate SBTA, if it is a SF 294 report.

(3) Copies of delinquency notices concerning SF 295 or SF 294 reports must be sent to AU or the appropriate SBTA, respectively.

(4) If the contracting officer administering the contract has reason to believe that the contractor is otherwise not complying in good faith with the subcontracting plan, in addition to the requirements at FAR 19.708(b), the contracting officer must contact the Director (AU) and consider any comments or recommendations offered.

519.706 Solicitation provisions and contract clauses.

For contracting activities using GSA Form 1602, Notice Concerning Solicitation, or a similar form as a cover page of the solicitation, the contracting officer shall insert the provision at 552.219-72 on that cover page when the contract amount is expected to be over $500,000 ($1 million for construction) and the acquisition (a) is not set aside for small business, (b) is not for personal services, or (c) will not result in a contract that will be performed outside of any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

519.770 Reporting requirements under subcontracting assistance program.

519.770-1 Report terms.

(a) *Standard Form 294, Subcontracting Report for Individual Contracts.* This report is required for reporting subcontracting activity under contracts with individual contract plans. A separate report must be made on this form for each contract with an individual contract plan. This report is not required for commercial products plans.

(1) Contractors shall submit the SF 294 report to the contracting office administering the contract and a copy to the SBTA.

(2) Reports are due semiannually (within 25 days after March 31st and September 30th) and at contract completion.

(b) *Standard Form 295, Summary Subcontract Report.* This form is required for reporting subcontracting activity under both individual contract plans and commercial products plans.

(1) *Individual contract plans.* (i) Contractors shall submit the SF 295 reports to AU.

(ii) The reports are quarterly, and are due 25 days after the end of each Government quarter (December 31st, March 31st, June 30th, and September 30th).

(iii) The reports are cumulative from quarter to quarter and aggregate subcontracting activity under all GSA contracts held by the contractor, except those covered by commercial products plans.

(2) *Commercial products plans.* (i) Contractors shall submit the SF 295 reports to the contracting office administering the contract and a copy to AU.

Note: This instruction applies only for the first GSA contract covered by a commercial products plan awarded during the contractor's fiscal year. Contractors are not required to submit SF 295 reports for subsequent contracts awarded during their current fiscal year and covered by the same commercial products plan.

(ii) Reports are due annually, on or before October 25th of each year. The reports should cover the contractor's subcontracting activity under company-wide plans for commercial products in effect during the reporting period, which is October 1st to September 30th (Government fiscal year).

519.770-3 Reporting on contractual actions under section 211 of Pub. L. 95-507.

(a) *Contracting office reporting requirements.* A quarterly report of the number and dollar value of contracts awarded and modification requiring a plan (see 519.702) in excess of $500,000 ($1 million for construction) requiring subcontracting plans or a written determination that no subcontracting opportunities exist, must be prepared by contracting offices and submitted to the SBTA by the 10th calendar day after the end of the quarter. Report Control Symbol ADM 64 is assigned to this report. Negative reports are required. The SBTA will forward the reports to AU by the 20th calendar day following the end of the quarter.

(b) *Report format.* The following format is prescribed for the quarterly report.

REPORTING
OFFICE_____
Quarter beginning_____
ending_____

Report on Contracting Actions Under Section 211 of Pub. L. 95-507

(contracts estimated or actual value over $500,000)

($1 million for construction)

Note: Do not include Contracts with Small Business Concerns.

1. Total number of contracts awarded over $500,000 ($1 million for construction).	No._____ $ value_____
2. Contracts awarded over $500,000 ($1 million for construction) which contain subcontracting plans.	No._____ $ value_____
3. Contracts awarded over $500,000 ($1 million for construction) without subcontracting plans. (Attach written justification for each contract awarded without a plan, see FAR 19.705-2).	No._____ $ value_____

(End of format)

PART 520—LABOR SURPLUS AREA CONCERNS—[RESERVED]

PART 521—[RESERVED]

PART 522—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

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Subpart 522.14—Employment of the Handicapped

522.1403 Waivers.
522.1406 Complaint procedures.

Authority: 40 U.S.C. 486(c).

Subpart 522.1—Basic Labor Policies

522.101 Labor relations.

522.101-1 General.

The contracting officer shall include the clause at FAR 52.222-1, Notice to the Government of Labor Disputes, in solicitations and contracts for items on the DOD Master Urgency List.

522.103 Overtime.

522.103-4 Approvals.

The head of the program office is the agency official responsible for approving overtime under FAR 22.103-4(a).

Subpart 522.3—Contract Work Hours and Safety Standards Act

522.302 Liquidated damages and overtime pay.

(a) The Administrator has designated the Heads of Central Office Services to make determinations under FAR 22.302(c).

(b) Upon a final administrative determination regarding the assessment of liquidated damages, the contracting officer notifies the appropriate Finance Office of the decision and provides necessary instructions regarding the disposition of funds withheld or the collection of funds. If funds were withheld from contract payments to satisfy the claim for liquidated damages pending a final administrative determination, the appropriate Finance Office shall be instructed to immediately release any funds in excess of the amount specified in the final administrative determination to the contractor. If funds were not withheld or if the amount of liquidated damages assessed exceeds that amount withheld for liquidated damages, the contracting officer initiates collection action by withholding funds from payments due on the instant contract or by issuing a demand for payment. When the contractor has other Government contracts the demand letter should indicate the Government's intent to offset if payment is not made. The contracting officer will provide the appropriate Finance Office with a copy of the demand for payment and request that the Finance Office initiate collection action under 41 CFR Part 105-55, Collection of Claims Owed the United States, if payment is not made in accordance with the demand letter.

Subpart 522.4—Labor Standards for Contracts Involving Construction

522.404 Davis-Bacon Act wage determinations.

522.404-6 Modifications of wage determinations.

Contracting directors may request extensions of the 90-day period for application of a general wage determination. See FAR 22.404-6(b)(6).

522.406 Administration and enforcement.

522.406-1 Policy.

The GSA Form 618-A, Transmittal of Contract Award, may be used to inform contractors of their obligations under the labor standards clauses of the contract.

522.406-6 Payrolls and statements.

Prime contractors and subcontractors who personally perform work are required to submit, instead of weekly payrolls and statements of compliance with respect to payment of wages, a statement clearly showing their contractual relationship, the scope and dates of work performed, that they received no wages, and that no mechanics or laborers were employed in the prosecution of the work. GSA Form 618-D, Statement to be Submitted When Work is Performed Personally, should be used to furnish this information.

522.406-7 Compliance checking.

Compliance checks must be made as frequently as necessary and before final payment is made. Compliance checking is essential to the success of the labor standards enforcement program.

522.406-8 Investigations.

(a) When compliance checks indicate such action is warranted, the contracting officer shall request the Regional Inspector General for Investigations to conduct an investigation of a contractor's compliance with the labor standards requirements.

(b) The contracting director shall review and process the contracting officer's report under FAR 22.406-8(d).

522.406-9 Withholding from or suspension of contract payments.

Upon final administrative determination regarding the assessment of liquidated damages, the contracting officer shall follow the procedures in 522.302(b).

522.406-11 Contract terminations.

Contracting officers shall submit reports required under FAR 22.406-11.

522.406-13 Semiannual enforcement reports.

Contracting activities shall submit semiannual enforcement reports to the Office of Procurement (PP), Public Buildings Service, for consolidation and submission to the Department of Labor. The reports should be submitted within 15 calendar days after the end of the reporting period.

522.407 Contract clauses.

In construction contracts with state or political subdivisions, the contracting officer shall insert the clause at 552.222-82, Preface for Labor Standards—State or Political Subdivision Contracts, as a preface to the clauses prescribed in FAR 22.407(a).

522.470 Forms.

GSA Form 3505, Labor Standards (Construction Contract), is for use in contracts subject to the Davis-Bacon and related Acts. The clauses on this form must be included in solicitations/contracts in full text, and may not be incorporated by reference.

Subpart 522.6—Walsh-Healey Public Contracts Act

522.608 Procedures.

522.608-2 Determination of eligibility.

The contracting officer shall forward ineligibility determinations under FAR 22.608-2(f)(1)(ii) through the contracting director.

522.608-3 Protests against eligibility.

The contracting officer shall forward determinations under FAR 22.608-3(b) through the contracting director.

522.608-4 Award pending final determination.

The certification required by FAR 22.608-4(b)(1) must be approved by the HCA.

522.606-6 Postaward.

The contracting officer shall notify and furnish information to the Department of Labor under FAR 22.606-6(c) after coordinating with legal counsel and the contracting director.

Subpart 522.8—Equal Employment Opportunity

522.803 Responsibilities.

The contracting officer shall submit questions under FAR 22.803(d) to legal counsel.

522.804 Affirmative action programs.

522.804-1 Nonsegregation.

In addition to the requirements of FAR 22.804, each contractor and subcontractor who serves as a depository of Government funds in any amount, or is a financial institution which is an issuing and paying agent for U.S. savings bonds and savings notes in any amount, must develop a written affirmative action compliance program for each of its establishments within 120 days from the start of its first such Government contract or subcontract.

522.804-70 Reports and other required information.

For contract administration purposes, nonexempt contractors shall be instructed to submit a copy of Standard Form 100, Equal Employment Opportunity Employer Information Report EEO-1, submitted under the Equal Opportunity clause to the contracting officer (see FAR 52.222-26(b)(7)).

522.804-71 Furnishing information to contractors.

Contracting officers shall provide contractors with (a) a SF-100, and (b) a copy of the notice that is to be provided the labor union or workers' representative and posted in conspicuous places (see FAR 22.805(b) and 52.222.26(b) (3) and (5)).

522.805 Procedures.

(a) The contract amount for purposes of applying the threshold at FAR 22.805(a) includes the value of the basic contract plus priced options. A contract modification exercising an option that has been priced and evaluated does not constitute a contract award under FAR 22.805(a)(1)(ii) and does not require a preaward clearance.

(b) Requests for reviews under FAR 22.805(a)(5) are made directly by the contracting officer.

522.807 Exemptions.

Requests for exemption under FAR 22.807(c) must be submitted through the HCA to the appropriate regional office of the OFCCP.

Subpart 522.10—Service Contract Act

522.1001 Definitions.

For purpose of this subpart, the agency labor advisor is the contracting office's assigned legal counsel.

522.1003 Applicability.

522.1003-4 Administrative limitations, variations, tolerances, and exemptions.

Requests for limitations, variations, tolerances, and exemptions from the Service Contract Act must be submitted to the Wage and Hour Administrator by the contracting director.

522.1003-7 Questions concerning applicability of the Act.

Requests for determination of Service Contract Act applicability must be submitted to the Administrator, Wage and Hour Division, by the contracting director.

522.1005 Clause for contracts of $2,500 or less.

The total dollar amount of orders reasonably expected to be placed against blanket purchase or basic ordering agreements in a 1-year period should be used for comparison with the dollar threshold.

522.1006 Clauses for contracts over $2,500.

(a) The clauses prescribed in FAR 22.1006 (a) and (b) may be repeated verbatim in solicitations and contracts or the GSA Form 2166, Service Contract Act of 1965 (As amended) and Statement of Equivalent Rates for Federal Hires, may be used.

(b) The contracting officer shall, in lieu of the clause at FAR 52.222-43, insert a clause substantially the same as one of the clauses at 552.222-43, Fair Labor Standards Act and Service Contract Act-Price Adjustment (Multiyear and Option Contracts), or another clause authorized by FAR 16.203-4(d) which accomplishes the same purpose, in solicitations and fixed price contracts for building services when the contract contains the clause at FAR 52.222-41, Service Contract Act of 1965, and is a multiyear contract or a contract with options to renew that is expected to exceed the small purchase limitation. When the contract will be negotiated based on certified cost and pricing data, the clause at FAR 52.222-43 should be used. The clause may be used for small purchases.

(c) If an economic price adjustment clause is developed under FAR 16.203-4 and included in a solicitation and contract, the clauses prescribed in this section normally will not be used. If they are used, the contracting officer must ensure the clauses do not conflict with or duplicate payment under the clauses in 552.222-43.

522.1011 Response to notice by Department of Labor.

522.1011-2 Requests for status or expediting of response.

Requests to expedite wage determinations or to check the status of a request may be made by the contracting officer directly to the Wage and Hour Administrator.

522.1021 Substantial variance hearings.

Requests for hearings will be made by the contracting officer through the HCA. All requests must be coordinated with the appropriate legal counsel.

Subpart 522.13—Special Disabled and Vietnam Era Veterans

522.1303 Waivers.

Requests for waivers under FAR 22.1303(c) must be submitted to the Administrator through the HCA.

522.1306 Complaint procedures.

The contracting officer may forward complaints about the administration of the Act to the Veteran's Employment Service in accordance with FAR 22.1306.

Subpart 522.14—Employment of the Handicapped

522.1403 Waivers.

Requests for the waivers under FAR 22.1403(c) must be submitted to the Administrator through the HCA.

522.1406 Complaint procedures.

The contracting officer may forward complaints about the administration of the Act to the OFCCP in accordance with FAR 22.1406.

PART 523—ENVIRONMENT, CONSERVATION, AND OCCUPATIONAL SAFETY

Subpart 523.2—Hazardous Materials Identification and Material Safety Data

Sec.
523.303 Contract clause.
523.370 Solicitation provision.

Authority: 40 U.S.C. 486(c).

Subpart 523.3—Hazardous Materials Identification and Material Safety Data

523.303 Contract clause.

The contracting officer shall insert the clause at 552.223-70, Hazardous Substances, in solicitations and contracts for packaged items subject to the Federal Hazardous Substances Act and the Hazardous Materials Transportation Act.

523.370 Solicitation provision.

The contracting officer shall insert the provision at 552.223-71, Hazardous Material Information, in solicitations including small purchases, which involve the shipment of hazardous materials on an f.o.b. origin basis.

PART 524—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 524.1—Protection of Individual Privacy

Sec.
524.103 Procedures.

Subpart 524.2—Freedom of Information Act

524.202 Policy.

Authority: 40 U.S.C. 486(c).

Subpart 524.1—Protection of Individual Privacy

524.103 Procedures.

See 41 CFR Part 105-64 and GSA Order, Privacy Act Program (OAD P 1878.8) when contracting for the design, development, or operation of a system of records on individuals.

Subpart 524.2—Freedom of Information Act

524.202 Policy.

See 41 CFR Part 105-60 and GSA Order, Freedom of Information Act Procedures (ADM 1035.11A) for requirements on making records available under the Freedom of Information Act.

PART 525—FOREIGN ACQUISITION

Subpart 525.1—Buy American Act—Supplies

Sec.
525.105 Evaluating offers.
525.105-70 Evaluating offers—hand or measuring tools or stainless steel flatware for other than the Department of Defense (DOD).
525.105-71 Procurement of hand or measuring tools or stainless steel flatware for DOD.
525.108 Excepted articles, materials, and supplies.
525.108-70 Determination of nonavailability.

Subpart 525.2—Buy American Act—Construction Materials

525.202 Policy.
525.203 Evaluation of offers.
525.204 Violations.
525.205 Solicitation provision and contract clause.

Subpart 525.3—Balance of Payments Program

525.302 Policy.
525.302-70 Procurements for agencies under the Foreign Assistance Act.
525.304 Excess and near-excess foreign currencies.
525.371 Restricted solicitation.

Subpart 525.4—Purchases Under the Trade Agreements Act of 1979

525.402 Policy.
525.402-70 Delegation of limited waiver authority.
525.407 Solicitation provision and contract clause.

Authority: 40 U.S.C. 486(c)

Subpart 525.1—Buy American Act—Supplies

525.105 Evaluating offers.

(a) Proposed awards, under FAR 25.105(c), must be submitted to the HCA or a designee for approval. A statement of facts containing the following information should be submitted for approval.

(1) Description of the item(s), including unit and quantity.

(2) Estimated cost.

(3) Statement as to whether duty is included in the estimated cost and, if not, the reasons for exclusion.

(4) Transportation costs for delivery to destination if the item is to be procured f.o.b. origin.

(5) Country of origin.

(6) Name and address of proposed contractor(s).

(7) Brief statement as to necessity for procurement.

(8) Reasons supporting request for approval explaining.

(i) Why the cost would not be unreasonable or inconsistent with the public interest when award to a domestic concern for more than $250,000 would be made to a small business or labor surplus area concern after the 12 percent factor is applied, but not to a firm after the 6 percent is applied.

(ii) Any proposed rejection of an acceptable low foreign offer to protect essential national security interests or rejection of any offer for other reasons of national interest when the Trade Agreements Act of 1979 is not applicable.

(b) A determination to reject a foreign offer using differentials greater than those provided at FAR 25.105 may be made.

(1) If necessary to protect national security interests; and

(2) After the HCA or a designee obtains advice from the Director, Federal Emergency Management Agency. The Executive Office of the President, Office of Management and Budget, must be apprised of the facts of each case where such a determination is made.

525.105-70 Evaluating offers—hand or measuring tools or stainless steel flatware for other than the Department of Defense (DOD).

(a) *Definitions.* "Hand or measuring tool," as used in this section, means Groups 51 and 52 in Cataloging Handbook H2-1, Federal Supply Classification Part I, Groups and Classes, published by the Defense Logistics Agency, Defense Logistics Services Center, Battle Creek, Michigan.

(b) *GSA Appropriation Act restrictions.* (1) The current GSA Appropriation Act restricts the acquisition of any hand or measuring tool and stainless steel flatware to domestic end products, except to the extent the Administrator of General Services or a designee determines that a satisfactory quality and sufficient quantity are unavailable from sources in the United States or its possessions or except as prescribed by section 6-104.4(b) of the Armed Services Procurement Regulations (ASPR) in effect on June 15, 1970.

(2) For hand or measuring tools, the GSA Appropriation Act further provides that a factor of 75 percent is to be used in evaluating foreign end products in lieu of the 50 percent in ASPR 6-104.4(b).

(c) *Evaluation procedures.* Offers for hand or measuring tools or stainless steel flatware must be evaluated using the following procedures adapted from ASPR 6-104.4(b).

(1) An offer of an end product manufactured in Canada will be evaluated on the same basis as a domestic end product after applicable duty, determined under 19 U.S.C. 1202, is included, irrespective of whether or not a duty-free entry certificate will be issued.

(2) Any other offer of a foreign end product must be evaluated at the greatest evaluated price determined by increasing either (i) the net value of the offer (exclusive of duty) by 50 percent (75 percent for hand or measuring tools) or (ii) the gross value of the offer (inclusive of duty) by 6 percent.

(3) A 12 percent factor must be used in (c)(2) (ii) above, when (i) a small business or any labor surplus area concern submits the low acceptable domestic offer or (ii) an otherwise low acceptable domestic offer would result in a contract not to exceed $100,000 based on its application, but not on the application of the factors in (c)(2) (i) and (ii).

(4) If a contract exceeding $100,000 to a small business or labor surplus area concern would result under the circumstances in (c)(3)(ii), the matter must be submitted to the HCA for a

decision whether such award would involve unreasonable cost or be inconsistent with the public interest. A statement of facts as outlined in 525.105 may be used.

(5) The above evaluation must be applied on an item-by-item basis or to any group of items on which award may be made as specifically provided by the solicitation. Award on the domestic offer will be made when any tie results from the foregoing procedures.

(d) *Solicitation provision.* The contracting officer shall insert the provision at 552.225-70, Buy American Act—Hand or Measuring Tools or Stainless Steel Flatware, in solicitations for the acquisition of hand or measuring tools or stainless steel flatware for other than Department of Defense requirements.

525.105-71 Procurement of hand or measuring tools or stainless steel flatware for DOD.

(a) *Definitions.* "Domestic end product," as used in this section, means a hand or measuring tool, other than an electric or air-motor driven hand tool, or stainless steel flatware, that is wholly produced or manufactured, including all components, in the United States or its possessions.

"Electric or air-motor driven hand tool," as used in this section, means a domestic end product if the cost of components produced or manufactured in the United States exceeds 75 percent of the cost of all components in the end product.

"Stainless steel flatware," as used in this section, means special order and stock items of stainless steel flatware purchased for DOD, including, but not limited to, the following National Stock Numbers (NSN):

7340-00-080-6057
7340-00-205-3340
7340-00-205-3341
7340-00-241-8169
7340-00-241-8170
7340-00-241-8171
7340-00-559-8357
7340-00-688-1055
7340-00-721-6316
7340-00-721-6971

(b) *DOD Appropriation Act restrictions.* (1) Except for purchases of $25,000 or less, DOD is prohibited from acquiring hand or measuring tools or stainless steel flatware (see 525.105-71(a)), that are not domestic end products, except in the case of stainless steel flatware, when the Secretary of the department concerned determines that a satisfactory quality and quantity produced or manufactured in the United States or its possessions are not available when needed at domestic market prices.

(2) In GSA procurements of such tools or flatware, a determination must be made by the appropriate Commodity Center Director whenever GSA applies the current DOD Appropriation Act restrictions. This determination must be made on a case-by-case basis for tools and flatware for NSNs other than those listed in 525.105-71(a), whenever (i) DOD requirements are included in the solicitation and (ii) the hand or measuring tools or stainless steel flatware are available from domestic sources.

(3) The basis for applying the DOD Appropriation Act restrictions to GSA acquisitions is the—

(i) Statutory prohibition on DOD, which applies when DOD requisitions such items, regardless of whether or not it is from the GSA stock program;

(ii) Impracticality of establishing a dual supply system to satisfy the requirements of civilian and military agencies; and

(iii) Language in the GSA Appropriation Act, which provides for the rejection of any offer when it is considered necessary for reasons of national interest under ASPR 6-104.4(d)(3)(ii).

(4) When no offers for a domestic end product are received or the total quantity offered by responsive and responsible offerors for a particular NSN of stainless steel flatware is insufficient to meet the requirement, the contracting officer should consider making an unavailability determination (see 525.108-70), amend the solicitation, and complete the acquisition under 525.105-70.

(c) *Contract clause.* The contracting officer shall insert the clause at 552.225-71, Notice of Procurement Restriction—Hand or Measuring Tools or Stainless Steel Flatware, in solicitations and contracts for the acquisition of hand or measuring tools or stainless steel flatware when the Commodity Center Director makes a determination under 525.105-71(b).

525.108 Excepted articles, materials, and supplies.

525.108-70 Determination of nonavailability.

(a) Determinations under FAR 25.102(a)(4), 25.202(a)(3), and 25.108 must be supported by a statement of fact (findings), including the following information, and a determination signed by the HCA or a designee:

(1) Description of the item(s), including unit and quantity;

(2) Estimated cost, including duty, if any (show the amount of duty separately);

(3) Transportation costs for delivery to destination, if item is to be procured f.o.b. origin;

(4) Country of origin;

(5) Name and address of prospective contractor(s);

(6) Brief statement as to the necessity for the procurement; and

(7) Statement of effort made to procure a similar item of domestic origin or statement that there is no domestic item that can be used as a reasonable substitute.

(b) Findings and determination of nonavailability will normally be prepared in the format shown below:

General Services Administration

Reference No. _____

Findings and Determination of Nonavailability Under the Buy American Act Regarding Purchase of (insert description)

Pursuant to the provisions of the Buy American Act (41 U.S.C. 10a–d) and Executive Order 10582, December 17, 1954 (3 CFR Supp.), and by virtue of delegated authority, the following findings of fact and determination are hereby made:

1. Findings (set forth a statement of facts).

2. Determination. In view of the foregoing, it is hereby determined that for the purposes of the Buy American Act (insert item description), is not mined, produced, or manufactured at the present time in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

Date _____

Signed

(End of Findings and Determination)

(c) When it has been determined that the Buy American Act is not applicable to the purchase of the end product or to the components from which it is manufactured, the original of the determination must be made a part of the contract file and a copy furnished to the Associate Administrator for Acquisition Policy for transmittal to the appropriate FAR Council and a statement must be inserted in the solicitation and contract that a determination has been made pursuant to FAR 25.108(b).

Subpart 525.2—Buy American Act—Construction Materials

525.202 Policy.

The HCA is authorized to make determinations required by FAR 25.202(a). The HCA may not redelegate authority to make determinations under FAR 25.202(a)(3) when the cost of the materials is estimated to exceed $100,000. Authority to make other determinations may be redelegated.

525.203 Evaluation of offers.

(a) The HCA or a designee may authorize the use of a particular foreign construction material when the use of a comparable domestic construction material would unreasonably increase the cost of the contract. The cost of a particular domestic construction material shall be determined to be unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent. The cost of construction material includes all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).

(b) The evaluation process described in paragraph (a) of this section, does not apply to excepted materials listed in the solicitation. (See paragraph (a) of the provision at 552.225-75). See FAR 25.201 for computing cost of components.

(c) The provision at 552.225-75, Buy American Act Notice—Construction Materials, requires offerors proposing to use foreign construction materials provide adequate information for Government evaluation under paragraph (a) of this section, and permits alternate offers for comparable domestic construction materials at stated prices. When a foreign construction material is not authorized under (a) of this section, evaluation of the offer must be based on the stated price, if any, for comparable domestic construction material. If an offer proposing to use foreign construction material does not furnish data on the cost of comparable domestic construction material, and use of the foreign construction material is not authorized, the offer of foreign material must be rejected, unless the contracting officer is able to obtain prices on comparable domestic material which verifies that domestic prices are unreasonable.

(d) The contracting officer shall add 6 percent of the cost of all foreign construction materials authorized for use in accordance with paragraph (a) of this section, to price(s) offered, if applicable, for evaluation purposes only.

525.204 Violations.

If a contractor fails to comply with the clause at FAR 52.225-5, Buy American Act—Construction Materials, the contracting officer shall document the failure in a report and forward the report to the debarring official for consideration for debarment action in accordance with Subpart 509.4.

525.205 Solicitation provision and contract clause.

The contracting officer shall insert the provision at 552.225-75, Buy American Act Notice—Construction Materials, in solicitations for construction that include the Buy American Act—Construction Materials clause at FAR 52.225-5.

Subpart 525.3—Balance of Payments Program

525.302 Policy.

(a) Decisions under FAR 25.302(b)(3) must be supported as provided in 525.108-70(a).

(b) Use of a greater differential than provided in FAR 25.302(c) may be authorized by the HCA or a designee.

525.302-70 Procurements for agencies under the Foreign Assistance Act.

When a contracting activity enters into contracts as the agent for an agency governed by the Foreign Assistance Act (22 U.S.C. 2151 *et seq.*) such as the Agency for International Development (AID), such contracts are governed by the policies and procedures of the agency and not by FAR 25.3 and 525.3.

525.304 Excess and near-excess foreign currencies.

When a contracting activity procures articles or services for use outside the United States for another agency, it will be assumed (unless a specific notation is made on the purchase request) that use of excess or near excess foreign currencies has been considered by the requisitioning agency and that such currencies are not available.

525.371 Restricted solicitation.

(a) Specific written estimates of comparative delivered prices of end products or service of domestic origin versus foreign origin made by the requisitioning office before submitting a purchase request is not required by the contracting activity. Procurements made directly for other agencies of items to be used outside the United States will be made under the Balance of Payments Program, except for agencies supported by GSA that come under the Foreign Assistance Act; e.g., AID and the Bureau of International Narcotics Matters.

(b) Before procuring any item for GSA use outside the United States, cost estimates must be made before restricting competition to U.S. end products or services.

Subpart 525.4—Purchases Under the Trade Agreements Act of 1979

525.402 Policy.

(a) Under FAR 25.402(a), when the estimated value of all items or products (exclusive of any item or product within any of the exceptions described in FAR 25.403) listed in the solicitation exceeds the Trade Agreements Act threshold, contracting officers shall evaluate offers without regard to the restrictions of the Buy American Act or the Balance of Payments Program. The $156,000 threshold must be inserted in paragraph (b) of the FAR clause at 52.225-9.

(b) When acquiring eligible products without full and open competition using the authorities in FAR 6.302-3(a)(2)(i) or 6.302-7, a copy of the approved justification must be furnished to the Associate Administrator for Acquisition Policy for subsequent transmittal to the U.S. Trade Representative.

525.402-70 Delegation of limited waiver authority.

(a) The U.S. Trade Representative, under section 302(b) of the Trade Agreements Act (Act), has authorized the Administrator of General Services to waive, under limited specified circumstances and on a case-by-case basis, the purchasing prohibition in section 302(a)(1) of the Act.

(b) The Administrator has delegated to the HCA authority to waive the purchasing prohibition in paragraph (a) of this section, in cases where in response to a solicitation:

(1) There are no responsive bids or technically acceptable offers received from responsible offerors of U.S. or designated country end products, or

(2) Responsible offerors do not offer a sufficient quantity to meet the Government's requirements.

(c) A copy of any waiver under paragraph (b) of this section must be furnished to the Associate Administrator for Acquisition Policy for transmittal to the U.S. Trade Representative.

525.407 Solicitation provision and contract clause.

The contracting officer shall insert the clause at 552.225-72, Eligible Products from Nondesignated Countries—Waiver, in solicitations and contracts subject to the Trade Agreements Act.

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PART 526—[RESERVED]

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 527—PATENTS, DATA, AND COPYRIGHTS

Authority: 40 U.S.C. 486(c).

Subpart 527.4—Rights in Data and Copyrights

527.409 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the clause at 552.227–70, Government Rights (Unlimited), in lieu of the clause at FAR 52.227–17, Rights in Data-Special Works, in contracts for architect-engineer services and construction involving architect-engineer services, except when the clause at 552.227–71 is required.

(b) The contracting officer shall substitute the clause at 552.227–71, Drawings and Other Data to Become Property of Government, for the clauses at 552.227–70 and FAR 52.227–17 in contracts for architect-engineer services and construction involving architect-engineer services, when the sole property rights and exclusive control over the design and data are required by the Government.

PART 528—BONDS AND INSURANCE

Subpart 528.1—Bonds

Sec.

528.101 Bid guarantee.
528.101–1 Policy on use.
528.101–3 Contract clause.
528.101–4 Noncompliance with bid guarantee requirements.
528.102 Performance and payment bonds for construction contracts.
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528.103 Performance and payment bonds for other than construction contracts.
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Subpart 528.2—Sureties

528.202 Acceptable sureties.
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Subpart 528.3—Insurance

528.301 General.
528.310 Contract clause for work on a Government installation.

Authority: 40 U.S.C. 486(c).

Subpart 528.1—Bonds

528.101 Bid guarantee.

528.101–1 Policy on use.

(a) *Construction contracts.* (1) Bid guarantees must not be required for contracts awarded under section 8(a) of the Small Business Act as amended (15 U.S.C. 637(a)).

(2) Unless waived under FAR 28.101–1(c), bid guarantees must be required for construction contracts (except section 8(a) contracts) that do not exceed $25,000 when it is determined under 528.102–1(b) that a performance bond is essential to protect the Government's interest.

(b) *Building service contracts.* Unless waived by the HCA, bid guarantees must be required for building service contracts in excess of $25,000 when it is determined under 528.103–2 that a performance bond is essential to protect the Government's interest.

(c) *All other contracts.* Refer to FAR 28.101 for guidance on the use of bid guarantees.

528.101–3 Contract clause.

(a) The contracting officer shall insert a clause substantially the same as the clause at 552.228–70, Bid Guarantee and Bonds, in solicitations and contracts when a construction contract or a contract for dismantling, demolition, or removal of improvements is contemplated and a bid guarantee and bond requirement is to be included.

(b) The contracting officer shall insert a clause substantially the same as the clause at 552.228–71, Bid Guarantee, in solicitations and contracts when a building service or other service contract is contemplated and a bid guarantee requirement is to be included.

528.101–4 Noncompliance with bid guarantee requirements.

In a negotiated acquisition, an offeror submitting a bid guarantee executed by an unacceptable surety may be determined technically unacceptable if acceptance of the most favorable initial proposal without discussion would result in the lowest overall cost to the Government (see FAR 15.610(a)). However, if the offeror's proposal could, after discussions, be made acceptable and may result in the lowest overall cost to the Government, the contracting officer must include the offeror in the competitive range and permit the deficiency to be remedied in a revised proposal (see FAR 15.610(b)).

528.102 Performance and payment bonds for construction contracts.

528.102–1 General.

(a) The performance and payment bond requirements in FAR 28.102–1 apply to contracts awarded under section 8(a) of the Small Business Act unless the requirement has been waived by SBA under section 8(a)(2) of the Small Business Act, as amended.

(b) Performance and/or payment bonds may be required on a case-by-case basis for construction contracts that do not exceed $25,000 if a written determination is made by the contracting officer and approved by the contracting director indicating that they are essential to protect the Government's interest.

528.102–3 Solicitation requirements.

The contracting officer shall insert a clause substantially the same as the clause at 552.228–70, Bid Guarantee and Bonds, in solicitations and contracts when a construction contract or a contract for dismantling, demolition, or removal of improvements is contemplated and a performance and payment bond requirement is to be included.

528.103 Performance and payment bonds for other than construction contracts.

528.103–2 Performance bonds.

(a) Performance bonds may be required on a case-by-case basis for building service contracts in excess of $25,000, if a written determination is made by the contracting officer and approved by the contracting director indicating that they are essential to protect the Government's interest.

(b) Performance bonds must not be required for building service contracts awarded under section 8(a) of the Small Business, Act as amended (15 U.S.C. 637(a)), or contracts awarded to workshops for the blind or other severely handicapped under the Javits-Wagner-O'Day Act, as amended (41 U.S.C. 46–48c).

(c) The penal amount of the performance bond generally shall be 10 to 50 percent of the contract price for the term of the contract at the time of the award. The contracting officer shall consider the circumstances and determine the amount of the performance bond on a case-by-case basis.

(d) The contracting officer shall insert a clause substantially the same as the clause at 552.228–72, Performance Bond, in solicitations and contracts when a building service or other service contract is contemplated and a performance bond requirement is to be included.

528.103–3 Payment bonds.

(a) Payment bonds may be required for other than construction contracts when the contracting director determines, under FAR 28.103–3, that such a requirement is in the Government's interest.

(b) The penal amount of the payment bond generally will be 10 to 50 percent of the contract price for the term of the contract at the time of award. The contracting officer shall consider the circumstances and determine the amount of the payment bond on a case-by-case basis.

(c) The contracting officer shall insert a clause substantially the same as the clause at 552.228–73, Performance and Payment Bonds, in solicitations and contracts when a building service or other service contract is contemplated and a performance and payment bond requirement is to be included.

528.106 Administration.

528.106–6 Furnishing information.

The HCA or a designee shall perform the functions outlined in FAR 28.106–6(c).

528.106–70 Execution and administration of bonds.

(a) Bid guarantees, other than corporate or individual sureties, must be returned to offerors as specified in FAR clause 52.228–1, Bid Guarantee.

(b) When a performance or payment bond or acceptable alternate is not furnished within the time specified, the contract may be terminated for default. (See FAR 52.228–1 and Subpart 49.4.)

Subpart 528.2—Sureties

528.202 Acceptable sureties.

528.202–1 Corporate sureties.

(a) The current edition of Treasury Department Circular 570 must be prominently displayed in bid opening rooms, in GSA Business Service Centers, and in all places where bid forms and information are regularly available. Copies should be made available to officials having a need to know.

(b) Corporate surety bonds must be manually signed by the Attorney-in-Fact or officer of the surety company and the corporate seal affixed. Failure of the surety to affix the corporate seal may be waived as a minor informality. (See B–184120, July 2, 1975, 75–2 CPD 9.)

(c) Where an invitation for bid requires a bid guarantee and an unacceptable corporate surety is submitted in fulfillment of the requirement, the bid must be rejected as nonresponsive. A bidder must not be permitted to substitute an acceptable surety after bid opening. (See B–198687, May 23, 1980, 80–1 CPD 360.)

(d) A contractor submitting a performance or payment bond executed by an unacceptable corporate surety in satisfaction of a performance or payment bond requirement may be permitted to substitute an acceptable surety for a surety previously determined to be unacceptable.

528.202–2 Individual sureties.

(a) In addition to the requirements of FAR 28.202–2, the following criteria must be considered when making determinations regarding the acceptability of individual sureties:

(1) The contracting officer may deduct the total amount of other bonds which the surety executed (Block 10 of SF 28) from the net worth figure entered in Block 7, line g, to arrive at a realistic net worth. Alternatively, the contracting officer may deduct nothing or only a portion of the amount entered in Block 10 based upon the degree of completion of the contracts on which the bonds were provided.

(b) If the contracting officer is unable to make a determination of net worth from the SF 28, the individual surety must be required to furnish additional information. Generally, supplementary information will not be required unless the SF 28 is incomplete or improperly filled out or unless the contracting officer has reason to believe the surety's statement on the SF 28 does not reflect the true net worth.

(c) If the contracting officer determines that either surety's net worth is not equal to the penal amount of the bond, the bid of the firm utilizing the sureties must be rejected as nonresponsible. A finding of bidder nonresponsibility pursuant to FAR 9.105–2, based on unacceptability of an individual surety need not be referred to the Small Business Administration for a competency review. (See 61 Comp. Gen. 456 (1982).)

(d) Under certain circumstances, such as when there is a record indicating a continuing pattern among certain individual sureties not to disclose outstanding bond obligations, the offeror's sureties may be rejected as unacceptable. (See 61 Comp. Gen. 592 (1982).)

(e) In a sealed bid procurement an offeror submitting a bid guarantee executed by an unacceptable surety may not substitute an acceptable individual surety after bid opening. This holds even though the surety's acceptability is a matter of bidder responsibility. (See 61 Comp. Gen. 456 (1982).) When a negotiated procurement is involved, such a deficiency may be remedied by the offeror in a revised proposal.

(f) Any individual surety executing a bond furnished GSA cannot have been excluded from acting as an individual surety by the Associate Administrator for Acquisition Policy. (See 528.270.) Any bid submitted in response to an invitation for bid which is accompanied by a bid guarantee backed by an individual surety who has been excluded must be rejected as nonresponsive. When a negotiated procurement is involved, such a deficiency may be remedied by the offeror in a revised proposal.

(g) A contractor submitting an unacceptable individual surety in satisfaction of a performance or payment bond requirement may be permitted to substitute an acceptable surety for a surety previously determined to be unacceptable.

528.202–70 Acceptability of bonds and sureties.

(a) If there is a question of validity, the contracting officer should seek the advice of legal counsel. Upon receipt of a required bond, the contracting officer must check the current Treasury Department Circular 570 to determine acceptability.

(b) A contracting officer verifies the acceptability of the surety on a bond by placing the words "Acceptability of Bond Verified," with his signature immediately thereunder, on the bond or on a properly identified attachment. The bond must be retained with the original of the contract. The contracting officer shall notify the contractor that the bond(s) has been accepted.

(c) Any contracting officer who becomes aware of circumstances which may serve as the basis for exclusion of an individual from acting as an individual surety on bonds submitted by offerors on GSA procurements may refer the matter to the Associate Administrator for Acquisition Policy for consideration of exclusion action. (See 528.270.) Circumstances that involve possible criminal or fraudulent activities must first be reported to the Assistant Inspector General for Investigations or to the appropriate regional Inspector General for Investigations. The Office of Inspector General may conduct an investigation and, when appropriate, refer the matter to the Associate Administrator for Acquisition Policy. Referrals for consideration of exclusion action should include as a minimum:

(1) The basis for exclusion (see 528.270(b));

(2) A statement of facts;
(3) Copies of supporting documentary evidence;
(4) The individuals name and current or last known home and or business addresses including zip codes;
(5) A statement of GSA's history with such individuals, if any; and
(6) A statement concerning any known active or potential criminal investigations or court proceedings.

528.202-71 Assets pledged to support bonds.

(a) When bid guarantees, performance and/or payment bonds are required, the solicitation clauses at 552.228-70, 552.228-71, 552.228-72, and 552.228-73 may be expanded at the contracting officer's discretion to include the clause at 552.228-74, Pledges of Assets, which requires offerors to obtain pledges of assets from individual sureties identified in their offers, e.g., a recordable Covenant not to Convey or Encumber Real Estate and/or commercial or government securities placed in escrow accounts in accordance with 528.203.

(b) The following format or any document substantially the same, may be attached when a surety pledges real estate on Standard Form 28, Affidavit of Individual Surety.

Covenant Not To Encumber Or Convey Real Estate

I/we covenant and agree that so long as I/we shall be obligated as an individual surety on solicitation/contract no. GS-_____ in the amount of $_____ to the United States of America whether such obligation be incurred before or after the date hereof, and until this instrument is formally released. I/we shall not make, or cause to be made, any deed of trust, mortgage, conveyance or any other instrument or agreement having the effect of a lien upon or conveyance of the real estate now owned by me/us described as follows:
(address)
IN WITNESS WHEREOF, I/we have hereunto affixed my/our hand(s) and seal(s) this_____ DAY OF_____.
WITNESS:

_____
_____
(SEAL)
_____
(SEAL)

I, _____, a Notary Public in and for the ____(STATE)____, do hereby certify that _____, party to a certain Covenant and Agreement bearing date the ____ day of ____ 19____, and hereunto annexed, personally appeared before me the said _____ being personally well known to me as the person(s) who executed the said Covenant and Agreement, and acknowledged the same to be act and deed.
GIVEN under my hand and seal this _____ day of _____ 19____.

_____
Notary Public. State

(c) When an offeror chooses to provide an individual surety who pledges real estate as described in 528.202-71(a), the contracting officer shall obtain from the offeror/contractor evidence to demonstrate that the covenant has been recorded in the appropriate land records office of the jurisdiction where the property is located.

528.203 Options in lieu of sureties.

(a) An irrevocable letter of credit may be accepted as a bid guarantee under FAR clause 52.228-1, Bid Guarantee.

(b) Security deposited instead of corporate or individual sureties on bonds must be safeguarded as provided in procedures issued by the Office of the Comptroller immediately after they are received. United States bonds or notes received in the District of Columbia must be deposited with the Treasurer of the United States as provided in FAR 28.203-1.

528.270 Exclusion of individual sureties.

(a) The Associate Administrator for Acquisition Policy or a designee may exclude an individual from acting as an individual surety on bonds submitted by offerors on GSA procurements in order to protect the Government.

(b) An individual may be excluded for:

(1) Failure to fulfill an obligation under a bond.

(2) Willful failure to disclose other bond obligations.

(3) Misrepresentation of available assets.

(4) Any false or misleading statement, signature or representative on a bond or affidavit of individual suretyship.

(5) Any cause that would constitute a cause for debarment or suspension under FAR 9.406-2 or 9.407-2.

(6) Any other such serious and compelling cause affecting the responsibility of a surety as may be determined by the Associate Administrator or a designee to warrant exclusion.

(c) The policies, procedures and requirements of FAR Subpart 9.4 and Subpart 509.4 are hereby incorporated by reference and will be used in exclusionary proceedings involving individual sureties.

(d) Information regarding excluded individual sureties will be distributed to GSA contracting activities.

Subpart 528.3—Insurance

528.301 General.

(a) Insurance requirements must be adequate, just, and reasonable, and should be predicated on potential loss or damage (not necessarily on the value of the contract). When it is determined that insurance coverage should be required, the solicitation and resultant contract must contain the appropriate provisions prescribed in FAR 28.309, 28.310, or 28.311. The determination as to the type of insurance, amount, and any related insurance requirements must be made by the contracting officer with the advice of assigned legal counsel. All premiums or costs incurred to comply with an insurance requirement must be paid by the contractor.

(b) Submission of a current certificate of insurance indicating the amount and coverage, to the contracting officer, will serve as certification that the required insurance has been obtained.

528.310 Contract clause for work on a Government installation.

The contracting officer shall insert the clause at 552.228-75, Workmen's Compensation Laws, in solicitations and contracts when the contract amount is expected to exceed the small purchase limitation and the contract will require work to be performed on Government property.

PART 529—TAXES

Subpart 529.4—Contract Clauses

Sec.
529.401 Domestic contracts.
529.401-70 Small purchases.
529.401-71 Multiple Award Schedule contracts.
529.401-72 Contracts usable by the DC Government.

Authority: 40 U.S.C. 486(c).

Subpart 529.4-Contract Clauses

529.401 Domestic contracts.

529.401-70 Small purchases.

The contracting officer shall insert the clause at 552.229-70, Federal, State, and Local Taxes, in small purchases.

529.401-71 Multiple award schedule contracts.

In addition to including the clause at FAR 52.229-1 in solicitations and contracts for leased equipment in accordance with FAR 29.401-1, contracting officers shall insert the clause at FAR 52.229-1, State and Local Taxes, in multiple award schedule solicitations and contracts (including new item introductory schedules).

529.401-72 Contracts usable by the DC Government.

The contracting officer shall insert the clause at 552.229-72, Federal Excise Tax—DC Government, in contracts which involve the purchase of supplies by the District of Columbia Government.

PART 530—COST ACCOUNTING STANDARDS

Authority: 40 U.S.C. 486(c).

Subpart 530.2—CAS Program Requirements.

530.201-5 Waiver.

The Associate Administrator for Acquisition Policy may waive CAS requirements under FAR 30.201-5(c).

PART 531—CONTRACT COST PRINCIPLES AND PROCEDURES

Authority: 40 U.S.C. 486(c).

Subpart 531.1—Applicability

531.101 Objectives.

The Associate Administrator for Acquisition Policy approves individual deviations concerning cost principles under FAR 31.101.

PART 532—CONTRACT FINANCING

Subpart 532.1—General

Sec.
532.111 Contract clauses.

Subpart 532.4—Advance Payments

532.402 General.
532.407 Interest.

Subpart 532.5—Progress Payments Based on Costs

532.501 General.
532.501-2 Unusual progress payments.
532.501-70 Use of benchmarks with progress payments based on costs.
532.502 Preaward matters.
532.502-2 Contract finance office clearance.
532.502-3 Solicitation provisions.
532.502-4 Contract clauses.
532.503-5 Administration of progress payments.
532.503-6 Suspension or reduction of payments.
532.503-9 Liquidation rates—alternate method.

Subpart 532.6—Contract Debts

532.601 Definitions.
532.606 Debt determination and collection.
532.606-70 Referral of delinquent debts.

Subpart 532.7—Contract Funding

532.700 Scope.
532.705 Contract clauses.
532.705-1 Clauses for contracting in advance of funds.

Subpart 532.8—Assignment of Claims

532.803 Policies.
532.805 Procedures.
532.806 Contract clauses.

Subpart 532.9—Prompt Payment

532.905 Invoice payments.
532.905-70 Certification of payment to subcontractors and suppliers.
532.905-71 Final payment.
532.908 Contract clause.

Subpart 532.70—[Reserved]

Subpart 532.71—Payments Under Contracts Subject to Audit

532.7101 General.
532.7102 Submission and processing of invoices or vouchers.
532.7103 Action upon receipt of an audit report.
532.7104 Suspension and disapproval of amounts claimed.

Authority: 40 U.S.C. 486(c).

Subpart 532.1—General

532.111 Contract clauses.

(a) *Discounts for prompt payment.* The clause at 552.232-8 must be included in multiple award schedule solicitations and resultant contracts, instead of the clause at FAR 52.232-8. (See 515.608-71 for an explanation concerning this deviation.)

(b) *Invoice requirements.* The contracting officer shall insert a clause substantially the same as the clause at 552.232-72, Invoice Requirements, in all solicitations and contracts for supplies, services, construction or the acquisition of leasehold interests in real property that require the submission of invoices for payment. The contracting officer should delete subparagraph (b) of the clause when an Accounting Control Transaction (ACT) number is not required for payment.

(c) *Adjusting payments.* The contracting officer shall insert the clause at 552.232-78, Adjusting Payments, in all solicitations and contracts for recurring building services expected to exceed the small purchase limitation.

(d) *Final payment.* The contracting officer shall insert the clause at 552.232-79, Final Payment, in all solicitations and contracts for recurring building services expected to exceed the small purchase limitation.

Subpart 532.4—Advance Payments

532.402 General.

The findings and determinations required by FAR 32.402(e) must be prepared by the contracting officer in coordination with legal counsel and the contract finance office. The findings, determinations and authorization for advance payments must be approved by the head of the contracting activity (HCA).

532.407 Interest.

The contract finance office will provide the contracting officer the interest rate to be charged on the unliquidated balance of advance payments.

Subpart 532.5—Progress Payments Based on Costs

532.501 General.

532.501-2 Unusual progress payments.

The HCA must approve or disapprove requests for "unusual" progress payments.

532.501-70 Use of benchmarks with progress payments based on costs.

(a) In unusual circumstances, it may be desirable to provide for the achievement of specified benchmarks such as submission and acceptance of a preproduction or pilot model before making progress payments based on costs. When progress payments are conditioned upon achievement of specified benchmarks during performance of the contract, the HCA must make a written determination that use of benchmarks is in the best interest of the Government. When such a determination is made, the solicitation and each resulting contract must include a provision specifying the benchmarks that must be achieved before progress payments are made.

(b) Benchmarks should not be used in a manner that will convert progress payments based on costs into progress payments based on a percentage or stage of completion.

532.502 Preaward matters.

532.502-2 Contract finance office clearance.

(a) The contract finance office director must provide the approval required by FAR 32.502-2.

(b) Contracting officers must request the contract finance office to provide advice and assistance regarding a contractor's financial condition and the adequacy of the contractor's accounting system and controls before providing for progress payments based on costs.

532.502-3 Solicitation provisions.

When the notice prescribed in FAR 32.502-3 (a) or (b) is included in a solicitation, the solicitation must include the provision at 552.232-74, Progress Payments.

532.502-4 Contract clauses.

The appropriate legal counsel must concur in the progress payment clause included in each solicitation and contract when the progress payments will be based on cost.

532.503-5 Administration of progress payments.

The contracting officer must ensure that the contract finance office (1) has adequate administrative and fiscal

procedures to accomplish the fiscal aspects of FAR 32.503–5, (2) provides the contracting officer with the date and amount of each progress payment to a contractor, and (3) provides the contracting officer with written recommendations whenever findings are made which warrant action by the Government.

532.503–8 Suspension or reduction of payments.

Action recommended by the contracting officer under FAR 32.503–8 must be approved by the HCA after coordination with the assigned legal counsel. Upon approval, the contracting officer will request the contract finance office to suspend or reduce payments.

532.503–9 Liquidation rates—alternate method.

Reduction of the liquidation rates specified in paragraph (b) of the clause at FAR 52.232–16, may be made only with the approval of the contracting director after coordination with the contract finance office. Upon approval, the contracting officer will request the finance office to reduce the rate.

Subpart 532.6—Contract Debts

532.601 Definitions.

"Debt" means an amount of money or property which has been determined by a responsible official to be owed to the United States from any person, or entity except that the terms do not apply to amounts owed by another Federal agency.

"Delinquent debt" means an amount that has not been paid or otherwise collected by the date specified (usually 30 days) in the contracting officer's initial written demand for payment (i.e., final decision letter).

"Responsible official" as used in this subpart means the contracting officer. However, the contract finance office is responsible for the administration of debt collection under the Accounting Operations—Accounts Receivable and Credit and Finance Operations, and Related Activities Handbook (PFM P 4253.1).

532.606 Debt determination and collection.

532.606–70 Referral of delinquent debts.

(a) When the contracting officer determines that a debt in excess of $100 is delinquent, the contracting officer shall forward notification of the delinquent debt to the applicable finance office for collection in accordance with the Debt Collection Act of 1982, and possible forwarding to a credit reporting agency.

(b) If the contractor appeals the contracting officer's demand for payment pursuant to the Disputes clause of its contract, the contracting officer shall advise the Finance Office whether to suspend collection efforts pending resolution of the dispute.

Subpart 532.7—Contract Funding

532.700 Scope.

GSA fiscal regulations are contained in the Budget Administration Handbook (COM P 4251.3A), Accounting Classification Handbook (COM P 4240.1), and Accounting Operations—Voucher Examination, Payment Handbook (PFM P 4252.1).

532.705 Contract clauses.

532.705–1 Clauses for contracting in advance of funds.

The contracting officer shall insert the clause at 552.232–77, Availability of Funds, in solicitations and contracts for services which are "severable" when option provisions are included, when the contract will be chargeable to funds of the new fiscal year and the contract action is to be initiated before the funds are available, or when the performance period may span fiscal years.

Subpart 532.8—Assignment of Claims

532.803 Policies.

Assignment of claims is restricted to individual orders of $1,000 or more when payments under requirements or indefinite quantity type contracts are made by more than one Government agency. This limitation does not apply when orders and payments are made solely by GSA.

532.805 Procedures.

(a) Upon receipt of a notice of assignment, the contracting officer must obtain legal counsel concurrence that both the notice and the instrument of assignment are in proper form, properly executed, and are actions that the contractor is entitled to make under the terms of the contract.

(b) When acknowledging receipt of the notice of assignment, the contracting officer must notify the contractor that all future invoices or other requests for payment under the contract must specify the name and address of the assignee and include a notation that payments due thereunder have been duly assigned. A copy of the acknowledgement, evidencing legal counsel concurrence, must be sent to the contract finance office.

(c) When payments under requirements or indefinite quantity contracts that are for the sole use of GSA have been assigned, the contracting officer must provide all GSA offices that will place orders against the contract the name and address of the assignee that will receive amounts due under the contract. The notification should also state that the contractor has been requested to specify the name and address of the assignee on future invoices.

532.806 Contract clauses.

The contracting officer shall insert the clause at 552.232–23, Assignment of Claims, in solicitations and requirements or indefinite quantity contracts under which more than one agency may place orders.

Subpart 532.9—Prompt Payment

532.905 Invoice payments.

(a) Before exercising the authority to modify the date for constructive acceptance in subdivision (a)(6)(i) of the clause at FAR 52.232–25, Prompt Payment, or subdivision (a)(5)(i)(A) of the clause at FAR 52.232–26, Prompt Payment for Fixed-Price Architect-Engineer Contracts, the contracting officer shall prepare a written justification explaining why a longer period is necessary. The time specified must be determined on a case-by-case basis and the justification must be approved by an official one level above the contracting officer. A contracting officer must not specify a constructive acceptance period that exceeds 30 days. The time specified in subdivision (a)(5)(i)(B) of the clause at FAR 52.232–26 for constructive approval of progress payments must not exceed 7 days.

(b) The time specified for payment of progress payments in subdivision (a)(1)(i)(A) of the clause at FAR 52.232–27, Prompt Payment for Construction Contracts, must be determined by the contracting officer on a case-by-case basis. Periods longer than 14 days must be justified in writing and approved by an official one level above the contracting officer. Under no circumstances may more than 30 days be specified. The time specified in subdivision (a)(4)(i) of FAR clause 52.232–27, for constructive acceptance or approval will be determined by the contracting officer on a case-by-case basis but may not exceed 7 days unless a longer period is justified, in writing, and approved by an official one level above the contracting officer. Under no circumstances may more than 30 days be specified.

532.905–70 Certification of payment to subcontractors and suppliers.

When a contract includes the clause at FAR 52.232–5, Payments Under Fixed-Priced Construction Contracts, no progress payments will be processed until the contractor submits a certification of payment to subcontractors and suppliers. The GSA Form 2419, Certification of Progress Payments Under Fixed-Price Construction Contracts, may be used for certification.

532.905–71 Final payment.

(a) The final payment on construction or building service contracts must not be processed until the contractor submits a properly executed GSA Form 1142, Release of Claims. If, after repeated attempts, the contracting officer is unable to obtain a release of claims from the contractor, final payment may be processed with the approval of appropriate legal counsel.

(b) The amount of final payment must include, as appropriate, any deductions to cover liquidated damages for late completion, liquidated damages for labor violations, amounts withheld for improper payment of labor wages, and the amount of unilateral change orders covering defects and omissions.

532.908 Contract clause.

(a) The contracting officer shall insert the clause at 552.232–70, Payments by Electronic Funds Transfer, in solicitations and contracts that include the FAR clause 52.232–28, when payments may be made by GSA and other agencies (e.g., multiple award schedule contracts).

(b) The contracting officer shall insert the clause at 552.232–71, Prompt Payment, in solicitations and contracts for the acquisition of leasehold interests in real property. The contracting officer may modify the date for constructive acceptance in subparagraph (b)(2) of the basic clause to specify a period longer than 7 calendar days (but not to exceed 30 days) if necessary due to the nature of the services to be received, inspected or accepted by the Government. A written justification for specifying the longer period must be prepared and approved by the contracting director. The contracting officer shall use Alternate I instead of the basic clause if the lease contract does not contain provisions for ordering alterations or overtime utility services.

(c) The contracting officer shall insert the clause at 552.232–73, Electronic Funds Transfer Payment, in solicitations and contracts for acquisitions of leasehold interests in real property if payment may be made by electronic funds transfer.

Subpart 532.70—[Reserved]

Subpart 532.71—Payments Under Contracts Subject to Audit

532.7101 General.

(a) The contracting officer shall not approve the initial invoice or voucher before consulting with the Assistant Inspector General—Auditing or the Field Audit Office regarding cost or other supporting data as required under:

(1) Cost-reimbursement type contracts;

(2) The cost-reimbursement portion of fixed-price type contracts;

(3) Time and materials or labor-hour contracts; or

(4) Fixed-price contracts providing for (i) progress payments based on costs, (ii) advance payments, (iii) guaranteed loans, or (iv) incentives or redetermination.

(b) The contracting officer shall not approve the final payment invoice or voucher for such contracts, nor for the final payment or settlement of other contracts subject to audit prior to (1) receipt and review of the contract audit report or (2) consultation with the Assistant Inspector General for Auditing or the Field Audit Office if no audit is to be conducted; provided, that this paragraph (b) shall not apply to fixed-price contracts with escalation where no price revision (upward or downward) is to be made.

532.7102 Submission and processing of invoices or vouchers.

(a) Contractors should be required to submit invoices or vouchers to the contracting officer. Contracting officers must annotate the invoices with the date of receipt as required by FAR 32.905. That date will be used to determine interest penalties for late payments. The processing of invoices or vouchers before payment must include a review by the contracting officer, or a designee, to determine that the items and amounts claimed are in consonance with the contract terms and represent prudent business transactions. The contracting officer must ensure that these payments are commensurate with physical and technical progress under the contract. If the contractor has not deducted from the invoice amounts which are questionable or which are required to be withheld, the contracting officer shall make the required deduction, except as provided in 532.7103.

(b) Subject to 532.7101, approval by the contracting officer of any payment, must be noted on (or attached to) the invoice or voucher submitted by the contractor. The invoice or voucher will be forwarded to the appropriate contract finance office and retained therein after certification and scheduling for payment by a disbursing office.

532.7103 Action upon receipt of an audit report.

Audit reports will be furnished to the contracting officer, with a copy to the appropriate contract finance office. Upon receipt of an audit report, the contracting officer shall, pursuant to contract terms, determine the allowability of all costs covered by audit, giving full consideration to the auditor's recommendations. When the contracting officer is in doubt or questions the recommendations of the auditor, deductions need not be made from invoices or vouchers for provisional payments. In these cases, the contracting officer shall confer with the auditor and other appropriate Government personnel (such as a price specialist or legal counsel) to determine what further action should be taken regarding the costs in question. If the contracting officer disagrees with the auditor's recommendations, the contracting officer shall document the contract file and furnish the auditor with a copy of the statement.

532.7104 Suspension and disapproval of amounts claimed.

The contracting officer shall notify the appropriate contract finance office in writing when amounts claimed for payment are (a) suspended, (b) disapproved as not being allowable according to contract terms, or (c) not allocable to the contract. This notice by the contracting officer will be the basis for the issuance by the contract finance office of GSA Form 533, Administrative Difference Statement. A copy of GSA Form 533 will be attached to each copy of the invoice or voucher from which the deduction has been made, including an explanation of the deduction.

PART 533—PROTESTS, DISPUTES, AND APPEALS

Subpart 533.1—Protests

Sec.
533.101 Definitions.
533.102 General.
533.103 Protest to the agency.
533.104 Protests to GAO.
533.105 Protests to GSBCA.

Subpart 533.2—Disputes and Appeals

533.214 Contract clause.

Subpart 533.71—Processing Contract Appeals

533.7100 Definitions.

533.7101 Notice of appeal.
533.7102 Contents of notices of appeal.
533.7103 Appeal files.
533.7103-1 Preparation of the appeal file.
533.7103-2 Transmittal of the appeal file.
533.7104 The contracting officer's memorandum of position.
533.7105 Procedure following decision of the GSA Board of Contract Appeals.

Authority: 40 U.S.C. 486(c).

Subpart 533.1—Protests

533.101 Definitions.

"Associate General Counsel" means the Associate General Counsel of the General Law Division, Personal Property Division, or Real Property Division.

533.102 General.

Except as indicated in this subpart, the Office of General Counsel (OGC) is responsible for all contacts with the GAO or GSBCA, potential contractors, attorneys, and any other persons, concerning protests of GSA contract actions filed with the Comptroller General or GSBCA.

533.103 Protests to the agency.

The contracting officer shall consider those protests which are filed only with the agency. The protestor must be notified in writing of the contracting officer's final decision in a timely manner.

533.104 Protests to GAO.

(a) *General.* (1) In addition to the requirements of FAR 33.104(a)(2), the agency report must contain the GAO protest number (GAO case file number), the solicitation or contract number, the full corporate name of the protesting organization and other firms involved, and a statement indicating whether the protest was filed before or after award. If the protest is filed after award, the report must contain the identity of the awardee, the date of award, the contract number, the date and time of bid opening (including a statement when the date of bid opening was extended by subsequent amendments), the total number of offerors, a complete chronological statement of all relevant events and administrative actions taken (including reasons and authority for the actions taken), and any other relevant documents believed helpful in determining the validity of the protest. (This evidence should be referenced and identified within the text of the position statement, alphabetically or numerically, e.g., Tab A, Exhibit 1, etc.)

(2) GAO protests must be handled on a priority basis. The appropriate Associate General Counsel (AGC) shall prepare a report for signature of the General Counsel responding to GAO protests. These reports are to be based upon a statement of fact and position prepared by the responsible contracting officer and approved by the contracting director. When requested by the appropriate AGC, the Regional Counsel will prepare a statement of legal position analyzing the merits of a protest concerning a regional procurement.

(3) The following procedures must be followed in handling protests:

(i) When a protest is received by the agency, the AGC shall telephonically notify the contracting officer through the appropriate Central Office contracting activity or Regional Counsel. If the contracting activity or Regional Counsel receives a copy of a protest before being notified thereof by the AGC, they must immediately notify the appropriate AGC.

(ii) After receiving the formal protest, which has been filed with GAO, the AGC will formally request a statement of fact and position from the contracting officer through the appropriate Central Office contracting activity or Regional Counsel. The contracting officer shall immediately notify the affected bidders or offerors that a protest has been received.

(iii) The contracting officer shall notify assigned counsel and begin preparing a documented statement of fact and position immediately upon receiving a protest or notice thereof.

(iv) When completed, the statement of fact and position must be concurred in by the contracting director, and on regional procurements, by the Office of Regional Counsel. In appropriate cases, the AGC may request the Regional Counsel to prepare a legal position analyzing the merits of a protest against a regional procurement. In such cases, the contracting officer's statement of fact and position should be included as a referenced attachment thereto.

(v) The Regional Counsel's legal position, when requested, and the contracting officer's statement of fact and position, must be transmitted to the appropriate AGC, in triplicate. If other interested parties are involved, additional copies may be requested. The statement is due in the office of the appropriate AGC no later than 10 workdays after the date on which the contracting officer originally received the protest. This time may be reduced if GAO invokes the express option. If a contracting officer is unable to prepare a statement of fact and position within 10 workdays, the appropriate AGC must be notified promptly, by telephone, of the reasons for the delay and of the additional time needed. Additional time may be granted if the specific circumstances of the protest require a longer time. A request for an extension is proper only if the facts or legal issues affecting the resolution of a protest are so complicated that an adequate report cannot be prepared on time; the need to coordinate the report with other agencies, or with offices in distant locations, makes it impossible to prepare the report on time; or other compelling circumstances prevent preparing the report on time. Upon request of the AGC, the contracting officer shall confirm any oral requests for extensions in writing. The contracting director shall concur in the request and send a copy to the HCA. A request for an extension, which will delay submission of the agency's report to GAO beyond 25 workdays from the date GSA originally received the protest, may be granted only by the GAO. The AGC will notify the Central Office contracting activity or Regional Counsel of the GAO's decision.

(vi) After submitting the statement to the AGC, the contracting officer or Regional Counsel must advise the AGC of all later developments that may affect the case.

(vii) All documents transmitted under these procedures must be sent by the fastest means possible.

(viii) In addition to the requirements of FAR 33.104(a)(5)(ii), a copy of any comments is sent to the AGC.

(4) The Office of General Counsel (OGC) must furnish the GAO with the name, title, and telephone number of one or more officials whom the GAO may contact regarding protests. The OGC is responsible for promptly advising the GAO of any change in the designated officials.

(5) The format for notification required by FAR 33.104(a)(3) is as follows:

Name

Address

A protest concerning Solicitation No. _____ has been filed with the General Accounting Office (GAO).

The protest was filed by (*Insert the name and address of the protester, and the name of the person signing the protest.*) on (*Date*).

Copies of the protest may be obtained from this office.

You may submit your views and relevant information regarding the protest directly to the General Accounting Office within 7 calendar days of receiving this notice. A copy of any submission to the GAO should be provided to this office.

_____

Contracting Officer's signature

(b) *Protests before award.* Under FAR 33.104(b), the HCA may determine in writing that urgent and compelling circumstances significantly affecting the interests of the United States do not permit waiting for the decision of GAO and award is likely to occur within 30 calendar days. The written determinations and findings (D&F), in the format shown at 501.704–70(e)(1), should be prepared by the contracting officer for the signature of the HCA. The D&F must be concurred in by the Regional Counsel (on regional procurements), and the appropriate AGC. After the D&F is approved, it must be returned to the appropriate AGC who notifies GAO of the agency's findings and intended action before the award is made.

(c) *Protests after award.* The procedures in paragraph (a) of this section apply to the handling of protests after award. If the protest is received within 10 calendar days after an award, contract performance must be suspended under FAR 33.104(c) unless the HCA determines in writing that contract performance is in the best interests of the United States or that urgent and compelling circumstances that significantly affect the interests of the United States do not permit waiting for the GAO's decision. The written determination and findings (D&F), in the format shown at 501.704–70(e)(2), should be prepared by the contracting officer for signature of the HCA. The D&F must be concurred in by the Regional Counsel (on regional procurements), and the appropriate AGC. After the D&F is approved, it must be returned to the AGC who notifies GAO of the agency's findings and intended action before contract performance is authorized.

(d) *Notice of GAO.* The HCA responsible for the solicitation, proposed award, or award of the contract must report to the Comptroller General through the OGC within 60 calendar days of receipt of the GAO's recommendation if the agency has decided not to comply with the recommendation. The report must explain the reasons why the GAO's recommendation will not be followed.

533.105 Protests to GSBCA.

(a) *Notification procedure.* After receiving a protest, the contracting officer shall notify the following:

(1) All firms solicited, or those who have submitted sealed bids or offers if the protest is filed after the closing date of the solicitation, and the appropriate delegating official in the Information Resources Management Service. When giving such notification, the contracting officer should follow these procedures:

(i) Avoid interpreting or characterizing the nature of the protest.

(ii) Use appropriate means to ensure delivery to all the firms by the workday after the date of filing with the GSBCA.

(iii) Use the following format:

Name

Address

A protest concerning Solicitation No._____ has been filed with the General Services Administration Board of Contract Appeals (GSBCA).

The protest was filed by (*Insert the name and address of the protester, and the name of the person signing the protest.*) on (*Date*).

The protest has been purportedly filed pursuant to Section 2713 of the Competition in Contracting Act, Pub. L. 98–369.

Copies of the protest may be obtained from the Office of the Clerk of the GSBCA, 18th & F Streets NW., Washington, DC 20405, or from the contracting officer.

Contracting officer's signature

(2) The agency on whose behalf GSA is making the procurement, if any. A copy of the protest complaint, including all attachments, must be forwarded to the agency by appropriate means to ensure next day delivery.

(3) *Assigned counsel.* A copy of the protest complaint, including all attachments, must be forwarded to the appropriate AGC by appropriate means to ensure next day delivery.

(4) The Board, through assigned counsel, within 5 workdays after the date of filing with the GSBCA, that the notices described in (1) and (2) have been given. Written confirmation of notice and a listing of all persons and agencies receiving notice must be provided.

(b) *Protest file.* To ensure timely submission, the contracting officer should begin assembly of the protest file by the second workday after receiving the protest. The protest file must be forwarded to assigned counsel by overnight delivery not later than the 8th workday after the protest is filed with the GSBCA. Assigned counsel will distribute the copies to the GSBCA, the protester, and retain one copy for itself. If additional copies are needed, assigned counsel will advise the contracting officer. The following rules govern the assembly of protest files:

(1) *Format.* Protest file exhibits are true, legible, and complete copies. They must be arranged in chronological order within each submission, earliest documents first, bound on the left margin except where size or shape makes such binding impracticable, numbered, tabbed, and indexed. The numbering must be consecutive, in whole arabic numerals (no letters, decimals, or fractions), and continuous from one submission to the next, so that the complete file, after all submissions, will consist of one set of consecutively numbered exhibits. The index should include the date and a brief description of each exhibit and indicate which exhibits, if any, have been filed with the Board in camera (see (b)(3) of this section) or otherwise not served on every other party.

(2) *Contents.* In addition to the items required by FAR 33.105(b), the contents should include those items required by GSBCA Rule 4(a), when appropriate. (See 48 CFR 6101.4(a).)

(3) *Confidential, privileged, or proprietary information.* The protest file may require the inclusion of documents and information from other vendors which are confidential, proprietary, or privileged. When such information is required to be included in the protest file, it is to be placed only in the copies going to the Board and to assigned counsel. Copies going to other interested parties will only identify the information in the index. However, the index must not reveal the number and identity of the offerors whose proposals are included in the copies of the protest file going to assigned counsel and the GSBCA, and should include an identifying statement, e.g., "proposals being considered for award."

(c) *Protest conference.* Within 6 working days of filing a protest, a conference may be convened by the Board to establish further proceedings for the protest. Although the protest file and answer will most likely not have been filed, the Government must be prepared to discuss the issues in the protest, whether a record submission or hearing is desired, and other matters raised by the Board or any other interested party. The Government must also be prepared, if required, to object to the scope of discovery in any protest action.

(d) *Procedure following decision of the GSA Board of Contract Appeals.* (1) Upon a Board decision (oral or written) to suspend procurement authority pending a decision on the merits of a protest, the contracting officer, in conjunction with the appropriate AGC, shall comply with the suspension decision.

(2) If the Board suspends performance of a contract for automatic data processing goods and services, the contracting officer shall take immediate action to comply with the suspension decision (40 U.S.C. 759(h)(3)(B)). Such suspension will be effective as directed by the Board.

(3) If the Board revokes, suspends, or revises procurement authority after the award of a contract for ADP resources,

the contracting officer shall consider the contract valid as to all goods or services delivered and accepted before the Board's decision (40 U.S.C. 759(h)(6)(B)).

Subpart 533.2—Disputes and Appeals

533.214 Contract clause.

The contracting officer shall insert the clause at 552.233–70, Disputes (Utility Contract), in solicitations and contracts for utility services. This clause supplements the Disputes clause at FAR 52.233–1.

Subpart 533.71—Processing Contract Appeals

533.7100 Definitions.

"Assigned Counsel" means the attorney employed by the Office of General Counsel (including offices of Regional Counsel) assigned to provide legal review or assistance.

"Associate General Counsel" means the Associate General Counsel of the General Law Division, Personal Property Division, or Real Property Division.

533.7101 Notice of appeal.

(a) Notices of appeal are to be addressed to the GSA Board of Contract Appeals along with a copy to the contracting officer. Final decisions must be appealed within 90 calendar days from the date the decision of the contracting officer is received. Any request for an extension of the 90-day appeal period will be denied.

(b) If the notice of appeal was mailed or otherwise submitted to the contracting officer in an untimely manner, a separate letter, signed by the contracting director, shall be sent to the AGC, requesting that a motion for dismissal of the appeal be submitted to the GSA Board of Contract Appeals (the Board). The letter shall state the name of the appellant, contract number, and date of the contracting officer's final decision, and must be accompanied by (1) the certified mail receipt showing the date on which the appellant received the contracting officer's final decision, and (2) the envelope which contained the notice of appeal or other evidence of late submission of the notice of appeal.

533.7102 Contents of notices of appeal.

A notice of appeal must be in writing and should indicate that an appeal is thereby intended, should identify the decision and the date thereof from which the appeal is taken, the GSA office cognizant of the dispute, and the number of the contract in question. The appeal should describe the nature of the dispute and the relief sought, the contract provisions involved, and any other additional information or comments relating to the dispute which are considered to be important. The notice of appeal must be signed personally by the appellant (the prime contractor making the appeal) or by an officer of the appellant corporation, or member of the appellant firm, or by the contractor's duly authorized representative or attorney.

533.7103 Appeal files.

(a) Appeal files must be prepared in accordance with this section and forwarded, after concurrence by assigned counsel, to the appropriate AGC within 20 calendar days after receipt of the notice of appeal or advice that an appeal has been filed unless the AGC advises that the Board requires a shorter period under its small claims procedures. In the event the time for submission of the appeal file cannot be met, the contracting officer shall submit in writing a full explanation and a request for additional time to the AGC, before expiration of the designated time.

(b) Upon receipt of the notice of appeal, the contracting activity must establish a record to ensure the timely preparation and submission of appeal cases. The record must show, as a minimum, the name of the appellant, the date of the contracting officer's final decision, the date the appeal was filed, contract number, docket number, and name of the contracting officer.

533.7103–1 Preparation of the appeal file.

(a) *General.* Appeal files must be prepared in quadruplicate. Each file is identified by the name of the appellant, contract number, and docket number. All copies of the appeal file must be identical both as to content and position of items. If more than one appeal is filed under the same contract, upon request to, and waiver by, the Board, the appeal file for the second and subsequent appeals need not duplicate the documents included in the first appeal file, but must make reference to the appeal file which contained such documents, including the docket and item numbers. However, if changes to such documents occur subsequent to preparation of the original file, these changes must be appropriately identified and included in the later appeal file. Such files must also include any documents pertinent to the later appeal but not previously furnished.

(b) *Content of appeal file.* (1) Each appeal file must be assembled by using a two-piece red press-board binder 11 by 8½ inches punched with a 3-inch capacity fastener (NSN 7510–00–582–4201). A gummed label (NSN 7510–00–264–5460) must be used on top of the file to identify the case by contractor, contract number, and docket number.

(2) Individual appeal files must not be more than 1 inch thick. If the file will be more than 1 inch thick, two or more consecutive binders must be used and identified with the appropriate exhibit numbers contained in each.

(3) Each document to be included in the appeal file (i.e., letter, telegram, memo, report, invoice, etc.) must be legible, complete, included as a separate exhibit in the file, and listed in the "Index of Exhibits" by exhibit number and brief description. If a document cannot be legibly reproduced, the unaltered document must be submitted with an attached accurate typewritten transcription thereof. Assigned counsel will assist the contracting officer in determining which documents are relevant to the issue in the appeal or not privileged for inclusion in the appeal file.

(4) Each appeal file must contain division sheets separating the different documents listed in the "Index of Exhibits." Division sheets must be tabbed and numbered consecutively commencing with number one, in whole Arabic numbers (no letters, decimals, or fractions), and continuously from each file to the next so that the complete appeal file will consist of one set of consecutively numbered appeal file exhibits.

(c) *Arrangement of documents.* (1) The first (top) document in the appeal file must be the "Index of Exhibits." The index must list, opposite each exhibit number, the date and a brief description of the document and must indicate which exhibits, if any, have been filed with the Board but not served on the other party because of their length or bulk. The exhibits must be arranged in chronological order, earliest document first (as exhibit 1), and be separated by tabs for identification. For example:

	Exhibit	Date
Copy of basic contract, including referenced terms and conditions and any amendments	1	5/20/88
Notice of award	2	5/20/88
Notice to proceed and facsimile of Post Office receipt	3	6/5/88
Contractor's request for final decision or other documents of claim in response to which the decision was issued	4	8/5/88
Contracting officer's final decision letter applicable to the dispute and facsimile of Post Office receipt	5	8/25/88
Notice of Appeal with attachment, if any	6	9/10/88
Board of Contract Appeals acknowledgement of contractor's Notice of Appeal	7	9/15/88

(2) In addition to the exhibits listed in (c)(1) of this section, other pertinent exhibits, such as the following, should be included and exhibited as applicable, in chronological order:

(i) Copy of the repurchase contract, including referenced terms and conditions.

(ii) Copies of specifications/drawings applicable to the dispute.

(iii) Copy of the abstract of offers and list of all offerors solicited for the repurchase contract.

(iv) Copy of letter of assessment, including worksheet showing calculation of excess costs and/or other damages including administrative costs.

(v) Copies of defaulted purchase/delivery orders.

(vi) Copies of purchase/delivery orders issued under the repurchase contract.

(vii) Proof of payment and a detailed disbursement listing, annotated and certified, if applicable.

Note: The information and documents needed must be obtained from the appropriate GSA finance office. The finance information will include a detailed disbursement listing, annotated with the check number and date, and the amount applicable to the repurchase order if different from the check amount. The disbursement listing will be certified by an appropriate finance division official whose title and date of signature will also be shown.

(viii) Evidence of certification of the claim or claims, as applicable.

(ix) All other correspondence between the Government and the contractor relevant to the appeal.

(x) All documents and other physical evidence on which the contracting officer relied in making a decision.

533.7103–2 Transmittal of the appeal file.

(a) The original and two copies of the appeal file must be forwarded to the AGC by a transmittal letter from the contracting director. The appeal file must be accompanied by the contracting officer's detailed statement of facts in a memorandum of position as a separate document which must be concurred in by assigned counsel who will also prepare and attach a statement of legal position. In addition, a list of recommended witnesses and the Government's estimate (when appropriate) of the amount of any claim in the event of an adverse decision must be prepared. A point of contact must be given to the AGC; name of individual, position, title, and telephone number.

(b) The contracting officer shall retain one copy of the appeal file.

(c) After reviewing the appeal file for adequacy, the trial attorney in the Office of General Counsel will transmit the appeal file to the Board and serve a copy of the appeal file upon appellant.

533.7104 The contracting officer's memorandum of position.

The memorandum of position is a chronological summary of the actions leading to the dispute and a rationale of the contracting officer's actions for the information of the trial attorney. The memorandum of position is submitted to the AGC simultaneously with the appeal file, but as a separate document; i.e., it will not be included as part of the appeal file or included in the index. Although no particular form is prescribed, the statement must identify the contract, state the nature of the contractor's claim, cite pertinent portions of the contract, state the contracting officer's decision with citations to pertinent contract provisions and a supporting explanation, and set out any new facts which may have developed since the decision was made. The contracting officer shall sign the memorandum of position.

533.7105 Procedure following decision of the GSA Board of Contract Appeals.

(a) Decisions of the Board will be promptly implemented. However, it must be recognized that the contractor may decide to appeal a Board decision in the United States Court of Appeals for the Federal Circuit. It is also possible for either party to file a motion for reconsideration by the Board within 30 calendar days from the date of the receipt of a copy of the Board decision. If further appeal of a decision or a motion for reconsideration of a decision is contemplated, the implementation of the decision may be postponed; if the issue is over quantum, however, consideration should be made to making payment of the undisputed amount to minimize interest to be paid the contractor.

(b) The contracting officer need not take any further action (other than administrative) if the Board affirms the contracting officer's original decision, provided a recovery of costs is not due from the contractor. Where a recovery is due, collection must be initiated by the contracting officer either by (1) a contract amendment adjusting the contract price or (2) a written demand for immediate payment, as appropriate. (In excess cost cases, Office of Finance will normally pursue the necessary collection.) Any written demand must instruct the contractor to make payment to the General Services Administration and address it to the appropriate GSA finance office. A copy of any written demand must be provided to the appropriate GSA finance office for information and followup.

(c) In appeals brought under the disputes clause of the contract, when the Board does not uphold the contracting officer's original decision and the Board's decision provides for payment in favor of the contractor, the contracting officer shall prepare a supplemental agreement with concurrence of assigned counsel. The supplemental agreement will ensure against further litigation of the same dispute. The contracting officer shall forward the recommendation for payment to the appropriate finance office with the original of the supplemental agreement and a copy of the Board's decision.

(d) In appeals brought under the Contract Disputes Act of 1978, when the Board does not uphold the contracting officer's original decision and the Board's decision awards the contractor an amount of money, and the AGC informs the contracting officer that the Government will not move for reconsideration of the Board's decision or appeal it to the United States Court of Appeals for the Federal Circuit, the contracting officer must complete the Certificate of Finality attached to the copy of the Board's decision and return it to the Board. The Board will forward the Certificate of Finality, completed by both parties, and a certified copy of its decision to the United States General Accounting Office to be certified for payment to the contractor.

PART 534—MAJOR SYSTEM ACQUISITION

Sec.
534.002 Policy.
534.002–70 Directives.
534.002–71 Definitions.

Authority: 40 U.S.C. 486(c).

534.002 Policy.

534.002-70 Directives.

Additional policies and procedures on major systems acquisitions are contained in the following:

(a) GSA Order, Major System Acquisitions in the General Services Administration (ADM 5400.33).

(b) FIRMR 201-32.103, The Acquisition of Major ADP Resource Systems.

(c) GSA Order, Major System Acquisitions in the Automated Data and Telecommunications Service (DTS 5400.1).

534.002-71 Definitions.

Major system acquisitions are those that are:

(a) Directed at and critical to fulfilling an agency mission;

(b) Estimated to entail the allocation of $25 million or more life cycle cost in current year dollars; or

(c) Determined by the Administrator to warrant special management attention or to be of critical importance to the agency or technologically advanced.

PART 535—RESEARCH AND DEVELOPMENT CONTRACTING—[RESERVED]

PART 536—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 536.1—General

Sec.

536.101 Applicability.
536.102 Definitions.

Subpart 536.2—Special Aspects of Contracting for Construction

536.201 Evaluation of contractor performance.
536.202 Specifications.
536.203 Government estimate of construction cost.
536.204 Disclosure of the magnitude of construction projects.
536.206 Liquidated damages.

Subpart 536.3—Special Aspects of Sealed Bidding in Construction Contracting

536.302-70 Charges and deposits for bidding documents.
536.303 Invitations for bids.
536.303-70 Bids that include alternates.
536.303-71 Bids that include options.
536.303-72 Bids that include alternates and options.
536.370 Exercise of options.

Subpart 536.5—Contract Clauses

536.570 Supplemental provisions and clauses.
536.570-1 Definitions.
536.570-2 Authorities and limitations.
536.570-3 Specialist.
536.570-4 Basis of award—construction contract.
536.570-5 Working hours.
536.570-6 Use of premises.
536.570-7 Measurements.
536.570-8 Specifications and drawings.
536.570-9 Shop drawings, coordination drawings, and schedules.
536.570-10 Samples.
536.570-11 Heat.
536.570-12 Use of equipment by the Government.
536.570-13 Subcontracts.
536.570-14 Furnishing information and records.

Authority: 40 U.S.C. 486(c).

Subpart 536.1—General

536.101 Applicability.

Other requirements of this regulation are generally applicable to construction and architect-engineer contracts. However, if a requirement in this part is inconsistent with a requirement in another part of this regulation, this part takes precedence.

536.102 Definitions.

"Construction activity" means the organizational level of the agency that has authority and responsibility for the architectural, engineering, and other technical or administrative aspects of design and construction.

"Statutory cost limitations," as used in this part, means the cost limits that may be included in the agency's statutory authorization or annual appropriations act (by law).

Subpart 536.2—Special Aspects of Contracting for Construction

536.201 Evaluation of contractor performance.

(a) The construction activity shall prepare a performance report for each construction contract of $25,000 or more, and each construction contract where any element of performance was unsatisfactory or outstanding.

(b) Each regional construction activity shall establish an evaluation report file with procedures for maintaining alphabetically the evaluation reports, for cross referencing all names under which a contractor does business with GSA, and for ensuring that fully qualified personnel possessing the knowledge of the contractor's performance prepare and review the evaluation reports.

(c) The regional construction activity shall provide the contracting officer with a copy of the evaluation report for inclusion in the contract file. The evaluation reports should be used when making preaward determinations of contractor responsibility.

536.202 Specifications.

Under the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6962, the Environmental Protection Agency has promulgated rules in 40 CFR Parts 248 and 249, regarding the use of certain waste by-products as generally acceptable substitutes for energy-intensive raw materials. The rules provide that when certain construction material containing energy intensive raw material is required that the technical specification allows as an alternate, construction material containing certain waste byproducts. However, specifications should not be revised to allow the use of the alternate material if it is found that performance requirements for the construction material would not be met or that the use of the alternate material would be unsatisfactory for technical reasons.

536.203 Government estimate of construction cost.

(a) A detailed independent Government estimate shall be prepared for contracts for new construction, repairs and alterations, professional services, and for any modification expected to cost $25,000 or more. When the expected cost is less than $25,000, the contracting officer may require the preparation of an estimate. Except as provided in paragraphs (c) and (d) of this section access to or disclosure of the Government estimate must be limited to Government personnel whose official duties require knowledge of the estimate.

(b) A copy of the independent Government estimate must be sealed in an envelope and submitted to the contracting officer before the date and time for bid opening or the date for receipt of proposals. (See paragraphs (c) and (d).)

(c) If the procurement is by sealed bidding, the sealed copy of the Government estimate must be stored with the bids received until bid opening. Before releasing an amendment to a solicitation that may affect the price, a revised sealed Government estimate must be stored with the bids until bid opening. After the bids are read and recorded, the sealed Government estimate will be opened and retained with the Standard Form 1419, Abstract of Offers—Construction. However, the Government's estimate must not be disclosed until after award. Immediately after award the Government estimate must be recorded on the SF 1419 as the Independent Government Estimate.

(d) If the procurement is by negotiation, the sealed copy of the Government estimate must be stored with the proposals until the closing time for receipt of proposals. Cost figures in the Government estimate may be disclosed during negotiation, but only to the extent considered necessary for arriving at a fair and reasonable price, provided that the overall amount of the Government estimate is not disclosed before award. Before the release of a modification to the solicitation which may affect price, a revised Government estimate must be prepared, sealed, and stored, with the proposals until closing time for proposals. After award, the independent Government estimated price may be revealed, upon request, to those firms or individuals who submitted proposals.

(e) The Government estimate must be used to evaluate offers, as a guide in conducting contract negotiations or negotiations of contract modifications, and as a tool for determining the reasonableness of prices.

536.204 Disclosure of the magnitude of construction projects.

The magnitude of construction projects in excess of $10,000,000 should be shown in increments of $10,000,000 (e.g. $20,000,000 to $30,000,000).

536.206 Liquidated damages.

When liquidated damages are included in the solicitations the rate must reflect the probable damages the Government will suffer and may include items such as:

(a) The added cost of contract administration and supervision;

(b) The rental the Government would have to pay if construction is not completed on schedule; and

(c) The cost of these monies.

Subpart 536.3—Special Aspects of Sealed Bidding in Construction Contracting

536.302-70 Charges and deposits for bidding documents.

(a) Generally, bid documents will be provided free and without a requirement for either a refundable deposit or a nonrefundable charge, except as provided in paragraph (c) of this section. Bid documents will be provided free for review purposes to plan rooms, contractor service facilities, and other similar places having a legitimate interest in the bidding process.

(b) To encourage the return of specifications and drawings to GSA, a note similar to the following, must be prominently placed in each solicitation:

Note: We request your cooperation in returning the bid documents to GSA within 20 calendar days after bid opening date.

(c) If the contracting officer determines before issuance of the solicitation that an insufficient number of sets of bid documents were returned on previous projects, a refundable bid document deposit may be required. Under extraordinary circumstances, a nonrefundable charge may be required for bid documents if approved by the head of the contracting activity.

(1) The amount of deposit for bid documents should be determined on the basis of the actual printing costs of the documents. The following table is for guidance only, and the contracting officer may require amounts higher or lower than those shown. Deposits should not be so high as to discourage competition. Refundable bid document charges are intended to ensure the return of bid documents to the Government for use by the successful contractor and Government personnel, and thus minimize the need for duplication of additional sets. When the administrative cost of processing bid document deposits and returning bid documents is greater than the value of returned documents, the contracting officer should not require deposits.

Estimated project cost range	Guide for refundable bid document deposit
Up to $1,000,000	None
$1,000,000 to $5,000,000	$30
$5,000,000 to $10,000,000	40
$10,000,000 and over	50

(2) When a bid document deposit is required, the presolicitation notice must require that the deposit be made by certified check, cashier's check, or money order payable to the General Services Administration. If a deposit is not submitted as specified, a reasonable attempt must be made to obtain the deposit in the proper form without delay. A record of the attempt must be placed in the contract file. The document deposit will be refunded if bid documents are returned in good condition, without marks, notes, or mutilations, within 20 calendar days after bid opening. Refunds will not be made for bid documents returned more than 20 days after bid opening.

(3) The contracting officer must cite the amount of the refundable deposit on Standard Form 1417, Pre-Solicitation Notice (Construction Contract).

536.303 Invitations for bids.

The invitation for bids must include the following, when applicable:

(a) Special instructions concerning bids and awards of contracts that include base bid, alternates, and/or options (see 536.570-4).

(b) Instructions concerning the pre-bid conference (see FAR 14.207, Pre-bid conference).

536.303-70 Bids that include alternates.

(a) The base bid must include all features that are essential to a sound and adequate building design. However, if it appears that funds available for a project may be insufficient to include all desired features in the base bid, the contracting officer may issue a solicitation for a base bid and include one or more alternates in the order of priority. Alternates may be used only when they are clearly justified and should involve substantial amounts of work in relation to the base bid. Their use must be limited and should involve only "add" alternates.

(b) The language used in soliciting alternates must be approved in writing by counsel.

(c) All solicitations requiring a base bid and alternates must include the Alternate II provision at 552.236-73, Basis of Award—Construction Contract, which prescribes the method for evaluating bids.

(d) Before opening bids that include alternates, the contracting officer shall determine and record in the contract file the amount of funds available for the project. The amount recorded must be announced at the beginning of the bid opening and must be the controlling factor in determining the low bidder. This amount may be increased later when determining the alternate items to be awarded to the low bidder, provided that the award amount of the base bid plus the combination of alternate items do not exceed the amount offered by any other responsible bidder whose bid conforms to the solicitation for the base bid and the same combination of alternate items.

536.303-71 Bids that include options.

(a) Subject to the limitations in paragraph (c) of this section, the contracting officer may include options in contracts when it is in the Government's interest.

(b) The appropriate use of options may include, but is not limited to, the following:

(1) When additional work is anticipated but funds are not expected to be available at the time of award, and it would not be practicable to award a separate contract or to permit an additional contractor to work on the same site.

(2) When fixed building equipment, e.g. elevators, escalators, etc., will be installed under the construction contract and it is advantageous to have the installer of the equipment maintain and service the equipment during the warranty period.

(c) The contracting officer shall not employ options if:

(1) The prospective option represents known firm requirements for which funds are available unless competition for the option quantity is impracticable once the initial contract is awarded; or

(2) The contractor will incur undue risks; e.g., the price or availability of necessary materials or labor is not reasonably foreseeable.

(d) Solicitations containing option provisions must state the period within which the options may be exercised.

(e) The solicitations must state whether the basis of award is inclusive or exclusive of the options. Before a solicitation that includes evaluated options is issued, the contracting officer shall make a determination that there is reasonable certainty that funds will be made available to permit exercise of the option.

(f) The language of all solicitation provisions for options must be approved, in writing, by counsel.

(g) All solicitations requiring a base bid and options must include the Alternate I provision at 552.236–73, Basis of Award—Construction Contract, which prescribes the method of evaluation of bids.

536.303–72 Bids that include alternates and options.

(a) Solicitations may include alternates and options when the conditions in 536.303–70, Bids that include alternates, and 536.303–71, Bids that include options, are satisfied. In such solicitations, the low bidder for purposes of award is the responsible bidder offering the lowest aggregate price for the base bid plus those alternates in the order of priority listed in the solicitation that provide the most features of work within the funds available at bid opening, plus all options designated to be evaluated.

(b) In the case of options associated with alternates, the basis of award may require the evaluation of such options if the related alternate is selected.

(c) All solicitations requiring a base bid, alternates and options must include the Alternate III provision at 552.236–73, Basis of Award—Construction Contract, which prescribes the method of evaluation of bids.

(d) Before opening bids that include alternates and options, the contracting officer shall determine and record in the contract file the amount of funds available for the project (i.e., for the base bid and alternate work). The amount recorded must be announced at the beginning of the bid opening. This amount may be increased later when determining the alternate items to be awarded to the low bidder, provided that the award amount of the base bid and evaluated options plus such a combination of alternate items does not exceed the amount offered by any other responsible bidder whose bid conforms to the solicitation for the base bid, the evaluated options, and the same combination of alternate items.

536.370 Exercise of options.

(a) When exercising an option, the contracting officer shall notify the contractor, in writing, within the time period specified in the contract.

(b) The contracting officer may exercise options only after determining that:

(1) Funds are available;

(2) The requirement covered by the option fulfills an existing Government need; and

(3) The exercise of the option is the most advantageous method of fulfilling the Government's need, price and other factors considered.

(c) Before exercising an option, the contracting officer shall determine that such action is in accordance with the terms of the option and the requirements of this section. The written determination must be included in the contract file.

(d) The contract modification or other written document which notifies the contractor of the exercise of the option must cite the option clause as authority. In addition, when exercising an unpriced and/or unevaluated option cite the statutory authority permitting the use of other than full and open competition (see FAR 6.302 and 517.207).

Subpart 536.5—Contract Clauses

536.570 Supplemental provisions and clauses.

536.570–1 Definitions.

The contracting officer shall insert the clause at 552.236–70, Definitions, in solicitations and contracts when construction, dismantling, demolition, or removal of improvements is contemplated.

536.570–2 Authorities and limitations.

The contracting officer shall insert the clause at 552.236–71, Authorities and Limitations, in solicitations and contracts when construction, dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to exceed the small purchase limit.

536.570–3 Specialist.

The contracting officer shall insert the clause at 552.236–72, Specialist, in construction contracts when the technical sections of the contract require unusual experience or specialized facilities for adequate contract performance.

536.570–4 Basis of award—construction contract.

The contracting officer shall insert a provision substantially the same as the provisions at 552.236–73, Basis of Award—Construction Contract, in solicitations for fixed price construction contracts except when:

(a) The solicitation requires the submission of a lump sum bid only;

(b) The solicitation is for an indefinite quantity contract; or

(c) The contract amount is not expected to exceed the small purchase limitation.

If the solicitation requests the submission of a base bid and unit prices, the contracting officer shall use the basic provision. If the solicitation requests the submission of a base bid and options the contracting officer shall use the provision with its Alternate I. If the solicitation requests the submission of a base bid and alternates, the contracting officer shall use the provision with its Alternate II. If the solicitation requests the submission of a base bid, alternates, and options, the contracting officer shall use the provision with its Alternate III.

536.570–5 Working hours.

The contracting officer shall insert the clause at 552.236–74, Working Hours, in solicitations and contracts when construction, dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to exceed the small purchase limit.

536.570–6 Use of premises.

The contracting officer shall insert the clause at 552.236–75, Use of Premises, in solicitations and contracts when construction, dismantling, demolition, or removal of improvements is contemplated.

536.570–7 Measurements.

The contracting officer shall insert the clause at 552.236–76, Measurements, in solicitations and contracts when construction, dismantling, demolition, or removal of improvements is contemplated.

536.570–8 Specifications and drawings.

The contracting officer shall insert the clause at 552.236–77, Specifications and Drawings, in contracts when construction, dismantling, demolition, or removal of improvements is contemplated and the contract is expected to exceed the small purchase limit.

536.570–9 Shop drawings, coordination drawings, and schedules.

The contracting officer shall insert the clause at 552.236–78, Shop Drawings, Coordination Drawings, and Schedules, in contracts when construction is contemplated and the contract is expected to exceed the small purchase limit.

536.570–10 Samples.

The contracting officer shall insert the clause at 552.236–79, Samples, in construction contracts when the technical sections of the contract require the submission and approval of samples.

536.570–11 Heat.

The contracting officer shall insert the clause at 552.236–80, Heat, in contracts, as appropriate, when construction, dismantling, demolition, or removal of improvements is contemplated.

536.570–12 Use of equipment by the Government.

The contracting officer shall insert the clause at 552.236–81, Use of Equipment by the Government, in contracts requiring heating and air-conditioning of existing buildings when it may be necessary for the Government to operate all or part of the equipment before final acceptance of the contract.

536.570–13 Subcontracts.

The contracting officer shall insert the clause at 552.236–82, Subcontracts, in solicitations and contracts for construction when the contract is expected to exceed the small purchase limit.

536.570–14 Furnishing information and records.

The contracting officer shall insert the clause at 552.236–83, Furnishing Information and Records, in solicitations and contracts when construction, dismantling, demolition or removal of improvements is contemplated and the contract amount is expected to exceed the small purchase limit.

PART 537—SERVICE CONTRACTING

Subpart 537.1—Service Contracts—General

Sec.
537.101 Definitions.
537.106 Funding and term of service contracts.
537.110 Solicitation provisions and contract clauses.

Subpart 537.2—Advisory and Assistance Service

537.205 Management controls.

Authority: 40 U.S.C. 486(c).

Subpart 537.1—Service Contracts—General

537.101 Definitions.

"Building service contract" means a contract for services relating to the operation and maintenance of a building, e.g., janitorial; window washing; snow removal; trash removal; lawn and grounds care; inspection, maintenance and repair of fixed equipment (elevators, air-conditioning, and heater systems, etc.) and protection or guard service.

537.106 Funding and term of service contracts.

The Federal Property and Administrative Services Act of 1949, as amended (41 U.S.C. 260), authorizes GSA to enter into contracts for periods not to exceed three years for the operation, maintenance, and repair of fixed building equipment in Federally owned buildings (40 U.S.C. 490(a)(14)) and contracts for periods not exceeding ten years for utility services (40 U.S.C. 481(a)(3)). Contracts for these services may be awarded for the performance periods indicated without an "Availability of Funds" clause.

537.110 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the provision at 552.237–70, Qualifications of Offerors, in solicitations and contracts for building services when the contract amount is expected to exceed the small purchase limitation.

(b) The contracting officer shall insert the clause at 552.237–71, Qualifications of Employees, in solicitations and contracts for building services when the amount is expected to exceed the small purchase limitation. Supplemental clauses may be used with the clause at 552.237–71 to outline specific requirements regarding employees who will perform work on contracts.

(c) The contracting officer shall insert the certification at 552.237–72, Certification Regarding "Quasi-Military Armed Forces," in solicitations and contracts for guard service.

Subpart 537.2—Advisory and Assistance Service

537.205 Management controls.

All requests for advisory and assistance services must be processed in accordance with the requirements of GSA Order, Procurement of Consulting Services (ADM 2800.12D).

PART 538—GSA SCHEDULE CONTRACTING

Sec.
538.000 Scope of part.

Subpart 538.2—Establishing and Administering Schedules

538.203 Solicitation preparation.
538.203–70 Reserved.
538.203–71 Contract clauses.

Authority: 40 U.S.C. 486(c).

538.000 Scope of part.

Except for the Information Resources Management Service (IRMS), schedule contracts awarded under the Teleprocessing Service Program (TSP) and unless otherwise stated, the policies and procedures in this part are prescribed for contracting for supplies and services by the Federal Supply Service (FSS) and the Information Resources Management Service (IRMS) under their respective schedule programs.

Subpart 538.2—Establishing and Administering Schedules

538.203 Solicitation preparation.

538.203–70 [Reserved]

538.203–71 Contract clauses.

The contracting officer shall insert the clause at 552.238–72, Contractor's Report of Orders Received, in solicitations issued and contracts awarded under the FSS and IRMS schedule programs. Paragraph (b) of the basic clause may be modified as necessary to meet program requirements. If it is necessary to identify the official responsible for preparing the report, the contracting officer may use the clause with its Alternate I. When the clause is used by IRMS, the contracting officer shall use the clause with its Alternate II.

PART 539—MANAGEMENT, ACQUISITION, AND USE OF INFORMATION RESOURCES

Authority: 40 U.S.C. 486(c).

539.000 Scope of part.

To the extent prescribed in Part 538, the policies and procedures in that part apply to IRMS schedules.

PARTS 540–541 [RESERVED]

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 542—CONTRACT ADMINISTRATION

Subpart 542.2—Assignment of Contract Administration

Sec.
542.200–70 Policy.

Sec.

542.201 Definitions.
542.202 Assignment of contract administration.

Subpart 542.3—Contract Administration Office Functions

542.302 Contract administration functions.

Subpart 543.4—Correspondence and Visits

542.470 Implementation.

Subpart 542.11—Production Surveillance and Reporting

542.1107 Contract clause.

Subpart 542.12—Novation and Change-of-Name Agreements

542.1203 Processing agreements.

Subpart 542.70—Bankruptcy, Insolvency or Dissolution of a Business

542.7001 General.
542.7002 Procedures.

Subpart 542.71—Audit of Contractor's Records

542.7101 General.
542.7102 Purpose of audit.
542.7103 Types of contracts subject to audit.
542.7104 Additional internal controls.
542.7105 Releasing or withholding of audit reports.

Authority: 40 U.S.C. 486(c).

Subpart 542.2—Assignment of Contract Administration

542.200–70 Policy.

(a) Contracting directors shall establish procedures that will ensure that contract administration activities are performed by qualified personnel and in an effective manner.

(b) Contract administration may be performed by the contracting officer who awarded the contract or by an administrative contracting officer (ACO) within the contracting office. As an alternative, management may establish a separate contract administration office (CAO) consistent with the nature and complexities of the contracts, the need to perform contract administration at or near the contractor's facility or the place of performance, and the availability of resources.

(c) The contracting officer may designate one or more representatives to perform specified functions such as quality assurance, production, price analysis, finance and various engineering and technical specialities. These representatives may not enter into or modify a contract or otherwise perform functions reserved for a contracting officer except to the limited extent permitted for construction contracts. (See 542.201.2(d).) Designations of ACOs and contracting officers representatives must be in writing and communicated to the contractor.

542.201 Definitions.

"Assignment of contract administration" means that process whereby identified functions, duties, or responsibilities related to the administration of contracts are assigned to a CAO or an ACO within a contracting office.

"Contract administration" means the performance of actions after contract award that the Government takes to obtain compliance with contract requirements, including timely delivery of supplies or services, acceptance, payment, and closing of the contract. These actions include technical, financial, audit, legal, administrative, and managerial services in support of the contracting officer. It may include additional tasks requested or needed by the contracting activity including support in the pre-award phase of contracting.

"Contracting Officer's Representative (COR), Contracting Officer's Technical Representative (COTR), or Contract Administrator" means an individual designated and authorized in writing by the contracting officer to perform specific limited contract administration activities.

"Procuring Contracting Officer" (PCO) means, a contracting officer (see FAR Subpart 2.1). This regulation uses the term to differentiate between procuring and administrative responsibilities when contract administration authority has been delegated to an ACO within a contracting office or a CAO.

542.202 Assignment of contract administration.

(a) The contracting officer may delegate to an ACO functions not listed in FAR 42.302 and 542.302(b) provided that:

(1) The requirements of FAR 42.202(c) are met and,

(2) The Associate Administrator for Acquisition Policy approves the additional delegation. Requests for additional delegations must be submitted through the appropriate Central Office Service Commissioner or Assistant Administrator of the appropriate service or staff office to the Office of Acquisition Policy. If a service/office is providing contracting support for another service/office the request shall be sent to the Commissioner/Assistant Administrator of the contracting service/office. That official shall coordinate as necessary with the affected service/office.

(b) In addition to the requirements of FAR 42.202(d), the contracting officer shall provide or make available a complete copy of the contract file to the ACO.

Subpart 542.3—Contract Administration Office Functions

542.302 Contract Administration functions.

(a) Normal contract administration functions identified at FAR 42.302(a) are to be performed, to the extent they apply, either by the contracting office or an office specifically established to perform contract administration functions.

(b) The ACO or CAO shall perform the additional functions listed below only when and to the extent specifically authorized by the contracting officer.

(1) Negotiate and issue priced or unpriced orders under indefinite delivery type contracts and basic ordering agreements.

(2) Issue change orders to modify the method of shipment, the packing requirements, the place where supplies are to be delivered, or the specifications after coordinating with the PCO (only applies to ACO's in FSS).

(3) Accept/reject requests for acceptance of nonconforming supplies after coordinating with the PCO if other than a minor nonconformance is involved (only applies to ACO's in the Federal Supply Service (FSS)).

(4) Negotiate price adjustments and execute supplemental agreements resulting from acceptances in (b)(3) of this section.

(5) Issue cure or show cause notices under FAR 49.402–3(b) after coordinating with the PCO (only applies to ACO's in FSS).

(6) Terminate individual purchase/delivery orders after coordinating with the PCO.

(7) Terminate the contract for default after coordinating with the PCO (only applies to ACO's in FSS).

(8) Assess liquidated damages.

(c) Contracting officers may authorize COR's for construction contracts to issue change orders under $25,000, provided, the COR has been issued a Standard Form 1402, Certificate of Appointment under 501.603–70.

(d) Functions peculiar to specific programs may be delegated when approved by the Associate Administrator for Acquisition Policy. Requests to delegate contract administration functions not found in FAR 42.302 and 542.302(b) must be submitted to the Office of Acquisition Policy by the head of the affected Central Office service for approval.

Subpart 542.4—Correspondence and Visits

542.470 Implementation.

HCA's issuing implementing guidelines or procedures must obtain the concurrence of the Associate Administrator for Acquisition Policy.

Subpart 542.11—Production Surveillance and Reporting

542.1107 Contract clause.

The contracting officer shall insert the clause at 552.242–70, Status Report of Orders and Shipments, in solicitations and indefinite quantity and requirements contracts for stock or special order program items. The clause may also be used in indefinite delivery definite quantity contracts for stock or special order program items when close monitoring is necessary because numerous shipments are involved.

Subpart 542.12—Novation and Change-of-Name Agreements

542.1203 Processing agreements.

In determining whether it is in the Government's interest to recognize a successor in interest under FAR Subpart 42.12, the contracting officer shall consider, in addition to information provided by affected contracting and contract administration offices, information provided by the agency small business technical advisor where the contract was awarded to a small business under a small business set-aside and the third-party successor is a large business. Under the following conditions the contracting officer should refuse to recognize the successor and nonconcur in the transfer of the contract(s):

(a) There is adequate reason to believe that the transaction is intended to circumvent the requirements and objectives of the small business program; or

(b) The contract involved is a multiple award schedule (MAS) contract and other MAS small business contracts exist for the same special item number(s). If the MAS contract involves both set-aside and non-set-aside special item numbers, the contracting officer shall cancel that part of the contract related to the set-aside items, and process the novation request for the non-set-aside items under FAR Subpart 42.12.

Subpart 542.70—Bankruptcy, Insolvency or Dissolution of a Business

542.7001 General.

Prompt action is vital when a contractor becomes insolvent or files under any of the laws relating to bankruptcy, insolvency, and dissolution of businesses (11 U.S.C. 101 et. seq.) to assure that the Government's rights are protected. Terminated and current contracts with the contractor must be considered in any action contemplated. Contracting officers may be advised of such difficulties by the quality assurance specialist (QAS), contracting officer's representatives (COR), the Office of Finance, the Office of Inspector General, or other means, e.g., newspaper items, Dun and Bradstreet, an industry association, other contractors, other Federal agencies, or financial institutions. The contracting officer shall verify the accuracy of the information received and follow the procedures in 542.7002.

542.7002 Procedures.

(a) When a contractor is experiencing financial difficulties the contracting officer shall:

(1) Determine whether the contractor is delivering supplies and/or performing the services within the timeframes specified in the contract and whether the contractor is making satisfactory progress toward future deliveries or performance. Obtain, if needed, the recommendations of the QAS or COR.

(2) If the contractor has failed without excuse to deliver or perform under the contract or has failed to make progress so as to endanger performance, consider terminating the contract for default.

(3) If contract termination is not considered necessary, continue to monitor contract(s) by requesting that the QAS or COR visit the contractor's plant or the work site more often than usual to ascertain that progress is being made.

(4) If a small business contractor is involved, notify the regional Small Business Administration (SBA) office and the agency Small Business Technical Advisor.

(5) If the contract has a performance bond and/or payment bond, the bonding company should be notified if the circumstances of the particular case dictate such notification.

(b) When a contractor has filed for bankruptcy, the contracting officer shall:

(1) Notify the contracting director, assigned counsel, the Office of Finance and other interested parties.

(2) Determine whether the contractor is performing in accordance with the terms of the contract and/or is making satisfactory progress towards completion of the contract. If the contractor has failed without excuse to deliver or perform under the contract or failed to make progress so as to endanger performance, consider terminating the contract for default. Termination must not be effected without concurrence of assigned counsel, who will coordinate with the assigned Assistant United States Attorney.

(3) Determine the status of and provide for the protection and disposition of Government-owned property, if applicable.

(4) If special safeguards for Government property are needed, determine the names, addresses, and phone numbers of the local Government officials concerned in the bankruptcy proceedings, e.g., sheriff, marshal, or the Receiver or Trustee in bankruptcy, if assigned.

(5) Transmit immediately all relevant communications to assigned counsel; e.g., notice of bankruptcy, notice of meeting of creditors, plan of arrangement, status of such plan, claims bar date and address of the Bankruptcy Court where proceedings were filed. Assigned counsel shall immediately transmit a copy of the notice of bankruptcy to the appropriate office in the Office of General Counsel (i.e., LG, LP, or LR) or to the assigned Assistant United States Attorney.

(6) Prepare, in consultation with assigned counsel, the preliminary, contingent and, after reprocurement (if any), final proof of claim. Such proofs of claim will be forwarded by the assigned counsel to the appropriate office in the Office of General Counsel (i.e., LG, LP, or LR) or to the assigned Assistant United States Attorney.

(7) Consult with assigned counsel regarding possible setoffs of Government claims from retained and unpaid contractor earnings.

(8) Advise the Inspector General whenever there is reason to believe that the contractor may have fraudulently transferred assets before filing for bankruptcy. Also advise the Inspector General in any case where the contracting officer is aware of an ongoing audit or investigation of the contractor.

(c) Upon receipt of information that a contractor intends to dissolve a business or to cease operations for whatever reason, e.g., because of retirement, fire sale of business (without public notice), etc., the contracting officer shall verify the accuracy of the information. If the information is accurate, the contracting

officer shall request the QAS or COR to verify status of contract(s) and notify other directly interested parties. However, the QAS or COR should not be requested to make special contract administration visits unless all other efforts to obtain the necessary information have failed. If a claim against the contractor is either pending or outstanding, the contracting officer should notify assigned counsel and simultaneously obtain information that would aid in finalizing the amount of claim(s).

Subpart 542.71—Audit of Contractor's Record

542.7101 General.

The Assistant Inspector General—Auditing and the Field Audit Offices audit contractors' records when required by law, regulation, or sound business judgment. These audits include periodic or special request audits of contractors determined to be necessary because of such matters as the financial condition, integrity, and reliability of the contractor and prior audit experience, adequacy of the accounting system, and the amount of unaudited claims. So that the Government can benefit to the maximum extent from these audits, a coordinated and cooperative effort must be made by contracting officers, technical specialists, and finance and audit personnel.

542.7102 Purpose of audit.

Audits are conducted to advise and make recommendations to the contracting officer concerning:

(a) Propriety of amounts paid, or to be paid, by GSA to contractors when such amounts are based on a cost or time determination or on variable features related to the results of contractors' operations;

(b) Adequacy of measures taken by contractors regarding the use and safeguarding of Government assets under their custody or control;

(c) Compliance by contractors with contractual provisions such as progress payments, advance payments, guaranteed loans, cash return provisions, and price adjustments; and

(d) Reasonableness of contractor's termination settlement proposals.

542.7103 Types of contracts subject to audit.

(a) The following types of contracts, (excluding small purchases) include either the Audit-Negotiation clause prescribed in FAR 15.106–2 or the Examination of Records by GSA clause at 552.215–70 and are subject to audit.

(1) Cost-reimbursement type contracts;

(2) Contracts involving the use or disposition of Government-furnished property;

(3) Contracts that provide for advance payments, progress payments based on costs, or guaranteed loans;

(4) Contracts containing a price warranty or price reduction clause;

(5) Contracts or leases involving income to the Government when the income is based on operations that are under the control of the contractor or lessee;

(6) Fixed-price contracts or leases with economic price adjustment, with incentives and with price redetermination;

(7) Requirements and indefinite quantity (call-type) contracts;

(8) Time-and-material, labor-hour, and letter contracts; and

(9) Leases when the rental is subject to adjustment based on negotiated operating cost escalation.

(b) A copy of each contract or modification of the types described in paragraph (a) of this section must be furnished to the Assistant Inspector General for Auditing (JA), General Services Administration, Washington, DC 20405, or to the Field Audit Office, as appropriate, simultaneously with distribution of other copies of the contract.

542.7104 Additional internal controls.

As a supplement to the contractual right to audit contractor records in cost-reimbursement type, time and materials, labor-hour, requirements and indefinite quantity (call-type) contracts, the contracting officer (with the assistance of the Assistant Inspector General—Auditing or the Field Audit Office) shall establish internal controls or procedures prior to the performance of those contracts with respect to any flexible or variable features. For example, if a time and materials or labor-hour contract is performed (on a Government facility or elsewhere) subject to observation or overall supervision by Government personnel approval of time records may be provided for as incidental to the Government supervision. Any reasonable and reliable method or procedure may be established to account for such matters as the time spent on the job and materials or supplies received which will assist the contract auditor and the contracting officer to determine the correctness of the charges to the contract.

542.7105 Releasing or withholding of audit reports.

The Freedom of Information Act generally requires the disclosure of Government records subject to certain exceptions. It may be to the benefit or detriment of the Government to release contract audit reports or portions of them depending upon the circumstances. However, because of the complexity of the matter, contracting officers shall consult with both the Assistant Inspector General-Auditing and the Office of General Counsel, before releasing or withholding such information.

PART 543 CONTRACT MODIFICATION

Subpart 543.1—General

Sec.
543.102 Policy.
543.170 Changes in designated subcontractors, inspection and/or production points.

Subpart 543.2—Change Orders

543.202 Authority to issue change orders.
543.205 Contract clauses.

Authority: 40 U.S.C. 486(c).

Subpart 543.1—General

543.102 Policy.

A modification for work outside the scope of a contract must be treated as a new procurement. Such modifications must be justified and approved under FAR Subpart 6.3, synopsized under FAR Subpart 5.2 and Subpart 505.2, and effected through a supplemental agreement.

543.170 Changes in designated subcontractors, inspection and/or production points.

(a) The contracting officer shall not execute a contract modification that authorizes a change in a designated subcontractor or any designated inspection or production point, without considering the impact of the change on the contractor's ability to fulfill the terms and conditions of the contract. When considering the impact, the contracting officer should consider the same factors that would be considered in evaluating whether a contractor is responsible. (See FAR Subpart 9.1 and Subpart 509.1.)

(b) If the contracting officer approves a change of subcontractor, inspection point, or production point, the contracting officer shall issue a contract modification specifying the nature of the change and the effective date. Where feasible, the modification should provide that delivery orders placed before the effective date will remain in effect as written. In determining the effective date, contracting officers should take into consideration the time necessary for offices concerned to take required actions.

Subpart 543.2—Change Orders

543.202 Authority to issue change orders.

(a) Change orders must be issued by the procuring contracting officer unless FAR 42.202(c) or 542.302 apply.

(b) A contracting officer's representative (COR) for a construction contract that has been issued a warrant under 501.603–70, may be authorized to issue change orders of $25,000 or less. (See 542.302.) Such change order authority may be exercised on a contract-by-contract basis by the contracting officer's written authorization. The contracting officer may further limit the authorization, e.g., to lower dollar amounts, to emergency situations, etc. In addition, the contracting officer's written authorization must instruct the COR to avoid personally performing all of the following tasks for a single change order: (1) Determining the need for a change, (2) Preparing the Government's cost estimate, (3) Conducting negotiations, (4) Issuing the change order and (5) Inspecting the work. The contracting officer shall further instruct the COR to submit change orders to a designated official for review before issuance (for price-to-be-determined-later change orders before definitization) whenever all of these activities are personally performed. The contracting officer may personally review change orders or may designate the COR's immediate supervisor or a higher-level official within the organization to review change orders. To the maximum extent possible, the same individual should review change orders issued under a particular contract.

(c) Change orders should be issued after coordination as appropriate, with counsel, quality control, finance, audit or other technical personnel.

543.205 Contract clauses.

(a) The contracting officer shall insert the clause at 552.243–70, Pricing of Adjustments, in solicitations and contracts when the contract amount is expected to exceed the small purchase limitation and a contract other than a cost type contract is contemplated.

(b) The contracting officer shall insert the clause at 552.243–71, Equitable Adjustments, in solicitations and contracts for (1) dismantling, demolishing, or removing improvements; or (2) construction, when the contract amount is expected to exceed the small purchase limitation and a fixed-price contract is contemplated.

PART 544—SUBCONTRACTING POLICIES AND PROCEDURES—[RESERVED]

PART 545—GOVERNMENT PROPERTY—[RESERVED]

PART 546—QUALITY ASSURANCE

Subpart 546.3—Contract Clauses

Sec.
546.302 Fixed-price supply contracts.
546.302–70 Source inspection by Quality Approved Manufacturer.
546.302–71 Source inspection.
546.312 Construction contracts.

Subpart 546.4—Government Contract Quality Assurance

546.400 Scope of subpart.
546.402 Government contract quality assurance at source.
546.403 Government contract quality assurance at destination.
546.470 Testing.
546.470–1 Acceptance testing.
546.470–2 Certification testing.

Subpart 546.7—Warranties

546.704 Authority for use of warranties.
546.705 Limitations.
546.708 Warranties of data.
546.709 Warranties of commercial items.
546.710 Contract clauses.

Authority: 40 U.S.C 486(c)

Subpart 546.3—Contract Clauses

546.302 Fixed-price supply contracts.

546.302–70 Source inspection by Quality Approved Manufacturer.

Contracting officers in the Federal Supply Service shall insert the clause at 552.246–70, Source Inspection by Quality Approved Manufacturer, in solicitations and contracts that provide for source inspection, except multiple award schedules contracts, motor vehicle contracts, and contracts awarded by the Special Programs Division of the Office of Scientific Equipment Commodity Center, unless the contracting officer, in conjunction with the Central Office Quality Assurance Division (FQA), decides inspection by Government personnel is necessary. Contracting officers may authorize the use of manufacturing plants or other facilities located outside the United States (including Puerto Rico and the Virgin Islands) to perform inspection and testing under paragraph (a)(1) of the clause when:

(a) Inspection services are available from another Federal agency on the basis of its primary inspection responsibility in a geographic area;

(b) An inspection interchange agreement exists with another agency concerning inspection at a contractor's plant;

(c) Procurement is being made for AID and specifies the area of source; or

(d) Other considerations will ensure more economical and effective inspection consistent with the Government's interest.

Such authorization must be fully coordinated with FQA and documented in the file.

546.302–71 Source inspection.

The contracting officer shall insert the clause at 552.246–72, Source Inspection, in solicitations and contracts when it is determined that inspection is to be performed at the source by Government personnel.

546.312 Construction contracts.

The contracting officer shall insert the clause at 552.246–71, Final Inspection and Tests, in solicitations and contracts for construction that include the Inspection of Construction clause at FAR 52.246–12.

Subpart 546.4—Government Contract Quality Assurance

546.400 Scope of subpart.

This subpart prescribes policies and procedures for use by the Federal Supply Service. Use by other GSA activities is optional.

Subpart 546.4—Government Contract Quality Assurance

546.402 Government contract quality assurance at source.

(a) Source inspection of supplies shall be performed either by Government personnel or by a Quality Approved Manufacturer when the contract is:

(1) A Federal Supply Schedule contract selected for source inspection;

(2) A requirements contract which is national in scope (including shipments to GSA distribution centers);

(3) A requirements contract which is regional in scope;

(4) A definite quantity contract for stock items;

(5) For Class 8010 items; or

(6) For Special-purpose vehicles, trucks over 10,000 pounds gross vehicle weight (GVW), trucks weighing 10,000 pounds GVW or less that are not covered by a Federal standard, and vehicles to be shipped outside the coterminous United States.

(b) Contracts may also provide for source inspection when the contracting director, after coordination with FQA, determines that it is in the Government's interest due to the critical nature of the supplies.

546.403 Government contract quality assurance at destination.

Inspection of supplies at destination should be performed when the supplies are purchased using small purchase procedures, a schedule contract is involved (except for schedules selected for source inspection), or the contract is for:

(a) Commercial or off-the-shelf products;

(b) Standard vehicles purchased for domestic consignees; or

(c) Trucks weighing 10,000 pounds GVW or less purchased for domestic consignees using a Federal Standard.

546.470 Testing.

Testing to determine conformance with specifications and standards may be conducted at facilities of Federal agencies, manufacturers, independent testing laboratories, and others, as appropriate.

546.470-1 Acceptance testing.

(a) Acceptance testing is conducted to determine conformance with purchase descriptions or specifications before a shipment is accepted. Such testing must not be solely for the purpose of furnishing information to a producer or vendor as to conformance with specification requirements.

(b) The cost of services for acceptance testing of samples of a shipment normally will be borne by GSA, except for retesting necessitated by prior rejection.

546.470-2 Certification testing.

(a) Certification testing is conducted to determine conformance of an item with a specification for the purpose of executing a certificate of compliance required by the specification.

(b) When a certificate from a recognized laboratory is required by the contract and there is a lack of suitable commercial testing facilities, GSA, upon request and agreement by the contractor to pay all costs, will arrange, for the required certification testing by a Government laboratory, where feasible.

Subpart 546.7—Warranties

546.704 Authority for use of warranties.

The contracting officer must consider the criteria in FAR 46.703 and decide whether to use a warranty in a specific acquisition.

546.705 Limitations.

The use of warranties in cost reimbursement contracts, other than those in FAR clause 52.246-3 or 52.246-8, must be approved by the contracting director.

546.708 Warranties of data.

Warranties of data should be developed by the technical or specification manager when the contracting officer decides that the use of a warranty is in the Government's interest and the contracting director concurs.

546.709 Warranties of commercial items.

The specification manager shall advise the contracting officer: (a) Whether the specification contains a warranty or a commercial warranty applies and (b) when an extended warranty is necessary and recommends the duration of the extended warranty.

546.710 Contract Clauses.

(a) The contracting officer shall insert the clause at 552.246-17, Warranty of Supplies of a Noncomplex Nature, in solicitations and contracts instead of FAR 52.246-17. If commercial items, i.e., specified by brand name or equal, are to be acquired, the clause at 552.246-17 must be used with Alternate I instead of FAR 52.246-17 with its Alternate I. The term "commercial items" in the clause is not to be used in conjunction with Commercial Item Descriptions (CIDs) or specifications.

(b) The contracting officer shall insert the clause at 552.246-73, Warranty—Multiple Award Schedule, in solicitations and multiple award schedule (except international schedule) contracts.

(c) The contracting officer shall insert the clause at 552.246-74, Warranty—International Multiple Award Schedule, in solicitations and international multiple award schedule contracts.

(d) The contracting officer shall insert the clause at 552.246-76, Warranty of Pesticides, in solicitations and contracts involving the procurement of pesticides.

(e) The contracting officer shall insert the clause at 552.246-75, Guarantees, in solicitations and contracts for construction when the contract amount is expected to exceed the small purchase limitation.

PART 547—TRANSPORTATION

Subpart 547.3—Transportation in Supply Contracts

Sec.

547.300 Scope of subpart.
547.303 Standard delivery terms and contract clauses.
547.303-1 F.o.b. origin.
547.303-6 F.o.b. destination.
547.304-5 Exceptions.
547.305 Solicitation provisions, contract clauses, and transportation factors.
547.370 Restrictions on transportation to military installations.

Authority: 40 U.S.C. 486(c).

Subpart 547.3—Transportation in Supply Contracts

547.300 Scope of subpart.

This subpart prescribes policies and procedures for Federal Supply Service (FSS) acquisitions.

547.303 Standard delivery terms and contract clauses.

547.303-1 F.o.b origin.

(a) The contractor shall request a carrier routing from the applicable transportation zone office on all shipments weighing 10,000 pounds or more.

(b) The contractor shall ship on a Government bill of lading (GBL) unless:

(1) Shipment is via postal or parcel service;

(2) Shipment on a commercial bill of lading (CBL) is authorized in writing by the contracting officer because (i) shipment is urgently required and (ii) a GBL cannot be issued in a timely manner; or

(3) The transportation cost estimate is under $100 (see FAR 42.1403-2).

(c) The signature of the carrier's agent and the annotation at FAR 52.247-1 must be shown on the original and all copies of the CBL. The original of the CBL must be mailed to the office, which authorized the CBL.

547.303-6 F.o.b. destination.

The contracting officer shall insert in solicitations and contracts the clause at 552.247-34, F.o.b. Destination, in lieu of the clause at FAR 52.247-34.

547.304-5 Exceptions.

(a) Unless the contracting officer can justify more restrictive delivery terms and documents the contract file accordingly, solicitations including delivery to Alaska, Hawaii, or Puerto Rico must specify that offers:

(1) May be f.o.b origin; f.o.b. vessel, part of shipment; f.o.b. destination; or any combination of these delivery terms (other delivery terms may be provided for, if appropriate); and

(2) Will be evaluated on the basis of the lowest overall cost to the Government delivered to the ultimate destination.

(b) Federal Supply Schedules should attempt to obtain a f.o.b. destination delivery term for Alaska, Hawaii, and Puerto Rico, if such delivery term is offered for shipments within CONUS.

547.305 Solicitation provisions, contract clauses, and transportation factors.

The contracting officer shall insert in solicitations and contracts the clause at 552.247-70, Placarding Railcar Shipments, when it is essential that the railcar doors be specially positioned next to the unloading dock, platform, or warehouse door.

547.370 Restrictions on transportation to military installations.

Solicitations and contracts specifying direct delivery to military installations must specify applicable delivery restrictions.

PART 548—VALUE ENGINEERING—[RESERVED]

PART 549—TERMINATION OF CONTRACTS

Sec.

549.001 Definitions.
Subpart 549.1—General Principles
549.111 Review of proposed settlements.
Subpart 549.4—Termination for Default
549.402-6 Repurchase against contractor's account.
549.402-7 Other damages.
Subpart 549.5—Contract Termination Clauses
549.502 Termination for convenience of the Government.
549.570 Submission of termination liability schedule.

Authority: 40 U.S.C. 486(c).

549.001 Definitions.

"Administrative costs," as used in this part, mean costs, other than excess costs, incurred by the Government as a result of the contractor's default. Administrative costs include but are not limited to:

(a) Salaries and fringe benefits paid to Government employees who perform work (e.g. reprocurement) as a result of the default.

(b) Preaward survey expenses incurred in qualifying reprocurement contractors;

(c) Costs incurred in printing and distributing the reprocurement solicitation.

"Excess costs," as used in this part, mean costs, other than administrative costs, incurred by the Government as a consequence of the contractor's default in the reprocurement of similar supplies or services or in the resulting performance of such services by the Government.

Subpart 549.1—General Principles

549.111 Review of proposed settlements.

(a) Proposed termination settlements between $25,000 and $100,000, must be reviewed and approved by the contracting director.

(b) Proposed termination settlements over $100,000, must be reviewed and approved by the head of the contracting activity (HCA).

(c) The HCA may require review and approval of proposed termination settlements less than $25,000 at least one supervisory level above the contracting officer.

Subpart 549.4—Termination for Default

549.402-6 Repurchase against contractor's account.

(a) After termination but before repurchase, the contracting officer shall revalidate the need for the supplies or services and document the file.

(b) Repurchase against a contractor's account must be based on the original contract terms, conditions, and specification. If acceptable offers cannot be obtained on this basis, similar supplies or services may be bought to substantially satisfy the original requirement. Advice of counsel must be obtained before issuing a solicitation for similar supplies or services.

(c) To protect the Government's rights to recover excess costs, the contracting officer must document the file to explain the circumstances of any delay in the reprocurement.

549.402-7 Other damages.

(a) Under the default clause, the contracting officer may assess administrative costs, if in the best interest of the Government, after considering:

(1) The expected cost to the Government of documenting and supporting the assessment.

(2) The amount the Government expects to recover.

(3) The advice of legal counsel.

(b) Documents supporting an assessment of administrative costs must be detailed and must demonstrate that the added costs incurred by the Government were a direct result of the default.

(1) To support administrative labor costs, the contracting officer must record:

(i) Name, position, and organization of each employee performing work activities as a consequence of the default.

(ii) Date(s) of work and time(s) spent by each employee on the repurchase.

(iii) Description of specific tasks performed (i.e., solicitation preparation, clerical).

(iv) Hourly rate of pay (straight time or overtime).

(v) Applicable fringe benefits.

(vi) Explanation of how the time spent by the employees during the reprocurement would have been used on other projects but for the default.

(2) Documents supporting other administrative costs (i.e., travel, per diem, printing and distribution of the repurchase contract) incurred may include travel vouchers, invoices, printing requisitions, and other appropriate evidence of expenditures.

(c) After deciding that the assessment of administrative costs is appropriate, the contracting officer shall make a written demand on the contractor. The basis of calculating the costs being assessed must be furnished to the contractor. A single demand letter may be used to recover excess costs and administrative costs.

Subpart 549.5—Contract Termination Clauses

549.502 Termination for convenience of the Government.

The contracting officer shall insert the clause at 552.249-70, Termination for Convenience of the Government (Fixed-Price), in all solicitations and contracts for the acquisition and maintenance of telephone systems to be funded through the Information Technology Fund (IT). This clause should be used with the FAR clauses at 52.249-1 or 52.249-2 and 52.249-4.

549.570 Submission of termination liability schedule.

The contracting officer shall insert the clause at 552.249-71, Submission of Termination Liability Schedule, in all solicitations for the acquisition and maintenance of telephone systems to be funded through the Information Technology Fund (IT). This provision is to be used when the clause at 552.249-70 is used.

PART 550—EXTRAORDINARY CONTRACTUAL ACTIONS

Authority: 40 U.S.C. 486(c).

550.001 Definitions.

"Approving authority," as used in FAR Part 50, means the Administrator of General Services Administration.

PART 551—USE OF GOVERNMENT SOURCES BY CONTRACTORS—[RESERVED]

Subchapter H—Clauses and Forms

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Sec.

552.000 Scope of part.

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Subpart 552.1—Instructions for Using Provisions and Clauses

Sec.
552.101 Using Part 552.
552.102 Incorporating provisions and clauses.
552.102-1 Incorporation by reference.
552.103 Identification of provisions and clauses.
552.105 Procedures for using alternate.
552.107 Provisions and clauses prescribed in Subpart 552.1.

Subpart 552.2—Text of Provisions and Clauses

552.200 Scope of subpart.
552.203-4 Contingent fee representation and agreement.
552.203-5 Convenant against contingent fees.
552.203-70 Restriction on advertising.
552.207-70 Report of employment under commercial activities.
552.209-73 Product removal from qualified products list.
552.209-74 Waiver of first article testing and approval requirement.
552.209-75 Supplemental requirements for first article approval-contractor Testing.
552.209-76 Supplemental requirements for first article approval-government Testing.
552.210-70 Standard references.
552.210-71 Reference to specifications in drawings.
552.210-72 Acceptable age of supplies.
552.210-73 Age on delivery.
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552.210-75 Marking.
552.210-76 Charges for marking.
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552.210-78 Charges for packaging and packing.
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552.211-70 Commercial item certification.
552.212-1 Time of delivery.
552.212-70 Time of shipment.
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552.212-72 Availability for inspection, testing, and shipment/delivery.
552.212-74 Non-compliance with contract requirements.
552.214-16 Minimum bid acceptance period.
552.214-73 "All or none" offers.
552.214-74 Solicitation copies.
552.214-75 Progressive awards and monthly quantity allocations.
552.214-76 Bid sample requirements.
552.215-70 Examination of records by GSA.
552.215-73 Preparation of offers—contruction.
552.215-74 Contract award—negotiated construction.
552.215-75 Data universal numbering system (DUNS).
552.216-71 Economic price adjustment—FSS multiple award schedule contracts.
552.219-1 Small business concern representation.
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552.219-71 Allocation of orders—partially set-aside items.
552.219-72 Notice to offerors of subcontracting plan requirements.
552.222-43 Fair Labor Standards Act and Service Contract Act—price adjustment (multiyear and option contracts).
552.222-82 Preface for labor standards—state or political subdivision contracts.
552.223-70 Hazardous substances.
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552.225-70 Buy American Act—hand or measuring tools or stainless steel flatware.
552.225-71 Notice of procurement restriction—hand or measuring tools or stainless steel flatware.
552.225-72 Eligible products from nondesignated countries—waiver.
552.225-75 Buy American Act notice—construction materials.
552.227-70 Government rights (unlimited).
552.227-71 Drawings and other data to become property of Government.
552.228-70 Bid guarantee and bonds.
552.228-71 Bid guarantee.
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552.228-74 Pledge of assets.
552.228-75 Workmen's compensation laws.
552.229-70 Federal, state, and local taxes.
552.229-72 Federal excise tax—DC government.
552.232-8 Discounts for prompt payment.
552.232-23 Assignment of claims.
552.232-70 Payments by electronic funds transfer.
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552.232-72 Invoice requirements.
552.232-73 Electronic funds transfer payment.
552.232-74 Progress payments.
552.232-77 Availability of funds.
552.232-78 Adjusting payments.
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552.233-70 Disputes (utility contract).
552.236-70 Definitions.
552.236-71 Authorities and limitations.
552.236-72 Specialist.
552.236-73 Basis of award—construction contract.
552.236-74 Working hours.
552.236-75 Use of premises.
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552.236-77 Specifications and drawings.
552.236-78 Shop drawings, coordination drawings, and schedules.
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552.237-70 Qualifications of offerors.
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552.238-72 Contractor's report of orders received.
552.242-70 Status report of orders and shipments.
552.243-70 Pricing of adjustments.
552.243-71 Equitable adjustments.
552.246-17 Warranty of supplies of a noncomplex nature.
552.246-70 Source inspection by quality approved manufacturer.
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552.246-72 Source inspection by Government.
552.246-73 Warranty—multiple award schedule.
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552.246-75 Guarantees.
552.246-76 Warranty of pesticides.
552.247-34 F.o.b. destination.
552.247-70 Placarding railcar shipments.
552.249-70 Termination for convenience of the Government (fixed price) (short form).
552.249-71 Submission of termination liability schedule.
552.252-5 Authorized deviations or variations in provisions.
552.252-6 Authorized deviations or variations in clauses.
552.253-70 Forms containing solicitation provisions and/or contract clauses incorporated by reference.
552.270-1 Preparation of offers.
552.270-2 Explanation to prospective offerors.
552.270-3 Late submissions, modifications, and withdrawals of offers.
552.270-4 Historic preference.
552.270-5 Lease award.
552.270-6 Parties to execute lease.
552.270-10 Definitions.
552.270-11 Subletting the premises.
552.270-12 Maintenance of premises.
552.270-13 Damage by fire or other casualty.
552.270-14 Condition report.
552.270-15 Applicable codes and ordinances.
552.270-16 Inspection of premises.
552.270-17 Failure in performance.
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552.270-20 Proposals for adjustment.
552.270-21 Changes.
552.270-22 Liquidated damages.
552.270-23 Operating cost.
552.270-24 Tax adjustment.
552.270-25 Adjustments for vacant premises.
552.270-26 If minimum not delivered.
552.270-27 Delivery and condition.
552.270-28 Time extensions.
552.270-29 Termination for default.
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Subpart 552.3—Provision and Clause Matrixes

552.300 Scope of subpart.
552.301 Fixed-price supply.
552.305 Fixed-price service.
552.307 Fixed-price construction.
552.314 Architect-engineering.
552.319 Small purchases.
552.320-70 Utility services (sole supplier—regulated rates).
552.370 Leases of real property.

Authority: 40 U.S.C. 486(c).

552.000 Scope of part.

This part provides the text of provisions and clauses which are unique to GSA or supplement the FAR. Matrixes are also provided for acquisitions of various supplies, services and leasehold interests in real property.

Subpart 552.1—Instructions for Using Provisions and Clauses

552.101 Using Part 552.

(a) *Definition.* "Clause," as used in this subpart, means provision or clause as defined in FAR 52.101(a).

(b) *Numbering.* When a clause in this Part has the same title as a clause in the FAR, that clause is preceded by the number 5 and is included under the same subsection number and caption as in the FAR. Clauses numbered in this manner represent (1) clauses which are "substantially" the same as FAR clauses, and (2) clauses which are to be used instead of FAR clauses. All supplemental clauses are numbered in the same manner as the FAR, except that the number is preceded by the chapter number and the subsection numbers begin with 70 and are sequentially numbered, e.g., 552.232-70, 552.232-71, etc.

(c) *Matrixes.* Matrixes are included as a guide to locating clauses for supply, service, construction, and architect-engineer solicitations/contracts. There is a separate matrix for small purchases. Matrixes listing FAR and GSAR clauses for utility contracts (sole-supplier-regulated rates) and leases of real property are also included. Individuals drafting solicitations must research pertinent regulations or make other determinations to ensure that (1) the clauses selected fit the procurement, (2) there are no restrictions on their use, and (3) when one clause is dependent upon the use of another clause, all necessary clauses are included in the solicitation.

552.102 Incorporating provisions and clauses.

552.102-1 Incorporation by reference.

Clauses prescribed in the GSAR may be incorporated in solicitations/contracts by reference. As an alternative, forms containing GSAR clauses in full text may be incorporated by reference.

552.103 Identification of provisions and clauses.

(a) When a class deviation from a FAR clause is prescribed in the GSAR, the contracting officer shall identify the clause by the GSAR citation (552.232-8—Prompt Payment Discount (Nov 1987) (Deviation FAR 52.232-8)).

(b) When a "substantially the same as" clause is used that varies from a FAR or GSAR clause, the word "(Variation)," must be included as a part of the title of the clause, along with the FAR or GSAR citation (552.215-70 Examination of Records by GSA (Apr 1984) (Variation I)). If there is more than one variation of a provision or clause, the variations are titled (Variation I), (Variation II), (Variation III), etc. Variations of clauses which result from negotiations do not need to be identified unless an amendment to the solicitation is issued.

(c) Variations of FAR or GSAR clauses should generally be used for individual cases. A copy of clause variations developed for repeated use must be furnished to the Office of GSA Acquisition Policy and Regulations (VP) for potential inclusion in the GSAR.

552.105 Procedures for using alternates.

The procedures in FAR 52.105 apply to GSAR Part 552.

552.107 Provisions and clauses prescribed in Subpart 552.1.

(a) The contracting officer shall insert the provision at 552.252-5, Authorized Deviations or Variations in Provisions, in solicitations that include any FAR or GSAR clause with an authorized deviation or variation. This provision must be used in lieu of the FAR provision at 552.252-5.

(b) The contracting officer shall insert the clause at 552.252-6, Authorized Deviations or Variations in Clauses, in solicitations and contracts that include any FAR or GSAR clause with an authorized deviation or variation. This clause must be used in lieu of the FAR clause at 552.252-6.

Subpart 552.2—Text of Provisions and Clauses

552.200 Scope of subpart.

This subpart sets forth the text of all GSAR provisions and clauses, and for each provision and clause, provides a cross-reference to the location in the GSAR that prescribes its use.

552.203-4 Contingent Fee Representation and Agreement.

As prescribed in 503.404(a), insert the following provision:

Contingent Fee Representation and Agreement (May 1989)

(a) *Representation.* The Offeror represents that, except for full-time bona fide employees working solely for the offeror or bona fide established real estate agents or brokers maintained by the Offeror for the purpose of securing business, the Offeror—

Note: The Offeror must check the appropriate boxes. For interpretation of the term "bona fide employee or agency," see paragraph (b) of the Covenant Against Contingent Fees clause.

(1) _____ has, _____ has not employed or retained any person or company to solicit or obtain this contract and;

(2) _____ has, _____ has not paid or agreed to pay to any person or company employed or retained to solicit or obtain this contract any commission, percentage, brokerage, or other fee contingent upon or resulting from the award of this contract.

(b) *Agreement.* The Offeror agrees to provide information relating to the above Representation as requested by the Contracting Officer and, when subparagraph (a)(1) or (a)(2) is answered affirmatively, to promptly submit to the Contracting Officer—

(1) A completed Standard Form 119, Statement of Contingent or Other Fees, (SF 119); or

(2) A signed statement indicating that the SF 119 was previously submitted to the same contracting office, including the date and applicable solicitation or contract number, and representing that the prior SF 119 applies to this offer or quotation.

(End of provision)

552.203-5 Covenant Against Contingent Fees.

As prescribed in 503.404(b), insert the following clause:

Covenant Against Contingent Fees (May 1989)

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover the full amount of the contingent fee.

(b) "Bona fide employee or agency," as used in this clause, means licensed real estate agents or brokers having listings on property for rent, in accordance with general business practice, who have not obtained such license for the sole purpose of effecting this contract, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contracts or contracts through improper influence.

"Contingent fee," as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

"Improper influence," as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

(End of clause)

552.203-70 Restriction on advertising.

As prescribed in 503.570-2, insert the following clause:

Restriction on Advertising (May 1989)

The Contractor shall not refer to contracts awarded by the United States Government in commercial advertising in such a manner as to state or imply that the product or service provided is approved or endorsed by any element of the Federal Government or is considered by the Government to be superior to other products or services. Any advertisement by the Contractor, including price-off coupons, which refer to a military resale activity shall contain the following statement: "This advertisement is neither paid for nor sponsored in whole or in part, by any element of the United States Government."

(End of clause)

552.207-70 Report of employment under commercial activities.

As prescribed in 507.305, insert the following clause:

Report of Employment Under Commercial Activities (Apr 1984)

(a) The Contracting Officer, as soon as practicable, will provide the Contractor with a list of the Federal employees, including social security numbers, that will be involuntarily separated from Government employment as a result of this contract.

(b) The Contractor agrees:

(1) To provide the Contracting Officer, within 5 working days after the date of transfer of the operation and maintenance responsibilities of a Federal project to the Contractor (contract start date), with the names and social security numbers of individuals on the list referenced in paragraph (a) that, as of the contract start date, had accepted or rejected offers of employment comparable to their previous employment with the Federal Government. For those who reject the Contractor's employment offer, the Contractor shall include the total monetary value of the pay and benefits offered;

(2) To provide the Contracting Officer with the names and social security numbers of the individuals hired, within 5 working days of such hiring, during the first 90 days after the contract start date, if the Contractor hires any additional Federal employees on the list referenced in paragraph (a) for any job within the Contractor's organization; and

(3) To furnish the information required by this clause in a concise and clearly detailed format.

(c) The operation of the system of records identified by this clause is subject to the Privacy Act of 1974 (5 U.S.C. 552a) and the Privacy Act Notification and Clause of this contract. This clause constitutes the notice required to invoke compliance by the contractor with the provisions of the notice and clause.

(End of Clause)

552.209-73 Product removal from qualified products list.

As prescribed in 509.206-2, insert the following clause:

Product Removal From Qualified Products List (May 1989)

If, during the performance of this contract, the product being furnished is for any reason (except those outlined in paragraph 3.1.1 of the applicable Federal or Interim Federal Specification for security cabinets, security vault doors and changeable combination padlocks) removed from the Qualified Products List, the Government may terminate this contract for default under paragraph (a)(1)(ii) of the Default clause at FAR 52.249-8.

(End of Clause)

552.209-74 Waiver of first article testing and approval requirements.

As prescribed in 509.306, insert the following provision:

Waiver of First Article Testing and Approval Requirement (May 1989)

(a) The Government reserves the right to waive the requirements of first article testing set forth elsewhere in this solicitation as to those Offerors offering a product which has been previously procured and approved by the General Services Administration under the same specification and at the same facility.

(b) Offerors must submit an offer including testing and approval, however, an Offeror may submit an alternate offer excluding testing and approval, provided the Offeror satisfies the requirements for the waiving of first article testing.

(c) Before a waiver of the first article testing requirement of this solicitation will be considered, the Offeror is requested to identify the procurement under which the product offered was previously approved and accepted:_____.

(Offeror to insert both contract number and applicable national stock number.)

(End of provision)

552.209-75 Supplemental requirements for first article approval—contractor testing.

As prescribed in 509.308-1, insert the following clause:

Supplemental Requirements for First Article Approval—Contractor Testing (May 1989)

(a) The term "Contracting Officer" as used in FAR 52.209-3, First Article Approval—Contractor Testing, means the Administrative Contracting Officer (ACO).

(b) The Contractor shall have either (1) the necessary inspection and test equipment at the Contractor's plant to perform first article testing, or (2) if the inspection and test equipment is not available, a letter of commitment from a laboratory acceptable to the Government to perform the inspection and testing.

(c) When the Government elects to witness the first article testing, the Contractor shall conduct the testing between the hours of 7:00 AM and 5:00 PM, Monday thru Friday, unless a different time is agreed to by the ACO.

(d) The first article test report shall contain:

(1) The complete test data, the test method(s) used and date of test;

(2) Signature and printed name of the individual who performed the inspection;

(3) Applicable specification/CID and/or drawing numbers;

(4) Name and type of test equipment used; and

(5) All numerical values as a result of testing with each noted as to whether it passes or fails the contract test requirements.

(e) The first article shall be retained by the Contractor as the manufacturing standard and will be kept in a secure area, under control of the Quality Assurance Specialist (QAS), to protect against possible changes or alterations for the life of the contract. If the first article sample is destroyed during testing or damaged to a point making it unusable as a standard, the Contractor, upon Government request, shall provide a second sample.

(f) If the Contractor delivers the approved first article as part of the contract quantity, it shall be in the last scheduled delivery under the contract.

(End of Clause)

552.209-76 Supplemental requirements for first article approval—government testing.

As prescribed in 509.308-2, insert the following clause:

Supplemental Requirements for First Article Approval—Government Testing (May 1989)

(a) The term "Contracting Officer" as used in FAR 52.209-4, First Article Approval—Government Testing, means the Administrative Contracting Officer (ACO).

(b) The first article shall be retained by the Contractor as the manufacturing standard and will be kept in a secure area, under the control of the Quality Assurance Specialist (QAS) to protect against possible changes or alterations for the life of the contract. If the first article sample is destroyed during testing or damaged to a point making it unusable as a standard, the Contractor, upon Government request, shall provide a second sample.

(c) If the Contractor delivers the approved first article as part of the contract quantity, it shall be in the last scheduled delivery under the contract.

(End of Clause)

552.210-70 Standard references.

As prescribed in 510.011(a), insert the following clause:

Standard References (May 1989)

(a) All documents and publications (such as, but not limited to, manuals, handbooks, codes, standards and specifications) cited in this contract for the purpose of establishing requirements applicable to equipment, materials, or workmanship under this contract, shall be deemed to be incorporated herein as fully as if printed and bound with the specifications of this contract, in accordance with the following:

(1) Wherever reference is made to Standard Specifications of the Public Buildings Service, Interim Federal Specifications, Interim Amendments to Federal Specifications, Interim Federal Standards, or Interim Amendments to Federal Standards, the Contractor shall comply with the requirements set out in the issue or edition identified in this contract.

(2) Wherever reference is made to any such document other than those specified in subparagraph (a)(1) of this clause, the Contractor shall comply with the requirements set out in the edition specified in this contract, or if not specified, the latest edition or revision thereof, as well as the latest amendment or supplement thereto, in effect on the date of the solicitation on this project, except as modified by, as otherwise provided in, or as limited to type, class or grade, by the specifications of this contract.

(b) Federal Specifications, Federal Standards, Standard Specifications of the Public Buildings Service and Public Buildings Service Standard Methods of Test may be obtained from the Business Service Center at any GSA Regional Office. Inquiries regarding "Commercial Standards," "Product Standards," and "Simplified Practice Recommendations" should be addressed to the Standard Development Service Section, National Bureau of Standards, Washington, DC 20234. Publications of Associations referred to in the specifications may be obtained directly from the Associations.

(c) Upon request the Contractor shall make available at the job site within a reasonable time, a copy of each trade manual and standard which is incorporated by reference in this contract and which governs quality and workmanship.

(End of Clause)

552.210-71 Reference to specifications in drawings.

As prescribed in 510.011(b), insert the following clause:

References to Specifications in Drawings (Apr 1986)

If military or other drawings are made a part of this contract, any reference in the drawings to Federal specifications or standards will be considered to be a reference to the date of such Federal specification or standard identified in the contract. If the date of the Federal specification or standard is not identified in the contract, the edition, including revisions thereto, in effect on the date the solicitation is issued will apply.

(End of Clause)

552.210-72 Acceptable age of supplies.

As prescribed in 510.011(c), insert the following clause:

Acceptable age of supplies (May 1989)

The supplies furnished under this contract shall not be more than_____months old, beginning with the first full month after the date of manufacture marked on the container. For the purpose of this clause, supplies shall be considered to be furnished (1) when they are offered to the Government for inspection and testing, or (2) on the date of shipment if shipment is authorized to be made without prior inspection by the Government. If the age of the supplies furnished under this contract is greater than the specified period, the Government may exercise its right to reject the supplies under paragraph (f) of FAR clause 52.246-2, Inspection of Supplies—Fixed-Price.

(End of Clause)

Alternate I (May 1989)

For items having a limited shelf-life, the sentence below should be substituted for the first sentence of the basic clause when authorized:

The supplies furnished under this contract shall not be more than_____days old, beginning with the date of manufacture (month, day, year) marked on the container.

552.210-73 Age on delivery.

As prescribed in 510.011(c), insert the following clause:

Age on Delivery (May 1989)

Included in the description of each shelf-life item is a statement regarding the "age on delivery." The age of the item(s) shall not exceed the number of months shown in the item description, counted from the first day of the month after the month of manufacture to the date of delivery to the specified delivery point(s). If the age of the supplies delivered under this contract is greater than the number of months shown, the Government may exercise its right to reject the supplies under paragraph (f) of FAR clause 52.246-2, Inspection of Supplies—Fixed Price.

(End of Clause)

552.210-74 Brand name or equal.

As prescribed in 510.011(d) insert the following clause:

Brand Name or Equal (May 1989)

(As used in this clause, the term "brand name" includes indentification of products by make and model.)

(a) Identification of items in this solicitation by a "brand name or equal" description is intended to indicate the quality and characteristics of products that will be satisfactory and is not intended to be restrictive. Offers of "equal" products (including products of the brand name manufacturer other than the one described by brand name) will be considered for award if such products are clearly identified in the offers and are determined by the Government to meet fully the salient characteristics requirements listed in the solicitation.

(b) Unless clearly indicated in the offer that an "equal" product is offered, the offer shall be considered as offering a referenced brand name product.

(c)(1) An offeror proposing to furnish an "equal" product shall insert the name of the product in the space provided in the solicitation or otherwise clearly identify the product. The Government's determination as to the acceptability of the "equal" product shall be based on information furnished or otherwise identified in the offer as well as other information reasonably available to the purchasing activity. Caution to Offerors. The purchasing activity is not responsible for locating or securing any information not identified in the offer and reasonably available to the purchasing activity. Accordingly, to ensure that sufficient information is available, the offeror must furnish with its offer all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the purchasing activity to (i) determine whether the product offered meets the specified salient characteristics, and (ii) establish exactly what the offeror proposes to furnish. The information furnished may include specific references to information previously furnished or otherwise reasonably available to the purchasing activity.

(2) An offeror proposing to modify a product to make it conform to the requirements of the solicitation shall (i) include in its offer a clear description of the proposed modifications and (ii) clearly mark any descriptive material to show the proposed modifications.

(3) In sealed bidding, modifications proposed after bid opening to make a product conform to a brand name product referenced in the solicitation will not be considered.

(End of Clause)

552.210-75 Marking.

As prescribed in 510.011(e) insert the following clause:

Marking (Apr 1984)

(a) *General requirements.* Interior packages, if any, and exterior shipping containers shall be marked as specified elsewhere in the contract. Additional marking requirements may be specified on delivery orders issued under the contract. If not otherwise specified, interior packages and exterior shipping containers shall be marked in accordance with the following standards:

(1) *Deliveries to civilian activities.* Supplies shall be marked in accordance with Federal Standard 123, edition in effect on the date of issuance of the solicitation.

(2) *Deliveries to military activities.* Supplies shall be marked in accordance with Military Standard 129, edition in effect on the date of issuance of the solicitation.

(b) *Improperly marked material.* When Government inspection and acceptanceare at destination, and delivered supplies are not marked in accordance withcontract requirements, the Government has the right, without prior notice to the contractor, to perform the required marking, by contract or otherwise, and charge the contractor therefor at the rate specified elsewhere in this contract. This right is not exclusive, and is in addition to other rights or remedies provided for in this contract.

(End of Clause)

552.210-76 Charges for marking.

As prescribed in 510.011(f), insert a clause substantially as follows:

Charges for Marking (May 1989)

The rate provided for in paragraph (b) of 552.210-75, Marking, is $_____* ____ per man-hour or fraction thereof.

(End of Clause)

*The rate to be inserted in the above clause shall be determined and published by the Commissioner, Federal Supply Service, or a designee.

552.210-77 Preservation, packaging and packing.

As prescribed in 510.011(g), insert the following clause:

Preservation, Packaging, and Packing (Apr 1984)

Unless otherwise specified, all items shall be preserved, packaged, and packed in accordance with normal commercial practices, as defined in the applicable commodity specification. Packaging and packing shall comply with the requirements of the Uniform Freight Classification and the National Motor Freight Classification (issue in effect at time of shipment) and each shipping container of each item in a shipment shall be of uniform size and content, except for residual quantities. Where special or unusual packing is specified in an order, but not specifically provided for by the contract, such packing details must be the subject of an agreement independently arrived at between the ordering agency and the Contractor.

(End of Clause)

552.210-78 Charges for packaging and packing.

As prescribed in 510.011(h), insert a clause substantially as follows:

Charges for Packaging and Packing (May 1988)

If supplies shipped to a GSA wholesale distribution center are not packaged and packed in accordance with contract requirements, the Government has the right, without prior notice to the Contractor, to perform the required repackaging/repacking, by contract or otherwise, and charge the Contractor therefor at the rate of $_____*_____ per man-hour or fraction thereof. The Contractor will also be charged for material costs, if incurred. This right is not exclusive, and is in addition to other rights or remedies provided for in this contract.

(End of Clause)

*The rate to be inserted in the above clause shall be determined by the Commissioner, Federal Supply Service, or a designee.

552.210-79 Packing list.

As prescribed in 510.011(i), insert the following clause:

Packing List (Apr 1984)

A packing list or other suitable shipping document shall accompany each shipment and shall show the (a) name and address of consignor, (b) name and address of consignee, (c) Government purchase order number, (d) Government bill of lading number covering the shipment, if any, and (e) description of the material shipped, including item number, quantity, number of containers, and package number, if any.

(End of Clause)

552.211-70 Commercial item certification.

As prescribed in 511.070, insert the following provision:

Commercial Item Certification (May 1989)

The Offeror by signing the offer certifies that the product(s) offered meet the requirements of the Commercial Item Description (CID) and are the Offeror's commercial or commercial-type product(s) as defined below:

(a) A "commercial product" is a product such as an item, material, component, subsystem, or system, (1) regularly used for other than Government purposes and (2) sold or traded to the general public in the course of normal business operations at prices based on established catalog or market prices (see FAR 15.804-3 for explanation of terms).

(b) A "commercial-type product" is a commercial product that is modified or altered, without degrading the quality, appearance, or function of the commercial product, in compliance with Government requirements and as such is usuallysold only to the Government and not through the normal catalog or retail outlets, or (2) identified, packaged or marked differently than the commercial product normally sold to the general public.

(End of Provision)

552.212-1 Time of delivery.

(a) As prescribed in 512.104(a)(1) insert the following clause:

Time of Delivery (May 1989)

(a) The time of delivery for each item means the time required after receipt of an order (1) to make delivery to a destination in the case of delivered prices, or (2) to place shipment in transit in the case of f.o.b. origin prices.

(b) Delivery is required to be made at the point(s) specified within _____ days after receipt of order.

(End of Clause)

Alternate I (May 1989)

If it is necessary to show different delivery times for different items or groups of items, the Contracting Officer may substitute the following paragraph (b) for paragraph (b) of the basic clause.

"(b) Delivery is required to be made at the point(s) specified within the number of calendar days after receipt of order as indicated below:

Items or groups of items (special item numbers or nomenclature)	Required delivery time (days ARO)

(b) As prescribed in 512.104(a)(2) insert the following clause:

Time of Delivery (May 1989)

The Government desires that delivery be made at destination within the number of calendar days after receipt of order as set forth below. Offerors are requested to insert in the "Time of Delivery (days ARO)" column in the Schedule of Items a definite number of calendar days within which delivery will be made. *If the Offeror does not insert a delivery time, the Offeror will be deemed to offer delivery in accordance with the Government's stated desired delivery time.*

Items or groups of items (special item numbers or nomenclature)	Required delivery time (days ARO)

(End of Clause)

Alternate I (May 1988)

If the Government's desired delivery time(s) is shown in a column titled "Desired Delivery Time (days ARO)" next to the column "Time of Delivery (days ARO)" in the Schedule of Items, the Contracting Officer may substitute the following as the first sentence of the basic clause and delete the column titles and blank spaces. "The Government desires that delivery be made at destination within the number of calendar days after receipt of order as set forth in the Desired Delivery Time (days ARO) column in the Schedule of Items."

Alternate II (May 1989)

If the same desired delivery time applies to all items, the Contracting Officer may substitute the following as the first sentence of the basic clause and delete the column titles and blank spaces. "The Government desires that delivery be made at destination within _____ calendar days after receipt of order."

552.212-70 Time of shipment.

As prescribed in 512.104(a)(3), insert the following clause:

Time of Shipment (May 1989)

Shipment is required within _____ calendar days after receipt of order.

(End of Clause)

Alternate I (May 1989)

If the contract will require shipment more than 45 calendar days after receipt of the order, the following paragraph should be added to the basic clause.

Each delivery order will specify that shipment is required no later than the number of days shown above. If such order also states that "Early Shipment is Precluded," the Contractor agrees to make shipment no sooner than _____ calendar days after receipt of order. Earlier shipments may result in nonacceptance of the supplies at the delivery point at the time of arrival.

(The second number to be inserted should be 15 calendar days less than the first number.)

552.212-71 Notice of shipment.

As prescribed in 512.104(a)(4), insert the following clause:

Notice of Shipment (May 1989)

If specified in an order placed under this contract, the Contractor shall, at the time each shipment is made on such order, furnish a notice of shipment to either the consignee or the ordering office or both, as specified. This requirement may be satisfied by completion and return of appropriate forms furnished by the ordering office or by the furnishing of copies of bills of lading, freight bills, or similar documents in accordance with normal commercial practice if such document clearly identifies the order number, items and quantities shipped, date of shipment, point of origin, method of shipment and routing, and the name of initial carrier.

(End of Clause)

552.212-72 Availability for inspection, testing, and shipment/delivery.

As prescribed in 512.104(d), insert the following clause:

Availability for Inspection, Testing, and Shipment/Delivery (Mar 1989)

(a) The Government requires that the supplies be made available for inspection and testing within ____*____ calendar days after receipt of [Insert "Notice of Award" or "order"], and be [Insert "shipped" or "delivered"] within ____*____ calendar days after receipt of (1) notice of approval and release by the Government inspector or (2) authorization to ship without Government inspection.

(b) Failure to make supplies available for inspection and testing or to [Insert "ship" or "deliver"] as required by this clause may result in termination of this contract for default.

(End of Clause)

Alternate I (Mar 1989).

If the contract is for stock items, the Contracting Officer shall insert "shipped" or "ship" in the basic clause, add the following paragraph (b) and redesignate paragraph (b) of the basic clause as paragraph (c).

(b) If notice of approval and release by the Government inspector or authorization to ship without Government inspection is received before ____*____ calendar days after receipt of the [Insert "Notice of Award" or "order"], receipt of such notice shall be deemed to be received on the ____*____ calendar day after receipt of [Insert "Notice of Award" or "order"]. Shipments shall not be made before the ____*____ calendar day after receipt of the [Insert "Notice of Award" or "order"] unless authorized in writing by the Contracting Officer.

*Entries are normally the same number of days specified for availability.

552.212-74 Non-compliance with contract requirements.

As prescribed in 512.104(b), insert the following clause:

Non-Compliance With Contract Requirements (Apr 1984)

In the event the Contractor, after receiving written notice from the Contracting Officer of non-compliance with any requirement of this contract, fails to initiate promptly such action as may be appropriate to comply with the specified requirement within a reasonable period of time, the Contracting Officer shall have the right to order the Contractor to stop any or all work under the contract until the Contractor has complied or has initiated such action as may be appropriate to comply within a reasonable period of time. The Contractor will not be entitled to any extension of contract time or payment for any costs incurred as a result of being ordered to stop work for such cause.

(End of Clause)

552.214-16 Minimum bid acceptance period.

As prescribed in 514.270, insert the following provision:

Minimum Bid Acceptance Period (Oct 1985) (Deviation FAR 52.214-16)

(a) "Acceptance period," as used in this provision, means the number of calendar days available to the Government for awarding a contract from the date specified in this solicitation for receipt of bids.

(b) This provision supersedes any language pertaining to the acceptance period that may appear elsewhere in this solicitation.

(c) The Government requires a minimum acceptance period of ____*____ calendar days.

(d) In the space provided immediately below, bidders may specify a longer acceptance period than the Government's minimum requirement. *(Insert any number equal to or greater than the minimum requirement stated in paragraph (c) of this provision. Failure to insert any number means the offeror accepts the minimum in paragraph (c)).*

The bidder allows the following *total* acceptance period: _____calendar days.

(e) A bid allowing less than the Government's minimum acceptance period will be rejected.

(f) The bidder agrees to execute all that it has undertaken to do, in compliance with its bid, if that bid is accepted in writing within (1) the acceptance period stated in paragraph (c) above, or (2) any longer acceptance period stated in paragraph (d) above, or (3) any extension of the offered acceptance period as may be subsequently agreed to by the bidder.

(End of provision)

*The contracting officer shall insert an appropriate number of days.

552.214-73 "All or none" offers.

As prescribed in 514.201-6(a), insert the following provision:

"All or None" Offers (Apr 1984)

(a) Unless awards in the aggregate are specifically precluded in this solicitation, the Government reserves the right to evaluate offers and make awards on an "all or none" basis as provided below.

(b) An offer submitted on an "all or none" or similar basis will be evaluated as follows: The lowest acceptable offer exclusive of the "all or none" offer will be selected with respect to each item (or group of items when the solicitation provides for aggregate awards) and the total cost of all items thus determined shall be compared with the total of the lowest acceptable "all or none" offer Award will be made to result in the lowest total cost to the Government.

(End of Provision)

Alternate—I (Apr 1984)

For a requirements or indefinite quantity contract, the following paragraph (b) shall be substituted in the basic provision:

(b) An offer submitted on an "all or none" or similar basis will not be considered unless the offer is low on each item to which the "all or none" offer is made applicable. The term "each item" as used in this provision refers either to an item that under the terms of the solicitation may be independently awarded, or to a group of items on which an award is to be made in the aggregate.

552.214-74 Solicitation Copies.

As prescribed in 514.201-6(b), insert the following notice:

Solicitation Copies (May 1989)

To reduce costs, only one copy of this solicitation is mailed to active bidders and to addressees on our bidders' mailing list. If additional copies are required by the solicitation, you may reproduce them yourself, provided they are complete in every respect, or you may obtain them from the address specified below:

_____

_____

_____

Tel._____

(End of Notice)

552.214-75 Progressive Awards and Monthly Quantity Allocations.

As prescribed in 514.201-7(a), insert the following clause:

Progressive Awards and Monthly Quantity Allocations (May 1989)

(a) *Monthly quantity allocation.* (1) Set forth below are the Government's estimated annual and monthly requirements for each stock item covered by this solicitation. Offerors shall indicate, in the spaces provided, the monthly quantity which they are willing to furnish of any item or group of items involving the use of the same production facilities. In making monthly allocations, offerors are urged to group as many items as possible. Such groupings will make it possible for the Government to make fullest use of the production capabilities of each offeror.

(2) Offerors need not limit their monthly allocations to the Government's estimated monthly requirements, since additional unanticipated needs may occur during the period of the contract. If an offeror does not insert monthly allocation quantities, it will be deemed to offer to furnish all of the Government's requirements, even though they may exceed the stated estimated requirements.

National stock number	Estimated annual requirements	Estimated monthly requirements

BIDDERS MONTHLY QUANTITY ALLOCATIONS

Items or groups of items	Monthly allocation quantity

(b) *Progressive awards.* If the low responsive offeror's monthly quantity allocation is less than the Government's estimated requirements, the Government may make progressive awards beginning with the low responsive offeror and including each next low responsive offeror to the extent necessary to meet the estimated requirements.

(c) *Ordering procedures.* If progressive awards are made, orders will be placed first with the Contractor offering the lowest price on each item normally up to that Contractor's maximum quantity allocation and then, in the same manner, successively to other Contractors. When cumulative orders during any month, placed with a lower priced Contractor, equal or exceed 95 percent of its monthly quantity allocation, to avoid the placement of unduly small orders or the splitting of a subsequent order, the Government reserves the right to award the full quantity of the subsequent order to the next lower priced Contractor. In no case will orders be placed with any Contractor in excess of its monthly quantity allocation.

(End of Clause)

552.214-76 Bid sample requirements.

As prescribed in 514.202-4(a)(4), insert the following provision:

Bid Sample Requirements (May 1989)

This provision supplements FAR 52.214-20, which is incorporated by reference. Samples shall be from the production of the manufacturer whose products will be supplied under resultant contracts.

(a) Two bid samples are required for each of the following items in this solicitation:

(b) Two representative samples shall be submitted for each of the following items upon which a bid is submitted:

Items	Acceptable representative samples

Note: (1) Bidders ___ Are or ___ Are Not authorized to re-apply samples being retained by GSA in connection with previous solicitations and/or resultant contracts. When the block "Are" is marked by the Government, FAR 52.214-20, Alternate II, shall apply.

(2) Bidders who propose to furnish an item or group of items from more than one manufacturer or production point must submit two samples from the production of each manufacturer or production point.

(c) Samples will be evaluated to determine compliance with all characteristics listed below:

Subjective characteristics	Objective characteristics

(d) Forward samples addressed to the Sample Room indicated below. Except for samples delivered by U.S. Mail, deliveries will be accepted between the hours of _____ Mondays through Fridays, official holidays excluded. Samples must be submitted with the original copy of the attached GSA Form 434 enclosed and properly executed.

Caution: Use proper address for method of shipment selected.

Mail and parcel post	Freight or express
(Insert Address of Bid Sample Room).	(Insert Address of Bid Sample Room).

(e) Samples shall be disposed of, after they have served the Government's purpose, pursuant to a bidder's instructions indicated on GSA Form 434.

(End of Provision)

552.215-70 Examination of records by GSA.

As prescribed in 515.106-70 and 514.201-7(b), insert the following clause:

Examination of Records by GSA (Apr 1984)

The Contractor agrees that the Administrator of General Services or any duly authorized representatives shall, until the expiration of 3 years after final payment under this contract, or of the time periods for the particular records specified in Subpart 4.7 of the Federal Acquisition Regulation (48 CFR 4.7), whichever expires earlier, have access to and the right to examine any books, documents, papers, and records of the Contractor involving transactions related to this contract or compliance with any clauses thereunder. The Contractor further agrees to include in all its subcontracts hereunder a provision to the effect that the subcontractor agrees that the Administrator of General Services or any authorized representatives shall, until the expiration of 3 years after final payment under the subcontract, or of the time periods for the particular records specified in Subpart 4.7 of the Federal Acquisition Regulation (48 CFR 4.7), whichever expires earlier, have access to and the right to examine any books, documents, papers, and records of such subcontractor involving transactions related to the subcontract or compliance with any clauses thereunder. The term "subcontract" as used in this clause excludes (a) purchase orders not exceeding $10,000 and (b) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

(End of Clause)

552.215-73 Preparation of offers—construction.

As prescribed in 515.407(a), insert the following provision:

Preparation of Offers—Construction (Apr 1984) (Deviation FAR 52.215-13)

(a) Offers must be (1) submitted on the forms furnished by the Government or on copies of those forms, and (2) manually signed. The person signing an offer must initial each erasure or change appearing on any offer form.

(b) The offer form may require offerors to submit offer prices for one or more items on various bases, including:

(1) Lump sum offer;

(2) Alternate prices;

(3) Units of construction; or

(4) Any combination of subparagraphs (b) (1) through (3) of this clause.

(c) If the solicitation requires an offer on all items, failure to do so will disqualify the offer. If an offer on all items is not required, offerors should insert the words "no offer" in the space provided for any item on which no price is submitted.

(d) Alternate offers will not be considered unless this solicitation authorizes their submission.

(End of Provision)

552.215-74 Contract award—negotiated—construction.

As prescribed in 515.407(b), insert the following provision:

Contract Award Negotiated—Construction (Apr 1989) (Deviation FAR 52.215-16)

(a) The Government will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government considering, cost or price and other factors specified elsewhere in this solicitation.

(b) The Government may (1) reject any or all offers if such action is in the public interest, (2) accept other than the lowest offer, and (3) waive informalities and minor irregularities in offers received.

(c) The Government may award a contract on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint.

(d) The Government may accept any item or combination of items, unless doing so is precluded by a restrictive limitation in the solicitation or the offer.

(e) A written award or acceptance of offer mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer shall result in a binding contract without further action by either party. Before the offer's specified expiration time, the Government may accept an offer (or part of an offer, as provided in paragraph (d) of this clause), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award. Negotiations conducted after receipt of an offer do not constitute a rejection or counteroffer by the Government.

(f) Neither financial data submitted with an offer, nor representations concerning facilities or financing, will form a part of the resulting contract.However, if the resulting contract contains a clause providing for price reduction for defective cost or pricing data, the contract price will be subject to reduction if cost or pricing data furnished is incomplete, inaccurate, or not current.

(End of Provision)

552.215-75 Data universal numbering system (DUNS).

As prescribed in 515.406-2, insert the following provision:

Data Universal Numbering System (DUNS) (Apr 1984)

(a) The offeror shall insert the DUNS number applicable to the offerors address entered on the Solicitation, Offer, and Award Form_____.

(b) If the offeror's production point (point of final assembly) is other than the location entered on the Solicitation, Offer, and Award Form, or if additional production points are involved, the offeror is requested to furnish the DUNS number applicable to each production point. Spaces for inserting these numbers are provided in the clause of this solicitation where offerors are to list production point addresses.

(c) If DUNS numbers have not been established for the addresses indicated in paragraphs (a) and (b) of these clauses, GSA will arrange for the assignment of these numbers after award of a contract, and will notify the Contractor accordingly.

(End of Provision)

552.216-71 Economic price adjustment—FSS multiple award schedule contracts

As prescribed in 516.203-4(b), insert the following clause:

Economic Price Adjustment (Oct 1985)

Price adjustments include price increases and price decreases. Adjustments will be considered as follows:

(a) Contractors shall submit price decreases anytime during the contract period in which they occur. Price decreases will be handled in accordance with the provisions of the Price Reduction Clause.

(b) Contractors may request price increases under the following conditions:

(1) Increases resulting from a reissue or other modification of the Contractor's commercial catalog/pricelist that was used as the basis for the contract award.

(2) Only three increases will be considered during the contract period.

(3) Increases are requested after the first 30 days of the contract period and prior to the last 60 days of the contract period.

(4) At least 30 days elapse between requested increases.

(c) The aggregate of the increases in any contract unit price under this clause shall not exceed _____* percent of the original contract unit price. The Government reserves the right to raise this ceiling where changes in market conditions during the contract period support an increase.

(d) The following material shall be submitted with the request for a price increase:

(1) A copy of the commercial catalog/pricelist showing the price increase and the effective date for commercial customers.

(2) Discount Schedule and Marketing Data regarding the Contractor's commercial pricing practice relating to the reissued or modified catalog/price list, or a certification that no change has occurred in the data since completion of the initial negotiation or a subsequent submission.

(3) Documentation supporting the reasonableness of the price increase.

(e) The Government reserves the right to exercise one of the following options:

(1) Accept the Contractor's price increases as requested when all conditions of (b), (c), and (d) of this clause are satisfied;

(2) Negotiate more favorable discounts from the new commercial prices when the total increase requested is not supported; or,

(3) Remove the product(s) from contract involved pursuant to the Cancellation Clause of this contract, when the increase requested is not supported.

(f) The contract modification reflecting the price adjustment shall be signed by the Government and made effective upon receipt of notification from the Contractor that the new catalog/pricelist has been mailed to the addressees previously furnished by the Contracting Officer, provided that in no event shall such price adjustment be effective prior to the effective date of the commercial price increases. The increased contract prices shall apply to delivery orders issued to the Contractor on or after the effective date of the contract modification.

(End of Clause)

* Insert the percent appropriate at the time the solicitation is issued. This percentage should normally be 10 percent, unless based on a trend established by an appropriate index such as the Producer Prices and Price Index during the most recent 6-month period indicates that a different percentage is more appro-priate. Any ceiling other than 10 percent must be approved by the contracting director.

Alternate I (Jan 1989)

The following is substituted for paragraphs (b) and (c) of the clause:

"(b) Contractors may request price increases to be effective on or after the first 12 months of the contract period providing all of the following conditions are met:

(1) Increases resulting from a reissue or other modification of the Contractor's commercial catalog/pricelist that was used as the basis for the contract award.

(2) No more than three increases will be considered during each succeeding 12-month period of the contract. (For succeeding contract periods of less than 12 months, up to three increases will be considered subject to theother conditions of this subparagraph (b)).

(3) Increases are requested before the last 60 days of the contract period.

(4) At least 30 days elapse between requested increases.

(c) In any contract period during which price increases will be considered, the aggregate of the increases during any 12-month period shall not exceed _____ * percent of the contract unit price in effect at the end of the preceding 12-month period. The Government reserves the right to raise the ceiling when market conditions during the contract period support such a change.

(End of Clause)

* Insert the percentage appropriate at the time the solicitation is issued. This percentage should be determined based on the trend established by an appropriate index such as the Producer Prices and Price Index. A ceiling of more than 10 percent must be approved by the contracting director.

552.219-1 Small business concern representation.

As prescribed in 519.304(a), insert the following provision:

Small Business Concern Representation (Aug 1986) (Deviation FAR 52.219-1)

The offeror represents and certifies as part of its offer that it_____is, _____is not a small business concern. "Small business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the size standards in this solicitation.

(End of Provision)

552.219-70 Standard industrial classification code and small business size standard.

(a) As prescribed in 519.304(b), insert the following provision:

Standard Industrial Classification and Small Business Size Standard (Mar 1987)

The Standard Industrial Classification Code applicable to the supplies/services being procured is No. *_____, and the applicable small business size standard is **_____.

(End of Provision)

(b) As prescribed in 519.304(b), insert the following provision:

Standard Industrial Classification and Small Business Size Standard (Mar 1987)

The Standard Industrial Classification (SIC) Codes and the small business size standards applicable to the items being procured are as follows:

Item Nos.	SIC code	Small business size standard
	*	**

(End of Provision)

* Insert the SIC Code for the supplies or services being procured. See FAR 19.102.

** Insert (for example) "500 employees," or "$2 million annual receipts," or a similar appropriate entry. See FAR 19.102.

552.219-71 Allocation of orders—partially set-aside items.

As prescribed in 519.502-3(b)(1), insert the following clause:

Allocation of Orders—Partially Set-Aside Items (June 1986)

Where the set-aside portion of an item or group of items is awarded to a Contractor other than the one receiving the award on the corresponding non-set-aside portion, the Government will divide the requirements to be ordered between the two contractors with the objective of achieving, as nearly as possible, a 50/50 division of the total value of orders placed after the award of the set-aside portion. In no case will this division vary by more than a 60/40 division (with either the non-set-aside or set-aside Contractor receiving the larger portion) from the time of the award of the set-aside portion.

(End of clause)

552.219-72 Notice to offerors of subcontracting plan requirements.

As prescribed in 519.708 insert the following provision:

Notice to Offerors of Subcontracting Plan Requirements (Nov 1988)

Offerors, prior to being awarded any contract exceeding $500,000 ($1 million for construction), shall be required to submit an acceptable subcontracting plan (see FAR 52.219-9) or demonstrate that no subcontracting opportunities exist. This provision does not apply to small business concerns.

(End of Provision)

552.222-43 Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiyear and Option Contracts).

(a) As prescribed in 522.1006(b), insert the following clause:

Fair Labor Standards Act and Service Contract Act—Price Adjustment (Option Contract) (June 1988)

(a) The Contractor warrants that the prices in this contract do not include an allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(b) The minimum prevailing wage determination, including fringe benefits, issued under the Service Contract Act of 1965 (41 U.S.C. 351-358) by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, current at the beginning of each renewal option period, shall apply to any renewal of this contract. When a determination does not apply to the renewal option period, the current Federal minimum wage as established by section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206) will apply to any renewal of this contract.

(c) The *_____ option price(s) will be adjusted upward or downward by the Contracting Officer, using the formula in paragraph (e) of this clause, when each option is exercised with the adjusted price to be effective beginning the first day of the option period. The Contracting Officer shall notify the Contractor of the adjusted price and incorporate, by contract modification, the most recent wage determination issued under the Service Contract Act of 1965.

(d) In determining the percentage of increase or decrease in labor costs, the wage determination being applied to the option period will be compared with the wage determination that applied during the initial contract period. If a wage determination is not issued for the initial contract period, but is issued for the option period, or if a wage determination is issued for the initial contract period, but not for the option period, the adjustment will be based on the increase or decrease in wages and fringe benefits that the Contractor must pay his employees under the Fair Labor Standards Act versus the wage determination issued under the Service Contract Act.

(e) **_____ percent of the *_____ option price(s) will be adjusted upward or downward based on the percentage increase or decrease in the minimum hourly wages and fringe benefits to be paid ***_____ under this contract. The *_____ option price(s) will be adjusted using the formula contained herein, provided that the *_____ contract price(s) for the first option period as adjusted does not exceed the *_____ prices(s) for the initial contract period by more than ****_____ percent. If the *_____ prices after adjustment exceed the initial contract period by more than ****_____ percent, the ceiling price (the *_____ price for the initial period increased by ****_____ percent) will be the contract price for the first option period. Similarly, the contract price(s) for the second option period as adjusted may not exceed the *_____ price(s) for the first option period by more than ****_____ percent. If the *_____ price(s) after adjustment exceeds the contract price for the first option period by more than ****_____ percent, the ceiling price(s) (the *_____ prices for the first option period increased by ****_____ percent) will be the contract price(s) for the second option period.

(End of Clause)

*The contracting officer should insert a description of the unit price, e.g., monthly, hourly, etc.

**The contracting officer should insert the percentage of the option price(s) to be adjusted. The percentage to be used is based on the portion of the total price that represents the labor and labor burden cost.

***The contracting officer should insert the class of service employee listed in the wage determination that will perform most of the work required by the contract, e.g., janitor, guard, mechanic, etc.

****The contracting officer should insert a percentage that reflects past increases of wage rates in the locality where services will be performed. For example, if increases over the past 3 years have been 5 percent, 7 percent, and 8 percent, the contracting officer should establish a ceiling of 10 percent. The ceiling is intended to force contractors to bargain with local unions to keep wage increases reasonable from year to year.

Alternate—I (June 1986)

To adjust the option price for material as well as labor, the basic clause may be modified by deleting paragraph (e) and substituting the following as paragraph (e).

"(e) _____* percent of the _____** option price(s) will be adjusted upward or downward based on the percentage increase or decrease in the minimum hourly wages and fringe benefits to be paid _____*** under this contract. _____* percent of the _____** option price(s) will be adjusted upward or downward based upon the percentage increase or decrease in material cost reflected on the_____*** published by the U.S. Department of Labor, Bureau of Labor Statistics. The material cost price adjustment for the first option period will be based on the increase or decrease in wholesale prices for _____**** period beginning with the month in which the offers were submitted for the requirement. The price adjustment for the second option period will be based upon the increase or decrease in the wholesale prices for the _____**** period beginning with the month in which the offers were submitted for the requirement. The _____** option price(s) will be adjusted using the formula contained herein, provided that the total _____** contract price(s) for the first option period as adjusted does not exceed the _____** price(s) for the initial contract period by more than _____***** percent. If the _____** price(s) after adjustment exceed the initial period by more than _____***** percent, the ceiling price(s) (the _____** price(s) for the initial period increased by _____***** percent) will be the contract price(s) for the first option period. Similarly, the contract price(s) for the second option period as adjusted may not exceed the _____** price(s) for the first option period by more than _____***** percent. If the _____** price(s) after adjustment exceeds the contract price(s) for the first option period by more than _____***** percent, the ceiling price(s) (the _____** price for the first option period increased by _____***** percent) will be the contract price(s) for the second option period."

(End of Clause)

*The contracting officer should insert the percentage of the option price(s) to be adjusted. The percentages to be used are based on the portion of the total price that represents the labor cost (first blank) and the material costs (second blank).

**The contracting officer should insert a description of the unit price, e.g., monthly, hourly, etc.

***The contracting officer should insert the class of service employee listed in the wage determination in the first blank and the index that will be used to compute the adjustment for material cost increases, e.g., Wholesale Commodity Prices for General Purpose Machinery and Equipment, code 114, in the second blank.

****The contracting officer should insert the period of time to be used for computing the adjustment, e.g., 1 year, etc. The first blank will normally read "1 year," the second "2 years."

*****The contracting officer should insert a percentage that reflects the past increases for wages and materials.

(b) As prescribed in 522.1006(b), insert the following clause:

Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiyear Contract) (June 1988)

(a) The Contractor warrants that the prices in this contract do not include an allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(b) The _____* price(s) will be adjusted upward or downward before the end of the first year of the contract period, with the adjusted price to be effective beginning the first day of the thirteenth month. The _____* prices(s) will be adjusted again before the end of the second year of the contract period with the adjusted price(s) to be effective beginning the first day of the twenty-fifth month.

(c) The Contracting Officer shall notify the Contractor of the adjusted price(s) and incorporate, by contract modification, the most recent wage determination issued under the Service Contract Act of 1965 by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor (DOL). If a wage determination is not issued by the DOL, the Federal minimum wage established by Section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206) applies to this contract.

(d) In determining the percentage of the increase or decrease in labor cost, the wage determination being applied to the second or third year will be compared with the wage determination that applied to the first year. If a wage determination is not issued for the initial 12-month period but is issued for the second or third year period, or if a wage determination is issued for the initial contract period but not for the second or third period, the adjustment will be based on the increase or decrease in wages and fringe benefits that the contractor must pay the employees under the Fair Labor Standards Act versus the wage determination issued under the Service Contract Act.

(e) _____** percent of the _____* price(s) will be adjusted upward or downward based on the percentage increase or decrease in the minimum hourly wages and fringe benefits to be paid _____*** in the locality where the contract work is to be performed as determined by the Administrator, U.S. Department of Labor, and stated on the Register of Wage Determinations and fringe benefits issued under the Service Contract Act of 1965 provided that the _____* contract price(s) is not escalated more than _____**** percent per year.

(End of Clause)

*The contracting officer should insert a description of the unit price, e.g., monthly, hourly, etc.

**The contracting officer should insert the percentage of the contract price(s) to be adjusted. The percentage to be used is based on the portion of the total price that represents the labor and labor burden costs.

***The contracting officer should insert the class of service employee listed in the wage determination that is expected to perform most of the work required by the contract, e.g., elevator mechanic, maintenance mechanic, etc.

****The contracting officer should insert a percentage that reflects the past increases of wage rates in the locality where services will be performed. For example, if increases over the past 3 years have been 5 percent, 7 percent, and 8 percent, the contracting officer should establish a ceiling of 10 percent. The ceiling is intended to force contractors to bargain with local unions to keep wage increases reasonable from year to year.

Alternate—I (June 1986)

To provide for adjusting the contract price for materials as well as labor, the basic clause may be modified by deleting paragraph (e) and substituting the following paragraph (e).

"(e) _____* percent of the _____** price(s) will be adjusted upward or downward based on the percentage increase or decrease in the minimum hourly wages and fringe benefits to be paid _____*** under this contract and _____* percent of the _____** price will be adjusted upward or downward based upon the percentage increase or decrease in material cost reflected on the _____*** published by the U.S. Department of Labor, Bureau of Labor Statistics, provided that the total _____** contract price(s) is not escalated more than _____***** percent per year. The first material price adjustment will be based on the increase or decrease in wholesale price for the _____**** period beginning with the month in which the offers were submitted for the requirement. The second material price adjustment will be based upon the increase or decrease in the wholesale prices for the _____**** period beginning with the month in which offers were submitted for the requirement."

*The contracting officer should insert the percentage of the contract price(s) to be adjusted. The percentages to be used are based on the portion of the total price that represents the labor costs (first blank) and the material costs (second blank).

**The contracting officer should insert a description of the unit price, e.g., monthly, hourly, etc.

***The contracting officer should insert the class of service employee listed in the wage determination in the first blank and the index that will be used to compute the adjustment for material cost increases, e.g., Wholesale Commodity Prices for General Purpose Machinery and Equipment, code 114, in the second blank.

****The contracting officer should insert the period of time to be used for computing the adjustment, e.g., 1 year, etc. The first blank will normally read "1 year" the second "2 years."

*****The contracting officer should insert a percentage that reflects past increases for wages and materials.

552.222-82 Preface for labor standards—state or political subdivision contracts.

As prescribed in 522.407 insert the following clause:

Preface for Labor Standards—State or Political Subdivision Contracts (Apr 1984)

The Contractor shall comply with the requirements of the Contract Work Hours Safety Standards Act and shall insert the following clauses in all subcontracts under this contract with private persons or firms.

(End of Clause)

552.223-70 Hazardous substances.

As prescribed in 523.303, insert the following clause:

Hazardous Substances (May 1989)

(a) If the packaged items to be delivered under this contract are of a hazardous substance and ordinarily are intended or considered to be for use as a household item, this contract is subject to the Federal Hazardous Substances Act, as amended (15 U.S.C. 1261-1276), implementing regulations thereof (16 CFR Chapter II), and Federal Standard No. 123, Marking for Shipment (Civil Agencies), issue in effect on the date of this solicitation.

(b) The packaged items to be delivered under this contract are subject to the preparation of shipping documents, the preparation of items for transportation, shipping container construction, package making, package labeling, when required, shipper's certification of compliance, and transport vehicle placarding in accordance with Parts 171 through 178 of 49 CFR and the Hazardous Materials Transportation Act.

(c) The minimum packaging acceptable for packaging Department of Transportation regulated hazardous materials shall be those in 49 CFR 173.

(End of Clause)

552.223-71 Hazardous material information.

As prescribed in 523.370, insert the following provision:

Hazardous Material Information (Apr 1984)

Offeror shall indicate for each national stock number (NSN) the following information:

NSN	DOT shipping name	DOT hazard class	DOT label required
			Yes [ ] No [ ]
			Yes [ ] No [ ]
			Yes [ ] No [ ]

(End of Provision)

552.225-70 Buy American Act—hand or measuring tools or stainless steel flatware.

As prescribed in 525.105-70(d), insert the following provision:

Buy American Act—Hand or Measuring Tools or Stainless Steel Flatware (May 1989)

Offers of foreign end products will be evaluated in accordance with GSAR 525.105–70(c) (48 CFR 525.105–70(c)). Offerors that intend to supply foreign end products must specify below or on an attachment to this offer the amount of duty (i) applicable if a duty-free entry certificate was not issued (for Canadian end products only) or (ii) included in each offered price (for all other offers of foreign end products). If no duty is specified, the differential in GSAR 525.105–70(c)(2)(i) will be applied to the offered price.

Item No.	Unit	Amount of duty (in dollars and cents)

(End of Provision)

552.225–71 Notice of procurement restriction—hand or measuring tools or stainless steel flatware.

As prescribed in 525.105–71(c), insert the following clause:

Notice of Procurement Restriction—Hand or Measuring Tools or Stainless Steel Flatware (May 1989)

(a) Awards under this solicitation will only be made to offerors that will furnish hand or measuring tools or stainless steel flatware that are domestic end products. Pursuant to the requirements of the current Department of Defense Appropriations Act, GSA has determined, in accordance with section 6–104.4 of the Armed Services Procurement Regulation (6/15/70) (32 CFR 6–104.4), that it is in the national interest to reject foreign products.

As used in this clause, a "domestic end product" is—

(1) Any hand or measuring tool, except for an electric or air-motor driven hand tool, or stainless steel flatware, wholly produced or manufactured, including all components, in the United States or its possessions; or

(2) Any electric or air-motor driven hand tool if the cost of its components produced or manufactured in the United States exceeds 75 percent of the cost of all its components.

(b) Tool kits or sets, being procured under this solicitation, will not be considered domestic end products if any individual tool classified in FSC Group 51 or 52 and included in a tool kit or set is not a domestic end product as defined in paragraph (a) of this clause. The restrictions of this clause do not apply to individual hand or measuring tools that are contained in the tool kit or set but are not classified in FSC Group 51 or 52.

(End of Clause)

552.225–72 Eligible products from nondesignated countries—waiver.

As prescribed in 525.407, insert the following clause:

Eligible Products From Nondesignated Countries—Waiver (May 1989)

(a) In accordance with the Trade Agreements Act of 1979 and 48 CFR 25.402(b), no eligible product that originates in a nondesignated country may be purchased by a Federal agency. However, this restriction may be waived before award when it is determined to be in the national interest. Accordingly, offers to furnish products originating in a nondesignated country may be submitted in response to this solicitation and will be considered for award if a waiver is obtained from the U.S. Trade Representative or a designee (19 U.S.C. 2512) on the basis that:

(1) No responsive bid or technically acceptable offer from a responsible offeror is received offering U.S. or designated country end products (48 CFR 52.225–8 and 52.225–9); or

(2) Responsible offerors do not offer a sufficient quantity to meet the Government's requirements.

(b) The determination to seek a waiver is at the sole discretion of the acquiring activity, and the granting of such waiver will be at the sole discretion of the U.S. Trade Representative or designee. (48 CFR 525.402).

(End of Clause)

552.225–73 Buy American Act notice—construction materials.

As prescribed in 525.205, insert the following provision:

Buy American Act Notice—Construction Materials (May 1989)

(a) The Buy American Act (41 U.S.C. 10) generally requires that only domestic construction material be used in performing this contract (See the clause entitled "Buy American Act—Construction Materials"). This requirement does not apply to the excepted construction material or components listed below:

(List applicable excepted materials or indicate "none.")

(b) Offers based on the use of other foreign construction material may be acceptable for award if the Government determines that—

(1) Comparable domestic construction material in sufficient and reasonably available quantities, of a satisfactory quality, is unavailable; or

(2) Use of comparable domestic construction material is impracticable or would unreasonably increase the cost of this contract.

(c) Any offer based on the use of one or more other foreign construction materials shall include current data, based on a reasonable canvass of suppliers, in the format listed in paragraph (h) of this clause, clearly demonstrating that the cost of each foreign construction material, plus 6 percent, is less than the cost of each comparable domestic construction material. The cost of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate may be issued).

(d) For evaluation purposes, the Government will add to the offer, 6 percent of the cost of foreign construction material that qualifies for acceptance under paragraph (c) of this clause.

(e) When offering foreign construction material, offerors may also offer, at stated prices, any available comparable domestic construction material to avoid the possibility that failure of a foreign construction material to be acceptable, under (c) of this clause, will cause rejection of the entire offer.

(f) If any foreign construction material does not qualify for acceptance under paragraph (c) of this clause, the Government will evaluate the offer on the basis of the stated price for comparable domestic construction material, and the Offeror shall be required to furnish such domestic construction material at that price. If the Offeror does not state a price for a comparable domestic construction material, and the foreign construction material does not qualify for acceptance under paragraph (c) of this clause, the offer will be rejected in sealed bid procurements and may be rejected in negotiated procurements.

(g) If the foregoing procedure results in a tie between a foreign offer as evaluated and a domestic offer, award shall be made on the domestic offer. In such case, offers proposing to use any foreign construction material will be considered to be foreign offers.

(h) For evaluation purposes under paragraph (c) of this clause, the following information and any applicable supporting data based on the canvass of suppliers shall be included in the offer for the use of one or more foreign construction materials:

FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS COST COMPARISON

Construction material description	Unit of measure	Quantity	Cost (dollars)[1]
Item 1:			
Foreign construction material			
Comparable domestic construction material			$
Item 2:			
Foreign construction material			
Comparable domestic construction material			

[1] Include all delivery costs to the construction site and any applicable duty.

(End of Provision)

552.227–70 Government Rights (Unlimited).

As prescribed in 527.409(a), insert the following clause:

Government rights (unlimited) (May 1989)

The Government shall have unlimited rights in all drawings, designs, specifications, notes and other works developed in the performance of this contract, including the right to use same on any other Government design or construction without additional compensation to the Contractor. The Contractor hereby grants to the Government a paid-up license throughout the world to all such works to which he may assert or establish any claim under design patent or copyright laws. The Contractor for a period of three years after completion of the project agrees to furnish the original or copies of all such works on the request of the Contracting Officer.

(End of Clause)

552.227–71 Drawings and other data to become property of Government.

As prescribed in 527.409(b), substitute the following clause:

Drawings and Other Data to Become Property of Government (May 1989)

All designs, drawings, specifications, notes and other works developed in the performance of this contract shall become the sole property of the Government and may be used on any other design or construction without additional compensation to the Contractor. The Government shall be considered the "person for whom the work was prepared" for the purpose of authorship in any copyrightable work under section 201(b) of Title 17, United States Code. With respect thereto, the Contractor agrees not to assert or authorize others to assert any rights nor establish any claim under the design patent or copyright laws. The Contractor for a period of three years after completion of the project agrees to furnish all retained works on the request of the Contracting Officer. Unless otherwise provided in this contract, the Contractor shall have the right to retain copies of works beyond such period.

(End of Clause)

552.228–70 Bid Guarantee and Bonds.

As prescribed in 528.101–3(a) and 528.102–3, insert a clause substantially the same as follows:

Bid Guarantee and Bonds (May 1989)

A bid guarantee is required as provided in Standard Form 1442, Solicitation, Offer and Award (Construction, Alteration, or Repair).

(a) If the contract price is more than $25,000, the Contractor shall furnish a performance bond in a penal amount of 100 percent of the contract price, and payment bond in a penal amount as follows:

(1) Fifty percent of the contract price if the contract price is more than $25,000 but not more than $1,000,000; or

(2) Forty percent of the contract price if the contract price is more than $1,000,000 but not more than $5,000,000; if the contract price is over $5,000,000, then forty percent of the contract price or $2,500,000, whichever is less.

(b) If offers on one or more alternate and/or unit price offers were accepted in awarding the contract, contract price as used above shall mean the aggregate of the lump sum amount plus the product of each unit price accepted multiplied by the applicable number of units specified in the bid form, plus or minus such alternate offers as were accepted.

(c) Performance and payment bonds shall be submitted within the time specified on the Standard Form 1442, Solicitation, Offer, and Award, for this contract.

(d) The Contractor shall not lose the right to receive any payment due or to become due under the contract unless and until the surety has made payment in settlement of claims by suppliers of labor or material in accordance with the requirements of the surety's undertaking under the payment or performance bond and has notified the Contracting Officer of the claims and amount so paid.

(End of Clause)

552.228–71 Bid guarantee.

As prescribed in 528.101–3(b), insert a clause substantially as follows:

Bid Guarantee (May 1989)

If the contract price is more than $25,000, offerors shall furnish a bid guarantee in a penal amount of _____ percent of the offer price for the term of the contract (excluding options to extend the term of the contract, if any) or $3,000,000, whichever is less.

For bid guarantee purposes the amount of the offer shall be deemed to be the aggregate of each unit price bid multiplied by the applicable number of units shown on the offer form or in the method of award formula.

(End of Clause)

552.228–72 Performance bond.

As prescribed in 528.103–2(d), insert a clause substantially as follows:

Performance Bond (Apr 1985)

(a) The offeror to whom the award is made shall furnish a performance bond for the protection of the Government in an amount equal to _____ percent of the contract price for the term of the contract (excluding options to extend the term of the contract, if any) within 15 calendar days after receiving the written award (or acceptance of offer) and bonding forms. The period of time for furnishing the performance bond may be extended for 10 calendar days, if fully justified in the opinion of the Contracting Officer, and if the request for the extension is received or confirmed in writing within the original 15 calendar day period.

(b) The performance bond shall be a firm commitment, supported by corporate sureties where names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, or in accordance with Treasury Department regulations, certain bonds or notes of the United States.

552.228–73 Performance and payment bonds.

As prescribed in 528.103–3(c), insert a clause substantially as follows:

Performance and Payment Bonds (Apr 1985)

(a) The offeror to whom the award is made shall furnish a performance bond for the protection of the Government in an amount equal to _____ percent of the contract price and a payment bond in an amount equal to _____ percent of the contract price. As used herein the term "contract price" means the total amount of the contract for the term of the contract (excluding options to extend the term of the contract, if any). Bonds shall be provided within 15 calendar days after receiving the written award (or acceptance of offer) and bonding forms. The period of time for furnishing bonds may be extended for 10 calendar days, if fully justified in the opinion of the Contracting Officer, and if the request for the extension is received or confirmed in writing within the original 15 calendar day period.

(b) The performance and payment bonds shall be in the form of firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, or, in accordance with Treasury Department regulations, certain bonds or notes of the United States.

552.228–74 Pledge of assets.

As prescribed in 528.202–71(a), insert a clause substantially the same as follows:

Pledges of Assets (May 1989)

(a) Offerors shall obtain from each person acting as an individual surety on a bid guarantee, a performance bond or a payment bond (1) Pledges of Assets, and (2) Standard Form 28, Affidavit of Individual Surety.

(b) Pledges of assets from each person acting as an individual surety, in the amount of the penal sum of the bond, shall be in the form of:

(1) Evidence of an escrow account containing commercial and/or Government securities; and/or

(2) Evidence that a recorded Covenant not to Convey or Encumber Real Estate has been recorded in the appropriate land records office of the jurisdiction where the property is located. (At the Contracting Officer's discretion the Offeror may be required to provide evidence of clear title by the conduct of a title search on each piece of pledged property.)

(End of Clause)

552.228–75 Workmen's compensation laws.

As prescribed in 528.310(a), insert the following clause:

Workmen's Compensation Laws (Apr 1984)

The Act of June 25, 1936, 49 Stat. 1938 (40 U.S.C. 290) authorizes the constituted authority of the several States to apply their workmen's compensation laws to all lands and premises owned or held by the United States.

(End of Clause)

552.229–70 Federal, state, and local taxes.

As prescribed in 529.401–70, insert the following clause:

Federal, State, and Local Taxes (Apr 1984)

The contract price includes all applicable Federal, State, and local taxes. No adjustment will be made to cover taxes

which may subsequently be imposed on this transaction or changes in the rates of currently applicable taxes. However, the Government will, upon the request of the Contractor, furnish evidence appropriate to establish exemption from any tax from which the Government is exempt and which was not included in the contract price.

(End of Clause)

552.229-72 Federal excise tax—DC Government.

As prescribed in 529.401-72, insert the following clause:

Federal Excise Tax—DC Government (Apr 1984)

The District of Columbia is exempt from and will not pay Federal excise taxes. Contractors will bill shipments to the District of Columbia at prices exclusive of such excise tax and show the amount of such tax on the invoice. The Internal Revenue Tax Exempt Certificate Number will be shown on all District of Columbia Government purchase orders.

(End of Clause)

552.232-8 Discounts for prompt payments.

As prescribed in 532.111(a), insert the following clause:

Discounts for Prompt Payment (Apr 1989) (Deviation FAR 52.232-8)

(a) Discounts for early payment (hereinafter referred to as "discounts" or "the discount") will be considered in evaluating the relationship of the offeror's concessions to the Government vis-a-vis the offeror's concessions to its commercial customers, but only to the extent indicated in this clause.

(b) Discounts will not be considered to determine the low offeror in the situation described in the "Offers on Identical Products" provision of this solicitation.

(c) Uneconomical discounts will not be considered as meeting the criteria for award established by the Government. In this connection, a discount will be considered uneconomical if the annualized rate of return for earning the discount is lower than the "value of funds" rate established by the Department of the Treasury and published quarterly in the **Federal Register**. The "value of funds" rate applied will be the rate in effect on the date specified for the receipt of offers.

(d) Agencies required to use the resultant schedule will not apply the discount in determining the lowest delivered price pursuant to the FPMR, 41 CFR 101-26.408, if the agency determines that payment will probably not be made within the discount period offered. The same is true if the discount is considered uneconomical at the time of placement of the order.

(e) Discounts for early payment may be offered either in the original offer or on individual invoices submitted under the resulting contract. Discounts offered will be taken by the Government if payment is made within the discount period specified.

(f) Discounts that are included in offers become a part of the resulting contracts and are binding on the contractor for all orders placed under the contract. Discounts offered only on individual invoices will be binding on the Contractor only for the particular invoice on which the discount is offered.

(g) In connection with any discount offered for prompt payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the date on which an electronic funds transfer was made.

(End of Clause)

552.232-23 Assignment of claims.

As prescribed in 532.806, insert the following clause:

Assignment of Claims (May 1989)

Because this is a requirements or indefinite quantity contract under which more than one agency may place orders, paragraph (a) of the Assignment of Claims clause (FAR 52.232-23) is inapplicable and the following is substituted therefor:

In order to prevent confusion and delay in making payment, no claim(s) for amounts due or to become due under this contract, shall be assigned by the Contractor; but it shall be permissible for the Contractor to assign separately to a bank, trust company, or other financial institution, including any Federal lending agency, under the provisions of the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 15 (hereinafter referred to as "the Act"), all amounts due or to become due under any delivery order amounting to $1,000 or more issued by any Government agency under this contract. Any such assignment shall be effective only if and when the assignee files written notice of the assignment together with a true copy of the instrument of assignment with the contracting officer issuing the delivery order and the finance office designated in the delivery order to make payment. Unless otherwise stated in the delivery order, payments to an assignee of any amounts due or to become due under any delivery order assigned may, to the extent specified in the Act, be subject to reduction or set-off.

(End of Clause)

552.232-70 Payments by electronic funds transfer.

As prescribed in 532.908(a), insert the following clause:

Payments by Electronic Funds Transfer (Apr 1989)

The submission of a designation of financial institution for receipt of electronic funds transfer payments in the "Electronic Funds Transfer Payment Methods" clause (FAR 52.232-28) shall be as follows. The Contractor shall submit its designation of a financial institution for receipt of electronic funds transfer payments with each invoice requesting payment of $25,000 or more (exclusive of any discount for prompt payment). The information for electronic funds transfer is not required by the Department of Defense, the United States Postal Service, or the Tennessee Valley Authority. Information required for electronic funds transfer payments shall be furnished to the Veterans Administration in accordance with instructions provided by that agency. Other agencies and departments thereof may waive the requirement for designation of a financial institution for receipt of electronic funds transfer payments and for submission of information required to make such payments by including a notice on delivery orders or otherwise notifying the Contractor.

(End of Clause)

552.232-71 Prompt payment.

As prescribed in 532.908(b), insert the following clause:

Prompt Payment (Apr 1989)

The Government will make payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or an electronic funds transfer is made. All days referred to in this clause are calendar days, unless otherwise specified.

(a) *Payment due date*—(1) *Rental payments.* Rent shall be paid monthly in arrears and will be due on the first workday of each month, and only as provided for by the lease.

(i) When the date for commencement of rent falls on the 15th day of the month or earlier, the initial monthly rental payment under this contract shall become due on the first workday of the month following the month in which the commencement of the rent is effective.

(ii) When the date for commencement of rent falls after the 15th day of the month, the initial monthly rental payment under this contract shall become due on the first workday of the second month following the month in which the commencement of the rent is effective.

(2) *Other payments.* The due date for making payments other than rent shall be the later of the following two events:

(i) The 30th day after the designated billing office has received a proper invoice from the Contractor.

(ii) The 30th day after Government acceptance of the work or service. However, if the designated billing office fails to annotate the invoice with the actual date of receipt, the invoice payment due date shall be deemed to be the 30th day after the Contractor's invoice is dated, provided a proper invoice is received and there is no disagreement over quantity, quality, or contractor compliance with contract requirements.

(b) *Invoice and inspection requirements for payments other than rent.* (1) The Contractor shall prepare and submit an invoice to the designated billing office after completion of the work. A proper invoice shall include the following items:

(i) Name and address of the Contractor.

(ii) Invoice date.

(iii) Lease number.

(iv) Government's order number or other authorization.

(v) Description, price, and quantity of work or services delivered.

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the remittance address in the lease or the order).

(vii) Name (where practicable), title, phone number, and mailing address of person to be notified in the event of a defective invoice.

(2) The Government will inspect and determine the acceptability of the work performed or services delivered within 7 days after the receipt of a proper invoice or notification of completion of the work or services unless a different period is specified at the time the order is placed. If actual acceptance occurs later, for the purpose of determining the payment due date and calculation of interest, acceptance will be deemed to occur on the last day of the 7-day inspection period. If the work or service is rejected for failure to conform to the technical requirements of the contract, the 7 days will be counted beginning with receipt of a new invoice or notification. In either case, the Contractor is not entitled to any payment or interest unless actual acceptance by the Government occurs.

(c) *Interest penalty.* (1) An interest penalty shall be paid automatically by the Government, without request from the Contractor, if payment is not made by the due date.

(2) The interest penalty shall be at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the day after the due date. This rate is referred to as the "Renegotiation Board Interest Rate," and it is published in the **Federal Register** semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the payment amount approved by the Government and be compounded in 30-day increments inclusive from the first day after the due date through the payment date.

(3) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the clause at 52.233-1, Disputes, or for more than 1 year. Interest penalties of less than $1.00 need not be paid.

(4) Interest penalties are not required on payment delays due to disagreement between the Government and Contractor over the payment amount or other issues involving contract compliance or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable, will be resolved in accordance with the clause at 52.233-1, Disputes.

(End of Clause)

Alternate I (Apr 1989)

If Alternate I is used, subparagraph (a)(1) of the basic clause should be designated as paragraph (a) and subparagraph (a)(2) and paragraph (b) should be deleted. Paragraph (c) of the basic clause should be redesignated (b).

552.232-72 Invoice requirements.

As prescribed in 532.111(b), insert the following clause:

Invoice Requirements (Apr 1989)

(a) Invoices shall be submitted in an original only, unless otherwise specified, to the designated billing office specified in this contract or purchase/delivery order.

(b) Invoices must include the Accounting Control Transaction (ACT) number provided below or on the purchase/delivery order.

ACT Number (*Contracting Officer Insert Number*)

(c) In addition to the requirements for a proper invoice specified in the Prompt Payment clause of this contract or purchase/delivery order, the following information or documentation must be submitted with each invoice:

(Contracting Officer *List Additional Requirements*)

(End of Clause)

552.232-73 Electronic funds transfer payment.

As prescribed in 532.908(c), insert the following clause:

Electronic Funds Transfer Payment (Apr 1989)

Payments under this contract will be made by the Government either by check or electronic funds transfer (through the Treasury Fedline Payment System (FEDLINE) or the Automated Clearing House (ACH), at the option of the Government. Not later than 14 days after receipt of a notice of award or request from the Contracting Officer or other Government official, the Contractor shall provide information necessary for check payment and/or designate a financial institution for receipt of electronic funds transfer payments. The Contractor shall submit this information to the Contracting Officer or other Government official, as directed.

(a) For payment by check, the Contractor shall provide the full name (where practicable), title, phone number, and complete mailing address of the responsible official(s) to whom check payments are to be sent (must be the same as the remittance address in the lease or the order).

(b) For payment through FEDLINE, the Contractor shall provide the following information:

(1) Name, address, and telegraphic abbreviation of the financial institution receiving payment (must be the same as the remittance address in the lease or the order).

(2) The American Bankers Association 9-digit identifying number for wire transfers of the financing institution receiving payment if the institution has access to the Federal Reserve Communications System.

(3) Payee's account number at the financial institution where funds are to be transferred.

(4) If the financial institution does not have access to the Federal Reserve Communications System, name, address, and telegraphic abbreviation of the correspondent financial institution through which the financial institution receiving payment obtains wire transfer activity. Provide the telegraphic abbreviation and American Bankers Association identifying number for the correspondent institution.

(c) For payment through ACH, the Contractor shall provide the following information:

(1) Routing transit number of the financial institution receiving payment (same as American Bankers Association identifying number used for FEDLINE).

(2) Number of account to which funds are to be deposited.

(3) Type of depositor account ("C" for checking, "S" for savings).

(4) If the Contractor is a new enrollee to the ACH system, a "Payment Information Form," SF 3881, must be completed before payment can be processed.

(d) In the event the Contractor, during the performance of this contract, elects to designate a different financial institution for the receipt of any payment made using electronic funds transfer procedures, notification of such Change and the required information specified above must be received by the appropriate Government official 30 days prior to the date such change is to become effective.

(e) The document furnishing the information required by this paragraph must be dated and contain the signature, title, and telephone number of the Contractor official authorized to provide it, as well as the Contractor's name and contract number.

(f) Contractor failure to properly designate a financial institution or to provide appropriate payee bank account information may delay payments of amount otherwise properly due.

(End of Clause)

552.232-74 Progress payments.

As prescribed in 532.502-3, insert the following provision:

Progress Payments (May 1989)

If an offeror desires progress payments, a written request must accompany the offer and the appropriate box below must be checked:

[ ] Progress payments are desired, but offer is not conditioned on receiving progress payments.

[ ] Offer is conditioned on receiving progress payments.

Note: 1. If an offer is conditioned on the availability of progress payments and the offeror is found ineligible for such payments, the offer will be rejected.

2. Submission of an offer without requesting progress payments does not preclude the offeror from later requesting progress payments in accordance with applicable regulations, prior to or after award of the contract.

(End of Provision)

552.232-77 Availability of funds.

As prescribed in 532.705-1, insert the following clause:

Availability of Funds (July 1984)

The authorization of performance of work under this contract during the initial contract period and any option or extension period(s) is contingent upon the appropriation of funds to procure this service. If the contract is awarded, extended, or option(s) exercised, the Government's obligation beyond the end of the fiscal year (September 30), in which the award or extension is made or option(s) exercised, is contingent upon the availability of funds from which payment for the contract

services can be made. No legal liability on the part of the Government for payment of any money beyond the end of each fiscal year (September 30) shall arise unless or until funds are made available to the Contracting Officer for this procurement and written notice of such availability is given to the contractor.

(End of Clause)

552.232-78 Adjusting payments.

As prescribed in 532.111(c), insert the following clause:

Adjusting Payments (May 1989)

(a) Under the Inspection of Services clause of this contract, payments may be adjusted if any services do not conform with contract requirements. The Contracting Officer or a designated representative will inform the Contractor, in writing, of the type and dollar amount of proposed deductions by the 10th workday of the month following the performance period for which the deductions are to be made.

(b) The Contractor may, within 10 working days of receipt of the notification of the proposed deductions, present to the Contracting Officer specific reasons why any or all of the proposed deductions are not justified. Reasons must be solidly based and must provide specific facts that justify reconsideration and/or adjustment of the amount to be deducted. Failure to respond within the 10-day period will be interpreted to mean that the Contractor accepts the deductions proposed.

(c) All or a portion of the final payment may be delayed or withheld until the Contracting Officer makes a final decision on the proposed deduction. If the Contracting Officer determines that any or all of the proposed deductions are warranted, the Contracting Officer shall so notify the Contractor, and adjust subsequent payments under the contract accordingly.

(End of Clause)

552.232-79 Final payment.

As prescribed in 532.111(d), insert the following clause:

Final Payment (Apr 1984)

Before final payment is made, the Contractor shall furnish the Contracting Officer with a release of all claims against the Government relating to this contract, other than claims in stated amounts that are specifically excepted by the Contractor from the release. If the Contractor's claim to amounts payable under the contract has been assigned under the Assignment of Claims Act of 1940, as amended (31 U.S.C. 3727, 41 U.S.C. 15), a release may also be required of the assignee.

(End of Clause)

552.233-70 Disputes (utility contract).

As prescribed in 533.214, insert the following clause:

Disputes (Utility Contract) (Apr 1984)

The requirements of the Disputes clause at FAR 52.233-1 are supplemented to provide that matters involving the interpretation of retail rates, rate schedules, tariffs, riders, and tariff related terms provided under this contract and conditions of service are subject to the jurisdiction and regulation of the utility rate commission having jurisdiction.

(End of Clause)

552.236-70 Definitions.

As prescribed in 536.570-1, insert the following clause:

Definitions (Apr 1984)

The terms "Administration" and "Service" as used in this contract shall mean the General Services Administration (GSA) and the Public Buildings Service (PBS), respectively.

(End of Clause)

552.236-71 Authorities and limitations.

As prescribed in 536.570-2, insert the following clause:

Authorities and Limitations (Apr 1984)

(a) All work shall be performed under the general direction of the Contracting Officer, who alone shall have the power to bind the Government and to exercise the rights, responsibilities, authorities and functions vested in him by the contract documents, except that he shall have the right to designate authorized representatives to act for him. Wherever any provision in this contract specifies an individual (such as, but not limited to, Construction Engineer, Resident Engineer, Inspector or Custodian) or organization, whether Governmental or private, to perform any act on behalf of or in the interests of the Government, that individual or organization shall be deemed to be the Contracting Officer's authorized representative under this contract but only to the extent so specified. The Contracting Officer may, at any time during the performance of this contract, vest in any such authorized representatives additional power and authority to act for him or designate additional representatives, specifying the extent of their authority to act for him; a copy of each document vesting additional authority in an authorized representative or designating an additional authorized representative shall be furnished to the Contractor.

(b) The Contractor shall perform the contract in accordance with any order (including but not limited to instruction, direction, interpretation, or determination) issued by an authorized representative in accordance with his authority to act for the Contracting Officer; but the Contractor assumes all the risk and consequences of performing the contract in accordance with any order (including but not limited to instruction, direction, interpretation, or determination) of anyone not authorized to issue such order.

(End of Clause)

552.236-72 Specialist.

As prescribed in 536.570-3, insert the following clause:

Specialist (Apr 1984)

The term "Specialist," as used in the contract specification, shall mean an individual or firm of established reputation (or, if newly organized, whose personnel have previously established a reputation in the same field), which is regularly engaged in, and which maintains a regular force of workmen skilled in either (as applicable) manufacturing or fabricating items required by the contract, installing items required by the contract, or otherwise performing work required by the contract. Where the contract specification requires installation by a specialist, that term shall also be deemed to mean either the manufacturer of the item, an individual or firm licensed by the manufacturer, or an individual or firm who will perform the work under the manufacturer's direct supervision.

(End of Clause)

552.236-73 Basis of award—construction contract.

As prescribed in 536.570-4, insert the following provision or the appropriate Alternate:

Basis of Award—Construction Contract (Apr 1985)

(a) The low bidder for purposes of award is the responsible bidder offering the lowest price for the base bid (consisting of the lump sum bid and any associated unit price bids extended by the applicable number of units shown on the bid form). See Standard Form 1442, Solicitation, Offer, and Award and the provision entitled "Contract Award—Sealed Bidding."

(b) A bid may be rejected as nonresponsive if the bid is materially unbalanced as to bid prices. A bid is unbalanced when the bid is based on prices significantly less than cost for some work and significantly overstated for other work.

(End of Provision)

Alternate I

If the solicitation includes a base bid and options, the Contracting Officer shall delete paragraph (a) of the basic clause and insert paragraph (a) substantially as follows:

(a) The low bidder for purposes of award is the responsible bidder offering the lowest aggregate price for (1) the base bid (consisting of the lump sum bid and any associated unit price bids extended by the applicable number of units shown on the bid form) plus (2) all options designated to be evaluated. The evaluation of options will not obligate the Government to exercise the options. See Standard form 1442, Solicitation, Offer, and Award and the provision entitled "Contract Award—Sealed Bidding."

Alternate II

If the solicitation includes a base bid and alternates, the Contracting Officer shall delete paragraph (a) of the basic clause and insert paragraphs (a), (c), and (d) substantially as follows:

(a) The low bidder for purposes of award is the responsible bidder offering the lowest aggregate price for (1) the base bid (consisting of the lump sum bid and any associated unit price bids extended by the applicable number of units shown on the bid form) plus (2) those alternates in the order of priority listed in the solicitation that provide the most features of work within the funds available at bid opening. See the provision entitled "Contract Award—Sealed Bidding."

(c) Alternates will be added to the base bid in the order listed in the solicitation (see Standard Form 1442, Solicitation, Offer, and Award). If the addition of an alternate would make all bids exceed the funds available at bid opening, that alternate shall be skipped and the next subsequent alternate in a lower amount shall be added, provided that the aggregate of base bid and the selected alternates do not exceed the funds available at bid opening. See the provision entitled "Contract Award—Sealed Bidding."

(d) After the low bidder has been determined in accordance with paragraph (a), an award may be made to that low bidder on the base bid, plus any combination of alternates for which funds are available at the time of award, but only if the award amount does not exceed the amount offered by any other responsible bidder. If the base bid plus the proposed combination of alternates exceed the amount offered by any other responsible bidder for the same combination of alternates, the award cannot be made on that combination of alternates.

Alternate III

If the solicitation includes a base bid, alternates, and options, the Contracting Officer shall delete paragraph (a) of the basic clause and insert paragraphs (a), (c), and (d) substantially as follows:

(a) The low bidder for purposes of award is the responsible bidder offering the lowest aggregate price for (1) the base bid (consisting of the lump sum bid and any associated unit price bids extended by the applicable number of units shown on the bid form) plus (2) those alternates in the order of priority listed in the solicitation that provide the most features of work within the funds available at bid opening plus (3) all options designated to be evaluated except those options associated with alternates which are skipped during the selection process outlined in paragraph (c) below. The evaluation of options will not obligate the Government to exercise the options. See the provision entitled "Contract Award—Sealed Bidding."

(c) Alternates will be added to the base bid in the order listed in the solicitation (see Standard Form 1442, Solicitation, Offer, and Award). If the addition of an alternate would make all bids exceed the funds available at bid opening, that alternate shall be skipped and the next subsequent alternate in a lower amount shall be added, provided that the aggregate of base bid and the selected alternates do not exceed the funds available at bid opening. For example, when the amount available is $100,000 and a bidder's base bid is $85,000, with its separate bids on four successive alternates being $10,000, $8,000, $6,000, and $4,000, the aggregate amount of the bid for purposes of selecting the alternates would be $99,000 (base bid plus the first and fourth alternates). The second and third alternates are skipped because each of them would cause the aggregate of the base bid and alternates to exceed the $100,000 amount available when considered with the first alternate. All bids shall be evaluated on the basis of the same alternates.

(d) After the low bidder has been determined in accordance with paragraph (a), award may be made to that low bidder on the base bid and evaluated options plus any combination of alternates for which funds are available at the time of award, but only if that low bidder is still low on the sum thereof plus any previously unevaluated options designated to be evaluated which are associated with proposed alternates that were skipped during the selection under paragraph (c). If that low bidder is not still low, award cannot be made on the proposed combination of alternates.

552.236-74 Working hours.

As prescribed in 536.570-5, insert the following clause:

Working Hours (Apr 1984)

(a) It is contemplated that all work will be performed during the customary working hours of the trades involved unless otherwise specified in this contract. Work performed by the Contractor at his own volition outside such customary working hours shall be at no additional expense to the Government.

(b) Any requests received by the Contractor from occupants of existing buildings to change the hours of work shall be referred to the Contracting Officer for determination.

(End of Clause)

552.236-75 Use of premises.

As prescribed in 536.570-6, insert the following clause:

Use of Premises (Apr 1984)

(a) If the premises are occupied, the Contractor, his subcontractors, and their employees shall comply with the regulations governing access to, operation of, and conduct while in or on the premises and shall perform the work required under this contract in such a manner as not to unreasonably interrupt or interfere with the conduct of Government business.

(b) Any request received by the Contractor from occupants of existing buildings to change the sequence of work shall be referred to the Contracting Officer for determination.

(c) If the premises are occupied, the Contractor, his subcontractors and their employees shall not have access to or be admitted into any building outside the scope of this contract except with official permission.

(End of Clause)

552.236-76 Measurements.

As prescribed in 536.570-7, insert the following clause:

Measurements (Apr 1984)

All dimensions shown of existing work and all dimensions required for work that is to connect with work now in place, shall be verified by the Contractor by actual measurement of the existing work. Any discrepancies between the contract requirements and the existing conditions shall be referred to the Contracting Officer before any work affected thereby has been performed.

(End of Clause)

552.236-77 Specifications and Drawings.

As prescribed in 536.570-8, insert the following clause:

Specifications and Drawings (Apr 1984)

The requirements of the clause entitled "Specifications and Drawings" at FAR 52.236-21, are supplemented as follows:

(a) In case of difference between small and large-scale drawings, the large-scale drawings shall govern. Schedules on any contract drawing shall take precedence over conflicting information on that or any other contract drawing. On any of the drawings where a portion of the work is detailed or drawn out and the remainder is shown in outline, the parts detailed or drawn out shall apply also to all other like portions of the work.

(b) Where the word "similar" occurs on the drawings, it shall have a general meaning and not be interpreted as being identical, and all details shall be worked out in relation to their location and their connection with other parts of the work.

(c) Standard Details or Specification Drawings are applicable when listed, bound with the specifications, noted on the drawings or referenced elsewhere in the specifications. Where the notes on the drawings indicate modifications, such modifications shall govern.

(d) In case of difference between Standard Details or Specification Drawings and the specifications, the specifications will govern. In case of difference between the Standard Details or Specification Drawings and the drawings prepared specifically for this contract, the later shall govern.

(End of Clause)

552.236-78 Shop drawings, coordination drawings, and schedules.

As prescribed in 536.570-9, insert the following clause:

Shop Drawings, Coordination Drawings, and Schedules (Apr 1984)

The requirements, of the clause entitled "Specifications and Drawings" at FAR 52.236-21, are supplemented as follows:

(a) The Contractor shall submit shop drawings, coordination drawings, and schedules for approval as required by the specifications or requested by the Contracting Officer as follows:

(b) Shop drawings shall include fabrication, erection and setting drawings, schedule

drawings, manufacturers' scale drawings, wiring and control diagrams, cuts or entire catalogs, pamphlets, descriptive literature, and performance and test data.

(c) Drawings and schedules, other than catalogs, pamphlets and similar printed material, shall be submitted in reproducible form with two prints made by a process approved by the Contracting Officer. Upon approval, the reproducible form will be returned to the Contractor who shall then furnish the number of additional prints, not to exceed 10, required by the specifications. The Contractor shall submit shop drawings in catalog, pamphlet and similar printed form in a minimum of four copies plus as many additional copies as the Contractor may desire or need for his use or use by subcontractors.

(d) Before submitting shop drawings on the mechanical and electrical work, the Contractor shall submit and obtain the Contracting Officer's approval of such lists of mechanical and electrical equipment and materials as may be required by the specifications.

(e) Each shop drawing or coordination drawing shall have a blank area 5 by 5 inches, located adjacent to the title block. The title block shall display the following:
Number and title of drawing
Date of drawing or revision
Name of project building or facility
Name of contractor and (if appropriate) name of subcontractor submitting drawing
Clear identity of contents and location on the work
Project title and contract number

(f) Unless otherwise provided in this contract, or otherwise directed by the Contracting Officer, shop drawings, coordination drawings and schedules shall be submitted to the Contracting Officer, with a letter in triplicate, sufficiently in advance of construction requirements to permit no less than 10 working days for checking and appropriate action.

(g) Approval of drawings and schedules will be general and shall not be construed as permitting any departure from the contract requirements, or as approving departures from full-size details furnished by the Contracting Officer.

(End of Clause)

552.236-79 Samples.

As prescribed in 536.570-10, insert the following clause:

Samples (Apr 1984)

(a) After the award of the contract, the Contractor shall furnish for the approval of the Contracting Officer samples required by the specifications or by the Contracting Officer. Samples shall be delivered to the Contracting Officer or to the Architect as specified or as directed. The Contractor shall prepay all shipping charges on samples. Materials or equipment for which samples are required shall not be used in the work until approved in writing by the Contracting Officer.

(b) Each sample shall have a label indicating:

(1) Name of project building or facility, project title and contract number

(2) Name of Contractor and, if appropriate, name of subcontractor

(3) Identification of material or equipment with specification requirement

(4) Place of origin

(5) Name of producer and brand (if any)

Samples of finished materials shall have additional markings that will identify them under the finish schedules.

(c) The Contractor shall mail under separate cover a letter in triplicate submitting each shipment of samples and containing the information required in paragraph (b) of this clause. He shall enclose a copy of this letter with the shipment and send a copy to the Government representative on the project. Approval of a sample shall be only for the characteristics or use named in such approval and shall not be construed to change or modify any contract requirement. Substitutions will not be permitted unless they are approved in writing by the Contracting Officer.

(d) Approved samples not destroyed in testing will be sent to the Government representative at the project. Approved samples of hardware in good condition will be marked for identification and may be used in the work. Materials and equipment, incorporated in the work shall match the approved samples. Other samples not destroyed in testing or not approved will be returned to the Contractor at his expense if so requested at time of submission.

(e) Failure of any material to pass the specified tests will be sufficient cause for refusal to consider, under this contract, any further samples of the same brand or make of that material or equipment which previously has proved unsatisfactory in service.

(f) Samples of various materials or equipment delivered on the site or in place may be taken by the Government representative for testing. Samples failing to meet contract requirements will automatically void previous approvals of the items tested. The Contractor shall replace such materials or equipment found not to have met contract requirements, or there shall be a proper adjustment of the contract price as determined by the Contracting Officer.

(g) Unless otherwise specified, when tests are required only one test of each sample proposed for use will be made at the expense of the Government. Samples which do not meet specification requirements will be rejected. Testing of additional samples will be made by the Government at the expense of the Contractor.

(End of Clause)

552.236-80 Heat.

As prescribed in 536.570-11, insert the following clause:

Heat (Apr 1984)

Unless otherwise specified or unless already provided by the Government the Contractor shall:

(a) Provide heat, as necessary to protect all work, materials, and equipment against injury from dampness and cold;

(b) Protect, cover and/or heat as may be necessary, to produce and maintain a temperature of not less than 50 degrees Fahrenheit (t) in the concrete during the placing, setting and curing of concrete, and (2) in the plaster during the application, setting and curing of plaster; and

(c) Provide heat as necessary in the area where work is to be done to provide the minimum temperature recommended by the supplier or manufacturer of the material, but in no case less than 50 degrees Fahrenheit, for a period beginning 10 days before placing of interior finishes and finish materials and continuing until completion or beneficial occupancy of the area, whichever is earlier.

(End of Clause)

552.236-81 Use of equipment by the Government.

As prescribed in 536.570-12, insert the following clause:

Use of Equipment by the Government (Apr 1984)

(a) The Government may take over and operate, with Government employees, such equipment as is necessary for heating or cooling such areas of the building as require the service, as soon as the installation is sufficiently complete.

(b) The Contracting Officer will advise the Contractor by letter, prior to the use of equipment, which items of equipment will be operated, and the date and time such operation will begin.

(c) Government operation of equipment will not relieve the Contractor of the one-year guarantee on materials and workmanship elsewhere provided for in this contract.

(d) The guarantee period, elsewhere provided for in this contract, for each piece of equipment shall be in accordance with the "Guarantees" clause of this contract.

(End of Clause)

552.236-82 Subcontracts.

As prescribed in 536.570-13, insert the following clause:

Subcontracts (Apr 1984)

(a) Nothing contained in the contract shall be construed as creating any contractual relationship between any subcontractor and the Government. The divisions or sections of the specifications are not intended to control the Contractor in dividing the work among subcontractors, or to limit the work performed by any trade.

(b) The Contractor shall be responsible to the Government for acts and omissions of his own employees and of subcontractors and their employees. He shall also be responsible for the coordination of the work of the trades, subcontractors and suppliers.

(c) The Government will not undertake to settle any differences between or among the Contractor, subcontractors, or suppliers.

(End of Clause)

552.236-83 Furnishing information and records.

As prescribed in 536.570-14, insert the following clause:

Furnishing Information and Records (Apr 1984)

(a) If the Contractor or any subcontractor under this contract or the officers or agents of the Contractor or any subcontractor, refuses, except as provided by the terms of this contract, to furnish to any Government agency or any establishment in the legislative or judicial branch of the Government information or records reasonably pertinent to this contract, the following actions may be taken:

(1) In the case of a refusal by the Contractor, its officers or agents, the Government may, after affording an opportunity to explain or justify such refusal, terminate the Contractor's right to proceed with the work. The rights and remedies provided in this clause are in addition to those outlined in paragraph (a) of the Default (Fixed-Price Construction) clause at FAR 52.249-10, paragraph (b) of the Liquidated Damages—Construction clause at FAR 52.212-5 and to any other rights and remedies provided by law or under this contract;

(2) In the case of a refusal by a subcontractor, its officers or agents, the Government may, after affording an opportunity to explain or justify such refusal, require the Contractor to terminate the subcontract without cost to the Government, or if the Contractor fails or refuses to effect such termination, the Government may terminate the Contractor's right to proceed with the work under this contract and thereupon the Government may avail itself of the rights and remedies referred to in subparagraph (a)(1) of this clause.

(b) The term "subcontract" as used in this paragraph means any contract entered into or any purchase order issued by a prime contractor under a contract with the Government in connection with the performance of the prime contractor's obligations under this contract.

(c) The term "subcontractor" as used in this paragraph means a party to a subcontract other than the prime contractor under this contract.

(End of Clause)

552.237-70 Qualifications of offerors.

As prescribed in 537.110(a), insert the following provision:

Qualifications of Offerors (May 1989)

(a) Offers will be considered only from responsible organizations or individuals now or recently engaged in the performance of building service contracts comparable to those described in this solicitation. In order to determine an Offeror's qualifications, the Offeror may be requested to furnish a narrative statement listing comparable contracts which it has performed; a general history of its operating organization; and its complete experience. An Offeror may also be required to furnish a statement of its financial resources; show that it has the ability to maintain a staff of regular employees adequate to ensure continuous performance of the work; and, demonstrate that its equipment and/or plant capacity for the work contemplated is sufficient, adequate, and suitable.

(b) Competency in performing comparable building service contracts, demonstration of acceptable financial resources, personnel staffing, plant, equipment, and supply sources will be considered in determining whether an Offeror is responsible.

(c) Prospective Offerors are advised that in evaluating these areas involving any small business concern(s), any negative determinations are subject to the Certificate of Competency procedures set forth in the Federal Acquisition Regulation.

(End of Provision)

552.237-71 Qualifications of employees.

As prescribed in 537.110(b), insert the following clause:

Qualifications of Employees (May 1989)

(a) The contracting officer or a designated representative may require the Contractor to remove any employee(s) from GSA controlled buildings or other real property should it be determined that the individual(s) is either unsuitable for security reasons or otherwise unfit to work on GSA controlled property.

(b) The Contractor shall fill out and cause each of its employees performing work on the contract work to fill out, for submission to the Government, such forms as may be necessary for security or other reasons. Upon request of the Contracting Officer, the Contractor and its employees shall be fingerprinted.

(c) Each employee of the contractor shall be a citizen of the United States of America, or an alien who has been lawfully admitted for permanent residence as evidenced by Alien Registration Receipt Card Form I-151, or, who presents other evidence from the Immigration and Naturalization Service that employment will not affect his immigration status.

(End of Clause)

552.237-72 Certification regarding "Quasi-Military Armed Forces."

As prescribed in 537.110(c), insert the following certification:

Certification Regarding "Quasi-Military Armed Forces" (Apr 1984)

(a) By signing this offer, the Offeror certifies that the individual, firm, or corporation submitting this offer is not a "Quasi-Military Armed Force" within the meaning of the decision of the court in United States ex. rel. Weinberger v. Equifax, 557 F. 2d 456 (5th Cir., 1977).

(b) The Offeror further certifies that it will not, during the term of this contract, offer "Quasi-Military Armed Forces" for hire.

(End of Certification)

552.238-72 Contractor's report of orders received.

As prescribed in 538.203-71, insert the following clause:

Contractor's Report of Orders Received (May 1989)

(a) Contractors shall furnish quarterly the dollar value (rounded to the nearest whole dollar) of all Government agencies' and Government Contractor's orders received during the preceding 3-month period to include any partial month. A separate report for each National Stock Number (NSN), Special Item Number (SIN), or subitem shall be prepared and submitted, unless otherwise specified, on GSA Form 72A.

(b) The report is due in the office specified below or specified at the time of award 15 days following the completion of the reporting period or completion of the contract. A report is required even when no billings or invoices are issued or no orders are received during the reporting period.

(c) The Government reserves the right to inspect without further notice, such records of the Contractor as pertain to sales under any contract resulting from this solicitation. Willful failure or refusal to furnish the required reports, or falsification thereof, shall constitute sufficient cause for terminating the contract for default under FAR 52.249-8, Default (Fixed-Priced Supply and Service).

(d) The report shall be forwarded to the following address:

General Services Administration

_____

_____

_____

_____

(End of Clause)

Alternate I (May 1989).

If it is necessary to identify the official responsible for preparing the report, the Contracting Officer may add a paragraph substantially the same as the following paragraph (e) to the basic clause:

(e) Within _____ days of contract award, the Contractor shall provide to the Contracting Officer, the name, title, address, and telephone number of the individual who will be responsible for the report.

Alternate II (May 1989).

When the clause is used in IRMS schedule contracts, substitute a paragraph substantially the same as the following paragraph (a) for paragraph (a) of the basic clause:

(a) The Contractor shall furnish quarterly the dollar value (rounded to the nearest whole dollar) of orders received or invoices issued during the preceding 3-month period to include any partial month. A separate report for each Special Item Number (SIN) shall be prepared and submitted, unless otherwise specified, on GSA Form 72.

552.242-70 Status report of orders and shipments.

As prescribed in 542.1107, insert the following clause:

Status Report of Orders and Shipments (May 1989)

(a) The Contractor shall furnish to the Administrative Contracting Officer (ACO) a report covering orders received and shipments made during each calendar month of contract performance. The information required by the Government shall be reported on GSA Form 1678, Status Report of Orders and Shipments, in accordance with instruction on the form, or in an automated printout form as an attachment to the GSA Form 1678 when authorized by the ACO.

Blocks 1 through 5 of the GSA Form 1678 must be completed and attached as a cover page to the automated report. Reports shall be forwarded to the ACO not later than the seventh workday of the succeeding month.

(b) An initial supply of GSA Form 1678 will be forwarded to the Contractor with the contract. Additional copies of the form, if needed, may be obtained from the ACO, or reproduced by the Contractor.
(End of Clause)

552.243-70 Pricing adjustments.

As prescribed in 543.205(a), insert the following clause:

Pricing of Adjustments (Apr 1984)

When costs are a factor in any determination of a contract price adjustment, such costs shall be in accordance with the contract cost principles and procedures in Part 31 of the Federal Acquisition Regulation (48 CFR Part 31) in effect on the date of this contract.
(End of Clause)

552.243-71 Equitable Adjustments.

As prescribed in 543.205(b), insert the following clause in solicitations and contracts for (a) dismantling, demolition, or removal of improvements; and (b) construction, when a fixed-price contract is contemplated and the contract amount is expected to exceed the small purchase limitation:

Equitable Adjustments (Apr 1984)

(a) The provisions of the "Changes" clause prescribed by FAR 52.243-4 are supplemented as follows:

(1) Upon written request, the Contractor shall submit a proposal, in accordance with the requirements and limitations set forth in the "Equitable Adjustments" clause, for work involving contemplated changes covered by the request. The proposal shall be submitted within the time limit indicated in the request or any extension of such time limit as may be subsequently granted. The Contractor's written statement of the monetary extent of a claim for equitable adjustment shall be submitted in the following form:

(i) Proposals totaling $5,000 or less shall be submitted in the form of a lump sum proposal with supporting information to clearly relate elements of cost with specific items of work involved to the satisfaction of the Contracting Officer, or his/her authorized representative.

(ii) For proposals in excess of $5,000, the claim for equitable adjustment shall be submitted in the form of a lump sum proposal supported with an itemized breakdown of all increases and decreases in the contract in at least the following detail:

Direct Costs

Material quantities by trades and unit costs (Manufacturing burden associated with material fabrication performed will be considered to be part of the material costs of the fabricated item delivered to the job site)
Labor breakdown by trades and unit costs (Identified with specific item of material to be placed or operation to be performed)
Construction equipment exclusively necessary for the change
Costs of preparation and/or revision to shop drawings resulting from the change
Workmen's Compensation and Public Liability Insurance
Employment taxes under FICA and FUTA
Bond Costs—when size of change warrants revision

Overhead, Profit and Commission

(2) The allowable overhead shall be determined in accordance with the contract cost principles and procedures in Part 31 of the Federal Acquisition Regulation (48 CFR Part 31) in effect on the date of this contract. The percentages for profit and commission shall be negotiated and may vary according to the nature, extent and complexity of the work involved, but in no case shall exceed the following unless the contractor demonstrates entitlement to a higher percentage:

	Overhead	Profit	Commission
To Contractor on work performed by other than his own forces			10%
To first-tier subcontractor on work performed by his subcontractors			10%
To Contractor and/or the subcontractors for that portion of the work performed with their respective forces.	To be negotiated	10%	

Not more than four percentages will be allowed regardless of the number of tier subcontractors. The Contractor shall not be allowed a commission on the commission received by a first tier subcontractor. Equitable adjustments for deleted work shall include credits for overhead, profit and commission. On proposals covering both increases and decreases in the amount of the contract, the application of overhead and profit shall be on the net change in direct costs for the Contractor or subcontractor performing the work.

(3) The Contractor shall submit with the proposal his request for time extension (if any), and shall include sufficient information and dates to demonstrate whether and to what extent the change will delay the contract in its entirety.

(4) In considering a proposal, the Government shall make check estimates in detail, utilizing unit prices where specified or agreed upon, with a view to arriving at an equitable adjustment.

(5) After receipt of a proposal the Contracting Officer shall act thereon, within 30 days; provided, however, that when the necessity to proceed with a change does not allow time properly to check a proposal or in the event of failure to reach an agreement on a proposal, the Government may order the Contractor to proceed on the basis of price to be determined at the earliest practicable date. Such price shall not be more than the increase or less than the decrease proposed.

(6) If a mutually acceptable agreement cannot be reached, the Contracting Officer may determine the price unilaterally.

(b) The provisions of the "Differing Site Conditions" clause prescribed by FAR 52.236-2 are supplemented as follows: The Contractor shall submit all claims for equitable adjustment in accordance with, and subject to the requirements and limitations set out in paragraph (a) of this "Equitable Adjustments" clause.
(End of Clause)

552.246-17 Warranty of supplies of a noncomplex nature.

As prescribed in 546.710(a), insert the following clause:

Warranty of Supplies of a Noncomplex Nature (May 1989) (Deviation FAR 52.246-17)

(a) *Definitions.* "Acceptance," as used in this clause, means the act of an authorized representative of the Government by which the Government assumes for itself, or an agent of another, ownership of existing supplies, or approves specific services as partial or complete performance of the contract.

"Correction," as used in this clause, means the elimination of a defect.

"Supplies," as used in this clause, means the end item furnished by the Contractor and related services required under the contract. The word does not include "data."

(b) *Contractor's obligations.* (1) Notwithstanding inspection and acceptance by the Government of supplies furnished under this contract, or any condition of this contract concerning the conclusiveness thereof, the Contractor warrants that for * * *

(i) All supplies furnished under this contract will be free from defects in material or workmanship and will conform with the requirements of this contract.

(ii) The preservation, packaging, packing, and marking, and the preparation for, and method of, shipment of such supplies will conform with the requirements of this contract.

(2) When return, correction, or replacement is required, transportation charges and responsibility for the supplies while in transit shall be borne by the Contractor. However, the Contractor's liability for the transportation charges shall not exceed an amount equal to the cost of transportation charges by the usual commercial method of shipment between the place of delivery

specified in the contract and the Contractor's plant, and return.

(3) Any supplies or parts thereof, corrected or furnished in replacement under this clause, shall also be subject to the terms of this clause to the same extent as supplies initially delivered. The warranty, with respect to supplies or parts thereof, shall be equal in duration to that in paragraph (b)(1) of this clause and shall run from the date of delivery of the corrected or replaced supplies.

(4) All implied warranties of merchantability and "fitness for a particular purpose" are excluded from any obligation contained in this contract.

(c) *Remedies available to the Government.* (1) The Contracting Officer shall give written notice to the Contractor of any breach of warranties in paragraph (b)(1) of this clause within * * *.

(2) Within a reasonable time after the notice, the Contracting Officer may either—

(i) Require, by written notice, the prompt correction or replacement of any supplies or parts thereof (including preservation, packaging, packing, and marking) that do not conform with the requirements of this contract within the meaning of paragraph (b)(1) of this clause; or

(ii) Retain such supplies and reduce the contract price by an amount equitable under the circumstances. When the nature of the defect in the nonconforming item is such that the defect affects an entire batch or lot of material, then the equitable price adjustment shall apply to the entire batch or lot of material from which the nonconforming item was taken.

(3)(i) If the contract provides for inspection of supplies by sampling procedures, conformance of supplies or components subject to warranty action shall be determined by the applicable sampling procedures in the contract. The Contracting Officer—

(A) May, for sampling purposes, group any supplies delivered under this contract;

(B) Shall require the size of the sample to be that required by sampling procedures specified in the contract for the quantity of supplies on which warranty action is proposed;

(C) May project warranty sampling results over supplies in the same shipment or other supplies contained in other shipments even though all of such supplies are not present at the point of reinspection; *Provided,* That the supplies remaining are reasonably representative of the quantity on which warranty action is proposed; and

(D) Need not use the same lot size as on original inspection or reconstitute the original inspection lots.

(ii) Within a reasonable time after notice of any breach of the warranties specified in paragraph (b)(1) of this clause, the Contracting Officer may exercise one or more of the following options:

(A) Require an equitable adjustment in the contract price for any group of supplies.

(B) Screen the supplies grouped for warranty action under this clause at the Contractor's expense and return all nonconforming supplies to the Contractor for correction or replacement.

(C) Require the Contractor to screen the supplies at locations designated by the Government within the continental United States and to correct or replace all nonconforming supplies.

(D) Return the supplies grouped for warranty action under this clause to the Contractor (irrespective of the f.o.b. point or the point of acceptance) for screening and correction or replacement.

(4)(i) The Contracting Officer may, by contract or otherwise, correct or replace the nonconforming supplies with similar supplies from another source and charge to the Contractor the cost occasioned to the Government thereby if the Contractor—

(A) Fails to make redelivery of the corrected or replaced supplies within the time established for their return; or

(B) Fails either to accept return of the nonconforming supplies or fails to make progress after their return to correct or replace them so as to endanger performance of the delivery schedule, and in either of these circumstances does not cure such failure within a period of 10 days (or such longer period as the Contracting Office may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure.

(ii) Instead of correction or replacement by the Government, the Contracting Officer may require an equitable adjustment of the Contract price for all nonconforming supplies, including batch or lot materials which have either been consumed or other disposition has been made. In addition, if the Contractor fails to furnish timely disposition instructions, the Contracting Officer may dispose of the nonconforming supplies for the contractor's account in a reasonable manner. The Government is entitled to reimbursement from the Contractor, or from the proceeds of such disposal, for the reasonable expenses of the care and disposition of the nonconforming supplies, as well as for excess costs incurred or to be incurred.

(5) The rights and remedies of the Government provided in this clause are in addition to and do not limit any rights afforded to the Government by any other clause of this contract.

(6) Unless otherwise provided, this warranty is applicable both within and outside the continental limits of the United States.

(7) In addition to other marking requirements of this contract, the Contractor shall stamp or mark the supplies delivered or otherwise furnish notice with the supplies of the existence of the warranty. The marking should briefly include (i) a statement that the warranty exists, (ii) the substance of the warranty, (iii) its duration, and (iv) who to notify if the supplies are found to be defective.
(End of Clause)

* Contracting Officer shall state the specific period of time after delivery or the specified event whose occurrence will terminate the warranty period; e.g., the number of miles or hours of use, or combination of any applicable event or periods of time.

** Contracting Officer shall insert specific period of time; e.g., "45 days from the last delivery under this contract," or "45 days after discovery of the defect." The number of days specified shall be no less than 30.

Alternate I (May 1989)

If commercial items, i.e., specified by brand name or equal, are to be acquired, substitute the following for paragraph (b)(1) of the basic clause and delete paragraph (b)(4) of the basic clause.

(1) Notwithstanding inspection and acceptance by the Government of supplies furnished under this contract, or any condition of this contract concerning the conclusiveness thereof, the Contractor warrants that for ____* ____ all supplies furnished—

(i) Are of a quality to pass without objection in the trade under the contract description;

(ii) Are fit for the ordinary purposes for which the supplies are used;

(iii) Are within the variations permitted by the contract, and are of an even kind, quality, and quantity within each unit and among all units;

(iv) Are adequately contained, packaged, and marked as the contract may require; and

(v) Conform to the promises or affirmations of fact made on the container.

552.246-70 Source inspection by quality approved manufacturer.

As prescribed in 546.302-70, insert the following clause:

Source Inspection by Quality Approved Manufacturer (Mar 1989)

(a) *Inspection system and inspection facilities.* (1) The inspection system maintained by the Contractor under the Inspection of Supplies—Fixed Price clause (FAR 52.246-2) of this contract shall be maintained throughout the contract period and shall comply with all requirements of Federal Standard 368, edition in effect on the date of the solicitation. A written description of the inspection system shall be made available to the Government before contract award. The Contractor shall immediately notify the Contracting Officer and the designated GSA quality assurance office of any changes made in the inspection system during the contract period. As used herein, the term "inspection system" means the Contractor's own facility or any other facility acceptable to the Government that will be used to perform inspections or tests of materials and components before incorporation into end articles and for inspection of such end articles before shipment. When the manufacturing plant is located outside of the United States, the Contractor shall arrange delivery of the items from a plant or warehouse located in the United States (including Puerto Rico and the Virgin Islands) equipped to perform all inspections and tests required by the contract or specifications to evidence conformance therewith, or shall arrange with a testing laboratory or other facility in the United States, acceptable to the Government, to perform the required inspections and tests.

(2) In addition to the requirements in Federal Standard 368, records shall include the date when inspection and testing were performed. All records shall be available for at least 12 months after contract performance is completed.

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(3) Offerors are required to specify, in the space provided elsewhere in this solicitation, the name and address of each manufacturing plant or other facility where supplies will be available for inspection, indicating the item number(s) to which each applies.

(4) Within 10 calendar days after receipt of the written notice of award, the Contractor shall provide the Contracting Officer with the name of the individual and an alternate that will be responsible for inspecting each shipment under this contract.

(b) *Inspection and receiving reports.* (1) For each shipment, the Contractor shall prepare and distribute DD Form 250, Material Inspection and Receiving Report, not later than the close of business the workday following shipment. The Contractor will be provided a supply of the DD Form 250 with complete instructions for preparation and distribution. When shipments are released, one of the officials named by the Contractor under paragraph (a)(4) above, shall certify that the supplies have been inspected and found to be in conformity with contract requirements. The certification shall be placed in block 16 of the DD Form 250 and shall read as follows:

I certify that the shipment of supplies shown on this form was inspected and found to comply with all requirements of the contract.

Signature of Certifying Official

(c) *Inspection by Government personnel.* (1) Although the Government will normally rely upon the Contractor's certification as to the quality of supplies shipped, it reserves the right under the Inspection of Supplies—Fixed Price clause to inspect and test all supplies called for by this contract, before acceptance, at all times and places, including the point of manufacture. When the Government notifies the Contractor of its intent to inspect supplies before shipment, the Contractor shall notify or arrange for subcontractors to notify the designated GSA quality assurance office 7 workdays before the date when supplies will be ready for inspection. Shipment shall not be made until inspection by the Government is completed and shipment is authorized by the Government.

(2) Government inspection responsibility will be assigned to the GSA quality assurance office which has jurisdiction over the State in which the Contractor's or subcontractor's plant or other designated point for inspection is located.

(3) During the contract period, a Government representative may periodically select samples of supplies produced under this contract for Government verification inspection and testing. Samples sent to a Government testing facility will be disposed of as follows: Samples from an accepted lot, not damaged in the testing process, will be returned promptly to the Contractor after completion of tests. Samples damaged in the testing process will be disposed of as requested by the Contractor. Samples from a rejected lot will be returned to the Contractor or disposed of in a time and manner agreeable to both the Contractor and the Government.

(d) *Quality deficiencies.* (1) Notwithstanding any other clause of this contract concerning the conclusiveness of acceptance by the Government, any supplies or production lots shipped under this contract found to be defective in material or workmanship, or otherwise not in conformity with the requirements of this contract within a period of _____* months after acceptance shall, at the Government's option, be replaced, repaired or otherwise corrected by the Contractor at no cost to the Government within 30 calendar days (or such longer period as the Government may authorize in writing) after receipt of notice to replace or correct. When the nature of the defect affects an entire batch or lot of supplies, and the Contracting Officer determines that correction can best be accomplished by retaining the nonconforming supplies and reducing the contract price by an amount equitable under the circumstances, then the equitable price adjustment shall apply to the entire batch or lot of supplies from which the nonconforming item was taken.

(2) If supplies in process, shipped, or awaiting shipment to fill Government orders are found not to comply with contract requirements, or if deficiencies in either plant quality or process controls are found, the Contractor may be issued a Quality Deficiency Notice (QDN). Upon receipt of a QDN, the Contractor shall take immediate corrective action and shall suspend shipment of the supplies covered by the QDN until such time as corrective action has been completed. The Contractor shall notify the GSA quality assurance office, within 5 workdays, of corrective action taken or to be taken to permit onsite verification by a Government representative. Shipments of nonconforming supplies will be returned at the Contractor's expense and may be cause for termination. Delays due to the issuance of a QDN do not constitute excusable delay under the Default clause. Failure to complete corrective action in a timely manner may result in termination of this contract.

(3) This contract may be terminated for default if subsequent Government inspection discloses that plant quality or process controls are not being maintained, supplies which do not meet the requirements of the specification are being shipped, or there is failure to comply with any other requirement of this clause.

(e) *Additional cost for inspection and testing.* The Contractor will be charged for any additional cost of inspection/testing or reinspecting/retesting supplies for the reasons stated in paragraph (e) of FAR 52.246-2, Inspection of Supplies—Fixed Price. When inspection or testing is performed by or under the direction of GSA, charges will be at the rate of $_____** per man-hour or fraction thereof if the inspection is at a GSA distribution center; $_____** per man-hour or fraction thereof, plus travel costs incurred, if the inspection is at any other location; and $_____** per man-hour or fraction thereof for laboratory testing, except that when a testing facility other than a GSA laboratory performs all or part of the required tests, the Contractor shall be assessed the actual cost incurred by the Government as a result of testing at such facility. When inspection is performed by or under the direction of any agency other than GSA, the charges indicated above may be used, or the agency may assess the actual cost of performing the inspection and testing.

(f) *Responsibility for rejected supplies.* When the Contractor fails to remove or provide instructions for the removal of rejected supplies under FAR 52.246-2(h) pursuant to the Contracting Officer's instructions, the Contractor shall be liable for all costs incurred by the Government in taking such measures as are expedient to avoid unnecessary loss to the Contractor. In addition to the remedies provided in FAR 52.246-2(l), supplies may be stored for the Contractor's account or sold to the highest bidder on the open market and the proceeds applied against the accumulated storage and other costs, including the cost of the sale.

(g) *Subcontracting requirements.* The Contractor shall insert in any subcontracts the inspection or testing provisions set forth in paragraphs (a) through (d) of this clause and the Inspection of Supplies—Fixed Price clause of this contract. The Contractor shall be responsible for compliance by any subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause and the Inspection of Supplies—Fixed Price clause.

* The Contracting Officer shall normally insert 12 months as the period during which defective or otherwise nonconforming supplies must be replaced. However, when the supplies being bought have a shelf life of less than 1 year, the shelf-life period should be used, or in the instance where a longer period may reasonably be expected to be available, the longer period should be used.

** The rates to be inserted are established by the Commissioner of the Federal Supply Service or a designee.

(End of Clause)

552.246-71 Final inspection and tests.

As prescribed in 546.312, insert the following clause:

Final Inspection and Tests (May 1989)

The Contractor shall give written notice to the Contracting Officer at least 10 calendar days before the date the work will be completed and ready for final inspection and tests. Final inspection and tests will begin within 10 calendar days after the date specified in the Contractor's notice unless the Contracting Officer determines that the work is not ready for final inspection and so informs the Contractor.

(End of Clause)

552.246-72 Source inspection by Government.

As prescribed in 546.302-71, insert the following clause:

Source Inspection by Government (May 1989)

(a) *Inspection by Government personnel.* (1) Supplies to be furnished under this contract will be inspected at source by the Government before shipment from the manufacturing plant or other facility designated by the Contractor, unless the Contractor is otherwise notified in writing by the Contracting Officer or a designated representative. Notwithstanding the foregoing, the Government may perform any or all tests contained in the contract specifications at a Government facility without prior written notice by the Contracting Officer before release of the supplies for shipment. Samples sent to a Government testing facility will be disposed of as follows: Samples from an accepted lot, not damaged in the testing process, will be returned promptly to the Contractor after completion of tests. Samples damaged in the testing process will be disposed of as requested by the Contractor. Samples from a rejected lot will be returned to the Contractor or disposed of in a time and manner agreeable to both the Contractor and the Government.

(2) Government inspection responsibility will be assigned to the GSA quality assurance office which has jurisdiction over the State in which the Contractor's or subcontractor's plant or other designated point for inspection is located. The Contractor shall notify or arrange for subcontractors to notify the designated GSA quality assurance office 7 workdays before the date when supplies will be ready for inspection. Shipment shall not be made until after inspection by the Government is completed and shipment is authorized by the Government.

(b) *Inspection and receiving reports.* For each shipment, the Contractor shall be responsible for preparation and distribution of inspection documents as follows: (1) DD Form 250, Material Inspection and Receiving Report, for deliveries to military agencies; or (2) GSA Form 308, Notice of Inspection for deliveries to GSA or other civilian agencies. When required, the Contractor will be furnished a supply of GSA Form 308 and/or DD Form 250, and complete instructions for their preparation and distribution.

(c) *Inspection facilities.* (1) The inspection system required to be maintained by the Contractor in accordance with FAR 52.246-2, Inspection of Supplies—Fixed Price, may be the Contractor's own facilities or any other facilities acceptable to the Government. These facilities shall be utilized to perform all inspections and tests of materials and components before incorporation into end articles, and for the inspection of such end articles before shipment. The Government reserves the right to evaluate the acceptability and effectiveness of the Contractor's inspection system before award and periodically during the contract period.

(2) Offerors are required to specify, in the spaces provided elsewhere in the solicitation, the name and address of each manufacturing plant or other facility where supplies will be available for inspection, indicating the item number(s) to which each applies.

(3) The Contractor shall deliver the items specified in this contract from a plant or warehouse located within the United States (including Puerto Rico and the Virgin Islands) that is equipped to perform all inspections and tests required by this contract or specifications to evidence conformance therewith, or shall arrange with a testing laboratory or other facility in the United States, acceptable to the Government, to perform the required inspections and tests.

(d) *Availability of records.* In addition to any other requirement of this contract, the Contractor shall maintain records showing the following information for each order received under the contract: (1) Order number; (2) date order received by the Contractor; (3) quantity ordered; (4) date scheduled into production; (5) batch or lot number, if applicable; (6) date inspected and/or tested; (7) date available for shipment; (8) date shipped or date service completed; and (9) National Stock Number (NSN), or if none is provided in the contract, the applicable item number or other contractual identification. These records should be maintained at the point of source inspection and available to the Contracting Officer, or an authorized representative, for at least 12 months after contract performance is completed.

(e) *Additional cost for inspection and testing.* The Contractor will be charged for any additional cost for inspecting/testing or reinspection/retesting supplies for the reasons stated in paragraph (e) of FAR 52.246-2, Inspection of Supplies—Fixed Price. When inspection or testing is performed by or under the direction of GSA, charges will be at the rate of $_____* per man-hour or fraction thereof if the inspection is at a GSA distribution center; $_____* per man-hour or fraction thereof, plus travel costs incurred, if the inspection is at any other location; and $_____* per man-hour or fraction thereof for laboratory testing, except that when a testing facility other than a GSA laboratory performs all or part of the required tests, the Contractor shall be assessed the actual cost incurred by the Government as a result of testing at such facility. When inspection is performed by or under the direction of any agency other than GSA, the charges indicated above may be used, or the agency may assess the actual cost of performing the inspection and testing.

(f) *Responsibility for rejected supplies.* When the Contractor fails to remove or provide instructions for the removal of rejected supplies under FAR 52.246-2(h) pursuant to the Contracting Officer's instructions, the Contractor shall be liable for all costs incurred by the Government in taking such measures as are expedient to avoid unnecessary loss to the Contractor. In addition to the remedies provided in FAR 52.246-2(l), supplies may be stored for the Contractor's account or sold to the highest bidder on the open market and the proceeds applied against the accumulated storage and other costs, including the cost of the sale.

(End of Clause)

*The rates to be inserted are established by the Commissioner of the Federal Supply Service or a designee.

552.246-73 Warranty—multiple award schedule.

As prescribed in 546.710, insert the following clause:

Warranty—Multiple Award Schedule (May 1989)

The Contractor's standard commercial warranty as stated in the Contractor's commercial price list will apply to this contract if its warranty is equal to or better than the warranty required by 552.246-17 (Alternate I).

(End of Clause)

552.246-74 Warranty—international multiple award schedule.

As prescribed in 546.710(c), insert the following clause:

Warranty—International Multiple Award Schedule (May 1989)

Unless specified otherwise in this contract, the Contractor's standard commercial warranty as stated in the commercial price list applies to this contract, except: (a) The Contractor shall provide, at a minimum, a warranty on all non-consumable parts for a period of 90 days from the date that the Government accepts the product; (b) parts and labor required under the warranty provisions shall be supplied free of charge; (c) transportation costs of returning the products to and from the repair facility, or the costs involved with contractor personnel traveling to the Government facility for the purpose of repairing the product onsite shall be borne by the Contractor during the 90-day warranty period.

(End of Clause)

552.246-75 Guarantees.

As prescribed in 546.710(b), insert the following clause:

Guarantees (May 1989)

(a) Unless otherwise provided in the specifications, the Contractor guarantees all work to be in accordance with contract requirements and free from defective or inferior materials, equipment, and workmanship for 1 year after the date of final acceptance or the date the equipment or work was placed in use by the Government, whichever occurs first.

(b)(1) If, within any guarantee period, the Contracting Officer finds that guaranteed work requires repair or change because of defective or inferior materials, equipment, or workmanship or is not in accordance with contract requirements, the Contracting Officer shall notify the Contractor in writing. The Contractor shall promptly, and without additional expense to the Government, correct:

(i) All guaranteed work;

(ii) All damage to equipment, the site, the building or its contents resulting from the unsatisfactory guaranteed work; and

(iii) Any work, materials, and equipment that are disturbed in fulfilling the guarantee, including any disturbed work, materials, and equipment that may have been guaranteed under another contract.

(2) If the Contractor fails to proceed promptly in accordance with the guarantee, the Government may have such work performed at the expense of the Contractor.

(c) Any special guarantees that may be required under the contract will be subject to paragraphs (a) and (b), insofar as they do not conflict with special guarantees.

(d) The Contractor shall furnish to the Government: (1) Each transferable guarantee or warranty of equipment, materials, or installation furnished by any manufacturer, supplier, or installer in the ordinary course of business; (2) All information required to

make such guarantee or warranty legally binding and effective; and (3) The information and the guarantee or warranty in sufficient time to permit the Government to meet any time limit specified in the guarantee or warranty or, if no time limit is specified, prior to completion and acceptance of all work under this contract.

(End of Clause)

552.246-76 Warranty of pesticides.

As prescribed in 546.710, insert the following clause:

Warranty of Pesticides (May 1989)

(a) Notwithstanding acceptance of pesticides by the Government, the Contractor warrants that for 1 year after the date of shipment, all pesticides furnished under this contract shall meet the requirements of Pub. L. 92-516, as amended, and shall be registered with the Environmental Protection Agency (EPA).

(b) If EPA takes action to stop sale, stop use, remove, seize, or cancel registration of a pesticide within 1 year after date of shipment, the Contractor shall immediately notify the Contracting Officer. The notification will include: (1) Contract number; (2) identification of the pesticide; (3) reason for the EPA action against the pesticide; and (4) list of Government agencies and addresses to which it was delivered.

(End of Clause)

552.247-34 F.o.b. destination.

As prescribed in 547.303-6, insert the following clause:

F.O.B Destination (May 1989) (Deviation FAR 52.247-34)

(a) The term "f.o.b. destination," as used in this clause, means:

(1) Free of expense to the Government, on board the carrier's conveyance, at a specified delivery point where the consignee's facility (plant, warehouse, store, lot, or other location to which shipment can be made) is located; and

(2) Supplies shall be delivered to the destination consignee's wharf (if destination is a port city and supplies are for export), warehouse unloading platform, or receiving dock, at the expense of the Contractor. The Government shall not be liable for any delivery, storage, demurrage, accessorial, or other charges involved before the actual delivery (or "constructive placement" as defined in carrier tariffs) of the supplies to the destination, unless such charges are caused by an act or order of the Government acting in its contractual capacity. If rail carrier is used, supplies shall be delivered to the specified unloading platform of the consignee. If motor carrier (including "piggyback") is used, supplies shall be delivered to truck tailgate at the unloading platform of the consignee, except when the supplies delivered meet the requirements in Item 568 of the National Motor Freight Classification for "heavy or bulky freight." When supplies meeting the requirements of Item 568 are delivered, unloading (including movement to the tailgate) shall be performed by the consignee, with assistance from the truck driver, if requested. If the Contractor uses rail carrier or freight forwarder for less than carload shipments, the Contractor shall assure that the carrier will furnish tailgate delivery, when requested, if transfer to truck is required to complete delivery to consignee.

(b) The Contractor shall:

(1)(i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment in conformance with carrier requirements;

(2) Prepare and distribute commercial bills of lading;

(3) Deliver the shipment in good order and condition to the point of delivery specified in the contract;

(4) Be responsible for any loss of and/or damage to the goods occurring before receipt of the shipment by the consignee at the delivery point specified in the contract;

(5) Furnish a delivery schedule and designate the mode of delivering carrier; and

(6) Pay and bear all charges to the specified point of delivery.

(End of clause)

552.247-70 Placarding railcar shipments.

As prescribed in 547.305, insert the following clause:

Placarding Railcar Shipments (May 1989)

When a railcar is loaded in such a manner that it can be or should be unloaded from only one side, the Contractor shall place on the appropriate railcar door a placard reading "Unload From This Side" and on the opposite door a placard reading "Unload From Other Side."

(End of Clause)

552.249-70 Termination for convenience of the Government (fixed-price) (short form).

As prescribed in 549.502 insert the following clause:

Termination for Convenience of the Government (Fixed-Price) (Short Form) (May 1989) (Deviation FAR 52.249-1 and 52.249-2)

(a) If the Government terminates this contract for convenience, the rights of the Government and the Contractor shall be determined under paragraph (b) unless there is a termination liability schedule, in which case the rights of the parties shall be determined under paragraph (c).

(b) The clause at [Contracting Officer inserts 52.249-1 or 52.249-2, as applicable] of the FAR shall apply to the supply portion of the contract and the clause at 52.249-4 of the FAR shall appiy to the service portion of the contract.

(c) If the Contractor specifies a schedule of termination liability charges that would be incurred by the Government if the Government terminates this lease contract without taking title to the equipment, the payment of such charges shall be the only responsibility of the Government to compensate the Contractor for such termination; except that, there shall be no termination liability for equipment installed after termination of this contract.

(End of Clause)

552.249-71 Submission of termination liability schedule.

As prescribed in 549.570 insert the following clause:

Submission of Termination Liability Schedule (May 1989)

(a) An offeror may submit, as part of its proposal, a termination liability schedule to be applied if any resultant contract is terminated by the Government for reasons other than default. The offeror shall provide and explain the amount and method of computation of the termination liability charge(s).

(b) If submitted, the termination liability schedule will be incorporated into Part I, Section B of the contract document. If a termination liability schedule is not submitted and the Government terminates any resultant contract for its convenience, the rights of the parties shall be determined under paragraph (b) of the GSAR Termination for Convenience of the Government clause at 552.249-70.

(c) Any termination liability charges existing at the end of the evaluated contract period will be considered in the evaluation of offers.

(End of Clause)

552.252-5 Authorized deviations or variations in provisions.

As prescribed in 552.107(a), insert the following provision:

Authorized Deviations or Variations in Provisions (Deviation FAR 52.252-5) (Jul 1985)

(a) The use in this solicitation of any Federal Acquisition Regulation (48 CFR Chapter 1) provision with an authorized deviation or variation is indicated by the addition of "(Deviation)" or "(Variation)" after the date of the provision, if the provision is not published in the General Services Administration Acquisition Regulation (48 CFR Chapter 5). The use in this solicitation of any Federal Acquisition Regulation (FAR) provision with an authorized deviation or variation that is published in the General Services Administration Acquisition Regulation is indicated by the addition of "(Deviation (FAR provision no.))" or "(Variation (FAR provision no.))" after the date of the provision.

(b) The use in this solicitation of any General Services Administration Acquisition Regulation provision with an authorized deviation or variation is indicated by the addition of "(Deviation)" or "(Variation)" after the date of the provision.

(c) Changes in wording of provisions that are prescribed for use on a "substantially the same as" basis are not considered deviations. Therefore, when such provisions are not worded exactly the same as the FAR or GSAR provision, they are identified by th word "(Variation)."

(End of Provision)

552.252-6 Authorized deviations or variations in clauses.

As prescribed in 552.107(b), insert the following clause:

Authorized Deviations or Variations in Clauses (Deviation FAR 52.252-6) (Jul 1985)

(a) The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR Chapter 1) clause with an authorized deviation or variation is indicated by the addition of "(Deviation)" or "(Variation)" after the date of the clause, if the clause is not published in the General Services Administration Acquisition Regulation (48 CFR Chapter 5). The use in this solicitation of any Federal Acquisition Regulation (FAR) clause with an authorized deviation or variation that is published in the General Services Administration Acquisition Regulation is indicated by the addition of "(Deviation (FAR clause no.))" or "(Variation (FAR clause no.))" after the date of the clause.

(b) The use in this solicitation of any General Services Administration Acquisition Regulation clause with an authorized deviation or variation is indicated by the addition of "(Deviation)" or "(Variation)" after the date of the clause.

(c) Changes in wording of clauses that are prescribed for use on a "substantially the same as" basis are not considered deviations. Therefore, when such clauses are not worded exactly the same as the FAR or GSAR clause, they are identified by the word "(Variation)."

(End of Clause)

552.253-70 Forms containing solicitation provisions and/or contract clauses incorporated by reference.

As prescribed in 553.171, insert the following clause:

Forms Containing Solicitation Provisions and/or Contract Clauses Incorporated by Reference (May 1989)

This solicitation incorporates the following forms containing solicitation provisions and/or contract clauses by reference, with the same force and effect as if they were included in full text. Upon request, the Contracting Officer will make the forms available.

[Insert the form number, title, and the revision date]

(End of Clause)

552.270-1 Preparation of offers.

As prescribed in 570.701-1, insert the following provision:

Preparation of Offers (Apr 1985)

(a) Offerors are expected to read all parts of this solicitation.

(b) Offers must be (1) submitted on the forms prescribed and furnished by the Government as a part of this solicitation or on copies of those forms, and (2) signed. The person signing an offer must initial each erasure or change appearing on any offer form. If the offeror is a partnership, the names of the partners composing the firm must be included with the offer.

(c) Offers will be construed to be in full and complete compliance with this solicitation unless the offer describes any deviation in the offer.

(End of Provision)

552.270-2 Explanation to prospective offerors.

As prescribed in 570.701-2, insert the following provision:

Explanation to Prospective Offerors (June 1985)

, Any prospective offeror desiring an explanation or interpretation of the solicitation should request it in writing. Oral explanations or instructions given to a prospective offeror will not be binding. Any information given to a prospective offeror concerning a solicitation will be furnished promptly to all other prospective offerors, if that information is necessary in submitting offers or if the lack of it would be prejudicial to any other prospective offeror.

(End of Provision)

552.270-3 Late submissions, modifications, and withdrawals of offers.

As prescribed in 570.701-3, insert the following provision:

Late Submissions, Modifications, and Withdrawals of Offers (June 1985)

(a) Any offer or modification of an offer which is received after the exact time specified for receipt of "best and final" offers will not be considered unless it is received before award is made, and:

(1) It was sent registered or certified mail not later than the fifth calendar day prior to the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th or earlier);

(2) It was sent by mail (telegram or mailgram if authorized) and it was determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation; or

(3) It is the only offer received.

(b) The only acceptable evidence to establish:

(1) The date of the mailing of a late offer or modification sent either by registered or certified mail is the U.S. Postal Service postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. If neither postmark shows a legible date, the offer or modification will be deemed to have been mailed late. [The term "postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed on the date of mailing by employees of the U.S. Postal Service. Therefore, offerors should request that the postal clerk place a hand canceled postmark on both the receipt and the envelope or wrapper.]

(2) The time of receipt at the Government installation is the time-date stamp of such installation on the offer wrapper or other documentary evidence of receipt maintained by the installation.

(c) Notwithstanding (a), of this provision, a late modification of an otherwise successful offer which makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.

(d) Offers may be withdrawn by written notice or telegram (including mailgram) received at any time prior to award. Offers may be withdrawn in person by an offeror or his authorized representative, provided his identity is made known and he signs a receipt for the proposal before award.

(End of Provision)

552.270-4 Historic preference.

As prescribed in 570.701-4, insert the following provision:

Historic Preference (June 1985)

(a) Preference will be given to offers of space in buildings on, or formally listed as eligible for inclusion in the National Register of Historic Places and to historically significant buildings in historic districts listed in the National Register. Such preference will be extended to historic buildings and will result in award if:

(1) The offer for space meets the terms and conditions of this solicitation as well as any other offer received. (It is within the discretion of the Contracting Officer to accept alternatives to certain architectural characteristics and safety features defined elsewhere in this solicitation to maintain the historical integrity of the building such as high ceilings, wooden floors, etc.); and

(2) The rental is no more than 10 percent higher on a total annual square foot (net usable area) cost to the Government than the lowest otherwise acceptable offer.

(b) If more than one offer of an historic building is received and they meet the above criteria, an award will then be made to the lowest priced historic property offered.

(End of Provision)

552.270-5 Lease award.

As prescribed in 570.701-5, insert the following provision:

Lease Award (June 1985)

(a) The Government will award a lease resulting from this solicitation to the responsible offeror, whose offer conforming to the solicitation, will be most advantageous to the Government, price and other factors specified elsewhere in this solicitation, considered.

(b) The Government may (1) reject any or all offers, (2) accept other than the lowest priced offer, and (3) waive informalities and minor irregularities in offers received.

(c) Negotiations conducted after receipt of an offer do not constitute a rejection or counteroffer by the Government.

(d) The unconditional acceptance of an offer establishes a valid contract.

(End of Provision)

552.270-6 Parties to execute lease.

As prescribed in 570.701-6, insert the following provision:

Parties to Execute Lease (June 1985)

(a) If the lease is executed by an attorney, agent, or trustee on behalf of the Lessor, an authenticated copy of his power of attorney, or other evidence to act on behalf of the Lessor, must accompany the lease.

(b) If the Lessor is a partnership, the lease must be signed with the partnership name, followed by the name of the legally authorized partner signing the same.

(c) If the Lessor is a corporation, the lease must be signed with the corporate name, followed by the signature and title of the officer or other person signing the lease on its behalf, duly attested, and, if requested by the Government, evidence of this authority so to act must be furnished.

(End of Provision)

552.270-10 Definitions.

As prescribed in 570.702-1, insert the following clause:

Definitions (June 1985)

(a) The terms "contract" and "Contractor" shall mean "lease" and "Lessor," respectively.

(b) If the lease is a sub-lease, the term "Lessor" means the sub-lessor.

(c) The term "Lessor shall provide" means the Lessor shall furnish and install.

(End of Clause)

552.270-11 Subletting the premises.

As prescribed in 570.702-2, insert the following clause:

Subletting the Premises (June 1985)

The Government may sublet any part of the premises but shall not be relieved from any obligations under this lease by reason of any such subletting.

(End of Clause)

552.270-12 Maintenance of premises.

As prescribed in 570.702-3, insert the following clause:

Maintenance of Premises (June 1985)

The Lessor shall maintain the demised premises, including the building and all equipment, fixtures, and appurtenances furnished by the Lessor under this lease in good repair and tenantable condition, except in case of damage arising from the act or the negligence of the Government's agents or employees. For the purpose of so maintaining said premises and property, the Lessor may at reasonable times, and with the approval of the authorized Government representative in charge, enter and inspect the same and make any necessary repairs thereto.

(End of Clause)

552.270-13 Damage by fire or other casualty.

As prescribed in 570.702-4, insert the following clause:

Damage by Fire or Other Casualty (June 1985)

If the said premises be destroyed by fire or other casualty, this lease will immediately terminate. In case of partial destruction or damage, so as to render the premises untenantable, as determined by the Government, the Government may terminate the lease by giving written notice to the Lessor within 15 calendar days thereafter; if so terminated, no rent will accrue to the Lessor after such partial destruction or damage; and if not so terminated, the rent will be reduced proportionately by supplemental agreement hereto effective from the date of such partial destruction or damage.

(End of Clause)

552.270-14 Condition report.

As prescribed in 570.702-5, insert the following clause:

Condition Report (June 1985)

A joint physical survey and inspection report of the demised premises will be made as of the effective date of this lease, reflecting the then present condition, and will be signed on behalf of the parties hereto.

(End of Clause)

552.270-15 Applicable codes and ordinances.

As prescribed in 570.702-6, insert the following clause:

Applicable Codes and Ordinances (June 1985)

The Lessor, as part of the rental consideration, agrees to comply with all codes and ordinances applicable to the ownership and operation of the building in which the leased space is situated and, at his own expense, to obtain all necessary permits and related items.

(End of Clause)

552.270-16 Inspection of premises.

As prescribed in 570.702-7, insert the following clause:

Inspection of Premises (May 1989)

At all times after receipt of offers, prior to or after acceptance of any offers, or during any construction, remodeling, or renovation work, the premises and the building or any parts thereof, upon reasonable and proper notice, must be accessible for inspection by the Contracting Officer, or architects, engineers, or other technicians representing him, to determine whether the essential requirements of the solicitation or the lease requirements are met. Additionally, the Government reserves the right, upon reasonable notice, to: (a) Inspect and perform bulk sampling and analysis of suspected asbestos-containing materials; (b) monitor the air for asbestos fibers in the space offered or under lease as well as other areas of the building deemed necessary by the Contracting Officer; (c) inspect the premises for any leaks, spills, or other potentially hazardous conditions which may involve tenant exposure to hazardous or toxic substances (e.g., PCBs); (d) inspect the site upon which the space is offered for any current or past hazardous waste operations, and ensure that appropriate mitigating actions were taken to alleviate any environmentally unsound activities in accordance with Federal, State and local regulations.

(End of Clause)

552.270-17 Failure in performance.

As prescribed in 570.702-8, insert the following clause:

Failure in Performance (June 1985)

The covenant to pay rent and the covenant to provide any service, utility, maintenance, or repair required under this lease are dependent. In the event of failure by the Lessor to provide any of these items, the Government may, by contract or otherwise perform the service, maintenance, utility, or repair, and charge to the Lessor any cost incurred by the Government that is related to the performance of such service, maintenance etc., including any administrative costs, and deduct such cost from any rental payments. Alternately, the Government may reduce rental payments by the corresponding value of the contract requirement not performed, as determined by the Contracting Officer. These remedies are not exclusive and are in addition to any other remedies which may be available under this contract or in the law.

(End of Clause)

552.270-18 Lessor's successors.

As prescribed in 570.702-9, insert the following clause:

Lessor's Successors (June 1985)

The terms and provisions of this lease and the conditions herein bind the Lessor and the Lessor's heirs, executors, administrators, successors, and assigns.

(End of Clause)

552.270-19 Alterations.

As prescribed in 570.702-10, insert the following clause:

Alterations (June 1985)

The Government shall have the right during the existence of this lease to make alterations, attach fixtures, and erect structures or signs in or upon the premises hereby leased, which fixtures, additions or structures so placed in, on, upon, or attached to the said premises shall be and remain the property of the Government and may be removed or otherwise disposed of by the Government. If the lease contemplates that the Government is the sole occupant of the building, for purposes of this clause, the leased premises include the land on which the building is sited and the building itself. Otherwise, the Government shall have the right to tie into or make any physical connection with any structure located on the property as is reasonably necessary for appropriate utilization of the leased space.

(End of Clause)

552.270-20 Proposals for adjustment.

As prescribed in 570.702-11, insert the following clause:

Proposals for Adjustment (June 1985)

(a) The Contracting Officer may, from time to time during the term of this lease, require changes to be made in the work or services to be performed and in the terms or conditions of this lease. Such changes will be required under the Changes clause.

(b) If the Contracting Officer makes a change within the general scope of the lease, the Lessor shall submit, in a timely manner, an itemized cost proposal for the work to be accomplished or services to be performed when the cost exceeds $25,000. The proposal, including all subcontractor work, will contain at least the following details:

(1) Material quantities and unit costs,

(2) Labor costs (identified with specific item or material to be placed or operation to be performed),

(3) Equipment costs,

(4) Workman's compensation and public liability insurance,

(5) Overhead,

(6) Profit, and

(7) Employment taxes under FICA and FUTA.

(End of Clause)

Alternate I (June 1985)

For the acquisition of leasehold interests in real property of 10,000 square feet or more, add paragraphs (c) and (d) to the basic clause.

(c) The following Federal Acquisition Regulation (FAR) provisions also apply to all proposals exceeding $100,000 in cost:

(1) The Lessor shall provide cost or pricing data including subcontractor cost or pricing data (48 CFR 15.804-2),

(2) The Lessor's representative, all Contractors, and subcontractors whose portion of the work exceeds $100,000 must sign and return the "Certificate of Current Cost or Pricing Data" (48 CFR 15.804-4), and

(3) The agreement for "Price Reduction for Defective Cost or Pricing Data" must be signed and returned (48 CFR 15.804-8).

(d) Lessors shall also refer to 48 CFR Part 31, Contract Cost Principles, for information on which costs are allowable, reasonable, and allocable in Government work.

(End of Clause)

552.270-21 Changes.

As prescribed in 570.702-12, insert the following clause:

Changes (June 1985)

(a) The Contracting Officer may at any time, by written order, make changes within the general scope of this lease in any one or more of the following:

(1) Specifications.

(2) Work or services.

(3) Amount of space.

(4) Facilities or space layout.

(b) If any such change causes an increase or decrease in the Lessor's cost of, or the time required for, performance under this contract, whether or not changed by the order, the Contracting Officer shall modify the lease by (1) making an equitable adjustment in the rental rate, (2) making a lump sum price adjustment, or (3) revising the delivery schedule.

(c) If such change causes an increase in costs under this contract, the Lessor shall submit any "proposal for adjustment" (hereafter referred to as proposal) under the clause at 552.270-20, Proposal for Adjustment.

(d) Adjustments for operating expenses in vacant leased premises will be in accordance with the clause at 552.270-25, Adjustment for Vacant Premises.

(e) Failure to agree to any adjustment shall be a dispute under the Disputes clause.

(f) No services or work for which an additional cost or fee will be charged by the Lessor will be furnished without the prior written authorization of the Contracting Officer or a designated representative of the Contracting Officer.

(End of Clause)

552.270-22 Liquidated damages.

As prescribed in 570.702-13, insert the following clause:

Liquidated Damages (June 1985)

In case of failure on the part of the Lessor to complete the work within the time fixed in the lease contract or letter of award, the Lessor shall pay the Government as fixed and agreed liquidated damages, pursuant to this clause, the sum of $_____ for each and every calendar day that the delivery is delayed beyond the date specified for delivery of all of the space ready for occupancy by the Government.

(End of Clause)

552.270-23 Operating costs.

As prescribed in 570.702-14, insert the following clause:

Operating Costs (June 1985)

(a) Beginning with the second year of the lease and each year after, the Government shall pay adjusted rent for changes in costs for cleaning services, supplies, materials, maintenance, trash removal, landscaping, water, sewer charges, heating, electricity, and certain administrative expenses attributable to occupancy. Applicable costs listed on GSA Form 1217, Lessor's Annual Cost Statement, when negotiated and agreed upon, will be used to determine the base rate for operating costs adjustment.

(b) The amount of adjustment will be determined by multiplying the base rate by the percent of change in the Cost of Living Index. The percent change will be computed by comparing the index figure published for the month prior to the lease commencement date with the index figure published for the month which begins each successive 12-month period. For example, a lease which commences in June of 1985 would use the index published for May of 1985 and that figure would be compared with the index published for May of 1986, May of 1987, and so on, to determine the percent change. The Cost of Living Index will be measured by the U.S. Department of Labor revised Consumer Price Index for Wage Earners and Clerical Workers, U.S. City Average, All Items Figure, (1967=100) published by the Bureau of Labor Statistics. Payment will be made with the monthly installment of fixed rent. Rental adjustments will be effective on the anniversary date of the lease. Payment of the adjusted rental rate will become due on the first workday of the second month following the publication of the Cost of Living Index for the month prior to the lease commencement date.

(c) If the Government exercised an option to extend the lease term at the same rate as that of the original term, the option price will be based on the adjustment during the original term. Annual adjustments will continue.

(d) In the event of any decreases in the Cost of Living Index occurring during the term of occupancy under the lease, the rental amount will be reduced accordingly. The amount of such reductions will be determined in the same manner as increases in rent provided under this clause.

(e) The offer must clearly state whether the rental is firm throughout the term of the lease or if it is subject to annual adjustment of operating costs, as indicated above. If operating costs will be subject to adjustment, it should be specified on block 19 of GSA Form 1364, Proposal to Lease Space, contained elsewhere in this solicitation.

(End of Clause)

552.270-24 Tax adjustment.

As prescribed in 570.702-15, insert the following clause:

Tax Adjustment (June 1985)

(a) The Government shall pay additional rent for its share of increases in real estate taxes over taxes paid for the calendar year in which its lease commences (base year). Payment will be in a lump sum and become due on the first workday of the month following the month in which paid tax receipts for the base year and the current year are presented, or the anniversary date of the lease, whichever is later. The Government will be responsible for payment only if the receipts are submitted within 60 calendar days of the date the tax payment is due. If no full tax assessment is made during the calendar year in which the Government lease commences, the base year will be the first year of a full assessment.

(b) The Government's share for the tax increase will be based on the ratio of the square feet occupied by the Government to the total rentable square feet in the building. If the Government's lease terminates before the end of a calendar year, payment will be based on the percentage of the year in which the Government occupied space. The payment will not include penalties for nonpayment or delay in payment. If there is any variance between the assessed value of the Government's space and other space in the building, the Government may adjust the basis for determining its share of the tax increase.

(c) The Government may contest the tax assessment by initiating legal proceedings on behalf of the Government and the Lessor or the Government alone. If the Government is precluded from taking legal action, the Lessor shall contest the assessment upon reasonable notice by the Government. The Government shall reimburse the Lessor for all costs and shall execute all documents required for the legal proceedings. The Lessor shall agree with the accuracy of the documents. The Government shall receive its share of any tax refund. If the Government elects to contest the tax assessment, payment of the adjusted rent shall become due on the first workday of the month following conclusion of the appeal proceedings.

(d) In the event of any decreases in real estate taxes occurring during the term of occupancy under the lease, the rental amount will be reduced accordingly. The amount of any such reductions will be determined in the same manner as increases in rent provided under this clause.

(End of Clause)

552.270-25 Adjustment for vacant premises.

As prescribed in 570.702-16, insert the following clause:

Adjustment for Vacant Premises (June 1985)

(a) If the Government fails to occupy any portion of the leased premises or vacates the premises in whole or in part prior to expiration of the firm term of the lease, the rental rate will be reduced.

(b) The rate will be reduced by that portion of the costs per square foot of operating expenses not required to maintain the space. Said reduction must occur after the Government gives 30 calendar days prior notice to the Lessor, and must continue in effect until the Government occupies the premises or the lease expires or is terminated.

(End of Clause)

552.270-26 If minimum not delivered.

As prescribed in 570.702-17, insert the following clause:

If Minimum Not Delivered (June 1985)

If delivered space contains less than the minimum square footage, the Government may cancel the lease. If such cancellation occurs, the Government may exercise its legal rights including charging the Lessor and its surety the increased cost of providing replacement space.

(End of Clause)

552.270-27 Delivery and condition.

As prescribed in 570.702-18, insert the following clause:

Delivery and Condition (June 1985)

Unless the Government elects to have the space occupied in increments, the space must be delivered ready for occupancy as a complete unit. The Government reserves the right to determine when the space is ready to occupy.

(End of Clause)

552.270-28 Time extensions.

As prescribed in 570.702-19, insert the following clause:

Time Extensions (June 1985)

The lease will not be terminated nor the Lessor charged with resulting damage if delays arise from unforeseeable causes beyond the control of the Lessor and/or its contractors, subcontractors, suppliers, or another Government contractor. However, the Lessor shall notify the Contracting Officer, in writing, of any delay within 10 calendar days after it begins. The Contracting officer shall ascertain the facts, determine the extent of the delay, and grant extensions when justified.

(End of Clause)

552.270-29 Termination for default.

As prescribed in 570.702-20, insert the following clause:

Termination for Default (June 1985)

If the Lessor fails to prosecute the work required to deliver the leased premises ready for occupancy by the Government with such diligence as will ensure delivery of the leased premises within the time required by the lease agreement, or any extension of the specified time, or if the Lessor fails to complete said work within such time, the Government may, by written notice to the Lessor, terminate the lease agreement. Regardless of whether the lease is terminated, the Lessor and his sureties shall be liable for any damage to the Government resulting from his failure to deliver the premises ready for occupancy within the specified time.

(End of Clause)

552.270-30 Progressive occupancy.

As prescribed in 570.702-21, insert the following clause:

Progressive Occupancy (June 1985)

The Government shall pay rent only when the entire premises or suitable units are ready for occupancy. If the agency occupies the space in partial increments, rent will accrue or be paid on a pro rata basis. Rental payments shall become due on the first workday of the month following the month in which an increment of space is occupied, except that should an increment of space be occupied after the fifteenth day of the month, the payment due date will be the first workday of the second month following the month in which it was occupied. The commencement date of the firm term will be a composite determined from all dates of incremental occupancy.

(End of Clause)

Subpart 552.3—Provision and Clause Matrixes

552.300 Scope of subpart.

This subpart consists of a series of matrixes, one each for supply, service, construction, architect-engineer and small purchase contracts which lists the applicable GSA provisions and clauses; and one each for utility contracts (sole supplier-regulated rates) and leases of real property which list the applicable FAR and GSAR provisions and clauses.

Note: The matrixes do not appear in this volume of the **Federal Register** or Title 48, Chapter 5 of the Code of Federal Regulations. Individual copies may be obtained from the Director of the Office of GSA Acquisition Policy and Regulations (VP), 18th and F Streets NW., Washington, DC 20405.

PART 553—FORMS

Subpart 553.1—General

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553.102 Current editions.
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553.171 Forms incorporated by reference.

Subpart 553.3—Illustrations of Forms

553.300 Scope of subpart.

Authority: 40 U.S.C. 486(c).

Subpart 553.1—General

553.101 Requirements for use of forms.

(a) The requirements for use of GSA forms are explained in other parts of this regulation.

(b) The location in the text where a form is prescribed is identified by a cross-reference shown on the illustration of the form. When a form is mentioned in more than one place in this regulation, the section referenced on the illustration is the section where the basic prescription can be found.

553.102 Current editions.

Contracting officers shall use the current edition of the forms in Subpart 553.3 unless otherwise authorized under this regulation.

553.170 Establishing and revising GSA Forms.

(a) If two or more GSA services/offices use a GSA form, the Office of Acquisition Policy is responsible for maintaining the form. When a GSA form is used by a particular GSA service/office or if the form is used in connection with a type of contract which is unique to one service/office (e.g., construction contracts), that service/office is responsible for maintenance of the form.

(b) Proposed new or revised GSA procurement related forms must be submitted to the Office of Acquisition Policy for review and concurrence.

553.171 Forms incorporated by reference.

Forms containing solicitation provisions and/or contract clauses may be incorporated by reference in solicitations/contracts.

The contracting officer shall insert a clause substantially the same as the clause at 552.253-70 in solicitations and contracts when GSA Forms containing solicitation provisions and/or contract clauses are incorporated by reference.

Subpart 553.3—Illustrations of Forms

553.300 Scope of subpart.

Standard and GSA forms prescribed or referenced in the text of this chapter are illustrated in and made a part of the GSAR loose-leaf edition. The forms are not illustrated in this volume of the **Federal Register** or Title 48, Chapter 5 of the Code of Federal Regulations. Copies may be obtained from the Director of the Office of GSA Acquisition Policy and Regulations (VP), 18th and F Streets NW., Washington, DC 20405.

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Subpart 570.8—Forms Used for Contracting for Leasehold Interests in Real Property

570.801 Standard forms.
570.802 GSA forms.

Authority: 40 U.S.C. 486(c).

Subpart 570.1—General

570.101 Applicability.

(a) This part does not apply to the acquisition of leasehold interests in real property by the power of eminent domain, or by donation, or to the acquisition of leasehold interests in bare or unimproved land.

(b) Other parts of the GSAR apply to the acquisition of leasehold interests in real property only to the extent specified in this part and 501.103(b).

570.102 Definitions.

"Acquisition" means the acquiring by lease with appropriated funds of an interest in improved real property for use by the Federal Government whether the space is already in existence or must be constructed. Acquisition begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, market survey, solicitation, award of lease, lease performance, lease administration, and those technical and management functions directly related to the process of fulfilling agency space needs by contract.

"Contract" means lease.

"Contractor" means lessor.

"Fair Rental" means the amount of the rental that reasonably can be expected to be paid for the lease of real property as established by competition and/or by a value estimate based on accepted real property appraisal procedures.

"Landlord" or "lessor" means any individual, firm, partnership, trust, association, state or local government, or other legal entity that leases real property to the Government.

"Lease" or "leasehold interest in real property" means a conveyance to the Government of the right of exclusive possession of real property for a definite period of time by a landlord. It may include services provided by the landlord such as heating, ventilation, air conditioning, utilities, custodial services, and other related services furnished by the landlord.

"Lessee" or "tenant" means the United States of America.

"Rent and related services" means the consideration paid for the use of leased property plus the costs of operational services such as heat, light, and janitor services whether furnished by the lessor, the Government, or both.

"Small business" means a concern including affiliates, which is organized for profit, is independently-owned and operated, is not dominant in the field of leasing commercial real estate, and has annual average gross receipts of $10 million or less for the preceding three fiscal years.

"Solicitation for Offers (SFO)" means invitation for bids in sealed bidding or request for proposals in negotiations.

"Space in buildings" means the premises leased, or to be leased, including improvements. Its quantity is normally expressed in terms of square feet. It does not include space acquired by the power of eminent domain, donation, or condemnation or acquisitions of bare or unimproved land.

"Substantially as follows" or "substantially the same as," when used in the prescription of a provision or clause, means that authorization is granted to prepare and utilize a variation of that provision or clause to accommodate requirements that are peculiar to an individual acquisition, provided that the variation includes the salient features of the FAR/GSAR provision or clause, and is not

inconsistent with the intent, principle, and substance of the FAR/GSAR provision or clause or related coverage on the subject matter.

570.103 Authority to lease.

The Federal Property and Administrative Services Act of 1949 (40 U.S.C. 490(h)(1)), as amended, and Section 1 of the Reorganization Plan No. 18 of 1950 (40 U.S.C. 490 Note) authorize the Administrator of General Services to acquire leasehold interests in real property for use by Federal agencies. The authority is limited to leases for buildings and improvements that do not bind the Government for periods in excess of 20 years.

570.104 Contracting officers.

(a) Contracting officers, acting within the scope of their appointments, are the exclusive GSA agents to enter into and administer leases on behalf of the Government in accordance with agency procedures.

(b) The contracting officer shall perform, or have performed, all administrative actions necessary for effective contracting.

570.105 Competition.

(a) The competition requirements of FAR Part 6 and Part 506 apply to the acquisition of leasehold interests in real property.

(b) Contracts for leasehold interests in real property must be awarded through the use of competitive procedures (sealed bidding or negotiation), unless the use of other than full and open competition is permitted by one of the exceptions in FAR 6.302.

(c) The acquisition of space in buildings through other than full and open competition must be held to the smallest number practicable and be justified in writing and approved in accordance with FAR 6.303, 6.304, and 506.304.

570.106 Methods of contracting.

(a) The use of sealed bidding to acquire space in buildings is generally not feasible, unless a building site has been preselected and a building is to be constructed on the site in accordance with Government furnished plans and specifications for lease to the Government. When using sealed bidding, see the procedures in FAR Part 14 and Part 514.

(b) The negotiated method is normally the best suited for acquiring space in buildings through a lease contract because it is necessary to conduct discussions with offerors about their proposals and factors other than price must be considered in making the award.

Subpart 570.2—Special Aspects of Contracting for Leasehold Interests of 10,000 Square Feet or More

570.201 Market surveys.

A market survey must be conducted by Government employees or by contractor personnel for every acquisition. The market survey must include:

(a) Solicitation of information on the availability of space through the use of circulars or newspaper advertisements and consultations (telephonically or in person) with realtors, brokers, owners, and others, as appropriate.

(b) An inspection of available locations that appear to meet the minimum requirements regarding quantity, quality, availability, and probable cost, unless a justification for use of other than competitive procedures has been approved. Results of inspections must be documented.

570.202 Advertising.

(a) Requirements for blocks of space of 10,000 or more square feet must be publicized in local newspapers and/or periodicals unless exempt under FAR 5.202 or 505.202.

(b) When the Government intends to acquire a leasehold interest in a building to be constructed on a preselected site, the proposed acquisition must be synopsized in the Commerce Business Daily (CBD).

(c) See FAR Part 5 and Part 505 for further information on advertising and synopsizing.

570.203 Solicitation for offers (SFO).

(a) The SFO is the basis for the entire lease negotiation process and must be made a part of the lease. SFO's must contain the information necessary to enable the prospective offeror to prepare a proposal. Each solicitation, as a minimum, must:

(1) Be in writing.

(2) Contain a description of the minimum requirements of the Government, including:

(i) A description of the required space.

(ii) Specifications. The type of specification will depend upon the nature of the space needed by the agency and the market available to satisfy the needs. Specifications may be stated in terms of function, performance, or design requirements. The specification must be drafted to promote full and open competition and include restrictive provisions or conditions only to the extent necessary to satisfy the needs of the agency or as authorized by law.

(iii) Any special requirements.

(iv) A delivery schedule.

(3) Describe the method used to measure space.

(4) Specify a date and place for the submission of offers.

(5) Indicate whether offers will be evaluated based on the initial lease term, or on the full term (initial term plus options).

(6) Require offers to be submitted on an annual rate per square foot basis for the amount of space offered.

(7) Identify all factors, including price or cost, and any significant subfactors that will be considered in awarding the lease and state the relative importance the Government places on those evaluation factors and subfactors. Numerical weights, which may be employed in the evaluation of proposals, need not be disclosed in solicitations. The solicitation must inform offerors of minimum requirements that apply to particular evaluation factors and significant subfactors.

(i) Offers will be reduced to an annual rental rate per square foot for the amount of space offered.

(ii) When different types of space are solicited, the lowest offer as to price will be determined on the basis of the composite square foot rate per year for the total amount of space offered.

(iii) When lump sum payments for initial tenant alterations are solicited, the lowest offer as to price will be determined by adding the annualized lump sum amount to the annual square foot rental rate (or the composite square foot rate). The lump sum amount will be annualized by dividing the lump sum by the number of years in the term (initial plus options) and dividing by the square footage offered.

(iv) The other factors that will be considered in evaluating proposals should be tailored to each acquisition and include only those factors that will have an impact on the award decision. The evaluation factors that apply to an acquisition and the relative importance of those factors are within the broad discretion of the contracting officer. However, price or cost to the Government must be included as an evaluation factor in every case. Other evaluation factors that may apply to a particular acquisition are the availability of public transportation, the availability of adequate food service within a reasonable distance, the neighborhood and building quality, the availability of daycare and physical fitness facilities, and any other relevant factors.

(8) Include provisions and clauses substantially the same as those listed on the matrix at 552.370 when the prescription for use of the provision or clause requires its use. The omission of any provision or clause when its prescription requires its use constitutes a deviation which must be approved under Subpart 501.4. Approval may be granted to deviate from provisions or clauses that are mandated by statute (e.g. FAR 52.203–5, Covenant Against Contingent Fees, FAR 52.203–1, Officials Not to Benefit, FAR 52.215–1, Examination of Records by the Comptroller General, etc.) in order to modify the language of the provision or clause. However, the statutory provisions and clauses may not be omitted from the SFO unless the statute provides for waiving the requirements of the provision or clause.

(9) Include appropriate forms as prescribed in Subpart 570.8.

(b) The SFO must be released to all prospective offerors at the same time.

(c) A reasonable number of extra copies of SFO's should be maintained at the issuing office in order to respond to individuals and firms requests for the SFO.

570.204 Changes to SFO's.

(a) When the Government's requirements change (either before or after receipt of proposals), the solicitation must be amended in writing.

(b) When time is of the essence, information on modifications may be provided orally if:

(1) The modifications are not complex;

(2) A record is made of the information provided;

(3) All offerors or prospective offerors are given notice on the same day, if possible; and

(4) The information provided orally is promptly confirmed by a written amendment.

(c) When modifications in the Government's requirements occur, the following procedures apply:

(1) If proposals have not been submitted, amendments must be sent to all offerors solicited.

(2) If proposals have been received but not evaluated, the amendments must be sent to all of the offerors.

(3) If a modification is so substantial that it requires a complete revision of the solicitation, the solicitation should be canceled and a new solicitation issued. New solicitations must be issued to all concerns solicited originally, any concerns added to the original SFO mailing list, and any other interested concerns.

570.205 Negotiations.

(a) Negotiations will be conducted with all offerors that are within the competitive range. The contracting officer shall determine the competitive range on the basis of cost and other factors that were stated in the solicitation and shall include in the competitive range all offers that have a reasonable chance of being selected for award. When there is doubt as to whether an offer is in the competitive range, the offer should be included.

(b) The content and extent of the negotiations are a matter of the contracting officer's judgement based on the particular facts of each acquisition. The contracting officer shall:

(1) Control all discussions;

(2) Advise the offeror of deficiencies in its offer so that the offeror is given an opportunity to satisfy the Government's requirements;

(3) Attempt to resolve any uncertainties concerning the offer;

(4) Resolve any suspected mistakes by calling them to the offeror's attention as specifically as possible without disclosing information concerning other offerors' proposals or the evaluation process; and

(5) Provide the offeror a reasonable opportunity to submit any cost or price, technical, or other revisions to its offer that may result from the discussion.

(c) No indication may be given to any offeror of a price which must be met since such practice constitutes an auction technique that is prohibited. Likewise, no offeror should be advised of its relative standing with other offerors.

(d) After receipt of offers, no information regarding the number or identity of the offerors participating in the negotiation may be made available to anyone whose official duties do not require such knowledge.

(e) Negotiations must be closed by establishing a date and time for closing of negotiations and requesting in writing that offerors submit a "best and final offer" by that date.

(f) Negotiations may not be conducted after the closing date for best and final offers unless negotiations are reopened with all offerors in the competitive range.

(g) Negotiations are confidential and must reflect complete agreement on all items and conditions of the lease contract. Information regarding the transaction will not be announced or made available until after the contract is awarded.

(h) A written negotiation record must be placed in the lease file.

570.206 Evaluating offers.

(a) An abstract of final offers must be prepared to aid in the analysis of offers received.

(b) Offers will be evaluated on the basis of the lowest annual price per square foot cost to the Government and other award factors as stated in the SFO.

570.207 Late offers, modifications of offers, and withdrawals of offers.

Offers determined to be received late will be considered under FAR 15.412.

570.208 Preaward requirements.

570.208–1 General.

(a) In order to comply with the warranty requirement of 41 U.S.C. 254(a) concerning contingent fees, the requirements of FAR Subpart 3.4 and Subpart 503.4 must be followed.

(b) Applicable certifications as prescribed in 552.370 must be reviewed for compliance with regulations.

(c) Leases must be cleared in accordance with the requirements of GSA Order, Contract Clearance (APD 2800.1B).

570.208–2 Cost or pricing data.

(a) Cost and pricing data is required under the circumstances described in FAR 15.804–2.

(b) The exemptions from and waivers of submission of certified cost or pricing data are outlined in FAR 15.804–3. The competition exemption applies when adequate price competition, as defined in FAR 15.804–3(b), is obtained. The market price exemption from submission cost or pricing data may be applied to proposed leases where there is evidence that the price is based on an established market price for similar space leased to the general public. A market survey and an appraisal conducted in accordance with accepted real property appraisal procedures may be used as evidence to establish the market price. The contracting officer may grant an exemption and need not require the prospective lessor to submit a Standard Form 1412, Claim for Exemption from Submission of Certified Cost or Pricing Data, when there is evidence, before solicitation, that there is an acceptable established market price (see FAR 15.804–3(e)(3)).

(c) In exceptional cases, the requirement for submission of certified cost or pricing data may be waived under FAR 15.804–3(i) and 515.804–3.

(d) When certified cost or pricing data is required, the contracting officer shall follow the procedural requirements in FAR 15.804–6(e).

(e) In the event the proposed lessor refuses to provide the data when required, the contracting officer shall follow the procedures in FAR 15.804–6(e) and 515.804–70.

570.208–3 Appraisal.

When the net annual rental exceeds $2,000, an appraisal of the fair rental is required for the property to be leased. However, an appraisal is not required for leases under 10,000 square feet where the contracting officer receives three or more best and final offers that are responsive to the solicitation requirements, except where lease construction projects are involved, the term is more than 10 years, or the total rental (firm term plus options) exceed $1 million.

570.208–4 Proposal evaluation.

(a) The contracting officer shall use cost or price analysis to evaluate the offers in accordance with the general guidance provided in FAR 15.805. The contracting officer shall document the lease file to demonstrate that the fair rental value has been properly established and show how it relates to the proposed contract rental.

(b) The lease file must also document the evaluation of other award factors listed in the solicitation. The file should include the basis for evaluation, an analysis of each offer, and a summary of findings.

570.208–5 Financial responsibility.

(a) The contracting officer shall make a determination that the prospective offeror is financially responsible with respect to the lease being considered. The contracting officer's signature on the contract is deemed to be an affirmative determination.

(b) In cases where the contracting officer has reason to question the offeror's financial ability to perform, a financial responsibility check may be requested from the Credit and Finance Branch, Region 6.

(c) All documents generated as a result of financial responsibility checks must be placed in the permanent lease file.

570.209 Award.

(a) An award will be made to the responsible offeror whose proposal is most advantageous to the Government considering price and other factors included in the solicitation.

(b) Award will be made in writing within the time frame specified in the SFO. If an award cannot be made within that time, the contracting officer shall request in writing from each offeror an extension of the acceptance period through a specific date.

(c) Unsuccessful offerors will be notified in writing, of the award.

(d) All proposals received in response to a solicitation may be rejected if the head of the contracting activity or designee determines that such action is in the public interest.

570.210 Inspection and certification.

A Government representative shall:

(a) Inspect the space, and

(b) Certify that the space is in substantial compliance with the Government's requirements and specifications before occupancy.

Subpart 570.3—Special Aspects of Contracting for Leasehold Interests of Less Than 10,000 Square Feet

570.301 Definitions.

"Small lease" means a lease for a block of space of less than 10,000 square feet that is awarded using the simplified procedures prescribed in this subpart.

"Small lease procedure" means the procedures prescribed in this subpart for making small leases using a simplified process and a short form lease contract.

570.302 Purpose.

The purpose of this subpart is to prescribe simplified procedures for small leases in order to reduce administrative costs while providing for the efficient and economical acquisition of leasehold interests in real property.

570.303 Policy.

The procedures prescribed in this subpart should be used to the maximum extent practicable for acquiring leasehold interests in real property involving blocks of space aggregating less than 10,000 square feet.

570.304 Procedures.

570.304–1 General.

(a) The contracting officer or a designated representative will:

(1) Locate and inspect buildings where space may be available to satisfy the Government's requirements;

(2) Present a proposed lease to prospective offerors together with a notice identifying all factors, including price or cost, and any significant subfactors that will be considered in awarding the lease and stating the relative importance the Government places on the evaluation factors or subfactors;

(3) Ask the prospective offerors to review the proposed lease and provide an offer;

(4) Negotiate directly with the offerors; and

(5) Award the lease.

(b) This procedure does not eliminate the requirements for legal review, contract clearance, etc., if the lease would be subject to such requirements based on the amount of the transaction or the nature of the agreement.

570.304–2 Market survey.

A market survey must be conducted in accordance with 570.201. The market survey is a crucial aspect of the small lease procedure.

570.304–3 Advertising.

Requirements may be publicized in local newspapers and/or periodicals when the contracting officer determines such advertising will serve to promote competition. For further information on advertising, refer to FAR Part 5 and Part 505.

570.304–4 Soliciting offers.

(a) Offers will be solicited by presenting each prospective offeror with a proposed short form lease and a notice identifying all factors, including price or cost, and any significant subfactors that will be considered in awarding the lease and stating the relative importance the Government places on the evaluation factors or subfactors.

(b) The proposed lease must describe the Government's requirements and include applicable provisions and contract clauses substantially the same as those listed on the matrix at 552.370.

570.304–5 Negotiation and award.

The policies and procedures in 570.205, 570.208 and 570.209 apply to small leases.

570.304–6 Inspection and certification.

A Government representative must inspect the space and certify that the space is in substantial compliance with the Government's requirements and specifications before occupancy.

Subpart 570.4—Mistakes, Protest, Miscellaneous

570.401 Disclosure of mistakes after award.

When a mistake in a lessor's offer is not discovered until after award, the mistake should be handled as provided in FAR 14.408–4 and Subpart 514.4.

570.402 Protests.

Protests regarding the award of lease contracts are handled as provided in FAR Subpart 33.1 and Subpart 533.1.

570.403 Awards to Federal employees.

Offers from officers or employees of the Government must be handled as provided in FAR 3.6 and 503.6.

Subpart 570.5—Special Aspects of Contracting for Continued Space Requirements

570.501 Renewal options.

(a) *Exercise of options.* Before exercising an option, the provisions of Part 517 must be followed.

(b) *Notification.* When a contracting officer determines that it is in the best interest of the Government to continue to lease a property, the lessor must be notified within the timeframe required by the lease.

(c) *Market survey.* When the right to renew a lease exists, a renewal must be based on a market survey and other applicable considerations. Surveys should focus on the prevailing rental rates for comparable space.

(d) *Reappraisal.* The original appraisal must be updated (e.g., by memorandum) or a new appraisal performed when the annual net rental exceeds $2,000.

(e) *Cancellation.* When a determination is made that a lease which has an automatic renewal clause is no longer required, the lessor will be notified in writing that the lease has been canceled.

570.502 Succeeding leases.

(a) *General.* Succeeding leases for the continued occupancy of space in a building may be entered into when a cost-benefit analysis has been conducted and the results indicate that an award to an offeror other than the present lessor would result in substantial relocation and duplication costs to the Government that are not expected to be recovered through competition.

(b) *Procedure*—(1) *Advertising.* The contracting officer shall publish a notice in local newspapers and/or periodicals when blocks of space of 10,000 or more square feet are involved. The notice should normally (i) indicate the Government's lease is expiring, (ii) describe the agency's needs in terms of type and quantity of space, (iii) indicate the Government is interested in considering alternative space if economically advantageous, (iv) advise prospective offerors that the Government will consider the cost of moving, alterations, etc., when deciding whether it should relocate, and (v) tell interested parties who to contact if they are interested in providing space to the Government.

(2) *Market survey.* A market survey must be conducted in accordance with 570.201.

(3) *Competition determination.* (i) If no potential acceptable locations are identified through the notice or the market survey, the contracting officer may prepare a justification to negotiate directly with the present lessor. The justification must be prepared and approved in accordance with FAR Subpart 6.3 and Subpart 506.3 and should fully document the efforts to locate alternative sources.

(ii) If potential acceptable locations are identified through the advertisement or market survey and relocation costs (including estimated moving costs, telecommunications costs, and the estimated cost of alterations, amortized over the firm term of the lease) are not significant enough to preclude recovery of such costs through competition, the contracting officer may proceed to develop a formal SFO and negotiate with all interested parties in accordance with the procedures in Subpart 570.2 or 570.3.

(iii) If potential acceptable locations are identified through the advertisement or market survey and substantial relocation costs are involved, the contracting officer shall conduct a cost-benefit analysis to determine whether the duplication of costs to the Government could be recovered through competition. The cost-benefit analysis must give consideration to the prices of other potentially available properties, relocation costs, and other appropriate considerations. The prices for other potentially available properties must be established by requesting the prospective offeror to provide an informational quotation for standard space for comparison purposes. The prices quoted for standard space will be adjusted by the Government for special requirements. A formal solicitation for offers (SFO) is not required for the purpose of obtaining the informational quotation. The contracting officer shall provide a general description of the Government's needs when requesting informational quotations. If oral quotations are provided, the record must be documented to reflect the following information, as a minimum: the name and address of the firm solicited, the name of the firm's representative providing the quote, the price(s) quote, the description of the space and services for which the quote is provided, the name of the Government employee soliciting the quotation, and the date of the conversation. The informational quotations must be compared to the present lessor's price, adjusted to reflect the anticipated price for a succeeding lease. Based on the results of the cost-benefit analysis, the contracting officer will:

(A) Prepare a justification for approval in accordance with FAR Subpart 6.3 and Subpart 506.3 to support the determination to negotiate with the present lessor for continued occupancy because it is likely that award to any other offeror would result in substantial duplication of costs to the Government that are not expected to be recovered through competition; or

(B) Develop a formal SFO and negotiate with all interested parties in accordance with the procedures in Subpart 570.2 or 570.3.

570.503 Expansion requests.

(a) When the expansion space needed is within the general scope of the lease, the space may be acquired through a modification to the lease.

(b) When the expansion space needed is outside the general scope of the lease, the contracting officer must determine whether it is more prudent to provide the expansion space by supplemental agreement to the existing lease or to satisfy the requirement through relocation. A market survey must be conducted to determine whether suitable alternative locations are available. If the market survey reveals alternate locations that can satisfy the total requirement, a cost-benefit analysis must be performed to determine whether it is in the Government's best interest to relocate. This analysis may include—

(1) The cost of the alternate space compared to the cost of expanding at the existing location;

(2) The cost of moving;

(3) The cost of duplicating existing improvements; and

(4) The cost of the unexpired portion of the firm term lease (unless a termination is possible, in which case the actual cost of such an action should be used).

(c) If no suitable alternative location is available and the cost of the space exceeds $25,000, a justification may be prepared for approval in accordance with FAR Subpart 6.3 and Subpart 506.3 in order to negotiate a Supplemental Lease Agreement to provide expansion space, provided the original lease term is not extended. When the cost is $25,000 or less, the contracting officer must prepare the justification for inclusion in the file.

570.504 Superseding leases.

(a) Consideration should be given to the execution of a superseding lease that would replace the existing lease when the changes or modifications to the space contemplated are so numerous or detailed as to cause complications, or would substantially change the present lease.

(b) The justification and approval requirements in FAR Subpart 6.3 and Subpart 506.3 must be complied with before negotiating a superseding lease if the amount of the lease for the firm term exceeds $25,000. When the cost is $25,000 or less, the contracting officer must prepare a justification for inclusion in the file.

570.505 Lease extensions.

(a) The justification and approval requirements in FAR Subpart 6.3 and Subpart 506.3 must be complied with before negotiating a Supplemental Lease Agreement exceeding $25,000 to extend the term of the lease to provide for continued occupancy on a short-term basis (usually not to exceed 1 year). For extensions of $25,000 or less the contracting officer must prepare the justification for inclusion in the contract file.

(b) FAR 6.302–1 provides for contracting without providing for full and open competition when the property or services needed by the agency are available from only one responsible source and no other type of property or services will satisfy the needs of the agency. This authority may be used to extend the term of a lease by supplemental agreement in situations such as the following:

(1) When the agency occupying the leased space is scheduled to move into other Federally controlled space but unexpected delays are encountered in preparing the new space for occupancy.

(2) When unexpected delays which are outside of GSA's control (i.e., protests, etc.) are encountered in acquiring replacement space.

(3) When various agencies occupying leased space are being consolidated and it is necessary to extend the terms of some leases to establish a common expiration date.

Subpart 570.6—Special Aspects of Contracting for Lease Alterations

570.601 General.

(a) Although the Government generally has a contractual right to alter the space leased, normally most alterations are acquired through a modification to the lease because they fall within the general scope of the lease and it is in the Government's interest to acquire the alterations from the lessor.

(b) As the need for alterations arise during the term of a lease contract, the contracting officer must examine each project and make a determination as to whether the alterations fall within the general scope of the lease and may be acquired through a modification to the lease. The primary test is whether the work can be regarded as fairly and reasonably an inseparable part of the lease requirement originally contracted for. If the alterations are outside the general scope, the contracting officer must make a decision to acquire the alterations through a separate contract, through a Supplemental Lease Agreement, or to request the work be performed by Federal employees.

570.602 Alterations by the lessor.

570.602–1 Justification and approval requirements.

(a) The justification and approval requirements in FAR Subpart 6.3 and 506.3 must be complied with before negotiating directly with the lessor for any alteration project exceeding $25,000 that is outside the general scope of the lease contract.

(b) Before negotiating directly with the lessor for any alteration project of $25,000 or less, that is outside the general scope of the lease, the contracting officer shall document, in writing, the reasons for the absence of competition.

570.602–2 Procedures.

(a) *Scope of work.* A scope of work must be prepared for all alteration projects.

(b) *Independent Government estimate.* An independent Government estimate must be prepared for all alteration projects, including changes to alteration agreements with lessors.

(c) *Request for proposal.* (1) The lessor must be provided with a scope of work, including any plans and specifications which have been developed, and should be requested to submit a proposal. The request for proposal should indicate whether progress payments will be made and provide for retainage, when appropriate.

(2) The proposal must be requested to be submitted in such detail that a cost or price analysis can be made.

(3) The requirements for the submission of certified cost or pricing data outlined in FAR 15.804–2 apply to alteration projects over $100,000. The procedural requirements at FAR 15.804–6 must be followed when requesting cost and pricing data. Exemptions from or waivers to submission of certified cost or pricing data must be processed in accordance with the requirements of FAR 15.804–3 and 515.804–3. If the lease does not include the clauses at FAR 52.215–22 and 52.215–24 or the clauses at FAR 52.215–23 and 52.215–25, the modification to the lease for the alterations must add the clauses at FAR 52.215–23 and 52.215–25 if cost and pricing data is submitted.

(d) *Audits.* Unless the cost or pricing data requirement is exempt or waived in accordance with FAR 15.804–3 and 515.804–3, an audit must be requested for negotiated alteration projects which are not competed as a part of the lease and exceed $500,000.

(e) *Evaluation of proposals.* The contracting officer shall:

(1) Determine whether the proposal will meet the Government's requirements;

(2) Analyze cost as compared to the independent estimate and the audit;

(3) Analyze profit in accordance with FAR Subpart 15.9 if the project exceeds $25,000; and

(4) Document analysis leading to negotiation objectives developed from paragraphs (e) (1) through (3) of this section.

(f) *Price negotiations.* (1) The contracting officer is responsible for exercising sound judgment and may make reasonable compromises as necessary.

(2) The negotiated price should provide the lessor with the greatest incentive for efficient and economical performance.

(3) Negotiations must be documented by a price negotiation memorandum.

(g) *Award.* Alterations may be procured using the GSA Form 276, Supplemental Lease Agreement, or the GSA Form 300, Order for Supplies or Services (alteration project of $25,000 or less) provided a reference is made to the lease.

(h) *Inspection and payment.* Final payment for alterations must not be made until the work is:

(1) Inspected by a qualified Government employee or independent Government contractor; and

(2) Certified as completed in a satisfactory manner.

570.603 Alterations by the Government.

When the Government elects to exercise its rights to make the alterations rather than contract directly with the lessor, the work may be performed by Federal employees or may be contracted out using all of the standard contracting procedures that would apply to a construction contract if the work were to be performed on Federal property. If the Government decides to contract for the work, the lessor, as well as all other prospective contractors, should be invited to submit an offer for the project.

Subpart 570.7—Solicitation Provisions and Contract Clauses

570.701 Solicitation provisions.

570.701–1 Preparation of offers.

The contracting officer shall insert a provision substantially the same as the provision at 552.270–1, Preparation of Offers, in solicitations for leasehold interests in real property.

570.701–2 Explanation to prospective offerors.

The contracting officer shall insert a provision substantially the same as the provision at 552.270–2, Explanation to Prospective Offerors, in solicitations for leasehold interests in real property.

570.701–3 Late submissions, modifications, and withdrawals of offers.

The contracting officer shall insert a provision substantially the same as the provision at 552.270–3, Late Submissions, Modifications, and Withdrawals of Offers, in solicitations for leasehold interests in real property.

570.701–4 Historic preference.

The contracting officer shall insert a provision substantially the same as the provision at 552.270–4, Historic Preference, in solicitations for leasehold interests in real property when the market survey indicates that space is available in both historic and non-historic buildings.

570.701–5 Lease award.

The contracting officer shall insert a provision substantially the same as the provision at 552.270–5, Lease Award, in solicitations for leasehold interests in real property

570.701–6 Parties to execute lease.

The contracting officer shall insert a provision substantially the same as the provision at 552.270–6, Parties to Execute Lease, in solicitations for leasehold interests in real property

570.702 Contract clauses.

570.702–1 Definitions.

The contracting officer shall insert a clause substantially the same as the clause at 552.270–10, Definitions, in solicitations and contracts for leasehold interests in real property

570.702–2 Subletting the premises.

The contracting officer shall insert a clause substantially the same as the clause at 552.270–11, Subletting the Premises, in solicitations and contracts for leasehold interests in real property.

570.702–3 Maintenance of premises.

The contracting officer shall insert a clause substantially the same as the clause at 552.270–12, Maintenance of Premises, in solicitations and contracts for leasehold interests in real property.

570.702–4 Damage by fire or other casualty.

The contracting officer shall insert a clause substantially the same as the clause at 552.270–13, Damage by Fire or Other Casualty, in solicitations and contracts for leasehold interests in real property.

570.702–5 Condition report.

The contracting officer shall insert a clause substantially the same as the clause at 552.270–14, Condition Report, in solicitations and contracts for leasehold interests in real property.

570.702–6 Applicable codes and ordinances.

The contracting officer shall insert a clause substantially the same as the clause at 552.270–15, Applicable Codes and Ordinances, in solicitations and contracts for leasehold interests in real property.

570.702–7 Inspection of premises.

The contracting officer shall insert a clause substantially the same as the clause at 552.270–16, Inspection of Premises, in solicitations and contracts for leasehold interests in real property.

570.702–8 Failure in performance.

The contracting officer shall insert a clause substantially the same as the clause at 552.270–17, Failure in Performance, in solicitations and contracts for leasehold interests in real property

570.702–9 Lessor's successors.

The contracting officer shall insert a clause substantially the same as the clause at 552.270–18, Lessor's Successors, in solicitations and contracts for leasehold interests in real property

570.702–10 Alterations.

The contracting officer shall insert a clause substantially the same as the clause at 552.270–19, Alterations, in solicitations and contracts for leasehold interests in real property.

570.702–11 Proposals for adjustment.

The contracting officer shall insert a clause substantially the same as the clause at 552.270–20, Proposals for Adjustment, in solicitations and contracts for leasehold interests in real property. If the lease is for 10,000 square feet or more, the contracting officer shall use the clause with its Alternate I.

570.702–12 Changes.

The contracting officer shall insert a clause substantially the same as the clause at 552.270–21, Changes, in solicitations and contracts for leasehold interests in real property.

570.702–13 Liquidated damages.

The contracting officer shall insert a clause substantially the same as the clause at 552.270–22, Liquidated Damages, in solicitations and contracts for leasehold interests in real property when there is a critical requirement that the delivery date be met and an actual cost cannot be established for the loss to the Government resulting from late delivery.

570.702–14 Operating costs.

If the contracting officer determines operating cost escalation is necessary, a clause substantially the same as the clause at 552.270–23, Operating Costs, must be included in solicitations and contracts for leasehold interests in real property.

570.702–15 Tax adjustment.

If the contracting officer determines tax escalation is necessary, a clause substantially the same as the clause at 552.270–24, Tax Adjustment, must be included in solicitations and contracts for leasehold interests in real property.

570.702–16 Adjustment for vacant premises.

The contracting officer shall insert a clause substantially the same as the clause at 552.270–25, Adjustment for Vacant Premises, in solicitations and contracts for leasehold interests in real property

570.702–17 If minimum not delivered.

The contracting officer shall insert a clause substantially the same as the clause at 552.270–26, If Minimum Not Delivered, in solicitations and contracts for leasehold interests in real property

570.702–18 Delivery and condition.

The contracting officer shall insert a clause substantially the same as the clause at 552.270–27, Delivery and Condition, in solicitations and contracts for leasehold interests in real property

570.702–19 Time extensions.

The contracting officer shall insert a clause substantially the same as the clause at 552.270–28, Time Extensions, in solicitations and contracts for leasehold interests in real property

570.702-20 Termination for default.

The contracting officer shall insert a clause substantially the same as the clause at 552.270-29, Termination for Default, in solicitations and contracts for leasehold interests in real property.

570.702-21 Progressive occupancy.

The contracting officer shall insert a clause substantially the same as the clause at 552.270-30, Progressive Occupancy, in solicitations and contracts for leasehold interests in real property.

Subpart 570.8—Forms Used for Contracting for Leasehold Interests in Real Property

570.801 Standard forms.

(a) Standard Form 2, U.S. Government Lease for Real Property, should be used to award leases of 10,000 square feet or more. The reference to the Standard Form 2A in paragraph 7 should be deleted. Its use for leases of less than 10,000 square feet is optional.

(b) Page 1 of the Standard Form 2-B, U.S. Government Lease for Real Property (Short Form), may be used to award leases for less than 10,000 square feet. Page 2 of the form should not be used because the clauses are obsolete.

570.802 GSA forms.

(a) GSA Form 276, Supplemental Lease Agreement, should be used to amend existing leases that involve the acquisition of additional space or partial release of space, revisions in the terms of a lease, restoration settlements, and alterations.

(b) GSA Form 387, Analysis of Values Statement, should be completed whenever an appraisal is provided by in-house or contract appraiser.

(c) GSA Form 1364, Proposal To Lease Space To The United States of America, may be used to obtain offers from prospective offers.

(d) GSA Form 3516, Solicitation Provisions, should be included as a part of all solicitations for the acquisition of leasehold interests in real property.

(e) GSA Form 3517, General Clauses, should be included as a part of all solicitations and contracts for the acquisition of leasehold interests in real property.

(f) GSA Form 3518, Representations and Certifications, should be included as a part of all solicitations for the acquisition of leasehold interests in real property.

Appendix A to Chapter 5—Contracting Office Assignment Codes

Note: Appendix A is illustrated in and made a part of the GSAR loose-leaf edition. Appendix A is not illustrated in this volume of the **Federal Register** or Title 48, Chapter 5 of the Code of Federal Regulations.

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Part III

Environmental Protection Agency

40 CFR Part 148 et al.
Land Disposal Restrictions for Second Third Scheduled Wastes; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 148, 264, 265, 268, 269, and 271

[SWH-FRL-3564-9]

Land Disposal Restrictions for Second Third Scheduled Wastes

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is today promulgating regulations implementing the Congressionally mandated prohibitions on land disposal of hazardous wastes listed in 40 CFR 268.11 (the second one-third of the Schedule of restricted hazardous wastes, hereafter referred to as the Second Third). This action is taken in response to amendments to the Resource Conservation and Recovery Act (RCRA), enacted in the Hazardous and Solid Waste Amendments (HSWA) of 1984. Today's notice promulgates specific treatment standards and prohibition effective dates for certain Second Third wastes, and imposes the "soft hammer" provisions of 40 CFR 268.8 on Second Third wastes for which the Agency is not establishing treatment standards. In addition, this notice promulgates treatment standards and effective dates for certain First Third (40 CFR 268.10) "soft hammer" wastes, as well as for certain wastes originally contained in the Third Third of the schedule (40 CFR 268.12). Wastes for which treatment standards are being promulgated can be land disposed after the applicable effective dates only if the respective treatment standards are met, or if disposal occurs in units that satisfy the "no migration" standard.

EFFECTIVE DATE: This final rule is effective June 8, 1989, except for EPA Hazardous Waste F006—cyanide (nonwastewater) which is effective July 9, 1989.

ADDRESSES: The official record for this rulemaking is identified as Docket Number F–89–LD11–FFFFF and is located in the EPA RCRA docket, Room 2427, 401 M Street SW., Washington, DC 20460. The docket is open from 9:00 to 4:00, Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials by calling (202) 475–9327. The public may copy a maximum of 100 pages from any regulatory document at no cost. Additional copies cost $.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; Telephone: 800–424–9346 (toll-free) or 382–3000 locally. For general information on specific aspects of this final rule, contact Bob Scarberry or Michaelle Wilson, Office of Solid Waste (OS–333), (202) 382–4770. For specific information on BDAT treatment standards, contact James Berlow, Office of Solid Waste (OS–322), (202) 382–7917. For specific information on the Underground Injection Control Program and hazardous waste injection wells, contact Bruce Kobelski, Office of Drinking Water (WH–550), (202) 382–5508. For specific information on capacity determinations or national variances, contact Jo-Ann Bassi, Office of Solid Waste (OS–322), (202) 475–6672.

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I. Background

A. Summary of the Hazardous and Solid Waste Amendments of 1984 and the Land Disposal Restrictions Framework

1. Statutory Requirements

The Hazardous and Solid Waste Amendments (HSWA), enacted on November 8, 1984, prohibit the land disposal of hazardous wastes. Specifically, the amendments specify dates when particular groups of hazardous wastes are prohibited from land disposal unless "it has been demonstrated to the Administrator, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous" (RCRA sections 3004 (d)(1), (e)(1), (g)(5); 42 U.S.C. 6924 (d)(1), (e)(1), (g)(5)). Congress established a separate schedule for restricting the disposal by underground injection of solvent- and dioxin-containing hazardous wastes, wastes referred to collectively as California list hazardous wastes (RCRA section 3004(f)(2), 42 U.S.C. 6924(f)(2)), and soil and debris resulting from CERCLA section 104 and 106 response actions and RCRA corrective actions when the soil and debris contains listed spent solvent, dioxin, and California list hazardous wastes.

The amendments also require the Agency to set "levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized" (RCRA section 3004(m)(1), 42 U.S.C. 6924(m)(1)). Wastes that meet treatment standards established by EPA are not prohibited and may be land disposed. In addition, a hazardous waste that does not meet the treatment standard may be land disposed provided the "no migration" demonstration specified in RCRA sections 3004 (d)(1), (e)(1) and (g)(5) is made.

For the purposes of the restrictions, HSWA defines land disposal "to include, but not be limited to, any placement of * * * hazardous waste in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, or underground mine or cave" (RCRA section 3004(k), 42 U.S.C. 6924(k)). Therefore, because HSWA defines land disposal to include underground injection wells, disposal of hazardous wastes in injection wells is subject to the land disposal restrictions.

The land disposal restrictions are immediately effective unless the Administrator grants a national variance from the statutory or regulatory deadline and establishes a different date (not to exceed two years beyond the applicable deadline) based on "the earliest date on which adequate alternative treatment, recovery, or disposal capacity which protects human health and the environment will be available" (RCRA section 3004(h)(2), 42 U.S.C. 6924(h)(2)). The Administrator may also grant a case-by-case extension of the effective date for up to one year, renewable once for up to one additional year, when an applicant successfully makes certain demonstrations (RCRA section 3004(h)(3), 42 U.S.C. 6924(h)(3)). A case-by-case extension can be granted whether or not a national capacity variance has been granted.

The statute also allows treatment of hazardous wastes in surface impoundments that meet certain minimum technological requirements (or certain exceptions thereto). Treatment in surface impoundments is permissible provided the treatment residues that do not meet the treatment standard(s) (or applicable statutory prohibition levels) are "removed for subsequent management within one year of the entry of the waste into the surface impoundment" (RCRA section 3005(j)(11)(B), 42 U.S.C. 6925(j)(11)(B)).

In addition to prohibiting the land disposal of hazardous wastes, Congress prohibited storage of any waste which is prohibited from land disposal unless "such storage is solely for the purpose of the accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment or disposal" (RCRA section 3004(j), 42 U.S.C. 6924(j)).

2. Applicability to Injected Wastes

As noted above, disposal of hazardous wastes in injection wells is subject to the provisions of HSWA. The Agency has previously proposed and promulgated regulations pertaining to injected wastes separately from regulations addressing wastes disposed in surface facilities. The Agency chose this approach for two reasons. First, injection of hazardous wastes is controlled by two statutes, RCRA and the Safe Drinking Water Act (SDWA). The regulations governing injection of these wastes have been codified along with other regulations of the Underground Injection Control (UIC) program under the SDWA in Parts 124, 144, 145, 146, 147, and 148 of the Code of Federal Regulations (CFR). EPA believes that it is useful to the regulated community and to the State regulators to have requirements regarding restrictions on hazardous waste injection located in the same portion of the CFR as are other requirements pertaining to injection wells. Second, the statute established a separate schedule for the restrictions on injection of certain wastes.

3. Solvents and Dioxins

Effective November 8, 1986, HSWA prohibited land disposal (except by underground injection into deep wells) of dioxin-containing hazardous wastes numbered F020, F021, F022, and F023 and solvent-containing hazardous wastes numbered F001, F002, F003, F004, and F005 listed in 40 CFR 261.31. (RCRA sections 3004 (e)(1), (e)(2), 42 U.S.C. 6924 (e)(1), (e)(2)).

On November 7, 1986, EPA promulgated a final rule (51 FR 40572) implementing RCRA section 3004(e). This rule not only established the general framework for the land disposal restrictions program, but also established treatment standards for the F001–F005 solvent wastes and F020, F023 and F026–F028 dioxin-containing wastes.

4. California List Wastes

Effective July 8, 1987, the statute prohibited further land disposal (except by deep well injection) of the following listed or identified wastes (RCRA section 3001) set out in RCRA sections 3004 (d)(1) and (d)(2) (42 U.S.C. 6924 (d)(1), (d)(2)).

(A) Liquid hazardous wastes, including free liquids associated with any solid or sludge, containing free cyanides at concentrations greater than or equial to 1,000 mg/l.

(B) Liquid hazardous wastes, including free liquids associated with any solid or sludge, containing the following metals (or elements) or compounds of these metals or elements) at concentrations greater than or equal to those specified below:

(i) arsenic and/or compounds (as As) 500 mg/l;

(ii) cadmium and/or compounds (as Cd) 100 mg/l;

(iii) chromium (VI and/or compounds (as Cr VI)) 500 mg/l;

(iv) lead and/or compounds (as Pb) 500 mg/l;

(v) mercury and/or compounds (as Hg) 20 mg/l;

(vi) nickel and/or compounds (as Ni) 134 mg/l;

(vii) selenium and/or compounds (as Se) 100 mg/l; and

(viii) thallium and/or compounds (as Tl) 130 mg/l.

(C) Liquid hazardous wastes having a pH less than or equal to two (2.0).

(D) Liquid hazardous wastes containing polychlorinated biphenyls (PCBs) at concentrations greater than or equal to 50 ppm.

(E) Hazardous wastes containing halogenated organic compounds (HOCs) in total concentration greater than or equal to 1,000 mg/kg.

On July 8, 1987, EPA promulgated a final rule (52 FR 25760) implementing RCRA section 3004(d). This rule established treatment standards for California list wastes containing PCBs and certain HOCs, and codified the statutory prohibition for liquid corrosive wastes. The statutory prohibition is also in effect for California list wastes containing free cyanides, metals, and dilute HOC wastewaters.

5. Disposal of Solvents, Dioxins and California List Wastes in Injection Wells

Section 3004(f) of RCRA required that the Administrator prohibit the disposal of solvents, dioxins and California list wastes in deep wells, effective August 8, 1988, unless such disposal had been determined to be protective of human health and the environment for as long as the wastes remained hazardous or unless a variance had been granted under RCRA section 3004(h). On July 26, 1988, the Agency established effective dates for the prohibition on injection of solvents and dioxin wastes (53 FR 28118). In another regulation, effective August 8, 1988 and published August 16, 1988 in the Federal Register, the Agency established, in part, effective dates for the prohibition on injection of California list wastes (53 FR 30908).

6. Scheduled Wastes

The amendments required the Agency to prepare a schedule for restricting the land disposal of all hazardous wastes listed or identified as of November 8, 1984 in 40 CFR Part 261, excluding solvent- and dioxin-containing wastes and California list wastes covered under the schedule set by Congress. The schedule, based on a ranking of the listed wastes that considers their intrinsic hazard and their volume, is to ensure that prohibitions and treatment standards are promulgated first for high volume hazardous wastes with high intrinsic hazard before standards are set for low volume wastes with low intrinsic hazard. The statute further requires that these determinations be made by the following deadlines:

(A) At least one-third (the First Third) of all listed hazardous wastes by August 8, 1988.

(B) At least two-thirds (the Second Third) of all listed hazardous wastes by June 8, 1989.

(C) All remaining listed hazardous wastes and all hazardous wastes identified by one or more of the characteristics defined in 40 CFR Part 261 (the Third Third) by May 8, 1990.

On May 28, 1986, EPA promulgated the schedule for setting treatment standards for the listed and identified hazardous wastes (51 FR 19300). This schedule is incorporated in 40 CFR 268.10, 268.11, and 268.12.

If EPA fails to set a treatment standard by the statutory deadline for any hazardous waste in the First or Second Third, the waste may be disposed in a landfill or surface impoundment provided "such facility" is in compliance with the minimum technological requirements specified in RCRA section 3004(o) for new facilities (RCRA section 3004(g)(6)).

Note: On August 17, 1988, EPA interpreted the term "such facility" in 3004(g)(6) to refer to the individual surface impoundment or landfill unit. See 53 FR 31181. This interpretation was upheld by the D.C. Circuit in *Steel Bar Mills* v. *EPA*, No. 88-1008 (Order of Feb. 22, 1989).

In addition, prior to land disposal, the generator must certify to the Administrator that he has investigated the availability of treatment capacity and has determined that he has contracted to use the practically available technology that yields the greatest environmental benefit, or that disposal in such landfill or surface impoundment is the only practical alternative to treatment currently available to the generator. This restriction on the use of landfills and surface impoundments applies until EPA sets a treatment standard for the waste or until May 8, 1990, whichever is sooner. Other forms of land disposal, including underground injection, are not similarly restricted and may continue to be used for disposal of untreated wastes until EPA promulgates a treatment standard and sets an effective date, or until May 8, 1990, whichever is sooner. If the Agency fails to set a treatment standard for any scheduled hazardous waste by May 8, 1990, the waste is automatically prohibited from all forms of land disposal after that time unless the waste is the subject of a successful "no migration" demonstration (RCRA section 3004(g)(5), 42 U.S.C. 6924(g)(5)).

For the scheduled wastes, the statute does not provide different deadlines for restriction of underground injected versus surface land disposed wastes; however, the Agency proposed and promulgated First Third regulations for surface disposed and injected wastes on separate dates. The First Third final rule, promulgated on August 8, 1988 and published in the Federal Register on August 17, 1988 (53 FR 31138), set out the conditions under which wastes may continue to be land disposed by means other than by injection. Effective dates for the prohibition of injection of certain First Third wastes are included in the final regulation published August 16, 1988 (53 FR 30908). In addition, the Agency promulgated effective dates for the prohibition on injection of another group of First Third wastes on June 14, 1989 (54 FR 25416). Today's final rule promulgates the conditions under which Second Third wastes may continue to be land disposed. It also promulgates treatment standards for some First Third and Third Third restricted hazardous wastes. This rule applies to all forms of land disposal including deep well injection, and finalizes the January 11, 1989 proposed rulemaking (54 FR 1056).

7. Newly Identified and Listed Wastes

RCRA requires the Agency to make a land disposal prohibition determination for any hazardous waste that is newly identified or listed in 40 CFR Part 261 after November 8, 1984 within six months of the date of identification or listing (RCRA section 3004(g)(4), 42 U.S.C. 6924(g)(4)). However, the statute does not provide for an automatic prohibition of the land disposal of such wastes if EPA fails to meet this deadline.

B. Regulatory Framework

The November 7, 1986 final rule (51 FR 40572) established the regulatory framework for implementing the land disposal restrictions program. Some changes to the framework were made in the July 8, 1987 California list final rule (52 FR 25760), as well as in the August 17, 1988 First Third final rule (53 FR 31138). Regulations specifying how the framework applies to injected wastes were promulgated July 26, 1988 (53 FR 28118).

The following discussion summarizes the major provisions of the land disposal restrictions framework. (For a comprehensive understanding of the Land Disposal Restrictions program, refer to the aforementioned final rules.) It is included for purposes of information only, any does not reopen and of the previously-stated principles for judicial review.

1. Applicability

The land disposal restrictions apply prospectively to the affected wastes. In other words, hazardous wastes land disposed after the applicable effective dates are subject to the restrictions, but wastes land disposed prior to the effective dates are not required to be removed or exhumed for treatment (51 FR 40577). Similarly, only surface impoundments receiving restricted wastes after the applicable deadline are subject to the restrictions on treatment in surface impoundments contained in 40 CFR 268.4 and RCRA 3005(j)(11). Also, the storage restrictions apply to wastes placed in storage after the effective dates.

The provisions of the land disposal restrictions program apply to wastes produced by generators (including small quantity generators) of greater than 100 kilograms of hazardous waste (or greater than 1 kilogram of acutely hazardous waste) in a calendar month. Wastes produced by small quantity generators of less than 100 kilograms of hazardous waste (or less than 1 kilogram of acute hazardous waste) per calendar month are conditionally exempt from RCRA, including the land disposal restrictions (see 40 CFR 268.1).

The land disposal restrictions apply to both interim status and permitted facilities. The requirements of the land disposal restrictions program supersede 40 CFR 270.4(a); therefore, even though the requirements may not be specified in the permit conditions, all permitted facilities are subject to the restrictions.

2. Treatment Standards

By each statutory deadline, the Agency must establish the applicable treatment standards under 40 CFR Part 268 Subpart D for each restricted hazardous waste. After the applicable effective dates, restricted wastes may be land disposed if they meet the treatment standards. If EPA does not promulgate treatment standards by the statutory deadlines, such wastes are prohibited from land disposal (with the exception of First Third and Second Third wastes that are subject to the "soft hammer" provisions of 40 CFR 268.8).

A treatment standard is based on the performance of the best demonstrated available technology (BDAT) to treat the waste (51 FR 40578). EPA may establish treatment standards either as specific technologies or as performance standards based on the performance of BDAT technologies. Compliance with performance standards may be monitored by measuring the concentration level of the hazardous constituents (or in some circumstances, indicator pollutants) in the waste, treatment residual, or in the extract of the waste or treatment residual. When treatment standards are set as performance levels, the regulated community may use any technology not otherwise prohibited (such as impermissible dilution) to treat the waste to meet the treatment standard. Treaters thus are not limited to use of only a particular technology. However, when treatment standards are expressed as specific technologies, such technologies must be employed.

3. National Variances from the Effective Dates

The Agency has the authority to grant national variances from the statutory or regulatory effective dates, not to exceed two years, if there is insufficient alternative protective treatment, recovery or disposal capacity for the wastes (RCRA section 3004(h)(2)). If there is a significant shortage of such capacity nationwide, EPA will establish an alternative effective date based on the earliest date such capacity will be available.

During the period a capacity variance is in place, disposal in a landfill or surface impoundment may be made only in a unit meeting the minimum technological requirements of RCRA section 3004(o). The D.C. Circuit recently upheld the Agency's interpretation of the term "such facility" in section 3004(h)(4) to refer to the disposal unit. (*Steel Bar Mills Ass'n.* v. *EPA*, No 88-1608, Order of Feb. 22, 1989; *Mobil Oil Corp.* v. *EPA*,—F.2d—(D.C. Cir., April 4, 1989)). It is the Agency's opinion, however, that if a waste subject to a national capacity variance is treated to meet the applicable treatment standards (or meets the standards as generated), the land disposal restrictions allow such waste to be disposed in a Subtitle C landfill or surface impoundment regardless of whether the unit meets minimum technological requirements (MTRs) (but see RCRA sections 3004(o)(1) and 3005(j)(1), which independently require that certain surface impoundments and landfills meet MTRs). This is because such waste, once treated to meet the promulgated treatment standard (or which meets such standard as generated), is no longer prohibited from land disposal. In addition, from a policy perspective, if a person treats a national capacity variance waste to meet a treatment standard, thus electing not to take advantage of the variance, he should receive some benefit under the law and thus should be able to utilize non-MTR landfills and impoundments as he would if the Agency had not granted the national capacity variance.

4. Case-By-Case Extensions of the Effective Dates

The Agency will consider granting up to a one-year extension (renewable once) of a ban effective date on a case-by-case basis. The requirements outlined in 40 CFR 268.5 must be satisfied. During the period that such a case-by-case extension is in place, disposal in a landfill or surface impoundment may be made only in a unit meeting the minimum technological requirements of RCRA section 3004(o). In considering whether to grant a case-by-case extension, the Agency has stated that it will consider the feasibility of providing alternative capacity during the extension period, and that the determination of feasibility "may involve considerations of the technical and practical difficulties associated with providing alternative capacity." (51 FR 40603, Nov. 7, 1986.) EPA wishes to clarify that in assessing questions of feasibility, it will never base a decision solely on the assertion that alternative treatment is too costly.

5. "No Migration" Exemptions From the Restrictions

The Agency has the authority to allow the land disposal of a restricted hazardous waste which does not meet the treatment standard upon the successful demonstration that there will be no migration of hazardous

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constituents from the disposal unit or injection zone for as long as the waste remains hazardous (for surface disposed wastes see 40 CFR 268.6; for underground injected wastes see 40 CFR 148.20). If a "no migration" petition is granted, it can remain in effect for no longer than ten years for disposal in interim status land disposal units, and for no longer than the term of the RCRA permit for disposal in permitted units (40 CFR 268.6(h)).

The Agency's plan for implementing the "no migration" provisions of RCRA with respect to injected wastes are outlined in detail in 40 CFR 148.20 (53 FR 28118, July 26, 1988). A petitioner is required to demonstrate through modeling that there is no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This demonstration can be made in one of two ways: The use of flow and transport models to show that injected fluids will not migrate vertically out of the injection zone for a period of 10,000 years or laterally within the injection zone to a point of discharge or interface with an underground source of drinking water; or, use of geochemical modeling to show that the waste is transformed so it will become nonhazardous at the edge of the injection zone. Also, a showing must be made that the well is in compliance with the substantive area of review, corrective action, and mechanical integrity requirements of Part 146.

6. Variances From the Treatment Standards

The variance from the treatment standard procedures were established to account for cases where the treatment standard is expressed as a performance level and the waste, after properly-conducted treatment, cannot meet the level, or where the treatment technology is not appropriate for the waste. The petitioner must demonstrate that because the physical or chemical properties of the waste differs significantly from the wastes analyzed in developing the treatment standard, the waste cannot be treated to specified levels or by the specified methods (51 FR 40605 and 40 CFR 268.44). The variance procedure can result in the establishment of a new treatability group and corresponding treatment standard that applies to all wastes meeting the criteria of the new waste treatability group. A site-specific variance from the treatment standard may also be granted administratively (without rulemaking), but the variance has no generic applicability to the waste if it is generated at other sites (53 FR 31199, August 17, 1988).

7. Exemption for Treatment in Surface Impoundments

Wastes that would otherwise be prohibited from one or more methods of land disposal may be treated in a surface impoundment that meets certain technological requirements (RCRA section 3005(j)(11) and 40 CFR 268.4(a)(3)) as long as treatment residuals that do not meet the applicable treatment standard (or statutory prohibition levels where no treatment standards are established) are removed for subsequent management within one year of entry into the impoundment and are not placed into any other surface impoundment. The owner or operator must certify to the Regional Administrator that the impoundment meets the liner, leachate collection system and ground water monitoring requirements imposed by RCRA section 3004(o)(1) (unless the impoundment qualifies for an exemption from those requirements under RCRA sections 3005 (j)(2) and (j)(4)). The owner or operator must also submit a copy of the waste analysis plan that has been modified to provide for testing treatment residuals in accordance with § 268.4 requirements.

8. Storage of Restricted Wastes

Storage of restricted wastes is prohibited except where storage is solely for the purpose of accumulating sufficient quantities of wastes to facilitate proper treatment, recovery, or disposal (RCRA section 3004(j) and 40 CFR 268.50). A facility that stores a prohibited waste for more than one year bears the burden of proving that such storage is solely for this purpose. The Agency bears the burden of proof if it believes that storage of a restricted waste by a facility for up to one year is not for the purpose of accumulating sufficient quantities to facilitate proper treatment, recovery, or disposal. Since any placement of wastes in landfills, piles, impoundments, etc. is defined as land disposal (RCRA section 3004(k)), only storage in tanks and containers is affected by the storage prohibition in § 268.50 (see 52 FR 21013, June 4, 1987).

9. The "Soft Hammer" Provisions

The First and Second Third wastes for which EPA has not promulgated treatment standards may be disposed in landfill and surface impoundment units, provided certain demonstrations are made, and provided these units meet the minimum technology requirements of section 3004(o) as specified in 40 CFR 268.5.

The Agency's reading that "soft hammer" wastes destined for landfill or impoundment disposal can only be disposed in minimum technology landfills and surface impoundment units was upheld by the D.C. Circuit in *Steel Bar Mills Ass'n.* v. *EPA*, No. 88-1606 (order of Feb. 22, 1989), and endorsed in *dicta* in *Mobil Oil Corp.* v. *EPA*, __F.2d__ (D.C. Cir., April 4, 1989, slip op. at 7-8). The "soft hammer" provisions apply only until May 8, 1990, or until EPA promulgates treatment standards, whichever is sooner. Other types of land disposal are not restricted until EPA promulgates treatment standards and effective dates, or until May 8, 1990.

C. Summary of the Proposed Rule

The Agency proposed treatment standards and effective dates for 32 Second Third wastes. In addition, the Agency proposed treatment standards and effective dates for 19 First Third wastes which previously had been subject to the "soft hammer" provisions, as well as for 14 Third Third wastes and 4 newly listed wastes. Effective dates for wastes being underground injected were also proposed. No changes to the land disposal restrictions framework were proposed. The proposed approach, as well as any changes being made in today's final rule, is discussed in preamble section III of today's rule.

D. Comments Received on the Proposed Rule

The Agency received 92 comments addressing various elements of the proposed rule. Some of the most frequently discussed issues were: the proposed treatment standards for cyanide wastes, the use of "no land disposal" as a treatment standard, and rescheduling of wastes from the Third Third to the Second Third. A summary of these issues, along with the Agency's response, is provided in the appropriate preamble sections related to the individual waste codes of today's rule.

The Agency also received comments on the applicability of the land disposal restrictions to wastes included in lab packs and on the advance notice of the Agency's proposed approach for regulating the remaining listed and characteristic wastes by May 8, 1990. A summary of these comments and the Agency's responses follows in this section.

Detailed summaries of all comments and the Agency's responses can be found in the documents "Comment Response Document for the Second Third Land Disposal Restrictions Proposed Rule", Volumes 1-3, in the RCRA docket.

1. Regulation of Lab Packs

The Agency received several comments related to the regulation of lab packs under the land disposal restrictions framework. Some commenters requested an exemption from the land disposal restrictions for lab packs. Other commenters requested that the Agency establish as the treatment standard a specified treatment method for the entire lab pack, disregarding the treatment standards applicable to the wastes it contains. Several commenters requested relief from the paperwork burden associated with providing notice of each restricted waste in the lab pack and its corresponding treatment standard (as required under the land disposal restrictions recordkeeping requirements). Commenters also stated that there may be hundreds of wastes included in a lab pack and the land disposal restrictions require that applicable treatment standards or "soft hammer" requirements be met for each waste prior to land disposal. They assert that such regulation is inappropriate for lab packs.

The Agency addressed the issue of applicability of the land disposal restrictions to lab packs in the final rule promulgated on November 7, 1986 (see 51 FR 40584-85), and is not changing its position in today's final rule. The Agency maintains that these wastes cannot be exempt from the statutory requirements since the plain language of the statute includes them, and there is no indication in the legislative history to exclude lab packs from the land disposal restrictions if they contain restricted wastes.

With respect to means of easing the administrative burden on lab packs, the Agency is sympathetic to the concerns voiced, but lacks the time and resources (given the pressing statutory deadlines) to take action in this rulemaking, particularly when no clearly acceptable approach is now apparent. The Agency is thus today soliciting further comment and data on issues associated with lab packs. The Agency requests data and specific suggestions supporting treatment options for lab packs. The Agency also solicits specific suggestions on modifications that could be made to the notification and certification requirements, in order that the administrative burden for lab packs might be somewhat relieved, while at the same time satisfying the "cradle to grave" paper trail for hazardous wastes regulated under the land disposal restrictions.

2. Advance Notice of Third Third Approach

Several comments addressed the Agency's advance notice of an approach for regulating the remaining listed and characteristic hazardous wastes by May 8, 1990. The Agency appreciates these comments and suggestions, and will consider them when proposing land disposal restrictions for the Third Third later this year. The Agency will respond to comments received on the advance notice in the Response to Comments Document for Third Third wastes.

3. Comments on Stabilization of Organics

Comments were received in response to the Agency's request for data on the effectiveness of stabilization of organic constituents. The Agency will evaluate these comments prior to promulgation of the Third Third final rule.

II. Summary of Today's Final Rule

Today's notice describes the Agency's final approach to implementing RCRA section 3004(g) requirements with respect to certain listed hazardous wastes included in 40 CFR 268.11 (as well as §§ 268.10 and 268.12). The Agency is required to promulgate regulations establishing conditions under which Second Third wastes may be land disposed by the statutory deadline of June 8, 1989.

A. Applicability of Treatment Standards

Today the Agency is promulgating treatment standards and effective dates for only certain Second Third wastes. Wastes listed in 40 CFR 268.11 for which EPA does not establish treatment standards or effective dates are subject to the "soft hammer" provisions that allow continued land disposal until May 8, 1990, or until treatment standards are promulgated, whichever is sooner (40 CFR 268.8).

The Agency is also promulgating treatment standards for certain First Third "soft hammer" wastes, as well as certain Third Third wastes, to become effective immediately upon promulgation. The Third Third wastes included in today's final rule were originally scheduled to be prohibited from land disposal by May 8, 1990. These wastes are included in today's rule because of the similarity of the Third Third wastes to First or Second Third waste treatability groups for which treatment standards are being promulgated. The Agency maintains that the original schedule promulgated May 26, 1986 (51 FR 19300) is not irrevocable: the Agency retains a continuing authority to shift particular wastes from one third of the schedule to another (see *Chemical Waste Management* v. *EPA*, 839 F. 2d 1528, 1529 n.2 (D.C. Cir. 1989). The statutory language likewise indicates that scheduling decisions are committed solely to the Agency's discretion (RCRA section 3004(g)(3)), and that prohibitions need not be delayed until the end of a scheduling period to take effect (see, e.g., RCRA section 3004(g)(1): "Not later than * * *"). Given the Congressional concern about an expeditious end to land disposal of untreated hazardous wastes (see e.g., RCRA sections 1002(b)(7), 1003(5), 1003(6)), it also makes sense from a policy perspective to accelerate prohibitions where it is possible to do so. Thus, the Agency is not precluded from proposing or promulgating treatment standards for any wastes ahead of schedule.

In addition, the Agency is amending the schedule so that certain Second Third wastes are moved to the Third Third. The Agency is moving wastewater residues resulting from certain treatment methods (i.e., metals recovery, metals precipitation, cyanide destruction, carbon adsorption, chemical oxidation, steam stripping, biodegradation, and incineration or other direct thermal destruction provided such treatment methods are well-designed and well-operated) for which EPA has not promulgated wastewater treatment standards. This action is being taken in order that residues from substantial treatment of these "soft hammer" wastes may be further treated in land disposal units that do not meet minimum technology requirements. As was explained in the First Third final rule (53 FR 31184), the Agency finds justification for such action in that wastes that have undergone substantial treatment to levels that may ultimately satisfy treatment standards should not be precluded from further treatment in polishing or advanced biological treatment units (RCRA sections 3005 (j)(3) and (j)(13)) that are substantially protective of human health and the environment.

It should be noted that the Agency moved all multi-source leachate derived from most listed hazardous wastes to the Third Third in a final rule promulgated on February 27, 1989 (54 FR 8264). The February 27, 1989 rule thus applies to multi-source leachate derived from disposal of Second Third listed hazardous wastes. This action has the effect of rescheduling the residues from treating the leachate and to contaminated ground water or soil that contain such leachate. *Id.* Other

restricted wastes not initially part of the leachate that are mixed with it, however, are not rescheduled and thus remain subject to all applicable statutory and regulatory prohibitions. *Id.*

EPA is today deleting § 268.12(c), as adopted in the August 17, 1988 First Third regulation. That provision rescheduled leachate derived from management of soft hammer wastes to the Third Third. By rescheduling all multi-source leachate to the Third Third, this provision is no longer necessary. The only leachate to which it would still apply would be single-source leachate, and EPA has already determined that all prohibitions and standards for single-source leachate should take effect immediately (see 54 FR 8265, Feb. 27, 1989). Consequently, there is no reason for this provision to remain in effect.

The Agency is moving Second Third wastes that are mixed hazardous/radioactive wastes to the Third Third. As was explained in the First Third final rule (53 FR 31147), there are relatively small volumes of such waste mixtures being generated, so such waste is more appropriately addressed in the Third Third.

B. Best Demonstrated Available Technologies (BDAT)

Today's final rule defines waste treatability groups and identifies the Best Demonstrated Available Technology (BDAT) for each (see preamble section III.A.). Treatment standards applicable to each treatability group are based on the performance levels achievable by the corresponding BDAT. Any technology not otherwise prohibited (i.e., impermissible dilution) may be used to meet concentration-based treatment standards. Where treatment standards are expressed as a specified technology, the waste must be treated using the specified technology prior to land disposal.

Following are tables listing BDAT for the wastes for which treatment standards are promulgated in today's rule:

Best Demonstrated Available Technologies for Wastes Included in Today's Final Rule

1. Alkaline chlorination, followed by precipitation, settling, and sludge dewatering:

F007 wastewaters
F008 wastewaters
F009 wastewaters
F010 wastewaters
F011 wastewaters
F012 wastewaters
P013 wastewaters
P021 wastewaters
P029 wastewaters
P030 wastewaters
P063 wastewaters
P074 wastewaters
P098 wastewaters
P099 wastewaters
P104 wastewaters
P106 wastewaters
P121 wastewaters

2. Alkaline chlorination, followed by precipitation, settling, filtration, and stabilization of metals:

F006 nonwastewaters
(note: metal standards for this wastecode were establisehd as part of the First Third final rule and are not being repromulgated)
F007 nonwastewaters
F008 nonwastewaters
F009 nonwastewaters

3. Electrolytic oxidation followed by alkaline chlorination, followed by precipitation, settling, filtration, and stabilization of metals:

F011 nonwastewaters
F012 nonwastewaters
P074 nonwastewaters
P099 nonwastewaters
P104 nonwastewaters

4. Electrolytic oxidation followed by alkaline chlorination, followed by precipitation, settling, filtration:

P013 nonwastewaters
P021 nonwastewaters
P029 nonwastewaters
P030 nonwastewaters
P063 nonwastewaters
P098 nonwastewaters
P106 nonwastewaters
P121 nonwastewaters

4. Incineration:

F010 nonwastewaters
F024
K009 nonwastewaters
K010 nonwastewaters
K011 nonwastewaters
K013 nonwastewaters
K014 nonwastewaters
K023
K028
K029 nonwastewaters
K038 nonwastewaters
K039 nonwastewaters*
K040 nonwastewaters
K043
K093
K094
K095 nonwastewaters
K096 nonwastewaters
P039 nonwastewaters
P040 nonwastewaters*
P041 nonwastewaters*
P043 nonwastewaters*
P044 nonwastewaters*
P062 nonwastewaters*
P071 nonwastewaters
P085 nonwastewaters*
P089 nonwastewaters
P094 nonwastewaters
P097 nonwastewaters
P109 nonwastewaters*
P111 nonwastewaters*
U028
U058 nonwastewaters*
U069
U087 nonwastewaters*
U088
U102
U107
U109
U235 nonwastewaters

*Required method of treatment

5. Incineration or fuel substitution:

K027 nonwastewaters*
K113 nonwastewaters*
K114 nonwastewaters*
K115 nonwastewaters*
K116 nonwastewaters*
U221 nonwastewaters*
U223 nonwastewaters*

*Required method of treatment

6. Carbon adsorption or incineration; or pretreatment (such as biological treatment or chemical oxidation) followed by carbon adsorption and incineration:

K027 wastewaters*
K039 wastewaters*
K113 wastewaters*
K114 wastewaters*
K115 wastewaters*
K116 wastewaters*
P040 wastewaters*
P041 wastewaters*
P043 wastewaters*
P044 wastewaters*
P062 wastewaters*
P085 wastewaters*
P109 wastewaters*
P111 wastewaters*
U058 wastewaters*
U087 wastewaters*
U221 wastewaters*
U223 wastewaters*

*Required method of treatment

7. Biological treatment:

K036 wastewaters
K038 wastewaters
K040 wastewaters
P039 wastewaters
P073 wastewaters
P089 wastewaters
P094 wastewaters
P097 wastewaters
U235 wastewaters

8. Steam stripping followed by biological treatment:

K009 wastewaters
K010 wastewaters

9. No land disposal based on no generation (generated from the process in the listing description and disposed after June 8, 1989):

K005 nonwastewaters
K007 nonwastewaters

10. Stabilization:

K115—nickel

11. No standards for the Second Third waste codes ("soft hammer"):

K025 wastewaters
K029 wastewaters
K041
K042
K095 wastewaters
K096 wastewaters
K097
K098
K105
P002, P003, P007, P008, P014, P026, P027, P049, P054, P057, P060, P066, P067, P072, P107, P112, P113, P114,
U002, U003, U005, U008, U011, U014, U015, U020, U021, U023, U025, U026, U032, U035, U047, U049, U057, U059, U060, U062, U070, U073, U080, U083, U092, U093, U094, U095, U097, U098, U099, U101, U106, U109, U110, U111, U114, U116, U119, U127, U128, U131, U135, U138, U140, U142, U143, U144, U146, U147, U149, U150, U161, U162, U163, U164, U165, U168, U169, U170, U172, U173, U174, U176, U178, U179, U189, U193, U196, U203, U205, U206, U208, U213, U214, U215, U216, U217, U218, U239, U244

C. Applicability of Today's Rule to Class I–H Hazardous Waste Injection Wells Regulated Under 40 CFR Part 148

The Agency has previously proposed and promulgated regulations and effective dates for underground injected hazardous wastes covered under RCRA sections 3004(f) and (g) separately from regulations addressing wastes disposed in surface facilities. The Agency is today addressing all methods of land disposal, including injection wells regulated jointly under the Safe Drinking Water Act (SDWA) and RCRA.

D. Waste Analysis Requirements

The Agency is today finalizing for Second Third wastes the waste analysis requirements already promulgated in the First Third final rule (53 FR 31146). Where BDAT is a destruction or removal technology, a total waste analysis is required because it is most appropriate for measuring such destruction or removal. Similarly, where BDAT is identified as an immobilization technology such as stabilization, analysis of a TCLP waste extract is required because it is the most appropriate measure of immobilization. In cases where both types of technology are identified as BDAT, both types of waste analyses are required.

In order for the initial generator to determine whether his waste meets the applicable treatment standard as generated, he should analyze the total waste if a treatment standard is in § 268.41, or he should analyze a waste extract if the treatment standard is found in § 268.43. The generator may also make this determination based on his knowledge of the waste provided there is a reasonable basis for doing so as, for example, the generator using so little of a key constituent that it could not be found in the waste at levels exceeding a treatment standard (51 FR 40597, Nov. 7, 1986; and § 268.7(a)).

E. Nationwide Extensions of the Effective Date

Due to lack of sufficient alternative protective treatment or recovery capacity, EPA is granting a national capacity extension for soil and debris contaminated with certain waste codes covered by today's final rule. A two-year extension, until June 8, 1991, is granted for soil and debris contaminated with First, Second, and Third Third wastes for which treatment standards promulgated in today's rule are based upon the performance of incineration. (See preamble section III.C.2.)

A capacity variance is also granted for certain wastes disposed by underground injection. A two-year extension of the effective date, until June 8, 1991, is granted for hazardous waste codes F007, K009 (wastewaters), K011 (nonwastewaters), and K013 (nonwastewaters) (see preamble section III.C.3.).

EPA has determined to establish an effective date of July 8, 1989 for the F006—cyanide (nonwastewater) treatment standard. Although existing information indicates that the treatment standard is readily achievable with existing treatment systems, the delayed effective date will provide any time needed for generators to adjust or fine tune existing treatment systems, or to enter into contracts with commercial treaters. At the same time, given the information showing that well over 90 percent of generators are already achieving treatment standards and the existence of excess commercial treatment capacity (see preamble section III.C.), EPA does not believe that the regulated community needs any longer period to come into compliance with the new standard (see RCRA section 3010(b)(1)).

EPA does not believe that section 3004(h)(1) mandates an immediate effective date for the cyanide standard for F006 nonwastewaters. Section 3004(h)(1) applies to prohibitions issued under sections 3004(d)–(g). The cyanide standard is not a prohibition of the waste (since F006 is already prohibited under the First Third rule), but rather an additional treatment standard issued pursuant to section 3004(m). The general policy of section 3004(h), however, provides good cause within the meaning of section 3010(b)(3) for not delaying the new standard's effective date for any more than 30 days.

The Agency is also delaying the effective date for 30 days, until July 8, 1989, for F007, F008, and F009 wastewaters and nonwastewaters. EPA has determined that no long term national capacity variance for these wastes is warranted. The extension is being granted, however, in order to be cautious and allow time (if any is truly needed) for facilities to adjust existing cyanide treatment processes to operate more efficiently, or to enter into contracts with commercial treatment facilities.

EPA is also granting a 30-day capacity extension to F011 and F012 wastewaters and nonwastewaters, until July 8, 1989. Additionally, for the period between July 8, 1989 and December 8, 1989, F011 and F012 nonwastewaters will be subject to the same cyanide standards as the electroplating wastes (i.e., 590 mg/kg for total cyanide and 30 mg/kg for amenable cyanide). Effective December 8, 1989, however, these wastes must meet the 110 mg/kg total cyanide standard and the 9.1 mg/kg amenable cyanide standard (see preamble section III.C.1. for further discussion of the effective dates).

F. Treatment Standards for Prohibited Wastes that are Mixed with Non-Prohibited Wastes

Prohibited wastes are not exempted from the land disposal prohibitions when they are mixed with other wastes (or any other materials, for that matter.) Were this not the case, land disposal prohibitions would be without meaning since they could be evaded by the expedient of mixing with a non-prohibited waste. (See 54 FR 8265, Feb. 27, 1989.)

Prohibited wastes are sometimes mixed with other materials in the course of treatment. If the prohibited waste is no longer capable of being treated to meet the treatment standard after mixing, it is possible that an improper form of mixing is occurring. The Agency realizes and acknowledges, however, that mixing wastes can be a normal part of treatment. Therefore, to the extent that such mixing occurs and can be

determined to be a legitimate part of the treatment process, the mixture could be eligible for a treatability variance pursuant to § 268.44. Part of the demonstration, however, would be whether mixing has made the prohibited waste more difficult to treat, and if so, whether the treatment method utilized is still legitimate.

It should be evident that intentional mixing to evade a treatment standard is impermissible, and if such intentional mixing occurs, it never could serve as grounds for granting a treatability variance under § 268.44. The Agency further expects that generators and treatment facilities would take reasonable steps to avoid mixing waste streams that are generated separately if such mixing is not a legitimate part of the treatment process. For example, it would ordinarily be inappropriate to mix a metal-bearing waste like F006 with a halogenated organic waste like F024.

The status of mixtures that consist of multi-source leachate and other non-leachate First Third prohibited wastes is presently controlled by a recent order filed by the D.C. Court of Appeals for the District of Columbia Circuit. In that order, the Court left in effect (by mutual consent of the parties) a judicial stay of the applicability of the so-called waste code carry-through principle to multi-source leachate. The order continues, "[a]s to anything contaminated both by leachate and by other first-third prohibited wastes, the other wastes must, to the extent technically feasible, be treated to the applicable treatment standards. Prohibited wastes intentionally mixed with leachate for the purpose of avoiding applicable treatment standards remain subject to all of the standards and requirements in the August 8, 1988 rule." Order of April 24, 1989 in *Chemical Waste Management* v. *EPA*, No. 88–1581.

EPA interprets this order in the following way: First, by requiring that all non-leachate First Third prohibited wastes be treated "to the extent technically feasible", the Court made clear that only technical considerations are involved in the determination, and that the cost of treatment is not a relevant consideration. (In fact, the Court amended its earlier order of September 23, 1988, which required treatment "to the extent feasible", in response to the government's pleading that cost could not legally be considered in determining treatment standards.) In determining whether treatment has occurred to the extent technically feasible, it ordinarily would be necessary to address the possible means of treating all of the hazardous constituents in the prohibited waste, including both organics and inorganics.

Second, all of the parties in their pleadings to the Court represented that any mixing of prohibited wastes and multi-source leachate that occurred *after* September 23, 1988, the date of the first amended order entered by the Court related to this situation, would be deemed to be mixing with the purpose of avoiding a treatment standard and that therefore all applicable treatment standards would continue to apply to the non-leachate prohibited waste(s) in such mixtures. (See Petitioners' Response of April 13, 1989 at pp. 5–6, 8 expressing this understanding, and Petitioners' Supplemental Response of April 24, 1989 characterizing language suggested by petitioners that documents this understanding as stating that "restricted wastes in such mixtures occurring on or after the date of amendment of the stay order will have to be treated to the applicable treatment standards, notwithstanding the presence in the mixture of multi-source leachates.") Consequently, any prohibited waste that was mixed with multi-source leachate after September 23, 1988 remains subject to treatment standards.

EPA believes that any person seeking to dispose of a leachate-non-leachate First Third prohibited waste mixture would have the burden of demonstrating that the mixture has been treated to the extent technically feasible. This is because that person would be claiming an exception to a remedial statutory scheme, see, e.g., *SEC* v. *Ralston Purina Co.*, 346 U.S. 119, 126 (1953), and in addition would be in possession of facts within its special knowledge. The Agency notes in addition that States could evaluate the validity of an "extent technically feasible" claim only if the State is authorized to administer the land disposal prohibition regulations. Since no State is so authorized at the present time, any regulatory concurrence would have to come from EPA.

EPA believes it important that the Court's order not be used as a means to evade technically achievable treatment standards. Therefore, the Agency recommends careful evaluation of any claim that one of these mixtures has been treated to the extent technically feasible. In addition, the Agency recommends that EPA headquarters personnel be notified of such claims in order to assist in the technical determination and in order to have technology-based determinations of waste treatability be as consistent as possible.

G. Rationale for Immediate Effective Date

The regulations promulgated today will be effective immediately except where the Agency has specified a national extension of the effective date or otherwise specified an alternative effective date. HSWA requires that today's regulations become effective on or before the June 8, 1989 effective date of the restrictions on the second one-third of the wastes scheduled pursuant to RCRA section 3004(g)(4)(A). If the Agency fails to promulgate regulations for any of these wastes by the statutory effective date, the restrictions on disposal of the waste in a landfill or surface impoundment, stipulated in section 3004(g)(6)(B) take effect automatically on June 8, 1989. If the Agency has not promulgated treatment standards for any scheduled waste by May 8, 1990, that waste is prohibited from all forms of land disposal unless a generator has been granted an extension of the effective date (either a national capacity extension or a case-by-case extension) or a "no migration" finding has been made. Hence, June 8, 1989 is the latest date for EPA to promulgate regulations that will prevent the "soft hammer" in section 3004(g) from becoming effective for all Second Third wastes.

Section 3004(h) requires that regulations established under sections 3004 (d), (3), (f), or (g) be effective immediately upon promulgation. Furthermore, section 3004(m) specifies that regulations setting treatment standards must have the same effective date as applicable regulations established under sections 3004 (d), (e), (f), or (g). For today's regulations which set treatment standards and are promulgated under section 3004(g), this date will be June 8, 1989. Since the statute clearly states that the regulations implementing section 3004(g) must go into effect on or before June 8, 1989 in order to prevent the "soft hammer" from falling, EPA finds that good cause exists under section 3010(b)(3) to have an immediate effective date. For the same reason, EPA finds that good cause also exists under section 554(d)(3) of the Administrative Procedure Act, 5 U.S.C. section 553(d)(3), to waive the requirements that regulations be published at least 30 days before the effective date.

III. Detailed Discussion of Today's Rule

A. Development and Identification of Treatment Standards

Today's rule promulgates BDAT treatment standards for many Second Third wastes, some First Third wastes for which land disposal has been previously restricted according to the "soft hammer" provisions, and several Third Third wastes. Sections III.A.1. through III.A.11. of the January 11, 1989 Proposed Rule (54 FR 1062–1104) presented discussions on the determination of treatability groups and the development of treatment standards for RCRA hazardous wastes. Sections III.A.1. through III.A.7. (54 FR 1062–1065) presented an overview of the general procedures that the Agency follows for these determinations. A detailed discussion of the methodology for identification of BDAT is provided in the November 7, 1986 Final Rule for Solvents and Dioxins (51 FR 40572). The Agency specifically stated that it did not reopen the issues presented in these sections for public comment, but merely restated the Agency's position on these issues in order to save readers the trouble of referring to earlier documents. The same is true for most of the reiterated discussions in today's preamble. However, the Agency is also adding a clarifying discussion of certain issues, particularly the comparison of treatment standards to Practical Quantitation Limits (PQLs), and the use of grab and composite samples for purposes of establishing and enforcing treatment standards.

1. Clarification of the General Applicability of BDAT

a. *Wastewater versus nonwastewater standards.* The treatment standards in today's rule are generally expressed as constituent concentrations for "wastewaters" and for "nonwastewaters". The treatment standards apply to the prohibited waste as well as to all residuals generated by treating the original prohibited waste. Therefore, solids generated from treatment of a particular waste must meet the nonwastewater treatment standards and wastewaters generated from treatment of this waste must meet the wastewater treatment standards. Section III.A.3.(f.) and (h.) of today's rule provides a discussion of the applicability of treatment standards to treatment residuals where BDAT is established as a method of treatment rather than as numerical concentration-based standards.

For purposes of this rule, the Agency defines wastewaters as those wastes (listed wastes, including wastes generated as a result of the "mixture" and "derived-from" rules) that contain less than 1% total organic carbon (TOC) and less than 1% total suspended solids, except for those wastes identified as F001, F002, F003, F004, and F005 solvent-water mixtures. See 53 FR 31145 (August 17, 1988) adopting this definition for First Third wastes and 51 FR 40579 (November 7, 1986) for the definition of F001, F002, F003, F004, and F005 solvent-water mixtures. Those wastes (listed wastes, including wastes that are hazardous as a result of the "mixture" and "derived-from" rules) that do not meet these criteria are defined as nonwastewaters and thus would contain greater than or equal to 1% TOC, or greater than or equal to 1% total suspended solids. It is not permissible to dilute or perform partial treatment on a waste in order to switch the applicability of a nonwastewater standard to a wastewater standard (or vice versa). (See 52 FR 21012 (June 4, 1987); but see 52 FR 25767 (June 8, 1987) noting special circumstances when California list wastes are involved). Dewatering technologies (such as filtration and centrifugation) that are designed to separate wastewater from nonwastewaters are not prohibited.

b. *Analytical requirements and relationship of PQLs to BDAT.* For all wastes in today's rule, BDAT has been identified as a destruction technology for all of the organic constituents and for cyanides. The corresponding treatment standards for these constituents are based on the analysis of total concentration. Since these technologies are specifically designed to destroy the organics and cyanides, the Agency maintains that the best measure of treatment performance is the one that reflects the extent to which these organics and cyanides have been destroyed.

Note: The land disposal restrictions for solvent waste codes F001–F005 (51 FR 40572) require the analysis of TCLP extracts as a measure of performance. At the time that the treatment standards for F001–F005 were promulgated, useful data were not available on total constituent concentrations in treated residuals and, as a result, the TCLP was considered to be the best available measure of performance.

In cases where treatment standards for metals in nonwastewaters are based on stabilization, the use of the TCLP is required as a measure of the performance of the treatment technology. The Agency maintains that where data are available, the TCLP data best reflect the extent to which the mobility of these metals can be minimized. Where treatment standards for nonwastewaters are based on multiple treatment processes due to the presence of organics and metals, the waste has to meet both total constituent concentrations for organics and TCLP concentrations for metals prior to land disposal.

The Agency evaluates all BDAT list constituents when establishing treatment standards. This list of chemicals was derived from the constituents listed in 40 CFR Part 261 Appendix VII and Appendix VIII. The rationale for selection of the particular constituents to be regulated can be found in the background document for each waste or waste treatability group. The Agency believes that it is not restricted to regulating only those constituents for which a waste is listed (40 CFR Part 261 Appendix VII). This is appropriate given that Appendix VII, setting forth the constituents that were the basis for listing, is not an exhaustive list of hazardous constituents in each waste, and was never intended to be. (See RCRA section 3001(f), a provision designed to force EPA to consider hazardous constituents other than those for which the waste was listed when evaluating delisting petitions. Section 3001(f) thus acknowledges that Appendix VII is only a partial list of the hazardous constituents that can be present in a listed waste.)

EPA has been asked a number of questions about the relationship of BDAT treatment standards to the practical quantitation limits (PQLs) for a number of constituents. In response, it is important to clarify the definition of PQLs, their intended use, and their relationship to BDAT treatment standards.

In the September, 1986, edition of SW–846 (Volume 1B, Chapter 1, p. 1–9), the Agency defines PQLs as follows: "The practical quantitation limit (PQL) is the lowest level that can be reliably achieved within the specified limits of precision and accuracy during routine laboratory operating conditions." Further, in Method 8250 of SW–846 (the analytical method for determination of semivolatile organics in wastes by gas chromatography/mass spectrometry) the Agency states "Sample PQLs are highly matrix-dependent. The PQLs listed herein are provided for guidance and may not always be achievable" (*Ibid*, Table 2, p. 8250–5), and further defines PQLs as the method detection limit (from Table 1, p. 8250–2, 3, and 4) multiplied by a matrix dependent factor that was estimated for four matrices (Table 2, p. 8250–5).

As evident from the above citations, the Agency recognizes the importance of the dependency of the waste matrix to

the level of PQLs obtainable. The Agency also recognizes that PQLs listed in SW–846 are not always achievable for constituents as measured in untreated wastes. However, the Agency points out that the levels of PQLs are directly related to the amount of interferences that are present in the different waste matrices. Most treatment processes, particularly destructive technologies such as incineration, do not destroy only the hazardous constituents of the waste. They destroy other organics present that typically interfere with the analysis for constituents in untreated wastes. Thus, PQLs are typically significantly lower for treatment residuals such as incinerator ash than for untreated wastes. These differences in PQLs for untreated and treated wastes are demonstrated in almost every BDAT background document where incineration has been established as BDAT.

With respect to the use of PQLs, the Agency points out that PQLs were established as a means of guidance for analysis of waste samples and were intended to act as minimum performance criteria for analytical laboratories. They do not necessarily represent the lowest limits of achievable analytical performance for any given waste. They were also intended to be broadly applied to groups of wastes. The matrix dependent correction factors were not developed for any particular waste code, and as listed in Table 2 (cited above) do not specifically apply to any particular treatment residuals (i.e., Table 2 only lists correction factors for matrices identified as ground water, low-level soil, high-level soil, and non-water miscible waste). Further, the Agency is currently in the process of modifying and expanding these matrix correction factors, as well as modifying the detection limits from which the PQLs are derived.

The major point of confusion regarding PQLs is that the PQLs noted in SW–846 for some constituents are higher than some of the promulgated treatment standards. This apparent anomaly results primarily from the fact that the PQLs in SW–846 were not based on testing the matrices that were tested in developing the treatment standards. The treatment standards for a given waste code, in contrast, are based on analytical testing of the residuals from the treatment of that waste (or in some cases, a similar waste from which the treatment standards are transferred). Thus, the resulting treatment standards appropriately reflect the level of analytical performance achievable for that waste.

Other commenters questioned whether constraints posed by the limits of applicable analytic methods allow the treatment standards to be met on a reliable, routine basis. The Agency points out that the laboratories used in the development of the BDAT standards are themselves reliable and must maintain compliance with all QA/QC requirements on a routine basis. Further, the background documents for all wastes for which incineration has been established as BDAT, indicate a consistency of the laboratories in obtaining low detection limits for the regulated constituents in these wastes, thus providing additional support that these treatment standards are achievable on a routine and reliable basis.

In cases where a facility believes that particular, waste-specific treatment standards cannot be obtained due to the inability of their laboratory to achieve PQLs below the treatment standards on certain treatment residuals, the facility may submit a petition for a variance from those particular treatment standards for that particular waste or wastes. In such a case, the facility must demonstrate that the analyses are in compliance with all other BDAT QA/QC provisions and that the treatment process is a well-designed and well-operated BDAT process. (As outlined in the BDAT Generic Quality Assurance Project Plan (EPA/530–SW–87–011, March 1987), the Agency may also use analytical methods for setting treatment standards that are not specifically identified in SW–846, provided that the methods comply with all appropriate detection limits, spike/surrogate recoveries, and other quality assurance criteria.)

c. *Restrictions on the use of technologies identified as BDAT.* All of the treatment standards expressed as concentrations of specific constituents in the waste reflect performance achieved by the Best Demonstrated Available Technology (BDAT). As such, compliance with these standards only requires that these concentrations (treatment levels) be achieved prior to land disposal. The standard generally does not require or restrict the use of any particular treatment technology to achieve these levels. The Agency emphasizes that the technologies identified as BDAT (for those wastes with only concentration-based standards) are simply those technologies that EPA utilized to develop the waste specific concentration-based performance standards. The waste need not be treated by that specific technology. Any treatment, including recycling or any combination of treatment technologies, unless prohibited (such as impermissible dilution), can be used to achieve these concentration-based standards unless that technology is defined as land disposal (i.e., land treatment).

Treatment standards promulgated today are expressed as numerical concentration levels, with a few exceptions. Because of difficulties associated with analysis of specific constituents in wastes from the production of toluene diisocyanate (K027, K113, K114, K115, K116, U221 and U223) and certain organophosphorus pesticides (K039, P040, P041, P043, P044, P062, P085, P109, P111, U058 and U087), some treatment standards in today's rule are expressed as a technology rather than as a concentration-based standard (see sections III.A.3.(f.) and III.A.3.(h.)). In addition, treatment standards for K005 and K007 wastes that are generated from the process described in the listing for these waste codes (rather than derived from residuals from prior disposal of these wastes) are expressed as "No Land Disposal Based on No Generation" (see section III.A.3.(c.)).

In situations where wastes subject to concentration-based standards are mixed with wastes subject to treatment standards that are specified technologies, the mixture would have to be treated by the specified BDAT method, and would have to meet the concentration-based treatment standards for any other prohibited wastes that are contained in the matrix. See generally 53 FR 31146–147 (August 17, 1988).

It may not be appropriate to apply the specified technology to every mixture that contains the waste subject to that technology. However, EPA has structured the final rule in a way that the technology specified as BDAT is likely to be appropriate for the types of mixtures that are most likely to be encountered in the near term application of this rule.

For example, EPA has specified incineration or fuel substitution as the treatment technology for certain wastes prohibited by today's regulation. The most likely mixture for which these technologies might be inappropriate is contaminated soil and debris. In today's rule, however, EPA is granting a two-year national capacity variance for soil and debris for those wastes where BDAT has been specified as incineration. Multi-source leachate might also be contaminated with these wastes, but EPA has deferred standards for such leachates until the Third Third.

See 54 FR 8264 (February 27, 1989). EPA also notes that in other situations it may be inappropriate for multi-waste mixtures to be treated by the specified treatment methods which are demonstrated treated methods for most wastes that contain organic contaminants. Given the lack of immediate applicability to soil and debris and multi-source leachate, the Agency does not believe that there are may other situations where the promulgated treatment standards would prove inappropriate. However for those situations, the treatability variance in 40 CFR 268.44 is available.

d. *Applicability of treatment standards to treatment residues identified as "derived-from" wastes.* BDAT typically consists of a treatment operation, or series of operations, that generate additional waste residues. For example, the BDAT for K001 nonwastewaters is incineration followed by stabilization. (See 53 FR 31153 (August 17, 1988).) Incineration generates two residues that may require further treatment, namely ash and scrubber waters. Treatment of scrubber waters to remove metals may generate additional inorganic residues also requiring stabilization. Ultimately these additional wastes (i.e., treatment residues) may be land disposed, so they must meet the same standards as the stabilized ash. With respect to these additional wastes, the Agency emphasizes that all residues from treating the original listed waste are likewise considered to be the listed waste by virtue of the "derived-from" rule contained in 40 CFR 261.3(c)(2). Consequently, all wastes generated in the course of treatment are prohibited from land disposal unless they comply with the treatment standard or are otherwise exempted from the prohibition through a no-migration petition or by a capacity variance.

The Agency is, however, developing "de minimis" levels for certain hazardous constituents in listed wastes below which the waste will no longer be a hazardous waste for purposes of Subtitle C regulation. At this time, EPA has not proposed these "de minimis" levels. In addition, the Agency has not completed its evaluation of the regulations that would be impacted by these "de minimis" levels—in particular, their relationship to BDAT treatment standards.

e. *Transfer of treatment standards.* Some treatment standards are not based on testing the performance of BDAT on the specific waste subject to the treatment standard. Rather, in certain instances, the Agency examines similarities in waste characteristics and constitutents and determines whether the treatment standards can be transferred. EPA believes that transferring treatment performance data to establish standards for untested wastes or constitutents is technically valid when the untested wastes are generated from similar industries and/or similar processing steps or when the constituents have similar chemical and physical properties. Transfer of treatment standards to wastes from similar processing steps involves relatively minimal amount of analysis because of the likelihood that the production processes will produce a waste matrix with similar characteristics.

In cases where only the industry is similar, EPA closely examines the waste characteristics prior to concluding that the untested waste constitutents can be treated to levels associated with tested wastes. EPA reviews the available waste characteristic data to identify those parameters which are expected to affect treatment selection. Some of the most important constitutents, as well as other parameters, are identified to facilitate the selection of the appropriate treatment technology for a given waste. When the analysis suggests that the untested waste can be treated with the same technology as a waste for which treatment performance data are already available, a more detailed list of constituents is analyzed to identify the most important waste characteristics which the Agency believes will affect the performance of the technology. By examining and comparing these characteristics, the Agency determines whether the untested wastes will achieve the same level of treatment as the tested waste. Where the Agency determines that the untested waste can be treated to the same concentration-based levels as well as the tested waste, the treatment standards can be transferred. A detailed discussion of this transfer process can be found in the BDAT background documents for each waste or waste treatability group.

f. *Treatment standards based on single facility data and grab samples versus composite samples.* As discussed previously in the August 17, 1989 final rule for First Third wastes, the Agency believes that the use of a small number of data sets from a single treatment facility can be representative of the treatment achieved by the particular treatment system. This is particularly true when no other treatment data is available, or when data exist but there is no verification that the treatment process from which the data was obtained was well-designed or well-operated. It is not possible for the Agency to sample every facility generating the waste or every treatment system treating the waste. For the purposes of determining BDAT treatment standards, the Agency has established a procedure and methodology for selecting particular facilities and treatment systems that it considers to be well-designed and well-oeprated (53 FR 31138). The Agency also selects wastes that are representative of those most difficult to treat.

The Agency recognizes that there are certain variabilities inherent to every treatment system as well as a certain amount of variability in the characteristics of the wastes. In the calculation of the treatment standards, the Agency accounts for these by multiplying the mean of the concentration of the constituents to be regulated by a correction factor known as the variability factor. This factor is derived utilizing a quantitative procedure that determines the statistical 99th percentile for the treatment standard. This results in the establishment of a treatment standard that is believed to be achievable 99 percent of the time by a well-designed, well-operated system.

The Agency further accounts for variability due to analytical reproducibility by adjusting the treatment standard for the analytical recovery data for constituents. In addition, the Agency performs all analyses of hazardous constituents used in the development of the treatment performance data, in accordance with an established quality assurance/quality control plan (as outlined in the BDAT Generic Quality Assurance Project Plan).

Where performance data exist based on both the analysis of composite samples and on the analysis of grab samples, the Agency establishes the treatment standards based on the analysis of grab samples. There are two principal reasons for this. It is normally easier and more expeditious for EPA to enforce on the basis of grab samples. In addition, grab samples normally reflect maximum process variability, and thus would reasonably characterize the ranges of treatment system performance.

In cases where only composite data exist, the Agency considers the QA/QC of the data, the inherent efficiency of the process design, and the level of performance achieved. The Agency may then choose to use this composite data to develop the treatment standard. Where this data is used to establish the treatment standard, the treatment

standard is identified as based on analysis of a composite sample. Enforcement of that standard thus would also be based on composite samples.

An individual facility's waste analysis plan will provide the basis for that facility's compliance monitoring. This plan must be adequate to assure compliance with Part 268. However, a facility remains strictly liable for meeting the treatment standards, so that if it disposes of a waste that does not meet a treatment standard, it is in violation of the land disposal restrictions regulations. If the facility complied with its waste analysis plan, it would not be in violation of the waste analysis plan provisions. Put another way, a waste analysis plan cannot immunize land disposal of prohibited wastes, although such plans may be written to authorize types of sampling and monitoring different from those used to develop the treatment standard(s).

If a waste analysis plan were to authorize a different mode of sampling or monitoring, there would need to be a demonstration that the plan (and the specific deviating feature) is adequate to assure compliance with Part 268 (see 40 CFR 264.13(a)). This might require, for example, a demonstration of statistical equivalence between a composite sampling protocol and one based on grab sampling, or a demonstration of why monitoring for a subset of pollutants would assure compliance of those not monitored. (EPA repeats that enforcement of the rule is based on the treatment standard, not the facility's waste analysis plan, so that enforcement officials would normally take grab samples and analyze for all constituents regulated by the applicable treatment standards.)

2. Second Third Wastes From Specific Sources for Which BDAT Standards are not Promulgated in Today's Rule

K019 and K025 wastes were originally scheduled to be examined as part of the Second Third rulemaking. However, EPA promulgated treatment standards for these wastes in the First Third final rule on August 8, 1988 (53 FR 31155, 31156 and 31174 (August 17, 1988)). Concentration-based treatment standards, based on the performance of rotary kiln incineration, were promulgated for the wastewater and nonwastewater forms of K019 and a treatment standard of "No Land Disposal Based on No Generation" was promulgated for nonwastewater forms of K025. EPA recently amended the standard for K025 nonwastewaters so that it applies only to wastes generated from the process description in the listing of K025 wastes and that are disposed after August 17, 1988. See 54 FR 18836 (May 2, 1989).

EPA did not promulgate treatment standards for the K025 wastewaters on August 8, 1988. The "soft hammer" provisions, however, did not apply because K025 wastes were originally scheduled in the Second Third. The Agency is not promulgating treatment standards for these wastewaters in today's rule (i.e., prior to their statutory deadline); therefore, land disposal of K025 wastewaters is now restricted according to the "soft hammer" provisions in 40 CFR 268.8. EPA is presenting this information in today's preamble as a matter of convenience, in order to show treatment standards for all of the Second Third wastes. EPA did not reopen the comment period on the promulgated concentration-based treatment standards for K019 wastes or on the promulgated "No Land Disposal Based on No Generation" standards for K025 nonwastewaters.

The Agency has not completed its evaluation of BDAT for Second Third wastes identified as K029 wastewaters, K095 wastewaters, K096 wastewaters, nonwastewater and wastewater forms of K041, K042, K097, K098, K105 as well as certain other Second Third wastes identified with a "U" or "P" waste code. Therefore, the Agency is not promulgating treatment standards for these wastes in today's rule. Since the Agency is not promulgating standards for these Second Third wastes by their statutory deadline, land disposal of these wastes is regulated by the "soft hammer" provisions of 40 CFR 268.8. The Agency believes that the majority of these "soft hammer" wastes, as generated, are nonwastewaters containing relatively high concentrations of chlorinated organics. In addition, EPA believes that the majority of these wastes contain high enough concentrations of halogenated organics (greater than 0.1%), that they are already restricted from land disposal as Halogenated Organic Compounds (HOCs) under the California List Rule.

Treatment standards for some wastewater or nonwastewater forms of other Second Third wastes have not been promulgated in today's rule. An explanation of each can be found in the discussion of treatment standards for the appropriate treatability group in the ensuing section (III.A.3.) of today's preamble.

3. Treatment Standards and Responses to Major Comments for All Wastes Proposed With the Second Third Wastes

This section of today's rule discusses treatment standards for all wastes and waste treatability groups proposed in the Second Third proposal. This includes many of the Second Third wastes, some of the First Third wastes that were, until today, regulated under the "soft hammer" provisions, and some Third Third wastes for which the Agency decided to promulgate restrictions ahead of schedule. A more detailed explanation of the Agency's action is found in relevant background documents and response to comment documents which are part of the administrative record to this rule.

a. *Cyanide wastes.* Today's rule promulgates treatment standards for many wastewater and nonwastewater forms of RCRA hazardous wastes that contain cyanides. Wastes containing cyanides are generated primarily by facilities performing operations such as electroplating (generating F006, F007, F008 and F009 wastes), heat treating (F010, F011 and F012), chemical conversion coating of aluminum (F019), other metal finishing, and acrylonitrile production (K011, K013 and K014). Facilities in these industries as well as others can also generate cyanide wastes listed as P013, P021, P029, P030, P063, P074, P098, P099, P104, P106 and/or P121. Wastes designated with these "P" codes are typically discarded, out-of-date, or off-specification chemicals used by these industries. Detailed technical descriptions of the specific production processes generating these "F" and "K" wastes and background on the specific chemical represented by the "P" waste codes can be found in the background documents for the listing of these wastes.

The same industries often generate other reactive cyanide wastes identified simply as D003 wastes (as defined in 40 CFR 261.23(a)(5)). Today's rule, however, does not promulgate treatment standards for these D003 wastes.

In the January 11, 1989 proposed rule, the Agency defined three subcategories of cyanide wastes from the metal finishing industry: Metal Finishing Aqueous Liquids, Metal Finishing Organic Liquids, and Metal Finishing Sludges. The Agency has re-examined the need for these subcategories and believes they are unnecessary for the establishment of separate treatment standards. Rather, the Agency has decided that presentation of the treatment standards on a waste code basis (according to the wastewater and nonwastewater forms of the waste) provides a significant distinction of the treatability groups.

The treatment standards for all of these cyanide wastes are based on testing performed by the Agency or on testing performed by the commercial hazardous waste treatment industry. Additional performance data were submitted during the comment period. Analysis of these dates support the positions of many of the commenters (as well as the Agency). EPA has determined that the use of these data to promulgate revised treatment standards for many of the cyanide wastes is technically justified. The Agency provided notice of these additional data (that provide the basis for many of the final treatment standards for cyanides) by sending a letter to all persons submitting initial comments on the issue of cyanide treatability. This letter included: (1) A copy of the additional data on the treatment of cyanide that was received by the Agency; (2) a notice of the anticipated changes in the appropriate treatment standards; and (3) a request for additional comments. All of this information, including the Agency's response to the additional comments, have been placed in the administrative record for today's rule.

The treatment standards for total cyanides, amenable cyanides, and organics (i.e., those in K011, K013, and K014) were developed based on the performance of destructive technologies such as alkaline chlorination, electrolytic oxidation, wet air oxidation and/or incineration. The treatment standards for metals are based on the performance of technologies such as hexavalent chromium reduction, lime or sulfide precipitation, filtration, and stabilization. Other treatment technologies that can achieve these concentration-based treatment standards are not precluded from use by this rule (see the detailed discussion on the use of alternative technologies in section III.A.1.(c) of today's rule). The specific regulated constituents and treatment standards for each waste code are listed in the tables at the end of such section according to the wastewater and nonwastewater forms of the waste.

1. Comments with general applicability to cyanide wastes. This section discusses the Agency's response to those comments that pertain to all or many of the cyanide wastes. This includes comments on the following: precision of the analytical methods for amenable and total cyanides; establishment of alkaline chlorination versus electrolytic oxidation as BDAT; the forcing of pretreatment by BDAT; effects of iron-cyanide complexes on cyanide treatability; potential stabilization of cyanides; and use of the TCLP for development of alternative leachable cyanide standards.

i. Precision of analytical methods. Several commenters had serious reservations regarding the precision and accuracy of the analysis for total and amenable cyanides in nonwastewaters. They pointed out that the reproducibility (i.e., precision) of the analytical method for analyzing total cyanide in nonwastewaters (using the official test methods of the Office of Solid Waste i.e., EPA Publication SW-846) exceeded the proposed standard for amenable cyanides in nonwastewaters. Analysis of amenable cyanide involves two measurements of total cyanides, i.e., one analysis of total cyanide before and one after a laboratory alkaline chlorination step. The Agency has re-examined the data used to develop the treatment standards for amenable cyanides. Although the Agency maintains the overall validity of these analytical methods, it agrees, in part, with the commenters that at certain levels of total cyanides the reproducibility of the analytical method may indeed exceed the standards for amenable cyanide as originally proposed. Thus, the Agency has recalculated the standards for amenable cyanides, and in doing so has taken into account the reproducibility of the analytical method for total cyanides. The standards presented in today's rule have been developed based on these calculations. Details on the recalculation of the amenable cyanide standards for each waste treatability group are provided in the background document for cyanide wastes.

ii. Alkaline chlorination versus electrolytic oxidation. Several commenters questioned whether an electrolytic oxidation treatment system, typically a batch process, could be implemented in a continuous wastewater treatment process The commenters explained that most electroplating job shops that generate F006, F007, F008, and F009 wastes employ a continuous alkaline chlorination process as part of their wastewater treatment process. The commenters further stated that they could not possibly retrofit existing facilities by June 8, 1989, the promulgation date of this rule.

The commenters' point was addressed chiefly to F006 wastes. However, the comment no longer has applicability for F006 wastes (nor for F007, F008 or F009) because electrolytic oxidation is no longer the technology basis for the final cyanide standards for these waste codes. Rather, for these wastes, the promulgated BDAT treatment standards are based on the performance of alkaline chlorination, without electrolytic oxidation.

The Agency has determined that electrolytic oxidation is applicable primarily as a pretreatment step, particularly when cyanide concentrations in the raw waste are quite high (several percent, at least). It is part of the basis for final treatment standards only for waste codes F011 and F012 nonwastewaters and certain discarded commercial chemical products (i.e., those cyanide wastes identified with a "P").

In addition, the Agency reemphasizes that where BDAT treatment standards are expressed as concentration limits, it is not required to use technologies identified as BDAT. Other treatment technologies that can achieve these concentration-based standards are not precluded from use by this rule. Further discussion on the restrictions on the use of technologies identified as BDAT can be found in section III.A.1.(c.) of this rule.

iii. Pretreatment standards. According to 40 CFR 261.31, F006, F012 and F019, wastes are specifically listed as wastewater treatment sludges (Note: at this time the Agency is not promulgating treatment standards for F019 wastes as discussed in section III.A.1.(c.)(4.)). Many commenters stated that by establishing treatment standards for cyanides in these wastes, the Agency is requiring pretreatment (of the cyanides) before the listed waste is generated. They assert that the Agency lacks the authority to take such action under RCRA.

EPA rejects the view that the statutory language of HSWA precludes the approach adopted today. The statute requires EPA to establish treatment standards "which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste * * *" (section 3004(m)(1)). Alkaline chlorination of aqueous cyanide streams is a standard method of treatment that destroys cyanides, and thus substantially diminishes the toxicity of the wastewater treatment sludge, thereby satisfying this statutory requirement. In addition, Congress focused specifically on the treatment of cyanides in promulgating the 1984 amendments and indicated that "[d]estruction of total cyanides should be required as a precondition to land disposal." 130 Cong. Rec. S 9179 (daily ed. July 25, 1984) (Statement of Senator

Chaffee explaining the amendment which became section 3004(m)). Cyanides in these wastes are customarily destroyed by treating aqueous wastestreams. Given the evident Congressional purpose of the land disposal restriction provisions, and the specific Congressional intention (quoted above) that cyanides be destroyed, EPA believes that Congress was not concerned whether cyanides were destroyed before or after the listed waste technically is generated, but rather was concerned with the cyanide content in the waste when disposed. Consequently, it is reasonable for the Agency to develop a standard which is achievable by treating cyanides before the listed waste is generated. (EPA emphasizes, however, that cyanide treatment does not require any change to the manufacturing process. It may in certain cases involve changes in treatment of wastewaters from the manufacturing processes.)

Commenters also stated that the BDAT technology studied by the Agency was not based on the treatment of wastewater treatment sludges and that the technology could not be applied to F006, F012 or F019 after generation particularly when the wastewater treatment processes included a dewatering step. They asserted that after dewatering, the wastewater treatment sludges have high solid content (approximately 40–60%) and as a result, could not be processed through the systems EPA determined to be BDAT. The Agency maintains that the BDAT technologies can be applied prior to the dewatering step or can be applied after dewatering by slurrying the waste with water. In this case, the dewatering step would probably only be performed in order to reduce the volume of these wastes prior to transportation to a treatment and disposal facility. Indeed, one of the commercial facilities that treat cyanide wastes informed EPA that some solid cyanide wastes were being dissolved and slurried prior to treatment through the BDAT process (after which treatment they are able to meet the cyanide treatment standards). While the Agency does not believe that slurrying these wastes is necessarily the most cost-effective way to perform alkaline chlorination (or other cyanide treatment), this treatment option remains available. In addition, generators of these sludges need not dewater them but rather may send the high water content sludges to alkaline chlorination. In either of these situations, cyanide treatment would be performed on the listed waste itself.

The Agency also points out that this "pretreatment" argument appears academic, in that many of the wastes and wastewaters entering the wastewater treatment process that generate F006, F012 and F019 are already RCRA hazardous wastes or are mixed with hazardous wastes (such as F007, F008, F009, F010, and/or F011). In these situations, EPA would be applying treatment standards to a cyanide-containing hazardous waste already generated, and in most cases, the cyanide standard would be the same as for F006.

In conclusion, the commenter's arguments regarding "pretreatment" appear artificial, and may have no practical consequences. The Agency maintains that these BDAT technologies are applicable to these wastes and thus is promulgating the appropriate treatment standards for cyanides.

iv. Treatment of iron-cyanide complexes. As stated in the proposed rule and the proposed cyanide background document, the Agency believed that the F011 and F012 wastes that were treated by the Agency had similar chemical characteristics as F006, F007, F008, F009, and F019 wastes, and therefore believed that the performance of the treatment system of electrolytic oxidation followed by alkaline chlorination could be transferred to these wastes. Many commenters stated that EPA's performance data for electrolytic oxidation followed by alkaline chlorination for total and amenable cyanide constituents in F011 and F012 nonwastewaters could not be transferred to F006, F007, F008, F009 and F019 nonwastewaters because of the differences in the concentration of iron-cyanide complexes. They stated that these complexes are more difficult to treat by conventional cyanide oxidation processes.

Based on a re-examination of the chemical composition and waste characteristics of these wastes, the Agency agrees with the commenters that the F006, F007, F008, F009 and F019 wastes have different waste treatability characteristics than the F011 and F012 wastes because of the iron-cyanide complexes. The Agency believes that the source of the high iron concentration in these wastes may be due to the fact that these wastes are generated from the electroplating industry and that the material being plated is steel. The iron contained in steel is replaced with the metal contained within the electroplating baths (for example zinc in zinc cyanide plating baths). The iron that is thus released is believed to then react with the cyanide to form compounds that are referred to as iron-complex cyanides.

Some iron in these wastes results, not from the plating process itself, but rather from other sources that are generated sporadically. These sources include: other metal finishing operations such as acid cleaning, descaling and pickling; the degradation of process tank linings or racks; or the intermingling of electroplating rinse water streams with other wastes with high iron content.) It is possible that these sources of iron can be avoided by implementing waste audits and by application of simple source reduction techniques such as proper equipment maintenance, segregation of high iron waste streams, and substitution of pickling/descaling acids. Because the principal source of iron appears to be the steel plating process itself, however, EPA views this as an intrinsic characteristic of the electroplating wastewaters that needs to be taken into account in assessing the treatability of F006, F007, F008 and F009 wastes.

The Agency agrees that the high concentrations of iron in the cyanide wastes (when present as iron-cyanide complexes) appear to effect the level of cyanide destruction that is achievable (i.e., they appear to be more difficult to treat). Data also indicate that some F006, F007, F008 and F009 wastes containing low concentrations of iron (or no iron) appear to be treatable to lower cyanide concentrations than those with high iron. At this time, however, the Agency has not determined a specific concentration of iron in these wastes that would indicate a difference in treatability for the cyanides (i.e., a separate treatability group for F006, F007, F008 and F009 wastes containing low iron), and thus promulgated a higher total cyanide treatment standard of 590 mg/kg for all F006, F007, F008 and F009 wastes based on the new data provided by industry (that included wastes treatment performance data on wastes with high iron content).

Where the Agency could determine that specific cyanide waste codes (i.e., F011, F012, P013, P021, P029, P030, P063, P074, P098, P099, P104, P106, and P121) normally contain relatively low concentrations of iron, the Agency promulgated the proposed total cyanide treatment standard of 110 mg/kg.

Other commenters further stated that not only are the F006, F007, F008, and F009 wastes and F011 and F012 wastes different in waste characteristics (such as iron content) but also in the type of metal finishing processes that generate these wastes. The F006, F007, F008, and F009 wastes are generated from the electroplating process and the F011 and F012 wastes are generated from a heat treating process. The commenters stated that electroplaters have pretreatment requirements for NPDES permits for total and amenable cyanides and that heat treaters are not subject to the same requirements. Since alkaline chlorination is also the technology basis for most of the cyanide treatment standards in today's rule, there is no inconsistency in the approach between the Clean Water Act limitations and standards and the treatment standards adopted in today's rule. (As noted elsewhere, existing data show that the great majority of generators are meeting the F006 treatment standards for cyanides with their existing wastewater treatment technology.)

Clean Water Act effluent limitations and standards could technically be achieved by adding reagents such as ferrous sulfate to the wastewaters. EPA, however, did not base the NPDES and pretreatment standards on precipitation with ferrous sulfate but rather on alkaline chlorination to destroy cyanides and hydroxide precipitation to remove metals. If a company chooses to precipitate with ferrous sulfate, there is an increase in concentration of the iron-cyanide complexes that results in an increase of the measured total cyanide concentration in the sludge (i.e., nonwastewaters) generated from the wastewater treatment. The Agency maintains that, in most cases, this type of addition of ferrous ions can be eliminated through proper design and operation of the existing onsite cyanide destruction technologies without significantly impacting the achievement of the NPDES effluent limitations on cyanides.

By reducing the concentration of iron-cyanide complexes that end up in the wastewater treatment sludges, the potential for release of toxic cyanides from land disposal units is reduced. This is entirely consistent with the Congressional intent with respect to the destruction of cyanide. (See further discussion in section III.A.3.(a.)(1.)(vi.) of today's rule.)

v. *Stabilization of cyanides.* Several commenters stated that the Agency should consider stabilization as an effective technology for the treatment of cyanides. Commenters also stated that the Agency did not provide any stabilization data in the background document or the administrative record. At the time of proposal, the Agency had not reviewed any performance data for stabilization that meet the QA/QC requirements for determining BDAT. During the comment period, the Agency had an opportunity to review some stabilization data that was generated by both the Agency and industry. (This data appears in the final background document for cyanide wastes and has been placed in the administrative record.)

The Agency does not agree with commenters that stabilization is an applicable technology for the treatment of the majority of cyanide wastes. While some data may indicate that stabilization processes appear to reduce the leachability of some forms of cyanide, the Agency contends that destruction of cyanide is clearly a preferred treatment method (as further discussed in section III.A.3.a.1.vi. of today's rule). The Agency believes that the majority of commercially available conventional stabilization technologies are primarily designed to stabilize cationic species (such as many of the BDAT list metals) and are not specifically designed for anionic species (such as cyanide). The Agency believes that the presence of certain metal complex cyanides may appear to give the effect of "stabilization" due to the low solubility of these cyanide complexes. The Agency believes that the extrapolation of stabilization data on wastes containing complexed cyanides could lead to erroneous assumptions on the ability of cyanides that are somewhat more soluble to be "stabilized". In addition, solitary use of treatment processes that convert the soluble cyanides present in the wastes to a less soluble state (i.e., complexed cyanides) for purposes of stabilization does not provide an overall reduction in toxicity. (See following discussion of leachable cyanides.)

vi. Use of the TCLP for leachable cyanide. Many commenters stated that the Agency should develop treatment standards for cyanides based on a leachable level of cyanide as opposed to a total cyanide level. The Agency has reviewed the data submitted by commenters on the level of leachable cyanides and the analysis of the data appears in the background document for cyanide wastes and in the administrative record for today's rule. The Agency strongly disagrees with the commenters that the cyanide treatment standards should be based on leachable levels. The Agency believes that the legislative history to RCRA section 3004(m) indicates that Congress intended that the "destruction of total cyanides would be required as a precondition to land disposal" (130 Congressional Record S9179, July 25, 1984, statement of Senator Chafee).

The treatment standards for cyanides are based on a total waste analysis for two reasons. First, the Agency believes that by only regulating the leachable cyanide concentration, the complex-metal cyanides that are present in the wastes would not be regulated. Second, based on the review of the available treatment data, the Agency believes that the conventional cyanide treatment technologies provide substantial treatment of both the amenable and total cyanide concentration as measured by the Cyanide Amenable to Chlorination test in Method 9010 (EPA Publication SW–846).

Finally, the Agency believes that there is a real potential for the complexed cyanides that are present in these wastes to at least partially degrade into the more toxic form of cyanides known as "free" cyanides. This process is anticipated to result from exposure to ultraviolet light (from sunlight) when the wastes are placed into certain land disposal units such as a surface impoundment. This is consistent with the Agency's approach to establishing effluent guideline limitations for total cyanides in wastewater discharges from these same metal finishing industries.

In today's rule, the Agency is promulgating a total cyanide standard for F006, F007, F008, and F009 nonwastewaters as 590 mg/kg. This standard is higher than the proposed standard of 110 mg/kg and thereby allows for an overall higher concentration of iron cyanide complexes to be present in the nonwastewaters. At the same time, based on the same performance data, the total cyanide standard for wastewaters has been reduced from 12 mg/l to 1.9 mg/l and the amenable cyanide standard for wastewaters has been reduced from 1.3 mg/l to 0.10 mg/l. Since the complexed cyanides present in wastewaters are more likely to be subject to photodegradation to "free" cyanide than those in the nonwastewaters, the Agency believes that these revised total and amenable cyanide standards promulgated in today's rule provide a significant overall reduction in potential toxicity from the photodegradation of iron-cyanide complexes.

2. Wastes from electroplating operations

F006—Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and

aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.

F007—Spent cyanide plating bath solutions from electroplating operations.

F008—Plating bath sludges from the bottom of plating baths from the electroplating operations where cyanides are used in the process.

F009—Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process.

Today's rule promulgates treatment standards for amenable and total cyanides in F006 nonwastewaters, and for amenable cyanides, total cyanides, and metal constituents in F007, F008, and F009 nonwastewaters and wastewaters. BDAT treatment standards for the nonwastewaters are based on the performance of alkaline chlorination for the amenable and total cyanides and stabilization for the metal constituents. BDAT treatment standards for the wastewaters are based on the performance of alkaline chlorination for the amenable and total cyanides and chemical precipitation followed by settling and filtration for the metals.

i. Nonwastewaters. In the January 11, 1989 proposed rule (54 FR 1066–1071), the Agency proposed nonwastewater treatment standards based on the performance of electrolytic oxidation followed by alkaline chlorination for amenable and total cyanides. The Agency received comments that questioned whether the performance of electrolytic oxidation is considered demonstrated because of the limited number of data points. The Agency maintains that the use of a small number of data points from a single facility can be representative of the treatment achieved by any particular treatment system (such as those data from electrolytic oxidation). However, the Agency has received a significant amount of new data on alkaline chlorination that form the basis for the cyanide treatment standards for F006, F007, F008 and F009 wastes promulgated in today's rule.

The Agency also received extensive comments that questioned the devisability of the proposed standards. In particular, many commenters stated that performance data for F011 and F012 wastes (based on electrolytic oxidation followed by alkaline chlorination) should not be transferred to F006, F007, F008, F009 wastes because of the differences in concentration of iron-cyanide complexes in these wastes. (See section III.A.3.(a.)(1.)(iv.) for a more complete discussion of the Agency's position on the treatment of iron-cyanide complexes). The Agency agrees with the commenters that a sufficient number of F006, F007, F008 and F009 electroplating wastes have different treatablity characteristics (i.e., high iron concentration) than F011 and F012 wastes, and that the proposed transfer of the treatment standards is no longer warranted. Therefore, the Agency is promulgating revised cyanide treatment standards based on the new alkaline chlorination performance data received by the Agency during the comment period. (This data appeared as part of the record for the proposed rule and is also part of the administrative record for this final rule. See further discussion of how the Agency noticed this data and solicited additional comment in the introduction to section III.A.3.(a.) of today's preamble.)

In supplemental comments on this new data, certain commenters questioned the devisability of the revised treatment standard of 590 mg/kg for total cyanide in nonwastewaters. (The proposed standard was 110 mg/kg.) They reiterated their previous argument that this standard was only representative of the treatment of wastewaters and not representative of the treatment of F006 as generated. In addition, they stated that the revised standard was based on insufficient operating data. Some commenters also indicated that some of their F006 wastes (as generated) would not be able to meet even the revised standard for total cyanides.

EPA is responding in detail to both the initial comments to the proposed rule and these additional comments in the background document for cyanide wastes and in the response to comments background document, and will address a few of the major points in today's preamble. First, the treatment standard is based on one month of operating data (14 data points) which the Agency has examined carefully and believes (based on detailed descriptions of the treatment process plus descriptions of sampling and analysis data) represent a well-designed and well-operated treatment process and that represent BDAT treatment for F006, F007, F008 and F009 wastes.

Second, although not all of the data came from treating F006 wastes (in fact, treatment was performed during a one month period on RCRA wastes identified as F006, F007, F008, F009, F011, F012, D002, D003, P029, P030 and P106), the waste mixtures that were treated should be more difficult to treat than segregated F006 wastes. This is because the mixtures of these RCRA wastes contained roughly an order of magnitude more iron and cyanide and greater concentrations of the minor complexing metals, nickel, zinc, and copper than typical F006 precursor wastewaters from electroplating (based on a review of the data used to develop the effluent guidelines limitations for cyanides from the metal finishing industries).

Third, with respect to the devisability of the revised standards, the Agency points out that most of the treatment and waste characterization data submitted to the Agency corroborates that the 590 mg/kg standard for total cyanide is achievable. Over 90 percent of the waste characterization data for F006 sludges reported to the Agency in comments to the proposed rule (submitted by both the affected industry and treatment facilities alike) meet the promulgated standard for total cyanides in F006 nonwastewaters. Not only do these comments confirm the ultimate standard's devisability, but also imply generators do not need to make significant modifications in their current treatment processes in order to meet the standard.

In addition, EPA reviewed treatment and waste characterization data contained in over 1500 individual facility's responses submitted to the Agency as part of the 1986 Treatment Storage, Disposal and Recycling Survey and the 1986 Generator Survey (which responses were selected by EPA from generators generating the largest volumes of F006 wastes). Again, these responses corroborated the standard's devisability (plus the lack of need to modify existing treatment processes). The responses EPA reviewed showed that over 90 percent of the F006 wastewater treatment sludges generated contained less than the 590 mg/kg total cyanide treatment standard required as a result of today's rule. That is, treatment performed with existing treatment technology before imposition of treatment standards for cyanides in wastewater treatment sludge indicate that over 90 percent of facilities are already achieving the standard. The Agency believes that these data show that most of the industry is capable of meeting the total cyanide standard through proper operation of the treatment technology that is already in place at the generators' facilities.

Further, for those few instances where commenters claimed to be unable to meet the 590 mg/kg standard, they provided no information on the circumstances of treatment or generation, leaving the Agency no means of ascertaining why the cyanide standards promulgated in today's rule were not achievable. In short, EPA believes there is ample support for stating that the total cyanide standard for F006, F007, F008 and F009 nonwastewaters promulgated in today's rule is achievable.

The standards for amenable cyanides in the nonwastewater forms of F006, F007, F008 and F009 reflect the limits of precision of the analytical method for cyanides amenable to chlorination (so that the amenable cyanide is approximately 5 percent of the standard for total cyanides). EPA believes that properly conducted alkaline chlorination actually destroys free cyanides to a greater extent, but that it is difficult to measure amenable cyanides in nonwastewaters. No commenter suggested that a free cyanide standard of 30 mg/kg was not achievable for these nonwastewaters.

The Agency is promulgating treatment standards for the metal constituents in F007, F008, and F009 nonwastewaters, based on the transfer of performance data from the stabilization of F006 wastes. (The metal standards for F006 nonwastewaters were promulgated in the First Third final rule (see 53 FR 31152–31153) and are not being revised in today's rule.) The Agency received no comments or data refuting this transfer.

ii. Wastewaters. Today's rule promulgates revised treatment standards for amenable and total cyanides and metal constituents in F007, F008, and F009 wastewaters. In the January 11, 1989 proposed rule (54 FR 1066–1071), EPA proposed treatment standards based on performance of wet air oxidation for cyanides, and chemical precipitation followed by settling and filtration for metals.

Many commenters expressed concerns that the data base used by the Agency to establish treatment standards for cyanide were limited. They therefore questioned whether wet air oxidation is a demonstrated technology. However, the issue is essentially moot for these waste codes because during the comment period the Agency received cyanide treatment data for F007, F008, and F009 wastewaters based on the performance of alkaline chlorination. EPA performed a statistical comparison of wet air oxidation and alkaline chlorination and found that there is a statistical difference between the two technologies for cyanides. The Agency determined that alkaline chlorination technology performs better than wet air oxidation for these particular wastes based on a comparison of the available data. Therefore, the Agency is promulgating revised wastewater treatment standards for cyanides to reflect BDAT as alkaline chlorination.

These data (which substantially expand the treatment data base for these wastewaters) also indicate that the standard for these wastewaters should be decreased from the proposed level to 1.9 mg/l total cyanide and 0.10 mg/l amenable cyanide (from 12 mg/l and 1.3 mg/l respectively). These standards are more similar to the promulgated effluent guidelines limitations and standards for the metal finishing industries. Commenters, in fact, raised no significant challenges to EPA's solicitation to lower the wastewater standard for these wastes.

The Agency is promulgating the wastewater treatment standards for metals in F007, F008, and F009 based on the transfer of the treatment performance data for chemical precipitation, settling, filtration and sludge dewatering for K062 wastes. The Agency believes that the K062 wastewaters are more difficult to treat than F007, F008, and F009 wastewaters based on the higher concentrations of dissolved metals in K062 (up to 100,000 mg/l).

The Agency is not promulgating the treatment standards for total and amenable cyanide in F006 wastewaters at this time. Concentration-based treatment standards for cyanides and metal constituents in the F006 wastewaters will be promulgated by May 8, 1990. It is likely that the total and amenable cyanide treatment standard for the F006 wastewaters will be based on a data transfer from the performance of alkaline chlorination for the F007, F008, and F009 wastewaters. It is likely that the metal treatment standards will be based upon information available from EPA's effluent limitations guidelines and standards program. Since no treatment standards are promulgated in today's rule for F006 wastewaters, these wastes continue to be subject to the "soft hammer" provisions of 40 CFR 268.8.

BDAT TREATMENT STANDARDS FOR F006

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Cyanides (total)	590	(1)
Cyanides (amenable)	30	(1)

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR F007, F008 AND F009

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Cyanides (total)	590	(1)
Cyanides (amenable)	30	(1)
Cadmium	(1)	0.066
Chromium	(1)	5.2
Lead	(1)	0.51
Nickel	(1)	0.32
Silver	(1)	0.072

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR F007, F008 AND F009

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Cyanides (total)	1.9	(1)
Cyanides (amenable)	0.10	(1)
Chromium	0.32	(1)
Lead	0.04	(1)
Nickel	0.44	(1)

[1] Not applicable.

3. Wastes from Metal Heat Treating Operations.

F010—Quenching bath sludge from oil baths from metal heat treating operations where cyanides are used in the process.

F011—Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations.

F012—Quenching wastewater treatment sludges from metal heat treating operations where cyanides are used in the process.

Today's rule promulgates treatment standards for F010, F011, and F012 wastewaters and nonwastewaters. Treatment standards for total cyanide in F010 nonwastewaters are based on the performance of incineration. Treatment standards for F011 and F012 nonwastewaters are based on the performance of electrolytic oxidation followed by alkaline chlorination for amenable and total cyanides, and based on the performance of stabilization for the metal constituents. Treatment standards for amenable and total cyanide in F010, F011 and F012 wastewaters are based on the performance of alkaline chlorination. Treatment standards for metals in F011 and F012 wastewaters are based on the performance of chemical precipitation.

settling, and filtration. Other technologies that can achieve these concentration-based treatment standards are not precluded from use by this rule.

EPA notes that the technology basis for treating cyanides in the wastewaters from F010, F011 and F012 differ from the technology basis for treatment of the corresponding nonwastewaters. EPA, however, expects that the technology used to treat the cyanides in the nonwastewaters will achieve the standards promulgated for the wastewaters.

Thus, EPA expects that if an F010 waste is incinerated, then the F010 scrubber water that may be generated as a residue from incineration will not need further treatment for cyanides because they will already meet the promulgated treatment standards. If any F010 wastewaters are generated by a process other than incineration and they do not meet the treatment standards, then it would be reasonable to treat these wastewaters with alkaline chlorination rather than incineration.

In a similar manner, wastewaters generated from the treatment of F011 or F012 nonwastewaters using electrolytic oxidation followed by alkaline chlorination are not expected to need further treatment for cyanides because the Agency believes that these wastewaters will also already meet the promulgated standards. However, if any F011 or F012 wastewaters are generated by another treatment technology and do not meet the treatment standards as generated, it would also be reasonable to treat these wastewaters with alkaline chlorination alone rather than electrolytic oxidation followed by alkaline chlorination. (Electrolytic oxidation is applicable primarily as a pretreatment step, particularly when cyanide concentrations in the raw waste are quite high.)

i. Standards for F010 wastes. In the January 11, 1989 proposed rule, the Agency proposed a treatment standard for total cyanide in F010 nonwastewaters based on BDAT as incineration. Also, EPA indicated that these wastes could contain up to 5 percent oil and grease content and can exist as a bi-layered waste, i.e. organic and aqueous layer. Based on conversations with the treaters of this waste, the Agency believes that the F010 wastes can be separated into an organic layer and an aqueous layer. This F010 organic layer is what is typically incinerated, while the F010 aqueous layer can be treated by conventional cyanide treatment rather than incineration. At the time of the proposal, the Agency had not examined the efficiency of this separation process, and so proposed standards for all F010 nonwastewaters based on the incineration of the wastes.

Also, in the proposal, the Agency did not clarify what the treatment standards would be for F010 nonwastewaters that could be generated from the alkaline chlorination treatment of the separated aqueous layer (an F010 wastewater). During the comment period, the Agency received no comments (or data) indicating the efficiency of the separation of the layers or whether the proposed treatment standard (based on incineration) could be met.

In this rule, the Agency is clarifying its position on the treatment standards for the F010 nonwastewaters that might be generated from treating a separated F010 aqueous layer or other F010 wastewaters. As a point of clarification, the Agency first notes that treatment residues from treating F010 wastewaters are listed under the F012 waste code (wastewater treatment sludge from metal heat treating operation) and would therefore be subject to the cyanide standards for F012 nonwastewaters. Such sludges would therefore not be subject to the standards based on performance of incineration. With respect to F010 wastewaters, the Agency believes that aqueous F010 wastewaters have similar waste characteristics to F011 and F012 wastewaters. The Agency is therefore transferring the performance of the treatment system of alkaline chlorination for the cyanide constituents (based on the new data obtained on alkaline chlorination during the comment period). See the following discussion of treatment standards for F011 and F012 wastewaters. Therefore, the treatment standards for amenable cyanides and total cyanides in F010 wastewaters are 0.10 mg/l and 1.9 mg/l respectively. The promulgated treatment standard for residues from the incineration of the F010 organic layer (i.e., F010 nonwastewaters high in organics) is 1.5 mg/kg, the same standard that EPA proposed. The Agency notes that if a generator or treater of a F010 wastes does not separate the waste into the two layers, that facility would have to meet the 1.5 mg/kg treatment standard for total cyanides in the nonwastewater residuals (based on incineration).

The Agency did not propose treatment standards for any metals contained n F010 wastewaters or nonwastewaters. At the time, the Agency had no waste characterization data that indicated the presence of hazardous metals in the untreated wastes. In addition, the Agency received no comments or data indicating that metals were present in these wastes. As a result, the Agency is promulgating only the treatment standards for cyanides contained in F010 wastewaters and nonwastewaters. This does not preclude the Agency from proposing the regulation of metals in these wastes if any F010 waste characterization data or treatment performance data become available.

ii. Standards for F011 and F012 wastes. The treatment standards proposed on January 11, 1989, for F011 and F012 nonwastewaters were based on the performance of electrolytic oxidation followed by alkaline chlorination for the cyanides (both total and amenable) and stabilization for the metal constituents. The Agency is not basing treatment standards for these wastes on the new alkaline chlorination data used to establish standards for F006, F007, F008 and F009 wastes. The treatment standards for F011 and F012 wastes are thus substantially lower than those for the other waste codes. The Agency believes that this is appropiate not only because of the existing performance data supporting the lower standard, but because these wastes do not have the treatability characteristics (i.e., high iron concentrations) that justify the higher standards for F006, F007, F008, and F009 nonwastewaters.

The Agency is promulgating a total cyanide standard of 100 mg/kg and an amenable cyanide standard of 9.1 mg/kg for F011 and F012 nonwastewaters. The amenable cyanide standard is based on measured concentrations of amenable cyanides in F011 and F012 treatment residuals rather than based only on the reproducibility of the analytic method for total cyanides.

(Note.—The Agency used the reproducibility of the analysis for total cyanides to establish the amenable cyanide standards for F006, F007, F008 and F009 nonwastewaters because the data indicated that the amenable cyanides could be reduced to below the reproducibility of the analysis for total cyanides. The treatment data indicated that this was not the case for F011 and F012 wastes.)

Two commenters believed that the calculation of the variability factor for the total cyanide treatment standard (100 mg/kg) for these wastes was incorrect. The Agency disagrees with the commenters. The calculation of a variability factor for two data points is based on the standard deviation and the mean. EPA uses the two data points as the limits on lognormal distribution. Based on this information, the calculated variability factor is 1.58. Thus, the variability factor multiplied by the mean of the two data points represents the treatment standard. The calculation of these standards is further clarified and presented in the final background document for cyanide wastes and the administrative record for this rule.

The Agency received extensive comments on its use of only two data points to establish the treatment standards for cyanides based on the performance of electrolytic oxidation followed by alkaline chlorination. As discussed previously in section III.A.1.(f.) of today's rule and in the August 17, 1989 final rule for First Third wastes, the Agency believes that the use of a small number of data sets from a single facility can be representative of the treatment achieved by the particular treatment system. EPA has a mandatory duty to issue standards on a very tight timetable, and automatic consequences occur should the Agency fail to act. Under these circumstances, EPA must base standards on the best data available to it, even if the data is limited. If better sources of data were made available, EPA would make every effort to use them (as has occurred with a number of wastes in this rulemaking, such as in the development of standards for the organophosphorus waste treatability group as discussed in section III.A.3.(h.) of today's preamble). Therefore, the Agency is promulgating the final standard based on the information available.

For F012 nonwastewaters (as with F006), many commenters stated that the Agency is requiring a pretreatment for the cyanides before the hazardous waste (as listed) is actually generated. The Agency has responded to this issue on pretreatment in detail in section III.A.3.(a.)(1.)(a)(iii.) of today's preamble.

The proposed treatment standards for F011 and F012 wastewaters were based on the performances of wet air oxidation for the cyanides and chemical precipitation, settling, and filtration for the metal constituents. During the comment period the Agency received performance data for the treatment of cyanides in wastewaters by alkaline chlorination. EPA performed a statistical comparison of the data from wet air oxidation and the new data from alkaline chlorination and found that alkaline chlorination performed better. Therefore, EPA is promulgating revised treatment standards for total and amenable cyanides for F011 and F012 wastewaters based on these new data and is transferring these standards to F010 wastewaters as previously discussed.

The Agency is promulgating the metal standards for F011 and F012 nonwastewaters based on the transfer of the treatment performance data for chemical precipitation, settling, filtration and sludge dewatering for K062 wastes. The Agency believes that the K062 wastes are more difficult to treat than the residues from treatment of F011 and F012 based on the higher concentrations of dissolved metals in K062 (up to 100,000 mg/l).

BDAT TREATMENT STANDARDS FOR F010

[Nonwastewaters]

Constitutent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Cyanides (total)	1.5	(1)

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR F010

[Wastewaters]

Constitutent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Cyanides (total)	1.9	(1)
Cyanides (amenable)	0.10	(1)

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR F011 AND F012

[Nonwastewaters]

Constitutent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Cyanides (total)	110	(1)
Cyanides (amenable)	9.1	(1)
Cadmium	(1)	0.066
Chromium	(1)	5.2
Lead	(1)	0.51
Nickel	(1)	0.32
Silver	(1)	0.072

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR F011 AND F012

[Nonwastewaters]

Constitutent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Cyanides (total)	1.9	(1)
Cyanides (amenable)	0.10	(1)
Chromium	0.32	(1)
Lead	0.04	(1)
Nickel	0.44	(1)

[1] Not applicable.

4. F019 wastes.

F019—Wastewater treatment sludges from the chemical conversion coating of aluminum.

Today's rule does not promulgate treatment standards for the wastewater or nonwastewater forms of F019. This waste was originally scheduled for regulation in the First Third, with the statutory deadline of August 8, 1988. Since the Agency did not promulgate standards for the wastewater or nonwastewater forms of F019, land disposal of these wastes shall continue to be regulated by the "soft hammer" provisions in 40 CFR 268.8. EPA intends to promulgate concentration-based treatment standards for cyanides and metals constituents in F019 wastes by May 8, 1990.

The Agency believes that F019 wastes are in a different treatability group than F006, F007, F008, and F009 electroplating wastes or F010, F011, and F012 heat treating wastes due to the very high concentration of iron-cyanide complexes in both the wastewaters and nonwastewaters. These iron levels are significantly higher than those found in F006 wastewater precursors, and higher than any of the wastes used to establish BDAT for the electroplating wastes. The Agency believes that the source of the iron-cyanide complexes is the soluble ferrocyanide compounds (such as potassium ferrocyanide) that are used as constituents in aluminum conversion coating compounds or baths. Therefore, the cyanides present in these conversion coating baths would be the iron-cyanide complexes which are used as a component of the coating. The Agency believes that F019 nonwastewaters or the wastewater treated to generate this waste have substantial concentrations of iron-cyanide complexes. The Agency believes that the source of iron for the F019 waste is a legitimate source of iron and that F019 wastes represent a separate treatability group of cyanide wastes.

The Agency is investigating ultraviolet/ozonation, wet air oxidation, hydrolysis and incineration as potential candidates for BDAT. Recovery or reuse of the wastes containing iron-cyanide complexes is also being considered. In the interim, the "soft hammer" provisions continue to apply to the land disposal of F019 wastes.

5. Wastes from Acrylonitrile Production.

K011—Bottom stream from the wastewater stripper in the production of acrylonitrile.

K013—Bottom stream from the acetonitrile column in the production of acrylonitrile.

K014—Bottoms from the acetonitrile purification column in the production of acrylonitrile.

Wastes identified as K011, K013, and K014 are generated primarily in the organic chemicals manufacturing industry, specifically those engaged in the production of acrylonitrile. Detailed technical descriptions of the specific production processes generating these wastes can be found in the final background document for these wastes.

Today's rule promulgates treatment standards for K011, K013, and K014 nonwastewaters based on the performance of incineration. Other treatment technologies that can achieve these concentration-based standards, such as wet air oxidation, are not precluded from use by this rule. EPA is promulgating treatment standards for four organic constituents and for total cyanide. At this time the Agency is not promulgating any standards for K011, K013, or K014 wastewaters. The specific regulated constituents and treatment standards for these wastes are listed in tables at the end of this section.

i. *Nonwastewaters.* In the January 11, 1989 proposed rule (54 FR 1086–1071), the Agency proposed treatment standards for nonwastewaters based on the performance of incineration for total cyanide and organics and stabilization for the metal constituents, specifically nickel.

Several commenters argued against developing a treatment standard for nickel because, based on waste characterization data, nickel was not present in significant concentrations in the raw waste. Commenters also stated that the presence of certain constituents (e.g., sulfates and ammonia) would make the removal of nickel from wastewaters, and the stabilization of nickel in the sludge and ash, much more difficult than the Agency has estimated, thereby making the BDAT treatment standards unachievable.

The Agency has concluded, based on extensive review of existing data, that nickel is not present in concentrations that would merit regulation as part of the K011, K013, and K014 treatment standards, and therefore is removing nickel from the list of regulated constituents for K011, K013, and K014 nonwastewaters. If additional treatment performance data for nickel becomes available, the Agency is not precluded from regulating nickel as a nonwastewater treatment standard for K011, K013, and K014 wastes. As a result of this determination, the Agency is revising its BDAT treatment standards for K011, K013, and K014 nonwastewaters to be based solely on the performance of incineration.

ii. *Wastewaters.* In the January 11, 1989 proposed rule (54 FR 1068–1071), the Agency proposed wastewater treatment standards based on the performance of wet air oxidation followed by biological treatment for amenable cyanides, total cyanides, and organic constituents, and chemical precipitation, settling, and filtration for metal constituents. The Agency received many comments concerned with EPA's rationale for transferring performance data for the cyanide constituents from wet air oxidation of F007 wastes, and for organic constituents from the effluent limitations for facilities in the Organic Chemical Plastics and Synthetic Fibers (OCPSF) industry for biological treatment. Because of these comments and the additional treatment data that are being compiled by the Ad Hoc Acrylonitrile Producers UIC Group, the Agency believes that additional data collection and analysis is necessary prior to promulgation of these treatment standards.

Therefore, today's rule does not promulgate treatment standards for the wastewater forms of K011, K013 and K014. These wastes were originally scheduled for regulation in the First Third, with a statutory deadline of August 8, 1988. Since the Agency still has not promulgated standards for the wastewater forms of K011, K013 and K014, land disposal of these wastewaters shall continue to be regulated by the "soft hammer" provisions in 40 CFR 268.8. EPA intends to promulgate concentration-based treatment standards for cyanides, organics, and metals constituents for these wastes prior to May 8, 1990.

BDAT TREATMENT STANDARDS FOR K011, K013, AND K014

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Acetonitrile	1.8	(1)
Acrylonitrile	1.4	(1)
Acrylamide	23.	(1)
Benzene	0.03	(1)
Cyanides (Total)	57.	(1)

[1] Not applicable.

6. Cyanide wastes designated with a "P" waste code.

P013—Barium cyanide
P021—Calcium cyanide
P029—Copper cyanide
P030—Soluble cyanides salts (NOS)
P063—Hydrogen cyanide
P074—Nickel cyanide
P098—Potassium cyanide
P099—Potassium silver cyanide
P104—Silver cyanide
P106—Sodium cyanide
P121—Zinc cyanide

Wastes identified as P013, P021, P029, P030, P063, P074, P098, P099, P104, P106, and P121 are usually discarded, out-of-date, or off-specification chemicals. Facilities in industries such as electroplating, heat treating, chemical conversion coating of aluminum, and acrylonitrile production typically generate these wastes.

P013, P021, P099, and P121 and Third Third wastes that were originally scheduled to be regulated no later than May 8, 1990. Several commenters opposed accelerating the schedule for these wastes. However, the statute does not preclude EPA from prohibiting the land disposal of a given waste ahead of schedule [and the schedule in §§ 268.10 through 268.12 itself says that wastes will be evaluated by a given date, indicating that the specified date is the latest time by which EPA must act]. The Agency believes that this is a particularly prudent approach for P013, P021, P099, and P121 because these wastes are not only generated, but are similar to F011 and F012 wastes from the heat treating industry.

Today's rule promulgates concentration-based treatment standards for wastewater and nonwastewater forms of these wastes. BDAT for the nonwastewater forms of these wastes is based on the performance of electrolytic oxidation followed by alkaline chlorination for the cyanide constituents, and stabilization for the metal constituents. BDAT for the wastewater forms of these wastes is based on the performance of alkaline chlorination for the cyanide constituents and chemical precipitation, settling, and filtration for the metal constituents (where regulated). Treatment standards for these wastes were transferred from the performance of the BDAT for the F011 and F012 waste codes generated from heat treating operations. These discarded commercial chemical products do not contain high concentrations of iron and therefore the Agency believes that the treatment standards need not reflect the difficulties of treating complex cyanides.

The Agency is thus promulgating these concentration-based treatment standards in this section due to the similarity of these "P" wastes to the listed metal heat treating wastes.

Treatment standards for nickel in P074 and silver in P099 and P104 nonwastewaters are based on the performance of stabilization of F006 nonwastewaters. Treatment standards for nickel in P074 wastewaters are based on the performance of chemical precipitation and filtration of K062 wastewaters. The Agency believes that these wastes are more difficult to treat than the corresponding P wastes based on the higher concentrations of metals and dissolved solids anticipated to be present in F006 and K062 as compared to the P wastes (i.e., up to 100,000 ppm). The Agency is not promulgating treatment standards for barium in any P013 wastes or for silver in P099 and P104 wastewaters due to the current lack of treatment data for these metals in their respective waste types. The Agency is not precluded from developing standards for barium or silver in these particular wastes if treatment data becomes available.

One commenter argued that the Agency should not regulate copper or zinc, as EPA proposed to do, because they are not hazardous constituents specifically listed in Appendix VIII of 40 CFR Part 261. The Agency does not totally agree, in that both zinc and copper are components of zinc cyanide and copper cyanide. EPA has determined that both zinc and copper exhibit aquatic toxicity, and has considered adding these constituents to Appendix VIII for that reason. However, EPA has decided to reserve that determination for a later rulemaking, and is only regulating cyanides in these wastes (P029 and P121).

BDAT TREATMENT STANDARDS FOR P013, P021, P029, P030, P063, P074, P098, P099, P104, P106, AND P121

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Cyanides (total)	1.9	(1)
Cyanides (amenable)	0.10	(1)
Nickel (P074 only)	0.44	(1)

[1] Not applicable.

7. Cyanide Wastes Designated as D003 Reactive.

Today's rule does not promulgate treatment standards for wastes identified as D003 wastes. In the January 11, 1989 proposed rule, the Agency presented a strategy for the development of treatment standards for cyanide wastes designated as D003 (see 54 FR 1071) and proposed a subcategory for D003 identified as the Reactive Cyanides Subcategory. According to 40 CFR 261.23(a)(5), a waste can be identified as D003 when it is a cyanide or sulfide bearing waste which, when exposed to pH conditions between 2 and 12.5, can generate toxic gases, vapors or fumes in quantities sufficient to present a danger to human health or the environment. No specific comments were received that challenged the development of this D003 Subcategory.

In general, the Agency received many comments that supported the development of concentration-based treatment standards. However, some commenters expressed concerns about what the treatment standard levels should be. The Agency believes that some of the general concerns about the measurement of cyanides and the selection of technologies for electroplating and heat treating cyanide wastes may also be applicable to D003 cyanide wastes. The Agency will respond to these comments and propose treatment standards for D003 wastes in the Reactive Cyanide Subcategory in a future notice of proposed rulemaking for the Third Third wastes.

b. *Wastes from chlorinated aliphatics production.*

F024—Wastes including but not limited to, distillation residues, heavy ends, tars, and reactor clean-out wastes from the production of chlorinated aliphatic hydrocarbons, having carbon content from one to five, utilizing free radical catalyzed processes. (This listing does not include light ends, spent filters and filter aids, spent desiccants, wastewater, wastewater treatment sludges, spent catalysts, and wastes listed in 261.32).

BDAT TREATMENT STANDARDS FOR P013, P021, P029, P030, P063, P074, P098, P099, P104, P106, AND P121

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Cyanides (total)	110	(1)
Cyanides (amenable)	9.1	(1)
Nickel (P074 only)	(1)	0.32
Silver (P099 and P104 only)	(1)	0.072

[1] Not applicable.

Wastes identified as F024 are generated primarily by facilities in the organic chemicals manufacturing industry, specifically those engaged in the production of chlorinated aliphatic hydrocarbons. Detailed technical descriptions of the specific production processes generating these wastes can be found in the background document for the listing of this waste code.

Today's rule promulgates treatment standards for F024 wastewaters and nonwastewaters as proposed for all constituents except 2-chloro-1,3-butadiene, 3-chloropropene, di-n-octyl phthalate, chromium and nickel. BDAT treatment standards for F024 are based on rotary kiln incineration for nonwastewaters, and rotary kiln incineration followed by chemical precipitation and vacuum filtration for wastewaters. Other treatment technologies that can achieve these concentration-based treatment standards are not precluded from use by this rule. EPA is promulgating treatment standards for two metals in F024 wastewaters and fourteen organic constituents in F024 nonwastewaters and wastewaters. The specific regulated constituents and treatment standards for these wastes are listed in the tables at the end of this section.

Several commenters suggested that the Agency specify a method of treatment as the BDAT treatment standard for the polychlorinated dioxins (PCDDs) and polychlorinated furans (PCDFs) instead of establishing concentration-based treatment standards. Where treatment performance data are available, the Agency prefers to set concentration-based treatment standards rather than specifying a method of treatment as the BDAT treatment standard. Defining concentration-based treatment standards in terms of concentrations of hazardous constituents in the treated waste ensures that treatment standards are achievable, in practice, using available technologies, but does not specifically mandate the use of any particular treatment technology in order to comply with the treatment standard. Because treatment performance data were available for the constituents regulated in F024, concentration-based treatment standards were established.

Several other commenters stated that the PCDDs and PCDFs should be regulated for the following reasons: (1) F024 is not listed for these constituents; (2) their levels in F024 were below the practical quantitation limits (PQLs); (3)

QA/QC data did not affirm their presence in F024; and (3) a quantitation level below 10 ppb is difficult to achieve and standards should not be set any lower than the PQLs demonstrated in F024 incinerator ash.

In response to the first issue, the Agency points out the hazardous constituents for which a waste is listed are considered by the Agency in selection of constituents for regulation. However, these constituents only provide a minimum basis for listing a waste as hazardous. The Agency believes that it is not restricted to regulation of these constituents. Indeed, to do so would (at least in some cases) fail to substantially reduce toxicity or mobility of hazardous constituents in the waste, as required by section 3004(m). Moreover, the language of 3004(m) applies to all "hazardous constituents", not just those for which the waste is listed. The Agency uses waste characterization data and treatment performance data collected under the BDAT program to determine the constituents that should be regulated. A more detailed explanation of the selection of regulated constituents in F024 is provided in the BDAT background document for this waste code.

With respect to the second issue, the commenters were incorrect in stating that PCDD and PCDF levels measured in the F024 wastes were below the PQLs. In fact, these constituents were detected in untreated F024 at levels of 0.3 to 50 ppb (parts per billion), which were well above the PQLs (0.2 to 30 ppt (parts per trillion)) for these constituents. Section III.A.1.(b.) of today's preamble provides a further discussion of the applicability of Appendix VII and the relationship of PQLs to BDAT treatment standards.

The commenters were also incorrect with respect to the third issue on the QA/QC. As evidenced in the background document for this waste, the available QA/QC data does confirm the presence of dioxins and furans in F024.

The Agency also disagrees with the commenters' fourth issue. A quantitation level below 10 ppb is not difficult to achieve. The Agency does not anticipate any difficulties in achieving detection at the treatment standard of 1 ppb for either the nonwastewater or wastewater. The treatment standards for all of the PCDDs and PCDFs regulated in F024 are greater than the PQLs demonstrated on F024 incinerator ash (30 to 80 ppt). Finally, the Agency believes that these treatment standards are analytically achievable on a routine basis and points out that quantitation levels for these PCDDs and PCDFs have been achieved by commercial laboratory facilities at low ppt levels in nonwastewaters and low ppq (parts per quadrillion) levels in wastewaters.

The treatment standards set for bis(2-ethylhexyl) phthalate and di-n-octyl phthalate were opposed by one commenter who argued that setting treatment standards for these constituents was unnecessary because they were not detected in the F024 feed streams at levels above their PQLs. This commenter further stated that since the treatment standards for these two constituents are below their PQLs, the treatment standards are invalid and unreasonable. The commenter suggested that the low levels of these phthalates could be a result of cross-contamination and thus, recommended that the Agency either set a method of treatment as the treatment standard instead of establishing a concentration-based treatment standard or reserve the standards for these two phthalate constituents until more complete information is available.

The premise to the commenter's argument is incorrect in that both of these phthalate constituents were quantified above their respective PQLs in the F024 feed streams. The treatment performance data for bis(2-ethylhexyl) phthalate in F024 demonstrate that substantial treatment was achieved by rotary kiln incineration. Because bis(2-ethylhexyl) phthalate was not found in either the laboratory blanks or the treatment residuals, the commenter's claim that this constituent could be present as a result of cross-contamination does not appear to be supportable. Thus, the Agency has no reason to believe that the presence of bis(2-ethylhexyl) phthalate in F024 sampled by the Agency was due to cross-contamination. (See also the Agency's response to comments on cross-contamination of phthalates in section III.A.3.(e.) of today's preamble.)

The Agency's data indicated, however, that di-n-octyl phthalate was identified in only a few characterization samples at treatable concentrations. Further, bis(2-ethylhexyl) phthalate was also found at treatable concentrations in each of these samples. These two phthalate constituents have similarities in chemical properties and structure such that the Agency believes that they can be treated to similar concentrations by incineration. Due to the similarity in treatability of these constituents, any di-n-octyl phthalate present in F024 will be effectively controlled by regulating the bis(2-ethylhexyl) phthalate (using incineration as BDAT). Accordingly, the Agency is promulgating the treatment standards for bis(2-ethylhexyl) phthalate, but is not promulgating the treatment standards for di-n-octyl phthalate.

Several commenters stated that the concentration-based treatment standards for F024 nonwastewaters should be identical with treatment standards previously promulgated for the same constituents in other waste codes. The Agency disagrees with these commenters. BDAT treatment standards for a particular waste are developed based on treatment performance data for that waste or for a waste judged to be similar. Constituents may be treated to different levels depending on the waste matrices in which they are present. Accordingly, treatment standards for a constituent may vary among the waste codes in which the constituent is regulated.

Another commenter suggested that the nonwastewater treatment standards be raised by two orders of magnitude because they believed the proposed treatment standards could not be analytically achieved on a routine basis. However, based on routine analysis performed by contract laboratories supporting the Agency's various programs, the Agency does not anticipate any analytical difficulties in achieving the F024 treatment standards on a routine basis.

One commenter suggested that the Agency consider the composition of F024 wastewater when it is comingled with wastewater from other treated listed wastes. However, the Agency cannot take into account all of the possible mixes of waste residuals. (See also the previous discussion of mixing in section III.A.1.(c.) in today's preamble.) For these cases, the regulated community must consider the treatment standards for each regulated waste stream and comply with the strictest standards for each of the regulated constituents (or if mixing is part of a legitimate treatment process, seek a treatability variance).

One commenter felt that stabilization of incinerator ash should not be required unless leachable metal levels were higher than characteristic hazardous waste levels. The Agency reminds the commenter that F024 treated waste residuals are also considered to be listed hazardous wastes under the "derived-from" rule, regardless of whether or not the waste exhibits a characteristic. The metal constituents originally proposed for regulation (chromium and nickel) were found in F024 at treatable levels. Because incineration does not provide treatment for metals, the Agency chose to stabilize the incinerator ash to immobilize these and other metal constituents.

One commenter felt that treatment of chromium and nickel was not demonstrated by the stabilization testing performed on K048 and K051 wastes, thereby invalidating the transfer of the treatment standards for chromium and nickel from these waste codes to F024. This commenter suggested transferring treatment performance data from F006 instead.

The Agency has recently completed an analysis of TCLP extracts obtained from the stabilization of F024 incinerator ash residues. The results of this analysis show substantial reduction of metals in TCLP extracts after stabilization. However, since this data was not available for public notice and comment, and since the resultant treatment standards are significantly different from the proposed standards, the Agency has decided not to promulgate treatment standards for metals in F024 nonwastewaters in today's rule. The Agency is reserving treatment standards for metals in F024 nonwastewaters in order to provide notice that revised standards will be proposed for restrictions in a future rulemaking. No specific comments or data were received disputing the validity of the proposed standards for the metals in F024 wastewaters and thus the Agency is promulgating these standards as proposed.

The Agency discovered an error in its calculation of the proposed treatment standards for 2-chloro-1,3-butadiene and 3-chloropropene for F024 nonwastewater (i.e., 0.014 mg/kg for each constituents). Because the data used to calculate these standards were correct and in the public record, the Agency is promulgating the recalculated standards in today's rule (i.e., 0.28 mg/kg for each constituent).

BDAT TREATMENT STANDARD FOR F024

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
2-Chloro-1,3-butadiene.	0.28	Not applicable
3-Chloropropene	0.28	"
1,1-Dichloroethane	0.014	"
1,2-Dichloroethane	0.014	"
1,2-Dichloropropane	0.014	"
cis-1,3-Dichloropropene	0.014	"
trans-1,3-Dichloropropene.	0.014	"
Bis(2-ethylhexyl)phthalate.	1.8	"
Hexachloroethane	0.001	"
Hexachlorodibenzofurans.	0.001	"
Hexachlorodibenzo-p-dioxins.	0.001	"
Pentachlorodibenzofurans.	0.001	"
Pentachlorodibenzo-p-dioxins.	0.001	"
Tetrachlorodibenzofurans.	0.001	"
Chromium (Total)	Not applicable.	Reserved
Nickel	"	Reserved

BDAT TREATMENT STANDARD FOR F024

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	(mg/l)
2-Chloro-1,3-butadiene.	0.28	Not applicable
3-Chloropropene	0.28	"
1,1-Dichloroethane	0.014	"
1,2-Dichloroethane	0.014	"
1,2-Dichloropropane	0.014	"
cis-1,3-Dichloropropene	0.014	"
trans-1,3-Dichloropropene.	0.014	"
Bis(2-ethylhexyl)phthalate.	0.036	"
Hexachloroethane	0.036	"
Hexachlorodibenzofurans.	0.001	"
Hexachlorodibenzo-p-dioxins.	0.001	"
Pentachlorodibenzofurans.	0.001	"
Pentachlorodibenzo-p-dioxins.	0.001	"
Tetrachlorodibenzofurans.	0.001	"
Chromium (Total)	0.35	"
Nickel	0.47	"

BDAT TREATMENT STANDARD FOR F024

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
2-Chloro-1,3-butadiene.	0.28	Not applicable
3-Chloropropene	0.28	"
1,1-Dichloroethane	0.014	"
1,2-Dichloroethane	0.014	"
1,2-Dichloropropane	0.014	"
cis-1,3-Dichloropropene	0.014	"
trans-1,3-Dichloropropene.	0.014	"
Bis(2-ethylhexyl)phthalate.	1.8	"
Hexachloroethane	1.8	"
Hexachlorodibenzofurans.	0.001	"

c. *Wastes from pigment production.*

K002—Wastewater treatment sludge from the production of chrome yellow and orange pigments.

K003—Wastewater treatment sludge from the production of molybdate orange pigments.

K004—Wastewater treatment sludge from the production of zinc yellow pigments.

K005—Wastewater treatment sludge from the production of chrome green pigments.

K006—Wastewater treatment sludge from the production of chrome oxide green pigments (anhydrous and hydrated).

K007—Wastewater treatment sludge from the production of iron blue pigments.

K008—Oven residues from the production of chrome oxide green pigments.

Wastes identified as K002, K003, K004, K005, K006, K007 and K008 are generated primarily by facilities in the inorganic chemicals manufacturing industry, specifically those engaged in the production of pigments. Detailed technical descriptions of the specific production processes generating these wastes can be found in the background document for the listing of these wastes.

1. Nonwastewaters. Today's rule promulgates a "No Land Disposal Based on No Generation" treatment standard for K005 and K007 nonwastewaters as proposed—applicable only to wastes generated from the process described in the listing description and disposed after June 8, 1989. Many commenters opposed any standard that specifies "No Land Disposal" for a particular waste. The Agency maintains that for *certain* wastes, this standard is appropriate. The Agency believes that the following clarification of the applicability of this standard to K005 and K007 wastes may remove the majority of the commenters' concerns.

Based on conversations with representatives of manufacturers of inorganic pigments and responses to EPA's RCRA section 3007 questionnaires, the Agency believes that the last company producing chrome-green and iron blue pigments (from which K005 and K007 wastes are generated), shut down production in 1987. Thus, the proposed "No Land Disposal" standard is appropriate for these wastes, with one important caveat. This standard applies only to wastes generated from the process described in the listing description for these wastes (in 40 CFR 261.32) that are disposed after June 8, 1989 (the effective date of this standard). The Agency recently modified existing regulatory standards for most of the "No Land Disposal" treatment standards promulgated with the First Third wastes to adopt this distinction. See 53 FR 31174 (August 17, 1988) promulgating these standards, and the subsequent revision in 54 FR 18836 (May 2, 1989). The Agency adopts the explanation in the May 2, 1989 notice for its action here with respect to the waste from pigment production that are no longer being generated (i.e., K005 and K007).

K005 and K007 are Third Third Wastes that were originally scheduled to be promulgated by May 8, 1990. Several commenters opposed the

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proposed accelerated schedule for these wastes as well as other wastes. However, the statute does not preclude EPA from prohibiting the land disposal of a given waste ahead of schedule (and the schedule in 40 CFR 268.10–268.12 itself says that wastes will be evaluated by a given date, indicating that the specified date is the latest time by which EPA must act), and in fact compels the Agency to prohibit the land disposal of hazardous wastes as soon as possible. The Agency believes that this is a particularly prudent approach for K005 and K007 nonwastewaters, since the basis of the treatment standard for these wastes is that they are not being generated and since no comments were received disputing this premise specifically for K005 and K007.

In the January 11, 1989, proposed rule for Second Third Wastes (54 FR 1072–74), EPA proposed a treatment standard of "No Land Disposal Based on Recycling" for K002, K003 and K006 nonwastewaters and proposed to revise the promulgated treatment standard (53 FR 31174) for K004 and K008 nonwastewaters from "No Land Disposal Based on No Generation", to "No Land Disposal Based on Recycling". EPA received comments, however, suggesting that there may be wastes generated as part of the recycling process that could remain subject to the land disposal prohibitions, and which otherwise called into question the circumstances of recycling. Although EPA does not necessarily endorse these comments, the Agency believes that these issues warrant further study and, therefore, has decided that K002, K003 and K006 wastes will remain in the Third Third of the schedule. Thus, the Agency is not promulgating the treatment standard of "No Land Disposal Based on Recycling" for K002, K003, and K006 nonwastewaters.

The methods of recycling, which EPA has determined require further evaluation, also apply to K004 and K008 wastes; therefore, since EPA's initial premise of no generation has not proven correct, EPA has decided to revoke the promulgated treatment standard of "No Land Disposal Based on No Generation" for K004 and K008 nonwastewaters, and to reschedule the development of treatment standards for the nonwastewater forms of K004 and K008 wastes to the Third Third of the schedule. The Agency will study these wastes along with K002, K003 and K006 nonwastewaters.

2. Wastewaters. In today's rule, the Agency is not promulgating treatment standards for the wastewater forms of K002, K003, K004, K005, K006, K007 or K008. Since K004 and K006 were First Third wastes, land disposal of these wastewaters continues to be subject to the "soft hammer" provisions in 40 CFR 268.8. Because K002, K003, K005, K006 or K007 wastes were originally scheduled for development of BDAT treatment standards with the Third Third Wastes, land disposal of these wastewaters is not subject to the "soft-hammer" restrictions.

The Agency may develop concentration-based treatment standards for all of these wastewaters prior to May 8, 1990, if there is an identified need for such standards (i.e. if wastewater forms of the listed waste are proven to be generated). Wastewater forms of these wastes are expected to be generated from only a few sources. The Agency is currently evaluating the possibility of transferring treatment performance data from wastes having similar physical and chemical characteristics. The Agency has identified several sources of chromium reduction, cyanide destruction, and metals precipitation/stabilization performance data which may be applicable.

As a point of clarification, nonwastewater residuals generated from treatment of K005 or K007 wastewaters are also considered to be the listed wastes (based on the derived-from rule) and would be required to meet the treatment standards for nonwastewaters when EPA develops them. However, as noted above, the "No Land Disposal Based on No Generation" standard does not apply to these wastes. It only applies to the waste as originally generated, according to the description of the waste in the listing (as listed in 40 CFR 261.32).

BDAT Treatment Standard for K005 and K007

[Nonwastewater forms of these wastes generated by the process described in the waste listing description and disposed after June 8, 1989, and not generated in the course of treating wastewater forms of these wastes]

No Land Disposal Based on No Generation

d. *Wastes from acetaldehyde production.*

K009—Distillation bottoms from the production of acetaldehyde from ethylene.

K010—Distillation side cuts from the production of acetaldehyde from ethylene.

Wastes identified as K009 and K010 are generated primarily by facilities in the organic chemicals manufacturing industry, specifically those engaged in the production of acetaldehyde. Detailed technical descriptions of the specific production processes generating these wastes can be found in the background document for the listing of these wastes.

Today's rule promulgates treatment standards for organic constituents in nonwastewater and wastewater forms of wastes identified as K009 and K010. Standards applicable to nonwastewaters are based on the performance achieved by rotary kiln incineration and the concentration of organics measured in ash residuals. Standards applicable to wastewaters are based on the performance achieved by steam stripping followed by biological treatment and the concentration of organics measured in the resultant effluent wastewaters. Other treatment technologies that can achieve these concentration-based treatment standards are not precluded from use by this rule. The regulated constituents and treatment standards for these wastes are listed in the tables at the end of this section.

In comments to the proposed rule, one of the two generators of K009 and K010 wastes indicated to the Agency that some of the organic constituents proposed for regulation were extraneous to the manufacturing process of acetaldehyde and that another of the proposed constituents could be effectively controlled by the proposed regulation of chloroform. After reviewing the commenter's rationale and the available data on the manufacturing of acetaldehyde, the Agency has determined that the proposed standards for 1,1-dichloroethane, acrolein, methylene chloride, and/or ethyl methacrylate in wastewaters are unnecessary and is therefore not promulgating the proposed standards for these constituents. However, the Agency is promulgating treatment standards for chloroform in both nonwastewater and wastewater forms of K009 and K010.

The same commenter questioned EPA's legal authority to regulate constituents that were not explicitly identified by the Agency as toxic constituents of concern when K009 and K010 were listed as hazardous wastes under Subtitle C of RCRA.

The Agency strongly disagrees with the commenter's interpretation of section 3004(m) and its interpretation of toxicity. RCRA section 3004(m) mandates EPA to promulgate treatment standards that sustantially reduce the toxicity of the waste or that substantially reduce the likelihood of migration of hazardous constituents from the wastes. Section 3004(m) applies to all hazardous constituents and does not limit the concern to those constituents for which the waste is listed. The Agency has thus interpreted the intent of the statutory language to measure reduction of toxicity in terms of the amount and types of constituents that define the chemical composition of the waste. Thus, the Agency believes that in the development of treatment standards, the Agency can regulate any of the Appendix VII and VIII (40 CFR Part 261) constituents.

Further, the Agency has interpreted this statutory mandate as authorizing the Agency to develop treatment standards for constituents that serve as indicators of performance, thereby accounting for the reduction in either the amount or mobility of Appendix VII and VIII constituents contained in the wastes. The Agency believes that the use of surrogate or indicator constituents fully responds to the intent of section 3004(m) because there could be instances that available analytical methods cannot satisfactorily analyze for Appendix VII and VIII constituents in complex waste matrices and thus, the Agency would be unable to develop concentration-based treatment standards for the waste.

In addition, Appendix VII constituents supporting the listing of K009 and K010 were intended to support the Administrative Record of EPA in assessing the need to regulate K009 and K010 as hazardous wastes under RCRA. These constituents were by no means an exhaustive list of hazardous constituents contained in the waste, but merely provided a minimum basis for listing a waste as hazardous. Therefore, the Agency believes that it is not restricted to regulation of only these constituents. See further clarification of the use of Appendix VII constituents in section III.A.1.(b.) of today's preamble.

As noted in the proposal, performance data supporting the development of treatment standards were not generated from the direct treatment of K009 and K010 wastes. Instead, these performance data are from the treatment of wastes either judged to be as difficult to treat as the wastes of concern or containing treatable concentrations of the constituents that are candidates for regulation in the wastes of concern.

For wastewaters, these performance data were originally developed specifically to support the effluent guidelines limitations for facilities in the Organic Chemical Plastics and Synthetic Fibers (OCPSF) industry and represent the performance of Best Practical Technologies and Best Available Technologies for treatment of wastewaters. The Agency has determined that it is technically feasible to transfer the OCPSF performance data to K009 and K010, and thus is promulgating treatment standards developed from these data. Further details of the Agency's evaluation of performance data and determinations of BDAT are found in the BDAT background document for K009 and K010 wastes.

Also, this commenter pointed out that the data used by the Agency in supporting the wastewater standards may not have been adjusted for analytical spiked recoveries. The adjustment that the commenter is referring to is known as a "correction factor", which may be obtained by injecting a known quantity of a pollutant into water and determining the percent of known amount measured. During preliminary stages of the OCPSF rulemaking, EPA in fact used this adjustment technique for a variety of data, including the chloroform data discussed by the commenter in the present rulemaking. However, the Chemical Manufacturers Association submitted comments in the OCPSF rulemaking arguing that the use of correction factors for these data are technically unsound. EPA agreed that these data are "better represented as unadjusted for recovery", and decided to present the data in unadjusted form (48 FR 11856, March 21, 1983).

For purposes of the current rulemaking under RCRA section 3004(m), however, EPA believes that it is appropriate to apply a correction factor to the chloroform data to ensure consistency with the BDAT Generic Quality Assurance Project Plan (EPA/530–SW–87–011, March 1987). This Plan presents data and uses it to establish standards in a conservative manner that assures that variability in calculating correction factors is accounted for.

Thus, EPA has recalculated the wastewater standard for chloroform. At proposal, the chloroform standard for wastewaters was 0.09 mg/l. Today's rule promulgates a revised chloroform standard of 0.10 mg/l. Although this revision is minimal, the Agency believes this recalculation of the chloroform standard was necessary and fully complies with Agency methodology for developing treatment standards. Detailed information of the Agency's revisions to this standard are provided in the BDAT background document for K009 and K010 wastes.

The proposed treatment standards for wastewaters were originally presented as based on analysis of grab samples. The Agency received comments that pointed out that the data used to determine the treatment standards represented analysis of composite rather than grab samples. At the time of proposal, the Agency believed that since the standards were for volatile organic constituents, analysis of grab samples had been performed due to potential losses of volatiles during a composite sampling. However, the Agency has since determined that while grab samples are indeed used during sampling, the analysis of the samples is performed by careful compositing of the grab samples in the analytical laboratory immediately prior to analysis. Therefore, the treatment standard for methylene chloride in K009 and K010 wastewaters promulgated in today's rule are corrected and expressed as based on a composite sample. See further discussion of issues concerning grab versus composite sampling in section III.A.1.(f.) of today's preamble.

The Agency also solicited comments on the need for regulating other chlorinated organic constituents that are not on the BDAT list but were found at treatable concentrations. The only commenter supported the Agency's approach that no regulation is necessary, indicating that available data appear to indicate that these constituents are unlikely to interfere with the treatment of the regulated constituents. As a result, EPA is not promulgating, at this time, additional requirements for these other organic constituents present in K009 and K010 wastewaters.

BDAT Treatment Standards for K009 and K010

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Chloroform	6.0	[1]

[1] Not applicable.

BDAT Treatment Standards for K009 and K010

[Wastewaters]

Constituent	Maximum for any composite sample	
	Total composition (mg/l)	TCLP (mg/l)
Chloroform	0.10	[1]

[1] Not applicable.

e. *Phthalates and phthalic anhydride production wastes.*

K023—Distillation light ends from the production of phthalic anhydride from naphthalene.
K093—Distillation light ends from the production of phthalic anhydride from ortho-xylene.
K094—Distillation bottoms from the production of phthalic anhydride from ortho-xylene.
U028—Bis-(2-ethylhexyl) phthalate
U069—Di-n-butyl phthalate
U088—Diethyl phthalate
U102—Dimethyl phthalate
U107—Di-n-octyl phthalate
U190—Phthalic anhydride

Wastes identified as K023, K093, and K094 are wastes generated primarily by facilities in the organic chemicals manufacturing industry, specifically those engaged in the production of phthalic anhydride. Detailed technical descriptions of the specific production processes generating these three wastes can be found in the background document for the listing of these wastes. Phthalic anhydride, when discarded, out-of-date, off-specification, or spilled often becomes the waste identified as U190. In contact with water, phthalic anhydride reacts readily to become phthalic acid. Phthalic anhydride and phthalic acid can be reacted with other simple compounds to form a class of chemicals known as phthalic acid esters. Generally, these esters are simply referred to as phthalates. The chemicals for which wastes identified as U028, U088, U069, U102, and U107 are listed are all phthalates.

All of these compounds are very similar in chemical composition and structure (i.e., they contain one aromatic ring and are comprised of only carbon, hydrogen and oxygen). For the purposes of determining BDAT, all of these wastes have been grouped together into one treatability group identified as "phthalates and phthalic anhydride production wastes" or "phthalates" (for short).

Treatment standards for the majority of these wastes were originally scheduled to be promulgated as part of the Third Third wastes (i.e., promulgation by May 8, 1990). Only U028 and U107 wastes were originally scheduled for promulgation with the Second Third wastes. However, in the January 11, 1989, proposed rule for Second Third wastes, the Agency proposed standards for all nine of these phthalate and phthalic anhydride production wastes based on a transfer of treatment standards from similar wastes identified as K024 (distillation bottoms from the production of phthalic anhdride from naphthalene). Standards for K024 wastewaters and nonwastewaters were promulgated with the First Third wastes on August 8, 1988, based on the performance of incineration of K024 nonwastewaters in a rotary kiln as measured by the concentrations of hazardous constituents found in the ash and scrubber water residuals.

Several commenters opposed the accelerated schedule for these wastes. However, the statute (i.e., HSWA) does not preclude EPA from prohibiting the land disposal of a given waste ahead of schedule (and the schedule in §§ 268.10 through 268.12 itself says that wastes will be evaluated by a given date, indicating that the specified date is the latest time by which EPA must act). The Agency believes that setting the treatment standards and restrictions as early as possible is consistent with Congressional intent to move away from land disposal and towards treatment. Moreover, Congress created the capacity variance in section 3004(h) to address the concerns of providing additional time (where necessary) to develop protective treatment or disposal capacity. Thus, in today's rule, the Agency is promulgating treatment standards as proposed for K023, K093, K094, U028, U069, U088, U102, U107, and U190 based on the direct transfer of standards for K024.

While the treatment standards are based on the performance of incineration of K024 in a rotary kiln, other treatment technologies such as fluidized bed incineration, fuel substitution, biodegradation, and solvent extraction, that can achieve these standards are not precluded from use by this rule. The treatment standards in today's rule for all of these wastes are listed in the tables at the end of this section.

1. K023, K093 and K094 wastes. The Agency has data that indicate that there are relatively few generators of K023, K093 and K094. Information also suggests that many of these wastes, as generated, are not typically land disposed. The Agency considered promulgating a treatment standard of "No Land Disposal Based on No Generation" for the nonwastewater forms of K023, K093 and K094. However, several commenters provided information that these wastes are indeed being generated. Since the premise of no generation is not valid, the Agency decided to promulgate the proposed concentration-based standards.

The Agency determined that the treatment standards for K024 may be transferred to K023, K093 and K094 wastes because: (1) All of these wastes are generated from the production of phthalic anhydride; (2) distillation residues generated from production processes using naphthalene (corresponding to K023 and K024 wastes) are expected to contain higher concentrations of less volatile constituents than distillation residues generated from production processes using ortho-xylene (corresponding to K093 and K094 wastes). Since these constituents in K023 and K024 have lower volatility, they are more difficult to vaporize and subsequently be destroyed in a rotary kiln. K023 and K024 are thus more difficult to treat than K093 and K094; and (3) distillation *bottoms* (K024) are expected to contain lower concentrations of volatile constituents than the distillation *light ends* (K023) and thus would be more difficult to treat than K023. Based on this analysis, the Agency has determined that K024 represents the most difficult to treat of the four wastes generated from the production of phthalic anhydride. In addition, since K023, K024, K093 and K094 are all wastes from the production of phthalic anhydride, they are expected to contain a greater concentration of interfering constituents than off-spec or discarded phthalic anhydride (U190) and thus would be more difficult to treat than U190. Therefore, the Agency is directly transferring the concentration-based standards for phthalic anhydride (as measured by the analysis for phthalic acid) in K024 wastewaters and nonwastewaters to K023, K093, K094 and U190 wastewaters and nonwastewaters respectively.

One commenter questioned why the Agency did not simply establish treatment standards for K023, K024, K093, K094 and U190 measuring for phthalic anhydride rather than phthalic acid. The commenter reasoned that: (1) Analytical methods for the direct measurement of phthalic anhydride exist and are available; (2) measurement should be for phthalic anhydride because it has a significantly higher toxicity than phthalic acid; and (3) treatment standards for phthalic anhydride would allow treatment by hydrolysis and hydrolysis significantly reduces the toxicity of the waste.

The Agency's response to these issues is twofold: (1) Although methods for the measurement of phthalic anhydride exist, the measurement of phthalic acid as a surrogate provides a more effective means of measuring treatment, due to the instability of phthalic anhydride in water (i.e., hydrolysis of the anhydride in the wastes prior to analysis of treatment residuals could result in false positive measurements of treatment efficiency if analysis were performed only for the anhydride); and (2) destruction of phthalic anhydride by incineration provides a more complete reduction in total toxicity than simple hydrolysis (i.e., incineration completely destroys both the phthalic anhydride and the phthalic acid to carbon dioxide and water, while hydrolysis does not provide any significant destruction of the organics, but rather enlarges the phthalic anhydride molecule to the acid form).

Several commenters pointed out that, as initially generated, K023, K024, K093, K094 and U190 nonwastewaters are comprised primarily of phthalic anhydride and would contain practically no phthalic acid. Thus, the wastes would probably meet the treatment standard based on analysis for phthalic acid without any treatment. Commenters suggested that the treatment standard should include a hydrolysis step prior to analysis for phthalic acid.

The Agency never intended, by establishing the standard only for phthalic acid, that these wastes should avoid treatment. In the proposed rule (54 FR 1088 (January 11, 1989)), the standards for U190 were correctly expressed as "phthalic anhydride (U190) reported as phthalic acid". The Agency thus clearly intended that the phthalic anhydride be converted to phthalic acid prior to analysis. The Agency recognizes that the standards for K023, K093 and K094 were expressed in the proposed rule (54 FR 1078 (January 11, 1989)) only as "phthalic acid". However, today's rule corrects this inconsistency by expressing all of the wastewater and nonwastewater standards for K023, K093, and K094 and U190 as "phthalic anhydride * * * (measured as phthalic acid)". Thus, the Agency is specifically requiring analysis for phthalic acid after hydrolysis of K023, K093, K094 and U190 nonwastewaters.

For the same reason, EPA is also making this same clarifying change as a technical correction to the standards for K024 wastewaters and nonwastewaters that were adopted in the First Third rule. Thus, these standards are now expressed as "phthalic anhydride * * * (measured as phthalic acid)". (EPA is not altering the numerical standards for these K024 wastes.)

For the wastewater forms of these wastes, the Agency is not requiring an additional hydrolysis step provided that complete hydrolysis of the anhydride can be reasonably assumed to have occurred (such as in cases where the phthalic anhydride in the waste has been in prolonged contact with water in the waste, been sufficiently mixed with the water, or suspected to have been present in low concentrations in the water).

2. Standards for U028, U069, U088, U102, and U107. EPA proposed concentration-based treatment standards for U028, U069, U088, U102, and U107 based on the transfer of data on the performance of rotary kiln incineration for K024 nonwastewaters. Standards for these wastes are derived from a direct transfer of the numerical values for phthalic acid to each of the individual phthalate esters (i.e., 28 mg/kg for all nonwastewaters and 0.54 mg/l for all wastewaters as measured by each phthalate).

One commenter argued that the Agency has not adequately demonstrated the transferability of the treatment standards for K024 wastes to these phthalate esters. The commenter stated that it had found no support for EPA's statement that all of these compounds are anticipated to be easier to burn than phthalic acid. At the same time, the commenter claimed the following information as support to their position: (1) The K024 phthalic anhydride residue is a solid and the phthalates are typically liquids; and (2) the autoignition temperature (a measure of the ease of ignition) for phthalic anhydride is 1083°F; 1032°F for dimethyl phthalate; 950°F for phthalic acid; and 735°F for bis-(2-ethylhexyl)phthalate.

The Agency recognizes that there are many factors that affect how easily a compound can be burned, such as boiling point, activation energy, bond dissociation energy, heat of combustion, heat of formation, and general structural class. However, the information provided by the commenter appears to support the Agency's position rather than the commenter's. In general, solids should be more difficult to burn than liquids. In addition, phthalic anhydride with the highest autoignition temperature appears to be more difficult to burn than the phthalic acid or the other identified phthalates.

Moreover, these data support that these phthalates pose relatively the same difficulty in burning because their autoignition temperatures are within the same order of magnitude. More important, the Agency maintains that the performance data available to the Agency support that the treatment standards for the incineration of K024 are not only transferable to these wastes but also achievable on a routine basis.

Incineration data for K024 indiate that untreated K024 wastes contained from 1.3 to 22% phthalic anhydride, approximately 10% ash, and up to 83% polymeric materials. Analysis of the incinerator residues for phthalic acid, the surrogate for phthalic anhydride (see previous discussion for K023, K093 and K094 wastes above), indicated destruction to detection limits of 8.2 mg/kg in the ash and 0.16 mg/1 in the scrubber water. Thus, if phthalic anhydride is, as the commenters' data indicates, one of the more difficult phthalates to burn, then the other phthalates and phthalic acid should be able to be destroyed to these levels. The Agency points out that the ash and the polymeric materials present in the untreated K024 waters also contribute to the difficulty in incineration of this waste. Thus, the Agency concluded that the K024 wastes are the most difficult to treat of these wastes.

The commenters expressed concern about several other issues that led them to believe that the standards could not be achieved. These include the potential for false positives due to cross-contamination from: (1) The co-incineration of nonhazardous materials containing phthalates; (2) plastic materials used during sampling and analysis; (3) nonhazardous materials co-disposed with treatment residuals; (4) liners and covers used in a roll-off containers used to transport ash (containing 35 mg/kg of phthalates); and (5) plastic materials used in the scrubber water systems. They also argued that household garbage (containing 22 mg/kg of phthalates) and landfill liners would exceed the treatment standards. Thus, they concluded that the treatment standards were not meaningful nor could they possibly be met. Several commenters further concluded that since the treatment standards could not be met, the Agency should simply establish incineration as a technology, rather than set concentration-based standards. Finally, one commenter also stated that the Agency has an insufficient number of data points on which to base the standards.

In response to the majority of these comments, the Agency points to the data on phthalate concentrations in the residuals from the test burns of four different waste types that support the Agency's key positions. The wastes include: (1) K019 (heavy ends from the distillation of ethylene dichloride in ethylene dichloride production); (2) K037 (wastewater treatment sludges from the production of Disulfoton); (3) F024 (various wastes from the production of chlorinated aliphatics such distillation residues, heavy ends, tars, and reactor clean-out wastes); and (4) K101/K102 (distillation tar residues from the distillation of aniline-based compounds

and residue from activated carbon in the production of veterinary pharmaceuticals). These wastes represent a myriad of different hazardous waste types and these data are from more than one different incineration facility.

EPA analyzed for various phthalates in the incineration residues from these test burns as follows: (1) Six data sets for di-n-butyl and bis-(2-ethylhexyl) phthalate in K019 ash residues and six data sets for di-n-octyl, di-n-butyl, and bis-(2-ethylhexyl) phthalate in K019 scrubber waters; (2) six data sets for bis-(2-ethylhexyl) phthalate in K037 ash and scrubber waters; (3) six data sets for diethyl and bis-(2-ethylhexyl) phthalate in F024 ash and scrubber waters; and (4) six data sets for bis-(2-ethylhexyl) phthalate in K101 and K102 ash and scrubber waters.

In general, the majority of the measured values for phthalates were approximately at the detection limit for the majority of phthalates that were analyzed. In kiln ash the measured values or detection limits ranged from <0.42 to <2.0 mg/kg. This is consistent with the estimated PQLs for these phthalates in ash residues (as calculated by multiplying the detection limits for the individual phthalates as measured by SW-846 Method 8250 by the correction factor of 670 for low-level contaminated soil) ranging from 1.6 mg/kg for dimethyl phthalate to a maximum of 2.5 mg/kg for di-n-butyl, di-n-octyl, and bis-(2-ethylhexyl) phthalate. The data from these four test burns also indicated that in the scrubber waters the measured values for these phthalates (or their detection limits) ranged from <0.002 to <0.060 mg/l. The concentrations of phthalates in the untreated wastes ranged from 0.05 to 500 mg/kg.

The concentrations of phthalates in the untreated wastes (for the aforementioned data) were relatively low. Accordingly, EPA did not attempt to transfer standards for phthalates from these wastes. However, these data illustrate several important points with regard to cross-contamination and the achievability of the standards. For four different test burns on four completely different waste types, analysis of treatment residuals indicated concentrations or achievable detection limits well below the promulgated treatment standards (typically an order of magnitude less). Thus the commenters' cross-contamination concerns during incineration, scrubber water processing, sample collection, transport of analytical samples, and laboratory preparation and analysis of the samples are not supported by these data. In addition, the proper use of analytical techniques in accordance with standard QA/QC in their laboratories can also reduce the potential for incidental cross-contamination.

With respect to cross-contamination concerns from incineration of nonhazardous wastes, the Agency notes that in general, a facility operator may need to segregate wastes to meet treatment standards and that need is fully consistent with the intent of the land disposal restrictions. However, based on the demonstration of incinerability of the high concentrations of phthalic anhydride in K024 wastes, the demonstration of achievability of low detection limits for ash and scrubber waters, and the basic high efficiency of destruction inherent to hazardous waste incinerators, the Agency believes that segregation of other wastes from these phthalate wastes is unnecessary and that compliance with the treatment standards for phthalate wastes would not be mitigated by co-incineration with other wastes containing phthalates.

With respect to cross-contamination concerns from co-disposal with nonhazardous wastes, from liners and covers of roll-off containers, or from the landfill liners, the Agency notes that contamination from these materials (as evidenced in the commenters' data referenced above) would be expected to be small compared to the standards. It appears unlikely that an ash residue that typically contains <2.0 mg/kg of phthalates would be significantly contaminated to a level above the treatment standard of 28 mg/kg by wastes containing only 22 mg/kg or 35 mg/kg. The fact that these materials contain phthalate levels at or near the treatment standards has no relevance to the achievability of the treatment standards. The fact that incineration can destroy hazardous wastes to a level that may be deemed nonhazardous is exactly the goal of incineration treatment.

One commenter suggested that the Agency set technology-based treatment standards for these wastes instead of concentration-based standards. This commenter felt that setting technology-based standards would eliminate the concerns of achievability of the treatment standards due to cross-contamination. Though section 3004(m) specifies that BDAT treatment standards may be expressed as either concentration-based levels or as a method of treatment (technology-based), the Agency maintains that where treatment performance data are available concentration-based treatment standards should be established rather than specifying a method of treatment. Concentration-based standards allow industry the flexibility to use any treatment technology or combination of technologies to treat the wastes as long as land disposed residuals produced, have concentrations of the regulated constituents less than or equal to the treatment standards.

Moreover, none of the commenters supported their claims (that the treatment standards could not be achieved) with data on the measurement of phthalates in treatment residuals. Because acceptable treatment performance data were available for treatment of K024 and since the data support that cross-contamination is not anticipated to affect the achievability of the standards, the Agency is promulgating the concentration-based treatment standards for U028, U069, U088, U102, and U107.

BDAT Treatment Standards for K023, K024, K093, K094, and U190

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Phthalic anhydride . . . (measured as Phthalic acid).	28	Not applicable

BDAT Treatment Standards for K023, K024, K093, K094, and U190

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Phthalic anhydride . . . (measured as Phthalic acid).	0.54	Not applicable

BDAT Treatment Standards for Phthalates U028, U069, U088, U102, and U107

[Nonwastewaters]

Waste code	Regulated constituent	Maximum for any single grab sample	
		Total composition (mg/kg)	TCLP (mg/l)
U028	Bis-(2-ethylhexyl) phthalate	28	Not Applicable
U069	Di-n-butyl phthalate	28	"
U088	Diethyl phthalate	28	"
U102	Dimethyl phthalate	28	"
U107	Di-n-octyl phthalate	28	"

BDAT Treatment Standards for Phthalates U028, U069, U088, U102, and U107 [Wastewaters]

Waste code	Regulated constituent	Maximum for any single grab sample	
		Total composition (mg/kg)	TCLP (mg/l)
U000.28	Bis-(2-ethylhexyl) phthalate	0.54	Not Applicable
U069	Di-n-butyl phthalate	0.54	"
U088	Diethyl phthalate	0.54	"
U102	Dimethyl phthalate	0.54	"
U107	Di-n-octyl phthalate	0.54	"

f. *Wastes from the production of dinitrotoluene, toluene diamine and toluene diisocyanate.*

K027—Centrifuge and distillation residues from toluene diisocyanate production.

K111—Product washwaters from the production of dinitrotoluene via nitration of toluene.

K112—Reaction by-product water from the drying column in the production of toluenediamine via hydrogenation of dinitrotoluene.

K113—Condensed liquid light ends from the production of toluenediamine via hydrogenation of dinitrotoluene.

K114—Vicinals from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.

K115—Heavy ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.

K116—Organic condensate from the solvent recovery column in the production of toluene diisocyanate via phosgenation of toluenediamine.

U221—Toluenediamine (TDA).

U223—Toluene diisocyanate (TDI).

Today's rule promulgates treatment standards for nonwastewater and wasterwater forms of K027, K113, K114, K115, K116, U221, and U223 wastes. Detailed technical descriptions of the specific production processes generating these wastes can be found in the background document for the listing of these wastes. The treatment standards for the organic hazardous constituents are expressed as specific methods of treatment. For the nonwastewater forms of these wastes, the treatment methods are either incineration or fuel substitution. For the wastewater forms of these wastes, the methods are either carbon adsorption followed by incineration or fuel substitution of the spent carbon, or direct incineration of the wastewaters. In addition, for K115 wastes, the Agency is promulgating concentration-based treatment standards for nickel. The Agency did not propose treatment standards for K111 and K112 wastes, and therefore is not promulgating treatment standards in today's rule. At this tme, K111 and K112 wastes are not prohibited from land disposal.

The Agency determined that the analytical methods available during the development of today's rule could not satisfactorily measure the principal hazardous organic constituents contained in K027, K113-K116, U221, and U223 wastes and treatment residuals. One commenter identified a preliminary method of analysis for at least one constituent and urged the Agency to establish concentration-based standards based on the use of this method. However, since the Agency has not finalized this or any other analytical method for the major constituents in these wastes, performance data could not be obtained using this method that would allow the Agency to develop concentration-based treatment standards for today's rule. The Agency has also been unable to identify any surrogate constituents or gross parameters that could be used to assure reduction of the hazardous organic constituents of concern. Thus, the Agency is unable to promulgate concentration-based treatment standards for organics in these wastes.

EPA prefers concentration-based treatment standards due to the greater flexibility in choice of technology used to achieve the standard, and to the greater control afforded in ensuring efficient design and operation of the chosen technology. However, in the absence of analytical methods the Agency believes that the only logical alternative to a concentration-based standard is to establish a method of treatment as the BDAT treatment standard.

It should be noted that promulgating standards expressed as specified methods of treatment does not preclude the Agency from establishing concentration-based standards in the future, should an analytical method be developed with sufficient QA/QC that will measure the hazardous constituents, or should an adequate surrogate or indicator constituent be identified.

The majority of commenters addressing this issue supported this approach. Further, EPA believes that this approach is consistent with the BDAT methodology and with RCRA section 3004(m) which authorizes the Agency to establish either levels or methods of treatment. Therefore, today's rule promulgates treatment standards expressed as required methods for these wastes.

The Agency also points out that when treatment standards are expressed as a specific technology rather than as concentration-based standards, it is possible for a generator or treater to

demonstrate that an alternative technology can achieve an equivalent level of performance as that specified treatment method (40 CFR 268.42(b)). This demonstration could be based on: (1) A newly developed analytical method for the primary hazardous constituent; (2) a concentration-based standard utilizing a surrogate or indicator compound; or (3) other demonstrations of equivalence for an alternative method of treatment. The resultant treatment standard, as well as any analytical methodology used in the demonstration, could then be proposed by the Agency to be applicable to all wastes in this group.

EPA's full rationale for finalizing the treatment standards promulgated today is contained in the BDAT background document for these wastes. The treatment standards promulgated today for nonwastewaters and wastewater forms of K027, K113–K116, U221, and U223 are summarized in the set of tables at the end of this section.

1. Nonwastewaters. The Agency believes that incineration and fuel substitution represents BDAT for the organics in nonwastewater forms of these wastes. The Agency is promulgating a treatment standard of "Incineration or Fuel Substitution as a Method of Treatment" for the nonwastewater forms of K027, K113–K116, U221, and U223. Incinerators must comply with the requirements of 40 CFR Part 264 Subaprt O, or Part 265 Subpart O. Similarly, fuel substitution units must comply with the requirements of 40 CFR Part 266, Subpart D.

The majority of commenters addressing the nonwastewater treatment standards agreed with the Agency's rationale for requiring that these hazardous wastes be burned in incinerators regulated under 40 CFR Part 264 Subpart O or Part 265 Subpart O, or in fuel substitution units burning for energy recovery under requirements set out in 40 CFR Part 266 Subpart D (see 54 FR 1078–1080).

There were a number of comments concerning the regulatory status of residues resulting after burning these wastes. In the January 11, 1989 proposal, the Agency limited its discussion of residues from incineration/fuel substitution to those that are routinely generated during the burning of the restricted wastes (e.g., ashes, incineration/fuel substitution scrubber waters, spent filters and/or sludges from the treatment of scrubber waters). When EPA specifies a treatment method as the treatment standard, residues resulting from the required treatment method are no longer prohibited from land disposal (unless EPA should otherwise specify other requirements, as it is doing in this proceeding for nickel in K115 wastes and for organics concentrated in the spent carbon from the treatment of K027, K113–K116, U221, or U223 wastewaters).

However, some commenters asked the Agency to clarify the regulatory status of wastes that are generated sporadically (e.g., aging equipment which have been exposed to the treated wastes). In response to the commenters who pointed out that wastes resulting from maintenance operations (e.g., replacing of aging materials in the combustion chambers, descaling of boiler soot, or debris equipment) as well as post treatment residues (e.g., filter cakes from water discharges of incineration scrubber waters and washes from the rinsing of incineration equipment) were not addressed by the Agency in the proposed rule, EPA notes that none of these sporadically generated residues are prohibited from land disposal so long as they originate from the treatment method specified in this rule. See further discussion clarifying the applicability of the treatment standards to incinerator equipment and other treatment residues where the treatment standards are promulgated as a specific method or method(s) of treatment in section III.A.3.(h.)(2.) of today's preamble.

For K115, the concentration-based standard for nickel is based on the performance achieved by stabilization of F006 sludges as measured by analysis of the TCLP extract. The Agency has determined that it is technically feasible to transfer the F006 performance data to the K115 incinerator residues because these residues are believed to show similar treatability characteristics to F006 wastes (high concentrations of nickel), and none of the constituents in K115 residuals are likely to interfere with the treatability of nickel. K115 wastes and its incineration/fuel substitution treatment residuals must comply with the concentration-based treatment standards promulgated for nickel.

2. Wastewaters. For organics in the wastewater forms of K027, K113–K116, U221 and U223 wastes, the Agency proposed as the BDAT treatment method carbon adsorption followed by incineration of spent carbon. Based on analysis of the comments received, today's rule promulgates treatment standards for these requiring the use of either: (1) Carbon adsorption of wastewaters followed by incineration of the spent carbon, or (2) direct incineration of wastewaters as a method of treatment. For K115 wastewaters, the Agency is also promulgating concentration-based treatment standards for nickel. The total concentration level for nickel is based on the transfer of performance data that EPA has for metal bearing wastewaters containing nickel. K115 must comply with both the organic and metal standards.

Most of the commenters supported EPA's proposal specifying carbon adsorption followed by incineration of the spent carbon as the method of treatment for K027, K113–K116, U221, and U223 wastewaters. The commenters agreed that this treatment train substantially reduces the amount of soluble organics in wastewaters by concentrating the soluble organics in the activated carbon. The spent carbon is generated by a nondestructive treatment process and thus, the spent carbon must undergo further treatment in order to destroy the amount of organics concentrated in the spent carbon. As a result, spent carbon treatment residues must comply with the nonwastewater treatment standards being promulgated in today's rule for the organics in the nonwastewater form of these wastes (i.e., incineration or fuel substitution).

Carbon adsorption is often used at the end of a treatment train, after the constituent concentrations are reduced by technologies such as chemical oxidation, hydrolysis or biodegradation. It should be noted that the use of such other treatment technologies prior to carbon adsorption is not prohibited by this rule provided that the activated carbon is utilized at a point prior to placing the treated wastewaters in a surface impoundment and that the other forms of treatment do not involve land disposal. (Treatment in an impoundment that meets the requirements of RCRA section 3005(j)(11) (implemented by 40 CFR 261.4) is also not prohibited). For example, biological treatment in a tank followed by activated carbon treatment, followed by discharge of treated wastewaters to a surface impoundment is not precluded.

Any nonwastewater residues from treatment technologies prior to carbon adsorption must meet the same treatment standards applicable to the spent carbon (i.e., they would have to be incinerated in order to meet BDAT). The wastewater effluent from carbon adsorption is considered to meet the treatment standard. See further discussion on the applicability of the land disposal restrictions on the residues from carbon adsorption in section III.A.3.(h.)(2.) of today's preamble.

EPA is further specifying that, to avoid ineffective treatment, effluent wastewaters must be treated by well-designed and well-operated activated carbon unit. This is a unit that is designed and operated in a manner where operating parameters are consistent with the range of operational parameters for which the units were designed.

For instance, wastewaters contaminated with K027 generate insoluble organics (polymers) that may upset the operation of the carbon-adsorption unit and thus, these insoluble organics (typically measured as total suspended solids, TSS) must be removed from the wastewaters prior to carbon adsorption. Pretreatment of wastewaters will minimize operating problems such as plugging of the carbon bed by keeping the TSS of influent wastewaters to the carbon adsorption unit at levels that allow the unit to operate properly. Carbon adsorption units thus must be operated such that breakthrough of TDI and TDA does not occur. Selection of an indicator gross parameter or indicator constituent that can account for the performance of this technology should be made on a case-by-case basis (for example, as part of a facility's waste analysis plan). (See also the discussion of waste analysis plans in section III.A.1.(f.) of today's preamble.) The BDAT background document for K027, K111–K116, U221, and U223 wastes provides additional information of these and other parameters that are typically monitored and considered for the design and operation of carbon adsorption units.

EPA emphasizes that the specified method of treatment includes incineration or fuel substitution of the spent carbon and any other nonwastewater forms of the wastes that are generated up-stream from the effluent discharge of the carbon adsorption column (e.g., spent filters or biotreatment sludges). The spent carbon and other nonwastewaters generated prior to carbon adsorption could presumably be burned for energy recovery in a boiler or industrial furnace. Such additional treatment is necessary to thermally destroy the organic constituents left behind in the spent carbon or nonwastewaters. Without these treatment steps, the hazardous constituents would be merely transferred from one environmental media (water), to another (the carbon or other solid waste).

Commenters also urged the Agency to consider direct incineration of these wastewaters either as the BDAT or as an alternative BDAT method of treatment. The Agency believes that incineration of these restricted wastewaters is a treatment equivalent to carbon adsorption followed by incineration of spent carbon because the amount of organics concentrated in the spent carbon undergo further treatment by incineration prior to land disposal (i.e., incineration or fuel substitution of spent carbon and spent filters). Further, incineration/fuel substitution alone is capable of substantially reducing the organics in these restricted wastewaters. Therefore, EPA is promulgating incineration or fuel substitution as an equivalent BDAT method for these wastewaters. Treatment residues from incineration or fuel substitution of these wastewaters are not prohibited from land disposal.

One commenter indicated that it thermally regenerates the spent carbon used to treat wastewaters contaminated with TDI wastes. Thermal regeneration of the spent carbon is not prohibited providing that the nonwastewater residues resulting from thermal regeneration of the spent carbon undergo incineration or fuel substitution (i.e., meet the K027, K113–K116, U221, and U223 nonwastewater standards promulgated today). The regenerated carbon is no longer a solid waste provided that it is further reused or marketed (See 40 CFR 261.3(c)(2)(i)).

Several commenters urged the Agency to consider currently available treatment methods that deactivate the reactivity of wastewaters containing TDI constituents (K027 and/or U223). The methods of treatment consist of adding large amounts of water with or without chemical reagents, in order to polymerize most of the free TDI to ureas and/or polyurethanes. Commenters argued that these deactivated TDI wastewaters could be land disposed without causing any harm to the human health and the environment.

The Agency disagrees with the commenters because deactivation methods alone cannot be deemed BDAT. For instance, the addition of large amounts of water may successfully remove the reactivity of TDI. This technology, however, leaves behind residues of aromatic organic rings containing nitrogen constituents such as TDA. Since this method of treatment, alone, neither removes the long term toxicity of the organic constituents in the waste nor reduces the potential for migration of organics, the Agency has ruled out this method of treatment as a potential candidate for BDAT.

BDAT TREATMENT STANDARDS FOR K027, K113–K116, U221 AND U223

[Nonwastewaters]

Incineration or fuel substitution [1] as a method of treatment

[1] Incinerators must comply with 40 CFR 264 Subpart O or 265 Subpart O. Fuel substitution units must be in compliance with 40 CFR Part 266 Subpart D.

BDAT TREATMENT STANDARDS FOR K027, K113–K116, U221 AND U223

[Wastewaters]

Carbon adsorption [2] or incineration [1] as a method of treatment

[1] Incinerators must comply with 40 CFR 264 Subpart O or 265 Subpart O. Fuel substitution units must be in compliance with 40 CFR Part 266 Subpart D.

[2] Spent carbon and any other nonwastewater residuals generated upstream from a carbon adsorption unit must meet the nonwastewater standards applicable to these wastes prior to land disposal. Carbon adsorption units must be operated such that breakthrough of TDI and TDA does not occur. Selection of a surrogate or indicator compound as a measure of breakthrough should be considered on a case-by-case situation.

BDAT TREATMENT STANDARDS FOR K115

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Nickel	[1]	0.32

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR K115

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Nickel	0.47	[1]

[1] Not applicable.

g. *Wastes from 1,1,1-trichloroethane production.*

K028—Spent catalyst from the hydrochlorinator reactor in the production of 1,1,1-trichloroethane

K029—Waste from the product steam stripper in the production of 1,1,1-trichloroethane.

K095—Distillation bottoms from the production of 1,1,1-trichloroethane.

K096—Heavy ends from the heavy end column from the production of 1,1,1-trichloroethane.

Wastes identified as K028, K029, K095 and K096 are generated primarily by facilities in the organic chemicals manufacturing industry, specifically those engaged in the production of 1,1,1-

trichloroethane. Detailed technical descriptions of the specific production processes generating these wastes can be found in the background document for the listing of these wastes. Today's rule promulgates treatment standards for nonwastewater forms of K028, K029, K095 andK096 and wastewater forms of K028. The regulated constituents and treatment standards for these wastes are listed in the tables at the end of this section.

1. Revision of the "No Land Disposal" standards. At the time of the proposed rule, information available to the Agency indicated that K029 wastes were no longer being generated and that K095 and K096 wastes were being completely recycled. According to available waste characterization data, all three of these wastes would be classified as nonwastewaters for the purposes of BDAT. Therefore, the Agency proposed a treatment standard of "No Land Disposal Based on No Generation" for K029 nonwastewaters and "No Land Disposal Based on Recycling" for K095 and K096 nonwastewaters. The Agency simultaneously proposed that concentration-based standards for the nonwastewaters could be transferred from treatment performance data for incineration of either K019 or F024 nonwastewaters. This data transfer would be possible because these two wastes were more difficult to treat than K029, K095 and K096.

Many commenters opposed any standard that specified "No Land Disposal" for a particular waste because of complications arising from EPA's application of the "derived-from" and "mixture" rules. The commenters were concerned that during the process of recycling their K095 and K096 wastes, an accidental spill may occur thus creating a nonrecyclable K095 or K096 nonwastewater based on either the "derived-from" or the "mixture" rule. The commenters also pointed out that potential fluctuations in the generation processes, or modifications to the generation process may result in the generation of a waste that could no longer be recycled. They indicated that these wastes, if generated, would probably require incineration and may produce an ash that would most likely require land disposal. Thus, a genuine need for a concentration-based treatment standard would arise.

The Agency maintains that for *certain* wastes, the "No Land Disposal" standard is appropriate. The Agency believes that the clarification of the applicability of this standard may remove the majority of the commenters' concerns. Such a standard is appropriate, provided that it applies to wastes generated from the process described in the listing description for this waste that appears in 40 CFR Part 261, and is disposed after the date of the applicable land disposal prohibition for that waste. A final rule published on May 2, 1989 provides a complete explanation of the basis for limiting the "No Land Disposal Based on No Generation" standard in this way (54 FR 18836).

However, most commenters supported the Agency's proposed alternative (i.e., the transfer of concentration-based treatment standards for K019 wastes to K029, K095 and K096). Thus, the Agency is not promulgating the "No Land Disposal Based on No Generation" standard for K029 nonwastewaters nor is it promulgating the "No Land Disposal Based on Recycling" standard for K095 and K096 nonwastewaters.

2. Standards for organic constituents. Commenters pointed out that K019 wastes were more similar to K028, K029, K095 and K096 nonwastewaters than F024 wastes. The Agency reexamined the data and agrees with the commenters. Waste characterization data on K019 nonwastewaters indicate that the K019 wastes do contain higher concentrations of chlorinated organic compounds than the F024 wastes and are more difficult to treat than K028, K029, K095 and K096 nonwastewaters. The Agency is therefore promulgating treatment standards for the organic constituents present in these nonwastewaters based on the transfer of performance data from rotary kiln incineration in K019 wastes rather than F024 wastes.

Because characterization data on K029, K095, and K096 show the presence of treatable concentrations of several organic constituents that the Agency had not found present in K028, the Agency developed standards for these other organic constituents based on a transfer of performance data and existing concentration-based standards for K019 wastes. Details on the rationale for the transfer of performance data and the development of treatment standards for these organic constituents can be found in the BDAT background document for these wastes.

One commenter stated that the proposed organic constituent treatment standards fall below PQLs achievable in the commenter's analytical laboratories. However, the background documents for K019 and for F024 demonstrate that detection levels in ash and scrubber water residuals can be achieved in laboratories. In fact, the limits achieved by the laboratories used in the BDAT studies are well below the proposed or final standards for all regulated organic constituents. The Agency believes this evidence verifies that analytical laboratories that are in compliance with EPA's QA/QC requirements can quantify these regulated constituents at the treatment standard levels. See also a more complete discussion of the relationship of PQLs to BDAT treatment standards in section III.A.1.(b.) of today's preamble.

Several commenters stated that the treatment standards for the organic constituents should be consistent with treatment standards previously promulgated for the same constituents in other waste codes. The Agency disagrees with these commenters. Treatment standards for a particular waste are developed based on BDAT performance data for that waste or for a waste judged to be similar. Treatment standards for particular constituents may vary for different wastes due to differences in the waste matrices which may alter the constituent treatability. The Agency also believes that these commenters concerns may be moot by the Agency's decision to transfer treatment standards from K019 wastes to K028, K029, K095 and K096 nonwastewaters.

3. Standards for metal constituents. In today's rule, only the proposed treatment standards for cadmium, chromium, lead and nickel in K028 wastewaters are being promulgated. These wastewater standards are being transferred based on the reanalysis of the performance data from the lime and sulfide precipitation treatment of metals from K062 wastewaters. The Agency has determined that these metals present in K062 wastewaters are more difficult to treat than when present in K028 wastewaters. K062 wastewaters typically contain much higher levels of these metals as well as other metals (such as iron) and much higher levels of dissolved solids (such as sulfates or chlorides). These higher concentration of metals and dissolved solids interfere with the effectiveness of the precipitation reactions which are intended to remove the metals of interest. Thus, the K062 wastewaters are more difficult to treat than K028 wastewaters. A more detailed explanation of the transfer of these data for metal constituents in K028 is provided in the BDAT background document for these wastes. The Agency did not receive any comments opposing the transfer of these K062 treatment performance data specifically to K028 wastewaters nor were any comments or data received indicating that these

standards could not be achieved. Therefore, the Agency is promulgating these standards as proposed.

Standards for nickel and chromium in K028 nonwastewaters were originally proposed based on performance data for these metal constituents from the stabilization of K048 and K051 incinerator ash. One commenter felt that these data were not demonstrated by the stabilization testing performed, thereby invalidating the transfer of the treatment standards. This commenter suggested transferring treatment performance data from F006 instead.

Meanwhile, the Agency has recently completed an analysis of TCLP extracts obtained from the stabilization of F024 incinerator ash residues. The results of this analysis show substantial reduction of metals in TCLP extracts after stabilization. At the same time, the Agency reexamined the data for the stabilization of F006, K048, and K051 nonwastewaters and concluded that these new stabilization data for F024 wastes may better represent the levels of treatment obtainable for the metals expected to be contained in K028 ash residues (as well as those for K029, K095, and K096). However, since these data were not available for public notice and comment, and since the resultant treatment standards are significantly different from the proposed standards, the Agency has decided not to promulgate treatment standards for these metals in K028 nonwastewaters in today's rule. The Agency is reserving standards for nickel and chromium in K028 nonwastewaters in order to provide notice that these constituents will be proposed for restrictions in a future rulemaking.

Another commenter challenged transferring stabilization data in order to regulate inorganic constituents in treatment residues from K028 wastes because the commenter believed that if the concentrations for metals fall below the levels which define a characteristic waste (40 CFR Part 261 Subpart C), no treatment should be required. The Agency reminds the commenter that the treatment residuals are also considered to be listed hazardous wastes under the "derived-from" rule, regardless of whether or not the waste exhibits a characteristic. See further discussion of the relationship of BDAT to the "derived-from" rule in section III.A.1.(d.) of today's preamble.

In a similar manner, one commenter questioned the need to regulate metals constituents in residues derived from a predominantly organic waste. Because incineration is designed specifically to destroy organics and because it does not provide treatment for metals (which end up in the ash), the Agency believes that stabilization of the ash to immobilize metal constituents is a technically valid approach.

Other commenters stated that these metals should not be regulated because these wastes are not listed for these constituents. The hazardous constituents for which a waste is listed are considered by the Agency is selection of constituents for regulation. However, these constituents are by no means an exhaustive list, but merely provide a minimum basis for listing a waste as hazardous. As discussed in section III.A.1.(b.) of today's preamble, the Agency therefore believes that it is not restricted to regulation of only these constituents. The Agency uses waste characterization and treatment performance data collected under the BDAT program to determine the constituents that should be regulated.

At the time of proposal, there was apparently no need for metals standards in K029, K095 and K096 nonwastewaters, because K095 and K096 nonwastewaters were being totally recycled and because K029 nonwastewaters were identified as no longer being generated. The Agency intends to develop standards for metals in nonwastewaters forms of K029, K095, and K096 and propose them with the Third Third wastes prior to promulgation by May 8, 1990.

4. Standards for K029, K095 and K096 wastewaters. The Agency also did not propose treatment standards for the wastewater forms of K029, K095 and K096. The Agency stated that it believed that there was no need for their development because it was unlikely that these wastewaters were being generated nor could be generated. Commenters indicated that they believe that the likelihood for generation of these wastewaters is reasonably good, and thus a need exists for standards. In particular, wastewaters may be generated during the recycling of K095 and K096 (e.g., wash waters, contaminated cooling water, and spill rinsings). (However, if K095 and/or K096 wastes are used as intermediates and thus not discarded, these materials would not be solid wastes, and any residues from their use would therefore not be deemed to be derived from management of a listed hazardous waste.)

The Agency agrees with these commenters that wastewater forms of K029, K095 and K096 may be generated and thus treatment standards are needed. However, today's rule cannot promulgate any treatment standards because no standards were previously proposed. The Agency intends to develop standards for wastewater forms of K029, K095, and K096 and propose them with the Third Third wastes prior to promulgation by May 8, 1990.

K029, K095, and K096 are all considered Second Third wastes for which treatment standards were to be established by the statutory deadline of June 8, 1989. Since the Agency is not promulgating standards for the wastewater forms of K029, K095 and K096 by their statutory deadline, land disposal of these wastewaters shall be regulated by the "soft hammer" provisions in 40 CFR Part 268.

BDAT TREATMENT STANDARDS FOR K028

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
1,1-Dichloroethane	6.0	(1)
trans-1,2-Dichloroethene	6.0	(1)
Hexachlorobutadiene	5.6	(1)
Hexachloroethane	28.	(1)
Pentachloroethane	5.6	(1)
1,1,1,2-Tetrachloroethane	5.6	(1)
1,1,2,2-Tetrachloroethane	5.6	(1)
1,1,1-Trichloroethane	6.0	(1)
1,1,2-Trichloroethane	6.0	(1)
Tetrachloroethylene	6.0	(1)
Chromium (Total)	(1)	Reserved.
Nickel	(1)	Reserved.

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR K028

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
1,1-Dichloroethane	0.007	*
trans-1,2-Dichloroethene.	0.033	*
Hexachlorobutadiene	0.007	*
Hexachloroethane	0.033	*
Pentachloroethane	0.033	*
1,1,1,2-Tetrachloroethane.	0.007	*
1,1,2,2-Tetrachloroethane.	0.007	*
Tetrachloroethylene	0.007	*
1,1,1-Trichloroethane	0.007	*
1,1,2-Trichloroethane	0.007	*
Cadmium	6.4	*
Chromium (Total)	0.35	*
Lead	0.037	*
Nickel	0.47	*

BDAT TREATMENT STANDARDS FOR K029

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Chloroform	6.0	Not applicable
1,2-Dichloroethane	6.0	"
1,1-Dichloroethylene	6.0	"
1,1,1-Trichloroethane	6.0	"
Vinyl chloride	6.0	"

BDAT TREATMENT STANDARDS FOR K095

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
1,1,1,2-Tetrachloroethane	5.6	"
1,1,2,2-Tetrachloroethane	5.6	"
Tetrachloroethene	6.0	"
1,1,2-Trichloroethane	6.0	"
Trichloroethylene	5.6	"
Hexachloroethane	28.0	"
Pentachloroethane	5.6	"

BDAT TREATMENT STANDARDS FOR K096

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
1,3-Dichlorobenzene	5.6	"
Pentachloroethane	5.6	"
1,1,1,2-Tetrachloroethane	5.6	"
1,1,2,2-Tetrachloroethane	5.6	"
Tetrachloroethylene	6.0	"
1,2,4-Trichlorobenzene	19.	"
Trichloroethylene	5.6	"
1,1,2-Trichloroethane	6.0	"

h. *Organophosphorus pesticide wastes.*

K036—Still bottoms from toluene reclamation distillation in the production of Disulfoton.
K038—Wastewater from the washing and stripping of Phorate production.
K039—Filter cake from the filtration of diethyl phosphorodithioic acid in the production of Phorate.
K040—Wastewater treatment sludge from the production of Phorate.
P039—Disulfoton
P040—Diethyl 2-pyrazinyl phosphorothioate
P041—Diethyl-p-nitrophenyl phosphate
P043—Diisopropylfluorophosphate
P044—Dimethoate
P062—Hexaethyl tetraphosphate
P071—Methyl parathion
P085—Octamethyl pyrophosphoramide
P089—Parathion
P094—Phorate
P097—Famphur
P109—Tetraethyl dithiopyrophosphate
P111—Tetraethyl pyrophosphate
U058—Cyclophosphamide
U087—0,0-Diethyl S-methyl dithiophosphate
U235—tris-(2,3-Dibromopropyl) phosphate

Today's rule promulgates treatment standards for wastewater and nonwastewater forms of K036, K039, K040, P039, P040, P041, P043, P044, P062, P071, P085, P089, P094, P097, P109, P111, U058, U087 and U235. It also promulgates standards for wastewater forms of K036. Detailed technical descriptions of the specific production processes generating these wastes can be found in the background document for the listing of these wastes.

The principal constituents of concern in each of these wastes are members of a group of organic compounds known as organophosphorus compounds. The majority of these constituents also contain sulfur and are often referred to as phosphorothioates. All of these compounds are somewhat similar in structure and elemental content. Most are typically manufactured for use as pesticides. Therefore, the Agency has classified all of these compounds as one treatability group identified as the organophosphorus pesticides.

In the January 11, 1989 proposed rule for Second Third wastes, the Agency proposed a direct transfer of the concentration-based standards from the incineration of K037 wastes (wastewater treatment sludge from the production of Disulfoton) to some of these organophosphorus pesticide wastes (i.e., those that have analytical methods) and proposed incineration as a method of treatment for the others. The basis of all of these standards is the similarities in structure and elemental composition of all of the organophosphorus pesticides to each other and to Disulfoton, the principal hazardous constituent of concern in K037 wastes. (EPA promulgated concentration-based treatment standards for K037 wastewaters and nonwastewaters with the First Third wastes on August 8, 1988.) In addition, the Agency believes that Disulfoton is one of the most difficult chemicals in this group of organophosphorus pesticides to incinerate. Given that Disulfoton can be effectively treated by incineration and that the chemicals in this group are structurally similar, the Agency believes that all the other organophosphorus pesticides in this section can be effectively treated by incineration, and that the concentration-based standard for each representative regulated organophosphorus pesticide can be identical to that achieved by incineration of Disulfoton in K037 wastes. Therefore, the Agency believes that the performance achievable by incineration represents BDAT for all of the organophosphorus pesticide chemicals and is promulgating concentration-based treatment standards for the wastewaters and nonwastewater forms of K038, K040, P039, P071, P089, P094, P097 and U235 as well as wastewater forms of K036 based on this transfer.

EPA is establishing incineration as a method of treatment for the nonwastewater forms of K039, P040, P041, P043, P044, P062, P085, P109, P111, U058 and U087. Standards for the wastewater forms of these organophosphorus pesticides have been developed based on the performance of biological degradation, incineration and carbon adsorption. These are discussed in detail in the following sections.

1. *Wastes with concentration-based BDAT standards.* The Agency has determined that, currently, there are analytical methods (most of which comply with the EPA, Office of Solid Waste, Publication: SW–846 (generally referred to as SW–846)) that allow the measurement of the principal hazardous constituent (organophosphorus pesticide) contained in wastes and treatment residuals for wastes identified as K036, K038, K040, P039, P071, P089, P094, P097 and U235. Thus, the Agency is able to promulgate concentration-based treatment standards for: Disulfoton in K036 wastewaters; Disulfoton in P039 wastewaters and nonwastewaters; Phorate in K038, K040 and P094 wastewaters and nonwastewaters; and Methyl parathion, Parathion, Famphur, and tris-(2, 3-Dibrompropyl) phosphate in P071, P089, P097 and U235 wastewaters and nonwastewaters, respectively. Standards applicable to nonwastewaters are based on the performance achieved by rotary kiln incineration and the concentration of organophosphorus pesticide measured in the ash residuals. Standards applicable to wastewaters are based on the performance achieved by biological treatment and the concentration of organophosphorus pesticide measured in the resultant effluent wastewaters. Where the treatment standards are expressed as concentration-based standards, other treatment technologies that can achieve these concentration-based treatment standards are not precluded from use by this rule. The regulated constituents and treatment standards for these wastes are listed in the tables at the end of this section.

The proposed treatment standards for the wastewater forms of these organophosphorus pesticides were based on the concentrations of Disulfoton as measured in grab samples of scrubber water from the incineration of K037 nonwastewaters. EPA has decided to change these standards in the final rule based on additional performance data for a biological wastewaters treatment system submitted during the comment period. These data were from the treatment of industrial wastewaters containing low concentrations of Parathion. Although, these data (based on analysis of grab samples for influent wastes and composite samples for effluent) were not generated specifically for this rulemaking and do not result from the direct treatment of the RCRA waste identified as P089 (Parathion), the Agency believes that these wastewaters have concentrations of Parathion that are similar to those wastewaters identified specifically as K036, K038, K040, P039, P071, P089, P094, P097 or U235. The Agency has also determined that these data are valid and represent the level of performance that appears to be achievable for this type of biological wastewater treatment system.

The Agency points out that the promulgated concentration-based treatment standards for wastewaters for these organophosphorus wastes are based on the analysis of composite samples rather than grab samples, because this new performance data received during the comment period were based on the analysis of composite effluent samples. See further discussion of when EPA uses composite samples to establish treatment standards in section III.A.1.(f.) of today's preamble.

EPA believes these data to be a preferable measure of treatment performance because where the Agency has performance data (that conform with BDAT methodology) on wastewater treatment processes and data on incineration (constituent concentrations in scrubber water), the Agency prefers to establish treatment standards based on the wastewater treatment processes. (Note.—This does not preclude the Agency from establishing treatment standards for other wastes based on constituent concentrations in incinerator scrubber waters.)

EPA also believes that these data for biological treatment of Parathion can be validly transferred to the wastewaters forms of the other organophosphorus pesticide waste codes. This is due to the structural similarity between Parathion and the other organophosphorus wastes. Thus, today's rule promulgates revised concentration-based standards for the wastewater forms of K036, K038, K040, P039, P071, P089, P094, P097 and U235 based on analysis of composite samples from wastewater treatment. (EPA also intends to investigate if these wastewater standards are appropriate for K037 wastewaters—a First Third waste—as part of the Third Third rulemaking.)

The Agency received one comment disagreeing with the proposed concentration-based standards for P089, P097, and U235, because of a perceived lack of analytical methods to detect Parathion (P089), Famphur (P097) and tris-(2,3-dibromopropyl) phosphate. The Agency disagrees with this comment, and believes that all three chemicals can be analyzed. Famphur and Parathion can be analyzed by Method 8270 of SW–846, and have been proposed in the January 23, 1989 update to the third edition of SW–846. Tris-(2,3-dibromopropyl) phosphate can be analyzed by Method 8350 of SW–846, and will be included in the second update to the third edition of SW–846, due to be proposed as an official method in early 1990. All three chemicals have been previously included on the BDAT List for that reason.

One commenter questioned why, in the January 11, 1989 proposal, standards were proposed for K036 wastewaters, but not for K036 nonwastewaters. The Agency promulgated a BDAT standard of "No Land Disposal based on No Generation" for K036 nonwastewaters with the First Third wastes on August 8, 1988. (See 53 FR 31174). EPA amended this standard on May 2, 1989, to apply to wastes generated from the process described in the listing description and disposed after August 17, 1988 (54 FR 18836). In the forthcoming proposed rule for Third Third wastes, the Agency intends to propose a standard for other forms of K036 nonwastewaters, such as K036 spill residues or solid residues from the treatment of K036 leachate.

One commenter stated that K036 and P039 may be harder to destroy by incineration than K037, because the concentration of Disulfoton in K036 and P039 may be many times higher than the concentration in K037. The Agency disagrees with this comment. While it recognizes that higher concentrations of Disulfoton may occur in K036 and P039 wastes, the Agency believes that the concentrations would not be significantly different from that measured in the untreated K037 wastes. The data in the background document for K037 show Disulfoton concentrations of 10.4% to 24.6% for the untreated wastes. The Agency believes that these concentration levels would be within the same order of magnitude of those anticipated to be in K036 and P039. The Agency successfully incinerated this high level of Disulfoton such that the concentrations in the residuals were at or near the detection limit in the residuals. Further, the K037 waste tested also contained approximately 75% solids (filter paper and diatomaceous earth filter aid) which the Agency believes could interfere with the destruction of Disulfoton and thus make K037 more difficult to destroy than K036 and P039 wastes that may have slightly higher concentrations of the chemical, but a lesser amount of interferences.

2. Wastes with treatment methods as BDAT. The Agency determined that the analytical methods available during the development of today's rule could not satisfactorily measure the principal hazardous organic constituents (organophosphorus pesticide) contained in wastes and treatment residuals for wastes identified as K039, P040, P041, P043, P044, P062, P085, P109, P111, U058 and U087. Thus, the Agency is unable to promulgate concentration-based treatment standards for these wastes and is promulgating methods of treatment. Although EPA prefers a concentration-based standard (due to both the greater flexibility in choice of technology used to achieve the standard and in the greater control afforded to ensure efficient design and operation of the chosen technology), in the absence of analytical methods (that would measure and assure compliance), the Agency believes that establishing a method of treatment is the only logical alternative for BDAT. In general, the majority of commenters on this issue supported this approach. Further, EPA believes that this is consistent with the promulgated BDAT methodology and with RCRA Section 3004(m) which authorizes the Agency to establish either levels or methods of treatment. Therefore, today's rule promulgates methods of treatment for these wastes.

As discussed previously, the Agency believes that incineration represents BDAT for the nonwastewater forms of these wastes. Besides the fact that EPA does not currently have an analytical method for this group of

organophosphorus pesticides, EPA has currently not identified any organic constituents in these wastes that could be used as a surrogate or as an indicator compound in order to develop alternative concentration-based standards for these wastes. It should be noted that promulgating BDAT standards expressed as specific methods of treatment does not preclude the Agency from establishing concentration-based standards in the future, should an analytical method be developed with sufficient QA/QC that will measure the hazardous constituents or should an adequate surrogate or indicator constituent be identified. Therefore, the Agency is promulgating a BDAT treatment standard of "Incineration as a Method of Treatment" for the nonwastewater forms of K039, P040, P041, P043, P044, P062, P085, P109, P111, U058 and U087. Incinerators must comply with 40 CFR 264 Subpart O or 265 Subpart O.

For the wastewater forms of these organophosphorus wastes, the Agency proposed carbon adsorption as the BDAT treatment method in 54 FR 1086 (January 11, 1989). The residual from this type of nondestructive treatment (i.e., the spent carbon) is still considered to be the same waste code as before treatment, and must be managed as such. It therefore must be incinerated prior to land disposal.

It should be noted that the use of other treatment technologies prior to carbon adsorption is not prohibited by this rule. Carbon adsorption is often used at the end of a treatment train, after the constituent concentrations are reduced by technologies such as chemical oxidation, hydrolysis or biodegradation. Any nonwastewater residues from these treatment technologies prior to and including carbon adsorption would have to be incinerated in order to meet the treatment standard. See section III.A.3.(j.) of today's preamble for a similar discussion on carbon adsorption for wastewaters associated with K027 wastes.

Several commenters suggested that there are cases where it may be preferable to incinerate the wastewater, rather than have the waste adsorbed by carbon. Two examples of these situations occur when: (1) The waste appears as a result of the "mixture-rule" with other waste codes for which the BDAT treatment method requires incineration; and (2) the waste is generated such that it contains a relatively high level of TOC but just under the 1% TOC cut-off and maintains its classification (for purposes of BDAT) as a wastewater. In either case, the Agency agrees with the commenter that incineration would then be the preferred or required (as in the case of the first example) method of treatment. In fact, the Agency did consider incineration as an alternative destructive technology to carbon adsorption. However, it seemed impractical to require all wastewater streams to be incinerated. (Some data indicated that the majority of hazardous wastewaters contain significantly less than 1% TOC.)

For those wastewaters that do contain just under the 1% TOC level, incineration may be more desirable and possibly more effective than carbon adsorption. This might lead one to believe that for these "high" TOC wastewaters, the Agency should therefore dictate incineration over carbon adsorption. However, at this time the lack of a method to analyze for the constituents of concern makes it difficult (but not impossible) to correlate the performance efficiency of the two treatment methods for the constituents of concern to performance efficiency of a surrogate or indicator compound. One possible surrogate to measure treatment efficiency is total organic carbon (TOC); however, the Agency is currently unaware of the level of TOC for which carbon adsorption would be more efficient than incineration.

Thus, the Agency is promulgating "Incineration or Carbon Adsorption as a Method of Treatment" as BDAT for the wastewater forms of wastes identified as K039, P040, P041, P043, P044, P062, P085, P109, P111, U058 and U087. Spent carbon and any other nonwastewater residuals generated up-stream from a carbon adsorption unit must meet the nonwastewater standards applicable to these wastes prior to land disposal, and so must be incinerated. Carbon adsorption units must be operated such that breakthrough of organophosphorus compounds does not occur. (See section III.A.3.(f.) of today's preamble for a discussion on the need for specifying some level of proper operating conditions for carbon adsorption technology.) Selection of a surrogate or indicator compound of this breakthrough should be made on a case-by-case basis (for example, as part of a facility's waste analysis plan). See also the discussion of waste analysis plans in section III.A.1.(f.) of today's preamble.

Commenters asked the Agency to specifically clarify the applicability of the "treatment as a method" BDAT standards to treatment residuals. They suggested that the Agency could clarify the standards by stating that they do not apply to "derived-from" wastes. While the Agency agrees that clarification is necessary, it does not agree that the standards should be identified as suggested for several reasons: (1) all wastes identified as "derived-from" are not necessarily treatment residues (e.g., leachate); (2) all nonwastewater treatment residues (such as spent carbon, residues from recycling, and residues from wastewater treatment processes prior to carbon adsorption) may contain leachable hazardous organics; (3) some wastewaters (such as scrubber waters from steam stripping operations or recovery process waters) may contain significant amounts of untreated constituents.

However, the Agency believes that the previous discussions in this section assist in clarifying the applicability to these residues. As a summary, the Agency points out the following: (1) Scrubber waters from incinerators in compliance with 40 CFR Part 264 Subpart O of Part 265 Subpart O are considered to meet BDAT for these wastes and can be land disposed; (2) the scrubber waters from incinerators in compliance with 40 CFR Part 264 Subpart O or Part 265 Subpart O therefore are not required to undergo "Carbon Adsorption as a Method of Treatment"; (3) incinerator ashes and residues from the treatment of scrubber waters from incinerators in compliance with 40 CFR Part 264 Subpart O of Part 265 Subpart O are considered to meet BDAT for these wastes and can be land disposed; (4) incinerator equipment (such as fire brick) that are derived from sections of the incinerator that have been directly subjected to the high temperatures of the incinerator (that was operated in compliance with 40 CFR Part 264 Subpart O of Part 265 Subpart O) or are downstream from the high temperature zones are considered to meet BDAT for these wastes and can be land disposed. The Agency believes that the hazardous constituents contained in these wastes are destroyed in the high temperature zones of the incinerator and would not be expected to be present in the high temperature zones or in the equipment down stream of these zones; (5) wastewater effluent (and their subsequent nonwastewater treatment residues) from the carbon adsorption units treating wastewater forms of these waters are considered to meet BDAT for these wastes and can be land disposed; and (6) spent carbon (and nonwastewater residues from the pretreatment of these wastes prior to carbon adsorption) from the treatment of wastewater forms of these wastes are not considered to meet BDAT for these wastes and must meet the BDAT treatment standards for nonwastewaters prior to land disposal.

As noted earlier, when treatment standards are expressed as a specific technology rather than concentration-based standards, it is possible for a generator or treater to demonstrate that an alternative technology can achieve an equivalent level of performance as that specific treatment method (40 CFR 268.42(b)). This demonstration could be based on: (1) A newly developed analytical method for the primary hazardous constituent; (2) a concentration-based standard utilizing a surrogate or indicator compound; or (3) other demonstrations of equivance for an alternative method of treatment. The resultant treatment standard as well as any analytical methodology used in the demonstration could then be proposed by the Agency to be applicable to all wastes in this group.

BDAT TREATMENT STANDARDS FOR ORGANOPHOSPHORUS WASTES K038, K040, P039, P071, P089, P094, P097 AND U235

Waste code	Regulated constituent	Maximum for any single grab sample	
		Total composition, (mg/kg)	TCLP (mg/l)
K038	Phorate	0.1	[1]
K040	Phorate	0.1	[1]
P039	Disulfoton	0.1	[1]
P071	Methyl parathion	0.1	[1]
P089	Parathion	0.1	[1]
P094	Phorate	0.1	[1]
P097	Famphur	0.1	[1]
U235	tris-(2,3-Dibromopropyl) phosphate	0.1	[1]

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR ORGANOPHOSPHORUS WASTES K036, K038, K040, P039, P071, P089, P094, P097 AND U235

[Wastewaters]

Waste code	Regulated constituent	Maximum for any composite sample	
		Total composition (mg/l)	TCLP (mg/l)
K036	Disulfoton	0.025	[1]
K038	Phorate	0.025	[1]
K040	Phorate	0.025	[1]
P039	Disulfoton	0.025	[1]
P071	Methyl parathion	0.025	[1]
P089	Parathion	0.025	[1]
P094	Phorate	0.025	[1]
P097	Famphur	0.025	[1]
U235	tris-(2,3-Dibromopropyl) phosphate		

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR ORGANOPHOSPHORUS WASTES K039, P040, P041, P043, P044, P062, P085, P109, P111, U058 AND U087

[Nonwastewaters]

Incineration as a method of treatment

[1] Incinerators must comply with 40 CFR 264 Subpart O or 265 Subpart O.

BDAT TREATMENT STANDARDS FOR ORGANOPHOSPHORUS WASTES K039, P040, P041, P043, P044, P062, P085, P109, P111, U058 AND U087

[Wastewaters]

Carbon adsorption [2] or incineration [1] as a method of treatment

[1] Incinerators must comply with 40 CFR 264 Subpart O or 265 Subpart O.

[2] Spent carbon and any other nonwastewater residuals generated upstream from a carbon adsorption unit must meet the nonwastewater standards applicable to these wastes prior to land disposal. Carbon adsorption units must be operated such that breakthrough of the organophosphorus compounds does not occur. Selection of a surrogate or indicator compound as a measure of breakthrough should be considered on a case-by-case situation.

i. Wastes from 2,4–D production.

K043—2,6–Dichlorophenol wastes from the production of 2,4–D.

Wastes identified as K043 are generated primarily by facilities in the organic chemicals manufacturing industry, specifically those engaged in the production of 2,4–D. The Agency has data that indicate that there is only one current generator of this waste. Detailed technical descriptions of the specific production process generating these wastes can be found in the background document for the listing of this waste code. The treatment standards for this waste are based on data obtained from wastes generated and treated at this facility.

Today's rule promulgates treatment standards for K043 wastewaters and nonwastewaters based on incineration. Other treatment technologies that can achieve these concentration-based treatment standards are not precluded from use by this rule. EPA is

promulgating treatment standards for thirteen organic constituents including tetrachloroethene, six chlorinated phenols, and six polychlorinated dibenzo-p-dioxins and dibenzofurans (PCDDs and PCDFs, respectively). The specific regulated constituents and treatment standards for these wastes are listed in the tables at the end of this section.

The promulgated treatment standards for the regulated chlorinated phenols in wastewaters are based on new data received by the Agency from the sole generator/treater of K043 during the comment period. The original data for wastewaters consisted of two data points. The new data provided six additional wastewater data points. The Agency believes these new data are more representative of treatment that can be achieved for K043.

In general, the comments submitted on the proposed rule for K043 related to four general issues: (1) The establishment of treatment standards for PCDDs and PCDFs; (2) specifying a treatment technology as the treatment standards for K043 rather than establishing concentration-based standards; (3) the validity of the performance data upon which the treatment standards are based; and (4) the regulation of tetrachloroethene in K043.

Commenters were concerned with the treatment standards established for the six regulated PCDDs and PCDFs. Some commenters thought that the PCDDs and PCDFs should not be regulated because K043 is not listed for these constituents. This is not a sufficient reason for not establishing a treatment standard, for the reasons given a number of times earlier in this preamble. (See further discussion of the use of Appendix VII in establishing BDAT in section III.A.1.(b.) of today's preamble and the discussion of the analysis for analysis of PCDDs and PCDFs in F024 wastes in section III.A.3.(b.) of today's preamble.) The Agency thus uses waste characterization and treatment performance data to determine the constituents that should be regulated for a waste. A more detailed explanation of the selection of regulated constituents in K043 is provided in the background document for this waste code.

Another commenter felt that the tetrachlorodibenzo-p-dioxins (TCDDs) and tetrachlorodibenzofurans (TCDFs) should not be regulated because the incineration data (submitted by the commenter) did not indicate the presence of these constituents in K043 wastes. In response, the Agency points out that the availability of specific treatment data for a given constituent in a particular waste, is not a requirement for the selection of that constituent for regulation. This is particularly true when EPA has sufficient additional waste characterization data that indicate the presence of that constituent in treatable levels in wastes other than what was specifically treated. While the Agency did not have specific treatment data for TCDDs and TCDFs in the submitted K043 incineration data, it did not waste characterization data indicating the presence of several of these constituents in other untreated K043 wastes at concentrations that the Agency determined were treatable by incineration.

This same commenter expressed concern that the BDAT treatment standards for these constituents in K043 were transferred from treatment standards for K099. According to the commenter, the wastes are not sufficiently similar to justify transferring standards. As stated in the proposed rule (54 FR 1063), the Agency also has data on six PCDDs and PCDFs in untreated and treated K099 wastes. Since K099 is generated at the same site as K043 (in the next step of the 2,4-D production process) and since they contain similar types and concentrations of hazardous constituents as contained in untreated K043 wastes, the Agency believes that K099 wastes are sufficiently similar in order to justify transferring standards for these constituents to K043 wastes.

In addition, the Agency feels that incineration of K043 waste will treat the PCDDs and PCDFs to levels that are comparable to those achieved by chlorination of the K099 waste. Further, the Agency points out that standards for PCDDs and PCDFs are the same as those promulgated for F024 wastes (which are also based on incineration). The Agency believes that the F024 wastes tested by the Agency are more difficult to incinerate than K043, based on available characterization data, and that the resultant F024 incinerator ash is as difficult or more difficult to analyze than the respective K043 nonwastewater residuals. While the Agency maintains that the transfer of standards from K099 is supportable, the Agency believes that the data from F024 also lends support to establishment of these standards for K043. See section III.A.1.(e.) of today's preamble for a more detailed discussion related to the transfer of treatment standards.

Several commenters expressed general concerns about the ability to comply with the treatment standards for PCDDs and PCDFs because they are too low (i.e., near the practical quantitation limits (PQLs) for these constituents). They claim that the 1 ppb detection limit is not routinely achievable, that only a handful of laboratories can perform the analysis to this level, and that analysis and reporting of these constituents typically takes three to eight months.

The Agency disagrees that these treatment standards are too low and does not anticipate any difficulties in achieving detection at the treatment standard of 1 ppb for either the nonwastewaters or wastewaters. While the Agency has no data for PCDDs and PCDFs in treated K043 residuals, data do exist for these constituents in treatment residues of other wastes indicating that detection limits of less than 1 ppb can routinely be achieved. For example, performance data from incineration of F024 show detection limits of less than 10 parts per trillion (ppt) in residual wastewater and less than 100 ppt in residual ash. The Agency believes that these treatment standards are analytically achievable on a routine basis and points out that quantitation levels for these PCDDs and PCDFs have been achieved by commercial laboratory facilities at low ppt levels in nonwastewaters and low parts per quadrillion (ppq) levels in wastewaters. The Agency also contends that there are a sufficient number of laboratories capable of performing the analysis of PCDDs and PCDFs to the 1 ppb level and that the analysis can be performed in a timely manner, as was the case for F024 sample analyses. Furthermore, because there currently is just one generator of K043, the Agency does not believe that the regulation of PCDDs and PCDFs in K043 will adversely affect laboratory capacity to perform such analyses. See also further discussion of PQLs in section III.A.1.(b.) of today's preamble.

One commenter suggested that the Agency set technology-based treatment standards for K043 instead of concentration-based standards. This commenter felt that setting technology-based standards would be equivalent to establishing concentration-based levels because the concentrations were based on performance data from the sole generator of K043 whose treatment facility is well designed and operated. Though section 3004(m) specifies that BDAT treatment standards may be expressed as either concentration-based levels or as a method of treatment (technology-based), the Agency maintains that where treatment performance data are available, concentration-based treatment standards should be established rather than specifying a method of treatment. Concentration-based standards allow industry the flexibility to use any treatment technology or combination of technologies to treat K043 as long as the treatment residuals produced (that are destined for land disposal) have concentrations of the regulated constituents less than or equal to the treatment standards. In addition, other facilities in the future may generate K043 wastes and the Agency has no guarantee that such facilities will have treatment systems that are as well-designed and well-operated as that of the current sole generator/treater. Because acceptable treatment performance data were available for treatment of K043, the Agency established concentration-based treatment standards for this waste.

One commenter claimed that the wastewater performance data supplied to EPA were insufficient to establish statistically valid concentration-based treatment standards because the background levels of chlorinated phenols were no different than levels in the scrubber water collected during the test burn. EPA does not concur with the claim that the supplied data are not useful in establishing statistically valid treatment standards for wastewaters. The sole generator provided the Agency with results from the analysis of eight scrubber water samples collected during incineration treatment tests. The concentrations of the regulated constituents in these samples are substantially lower than those in the untreated waste. Thus, incineration has been demonstrated to provide substantial treatment of these constituents. The Agency's own statistical analysis confirms the fact that the levels of regulated constituents found in the scrubber water sampled showed statistically significant reduction from the levels identified in the raw waste. The fact that background samples of scrubber water and the scrubber water collected during the treatment test were similar in their concentrations of regulated constituents indicates simply that the incineration of K043 completely destroys these constituents in the waste.

A concern of the sole generator/treater was that concentration-based treatment standards would force the facility to incinerate dilute K043 wastewaters or seek a treatment standard variance because of difficulties arising from the "derived-from" and "mixture" rules. The Agency does not believe the generator/treater would be forced to incinerate or seek a treatment variance for dilute "derived-from" or "mixed" K043 wastewaters. First, the K043 wastewater treatment standards would apply only if the wastewaters were placed in land disposal units. Second, if such wastewaters are being placed in land disposal units, the facility has the option of delisting the scrubber waters following the incineration of K043 waste such that the "derived-from" and "mixture" rules would no longer apply. Third, the treated K043 wastewaters could be isolated in a land disposal unit such that other plant wastewaters would not become subject to the BDAT treatment standards set for K043 under the "mixture" rule.

Finally, it is clear that the type of problem referred to by the commenter would arise only if the other wastes at the facility also contain treatable levels of the regulated hazardous constituents in K043, in which case it furthers RCRA's goals to have effective treatment of those constituents before land disposal of the combined waste. For example, if waste A has a treatment standard of 10 mg/l for hazardous constituent X and is treated to meet the standard but then is combined with other waste streams and the combined waste stream now contains greater than 10 mg/l of X, the other wastes must contain X in treatable concentrations. Further treatment to minimize threats to human health and the environment thus would be appropriate before land disposal (See also RCRA section 3004(m)).

One commenter believes that tetrachloroethene should not be a regulated constituent in K043 because it is used as a cleaning solvent for K043 process equipment and is not present in the waste as a result of the production process that generates K043. Further, the commenter states that this constituent is already being regulated under the Solvents and Dioxins Rule (under F002 waste) for this use.

In this case, the waste stream in question is a process waste that has become contaminated with small amounts of solvent; it is not a mixture of spent solvent and K043. Furthermore, the K043 waste does not contain a spent solvent since the tetrachloroethene that contaminated the K043 had not been generated as a waste when the contamination took place. Data provided to EPA indicated that tetrachloroethene was present in the untreated K043 as a treatable level and showed substantial treatment by incineration in K043 treatment residuals. The solvent cleaning step is part of the production process and any contamination present in the waste before treatment becomes part of that waste and, thus, can be made subject to BDAT treatment standards. Therefore, the Agency chose to regulate tetrachloroethene in K043 at a total constituent concentration of 0.006 mg/l in wastewaters and 1.7 mg/kg in nonwastewaters.

BDAT TREATMENT STANDARDS FOR K043

[Nonwastewaters]

Constituent	Maximum for any single grab sample: Total composition (mg/kg)	Maximum for any single grab sample: TCLP (mg/l)
2,4-Dichlorophenol	0.38	[1]
2,6-Dichlorophenol	0.34	[1]
2,4,5-Trichlorophenol	8.2	[1]
2,4,6-Trichlorophenol	7.8	[1]
Tetrachlorophenols (Total)	0.68	[1]
Pentachlorophenol	1.9	[1]
Tetrachloroethene	1.7	[1]
Hexachlorodibenzo-p-dioxins	0.001	[1]
Hexachlorodibenzo-furans	0.001	[1]
Pentachlorodibenzo-p-dioxins	0.001	[1]
Pentachlorodibenzo-furans	0.001	[1]
Tetrachlorodibenzo-p-dioxins	0.001	[1]
Tetrachlorodibenzo-furans	0.001	[1]

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR K043

[Wastewaters]

Constituent	Maximum for any single grab sample: Total composition (mg/l)	Maximum for any single grab sample: TCLP (mg/l)
2,4-Dichlorophenol	0.049	[1]
2,6-Dichlorophenol	0.013	[1]
2,4,5-Trichlorophenol	0.016	[1]
2,4,6-Trichlorophenol	0.039	[1]
Tetrachlorophenols (Total)	0.018	[1]
Pentachlorophenol	0.22	[1]
Tetrachloroethene	0.006	[1]
Hexachlorodibenzo-p-dioxins	0.001	[1]
Hexachlorodibenzo-furans	0.001	[1]
Pentachlorodibenzo-p-dioxins	0.001	[1]
Pentachlorodibenzo-furans	0.001	[1]
Tetrachlorodibenzo-p-dioxins	0.001	[1]
Tetrachlorodibenzo-furans	0.001	[1]

[1] Not applicable.

B. "Soft Hammer" Applicable Treatment Standards

(Note: EPA is not reinterpreting any of the principles relating to the RCRA "soft hammer" provision (RCRA section 3004(g)(6)) contained in the First Third rule and preamble. See 53 FR 31179–31185. The Agency is adding the following discussion, which repeats those principles, solely for purposes of providing information.)

The Agency has not promulgated treatment standards for the First Third and Second Third wastes in Tables B.(a)

and B.(b). If EPA fails to set treatment standards for any hazardous waste included in 40 CFR 268.10 or 268.11 by the August 8, 1988 or June 8, 1989 statutory deadlines, such waste is subject to the "soft hammer" provisions.

Under the "soft hammer" provisions, these wastes may be land disposed in a landfill or surface impoundment only if the generator makes certain certifications, and only if the unit meets the RCRA 3004(o) minimum technological requirements. Among other things, the "soft hammer" provisions require that prior to disposal in a landfill or surface impoundment unit meeting the minimum technological requirements, a generator must demonstrate his good faith effort to treat his waste by the best practically available treatment technology(ies). The Agency has interpreted this to mean practically available treatment that provides the greatest environmental benefit (40 CFR 268.8(a)(1)). Where no treatment is practically available, the generator may so demonstrate. The required demonstration and certification must be submitted to the Regional Administrator. "Soft hammer" wastes become subject to the statutory hard hammer as of May 8, 1990.

The Agency is amending § 268.12 to include wastewater residues derived from the treatment of "soft hammer" wastes by certain processes (shifting such wastewater residues to the Third Third). This action will allow these wastewater residues to be disposed in units not meeting minimum technological requirements and such residues will not be subject to the certification requirements of § 268.8. This action is being taken because a number of companies use BDAT-type treatment to treat "soft hammer" wastes, and then further treat the resulting treatment residues in impoundments that do not satisfy minimum technological requirements, but meet the requirements of section RCRA section 3005(j)(3) or 3005(j)(13). The Agency believes that persons who are substantially treating their wastes to levels that may satisfy ultimate treatment standards are not precluded from further treatment of these wastes in polishing (i.e., 3005(j)(3)) or advanced biological treatment (i.e., 3005(j)(13)) units that are substantially protective of human health and the environment, although not equivalent to minimum technology impoundments from the standpoint of preventing migration from the unit. Furthermore, EPA does not believe that these types of treatment residuals are the types of contaminated wastes deserving of prioritization in the second third of the schedule.

The Agency has identified several treatment technologies that are generally considered appropriate for the nonwastewater forms of "soft hammer" wastes (see 53 FR 31175). These technologies include: metal recovery, leaching/oxidation, metals stabilization, ash stabilization, chemical oxidation, biodegradation, incineration, and PCB incineration. Treatment technologies generally considered appropriate for the wastewater forms of "soft hammer" wastes include: aqueous metal recovery, chromium reduction, metals precipitation, steam stripping, carbon adsorption, oxidation/reduction, chemical oxidation, biodegradation, incineration, and PCB incineration.

The technologies are listed as general categories of technologies that EPA believes have a reasonable probability of application to the waste codes listed. These categories do not specify any particular type of technology (e.g., incineration can represent liquid incinerators, rotary kiln, or fluidized bed incinerators). The actual choice of a particular technology or even train of technologies depends on the physical and chemical characteristics of the specific waste. Specific selection of one technology depends on its functional design.

The Agency notes that many of these wastes, when existing as untreated wastes, are already prohibited from land disposal because they are California list wastes. However, as was discussed in the August 17, 1988 final rule, treatment to comply with the California list prohibitions (including the codified statutory prohibition levels) does not necessarily satisfy the "soft hammer" requirements of 40 CFR 268.8 and, in fact, the California list prohibitions represent the minimum treatment required for such "soft hammer" wastes prior to land disposal (53 FR 31187). In the case of an overlap between a "soft hammer" waste and a California list statutory prohibition, the "soft hammer" provisions still apply because they are potentially more protective. However, in no case may a waste be disposed of in excess of the California list prohibition levels.

Where EPA has promulgated a California list treatment standard, however, the soft hammer does not apply. *Id.* Thus, the "soft hammer" does not apply to California list HOCs for which EPA has established a treatment standard. *Id.*

The following tables are presented as an aid to generators seeking appropriate technologies to treat "soft hammer" F- and K-listed wastes. Several technologies are listed for each waste code, in descending order of preference. EPA notes that certain technologies are only appropriate for certain constituent types and that more than one treatment technology may be required (if practically available) to treat the different constituents of concern in the waste.

The Agency emphasizes that these tables are not to be considered as strict treatment requirements. In general, however, EPA will use these tables in evaluating the demonstrations and certifications received for these wastes and is providing this information to aid the generator in determining the best practically available technology (if any) for treating his waste in compliance with § 268.8.

TABLE B.a.—APPROPRIATE TREATMENT TECHNOLOGIES FOR FIRST THIRD AND SECOND THIRD "NONWASTEWATERS"

RCRA Waste Code	Potential California List Applicability	Primary Applicable Treatment Technologies
F019	Cyanide	Electrolytic Oxid. Alkaline Chlorin. UV Ozonation Incineration Ash Stabil.
K004	Chromium	Metals Recovery.
K006		Metals Stabil.
K041	Halogenated Organics	Incineration.
K097		
K098		
K042		
K105	PCBs/Halogen. Organ	PCB Incineration.
K017	Halogenated Organics	Incineration.

TABLE B.a.—APPROPRIATE TREATMENT TECHNOLOGIES FOR FIRST THIRD AND SECOND THIRD "NONWASTEWATERS"—Continued

RCRA Waste Code	Potential California List Applicability	Primary Applicable Treatment Technologies
K073		Biodegradation Ash Stabilization. Metals Recovery. Leaching/Oxidation. Metals Stabil.
K031	Arsenic	
K084		
K101, K102/high Ar		
K046/explosive	Lead	Open Detonate/Burn Oxidation. Incineration Metals Stabil.
K069/$CaSO_4$	Lead	Leaching/Oxidation Metals Stabil.
K085	Halogenated Organics & PCB's	PCB Incineration Biodegradation Ash Stabilization. Incineration. Wet Air Oxidation. Biodegradation Ash Stabilization. Metals Recovery Metals Stabil.
K035	Organics and/or Metals	
K083		
K086 solv. sludges caust. water.		
K106	Mercury	

TABLE B.b.—APPROPRIATE TREATMENT TECHNOLOGIES FOR FIRST THIRD AND SECOND THIRD "WASTEWATERS"

RCRA Waste Code	Potential California List Applicability	Primary Applicable Treatment Technologies
F006	Cyanide	Alka. Chlorination. Wet Air Oxidation.
K011	Cyanide	
K013		
K014		
K025	Halogenated Organics	Carbon Adsorption. Chemical Oxidation. Carbon Adsorption.
K029	Halogenated Organics	
K095		
K096		
K041	Halogenated Organics	Steam Stripping. Carbon Adsorption. Biodegradation.
K097		
K098		
K042	Halogenated Organics	Steam Stripping. Carbon Adsorption. Biodegradation.
K105	PCBs/Halog. Organics	Carbon Adsorption. Biodegradation. Chromium Reduction. Metals Precip.
K004	Chromium	
K008		
K061		
K017	Halogenated Organics	Steam Stripping. Carbon Adsorption. Biodegradation.
K021		
K073		
K022	Unlikely to be applicable	Steam Stripping. Carbon Adsorption. Chemical Oxidation. Biodegradation. Metals Precip. Oxidation/Reduction Metals Precip.
K035		
K060		
K083		
K031	Arsenic, lead or mercury	
K046/nonexpl		
K069/all		
K084		
K106		
K046/expl	Lead	Oxidation. Metals Precip.
K085	Halogenated Organics & PCB's	Biodegradation. Carbon Adsorption.
K086	Halogenated Organics	Biodegradation.
solv. sludges	Metals	Carbon Adsorption.
caust. water		Chromium Reduction Metals Precip.

C. Capacity Determinotions

1. Determination of Alternative Capacity and Effective Dates for Surface Land-Disposed Wastes for Which Treatment Standards Are Promulgated

a. *Total Quantity of Land-Disposed Wastes.* The capacity analyses for wastes for which EPA is today finalizing treatment standards were performed using the National Survey of Hazardous Waste Treatment, Storage, Disposal, and Recycling Facilities (the TSDR Survey). EPA conducted the TSDR Survey during 1987 and early 1988 to obtain comprehensive data on the nation's capacity for managing hazardous waste and on the volumes of hazardous waste being disposed of in or on the land (i.e., land disposal). Survey data are part of the record for this final rule.

In addition, EPA recently conducted the National Survey of Hazardous Waste Generators (the Generator Survey). The Generator Survey was designed to gather data on waste generators and exempt hazardous waste treatment capacity, along with detailed waste characterization data. Although the majority of these data are not yet available, EPA used a subset of the data to corroborate conclusions as to the amount of treatment capacity required for the electroplating wastes (F006–F012). These data are available as part of the administrative record.

The various land disposal methods used and the quantities of waste handled are presented in Table III.C.1.a. Since publication of the proposed rule, EPA has received additional data from late-reporting TSDR facilities. Although the new data do not affect any of the national capacity variance decisions for surface disposed wastes, they have been included in this discussion for completeness. Some methods of land disposal, including use of salt domes, salt bed formations, and underground caves and mines, are not addressed in the capacity analyses because of insufficient data on the types and volumes of wastes disposed of by these methods.

The TSDR Survey indicated that about 623 million gallons of wastes for which standards are finalized today were disposed in or on the land in 1986. This includes approximately 3 million gallons of wastes that were stored in surface impoundments, and 1 million that were stored in waste piles. These stored wastes will eventually be treated, recycled, or permanently disposed in other units. To avoid double counting, the volumes of wastes reported as being stored in surface impoundments or waste piles have not been included in the volume of wastes requiring alternative treatment capacity. Furthermore, this final rule prohibits the placement of wastes affected by this rule in waste piles or surface impoundments for storage.

The TSDR Survey indicated that less than 50,000 gallons of the wastes addressed today were treated annually in surface impoundments that do not meet EPA's minimum technology requirements. However, this amount is actually a treatment residual from an impoundment that was replaced with a tank. Because the Agency assumes that this waste is now being sent off-site for treatment, this amount is included as treatment capacity required in today's rule.

In addition, 5 million gallons are treated in waste piles, less than 1 million gallons were disposed in surface impoundments, 10 million gallons were disposed in land treatment units or landfills, and 604 million gallons are injected underground. All of these wastes will require alternative treatment capacity.

b. *Required Alternative Capacity for Surface Land Disposed Wastes.* EPA assessed the requirements resulting from today's final rule for alternative treatment capacity for surface land disposed wastes. EPA first characterized the volumes of wastes for which treatment standards are being established, since these wastes require alternative treatment. Waste streams were characterized on the basis of land disposal method, waste code, and physical/chemical form. Using this information, EPA placed the wastes into treatability groups identifying applicable treatment technologies. The waste volumes were then summed by treatability group to determine the amount and type of alternative treatment capacity that would be required when owners or operators comply with the land disposal restrictions being promulgated today.

Based on this analysis, the EPA estimates that today's rule could affect about 623 million gallons of wastes that are land disposed annually. This total includes wastes that were stored only; consequently, only about 619 million gallons will require alternative treatment capacity. Of this total, 15 million gallons were surface disposed (i.e., excluding underground injection), and the remaining 604 million gallons were underground injected. (See section III.C.3. for determinations of alternative capacity and effective dates for wastes injected underground.)

The volumes of surface land disposed wastes that require alternative commercial treatment/recycling capacity are presented in Table III.C.1.b. This table does not include wastes that can be treated on site by the generator.

As explained in preamble section III.A.1., with limited exceptions, EPA is finalizing treatment standards expressed as concentration limits based on the performance of the Best Demonstrated Available Technology (BDAT), rather than requiring treatment using BDAT. Where the treatment standard is a specific level of performance to be met, then any treatment method may be used to achieve the concentration level specified by the standard. However, BDATs (and technologies that the Agency finds perform comparably) as discussed in preamble section III.A., were used as the basis for determining available capacity.

The TSDR Survey contains data on specific treatment processes at facilities. The data enable EPA to identify specific BDAT treatment (and treatment the Agency finds performs comparably) in its assessment of both off-site and on-site capacity. Therefore, EPA believes that the capacity identified as available for a specific treatment technology will be capable of meeting the treatment standards, since a well-designed and well-operated BDAT treatment process should be capable of complying with the promulgated treatment standards.

c. *Capacity Currently Available and Effective Dates.* Table III.C.1.c presents an estimate of the volume of wastes that will require alternative treatment before land disposal to comply with the standards finalized today. The amount of capacity that is available at commercial facilities in each case is also presented. Available capacity is equal to the specific treatment system's maximum capacity less the amount used in 1986, and was calculated using the TSDR Survey data. In addition, the available capacity presented in this section was adjusted to account for wastes previously restricted from land disposal by subtracting the capacity required for land disposed solvent wastes, California List Halogenated Organic Compound (HOC) wastes, and First Third wastes.

It is important to note that some of the wastes, because of their actual physical form, cannot meet treatment standards simply by using the technology identified as BDAT. These wastes must be treated through several steps, called a "treatment train". EPA assumes that the resultant residuals will also need to be treated using alternative technologies before land disposal; therefore, the total volumes reported were assigned to appropriate technologies.

The following sections discuss the results of the individual capacity analyses and effective dates for each waste code included in today's rule.

Wastes from Electroplating Operations. For today's final rule, EPA has revised the proposed cyanide treatment standards for cyanide-containing F007, F008, F009 waste from electroplating operations. The final wastewater and nonwastewater treatment standards are based on alkaline chlorination. The treatment standards for metals in treatment residuals from alkaline chlorination are based on chemical precipitation followed by settling and filtration for wastewaters, and stabilization for the nonwastewaters. EPA estimates that 2 million gallons of wastewaters and nonwastewaters will require cyanide treatment before stabilization as a result of today's treatment standards.

After analyzing the TSDR Survey data, EPA has determined that sufficient commercial capacity exists for these wastes (both wastewaters and nonwastewaters). EPA has therefore determined that no long term national capacity variance for these wastes is warranted. However, in order to be cautious and allow time (if any is truly needed) for facilities to adjust existing cyanide treatment processes to operate more efficiently, EPA has determined to grant a 30-day extension for the electroplating wastes (see also the discussion in preamble section II.E.). As shown below, however, EPA believes that there will be ample treatment capacity at the end of 30 days (if not sooner) to accommodate demand for treatment of these wastes.

In response to public comments, EPA reevaluated the amount of alternative treatment capacity necessary to treat F006 wastes as a result of today's final rule. The results of this analysis corroborate the Agency's position that the majority of F006 wastes containing cyanides are already being pretreated on-site to cyanide levels that meet the treatment standard, and therefore, only limited additional commercial capacity is needed.

EPA evaluated TSDR Survey data and Generator Survey data from approximately 1,500 facilities, selected from those generating the largest volumes of F006 wastes. The TSDR Survey contained data on 358 facilities generating F006 wastes in 1986. Of the total volume generated, 69 percent is generated at facilities with on-site cyanide treatment, and 27 percent was determined to be non-cyanide bearing F006. Consequently, only 4 percent of the F006 waste reported as generated in the TSDR Survey would need alternative off-site treatment capacity for cyanides.

EPA also evaluated a subset of Generator Survey data currently available. This analysis involved evaluating data from almost 1,500 facilities. The analysis identified 322 facilities generating F006 waste. Since the Generator Survey contains waste concentration data, EPA was able to identify the volume of wastes with the following: Cyanide concentrations above and below the treatment standards; with unknown cyanide concentration; and where the presence of cyanide is unknown. This analysis showed that only 7 percent of the F006 waste for this data subset was not analyzed by the generator for the presence of cyanide, or the cyanide concentration in the waste was unknown, or had a cyanide concentration in excess of the treatment standard. However, less than 0.7 percent of the volume of the F006 waste had a cyanide concentration above the treatment standard or had cyanides with unknown concentration levels. In summary, 93 percent of this sample reported meeting the treatment standard, approximately 1 percent reported exceeding the treatment standard, and 6 percent reporting unknown cyanide levels. The percentage of compliance could be higher since it is reasonable to assume that most of the unknown wastes will contain cyanides in concentrations less than the treatment standard, otherwise generators would know and report that cyanides were present.

Although EPA has only evaluated data from a subset of F006 generators, it believes this pattern to be representative of the total census of F006 wastes. (As noted in section III.A.3.a.2.i., the data on total cyanide submitted to EPA in the public comments to the rulemaking also showed greater than 90 percent compliance with the final treatment standard.)

In order to be cautious in assessing the need for alternative treatment capacity, EPA is assuming that, as a worst case, 10 percent of F006 waste may need alternative commercial treatment capacity. EPA therefore assumes for this rule that 10 percent of the 129 million gallons of land disposed F006 (or about 13 million gallons) may require alternative commercial treatment. Sufficient commercial alkaline chlorination capacity exists to treat this volume of waste. Consequently, EPA does not believe that any extended national capacity variance is warranted for F006 nonwastewaters. As stated earlier, the Agency is delaying the effective date of the cyanide standard for F006 nonwastewaters 30 days in order to give facilities a short period of time to adjust equipment performance should this be necessary. (Technically, the basis for this 30-day delay is section 3010(b) rather than section 3004(h)(2), as noted in preamble section II.E.)

EPA also has determined that no extended capacity variance is appropriate for the F007–F009 wastes. These wastes are generated in considerably smaller volumes than F006 and are no more difficult to treat. EPA has determined to delay the effective date of the new standards for 30 days, however, for the same reasons as for the cyanide standard for F006. The basis for this action is RCRA section 3004(h)(2).

Wastes from Heat Treatment Operations and Cyanide-Bearing "P" Wastes. EPA is also promulgating in today's final rule treatment standards for F011 and F012 cyanide-containing wastes from heat treating operations and P013, P021, P029, P030, P063, P074, P098, P099, P104, P106, and P121. The nonwastewater treatment standards for cyanide in these wastes are promulgated based on the performance of electrolytic oxidation followed by alkaline chlorination. The wastewater standard is promulgated based on the performance of alkaline chlorination.

One commenter on the proposed rule pointed out than no commercial facilities offer the specific treatment trains identified as BDAT for nonwastewaters (i.e., electrolytic oxidation followed by alkaline chlorination). EPA agrees that no commercial facilities with a treatment train consisting of electrolytic oxidation followed by alkaline chlorination were identified in the TSDR Survey. However, EPA believes that alkaline chlorination alone will meet the treatment standards (see the Background Document on cyanides for the basis of this conclusion). The Agency received numerous public comments supporting this position. Consequently, EPA included commercially available alkaline chlorination capacity in its capacity determinations for these wastes.

After analyzing the TSDR Survey data, EPA has determined that adequate treatment capacity is commercially available to treat the small volume of F011, F012, P030, P063, P074, P098, P099, P104, P106, and P121 wastes (both wastewaters and nonwastewaters) surface land disposed. (As noted above, the nonwastewater form of the wastes are amenable to wastewater treatment because they can by hydrated (i.e.,

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dissolved easily.)) EPA does not believe that any extension is warranted for the discarded commercial chemical product wastes. They are generated in small volumes at sporadic intervals and do not have to be treated in existing treatment systems that conceivably require major adjustments.

The F011 and F012 wastes could be treated in such existing treatment systems, however, and EPA has consequently decided to delay the prohibition effective date for 30 days for these wastes as a result. Further, if F011 nonwastewaters and F012 nonwastewaters are commingled with electroplating nonwastewaters, the entire mixture will become subject to the lowest treatment standard for common constituents, in this case 110 mg/kg total cyanide. This limit is not uniformly attainable for the electroplating wastes due to significant concentrations (in some streams, at least) of complexed cyanides. Thus, EPA expects that F011 nonwastewaters and F012 nonwastewaters will be segregated and treated separately—an appropriate result since otherwise the electroplating wastes would interfere with the treatment of the free (i.e., non-complexed) cyanides in the heat-treating wastes. It will, however, take some time to adjust processes to segregate these heat-treating and electroplating wastes. Accordingly, the Agency is deferring the effective date of the 110 mg/kg total cyanide standard and the 9.1 mg/kg amenable cyanide standard for the F011 and F012 heat-treating nonwastewaters until December 8, 1989. Between July 8, 1989 and December 8, 1989 these wastes will be subject to the same cyanide standards as the electroplating nonwastewaters, i.e., 590 mg/kg total cyanide and 30 mg/kg amenable cyanide (the alternative, which the Agency has rejected as contrary to policy and RCRA sections 3004 (h) and (m), being to leave these heat-treating wastes subject to no cyanide standard at all even though some treatment is available and achievable).

The treatment standards for F010 nonwastewaters have not been changed from the proposal. The nonwastewater standard for total cyanide concentration is based on incineration, and the wastewater standard is based on alkaline chlorination. EPA estimates that less than 1 million gallons a year of F010 nonwastewater will require incineration as a result of today's final rule. There is no shortage of this technology, nor would any short term adjustments be needed in the technology's operation. No F010 wastewaters were identified in the TSDR Survey as being surface land disposed. Consequently, there is no basis for delaying the effective date of the prohibition and treatment standards for these wastes.

F019 Wastes. For today's final rule, EPA has decided not to finalize the proposed standards for F019 wastewaters and nonwastewaters (see preamble section III.A.3.a.4.). Consequently, F019 wastes will continue to be subject to the "soft hammer" requirements.

Wastes From Acrylonitrile Production. Nonwastewater treatment standards for K011, K013, and K014 wastes are being promulgated based on incineration. However, EPA is not promulgating the proposed wastewater standards for K011, K013, and K014. Therefore, these wastewaters will be subject to the "soft hammer" provisions of 40 CFR 268.8.

After analyzing the TSDR Survey data, the Agency has determined that enough commercial incineration capacity is available to treat the less than 1 million gallons of nonwastewater K011, K013, and K014 that are not injected underground. Therefore, EPA is not granting a national capacity extension for K011, K013, and K014 nonwastewaters that are surface land disposed.

Wastes From Acetaldehyde Production. Nonwastewater treatment standards for K009 and K010 are based on incineration. For K009 and K010 wastewaters, steam stripping followed by biological treatment has been identified as BDAT. No surface disposed K009 or K010 wastes were identified from the TSDR Survey. Consequently, EPA is not granting a variance to these wastes.

Wastes from the Production of Dinitrotoluene, Toluene, Diamine, and Toluene Diisocyanate. For K027, K113–K116, U221, and U223 wastes, EPA is requiring the use of incineration or reuse as fuel as a method of treatment for nonwastewaters, and carbon adsorption, incineration, or reuse as fuel as a method of treatment for wastewaters. Based on TSDR Survey data, EPA estimates that about 8 million gallons per year of surface land disposed nonwastewaters will require incineration as a result of today's treatment standards. No wastewaters were identified from the TSDR Survey or from public comments as requiring alternative treatment.

After analyzing the TSDR Survey data, EPA has determined that there is enough commercial capacity available to treat the K027, K113–K116, U221, and U223 nonwastewaters and wastewaters. EPA is therefore not granting a capacity extension for surface land disposal of these wastes.

Organophosphorus Pesticide Wastes. For K039, P040, P041, P043, P044, P062, P085, P109, P111, U058, and U087 wastes, EPA is requiring the use of incineration as a method of treatment for nonwastewaters, and either carbon adsorption or incineration as a method of treatment for wastewaters. After analyzing the TSDR Survey data, EPA has determined that enough commercial capacity is available to treat both the wastewater and nonwastewater forms of these wastes. EPA is therefore not granting a national capacity variance to surface disposed K039, P040, P041, P043, P044, P062, P085, P109, P111, U058, and U087 wastes.

For K038, K040, P039, P071, P089, P094, P097, and U235 nonwastewaters, EPA is promulgating treatment standards based on incineration/reuse as fuel. For K038, K038, K040, P039, P071, P089, P094, P097, and U235 wastewaters the standard is based on biological treatment (today's final rule does not affect the "no land disposal" standard for K038 nonwastewaters previously promulgated). After analyzing the TSDR Survey data, the Agency has determined that enough capacity is commercially available to treat the wastewater and nonwastewater forms of these wastes. EPA is therefore not granting a capacity extension for wastes K038 (nonwastewaters only), K038, K040, P039, P071, P089, P094, P097, and U235.

Wastes From Pigment Production. EPA is promulgating a treatment standard of "no land disposal" only for K005 and K007 nonwastewaters generated from the manufacturing processes listed in 40 CFR 261.32 and disposed after June 8, 1989. At this time, EPA is not promulgating treatment standards for K005 and K007 wastewaters or other nonwastewaters (e.g., "derived-from" wastes). The TSDR Survey identified about 2 million gallons of K005 and K007 nonwastewaters as being surface land disposed at one facility. However, as stated earlier in this preamble, EPA has determined that this was the only facility generating these wastes, and that the facility is no longer generating or land disposing K005 or K007.

The Agency is not promulgating the proposed treatment standard of "no land disposal" for K002, K003, K004, K006, and K008 nonwastewaters. Since K004 and K008 wastes are First Third wastes, their land disposal will continue to be restricted by the "soft hammer" provisions. Treatment standards for K002, K003, and K006 wastes will be established with the remaining Third Third wastes by May 8, 1990.

Wastes From Chlorinated Aliphatics Production, From 1,1,1-Trichloroethane Production, From 2,4-D Production, and Phthalates and Phthalic Anhydride Production Wastes. Today EPA is promulgating treatment standards based on incineration/reuse as fuel for F024, K023, K028, K043, K093, K094, U028, U069, U088, U102, U107, and U190 wastewaters and nonwastewaters, and for K029, K095, and K096 nonwastewaters. The wastewater forms of K029, K095, and K096 wastes are subject to the "soft hammer" provisions. The treatment standards for metals in treatment residuals for F024 and K028 are based on stabilization.

The Agency estimates that less than 1 million gallons of F024, K023, K028, K029, K043, K093, K094, K095, K096, U028, U069, U088, U102, U107, and U190 wastes will require commercial incineration or reuse as fuel as a result of today's treatment standards. After analyzing the TSDR Survey data, the Agency has determined that enough incineration capacity is commercially available to treat these wastes. EPA is therefore not granting a capacity extension for surface land disposed F024, K023, K028, K029, K043, K093, K094, K095, K096, U028, U069, U088, U102, U107, and U190 wastes.

TABLE III.C.1.a.—VOLUME OF WASTES BY LAND DISPOSAL METHOD FOR WHICH STANDARDS ARE BEING ESTABLISHED

Land disposal method	Volume (million gallons/year)
Storage:	
Waste piles	1
Surface impoundments	3
Treatment:	
Waste piles	5
Surface impoundments	<1
Disposal:	
Landfills	10
Land treatment	<1
Surface impoundments	<1
Injected underground	604
Total	623

TABLE III.C.1.b.—REQUIRED ALTERNATIVE COMMERCIAL TREATMENT/RECYCLING CAPACITY FOR SURFACE LAND DISPOSED WASTES [1]

[Millions gallons/year]

Waste Code	Capacity required for surface land disposed wastes
First third wastes:	
F007	1.3
F008	2.7
F009	0.3
K011	0.2
K013	0.1
K014	<0.1
K036	0.0
P030	<0.1
P039	<0.1
P041	0.0
P063	<0.1
P071	<0.1
P089	<0.1
P094	<0.1
P097	0.0
U221	0.3
U223	<0.1
Second third wastes:	
F010	0.2
F011	0.1
F012	0.1
F024	<0.1
K009	0.0
K010	0.0
K027	7.6
K028	0.0
K029	0.0
K038	0.0
K039	0.0
K040	0.0
K043	0.0
K095	0.0
K096	0.0
P029	0.0
P040	0.0
P043	0.0
P044	<0.1
P062	0.0
P074	0.0
P085	0.0
P098	<0.1
P104	0.0
P106	<0.1
P111	0.0
U028	<0.1
U058	0.0
U107	0.0
U235	0.0
Third third wastes	
K005	[2] 0.0
K007	[2] 0.0
K023	0.0
K093	<0.1
K094	<0.1
P013	0.0
P021	0.0
P099	0.0
P109	0.0
P121	0.0
U069	<0.1
U087	0.0
U088	0.0
U102	0.0
U190	<0.1
Newly listed wastes:	
K113	0.0
K114	0.0
K115	0.2
K116	0.0

[1] The volumes presented here include all types of treatment required (i.e., all phases of treatment trains, where applicable.

[2] Waste no longer generated from the process described in 40 CFR Part 261.32.

TABLE III.C.1.c.—REQUIRED ALTERNATIVE COMMERCIAL TREATMENT/RECYCLING CAPACITY FOR SURFACE LAND DISPOSED WASTES

Technology	Available capacity (mil gal/year)	Required surface land disposed (mil gal/year)
Incineration:		
Liquids	282	<1
Solid/sludge	17	9
Wastewater Treatment:		
Alkaline chlorination	[2] 33	2
Electrolytic oxidation followed by alkaline chlorination	0	[1] 0
Carbon adsorption	2	0
Biological treatment	44	<1
Steam stripping followed by biological treatment	0	0
Stabilization	516	2

[1] These wastes have been included with the wastes requiring alkaline chlorination.

[2] Available capacity has been adjusted to account for 13 million gallons of capacity that may be needed for F006.

2. Extension of the Effective Date for Contaminated Soil and Debris

The Agency is today granting an extension of the effective date for certain First, Second, and Third Third contaminated soils and debris for which treatment standards established by today's rule are based on incineration. RCRA section 3004(h)(2) allows the Administrator to grant an extension to the effective date which would otherwise apply on the basis of the earliest date on which adequate protective capacity will be available, not to exceed two years "* * * after the effective date of the prohibition which would otherwise apply under subsection (d), (e), (f), or (g)." For First Third wastes that have heretofore been subject to the "soft hammer" provisions but for which treatment standards are being promulgated today, the Agency is interpreting the statutory language "* * * effective date of the prohibition that would otherwise apply" to be the date treatment standards are promulgated for these wastes (i.e., June 8, 1989) rather than the date the "soft hammer" provisions took effect (i.e., August 8, 1988). The Agency finds this the best interpretation for two reasons. Extensions of the effective date are based on the available capacity of the BDAT technology for the waste, so it is

reasonable that such an extension initiate from the date treatment standards based on performance of BDAT are established. Furthermore, it is not the intent of the Agency to, in effect, penalize First Third wastes by allowing less time (i.e., 38 months) for the development of needed capacity, while Second and Third Third wastes in the same treatability group are allowed the maximum 48 months (assuming capacity does not become available at an earlier date). The capacity extension, therefore, commences for First, Second, and Third Third wastes on June 8, 1989, and extends (at maximum) until June 8, 1991.

For the purpose of determining whether a contaminated material is subject to this capacity extension, soil is defined as materials that are primarily geologic in origin such as silt, loam, or clay, and that are indigenous to the natural geological environment. In certain cases soils will be mixed with liquids or sludges. The Agency will determine on a case-by-case basis whether all or portions of such mixtures should be considered soil (52 FR 31197, November 8, 1986).

Analysis of the TSDR survey data indicated that relatively small volumes of soil contaminated with Second Third wastes were land disposed in 1986. However, the Superfund remediation program has expanded significantly since that time. Plans for remediation at Superfund sites indicate far greater excavation of soil and debris requiring treatment, including incineration, and subsequent land disposal in 1989 than in 1986. Because of the major increase in the Superfund remediation program, the Agency believes that capacity is still inadequate for incineration of Second Third contaminated soil and debris. Therefore, a two year extension of the effective date is granted to Second Third contaminated soil and debris for which BDAT is incineration or fuel substitution.

EPA is not promulgating a national capacity variance for soil and debris that are contaminated with any of the prohibited cyanide wastes. The treatment technology on which the Agency based treatment standards is alkaline chlorination (preceded by electrolytic oxidation in certain cases involving heavily contaminated wastes). The record for this rulemaking documents that there is ample commercial cyanide treatment capacity providing alkaline chlorination. It is true that this is a wastewater treatment technology, and that contaminated soils and debris are not liquids. However, contaminated soils could be slurried into liquid form and so be treatable by this technology. The Agency consequently does not believe that a national capacity variance is warranted.

3. Capacity Determinations for Underground Injected Wastes

The Agency received comments from 8 different parties concerning the establishment of effective dates for underground injected wastes. The Agency is taking this opportunity to discuss its position on the two comments which it feels are most crucial to this rule and to the regulated community. A response to all comments made on the January 11, 1989, proposed rule can be found in the Response to Comments Background Document in the RCRA docket.

A number of commenters indicated that treatment capacity variances should commence not from the statutory deadline of RCRA section 3004(g), but rather from May 8, 1990 or from an earlier date which EPA may establish by regulation after promulgating a BDAT treatment standard (and after making a decision on the availability of national protective treatment or disposal capacity). EPA first addressed this issue in the June 7, 1989, promulgation of effective dates for the ban on underground injection of certain First Third wastes published in the Federal Register on June 14, 1989 (54 FR 25416). EPA adopted the commenters' approach for the wastes addressed in that rule, and is likewise adopting the same approach for today's rule. Briefly, RCRA section 3004(g) sets no statutory prohibitions for disposal of hazardous wastes into UIC wells until May 8, 1990. Any earlier prohibition date is set by regulation. Thus, any extension of the effective date would commence from that regulatory prohibition date, and be based on anaylsis of available adequate alternative treatment, recovery, or disposal capacity existing as of the regulatory prohibition date (see RCRA section 3004(h)(2)). For a further discussion of this issue, see 54 FR 25416, June 14, 1989. This decision changes the effective dates for F007 wastewaters and nonwastewaters, and K011 and K013 nonwastewaters from August 8, 1990 to June 8, 1991, as indicated in the January 11, 1989 proposed rule.

Commenters also requested that the Agency defer setting any section 3004(g) prohibitions for UIC wastes until May 8, 1990. As previously articulated in the Federal Register on June 14, 1989 (54 FR 25416), the Agency disagrees with this position. EPA believes that it is the intent of Congress to ban the disposal of section 3004(g) wastes as expeditiously as possible upon the establishment of treatment standards and determination of alternative treatment capacity. If capacity exists, then consistent with section 3004(g)(5), the Agency will ban the underground disposal of such waste. Facilities that are able to make a demonstration of "no migration" in compliance with the requirements of 40 CFR 148 and 40 CFR 268.6 or meet the treatment standards in Part 268 may continue to inject hazardous wastes beyond the specified effective dates.

In previous rules, the Agency used a hierarchical approach in making decisions to allocate limited protective treatment or disposal capacity when evaluating national capacity variances (52 FR 32450, August 27, 1987; and 53 FR 30912, August 16, 1988). Briefly, available treatment capacity was first apportioned to demand from waste originally destined for surface disposal units, then to wastes from CERCLA remedial actions and RCRA section 3004(u) corrective actions, and finally to wastes disposed in injection wells. For the reasons discussed in the recent Final Rule for a group of First Third Wastes effective June 7, 1989 and published in the Federal Register on June 14, 1989 (54 FR 25416). This hierarchy has no effect on the Agency's decisions today. The UIC wastes being prohibited are relatively low volume. Prohibiting these small volumes of wastes will not result in capacity becoming unavailable for either wastes that are surface disposed, or for CERCLA/RCRA cleanup wastes.

a. *Effective date determinations for Second Third scheduled wastes for which EPA has not set treatment standards.* The Agency has not set treatment standards for the Second Third wastes listed in Table III.C.3.a. These wastes are not prohibited from land disposal by underground injection until the Agency sets treatment standards and effective dates, or until May 8, 1990, if EPA takes no action.

On January 11, 1989, the Agency proposed, in part, to set treatment standards and UIC effective dates for the following First Third wastes: F019, K011, K013, and K014. In today's rule, EPA is not finalizing the treatment standards or effective dates for F019 wastes, and K011 wastewaters, K013 wastewaters, or K014 wastewaters. These wastes, consequently, remain subject to the "soft hammer" provisions of 40 CFR 268.8. Similarly, the Agency proposed to set treatment standards and UIC effective dates for the following Third Third wastes: K002 nonwastewaters, K003 nonwastewaters, and K006 nonwastewaters. In today's rule, EPA is not finalizing these standards or effective dates. Since the statutory deadline for these wastes is

May 8, 1990, and no prohibitions are being established in today's rule, these wastes are not subject to the land disposal restrictions until promulgation of the Third Third final rule.

Treatment standards for K004 nonwastewaters and K008 nonwastewaters were finalized on August 16, 1988 (No Land Disposal Based on No Generation). Amendments to these standards were proposed on January 11, 1989 (No Land Disposal Based on Recycling). These treatment standards were finally amended on May 2, 1989 (No Land Disposal Based on No Generation for forms of these wastes generated by the process described in the waste listing description and disposed after August 17, 1988, and not generated in the course of treating wastewater forms of these wastes; 54 FR 18836). EPA is today rescinding all treatment standards for these nonwastewaters; therefore, all K004 and K008 wastes (wastewaters and nonwastewaters) are under the effect of the "soft hammer" provisions of 40 CFR 268.8.

b. *Scheduled wastes with established treatment standards which current data indicate are not being injected.* The wastes listed in Table III.C.3.b. are wastes for which standards are being established today and for which current data indicate are not being injected. No comment was received indicating that any of these wastes are being underground injected. Therefore, EPA is prohibiting the underground injection of these wastes unless they meet the treatment standards on June 8, 1989. The Agency believes these decisions will have no effect on the remaining national capacity available to treat wastes generated from RCRA/CERCLA cleanup actions requiring the type of treatment associated with these wastes.

The Agency has not established treatment standards for F006 wastewaters; accordingly, today's rule does not ban injection of F006 wastewaters. F006 nonwastewaters were banned from injection on June 7, 1989 published in the Federal Register, June 14, 1989 (54 FR 25416).

EPA is also banning the underground injection of K009 nonwastewaters and K010 wastewaters. Data received since the January 11, 1989, proposal indicate that these wastes are not being underground injected.

c. *Scheduled wastes with established treatment standards which current data indicate are being injected.* Table III.C.3.c. lists those wastes with treatment standards being established today which are underground injected. The Table summarizes the volumes requiring alternative treatment capacity. Table III.C.3.d. lists effective dates for the prohibitions against the underground injection of these wastes. The Agency believes these decisions will have little effect on the remaining national capacity available to treat wastes generated from RCRA/CERCLA cleanup actions requiring the type of treatment associated with these wastes. Moreover, these waste streams are sufficiently low volume not to affect transportation capacity for these wastes (see 53 FR 30914, August 16, 1988).

(1) Capacity determinations for injected wastes requiring alkaline chlorination or electrolytic oxidation followed by alkaline chlorination (F007, F008, F009, F011, F012, P029, P030, P063, and P098). The wastewater treatment standards for F007, F008, F009, F011, F012, P029, P030, and P098 are based on alkaline chlorination. The nonwastewater treatment standards for F007, F008, and F009 are based on alkaline chlorination followed by precipitation. The treatment standards for F011, F012, P029, P030, P063, and P098 nonwastewaters are based on electrolytic oxidation followed by alkaline chlorination. (As indicated in preamble section III.C.1.c., no commercial facilities with a treatment train consisting of electrolytic oxidation followed by alkaline chlorination were identified in the TSDR Survey. The Agency believes that alkaline chlorination alone will be able to meet the BDAT treatment standards for F011, F012, P029, P030, P063, and P098 nonwastewaters.)

An estimated 130 million gallons per year of these wastes will require cyanide wastewater treatment. Of the 130 million gallons, approximately 128 million gallons are being disposed by underground injection. Table III.C.3.c. gives the volumes of wastes injected for the indicated waste codes. These wastes may be injected in individual streams or as mixtures of wastes.

There is no need to use the allocation hierarchy in this situaiton. A straight comparison of available versus required capacity indicates a shortfall in alkaline chlorination capacity for injected F007 wastewaters and nonwastewaters (33 million gallons available versus 128 million gallons of injected F007). Comments received on the proposed effective date supported that determination. The Agency is therefore granting a two-year national capacity variance for F007 wastes which are underground injected. As indicated earlier in the preamble, EPA will grant a two-year variance not from the August 8, 1988 statutory First Third deadline, but rather from the effective date of this rule.

Over 33 million gallons per year of available alternate commercial treatment capacity has been identified for the low volumes of F008, F009, F011, F012, P029, P030, and P098 wastewaters and nonwastewaters being injected; therefore, no capacity variances were proposed for these wastes. No comment was received on this action. The Agency is banning the underground injection of P029, P030, and P098 wastes upon promulgation of this rule. As indicated in preamble section III.C.1.a., EPA is granting 30-day extensions of the effective date for F008, F009, F011, and F012 wastes. These wastes will therefore be banned from underground injection on July 8, 1989. (See preamble section III.C.1.a. describing the bifurcated treatment standard for F011 nonwastewaters and F012 nonwastewaters).

P063 wastes are reported in the TSDR survey as part of mixed waste streams with K011, K013, and K014. In the proposal EPA requested information on the quantities of P063 being underground injected, indicating a belief that such wastes are being injected in much smaller quantities than the data in the TSDR survey might suggest. Information received since this rule was proposed indicates that only relatively small amounts of P063 are being disposed by underground injection. Consequently EPA is banning the underground injection of P063 wastes upon the promulgation of this rule.

(2) Capacity determination for injected P071, P089, U028, U088, U107, and U190. Treatment standards for P071 and P089 nonwastewaters, and U028, U088, U107, and U190 wastewaters and nonwastewaters are based on incineration. Treatment standards for P071 and P089 wastewaters are based on biological treatment.

These wastes are currently injected in low volumes, if at all (see Table III.C.3.c.). The Agency has determined that adequate treatment capacity exists for these wastes (281 million gallons of available capacity and 44 million gallons of available biological treatment capacity versus a maximum of 300,000 gallons injected). No comments were received on the proposed effective dates. The Agency is therefore banning the underground injection of these wastes upon promulgation of this rule.

(3) Capacity determination for injected K009 wastewaters and K010 nonwastewaters. On January 11, 1989, the Agency proposed to grant capacity variances for all K009 and K010 wastes. New information indicates that only K009 wastewaters and K010 nonwastewaters are being injected. The

Agency is setting treatment standards for K009 wastewaters based on steam stripping followed by biological treatment. Treatment standards for K010 nonwastewaters are based on incineration. Inadequate alternative treatment capacity exists to treat the K009 wastewaters that are annually being injected (0 gallons of capacity available versus approximately 79 million gallons injected). There is adequate alternative treatment capacity to treat the K010 nonwastewaters that are being injected annually (281 million gallons of capacity available versus approximately 5 million gallons injected). Consequently, EPA is today granting a two-year capacity variance to the prohibition of underground injection of K009 wastewaters. The underground injection of K010 nonwastewaters is banned on June 8, 1989. As indicated previously, K009 nonwastewaters and K010 wastewaters not meeting the treatment standards are banned on June 8, 1989, based upon assessment of the best data available to the Agency, which indicate that these wastes are not being underground injected.

(4) Capacity determination for injected K011 nonwastewaters, K013 nonwastewaters, and K014 nonwastewaters. A significant volume of K011 nonwastewaters and K013 nonwastewaters (wastes from acrylonitrile production) are currently being land disposed by underground injection. Treatment standards for these wastes are based on incineration. The data indicate that approximately 282 million gallons of commercial incineration capacity exists versus 347 million gallons of injected K011 nonwastewaters and K013 nonwastewaters requiring incineration.

The Agency received extensive support for the proposed capacity variance for these waste codes. As indicated earlier in the preamble, EPA will grant a two-year variance not from the August 8, 1988, statutory First Third deadline, but rather from the effective date of this rule. K011 nonwastewaters and K013 nonwastewaters will be banned from underground injection on June 8, 1991. At proposal, EPA had treated K011, K013, and K014 injected nonwastewaters as one nonsegregable treatability group for the purpose of the national capacity determination. Upon further evaluation, EPA believes injected K014 nonwastewaters are segregable from K011 and K013 injected nonwastewaters. EPA plans to publish a notice to provide an opportunity to comment on this issue and will set an effective date for injected K014 nonwastewaters after evaluating comments. Thus, EPA is not taking final action on the proposal for setting an effective date for injected K014 nonwastewaters. Until final action, injected K014 nonwastewaters remain under the effect of the "soft hammer" provisions of 40 CFR 268.8.

(5) Capacity determination for injected U221, U223, and P044 Wastes. Table III.C.3.c. indicates that approximately 27 million gallons per year of U221 wastes are being injected underground, and additional volumes of U223 and P044 wastes are being injected in mixed waste streams. Treatment standards for P044 nonwastewaters, and U221 and U223 wastewaters and nonwastewaters are based on incineration. Treatment standards for P044 wastewaters are based on carbon adsorption or incineration. The data indicates that there is adequate treatment capacity for both injected nonwastewaters and wastewaters (282 million gallons of incineration capacity available versus 27 million gallons injected; 2 million gallons of carbon adsorption capacity available versus <100,000 injected). No national capacity variances were proposed for U221, U223 or P044 wastes. No comment was received on this decision. The Agency is therefore banning the underground injection of U221, U223, and P044 on June 8, 1989, unless these wastes meet the treatment standards.

Table III.C.3.a.—Second Third Wastes for Which Treatment Standards Are Not Established

K025 (wastewaters), K029 (wastewaters), K041, K042, K095 (wastewaters), K096 (wastewaters), K097, K098, K105

P002, P003, P007, P008, P014, P026, P027, P049, P054, P057, P060, P066, P067, P072, P107, P112, P113, P114

U002, U003, U005, U006, U011, U014, U015, U020, U021, U023, U025, U026, U032, U035, U047, U049, U057, U059, U060, U062, U070, U073, U080, U083, U092, U093, U094, U095, U097, U098, U099, U101, U106, U109, U110, U111, U114, U116, U119, U127, U128, U131, U135, U136, U140, U142, U143, U144, U146, U147, U149, U150, U161, U162, U163, U164, U165, U166, U169, U170, U172, U173, U174, U176, U178, U179, U189, U193, U196, U203, U205, U206, U208, U213, U214, U215, U216, U217, U218, U239, U244

Table III.C.3.b.—Wastes for Which Treatment Standards Are Today Established and Which Are Not Underground Injected

(Banned from underground injection on June 8, 1989)

First Third

K030 (wastewaters), P039, P041, P084, P097

Second Third

F010, F024, K009 (nonwastewaters), K010 (wastewaters), K027, K028, K029 (nonwastewaters), K038, K039, K040, K043, K095 (nonwastewaters), K096 (nonwastewaters), P040, P043, P062, P074, P085, P104, P106, P111, U058, U235

Third Third

K005 (nonwastewaters), K007 (nonwastewaters), K023, K093, K094, P013, P021, P099, P109, P121, U069, U087, U102

Newly Listed Wastes

K113, K114, K115, K116

TABLE III.C.3.c.—WASTES FOR WHICH TREATMENT STANDARDS ARE TODAY ESTABLISHED AND WHICH ARE BEING UNDERGROUND INJECTED

(Millions of gallons per year)

Waste code	Volume of injected waste requiring treatment capacity
First Third:	
F007	[1] 127.6
F008	[1] <0.1
F009	[1] <0.1
K011 nonwastewaters	[1] 173.4
K013 nonwastewaters	[1] 173.4
P030	[1] <0.1
P063	[1] <0.1
P071	[1] <0.1
P089	[1] <0.1
U221	[1] 26.8
U223	[1] <0.1
Second Third:	
F011	[1] 0.0
F012	[1] 0.0
K009 wastewaters	79.0
K010 nonwastewaters	5.0
P029	[1] <0.1
P044	[1] 0.0
P098	[1] <0.1
U028	[1] 0.0
U107	[1] <0.1
Third Third:	
U088	[1] 0.0
U190	<0.1

[1] Indicates wastes are injected in mixed waste streams. Wastes with no volumes indicated may be injected as part of these mixed streams.

TABLE III.3.C.d.—SUMMARY OF EFFECTIVE DATES FOR UNDERGROUND INJECTED WASTES WITH STANDARDS ESTABLISHED IN TODAY'S RULE

Waste code	Effective date
First Third:	
F007, K011 nonwastewaters, K013 nonwastewaters.	June 8, 1991.
P030, P063, P071, P089, U221, U223.	June 8, 1989.
F008, F009	July 8, 1989.
Second Third:	
K009 wastewaters	June 8, 1991.
K010 nonwastewaters, P029, P044, P098, U028, U107.	June 8, 1989.
F011, F012 (560 mg/kg, 30 mg/kg).	July 8, 1989.
F011, F012 (110 mg/kg, 9.1 mg/kg).	Dec. 8, 1989.
Third Third:	
U088, U190	June 8, 1989.

IV. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility. The standards and requirements for authorization are found in 40 CFR Part 271.

Prior to HSWA, a State with final authorization administered its hazardous waste program in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, HSWA applies in authorized States in the interim.

Today's rule is promulgated pursuant to sections 3004(d) through (k), and (m), of RCRA (42 U.S.C. 6924(d) through (k), and (m)). Therefore, it will be added to Table 1 in 40 CFR 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA and take effect in all States, regardless of their authorization status. States may apply for either interim or final authorization for the HSWA provisions in Table 1, as discussed in the following section. When this rule is promulgated, Table 2 in 40 CFR 271.1(j) will be modified also to indicate that this rule is a self-implementing provision of HSWA.

B. Effect on State Authorizations

As noted above, EPA will implement today's final rule in authorized States until their programs are modified to adopt these rules and the modification is approved by EPA. Because the rule is promulgated pursuant to HSWA, a State submitting a program modification may apply to receive either interm or final authorization under RCRA section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State program modifications for either interim or final authorization are described in 40 CFR 271.21. It should be noted that HSWA interim authorization will expire on January 1, 1993 (see 40 CFR 271.24(c)).

Section 271.21(e)(2) requires that States that have final authorization must modify their programs to reflect Federal program changes and must subsequently submit the modification to EPA for approval. The deadline by which the State must modify its program to adopt this regulation will be determined by the promulgation of the final rule in accordance with § 271.21(e). These deadlines can be extended in certain cases (see § 271.21(e)(3)). Once EPA approves the modification, the State requirements become Subtitle C RCRA requirements.

States with authorized RCRA programs may already have requirements similar to those in today's final rule. These State regulations have not been assessed against the Federal regulations being promulgated today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these requirements in lieu of EPA until the State program modification is approved. Of course, States with existing standards may continue to administer and enforce their standards as a matter of State law. In implementing the Federal program, EPA will work with States under agreements to minimize duplication of efforts. In many cases, EPA will be able to defer to the States in their efforts to implement their programs rather than take separate actions under Federal authority.

States that submit official applications for final authorization less than 12 months after the effective date of these regulations are not required to include standards equivalent to these regulations in their application. However, the State must modify its program by the deadline set forth in § 271.21(e). States that submit official applications for final authorization 12 months after the effective date of these regulations must include standards equivalent to these regulations in their application. The requirements a State must meet when submitting its final authorization application are set forth in 40 CFR 271.3.

The amendments being promulgated today need not affect the State's Underground Injection Control (UIC) primacy status. A State currently authorized to administer the UIC program under the Safe Drinking Water Act (SDWA) could continue to do so without seeking authority to administer these amendments. However, a State which wished to implement Part 148 and receive authorization to grant exemptions from the land disposal restrictions would have to demonstrate that it had the requisite authority to administer sections 3004(f) and (g) of RCRA. The conditions under which such an authorization may take place are summarized below and are discussed in a July 15, 1985 final rule (50 FR 28728).

C. State Implementation

The following four aspects of the framework established in the November 7, 1986, rule (51 FR 40572) affect State implementation to today's final rule and impact State actions on the regulated community:

1. Under Part 268, Subpart C, EPA is proposing land disposal restrictions for all generators, treaters, storers, and disposers of certain types of hazardous waste. In order to retain authorization, States must adopt the regulations under this Subpart since State requirements can be no less stringent than Federal requirements.

2. Also under Part 268, EPA is proposing to grant two-year national variances from the effective dates of the land disposal restrictions based on an analysis of available alternative treatment, recovery, or disposal capacity. Under section 268.5, case-by-case extensions of up to one year (renewable for one additional year) may be granted for specific applicants lacking adequate capacity.

The Administrator of EPA is solely responsible for granting variances to the effective dates because these determinations must be made on a

national basis. In addition, it is clear that RCRA section 3004(h)(3) intends for the Administrator to grant case-by-case extensions after consulting the affected States, on the basis of national concerns which only the Administrator can evaluate. Therefore, States cannot be authorized for this aspect of the program.

3. Under § 268.44, the Agency may grant waste-specific variances from treatment standards in cases where it can be demonstrated that the physical and/or chemical properties of the wastes differ significantly from wastes analyzed in developing the treatment standards, and the wastes cannot be treated to specified levels or treated by specified methods.

The Agency is solely responsible for granting such variances since the result of such an action may be the establishment of a new waste treatability group. All wastes meeting the criteria of these new waste treatability groups may also be subject to the treatment standard established by the variance. Granting such variances may have national impacts; therefore, this aspect of the program is not delegated to the States at this time.

4. Under § 268.6, EPA may grant petitions of specific duration to allow land disposal of certain hazardous wastes where it can be demonstrated that there will be no migration of hazardous constituents for as long as the waste remains hazardous. States which have the authority to impose restrictions may be authorized under RCRA section 3006 to grant petitions for exemptions from the restrictions. Decisions on site-specific petitions do not require the national perspective required to restrict wastes or grant extensions. EPA will be handling "no migration" petitions at Headquarters, though the States may be authorized to grant these petitions in the future. The Agency expects to gain valuable experience and information from review of "no migration" petitions which may affect future land disposal restrictions rulemakings. In accordance with RCRA section 3004(i), EPA will publish notice of the Agency's final decision on petitions in the Federal Register.

States are free to impose their own disposal restrictions if such actions are more stringent or broader in scope than the actions of Federal programs (RCRA section 3009 and 40 CFR 271.1(i)). Where States impose such restrictions, the broader and more stringent State restrictions govern.

V. Effect Of the Land Disposal Restrictions Program on Other Environmental Programs

A. Discharges Regulated Under the Clean Water Act

As a result of the land disposal restrictions program, some generators might switch from land disposal of restricted Second Third wastes to discharge to publicly-owned treatment works (POTWs) in order to avoid incurring the costs of alternative treatment. In shifting from land disposal to discharge to POTWs, an increase in human and environmental risks could occur. Also as a result of the land disposal restrictions, hazardous waste generators might illegally discharge their wastes to surface waters without treatment, which could cause damage to the local ecosystem and potentially pose health risks from direct exposure or bioaccumulation.

Some generators might treat their wastes prior to discharging to a POTW, but the treatment step itself could increase risks to the environment. For example, if incineration were the pretreatment step, metals and other hazardous constituents present in air scrubber waters could be discharged to surface waters. However, the amount of Second Third waste shifted to POTWs would be limited by such factors as the physical form of the waste, the degree of pretreatment required prior to discharge, and State and local regulations.

B. Discharges Regulated Under the Marine Protection, Research, and Sanctuaries Act

Management of some of the hazardous wastes included in today's rulemaking could be shifted from land disposal to ocean dumping and ocean-based incineration. If the cost of ocean-based disposal plus transportation were lower than the cost of land-based treatment, disposal, and transportation, this option could become an attractive alternative. In addition, ocean-based disposal could become attractive to the regulated community if land-based treatment were not available.

However, the Ocean Dumping Ban Act of 1988 has restricted ocean dumping of sewage sludge and industrial wastes to existing, authorized dumpers until December 31, 1991, after which " . . . it shall be unlawful for any person to dump (sewage sludge or industrial wastes) into ocean waters". Therefore, the Ocean Dumping Ban Act has made moot any economic or other incentive to ocean dump industrial hazardous wastes, including the wastes subject to this regulation.

C. Air Emissions Regulated Under the Clean Air Act

Some treatment technologies applicable to Second Third wastes could result in cross-media transfer of hazardous constituents to air. For example, incineration of metal-bearing wastes could result in metal emissions to air. Some constituents, such as chromium, can be more toxic if inhaled than if ingested. Therefore, it might be necessary to issue regulatory controls for some technologies to ensure they are operated properly.

The Agency has taken several steps to address this issue. EPA has initiated a program to address metal emissions from incinerators. It has also initiated two programs under section 3004(n) to address air emissions from other sources. The first program will address fugitive emissions from equipment such as pumps, valves, and vents from units processing concentrated organic waste streams. The second program will address other sources of air emissions, such as tanks and waste transfer and handling.

D. Clean Up Actions Under the Comprehensive Environmental Response, Compensation, and Liability Act

The land disposal restrictions may have significant effects on the selection and implementation of response actions that are taken under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). There are three primary areas in which these effects may occur.

One area that may be affected by the LDR is in the selection of treatment standards at the remedial action site. The cleanup standards set at CERCLA sites are risk-based, while treatment standards developed under the land disposal restrictions program are technology-based. Therefore, the technology-based treatment standards may be more stringent than the risk-based cleanup standards developed based on the CERCLA selection of remedy criteria, and vice versa. Another matter that may be affected is the treatment of soil and debris contaminated with wastes restricted from land disposal. Contaminated soil and debris are a primary type of waste that must be remediated at most CERCLA sites. In many cases, the soil matrix is different from that of the industrial waste for which treatment standards are set. CERCLA site managers must either comply with the treatment standards or request and be granted a variance from the treatment standard (§ 268.44) or request and be granted a "no-migration" variance (§ 268.6).

Finally, even though the hazardous substances at a CERCLA remediation site may have been disposed prior to the effective date of RCRA, if the action involves removal of restricted wastes after the prohibition effective date, the land disposal restrictions are legally applicable (51 FR 40577). For example, if a waste is excavated from a unit, treated, and redisposed, EPA has indicated that "placement" (see RCRA section 3004(k)) of the waste in a land disposal unit has occurred and the applicable treatment standards must be met (see 53 FR 51444 and 51445, Dec. 21, 1988). However, if the waste is capped in place, removal or "placement" has not occurred and the treatment standards are not legally applicable.

E. Applicability of Treatment Standards to Wastes from Pesticides Regulated Under the Federal Insecticide, Fungicide, and Rodenticide Act

A number of generators of pesticide waste that have heretofore been comparatively unaware of the land disposal restrictions may be regulated when today's rulemaking is promulgated. This will require that the Agency develop guidance materials and provide training on how to comply with the requirements of the land disposal restrictions.

Generators of significant quantities of pesticide P and U wastes are farmers and commercial pesticide applicators. The provisions of 40 CFR 268.1(c)(5) exempt farmers from regulation under the land disposal restrictions program; however, no such exemption exists for commercial applicators. Such generators of hazardous wastes have traditionally land disposed their pesticide wastes. Subsequent to promulgation of today's final rule, these generators must comply with the requirements of the land disposal restrictions if they dispose a hazardous waste subject to treatment standards of "soft hammer" provisions.

F. Regulatory Overlap of Polychlorinated Biphenyls (PCBs) Under the Toxic Substance Control Act and Resource Conservation and Recovery Act

Certain wastes listed as P or U contain PCBs. The PCB component of such a waste mixture is regulated primarily under TSCA, whereas the listed P or U component of the waste is regulated under RCRA. Such a mixture of listed/PCB waste must meet the applicable requirements under both statutes. Such a waste must ordinarily go to an incinerator permitted under both TSCA and RCRA. Any ash residual from incineration must meet the treatment standard for the listed waste component prior to land disposal.

VI. REGULATORY REQUIREMENTS

A. Regulatory Impact Analysis

1. Purpose

The Agency estimated the costs, benefits, and economic impacts of today's final rule to determine if it is a "major" regulation as defined by Executive Order No. 12291. For all major rules, the Agency is required by the Executive Order to conduct a Regulatory Impact Analysis, and by the Regulatory Flexibility Act to assess small business impacts. The cost and economic impact estimates serve, additionally, as measures of the practical capability of facilities to comply with the final rule.

The results indicate that today's final rule is not a major rule. This section of the preamble discusses the results of the analyses of the final rule.

2. Executive Order No. 12291

Executive Order No. 12291 requires EPA to assess the effect of final Agency actions and alternatives during the development of regulations. Such an assessment consists of a quantification of the potential benefits and costs of the rule, as well as a description of any beneficial or adverse effects that cannot be quantified in monetary terms. In addition, Executive Order No. 12291 requires that regulatory agencies prepare a Regulatory Impact Analysis (RIA) for major rules. Major rules are defined as those likely to result in:

- An annual cost to the economy of $100 million or more; or
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, employment, investment, innovation, or international trade.

The Agency has conducted cost analysis and has concluded that the final rule is not a major rule. Annual costs to the economy are estimated at approximately $24.9 million to $32.4 million for wastes not injected underground and an additional $3.9 million for those injected underground.

3. Basic Approach

The Agency analyzed costs and benefits using the same approach and methodology that was used for the August 17, 1988 First Third final rule (53 FR 31138). The effects of the final rule were estimated by comparing post-regulatory costs, benefits, and economic impacts with those resulting under baseline conditions. The baseline for all Second and Third wastes is defined as continued land disposal of wastes in units meeting minimum technological requirements. The baseline was not adjusted to reflect treatment requirements that would automatically occur in the absence of a rule after May 8, 1990.

The baseline for First Third wastes included in this rule is defined as treatment needed to comply with the First Third Land Disposal Restrictions rule or the soft hammer provisions that went into effect on August 8, 1988. This baseline corresponds to treatments evaluated under Alternative A Scenario 2 in the First Thirds RIA (53 FR 31138, August 17, 1988).

4. Results

Table VI(A) summarizes the results of the Regulatory Impact Analysis, as discussed in the following section.

TABLE VI(A)—REGULATORY IMPACT ANALYSIS RESULTS

	Surface Disposal	Underground Injection
Affected facilities:		
• Promulgated Wastes	27	20
• "Soft hammer" Wastes	8	.....
Total	35	20
Costs (annual) in millions:		
• Promulgated Wastes	24.9	3.9
• "Soft hammer" Wastes	7.5	.....
Total	32.4	3.9
Economic Impact: Significantly affected facilities	0	0
Benefits (over 70 yrs.):		
• Cancer case avoided	.07	.....
• Noncarcinogenic exposures avoided	555	.....

a. *Population of affected facilities.* The final rule will affect 27 facilities that surface-dispose wastes. An additional 8 facilities would be affected by the soft hammer provisions that will take effect on June 8, 1989.

Only 20 injection facilities will be required to either treat wastes or file "no migration" petitions. These facilities will not significantly contribute to compliance costs already incurred by injection well owners/operators managing solvents, dioxins, California list, and First Third wastes.

b. Costs. The standards promulgated by this final rule are estimated to cost industry $24.9 million per year for surface-disposed wastes, and 3.9 million per year for injected wastes. If there is not enough capacity to treat the wastes subject to the soft hammer provisions, the facilities may be able to continue managing their wastes in minimum technology units at no additional cost.

If treatment capacity is available, surface-disposed wastes subject to the soft hammer provisions would need to be treated. The Agency estimated the upper range costs of treating those wastes by assuming these wastes would be incinerated. This treatment could add as much as $7.5 million to the cost of the rule. Less costly forms of treatment would be available for the soft hammered wastes, which would reduce the cost.

In general, the Agency assumed that the least costly treatment would be selected. This assumption had negligible effects on the estimated costs except for the case of a combined waste stream containing K027 and D007, a Third Third chromium waste. The Agency assumed that the combined waste would be treated to comply with the final rule. The Agency also assumed that no treatment of the residual scrubber sludges to remove chromium would take place because treatment standards for D007 have not been promulgated. Promulgation of standards for D007 under the Third Third rule would increase costs for this combined waste by approximately $28 million annually.

The additional volume of injected wastes attributable to the Second Third schedule is small by comparison to the volumes of wastes regulated by previous rulemakings. The Agency performed an analysis to assess the economic effect of associated compliance costs for Second Third wastes and found total compliance costs to be $3.9 million annually and petition costs are estimated at $0.1 million annually.

c. *Economic impacts.* The economic impact analysis for surface-disposed wastes estimates that none of the affected facilities would be significantly affected by the final rule. None of the affected facilities is expected to close as a result of the rule.

d. *Benefits.* The benefits analysis for surface-disposed wastes estimated that, over a 70 year lifetime, the final rule would reduce the number of cancer cases by 0.07 and the number of exposures to noncarcinogenic chemicals above threshold levels by 555.

Benefits other than reduction in human health risk—such as resouce damage avoided and corrective action costs avoided—were not quantified. As a result, the benefits of the land disposal restrictions for Second Third wastes are likely to be understated.

B. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, whenever an agency is required to publish a notice of rulemaking for a final rule, it must prepare and make available for public comment a Regulatory Flexibility Analysis (RFA) that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if the Agency's Administrator certifies that the rule will not have a significant economic effect on a substantial number of small entities.

According to EPA's guidelines for conducting an RFA, if over 20 percent of the population of small businesses, small organizations, or small government jurisdictions is likely to experience financial distress based on the costs of the rule, then the agency is required to consider that the rule will have a significant effect on a substantial number of small entities and to perform a formal RFA. EPA evaluated the economic effect of the final rule, as required by the Regulatory Flexibility Act, and determined that no facilities would be significantly affected. The Administrator certifies that Part 268 and Part 148 will not have significant economic effects on a substantial number of small entities. As a result of this finding, the Agency has not prepared a formal RFA.

C. Paperework Reduction Act

All information collection requirements in this final rule were promulgated in previous land disposal restrictions rulemakings (other than those for the Underground Injection Control Program) and approved by the Office of Management and Budget at that time. Since there are no new information collection requirements being promulgated today, an Information Collection Request has not been prepared.

For the Underground Injection Control Program, the information collection requirements in this final rule have been approved by the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* Reporting and recordkeeping burden on the public for this collection is estimated at 745 hours for the respondents, with an average of 14 hours per response. These burden estimates include all aspects of the collection effort and may include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, (please reference ICR No. 370.09), to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (202-382-2745); and Office of Management and Budget, Paperwork Reduction Project (2040-0042), Washington, DC 20503, marked "Attention: Desk Officer for EPA."

D. Review of Supporting Documents

The primary source of information on current land disposal practices and industries affected by this rule was EPA's 1986 "National Survey of Hazardous Waste Treatment, Storage, Disposal, and Recycling Facilities (the TSDR Survey). The average quantity of waste contributed by generator facilities was obtained from EPA's "National Survey of Hazardous Waste Generators and Treatment, Storage, and Disposal Facilities Regulated under RCRA in 1981" (April 1984).

VII. REFERENCES

(1) U.S. EPA, "Treatment Technology Background Document." June, 1989. EPA/530-SW-89-045A.

(2) U.S. EPA, "Methodology for Developing Treatment Standards." June, 1989. EPA/530-SW-89-045B.

(3) U.S. EPA, "Best Demonstrated Available Technology (BDAT) for Cyanide Wastes, F006 (Cyanide Only), F007-F012, F019, P012, P013, P021, P029, P030, P033, P063, P074, P098, P099, P104, P106, and P121, U246." June 1988. EPA/530-SW-89-046K.

(4) U.S. EPA, "Best Demonstrated Available Technology (BDAT) for K011, K013, and K014. June 1989. EPA/530-SW-89-046J.

(5) U.S. EPA, "Best Demonstrated Available Technology (BDAT) for K009 and K010. June 1989. EPA/530-SW-89-046I.

(6) U.S. EPA, "Best Demonstrated Available Technology (BDAT) for K043. June 1989. EPA/530-SW-89-046L.

(7) U.S. EPA, "Best Demonstrated Available Technology (BDAT) for Phthalate Wastes, K023, K093, K094, U028, U069, U088, U102, U107, U190. June 1989. EPA/530/SW-89-048H.

(8) U.S. EPA, "Best Demonstrated Available Technology (BDAT) for Organophosphorous Wastes, K038-K040, P039, P040, P041, P043, P044, P062, P071, P085, P089, P094, P027, P109, P111, U059, U087, and U235. June 1989. EPA/530-SW-89-045G.

(9) U.S. EPA, "Best Demonstrated Available Technology (BDAT) for F024. June 1989. EPA/530-SW-89-048M.

(10) U.S. EPA, "Best Demonstrated Available Technology (BDAT) for Waste from the Production of Dinitrotoluene, Toluenediamine, and Toluenediisocyanate, K027, K111-K116, U221, and U223. June 1989. EPA/530-SW-89-046O.

(11) U.S. EPA, "Best Demonstrated Available Technology (BDAT) for Wastes From the Production of 1,1,1,-Trichloroethene K028, K029, K095, and K096. December 1988. EPA/530-SW-89-048N.

(12) ICF, Memorandum From Ralph Braccio, Jean Tilley to William Vocke, "Results of Preliminary Analysis of Proposed Second Thirds Land Disposal Restrictions Rule. December 19, 1988.

(13) U.S. EPA, "Background Document for Second Third Wastes to Support 40 CFR Part 268 Land Disposal Restrictions Proposed Rule. Second Third Wastes Volumes, Characteristics, and Required and Available Treatment Capacity". June 1989. EPA/530-SW-89-048F.

(14) U.S. EPA, "Evaluation of Availability of Alternate Treatment and Disposal Capacity for Injected Hazardous Wastes"; Tischler and Kocurek. October 1987.

(15) U.S. EPA, "Information Collection Request for the Proposed Hazardous Waste Disposal Restrictions for Class I Injection of Second Thirds List Wastes", Cadmus Group, Inc. November 1988.

(16) U.S. EPA, "Second and Third Thirds Cost Estimate", Cadmus Group, Inc. December 1988.

(17) U.S. EPA, "Response to Comments Background Document for Second Third Scheduled Wastes, Vol. 1"; June 1989. EPA/530-SW-89-048D.

(18) U.S. EPA, "Response to Comments Background Document for Second Third Scheduled Wastes, Vol. 2"; June 1989. EPA/530-SW-89-048E.

(19) U.S. EPA, "Response to Comments Background Document for Second Third Scheduled Wastes, Vol. 3"; June 1989. EPA/530-SW-89-048C.

List of Subjects in 40 CFR Part 148, 264, 265, 268, and 271

Administrative practice and procedure, Confidential business information, Environmental protection, Hazardous materials, Hazardous materials transportation, Hazardous waste, Imports, Indian lands, Insurance, Intergovernmental relations, Labeling, Packaging and containers, Penalties, Recycling, Reporting and recordkeeping requirements, Security measures, Surety bonds, Waste treatment and disposal, Water pollution control, Water supply.

Dated: June 8, 1989.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, Title 40, Chapter I, of the Code of Federal Regulations is amended as follows:

PART 148—HAZARDOUS WASTE INJECTION RESTRICTIONS

1. The authority citation for Part 148 continues to read as follows:

Authority: Section 3004, Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*

2. Section 148.14 is amended by redesignating paragraphs (b), (c), and (d) as paragraphs (d), (e), and (g); by revising the introductory text of newly redesignated paragraph (g); and by adding new paragraphs (b), (c), and (f) to read as follows:

§ 148.14 Waste specific prohibitions—first third wastes.

* * * * *

(b) Effective June 8, 1989, the waste specified in 40 CFR 261.32 as EPA Hazardous Waste number K036 (wastewaters); and the wastes specified in 40 CFR 261.33 as P030, P039, P041, P063, P071, P089, P094, P097, U221, and U223 are prohibited from underground injection.

(c) Effective July 8, 1989, the wastes specified in 40 CFR 261.31 as EPA Hazardous Waste numbers F008 and F009 are prohibited from underground injection.

* * * * *

(f) Effective June 8, 1991, the waste specified in 40 CFR 261.31 as EPA Hazardous Waste number F007; and the wastes specified in 40 CFR 261.32 as K011 (nonwastewaters) and K013 (nonwastewaters) are prohibited from underground injection.

(g) The requirements of paragraphs (a), (b), (c), (d), (e), and (f) of this section do not apply:

* * * * *

3. Section 148.15 is amended by redesignating paragraph (b) as paragraph (e); by revising the introductory text of newly redesignated paragraph (e); and by adding new paragraphs (b), (c), and (d) to read as follows:

§ 148.15 Waste specific prohibitions—second third wastes.

* * * * *

(b) Effective June 8, 1989, the wastes specified in 40 CFR 261.31 as EPA Hazardous Waste numbers F010, F024; the wastes specified in 40 CFR 261.32 as K009 (nonwastewaters), K010, K027, K028, K029 (nonwastewaters), K038, K039, K040, K043, K095 (nonwastewaters), K096 (nonwastewaters), K113, K114, K115, K116; and wastes specified in 40 CFR 261.33 as P029, P040, P043, P044, P062, P074, P085, P098, P104, P106, P111, U028, U058, U107, and U235 are prohibited from underground injection.

(c) Effective July 8, 1989, and continuing until December 8, 1989, the wastes specified in 40 CFR 261.31 as EPA Hazardous Waste numbers F011 and F012 are prohibited from underground injection pursuant to the treatment standards specified in §§ 268.41 and 268.43 applicable to F007, F008, and F009 wastewaters and nonwastewaters. Effective December 8, 1989, F011 (nonwastewaters) and F012 (nonwastewaters) are prohibited pursuant to the treatment standards specified in §§ 268.41 and 268.43 applicable to F011 and F012 wastewaters and nonwastewaters.

(d) Effective June 8, 1991, the waste specified in 40 CFR 261.32 as EPA Hazardous Waste number K009 (wastewaters) is prohibited from underground injection.

(e) The requirements of paragraphs (a), (b), (c), and (d) of this section do not apply:

* * * * *

4. Section 148.16 is amended by redesignating paragraph (b) as paragraph (c); by revising the introductory text of newly redesignated paragraph (c); and by adding new paragraph (b) to read as follows:

§ 148.16 Waste specific prohibitions—third third wastes.

* * * * *

(b) Effective June 8, 1989, the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste numbers K005 (nonwastewaters), K007 (nonwastewaters), K023, K093, K094; and the wastes specified in 40 CFR 261.33 as P013, P021, P089, P109, P121, U069, U087, U088, U102, and U190 are prohibited from underground injection.

(c) The requirements of paragraphs (a) and (b) of this section do not apply:

* * * * *

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES

1. The authority citation for Part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

Subpart E—Manifest System, Recordkeeping, and Reporting

§ 264.73 [Amended]

2. Section 264.73 is amended by revising the first sentence in the parenthetical statement to read as follows: (Approved by the Office of

Management and Budget under control numbers 2050–0012, 2050–0013 and 2040–0042 * * *).

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for Part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935.

Subpart E—Manifest System, Recordkeeping, and Reporting

§ 265.73 [Amended]

2. Section 265.73 is amended by revising the parenthetical statement to read as follows: (Approved by the Office of Management and Budget under control numbers 2050–0039 and 2040–0042).

PART 268—LAND DISPOSAL RESTRICTIONS

1. The authority citation for Part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

Subpart A—General

§ 268.7 [Amended]

2. Section 268.7 is amended by revising the parenthetical statement to read as follows: (Approved by the Office of Management and Budget under control numbers 2050–0082 and 2040–0042).

Subpart B—Schedule for Land Disposal Prohibitions and Establishment of Treatment Standards

3. Section 268.12 is amended by removing paragraph (c); by redesignating paragraphs (d), (e), (f), (g), and (h) as paragraphs (c), (d), (e), (f), and (g); and by revising paragraphs (b) and newly redesignated paragraph (c) to read as follows:

§ 268.12 Identification of wastes to be evaluated by May 8, 1990.

* * * * *

(b) Wastewater residues (less than 1% total organic carbon and less than 1% total suspended solids) resulting from the following well-designed and well-operated treatment methods for wastes listed in §§ 268.10 and 268.11 for which EPA has not promulgated wastewater treatment standards: metals recovery, metals precipitation, cyanide destruction, carbon adsorption, chemical oxidation, steam stripping, biodegradation, and incineration or other direct thermal destruction.

(c) Hazardous wastes listed in §§ 268.10 and 268.11 that are mixed hazardous/radioactive wastes.

* * * * *

Support C—Prohibitions on Land Disposal

4. Section 268.34 is added to read as follows:

§ 268.34 Waste specific prohibitions—second third wastes.

(a) Effective June 8, 1989, the following wastes specified in 40 CFR 261.31 as EPA Hazardous Waste Nos. F010; F024; the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste Nos. K005, K007; K009 (nonwastewaters), K010; K023; K027; K028; K029 (nonwastewaters); K036 (wastewaters); K038; K039; K040; K043; K093; K094; K095 (nonwastewaters); K096 (nonwastewaters); K113; K114; K115; K116; and the wastes specified in 40 CFR 261.33 as EPA Hazardous Waste Nos. P013; P021; P029; P030; P039; P040; P041; P043; P044; P062; P063; P071; P074; P085; P089; P094; P097; P098; P099; P104; P108; P109; P111; P121; U028; U058; U089; U087; U088; U102; U107; U221; U223; and U235 are prohibited from land disposal.

(b) Effective June 8, 1989, the following wastes specified in 40 CFR 261.32 as EPA Hazardous Waste Nos. K009 (wastewaters), K011 (nonwastewaters), K013 (nonwastewaters), and K014 (nonwastewaters) are prohibited from land disposal except when they are underground injected pursuant to 40 CFR 148.14(f) and 148.15(d).

(c) Effective July 8, 1989, the wastes specified in 40 CFR 261.31 as EPA Hazardous Waste Nos. F006—cyanide (nonwastewater); F008; F009; F011 (wastewaters) and F012 (wastewaters) are prohibited from land disposal.

(1) Effective July 8, 1989, the following waste specified in 40 CFR 261.31 as EPA Hazardous Waste No. F007 is prohibited from land disposal except when it is underground injected pursuant to 40 CFR 148.14(f).

(2) Effective July 8, 1989 and continuing until December 8, 1989, F011 (nowastewaters) and F012 (nonwastewaters) are prohibited from land disposal pursuant to the treatment standards specified in §§ 268.41 and 268.43 applicable to F007, F008, and F009 nonwastewaters. Effective December 8, 1989 F011 (nowastewaters) and F012 (nonwastewaters) are prohibited from land disposal pursuant to the treatment standards specified in §§ 268.41 and 268.43 applicable to F011 (nonwastewaters) and F012 (nonwastewaters) .

(d) Effective June 8, 1991, the wastes specified in this section having a treatment standard in Subpart D of this part based on incineration, and which are contaminated soil and debris are prohibited from land disposal.

(e) Between June 8, 1989 and June 8, 1991, (for wastes F007, F008, F009, F011, and F012 between June 8, 1989 and July 8, 1989) wastes included in paragraphs (c) and (d) of this section may be disposed in a landfill or surface impoundment, regardless whether such unit is a new, replacement, or lateral expansion unit, only if such unit is in compliance with the technical requirements specified in § 268.5(h)(2).

(f) The requirements of paragraphs (a), (b), (c), and (d) of this section do not apply if:

(1) The wastes meet the applicable standards specified in Subpart D of this Part; or

(2) Persons have been granted an exemption from a prohibition pursuant to a petition under § 268.6, with respect to those wastes and units covered by the petition.

(g) The requirements of paragraphs (a), (b), and (c) of this section do not apply if persons have been granted an extension to the effective date of a prohibition pursuant to § 268.5, with respect to those wastes covered by the extension.

(h) Between June 8, 1989 and May 8, 1990, the wastes specified in § 268.11 for which treatment standards under Subpart D of this Part are not applicable, including California list wastes subject to the statutory prohibitions of RCRA section 3004(d) or codified prohibitions under § 268.32, are prohibited from disposal in a landfill or surface impoundment unless the wastes are the subject of a valid demonstration and certification pursuant to § 268.6.

(i) To determine whether a hazardous waste listed in §§ 268.10, 268.11, and 268.12 exceeds the applicable treatment standards specified in §§ 268.41 and 268.43, the initial generator must test a representative sample of the waste extract or the entire waste, depending on whether the treatment standards are expressed as concentrations in the waste extract or the waste, or the generator may use knowledge of the waste. If the waste contains constituents in excess of the applicable Subpart D levels, the waste is prohibited from land disposal and all requirements of Part 268 are applicable, except as otherwise specified.

Subpart D—Treatment Standards

6. In § 268.41, Table CCWE is amended by removing from the subtable for F006 nonwastewaters "Cyanides (Total) * * * Reserved", and by adding the following subtables to Table CCWE in alphabetical/numerical order by EPA Hazardous Waste Number:

§ 268.41 Treatment standards expressed as concentrations in waste extract.

(a) * * *

TABLE CCWE—CONSTITUENT CONCENTRATIONS IN WASTE EXTRACT

* * * * *

F007, F008, and F009 nonwastewaters (see also table CCW in § 268.43)	Concentration (in mg/l)
Cadmium	0.066
Chromium (total)	5.2
Lead	0.51
Nickel	0.32
Silver	0.072

F011 and F012 nonwastewaters (see also table CCW in § 268.43)	Concentration (in mg/l)
Cadmium	0.066
Chromium (total)	5.2
Lead	0.51
Nickel	0.32
Silver	0.072

F024 nonwastewaters (see also table CCW in § 268.43)	Concentration (in mg/l)
Chromium (total)	Reserved.
Nickel	Reserved.

K028 nonwastewaters (see also table CCW in § 268.43)	Concentration (in mg/l)
Chromium (total)	Reserved.
Nickel	Reserved.

K115 nonwastewaters (see also table CCW in § 268.43)	Concentration (in mg/l)
Nickel	0.32

P074 nonwastewaters (see also table CCW in § 268.43)	Concentration (in mg/l)
Nickel	0.32

P099 nonwastewaters (see also table CCW in § 268.43)	Concentration (in mg/l)
Silver	0.072

P104 nonwastewaters (see also table CCW in § 268.43)	Concentration (in mg/l)
Silver	0.072

* * * * *

7. In § 268.42, paragraphs (a)(3) and (a)(4) are added to read as follows:

§ 268.42 Treatment standards expressed as specified technologies.

(a) * * *

(3) The nonwastewater form of the following hazardous wastes listed in §§ 268.10, 268.11, and 268.12 must be incinerated in accordance with the requirements of Part 264, Subpart O, or Part 265, Subpart O, or burned in boilers or industrial furnaces burning in accordance with applicable regulatory standards: K027, K039, K113, K114, K115, K116, P040, P041, P043, P044, P062, P085, P109, P111, U058, U087, U221, and U223.

(4) The wastewater form of the following hazardous wastes listed in §§ 268.10, 268.11, and 268.12 must be treated by carbon adsorption, or incinerator, or pretreatment followed by carbon adsorption: K027, K039, K113, K114, K115, K116, P040, P041, P043, P044, P062, P085, P109, P111, U058, U087, U221, and U223.

* * * * *

8. In § 268.43, paragraph (a) is revised; Table CCW is amended by revising the subtable for F006 nonwastewaters; by revising the subtables for K024 wastewaters and nonwastewaters; by removing K004 and K008 from the subtable for No Land Disposal; by adding the following subtables in alphabetical/numerical order by EPA hazardous waste number, and by adding paragraph (b) and K005 and K007 to the subtable for No Land Disposal to read as follows:

§ 268.43 Treatment standards expressed as waste concentrations.

(a) Table CCW identifies the restricted wastes and the concentrations of their associated hazardous constituents which may not be exceeded by the waste or treatment residual (not an extract of such waste or residual) for the allowable land disposal of such waste or residual. The wastewater and nonwastewater treatment standards in Table CCW are based on analysis of composite samples for wastes, K009, K010, K036, K038, K040, P039, P071, P089, P094, P097, and U235.

TABLE CCW—CONSTITUENT CONCENTRATION IN WASTES

* * * * *

F006 nonwastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/kg)
Cyanides (Total)	590
Cyanides (Amenable)	30

F007, F008, and F009 nonwastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/kg)
Cyanides (Total)	590
Cyanides (Amenable)	30

F007, F008, and F009 wastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/l)
Cyanides (Total)	1.9
Cyanides (Amenable)	0.10
Chromium (Total)	0.32
Lead	0.04
Nickel	0.44

F010 nonwastewaters	Concentration (in mg/kg)
Cyanides (Total)	1.5

F010 wastewaters	Concentration (in mg/l)
Cyanides (Total)	1.9
Cyanides (Amenable)	0.10

F011 and F012 nonwastewaters [1]	Concentration (in mg/kg)
Cyanides (Total)	110
Cyanides (Amenable)	9.1

[1] Effective December 8, 1989; from July 8, 1989 until December 8, 1989, these wastes are subject to the same treatment standards as F007, F008, and F009 nonwastewaters (see also Table CCWE in § 268.41).

F011 and F012 wastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/l)
Cyanides (Total)	1.9
Cyanides (Amenable)	0.10
Chromium (Total)	0.32
Lead	0.04
Nickel	0.44

F024 nonwastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/kg)
2-Chloro-1,3-butadiene	0.28
3-Chloropropene	0.28

F024 nonwastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/kg)
1,1-Dichloroethane	0.014
1,2-Dichloroethane	0.014
1,2-Dichloropropene	0.014
cis-1,3-Dichloropropene	0.014
trans-1,3-Dichloropropene	0.014
Bis(2-ethylhexyl)phthalate	1.8
Hexachloroethane	1.8
Hexachlorodibenzo-furans	0.001
Hexachlorodibenzo-p-dioxins	0.001
Pentachlorodibenzo-furans	0.001
Pentachlorodibenzo-p-dioxins	0.001
Tetrachlorodibenzo-furans	0.001

F024 wastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/l)
2-Chloro-1,3-butadiene	0.28
3-Chloropropene	0.28
1,1-Dichloroethane	0.014
1,2-Dichloroethane	0.014
1,2-Dichloropropene	0.014
cis-1,3-Dichloropropene	0.014
trans-1,3-Dichloropropene	0.014
Bis(2-ethylhexyl) phthalate	0.036
Hexachloroethane	0.036
Hexachlorodibenzo-furans	0.001
Hexachlorodibenzo-p-dioxins	0.001
Pentachlorodibenzo-furans	0.001
Pentachlorodibenzo-p-dioxins	0.001
Tetrachlorodibenzo-furans	0.001
Chromium (Total)	0.35
Nickel	0.47

K009 and K010 nonwastewaters	Concentration (in mg/kg)
Chloroform	6.0

K009 and K010 wastewaters	Concentration (in mg/l)
Chloroform	0.10

K011, K013, and K014 nonwastewaters	Concentration (in mg/kg)
Acetonitrile	1.8
Acrylonitrile	1.4
Acrylamide	23
Benzene	0.03
Cyanides (Total)	57

K023, K093, and K094 nonwastewaters	Concentration (in mg/kg)
Phthalic anhydride (measured as Phthalic acid)	28

K023, K093, and K094 wastewaters	Concentration (in mg/l)
Phthalic anhydride (measured as Phthalic acid)	0.54

K024 nonwastewaters	Concentration (in mg/kg)
Phthalic anhydride (measured as Phthalic acid)	28

K024 wastewaters	Concentration (in mg/l)
Phthalic anhydride (measured as Phthalic acid)	0.54

K028 nonwastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/kg)
1,1-Dichloroethane	6.0
trans-1,2-Dichloroethane	6.0
Hexachlorobutadiene	5.6
Hexachloroethane	28
Pentachloroethane	5.6
1,1,1,2-Tetrachloroethane	5.6
1,1,2,2-Tetrachloroethane	5.6
1,1,1-Trichloroethane	6.0
1,1,2-Trichloroethane	6.0
Tetrachloroethylene	6.0

K028 wastewaters	Concentration (in mg/l)
1,1-Dichloroethane	0.007
trans-1,2-Dichloroethane	0.033
Hexachlorobutadiene	0.007
Hexachloroethane	0.033
Pentachloroethane	0.033
1,1,1,2-Tetrachloroethane	0.007
1,1,2,2-Tetrachloroethane	0.007
Tetrachloroethylene	0.007
1,1,1-Trichloroethane	0.007
1,1,2-Trichloroethane	0.007
Cadmium	6.4
Chromium (Total)	0.35
Lead	0.037
Nickel	0.47

K029 nonwastewaters	Concentration (in mg/kg)
Chloroform	6.0
1,2-Dichloroethane	6.0
1,1-Dichloroethylene	6.0
1,1,1-Trichloroethane	6.0
Vinyl chloride	6.0

K036 wastewaters	Concentration (in mg/l)
Disulfoton	0.025

K038 and K040 nonwastewaters	Concentration (in mg/kg)
Phorate	0.1

K038 and K040 wastewaters	Concentration (in mg/l)
Phorate	0.025

K043 nonwastewaters	Concentration (in mg/kg)
2,4-Dichlorophenol	0.38
2,6-Dichlorophenol	0.34
2,4,5-Trichlorophenol	8.2
2,4,6-Trichlorophenol	7.6
Tetrachlorophenols (Total)	0.68
Pentachlorophenol	1.9
Tetrachloroethene	1.7
Hexachlorodibenzo-p-dioxins	0.001
Hexachlorodibenzo-furans	0.001
Pentachlorodibenzo-p-dioxins	0.001
Pentachlorodibenzo-furans	0.001
Tetrachlorodibenzo-p-dioxins	0.001
Tetrachlorodibenzo-furans	0.001

K043 wastewaters	Concentration (in mg/l)
2,4-Dichlorophenol	0.049
2,6-Dichlorophenol	0.013
2,4,5-Trichlorophenol	0.016
2,4,6-Trichlorophenol	0.039
Tetrachlorophenols (Total)	0.018
Pentachlorophenol	0.22
Tetrachloroethene	0.006
Hexachlorodibenzo-p-dioxins	0.001
Hexachlorodibenzo-furans	0.001
Pentachlorodibenzo-p-dioxins	0.001
Pentachlorodibenzo-furans	0.001
Tetrachlorodibenzo-p-dioxins	0.001
Tetrachlorodibenzo-furans	0.001

K095 nonwastewaters	Concentration (in mg/kg)
1,1,1,2-Tetrachloroethane	5.6
1,1,2,2-Tetrachloroethane	5.6
Tetrachloroethene	6.0
1,1,2-Trichloroethane	6.0
Trichloroethylene	5.6
Hexachloroethane	28
Pentachloroethane	5.6

K096 nonwastewaters	concentration (in mg/kg)
1,3-Dichlorobenzene	5.6
Pentachloroethane	5.6
1,1,1,2-Tetrachloroethane	5.6
1,1,2,2-Tetrachloroethane	5.6
Tetrachloroethylene	6.0
1,2,4-Trichlorobenzene	19
Trichloroethylene	5.6
1,1,2-Trichloroethane	6.0

K115 wastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/l)
Nickel	0.47

P013 nonwastewaters	Concentration (in mg/kg)
Cyanides (Total)	110
Cyanides (Amenable)	9.1

P013 wastewaters	Concentration (in mg/l)
Cyanides (Total)	1.9
Cyanides (Amenable)	0.10

P021 nonwastewaters	Concentration (in mg/kg)
Cyanides (Total)	110
Cyanides (Amenable)	9.1

P021 wastewaters	Concentration (in mg/l)
Cyanides (Total)	1.9
Cyanides (Amenable)	0.10

P029 nonwastewaters	Concentration (in mg/kg)
Cyanides (Total)	110
Cyanides (Amenable)	9.1

P029 wastewaters	Concentration (in mg/l)
Cyanides (Total)	1.9
Cyanides (Amenable)	0.10

P030 nonwastewaters	Concentration (in mg/kg)
Cyanides (Total)	110
Cyanides (Amenable)	9.1

P030 wastewaters	Concentration (in mg/l)
Cyanides (Total)	1.9
Cyanides (Amenable)	0.10

P039 nonwastewaters	Concentration (in mg/kg)
Disulfoton	0.1

P039 wastewaters	Concentration (in mg/l)
Disulfoton	0.025

P063 nonwastewaters	Concentration (in mg/kg)
Cyanides (Total)	110
Cyanides (Amenable)	9.1

P063 wastewaters	Concentration (in mg/l)
Cyanides (Total)	1.9
Cyanides (Amenable)	0.10

P071 nonwastewaters	Concentration (in mg/kg)
Methyl parathion	0.1

P071 wastewaters	Concentration (in mg/l)
Methyl parathion	0.025

P074 nonwastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/kg)
Cyanides (Total)	110
Cyanides (Amenable)	9.1

P074 wastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/l)
Cyanides (Total)	1.9
Cyanides (Amenable)	0.10
Nickel	0.44

P089 nonwastewaters	Concentration (in mg/kg)
Parathion	0.1

P089 wastewaters	Concentration (in mg/l)
Parathion	0.025

P094 nonwastewaters	Concentration (in mg/kg)
Phorate	0.1

P094 wastewaters	Concentration (in mg/l)
Phorate	0.025

P097 nonwastewaters	Concentration (in mg/kg)
Famphur	0.1

P097 wastewaters	Concentration (in mg/l)
Famphur	0.025

P098 nonwastewaters	Concentration (in mg/kg)
Cyanides (Total)	110
Cyanides (Amenable)	9.1

P098 wastewaters	Concentration (in mg/l)
Cyanides (Total)	1.9
Cyanides (Amenable)	0.10

P099 nonwastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/kg)
Cyanides (Total)	110
Cyanides (Amenable)	9.1

P099 wastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/l)
Cyanides (Total)	1.9
Cyanides (Amenable)	0.10

P104 nonwastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/kg)
Cyanides (Total)	110
Cyanides (Amenable)	9.1

P104 wastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/l)
Cyanides (Total)	1.9
Cyanides (Amenable)	0.10

P106 nonwastewaters	Concentration (in mg/kg)
Cyanides (Total)	110
Cyanides (Amenable)	9.1

P106 wastewaters	Concentration (in mg/l)
Cyanides (Total)	1.9
Cyanides (Amenable)	0.10

P121 nonwastewaters	Concentration (in mg/kg)
Cyanides (Total)	110
Cyanides (Amenable)	9.1

P121 wastewaters	Concentration (in mg/l)
Cyanides (Total)	1.9
Cyanides (Amenable)	0.10

U028 nonwastewaters	Concentration (in mg/kg)
Bis-(2-ethylhexyl) phthalate	28

U028 wastewaters	Concentration (in mg/l)
Bis-(2-ethylhexyl) phthalate	0.54

U069 nonwastewaters	Concentration (in mg/kg)
Di-n-butyl phthalate	28

U069 wastewaters	Concentration (in mg/l)
Di-n-butyl phthalate	0.54

U088 nonwastewaters	Concentration (in mg/kg)
Diethyl phthalate	28

U088 wastewaters	Concentration (in mg/l)
Diethyl phthalate	0.54

U102 nonwastewaters	Concentration (in mg/kg)
Dimethyl phthalate	28

U102 wastewaters	Concentration (in mg/l)
Dimethyl phthalate	0.54

U107 nonwastewaters	Concentration (in mg/kg)
Di-n-octyl phthalate	28

U107 wastewaters	Concentration (in mg/l)
Di-n-octyl phthalate	0.54

U190 nonwastewaters	Concentration (in mg/kg)
Phthalic anhydride (measured as Phthalic acid)	28

U190 wastewaters	Concentration (in mg/l)
Phthalic anhydride (measured as Phthalic acid	0.54

U235 nonwastewaters	Concentration (in mg/kg)
tris-(2,3-Dibromopropyl) phosphate	0.1

U235 wastewaters	Concentration (in mg/l)
tris-(2,3-Dibromopropyl) phosphate	0.025

No Land Disposal for:

* * * * *

K005 Nonwastewaters generated by the process described in the waste listing description, and disposed after June 8, 1989, and not generated in the course of treating wastewater forms of these wastes. (Based on No Generation)

K007 Nonwastewaters generated by the process described in the waste listing description, and disposed after June 8, 1989, and not generated in the course of treating wastewater forms of these wastes. (Based on No Generation)

* * * * *

(b) When wastes with differing treatment standards for a constituent of concern are combined for purposes of treatment, the treatment residue must meet the lowest treatment standard for the constituent of concern.

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

1. The authority citation for Part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

Subpart A—Requirements for Final Authorization

2. § 271.1(j) is amended by adding the following entry to Table 1 in chronological order by date of publication in the **Federal Register**:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	FEDERAL REGISTER reference	Effective date
[Insert date of publication]	Land Disposal Restrictions for Second Third wastes.	[Insert page numbers]	June 8, 1989.

3. § 271.1(j) is amended by revising the entry for June 8, 1989 in Table 2 to read as follows:

§ 271.1 Purpose and Scope (j) * * *

* * * * *

TABLE 2.—SELF-IMPLEMENTING PROVISIONS OF THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Effective	Self-implementing provision	RCRA citation	FEDERAL REGISTER reference
June 8, 1989	Prohibition on land disposal ⅔ of listed wastes.	3004(g)(6)(B)	[Insert date of publication and page numbers of this document.]

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federal register

Friday
June 23, 1989

Part IV

Environmental Protection Agency

40 CFR Part 311

Worker Protection Standards for Hazardous Waste Operations and Emergency Response; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 311

[FRL-3550-5]

Worker Protection Standards for Hazardous Waste Operations and Emergency Response

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to require the application of worker protection standards for employees engaged in hazardous waste operations pursuant to section 126(f) of the Superfund Amendments and Reauthorization Act of 1986 (SARA). These standards will apply to employees of State and local governments in States without approved State plans under section 18(b) of the Occupational Safety and Health Act of 1970 (OSH Act). The Occupational Safety and Health Administration (OSHA) has promulgated standards that apply to private employees, Federal employees through Executive Order No. 12196, and, through State action, to State and local employees in States with OSHA-approved State plans. Today EPA is promulgating identical standards for State and local employees in States without OSHA-approved State plans.

DATES: Effective date: July 24, 1989. The information collection requirements contained in 40 CFR 311.1 have not been approved by the Office of Management and Budget (OMB) and are not effective until OMB has approved them. EPA will publish notice of the effective date.

Compliance dates: For emergency response operations: March 6, 1990. For other hazardous waste operations: September 21, 1989.

ADDRESS: The record supporting this rulemaking is available for public inspection in the Superfund Docket, Room M2427, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (Docket Number 126WPS). The docket may be inspected between 9 a.m. and 4 p.m. Monday through Friday, excluding Federal holidays. To review docket materials, you may make an appointment by calling 202-382-3046. The public may copy a maximum of 50 pages from any regulatory docket at no cost. Additional copies cost $0.20 per page.

FOR FURTHER INFORMATION CONTACT: Ms. Vickie Santoro, Project Manager, Environmental Response Branch, Emergency Response Division (MS-101), U.S. Environmental Protection Agency, Woodbridge Avenue, Building 18, Edison, NJ 08837, or the RCRA/Superfund Hotline, 800-424-9346 (or in Washington, DC, at 202-382-3000).

SUPPLEMENTARY INFORMATION: The contents of today's preamble are as follows:

I. Introduction

A. Statutory Authority
B. Background of this Rulemaking
C. Organization of the Final Rule

II. Worker Protection Standards for Hazardous Waste Operations and Emergency Response

A. General Requirements
B. Clarification of Key Issues in the Rulemaking
1. Definition of "Employee" of State and Local Governments.
2. Effective Date of Final Rule.

III. Summary of Supporting Analysis

A. Executive Order No. 12291
B. Regulatory Flexibility Act
C. Paperwork Reduction Act

List of Subjects

I. Introduction

A. Statutory Authority

Section 126(a) of the Superfund Amendments and Reauthorization Act of 1986 (SARA) requires the Secretary of Labor to promulgate, within one year after the date of enactment of SARA, health and safety standards pursuant to section 6 of the Occupational Safety and Health Act of 1970 (OSH Act), for employees engaged in hazardous waste operations. These section 126(a) standards were proposed by the Department of Labor's Occupational Safety and Health Administration (OSHA) on August 10, 1987 (52 FR 29620) to replace the existing interim final rule that had been published on December 19, 1986 (51 FR 45654). Final regulations were published on March 6, 1989 (54 FR 9294). Pursuant to section 126(c) of SARA, the OSHA worker protection regulations are effective on March 6, 1990, one year after the date of their promulgation as a final rule. The OSHA final regulations contain standards for all private employees, and for Federal employees through Executive Order No. 12196. State and local employees in States that have OSHA-approved plans under section 18 of the OSH Act must comply with standards at least as stringent as the OSHA standards.

Section 126(f) of SARA requires the Administrator of the U.S. Environmental Protection Agency (EPA) to promulgate standards identical to those contained in the section 126(a) OSHA regulations (codified at 29 CFR 1910.120) no later than 90 days after the date of promulgation of the OSHA final regulations. The EPA regulations are to cover State and local government employees in States that are without an OSHA-approved State plan under section 18 of the OSH Act. Today's final rule implements the requirements of section 126(f).

B. Background of this Rulemaking

On October 17, 1988, EPA published a Notice of Proposed Rulemaking (NPRM) (53 FR 40692) on Worker Protection Standards for Hazardous Waste Operations and Emergency Response. In the NPRM, EPA requested that the public review the proposed OSHA regulations of August 10, 1987 (52 FR 29620). In addition, EPA sought comment on two issues beyond the substance of the OSHA standards—the definition of "employee" and the effective date for final EPA regulations. EPA noted that within 90 days after the promulgation of OSHA's final regulations, EPA would promulgate identical standards.

The official public comment period for the October 17, 1988 NPRM ended on November 16, 1988. EPA received a total of 17 comment letters, including seven letters postmarked after the close of the official comment period. The comments received, together with the Agency's responses, are contained in the document "Response to Comments on the October 17, 1988 Notice of Proposed Rulemaking on Worker Protection Standards," which is available for inspection in the Superfund Docket, Room M2427, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (Docket Number 126WPS).

Today, the Agency is promulgating the final rule on Worker Protection Standards for Hazardous Waste Operations and Emergency Response. In preparing the final rule, EPA considered all of the public comments submitted on the October 17, 1988 NPRM. Section II of this preamble addresses the issues and comments relating to the application of the OSHA standards by EPA.

This final rule includes two different effective dates. The emergency response portions of today's final rule are effective on March 6, 1990, the same date as the OSHA rule. For other hazardous waste operations, EPA is retaining an effective date of 90 days from promulgation September 21, 1989. The reasons for this two-part approach are explained in Section II.B. of this preamble. EPA encourages all State and local governments who are able to apply these standards sooner than the applicable effective dates to do so.

C. Organization of the Final Rule

Today's final rule amends 40 CFR by adding Part 311—Worker Protection. Section 311.1 will extend the application of the OSHA standards to State and local employees in States without OSHA-approved plans. Section 311.2 will provide the definition of the term "employee" applicable to § 311.1.

The substantive provisions of 29 CFR 1910.120 will apply to State and local employees engaged in "hazardous waste operations," as defined in 29 CFR 1910.120(a), in States that do not have a State plan approved under section 18 of the OSH Act. Section 126 does not provide a definition of "State" for purposes of determining the universe of entities to be regulated by EPA under subsection (f). Because EPA's standards under section 126(f) apply in "each State which does not have in effect an approved State plan * * *," EPA believes it is appropriate in section 126(f) to use the OSHA definition of State. The OSH Act defines "State" to include the States of the U.S., the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territories of the Pacific Islands. Thus, EPA's regulations use the term "State" to refer to these same entities, and EPA's final rule extends to any State that does not have an OSHA-approved plan. An employee is defined in this final rule as a compensated or non-compensated worker who is controlled directly by a State or local government, as contrasted to an independent contractor.

II. Worker Protection Standards for Hazardous Waste Operations and Emergency Response

A. General Requirements

Today's final rule applies worker protection standards to certain State and local employees engaged in hazardous waste operations, pursuant to section 126(f) of the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499) (SARA). The Occupational Safety and Health Administration (OSHA) has promulgated standards that apply to all private employees, and to all Federal employees through Executive Order No. 12196. States that operate under an OSHA-approved plan are required to adopt standards at least as stringent as the OSHA standards to protect its State and local employees. Today's rule will apply the OSHA standards to employees of States without approved plans under section 18(b) of the Occupational Safety and Health Act of 1970 (OSH Act). Employees covered by these standards will include non-compensated workers as well as compensated workers. The following States currently do not have OSHA-approved State plans and, therefore, are subject to today's final rule [1]:

Alabama	Missouri
Arkansas	Montana
Colorado	Nebraska
Delaware	New Hampshire
District of Columbia	New Jersey
Florida	North Dakota
Georgia	Ohio
Guam	Oklahoma
Idaho	Pennsylvania
Illinois	Rhode Island
Kansas	South Dakota
Louisiana	Texas
Maine	West Virginia
Massachusetts	Wisconsin
Mississippi	

B. Clarification of Key Issues in the Rulemaking

1. Definition of "Employee" of State and local Governments

In the October 17, 1988 NPRM, EPA proposed to allow individual States to develop their own definition of the term "employee", so long as the definition was consistent with other State statutes or regulations. This approach would have been consistent with the approach taken by OSHA. Due to limitations in the OSH Act, individual OSHA-plan States are allowed to establish their own definition of the term employee and as a result, some States include volunteers and some do not. The definition of employee is important because whether that term is defined narrowly or broadly determines whether non-compensated workers, such as volunteer fire fighters, first responders, and emergency medical technicians responding to emergency incidents, are protected by the EPA standards.

Fourteen commenters on the NPRM addressed the issue of the definition of employee; eleven of them supported the inclusion of volunteers within the definition and three had concerns about such a broad definition. Those supporting the inclusion of volunteers cited several reasons for their position, particularly noting that all responders deserved the same level of protection and that Congress' intent to protect the health and safety of workers would be achieved only through a broad definition of the term employee that included both paid and unpaid workers. In fact, one commenter indicated that allowing States to define employee under section 126(f) would be contrary to Congressional intent. Another commenter noted that training in safe work procedures enhances the safety and efficiency of the cleanup itself. The three commenters holding the view that volunteers should not be included in the definition of employee believed that such an approach would put a strain on available resources or that the costs exceeded the benefits (particularly when supervisory personnel are likely to be trained and volunteers may not routinely be in immediate contact with hazardous materials), as taxes would need to be raised or current funding priorities revised in order to meet health and safety training and equipment needs for the additional employees covered by a broad definition.

Under today's final rule, EPA has defined the term "employee" of State and local governments to include both compensated and non-compensated workers. This definition has no applicability beyond this regulation and does not affect the definition of employee used for other purposes. The Agency agrees with the majority of commenters that this broad definition of "employee" is appropriate because whether or not wages are paid is an insufficient basis for failing to require standards of protection for individuals who can be exposed to hazardous situations in the course of performing emergency response duties. Under today's final rule, employees in non-OSHA plan States will be allowed to participate in response activities only if such employees received proper training and are in compliance with the other worker protection standards imposed in this rulemaking. Not to include volunteers in the definition of employee would leave these responders subject to greater health and safety risks. In States that are without an OSHA-approved plan, approximately eighty percent of the fire fighters (about 500,000) are volunteers.

This approach is consistent with the requirement of SARA section 126(f) to promulgate standards identical to those promulgated by OSHA. The definition of employee deals with the scope of coverage of those standards and not the substance of the standards themselves. Further, this approach is fully consistent with Congress' intent in passing section 126(f). As discussed by OSHA (see 54 FR 9297-9298, 9312; March 6, 1989), Congress used broad language to express its intent to provide broad coverage for all emergency response situations, not just for a limited class of hazardous waste operations. This broad coverage was supported by the fact that Congress made section 126 a free-standing provision and did not amend

[1] The specific States covered by today's final rule may vary over time, depending upon whether a State has in place an OSHA-approved State plan. The States listed in today's preamble represent the affected States as of today's date of publication.

the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601 *et seq.*, nor the OSH Act.

Further, in section 126(d)(4), Congress directed OSHA to provide training standards for "workers who are responsible for responding to hazardous emergency situations who may be exposed to toxic substances in carrying out their responsibilities." This language is also broad, and volunteers who take on emergency responsibilities at the direction of a State or locality clearly "may be exposed" by carrying out such responsibilities.

Finally, the legislative history of section 126 indicates that Congress intended broad coverage for all persons conducting emergency response. For example, Senator Metzenbaum specifically addressed his concern for providing training to "fire fighters who are called in to deal with toxic explosions * * *" 131 Cong. Rec. S11996 (Sept. 24, 1985). EPA's interpretation would apply regulatory standards to all State or local fire fighters engaged in emergency response in relevant jurisdictions; a narrow interpretation would exclude eighty percent of these fire fighters.

In requiring worker protection standards, Congress thus intended to minimize health and safety risks for responders in hazardous waste cleanup activities. A reasonable interpretation of Congress' intent is that training, medical surveillance, maximum exposure limits, and other worker protection standards should apply to *all* persons whose duties bring them into contact with hazardous wastes during site cleanup and emergency response, whether or not they receive monetary compensation for the activity. Inclusion of noncompensated employees in this regulation also is consistent with recently proposed revisions to the National Oil and Hazardous Substances Pollution Contingency Plan (the NCP) that require compliance with OSHA standards for volunteers in cleanups undertaken pursuant to the NCP (40 CFR 300.185, 53 FR 51493, December 21, 1988).

OSHA itself has not taken this approach because of the long standing limitation in the OSH Act (enacted in 1970) on OSHA regulation of employees of State and local government. EPA is not subject to that limitation as section 126(f) is free-standing, and was created by Congress' removing language from section 126(a), which remained under OSHA control. Moreover, OSHA acknowledges that volunteers are an important component of the emergency response network and supports use of a broad interpretation by EPA, as well as application of these standards to volunteers by States with OSHA-approved plans that do not generally apply to volunteers.

EPA acknowledges that the expanded definition of "employee" may impose additional costs on State and local governments in States without OSHA-approved plans. However, grants are available to universities and other nonprofit organizations for developing and administering tuition-free health and safety training for workers engaged in hazardous waste operations, which could offset some portion of these increased costs. Among the sources for grants are the National Institute of Environmental Health Sciences (NIEHS) and, through September 1989, the Federal Emergency Management Agency (FEMA). In addition, EPA has developed tuition-free training courses available to State and local government employees, and training materials that are available free of charge to State and local governments. Organizations interested in further information about EPA training courses and materials should contact the Operational Support Section of the Environmental Response Team, U.S. EPA, 26 West Martin Luther King Drive, Cincinnati, Ohio 45268, (513) 569-7537.

EPA believes that there are significant benefits to including volunteers within the scope of today's rule. These benefits accrue both to the communities that could be endangered by inadequately trained responders and to the responders themselves. EPA believes these factors outweigh any additional costs that may be incurred in complying with today's final rule, and that adoption of the broad definition is reasonable.

Five commenters requested that EPA develop a national definition of employee that includes non-compensated workers and that would be applied in all States, whether or not they have OSHA-approved State plans. They stated that inclusion of volunteers in the definition of employee would facilitate interstate commerce, because of the steady stream of interstate hazardous waste transport, and would minimize risks to the communities. The commenters further stated that standardization would ensure safe response actions by all State and local governments to incidents requiring mutual aid operations. EPA has not complied with the commenters' request because EPA has no authority to establish a national definition of "employee". Section 126(f) of SARA requires EPA to promulgate identical standards to those promulgated by OSHA (codified at 29 CFR 1910.120) that apply to State and local employees in States without an OSHA-approved State plan. EPA lacks authority to extend the regulation to volunteers in States with OSHA-approved plans.

2. Effective Date of Final Rule

EPA requested comments in the NPRM on the appropriate effective date of its final rule. EPA proposed 90 days as sufficient time for preparing for compliance. Nine commenters addressed the effective date issue. Of the nine, seven commenters stated that more than 90 days was needed for compliance, one supported EPA's 90-day proposal, and one believed the rule should be effective immediately. Several commenters suggested use of a sequenced compliance schedule or a timetable for compliance.

EPA has decided to adopt different effective dates for two separate groups of employees affected by this final rule. The effective date for emergency responders is March 6, 1990; the effective date for all other employees engaged in hazardous waste operations is 90 days after the date of promulgation of this rule. EPA acknowledges that, in the case of emergency responders, a full understanding of the new requirements was not possible until OSHA promulgated its final standards pursuant to section 126(a) of SARA, and a full understanding of the scope (i.e., the broader definition of employee) was not possible until EPA promulgated this final rule. In addition, the larger number of emergency responders subject to the EPA regulations may lead to scheduling complications for training and other provisions of the rule. Thus, 90 days might not provide sufficient time for some State and local governments to apply the standards to all employees in an orderly fashion. Therefore, EPA is making the emergency response portions of today's final rule effective on March 6, 1990, the same date as the OSHA rule. EPA believes that this effective date is reasonable. EPA encourages all State and local governments to comply sooner, if possible.

For other hazardous waste operations, including those conducted at treatment, storage, and disposal facilities, EPA is retaining an effective date of 90 days from promulgation, September 21, 1989. At these sites, private employers have had to comply with essentially the same OSHA standards since the date of OSHA's interim final rule (December 19, 1986). State and local governments are often involved in a coordinated response with private employees at these sites, and EPA wants to minimize the time in which State and local

employees do not receive the protection of this rule. EPA believes that training courses for hazardous waste operations other than emergency response, which fully reflect the standards in 29 CFR 1910.120, can be used by States and localities to provide an orderly transition for the subject employees. EPA believes, therefore, that it is important and possible for State and local governments to apply these standards in an orderly fashion sooner than in the case of emergency responders. Thus, EPA believes that this effective date is reasonable.

III. Summary of Supporting Analysis

A. Executive Order No. 12291

Executive Order (E.O.) No. 12291 requires that regulations be classified as major or non-major for purposes of review by the Office of Management and Budget (OMB). According to E.O. No. 12291, major rules are regulations that are likely to result in:

(1) An annual effect on the economy of $100 million or more; or

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

EPA has determined that today's final rule is non-major. The Agency estimates that the annual costs of compliance with EPA's application of OSHA's worker protection standards to State and local employees in non-OSHA States is approximately $38 million. The benefits attributable to EPA's application of OSHA's worker protection standards include chronic illnesses and deaths avoided, acute injuries and fatalities avoided, medical costs avoided and work days saved, and greater protection of community properties and lives. Many of these benefits are difficult to quantify. EPA estimates, however, that over five lives will be saved annually and about $12 million in medical costs and lost productivity will be avoided annually when today's final rule is implemented. For further information on EPA's benefits estimates see "Benefits Attributable to EPA's Worker Protection Standards," available in the Superfund Docket at EPA.

The EPA cost and benefit estimates are based on an analysis conducted by OSHA of the economic effects in all 50 States of the SARA section 126 worker protection standards.[2] The OSHA economic analysis includes cost estimates for applying the standards to both compensated and non-compensated employees. EPA's analysis attributes some of the costs and benefits contained in the OSHA economic report to EPA's worker protection regulations. The EPA costs and benefits, therefore, are a subset of the OSHA estimates.

In general, the costs attributable to the EPA regulations are incurred by employers of two categories of workers in non-OSHA States: (1) Public emergency response teams (e.g., police and fire fighters); and (2) public employees, including On-Scene Coordinators, engaged in cleanups of hazardous waste at uncontrolled sites and at treatment, storage, and disposal facilities. The estimated net annual costs attributable to these two categories of employees are $36.6 million and $1.6 million, respectively.

Thus, the total estimated annual cost is about $38 million. For further details, see "Compliance Cost Analysis in Support of EPA Worker Protection Standards Under Section 126(f) of the Superfund Amendments and Reauthorization Act of 1986" (Cost Analysis). This rule has been submitted to the Office of Management and Budget (OMB) for review as required by E.O. No. 12291.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires that a Regulatory Flexibility Analysis be performed for all rules that are likely to have a "significant impact on a substantial number of small entities." In OSHA's Regulatory Flexibility Analysis for its worker protection standards, OSHA determined that the standards may have some impact on local subcontractors performing hazardous waste operations. The EPA regulations do not affect these workers because they are private employees. There is a possibility, however, that some small municipalities in non-OSHA States may be unable to afford the costs of compliance with the worker protection standards. These small communities have the option of pooling resources with neighboring communities to form a regional response capability. In addition, through tuition-free training courses and the extension of the effective date for emergency responders, EPA believes that the costs to small municipalities have been minimized and should not present a significant burden. Such municipalities also have the option of not acting as first responders to hazardous materials incidents, in which case they should coordinate with the Local Emergency Planning Committees and the State Emergency Response Commission to ensure proper hazardous materials incidents response within their municipalities.[3]

On the basis of the analysis contained in the Cost Analysis supporting this rulemaking and in the OSHA Economic Document, I hereby certify that this rule will not have a significant impact on a substantial number of small entities. This rule, therefore, does not require a Regulatory Flexibility Analysis

C. Paperwork Reduction Act

The information collection requirements in this final rule have been submitted for approval to OMB under the *Paperwork Reduction Act of 1980*, 44 U.S.C. 3501 *et seq.* These requirements are not effective until OMB approves them and a technical amendment to that effect is published in the **Federal Register**.

Public reporting burden for this collection of information is estimated to average 3.7 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects in 40 CFR Part 311

Containers, Drums, Emergency response, Hazardous materials, Hazardous substances, Hazardous waste, Materials handling and storage, Personal protection equipment, Storage areas, Training, Waste disposal.

[2] See U.S. Department of Labor, Occupational Safety and Health Administration, "Regulatory Impact and Regulatory Flexibility Analysis of the Occupational Safety and Health Standards for Hazardous Waste Operations and Emergency Response," December 14, 1988. (OSHA Economic Document)

[3] Under section 301 of Title III of SARA (also known as the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA)), States have established State Emergency Response Commissions (SERCs), which in turn have appointed Local Emergency Planning Committees (LEPCs), for the purpose of establishing a framework for State and local emergency planning.

BEST COPY AVAILABLE

Date: June 6, 1989

William K. Reilly,

Administrator.

For the reasons set out in the preamble, Title 40 of the Code of Federal Regulations, Chapter I is amended by adding a new Part 311 to read as follows:

PART 311—WORKER PROTECTION

Sec.

311.1 Scope and application

311.2 Definition of employee

Authority: 29 U.S.C. 655, Pub. L. 99-499

§ 311.1 Scope and application.

The substantive provisions found at 29 CFR 1910.120 on and after March 6, 1990, and before March 6, 1990, found at 54 FR 9317 (March 6, 1989), apply to State and local government employees engaged in "hazardous waste operations," as defined in 29 CFR 1910.120(a), in States that do not have a State plan approved under section 18 of the Occupational Safety and Health Act of 1970.

§ 311.2 Definition of employee.

"Employee" in § 311.1 is defined as a compensated or non-compensated worker who is controlled directly by a State or local government, as contrasted to an independent contractor.

[FR Doc. 89-14161 Filed 6-22-89; 8:45 am]

BILLING CODE 6560-50-M

federal register

Friday
June 23, 1989

Part V

Department of Health and Human Services

National Institutes of Health

Recombinant DNA Advisory Committee; Meeting; Recombinant DNA Research; Request for Public Comment; Notices

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Advisory Committee Human Gene Therapy Subcommittee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the Recombinant DNA Advisory Committee—Human Gene Therapy Subcommittee at the National Institutes of Health, Building 31C, Conference Room 6, 9000 Rockville Pike, Bethesda, Maryland 20892, on July 31, 1989, from approximately 9:00 a.m. to adjournment at approximately 5:00 p.m. The purpose of the meeting will be to discuss the revisions to the document entitled: "Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA into Human Subjects." This meeting will be open to the public. Attendance by the public will be limited to space available.

Following this notice is a request for public comment on the "Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA into Human Subjects."

Further information can be obtained from Ms. Rachel E. Levinson, Executive Secretary of the Human Gene Therapy Subcommittee, Recombinant DNA Advisory Committee, Office of Recombinant DNA Activities, Office of Science Policy and Legislation, National Institutes of Health, Building 31, Room 4B11, Bethesda, Maryland 20892, telephone (301) 496-9838.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: June 15, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-14851 Filed 6-22-89; 8:45 am]

BILLING CODE 4140-01-M

Recombinant DNA Research: Request for Public Comment on "Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA into Human Subjects"

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Request for public comment.

SUMMARY: This notice publishes for public comment "Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA into Human Subjects" which was developed by the Points to Consider Subcommittee of the Recombinant DNA Advisory Committee at its March 31, 1989, meeting.

DATE: Comments must be received by July 17, 1989.

ADDRESS: Written comments and recommendations should be submitted to Ms. Rachel E. Levinson, Executive Secretary, Human Gene Therapy Subcommittee, Office of Recombinant DNA Activities, Office of Science Policy and Legislation, National Institutes of Health, Building 31, Room 4B11, Bethesda, Maryland 20892 (FAX number (301) 496-9839). All comments received in timely response to this notice will be considered and will be available for public inspection in the above office on weekdays between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Further information can be obtained from Ms. Rachel E. Levinson, Executive Secretary of the Human Gene Therapy Subcommittee, Office of Recombinant DNA Activities, Office of Science Policy and Legislation, National Institutes of Health, Building 31, Room 4B11, Bethesda, Maryland 20892, telephone (301) 496-9838.

SUPPLEMENTARY INFORMATION: On September 29, 1986, the Recombinant DNA Advisory Committee (RAC) adopted the "Points to Consider in the Design and Submission of Human Somatic Cell Gene Therapy Protocols," which had been prepared by the Human Gene Therapy Subcommittee. At the January 30, 1989, meeting, RAC endorsed a proposal to form a subcommittee to update and report to the Human Gene Therapy Subcommittee and the RAC any recommendations to amend the "Points to Consider." A Points to Consider Subcommittee was formed and met on March 31, 1989. The Human Gene Therapy Subcommittee will meet on July 31, 1989, at the National Institutes of Health, Building 31C, Conference Room 6, 9000 Rockville Pike, Bethesda, Maryland 20892, from approximately 9:00 a.m. to adjournment to discuss the recommendations from the Points to Consider Subcommittee for updating the "Points to Consider." Any comments received by July 17, 1989, will be circulated to the Human Gene Therapy Subcommittee as its meeting on July 31, 1989, and to the RAC at its next meeting.

Human Gene Therapy Subcommitee—NIH Recombinant DNA Advisory Committee

Outline

Applicability
Introduction
I. *Description of Proposal*
A. Objectives and rationale of the proposed research
B. Research design, anticipated risks and benefits
1. Structure and characteristics of the biological system
2. Preclinical studies, including risk assessment studies
3. Clinical procedures, including patient monitoring
4. Public health considerations
5. Qualifications of investigators, adequacy of laboratory and clinical facilities
C. Selection of patients
D. Informed consent
E. Privacy and confidentiality
II. *Special Issues*
A. Provision of accurate information to the public
B. Timely communication of research methods and results to investigators and clinicians
III. *Requested Documentation*
A. Original protocol
B. IRB and IBC minutes and recommendations
C. One-page abstract of gene transfer protocol
D. One-page description of proposed experiment in non-technical language
E. Curricula vitae for professional personnel
F. Indication of other federal agencies to which the protocol is being submitted
G. Other pertinent material
IV. *Reporting Requirements.*

Applicability

These "Points to Consider" apply to research conducted at or sponsored by an institution that receives any support for recombinant DNA research from the National Institutes of Health (NIH). Other researchers (e.g., those employed by private companies, institutions, non-United States organizations, non-profit organizations, etc.) are encouraged to use the "Points to Consider." Experiments in which recombinant DNA is introduced into cells of a human subject with the intent of stably modifying the subject's genome are covered by Section III-A-4 of the NIH Guidelines for Research Involving Recombinant DNA Molecules (51 FR 16958). Section III-A-4 applies both to recombinant DNA and to DNA or RNA derived from recombinant DNA.

Introduction

(1) Section III-A-4 requires experiments involving the transfer of recombinant DNA into human subjects be reviewed by the NIH Recombinant DNA Advisory Committee (RAC) and approved by the NIH. RAC consideration of each proposal will be on a case-by-case basis and will follow publication of a precis of the proposal in the **Federal Register**, an opportunity for public comment, and a review of the proposal by the Human Gene Therapy Subcommittee of the RAC. RAC recommendations on each proposal will be forwarded to the NIH Director for a decision which will then be published in the **Federal Register**. In accordance with Section IV-C-1-b of the NIH Guidelines, the NIH Director may approve proposals only if he finds that they present "no significant risk to health or the environment."

(2) In general, it is expected that the transfer of recombinant DNA into human subjects will not present a risk to the environment as the recombinant DNA is expected to be confined to the human subject. Nevertheless, Section I-B-4-b of the "Points to Consider" document specifically asks the researchers to address this point.

(3) This document is intended to provide guidance in preparing proposals for NIH consideration under Section III-A-4 of the NIH Guidelines for Research Involving Recombinant DNA Molecules. The document will be considered for revision as experience in evaluating proposals accumulates and as new scientific developments occur. This review will be carried out periodically as needed.

(4) A proposal will be considered by the RAC only after the protocol has been approved by the local Institutional Biosafety Committee (IBC) and by the local Institutional Review Board (IRB) in accordance with Department of Health and Human Services (DHHS) Regulations for the Protection of Human Subjects (45 Code of Federal Regulations, Part 46). If a proposal involves children, special attention should be paid to subpart D of these DHHS regulations. The IRB and IBC may, at their discretion, condition their approval on further specific deliberation by the RAC and its Subcommittee. Consideration of proposals by the RAC may proceed simultaneously with review by any other involved federal agencies (See Footnote 1) provided that the RAC is notified of the simultaneous review. Meetings of the Committee and the Subcommittee will be open to the public except where trade secrets or proprietary information would be disclosed. The Committee prefers that the first proposals submitted for RAC review contain no proprietary information or trade secrets, enabling all aspects of the review to be open to the public. The public review of these protocols will serve to inform the public not only on the technical aspects of the proposals but also on the meaning and significance of the research.

(5) The clinical application of recombinant DNA techniques raises two general kinds of questions: (1) The questions usually discussed by IRBs in their review of any proposed research involving human subjects; and (2) broader issues. The first type of question is addressed principally in Part I of this document. Several broader issues are discussed later in this Introduction and in Part II below.

(6) Following the Introduction, this document is divided into four parts. Part I requests a description of the protocol with special attention to the short-term risks and benefits of the proposed research to the patient (See Footnote 2) and to other people, the selection of patients, informed consent, and privacy and confidentiality. In Part II, investigators are requested to address special issues pertaining to the free flow of information about the clinical trials. These issues lie outside the usual purview of IRBs and reflect general public concerns about biomedical research. Part III summarizes other requested documentation that will assist the RAC and its Subcommittee in their review of the proposals. Part IV specifies reporting requirements.

(7) The RAC and its Subcommittee will not at present entertain proposals for germ line alterations but will consider for approval protocols involving somatic cell gene therapy. The purpose of somatic cell gene therapy is to treat an individual patient, e.g., by inserting a properly functioning gene into a patient's somatic cells. In germ line alterations, a specific attempt is made to introduce genetic changes into the germ (reproductive) cells of an individual, with the aim of changing the set of genes passed on to the individual's offspring.

(8) The acceptability of human somatic cell gene therapy has been addressed in several public documents as well as in numerous academic studies. The November 1982 report of the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavorial Research, Splicing Life, resulted from a two-year process of public deliberations and hearings; upon release of that report, a House subcommittee held three days of public hearings with witnesses from a wide range of fields from the biomedical and social sciences to theology, philosophy, and law. In December 1984, the Office of Technology Assessment released a background paper, Human Gene Therapy, which concluded:

> Civic, religious, scientific, and medical groups have all accepted, in principle, the appropriateness of gene therapy of somatic cells in humans for specific genetic diseases. Somatic cell gene therapy is seen as an extension of present methods of therapy that might be preferably to other technologies.

In light of this, the RAC is prepared to consider proposals for somatic cell gene therapy.

(9) The RAC and its Subcommittee are also prepared to consider for approval proposals involving the transfer of recombinant DNA into human subjects, provided that the design of such experiments offers adequate assurance that their consequences will not go beyond their purpose, which is the same as the traditional purpose of all clinical investigations, namely, to benefit the health and well-being of the individual being treated while at the same time gathering generalizable knowledge.

(10) Two possible undesirable consequences of the transfer of recombinant DNA would be unintentional: (1) Vertical transmission of genetic changes from an individual to his or her offspring or (2) horizontal transmission of viral infection to other persons with whom the individual comes in contact. Accordingly, this document requests information that will enable the RAC and its Subcommittee to assess the likelihood that the proposed experiments will inadvertently affect

reproductive cells or lead to infection of other people (e.g., treatment personnel or relatives).

(11) In recognition of the social concern that surrounds the general discussion of recombinant DNA, the Subcommittee will continue to consider the possible long-range effects of applying knowledge gained from these and related experiments. While research in molecular biology could lead to the development of techniques for germ line intervention or for the use of genetic means to enhance human capabilities rather than to correct defects in patients, the Subcommittee does not believe that these effects will follow immediately or inevitably from experiments with somatic cell gene therapy. The Subcommittee will cooperate with other groups in assessing the possible long-term consequences of the transfer of recombinant DNA and related laboratory and animal experiments in order to define appropriate human applications of this emerging technology.

(12) Responses to the questions raised in these "Points to Consider" should be provided in the form of either written answers or references to specific sections of the protocol or its appendices.

(13) Investigators should indicate points which are not applicable with a brief explanation. Investigators submitting proposals that employ essentially the same vector systems (or with minor variations), and/or that are based on the same preclinical testing as proposals previously reviewed by the RAC, may refer to preceding documents without having to rewrite material already reviewed by the Human Gene Therapy Subcommittee and the RAC.

I. Description of Proposal

A. Objectives and rationale of the proposed research

State concisely the overall objectives and rationale of the proposed study. Please provide information on the following specific points:

1. *Use of recombinant DNA for therapeutic purposes.* For research in which recombinant DNA is transferred in order to treat a disease or disorder (e.g., genetic diseases, cancer, metabolic diseases, etc . . .), the following questions should be addressed:

a. Why is the disease selected for treatment by means of gene therapy a good candidate for such treatment?

b. Describe the natural history and range of expression of the disease selected for treatment. What objective and/or quantitative measures of disease activity are available? In your view, are the usual effects of the disease predictable enough to allow for meaningful assessment of the results of gene therapy?

c. Is the protocol designed to prevent all manifestations of the disease, to halt the progression of the disease after symptoms have begun to appear, or to reverse manifestations of the disease in seriously ill victims?

d. What alternative therapies exist? In what groups of patients are these therapies effective? What are their relative advantages and disadvantages as compared with the proposed gene therapy?

2. *DNA Transfer for Other Purposes.*

a. Into what cells will the recombinant DNA be transferred? Why is the transfer of recombinant DNA necessary for the proposed research? What questions can be answered by using recombinant DNA?

b. What alternative methodologies exist? What are their relative advantages and disadvantages as compared to the use of recombinant DNA?

B. Research Design, Anticipated Risks and Benefits

1. *Structure and characteristics of the biological system.* Provide a full description of the methods and reagents to be employed for gene delivery and the rationale for their use. The following are specific points to be addressed:

a. What is the structure of the cloned DNA that will be used?

(1) Describe the gene (genomic or cDNA), the bacterial plasmid or phage vector, and the delivery vector (if any). Provide complete nucleotide sequence analysis or a detailed restriction enzyme map of the total construct.

(2) What regulatory elements does the construct contain (e.g., promoters, enhancers, polyadenylation sites, replication origins, etc.)?

(3) Describe the steps used to derive the DNA construct.

b. What is the structure of the material that will be administered to the patient?

(1) Describe the preparation, structure, and composition of the materials that will be given to the patient or used to treat the patient's cells.

(a) If DNA, what is the purity (both in terms of being a single DNA species and in terms of other contaminants)? What tests have been used and what is the sensitivity of the tests?

(b) If a virus, how is it prepared from the DNA construct? In what cell is the virus grown (any special features)? What medium and serum are used? How is the virus purified? What is its structure and purity? What steps are being taken (and assays used with their sensitivity) to detect and eliminate any contaminating materials (for example, V130 RNA, other nucleic acids, or proteins) or contaminating viruses or other organisms in the cells or serum used for preparation of the virus stock?

(c) If co-cultivation is employed, what kinds of cells are being used for co-cultivation? What steps are being taken (and assays used with their sensitivity) to detect and eliminate any contaminating materials? Specifically, what tests are being done to assess the material to be returned to the patient for the presence of live or killed donor cells or other non-vector materials (for example, V130 sequences) originating from those cells?

(d) If methods other than those covered by (a)–(c) are used to introduce new genetic information into target cells, what steps are being taken to detect and eliminate any contaminating materials? What are possible sources of contamination? What is the sensitivity of tests used to monitor contamination?

(2) Describe any other material to be used in preparation of the material to be administered to the patient. For example, if a viral vector is proposed, what is the nature of the helper virus or cell line? If carrier particles are to be used, what is the nature of these?

2. *Preclinical studies, including risk-assessment studies.* Describe and justify the experimental basis (derived from tests in cultured cells and animals) for claims about the efficacy and safety of the proposed system for gene delivery and explain why the model(s) chosen is (are) the most appropriate.

a. Laboratory studies of the delivery system. (1) What cells are the intended recipients of recombinant DNA? If recipient cells are to be treated in vitro and returned to the patient, how will the cells be characterized before and after treatment? What is the theoretical and practical basis for assuming that only the treated cells will act as recipients?

(2) Is the delivery system efficient? What percentage of the target cells contain the added DNA?

(3) How is the structure of the added DNA sequences monitored and what is the sensitivity of the analysis? Is the added DNA extrachromosomal or integrated? Is the added DNA unrearranged?

(4) How many copies are present per cell? How stable is the added DNA both in terms of its continued presence and its structural stability?

b. Laboratory studies of gene expression. Is the added gene expressed? To what extent is expression only from the desired gene (and not from the surrounding DNA)? To what extent does the insertion modify the expression of other genes? In what percentage of cells does expression from the added DNA occur? Is the product biologically active? What percentage of normal activity results from the inserted gene? Is the gene expressed in cells other than the target cells? If so, to what extent?

c. Laboratory studies pertaining to the safety of the delivery/expression system. (1) If a retroviral system is used:

(a) What cell types have been infected with the retroviral vector preparation? Which cells, if any, produce infectious particles?

(b) How stable are the retroviral vector and the resulting provirus against loss, rearrangement, recombination, or mutation? What information is available on how much rearrangement or recombination with endogenous or other viral sequences is likely to occur in the patient's cells? What steps have been taken in designing the vector to minimize instability or variation? What laboratory studies have been performed to check for stability, and what is the sensitivity of the analyses?

(c) What laboratory evidence is available concerning potential harmful effects of the transfer, e.g., development of neoplasia, harmful mutations, regeneration of infectious particles, or immune responses? What steps have been taken in designing the vector to minimize pathogenicity? What laboratory studies have been performed to check for pathogenicity, and what is the sensitivity of the analyses?

(d) Is there evidence from animal studies that vector DNA has entered untreated cells, particularly germ line cells? What is the sensitivity of the analyses?

(e) Has a protocol similar to the one proposed for a clinical trial been carried out in non-human primates and/or other animals? What were the results? Specifically, is there any evidence that the retroviral vector has recombined with any endogenous or other viral sequences in the animals?

(2) If a non-retroviral delivery system is used: What animal studies have been done to determine if there are pathological or other undesirable consequences of the protocol (including insertion of DNA into cells other than those treated, particularly germ line cells)? How long have the animals been studied after treatment? What tests have been used and what is their sensitivity?

3. *Clinical procedures, including patient monitoring.* Describe the treatment that will be administered to patients and the diagnostic methods that will be used to monitor the success or failure of the treatment. If previous clinical studies using similar methods have been performed by yourself or others, indicate their relevance to the proposed study.

a. Will cells (e.g., bone marrow cells) be removed from patients and treated in vitro? If so, what kinds of cells will be removed from the patients, how many, how often, and at what intervals?

b. Will patients be treated to eliminate or reduce the number of cells containing malfunctioning genes (e.g., through radiation or chemotherapy)?

c. What treated cells (or vector/DNA combination) will be given to patients? How will the treated cells be administered? What volume of cells will be used? will there be single or multiple treatments? If so, over what period of time?

d. What are the clinical endpoints of the study? Are there objective and quantitative measurements to assess the natural history of the disease? Will such measurements be used in following patients? How will patients be monitored to assess specific effects of the treatment on the disease? What is the sensitivity of the anlayses? How frequently will follow-up studies be done? How long will patient follow-up continue?

e. What are the major beneficial and adverse effects of treatment that you anticipate? What measures will be taken in an attempt to control or reverse these adverse effects if they occur? Compare the probability and magnitude of potential adverse effects on patients with the probability and magnitude of deleterious consequences from the disease if recombinant DNA is not used.

f. If a treated patient dies, what special post mortem studies will be performed?

4. *Public health considerations.* Describe any potential benefits and hazards of the proposed therapy to persons other than the patients being treated. Specifically:

a. On what basis are potential public health benefits or hazards postulated?

b. Is there a significant possibility that the added DNA will spread from the patient to other persons or to the environment?

c. What precautions will be taken against such spread (e.g., to patients sharing a room, health-care workers, or family members)?

d. What measures will be undertaken to mitigate the risks, if any, to public health?

5. *Qualifications of investigators, adequacy of laboratory and clinical facilities.* Indicate the relevant training and experience of the personnel who will be involved in the preclinical studies and clinical administration of recombinant DNA. In addition, please describe the laboratory and clinical facilities where the proposed study will be performed.

a. What professional personnel (medical and nonmedical) will be involved in the proposed study? What are their specific qualifications and experience with respect to the disease to be treated or the techniques employed in molecular biology? Please provide curricula vitae (see Section III–E).

b. At what hospital or clinic will the treatment be given? Which facilities of the hospital or clinic will be especially important for the proposed study? Will patients occupy regular hospital beds or clinical research center beds? Where will patients reside during the follow-up period? What special arrangements will be made for the comfort and consideration of the patients?

C. Selection of Patients

Estimate the number of patients to be involved in the proposed study. Describe recruitment procedures and patient eligibility requirements, paying particular attention to whether these procedures and requirements are fair and equitable.

1. How many patients do you plan to involve in the proposed study?

2. How many eligible patients do you anticipate being able to identify each year?

3. What recruitment procedures do you plan to use?

4. What selection criteria do you plan to employ? What are the exclusion and inclusion criteria for the study?

5. How will patients be selected if it is not possible to include all who desire to participate?

D. Informed consent

Indicate how patients will be informed about the proposed study and how their consent will be solicited. The consent procedure should adhere to the requirements of DHHS regulations for the protection of human subjects (45 Code of Federal Regulations, Part 46). If the study involves pediatric or mentally handicapped patients, describe procedures for seeking the permission of parents or guardians and, where applicable, the assent of each patient. Areas of special concern highlighted below include potential adverse effects, financial costs, privacy, long-term follow-up, and post mortem examination.

1. How will the major points covered in Sections I–A through I–C of this document be disclosed to potential participants in this study and/or parents

or guardians in language that is understandable to them?

2. How will the innovative character and the theoretically possible adverse effects of the experiment be discussed with patients and/or parents or guardians? How will the potential adverse effects be compared with the consequences of the disease? What will be said to convey that some of these adverse effects, if they occur, could be irreversible?

3. What explanation of the financial costs of the experiment and any available alternatives will be provided to patients and/or parents or guardians?

4. How will patients and/or their parents or guardians be informed that the innovative character of the experiment may lead to great interest by the media in the research and in treated patients?

5. How will patients and/or their parents or guardians be informed:

a. About the irreversible consequences of some of the procedures performed?

b. That there may be adverse medical consequences of withdrawal from the study once it has begun?

c. About a willingness to cooperate in long-term follow-up will be expected?

d. That a willingness to permit an autopsy to be performed in the event of a patient's death following transfer is also a precondition for a patient's participation in the study? (This stipulation is included because an accurate determination of the precise cause of a patient's death would be of vital importance to all future patients.)

E. Privacy and confidentiality

Indicate what measures will be taken to protect the privacy of patients and their families as well as to maintain the confidentiality of research data.

1. What provisions will be made to honor the wishes of individual patients (and the parents or guardians of pediatric or mentally handicapped patients) as to whether, when, or how the identity of patients is publicly disclosed?

2. What provision will be made to maintain the confidentiality of research data, at least in cases where data could be linked to individual patients?

II. Special Issues

Although the following issues are beyond the normal purview of local IRBs, the RAC and its Subcommittee request that investigators respond to questions A and B below.

A. What steps will be taken, consistent with point I–E above, to ensure that accurate information is made available to the public with respect to such public concerns as may arise from the proposed study?

B. Do you or your funding sources intend to protect under patent or trade secret laws either the products or the procedures developed in the proposed study? If so, what steps will be taken to permit as full communication as possible among investigators and clinicians concerning research methods and results?

III. Requested Documentation

In addition to responses to the questions raised in these "Points to Consider," please submit the following materials:

A. Your protocol as approved by your local IRB and IBC.

B. Results of local IRB and IBC deliberations and recommendations that pertain to your protocol.

C. A one-page scientific abstract of the protocol.

D. A one-page description of the proposed experiment in nontechnical language.

E. Curricula vitae for professional personnel.

F. An indication of other federal agencies to which the protocol is being submitted for review.

G. Any other material which you believe will aid in the review.

IV. Reporting Requirements

A. Serious adverse effects of treatment should be reported immediately to both the local IRB and the NIH Office for Protection from Research Risks, and a written report should be filed with both groups. A copy of the report should also be forwarded to the NIH Office of Recombinant DNA Activities (ORDA).

B. Reports regarding the general progress of patients should be filed with both your local IRB and ORDA within 6 months of the commencement of the experiment and at six-month intervals thereafter. These twice-yearly reports should continue for a sufficient period of time to allow observation of all major effects. In the event of a patient's death, a summary of the special post mortem studies and statement of the cause of death should be submitted to the IRB and ORDA, if available.

Footnotes:

1. The Food and Drug Administration (FDA) has jurisdiction over drug products intended for use in clinical trials of human somatic cell gene therapy. For general information on FDA's policies and regulatory requirements, please see the **Federal Register**, Volume 51, pages 23309–23313, 1986.

2. The term "patient" and its variants are used in the text as a shorthand designation for "patient-subject."

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: June 15, 1989.

Jay Moskowitz,

Associate Director for Science Policy and Legislation.

[FR Doc. 89–14852 Filed 6–22–89; 8:45 am]

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federal register

Friday
June 23, 1989

Part VI

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for the Northern Spotted Owl; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB82

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for the Northern Spotted Owl

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to determine the northern spotted owl (*Strix occidentalis caurina*) as a threatened species pursuant to the Endangered Species Act (Act) of 1973, as amended. The present range of the subspecies is from southwestern British Columbia through western Washington, western Oregon, and the coast range area of northwestern California south to San Francisco Bay. The northern spotted owl is threatened throughout its range by the loss and adverse modification of old-growth and mature forest habitat primarily from commercial timber harvesting. This proposed rule, if made final, will extend the Act's protection to the northern spotted owl. The Service seeks data and comments from the public on this proposed rule.

DATES: Comments from all interested parties must be received by September 21, 1989. The Act requires the Service to promptly hold one public hearing on the proposed listing regulation should a person file a request for such a hearing by August 7, 1989 (section 4(b)(5)(E); 16 U.S.C 1533(b)(5)(E)). Because of anticipated widespread public interest, the Service has decided to hold four public hearings. See "SUPPLEMENTARY INFORMATION" for dates of hearings.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Regional Director (Attn: Listing Coordinator), U.S. Fish and Wildlife Service, 1002 NE Holladay Street, Portland, Oregon 97232. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address. See "SUPPLEMENTARY INFORMATION" for location of hearings.

FOR FURTHER INFORMATION CONTACT: Mr. Robert P. Smith, Assistant Regional Director for Fish and Wildlife Enhancement at the above address (503/231-6150 or FTS 429-6150).

SUPPLEMENTARY INFORMATION:

Hearing Information

August 14, 1989—Columbia River Red Lion Inn, Riverview Room, 1401 N. Hayden Island Drive, Portland, Oregon 97217.

August 17, 1989—Redding Convention Center, 700 Auditorium Drive, Redding, California 96001.

August 21, 1989—Washington Center for the Performing Arts, 512 South Washington Street, Olympia, Washington 98501.

August 28, 1989—Lane County Convention Center Auditorium, 796 West 13th Street, Eugene, Oregon 97402.

A public hearing will be conducted at each of these locations from 1:00 to 4:30 p.m., and from 6:00 to 9:00 p.m. Oral statements may be limited to 5 or 10 minutes, if the number of parties present desiring to give such statements necessitates some limitation. There are no limits to the lengths of any written statement presented at a hearing or mailed to the Service. Oral comments presented at the public hearings are given the same weight and consideration as are comments submitted in written form. Should the public hearings scheduled be insufficient to provide all individuals with an opportunity to speak, anyone not accommodated will be requested to submit their comments in writing.

Background

The spotted owl (*Strix occidentalis*), consisting of three subspecies (northern, California, and Mexican), is a medium-sized owl with dark eyes, dark-to-chestnut brown coloring, with whitish spots on the head and neck and white mottling on the abdomen and breast. The first record of the spotted owl was made in 1855 in the west end of the Tehachapi Mountains in southern California (Xantus 1859). It was first observed in the Pacific Northwest in 1892 (Bent 1938). Though observed only occasionally prior to the 1970's, northern spotted owls since that time have been found to be more common in certain types of forested habitat throughout its range (USDA 1986).

Although a secretive and mostly nocturnal bird, the northern spotted owl is apparently unafraid of humans (Bent 1938, Forsman *et al.* 1984, USDA 1986). The spotted owl is site-tenacious and maintains a territory year-round: however, in some cases, individuals may migrate seasonally on a local basis, changing their home range size or location between the summer and winter. Monogamous and long-lived, spotted owls tend to mate for life, although it is not known if pair-bonding or site-tenacity is the determining factor. The adult female is slightly larger than the male.

Spotted owls are perch-and-dive predators and over 50 percent of their prey items are arboreal or semiarboreal species. Spotted owls subsist on a variety of mammals, birds, reptiles, and insects, with small mammals such as flying squirrels (*Glaucomys sabrinus*), red tree voles (*Arborimus longicaudus*) and dusky-footed woodrats (*Neotoma fuscipes*) making up the bulk of the food items throughout the species' range (Solis and Gutierrez 1982, Forsman *et al.* 1984, Barrows 1985).

Three subspecies of the spotted owl currently are recognized by the American Ornithologists' Union (1957): the northern spotted owl (*Strix occidentalis caurina*), the California spotted owl (*S. o. occidentalis*), and the Mexican spotted owl (*S. o. lucida*). Northern spotted owls are distinguished from the other subspecies by their darker brown color and smaller white spots and markings (Merriam 1898, Nelson 1903, Bent 1938). Juvenile plumage is similar to adult plumage except for ragged white downy tips on the tail feathers of the juvenile. Oberholser (1915) reported that there was considerable overlap in color of plumage between the northern and California spotted owl subspecies in California. The geographical separation between these two subspecies presumably occurs within a 12-to-15-mile gap of forested habitat between southeastern Shasta and northwestern Lassen National Forests, where the Sierra Nevada contacts the Klamath physiographic province; the Pit River is generally accepted as the boundary between the two California subspecies (USDA 1986; G. Gould, California Dept. of Fish and Game, Sacramento, CA, pers. comm.).

Barrowclough (1987) examined available museum specimens of all three spotted owl subspecies to investigate geographical variation within and between these taxa. In his unpublished findings, he reported clinal variation over the range of the northern and California subspecies and questioned the validity of considering these two taxa as distinct subspecies. It should be noted that Barrowclough's (1987) draft manuscript has yet to be accepted and published, and that the Service generally relies on the latest published information in peer-reviewed ornithological journals to establish taxonomic affinities. Although the geographical separation between the northern and California subspecies is within the dispersal capabilities of the

owl (E.C. Meslow, U.S. Fish and Wildlife Service Coop. Unit, Oregon State Univ., Corvallis, OR, pers. comm.), there are no data available to determine whether genetic exchange occurs between the two subspecies in California.

Spotted owls usually do not nest every year nor are nesting pairs successful every year. Early nesting behavior begins in February to March with nesting occurring March to June. The average clutch size is 2 eggs, with a range of 1 to 4. A 1:1 sex ratio of adult males to adult females is assumed from known data. Fledging occurs from mid-May to late June, with parental care continuing into September. Females are capable of breeding as 2-year-olds, but most probably do not breed until they are at least 3 years of age (Barrows 1985, Miller and 1985b, Franklin *et al.* 1986). A few subadult males have been observed paired with adult females (Wagner and Meslow 1986, Miller and Meslow 1985b). Males do most of the foraging during incubation and assist with foraging during the fledging period.

Reproduction by spotted owls has fluctuated dramatically from year to year in some areas (Forsman *et al.* 1984, Barrows 1985, USDA 1986, Allen *et al.* 1987). In some years most pairs may breed, whereas in other years very few pairs even attempt to nest. Gutierrez *et al.* (1984) noted a broad failure in reproduction from northern California through Washington in 1982. It has been suggested that fluctuations in reproduction and numbers of pairs breeding may be related to fluctuations in prey availability (Forsman *et al.* 1984, Barrows 1985, Gutierrez 1985). Both the proportion of pairs occupying territories that attempt to breed and the proportion of pairs attempting to breed that are successful (i.e., fledge young) vary from year to year (Franklin *et al.* 1987; Forsman *et al.* 1984; Meslow *et al.* 1986; The Washington Department of Wildlife 1987; Miller and Meslow 1985b; Gutierrez *et al.* 1984; G.S. Miller, pers. comm.). Average reproductive rates for Oregon and California (Marcot 1986) range from 0.49 to 0.67 juveniles per pair (Franklin *et al.* 1987; Marcot and Holthausen 1987; Forsman *et al.* 1984; Gutierrez *et al.* 1985a; Barrowclough and Coats 1985).

Mortality rates of juveniles are significantly higher than adult rates (Forsman *et al.* 1984, Miller and Meslow 1985a and 1986b, Gutierrez *et al.* 1985a and b). Recent studies of juvenile dispersal in Oregon and California indicate that few of the juvenile spotted owls survived to reproduce (Gutierrez *et al.* 1985a and b, Miller and Meslow 1985a and b, 1986b). These research studies all report very high mortality during predispersal and the first months of dispersal. In one study, out of 48 juveniles radiotracked during a 3-year study, only 3 were known to be alive after 1 year (the fate of 6 was unknown because transmitter signals were lost) (Meslow and Miller 1986b). Twelve of 23 juveniles in a 2-year study in California died during the dispersal period; the fate of the other 11 was unknown (Gutierrez *et al.* 1985b). It is not known whether the use of radio transmitters attached to juveniles for tracking purposes contribute to juvenile mortality (Irwin 1987; Dawson *et al.* 1986); researchers using this technique believe it should not measurably influence juvenile survival if done properly (Meslow, pers. comm.).

Using the data for the few years available, Marcot and Holthausen (1987) estimated that about 60 percent of juveniles live until they disperse from their nesting areas, but only about 18 percent of those fledged survive for 1 year. Miller and Meslow's (1986a) 4-year study in Oregon estimated first year post-dispersal survival at 19 percent. Gutierrez *et al.* (1985b) estimated a maximum of 50 percent survival in California based on 2 years of data, while Marcot (1986) estimated overall survival of juvenile owls from hatching through the first year of life at 11 to 12 percent.

The current range of the northern spotted owl is from southwestern British Columbia, western Washington, western Oregon, and northern California south to San Francisco Bay. The southeastern boundary of its range, separating this subspecies from the California spotted owl, is the Pit River area of Shasta County, California. Populations are not evenly distributed throughout its present range. The majority of individuals is found in the Cascades of Oregon and the Klamath Mountains in southwestern Oregon and northwestern California (USDA 1986; Gould, pers. comm.; USDI 1989). This area represents the core of the present range of this subspecies. Evidently, northern spotted owls reach their highest population densities and have their best reproductive success in suitable habitat in this part of their range (Franklin and Gutierrez 1988; Franklin *et al.* 1989; Miller and Meslow 1988; USDI 1987, 1989; Robertson 1989). Habitat in southwestern Oregon begins to change south of Roseburg to a drier Douglas-fir/mixed conifer habitat with a corresponding change in prey base (from flying squirrels to woodrats) (Meslow, pers. comm.). In addition, historical logging practices in the mixed conifer zone consisted of more selective timber harvesting than in other areas, leaving remnant stands of old growth or stands of varying ages with old-growth characteristics; this situation is also present along the east side of the Cascades in Washington.

Northern Washington and southern British Columbia represent the northern extent of the range of the northern subspecies; population densities and numbers are lowest in these areas. Very few pairs have been located in British Columbia; all have been located near the United States border. Few owls (pairs or singles) are presently found in the Coast Ranges in southwestern Washington or in the northwestern Oregon Coast Ranges (north from the southern portion of the Siuslaw National Forest). The population also decreases in size and density toward its southern extreme along the coast range in Marin, Napa, and Sonoma Counties, California. Little data on numbers and distribution on private, State, or tribal lands in these areas are available, although the spotted owl may have been nearly extirpated from much of these lands due to reduction of old-growth habitat (Forsman 1986; E. Forsman, USDA Forest Service, Pacific NW Research Station, Olympia, WA, pers. comm.; Gould, pers. comm.).

The northern spotted owl is known from most of the major types of coniferous forests in the Pacific Northwest (Forsman *et al.* 1977, 1984; Forsman and Meslow 1985; Gould 1974, 1975, 1979; Garcia 1979; Marcot and Gardetto 1980; Solis 1983; Sisco and Gutierrez 1984; Gutierrez *et al.* 1984). The historical range of the northern spotted owl extended throughout the coniferous forest region from southwestern British Columbia south through western Washington, western Oregon, and the Coast Ranges of California to San Francisco Bay (USDA 1986). The current range and distribution of the northern subspecies is similar to the historical range where forested habitat still exists. The owl has been extirpated or is uncommon in certain areas as the result of decline or modification of old-growth and mature habitat and thus its distribution is now discontinuous over its range (Dawson *et al.* 1986, Forsman 1986).

In California, northern spotted owls most commonly use the Douglas-fir (*Pseudotsuga menziesii*) and mixed conifer forest types (Marcot and Gardetto 1980, Solis 1983, and Gutierrez 1985). Gould (1974) reported finding spotted owls in northwestern California in coast redwood (*Sequoia sempervirens*), Douglas-fir and Bishop pine (*Pinus muricata*) forests, and also

in stands dominated by ponderosa pine (*Pinus ponderosa*). In Washington's coastal forest, the spotted owl is found in forests dominated by Douglas-fir and western hemlock (*Tsuga heterophylla*). At higher elevations in western Washington, Pacific silver fir (*Abies amabilis*) is commonly used by owls whereas on the east side of the Cascades Douglas-fir and grand fir (*Abies grandis*) are used (Postovit 1977). Availability of forest types within a region may be responsible for the observed differences in use among types (Gutierrez 1985; Meslow *et al.* 1986). Gould (pers. comm.) observed that preferred habitat particularly in California is not continuous, but occurs naturally in a mosaic pattern, especially in the southern portions of the State.

Spotted owls have been observed over a wide range of elevations, although they seem to avoid higher elevation, subalpine forests (USDA 1986). Garcia (1979) reports that spotted owl densities in Washington were greatest below 4,100 feet elevation. Postovit (1977) found owls on the Olympic Peninsula at elevations ranging from 70 to 3,200 feet and an elevation range of 1,600 to 4,200 feet in the Cascade Mountains of Washington. On the east side of Washington's Cascades, J. Casson (USDA Forest Service, Wenatchee N.F., WA, pers. comm.) found owls up to 5,000 feet elevation and almost always in association with Douglas-fir. Northern spotted owls have been observed occasionally at elevations up to 6,000 feet or more in California (Gould, pers. comm.).

Preferred forest habitat used by spotted owls is generally characterized by the presence of a multi-layered stand structure, dense tree canopy closure, and large trees with cavities or broken tops. These are characteristics that generally typify old-growth forests, although some old-growth characteristics preferred by spotted owls may appear in mature forests. Old-growth stands tend to have a high degree of decadence with abundant standing and down dead trees, and supporting a high density of prey species (Forsman 1976, 1980; Gould 1977; Postovit 1977; Barrows and Barrows 1978; Garcia 1979; USDA 1986; Barrows 1981; Solis and Gutierrez 1982; Forsman *et al.* 1984; Gutierrez *et al.* 1984; Carey 1985; Ruediger 1985).

Northern spotted owl preferences for old-growth forests and forests with old-growth characteristics have been established using different types of information, including relative abundance, proportion of occupied sites containing old growth, and allocation of time. For the coniferous forest within the range of the northern spotted owl, young or second-growth forest is generally defined as less than 100 years of age, mature forest as stands from 100 to 200 years old, and old growth as forest more than 200 years old. Forsman *et al.* (1977) computed the relative abundance of spotted owls in Oregon, and found that densities of spotted owl pairs were 12 times higher in old growth than in young-growth forests. Of 1,502 observations of owls, Forsman *et al.* (1987) found that 1,282 were in old growth, 22 in mature forest, 131 in old-growth/mature forest, and 67 in stands less than 100 years of age, demonstrating an overwhelming preference for old growth (USDI 1989). Pairs were evident at 928 of these 1,502 sites. Other studies by Forsman *et al.* (1984, 1987) analyzed the habitat characteristics of spotted owl sites in Oregon and observed that more than 90 percent of sites occupied by owls contained a major component of old-growth forest. Similar studies conducted by Marcot and Gardetto (1980) in northern California found that 95 percent of spotted owl sites were in old-growth stands. Ninety-seven percent of the spotted owl population in Washington was found in old-growth/mature forest; there were no known reproductive pairs in managed second-growth forest (Allen 1988). Many apparently suitable sites are not occupied every year. Marcot and Holthausen (1987) compared percent occurrence of occupancy to amount of area in old growth at each site. The results of their analysis showed probability of use is positively correlated with the percent of area containing old-growth forest types.

Forsman *et al.* (1984) analyzed home range data for eight radio-equipped adult spotted owls in the H.J. Andrews Study Area on the west slope of the Cascade Range. Home range is defined as an area within which the activities of an animal are confined. Whereas the percent of old-growth conifer forest in their home ranges varied from 33 to 66 percent, the percent of time spent foraging in old growth by the eight owls ranged from 65 to 99 percent, demonstrating a non-random use and pronounced preference for old growth. All eight owls foraged in old-growth conifer forest significantly more than expected based upon availability of that habitat relative to other habitat types in the study area. Use of 5- to 60-year-old stands was significantly less than expected except in the case of a single bird whose use of a small portion of 31- to 60-year-old forest within its range was in direct proportion to availability. Recent clearcuts or burned areas were rarely used (Forsman *et al.* 1984). Similar trends have been noted for northern spotted owls in the Coast Range of Oregon (Forsman *et al.* 1984; Reid *et al.* 1987), and the Klamath and Cascade Mountains (Meslow *et al.* 1986).

In addition, this preference for old growth has been evident from observations of roosting owls as well as during the dispersal period by juveniles. In analyzing dispersal patterns by juvenile owls, Miller (1989) found that the 18 radio-equipped individuals he studied used a variety of habitats. However, 12 of the 18 birds selected old-growth/mature forests significantly more than expected based on availability. Forsman *et al.* (1984) reported that 97.6 percent of 1,098 adult spotted owl roost sites in the central Oregon Cascades were in old-growth forest; 91 percent of 555 roost sites on BLM Coast Ranges forests were in old growth.

Although the literature strongly supports the generalization that owls preferentially select old-growth forests over young growth (USDI 1989), there are records of owls using young-growth forests. These data on young-growth forests have led to questions on the importance of old-growth habitat to spotted owl populations (e.g., Irwin 1987). In addition to the studies noted earlier (Irwin *et al.* 1988a), Irwin *et al.* (1988b) examined the immediate vicinity surrounding and including 29 nest sites on the Wenatchee and Okanogan National Forests in the Washington Cascades. Each of these nests apparently had successfully fledged at least one young in 1987 and/or 1988. The authors noted that while characteristics of many of these sites did not completely coincide with the general description of old growth, most of the sites retained dense, multi-layered canopies; no estimate was made of the amount of old growth within the home ranges of the owls whose nest sites were included in the analysis. As noted earlier, the presence of a dense, multi-layered canopy is an important structural characteristic typical of old-growth forests. Surveys in the northern third of the Oregon Coast Ranges (Forsman 1986) and in southwestern Washington (Irwin *et al.* 1988a) revealed a low density of spotted owls within this portion of their range and a paucity of old-growth habitat in this area, suggesting that this type of habitat (i.e., 40- to 120-year-old managed forest or predominantly young-growth forest) is not preferred or suitable habitat for northern spotted owls.

Northern spotted owls have relatively large home ranges. Researchers, using radiotelemetry techniques, have recorded home range sizes used by adult spotted owls ranging from approximately 300 acres to more than 19,000 acres (Solis 1983; Forsman *et al.* 1984; Sisco and Gutierrez 1984; Allen and Brewer 1985; Forsman and Meslow 1985; Brewer 1985; Forsman 1986; Meslow *et al.* 1986; Allen *et al.* 1987; Reid *et al.* 1987; N. Tilghman, USDA Forest Service, Redwoods Sciences Research Station, Arcata, CA, pers. comm.). In a sample of 14 pairs of northern spotted owls in the Coast Ranges of Oregon, A. Carey (USDA Forest Service, Pacific NW Research Station, Olympia, WA, pers. comm.) calculated mean home range size to be 5,425 acres of which 2,549 acres were old growth. Estimated mean home range size for northern spotted owl pairs ranges from 1,700 acres in northwestern California to about 12,500 acres on the Olympic Peninsula (USDI 1987, 1989). The estimated mean home range size and amount of included preferred habitat is smaller for a single bird than for a pair in those areas studied (USDA 1988). In general, home range sizes are smallest during the spring and summer (reproductive period), largest during the fall and winter (non-reproductive), increase from south to north, and increase with increasing elevation. Pairs of owls may also occupy overlapping home ranges (Forsman *et al.* 1984; Solis 1983).

Significantly, research indicates that spotted owls on the Olympic Peninsula and Oregon Coast Ranges consistently occupy larger home ranges than owls in the other provinces. These areas also have the fewest pairs of spotted owls and the least remaining old-growth forest (USDA 1989). The large home range sizes reported for owl pairs on the Olympic Peninsula, Oregon Coast Ranges, and on the west side of the Cascade Range in Washington (USDI 1989) may reflect: (1) The adverse influence of forest fragmentation resulting from timber harvest; and (2) the fact that the Washington locations are near the periphery of the subspecies' range. Forests within these provinces are highly fragmented and have the least amount of old-growth forest remaining within the range of the owl. For example, on the Siuslaw National Forest, located within the Coast Ranges of Oregon, remaining old-growth timber occurs in widely separated and relatively small parcels (Harris 1984). In this area, the owls utilize the available old growth in a highly fragmented and patchy environment (Friesen and Meslow 1988). This pattern is probably true for the Olympic Peninsula as well. The above findings and those of Allen and Brewer (1985), Forsman *et al.* (1984), Carey (1985), and Dawson *et al.* (1986), suggest that home range size increases as quality and quantity per unit area of preferred habitat declines (USDI 1989).

There are no estimates of the historical population size and distribution of the northern spotted owl within preferred habitat, although spotted owls are believed to have inhabited most old-growth forests throughout the Pacific Northwest prior to modern settlement (mid-1800s), including northwestern California (USDI 1989). Spotted owls are still found within their historical range in most areas where preferred and suitable habitat exist, although most of the owls are restricted within this range to mature and old-growth forests managed by the Federal government. Over 90 percent of the known number of spotted owls have been located on federally managed lands (Forsman *et al.* 1987; USDA 1988; USDI 1989; Gould, pers. comm.). Little information is available on numbers and distribution of owls on private, State, or tribal lands in these areas, although the spotted owl may be nearly extirpated from much of these lands due to reduction of old-growth habitat (Forsman 1986; Forsman, pers. comm.; Gould, pers. comm.).

Petition Process Background

On January 28, 1987, the Fish and Wildlife Service (Service) received a petition submitted by Greenworld requesting the listing of the northern spotted owl (*Strix occidentalis caurina*) as an endangered species under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act). On July 23, 1987, the Service accepted the Greenworld petition as presenting substantial information indicating that listing might be warranted and initiated a status review.

On August 4, 1987, the Service received a second petition, submitted by the Sierra Club Legal Defense Fund, Inc. on behalf of 29 conservation organizations, requesting that the populations of northern spotted owls on the Olympic Peninsula in Washington and the Coast Ranges of Oregon be listed as endangered pursuant to the Act, and that the subspecies be listed as threatened throughout the remainder of its range in Washington, Oregon, and northern California. The Sierra Club Legal Defense Fund, Inc. requested that its petition be consolidated with the petition by Greenworld. In accordance with its established policy, the Service treated this second petition as a public comment to be considered in evaluating the original listing petition. As a result, the time frames and schedules required by the first petition remained the same. Both petitions sought the designation of critical habitat.

Section 4(b)(3) of the Act requires the Secretary of the Interior to reach a final decision on any petition accepted for review within 12 months of its receipt. In conducting its review, the Service published a notice in the **Federal Register** (52 FR 34396) on September 11, 1987, requesting public comments and biological data on the status of the northern spotted owl. In addition, a status review team of three Service biologists was established. This team reviewed and evaluated all comments and information received in response to the September 11 notice as well as all other information in the Service's files or gathered in the effort to review the status of the subspecies. Two sequential drafts of the status review were prepared by the Service team and submitted for review by scientists, researchers, and others knowledgeable about the spotted owl in the Pacific Northwest.

On December 14, 1987, the Service team completed its status review on the northern spotted owl. On December 17, 1987, the Service's Regional Director for Region 1 made a finding, based on the review, that listing the northern spotted owl pursuant to Section 4(b)(3)(B)(i) of the Act was not warranted at that time. The Regional Director noted that because of the need for population trend information and other biological data, high priority would be given to this subspecies for continued monitoring and further research. Notice of this finding was published in the **Federal Register** on December 23, 1987 (52 FR 48552).

On May 5, 1988, the Sierra Club Legal Defense Fund, Inc. filed suit on behalf of 23 environmental organizations in the U.S. District Court for the Western District of Washington (Northern Spotted Owl v. Hodel, No. C88–573Z, W.D., Wash. 1988) challenging the Service's finding on the listing petitions. In an order issued on November 17, 1988, the Court concluded that the Service's finding was arbitrary and capricious or contrary to law, and remanded the matter to the Service for further review. The Service was specifically ordered to: provide an analysis and explanation for its finding; explain the reasoning for not listing the owl as threatened; and to supplement its status review and petition finding.

On December 5, 1988, the Director of the Service established a new status review team, consisting of 11 Service biologists, to conduct an in-depth review and interpretation of all data and other information that had been made available to the Service in 1987 on the issue. After reviewing the 1987 administrative record, the Service concluded that there was considerable new information available that had not been present in the original record and that such information was needed to respond sufficiently to the Court's request and to meet the Act's requirement to evaluate the best available biological information. In an order issued on January 12, 1989, the Court granted the Service's request to reopen the administrative record for the status review and petition finding for a period not to extend beyond February 28, 1989. The Service published a notice in the Federal Register (54 FR 4048; January 27, 1989) reopening the status review and soliciting comments, data, and other information. In its order of January 12, the Court gave the Service until May 1, 1989, to complete the additional status review, supplement the status review report, and submit to the court a new analysis and finding on the petition to list the northern spotted owl as endangered or threatened. On April 21, 1989, the team completed the review and submitted a supplemental status review report to the Regional Director, Region 1, Fish and Wildlife Service. On April 25, 1989, the Regional Director issued a revised petition finding indicating that listing the northern spotted owl as a threatened species throughout its entire range is warranted and that the Service would pursue promptly the listing process for the species. This proposal constitutes the final revised finding for the petitioned action.

The entire spotted owl species (*Strix occidentalis*) is listed on the Service's Notice of Review for vertebrate wildlife as a candidate species for listing, category 2. A category 2 species is one for which listing may be appropriate but additional information is needed. The information submitted and reviewed as part of the status review process for the northern spotted owl contributed to the supplemental information needed on which to base a decision to propose this subspecies for listing.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the northern spotted owl (*Strix occidentalis caurina*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Western Oregon and Washington were covered by approximately 24 to 28 million acres of forest at the time of modern settlement (early to mid-1800's), of which about 70 percent (14 to 19 million acres) may have been old growth (Society of American Foresters Task Force 1983, Spies and Franklin 1988, Morrison 1988, Norse 1988). Historical estimates for northwestern California are not as precise, but suggest there were between 1.3 and 3.2 million acres of old-growth Douglas-fir/mixed conifer and about 2.2 million acres of old-growth coastal redwood (Society of American Foresters Task Force 1983, Laudenslayer 1985, Fox 1988, California Department of Forestry and Fire Protection 1988, Morrison 1988).

An estimated 70 to 80 percent reduction in old-growth forests has occurred since the time of modern settlement in Oregon and Washington (USDI 1989). Old-growth forests in the Douglas-fir/mixed conifer region of northwestern California may have undergone a similar reduction of about 45 to 80 percent since the mid-1800's (Laudenslayer 1985; Green 1985; Fox 1988; California Department of Forestry and Fire Protection 1988). Some recent estimates (Spies and Franklin 1988, Morrison 1988, Norse 1988) suggest that this reported decline in historical habitat, in fact, may have been as high as 83 to 88 percent. Habitat reduction has not been uniform throughout the range of the spotted owl, but has been concentrated at lower elevations and the Coast Ranges. Reduction of old growth is largely attributable to timber harvesting and land conversion practices, although natural perturbations, such as forest fires, have caused losses as well.

Current surveys and inventories have shown that while northern spotted owls are not found in all old-growth forests, nor exclusively in old-growth forests, they are overwhelmingly associated with forests of this age and structure (USDI 1989). Therefore, trends in amount and distribution of old-growth forests may be used as a reasonable indicator of trends in the abundance and distribution of spotted owl populations and habitat over time.

By examining the trends in old-growth forest reduction from the mid-1800's to the present, the Service has extrapolated the loss of old-growth and mature habitat to the middle of the next century (USDI 1989). Based on the assumption that current timber harvest management practices and rates will continue, most commercial old-growth and mature forests (those available for commercial logging) will have been logged and converted to younger stands by the year 2050. Since over 90 percent of presently known spotted owl occurrences and habitat are found on federally managed lands (Forsman *et al.* 1987), future estimates are based upon average annual logging rates and published trend estimates for federal lands only. Relatively speaking, little old growth presently exists on private, State, or tribal lands (Society of American Foresters Task Force 1983; Old-Growth Definition Task Group 1986; Morrison 1988; Spies and Franklin 1988; California Department of Forestry and Fire Protection 1988; Thomas *et al.* 1988; Greene 1988). In addition, current logging practices, such as clearcutting, even-aged management, and short logging rotations, preclude development of future old-growth conditions from existing young forest stands. These non-federal lands historically might have contained a significant amount of owl habitat and may still offer the opportunity to provide vital linkages between islands of federally managed habitat in many areas.

At the current rate of timber harvest, the existing old-growth and mature habitat of the northern spotted owl throughout its range is expected to decline by an additional 50 to 60 percent between 1989 and 2050, from an estimated 7 million acres currently to about 2.7 million acres (USDI 1989). This would represent a total decline of at least 80 to 85 percent from the amount of spotted owl habitat originally estimated for the western part of the Pacific Northwest, including northern California. The figures used to derive this estimate do not include any young-growth forest acreages that might develop old-growth characteristics or conditions during the next 60 years (USDI 1989); as noted earlier, however, conversion of younger habitat to old-growth condition is not expected to be significant unless current logging practices change (Beuter *et al.* 1976; Heinrichs 1983; Society of American Foresters Task Force 1983; Harris 1984; Spies and Franklin 1988). As a result of habitat fragmentation, reduction in individual stand size, and edge effects, it has been speculated that the amount of

biologically effective habitat presently available for the spotted owl (i.e., habitat patches of sufficient size to support reproductively successful owls) may actually be less than 50 percent of the total preferred habitat remaining today. This reduction in the quality of remaining forest habitat under present logging patterns will continue to the point where less than 10 percent of historical levels remains (Harris 1984; Harris *et al.* 1982; Morrison 1988, 1989; Norse 1988).

Under current management plans, the distribution of spotted owl habitat remaining by the year 2050 will closely coincide with National Parks, reserved areas on federally managed forests, or other lands that are not considered suitable or available for timber harvest for other reasons (e.g., lands too steep or rocky for timber production, lands needed for hydrologic protection, scenic areas, etc.). These areas will contribute to maintaining spotted owl populations only to the extent that they contain suitable habitat of adequate size and quality for the birds (USDI 1989). By then, most remaining preferred habitat will not longer be continuous, but will exist as islands of varying size, spacing, and suitability spread over the range of the subspecies. Many of the current wilderness areas and parks are largely high-elevation lands above timberline. Lands unsuited for timber production may have poor soil conditions or be too steep or rocky; such areas generally are not suitable habitat for spotted owls nor are they likely to effectively support successfully reproducing pairs of owls (Meslow, pers. comm.)

To achieve the primary objective of timber management in Oregon, Washington, and northern California of producing wood at a non-declining rate, forests must be intensively managed with average cutting rotations of 70 to 120 years (USDI 1984, USDA 1988). Current preferred timber harvest systems emphasize dispersed clearcut patches for even-age management as the pattern of harvest. Thus, public forest lands that are intensively managed for timber production are, in general, not allowed to develop "old-growth characteristics," which require about 200 years to develop. As a result, loss and fragmentation of remaining forests and old-growth stands suitable for spotted owls will continue if current management practices are unchanged.

Annual cutting rates of old-growth and old-growth/mature age classes of trees have been established by the Forest Service and the Bureau of Land Management (Bureau) (USDI 1989). During the 1980's, the Bureau has been harvesting old-growth and old-growth/mature trees at the rate of about 22,000 acres per year in Oregon. The Forest Service estimates its harvesting of spotted owl habitat (mature and old-growth classes) at the rate of about 36,000 to 40,000 acres per year in Oregon and Washington combined, and 12,000 acres annually in California. Several legal actions against the Forest Service and the Bureau delayed harvest in 1988 and 1989. Unless these cutting rates or patterns of cutting are altered, that portion of existing spotted owl habitat remaining that is available for timber harvest will be gone within about 60 years (USDI 1989).

As a result of past and present harvest patterns, potential isolation of several subpopulations of northern spotted owls is also of considerable concern (e.g., the Olympic Peninsula, the Coast Ranges in southwestern Washington and northwestern Oregon, and the Marin County area in California) (USDA 1988, USDI 1989). The central problem of subpopulation isolation is one of maintaining a critical population size level in the absence of genetic or demographic contributions from other subpopulations. The smaller a population of subpopulation and the greater its isolation from other populations, the greater the risk of its elimination as a result of chance demographic and environmental events or genetic effects (Shaffer 1987b).

The population of spotted owls on the Olympic Peninsula may be isolated demographically, and perhaps even genetically, from other owl populations, since there does not appear to be an effective, self-sustaining population in either southwestern Washington adjacent to the Olympic Peninsula or the northwestern Oregon Coast Ranges (Irwin *et al.* 1988, 1989a; A. Potter, Wash. Dept. of Wildlife, Olympia, WA, pers. comm.; Forsman *et al.* 1977; Forsman 1988; W. Logan, Bureau of Land Management, Salem, OR, pers. comm.). While the population in the Oregon Coast Ranges may not be currently isolated due to a tenuous connection to the Cascade populations at the southern part of the range provided by lands managed by the Bureau, the scale of habitat fragmentation throughout the range is of considerable concern USDI 1989). As one moves north along the Oregon Coast Ranges, habitat ownership becomes fragmented because of checkerboarding of Bureau and private lands and remaining old growth and mature forests become more fragmented as well. During the next 10 to 15 years, given the existing direction of land management, the current degree of isolation on the Olympic Peninsula and the potential for isolation of portions of the Oregon Coast Ranges province are likely to become exacerbated, as most intervening habitat is privately owned.

The Washington and Oregon Cascade populations of owls are at risk of becoming demographically isolated from one another by loss of habitat along the Columbia River corridor. The impounded section of the Columbia River upstream of Bonneville Dam and the associated transportation and urban/agricultural corridor downstream from Bonneville Dam may serve as a significant dispersal barrier to the north-south movement of owls. In addition, the Columbia River downstream from Portland is very wide with little or no old-growth and mature habitat adjacent to the river, nor is there a viable owl population in this area (Logan, pers. comm.; Forsman *et al.* 1977; Forsman 1988; Potter, pers. comm.). In California, isolation of spotted owls may be as great in the tri-county area of Marin, Sonoma, and Napa Counties as it is on the Olympic Peninsula or in the Oregon Coast Ranges (Bontadelli 1989, Gould, pers. comm.).

Most remaining private forest lands as well as much of the publicly owned lands in the range of the northern spotted owl no longer provide continuous parcels of preferred habitat, primarily due to logging practices resulting in fragmentation of the owl's forest habitat. Habitat fragmentation may be defined as the breakup of contiguous tracts of forest habitat into smaller, more isolated parcels (USDI 1989). Timber harvest, employing a pattern of small, dispersed clearcuts, eventually leads to a situation where parcel sizes are so small as to be influenced by edge effects (windthrow, invasion by alien species, microclimatic changes, etc.). As a result, the original parcels may no longer be able to sustain the species or the community originally found in the larger and contiguous tracts of habitat and the quality (i.e., biological effectiveness of the habitat to support successful reproduction) of remaining preferred forest stands may be lessened considerably when the effects of adjacent roads and clearcuts are considered. Impacts from edge effects and environmental disturbances may be most noticeable in areas where little old growth currently remains, for example, in the Oregon Coast Ranges. Fragmentation of habitat can also adversely affect spotted owls by: (1) Directly eliminating key roosting, nesting, or foraging stands; (2) indirectly reducing the survival of dispersing

juvenile owls; (3) perhaps increasing competition or predation, and (4) reducing population densities and interaction between individuals. These factors all interact to decrease habitat quality, suitability, or effectiveness for supporting a well-distributed population of spotted owls over time (Greene 1988, Harris 1984, Meslow *et al.* 1981, Spies and Franklin 1988, Thomas *et al.* 1988).

The patchwork pattern of even-age, dispersed, clearcut timber harvest systems has imposed a checkerboard pattern on present old-growth and mature forests, fragmenting remaining habitat throughout the owl's range and reducing the total amount of suitable spotted owl habitat. This fragmentation of spotted owl habitat may be especially noticeable on Bureau lands which are additionally checkerboarded because of land ownership patterns. Forest Service modeling (USDA 1988) predicts that the mortality of dispersing juvenile owls will increase whenever the amount of suitable habitat areas decreases. As spotted owl habitat continues to be reduced further by timber harvest, the current spotted owl population is expected to decline correspondingly, and perhaps more precipitously. It is unknown whether the amount and distribution of spotted owl habitat remaining at the end of commercial harvest of old-growth forests on public lands (USDI 1989) will be adequate to support a viable population of the northern spotted owl. Attempts to answer this question by using the concepts and tools of population viability assessments have been undertaken by the Forest Service (USDA 1988, 1988) and Lande (1987a, 1987b, 1988). Although subject to criticism on a number of grounds, these assessments indicate that implementation of the Forest Service's preferred alternative for managing the spotted owl in Oregon and Washington (Alternative F, USDA 1988) will not provide a high probability of persistence for the spotted owl over the next 50 to 100 years, at least not in significant portions of its range. Litigation has been initiated regarding the Forest Service's preferred alternative. At this time it is not known whether this alternative will be implemented. Moreover, at this writing, individual forest plans pertaining to spotted owl management based on the regional guidelines have not been finalized.

Although the actual numbers of owl sites and pairs on all lands is not precisely known, recent surveys indicate that there are about 1,900 pairs of northern spotted owls within the present range of the subspecies, of which over 90 percent are found on federally managed lands (USDI 1989). The present population is predicted to decline by about 50 percent (on Forest Service lands) to 75 percent (BLM lands) from present levels over the next 50 to 60 years under current management plans (USDA 1988).

Data contributing to estimates of present population size have been collected for about 20 years, with counts of owls increasing over that period as greater areas of habitat were surveyed (Gould 1985; Gould, pers. comm.; Forsman *et al.* 1987; USDA 1988; Robertson 1989; Vetterick 1989). However, the increase in numbers of spotted owls counted in these surveys reflects an increase in inventory effort and improvements in inventory methods rather than an indication of any upward population trend. Not all forest habitat has been fully surveyed, as some areas, particularly wilderness areas, are difficult to inventory. However, Forest Service and Bureau biologists believe that about 70 to 80 percent of the northern spotted owl population has been inventoried in most cases (Potter, pers. comm.; Logan, pers. comm.; D. Smithey, Bureau of Land Management, Coos Bay, OR, pers. comm.; D. Bonn, Bureau of Land Management, Medford, OR, pers. comm.; J. Lint, Bureau of Land Management, Roseburg, OR, pers. comm.; Gould, pers. comm.; T. Simon-Jackson, USDA Forest Service, San Francisco, CA, pers. comm.; Forsman, pers. comm.). An estimate of population trends in relation to habitat over time is likely to provide a better understanding of this or any habitat specific species than just total numbers of individuals and pairs.

Information about population trends for spotted owls is provided by three different kinds of data: (1) Changes in spotted owl habitat; (2) changes in spotted owl population size; and (3) survival and reproductive rates. Both the close association between the spotted owl and old-growth forests and the dramatic reductions in old growth that have occurred have been thoroughly discussed earlier. This loss of old-growth and mature habitat continues, with projected losses on Federal lands of about 1.5 percent per year (USDA 1988) or greater (Morrison 1988). A number of biologists knowledgeable about spotted owls have reported declines in owl populations in many areas over the species' range in recent years, commensurate with declines in habitat (A. Franklin, Humboldt State Univ. Arcata, CA, pers. comm.; Meslow pers. comm.). Finally, when the best available estimates of spotted owl survival and reproductive rates are combined and analyzed, resulting values point to a declining population (USDI 1989).

Based on ecological theory, several predictions about the effects of continued harvesting of preferred habitats on the future demographic performance of spotted owls can be made. Given the data, it is likely that continued harvest of preferred habitat will adversely affect spotted owl populations. As more of this habitat is removed and fragmented, the following is expected to occur: (1) Individual owls will have to use habitats comprised of a higher proportion of young forests, necessitating an increase in their home range size to meet their energetic and nutritional requirements and resulting in an overall decrease in density of spotted owls; and (2) as more owls use less suitable habitats, there will likely be a decrease in the average reproductive success of the population as a whole. Analysis of available information for spotted owls seems to support these theoretical predictions (USDI 1989).

The reported variation in per capita reproductive rates between habitats of different suitability implies that owls using young-growth forests may actually contribute proportionately less to population recruitment than their numbers would suggest. Because of apparent differences in reproductive rates, it would be incorrect to assume that a given owl population, normally concentrated in old-growth forests, could be maintained for any length of time on a relatively larger area of less suitable, young forests. The data on spotted owls suggest that use of young forests by owls is dependent on the presence of old-growth stands within the home range.

Fragmentation can also have harmful genetic consequences through its effect on the effective population size. Each subpopulation occupying a discrete habitat patch, such as those that result from habitat fragmentation, comprises a component of the overall population, referred to as a "metapopulation." The processes of extinction and colonization within individual patches can have deleterious genetic effects that might not be predicted by models that do not consider metapopulation structure (USDI 1989).

Although natural habitat is never constant, the original old-growth forest habitat probably was fairly stable and continuous over much of the owl's historical range. Natural perturbations would generally tend to be small and localized, creating occasional openings in an otherwise fairly continuous and

closed-canopy forest environment. The current habitat situation for spotted owls continues to change from the original condition where unsuitable habitat patches were small and isolated, to the reverse where suitable habitat now occurs in small and isolated patches. These factors all interact to decrease habitat suitability or effectiveness for supporting a well-distributed population of spotted owls over time (Greene 1988; Harris 1984; Meslow *et al.* 1981; Spies and Franklin 1988; Thomas *et al.* 1988).

Spotted owl population viability assessments performed to date (USDA 1988, 1988; Lande 1987a, 1987b, 1988) have not explicitly considered habitat differences in reproductive rates and how different fitnesses of owls in different habitats would affect population dynamics. In particular, the life table and population viability analyses that have been performed to date may present an optimistic view of the future status of spotted owl populations for two reasons (USDI 1989). First, the population viability analyses conducted by the Forest Service were based on a single frequency distribution of reproduction rates, with a mean value from owl pairs in the most preferred habitats. However, as discussed previously, theory and empirical data suggest that owl pairs in less suitable, younger habitats may have significantly lower per capita reproductive rates. Therefore, as more preferred habitat is cleared, population growth rates may be reduced to values lower than were used in existing models. Second, the Forest Service's population viability analyses assume that a given Spotted Owl Habitat Area (SOHA) will be occupied with a probability proportional to the amount of old-growth forest within the SOHA. However, the assumed relationship is based on the present landscape configuration, the existing amounts of old growth, and the current spatial relationships between old growth and young growth forests. The assumed SOHA occupancy probabilities are likely to decline as surrounding old growth is cleared and SOHAs become more isolated from other large patches of preferred habitat. These points are intended to emphasize the fact that the models should be interpreted cautiously, and that planning for the owl should include built-in safety factors to insure that future habitat requirements for a viable population are not underestimated.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Considerable research by Federal, State, and private groups is being conducted on this subspecies. This work is providing valuable information and is not having a negative impact on the subspecies. The spotted owl is not a game bird, nor is there any known commercial or sporting use.

C. Disease or Predation

Predation by great horned owls (*Bubo virginianus*) has been identified as a major source of juvenile mortality in spotted owls (USDI 1987; Dawson *et al.* 1986; USDA 1988; Simberloff 1987; and USDA 1988). Concern has been expressed that increasing habitat fragmentation may be subjecting spotted owls to greater risks of predation as they move into or across more open terrain, or come into more frequent contact with forest edges where horned owls may be more numerous. Hamer (1988) has been studying spotted owl and great horned owl interactions in the north Cascades of Washington. His survey of the 145-square-mile Mt. Baker study area showed that great horned owls were more common than spotted owls in this mostly fragmented and young-growth dominated habitat. He found, with a limited sample size, that spotted owls avoided areas intensively used by pairs of great horned owls. In young-growth forests in southwestern Washington, Irvin *et al.* (1988a) reported that great horned owls, along with the western screech owl (*Otus asio*), were the most commonly found owls, and that spotted owls were infrequently found. Specific impacts of great horned owl predation on the overall spotted owl population are unknown, but this remains an issue of concern. Parasites have been found in blood samples of the northern spotted owl, although their significance and potential impact on the subspecies are unknown at the present time (Gould, pers. comm.).

D. The Inadequacy of Existing Regulatory Mechanisms

There are numerous State and federal laws and regulations that, if enforced, may protect spotted owls and, to a lesser extent, spotted owl habitat. Implementation and effectiveness of these laws to date, however, has been variable.

Each of the three States in which the subspecies occurs has recognized the precarious status of the owl. It is listed as endangered by the State of Washington, threatened by the State of Oregon, and as a sensitive species by the State of California. State laws in Washington and Oregon offer little regulatory protection to the spotted owls other than a prohibition against taking. In California, timber management plans require the approval of the Department of Fish and Game.

The Federal Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*) prohibits taking of spotted owls or their eggs or nests unless and except as permitted by regulation. The Act imposes criminal penalties for unlawful taking.

The National Park Service is required by statute to manage National parks to conserve their wildlife (16 U.S.C. 1). Approximately 8 to 10 percent of spotted owl habitat is located within National parks.

The National Forest Management Act of 1976 and its implementing regulations require the Forest Service to manage National Forests to provide enough habitat to maintain viable populations of native vertebrate species, such as the spotted owl. These regulations define a viable population as one which "has the estimated numbers and distribution of reproductive individuals to ensure its continued existence is well-distributed" (36 CFR 219.19).

The Forest Service manages about two-thirds of the current northern spotted owl habitat. Spotted owl management on National Forest lands in California, Oregon, and Washington is based on regional guidelines adopted by the Pacific Southwest Region (Region 5) for California and by the Pacific Northwest Region (Region 6) for Oregon and Washington. These guidelines provide for a network of forest-wide owl sites (Spotted Owl Habitat Areas or SOHAs) containing 1,000 acres in California and from 1,000 to 3,000 acres in Washington and Oregon. Some of these sites will be located in areas not available for timer harvest (e.g., natural areas, research areas, wilderness), but the majority of the sites (60 to 70 percent) would be surrounded by commercial timber land available for logging.

The Forest Service has prepared a Final Supplement Environmental Impact Statement (USDA 1988) with a preferred alternative to implement forest plans to manage about 300 spotted owl habitat areas within its lands in Oregon and Washington. In California, the Forest Service is implementing a similar network system to manage about 250 owl habitat areas within its lands. The intent of this system in both Forest Service Regions is to maintain the viability of the subspecies through a network system that is evenly distributed over the range of the owl.

Sites were to be selected based upon known owl presence, although some sites were actually selected on their potential to contain owls rather than current occupancy. The potential success of this effort cannot be determined yet, since there have been insufficient time and data to determine trends.

In late 1988, the Forest Service made its final Record of Decision on spotted owl management guidelines for National Forests in Washington and Oregon. The decision provides guidance (habitat amount, location, juxtaposition) to set aside a network of selected SOHAs, totaling approximately 374,000 to 477,000 acres in Washington and Oregon forests. The Forest Service in California is preparing to finalize Forest plans implementing a similar habitat management plan on the four National Forests in the northern spotted owl's range.

The Forest Service's Record of Decision for Oregon and Washington set a timetable of 5 years for a full review of the Forest Service's owl management program, continued implementation of a $5 million annual Research, Development, and Application Program, and reaffirmed the Forest Service's commitment to coordinate and cooperate with other agencies. The Forest Service's spotted owl habitat guidelines are the subject of several current lawsuits. Whether or not the current habitat guidance will stand is unknown. In addition, the final Forest Service spotted owl decision only addresses regional standards and guidelines for spotted owl management. The actual implementation of owl management will be based on individual forest plans once they are finalized. A thorough assessment of the impacts of the Forest Service's preferred alternative for each forest is not possible at this time since the actual arrangements (location and juxtaposition) of occupied management areas (SOHAs) have not been tested or available for interagency or public review.

The Bureau of Land Management administers approximately 11 percent of spotted owl habitat, mostly in Oregon. Most Bureau forest lands in Oregon are administered under the provision of the Oregon and California Act, which mandates management of these lands for permanent forest production. These lands cannot be withdrawn or set aside for other long-term management objectives unless other applicable statutes permit. However, short-term (10-year) restrictions can be placed on certain tracts during a 10-year planning period (W. Nietro, Bureau of Land Management, Portland, OR, pers. comm. 1989). Currently, there are timber harvesting restrictions on 110 Spotted Owl Management Areas (SOMAs) that are managed by the Bureau under a cooperative agreement with the Oregon Department of Fish and Wildlife through 1990. The intent is to provide linkages and habitat for 90 pairs of owls between Forest Service lands in the Oregon Cascades and Coast Ranges and to preserve the integrity of these sites into the next planning period. These pairs constitute approximately one-third of the known spotted owl pairs on Bureau lands in Oregon. The Bureau only manages small parcels of owl habitat in California and none in Washington.

The success (viability) of spotted owl pairs, in terms of survival and reproductive output, is predicted largely on the sufficiency of their habitat to support the full range of physical, behavioral, and nutritional needs of the subspecies as expressed by measurement of owl use. Selected SOHA or SOMA size in the Forest Service's FSEIS and the Bureau of Land Management/Oregon Department of Fish and Wildlife agreement is generally less than the mean amount of preferred habitat documented within the home ranges of paired owls studied in all physiographic provinces (USDI 1989). As a consequence, some pairs may not persist in less than optimally sized habitats (Ruggiero *et al.* 1988).

According to the final regional guidance, and the Record of Decision (for Oregon and Washington), the Forest Service does not quantitatively provide for long-term contingencies in the case of catastrophic environmental events. Similarly, current spotted owl habitat management by the Bureau does not take into consideration or provide for such events.

In August 1988, an Interagency Agreement established in 1987 between the Fish and Wildlife Service and the Forest Service was expanded to include the Bureau of Land Management and the National Park Service. This agreement requires the four agencies to cooperate, coordinate, exchange data, and review proposals designed to manage and protect owl habitat; it also commits them to manage land to maintain viable, well-distribute spotted owl populations. However, at this time, there are no coordinated management schemes in place among the agencies; the Forest Service and Bureau have developed timber harvest proposals and spotted owl protection strategies independently of each other.

The cumulative impact of timber-cutting practices by land managing agencies increases and exacerbates the fragmentation of existing owl habitat. The proposed spotted owl management plans of the Forest Service and Bureau of Land Management are untested. Recent legal actions aside, there is no indication from the land management agencies that the current rate of change from old growth to young, even-aged forest management will diminish. Further, as agencies concentrate their clearcutting activities outside of designated spotted owl habitat management areas, future habitat management options will be lost if currently planned habitat networks prove later to be deficient.

E. Other Natural or Man-Made Factors Affecting Its Continued Existence

The barred owl (*Strix varia*), has undergone rapid range expansion over the past 20 years into the range of the spotted owl in the northwestern United States (Hamer 1988; USDI 1989). Gould (pers. comm.) indicates that the barred owl now occurs as far south as Mendocino County, California. Furthermore, it has at least replaced, and possibly displaced, the northern spotted owl in some areas (Forsman and Meslow 1986; Allen *et al.* 1985; Hamer and Samson 1987). Hamer (1988, 1989) noted that the barred owl seems to be more prevalent in cut-over areas than spotted owls. On his study area in the northern Cascade Mountains of Washington, the barred owl is now 2.1 times more numerous than the spotted owl.

The barred owl's adaptability and aggressive nature appear to allow it to take advantage of habitat perturbations, such as those that result from habitat fragmentation, and to expand its range where it may compete with the spotted owl for available resources. The long-term impact to the spotted owl is unknown, but of considerable concern. Continued examination is warranted of the role and impact of the barred owl as a congeneric intruder in historical spotted owl range and its relationship to habitat fragmentation. The potential for interbreeding of the two species also merits concern and monitoring.

There are numerous examples of extrinsic factors such as fires, wind damage, and volcanic action affecting forest habitat, including known spotted owl habitat. These natural occurrences have not been factored into any future projections of population persistence of the spotted owl, and their impact is unknown. Genetic problems (such as inbreeding) have not yet been considered a problem with spotted owls.

In its Status Review and Supplement (USDI 1987, 1989), the Service has compiled and carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the Service has found that listing the northern spotted owl as a threatened species throughout its range is warranted. The Endangered Species Act of 1973 (Act), as amended, states that the term "endangered species" means any species which is in danger of extinction throughout all or a significant portion of its range. The term "threatened species" means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Given the loss of a substantial amount (70 to 80 percent) of historical habitat from timber harvesting, and continuing and planned reduction and fragmentation of a large portion of the remaining old-growth and mature habitat, the northern spotted owl population will continue to decline unless steps are taken to offset these losses.

The northern spotted owl shows a clear preference throughout its range for old-growth forests and forests with old-growth characteristics for nesting, foraging, and roosting. Forests are considered "old growth" when about 200 or more years of age, although some old-growth characteristics preferred by spotted owls may appear prior to that age in mature timber (from about 100 to 200 years of age). As a result of historical and ongoing timber harvest, the once extensive and continuous old-growth forests are being converted to a patchwork landscape dominated by young, even-aged stands. Existing timber management planning and policies do not provide for old growth replacement because of rotation periods ranging from about 70 to 120 years on federal lands to as little as 40 years on private lands.

If current management practices continue, by the year 2050, most commercial old-growth forests will have been logged and converted to younger, even-aged managed forests. This would represent a total decline of at least 80 to 85 percent from the amount of preferred habitat originally estimated for the western part of the Pacific Northwest, including northern California. Impacts from timber harvesting are rangewide and, in addition to causing the direct loss of preferred habitat, appear to be affecting the quality of the remaining forest habitat throughout much of the species' range. Moreover, the total population of spotted owls is relatively low (recent surveys report about 1,500 pairs) and pairs are relatively widely spaced. This subspecies has very specific and narrow habitat requirements. With a low, variable reproductive rate and a low population density, a consequence partly of its large home range requirements, the spotted owl would be especially vulnerable to localized catastrophic events. Lastly, current and proposed management practices may not be designed for nor be sufficient to ensure long-term population viability of the spotted owl. On the basis of the best scientific and commercial data available, the Service believes that threatened status is warranted rangewide for the entire population of the northern spotted owl.

Under the Act's definition, to be considered for endangered classification, the spotted owl would have to be in danger of extinction throughout all or a significant portion of its range. While the available data indicate a gradual, rangewide decline in the species commensurate with habitat loss, they do not suggest that extinction is an imminent possibility. The Service recognizes that the situation is most serious in the California Coast Range (especially Marin and Sonoma Counties), the Oregon Coast Ranges (beginning with Coos Bay Bureau of Land Management lands north to the Columbia River), and from the Olympic Peninsula south to the Columbia River. However, when the status of the entire subspecies is analyzed rangewide, it is the Service's conclusion that the likelihood of extinction of the subpopulations of the owls in these areas is not so immediate as to justify a rangewide endangered classification at this time. The Olympic Peninsula population of the northern subspecies may be the only unit that could qualify as a distinct population under the Act. However, it was not clear that identifying this as a separate population was fully justified by the data or that the immediacy of threat in relationship to other areas was sufficient to warrant a separate designation as endangered at this time.

Critical Habitat

Section 4(a)(3) of the Endangered Species Act (Act), as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be listed as endangered or threatened.

The Service finds that critical habitat for the northern spotted owl is not presently determinable. The Service's regulations (50 CFR 424.12(a)(2)) state that critical habitat is not determinable if information sufficient to perform required analyses of the impacts of the designation is lacking or if the biological needs of the species are not sufficiently well known to permit identification of an area of critical habitat. By critical habitat is meant "specific areas within the geographical area currently occupied by a species on which are found the physical or biological features essential to the conservation of the species and that may require special management considerations or protection" (50 CFR 424.02(d)).

The extensive range of the northern spotted owl, from British Columbia to San Francisco Bay, involves over 7 million acres of its preferred old-growth and mature forest habitat and an undetermined amount of other forest types that may also be of significance to the survival and recovery of the subspecies. Much of this habitat has been fragmented by logging, and many stands are isolated from each other or of such small size as not to support viable populations of spotted owls. The specific size, spatial configuration and juxtaposition of these essential habitats as well as vital connecting linkages between areas necessary for ensuring the conservation of the subspecies throughout its range have not been determined at this time, nor have analyses been conducted on the impacts of a designation.

During the proposed comment period, the Service will seek additional agency and public input on critical habitat, along with information on the biological status of and threats to the spotted owl. The Service intends to use this and other information in formulating a decision on critical habitat designation for the spotted owl.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of

Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Regulations governing these conferences are found at 50 CFR 402.10. If a species is listed subsequently, Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The U.S. Forest Service and Bureau of Land Management have active timber sale programs in the Pacific Northwest, including northern California, whereby private timber companies bid for the right to log Federal land. In Fiscal Year 1989, the Forest Service had 425 timber sales containing about 48,000 acres that included at least some northern spotted owl habitat. To date, the Forest Service has been enjoined through court action from completing 165 timber sales, totalling approximately 22,500 acres, largely because of spotted owls and old growth issues. About 52 timber sales, representing roughly 2,600 acres, have been released by the Court and subsequently offered for sale (G. Gunderson, USDA Forest Service, Portland, OR, pers. comm.). It is anticipated that future proposed sale activity will be similar, but will depend in part, upon the outcome of a number of unresolved court challenges.

In 1988, the Bureau of Land Management advertised 229 timber sales for a total of 29,798 acres. Of these planned sales, 41 (5,330 acres) are involved in an existing lawsuit. During 1989, the Bureau plans to advertise 190 timber sales to harvest 24,655 acres; there is also an existing lawsuit involving 75 of these sales, covering 9,750 acres, (Nietro, pers. comm.). On an annual basis, the Bureau awards contracts to harvest 32,940 acres, of which 22,800 acres are clearcut and 10,140 acres are partially cut. Of the acreage cut, approximately 66 percent of the harvest is in forests over 200 years old (Nietro, pers. comm.).

Because habitat loss and modification resulting from timber harvesting activities represents the primary threat to the northern spotted owl, the Forest Service and Bureau will review and assess the potential impacts of timber sales on this species to ensure compliance with Section 7 of the Act, as described above.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that generally apply to threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

On June 28, 1979, the order Strigiformes, which includes all owls, was included in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The effect to this listing is that export permits are generally required before international shipment may occur. Such shipment is strictly regulated by CITES party nations to prevent effects that may be detrimental to the species' survival.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final action concerning this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from the Regional Director (Attention: Listing Coordinator), U.S. Fish and Wildlife Service, 1002 NE Holladay Street, Portland, Oregon 97232.

Authors

The primary author of this proposed rule is Joseph J. Dowhan, U.S. Fish and Wildlife Service, Pacific Regional Office, 1002 NE. Holladay St., Portland, Oregon 97232–4181 (503/231–6150 or FTS 429–6150), and the Service's Northern Spotted Owl Status Review Team.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411; Pub. L. 100–478, 102 Stat. 2306; Pub. L. 100–653, 102 Stat. 3825 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under Birds, to the list of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Birds							
Owl, northern spotted.	*Strix occidentalis caurina.*	U.S.A. (WA, OR, CA); Canada (British Columbia).	Entire	T	NA	NA	

Dated: June 15, 1989.

Susan Recce Lamson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89–14889 Filed 6–22–89; 8:45 am]

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federal register

Friday
June 23, 1989

Part VII

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Proposed Establishment of the Salt Lake City Terminal Control Area and Revocation of the Salt Lake City International Airport, Airport Radar Service Area; UT; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88-AWA-9]

RIN 2120-AD02

Proposed Establishment of the Salt Lake City Terminal Control Area and Revocation of the Salt Lake City International Airport, Airport Radar Service Area; UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a Terminal Control Area (TCA) at the Salt Lake City International Airport, UT. The TCA would consist of airspace from the surface or higher within a 25-mile radius of Salt Lake City International Airport up to and including 10,000 feet above mean sea level (MSL). Establishment of this TCA would impose certain operating rules and pilot/equipment requirements, including requirements for an operable two-way radio, a 4096 transponder with automatic altitude-reporting equipment, an operable very high frequency omni-directional radio range (VOR) or tactical air navigational aid (TACAN) receiver, and restrictions on student pilot operations. This action is intended to increase the capability of the air traffic control (ATC) system to separate all aircraft in the terminal airspace around the Salt Lake City International Airport. The objective of this proposal is to substantially increase safety while accommodating the legitimate concerns of airspace users. Salt Lake City International Airport is currently served by an Airport Radar Service Area (ARSA) which would be rescinded concurrent with the establishment of this TCA.

DATES: Comments must be received on or before August 22, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC-10], Airspace Docket No. 88-AWA-9, 800 Independence Avenue, SW., Washington, DC 20591.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Betty Harrison, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9255.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-AWA-9." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

Related Rulemaking Actions

On May 21, 1970, the FAA published FAR Amendment 91-78 (35 FR 7782) which enabled the establishment of TCA's. On October 14, 1988, the FAA published a final rule which revised the classification and pilot/equipment requirements for conducting operations in a TCA (53 FR 40318). Specifically, the rule: (a) Establishes a single-class TCA; (b) requires the pilot-in-command of a civil aircraft operating within a TCA to hold at least a private pilot certificate, except for a student pilot who has received certain documented training; and (c) eliminates the helicopter exception from the minimum navigational equipment requirement.

The FAA published a final rule on June 21, 1988, which requires Mode C equipment when operating within 30 miles of any designated TCA primary airport from the surface up to 10,000 feet MSL, except for operations by certain aircraft types specifically excluded (53 FR 23356).

On February 3, 1987, the FAA published a final rule which established requirements pertaining to the use, installation, inspection, and testing of Air Traffic Control Radar Beacon System (ATCRBS) and Mode S transponders in U.S.-registered civil aircraft (53 FR 3380). The rule adopted continues to require a transponder for operation in each TCA.

Background

The TCA program was developed to reduce the midair collision potential in the congested airspace surrounding airports with high density air traffic by providing an area in which all aircraft will be subject to certain operating rules and equipment requirements.

The density of traffic and the type of operations being conducted in the airspace surrounding major terminals increase the probability of midair collisions. In 1970, an extensive study found that the majority of midair collisions occurred between a general aviation (GA) aircraft and an air carrier, military or another GA aircraft. The basic causal factor common to these conflicts was the mix of uncontrolled aircraft operating under visual flight rules (VFR) and controlled aircraft operating under instrument flight rules (IFR). TCA's provide a method to accommodate the increasing number of IFR and VFR operations. The regulatory requirements of TCA airspace afford the greatest protection for the greatest number of people by providing ATC with an increased capability to provide aircraft separation service, thereby

minimizing the mix of controlled and uncontrolled aircraft.

To date, the FAA has established a total of 23 TCA's. The FAA is proposing to take action to modify or implement the application of these proven control techniques to more airports to provide greater protection of air traffic in the airspace regions most commonly used by passenger-carrying aircraft.

On August 22, 1987, the Secretary of Transportation announced nine locations for which the FAA would issue Notices proposing the establishment of TCA's. The nine candidates cited qualify for TCA status by meeting the criteria published in FAA Handbook 7400.2C, "Procedures for Handling Airspace Matters." The criteria for establishing a TCA are based on factors which include the number of aircraft and people using that airspace, the traffic density, and the type or nature of operations being conducted. Accordingly, guidelines have been established to identify TCA locations based on two elements—the number of enplaned passengers and the number of aircraft operations.

Pre-NPRM Public Input

Airspace Meetings

Informal airspace meetings were held in the Salt Lake City area on October 4, 5, and 6, 1988. The FAA received 23 written comments as a result of these meetings. These comments were from congressional offices, county offices, military organizations, aviation organizations/services, airport management and individual pilots. All comments received were in reference to the FAA TCA proposal presented at the informal airspace meetings. In addition to the comments, the FAA received a TCA proposal from the Airports System Planning Advisory Committee (ASPAC). This committee represents 25 aviation organizations in the Salt Lake City area. All comments received, along with FAA analyses, are summarized as follows:

1. Two major airlines supported the 12,500-foot MSL ceiling proposed by the FAA, while several independent airspace users favored a lower ceiling. These independent users stated that a 12,500-foot MSL ceiling would be too restrictive for pilots not wishing to participate in the TCA. The ASPAC TCA design proposed a ceiling of 10,000 feet MSL.

After considering all comments, the FAA is proposing a 10,000-foot TCA ceiling.

2. Several commenters were concerned that the proposed eastern boundary would force those aircraft not wishing to participate in the TCA too close to high terrain.

Since this is a known VFR transit area, the FAA moved the proposed boundary west to a longitudinal line of 111°45'00" W. This will allow VFR aircraft ample room to navigate around the TCA as well as over high terrain.

3. Several commenters requested a "cutout" around the Salt Lake Skypark Airport. Commenters indicated that the FAA proposal would hamper training operations for aircraft based at the Salt Lake Skypark Airport.

This area is not involved in the major traffic flows for the primary airport; therefore, the FAA is proposing an exclusion of that portion of airspace surrounding the Salt Lake Skypark Airport below 5,300 feet MSL. This exclusion will allow aircraft to depart, land, and operate around Skypark Airport without entering the TCA.

4. Some commenters requested that the proposed TCA be delineated by prominent visual landmarks.

The FAA has altered the proposed TCA boundaries using available visual landmarks while ensuring that the TCA conforms to the desired TCA configuration.

5. Tooele County officials requested that the FAA delete the Tooele Valley Airport from the proposed TCA. This exclusion would accommodate all general aviation pilots who do not wish to participate, circumnavigate, or fly beneath the TCA.

After analyzing this request, the FAA altered the proposed TCA boundaries in this area by deleting the Tooele Valley Airport from the proposed TCA.

6. Several commenters complained that the proposed TCA extends to 30 miles from the primary airport.

The FAA reduced the proposed TCA boundaries. The boundaries proposed in the Notice extend to 25 miles from the primary airport in certain areas. These areas are needed to provide the best service for aircraft transitioning in and out of the Salt Lake City International Airport.

7. The FAA received one request for a corridor-type TCA.

The FAA conducted a test of "climb and descent corridors" in the Boston, MA, area. It was concluded that corridors do not provide the desired degree of safety nor the most efficient use of airspace necessary to contain aircraft in high density terminal areas.

8. One suggestion was received to exclude airspace northwest of the primary airport below 5,500 feet MSL outside the Salt Lake City Control Zone from the inner core of the TCA to allow low-level operations.

Such low-level operations can be conducted within TCA airspace. In addition, air traffic control services provide separation which would create a safer environment.

9. Cedar Valley Airport operators requested that the FAA delete Cedar Valley Airport from the TCA proposal. Excluding Cedar Valley Airport will ensure that current sport-related aviation procedures will remain unchanged.

As a result of these comments, the FAA considered this request and altered the TCA proposal to exclude Cedar Valley Airport from the TCA design.

10. Some commenters requested that the shelf over the Salt Lake City Municipal 2 Airport be altered to reflect an even altitude. Commenters stated that the proposed floor restricts the number of available altitudes for VFR flight beneath the floor of the TCA.

The FAA raised the proposed floor in this area up to 6,000 feet MSL to allow VFR aircraft an additional 2,000 feet.

11. Several commenters expressed concern that the TCA floor west of Morgan precludes VFR flight. Commenters stated that a combination of high terrain and a low floor creates an unsafe environment for VFR aircraft.

The proposed boundary in this area was altered to delete the airspace east of the Hill Air Force Base and Ogden Municipal Airport Airport Traffic Areas (ATA).

12. United States Air Force representatives expressed concern that implementing a TCA may impede military operations.

The military operations addressed will be accommodated through inter-facility agreements. The FAA contends that a TCA will result in a safer environment for both civil and military aircraft.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a TCA at Salt Lake City International Airport, UT. In 1987, the total number of annual enplaned passengers at Salt Lake City International Airport was 4,895,326 which exceeds the 3.5 million necessary for consideration as a TCA candidate. The total number of airport operations were 292,050, over 50 percent of which were air carrier. Additionally, within the proposed boundaries, more than 750,000 flight operations are conducted annually. Consequently, the FAA has determined that establishment of a TCA at Salt Lake City International Airport is in the interest of flight safety and will

result in a greater degree of protection for the greater number of people during flight in that terminal area. Salt Lake City International Airport is currently served by an ARSA, which would be rescinded concurrent with the establishment of this TCA. The proposed location is depicted on the attached chart.

Section 91.90 of Part 91 of the Federal Aviation Regulations (14 CFR Part 91) defines TCA's and prescribes operating rules for aircraft in airspace designated as a TCA. The TCA rule provides, in part, that prior to entering the TCA, any pilot arriving at any airport within the TCA or flying through a TCA must: (1) Obtain appropriate authorization from ATC; (2) comply with applicable procedures established by ATC for pilot training operations at an airport within a TCA; (3) hold at least a private pilot certificate; (4) meet the requirements of § 61.95 if the aircraft is operated by a student pilot. Any aircraft arriving at any airport within the TCA or flying through a TCA must: have an operable VOR or TACAN receiver; have an operable two-way radio capable of communications with ATC on appropriate frequencies for that TCA; and be equipped with the applicable operating transponder and automatic altitude reporting equipment specified in paragraph (a) of § 91.24, except as provided in paragraph (d) of that section. Unless otherwise authorized by ATC, all large turbine-engine-powered aircraft operating to or from a primary airport must be operated above the designated floors of the TCA. The pilot of any aircraft departing from an airport located within a TCA is required to receive a clearance from ATC prior to takeoff.

All aircraft operating within a TCA are required to comply with all ATC clearances and instructions, and any FAA arrival or departure traffic pattern for the airport of intended operation. However, the rule permits ATC to authorize deviations from any of the operating requirements of the rule when safety considerations justify the deviation or more efficient utilization of the airspace can be attained. Ultralight vehicle operations and parachute jumps in a TCA may only be conducted under the terms of an ATC authorization.

Definitions, operating requirements, and specific airspace designations applicable to TCA's may be found in §§ 71.12, 71.401, and 71.403 of Part 71 (14 CFR Part 71); and Sections 91.1 and 91.90 of Part 91 (14 CFR Part 91).

The standard configuration of a TCA consists of three concentric circles centered on the primary airport extending to 10, 20, and 30 miles respectively. The vertical limits of the TCA are 12,500 feet above MSL, with the floor established at the surface in the inner area and at levels appropriate to containment of operations in the outer areas. Variations of these criteria may be authorized contingent upon terrain, adjacent regulatory airspace, and factors unique to the terminal area. The airspace configuration contained herein is the result of an extensive staff study conducted by the local FAA authority after obtaining public input from informal airspace meetings and coordinating with the FAA regional office. The FAA has determined the following proposed TCA airspace configuration is consistent with TCA objectives and allows consideration of terminal area flight operations and terrain:

1. That airspace extending upward from the surface up to and including 10,000 feet MSL, beginning at a point where the 13-mile arc of the Salt Lake City International Airport Runway 16 ILS (I—MOY) localizer/distance measuring equipment (LOC/DME) antenna intercepts Interstate 15 (I–15), extending south on I–15 until intercepting the Salt Lake City International Airport ATA, extending south along the Salt Lake City International Airport ATA boundary until intercepting I–15, extending south on I–15 until intercepting the 11-mile arc on the I–MOY LOC/DME antenna clockwise until intercepting the Union Pacific railroad tracks, extending southwest along the Union Pacific railroad tracks until intercepting the 13-mile arc of the I–MOY LOC/DME antenna clockwise until the point of beginning. This airspace is needed to contain aircraft departing from and arriving at the primary airport. The reduced areas to the north and south provide sufficient airspace for skydiving, gliders, etc.

2. That airspace extending upward from 7,000 feet MSL up to and including 10,000 feet MSL between the 13-mile radius and the 25-mile radius of the I–MOY LOC/DME antenna, excluding that airspace south of the Union Pacific railroad tracks, and that airspace beginning at a point where the 25-mile arc intercepts the Hill AFB ATA and U.S. Highway 89. This segment of airspace allows for terrain clearance and is necessary for climb and descent into the primary airport.

3. That airspace extending upward from 7,000 feet MSL up to an including 10,000 feet MSL, beginning at a point where the 11-mile arc of the I–MOY LOC/DME antenna intercepts a line at long. 112°09'00" W., bounded on the west by a line at long. 112°09'00" W., on the south by a line at lat. 40°27'30" N., to a point at lat. 40°27'30" N., long. 112°00'30" W., extending north to a point at lat. 40°35'30" N., long. 112°00'00" W., on a 11-mile arc of the I–MOY LOC/DME antenna; and that airspace directly east of the previously described area and west of I–15 extending upward from 6,000 feet MSL up to and including 10,000 feet MSL; and that airspace south of the 7,000 to 10,000 feet MSL area and 6,000 to 10,000 feet MSL area north of a line at lat. 40°23'30" N., west of a line at long. 112°09'00" W., east of I–15 extending upward from 9,000 feet MSL to and including 10,000 feet MSL, excluding Restricted Areas R–6412A and R–6412B when active. This airspace is configured for terrain clearance and areas limited in radar and radio coverage.

4. That airspace extending upward from 9,000 feet MSL up to and including 10,000 feet MSL east of I–15, south of Interstate 84 west of a line at long. 111°45'00" W., and north of a line at lat. 40°31'30" N. This airspace is configured for terrain clearance east of Salt Lake City International Airport.

The preceding general summary of the proposed TCA airspace configuration identifies that airspace which is necessary to contain large turbojet aircraft operations at Salt Lake City International Airport. ATC will provide control and separation of all flights within the proposed airspace boundaries. Furthermore, ATC authorization is requisite to aircraft operations within that airspace. Establishment of this TCA will greatly enhance the safety of flight within the congested airspace overlying the Salt Lake City metropolitan area by facilitating the separation of controlled and uncontrolled flight operations. Section 71.403 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated Jaunary 3, 1989.

Regulatory Evaluation Summary

The FAA is required to assess the benefits and costs of each proposed rulemaking action to assure that the public is not burdened with rules having costs which outweigh their benefits. This section contains an analysis which quantifies, to the maximum possible extend, the costs and benefits of establishing a TCA at Salt Lake City, UT. This regulatory evaluation summary should be read in conjunction with the NPRM since it provides additional background information.

This proposal is intended to lower the likelihood of midair collisions by increasing the capability of the ATC system to separate all aircraft in terminal airspace around the Salt Lake City International Airport. This action was prompted by data indicating that a high percentage of near midair collisions reported to the FAA in terminal areas involve VFR aircraft that are not required to be under the control of ATC. Thus, the overall objective of this proposal is to substantially increase safety while accommodating the ligitimate concerns of airspace users.

Costs-Benefits Analysis

a. Costs

The FAA estimates the total cost expected to accrue from implementation of the proposed rule to be $4.4 million ($2.6 million, discounted, 15 years) in 1987 dollars. Approximately $2.5 million (discounted) or 97 percent of the total estimated costs would be incurred by the FAA primarily for additional personnel. The remaining costs would be incurred by small GA aircraft operators who would be required under this proposal to equip their aircraft with Mode C transponders sooner than they would have for the ARSA under the previous FAA rule: "Transponder With Automatic Altitude Reporting Capability Requirement (Mode C)" (53 FR 23356, June 21, 1988). This rule became effective June 21, 1988, and will be implemented in two phases. Phase I, to begin in July 1989, will require a transponder with Mode C at and above 10,000 feet MSL and in the vicinity (30 nautical miles) of TCA primary airports. There are currently 23 TCA's.

Phase II will implement a transponder with Mode C requirement in the airspace in the vicinity (10 nautical miles) of ARSA primary airports. Phase II becomes effective on December 30, 1990, and will affect over 135 ARSA's. Also in Phase II, a transponder with Mode C will be required at other designated airports for which either a TCA or ARSA has not been adopted. Consequently, most aircraft without Mode C transponders would need ATC authorization to fly within 30 nautical miles of a TCA primary airport, within 10 nautical miles of an ARSA primary airport, or within controlled airspace of other designated airports that would also require Mode C transponders.

Thus, this evaluation, as well as the Mode C rule, assumes that all aircraft without Mode C would acquire such equipment rather than circumnavigate the subject airport. The only aircraft without this equipment would be nonelectrical and antique types. Costs to those types of aircraft operators have already been accounted for by the Mode C rule. As a result, aircraft operators impacted by this proposal would only incur the opportunity cost of capital by requiring them to acquire, install, and maintain Mode C transponders one year earlier than they would be required to do so in accordance with Phase II of the Mode C rule.

b. Benefits

This proposed rule is expected to generate potential benefits primarily in the form of enhanced safety to the aviation community and the flying public. Such safety, for instance, would take the form of reduced casualty losses (namely, aviation fatalities and property damage) resulting from a lowered likelihood of midair collisions due to increased positive control in airspace to be established by the TCA. In addition, potential benefits are expected to accrue in the form of improved operational efficiency on the part of FAA air traffic controllers.

Ordinarily, the potential benefits of this proposal would be the reduction in the probability of midair collisions resulting from converting the existing ARSA to a TCA. However, due to the recent Mode C rule (and to some extent, the rule for Traffic Alert and Collision Avoidance (TCAS), 54 FR 940, January 10, 1989). the number of potential midair collisions avoided by this proposal is expected to be significantly lower. Nevertheless, this proposal is still expected to accrue benefits in terms of enhanced safety, though on a much smaller scale.

This point can be illustrated with the use of statistical models based on actual and projected critical near midair collision (NMAC) incidents in lieu of actual midair collisions. (A critical NMAC is an event involving two aircraft coming within 100 feet of each other; the fact that they do not collide is not due to an action on the part of either pilot but, rather, is due purely to chance.) Since midair collisions involving Part 135 aircraft and especially Part 121 aircraft are rare, the use of critical NMAC's will serve to illustrate, to some degree, the potential improvements in aviation safety of implementing this proposal.

Simple regression analyses were prepared for this evaluation which focused on critical NMAC's and aircraft operations in the 23 existing TCA's and in a random sample of 23 of the existing 79 ARSA's (as of 1986 and 1987). The results of these analyses indicated that TCA's have approximately 68 percent fewer critical NMAC's annually, on average, than ARSA's. While there is no demonstrated relationship between NMAC's and actual midair collisions, the lower NMAC rate does indicate a more efficient separation of aircraft in congested airspace.

As the result of these findings, if the existing Salt Lake City ARSA were to remain unchanged (and the recent Mode C and TCAS rules were not in effect), the Salt Lake City Terminal Area would be expected to experience approximately 2.1 critical NMAC's annually (or 31 critical NMAC's over the next 15 years). If, however, the ARSA were to become a TCA, this figure would reduce to approximately 0.7 critical NMAC's annually (or 11 critical NMAC's over the next 15 years). Thus, over the next 15 years, this proposal could result in the reduction of approximately 21 critical NMAC's. However, it is important to note that many, if not most, of these potential critical NMAC's would never materialize as predicted primarily because of the "Mode C" rule as it is applied to the Salt Lake City ARSA and, to some extent, the "TCAS" rule.

According to Phase II of the Mode C rule, all aircraft operating within 10 nautical miles (except for flights under the outer 5-mile "shelf") of an ARSA primary airport must be equipped with a Mode C Transponder. Phase I of the Mode C rule requires, as of July 1989, aircraft operating within 30 nautical miles of a TCA to be equipped with a Mode C transponder. These requirements are expected to significantly reduce the risk of midair collisions in ARSA's and TCA's. For this reason, the primary safety benefit of this proposal to create a TCA in 1989 at Salt Lake City is that the safety enhancements of the Mode C and TCAS requirements will occur one year earlier than would be otherwise expected without this proposal. A second safety benefit would be in terms of the lowered likelihood of midair collisions as a result of expanding the lateral boundaries of positive ATC by 20 nautical miles through replacing the Salt Lake City ARSA with a TCA.

Thus, the safety benefits of the establishment of a new TCA, while positive, would be less than would otherwise accrue in the absence of the Mode C and TCAS rules. Since this proposal essentially extends the effects of the Mode C rule, virtually all of its potential safety benefits are assumed to be part of that rule. Such benefits cannot be estimated separately and, therefore, are considered to be inextricably linked primarily to the Mode C rule. Over a 15-year period, the Mode C rule is expected to generate total potential safety benefits of $344 million (discounted, in 1987 dollars). (The Mode C rule benefits estimate of $310 million for 10 years has

been adjusted to a 15-year period for the purpose of comparability with the TCAS rule and other FAA rulemaking actions.) It is important to note that part of these safety benefits would be attributed to the TCAS rule. Thus, the potential safety benefits of this proposal, and the Mode C and TCAS rules are considered to be inextricably linked.

Another potential benefit of the proposed rule would be improved operational efficiency on the part of FAA air traffic controllers. Under the proposed rule, Mode C transponder requirements would ease controller workload as a result of aircraft being controlled due to a reduction in radio communications. The proposed rule would also make potential traffic conflicts more readily apparent to the controller. As the result of improved operational efficiency, the impact of controller workload increased by separation requirements in the proposed TCA would be somewhat offset due to the controller's ability to adjust the volume of VFR traffic in any given portion of the TCA.

Improved operational efficiency should generate other types of benefits in the form of significant reductions in the number of VFR aircraft requests denied and VFR aircraft delayed during the busy periods. As the result of converting the existing Salt Lake City ARSA to a TCA, the improved operational efficiency would accrue due to the availability of additional air traffic controllers. If the Salt Lake City ARSA were to remain intact, such air traffic personnel would not be required. Therefore, potential benefits of improved operational efficiency, which are not considered to be quantifiable in monetary terms in this evaluation, would be attributed to this proposal rather than either the Mode C rule or TCAS rule.

c. Comparison of Benefits and Costs

The total cost that would accrue from implementation of the proposed rule is estimated to be $2.6 million (discounted, in 1987 dollars). Approximately, 3 percent of this total cost estimate would fall on those GA aircraft operators without Mode C transponders in the form of opportunity costs by requiring them to acquire such avionics equipment, including maintenance, one year sooner than they otherwise would under the status quo. The typical individual GA aircraft operator impacted would incur an estimated one-time cost ranging from $86 to $191 (discounted) under the proposed rule. (As a result of the opportunity cost concept, the derivation of these cost estimates are too complex to discuss briefly. Therefore, the reader should refer to the detailed regulatory evaluation, which is contained in the docket, for a full explanation of the method by which these costs estimates were made.)

The potential benefits of the proposed rule would be the lowered likelihood of midair collisions from the conversion of the existing ARSA to a TCA. The number of midair collisions avoided and their respective monetary values cannot be estimated for this proposal independent of the Mode C and TCAS rules, but the FAA believes the risk would be substantially reduced. An FAA analysis prepared for this evaluation, however, has shown that critical near midair collisions occur approximately two-thirds less frequently in a TCA than within an ARSA. The FAA believes that even after the aviation community complies with the Mode C and TCAS rules, locations converting from ARSA's to TCA's would continue to experience reduced critical NMAC's. In addition, the proposed rule would generate improved operational efficiency benefits on the part of FAA air traffic controllers, though they are not considered to be quantifiable in monetary terms.

Clearly, in view of the cost of compliance relative to the significant reduction in the likelihood of midair collisions as well as improved operational efficiency in the Salt Lake City Terminal Area, the FAA firmly believes the proposed rule is cost-beneficial.

The Regulatory Evaluation that has been placed in the docket contains additional detailed information related to the costs and benefits that are expected to accrue from the implementation of this NPRM.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules which may have "significant economic impact on a substantial number of small entities."

The small entities which could be potentially affected by the implementation of this proposed rule are unscheduled operators of aircraft for hire who own nine or fewer aircraft.

Virtually all of the aircraft operators impacted by this proposed rule would be those who acquire Mode C transponder capability. The FAA believes that all unscheduled aircraft operators (namely, air taxi operators) potentially impacted by this proposed rule already have Mode C transponders due to the fact that such operators fly regularly in or near airports where radar approach control service has been established. Even if some of these operators were to acquire, install, and maintain Mode C transponders, the cost would not have a significant economic impact on a substantial number of them. The annual FAA threshold for significant economic impact is $3,700 (1987 dollars) for a small entity. According to FAA Order 2100.14A (Regulatory Flexibility Criteria and Guidance), the definition of a small entity, in terms of an air taxi operator, is one with nine aircraft owned, but not necessarily operated.

If we were to assume that a particular aircraft operator had nine aircraft without transponders, then the annual one-time cost per impacted aircraft would be approximately $210 (undiscounted, for the purpose of comparability with the figure of $3,700). The total annual one-time cost per small entity would amount to an estimated $1,890. Thus, the annual worst case cost for a small entity would fall far below the FAA's annual threshold of $3,700. Therefore, the FAA believes this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

International Trade Impact Assessment

The proposed rule would neither have an effect on the sale of foreign aviation products or services in the United States, nor would it have an effect on the sale of U.S. products or services in foreign countries. This is because the proposed rule would only potentially impact small GA aircraft operators without Mode C, and not aircraft manufacturers. The average cost of acquiring Mode C capability is estimated to range from $900 (to upgrade from a Mode A transponder) to $2,000 (to acquire a Mode C transponder without having a Mode A transponder). The cost of acquiring Mode C capability is not considered to be high enough to discourage potential buyers of small GA airplanes.

Federalism Implications

The proposed regulation would not have substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, preparation of a Federalism assessment is not warranted.

Conclusion

For the reasons discussed under "Regulatory Evaluation," the FAA has determined that this proposed regulation is not a "major rule" under Executive Order 12291. This rulemaking is considered a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). It is certified that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 14 CFR Part 71

Aviation safety, Terminal control areas and airport radar service areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.403 [Amended]

2. § 71.403 is amended as follows:

Salt Lake City, UT [New]

Primary Airport: Salt Lake City International Airport (lat. 40°47'13" N., long. 111°58 ' W.) Salt Lake City International Airport Runway 16 ILS (I-MOY) Localizer/DME (LOC/DME) Antenna (lat. 40°46'23" N., long. 111°58'23" W.)

Boundaries. Area A. That airspace extending upward from the surface to and including 10,000 feet MSL beginning at a point where the 13-mile arc of the Salt Lake City International Airport Runway 16 ILS (I-MOY) localizer/distance measuring equipment (LOC/DME) antenna intercepts Interstate 15 (I-15), extending south on I-15 unit intercepting the Salt Lake City International Airport Airport Traffic Area (ATA), extending south along the Salt Lake City International ATA boundary until intercepting I-15, extending south on I-15 until intercepting the 11-mile arc of the I-MOY LOC/DME antenna clockwise until intercepting the Union Pacific railroad tracks, extending southwest on the Union Pacific railroad tracks until intercepting the 13-mile arc of the I-MOY LOC/DME antenna clockwise until the point of beginning, excluding that airspace below 6,000 feet MSL beginning at a point where the 11-mile arc of the I-MOY LOC/DME antenna intercepts the Union Pacific railroad track, extending northeast to a point at lat. 40°44'50" N., long. 112°11'00" W., extending southeast to a point at lat. 40°39'20" N., long. 112°02'30" W., extending east to a point at lat. 40°39'20" N., long. 110°58'10" W., extending south until intercepting the 11-mile arc of the I-MOY LOC/DME antenna, and excluding that airspace below 5,300 feet MSL west of I-15 bounded on the south by Cudahy Lane, on the west by Redwood Road until intercepting the power transmission lines, extending northeast along the power transmission lines until intercepting I-15.

Area B. That airspace extending upward from 7,600 feet MSL to and including 10,000 feet MSL between the 13-mile radius and the 25-mile radius of the I-MOY LOC/DME antenna, excluding that airspace south of the Union Pacific railroad tracks and that airspace beginning at a point where the 25-mile arc intercepts the Ogden Municipal Airport ATA, extending south along the Ogden Municipal Airport ATA and the Hill AFB ATA until intercepting U.S. Highway 89.

Area C. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL beginning at a point where the 11-mile arc of the I-MOY LOC/DME antenna, intercepts the Union Pacific railroad tracks, extending northeast to a point at lat. 40°44'50" N., long. 112°11'00" W., extending southeast to a point at lat. 40°39'20" N., long. 112°02'30" W., extending east to a point at lat. 40°39'20" N., long. 110°58'10" W., extending south until intercepting the 11-mile arc of the I-MOY LOC/DME antenna, counterclockwise until intercepting I-15, extending south on I-15 until intercepting a line at lat. 40°27'30" N., extending west on lat. 40°27'30" N., until a point at lat. 40°27'30" N., long. 112°00'30" W., extending north to a point at lat. 40°35'30" N., long. 112°00'00" W., on the 11-mile arc of the I-MOY LOC/DME antenna clockwise until the point of beginning.

Area D. That airspace extending upward from 7,000 feet MSL to and including 10,000 feet MSL beginning at a point where the 11-mile arc of the I-MOY LOC/DME antenna, intercepts a line at long. 112°09'00" W., bounded on the west by long. 112°09'00" W., on the south by a line at lat. 40°27'30" N., to a point at lat. 40°27'30" N., long. 112°00'30" W., extending north to a point at lat. 40°35'30" N., long. 112°00'00" W., on the 11-mile arc of the I-MOY LOC/DME antenna clockwise to the point of beginning.

Area E. That airspace extending upward from 9,000 feet MSL to and including 10,000 feet MSL beginning at a point where a line at long. 111°45'00" W., intercepts Interstate 84 (I-84), extending south on long. 111°45'00" W., until intercepting lat. 40°31'30" N., extending west until intercepting I-15, extending north along I-15 until intercepting the Salt Lake City International Airport ATA, extending north along the Salt Lake City International Airport ATA boundary until intercepting I-15, extending north along I-15 until intercepting U.S. Highway 89, north along U.S. Highway 89 until intercepting Hill AFB ATA, extending north along Hill AFB ATA boundary until intercepting I-84, extending east along I-84 until the point of beginning.

Area F. That airspace extending upward from 9,000 feet MSL to and including 10,000 feet MSL bounded on the north by a line at lat. 40°27'30" N., on the east by I-15, on the south by lat. 40°23'30" N., on the west by a line at long. 112°09'00" W., to the point of beginning, excluding that airspace contained in Restricted Areas R-6412A and R-6412B when active.

Area G. That airspace extending upward from 7,800 feet MSL to and including 10,000 feet MSL beginning at a point where the 25-mile arc of the I-MOY LOC/DME antenna intercepts the Ogden Municipal Airport ATA counterclockwise along the Ogden Municipal Airport ATA and the Hill AFB ATA boundaries until intercepting the 25-mile arc of the I-MOY LOC/DME antenna to the point of beginning.

§ 71.501 [Amended]

3. § 71.501 is amended as follows:

Salt Lake City International Airport, UT [Removed]

Issued in Washington, DC, on June 19, 1989.

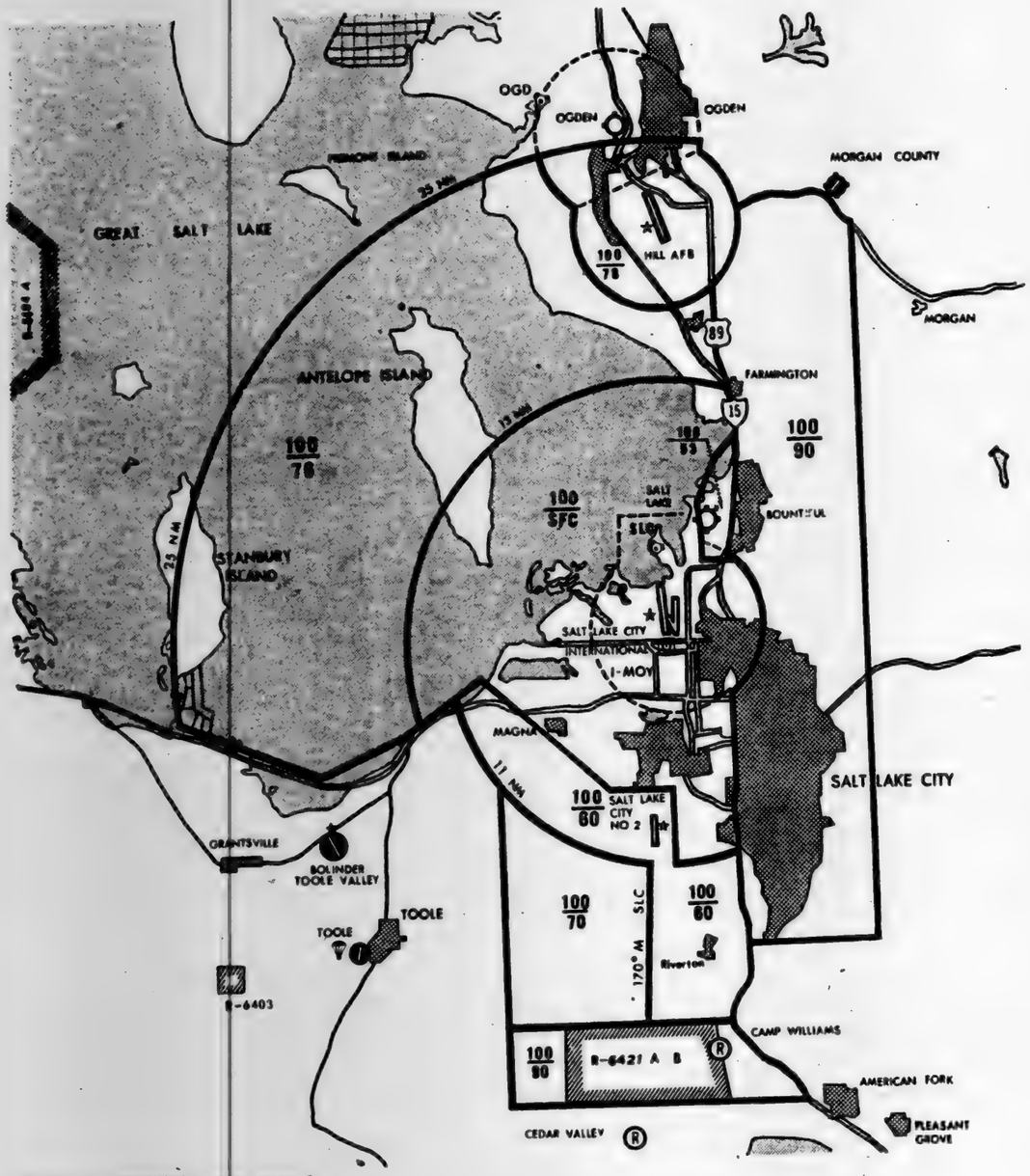
Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

BILLING CODE 4910-13-M

TERMINAL CONTROL AREA
SALT LAKE CITY, UTAH
SALT LAKE CITY INTERNATIONAL AIRPORT

(NOT TO BE USED FOR NAVIGATION)



[FR Doc. 89-14859 Filed 6-22-89; 8:45 am]
BILLING CODE 4910-13-C

federal register

Friday
June 23, 1989

Part VIII

Department of Transportation

Federal Aviation Administration
14 CFR Parts 21, 25, and 121
Location of Passenger Emergency Exits in Transport Category Airplanes; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21, 25, and 121

[Docket No. 25491; Amdts. Nos. 21-65, 25-67, 121-205]

RIN 2120-AC25

Location of Passenger Emergency Exits in Transport Category Airplanes

June 13, 1989.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule establishes a new standard that limits the distance between emergency exits on transport category airplanes. This rule prohibits airplane manufacturers and air carriers from increasing the distance between emergency exits to more than 60 feet. Existing regulations do not limit the distance. This rule is intended to ensure an opportunity for safe passenger evacuation during an emergency.

EFFECTIVE DATE: July 24, 1989.

FOR FURTHER INFORMATION CONTACT: Arthur J. Hayes, Aircraft Engineering Division (AIR-120), Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone (202) 267-9937.

SUPPLEMENTARY INFORMATION:

Background

Since 1967, the Federal Aviation Administration (FAA) has regulated the location of emergency exits on airplanes by requiring that an exit be provided for every specified number of passengers, that an exit be located where it would allow the most effective means of passenger evacuation, and that exits be distributed as uniformly as practicable taking into account passenger distribution. (14 CFR 25.807) An underlying assumption has been that a uniform distribution of exits accounting for passenger distribution results in reasonable seat-to-exit and exit-to-exit distances.

However, some recent exit configurations have exit distances that are greater than those envisaged when the exit rule was adopted. Of the new wide-body transports that were being designed when the rule was adopted, the Boeing Model 747 had a maximum distance between exits of 44 feet; the McDonnell Douglas Model DC-10, 47 feet; and the Lockheed Model L-1011, 50 feet. (All figures are rounded off.) Basic narrow-body transport models typically had shorter distances. Derivative configurations of these models show an increase in typical distances. Exit-to-exit distance, originally 50 feet in the L-1011-385-1, increased to nearly 70 feet in a later model, the L-1011-385-3. The Boeing 747 showed an increase from 44 feet in the 747-100, -200, and -300 models to nearly 70 feet in the 747-200 and 747-300 models with the No. 3 exits deactivated. A recent certification request proposed a derivative configuration with a distance substantially greater than 80 feet. The FAA denied this request. These recent cases of exit configuration design indicate that the exit distribution requirement of § 25.807(c) alone is ineffective in preventing increases in escape path distances. While the agency recognizes that exit distance considered alone is not dispositive of the conditions which provide for a safe evacuation, under our current state of safety knowledge, this factor is clearly an important variable. As discussed below, however, the agency considers it preferable that a performance standard for evacuation be employed in the future, so as not to artificially constrain design options. With the specific intent of developing the information necessary to propose such a performance standard to replace (among other factors affecting safe evacuation) this artificial exit distance limitation, the agency will gather the best available safety expertise in a formally chartered advisory committee to consider and report on the best means for achieving that end.

The agency's concern over the significance of escape path distance recently increased in connection with type certification activities for a derivative of the Boeing Model 747 (B-747), necessitating this action in the interim, until better knowledge permitting development of a performance standard becomes available. In September 1984, at the request of the Boeing Company (Boeing), the Seattle Aircraft Certification Office (ACO) approved a modification of the B-747 which would deactivate a pair of over-wing exits and reduce the maximum passenger capacity of the main deck by 110, from 550 to 440. The Seattle ACO approved the modification on the basis that such a modification was within the requirements of the regulations at that time. The FAA received many letters from the public objecting to the deactivation of emergency exits. In response to the public objections, the FAA Administrator asked the Office of Airworthiness (presently the Aircraft Certification Service) for a review of the ACO action. The review, dated March 1, 1985, found that the B-747, as modified, fully met all applicable rules and that no exemptions, waivers, or special conditions were granted or considered. Notwithstanding this conclusion, on June 12, 1985, the FAA Administrator wrote a letter to a number of U.S. air carriers strongly encouraging them to maintain the original number of emergency exits on their passenger-carrying Boeing 747 airplanes, because of safety concerns not addressed by the rule.

On June 24, 25, and 26, 1985, the House Subcommittee on Investigations and Oversight heard testimony from witnesses opposed to exit deactivations and from the FAA Administrator. The Administrator promised the committee a review of all issues raised in the letters received by the FAA and in testimony given before the committee. The review was summarized in a report to the Administrator, dated August 5, 1985. It found that the approval for design modifications to B-747 airplanes was technically valid in accordance with the regulations but that issues raised by the public added new emphasis and perspective to the issue of escape path distances. The report concluded that all of the issues raised by the public questioned the efficacy of the rules rather than the validity of the approval. The report stated that the FAA would hold a Public Technical Conference on emergency evacuation. As a result, an Emergency Evacuation Task Force was formed in Seattle, Washington, in September of 1985. The task force consisted of members of the interested public and was chaired by the FAA. The task force reviewed recent design, maintenance, and operational experience of the new generation of narrow- and wide-body transports. It examined the full range of emergency evacuation topics, including passenger emergency exits, cabin configuration, emergency evacuation demonstrations, evacuation slides, crewmember duties and training, and passenger safety information. Although no consensus was reached by the task force, the task force efforts were helpful to the FAA in its own ongoing efforts to improve emergency evacuations. Unfortunately, the task force did not provide any basis for a performance standard to address the concerns raised by increasing exit distances.

The FAA reviewed the issues surrounding the Boeing approval as well as information gained on modifications of other wide-body transport airplanes, information received from flight attendants who are knowledgeable about emergency evacuation

procedures, and information from the public and other interested persons. As a result, the FAA decided that the rule on number and location of passenger emergency exists were not adequate to maintain the original intent of those rules that exists be located to provide an opportunity for passenger evacuation in an emergency, because aircraft designs had significantly changed in the over 20 years since the rule was written.

The agency's reassessment of the rules in light of recent aircraft designs and events has confirmed the importance of the distance betewen exists and the potential impact of excessive distance on the chances of passenger survival in an emergency. Accordingly, in the absence of a performance standard which provides acceptable safety, the FAA is amending Parts 21, 25, and 121 of the Federal Aviation Regulations (FAR) to prohibit any passenger emergency exist from being located more than 60 feet from any adjacent passenger emergency exist. The FAA has determined that the specification of the distance between exists along with the existing uniform distribution rule is sufficient to provide the appropriate distance between a passenger seat and an emergency exit, though the preferable alternative would be a performance standard. For the purposes of this rule, the distance between exists is measured along a line parallel to the airplane's longitudinal axis for exits on the same deck and on the same side of the fuselage.

This rulemaking action covers only one of many factors affecting cabin evacuation. The FAA considers evacuation within a systems or "holistic" framework, i.e., a number of interrelated factors affect the success of an evacuation. These factors include: cabin attendant training, fuselage attitude, door design, door reliability, chute design and reliability, chute inflation times, aisle design, seat materials, exist low lighting, aisle lighting, crew check lists passenger safety information, cabin configuration, and other factors.

The FAA is addressing these and other related issues by establishing an emergency evacuation advisory committee to develop recommendations for an evacuation performance standard and appropriate further modifications and additions to the agency's existing evacuation regulations. The committee will include representatives of crewmembers, airlines, manufacturers, and other interested organizations. The committee will provide the FAA with recommendations on areas which concern improved specification of emergency evacuation regulations and other new techniques which should enhance cabin evacuation. Specifically, the committee will be tasked to design a performance standard against which safe evacuation capability of existing and new aircraft designs can be measured in order to replace artificial exist distance limitations and other nonperformance oriented design criteria mandated by this and other regulations. This group will be asked to submit recommendations on airplane evacuation standards by July 1, 1991, and to review all relevant cabin evacuation issues that the FAA asks it to consider, as well as issues raised by passengers, the National Transportation Safety Board, and the Congress. The FAA will use the committee's recommendations as a basis for reformulating the agency's evacuation regulations, if warranted by analysis in accordance with Executive Order 12291. While such a reformulation into an evacuation performance standard is hoped to obviate the need for distance limitations established by this final rule, the FAA finds that, in the interim until such performance standards are available, distance limits between emergency exist doors are necessary in the interest of airline passenger safety.

On October 20, 1987, the FAA published Notice of Proposed Rulemaking No. 87-10 (Notice No. 87-10) (52 FR 39190) which proposed to establish new standard limits on transport category airplanes for the distance between any passenger seat and the nearest emergency exit and the distance between exits. On March 2, 1988, the Administrator testified before the House Committee on Public Works and Transportation, Subcommittee on Investigations and Oversight. In that testimony the Administrator stated that, having reviewed the public comments, the FAA planned to issue a final rule to prescribe a new standard to limit the distance between exists. Comments received on the proposals are described and responded to below.

Discussion of Comments

The FAA received 31 comments on the proposals. Approximately two-thirds of the comments are generally supportive of the FAA proposals. These supportive comments are from associations of airline employees, from individual flight attendants and private citizens, and from an association of airline passengers. In addition to these groups, there are favorable comments from the National Transportation Safety Board (NTSB), The Airworthiness Authorities Steering Committee, Transport Canada, and The Civil Aviation Administration of China.

Although about one-third of the commenters oppose the proposals, none of these comments contains either a supportable alternative performance standard or any additional proof that would convince the FAA that the proposals should be withdrawn. These opposing comments come from foreign air carriers, from airline associations, and from airplane manufacturers.

The discussion of comments is divided into the following categories of issues: (1) Common sense support of the agency's approach; (2) retroactive nature of the agency's action; (3) claimed discriminatory and inconsistent nature of the agency's action; (4) offsetting factors; (5) accident and service experience; (6) actual emergency evacuation conditions versus evacuation demonstrations; (7) sixty-foot determination; (8) economic costs; and (9) comments beyond the scope of the proposals.

Common Sense Support of the Agency's Approach

Most of the supporting commenters agree that, given our present state of knowledge regarding safety matters, exit-to-exit distances affect the outcome of emergency evacuations. Throughout the favorable comments, the common sense assumption is presented that a passenger who is close to an emergency exit has a better chance to escape than a person farther away. A British aeronautical engineer states:

> With the considerable test and operational data available to the FAA it is reassuring to read that they now also support my long held opinion, and that of my colleagues, that the escape path distance can have a major effect on the outcome of the evacuation.

The commenters who support the proposals think that the FAA should address the issues of exit-to-exit distance and seat-to-exit distance as well as other cabin improvements (e.g., smoke hoods and location of cabin attendant stations).

The FAA agrees that distance from a passenger to an exit and distance between exits are relevant factors (though not the only important ones) in emergency evacuations and, therefore, is amending its airworthiness requirements to establish a standard limit on distances between exits, in the absence of a preferable performance standard. For reasons discussed under the heading Rule Clarifications, the FAA is not adopting a specific limit on the distance between a passenger seat and the nearest emergency exit. In recent years, the FAA has completed several

rulemaking actions that addressed other safety features that could increase the likelihood of passenger survival in an emergency evacuation. On July 10, 1986, the FAA issued Amendments 25–61 and 121–169 (51 FR 26206) to upgrade fire safety standards for cabin interior materials in transport category airplanes. On May 29, 1987, the FAA issued Amendment 121–194 (52 FR 21472) to establish new carry-on baggage requirements. The Task Force Report on Emergency Evacuation of Transport Airplanes (discussed in the background section of the preamble of Notice No. 87–10) identified additional areas that are under study within the FAA and that could be the subject of future rulemaking. The agency expects that the emergency evacuation advisory committee to be formed will consider all of these data in its development of a recommended performance standard for emergency evacuations.

Retroactive Nature of the Agency's Action

Several commenters state that the FAA is attempting by general rulemaking to disapprove, retroactively, a particular emergency exit design that the FAA admits is legal under existing regulations. Specifically, The Boeing Company describes three ways that this rule would be applied retroactively.

(1) It would apply to applications for supplemental type certificates (STC) or for amendments to type certificates that were submitted to the FAA before October 16, 1987 (§ 25.2).

(2) It would apply to airplanes that already have STC's or amended type certificates but have not yet received standard airworthiness certificates (§ 21.183(f)).

(3) It would prevent airplanes that are already in service from being modified in a way that was legal under the certification rules that applied to those airplanes when they were manufactured (§ 121.310(m)).

Only one commenter specifically criticizes the agency's intention to make §§ 21.183(f) and 121.310(m) applicable as of the date of issuance of the proposals.

Boeing states that the FAA does not have discretion to change the rules in the ways described above. Boeing also states that once the FAA has approved a type design and issued a production certificate the manufacturer is entitled under § 21.183(a) to a standard airworthiness certificate without further showing. Boeing states that the FAA cannot change the automatic nature of § 21.183(a) because it maintains that § 21.183(a) is taken directly from the agency's statutory mandate. Section 603(c) of the Federal Aviation Act of 1958 (Act), 49 U.S.C. 1423(c), provides:

> If the Administrator finds that the aircraft conforms to the type certificate therefor, and, after inspection, that the aircraft is in condition for safe operation, he shall issue an airworthiness certificate.

Boeing further states that Congress passed legislation giving the FAA specific authority to issue retroactive regulations relating to aircraft noise and sonic boom which shows that the FAA does not otherwise have the authority to issue retroactive regulations under the Act.

Boeing's description of how the new rule is applied retroactively is correct; however, Boeing and other commenters are incorrect in claiming that the FAA does not have any authority to apply airworthiness certification rules retroactively.

The basic scheme of the type certification regulations is set out in § 21.17. Paragraph (a) of § 21.17 reads as follows:

> (a) Except as provided in § 23.2, § 25.2 and in Part 36 of this chapter, an applicant for a type certificate must show that the aircraft, aircraft engine, or propeller concerned meets—
>
> (1) The applicable requirements of this subchapter that are effective on the date of application for that certificate unless—
>
> (i) Otherwise specified by the Administrator, or
>
> (ii) Compliance with later effective amendments is elected or required under this section, and
>
> (2) Any special conditions prescribed by the Administrator.

Section 21.17(a) has described for many years four methods by which an applicant for a type certificate could be required to comply with regulations that are not the applicable requirements that are effective on the date of application for the type certificate. First, retroactive regulations could be applicable under § 25.2. Second, under § 21.17(a)(1)(i), the applicable regulations could be otherwise specified by the Administrator. Third, under § 21.17(a)(1)(ii), compliance with later effective regulations could be required. Fourth, under § 21.17(a)(2), special conditions could be prescribed by the Administrator.

In addition, airplane manufacturers have always been affected by either special airworthiness requirements of instrument and equipment requirements that have been included in the applicable operating rules (e.g., Subparts J and K of Part 121). Even though an airplane fully met the type certification requirements, an airline could not operate the airplane unless it also met the special airworthiness or instrument and equipment requirements that apply to that airline.

Thus, for many years, the FAA has had the authority to upgrade applicable type certification and airworthiness requirements as needed to ensure that the appropriate level of safety is maintained. This authority to apply rules in a manner that has certain retroactive effects has been exercised by the FAA on many occasions and applies to supplemental type certificates and to amendments to type certificates. The language in section 603(c) of the Act in no way limits the above-described authority since the issuance of an airworthiness certificate becomes automatic only after the Administrator has found full compliance with the type certificate or production certificate, as applicable. (See § 21.183)

Therefore, the fact that the FAA was given specific authority in section 611 of the Act to issue retroactive rules relating to aircraft noise and sonic boom does not lead to Boeing's conclusion. As described above, the authority to promulgate retroactive requirements to address safety issues is consistent with the proper exercise of the agency's safety rulemaking authority, and exists independently from the authority to promulgate standards to address the control and abatement of noise and sonic boom. Therefore, the enactment of section 611 in no way diminishes the authority of the FAA under the Act to adopt the standard described herein.

Claimed Discriminatory and Inconsistent Nature of the Agency's Action

Boeing states that the proposed Part 121 amendment is arbitrary and capricious and discriminates against Boeing because it is specifically targeted at the B–747. Boeing's basic argument is that if safety is the justification for the operating rule, then all airplanes that do not meet the 30-foot/60-foot requirements would have to be barred from future Part 121 operations. According to Boeing, however, § 121.310(m), as proposed, would permit Lockheed Model L–1011–500 (L–1011–500) airplanes that are presently operating under Part 121 to continue to operate under that part even though they do not meet the 30 foot/60-foot requirements while prohibiting operation of comparably modified or newly-manufactured B–747 airplanes. Boeing and other commenters state that the FAA position is inconsistent in the following ways:

(1) A 10-door B–747 would be considered safe for 550 passengers on the main deck while an 8-door B–747 would not be considered safe for 400 passengers or even for substantially lower maximum seating configurations.

(2) L–1010–500 airplanes with emergency exits that are 65.6 feet apart would continue to be legal under Part 121.

(3) Foreign air carriers could continue to operate their previously-modified 8-door B–747's into and out of the United States but could not sell a modified B–747 to a Part 121 certificate holder unless the over-the-wing exits were reactivated.

The Lockheed Corporation (Lockheed) states that the regulatory evaluation prepared for the proposals is inconsistent with the proposed rule language because, while the regulatory evaluation states that the L–1011–500 airplanes would not be impacted by the proposed rule, the language of proposed § 121.310(m) would prevent such airplanes now owned by foreign operators from being sold to U.S. airlines.

KLM Royal Dutch Airlines (KLM) suggests that because the agency's distinctions may not be understandable to the public, airlines like KLM might be forced to reactivate exits so that they would not have internal inconsistencies in their operations.

That airplanes will be flying side by side in air carrier operations even though they neither meet the same requirements nor possess the same characteristics is in no way a new concept. At times the FAA has adopted retrofit rules that apply to all airplanes operating under a particular operating rule, and at other times it has allowed certain airplanes to continue operating until they are retired.

Under this rule there would continue to be inconsistencies in the seat-to-exit ratios of various airplane types. Under the current rules, airlines have chosen to configure their cabin space in various ways and many airplanes do not have as many seats as would be allowed for that airplane under § 25.807; however, this rulemaking addresses exit-to-exit distance as a separate issue from seat-to-exit ratios. The current seat-to-exit ratios in § 25.807 are not changed by this rulemaking. Perhaps the emergency evacuation advisory committee will develop recommendations for a performance standard which accommodates the change implied by this comment.

The statement from the regulatory evaluation referenced in the Lockheed comment did not mean that L–1011–500 airplanes would be excluded from the effect of proposed § 121.310(m). The statement referred to the fact that, since Lockheed is no longer manufacturing the L–1011–500, there would be no direct economic impact on Lockheed. Under new § 121.310(m), no existing foreign-owned airplane (whether a L–1011–500 or a modified B–747 or any other transport category airplane) that exceeds the exit-to-exit limit can be obtained by a U.S. airline to be operated under Part 121.

This rule is intended to "hold the line" on growth of exit distance until an adequate performance standard can be developed. The overall effect of this final rule is threefold:

(1) No operator of U.S.-registered airplanes can modify one of its existing airplanes to exceed the exit-to-exit limit established by this rulemaking under Part 121.

(2) No operator can purchase from a foreign air carrier and operate under Part 121 any existing airplane that exceeds the exit-to-exit limit established by this rulemaking.

(3) No airplane manufactured after October 16, 1987, that exceeds the exit-to-exit limit will receive a U.S. standard airworthiness certificate.

Thus, while this rule contains the above-mentioned effects, this rule does not require any operator of a U.S.-registered airplane to expend any resources to retrofit any airplane that was in its fleet as of October 16, 1987. These effects clearly are associated with no direct costs.

Offsetting Factors

Several commenters state that improvements to emergency exit slide design and maintenance and to emergency exit door maintenance and actual seating configurations are offsetting factors which would allow faster and safer evacuations with fewer exits. This, is fact, might be true and could be a factor to be considered by the emergency evacuation advisory committee in its attempts to develop a suitable performance standard.

Boeing cites specific emergency exit and slide design improvements for the B–747 in the following areas: (1) Reduced inflation time of up to 50 percent; (2) use of higher strength, tear, and puncture-resistant sliding surface materials; (3) improve 25-knot wind performance; (4) an escape slide design with improved load-bearing capacity; and (5) lengthening the No. 2 door escape slide so that it can be usable for a wider range of conditions.

Virtually all of the foreign air carriers state that the FAA failed to consider that the standard seating configuration for the main deck of their B–747's ranged from 322 passengers to 384 passengers, all well below the 440 that would be the maximum under the present rules for an 8-door configuration. British Airways suggests as an alternative to the FAA proposals a 10-percent reduction in the present limit of 440 passengers to 396 for the 8-door configuration.

While the FAA recognizes that there have been improvements in emergency evacuation equipment and maintenance in recent years, in the absence of an accepted and validated performance standard against which to measure these factors and their contribution to evacuation success, these improvements do not offset the need to place a limit on the distance between exits until the performance standard is developed. Furthermore, as one commenter notes, a large proportion of the world fleet is not yet fitted with the inflatable slides which incorporate the latest safety advances. Also, this commenter notes that, despite improvements in emergency evacuation procedures for wide-bodied transports, the time necessary to evacuate these types of airplanes in full-scale demonstrations remains close to the time necessary to evacuate narrow-bodied airplanes.

The FAA is not addressing seat-to-exit ratios in this rulemaking. As discussed previously, this rulemaking is needed to hold the line on maximum exit-to-exit distance to provide the appropriate level of safety until a performance standard can be developed. This requirement will work together with present seat-to-exit ratio requirements, uniform distribution requirements, and improvements in evacuation equipment to increase the likelihood that passengers will survive in emergencies involving fire where evacuation is necessary.

Accident and Service Experience

Boeing and others point to actual evacuations in emergency situations in which 8-door B–747's were evacuated safely. British Airways describes its own experience in two emergency evacuations (Azores, 1985, and Los Angeles, 1987) where 334 and 370 passengers, respectively, plus crewmembers evacuated with only a few minor injuries to passengers.

The examples cited by commenters do not contradict the proposed rule changes. The main objective of the 60-foot exit-to-exit distance requirement is to prevent any further increase in exit-to-exit distances until an adequate performance standard can be developed.

While the evacuation situations described by British Airways are both examples of successful actual emergency evacuations, neither involved crash conditions. The evacuations involved neither fire nor

smoke, and all emergency exits were operable. In accidents studied where some passengers survived and some did not, evidence indicates that proximity to an exit increased the likelihood of survival. (See the following discussion.)

Actual Emergency Evacuation Conditions Versus Evacuation Demonstrations

Positions vary on the question of whether distance to exits is as important as other factors in evacuation. The Association of Flight Attendants (AFA) states that distance to exits is as important as other factors. In support of its position, the AFA provides quotes from two earlier FAA reports. A 1964 report entitled "Human Factors of Emergency Evacuation" state that no passenger should be more than 22 feet from an exit. (AM 65-7, p. 8, Mohler, Swearingen, McFadden, and Garner). A 1970 FAA report entitled "Survival In Emergency Escape From Passenger Aircraft," stated:

> In all three accidents, the distance between initial seat location and the nearest usable exit tended to be greater among fatalities than survivors. This leads to the not unsurprising conclusion that it is better to sit closer to an exit than farther away.
> (AM-70-16, p. 55, Snow, Carroll, and Allgood)

The AFA also states that testimony of flight attendants who had been in crashes confirms that distance to exit doors is important in escaping.

Many commenters who think that the FAA is overemphasizing distance to exits appear to agree with one commenter who states that the time needed to evacuate airplanes in emergencies is a function of both distance to the nearest emergency exit and the time to evacuate. This commenter suggests that with shorter distances, lines may form and that the piling up or queuing of passengers in emergency evacuations may actually impede the ability to evacuate airplanes because passengers could be more prone to panic if they are lined up and waiting.

Most of the opposing commenters also appear to believe that the FAA is not giving adequate recognition to the numerous emergency evacuation demonstrations that have proven that airplanes, such as models of the B-747 with 8 doors on the main deck, could be evacuated within less than 90 seconds with 50 percent of the exits blocked along with the other simulated emergency conditions required by the rules.

As noted in Notice No. 87-10, the evacuation demonstration required by § 25.803 neither establishes a maximum escape path distance nor demonstrates that escape path distance is not a major factor in actual emergencies. That demonstration is conducted to provide a benchmark against which the FAA can consistently evaluate emergency exit performance with various internal seating and emergency exit configurations. It does not simulate actual post-crash emergency evacuation conditions, nor could it reasonably do so. It is not an acceptable evacuation performance standard.

As explained in Notice No. 87-10, with present designs, excessive escape path distance can be a major impediment to evacuation in a number of situations which service experience has shown might occur during an actual emergency. The typical passenger cabin with a single aisle feeds evacuees to pairs of exits, one exit on each side of the cabin (or dual aisles to dual lane exits in typical wide-body cabins). In an actual emergency evacuation, exits at one end of the cabin might be made unusable by fire, smoke, structural damage, water submersion, landing gear collapse, or other causes, leaving one or more pairs of usable exits in the remainder of the cabin. This is commmonly the case in a pool fire accident, where escape time differences of only a few seconds can be critical. In this situation, the aisle cannot feed evacuees to a pair of typical floor level exits fast enough to use the full evacuation capability of the exit pair. The flow rate of the aisle is less than that of the exit pair, making the aisle itself the critical impediment which determines the time required for passengers to escape the airplane. Similarly, dual aisles inadequately feed pairs of exits equipped with dual-lane evacuation slides.

In the situation where one exit in a pair of exits is unusable, as in an evacuation demonstration, the aisle is not the critical impediment to evacuation. In this case the aisle can feed more evacuees to the remaining single exit than that exit can handle. This results in passenger queues at exits. The limited flow rate of the single exit is the impediment which determines evacuation time. This is the situation which some commenters contend demonstrates that aisle length has no effect on evacuation time. The FAA acknowledges that in evacuation demonstrations, aisle distance may not be as critical a factor in evacuation time as it is in real accident emergencies where the aisle may be barely passable. The agency expects that these variables will be more appropriately accounted for in a performance standard developed by the emergency evacuation advisory committee.

Sixty-Foot Determination

A number of commenters address the proposed maximum distance between emergency exits. Several commenters who support the proposed maximum distance between exits cite the historical increase in distance between exits as described in Notice No. 87-10. These commenters agree with the FAA position that earlier improvements in crashworthiness safety regulations had not focused on the distance between exits because as a practical matter those distances were all within a range generally agreed to be acceptable. Some of these commenters suggest that while they think a distance of less than 60 feet could be justified, they will accept the agency's proposal of 60 feet.

Virtually all of the commenters who oppose the proposal state that there is no basis for the 60-foot maximum distance requirement. Typical of these commenters is KLM Royal Dutch Airlines' statement that the 60-foot limit between emergency exits was and is an arbitrary figure, not supported by objective evidence or analysis. KLM states that the 60-foot limit was a subjective opinion expressed by airline cabin crew delegations at the 1985 Evacuation Technical Conference in Seattle. KLM and other commenters urge the FAA to consider other factors besides exit distance: factors such as dual aisles versus single aisles and the number of people who have been evacuated within the 90-second limit in demonstrations of emergency evacuation procedures under Part 121.

Several commenters assume that the primary justification for the proposed 60-foot maximum distance is the tests discussed in Notice No. 87-10 that were conducted in the emergency evacuation simulator at the FAA Civil Aeromedical Institute (CAMI). These commenters specifically dispute the statement made in Notice No. 87-10 that the CAMI tests indicate that a reduction in aisle flow by about one-third could be reasonably expected when the floor is inclined because of, for example, gear collapse.

Boeing contends that the FAA selectively used the CAMI data. British Airways states that it disagrees with the conclusions drawn by the FAA on flow rates and has not been able to support it in its reading of the appropriate CAMI report.

As the discussion in Notice No. 87-10 clearly indicated, the justification for the maximum 60-foot distance between exits is not based on specific empirical research (CAMI's or other), success or failure of evacuation demonstrations, or anecdotal evidence from actual crash evacuations. However, testing, historical data, analysis, and informed engineering judgment lead the FAA to conclude that, in the absence of a preferable but presently unavailable evacuation performance standard, it would not be prudent to allow distances between emergency exits to increase without providing a limit. As Notice No. 87-10 stated, the issue of maximum distance between exits was not addressed in the major crashworthiness regulations in the 1960's because even the new wide-bodied transports then being designed had a maximum exit-to-exit distance ranging from 44 feet to 50 feet. Before Notice No. 87-10 was issued, one designer of a derivative version of an existing airplane proposed exit-to-exit distances substantially exceeding 80 feet. This is not acceptable, for reason of safety, in present designs.

For the FAA to determine that 60 feet is the maximum allowable distance between exits, the FAA does not have to conclude, as Boeing and many other commenters seem to assume, that 65 feet or 75 feet or even 85 feet would never under any circumstance be safe. A survivable crash situation in which upwards of 400 people safely evacuate an airplane with exits more than 60 feet apart is certainly possible. But, as other commenters note, there also have been survivable crashes in which many people died or were injured because some or nearly all of the available exits were unusable. As the FAA has stated on numerous occasions, Part 25 of the FAR contains many requirements for built-in redundance because it would be imprudent to allow otherwise. For instance, three-engine transport category airplanes must be capable of maintaining safe flight with two engines inoperable, not because such flight is desirable but because such capability may be necessary, although rarely, to avoid a catastrophe.

Therefore, the decision to establish a maximum distance of 60 feet between exits is not a decision based on specific provable data. Rather, in the absence of a technically acceptable evacuation performance standard, it is a decision based on a balancing of door distance in the total equation of cabin evacuation, that is, how door distance interrelates with aisle design, exit row lighting, door design, chute inflation time, and other factors that go into the cabin evacuation scenario, given our present understanding of the interrelationship of these variables. The FAA finds that the selection of a maximum 60/foot distance between exits is a prudent and necessary safety decision consistent with its mandate under the Act and in the absence of an acceptable performance standard.

The agency has placed in the public docket (No. 25191) an explanation of its analysis and use of the CAMI tests in arriving at the one-third reduction in flow rate mentioned in Notice No. 87-10. These tests were just one factor in the agency's decision. The primary technical basis for the difference between the one-third reduction and lesser figures mentioned by commenters is the emphasis given to different parameters in the tests.

Economic Costs

Many foreign air carriers and Boeing comment that the agency's regulatory evaluation did not consider potential revenue loss to air carriers because they could not increase their passenger capacity. These commenters state that with 8 emergency exits on the main deck, it would be possible to increase the seating capacity by 6 to 12 seats while maintaining an interior layout consistent with the current layout (a mix of first class, business class, and coach seating; seat pitch and width; and interior service areas such as closets, galleys, and lavatories). Commenters provide a range of estimates of the annual value of these seats to air carriers in additonal passenger revenues.

The loss of potential revenue because an air carrier cannot increase its passenger capacity should not be considered as an impact of this rulemaking. Airlines are currently operating B-747's well below the type certificated maximum seating capacities: 440 with 8 exits and 550 with 10 exits on the main deck. This rulemaking does not prohibit an airline from increasing passenger seating capacity to the maximum allowed. Although allowing deactivation of two of the exit doors could potentially provide air carriers with an opportunity to increase passenger seating capacity without changing the present interior layout, it is not a cost directly related to this rulemaking. It is a cost resulting from air carrier management decisions regarding cabin configuration and passenger service.

Only foreign air carriers and Boeing raised the issue of increasing passenger seating capacity. The Air Transport Association of America (ATA), which represents U.S. air carriers, states in its comments, "Few ATA member airlines are directly affected by the proposed limitations on seat/exit locations; those which are directly affected have, for reasons of their own, elected to restrict their future airplane seat/exit configurations to those which comply with the proposed limits." Consequently, this rulemaking does not have a substantial impact on U.S. air carriers.

The cost figures submitted regarding lost opportunity are inaccurate. For example, both Boeing and Korean Airlines assume that the present passenger load factor would apply to the additonal seats gained by deactivation of the exit doors; however, if the current passenger load factor is about 70 percent on an airplane with 350 seats, the additonal 6-12 seats would be used only when flights were full or nearly full. The additional seats would more accurately have a load factor of about 10 percent. Such an adjustment would significantly reduce the lost opportunity costs of the air carriers.

KLM Royal Dutch Airlines expresses concern that it would be forced to reactivate exit doors in its 8-door B-747's because the public may think the airplanes with 8 doors on the main deck are unsafe. KLM states that reactivating the doors would cost $450,000 per airplane. The FAA is not requiring exit doors to be reactivated as a condition for continued airworthiness. As stated previously, the FAA is prohibiting air carriers and manufacturers from increasing exit-to-exit distances beyond the limitations in this rule because the preferable alternative of a performance standard cannot now be exercised. As a result of this rulemaking, airlines may voluntarily reactivate exit doors in the interest of safety. These costs would be voluntary and, therefore, are not being considered.

The Orient Airlines Association and Korean Airlines state that orders for 8-door B-747's have been placed with Boeing. In anticipation of delivery of these airplanes, the airlines have made plans; to change these plans, as the final rule would require, would involve incurring added costs. The FAA recognizes that inconvenience may be involved for foreign air carriers that had placed orders. However, any such lost opportunity costs are not considered except as they relate to U.S. trade (discussed in the International Trade Impact Assessment).

Boeing submitted cost estimates on fuel costs associated with additional weight and maintenance cost of the equipment for the two exits. These avoided costs were considered in the regulatory evaluation for the proposed rule. The estimated cost impact is $8,300 per B-747 per year operated. This consists of $6,800 in avoided fuel costs and $1,500 in avoided maintenance expenses. Boeing estimates an annual

cost increase of $4,780 per B–747. This consists of fuel costs of $1,080 and maintenance costs of $3,700. In light of these figures, an appropriate range of the potential per airplane annual cost increase of this final rule is from $5,000 to $6,000.

In summary, no additional cost/benefit information, which significantly alters the agency's original assessment of the proposed rule, was submitted in response to Notice No. 87–10.

Comments Beyond the Scope of the Proposals

The following are a number of comments that while relating to the overall issue of emergency evacuation are beyond the scope of this rulemaking:

- One commenter recommends a separate proposal to resolve the shortcomings and controversial aspects of simulated emergency evacuation demonstrations.
- British Airways recommends further evacuation testing to establish supportable, repeatable criteria rather than the subjective opinions expressed in Notice No. 87–10.
- McDonnel Douglas states that the issue is more complex than just distance alone and that the FAA should consider seat pitch, aisle width, door size, and seat density.
- ALPA states that the FAA should correlate distance to size of exit. For example, for less than a Type A exit, the maximum distance between exits should be 50 feet.
- Several commenters suggest that a flight attendant be required at each Type A emergency exit.

As stated earlier, this rulemaking focuses on exit-to-exit distances because an acceptable performance standard has not yet been developed. The FAA may address related issues, such as emergency evacuation demonstrations, cabin configuration, and location of flight attendants in other actions and in the deliberations of the emergency evacuation advisory committee. The recommendation by British Airways to conduct further evacuation testing before establishing criteria would only allow for a continuing increase in exit-to-exit distances. The FAA will continue to conduct research in emergency evacuations and will use such research results to increase the likelihood of passenger survival in emergencies. The FAA will also fully support and aggressively address the recommendations of the emergency evacuation advisory committee regarding proposal and adoption of a regulation implementing an evacuation performance standard.

Rule Clarifications

In addition to minor editorial corrections, the following specific changes have been made to the proposed rule language that appears in Notice No. 87–10.

Section 25.2

The phrase, "involving an increase in distance between any adjacent passenger emergency exits," in proposed § 25.2(b) has been replaced with the words "for an airplane manufactured after October 16, 1987,". This change makes the language of § 25.2 consistent with § 21.183(f) and clarifies the intent that § 25.2(b) applies only to newly-manufactured airplanes.

Sections 25.807(c)(7) and 121.310(m)

One commenter notes that the distance from the furthest upper deck seat (down the staircase) to a main deck exit in the B–747 is greater than 30 feet. This commenter recommends that the distance to the exit on the upper deck should be allowed to meet the rule. Two other commenters emphasize that both distances (seat-to-exit and exit-to-exit) should be measured parallel to an airplane's longitudinal centerline axis.

The intent is for each distance to be measured along a line parallel to an airplane's longitudinal axis for exits on the same deck and on the same side of the fuselage. The wording in the rule has been changed to accommodate these concerns, to clarify that adjacent exits are on the same side of the same deck, and to set a limit on exit-to-exit distance only on the same side of the same deck.

In addition, proposed §§ 25.807(c)(7) and 121.310(m)(1) have been withdrawn because they are redundant with respect to existing requirements. (Proposed § 25.807(c)(8) has been renumbered § 25.807(c)(7) in this final rule.) Section 25.807(c) currently requires that at least one floor level exit per side be located near each end of the cabin. Therefore, for a passenger seat located aft of the aft-most exit or forward of the forward-most exit, the escape path distance will not be excessive.

Regulatory Evaluation Summary

The regulatory evaluation prepared for this rule considers costs and benefits associated with amendments to Parts 21, 25, and 121 to limit passenger emergency escape path distance by establishing a standard that limits the distance any exit may be from an adjacent exit (no more than 60 feet).

The potential impact of this rule falls primarily on U.S. airline operators of B–748 airplanes. Although no B–747 airplane currently in use by U.S. air carriers has an exit-to-exit distance greater than 60 feet, a loss of potential revenues could occur if any U.S. air carrier intended to deactivate two exit doors from B–747 airplanes thereby increasing exit-to-exit distances beyond the standard limit established in this rulemaking.

This rule could have a potential impact on operators of Lockheed Model L–1011–385–3 (L–1011–500) airplanes. These airplanes are no longer in production and those currently in existence in U.S. air carrier service have been excluded from the requirements of this rulemaking. Noncomplying L–1011–500's may not enter Part 121 operations after October 16, 1987. The L–1011–500's owned by foreign operators before October 16, 1987, cannot be used by a Part 121 operator unless they are modified to comply with the exit distance requirements. To modify such an airplane is prohibitively expensive.

After reviewing the comments received on Notice No. 87–10, the FAA has revised its regulatory evaluation of this final rule. No U.S. air carrier indicated any interest in deactivating emergency exits on its existing B–747 airplanes or ordering new airplanes with exits deactivated even if regulations allowed such deactivation. The ATA, which represents U.S. air carriers, stated in its comments, "Few ATA members are directly affected by the proposed limitations on seat/exit locations; those which are directly affected have, for reasons of their own, elected to restrict their future airplane seat/exit locations to those which comply with the proposed limits." Therefore, the FAA concludes that the final rule will not have an effect on the revenues of U.S. air carriers because it incorporates current industry practice into regulation.

There may be some unquantifiable safety or cost effects on firms which produce executive configurations of airline transport category airplanes. Some of these newly-manufactured airplanes may be affected by the final rule. However, since most executive conversions are destined for overseas customers, any such airplanes which did not meet the final rule could be accommodated under the deviation authority of Part 21.

A benefit of the final rule is that it will ensure that the current level of safety of B–747 airplanes used in Part 121 operations is maintained by precluding the deactivation of emergency exits. The rule also will prevent any decrease in safety related to emergency exit distances in future airplane designs when compared to current airplanes by establishing an exit-to-exit distance standard.

Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980 was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules which may have a significant impact on a substantial number of small entities.

This final rule will not have a significant economic impact, positive or negative, on a substantial number of small entities. This regulation will potentially impact primarily two types of entities: the manufacturer of B–747 airplanes and airline operators whose fleets contain B–747 airplanes.

The FAA size threshold for determination of a small entity for aircraft manufacturers is 75 employees; that is, any aircraft manufacturer with more than 75 employees is considered not to be a small entity. The Boeing Company, manufacturer of the B–747 airplane, is not a small entity.

The FAA size threshold for a determination of a small entity for aircraft operators is 9 owned aircraft; that is, any operator with more than 9 owned aircraft is considered not to be a small entity. The FAA threshold for a substantial number of small entities is one third and at least eleven of the small entities must be impacted. There are less than eleven small entities that own B–747 airplanes.

International Trade Impact Assessment

This rule is not expected to have any measurable impact on international trade. Although some foreign operators could modify their airplanes by deactivating exit doors, such an action would not result in any serious competitive disadvantages for U.S. operators doing business abroad. This assessment is based on the fact that some foreign operators have already deactivated exit doors and this practice is not expected to continue to any great extent because virtually all of the world fleet operators, on average, are flying below their maximum seating capacity. Thus, this rule is expected to have no measurable impact on the trade opportunities for U.S. operators doing business abroad or for foreign operators doing business in the United States.

Federalism Implications

These regulations are issued under the authority of the Federal Aviation Act (Act) of 1958, as amended (49 U.S.C. 1301 et seq.).

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, it is determined that this final rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed in this preamble and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Assessment, the FAA has determined that this regulation is not major under Executive Order 12291. In addition, it is certified that this rule will not have a significant economic impact, positive or negative, or a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This rule is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A regulatory evaluation of the rule, including a Regulatory Flexibility Determination and Trade Impact Assessment, has been placed in the docket. A copy may be obtained by contacting the person identified under "FOR FURTHER INFORMATION CONTACT."

List of Subjects

14 CFR Part 21

Air transportation, Aircraft, Aviation Safety, Safety.

14 CFR Part 25

Air transportation, Aircraft, Aviation safety, Safety.

14 CFR Part 121

Air carriers, Air transportation, Aircraft, Airplanes, Airworthiness directives and standards, Aviation safety, Common carriers, Crashworthiness, Emergency evacuation, Safety, Transportation.

The Rule

Accordingly, the Federal Aviation Administration amends Parts 21, 25, and 121 of the Federal Aviation Regulations (14 CFR Parts 21, 25, and 121) as follows:

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

1. The authority citation for Part 21 continues to read as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2); 42 U.S.C. 1857f–10, 4321 et seq., E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. By amending § 21.183 by adding a new paragraph (f) to read as follows:

§ 21.183 Issue of standard airworthiness certificates for normal, utility, acrobatic, commuter, and transport category aircraft; manned free balloons; and special classes of aircraft.

* * * * *

(f) *Passenger emergency exit requirements.* Notwithstanding all other provisions of this section, each applicant for issuance of a standard airworthiness certificate for a transport category airplane manufactured after October 16, 1987, must show that the airplane meets the requirements of § 25.807(c)(7) in effect on July 24, 1989. For the purposes of this paragraph, the date of manufacture of an airplane is the date the inspection acceptance records reflect that the airplane is complete and meets the FAA-approved type design data.

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

3. The authority citation for Part 25 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 49 CFR 1.47(a).

4. By amending § 25.2 by redesignating the introductory text as paragraph (a), redesignating paragraphs (a), (b), (c) and (d) as paragraphs (a)(1), (a)(2), (a)(3) and (a)(4), respectively, and adding a new paragraph (b) to read as follows:

§ 25.2 Special retroactive requirements.

* * * * *

(b) Irrespective of the date of application, each applicant for a supplemental type certificate (or an amendment to a type certificate) for an airplane manufactured after October 16, 1987, must show that the airplane meets the requirements of § 25.807(c)(7) in effect on July 24, 1989.

5. By amending § 25.807 by adding a new paragraph (c)(7) to read as follows:

§ 25.807 Passenger emergency exits.

* * * * *

(c) * * *

(7) For an airplane that is required to have more than one passenger emergency exit for each side of the fuselage, no passenger emergency exit shall be more than 60 feet from any adjacent passenger emergency exit on the same side of the same deck of the fuselage, as measured parallel to the airplane's longitudinal axis between the nearest exit edges.

* * * * *

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

6. The authority citation for Part 121 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421 through 1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 49 CFR 1.47(a).

7. By amending § 121.310 by adding a new paragraph (m) to read as follows:

§ 121.310 Additional emergency equipment.

* * * * *

(m) Except as provided by § 121.627(c) and except for an airplane used in operations under this part on October 16, 1987, and having an emergency exit configuration installed and authorized for operation prior to October 16, 1987, for an airplane that is required to have more than one passenger emergency exit for each side of the fuselage, no passenger emergency exit shall be more than 60 feet from any adjacent passenger emergency exit on the same side of the same deck of the fuselage, as measured parallel to the airplane's longitudinal axis between the nearest exit edges.

Issued in Washington, DC, on June 16, 1989.

Robert E. Whittington,

Acting Administrator.

[FR Doc. 89-14797 Filed 6-22-89; 8:45 am]

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June 23, 1989

Part IX

Department of Transportation

Research and Special Programs Administration

Inconsistency Ruling No. IR-22; City of New York Regulations Governing Transportation of Hazardous Materials; Notice of Decision on Appeal

BEST COPY AVAILABLE

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. IRA-40A]

Inconsistency Ruling No. IR-22; City of New York Regulations Governing Transportation of Hazardous Materials

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of decision on appeal.

SUMMARY: Inconsistent Ruling No. IR-22 (52 FR 46574; December 8, 1987) is affirmed in response to the appeal of the City of New York. The Inconsistent Ruling determines that certain New York City Regulations concerning transportation of hazardous materials are inconsistent with the Hazardous Materials Transportation Act and are therefore preempted.

EFFECTIVE DATE: June 19, 1989.

FOR FURTHER INFORMATION CONTACT: Mary M. Crouter, Senior Attorney, Office of the Chief Counsel, Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC 20590. (Tel. 202-366-4400).

SUPPLEMENTARY INFORMATION:

I. Background

A. General Authority and Preemption under the HMTA

Section 112(a) of the Hazardous Materials Transportation Act (HMTA) (49 App. U.S.C. 1811(a)) preempts "* * * any requirement, of a State or political subdivision thereof, which is inconsistent with any requirement set forth in [the HMTA], or in a regulation issued under [the HMTA]." This express preemption makes it evident that Congress did not intend the HMTA and its regulations to completely occupy the field of transportation so as to preclude any state or local action. The HMTA preempts only those state and local requirements that are "inconsistent."

In the HMTA's Declaration of Policy (section 102) and in the Senate Commerce Committee language reporting out what became section 112 of the HMTA, Congress indicated a desire for uniform national standards in the field of hazardous materials transportation. Congress inserted the preemption language in section 112(a) "in order to preclude a multiplicity of state and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous material transportation" (S. Rep. No. 1192, 93rd Cong., 2d Sess., 37 (1974)). Through its enactment of the HMTA, Congress gave the Department the authority to promulgate uniform national standards. While the HMTA did not totally preclude state of local action in this area, Congress apparently intended, to the extent possible, to make such state or local action unnecessary. The comprehensiveness of the Hazardous Materials Regulations (HMR), issued to implement the HMTA, severely restricts the scope of historically permissible state or local activity.

Although advisory in nature, inconsistency rulings issued by the Office of Hazardous Materials Transportation (OHMT) and appeals to the Administrator of the Research and Special Programs Administration (RSPA) under 49 CFR Part 107 provide an alternative to litigation for a determination of the relationship between Federal requirements and those of a state or political subdivision. If a state or political subdivision requirement is found to be inconsistent, the state or local government may apply to RSPA for a waiver of preemption. 49 App. U.S.C. 1811(b); 49 CFR § 107.215 through 107.225.

In issuing its advisory inconsistency rulings concerning preemption under the HMTA, RSPA is guided by the principles enunciated in Executive Order 12612 entitled "Federalism" (52 FR 41685, October 30, 1987). Section 4(a) of that Executive Order authorizes preemption of state laws only when the statute contains an express preemption provision, there is other firm and palpable evidence of Congressional intent to preempt, or the exercise of state authority directly conflicts with the exercise of Federal authority. The HMTA, of course, contains an express preemption provision, which RSPA has implemented through regulations and applied in a series of inconsistency rulings beginning in 1978.

Since these proceedings are conducted pursuant to the HMTA, only the question of statutory preemption under the HMTA will be considered. A court might find a non-Federal requirement preempted for other reasons, such as statutory preemption under another Federal statute, preemption under state law, or preemption by the Commerce Clause and the Supremacy Clause of the U.S. Constitution because of an undue burden on interstate commerce. However, RSPA does not make such determinations in its inconsistency ruling process.

RSPA has incorporated into its procedures (49 CFR 107.209(c)) the following criteria for determining whether a state or local requirement is consistent with, and thus not preempted by, the HMTA:

(1) Whether compliance with both the non-Federal requirement and the Act or the regulations issued under the Act is possible; and

(2) The extent to which the non-Federal requirement is an obstacle to the accomplishment and execution of the Act and the regulations issued under the Act.

These criteria are based upon U.S. Supreme Court decisions on preemption. *Hines* v. *Davidowitz*, 312 U.S. 52 (1941); *Florida Lime & Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132 (1963); *Ray* v. *Atlantic Richfield Co.*, 435 U.S. 151 (1978).

The first criterion, the "dual compliance" test, concerns those non-Federal requirements which are irreconcilable with Federal requirements; that is, compliance with the non-Federal requirement causes the Federal requirement to be violated, or *vice versa*. The second criterion, the "obstacle" test, involves determining whether a state or local requirement is an obstacle to accomplishing and executing the HMTA and the HMR; a requirement which is such an obstacle is inconsistent. Application of this second criterion requires an analysis of the non-Federal requirement in light of the requirements of the HMTA and the HMR, as well as the purposes and objectives of Congress in enacting the HMTA and the manner and extent to which those purposes and objectives have been carried out through the OHMT's regulatory program.

B. Chronology

On April 13, 1987, the American Trucking Associations, Inc. and the National Tank Truck Carriers, Inc. (ATA/NTTC) applied for an administrative ruling to determine whether Directives 3-76, 5-63, 6-76, and 7-74 of the City of New York Fire Department's Bureau of Fire Prevention (BFP) are inconsistent with the HMTA and the HMR, and, therefore, preempted under section 112(a) of the HMTA. BFP Directives 6-76 and 7-74 create permit systems that govern the use of tank trucks which transport combustible or flammable mixtures within New York City. BFP Directive 3-76 establishes a City permit system for open and closed body platform trucks transporting flammable and combustible liquids, while Directive 5-63 creates a permit system for the transportation of compressed gases within the City.

On May 18, 1987, OHMT published a public notice and invitation to comment soliciting public comments on the ATA/NTTC application. Detailed comments were filed by the applicants (together with the National Paint & Coatings Association, Inc.) and by the City of New York (the City). Comments in support of the ATA/NTTC position were filed by the Union Carbide Corporation and the New Jersey Turnpike Authority.

The applicants' request for a similar ruling concerning hazardous materials time, routing, escort, and other restrictions of the City of New York and the Port Authority of New York and New Jersey is the subject of a separate docket (IRA-40B). On May 5, 1988, the Director, OHMT, issued Inconsistency Ruling 23 (IR-23), which was published at 53 FR 16840 on May 11, 1988. The City appealed IR-23 (53 FR 32184, August 23, 1988) and a separate decision addressing that appeal will be issued.

On December 2, 1987, the Director, OHMT, issued Inconsistency Ruling 22 (IR-22), which was published at 52 FR 46574 on December 8, 1987 (correction, 52 FR 49107, December 29, 1987). The Director determined that the City's permitting system for transportation of certain hazardous materials is inconsistent with the HMTA and the HMR and, therefore, preempted. The Director found that the City created its own independent set of cargo containment, equipment and related requirements that overlap extensive HMR requirements, are likely to encourage noncompliance with the HMR, and concern subjects that RSPA has determined are its exclusive province under the HMTA. Furthermore, he found that the City's directives result in serious delays in the transportation of hazardous materials.

For these reasons, the Director determined that BFP Directives 3-76 (except sessions 13 and 16), 6-76 (except section 25), 7-74 (except sections 31 and 32 and subsections 2-2 and 2-3), and 5-63 (except section 7) are inconsistent with the HMTA and the HMR and, therefore, preempted under section 112(a) of the HMTA (49 App. U.S.C. 1811(a)). Sections 13 and 16 of BFP Directive 3-76, section 25 of BFP Directive 6-76, sections 31 and 32 of BFP Directive 7-74, and section 7 of BFP Directive 5-63 were found consistent with the HMTA and the HMR. No opinion was rendered concerning subsections 2-2 and 2-3 of BFP Directive 7-74.

II. The Appeal

On February 2, 1988, the City filed an appeal of IR-22 with the Administrator of RSPA. The City filed a memorandum of law (City Memo.) and two extensive affidavits in support of its appeal, which was contained in its letter of January 27, 1988. One affidavit is that of the City's Assistant Corporation Counsel Grace Goodman, with exhibits consisting of excerpts from transcripts of depositions and other materials from a related court action in the U.S. District Court for the Eastern District of New York, *National Paint & Coatings Assn., Inc.* v. *City of New York*, 84 Civ. 4525 (ERK) (*National Paint* case). The other affidavit is that of Lawrence Lennon, Director of the Transportation Division of the City's Department of Planning, which originally was submitted in opposition to a motion for summary judgment in the *National Paint* case. The City made the following arguments:

(1) There allegedly are factual disputes about the City's regulations which should have been resolved before an inconsinstency ruling was issued, and the City's regulations allegedly meet the "dual compliance" test;

(2) OHMT allegedly erred in interpreting the law governing preemption under the HMTA; and

(3) OHMT allegedly erred in its application of the law to the City's regulations.

On February 24, 1988, RSPA published a public notice and invitation to comment on the appeal (53 FR 5538). In response, comments were submitted by the New Jersey Turnpike Authority, Fruehauf Corporation-Liquid & Bulk Tank Division, National Private Trucking Association, Truck Renting and Leasing Association, and ATA/NTTC, together with the National Paint & Coatings Association, Inc. (NPCA). NPCA also submitted a copy of Plaintiffs' reply brief in the *National Paint* case. Subsequently, rebuttal comments were filed by the City, "Bomar" Tank Discharge Systems, Inc., and D.R. Pesuit & Associates.

III. Decision on Appeal

I am issuing this decision in my capacity as Administrator of RSPA. I have thoroughly considered all of the issues raised in the appeal and the discussions of them in the comments and rebuttal comments. All of the issues being appealed were discussed exhaustively by the Director of OHMT in IR-22; thus I will respond only to the specifdic issues raised on appeal and generally will not reiterate the Ruling's discussions, with all of which I fully concur.

Although all major issues and arguments raised by the City and other commenters are summarized, I have not responded to or commented on many of those which are irrelevant to my decision. My failure to address any issue or argument should not be construed as agreement or disagreement with them.

I will discuss and decide each of the issues raised by the City and described above in Section II.

1. There Allegedly are Factual Disputes About the City's Regulations Which Should Have Been Resolved Before an Inconsistency Ruling Was Issued, and the City's Regulations Allegedly Meet the "Dual Compliance" Test.

a. The City's Arguments

The City stated that, despite its request that OHMT refrain from issuing a determination until the factual record could be developed at trial in the *National Paint* case, OHMT issued IR-22. The City argues that, following the logic of its abstention argument, it did not present to OHMT a point-by-point rebuttal of the applicants' characterizations of the City's directives. However, for purposes of the appeal, the City included a point-by-point refutation of the applicants' version of the facts.

b. Commenters' Arguments

ATA/NTTC argue that OHMT properly decided that its determination concerning the preemptive effect of its regulations was relevant and would be useful in the pending *National Paint* case. Furthermore, ATA/NTTC argue that because IR-22 determined that the areas regulated by the City are the exclusive province of RSPA under the HMTA, the City's factual arguments are irrelevant. ATA/NTTC Comments at 3.

c. Administrator's Decision

A threshold problem with the City's factual arguments is that the City has repeatedly and mistakenly construed OHMT's description (in IR-22) of the applicants' arguments as OHMT's own findings. For example, the City states (City Memo. at 3) that OHMT "is simply wrong" that the issuance of permits "is a matter of unfettered City discretion because no standards are specified therefor." (quoting 52 FR 46578). The statement the City quotes is in Part IV.B., which is captioned "Applicants' Arguments." Furthermore, the introduction to that statement reads, in part, "the following are among the more significant of those provisions * * * which *the applicants allege are inconsistent* with HMR provisions" (emphasis added). 52 FR 46578.

A more fundamental problem with the City's factual and "dual compliance" arguments, however, is that they are irrelevant. The Director of OHMT found the BFP Directives to be inconsistent because "the City has created its own independent set of cargo containment, equipment and related requirements

which overlap the extensive HMR requirements, which are likely to encourage noncompliance with the HMR, and which concern subjects that RSPA has determined are its exclusive province under the HMTA." 52 FR 46583. In short, the Director's decision was based not on the "dual compliance" test but on the "obstacle" test. Even assuming, *arguendo*, that each of the City's requirements, both individually and collectively, passed the "dual compliance" test, that fact would not be sufficient for a finding of consistency if those same requirements do not survive scrutiny under the "obstacle" test. Therefore, in this instance, no purpose would be served by a point-by-point comparison of the City's requirements with the Federal requirements. Furthermore, the City had ample opportunity to submit rebuttal comments in response to commenters' statements, but did not choose to do so. The City's legal argument that the Director failed to correctly apply the tests for inconsistency is discussed below under Sections 2 and 3.

2. OHMT Allegedly Erred in Interpreting the Law Governing Preemption Under the HMTA.

a. OHMT Allegedly Erred in Not Being Guided By the Prior Decision of the Federal District Court That Considered These Same Regulations

(1) *The City's Arguments.* The City argues that OHMT "should have deferred to the opinion of the District Court on those aspects of the law that the Court had already considered in a case dealing with the exact same regulations." The opinion to which the City refers was a decision by the District Court in the *National Paint* case to deny plaintiff's motion for summary judgment which argued that the City's regulations are preempted as a matter of law. The City asserts that the District Court decided Congress did not intend to preempt the fields occupied by the City's regulations; the goal of Congress in enacting the HMTA was not simply uniformity, but safety; and the court must look to the HMTA and the HMR directly, rather than to RSPA's administrative rulings and subsequent pronouncements, to determine the preemptive effect of the Federal regulations.

(2) *Commenters' Arguments.* ATA/NTTC states that the issue of the prior District Court decision "was squarely presented to OHMT in IR–22" and "OHMT properly decided that OHMT's determination concerning the preemptive effect of its regulations was relevant and useful." ATA/NTTC Comments at 7. ATA/NTTC argues that Federal District Judge Sifton "clearly indicated the court's special interest in OHMT's interpretation or determination of the preemptive effect of its regulations." They note that "Judge Sifton did not hold, and could not lawfully have ruled, that OHMT was precluded from making that determination, or that the court would have rejected OHMT's determination had it been issued at the time Judge Sifton ruled." ATA/NTTC Comments at 8. ATA/NTTC further states that OHMT, in IR–22, has now given its views concerning its intent to occupy the field and the resulting preemption of State regulations in the same area. ATA/NTTC argues, therefore, that OHMT correctly interpreted Judge Sifton's opinion. Although Judge Sifton found that plaintiffs had "not made a significant showing that federal regulations were intended to occupy the field," ATA/NTTC argues that—

> OHMT has now clearly and unequivocally indicated what the intent of the regulations is. Further, as to the City's fundamental defense, that federal tank truck regulations are only a minimum standard upon which local governments may in the interest of local safety build additional regulatory structures, Judge Sifton noted that the City's argument was persuasive only because OHMT had not rejected it. The Court stated that if plaintiffs were to establish that OHMT had rejected the argument and concluded that additional requirements could not be imposed, the City's argument would be unpersuasive.

ATA/NTTC Comments at 9.

Finally, ATA/NTTC notes that "the Court in the pending [*National Paint*] case invited the parties seeking to void the City's regulations to file a motion for summary judgment based on the ruling in IR–22." ATA/NTTC Comments at 7.

(3) *Rebuttal Comments.* The City argues that Judge Sifton's decision was correct concerning the lack of categorical preemption as to cargo containment systems under the HMTA and the HMR. The City argues that Judge Sifton's opinion was that the HMR, as to cargo tank requirements, specify that they are minimum requirements and, therefore, regulations shown to promote a higher degree of safety (e.g., the City's regulations) could not be an obstacle.

(4) *Administrator's Decision.* In response to the City's request that OHMT abstain from issuing an inconsistency ruling, the Director, OHMT, stated:

> In light, therefore, of the relevance of OHMT's intent concerning the preemptive effect of its regulations, the existence of the inconsistency ruling process for the issuance of advisory opinions concerning such issues, and the pendency of judicial proceedings in which an inconsistency ruling might be useful, OHMT will address the issues raised by the applicants.

52 FR 46576.

The Director reached this decision after considering Judge Sifton's 1985 memorandum and order denying plaintiffs' motion for summary judgment, and a leading Supreme Court case on preemption which was cited and discussed by Judge Sifton in that memorandum.

The City's characterization of Judge Sifton's 1985 memorandum as having already decided certain issues for purposes of this case is erroneous. An order denying a motion for summary judgment does not "decide" issues in an administrative proceeding. Furthermore, the City's contention that the cargo tank regulations are minimums which the City or any other jurisdiction is free to exceed based on a safety rationale is clearly wrong. RSPA has stated numerous times, in its HMR rulemaking dockets, written interpretations, and inconsistency rulings, that the HMR generally are minimum requirements which *the regulated industry* may exceed so long as the minimum requirements are met. The HMR are not, and have never been, minimum requirements which States or local jurisdictions could unilaterally choose to exceed by imposing additional obligations on the regulated industry. It is my determination that the Director, OHMT, acted properly in issuing IR–22, after considering the arguments of both parties to the litigation. Furthermore, as ATA/NTTC notes, the court in the *National Paint* case requested plaintiffs to file a motion for summary judgment based on IR–22. The District Court evidently considers IR–22 to be relevant and, as the Director stated in IR–22, "it is appropriate that the Federal Court have the benefit of the Agency's views prior to making a final decision concerning the preemption issues." 52 FR 46576.

b. IR–22 Allegedly Is Based On An Erroneous Statement of The Law

(1) *IR–22 allegedly fails to apply the proper tests for inconsistency*—(a) *The City's Arguments.* The City argues that despite OHMT's statement that there is a two-prong test for determining inconsistency, OHMT either ignored or wrongly applied the "dual compliance" prong. The City states that the Supreme Court held, in *Hines* v. *Davidowitz, supra*, that "determination of the absence of 'actual conflict' should come before any 'inquiry into congressional design,' because the presence of such

conflict would make the further inquiry unnecessary." The City asserts that in IR–22, OHMT stopped its inquiry at the point of determining that differing regulations exist, and did not inquire as to whether these differences conflict.

(b) *Commenters' Arguments.* ATA/NTTC state that "the legislative history of Section 1811 provides a clear picture of what Congress meant by 'inconsistent' and the degree to which Congress extended to OHMT the responsibility to preempt a field when necessary to accomplish the objectives of the HMR." ATA/NTTC Comments at 11. ATA/NTTC argue that the City's position that an inconsistency ruling "must evaluate *both* whether the City's regulations are an obstacle to achieving the goals of the HMTA *and* whether an actual conflict exists between the HMR and the City's regulations" is "incorrect and reflects a fundamental misunderstanding of preemption law." ATA/NTTC Comments at 13. ATA/NTTC state that the Supreme Court has repeatedly held that state law can be preempted in either of two general ways: (1) Where Congress has evidenced an intent to occupy a given field, or (2) where it is impossible to comply with both state and federal law or the state law stands as an obstacle to accomplishment of the purposes and objectives of Congress. Because the HMTA did not totally preclude state or local action in the field of hazardous materials transportation, ATA/NTTC point out that it is the second test with which OHMT is concerned. ATA/NTTC argue, however, that this second test is clearly set in the alternative, and the Supreme Court has "treated the obstacle and actual conflict tests as separate and independent." ATA/NTTC assert that the City's reliance on *Florida Lime and Avocado Growers, Inc.* v. *Paul,* 373 U.S. 132 (1963) is misplaced, and that "the City is flatly wrong in asserting that prior HMTA cases [citations omitted] require both a 'dual compliance' and obstacle analysis." ATA/NTTC state that in *Florida Avocado Growers* the Court looked at whether an actual conflict existed but "did not hold that a proper preemption inquiry must first concern an 'actual conflict,' or that both 'actual conflict' and 'obstacle' analyses must be undertaken." ATA/NTTC Comments at 14.

In *National Tank Truck Carriers, Inc.* v. *Burke,* 535 F. Supp. 509, 517 (D.R.I. 1982), *aff'd,* 698 F.2d 559 (1st Cir. 1983), according to ATA/NTTC, the "Court held that Rhode Island's curfew requirement did not directly conflict with federal requirements but was 'inconsistent in that it undermines the full purposes of the Act and is preempted.'" ATA/NTTC Comments at 17, quoting 535 F. Supp. at 519. Further, in *Missouri Pacific R.R. Co.* v. *R. Comm'n of Texas,* 671 F. Supp. 466, 480 (W.D. Tex. 1987) [*aff'd on other grounds,* 850 F.2d 264 (5th Cir. 1988), *cert. denied,* 109 S. Ct. 794 (1989)], ATA/NTTC note that the District Court relied solely on the obstacle test in finding certain Texas regulations to be inconsistent with the HMR. The Texas regulations required a caboose on all trains over 2,000 feet in length which transported hazardous materials. ATA/NTTC state that there was no evidence that dual compliance was impossible (because the HMR had no applicable regulation) and OHMT had not issued an inconsistency ruling. Nevertheless, the Court found the Texas regulations inconsistent under the obstacle test. ATA/NTTC therefore argue that OHMT's reliance solely on the obstacle test in IR–22 "was entirely proper and consistent with case law." ATA/NTTC Comments at 18.

(c) *Rebuttal Comments.* The City argues that OHMT exceeded its authority in IR–22 when it expressed an opinion concerning the preemptive effect of its regulations. It argues that OHMT has the authority to express its intent when promulgating regulations or when explicitly refraining from promulgating regulations, but that it "may not now purport to 'interpret' the HMR to say that only 'uniform' standards are not preempted." The City asserts that it does not contend that OHMT can never make valid interpretations of its intention through inconsistency rulings, but that those interpretations "must be based on, and not contradict, the regulations they purport to explain." City Reply Memo. at 7. The City argues that if RSPA has discovered a need for uniformity in the area of cargo containment, it may start a new rulemaking or seek a new statement of intent from Congress. The City asserts RSPA has apparently chosen the latter course because in 1987 it submitted proposed legislation to Congress which included packaging as one of the areas subject to Federal preemption.

(d) *Administrator's Decision.* The City is wrong in contending that OHMT exceeded its authority by interpreting the cargo containment regulations as preempting the City's regulations. In IR–22 the Director stated that Federal regulations in certain areas, including cargo containment, equipment, and related requirements are the exclusive province of the Department of Transportation. RSPA has stated that position in numerous previous inconsistency rulings, and reiterated it in IR–22. Therefore, the Director's decision to apply only the obstacle test was entirely consistent with previous RSPA practice and policy.

Furthermore, the Department's submission of proposed legislation to Congress is not evidence of the need to seek a new statement of intention from Congress. The Purpose of the Department's legislative proposal was to codify in the statute the experience which the Department had gained in administering the HMTA since its passage, thereby reducing the potential for conflict between Federal and non-Federal requirements.

(2) *IR–22 allegedly misinterprets the nature of the dual compliance test.*—(a) *The City's Arguments.* The City contends that OHMT has wrongfully expanded the test by saying that inconsistency is present not only where compliance with the non-Federal requirement would cause the Federal requirement to be violated, but also where compliance with the Federal regulation causes the non-Federal regulation to be violated. The City contends that case law "is quite specific that it is only where compliance with the state law would violate the federal rule, and *not* the other way around, that constitutes actual conflict for preemption purposes." The City cites *Florida Avocado Growers, supra,* and *Jones* v. *Rath Packing Company,* 430 U.S. 519, 540 (1977), as standing for this proposition.

The City further contends that OHMT erred in concurring with the applicants' claim that an actual conflict occurs when the City regulates a subject that the Federal Government does not regulate at all, simply because that subject can be characterized as within a general subject area that is Federally regulated.

(b) *Commenters' Arguments.* ATA/NTTC respond to the City's arguments by stating that the City misinterprets OHMT's use of the phrase "*vice versa*" in its description of the dual compliance test. ATA/NTTC contend that OHMT properly focused on whether the Federal and non-Federal requirements are "irreconcilable."

(c) *Administrator's Decision.* RSPA's understanding of the "dual compliance" test does not conflict with the City's. The "dual compliance" test invalidates those non-Federal requirements that are irreconcilable with Federal requirements because compliance with both is physically impossible. The "dual compliance" test is inapplicable to a situation where the non-Federal requirement is in addition to, or in an

area not covered by, a Federal regulation. Obviously, in such a situation, compliance with both the Federal and non-Federal requirements is possible, and the test for inconsistency thus is whether the non-Federal requirement is an obstacle to the accomplishment of the HMTA and the HMR.

(3) *IR–22 allegedly misinterprets the nature of the obstacle test*—(a) *OHMT allegedly exceeds its authority to define the aim of Congress*—(i) *The City's Arguments.* The City argues that "OHMT wrongly broadened the 'obstacle' test by saying that a local regulation is inconsistent if it appears to obstruct the stated aims, not only of Congress in enacting the law, but also of the administrative agency in interpreting its regulations." City Memo. at 26. The City contends that OHMT has no authority to "bootstrap" its limited authority to issue inconsistency rulings into an assertion that it totally occupies certain subject areas within the broad field of hazardous materials transportation. The City states that the legislative history of the HMTA suggests that Congress did not intend that "cargo containment systems, equipment and related requirements" be preempted. The City argues that Congress adopted the Senate's provision of the Secretary's rulemaking authority, which the City asserts was "softened" from the House version. The House version had stated the Secretary "shall" regulate certain topics, while the enacted provision states that the:

> regulations *may* govern any safety aspect of the transportation of hazardous materials which the Secretary deems necessary or appropriate, including, but not limited to, the packing, repacking, handling, labeling, marketing, placarding, and routing * * * of hazardous materials. (Emphasis added)

49 App. U.S.C. 1804(a).

Thus, the City argues, Congress did not prescribe any particular topics that must be regulated by the Secretary, to the exclusion of state or local authorities. The City notes that this list of topics does not include "cargo/containment systems, equipment or related requirements." Furthermore, the City argues, "it is only when the Secretary has actually promulgated regulations with which a local regulation might conflict that preemption could occur." City Memo. at 27.

The City contends that the tank truck regulations found in 49 CFR 178.340 *et seq.* "clearly state * * * that the standards they present are 'minimum requirements.' " The City states that the Federal Motor Carrier Safety Regulations (FMCSR; 49 CFR Parts 390–397) contain explicit statements that they are not intended to preempt more stringent local regulations (§ 393.30) and that additional consistent equipment is permitted (§ 393.2). Therefore, the City argues, because the HMR at 49 CFR 178.340–2(b) reference the "parts and accessories" regulations in the FMCSR, the FMCSR provisions on stringency and consistency must necessarily be applicable to the HMR.

The City takes issue with IR–22's reliance on prior inconsistency rulings to establish exclusive Federal authority over "cargo containment systems" because, according to the City:

> most of the DOT's prior inconsistency rulings have dealt with routing restrictions, not truck design specifications [and] those few that did discuss any specification were dealing with the transportation of radioactive waste, which is subject to an entirely different legislative history than that at issue here.

City Memo. at 29.

The City argues, for example, that IR–2, despite the use of the term "cargo containment systems" in its preamble, did not deal with them, but instead dealt with a permit system, hours of transit, an accessory lock, and other "regulatory features." The City contends that OHMT cannot rely on IR–7 through IR–15 because the hazardous materials at issue in those rulings were exclusively radioactive materials, which OHMT had addressed in a special rulemaking in 1981. The City argues that DOT's exercise of rulemaking authority in the area of radioactive materials does not mean that DOT has also occupied the field of "packaging" of other hazardous materials, and the City does not concede that "packaging" is synonymous with "containment systems."

Finally, the City argues that DOT does not appear sure of its preemption authority over packaging and containers since in 1987 it submitted a legislative proposal to Congress which would amend the HMTA to delineate specific subject areas which are exclusively Federal, including "the design, fabrication, marketing, maintenance, reconditioning, repairing, or testing of a package or container."

(ii) *Commenters' Arguments.* ATA/NTTC argue that OHMT used its statutory authority properly to define the intent of the HMTA. The commenters state that "the Supreme Court has clearly affirmed the concept of a Federal agency defining the scope of the preemptive effect of its own regulations through the exercise of its discretionary rulemaking authority." ATA/NTTC Comments at 21.

ATA/NTTC argue that the purpose of Congress in enacting the HMTA was to create national uniformity, which is why Congress consolidated rulemaking authority in DOT. The commenters also argue that OHMT's preemption authority, whether exercised through inconsistency rulings, rulemaking, or other expression of agency intent, has been fully recognized by the courts. ATA/NTTC specifically reject the City's contention that OHMT's authority is limited to a specific subject area. The commenters contend that OHMT's authority under the HMTA is the same for radioactive and non-radioactive hazardous materials, and cited both decisions in *City of New York* v. *U.S. DOT,* 539 F. Supp. 1237 (S.D.N.Y. 1982) *rev'd other grounds,* 715 F.2d 732 (2nd Cir.), *cert. denied,* 465 U.S. 1055 (1984), as affirming that authority. ATA/NTTC state that in both cases:

> the District Court and the Second Circuit * * * had the opportunity to specifically address the very argument raised here by the City. In those cases, the City argued and the court rejected the proposition that OHMT could determine a City regulation inconsistent and therefore, preempted only after making the specific factual evaluation called for under section 1811(b) for a waiver of preemption. The City also argued and the District Court rejected the notion that DOT lacks the authority to preempt as inconsistent with federal regulations, a non-uniform local regulation that is more stringent and better fosters the goal of local safety than the federal regulations. The District Court held that inconsistency with federal regulations could be based on non-uniformity in an area of regulation where OHMT has determined that uniformity is important to the objectives of the HMTA.

ATA/NTTC Comments at 25–26.

Finally, ATA/NTTC note that IR–22 is supported by the approach taken in the most recent Supreme Court preemption case, *California Coastal Commission* v. *Granite Rock Co.,* 107 S. Ct. 1419 (1987), in which "the Court focused exclusively on the obstacle test" and "looked at the Forest Service's regulations to determine whether the agency intended to occupy the regulatory field and preempt state law." In conclusion, ATA/NTTC assert that "the underlying national objectives of the HMTA, the comprehensiveness of OHMT's prior rulemaking and the prior inconsistency rulings * * *, PROVIDE A FIRM BASIS FOR OHMT in IR–22 to rely exclusively on the obstacle test."

(iii) *Administrator's Decision.* In enacting the HMTA, Congress vested the Secretary of Transportation with authority, delegated to RSPA, to regulate hazardous materials transportation. The legislative history indicates that Congress sought to improve safety through nationally uniform standards, where appropriate, but left to the Secretary's discretion the scope and extent of regulation. The scope of topics which may be regulated is expressly *not* limited to those enumerated in the HMTA, nor is that enumeration of topics an expression of Congress' intent that Federal regulations on those topics invariably are to preempt non-Federal requirements. RSPA has exercised the discretion delegated to it by regulating numerous areas of hazardous mataerials transportation to the degree it has determined necessary, and interpreted the law and its regulations to determine what role non-Federal entities may play in regulating each area. The City's contention that preemption can only occur when the Secretary has actually promulgated regulations with which a local regulation would conflict is plainly in error. The Secretary is responsible for implementing the HMTA and setting national standards. The absence of a regulation on a particular topic may indicate that non-Federal entities are free to regulate, but it may also mean that the Secretary has determined that no regulation is needed on that topic. Clearly, it is one of the purposes of the inconsistency ruling process to define the limits of permissible non-Federal rulemaking.

Furthermore, whether a non-Federal requirement is an obstacle to the accomplishment of the HMTA is not dependent upon RSPA's intent to occupy a certain subject area. An agency's intent to occupy a given area is only one indication of whether non-Federal entities may regulate in that area. Even in the absence of any Federal intent to occupy a given area, a non-Federal requirement may be found to be an obstacle if it interferes with accomplishing the stated purposes of the statute and implementing regulations.

The City misconstrues the applicability of the FMCSR. IR–22 addressed the preemptive effect of the FMCSR:

> For example, § 178.340–2(b) incorporates by reference the 49 CFR Part 393 requirements relating to parts and accessories applicable to all motor vehicles * * * and makes them applicable to * * * specification cargo tanks used for hazardous materials transportation. The parts and accessories requirements of 49 CFR Part 393, therefore, are HMR provisions and thus are compared with state and local requirements for preemption purposes under both the 'obstacle' and 'dual compliance' tests.

52 FR 46575.

Thus, those FMCSR provisions which are incorporated by reference into the HMR (except for those incorporated by 49 CFR 177.804) are treated as HMR provisions for the purposes of preemption.

The City's argument disputing IR–22's reliance on prior inconsistency rulings to establish exclusive Federal authority over cargo containment systems is not persuasive. IR–22 quoted at length from IR–2 (44 FR 75568, December 20, 1979) and subsequent IR's to demonstrate that as early as 1979, and consistently since then, "it has been clear that hazardous materials transportation cargo containment systems, packagings, accessories, construction tests, equipment and hazard warning systems are areas of exclusive Federal jurisdiction because of the total occupancy of those fields by the HMR." 52 FR 46580.

The City's argument that RSPA's regulatory authority with respect to radioactive materials is different from its authority with respect to other hazardous materials is specious. The HMTA does not differentiate the Secretary's authority on the basis of the hazardous materials to be regulated, but leaves those decisions to the Secretary's discretion. The Secretary has chosen to regulate the packaging of hazardous materials to such an extent that the Federal role is exclusive. In contrast, the Secretary has promulgated comprehensive routing requirements only with respect to radioactive materials, and, therefore, has not determined, with respect to other hazardous materials, that the Federal role in routing is exclusive. The City simply ignores a 10-year history of inconsistency rulings and expressions of RSPA intent which specifically contradict the City's position. The City's assertion with respect to DOT's legislative proposal is without merit as discussed earlier.

(b) *OHMT allegedly wrongly defines the aim of Congress*—(i) *The City's Arguments.* The City argues that OHMT wrongly defines the intent of Congress as being uniformity of regulation, when in fact the actual aim of Congress is safety. The City states that Judge Sifton's 1985 decision (*supra*) properly disposed of this issue, and that the Conference Report preemption language, rather than the Senate Report language more commonly referred to, should be relied upon. The City notes that the Conference Report "makes a point of coupling the exception provision to the preemption provision, showing that differing and more stringent local laws were not necessarily to be preempted." City Memo. at 34. Moreover, the City notes, the Conference Report apparently did not approve that portion of the Senate Report which stated that varying as well as conflicting regulations would be deemed inconsistent.

(ii) *Commenters' Arguments.* ATA/NTTC assert that the purpose of the HMTA is to improve "the regulatory and enforcement authority of the Secretary of Transportation to protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce." ATA/NTTC Comments at 29 (quoting 49 App. U.S.C. 1801). To achieve this purpose, ATA/NTTC state, the HMTA broadly delegates to the Secretary rulemaking authority over "*any safety aspect* of the transportation of hazardous materials which the *Secretary deems* necessary or appropriate." ATA/NTTC Comments at 29 (emphasis added), quoting 49 App. U.S.C. 1804. Commenters assert that in support of this authority, Congress provided explicitly that non-Federal regulations determined to be inconsistent with Federal regulations are preempted. Commenters further note that the First Circuit, in *National Tank Truck Carriers Association* v. *Burke,* 608 F.2d 819, 824 (1979) stated that the purpose of the HMTA "was to secure a general pattern of uniform, national regulations, and thus 'to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation'. Senate Committee on Commerce, Report No. 93–1192, September 30, 1974."

(iii) *Administrator's Decision.* RSPA does not disagree that the goal of the HMTA is to improve hazardous materials transportation safety, but Congress intended that the means of achieving that goal include national standards to be promulgated by DOT in order to reduce the need for State and local regulation. The inconsistency ruling process is intended to determine which state or local requirements are inconsistent with the nationwide Federal standards and, therefore, preempted, as Congress directed in Section 1811(a).

(c) *OHMT allegedly fails to balance the degree of alleged impediment to the national aim against legitimate local safety needs*—(i) *The City's Arguments.* The City asserts that where there is no *per se* preemption, it is necessary to use a balancing test to determine inconsistency by weighing "the City's legitimate safety concerns against whatever degree of uniformity is necessary to achieve the overall Congressional aim of safety." City Memo. at 36.

(ii) *Commenters' Arguments.* ATA/NTTC state that the City is wrong in asserting that inconsistency

determinations should be based on whether the non-Federal regulation is an obstacle to local safety, and adds that "OHMT may consider local safety factors in a separate administrative proceeding under section 1811(b) as a basis to waive preemption." ATA/NTTC Comments at 32. ATA/NTTC argue that once a state or local regulation has been determined to be inconsistent and therefore preempted, the HMTA authorizes the Secretary in a subsequent proceeding to determine whether the state or local regulation nevertheless qualifies for an exemption from preemption.

(iii) *Rebuttal Comments.* The City argues that OHMT erred in not considering the City's safety evidence in an area where Congress has not dictated uniformity and the regulations state that the standards are minimums. The City argues that a safety analysis would obviate the need for an additional administrative proceeding, and that "the waiver proceeding is available to insure that safety is considered even in those cases (such as radioactive transportation routing) where it is clear that Congress intended uniformity as its first line of defense. The existence of two separate proceedings is to cover two separate situations, not to be stages of a single proceeding." City Reply Memo. at 10.

(iv) *Administrator's Decision.* There is no suggestion in the plain language of the HMTA or the inconsistency regulations that the inconsistency ruling process and the waiver of preemption process are intended to apply to two different situations, nor have they been so applied. Consideration of local safety concerns is properly conducted during a waiver of preemption proceeding. As commenters point out, the correct analysis in an inconsistency ruling proceeding is whether a state or local requirement stands as an obstacle to compliance with the Federal regulations, not whether local safety concerns justify a waiver of preemption. Virtually all state and local hazardous materials requirements are prompted by safety concerns, but the focus of preemption analysis is whether state or local requirements are inconsistent with national objectives, not whether local safety concerns should be weighed against national concerns.

3. *OHMT allegedly erred in its application of the law to the facts when it held that the city's regulations are inconsistent with the HMTA and HMR.*

a. The City's Regulations Allegedly Are Not An Obstacle To the Congressional Aim of Safety.

(1) *The City's regulations allegedly cause no significant delays*—(a) *The City's Arguments—Applicants allegedly overstate the amount of downloading caused by the City regulations.* The City contends that its regulations do not cause significant delays and that the applicants' assertions to the contrary, which IR–22 accepted, can be rebutted. The City asserts that the applicants have overstated the amount of "downloading" (i.e., transfer of hazardous materials cargo from a DOT-specification vehicle into a City-specification vehicle) caused by the City's regulations because those regulations apply only to trucks stopping to make local pickups or deliveries. Secondly, the City asserts that the bulk of flammable and combustible liquids transported for local delivery within the City consists of gasoline and fuel oil, which are transported by the industry in an "entire fleet of City-specification trucks" without the need for downloading. Third, the City argues that the applicants have not shown that there is any significant volume of hazardous materials remaining to be downloaded. The City argues that the common practice is for a distant manufacturer to ship to a metropolitan-area storage facility and either have a local trucker deliver from there or have a local customer purchase from the storage depot. Neither of these alternatives involves downloading which would delay shipments in transit, the City contends. The City further contends that there is no "significant increase in risk from the fact that a particular customer's order may be handled twice if it is delivered to a local storage terminal and then reshipped to the customer" because such a practice "is a routine procedure already being done safely every day." City Memo. at 40.

The City's permit system allegedly does not cause hazardous delays in shipment. The City also contends that its permit system does not cause delays because, unlike the permit system in IR–2 and the related *Burke* case, the City's system does not require loaded DOT-specification vehicles to stop at the border to get a permit, thus interrupting and delaying a particular shipment. The City argues that under its system, carriers obtain permits before a truck is loaded for shipment, either by hiring a City-specification truck which already has a permit, or by including some City-specification trucks in their fleets and obtaining the necessary annual permits well in advance of actual shipments.

(b) *Commenters' Arguments—Downloading allegedly causes delay.* ATA/NTTC argue that the City's attempt to minimize the application of its regulations is disingenuous. ATA/NTTC state that the City's argument "implies that industry operates two distinct and separate classifications of vehicles, one for making pickups or deliveries in the City and another for making pickup[s] or deliveries outside the City." ATA/NTTC Comments at 36. ATA/NTTC note that a vehicle being used in interstate commerce may be required to make pickups or deliveries at many locations both within and outside New York City. Futhermore, they note that there are truck terminals in the City where cargo is transferred between trucks in interstate commerce so that even though there is no local pickup or delivery, the City's regulations would apply. ATA/NTTC state that the City's regulations would also prohibit vehicles carrying hazardous materials from making a rest stop, or a stop for food or fuel, or from making pickups or deliveries of non-hazardous materials.

The City regulations also apply, ATA/NTTC argue, to more than just bulk shipments of gasoline and fuel oil, so that the potential for downloading exists for packaged freight as well. ATA/NTTC "completely reject the City's assertion that the bulk transportation of non-gasoline non-fuel oil hazardous chemicals is so minimal that the safety concerns of downloading can be ignored." ATA/NTTC Comments at 37. ATA/NTTC also take issue with the City's contention that metropolitan-area storage depots reduce the need for downloading. They contend that many of the metropolitan depots are actually located in New Jersey, so that shipments from them to the City involve interstate shipments, which DOT, not the City, has been given responsibility to regulate.

ATA/NTTC assert that the City's argument concerning the use of local storage depots clearly shows that the regulations cause delay. Because a single (DOT-specification) vehicle cannot be used to ship directly to a purchaser in the City, they contend, shipments must be downloaded, creating delays and an increase in risk. In addition, ATA/NTTC state that the City's arbitrary tank truck volume limitations means an increase in the number of trips necessary, creating additional delay and risk.

Permits allegedly cause delay. ATA/NTTC argue that whether hazardous materials are downloaded directly to City-specification vehicles or to a storage depot, significant delays can be caused waiting for a City truck or storage facility to become available. They assert that the "City cannot possibly justify its regulations by arguing that such a delay, involving a vehicle parked on the side of the road outside the City, trying to find an adequate local carrier or adequate storage depot, does not represent the kind of delay the HMTA was designed to prevent." ATA/NTTC Comments at 40. Furthermore, they assert, industry does not maintain different fleets of trucks to serve different cities. If hazardous materials had to be transferred to local vehicles permitted in each city, ATA/NTTC contend, obvious delays in transit would result that are clearly the type of delay the HMTA was designed to prevent.

(c) *Rebuttal Comments.* The City contends that commenters have not submitted any evidentiary material to quantify their claims. Furthermore, the City contends that the great bulk of hazardous materials being transported is short-haul and uses the existing fleet of City-specification trucks. The City admits that in some instances it will be necessary for shippers to use different vehicles to serve New York customers than they use for customers in other cities, but maintains that the City is sufficiently unique in comparison to all other cities that the rationale behind its regulations could scarcely become a precedent for any other place. City Reply Memo. at 18.

(d) *Administrator's Decision.* The Director of OHMT found that an additional reason for the inconsistency of the City directives is "their propensity to cause significant delays of hazardous materials transportation." 52 FR 46583. As the Director stated, previous inconsistency rulings have found that delay of such transportation is incompatible with safe transportation. The City and commenters agree that some downloading will occur but disagree about the extent of such downloading. Clearly, there are delays involved in downloading, and the mere threat of delay has been sufficient for a finding of inconsistency in prior inconsistency rulings, as the Director discussed at length in IR–22. In this case, actual delays in transit are involved in downloading, which exposes neighboring jurisdictions to an increased risk of accidents and spills. The City contends that its regulations do not cause significant delay, but the issue under 49 CFR 177.853 is whether the delay is "unnecessary". Downloading hazardous materials from DOT-specification trucks, which are presumptively safe, into City-specification trucks is unnecessary and causes unnecessary delay in transportation. Similarly, the City's permit requirements cause unnecessary delay, because a carrier using DOT-specification trucks, which are presumptively safe, must obtain City permits at some point prior to transporting hazardous materials to or from the City. The City's burdensome permit application requirements, its unfettered discretion in granting permits, and the time needed to process applications create delays in the transportation of hazardous materials. Although a permit system is not *per se* inconsistent, the delays caused by the City's permit system are unnecessary because the City's permit requirements are inconsistent with the HMTA. The City's argument that a particular shipment need not be delayed, because a carrier can obtain permits well in advance of actual shipments, is specious. The only way a carrier can avoid delays is by complying with the City requirement to use City-specificatioin trucks, which the Director of OHMT determined is an obstacle to compliance with the HMTA and the HMR. The Director has sufficient reason to find that the delays that are and would be caused by the BFP Directives constitute an independent basis for inconsistency with the HMR, and I affirm that finding.

(2) *The City's regulations allegedly do not deter compliance with the HMR.*—(a) *The City's Arguments.* The City argues that the fact that a fleet of trucks exists that meets the City's more stringent requirements does not deter compliance because manufacturers and carriers build and operate dual complying trucks. Even those City-specification trucks that do not meet all HMR requirements, the City argues, are in compliance as long as they operate only within New York State, because the HMTA and HMR apply only to interstate operations. The City states that the HMTA adopted the House version of "commerce" which "explicitly states that the regulations 'did not extend to any such transportation which is solely between points in the same State.' " City Memo. at 42, quoting Conf. Rept. No. 93–1347, reprinted in U.S. Code Congressional and Administrative News at 7688. The City also asserts that DOT has acknowleged that its regulations do not apply to intrastate commerce, because it has proposed to expand application of the HMR (52 FR 24195, June 29, 1987). The City contends that the mere existence of two sets of truck specifications will not lead to non-compliance with the HMR, because manufacturers and carriers are perfectly capable of ordering and using "dually-compliant" vehicles. In fact, the City notes, many carriers regularly customize their orders to meet particular local regulatory needs.

(b) *Commenters' Arguments.* ATA/NTTC contend that the City's only response to the potential for confusion and sole reliance on City regulations is to assert that manufacturers and carriers are perfectly capable of ordering and using "dually-compliant" vehicles. ATA/NTTC argue that this "inadequate response does not change the fact that manufacturers and carriers do not have the extensive resources that would be necessary to conduct the dual technical and regulatory analysis necessary to design, manufacture and maintain a vehicle that fully complies with all HMR requirements, yet can also be permitted by the City Fire Department." ATA/NTTC Comments at 42.

ATA/NTTC assert that the City incorrectly argues that the HMTA only applies to interstate commerce, when in fact the definition of commerce in the HMTA specifically includes transportation which "affects" interstate commerce. Thus, they argue, the HMTA clearly "allows coverage of intrastate commerce or RSPA would not have the legal authority to consider applying its regulations to all forms of intrastate commerce." ATA/NTTC also note that the HMR apply to intrastate movements by interstate carriers and to the intrastate portion of interstate transportation.

ATA/NTTC dismiss the City's argument about customization by noting that the City's regulations go beyond mere customization. As an example, ATA/NTTC state that the City regulations flatly prohibit the use of tractor trailers to deliver flammables, yet a tractor-trailer cannot be converted into a straight truck by customization. Finally, ATA/NTTC note that differences have been the basis for preemption in the past, as in the *Ritter* case, where the court held that "compressed gas container testing requirements were preempted because they differed from federal requirements and therefore stood as an obstacle to the accomplishment of the purpose and objective of Congress." ATA/NTTC Comments at 43.

(c) *Administrator's Decision.* The City is incorrect in asserting that the HMTA applies only to interstate transportation. Section 103 of the HMTA defines "commerce" as trade, traffic, commerce, or transportation between a place in a

State and a place outside such State, or which *affects* such trade, traffic, commerce, or transportation. DOT has chosen to exercise this authority by regulating all transportation by interstate motor carriers, which includes the intrastate portion of any interstate transportation. 49 CFR 171.1. With respect to use of dually-compliant vehicles, RSPA assumes for purposes of this discussion that such vehicles can be built. However, dual compliance is not the issue. The issue is that RSPA has already determined what specifications are necessary for trucks hauling hazardous materials. To the extent the City believes the HMR are inadequate, the City may file a petition for rulemaking under 49 CFR 106.31. Therefore, I affirm the Director's determination that the BFP Directives deter compliance with HMR.

(3) *The City's regulations allegedly promote safety in a densely populated area*— (a) *The City's Arguments.* The City states that OHMT dismissed its argument that New York's population density justifies more stringent regulations by saying that almost any urban area has a population density which is a matter of concern in hazardous materials transportation. The City notes that OHMT's own regulations at 49 CFR 397.9(a) dictate that hazardous materials shipments should avoid densely populated areas, tunnels, and narrow streets or alleys. The City states that its road system and lack of a beltway make it inevitable that hazardous materials shipments travel through neighborhoods where between 10,000 and 50,000 people reside within a half-mile wide band of the highway, in contrast to neighboring counties where the greatest number of persons within a half-mile of the truck route is 10,000. The City asserts that an extra measure of safety in the City "is necessary and appropriate, under the aim of Congress to create a uniform level of safety throughout the nation." City Memo. at 45.

The City contends that OHMT recognized the City's unique situation in IR–2 (44 FR 75569, December 20, 1979), when it "barred certain Rhode Island regulations partly on the ground that its population density did not warrant the kind of special regulation that might be appropriate to a place as densely populated as New York City." City Memo. at 46. The City also contends that its aging and often substandard roads, its combination of subways, bridges, elevated and depressed roadways, traffic congestion, and population density makes fires more difficult to fight and the consequences of an accident potentially more severe than in other localities. All of these factors, the City contends, must be weighed against OHMT's claim that cargo containment systems and equipment require national uniformity.

(b) *Commenters' Arguments.* ATA/NTTC assert that the alleged safety benefits of the City's regulations are relevant only in a subsequent waiver of preemption determination. First, ATA/NTTC argue that "under the HMTA, OHMT, not the New York City Fire Department, has the responsibility for developing regulations to protect the nation, including New York City and its neighbors, adequately against the risks posed by the transportation of hazardous materials." ATA/NTTC Comments at 44–45. Second, they argue that "the HMTA sets up a separate waiver of preemption process in section 1811(b) which gives OHMT * * * authority to determine whether the City's allegedly "unique" circumstances allow for a different regulatory approach." ATA/NTTC Comments at 45.

ATA/NTTC contend that the city's argument has been rejected by the courts (*City of New York* v. *U.S. Department of Transportation*, 539 F. Supp. 1237 at 1254, 715 F.2d 732) and is contrary to the plain wording of the statute. ATA/NTTC point out that the Second Circuit, in *NYC* v. *DOT, supra,*

> concluded that OHMT's authority and responsibility to waive preemption under Section 1811(b) was meant to "ameliorate the sweep of section 112(a) [1811(a)] * * * so that *'in certain exceptional circumstances'* DOT could limit the preemptive force of federal regulations 'to secure more stringent regulations' by local authorities. *Senate Report, supra,* at 38."

ATA/NTTC Comments at 46.

Therefore, ATA/NTTC argue that the waiver of preemption procedures that OHMT has adopted are the proper forum in which to address the city's factual safety arguments.

(c) *Administrator's Decision.* As previously discussed, consideration of the City's safety concerns would be appropriate in a subsequent waiver of preemption proceeding but is not relevant in this proceeding.

(4) *Other Issues and Comments— Driver Certification Requirements.* The City states that RSPA reserved ruling on the driver certification requirements in one of the City's regulations (BFP Directive 7–74, subsections 2–2 and 2–3), but failed to defer ruling on similar requirements in other City regulations (BFP Directive 5–83, section 2, BFP Directive 6–76, section 2, and all of BFP Directive 7–74 section 2). The Director of OHMT found that each of the above sections (entitled "Certificate of Fitness") are inextricably tied to the City's inconsistent permitting requirement and thus are themselves inconsistent, with the exception of subsections 2–2 and 2–3 concerning certificate of fitness requirements. Therefore, the director properly did not defer ruling on those requirements. OHMT has now issued IR–26, 54 FR 16314 (April 21, 1989), concerning the California Department of Motor Vehicles' regulations on training required for highway transportation of hazardous materials. OHMT will publish a notice seeking additional comment on the city's certificate of fitness requirements in light of IR–26.

Other Comments. The New Jersey Turnpike Authority (NJTA) commented that it supported the decision in IR–22 and wished to advise that its position as expressed during the comment period on IRA–40 remains the same.

The Liquid and Bulk Tank Division of Fruehauf Corporation commented that it agreed with DOT's finding in IR–22 that the City's special requirements for tanks are at odds with DOT's requirements and may not be as good.

The Truck Renting and Leasing Association and the National Private Trucking Association both commented that they agree with OHMT's interpretation of the HMTA and urge RSPA to deny the City's appeal of IR–22.

"Bomar" Tank Discharge Systems, Inc. a manufacturer of City-approved truck tanks, submitted rebuttal comments stating that preemption of the City's tank truck directive would increase the risk of transporting gasoline and other hazardous liquids in the City. "Bomar" contends that tank trucks manufactured to City specifications are safer than DOT-specification trucks, and cites engineering analysis, accident statistics, and common sense to support its contention.

D.R. Pesult & Associates (DRP), consultants on gasoline tank trucks, submitted an analysis comparing DOT tanks with City-approved tanks which it had prepared at the request of "Bomar." DRP concludes that City-approved gasoline tank trucks are safer than DOT-specification trucks, and that, therefore, DOT should not preempt the City regulations.

Administrator's Response. I have considered all the comments and rebuttal comments submitted to the docket and, for the reasons discussed above, have determined that the decision in IR–22 should be affirmed.

IV. Conclusion

For the reasons indicated above and for the reasons set forth in IR–22 itself, I affirm the determination by the Director of the Office of Hazardous Materials Transportation in IR–22 that the City of New York Bureau of Fire Prevention Directives 3–76 (except sections 13 and 16), 6–76 (except section 25), 7–74 (except sections 31 and 32 and subsections 2–2 and 2–3) 5–83 (except section 7) are inconsistent with the HMTA and the HMR and, therefore, are preempted under 49 App. U.S.C. § 1811(a).

This decision on appeal constitutes the final administrative action in this proceeding.

Travis P. Dungan,

Administrator.

Issued in Washington, DC on June 19, 1989.

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June 23, 1989

Part X

Department of Transportation

Research and Special Programs Administration

Preemption Under the Hazardous Materials Transportation Act; Notice

DEPARTMENT OF TRANSPORTATION

[Notice No. 89-3]

Preemption Under the Hazardous Materials Transportation Act

AGENCY: Research and Special Programs Administration, (RSPA), DOT.

ACTION: Notice.

SUMMARY: This Notice publishes a subject-matter index to court decisions and DOT inconsistency rulings discussing preemption issues under the Hazardous Materials Transportation Act (HMTA) (Pub. L. 93-633, 49 App. U.S.C. 1801 *et seq.*) and the Hazardous Materials Regulations (HMR) (49 CFR Parts 171-179) issued thereunder. It also publishes a table summarizing all of the DOT's inconsistency rulings. This Notice is being published to facilitate better public understanding and awareness of the judicial and administrative precedents concerning preemption under the HMTA. It may be particularly useful to state or local governmental officials considering the regulation or restriction of hazardous materials transportation.

FOR FURTHER INFORMATION CONTACT: Edward H. Bonekemper, III, Senior Attorney, Office of the Chief Counsel, Research and Special Programs Administration, Department of Transportation, Washington, DC 20590 [Tel. (202) 366-4362].

SUPPLEMENTARY INFORMATION: The HMTA at section 112(a) (49 App. U.S.C. 1811(a)) preempts "* * * any requirement, of a State or political subdivision thereof, which is inconsistent with any requirement set forth in [the HMTA], or in a regulation issued under [the HMTA]." This express preemption provision makes it evident that Congress did not intend the HMTA and its regulations to completely occupy the field of transportation so as to preclude any state or local action. The HMTA preempts only those state and local requirements that are "inconsistent."

In the HMTA's Declaration of Policy (section 102) and in the Senate Commerce Committee language reporting out what became section 112 of the HMTA, Congress indicated a desire for uniform national standards in the field of hazardous materials transportation. Congress inserted the preemption language in section 112(a) "in order to preclude a multiplicity of state and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous material transportation" (S. Rep. 1192, 93rd Cong., 2d Sess., 37 (1974)). Through its enactment of the HMTA, Congress gave the Department the authority to promulgate uniform national standards. While the HMTA did not totally preclude state or local action in this area, Congress intended, to the extent possible, to make such state or local action unnecessary. The comprehensiveness of the HMR, issued to implement the HMTA, severely restricts the scope of historically permissible state or local activity.

DOT has provided an administrative forum, the inconsistency ruling process, for resolution of HMTA preemption issues. Although advisory in nature, inconsistency rulings issued by the Director of DOT's Office of Hazardous Materials Transportation (OHMT) under 49 CFR Part 107 provide an alternative to litigation for a determination of the relationship between Federal requirements and those of a state or political subdivision. Any aggrieved party may appeal an inconsistency ruling to the Administrator of RSPA. If a state or political subdivision requirement is found to be inconsistent, the state or local government may apply to OHMT for a waiver of preemption. 49 App. U.S.C. 1811(b); 49 CFR 107.215-107.225.

Only the question of statutory preemption under the HMTA is considered in DOT's inconsistency rulings. A court might find a non-Federal requirement preempted for other reasons, such as statutory preemption under another Federal statute, preemption under state law, or preemption by the Commerce Clause and the Supremacy Clause of the U.S. Constitution because of an undue burden on interstate commerce. However, OHMT does not make such determinations in an inconsistency ruling proceeding.

OHMT has incorporated into its procedures (49 CFR 107.209(c)) the following criteria for determining whether a state or local requirement is consistent with, and thus not preempted by, the HMTA:

(1) Whether compliance with both the non-Federal requirement and the Act or the regulations issued under the Act is possible; and

(2) The extent to which the non-Federal requirement is an obstacle to the accomplishment and execution of the Act and the regulations issued under the Act.

These criteria are based upon, and supported by, U.S. Supreme Court decisions on preemption. These include *Hines* v. *Davidowitz*, 312 U.S. 52 (1941); *Florida Lime & Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132 (1963); and *Ray* v. *Atlantic Richfield Co.*, 435 U.S. 151 (1978).

The first criterion, the "dual compliance" test, concerns those non-Federal requirements which are irreconcilable with Federal requirements; that is, compliance with the non-Federal requirement causes the Federal requirement to be violated, or *vice versa*. The second criterion, the "obstacle" test, involves determining whether a state or local requirement is an obstacle to executing and accomplishing the purposes of the HMTA and the HMR; a requirement constituting such an obstacle is inconsistent. Application of this second criterion requires an analysis of the non-Federal requirement in light of the requirements of the HMTA and the HMR, as well as the purposes and objectives of Congress in enacting the HMTA and the manner and extent to which these purposes and objectives have been carried out through OHMT's regulatory program.

All of DOT's inconsistency rulings (including all relevant **Federal Register** citations) are summarized in a detailed table accompanying this Notice. Those rulings also are summarized in the index accompanying this Notice. In contrast to DOT's advisory inconsistency rulings, court decisions on HMTA preemption issues are legally binding upon parties to those cases and may constitute binding precedents within the geographical area of each court's jurisdiction. Relevant court opinions, published and unpublished, are summarized in the index accompanying this Notice. Anyone desiring to receive periodic updates of this table and index should contact OHMT's Federal/State and Private Sector Initiatives Division, DHM-50, U.S. DOT, Washington, DC 20590 (202-366-4449).

Issued in Washington, DC on June 19, 1989, under authority delegated in 49 CFR Part 106, Appendix A.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation

Index to Preemption of State and Local Laws and Regulations Under the Hazardous Materials Transportation Act (49 App. U.S.C. 1801 et seq.) (HMTA)

The following is an alphabetized subject matter index of issues arising under the preemption provision (49 App. U.S.C. 1811(a)) of the HMTA. This index summarizes the implementation of the HMTA preemption provision by DOT and the courts.

Abbreviations Used in this Index:

CFR—Code of Federal Regulations
DOT—U.S. Department of Transportation
FR—Federal Register
HM-XXX—Hazardous Materials Regulations Docket of RSPA (e.g., HM-181)
HMR—Hazardous Materials Regulations (49 CFR Parts 171 through 179) issued by DOT under HMTA
HMTA—Hazardous Materials Transportation Act
IR-XX—Inconsistency Ruling issued by DOT (e.g., IR-18)
IR-XX(A)—Decision on Appeal re Inconsistency Ruling IR-XX (e.g., IR-18(A))
IRA-XX—Inconsistency Ruling Application filed with DOT (e.g., IRA-44)
LNG—Liquefied natural gas
LPG—Liquefied petroleum gas
"Nine-pack"—Group of nine inconsistency rulings (*IR-7 through *IR-15) issued by RSPA on 11/27/84 (49 FR 46632 et seq.).
NRC—Nuclear Regulatory Commission
OHMT—Office of Hazardous Materials Transportation, RSPA
RAM—Radioactive materials
RSPA—Research and Special Programs Administration, DOT
An asterisk (*) denotes a case, IR or other provision involving only RAM.
A cross-hatch (#) denotes a case, IR or other provision involving both RAM and other hazardous materials.

Accident/Incident Reporting Requirements

- Requirements for immediate, oral accident/incident reports for emergency response purposes are consistent. IR-2; IR-3; *National Tank Truck Carriers, Inc.* v. *Burke*, 535 F. Supp. 509 (D.R.I. 1982), *aff'd* 698 F.2d 559 (1st Cir. 1983); *49 CFR Part 177, Appendix A (policy).
- Requirements for written accident/incident reports are redundant with Federal requirements and thus inconsistent. IR-2; IR-3; IR-3(A).
- RAM incident reporting requirements are inconsistent because of redundancy and possible conflict with NRC rules incorporated into HMR. *IR-8. That field has been totally occupied by Federal regulation. *IR-8(A).
- RAM transportation accident/incident reporting requirements for other than emergency assistance are inconsistent. *49 CFR Part 177, Appendix A (policy).

Advance Notice—See "Notice Requirements" and "Delays of Transportation"

Approval Requirements (Also see "Permit Requirements")

- Transportation approval requirements identical to Federal are consistent. *IR-14, IR-15.
- Transportation approval requirements different from Federal are inconsistent. *IR-8, *IR-8(A); *IR-10; *IR-11; *IR-12; *IR-13, *IR-15; *IR-15(A); #IR-19; #IR-19(A).
- Transportation approval requirements may not include inconsistent provisions: "A requirement for compliance with an inconsistent provision is itself inconsistent." *IR-8(A), 52 FR 13000 at 13006.
- Unfettered discretion to approve or disapprove transportation is inconsistent. *IR-8(A); *IR-15(A); *IR-18; #IR-20.
- "In light of the virtually total occupation of the field of radioactive materials transportation by the HMTA and the HMR, State or local provisions requiring approval or authorizing conditions to be established for the transportation of radioactive materials (other than compliance with Federal regulations) constitute unauthorized prior restraints on shipments that are presumptively safe based on their compliance with Federal regulations and are inconsistent with the HMTA and the HMR." *IR-15(A), 52 FR 13062 at 13063; quoted and followed, #IR-19.

Bans on Hazardous Materials Transportation—See "Prohibitions of Hazardous Materials Transportation"

Bonding Requirements—See "Insurance or Indemnification Requirements"

Certification Requirements—See "Information/Documentation Requirements", "Packaging Design and Construction Requirements" and "Shipping Paper Requirements"

Communication Requirements

- Requirement that motor vehicles carrying LPG or natural gas use two-way radio communications is consistent. IR-2.
- RAM communications requirements which are different from, or authorized to be different from, Federal requirements are inconsistent. *IR-8; *IR-8(A).

Confidentiality Requirement

- Requirements to keep RAM shipment information confidential which are same as Federal are consistent. *IR-8; *IR-15.

Container Design and Certification Requirements—See "Packaging Design and Construction Requirements"

Curfew—See "Time Restrictions"

Definitions—See "Hazard Class and Hazardous Materials Definitions"

Delays of Transportation (Also see "Routing Requirements" and "Time Restrictions")

- "The manifest purpose of the HMTA and the Hazardous Materials Regulations is safety in the transportation of hazardous materials. Delay in such transportation is incongruous with safe transportation." IR-2, 44 FR 75566 at 75571.
- "The mere threat of delay may redirect commercial hazardous materials traffic into other jurisdictions that may not be aware of or prepared for a sudden, possibly permanent, change in traffic patterns." IR-3, 46 FR 18919 at 18921. #IR-20; *IR-21(A).
- Local highway routing requirements for hazardous materials through-traffic not based on complete safety analysis and consultations with all affected jurisdictions are inconsistent with § 177.853(a) of the HMR. IR-3; IR-3(A); IR-23.
- "Since safety risks are 'inherent in the transportation of hazardous materials in commerce' [49 U.S.C. § 1801], an important aspect of transportation safety is that transit time be minimized. This precept has been incorporated in the HMR at 49 CFR § 177.853, which directs highway shipments to proceed without unnecessary delay, and at 49 CFR § 174.14, which directs rail shipments to be expedited within a stated time frame." IR-6, 49 FR 760 at 765; see also IR-16, 50 FR 20872 at 20879; quoted, #IR-19, 52 FR 24404 at 24409.
- Acute delays at State border inevitably resulting from State imposing documentary prerequisites upon non-domiciliaries for transport of hazardous materials render those requirements inconsistent with 49 CFR 177.853.
- State fees for hazardous materials transport not causing unnecessary transportation delays are consistent. *IR-17; *IR-17(A); *IR-27; # *New Hampshire Motor Transport Assn.* v. *Flynn*, 751 F.2d 43 (1st Cir. 1984).
- Time-consuming state permitting process with no definite decision date creates possibility of transportation delay and thus is inconsistent. #IR-19, #IR-19(A); *IR-21; *IR-21(A).
- Two-hour advance approval requirement not shown to serve any purpose causes delay and is inconsistent. #IR-20; *IR-21; *IR-21(A).

• Additional switching, handling and delays of hazardous materials caused by state requirement for caboose on certain trains carrying hazardous materials create obstacle, and requirement is inconsistent. *Missouri Pacific RR Co.* v. *Railroad Commission of Texas*, 671 F. Supp. 466 (W.D. Tex. 1987), *aff'd on other grounds* 850 F.2d 264 (5th Cir. 1988), *cert. denied*, 109 S. Ct. 794 (1989).

• State statute providing three days for a permit issuance decision re each RAM shipment is inconsistent. *IR–21; *IR–21(A). Prohibition on permit applications more than one day prior to scheduled shipment also is inconsistent. *IR–21; *IR–21(A).

• RAM requirements unnecessarily delaying transportation are inconsistent. *IR–8(A), *IR–18; *IR–18(A); *IR–21; *IR–21(A); #IR–26; *49 CFR Part 177, Appendix A (policy).

• City tank truck regulations causing delays for cargo transfers, vehicle permit inspections and obtaining specifications, certifications and affidavits, are inconsistent. IR–22.

• City truck regulations, requiring bulk gases to be transported around City unless no practical alternative route exists and the fire commission authorizes trip, promote safety, do not cause "unnecessary delay" under 49 CFR 177.853(a), and thus are consistent. *City of New York* v. *Ritter Transportation, Inc.*, 515 F. Supp. 663 (S.D. N.Y. 1981), *aff'd National Tank Truck Carriers, Inc.* v. *City of New York*, 677 F.2d 270 (2d Cir. 1982).

• "While states do have a role in effectuating the safe transportation of radioactive materials, it does not follow that they have unfettered discretion to take actions which have the effect of restricting or delaying transportation being conducted in compliance with Federal law." *IR–8(A), 52 FR 13000 at 13003; quoted #IR–19, 52 FR 24404 at 24409.

Documentation—See "Information/ Documentation Requirements"

Drivers' Licenses—See "Information/ Documentation Requirements" and "Training Requirements"

Effect of Requirements (Also see "Language of Requirements")

• "* * * it is the effect, both actual and potential, not the intent of state or local rules which determines their consistency with the HMTA and HMR." IR–8(A), 52 FR 13000 at 13003.

Emergency Response

• "Although the Federal Government can regulate in order to avert situations where emergency response is necessary, and can aid in local and state planning and preparation, when an accident does occur, response is, of necessity, a local responsibility." IR–2, 44 FR 75565 at 75566.

• Inadequacy of emergency response capabilities cannot provide basis for prohibiting transportation. *IR–18; *IR–18(A). Thus, emergency response-related information requirements cannot be used as a prerequisite to hazardous materials transportation. #IR–19.

Equipment Requirements (Also See "Packaging Design and Construction Requirements")

• Cargo containment-related equipment requirements, including those vesting discretionary approval authority in state or local officials, are inconsistent. IR–2; *IR–8; *IR–8(A); *IR–15; IR–22.

• "In summary, RSPA, OHMT and their predecessor agencies have established in a series of inconsistency rulings issued during the past decade the principle that the HMR provisions concerning hazardous materials transportation cargo containment systems, equipment, accessories and packagings, and the certification, marking, testing and permitting of same, have fully occupied that regulatory field. Those subjects are the exclusive province of the Federal Government. As a result, state or local requirements concerning those subjects detract from and create confusion concerning the Federal requirements, are inconsistent with the HMTA and the HMR, and, therefore, are preempted under section 112(a) of the HMTA. Similarly, these rulings have demonstrated RSPA's position that permitting systems and information or documentation requirements relating to or containing such requirements likewise are inconsistent with the HMTA and the HMR and, therefore, preempted." IR–22, 52 FR 46574 at 46582.

• "Headlights on" requirement is consistent. IR–2; IR–3; *National Tank Truck Carriers, Inc.* v. *Burke*, 535 F. Supp. 509 (D.R.I. 1982), *aff'd* 698 F.2d 559 (1st Cir. 1983).

• State requirement for caboose on certain trains carrying hazardous materials would cause additional switching, handling and delays of hazardous materials and thus is inconsistent. *Missouri Pacific RR Co.* v. *Railroad Commission of Texas, supra.*

• Requirements for additional or special equipment re RAM transportation are inconsistent. *49 CFR Part 177, Appendix A (policy).

• Requirement for illuminated rear bumper signs conflicts with DOT lighting regulations and would divert attention from DOT placards and thus is inconsistent. IR–2.

• Requirement for frangible shank-type lock on tank trailers carrying LNG or LPG is inconsistent since DOT comprehensively regulates cargo tank containment. IR–2.

• "* * * a state or local rule which grants an official discretionary authority to set equipment requirements for carriers engaged in interstate commerce impedes the Congressional purposes of increased safety and regulatory uniformity underlying the HMTA." IR–8(A), 52 FR 13000 at 13003.

• Vehicle equipment requirements which might conflict with those provisions of the Federal Motor Carrier Safety Regulations (FMCSR), 49 CFR Parts 390–377, which are incorporated in the HMR only by 49 CFR 177.804, must only meet the "dual compliance" test, not the "obstacle" test. IR–3; 43 FR 4856 (Feb. 6, 1978); *National Paint & Coatings Assn.* v. *City of New York*, CV–84–4525 (E.D. N.Y. 1985); 52 FR 18668–9 (May 18, 1987); IR–22. However, those FMCSR requirements specifically incorporated into the HMR by other HMR regulations must meet both tests. IR–22.

Escort Requirements

• RAM transportation front and rear escort requirements identical to DOT/ NRC standards are consistent, *IR–14, as are notice requirements facilitating escorts under the DOT/NRC requirements. *IR–17.

• Requirements for additional or special escorts re RAM transportation not required by DOT/NRC regulations are inconsistent, *IR–11; *IR–13; *IR–15(A); *IR–18; *IR–18(A); *IR–21. *49 CFR Part 177, Appendix A (policy).

• Requirements for carriers to delay for escorts re RAM transportation other than those in NRC standards are inconsistent. *IR–15.

• Escort requirements linked to inconsistent equipment requirements are inconsistent. IR–22; IR–23.

Federal Requirements (Also see "Standing")

• Only conflicts with Federal requirements under the HMTA and the HMR are cognizable in inconsistency proceedings (*not* Commerce Clause issues or preemption issus under other Federal statutes or regulations), but OHMT may address these HMTA/HMR conflict issues even if not clearly raised in the application. *IR–17 (A).

• Absence of a Federal regulation addressing the same subject as a challenged state or local requirement is not determinative of the issue of that requirement's consistency. *IR–17(A).

• Requiring compliance with Federal requirements is consistent. IR–3; *IR–7.

• State or local requirements identical to Federal ones are consistent. *IR–8.

• Adequacy of Federal requirements is irrelevant. *IR–8(A).

Fee Requirements

• Reasonable fees to fund consistent activities are consistent. *IR–17; *IR–17(A); *IR–27; # *New Hampshire Motor Transport Assn.* v. *Flynn, supra.*

• Fees which are unreasonably high or are related to inconsistent activities are inconsistent. *IR–11; *IR–13; *IR–15; *IR–18(A); #IR–19; *IR–27; # *New Hampshire Motor Transport Assn.* v. *Flynn, supra.*

• State's $1,000 per cask fee for spent nuclear fuel transportation to fund inspection, enforcement, State escorts and emergency response, not related to inconsistent provisions, and not causing transportation delays or diversions is consistent. *IR–17; *IR–17(A). Similar State RAM shipment fees are consistent. *IR–27.

• State's $25/year or $15/trip fee for hazardous materials transportation to fund transportation and environmental programs and related to a minimal delay licensing system is consistent. *New Hampshire Motor Transit Assn.* v. *Flynn, supra.*

• State's $1,000 per shipment fee for spent nuclear fuel transportation apparently to fund inconsistent state monitoring activities is inconsistent. *IR–15. State's RAM permit fee is inconsistent. *IR–27.

Findings

• Findings regarding hazardous materials transportation are not "requirements" subject to preemption under the HMTA. *IR–18.

Hazard Class and Hazardous Materials Definitions

• Hazard class and hazardous materials definitions differing from those in the HMR are inconsistent because the Federal role is exclusive. *IR–18; *IR–18(A); #IR–19; #IR–19(A); #IR–20; *IR–21; #IR–26; *Missouri Pacific RR Co.* v. *Railroad Commission of Texas, supra.*

• Local hazardous materials definitions and classifications which result in regulating more or different hazardous materials than HMR are obstacles to uniformity in transportation regulation and thus are inconsistent. IR–5; IR–6.

• Application of state requirements to selected DOT hazardous materials can contribute to the overall inconsistency of a series of interrelated regulations. #IR–19.

• "The key to hazardous materials transportation safety is precise communication of risk. The proliferation of differing State and local systems of hazard classification is antithetical to a uniform, comprehensive system of hazardous materials transportation safety regulations." IR–6, 48 FR 760 at 764.

• "State government or political subdivisions may not regulate—let alone prohibit—the transportation of radioactive or other hazardous materials specifically excepted from regulation under the HMTA or the HMR. The determination of what hazardous materials may or may not be regulated in the transportation field is the essence of DOT's exclusive authority to define and classify hazardous materials." #IR–20, 52 FR 24396 at 24401.

• "Radioactive Material" definitions different from HMR definitions are inconsistent. *IR–8; *IR–12; *IR–15; *IR–16; *IR–18; *IR–21. But essentially identical definitions are consistent. *IR–18.

• "If every jurisdiction were to assign additional requirements on the basis of independently created and variously named subgroups of radioactive materials, the resulting confusion of regulatory requirements would lead directly to the increased likelihood of reduced compliance with the HMR and subsequent decrease in public safety." *IR–12, 49 FR 46650 at 46651.

• City definitions of RAM and flammable materials differed from HMTA definitions and thus were preempted and their use enjoined. # *Union Pacific RR Co.* v. *City of Las Vegas*, CV–LV–85–932 HDM (D. Nev. 1986).

Hazard Warning Requirements—See "Placards and Other Hazard Warning Requirements."

Hazardous Substances and Wastes

• Dicta in footnotes indicate that State's hazardous substances transportation regulations appeared to be valid under the HMTA because they regulated only transportation from points in Maryland [but decision overlooked RSPA's 1980 amendment of 49 CFR § 171.1 applying HMR to intrastate transportation of hazardous substances and wastes]. *Browning-Ferris, Inc.* v. *Anne Arundel County*, 292 Md. 136, 438 A.2d 269 at 274 (1981).

Inconsistency Ruling, Necessity for

• Local government need not obtain an RSPA inconsistency ruling before enforcing a local requirement. *National Tank Truck Carriers, Inc.* v. *Burke*, 608 F.2d 819 at 821–2 (1st Cir. 1979); *City of New York* v. *Ritter Transportation, Inc.*, 515 F. Supp. 663 at 668 (S.D. N.Y. 1981); *Seaboard System Railroad, Inc.* v. *Bankester*, 254 Ga. 455, 330 S.E. 2d 700 at 705 (1985). *Contra* (based on doctrine of primary jurisdiction): *Consolidated Rail Corp.* v. *City of Dover*, 450 F. Supp. 966 at 974 (D. Del. 1978).

Incorporation by Reference

• NRC regulations incorporated by reference in HMR provide basis for consistency comparison with state and local requirements. *IR–8(A).

• State and local requirements which incorporate by reference specific superseded Federal regulations are inconsistent. *IR–8; *IR–8(A); *IR–18. However, state and local governments may incorporate by reference specific CFR volumes of the HMR for a reasonable time after their publication, although a later-published HMR rule would control over an inconsistent state or local requirement. #IR–19.

Indemnification Requirements—See "Insurance or Indemnification Requirements."

Information/Documentation Requirements (Also see "Shipping Paper Requirements" and "Notice Requirements.")

• Requirements for information or documentation in excess of Federal requirements create potential delay, constitute an obstacle to execution of the HMTA and the HMR, and thus are inconsistent. IR–2; IR–6; *IR–8; *IR–8(A); *IR–15; *IR–15(A); *IR–18; *IR–18(A); #IR–19; #IR–19(A); *IR–21; #IR–26; *IR–27; *Chem-Nuclear Systems, Inc.* v. *City of Missoula*, CV 80–18–M (D. Mont. 1984). There is no *de minimis* exception to the "obstacle" test because thousands of jurisdictions could impose *de minimis* information requirements. *IR–8(A).

• "In summary, the HMTA and HMR provide sufficient information and documentation requirements for the safe transportation of hazardous materials; state and local requirements in excess of them constitute obstacles to implementation of the HMTA and HMR and thus are inconsistent with them." #IR–19, 52 FR 24404 at 24408.

• Preliminary injunction was granted against City requirements to have decal and carry copy of permit. *American Trucking Assns. Inc.* v. *City of Boston*, Civ. Pet. 81–628–MA (USDC Mass. 1981), CCH Fed. Carrier Cases ¶82,938.

• Emergency response-related information requirements cannot be used as a prerequisite to hazardous materials transportation. #IR–19.

• "DOT and NRC have determined what information and documentation

requirements are needed for the safe transportation of radioactive materials, and state and local requirements going beyond them create confusion, impose burdens on transporters, are obstacles to the accomplishment of the HMTA's objectives, and thus are inconsistent." *IR–8(A), 52 FR 13000 at 13004; quoted in *IR–27; quoted and applied to non-RAM in #IR–19, 52 FR 24404 at 24408; see also *IR–15(A).

• State may require, as prerequisite to motor vehicle transport of hazardous materials, documentary evidence of hazardous materials training from its own domiciliaries but not from non-domiciliaries—except, on or after April 1, 1992, from non-domiciliaries not having hazardous materials endorsements on their commercial drivers' licenses. #IR–26.

• "No matter what the form, any state or local requirement that asks for an additional piece of paper that supplies the same information as is required to be on the DOT shipping paper would be inconsistent with the requirements contained in the Hazardous Materials Regulations." IR–2, 44 FR 75566 at 75571. Requirements for multiple submissions of same information are inconsistent. *IR–8(A).

• Requirements for RAM transportation route plans or other shipment-specific documentation or information are inconsistent. *IR–21. Also inconsistent are requirements for RAM shipment information on possible alternate routes, proposed means of conveyance, estimated date and time of departure, emergency response or recovery plans, attestations re safety inspections, certification of compliance with laws and regulations (latter being same as required on DOT shipping papers), telephone numbers, inspection reports, state permits, training programs, proof of insurance, and equipment replacement or repair plans. *IR–8(A); *IR–15; *IR–15(A); *IR–27.

• RAM information requirements identical to NRC's are consistent, but requirement for submission to state of NRC approvals and licenses is inconsistent. *IR–8; *IR–8(A); *IR–15; *IR–15(A).

• Mere requirement in permit application of some information required on DOT shipping papers may not require preemption. Dicta in *National Tank Truck Carriers, Inc.* v. *Burke*, 535 F. Supp. 509 (D.R.I. 1982), *aff'd* 698 F.2d 550 (1st Cir. 1983).

Inspection Requirements

• Inspection requirements relating to Federal and consistent requirements are encouraged by RSPA and are consistent. *IR–2; *IR–8; *IR–15; *IR–17; #IR–20; #IR–27.

• Inspection requirements relating to inconsistent requirements are themselves inconsistent. #IR–20; *IR–21; *IR–21(A); #IR–27.

Insurance or Indemnification Requirements

• The absence of a bonding, insurance, or indemnity requirement in the HMR "is a reflection of OHMT's determination that no such requirement is necessary and that any such requirement imposed at the state or local level is inconsistent with the HMR." #IR–25, 54 FR 16308 at 16311. "[N]o such requirement is necessary—particularly because 49 CFR 387.7 and 387.9 already require insurance or surety bonds of between $1,000,000 and $5,000,000 for motor carriers transporting hazardous wastes, hazardous substances and other hazardous materials." *Ibid.*

• RAM transportation indemnification, bonding or insurance requirements differing from Federal requirements are inconsistent. *IR–10; *IR–11; *IR–15; *IR–15(A); *IR–18; *IR–18(A). (See also *IR–13; *IR–14.)

• "The indemnification level established through the HMR, coupled with the indemnification provisions of the Price-Anderson Act (42 U.S.C. 2210), provides the exclusive standard for radioactive materials transportation indemnification. They have totally occupied that field, and any state or local bond, insurance or indemnification requirement not identical to the HMR requirement is an obstacle to the accomplishment of the objectives of the HMTA and the HMR." *IR–15(A), 52 FR 13062 at 13063.

Land Use Restrictions

• Regulations which apply only to transportation activities are not type of non-transportation land use restrictions which might be consistent. #IR–19; see IR–16.

Language of Requirements (Also see "Effect of Requirements")

• Actual language of state and local requirements, rather than later statements of intent, are controlling. *IR–8(A), IR–16, #IR–19(A), unless there is a demonstrated actual practice to the contrary. *IR–17.

Monitoring of Shipments

• Monitoring of hazardous materials shipments by state officials is consistent. *IR–17. However, a carrier cannot be required to stop and wait for state officials assigned to monitor shipments. *IR–15.

Motor Carrier Safety Regulations (MCSR)

• 49 CFR Part 390–397 (MCSR) were not made relevant to HMTA preemption by adoption of 49 CFR 177.804. They are relevant only insofar as specifically incorporated by reference in other HMR provisions. IR–22; IR–23.

Non-Regulatory Actions—See "Statements of Intent to Regulate"

Notice Requirements (Also see "Accident/Incident Reporting Requirements", "Delays of Transportation", and "Information/Documentation Requirements")

• Advance notice requirements generally are inconsistent. IR–6; *IR–8(A); *IR–16.

• "Through its rulemaking process and related studies, DOT has determined what prenotification (including information, documentation and certification) requirements are necessary for the safe transportation of radioactive materials. In the process of analyzing rulemaking comments and studies it has commissioned or examined, DOT has determined what prenotification requirements are not necessary. This field has been totally occupied by the HMR. State and local provisions either authorizing less prenotification or requiring greater prenotification than the HMR, therefore, constitute obstacles to the accomplishment and execution of the objectives of the HMTA and the HMR, are inconsistent, and are preempted." *IR–8(A), 52 FR 13000 at 13005.

• Local requirements for advance notice of hazardous materials transportation have potential to delay and redirect traffic and thus are inconsistent. IR–6.

• Notice requirements re RAM shipment schedule changes identical to NRC regulation are consistent. *IR–6.

• Notice requirements re RAM shipment schedule or changes thereto different from NRC regulations are inconsistent. *IR–14; *IR–15; *IR–16; *IR–18; *IR–18(A); *IR–27; **Chem-Nuclear Systems, Inc.* v. *City of Missoula*, CV 80–18–M (D. Mont. 1984); *49 CFR Part 177, Appendix A (policy).

• "The State's prenotification requirements differ from, and are more burdensome than, the radioactive materials prenotification requirements in §§ 173.22 and 177.825 of the HMR and 10 CFR 71.97 and 73.97 (NRC regulations incorporated by reference in § 173.22 of the HMR). [Its rule] requires more information about more shipments and thereby creates confusion and undermines the likelihood of proper

compliance with the HMR prenotification requirements. Therefore, [it] is inconsistent with the HMR to the extent that it exceeds NRC requirements by requiring greater prenotification concerning non-spent fuel HRCQ radioactive materials shipments." *IR–27, 54 FR 16326 at 16331.

Operations Suspension/Requirements—See "Traffic Controls/Regulations"

Packaging Design and Construction Requirements

• Packaging and cargo containment design, construction, testing, accessories, equipment, certification and permit requirements, including those vesting discretionary authority in state or local officials, are inconsistent. IR–2; *IR–8; *IR–8(A); *IR–18; *IR–18(A); IR–22.

• "State and local governments may not issue requirements that differ from or add to Federal ones with regard to packaging design, construction and equipment for hazardous materials shipments subject to Federal regulations." IR–2, 44 FR 75566 at 75568.

• Hazardous gas container-testing requirements are inconsistent. *National Tank Truck Carriers, Inc.* v. *City of New York*, 677 F.2d 270 (2nd Cir. 1982).

• RAM container testing and certification requirements are inconsistent. *IR–8; *IR–8(A); *IR–15.

• Requirement for frangible shank-type lock on tank trailers carrying LNG or LPG is inconsistent since DOT comprehensively regulates cargo tank containment. IR–2.

• But plaintiffs failed to demonstrate "obstacle" test violations or to obtain summary judgment enjoining city cargo containment system regulations, including requirement that flammable liquid cargo tanks be constructed of steel, not aluminum. *National Paint & Coatings Assn., Inc.* v. *City of New York*, CV 84–4525 (E.D., N.Y. 1985).

Penalties (Also see "Violations Provisions")

• Penalties (such as fines, imprisonment or civil penalties) for violating consistent state or local rules are consistent unless they are so extreme or arbitrarily applied to reroute or delay shipments; mere differences in amount do not undermine consistency. IR–3; *IR–27.

• Penalties (such as fines, imprisonment or civil penalties) for violating inconsistent state or local rules are themselves inconsistent. *IR–18; *IR–18(A); *IR–27; **Jersey Central Power & Light Co.* v. *Township of Lacey*, 772 F.2d 1103 (3rd Cir. 1985).

Permit Requirements (Also see "Approval Requirements")

• Permit *per se* is not inconsistent; its consistency depends upon its requirements. IR–2; IR–3; #IR–20.

• State permitting system which prohibits or requires certain transportation activities depending upon whether a permit has been issued (regardless of whether the activity is in compliance with the HMTA), applies to selected hazardous materials, involves extensive information and documentation requirements and contains considerable discretion as to permit issuance, is inconsistent. "Cumulatively, these factors constitute unauthorized prior restraints on shipments of nonradioactive hazardous materials that are presumptively safe based on their compliance with Federal regulations." #IR–19, 52 FR 24404 at 24407. Affirmed in IR–19(A). *Contra: #Southern Pacific Transportation Co.* v. *Public Service Commission of Nevada*, CV–N–86–444–BRT (D. Nev. 1988) (discussed in *IR–27 at 54 FR 16332).

• Certain over-the phone permits for transportation of hazardous gases are consistent. *National Tank Truck Carriers, Inc.* v. *City of New York*, 677 F.2d 270 (2nd Cir. 1982).

• Permit requirements for each shipment involving application 4 hours to 2 weeks prior to shipment, carrying of permit on vehicle and "an additional piece of paper that supplies the same information as is required to be on the DOT shipping paper" involve high probability of transportation delay and thus are inconsistent. IR–2.

• Local RAM transportation permit was consistent—prior to DOT's issuance of HM–164 re routing of certain RAM. *IR–1.

• Requirements implementing, inextricably related to, or "fleshing out," inconsistent permitting requirements are themselves inconsistent. *IR–21; *IR–21(A).

• If permit system is consistent, requirements to carry permit and display decal are consistent. IR–3. *But* requirement to display permit decal was held inconsistent. *American Trucking Assns.* v. *City of Boston*, C.A. 81–628–MA (D. Mass. 1981).

• Since HMTA and HMR have almost completely occupied the field of RAM transportation safety, state and local requirements are limited to: (1) Traffic control or restrictions applying to all traffic, (2) designation of preferred routes under 49 CFR 177.825, (3) adoption of Federal or consistent requirements, (4) enforcement of consistent requirements or those for which preemption has been waived, and (5) imposition of reasonable transit fees to finance those enforcement activities and emergency response preparedness. Thus, RAM transportation permits generally are inconsistent. *IR–8; *IR–8(A); *IR–10; *IR–11; *IR–12; *IR–13; *IR–15; *IR–18; *IR–18(A); #IR–19; #IR–19(A); #IR–20; *IR–21; *IR–21(A); *IR–27.

Persons Subject to Requirements

• Definitions of persons subject to state or local requirements which include fewer persons than HMR minimize inconsistency possibilities and are themselves consistent. *IR–18.

Personnel Requirements

• Requirements for additional or special personnel re RAM transportation are inconsistent. *49 CFR Part 177, Appendix A (policy).

Placards and Other Hazard Warning Requirements

• Placards and other hazard warning requirements are inconsistent if they are in addition to or different from Federal placarding requirements. IR–2; IR–3; IR–24; *Kappelmann* v. *Delta Air Lines, Inc.*, 539 F.2d 165 (D.C. Cir. 1976), *cert. denied* 429 U.S. 1061 (1977); *National Tank Truck Carriers, Inc.* v. *City of New York*, 677 F.2d 270 (2nd Cir. 1982).

• "Hazard warning systems are another area where [OHMT] perceives the Federal role to be exclusive * * *. Additional, different requirements imposed by States or localities detract from the DOT systems and may confuse those to whom the DOT systems are meant to impart information." IR–2, 44 FR 75565 at 75568.

• Requirement for illuminated rear bumper sign conflicts with DOT lighting regulations, would divert attention from DOT placards and thus is inconsistent. IR–2.

• Requirements for additional or different placards re RAM transportation are inconsistent. *49 CFR Part 177, Appendix A (policy).

• Requirements for placards and identification of products are inconsistent. IR–3; *American Trucking Assns.* v. *City of Boston*, C.A. 81–628–MA (D. Mass. 1981).

• Requirement to display permit decal is inconsistent. *American Trucking Assns.* v. *City of Boston*, C.A. 81–628–MA (D. Mass. 1981).

• "It is OHMT's view that the HMR placarding provisions do completely occupy the field and, therefore, preempt all state and local placarding and warning sign requirements for hazardous materials transportation which are not identical to the Federal requirements. This is true with respect

to requirements applying solely to pickups and deliveries, as well as to requirements applying to through-traffic, because all such non-identical requirements create confusion and undermine the uniform system of hazard communication necessary for the safe transportation of hazardous materials. Transportation viewed as being a mere pickup or delivery by one jurisdiction actually may be just the beginning or end of multi-state transportation through numerous local jurisdictions." IR–24, 53 FR 19848 at 19850.

• But plaintiffs, prior to IR–24, failed to obtain summary judgment or make sufficient showing that Federal placarding regulations were intended to occupy field and preempt city hazard warning sign requirements with respect to local deliveries. *National Paint & Coating Assn., Inc.* v. *City of New York*, CV–84–4325 (E.D. N.Y. 1985).

Prenotification Requirements—See "Notice Requirements"

Prohibitions of Hazardous Materials Transportation (Also see "Permit Requirements")

• Prohibitions of hazardous materials transportation generally are inconsistent. IR–3; IR–3(A); IR10; *IR–16; #IR–20.

• Power to ban, rather than to channel or guide, hazardous materials traffic is exclusively Federal. "A unilateral local ban is a negation, rather than an exercise, of local responsibility, since it isolates the local jurisdiction from the risks associated with the commercial life of the nation." IR–3(A) 47 FR 18457 (Apr. 29, 1982).

• Town order requiring railroad to remove its railcars containing vinyl chloride from Town is inconsistent. *Consolidated Rail Corp.* v. *John Hancock*, C.A. 79–0983–MA (D. Mass. 1979).

• City ban on hazardous materials pickups and deliveries by non-city-permitted vehicles is inconsistent. Likewise inconsistent is a City ban on fueling or stopping of hazardous materials through-traffic. IR–23.

• "A State or local government may not resolve the problem by effectively exporting it to another jurisdiction." ""Nine-Pack" Preamble, citing *Kassel* v. *Consolidated Freightways*, 450 U.S. 662 (1981) and IR–3.

• But local prohibition on liquefied gases transportation through city unless no practical alternative route existed is consistent. *National Tank Truck Carriers, Inc.* v. *City of New York*, 677 F.2d 270 (2d Cir. 1982), *affirming City of New York* v. *Ritter Transportation, Inc.*, 515 F. Supp. 663 (S.D. N.Y. 1981).

• Prohibitions of highway transportation of highway route controlled quantity RAM without providing an alternate route are inconsistent. *49 CFR Part 177, Appendix A (policy).

• Prohibition of RAM and explosives shipments is inconsistent. *IR–16; #IR–20.

• *De facto* prohibitions are inconsistent. *IR–10.

• Prohibition of RAM transportation which RSPA has excepted from HMR requirements is inconsistent. #IR–20.

• Inadequacy of emergency response capabilities cannot provide basis for prohibiting transportation. *IR–16; *IR–18(A).

• To the extent it prohibits rail, air or water transportation of fireworks, State regulation allowing fireworks delivery by motor vehicle is inconsistent and thus is preempted. *South Dakota Dept. of Public Safety ex rel. Melgaard* v. *Haddenham*, 339 N.W.2d 788 (S.D. 1983). But an otherwise consistent requirement is not inconsistent because it applies only to certain modes of transportation. *IR–18.

• County ordinance prohibiting spent fuel or radioactive waste transportation into County for storage on nuclear power plant sites is inconsistent and thus preempted. **Jersey Central Power & Light Co.* v. *Township of Lacey*, 772 F.2d 1103 (3rd Cir. 1985).

Radio Requirements—See "Communications Requirements"

• *Railroad-related Requirements*—State or local hazardous materials railroad transportation requirements may be preempted under the Federal Railroad Safety Act, 49 App. U.S.C. 434, without consideration of whether they might be consistent under the HMTA. *CSX Transportation, Inc.* v. *City of Tullahoma*, Civ. 4–87–47 (E.D. Tenn. 1988); *CSX Transportation, Inc.* v. *Public Utilities Commission of Ohio*, C–2–88–1023 (D. Ohio 1988).

Reporting Requirements—See "Accident/Incident Reporting Requirements"

Routing Requirements—(Also See "Delays of Transportation", "Prohibitions of Hazardous Materials Transportation" and "Traffic Controls/Regulations")

• Without adequate safety justification and appropriate coordination with, and concern for safety of people in, adjoining affected jurisdictions, routing restrictions (including time restrictions) are inconsistent—particularly if they result in increased transit times. *IR–1; IR–2; IR–3; IR–3(A); *IR–10; *IR–11; *IR–14; *IR–19; #IR–20; IR–23.

• Local routing restrictions prohibiting transport of liquefied gases through city except to areas for which no practical interstate or major highway alternative route exists are consistent. *National Tank Truck Carriers, Inc.* v. *City of New York*, 677 F.2d 270 (2nd Cir. 1982), affirming *City of New York* v. *Ritter Transportation, Inc.*, 515 F. Supp. 663 (S.D. N.Y. 1981).

• State preferred route designations for highway route controlled quantity RAM are consistent if in accordance with 49 CFR 177.825(b).

• State routing restrictions re highway route controlled quantity RAM are inconsistent if not:

(1) Established by state routing agency (49 CFR 171.8);

(2) Based on comparative radiological risk assessment process at least as sensitive as that in "DOT Guidelines";

(3) Based on evaluation of radiological risk wherever it may occur and on solicitation and consideration of views from each affected jurisdiction (49 CFR 177.825(b)); and

(4) Ensuring reasonable continuity of routes between jurisdictions. *49 CFR Part 177, Appendix A (policy).

• "* * *the Department, through promulgation of 49 CFR § 177.825, has established a near total occupation of the 'field of routing' * * * requirements relating to the transportation of radioactive materials. Thus, state and local radioactive materials transportation routing * * * requirements other than (1) those identical to Federal requirements or (2) state designated alternate routes under 49 CFR § 177.825(b), are very likely to be inconsistent and thus preempted under section 112(a) of the HMTA." *IR–8(a), 52 FR 13000 at 13003.

• Local routing restrictions re RAM are inconsistent if they prohibit transportation on routes authorized by 49 CFR Part 177 or authorized by a state routing agency consistent with that Part. *IR–18; *IR–18(A); #IR–20.

• Suspension or regulation of spent nuclear fuel shipments on *non*-Interstate highways (not needed for access to or from Interstate or preferred routes) is consistent. *IR–7.

• Routing restrictions on highway route controlled quantity RAM not in accordance with 49 CFR 177.825(b), which authorizes State (not local) designation of certain preferred routes, are inconsistent. *IR–8(A); *IR–16; *IR–18; *IR–18(A); #IR–20; *IR–21; **Jersey Central Power & Light Co.* v. *State of New Jersey*, Civil No. 84–5883 (D. N.J., Dec. 27, 1984), *appeal dismissed as moot*, 772 F.2d 35 (3rd Cir. 1985).

• Routing restrictions re non-highway route controlled quantity RAM (required by 49 CFR Part 172 to be placarded) are inconsistent unless identical to 49 CFR 177.825(a). *IR–18; *IR–18(A); *IR–21; *49 CFR Part 177, Appendix A (policy).

• Routing restrictions re radioactive materials not required by 49 CFR Part 172 to be placarded are inconsistent. *49 CFR Part 177, Appendix A (policy).

"* * * Congress' dual purposes in enacting the HMTA were: (1) To protect the Nation against the risks inherent in hazardous materials transportation; and (2) to prevent a patchwork of varying and conflicting State and local regulations. Commissioners' Ordinance No. 0–31–80 impedes both purposes. By delaying hazardous materials shipments and causing traffic to be diverted from established routes, the Ordinance increases exposure to the risks inherent in hazardous materials transportion; and to the extent that the Ordinance results in the diversion of hazardous materials traffic into adjacent jurisdictions, it constitutes a routing requirement adopted without consideration of the safety impacts on other affected jurisdictions. To the extent that the Ordinance creates a precedent for the establishment of independent and uncoordinated local prenotification systems, it contributes to the creation of the regulatory patchwork which Congress intended to preclude." IR–6, 48 FR 760 at 766.

• Routing requirements linked to inconsistent equipment requirements are inconsistent. IR–22; IR–23.

Security Requirements

• Security requirements re RAM transportation are inconsistent if they conflict with NRC's 10 CFR Part 73 physical security requirements or DOT-approved requirements under 49 CFR 173.22(c). *49 CFR Part 177, Appendix A (policy).

Shipping Paper Requirements (Also see "Information/Documentation Requirements")

• Shipping paper requirements generally are inconsistent.

• Requirements for additional or different shipping paper entries re RAM are inconsistent. *49 CFR Part 177, Appendix A (policy).

• Requirement for red or red-bordered shipping papers for intrastate hazardous materials shipments is an obstacle to uniform national system and thus is inconsistent. IR–4.

• Requirements for certification to state of shipment's compliance with law are redundant, constitute obstacles to HMTA, and thus are inconsistent. *IR–8; *IR–15; *IR–21.

Standing

• OHMT applies a broad interpretation of the "person affected" standard for requesting inconsistency rulings, which are intended to resolve HMTA preemption issues expeditiously and inexpensively. *IR–21.

Statements of Intent to Regulate

• State or local statements of intent to regulate are consistent. *IR–12; *IR–15; *IR–18.

• Governor's letter stating intent to take action but not constituting a state requirement does not raise a consistency issue. *IR–9.

State Requirements

• Local requirements for compliance with otherwise consistent state requirements are consistent. IR–3.

Storage

• State prohibition of transportation-related hazardous materials storage without a state permit, at places where, and for times when, HMR allow such storage is inconsistent. #IR–19; #IR–19(A).

• "In summary, the HMR contain a comprehensive series of regulations relating to the storage of hazardous materials incidental to transportation by rail. These regulations authorize or prohibit specific types of hazardous materials storage under specified circumstances. Creation by the PSC of a separate regulatory regime for rail transport-related storage of hazardous materials raises the spectre of widespread confusion. The PSC regulations are so open-ended and discretionary that they authorize the PSC to approve storage prohibited by the HMR or prohibit storage authorized by the HMR." #IR–19, 52 FR 24404 at 24410.

Time Restrictions (Also see "Routing Requirements" and "Delays of Transportation")

• Time restrictions are a subset of routing restrictions. IR–3. Thus, without adequate safety justification and appropriate coordination with adjoining affected jurisdictions, time restrictions except as to in-city pickup and deliveries are inconsistent. IR–3(A); IR–23.

• Statewide prohibition on hazardous materials carriage between 7–9 a.m. and 4–6 p.m. on weekdays resulted in delay and are inconsistent. IR–2; *National Tank Truck Carriers, Inc.* v. *Burke*, 535 F. Supp. 509 (D.R.I. 1982), *aff'd* 698 F.2d 559 (1st Cir. 1983). Also inconsistent is statewide prohibition on RAM transportation other than during non-holiday weekdays from 9 a.m. to 4 p.m. *IR–21.

• Citywide rush-hour curfew (no transport between 6–10 a.m. and 3–7 p.m.) on liquefied gas transportation is consistent. *National Tank Truck Carriers, Inc.* v. *City of New York*, 677 F.2d 270 (2nd Cir. 1982), affirming *City of New York* v. *Ritter Transportation Co.*, 515 F. Supp. 663 (S.D. N.Y. 1981).

• City prohibition of hazardous materials transportation in downtown area between 6 a.m. and 8 p.m. on weekdays is consistent insofar as it applies to in-city pickups and deliveries. IR–3.

• No decision on consistency of 6–10 a.m. and 3–7 p.m. bridge and tunnel prohibition is possible without information on safety justification, coordination with other jurisdictions, and delays or diversions of hazardous materials. #IR–20.

• Restriction of RAM transportation to May-October period and prohibition of holiday or inclement weather shipments is inconsistent. *IR–14.

• County's assertion of unfettered authority to change dates, routes and times of hazardous materials shipments is inconsistent. *IR–18.

• Time restrictions linked to inconsistent routing requirements are inconsistent. IR–22; IR–23.

• City restriction of hazardous materials through-traffic on weekdays to 10 a.m.–3 p.m. and 7 p.m.–6 a.m. for explosives and "prohibited materials" and to 9 a.m.–4 p.m. and 6 p.m.–7 a.m. for other "hazardous cargo" is inconsistent because not based on adequate safety analysis or preceded by consultations with all affected jurisdictions. IR–23.

Traffic Controls/Regulations (Also see "Routing Requirements")

• So long as reasonably administered on a case-by-case basis, the local authority to restrict or suspend operations when road, weather, traffic or other hazardous conditions or circumstances warrant is consistent. IR–3; *IR–15(A); #IR–20; *American Trucking Assns.* v. *City of Boston*, C.A. 81–628–MA (D. Mass 1981); *National Tank Truck Carriers, Inc.* v. *Burke*, 535 F. Supp. 509 (D.R.I. 1982), *aff'd* 698 F.2d 559 (1st Cir. 1983).

• Local traffic controls are presumed to be valid. #IR–20; IR–23.

• "To the extent that nationwide regulations do not adequately address a particular local safety hazard, State and local governments can regulate narrowly for the purpose of eliminating

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or reducing the hazard." IR-2, 44 FR 75565 at 75568.

• Radioactive materials may not be singled out for different types of control than hazardous materials generally, nor may controls conflict with carrier discretion and responsibility provided by the HMR. *IR-15(A).

• Requirement to comply with lawful orders, instructions and directives of authorized bridge personnel is consistent. #IR-20.

• Traffic controls are not prohibited routing rules if they are not based on the nature of the cargo, such as truck routes based on vehicle weight or size—nor are emergency measures. *49 CFR Part 177, Appendix A (policy).

• Local "rules of road" restrictions on vehicles carrying hazardous materials are consistent. Thus, requirements for separation distances between moving or parked vehicles carrying hazardous materials which do not create hazards or unreasonable delays are consistent. IR-3; #IR-20.

• Local provision that carriers must use major city thoroughfares and that otherwise Federal motor carrier safety routing rules (49 CFR 397.9(a)) apply is consistent. IR-3. Likewise consistent is a local regulation requiring hazardous materials through-traffic to avoid congested areas so far as practicable and to use highway exits as close as possible to final destination. IR-23.

• Weight restriction applying only to hazardous materials and their containers, not to entire vehicles and contents, is not a *bona fide* traffic control measure and is inconsistent. #IR-20.

• State order prohibiting railroad cars carrying hazardous materials from being cut off in motion, struck by other cars moving under their own momentum or coupled into with unnecessary force is inconsistent and preempted by the HMTA, HMR, and the Federal Railroad Safety Act. *Atchison, Topeka and Santa Fe Railroad Co. v. Illinois Commerce Commission*, 453 F. Supp. 920 (N.D. Ill. 1977).

• Traffic controls linked to inconsistent equipment requirements are inconsistent. IR-22; IR-23.

Training Requirements

• "[S]tate may impose more stringent training requirements [than HMR] on motor carrier operators so long as those requirements do not directly conflict with the HMR requirements and apply only to individuals domiciled in that State and [on or after April 1, 1992] to individuals domiciled in other States who do not have hazardous materials endorsements on their CDL's [commercial drivers' licenses]." #IR-26, 54 FR 16314 at 16322. This principle applies to RAM and other hazardous materials. *Ibid.*

• "* * * the Department, through promulgation of 49 CFR 177.825, has established a near total occupation of the field of training requirements relating to the transportation of radioactive materials. Thus, State and local radioactive materials transportation * * * training requirements other than * * * those identical to Federal requirements * * * are very likely to be inconsistent and thus preempted under section 112(a) of the HMTA." *IR-9(A), 52 FR 13000 at 13003. However, see preceding paragraph.

• State requirement for mountain driving training as prerequisite to RAM transportation is inconsistent. *IR-27.

Tunnel Restrictions

• Except for RAM, State and local regulations regarding the kind, character or quantity of hazardous material permitted to be carried through any urban vehicular tunnel used for mass transportation are consistent. 49 CFR 177.816. But prohibition on RAM transportation through a tunnel is inconsistent. #IR-20.

Violations Provisions (Also see "Penalties")

• Violations provisions (such as criminal or civil sanctions) are consistent with HMTA and HMR if used to enforce consistent provisions. IR-3.

• Violations provisions (such as criminal or civil sanctions) are inconsistent with HMTA and HMR if used to enforce inconsistent provisions. *IR-18; *IR-18(A).

Weight Restrictions—See "Traffic Controls/Regulations"

INCONSISTENCY RULINGS UNDER SECTION 112(A) OF THE HAZARDOUS MATERIALS TRANSPORTATION ACT

Ruling	Filed	Applicant	Subject	Disposition	Summary
IR-1	5/1/77	Associated Universities, Inc.	New York City health code restrictions on radioactive materials (RAM).	Public Notice: 6/15/77 (42 FR 41204); Ruling: IR-1, 4/20/78 (43 FR 16954).	City ordinance effectively banning shipment of radioactive materials in or through city was *consistent* with HMTA or HMR—(prior to issuance of Fed. highway routing rule, HM-164).
IR-2	12/1/78	R.I. Div. of Public Utilities & Carriers.	R.I. restrictions on transportation of bulk flammable gas by highway.	Public Notice: 3/12/79 (44 FR 13617); Ruling: IR-2, 12/20/79 (44 FR 75566); Appeal Filed: 1/21/78; Perfected 6/24/78; Ruling on Appeal: 10/30/80 (45 FR 71881); Upheld: 535 F. Supp. 509 (D.R.I. 1982) and 696 F.2d 559 (1st Cir. 1983).	State regulations re two-way radio communications, immediate notification to State Police of any accident, use of headlights at all times, vehicle inspections and definitions were *consistent*. But requirements re written notification to state agencies of accidents, illuminated rear bumper signs, frangible shank-type locks on trailers, permit requirements for each shipment and prohibitions on travel in rush hours were *inconsistent*. Affirmed on appeal and in court.

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INCONSISTENCY RULINGS UNDER SECTION 112(A) OF THE HAZARDOUS MATERIALS TRANSPORTATION ACT—Continued

Ruling	Filed	Applicant	Subject	Disposition	Summary
IR-3	2/5/80	Hazardous Materials Advisory Council (HMAC), Mass. Motor Transport Assn., American Trucking Associations (ATA).	City of Boston regulations on routing, time of day, and other requirements re hazardous materials transportation.	Public Notice: 3/24/80 (45 FR 19110); Ruling: IR-3, 3/26/81 (46 FR 18918); Appeal filed: 7/10/81; Ruling on Appeal: 4/29/82 (47 FR 18457).	City regulations re immediate reporting of accidents to local officials, requiring use of major roads except for pickups and deliveries, assessing penalties for violations of valid local regulations, requiring use of headlights, specifying separation distances between vehicles and vehicle operating requirements, and adopting Federal and State motor carrier safety regulations were *consistent*. But, City regulations re marking vehicles to identify products, requiring vehicle signs re residual materials, requiring written accident reports, restricting travel during a.m. rush hours, and restricting use of certain streets were *inconsistent*. No decision rendered on undefined permit system. On appeal, written accident reports still found *inconsistent*, but routing restrictions inconsistency finding was rescinded with no conclusion as to their validity.
IR-4	7/1/80	National Tank Trucker Carriers, Inc. (NTTC).	Washington State shipping papers requirements.	Public Notice: 11/3/80 (45 FR 72855); Ruling: IR-4, 1/11/82 (47 FR 1231); Appeal filed: 1/26/82; Ruling on Appeal: 8/2/82 (47 FR 33357); Correction: 8/5/82 (47 FR 34074).	State law requiring intrastate shipments of hazardous materials carried by motor vehicles to be accompanied by red or red bordered shipping papers was *inconsistent*.
IR-5	9/26/80 10/10/80 11/3/80	Ritter Transportation, Nat'l LP-Gas Assn.; Propane Corp. of America & 7 other companies.	New York City Fire Dept. regulations re hazardous compressed gases.	Public Notice: 4/6/81 (46 FR 20662); Ruling: IR-5, 11/18/82 (47 FR 51991).	City regulations re gas under pressure, combustible or flammable gas, combustible mixture and inflammable mixture had definitions different from DOT's and thus were *inconsistent*.
IR-6	9/24/80	General Battery Corp.	Covington, Ky. prenotification ordinance.	Public Notice: 8/26/82 (47 FR 37737); Ruling: IR-6, 1/6/83 (48 FR 760).	City ordinance extending scope of hazardous materials regulated and requiring advance notice of rail, barge and truck transport of dangerous and hazardous materials within city was found *inconsistent*.
IR-7	10/8/82	Nuclear Assurance Corp.	Governor of New York Order suspending shipments of spent fuel.	Public Notice: 5/12/83 (48 FR 21496); Correction: 5/26/83 (48 FR 23747); Ruling: IR-7, 11/27/84 (49 FR 46832).	Governor's letter advising company to suspend spent nuclear fuel shipments on 2 non-Interstate highway routes was *consistent* because it required compliance with Federal regulations requiring use of Interstate Highway System.
IR-8	10/13/82	Nuclear Assurance Corp.	Michigan regulations re radioactive materials (RAM) transportation.	Public Notice: 5/12/83 (48 FR 21496); Correction: 5/26/83 (48 FR 23747); Ruling: IR-8, 11/27/84 (49 FR 46637); Appeal Filed: 12/20/84; Ruling on Appeal: 4/20/87 (52 FR 13000); Correction: 6/11/87 (52 FR 22416).	State RAM regulations re confidentiality standards, inspection requirements (relating to valid regulations), incorporation of Federal regulations, and notification of shipment schedule changes (identical to Federal) were *consistent*. But state regulations re RAM definition, application for approval of shipments, application approval criteria (including container testing and certification requirements) different from Federal regulations, written notification of approvals, communications requirements, and notifications of delays and emergency plan implementation were *inconsistent*. Affirmed on appeal.
IR-9	10/14/82	Nuclear Assurance Corp.	Governor of Vermont's letters suspending shipments of spent nuclear fuel.	Public Notice: 5/12/83 (48 FR 21496); Correction: 5/26/83 (48 FR 23747); Ruling: IR-9, 11/27/84 (49 FR 46644).	Governor's letter advising that spent nuclear fuel shipments would not be permitted until Federal agencies established a national policy on them was found not to be state "requirement" and thus was not subject to an inconsistency determination.
IR-10	10/20/82	Nuclear Assurance Corp.	New York State Thruway Authority regulations re RAM transportation.	Public Notice: 5/12/83 (48 FR 21496); Correction: 5/26/83 (48 FR 23747); Ruling: IR-10, 11/27/84 (49 FR 46645); Correction: 3/12/85 (50 FR 9939).	Thruway Authority regulation prohibiting RAM transportation except under its procedures, which generally resulted in approval of low-level RAM shipments and disapproval of shipments of highway route controlled quantities of RAM, was *inconsistent*.
IR-11	12/20/82	DOT (Under 49 CFR § 107.209(b)).	Ogdensburg Bridge and Port Authority regulations re RAM transportation.	Public Notice: 5/12/83 (48 FR 21496); Correction: 5/26/83 (48 FR 23747); Ruling: IR-11, 11/27/84 (49 FR 46647).	Bridge and Port Authority regulations specifying international bridge crossing times; requiring escort, compensation therefor, and evidence of unquantified "proper" insurance, and incorporating county requirements were *inconsistent* as applied to non-highway route controlled RAM quantities. [Bridge was not part of Interstate Highway System.]

INCONSISTENCY RULINGS UNDER SECTION 112(A) OF THE HAZARDOUS MATERIALS TRANSPORTATION ACT—Continued

Ruling	Filed	Applicant	Subject	Disposition	Summary
IR-12	12/20/82	DOT (Under 49 CFR § 107.209(b)).	St. Lawrence County (N.Y.) law re RAM transportation.	Public Notice: 5/12/83 (48 FR 21496); Correction: 5/26/83 (49 FR 23747); Ruling: IR-12, 11/27/84 (49 FR 46650).	County law regulating RAM transport on non-Interstate highways, as it applied to non-highway route controlled quantities of RAM, was *consistent* in its non-regulatory and non-obligatory policy statement, but was *inconsistent* in its permit requirements and hazard class definitions (different from Federal).
IR-13	12/20/82	DOT (Under 49 CFR § 107.209(b)).	Thousand Islands Bridge Authority regulations re hazardous materials (including RAM) transportation.	Public Notice: 5/12/83 (48 FR 21496); Correction: 5/26/83 (49 FR 23747); Ruling: IR-13, 11/27/84 (49 FR 46653).	Bridge authority regulations re permit, fee and escort requirements as applied to vehicle carrying highway route controlled quantities of radioactive materials over Interstate Highway System bridge were *inconsistent*.
IR-14	12/20/82	DOT (Under 49 CFR § 107.209(b)).	Jefferson County (N.Y.) ordinance re RAM highway transportation.	Public Notice: 5/12/83 (48 FR 21496); Correction: 5/26/83 (48 FR 23747); Ruling: IR-14, 11/27/84 (49 FR 46656).	County ordinance regulating transportation of highway route controlled quantities of RAM in area including Interstate highway was *consistent* insofar as it contained front and rear escort requirements identical to NRC standards but was *inconsistent* in requiring 24-hour prenotification, limiting transport to May-October period, and prohibiting holiday and inclement weather shipments.
IR-15	7/19/83	DOT (Under 49 CFR	Vermont regulations re RAM transportation.	Public Notice: 8/4/83 (48 FR 35550); Ruling: IR-15, 11/27/84 (49 FR 46660); Appeal Filed: 12/19/84; Ruling on Appeal: 4/20/87 (52 FR 13062); Correction: 5/15/87 (52 FR 18492).	State regulations re highway, rail and water transport of irradiated reactor fuel and nuclear waste were *consistent* as to statement of intent, information requirements identical to NRC's, confidentiality standards same as Federal, and inspection requirements (as applied to consistent rules); but were *inconsistent* re application to Federally-regulated highway route controlled quantity radioactive materials, submission of application for shipment approval (including identification, fee and container certification requirements), criteria for approvals, written notice of approval by Vermont, notice requirements for schedule changes and delays, and monitoring of shipments by state officials. Affirmed on appeal.
IR-16	2/18/82	Arizona DOT	City of Tucson ordinance re RAM transportation.	Public Notice: 12/12/83 (48 FR 55387); Ruling: IR-16, 5/20/85 (49 FR 20872).	City ordinance establishing different (from Federal) RAM definitions, prohibiting certain transportation within or through city, and requiring prenotification was *inconsistent*.
IR-17	3/21/85	Wisconsin Electric Power Co.	Illinois statutory fee on spent nuclear fuel transportation.	Public Notice: 10/30/85 (50 FR 45186); Ruling: IR-17, 6/9/86 (51 FR 20926); Appeal Filed: 9/3/86; Public Notice: 9/29/86 (51 FR 34527); Correction: 10/8/86 (51 FR 36125); Ruling on Appeal: 9/25/87 (52 FR 36200); Correction: 10/6/87 (52 FR 37399).	State law imposing fee of $1,000 per cask of spent nuclear fuel transported through state used to fund consistent inspection and emergency response programs was *consistent*. Affirmed on appeal.
IR-18	5/5/83	Prince George's County (MD).	Prince George's County (Md.) regulations re RAM transportation.	Public Notice: 10/4/84 (49 FR 39260); Ruling: IR-18, 1/2/87 (52 FR 200); Appeal Filed: 1/20/87; Ruling on Appeal: 7/29/88 (53 FR 28850).	County Regulations re RAM transportation were *consistent* re statement of intent, findings, essentially identical hazardous materials definitions, and narrower applicability than HMTA/HMR; but were *inconsistent* re different hazardous materials definitions, penalties, and permit, advance notice, information, time, routing, escort, and bonding requirements. Affirmed on appeal.
IR-19	10/21/86 11/13/86	Southern Pacific Transportation Company.	Nevada regulations re railroad-related loading, unloading transfer and storage of RAM, explosives and other hazardous materials.	Public Notice: 11/25/86 (51 FR 42808); Ruling: IR-19, 6/30/87 (52 FR 24404); Correction: 8/7/87 (52 FR 29468); Appeal Filed: 7/26/87; Ruling on Appeal: 4/7/88 (53 FR 11600).	State regulations containing burdensome and discretionary permitting system for railroad-related loading, unloading, transfer and storage of hazardous materials were *inconsistent*. Affirmed on appeal.
IR-20	7/21/86	Citizens Against Nuclear Trucking (CANT).	Triborough Bridge and Tunnel Authority regulations re RAM and explosives transportation.	Application Amended: 10/8/86; Public Notice: 10/20/86 (51 FR 37248); Correction: 11/5/86 (51 FR 40294); Ruling: IR-20, 6/30/87 (52 FR 24396); Correction: 8/7/87 (52 FR 29468).	Authority regulations effectively prohibiting transportation of most RAM and explosives through tunnels and across bridges were *inconsistent*. Unfettered discretion to ban transportation was *inconsistent*. But traffic controls, inspections, vehicle separation distances, and requirements to comply with lawful orders were *consistent*.

INCONSISTENCY RULINGS UNDER SECTION 112(A) OF THE HAZARDOUS MATERIALS TRANSPORTATION ACT—Continued

Ruling	Filed	Applicant	Subject	Disposition	Summary
IR-21	7/24/86	Citizens Against Nuclear Trucking (CANT).	Connecticut statute and regulations re RAM transportation.	Public Notice: 9/29/86 (51 FR 34524); Correction: 10/8/86 (51 FR 36125); Ruling: IR-21, 10/2/87 (52 FR 37072); Appeal Filed: 11/2/87; Public Notice: 1/15/88 (53 FR 1089); Ruling on Appeal: 11/11/88 (53 FR 46735).	State statute and regulations re RAM transportation permitting, information, documentation, certification, time restriction, routing, escort requirements and related definition were *inconsistent*. OHMT applies a broad interpretation of the "person affected" standing requirement for inconsistency ruling applications.
IR-22	4/13/87	American Trucking Assns., Inc. & National Tank Truck Carriers, Inc.	New York City Fire Dept. Directives re tank truck carriage of hazardous liquids and gases.	Public Notice: 5/18/87 (52 FR 18668); Ruling: IR-22, 12/8/87 (52 FR 46574); Correction: 12/29/87 (52 FR 49107); Appeal Filed: 2/1/88; Public Notice: 2/24/88 (53 FR 5538).	City regulations re cargo containment systems, equipment and related areas were *inconsistent* because they involved exclusively Federal areas and caused delays. On appeal.
IR-23	4/13/87	American Trucking Assns., Inc. & National Tank Truck Carriers, Inc.	New York City routing and time restrictions.	Public Notice: 5/18/87 (52 FR 18668); Ruling: IR-23, 5/11/88 (53 FR 16840); Appeal Filed: 6/20/88; Public Notice: 8/23/88 (53 FR 32184).	City routing and time restrictions on through-traffic hazardous materials transportation were *inconsistent* because of absence of determination of effect on overall public safety and consultations with other affected jurisdictions. On appeal.
IR-24	9/8/87	McGil Specialized Carriers, Inc..	City of San Antonio, TX regulation re placarding of small quantities of explosives.	Public Notice: 11/6/87 (52 FR 43016); Ruling: IR-24, 5/31/88 (53 FR 19848).	City regulation adopting vague explosives placarding requirement of 1979 Uniform Fire Code was *inconsistent* because placarding is exclusively Federal area and City regulation required placarding where HMR forbid it.
IR-25	5/19/88	City of Maryland Heights, MO.	City of Maryland Heights Ordinance requiring $1,000 bond for each waste-hauling vehicle.	Public Notice: 6/6/88 (53 FR 20736); Ruling: IR-25, 4/21/89 (54 FR 16308); Correction: 5/10/89 (54 FR 20235).	City ordinance requiring a $1,000 bond for highway transportation of hazardous wastes was *inconsistent* insofar as it applied to hazardous materials regulated under the HMTA.
IR-26	10/13/87	California Dept. of Motor Vehicles.	California Administrative Code regulations re training for highway transportation of hazardous materials.	Public Notice: 11/6/87 (52 FR 43830); Extension: 12/29/87 (52 FR 49107); Ruling: IR-26, 4/21/89 (54 FR 16314); Correction: 5/18/89 (54 FR 21526).	State regulations requiring training for operators of motor vehicles carrying hazardous materials generally were *consistent* with respect to domiciliaries of that State but *inconsistent* with respect to non-domiciliaries. However, after April 1, 1992, they would be *consistent* with respect to non-domiciliaries not having a hazardous materials endorsement on their commercial drivers' licenses (CDL's).
IR-27	7/26/88	Department of Energy (DOE).	Colorado regulations re RAM transport.	Public Notice: 8/11/88 (53 FR 30418); Ruling: IR-27, 4/21/89 (54 FR 16326); Correction: 5/9/89 (54 FR 20001).	State regulations concerning permits, training, prenotification, information, documentation, and permit fee requirements for transportation of RAM as well as civil penalty provisions relating to them, were *inconsistent*. But inspection, civil penalty and shipping fee requirements not related to inconsistent State activities were *consistent*.

[FR Doc. 89-14675 Filed 6-22-89; 8:45 am]
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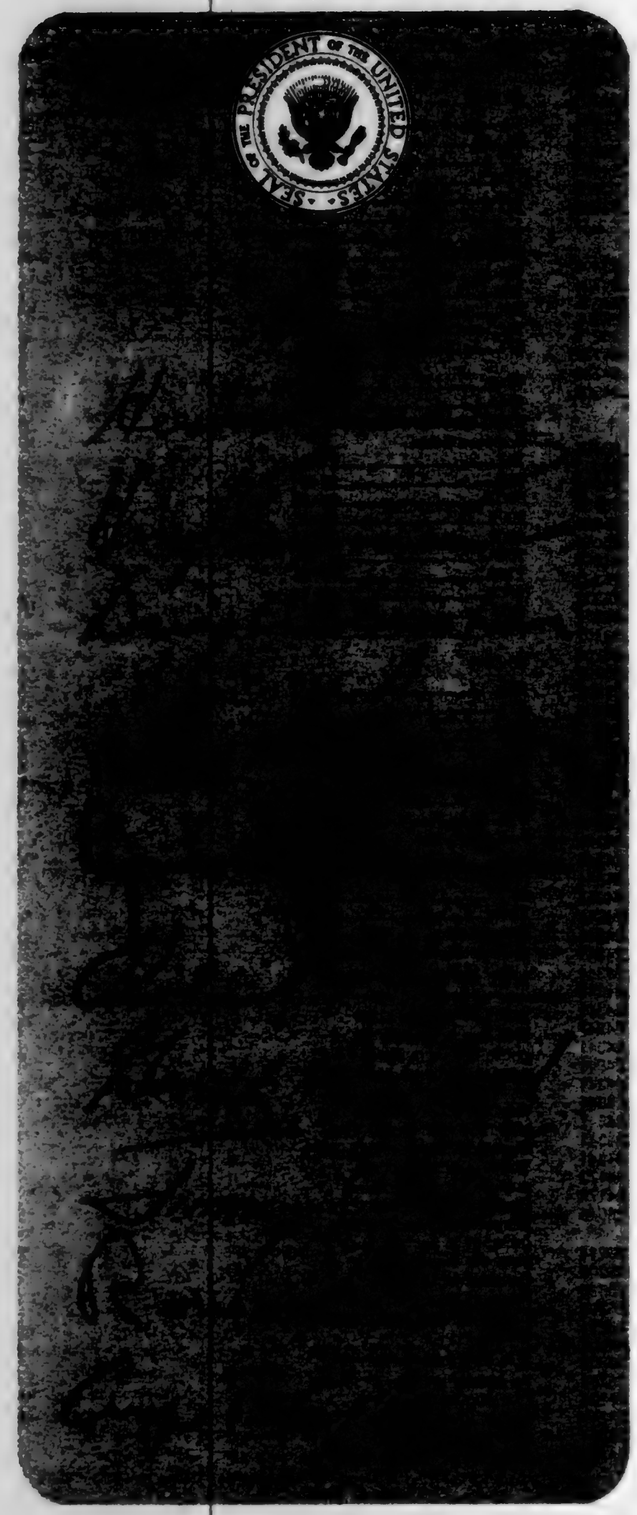
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H.R. 964/Pub. L. 101–40

To correct an error in Private Law 100–29 (relating to certain lands in Lamar County, Alabama) and to make technical corrections in certain other provisions of law. (June 20, 1989; 103 Stat. 81; 2 pages) Price: $1.00



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Rules and Regulations

Federal Register
Vol. 54, No. 121
Monday, June 26, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 226

Child Care Food Program: Addition of Snack or Meal

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule implements a nondiscretionary provision of the Hunger Prevention Act of 1988, Pub. L. 100–435, required to be implemented on July 1, 1989. That provision increases by one the number of reimbursable meals or supplements available under the Child Care Food Program (CCFP) to eligible children maintained in child care centers for eight or more hours per day. This rulemaking also includes a single, discretionary recordkeeping provision to be imposed upon centers which claim this additional reimbursement.

DATES: This interim rule is effective July 1, 1989. To be assured of consideration, comments must be postmarked on or before August 25, 1989.

ADDRESS: Comments should be addressed to: Robert Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, United States Department of Agriculture, 3101 Park Center Drive, Room 509, Alexandria, Virginia 22302. All written submissions will be available for public inspection at this location, Monday through Friday, 8:30 a.m.–5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Robert M. Eadie or James C. O'Donnell at the above address or by telephone at (703) 756–3620.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under Executive Order 12291 and has been classified not major because it will not have an annual effect on the economy of $100 million or more; will not cause a major increase in costs or prices for consumers, individual industries, or Federal, State or local government agencies; and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Pursuant to that review, the Acting Administrator of the Food and Nutrition Service (FNS) has certified that this interim rule does not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping requirements that are included in this rule have been approved by the Office of Management and Budget under clearance 0584–0055.

This rule implements Section 211 of Pub. L. 100–435, a nondiscretionary provision which provides for CCFP reimbursement for an additional meal or snack served to children who are provided care by participating centers for more than eight hours per day. Included in this rule is a single discretionary recordkeeping provision which is necessary for the implementation of the nondiscretionary time requirement of the provision. The effective date for this provision is July 1, 1989. Pub. L. 100–435 also required the Department to conduct a demonstration project in one State in order to assess the impact of providing reimbursement for an additional meal or snack in centers and homes. The State of Minnesota was chosen as the demonstration site and began providing this additional reimbursement in December 1988. Given the July 1 implementation date and the desirability of doing at least a preliminary assessment of the demonstration project, the Department believed it to be in the best interest of CCFP administrators to publish this rule after preliminary results from the demonstration were available and, at the same time, to give States and institutions adequate time to prepare for implementation. For these reasons, the Acting Administrator of the Food and Nutrition Service has determined, in accordance with 5 U.S.C. 553(b)(3)(B), that it is unnecessary and contrary to public interest to take prior public comment and that good cause therefore exists for publishing this rule without prior public notice and comment. For the same reasons, the Acting Administrator has determined that good cause exists for making this rule effective without a 30 day post-publication waiting period. Furthermore, because of the nondiscretionary, interpretive nature of this rule (except for the time recordkeeping requirement), the Acting Administrator has determined that prior notice and comment is unnecessary and a 30-day post-publication waiting period is not required in accordance with 5 U.S.C. 553(b)(3)(A) and 553(d)(2). However, because the Department believes that this rule may be improved through public comment, comments are solicited on this rule for 60 days. All comments received will be analyzed and any appropriate changes in the rule will be incorporated in the subsequent publication of a final rule.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.558 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983).

Background

Pub. L. 100-435, the Hunger Prevention Act of 1988, was enacted on September 19, 1988. Section 211 of that law amended Section 17(f)(2)(B) of the National School Lunch Act (42 U.S.C. 1766(f)(2)(B)) to allow reimbursement for a snack or meal served to eligible children in child care centers in addition to the reimbursement currently available for two meals and one snack under the CCFP. Specifically, the amendment made by Pub. L. 100–435 makes reimbursement available for "* * * two meals and two supplements or three meals and one supplement per day per child * * *" It limits the additional reimbursement to meals or supplements served to "* * * children

that are maintained in a child care setting for eight or more hours per day * * *" It further limits the reimbursement to centers, specifically excluding family day care homes. Finally, Section 701(b)(4) of Pub. L. 100-435 requires that the additional reimbursement provision be effective and implemented on July 1, 1989.

Except for certain restrictions covering the times of meal service in outside-school-hours care centers (§ 226.19(b)(7)) and a requirement that participating institutions keep daily records indicating the number of children in attendance (§ 226.15(e)(4)), current law and regulations governing the CCFP are silent with respect to meal service times and recordkeeping related to the times in which children are in attendance or served meals. However, given the specific time requirement established in Pub. L. 100-435, the Department believes it necessary, for the purpose of implementing the nondiscretionary parts of this rule, to require that centers claiming reimbursement for the additional meal or supplement maintain documentation that the participant to whom they serve the additional meal or supplement was in attendance at the center for eight or more hours on the day for which the meal was claimed. Under the Minnesota demonstration project, this documentation consisted of time-in/time-out records for each child in attendance for whom an extra meal or supplement was claimed. This rule incorporates the time-in/time-out requirement but applies it to all children in attendance regardless of whether they receive a reimbursable extra meal or supplement. The Department believes that extending this requirement to all children in attendance is essential to proper recordkeeping to support this extra reimbursement and more easily and accurately accommodates such things as unexpected changes in times in attendance by individual children. This documentation should, at a minimum, include a time-in/time-out form which shows the number of hours each child was in attendance at the center. This interim rule contains such a requirement. The Department is interested in receiving public comment on this provision and will issue a final rule on this aspect of the rule after consideration of those comments.

Under this rule, outside-school-hours care centers now may be approved to serve an extra meal or snack, but only under the conditions described in the revision of § 226.19(b0(4) and the time constraints established in the newly designated § 226.19(b)(6) (existing § 226.19(b)(7)). Given these restrictions, the Department expects that the service of an additional meal or snack will occur only when school is not in session or when the center provides lunches to children who are unable to obtain a lunch at school.

Certain adult day care centers are now eligible for participation in the CCFP. However, the Department believes, since Pub. L. 100-435 authorizes the extra meal or snack each day "* * * per child, for children that are maintained in a child care setting * * *", the intent of Congress was that this provision apply only to children in child care centers and not to adults in adult day care centers. Adult day care centers had been authorized for CCFP participation for a year at the time that Public Law 100-435 was enacted. Had Congress wanted to extend the provision to adults, it would have been so stated in the law.

List of Subjects in 7 CFR Part 226

Day care, Food assistance programs, Grant programs—health, infants and children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, Part 226 is amended as follows:

PART 226—CHILD CARE FOOD PROGRAM

1. The authority citation for Part 226 continues to read as follows:

Authority: Secs. 9, 11, 14, 16, and 17, National School Lunch Act, as amended (42 U.S.C. 1758, 1759a, 1762a, 1765 and 1766).

2. In § 226.15:

a. Paragraph (e)(5) through (e)(11) are redesignated (e)(6) through (e)(12); and

b. A new paragraph (e)(5) is added, to read as follows:

§ 226.15 Institution provisions.

* * * * *

(e) * * *

(5) For child care centers and outside school-hours care centers claiming reimbursement for more than two meals and one supplement per child per day, documentation of the total time-in-attendance for each child at the center for each day for which the extra meal or supplement was claimed. Such information shall include a time-in/time-out form which records time-in-attendance for each child at the center.

§ 226.17 [Amended]

* * * * *

3. In § 226.17, the second sentence of paragraph (b)(3) is amended by adding before the period the phrase ", except that reimbursement may be claimed for two meals and two supplements or three meals and one supplement served to a child for each day in which that child is maintained in care for eight or more hours".

§ 226.19 [Amended]

4. In § 226.19:

a. Paragraph (b)(4) is revised;

b. Paragraph (b)(5) is removed;

c. Paragraphs (b)(6) through (b)(10) are redesignated (b)(5) through (b)(9); and

d. The second sentence of newly redesignated paragraph (b)(5) is amended by adding before the period the phrase ", except that reimbursement may be claimed for two meals and two supplements or three meals and one supplement served to a child for each day in which that child is maintained in care for eight or more hours". The revision specified above reads as follows:

§ 226.19 Outside-school-hours care center provisions.

* * * * *

(b) * * *

(4) Outside-school-hours care centers shall be eligible to serve a breakfast, supplement and supper to enrolled children outside of school hours. In addition, outside-school-hours care centers shall be eligible to serve a lunch to enrolled children during periods of school vacation, including weekends and holidays, and to enrolled children attending schools which do not offer a lunch program. Notwithstanding the eligibility of outside-school-hours care centers to serve Program meals to children on school vacation, including holidays and weekends, such centers shall not operate under the Program on weekends only.

* * * * *

Date: June 21, 1989.

George A. Braley,

Acting Administrator.

[FR Doc. 89-15075, Filed 6-21-89; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 671]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 671 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 385,000 cartons during the period June 25 through July 1, 1989. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: Regulation 671 (§ 910.971) is effective for the period June 25 through July 1, 1989.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 475-3861.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

This regulation is issued under Marketing Order No. 910, as amended [7 CFR Part 910], regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601-674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee (Committee) and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the California-Arizona lemon marketing policy for 1988-89. The Committee met publicly on June 20, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that demand for lemons is good.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is revised as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.971 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.971 Lemon Regulation 671.

The quantity of lemons grown in California and Arizona which may be handled during the period June 25, 1989, through July 1, 1989, is established at 385,000 cartons.

Dated: June 21, 1989.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 89-15076 Filed 6-22-89; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 985

[FV-88-023FR]

Spearmint Oil Produced in the Far West; Revision of Salable Quantities and Allotment Percentages for "Class 1" (Scotch) and "Class 3" (Native) Spearmint Oils for the 1988-89 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service is adopting without modification as a final rule the provisions of an interim final rule which increased the quantities of "Class 1" (Scotch) and "Class 3" (Native) spearmint oils produced in the Far West that may be purchased from, or handled for, producers by handlers during the 1988-89 marketing year which began June 1, 1988. This action is taken under the marketing order for spearmint oil produced in the Far West to promote orderly marketing conditions and was recommended by the Spearmint Oil Administrative Committee, the agency responsible for local administration of the order.

EFFECTIVE DATE: June 26, 1989.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, F&V, AMS, USDA, Room 2522-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 475-5120.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 985 (7 CFR Part 985), as amended, regulating the handling of spearmint oil produced in the Far West. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended, (7 U.S.C. 601-674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus both statutes have small entity orientation and compatibility.

There are approximately nine handlers of Far West spearmint oil subject to regulation under the spearmint oil marketing order, and approximately 253 spearmint oil producers in the regulated area. Of the 253 producers, 170 producers hold "Class 1" oil (Scotch) allotment base and 136 producers hold "Class 3" oil (Native) allotment base. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of Far West Spearmint oil may be classified as small entities.

The Spearmint Oil Administrative Committee (Committee), at its January 26 and March 6, 1989, meetings, unanimously recommended that the salable quantities and allotment percentages for Scotch and Native spearmint oils for the 1988–89 marketing year be increased. The 1988–89 salable quantities and allotment percentages for those classes of oil were first published in a final rule in the March 1, 1988, issue of the **Federal Register** (53 FR 6129). Subsequently, an interim final rule increasing the salable quantity and allotment percentage for Scotch spearmint oil for the 1988–89 marketing year was published in the August 18, 1988, issue of the **Federal Register** (53 FR 31281), inviting comments until September 19, 1988. That interim final rule increased the 1988–89 salable quantity for Scotch spearmint oil from 650,131 to 766,387 pounds and the allotment percentage from 39 to 46 percent.

An interim final rule, modifying the August 18, 1988, interim final rule by increasing the salable quantity of Scotch spearmint oil from 776,387 to 883,011 pounds and increasing the allotment percentage from 46 to 53 percent, was published in the September 30, 1988, issue of the **Federal Register** (53 FR 38281). In addition, that interim final rule increased the salable quantity of Native spearmint oil from 701,077 to 791,772 pounds and increased the allotment percentage from 38 to 43 percent. The increases in the September 30, 1988, interim final rule were adopted without modification in a final rule published in the January 11, 1989, issue of the **Federal Register** (54 FR 962). Those revisions were issued pursuant to § 985.52(a) of the spearmint oil marketing order.

A new interim final rule modifying the January 11, 1989, final rule by increasing the salable quantity of Scotch spearmint oil from 883,011 to 966,314 pounds and increasing the allotment percentage from 53 to 58 percent was published in the April 4, 1989, issue of the **Federal Register** (54 FR 13513). In addition, that interim final rule increased the salable quantity of Native spearmint oil from 791,772 to 966,698 pounds and increased the allotment percentage from 43 to 52.5 percent. Those revisions were also pursuant to § 985.52(a) of the spearmint oil marketing order.

The salable quantity is the total quantity of a class of oil which handlers may purchase from or handle on behalf of producers during a marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage (which is the salable quantity multiplied by 100 divided by the total of all allotment bases) to the producer's allotment base for that class of oil.

Scotch Spearmint Oil

At its August 12, 1987, meeting, the Committee estimated trade demand for Scotch spearmint oil for the 1988–89 marketing year to be 761,063 pounds. A desirable carry-out figure of 0 pounds was adopted and, when added to the trade demand, resulted in a total supply needed of 761,063 pounds. The Committee estimated that 15,703 pounds would be carried in on June 1, 1988. This amount was deducted from the total supply needed leaving 745,360 pounds as the salable quantity needed. This figure was further reduced by 100,000 pounds which was the amount of Far West Scotch sales estimated to be filled by production from outside the production area (South Dakota). This left a salable quantity needed of 645,360 pounds. This quantity, divided by the total of all allotment bases of 1,667,002 pounds, resulted in 38.7 percent, which was the computed allotment percentage. This figure was adjusted to 39 percent and established as the 1988–89 Scotch allotment percentage which resulted in a 1988–89 salable quantity of 650,131 pounds.

At the time of the July 6, 1988, Committee meeting, the 1988–89 salable percentage of 39 percent, when applied to the then current total allotment base of 1,666,059 pounds, gave a 1988–89 salable quantity of 649,763 pounds. Since all growers either produced their individual salable quantity or filled any deficiencies with reserve pool oil, the total salable quantity which was available, when this figure was combined with the actual carry-in on June 1, 1988, was 683,644 pounds, and was the total supply available for the 1988–89 marketing year. Carry-in on June 1, 1988, was 33,881 pounds of Scotch oil, higher than the Committee had estimated.

The Committee, at its July 6, 1988, meeting, recommended increasing the salable percentage of Scotch spearmint oil by 7 percent, from 39 to 46 percent, thus making an additional 116,624 pounds available to the market. The basis for this recommendation was that when these additional pounds were added to the total supply available of 683,644 pounds, the resulting 800,268 pounds was between the five-year average sales of 758,682 pounds and the highest year of sales of 868,242 pounds. The Committee decided that this figure would meet immediate needs while assuring growers that a burdensome supply would not be put on the market. The Committee therefore recommended that the 1988–89 Scotch salable percentage be increased from 39 to 46 percent resulting in an increase in the salable quantity from 650,101 to 766,387 pounds. This figure added to the June 1, 1988, carry-in of 33,881 pounds resulted in a total available supply of 800,268 pounds. Thus, the interim final rule published in the August 18, 1988, issue of the **Federal Register** [53 FR 31281] increased the salable quantity for Scotch spearmint oil from 650,101 to 766,387 pounds and increased the allotment percentage from 39 to 46 percent.

Estimates at the time of the July 6, 1988, Committee meeting indicated that a maximum of 50 percent of a normal crop would be harvested in the Midwest during the 1988–89 marketing year. The demand for Far West Scotch oil increased as buyers of Midwest Scotch oil substituted Far West oil for Midwest oil. In order to meet the anticipated increase in trade demand, a higher salable quantity and allotment percentage for Scotch oil were therefore required.

At its August 10, 1988, meeting, the Committee unanimously voted to make more Scotch spearmint oil available to the market by increasing the salable quantity and allotment percentage. The Committee therefore recommended that the 1988–89 Scotch salable percentage be increased from 46 to 53 percent resulting in an increase in the salable quantity from 766,387 to 883,011 pounds. This figure, added to the June 1, 1988, carry-in of 33,881 pounds, resulted in a total available supply of 916,892 pounds. Thus, the interim final rule published in the September 30, 1988, issue of the **Federal Register** (53 FR 38281) and adopted in the final rule published in the January 11, 1989, issue of the **Federal Register** (54 FR 962), increased the salable quantity for Scotch spearmint oil from 766,387 to 883,011 pounds and increased the allotment percentage from 46 to 53 percent.

At its January 26, 1989, meeting, the Committee unanimously voted to make more Scotch spearmint oil available to the market by further increasing the salable quantity and allotment percentage. Total sales as of January 26, 1989, were the highest on record. Both buyer and grower input indicated that there would likely be 30,000 to 40,000 pounds of additional demand over the next several months. When the estimated amount that had been sold as of January 26, 1989, (888,653 pounds) was deducted from the total supply available of 916,892 pounds, the resulting 28,239 pounds was considered by the Committee to be less than desirable for that time in the marketing year. The Committee therefore recommended that the 1988–89 Scotch spearmint oil salable percentage be increased from 53 to 58 percent, resulting in an increase in the salable quantity from 883,011 to 966,314 pounds with only 932,255 pounds made available. The following table summarizes the computations used in arriving at the Committee's recommendations:

	Pounds			
	Recommendation Aug. 12, 1987	Recommendation July 6, 1988	Recommendation Aug. 10, 1988	Recommendation Jan. 26, 1989
(1) Carry-in	15,703	33,881	33,881	33,881
(2) Total supply available	665,834	800,268	916,892	[3] 966,136
(3) Desirable carryout	0	0	0	0
(4) Salable quantity	[1] 645,360	[2] 766,387	[2] 883,011	966,314
(5) Total allotment bases for Scotch oil	1,667,002	1,666,059	1,666,059	1,666,059
(6) Allotment percentage	39	46	53	58
(7) Adjusted salable quantity	650,101	766,387	883,011	[2] 932,255

[1] Salable quantity equals trade demand minus carry-in and minus any additional 100,000 pounds of Scotch oil expected to be available from South Dakota, which is outside the production area.
[2] Total supply available minus carrying.
[3] Although 5 percent of the total 1988–89 allotment base figure of 1,666,059 pounds results in a figure of 83,303 pounds, the action taken makes only 49,244 pounds available. This number is adjusted because some growers do not have reserve pool oil and, therefore, will not be able to fill the deficiency created by this increase with their own oil.

Thus, the Department determined an allotment percentage of 58 percent should be established for Scotch spearmint oil for the 1988–89 marketing year. This percentage made available 966,136 pounds of Far West Scotch spearmint oil to handlers of Far West spearmint oil. Although 5 percent of the total 1988–89 allotment base figure of 1,666,059 pounds resulted in a figure of 83,303, pounds, the increase in the 1988–89 Scotch spearmint oil salable percentage from 53 to 58 percent made only 49,244 pounds available. This is because some growers do not have reserve pool oil and, therefore, were not able to fill the deficiency created by this increase with their own oil. Because the deadline for filling another grower's deficiency was October 31, 1988, the additional allotment made available to growers without pool oil will not be available to market. Therefore, a certain amount of the additional allotment resulting from this increase cannot be used to make additional oil available to market.

Native Spearmint Oil

In addition, at its August 12, 1987, meeting, the Committee estimated trade demand for Native spearmint oil for the 1988–89 marketing year to be 750,000 pounds. A desirable carry-out figure of 0 pounds was adopted and, when added to the trade demand, resulted in a total supply needed of 750,000 pounds. The Committee estimated that 50,000 pounds would be carried-in on June 1, 1988. This amount was deducted from the total supply needed leaving 700,000 pounds as the salable quantity needed. This quantity, divided by the total of all allotment bases of 1,844,940 pounds, resulted in 37.9 percent which was the computed allotment percentage. This figure was adjusted to 38 percent and established as the 1988–89 Native allotment percentage which resulted in a 1988–89 salable quantity of 701,077 pounds based on the estimated total base of 1,844,940 pounds.

The 1988–89 salable percentage of 38 percent, when applied to the revised total allotment base of 1,841,330 pounds, gave a 1988–89 salable quantity of 699,705 pounds. Since all growers either produced their individual salable quantity or filled deficiencies with reserve pool oil, the total salable quantity made available, when this figure was combined with the actual carry-in on June 1, 1988, was 703,107 pounds, and was the total supply available for the 1988–89 marketing year.

Carry-in on June 1, 1988, was 3,402 pounds of Native oil, which was lower than the Committee had estimated.

Extensive surveys of growers and buyers led the Committee at its August 10, 1988 meeting to estimate that 610,479 pounds of the 1988–89 total available supply was committed to the market. This was the highest amount that had ever been sold or committed to be sold at that time of the year. When the estimated amount that was committed to the market of 610,479 pounds was deducted from the total supply available of 703,107 pounds, the result of 92,628 pounds was the amount available to the market. This was considered by the Committee to be less than was desirable for that early in the marketing year. In order to meet the anticipated increase in trade demand, a higher salable quantity and allotment percentage for Native oil were required. The Committee recommended increasing the salable percentage by 5 percent, from 38 to 43 percent, thus making an additional 92,067 pounds (0.05 x 1,841,330 pounds which was the then current total of allotment bases for Native oil) available to the market. The Committee decided that this figure would meet immediate needs while assuring growers that a burdensome supply would not be put on

the market. The Committee therefore recommended that the 1988–89 Native salable percentage be increased from 38 to 43 percent resulting in an increase in the salable quantity from 699,705 to 791,772 pounds. This figure added to the June 1, 1988, carry-in of 3,402 pounds resulted in a total available supply of 795,173 pounds. Thus, the interim final rule published in the September 30, 1988, issue of the **Federal Register** (53 FR 38281) and adopted in the final rule published in the January 11, 1989, issue of the **Federal Register** (54 FR 962), increased the salable quantity for Native spearmint oil from 701,077 to 791,772 pounds and increased the allotment percentage from 38 to 43 percent.

At its January 26, 1989 meeting, the Committee unanimously voted to make more Native spearmint oil available to the market by further increasing the salable quantity and allotment percentage. When the total estimated sales at that time of 766,249 pounds was deducted from the total supply available of 795,173 pounds, the resulting 28,924 pounds was the estimated amount available to the market. This was considered by the Committee to be less than is desirable for that time in the marketing year. The Committee therefore recommended that the 1988–89 Native spearmint oil salable percentage be increased from 43 to 49 percent, resulting in an increase in the salable quantity from 791,772 to 893,416 pounds. Although 6 percent of the total 1988–89 allotment base figure of 1,841,330 pounds resulted in a figure of 110,480 pounds, the action taken made only 101,644 pounds available. This was because some growers did not have reserve pool oil, and therefore were not able to fill the increased salable quantity with their own oil.

At its March 6, 1989 meeting, the Committee unanimously voted to revise its January 26, 1989, recommendation. Market activity shortly after the January 26 meeting was unexpectedly brisk and resulted in a depletion of the bulk of the available Native spearmint oil. By March 6, the total amount of sales and Native spearmint oil committed to be sold was estimated to be 856,617 pounds.

When the total sales of 856,617 pounds was deducted from the total supply available of 896,617 pounds, the resulting 40,000 pounds was the amount estimated to be available to the market. This was considered by the Committee to be less than is desirable for this time in the marketing year. The Committee therefore revised its January 26 recommendation and recommended that the 1988–89 Native spearmint oil salable percentage be further increased from 49 to 52.5 percent resulting in an increase in the salable quantity from 893,415 to 986,698 pounds with only 951,314 pounds being made available.

The following table summarizes the computations used in arriving at the Committee's recommendations.

	Pounds			
	Recommendation Aug. 12, 1987	Recommendation Aug. 10, 1988	Recommendation Jan. 26, 1989	Revised recommendation Mar. 6, 1989
(1) Carry-in	50,000	3,402	3,402	3,402
(2) Quantity available	750,000	795,174	[1] 896,817	[2] 954,716
(3) Desirable carryout	0	0	0	0
(4) Salable quantity	700,000	791,772	902,252	986,698
(5) Total allotment base for Native	1,844,940	1,841,330	1,841,330	1,841,330
(6) Allotment percentage	38	43	49	52.5
(7) Adjusted salable quantity	701,077	791,772	[1] 893,415	[2] 951,314

[1] Although 6 percent of the total 1988–89 allotment base figure of 1,842,330 pounds results in a figure of 110,480 pounds, the action taken makes only 101,644 pounds available. This is because some growers do not have reserve pool oil and, therefore, will not be able to fill the deficiency created by this increase with their own oil.

[2] Although the additional 3.5 percent of the total 1988–89 allotment base figure of 1,841,330 pounds results in a figure of 64,447 pounds, the action taken makes only 57,898 pounds available. This is because some growers do not have reserve pool oil and, therefore, will not be able to fill the deficiency created by this increase with their own oil.

Thus, the Department determined an allotment percentage of 52.5 percent should be established for Native spearmint oil for the 1988–89 marketing year. This percentage made available 954,716 pounds of Far West Native spearmint oil to handlers of Far West spearmint oil. Although the additional 3.5 percent of the 1988–89 allotment base figure of 1,841,330 pounds resulted in a figure of 64,447 pounds, the action taken made only 57,898 pounds available. This is because some growers did not have reserve pool oil and, therefore, were not able to fill the deficiency created by this increase with their own oil.

An interim final rule establishing those allotment percentages and salable quantities for Scotch and Native spearmint oils was issued on March 30, 1989, and published in the **Federal Register** on April 4, 1989 (54 FR 13513). Comments were solicited from interested persons through May 4, 1989. No comments were received. Thus, the allotment percentages and salable quantities as established by that interim final rate are adopted without change.

Based on available information, the Administrator of the AMS has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including that contained in the final rule published in the March 1, 1988, issue of the **Federal Register** (53 FR 6129); the interim final rule published in the August 18, 1988, issue of the **Federal Register** (53 FR 31281); the interim final rule published in the September 30, 1988, issue of the **Federal Register** (53 FR 38281); the final rule published in the January 11, 1989, issue of the **Federal Register** (54 FR 962), and the interim final rule published in the April 4, 1989, issue of the **Federal Register** (54 FR 13513), the Committee's recommendations and other information, it is found that to amend § 985.208 (53 FR 6129) so as to change the salable quantities and allotment percentages for Scotch and Native spearmint oils, as set forth below, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**. This action adopts as a final rule, without change, the provisions of the interim final rule. No comments were received concerning the interim final rule and no practical purpose would be served by postponing the effective date of this action.

List of Subjects in 7 CFR Part 985

Far West, Marketing agreements and orders, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR Part 985 is amended as follows:

Note: This section will not appear in the Code of Federal Regulations.

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

1. The authority citation for 7 CFR Part 985 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Accordingly, the interim final rule revising § 985.208, which was published at 54 FR 13513 on April 4, 1989, is adopted as a final rule without change.

Dated: June 21, 1989.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–15025 Filed 6–23–89; 8:45 am]

BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

9 CFR Part 91

[Docket No. 89–027]

Ports Designated for Exportation of Animals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the "Inspection and Handling of Livestock for Exportation" regulations by adding Olympia, Washington, to the list of ports designated as ports of embarkation and by adding the Port of Olympia Facility as the export inspection facility for that port. The facility meets the requirements of the regulations to be included in the list of export inspection facilities. The effect of this action is to add an additional port through which animals may be exported.

EFFECTIVE DATE: July 26, 1989.

FOR FURTHER INFORMATION CONTACT: Dr. N.Q. Faizi, Senior Staff Veterinarian, Import-Export Animals Staff, VS, APHIS, USDA, Room 762, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; (301) 436–8383.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 91, "Inspection and Handling of Livestock for Exportation" (referred to below as the regulations), prescribe conditions for exporting animals from the United States.

On January 31, 1989, we published in the **Federal Register** (54 FR 4832–4833, Docket No. 88–188) a document proposing to amend the regulations by adding Olympia, Washington, to the list of ports designated as ports of embarkation and by adding the Port of Olympia Facility as the export inspection facility for that port.

We solicited comments on the proposal for 60 days, to be postmarked or received on or before April 3, 1989. We received one comment, from a member of a county humane society. The commenter asserted that the Port of Olympia does not have facilities for holding, feeding, and watering animals prior to exportation. The agency has inspected the export inspection facility for the Port of Olympia and reviewed the facility's procedures for handling animals. Based on this information, the agency has determined that the export inspection facility for the Port of Olympia does have adequate facilities for holding, feeding, and watering animals and meets the requirements set forth in § 91.14(c) of the regulations. The commenter also asserted that the facility would not be accessible to the public on weekends and holidays. Since the facility covers only livestock and certain zoo species, prior arrangements between exporters and the facility operator would be made for each shipment. Thus, the facility would maintain a flexible schedule that would meet the needs of the exporters. Based on the rationale set forth in the proposal and in this document, we are adopting the provisions of the proposal without change as a final rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule". Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

There will be minimal economic effect because there are only about 6 ocean shipments a year out of the Northwest United States. This rule only affects owners exporting animals through the port of Seattle, Washington, or the port at Portland, Oregon, by giving these exporters another port from which to ship their animals.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 91

Animal diseases, Animal welfare, Exports, Livestock and livestock products, Transportation.

PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION

Accordingly, 9 CFR Part 91 is amended as follows:

1. The authority citation for Part 91 continues to read as follows:

Authority: 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 612, 613, 614, 618, 46 U.S.C. 466a, 466b; 49 U.S.C. 1509(d); 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 91.14 is amended by adding new paragraphs (a)(15)(iii) and (a)(15)(iii)(A) to read as follows:

§ 91.14 Ports of embarkation and export inspection facilities.

(a) * * *

(15) *Washington.* * * *

(iii) Olympia—ocean port.

(A) Port of Olympia Animal Export Facility, 915 Washington Street NE., Olympia, Washington 98507–0827, (206) 586–6150.

* * * * * *

Done in Washington, DC., this 20th day of June 1989.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-15020 Filed 6-23-89; 8:45 am]

BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

RIN 3150-AD22

Manner of Service of Pleadings Upon the Secretary of the Commission

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: This final rule makes minor changes in the Commission's rules of practice by requiring that all parties in NRC proceedings file copies of all pleadings filed with any agency adjudicatory tribunal with the Office of the Secretary in the same or equivalent manner in which they were filed with the tribunal. This will result in the Office of the Secretary receiving the pleading on approximately the same day as the tribunal.

EFFECTIVE DATE: July 26, 1989.

FOR FURTHER INFORMATION CONTACT: Charles E. Mullins, Attorney, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 492-1606.

SUPPLEMENTARY INFORMATION: The Commission has discovered that in individual proceedings before its various Atomic Safety and Licensing Boards, Atomic Safety and Licensing Appeal Boards, and Administrative Law Judges, some motions and pleadings addressed to those tribunals are served on (delivered to) those tribunals in a more expeditious manner than they are served on the Secretary of the Commission. For instance, the tribunals sometimes receive filings by telecopier or telefax, by express mail, or by hand delivery, while the Secretary's service copies of the same documents are sent by first-class (regular) mail. As a result, the Office of the Secretary, which is responsible for maintaining the official docket of all adjudicatory proceedings as well as the Public Document Room, often does not receive these filings until several days after they have been received by the parties and the tribunals. Under these circumstances, it is difficult for the Office of the Secretary to maintain the official agency docket in a timely fashion. *See* 10 CFR 1.25 and 2.702.

This addition to the Commission's rules of practice requires that parties serve the Office of the Secretary in the same or equivalent manner that they serve the tribunal before which the proceeding is being conducted. For example, if a party serves the tribunal by express or overnight mail, it should also serve the Secretary by express or overnight mail so that the Secretary will receive the pleading at approximately the same time as the tribunal and the other parties to the proceeding. Likewise, parties could serve the tribunal by hand while serving the Secretary by telecopier or telefax. Again, this equivalent service will ensure that the Secretary will receive copies of the pleadings at approximately the same time as the tribunal and the other parties to the proceeding. This change will allow the Secretary to maintain the official dockets in close harmony and synchronization with the actual progress of the tribunal's proceedings.

The rule makes an exception for those proceedings being held outside the Washington, DC, area when the adjudicatory tribunal is physically present in such a location. In those cases, the rule allows parties who serve the tribunal and the opposing parties by personal service to serve the Secretary by overnight mail. The rule also provides that service of pre-filed testimony and demonstrative evidence (such as maps and exhibits) on the Secretary may be accomplished by normal mail in all cases.

Because this amendment relates solely to matters of agency practice, good cause exists for omitting notice of proposed rulemaking and public procedures thereon as unnecessary.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final regulation.

Paperwork Reduction Act Statement

This final rule contains no new or amended information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Regulatory Analysis

The Commission and its Secretary have a demonstrated need for receiving copies of filings in NRC adjudications in a more timely fashion. This rule change which requires service upon the Secretary of filings by the same or equivalent method that they are served upon the adjudicatory tribunal is the only means available to achieve this end.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule, and therefore, that a backfit analysis is not required for this final rule, because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendment to 10 CFR Part 2:

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for Part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87-615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200-2.206 also issued under secs. 186, 234, 68 Stat. 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600-2.606 also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 and Table 1A of Appendix C also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85-256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91-560, 84 Stat. 1473 (42 U.S.C. 2135). Appendix B also issued under sec. 10, Pub. L. 99-240, 99 Stat. 1842 (42 U.S.C. 2021b et seq.).

2. Paragraphs (d), (e), and (f) of § 2.712 are redesignated paragraphs (e), (f), and (g), respectively and new paragraph (d) is added to § 2.712 to read as follows:

§ 2.712 Service of papers, methods, proof.

* * * * *

(d) *Service on the Secretary.* (1) All pleadings must be served on the Secretary of the Commission in the same or equivalent manner, *i.e.*, telefax, express mail, personal delivery, or courier, that they are served upon the adjudicatory tribunals and the parties to the proceedings so that the Secretary will receive the pleading at approximately the same time that it is received by the tribunal to which the pleading is directed.

(2) When pleadings are personally delivered to tribunals while they are conducting proceedings outside the Washington, DC area, service on the Secretary may be accomplished by overnight mail.

(3) Service of pre-filed testimony and demonstrative evidence (*e.g.*, maps and other physical exhibits) on the Secretary may be made by first-class mail in all cases.

(4) The addresses for the Secretary are:

(i) First class mail: Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

(ii) Express mail: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

(iii) Telecopier: (301) 492-1672 (3M); (301) 492-0275 (DEX); and (301) 492-1777 (Verification).

* * * * *

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 15th day of June, 1989.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 89-15032 Filed 6-23-89; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

[T.D. 89-62]

Consolidation of Tampa, St. Petersburg, and Port Manatee, FL, for Marine Purposes

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document consolidates the ports of entry of Tampa, St. Petersburg, and Port Manatee, Florida, for marine purposes only. This change will enable Customs to obtain more efficient use of its personnel, facilities, and resources, without impairing services to area businesses or the general public. Moreover, it will simplify vessel entry and clearance procedures and reduce expenses and paperwork for all parties involved thereby enabling Customs to provide better and more economical service to carriers, importers, and the public.

EFFECTIVE DATE: June 26, 1989.

FOR FURTHER INFORMATION CONTACT: Joseph O'Gorman, Office of Inspection and Control, (202-566-9425).

SUPPLEMENTARY INFORMATION:

Background

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the public, by notice published in the **Federal Register** on December 12, 1988 (53 FR 49892), it was proposed to consolidate the ports of entry of Tampa, St. Petersburg, and Port Manatee, Florida, for marine purposes only. The change would enable Customs to obtain more efficient use of its personnel, facilities and resources. Because of the close proximity of the respective ports of entry in the Tampa Bay area, and similar services performed, it was estimated that the proposed consolidation would significantly reduce costs without impairing Customs ability to provide services to area businesses and to the general public.

Under the proposal, each of the ports, Tampa, St. Petersburg, and Port Manatee, would retain its port code and geographic limits. Although each port would retain its identity, the three ports would be designated as a consolidated port in Tampa Bay for purposes of vessel arrival, and entry and clearance laws, which would benefit all the ports. In order to avoid obtaining necessary permits for each port visited, the original vessel's entry documentation would describe the ports which the vessel intended to visit and the cargo to be unladen at each location. Further, the three ports would be considered to be one port for the purposes of the navigation laws. However, all the requirements prescribed by the navigation laws administered and enforced by Customs would have to be complied with, as is now the case in existing consolidated ports.

It is anticipated that the consolidation will also result in reducing penalties incurred under the navigation laws if carriers fail to enter and properly clear merchandise being shipped in a residue cargo movement within the consolidated marine port, and will reduce paperwork for carriers, importers and Customs. No comments were received in response to the notice proposing this change. Accordingly, after further review of the matter, Customs has determined that it is in the public interest to adopt the change as proposed.

Executive Order 12291 and Regulatory Flexibility Act

Because this document relates to agency organization it is not subject to E.O. 12291. Accordingly, a regulatory impact analysis and the review prescribed by that E.O. are not required. Similarly, this document is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Drafting Information

The principal author of this document was Earl Martin, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices of the Customs Service participated in its development.

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Exports, Imports, Organizations and functions (Government agencies).

PART 101—GENERAL PROVISIONS

1. The authority citation for Part 101 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 2, 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1623, 1624.

§ 101.3 [Amended]

2. The list of Customs regions, districts, and ports of entry in § 101.3(b), Customs Regulations (19 CFR 101.3(b)), is amended as follows:

In the Southeast Region-Miami, Fla., under the column headed "Name and headquarters," the following phrase

would be added under the listing "Tampa, Fla.":

(The ports of Tampa, St. Petersburg, and Port Manatee, consolidated for purposes of the navigation laws. See T.D. 89-62.)

Michael H. Lane,

Acting Commissioner of Customs.

Approved: June 20, 1989.

Salvatore R. Martoche,

Assistant Secretary of the Treasury.

[FR Doc. 89-15029 Filed 6-23-89; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Maduramicin Ammonium with Chlortetracycline

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by American Cyanamid Co. The application provides for use of currently approved maduramicin ammonium 1 percent Type A medicated articles and chlortetracycline 50 grams per pound granular Type A articles to make combination drug Type C medicated feeds. The feeds are for the prevention of coccidiosis and reduction of mortality due to susceptible *Escherichia coli* infections in broiler chickens.

EFFECTIVE DATE: June 26, 1989.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4913.

SUPPLEMENTARY INFORMATION: American Cyanamid Co., Berdan Ave., Wayne, NJ 07470, is the sponsor of NADA 140-837 which provides for combining Cygro® (maduramicin ammonium) 1 percent Type A medicated articles with Aureomycin® (chlortetracycline) 50 grams per pound granular Type A articles to make Type C medicated broiler feeds. The Type C medicated feeds are for the prevention of coccidiosis caused by *Eimeria acervulina, E. tenella, E. brunetti, E. maxima, E. necatrix,* and *E. mivati,* and as an aid in the reduction of mortality due to suceptible *E. coli* infections. The NADA is approved and 21 CFR 558.128 and 558.340 are amended to reflect the approval.

These are new animal drugs used in Type A medicated articles to make Type C medicated feeds. Maduramycin ammonium is a Category II drug and chlortetracycline is a Category I drug. Therefore, as provided in 21 CFR 558.4(e), an approved FDA 1900 is required for making a Type C medicated feed containing the combination of maduramycin ammonium and chlortetracycline as in the approved subject NADA and in the regulation herein added to 21 CFR 558.340.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(ii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Section 558.128 is amended by adding new paragraph (c)(5)(xiii) to read as follows:

§ 558.128 Chlortetracycline.

* * * * *

(c) * * *

(5) * * *

(xiii) Maduramicin ammonium as in § 558.340.

3. Section 558.340 is amended in paragraph (c) by redesignating paragraphs (c) (2) and (3) as paragraphs (c)(1) (i) and (ii) and adding new paragraph (c)(2) to read as follows:

§ 558.340 Maduramicin ammonium.

* * * * *

(c) * * *

(2) *Amount.* 4.54 to 5.45 grams per ton (5 to 6 parts per million) with chlortetracycline 500 grams per ton.

(i) *Indications for use.* For prevention of coccidiosis caused by *Eimeria acervulina, E. tenella, E. brunetti, E. maxima, E. necatrix,* and *E. mivati*; as an aid in the reduction of mortality due to *Escherichia coli* infections susceptible to such treatment.

(ii) *Limitations.* For broiler chickens only. Use for no more than 5 days. Do not feed to laying hens. Withdraw 5 days before slaughter.

Dated: June 19, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89-14994 Filed 6-23-89; 8:45 am]

BILLING CODE 4160-01-M

UNITED STATES INFORMATION AGENCY

22 CFR Part 503

Fees for Processing FOIA Requests and Predisclosure Notification for Business Records

AGENCY: United States Information Agency.

ACTION: Final rule.

SUMMARY: This rule establishes sections on fees and predisclosure notification, law enforcement records, and details on how the Agency will implement the Freedom of Information Act (FOIA) exemptions. This rule is to conform to the amendments enacted by the Freedom of Information Reform Act of 1986 concerning law enforcement records and fees for processing requests and to Executive Order No. 12600 concerning predisclosure notification for business records. The Freedom of Information Reform Act of 1986 amended the FOIA by modifying the terms of Exemption 7 and by supplying new provisions relating to the charging and waiving of fees. Executive Order No. 12600 established procedures for notifying submitters of business records when the agency is considering release of those records in response to a FOIA request.

EFFECTIVE DATE: July 26, 1989.

FOR FURTHER INFORMATION CONTACT: Lola L. Secora, Freedom of Information Officer, (202) 485-7499.

SUPPLEMENTARY INFORMATION: The United States Information Agency published a proposed rule on the fee schedule and fee waiver regulations on February 10, 1989, and solicited comments. No comments were received by the March 13 deadline. Therefore, this rule will supercede that proposed rule in order to update the fee schedule and fee waiver requirements of the Freedom of Information Act, 5 U.S.C. 552(a)(4)(A)(i), et seq., to comply with the Freedom of Information Reform Act of 1986 (Pub. L. 99-570) and OMB Administrative Guidelines published in the **Federal Register** on March 17, 1987, Volume 52, No. 59, pages 10012-10020 and in conjunction with the New Fee Waiver Policy Guidance issued by the U.S. Department of Justice, Office of Legal Policy issued on April 2, 1987. Executive Order No. 12600 concerning Predisclosure Notification Procedures for Confidential Commercial Information was published in the **Federal Register**, Vol. 52, No. 122, pages 23781-23783 on June 25, 1987.

The Director has determined that this regulation is not a major rule within the meaning of E.O. 12291 because it will not have an effect on the economy of $100 million or more or otherwise meet the threshold criteria. Therefore, the preparation of a regulatory impact analysis is not required.

The Director certifies that this regulation will not have a significant economic impact on any substantial number of small entities as defined by the Regulatory Flexibility Act, Pub. L. 96-354.

This regulation does not require use of a form, nor does it otherwise involve a collection of information subject to the Paperwork Reduction Act, 44 U.S.C. 3501-3520.

List of Subjects in 22 CFR Part 503

Freedom of information.

For the reasons set out in the preamble, 22 CFR Part 503 is amended to read as follows:

PART 503—[AMENDED]

1. The authority citation for Part 503 continues to read as follows:

Authority: 22 U.S.C. 2658; 31 U.S.C. 483a; 5 U.S.C. 301; 5 U.S.C. 552 as amended by Pub. L. 93-502, 88 Stat. 1561; E.O. 10477, as amended, 18 FR 4540, 3 CFR 1949-1953 Comp., page 958, at 22 U.S.C.A. 611a; E.O. 11652, 37 FR 5209, 3 CFR (1974), page 339.

2. Sections 503.7 and 503.8 are revised to read as follows:

§ 503.7 Fees.

(a) *Fees to be charged—categories of requests.* The paragraphs below state, for each category of request, the type of fees that we will generally charge. However, for each of these categories, the fees may be limited, waived, or reduced for the reasons given in paragraph (e) of this section. "Request" means asking for records, whether or not you refer specifically to the Freedom of Information Act. Requests from Federal agencies and court orders for documents are not included within this definition. "Review" means, when used in connection with processing records for a commercial use request, examining the records to determine what portions, if any, may be withheld, and any other processing that is necessary to prepare the records for release. It includes only the examining and processing that are done the first time we analyze whether a specific exemption applies to a particular record or portion of a record. It does not include the process of researching or resolving general legal or policy issues regarding exemptions. "Search" means looking for records or portions of records responsive to a request. It includes reading and interpreting a request, and also page-by-page and line-by-line examination to identify responsive portions of a document.

(1) *Commercial use request.* If your request is for a commercial use, USIA will charge you the costs of search, review and duplication. "Commercial use" means that the request is from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or of a person on whose behalf the request is made. Whether a request is for a commercial use depends on the purpose of the request and the use to which the records will be put; the identity of the requester (individual, non-profit corporation, for-profit corporation), or the nature of the records, while in some cases indicative of that purpose or use, is not necessarily determinative. When a request is from a representative of the news media, a purpose of use supporting the requester's news dissemination function is not a commercial use.

(2) *Educational and scientific institutions and news media.* If you are an educational institution or a non-commercial scientific institution, operated primarily for scholarly or scientific research, or a representative of the news media, and your request is not for a commercial use, USIA will charge you only for the duplication of documents. Also, USIA will not charge you the copying costs for the first 100 pages of duplication. "Educational institution" means a preschool, elementary or secondary school, institution of undergraduate or graduate higher education, or institution of professional or vocational education. "Non-commercial scientific institution" means an institution that is not operated substantially for purposes of furthering its own or someone else's business, trade, or profit interests, and that is operated for purposes of conducting scientific research whose results are not intended to promote any particular product or industry. "Representative of the news media" means a person actively gathering news for an entity organized and operated to publish or broadcast news to the public. "News" means information that is about current events or that would be of current interest to the public. News media entities include television and radio broadcasters, publishers of periodicals (to the extent they publish "news") who make their products available for purchase or subscription by the general public, and entities that may disseminate news through other media (e.g., electronic dissemination of text). We will treat freelance journalists as representatives of a news media entity if they can show a solid basis for expecting publication through such an entity. A publication contract is such a basis, and the requester's past publication record may show such a basis.

(3) *Other requesters.* If your request is not the kind described by paragraph (a)(1) of this section or paragraph (a)(2) of this section, then USIA will charge you only for the search and the duplication. Also, we will not charge you for the first two hours of search time or for the copying costs of the first 100 pages of duplication.

(b) *Fees to be charged—general provisions.* (1) We may charge search fees even if the records we find are exempt from disclosure, or even if we do not find any records at all.

(2) We will not charge you any fee at all if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee. We have estimated that cost to be $5.00.

(3) If we determine that you are (acting alone or with others) breaking down a single request into a series of requests in order to avoid or reduce the fees charged, we may aggregate all these requests for purposes of calculating the fees charged.

(4) We will charge interest on unpaid bills beginning on the 31st day following the day the bill was sent. The accrual of interest will be stayed upon receipt of the fee, rather than upon its processing by USIA. Interest will be at the rate prescribed in section 3717 of Title 32 U.S.C.

(c) *Fee Schedule—USIA will charge the following fees:* (1) Manual searching

for or reviewing of records: (i) When performed by employees at grade GS–1 through GS–8 or FS–9 through FS–6—an hourly rate of $10.00 will be charged;

(ii) When performed by employees at grade GS–9 through GS–13 or FS–5 through FS–2—an hourly rate of $20.00 will be charged;

(iii) When performed by employees at grade GS–14 or above or FS–2 or above—an hourly rate of $36.00 will be charged.

(iv) When a search involves employees at more than one of these levels, we will charge the appropriate rate for each.

(2) Computer searching and printing. The actual cost of operating the computer plus charges for the time spent by the operator, at the rates given in paragraph (c)(1) of this section.

(3) Photocopying standard size pages—$0.15 per page.

(4) Photocopying odd-size documents (such as punchcards or blueprints) or reproducing other records (such as tapes)—the actual cost of operating the machine, plus the actual cost of the materials used, plus charges for the time spent by the operator, at the rates given in paragraph (c)(1) of this section.

(5) Certifying that records are true copies—this service is not required by the FOIA. If we agree to provide it, we will charge $10.00 per certification.

(6) Sending records by express mail, certified mail, or other special methods. This service is not required by the FOIA. If we agree to provide it, we will charge our actual cost.

(7) Performing any other special service that you request and to which we agree—actual cost of operating any machinery, plus actual cost of any materials used, plus charges for the time of our employees, at the rates given in paragraph (c)(1) of this section.

(d) *Procedures for assessing and collecting fees.* (1) Agreement to pay. We generally assume that when you request records you are willing to pay the fees we charge for services associated with your request. You may specify a limit on the amount you are willing to spend. We will notify you if it appears that the fees will exceed the limit and ask whether you nevertheless want us to proceed with the search.

(2) Advance payment. If you have failed to pay previous bills in a timely manner, or if our initial review of your request indicates that we will charge you fees exceeding $250.00, we will require you to pay your past due fees and/or the estimated fees, or a deposit, before we start searching for the records you want, or before we send them to you. In such cases, the administrative time limits as described in Section 503.6(b) above, will begin only after we come to an agreement with you over payment of fees, or decide that fee waiver or reduction is appropriate.

(e) *Waiver or reduction of fees.* We will waive or reduce the fees we would otherwise charge if disclosure of the information meets both of the following tests (paragraphs (e)(1) and (e)(2) of this section): (1) It is in the public interest because it is likely to contribute significantly to public understanding of government operations or activities, regardless of any other public interest it may further. In making this determination, we may consider:

(i) Whether the requester is in a position to contribute to public understanding;

(ii) Whether the requester has such knowledge or expertise as may be necessary to understand the information; and,

(iii) Whether the requester's intended use of the information would be likely to disseminate the information among the public, and

(2) It is not primarily in the commercial interest of the requester. Commercial interests include interests relating to business, trade, and profit. Not only profit-making corporations have commercial interests; so do nonprofit corporations, individuals, unions, and other associations.

(3) You must make your request for a waiver or reduction at the same time you make your request for records. Only the FOL Officer may make the decision whether to waive or reduce the fees. If we do not completely grant your request for a waiver or reduction, the denial letter will designate the appeal official.

§ 503.8 Exemptions.

Section 552(b) of the Freedom of Information Act contains nine exemptions to the mandatory disclosure of records. These exemptions and their application by the Agency are described below. In some cases, more than one exemption may apply to the same document. This section does not itself authorize the giving of any pledge of confidentiality by any officer or employee of the Agency.

(a) *Exemption one—National defense and foreign policy.* We are not required to release records that are specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order. Executive Order No. 12356 (1982) provides for such classification. When the release of certain records may adversely affect U.S. relations with foreign countries, we usually consult with officials of those area offices and/or with officials of the Department of State. We may also have in our possession records classified by another agency. If we do, we may consult with that agency or may refer your request to that agency for their direct response to you, in which case we will notify you that we have made such a referral.

(b) *Exemption two—Internal personnel rules and practices.* We are not required to release records that are related solely to the internal personnel rules and practices of an agency. We may withhold routine internal agency procedures such as guard schedules and luncheon periods. We may also withhold internal records the release of which would help some persons circumvent the law or agency regulations.

(c) *Exemption three—Records exempted by other statutes.* We are not required to release records if another statute specifically allows us to withhold them. Another statute may be used only if it absolutely prohibits disclosure or if it sets forth criteria identifying particular types of material to be withheld.

(d) *Exemption four—Trade secrets and confidential commercial or financial information.* We will withhold trade secrets and commercial or financial information that is obtained from a person and privileged or confidential.

(1) *Trade secrets.* A trade secret is a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort. A direct relationship is necessary between the trade secret and the productive process.

(2) *Commercial or financial information, obtained from a person, and is privileged or confidential.*

(i) Information is "commercial or financial" if it relates to businesses, commerce, trade, employment, profits, or finances (including personal finances).

(ii) Information is obtained from someone outside the Federal Government or from someone within the Government who has a commercial or financial interest in the information. "Person" includes an individual, partnership, corporation, association, state or foreign government, or other organization. Information is not "obtained from a person" if it is generated by USIA or another Federal agency.

(iii) Information is "privileged" if it would ordinarily be protected from disclosure in civil discovery by a recognized evidentiary privilege, such as the attorney-client privilege, or the work product privilege. Information may be privileged for this purpose under a privilege belonging to a person outside the Government, unless the providing of the information to the Government rendered the information no longer protectible in civil discovery.

(iv) Information is "confidential" if it meets one of the following tests:

(A) Disclosure may impair the Government's ability to obtain necessary information in the future;

(B) Disclosure would substantially harm the competitive position of the person who submitted the information;

(C) Disclosure would impair other Government interests, such as program effectiveness and compliance; or

(D) Disclosure would impair other private interests, such as an interest in controlling availability of intrinsically valuable records, which are sold in the market by their owner.

(3) *Designation of certain confidential information.* A person who submits records to the Government may designate part or all of the information in such records as exempt from disclosure under Exemption four. The person may make this designation either at the time the records are submitted to the Government or within a reasonable time thereafter. The designation must be in writing. The legend prescribed by a request for proposal or request for quotations pursuant to any agency regulation establishing a substitute for the language is sufficient but not necessary for this purpose. Any such designation will expire ten years after the records were submitted to the Government.

(4) *Predisclosure notification.* The procedures in this paragraph apply to records that were submitted to the Government where we have substantial reason to believe that information in the records could reasonably be considered exempt under Exemption four. Certain exceptions to these procedures are stated in paragraph (d)(5) of this section.

(i) When we receive a request for such records and we determine that we may be required to disclose them, we will make reasonable efforts to notify the submitter about these facts. The notice will inform the submitter about the procedures and time limits for submission and consideration of objections to disclosure. If we must notify a large number of submitters, we may do this by posting or publishing a notice in a place where the submitters are reasonably likely to become aware of it.

(ii) The submitter has five (5) working days from receipt of the notice to object to disclosure of any part of the records and to state all bases for its objections.

(iii) We will give consideration to all bases that have been timely stated by the submitter. If we decide to disclose the records and the submitter still does not agree, we will send a written notice to the submitter stating briefly why we did not sustain its objections and will provide a copy of the records as we intend to release them. The notice will state that we will disclose the records five (5) working days after the submitter receives the notice unless we are ordered by a United States District Court not to release them.

(iv) When a requester files suit under the FOIA to obtain records covered by this paragraph, we will promptly notify the submitter.

(v) Whenever we send a notice to a submitter under paragraph (d)(4)(i) of this section, we will notify the requester that we are giving the submitter a notice and an opportunity to object.

(5) *Exceptions to predisclosure notification.* The notice requirements in paragraph (d)(4) of this section do not appy in the following situations:

(i) We decide not to disclose the records;

(ii) The information has previously been published or made generally available;

(iii) We have already notified the submitter of previous requests for the same records and have come to an understanding with that submitter about the records;

(iv) Disclosure is required by a statute other than the FOIA;

(v) Disclosure is required by a regulation, issued after notice and opportunity for public comment, that specifies narrow categories of records that are to be disclosed under the FOIA, but in this case a submitter may still designate records as described in paragraph (d)(3) of this section and in exceptional cases, at our discretion, may follow the notice procedures in paragraph (d)(4) of this section;

(vi) The designation appears to be obviously frivolous, but in this case we will still give the submitter the written notice required by paragraph (d)(4)(iii) of this section (although this notice need not explain our decision or include a copy of the records).

(e) *Exemption five*—Internal memoranda. This exemption covers internal Government communications and notes that fall within a generally recognized evidentiary privilege. Internal Govenment communications include an agency's communications with an outside consultant or other outside person, with a court, or with Congress, when those communications are for a purpose similar to the purpose of privileged intra-agency communications. Some of the most common applicable privileges are:

(1) The deliberative process privilege. This privilege protects predecisional deliberative communications. A communication is protected under this privilege if it was made before a final decision was reached on some question of policy and if it expressed recommendations or opinions on that question. The purpose of this privilege is to prevent injury to the quality of the agency decisionmaking process by encouraging open and frank internal policy discussions, by avoiding premature disclosure of policies not yet adopted, and by avoiding the public confusion that might result from disclosing reasons that were not in fact the ultimate grounds for an agency's decision. This privilege continues to protect predecisional documents even after a decision is made. We will release purely factual material in a deliberative document unless that material is otherwise exempt. However, purely factual material in a deliberative document is within this privilege if:

(i) It is inextricably intertwined with the deliberative portions so that it cannot reasonably be segregated, or

(ii) It would reveal the nature of the deliberative portions, or

(iii) Its disclosure would in some other way make possible an intrusion into the decisionmaking process.

(2) Attorney-client privilege. This privilege protects confidential communications between a lawyer and an employee or agent of the Government where an attorney-client relationship exists (e.g., where the lawyer is acting as attorney for the agency and the employee is communicating on behalf of the agency) and where the employee has communicated information to the attorney in confidence in order to obtain legal advice or assistance, and/or where the attorney has given advice to the client.

(3) Attorney work product privilege. This privilege protects documents prepared by or for an agency, or by or for its representative (usually USIA attorneys) in anticipation of litigation or for trial. It includes documents prepared for purposes of administrative adjudications as well as court litigation. It includes documents prepared by program offices as well as by attorneys. It includes factual material in such documents as well as material revealing

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opinions and tactics. The privilege continues to protect the documents even after the litigation is closed.

(f) *Exemption six—Clearly unwarranted invasion of personal privacy.* We may withhold personnel, medical, and similar files and personal information about individuals if disclosure would constitute a clearly unwarranted invasion of personal privacy.

(1) Balancing test. In deciding whether to release records that contain personal or private information about someone else to a requester, we weigh the foreseeable harm of invading that individual's privacy against the public benefit that would result from the release of the information. In our evaluation of requests for records, we attempt to guard against the release of information that might involve a violation of personal privacy by a requester being able to "piece together items" or "read between the lines" information that would normally be exempt from mandatory disclosure.

(2) Information frequently withheld. We frequently withhold such information as home addresses, ages, minority group status, social security numbers, individual's benefits, earning records, leave records, etc.

(g) *Exemption seven—Law enforcement.* We are not required to release information or records that the Government has compiled for law enforcement purposes. The records may apply to actual or potential violations of either criminal or civil laws or regulations. We can withhold these records only to the extent that releasing them would cause harm in at least one of the following situations:

(1) Enforcement proceedings. We may withhold information when release could reasonably be expected to interfere with prospective or ongoing law enforcement proceedings. Investigations of fraud and mismanagement, employee misconduct, and civil rights violations may fall into this category. In certain cases, we may refuse to confirm or deny the existence of records that relate to violations in order not to disclose that an investigation is in progress or may be conducted.

(2) Fair trial or impartial adjudication. We may withhold records when release would deprive a person of a fair trial or an impartial adjudication because of prejudicial publicity.

(3) Personal privacy. We are careful not to disclose information that could reasonably be expected to constitute an unwarranted invasion of personal privacy. When a name surfaces in an investigation, that person is likely to be vulnerable to innuendo, rumor, harassment, or retaliation.

(4) Confidential sources and information. We may withhold records whose release could reasonably be expected to disclose the identity of a confidential source of information. A confidential source may be an individual; a state, local, or foreign Government agency; or any private organization. The exemption applies whether the source provides information under an express promise of confidentiality or under circumstances from which such an assurance could be reasonably inferred. Also, where the record, or information in it, has been compiled by a criminal law enforcement authority conducting a criminal investigation, or by an agency conducting a lawful national security investigation, the exemption also protects all information supplied by a confidential source. Also protected from mandatory disclosure is any information which, if disclosed, could reasonably be expected to jeopardize the system of confidentiality that assures a flow of information from sources to investigatory agencies.

(5) Techniques and procedures. We may withhold records reflecting special techniques or procedures of investigation or prosecution not otherwise generally known to the public. In some cases, it is not possible to describe even in general terms those techniques without disclosing the very material to be withheld. We may also withhold records whose release would disclose guidelines for law enforcement investigations or prosecutions if this disclosure could reasonably be expected to create a risk that someone could circumvent requirements of law or of regulation.

(6) Life and physical safety. We may withhold records whose disclosure could reasonably be expected to endanger the life or physical safety of any individual. This protection extends to threats and harassment as well as to physical violence.

(h) *Exemptions eight and nine—records on financial institutions and records on wells.* Exemption eight permits us to withhold records about regulation or supervision of financial institutions.

(2) Exemption nine permits the withholding of geological and geophysical information and data, including maps, concerning wells.

R. Wallace Stuart,

Acting General Counsel.

Date: June 20, 1989.

[FR Doc. 89-14971 Filed 6-23-89; 8:45 am]

BILLING CODE 1220-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 09-89-16]

Special Local Regulations; International Freedom Festival Fireworks Display, Detroit River

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the International Freedom Festival Fireworks Display. This event will be held on the Detroit River on June 30, 1989. In case of inclement weather, the event will be held on July 1, 1989. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: These regulations are effective from 8:00 p.m. on 30 June 1989 to 12:00 a.m. on July 2, 1989.

FOR FURTHER INFORMATION CONTACT: MST2 Corey A. Bennett, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199, (216) 522-4420.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold this event was not received by the Commander, Ninth Coast Guard District, until March 30, 1989, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date. This has been an annual event for many years and no negative comments have been received concerning the holding of the event in the past.

Drafting Information

The drafters of this regulation are MST2 Corey A. Bennett, project officer, Office of Search and Rescue and LCDR C.V. Mosebach, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The International Freedom Festival Fireworks Display will be conducted on the Detroit River on June 30, 1989. An unusually large concentration of spectator boats could pose hazards to navigation in the area. Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (Commander, U.S. Coast Guard Group Detroit, MI).

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). Because of the short duration of these regulations, their economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary.

Since the impact of these regulations is expected to be minimal the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principals and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended to add a temporary § 100.35-0916 to read as follows:

§ 100.35-0916 International Freedom Festival Fireworks Display, Detroit River.

(a) *Regulated Area:* (1) The U.S. waters of the Detroit River between the Ambassador Bridge and the downstream end of Belle Isle will be closed to vessel navigation or anchorage for vessels of 65 feet in length or greater from 8:00 p.m. (local time) 30 June 1989 until 12:00 a.m. on 1 July 1989.

(2) The area bound on the south by the International Boundary, on the west by 083°03' W., on east by 083° 02' W., and the north by the U.S. shoreline of the Detroit River will be closed to all vessel traffic, from 8:00 p.m. (local time) June 30, 1989 until 12:00 a.m. on July 1, 1989.

(b) *Special Local Regulations:* (1) Vessels under 65 feet shall begin clearing the shipping channels at 11:30 p.m. local or when the fireworks display ends, whichever comes first.

(2) Fireworks barges will be moved to positions in the Detroit River after 5:00 p.m. on June 30, 1989, and will be removed immediately after the fireworks display. The barges will be located within 950 feet of the U.S. riverbank opposite each of the following landmarks: COBO HALL, VETERANS MEMORIAL BLDG., and the FORD AUDITORIUM. Vessel masters shall pass with caution. Each barge will be marked in accordance with rule 30 of the Inland Rules of the road for a vessel at anchor, and a fixed white light on each corner of the barges will be shown at night and an orange buoy with horizontal white banks will mark each special mooring.

(3) If the weather on June 30, 1989 is inclement, the fireworks display and the river closure will be postponed until 8:00 p.m. 1 July 1989 to 12:00 a.m. on July 2, 1989. If postponed, notice will be given on June 30, 1989 over the U.S. Coast Guard Radio Net.

(4) Vessels desiring to transit the restricted area may do so only with prior approval of the Patrol Commander and when so directed by that officer. The Patrol Commander may be contacted on channel 16(156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Vessels will be operated at a "no wake" speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. These rules shall not apply to participants in the event or vessels of the patrol, in the performance of their assigned duties.

(5) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and shall comply with the orders of the Patrol Vessel; failure to do so may result in explusion from the area, citation for failure to comply, or both.

Effective Dates: This section is effective from 8:00 p.m. on June 30, 1989, to 12:00 a.m. on July 2, 1989.

Dated: June 16, 1989.

D.H. Ramsden,

Captain, U.S. Coast Guard, Acting Commander, Ninth Coast Guard District.

[FR Doc. 89-14978 Filed 6-23-89; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD 09-89-02]

Special Local Regulations; Sohio Riverfest, Cuyahoga River, Cleveland, OH

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special Local Regulations are being adopted for the Sohio Riverfest. This event will be held on July 28, 29 and 30, 1989 on the Cuyahoga River, Cleveland, Ohio. The regulations are needed to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATES: These regulations are effective from 7:00 p.m. on July 28, 1989 to 4:00 p.m. on July 30, 1989.

FOR FURTHER INFORMATION CONTACT: MST1 Scott E. Befus, Office of Search and Rescue, Ninth Coast Guard District, 1240 East Ninth Steet, Cleveland, OH 44199, (216) 522-4420.

SUPPLEMENTARY INFORMATION: On May 12, 1989 the Coast Guard published a notice of proposed rulemaking in the Federal Register for these regulations (54 FR 20607). Interested persons were requested to submit comments and five comments were received.

Drafting Information

The drafters of this regulation are MST1 Scott E. Befus, project officer, Office of Search and Rescue and LCDR C.V. Mosebach, project attorney, Ninth Coast Guard District Legal Office

Discussion of Comments

Comments were received by the Lake Carrier's Association, Port Colborne Quarries Limited, USS Great Lakes Fleet, Inc., International Salt Company, and the Interlake Steamship Company. Of all the comments received, none favored the proposed extension of closure times. Since all the comments received favored river closures similar to those of the 1988 Sohio Riverfest, the closures will remain the same as in previous years.

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of

spectator craft into the area for the duration of the event. This should have a favorable impact on commercial facilities providing services to the spectators. Any impact on commercial traffic in the area will be negligible. Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to reads as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended to add a temporary § 100.35–0902 to read as follows:

§ 100.35–0902 Sohio RiverFest, Cuyahoga River, Cleveland, Ohio.

(a) *Regulated Area:* The portion of the Cuyahoga River from the Conrail Railroad Bridge at Mile 0.8 above the mouth of the river to the Eagle Avenue Bridge will be closed to vessel navigation or anchorage for vessels of more than 100 gross tons.

(b) *Special Local Regulations:* (1) The above area will be closed to vessel navigation or anchorage by vessels of more than 100 gross tons from 7:00 pm (local time) until midnight on July 28, 1989; noon until 3:00 pm and 7:00 pm until midnight on July 29, 1989; and 1:00 pm until 4:00 pm on July 30, 1989.

(2) The Coast Guard will patrol the regatta area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander." Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum, and in a manner which will not endanger participants in the event or any other craft. The rules contained in the above two sentences shall not apply to participants in the event or vessels of the patrol operating in the performance of their assigned duties.

(3) The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regatta area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in explusion from the area, citation for failure to comply, or both.

(4) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(5) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(6) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(c) *Effective Dates:* This section is effective from 7:00 p.m. on July 28, 1989 to 4:00 p.m. on July 30, 1989.

Dated: June 16, 1989.

D.H. Ramsden,

Capt, U.S. Coast Guard Acting Commander, Ninth Coast Guard District.

[FR Doc. 89-14079 Filed 6-23-89; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD 09-89-18]

Special Local Regulations: Duluth Fourth Fest Fireworks Display

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the Duluth Fourth Fest Fireworks Display. This event will be held on July 4, 1989. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: These regulations are effective from 7:30 p.m. until 11:00 p.m. on July 4, 1989.

FOR FURTHER INFORMATION CONTACT: MST2 Corey A. Bennett, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199, (216) 522-4420.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold this event was not received by the Commander, Ninth Coast Guard District, until June 5, 1989, and there was not sufficient time remaining to publish proposed rules in advance of the event.

This has been an annual event for many years and no negative comments have been received concerning the holding of the event in the past.

Drafting Information

The drafters of this regulation are MST2 Corey A. Bennett, project officer, Office of Search and Rescue and LCDR C.V. Mosebach, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The Duluth Fourth Fest Fireworks Display will be conducted in the Duluth Harbor on July 4, 1989, in connection with a day-long marine festival. This event will have falling ash and debris, and an unusually large concentration of spectator boats could pose hazards to navigation in the area. Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (BMC A.R. Kraak, U.S. Coast Guard Group Duluth, MN).

Economic Assessment and Certification

These regulations are considered to be non-major under Effective Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). Because of the short duration of these regulations, their economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary.

Since the impact of these regulations is expected to be minimal the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principals and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the prepartion of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 33 100.35.

2. Part 100 is amended to add a temporary § 100.35–0918 to read as follows:

§ 100.35–0918 Duluth Fourth Fest Fireworks Display.

(a) *Regulated Area*: That portion of the Duluth Harbor Basin Northern Section bounded on the south by a line drawn on a bearing of 087 degrees true from the Cargill Pier through Duluth Basin Lighted Buoy 5 (LLNR 15195) to the opposite shore on the north by the Duluth Aerial Bridge.

(b) *Special Local Regulations*: (1) The above portion of Duluth Harbor, Lake Superior will be closed to all commercial vessel navigation or anchorage from 7:30 p.m. (Local Time) until 11:00 p.m. on July 4, 1989.

(2) Duluth Harbor Basin Northern Section will be closed to all traffic from 7:30 p.m. (Local Time) until 11:00 p.m. on July 4, 1989 within 600 yards of position 46 degrees 46 minutes 47 seconds north and 092 degrees 06 minutes 10 seconds west.

(3) Vessels desiring to transit the restricted area may do so only with prior approval of the Patrol Commander and when so directed by that officer. The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Vessels will be operated at a "no wake" speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event of any other craft. These rules shall not apply to participants in the event or vessels of the patrol, in the performance of their assigned duties.

(4) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and shall comply with the orders of the Patrol Vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(c) *Effective Dates*: This section is effective from 7:30 p.m. until 11:00 p.m. on July 4, 1989.

Dated: June 13, 1989.

D.H. Ramsden,

Capt, U.S. Coast Guard, Acting Commander, Ninth Coast Guard District.

[FR Doc. 89-14977 Filed 6-23-89; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD2 89-03]

Special Local Regulations; Venetian Night Boat Parade

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for mile 483.0 to 489.0 of the Upper Mississippi River. The "Venetian Night Boat Parade," an approved marine event, will be held on July 2, 1989 at Davenport, Iowa. These regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations are effective from 8:30 p.m. to 11:30 p.m. on July 2, 1989.

FOR FURTHER INFORMATION CONTACT: LTJG G.W. Wente, Chief, Boating Affairs Branch, Second Coast Guard District, 1430 Olive Street, St. Louis, MO 63103–2398, (314) 425–5971.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. There was not sufficient time to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of these regulations are LTJG G.W. Wente, project officer, Second Coast Guard District Boating Safety Division, and CDR J.T. Orchard, project attorney, Second Coast Guard District Legal Office.

Discussion of Regulations

These regulations are issued pursuant to 33 U.S.C. 1233 and 33 CFR Part 100.35 for the purpose of promoting the safety of life and property on the Upper Mississippi River between mile 483.0 and 489.0 during the "Venetian Night Boat Parade" on July 2, 1989. This event will consist of a lighted Boat Parade, which could pose hazards to navigation in the area. Therefore, these regulations are deemed necessary for the promotion of safety of life and property in the area during this event. These regulations have been reviewed under the provisions of Executive Order 12291 and have been determined not to be a major rule. This conclusion follows from the fact that the duration of the regulated area is short. In addition, these regulations are considered to be nonsignificant in accordance with guidelines set forth in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 5–22–80). An economic evaluation has not been conducted since, for the reasons discussed above, the impact of these regulations is expected to be minimal. In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), it is also certified that these rules will not have a significant economic impact on a substantial number of small entities. These rules are necessary to ensure the protection of life and property in the area during the event.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended to add a temporary section 100.35–0202 to read as follows:

§ 100.35–0202 Venetian Night Boat Parade.

(a) *Regulated Area*: The area between Mile 483.0 and 489.0 of the Upper Mississippi River is designated the regatta area, and will be closed to commercial and recreational navigation or mooring between the hours of 8:30 p.m. and 11:30 p.m. on July 2, 1989. All times listed are local time. These times represent a guideline for possible intermittent river closures not to exceed THREE (3) hours in duration. Mariners will be afforded enough time between such closure periods to transit the area in a timely manner.

(b) *Special Local Regulations*: (1) The Coast Guard will maintain a patrol consisting of regular and auxiliary Coast Guard vessels in the regatta area. This patrol will be under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 (156.8

MHZ) by the call sign "COAST GUARD PATROL COMMANDER." Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum, and in a manner which will not endanger participants in the event or any other craft. The rules contained in the above two sentences shall not apply to participants in the event or vessels of the patrol operating in the performance of their assigned duties.

(2) The Patrol Commander may direct the anchoring, mooring or movement of any boat or vessel within the regatta area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(3) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(4) The Patrol Commander may restrict vessel operation within the regatta area to vessels having particular operating characteristics.

(5) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(c) *Effective Dates:* These regulations are effective from 8:30 p.m. to 11:30 p.m. on July 2, 1989 (local time).

Dated: June 16, 1989.

M. J. Moynihan,

Captain, U.S. Coast Guard, Commander, Second Coast Guard District, Acting.

[FR Doc. 89-14980 Filed 6-23-89; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD2 89-04]

Special Local Regulations; Cincinnati Riverfront Regatta

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for mile 470.8 to 469.4 of the OHIO RIVER. The "Cincinnati Riverfront Regatta," an approved marine event, will be held on July 29 and 30, 1989 at Cincinnati, Ohio. These regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: These regulations are effective from 9:00 a.m. to 7:00 p.m. on July 29, 1989 and from 9:00 a.m. to 7:00 p.m. on July 30, 1989.

FOR FURTHER INFORMATION CONTACT: LTJG G.W. Wente, Chief, Boating Affairs Branch, Second Coast Guard District, 1430 Olive St., St. Louis, MO 63103-2398, (314) 425-5971.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. There was not sufficient time to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of these regulations are LTJG G.W. Wente, project officer, Second Coast Guard District Boating Safety Division, and CDR J.T. Orchard, project attorney, Second Coast Guard District Legal Office.

Discussion of Regulations

These regulations are issued pursuant to 33 U.S.C. 1233 and 33 CFR Part 100.35 for the purpose of promoting the safety of life and property on the Ohio River between miles 470.8 and 469.4 during the "Cincinnati Riverfront Regatta" on July 29 and 30, 1989. This event will consist of tunnel boat races, which could pose hazards to navigation in the area. Therefore, these regulations are deemed necessary for the promotion of safety of life and property in the area during this event. These regulations have been reviewed under the provisions of Executive Order 12291 and have been determined not to be a major rule. This conclusion follows from the fact that the duration of the regulated area is short. In addition, these regulations are considered to be nonsignificant in accordance with guidelines set forth in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 5-22-80). An economic evaluation has not been conducted since, for the reasons discussed above, the impact of these regulations is expected to be minimal. In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), it is also certified that these rules will not have a significant economic impact on a substantial number of small entities. These rules are necessary to ensure the protection of life and property in the area during the event.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water)

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended to add a temporary section 100.35-0203 to read as follows:

§ 100.35-0203 Cincinnati Riverfront Regatta.

(a) *Regulated Area:* The area between Mile 470.8 and 469.4 of the Ohio River is designated the regatta area, and will be closed to commercial and recreational navigation or mooring between the hours of 9:00 a.m. and 7:00 p.m. on July 29, 1989 and 9:00 a.m. and 7:00 p.m. on July 30, 1989. All times listed are local time. These times represent a guideline for possible intermittent river closures not to exceed THREE (3) hours in duration. Mariners will be afforded enough time between such closure periods to transit the area in a timely manner.

(b) *Special Local Regulations:* (1) The Coast Guard will maintain a patrol consisting of regular and Auxiliary Coast Guard vessels in the regatta area. This patrol will be under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 (156.8 MHZ) by the call sign "COAST GUARD PATROL COMMANDER." Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum, and in a manner which will not endanger participants in the event or any other craft. The rules contained in the above two sentences shall not apply to participants in the event or vessels of the patrol operating in the performance of their assigned duties.

(2) The Patrol Commander may direct the anchoring, mooring or movement of any boat or vessel within the regatta area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation of failure to comply, or both.

(3) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(4) The Patrol Commander may restrict vessel operation within the regatta area to vessels having particular operating characteristics.

(5) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(c) *Effective Dates:* These regulations are effective from 9:00 a.m. to 7:00 p.m. on July 29, 1989 and from 9:00 a.m. to 7:00 p.m. on July 30, 1989 (local time).

Dated: June 16, 1989.

M.J. Moynihan,

Captain, U.S. Coast Guard, Commander, Second Coast Guard District, Acting.

[FR Doc. 89-14976 Filed 6-23-89; 8:45 am]

BILLING CODE 4910-14-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 105-53

Statement of Organization and Functions

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is revising its statement of organization and functions to reflect its current organizational structure, functional arrangements, and organizational titles; and to correct the telephone number for a region. This regulation is informational in nature and is published in accordance with the Freedom of Information Act.

EFFECTIVE DATE: June 26, 1989.

FOR FURTHER INFORMATION CONTACT: Sylvester H. Kish, Director, Organization and Productivity Improvement Division, (202-566-0086).

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) has determined that this rule is not a major rule for the purpose of E.O. 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. Therefore, a Regulatory Impact Analysis has not been prepared. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and the consequence of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 105-53

Information Resources Management Service, Computer technology, Federal buildings and facilities, Federal Supply Service, Government property, Government property management, Organization and functions (Government agencies), Public Buildings Service, and Surplus Government property.

PART 105-53—STATEMENT OF ORGANIZATION AND FUNCTIONS

1. The authority citation for Part 105-53 continues to read as follows:

Authority: 5 U.S.C. 552(a)(1), Pub. L. 90-23, 81 Stat. 54 sec. (a)(1); 40 U.S.C. 486(c), Pub. L. 81-152, 63 Stat. 390, Sec. 205(c).

Subpart A—General

2. Section 105-53.112 is revised to read as follows:

§ 105-53.112 General statement of functions.

The General Services Administration, as a major policy maker, provides guidance and direction to Federal agencies in a number of management fields. GSA formulates and prescribes a variety of Governmentwide policies relating to procurement and contracting; real and personal property management; transportation, public transportation, public utilities and telecommunications management; automated data processing management; records management; the use and disposal of property; and the information security program. In addition to its policy role, GSA also provides a variety of basic services in the aforementioned areas to other Government agencies. A summary description of these services is presented by organizational component in Subpart B.

3. Section 105-53.120 is revised to read as follows:

§ 105-53.120 Address and telephone numbers.

The Office of the Administrator; Office of Ethics and Civil Rights; Office of the Executive Secretariat; Office of Small and Disadvantaged Business Utilization; Office of Inspector General; GSA Board of Contract Appeals; Information Security Oversight Office; Office of Administration; Office of Congressional Affairs; Office of Acquisition Policy; Office of General Counsel; Office of the Comptroller; Office of Operations and Industry Relations; Office of Policy Analysis; Office of Public Affairs; Information Resources Management Service; Federal Property Resources Service; and Public Buildings Service are located at 18th and F Streets NW., Washington, DC 20405. The Federal Supply Service is located at Crystal Mall Building 4, 1941 Jefferson Davis Highway, Arlington, VA, however, the mailing address is Washington, DC 20406. The telephone number for the above addresses is 202-472-1082. The addresses of the eleven regional offices are provided in § 105-53.151.

Subpart B—Central Office

4. Section 105-53.134 is revised to read as follows:

§ 105-53.134 Office of Administration.

The Office of Administration, headed by the Associate Administrator for Administration, participates in the executive leadership of the agency; providing advice on the formulation of major policies and procedures, particularly those of a critical or controversial nature, to the Administrator and Deputy Administrator. The Office plans and administers programs in organization, productivity improvement, position management, training, staffing, position classification and pay administration, employee relations, workers' compensation, career development, GSA internal security, reporting requirements, regulations, internal directives, records correspondence procedures, Privacy and Freedom of Information Acts, printing and duplicating, mail, telecommunications, graphic design, cooperative administrative support, and support for congressional field offices. The office also serves as the central point of control for audit and inspection reports from the Inspector General and the Comptroller General of the United States; and manages the GSA internal controls evaluation, improvement, and reporting program. In addition, the office includes a secretariat to oversee Federal advisory committees.

§ 105-53.135 [Removed and reserved]

5. Section 105-53.135 is removed and reserved.

6. Section 105-53.136 is added to read as follows:

§ 105-53.136 Office of Congressional Affairs.

The Office of Congressional Affairs, headed by the Associate Administrator for Congressional Affairs, is responsible for directing and coordinating the legislative and congressional activities of GSA.

7. Section 105-53.139 is amended by revising paragraph (a) to read as follows:

§ 105-53.139 Office of the Comptroller.

(a) *Functions.* The Office of the Comptroller, headed by the Comptroller, is responsible for centralized agencywide budget and accounting functions; overall allocation and administrative control of agencywide resources and financial management programs; planning, developing, and directing GSA's executive management information system; and overseeing implementation of OMB Circular A-76 agencywide.

* * * * *

8. Section 105-53.140 is revised to read as follows:

§ 105-53.140 Office of Operations and Industry Relations.

The Office of Operations and Industry Relations, headed by the Associate Administrator for Operations and Industry Relations, is responsible for formulating GSA-wide policy that relates to regional operations, supervising GSA's Regional Administrators, and planning and coordinating GSA business and industry relations and customer liaison activities.

9. Section 105-53.144 is revised to read as follows:

§ 105-53.144 Federal Property Resources Service.

(a) *Creation and authority.* The Federal Property Resources Service (FPRS), headed by the Commissioner, Federal Property Resources Service, was established on July 18, 1978, by the Administrator of General Services to carry out the utilization and disposal functions for real and related personal property.

(b) *Functions.* FPRS is responsible for utilization surveys of Federal real property holdings; the reuse of excess real property; and the disposal of surplus real property.

(c) *Regulations.* Regulations pertaining to FPRS programs are published in 41 CFR Chapter 1, 41 CFR Chapter 101, Subchapter H, and 48 CFR Chapter 1. Information on availability of the regulations is provided in § 105-53.116

Subpart C—Regional Offices

10. Section 105-53.150 is revised to read as follows:

§ 105-53.150 Organization and functions.

Regional offices have been established in 11 cities throughout the United States. Each regional office is headed by a Regional Administrator who reports to the Associate Administrator for Operations and Industry Relations. The geographic composition of each region is shown in § 105-53.151.

11. Section 105-53.151 is amended by revising No. 10 to read as follows:

§ 105-53.151 Geographic composition, addresses, and telephone numbers.

* * * * *

No. 10 (Comprising the States of Alaska, Idaho, Oregon, and Washington): GSA Center, Auburn, WA 98001. Telephone: 206-931-7000.

* * * * *

Dated: June 15, 1989.

Paul T. Weiss,

Associate Administrator for Administration.

[FR Doc. 89-14859 Filed 6-23-89; 8:45 am]

BILLING CODE 6820-24-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6835]

List of Communities Eligible for the Sale of Flood Insurance; Maryland et al.

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities were required to adopt floodplain management measures compliant with the NFIP revised regulations that became effective on October 1, 1986. If the communities did not do so by the specified date, they would be suspended from participation in the NFIP. The communities are now in compliance. This rule withdraws the suspension. The communities' continued participation in the program authorizes the sale of flood insurance.

EFFECTIVE DATE: As shown in fifth column.

ADDRESS: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: P.O. Box 457, Lanham, Maryland 20706, Phone: (800) 638-7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street SW., Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding.

In addition, the Director of the Federal Emergency Management Agency has identified the Special Flood Hazard Areas in these communities by publishing a Flood Insurance Rate Map. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the Special Flood Hazard Area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on these participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance and floodplains.

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, the suspension for each listed community has been withdrawn. The entry reads as follows:

§ 64.6 List of eligible communities.

State	Community name	County	Community No.	Effective date
Maryland	Betterton, town of	Kent	240095	May 4, 1989, suspension withdrawn.
Do	Unincorporated areas	Caroline	24013	Do.
Do	Crisfield, city of	Somerset	240062	Do.
Do	La Plata, town of	Charles	240092	Do.
Do	Unincorporated areas	Montgomery	240049	Do.
Do	....do	Somerset	240061	Do.
Colorado	....do	Adams	080001	May 17, 1989.
Do	Breckenridge, city of	Summit	080172	Do.
Do	Brighton, city of	Adams	080004	Do.
Do	Delta, city of	Delta	080043	Do.
Do	Evans, city of	Weld	080182	Do.
Kansas	Unincorporated areas	Chase	200040	Do.
Do	....do	Clay	200052	Do.
Do	Elmdale, city of	Chase	200042	Do.
Do	Eudora, city of	Douglas	200089	Do.
Do	Harper, city of	Harper	200129	Do.
Do	Hunter, city of	Mitchell	200228	Do.
Do	La Crosse, city of	Rush	200308	Do.
Do	Rantoul, city of	Franklin	200107	Do.
Do	Virgil, city of	Greenwood	200122	Do.
Nebraska	Allen, village of	Dixon	310244	Do.
Do	Amherst, village of	Buffalo	310245	May 17, 1989, suspension withdrawn.
Do	Bristow, village of	Boyd	310012	Do.
Do	Ceresco, village of	Saunders	10197	Do.
Do	Clearwater, village of	Antelope	310262	Do.
Do	Crete, city of	Saline	310186	Do.
Do	Unincorporated areas	Dakota	310429	Do.
Do	....do	Deuel	310430	Do.
Do	Elk Creek, village of	Johnson	310125	Do.
Do	Elkhorn, city of	Douglas	310075	Do.
Do	Franklin, city of	Franklin	310082	Do.
Do	Fullerton, city of	Nance	310152	Do.
North Dakota	Dodge, city of	Dunn	380027	Do.
South Dakota	Blunt, city of	Hughes	460039	Do.
Do	Brookings, city of	Brookings	460004	Do.
Utah	Cedar City, city of	Iron	490074	Do.
Colorado	Greeley, city of	Weld	080184	June 5, 1989.
Kansas	Unincorporated areas	Leavenworth	200186	Do.
Do	Lecompton, city of	Douglas	200091	Do.
Do	Neodesha, city of	Wilson	200359	Do.
Do	Unincorporated areas	Pawnee	200566	Do.
Nebraska	Henderson, city of	York	310378	June 5, 1989, suspension withdrawn.
Do	Hubbell, village of	Thayer	310220	Do.
Do	LaVista, city of	Sarpy	310192	Do.
Do	Linwood, village of	Butler	310026	Do.
Do	Litchfield, village of	Sherman	310295	Do.
Do	Loup City, city of	Sherman	310215	Do.
Do	Maxwell, village of	Lincoln	310300	Do.
Do	Newman Grove, city of	Madison	310393	Do.
Do	Omaha, city of	Douglas	315274	Do.
Do	Papillion, city of	Sarpy	315275	Do.
North Dakota	Burlington, city of	Ward	380650	Do.
Do	Casselton, city of	Cass	380020	Do.
Do	Harwood, city of	Cass	380338	Do.
Do	Harwood, township of	Cass	380259	Do.
Ohio	Ashtabula, city of	Ashtabula	390011	Do.
Do	Gambier, village of	Knox	390310	Do.
Do	Gloria Glens, village of	Medina	390361	Do.
South Dakota	Belle Fourche, city of	Butte	460012	Do.
Wyoming	Douglas, town of	Converse	560013	Do.
Do	Evansville, town of	Natrona	560071	Do.

Issued: June 20, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89-15016 Filed 6-23-89; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 64

[Docket No. FEMA 6635]

Suspension of Community Eligibility; New York et al.

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The third date ("Susp.") listed in the fourth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et. seq.). Accordingly, the communities will be suspended on the effective date in the fourth column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in Section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance—floodplains.

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Region II				
New York: West Union, town of, Steuben County	361437	July 27, 1975, Emerg.; July 1, 1988, Reg.; July 4, 1989, Susp.	July 4, 1989	July 4, 1988.
Region III				
Pennsylvania:				
Beccaria, township of, Clearfield County	421512	Apr. 8, 1976, Emerg.; July 4, 1989, Reg.; July 4, 1989, Susp..	do	July 4, 1989.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Coalport, borough of, Clearfield County	420301	Aug. 12, 1975, Emerg.; July 4, 1989, Reg.; July 4, 1989, Susp.	do	Do.
College, township of, Centre County	420259	Apr. 19, 1973, Emerg.; July 4, 1989, Reg.; July 4, 1989, Susp.	do	Do.
Curwensville, borough of, Clearfield County	420302	July 7, 1975, Emerg.; July 4, 1989, Reg.; July 4, 1989, Susp.	do	Do.
Harrison, township of, Bedford County	421338	Oct. 24, 1975, Emerg.; July 4, 1989, Reg.; July 4, 1989, Susp.	do	Do.
Little Meadows, borough of, Susquehanna County.	420814	Oct. 29, 1975, Emerg.; July 4, 1989, Reg.; July 4, 1989, Susp.	do	Do.
Mahaffey, borough of, Clearfield County	420310	Feb. 26, 1977, Emerg.; July 4, 1989, Reg.; July 4, 1989, Susp.	do	Do.
North Franklin, township of, Washington County	422150	Sept. 10, 1975, Emerg.; July 4, 1989, Reg.; July 4, 1989, Susp.	do	Do.
Sugarloaf, township of, Columbia County	421558	Apr. 3, 1979, Emerg.; July 4, 1989, Reg.; July 4, 1989, Susp.	do	Do.
West Providence, township of, Bedford County	421353	Nov. 11, 1974, Emerg.; July 4, 1989, Reg.; July 4, 1989, Susp.	do	Do.
Virginia: Northumberland County, unincorporated areas.	510107	Oct. 9, 1973, Emerg.; July 4, 1989, Reg.; July 4, 1989, Susp.	do	Do.
Region IV				
Alabama:				
Dale County, unincorporated areas	010060	Sept. 10, 1975, Emerg.; July 4, 1989, Reg.; July 4, 1989, Susp.	do	Do.
Daleville, city of, Dale County	010061	Apr. 11, 1975, Emerg.; Sept. 4, 1985, Reg.; July 4, 1989, Susp.	do	Do.
Moody, town of, St. Clair County	010187	May 21, 1975, Emerg.; July 4, 1989, Reg.; July 4, 1989, Susp.	do	Do.
Pell City, city of, St. Clair County	010189	May 5, 1975, Emerg.; July 4, 1989, Reg.; July 4, 1989, Susp.	do	Do.
Region V				
Minnesota: Blue Earth, city of, Faribault County	270116	Apr. 22, 1975, Emerg.; May 3, 1982, Reg.; July 4, 1989, Susp.	do	Do.
Region VII				
Kansas: Bazine, city of, Ness County,	200243	Oct. 14, 1975, Emerg.; July 4, 1989, Reg.; July 4, 1989, Susp.	do	Do.
Region VIII				
South Dakota: Mountain View, town of, Uinta County.	560092	Aug. 25, 1977, Emerg.; July 4, 1989, Reg.; July 4, 1989, Susp.	do	Do.
Region III				
Pennsylvania:				
Apolacon, township of, Susquehanna County	422072	Feb. 10, 1976, Emerg.; July 4, 1989, Reg.; July 4, 1989, Susp.	July 17, 1989.	July 17, 1989.
Burnside, borough of, Clearfield County	420298	Jan. 29, 1976, Emerg.; July 17, 1989, Reg.; July 17, 1989, Susp.	do	Do.
Ferguson, township of, Centre County	420260	May 17, 1973, Emerg.; July 17, 1989, Reg.; July 17, 1989, Susp.	do	Do.
Londonderry, township of, Bedford County	421345	Aug. 12, 1975, Emerg.; July 17, 1989, Reg.; July 17, 1989, Susp.	do	Do.
Penn, township of, Clearfield County	421530	Jan. 16, 1981, Emerg.; July 17, 1989, Reg.; July 17, 1989, Susp.	do	Do.
South Franklin, township of, Washington County.	422563	Sept. 11, 1975, Emerg.; July 17, 1989, Reg.; July 17, 1989, Susp.	do	Do.
Walker, township of, Centre County	421471	Sept. 18, 1974, Emerg.; July 17, 1989, Reg.; July 17, 1989, Susp.	do	Do.
West Brunswick, township of, Schuylkill County	422028	Aug. 1, 1979, Emerg.; July 17, 1989, Reg.; July 17, 1989, Susp.	do	Do.
West St. Clair, township of, Bedford County	421354	Apr. 22, 1975, Emerg.; July 17, 1989, Reg.; July 17, 1989, Susp.	do	Do.
Virginia: Grayson County, unincorporated areas	510243	Dec. 4, 1977, Emerg.; July 17, 1989, Reg.; July 17, 1989, Susp.	do	Do.
Region IV				
Georgia: Oconee County, unincorporated areas	130453	Oct. 16, 1975, Emerg.; July 17, 1989, Reg.; July 17, 1989, Susp.	do	Do.
Mississippi: Bolivar County, unincorporated areas	280011	May 4, 1973, Emerg.; July 17, 1989, Reg.; July 17, 1989, Susp.	do	Do.
Region VI				
Texas: Denver City, city of, Yoakum County,	480682	Aug. 15, 1974, Emerg.; July 17, 1989, Reg.; July 17, 1989, Susp.	do	Do.
Region VIII				
Colorado: Oak Creek, township of, Routt County,	080158	June 16, 1975, Emerg.; July 17, 1989, Reg.; July 17, 1989, Susp.	do	Do.

State	County	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona	Pima	Unincorporated Areas	May 12, 1989 May 19, 1989 *Daily Territorial*	The Honorable Dan Eckstrom, Chairman, Pima County Board of Supervisors, 130 West Congress Street, Tucson, Arizona 85701.	May 3, 1989	040073
Florida	Dade	Unincorporated Areas	May 19, 1989 May 26, 1989 *Miami Review*	The Honorable Joaquin Avino, County Manager, Dade County, Metro Dade Center, III N.W. 1st Street, Suite 2910, Miami, Florida 33128–1971.	May 10, 1989	125096
Georgia	DeKalb	Unincorporated Areas	June 8, 1989 June 15, 1989 *Decatur-DeKalb News-ERA*	The Honorable Manuel J. Maloof, Chief Executive Officer, DeKalb County, County Courthouse, 556 North McDonough, Decatur, Georgia 30030.	May 26, 1989	130065
Kansas	Sedgwick	Unincorporated Areas	June 15, 1989 June 22, 1989 *Daily Reporter*	The Honorable Paul W. Hancock, Chairman, Board of County Commissioners, 525 North Main, 3rd Floor, Wichita, Kansas 67203.	May 31, 1989	200321
Kansas	Sedgwick	City of Wichita	June 15, 1989 June 22, 1989 *Daily Reporter*	The Honorable Sheldon Kamen, Mayor, City of Wichita, City Hall, 455 North Main Street, Wichita, Kansas 67202.	May 31, 1989	200328
New York	Suffolk	Town of East Hampton.	June 8, 1989 June 15, 1989 *The East Hampton Star*	The Honorable Tony Bullock, Supervisor of the Town of East Hampton, 159 Pantigo Road, East Hampton, New York 11937.	May 30, 1989	360794 C
Texas	Comal and Guadalupe.	City of New Braunfels	June 16, 1989 June 23, 1989 *New Braunfels Herald Zeitung.*	The Honorable Douglas Miller, Mayor of the City of New Braunfels, P.O. Box 311596, New Braunfels, Texas 78131.	May 19, 1989	485493

Issued: June 12, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89–15013 Filed 6–23–89; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 65

Changes in Flood Elevation Determinations; Louisiana et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations will be used in calculating flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

DATES: The effective dates for these modified base flood elevations are indicated on the following table and amend the Flood Insurance Rate Map(s) (FIRM) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed on the following table.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 646–2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of modified flood elevations for each community listed. These modified elevations have been published in newspaper(s) of local circulation and ninety (90) days have elapsed since that publication. The Administrator, has resolved any appeals resulting from this notification.

Numerous changes made in the base (100-year) flood elevations on the FIRMs for each community make it administratively infeasible to publish in this notice all of the changes contained on the maps. However, this rule includes the address of the Chief Executive Officer of the community, where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) and are in accordance with the National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968, (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR Part 65.

For rating purposes, the revised community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management measures required by 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities.

These modified base flood elevations shall be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Region X				
Idaho: Glenns Ferry, city of, Elmore County	160057	May 27, 1975, Emerg.; July 17, 1989, Reg.; July 17, 1989, Susp.	do	Do.
Oregon:				
Crook County, unincorporated areas	410050	Feb. 14, 1975, Emerg.; July 17, 1989, Reg.; July 17, 1989, Susp.	do	Do.
Jefferson County, unincorporated areas	410101	Apr. 30, 1975, Emerg.; July 17, 1989, Reg.; July 17, 1989, Susp.	do	Do.
Madras, city of, Jefferson County	410103	Apr. 22, 1975, Emerg.; July 17, 1989, Reg.; July 17, 1989, Susp.	do	Do.
Prineville, city of, Crook County	410051	Jan. 30, 1975, Emerg.; July 17, 1989, Reg.; July 17, 1989, Susp.	do	Do.
Wheeler County, unincorporated areas	410245	Sept. 25, 1975, Emerg.; July 17, 1989, Reg.; July 17, 1989, Susp.	do	Do.

Code for reading 3rd column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

Issued: June 20, 1989.

[FR Doc. 89–15015 Filed 6–23–89; 8:45 am]

BILLING CODE 6718-21-M

44 CFR Part 65

[Docket No. FEMA-6958]

Changes in Flood Elevation Determinations; Arizona et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Interim rule.

SUMMARY: This rule lists those communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) elevations for new buildings and their contents and for second layer insurance on existing buildings and their contents.

DATES: These modified elevations are currently in effect and amend the Flood Insurance Rate Map (FIRM) in effect prior to this determination.

From the date of the second publication of notice of these changes in a prominent local newspaper, any person has ninety (90) days in which he can request through the community that the Administrator, reconsider the changes. These modified elevations may be changed during the 90-day period.

ADDRESS: The modified base (100-year) flood elevation determinations are available for inspection at the office of the Chief Executive Officer of the community, listed in the fifth column of the table.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–2767.

SUPPLEMENTARY INFORMATION: The numerous changes made in the base (100-year) flood elevations on the FIRM(s) make it administratively infeasible to publish in this notice all of the modified base (100-year) flood elevations contained on the map. However, this rule includes the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection.

Any request for reconsideration must be based on knowledge of changed conditions, or new scientific or technical data.

These modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) and are in accordance with the National Flood Insurance Act of 1968, as amended, (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR Part 65.4.

For rating purposes, the revised community number is listed and must be used for all new policies and renewals.

These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

These elevations, together with the floodplain management measures required by 60.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time, enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities.

The changes in the base (100-year) flood elevations listed below are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains.

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O 12127.

2. Section 65.4 is amended by adding in alphabetical sequence new entries to the table.

The changes in the base flood elevations are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 USC 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains.

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 65.4 is amended by adding in alphabetical sequence new entries to the table.

State	County	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Louisiana	Unincorporated areas (FEMA Docket No. 6942).	St. Mary Parish	Nov. 18, 1988, Nov. 25 1988. *The Daily Review*	The Honorable Prescott Foster, President of the St. Mary Parish Council, 5th Floor Courthouse, Franklin, Louisiana 70530.	Nov. 3, 1988	220192
Maryland	Queen Anne's (FEMA Docket No. 6947).	Unincorporated areas	Jan. 4, 1989, Jan. 11, 1989 *Queen Anne's County Record-Observer.*	The Honorable Robert Sallitt, Queen Anne's County Administrator, 208 North Commerce Street, Centreville, Maryland 21617.	Dec. 21, 1988	240054 C
Massachusetts	Norfolk (FEMA Docket No. 6940).	City of Quincy	Oct. 14, 1988, Oct. 21, 1988. *The Patriot Ledger*	The Honorable Francis X. McCaugley, Mayor of the City of Quincy, 1305 Hancock Street, Quincy, Massachusetts 02169.	Sept. 30, 1988	255219 B
Missouri	St. Louis (Docket No. FEMA–6953).	City of Florissant	Feb. 13, 1989, Feb. 20, 1989. *St. Louis Post Dispatch*	The Honorable James J. Eagan, Mayor, City of Florissant, City Hall, 955 Rue St. Francois, Florissant, Missouri 63031.	Feb. 2, 1989	290352
Ohio	Montgomery (Docket No. FEMA–6953).	City of Trotwood	Feb. 23, 1989, Mar. 2, 1989 *Dayton Daily News*	The Honorable Richard J. Haas, Mayor, City of Trotwood, 35 North Olive Road, Trotwood, Ohio 45426.	Feb. 13, 1989	390417
South Caroline	Orangeburg (Docket No. FEMA–6950).	City of Orangeburg	Feb. 9, 1989, Feb. 16, 1989 *The Orangeburg Times and Democrat.*	The Honorable E.O. Pendarvis, Mayor, City of Orangeburg, P.O. Box 387, Orangeburg, South Carolina 29115.	Jan. 31, 1989	450164
Texas	Tarrant and Denton (FEMA Docket No. 6950).	City of Fort Worth	Feb. 2, 1989, Feb. 9, 1989 *Fort Worth Star Telegram*	The Honorable Bob Bolen, Mayor of the City of Fort Worth, Tarrant and Denton Counties, 1000 Throckmorton Street, Forth Worth, Texas 76102.	Jan. 26, 1989	480596 D

Harold T. Duryee,

Administrator, Federal Insurance Administration.

Issued: June 12, 1989.

[FR Doc. 89–15014 Filed 6–23–89; 8:45 am]

BILLING CODE 6718–03–M

44 CFR Part 67

Final Flood Elevation Determinations; Connecticut et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing modified base flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below:

ADDRESSES: See table below:

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 646–2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal the proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 USC 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been proposed. It does not involve any collection of information for purposes of The Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The modified base flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

Source of flooding and location	# Depth in feet above ground *Elevation in feet (NGVD) Modified
CONNECTICUT	
Somers (town), Tolland County (FEMA docket No. 6948)	
Unnamed Tributary:	
At confluence with Abbey Brook	*210
Just upstream of State Route 83 (South Road)	*325
Abbey Brook:	
Approximately 550 feet upstream of Ninth District Road	*210
Approximately 1,720 feet upstream of Ninth District Road	*210
Maps available for inspection at the Town Office, 600 Main Street, Somers, Connecticut.	
FLORIDA	
Orange County (unincorporated areas) (FEMA docket No. 6948)	
Harvest Lake: At shoreline	*92
St. Johns River:	
At Seminole County boundary	*11
Just upstream of State Road 520	*18
Maps available for inspection at the Department of Engineering, Engineering and Water Management, 2450 33rd Street, Orlando, Florida.	
Polk County (unincorporated areas) (FEMA docket No. 6948)	
Lake Garfield: Along shoreline	*107
Maps available for inspection at the Polk County Engineering Department, 168 West Main, Bartow, Florida.	
GEORGIA	
DeKalb County (unincorporated areas) (FEMA docket No. 6948)	
Stone Mountain Creek:	
Just downstream of dam at Water's Edge Lake	*758
Just upstream of dam at Water's Edge Lake	*772
Just upstream of North Deshon Road	*773
Stone Mountain Creek Tributary A:	
At mouth	*772
About 1,400 feet upstream of mouth	*772
About 250 feet upstream of Water's Edge Drive	*781
Crooked Creek Tributary, Stone Mountain Creek:	
Just downstream of dam at Crooked Creek Lake	*757
Just upstream of dam at Crooked Creek Lake	*768
About 650 feet downstream of South Deshon Road	*768
Maps available for inspection at DeKalb County, 556 North McDonough, Decatur, Georgia 30050.	
Marietta (city), Cobb County (FEMA docket No. 6948)	
Ward Creek:	
About 100 feet upstream of confluence of Westside Branch	*1018
About 350 feet downstream of Whitlock Drive	*1030
Just downstream of Whitlock Drive	*1032
Westside Branch:	
About 400 feet upstream of confluence with Ward Creek	*1017
About 325 feet downstream of Polk Street	*1052
About 900 feet upstream of Polk Street	*1065
Elizabeth Branch:	
About 580 feet downstream of Cobb Industrial Boulevard	*1033
Just upstream of Interstate 75	*1058
About 450 feet upstream of Interstate 75	*1068
Sope Creek:	
At confluence of Sope Branch	*1022
Just downstream of Page Street	*1027
Just upstream of Page Street	*1037
Poorhouse Creek:	
Just downstream of U.S. Highway 41	*938
About 500 feet upstream of U.S. Highway 41	*942
About 0.63 mile upstream of U.S. Highway 41	*950
Maps available for inspection at the City Hall, Marietta, Georgia.	
MINNESOTA	
St. Paul (city), Ramsey County (FEMA docket No. 6948)	
Mississippi River:	
About 2.7 miles downstream of Chicago & North Western railroad bridge	*704
Just downstream of Lock and Dam Number One	*717
Just upstream of Lock and Dam Number One	*734
Maps available for inspection at the St. Paul Planning Division, Division of Planning and Economic Development, 25 West Fourth Street, St. Paul, Minnesota.	
MISSISSIPPI	
Madison (city), Madison County (FEMA docket No. 6948)	
Hoem Creek:	
About 1920 feet downstream of Northbay Drive	*300
About 170 feet downstream of Northbay Drive	*303
About 1780 feet upstream of Northbay Drive	*310
Maps available for inspection at the Maintenance Facility Building, 525 Post Oak Road, Madison, Mississippi.	
MISSOURI	
Jackson County (unincorporated areas) (FEMA docket No. 6948)	
Little Blue River:	
At confluence with Missouri River	*723
About 1.8 miles downstream of Blue Hills Road	*726
Just upstream of U.S. Highway 24	*732
Maps available for inspection at the Jackson County Courthouse, 415 East 12th Street, Kansas City, Missouri.	
NEW JERSEY	
Ramsey (town), Bergen County (FEMA docket No. 6945)	
Valentine Brook Tributary No. 2:	
Upstream of Private Road (approximately 865 feet upstream of South Central Avenue)	*292
Downstream side of East Main Street	*340
Maps available for inspection at the Borough Building, 33 North Central Avenue, Ramsey, New Jersey.	
Wanaque (Borough), Passaic County (FEMA docket No. 6946)	
Stephens Lake Brook: Approximately 200 feet upstream of Wilson Drive	*268
Maps available for inspection at the Borough Clerk's Office, Borough Hall, 579 Ringwood Avenue, Wanaque, New Jersey.	
NEW YORK	
Fredonia (village), Chautauqua County (FEMA docket No. 6947)	
Canadaway Creek:	
Approximately 1,670 feet downstream of Risley Street bridge	*668
Approximately 310 feet downstream of Liberty Street bridge	*745
Maps available for inspection at the Building Inspector's Office, Village Hall, Fredonia, New York.	
NORTH CAROLINA	
Greensboro (city), Guilford County (FEMA docket No. 6948)	
South Buffalo Creek:	
About 4,000 feet downstream of Interstate 85	*718
Just downstream of Interstate 85	*721
Maps available for inspection at the City of Greensboro, Planning Development, Greensboro, North Carolina.	
Guilford County (unincorporated areas) (FEMA docket No. 6948)	
South Buffalo Creek:	
Just upstream of State Road 6	*715
About 800 feet upstream of State Road 6	*717
Just upstream of Interstate 85	*722
Maps available for inspection at the County Planning & Development, 201 S. Eugene, Greensboro, North Carolina 27402.	
OHIO	
Brecksville (city), Cuyahoga County (FEMA docket No. 6948)	
Chippewa Creek:	
Just downstream of Chippewa Road	*812
Just upstream of Brecksville Road	*852
Just upstream of the upstream crossing of Old Royalton Road	*874

Source of flooding and location *	# Depth in feet above ground. Elevation in feet (NGVD) Modified
Maps available for inspection at the Building Department, 3068 Brecksville Road, Brecksville, Ohio	
Ohio (village), Clermont County (FEMA docket No. 6848)	
Ohio River:	
At downstream corporate limits (river mile 434.8)	*508
At upstream corporate limits (river mile 434.0)	*508
Maps available for inspection at the Community Building, 310 Washington Street, Ohio, Ohio.	
Dublin (City), Franklin, Delaware and Union Counties (FEMA docket No. 6849)	
North Fork Indian Run:	
Just upstream of Brand Road	*866
About 500 feet downstream of Brandonway Drive	*867
About 500 feet upstream of confluence of Tributary I1	*891
Tributary S1	
About 850 feet upstream of Interstate 270	*899
About 1000 feet upstream of Interstate 270	*900
Maps available for inspection at the City Hall, 6555 Coffman Road, Dublin, Ohio.	
OKLAHOMA	
Oklahoma City (city), Canadian, Cleveland, Oklahoma, McClain, and Pottawatomie Counties (FEMA docket No. 6845)	
Deep Fork Tributary 12:	
Approximately 850 feet upstream from confluence with Deep Fork	*1,071
Approximately 1,400 feet downstream of 50th Street	*1,078
Deep Fork Tributary 13:	
Approximately 60 feet upstream from confluence with Deep Fork	*1,072
Approximately 40 feet downstream from Northeast Lake Dam	*1,077
Maps available for inspection at the City Hall, 200 North Walker, Suite 302, Oklahoma City, Oklahoma.	
TEXAS	
Grapevine (city) Dallas and Tarrant Counties (FEMA docket No. 6845)	
Bear Creek:	
Approximately 1,200 feet downstream of confluence of Tributary BB-5	*553
Approximately 1,300 feet upstream of confluence of Tributary BB-6	*558
Tributary BB-5:	
Confluence with Bear Creek	*554
Approximately 10 feet downstream on Creekwood Drive	*563
Maps available for inspection at the Department of Public Works, 307 West Dallas Road, Grapevine, Texas.	
Leon Valley (city), Bexar County (FEMA docket No. 6834)	
Zarzamora Creek:	
Approximately 1,150 feet downstream of Bandera Road	*803
Upstream side of Bandera Road	*812
Tributary A to Zarzamora Creek:	
Downstream corporate limits	*814
Upstream corporate limits	*817
Drain 4—Zarzamora Creek:	
Confluence with Zarzamora Creek	*812
Approximately 900 feet upstream of the confluence of Zarzamora Creek	*824
Maps available for inspection at 6400 El Verde Road, San Antonio, Texas.	

Issued: June 12, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89-15011 Filed 6-23-89; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 300

RIN 3067-AB11

Disaster Preparedness Assistance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This final rule removes § 300.6, Earthquake and Hurricane Plans and Preparedness, in 44 CFR Part 300, Disaster Preparedness Assistance. No proposed or interim rule has been previously published in the **Federal Register** for this action. A separate rulemaking action (44 CFR 361) was completed to amend the earthquake portion of that regulation on October 1, 1987.

The reason for this action is that the existing regulation no longer applies to the administration by the Federal Emergency Management Agency (FEMA) of its Hurricane Preparedness Program because of changes over the past few years. Section 201 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988 (previously known as the Disaster Relief Act of 1974) establishes a mechanism for providing Federal Technical assistance to States and authorizes grants to develop and improve capabilities of State governments to deliver disaster assistance and to prepare for and mitigate natural hazards to which the grant recipient is exposed. On January 19, 1989, FEMA published a final rule in the **Federal Register**, Vol. 54, No. 12, p. 2127, that prescribed requirements for the implementation of the Robert T. Stafford Disaster Relief and Emergency Assistance Act. Procedures for obtaining technical and financial assistance by State and local governments under Hurricane Preparedness Program are contained in the FEMA publications: "A Guide to Hurricane Preparedness Planning for State and Local Officials," CPG 2-16, December, 1984, as revised, and "CCA Policies and Procedures Guide," Civil Preparedness Guide (CPG) 1-38, June 1986.

EFFECTIVE DATE: June 26, 1989.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks, Jr., Chief, Field Operations Branch, Earthquake and Natural Hazards Programs Division; telephone 202/646-2796, or at the following address: Federal Emergency Management Agency, 500 C Street SW., Room 625, Washington, DC 20476.

SUPPLEMENTARY INFORMATION: Significant changes have occurred over the past several years in the Hurricane Preparedness Program administered by the Federal Emergency Management Agency (FEMA) necessitating this action. The vehicle used by FEMA for providing financial and technical assistance to States in a Comprehensive Cooperative Agreement (CCA) with the State department of emergency management or another agency designated by the Governor as having responsibility for a hurricane preparedness planning project. Funding is usually not provided by FEMA directly to local units of government. If it is determined through negotiations or other discussions with State and/or local officials that FEMA funding is to be provided to a local jurisdiction, the funding will generally be passed through the appropriate State agency to the local government.

Since Fiscal Year 1984, States were offered the option of designating the U.S. Army Corps of Engineers as the Project Management Agency of a Hurricane Preparedness Study. Most States selected this option for conducting their Population Preparedness Project for hurricane evacuation. The U.S. Army Corps of Engineers jointly funds with FEMA those Hurricane Preparedness Studies for which it serves as the Project Management Agency. FEMA's funds for the Project are then transferred directly to the U.S. Army Corps of Engineers, as the Project Management Agency, by means of an Interagency Agreement and no funds are given to the State. This option was also selected by some States for a Property Protection Project to develop a hurricane hazard mitigation plan. The Office of Ocean and Coastal Resource Management, National Weather Service, and National Hurricane Center in the National Oceanic and Atomspheric Administration have also provided funds for Hurricane Preparedness Studies. These options are explained in "A Guide to Hurricane Preparedness Planning for States and Local Officials," CPG 2-16, currently being revised by FEMA.

List of Subjects in 44 CFR Part 300

Disaster assistance.

Accordingly, amend 44 CFR Part 300, Chapter I, Subchapter E as follows:

PART 300—[AMENDED]

1. The authority citation of Part 300 continues to read:

Authority: 42 U.S.C. 5121 et seq.; Reorganization Plan No. 3 of E.O. 12148.

§ 300.6 [Removed]

2. Section 300.6 is removed.

Grant C. Peterson,

Associate Director, State and Local Programs and Support Directorate.

[FR Doc. 89-15010 Filed 6-23-89; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

48 CFR Part 352

Solicitations Provisions and Contract Clauses

AGENCY: Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: The Office of the Secretary, Department of Health and Human Services is amending its acquisition regulations to update its existing sets of general provisions and to add six new sets. The update consolidates all additions, removals, and revisions to the existing general provisions which have not undergone a major revision since April, 1984. The update includes: (1) Renaming the general provisions to general clauses; (2) Revising the general provisions to include the latest Federal Acquisition Regulation (FAR) and Health and Human Services Acquisition Regulation (HHSAR) clauses which are required by the regulations; (3) Establishing six new sets of general clauses for Negotiated Fixed-Price Service Contracts, Cost-Reimbursement Service Contracts, Cost-Reimbursement Research and Development Contracts, Time-and-Materials or Labor-Hour Contracts, Sealed Bid Construction Contracts, and Negotiated Fixed-Price Architect-Engineer Contracts.

The general clauses will provide consistency and uniformity in use of the FAR and HHSAR clauses required in Departmental contracts. The general clauses will reduce contractor uncertainty as to which clauses would apply to their contracts with HHS. It will also reduce administrative burden on the parts of both the government and contractor personnel in preparing, reviewing and understanding the Department's contract clauses.

EFFECTIVE DATE: June 15, 1989.

FOR FURTHER INFORMATION CONTACT: Norman Audi, Division of Acquisition Policy (202/245-0328).

SUPPLEMENTARY INFORMATION: On September 15, 1988, the proposed rule on revised general contract clauses was published in the **Federal Register** (53 FR 35852) and invited public comments by October 31, 1988. As a result, the following comments were received.

One commentor suggested that the applicability instructions should not be included in the sets of general clauses since the contractor officer, not the contractor, is responsible for determining which clauses apply to a contract. We concur. Therefore, we have removed all clauses with applicability instructions in the clause arrays. The contracting officer will add the appropriate clauses which will be specifically applicable to the instant procurement.

Several educational institutions requested that the Changes—Cost-Reimbursement, 52.243-2 (Alternate V), for contracts with educational institutions should be optional since the FAR guidance permits its voluntary use. We concur and have deleted the clause from the General Clauses for a Cost-Reimbursement Contract with Educational Institutions. Contractor officers may use the clause pursuant to the FAR prescription in 52.243-2 (Alternate V).

Several educational institutions suggested that Alternate I be added to the Cost Contract—No Fee clause at 52-216-11 since the issue of withholding payments is already covered in clause 352.232-9. We concur and have changed the clause.

Several educational institutions suggested that the Walsh-Healy Public Contracts Act at 52.222-20 be deleted since it is prescribed only for contracts for the manufacture of furnishing of supplies which clearly is not the function of a college or university. We concur and have deleted the clause from the General Clauses for a Contract with an Educational Institution.

Several educational institutions suggested that all reference to colleges and universities in the General Clauses of a Cost-Reimbursement Research and Development Contract be deleted since it is inconsistent with the HHS desire to clarify the sets of clauses to be used for a particular purpose or group of performers. We concur and have revised the general clause array accordingly.

We have also added internal instructions to 352-370(c) which will aid in clarifying the use of the general clause arrays.

This final rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that the final rule will not have a significant impact on small business entities.

This document does not contain information collection requirements which require the approval of the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

The provisions of this final rule will be issued under 5 U.S.C. 301; 40 U.S.C. 486(c).

List of Subjects in 48 CFR Part 352

Government procurement.

48 CFR Chapter 3 is amended in the manner set forth below.

Dated: June 9, 1989.

Terrence J. Tychan,

Acting Deputy Assistant Secretary for Administrative and Management Services.

As indicated in the preamble, Chapter 3 of Title 48, Code of Federal Regulations, is amended as shown.

1. The authority citation for Part 352 continues to read as follows:

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

2. The table of contents for Subpart 352.3 is revised to read as follows:

Subpart 352.3—Provision and Clause Matrices

Sec.
352.370 General.

General Clauses

Negotiated Fixed-Price Supply Contract
Cost-Reimbursement Supply Contract
Negotiated Fixed-Price Service Contract
Cost-Reimbursement Service Contract
Negotiated Fixed-Price Research and Development Contract
Cost-Reimbursement Research and Development Contract
Sealed Bid Supply Contract
Cost-Plus-A-Fixed-Fee Contract
Cost-Reimbursement Contract With Nonprofit Institutions Other Than Educational Institutions
Cost-Reimbursement Contract With Educational Institutions
Time-and-Materials or Labor-Hour Contract
Sealed Bid Construction Contract
Negotiated Fixed-Price Architect-Engineer Contract.

352.370 [Amended]

3. Section 352.370 is amended as follows:

a. Existing paragraphs (a), (b), and (c) are redesignated as (c), (d), and (e), respectively.

b. The following are added as paragraphs (a) and (b):

(a) Contracting Officers shall use the clause arrays which they believe are appropriate to the instant contract.

(b) Contracting officers are required to review FAR Part 52 for other clauses which are appropriate to each individual procurement. Contracting officers shall also review the clause matrices at FAR Subpart 52.3, as applicable.

c. In newly designated paragraph (c), replace the word "provisions" with the word "clauses."

d. Revise newly designated paragraph (e) to read as follows:

(e) The general clauses for cost-reimbursement contracts with nonprofit institutions other than educational institutions shall be utilized with the following modifications whenever a contract with a nonprofit institution provides for the payment of a fixed fee:

(1) Add the clause entitled "Facilities Capital Cost of Money" (SEP 1987) if the prospective contractor proposes facilities capital cost of money in its offer (see FAR 52.215-30 for the text of the clause). Add the clause entitled "Waiver of Facilities Capital Cost of Money" (SEP 1987) if the prospective contractor does not propose facilities capital cost of money in its offer (See FAR 52.215-31 for the text of the clause).

(2) Add the clause entitled "Fixed Fee" (APR 1984). (See FAR 52.216-8 for the text of the clause.)

(3) Delete "Alternate I" (JUL 1985) of clause 41 entitled "Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts) (JAN 1986).

(4) Substitute the clause at HHSAR 352.249-14, Excusable Delays, for FAR 52.249-14, Excusable Delays.

4. Remove the existing clause matrices following section 352.370, and replace them with the following:

GENERAL CLAUSES FOR A NEGOTIATED FIXED-PRICE SUPPLY CONTRACT

Clauses Incorporated By Reference

This contract incorporates the following clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available.

I. Federal Acquisition Regulation (FAR) (48 CFR Chapter 1)

No.	FAR clause No.	Title and date
1.	52.203-1	Officials Not to Benefit (APR 1984).
2.	52.203-3	Gratuities (APR 1984).
3.	52.203-5	Covenant Against Contingent Fees (APR 1984).
4.	52.203-6	Restrictions on Subcontractor Sales to the Government (JUL 1985).
5.	52.203-7	Anti-Kickback Procedures (OCT 1988).
6.	52.215-1	Examination of Records by Comptroller General (APR 1984).
7.	52.215-2	Audit—Negotiation (APR 1988).
8.	52.215-22	Price Reduction for Defective Cost or Pricing Data (Over $100,000) (APR 1988).
9.	52.215-24	Subcontractor Cost or Pricing Data (Over $100,000) (APR 1985).
10.	52.215-33	Order of Precedence (JAN 1986).
11.	52.219-8	Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (JUN 1985).
12.	52.219-9	Small Business and Small Disadvantaged Business Subcontracting Plan (Over $500,000) (APR 1984).
13.	52.219-13	Utilization of Women-Owned Small Businesses (AUG 1986).
14.	52.220-1	Preference for Labor Surplus Area Concerns (APR 1984).
15.	52.220-3	Utilization of Labor Surplus Area Concerns (APR 1984).
16.	52.222-2	Payment for Overtime Premiums (APR 1984).
17.	52.222-20	Walsh-Healey Public Contracts Act (APR 1984).
18.	52.222-26	Equal Opportunity (APR 1984).
19.	52.222-28	Equal Opportunity Preaward Clearance of Subcontracts ($1,000,000 or more) (APR 1984).
20.	52.222-35	Affirmative Action for Special Disabled and Vietnam Era Veterans (APR 1984).
21.	52.222-36	Affirmative Action for Handicapped Workers (APR 1984).
22.	52.222-37	Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (JAN 1988).
23.	52.223-2	Clear Air and Water (Over $100,000) (APR 1984).
24.	52.223-6	Drug-Free Workplace (MAR 1989).
25.	52.227-1	Authorization and Consent (APR 1984).
26.	52.227-2	Notice and Assistance Regarding Patent and Copyright Infringement (APR 1984).
27.	52.227-3	Patent Indemnity (APR 1984).
28.	52.227-14	Rights in Data—General (JUN 1987).
29.	52.229-5	Taxes—Contracts Performed in U.S. Possessions or Puerto Rico (APR 1984).
30.	52.232-1	Payments (APR 1984).
31.	52.232-8	Discounts for Prompt Payment (APR 1988).
32.	52.232-9	Limitation on Withholding of Payments (APR 1984).
33.	52.232-11	Extras (APR 1984).
34.	52.232-17	Interest (APR 1984).
35.	52.232-23	Assignment of Claims (JAN 1986).
36.	52.232-25	Prompt Payment (APR 1989).
37.	52.233-1	Disputes (APR 1984).
38.	52.233-3	Protest After Award (JUN 1985).
39.	52.243-1	Changes—Fixed-Price (AUG 1987).
40.	52.244-1	Subcontracts (Fixed-Price Contracts) (Over $500,000) (JAN 1986).
41.	52.244-6	Competition in Subcontracting (APR 1984).
42.	52.245-2	Government Property (Fixed-Price Contracts) (APR 1984).
43.	52.246-2	Inspection of Supplies—Fixed-Price (JUL 1985).

I. Federal Acquisition Regulation (FAR) (48 CFR Chapter 1)—Continued

No.	FAR clause No.	Title and date
44.	52.246-16	Responsibility for Supplies (APR 1984).
45.	52.248-1	Value Engineering (Over $100,000) (MAR 1989).
46.	52.249-2	Termination for Convenience of the Government (Fixed-Price) (APR 1984).
47.	52.249-8	Default (Fixed-Price) Supply and Service (APR 1984).

II. Department of Health and Human Services Acquisition Regulation (HHSAR) (48 CFR Chapter 3) Clauses

No.	HHSAR clause No.	Title and date
1.	352.202-1	Definitions (APR 1984).
2.	352.232-9	Withholding of Contract Payments (APR 1984).
3.	352.270-4	Pricing of Adjustments (APR 1984).
4.	352.270-7	Paperwork Reduction Act (APR 1984).

GENERAL CLAUSES FOR A COST-REIMBURSEMENT SUPPLY CONTRACT

Clauses Incorporated By Reference

This contract incorporates the following clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available.

I. Federal Acquisition Regulation (FAR) (48 CFR Chapter 1) Clauses

No.	FAR clause No.	Title and date
1.	52.203-1	Officials Not to Benefit (APR 1984).
2.	52.203-3	Gratuities (APR 1984).
3.	52.203-5	Covenant Against Contingent Fees (APR 1984).
4.	52.203-6	Restrictions on Subcontractor Sales to the Government (JUL 1985).
5.	52.203-7	Anti-Kickback Procedures (OCT 1988).
6.	52.215-1	Examination of Records by Comptroller General (APR 1984).
7.	52.215-2	Audit—Negotiation (APR 1988).
8.	52.215-22	Price Reduction for Defective Cost or Pricing Data (Over $100,000) (APR 1988).
9.	52.215-24	Subcontractor Cost or Pricing Data (Over $100,000) (APR 1985).
10.	52.215-33	Order of Precedence (JAN 1986).
11.	52.216-7	Allowable Cost and Payment (APR 1984).
12.	52.216-8	Fixed Fee (APR 1984).
13.	52.219-8	Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (JUN 1985).
14.	52.219-9	Small Business and Small Disadvantaged Business Subcontracting Plan (Over $500,000) (APR 1984).
15.	52.219-13	Utilization of Women-Owned Small Businesses (AUG 1986).
16.	52.220-1	Preference for Labor Surplus Area Concerns (APR 1984).
17.	52.220-3	Utilization of Labor Surplus Area Concerns (APR 1984).
18.	52.222-2	Payment for Overtime Premiums (APR 1984).
19.	52.222-20	Walsh-Healey Public Contracts Act (APR 1984).
20.	52.222-26	Equal Opportunity (APR 1984).
21.	52.222-28	Equal Opportunity Preaward Clearance of Subcontractors ($1,000,000 or more) (APR 1984).
22.	52.222-35	Affirmative Action for Special Disabled and Vietnam Era Veterans (APR 1984).
23.	52.222-36	Affirmative Action for Handicapped Workers (APR 1984).
24.	52.222-37	Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (JAN 1988).
25.	52.223-2	Clean Air and Water (Over $100,000) (APR 1984).
26.	52.223-6	Drug-Free Workplace (MAR 1989).
27.	52.227-1	Authorization and Consent (APR 1984).
28.	52.227-2	Notice and Assistance Regarding Patent and Copyright Infringement (APR 1984).
29.	52.227-3	Patent Indemnity (APR 1984).
30.	52.227-14	Rights in Data—General (JUN 1987).
31.	52.232-9	Limitation on Withholding of Payments (APR 1984).
32.	52.232-17	Interest (APR 1984).
33.	52.232-20	Limitation of Cost (APR 1984).
34.	52.232-23	Assignment of Claims (JAN 1986).
35.	52.232-25	Prompt Payment (APR 1989).
36.	52.233-1	Disputes (APR 1984).
37.	52.233-3	Protest After Award (JUN 1985) Alternate I (JUN 1985).
38.	52.242-1	Notice of Intent to Disallow Costs (APR 1984).
39.	52.243-2	Changes—Cost-Reimbursement (AUG 1987).
40.	52.244-2	Subcontracts (Cost-Reimbursement and Letter Contracts) (JUL 1985).
41.	52.244-5	Competition in Subcontracting (APR 1984).
42.	52.245-5	Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts) (JAN 1986).
43.	52.246-3	Inspection of Supplies—Cost-Reimbursement (APR 1984).

I. Federal Acquisition Regulation (FAR) (48 CFR Chapter 1) Clauses—Continued

No.	FAR clause No.	Title and date
44.	52.246–23	Limitation of Liability (APR 1984).
45.	52.248–1	Value Engineering (Over $100,000) (MAR 1989).
46.	52.249–6	Termination (Cost-Reimbursement) (May 1986).
47.	52.249–14	Excusable Delays (APR 1984).

II. Department of Health and Human Services Acquisition Regulation (HHSAR) (48 CFR Chapter 3) Clauses

No.	HHSAR clause No.	Title and date
1.	352.202–1	Definitions (APR 1984) Alternate I (APR 1984).
2.	352.228–70	Required Insurance (APR 1984).
3.	352.232–9	Withholding of Contract Payments (APR 1984).
4.	352.233–70	Litigation and Claims (APR 1984).
5.	352.242–71	Final Decisions on Audit Findings (APR 1984).
6.	352.270–5	Key Personnel (APR 1984).
7.	352.270–7	Paperwork Reduction Act (APR 1984).

GENERAL CLAUSES FOR A NEGOTIATED FIXED-PRICE SERVICE CONTRACT

Clauses Incorporated by Reference

This contract incorporates the following clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available.

I. Federal Acquisition Regulation (FAR) (48 CFR Chapter 1) Clauses

No.	FAR clause No.	Title and date
1.	52.203–1	Officials Not to Benefit (APR 1984).
2.	52.203–3	Gratuities (APR 1984).
3.	52.203–5	Covenant Against Contingent Fees (APR 1984).
4.	52.203–6	Restrictions on Subcontractor Sales to the Government (JUL 1985).
5.	52.203–7	Anti-Kickback Procedures (OCT 1988).
6.	52.215–1	Examination of Records by Comptroller General (APR 1984).
7.	52.215–2	Audit—Negotiation (APR 1988).
8.	52.215–22	Price Reduction for Defective Cost or Pricing Data (Over $100,000) (APR 1988).
9.	52.215–24	Subcontractor Cost or Pricing Data (Over $100,000) (APR 1985).
10.	52.215–33	Order of Precedence (JAN 1986).
11.	52.219–8	Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (JUN 1985).
12.	52.219–9	Small Business and Small Disadvantaged Business Subcontracting Plan (Over $500,000) (APR 1984).
13.	52.219–13	Utilization of Women-Owned Small Businesses (AUG 1986).
14.	52.220–1	Preference for Labor Surplus Area Concerns (APR 1984).
15.	52.220–3	Utilization of Labor Surplus Area Concerns (APR 1984).
16.	52.222–2	Payment for Overtime Premiums (APR 1984).
17.	52.222–3	Convict Labor (APR 1984).
18.	52.222–4	Contract Work Hours and Safety Standards Act—Overtime Compensation (MAR 1986).
19.	52.222–26	Equal Opportunity (APR 1984).
20.	52.222–28	Equal Opportunity Preaward Clearance of Subcontracts ($1,000,000 or more) (APR 1984).
21.	52.222–35	Affirmative Action for Special Disabled and Vietnam Era Veterans (APR 1984).
22.	52.222–36	Affirmative Action for Handicapped Workers (APR 1984).
23.	52.222–37	Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (JAN 1988).
24.	52.223–2	Clean Air and Water (Over $100,000) (APR 1984).
25.	52.223–6	Drug-Free Workplace (MAR 1989).
26.	52.227–1	Authorization and Consent (APR 1984).
27.	52.227–2	Notice and Assistance Regarding Patent and Copyright Infringement (APR 1984).
28.	52.227–3	Patent Indemnity (APR 1984).
29.	52.227–14	Rights in Data—General (JUN 1987).
30.	52.229–5	Taxes—Contracts Performed in U.S. Possessions or Puerto Rico (APR 1984).
31.	52.232–1	Payments (APR 1984).
32.	52.232–8	Discounts for Prompt Payment (APR 1989).
33.	52.232–9	Limitation on Withholding of Payments (APR 1984).
34.	52.232–11	Extras (APR 1984).
35.	52.232–17	Interest (APR 1984).

I. Federal Acquisition Regulation (FAR) (48 CFR Chapter 1) Clauses—Continued

No.	FAR clause No.	Title and date
36.	52.232–23	Assignment of Claims (JAN 1986).
37.	52.232–25	Prompt Payment (APR 1989).
38.	52.233–1	Disputes (APR 1984).
39.	52.233–3	Protest After Award (JUN 1985).
40.	52.243–1	Changes—Fixed-Price (AUG 1987) Alternate I (APR 1984).
41.	52.244–1	Subcontracts (Fixed-Price Contracts) (Over $500,000) (JAN 1986).
42.	52.244–5	Competition in Subcontracting (APR 1984).
43.	52.245–2	Government Property (Fixed-Price Contracts) (APR 1984).
44.	52.246–4	Inspection of Services—Fixed Price (APR 1984).
45.	52.246–25	Limitation of Liability—Services (APR 1984).
46.	52.248–1	Value Engineering (Over $100,000) (MAR 1989).
47.	52.249.4	Termination for Convenience of the Government (Services) (Short Form) (APR 1984).
48.	52.249–8	Default (Fixed-Price Supply and Service) (APR 1984).

II. Department of Health and Human Services Acquisition Regulation (HHSAR) (48 CFR Chapter 3) Clauses

No.	HHSAR clause No.	Title and date
1.	352.202–1	Definitions (APR 1984).
2.	352.232–9	Withholding of Contract Payments (APR 1984).
3.	352.270–4	Pricing of Adjustments (APR 1984).
4.	352.270–7	Paperwork Reduction Act (APR 1984).

GENERAL CLAUSES FOR A COST-REIMBURSEMENT SERVICE CONTRACT

Clauses Incorporated by Reference

This contract incorporates the following clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available.

I. Federal Acquisition Regulation (FAR) (48 CFR Chapter 1) Clauses

No.	FAR clause No.	Title and date
1.	52.203–1	Officials Not to Benefit (APR 1984).
2.	52.203–3	Gratuities (APR 1984).
3.	52.203–5	Covenant Against Contingent Fees (APR 1984).
4.	52.203–6	Restrictions on Subcontractor Sales to the Government (JUL 1985).
5.	52.203–7	Anti-Kickback Procedures (OCT 1988).
6.	52.215–1	Examination of Records by Comptroller General (APR 1984).
7.	52.215–2	Audit—Negotiation (APR 1988).
8.	52.215–22	Price Reduction for Defective Cost or Pricing Data (Over $100,000) (APR 1988).
9.	52.215–24	Subcontractor Cost or Pricing Data (Over $100,000) (APR 1985).
10.	52.215–33	Order of Precedence (JAN 1986).
11.	52.216–7	Allowable Cost and Payment (APR 1984).
12.	52.216–8	Fixed Fee (APR 1984).
13.	52.219–8	Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (JUN 1985).
14.	52.219–9	Small Business and Small Disadvantaged Business Subcontracting Plan (Over $500,000) (APR 1984).
15.	52.219–13	Utilization of Women-Owned Small Businesses (AUG 1986).
16.	52.220–1	Preference for Labor Surplus Area Concerns (APR 1984).
17.	52.220–3	Utilization of Labor Surplus Area Concerns (APR 1984).
18.	52.222–2	Payment for Overtime Premiums (APR 1984).
19.	52.222–3	Convict Labor (APR 1984).
20.	52.222–4	Contract Work Hours and Safety Standards Act—Overtime Compensation (MAY 1986).
21.	52.222–26	Equal Opportunity (APR 1984).
22.	52.222–28	Equal Opportunity Preaward Clearance of Subcontracts ($1,000,000 or more) (APR 1984).
23.	52.222–35	Affirmative Action for Special Disabled and Vietnam Era Veterans (APR 1984).
24.	52.222–36	Affirmative Action for Handicapped Workers (APR 1984).
25.	52.222–37	Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (JAN 1988).
26.	52.223–2	Clean Air and Water (Over $100,000) (APR 1984).
27.	52.223–6	Drug-Free Workplace (MAR 1989).
28.	52.227–1	Authorization and Consent (APR 1984).

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I. Federal Acquisition Regulation (FAR) (48 CFR Chapter 1) Clauses—Continued

No.	FAR clause No.	Title and date
29.	52.227–2	Notice and Assistance Regarding Patent and Copyright Infringement (APR 1984).
30.	52.227–3	Patent Indemnity (APR 1984).
31.	52.227–14	Rights in Data—General (JUN 1987).
32.	52.232–9	Limitation on Withholding of Payments (APR 1984).
33.	52.232–17	Interest (APR 1984).
34.	52.232–20	Limitation of Cost (APR 1984).
35.	52.232–23	Assignment of Claims (JAN 1986).
36.	52.232–25	Prompt Payment (APR 1989).
37.	52.233–1	Disputes (APR 1984).
38.	52.233–3	Protest After Award (JUN 1985) Alternate I (JUN 1985).
39.	52.242–1	Notice of Intent to Disallow Costs (APR 1984).
40.	52.243–2	Changes—Cost-Reimbursement (AUG 1987). Alternate I (APR 1984).
41.	52.244–2	Subcontracts (Cost-Reimbursement and Letter Contracts) (JUL 1985).
42.	52.244–5	Competition in Subcontracting (APR 1984).
43.	52.245–5	Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts) (JAN 1986).
44.	52.246–5	Inspection of Services—Cost-Reimbursement (APR 1984).
45.	52.246–25	Limitation of Liability—Services (APR 1984).
46.	52.248–1	Value Engineering (Over $100,000) (MAR 1989).
47.	52.249–6	Termination (Cost-Reimbursement) (MAY 1986).
48.	52.249–14	Excusable Delays (APR 1984).

II. Department of Health and Human Services Acquisition Regulation (HHSAR) (48 CFR Chapter 4) Clauses

No.	HHSAR clause No.	Title and date
1.	352.201–1	Definitions (APR 1984) Alternate I (APR 1984).
2.	352.228–70	Required Insurance (APR 1984).
3.	352.232–9	Withholding of Contract Payments (APR 1984).
4.	352.233–70	Litigation and Claims (APR 1984).
5.	352.242–71	Final Decisions on Audit Findings (APR 1984).
6.	352.270–5	Key Personnel (APR 1984).
7.	352.270–7	Paperwork Reduction Act (APR 1984).

GENERAL CLAUSES FOR A NEGOTIATED FIXED-PRICE RESEARCH AND DEVELOPMENT CONTRACT

Clauses Incorporated By Reference

This contract incorporates the following clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available.

I. Federal Acquisition Regulation (FAR) (48 CFR Chapter 1)

No.	FAR clause No.	Title and date
1.	52.203–1	Officials Not to Benefit (APR 1984).
2.	52.203–3	Gratuities (APR 1984).
3.	52.203–5	Covenant Against Contingent Fees (APR 1984).
4.	52.203–7	Anti-Kickback Procedures (OCT 1988).
5.	52.215–1	Examination of Records by Comptroller General (APR 1984).
6.	52.215–2	Audit—Negotiation (APR 1988).
7.	52.215–22	Price Reduction for Defective Cost or Pricing Data (Over $100,000) (APR 1988).
8.	52.215–24	Subcontractor Cost or Pricing Data (Over $100,000) (APR 1985).
9.	52.215–33	Order of Precedence (JAN 1986).
10.	52.219–8	Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (JUN 1985).
11.	52.219–9	Small Business and Small Disadvantaged Business Subcontracting Plan (Over $500,000) (APR 1984).
12.	52.219–13	Utilization of Women-Owned Small Businesses (AUG 1986).
13.	52.220–1	Preference for Labor Surplus Area Concerns (APR 1984).
14.	52.220–3	Utilization of Labor Surplus Area Concerns (APR 1984).
15.	52.222–2	Payment for Overtime Premiums (APR 1984).
16.	52.222–20	Walsh-Healey Public Contracts Act (APR 1984).
17.	52.222–26	Equal Opportunity (APR 1984).
18.	52.222–28	Equal Opportunity Preaward Clearance of Subcontracts ($1,000,000 or more) (APR 1984).

I. Federal Acquisition Regulation (FAR) (48 CFR Chapter 1)—Continued

No.	FAR clause No.	Title and date
19.	52.222–35	Affirmative Action for Special Disabled and Vietnam Era Veterans (APR 1984).
20.	52.222–36	Affirmative Action for Handicapped Workers (APR 1984).
21.	52.222–37	Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (JAN 1988).
22.	52.223–2	Clean Air and Water (Over $100,000) (APR 1984).
23.	52.223–6	Drug-Free Workplace (MAR 1989).
24.	52.227–1	Authorization and Consent (APR 1984)—Alternate I (APR 1984).
25.	52.227–2	Notice and Assistance Regarding Patent and Copyright Infringement (APR 1984).
26.	52.227–11	Patent Rights—Retention by the Contractor (Short Form) (APR 1984) Note: In accordance with FAR 27.303(a)(2), paragraph is modified to include the requirements in FAR 27.303(a)(2) (i) through (v). The frequency of reporting in (i) is annual.
27.	52.227–14	Rights in Data—General (JUN 1987).
28.	52.227–16	Additional Data Requirements (JUN 1987).
29.	52.229–5	Taxes—Contracts Performed in U.S. Possessions or Puerto Rico (APR 1984).
30.	52.232–2	Payments Under Fixed-Price Research and Development Contracts (APR 1984).
31.	52.232–9	Limitation on Withholding of Payments (APR 1984).
32.	52.232–17	Interest (APR 1984).
33.	52.232–23	Assignment of Claims (JAN 1986).
34.	52.232–25	Prompt Payment (APR 1989).
35.	52.233–1	Disputes (APR 1984).
36.	52.233–3	Protest After Award (JUN 1985).
37.	52.243–1	Changes—Fixed-Price (AUG 1987) Alternate V (APR 1984).
38.	52.244–1	Subcontracts (Fixed-Price Contracts) (Over $500,000) (JAN 1986).
39.	52.244–5	Competition in Subcontracting (APR 1984).
40.	52.246–16	Responsibility for Supplies (APR 1984).
41.	52.249–2	Termination for Convenience of the Government (Fixed-Price) (APR 1984).
42.	52.246–23	Limitation of Liability (APR 1984).
43.	52.249–9	Default (Fixed-Price Research and Development) (APR 1984).

II. Department of Health and Human Services Acquisition Regulation (HHSAR) (48 CFR Chapter 3) Clauses

No.	HHSAR clause No.	Title and date
1.	352.202–1	Definitions (APR 1984).
2.	352.232–9	Withholding of Contract Payments (APR 1984).
3.	352.270–4	Pricing of Adjustments (APR 1984).
4.	352.270–7	Paperwork Reduction Act (APR 1984).

GENERAL CLAUSES FOR A COST-REIMBURSEMENT RESEARCH AND DEVELOPMENT CONTRACT

Clauses Incorporated By Reference

This contract incorporates the following clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available.

I. Federal Acquisition Regulation (FAR) (48 CFR Chapter 1) Clauses

No.	FAR clause No.	Title and date
1.	52.203–1	Officials Not to Benefit (APR 1984).
2.	52.203–3	Gratuities (APR 1984).
3.	52.203–5	Covenant Against Contingent Fees (APR 1984).
4.	52.203–7	Anti-Kickback Procedures (OCT 1988).
5.	52.215–1	Examination of Records by Comptroller General (APR 1984).
6.	52.215–2	Audit—Negotiation (APR 1988).
7.	52.215–22	Price Reduction for Defective Cost or Pricing Data (Over $100,000) (APR 1988).
8.	52.215–24	Subcontractor Cost or Pricing Data (Over $100,000) (APR 1985).
9.	52.215–33	Order of Precedence (JAN 1986).
10.	52.216–7	Allowable Cost and Payment (APR 1984).
11.	52.216–8	Fixed Fee (APR 1984).
12.	52.219–8	Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (JUN 1985).
13.	52.219–9	Small Business and Small Disadvantaged Business Subcontracting Plan (Over $500,000 (APR 1984).
14.	52.219–13	Utilization of Women-Owned Small Businesses (AUG 1986).

I. Federal Acquisition Regulation (FAR) (48 CFR Chapter 1) Clauses—Continued

No.	FAR clause No.	Title and date
15.	52.220–1	Preference for Labor Surplus Area Concerns (APR 1984).
16.	52.220–3	Utilization of Labor Surplus Area Concerns (APR 1984).
17.	52.222–2	Payment for Overtime Premiums (APR 1984).
18.	52.222–20	Walsh-Healey Public Contracts Act (APR 1984).
19.	52.22–26	Equal Opportunity (APR 1984).
20.	52.222–28	Equal Opportunity Preaward Clearance of Subcontracts ($1,000,000 or more) (APR 1984).
21.	52.222–35	Affirmative Action for Special Disabled and Vietnam Era Veterans (APR 1984).
22.	52.222–36	Affirmative Action for Handicapped Workers (APR 1984).
23.	52.222–37	Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (JAN 1988).
24.	52.223–2	Clean Air and Water (Over $100,000) (APR 1984).
25.	52.223–6	Drug-Free Workplace (MAR 1989).
26.	52.227–1	Authorization and Consent (APR 1984). Alternate I (APR 1984).
27.	52.227–2	Notice and Assistance Regarding Patent and Copyright Infringement (APR 1984).
28.	52.227–11	Patent Rights—Retention by the Contractor (Short Form) (APR 1984) Note: In accordance with FAR 27.303(a)(2), paragraph (f) is modified to include the requirements in FAR 27.303(a)(2) (i) through (v). The frequency of reporting in (i) is annual.
29.	52.227–14	Rights in Data—General (JUN 1987).
30.	52.227–16	Additional Data Requirements (JUN 1987).
31.	52.232–9	Limitation on Withholding of Payments (APR 1984).
32.	52.232–17	Interest (APR 1984).
33.	52.232–20	Limitation of Cost (APR 1984).
34.	52.232–23	Assignment of Claims (JAN 1986).
35.	52.232–25	Prompt Payment (APR 1989).
36.	52.233–1	Disputes (APR 1984).
37.	52.233–3	Protest After Award (JUN 1985) Alternate I (JUN 1985).
38.	52.242–1	Notice of Intent to Disallow Costs (APR 1984).
39.	52.243–2	Changes—Cost-Reimbursement (Aug 1987). Alternate V (APR 1984).
40.	52.244–2	Subcontracts (Cost-Reimbursement and Letter Contracts) (JUL 1985).
41.	52.244–5	Competition in Subcontracting (APR 1984).
42.	52.245–5	Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts) (JAN 1986).
43.	52.246–23	Limitation of Liability (APR 1984).
44.	52.249–6	Termination (Cost-Reimbursement) (May 1986).
45.	52.249–14	Excusable Delays (APR 1984).

II. Department of Health and Human Services Acquisition Regulation (HHSAR) (48 CFR Chapter 3) Clauses

No.	HHSAR clause No.	Title and date
1.	352.202–1	Definitions (APR 1984) (Alternate I (APR 1984).
2.	352.228–70	Required Insurance (APR 1984).
3.	352.232–9	Withholding of Contract Payments (APR 1984).
4.	352.233–70	Litigation and Claims (APR 1984).
5.	352.242–71	Final Decisions on Audit Findings (APR 1984).
6.	352.270–5	Key Personnel (APR 1984).
7.	352.270–7	Paperwork Reduction Act (APR 1984).

GENERAL CLAUSES FOR A SEALED BID SUPPLY CONTRACT

Clauses Incorporated by Reference

This contract incorporates the following clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available.

I. Federal Acquisition Regulation (FAR) (48 CFR Chapter 1) Clauses

No.	FAR clause No.	Title and date
1.	52.203–1	Officials Not to Benefit (APR 1984).
2.	52.203–3	Gratuities (APR 1984).
3.	52.203–5	Covenant Against Contingent Fees (APR 1984).
4.	52.203–6	Restrictions on Subcontractor Sales to the Government (JUL 1985).
5.	52.203–7	Anti-Kickback Procedures (OCT 1988).

I. Federal Acquisition Regulation (FAR) (48 CFR Chapter 1) Clauses—Continued

No.	FAR clause No.	Title and date
6.	52.214–26	Audit-Sealed Bidding (Over $100,000) (APR 1985).
7.	52.214–27	Price Reduction for Defective Cost of Pricing Data—Modifications—Sealed Bidding (Over $100,000) (APR 1988).
8.	52.214–28	Subcontractor Cost or Pricing Data—Modifications—Sealed Bidding (Over $100,000) (APR 1985).
9.	52.214–29	Order of Precedence—Sealed Bidding (JAN 1986).
10.	52.215–26	Integrity of Unit Prices (APR 1987).
11.	52.219–8	Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (JUN 1985).
12.	52.219–9	Small Business and Small Disadvantaged Business Subcontracting Plan (Over $500,000) (APR 1984) Alternate I (APR 1984).
13.	52.219–13	Utilization of Women-Owned Small Businesses (AUG 1986).
14.	52.220–1	Preference for Labor Surplus Area Concerns (APR 1984).
15.	52.220–3	Utilization of Labor Surplus Area Concerns (APR 1984).
16.	52.222–2	Payment for Overtime Premiums (APR 1984).
17.	52.222–20	Walsh-Healey Public Contracts Act (APR 1984).
18.	52.222–26	Equal Opportunity (APR 1984).
19.	52.222–28	Equal Opportunity Preaward Clearance of Subcontracts ($1,000,000 or more) (APR 1984).
20.	52.222–35	Affirmative Action for Special Disabled and Vietnam Era Veterans (APR 1984).
21.	52.222–36	Affirmative Action for Handicapped Workers (APR 1984).
22.	52.222–37	Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (JAN 1988).
23.	52.223–2	Clean Air and Water (Over $100,000) (APR 1984).
24.	52.223–6	Drug-Free Workplace (MAR 1989).
25.	52.227–1	Authorization and Consent (APR 1984).
26.	52.227–2	Notice and Assistance Regarding Patent and Copyright Infringement (APR 1984).
27.	52.227–3	Patent Indemnity (APR 1984).
28.	52.229–3	Federal, State, and Local Taxes (APR 1984).
29.	52.229–5	Taxes—Contracts Performed in U.S. Possessions or Puerto Rico (APR 1984).
30.	52.232–1	Payments (APR 1984).
31.	52.232–8	Discounts for Prompt Payment (APR 1989).
32.	52.232–9	Limitation of Withholding of Payments (APR 1984).
33.	52.232–11	Extras (APR 1984).
34.	52.232–17	Interest (APR 1984).
35.	52.232–23	Assignment of Claims (JAN 1986).
36.	52.232–25	Prompt Payment (APR 1989).
37.	52.233–1	Disputes (APR 1984).
38.	52.233–3	Protest After Award (JUN 1985).
39.	52.243–1	Changes-Fixed-Price (Aug 1987).
40.	52.244–1	Subcontracts (Fixed-Price Contracts) (Over $500,000) (JAN 1986).
41.	52.245–2	Government Property (Fixed-Price Contracts) (APR 1984).
42.	52.246–2	Inspection of Supplies-Fixed Price (JUL 1985).
43.	52.246–16	Responsibility for Supplies (APR 1984).
44.	52.249–2	Termination for Convenience of the Government (Fixed-Price) (APR 1984).
45.	52.249–8	Default (Fixed-Price Supply and Service (APR 1984).

II. Department of Health and Human Services Acquisition Regulation (HHSAR) (48 CFR Chapter 3) Clauses

No.	HHSAR clause No.	Title and date (APR 1984).
1.	352.202–1	Definitions (APR 1984).
2.	352–232–9	Withholding of Contract Payments (APR 1984).
3.	352.270–4	Pricing of Adjustment (APR 1984).
4.	352.270–7	Paperwork Reduction Act (APR 1984).

GENERAL CLAUSES FOR A COST-PLUS-A-FIXED-FEE CONTRACT

Clauses Incorporated by Reference

This contract incorporates the following clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available.

I. Federal Acquisition Regulation (FAR) (48 CFR Chapter 1) Clauses

No.	FAR clause No.	Title and date
1.	52.203–1	Officials Not to Benefit (APR 1984).
2.	52.203–3	Gratuities (APR 1984).
3.	52.203–5	Covenant Against Contingent Fees (APR 1984).
4.	52.203–6	Restrictions on Subcontractor Sales to the Government (JUL 1985).
5.	52.203–7	Anti-Kickback Procedures (OCT 1988).
6.	52.215–1	Examination of Records by Comptroller General (APR 1984).
7.	52.215–2	Audit—Negotiation (APR 1988).
8.	52.215–22	Price Reduction for Defective Cost or Pricing Data (Over $100,000) (APR 1988).
9.	52.215–24	Subcontractor Cost or Pricing Data (Over $100,000) (APR 1985).
10.	52.215–33	Order of Precedence (JAN 1986).
11.	52.216–7	Allowable Cost and Payment (APR 1984).
12.	52.216–8	Fixed Fee (APR 1984).
13.	52.219–8	Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (JUN 1985).
14.	52.219–9	Small Business and Small Disadvantaged Business Subcontracting Plan (Over $500,000) (APR 1984).
15.	52.219–13	Utilization of Women-Owned Small Businesses (AUG 1986).
16.	52.220–1	Preference for Labor Surplus Area Concerns (APR 1984).
17.	52.220–3	Utilization of Labor Surplus Area Concerns (APR 1984).
18.	52.222–2	Payment for Overtime Premiums (APR 1984).
19.	52.222–20	Walsh-Healey Public Contracts Act (APR 1984).
20.	52.222–26	Equal Opportunity (APR 1984).
21.	52.222–28	Equal Opportunity Preaward Clearance of Subcontracts ($1,000,000 or more) (APR 1984).
22.	52.222–35	Affirmative Action for Special Disabled and Vietnam Era Veterans (APR 1984).
23.	52.222–36	Affirmative Action for Handicapped Workers (APR 1984).
24.	52.222–37	Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (JAN 1988).
25.	52.223–2	Clean Air and Water (Over $100,000) (APR 1984).
26.	52.223–6	Drug-Free Workplace (MAR 1989).
27.	52.227–1	Authorization and Consent (APR 1984).
28.	52.227–2	Notice and Assistance Regarding Patent and Copyright Infringement (APR 1984).
29.	52.227–3	Patent Indemnity (APR 1984).
30.	52.227–14	Rights in Data—General (JUN 1987).
31.	52.232–9	Limitation on Withholding of Payments (APR 1984).
32.	52.232–17	Interest (APR 1984).
33.	52.232–20	Limitation of Cost (APR 1984).
34.	52.232–23	Assignment of Claims (JAN 1986).
35.	52.232–25	Prompt Payment (APR 1989).
36.	52.233–1	Disputes (APR 1984).
37.	52.233–3	Protest After Award (JUN 1985) Alternate I (JUN 1985).
38.	52.242–1	Notice of Intent to Disallow Costs (APR 1984).
39.	52.243–2	Changes—Cost-Reimbursement (AUG 1987). Alternate II (APR 1984).
40.	52.244–2	Subcontracts (Cost-Reimbursement and Letter Contracts) (JUL 1985).
41.	52.244–5	Competition in Subcontracting (APR 1984).
42.	52.245–5	Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts) (JAN 1986).
43.	52.246–23	Limitation of Liability (APR 1984).
44.	52.248–1	Value Engineering (Over $100,000) (MAR 1989).
45.	52.249–6	Termination (Cost-Reimbursement) (May 1986).
46.	52.249–14	Excusable Delays (APR 1984).

II. Department of Health and Human Services Acquisition Regulation (HHSAR) (48 CFR Chapter 3) Clauses

No.	HHSAR clause No.	Title and Date
1.	352.202–1	Definitions (APR 1984) Alternate I (APR 1984).
2.	352.228–70	Required Insurance (APR 1984).
3.	352.232–9	Withholding of Contract Payments (APR 1984).
4.	352.233–70	Litigation and Claims (APR 1984).
5.	352.242–71	Final Decisions on Audit Findings (APR 1984).
6.	352.270–5	Key Personnel (APR 1984).
7.	352.270–7	Paperwork Reduction Act (APR 1984).

GENERAL CLAUSES FOR A COST-REIMBURSEMENT CONTRACT WITH NONPROFIT INSTITUTIONS OTHER THAN EDUCATIONAL INSTITUTIONS

Clauses Incorporated By Reference

This contract incorporates the following clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available.

I. Federal Acquisition Regulation (FAR) (48 CFR Chapter 1) Clauses

No.	FAR clause No.	Title and date
1.	52.203–1	Officials Not to Benefit (APR 1984).
2.	52.203–3	Gratuities (APR 1984).
3.	52.203–5	Covenant Against Contingent Fees (APR 1984).
4.	52.203–7	Anti-Kickback Procedure (OCT 1988).
5.	52.215–1	Examination of Records by Comptroller General (APR 1984).
6.	52.215–2	Audit—Negotiation (APR 1988).
7.	52.215–22	Price Reduction for Defective Cost or Pricing Data (Over $100,000) (APR 1988).
8.	52.215–24	Subcontractor Cost or Pricing Data (Over $100,000) (APR 1985).
9.	52.215–33	Order of Precedence (JAN 1986).
10.	52.216–11	Cost Contract—No Fee (APR 1984).
11.	52.219–8	Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (JUN 1985).
12.	52.219–9	Small Business and Small Disadvantaged Business Subcontracting Plan (Over $500,000) (APR 1984).
13.	52.219–13	Utilization of Women-Owned Small Businesses (AUG 1986).
14.	52.220–1	Preference for Labor Surplus Area Concerns (APR 1984).
15.	52.220–3	Utilization of Labor Surplus Area Concerns (APR 1984).
16.	52.222–2	Payment for Overtime Premiums (APR 1984).
17.	52.222–20	Walsh-Healey Public Contracts Act (APR 1984).
18.	52.222–26	Equal Opportunity (APR 1984).
19.	52.222–28	Equal Opportunity Preaward Clearance of Subcontractors ($1,000,000 or more) (APR 1984).
20.	52.222–35	Affirmative Action for Special Disabled and Vietnam Era Veterans (APR 1984).
21.	52.222–36	Affirmative Action for Handicapped Workers (APR 1984).
22.	52.222–37	Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (JAN 1988).
23.	52.223–2	Clean Air and Water (Over $100,000) (APR 1984).
24.	52.223–6	Drug-Free Workplace (MAR 1989).
25.	52.227–2	Notice and Assistance Regarding Patent and Copyright Infringement (APR 1984).
26.	52.227–11	Patent Rights—Retention by the Contractor (Short Form) (APR 1984) Note: In accordance with FAR 27.303(a)(2), paragraph (f) is modified to include the requirements in FAR 27.303(a)(2) (i) through (v). The frequency of reporting in (i) is annual.
27.	52.227–14	Rights in Data—General (JUN 1987).
28.	52.232–9	Limitation on Withholding of Payments (APR 1984).
29.	52.232–20	Limitation of Cost (APR 1984).
30.	52.232–23	Assignment of Claims (JAN 1986).
31.	52.232–25	Prompt Payment (APR 1989).
32.	52.233–1	Disputes (APR 1984).
33.	52.233–3	Protest After Award (JUN 1985) Alternate I (JUN 1985).
34.	52.242–1	Notice of Intent to Disallow Costs (APR 1984).
35.	52.243–2	Changes—Cost-Reimbursement (AUG 1987). Alternate V (APR 1984).
36.	52.244–2	Subcontracts (Cost-Reimbursement and Letter Contracts) (JUL 1985).
37.	52.244–5	Competition in Subcontracting (APR 1984)
38.	52.245–5	Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts) (JAN 1986) Alternate I (JUL 1985).
39.	52.248–1	Value Engineering (Over $100,000) (MAR 1989).
40.	52.246–23	Limitation of Liability (APR 1984).
41.	52.249–5	Termination for Convenience of the Government (Educational and Other Nonprofit Institutions) (APR 1984).

II. Department of Health and Human Services Acquisition Regulation (HHSAR) (48 CFR CHAPTER 3) Clauses

No.	HHSAR clause No.	Title and date
1.	352.202–1	Definitions (APR 1984) Alternate I (APR 1984).
2.	352.216–7	Allowable Cost and Payment (APR 1984).
3.	352.228–70	Required Insurance (APR 1984).
4.	352.232–9	Withholding of Contract Payments (APR 1984).
5.	352.233–70	Litigation and Claims (APR 1984).
6.	352.242–71	Final Decisions on Audit Findings (APR 1984).
7.	352.249–14	Excusable Delays (APR 1984).
8.	352.270–5	Key Personnel (APR 1984).

II. Department of Health and Human Services Acquisition Regulation (HHSAR) (48 CFR CHAPTER 3) Clauses—Continued

No.	HHSAR clause No.	Title and date
9.	352.270–7	Paperwork Reduction Act (APR 1984).

GENERAL CLAUSES FOR A COST-REIMBURSEMENT CONTRACT WITH EDUCATIONAL INSTITUTIONS

Clauses Incorporated By Reference

This contract incorporates the following clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available.

I. Federal Acquisition Regulation (FAR) (48 CFR Chapter 1) Clauses

No.	FAR clause No.	Title and date
1.	52.203–1	Officials Not to Benefit (APR 1984).
2.	52.203–3	Gratuities (APR 1984).
3.	52.203–5	Covenant Against Contingent Fees (APR 1984).
4.	52.203–7	Anti-Kickback Procedures (OCT 1988).
5.	52.215–1	Examination of Records by Comptroller General (APR 1984).
6.	52.215–2	Audit—Negotiation (APR 1988).
7.	52.215–22	Price Reduction for Defective Cost or Pricing Data (Over $100,000) (APR 1988).
8.	52.215–24	Subcontractor Cost or Pricing Data (Over $100,000) (APR 1985).
9.	52.215–33	Order of Precedence (JAN 1986).
		[Paragraph (a) of the following clause is modified to delete the words "Subpart 31.2" and to add the words "Subpart 31.3".]
10.	52.216–7	Allowable Cost and Payment (APR 1984).
11.	52.216–11	Cost Contract—No Fee (APR 1984) Alternate I (APR 1984).
12.	52.219–8	Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (JUN 1985).
13.	52.219–9	Small Business and Small Disadvantaged Business Subcontracting Plan (Over $500,000) (APR 1984).
14.	52.219–13	Utilization of Women-Owned Small Businesses (AUG 1986).
15.	52.220–1	Preference for Labor Surplus Area Concerns (APR 1984).
16.	52.220–3	Utilization of Labor Surplus Area Concerns (APR 1984).
17.	52.222–2	Payment for Overtime Premiums (APR 1984).
18.	52.222–26	Equal Opportunity (APR 1984).
19.	52.222–28	Equal Opportunity Preaward Clearance of Subcontracts ($1,000,000 or more) (APR 1984).
20.	52.222–35	Affirmative Action for Special Disabled and Vietnam Era Veterans (APR 1984).
21.	52.222–36	Affirmative Action for Handicapped Workers (APR 1984).
22.	52.222–37	Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (JAN 1988).
23.	52.223–2	Clean Air and Water (Over $100,000) (APR 1984).
24.	52.223–6	Drug-Free Workplace (MAR 1989).
25.	52.227–1	Authorization and Consent (APR 1984) Alternate I (APR 1984).
26.	52.227–2	Notice and Assistance Regarding Patent and Copyright Infringement (APR 1984).
27.	52.227–11	Patent Rights—Retention by the Contractor (Short Form) (APR 1984) Note: In accordance with FAR 27.303(a)(2), paragraph (f) is modified to include the requirements in FAR 27.303(a)(2) (i) through (v). The frequency of reporting in (i) is annual.
28.	52.227–14	Rights in Data—General (JUN 1987) Alternate IV (JUN 1987).
29.	52.232–9	Limitation on Withholding of Payments (APR 1984).
30.	52.232–20	Limitation of Cost (APR 1984).
31.	52.232–23	Assignment of Claims (JAN 1986).
32.	52.232–25	Prompt Payment (APR 1989).
33.	52.233–1	Disputes (APR 1984).
34.	52.233–3	Protest After Award (JUN 1985) Alternate I (JUN 1985).
35.	52.242–1	Notice of Intent to Disallow Costs (APR 1984).
36.	52.244–2	Subcontracts (Cost-Reimbursement and Letter Contracts) (JUL 1985)
37.	52.244–5	Competition in Subcontracting (APR 1984)
38.	52.245–5	Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts) (JAN 1986) Alternate I (JUL 1985).
39.	52.246–23	Limitation of Liability (APR 1984).
40.	52.249–5	Termination for Convenience of the Government (Educational and Other Nonprofit Institutions) (APR 1984).

II. Department of Health and Human Services Acquisition Regulation (HHSAR) (48 CFR Chapter 3) Clauses

No.	HHSAR clause No.	Title and date
1.	352.202–1	Definitions (APR 1984) Alternate I (APR 1984).
2.	352.228–70	Required Insurance (APR 1984).
3.	352.232–9	Withholding of Contract Payments (APR 1984).
4.	352.233–70	Litigation and Claims (APR 1984).
5.	352.242–71	Final Decisions on Audit Findings (APR 1984).
6.	352.249–14	Excusable Delays (APR 1984).
7.	352.270–5	Key Personnel (APR 1984).
8.	352.270–7	Paperwork Reduction Act (APR 1984).

GENERAL CLAUSES FOR A TIME-AND MATERIAL OR A LABOR-HOUR CONTRACT

Clauses Incorporated By Reference

This contract incorporates the following clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available.

I. Federal Acquisition Regulation (FAR) (48 CFR Chapter 1) Clauses

No.	FAR clause No.	Title and date
1.	52.203–1	Officials Not to Benefit (APR 1984).
2.	52.203–3	Gratuities (APR 1984).
3.	52.203–5	Convenant Against Contingent Fees (APR 1984).
4.	52.203–7	Anti-Kickback Procedures (OCT 1988).
5.	52.215–1	Examination of Records by Comptroller General (APR 1984).
6.	52.215–2	Audit—Negotiation (APR 1984).
7.	52.215–22	Price Reduction for Defective Cost or Pricing Data (Over $100,000 (APR 1984).
8.	52.215–24	Subcontractor Cost or Pricing Data (Over $100,000) (APR 1984).
9.	52.215–33	Order of Precedence (JAN 1986).
10.	52.216–7	Allowable Cost and Payment (APR 1984).
11.	52.219–8	Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (JUN 1985).
12.	52.219–9	Small Business and Small Disadvantaged Business Subcontracting Plan (Over $500,000) (APR 1984).
13.	52.219–13	Utilization of Women-Owned Small Business (AUG 1986).
14.	52.220–1	Preference for Labor Surplus Area Concerns (APR 1984).
15.	52.220–3	Utilization of Labor Surplus Area Concerns (APR 1984).
16.	52.222–2	Payment for Overtime Premiums (APR 1984).
17.	52.222–20	Walsh-Healey Public Contracts Act (APR 1984).
18.	52.222–26	Equal Opportunity (APR 1984).
19.	52.222–28	Equal Opportunity Preaward Clearance of Subcontracts ($1,000,000 or more) (APR 1984).
20.	52.222–35	Affirmative Action for Special Disabled and Vietnam Era Veterans (APR 1984).
21.	52.222–36	Affirmative Action for Handicapped Workers (APR 1984).
22.	52.222–37	Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (JAN 1988).
23.	52.223–2	Clear Air and Water (Over $100,000) (APR 1984).
24.	52.223–6	Drug-Free Workplace (MAR 1989).
25.	52.227–1	Authorization and Consent (APR 1984).
26.	52.227–14	Rights in Data—General (JUN 1987).
27.	52.232–7	Payments Under Time-and-Materials and Labor-Hour Contracts (APR 1984).
28.	52.232–9	Limitation on Withholding of Payments (APR 1984).
29.	52.232–17	Interest (APR 1984).
30.	52.232–23	Assignment of Claims (JAN 1986).
31.	52.232–25	Prompt Payment (APR 1984).
32.	52.233–1	Disputes (APR 1984).
33.	52.233–3	Protest After Award (JUN 1985) Alternate I (JUN 1985).
34.	52.242–1	Notice of Intent to Disallow Costs (APR 1984).
35.	52.243–3	Changes—Time-and-Materials or Labor-Hours (AUG 1987).
36.	52.244–3	Subcontractors (Time-and-Materials and Labor-Hour Contracts) (APR 1984).
37.	52.245–5	Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts) (JAN 1986).
38.	52.246–6	Inspection—Time-and-Material and Labor-Hour (JAN 1986).
39.	52.248–1	Value Engineering (Over $100,000) (MAR 1989).
40.	52.249–6	Termination (Cost-Reimbursement) (MAY 1986) Alternate IV (APR 1984).
41.	52.249–14	Excusable Delays (APR 1984).

II. Department of Health and Human Services Acquisition Regulation (HHSAR) (48 CFR Chapter 3) Clauses

No.	FAR clause No.	Title and date
1.	352.202-1	Definitions (APR 1984) Alternate I (APR 1984).
2.	352.228-70	Required Insurance (APR 1984).
3.	352.232-9	Withholding of Contract Payments (APR 1984).
4.	352.233-70	Litigation and Claims (APR 1984).
5.	352.242-71	Final Decisions on Audit Findings (APR 1984).
6.	352.270-5	Key Personnel (APR 1984).
7.	352.270-7	Paperwork Reduction Act (APR 1984).

GENERAL CLAUSES FOR A SEALED BID CONSTRUCTION CONTRACT

Clauses Incorporated By Reference

This contract incorporates the following clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available.

I. Federal Acquisition Regulation (FAR) (48 CFR Chapter 1) Clauses

No.	FAR clause No.	Title and date
1.	52.203-1	Officials Not to Benefit (APR 1984).
2.	52.203-3	Gratuities (APR 1984).
3.	52.203-5	Convenant Against Contingent Fees (APR 1984).
4.	52.203-7	Anti-Kickback Procedures (OCT 1988).
5.	52.212-12	Suspension of Work (APR 1984).
6.	52.214-26	Audit—Sealed Bidding (Over $100,000) (APR 1985).
7.	52.214-27	Price Reduction for Defective Cost or Pricing Data—Modifications—Sealed Bidding (Over $100,000) (APR 1988).
8.	52.214-28	Subcontractor Cost or Pricing Data—Modifications—Sealed Bidding (Over $100,000) (APR 1985).
9.	52.214-29	Order of Precedence—Sealed Bidding (JAN 1986).
10.	52.219-8	Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (JUN 1985).
11.	52.219-9	Small Business and Small Disadvantaged Business Subcontracting Plan (Over $1,000,000) (APR 1984) Alternate I (APR 1984).
12.	52.219-13	Utilization of Women-Owned Small Businesses (AUG 1986).
13.	52.220-1	Preference for Labor Surplus Area Concerns (APR 1984).
14.	52.220-3	Utilization of Labor Surplus Area Concerns (APR 1984).
15.	52.222-2	Payment for Overtime Premiums (APR 1984).
16.	52.222-3	Convict Labor (APR 1984).
17.	52.222-4	Contract Work Hours and Safety Standards Act—Overtime Compensation (MAR 1986).
18.	52.222-6	Davis-Bacon Act (FEB 1988).
19.	52.222-7	Withholding of Funds (FEB 1988).
20.	52.222-8	Payrolls and Basic Records (FEB 1988).
21.	52.222-9	Apprentices and Trainees (FEB 1988).
22.	52.222-10	Compliance With Copeland Act Requirements (FEB 1988).
23.	52.222-11	Subcontracts (Labor Standards) (FEB 1988).
24.	52.222-12	Contract Termination—Debarment (FEB 1988).
25.	52.222-13	Compliance With Davis-Bacon and Related Act Regulations (FEB 1988).
26.	52.222-14	Disputes Concerning Labor Standards (FEB 1988).
27.	52.222-15	Certification of Eligibility (FEB 1988).
28.	52.222-26	Equal Opportunity (APR 1984).

I. Federal Acquisition Regulation (FAR) (48 CFR Chapter 1) Clauses—Continued

No.	FAR clause No.	Title and date
29.	52.222-27	Affirmative Action Compliance Requirements for Construction (APR 1984).
30.	52.222-35	Affirmative Action for Special Disabled and Vietnam Era Veterans (APR 1984).
31.	52.222-36	Affirmative Action for Handicapped Workers (APR 1984).
32.	52.222-37	Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (JAN 1988).
33.	52.223-2	Clean Air and Water (Over $100,000) (APR 1984).
34.	52.223-6	Drug-Free Workplace (MAR 1989).
35.	52.225-5	Buy American Act—Construction Materials (APR 1984).
36.	52.227-1	Authorization and Consent (APR 1984).
37.	52.227-2	Notice and Assistance Regarding Patent and Copyright Infringement (APR 1984).
38.	52.227-4	Patent Indemnity—Construction Contracts (APR 1984).
39.	52.228-1	Bid Guarantee (APR 1984).
40.	52.228-2	Additional Bond Security (APR 1984).
41.	52.228-5	Insurance—Work on a Government Installation (APR 1984).
42.	52.232-5	Payments Under Fixed-Price Construction Contracts (APR 1989).
43.	52.232-17	Interest (APR 1984).
44.	52.232-23	Assignment of Claims (JAN 1986).
45.	52.232-27	Prompt Payment for Construction Contracts (APR 1989).
46.	52.233-1	Disputes (APR 1984).
47.	52.233-3	Protest After Award (JUN 1985).
48.	52.236-1	Performance of Work by the Contractor (Over $1,000,000) (APR 1984).
49.	52.236-2	Differing Site Conditions (APR 1984).
50.	52.236-3	Site Investigations and Conditions Affecting the Work (APR 1984).
51.	52.236-5	Material and Workmanship (APR 1984).
52.	52.236-6	Superintendence by the Contractor (APR 1984).
53.	52.236-7	Permits and Responsibilities (APR 1984).
54.	52.236-8	Other Contracts (APR 1984).
55.	52.236-9	Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements (APR 1984).
56.	52.236-10	Operations and Storage Areas (APR 1984).
57.	52.236-11	Use and Possession Prior to Completion (APR 1984).
58.	52.236-12	Cleaning Up (APR 1984).
59.	52.236-13	Accident Prevention (APR 1984).
60.	52.236-14	Availability and Use of Utility Services (APR 1984).
61.	52.236-15	Schedules for Construction Contracts (APR 1984).
62.	52.236-17	Layout of Work (APR 1984).
63.	52.236-21	Specifications and Drawings for Construction (APR 1984) Alternate I (APR 1984).
64.	52.243-4	Changes (Aug 1987).
65.	52.244-1	Subcontracts (Fixed-Price Contracts) (Over $500,000) (JAN 1986).
66.	52.245-2	Government Property (Fixed Price Contracts) (APR 1984).
67.	52.246-12	Inspection of Construction (JUL 1986).
68.	52.248-3	Value Engineering—Construction ($100,000 or more) (MAR 1989).
69.	52.249-2	Termination for Convenience of the Government (Fixed-Price) (APR 1984) Alternate I (APR 1984).
70.	52.249-10	Default (Fixed-Price Construction) (APR 1984).

II. Department of Health and Human Services Acquisition Regulation (HHSAR) (48 CFR Chapter 3) Clauses

No.	HHSAR clause No.	Title and date
1.	352.202-1	Definitions (APR 1984) (Paragraph (e) of the clause is deleted).
2.	352.232-9	Withholding of Contract Payments (APR 1984).
3.	352.270-4	Pricing of Adjustments (APR 1984).
4.	352.270-7	Paperwork Reduction Act (APR 1984).

GENERAL CLAUSES FOR A NEGOTIATED FIXED-PRICE ARCHITECT-ENGINEER CONTRACT

Clauses Incorporated By Reference

This contract incorporates the following clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available.

I. Federal Acquisition Regulation (FAR) (48 CFR Chapter 1) Clauses

No.	FAR clause No.	Title and date
1.	52.203–1	Officials Not to Benefit (APR 1984).
2.	52.203–3	Gratuities (APR 1984).
3.	52.203–5	Covenant Against Contingent Fees (APR 1984).
4.	52.203–7	Anti-Kickback Procedures (OCT 1988).
5.	52.212–12	Suspension of Work (APR 1984).
6.	52.215–1	Examination of Records by Comptroller General (APR 1984).
7.	52.215–2	Audit—Negotiation (APR 1988).
8.	52.215–22	Price Reduction for Defective Cost or Pricing Data (Over $100,000) (APR 1988).
9.	52.215–24	Subcontractor Cost or Pricing Data (Over $100,000) (APR 1985).
10.	52.215–33	Order of Precedence (JAN 1986).
11.	52.219–8	Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (JUN 1985).
12.	52.219–9	Small Business and Small Disadvantaged Business Subcontracting Plan (Over $500,000) (APR 1984).
13.	52.219–13	Utilization of Women-Owned Small Businesses (AUG 1986).
14.	52.220–1	Preference for Labor Surplus Area Concerns (APR 1984).
15.	52.220–3	Utilization of Labor Surplus Area Concerns (APR 1984).
16.	52.222–2	Payment for Overtime Premiums (APR 1984).
17.	52.222–3	Convict Labor (APR 1984).
18.	52.222–26	Equal Opportunity (APR 1984).
19.	52.222–28	Equal Opportunity Preaward Clearance of Subcontracts ($1,000,000 or more) (APR 1984).
20.	52.222–35	Affirmative Action for Special Disabled and Vietnam Era Veterans (APR 1984).
21.	52.222–36	Affirmative Action for Handicapped Workers (APR 1984).
22.	52.222–37	Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (JAN 1988).
23.	52.223–2	Clean Air and Water (Over $100,000) (APR 1984).
24.	52.223–6	Drug-Free Workplace (MAR 1989).
25.	52.227–1	Authorization and Consent (APR 1984).
26.	52.227–2	Notice and Assistance Regarding Patent and Copyright Infringement (APR 1984).
27.	52.227–17	Rights in Data—Special Works (JUN 1987).
28.	52.232–10	Payments Under Fixed-Price Architect-Engineer Contracts (AUG 1987).
29.	52.232–17	Interest (APR 1984).
30.	52.232–23	Assignment of Claims (JAN 1986).
31.	52.232–26	Prompt Payment for Fixed-Price Architect-Engineer Contracts (APR 1989).
32.	52.233–1	Disputes (APR 1984).
33.	52.233–3	Protests After Award (JUN 1985) Alternate I (JUN 1985).
34.	52.236–22	Design Within Funding Limitations (APR 1984).
35.	52.236–23	Responsibility of the Architect-Engineer Contractor (APR 1984).
36.	52.236–24	Work Oversight in Architect-Engineer Contracts (APR 1984).
37.	52.236–25	Requirements for Registration of Designers (APR 1984).
38.	52.243–1	Changes—Fixed-Price (AUG 1987) Alternate III (APR 1984).
39.	52.244–4	Subcontractors and Outside Associates and Consultants (APR 1984).
40.	52.249–7	Termination (Fixed-Price Architect-Engineer) (APR 1984).

I. Department of Health and Human Services Acquisition Regulation (HHSAR) (48 CFR Chapter 3) Clauses

No.	HHSAR clause No.	Title and date
1.	352.202–1	Definitions (APR 1984) (Paragraph (e) of the clause is deleted.).
2.	352.232–9	Withholding of Contract Payments (APR 1984).
3.	352.270–4	Pricing of Adjustments (APR 1984).
4.	352.270–7	Paperwork Reduction Act (APR 1984).

[FR Doc. 89–14810 Filed 6–23–89; 8:45 am]
BILLING CODE 4160–14–M

Proposed Rules

Federal Register
Vol. 54, No. 121
Monday, June 26, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 89–118]

7 CFR Part 318

Sharwil Avocados From Hawaii; Interstate Movement

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Reopening and extension of comment period for proposed rule.

SUMMARY: In a document published in the **Federal Register** on March 7, 1989, we proposed to amend the Hawaiian Fruits and Vegetables regulations to allow interstate movement pursuant to certificates of untreated Sharwil avocados from Hawaii to any destination. In response to requests from commenters, we are reopening and extending the comment period on the proposed rule.

DATES: Consideration will be given only to comments received on or before July 3, 1989.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 87–092. Comments received may be inspected at USDA, Room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Griffin, Staff Officer, Port Operations, PPQ, APHIS, USDA, Room 631, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8645.

SUPPLEMENTARY INFORMATION: The Hawaiian Fruits and Vegetables regulations (contained in 7 CFR 318.13 through 318.13–17 and referred to below as the regulations), among other things, govern the interstate movement from Hawaii of avocados in a raw or unprocessed state. Regulation is necessary to prevent spread of the Mediterranean fruit fly (*Ceratitis capitata* (Wied.)), the melon fly (*Dacus cucurbitae* (Coq.)), and the Oriental fruit fly (*Dacus dorsalis* (Hendel)). These fruit flies, commonly referred to as "Trifly," infest Hawaii but not the rest of the United States.

On March 7, 1989, we published in the **Federal Register** (54 FR 9453—9455, Docket No. 87–092) a proposal to amend the regulations to allow interstate movement pursuant to certificates of untreated Sharwil avocados from Hawaii to any destination based on compliance with certain harvesting and handling provisions. The proposal solicited comments postmarked or received by May 8, 1989. We subsequently published two other **Federal Register** documents on May 1, 1989 (54 FR 18528—18529, Docket No. 89–065), and May 16, 1989 (54 FR 21069–21070, Docket No. 89–087), that announced a public hearing, held on June 1, 1989, and reopened and extended the comment period to consider comments received by June 19, 1989.

In response to requests from commenters we are reopening and extending the comment period on the proposed rule until July 3, 1989. The new deadline will give interested persons additional time to prepare comments.

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167; 7 CFR 2.17, 2.51, and 371.2(c).

Done at Washington DC, this 20th day of June 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–15021 Filed 6–23–89; 8:45 am]
BILLING CODE 3410–34–M

7 CFR Part 352

[Docket No. 88–214]

Avocados From Mexico Transiting the U.S. to Foreign Countries

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Plant Quarantine Safeguard Regulations by adding Galveston, Texas, to the list of ports through which avocados from Mexico may be moved. We believe this action is warranted to allow avocados from Mexico to transit the United States through Galveston, Texas. This action would give shippers the alternative of importing and exporting Mexican avocados from the port at Galveston, Texas, instead of transporting them to the port at Houston, Texas. It would also slightly enlarge the corridor through which avocados would be allowed to transit the United States.

DATE: Consideration will be given only to comments received on or before August 25, 1989.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 88–214. Comments received may be inspected at USDA, Room 1141, South Building, 14th and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Frank E. Cooper, Senior Operations Officer, Port Operations, PPQ, APHIS, USDA, Room 632, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8393.

SUPPLEMENTARY INFORMATION:

Background

The Plant Quarantine Safeguard Regulations contained in 7 CFR Part 352 (the regulations) provide requirements applicable to most plants, plant products, and related articles, including avocados from Mexico, that are moved through the United States for export. These requirements include permits, notice of arrival, marking requirements, ports of arrival, inspections, safeguards, carriers, and routes of travel through the United States.

Section 352.29 provides specific requirements for avocados from Mexico, and restricts the ports through which they may enter to the following: Houston, Texas; the border ports of Brownsville, Eagle Pass, El Paso, Hidalgo, or Laredo, Texas; Nogales, Arizona; and those ports within the area

of the United States that is bounded on the west and south by a line extending from El Paso, Texas, to Salt Lake City, Utah, to Portland, Oregon, and due west from Portland, and on the east and south by a line extending from Brownsville, Texas, to Houston, Texas, to Kinder, Louisiana, to Memphis, Tennessee, to Louisville, Kentucky, and due east from Louisville. These boundaries were established in the regulations to protect plants and plant products in the United States from the avocado seed weevil, the avocado seed moth, and the Mexican fruit fly, which are hosted by avocados and are widely distributed in Mexico. The Mexican fruit fly is a serious pest of many kinds of fruits that are grown in the United States, including almost all varieties of citrus, and would present a significant pest risk to many U.S. crops. These pests could become established in the southeastern and western United States and would pose a significant pest risk in areas of the United States where host fruits are commercially grown.

We have received requests from shipping companies that transport Mexican avocados to add Galveston, Texas, to the list of ports in § 352.29(b) through which these avocados may transit the United States. The shippers desire to use the port at Galveston as an alternative to Houston, Texas, which is located approximately 40 miles northwest of Galveston, since many of the ships that could be used to transport avocados are loaded at the port of Galveston.

We have studied the pest risk attendant to allowing the movement of avocados from Mexico through Galveston, Texas, and we have determined that there would be no increased risk to plants and plant products in the United States if this movement were allowed. First, the avocados would move through the United States under Customs bond, as set forth under § 352.29(e), and in accordance with the applicable safeguard provisions of Part 352 and the requirements set forth in § 352.29. Second, avocados are a poor host for the Mexican fruit fly, and because avocados are not commercially grown in the Galveston/Houston area, there would be no additional pest risk. Third, the prevailing climate in Galveston is inhospitable to the plant pests hosted by avocados and they would be unlikely to survive long enough to pose a pest risk.

Based upon our analysis, we believe that allowing shippers to move Mexican avocados within the same region of Texas to a port 40 miles southeast of Houston would not increase the risk of introducing plant pests into areas of the United States that would be endangered by those pests.

Section 352.29(f) of the regulations would be revised to reflect that the eastern and southern boundary of the area through which avocados from Mexico may transit the United States would be bounded by a line extending from Brownsville, Texas, to Galveston, Texas (instead of Houston, Texas), to Kinder, Louisiana, to Memphis, Tennessee, to Louisville, Kentucky, and due east from Louisville.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

If implemented, the proposed rule would allow avocados from Mexico to be transported through the port of Galveston, Texas, in accordance with safeguard provisions of Part 352, for export to third countries. Persons involved in this process include the avocado owners or exporters, some of which are small entities, and the transporters (trucking, railroad, and shipping companies), all of which are large entities. Economic impacts on small entities would be limited to small increases or decreases to shipping costs paid by the avocado owners or exporters.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980, as amended (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.).

List of Subjects in 7 CFR Part 352

Agricultural commodities, Customs duties and inspection, Imports, Plant diseases, Plant pests, Plants (Agriculture), Postal Service, Quarantine, Transportation.

PART 352—PLANT QUARANTINE SAFEGUARD REGULATIONS

Accordingly, 7 CFR Part 352 would be amended as follows:

1. The authority citation for Part 352 would continue to read as follows:

Authority: 7 U.S.C. 149, 150bb, 150dd, 150ee, 150ff, 154, 159, 160, 162, and 2260; 31 U.S.C. 9701; and 7 CFR 2.17, 2.51, and 371.2(c).

§ 352.29 [Amended]

2. In § 352.29(b), the words "Galveston or" would be added immediately following the words "only at the following ports:"

3. In § 352.29(f), the words "Houston, Texas," would be removed and the words "Galveston, Texas," would be added in their place.

Done in Washington, DC, this 20th day of June 1989.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-15022 Filed 6-23-89; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Marketing Service

7 CFR Part 1040

[Docket No. AO-225-A39; DA-88-047]

Milk in the Southern Michigan Marketing Area; Decision on Proposed Amendment to Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision changes the plant location adjustments to prices under the Southern Michigan order. The amendments were proposed by four dairy farmer cooperatives that supply about 87 percent of the market's milk.

The changes would replace the current seven pricing zones with just three zones (zero, minus five cents, and minus seven cents) and increase the rate of adjustment at plants outside the zones from one cent to 2.25 cents per hundredweight per 10 miles or fraction thereof. The zone and location adjustments apply to Class I milk prices to handlers and to uniform prices to producers.

Also, a larger direct-delivery differential payment of 10 cents per hundredweight would be required for milk delivered to pool plants in a three-county area (metropolitan Detroit). Currently, two rates are applicable in portions of two counties.

Another change would use 0.115 rather than 0.113 as the factor that is multiplied times a specified butter price to determine the butterfat differential used for pricing milk under the order.

The amendments are based on industry proposals and a record of a public hearing held at Romulus, Michigan, on May 24, 1988. The amendments are necessary to reflect current marketing conditions and to maintain orderly marketing in the Southern Michigan marketing area. Cooperative associations will be polled to determine whether producers favor issuance of the amended order.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-4829.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amended order will promote more orderly marketing of milk by producers and regulated handlers.

Prior documents in this proceeding:

Notice of Hearing: Issued April 29, 1988; published May 4, 1988 (53 FR 15851).

Extension of Time for Filing Briefs: Issued July 19, 1988; published July 22, 1988 (53 FR 27699).

Recommended Decision: Issued February 21, 1989; published February 24, 1989 (54 FR 7938).

Correction to Recommended Decision: published March 10, 1989 (54 FR 10214).

Extension of Time for Filing Exceptions: Issued March 16, 1989; published March 21, 1989 (54 FR 11545).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the Southern Michigan marketing area. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice (7 CFR Part 900), at Romulus, Michigan, on May 24, 1988. Notice of such hearing was issued on April 29, 1988 and published May 4, 1988 (53 FR 15851).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Administrator, Agricultural Marketing Service, on February 21, 1989, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein, subject to the following modifications:

1. Under the heading "1. Changing the location adjustment and direct-delivery differential zones in the order.", seventeen new paragraphs are added after paragraph 74.

2. Under the heading "2. The location adjustment rate applicable to plants located outside location adjustment zones.":

a. Two new paragraphs are added after paragraph 32.

b. Eight new paragraphs are added after paragraph 41.

The material issues on the record of the hearing relate to:

1. Changing the location adjustments and direct-delivery differential zones in the order.

2. Changing the rate used to determine location adjustments at locations outside the zoned area.

3. Changing the factor used in the computation of the butterfat differential.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Changing the location adjustment and direct-delivery differential zones in the order.* The order should be amended to provide a single direct-delivery zone and three zones for pricing milk at Class I and uniform prices.

The Producers' Equalization Committee (PEC) proposed changing the structure of the existing pricing zones and direct-delivery differential zones.

The PEC is composed of four cooperative associations, namely Independent Cooperative Milk Producers Association, Michigan Milk Producers Association (MMPA), National Farmers Organization, and Southern Milk Sales. Together, these four associations market approximately 87 percent of the milk pooled on Order 40 and supply about 87 percent of the market's fluid milk sales.

The PEC proposed that the present seven zones, all in the lower portions of Michigan, be replaced with three zones.

The lower portion of Michigan is currently divided into seven geographically specified zones consisting of bands of countries grouped essentially on the basis of distance from the heavily populated corridor which encompasses Detroit, Flint and Bay City.

The above pricing structure has been in effect for the Southern Michigan market since September 1, 1977. The Class I price to handlers and the uniform price to producers is adjusted as follows.

Zone	Adjustment
1	No adjustment.
2	Minus 5 cents.
3	Minus 7 cents.
4	Minus 9 cents.
5	Minus 11 cents.
6	Minus 14 cents.
7	Minus 17 cents.

The PEC proposed that the lower portion of Michigan be comprised of three zones, as follows: Zone 1, a large southeastern segment, would contain the counties of Clinton, Genesee, Gratiot, Hillsdale, Huron, Ingham, Jackson, Lapeer, Lenawee, Livingston, Macomb, Monroe, Oakland, Saginaw, Sanilac, St. Clair, Shiawassee, Tuscola, Washenaw, Wayne, and Bay (except Gibson, Mount Forest, Pinconning, Garfield and Fraser townships)

Zone 2, a large southwestern segment, would include Allegan, Barry, Berrien, Branch, Calhoun, Cass, Eaton, Ionia, Kalamazoo, Kent, Montcalm, Muskegon, Ottawa, St. Joseph, and Van Buren Counties; and

Zone 3, north of Zones 1 and 2, would be comprised of Bay County (all townships excluded from Zone 1), and the counties of Alcona, Alpena, Antrim, Arenac, Benzie, Charlevoix, Cheboygan, Clare, Crawford, Emmet, Gladwin, Grand Traverse, Isabella, Iosco, Kalkaska, Lake, Leelanau, Manistee, Mason, Missaukee, Mecosta, Midland, Montmorency, Newaygo, Oceana, Ogemaw, Osceola, Oscoda, Otsego, Presque Isle, Roscommon and Wexford.

The Class I prices to handlers and the uniform price to producers would be adjusted as follows:

Zone	Adjustment
1	No adjustment.
2	Minus 5 cents.
3	Minus 7 cents.

The PEC also proposed expanding the area in which the direct-delivery differential is applicable from two counties (Wayne and Oakland Counties) to include Macomb County. The rate of the direct-delivery differential would be 10 cents in all three counties. At the present time, a 10-cent rate applies to milk received at pool plants in Wayne County and parts of Oakland County. A 4-cent rate presently applies to most of Oakland County.

Also proposed by the PEC was a proposal to increase the location adjustment rate from one cent to 2.25 cents applicable at plants located outside the marketing area. Both the direct-delivery differential and the location adustment rate applicable to distant plants will be discussed following a discussion dealing with the restructure of the present location adjustment zones.

A witness for the PEC testified that the proposed changes to the pricing structure of the Southern Michigan order are necessary because of the substantial changes that have occurred in the past decade. He said that a 21-cent difference (17 cents for Zone 7 plus a 4-cent direct-delivery differential) was created in September 1977 to facilitate the movement of milk from western Michigan to southeast Michigan. Also a 27-cent difference was created at that time (17 cents for Zone 7 plus a 10-cent direct-delivery differential) to move milk from northern Michigan to southeast Michigan. In 1977, he said, these differences in prices fairly reflected the cost of transporting milk to a market (Detroit metropolitan area) that was considered to be a deficit production area.

The PEC spokesman said that packaged milk sales by handlers located in the proposed Zone 1 (21 counties) was approximately 156.0 million pounds and that milk production for this same area was about 160 million pounds. He said that handlers also require milk for non-fluid milk products such as cottage cheese and yogurt. This 21-county area in 1977, he said, included four supply plants at Adrian, Ovid, Chesaning and Sebewaing, Michigan, which processed reserve milk supplies for Class III products.

The witness for the PEC said that the period from 1977 to 1987 can be described as a period of deteriorating packaged fluid milk sales by Order 40 pool plants. Fluid milk sales for this period, he said, decreased from approximately 2.218 billion pounds per year to 1.976 billion pounds or a decrease of 242 million pounds.

Proponent's spokesman testified that this decline in sales can be attributed to a depressed economy, declining population, and declining per capita consumption. Local plants today, he said, are not distributing fluid milk products into as many distant markets as in the past.

The witness for the PEC said that the distribution of fluid milk sales within Southern Michigan has also changed. Exhibit No. 9, for example, shows that in 1977, plants located in the two counties where the direct-delivery differential applies, accounted for 57 percent of Order 40's sales. Plants located within the present base zone and the minus 5-cent zone accounted for 25 percent of the total sales and the balance of sales (18 percent) were by plants in the minus 9-cent, minus 11-cent and beyond zones. By December 1987, he said, for these same zones, the percentages were 41, 27 and 32, respectively.

Proponent's witness testified that during this 10-year period, annual sales volume in the area now comprising the plus 10-cent direct-delivery differential declined by 445 million pounds whereas sales in the minus 9-cent and beyond zones increased by 217 million pounds resulting in a net loss of 242 million pounds of fluid milk sales for the entire market. He said that this redistribution of the local market's fluid milk sales represents a reversal of the previous trend in sales. Less packaged milk is being supplied to other in-state markets by Detroit metropolitan handlers, via distributors, and more of the packaged sales in the Detroit metropolitan area is being supplied by plants located outside the plus 10-cent direct-delivery differential area. The closing of two large distributing plants during the last 10 years, he said, has also contributed to the reduced fluid milk sales by plants located in the plus 10-cent direct-delivery differential area.

The PEC witness testified that milk production for the entire Southern Michigan market and by county has also changed during the last 10 years. He said that Exhibit 15 shows that for December 1987, milk production in the proposed Zone 1 area was within one percent of the production level of December 1977 and that in the proposed minus 5- and minus 7-cent zones, production had increased 14 percent when compared to 1977. He indicated that although milk production has remained fairly constant in the counties proposed for Zone 1, the monthly fluid milk needs of this area have decreased by almost 39 million pounds since 1977.

The spokesman for the PEC testified that more of the milk production in the proposed Zone 1 area is available to supply the fluid market today than there was in 1977. In his view, this is because of the closing of two manufacturing plants located in Sebewaing and Chesaning, Michigan. These two facilities, he said, acquired the majority of their milk supply from farms located in the central zone. His belief is that the central zone should no longer be considered a deficit production area and therefore, the spread in prices paid to customers located in different areas of the market should be reduced.

The PEC witness indicated that the change in the location adjustment rates should also be made to more properly align Class I prices between adjoining markets. Furthermore, it is his belief that prices within the market should be aligned to ensure comparable pricing treatment for plants which are similarly located but regulated by another Federal order.

The spokesman for the PEC expressed the view that because of the daily and monthly fluctuation in sales, it is necessary to design location adjustments so that the seasonal and operating reserves of the fluid market can be handled in an efficient manner with the least cost to those producers who are balancing the market.

The PEC witness indicated that the location adjustment rate for the proposed Zone 2 of minus 5 cents results in a Class I differential of $1.70 that applies to regulated handlers in the northern zone of the Indiana market (Order 49). He said that a minus 5-cent location adjustment also more closely aligns the producer uniform prices for Orders 40 and 49 in southwest Michigan. A minus 7-cent location adjustment in Zone 3, he said, recognizes the fact that the plants are located further from the major consumption areas of Lansing, Flint, and Bay City-Saginaw.

The PEC proposal, in the witness' view, would expand the central zone to include the cities of Lansing and Jackson in order to recognize the overlapping of route distribution and the competition for fluid milk sales among plants located in Lansing and Jackson with other plants presently included in the central zone. In his view, a zero location adjustment for Lansing and Jackson better aligns the Class I price among the competing handlers in the local markets and also better aligns the Order 40 Class I differential at these locations with the Order 33 (Ohio Valley) Class I differential of $1.60 for northwest Ohio.

The witness for the PEC testified that, in his opinion, the proposed reduction in the location adjustment rates for the more distant zones acknowledges that there is an increasing demand for milk by processing plants located in those areas which were previously considered secondary markets.

The PEC, he said, believes that these location adjustment rates should be designed so that producer supplies will move to plants when needed in the most efficient way. The proposed minus 5-cent location adjustment rate for Zone 2 will provide better inter-market price alignment. Furthermore, the witness said, the historical price relationship between Order 40 and surrounding markets was altered when the Class I differentials were changed pursuant to the Food Security Act of 1985. The PEC proposal, in his view, will result in more equity among fluid milk plants.

On cross-examination the PEC witness stated that this organization is not saying that the cost of transportation is any cheaper today than it was in 1977. He said that milk is not being moved into the central zone on a routine basis from outside this zone. The plants located in the minus 7-cent zone, he said, would have a fairly local procurement area and they do not utilize all the milk produced in the counties that would make up the minus 7-cent zone. Furthermore, he said, some of the milk produced in this area will move either to a fluid milk plant in the central zone or to the minus 5-cent zone or it may move to the MMPA balancing plant at Ovid, Michigan.

The PEC witness on cross-examination testified that the population west of Lansing has grown whereas the population in the Detroit metropolitan area as well as in Flint, Bay City-Saginaw has declined because of their reduced employment associated with the auto industry.

On cross-examination, the spokesman for the PEC indicated that a manufacturing plant under construction at Allendale (Ottawa County) that will be supplied by MMPA, would become operational late in 1989. He said that MMPA will still have a commitment to supply the local fluid milk plants.

The PEC Proposal was supported at the hearing by a witness for the Borden Company that operates a fluid milk plant located at Madison Heights, Michigan. This witness said that the proposal would not affect their costs and that none of their competitors would have their costs lowered.

A witness for Kraft, Inc. (Kraft), testified in opposition to the proposal. He said that Kraft operates supply plants at Pinconning and Clare, Michigan. The Clare plant, he said, now is subject to a minus 11-cent location adjustment and the Pinconning plant currently is subject to a minus 7-cent location adjustment.

The Kraft witness said that the two supply plants qualify as fully regulated supply plants because of the unit system of pooling administered by MMPA. The Pinconning plant, he said, receives milk from nonmember producers, one-third of whom are located in Huron, Tuscola and Sanilac Counties, Michigan, and the remaining two-thirds of the producers are located in counties north of Pinconning. He said the milk supply for the Clare plant comes from the central part of the state from Traverse City to Lansing.

Kraft's witness expressed the view that the current pricing structure of Order 40 reflects the sound principles applied throughout the milk order system such as: (1) The location price for milk should be reduced in direct proportion to the distance from the primary market, (2) the price of milk in major milk production areas should be lower than the price in principal consuming areas and, (3) similar prices should apply to similarly situated handlers.

The witness for Kraft testified that the proposal as it relates to their Pinconning plant would put their plant at a competitive disadvantage. This, he says, is because the producer pay price in Sanilac County would increase by 7 cents in a county where a competing supply plant is located at Marlette that would have a zero location adjustment.

Kraft's witness said that the proposal would do nothing to encourage the movement of milk from Sanilas or Huron Counties to the metropolitan Detroit area. He said that the proposal would discourage such shipments since the price difference between the "thumb" area and the Detroit metropolitan area would be reduced from 17 cents (10 cent direct-delivery differential plus 7 cents) to 10 cents.

The Kraft witness testified that the proposal would eliminate the incentive to move milk from the "thumb" area to distributing plants located at Port Huron, Flint, Saginaw and Bay City. This, he says, is because a zero price difference is proposed between the production area and these plants in contrast to a 7-cent incentive that now exists.

Kraft's witness said that the proposal would provide the MMPA butter-powder plant at Ovid, Michigan, with an ability (7 cents) to attract milk supplies located in the "thumb" area away from Kraft's Pinconning plant. He said that the proposal will make Kraft the only purchaser of milk in the "thumb" area with a minus location adjustment and that this additional expense of 7 cents will cost Kraft approximately $33,000 per year.

The witness for Kraft expressed the view that the proposal will be disruptive in the western part of the State between manufacturing plants. He said that in Ottawa County the blend price would increase 6 cents (minus 11 to minus 5 cents) and the impact will apply to a cheese plant being built by Leprino Foods, (Leprino) at Allendale, Michigan (Ottawa County). The plant when completed, he said, will have a capacity to manufacture two- to two-and-a-half million pounds of milk per day and that this price increase of 6 cents on this volume of milk will reduce the pool about $500,000 per year. Furthermore, he said, the blend price at Allendale would be 2 cents higher than the blend price at Clare. At the present time, he said, the two locations are priced the same. He said that the two cents on the expected volume at Allendale would result in a $144,000 procurement advantage per year to Leprino.

Kraft's witness said that the proposal is contrary to the historical policy and recent decisions by the Secretary. In his view, the proposal does less to reflect the cost of transporting milk from the production areas to the consuming areas than do the current provisions of the order. He said that the Secretary should be consistent and not adopt the proposal because it would increase prices in the State's major production areas in order to provide a competitive advantage for one manufacturing plant.

At the hearing and in their brief, Lansing Dairy, located at Lansing, Michigan, opposed the PEC proposal. Their spokesman said that transportation costs have gone up in the six counties surrounding Detroit. He said that the proposal would cost their plant about half a cent per gallon and, on their volume of sales, about $1,500–$1,600 per week. He said that the proposal will help MMPA's relationship with the Leprino cheese plant at Remus, Michigan, and with the Leprino plant under construction at Allendale.

Frigo Cheese Corporation (Frigo) opposed the proposal. The Frigo witness testified that Frigo operates three supply plants pooled on Order 40 that are located at Carney, Michigan, and at Lena and Wyocena, Wisconsin. He said that Frigo has been associated with Order 40 for over 18 years through the

unit pooling provisions administered by Dean Foods Company (Dean). The witness said that the PEC proposal would be disruptive to producers located in the Upper Peninsula and, therefore, Frigo was proposing a modification to the proposals.

The spokesman for Frigo proposed adding to the PEC proposals two more zones applicable to the Upper Peninsula with fixed location adjustments. He would add a Zone 4 with a minus 20-cent location adjustment and a Zone 5 with a minus 40-cent location adjustment. He said that Zone 4 would include the area outside of the marketing area but located in the Upper Peninsula that contains the counties of Alger, Baraga, Chippewa, Houghton, Keweenaw, Luce, Mackinac, Marquette and Schoolcraft. Zone 5, he said, would include the area outside the marketing area but located in the Upper Peninsula and would include the counties of Delta, Dickinson, Gogebic, Iron, Menominee and Ontonagon. Although offered as a modification of proposal No. 1, this proposal must be considered as more directly related to the PEC proposal to change the rate for computing location adjustments at plants outside the specified zones.

As indicated previously, the PEC proposed adding Macomb County to the area now subject to the direct-delivery differential. The proposed direct-delivery differential rate would be 10 cents and would apply to all of Wayne, Oakland and Macomb Counties.

The PEC witness testified that the proposal would increase the cost to one fluid milk plant located in Novi Township of Oakland County. He said that approximately 20 miles separates the Novi plant that is subject to a plus 4-cent direct-delivery differential from three large fluid milk plants located in the plus 10-cent area and that this minor difference in distance does not justify a 6-cent difference in the location value of producer milk.

The spokesman for the PEC said that the plus 10-cent direct-delivery differential is needed to induce needed milk deliveries to the present plants or any future plant that may be built in this three-county area. This expansion, he says, parallels the extension of the residential Detroit metropolitan area since the order was amended in 1977.

Proponent's witness testified that rapid urban development in Oakland and Macomb Counties has virtually eliminated milk production in these counties. He noted that within a 60-mile radius of the Detroit area, in the counties adjacent to the tri-county area, milk production in December 1977 was 40 million pounds and that by December 1987 milk production within the same radius had decreased to about 35 million pounds.

The PEC witness expressed the view that the direct-delivery differentials for this market have, over time, helped to provide milk supplies for milk plants located in the Detroit metropolitan area. He said that the additional 10 cents still fairly reflects the additional hauling cost paid on the majority of the milk moving to the Detroit area versus the cost of moving milk to other local markets in the central zone.

The changes in the plant location adjustment zones proposed by the PEC should be adopted. These changes will produce a flatter Class I and uniform price structure within the marketing area that will better reflect the need to move less milk under current market conditions. Instead of two direct-delivery zones (plus four cents and plus ten cents) and seven location adjustment zones (ranging from no adjustment to a minus 17 cents adjustment), there should be one direct-delivery zone (plus ten cents) and three location adjustment zones (ranging from zero to minus seven cents).

The current zone pricing structure has been in place since 1977. Since then, numerous changes have occurred in the market that warrant fewer zones and less incentive to move milk toward the Detroit metropolitan area from the outlying production areas. These changes include population shifts, plant closings, and increased milk production.

The metropolitan Detroit area (principally Macomb, Oakland and Wayne Counties) is still the market's largest single population center. However, population in Wayne County declined more than 12 percent (300,000) from July 1976 to July 1986.[1] Although the population in Oakland and Macomb Counties increased during this period, the three-county area combined had 5.5 percent fewer inhabitants as of July 1986 than there were in July 1976. These three countries, which make up the proposed direct-delivery differential zone, contained 46.8 percent of the marketing area population in July 1976, but only 44.0 percent in July 1986. The net decline for the three counties combined was more than 225,000 persons.

Data in exhibits show that annual Class I packaged milk dispositions from plants located in the direct-delivery differential zone (Wayne and Oakland Counties—there are no milk plants in Macomb County) declined by 35.5 percent, from 1.255 billion pounds in 1977 to 810.3 million pounds in 1987. The difference, 455.2 million pounds, represents the annual average milk production of nearly 500 Michigan dairy farms in 1987, based on daily deliveries per farm of 2,500 pounds of milk. This number simply serves to emphasize how much less Class I milk is currently used by plants in this zone than was needed ten years ago.

Milk production in the direct-delivery differential zone dropped by over 44 percent (from 4.8 million to 2.6 million pounds) between December 1977 and December 1987. However, within this zone, two large distributing plants have closed. To the extent that there is a need for milk at plants in the direct-delivery differential zone, the 10-cent differential, which is paid directly to producers and therefore is not pooled, is viewed by the supplying cooperatives as adequate to cover the additional cost of delivering milk to plants located in the three-county areas. No one opposed expanding the direct-delivery differential zone to include all three counties and fixing a uniform rate of 10-cents per hundredweight for the direct-delivery differential. The direct-delivery differential has no impact on the pooled value of milk and thus no impact on the uniform price.

The balance of the proposed "zero" zone consists of all or a portion of 18 counties, covering approximately the southeastern one-third of the lower portion of the State of Michigan. In this larger area, population increased slightly (2.2 percent) between 1976 and 1986, while milk production increased 0.8 percent (1.26 million pounds) over the same period of time. This zone includes several population centers, including Flint, Lansing, Saginaw and Bay City, all of which are Metropolitan Statistical Areas (MSA's) as defined by the Bureau of the Census. Two of these MSA's, Flint and Lansing, experienced population declines from 1976 to 1986, while the Saginaw and Bay City area population increased by over 16 percent, or more than 57,000 persons.

The population of the entire zero zone (which includes the direct-delivery differential zone) overall dropped by 2.75 percent (175,200) from 1976 to 1986. Three supply plants and four distributing plants (including the two mentioned earlier in the direct-delivery differential zone) have closed in the zero zone since 1977. Slightly more than 70 percent of the market's population resides in these 21 counties. Plants located in this zone received two-thirds of the market's producer milk in December 1987 and accounted for 68 percent of the market's Class I milk.

Milk produced in the 21-county zero zone and pooled during December 1987 amounted to 158.9 million pounds. Class I sales by plants located in these counties totaled 119.7 million pounds for the same month. Thus, Class I use amounted to about 75 percent of the milk that was produced in these counties. Overall, it appears that there is a good balance between production and Class I use in this area. Nevertheless, there may be some need to attract limited amounts of additional milk to plants in this zone from other zones. To this extent the proposed five cents Class I price difference between Zones 1 and 2, and the seven cents difference between Zones 1 and 3, should be adequate to attract such supplies.

Zone 2, the minus five cents zone, had 21 percent of the marketing area population in July 1986, an increase of 8.5 percent (148,400) from 10 years earlier. Milk production in this area in December 1987 was up about four percent from 10 years earlier. December 1987 pooled milk produced in counties in this zone totaled 102 million pounds, while plants in the zone had Class I uses of about 35 million pounds. Thus, there appears to be plenty of milk to serve this area. The two-cent Class I price difference between Zones 2 and 3 would cover only movements of milk from a short distance into Zone 3.

There are four MSA's in Zone 2. They include Battle Creek, Grand Rapids, Kalamazoo, and Muskegon. Of these, only the Grand Rapids MSA experienced growth from 1976 to 1986. The others declined from 0.1 percent (Muskegon) to 25 percent (Battle Creek). Many of the counties in this proposed zone currently are in a minus nine-cent or minus 11-cent zone. Such lower prices may encourage milk to move to higher-priced areas where it is not now needed.

Another consideration of the proposed five-cent lower Class I price in this zone is that it will improve price alignment with the northern tier of counties in the Indiana Federal milk order. The Class I price differential in the no-adjustment zone of the Indiana order is $2.00 per hundredweight. However, the four Michigan counties that are in the Indiana Federal order marketing area, along with other counties in northern Indiana, are in a minus 30-cent location adjustment zone. Under the current Southern Michigan order, the zero adjustment Class I differential is $1.75 per hundredweight, with location adjustments of minus nine cents and minus 11 cents applicable to plants in Michigan counties along the Michigan-Indiana border. This arrangement results in misalignment of Class I prices between the two orders. Thus, a minus five-cent zone in southwestern Michigan will provide Class I price alignment in the four Michigan counties that are part of the Indiana marketing area.

The third zone proposed, with a minus seven-cent adjustment, is much more a rural area than are the other two zones. On a percentage basis, the population increase in this zone was the largest, showing an 11 percent (75,000) gain from 1976 to 1986. However, the 1986 population of this zone is the smallest, comprising only 8.4 percent of the marketing area's total population. This zone also appears to be self-sufficient with respect to milk supply and demand. In December 1987, pooled milk produced in this zone amounted to 86.7 million pounds. Class I use by plants in this zone and outside the marketing area amounted to 20.4 million pounds.

The counties that comprise this minus seven-cent zone currently are in one of five different zones ranging from minus seven cents to minus 17 cents. Only two distributing plants are located in this zone, one at Cheboygan, which is near the northern tip of the lower peninsula, and one at Evart, which is more nearly in the center of the lower peninsula. Currently, the Cheboygan plant is in the minus 17-cent zone, while the Evart plant is in the minus 11-cent zone.

The record does not reveal the sizes of the two distributing plants in the proposed Zone 3, but an exhibit requested by Kraft, Inc., and prepared by the market administrator indicates that total Class I use by Southern Michigan handlers in all the territory outside proposed Zones 1 and 2 amounted to 20.5 million pounds in December 1987. Thus it is safe to assume that each of the two plants in Zone 3 had less Class I milk than the 20.5 million pounds. It is noted that in December 1987, pooled milk production in the Michigan Counties of Newaygo, Mecosta, Isabella, Gladwin, Clare, Osceola, and Missaukee totaled more than 50 million pounds. Since the plant at Evart is in Osceola County, and the counties just noted are either adjacent to it or nearby, there seems to be no need for a higher price at Evart to attract milk from the Cheboygan area.

The justification for fewer pricing zones is further reinforced by looking at the marketing situation overall. From 1976 to 1986, the population of the lower peninsula grew by only .5 percent, or about 46,000 persons. While the population remained static in size, major changes were going on as population shifts occurred. Some of these have already been noted. At the same time, total Class I packaged milk sales by Southern Michigan order pool handlers actually declined, from about 2,218 million pounds in 1977 to 1,976 million pounds in 1987, a 10.9 percent drop. However, milk production pooled under the order increased by nearly 10.5 percent over the same period. Thus, the percent of available milk used for Class I purposes declined from 53.9 percent in 1977 to 43.4 percent in 1987.

Moreover, Class I sales from plants in the Detroit metropolitan area have declined while sales from plants in more outlying areas have increased. These changes call for eliminating some of the highly structured zone pricing that has been operational since 1977. It is no longer needed.

The opposition by Kraft, Inc. and Lansing Dairy, Inc. has been noted. Lansing Dairy objected because its costs would be increased due to the higher applicable Class I price, which would have a negative economic impact on their operation. Lansing also expressed a view that it was indirectly being asked to subsidize the economic relationship between the cooperative and the Leprino Cheese operations.

Under the changed zone structure, Lansing Dairy will be affected two ways. First, the Class I price under the order at Lansing will be five cents higher than it now is. However, Lansing Dairy is one of four distributing plants in what is now a minus five-cent zone that will be in the new zero zone. Two of the other plants are in Lansing and one is in Jackson. Thus, plants in the same general area will be treated alike and pricing equity among these competing handlers will continue.

Second, Lansing Dairy's witness indicated that the handler procures some milk from independent producers north of Lansing, as far away as McBain in Missaukee County. Currently, the zone price difference between McBain and Lansing is six cents. Under the new structure, it will be seven cents. Thus, there will be greater recovery of hauling costs under the order for the handler's independent producers. This may work to the handler's advantage in procuring milk supplies.

Two proprietary handler supply plants would be similarly affected by the

[1] Official notice is taken of the following sources of population data:

Press Release, CB 87-110, released July 24, 1987, by the Bureau of the Census, United States Department of Commerce.

Estimates of the Population of Michigan Counties and Metropolitan areas: July 1, 1976 (Revised) and 1977 (Provisional), Current Population Reports, Series P-26, No. 77-22, issued September 1978 by the Bureau of the Census, United States Department of Commerce.

Provisional Estimates of the Population of Counties: July 1, 1986, Current Population Reports, Series P-26, No. 86-A, issued August 1987 by the Bureau of the Census, United States Department of Commerce.

changes. The Kraft plant at Clare, which is now in a minus 11-cent zone, would be in a minus seven-cent zone. Diehl, Inc., which operates a supply plant in Charlotte, Michigan (Eaton County), now is in a minus seven-cent zone, but will be in a minus five-cent zone. Aside from MMPA's plant in Adrian, the only other supply plant in lower Michigan that will not have a higher blend price at its location is the Kraft plant at Pinconning, Michigan, which is now and will continue to be in a minus seven-cent zone.

Kraft objected to higher blend prices at the MMPA plant at Ovid and the NFO plant at Marlette since its Pinconning plant competes for part of its milk supplies in a common production area. All three plants are now in the same pricing zone. Kraft's principal objection is that it believes it will have to pay its producers the higher blend price that would be applicable at the Marlette plant in order to compete with NFO for milk supplies. Kraft contends that it would have to absorb the price difference of 7 cents per hundredweight, which would amount to about $33,000 per year. If it does not do this, Kraft implies its producers will look for another buyer.

Kraft further argues (in its brief) that in 1977 it proposed higher prices at a manufacturing plant in Saginaw County and for the Kraft plant in Pinconning for essentially the same reasons that PEC now proposes higher prices at the Marlette and Ovid plants. However, Kraft's proposal was denied. The Kraft brief argues that a higher price (at any plant) cannot now be adopted for the same area without the expression of a reversal of past policy. Kraft, in its brief, asked that Official Notice be taken of the Deputy Assistant Secretary's Interim Final Decision, Docket No. A0-361-A24 et al., published in the Federal Register on July 8, 1988 (51 FR 24677). The requested document involved the issue of appropriate location adjustments in several orders, including Indiana, but not the Southern Michigan order. However, since the request does not indicate how Official Notice of that document would be useful in this proceeding, the request is denied.

In opposing Class I price increases in southwestern Michigan, Kraft points to the fact that the Class I differential at a Kalamazoo County distributing plant under the Indiana order would be $1.66. Kraft maintains that PEC's proposals do not, as PEC claims, improve price alignment between the Southern Michigan and Indiana orders. Kraft's brief also maintains that the PEC's proposed increase in the blend prices in southwestern Michigan will tend to encourage milk supplies to remain at manufacturing plants such as the MMPA plant under construction at Allendale (Ottawa County), rather than being delivered to deficit Class I markets. Kraft claims that MMPA admittedly plans to serve the Allendale plant with milk now sold to out-of-area customers.

Kraft's point about alignment of prices between the Southern Michigan and Indiana orders in Kalamazoo County, Michigan, is correct. However, four Michigan counties (Berrien, Cass, St. Joseph, and Branch) and 14 northern Indiana counties are in the minus 30-cent zone of the Indiana order. At plant locations in the four Michigan counties in this pricing zone of the Indiana order, Class I prices would be aligned under PEC's proposal. Kraft's claim that the PEC proposals diminish price alignment is correct at some locations while the PEC's claim that their proposals improve price alignment with Indiana is true at other locations.

Kraft expressed a view that higher Class I prices at plant locations in the proposed base zone and the minus five-cent zone are not needed because the plants are located in major milk producing areas where milk production is more than ample. Kraft holds that such increases will send a signal to producers to increase production. Instead, Kraft's brief suggest that the base zone (no adjustment) price could be lowered since the PEC maintains that there is now less need than there was in prior years to attract milk to Zone 1. However, there were no proposals submitted nor any testimony offered in support of any lowering of the Class I price. Moreover, the price changes are not of sufficient magnitude to have any measurable production response.

With regard to Kraft's concern that the PEC proposal would not result in a higher blend price at its Pinconning plant, the PEC witness indicated that the majority of the "thumb" milk supply is delivered to fluid milk plants in Flint, Port Huron, and Detroit. This certainly indicates that milk from the "thumb" area moves southward and therefore the zero adjustment zone should include the "thumb" counties. On the other hand, the record fails to establish that the Pinconning plant of Kraft has a particular association with the proposed new Zone 1 or that it now serves as a balancing plant for other plants that would be in the proposed new "no-adjustment" zone. While it is true that the plants at Ovid (MMPA), Marlette (NFO) and Pinconning (Kraft) have been in the same zone since at least 1977, there is no basis in the record to conclude that Pinconning should be included in the new no-adjustment zone along with the other two plants at Ovid and Marlette.

It also should be noted that Kraft's plant at Clare will be in the same pricing zone as MMPA's plant at Remus. Currently, the Remus plant is in the minus 9-cent zone while the Clare plant is in the minus 11-cent zone. In this case, Kraft's ability to compete for milk supplies should be improved.

Finally, the change from seven pricing zones to three pricing zones is not tied to the cost of moving milk. Transportation costs were the main consideration when the current zone structure was adopted in 1977. Given the changes that have occurred since then, the new pricing structure will reflect three basically self-sufficient pricing zones with recognition that some limited movements of milk between zones may be needed. Also, these changed zones allow the cooperatives that operate market-balancing manufacturing facilities an opportunity to operate those plants without being unduly influenced by differences in location adjustments.

Exceptions to the recommended decision on this issue were filed by Kraft and Lansing Dairy. Kraft also asked that the hearing be reopened because of the closing of the Kraft plant at Clare, Michigan, and because of what they perceive as a change in the Department's policy on Class I pricing subsequent to the close of the hearing.

Kraft in its exceptions, has characterized the Secretary's decision to reduce the minus location adjustments in several zones as raising the minimum Class I price. Kraft cites the statutory language of section 8c (18) of the Agricultural Marketing Agreement Act of 1937 (Act). In Kraft's view, the Act permits the Secretary to raise milk prices in a market or at a location when the current price is inadequate to attract "a sufficient quantity of pure and wholesome milk" to meet fluid needs. Section 8c (18), in their view, does not permit a minimum price increase where uncontroverted evidence establishes, and the Secretary finds, that the current supply is more than adequate to meet fluid needs.

The Class I differential, which is established at the base or "zero" zone, is $1.75, and would not be changed. Section 8c(18) is the authority for the Secretary to change the Class I differential if supply and demand warrants a change in order to increase or decrease milk production. The authority for the Secretary to provide for pricing zones (location adjustments) in an order is found in section 8c(5)(A) of the Act. What this decision does is to reduce location adjustments at various locations inside the lower portion of Michigan, but outside the Detroit area.

Kraft, in support of its Motion to Reopen the Hearing, refers to three letters from the Administrator of the Agricultural Marketing Service to: (1) Kraft, dated June 7, 1988, (2) Friendship Dairies, Inc., dated June 7, 1988, and (3) Dean Foods, dated March 22, 1989. In Kraft's view, the denial of proposals by these three organizations (markets other than Southern Michigan) is inconsistent with our rationale in the Southern Michigan decision.

The letter to Kraft was a denial of their proposal to increase the Class I differential 15 cents in the New York-New Jersey market because of the supply-demand pricing standard contained in section 8c(18) of the Act.

The letter to Friendship Dairies, Inc. denied two proposals that would have increased the Class I differential in the New York-New Jersey market. Again this denial was based on the supply-demand pricing standards contained in section 8c(18) of the Act.

The letter to Dean denied proposals that would have decreased the Class I differential seven cents in the Rio Grande Valley order and would have changed the location adjustment applicable to plants located in southeastern New Mexico from a minus 15 cents to a plus 21 cents for a net increase of 29 cents at Clovis, New Mexico. This request was prompted by Dean and several other handlers to lessen perceived interhandler inequities in the costs of raw milk that resulted from a 96-cent increase in the Class I differential under the Texas order and no change in the Rio Grande Valley Class I differential as mandated by the Food Security Act of 1985.

The Dean proposals were denied because they were inconsistent with the purpose of location adjustments since the proposals would have increased the price of milk in an area of surplus production and decreased the price of milk in an area that is slightly deficit in terms of local supplies.

The factual situation in the southwestern United States in March 1989, in terms of supply-demand for milk, was entirely different than marketing conditions in the Southern Michigan market at the time of the hearing (May 1988). Therefore, there is no inconsistency on the part of the Department in denying the proposals to amend the Rio Grande Valley order and in adopting the proposed amendments to the Southern Michigan order. Kraft, it appears, is misinterpreting the two sections of the statute that have been cited earlier and has taken a very narrow view of the purpose of location adjustments. The primary purpose of location adjustments continues to be to provide an incentive to move milk from the production area to the consumption center.

There is nothing improper about increasing or decreasing the location adjustment in a market to reflect changes in the relationship between production area and consumption areas. As clearly stated in the recommended decision, there have been significant changes in the Southern Michigan market since 1977 to justify the adoption of the proposed amendments.

Kraft, in its motion to reopen the hearing, states that it has closed its Clare, Michigan, plant since the hearing was held and that this has decreased the manufacturing capacity in the market. In Kraft's view, the closing of the Clare plant justifies reopening the hearing.

Kraft's request to reopen the hearing also relies on statements in briefs and exceptions filed by other producers and handlers to the effect that they would withdraw their milk from the Southern Michigan pool if certain proposed location adjustments were adopted at plants located outside the marketing area.

In response, we must conclude that Kraft's arguments are not persuasive as to any need to reopen the hearing. As to any loss of manufacturing capacity, we find no reason to believe that there will be any significant impact on the market due to such reduced capacity. Moreover, the record reveals that a new manufacturing plant is under construction, although it is at a different location. Since neither of the Kraft plants ship milk to distributing plants, we foresee no impact upon availability of milk for Class I use due to Kraft's closing its plant at Clare.

As to whether other parties shift milk to another order, such action, if it occurs, would not have a negative impact upon blend prices to producers in the lower portion of Michigan. If the result of such a shift would be higher blend prices to producers in lower Michigan, that would not compel a reopening of the hearing, even if the PEC did not intend that the effect of its proposals would be to increase returns to producers. It would not be surprising that adoption of a more realistic location adjustment applicable to distant milk supplies would cause handlers to evaluate whether those distant supplies should continue to be associated with the Southern Michigan order.

For the foregoing reason, the exceptions filed by Kraft and the Motion to Reopen the Hearing are denied.

Lansing Dairy also took exception to the recommended decision because its costs for bulk milk would be five cents higher since the plant would be in the base zone rather than in the minus five-cent zone. In its exceptions, Lansing states that over 30 percent of its finished products are marketed in the Detroit area and that therefore, its major competitors are not in the same area as its plant.

In Lansing's view, the Secretary should consider a handler's cost of hauling packaged milk to the major sales area where they compete in arriving at the appropriate location adjustment. However, it is not the purpose of location adjustments to reflect the costs of moving packaged milk from one location to another. There is nothing in the exception that persuades us to reconsider this issue. Therefore, the exceptions filed by Lansing are denied.

2. *The location adjustment rates applicable to plants located outside location adjustment zones.* The order should be amended to specify 2.25 cents per hundredweight per 10 miles as the rate to be used for computing Class I and uniform price differentials at plants located outside the defined location adjustment zones.

As indicated previously, the PEC proposed changing the location adjustment rate on Class I milk and the uniform price applicable to plants located outside the marketing area. The PEC proposed changing the present rate from 1 cent to 2.25 cents per ten miles of fraction thereof.

The PEC witness testified that the present one-cent rate does not result in very close alignment of either the Order 40 Class I price or the Order 40 uniform price as it relates to prices in other markets in the Upper Midwest.

Proponent's witness said that the Chicago order's Class I differential at Green Bay, Wisconsin, for example, is $1.12; whereas, the Order 40 Class I differential at this location using the present one-cent rate would be $1.40.

The spokesman for the PEC said that the difference in the blend price for a producer who is pooled at an Order 40 plant versus an Order 30 plant is even more dramatic. For example, he stated that for 1987, the Order 30 uniform price zoned out to Oconto, Wisconsin, averaged $11.44. The 1987 uniform price for milk pooled by an Order 40 plant also located in Oconto County, he said, averaged $11.71. The Frigo Cheese

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Company plant at Lena, Wisconsin, is in Oconto County.

The proponent's witness said that other examples of blend price differences could be demonstrated and that this degree of price difference creates disorderly market conditions. He said that this much of a difference in price creates an incentive for distant milk supplies to attempt to become pooled in a market with a higher Class I utilization while the supplier has no desire to supply the fluid market that is generating the higher blend price. Such activities, he said, dilute the returns from the Class I market for other producers who are actively involved in supplying the Class I and Class II processors.

The PEC spokesman said that milk from producers located in 16 Wisconsin counties was pooled as producer receipts on Order 40 for one or more months during 1987. In December 1977, he said, 10.6 million pounds of Wisconsin milk was pooled on Order 40 and for December 1987, 16.4 million pounds of Wisconsin milk was pooled on this order. The witness said that the PEC is concerned that this trend will escalate.

Proponent's witness said that in 1987 the producer delivery provisions and the diversion limitation provisons were relaxed. These changes, he said, were necessary to avoid uneconomic movements of milk but they also made it easier for distant producers to pool milk on Order 40 and divert that milk to nonpool plants. The witness said that under the current provisions, during the months of September through February each Order 40 producer is required to deliver only one day's production to a pool plant and that for the months of March through August, 100 percent of a producer's milk may be diverted to a nonpool plant.

The PEC witness testified that increasing the mileage rate as proposed will minimize the economic advantage that may be realized by such activities and therefore prevent the dilution of the uniform price. The mileage computation, he said, would be determined by the market administrator using the shortest highway distance between such a plant and the nearest point in the Southern Michigan marketing area.

On cross-examination, the proponent's witness testified that the PEC, in arriving at their proposed rate of 2.25 cents, considered the fact that within the State of Michigan, MMPA can haul milk at less cost than outside the State. He said that the State permits hauling tandem units with a payload of 100,000 pounds in the Upper Peninsula. The proposed rate, he says, covers the cost of transporting milk within the State of Michigan but not outside the State.

At the hearing a witness for Chicagoland Dairy Sales, Inc. (CDS), testified in support of the PEC proposal.

The CDS witness said that this organization is comprised of our cooperative associations, namely, Alto Cooperative Creamery, Lake-to-Lake Dairy Cooperative (division of Land O'Lakes, Inc.) Outagamie Producers Cooperative and Wisconsin Dairies Cooperative. This organization, he said, has 12 reserve supply plants pooled on Order 30.

The CDS spokesman said that their organization is experiencing problems meeting Order 40's producer pay prices in the common procurement areas of Michigan and Wisconsin. He said that the higher pay prices result from the higher Class I utilization in the Southern Michigan market relative to the Chicago Regional market.

The witness said that there is a common overlapping procurement area in the State of Wisconsin and in Menominee County in Michigan. He said that when comparing May 1977 with May 1987, the amount of Wisconsin milk procured by Order 40 plants increased by 44 percent and for December 1987 the increase was 54 percent.

The spokesman for CDS also testified that the Order 40 uniform price for January 1988 was $11.98 at the zero zone and for Chicago the zero zone blend price was $11.47, or 51 cents lower. He said that the adjusted uniform price at Wyocena, Wisconsin (where a Frigo plant is located), would be $11.64 ($11.98 minus a 34-cent location adjustment) for Order 40 and that under the Chicago order the uniform price at the same location (Zone 9) would be $11.26, or 38 cents less. The witness said that this pricing advantage enjoyed by plants pooled in Order 40 is due to the low location adjustment rate contained in that order. He said that Order 30 uses a location adjustment rate of 1.6 cents per 10 miles.

The CDS witness said that for the years of 1985 through 1987, the Order 40 uniform price averaged 21, 17 and 25 cents higher, respectively, than the Order 30 price at Wyocena. For 1988, he said, the spread for the months of January through April was 38, 41, 36 and 30 cents, respectively.

At Lena, Wisconsin (where another Frigo plant is located), he said, for the years of 1985 through 1987, the Order 40 uniform price averaged 26, 22 and 30 cents higher, respectively, than the Order 40 price at that same location. For 1988, he said, the spread for the months of January through April was 43, 46, 41 and 35 cents, respectively.

The CDS spokesman said that for the years of 1985 through 1987, the Order 40 uniform price averged 35, 31 and 39 cents higher, respectively, than the Order 30 price at Carney, Michigan (the location of a third Frigo plant). For 1988, he said, the spread for the months of January through April was 52, 55, 50 and 44 cents, respectively.

The Frigo witness presented testimony to modify the PEC proposal. He said that the location adjustment rates for Order 33 (Ohio Valley) and Order 36 (Eastern Ohio-Western Pennsylvania) are 1.5 cents per 10 miles, for Order 30 it is 1.53 cents, and 2.0 cents for Order 49 (Indiana). The witness said that the location adjustment rate for Order 40 should be somewhere between 1.5 and 2.0 cents per ten miles. He said that Frigo preferred a 1.5-cent rate. Furthermore, he said, § 1040.52(a)(2) of the order should be changed by deleting the language that reads "the nearest point in such territory" to read "the state line."

The Frigo spokesman said that the milk supply in the Upper Peninsula is closely aligned with Order 40 either through the efforts of MMPA or Frigo. He said that the PEC proposals would lower returns to dairy farmers located in the Upper Peninsula and also limit the economic viability of their Carney plant. In his opinion, there are no realistic alternatives for the Carney plant should it become unprofitable under Order 40. He said that reserve plant status under Order 30 is not possible.

On cross-examination he said that using a 1.5-cent location adjustment rate, as Frigo proposed, would produce minus location adjustments of 40 cents at Carney, 49 cents at Lena and 39.5 cents at Wyocena. He said the current minus location adjustments at these same locations are 35, 41 and 34 cents, respectively. This would mean blend price decreases of 5, 8 and 5.5 cents, respectively.

On cross-examination, he said that about three percent of their total milk supply moves to an Order 40 distributing plant. He said that very little milk moves from their Lena plant to Liberty Dairy, a distributing plant located at Evart, Michigan (Osceola County) and owned by Dean. The witness said that the unit pooling provisions do not require Frigo to ship any milk from any particular plant. He said that milk from their Wyocena plant is moved the 320 miles around the south side of Lake Michigan to Liberty Dairy at a cost of $1.60 per hundredweight. From the Carney plant, he said, the milk moves north around

Lake Michigan and that they pay various rates for hauling.

The Frigo modification was supported at the hearing by Dean. A witness for Dean testified that their distributing plant at Evart acquires, each month, up to 10 percent of their milk supply from Frigo. He said that the majority of their milk supply comes from the Upper Peninsula. The Dean witness testified that if the location adjustment for the MMPA supply plant at Sault Ste. Marie is 22 cents then the Frigo plant at Carney should have a 27-cent location adjustment.

The Dean spokesman expressed the view that after MMPA and Leprino build their new cheese plant at Allendale that he would have some reservation about milk supplies being made available for distributing plants. He said that if you look at Frigo from the standpoint of being a cheese operation and compare it to other cheese operations in the state, then you would have to conclude that Frigo is supplying more of their milk to the fluid market than any other other cheese operations.

Farmers Union Milk Marketing Cooperative (FUMMC) also presented testimony to modify the PEC proposal. Their witness said that the FUMMC represents approximately 238 producers shipping to three supply plants pooled on Order 40 (Frigo plants). He said that the PEC proposal would adversely affect a group of Wisconsin and Michigan Upper Peninsula producers who have been associated with Order 40 for 20 years. The proposal, he said, would result in the shifting of about 30 million pounds of milk from the Order 40 pool to the Order 30 pool, thereby reducing the Order 30 blend price which is already lower than the Order 40 blend price.

The FUMMC witness said that they want the PEC proposal to coincide with neighboring markets and that they prefer the Order 30 location adjustment rate of 1.53 cents. He said that the location adjustment rate should be calculated from the Michigan State line and that the present rate of one cent represents the cost of moving milk.

Manitowoc Milk Producers Cooperative (Manitowoc) also supported a modification of the PEC proposal. Their witness said that their organization represents approximately 2,500 members shipping milk to Orders 30, 40, 68 (Upper Midwest) and Order 79 (Iowa). He said that about 130 of their members are shipping milk to the Frigo plants located at Carney and Lena. The Manitowoc witness suggested a location adjustment rate of 1.5 cents per 10 miles. This rate, he said, would provide uniformity and equity among producers as Order 40 relates to other orders.

The proposal to change the rate for computing location adjustments to Class I and uniform prices at locations outside the territory specified in the location adjustment zones should be adopted. The current location adjustment rate of 1 cent per hundredweight per 10 miles seriously overstates the value of milk to the Southern Michigan pool at locations considerably distant from the central market.

Location adjustments to Class I and uniform prices at plants located outside the zones specified for lower Michigan, which includes the marketing area and other territory, are based on distance from the plant to the nearest point in such zoned territory. The location adjustment is computed by adding to the price differential applicable at such nearest point an amount computed by multiplying the number of 10-mile increments by one cent.

There are four supply plants pooled under the order at which such location adjustments are applicable. They are located at Sault Ste. Marie and Carney, both in the Upper Peninsula of Michigan, and at Lena and Wyocena, Wisconsin. The current location adjustments at those plants are: Sault Ste. Marie, −23 cents; Carney, −35 cents; Lena, −41 cents; and Wyocena, −34 cents.

The nearest point in the zoned territory for the plants in the Michigan Upper Peninsula and at Lena, Wisconsin, is Mackinaw City. For the Wyocena, Wisconsin, location, the mileage is computed from Grand Beach (Berrien County), Michigan. From the point of measurement, the mileages to the plants are as follows: Sault Ste. Marie, 51–60 miles; Carney, 171–180 miles; Lena, 231–240 miles; and Wyocena, 221–230 miles.

The current location adjustment rate is outdated. It's use results in Class I and uniform prices at the various locations that are too high relative to the prices of milk in the marketing area because the rate does not reflect the cost of hauling milk. The record indicates that it costs about 2.25 cents per hundredweight per 10 miles to move milk within Michigan, and 3.6 cents or more to move milk into Michigan from plants outside Michigan. These numbers are based on the testimony of the PEC witness, who stated that the proposed 2.25-cent rate "—fairly well reflects the cost of transporting milk within Michigan." The witnesses for Frigo Cheese and Farmers Union Co-op indicated rates of $1.60 per hundredweight for a 320-mile haul, and $1.60 to $1.80 per loaded mile, respectively. These rates vary from about 3.4 cents to 5 cents per ten miles per hundredweight, assuming a 47,000-pound load of milk for the per loaded mile figure. Thus, it is clear that a transportation rate of 1.0 cents per 10 miles per hundredweight is seriously inadequate to reflect hauling costs incurred under current conditions.

In exceptions to the recommended decision, Frigo maintained that the distance from Wyocena, Wisconsin, to Evart, Michigan, is 443 miles, not 320. The 443-mile number is accepted as a more accurate number. Frigo's exception, however, argues that based on the entire haul, the rate charged is only 1.8 cents per hunderweight per 10 miles, and thus concludes that the location adjustment rate should be 1.75 cents per 10 miles per hundredweight.

Location adjustments are based on the distance between plants. Likewise, the cost of hauling milk is for moving the milk from one location to another. The costs per hundredweight per 10 miles as indicated in the recommended decision stand as valid to reflect the hauling costs indicated by the representative for Frigo and by the representative for FUMMC.

Various proposed modifications of the PEC proposal should not be adopted. After a through analysis of the issue, it is concluded that the best fit of location adjustments outside the zoned area results from the PEC proposal.

The proposal by Frigo to extend the zoning concept to include two additional zones for the Michigan Upper Peninsula was not supported by testimony or other evidence other than an expression of concern for the well-being of producers in that area. In that regard, such a modification would provide a lesser location adjustment to producer blend prices at the Frigo supply plants than would the proposals of the PEC. Along with this modification Frigo proposed that location adjustments at plants outside Michigan be based on the distance from the plant to the State line as determined by the Market Administrator, and that the rate per hundredweight per 10 miles should be somewhere between 1.5 and 2.0 cents. Under this proposed modification, the location adjustment at Carney would be −40 cents, with adjustments at Lena and Wyocena of −52 cents and −51 cents, respectively.

The modifications suggested by FUMMC and Manitowoc would use 1.50-1.53 cents as the location adjustment rate. Additionally, FUMMC would prefer measuring distances to plants from the Michigan State line. The basis for these modificiations was to improve uniformity of location adjustment rates among orders. It is noted that these modifications also would result in

smaller negative location adjustments and, therefore, higher blend prices to producers at the Frigo plants.

The proposal by the PEC would produce location adjustments of −20.5 cents at Sault Ste. Marie and −47.5 cents, −61 cents, and −57 cents at the Carney, Lena, and Wyocena plants, respectively.

The record in this proceeding, as previously indicated, does not contain detailed hauling cost information. But there is a basis for concluding that it costs more than 2.25 cents per hundredweight per 10 miles to move milk outside the State of Michigan. Therefore, there is no sound basis to consider further the alternative rates of 1.5 to 2.0 cents as suggested by several parties.

The value of milk at locations considerably distant from the central market must be related to the transportation costs that would be incurred in moving that milk to market. All the distributing plants that are fully regulated under the Southern Michigan order are located in the lower part of the State, mostly in the southern half of the State. Moreover, there is plenty of milk produced in this portion of the State to meet the market's needs. Since location adjustments at distant supply plants outside this area currently do not realistically reflect transportation costs, the blend prices applicable under order at such locations overstate the value of the milk to the Class I market. Thus, the producers in the southern part of the State are subsidizing producer incomes in the Upper Peninsula and Wisconsin areas that supply milk to those supply plants. This situation would continue under the PEC proposals, but not to as great a degree as it now does.

The two supply plants in Michigan's Upper Peninsula are located in the marketing area defined under the Michigan Upper Peninsula order and the two Wisconsin supply plants are located in the Chicago Regional order marketing area. Ideally, location adjustment rates under the Southern Michigan order would provide Class I prices at the plant locations equal to the applicable Class I price at such locations for the order marketing area in which the plants are located. The plant at Wyocena, Wisconsin, has a Class I differential of $1.188 under the Chicago Regional order. The PEC rate of 2.25 cents yields a Southern Michigan Class I differential at Wyocena of $1.75 minus 57 cents, or $1.18. Similarly, although not quite as close, the Chicago order Class I differential at Lena, Wisconsin is $1.073, whereas the 2.25 cents rate proposed under the Southern Michigan order would result in a Class I differential of $1.14.

Under the Michigan Upper Peninsula order, the Class I differential at Carney is $1.15, compared to the proposed $1.275 under the Southern Michigan order. At Sault Ste. Marie, the Class I differentials would not match up closely. The difference would be 19.5 cents. However, even with these differences Class I price alignment under the orders would be more nearly achieved using the 2.25-cent rate than with any of the proposed modifications. Thus, the best fit is provided using this rate.

There was some testimony on this issue concerning misalignment of blend prices at the Carney, Michigan, and Wisconsin supply plants. The location adjustment rate change will result in lower blend prices under the Southern Michigan order at these locations and thus in a closer alignment with blend prices under the Chicago order for the Wisconsin locations. However, it must be noted that the desire to achieve blend price alignment is not a sufficient basis for revising the location adjustment rate. Instead, the location adjustment rate should more nearly reflect the cost of transporting milk. Even if Class I prices are perfectly aligned, blend price differences may continue due to different levels of Class I use between two orders.

In addition to the exceptions filed by Frigo, exceptions also were filed by FUMMC and Dean. CDS indicated by letter that they support the proposed amendments.

The Frigo exceptions, for the most part, are a reiteration of the testimony presented at the hearing and the arguments contained in a post-hearing brief. Their views regarding the appropriate location adjustment for their plant at Carney, Michigan were fully considered in the issuance of the recommended decision.

However, Frigo's exception suggests that the location adjustment rate is being changed for the purpose of improving blend price alignment between the Southern Michigan and Chicago orders. This is not the case. The only purpose for adopting the 2.25 cents per hundredweight per 10 miles rate is so that the value of milk at these distant locations will more nearly reflect the cost of moving milk to the market. For this reason, and other reasons stated earlier in this decision, the Frigo exceptions are denied.

The exceptions filed by FUMMC also constitute a reiteration of their testimony at the hearing and the arguments contained in their post-hearing brief. Their views regarding the appropriate location adjustments for plants located beyond the proposed pricing zones were fully considered in the issuance of the recommended decision, therefore, their exceptions are denied.

Dean, in its exceptions, indicates the volume of milk received by its Liberty Dairy plant for the month of January 1989 and the distance this milk moved from the farms to the plant. This information cannot be considered by the Secretary because it was not part of the record.

Dean's representative in his exceptions and in his testimony presented at the hearing expressed a concern about the price that Dean will have to pay for milk to supply the Liberty Dairy plant as a result of the agreement between Leprino Cheese and MMPA. Dean has also expressed the view that this decision will exacerbate their ability to acquire a supply of milk because Frigo may be forced to ship a substantial quantity of milk to the Chicago Regional order rather than deliver milk to Liberty Dairy. Dean has asked that the Secretary continue to have a minus 11-cent location adjustment at Liberty Dairy or to decrease the location adjustments by four cents that would not be applicable to Frigo at their three plant locations.

In essence, Dean is asking that order provisions ensure the ability to not have to rely too heavily on cooperatives in acquiring a supply of milk for the Evart plant. However, it is not the function of the order to assure any handler of a supply of milk from any particular source or exclusive of any source. Dean's arguments are not persuasive and the exceptions, therefore, are denied. The views expressed by Dean as to the appropriate location adjustments for plants located outside of the proposed zones were fully considered in the issuance of a recommended decision and, therefore, their exceptions are denied.

The proposed changes in the location pricing provisions (both the zoning and rate issues) will change the total value of pooled milk by a small acount. An exhibit introduced by the market administrator shows recomputed uniform prices for the zero adjustment zone for May 1987 through April 1988 as being only one cent per hundredweight lower for eight months and no change for the other four months. For example, had the proposed changes been in place in December 1987, the value of Class I milk in the pool would have been, at most, about $40,000 higher. However, in a 379 million pound market, the impact of the $40,000 on the uniform price for the zero zone would have been about one cent per hundredweight.

There would be changes in the distribution of the location adjustment money among the market's producers. In general, producers in the western and northern part of the state will receive higher returns for their milk, while producers delivering their milk to plants located outside the marketing area will receive less for their milk. Not enough detailed information is available to be able to determine how much more or less will be paid to producers for delivering milk to plants in the specific zones. The amounts with which prices would change at the various locations have already been described.

3. *Changing the factor used in the computation of the butterfat differential.* The order should be amended to provide for the use of a factor of 0.115, rather than 0.113, times the butter price specified in the order in the computation of the butterfat differential.

The order presently provides that for milk containing 3.5 percent butterfat, the uniform price shall be increased or decreased for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential and rounded to the nearest one-tenth cent. The butterfat differential is determined by multiplying 0.113 times the simple average of the wholesale selling prices (using the midpoint of any grade range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

The PEC witness proposed that in the computation of the butterfat differential, a factor of 0.115 be used. He said that in 39 of 42 marketing orders, a factor of 0.115 is used in the computation of the butterfat differential.

Butterfat produced in the State of Michigan, he said, is marketed throughout most of the eastern half of the United States either as part of a fresh liquid product or as a component of a manufactured dairy product. The witness said that at different times of the year, butter produced in the Far West is shipped into Midwest markets. He testified that the cost of butterfat to all processors of dairy products should be similar, particularly since the market for butterfat is national.

A witness for Lansing Dairy testified that they were opposed to this proposal. The witness, however, never indicated why.

In its brief, Frigo stated that their organization supported the PEC aproposal.

This proposal should be adopted. Marketing orders adjacent to the Southern Michigan market are using the factor of 0.115 in the computation of the butterfat differential. The adoption of this factor will promote orderly marketing of butterfat in the Southern Michigan market and in adjacent markets.

No exceptions to the recommended decision were filed on this issue.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Southern Michigan order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a maketing agreement upon which a hearing has been held.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an Order amending the order regulating the handling of milk in the Southern Michigan marketing area, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered that this entire decision and the two documents annexed hereto be published in the **Federal Register.**

Determination of Producer Approval and Representative Period

January 1989 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the southern Michigan marketing area is approved or favored by producers, as defined under the terms of the order (as amended and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

List of Subjects in 7 CFR Part 1040

Milk marketing orders, Milk, Dairy products.

Signed at Washington, DC, on June 20, 1989.

Jo Ann R. Smith,

Assistant Secretary, Marketing and Inspection Services.

Order Amending the Order Regulating the Handling of Milk in the Southern Michigan Marketing Area

This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed,

except where they may conflict with those set forth herein.

(a) Findings. A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Southern Michigan marketing area. The hearing was held pursuant to the provision of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area; and the minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order Relative to Handling

It is therefore ordered that on and after the effective date hereof, the handling of milk in the Southern Michigan marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the recommended decision issued by the Administrator on February 21, 1989, and published in the **Federal Register** on February 24, 1989 (54 FR 7938), shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein.

PART 1040—MILK IN THE SOUTHERN MICHIGAN MARKETING AREA

1. The authority citation for 7 CFR Part 1040 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1040.52 [Amended]

2. In § 1040.52, revise paragraph (a)(1) to read as follows:

(a) * * *

(1) *Zone rates.* For a plant located within the following described territory, including the cities located therein, the applicable zone rates shall be as follows:

Michigan Counties

Zone I—No Adjustments

Clinton, Genesee, Gratiot, Hillsdale, Huron, Ingham, Jackson, Lapeer, Lenawee, Livingston, Macomb, Monroe, Oakland, Saginaw, Sanilac, St. Clair, Shiawassee, Tuscola, Washtenaw and Wayne.

Bay (except Gibson, Mount Forest, Pinconning, Garfield and Fraser Townships).

Zone II—5 cents

Allegan, Barry, Berrien, Branch, Calhoun, Cass, Eaton, Ionia, Kalamazoo, Kent, Montcalm, Muskegon, Ottawa, St. Joseph and Van Buren.

Zone III—7 cents

Bay (all townships excluded from Zone I), Alcona, Alpena, Antrim, Arenac, Benzie, Charlevoix, Cheboygan, Clare, Crawford, Emmet, Gladwin, Grand Traverse, Isabella, Iosco, Kalkaska, Lake, Leelanau, Manistee, Mason, Missaukee, Mecosta, Midland, Montmorency, Newago, Oceana, Ogemaw, Osceola, Oscoda, Otsego, Presque Isle, Roscommon and Wexford.

* * * * *

3. Amend § 1049.52(a)(2) by changing "one cent" to "2.25 cents."

§ 1040.74 [Amended]

4. Amend § 1040.74 by changing "0.113" to "0.115".

§ 1040.75 [Amended]

5. Amend § 1040.75 by removing and reserving paragraph (a)(2) and revising paragraph (a)(3) to read as follows:

(a) * * *

(3) Shall add not less than 10 cents per hundredweight with respect to milk received from producers and cooperative associations pursuant to § 1040.9(c) at a pool plant located within the Michigan counties of Macomb, Oakland, and Wayne.

* * * * *

Marketing Agreement Regulating the Handling of Milk in the Southern Michigan Marketing Area

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR Part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ 1040.1 to 1040.86, all inclusive, of the order regulating the handling of milk in the Southern Michigan marketing area (7 CFR PART 1040) which is annexed hereto; and

II. The following provisions:

§ 1040.87 Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he handled during the month of January 1989, hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Director, or Acting Director, Dairy Division, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

§ 1040.88 Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with Section 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

(Seal)

Attest _____
Date _____

(Signature)
By _____
(Name) (Title)

(Address)

[FR Doc. 89–15024 Filed 6–23–89; 8:45 am]
BILLING CODE 3410-02-M

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7 CFR Part 1126

[DA–89–025]

Milk in the Texas Marketing Area; Notice of Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites written comments on a proposal that would continue for the month of August 1989 through July 1990 a suspension of portions of the pool plant and producer milk definitions of the Texas order. The continuation of the suspension was requested by Associated Milk Producers, Inc., and Mid-America Dairymen, Inc., cooperative associations that represent a substantial proportion of the producers who supply milk to the market. The cooperatives contend that continuation of the suspension is necessary because the marketing conditions that resulted in the granting of the current suspension continue due to production increases in Texas.

DATE: Comments are due on or before July 11, 1989.

ADDRESS: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–4829.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under the criteria contained therein.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), the suspension of the following provisions of the order regulating the handling of milk in the Texas marketing area is being considered for the months of August 1989 through July 1990:

1. In § 1126.7(d) (introductory text,) the words "during the months of February through July" and the words "under paragraph (b) or (c) of this section".

2. In § 1126.7(e) (introductory text,) the words "and 60 percent or more of the producer milk of members of the cooperative association (excluding such milk that is received at or diverted from pool plants described in paragraphs (b), (c), and (d) of this section) is physically received during the month in the form of a bulk fluid product at pool plants described in paragraph (a) of this section either directly from farms or by transfer from plants of the cooperative association for which pool plant status under this paragraph has been requested".

3. In § 1126.13, paragraph (e)(1).

4. In § 1126.13(e)(2), the paragraph references "(a), (b), (c), and (d)".

5. In § 1126.13(e)(3), the sentence, "The total quantity of milk so diverted during the month shall not exceed one-third of the producer milk physically received at such pool plant during the month that is eligible to be diverted by the plant operator;"

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 15th day after publication of this notice in the **Federal Register**. The comment period is limited to 15 days to enable completion of the required rulemaking procedure in time to include August 1989 in the suspension period should it be found necessary.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed suspension would continue, for the months of August 1989 through July 1990, the suspension of portions of the pool plant and producer milk definitions of the Texas order. Specifically, the proposed action would continue the suspension of the 60-percent delivery standard for pool plants operated by cooperatives, the restrictions on the types of pool plants at which milk must be received to establish the maximum amount of milk that a cooperative may divert to nonpool plants, and the limits on the amount of milk that a pool plant operator may divert to nonpool plants. In addition, the action would, for the same time period, continue to suspend the shipping standards that must be met by supply plants to be pooled under the order and the individual producer performance standards that must be met in order for a producer's milk to be eligible for diversion to a nonpool plant.

The order provides for pooling a cooperative association plant located in the marketing area if at least 60 percent of the producer milk of members of the cooperative association is physically received at pool distributing plants during the month. Also, a cooperative association may divert to nonpool plants up to one-third of the amount of milk that the cooperative causes to be physically received at pool distributing and supply plants during the month. In addition, the order provides that the operator of a pool plant may divert to nonpool plants not more than one-third of the milk that is physically received during the month at the handler's pool plant. The proposed action would continue to inactivate the 60-percent delivery standard for plants operated by a cooperative association, allow a cooperative's deliveries to all types of pool plants to be included as a basis from which the diversion allowance would be computed, and remove the diversion limitation applicable to the operator of a pool plant.

The order also provides for regulating a supply plant each month in which it ships a sufficient percentage of its receipts to distributing plants. The order provides for pooling a supply plant that ships 15 percent of its milk receipts during August and December and 50 percent of its receipts during September through November and January. A supply plant that is pooled during each of the immediately preceding months of September through January is pooled under the order during the following months of February through July without making qualifying shipments to distributing plants. The requested action would continue the current suspension of these performance standards for an additional 12 months for August 1989 through July 1990 for supply plants that were regulated under the Texas order during each of the immediately preceding months of September through January.

The order also specifies that the milk of each producer must be physically received at a pool plant each month in order to be eligible for diversion to a nonpool plant. During the months of September through January, 15 percent of a producer's milk must be received at a pool plant for diversion eligibility. The proposed action would continue to have these requirements suspended.

The continuation of the current suspension was requested by two cooperative associations (Associated Milk Producers, Inc., and Mid-America Dairymen, Inc.) that represent a substantial proportion of the dairy farmers who supply the Texas market. Associated Milk Producers operates two supply-balancing plants that are pooled under the Texas order and a new supply-balancing plant will begin operation in June 1989, but will not reach its capacity until late in 1989. Mid-America Dairymen operates a supply plant in southwestern Missouri that has historically been pooled under the Texas order and a designated supply plant in Texas used strictly to assemble milk for shipment to nonpool plants for use in manufactured dairy products.

The cooperatives contend that this additional 12-month continuation of the current suspension is necessary because

the marketing conditions that resulted in the granting of the current suspension continue due to production increases in Texas. The cooperatives state that continued substantial production increases have not made it possible to project production levels in 1990 and beyond with any degree of certainty, thereby making any amendatory action at this time impractical. The cooperatives also contend that the suspension continuation is necessary to give handlers the flexibility to dispose of excess milk in the most efficient manner. In addition, they believe that the suspension would eliminate costly and inefficient movements of milk that would be made solely for the purpose of pooling the milk of dairy farmers who have historically supplied the Texas market.

In view of the foregoing, it may be appropriate to continue the current suspension of the aforementioned provisions of the Texas order.

List of Subjects in 7 CFR Part 1126

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1126 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Signed at Washington, DC, on: June 20, 1989.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 89–15027 Filed 6–23–89; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 25943; Notice No. 89–17]

RIN 2120–AD15

Navigational Equipment Requirement in a Terminal Control Area (TCA), Visual Flight Rules (VFR) Operations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to remove the navigational equipment requirement for operations conducted under VFR in a TCA and recognizes the usefulness of other types of navigation equipment for VFR operations. Effectively, this proposal would codify existing practices into the regulation.

DATE: Comments on this proposal must be received on or before July 26, 1989.

ADDRESSES: Comments on the proposal may be mailed or delivered in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–204), Docket No. 25943, 800 Independence Avenue SW., Washington, DC 20591. Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Laser, Air Traffic Rules Branch, ATO–230, Airspace-Rules and Aeronautical Information Division, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591, telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in these proposed rulemaking procedures by submitting such written data, views, or arguments as they may desire. Any materials submitted should identify the regulatory docket or notice number and be submitted in triplicate to the address above. All communications received on or before the closing date for comments will be considered by the Administrator before taking further rulemaking action. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25943." The postcard will be date/time stamped and returned to the commenter. The proposals contained in this notice may be changed as a result of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–200, 800 Independence Avenue SW., Washington, DC 20591; or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future notices should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

Background

On October 6, 1988, the Federal Aviation Administrative (FAA) issued Amendment Nos. 61–80, 71–11, and 91–205, Terminal Control Area (TCA) Classification and TCA Pilot and Navigational Equipment Requirements (53 FR 40318). Those amendments require, among other things, all aircraft operating in a TCA to be equipped with VOR or TACAN navigational equipment thereby eliminating, effective July 1, 1989, the previous navigational equipment requirement exclusion for helicopters. By separate action, the FAA amended the effective date pertaining to helicopter equipment in consonance with this proposal. That delay is necessary to allow interested parties to comment on this proposal and to delay purchase of equipment should the proposal be adopted.

The FAA has received numerous requests for exemption from the helicopter equipment requirement, and petitions to allow the use of certain area navigational equipment for operations in a TCA. Specifically, the National Association of State Aviation Officials, in its letter of January 14, 1989, stated that many new generation helicopters are operating with LORAN–C as a primary navigation system, and that LORAN–C equipment provides better position information than VOR equipment. The Experimental Aircraft Association (EAA), in its letter of January 5, 1989, advised the FAA that it had conducted an investigation concerning the TCA navigation equipment requirement. It was EAA's conclusion that LORAN–C produces more satisfactory results for many users and is much more useful for helicopter operations than VOR equipment. The Helicopter Association International (HAI) petitioned the FAA for a similar change to the equipment requirement—an exception for VFR and special VFR helicopter operations. The FAA believes the VFR provisions proposed in this notice are consistent with HAI's proposal. Several other organizations that use helicopters extensively have petitioned the FAA for exemption from the VOR/TACAN navigation equipment requirement citing that their aircraft are already equipped with LORAN–C.

Discussion

Section 91.33(d)(2) of the Federal Aviation Regulations (FAR) (14 CFR Part 91) specifies that all *civil* aircraft used to conduct instrument flight rules (IFR) operations must have "* * * navigational equipment appropriate to the ground facilities to be used." This provision is intentionally broad to allow the use of a variety of ground-based navigational facilities when conducting flight under IFR. However, the requirement is not applicable to public aircraft, i.e., aircraft used only in the service of a government, or a political subdivision, and foreign aircraft. Section 91.90 of the FAR, Terminal Control Areas, provides a more specific navigational equipment requirement for both civil and public aircraft conducting IFR operations in a highly regulated air traffic control (ATC) environment. To illustrate, in the past, most departure and arrival procedures at TCA primary airports involved navigation via specific VOR radials to a given point along an airway, route, or precision instrument approach procedure. In the current radar environment the use of VOR radials in conjunction with departure and approach procedures is often replaced with radar vectoring procedures. However, the ATC system must be prepared to revert to a non-radar environment should the need arise, in which case the VOR or TACAN requirement would be critical to the continued ATC separation of aircraft.

The need for specific navigational equipment for aircraft conducting operations in a TCA under VFR is a different issue. In a radar environment departure and arrival operations conducted by aircraft under IFR or VFR are handled by ATC in very much the same manner. Traffic operating under VFR is generally provided with radar vectors to points beyond which navigation within the TCA can be accomplished using pilotage or dead reckoning procedures. Should the radar become inoperative, ATC would simply allow VFR aircraft to navigate via visual reference to known checkpoints and landmarks where such routes can be procedurally separated from those used by IFR aircraft.

The Proposal

Therefore, based on the foregoing, the FAA believes there is reason to propose amending the regulations to require VOR or TACAN navigational equipment only for those operations conducted under IFR. Effectively, operations under VFR may be conducted using other types of navigational equipment such as LORAN–C, Omega, etc., or, may be conducted without any navigational equipment.

The FAA has established a working group with the goal of promulgating a regulation to establish the minimum standards under which a radio navigation sysem may be certified as the sole radio navigation system required in an aircraft for operation in the United States airspace. This proposal, which applies to VFR operations in a TCA, does not establish LORAN–C or any other area navigation system as the sole radio navigation system required in aircraft for operations in the National Airspace System.

Conclusion

For the above reasons the FAA has determined that this action is not a "major rule" under Executive Order 12291; and is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

A full regulatory evaluation was prepared for the final rule in Docket 25304 and placed in the regulatory docket. Because VOR or TACAN equipment remains a requirement for IFR operations in the TCA, this notice does not have any significant effect on the information and conclusions of that evaluation. Accordingly, the existing regulatory evaluation remains valid and no further evaluation is required. For the reasons contained in the regulatory evaluation in the docket, I certify that this action will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Federalism Determination

The requirements proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 14 CFR Part 91

Aviation safety, Safety, Aircraft, Air traffic control, Pilots, Airspace, Air transportation, and airports.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 91 of the Federal Aviation Regulations (14 CFR Part 91) as follows:

1. The Authority citation for Part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 et seq; E.O 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. Section 91.90(c) is revised to read as follows:

§ 91.90 Terminal Control Areas.

* * * * *

(c) *Communications and navigation equipment requirements.* Unless otherwise authorized by ATC, no person may operate and aircraft within a terminal control areas unless that aircraft is equipped with—

(1) *For IFR Operations:* An operable VOR OR TACAN receiver; and

(2) *For all operations:* An operable two-way radio capable of communciations with ATC on appropriate frequencies for the terminal control area.

* * * * *

Issued in Washington, DC on June 20, 1989

John R. Ryan,

Director, Air Traffic Operations Service.

[FR Doc. 89–14995 Filed 6–23–89; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

23 CFR Part 1313

[Docket No. 89–02; Notice 1]

Incentive Grant Criteria for Drunk Driving Prevention Programs

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: This Notice of Proposed Rulemaking (NPRM) implements a new program enacted by the Anti-Drug Abuse Act of 1988, which authorizes two new categories of federal incentive grants to States that adopt and implement comprehensive drunk driving prevention programs which provide for certain specified elements. This rulemaking action proposes the manner in which States would certify that they are eligible for these incentive grants, and the procedure by which NHTSA would award such grants. The agency requests comments on the proposed regulation discussed in this notice.

DATES: Comments must be received by July 26, 1989.

ADDRESS: Written comments should refer to the docket number and the number of this notice and be submitted (preferably in ten copies) to: Docket Section, National Highway Traffic Safety Administration, Room 5109, Nassif Building, 400 Seventh Street, SW.,

Washington, DC 20590. (Docket hours are from 8 a.m. to 4 p.m.)

FOR FURTHER INFORMATION CONTACT: Mr. Lewis Buchanan, Office of Alcohol and State Programs, NTS-21, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366-2753; or Ms. Heidi L. Coleman, Office of Chief Counsel, National Highway Traffic Safety Administration, telephone (202) 366-1834.

SUPPLEMENTARY INFORMATION: On November 18, 1988, the Anti-Drug Abuse Act of 1988, Pub. L. 100-690, was signed into law by the President. Section 9001 of the Act, et seq., entitled the Drunk Driving Prevention Act of 1988, amends the Highway Safety Act of 1966, 23 U.S.C. 401, et seq., by adding section 410, which authorizes a new incentive grant program. This program establishes a two-tiered incentive grant program, under which States may qualify for basic and supplemental incentive grants for adopting and implementing comprehensive drunk driving prevention programs which are self-sustaining and provide for certain specified elements that will improve the effectiveness of the State's enforcement of drunk driving laws. States may qualify for these grants in up to three fiscal years.

The section 410 program is similar to the "section 408" alcohol incentive grant program administered by NHTSA (23 U.S.C. 408), under which States may qualify for grants by adopting and implementing effective programs to reduce drunk driving. The section 408 program was first enacted in 1982, under Pub. L. 97-364, as a two-tiered (basic and supplemental) grant program. In 1984, section 408 was amended, Pub. L. 98-363, to expand the scope of the 408 program to include programs to combat drugged driving as well as drunk driving and to establish a third grant for which States may qualify (special grants) to encourage the States to enact tough minimum sentencing standards. Section 203 of the Surface Transportation and Uniform Relocation Assistance Act of 1987, Pub. L. 100-17, amended section 408 again by extending from three to five, the number of fiscal years in which a State may receive section 408 incentive grants.

This notice implements the 1988 statute which creates the new section 410 incentive grant program. It also proposes the manner in which States would certify that they are eligible for the grants, and the procedure by which NHTSA would award such grants. Since the States and members of the highway safety community concerned with drunk driving issues are already familiar with the agency's section 408 program, we will point out, in this notice, many of the similarities and differences between the two programs. It is our hope that this will help to clarify the issues at hand.

Limitations on Grant Amounts

Section 410 provides, in subsection (d) that an eligible State may receive as a basic grant an amount that shall not exceed 30 percent of its FY 1989 highway safety grant (section 402) apportionment. This is similar to the "basic" grant for an eligible State under the section 408 program, which is 30 percent of the State's FY 1983 section 402 apportionment. Section 402 apportionments are made to the States as formula grants under the Highway Safety Act of 1966, 23 U.S.C. 402, to aid the States in conducting highway safety programs. To qualify for a section 410 basic grant, a State must provide for both an expedited driver's license suspension or revocation system and a self-sustaining drunk driving prevention program. These criteria will be explained in further detail below, under the heading, "Basic Grant Criteria."

As under the section 408 program, under section 410 a State may be eligible for supplemental grants only if it meets the basic grant requirements, and also meets the requirements for the supplemental grant. However, unlike section 408, which provides for a single supplemental grant (of up to 20 percent of a State's FY 1983 section 402 apportionment) for meeting a number of supplemental criteria, section 410 establishes four separate supplemental grants. A State may become eligible for one or more of these supplemental grants, once it meets the basic criteria and the requirements of the particular supplemental grant program, subject only to the matching requirements, which will be explained further below.

An eligible State may receive as a supplemental grant an amount that shall not exceed 10 percent of its FY 1989 section 402 apportionment for each of three programs: mandatory blood alcohol concentration testing programs for drivers involved in fatal and serious crashes who are believed to have committed an alcohol-related traffic offense; an effective system for preventing operators of motor vehicles under age 21 from obtaining alcoholic beverages; and a suspension of registration and return of license plate program for repeat offenders and individuals convicted of driving while their driver's license is under suspension or revocation for an alcohol-related offense. In addition, an eligible State may receive as a supplemental grant an amount that shall not exceed 25 percent of its FY 1989 section 402 apportionment for a program which makes it unlawful to possess an open container or to consume an alcohol beverage in a motor vehicle. A State that meets the criteria for a basic grant and all four supplemental grants could receive grant funds in an amount of up to 85 percent of its FY 1989 section 402 apportionment. The criteria for qualifying for these supplemental grants will be explained in further detail below, under the heading "Supplemental Grant Criteria."

Since the statute provides that these grant amounts "shall not exceed" the percentages identified above, the agency has the discretion to award grants of amounts which are less than those specified in the Act. As will be explained in further detail in the "Basic Grant Criteria" portion of this notice, the agency has proposed to award a 20 percent basic grant under certain circumstances, rather than the full 30 percent. States would be able to qualify for the full 30 percent basic grant under the proposal by meeting additional requirements that need not be met to qualify for the 20 percent grant. Similarly, as will be explained in further detail in the "Supplemental Grant Criteria" portion of this notice, the agency has proposed to award a 10 percent grant to States for a program which makes it unlawful to possess an open container or to consume an alcoholic beverage in a motor vehicle under certain circumstances, rather than the full 25 percent. States would be able to qualify for the full 25 percent under the proposal by submitting additional information not required to qualify for the 10 percent grant.

The agency has otherwise proposed to award the full amount of each grant to States that meet the statutory criteria and demonstrate compliance in accordance with the regulation. We would be interested in receiving comments on the agency's proposed approach to the basic and open container and consumption grants, and whether it is believed that this approach should be considered for the other supplemental grants under section 410.

The statute provides, in section 410(c), that States, which may receive grants for up to three fiscal years, must match the section 410 grant funds they receive. The Act requires that the Federal share shall not exceed 75 percent of the cost of implementing and enforcing the drunk driving prevention program adopted to qualify for these funds in the first fiscal year the State receives funds, 50 percent in the second fiscal year and 25 percent in the third. These percentages are identical to those which apply to the first three fiscal years of section 408 incentive grant funds.

The limitations on grant amounts described above are included in § 1313.4(b) of the proposed regulation. In addition, the amount that would be awarded under each grant is identified in the portion of the proposed regulation that describes the criteria for receiving that grant. See paragraphs (a) and (b) of § 1313.5 and paragraphs (a), (b), (c)(1), (c)(2)(i) and (d) of § 1313.6.

The agency proposes to accept, as we do for both the section 402 and section 408 programs, a "soft" match in section 410's administration. By this, we mean that the State's share may be satisfied by the use of either allowable costs incurred by the State or the value of in-kind contributions applicable to the period to which the matching requirement applies. A State could not, however, use any Federal funds, such as its section 402 or 408 funds, to satisfy the matching requirements. In addition, a State could use each non-Federal expenditure only once for matching purposes. In other words, State funds expended to support drunk driving enforcement activities, if used to match section 402 Federal funds, could not be used also to match section 408 or 410 grant money.

Certification and Award Procedures

In an effort to simplify the administration of this program, the agency proposes certification and award procedures for section 410 incentive grants that are essentially the same as those for section 408 incentive grants. These procedures have been used successfully by the States and the agency's headquarters and regional staff with only minor modifications since they were first established by regulation in 1983.

If adopted, the proposed regulation would require that the State submit an application to NHTSA, which demonstrates that it meets the requirements of the grants being requested. The particular requirements of these grants are defined in detail in §§ 1313.5 and 1313.6 of the proposed regulation. The State would also be required to submit a certification that: (1) It has a drunk driving prevention program that meets the grant requirements; (2) It will use the funds awarded only for the implementation and enforcement of drunk driving prevention programs; and (3) It will maintain its aggregate expenditures from all other sources for its drunk driving prevention programs at or above the average level of such expenditures in fiscal years 1987 and 1988. These conditions are established in section 410 (a) and (b) of the statute. In determining their prior levels of funding for the purpose of calculating aggregate expenditures in fiscal years 1987 and 1988, States must include any non-section 410 money expended for drunk driving prevention purposes, regardless of source. It must include, for example, both Federal and matching funds expended under sections 402 and 408 for drunk driving prevention purposes. This statutory requirement, which is included in both the section 408 and 410 incentive grant programs, reflects Congress' interest in having States expand their drunk driving activities without their becoming dependent on Federal funds to conduct these activities.

The agency would then notify the State as to whether or not it qualifies for section 410 grant funds. If the State is informed by NHTSA that it is eligible for a grant, the State would be required to submit, within 120 days, a drunk driving prevention plan, similar in form to its section 408 alcohol safety plan. The plan would have to describe the programs the State is and will be implementing in order to be eligible for the grant and provide the necessary information, identified in § 1313.5 and § 1313.6 of the regulation, to demonstrate that the programs comply with the applicable criteria. The plan would also describe how the specific supplemental criteria adopted by a State are related to the State's overall drunk driving prevention program.

The agency proposes to permit each State to submit its plan as a portion of the State's section 402 Highway Safety Plan, an option which is available to the States for their section 408 Alcohol Safety Plans. In addition, under the proposed regulation, a State could choose to submit a Drunk Driving Prevention Plan that covers the period of one, two or three years in which it is potentially eligible for section 410 grants. In subsequent years, States would update the plan to demonstrate that they meet subsequent year requirements.

Upon receipt and subsequent approval of the plan, the agency would award the grant to the State, and would authorize the State to incur costs subject to available funds. Vouchers would be submitted directly to the appropriate NHTSA Regional Administrator and reimbursement would be made to States for authorized expenditures. The funding guidelines applicable to the section 402 Highway Safety Program and the section 408 Alcohol Incentive Grant Program (NHTSA Order 462-13A) would also be used to determine reimbursable expenditures under the section 410 program. As with requests for reimbursement under the section 402 and 408 programs, States should indicate on the vouchers what percentage of the funds expended are eligible for reimbursement under section 410.

NHTSA is proposing to make awards in the order in which complete, qualifying applications are submitted. If the balance of available funds in any given fiscal year is insufficient to make a complete award to a State, NHTSA proposes that the entire balance of remaining funds may be awarded. (The agency notes that funding for the section 410 program is dependent upon annual appropriations, unlike the section 408 program which has "contract authority" under the Highway Trust Fund.) He would permit the State which would receive an incomplete award to choose to wait until the next fiscal year to receive its funds. States may select this option to avoid potential penalties that may result by receiving a partial grant since States may receive a grant in only three fiscal years. Time of submission would be determined by postmark for certifications delivered through the mail and by stamped receipt for certifications delivered in person.

Basic Grant Criteria

To be eligible for a basic grant, the Act specifies, in section 410(e) that a State must provide for an expedited driver's license suspension or revocation system and a self-sustaining drunk driving prevention program. These are statutory requirements which the agency has no discretion to change. As stated above, an eligible State may receive, under the statute, up to 30 percent of its fiscal year 1989 section 402 apportionment. The agency proposes that States which qualify for a basic grant and provide for an administrative review and suspend the driver's license of offenders within 15 days of their receiving notice, under § 410(e)(1) (C) and (F)(i) of the statute, would be awarded the full 30 percent. States that qualify for a basic grant and provide for an administrative review and suspend the driver's license of offenders within 30, but not 15, days of their receiving notice, under section 410(e)(1) (C) and (F)(ii) of the statute, would be awarded 20 percent. These States must also show that meeting the 15-day requirement would impose a hardship upon the State.

The elements of these two basic grant criteria and the manner in which States must demonstrate compliance are explained fully below:

1. *Expedited Driver's License Suspension or Revocation System.*

Section 410(e) specifies that eligible States must provide:

(1) for an expedited driver's license suspension or revocation system for individuals who operate motor vehicles while under the influence of alcohol which requires that—

(A) when a law enforcement officer has probable cause under State law to believe an individual has committed an alcohol related traffic offense and such individual is determined, on the basis of a chemical test, to have been under the influence of alcohol while operating the motor vehicle or refuses to submit to such a test as proposed by the officer, the officer serve such individual with a written notice of suspension or revocation of the driver's license of such individual and take possession of such driver's license;

(B) the notice of suspension or revocation referred to in subparagraph (A) provide information on the administrative procedures under which the State may suspend or revoke in accordance with the objectives of this section a driver's license of an individual for operating a motor vehicle while under the influence of alcohol and specify any rights of the operator under such procedures;

(C) the State provide, in the administrative procedures referred to in subparagraph (B), for due process of law, including the right to an administrative review of a driver's license suspension or revocation within the time period specified in subparagraph (F);

(D) after serving notice and taking possession of a driver's license in accordance with subparagraph (A), the law enforcement officer immediately report to the State entity responsible for administering drivers' licenses all information relevant to the action taken in accordance with this paragraph;

(E) in the case of an individual who, in any 5-year period beginning after the date of the enactment of this section, is determined on the basis of a chemical test to have been operating a motor vehicle under the influence of alcohol or is determined to have refused to submit to such a test as proposed by the law enforcement officer, the State entity responsible for administering driver's licenses, upon receipt of the report of the law enforcement officer—

(i) suspend the driver's license of such individual for a period of not less than 90 days if such individual is a first offender in such 5-year period; and

(ii) suspend the driver's license of such individual for a period of not less than 1 year, or revoke such license, if such individual is a repeat offender in such 5-year period; and

(F) the suspension and revocation referred to under subparagraph (D) take effect not later than—

(i) 15 days after the day on which the individual first received notice of the suspension or revocation in accordance with subparagraph (B); or

(ii) 30 days after the day on which the individual first received notice of the suspension or revocation in accordance with subparagraph (B) if the Secretary determines that the requirements of clause (i) would impose a hardship upon the State.

In summary, the statute requires, under this criterion, that eligible states provide for an administrative driver's license suspension or revocation system that contains the following elements: (1) law enforcement officers take possession of an individual's driver's license on the spot if the driver fails a chemical test or refuses to take one; (2) officers serve offenders with notice of the suspension or revocation and of their rights, including the right to an administrative review; (3) the officers immediately forward a report to the appropriate licensing agency within the State; (4) due process is ensured by providing offenders with the right to an administrative review; (5) the period of suspension or revocation is not less than 90 days for first offenders and not less than 1 year for repeat offenders; and (6) the administrative review takes place and the suspension or revocation, if any, takes effect not later than 15 days after the individual receives notice (30 days if the State can show that meeting the 15-day requirement would impose a hardship on the State).

Some of Congress' reasons for passing this provision of the Act are explained in the Act's legislative history. Senator Lautenberg, sponsor of S. 2367, the original Senate version of Section 410, which was referred to the Committee on Environment and Public Works, stated that an administrative suspension or revocation procedure, "under which a drunk driver's license is taken away, and taken quickly * * * is a proven means of reducing drunk driving. * * * Administrative revocation gets the drunk driver off the road. The punishment is both sure and swift. That certainty of punishment is essential in combatting drunk driving." Cong. Rec. Daily Ed., S. 16012, October 4, 1988.

In addition, Senate Report 100–594, which was prepared by the Committee on Commerce, Science, and Transportation of S. 2549, a bill also sponsored by Senator Lautenberg, with expedited suspension provisions identical to S. 2367, states:

> The administrative suspension law required for the basic grant has been demonstrated to be [one of the] most effective measures for reducing the incidence of drunk driving fatalities. The Insurance Institute for Highway Safety recently completed a study on this point, "Fatal Crash Involvement and Law Against Alcohol-Impaired Driving." The study found administrative suspension laws currently in force to be the most effective of all the laws studied in reducing alcohol-related driving fatalities, and found a 9 percent reduction in alcohol-related fatalities attributable to such laws.

NHTSA agrees that administrative license suspension systems are effective countermeasures to drunk drivers, because they assure prompt, mandatory license sanctions against all offenders. The agency has strongly endorsed the concept of administrative license suspensions and the enactment of these administrative license suspension laws. NHTSA also believes, however, that States should have the flexibility to develop the details of an administrative license suspension law to meet their individual needs, so the agency did not support the establishment of an inflexible Federal model for all States to follow.

However, Congress opted against flexibility. As is evident from a review of the legislation, Congress did not simply require that States provide for an administrative suspension or revocation law, but rather selected the particular model that States must use to qualify for section 410 funds. Unfortunately, the agency has no legal authority to modify or waive any of the statutory requirements. While 23 States and the District of Columbia currently have administrative suspension laws on the books, which appear to work quite effectively, it is our belief that few if any of these States currently meet the strict detailed standards established in the section 410 legislation. NHTSA proposes, in this notice, to provide some limited degree of flexibility, to the extent permitted by the satute, through the manner by which States may demonstrate compliance with this statutory criterion. This notice highlights below the most salient features of the applicable portions of the proposed regulation.

The terms "operating a motor vehicle while under the influence of alcohol" and "under the influence of alcohol while operating the motor vehicle" are used in paragraphs (A) and (B) of section 410(e)(1), and elsewhere in the legislation. The agency proposes to define these terms so that they apply to persons determined, by use of a chemical test, to have an alcohol concentration in the blood or breath of 0.10 percent or greater. Consistent with the definitions in the 408 incentive grant program, these terms would not include persons who refuse to submit to such a test. To ensure that all offenders that may be subject to suspension or revocation under a State's law are provided with the same level of due process protection, we propose to specify, in § 1313.5(a)(1)(i)(B), that refusers as well as other offenders are entitled to receive notice of their rights, including the right to an administrative review.

The statute requires that law enforcement officers serve offenders with notice of their rights, including the right to an administrative review. In addition, it provides, in section 410(e)(1)(C), that States must provide for "due process of law, including the right to an administrative review," which takes place not later than 15 days after the individual receives notice (30 days if the State can show that meeting the 15-day requirement would impose a hardship on the State.)

Accordingly, as long as a State meets these requirements by providing offenders with proper notice and the right to an individualized administrative review which takes place within the time established by statute, the agency would presume that due process has been ensured. We request commens on whether it is believed that further guidance on the procedures necessary to ensure due process is required.

In an effort to simplify the regulatory language, we propse to avoid repeating the phrase "any 5-year period beginning after the date of the enactment of this section," or related phrases, in a number of places in the regulation that refer to the statutory criterion. Instead, this phrase would be included in the proposed definition of the term "repeat offender" and appropriate language would replace related phrases in § 1313.5 of the proposed regulation. Most importantly, the agency interprets this language in the Act to mean that an offender is an individual who has failed a chemical test or refused to submit to one after November 18, 1988. These individuals are considered to be repeat offenders if they have failed a chemical test or refused to submit to one on two or more occasions within a 5-year period, and if at least two of these incidents occurred after November 18, 1988.

The length of time for which suspensions must be served (or which must pass before an offender whose driving privileges are revoked may obtain a new license) is defined in paragraph (E) of section 410(e)(1). Like section 408 of the Highway Safety Act, section 410 provides that this period must be not less than 90 days for first offenders and not less than one year for repeat offenders. The Senate reports prepared by the Environment and Public Works and the Commerce, Science and Transportation Committees both state that the Secretary is expected, in promulgating implementing regulations, to provide for periods of "hard" suspension, during which time an offender is not allowed conditional driving privileges. The agency's regulation implementing the section 408 program provides, in 23 CFR 1309.3(f), that first offenders (other than refusers) must receive a "hard" suspension for the first thirty days of their 90 day suspension period, and that repeat offenders (including repeat refusers) and first refusers must receive a "hard" suspension for the full one year or 90 days, respectively. The agency proposes to adopt this definition in 23 CFR 1313.3(i), so that the same periods apply to driver license suspensions and revocations in the section 410 program. For more information on the application of the section 408 definition, particularly with regard to the conditions under which restricted licenses or In-Vehicle Alcohol Testing Devices (IVAT's) may be used, see 53 FR 32375, 32377 (August 25, 1988).

Both the legislation and the proposed rule refer to "suspensions" and "revocations." Although these actions do differ, the two terms are defined in the same manner in the proposed regulation. If the driver's license of an offender is revoked, that individual must apply for a new driver's license to regain driving privileges. This step is not necessary if the driver's license of the offender is suspended, although some action may need to be taken, such as the payment of reinstatement fees. For the purpose of this criterion, the agency is concerned only that, under suspensions or revocations, offenders lose their driving privileges for the requisite periods of time. The section 410 statute does not, and the agency does not propose to, specify what actions offenders must take to regain driving privileges after these periods of time have passed, although NHTSA does not recommend that license reinstatement should occur automatically. With respect to driver's licenses, the term "suspension" as used in this notice should be read to pertain to both suspensions and revocations, wherever appropriate.

The time frames within which an administrative review must take place and the suspension, if any, must take effect are defined in paragraphs (C) and (F) of section 410(e)(1). These occurrences must take place within 15 days after the individual first received notice of the suspension and the right to have an administrative review, or within 30 days after the individual first received notice if the agency has determined that the 15-day requirement would impose a hardship upon the State. Individuals will generally receive notice, and lose possession of their driver's license at the time of arrest. Although individuals would lose possession of their driver's license at that time, they generally would not immediately lose their driving privileges since they may be issued a temporary license. The agency believes individuals would receive notice and lose possession of their license at a later time only when an individual's chemical test results are not immediately available, such as when the State uses a laboratory to determine the results of chemical tests using blood or urine samples. Even in these circumstances, chemical test results would be obtained and, therefore, individuals would receive notice and lose possession of their license, within a matter of days after arrest.

The agency believes that States which meet all the basic criteria, but meet the 30 rather than the 15-day requirement, should be considered qualified for a section 410 basic grant. However, we wish to recognize, and provide incentives for States that go further, and provide administrative reviews and suspend driver's licenses within 15 days after offenders receive their notice. For this reason, we propose to award 20 percent basic grants to qualifying States that meet the 30-day but not the 15-day requirement, and 30 percent grants to qualifying States that provide administrative reviews and suspend driver's licenses within the 15-day period. The information that must be provided by States qualifying for a 20 percent basic grant, to establish hardship under the 30-day expedited suspension requirement, is discussed further below.

In a final rule dated August 25, 1988 (53 FR 32375), NHTSA created more flexibility in the section 408 program by providing the States with alternative methods for demonstrating compliance with the statutory criteria for that program. The agency proposes to offer similar flexibility from the start in the section 410 program, to the maximum extent practicable, while still ensuring compliance with the statutory criteria.

Whether the State is applying for a 20 or 30 percent basic grant, the agency believes that the first four elements of the expedited driver's license suspension requirement (§ 1313.5(a)(1)(i)(A)–(D) of the proposed regulation) must, necessarily, be demonstrated by submission of the State's law, regulation or binding policy directive. Under our proposal, we would not require data from any State, in either the first or in subsequent years, to demonstrate compliance with these elements of the criterion. With regard to the remaining two elements (§ 1313.5(a)(1)(i) (E) and (F) of the proposed rule), which cover the length of the suspension and the time within which the administrative review must take place and the

suspension must take effect, the agency proposes to allow States to qualify for 20 or 30 percent grants, as either "Law" or "Data" States, as they are permitted to do in demonstrating compliance with the "prompt suspension" criterion for the section 408 program (see 23 CFR 1309.5(a) (2) & (3), as amended).

The agency would consider a State to be a "Law" State in either case, for purposes of this criterion, if the terms of the State's laws, regulations, or binding policy directives, on their face, meet each element of the expedited suspension requirement. States would be considered to be "Data" States if the terms of the State's laws, regulations, or binding policy directives, on their face, meet each element of the expedited suspension requirement, with the exception of the elements described in § 1313.5(a)(1)(i) (E) and (F) of the proposed regulation, regarding the length of the suspension and the time within which the administrative review must take place and the suspension must take effect.

To demonstrate compliance in the first year it receives a 30 percent basic grant, a "Law" State would be required to submit only the law, regulation or binding policy directive itself governing its 15-day expedited suspension system requirement; the State would not be required to submit any data in that year. To comply with this criterion in subsequent years, the State would be required to submit data on the actual license suspension terms, although the agency would accept data showing that the State meets an average of these terms, or a plan to achieve these averages. In addition, the State must submit data demonstrating that the average time from notice to any administrative review and suspension does not exceed 15 days.

As with the section 408 implementing regulation (23 CFR 1309.5(a)(2)(ii)), data showing the average license suspension terms must include only the period of time actually ordered by the State. For example, the data must not reflect the period of time during which an individual is eligible to reapply for a driver's license, but simply fails to do so. In addition, the data must include license suspension terms only to the extent that they are actually completed. The State would be permitted to submit data based on a representative sample. By representative sample, the agency means that data should be obtained from all communities in the State or from a sample of communities representative of the State as a whole.

To demonstrate compliance for a 30 percent basic grant in both the first and in subsequent years, a "Data" State would be required to submit its law, regulation, or binding policy directive governing its 15-day expedited suspension system. It must also submit data on the actual license suspension terms, although the agency would accept data showing that the State meets an average of these terms. A Data State would not have the option of submitting a plan showing how it intends to achieve these averages. In addition, the State must submit data demonstrating that the average time from notice to any administrative review and suspension does not exceed 15 days. Data showing the average license suspension terms must include only the period of time actually ordered by the State, and must include license suspension terms only to the extent they are actually completed. The State would be permitted to submit data based on a representative sample.

Consistent with the section 408 program, since the agency is providing increased flexibility by permitting States to show compliance through averages, we will be able to accept absolutely no deviations from the license suspension terms specified in the statute and the regulation from States that qualify based on data. For example, to demonstrate compliance with the 90-day license suspension term for first offenders (including both failures and refusers), a Data State that submits data which shows an 89-day average would not be eligible for funding.

States that would not qualify for a 30 percent basic grant, but wish to apply for a 20 percent basic grant, may also do so as Law or Data States.

To demonstrate compliance in the first year it receives a 20 percent basic grant, a "Law" State would be required to submit only the law, regulation or binding policy directive itself governing its 30-day expedited suspension system; the State would not be required to submit any data in that year. The State's law must provide that any administrative reviews are provided and driver's licenses are suspended within 30 days after the individual receives notice of his or her right to a review and of the suspension, and the State must explain the hardship that would be imposed by a 15-day administrative review and suspension requirement. To comply with this criterion in subsequent years, the State would be required to submit data on the actual license suspension terms, although the agency would accept data showing that the State meets an average of the license suspension terms, or a plan to achieve these averages. In addition, the State must submit data demonstrating that the average time from notice to any administrative review and suspension does not exceed 30 days, and explain the hardship that would be imposed by instituting 15-day administrative reviews and suspensions. If a State seeks to qualify for a first year grant based upon a demonstration of hardship, it would be required to demonstrate hardship and submit a plan showing how it intends to meet the 15-day requirement. The State plan must demonstrate that it is striving to remove the remaining impediments and achieve a license suspension system that satisfies the 15-day requirement. In subsequent years, a State would be required to submit evidence showing that it has achieved considerable progress toward implementing that plan.

The agency believes that it is the intent of Congress that a State satisfy the 15-day period and that only in very unusual situations, unique to a particular State, would a State be able to demonstrate a hardship—that despite its best efforts, it cannot achieve the 15-day period. We would not consider, in determining whether a hardship would be imposed, potential benefits that would not be realized due to the lack of section 410 funding. To demonstrate that a hardship would be imposed, the State must show that unreasonable administrative, financial, legal or other burdens would result if it were to institute a procedure by which administrative reviews would take place and suspensions would take effect within 15 days. In most instances, the agency believes that hardship claims require more than a showing that current State law or administrative requirements preclude implementation of the 15-day period. The agency proposes to consider hardship claims, for example, in the event that extraordinary increases in personnel or Automated Data Processing costs would be needed for the State to meet the 15-day requirement. The agency requests that commenters suggest other costs or burdens they believe represent the kinds of unreasonable burdens that the agency should consider to be a hardship.

As stated earlier with regard to demonstrating compliance for a 30 percent grant, data showing the average license suspension terms must include only the period of time actually ordered by the State, and must include license suspension terms only to the extent they are actually completed. The State would be permitted to submit data based on a representative sample. By representative sample, the agency means that data should be obtained from all communities in the State or from a sample of communities representative of the State as a whole.

This is again parallel to the section 408 regulation (23 CFR 1309.5(a)(2)(ii)).

To demonstrate compliance for a 20 percent basic grant in both the first or in subsequent years, a "Data" State would be required to submit its law, regulation, or binding policy directive governing its 30-day expedited suspension system. It must also submit data on the actual license suspension terms, although the agency would accept data showing that the State meets an average of the license suspension terms. A Data State would not have the option of submitting a plan showing how it intends to achieve these averages. In addition, the State must submit data demonstrating that the average time from notice to any administrative review and suspension does not exceed 30 days, and explain the hardship that would be imposed by instituting 15-day administrative reviews and suspensions. Data showing the average license suspension terms must include only the period of time actually ordered by the State, and must include license suspension terms only to the extent they are actually completed. The State would be permitted to submit data based on a representative sample.

As noted above with respect to the 30 percent grant, since the agency is providing increased flexibility by permitting States to show compliance through averages, we will be able to accept absolutely no deviations from the license suspension terms specified in the statute and the regulation from States that qualify based on data.

The speed within which driver license suspensions take effect will determine whether a State is eligible for a 20 or a 30 percent basic grant. States must, in either case, have a self-sustaining drunk driving prevention program, and demonstrate compliance in the manner described below.

2. *Self-sustaining drunk driving prevention program.* Section 410(e) specifies that eligible States must provide also:

> (2) for a self-sustaining drunk driving prevention program under which the fines or surcharges collected from individuals convicted of operating a motor vehicle while under the influence of alcohol are returned, or an equivalent amount of non-Federal funds are provided, to those communities which have comprehensive programs for the prevention of such operations of motor vehicles.

The agency believes the three most essential elements of this program are: (1) the State, through its communities, institutes a "comprehensive" drunk driving prevention program; (2) while the program may not be completely "self-sustaining," a significant portion of its costs is supported with non-Federal funds; and (3) all of the fines or surcharges generated by drunk driving prevention programs, or an equivalent amount, are used for the program's continued operation.

The agency recognizes that different States have different needs. As Senator Gore stated in the floor debate on this issue, "smaller States may not be able to develop programs of the size and scope of larger States." 134 Congressional Record S17309 (Oct. 21, 1988). The agency believes that a model comprehensive program should contain a broad range of drunk driving prevention activities and approaches. While we encourage the States to continually strive for increased comprehensiveness, for the purpose of this criterion, NHTSA proposes to define the term "comprehensive drunk driving prevention program" to include only those features and components which we consider absolutely essential. These components and features are reflected in the proposed definition of the term "comprehensive drunk driving prevention program" in § 1313.3(b).

We believe most of these components and features need no explanation. Regarding the second component, on DWI prosecution, adjudication and sanctioning, NHTSA estimates that approximately 1.5% to 2% of licensed drivers could be arrested annually in a high arrest area. Those States that have not experienced increased levels of DWI arrests may wish to use these figures for planning purposes.

To demonstrate that they have "comprehensive" programs, we propose to require that States describe their criteria and procedures for reviewing community drunk driving prevention programs. The criteria that States use to evaluate whether these programs are comprehensive must meet or exceed the agency's regulatory definition of the term cited above. In determining a State's eligibility for a basic grant, under this criterion, the agency does not propose to review individual community programs or require that States report the number of community programs that qualify. However, we would hope that, in the future, an increased number of communities will qualify for revenues and that, with these revenues, community programs will become more comprehensive.

Although the Act requires that eligible States must have "self-sustaining" programs, it is clear that Congress did not expect that States would be required to show that their costs were covered completely in order to qualify. Congress did expect that States must show, however, that all fines or surcharges collected from convicted drunk drivers, or an equivalent amount, be returned or provided to the State's community level drunk driving prevention programs, that these non-Federal revenues are made available to continue the operation of community drunk driving prevention programs, and that a significant portion of the costs of operating these programs are supported with non-Federal funds. To determine whether States are meeting these requirements, the agency is proposing to require that States describe their procedures for returning or providing revenues to communities that have comprehensive drunk driving prevention programs, submit data showing the aggregate amount of fines or surcharges actually collected and the aggregate amount of revenues actually returned or provided to these programs, and certify that these revenues are being used to continue the operation of comprehensive drunk driving prevention programs and that a significant portion of the costs of these programs are supported with non-Federal funds.

We recognize that it may take time before program improvements made in the States actually result in increased revenues. We, therefore, propose to leave the term "significant" undefined in our regulation, and permit the States to establish their own definitions. We are also concerned that, if we were to establish a numerical measure for determining significance, the objective of creating self-sustaining programs could serve to undermine the more important goals of increasing the breadth and quality of comprehensive community programs, and encouraging local initiative.

NHTSA recognizes that many activities conducted by the State, such as enforcement efforts by the State highway patrol, directly benefit, and for the purpose of this criterion should be considered part of, a community's comprehensive drunk driving prevention program. For this reason, we propose to accept, under the regulation, a self-sustaining program which returns or provides revenues either directly to communities which have comprehensive drunk driving prevention programs, or to activities conducted by the State for the benefit of those communities. Section 1313.5(a)(2)(iii) of the proposed regulation, which is based on 23 CFR 1250.4(c) of NHTSA's section 402 implementing regulation, describes the conditions under which non-Federal funds expended for activities conducted by the State for the benefit of communities may be considered to have been returned or provided to the community. We request comments on whether this alternative is appropriate.

and on whether any additional requirements should be established to assure that communities receive a sufficient amount of revenues.

As noted above, the Act defines the mechanism for meeting the goals of comprehensiveness and self-sufficiency. It provides that all of the fines or surcharges generated by drunk driving prevention programs, or an equivalent amount, are used for the program's continued operation. More specifically, "fines or surcharges collected from individuals convicted of operating a motor vehicle while under the influence of alcohol are returned, or an equivalent amount of non-Federal funds are provided, to those communities which have comprehensive programs for the prevention of such operations of motor vehicles."

Congress used, as its model, a program that was established in New York State. See, S. Rept. 100-441. Under New York's program, all fines, penalties and forfeitures collected by a county from violations of the State's law prohibiting persons from operating a motor vehicle while under the influence of alcohol shall be paid to the State Comptroller, and then returned to the county if its drunk driving program is approved. County programs are approved by the State Motor Vehicle Commissioner based on a number of factors, including the interrelationship of the program with existing drunk driving related programs in law enforcement, prosecution, adjudication, education and other areas, and the avoidance of duplication of existing rehabilitation or other programs funded or operated by either the State or a municipality. Congress did not require, however, that States use this particular model in order to qualify, and it is premature at this stage of the rulemaking process to determine whether New York has a qualifying program.

NHTSA wishes to provide the States with sufficient flexibility to develop their own models for self-sustaining programs, provided the goals described above and the statutory criterion are satisfied. To determine compliance with this portion of the criterion, NHTSA believes it must review and, therefore, proposes that States submit, a copy of the law, regulation or binding policy directive governing the State's self-sustaining drunk driving prevention program, which requires that fines or surcharges must be imposed, and a description of the State's procedures for returning or providing revenues to communities that have comprehensive drunk driving prevention programs.

Under the agency's proposed definition of the term "fines or surcharges collected" from individuals convicted of operating a motor vehicle while under the influence of alcohol, "fines" would include both fines and penalties collected. "Surcharges" would include additional assessments collected over and above the fines and penalties, but it would not include user-type charges, such as rehabilitation, treatment, and license reinstatement fees. In addition, only fines or surcharges imposed on *convicted* individuals are covered by this provision. Based on the statutory language in section 410(e)(2), the proposed regulation provides that the revenues would not include fines or surcharges collected from individuals who lose their license administratively, but are not *convicted* of operating a motor vehicle while under the influence of alcohol. NHTSA believes it may be appropriate for States to assess fines and surcharges when persons lose a driver's license administratively, but the section 410 statute does not permit the agency to take those moneys into account.

NHTSA proposes to permit States to demonstrate compliance with this portion of the criterion by showing that *either* fines *or* surcharges are returned to qualifying communities. However, we request comments on whether, to ensure that a significant portion of the costs of operating comprehensive drunk driving prevention programs is funded with non-Federal moneys, NHTSA should require that both or the greater of the two sources should be used for these purposes.

Rather than returning the actual fines or surcharges to communities, under this proposal, States would have the option of providing an equivalent amount from other non-Federal revenues through the State's ordinary appropriations process. Congress established this option when it became aware that certain States are constitutionally restricted as to their use of fine revenues (e.g., prohibited for any purpose other than education). Accordingly, States that are unable or choose not to return the actual fines or surcharges collected from individuals convicted, can provide non-Federal funds from othe sources (such as alcoholic beverage taxes or fees) to communities that have comprehensive drunk driving prevention programs through the State's ordinary appropriations process. The agency requests comments on whether the States intend to use other mechanisms for providing funds to communities, and whether the method for demonstrating compliance with this element of the statutory criteria, described herein, would need to be altered for these States.

With regard to States that choose to provide an equivalent amount of non-Federal funds to qualifying communities, NHTSA proposes to permit States to demonstrate compliance with this portion of the criterion by showing that an amount equivalent to *either* the State's fines *or* surcharges are provided to qualifying communities. However, as we did above, with regard to States that return the actual fines or surcharges to these communities, we request comments on whether, to ensure that a significant portion of the costs of operating comprehensive drunk driving prevention programs is supported with non-Federal funds, NHTSA should require that an amount equivalent to both or the greater of the two sources should be used for these purposes.

We note that, in New York, the revenues collected within a county are returned to that county once its drunk driving program is approved. The agency proposes that, like New York's system, States with self-sustaining programs must return or provide fines or surcharges collected within a community, or an equivalent amount, to that community once it qualifies with a comprehensive program. The agency does not propose to mandate that States must return or provide fines or surcharges collected within communities that do not qualify with such a program, or an equivalent amount. In addition, the agency has not proposed to define the term "community" in its regulation. While it may be effective to evaluate programs on a county basis in one State, another State may need to evaluate community programs using a different basis. In fact, a State may wish to define communities in a manner that is not uniform throughout the State, or to recognize communities which cross State lines. The agency does not believe grant qualification should be jeopardized on this basis. Accordingly, we believe it is best to leave that decision to each individual State.

Under the proposed regulation, States returning fines or surcharges collected to qualifying communities must submit data showing the aggregate amount of fines or surcharges actually collected and returned. States providing an equivalent amount would have to show the aggregate amount of fines or surcharges actually collected, the amount of other non-Federal funds actually provided to communities and the source of those other funds. In addition, as stated previously, to qualify for a grant, States must certify that these revenues are being used to continue the operation of comprehensive drunk driving programs and that a significant portion of the costs of operating these programs are supported with non-Federal funds.

As stated earlier, although Congress used New York's program as a model in enacting the self-sustaining program requirement of section 410, NHTSA wishes to provide the States with sufficient flexibility to develop their own models for self-sustaining programs, provided the goals described above and the statutory criterion is satisfied. For example, New York has a centralized system, under which fines, penalties and forfeitures are collected and paid to the State Comptroller, and then returned to counties with approved programs. The agency does not wish to require that decentralized and mixed States, which provide that communities retain the revenues collected, change their entire systems in order to qualify for this program if they otherwise meet the criterion's requirements and Congressional goals. However, under such a system, where a community may retain revenues whether or not it has a comprehensive drunk driving program and may not be required to account for its expenditures, additional requirements may need to be established to ensure qualification. Further, NHTSA is concerned that there may be less of an incentive in these States for communities to develop comprehensive drunk driving prevention programs. We request comments on whether State systems that are decentralized or mixed should be accepted as self-sustaining under this criterion, and suggestions regarding the additional information, if any, that States with these systems must submit to demonstrate compliance.

Supplemental Grant Criteria

In section 410(f), the Act provides for four separate supplemental grant programs. States that are eligible for basic grants and also meet the supplemental criteria, may receive one or more of these grants. These supplemental grant programs include: (1) Mandatory blood alcohol concentration testing programs for drivers involved in fatal and serious crashes who are believed to have committed an alcohol-related traffic offense; (2) an effective system for preventing operators of motor vehicles under age 21 fromn obtaining alcoholic beverage; (3) a program which makes it unlawful to possess an open container or to consume an alcoholic beverage in a motor vehicle and (4) a suspension of registration and return of license plate program for repeat offenders and individuals convicted of driving while their driver's license is under suspension or revocation for an alcohol-related offense.

Under the statute, a State that is eligible for the open container grant may receive up to 25 percent of its FY 1989 section 402 highway safety grant apportionment. A State that is eligible for the other supplemental grant programs may receive up to 10 percent of its FY 1989 section 402 apportionment for each grant.

The elements of these supplemental grant criteria, and the manner in which State must demonstrate compliance are explained fully below:

1. *Mandatory Blood Alcohol Concentration Testing Programs.* Section 410(f)(1) of the Act specifies that eligible must provide for:

> mandatory blood alcohol concentration testing whenever a law enforcement officer has probable cause under State law to believe that a driver of a motor vehicle involved in [a crash] resulting in the loss of human life or * * * serious bodily injury, has committed an alcohol-related traffic offense.

In other words, if a law enforcement officer has probable cause to believe a driver of a motor vehicle involved in the fatal or serious injury crash has committed an alcohol-related traffic offense, the State must provide for mandatory testing of that driver. The agency believes that this program was meant to cover both fatally injured and surviving drivers.

The Act requires that the Secretary determine what is meant by "serious bodily injury." The agency proposes to adopt, as its definition for this term, "an injury, other than a fatal injury, which prevents injured persons from walking, driving or normally continuing the activities they were capable of performing before the injury occurred." This definition is essentially the same as the American National Standards Institute's definition of the term, "incapacitating injury," ANSI D16.1–1983, 2.3.3, which has been adopted by NHTSA's Fatal Accident Reporting System and many States. We are aware, from a preliminary review of State laws, that some States provide for BAC testing even when the crash does not result in serious bodily injury or death. These States may provide for testing if any injury results. This broader coverage would, of course, be acceptable under the proposed definition. Others, however, provide for BAC testing of drivers only when crashes result in fatalities or injuries likely to case a fatality. These States would have to expand the coverage of their laws to qualify under the agency's proposed definition.

The agency is also aware that the States that provide for post-crash BAC testing generally *permit*, but do not *require*, that tests be administered. If a State *requires* that testing be conducted, the agency proposes to permit the State (which would be considered to be a "Law" State under this particular grant) to demonstrate compliance in the first year it receives the grant by submitting only a copy of its law, regulation or binding policy directive governing the State's mandatory BAC testing program. The State would not be required to submit data to demonstrate compliance in the first fiscal year. Data would need to be submitted in subsequent years, however, showing the number of drivers involved in fatal and serious bodily injury crashes and that, when there was probable cause to believe that the driver had committed an alcohol-related traffic offense, substantially all of these drivers were tested for alcohol content and the results were reported to the State. The State could provide the necessary data based on a representative sample.

A State that does not require testing (a "Data" State under this particular grant) would be required to demonstrate compliance in the first and in subsequent years by submitting a copy of its law, regulation or binding policy directive governing the State's BAC testing program, plus data showing the number of drivers involved in fatal and serious bodily injury crashes and that, when there was probable cause to believe that the driver had committed an alcohol-related traffic offense, substantially all of these drivers were tested for alcohol concentration and the results were reported to the State. The State could provide the necessary data based on a representative sample. While a data State's law would not need to make post-crash BAC testing mandatory, it would need to give law enforcement officers authority to conduct this testing and establish all other elements of this criterion.

The agency proposes to award the full 10 percent to States that qualify under the mandatory blood alcohol concentration testing program.

2. *Program for Prevention of Operators under 21 from Obtaining Alcoholic Beverages.* Section 410(f)(2) of the Act specifies that eligible States must provide for:

> an effective system for preventing operators of motor vehicles under age 21 from obtaining alcoholic beverages * * *

The terms "alcoholic beverage" and "motor vehicle," which are used to describe the qualifications for receiving this grant, are defined by statute. The

statutory definitions are reflected in § 1313.3 of the proposed regulation.

Congress provided, in the statute, that a State's effective system "may include the issuance of drivers' licenses to individuals under age 21 that are easily distinguishable in appearance from drivers' licenses issued to individuals 21 years of age and older." Easily distinguishable licenses might, for example, use a different colored background, be stampted with the word "MINOR" or include a profile photograph of under-21 drivers, as compared with a full-face photograph of individuals 21 years of age and older.

The agency believes the use of easily distinguishable licenses for underaged drivers is a necessary element for an effective program and, therefore, proposes to require that States use such licenses to qualify for this supplemental grant. However, we do not believe that an easily distinguishable license alone makes a State's program effective. An effective system must be comprehensive and include a number of elements which, together, prevent operators under 21 from obtaining alcoholic beverages.

Under our proposal, in order to qualify for this supplemental grant, a State must issue easily distinguishable licenses to underaged drivers, and make it unlawful for a person who is less than 21 years of age to purchase or publicly possess any alcoholic beverage or for a person to provide (by sale or otherwise) any alcoholic beverage to a person who is less than 21 years of age. The State must also provide for meaningful penalties for both the underaged person and the provider of the alcoholic beverage, and maintain an effective and highly visible enforcement program. In addition, the State must have or put in place a Statewide training program for servers, vendors and its law enforcement community, and a public information program for the general population addressing specifically the problem of underaged individuals obtaining alcoholic beverages.

In requiring that States prohibit public possession and both the purchase and the provision (by sale or otherwise) of alcoholic beverages to minors, we recognize that the agency is proposing to go beyond what was mandated under the National Minimum Drinking Age Act (NMDA), 23 U.S.C. 158. The NMDA covers only the purchase and public possession of alcoholic beverages by minors and, under the implementing regulation (23 CFR Part 1208, see 51 FR 10380, March 26, 1986), the Department has found that laws which prohibit public possession and either the sale or purchase of alcoholic beverages satisfy this requirement. (We would continue to recognize, as we do under the NMDA, a limited number of exceptions, such as for religious purposes, and valid defenses for providers, such as lack of knowledge and good faith.) The agency is also exceeding the requirements of the National Minimum Drinking Age Act by proposing to require meaningful penalties, as none were mandated under that Act. Based on the knowledge that has been gained in attempts to address illegal substance abuse, we believe effective programs must be directed at providers as well as users of these substances. In addition, we doubt that any State can truly demonstrate that it has an effective program if efforts are not directed at both supply and demand, or if the penalties imposed for violating the law are not meaningful. Moreover, we believe these additional requirements reflect the purpose of the section 410 grant program, which was established as an incentive for States that not only prohibit minors from obtaining alcoholic beverages, but have "an effective system" for doing so.

The agency is considering and requests comments on whether to specify, in the regulation, the particular penalties that must be imposed. The current research suggests that license-based penalties are effective as both a specific and a general deterrent of drinking and driving, and the State of North Carolina has provided the agency with evidence of significant reductions in the involvement of underaged drivers in alcohol-related crashes following implementing of laws that require loss of driving privileges for illegal purchase of alcohol and other offenses. Other penalties, however, may be equally effective.

With regard to the underaged individual, our preliminary review of State laws reveals that a number of States provide that these individuals may temporarily lose driving privileges for purchasing or publicly possessing alcoholic beverages. Under these laws, the loss of driving privileges occurs without regard to the individual's alcohol concentration or the use of a motor vehicle in the purchase or public possession of alcohol, and generally occurs after conviction rather than administratively. Those States which provide for a minimum license suspension term require that the suspension last for a period of not less than either thirty or sixty days. We request comments on whether either of these minimum driver license suspension terms or other penalties would be meaningful to individuals who are less than 21 years of age and would contribute to an effective system for preventing underage drinking.

With regard to the provider of alcoholic beverages, our preliminary review of State laws reveals a variety of penalties ranging from liquor license-based sanctions, fines or penalties which vary according to the type of provider (private individual, small or large establishment, employed server) and may escalate with subsequent offenses, and imprisonment where providing alcoholic beverages to minors constitutes a criminal offense. The agency requests comments on whether these or other penalties (such as a point system for licensed establishments under which points would be considered by the licensing authority at the time of license renewal, or dram shop liability) would be meaningful to providers of alcoholic beverages and would contribute to an effective system for preventing underage drinking.

To demonstrate compliance in the first and in subsequent years, the State would be required to submit a law, regulation of binding policy directive which makes it unlawful for a person who is less than 21 years of age to purchase or publicly possess any alcoholic beverage or for a person to provide (by sale or otherwise) any alcoholic beverage to a person who is less than 21 years of age, and which provides for meaningful penalties for both the underaged individual and the provider of the alcoholic beverage. The State would also be required to submit sample driver's licenses issued to persons both under and over 21 years of age. In addition, the State would have to submit data demonstrating that it maintains an effective and highly visible enforcement program, and has or plans to put in place a Statewide training program for servers, vendors and its law enforcement community, and a public information program for the general population addressing specificially the problem of underaged individuals obtaining alcoholic beverages. The State must show progress in addressing this problem in subsequent years. The agency does not propose to specify the particular items of information that States must submit in support of these aspects of its system. However, some examples of information the agency might consider include: the number and the average period of time that driver or liquor licenses are actually suspended in the State for the purchase, sale or public possession of alcoholic beverages by persons under the age of 21; The amounts of fines or penalties assessed and collected and other penalties imposed and served for this type of violation; the amount of time and resources dedicated to the enforcement of this program; the number of alcohol-related fatal and non-fatal crashes which involved an underaged driver; the number of underaged drivers charged and found to be operating a motor vehicle while under the influence of alcohol; examples of training and promotional materials or electronic and print advertising developed and used and an estimate of the exposure obtained in the State (through dollar value and/or the number of people reached from each target audience).

The agency requests comments, particularly from the States, regarding whether we should provide further guidance on, or specifically identify in the regulation, the particular items of information that States must submit to demonstrate compliance with this requirement.

The agency proposes to award the full 10 percent to States that have a qualifying program for prevention of operators under 21 from obtaining alcoholic beverages.

3. *Program Making Unlawful Open Containers and Consumption of Alcohol in Motor Vehicles.* Section 410(f)(3) of the Act specifies that eligible States must:

> make unlawful the possession of any open alcoholic beverage container, or the consumption of any alcoholic beverage, in the passenger area of any motor vehicle located on a public highway or the right-of-way of a public highway, except—
>
> (A) as allowed in the passenger area, by persons (other than the driver), of any motor vehicle designed to transport more than 10 passengers (including the driver) while being used to provide charter transportation of passengers; or
>
> (B) as otherwise specifically allowed by such State, with the approval of the Secretary, but in no event may the driver of such motor vehicle be allowed to possess or consumer an alcoholic beverage in the passenger area.

The terms "alcoholic beverage," "motor vehicle" and "open alcoholic beverage container," which are used to describe the criteria for this grant, are defined by statute. The statutory definitions are reflected in § 1313.3 of the proposed regulation.

The Act provides that a State which meets the criteria for this grant may receive up to 25 percent of its FY 1989 section 402 apportionment. As stated earlier in this notice, the agency proposes to award a grant of 10 percent of this apportionment, rather than the full 25 percent, to States under certain circumstances. States would be able to qualify for the full 25 percent, however, by submitting additional information not required to qualify for the 10 percent grant.

To demonstrate compliance for the 10 percent grant, in the first and in subsequent years, the State would be required to submit only a law, regulation or binding policy directive which provides for each element of the unlawful open container and consumption of alcohol requirement. States must prohibit both the possession of an open container and the consumption of alcoholic beverages in a motor vehicle to qualify. The State would not be required to submit any data, but would have to identify any exceptions to its open container and consumption law, and provide sufficient justification for the agency to approve any exception not specifically permitted by the Federal statute. The statute permits an exception for persons (other than the driver) in the passenger area of a motor vehicle designed to transport more than 10 persons (bus) while being used to provide charter transportation of passengers.

To demonstrate compliance for the 25 percent grant, in the first and in subsequent years, the State would be required to submit the information identified above. In addition, the State would have to show that its law provides for meaningful penalties, and submit data demonstrating that the State maintains an effective and highly visible enforcement program.

The agency is considering and requests comments on whether to specify, in the regulation, the particular penalties that must be imposed. As stated earlier, the current research suggests that license-based penalties are effective as both a specific and a general deterrent of drinking and driving. Other penalties, however, may be equally effective.

Our preliminary review of State open container and consumption laws reveals a variety of penalties, which include fines, imprisonment and, in some cases, the suspension of a driver's license. The penalties, in most States, escalate for repeat offenders, and those States which provide for a driver's license suspension, generally do not impose a minimum suspension term. The agency requests comments on whether these or other penalties (such as a mandatory driver's license suspension for a minimum of thirty days) would be meaningful to individuals who unlawfully possess open containers or consume alcoholic beverages in motor vehicles.

The State would have to show progress in subsequent years. The agency does not propose to specify the particular items of information that States must submit in support of their enforcement and public information efforts, or to demonstrate progress. However, some examples of information the agency might consider include the number and the average period of time for which licenses are actually suspended under the State's open container and consumption laws, the amount of time and resources dedicated to the enforcement of this program, examples of promotional materials or electronic and print advertising developed and used and an estimate of the exposure obtained in the State (through dollar value and/or the number of people reached from the target audience).

The agency requests comments, particularly from the States, regarding whether we should provide further guidance on, or specifically identify in the regulation, the particular items of information that States must submit to demonstrate compliance with this requirement.

4. *Suspension of Registration and Return of License Plate Program.* Section 410(f)(4) specifies that eligible States must provide for:

> the suspension of the registration of, and the return to such State of the license plates for, any motor vehicle owned by an individual who—
>
> (A) has been convicted on more than one occasion of an alcohol-related traffic offense within any 5-year period following the date of the enactment of this section; or
>
> (B) has been convicted of driving while his or her driver's license is suspended or revoked by reason of a conviction for * * * an [alcohol-related traffic] offense.
>
> A State may provide limited exceptions to such suspension of registration or return of license plates, on an individual basis, to avoid undue hardship to any individual, including any family member of the convicted individual, and any co-owner of the motor vehicle, who is completely dependent on the motor vehicle for the necessities of life. Such exceptions may not result in unrestricted reinstatement of the registration or unrestricted return of the license plates of the motor vehicle.

According to Senate Report 100-594 on S. 2549, this supplemental grant was established by Congress in recognition of its concern that many alcohol-related traffic offenders continue to drive even after their driver's licenses have been suspended. The Committee on Commerce, Science, and Transportation estimates in its report, and the agency agrees, that between 50 and 60 percent of those individuals who have had their licenses revoked or suspended, nonetheless continue to drive. In addition, NHTSA believes the problem may well increase in the future as the use of driver license sanctions continues to grow.

The statute provides for the suspension of the offender's registration and the return of the offender's license plates to the State. The agency is aware that some States provide for confiscation procedures, while others provide instead for a license plate impoundment process. Like the revocation of a driver's license, if the license plates of a motor vehicle are confiscated, the individual must apply for new license plates before that vehicle can be returned to service. As with a driver's license suspension, this step is not necessary if the license plates of the vehicle are impounded, although some action may need to be taken, such as the payment of reinstatement fees. We believe there is less of an administrative burden to States using a confiscation procedure. Under § 1313.3(j) of the proposed regulation, the agency would leave the choice to the States and accept either method of suspending registrations and returning license plates to the State.

The Act does not specify the period of time for which offenders must lose their motor vehicle registration and license plates. The agency proposes to require, in § 1313.3(j) of the regulation, that States reinstate offenders' registration and release their license plates only after they have completed their *driver's license* suspension or revocation term(s). For example, if the offender is found to be driving with a suspended license and has, at that time, served five months of a one-year suspension term, the individual's registration would have to be suspended and his or her license plates returned to the State for the remaining seven months of the one-year term. In addition, if the individual's driver's license suspension term is extended for an additional year for this offense under State law, the registration and license plates must not be released to the offender until after this additional term has also been completed. States would, of course, be at liberty to impose more stringent penalties. The agency requests comments on this aspect of its proposal.

The statutory criterion for this supplemental grant requires that States impose the penalties identified in the Act on individuals who have been *convicted* on more than one occasion of alcohol-related traffic offenses within the time period specified or *convicted* of driving while their driver's license is suspended or revoked due to a *conviction* of an alcohol-related traffic offense. To determine whether a State complies, therefore, the agency proposes to consider only whether the registration must be suspended and the license plates returned to the State for these particular offenses. We would not consider, for example, penalties for the following offenses: administrative loss of license on more than one occasion for alcohol-related traffic offenses when there was no conviction, or conviction of driving while the offender's license is under suspension or revocation for a non-alcohol-related traffic offense. States would of course be free to impose these sanctions for offenses that are not covered by section 410.

To qualify, the registration of "any motor vehicle owned" by the offender must be suspended and the license plates of these vehicles returned to the State. The agency believes an offender need not be driving his or her motor vehicle at the time of the offense for this penalty to apply to motor vehicles that he or she owns. In addition, we believe the State must impose these penalties on *all* vehicles owned by the offender to meet the statutory criterion. By "own," we mean that the offender's name appears on the motor vehicle's registration or title.

Under section 410, a State may provide limited exceptions, on an individual basis, to avoid undue hardship to any individual, such as a family member of the convicted individual or any co-owner of the motor vehicle, who is completely dependent on the motor vehicle for the necessities of life. In its report on S. 2549, the Committee on Commerce, Science and Transportation stated, "it is the intent of the Committee that the Secretary, in issuing implementing regulations, should take a flexible approach to this criterion. The States should be permitted to strike a balance between the need to prevent the drunk driver from drivng and the needs of the family for transportation."

NHTSA had previously atempted to define "hardship" circumstances in the section 408 program. When the agency first issued its implementing regulation, it specified certain conditions under which hardship, restricted or conditional driver's licenses could be issued to offenders when a "hard" suspension was not required. In the August 25, 1988 final rule, amending this regulation the agency abandoned this approach as unnecessarily restrictive to the States. To ensure that the availability of these restricted licenses did not undermine the driver's license suspension requirements, however, we retained the condition that such licenses be issued in accordance with Statewide published guidelines developed by the State, and in exceptional circumstances specific to the offender. The agency proposes to include a similar generic restriction on the circumstances in which a State may release license plates to individuals to avoid undue hardship. In addition, the exceptions may not result in unrestricted reinstatement of the registration or unrestricted return of the license plates of the motor vehicle.

To avoid any confusion, we also propose to state specifically, in the regulation, that while exceptions may be made to avoid undue hardship for individuals which include a family member or a co-owner of a motor vehicle, an exception may not be made to avoid undue hardship for the offender.

To demonstrate compliance in the first year a State receives this grant, the State must submit a copy of its law, regulation or binding policy directive governing its suspension of registration and return of license plate program. The State need not submit data to obtain funding under this grant in the first fiscal year. The State's law, regulation or binding policy directive (which may include Statewide published guidelines), however, must establish the conditions under which license plates may be released by the State and provide that releases are made in exceptional circumstances specific to the offender's motor vehicle. In addition, the agency must be able to determine, based on the information provided, that these exceptions do not result in unrestricted reinstatement of registrations or unrestricted releases of license plates. As the Senate Committee on Commerce, Science and Transportation pointed out, in Senate Report 100-594, Minnesota's law provides for special and distinctive license places to be issued when a hardship exception is allowed with regard to an offender's motor vehicle. The Committee stated, and the agency agrees, that this may be one, although not the only, method of avoiding undue hardship, while attempting to prevent abuses by offenders. NHTSA reserves judgment on whether other aspects of the Minnesota law would be sufficient to qualify for this supplemental grant program.

In subsequent years, a State would be required to submit, in addition to the information described above, data showing the number of registrations suspended and license plates returned, that the average length of suspension terms meets the regulatory definition, and the number, reasons for and conditions under which hardship exemptions were granted. The State would be permitted to provide the necessary data based on a representative sample.

The agency proposes to award the full 10 percent to States that have a qualifying suspension of registration and return of license plate program.

Comments

Interested persons are invited to comment on this proposal. All comments must be limited to 15 pages in length. Necessary attachments may be appended to those submissions without regard to the 15 page limit. (49 CFR 553.21.) This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

Written comments to the public docket must be received by July 26, 1989. The agency has not provided a longer comment period in order to meet the statutory deadline for issuing its final rule. To expedite the submission of comments, simultaneous with the issuance of this notice NHTSA will mail copies to all Governors and Governors' Representatives for Highway Safety.

All comments received before the close of business on the comment closing date, will be considered and will be available for examination in the docket at the above address before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date. NHTSA will continue to file relevant material in the docket as it becomes available after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Copies of all comments will be placed in Docket 89-02; Notice 1 of the NHTSA Docket Section in Room 5109, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Federalism Assessment

This rulemaking action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it would have no federalism implication that warrants the preparation of a federalism asessment. The grant programs established by section 410 are entirely optional for the States. While many of the eligibility requirements are highly restrictive, they are mandated by the section 410 statute.

Economic and Other Effects

NHTSA has analyzed the effect of this action and has determined that it is not "major" within the meaning of Executive Order 12291, but that it is "significant" within the meaning of Department of Transportation regulatory policies and procedures, because it would have a substantial impact on State and local governments. A preliminary evaluation of the impacts of this proposal has been prepared and placed in Docket 89-02; Notice 1. Any interested person may obtain a copy of this preliminary evaluation by writing to NHTSA's Docket Section, room 5109, 400 Seventh Street, SW., Washington, DC 20590, or by calling the Docket Section at (202) 366-4949.

In compliance with the Regulatory Flexibility Act, the agency has evaluated the effects of this proposed rule on small entities. Based on the evaluation, I certify that this rule would not have a significant economic impact on a substantial number of small entities. States will be recipients of any funds awarded under the regulation and, accordingly, the preparation of an Initial Regulatory Flexibility Analysis is unnecessary.

The requirements in this proposal that States retail and report to the Federal government information which demonstrates compliance with drunk driving prevention incentive grant criteria, are considered to be information collection requirements as that term is defined by the Office of Management and Budget (OMB) in 5 CFR Part 1320. Accordingly, these proposed requirements have been submitted to OMB for approval, pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). Comments on the proposed information collection requirements should be submitted to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for NHTSA. It is requested that comments sent to the OMB also be sent to the NHTSA rulemaking docket for this proposed action.

The agency has also analyzed this proposed action for the purpose of the National Environmental Policy Act. The agency has determined that this action would not have any effect on the human environment.

List of Subjects in 23 CFR Part 1313

Alcohol, Drugs, Grant programs, Transportation, Highway safety.

In accordance with the foregoing, NHTSA proposes the addition of Part 1313 of Title 23 of the Code of Federal Regulations as follows:

PART 1313—INCENTIVE GRANT CRITERIA FOR DRUNK DRIVING PREVENTION PROGRAMS

Sec.

1313.1 Scope.
1313.2 Purpose.
1313.3 Definitions.
1313.4 General requirements.
1313.5 Requirements for a basic grant.
1313.6 Requirements for supplemental grants.
1313.7 Award procedures.

Authority: 23 U.S.C. 410.

§ 1313.1 Scope.

This part establishes criteria, in accordance with 23 U.S.C. 410, for awarding incentive grants to States that adopt and implement comprehensive drunk driving prevention programs which are self-sustaining and include measures that will improve the effectiveness of the enforcement of State drunk driving laws.

§ 1313.2 Purpose.

The purpose of this part is to encourage States to adopt and implement comprehensive drunk driving prevention programs which include measures that will discourage individuals from operating motor vehicles while under the influence of alcohol. The criteria established are intended to ensure that the State drunk driving prevention programs for which incentive grants are awarded are self-sustaining, and meet or exceed minimum levels designed to improve the effectiveness of the enforcement of State drunk driving laws.

§ 1313.3 Definitions

(a) "Alcoholic beverage" has the meaning given such term in section 1208.3 of this title, which implements section 158(c) of the National Minimum Drinking Age Act, 23 U.S.C. 158.

(b) A "comprehensive drunk driving prevention program" means a program that reflects the complexity and totality of the State's alcohol traffic safety problems, incorporates multiple approaches to these problems over a sustained period of time and ensures that public and private entities work in concert to address these problems. The program must include, at a minimum, the following components:

(1) Regularly conducted, peak-hour DWI enforcement efforts consisting of measures, such as roadside sobriety checkpoints or special DWI patrols;

(2) DWI prosecution, adjudication and sanctioning resources adequate to handle increased levels of DWI arrests;

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(3) Other programs directed at forms of prevention other than enforcement and adjudication activities, such as school, worksite or community education; designated driver programs; transportation alternatives; responsible alcohol service programs; server training; or treatment programs; and

(4) A public information program designed to make the public aware of the problem of drunk driving and of the above efforts in place to address it.

(c) "Fines or surcharges collected" means all fines and penalties or additional assessments collected, but it does not include user-type fees.

(d) "Motor vehicle" has the meaning given such term in § 659.5(c) of this title, which implements 23 U.S.C. 154, the National Maximum Speed Limit Act.

(e) "Open alcoholic beverage container" means any bottle, can, or other receptacle which: (1) Contains any amount of an alcoholic beverage, (2) Is open or has a broken seal or (3) The contents of which are partially removed.

(f) "Operating a motor vehicle while under the influence of alcohol" or "under the influence of alcohol while operating the motor vehicle" means operating a vehicle while the alcohol concentration in the blood or breath is 0.10 or more grams of alcohol per 100 milliliters of blood or 0.10 or more grams of alcohol per 210 liters of breath, as determined by chemical or other tests.

(g) "Repeat offender" means any person who a law enforcement officer has probable cause under State law to believe has committed an alcohol-related traffic offense, and to whom is administered one or more chemical tests to determine whether the individual was under the influence of alcohol while operating the motor vehicle and who is determined, as a result of such test, to be under the influence of alcohol, or who refuses to submit to such a test as proposed by the officer, more than once in any 5-year period beginning after November 18, 1988.

(h) "Serious bodily injury" means an injury, other than a fatal injury, which prevents injured persons from walking, driving or normally continuing the activities they were capable of performing before the injury occurred.

(i) With regard to an individual's driver's license, "suspension" or "revocation" means:

(1) For first offenses (other than refusals), the temporary debarring of all driving privileges for a term of not less than 90 days, or not less than 30 days followed immediately by a term of not less than 60 days of a restricted, provisional or conditional license. A restricted, provisional or conditional license may be issued only in accordance with a State law, regulation or binding policy directive establishing the conditions under which a restricted, provisional or conditional license may be issued or with Statewide published guidelines and in exceptional circumstances specific to the offender.

(2) For refusal to take a chemical test for first offenses, the temporary debarring of all driving privileges for a term of not less than 90 days.

(3) For second and subsequent offenses, including the refusal to take a chemical test, the temporary debarring of all driving privileges for a term of not less than one year.

(j) With regard to an individual's registration and license plates, "suspension" and "return" means the temporary debarring of the privilege to operate or maintain a particular registered motor vehicle on the public highway and the confiscation or impoundment of the motor vehicle's license plates for not less than the term(s) for which the individual's driver's license will be under suspension or revocation.

§ 1313.4 General requirements.

(a) Certification requirements. To qualify for a grant under 23 U.S.C. 410, a State must, for each year it seeks to qualify:

(1) Submit an application to NHTSA, 400 Seventh Street, SW., Washington, DC 20590 demonstrating that it meets the requirements of § 1313.5 and, if applicable, § 1313.6

(2) Submit a certification to NHTSA, 400 Seventh Street, SW., Washington, DC 20590 that:

(i) It has a drunk driving prevention program that meets those requirements,

(ii) It will use the funds awarded under 23 U.S.C. 410 only for the implementation and enforcement of drunk driving prevention programs,

(iii) It will administer the funds in accordance with 49 CFR Part 18 and OMB Circulars A–102 and A–87, and

(iv) It will maintain its aggregate expenditures from all other sources for its drunk driving prevention programs at or above the average level of such expenditures in fiscal years 1987 and 1988 (either State or Federal fiscal year 1987 and 1988 can be used); and

(3) After being informed by NHTSA that it is eligible for a grant, submit, within 120 days, to the agency a drunk driving prevention plan for up to three years, as applicable, that describes the programs the State is and will be implementing in order to be eligible for the grant and that provides the necessary information, identified in § 1313.5 and § 1313.6, to demonstrate that the program comply with the applicable criteria. The plan, must also describe how the specific supplemental criteria adopted by a State are related to the State's overall drunk driving prevention program.

(b) Limitation on grants. A State may receive a grant for up to three fiscal years subject to the following limitations:

(1) The amount received as a basic grant, under § 1313.5, shall not exceed 30 percent of the State's 23 U.S.C. 402 apportionment for fiscal year 1989.

(2) The amount received as a supplemental grant for a mandatory blood alcohol concentration testing program, under § 1313.6(a), shall not exceed 10 percent of the State's 23 U.S.C. 402 apportionment for fiscal year 1989.

(3) The amount received as a supplemental grant for a program for prevention of operators under 21 from obtaining alcoholic beverages, under § 1313.6(b), shall not exceed 10 percent of the State's 23 U.S.C. 402 apportionment for fiscal year 1989.

(4) The amount received as as supplemental grant for a program making unlawful open containers and consumption of alcohol in motor vehicles, under § 1313.6(c), shall not exceed 25 percent of the State's 23 U.S.C. 402 apportionment for fiscal year 1989.

(5) The amount received as a supplemental grant for a suspension of registration and return of license plate program, under § 1313.6(d), shall not exceed 10 percent of the State's 23 U.S.C. 402 apportionment for fiscal year 1989.

(6) In the first fiscal year a State receives a basic or supplemental grant, it shall be reimbursed for up to 75 percent of the cost of its drunk driving prevention adopted pursuant to 23 U.S.C. 401;

(7) In the second fiscal year a State receives a basic or supplemental grant, it shall be reimbursed for up to 50 percent of the cost of its drunk driving prevention program adopted pursuant to 23 U.S.C. 410; and

(8) In the third fiscal year a State receives a basic or supplemental grant, it shall be reimbursed for up to 25 percent of the cost of its drunk driving prevention program adopted pursuant to 23 U.S.C. 410;

§ 1313.5 Requirements for a basic grant.

(a) To qualify for a basic incentive grant of 30 percent of its 23 U.S.C 402 apportionment for fiscal year 1989, a State must have in place and implement or adopt and implement the following requirements:

(1)(i) An expedited driver's license suspension or revocation system for individuals who operate motor vehicles while under the influence of alcohol which requires that:

(A) When a law enforcement officer has probable cause under State law to believe an individual has committed an alcohol-related traffic offense and such individual is determined, on the basis of a chemical test, to have been under the influence of alcohol while operating the motor vehicle or refuses to submit to such a test as proposed by the officer, the officer serve such individual with a written notice of suspension or revocation of the drivers license of such individual and take possession of such driver's license;

(B) The notice of suspension or revocation referred to in paragraph (a)(1)(i)(A) of this section provide information on the adminstrative procedures under which the State may suspend or revoke in accordance with the objectives of this section a driver's license of an indvidual for operating a motor vehicle while under the influence of alcohol or refusing to submit to a chemical test and specify any rights of the individual under such procedures;

(C) The State provide, in the administrative procedures referred to in paragraph (a)(1)(i)(B) of this section, for due process of law, including the right to an administrative review of a driver's license suspension or revocation;

(D) After serving notice and taking possesion of a driver's license in accordance with paragraph (a)(1)(i)(A) of this section, the law enforcement officer immediately report to the State entity responsible for administering driver's licenses all information relevant to the action taken in accordance with this paragraph;

(E) In the case of an individual who, after November 18, 1988, is determined on the basis of a chemical test to have been operating a motor vehicle under the influence of alcohol or is determined to have refused to submit to such a test as proposed by the law enforcement officer, the State entity responsible for administering driver's licenses, upon receipt of the report of the law enforcement officer, provides for:

(*1*) The suspension of the driver's license of such individual for a period of not less than 90 days if the individual is a first offender; and

(*2*) The suspension or revocation of the driver's license of such individual for a period of not less than 1 year if the individual is a repeat offender; and

(F) The administrative review referred to under paragraph (a)(1)(i)(C) of this section shall take place and the suspension and revocation referred to under paragraph (a)(1)(i)(E) of this section take effect not later than 15 days after the individual first received notice of the suspension or revocation.

(ii)(A) To demonstrate compliance in the first fiscal year the State receives a basic grant, a Law State shall submit a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation, which provides for each element of the 15-day expedited suspension system requirement.

(B) To demonstrate compliance in subsequent fiscal years the State receives a basic grant, a Law State shall submit, in addition to the information identified in paragraph (a)(1)(ii)(A) of this section, data showing the number of licenses suspended, that the average length of the suspension terms for first offenders, first refusers, repeat offenders and repeat refusers meets the terms defined in § 1313.3(i) and that the average number of days it took to provide the administrative reviews and suspend the licenses meets the promptness requirement in paragraph (a)(1)(i)(F) of this section. The State can provide the necessary data based on a representative sample. Data on the average length of the suspension term must not include license suspension periods which exceed the terms actually prescribed by the State, and must reflect terms only to the extent that they are actually completed. If the State's data do not meet the average license suspension terms defined in § 1313.3(i), the State can demonstrate compliance with this element by submitting a plan showing how it intends to achieve these averages.

(C) For the purpose of this paragraph, "Law State" means a State that has a law, regulation or binding policy directive implementing or interpreting an existing law or regulation which provides for each element of the 15-day expedited suspension system criterion.

(iii)(A) To demonstrate compliance in the first and in subsequent years the State receives a basic grant, a Data State shall submit a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation, which provides for each element of the 15-day expedited suspension system requirement and data showing the number of licenses suspended, that the average length of the suspension terms for first offenders, first refusers, repeat offenders and repeat refusers meets the terms defined in § 1313.3(i) and that the average number of days it took to provide the administrative reviews and suspend the licenses meets the promptness requirement in paragraph (a)(1)(i)(F) of this section. The State can provide the necessary data based on a representative sample. Data on the average length of the suspension term must not include license suspension periods which exceed the terms actually prescribed by the State, and must reflect terms only to the extent that they are actually completed.

(B) For the purpose of this paragraph, "Data State" means a State that has a law, regulation or binding policy directive implementing or interpreting an existing law or regulation which provides for each element of the 15-day expedited suspension system criterion, except that it need not specifically provide for each element of paragraphs (a)(1)(i) (E) and (F) of this section.

(2)(i) A self-sustaining drunk driving prevention program under which the fines or surcharges collected from individuals convicted of operating a motor vehicle while under the influence of alcohol are returned, or an equivalent amount of non-Federal funds are provided through the State's ordinary appropriations process, to those communities which have comprehensive programs for the prevention of such operations of motor vehicles.

(ii) To demonstrate compliance in the first and in subsequent years the State receives a basic grant, a State shall submit a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation, which provides for a self-sustaining drunk driving prevention program, and for fines or surcharges to be imposed on individuals convicted of operating a motor vehicle while under the influence of alcohol. The State shall describe its criteria and procedures for reviewing community programs to determine whether they are comprehensive, as defined in § 1313.3(b), and describe its procedures for returning or providing revenues to communities that have comprehensive drunk driving prevention programs. The State shall submit data showing the aggregate amount of fines or surcharges actually collected and the aggregate amount of revenues actually returned or provided to community drunk driving prevention programs under the State's self-sustaining system. The State shall certify that these revenues are being used to continue the operation of comprehensive drunk driving prevention programs and that a significant portion of the costs of these programs are supported with non-Federal funds. If the State is demonstrating compliance based on the equivalent amount of non-Federal funds it provides to communities, it must also identify the source of these funds.

(iii) For the purpose of this section, activities conducted by the State for the benefit of a community may be considered to have been returned or provided to that community, provided that the community benefitted has had an active voice in the initiation, development, and implementation of the activities for which such funds are expended. In no case may the State arbitrarily ascribe State agency expenditures as "benefitting local communities." Where communities have had an active voice in the initiation, development, and implementation of a particular activity, and a community which has not had such active voice agrees in advance of implementation to accept the benefits of the activity, the non-Federal share of the cost of these benefits may be considered to have been returned or provided to the community. Where no communities have had an active voice in the initiation, development, and implementation of a particular activity, but a political subdivision requests the benefits of the activity, the non-Federal share of the cost of these benefits may be considered to have been returned or provided to the community. Evidence of consent and acceptance of the work, goods or services on behalf of the community must be established and maintained on file by the State, until all basic grant funds for that fiscal year have been expended and audits completed.

(b) To qualify for a basic incentive grant of 20 percent of its 23 U.S.C. 402 apportionment of fiscal year 1989, a State must meet the requirements of paragraphs (a)(1)(i) (A)–(E) and (a)(2)(i) of this section and require that the administrative review referred to under paragraph (a)(1)(i)(C) of this section shall take place and the suspension and revocation referred to under paragraph (a)(1)(i)(E) of this section take effect not later than 30 days after the individual first received notice of the administrative review and suspension or revocation, but only if the agency determines that the requirements of paragraph (a)(1)(i)(F) of this section would impose a hardship upon the State.

(1)(i) To demonstrate compliance in the first fiscal year the State receives a basic grant, a Law State shall submit, in addition to the information identified in paragraph (a)(2)(ii) of this section, a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulator, which provides for each element of the 30-day expedited suspension system requirement. The State shall also explain the hardship that would be imposed by a 15-day administrative review and suspension requirement and submit a plan demonstrating how it intends to meet the 15-day period identified in paragraph (a)(1)(i)(F) of this section.

(ii) To demonstrate compliance in subsequent fiscal years the State receives a basic grant, a Law State shall submit, in addition to the information identified in paragraph (b)(1)(i) of this section, data showing the number of licenses suspended, that the average length of the suspension terms for first offenders, first refusers, repeat offenders and repeat refusers meets the terms defined in § 1313.3(i) and that the average number of days it took to provide the administrative reviews and suspend the licenses meets the promptness requirement in paragraph (b) of this section. The State can provide the necessary data based on a representative sample. Data on the average length of the suspension term must not include license suspension periods which exceed the terms actually prescribed by the State, and must reflect terms only to the extent that they are actually completed. If the State's data do not meet the average license suspension terms defined in § 1313.3(i), the State can demonstrate compliance with this element by submitting a plan showing how it intends to achieve these averages. Data submitted to demonstrate compliance with the promptness requirement in paragraph (b) of this section shall be part of the required showing of substantial progress toward implementing the plan identified in paragraph (b)(1)(i) of this section. The State shall also explain the hardship that would be imposed by a 15-day administrative review and suspension requirement.

(iii) For the purpose of this paragraph, "Law State" means a State that has a law, regulation or binding policy directive implementing or interpreting an existing law or regulation which provides for each element of the 30-day expedited suspension system criterion.

(2)(i) To demonstrate compliance in the first fiscal year the State receives a basic grant, a Data State shall submit, in addition to the information identified in paragraph (a)(2)(ii) of this section, a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation, which provides for each element of the 30-day expedited suspension system requirement and data showing the number of licenses suspended, that the average length of the suspension terms for first offenders, first refusers, repeat offenders and repeat refusers meets the terms defined in § 1313.3(i) and that the average number of days it took to provide the administrative reviews and suspend the licenses meets the promptness requirement in paragraph (b) of this section. The State can provide the necessary data based on a representative sample. Data on the average length of the suspension term must not include license suspension periods which exceed the terms actually prescribed by the State, and must reflect terms only to the extent that they are actually completed. The State shall also explain the hardship that would be imposed by a 15-day administrative review and suspension requirement and submit a plan demonstrating how it intends to meet the 15-day period identified in paragraph (a)(1)(i)(F) of this section.

(ii) To demonstrate compliance in subsequent fiscal years the State receives a basic grant, a Data State shall submit all of the information identified in paragraph (b)(2)(i) of this section. In addition, the data submitted to demonstrate compliance with the promptness requirement in paragraph (b) of this section shall be part of the required showing of substantial progress toward implementing the plan identified in paragraph (b)(2)(i) of this section.

(iii) For the purpose of this paragraph, "Data State" means a State that has a law, regulation or binding policy directive implementing or interpreting an existing law or regulation which provides for each element of the 30-day expedited suspension system criterion, except that it need not specifically provide for each element of paragraph (a)(1)(i)(E) of this section or the promptness requirement in paragraph (b) of this section.

§ 1313.6 Requirements for supplemental grants.

(a) *Mandatory blood alcohol concentration testing program.* To qualify for a supplemental grant of 10 percent of its 23 U.S.C. 402 apportionment for fiscal year 1989, a State must have in place and implement or adopt and implement a drunk driving prevention program which meets the requirements of § 1313.5, and

(1) Provide for mandatory blood alcohol concentration testing whenever a law enforcement officer has probable cause under State law to believe that a driver of a motor vehicle involved in a crash resulting in the loss of human life or serious bodily injury has committed an alcohol-related traffic offense.

(2)(i) To demonstrate compliance in the first fiscal year the State receives a supplemental grant under this paragraph, a Law State shall submit a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation, which provides for each element of the mandatory testing requirement.

(ii) To demonstrate compliance in subsequent fiscal years the State receives a supplemental grant under this paragraph, a Law State shall submit, in addition to the information in paragraph (a)(2)(i) of this section, data showing the number of drivers involved in these crashes and that, when there was probable cause to believe the driver had comitted an alcohol-related traffic offense, substantially all of these drivers were tested for alcohol content and the results were reported to the State. The State can provide the necessary data based on a representative sample.

(iii) For the purpose of this paragraph, "Law State" means a State that has a law, regulation or binding policy directive implementing or interpreting an existing law or regulation which provides for each element of the mandatory testing criterion, including the requirement that testing is mandatory.

(3)(i) To demonstrate compliance in the first and in subsequent fiscal years the State receives a supplemental grant under this paragraph, a Data State shall submit a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation, which provides for the blood alcohol concentration testing requirement. The State shall also submit data showing the number of drivers involved in these crashes and that, when there was probable cause to believe the driver had committed an alcohol-related traffic offense, substantially all of these drivers were tested for alcohol content and the results were reported to the State. The State can provide the necessary data based on a representative sample.

(ii) For the purpose of this paragraph, "Data State" means a State that has a law, regulation or binding policy directive implementing or interpreting an existing law or regulation which provides for each element of the mandatory testing criterion, except that testing may be permitted rather than required by law.

(b) *Program for prevention of operators under 21 from obtaining alcoholic beverages.* To qualify for a supplemental grant of 10 percent of its 23 U.S.C. 402 apportionment for fiscal year 1989, a State must have in place and implement or adopt and implement a drunk driving prevention program which meets the requirements of § 1313.5, and

(1) Provide for an effective system for preventing operators of motor vehicles under age 21 from obtaining alcoholic beverages, which includes the issuance of drivers' licenses to individuals under age 21 that are easily distinguishable in appearance from drivers' licenses issued to individuals 21 years of age and older. The State must also make it unlawful both for a person who is less than 21 years of age to purchase and publicly possess any alcoholic beverage and for a person to provide (by sale or otherwise) any alcoholic beverage to a person who is less than 21 years of age; provide for meaningful penalties for both the underaged person and the provider of the alcoholic beverage; and maintain an effective and highly visible enforcement program. In addition, the State must have or plans to put in place–a Statewide training program for servers, vendors and its law enforcement community, and a public information program for the general population addressing specifically the problem of underaged individuals obtaining alcoholic beverages.

(2) To demonstrate compliance in the first and in subsequent fiscal years the State receives a supplemental grant under this paragraph, a State shall submit a law, regulation, or binding policy directive implementing or interpreting an existing law which makes it unlawful both for a person who is less than 21 years of age to purchase and publicly possess any alcoholic beverage and for a person to provide (by sale or otherwise) any alcoholic beverage to a person who is less than 21 years of age, and which provides for meaningful penalties for both underaged individuals and providers of alcoholic beverages. The State must also submit sample driver's licenses issued to persons both under and over 21 years of age. In addition, the State shall submit data demonstrating that the enforcement program is effective and highly visible, and that the State has or plans to put in place a Statewide training program for servers, vendors and its law enforcement community, and a public information program for the general population addressing specifically the problem of underaged individuals obtaining alcoholic beverages. Specific progress toward preventing operators of motor vehicles under 21 from obtaining alcoholic beverages must be shown in subsequent years.

(c) *Program making unlawful open containers and consumption of alcohol in motor vehicles.* (1) To qualify for a supplemental grant of 10 percent of its 23 U.S.C. 402 apportionment for fiscal year 1989, a State must have in place and implement or adopt and implement a drunk driving prevention program which meets the requirements of § 1313.5, and

(i) Make unlawful the possession of any open alcoholic beverage container, or the consumption of any alcoholic beverage, in the passenger area of any motor vehicle located on a public highway or the right-of-way of public highway except:

(A) As allowed in the passenger area, by persons (other than the driver), of any motor vehicle designed to transport more than 10 passengers (including the driver) while being used to provide charter transportation of passengers; or

(B) As otherwise specifically allowed by such State, with the approval of NHTSA, but in no event may the driver of such motor vehicle be allowed to possess or consume and alcoholic beverage in the passenger area.

(ii) To demonstrate compliance in the first and in subsequent fiscal years the State receive a supplemental grant under this paragraph, a State shall submit a law, regulation, binding policy directive implementing or interpreting an existing law or regulation, which provides for each element of the unlawful open container and consumption of alcohol requirement. The State shall also identify and provide sufficient justification for the agency to approve any exception, other than the exception that is specifically permitted under paragraph (c)(1)(i)(A) of this section.

(2)(i) To qualify for a supplemental grant of 25 percent of its 23 U.S.C. 402 apportionment for fiscal year 1989, a State must meet the requirements of paragraph (c)(1)(i) of this section, and have an effective and highly visible enforcement program which provides for meaningful penalties for violations.

(ii) To demonstrate compliance in the first and in subsequent fiscal years the State receives a supplemental grant under this paragraph, in addition to submitting the information identified in paragraph (c)(1)(ii) of this section, a State shall show that its law provides for meaningful penalties and submit data demonstrating that the State enforcement program is effective and highly visible. Specific progress toward deterring the unlawful possession of open containers and the consumption of alcoholic beverages in motor vehicles must be shown in subsequent years.

(d) *Suspension of registration and return of license plate program.* To qualify for a supplemental grant of 10 percent of its 23 U.S.C. 402 apportionment for fiscal year 1989, a State must have in place and implement or adopt and implement a drunk driving

prevention program which meets the requirements of § 1313.5, and

(1) Provide for the suspension of the registration of, and the return to such State of the license plates for, any motor vehicle owned by an individual who:

(i) Has been convicted on more than one occasion of an alcohol-related traffic offense within any 5-year period following November 18, 1988; or

(ii) Has been convicted of driving while his or her driver's license is suspended or revoked by reason of a conviction for an alcohol-related traffic offense; except that

(iii) A State may provide limited exceptions to such suspension of registration or return of license plates, on an individual basis, to avoid undue hardship to any individual, including any family member of the convicted individual, and any co-owner of the motor vehicle, but not including the offender, who is completely dependent on the motor vehicle for the necessities of life. Such exceptions may be issued only in accordance with a State law, regulation or binding policy directive establishing the conditions under which license plates may be released by the State or under Statewide published guidelines and in exceptional circumstances specific to the offender's motor vehicle, and may not result in unrestricted reinstatement of the registration or unrestricted return of the license plates of the motor vehicle.

(2)(i) To demonstrate compliance in the first year the State receives a supplemental grant under this paragraph, the State shall submit a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation, which provides for each element of the registration suspension and license plate return requirement.

(ii) To demonstrate compliance in subsequent years the State receives a supplemental grant under this paragraph, the State shall submit, in addition to the information identified in paragraph (d)(2)(i) of this section, data showing the number of registrations suspended and license plates returned under the State law, that the average length of the term for which the registration was suspended and the license plates returned meets the definition in § 1313.3(j), and the number, reasons for and conditions under which hardship exemptions are being granted. The State must show that it is actively enforcing its law and that the hardship exceptions do not result in unrestricted reinstatement of the registration or unrestricted return of the license plates of the motor vehicle. The State can provide the necessary data based on a representative sample.

§ 1313.7 Award procedures.

For each Federal fiscal year, grants under 23 U.S.C. 410 shall be made to eligible States upon submission of the drunk driving prevention plan and certification required by § 1313.4. Such grants shall be made until all eligible States have received a grant or until there are insufficient funds to award a grant to a State. Time of submission shall be determined by the postmark for certifications delivered through the mail and by stamped receipt for certifications delivered in person.

Issued on: June 19, 1989.

Jeffrey R. Miller,

Acting Administrator, National Highway Traffic Safety Administration.

[FR Doc. 89-14674 Filed 6-20-89; 3:30 pm]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 286

RIN 1076-AA55

Indian Business Development Program

RIN 1076-AA55

August 10, 1988.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Indian Financing Act Amendments of 1984 amended sections 402(a), 403, and 501 of the Indian Financing Act of 1974 by increasing the grant amounts for Indian tribes and Indian individuals, by authorizing appropriations not to exceed $10,000,000 per year fiscal year 1986 and each fiscal year thereafter, and by providing that competent management and technical assistance is available prior to the making of a grant. These grants are for the purpose of assisting Indian reservation economic development.

Accordingly, 25 CFR Part 286 is proposed to be amended to implement the indian Financing Act Amendments of 1984, and the original Act, which has been without authority for appropriations since fiscal year 1979.

DATES: Comments must be received on or before July 26, 1989 .

ADDRESSES: Send written comments to the Deputy to the Assistant Secretary—Indian Affairs (Trust and Economic Development), Attention: Division of Financial Assistance, Room 4062 MIB, Bureau of Indian Affairs, Department of the Interior, 18th & C Street, N.W., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Richard K. Nephew, Division of Financial Assistance, Bureau of Indian Affairs, Telephone number (202) 343-3660.

SUPPLEMENTARY INFORMATION: These proposed amendments are published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8. The policy of the Department of the Interior is, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding the proposed rule to the locations identified in the Addresses section of this preamble.

The proposed amendments reactivate a business development grant program which has been without funds since fiscal year 1977. The proposed rule increases the amount which may be awarded as a grant from $50,000 to $100,000 in the case of an individual Indian and $250,000 in the case of an Indian tribe. A change is also being made in management and technical assistance so that such assistance may be given prior to the making of a grant. Certain technical changes are made for the purpose of clarification.

The Indian Business Development Program, regulated by Part 286 supplants the Special Grants for Economic Development Program which operated in fiscal years 1983, 1984, and 1985 under authority of the Snyder Act of 1921 (25 U.S.C. 13). The Department of the Interior has determined that this document is not a major action under E.O. 12291 and certifies that this document will not have a singificant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

It is estimated the program regulated by this Part will have no more than a $50 million gross annual effect on the national economy. It is then, by definition at 318 DM 5, not a major action. Since this document does not constitute a major Federal action significantly affecting the quality of the human environment under the National Environemental Policy Act of 1969, no environmental assessments were made.

The collections of information contained in this rule have been submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3501 et seq. The collection of this information will not be required until it has been approved by the Office of Management and Budget.

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer, Bureau of Indian Affairs, Mailstop 337-SIB, 18th & C Streets, NW., Washington, DC 20240; and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

The primary author of this document is Richard K. Nephew, Division of Financial Assistance, Bureau of Indian Affairs, Telephone number (202) 343-3660.

List of Subjects in 25 CFR Part 286

Grant programs—business, Grant programs—Indians, Indians—business and finance, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, Part 286 of Title 25, Chapter I of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 286—[AMENDED]

1. The authority citation for Part 286 is revised to read as follows:

Authority: 25 U.S.C. 1524.

2. Section 286.1 is revised to read as follows:

§ 286.1 Definitions.

As used in this Part 286:

"Area Director" means the Bureau official in charge of an area office or his authorized representative.

"Commissioner" means the Commissioner of Indian Affairs, under the direction and supervision of the Assistant Secretary—Indian Affairs, who is responsible for the direction of day-to-day operations of the Bureu of Indian Affairs.

"Cooperative Association" means an association of individuals organized pursuant to state, federal, or tribal law, for the purpose of owning and operating an economic enterprise for profit with profits distributed or allocated to patrons who are members of the organization. "Corporation" means an entity organized pursuant to state, federal, or tribal law, with or without stock, for the purpose of owning and operating an economic enterprise.

"Economic enterprise" means any Indian-owned, commercial, industrial, agricultural, or business activity established or organized for the purpose of profit, provided that eligible Indian ownership constitutes not less than 51 per centum of the enterprise.

"Grantee(s)" means the recipient(s) of a nonreimburseable grant under this part.

"Indian" means a person who is a member of an Indian tribe.

"Partnership" means a form of business organization in which two or more legal persons are associated as co-owners for the purposes of business or professional activities for private pecuniary gain.

"Profits" means the net income earned after deducting oeprating expenses from operating revenues.

"Reservation" means Indian reservations, unterminated California rancherias, public domain Indian allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act (85 Stat. 688).

"Secretary" means the Secretary of the Interior.

"Superintendent" means the Bureau official in charge of a Bureau agency office or other local office reporting to an Area Director.

"Tribe" means any Indian Tribe, Band, Nation, Rancheria, Pueblo, Colony or Community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is federally recognized by the United States Government through the Secretary as eligible for the special programs and services provided by the Secretary to Indians because of their status as Indians.

3. A new § 286.5 is added to read as follows:

§ 286.5 Information collection.

(a) The collections of information contained in §§ 286.12 and 286.22 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076-0093. The information will be used to rate applicants in accordance with the priority criteria listed at 25 CFR 286.8. Response to this request is required to obtain a benefit in accordance with 25 U.S.C. 1521.

(b) Public reporting for this information is estimated to average 45 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer, Bureau of Indian Affairs, Mailstop 337-SIB, 18th & C Streets, NW., Washington, DC 20240; and the Paperwork Reduction Project (1076-0093), Office of Management and Budget, Washington, DC 20503.

4. Section 286.11(a) is revised to read as follows:

§ 286.11 Management and technical assistance.

(a) Prior to and concurrent with the making of a grant to finance an Indian economic enterprise, the Assistant Secretary-Indian Affairs will insure that competent management and technical assistance is available to the grantee in the preparation of the application for a grant and/or administration of the funds granted, consistent with the grantee's knowledge and experience and the nature and complexity of the economic enterprise being financed.

* * * * *

5. In § 286.17, paragraphs (a), (c), and (g) are revised and paragraph (j) is added, to read as follows:

§ 286.17 Grant limitations and requirements.

(a) Grants will be made to assist in establishing new economic enterprises, or in purchasing or expanding established ones. However, a grant may be made only when in the opinion of the Commissioner the applicant is unable to obtain adequate financing from other sources. Prior to making any grant, the Commissioner shall assure that, to the extent practical, the applicant's own resources have been invested in the proposed project. If the information in an application indicates that it may be possible for the applicant to obtain financing without a grant, the Commissioner will require the applicant to furnish letters from two customary lenders in the area, if available, who are making loans for similar purposes, showing whether or not they will make a loan to the applicant for the total financing needed without a grant.

* * * * *

(c) No grant in excess of $250,000 may be made to an Indian tribe or in excess of $100,000 to an Indian individual, partnership, corporation, or cooperative association.

* * * * *

(g) Ordinarily, not more than one grant will be made for a project. Nevertheless, in certain circumstances a second grant may be made to applicant for a new project or expansion of the original project. An additional grant will not be approved for an economic enterprise previously funded under the provisions of Title IV of the Indian Financing Act of 1974 except for expanding a successful enterprise, provided the total of grant made shall not exceed $250,000 to an Indian tribe and $100,000 to an Indian individual, partnership, corporation, or cooperative association.

* * * * *

(j) A grantee will be required to return all or a portion of the grant if the business or enterprise for which the grant was utilized is sold within three years of the date on which the grant was disbursed to the grantee, unless the proceeds from the sale are invested in a new business or business expansion which will benefit the Indian reservation economy. The grantee shall refund the lesser of the grant amount or a pro rata portion of sales proceeds. The pro rata portion of sales proceeds shall be based on the ratio of the grant amount to total costs funded by the grant and its corresponding matching financing.

W. P. Ragsdale,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 89-14969 Filed 6-23-89; 8:45 am]

BILLING CODE 4310-02-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6959]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed modified base (100-year) flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

DATES: The period for comment will be ninety (90) days following the second publication of the proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Management Agency gives notice of the proposed determinations of modified base (100-year) flood elevations for selected locations in the nation, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed modfied flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under Section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. The proposed modified base flood elevations for selected locations are:

PROPOSED MODIFIED BASE FLOOD ELEVATIONS

State	City/Town/County	Source of Flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Alaska	Municipality of Anchorage, Anchorage Borough.	Campbell	Approximately 600 feet downstream of West Dimond Boulevard.	*20	20
			Just downstream of West Dimond Boulevard	*24	*21
			Approximately 60 feet upstream of West Dimond Boulevard.	*25	*22
			Approximately 1,900 feet upstream of West Dimond Boulevard.	*26	*26
			Approximately 500 feet downstream of C Street.	*56	*56

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/Town/County	Source of Flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			Just downstream of C Street	*59	*57
			Approximately 600 feet upstream of C Street	*62	*62
			Approximately 200 feet downstream of Old Seward Highway.	*105	*105
			Approximately 200 feet upstream of Old Seward Highway.	*107	*106
			Just upstream of International Airport Road	*108	*108
			Approximately 300 feet upstream of New Seward Highway.	*120	*120
		Chester Creek	Just downstream of C Street	*28	*28
			Approximately 100 feet upstream of A Street	*34	*35
			Just downstream of Seward Highway at the intersection of Gambell and Ingra Streets.	*47	*47

Maps are available for review of The Public Works Department, 3500 East Tudor Road, Anchorage, Alaska.
Send comments to The Honorable Tom Fink, Mayor, Municipality of Anchorage, P.O. Box 196650, Anchorage, Alaska 99519.

Arizona	City of Casa Grande Pinal County.	North Branch, Santa Cruz Wash.	Approximately 600 feet upstream of Burris Road.	None	*1361
			Approximately 500 feet downstream of Thornton Road.	*1370	1368
			Approximately 450 feet upstream of Thornton Road.	*1372	*1370
			Upstream side of Pinal Avenue	*1383	*1383
			At Trekell Road	*1388	*1386
			Approximately 2,700 feet upstream of Trekell Road.	*1391	*1390

Maps are available for review at City Hall, 300 E. Fourth Street, Casa Grande, Arizona.
Send comments to The Honorable Jimmie B. Kerr, Mayor, City of Casa Grande, 300 E. Fourth Street, Casa Grande, Arizona 85222.

Arkansas	Mountain Home, City Baxter County.	Dodd Creek	Approximately 80 feet downstream of downstream corporate limits.	*721	*721
			Approximately 750 feet upstream of Bucher Drive.	*788	*786
		Dodd Creek Tributary	Approximately 1,800 feet donstream of Pine Tree Lane.	None	*754

Maps available for inspection at the City Hall, 720 S. Hickory, Mountain Home, Arkansas.
Send comments to The Honorable James Stevens, Mayor of the City of Mountain Home, Baxter County, 720 S. Hickory, Mountain Home, Arkansas 72653.

California	Trinity County, unincorporated areas.	Weaver Creek	1,300 feet downstream of Mill Street	None	*1,993
			1,050 feet downstream of Mill Street	None	*1,937
			600 feet downstream of Mill Street	None	*1,945
			Just upstream of Mill Street	None	*1,960
		Middle Weaver Creek	Just upstream of Mill Street	None	*1,960
			850 feet upstream of Mill Street	None	*1,966
			1,700 feet upstream of Mill Street	None	*1,979
			Just downstream of Bremer Street	None	*1,991
			Just upstream of confluence with Ten Cent Gulch.	None	*2,005
		Ten Cent Gulch	Just upstream of Highway 299	None	*2,011
	None	*2,011			
			Just upstream of Highway 3	None	*2,027
			850 feet upstream of Highway 3 at a private crossing.	None	*2,040
			1,212 feet upstream of Highway 3 at a private crossing.	None	*2,047
			2,200 feet upstream of Highway 3	None	*2,072

Maps are available for review at the Trinity County Courthouse, Board of Supervisors' Office, 101 Court Street, Weaverville, California.
Send comments to The Honorable Stanley Plowman, Chairman, Trinity County Board of Supervisors, P.O. Box 1258, Weaverville, California 96093.

Colorado	City of Colorado Springs, El Paso County.	Sand Creek, East Fork	At Powers Boulevard	*6,119	*6,119
			Approximately 870 feet upstream of Powers Boulevard.	*6,128	*6,128
			Approximately 1,975 feet upstream of Powers Boulevard.	*6,152	*6,156
			Approximately 2,850 feet upstream of Powers Boulevard.	*6,169	*6,169

Maps are available for review at 101 West Costilla, Colorado Springs, Colorado.
Send comments to The Honorable Robert Isaac, Mayor, City of Colorado Springs, 30 South Nevada, Colorado Springs, Colorado 80901.

Florida	Unincorporated areas of Seminole County.	St. Johns River	About 2,000 feet downstream of Osteen Bridge	*9	*9
			At Orange County boundary	*13	*11

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/Town/County	Source of Flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
		Econlockhatchee River	At confluence with St. Johns River	*12	*11
			At Orange County boundary	*37	*35
		Little Econlockhatchee River	At confluence with Econlockhatchee River	*33	*32
			At Orange County boundary	*48	*42

Maps available for inspection at the Planning Department, 1101 East First Street, Sanford, Florida.
Send comments to The Honorable Ken Hooper, County Administrator, Seminole County, 1101 East First Street, Sanford, Florida 32771.

Illinois	Unincorporated Areas of Fulton County.	Spoon River	Just downstream of State Route 116	*532	*536
			Just upstream of Second Street	*537	*537
		Tributary to Swegle Creek	About .48 miles downstream of State Route 116.	None	*536
			About .78 miles upstream of State Route 116	*536	*536

Maps available for inspection at the Zoning Office, 700 East Oak Street, Room 302, Canton, Illinois.
Send comments to The Honorable Melba Ripper, Chairman, Board of County Commissioners, Fulton County, County Courthouse, Lewiston, Illinois 61542.

Iowa	City of Carroll, Carroll County.	Middle, Raccoon River	About 2550 feet downstream of Grant Road	None	*1222
			About 1000 feet upstream of Chicago and North Western Railroad.	None	*1242

Maps Available for inspection at the City Hall, 112 East 5th Street, Carroll, Iowa.
Send comments to The Honorable H.J. Kienapfel, Mayor, City of Carroll, City Hall, 112 East 5th Street, Carroll, Iowa 51401.

Kansas	City of Newton, Harvey County.	South Branch, Slate Creek	About 250 feet downstream of South Kansas Street.	*1434	*1434
			Just upstream of South Kansas Street	*1442	*1437
			Just downstream of Union Pacific Railroad	*1445	*1445
		County Club, Branch Slate Creek.	About 400 feet upstream of confluence with South Branch Slate Creek.	*1444	*1440
			Just upstream of earth dam	*1451	*1451

Maps available for inspection at the City Hall, Newton City Engineer's Office, 120 East 7th Street, Newton, Kansas.
Send comments to The Honorable Violet Tompkins, Mayor, City of Newton, City Hall, 120 East 7th Street, Newton, Kansas 67114.

Kentucky	City of Allen City, Floyd County.	Levisa Fork	Just upstream of State Highway 23	*650	*651
			About 1200 feet upstream of State Highway 80	*651	*652
		Beaver Creek	Within community	*650	*651

Maps available for inspection at the City Hall, P.O. Box 510, Main Street, Allen City, Kentucky.
Send comments to The Honorable Vernon Porter, Mayor, Pro-Tem, City of Allen City, City Hall, P.O. Box 510, Main Street, Allen City, Kentucky 41601.

Maine	Cherryfield, town, Washington County.	Narraguagus River	Approximately 1.5 miles upstream of confluence of West Branch Narraguagus River.	None	*68
			Upstream of corporate limits	None	*96
		West Branch Narraguagus River.	At confluence with Narraguagus River	None	*67
			Upstream corporate limits	None	*89

Maps available for inspection at the Town Hall, Main Street, Cherryfield, Maine.
Send comments to The Honorable James Layton, Manager for the Town of Cherryfield, Washington County, RFD 1, Box 3, Cherryfield, Maine 04622.

Missouri	City of Manchester, St. Louis County.	Fishpot Creek	About 1470 feet downstream of Lindy Drive	*524	*525
			About 850 feet downstream of Lindy Drive	*538	*530
			Just upstream of Lindy Drive	*535	*533

Maps available for inspection at the City Hall, Engineering Department, 14318 Manchester Road, Manchester, Missouri.
Send comments to The Honorable Frank McGuire, Mayor, City of Manchester, City Hall, 14318 Manchester Road, Manchester, Missouri 63011.

New Jersey	East Brunswick, Township, Middlesex County.	Cedar Brook	Approximately .4 mile downstream of the corporate limits.	*34	*32
			Approximately .4 mile upstream of the corporate limits.	None	*35

Maps available for inspection at the Department of Planning and Community Development, 1 Jean Walling Civic Center, East Brunswick, New Jersey.
Send comments to The Honorable Gregory Fehrenbach, Administrator of the Township of East Brunswick, Middlesex County, P.O. Box 218, East Brunswick, New Jersey 08816.

Pennsylvania	Earl, township, Berks County.	Manatawny Creek	Approximately 100 feet upstream of downstream corporate limits.	*248	*249
			Approximately 640 feet upstream of upstream corporate limits.	None	*273

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/Town/County	Source of Flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified

Maps available for inspection at the Township Building, Earl, Pennsylvania.
Send comments to The Honorable Leroy Heimbach, Chairman of the Township of Earl Board of Supervisors, Berks County, R.D. 3, Box 571, Boyerstown, Pennsylvania 19512.

Pennsylvania	Falls, township, Bucks County.	Delaware River	At downstream corporate limits	*11	*12
			At upstream corporate limits	*16	*20

Maps available for inspection at the Falls Township Building, 285 Yardley Avenue, Falls, Pennsylvania.
Send comments to The Honorable August Bauers, Manager of the Township of Falls, Bucks County, 285 Yardley Avenue, Falls, Pennsylvania 19054.

Pennsylvania	Miller, township, Huntingdon County.	Standing Stone Creek	At downstream corporate limits	None	*662
			Approximately .43 mile upstream of LR 31112	*686	*687

Maps available for inspection at the home of the Township Secretary, Patricia McNeal, R.D. 2, Huntingdon, Pennsylvania.
Send comments to The Honorable James Bookhamer, Jr., Chairman of the Township of Miller Board of Supervisors, Huntingdon County, R.D. 2, Huntingdon, Pennsylvania 16652

Pennsylvania	Mount Pleasant, township, Columbia County.	Little Fishing Creek	Approximately 50 feet upstream of Township Route 518.	*549	*547
			At upstream corporate limits	*582	*580

Maps available for inspection at the residence of the Township Secretary, Mr. Boyd C. Laycock, Jr., R.D. 4, Bloomsburg, Pennsylvania.
Send comments to The Honorable Jon E. Turner, Chairman of the Township of Mount Pleasant Board of Supervisors, Columbia County, R.D. 4, Bloomsburg, Pennsylvania 17815.

Pennsylvania	Ruscombmanor, township, Berks County.	Unnamed Tributary to Little Manatawny Creek.	At downstream corporate limits	*483	*484
			Approximately 0.3 mile upstream of Olney Road.	*524	*525

Maps available for inspection at the residence of the township secretary, Rose Ellen Mull, R.D. 3, Oley Road, Fleetwood, Pennsylvania.
Send comments to The Honorable Earl L. Matthias, Chairman of the Township of Ruscombmanor Board of Supervisors, Berks County, R.D. 5, Box 5467, Fleetwood, Pennsylvania 19522.

Pennsylvania	Temple, borough, Berks County.	Laurel Run	Approximately 1,250 feet upstream of the corporate limits.	*340	*339
			At upstream corporate limits	*393	*390
		Laurel Run Alternate Branch	At confluence with Laurel Run	*346	*342
			At divergence from Laurel Run	*372	*376

Maps available for inspection at the residence of Carl B. Geibel, Secretary/Treasurer, 4835 Kutztown Road, Temple, Pennsylvania.
Send comments to The Honorable Richard E. Kubeck, Mayor of the Borough of Temple, Berks County, 802 Euclid Avenue, Temple, Pennsylvania 19560.

South Carolina	Unincorporated Areas of Richland County.	Tributary LJ-1	About 500 feet downstream of Liongate Road	*286	286
			Just downstream of Spring Valley Road	*304	*299
			Just upstream of Spring Valley Road	*307	*307

Maps available for inspection at the Richland County Engineering Office, Columbia, South Carolina.
Send comments to The Honorable Dean Hunter, Jr., Richland County Administrator, P.O. Box 192, Columbia, South Carolina 29202.

Tennessee	City of Collegedale, Hamilton County.	Wolftever Creek	About 0.6 mile downstream of Ooltewah-Ringgold Road.	None	*760
			Just upstream of Tucker Road	*785	*791
			About 1.82 miles upstream of Tallant Road	*804	*805
		Wilkerson Branch	At mouth	*785	*791
			Just upstream of College Drive East	*808	*807
			About 1,370 feet upstream of College Drive East.	None	*819
		Chesnutt Creek	At mouth	*792	*793
			Just upstream of Norfolk Southern Railway	*797	*797

Maps available for inspection at the City Hall, P.O. Box 1880, Collegedale, Tennessee.
Send comments to The Honorable Wayne VandeVere, Mayor, City of Collegedale, P.O. Box 1880, Collegedale, Tennessee 37315.

Tennessee	City of Knoxville, Knox County.	Love Creek	Just downstream of Millertown Pike	*948	*948
			About 1,500 feet upstream of Millertown Pike	*957	*956
			Just upstream of Shalite Mine Road	*964	*964

Maps available for inspection at the Knoxville Department of Engineering, P.O. Box 1631, Knoxville, Tennessee.
Send comments to The Honorable Victor Ashe, Mayor, City of Knoxville, P.O. 1631, Knoxville, Tennessee 37901.

Texas	Fort Bend County, unincorporated areas.	Clodine Ditch	At upstream side of the corporate limits	*93	*91
			Approximately 3.15 miles upstream of Harlem Road.	None	*94

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/Town/County	Source of Flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Fort Bend County Courthouse, 401 Jackson, Richmond, Texas. Send comments to The Honorable Jodie E. Stavinoha, Fort Bend County Judge P.O. Box 368, Richmond, Texas 77469.					
Texas	Victoria County, unincorporated areas.	Whispering Creek	Approximately 450 feet downstream of the City of Victoria corporate limits.	*113	*112
			Approximately 0.70 mile upstream of the City of Victoria corporate limits.	*119	*118
Maps available for inspection at the Old Courthouse, Room 102, 101 N. Bridge, Victoria, Texas. Send comments to The Honorable J.F. Barnett, Victoria County Floodplain Administrator, Old Courthouse, Room 102, 101 N. Bridge, Victoria, Texas 77901.					
Texas	Victoria, city, Victoria County.	Whispering Creek	At upstream side of U.S. Route 77	*98	*97
			Approximately 1,500 feet upstream of corporate limits.	*117	*116
		Spring Creek	At confluence of North Outfall	*80	*79
			Approximately 700 feet downstream of State Route 463.	*83	*84
		North Outfall	At confluence with Spring Creek	*80	*79
Maps available for inspection at the City Hall, 105 West Juan Linn, Victoria, Texas. Send comments to The Honorable John Blackaller, Mayor of the City of Victoria, Victoria County, P.O. Box 1758, Victoria, Texas 77902.					
Washington	City of Kennewick, Benton County.	Zintel Canyon	At the intersection of West 7th Avenue and South Vancouver Street.	*442	*442
			At the intersection of West 7th Avenue and Tacoma Street.	*432	*435
			At the interesection of South Ione Street and South Hartford Street.	*391	*394
			At the intersection of South Everett Street and West 11th Avenue.	*391	*390
			Approximately 100 feet north of the intersection of West 19th Avenue and Washington Street.	*378	*376
			Approximately 400 feet northeast of the intersection of West 21st Avenue and Washington Street.	*372	*372
Maps are available for review at City Hall, 210 West 6th Avenue, Kennewick, Washington. Send comments to The Honorable Victor P. Epperly, Mayor, City of Kennewick, 210 West 6th Avenue, Kennewick, Washington 99336.					
Washington	Grays Harbor County, unincorporated areas.	Pacific Ocean at Copalis Beach.	Approximately 2,000 feet north of mouth of Connor Creek at Chabot Island.	*21	*15
			Pacific shoreline 1,000 feet west of Chabot Island.	*21	*18
			Approximately 1,000 feet west of intersection of State Highway 109 and Pacific Boulevard.	*21	#2
Maps are available for review at Grays Harbor County Planning Department, 100 West Broadway Street, Montesano, Washington. Send comments to The Honorable William F. Bogler, Chairman, Grays Harbor County Board of Commissioners, 100 West Broadway Street, Montesano, Washington 98563					

Harold T. Duryee,

Administrator, Federal Insurance Administration.

Issued: June 12, 1989.

[FR Doc. 89-15012 Filed 6-23-89; 8:45 am]

BILLING CODE 6718-03-M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 528, 552 and 553

[GSAR Notice No. 5-244]

General Services Administration Acquisition Regulation; Bonds

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Proposed rule.

SUMMARY: This notice invites comments on a proposed change to the General Services Administration Acquisition Regulation (GSAR) that would revise section 528.101–4 to clarify the procedure for dealing with noncompliance with bid guarantee requirements in negotiated acquisitions; revise section 528.103–2 to delete percentage parameters for establishing the penal amount of performance bond from paragraph (c) and thereby permit the contracting officer to establish the penal amount on a case-by-case basis and to amend paragraph (d) to modify the prescriptive language for use of the clause at 552.228–72, Performance Bond, to reflect the need to modify the clause when it is used in solicitations that do not contain options to extend the period of performance; revise section 528.103–3 to delete percentage parameters for establishing the penal amount of payment bonds from paragraph (b) and thereby permit the contracting officer to establish the penal amount of payment bonds on a case-by-case basis and to amend paragraph (c) to modify the prescriptive language for use of the clause at 552.228–73, Performance and Payment Bonds, to reflect the need to modify the clause when it is used in solicitations that do not contain option provisions; to add section 528.106–1 to provide for use of the GSA Form 3604, Performance Bond for Other Than Construction Contracts, instead of the Standard Form 25, when a performance bond is required for building service and other service contracts; to revise the clauses in sections 552.228–72 and 552.228–73 to provide for the submission of performance or performance and payment bonds for the initial period of performance only after the contract is awarded, and to provide for the submission of an additional performance or performance and payment bond before an option to extend the period of performance is exercised by the Government; and to add section 553.370–3604 to illustrate the GSA Form 3604, Performance Bond for Other Than Construction Contracts. This rule is being initiated to resolve problems being experienced by GSA contracting activities. Since the problems being experienced by GSA may also apply to other agencies, a recommendation is also being made that the issues be addressed in the Federal Acquisition Regulation (FAR).

DATE: Comments are due in writing on or before July 26, 1989.

ADDRESS: Comments should be addressed to Ms. Marjorie Ashby, Office of GSA Acquisition Policy and Regulations (VP), 18th and F Streets, NW, Room 4026, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Scott, Office of GSA Acquisition Policy and Regulations, (202) 566–1224.

SUPPLEMENTARY INFORMATION:

A. Executive Order 12291

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this proposed rule.

B. Regulatory Flexibility Act

The proposed rule may have an economic effect on a substantial number of small entities. Accordingly, an initial regulatory flexibility analysis has been prepared and submitted to the Chief Counsel for Advocacy of the Small Business Administration. Copies of the initial regulatory flexibility analysis are available for public comment from the office identified above. The initial regulatory flexibility analysis indicates that when bonds (bid, performance and/or payment) are required in service contracts which contain provisions to extend the period of performance, contractors, particularly small and small disadvantaged business concerns, have great difficulty in obtaining such bonds. Many surety bond underwriters, simply refuse to issue bonds for such contracts. Others have modified the standard forms used for bonds and limited their liability to the first year of performance. Such modification may result in rejection of an otherwise acceptable bid when the sealed bidding method of procurement is used. The current regulatory requirements when applied to such service contracts adversely effect competition. GSA does not maintain statistics on the number of service contracts that require bonds. However, GSA believes the propsoed rule will have a beneficial impact in that it will enable more contractors, particularly small and small disadvantaged business concerns, to compete for such contracts.

C. Paperwork Reduction Act

The proposed rule does contain information collection requirements which have been submitted to OMB for approval under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). The title of the collections are 48 CFR 552.228–72, Performance Bond, and 48 CFR 552.228–73, Performance and Payment Bonds. The clauses require the offeror awarded the contract to submit bonds. In accordance with 41 CFR 201–45.510, GSA has requested an execption to permit the agency to use the proposed GSA Form 3604, Performance Bond for Other Than Construction Contracts, for service contracts in lieu of the Standard Form 25, Performance Bond. The GSA form does not request any information beyond that required by the standard form. The estimated annual burden for this collection is 275 hours. This is based on an estimated average burden hour per response of 0.25, 1 response per respondent, and an estimated 1100 respondents per year. Comments on the information collection requirement may be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Washington, DC 20503.

List of Subjects in 48 CFR Parts 528, 552 and 553

Government procurement.

It is proposed that 48 CFR Parts 528, 552 and 553 be amended as follows:

1. The authority citation for 48 CFR Parts 528, 552 and 553 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 528—BONDS AND INSURANCE

2. Section 528.101–4 is revised to read as follows:

528.101–4 Noncompliance with bid guarantee requirements.

(a) In sealed bidding, noncompliance with a solicitation requirement for a bid guarantee requires rejection of the bid, except in the situations described in FAR 28.101–4 when the noncompliance must be waived.

(b) In negotiation, noncompliance with a solicitation requirement for a bid guarantee requires rejection of an initial proposal as unacceptable, if a determination is made to award the contract on initial proposals without discussion, except in the situations described in FAR 28.101–4 when the noncompliance must be waived. (See FAR 15.610(a) for conditions regarding making awards based on initial proposals.) If the conditions for awarding based on initial proposals are not met, deficiencies in bid guarantees submitted by offerors determined to be in the competitive range must be addressed during discussions and the offeror must be given an opportunity to correct the deficiency.

3. Section 528.103–2 is amended by revising paragraphs (c) and (d) to read as follows:

528.103–2 Performance bonds.

* * * * *

(c) The contracting officer shall consider the circumstances and determine the penal amount of the performance bond on a case-by-case basis.

(d) The contracting officer shall insert a clause substantially the same as the clause at 552.228–72, Performance Bond, in solicitations and contracts when a building service or other service contract that includes options to extend the period of performance is contemplated and a performance bond requirement is to be included. The clause should be appropriately modified to delete references to the base term and options to extend the period of performance when the solicitation does not include option provisions.

4. Section 528.103–3 is amended by revising paragraphs (b) and (c) to read as follows:

528.103–3 Payment bonds.

* * * * *

(b) The contracting officer shall consider the circumstances and determine the penal amount of the payment bond on a case-by-case basis.

(c) The contracting officer shall insert a clause substantially the same as the clause at 552.228–73, Performance and Payment Bonds, in solicitations and contracts when a building service or other service contract that includes options to extend the period of performance is contemplated and a performance and payment bond requirement is to be included. The clause should be appropriately modified to delete references to the base term and option to extend the period of performance when the contract does not include option provisions.

5. Section 528.106–1 is added to read as follows:

528.106–1 Bonds and bond related forms.

The GSA Form 3604, Performance Bond for Other Than Construction Contracts, must be used instead of the Standard Form 25, Performance Bond, when a performance bond is required for building service or other service contracts.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Sections 552.228–72 and 552.228–73 are revised to read as follows:

552.228–72 Performance bond.

As prescribed in 528.103–2(d), insert a clause substantially as follows:

Performance Bond (XXX 1989)

(a) The Offeror to whom the award is made shall furnish a performance bond for the protection of the Government in an amount equal to _____ percent of the contract price for the base term of the contract. In determining the bond amount, "base term of the contract" refers to the initial period of performance EXCLUDING ANY OPTION(S). The guaranty shall cover the base term of the contract and any extensions thereof excluding any option(s) to extend the term of the contract.

(b) Prior to exercise of any option that extends the term of the contract, the Contractor shall be required to furnish an additional performance bond in an amount equal to _____ percent of the contract price for each option term exercised by the Government. In determining the bond amount, "option term" refers to the period of performance for the option being exercised. The guaranty for each option exercised shall cover the option term and any extensions thereof.

(c) The bond shall be provided within 15 calendar days after receiving written notice of award (or acceptance of offer) for the base term of the contract or written notification of the exercised option. The period of time for furnishing the performance bond may be extended for 10 calendar days, if fully justified in the opinion of the Contracting Officer, and if the request for the extension is received or confirmed in writing within the original 15 calendar day period. Failure to provide the required bond may be cause to terminate the Contractor's right to proceed under the base or option term of the contract.

(d) The performance bond shall be a firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, or in accordance with Treasury Department regulations, certain bonds or notes of the United States.

(End of Clause)

552.228–73 Performance and payment bonds.

As prescribed in 528.103–3(c), insert a clause substantially as follows:

Performance and Payment Bonds (XXX 1989)

(a) The Offeror to whom the award is made shall furnish a performance bond for the protection of the Government in an amount equal to _____ percent of the contract price and a payment bond in an amount equal to _____ percent of the contract price for the base term of the contract. In determining the bond amount, "base term of the contract" refers to the initial period of performance EXCLUDING ANY OPTION(S). The guaranty shall cover the base term of the contract and any extensions thereof excluding any option(s) to extend the term of the contract.

(b) Prior to exercise of any option that extends the term of the contract, the Contractor shall be required to furnish an additional performance bond in an amount equal to _____ percent of the contract price and a payment bond in an amount equal to _____ percent of the contract price for each option term exercised by the Government. In determining the bond amount, "option term" refers to the period of performance for the option being exercised. The guaranty for each option exercised shall cover the option term and any extensions thereof.

(c) The bonds shall be provided within 15 calendar days after receiving written notice of award (or acceptance of offer) for the base term of the contract or written notification of the exercised option. The period of time for furnishing the bonds may be extended for 10 calendar days, if fully justified in the opinion of the Contracting Officer, and if the request for the extension is received or confirmed in writing within the original 15 calendar day period. Failure to provide the required bonds may be cause to terminate the Contractor's right to proceed under the base or option term of the contract.

(d) The performance and payment bonds shall be a firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, or in accordance with Treasury Department regulations, certain bonds or notes of the United States.

(End of Clause)

7. Section 553.370–3604 is added to illustrate the GSA Form 3604, Performance Bond for Other Than Construction Contracts.

Note: GSA Form 3604 will not appear in the Code of Federal Regulations.

Dated: June 15, 1989.

Richard H. Hopf, III,

Associate Administrotor for Acquisition Policy.

BILLING CODE 6820–61–M

PERFORMANCE BOND FOR OTHER THAN CONSTRUCTION CONTRACTS
(See instructions on reverse)

DATE BOND EXECUTED (Must be same or later than date of contract)

Public reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Acquisition Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (), Washington, D.C. 20503.

PRINCIPAL (Legal name and business address)

TYPE OF ORGANIZATION ("X" one)

☐ INDIVIDUAL ☐ PARTNERSHIP

☐ JOINT VENTURE ☐ CORPORATION

STATE OF INCORPORATION

SURETY(IES) (Name(s) and business address(es))

PENAL SUM OF BOND

MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENTS

CONTRACT DATE	CONTRACT NO.

OBLIGATION:

We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS:

The principal has entered into the contract identified above.

THEREFORE:

The above obligation is void if the Principal: (1) Performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of the contract during the base term or option term of the contract and any extensions thereof that are granted by the Government, with or without notice to the Surety(ies), and during the life of any guaranty required under the contract, and (2) performs and fulfills all the undertakings, covenants, terms conditions, and agreements of any and all duly authorized modifications of the contract that hereafter are made. Notice of those modifications to the Surety(ies) are waived.

The guaranty for a base term covers the initial period of performance of the contract and any extensions thereof excluding any options to extend the term of the contract. The guaranty for an option term covers the period of performance for the option being exercised and any extensions thereof.

WITNESS:

The Principal and Surety(ies) executed this performance bond and affixed their seals on the above date.

PRINCIPAL

SIGNATURE(S)	1. (Seal)	2. (Seal)	Corporate Seal
NAME(S) & TITLE(S) (Typed)	1.	2.	

INDIVIDUAL SURETY(IES)

SIGNATURE(S)	1. (Seal)	2. (Seal)
NAME(S) (Typed)	1.	2.

CORPORATE SURETY(IES)

SURETY A	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $
	SIGNATURE(S)	1.	2.	Corporate Seal
	NAME(S) & TITLE(S) (Typed)	1.	2.	

GENERAL SERVICES ADMINISTRATION GSA FORM 3604 ( )

CORPORATE SURETY(IES) (Continued)

SURETY B	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Type)	1.	2.		
SURETY C	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Type)	1.	2.		
SURETY D	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Type)	1.	2.		
SURETY E	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Type)	1.	2.		
SURETY F	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Type)	1.	2.		
SURETY G	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Type)	1.	2.		

BOND PREMIUM ▶	RATE PER THOUSAND $	TOTAL $

INSTRUCTIONS

1. This form is authorized for use in connection with Government contracts. Any deviation from this form will require the written approval of the Administrator of General Services.

2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorization person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.

3. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of the approved sureties and must act within the limitation listed therein. Where more than one corporate surety is involved, their names and addresses shall appear in the spaces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)". In the space designated "SURETY(IES)" on the face of the form insert only the letter identification of the sureties.

(b) Where individual sureties are involved, the completed Affidavit of Individual Surety (Standard Form 28), for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning its financial capability.

4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal", and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

5. Type the name and title of each person signing this bond in the space provided.

GSA FORM 3804 BACK( )

[FR Doc. 89-14860 Filed 6-23-89; 8:45 am]

BILLING CODE 6820-61-C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice To Close Comment Periods on Petitions To List Mono Lake Brine Shrimp, Edgewood Blind Harvestman, and Western Snowy Plover

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice to close public comment periods on listing petitions.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a decision to close the public comment periods on three listing petitions in order to close the record before findings can be made on respective petitions.

DATES: Comments on the petitions to list the Mono Lake brine shrimp, the Edgewood blind harvestman, and the western snowy plover must be submitted by July 11, 1989.

ADDRESSES: Information, comments, or questions on the brine shrimp and the harvestman should be submitted to the Acting Field Supervisor, Division of Endangered Species, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room E-1823, Sacramento, California 95825. Information, comments, or questions on the plover should be submitted to the Field Supervisor, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, 727 N.E. 24th Avenue, Portland, Oregon 97232. The petitions, findings, and supporting data are available for public inspection, by appointment, during normal business hours at the addresses listed above.

FOR FURTHER INFORMATION CONTACT: Mr. Dave Harlow, at the above Sacramento address (telephone 916/978-4866 or FTS 460-4866); Mr. Russ Peterson, at the above Portland address (telephone 503/231-6179 or FTS 429-6179).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended in 1982 (16 U.S.C. 1531 et seq.), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the Federal Register. If the finding is positive, the Service is also required to promptly commence a review of the status of the involved species.

The Service published 90-day findings on two petitions to list the Mono Lake brine shrimp and the Edgewood blind harvestman in the **Federal Register** on August 19, 1988 (53 FR 31721). The Service also published a 90-day finding in the **Federal Register** on November 14, 1988 (53 FR 45788) on a petition to list the western snowy plover. Each of these notices requested public comments on the status of the species. The notices did not, however, specify closing dates for receipt of public comments. Comments on the three petitions must be submitted by the dates indicated above.

Author

This notice was prepared by Miss Jackie Campbell, Division of Endangered Species, U.S. Fish and Wildlife Service, 500 N.E. Multnomah Street, Suite 1692, Portland, Oregon 97232 (503/231-6150 or FTS 429-6150).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411; Pub. L. 100-478, 102 Stat. 2306; Pub. L. 100-653, 102 Stat. 3825 (16 U.S.C. 1531 et seq.); Pub. L. 99-625, 100 Stat. 3500 (1986), unless otherwise noted.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: June 12, 1989.

Susan Recce Lamson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89-15004 Filed 6-23-89; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

RIN 1018-AB14

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on the Proposed Rule To Reclassify the Gila Trout From Endangered to Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of reopening of comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice that the comment period is reopened on the proposed rule to reclassify the Gila trout (*Salmo gilae*) from endangered to threatened. The Service believes that the comment period should be reopened to obtain additional information on the reclassification.

DATE: The comment period on this proposed rule is reopened until July 26, 1989. Comments received after the closing date may not be considered in the final decision on this proposed rule.

ADDRESSES: Written comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, 3530 Pan American Highway NE, Suite D, Albuquerque, New Mexico 87107. Comments and materials will be available for public inspection during normal business hours, by appointment at the above address.

FOR FURTHER INFORMATION CONTACT: Jerry Burton, at the above address (505/883-7877 or FTS 474-7877).

SUPPLEMENTARY INFORMATION:

Background

The Gila trout is native to relatively undisturbed, high altitude mountain streams in Arizona and New Mexico. The Service has determined that reclassification of the Gila trout to threatened status may be warranted. The five original populations in the Gila National Forest, New Mexico, have been restored, replicated, and biologically secured, and seven additional populations have been established within the historic range of this fish. These accomplishments fulfill criteria for reclassification as given in the Gila Trout Recovery Plan (1984).

A proposal to reclassify the Gila trout as threatened was published in the **Federal Register** (52 FR 37424) on October 6, 1987. The comment period on the proposal originally closed on December 7, 1987. The Service is reopening the comment period to obtain additional information on the status of the species. Written comments received by July 26, 1989, at the Service office in the Addresses section will be considered.

References Cited

U.S. Fish and Wildlife Service. 1984. Gila Trout Recovery Plan. Endangered Species Office. Albuquerque, New Mexico. 52 pp.

Author

The primary author of this notice is Sonja E. Jahrsdoerfer, Wildlife Biologist, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766-3972 or FTS 474-3972).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*; Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411; Pub. L. 100–478, 102 Stat. 2306; Pub. L. 100–653, 102 Stat. 3825), Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: June 7, 1989.

Susan Recce Lamson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89–15006 Filed 6–23–89; 8:45 am]

BILLING CODE 4310–55–M

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Finding on Petition and Initiation of Status Review

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding and status review.

SUMMARY: The Service announces a 90–day finding on a petition to reclassify the African elephant from threatened to endangered, and initiates a status review of this species.

DATES: The finding announced herein was made on May 9, 1989. Comments and information may be submitted until September 25, 1989.

ADDRESSES: Comments, information, and questions should be submitted to the Chief, Office of Scientific Authority, Mail Stop: Room 725, Arlington Square, U.S. Fish and Wildlife Service, Washington, DC 20240. The petition, finding, supporting data, and comments will be available for public inspection, by appointment, from 8:00 a.m. to 4 p.m., Monday through Friday, in Room 750, 4401 North Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority, at the above address (703–358–1708 or FTS 358–1708).

SUPPLEMENTARY INFORMATION: Section 4(b)(3) of the Endangered Species Act, as amended in 1982, requires that within 90 days of receipt of a petition to list, delist, or reclassify a species, or to revise a critical habitat designation, a finding be made on whether the petition presents substantial information indicating that the action may be warranted, and that such a finding be promptly published in the **Federal Register**. If the funding is positive, section 4(b)(3) also requires prompt commencement of a review of the status of the involved species. The Service now announces a 90-day finding on a recently received petition.

The petition was submitted jointly by the Humane Society of the United States, Animal Welfare Institute, International Wildlife coalition, Animal Protection Institute, Society for Animal Protective Legislation, and Friends of Animals, Inc. An additional 32 organizations were listed as supporting and joining in the petition. It is dated February 16, 1989, and was received by the Service on the same date. It requests that the classification of the African elephant (*Loxodonta africana*) on the List of Endangered and Threatened Wildlife be changed from threatened to endangered.

The petition, and other information available to the Service, indicates that the status of the African elephant has deteriorated substantially since the species was originally classified as threatened in 1978. There are several serious problems, but the most critical immediate factors in the situation are intensive poaching to obtain elephant ivory and subsequent international trade of this product. In 1978 the species was estimated to number about 1,500,000 individuals. Regulatory measures implemented then and subsequently by the United Sates, other nations, and the convention on International Trade in Endangered Species of Wild Fauna and Flora have not been successful in arresting the decline. By 1987 the number of elephants had fallen to about 764,000, according to the African Elephant and Rhino Specialist Group of the International Union for conservation of Nature and Natural Resources. The most informed current estimates are between 550,000 and 700,000.

The Service has examined the petition and has found it to present substantial information indicating that the requested action may be warranted. Therefore, a review of the status of the African elephant is initiated herewith. The Service will consider the comments received, along with all other available data, in making a finding, required by section 4(b)(3) within 12 months of receipt of a petition presenting substantial information, as to whether the requested action is warranted, not warranted, or warranted but precluded by other listing activity.

Authority: The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*; Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411; Pub. L. 100–478, 102 Stat. 2306; Pub. L. 100–653; 102 Stat. 3825), Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: June 13, 1989.

Susan Recce Lamson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89–15005 Filed 6–23–89; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register

Vol. 54, No. 121

Monday, June 26, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. PE–89–001]

Organization, Functions, and Delegations of Authority

AGENCY: Agricultural Marketing Service.

ACTION: Notice.

SUMMARY: This notice sets forth the organization, functions, and delegations of authority for the Agricultural Marketing Service (AMS).

FOR FURTHER INFORMATION CONTACT: Celia Neach, Agricultural Marketing Service, Room 1721–S, P.O. Box 96456, Washington, DC 20090–6456; telephone 202/447–4874, (FTS) 447–4874.

SUPPLEMENTARY INFORMATION: Pursuant to the authority delegated to the Administrator of AMS in 7 CFR 2.7 and 2.50, the Organization, Functions, and Delegations of Authority of AMS published at 37 FR 8118, April 25, 1972, and amended by 39 FR 23076, June 26, 1974, and 40 FR 29559, July 14, 1975, is superseded by the following Statement of Organization, Functions, and Delegations of Authority of AMS. Advance public notice and opportunity for comment are unnecessary because this document relates to rules and regulations of agency organization, procedure, and practice, and do not affect any member of the public.

General

AMS was created by the Secretary of Agriculture on November 2, 1953, as authorized by 5 U.S.C. 301; Reorganization Plan No. 2 of 1953, 67 Stat. 633; and related authority. The name was changed to the Consumer and Marketing Service on February 8, 1965. Effective April 2, 1972, the Secretary changed the name back to Agricultural Marketing Service. The central office of AMS is located in Washington, DC, but a large part of the program activity is carried on through various regional and field offices. The functions and authorities delegated to the Administrator, AMS, appear in 7 CFR 2.50.

Organization and Functions

The Administrator. The Administrator is responsible for the general direction and supervision of programs and activities assigned to AMS. The Administrator reports to the Assistant Secretary for Marketing and Inspection Services.

Deputy Administrator, Marketing Programs. The Deputy Administrator for Marketing Programs is responsible for participating with the Administrator in developing, administering, and coordinating activities relating to AMS marketing and regulatory programs; and directing and coordinating the administration of the marketing and regulatory programs including the standardization, inspection, grading, and classing of agricultural commodities, market news, the functions contained in the Agricultural Marketing Act of 1946, as amended, including payments to State departments of agriculture in connection with cooperative marketing service projects under section 204(b) (7 U.S.C. 1623(b)), but excepting matters otherwise assigned; and the functions contained in the legislation identified under 7 CFR 2.50. The programs and activities are carried out by six commodity Divisions (Cotton, Dairy, Fruit and Vegetable, Livestock and Seed, Poultry, and Tobacco), and the Commodities Scientific Support Division.

Deputy Administrator, Management. The Deputy Administrator, Management is responsible for participating with the Administrator in developing, administering, and coordinating all activities relating to AMS management programs; directing and coordinating the administration of AMS Equal Employment Opportunity (EEO) and civil rights functions; and directing and coordinating the administration of the overall administrative management programs of AMS including budget and financial services, personnel, training, administrative, information resources management, and communication services. The programs and activities are carried out by the EEO Staff, the Financial Management, Personnel, and Information Resources Management Divisions, and the Executive Services Staff.

Information Staff. The Information Staff is responsible for the overall planning and administration of all public information programs relating to the AMS marketing service program activities. The responsibilities include developing and coordinating information and public education activities addressing consumer, industry, media, congressional, AMS, and Departmental audiences.

Compliance Staff. The Compliance Staff is responsible for developing and implementing methods to ensure integrity, effectiveness, and public confidence in all AMS programs and coordinating the AMS Management Control Program; evaluating and improving methods of detecting, preventing, and taking corrective actions on violations of AMS administered statutes; conducting investigations of non-criminal violations of the statutes administered by AMS, investigating minor criminal violations, and conducting employee misconduct investigations as authorized by the Department's Office of Inspector General.

Legislative and Regulatory Review Staff. The Legislative and Regulatory Review Staff is responsible for formulating and coordinating AMS legislative affairs and regulatory review programs; serving as the principal advisor to the Administrator on legislative matters; and representing AMS in developing and maintaining relationships with congressional offices.

Marketing Programs

The Cotton, Dairy, Fruit and Vegetable, Livestock and Seed, Poultry, Tobacco, and Commodities Scientific Support Divisions are under administrative, functional, and technical direction of the Deputy Administrator for Marketing Programs.

Cotton Division. The Cotton Division is responsible for planning and administering marketing services (market news, standardization, grading, sampling, and testing), expansion of market outlets, marketing regulations, and related programs for cotton, cotton linters, cottonseed, cotton products, and other vegetable fibers and related commodities as authorized by appropriate legislation listed in 7 CFR 2.50.

Dairy Division. The Dairy Division is responsible for planning and administering milk marketing agreement and order programs under the Agricultural Marketing Agreement Act of 1937, as amended, including directing and coordinating the administration of the overall administrative management programs of the Milk Market Administrators and their staffs; market news and milk order market information; promotion and research programs under the Dairy and Tobacco Adjustment Act of 1983; voluntary grading and inspection of dairy products and dairy plants including development of standards as authorized by the Agricultural Marketing Act of 1946, as amended, and related programs for milk and dairy products as authorized by appropriate legislation listed in 7 CFR 2.50.

Fruit and Vegetable Division. The Fruit and Vegetable Division is responsible for planning and administering market news; market regulatory programs; diversion, purchase, export, and research and promotion programs; voluntary quality inspection programs on fresh and processed fruits and vegetables, edible nuts and miscellaneous assigned commodities; marketing agreements and order programs; and a food quality assurance program as authorized by appropriate legislation listed in 7 CFR 2.50.

Livestock and Seed Division. The Livestock and Seed Division is responsible for planning and directing the implementation and administration of marketing services and regulatory activities relating to commodity grading and certification for meat and livestock products; inspection and certification of quality of agricultural and vegetable seeds; development, revision, and interpretation of grade standards and specifications for livestock, meat, wool, and mohair; purchase of meat and meat products for Government programs; market news reporting for livestock, meat, wool, and grain products; self-help research and information programs for lamb, beef, pork, wool, and mohair; and regulation of the marketing of agricultural and vegetable seeds in interstate commerce as authorized by appropriate legislation listed in 7 CFR 2.50.

Poultry Division. The Poultry Division is responsible for planning and administering market news service on poultry, eggs, and related commodities; voluntary inspection and grading on poultry and poultry products, shell eggs, egg products, rabbits and related products; mandatory inspection in all plants processing liquid, dried, or frozen egg products; development and revision of standards; purchase and diversion programs; and research and promotion activities as authorized by appropriate legislation listed in 7 CFR 2.50.

Tobacco Division. The Tobacco Division is responsible for planning and administering marketing services relating to market news, standardization, inspection, and grading, market regulatory programs, expansion of market outlets, and related programs for tobacco products and by-products, naval stores, and related commodities as authorized by legislation listed in 7 CFR 2.50.

Commodities Scientific Support Division. The Commodities Scientific Support Division is responsible for planning and formulating policies and programs for AMS scientific and marketing reseach activities; AMS statistical services; developing and implementing policies, programs, and central laboratory operations to provide scientific support to commodity programs; and carrying out laboratory quality assurance and safety oversight activities and related laboratory training.

Management Services

The Financial Management, Information Resources Management, and Personnel Divisions, the EEO Staff, and the Executive Services Staff are under the administrative, functional, and technical direction of the Deputy Administrator, Management.

Financial Management Division. The Financial Management Division is responsible for planning and administering budget and financial services; formulating and recommending integrated financial policies and programs including systems, instructions, procedures, and forms; provision of advice and assistance on reimbursable and cooperative agreements and other forms of Federal Assistance; and the operation of an Investment Program for AMS user fee reserve balances.

Personnel Division. The Personnel Division is responsible for formulating policy recommendations and developing comprehensive personnel employment programs; developing and administering AMS programs for the classification of positions, organizational development, and position management; employee and labor relations, employee development, and safety and health programs.

Information Resources Management Division. The Information Resources Management Division is responsible for administering AMS information systems, both automated and manual by formulating, planning, and implementing systems to meet AMS changing needs and requirements in conjunction with the Administrator, Deputy Administrators, and Division Directors of AMS; formulating and preparing multi-year budgets and reports on AMS systems, projects, and system activities as required; providing AMS support in data processing, office automation, microcomputers, telecommunications, micrographics, computer graphics, system studies and evaluation.

Equal Employment Opportunity Staff. The EEO Staff is responsible for formulating recommendations for EEO and civil rights politics and procedures and providing guidance and technical assistance on EEO and civil rights concerns; developing implementation plans and monitoring and evaluating EEO and civil rights programs for effectiveness and progress; and administering the EEO Counselor/Mediation and Special Emphasis programs.

Executive Services Staff. The Executive Services Staff is responsible for providing administrative support services to management divisions; serving as liaison with the Animal and Plant Health Inspection Service in providing administrative support to AMS; and administering the Market News telecommunications network and the voice communication system for AMS.

Delegations of Authority

Deputy Administrators. The Deputy Administrator, Marketing Programs and the Deputy Administrator, Management, are delegated the authority to perform all the duties and to exercise all the functions and powers which are now, or which may be vested in the Administrator (including the power of redelegation except when prohibited) except such authority as is reserved to the Administrator. Each Deputy Administrator shall be primarily responsible for the programs and activities of AMS assigned to him or her.

The Deputy Administrator, Marketing Programs, and the Deputy Administrator, Management, are delegated authority to establish and interpret program policies with respect to functions assigned.

Information Staff; Compliance Staff; Legislative and Regulatory Review Staff. The Directors of the Information, the Compliance, and the Legislative and Regulatory Review Staffs are delegated authority, in connection with respective functions assigned to him or her, to perform all duties and exercise all functions and powers which are now, or which may be vested in the Administrator (including the power to redelegate except when prohibited) except such authority as is reserved to the Administrator.

Marketing Programs Divisions and Management Services Divisions and Staffs. The Directors of the Marketing Programs Divisions and the Management Services Divisions and Staffs are delegated authority, in connection with the respective functions assigned to each of them, to perform all the duties and to exercise all the functions and powers which are now, or which may be, vested in the Administrator (including the power of redelegation except when prohibited) except such authority as is reserved to the Administrator and the Deputy Administrators.

Concurrent Authority and Responsibility to the Administrator. No delegation or authorization prescribed shall preclude the Administrator, or each Deputy Administrator, from exercising any of the powers or functions or from performing any of the duties conferred upon them, and any such delegation or authorization is subject at all times to withdrawal or amendment by the Administrator, and in their respective fields, by each Deputy Administrator. The offices to whom authority is delegated shall:

Maintain close working relationships with officers to whom they report;

Keep superiors advised with respect to major problems and developments;

Discuss with superiors proposed actions involving major policy questions or other important considerations or questions including matters involving relationships with other Federal agencies, other agencies of the Department, other Divisions or offices of AMS, other governmental or private organizations or groups.

Prior Authorization and Delegations

All prior delegations and redelegations of authority relating to any function, program, or activity covered by this notice shall remain in effect except to the extent that they are inconsistent, amended, or revoked. Nothing herein shall affect the validity of any action taken under prior delegations or redelegations of authority or assignments of functions.

June 16, 1989.

J. Patrick Boyle,

Administrator.

[FR Doc. 89-15026 Filed 6-23-89; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

[Docket No. 88-210]

Selection of Members for the Secretary's Advisory Committee on Swine Health Protection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Secretary of Agriculture is soliciting nominations for membership on the Secretary's Advisory Committee on Swine Health Protection.

DATE: Written comments must be received or postmarked on or before July 26, 1989.

FOR FURTHER INFORMATION CONTACT: Dr. William C. Stewart, Chief Staff Veterinarian, Swine Diseases Staff, VS, APHIS, USDA, Room 736, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7767.

SUPPLEMENTARY INFORMATION: The Secretary of Agriculture hereby solicits nominations for membership on the Secretary's Advisory Committee on Swine Health Protection (Committee). The Committee advises the Secretary of Agriculture on a variety of matters, including:

1. Evaluating the adequacy of state laws and regulations that pertain to the treatment of raw garbage fed to swine, including assurance that these laws and regulations meet minimum standards under the Swine Health Protection Act (the Act).

2. Assuring that states implement procedures necessary for effective enforcement of state laws pertaining to the treatment of raw garbage fed to swine.

3. Assuring coordination of the states' swine health protection programs and Federal-state cooperative programs.

4. Identifying methods for improving the treatment of raw garbage fed to swine.

5. Ensuring that records are kept and reports submitted demonstrating state compliance with the Department's swine health protection regulations.

6. Recommending improvements to the Swine Health Protection regulations implementing the Act.

We are soliciting nominations for the Committee from interested individuals and organizations, including state agricultural and animal health agencies, the food waste feeder industry, animal health organizations, and swine producer organizations. An organization may nominate individuals from within or outside its membership. However, the Secretary's selection of members to the Committee will not be limited to these nominations so that the Secretary can obtain the broadest possible representation on the Committee, in accordance with the Federal Advisory Committee Act and USDA Departmental Regulation 1041-1. It is a policy of the USDA that no person shall be discriminated against on grounds of race, color, religion, sex, national origin, age, or handicap.

Information concerning the nomination process can be obtained from Dr. William C. Stewart at the address and telephone number listed in this document.

Done in Washington, DC, this 20th day of June 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-15023 Filed 6-23-89; 8:45 am]

BILLING CODE 3410-34-M

Federal Grain Inspection Service

Advisory Committee Meeting

Pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92-463), notice is hereby given of the followng committee meeting:

Name: Federal Grain Inspection Service Advisory Committee.

Date: July 27, 1989.

Place: Red Lion Inn at the Quay, 100 Columbia Street, Vancouver, Washington 98660.

Time: 8:30 a.m.

Purpose: To provide advice to the Administrator of the Federal Grain Inspection Service with respect to the implementation of the U.S. Grain Standards Act.

The Agenda includes: (1) Soybean oil and protein update, (2) wheat dockage and foreign material study, (3) financial matters, (4) OTA followup, (5) research activities, and (6) other matters.

The meeting will be open to the public. Public participation will be limited to written statements unless otherwise requested by the Committee Chairman. Persons, other than members, who wish to address the Committee or submit written statements before or after the meeting should contact W. Kirk Miller, Administrator, FGIS, U.S. Department of Agriculture, P.O. Box 96454, Washington, DC 20090-6454, telephone (202) 382-0219.

BEST COPY AVAILABLE

Dated: June 30, 1989.
W. Kirk Miller,
Administrator.
[FR Doc. 89-15017 Filed 6-23-89; 8:45 am]
BILLING CODE 3410-EN-M

Forest Service

Screening of Effects of Proposed Emissions on Air Quality Related Values in Class I Wilderness Areas

AGENCY: Forest Service, USDA.

ACTION: Notice; extension of comment period.

SUMMARY: On April 24, 1989, at 54 FR 16382, the Forest Service published a notice of intent to use a screening procedure for the initial review of permit applications from proposed new or modified major sources of air pollution that might affect air quality related values in 88 class I wilderness areas managed by the Agency. The comment period on the proposed screening procedure was to end June 23, 1989. In response to requests for more time to comment on the proposed screening procedure, the Forest Service is extending the public comment period for 15 days.

DATE: Comments on the proposed screening procedure must now be received in writing by July 11, 1989.

ADDRESSES: Send written comments to F. Dale Robertson, Chief (2580), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090.

FOR FURTHER INFORMATION CONTACT: James G. Byrne, Watershed and Air Management Staff, 703-235-8096.

Date: June 20, 1989.
George M. Leonard,
Associate Chief.
[FR Doc. 89-15018 Filed 6-23-89; 8:45 am]
BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration
Title: Subsequent Purchaser Reports
Form Number: None. OMB-0648-0079
Type of Request: Request for extension of OMB approval of a currently cleared collection
Burden: 150 respondents; 150 reporting hours; average hours per response—.5 hours
Needs and Uses: Persons purchasing endangered species parts from Certificate of Exemption holders are required to file a report if they intend to resell or otherwise keep the items in the stream of commerce. The reports indentify the purchaser and the exact items purchased. The information is used to help enforce the Endangered Species Act and to track the legal interstate sale of the items.
Affected Public: Business or other for profit, small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Mandatory
OMB Desk Officer: Russel Scarato, 395-7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent to Russell Scarato, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 16, 1989.
Edward Michals,
Departmental Clearance Officer, Office of Management and Organization.
[FR Doc. 89-14955 Filed 6-23-89; 8:45 am]
BILLING CODE 3510-CW-M

Bureau of Export Administration

[Docket No. 9104-01; 9104-02]

Action Affecting Export Privileges: Lennert Appelberg, Appelberg Financial Services

In the Matter of: Lennert Appelberg, individually and doing business as Appelberg Financial Services Respondents.

Summary

Pursuant to the May 24, 1989, the Decision and Order of the Administrative Law Judge (ALJ), which Decision and Order is attached hereto and affirmed by me, Respondent, Lennert Appelberg, individually and doing business as Appelberg Financial Services, Filip Manssonsvag 1, S-13300 Saltsjobaden, Sweden, and all successors, assignees, officers, partners, representatives, agents and employees of Respondent, are hereby denied for a period of fifteen years from the date hereof, all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Export Administration Regulations (15 CFR Parts 768-799).

Order

On May 24, 1989, the ALJ entered his Decision and Order in the above-referenced matter. The Decision and Order, a copy of which is attached hereto and made a part hereof, has been referred to me for final action. Having examined the record and based on the facts in this case, I hereby affirm the Decision and Order of the ALJ.

This constitutes final agency action in this matter.

Date: June 19, 1989.
Joan M. McEntee,
Acting Under Secretary for Export Administration.

Decision and Order

In the Matter of: Lennart Appelberg,[1] individually and doing business as Appelberg Financial Services, Respondents.

[Docket No. 9104-01; 9104-02]

Appearance for Respondent: Lennart Appelberg, Filip Manssonsvag 1, S-13300 Saltsjobaden, Sweden.
Appearance for Agency: Louis K. Rothberg, Esq., Office of Chief Counsel for Export Administration, U.S. Department of Commerce, Room H-3329, 14th & Constitution Ave. NW., Washington, DC 20230.

Preliminary Statement

The Office of Export Enforcement (the "Agency"), Bureau of Export Administration, U.S. Department of Commerce issued a February 8, 1989 charging letter against Respondent Lennart Appelberg, individually and doing business as Appelberg Financial Services. The letter was issued under the authority of the Export Administration Act of 1979 (50 U.S.C.A. app. 2401-2420), as amended (the "Act"), and under the authority of the Export Administration Regulations (the "Regulations"), promulgated pursuant to the Act.[2]

[1] Respondent Appelberg's first name is spelled "Lennert" in those filings by the Office of Export Enforcement (the "Agency"), Bureau of Export Administration, U.S. Department of Commerce that were drafted by the Agency. It is, however, spelled "Lennart" in Exhibits 2, 3, 6, 8, 10, 12, and 13 to the May 11, 1989 Motion filed by the Agency. The spelling used in this Decision and Order is "Lennart," and the Decision and Order apply to Respondent Appelberg under either spelling of his first name.

[2] The Act was reauthorized and amended by the Export Administration Amendments Act of 1985, Pub. L. 99-64, 99 Stat. 120 (July 12, 1985), and amended by the Omnibus Trade and

Continued

The charging letter alleged that in 1985 Respondents, in conspiracy with others, including Goran B. Josberg, a person denied U.S. export privileges, obtained a U.S.-origin computer from a distributor in Sweden and reexported it to the Soviet Union without the required U.S. authorization. These actions of Respondents, according to the charging letter, violated §§ 787.3(b), 787.4, 787.6 and 787.12 of the Regulations.

When two months had passed after issuance of the February 8, 1989 charging letter without Respondents having filed an answer, an Order of April 10, 1989 declared Respondents to be in default and directed the Agency to make the default submission prescribed by § 788.8 of the Regulations. The Agency made that submission on May 11, 1989. Respondents have to date filed no submission in this proceeding.

Discussion

The Agency's default submission contained evidence of service of the charging letter on Respondents (May 11, 1989 Motion, Exhibit (hereinafter "Exh.") 1). The Agency's submission further presented evidence that in 1985 Respondents participated with others in obtaining a computer from a Swedish distributorship. This evidence included commercial documents connected with the transaction (*id.* Exh. 3, 5, 9), each of which bore Respondent Lennart Appelberg's signature, a certificate signed by him (*id.* Exh. 12), and statements by others describing his role (*id.* Exh. 2, 8, 10).

To show the alleged reexport of the computer from Sweden to the Soviet Union, the Agency also presented several documents. A commercial document signed by Respondent Lennart Appelberg (*id.* Exh. 3) and a written statement by a part owner of the distributorship (*id.* Exh. 6) said that Respondent Lennart Appelberg picked up the computer at the distributorship on December 27, 1985. Two days later, on December 29, 1985, according to an air waybill introduced by the Agency (*id.* Exh. 11), Respondents made a shipment from Sweden to Moscow, USSR of "Data Equipment".

To document further the alleged reexport, the Agency presented a certificate signed by Respondent Lennart Appelberg (*id.* Exh. 12) in which he declared that he had obtained the computer from the distributorship in December 1985 and had delivered it to Josberg. According to additional Agency evidence, Josberg had said that he did a majority of his business with the Soviet Union, that he exported to it computers manufactured by the company that made the one involved in this proceeding, and that he operated out of a Moscow hotel room (*id.* Exh. 2). Lastly, the Agency pointed out that the consignee in the air waybill for Respondents' December 29 shipment was a Moscow hotel (*id.* Exh. 11).

To prove that the computer involved in the transaction was of U.S.-origin, the Agency cited the serial number of the computer as reflected in one of the commercial documents for the transaction (*id.* Exh. 3), together with a letter from the computer's manufacturer stating that the computer with that number would have been made in the United States (*id.* Exh. 4). Further Agency evidence showed that, for national security reasons, this computer required U.S. authorization for reexport to the Soviet Union, although a presumption of approval may have existed for a properly filed application (*id.* Exh. 14); and the Agency showed that Respondents had made no application (*id.* Exh. 13).

As for Josberg, the Agency introduced a December 28, 1983 Temporary Denial Order naming him (*id.* Exh. 15) to show that he was a person denied U.S. export privileges during 1985. The Agency further presented evidence of statements made by Josberg indicating a knowledge of U.S. export control laws (*id.* Exh. 2, 16), and from this evidence argued that this same knowledge could be attributed to Respondents as alleged co-conspirators.

All told, the Agency contended that Respondents' actions contravened §§ 787.3(b), 787.4, 787.6, and 787.12 of the Regulations. For a sanction, the Agency, emphasizing the deliberateness of Respondents' actions, proposed a twenty-year denial of U.S. export privileges.

Conclusion

The Agency's presentation clearly established that Respondents participated with other persons in 1985 in obtaining a computer from a Swedish distributorship; the three commercial documents signed by Respondent Lennart Appelberg, together with the other evidence, serve as ample proof on that point. The certificate signed by him stating that he obtained the computer from the Swedish distributorship and delivered it to Josberg reasonably connects his obtaining of the computer to Josberg.

The Agency also clearly documented other elements in its cause of action. These elements include: that the computer was of U.S. origin; that a U.S. authorization was required for its reexport to the Soviet Union; that Respondents failed to obtain that authorization; that Respondents knew, or reasonably should have known, that such an authorization was required; and that Josberg was a person denied U.S. export privileges.

That Respondents reexported the computer from Sweden to the Soviet Union is less susceptible of a direct showing. But the Agency did present a body of circumstantial proof, described above, that successfully established the alleged reexport by a preponderance of the evidence.

From the above points established by the Agency, the conclusion follows that Respondents violated §§ 787.3(b), 787.4, and 787.6 of the Regulations by participating in the reexport of a U.S.-origin computer from Sweden to the Soviet Union without the U.S. authorization that Respondents knew or reasonably should have known was required. Further, because Josberg obtained benefit from and had an interest in this reexport, Respondents also violated § 787.12 of the Regulations.

Respondents' transgressions are serious, and as such merit a significant sanction. But the twenty years proposed by the Agency is slightly high. In a case earlier this year involving Josberg, the Agency proved violations by Josberg in a whole series of transactions (including the computer transaction with which Respondents are charged); and as a sanction, the Agency's proposal, which was adopted in the Decision and Order, was for a denial period of 35 years (54 FR 9537, March 7, 1989). Consequently, Respondents' violations in only this single computer transaction warrant a decidedly lesser term. By that standard, a sanction for Respondents of a fifteen-year denial of export privileges would be fair; it would also constitute a significant and an adequate sanction.

The proposed sanction for Respondents may be measured also against the sanctions imposed by this Tribunal on other respondents who were involved in transactions with Josberg. Three other cases were initiated by the Agency against such respondents: in one, the charges were dismissed; and in each of the other two, violations were found and denial periods were imposed, of twenty years and of ten years respectively. These two cases were: *Elzer* (twenty years), 53 FR 26676, July 29, 1988; and *Keck* (ten years), 54 FR 11775, March 22, 1989. A review of the

Competitiveness Act of 1988, Pub. L. 100-418, 102 Stat. 1107 (August 23, 1988).

The Regulations, formerly codified at 15 CFR Parts 368-399, were redesignated as 15 CFR Parts 768-799, effective October 1, 1988 (53 FR 37751, September 28, 1988).

degree of culpability of the respondents in these two cited cases as compared with Respondents' culpability here suggests that fifteen years for Respondents would be consistent with these prior decisions. Accordingly, it shall be so ordered.

Order

I. For a period of fifteen years from the date of the final Agency action, respondents

Lennart Appelberg individually and doing business as Appelberg Financial Services, Filip Mansonsvag 1, S–13300 Saltsjobaden, Sweden

and all successors, assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

II. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation:

(i) As a party or as a representative of a party to a validated or general export license application;

(ii) In preparing or filing any export license application or request for reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data.

Such denial of export privileges shall extend to those commodities and technical data which are subject to the Act and the Regulations.

III. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which the Respondents are now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

IV. All outstanding individual validated export licenses in which Respondents appear or participate, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Respondents' privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

V. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing, shall, with respect to commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any Respondent or any related person, or whereby any Respondent or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly:

(i) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any Respondent or related person denied export privileges, or

(ii) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

VI. This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C.A. app. 2412(c)(1)).

Thomas W. Hoya,

Administrative Law Judge.

Date: May 24, 1989.

To be considered in the 30 day statutory review process which is mandated by section 13(c) of the Act, submissions must be received in the Office of the Under Secretary for Export Administration, U.S. Department of Commerce, 14th & Constitution Ave., NW., Room 3898B, Washington, DC, 20230, within 12 days. Replies to the other party's submission are to be made within the following 8 days. 15 CFR 388.23(b), 50 FR 53134 (1985). Pursuant to Section 13(c)(3) of the Act, the final order of the Under Secretary may be appealed to the U.S. Court of Appeals for the District of Columbia within 15 days of its issuance.

[FR Doc. 89–14939 Filed 6–23–89; 8:45 am]

BILLING CODE 3510-DT-M

[Docket No. 8118–01]

Data General Corp., Respondent; Order of Dismissal

Background

The Administrative Law Judge (ALJ) on May 19, 1989, issued an order dismissing this proceeding. That order is before me for review under 50 U.S.C. App. 2412(c).

The charging letter alleges 96 separate violations of § 387.6 of the Export Control Regulations in effect in 1983 and 1984 (1983/84 Regulations), 96 separate violations of § 387.4(a) of the 1983/84 Regulations, and 16 separate violations of § 387.7 of the 1983/84 Regulations. In total, the charging letter alleges 208 separate violations of the 1983/84 Regulations.

This case has had a tortuous procedural history, including a previous dismissal of the proceedings by the ALJ which was vacated by the Under Secretary on November 17, 1988. The dismissal now before me for review results from a serious of incidents following the breakdown of settlement negotiations in late April of this year. First the ALJ refused the Department's request for an extension in time to answer Respondents outstanding motion to compel a response to requests of admissions. The Department then filed a motion for judgment on the pleadings which was rejected by the ALJ as "unresponsive and untimely." The Department then refused to comply with the ALJ's May 9 order requiring a response to Respondents outstanding requests for answers to interrogatories and production of documents, insisting that the ALJ should rule on the merits of the Department's motion for judgment on the pleadings. On account of the Department's refusal to comply with his May 9 order, the ALJ issued the order of dismissal now before me for review.

In his order of dismissal, the ALJ found that the Department's refusal to comply with orders relating to discovery prevented the development of a full record leaving no alternative but dismissal of the case. The Department, on the other hand, contends that the case can be decided on the existing record and that the ALJ's refusal to rule on the merits of the Department's motion for judgment on the pleadings as well as other allegedly arbitrary and capricious procedural rulings constitute abuses of discretion. Needless to say, Respondents supports the order of dismissal.

Discussion

The record in this proceeding reveals a climate of animosity between the ALJ and the Department inconsistent with effective enforcement of export controls and obtaining a sound resolution of this case. Some of the ALJ's procedural rulings appear to result from less than judicious consideration. In particular, the ALJ's summary refusal to accommodate the joint request to extend procedural deadlines appears arbitrary in the absence of any indication that the extension would inconvenience the tribunal. On the other hand, while a careful reading of the Department's motion for judgment on the pleadings reveals that it was intended to be responsive and not in disregard of the ALJ's May 1 order requiring a response to Repondent's motion to compel discovery, that document could have been better drafted to make that point more clearly.

The Department decision to file a motion for judgment on the pleadings in a case involving substantial allegations going to the issue of mitigation is also subject to question. In seeking to have the entire case resolved on a motion for judgment on the pleadings, the Department has necessarily conceded that all allegations of Respondent going to mitigation should be accepted. Yet, these allegations appear to be so substantial and extensive as to support a cogent argument that not more than nominal sanctions should be imposed even if the alleged violations of the regulations are proven.[1] Without some better showing than more than nominal sanctions should be imposed if the alleged violations are proven, I cannot find that vacating the order of dismissal and remanding the proceeding for consideration of the motion for judgment on the pleadings would serve the cause of fair and effective enforcement of the Export Control Regulations. Accordingly, for the reasons just stated rather than the reasons stated by the ALJ in support of his order of dismissal, I have decided that the order of dismissal should be affirmed.

Order

Having examined the record, and based on the facts before me in this case, I hereby affirm the ALJ's recommendation that these proceedings be dismissed.

This constitutes final agency action on this matter.

Date: June 19, 1989.

Joan M. McEntee,

Acting Under Secretary for Export Administration.

[1] Particular note has been taken to claims asserted by Respondent in mitigation. First, Respondent claims that the alleged violations have already been adequately sanctioned by the Department's having summarily suspended Respondent's distribution license in September of 1984 costing Respondents millions of dollars in lost sales. Second, Respondent claims that its post 1984 adherence to the Export Control Regulations has been exemplary.

DEPARTMENT OF COMMERCE

Office of Administrative Law Judges

Washington, DC 20230

[Docket No. 8118–01]

In the Matter of Data General Corp., Respondent.

Appearance for Respondent: Richard S. Elliott, Esq., Paul, Weiss, Rifkind, Wharton & Garrison, 1615 L Street NW., Suite 1300, Washington, DC 20036.

Appearance for Agency: Thomas C. Barbour, Esq., Attorney-Advisor, Office of Chief Counsel for Export Administration, U.S. Department of Commerce, Room H–3329, 14th & Constitution Ave. NW., Washington, DC 20230.

Order of Dismissal

The charging letter and the proceeding are hereby Dismissed.

Agency Counsel, in his filing on May 12, 1989 refused, without explanation or statement of objections, to respond to the pending discovery requests. Such refusal denies this Tribunal the exercise of its function to rule on objections in such situations and makes the further conduct of the proceeding a farce. The approach of Agency Counsel does not appear to have changed in the two years since the Order quoted below was issued. In relevant part it said:

> The record clearly reflects and demonstrates that the Department's dilatory tactics respecting discovery have and continue to impair the orderly progress of this proceeding, including the Respondent's ability to develop and present its equitable defenses. Further, it is noted that this cited refusal is but another, in a pattern of Agency countenanced actions on the part of its officials and counsel, which demonstrate a continuing pattern of interference and obstruction of the functional independence of ther Administrative Law Judge to conduct fair and impartial due process adjudications under the Administrative Procedure Act and the Export Administration Amendments Act of 1985, Pub. L. 99–64, 99 Stat. 120 (*Nash* v. *Califano*, 613 F.2d 10 (1980)).
>
> The record of interference and obstruction is demonstrated and documented in the correspondence and the disposition of numerous cases over the past year since the above Act was implemented culminating in the incomplete "Request to Amend Charging Letter" filed by Agency Counsel on December 19, 1986. As with the other of Agency Counsel's filings which are incomplete and mistate the record, it does not provide a basis for coherent action, nor does it reflect the specific guidance given during the December 19 conference. Over the last decade, Agency Counsel appears to have presided over a compliant and secretive administrative adjudicatory process facially patterned to provide a fair hearing, but in fact, devoid of independent consideration or review. The submissions and comments clearly demonstrate Agency Counsel's unwillingness to permit independent inquiry or adjudication, even in the limited area of discovery as provided in the Agency Regulations 55 CFR 388.9 Administrative Conference Recommendation 21, and the relevant Federal Rules of Civil Procedure.
>
> Action is deferred on all other aspects of the Motion except with respect to attorney's fees which is denied. While it is abundantly clear that the Counsel and the Agency's failure was not substantially justified and such award of expenses would not be unjust, applications for attorney's fees under the Equal Access to Justice Act to the Department of Commerce are to be filed in the manner prescribed in 15 CFR Part 18. Since no such filing was made, no proper adjudication may be considered here. Counsel's attention is also invited to the recent administrative decision, in the matter of Robert W. Haire, Sr., Docket No. 601–172, December 16, 1986, which would deny such recovery even under the Equal Access to Justice Act, the statutory basis for the sovereign immunity waiver. Here, resort to an Article III court of competent jurisdiction would appear to be more the appropriate forum to adjudicate the question of fees and expenses in the course of the judicial proceeding.

(Extract from Order of December 22, 1986 in *D.S.E., Inc.*, Docket No. 6679–01).

Background

The charging letter covering these alleged 1983–1984 violations was initially dated July 1, 1988. Differences concerning the sufficiency of both the initial and amended charging letter were determined by the Under Secretary's Order of November 17, 1988. An answer was filed on December 19, 1988. The usual requests were made for the parties to state their position on January 11, 1989, and such filings were made before the scheduling Order was issued on February 17, 1989. On March 9, 1989, Respondent filed requests for Discovery. A Motion to Compel Discovery was filed and an Order issued on April 7, 1989, to which a response was directed by April 18. The period in which to respond to the Motion to Compel was thereafter extended to April 28. In this period it was represented that settlement was imminent. However, the proceedings were not suspended and when further extension was requested on the due date April 28, it was denied by Order of May 1, 1989, with the admonition that a complete response was to be filed on

May 2, and that sanctions would be deferred pending that filing. On May 2, 1988, the contemplated filing was not made. Rather, Agency Counsel filed a Motion for Judgment on the Pleadings, which was denied as unresponsive and untimely. By Order of May 5, 1988 Agency Counsel was again given the opportunity to respond to the outstanding discovery requests, this time by May 9, 1988. On May 5, Agency Counsel filed an interlocutory appeal with the Under Secretary, without prior notice or request for certification of the question posed, to this Office.[1] Following a further extension to May 12, 1989 for the Agency to respond to all of the Discovery requests, Agency Counsel, on that date filed a pleading declining to respond to the discovery requests. On May 16, 1988, following the initial drafting of this Order, Respondent's Counsel filed a Motion to Dismiss.

Discussion

In the present incomplete state of the record this Tribunal perceives no alternative to dismissal of the case, regrettable though that course of action is. Agency Counsel's actions have effected a statemate preventing development of a complete record. The comments on behalf of the Agency in its Appeal respecting its Motion To Dismiss are at least misleading. The appropriate time for filing a Motion to Dismiss is following the filing of Respondent's answer. While no time is established in the rules for such filing, orderly practice, particularly with respect to such a dispositive Motion, warrants it as well as other such Motions that are directed to the contents of pleadings, being made as soon after the filing as possible. In addition to the filing being out of time, it was made in lieu of the response to Discovery. Since the Agency was then in default, it was in no position to pray for, urge, request or compel dispositive action on an alternative request. Without a delay to allow for the Respondent's Counsel to respond, which would materially alter the course and timing of the proceeding, a ruling on the substance of the Motion would have been clearly premature and inappropriate. The parties had been advised of the pre-hearing and hearing dates. Administrative arrangements had been initiated. Witnesses and other schedules had been set. By such tardy filing, Counsel was not entitled to disrupt the process in this already stale proceeding. If Agency Counsel had such confidence in the position asserted, the outcome sought should have been perceived as inevitable and the proceedings respecting discovery and hearing could have continued as provided by the regulations and the announced schedule. The pre-hearing conference would have been an appropriate time and place to go over each of the asserted admissions contained in the Motion. They would, at that point, have been the basis for a specific finding on the record or identified as an area for dispute to be resolved at the hearing. For Agency Counsel to take the position that by some divine inspiration or manifest destiny only he has the vision of immutable truth and right, demonstrates an unacceptable arrogance.

Discovery is specifically provided for in Agency Counsel's self scrivined regulations. A mockery has been made over the years of the valuable right, culminating in this most recent instance of refusal by Counsel to follow the agency regulations. No objection has been made to the discovery requests. No cause has been stated for not responding. An impudent refusal to participate in the process has been manifest by Counsel who is delinquent. The delegee of the Secretarial Authority may not countenance such misconduct.

The arguments of Respondents Counsel in support of this Motion to Dismiss are adopted and incorporated herein.

Hugh J. Dolan,

Administrative Law Judge.

Date: May 19, 1989.

[FR Doc. 89-14938 Filed 6-23-89; 8:45 am]

BILLING CODE 3510-DT-M

[1] The manner of filing the interlocutory appeal is well calculated to deny to the Secretary's delegatee a full basis of decision. The usual and better course in such exceptional instances is for the moving party to request certification of the question by the Administrative Law Judge, noting the intention to file such appeal. The Administrative Law Judge and the opposing party then have the opportunity to comment, presenting the appellate authority with a complete record for a prompt adjudication.

International Trade Administration

[A-122-806]

Final Determination of Sales at Less Than Fair Value; Generic Cephalexin Capsules From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: We determine that generic cephalexin capsules from Canada are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to continue to suspend liquidation of all entries of generic cephalexin capsules from Canada, as described in the "Continuation of Suspension of Liquidation" section of this notice. The ITC will determine, within 45 days of the publication of this notice, whether these imports are materially injuring, or threaten material injury to, a United States industry. We also determine that critical circumstances do not exist with respect to imports of generic cephalexin capsules from Canada.

EFFECTIVE DATE: June 26, 1989.

FOR FURTHER INFORMATION:
Contact Karmi Leiman or Louis Apple, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; (202) 377-8371, (202) 377-1769.

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that generic cephalexin capsules from Canada are being, or are likely to be, sold in the United States at less than fair value, as provided for in section 735 of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) ("the Act"). The estimated weighted-average margins are shown in the "Continuation of Suspension of Liquidation" section of this notice. We also determine that critical circumstances do not exist with respect to generic cephalexin capsules from Canada.

Case History

On April 7, 1989, we made an affirmative preliminary determination (54 FR 14669, April 12, 1989). The following events have occurred since the publication of that notice.

On April 12, 1989, a disclosure conference was held with the respondent, Novopharm, Ltd. ("Novopharm"), to explain the methodology used in the Department's preliminary determination. A disclosure conference was held with the petitioner, Biocraft Laboratories, Inc., on April 13, 1989. The petitioner submitted comments pursuant to the disclosure conference on April 17, 1989.

Novopharm's response to the Department's second deficiency letter (dated April 4, 1989) was submitted in two parts. Appendices A and B were received on April 18, 1989, and the balance of the response, including two computer tapes, was received on April 19, 1989. Two corrected tapes were filed on April 20, 1989.

The Department received a request from respondent on April 21, 1989, for a public hearing to comment on the preliminary determination. A request for a public hearing was received from petitioner on April 24, 1989.

The Department's verification at the Novopharm facility in Scarborough, Ontario, Canada took place from April 24 through April 28, 1989. Verification took place at the headquarters of LyphoMed/Novopharm Pharmaceutical Company ("the joint venture") and LyphoMed, Inc. ("LyphoMed") in Rosemont, Illinois from May 1 through May 5, 1989.

Case briefs were submitted by both the petitioner and the respondent on May 31, 1989. On June 5, both parties submitted rebuttal briefs. The public hearing was held on June 7, at which counsel for both parties were present.

On June 9, 1989, the Department received post-hearing comments from the petitioner.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the *Harmonized Tariff Schedule* (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS subheading(s). The HTS numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The products covered by this investigation are generic cephalexin capsules from Canada. Generic cephalexin capsules are cephalexin monohydrate in capsule form. Cephalexin monohydrate is a semi-synthetic cephalosporin antibiotic intended for oral administration. Its chemical formula is $C_{16}H_{17}N_3O_4S.H_2O$. Generic cephalexin capsules contain not less than 90 percent and not more than 120 percent of the labelled amount of cephalexin monohydrate. The capsule is made of a water soluble gelatin, designed to facilitate swallowing and a phased release of the drug into the user's digestive system.

Prior to January 1, 1989, such merchandise was classifiable under item 411.7600 of the *Tariff Schedules of the United States Annotated* (TSUSA). This merchandise is currently classifiable under HTS subheading 3004.20.00.

Period of Investigation

The period of investigation is May 1, 1988, through October 31, 1988.

Fair Value Comparisons

To determine whether sales of generic cephalexin capsules from Canada to the United States were made at less than fair value, we compared the United States price to the foreign market value ("FMV"), as specified below.

United States Price

We based United States price on exporter's sales price ("ESP"), in accordance with section 772(c) of the Act, since the first sale to an unrelated customer was made after importation of the subject merchandise. We analyzed sales by the joint venture and by LyphoMed. To calculate ESP, we used the packed, ex-warehouse or delivered, duty-paid prices to unrelated purchasers in the United States. We made deductions, where appropriate, for foreign inland freight, U.S. inland freight, U.S. and foreign brokerage and handling charges, insurance, and U.S. duty, in accordance with section 772(d)(2) of the Act. We made further deductions, where appropriate, for discounts, rebates, and price protection payments.

In accordance with section 772(e)(2), we made additional deductions, where appropriate, for credit expenses, commissions, royalties, and indirect selling expenses, including: Pre-sale warehousing, inventory carrying costs, advertising, and other indirect selling expenses. The total of the U.S. indirect selling expenses formed the cap for the allowable home market indirect selling expenses offset under § 353.56(b) of the Department's new regulations (54 FR 12742, March 28, 1989) (to be codified at 19 CFR).

Pursuant to section 772(d)(1) of the Act, we added duty drawback paid by the Canadian government to respondent as a rebate of duties paid on imports of raw cephalexin.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value based on the packed, delivered home market prices to unrelated purchasers. We made deductions, where appropriate, for frieght to warehouse, inland insurance, discounts, rebates, credit expenses, royalties, warranty expenses, and commissions. We also deducted indirect selling expenses, including: Inventory carrying costs, advertising, warehousing expenses, and other indirect selling expenses. These expenses were capped by the amount of indirect selling expenses incurred on sales in the U.S. market, in accordance with § 353.41 of our new regulations.

In order to adjust for differences in packing between the two markets, we deducted Canadian home market packing costs from foreign market value and added U.S. packing costs.

Pursuant to section 773(a)(4)(C) of the Act, we made further adjustments to the home market price to account for differences in merchandise. In calculating the difference in merchandise adjustment, we used only those cost differences related to physical differences in the merchandise.

Currency Conversion

We used the official exchange rates in effect on the dates of sale, in accordance with section 773(a)(1) of the Act. All currency conversions were made at the rates certified by the Federal Reserve Bank of New York in accordance with § 353.60 of the Department's new regulations.

Verification

We verified the information used in making our final determination in this investigation in accordance with section 776(b) of the Act. We used standard verification procedures, including examination of relevant accounting records and original source documents provided by the respondent.

Critical Circumstances

Petitioner alleges that "critical circumstances" exist with respect to imports of the subject merchandise from Canada. Section 735(a)(3) of the Act provides that critical circumstances exist if we determine that:

(A) (i) there is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation; or

(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value; and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 735(a)(3)(B), we generally consider the following factors in determining whether imports have been massive over a relatively short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

Because the Department's import data pertaining to the subject merchandise are based on basket TSUSA categories,

we requested specific data on shipments of the subject merchandise as the most appropriate basis for our determinations of critical circumstances.

Based on our analysis of the monthly shipment data submitted by the respondent, we have found that imports of the subject merchandise have been massive over a relatively short period of time because they increased by more than 15% in the period following the Department's initiation. While some of this increase may have been due to seasonal fluctuations in the demand for the subject merchandise, we were presented with insufficient data to determine the extent of any seasonality. Therefore, we find that the requirements of section 735(a)(3)(B) are met.

We have examined antidumping duty measures undertaken by foreign countries as reported through the GATT Committee on Antidumping Practices. We found no record of antidumping orders on generic cephalexin capsules from Canada. Therefore, we find that the requirements of section 735(a)(3)(A)(i) are not met. As for section 735(a)(3)(A)(ii), it is our standard practice to impute knowledge of dumping when the estimated margins in our determinations are of such a magnitude that the importer should realize that dumping exists with regard to the subject merchandise.

The estimated margins found in this determination are not sufficiently high to impute knowledge of dumping. Therefore, despite the existence of massive imports, we conclude that critical circumstances do not exist with respect to imports of generic cephalexin capsules from Canada.

Interested Party Comments

Comment 1: Respondent requests that the Department make an allowance for quantity discounts pursuant to § 353.55 of the Department's new regulations by comparing the highest volume sales in the United States with the highest volume sales in the home market. Respondent claims that it is eligible for a quantity discount adjustment under both § 353.55(b)(1) and (b)(2). It claims that it granted quantity discounts on more than 20 percent of its home market sales during the period of investigation ("POI"). It also claims that its U.S. quantity discounts are attributable to production cost savings.

Petitioner argues that the Department should not make an allowance for quantity discounts. Petitioner claims that respondent has not satisfied the requirements of section 353.55 because it did not grant comparable quantity discounts on at least 20% of its home market sales, nor has it shown that the discounts it offers in either the home market or the United States are related to economies of scale associated with the production of larger quantities of cephalexin capsules.

DOC Position: In order to make the most reasonable comparison, the Department has compared sales to buying groups and government agencies in the home market with sales to purchasers of large quantities in the United States. Similarly, we have compared sales to purchasers other than buying groups and government agencies in the United States.

Because of this, we have not applied a quantity discount adjustment to foreign market value, as provided for under § 353.55(b)(1) or (b)(2). Moreover, respondent's claim for such an adjustment was not adequately supported.

Comment 2: Petitioner argues that the Department should exclude variable factory overhead and direct labor costs from the adjustment for physical differences in merchandise. Further, the cost data excluded from the adjustment for physical differences in merchandise should not be allowed as a quantity adjustment.

Respondent argues that all costs (factory overhead, labor, and materials) associated with producing physically different merchandise should be included in the adjustment for physical difference in merchandise. Should the Department exclude these costs from the adjustment for physical differences in merchandise, respondent maintains that the costs should be used to adjust the FMV in accordance with § 353.55(b)(2).

DOC Position: To the extent that physical differences exist between the merchandise sold in the U.S. and home markets, the Department adjusts the observed FMV by the net differences in variable costs associated with those differences, in accordance with § 353.57. In this instance, respondent was unable to show that differences in variable factory overhead and direct labor costs are associated with physicial differences in the merchandise. The Department therefore did not adjust the FMV by the net difference in these costs. Respondent did demonstrate that differences in the costs of materials for the products sold in the two markets were associated with physical differences in the merchandise. Therefore, we adjusted FMV for the difference in material costs.

Further, as explained in Comment 1 above, the Department did not adjust the FMV by the net difference in manufacturing costs pursuant to § 353.55(b)(2).

Comment 3: Petitioner argues that due to Canadian government dominance of the home market, sales to government agencies and hospitals should be excluded from the FMV because these sales are not made under "free market conditions. Petitioner asserts that sales are as "state controlled" as sales in Poland or Hungary.

DOC Position: We disagree and have included sales to government agencies and hospitals in the home market in the weighted-average FMV. There is no foundation in the statute, regulations, or in Departmental practice for finding "state control" of only certain sales to certain purchasers in a market economy.

Comment 4: Respondent asserts that date of sale for all sales in both the U.S. and home markets is the date of shipment. The terms of the sales are subject to change up to the time of shipment of the merchandise.

DOC Position: We agree. We recognize a sale when all terms, including price and quantity, are fixed. We have reviewed numerous examples of respondent's contracts in both the U.S. and home markets. We determined that the terms of sale, including price and quantity, are subject to change until the shipment date.

Comment 5: Petitioner argues that the magnitude of the difference between the packing costs reported for U.S. sales and packing costs reported for Canadian sales raises doubts about the accuracy of the information.

Doc Position: We disagree. We examined packing costs for both markets at verification and found the reported costs to be accurate.

Comment 6: Petitioner argues that due to the frequency of erroneous data discovered by the Department at verification, the Department should adjust all reported values in a given category to reflect the average differential between the reported values and the verified values.

Doc Position: In making our final determination, we used only verified information. We did not adjust all reported values as petitioner has suggested. In certain instances, we used respondent's revised figures, which reflect the correction of errors found at verification. We did not make deductions for home market freight costs to customers or for cash discounts because of pervasive errors in the reported data.

Comment 7: Petitioner agrees with the Department's preliminary determination finding evidence of "massive" imports by respondent after the Department's initiation, but disagrees with the Department's conclusion that the importer did not know of sales at less than fair value. Petitioner argues that the price differential between the U.S. and home markets was large enough to impute knowledge of dumping by the importer because there is a close corporate relationship between the exporter and importer. This relationship permitted the parties to know that the goods were selling in the United States at less than fair value. Petitioner asks that the Department conclude that critical circumstances exist.

Respondent agrees with the Department's preliminary determination finding that no critical circumstances exist and argues that the estimated margins are not sufficiently high to impute knowledge of dumping. Respondent states that its exports of the subject merchandise were not "massive." Rather, it contends that it was filling pre-investigation contracts that were made when "seasonal" orders were high. Respondent states that despite the relationship between the companies, the Department's analysis is sufficiently complex and the margins sufficiently low that it was not possible to know that sales were made at less than fair value.

Doc Position: The Department has determined that critical circumstances do not exist with respect to imports of the subject merchandise, as explained in the "Critical Circumstances" section of this notice.

Comment 8: Respondent argues that the Department should treat advertisements by the joint venture as indirect selling expenses, and not as direct selling expenses, because the advertisements were directed at customers of the joint venture, and not to customers of these customers.

Petitioner argues that the wording of the promotional flier can be construed as directed either at customers of the joint venture or at the customer's customers. Hence, the joint venture's advertising should be deducted directly from the U.S. price.

Doc Position: We agree with respondent. We examined the joint venture's advertising at verification and found that these advertisements were directed at first level purchasers and not at the customer's customer.

Comment 9: Respondent argues that the Department should use the interest rate on LyphoMed's convertible subordinated debentures issued in the United States in March, 1987, in its calculation of credit and inventory carrying costs for U.S. sales. Respondent argues that while the actual interest paid may fall below generally available rates of interest during the period, the Department should follow its established policy of using actual costs rather than imputing hypothetical credit costs.

Petitioner argues that the rate paid to holders of the debentures does not accurately reflect respondent's costs of financing its operations in the United States. The interest rate paid on the debentures omits the cost to respondent of the outstanding equity rights enjoyed by the debenture holders.

Doc Position: We agree with petitioner. We recalculated U.S. inventory carrying costs and credit costs using the prime rate in effect during the peirod of investigation. The outstanding debentures contain a stock convertibility option. This option represents a real, though unquantifiable, cost to respondent over and above the cost of the interest payments to the debenture holders. In the absence of actual quantifiable short-term borrowing costs, the Department uses the prime rate as the best information available.

Comment 10: Respondent argues that advertising expenses incurred by LyphoMed on the sales of its products sold under the LyphoMed name should not be deducted as a circumstance of sale adjustment nor included in the ESP cap. Respondent claims that advertising for LyphoMed products bears no relationship to the sale of products, including cephalexin capsules, bearing the "LyphoMed/Novopharm" name.

Petitioner argues that LyphoMed's advertising benefits LyphoMed/Novopharm products as well as LyphoMed products and that an allocated portion should be deducted from the U.S. price.

Doc Position: We agree with respondent and did not include LyphoMed's advertising in our calculation of U.S. price. LyphoMed, while one of the partners in the joint venture, is an independent corporate entity producing products other than the subject merchandise. There is no evidence that advertising for LyphoMed brandname products, which do not include generic cephalexin capsules, has any relation to U.S. sales of generic cephalexin capsules.

Comment 11: Respondent argues that the Department should not deduct from U.S. price, inventory carrying costs incurred between date of production and date of export. Respondent further argues that if the Department does deduct these costs, it should calculate these costs using Novopharm's actual borrowing rate during the POI.

DOC Position: It is the Department's practice to make an adjustment to U.S. price in ESP situations for inventory carrying costs incurred from the date of production to the date of export to the United States because merchandise is held in inventory for this time period and this calculation thus more accurately reflects the cost to the manufacturer in an ESP situation. We calculated this adjustment using Novopharm's actual short-term borrowing cost. *See, Final Determination of Sales at Less than Fair Value: Industrial Phosphoric Acid from Belgium*, 52 FR 25436 (July 7, 1987); *Final Determination of Sales at Less Than Fair Value: Industrial Forklift From Japan*, 53 FR 12552 (April 15, 1988).

Comment 12: Respondent believes that sales of "short-dated" merchandise in the United States should be excluded from the Department's fair value comparisons because they involved second quality merchandise. Respondent states that this merchandise was of lesser quality because the product was approaching the end of its shelf life and that a small amount of this merchandise was sold at reduced prices to a small group of customers during the period of investigation.

DOC Position: We agree with respondents. We excluded sales of short-dated merchandise from our value comparisons. At verification, we found that these sales accounted for an insignificant portion of total sales to the United States.

Comment 13: Respondent argues that the Department should accept its method of discounting to present value the post-sale payments for chargebacks and commissions in the United States. Respondent states that credit expense is distorted because it is calculated based on invoice gross unit price rather than the actual value of these sales, which is the invoice gross unit price less chargebacks and commissions. Respondent argues that by discounting to present value these post-sale adjustments it is compensating for the distortion of credit expenses.

DOC Position: We disagree with respondents. Imputed credit costs represent the costs of financing receivables, which are generally booked on the basis of invoice price. While post-sale expenses, such as commissions and chargebacks, affect the actual amount received by the seller, they do not affect the dollar value in receivables that is actually financed.

Comment 14: Respondent argues that its payments to a distributor in the home market are not commissions as originally reported, but are more properly categorized as rebates. Novopharm grants these post-sale price reductions regardless of whether the merchandise is resold. Respondent

argues that purchasers cannot receive a "commission" for their own purchases.

Petitioner argues that these payments should be treated as commissions because they are the distributor's sole compensation for selling Novopharm's products and the distributor makes these purchases for resale, not for its own use.

DOC Position: We agree with respondent. The payment to the distributor is a fixed percentage of the original invoice price and is made regardless of whether the merchandise is resold. The Department considers payments of this type to be rebates, not commissions. *See, e.g., Final Determination of Sales at Less Than Fair Value, Portland Hydraulic Cement From Japan,* 48 FR 41059, 41061 (Sept. 13, 1983).

Respondent reported commissions paid to its own employees, in both the home market and the United States. We treated these commissions to salesman to salesmen and order takers as direct selling expenses. It is the Department's practice to account for commissions of this type with a circumstance of sale adjustment when the commissions are directly related to specific sales. In this case, the company made payments equal to a specified percentage of the selling price. The respondent incurred the commission expense only if a sale was made. *See, e.g., Final Determination of Sales at Less Than Fair Value, Egg Filler Flats From Canada,* 50 FR 24009, 24010, (June 7, 1985); *Final Determination of Sales at Less Than Fair Value, Iron Construction Castings From Canada,* 51 FR 2412, 2414, (Jan. 16, 1986).

Comment 15: Respondent contends that the Department should deduct home market inventory carrying costs from foreign market value as a direct expense. Respondent states that because it tracks the time in inventory for each "lot" of cephalexin produced, it can compute the time in inventory for each capsule produced within each lot. Respondent argues that because it has tied inventory carrying costs to specific sales under investigation, these costs should be treated as direct selling expenses.

Petitioner argues that inventory carrying costs should be treated as an indirect selling expense. Petitioner argues that, even though respondent has the capability to track a batch of chemicals from mixing bowl to bottle, these costs are not incurred directly for the benefit of individual customers.

DOC Position: We agree with the petitioner. The ability to calculate inventory carrying costs for specific sales does not mean that these costs are directly related to those sales. These costs are incurred regardless of whether the merchandise is sold and are, therefore, properly treated as indirect expenses.

Comment 16: Respondent contends that the Department should deduct warranty expenses from foreign market value as a circumstance of sale adjustment. Respondent states that it has identified the actual warranty expenses incurred during the period of investigation and it has shown that these expenses are directly related to sales under investigation.

Petitioner argues that respondent has not justified the difference between warranty expenses associated with sales in the United States and in Canada and, consequently, is not entitled to any adjustment. Petitioner further argues that if there are no warranty expenses in the United States, no adjustment should be made.

DOC Position: We agree with respondent. We examined warranty expenses at verification and found that the reported expenses were directly related to the sales under investigation.

Comment 17: Respondent contends that the Department should not impute post-sale payments for chargebacks and commissions for certain sales in the United States. Respondent states that its methodology for reporting these payments does not understate the actual expenses incurred on the sales under investigation.

Petitioner contends that the Department should impute post-sale payments for chargebacks and commissions on certain sales in the United States. Petitioner argues that, even though the expenses were not yet incurred, the expenses are understated because they will likely be incurred in the future.

DOC Position: We agree with respondent. At verification, we examined respondent's method for reporting these expenses and found it to be reasonable. We did not find that these expenses were understated.

Comment 18: Respondent maintains that the Department should make a circumstance of sale adjustment for quality control expenses. Respondent argues that the quality control expenses it incurred for products sold in the United States are different than quality control expenses incurred for products sold in Canada due to differing regulatory requirements in the two countries. Respondent further argues that these expenses relate directly to the sales under investigation and should be treated as direct selling expenses. Respondent states that if the Department does not treat these expenses as direct, then these expenses should be treated as indirect selling expenses.

Petitioner argues that these expenses should be treated as indirect selling expenses because they are only indirectly related to the sales under investigation.

DOC Position: We agree with petitioner. These expenses are incurred regardless of whether a sale is made and are properly treated as an indirect selling expense.

Comment 19: Respondents argue that the expenses reported as "home market direct selling expenses" should be treated as direct selling expenses.

Petitioner argues that these expenses should be treated as indirect selling expenses because they are indirectly related to the sales under investigation.

DOC Position: We agree with petitioner. We examined the components of the reported "home market direct selling expenses," which included such items as salaries and training, and found that these expenses did not bear a direct relationship to the sales under investigation.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of generic cephalexin from Canada, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse for consumption, on or after April 12, 1989, the date of publication of the preliminary determination in the **Federal Register**. The U.S. Customs Service shall continue to require a cash deposit or posting of bond equal to the estimated amounts by which the foreign market value of the merchandise subject to this investigation exceeds the United States price, as shown below. This suspension of liquidation will remain in effect until further notice.

The weighted-average margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
Novopharm, Ltd	7.50
All others	7.50

ITC Notification

In accordance with section 735(c) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business properietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration. The ITC has 45 days from this final determination to determine whether or not material injury exists, or if threat of material injury exists. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that material injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on generic cephalexin from Canada entered, or withdrawn from warehouse, for consumption, on or after the effective date of the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673(d)).

June 19, 1989.

Eric L Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-14956 Filed 6-23-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-201-801]

Initiation of Antidumping Duty Investigation; Certain Steel Pails From Mexico

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce (the "Department"), we are initiating an antidumping duty investigation to determine whether imports of certain steel pails from Mexico are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of certain steel pails materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before July 17, 1989. If that determination is affirmative, we will make a preliminary determination on or before November 7, 1989.

EFFECTIVE DATE: June 26, 1989.

FOR FURTHER INFORMATION CONTACT: Steven Lim or Bradford Ward, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-4087 or (202) 377-5288, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On May 31, 1989, we received a petition filed in proper form by the Pail Producers' Committee of the Steel Shipping Container Institute ("SSCI"), the individual members of the Committee and two non-member steel pail producers. In compliance with the filing requirements of section 353.12 of the Department's regulations (54 FR 12772, March 28, 1989), petitioner alleges that imports of certain steel pails from Mexico are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, the U.S. industry.

Petitioner has stated that it has standing to file the petition, because it is an interested party, as defined under section 771(9)(E) of the Act, and because it has filed the petition on behalf of the U.S. industry producing the product that is subject to this investigation. If any interested party, as described under paragraphs (C), (D), (E), (F), or (G) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, please file written notification with the Commerce officials cited in the "FOR FURTHER INFORMATION CONTACT" section of this notice.

Under the Department's revised regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in § 353.14 of the Department's regulations (54 FR 12773, March 28, 1989).

United States Price and Foreign Market Value

Petitioner bases United States price (USP) for tighthead steel pails on two invoices from a U.S. distributor of imported steel pails from Mexico. Petitioner's foreign market value (FMV) for openhead steel pails is based on a price quote made by the manufacturer of steel pails in Mexico. Petitioner has added ten cents to the USP for tighthead steel pails in order to adjust for physical differences between tighthead and openhead steel pails. Based on a comparison of FMV to USP, petitioner alleges a dumping margin of 89.37 percent.

However, the Department recalculated the prices by subtracting ten cents from the FMV to adjust for physical differences between openhead and tighthead steel pails. Based on a comparison of FMV to USP as estimated by the Department, the petition alleges a dumping margin of 93.91 percent.

Initiation of Investigation

Under section 732(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether the petition contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on certain steel pails from Mexico and found that the petition meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of certain steel pails from Mexico are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by November 7, 1989.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the *Harmonized Tariff Schedule* (HTS), as provided for in section 1201 et seq. of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouses, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive as to the scope of the product coverage.

Prior to January 1, 1989, certain steel pails were classified under item 640.3020 of the *Tariff Schedules of the United*

States Annotated (TSUSA), this merchandise is currently classificable under HTS items 7310.21.0000 and 7310.29.0000.

The scope of this investigation includes certain steel pails from Mexico which are cylindrical containers of steel, with a volume (capacity) of 1 through 7 gallons, an outside diameter of 11¼ inches or greater, and a wall thickness of 29–22 guage steel, presented empty. This merchandise includes openhead, tighthead, and dome top steel pails.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in the Department's files, provided the ITC confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by July 17, 1989, whether there is a reasonable indication that imports of certain steel pails from Mexico materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated; otherwise, the investigation will proceed according to the statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

June 20, 1989.

[FR Doc. 89–15070 Filed 6–23–89; 8:45 am]

BILLING CODE 3510–DS–M

[C–469–004]

Stainless Steel Wire Rod From Spain; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of final results of countervailing duty administration review.

SUMMARY: On April 24, 1989, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on stainless steel wire rod from Spain. We have now completed that review and determine the net subsidy during the period January 1, 1987 through December 31, 1987 to be *de minimis*.

EFFECTIVE DATE: June 26, 1989.

FOR FURTHER INFORMATION CONTACT: Laurie Goldman or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On April 24, 1989, the Department of Commerce ("the Department") published in the **Federal Register** (54 FR 16384) the preliminary results of its administrative review of the countervailing duty order on stainless steel wire rod from Spain (48 FR 52; January 3, 1983). The Department has now completed that administrative review in accordance with section 751(a) of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by this review are shipments of Spanish stainless steel wire rod, which includes coiled, semi-finished, hot rolled stainless steel products of approximately round solid cross section, not under 0.20 inch nor over 0.74 inch in diameter, whether or not tempered or treated or partly manufactured. During the review period, such merchandise was classified under item numbers 607.2600 and 607.4300 of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under item numbers 7221.00.0020 and 7221.00.0040 of the Harmonized Tariff Schedule.

Final Results of Review

We gave interested parties an opportunity to comment on the preliminary results. We received no comments.

As a result of our review, we determine the net subsidy to be 0.42 percent *ad valorem* for the period January 1, 1987 through December 31, 1987. The Department considers any rate less than 0.50 percent *ad valorem* to be *de minimis*.

Therefore, the Department will instruct the Customs Service to liquidate, without regard to countervailing duties, all unliquidated entries of this merchandise exported on or after January 1, 1987 and on or before December 31, 1987.

Further, the Department will instruct the Customs Service to waive deposits of estimated countervailing duties, as provided for by section 751(a)(1) of the Tariff Act, on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit waiver shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.22 of the Commerce Regulations published in the **Federal Register** on December 27, 1988 (53 FR 52306) (to be codified at 19 CFR 355.22).

Lisa Barry,

Acting Assistant Secretary for Import Administration.

Date: June 16, 1989.

[FR Doc. 89–14957 Filed 6–23–89; 8:45 am]

BILLING CODE 3510–DS–M

Decision for Duty-Free Entry of Scientific Instruments: Corrections

The Notices of Decision appearing on page 25148 in the **Federal Register** of June 13, 1989 should be corrected as follows:

In FR Doc. 89–14047, Docket Number: 88–031, column 1, line 32 should read 89–031 and in FR Doc. 89–14048, Docket Number: 88–032, column 2, line 48 should read 89–032.

Frank W. Creel,

Director.

[FR Doc. 89–14958 Filed 6–23–89; 8:45 am]

BILLING CODE 3510–DS–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Cotton and Wool Textile Products Produced or Manufactured in Uruguay

June 21, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing new agreement year limits.

EFFECTIVE DATE: July 3, 1989.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current bilateral agreement and the Memorandum of Understanding dated October 17, 1988 between the Governments of the United States and Uruguay establish limits for the period July 1, 1989 through June 30, 1990.

A copy of the agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647–1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

June 21, 1989.

Commissioner of Customs,
Department of the Treasury,
Washington, DC

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further amended on July 31, 1986; pursuant to the Bilateral Cotton and Wool Textile Agreement of December 30, 1983 and January 23, 1984, as amended, and the Memorandum of Understanding dated October 17, 1988 between the Governments of the United States and Uruguay; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on July 3, 1989, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and wool textile products in the following categories, produced or manufactured in Uruguay and exported during the twelve-month period which begins on July 1, 1989 and extends through June 30, 1990, in excess of the following levels of restraint:

Category	12-mo. restraint limit
334	67,450 doz.
335	75,281 doz.
433	15,727 doz.
434	23,462 doz.

Category	12-mo. restraint limit
435	47,384 doz.
442	33,519 doz.

Imports charged to these category limits for the periods July 1, 1988 through June 30, 1989 and January 1, 1989 through June 30, 1989 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for those periods have been exhausted by previous entries, such goods shall be subject to the limits set forth in this directive.

The limits may be adjusted in the future pursuant to the provisions of the current bilateral agreement between the Governments of the United States and Uruguay.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89–14992 Filed 6–23–89; 8:45 am]

BILLING CODE 3510–DR–M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1989; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1989 commodities to be produced and a service to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: July 26, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: On March 31, April 28, and May 5, 1989, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (54 FR 13219, 18324 and 19428) of proposed additions to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018).

No comments were received in direct response to the proposed additions to the Procurement List. However, during the comment period, the Committee received a letter from the Governor of a State requesting that a portion of the annual Federal requirement for the surgical sponge, the compress and skullcap, and other dressings be shared with an Indian Tribe. According to the letter, the Tribe was in the process of developing the capability to produce these and other dressings. The Committee has decided to add the entire portion because under its regulations it is required to make a decision based upon the impact of a proposed addition on the current or most recent supplier for the item and not on a potential supplier. The Committee also noted that taking the approach proposed by the Governor would not assure that the Indian Tribe in question would receive a contract for the remaining portion of the annual requirement. After consideration of the material presented to it concerning capability of qualified workshops to produce the commodities and provide the service at fair market prices and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and service listed.

c. The actions will result in authorizing small entities to produce the commodities and provide the service procured by the Government.

Accordingly, the following commodities and service are hereby added to Procurement List 1989:

Commodities

Strap, Assembly
4935–00–784–0141
(Requirements of U.S. Army Missile Command, Redstone Arsenal, Alabama only)

Compress and Skullcap, Head Dressing
6510–00–201–7680

Sponge, Surgical, Gauze, Compressed
6510–00–926–9082

Service

Janitorial/Custodial

Buildings 280 and 281, Area A
Wright-Patterson Air Force Base, Ohio

E.R. Alley, Jr.,
Deputy Executive Director.

[FR Doc. 89-14940 Filed 6-23-89; 8:45 am]
BILLING CODE 6820-33-M

Procurement List 1989; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1989 commodities to be produced and services to be provided by workshops for the blind or other severely handicapped.

DATE: Comments must be received on or before July 26, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018):

Commodities

Bandage, Gauze, Compressed, Camouflaged
6510-00-200-3185
Envelope, Wallet
7530-00-268-3993

Services

Commissary Shelf Stocking
Naval Outlying Landing Field
Imperial Beach, California

Commissary Shelf Stocking, Custodial and Warehouse Service
Randolph Air Force Base, Texas

Janitorial/Custodial
U.S. Army Reserve Center
2552 Avery Avenue
Memphis, Tennessee

E.R. Alley, Jr.,
Deputy Executive Director.

[FR Doc. 89-14941 Filed 6-23-89; 8:45 am]
BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Brilliant Pebbles; Meeting

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Brilliant Pebbles will meet in closed session on July 10-11, 1989 at Lawrence Livermore Laboratory, California.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will discuss classified technical and programmatic details associated with the Brilliant Pebbles space-based interceptor concept including technical maturity, potential military effectiveness, and cost and schedule risk associated with the development, testing and possible deployment.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 52b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Linda M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-15003 Filed 6-23-89; 8:45 am]
BILLING CODE 3810-01-M

Department of the Army

Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB)

Dates of Meeting: 17-27 July 1989.

Times of Meeting: 0800-1730 hours weekdays and as needed on weekends.

Place: Military Academy, West Point, New York

Agenda: The Army Science Board 1989 Summer Studies on "International Cooperation and Data Exchange to Enhance the Army's Technology Base" and "Maintaining State of the Art in the Army Command and Control System" will meet for cumulative briefings, discussions, and report writing sessions for development of the final reports. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The proprietary and nonproprietary matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202)965-3039 or 695-7046.

Sally A. Warner,
Administrative Officer Army Science Board.

[FR Doc. 89-14998 Filed 6-23-89; 8:45 am]
BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Waste Isolation Pilot Plant (WIPP); Draft Supplement to the Environmental Impact Statement; Additional Public Hearing and Extension of the Public Comment Period

AGENCY: Department of Energy.

ACTION: Addition of a public hearing in Utah on the draft Supplement to the Environmental Impact Statement (SEIS) on WIPP and the extension of the public comment period

SUMMARY: On April 21, 1989, the Department of Energy (DOE) published a notice in the **Federal Register** (Volume 54, Number 76, pp. 16350-2) announcing the availability of the Draft SEIS, the subsequent 60-day public comment period, and the six public hearing schedules, locations, and procedures. Also, on June 12, 1989, a notice was published (Volume 54, Number 111, page 24940), announcing two additional hearings in Texas and New Mexico and a 67-day comment period. A third additional public hearing on the SEIS is now scheduled to accommodate a request received by DOE from the State of Utah. The hearing will take place on July 6, 1989, at the Ogden Hotel, 247 24th Street, Ogden, Utah. It will begin at 9:00 a.m. and will continue, as needed, through the day and evening with recesses for meals. The public comment period on the draft SEIS has been extended to July 11, 1989.

Participation Procedures: To accommodate those interested in commenting on the draft SEIS, an additional public hearing is scheduled in Ogden, UT on July 6, 1989, and the public comment period has been extended. Written comments should be mailed to the address below and postmarked by July 11, 1989. Persons wishing to preregister to make oral comments at the public hearings should call the DOE's WIPP SEIS Project Office at the phone number indicated below preferably one week prior to the hearing date. Commenters may also register at the door and will be accommodated as time allows.

ADDRESSES: Written comments should be directed to: W. John Arthur III, Project Manager, WIPP SEIS Project Office, U.S. Department of Energy, 6301 Indian School Road, NE, 7th Floor, Albuquerque, NM 87110. Those wishing to be placed on the list of preregistered oral commenters should call DOE's toll-free number 1-800-274-0585 and leave their name, phone number, and address with zip code.

FOR FURTHER INFORMATION CONTACT: W. John Arthur, III, WIPP SEIS Project Manager, U.S. Department of Energy, Albuquerque Operations Office, P.O. Box 5400, Albuquerque, NM 87110, (505) 889-3038.

Or

Carol Borgstrom, Director, Office of NEPA Project Assistance (EH-25), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586-4600.

Dated in Washington, DC, this 21 day of June, 1989, for the U.S. Department of Energy.

Peter N. Brush,
Acting Assistant Secretary, Environment, Safety and Health.

[FR Doc. 89-15144 Filed 6-23-89; 8:45 am]
BILLING CODE 6450-01-M

Procurement and Assistance Management Directorate; Determination of Noncompetitive Financial Assistance

AGENCY: Department of Energy (DOE).

ACTION: Notice.

SUMMARY: DOE announces that pursuant to 10 CFR Part 600.7(b) it intends to renew on a noncompetitive basis a grant to Jackson State University (JSU) as the lead institution on behalf of a consortium involving JSU, Ana G. Mendez Educational Foundation (AGMEF), and Lawrence Berkeley Laboratory of the University of California to improve the research and instructional programs in mathematics, natural science, and computer science at JSU and the three institutions of higher education which comprise the AGMEF—the University of Turabo, Metropolitan University, and the Puerto Rico Junior College. The grant renewal is to be effective July 15, 1989. The estimated amount is $1,332, 330.

Procurement Request Number: 05-89ER75274.001.

Project Scope: The grant renewal is to continue a collaborative research and manpower development effort between JSU and AGMEF in response to Congressional direction included in the conference report on the Energy and Water Development Appropriation Act of 1989. Eligibility for this award is, therefore, restricted to JSU.

FOR FURTHER INFORMATION CONTACT: Luis E. Velazquez, Research Management Branch, Research and Waste Management Division, Oak Ridge Operations, U.S. Department of Energy, P.O. Box 2001, Oak Ridge, Tennessee 37831-8622, (615) 576-0731.

Issued in Oak Ridge, Tennessee, on June 6, 1989.

Robert E. Lynch,
Acting Director, Procurement and Contracts Division, Oak Ridge Operations.

[FR Doc. 89-15061 Filed 6-23-89; 8:45 am]
BILLING CODE 6450-01-M

Office of Fossil Energy

[FE Docket No. 89-20-NG]

Brymore Energy, Inc.; Order Granting Blanket Authorization To Export Natural Gas to Canada.

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of an Order Granting Blanket Authorization To Export Natural Gas to Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued an order granting Brymore Energy Inc. (BEI) blanket authorization to export natural gas from the United States to Canada. The order issued in FE Docket No. 89-20-NG authorizes BEI to export up to 200 Bcf of gas for short-term and spot market sales over a two-year period beginning on the date of the first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on June 19, 1989.

J. Allen Wampler,
Assistant Secretary, Fossil Energy.

[FR Doc. 89-15062 Filed 6-23-89; 8:45 am]
BILLING CODE 3510-05-M

[FE Docket No. 89-11-NG]

Canterra Natural Gas Inc.; Granting of Extension of Blanket Authorization to Import Natural Gas

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of an Order Granting Extension of Blanket Authorization to Import Natural Gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued an order granting Canterra Natural Gas Inc. (CNG), an extension of its existing blanket authorization to import natural gas from Canada. The order issued in FE Docket No. 89-11-NG authorizes CNG to import up to 50 Bcf of Canadian natural gas over a two-year period commencing August 14, 1989, through August 13, 1991, for sale in the domestic spot market.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open betwen the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on June 19, 1989.

J. Allen Wampler,
Assistant Secretary, Fossil Energy.

[FR Doc. 89-15063 Filed 6-23-89; 8:45 am]
BILLING CODE 6450-01-M

[FE Docket No. 89-20-NG]

Grand Valley to Import Natural Gas From Canada.

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of Application for Blanket Authorization to Export Natural Gas from Canada.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt on May 11, 1989, of an application filed by Grand Valley Gas Company (Grand Valley), a Utah State corporation, for blanket authorization to import up to 75 Bcf of natural gas from Canada over a two-year term beginning on the date of first delivery. The gas would be purchased from various Canadian sources on a short-term and

spot market basis to supply U.S. purchasers that are expected to include, but are not limited to, industrial and commercial end-users, agricultural users, electric utilities, pipelines and distribution companies. At the present time the applicant is involved in negotiations with a number of U.S. purchasers in the Pacific Northwest. Grand Valley intends to use existing pipeline facilities for transportation of the volumes to be imported and to file quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than July 26, 1989.

FOR FURTHER INFORMATION CONTACT:

Scott Styles, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7249.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW. Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement will be competitive and thus in the public interest. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The DOE has determined that compliance with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et. seq.*, can be accomplished by means of a categorical exclusion. On March 27, 1989, the DOE published in the Federal Register (54 FR 12474) a notice of amendments to its guidelines for compliance with NEPA. In that notice, the DOE added to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttal presumption that the DOE's action is not a major Federal action under NEPA. Unless the DOE receives comments indicating that the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs, Fossil Energy, Room 3F–056, FE–50, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. They must be filed no later than 4:30 p.m., e.d.t., July 26, 1989.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR Section 590.316.

A copy of Grand Valley's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056 at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on June 19, 1989.

J. Allen Wampler,

Assistant Secretary, Fossil Energy.

[FR Doc. 89–15064 Filed 6–23–89; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 89–32–NG]

Gulf Energy Marketing Co.; Application to Export Natural Gas to Mexico

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of application for blanket authorization to export natural gas to Mexico.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on May 30, 1989, of an application filed by Gulf Energy Marketing Company (Gulf Energy), requesting blanket authorization to export up to 105 Bcf of natural gas from the United States to Mexico for short-term and spot market sales over a two-year period beginning on the date of first delivery. Gulf Energy intends to use existing pipeline facilities in Texas for transportation of the volumes to be exported and to file quarterly reports detailing each transaction.

The application is under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. DATES: Protests, motions to intervene, notices of intervention and written comments are invited. Protests, motions to intervene or notices of intervention, as applicable, request for additional procedures and written comments are to be filed no later than July 26, 1989.

FOR FURTHER INFORMATION:

Larine A. Moore, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: Gulf Energy, a Delaware corporation with its principal place of business located in Houston, Texas, proposes to export domestically produced natural gas to Mexico for resale to purchasers in Mexico on an interruptible or firm basis for a term of two years beginning with the date of first delivery. Gulf Energy, a marketer of natural gas, states that authority would be used primarily to make sales to Petroleous Mexicanos (Pemex) for the local distribution by Pemex to residential and industrial users.

Gulf Energy states it plans to negotiate a sales contract with Pemex for up to 140 MMcf per day at a price that would be adjusted each month based on changes in the price of natural gas in the market. Because the applicant contemplates other sales, authorization is requested for 105 Bcf during the two-year period. Applicant states that sales transactions, including the final arrangement with Pemex, will be the product of arms-length negotiations, and the terms of each arrangement will reflect prevailing market conditions. Gulf Energy proposes using in connection with the Pemex transaction an interconnection between the pipeline facilities of Texas Eastern Transmission Corporation and Pemex near Reynosa, Tamailipas, Mexico. An alternate delivery point would be at the point of interconnection of Valero Gas Transmission and Pemex near Piedros Negros, Mexico. Other existing interconnections may also be used for various transactions.

Gulf Energy requests that an authorization be granted on an expedited basis. A decision on Gulf Energy's request for expedited treatment will not be made until all responses to this notice have been received and evaluated.

This export application will be reviewed pursuant to Section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order Nos. 0204–111 and 0204–127. In deciding whether the proposed export of natural gas is in the public interest, domestic need for the gas will be considered, and any other issue determined to be appropriate, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial Parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment on these matters as they relate to the requested export authority. The applicant asserts that there is no current need for the domestic gas that would be exported under the proposed arrangements. Parties opposing this arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The DOE has determined that compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 et seq., can be accomplished by means of a categorical exclusion. On March 29, 1989, the DOE published in the **Federal Register** (54 FR 12474) a notice of amendments to its guidelines for compliance with NEPA. In that notice, the DOE added to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the DOE's action is not a major Federal action under NEPA. Unless the DOE receives comments indicating that the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. Protests, motions to intevene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs, Fossil Energy, Room 3F–056, FE–50, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. They must be filed no later than 4:30 p.m., e.d.t., July 26, 1989.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as addtional written comments, an oral presentation, a conference, on trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and response filed by parties pursuant to this notice, in accordance with 10 CFR Sec. 590.316.

A copy of Gulf Energy's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056 at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on June 19, 1989.

J. Allen Wampler,

Assistant Secretary Fossil Energy.

[FR Doc. 89–15065 Filed 6–23–89; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 88-27-NG]

Ocean State Power and Ocean State Power II; Application to Amend Authorization to Import Natural Gas from Canada

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of application to amend authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on April 21, 1989, of a joint application filed by Ocean State Power (Ocean State) and Ocean State Power II (Ocean State II) to amend a previous order of the Economic Regulatory Administration (ERA) which authorized Ocean State to import 100,000 Mcf per day of natural gas from Canada over a 20-year period. By this application, Ocean State intends to reduce by one-half the volumes of gas that it would import and Ocean State II seeks authority to import 50,000 Mcf of Canadian gas per day in place of Ocean State.

On January 6, 1989, the authority to regulate natural gas imports and exports was transferred from the ERA to the Assistant Secretary for Fossil Energy. DOE Delegation Order No. 0204-127 specifies the transferred function (54 FR 11436, March 20, 1989).

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than July 26, 1989.

FOR FURTHER INFORMATION CONTACT:

John Boyd, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-070, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-4523.

Michael T. Skinker, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: On September 14, 1988, the ERA issued DOE/ERA Opinion and Order No. 243-A (Order 243-A) authorizing Ocean State, a Rhode Island partnership, to import from ProGas Limited (ProGas) up to 100,000 Mcf per day of gas over a 20-year period, beginning on the date of first delivery, to fuel a new combined-cycle electrical generating plant in Burrillville, Rhode Island. (*Ocean State*, 1 ERA Para. 70,810). The plant is scheduled to begin operation in late 1989 and will comprise two 250-megawatt combined-cycle units, to be constructed sequentially. The imported gas would enter the U.S. near Niagara Falls, New York, and be transported to Rhode Island by Tennessee Gas Pipeline Company.

In Order 243, the ERA found that the proposed import, which would be made under a market-responsive gas purchase contract containing flexible price adjustment terms and no take-or-pay requirement, meets the DOE guidelines concerning competitiveness, need for the supply and security of supply, and is consistent with the public interest. In addition, the ERA determined that the import authorization would have limited environmental impacts and would be environmentally acceptable.

At the time Order 243-A was issued, Ocean State planned to construct, own, and operate both combined-cycle units. Ocean State is currently planning to develop only the first unit which will utilize 50,000 Mcf of gas per day. To facilitate financing of the project, Ocean State II was formed to develop the second unit. Ocean State II is a separate Rhode Island partnership comprised of companies which are affiliates of the partners in Ocean State. In view of the changed circumstances, Ocean State now requests that its existing authorization be amended to reduce by 50,000 Mcf the maximum daily volume of gas that it will import. In addition, Ocean State II requests authorization to import from Canada for the second unit up to 25,000 Mcf per day of the volumes that ProGas originally committed to supply to Ocean State when both units are operational and 25,000 Mcf per day of gas from TransCanada PipeLines Limited (TransCanada).

Ocean State filed with this application a new gas purchase agreement entered into with ProGas dated December 14, 1988, to supply 50,000 Mcf per day over a 20-year period for the first combined-cycle unit which replaces their original contract. Ocean State II also filed two precedent agreements and gas purchase contracts entered into with ProGas and TransCanada, dated July 14, and August 19, 1988, respectively, whereby each supplier would deliver 25,000 Mcf per day over a 20-year period for the second combined-cycle unit. According to the applicants, all three agreements contain substantially the same terms as Ocean State's original agreement with ProGas upon which Order 243-A was based, including pricing, volume adjustment, renegotiation provisions, and delivery point. The primary exception is a provision in the agreement between Ocean State II and ProGas that stipulates that if ProGas is unable to meet its sales obligations to Ocean State II, Ocean State II may substitute third-party supplies for ProGas' volumes.

To provide assurance to Ocean State and Ocean State II that ProGas and TransCanada will meet their gas supply obligations, the parties have also entered into a backstop agreement. The backstop agreement provides that if ProGas is unable to supply gas as required under its purchase contracts with Ocean State and Ocean State II, TransCanada will make up the deficiency, and vice versa.

This joint application will be reviewed pursuant to section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order Nos. 0204-111 and 0204-127. Based on the application, the only changes in the import arrangement previously authorized by the ERA in Order 243-A is the proposed replacement of Ocean State II for Ocean State as the authorized importer of one-half of the Canadian gas and the substitution of TransCanada as the supplier for one-quarter of the total volumes. The contractual terms under which the gas would be supplied are substantially the same and the quantity imported would not alter. Accordingly, the competitiveness of the import arrangements, need, and security of supply are not expected to be issues in this proceeding.

Nevertheless, the application raises one new element which bears on the competitiveness of Ocean State II's import arrangement. In particular, the contract between Ocean State II and ProGas provides that if ProGas is unable to meet its sales obligations, Ocean State II may arrange for purchases of gas from third-party suppliers. Should those supplies come from foreign sources, Ocean State II is essentially asking for the DOE to pre-approve imports without advance identification of the supplier or the details of any specific import transaction. While such authorizations to import gas where no sales contracts have been negotiated are routinely granted under DOE's blanket import program and are limited to two years, it is conceivable that a substitute import arrangement contemplated by Ocean State II may involve more than two years. Further, there would be no assurance to DOE that the underlying contracts would be sufficiently flexible to respond to changes in market conditions.

Accordingly, all parties should be aware that if this joint application is approved, the DOE will require Ocean State II to file a separate application for import authority for any sale and purchase of imported gas involving a substitute supplier for ProGas which is over two years. This condition on the authorization would ensure that Ocean State II has sufficient supplies of gas to operate its cogeneration facility while at the same time allowing the DOE to meet its section 3 responsibilities.

NEPA Compliance

In conjunction with Order 234-A, the ERA issued on September 14, 1988 (53 FR 36483, September 20, 1988), a Record of Decision, pursuant to the Council on Environmental Quality Regulations (40 CFR Part 1505) implementing the procedural provisions of the National Environmental Policy Act of 1969 (NEPA) and the DOE's guidelines for compliance with NEPA (52 FR 47662, December 15, 1987). The ERA relied on the *Ocean State Power Project Final Environmental Impact Statement* (FEIS) issued by the Federal Energy Regulatory Commission (FERC) on July 11, 1988 (FERC/EIS-0050), in assessing the environmental effects of granting the import. The FEIS which was adopted by the DOE (DOE/EIS-0140) examined the impacts of constructing both the cogeneration facility and Tennessee's additional transmission facilities needed to supply the imported gas. The ERA determined that the environmental impacts of constructing and operating both the power plant and the proposed Tennessee gas pipeline facilities would be environmentally acceptable. The environmental impacts of authorizing this import are no different than those associated with the earlier grant of import authority to Ocean State. Since the facilities identified in this application have previously been assessed in the ERA's September 14, 1988, Record of Decision, the DOE expects that no additional environmental review will be required.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must however file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices on intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs, Fossil Energy, Room 3F-056, FE-50, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. They must be filed no later than 4:30 p.m., e.d.t., July 26, 1989.

A decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR Sec. 590.316.

A copy of Ocean State and Ocean State II's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 9, 1989.

J. Allen Wampler,

Assistant Secretary, Fossil Energy.

[FR Doc. 89-15066 Filed 6-23-89; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 89-18-NG]

Texas International Gas & Oil Co.; Order Granting Authorization to Export Natural Gas

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of an order granting blanket authorization to export natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that it has issued an order granting Texas International Gas & Oil Company (TI) authorization to export natural gas from the United States to Mexico. The order issued in FE Docket No. 89-18-NG authorizes TI to export up to 22 Bcf of domestic gas over a two-year term beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal Holidays.

Issued in Washington, DC, June 19, 1989.

J. Allen Wampler,

Assistant Secretary, Fossil Energy.

[FR Doc. 89-15067 Filed 6-23-89; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 89-28-NG]

Western Energy, Inc.; Application To Export Natural Gas to Mexico

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of Application for blanket authorization to export natural gas to Mexico.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on April 28, 1989, of an application filed by Western Energy, Inc. (WEI), requesting blanket authorization to export up to 54.75 Bcf of natural gas from the United States to Mexico for short-term and spot market sales over a two-year period beginning on the date of the first delivery. WEI intends to export this gas by means of the existing transmission facilities of

Western Gas Interstate Company connecting with the facilities of Petroleos Mexicanos (Pemex) near El Paso, Texas. WEI also proposes to submit quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than July 26, 1989.

FOR FURTHER INFORMATION:

William C. Daroff, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9516

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667

SUPPLEMENTARY INFORMATION: WEI, a Colorado corporation with its principal place of business in El Paso, Texas, is a marketer of natural gas, light hydrocarbons and gaseous petroleum chemicals. In a letter dated May 2, 1989, WEI amended its original application, changing the term of the proposed export from two and one-half to two years.

WEI indicates that the requested authority would be used primarily, and perhaps exclusively, to make sales to Pemex, Mexico's national energy company, for distribution by Pemex to industrial and residential consumers in the city of Juarez, Mexico. The applicant states that it is currently negotiating a contract with Pemex for up to 60,000 Mcf per day at prices based on supplies of gas in the spot market. To the extent there are purchasers other than Pemex, the specific terms of each export arrangement, including the price, volume, and duration will be negotiated in response to market conditions. According to WEI, all of the gas exported would be purchased from natural gas producers in the States of Texas and New Mexico.

In support of its application, WEI asserts that the proposed export is in the public interest because the terms of each sale will be freely negotiated, thus ensuring that the arrangement will be competitive while providing an efficient allocation of natural gas in the market place.

This export application will be reviewed pursuant to Section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order Nos. 0204–111 and 0204–127. In deciding whether the proposed export of natural gas is in the public interest, the domestic need for the gas will be considered, and any other issues determined to be appropriate, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment in their responses on these matters as they relate to the requested export authority.

WEI requests that an authorization be granted on an expedited basis. A decision on WEI's request for expedite of treatment will not be made until all responses to this notice have been received and evaluated.

NEPA Compliance

The DOE has determined that compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, can be accomplished by means of a categorical exclusion. On March 27, 1989, the DOE published in the **Federal Register** (54 FR 12474) a notice of amendments to its guidelines for compliance with NEPA. In that notice, the DOE added to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the DOE's action is not a major Federal action under NEPA. Unless the DOE receives comments indicating that the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedure

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs, Fossil Energy, Room 3F–056, FE–50, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m., e.d.t., July 26, 1989.

It is intended that a decisional record on the application will be developed though responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice to all parties will be provided. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of WEI's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 19, 1989.

J. Allen Wampler,

Assistant Secretary, Fossil Energy.

[FR Doc. 89–15068 Filed 6–23–89; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 89–13–NG]

Wisconsin Public Service Corp.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of an order granting blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that it has issued an order granting Wisconsin Public Service Corporation (WPSC) authorization to import natural gas from Canada to the United States. The order issued in FE Docket No. 89–13–NG authorizes WPSC to import up to 25.55 Bcf of gas over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except on Federal holidays.

Issued in Washington, DC, June 19, 1989.

J. Allen Wampler,

Assistant Secretary, Fossil Energy.

[FR Doc. 89–15069 Filed 6–23–89; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. ER89–483–000]

Alamito Co.; Filing

June 19, 1989.

Take notice that on May 30, 1989, Alamito Company tendered for filing a letter formally changing its name to Century Power Corporation. The letter states that this action reflects only a corporate name change and has no effect at all on the company's rights, obligations or positions as expressed in any pleading, rate schedule or other document on file with the Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 3, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–14947 Filed 6–23–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP84–654–023 and CP86–480–004]

Algonquin Gas Transmission Co.; Tariff Filing

June 19, 1989.

Take notice that on June 8, 1989, Algonquin Gas Transmission Company (Algonquin) filed certain revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1.

Algonquin states that this filing is in compliance with the Commission orders of August 15, 1985 and July 2, 1987. Algonquin states that the purpose of this filing is to reflect in its rates to be effective November 1, 1987 the actual per book costs for the required facility construction necessary to provide full firm service deliveries of 73,696 MMBtu per day, under Rate Schedule F–4, as of November 1, 1987.

Algonquin states that it is reducing its currently effective Rate Schedule F–4 Demand Handling Charge effective November 1, 1987 by $6.031 per MMBtu of Demand from $22.756 to $16.725. Algonquin states that it waited until this time to file the cost of service related to the F–4 facilities "because it was necessary to use the settlement rate of returns, income tax rate and depreciation rate included in the Commission's final orders in Docket Nos. RP86–41 and RP87–14." Algonquin states that all monies overcollected by Algonquin under its Rate Schedules F–4 for the period commencing November 1, 1987 will be refunded (including interest) to its customers by a credit to the next month's billing following Commission acceptance of this filing.

Algonquin states that this filing revises its rate under Rate Schedule AFT–1 to conform the F–4 rate which is included on Rate Schedule AFT–1 to the F–4 rate of $16.725 as proposed in this filing.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such protests should be filed on or before June 26, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–14948 Filed 6–23–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ89–3–24–002]

Equitrans, Inc.; Proposed Change in FERC Gas Tariff

June 19, 1989.

Take notice that Equitrans, Inc. (Equitrans) on June 15, 1989, tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1, to become effective June 1, 1989.

Substitute Eighth Revised Sheet No. 10
Substitute Seventh Revised Sheet No. 14
Substitute Second Revised Sheet No. 34
Second Revised Sheet No. 172

Equitrans states that the foregoing tariff sheets are being filed in compliance with the Commission's Letter Order issued on May 31, 1989 in Docket No. TQ89–3–24–000. The Order directed Equitrans to refile its Quarterly Purchased Gas Cost Adjustment tariff sheets along with tariff sheet No. 172 to be effective June 1, 1989 to reflect the revised pipeline supplier rates in effect on June 1, 1989.

Equitrans states that a copy of its filing has been served upon its purchasers, interested state commissions, and upon each party on the service list of Docket No. CP86–676–000.

Any person desiring to protest said filing should file a motion to protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission

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and are available for public inspection. All such protests should be filed on or before June 26, 1989.

Lois D. Cashell,

Secretary.

[FR Doc. 89-14949 Filed 6-23-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89-7-4-001]

Granite State Gas Transmission, Inc.; Proposed Change in Rates

June 19, 1989.

Take notice that on June 15, 1989, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021, tendered for filing Substitute Nineteenth Revised Sheet No. 8 in its FERC Gas Tariff, First Revised Volume No. 1, for effectiveness on May 1, 1989.

According to Granite State, it filed a change in the Injection Charge in its Rate Schedule GSS on May 30, 1989 to track a change proposed by CNG Transmission Corporation (CNG) in its Rate Schedule GSS in a filing in Docket No. RP89-124-000. Granite State further states that CNG made a compliance filing in Docket No. RP89-124-000 pursuant to a Commission order issued April 28, 1989 changing the Injection Charge that Granite State has tracked in its May 30, 1989 filing. According to Granite State, the Injection Charge in its Rate Schedule GSS on Substitute Nineteenth Revised Sheet No. 8 tracks the change made by CNG in its compliance filing.

According to Granite State, copies of its filing were served upon Bay State Gas Company and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to protest said filing should file a protest with the federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such protests should be filed on or before June 26, 1989. Protests will be considered by the Commission, in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-14950 Filed 6-23-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89-8-4-000]

Granite State Gas Transmission, Inc.; Filing

June 19, 1989.

Take notice that on June 14, 1989, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021, tendered for filing with the Commission the following tariff sheet in its FERC Gas Tariff, First Revised Volume No. 1, for effectiveness on July 1, 1989:

Second Revised Sheet No. 7-C

According to Granite State, the purpose of the instant filing is to comply with the Commission's order issued September 28, 1988 in Docket No. RP88-242-000 relating to the procedures pursuant to which Granite State will recover from its customers the fixed take-or-pay charges billed by Tennessee Gas Pipeline Company under the provisions of Order No. 500. Granite State proposes to track Tennessee's revised take-or-pay charges filed on May 31, 1989 in Docket No. RP88-191.

Granite State further states that copies of its filing were served upon its customers, Bay State Gas Company and Northern Utilities, Inc., and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 26, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-14951 Filed 6-23-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-29-005 and RP88-228-020]

Tennessee Gas Pipeline Co. Filing

June 19, 1989.

Take notice that on June 14, 1989, Tennessee Gas Pipeline Company (Tennessee) filed the following Pro Forma tariff sheets:

Pro Forma Sheet No. 50A
Pro Forma Sheet No. 51
Pro Forma Sheet No. 56
Pro Forma Sheet No. 58B
Pro Forma Sheet No. 115A

Tennessee states that it is filing these sheets in compliance with the Commission's May 31, 1989 Letter Order in the referenced proceeding. Tennessee states that the Pro Forma sheets provide that Tennessee will authorize takes in excess of a firm transportation or firm sales customer's Demand 2 nomination (i) if the customer has made a request at least five business days prior to the date the customer commences taking the excess quantities and (ii) provided that the excess takes will not adversely affect Tennessee's other firm services or system operations.

Tennessee states that it is filing Pro Forma tariff sheets because a Demand 2 nomination procedure has not been placed into effect by Tennessee. By order issued May 24, 1989 in Docket Nos. RP88-228-012, et al., the Commission accepted an Interim Stipulation and Agreement dated March 9, 1989 which provides that Tennessee's rate and billing determinants for an interim period February 1, 1989 to November 1, 1989 shall not reflect Demand 2 nominations. Tennessee may elect to place rates in effect at the end of the interim period which reflect Demand 2 nominations of its customers. At that time, Tennessee will file the Pro Forma tariff sheets attached hereto as part of its FERC Gas Tariff.

Tennessee respectfully requests that the Commission grant any waivers it deems necessary for the acceptance of this filing.

Tennessee states that copies of the filing have been mailed to all parties in this proceeding, affected customers and affected state regulatory Commissions.

Any person desiring to protect said filing should file a protect with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such protest should be filed on or before June 26, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-14952 Filed 6-23-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-92-017 and RP85-209-023]

United Gas Pipe Line Co.; Filing of Tariff Sheets

June 19, 1989.

Take notice that on June 15, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas, 77251-1478, filed in Docket No. RP88-92 updated tariff sheets to implement the Motion Rates.

United states that the tariff sheets reflect rates and charges equal to the Base Tariff Rates originally moved into effect by United on September 30, 1988 and accepted by the Commission on December 8, 1988. United also states that the maximum time period provided for under the Interim and Base Settlements for the Interim Settlement Rates will expire on or about June 19, 1989, and therefore, effective as of June 20, 1989, United will commence charging and collecting the "Motion Rates" which were allowed to become effective by the December 8, 1988 Commission Order. It is further stated that commencement of the Motion Rates should not be interpreted as a withdrawal of the Base Settlement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE. Washington, DC 20426, in such accordance with § 385.214 and 385.211 of the Commissions Rules of Practice and Procedure. All such motions or protests should be filed on or before June 26, 1989. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-14953 Filed 6-23-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-195-000, RP89-140-003]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

June 19, 1989.

Take notice that on June 14, 1989, Williams Natural Gas Company (WNG) submitted the following revised tariff sheets to its FERC Gas Tariff:

Original Volume No. 1

Substitute Revised Eleventh Revised Sheet No. 6
Second Revised Original Sheet No. 6E
Revised Substitute Tenth Revised Sheet No. 7
Second Revised Third Revised Sheet Nos. 31 and 38
Second Revised Original Sheet Nos. 113-115

This filing is identical to the filing made in RP89-140-003 on May 30, 1989 except that Docket No. RP89-195-000 has been added to the caption.

WNG states that these tariff sheets are filed in compliance with Commission order issued April 28, 1989 in Docket No. RP89-140-000 and 001.

WNG states that it made revisions to its tariff language and reduced the settlement costs by $2.2 million after computing the 25% to be absorbed by WNG to comply with Paragraph (C).

WNG states that it is submitting supporting documentation in compliance with Paragraph (D) and a list of all contracts in litigation on March 31, 1989 in compliance with Ordering Paragraph (E).

WNG states that pursuant to Art. 29.2(b) of the General terms and Conditions, it included an additional $4,380,000 in Settlement Costs concerning disputes which were in litigation on March 31, 1989, but which have been subsequently settled with payments made by the Company.

WNG states that proprietary material related to its Settlements with producers has been included in a non-public copy filed with the Commission and the sensitive material has been deleted from the public copies of the filing which have been mailed to WNG's jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before June 26, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-14954 Filed 6-23-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-00100; FRL-3607-9]

Biotechnology Science Advisory Committee; Subcommittee on Mobile Genetic Elements; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meeting.

SUMMARY: There will be a 1-day meeting of the Biotechnology Science Advisory Committee's Subcommittee on Mobile Genetic Elements. The meeting will be open to the public. The Subcommittee will discuss transposon and plasmid transfer from donor bacteria to recipient bacteria in the environment. The discussion will focus on the likelihood of, and techniques for estimation of such movements.

DATE: The meeting will be held on Thursday, July 20, 1989, starting at 9 a.m. and ending at approximately 5 p.m.

ADDRESS: The meeting will be held at: The Embassy Suites Hotel, 1300 Jefferson Davis Highway, Crystal City, VA.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: Attendance by the public will be limited to available space. The TSCA Assistance Office will provide summaries of the meeting at a later date.

Dated: June 15, 1989.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 89-15058 Filed 6-23-89; 8:45 am]

BILLING CODE 6560-50-M

Science Advisory Board

[FRL-3607-8]

Environmental Engineering Committee; Open Meeting—July 13–14, 1989

Under Pub. L. 92–463, notice is hereby given that the Science Advisory Board's Environmental Engineering Committee (EEC), will meet July 13–14, 1989 in the Large Conference Room, 10th Floor, Earnest J. Cockrell Hall, University of Texas; Austin, Texas 78712–1076. The meeting will begin at 9:00 a.m. on Thursday, and Friday, and adjourn no later than 5:00 p.m.

The purpose of the meeting is to review several draft reports, discuss progress on on-going projects and to plan the Fiscal 1990 meeting schedule of the EEC. The draft reports include the SAB comments on EPA's draft pollution prevention research plan report to Congress, the Saturated Zone Model for surface impoundments, and the sludge incineration report. Other topics include the following as time permits: a recap of toxics treatability research-in-progress review conducted by the Toxics Treatability Subcommittee on June 22–23, 1989 in Cincinnati, Ohio; discussion of an upcoming review of the EPA's municipal waste combustion ash solidification/stabilization research program; discussion of generic leachability and the TCLP (Toxicity Characteristic Leaching Procedure), asbestos engineering research, risk reduction strategies effort of the SAB, and soils cleanup model.

The meeting is open to the public. Any member of the public wishing further information on the meeting or those who wish to submit written comments should contact Dr. K. Jack Kooyoomjian, Executive Secretary, Science Advisory Board (A101–F), U.S. Environmental Protection Agency, Washington, DC 20460, at 202/382–2552 by July 7, 1989. Seating at the meeting will be on a first come basis.

Date: June 16, 1989.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 89–15059 Filed 6–23–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL ELECTION COMMISSION

Clearinghouse Advisory Panel; Renewal of Charter

SUMMARY: The National Clearinghouse on Election Administration announces the renewal of the charter for the Clearinghouse Advisory Panel.

The purpose of the Panel is to provide advice and consultation to the Clearinghouse with respect to its research programs on election administration.

FOR FURTHER INFORMATION CONTACT: Jane McKee, National Clearinghouse on Election Administration, Washington, DC 20463. (202) 376–5670.

Date: June 20, 1989.

Penelope Bonsall,

Director, National Clearinghouse on Election Administration.

[FR Doc. 89–14997 Filed 6–23–89; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–832–DR]

Amendment to Notice of a Major Disaster Declaration; Alaska

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Alaska (FEMA–832–DR), dated June 7, 1989, and related determinations.

DATED: June 14, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

Notice: Notice is hereby given that the incident period for this disaster is closed effective June 10, 1989.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89–15008 Filed 6–23–89; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–826–DR]

Amendment to Notice of a Major Disaster Declaration; Alaska

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Alaska (FEMA–826–DR), dated May 10, 1989, and related determinations.

DATED: June 12, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

Notice: The notice of a major disaster for the State of Alaska dated May 10, 1989, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 10, 1989.

The communities of Akiachak, Alakanuk, Allakaket, Anvik, Arctic Village, Beaver, Chignik, Eagle Village, Ekwok, Ester, Fort Yukon, Gamble, Golovin, Grayling, Karluk, Kokhanok, Kongiganek, Koyukuk, Lower Kalskag, Levelock, Manokotak, Minto, New Stuyahok, St. Michael, Tattilek, Togiak, Tununak, and Venetie for Public Assistance.

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assitance.)

[FR Doc.89–15019 filed 6–23–89; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–833–DR]

Major Disaster and Related Determinations; Louisiana

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Louisiana (FEMA–833–DR), dated June 16, 1989, and related determinations.

DATED: June 16, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

Notice: Notice is hereby given that, in a letter dated June 16, 1989, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq., Public Law 93–288, as amended by Pub. L. 100–707), as follows:

I have determined that the damage in certain areas of the State of Louisiana, resulting from severe thunderstorms and tornadoes on June 7–8, 1989, is of sufficient severity and magnitude to warrant a major disaster declaration under Public Law 93–288, as amended by Public Law 100–707. I, therefore, declare that such a major disaster exists in the State of Louisiana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas. You are also authorized to provide Public Assistance in the affected areas, if requested and necessary. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under PL 93–288, as amended by PL 100–707, for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Graham L. Nance of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Louisiana to have been affected adversely by this declared major disaster:

The parishes of East Baton Rouge, Iberville, Livingston, St. Helena, Vernon, and West Baton Rouge for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.) (Billing Code 6718–02.)

Julius W. Becton, Jr.

Director, Federal Emergency Management Agency.

[FR Doc. 89–15007 Filed 6–23–89; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–828–DR]

Amendment to Notice of A major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA–828–DR), dated May 19, 1989, and related determinations.

DATED: June 14, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

Notice: Notice is hereby given that the announcement closing the incident period for this disaster on June 7, 1989, is rescinded. The incident period for this disaster will continue as beginning on May 4, 1989, and continuing.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.) (Billing Code 6718–02.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89–15009 Filed 6–23–89; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL HOME LOAN BANK BOARD

[No. 89–1585]

Release of Thrift Financial Data; Federal Savings & Loan Insurance Corp.

Date: June 13, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The Federal Home Loan Bank Board ("Board") is announcing that it will be making available to the general public a significant amount of additional data on the operations of individual institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation ("FSLIC-insured thrift institutions") in response to standard requests for such information. The Board is also requesting comments on methods to improve data collection for interest rate risk measurement. The Board has reviewed its policy regarding data release and is taking this action to ensure that the public is kept adequately informed.

DATE: Comments must be received on or before July 26, 1989.

ADDRESS: Please send comments and letters to the: Director, Information Services Section, Office of Secretariat, Federal Home Loan Bank Board, Washington, DC 20552.

Comment letters will be available for inspection at 801 17th Street NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Richard C. Pickering, Deputy Director, Office of Policy and Economic Research, (202) 906–6770, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Federal Home Loan Bank Board announces that beginning with the release of information covering the first quarter of 1989 (scheduled for early June), it will begin making available to the general public a significant amount of additional data on the operations of individual FSLIC-insured thrift institutions in response to standard requests for such information. In addition, it will make available monthly data on the activity of these institutions in twelve-month blocks in August of each year.

The Board will also make available in June aggregates of information reported by thrift institutions on the amount and yield/cost of financial assets and liabilities classified by remaining time to maturity or repricing. Beginning with the March 1990 data collection, the Board will release the data (Section H of the Thrift Financial Report) for individual thrift institutions.

The Board has been collecting this data since 1984 as a means of measuring the interest rate risk exposure of thrift institutions. This information, together with certain assumptions regarding mortgage loan prepayment rates, is used to measure the sensitivity of thrift institution earnings and net asset values to changes in market interest rates. The Board recognizes, however, that such measurement may be imprecise because of the level of aggregation and simplification required to make it feasible for institutions of all types to report such information.

Because the measurement of interest rate risk exposure is essential to the assessment of a thrift institution's safety and soundness, the Board has developed a comprehensive interest rate risk program encompassing guidance on prudent interest rate risk policies and procedures (Thrift Bulletin 13) and the integration of interest rate risk exposure in the Board's risk-based capital proposal. The measurement of interest rate risk is a critical component of this program.

Because of the importance of interest rate risk measurement and the limitations on that measurement imposed by data aggregation, the Board is requesting comment on methods to improve data collection for interest rate risk measurement. The enhancements to Section H effective June 1989 have extended the range of data available to the Board. Further enhancements may be warranted and the Board is soliciting comment for all interested parties on recommendations for such enhancements.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89–14945 Filed 6–23–89; 8:45 am]

BILLING CODE 6720–01–M

[No. 89-1569]

Power of Receiver and Conduct of Receiverships; Repurchase Agreements; Western Savings and Loan Association

Date: June 14, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The Federal Home Loan Bank Board is supplementing an earlier resolution concerning Western Savings and Loan Association, Phoenix, Arizona ("Western"), to provide that the protections afforded to certain persons and entities engaged in repurchase agreements ("repos") with Western will be afforded to such persons or entities engaged in similar transactions with Western Savings and Loan Association, F.A., Phoenix, Arizona to which such repos were transferred by the Federal Savings and Loan Insurance Corporation as receiver for Western.

EFFECTIVE DATE: June 14, 1989.

FOR FURTHER INFORMATION CONTACT: Lawrence W. Hayes, Deputy General Counsel for FSLIC, (202) 906-6248; or Jody Kresch, Attorney, Office of General Counsel, (202) 906-7204; Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Board has adopted the following resolution:

Whereas: The Federal Home Loan Bank Board ("Board"), by its Resolution No. 89-1553, dated June 14, 1989, appointed the Federal Savings and Loan Insurance Corporation ("Corporation") as receiver ("Receiver") for Western Savings and Loan Association, Phoenix, Arizona, ("Western") and pursuant to an Acquisition Agreement, dated June 14, 1989, between the Receiver and Western Savings and Loan Association, F.A., Phoenix, Arizona ("New Federal"), the Receiver transferred certain assets and liabilities, including repurchase agreements ("repos"), of Western to New Federal, all as more fully set forth in such Acquisition Agreement; and

Whereas: The Board has previously adopted Resolution No. 88-1575, dated December 29, 1988 and Resolution No. 89-103, dated February 2, 1989, regarding repos ("Repo Resolutions"); and

Whereas: The Board desires to supplement the Repo Resolutions (which supplementation the Board does not consider to be an amendment or rescission of such Resolution) to take into account the transfer of certain of Western's assets and liabilities to New Federal and to provide the same protections and commitments to counterparties to Repos with New Federal.

Now, therefore, the Board resolves as follows:

1. All references in the Repo Resolutions to "Western" shall also be references to New Federal.

2. This resolution shall be effective immediately upon its adoption by the Board.

3. The Secretary of the Board shall forward this resolution for publication in the **Federal Register**.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-14946 Filed 6-23-89; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

Review of Revenue Limit on Securities Underwriting Subsidiaries

The Board is considering whether to increase from 5 to 10 percent the revenue limit established by the Board in its Section 20 Orders authorizing bank holding company subsidiaries to underwrite and deal in bank-ineligible securities. See, e.g., *Citicorp, J.P. Morgan & Co. Incorporated, and Bankers Trust New York Corporation*, 73 Federal Reserve Bulletin 473, 485 (1987), *affirmed sub nom. Securities Industry Association* v. *Board of Governors of the Federal Reserve System/Citicorp, J.P. Morgan & Co. Incorporated, Bankers Trust New York Corporation*, 839 F.2d 47 (2d Cir. 1988), *cert. denied*, 108 S.Ct. 2830 (1988). See also *Securities Industry Association* v. *Board of Governors of the Federal Reserve System/The Chase Manhattan Corporation*, 847 F.2d 890 (D.C. Cir. 1988).

In those Orders, the Board determined that a bank holding company subsidiary would not be "engaged principally" in securities underwriting activity in violation of section 20 of the Glass-Steagall Act (12 U.S.C. 377), if the subsidiary's gross revenue from bank-ineligible underwriting and dealing did not exceed a range of between 5 and 10 percent of its total gross revenues. Initially, the Board established a 5 percent limit on the amount of revenues received by a section 20 subsidiary from bank-ineligible activity for the first year of operation.

The Board stated that it would review after one year of operation under the Orders whether to increase the limit to 10 percent. In this connection, a number of bank holding companies have filed requests for an increase of the revenue limit to the 10 percent level.

Any comments regarding this matter should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than July 20, 1989.

Board of Governors of the Federal Reserve System, June 20, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-14990 Filed 6-23-89; 8:45 am]

BILLING CODE 6210-01-M

Request for Modification of Restriction on Section 20 Subsidiaries' Underwriting of Asset-Backed Securities of Affiliates

The Board is considering whether to modify a provision in the Board's Section 20 Orders which prohibits securities subsidiaries of bank holding companies from underwriting or dealing in bank-ineligible securities issued by affiliates or representing interests in, or secured by, obligations originated or sponsored by affiliates ("affiliate securities"). This restriction was established by the Board in its initial Orders under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) authorizing the establishment of subsidiaries that underwrite and deal in bank-ineligible securities to a limited extent consistent with section 20 of the Glass-Steagall Act (12 U.S.C. 377). The prohibition was adopted by the Board as a precautionary measure to address the Board's specific concern that a Section 20 subsidiary might be tempted to securitize the affiliates' least creditworthy assets. See, e.g., *Citicorp, J.P. Morgan & Co. Incorporated, and Bankers Trust New York Corporation*, 73 Federal Reserve Bulletin 473, 499, 504 (1987).

Subsequent to the Board's initial Orders, the U.S. Senate and Committees of the U.S. House of Representatives voted in favor of legislation to permit bank holding company subsidiaries to underwrite and deal in affiliate securities that are: (1) Rated by an unaffiliated, nationally recognized rating organization, or (2) issued or guaranteed by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, or the Government National Mortgage Association, or represent interests in such obligations.[1] The Board has received requests from bank holding companies to modify the prohibition on underwriting affiliate securities to permit such underwriting and dealing if the requirements listed above are met.

In approving the initial establishment of section 20 subsidiaries, the Board stated it would review the continued appropriateness of the limitations established initially, and reserved the right to amplify or modify them from time to time as the Board deems necessary to ensure the standards of the Bank Holding Company Act are met. The Board requests comment on whether replacing the existing prohibition on underwriting affiliate obligations with a test based on the above-stated requirements would be appropriate to address the Board's concern.

Any comments regarding the requested relief should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than July 20, 1989.

Board of Governors of the Federal Reserve System, June 20, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-14989 Filed 6-23-89; 8:45 am]

BILLING CODE 6210-01-M

[1] S. 1886, section 102, 100th Cong., 2d Sess. (1988); H.R. 5094, section 201, 100th Cong., 2d Sess. (1988).

General Educational Fund, Inc., et al.; Applications To Engage in Permissible Nonbanking Activities; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 89-12407) published at page 22488 of the issue for Wednesday, May 24, 1989.

Under the Federal Reserve Bank of Kansas City, the entry for Colorado National Bankshares, Inc. is amended to read as follows:

1. *Colorado National Bankshares, Inc.*, Denver Colorado; to engage *de novo* through its subsidiary, Colorado National Life Insurance Company, Inc., Denver, Colorado, in credit-related insurance underwriting (reinsurance) activities directly related to an extension of credit by the bank holding company or any of its subsidiaries, and limited to assuring the repayment of the outstanding balance due on the extension of credit in the event of the death, disability, or involuntary unemployment of the debtor pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Comments on this application must be received by July 7, 1989.

Board of Governors of the Federal Reserve System, June 19, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board

[FR Doc. 89-14981 Filed 6-23-89; 8:45 am]

BILLING CODE 6210-01-M

Commercial Bancshares of Roanoke, Inc., et al.; Applications to Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 14, 1989.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Commercial Bancshares of Roanoke, Inc.*, Roanoke, Alabama; to engage *de novo* through it subsidiary, Commercial Bancshares Services, Inc., Roanoke, Alabama, in data processing activities pursuant to § 225.25(b)(7) of the Board's Regulation Y. Applicant's customers will be limited to financial institutions and Applicant will provide software applications and systems for certain financial institution back room data processing operations.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Otton Bremer Foundation and Bremer Financial Corporation*, St. Paul, Minnesota; to engage *de novo* in making and servicing loans to the Bremer Financial Corporation Employee Stock Ownership Plan & Trust (the "ESOP") pursuant to § 225.25(b)(1) of the Board's Regulation Y. The loans will be made for the following purposes: (1) To enable the ESOP to purchase shares of capital stock of and only of the Applicant; and (2) to enable the ESOP to refinance any existing indebtedness or future indebtedness incurred by the ESOP.

Comments on this application must be received by July 10, 1989.

Board of Governors of the Federal Reserve System, June 20, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-14983 Filed 6-23-89; 8:45 am]

BILLING CODE 6210-01-M

Merchant House; Formation of, Acquisition by, or Merger of Bank Holding Companies; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 89-10651) published at page 19237 of the issue for Thursday, May 4, 1989.

Under the Federal Reserve Bank of San Francisco, the entry for Merchant House is amended to read as follows:

1. *Merchant House*, Santa Ana, California; to become a bank holding company by acquiring 52.60 percent of the voting shares of PNB Financial Group, Inc., Newport Beach, California, and thereby indirectly acquire Pacific National Bank, Newport Beach, California.

Comments on this application must be received by July 7, 1989.

Board of Governors of the Federal Reserve System, June 19, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-14982 Filed 6-23-89; 8:45 am]

BILLING CODE 6210-01-M

OnBancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 12, 1989.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *OnBancorp, Inc.*, Syracuse, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Onondaga Savings Bank, Syracuse, New York, which operates a savings bank life insurance department in conformity with New York Law. It also has a subsidiary engaged in insurance agency activities beyond those permissible for bank holding companies, which it has committed to divest within two years of consummation.

B. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *National City Corporation*, Cleveland, Ohio; to acquire 100 percent of the voting shares of Crestwood Banking Company, Ltd., Crestwood, Kentucky, and thereby indirectly acquire Crestwood State Bank, Crestwood, Kentucky.

C. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690.

1. *Dental Bancorporation*, Victor, Iowa; to acquire 20 percent of the voting shares of Colfax Bancshares, Inc., Colfax, Iowa, and thereby indirectly acquire First National Bank in Colfax, Colfax, Iowa.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *The Cedar Vale Bank Holding Company*, Wellington, Kansas; to become a bank holding company by merging with Sumner County Bancshares, Inc., Wellington, Kansas, and thereby indirectly acquire Bank of Commerce and Trust Company Wellington, Kansas, which engages as agent in the sale of credit-related and accident and health insurance only to assure repayment of the outstanding balance due on a specific extension of credit by the bank by the debtor pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 20, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-14964 Filed 6-23-89; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 7, 1989.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *J.C. (Jesse) Palmer, III*, Waynesboro, Georgia; to retain 1.37 percent, and to acquire an additional 6.04 percent of the voting shares of First Burke Banking Company, Waynesboro, Georgia, for a total of 35.09 percent, and thereby indirectly acquire The First National Bank of Waynesboro, Waynesboro, Georgia.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *French E. Hickman, D.D.S.*, Oklahoma City, Oklahoma, to acquire individually an additional 14.39 percent for a total of 34.65 percent and through French E. Hickman, D.D.S., Inc., Retirement Plan, Oklahoma City, Oklahoma, 4.97 percent for a total acquisition of 39.62 percent; Jack R. Matherly, McLoud, Oklahoma, to acquire an additional 40.19 percent and through Matherly Mechanical Contractors, Inc., 2.67 percent for a total of 52.13 percent of the voting shares of Harrah National Bancshares, Inc., Harrah, Oklahoma, and thereby indirectly acquire The National Bank of Harrah, Harrah, Oklahoma.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Victor S. Morhaime*, Northridge, California; to acquire up to an additional 9.50 percent of the voting shares of BNB Bancorp, Burbank, California, and thereby indirectly acquire Burbank National Bank, Burbank, California.

Board of Governors of the Federal Reserve System, June 20, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-14965 Filed 6-23-89; 8:45 am]

BILLING CODE 6210-01-M

South Banking Co.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than July 14, 1989.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *South Banking Company*, Alma, Georgia; to merge with Georgia Peoples Bankshares, Inc., Baxley, Georgia, and thereby indirectly acquire Peoples State Bank & Trust Company, Baxley, Georgia.

Board of Governors of the Federal Reserve System, June 20, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-14966 Filed 6-23-89; 8:45 am]

BILLING CODE 6210-01-M

Wachusett Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 13, 1989.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Wachusett Bancorp, Inc.*, Clinton, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Clinton Savings Bank, Clinton, Massachusetts, which engages in the sale of Massachusetts Savings Bank Life Insurance.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Cen-La Bancshares, Inc.*, Marksville, Louisiana; to retain 5.59 percent of the voting shares of Union Bancshares, Inc., Marksville, Louisiana, and thereby indirectly acquire Union Bank, Marksville, Louisiana.

C. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Wilkinson Banking Corporation*, Greenwood, Arkansas; to become a bank holding company by acquiring at least 80 percent of the voting shares of Farmers Bank, Greenwood, Arkansas, which engages in the sale, as agent, of credit related insurance sold in connection with extensions of credit made by Farmers Bank. Farmers Bank, located in a town with a population not exceeding 5,000, also engages in the sale of a line of life insurance products not related to credit extensions by the bank, including universal, term and decreasing term life insurance and annuity contracts. It engages in no underwriting activities.

Board of Governors of the Federal Reserve System, June 19, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-14967 Filed 6-23-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Meeting of the Minority Biomedical Research Support Subcommittee of the General Research Support Review Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Minority Biomedical Research Support Subcommittee (MBRSS) of the General Research Support Review Committee (GRSRC), Division of Research Resources (DRR), July 20-21, 1989, Building 31, Conference Room 9, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on July 21, from 8:30 a.m. to 12:00 noon to discuss policy matters relating to the Minority Biomedical Research Support Program (MBRSP). Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, the meeting will be closed to the public on July 20, from 6:30 a.m. to 5 p.m. for the review, discussion, and evaluation of individual grant applications.

The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Michael Fluharty, Acting Information Officer, Division of Research Resources, Naitonal Institutes of Health, Westwood Building, Room 857, Bethesda, Maryland 20892, (301) 496-5545, will provide a summary of the meeting, and a roster of the committee members upon request. Dr. Lawrence J. Alfred, Executive Secretary, (301) 496-4390, will provide substantive program information upon request.

(Catalog of Federal Domestic Assistance Program No. 13.375, Minority Biomedical Research Support, National Institutes of Health.)

Dated: June 19, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-15048 Filed 6-23-89; 8:45 am]

BILLING CODE 4140-01-M

Meeting of Environmental Health Sciences Review Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Environmental Health Sciences Review Committee on July 24-25, in Building 101 Conference Room, South Campus, NIEHS, Research Triangle Park, North Carolina. This meeting will be open to the public on July 24 from 9 a.m. to approximately 2 p.m. for general discussion. Attendance by the public is limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, the meeting will be closed to the public on July 24, from 2 p.m. to adjournment on July 25, for the review, discussion and evaluation of individual grant applications and contract proposals. These applications and proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and proposals, the

disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Drs. John Braun, Carol Shreffler or Donald McRee, Executive Secretaries, Environmental Health Sciences Review Committee, National Institute of Environmental Health Sciences, National Institutes of Health, P.O. Box 12233, Research Triangle Park, North Carolina 27709, (telephone 919–541–7826), will provide summaries of meeting and rosters of committee members.

(Catalog of Federal Domestic Assistance Program Nos. 13.112, Characterization of Environmental Health Hazards; 13.113, Biological Response to Environmental Health Hazards; 13.114, Applied Toxicological Research and Testing; 13.115, Biometry and Risk Estimation; 13.894, Resource and Manpower Development, National Institutes of Health)

Dated: June 19, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–15049 Filed 6–23–89; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Secretary's Council on Health Promotion and Disease Prevention; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following meeting of the Secretary's Council on Health Promotion and Disease Prevention, scheduled to meet Thursday, July 13, 1989.

Name: Secretary's Council on Health Promotion and Disease Prevention

Date and Time: July 13, 1989, 8:30 a.m. to 4:00 p.m.

Place: Room 5051, Cohen Building, 330 Independence Avenue, SW., Washington, DC.

Open July 13, 1989, 8:30 a.m. to Noon. Closed from Noon to 1:30 p.m. for a working lunch.

Purpose: The Secretary's Council on Health Promotion and Disease Prevention is charged to provide advice to the Secretary and to the Assistant Secretary for Health on national goals and strategies to achieve those goals for improving the health of the Nation through disease prevention and health promotion.

Agenda: This will be the fourth meeting of the Secretary's Council. The Council will hear briefings on PHS prevention activities. They will hear council subcommittee reports including the progress of the Year 2000 Health Objectives, community health and minority health.

Anyone wishing to obtain a Roster of Members, Minutes of Meetings, or other relevant information should contact Linda M. Harris, Ph.D., Staff Director for the Council, Office of Disease Prevention and Health Promotion, Public Health Service, U.S. Department of Health and Human Services, Washington, DC 20201, Telephone (202) 472–5370.

Agenda items are subject to change as priorities dictate.

Date: June 16, 1989.

James A. Harrell,

Acting Director, Office of Disease Prevention and Health Promotion.

[FR Doc. 89–14944 Filed 6–23–89; 8:45 am]

BILLING CODE 4160–17–M

Social Security Administration

Redelegation of Authority to Sign Enumeration at Birth Agreements

Section 137 of Pub. L. 92–603 (the Social Security Amendments of 1972) amended section 205(c)(2) of the Social Security Act, as amended, by adding subparagraph (B) to section 205(c)(2). Among other things, this subparagraph confers upon the Secretary of Health and Human Services (the Secretary) authority to take affirmative measures to assure the assignment of Social Security numbers (SSNs), at the request of the parents or guardians, to or on behalf of children who are below school age. This section of the Social Security Act also provides that the Secretary shall require applicants for SSNs to furnish the evidence necessary to establish their age, U.S. citizenship or alien status, and true identity.

Current Social Security Administration (SSA) regulations at 20 CFR 422.103 provide that an individual may apply for an SSN by filing a signed Form SS–5 "Application for Social Security Number Card," and by submitting evidence of age, identity, and U.S. citizenship or alien status, as described in 20 CFR 422.107. Under these current rules, a U.S. birth certificate is generally accepted as evidence of age, as evidence of identity for a child under 7 years of age, and as evidence of U.S. citizenship.

Section 1524 of Pub. L. 99–514 (the Tax Reform Act of 1986), which is applicable to tax returns due after December 31, 1987, requires that a taxpayer who claims an exemption for a dependent must provide the taxpayer identificatioin number of the dependent, if the dependent is age 5 or older. This is usually an SSN.

Under Pub. L. 100–485 (the Family Support Act of 1988), a taxpayer must provide a taxpayer number for dependents age 2 or older on tax returns due after December 31, 1989. This will generally be an SSN.

Because of the growing need for persons to obtain SSNs at an early age, in 1987 SSA initiated pilot projects in three States to test the feasibility of assigning an SSN to a newborn child, bsed on a parent's request, as part of the State's birth registration process. This was well received by the new parents, pilot States and participating hospitals. Based on the success of the pilot projects, we are asking the other States, including, for the purpose of this service, the District of Columbia, Puerto Rico, Guam, and New York City, to enter into agreements (enumeration at birth agreements) with us to make this service available nationally. We do not plan to extend this service to any other U.S. territories or possessions because of the relatively small number of births and requests for SSNs in those places.

Notice is hereby given that the Commissioner of Social Security (the Commissioner) has redelegated authority to sign enumeration at birth agreements to SSA's Deputy Commissioner for Policy and External Affairs and Associate Commissioner for Policy. This redelegation is made pursuant to authority under section 205(c)(2)(B) of the Social Security Act, as amended, delegated by the Secretary to the Commissioner, with authority to redelegate (33 FR 5836–37, dated April 16, 1968). The Commissioner's redelegation is effective on the date that it is published in the **Federal Register**. I affirm and ratify any actions taken by the Deputy Commissioner for Policy and External Affairs and the Associate Commissioner for Policy which may constitute the exercise of this authority after September 7, 1988 and before the date that this redelegation is published in the **Federal Register**. Further redelegations by these delegates are not authorized.

Dated: June 12, 1989.

Dorcas R. Hardy,

Commissioner of Social Security.

[FR Doc. 89–15028 Filed 6–23–89; 8:45 am]

BILLING CODE 4190–11–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Bedrock Spring Area of Critical Environmental Concern (ACEC)

AGENCY: Bureau of Land Mangement, Interior.

ACTION: Implementation of the management plan for the Bedrock Spring Area of Critical Environmental Concern (ACEC).

SUMMARY: The California Desert Conservation Area Plan identified the Bedrock Spring ACEC as an area with significant cultural resources which require special management attention. The management plan presents actions which will protect and preserve those resources. The ACEC includes 800 acress within T. 28S, R. 41E; T. 28S, R. 42E; and T. 29S, R. 42E, MDM. Authorities for the management plan are 43 CFR 8000.0–6, 8341, 8342, 8364, and 8365; Federal Land Policy and Management Act of 1976; Archaeological Resources Protection Act of 1979; National Historic Preservation Act of 1966; and National Environmental Policy Act of 1970.

The development of the management plan included public involvement. The ACEC will remain open to uses which are compatible with the plan, protection, and preservation of the cultural resources. The plan recommends the following actions: close all routes and ways within the ACEC, except Route 1123 and another route to be designated, for the protection of cultural resources; post routes and ways with appropriate signs; fence or barricade closed routes and ways; prohibit camping within the ACEC; place signs at boundaries of the ACEC which inform the public of prohibitions and the importance of the cultural resources; develop maps of the cultural resource sites; develop a program for annual monitoring; implement regular surveillance by Resource Area Rangers; pursue excavation of the disturbed midden at sites within the ACEC.

EFFECTIVE DATE: Immediately.

ADDRESS: The management plan, including maps, environmental assessment, and public comments, will be available at the Ridgecrest Resource Area office, 112 E. Dolphin Avenue, Ridgecrest, CA 93555 from 7:30 a.m. until 4:00 p.m. on normal workdays.

FOR FURTHER INFORMATION, CONTACT: Joan Oxendine at the above address or telephone (619) 375–7125.

Date: June 15, 1989.

H. W. Riecken,

Acting District Manager.

[FR Doc. 89–14961 Filed 6–23–89; 8:45 am]

BILLING CODE 4310–40–M

Christmas Canyon Area of Critical Environmental Concern (ACEC)

AGENCY: Bureau of Land Management, Interior.

ACTION: Implementation of the management plan for the Christmas Canyon Area of Critical Environmental Concern (ACEC).

SUMMARY: The California Desert Conservation Area Plan indentified the Christmas Canyon ACEC as an area with significant cultural resources which require special management attention. The management plan recommends actions for the protection and preservation of those cultural resources. The ACEC includes 7,540 acres of public land within T. 28S, R. 42E; T. 28S, R. 43E; and T. 27S, R. 43E, MDM. Authorities for the management plan are 43 CFR 8000.0–6, 8341, 8342, 8364, and 8365; Federal Land Policy and Mangement Act of 1976; Archaeological Resources Protection Act of 1979; National Historic Preservation Act of 1966; and National Environmental Policy Act of 1970.

The development of the management plan included public involvement. The ACEC will remain open to uses which are compatible with the plan, protection and preservation of cultural resources. The plan recommends the following actions: authorize competitive events for off-road vehicles on existing routes; identify, record, evaluate and, if necessary, protect or subject to data recovery, those cultural resources within the western part of the ACEC; monitor cultural resources; locate and record artifacts removed from the ACEC by amateur archaeologists; increase patrol of the ACEC by Resource Area Rangers; fence or restrict access to cultural resources, if necessary; inform the public of the importance of the cultural resources through interpretive programs or signs; coordinate patrol and visitor management with Mojave "B" Range Naval authorities.

EFFECTIVE DATE: Immediately.

ADDRESS: The management plan, including maps, environmental assessment, and public comments, will be available at the Ridgecrest Resource Area office, 112 E. Dolphin Avenue, Ridgecrest, CA 93555 from 7:30 a.m. until 4:00 p.m. on normal workdays.

FOR FURTHER INFORMATION, CONTACT: Joan Oxendine at the above address or telephone (619) 375–7125.

Date: June 15, 1989.

H.W. Riecken,

Acting District Manager.

[FR Doc. 89–14962 Filed 6–23–89; 8:45 am]

BILLING CODE 4310–40–M

Squaw Spring Area of Critical Environmental Concern (ACEC)

AGENCY: Bureau of Land Management, Interior.

ACTION: Implementation of the management plan for the Squaw Spring Area of Critical Environmental Concern (ACEC).

SUMMARY: The California Desert Conservation Area Plan identified the Squaw Spring ACEC as an area with significant cultural resources which require special management attention. The management plan recommends actions for the protection and preservation of those cultural resources. The Squaw Spring ACEC includes 661 acres of public land with sections 34 and 35, T. 29S, R. 41E, MDM. Authorities for the plan are 43 CFR 8000.0–6, 8341, 8342, 8364, and 8365; Federal Land Policy and Management Act of 1976; Archaeological Resources Protection Act of 1979; National Historic Preservation Act of 1966; and National Environmental Policy Act of 1970.

The development of the management plan included public involvement. The ACEC will remain open to uses which are compatible with the plan, protection, and preservation of cultural resources. The plan recommends the following actions: post "Closed Area" signs at roads in the western half of the ACEC; inventory and map cultural resources within Sec. 35, and amend the boundary of Squaw Spring Archaeological District or ACEC, as appropriate; post "No Camping" signs within the closed area; update sign at entrance of the ACEC; record and photodocument the petroglyphs; monitor the ACEC; coordinate monthly surveillance with Resource Area Rangers; conduct data recovery if condition and trend indicate that cultural resources are seriously threatened.

EFFECTIVE DATE: Immediately.

ADDRESS: The management plan, including maps, environmental assessment, and public comments, will be available at the Ridgecrest Resource Area office, 112 E. Dolphin Avenue, Ridgecrest, CA 93555 from 7:30 a.m. until 4:00 p.m. on normal workdays.

FOR FURTHER INFORMATION CONTACT: Joan Oxendine at the above address or telephone (619) 375–7125.

Date: June 15, 1989.

H.W. Riecken,

Acting District Manager.

[FR Doc. 89–14963 Filed 6–23–89; 8:45 am]

BILLING CODE 4310–40–M

White Mountain City Area of Critical Environmental Concern (ACEC)

AGENCY: Bureau of Land Management, Interior.

ACTION: Implementation of the management plan for the White Mountain City Area of Critical Environmental Concern (ACEC).

SUMMARY: The California Desert Conservation Area Plan identified the White Mountain City ACEC as an area with significant cultural resources which require special management attention. The White Mountain City ACEC includes 630 acres of public land managed by the Bureau of Land Management in sections 23 and 26, T. 6S, R. 36E, MDM. The authorities for the management plan are 43 CFR 8000.0–6, 8341, 8342, 8364, and 8365; Federal Land Policy and Management Act of 1976; Archaeological Resources Protection Act of 1979; National Historic Preservation Act of 1966; and National Environmental Policy Act of 1970.

The development of the management plan included public involvement. The ACEC will remain open to uses which are compatible with the management plan, protection, and preservation of the cultural resources. The plan recommends the following actions: close those roads which branch off from Wyman Creek Road and which are conducive to disturbance of cultural resources; close the ACEC to camping to discourage further vandalism to historic structures; erect signs informing the public of actions prohibited by the management plan and of the historical significance of the ruins; erect signs and barriers at roads which are closed; pursue cooperative effort with nearby Deep Springs College to inventory the ACEC and develop a stewardship for it; establish photo overview points for annual monitoring; establish a photo record of petroglyphs for biennial monitoring; coordinate a schedule for routine surveillance with Resource Area Rangers.

EFFECTIVE DATE: Immediately.

ADDRESS: The management plan, including maps, environmental assessment and public comments, will be available at the Ridgecrest Resource Area office, 112 E. Dolphin Avenue, Ridgecrest, California 93555 from 7:30 a.m. until 4:00 p.m. on normal workdays.

FOR FURTHER INFORMATION CONTACT: Joan Oxendine at the above address or telephone (619) 375–7125.

Date: June 15, 1989.

H.W. Riecken,

Acting District Manager.

[FR Doc. 89–14904 Filed 6–23–89; 8:45 am]

BILLING CODE 4310–40–M

[MTM78139; MT–020–09–4212–13]

Realty Action; Exchange of Public Lands in Montana

AGENCY: Bureau of Land Management, Miles City District Office, Interior.

ACTION: Notice of Realty Action MTM–78139. Exchange of public lands in Wheatland, Sweet Grass, Stillwater, and Yellowstone Counties, Montana, for private land in Stillwater County, Montana with The Nature Conservancy.

SUMMARY: The following described lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716. Only sufficient public lands that equal the same monetary value as the private lands will be used in this exchange. The remaining public lands will be made available for other land exchanges.

Principal Meridian, Montana

Tract 1 T. 1 S., R. 23 E.,
Section 14, SE¼NW¼, NE¼NE¼, S½ NE¼, SE¼, SE¼SW¼
Tract 2 T. 5 N., R. 12 E.,
Section 28, NE¼
Tract 3 T. 5 S., R. 18 E.,
Section 7, SE¼NE¼
Tract 4 T. 2 S., R. 15 E.,
Section 5, Lot 4
Tract 5 T. 9 N., R. 18 E.,
Section 22, NW¼, Section 26, W½W½, SE¼NW¼, NE¼SW¼
T. 8 N., R. 17 E., Section 4, NW¼SE¼
Tract 6 T. 10 N., R. 14 E.,
Section 22, N½NW¼, Section 26, N½NE¼, SE¼NE¼
Aggregating 1253.81 acres of public land

Note: If any of the public land listed above is dropped from the exchange for any reason, substitution will be made from the following list aggregating 80 acres:

Tract 7 T. 5 S., R. 16 E.,
Section 10, SW¼NW¼
Tract 8 T. 5 S., R. 16 E.,
Section 7, NE¼NW¼

As needed, the United States will exchange these lands to acquire the following described lands from the The Nature Conservancy:

Principal Meridian, Montana

T. 4 S., R. 16 E., Section 11, S½, Section 14, N½NE¼, SE¼NE¼, N½SW¼NE¼, N½ S½SW¼NE¼
Aggregating 470 acres of private lands.

DATES: For a period of 45 dys from the date of this notice, interested parties may submit comments to the Bureau of Land Management at the address shown below. Any adverse comments will be evaluated by the BLM, Montana State Director who may sustain, vacate or modify this realty action. In the absence of any objections this realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Information related to the exchange, including the environmental assessment and land report is available for review at the Miles City District, Billings Resource Area Office, 810 E. Main, Billings, Montana 59105.

SUPPLEMENTARY INFORMATION: The publication of this notice segregates the public lands described above from settlement, sale, location, and entry under the public land laws, including the mining laws, but not from exchange pursuant to Section 206 of the Federal Land Policy and Management Act of 1976 for aperiod of 2 years from the date of first publication. The exchange will be made subject to:

1. A reservation to the United States of a right-of-way for ditches or canals in accordance with 43 U.S.C. 945.

2. The reservation to the United States of all minerals in Tracts 2 and 4.

3. All valid existing rights (e.g. rights-of-way, easements and leases of record).

4. Fair Market Value based on accepted appraisal methods.

5. The 2-year notifications to grazing leases were received May 17, 1989, in accordance with 43 CFR 4110.4–2(b).

6. Pursuant to section 106 consultation under the National Historic Preservation Act, archeological easements may be placed on significant cultural resource properties with selected tracts. There will be an exclusive road easement granted to the Bureau of Land Management in conjunction with or simultaneously with the exchange. This exchange is consistent with Bureau of Land Management policies and the Billings RMP/EIS and has been discussed with state and local officials. The estimated intended time of the exchange is August 1989. The public interest will be served by completion of this exchange because it will enable the Bureau of Land Management to acquire lands with high public values, and will increase management efficiency of public lands in the area.

Sandra E. Sacher,

Associate District Manager.

[FR Doc. 89–14999 Filed 6–23–89; 8:45 am]

BILLING CODE 4310–DN–M

[OR–943–09–4214–11; GP9–252; OR–38794]

Conveyance of Public Land; Order Providing for Opening of Lands; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the conveyance of 80 acres of public land out of Federal ownership. This action will also open 200 acres of reconveyed lands to surface entry, mining and mineral leasing.

EFFECTIVE DATE: July 31, 1989.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503–231–6905.

SUPPLEMENTARY INFORMATION: Notice is hereby given that in an exchange of lands made pursuant to Section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, a patent has been issued transferring 80 acres of land in Grant County, Oregon, from Federal to private ownership.

In the exchange, the following described lands have been reconveyed to the United States:

Willamette Meridian

T. 16 S., R. 27 E., sec. 22, NW¼.
T. 21 S., R. 31 E., sec. 14, NE¼NE¼.

The areas described aggregate 200 acres in Grant and Harney Counties.

At 8:30 a.m., on July 31, 1989, the above described lands will be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on July 31, 1989, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

At 8:30 a.m., on July 31, 1989, the above described lands will be open to location and entry under the United States mining laws. Appropriation of land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

At 8:30 a.m., on July 31, 1989, the above described lands will be open to applications and offers under the mineral leasing laws.

Robert E. Mollohan,

Acting Chief, Branch of Lands and Minerals Operations.

Dated: June 15, 1989.

[FR Doc. 89–1500 Filed 6–23–89; 8:45 am]

BILLING CODE 4310–33–M

[AK–932–09–4214–10; AA–12404, AA–12904, AA–12950, and FF–22940]

Termination of Proposed Withdrawal and Reservation of Lands; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates the segregative effect of a proposed withdrawal and reservation of lands on four sites requested by the U.S. Army Corps of Engineers for use as a vehicle maintenance facility and as radio relay sites.

EFFECTIVE DATE: June 26, 1989.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–3342.

SUPPLEMENTARY INFORMATION: Notices of a proposed withdrawal and reservation of lands for the U.S. Army Corps of Engineers, were published in the **Federal Register** on the dates specified below. The Corps of Engineers has since cancelled its application involving each of the following sites:

(a) Published June 24, 1977 (42 FR 32321). The purpose of the application, serial number AA–12404, was for use as a vehicle maintenance facility and involves the following described lands:

Fairbanks Meridian (Unsurveyed)

A tract of land located in section 8, T. 22 S., R. 12 E., more specifically described as follows:

Commencing at a point on the center line of the Richardson Highway, right-of-way 300 feet, from which the junction of the Denali Highway (M.P. 185.5) bears N. 10°24'30" E., 150 feet to the true point of beginning for this description; thence N. 10°35'30" W., 150 feet; thence N. 79°24'30" E., 100 feet; thence S. 15°21'19" E., 356.23 feet; thence S. 79°24'30" W., 129.58 feet; thence N. 10°35'30" W., 205 feet, more or less, to the true point of beginning.

The area described contains approximately 0.93 acre.

(b) Published July 7, 1977 (42 FR 34937). The purpose of the application, serial number AA–12904, was for use as a radio relay site and involves the following described lands:

Seward Meridian

A tract of land located in T. 20 N., R. 12 E., more specifically described as follows:

Commencing at U.S.G.S. monument "SNLC–1", latitude 61°50' N., longitude 147°20' W., thence N. 55°19' E., 265.70 feet to the true point of beginning for this description; thence south 330 feet; thence west 430 feet; thence north 330 feet; thence east 430 feet to the point of beginning.

The area described contains approximately 3.26 acres.

(c) Published July 7, 1977 (42 FR 34937). The purpose of the application, serial number AA–12950, was for use as a radio relay site and involves the following described lands:

Fairbanks Meridian (Unsurveyed)

A tract of land located in section 26, T. 19 S., R. 11 E., more specifically described as follows:

Commencing at a point identical with latitude 63°14.3' N., longitude 145°36.8' W., thence west 165 feet to the true point of beginning for this description; thence north 495 feet; thence east 330 feet; thence south 660 feet; thence west 330 feet; thence north 165 feet, to the point of beginning.

The area described contains approximately 5.00 acres.

(d) Published August 16, 1977 (42 FR 41668). The purpose of the application, serial number FF–22940, was for use as a radio relay site and involves the following described lands:

U.S. Survey 4298

The area described contains 2.06 acres.

At 8:00 a.m. Alaska Daylight Time, on the date of this publication, such lands will be relieved of the segregative effect of the proposed withdrawals.

Sue A. Wolf,

Chief, Branch of Land Resources.

[FR Doc. 89–15001 Filed 6–23–89; 8:45 am]

BILLING CODE 4310–JA–M

National Park Service

Upper Delaware Scenic and Recreational River

AGENCY: National Park Service; Upper Delaware Citizens Advisory Council.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Upper Delaware Citizens Advisory Council. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: June 30, 1989, 7:00 p.m.*

*Announcements of cancellation due to inclement weather will be made by radio stations WDNH, WDLC, WSUL, and WVOS.

Inclement Weather Reschedule Date: July 14, 1989.

ADDRESS: Town of Tusten Hall, Narrowsburg, New York.

FOR FURTHER INFORMATION CONTACT: John T. Hutzky, Superintendent; Upper Delaware Scenic and Recreational River, P.O. Box C, Narrowsburg, NY 12765-0159; 717-729-8251.

SUPPLEMENTARY INFORMATION: The Advisory Council was established under section 704 (f) of the National Parks and Recreation Act of 1978, Pub. L. 95-625, 16 USC 1724 note, to encourage maximum public involvement in the development and implementation of the plans and programs authorized by the Act. The Council is to meet and report to the Delaware River Basin Commission, the Secretary of the Interior, and the Governors of New York and Pennsylvania in the preparation and implementation of the management plan, and on programs which relate to land and water use in the Upper Delaware region. The agenda for the meeting will surround disposal of septage materials in the Upper Delaware Region.

The meeting will be open to the public. Any member of the public may file with the Council a written statement concerning agenda items. The statement should be addressed to the Upper Delaware Citizens Advisory Council, P.O. Box 84, Narrowsburg, NY 12764. Minutes of the meeting will be available for inspection four weeks after the meeting, at the permanent headquarters of the Upper Delaware Scenic and Recreational River; River Road, 1¾ miles north of Narrowsburg, New York; Damascus Township, Pennsylvania.

James W. Coleman, Jr.,

Regional Director, Mid-Atlantic Region.

[FR Doc. 89-15081 Filed 6-23-89; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-290 (Sub-No. 89X)]

Norfolk and Western Railway Co.; Abandonment Exemption Between Briery and Abilene Connection, VA

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 4.8-mile line of railroad between milepost V-136.9, at Briery, VA, and milepost V-141.7, at Abilene Connection, VA.

Applicant has certified that: (1) No local or overhead traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 26, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by July 6, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by July 17, 1989, with:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative:

Virginia K. Young, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510-2129.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by June 30, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Acting Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: June 20, 1989.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-15080 Filed 6-23-89; 8:45 am]

BILLING CODE 7035-01-M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C.2d 400 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the Federal Register on December 22, 1987 (52 FR 48440-48446).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Community Relations Service (CRS); Availability of Funding for Emergency Physical Care, Maintenance and Other Services to Certain Alien Families and Alien Unaccompanied Minors

AGENCY: Community Relations Service (CRS), U.S. Department of Justice.

ACTION: Notice of availability of funding for a Cooperative Agreement to support the provision of emergency physical care, maintenance and other services to alien families and alien unaccompanied minors who have been apprehended and/or processed by the Immigration and Naturalization Service (INS) and are currently awaiting action on their immigration status.

SUMMARY: This announcement governs the award of a Cooperative Agreement to a public or prviate non-profit organization or agency to provide eligible alien families and alien unaccompanied minors with emergency physical care, maintenance and other services. Hereafter, the Program providing such services shall be referred to as the Alien Shelter Care Program (ASCP).

DATE: Closing Date: 5:00 p.m. Eastern Daylight Time; August 4, 1989.

SUPPLEMENTARY INFORMATION:

Purpose and Scope

The ASCP was established in February 1989 by the Department of Justice as part of a Departmental plan to address the exigent situation in the Lower Rio Grande Valley caused by unprecedented numbers of undocumented Central American and other aliens entering the Valley. The ASCP responds to the complex and difficult legal and humanitarian issues associated with the apprehension and processing of undocumented alien families and children. At the same time, the ASCP alleviates the serious burdens upon local communities that result from the entry of large numbers of undocumented aliens into the United States through the Rio Grande Valley.

The purpose of the ASCP is to provide temporary physical care, maintenance and other services to alien family units an alien unaccompanied minors who have been apprehended by the INS in the Lower Rio Grande Valley of Texas. Shelter residents are comprised of individuals who have been processed by the INS for deportation proceedings and are awaiting a final determination on those proceedings, or have applied for asylum and are awaiting action on their applications.

Through a Cooperative Agreement with the American Red Cross (ARC), CRS currently administers the ASCP in the Lower Rio Grande Valley. As the federal agency responsible for this Program, CRS oversees the ASCP to ensure that it is operated in compliance with Department of Justice policies, federal rules, regulations and other governing procedures. Additionally, CRS ensures that all parties involved in the day-to-day operations fo the ASCP comply with all formal and informal agreements among the involved federal agencies and the Recipient. These agencies include CRS, INS and the U.S. Public Health Service (PHS). CRS also monitors the provision of services, coordinates and facilitates inter-agency communication and cooperation, and ensures the execution of the various responsibilities among the parties involved.

The unique public/private partnership between CRS and ARC has enabled the Department of Justice and the ARC to respond in an effective and humane manner to the sheltering needs of undocumented families and children in the Lower Rio Grande Valley. The Recipient agency should agree to participate in the funding of the ASCP either through a 5% cost-sharing agreement with the CRS or through a 5% in-kind contribution.

Through this Cooperative Agreement, CRS intends to transfer all existing ARC administrative and operational responsibilites, governing procedures, use of facilities, use of equipment, certain personnel and all legal obligations thereof to the new Recipient. All facilities and equipment will revert back to the federal government at the end of the term of the Cooperative Agreement.

Included in the transfer of responsibilities are the following:

(1) Facilities

Existing shelter care complexes and all improvements and renovations therein located at 424 Ringold Rd., Brownsville, Texas 78520, and East 77 Sunshine Strip, Near Route 5, Box 5148, San Benito, Texas 78586.

(2) Legal Obligations

a. All ARC leases and contractual agreements and arrangements; and

b. All ARC formal or informal agreements currently in place that are essential to the successful administration and operation of the ASCP.

(3) Personnel

The 49 individuals who were locally hired by the ARC for the administrative, direct service and support activities of the Program. A complete listing of position descriptions for these personnel will be provided to the Recipient at the Technical Assistance Conference.

(4) Administration and Program Operations Including

a. Overall management system and administration of the ASCP including governing procedures and current operating organizational structure and systems detailed in the ARC operations manual.

b. Client Intake Processing and Computerized Data Processing Services.

c. Provision of:

1. Shelter, Sleeping Arrangements and Food Service;
2. Clothing;
3. Personal Items;
4. Sanitation Services;
5. Laundry Services;
6. Educational Services;
7. Recreational Services;
8. Facility Maintenance and Renovations;
9. Utilities Management Services;
10. Security Services;
11. Telecommunications Services;
12. Medical Services Supplemental to PHS Activities; and
13. Other, as funding permits.

(5) Equipment, Including

a. Kitchen;
b. Food service;
c. Computer;
d. Cots;
e. Telecommunications;
f. Photo-copying;
g. Tables, Chairs and Desks;
h. Air Conditioners;
i. Medical Supplies;
j. Washing Machines, Clothes Dryers and Clothes Lines;
k. Recreational; and
l. Educational.

Recipients must comply with the existing guidelines and operating procedures as currently established for the ASCP. These guidelines and procedures will be enumerated in detail at the Technical Assistance Conference.

Although the Recipient is responsible for the delivery of basic shelter care, maintenance and other services of the ASCP, a number of federal agencies including CRS, INS, and PHS are responsible for other legal requirements of the Program and thus are inter-related and involved in the day-to-day operations of the program. Due to the involvement of these federal agencies and, to avoid any real or perceived conflicts of interest, applicants with ongoing advocacy programs for Central American and other aliens must show, in detail, how these advocacy functions and activities will be completely segregated from the operational aspects of the program. No legal activities or advocacy services are to be performed by the Recipient.

Shelter Operations

The current ASCP consists of 2 complexes within 20 miles of each other that have the combined capacity to shelter a total population of 917 residents. These shelter complexes operate 24 hours a day, seven days a week and their operation is extremely labor intensive. If the eligible population decreases, the main facility at Brownsville would remain operational whereas the facility at San Benito would be maintained as a contingency site. Since February 1989, the ARC has provided services to over 7,000 individuals. The average stay of shelter residents is approximately 3 weeks.

Shelter residents are not detained by the INS at the ARC shelter complexes. For administrative processing purposes, residents are deemed to be in the constructive custody of the INS. All shelter residents are free to leave the shelters during the day but must report back each evening if they wish to continue receiving services at the

shelter. The requirement of reporting back to the shelter is for the purpose of providing structure and ensuring safety within the shelter, and to ensure respect for the rights of other shelter residents.

INS Liaison personnel are posted in separate administrative quarters at the shelter complexes presently on a 24 hour basis, 7 days a week. These liaison personnel provide information to the residents regarding their status, scheduled hearings and general immigration procedures. No INS processing takes place at the shelters.

PHS operates a clinic at the shelter complex to provide medical screening and other related health services. Medical services include screening for infectious diseases, immunizations, physical examinations, pre-natal care and, as needed, mental health evaluations. If definitive medical care is needed, the residents are referred to local hospitals or clinics. In addition to this, the ARC operates an aid station supervised by registered nurses at the shelter complexes for general sick call, first aid functions; provides a system of emergency health care services after the PHS clinic closes each day.

One of the two current shelter complexes is fully equipped with a kitchen that has the capacity to prepare up to 10,000 meals. This kitchen facility serves both shelter complexes. The average number of meals prepared at the shelter is 2,200 per day. Approximately 500 meals and snacks, as needed, are transported by the ARC to the second facility 3 times a day.

The ASCP provides educational services to all school age children at the shelter complexes. Approximately 12 teachers and teacher aids are utilized to provide educational services. Classes are held five days a week for 3 hours per day. In addition, structured recreational activities are provided for 3 hours each day.

Neither CRS nor the Recipient are authorized to provide any type of direct legal services to shelter residents. Recipients are prohibited from providing legal services or advocacy services on behalf of shelter residents. However, CRS and the Recipient ensure that the residents have access to legal representation while in the shelter. Legal services, including individual consultations and group orientations, are provided by pro-bono attorneys and authorized paralegals located in an office at the shelter complex.

Authorization. Authority for the CRS ASCP is contained in the Acting Associate Attorney General's Memorandum of February 21, 1989, and in Title V, Section 501(c) of Public Law 96-422 (the Refugee Education Assistance Act of 1980).

Award Instruments. An award to support ASCP services will be in the form of a Cooperative Agreement issued by CRS.

The administration of this award shall require the substantial involvement of the Federal Government, including, but not limited to:

1. The monitoring of the provision of services, coordinating and facilitating inter-agency communication and cooperation, and ensuring the successful execution of the various responsibilities among the parties involved in the day-to-day operation of the program;

2. Provision of technical assistance; and

3. Tracking of residents being provided services at the shelter complex.

The CRS will negotiate a Cooperative Agreement with the applicant approved by the Director, CRS.

Available Funds. Approximately $1.2–$1.8 million will be available to support this program. The estimated range and amounts of available funds contained in this Notice are intended to serve as bench marks only. These estimates do not bind CRS to any specific level of funding.

Future funding for the Alien Shelter Care Program will be contingent upon need and the availability of Federal appropriations. If the need continues to exist and adequate funds are available, the Director, CRS, anticipates continuation of this program.

Program Performance Period. Awards normally will not exceed a 6 month program performance period.

Proposal Review. Proposals will be reviewed, evaluated, rated, and competitively ranked by a Review Panel on the basis of weighted criteria listed in this Notice. Applicants must receive a minimum score of 65 points, out of a total of 100 possible points, in order to be considered for funding. All funding decisions are made at the discretion of the Director, Community Relations Service. Awards will be subject to the availability of funds.

Technical Assistance Conference. CRS will hold a Technical Assistance Conference (TAC) in regard to this Notice. A three day conference will be held in Brownsville, Texas the week on July 12, 13, and 14, 1989. The Conference will consist of tours of the ASCP shelter complexes, presentation by CRS and ARC on the operating procedures and guidelines of the ASCP and question and answer sessions. Interested applicants are encouraged to attend the TAC, at the applicant's expense. Expenses incurred at the TAC will be treated as pre-award costs for the selected applicant. Detailed information will be included as part of the Proposal Application Package, which can be obtained from CRS by calling (301) 492-5818.

Eligible Applicants

Non-profit organizations incorporated under State law, which have demonstrated experience in: (1) The administration of large residential or community-based shelter programs for documented aliens, or similar populations; and/or (2) the resettlement of, or provision of other relevant services to documented aliens, or similar populations, are eligible to apply.

Subcontractual arrangements for the administration of an ASCP will be acceptable only in the case of provision of service by national-level organizations through local-level agencies which have a demonstrable affiliation with, or membership in, the national-level organization.

Consortiums or joint ventures between or among unrelated agencies or organizations, i.e., those where no formal affiliation or membership relationship exists, will not be considered for funding under the terms of this Notice.

Present CRS Recipients are not precluded from submitting applications under the terms and conditions of this Notice.

Eligible Client Population

Under the terms of this announcement, the eligible client population consists of alien families and alien unaccompanied minors who have either been processed by INS for deportation proceedings and are awaiting action on those proceedings, or have applied for asylum and are awaiting action on their applications, or have posted bond but are awaiting transportation to their final point of destination.

Application Contents

Applicants are required to set forth in detail a proposal that includes the following:

1. *Application.* Standard Form 424, Application for Federal Assistance.

2. *Program Abstract.* A brief summary of the proposal which includes names and locations of relevant agencies and the various services to be rendered.

3. *Organization/Agency Background.* A summary of:

a. Applicant's history, philosophy and goals;

b. Applicant's rationale and objectives in applying for the Cooperative Agreement to administer the ASCP; and

c. Organization experience with regard to (1) the administration of large residential, community-based shelter programs for documented aliens, or similar populations; or (2) the resettlement of or provision of other relevant services to documented aliens, or similar populations.

4. *Community Support.* Applicants are required to detail those measures which have and will be taken to develop and maintain community receptivity and support, and/or reduce community opposition to the program and its clientele.

5 *Interagency Coordination.* A detailed description of measures to assure on-going communication with the relevant CRS, INS, PHS, law enforcement, and other officials.

6. *General Program Design.* A summary description addressing:

a. Identification of significant milestones, as they relate to program implementation;

b. Applicant's Organization/Agency Management: Applicants are required to submit a comprehensive plan which outlines the proposed management of the program. The plan must include the following:

(1) A comprehensive organizational chart of the applicant organization or agency which,

(a) Shows the overall lines of authority, responsibility, and supervision in the organization or agency as a whole;

(b) Shows the relationship of the proposed project to other organization and agency projects; and

(c) Shows the relationship of the local-level affiliate to the national-level organization, if applicable.

(2) Identification of the staff member who shall assume overall supervision of the program at the applicant organization or agency level;

(3) A description of the methods for program and financial administration by the applicant organization or agency;

(4) A description of the means of communication among the various levels of program and financial administration;

For national level organizations whose local-level affiliate will administer the program the following material must also be included:

A description of the specific services to be rendered by the national-level organization to its local level affiliate and the specific services to be rendered by the affiliate and a monitoring plan.

c. Local Level Affiliate Management Plan

For national-level organizations whose local-level affiliate will be responsible for the administration and operation of the program, a management plan must also be included which contains the following:

(1) A comprehensive organizational chart of the local-level affiliate which:

a. Shows overall lines of authority and responsibility within the local-level affiliate; and

b. Shows the relationship of the proposed program to other agency programs.

(2) Identification of the local-level affiliate staff member who will assume overall responsibility for the program.

(3) A description of the methods for the administration and supervision of the program which identifies all responsible staff members.

d. On-Site Program and Staff Supervision

(1) A detailed description of the methods for the on-site administration and supervision of program staff;

(2) Proposed staff schedule;

(3) Proposed staff training and which key personnel will be sent in advance of the program period for on-site training at the existing Program site;

(4) A description of the means of communication among the various levels of program administration; and

(5) The roles of consultants, if any, and rationale for their use.

(6) The Recipient will be required to provide certification that it is in compliance with Sec. 5153 of the Drug-Free Work Place Act of 1988, P.L. 100-690, Title V, Subtitle D.

e. A detailed description of the methods for mobilizing and utilizing volunteers for the provision of services;

f. A detailed narrative description of how the Recipient will ensure that the facility complexes and operations of the ASCP are in compliance with all applicable health, safety, zoning requirements, regulations, standards and practices;

g. A detailed narrative description which demonstrates that the Recipient will be able to implement the Operational and Procedural Manual and deliver the following services to an average daily population of 750:

(1) Shelter;

(2) Food Service;

(a) Three nutritionally balanced meals, snacks and baby food; and

(b) The transport of meals between facilities;

(3) Clothing;

(a) Emergency clothing, as needed;

(4) Personal Items;

(a) Initial supplies of toiletries; and

(b) Periodic replenishment of personal items;

(5) Sanitation Services;

(a) Toilets;

(b) Bathing facilities; and

(c) Waste disposal;

(6) Laundry Services;

(a) Client access to laundry facilities for washing of clothing;

(7) Educational Assessment and Services;

(8) Recreational Services;

(a) Team sports equipment and playing areas;

(b) Movies; and

(c) Others; if any,

(9) Facility Maintenance/Renovations;

(a) Plumbing;

(b) Electrical;

(c) Construction; and

(d) Other, as necessary;

(10) Utilities Management Services;

(a) Water;

(b) Sewer;

(c) Electricity; and

(d) Telephone;

(11) Security Services;

(12) Telecommunications Services; and

(a) Telephones;

(b) Facsimilie machines; and

(c) Data processing facilities and computer support;

(13) Medical services supplemental to PHS for general sick call, first aid and a system of emergency health care after the PHS clinic closes each day; and

(14) Computerized Data Collection Services;

(a) Data entry services; and

(b) Preparation of periodic reports and statistical summaries, including, but not limited to, daily head counts, bi-weekly rosters of new clients entering the program and clients exiting the program, and census of clients.

7. *Program Records and Accountability.* Applicants are required to set forth a detailed narrative describing the following:

a. Internal administrative controls, such as daily logs, daily staff meetings, in-house resident leader meetings, program policies and procedures;

b. Administrative program records such as cash disbursement records, other financial records, inventory lists, medical records, medication dispensing records, food allocation, and similar files;

c. Methods for insuring 24-hour monitoring of the program and its clients, such as sign in/sign out sheets; and

d. Plan to ensure resident compliance with shelter complex rules;

8. *Program Evaluation.* A plan for information analysis and program evaluation which include, at minimum, data pertaining to and assessment of:

a. Achievement of overall stated goals and objectives of the program;

b. Client Statistics, including number served by program and serious incidents;

c. Factors contributing to or inhibiting successful delivery of services.

9. *Budget and Budget Narrative,* including:

a. *A Proposed Budget*

A narrative explanation for each line item in each budget category must accompany the proposed budget. The following budget structure should be used to provide appropriate cost breakdowns:

(1) *Personnel.* Salaries and wages only. Fees and expenses for consultants shall be included in line "other." The name and title, salary amounts and level of effort must be identified for each position. A current position description is required for each position.

(2) *Fringe Benefits.* Submit a current copy of the negotiated fringe benefit rate. If fringe benefits are applicable to direct salaries and wages and treated as part of the indirect cost rate negotiation agreement, leave blank.

(3) *Travel.* Use only for travel (domestic) of employees on the grant or cooperative agreement. Include estimated cost breakout for airfare, per diem (limited to prevailing federal government per diem levels), number of days, number of persons traveling and purpose of travel. Travel for consultants shall not go in this line item, nor shall local transportation (i.e., where no out-of-town travel is involved).

(a) Local travel by staff is reimbursed at the rate of 22 cents/mile.

(b) Other travel: Emergency travel, travel to approved or required conferences, such as the yearly CRS/INS conference, or other travel required at the discretion of the government should be included as a separate line item. For the yearly CRS conference, agencies should base this item upon the participation of 2 staff members for 4 days at the prevailing federal government per diem level.

(4) *Equipment.* Equipment refers only to non-expendable personal property, which is defined as follows:

(1) Non-expendable personal property means tangible personal property having a useful life of more than two years and an acquisition cost of $500 or more per unit. A grantee may use its own definition of non-expendable personal property provided that such definition would at least include all tangible personal property;

(b) Personal property means property of any kind except real property. Each item of non-expendable personal property costing $1,000 and each item of general purpose equipment costing over $500 must be identified and explained (i.e., office equipment and furnishings which are usable for activities other than the technical specialized aspects of the grant program).

(5) *Supplies.* Include all tangible personal property except that which is included in the equipment line. Requests in excess of $500 per category of tangible personal property (supplies) must be identified and explained.

(6) *Contractual.* Use of procurement contracts (except those which belong on other line items such as equipment, supplies and construction). It must not include payments to individuals such as stipends, consulting fees, benefits, etc.

(7) *Renovation.* Costs for alteration and renovation must be explained in detail. In cases when renovation is required to bring a facility into compliance with existing codes and regulations, the extent and reasonableness of renovation costs depend upon the extent of repairs required, property values, etc. Repair work and renovation require documented estimates of cost and time and a description of the repair. Programs must conform to the procurement standards set forth in Office of Management and Budget (OMB) Circular A-122. All repairs and renovations require the prior approval of the CRS.

(8) *Client Costs.* All costs directly related to entrants such as essentials, furnishing and utensils, food or food allowances, personal items, clothing, local transportation, assistance payments, medical services, and so on, must be identified and explained.

(9) *Other.* All direct costs not clearly covered in categories listed above, i.e., consulting costs, local transportation, space and equipment rental, and van usage must be identified and explained. Requests for any item identified in the Office of Management and Budget Circular (OMB A-122) which require approval by the CRS Grants Officer must be identified and explained. Also identify utilities and breakout costs per month.

(10) *Indirect Cost.* Identify and explain indirect cost items.

a. If an approved plan exists, CRS may accept an indirect cost rate or allocation plan previously approved for a recipient by a Federal granting agency or the basis of allocation methods substantially in accord with those set forth in the applicable CRS Cost Circular.

(1) If Federally approved rates are used as the basis for charging indirect costs to grant funds, a copy of the Federal agency approval document shall be furnished to CRS as part of the grant application.

b. If no approved plan exists, indirect costs may not be charged to grant funds on the basis of predetermined fixed rates or a negotiated lump sum, unless such rate or lump sum is approved in writing by CRS.

(1) Recipients desiring actual indirect costs, and not having a Federally-approved rate must submit proposals to CRS Grants Management Office.

(2) In lieu of submitting actual indirect cost proposals, flat rates, not in excess of ten percent of direct labor costs (including fringe benefits), or five percent of total direct costs may be allowed, as a predetermined rate.

(a) Such rates are based upon general with respect to minimum overhead support levels required for grantee operations.

(b) Where flat rates are accepted in lieu of actual indirect costs, recipients may not also charge expenses normally included in overhead pools, such as accounting services, legal services, building occupancy and maintenance, etc., as direct costs.

10. *Applicant's Addenda Material.* Applicants are required to submit the following material as an addendum to the program proposal. Material is required for all participating agencies, i.e., applicant organizations as well as local-level affiliates, as applicable:

a. Organization/Agency Administraton

1. A copy of the Organization/Agency's Articles of Incorporation;

2. A copy of the IRS status as a non-profit organization/agency;

3. A list of officers and board members, if applicable; and

4. A list of professional affiliations and certifications.

b. Organizational/Agency Standards and Policies

1. Personnel handbook, statement of standards of conduct, and agency EEO guidelines;

2. Statement regarding professional and agency liability; and

3. A copy of policy regarding confidentiality of client information and records.

c. Staff

1. Position descriptions and resumes, if individuals have been identified for certain positions, for all personnel to be hired and of individuals responsible for administering the program from the applicant organization/agency level and local-level affiliate, as applicable; and

2. Resumes of program consultants.

d. Community Support

A list of voluntary or donated resources, including letters of intent from agencies or entities providing the resources.

e. Finance and Budget

1. A description of the financial management system of the applicant and local-level affiliate, as applicable, to include:

a. Prior experience in the large scale purchasing of bulk commodities;

b. The agency's experience in working with local merchants and the agency's ability to pay these merchants on a timely basis;

c. Description of the degree of automation of the accounting system;

d. A statement on the agency's ability to operate on a cost-reimburseable basis or whether it would require advance of federal funds;

2. A copy of the latest financial audit of the applicant and local-level affiliate, as applicable; and

3. A listing of other Federal, State, local or foundation grants, cooperative agreements, or contracts administered by the applicant and local-level affiliate, as applicable.

This material should include information regarding the funding source, grant, cooperative agreement, or contract number; level of financial support, purpose of grant, cooperative agreement, or contract; grant, cooperative agreement, or contract performance period; and name, address, and telephone number of the grant, cooperative agreement, or contract officer form the relevant agency.

f. Subcontracts/Subgrants

Subcontracts/Subgrants refers to those procurement arrangements which will be entered into by the Recipient for the delivery of certain goods or services such as renovatons, which will not be provided directly by the program. Identify all proposed services which are to be provided through subcontractors/subgrants.

g. Recipient will be required to comply with federal regulations on debarment, suspension and other responsibility matters.

Criteria for Evaluation of ASCP Applications

ASCP applications will be competitively reviewed, evaluated, rated and ranked by a Review Panel, according to the weighted criteria outlined below.

Applicants must receive a minimum score of 65 points out of a total of 100 possible points in order to be considered for funding.

1. The adequacy of the overall organizational Management Plan to implement and administer the Operational and Procedural Manual as demonstrated by:

a. Proposed plans for overall agency management and program management including clear organizational charts reflecting lines of authority and responsibility;

b. The description of the methods for the admnistration and supervision of the program and means of communication among the various levels of program administration; and

c. Size of staff pool, staff qualifications, plans for staff supervision, staffing patterns, the plan for staff recruitment and proposed staff training.

(20 Points)

2. The capacity for providing required services, as demonstrated by:

a. An integrated program plan to provide all program services;

b. The plan for the utilization of volunteers and donated services; and

c. Sensitivity to the issues of culture, race, ethnicity and native language and use of resources in a manner which contributes to mutual support.

(20 Points)

3. The qualifications of the applicant organization or agency, and the local-level affiliate, if applicable, with respect to:

a. The adequacy of the financial management system of the applicant;

b. Prior experience in the large scale purchasing of bulk commodities;

c. The plan to work with local merchants and to ensure timely payment of local vendors and merchants;

d. The adequacy of the system to develop and maintain administrative control records such as cash disbursement records, other financial records, inventory lists, medication dispensary records, food allocation and similar files.

(15 Points)

4. The degree to which the proposed budget and budget narrative is reasonable, succinct, cost effective and likely to achieve program objectives.

(10 Points)

5. The degree to which the applicant complies with cost sharing requests of this proposal either through the assumption of a cash share of the budget or through in-kind contributions.

(10 Points)

6. The adequacy of the program evaluation plan.

(5 Points)

7. The comprehensiveness of the requested application addenda material.

(5 Points)

8. The qualifications of the applicant organization or agency, and the local-level affiliate, if applicable, with respect to:

a. Demonstrated experience in (1) the administration of large residential, community based shelter programs for documented aliens, or similar populations, or (2) the resettlement of or provision of other relevant services to documented aliens, or similar populations;

b. Demonstrated capacity for effective programmatic and fiscal management and accountability of programs serving large numbers of residents; and

c. The rationale for wanting to assume responsibility for the ARC operations.

(15 Points)

Application Submission

Eligible applicants must request a Proposal Application Package, which includes Applicant Form 424, Details on the Technical Assistance Conference, and a copy of the Program Announcement from the United States Department of Justice, Community Relations Service, Suite 330, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815; Attention: Cynthia Bowie, Senior Grants Specialist.

Proposal Application Packages may also be obtained by contacting the Community Relations Service at 301-492-5818, or, 1-800-424-9304.

Applicants must submit a signed Applicant Form 424 and a signed original and two copies of the proposal and supporting documentation to the United States Department of Justice, Community Relations Service, Suite 330, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815; Attention: Cynthia Bowie, Grants Officer.

Applications Delivered by Mail

All applications must be received by registered mail by 5:00 p.m. (Eastern Daylight Time), August 4, 1989. Only those applications received on or before that time will be considered as timely applications.

Applications Delivered by Hand

An application that is hand delivered must be taken to the United States Department of Justice, Community

Relations Service, Suite 330, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

The Grants Management Office will accept hand delivered applications between 9:00 a.m. and 5:00 p.m., Eastern Daylight Time, daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand delivered will not be accepted after 5:00 p.m., Eastern Daylight Time, on the closing date.

Catalogue of Federal Domestic Assistance Number: 16.201.

Jeffrey L. Weiss,

Associate Director, Community Relations Service.

Intergovernmental Review

Application Requirements

Pursuant to Executive Order 12372, *Intergovernmental Review of Federal Programs*, all States have the option of designing procedures for the review and comment on Federally assisted programs.

Each applicant is required to notify each State in which it is proposing activities under this Announcement and to comply with the States' established review procedures. This may be done by contacting the applicable State Single Point of Contact (SPOC)

State Requirements

Comments and recommendations relative to applications submitted under this solicitation should be bailed no later than 45 days after the day of publication, addressed to: Jeffrey L. Weiss, Associate Director, Immigration and Refugee Affairs, Community Relations Service, Suite 330, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

[FR Doc. 89-15071 Filed 6-23-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on June 8, 1989, a proposed Consent Decree in *United States* v. *Altoona City Authority*, Civil No. 89-115J was lodged with the United States District Court for the Western District of Pennsylvania. The proposed Consent Decree arises under the Clean Water Act, 33 U.S.C. 1251 et seq. and resolves violations by the Altoona (Pennsylvania) City Authority of the discharge limitations and other terms and conditions of its National Pollutant Discharge Elimination System ("NPDES") permits issued pursuant to Section 402 of the Clean Water Act, 33 U.S.C. 1362. The Consent Decree provides for payment of a $180,000 civil penalty and implementation of remedial construction measures of the Authority's two wastewater treatment facilities. The agreement requires the Authority to achieve full compliance with final effluent limitations at its Easterly wastewater treatment facility by April 1, 1991 and at its Westerly wastewater treatment facility by November 17, 1990.

The Department of Justice will receive for a period of thirty (30) days from the date of publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Altoona City Authority*, DJ Ref. 90-5-1-1-2936.

The proposed Consent Decree may be examined at the office of the United States Attorney, Western District of Pennsylvania, 633 U.S. Post Office & Courthouse, 7th Avenue & Grant Street, Pittsburgh, Pennsylvania, and at the Region III Office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, Pennsylvania, 19107. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy please enclose a check in the amount of $2.10 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-14965 Filed 6-23-89; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

[Civil No. 89-4522]

Pacific Dunlop Holdings Inc., et al.; Proposed Final Judgment, Stipulation and Competitive Impact Statements

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b) through (h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the Eastern District of Pennsylvania in *United States* v. *Pacific Dunlop Holdings Inc., Becton, Dickinson and Co., and Edmont, Inc.*, Civil No. 89-4522.

The Complaint in this case alleges that the effect of the proposed acquisition of Edmont by Pacific Dunlop may be substantially to lessen competition, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, in the following United States markets: (1) Dipped unsupported nitrile industrial gloves, (2) liquid proof dipped supported latex industrial gloves, (3) liquid proof dipped supported nitrile industrial gloves, (4) liquid proof dipped supported neoprene industrial gloves, and (5) liquid proof dipped supported PVC industrial gloves.

The proposed Final Judgment: (1) Orders and directs Pacific Dunlop to divest any and all interest that it has or shall acquire in Ansell Granet Inc. and (2) orders and directs Pacific Dunlop to divest any and all interest that it has or shall acquire in certain real, personal, and intellectual property used in the production or sale of industrial gloves at Edmont's industrial gloves facility in Canton, Ohio.

The proposed Final Judgment requires Pacific Dunlop to divest the above described assets within six (6) months of the filing of the proposed Final Judgment. If the divestitures are not accomplished within the 6-month period, the Court shall, upon application of the United States, appoint a trustee to effect the remaining divestitures. Under the proposed Final Judgment, Pacific Dunlop or the trustee, whichever is then responsible for effectuating the divestitures required, shall notify the Department of any proposed divestiture required by the Final Judgment. The devestitures are to be made to persons acceptable to the United States in its sole determination.

Public comment is invited within the statutory 60-day comment period. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to John J. Hughes, Chief, Middle Atlantic Office, Antitrust Division, United States Department of Justice, The Curtis Center, Suite 650, 7th & Walnut Streets, Philadelphia, PA 19106 (Area Code 215) 597-7401, within the statutory 60-day comment period.

Joseph H. Widmar,

Director of Operations Antitrust Division.

In the United States District Court for the Eastern District of Pennsylvania.

In the matter of *United States of America, Plaintiff*, v. *Pacific Dunlop Holdings Inc.; Becton, Dickinson and Company; and Edmont, Inc., Defendants.*

Civil No. 89-4522.

Filed: 6/16/89.

Stipulation

It is stipulated by and between the undersigned parties, by their respective officers or attorneys, that:

(1) The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on the defendants and by filing that notice with the Court.

(2) The parties shall abide by and comply with the provisions of the Final Judgment pending entry of the Final Judgment.

(3) In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation will be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated:

For the Plaintiff United States of America:

Michael Boudin,

Acting Assistant Attorney General.

Judy Whalley,

John W. Clark,

John J. Hughes,

Robert E. Connolly,

Attorneys, Antitrust Division, U.S. Department of Justice.

Richard S. Rosenberg,

Mary Ann Ryan,

Attorneys, Antitrust Division, Department of Justice, Middle Atlantic Office, The Curtis Center, Suite 650, 7th and Walnut Streets, Philadelphia, Pennsylvania 19106, Telephone: (215) 597-7401.

For the Defendant Pacific Dunlop Holdings Inc.

Pepper, Hamilton & Scheetz.

By:

Hugh Latimer,

Pepper, Hamilton & Scheetz, 1300 19th Street, NW., Suite 700, Washington, DC 20036.

For the Defendant Becton, Dickinson and Co.

By:

Roy Weber,

Associate General Counsel, Becton, Dickinson and Co., One Becton Drive, Franklin Lakes, New Jersey 07417.

For the Defendant Edmont, Inc.

By:

Roy Weber,

Vice President and General Counsel, Edmont, Inc., 1300 Walnut Street, Coshocton, Ohio 43812.

So ordered.

United States District Judge.

Dated:

Final Judgment

Whereas, plaintiff, United States of America, having filed its Complaint herein on June, 1989, and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

And whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, prompt and certain divestiture is the essence of this agreement and defendants have represented to plaintiff that the divestiture required below can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now, therefore, Before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

Ordered, adjudged, and decreed as follows:

I. Jurisdiction

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against the defendants under section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definitions

As used in this Final Judgment:

A. "Ansell Granet" means any and all interest that defendants have in all of the real, personal, and intellectual property of Ansell Granet Inc., a Delaware corporation.

B. "Edmont" means Edmont, Inc., a Nevada corporation wholly-owned by Becton, Dickinson and Company, a New Jersey corporation.

C. "Canton facility" means any and all interest that defendants have or shall acquire in all of the real, personal and intellectual property used in the production or sale of industrial gloves by Edmont in Canton, Ohio.

D. "Industrial gloves" means gloves used to protect hands from cuts and abrasions and environmental, chemical, and biological agents and/or to protect products from hand-borne contamination.

E. "Pacific Dunlop" means Pacific Dunlop Holdings Inc., a Delaware corporation wholly-owned by Pacific Dunlop Limited, a Victoria (Australia) corporation.

III. Applicability

A. The provisions of this Final Judgment apply to the defendants, to their successors and assigns, to their subsidiaries, affiliates, directors, officers, managers, agents, and employees, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Nothing contained in this Final Judgment shall suggest that any portion of this Final Judgment is or has been created for the benefit of any third party, and nothing herein shall be construed to provide any rights to any third party.

C. Pacific Dunlop shall require, as a condition of the sale or other disposition of all or substantially all of its interest in the Canton facility and Ansell Granet, that the acquiring party or parties agree to be bound by the provisions of this Final Judgment.

IV. Divestiture of Assets

A. Pacific Dunlop is hereby ordered and directed to divest, to an eligible purchaser or purchasers, any and all interest that it has or shall acquire in Ansell Granet, including the right to use the name "Granet."

B. Pacific Dunlop is hereby ordered and directed to divest, to an eligible purchaser or purchasers, any and all interest that it has or shall acquire in all the real, personal, and intellectual property used in the production or sale of industrial gloves at the Canton facility, but excluding formers, patents, trademarks, trade names, copyrights, trade dress, nitrile formulations, and research and development.

C. Pacific Dunlop shall provide to the purchaser or purchasers of the Canton facility all proprietary information (subject to Section IV.B above) required (1) To manufacture and package each type of industrial glove product manufactured for commercial sale at the Canton facility at any time since January 1, 1987, to standards of quality at least equal to currently manufactured

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product and (2) to maintain equipment at current levels of efficiency. Pacific Dunlop shall also provide to the purchaser or purchasers of the Canton facility a non-exclusive, perpetual license to use any and all patents currently used in the production of industrial gloves at the Canton facility. Pacific Dunlop shall also provide for twelve (12) months following the dates of divestiture under Sections IV.A and IV.B, or by the trustee appointed pursuant to Section V, if requested by the purchaser or purchasers, any technical assistance required to manufacture and package such gloves and maintain such equipment, for which Pacific Dunlop will be compensated in an amount equal to the salaries, benefits, and out of pocket expenses incurred in providing such services. Pacific Dunlop shall also provide to the purchaser or purchasers of the Canton facility identification of all customers to whom industrial gloves manufactured at the Canton facility were sold since January 1, 1987 and the types of industrial gloves sold to each.

D. Pacific Dunlop shall provide to the purchaser or purchasers of Ansell Granet identification of all customers to whom industrial gloves manufactured by Ansell Granet were sold.

E. Unless plaintiff otherwise consents, divestiture under Sections IV.A and IV.B, or by the trustee, shall be accomplished in such a way as to satisfy plaintiff, in its sole determination, that the Canton facility and Ansell Granet can and will be operated by the purchaser or purchasers as viable, ongoing businesses engaged in the production of industrial gloves. Divestiture under Sections IV.A and IV.B, or by the trustee, shall be made to a purchaser or purchasers for whom it is demonstrated to plaintiff's satisfaction that (1) The purchase or purchases are for the purpose of competing effectively in the sale of industrial gloves in the United States and (2) the purchaser or purchasers have the managerial, operational, and financial capability to compete effectively in the sale of industrial gloves in the United States.

F. Without the consent of the purchaser or purchasers, Pacific Dunlop shall not offer, for six (6) months following the dates of divestiture under Sections IV.A and IV.B, or by the trustee, employment to employees currently employed at the Canton facility or Ansell Granet.

G. Within one (1) month of the divestiture under Section IV.B, or by the trustee, Pacific Dunlop shall notify customers to whom industrial gloves manufactured at the Canton facility were sold since January 1, 1987 that (1) Industrial gloves they purchased from Edmont were manufactured at the Canton facility and (2) the Canton facility was sold to the purchaser or purchasers.

H. At the time of divestiture under Section IV.B, or by the trustee, Pacific Dunlop shall provide to the purchaser or purchasers of the Canton facility a nitrile formulation for use at the Canton facility which will enable such purchaser or purchasers to manufacture nitrile gloves of a quality, manufacturing efficiency, and yield substantially equivalent to the nitrile gloves currently manufactured by Edmont at the Canton facility.

I. Pacific Dunlop or the trustee shall be entitled to require that the purchaser or purchasers of the assets to be divested be precluded from representing in any manner that the nitrile gloves which it or they manufacture or sell utilize any Edmont nitrile formulation, and that such purchaser or purchasers be precluded from manufacturing or selling a green nitrile glove for seven (7) years following the date of divestiture under Section IV.B, or by the trustee.

J. Pacific Dunlop shall remove the formers currently in place at the Canton facility and replace them with new formers of a quality substantially equivalent to the current formers and suitable for the manufacturer of all products currently manufactured at the Canton facility. Pacific Dunlop has ordered such new formers and will install them as soon as they are received. At the option of the purchaser or purchasers, the closing of the divestiture of the Canton facility may be deferred until the new formers are installed.

K. Pacific Dunlop or the trustee shall be entitled to require the issuance of a royalty free perpetual license to Pacific Dunlop to use, after the divestiture provided for in the Final Judgment, any and all know-how, trade secrets, and other intellectual property provided to the purchaser or purchasers of Ansell Granet and the Canton facility, except for the name "Granet" and other divested Ansell Granet trademarks, copyrights, trade dress, and trade names.

L. Defendants shall take all reasonable steps to accomplish quickly the divestiture and all other obligations contemplated by this Final Judgment.

V. Appointment of Trustee

A. In the event that Pacific Dunlop has not divested all of its interests required by Sections IV.A and IV.B by six (6) months from the filing of this Final Judgment the Court shall, on application of the plaintiff, appoint a trustee to effect the remainder of the divestiture required by Sections IV.A and IV.B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the assets required to be divested pursuant to Sections IV.A and IV.B. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee, subject to the rights of Pacific Dunlop in Sections IV.I and IV.K, and subject to the provisions of Section VI of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Pacific Dunlop shall not object to a sale by the trustee pursuant to the provisions of this Final Judgment on any grounds other than the trustee's malfeasance. Any such objections by Pacific Dunlop must be conveyed in writing to plaintiff and the trustee within fifteen (15) days after the trustee has provided the notice required under Section VI.

B. If Pacific Dunlop has not divested all of its interests required by Sections IV.A and IV.B by five (5) months from the filing of this Final Judgment, plaintiff and Pacific Dunlop shall immediately notify each other in writing of the names and qualifications of not more than two (2) nominees for the position of the trustee who shall effect the required divestiture. Pacific Dunlop shall attempt to agree upon one of the nominees to serve as the trustee. If plaintiff and Pacific Dunlop are able to agree on a trustee within thirty (30) days of the exchange of names, plaintiff shall notify the Court of the person upon whom plantiff and Pacific Dunlop agreed, and the Court shall appoint such person as the trustee. If plaintiff and Pacific Dunlop are unable to agree within that time period, plaintiff shall furnish the Court the names of each party's nominees. The Court may hear plaintiff and Pacific Dunlop as to the qualifications of the nominees and shall appoint one of the nominees as the trustee.

C. The trustee shall serve at the cost and expense of Pacific Dunlop, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services, all remaining money shall be paid to Pacific Dunlop and the trust shall then be terminated. The compensation of such trustee shall be reasonable and based on a fee arrangement providing the trustee with an incentive based on the price and

terms of the divestiture and the speed with which it is accomplished.

D. Pacific Dunlop shall use its best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business or businesses to be divested, and Pacific Dunlop shall develop financial or other information relevant to such business or businesses as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Upon the request of the trustee, Becton, Dickinson shall provide reasonable assistance and records and documents within its possession or control to aid the trustee in accomplishing the divestiture of the Canton facility. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

E. After its appointment, the trustee shall file monthly reports with plaintiff and Pacific Dunlop and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee shall thereupon promptly file with the Court a report setting forth (1) The trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. The trustee shall at the same time furnish such report to plaintiff and Pacific Dunlop, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which may, if necessary, include extending the trust and the term of the trustee's appointment.

VI. Notification

A. Pacific Dunlop or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify plaintiff of any proposed divestiture required by Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify Pacific Dunlop. The notice shall set forth the details of the proposed transactions and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest or desire to acquire any ownership interest in the Canton facility or Ansell Granet, together with full details of the same. Within fifteen (15) days after receipt of the notice, plaintiff may request additional information concerning the proposed divestiture, the proposed purchaser, and any other potential purchaser. Pacific Dunlop or the trustee shall furnish the additional information within fifteen (15) days after receipt of the request. Within thirty (30) days after receipt of the notice or within fifteen (15) days after receipt of the additional information, whichever is later, plaintiff shall notify in writing Pacific Dunlop and the trustee, if there is one, if it objects to the proposed divestiture. If plaintiff fails to object within the period specified, or if plaintiff notifies in writing Pacific Dunlop and the trustee, if there is one, that it does not object, then the divestiture may be consummated, subject only to Pacific Dunlop's limited right to object to the sale under Section V.A. Upon objection by the plaintiff the proposed divestiture shall not be accomplished. Upon objection by Pacific Dunlop under Section V.A., the proposed divestiture shall not be accomplished unless approved by the Court.

B. On the date of entry of this Final Judgment and every thirty (30) days thereafter until the divestiture has been completed, Pacific Dunlop shall deliver to plaintiff a written report as to the fact and manner of compliance with Section IV of this Final Judgment. Each such report shall include, for each person who during the period preceding the delivery of the report made an offer, expressed an interest or desire to acquire, entered into negotiations to acquire, or made an inquiry about acquiring any ownership interest in the Canton facility or Ansell Granet, the name, address, and telephone number of that person and a detailed description of each previously unreported contact with that person during that period. Pacific Dunlop shall maintain full records of all efforts made to divest the Canton facility and Ansell Granet.

VII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to Sections IV or V of this Final Judgment without the prior consent of the plaintiff.

VIII. Preservation of Assets

A. Pacific Dunlop shall preserve, hold, and continue to operate as going businesses the Canton facility and Ansell Granet. Pacific Dunlop shall discontinue any efforts to integrate the operation of Ansell Granet into the operation of any other business unit owned or affiliated with Pacific Dunlop. Pacific Dunlop shall use all reasonable efforts to maintain the Canton facility and Ansell Granet as viable and active competitors in the market for the production and sale of industrial gloves.

B. Pacific Dunlop shall not sell, lease, assign, transfer or otherwise dispose of, or pledge as collateral for loans (except such loans as are currently outstanding or replacements or substitutes therefore), assets required to be divested pursuant to Sections IV.A and IV.B, except that any component of such assets as is replaced in the ordinary course of business with a newly purchased component may be sold or otherwise disposed of, provided the newly purchased component is so identified as a replacement component for one to be divested.

C. Pacific Dunlop shall provide and maintain sufficient working capital to maintain the Canton facility and Ansell Granet as viable, ongoing businesses.

D. Pacific Dunlop shall preserve the assets required to be divested pursuant to Sections IV.A and IV.B except those replaced with newly acquired assets in the ordinary course of business, in a state of repair equal to their state of repair as of the date of this Final Judgment, ordinary wear and tear excepted. Defendants shall preserve the documents, books and records of the Canton facility and Ansell Granet, and Pacific Dunlop shall continue to maintain such documents, books, and records until the dates of divestiture.

E. Except in the ordinary course of business, Pacific Dunlop shall refrain from terminating or reducing one or more current employment, salary, or benefit agreements for one or more management, engineering, or other technical personnel employed in connection with the Canton facility or Ansell Granet, and shall refrain from transferring any employee employed at the Canton facility or Ansell Granet without the prior approval of plaintiff.

F. Defendants shall refrain from taking any action that would jeopardize the sale of the Canton facility or Ansell Granet.

IX. Compliance Inspection

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice, including consultants and other persons retained by the Department, shall, upon the written request of the Attorney General

or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants made to their principal officers, be permitted:

1. Access during office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants, which may have counsel present, relating to any matters contained in this Final Judgment; and

2. Subject to the reasonable convenience of defendants and without restraint or interference from them, to interview their officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to defendants at their principal offices, defendants shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section IX shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to plaintiff, defendants represent and identify in writing the material in any such information or documents for which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, "subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then plaintiff shall give ten (10) days notice to defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendants are not a party.

X. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, implementation, or modification of any of the provisions of this Final Judgment, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XI. Termination

This Final Judgment will expire on the fifth anniversary of the completion of the divestitures required herein.

XII. Public Interest

Entry of this Final Judgment is in the public interest.

Dated:

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

United States District Judge

Competitive Impact Statement

The United States, pursuant to section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16 (b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On June 15, 1989, the United States filed a civil antitrust complaint under section 15 of the Clayton Act, 15 U.S.C. 25, challenging the proposed acquisition of the United States assets of Edmont, Inc. ("Edmont"), a wholly owned subsidiary of Becton, Dickinson and Company ("BD"), by Pacific Dunlop Holdings Inc. ("PDH"). The complaint alleges that the proposed acquisition violates Section 7 of the Clayton Act, 15 U.S.C. 18.

Both PDH and Edmont are major United States suppliers of various types of dipped supported and unsupported industrial gloves designed to protect hands from cuts and abrasions and environmental, chemical, and biological agents and/or to protect products from hand-borne contamination. Dipped unsupported industrial gloves are liquid proof and chemical resistant ("liquid proof") gloves that are made from latex (natural rubber) or a synthetic material such as nitrile, neoprene, or polyvinyl chloride ("PVC"); these gloves may be flock-lined, but do not employ any other lining. Dipped supported industrial gloves are made of cloth or other lining material coated with latex or a synthetic material such as those identified above; these gloves may or may not be liquid proof depending on whether they are designed to allow for hand ventilation.

The complaint names as defendants Edmont, PDH, and BD and alleges that the effect of the merger may be substantially to lessen competition among products that sell in the United States the following types of industrial gloves: dipped unsupported nitrile gloves, liquid proof dipped supported latex gloves, liquid proof dipped supported nitrile gloves, liquid proof dipped supported neoprene gloves, and liquid proof dipped supported PVC gloves.

Plaintiff and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the government withdraws its consent. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, and enforce the proposed Final Judgment and to punish violations thereof.

II. Events Giving Rise to the Alleged Violation

Under the terms of a Purchase and Sale Agreement dated February 13, 1989 between PDH and Edmont, PDH proposes to acquire all of Edmont's industrial glove operations in the United States. Under the Agreement, PDH is to pay a purchase price of approximately $192 million and assume certain of Edmont's liabilities.

PDH and Edmont both produce for sale in the United States a broad line of industrial gloves. In 1988, PDH's total industrial glove sales in the United States were approximately $26 million. Through its subsidiary Ansell Inc., PDH sells in this country unsupported nitrile gloves manufactured by its affiliate Ansell Glove Company Ltd. in the United Kingdom. Another PDH subsidiary, Ansell Granet, Inc., produces at a plant in Snow Hill, North Carolina dipped supported gloves coated with latex, nitrile, neoprene, and PVC.

Edmont's total United States sales of industrial gloves were approximately $65 million in 1988. It produces unsupported nitrile gloves at plants in Canton, Ohio and Juarez, Mexico, and liquid proof dipped supported gloves at other plants in Ohio, North Carolina, Louisiana, and Canada.

The complaint alleges that the production and sale of dipped unsupported nitrile gloves, of liquid proof dipped supported latex gloves, of liquid proof dipped supported nitrile gloves, of liquid proof dipped supported neoprene gloves, and of liquid proof dipped supported PVC gloves, each constitutes a line of commerce and relevant product market within the meaning of Section 7 of the Clayton Act. The several types of liquid proof dipped supported and unsupported industrial gloves each have differing degrees of suitability for the many uses for

industrial gloves. As between liquid proof dipped supported and dipped unsupported industrial gloves, the former offer superior protection from cuts and abrasion, while the latter have superior protectin from cuts and abrasion, while the latter have superior tactile and dexterity properties. Within the unsupported and liquid proof supported categories, each type of coating material offers protection against certain chemicals or other toxic or corrosive substances superior to other types. A small but significant and nontransitory increase in the price of any of above identified types of industrial gloves is not likely to cause a significant number of customers to substitute any other type of industrial glove, or any other product.

For each of the above types of industrial gloves, firms that produce and sell that type in the United States compete with each other for sales throughout the country. The United States is, as alleged in the complaint, a section of the country and a relevant geographic market, within the meaning of section 7 of the Clayton Act.

The complaint also alleges that the above markets for industrial gloves are highly concentrated and would become substantially more concentrated as a result of the proposed acquisition of Edmont by PDH. In 1988, total United States sales of dipped unsupported nitrile gloves were approximately $28.7 million. Edmont and PDH, through it subsidiary Ansell Inc., are respectively the first and fifth largest competitors in this market; based on 1988 United States sales data, Edmont and PDH market shares are, respectively, about 43 percent and 4.4 percent. Based on market shares derived from United States sales of all firms in the market, the proposed acquisition would increase the Herfindahl-Hirschman Index ("HHI") by about 380 points to over 3200.

Total United States sales in 1988 of all dipped supported latex, nitrile, neoprene, and PVC gloves were approximately $80 million. Edmont and PDH, through its subsidiary Ansell Granet Inc., are the second and third leading United States sellers of dipped supported latex gloves, with shares of 1988 sales of that type of glove at about 30 percent and 5 percent respectively; the first and third leading United States sellers of dipped supported nitrile gloves, with shares of about 54 percent and 6 percent; the first and fourth leading United States sellers of dipped supported neoprene gloves, with shares of about 44 percent and 7.7 percent; and among the top five leading United States sellers of dipped supported PVC gloves, with shares of about 35 percent and 5.6 percent.

A number of producers of dipped supported latex, nitrile, neoprene, and PVC gloves make more than one type of such gloves, and most producers can make more than one type using the same production equipment. Further, all producers of dipped supported gloves can make both liquid proof and non-liquid proof gloves on the same equipment. Accordingly, for purposes of assessing the competitive structure of these markets, and thus analyzing the effect of the acquisition on competition in the markets, it is appropriate to aggregate the capacity resulting from all such equipment that can be used by producers to make more than one type of glove.

Based on 1988 United States sales of all dipped supported gloves, each of the above identified markets for liquid proof dipped supported gloves is highly concentrated and would become substantially more concentrated as a result of the proposed acquisition of Edmont by PDH. In each market, the proposed acquisition would increase the HHI by at least 300 points to over 2800.

As alleged in the complaint, successful entry into any of the above described United States markets for dipped supported and unsupported industrial gloves is difficult and time-consuming because of the cost and time required to perfect the production technologies, to construct necessary production facilities, and to develop the substantial distributor relationships necessary to compete effectively in the United States.

III. Explanation of the Proposed Final Judgment

The United States brought this action because the effect of the proposed acquisition of Edmont by PDH may be substantially to lessen competition, in violation of section 7 of the Clayton Act, in the United States markets for the manufacture and sale of unsupported nitrile industrial gloves, liquid proof dipped supported latex industrial gloves, liquid proof dipped supported nitrile industrial gloves, liquid proof dipped supported neoprene industrial gloves, and liquid proof dipped supported PVC industrial gloves. As described below, the provisions of the Final Judgment are designed to prevent the anticompetitive effects of the proposed acquisition in each of these markets.

To eliminate the competitive threat posed by the proposed acquisition in the unsupported nitrile glove market, the proposed Final Judgment requires PDH to divest, subject to certain exclusions, any and all interest that it has or shall acquire in real, personal, and intellectual property used in the production or sale of industrial gloves at Edmont's manufacturing facility in Canton, Ohio (the "Canton facility"). Edmont currently manufactures unsupported nitrile gloves at this facility. It is the government's judgment that an acceptable purchaser of the Canton facility will compete effectively in the United States market for unsupported nitrile gloves, and will supplant the loss of PDH in this market.

Excluded from this divestiture are patents, trademarks, trade names, copyrights, trade dress, nitrile formulations, research and development, and currently-used formers. However, the proposed Final Judgment requires PDH to provide the purchaser of the Canton facility with a non-exclusive and perpetual license to practice any and all patents pertinent to production at the facility, a nitrile formulation that will enable the purchaser to produce gloves of a quality, manufacturing efficiency, and yield substantially equivalent to that currently achieved by Edmont at the facility, and replacement formers of comparable quality to those currently used at the facility.

To preserve the current level of competition in the liquid proof dipped supported glove markets, the Final Judgment requires PDH to divest any and all interest that it has or shall acquire in its subsidiary Ansell Granet Inc. This divestiture would include all real, personal, and intellectual property used in Ansell Granet's industrial glove production and sales. Ansell Granet currently manufactures liquid proof dipped supported gloves and is PDH's sole source of such gloves for the United States markets. An acceptable purchaser of this plant thus will fully replace PDH as a competitor in these markets.

Under the Final Judgment, PDH is to complete both divestitures within six months of the filing of the judgment, and if it fails to do so, the court will appoint a trustee to accomplish the divestitures. In the latter eventuality, only the trustee would have the right to sell the assets to be divested, and PDH would be required to pay for all of the trustee's sale related expenses. If the trustee does not accomplish the divestitures within six months of appointment, the trustee and the parties will make recommendations to the Court and the Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which may

include extending the trust or the term of the trustee's appointment.

The Final Judgment provides that both the Canton facility and Ansell Granet must be divested in such a way as to satisfy the United States that those assets can and will be operated by the purchaser(s) as viable, ongoing businesses that can compete effectively in the sale of industrial gloves in the United States. In this regard, it affords the United States an opportunity to review any proposed sale to effect the divestitures prior to consummation. If the United States requests information from Pacific Dunlop to assess a proposed sale, the sale may not be consummated until at least 15 days after Pacific Dunlop supplies the information. Upon objection by the United States, a proposed divestiture may not be completed. Until the required divestiture has been accomplished, Pacific Dunlop must preserve and maintain the Canton facility and Ansell Granet as ongoing and economically viable businesses.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of section 5(a) of the Clayton Act (15 U.S.C. 16(a)), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendants.

V. Procedure Available for Modification of the Proposed Final Judgment

The United States and defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate comments, determine whether it should withdraw its consent, and respond to comments. The comments and the response of the United States will be filed with the Court and published in the Federal Register.

Written comments should be submitted to: John J. Hughes, Chief, Middle Atlantic Office, Antitrust Division, The Curtis Center, Suite 650, 7th & Walnut Streets, Philadelphia, PA 19106.

VI. Alternatives to the Proposed Final Judgment

An alternative to settling this action pursuant to the proposed Final Judgment would be for the United States to seek preliminary and permanent injunctions against the consummation of the acquisition of Edmond by PDH. The United States rejected this alternative because the divestitures in the proposed Final Judgment should prevent the acquisition from having significant anticompetitive effects in any of the industrial glove markets alleged in the complaint.

With respect to the liquid proof dipped supported glove markets, Ansell Granet is the only operation affiliated with Pacific Dunlop that manufacturers dipped supported industrial gloves, and its divestiture provides all the relief that could be obtained by the United States with respect to those markets. Regarding the unsupported nitrile glove market, the United States considered as an alternative requiring PDH's affiliate, Ansell Glove Company Ltd., to divest its assets devoted to this market, which are located in the United Kingdom; PDH is not otherwise engaged in the production of unsupported nitrile gloves. However, the United States concluded that the sale of Edmont's Canton facility would better enable the purchaser to compete for sales in the United States than a sale of the Ansell Glove Company operations. While the two facilities have roughly equal production capacities, Ansell Glove Company's manufacturing plant is located in England, and therefore its ability to compete in the United States is to some extent subject to fluctuating foreign exchange rates and other potential relative disadvantages of supplying the United States from overseas facilities.

The United States is satisfied that the proposed Final Judgment fully resolves the anticompetitive effects of the proposed acquisition alleged in the complaint. Although the judgment may not be entered until the criteria establishd by the APPA (15 U.S.C. 15 (b)–(h)) have been fully satisfied, the public will benefit immediately from the judgment's provisions because the defendants have stipulated to comply with its terms pending its entry by the court.

VII. Determinative Materials and Documents

There are no materials or documents that the United States considered to be determinative in formulating this proposed Final Judgment. Accordingly, none are being filed with this Competitive Impact Statement.

Respectively submitted

Richard S. Rosenberg,

Mary Ann Ryan, Attorneys, Antitrust Division, Department of Justice, Middle Atlantic Office, The Curtis Center, Suite 650, 7th and Walnut Streets, Philadelphia, Pennsylvania 19106, Telephone: (215) 597–7417.

[FR Doc. 89–14966 Filed 6–23–89; 8:45 am]

BILLING CODE 4410–01–M

Office of Justice Programs

Grants and Cooperative Agreements; Availability

June 15, 1989.

AGENCY: Department of Justice, Office of Justice Programs, Office for Victims of Crime.

ACTION: Notice of the availability of funds and request for applications to provide training and technical assistance to state and local victim service programs.

SUMMARY: The Office of Victims of Crime (OVC), Office of Justice Programs (OJP), U.S. Department of Justice is seeking applications to provide national scope training and technical assistance that will assist crime victim service providers and managers of programs to provide quality and timely services to crime victims. The Office for Victims of Crime announces the availability of $150,000 for the support of up to five regional training seminars.

The statutory authority for this notice is found in the Victims of Crime Act of 1984 (VOCA), Public Law 98–473, as amended by the Children's Justice and Assistance Act of 1986 (CJA), Public Law 99–401, and as amended by the Anti-Drug Abuse Act of 1988, Title VII, Subtitle D, of Public Law 100–690. The Victims of Crime Act has been codified at 42 U.S.C. 10601, *et seq.*

DATE: Applications for these funds must be received by August 7, 1989.

ADDRESS: Address applications to the Office for Victims of Crime, 633 Indiana Avenue NW., Washington, DC 20531. Attention: Cynthia Darling.

FOR FURTHER INFORMATION CONTACT: Cynthia Darling, (202) 724–5947. (This is not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

On November 18, 1986, President Reagan signed into law the Anti-Drug Abuse Act of 1988, Pub. L. 100–690, Title VII, Subtitle D, of this Act reauthorized the Victims of Crime Act (VOCA) through Federal Fiscal Year 1994.

The Office for Victims of Crime was established in 1984 within the U.S. Department of Justice to serve as the Federal focal point for victim issues and to administer the Victims of Crime Act of 1984, as amended. For the first time Section 1411 of the Act legislatively established an Office for Victims of Crime within the Justice Programs, U.S. Department of Justice. The Direct is appointed by the President and reports to the Attorney General through the Assistant Attorney General for the Office of Justice Programs, and has final authority for all grants, cooperative agreements, and contracts awarded by the Office for Victims of Crime. The Director is responsible for administering funds made available under sections 1402, 1403, and 1404 of the Act. Funds made available under Section 1402(d)(2)(A)(ii) and (D)(ii) are utilized by the States to support a variety of eligible crime victim assistance programs. In any given year, approximately 1,500 programs receive partial funding support with VOCA funds.

Section 1402(d)(2) (A) states that "Of the first $100,000,000 deposited in the Fund in a particular fiscal year * * * 1% shall be available for grants under section 1404(c) * * *" Section 1404(c)(1) of the Act states that the Director shall make grants (A) for training and technical assistance services to eligible crime victim assistance programs; and (B) for the financial support of services to victims of Federal crime by eligible crime victim assistance programs.

Of the 1% available for this purpose, up to one-half of one percent is authorized for training and technical assistance and at least one-half of one percent is authorized for victims of Federal crimes. This year a major portion of these funds will be allocated for services to victims of Federal crimes on Indian reservations. The remainder of the funds will be available for training and technical assistance for eligible victim assistance programs.

Over the last three years the Office of Justice Programs has awarded funds to provide training to victim assistance program staff. Grant awards to organizations included but were not limited to the National Organization for Victim Assistance, the National Sheriff's Association, the National Victims Center, the Medical University of South Carolina, Parents of Murdered Children and Other Survivors of Homicide Victims, the South Dakota Coalition Against Domestic Violence and Sexual Assault, the National Association of Crime Victim Compensation Boards, the National Organization of Black Law Enforcement Executives, the National District Attorneys' Association, and the National Woman Abuse Prevention Project. Funds supporting these projects have come from the Victims of Crime Act and the Justice Assistance Act.

Statement of Problem

Although crime has been a problem of great national concern for decades, it only has been in the last ten years that the plight of the crime victim has been brought to the Nation's attention. Shortly after assuming office, President Reagan established the President's Task Force on Victims of Crime. He was concerned that the scales of justice were out of balance and that victims of crime were not being treated with the dignity, fairness and courtesy which they deserved. After holding six public hearings the Task Force issued a final report in December 1982, making 68 recommendations on how treatment of crime victims could be improved. Out of that report came the following Federal initiatives: (1) The establishment of the Office for Victims of Crime, and (2) passage of the Victims of Crime Act of 1984.

Since the enactment of VOCA there has been a considerable increase in the number and type of victim assistance programs operating in the United States. As a result, there is an ongoing need for technical assistance and training for victim service program staff. Funds will be made available to meet this need through this announcement.

Purpose

The OVC is making available $150,000 for the development and presentation of regional training conferences for crime victim assistance service providers.

Program Description

One grant will be awarded for the purpose of developing and presenting up to five regional training conferences throughout the United States. There are no attendance restrictions, however, preference should be given to VOCA-funded program staff in cases where space or type of training might necessitate limitation of attendance.

The training should utilize existing training material and, at a minimum, should cover the provision of direct services such as specialized service needs of crime victims, crisis intervention, counseling, providing emergency services, and assistance in criminal justice proceedings. The program should be designed for approximately two to three-day sessions to accommodate an audience of about 120 people. The training should include appropriate written materials for participants, and an overview of VOCA and VOCA Guidelines for victim assistance and victim compensation. Since cost effectiveness as well as the ability to initiate the training program in a timely manner will be primary selection factors, it is essential that development costs be minimized. A variety of training materials for this purpose have been developed in recent years and should be utilized.

Sites for training sessions should be selected to accommodate geographical diversity and reasonable travel and per diem costs. Direct service providers will be asked to pay for their own travel and lodging, with the cost of the training paid by the technical assistance project. The development, publication and dissemination of brochures/flyers announcing the regional training conferences will be carried out by the grantee. The cost of such activities will be the responsibility of the grantee and should be described fully in the budget.

A method by which conference attendees can evaluate the regional training conferences should be included by the applicant in the program description. The applicant should submit a proposed agenda for the training and proposed site locations. Applicants should identify and include resumes of qualified and capable staff who have expertise in victim services.

Selection Criteria

The selection of the grantee will be based on:

1. Evidence of an in-depth knowledge of the subject matter and current issues in service delivery. (20 points)

3. Experience in conducting national level training for direct service providers and evidence of proven ability to provide high quality training results. (15 points)

4. A detailed budget that demonstrates the cost-effectiveness of the project, including the use of regional training resources. (20 points)

5. Project director and training staff which have expertise in state-of-the-art victim assistance intervention. Resumes

of proposed staff and all trainers should be included. (20 points)

6. Proposed training curriculum that shows ability to begin training in a timely manner, proposed sites for training and projected schedule for each training conferences. (25 points)

Funds Available

The sum of $150,000 will be available from the Office for Victims of Crime for the purpose of conducting up to five regional training conferences for direct service providers to address the training and technical assistance needs of crime victim assistance programs.

Time Period and Award Amount

The grant will be for twelve months and will cover 100% of the project costs (no matching funds required).

Eligible Applicants

Eligible applicants may be from public or private non-profit organizations with knowledge of subject matter, expertise and experience in providing training on a nationwide basis for victim assistance direct service providers. The Office for Victims of Crime will accept applications from eligible organizations and will award one grant.

Submission Deadlines

Applications must be received by August 7, 1989. Mailed applications must be postmarked by this date. However, applications which are hand delivered must be received by the close of business (5:00 p.m.) at the Office for Victims of Crime, 633 Indiana Avenue NW., Washington, DC 20531, on or before the deadline date.

Applications

Applicants should submit three (3) copies of their completed Proposal by the deadline established above, each signed in the original.

Applications must include:

A. A completed and signed Federal Assistance application on the current Standard Form 424. Copies of the required forms, and any information or clarification regarding them, may be obtained by writing or calling the Office for Victims of Crime, State Compensation and Assistance Division, 633 Indiana Avenue NW., Washington, DC 20531, (202) 724-5947.

B. An abstract of the full proposal, not to exceed one page.

C. A program narrative of not more than twenty (20) double-spaced typed pages which should include:

1. A clear, concise statement of the issues surrounding the problem area and a discussion of the relationship of the proposed work to the existing training literature;

2. A clear statement of the project objectives including an estimate of the number of service providers to be trained, proposed training sites, a list of major milestones of events, activities, products, and a time-table for the operation of the program;

3. A clear statement which describes the approach and strategy to be utilized to complete each of the tasks identified in the program description. Applicants should indicate the contents of proposed training packages and how the organization plans to maximize attendance at training conferences;

4. The proposed organization and management plan to be used including, at a minimum, the staff of the project, and the time commitments of key staff to individual project tasks. A project director must be identified, with a clear indication of the amount of time to be devoted to the project;

5. Description of how the project will be evaluated;

6. Description of the proposed training curriculum, with topics listed and time scheduled for each topic.

D. A proposed budget outlining all direct and indirect costs for personnel, fringe benefits, travel, equipment, supplies, subcontracts, and a short narrative justification of each budgeted item cost. Any anticipated subcontracts must include a separate budget.

E. Copies of vitae for the professional staff which summarize education, clinical, research and training experience, and bibliographic information related to the proposed work.

F. Detailed technical material that supports or supplements the description of the proposed effort, but is not integral to it, should be included in an appendix.

All three copies of the application must be sent or hand delivered to: Office for Victims of Crime, State Compensation and Assistance Division, 633 Indiana Avenue NW., Washington, DC 20531, by the deadline established above.

FOR FURTHER INFORMATION CONTACT: Cynthia Darling, State Compensation and Assistance Division, (202) 724-5947.

Information concerning model programs and practices is available from the National Criminal Justice Reference Service, 1600 Research Boulevard, Rockville, Maryland 20850, (301) 251-5000, and the National Victims Resource Center, Box 6000, Rockville, Maryland 20850, (301) 251-5519.

Approved:

Jane Nady Burnley,

Director, Office for Victims of Crime.

[FR Doc. 89-14970 Filed 6-23-89; 8:45 am]

BILLING CODE 4410-18-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 89-51]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee.

DATES: July 13, 1989, 8 a.m. to 5 p.m.

ADDRESSES: National Aeronautics and Space Administration, Federal Building 10B, Room 625, 600 Independence Avenue, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Catherine L. Smith, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2367.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee was established to provide overall guidance and direction to the aeronautics research and technology activities in the Office of Aeronautics and Space Technology. The Committee, chaired by Mr. Phil M. Condit, is comprised of 23 members. The meeting will be open to the public up to the seating capacity of the room (approximately 40 persons including the team members and other participants).

Type of Meeting: Open.

Agenda: July 13, 1989

8 a.m.—Opening Remarks.
8:30 a.m.—Program Plans.
10 a.m.—Committee Discussion.
12:15 p.m.—NASA/Federal Aviation Administration Cooperative Activities Review.
1:25 p.m.—National Aero-Space Plane Update.
2:10 p.m.—Discussion on Current Study Topics.
3:30 p.m.—Discussion on New Study Topics.
5 p.m.—Adjourn.

June 19, 1989.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 89-14972 Filed 6-23-89; 8:45 am]

BILLING CODE 7510-01-M

[Notice (89-50)]

NASA Advisory Council (NAC), Space Systems and Technology Advisory Committee (SSTAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee.

DATES: July 19, 1989, 8:30 a.m. to 3:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, Federal Building 10B, Room 625, 600 Independence Avenue, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Catherine L. Smith, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2367.

SUPPLEMENTARY INFORMATION: The NAC Space Systems and Technology Advisory Committee was established to provide overall guidance and direction to the space research and technology activities in the Office of Aeronautics and Space Technology (OAST). The Committee, chaired by Dr. Joseph F. Shea, is comprised of 20 members. The meeting will be open to the public up to the seating capacity of the room (approximately 40 persons including the Committee members and other participants).

Type of Meeting: Open.

Agenda: July 19, 1989

8:30 a.m.—Opening Remarks.
8:45 a.m.—Program Plans.
11:50 a.m.—Aeronautics and Space Engineering Board Space Technology Summer Workshop Discussion.
1 p.m.—Space Facilities Study.
1:30 p.m.—Ad Hoc Review Team Final Reports.
3 p.m.—Ad Hoc Review Team Status Update.
3:20 p.m.—Summary Session.
3:30 p.m.—Adjourn.

June 19, 1989.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 89-14973 Filed 6-23-89; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-312]

Sacramento Municipal Utility District; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (The Commission) is considering issuance of an exemption from the requirements of 10 CFR Part 20, Appendix A, footnote d-2(c), to the Sacramento Municipal Utility District, who holds Facility Operating License No. DPR-54, which authorizes operation of the Rancho Seco Nuclear Generating Station. Rancho Seco is a pressurized water reactor located in Sacramento County, California.

Environmental Assessment

Identification of the Proposes Action: The exemption from 10 CFR Part 20 would allow the use of a radioiodine protection factor of 50 for Mine Safety Applicances (MSA) GMR-I canisters at Rancho Seco.

The Need for the Proposed Action: The exemption is needed to facilitate refueling operations at Rancho Seco by reducing the time and person-rem exposure required to complete tasks that require respiratory protection.

Environmental Impacts of the Proposed Action: There are no environmental impacts of the proposed action. The proposed exemption involves a change in the installation or use of the facility's components located within the restricted areas as defined in 10 CFR Part 20. The staff has determined that the proposed exemption involves no significant increase in the amounts, and no significant change in the types, of any effluents that may be released offsite and that there is no significant increase in individual or cumulative occupation radiation exposure.

With regard to potential non-radiological impacts, the proposed exemption involves systems located entirely within the restricted areas as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action: We have concluded that there is no measurable environmental impact associated with the proposed exemption. The principal alternative would be to deny the requested exemption. This would not reduce environmenal impacts of plant operation.

Alternative Use of Resources: This action does not involve the use of resources not previously considered in the Final Environmental Statement (operating license) for Rancho Seco Nuclear Generating Station.

Agencies and Persons Consulted: The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Findings of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated November 17, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the Martin Luther King Regional Library, 7340 24th Street Bypass, Sacramento, California.

Dated at Rockville, Maryland this 13th day of June 1989.

George W. Knighton,

Director, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects Office of Nuclear Reactor Regulation.

[FR Doc. 89-15030 Filed 6-23-89; 8:45 am]

BILLING CODE 7590-01-M

Records for the Millstone Nuclear Power Station; Request for Repository Library

AGENCY: Nuclear Regulatory Commission.

ACTION: Relocation of the records for the Millstone Nuclear Power Station.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) intends to move the Local Public Document Room (LPDR) records collection for the Northeast Nuclear Energy Company's Millstone Nuclear Power Station from the Waterford Public Library, Waterford, Connecticut,

to an as yet undetermined library. On July 7, 1988, the NRC published notice in the Federal Register (53 FR 25554) inviting public comments on possible LPDR sites. No comments were received from libraries interested in maintaining the collection. The collection currently contains 150 linear feet of documents. Since no library expressed interest in maintaining the current collection, the collection is being offered in a modified format. Documents dated prior to 1981 would be in hardcopy format and consist of approximately 50 linear feet. Documents dated 1981 forward would be on microfiche, with weekly microfiche supplements for new documents. Documents in the microfiche file would be identified using NRC-furnished computer hardware and software to access the NRC on-line document data base. The purpose of this notice is to invite public comment on possible LPDR sites for this modified collection.

DATE: Comment period expires July 26, 1989. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments filed on or before this date.

ADDRESSES: Written comments may be submitted to Mr. David Meyer, Chief, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Lower Level, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Jona Souder, Local Public Document Room Program Manager, Freedom of Information/Local Public Document Room Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301–492–7537, for Toll-Free 800–638–8081.

SUPPLEMENTARY INFORMATION: Since August 1971, the Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut, has served as the NRC Local Public Document Room repository for records relating to the Millstone Nuclear Power Station. The document collection includes essentially all publicly-available records considered by the NRC in the licensing and regulation of the Millstone Nuclear Power Station. At the present time, the collection takes up approximately 150 linear feet of shelf space in addition to some microfiche and microfiche equipment.

Due to the large size of the collection and difficulty in finding a new location with adequate available space, the documents dated 1981 and forward would be provided in microfiche format, leaving a hardcopy collection of approximately 50 linear feet.

In order to locate specific documents in the microfiche file, the Agency would provide a computer with modem and printer to be used to access its on-line document data base.

Among the factors the NRC will consider in selecting a new location for the collection are the following:

(1) Whether the institution is an established document repository located within 50 miles of the nuclear facility and has a history of impartially serving the public;

(2) The physical facilities available, including shelf space, patron workspace, and copying equipment;

(3) The willingness and ability of the library staff to maintain the LPDR collection and assist the public in locating records;

(4) Nature and extent of related research resources, such as government documents;

(5) The public accessibility of the library, including parking, ground transportation, and hours of operation, particularly evening and weekend hours;

(6) The proximity of the library to existing user groups of the collection, if known;

(7) The background and experience of the library staff in searching on-line data bases.

Public comments are requested of libraries in the vicinity of the Millstone Nuclear Power Station that might be considered for selection as the new location for this NRC local public document room collection.

Dated at Bethesda, Maryland, this 21st day of June 1989.

For the Nuclear Regulatory Commission.

John D. Phillips,

Acting Director, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 89–15035 Filed 6–23–89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50–348A, 50–364A]

Alabama Power Co.; Joseph M. Farley Nuclear Plant, Units 1 and 2 Antitrust Settlement

On June 29, 1984, the Alabama Electric Cooperative, Inc. (AEC) petitioned the Nuclear Regulatory Commission (NRC) pursuant to 10 CFR 2.206 to enforce Antitrust License Condition No. 2 which is incorporated in the Joseph M. Farley Nuclear Plant, Units 1 and 2 (Farley) licenses. On June 16, 1986, the Director of the Office of Nuclear Reactor Regulation issued a Notice of Violation that cited eleven areas of non-compliance with Antitrust License Condition No. 2. After extensive discussions and negotiations between AEC, Alabama Power Company (APCo) and the NRC staff, AEC and APCo entered into a joint settlement agreement dated April 25, 1989 that fully resolves the original controversy which led AEC to petition the NRC in June of 1984.

Discussion

The antitrust license conditions attached to the Farley licenses resulted from the NRC's antitrust construction permit review in the late 1970's and subsequent court proceedings in the early 1980's. The license condition in question required APCo to offer to sell to AEC an undivided ownership interest in the Farley plant. AEC's petition was precipitated by the inability of APCo and AEC to mutually agree upon the terms and conditions of the proposed sale.

On the basis of the AEC petition and the subsequent staff analysis of the allegations raised by AEC, the Director of the Office of Nuclear Reactor Regulation (Director) issued a Director's Decision and Notice of Violation (NOV) against APCo on June 16, 1986. The Director's Decision denied AEC's petition in part and granted it in part. The NOV cited eleven of the fourteen allegations raised by AEC in its petition as areas of non-compliance by APCo with Antitrust License Condition No. 2. Subsequent to the issuance of the NOV, APCo and AEC enterd into protracted negotiations that ultimately resulted in the parties consummating a Purchase and Ownership Agreement on November 16, 1988 for the sale by APCo to AEC of an ownership interest in APCo's James H. Miller, Jr. Steam Electric Generating Plant, Units 1 and 2. This Purchase and Ownership Agreement allowed AEC to substitute its rights to purchase a portion of the Farley plant, provided for by Farley Antitrust License Condition No. 2, for the rights to purchase a portion of APCo's James H. Miller, Jr. coal-fired power plant.

APCo and AEC have concluded that the settlement agreement summarized above resolves the dispute between the two parties that was characterized in AEC's request for a 2.206 enforcement action filed before the NRC on June 29, 1984.

As a result of the consummation of this settlement agreement, the staff, by this Notice, hereby completes its review of this matter.

Dated at Rockville, Maryland, this 20th day of June 1989.

For the Nuclear Regulatory Commission.

Darrel A. Nash,

Acting Chief, Policy Development and Technical Support Branch, Program Management, Policy Development and Analysis Staff, Office of Nuclear Reactor Regulation.

[FR Doc. 89–15031 Filed 6–23–89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–445A]

Texas Utilities Electric Co. et al.; No Significant Antitrust Changes and Time for Filing Requests for Reevaluation

The Director of the Office of Nuclear Reactor Regulation has made a finding in accordance with section 105c(2) of the Atomic Energy Act of 1954, as amended, that no significant (antitrust) changes in the licensees' activities or proposed activities have occurred subsequent to the antitrust construction permit review of Unit 1 of the Comanche Peak Steam Electric Station by the Attorney General and the Commission. The finding is as follows:

Section 105c(2) of the Atomic Energy Act of 1954, as amended, provides for an antitrust review of an application for an operating license if the Commission determines that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous construction permit review. The Commission has delegated the authority to make the "significant change" determination to the Director, Office of Nuclear Reactor Regulation. Based upon an examination of the events since the issuance of the Comanche Peak Steam Electric Station construction permits to TU Electric Co., *et al.*, and the consummation of the settlement agreement before the Commission, the staffs of the Policy Development and Technical Support Branch, Office of Nuclear Reactor Regulation and the Office of the General Counsel, hereafter referred to as "staff", have jointly concluded, after consultation with the Department of Justice, that the changes that have occurred since the construction permit review are not of the nature to require a second antitrust review at the operating license stage of the application.

In reaching this conclusion, the staff considered the structure of the electric utility industry in northeastern and north central Texas, the events relevant to the Comanche Peak construction permit review and the antitrust settlement subsequent to the construction permit review.

The conclusion of the staff analysis is as follows:

Prior to the antitrust settlement agreement before the Nuclear Regulatory Commission (NRC), competition for the purchase or sale of power and energy and related ancillary services in the Texas bulk power market was primarily limited to intrastate power transactions. This intrastate power network has remained intact for many years—notwithstanding the fact that some power entities doing business on the perimeter of the state of Texas as well as some systems within the state have expressed interest in interstate bulk power transactions for a number of years. Although the Texas bulk power market has remained primarily intrastate in nature, there have been several changes since the NRC settlement in 1980 that have provided competitive stimuli to this market.

The change that has had the greatest impact in the Texas bulk power market has been the implementation of the joint settlement agreement, i.e., before the NRC and the Federal Energy Regulatory Commission. This settlement agreement required TU Electric, *et al.*, to make their transmission facilities more available to power systems in Texas and thereby promote competition between intrastate and interstate power systems with the construction of two DC transmission lines. Although both of the direct current (DC) transmission ties with the Southwest Power Pool (SWPP) have not been completed, the North tie has been completed and the Central and South West operating systems are exchanging power and energy over this tie. Plans have been developed to expand the North tie (as contemplated in the settlement agreement) to accommodate a significant power transfer by a Texas co-generating entity.

Capacity (15 percent) in both DC interties has been reserved for non-owners who wish to engage in firm power transactions in the interstate market. Moreover, wheeling to, from or over the DC interties is now an available option to many power systems in Texas.

To remedy a growing need to redistribute power from co-generators concentrated in industrialized pockets in the state, the Texas Public Utility Commission promulgated rules requiring mandatory transmission or wheeling of co-generated power in Texas. These rules have enabled corporate entities, which heretofore have not participated in the Texas bulk power market, to market their by-product power and energy, i.e., barriers to entry into the production and sale of bulk power in Texas have been lowered as a result of the newly adopted wheeling rules.

Increased coordination and cooperation among bulk power suppliers has resulted in a more open market in the state of Texas. TU Electric has implemented numerous transmission and scheduling agreements which have enabled a variety of power systems to shop for alternative power throughout the northern portion of the state.* Moreover, a computer controlled bulletin board, advising all members of the Electric Reliability Council of Texas (ERCOT) of available power and energy in the state is now in place, making "shopping" for power and energy easier for more power systems in the state—thereby enabling power systems to better meet the individual needs of their customers.

All types of power entities in Texas, i.e., municipal, cooperative and investor owned, are beginning to explore joint generation projects both within and outside the state. The concept of interstate planning and participation in interstate power projects is a new one for most Texas power entities. Although the movement to interstate cooperation and competition is still in its embryonic stages in Texas, this movement was contemplated by and provided for in the antitrust settlement agreement before both the Nuclear Regulatory Commission and the Federal Energy Regulatory Commission. (The settlement agreement provides for requests for capacity increases and ownership purchases in the DC interties at intervals of every 3 years beginning in June of 1986 and lasting until June of 2004.) It is anticipated that this movement toward increased cooperation and competition will continue among intrastate power systems within Texas and also between intrastate power systems wishing to engage in joint power supply planning and power supply transaction across state borders.

Although there are still physical impediments to complete synchronous operations between most Texas power entities and systems outside of Texas, i.e., there are no major alternating current interconnections between ERCOT and the SWPP, the settlement agreement provided power systems inside of Texas, as well as in surrounding states, the opportunity to exchange power and energy and engage in bulk power transactions.

The staff views the settlement agreement as a major first step in opening up power supply options to a broad spectrum of power entities in ERCOT and the SWPP. The staff's analysis of the changes in the licensees' activities since the antitrust settlement has not identified any changed activity envisioned by the Commission as set forth in its *Summer* decision. Consequently, the staff recommends that no affirmative significant change determination be made pursuant to the application for an operating license for Unit 1 of the Comanche Peak Steam Electric Station.

Based upon the staff analysis, it is my finding that there have been no "significant changes" in the licensees' activities or proposed activities since the completion of the previous antitrust review.

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*Although there have been allegations made recently by an electric cooperative power system in TU Electric's service area that TU Electric has not provided transmission and coordination services upon request, staff believes, in light of the Commission's *Summer* decision, that the issues raised by the cooperative are not germane to the Commission's "significant change" review, but may be more appropriately addressed in the context of a compliance proceeding.

Signed on June 16, 1989 by Thomas E. Murley, Director of the Office of Nuclear Reactor Regulation.

Any person whose interest may be affected by this finding, may file, with full particulars, a request for reevaluation with the Director of the Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555 within 30 days of the initial publication of this notice in the **Federal Register**. Requests for reevaluation of the no significant change determination shall be accepted after the date when the Director's finding becomes final, but before the issuance of the OL, only if they contain new information, such as information about facts or events of antitrust significance that have occurred since that date, or information that could not reasonably have been submitted prior to that date.

Dated at Rockville, Maryland, this 19th day of June 1989.

For The Nuclear Regulatory Commission.

Darrel A. Nash,

Acting Chief, Policy Development and Technical Support Branch, Program Management, Policy Development and Analysis Staff, Office of Nuclear Reactor Regulation.

Summary Statement

Director's Findings—The Director of the Office of Nuclear Reactor Regulation has made a finding of "no significant change" regarding the antitrust aspects of the licensees' application in Docket No. 50–445A. Requests for reevaluation are due thirty days from the date of publication in the **Federal Register**.

[FR Doc. 89–15034 Filed 6–23–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–341]

Detroit Edison Co.; Wolverine Power Supply Cooperative, Inc. Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NFP–43, issued to the Detroit Edison Company and Wolverine Power Supply Cooperative, Inc. (the licensees), for operation of Fermi-2, located in Monroe County, Michigan.

In accordance with the licensees' application for amendment dated December 22, 1988, the amendment would revise the Technical Specification Section 3/4.3.2 and the associated Tables. The table entries previously listed in a section entitled "Containment Isolation" are separated into two sections, one for Primary Containment and one for Secondary Containment isolation functions.

Revisions to table entries, table notations and nomenclature are made to either more clearly reflect the plant configuration, remove duplication or ambiguity, or reflect the new section of the table. Provisions have been included to allow routine testing of the Reactor Water Cleanup system without necessitating removal of the system from service. In addition, the definition of Channel Calibration is revised to better reflect standard industry practice.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By July 26, 1989, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–352–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Lawrence A. Yandell: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated December 22, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Dated at Rockville, Maryland, this 19th day of June 1989.

For the Nuclear Regulatory Commission.

Lawrence A. Yandell,

Acting Director, Project Directorate III–1, Division of Reactor Projects—III, IV, V & Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–15033 Filed 6–23–89; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

National Advisory Committee on Semiconductors (NACS); Meeting

The purpose of the National Advisory Committee on Semiconductors, is to devise and promulgate a national semiconductor strategy, including research and development. The implementation of this strategy will assure the continued leadership of the United States in semiconductor technology. The Committee will meet on July 6, 1989 at Science Applications International Corporation, 1555 Wilson Blvd., 7th Floor, Rosslyn, Virginia, 8:00 a.m. The proposed agenda is:

(1) Briefing of the Committee on its organization and administration.

(2) Briefing of the Committee by OSTP personnel and personnel of other agencies on proposed, ongoing, and completed studies regarding semiconductors.

(3) Discussion of composition of panels to conduct studies.

A portion of the July 6 session will be closed to the public.

The briefing on some of the current activities of OSTP necessarily will involve discussion of material that is formally classified in the interest of national defense or for foreign policy reasons. This is also true for a portion of the briefing on panel studies. As well, a portion of both of these briefings will require discussion of internal personnel procedures of the Executive office of the President and information which, if prematurely disclosed, would significantly frustrate the implementation of decisions made requiring agency action. These portions of the meeting will be closed to the public pursuant to 5 U.S.C. 552 b.(c)(1), (2), and (9)(B).

A portion of the discussion of panel composition will necessitate the disclosure of information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, this portion of the meeting will also be closed to the public, pursuant to 5 U.S.C. 552 b.(c)(6).

Because of the security in the New Executive Office Building, persons wishing to attend the open portion of the meeting should contact Hazel Houston, at (703) 556–7130, prior to 3 p.m. on July 5, 1989. Mrs. Houston is also available to provide specific information regarding time, place and agenda for the open session.

Barbara J. Dicing,

Special Assistant, Office of Science and Technology Policy.

June 20, 1989.

[FR Doc. 89–14943 Filed 6–20–89; 3:45 pm]

BILLING CODE 3170–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34–26946; File No. SR–AMEX–89–13]

Self-Regulatory Organization's; Proposed Rule Change by the American Stock Exchange, Inc. Relating to the Joint-Exchange Margin Monitoring Program

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 9, 1989 the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. ("AMEX" or "Exchange") hereby proposes to adopt margin monitoring procedures for stock and index options that are to be uniform with all other options self-regulatory organizations. Such procedures will permit the rapid implementation of uniformly agreed upon changes in margin requirements.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

This proposed change provides for Exchange participation in a formal joint-exchange program for monitoring the adequacy of margin levels and a system for the rapid implementation of any margin changes. Pursuant to the terms of the program, on a quarterly basis, the exchanges would jointly engage in a statistical review of data relating to (i) The volatilities of all securities and indices underlying exchange-traded options for the previous five and one-half (5½) months; and (ii) the frequency distributions of the percentage price movements of the underlying instruments for the most recent five and one-half (5½) month period to determine the degree of coverage provided by the current margin levels. Further, margin levels would be monitored daily through the calculations of implied volatilities for all underlying securities and broad-based indices.

Under the proposed plan, options margin levels will be considered adequate when the current margin is sufficient to cover between 92.5% and 97.5% of all seven-day price changes during the five and one-half (5½) month period and between 87.5% and 92.5% for the most volatile quarter of all equity options. A margin increase will be considered warranted when the current

level of margin provides less coverage than either standard described above. Similarly, a margin decrease will be considered warranted when the coverage is greater for both standards. Any changes in the level of margin would be made across the board for a product group, i.e., for all stock options and/or index options. Changes would be in 1% increments with no change of less than 2%. Ordinarily, changes shall not be made in two consecutive quarters and shall not be greater than 5% in any one quarter. When the statistical review indicates that a margin change should be considered, other relevant matters such as current market conditions, member firm views, and implied volatility are also to be evaluated. The specific methodology for such statistical reviews and the conditions under which a change in margin requirements would be warranted is set forth in Exhibit 1.

Exchange representatives along with those of other exchanges have worked with the SEC staff on the development of an effective margin monitoring mechanism. In addition, the SEC staff has approved a procedure whereby if all exchanges are in agreement, a change in margin requirements will become effective upon filing and implemented at the next month's rollover.

The proposed change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Exchange in that the proposed change is designed to maintain adequate options levels which will provide financial protection to the securities industry. Therefore, the proposed rule change is consistent with section 6(b)(5) of the 1934 Act, which provides in pertinent part, that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

B. Self-Regulatory Organization's Statement on Burden on Competition

The AMEX believes that the proposed rule change will not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Options Committee, a committee on the AMEX Board of Governors comprised of members and representatives of member firms, has endorsed the proposed rule change.

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 17, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.
June 19, 1989.

Exhibit 1—Quarterly Review of Option Margin Levels

1. Following each three month period as specified below frequency distributions shall be calculated based upon seven (7) business day interval percentage price changes for all of the stocks underlying listed options (defined as issued and guaranteed by the Options Clearing Corporation), and for each index underlying listed index options, for every trading day during the previous five and one half (5½) month period. All reviews shall be conducted on a quarterly basis, encompassing a five and one half (5½) month time period, beginning the first (1st) business day of the review period and ending with the tenth (10th) business day of the sixth (6th) month. For example, distributions would be calculated for the period of September 1, 1988 through February 14, 1989, and then again for the period of December 1, 1988 through May 14, 1989 and so on.

2. Cumulative distributions of percentage price changes shall be calculated for the option stocks combined and the broad market indices. In addition, the volatilities of the individual stocks shall be determined for the review period, and the stocks ranked by volatility from lowest to highest. The cumulative distribution of seven (7) business day, precent price changes for option stocks shall also be determined for the 25% of those stocks having the highest volatilities.

3. The degree of coverage based upon the existing option margin levels shall be determined for each of the groups listed above.

4. Margin levels shall be monitored daily trhough calculations of implied volatilities for each broad-based index and equity security that underlie listed options. An applicable margin percentage is then calculated based upon a twenty (20) day moving average, with the most recent days having the greater weight.

5. For stock options, a margin increase shall be considered warranted when the current margin add-on provides a level of coverage of less than 92.5% of all observations *or* less than an 87.5% level of coverage of stocks in the highest volatility quartile during the five and one half (5½) month review period.

A margin decrease shall be considered warranted when the current margin add-on provides a level of coverage in excess of 97.5% for all observations *and* over a 92.5% coverage level for stocks in the highest volatility quartile during the five and one half (5½) month review period.

6. For index options, a margin increase shall be considered warranted when the current margin add-on provides a level of coverage of less than 92.5% of all observations during the five and one half (5½) month review period.

A margin decrease shall be considered warranted where the current margin add-on provides a level of coverage in excess of 97.5% for all observations during the five and one half (5½) month review period.

7. Margin changes shall be made uniformly for a product group (i.e., stock options *and* industry index options; broad-based index options). Margin changes shall be made in 1% increments, with no change being less than 2%. Margin changes shall not be made ordinarily in two (2) consecutive quarters and shall not exceed 5% in any one quarter.

8. Margin changes shall be filed pursuant to section 19(b)(3)(A) of the 1934 Act through a rule filing, which shall be made no later than five (5) business days subsequent to the close of the relevant review period. Margin changes shall become effective the business day immediately following the next month's expiration. Margin changes effected pursuant to a 19(b)(3)(A) rule filing shall not result in margin levels lower 5% and 10% for index and equity options, respectively.

9. In detemining whether to effect a margin change, in addition to the frequency distribution results, other relevant matters shall be considered such as current market conditions, member firm views and margin levels implied from options premiums where the results differ from the historical frequency distributions by two percent (2%) or more.

[FR Doc. 89-15038 Filed 6-23-89; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. 34-26947; File No. SR-AMEX-88-20]

Self-Regulatory Organization; American Stock Exchange, Inc. Order Approving Proposed Rule Change Relating to Solicitation of Options Transactions

On November 21, 1988, the American Stock Exchange, Inc. ("AMEX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to regulate the manner in which members outside the trading crowd may solicit other members outside the trading crowd to participate in an options transaction.

The proposed rule change was noticed in Securities Exchange Act Release No. 26703 (April 7, 1989) 54 FR 15063 (April 14, 1989). No comments were received on the proposed rule change.

The Exchange proposes to permit solicitation of members outside the trading crowd (both on and off-floor) under conditions that provide members of the trading crowd with equal and fair access to information regarding solicited orders and the opportunity to participate in such orders. Specifically, if the solicited party is a broker dealer (other than a registered trader), the members of the trading crowd must receive the same information about an options order that is disclosed to the solicited party. After members of the trading crowd have been given a reasonable opportunity to accept the bid or offer, the member may cross all or any remaining part of the order with the solicited broker dealer.

If a member desires to solicit a member that is a registered trader outside the trading crowd, the member must expose the order to the trading crowd twice. First, before any outside solicitation is permitted, the member must disclose to the trading crowd the same information regarding the order that will be disclosed to the solicited registered trader. Assuming the trading crowd does not accept the order, a registered trader may be solicited outside the trading crowd. However, after such solicitation the order must be announced, including any changes from the previously announced order, to the trading crowd. As with broker dealer solicited transactions, the trading crowd is given a reasonable opportunity to accept the bid or offer, before the solicited registered trader accepts (or the member crosses on his behalf), all or any remaining part of such order. Additionally, the proposed rule change requires that all orders and tickets subject to the solicitation rule be marked as specified by the Exchange.

The Exchange proposes these amendments in order to reconcile the practice of solicitation outside the trading crowd with the rules and practices of the auction market. During the past year, the Exchange has reviewed the manner in which members outside the trading crowd are solicited in options transactions. The Exchange recognizes that solicitation outside the trading crowd, in some circumstances, may add depth and liquidity to the market for some option classes. However, the Exchange seeks to ensure that members of trading crowds have the opportunity to participate in any solicited transactions on the same terms as the solicited party. Specifically, the Exchange believes that the trading crowd must have adequate time to digest the terms of the order to be able to decide whether to participate in the transaction. The Exchange believes the proposed rule change, by providing equal and fair access to order information, will permit both the registered trader and the solicited party the same opportunity to provide the best available price and participate in the transaction.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Section 6.[3] The proposed rule change provides a fair procedure for incorporating additional sources of liquidity from outside of the trading crowd with the auction market structure of the options trading crowd. Specifically, affording members of the trading crowd the opportunity to participate in all transactions, including solicited orders, ensures that customer orders will receive the price protections accorded by the centralized auction market features of the trading crowd. At the same time, the proposal will enable broker-dealers to seek other sources of liquidity if trading crowd interest proves insufficient.

Currently, the absence of Exchange rules that uniformly regulate and monitor solicited transactions would make it difficult for the Exchange to ensure that the trading crowd always has the opportunity to participate in solicited transactions. The lack of clear Exchange rules governing such activity creates uncertainty for floor traders and floor brokers, and hinders solicitation of additional trading interest. The Exchange proposal provides clear guidelines, and strengthens the ability of the Exchange to ensure that customer orders receive full consideration by the trading crowd. Moreover, the proposed rule change will enable the Exchange to monitor more effectively transactions where orders have been solicited outside the trading crowd. Such data will permit the Exchange to examine the effect that solicited transactions have on customer orders and the trading crowd. Finally, the provisions of the proposed rule, along with other Amex rules, will ensure that transactions involving solicitations are not prone to abuse.[4]

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[1] 15 U.S.C. 78s(b)(1) (1982).
[2] 17 CFR 240.19b-4 (1987).

[3] 15 U.S.C. 78f (1982).
[4] *See, e.g.*, Amex Rule 111(c) (Prohibits a registered trader from effecting a transaction in which he has an interest and executing as broker an off-floor order in the same stock in the same trading session) and Amex Rule 150 (Prohibits members from executing transactions for their own account while they personally hold or have knowledge that a member of his organization hold our unexecuted order in that security on the same side of the market).

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Jonathan G. Katz,

Secretary.

Dated: June 19, 1989.

[FR Doc. 89-15039 Filed 6-23-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-26851; File No. SR-OCC-89-04]

Filing of Proposed Rule Change by the Options Clearing Corporation; Relating to Index Option Escrow Receipts

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 2, 1989, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The rule change proposes to convert the index option escrow receipt pilot program to permanent status and to effect certain amendments to the index option escrow receipt form. For example, the index option escrow receipt as revised eliminates bankers' acceptances and certificates of deposit as permissible collateral under the receipt and permits OCC, in certain situations, to close out the short position represented by the escrow receipt. The rule change also proposes to increase the limitation on the amount of all escrow receipts that an issuing custodian bank may have outstanding at any one time. Other technical amendments are made as well.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is threefold: (1) To convert the index option escrow receipt program from pilot to permanent status; (2) to effect certain amendments to OCC's index option escrow receipt; and (3) to increase the limitation on the amount of stock option and index option escrow receipts that an issuing custodian bank may have outstanding at any one time.

On August 13, 1985, the Securities and Exchange Commission (the "Commission") approved a pilot program permitting OCC Clearing Members to deposit with OCC an "index option escrow receipt" in lieu of OCC margin requirements on short index call options held in the Clearing Member's customers' amount. These escrow receipts permit a Clearing Member's customer to "cover" a short index call option position by depositing with an OCC-approved custodian bank any combination of cash, cash equivalents or marginable equity securities. The index option escrow receipt, which is issued by the bank, constitutes its acknowledgment that it holds the deposited property for OCC's benefit and will not release the property without OCC's written consent.

OCC is requesting that the index option escrow receipt program, as amended herein, be converted from pilot to permanent status because it has achieved its purpose of encouraging broader participation by institutional investors in the index options markets. Since the program was provisionally approved, it has proven to be a practical and cost-effective means of enabling these investors to manage their portfolio risk by writing index call options. Additionally, the various safeguards built into the receipt (such as a custodian bank's obligation to monitor the value of the deposited property and report to OCC if the property's value falls below certain maintenance levels) adequately protect OCC from default by a Clearing Member or its customer.[1]

In its review of the program, OCC identified certain provisions of the index option escrow receipt that in its judgment required amendment or additional enhancement. Some changes were suggested by a consortium of escrow receipt banks having large custodial businesses. Many of these changes will effect not only the index option escrow receipt, but OCC's stock option escrow receipt and its proposed index participation ("IP") escrow receipt as well. Conforming amendments will be made to those escrow receipts in separate filings.[2]

(1) Increase in the Limitation on the Total Amount of Escrow Receipts Issuable by a Custodian Bank

Under the stock option, index option and proposed IP escrow receipts, a custodian bank must certify to OCC that the gross value of the collateral held pursuant to all of these escrow receipts does not exceed 25% of the equity attributable to all outstanding shares of capital stock issued by the bank. Three years ago, at the request of OCC's custodian banks, an alternative, less restrictive formula was adopted permitting the banks to calculate the 25% limitation based on the intrinsic value (or "in-the-money" amount) of the options represented by outstanding escrow receipts. *See* Securities Exchange Act Release No. 34-23244 (May 16, 1986).

In OCC's discussions with certain of its custodian banks, the principal change to the index option escrow receipts suggested by them was that this equity-based cap be eliminated entirely. These banks argued that despite the alternative calculation the limitation placed undue restrictions on their custodial businesses. They cited to the fact that bank regulators placed stringent duties on them to segregate deposited property. They noted further the fact that most of the customers using these escrow receipts are large institutional investors that could meet their obligations on an assignment to the short position represented by an escrow receipt, even if the bank failed to properly segregate collateral. Some of the banks indicated that it would be economically infeasible for them to continue issuing escrow receipts without an increase in capacity.

At this time, OCC cannot endorse a completion elimination of a cap on the issuance of these instruments. OCC believes that some limitation is necessary to prevent an excessive concentration of escrow receipts in one bank, thereby limiting OCC's known financial exposure in the event that a single bank failed and did not properly segregate the collateral underlying outstanding escrow receipts.

However, to encourage the banks' continued participation in the escrow receipt programs, OCC has determined to increase the cap from 25% to 100% of the equity attributable to the outstanding shares of a bank's capital stock. Accordingly, the first paragraph of the index option escrow receipt is amended to reflect this increase. Conforming amendments to the stock option escrow receipt will be made in a separate filing; the IP escrow receipt filing pending before the Commission will be similarly amended.

OCC believes that this increase can be effected without unnecessary financial risk to OCC. First, OCC's potential exposure to loss under these instruments is a highly contingent one because at least three events must occur simultaneously before OCC would sustain a loss under an escrow receipt: (i) The Clearing Member submitting the escrow receipt must fail; (ii) the custodian bank must fail; and (iii) the custodian bank must have failed to either segregate the deposited property or properly mark to market the value of the property. Second, to further ensure that the deposited property is properly segregated, OCC requires its custodian banks to provide OCC annually with an opinion letter from the bank's outside auditors on the adequacy of the bank's system of internal accounting control for issuing escrow receipts and segregating deposited property.

(2) Eliminate Certain "Cash Equivalents" as Acceptable Collateral Under the Index Option Escrow Receipt

The index option escrow receipt currently permits the deposit or "cash equivalents" as collateral. Cash equivalents are defined in § 220.8(a)(3)(ii) of Regulation T and include short-term U.S. government securities, negotiable bank certificates of deposit ("CD's") and bankers' acceptances. OCC believes that continued acceptance of the latter two instruments as collateral would present undue risk to OCC because OCC has no means of ensuring that the issuers of that paper are financially sound. Unlike the custodian banks issuing the escrow receipts themselves, which are required to submit quarterly financial statements to OCC, OCC receives no financial information on the banks issuing CD's and bankers' acceptances. Moreover, if an issuer of those instruments fails and the instruments become worthless, the custodian bank would be liable to OCC for any loss sustained as a result of OCC's inability to collect under those instruments.[3]

Given this potential exposure on OCC's part, the index option escrow receipt, Rule 1801(b)(2) and Rule 1801(f) are amended to eliminate CD's and bankers' acceptances as permissible collateral, while still permitting the deposit of short-term U.S. government securities valued at the lesser of par value or 100% of current market value.

(3) Provide OCC with Additional Close-Out Authority for Short Positions Covered by Index Option Escrow Receipts

OCC presently has no authority to close out the short options positions of a suspended Clearing Member that are covered by stock option or index option escrow receipts. Instead, under OCC Rule 1106(b)(2) these positions must be maintained by OCC "subject to the instructions of the suspended Clearing Member or its representative." This presents no financial risk to OCC when the covered short position involves an equity option, since the specific underlying security deliverable upon an assignment to that position must be deposited as collateral under the stock option escrow receipt. However, that risk does exist with respect to short index option positions backed by an index option escrow receipt. Upon Clearing Member suspension, OCC could sustain a loss by being unable to close out that covered position even though the value of the collateral backing the position is declining precipitiously.

To protect OCC in this situation, amendments to the index option escrow receipt, Rule 1106(b)(2), Rule 1801(d) and Rule 1801(e) permit OCC to close out the short position covered by the index option escrow receipt and to draw on the receipt in an amount equal to the cost of the closing transaction plus any commissions, financing costs and other charges incurred by OCC in connection therewith. OCC would be able to take this action only in the limited situation where: (1) The value of the colletaral deposited under the index option escrow receipt fall below the maintenance level, which is 50% of the product of (a) the number of option contracts covered by the escrow receipt and (b) the aggregate current index value of the underlying index; (2) OCC requested the Clearing Member that filed the receipt to deposit additional margin in respect of the short postions of the short positions covered by the escrow receipt; and (3) OCC suspended the Clearing Member.

(4) Other Changes

As presently written, the index option escrow receipt requires the custodian bank to certify that it will not subject "nor permit the Customer to subject" the deposited property in any lien or encumbrance. The banks asserted that they have no legal ability to prevent their customer from attempting to encumber those assets and therefore are being required to certify something that is legally impossible for them to comply with. Consequently, the index option escrow receipt is amended to remove that clause. Other technical amendments are made to that certification, but without changes in substance.

The index option escrow receipt is amended to clarify that the written notice that the custodian bank must give to OCC when the value of the deposit has fallen below maintenance levels may be given to OCC by facsimile.

The remaining changes to the rules and the index option escrow receipt are technical refinements, which are self-explanatory.[4] For example, the references to the "market value" of deposited property in Rule 1801 is changed simply to "value," since the method for valuing deposited property is provided for in Rule 1801(f). The reference in Rule 1801(c) to the defining term "initial position value" is eliminated because the term is not used elsewhere in the rule.

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The proposed rule change is consistent with the purposes and requirements of section 17A of the Securities Exchange Act of 1934 (the "Act") because it would foster broader institutional prticipation in and contribute to the liquidity of the market for index options, while still providing

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[5] 15 U.S.C. 78s(b)(2) (1982).

[6] 17 CFR 200.30-3(a)(12) (1988).

[1] One major options exchange has given extensive treatment to the benefits of this program. *See* Chicago Board Options Exchange, *Market Index Option Escrow Receipt Pilot Report* (filed with the Commission on February 6, 1987) [hereinafter referred to as "Pilot Report."]

[2] The stock option escrow receipt for short call options on equity securities operates almost identically to the index option escrow receipt. However, unlike the latter receipt, only the specific security underlying short call options may be deposited as collateral under the stock option escrow receipt.

Pending before the Commission is OCC's proposal to accept escrow receipts to cover short positions in index participations ("IPs"). The same type of collateral permitted under the index option escrow receipt would be permitted under the IP escrow receipt. *See* SR-OCC-88-9 (filed with the Commission on December 19, 1988).

[3] Moreover, few customers utilize these instruments as collateral. *See Pilot Report* at p. 7

[4] Conforming amendments to the first paragraph of the index option escrow receipt require the custodian bank to include the value of the collateral backing outstanding IP escrow receipts in computing its limitations on the amount of escrow receipts that it can issue. As the proposed IP escrow receipt is still pending Commission approval, those changes will not be implemented unless and until the IP escrow receipt is approved

adequate safeguards for the protection of OCC.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burdent on competition.

C. Self-Regulartory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were not and are not intended to be solicited by OCC with respect to the proposed rule changes and none have been received by OCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning File No. SR-OCC-89-4. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relatintg to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will be also available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 17, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-15037 Filed 6-23-89; 8:45 am]

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[Rel. No. 34-26944; File No. SR-PSE-89-09]

Self-Regulatory Organizations; Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to Appeal of Floor Citations

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 12, 1989, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

ITEM 1. Text of the Proposed Rule Change

The PSE proposes to amend Rule XX, Section 11, governing the procedure for the appeal of floor citations. Brackets indicate language to be deleted; italics indicate new language.

[Hearings and Review] Appeal of Floor Citations

Sec. 11. This Section provides the following procedures for persons aggrieved by Exchange action taken pursuant to the provisions of the Constitution and Rules of the Exchange, [wherein] *for which action* a member has [received a fine or] *been* sanctioned via *floor* citation, and applies for an opportunity to [be heard and/or to have the complained of action reviewed] *make an oral presentation or to have the matter reviewed on the papers alone. (This Section shall not apply to disciplinary action taken pursuant to Section 3 herein, non-disciplinary action taken pursuant to Section 7 (a) herein, or to an action in Arbitration, from which there is no review.)*

(a) Submission of Application to Exchange.

A person who is aggrieved by any action of the Exchange within the scope of this Section and who desires [to have an] *the* opportunity [to be heard] *to make an oral presentation* with respect to such action or to have such action reviewed *on the papers alone* shall file a written application with the [offices of the] Compliance [/Surveillance] Department[s], within five days after notification that such action has been taken. *The notification submitted by the Exchange shall state the specific grounds for the action taken by the Exchange, and shall notify the applicant of his right to make an oral presentation or to have the matter reviewed on the papers alone.* The application shall state the [action] complained of *action*, the specific reasons why the applicant takes exception to such action, and the relief sought. In addition, the application shall indicate whether the applicant *desires to make an oral presentation, in which event it shall be considered a "request for a hearing", or to proceed only upon the existing and/or any additional documents or materials, in which event it shall be considered a "request for a review on the papers".* [intends to submit any additional documents, statements (oral or written), arguments or other material in support of the application, in which event it shall be considered a request for hearing and review. If the applicant does not indicate an intention to submit any such additional material, the application shall be considered a request for review only] *(Hereinafter, the terms "hearing" and "review on the papers" shall be referred to jointly as the "Proceeding(s)".*

(b) [Parties and other Participants] Intervention.

Any person associated with the applicant whose interest might be affected by the [p] *P*roceeding shall be entitled to participate as a party. Further, in the discretion of the [p]*P*anel appointed pursuant to paragraph (c) hereof or of the Board of Governors *("Board")*,

any other person whose interests might be affected by the [p]*P*roceeding may be permitted to [be a limited participant] *intervene* in the [p]*P*roceeding, [which may include] *and may be granted* such rights of a party as either the [p]*P*anel or the Board, as the case may be, deems appropriate. Any determination of the [p]*P*anel as to participation in the [p]*P*roceedings is subject to *appellate* review by the Board at the close of the [p]*P*roceedings or, in the Board's discretion, during the course of the [p]*P*roceedings.

(c) Procedure Following Application for Hearing and/or Review on the Papers.

(1) Appointment of the Panel

Applications for hearing and/or review *on the papers* shall be referred to the *Exchange* Committee [of the Exchange involved in the action complained of] *responsible for the complained of action.* The *appropriate* Committee shall appoint a [hearing] [p]*P*anel composed of three members of the Committee or other approved members. The [p]*P*anel so appointed shall be furnished with all materials considered by the Exchange or the Committee in connection with its initial action. *Parties to the Proceedings shall be notified of the composition of the Panel. Any objection to the composition of the Panel must be submitted within 5 business days of receipt of the notification regarding the composition.*

[(2) Parties to the proceedings shall be informed of the composition of the panel and shall be furnished with a list of the materials made available to the panel. The applicant shall, in addition, be furnished a concise statement of the specific grounds for the action by the Exchange or by a Committee of the Exchange with respect to which hearing and review is sought, and the applicant shall be notified of his right to make an oral appearance to the panel.]

([3])*2*) Additional Submissions and Notice

Within fifteen *business* days after receipt of the [information] *notification regarding composition of the panel, as* referred to in [sub]paragraph *one* (1) above, [all parties to the proceedings] *the applicant, if the application is for a review on the papers,* shall submit to the [p]*P*anel any additional documents, statements, arguments or other materials. [and may] *The Exchange will then have fifteen days to submit to the Panel any additional documents, statements, arguments or other materials in response to the applicant's submission. If the application is for a hearing, the parties may, at this time,* request an opportunity [to make an oral presentation to the panel, which request, if made, shall be granted. A request shall also be made at this time] to call witnesses to the hearing; [which] the [p]*P*anel, in its discretion, may or may not grant *this request.* [A record shall be kept of any such oral presentation.] *In the event of a hearing, each party shall furnish to the Panel and to the other parties, not less than five business days in advance of the scheduled hearing date, copies of all documentary evidence such party intends to present at the hearing. Parties shall be given at least 15 business days notice of the time and place of the hearing.*

(3) Conduct of the Proceeding

Whether the Proceeding is a hearing or a review on the papers alone, the Panel shall determine all questions concerning the admissibility of evidence and shall otherwise regulate the conduct of the Proceeding. The formal rules of evidence shall not apply. In the event of a hearing, each of the parties shall be permitted to make an opening statement, present witnesses pursuant to paragraph (c)(2), present documentary evidence, cross-examine witnesses and present closing arguments. The Panel shall have the right to question all parties and witnesses to the Proceeding. The Panel may also request the production of documentary evidence and witnesses. No member or person associated with a member, or employee of the Exchange, shall refuse to furnish relevant testimony, documentary materials or other information requested by the Panel during the course of the Proceeding. All parties are entitled to be represented by counsel who may participate fully in the Proceeding. In the event of a hearing, a transcript of the hearing shall be made and shall become part of the record.

(4) The Decision of the Panel

Within 30 days after the date of the hearing or the review on the papers, the Panel shall render its decision. The Panel may confirm, reverse or modify in whole or in part the decision of the Exchange Committee, and may make any findings or conclusions which in its judgment are proper. The decision of the [p]*P*anel [following the hearing] shall be in writing, [and shall be sent to the parties to the proceedings. Such decision] shall contain a concise statement setting forth the specific [grounds on which the decision of the panel is based as well as a statement setting forth the reasons supporting the conclusions of the panel] *findings and conclusions of the Panel and the reasons in support thereof, and shall be sent to the parties to the Proceedings.*

(5) Appellate Review by the Board of the Panel's Decision

The decision of the [p]*P*anel shall be subject to *appellate* review by the Board either on *the Board's* [its] own motion within thirty days after issuance (or upon presentation to the Board, whichever is later), or upon written [application] *petition* of any party to the [p]*P*roceeding filed within fifteen *business* days after issuance. Such *appellate* review *of the Proceedings* shall be in accordance with paragraph (d) hereof.

(d) Procedure Following [Application] Petition for Appellate Review by the Board.

(1) Additional Submissions and Appointment of the Appellate Review Panel

[Applications] *Petitions* for *appellate* review *of the Proceeding* pursuant to *paragraph* (c)(5), shall be referred to the Board which shall be furnished with all material considered by the Exchange[.] Committee or [p]*P*anel. Parties to the proceedings shall be furnished with a list of such material. [The applicant, if he has not already received such a statement, shall be furnished a concise statement of the specific grounds for the action by the Exchange or by a Committee of the Exchange with respect to which hearing and review is sought.] Parties may submit a written *statement* [argument] to the Board and may request an opportunity to make an oral [argument] *presentation* before the Board; the Board, in its discretion, may grant or deny [such a] *the* request *for oral presentation. In the absence of a request for such a presentation, or at any time, the Board may require an oral presentation. Whether appellate review is conducted by hearing or by review on the papers alone,* [If the Board grants the request,] the matter shall be referred to an appropriate *Appellate Review* [p]*P*anel appointed by the Board. [and a record shall be kept of any oral presentation that is made. Where an application only for review is made pursuant to paragraph (c)(5), the Board may, upon its own motion or upon the request of a party, consider the application as an application for hearing and review and refer it to an appropriate Review Panel for resolution.] *A transcript shall be made of any oral presentation and shall become part of the record.*

(2) Decision of the Appellate Review Panel

Appellate Review by the Board *pursuant to paragraph (c)(5)* shall be made upon the material furnished it by the Exchange[.] Committee or [p]*P*anel as well as by the parties, and shall be made after such further proceedings as the Board shall order. [Based upon such record] [t]The Board may confirm, reverse or modify in whole or in part the decision of the Committee or [p]*P*anel and may make any findings or conclusions which in its judgment are proper [on the record]. The decision of the Board shall be in writing, shall

contain a concise statement of the [specific grounds for the decision,] *findings and conclusions of the Board and the reasons in support thereof,* and shall be sent to the parties to the [p]Proceedings.

II. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for the Proposed Rule Change

The PSE proposes to amend Rule XX, Section 11 in order to provide clarity as to the precise procedure by which floor citations are reviewed, and to facilitate the systematic, complete and orderly functioning of the review proceedings. Although many of the changes are non-substantive and minor in nature, the more substantive amendments are discussed below.

The amendment clarifies that there exists two different procedures by which floor citation sanctions may be reviewed. At the election of the member, they may be reviewed by way of oral presentation (hearing) or solely on the papers. As it presently exists, the Rule does not precisely distinguish nor define these procedures, thus causing certain confusion as to the process for each. Furthermore, the proposed amendment clarifies and distinguishes the above described initial review from the second appeal by the Board, introduced in Section 11(c)(5) of the Rule. In order to clarify that this is, in fact, a second review, the term "Board review" has been replaced with the terms "appellate review by the Board," or "appellate review of the Proceedings."

In revised Section (2), entitled "Additional Submissions and Notice," the amendment specifies and distinguishes the precise submissions which must be made when the appeal is conducted by hearing or on the papers. Furthermore, since the Exchange performs in the capacity of a "respondent" to the applicants appeal, this Section provides the Exchange with the opportunity to respond to a submission made on the papers; to allow otherwise would force the Exchange to rebut arguments which have not yet been made.

The proposed amendment also adds a section which delineates the manner by which the Proceedings are conducted. This addition, revised Section (3), provides the Panel with the power to call and question parties and witnesses, demand the production of documents, and rule on the admissibility of evidence. This section also specifies the order of procedure for a review conducted by way of oral presentation.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of the publication of this notice in the **Federal Register** or within such longer priod: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 17, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

June 19, 1989.

[FR Doc. 89-15040 Filed 6-23-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 26945; File No. SR-PSE-89-10]

Proposed Rule Change by Pacific Stock Exchange Inc., Relating to Margin Requirements

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 17, 1989, the Pacific Stock Exchange Incorporated ("PSE" or the "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

ITEM 1. *Text of the Proposed Rule Change*

The Pacific Stock Exchange Incorporated ("PSE" or "Exchange") proposes to amend Rule XI, Section 2(d), by adding Commentary .01, and Rule XXI, Section 16(a), by adding Commentary .06, as set forth below. (Italics indicates additions.)

Rule XI.—Margins

Sec. 2(d)

(1) through (8) No change.

Commentary:

.01 The Exchange has established and filed with the Securities and Exchange Commission option margin monitoring procedures which are uniform with all other options self-regulatory organizations. The Exchange may increase or decrease option margins requirements through a rule filing made pursuant to Section 19(b)(3)(A) of the Act, provided the option margin changes are within the parameters established by such procedures. The Exchange's Chairman, or his designee, shall have the authority for determining changes to options margin levels in accordance with the parameters. Any modifications to the Exchange's option margin monitoring procedures shall be filed with the Securities and Exchange Commission.

Rule XXI.—Index Options Margins

Sec. 16(a) through (d) No change.

Commentary:

.01 through .05 No change.

.06 *Index options margins may be increased or decreased pursuant to Exchange Rule XI, Section 2(d), Commentary .01.*

II. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for the Proposed Rule Change

The purposes of this rule change is to authorize the Exchange to modify index and equity option margin requirements based upon uniform option margin monitoring procedures filed with the Securities and Exchange Commission by the various options self-regulatory organizations. All modifications to option margin requirements will be effected pursuant to a rule filing under section 19(b)(3)(A) of the Act. The option monitoring procedures have been formulated to ensure that adequate option margin levels are maintained at all times and to provide the options self-regulatory organizations the ability to modify option margins on a timely basis using a consistent methodology. The monitoring procedures rely upon statistical analysis conducted on a quarterly basis. The analysis involves the computation of frequency distributions for seven (7) business day percentage price movements of the underlying instruments for the most recent five and one-half (5½) month period. The resulting figure will determine the degree of coverage the current margin levels have provided. This is an established methodology for determining the adequacy of options margin levels. In addition, margin levels are monitored daily through the calculations of implied volatilities for all underlying securities and broad-based indices. Attached is a detailed explanation of the methodology for determining the adequacy of margin levels. The Exchange believes that the proposed rule change is consistent with the provisions of the Securities Exchange Act of 1934 and, in particular, Section 6(b) thereof, in that the rule changes intent is to insure that option margin requirements are in effect which provide a reasonable level of financial protection to securities firms, public investors and does not permit the excessive use of credit for the purchase or carrying of securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of the publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned, self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 17, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

June 19, 1989.

Jonathan G. Katz,

Secretary.

Quarterly Review of Option Margin Levels

1. Following each three month period as specified below, *frequency distributions* shall be calculated based upon seven (7) business day interval percentage price changes for all of the stocks underlying listed options (defined as issued and guaranted by the Options Clearing Corporation), and for each index underlying listed index option, for every trading day during the previous five and one-half (5½) month period. All reviews shall be conducted on a quarterly basis, encompassing a five and one-half (5½) month time period, beginning on the first (1) business day of the review period and ending with the tenth (10) business day of the sixth (6) month. For example, distributions would be calculated for the period of September 1, 1988 through February 14, 1989, and then again for the period of December 1, 1988 through May 14, 1989, and so on.

2. Cumulative distributions of percentage price changes shall be calculated for the option stocks combined and the broad market indices. In addition, the volatilities of the individual stocks shall be determined for the review period, and the stocks ranked by volatility from lowest to highest. The cumulative distribution of seven (7) business days percent price changes for option stocks shall also be determined for the 25% of those stocks having the highest volatilities.

3. The degree of coverage based upon the existing option margin levels shall be determined for each of the groups listed above.

4. Margin levels shall be monitored daily through calculations of implied volatilities for each broad-based index and equity security, which underlies listed options. An applicable margin

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percentage is calculated based upon a twenty (20) day moving average, with the most recent days having the greater weight.

5. For stock option, a margin increase shall be considered warranted when the current margin add-on provides a level of coverage of less than 92.5% of all observations *or* less than a 97.5% level of coverage for stocks in the highest volatility quartile during the five and one-half (5½) month review period.

A margin decrease shall be considered warranted when the current margin add-on provides a level of coverage in excess of 97.5% for all observations *and* over a 92.5% coverage level for stocks in the highest volatility quartile during the five and one-half (5½) month review period.

6. For index options, a margin increase shall be considered warranted when the current margin add-on provides a level of coverage of less than 92.5% of all observations during the five and one-half (5½) month review period.

A margin decrease shall be considered warranted where the current margin add-on provides a level of coverage in excess of 97.5% for all observations during the five and one-half (5½) month review period.

7. Margin changes shall be made uniformly for a product group (i.e., stock options *and* industry index options; broad-based index options). Margin changes shall be made in 1% increments, with no change being less than 2%. Margin changes shall not be made ordinarily in two (2) consecutive quarters and shall not exceed 5% in any one quarter.

8. Margin changes shall be filed pursuant to Section 19(b)(3)(A) of the 1934 Act through a rule filing, which shall be made no later than five (5) business days subsequent to the close of the relevant review period. Margin changes shall become effective the business day immediately following the next month's expiration. Margin charges effected pursuant to a Section 19(b)(3)(A) rule filing shall not result in margin levels lower than 5% and 10% for index and equity options, respectively.

9. In determining whether to effect a margin change, in addition to the frequency distribution results, other relevant matters shall be considered such as current market conditions, member firm views and margin levels implied from options premiums where the results differ from the historical frequency distributions by two percent (2%) or more.

[FR Doc. 89-15041 Filed 6-23-89; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. 34-26943; File No. SR-Phlx-89-33]

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Responsibility To Make Ten-Up Markets

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 30, 1989, the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("PHLX" of the "Exchange"), pursuant to Rule 19b-4 of the Securities Exchange Act of 1934 ("Act"), proposes to amend the Exchange Option Floor Procedure Advice A-11 ("Advice") by revising section (iii) thereof as follows (new language is italicized, deleted language appears in brackets):

(iii) If the availed upon best bid or offer is made by someone other than a floor trader and is not for at least ten contracts, participation for the additional contracts needed to meet the minumum ten contract requirement shall be *supplied at that same price* by the floor trader *quoting the previous* [At the next] best bid or offer (whichever the case). If more than one floor trader is quoting the next best bid or offer, participation for the additional contracts shall be decided upon agreement by those floor traders or otherwise divided proportionately among them.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for the Proposed Rule Change

The proposed rule change is intended to implement certain technical and clarifying language to a proposed Floor Procedure Advice that was recently filed with and approved by the Commission. *See* SR-PHLX-89-02; approved in Securities Exchange Act Release No. 26669 (March 27, 1989).

Option Floor Procedure Advice A-11 outlines the responsibility to make ten-up markets. The advice imposes a responsibility on specialist and registered Options Traders for ensuring that orders are filled to a minimum of ten contracts under certain circumstances, delineated in the Advice.

The Advice requires that, if the best bid or offer is made by someone other than a floor trader (e.g., a public customer limit order) and is not for at least ten contracts, the remainder of the participation needed to meet the ten contract requirement must be supplied by floor traders bidding or offering at the next best price. There has been some confusion as to whether this provision requires those traders to participate at the better price, or merely at their stated bid or offer. The above-mentioned revision to the Advice makes clear that the entire ten contract requirement must be safisfied at a single price; that is, at the best bid or offer in the market at that time.

The proposed rule change is consistent with section 6(b)(5) of the Act in that it will promote just and equitable principles of trade, protect investors, and promote the public interest by assuring a minimum ten contract execution of public customer orders. Additionally, the proposal is consistent with section 11A(a)(i)(e) (ii) and (iv) of the Act in that it will promote fair competition among brokers and dealers and the practicability of brokers executing investors' orders in the best market.

B. Self-Regulatory Organization's Statement of Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

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III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the PHLX consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 17, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 19, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-15042 Filed 6-23-89; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. IC-17015; 811-600]

First Investors Option Fund, Inc.; Notice of Application

Date: June 19, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "1940 Act").

Applicant: First Investors Option Fund, Inc. ("Applicant").

Relevant 1940 Act Section: Section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company under the 1940 Act.

Filing Dates: The application on Form N-8F was filed on May 31, 1989.

Hearing or Notification of Hearing: An order granting the aplication will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 14, 1989, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of the hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, 120 Wall Street, New York, New York 10005.

FOR FURTHER INFORMATION CONTACT: Patricia Copeland, Legal Technician, (202) 272-3009, or Brion Thompson, Branch Chief, (202) 272-3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant, a New York corporation, represents that its Board of Directors and the Board of Directors of First Investors High Yield Fund, Inc. ("High Yield Fund") (File No. 811-4674) unanimously adopted resolutions approving the reorganization of Applicant into High Yield Fund and the submission of the Agreement and Plan of Reorganization for approval by Applicant's shareholders. Thereafter, the SEC issued an order approving the reorganization. *See,* Investment Company Act Release No. 16553 (September 8, 1988).

2. On September 7, 1988, the Agreement and Plan of Reorganization by and between Applicant and High Yield Fund was approved by a vote of two-thirds of Applicant's shareholders. On November 1, 1988, Applicant transferred all of its assets to High Yield Fund in a tax-free exchange for shares of common stock of High Yield Fund having an aggregate net asset value equal to the value of the transferred assets. On the same date, Applicant distributed the High Yield Fund shares acquired through the transfer to its shareholders on a pro rata basis in exchange for, and in cancellation of, the outstanding shares of Applicant.

3. Expenses incurred in connection with the reorganization were borne by Applicant and High Yield Fund based on the relative net asset value of the two funds, unless such expense was specifically allocated to either fund. All the expenses incurred in connection with the special meeting of shareholders of Applicant to consider approval of the reorganization and the payment of any state stock transfer stamps and taxes were assumed by Applicant.

4. Applicant does not currently propose to engage in any business activities other than those related to its dissolution. Applicant has no securityholders or assets, no debts or other liabilities, and is not a party to any litigation or administrative proceeding.

5. Finally, Applicant states that, upon receipt of the order requested from the SEC, Applicant will file a Certificate of Dissolution with the appropriate authority in the State of New York.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-15044 Filed 6-23-89; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. IC-17013; 812-7255]

GW Sierra Trust Funds (Formerly, the GW Investment Funds) et al.

June 16, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption and approval of offers of exchange under the Investment Company Act of 1940 ("1940 Act").

Applicants: GW Sierra Trust Funds ("Company"), Great Western Financial Securities Corporation ("GWFSC") and on behalf of any future funds or series that hold themselves out to investors as related companies for purposes of investment and investor services and (i) have a common investment adviser or principal underwriter with the Company, or (ii) have an investment adviser or principal underwriter under

common control with the investment adviser or principal underwriter of the Company ("Additional Funds") (collectively, "Applicants").

Relevant 1940 Act Sections: Order requested under Section 6(c) for an exemption from 2(a)(32), 2(a)(35), 22(c), 22(d) and Rule 22c-1, and for approval under Section 11(a) of the 1940 Act.

Summary of Application: Applicants seek an order (i) permitting the assessment and waiver of a contingent deferred sales charge ("CDSL") on redemptions of certain of the Company's initial and future series of shares and (ii) approving certain offers of exchange on a basis other than relative net asset value.

Filing Date: The application was filed on February 10, 1989, and amended on May 22 and June 16, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 10, 1989, and should state the nature of the requester's interest, the reason for the request, and the issues contested. Hearing requests also should be accompanied by proof of service on the Applicants in the form of affidavits or, for lawyers, certificates of service. Requests for notification of a hearing may be made by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, Washington, D.C. 20549. Applicants, 686 South Figueroa Street, Suite 1100, Los Angeles, California 90017.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Cathey Baker (202) 272-3033 or Brion R. Thompson, Branch Chief (202) 272-3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee. One may obtain a copy by going to the SEC's Public Reference Branch or by telephoning the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. The Company is an open-end, diversified, management investment company organized as a Massachusetts business trust on February 22, 1989. On February 27, 1989, the Company filed a Notification of Registration on Form N-8A with the Commission, pursuant to Section 8(a) of the 1940 Act. A Registration Statement on Form N-1A under the 1940 Act and the Securities Act of 1933 was filed on March 10, 1989. The Registration Statement has not yet been declared effective.

2. The Company is a series company that is currently composed of six series, the Growth and Income Fund, the U.S. Government Securities Fund, the California Tax Exempt Income Fund, the U.S. Government Money Market Fund, the California Tax Exempt Money Market Fund and the Global Income Money Market Fund (collectively, "Funds"). Shares of all the Funds are sold by GWFSC, which is registered as a broker-dealer under the Securities Exchange Act of 1934. Affiliates of GWFSC serve as the investment adviser and administrator to the various Funds.

3. The Applicants propose to (i) offer shares of each CDSL Fund subject to a CDSL (as discussed below) and offer shares of each Non-CDSL Fund without a sales charge, (ii) institute a plan of distribution in accordance with Rule 12b-1 under the 1940 Act ("Plan"), and (iii) provide the Company's shareholders with the right to exchange shares of any one Fund for shares of any other Fund.

4. Shares of the Growth and Income Fund, the U.S. Government Securities Fund and the California Tax Exempt Income Fund ("CDSL Funds") will be offered without an initial sales charge, but a CDSL will be imposed upon certain redemptions within four years after purchase. Shares of the U.S. Government Money Market Fund, the California Tax Exempt Money Market Fund and the Global Income Money Market Fund ("Non-CDSL Funds") will be offered without a sales charge or CDSL.

5. The CDSL would be imposed on a redemption of shares of any CDSL Fund that causes the current value of the shares of that CDSL Fund held by a shareholder to fall below the total amount of payments for the purchase of shares of the CDSL Fund made by the shareholder during the preceding four years. No CDSL would be imposed to the extent that the net asset value of the CDSL Fund shares redeemed by a shareholder does not exceed (i) the current net asset value of shares of the CDSL Fund purchased more than four years prior to the redemption, plus (ii) the current net asset value of shares of the CDSL Fund purchased through reinvestment of dividends or capital gains distribution, plus (iii) increases in the net asset value of the shares of the CDSL Fund above purchase payments made during the preceding four years.

6. The amount of the CDSL imposed on a shareholder of a CDSL Fund would depend on the number of years that had elapsed since the shareholder made the purchase payment from which an amount is being redeemed. The CDSL would be 3% in the first year and would decrease to 2% in the second and third year, then to 1% in the fourth year. The amount of the CDSL (if any) would be calculated by first determining the date on which the purchase payment that is the source of the redemption was made, and then applying the appropriate percentage to the amount of the redemption subject to the CDSL. All purchase payments for shares of a Fund made by a shareholder during a month would be aggregated and deemed to have been made on the last day of the preceding month for purposes of determining the number of years that had elapsed since the purchase payments were made. In determining whether a CDSL is payable, the Applicants will assume that the purchase payment for shares of a Fund from which a redemption is made is the earliest purchase payment from which a full redemption has not already been effected. In addition, the Company will assess no CDSL on exchanges of shares between Funds. Moreover, for purposes of the CDSL, when shares of one Fund are exchanged for shares of another Fund, the purchase date for the shares of the Fund exchanged into will be assumed by the Company to be the date on which the shares were purchased in the Fund (whether a CDSL Fund or a Non-CDSL Fund) from which the exchange was made. If the exchanged shares themselves were acquired through an exchange, the purchase date will be assumed to carry over from the date of the original investment in the first Fund in the series of exchanges, whether a CDSL Fund or a Non-CDSL Fund.

7. Under the Applicants' proposal, the CDSL would be waived on the following redemptions: (i) Any partial or total redemption of shares of a shareholder who dies or becomes disabled, so long as the redemption is requested within a year after death or initial determination of disability; (ii) any partial or complete redempton in connection with certain distributions from Individual Retirement Accounts ("IRAs") or other qualifed retirement plans; (iii) redemptions effected by (a) employees or retired employees of GWFSC or its subsidiaries and (b) IRAs, Keogh plans and employee benefit plans for those employees or retired employee; (iv) redemptions effected by directors, trustees, officers or advisory board members, or persons retired from such positions, of any investment company for which GWFSC or an affiliate serves as investment adviser; (v) redemptions effected by an investment company registered under the 1940 Act in connection with the combination of the investment company with the Company by merger, acquisition of assets or by any other transaction; (vi) redemptions by registered representatives or full-time employees of dealers with which GWFSC has entered into sales agreements for the sale of Company shares; (vii) redemptions by institutional investors that invest $1 million in one or more of the Funds in the aggregate; (viii) redemptions effected by certain retirement plans qualified under Section 457 of the Internal Revenue Code of 1986, as amended, and related employee benefit plans of a single employer for which Great Western Bank provides a Great Western savings option and recordkeeping services; and (ix) redemptions effected pursuant to the Company's automatic cash withdrawal plan, under which a shareholder who owns shares of a Fund with a value in excess of $10,000 may elect to receive perodic cash payments of at least $100, if the amount withdrawn per month is equal to or less than 5% of the value of the shareholder's shares in the Fund at the time the withdrawal plan commences. The Applicants also propose to institute a one-time only reinvestment privilege under which a shareholder who redeemed shares subject to the CDSL and reinvested the proceeds of the redemption within 30 days after the redemption would receive a credit against the amount of the CDSL paid. The percentage of the CDSL credited to the shareholder would be the same as the percentage of the redemption proceeds that are reinvested.

8. The Company proposes to finance its distribution expenses under the Plan mentioned above. Under the Plan, the Company will pay an annual fee to GWFSC for expenses incurred by GWFSC in connection with the offering of each series of the Company's shares. The fee of GWFSC for its services under the Plan will be paid monthly by the Company with respect to each Fund at an annual rate not to exceed .50% of the average daily net assets of the particular Fund.

9. The Applicants propose to offer to exchange shares of any CDSL Fund for shares of another CDSL Fund without the imposition of A CDSL at the time of the exchange. Upon subsequent redemptions, such shares will be subject a CDSL calculated by reference to the date of the initial purchase of the first CDSL Fund's shares. In addition, shares of any CDSL Fundmay be exchanged for shares of any Non-CDSL Fund, such shares will be subject to the CDSL charge of the CDSL Fund, taking into account the time such shares were held in the Non-CDSL Fund. Finally, shares of any Non-CDSL Fund may be exchanged for shares of any CDSL Fund without the imposition of any CDSL at the time of the exchange. Such shares, upon subsequent redemption from the CDSL Fund, will be subject to the CDSL charge of the CDSL Fund, also taking into account the time such shares were held in the Non-CDSL Fund. In each instance, the CDSL is deferred until such time as the shareholder ultimately redeems shares from the company.

Applicants' Legal Conclusions

10. The applicants submit that granting their request is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. The Applicants request that the order be applicable to the existing Funds and the Additional Funds, subject to their compliance with all the representations and conditions in the application. The Applicants acknowledge that they bear the burden of ensuring that the exchange offer and the CDSL complies with the condition set forth below.

Applicants' Conditions

The Applicants agree that the following may be made conditions to the proposed relief:

1. The Applicants will comply with the provisions of revised proposed rule 11a-3, Investment Company Act Release No. 16504 (July 30, 1988), 53FR 30299 (August 11, 1988), as currently proposed and as further revised and/or adopted.

2. The Applicants will comply with the provisions of proposed rule 6c-10, Investment Company Act Release No. 16169 (November 2, 1988), 53 FR 45275 (November 9, 1988), as currently proposed and as further revised and/or adopted.

3. The Applicants will obtain an amended order prior to any modification of the exchange offer in a manner inconsistent with the provisions of revised proposed rule 11a-3 and as that rule may be further revised and/or adopted, except that an amended order is not required to terminate the exchange offer.

4. The Applicants will obtain an amended order prior to any modification of the CDSL in a manner inconsistent with the provisions of proposed rule 6c-10 and as that rule may be revised and/or adopted.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc.89-15043 Filed 6-23-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17011; 812-7298]

The Lincoln National Life Insurance Co. et al.

June 15, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: The Lincoln National Life Insurance Company ("LNL"); Lincoln National Variable Annuity Account H ("Variable Account"); and American Funds Distributors, Inc. ("AFD").

Relevant 1940 Act Sections: Exemption requested under Section 6(c) from Sections 26(a)(2) and 27(c)(2).

Summary of Application: Applicants seek an order to the extent necessary to permit LNL to deduct mortality and expense risk charges from the assets of the Variable Account.

Filing Date: The application was filed on April 17, 1989 and an amendment was filed on May 31, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on July 10, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Lincoln National Life Insurance Company, 1300 South Clinton Street, Fort Wayne, IN 46801; American Funds Distributors, Inc., 333 South Hope Street, Los Angeles, CA 90071.

FOR FURTHER INFORMATION CONTACT: Heidi Stam, Staff Attorney, (202) 272-3017, or Clifford E. Kirsch, Special Counsel, (202) 272-2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier, (800) 231-3282 (in Maryland (301) 253-4300).

Applicants' Representations

1. The Variable Account was established in connection with the proposed issuance of flexible premium variable annuity contracts ("Contracts").

2. The Variable Account will invest in shares of the American Variable Insurance Series ("Series Fund"). The Series Fund is an open-end, diversified management investment company with a number of series, or portfolios. The Variable Account has a number of subaccounts, each of which invests solely in a specific corresponding portfolio of the Series Fund.

3. LNL will deduct a contract maintenance charge of $35 per year to compensate LNL for administrative services provided to contract owners. LNL also deducts an administrative expense charge at an effective annual rate of .10% of the net assets of the Variable Account. LNL does not anticipate any profits from these charges.

4. A contingent deferred sales charge of up to 6% of purchase payments is imposed on certain full surrenders or partial withdrawals under the Contracts.

5. The administrative and contingent deferred sales charges under the Contracts may be waived or reduced under certain circumstances which are described more fully in the application.

6. LNL imposes a charge to compensate it for bearing certain mortality and expense risks under the Contracts. This charge is equal to an effective annual rate of 1.25% of the value of the net assets of the Variable Account. Of that amount, approximately .80% is attributable to mortality risks, and approximately .45% is attributable to expense risks.

7. The mortality risk borne by LNL arises from its obligation to make annuity payments regardless of how long all annuitants may live and from its obligation to pay a death benefit that may be higher than the Contract value. LNL's expense risk is that the deductions for administration costs under the Contracts may be insufficient to cover the actual future costs incurred by LNL.

8. If the mortality and expense risk charge is insufficient to cover actual costs and assumed risks, the loss will fall on LNL. Conversely, if the charge is more than sufficient to cover costs, any excess will be profit to LNL. LNL currently anticipates a profit from this charge.

9. LNL does not anticipate that the contingent deferred sales charge will generate sufficient funds to pay the cost of distributing the Contracts. If the distribution charges are insufficient to cover the expenses, the deficiency will be met from LNL's general account which may include amounts derived from the mortality and expense risk charge.

10. LNL states that the mortality and expense risk charge is a reasonable charge to compensate LNL for the risks assumed under the Contracts.

11. LNL represents that the charge of 1.25% for mortality and expense risks is within the range of industry practice with respect to comparable annuity products. This representation is based upon LNL's analysis of publicly available information about similar industry products, taking into consideratio such factors as current charge levels, the existence of charge level guarantees, and guaranteed annuity rates. LNL will maintain at its administrative offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

12. Applicants acknowledge that any profit realized from the mortality and expense risk charge may be viewed by the Commission as being offset by distribution expenses not reimbursed by the contingent deferred sales charge. LNL has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Variable Account and Contract owners. The basis for such conclusion is set forth in a memorandum which will be maintained by LNL at its administrative offices and will be available to the Commission.

13. LNL also represents that the Variable Account will only invest in management investment companies which undertake, in the event such company adopts a plan under Rule 12b-1 to finance distribution expenses, to have a board of directors (or trustees), a majority of whom are not interested persons of the company, formulate and approve any such plan under Rule 12b-1.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-15045 Filed 6-23-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17012; 812-7277]

National Tax Credit Partners L.P. and National Partnership Investments Corp.; Notice of Application

June 16, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: National Tax Credit Partners L.P., a California limited partnership ("Partnership"), and its general partner, National Partnership Investments Corp., a California corporation ("General Partner").

Relevant 1940 Act Sections: Exemption under Section 6(c) from all provisions of the 1940 Act.

Summary of Application: Applicants seek an order to permit the Partnership to invest primarily in other limited partnerships that will develop, rehabilitate, own and operate housing complexes eligible for low income housing and historic rehabilitation tax credits.

Filing Date: The application was filed on March 23, 1989, and amended on June 13, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 11, 1989, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 9090 Wilshire Boulevard, Second Floor, Beverly Hills, CA 90211.

FOR FURTHER INFORMATION CONTACT: Victor R. Siclari, Staff Attorney, at (202) 272-3567 or Stephanie M. Monaco, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier which can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. The Partnership was organized under the California Revised Limited Partnership Act as a vehicle for equity investment in apartment complexes ("Apartment Complexes") eligible for low income housing tax credits under the Internal Revenue Code of 1986, as amended ("Code"), or, in certain cases, for historic rehabilitation tax credits under the Code ("Tax Credits") and assistance under other governmental programs promoting low- or moderate-income housing.

2. The Partnership will operate as a "two-tier" partnership by investing primarily as a limited partner in other partnerships ("Local Partnerships") which will develop, rehabilitate, own, and operate Apartment Complexes.[1] Local Partnerships will be primarily limited partnerships, but also may be general partnerships or joint ventures. However, the Partnership will invest no more than 10% of its funds in general partnerships or joint ventures. The Partnership's investment objectives are: (a) To provide Qualified Investors (defined herein) current tax benefits in the form of Tax Credits to offset their federal income tax liability; (b) to preserve and protect the Partnership's capital; and (c) to provide cash distributions.

3. The Partnership will normally acquire at least a 90% interest in the profits, losses and Tax Credits, as well as a specified interest in the cash distributions, of the Local Partnerships, with the balance remaining with the local general partners. Should the Partnership invest in any Local Partnership in which it acquires less than 50% of the limited partnership interest, the Partnership's partnership agreement ("Partnership Agreement") will provide that the Partnership will have at least a 50% vote to: (a) Amend the Local Partnership agreement; (b) dissolve the Local Partnership; (c) remove the local general partner and elect a replacement; and (d) approve or disapprove the sale of substantially all of the assets of such Local Partnership. In addition, the Partnership will require that the Local Partnership agreements provide to the limited partners of the Local Partnerships substantially all of the rights required by Section VII of the guidelines adopted by the North American Securities Administrators Association, Inc. ("NASAA").

4. The Partnership filed a registration statement under the Securities Act of 1933 for the sale of units ("Units") at $5,000 per Unit. Each Unit consists of two limited partnership interests ("Limited Partnership Interests") and one warrant ("Warrant") granting an investor the right to purchase one additional limited partnership interest ("Additional Limited Partnership Interest") between January 1, 1990 and January 31, 1990. If the prescribed minimum number of subscriptions have not been met, no Units will be sold and funds paid by subscribers will be returned promptly, together with a pro rata share of any interest earned thereon. The Partnership will not admit any subscribers as limited partners ("Limited Partners") to the Partnership until the exemptive order applied for herein is granted or the Partnership receives an opinion of counsel that it is exempt from registration under the 1940 Act. In the event that any of the Warrants are not exercised, the Partnership may sell the related Additional Limited Partnership Interests to other Qualified Investors (defined herein). Purchasers of the Units and Additional Limited Partnership Interests will become Limited Partners of the Partnership. The Warrants are not detachable from the Limited Partnership Interests at any time, and neither the Units nor the Warrants are transferable. The Partnership Agreement also imposes certain restrictions on transfer and assignment of the Limited Partnership Interests, including that each proposed assignee must deliver to the General Partner evidence of his suitability. The Partnership will not redeem or repurchase Units or Limited Partnership Interests, does not anticipate formation of a public market for the Units or Limited Partnership Interests, and thus believes purchases of Units should be considered illiquid investments.

5. Subscriptions for Units must be approved by the General Partner and PaineWebber Incorporated ("Selling Agent"). Each subscriber must represent that he meets the following general investor suitability standards ("Qualified Investor"): (a) In the case of corporate investors that are closely held but are not personal service corporations, corporations subject to Subchapter S of the Code, and C Corporations that are not closely held and are not personal service corporations, such corporations reasonably expect for most of the next ten years to have substantial unsheltered income against which the Tax Credits from the Partnership can be utilized; or (b) in the case of noncorporate investors, such investors reasonably expect to have an annual adjusted gross income of $200,000 or less or to have substantial unsheltered passive activity income for 1989 and each of at least the next ten years in which the Tax Credits are expected to be available, and either (i) has a net worth (exclusive of home, furnishings, and automobiles) of at least $30,000 and an annual gross income of not less than $30,000 in the current year, (ii) has a net worth (exclusive of home, furnishings, and personal automobiles) of at least $75,000, or (iii) is purchasing in a fiduciary capacity for a person meeting the requirements set forth in clause (i) or (ii). Certain states may impose additional or alternative standards, but in no event shall the Partnership employ any suitability standard less restrictive than that set forth above.

6. Although the Partnership will be controlled by its General Partner, certain significant actions cannot be taken by the General Partner without the express consent of a majority in interest of the Limited Partners. Such actions include: (a) The sale at any one time of all or substantially all of the assets of the Partnership, except for (i) a liquidating sale of a final Local Partnership interest remaining after the sale of all other Local Partnership interests, or (ii) sales in connection with the liquidation and winding up of the Partnership's business upon its dissolution; (b) dissolution of the Partnership; and (c) the admission of a successor or additional General Partner. Also, the majority in interest of the Limited Partners will have the right to amend the Partnership Agreement (subject to certain limitations), dissolve the Partnership, and remove any General Partner and elect a replacement therefor. In addition, each Limited Partner is entitled to review at any and all reasonable times all books and records of the Partnership and of the Local Partnerships.

7. PaineWebber T.C., Inc., an Affiliate (as defined in the Partnership Agreement) of the Selling Agent, will serve as the special limited partner of the Partnership ("Special Limited Partner"). The Special Limited Partner and the General Partner will each have the right to appoint three of the six members of the Partnership's investment committee, which must approve certain

[1] The Partnership may invest in Apartment Complexes that have commercial, retail or office space, but only if such space (a) is merely an ancillary feature of the Apartment Complex's overall development structure, (b) does not represent the primary tax or economic motivation underlying the Partnership's investment in the Apartment Complex, and (c) does not generate in excess of 20% of the anticipated total gross rental income of the Apartment Complex.

of the Partnership's investment decisions. The Special Limited Partner will also have the right to remove, and appoint a substitute for, the General Partner under certain limited circumstances. The Special Limited Partner will provide consulting services to the General Partner for the administration of the Partnership's affairs.

8. The General Partner and its Affiliates will receive from the Partnership reimbursement of organizational and offering expenses and an allowance for wholesaling expenses. The Selling Agent will receive customary commissions, an investment banking fee on the sale of the Units, and a marketing fee. The Selling Agent may authorize other members of the National Association of Securities Dealers, Inc. ("NASD") to sell Units, and may reallow them commissions. These selling commissions and fees are customarily charged in securities offerings of this type and are consistent with the NASD guidelines. Acquisition phase fees payable to all persons for the acquisition of interests in Local Partnerships will be limited by the guidelines adopted by NASAA. The Partnership may pay additional fees or compensation to the General Partner, the Special Limited Partner, or their Affiliates, and they may receive amounts from Local Partnerships to the extent permitted by applicable law and regulations. All such fees and amounts shall be subject to the terms of the Partnership Agreement. The General Partner also will be allocated generally 1% of cash flow and 1% of the Tax Credits received by the Partnership, and compensation in various forms will be paid to the general partner of each Local Partnership.

9. All proceeds of the public offering of Units and Additional Limited Partnership Interests (other than those issued upon exercise of the Warrants) will initially be placed in an escrow account with United States Trust Co. of New York ("Escrow Agent"). Pending release of the proceeds to the Partnership, the Escrow Agent will deposit escrowed funds in interest bearing accounts which will be limited to (a) bank money accounts with the Escrow Agent that are fully segregated and fully covered by federal deposit insurance, (b) short-term certificates of deposit issued by a United States Bank having a net worth of at least $50 million, and (c) short-term securities issued or guaranteed by the United States government. Upon receipt of the prescribed minimum number of subscriptions, funds in escrow will be released to the Partnership and held in trust pending investment in Local Partnerships or Apartment Complexes. Any net proceeds not immediately utilized to acquire Local Partnership interests or for other Partnership purposes (such as the establishment of a reserve) may be invested in permitted interim investments, which include: (a) Readily marketable securities issued by states or municipalities within the United States or agencies or subdivisions thereof rated in the highest rating category by a nationally recognized statistical rating organization ("NRSRO"); (b) direct obligations of, or obligations unconditionally guaranteed by, the United States government or any agency thereof; (c) commercial paper issued by any corporation organized and doing business under the laws of the United States or any state thereof rated in the highest category by a NRSRO; (d) certificates of deposit or Eurodollar certificates of deposit issued by any bank whose deposits are federally insured and which have a combined capital and surplus of not less than $100 million (or, in the case of Eurodollar certificates of deposit, a branch of any such bank); (e) collateralized repurchase agreements with domestic banks whose deposits are federally insured and which have a combined capital and surplus of not less than $100 million having a duration no longer than 60 days (or any extension or renewal thereof for a period not exceeding the period of the initial agreement) with respect to or secured by any of the types of securities specified in clauses (a) through (c) above; and (f) shares of any open-end investment company, as defined in the 1940 Act, which has assets of not less than $200 million and invests primarily in securities of the type enumerated in clauses (a) through (e) above or banker's acceptances; provided, however, that if the value of "investment securities" (as defined in the 1940 Act and which term shall not include the value of the Local Partnership interests) exceeds 40% of the value of the Partnership's total assets (exclusive of government securities, as defined in the 1940 Act, and cash items) at any time, such excess may be invested only in government securities.

Applicants' Legal Conclusions

1. The exemption of the Partnership from all provisions of the 1940 Act is both necessary and appropriate in the public interest, because: (a) Investment in low and moderate income housing in accordance with national policy is not economically suitable for private investors without the tax and organizational advantages of the limited partnership form; (b) the limited partnership form insulates each Limited Partner from personal liability, limits his financial risk to his investment, and allows him to claim his proportionate share of the Tax Credits, income, and losses from the investment; and (c) the limited partnership form of organization is incompatible with fundamental provisions of the 1940 Act.

2. Investment Company Act Release No. 8456 (Aug. 9, 1974) lists two conditions, designed for the protection of investors, which must be satisfied in order to qualify for the type of exemptive relief which the Partnership seeks: (a) "Interests in the issuer should be sold only to persons for whom investments in limited profit, essentially tax-shelter, investments would not be unsuitable * * *;" and (b) "requirements for fair dealing by the general partner of the issuer with the limited partners of the issuer should be included in the basic organizational documents of the company." The Partnership will comply with these conditions and will otherwise operate in a manner designed to insure investor protection. Interests in the Partnership will be sold only to, and transfers will be permitted only to, investors who meet specified suitability standards. The Limited Partners are adequately protected through disclosure in the Partnership's Prospectus of all potential conflicts with the General Partners, the Special Limited Partner, and their Affiliates. The Partnership will file with the SEC and distribute to investors certain financial documents and reports on its activities. Also, the General Partner and its Affiliates agree in the Partnership Agreement that each General Partner and its Affiliate (excepting such Affiliates that are publicly or privately syndicated limited partnerships) will not undertake an equity investment which could be suitable for the Partnership unless (a) the Partnership does not have funds available to consummate the transaction on a timely basis, or (b) the Partnership has declined to enter into such investment (with Affiliates that are publicly or privately syndicated limited partnerships being able to undertake such an investment only under certain circumstances that have been limited to protect the interests of the Limited Partners). In addition, the Partnership will not acquire Apartment Complexes from a prior partnership affiliated with the General Partner unless certain conditions are met that are designed to protect the interests of the Limited Partners and ensure that the terms of the transaction are fair to the Partnership. Limited Partners are further protected by the numerous provisions of the Partnership Agreement designed to prevent over-reaching by the General Partner and to assure fair dealing by the General Partner vis-a-vis the Limited Partners.

3. The substantial fees and other forms of compensation that will be paid to the General Partner, the Special Limited Partner, and their Affiliates will not have been negotiated through arm's-length negotiations. Applicants conclude, however, that the terms of all such compensation will be fair and no less favorable to the Partnership than would be the case if such terms had been negotiated with independent third parties. In addition, all compensation to be paid to the General Partner and its Affiliates is specified in the Partnership Agreement and the Partnership's Prospectus and no compensation will be payable to the General Partner or any of its Affiliates not so specified. Further, the Partnership believes that such compensation meets all applicable guidelines of the various states in which the Units and the Additional Limited Partnership Interests will be offered and sold and with the statement of policy adopted by NASAA applicable to real estate programs in the form of limited partnerships.

4. The contemplated arrangement of the Partnership is not susceptible to abuses of the sort the 1940 Act was designed to remedy. The suitability standards described above, the requirements for fair dealing provided by the Partnership's governing instruments, and pertinent governmental regulations imposed on each Local Partnership by various federal, state and local agencies, provide protection to investors in Units comparable to and in some respects greater than that provided by the 1940 Act. An exemption would therefore be entirely consistent with the protection of investors and the purposes and policies of the 1940 Act.

5. Applicants acknowledge that the order requested from the SEC applies in a prospective manner only and they will not rely on such order with respect to any activities, investments or commitments by them prior to the date of the order.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-15046 Filed 6-23-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17014; 812-7219]

The PNC Fund and TBC Funds Distributor, Inc.

June 16, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Approval under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: The PNC Fund ("Fund," formerly NCP Funds) and TBC Funds Distributor, Inc. (the "Distributor").

Relevant 1940 Act Section: Section 11(a).

SUMMARY OF APPLICATION: Applicants seek an order approving certain exchange offer of shares among existing and future investment portfolios of the Funds on a basis other than their relative net asset values per share at the time of the exchange.

FILING DATES: The application was filed on January 17, 1989, and an amendment was filed on May 25, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 12, 1989, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, Washington, DC 20549. Applicants, c/o Drinker Biddle & Reath, 1100 PNB Building, Broad & Chestnut Streets, Philadelphia, PA 19107. Attention: Jeffrey A. Dalke, Esq. or Eric C. Freed, Esq.

FOR FURTHER INFORMATION CONTACT: Paul J. Heaney, Financial Analyst (202) 272-3420, or Brion R. Thompson, Branch Chief (202) 272-3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier which may be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. Applicants are the Fund, an open-end management investment company registered under the 1940 Act, and its Distributor. The Fund currently consists of a Government Obligations Money Market Portfolio, a Money Market Portfolio, and a Tax-Free Money Market Portfolio (collectively, the "No-Load Portfolios"); and an Equity Portfolio, a Balanced Portfolio, a Fixed Income Portfolio; and an International Portfolio (collectively, the "Load Portfolios"). Approval of the proposed exchange offer is sought on behalf of the existing and future No-Load and Load Portfolios (collectively referred to as the "Portfolios").

2. Shares of the No-Load Portfolios are sold at net asset value without a sales charge. Shares of the Load Portfolios are offered at net asset value plus a front-end sales load. None of the Portfolios currently charges a contingent deferred sales load or a redemption fee. Applicants wish to allow the exchange of shares of a Portfolio (whether Load or No-Load) for shares of a Load Portfolio.

Applicants' Analysis

1. Applicants state that the purpose of their exchange offer is to permit simultaneous, voluntary redemption and purchase transactions initiated solely at a shareholder's request. Applicants state that certain share exchange transactions may not comply with Section 11(a) of the 1940 Act because they could be interpreted to be on a basis other than relative net asset values. Applicants are concerned, however, that if exchanges are always made at the relative net asset values of the shares involved in the exchanges without the imposition of any sales load, the distribution system of the Load Portfolios would be disrupted because an investor could easily avoid the sales load by acquiring No-Load Portfolio shares and immediately exchanging the shares for Load Portfolio shares.

2. Applicants assert that their exchange offer will solve these concerns, be equitable to all shareholders and benefit exchanging shareholders by crediting them for sales loads previously paid. Applicants state further that the arrangements described in the application are substantially identical to those that have been the subject of other applications granted by the SEC and are consistent with revised proposed Rule 11a-3 under the 1940 Act.

3. Accordingly, Applicants submit that the granting of their request is appropriate in the public interest and consistent with the protection of

investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Applicants' Conditions

The Applicants agree that the following may be made conditions to the proposed relief:

1. The Applicants will comply with the provisions of proposed Rule 11a-3, Investment Company Act Release No. 16504 (July 20, 1988), 53 FR 30299 (August 11, 1988) as currently proposed and as further revised and/or adopted.

2. Applicants will obtain an amended order prior to any modification of the exchange offer in a manner inconsistent with the provisions of revised proposed Rule 11a-3 as currently proposed and as further revised and/or adopted.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-15047 Filed 6-23-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program, McGhee Tyson Airport, Knoxville, TN

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Metropolitan Knoxville Airport Authority under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96-52 (1980). On November 9, 1988, the FAA determined that the noise exposure maps submitted by the Metropolitan Knoxville Airport Authority under Part 150 were in compliance with applicable requirements. On May 5, 1989, the Administrator approved the McGhee Tyson Airport noise compatibility program. Most of the recommendations of the program were approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the McGhee Tyson Airport noise compatibility program is May 5, 1989.

FOR FURTHER INFORMATION CONTACT: Otis T. Welch, Principal Planner/ Programmer; Airports District Office; 3973 Knight Arnold Road, Suite 105; Memphis, Tennessee 38118-3004; telephone number 901/521-3495. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compability program for McGhee Tyson Airport, effective date May 5, 1989.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties in the local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate of foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Memphis, Tennessee.

The Metropolitan Knoxville Airport Authority submitted to the FAA on September 20, 1988, and October 20, 1988, noise exposure maps, descriptions and other documentation produced during the noise compatibility planning study conducted from January 1986 to December 1987. The McGhee Tyson Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on November 9, 1988. Notice of this determination was published in the **Federal Register** on November 29, 1988.

The McGhee Tyson Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 1991. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on November 9, 1988, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained eleven proposed actions for noise mitigation (on an/or off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective May 5, 1989.

Outright approval was granted for ten of the specific program elements. A measure to encourage the County to update its Hazard Zoning Ordinance using FAA Part 77 Imaginary Surfaces was disapproved because the measure involved height control and is not directly related to noise.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on May 5, 1989. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the Metropolitan Knoxville Airport Authority.

Issued in Memphis, Tennessee, June 5, 1989.

John M. Dempsey,

Manager, Memphis Airpots District Office.

[FR Doc. 89-14901 Filed 6-23-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Delegation Order No. 156 (Rev. 10); Chief Counsel Directives Manual (30)330]

Delegation of Authority to Permit Disclosure of Tax Information and To Permit Testimony of the Production of Documents

AGENCY: Intenal Revenue Service, Treasury.

ACTION: Corrections to Delegation Order No. 156 (Rev. 10).

SUMMARY: This document contains corrections to the Federal Register publication for Friday, June 2, 1989, at 54 FR 23729 of Delegation Order No. 156 (Rev. 10). The document relates to the delegation of authority to permit disclosure of tax information and to permit testimony of the production of documents.

EFFECTIVE DATE: June 2, 1989.

FOR FURTHER INFORMATION CONTACT: Carman L. Gannotti, EX:D, Room 1603, 1111 Constitution Avenue NW., Washington, DC 20224. Telephone (202) 566-4283, (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The document which is the subject of these corrections is a revised delegation order authorizing certain Internal Revenue Service officials to disclose returns filed in accordance with section 6050I of the Internal Revenue Code (IRC) as prescribed in IRC 6103(i)(8).

Need for Correction

As published, the delegation order contains errors that, if not corrected, might cause confusion to taxpayers and practitioners.

Accordingly, FR Doc. 89-13037 published June 2, 1989 is corrected as follows:

Paragraph 1. On page 23730, line 6 of column 1, the language "(1) Deputh Assistant Commissioners;" should read "(1) Deputy Assistant Commissioners;".

Par. 2. On page 23733, line 28 of column 1, the language "written request, or returns filed in" should read "written request, of returns filed in".

Dale D. Goode,

Chief, Regulations Unit Assistant Chief Counsel (Corporate).

[FR Doc. 89-14942 Filed 6-23-89; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF VETERANS AFFAIRS

Cooperative Studies Evaluation Committee; Meeting

The Department of Veterans Affairs gives notice under Pub. L. 92-463 (Federal Advisory Committee Act) as amended by section 5(c) of Pub. L. 94-409 that a meeting of the Cooperative Studies Evaluation Committee will be held at the Logan Airport Hilton Hotel, Logan International Airport, Boston, MA 02128 July 27, 1989. The session is scheduled to begin at 10 a.m. and end at 3:15 p.m. The meeting will be for the purpose of reviewing two new clinical trials, one in the treatment of patients with AIDS and one in reduction of alcohol intake in lowering blood pressure. The Committee advises the Director, Medical Research Service, through the chief of the Cooperative Studies Program on the relevance and feasibility of the studies, the adequacy of the protocols, and the scientific validity and propriety of technical details, including protection of human subjects.

The meeting will be open to the public up to the seating capacity of the room from 10 to 10:30 a.m., to discuss the general status of the program. To assure adequate accommodations, those whose plan to attend should contact Dr. Ping Huang, Coordinator, Cooperative Studies Evaluation Committee, Veterans Administration Central Office, Washington, DC (202-233-2861), prior to July 21, 1989.

The meeting will be closed from 10:30 a.m. to 3:15 p.m. for consideration of specific proposals in accordance with provisions set forth in section 10(d) of Pub. L. 92-463, (the Federal Advisory Committee Act) as amended by section 5(c) of Pub. L. 94-409, and 5 U.S.C. 552b(c)(6). During this portion of the meeting, discussions and recommendations will deal with qualifications of personnel conducting the studies, staff and consultant critiques of research protocols, and similar documents, and the medical records of patients who are study subjects, the disclosure of which would constitute clearly unwarranted invasion of personal privacy.

Dated: June 15, 1989.

By direction of the Secretary:

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 89-14975 Filed 6-23-89; 8:45 am]

BILLING CODE 8320-01-M

Scientific Review and Evaluation Board for Health Services and Development; Meetings

The Department of Veterans Affairs gives notice under Pub. L. 92-463 that an advisory committee meeting of the Scientific Review and Evaluation Board for Health Services Research and Development will be held at the Vista International Hotel, 1400 M Street, NW., Washington, DC, on July 17, 18 and 19, 1989. The first phase of these meetings will begin at 7:30 p.m. and adjourn at 9 p.m. on the evening of July 17, 1989. The meetings will convene at 8 a.m. on July 18 and 19 and adjourn at 5 p.m. on July 18 and 3:30 p.m. on July 19, 1989. The purpose of the meetings will be to review research and development applications concerned with the measurement and evaluation of health care systems and with testing new methods of health care delivery and management. Applications are reviewed for scientific and technical merit and recommendations regarding their funding are prepared for the Assistant Chief Medical Director for Research and Development.

The meeting will be open to the public (to the seating capacity of the room) at the start of the July 17th session for approximately one hour to cover administrative matters and to discuss the general status of the program.

The closed portion of the meetings involves: Discussion, examination, reference to, and oral review of staff and consultant critiques of research protocols, and similar documents. During this portion of the meeting, discussion and recommendations will deal with qualifications of personnel

conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action regarding such research projects. As provided by subsection 10(d) of Pub. L. 92-463, as amended by Pub. L. 94-409, closing portions of these meetings is in accordance with 5 U.S.C. 552(c)(6) and (9)(B).

Due to the limited seating capacity of the room, those who plan to attend the open session should contact Mrs. Carolyn Smith, Program Analyst, Health Services Research and Development Service, 810 Vermont Avenue, NW., Washington, DC, 20420, (phone: 202/233-6935) at least 5 days before the meeting.

Dated: June 15, 1989.

By direction of the Secretary:

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 89-14974 Filed 6-23-89; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register

Vol. 54, No. 121

Monday, June 26, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 54 FR 24464.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., June 27, 1989.

CHANGES IN THE AGENDA: The Commodity Futures Trading Commission has cancelled the open meeting to discuss the Regulation of Hybrid Instruments/Final Rule previously scheduled for 10:00 a.m., June 27, 1989. The meeting will be rescheduled for July.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, Secretary of the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89-15187 Filed 6-22-89; 2:11 pm]

BILLING CODE 6351-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:35 p.m. on Tuesday, June 20, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to assistance agreements pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552(c)(2), (c)(4), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street NW., Washington, DC.

Dated: June 21, 1989.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 89-15147 Filed 6-22-89; 11:23 am]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 7:43 a.m. on Wednesday, June 21, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to an assistance agreement pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: June 21, 1989.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 89-15148 Filed 6-22-89; 11:23 am]

BILLING CODE 6714-01-M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Wednesday, June 28, 1989, 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC.

STATUS: This meeting will be open to the public.

MATTER TO BE CONSIDERED:

Pete du Pont for President, Inc., Oral presentation under 11 CFR 9038.2(c)(3).

"FEDERAL REGISTER" NO. 89-14885.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, June 29, 1989, 10:00 a.m., Meeting open to the public.

The following items were added to the agenda:

Position description—Inspector General
Final drafts—Voting systems standards.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Majorie W. Emmons,

Secretary of the Commission.

[FR Doc. 89-15130 Filed 6-22-89; 10:18 am]

BILLING CODE 6715-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Friday, June 30, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: June 22, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-15201 Filed 6-22-89; 3:02 am]

BILLING CODE 6210-01-M

federal register

Monday
June 26, 1989

Part II

Department of Labor

Pension and Welfare Benefits Administration

29 CFR Parts 2560 and 2570

Employee Retirement Income Security Act; Civil Penalties Assessment Procedures and Administrative Hearings Procedures; Final Rules

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2560

RIN 1210-AA34

Final Regulation Relating to Civil Penalties Under ERISA Section 502(c)(2)

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: This document contains a final regulation that describes procedures relating to the assessment of civil penalties under section 502(c)(2) of the Employee Retirement Income Security Act of 1974, as amended (ERISA, or the Act). Section 502(c)(2) authorizes the Secretary of Labor (the Secretary) to assess a civil penalty of up to $1,000 a day against a plan administrator who fails or refuses to file the annual report on behalf of an employee benefit plan required under section 101(b)(4) of the Act. The regulation clarifies the manner in which the Department will assess penalties under ERISA section 502(c)(2) and the procedures for agency review. A separate document containing a final regulation relating to procedures for hearings before an administrative law judge, and appeals, on assessments of penalties under ERISA section 502(c)(2) is also being published in today's Federal Register.

EFFECTIVE DATE: The regulation is effective with respect to annual reports required to be filed for plan years beginning on or after January 1, 1988.

FOR FURTHER INFORMATION CONTACT: David Lurie, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, (202) 523-8671, U.S. Department of Labor, Washington, DC 20210, or Vicki Schtein-Dunn, Plan Benefit Security Division, Office of the Solicitor, (202) 523-8596 U.S. Department of Labor, Washington, DC 20210.

SUPPLEMENTARY INFORMATION:

A. Background

Section 502(c)(2) provides that the Secretary may assess a civil penalty of up to $1,000 a day from the date of a plan administrator's failure or refusal to file the annual report required to be filed under section 101(b)(4).[1] ERISA section 101(b)(4) requires the administrator of an employee benefit plan to file an annual report containing the information required by section 103. Section 103 of ERISA and the Department's regulations thereunder (29 CFR 2520.103-1 *et seq.*) describe the content of the annual report.

Section 502(c)(2) also provides that an annual report that has been rejected under section 104(a)(4) for failure to provide material information shall not be treated as having been filed with the Secretary. ERISA section 104(a)(4) provides, in relevant part, that the Secretary may reject any filing upon determining that such filing is incomplete. Section 104(a)(5) describes various remedies available to the Secretary where a filing is rejected and a revised filing satisfactory to the Secretary is not submitted within 45 days.[2]

On October 17, 1988, the Department published a notice in the **Federal Register** (53 FR 40874) containing proposed regulation § 2560.502c-2 relating to the manner in which the Department will assess civil penalties under section 502(c)(2). On the same date, the Department also published a notice of proposed rulemaking in the **Federal Register** (53 FR 40877) relating to procedures for hearings before an administrative law judge, and appeals, on assessment of penalties under section 502(c)(2).

In general, proposed regulation § 2560.502c-2, discussed in detail below, addressed: the circumstances under which a penalty might be assessed (§ 2560.502c-2(a)); factors considered by the Department in determining the amount of a penalty (§ 2560.502c-2(b)); the provision of notice to the administrator of the Department's intention to assess a penalty § 2560.502c-2(c)); waiver of all or part of the penalty by the Department upon a showing of reasonable cause and the requirements relating to a showing of reasonable cause (§ 2560.502c-2(d) and (e)); the effect of a failure to file a statement of reasonable cause (§ 2560.502c-2(f)); the provision of notice to the administrator of the Department's findings as to reasonable cause and the effect of such notice where a penalty is to be assessed (§ 2560.502c-2(g)); the effect of a request for a hearing before an administrative law judge (§ 2560.502c-2(h)); service of notices (§ 2560.502c-2(i)); and the liability of the administrator for assessed penalties (§ 2560.502c-2(j)).

As indicated in the supplementary information accompanying the proposed regulation, the Department believes that the section 502(c)(2) sanction is a valuable additional enforcement tool which is necessary to ensure compliance with ERISA's annual reporting requirements. The Department also believes that adoption of this regulation is necessary for the effective implementation of its annual reporting enforcement program. In this regard, the Department also notes that section 9342(d)(2) of OBRA 1987 provides that the Secretary shall issue regulations necessary to carry out the 502(c)(2) civil penalty provisions. Thus, the Department publishes this final regulation, and, separately, final procedural regulations relating to hearings and appeals on assessment of penalties under ERISA section 502(c)(2) (§ 2570.60 et seq.).

The notice of proposed rulemaking gave interested parties an opportunity to comment on the § 2560.502c-2 proposal. In response, the Department received eight letters of comment concerning the regulation. The discussion below summarizes the proposed regulation, the issues raised by the commentators and the Department's reasons for adopting the provisions of the final regulation.

B. Discussion of Regulation and Comments

General. A number of the commentators expressed general concern about the Department's assessment of civil penalties under section 502(c)(2) and the potential adverse impact such penalties might have on plan administrators, particularly administrators of small plans, who are making good faith, diligent efforts to comply with ERISA's annual reporting requirements. One commentator suggested that, in order to ensure that oversight errors do not result in a penalty, the Department assess penalties only where there is an intentional withholding of information, plus a past pattern of failure to reasonably comply with the annual reporting requirements.

With regard to these concerns, it is the view of the Department that the procedures being adopted in these final regulations, and the final regulations relating to hearings and appeals (§ 2570.60 et seq.), substantially reduce the possibility of a penalty being imposed on an administrator who demonstrates good faith and diligence in complying with ERISA's annual reporting requirements. As explained in the supplementary information accompanying the proposal, penalties under section 502(c)(2) will be assessed only in those instances where there is a failure or refusal to file any annual report within the prescribed time frames [4] or where, subsequent to notification that a filed report has been rejected and the reasons therefor, there is a failure or refusal to file a corrected report within the 45 day period prescribed in section 104(a)(5). Section 104(a)(5) specifically contemplates that, where a filing is rejected under 104(a)(4), the filer will be afforded 45 days from the date of the rejection to submit a revised filing satisfactory to the Secretary. Accordingly, in the case of a report rejected under section 104(a)(4), the administrator can avoid the assessment of any penalty under 502(c)(2) by making the necessary corrections to the filing within the prescribed time frame. In addition, as reflected in the § 2560.502c-2 regulation, penalties may be waived, in whole or in part, upon the administrator's showing of reasonable cause for the failure to file a complete report. Finally, the Department notes that an administrator may, in accordance with the provisions of § 2560.502c-2 and § 2570.60 et seq., request a hearing before an administrative law judge on the Department's decision to assess a civil penalty under section 502(c)(2). The Department believes, as indicated above, that these procedures, in addition to efforts to obtain filer compliance prior to the proposed assessment of a penalty, serve to reduce the possibility of penalties being assessed where there is good faith compliance and diligence on the part of an administrator.

A number of the commentators also raised questions relating to the relationship of the penalties under section 502(c)(2) to those penalties imposed by the Internal Revenue Service for noncompliance with the annual reporting requirements of the Internal Revenue Code (the Code), and the extent to which the Department of Labor and the Internal Revenue Service will coordinate the assessment of penalties. While the penalties under both section 502(c)(2) of Title I of ERISA and the Code (sections 6652 and 6692 of the Code) relate to annual reporting requirements which are generally satisfied by the filing of the Form 5500 Series and related schedules, The Title I and Code penalties are separate and independent penalties. Therefore, penalties under one or both statutes could be assessed, or waived, in a given situation. In this regard, the Department will be coordinating its annual reporting compliance efforts with those of the Internal Revenue Service.

A discussion of the specific provisions of the regulation and comments thereon follows.

1. *Scope.* Proposed § 2560.502c-2(a) addressed the general application of section 502(c)(2). Paragraph (a)(1) provided that the administrator, as defined in ERISA section 3(16)(A), is liable for the penalties assessed under section 502(c)(2) in each case in which there is a failure or refusal to file the annual report on behalf of an employee benefit plan subject to the annual reporting requirements. Paragraph (a)(2) defined a failure or refusal to file the annual report as a failure or refusal to file, in whole or in part, that information described in ERISA section 103 and § 2520.103-1, et seq., at the time and in the manner prescribed for such filings.

One commentator, who indicated that subjecting administrators to a $1000 a day penalty will only increase the burdens already imposed on small companies, recommended that the penalty provisions be limited to administrators of plans with over 100 participants. It is the view of the Department that the only burdens directly attributable to the civil sanctions under section 502(c)(2) are those which arise by virtue of noncompliance with the annual reporting requirements. In this regard, the Department can find no basis in the statute, the legislative history or otherwise for concluding that the administrators of small plans should be held to a lesser standard of compliance with applicable requirements than those of large plans. Accordingly, the final regulation, as proposed, will apply to any plan administrator (within the meaning of section 3(16)(A)) required to file an annual report under section 101(b)(4).

2. *Amount Assessed.* Proposed § 2560.502c-2(b)(1) provided that the Department shall take into account the degree and willfulness of the failure to file the annual report in determining the amount to be assessed under section 502(c)(2). Consistent with the terms of section 502(c)(2), paragraph (b)(1) provided that the penalty assessed by the Department shall not exceed $1000 a day. With regard to the period for which a penalty may be assessed, paragraph (b)(1) provided that the penalty will be computed from the date of the administrator's failure or refusal to file the annual report and continue up to the date on which an annual report satisfactory to the Secretary is filed. As explained in the supplementary information accompanying the proposed regulation, while the Department might assess a penalty for interim periods of noncompliance, liability for penalties under section 502(c)(2) continue for each day up to the date compliance is achieved. A number of the commentators indicated that a $1000 a day penalty appeared to be severe for reporting violations. In this regard, the Department notes that a $1000 a day penalty is the maximum penalty which can be assessed under section 502(c)(2) and, as provided in paragraph (b)(1) of the regulation, the Department will take into account the degree and willfulness of the failure to file in determining the amount of the penalty to be assessed. Paragraph (b)(1), therefore, is being adopted as proposed.

Paragraph (b)(2) of the proposal provided for a limited tolling of the penalty to permit plan administrators to present arguments to the Department concerning any reasonable cause for the failure to file without continuing to incur penalties for the failure. As described in the supplementary information accompanying the proposal, where an administrator, upon receipt of a notice of intent to access a penalty (as described in paragraph (c)), files a statement of reasonable cause (as described in paragraph (e)), no liability for penalties will incur for any day starting from the date the Department serves the administrator a copy of the notice to assess a penalty until the day after the Department issues the notice of determination on the statement of reasonable cause (as described in paragraph (g)). One commentator suggested that the regulation should be revised to make clear that penalties would be tolled whether or not the Department determined reasonable cause to exist. Paragraphs (b)(2) and (e) have been revised to make it clear that if an administrator files the statement of reasonable cause described in paragraph (e), penalties will be tolled for the described period regardless of the Department's determination on that statement.

Paragraph (b)(3) defined the date on which an administrator failed or refused to file the annual report as the date on which the annual report was due, determined without regard to any extension for filing. Paragraph (b)(3), like section 502(c)(2) of the Act, also provided that an annual report which is

[1] Section 502(c)(2) was added to ERISA by section 9342(c)(2) of the Omnibus Budget Reconciliation Act of 1987 (OBRA 1987, Pub. L. 100-203).

[2] Under section 104(a)(5), the Secretary may, in addition to engaging an independent qualified public accountant or an enrolled actuary, bring a civil action for appropriate legal or equitable relief or take any other action authorized by Title I of ERISA, e.g., the assessment of a civil penalty under section 502(c)(2).

[4] ERISA section 104(a)(4) provides that the annual report described in section 103 is required to be filed within 210 days after the close of the plan year. However, an extension of time to file the annual report may be granted by the Internal Revenue Service (*See:* Instructions to the Form 5500 Series).

rejected under section 104(a)(4) for a failure to provide material information shall be treated as a failure to file the annual report. As indicated in the suplementary information accompanying the proposal, material information, for purposes of this provision, would be any information required to be included on, or as part of, the annual report which is necessary to process, verify or analyze an annual report.

One commentator indicated that the extension period should be considered, so that the failure or refusal to file is not considered to have taken place until after the expiration of the extension period. In the supplementary information accompanying the proposal, the Department expressed the view that in those situations where an extension of time is granted for the filing of the annual report and the administrator fails either to file a timely report or a complete report within the extension period, the administrator should not, for purposes of the 502(c)(2) penalty, benefit from the requested extension. The Department has not changed its view in this regard. Accordingly, for purposes of paragraph (b)(3) of the final regulation, the date on which the annual report was due is, as proposed, determined without regard to any extension of time granted for the filing of the report.

Another commentator suggested that paragraph (b)(3) be revised to make clear that, in the case of a rejected report, a failure to file occurs only where the administrator fails to correct a report within the 45 day period prescribed in section 104(a)(5). The Department has modified paragraph (b)(3) in the final regulation to clarify the application of the 45 day period for correcting deficient reports.

3. *Notice of Penalty.* Proposed § 2560.502c–2(c) provided that, prior to the assessment of any penalty under section 502(c)(2), the Department shall provide the administrator with a written notice indicating the Department's intention to assess a penalty, the amount of the penalty, the period to which the penalty applies, and the reasons for the penalty. This notice would be served in accordance with the service of notice provisions of § 2560.502c–2(i). Under § 2560.502c–2(f) of the regulation, this notice will become a final order of the Secretary, within the meaning of § 2570.61(g) (See: § 2570.60 et seq. also appearing in today's **Federal Register**), within 30 days of the service of notice, unless the statement of reasonable cause, described in § 2560.502c–2(e), is filed with the Department. No comments were received on this paragraph; accordingly, paragraph (c) is being adopted without modification.

4. *Waiver of Penalty.* Paragraphs (d), (e), (f), (g), and (h) of the proposed § 2560.502c–2 generally related to the waiver of penalties under section 502(c)(2). Paragraph (d) provided that the Department may waive all or part of the penalty to be assessed under section 502(c)(2) upon a showing of reasonable cause for the failure to file the annual report. Paragraph (e) provided that, subsequent to the issuance of a notice of the Department's intent to access a penalty, the administrator shall have 30 days from the date of the service of notice to make an affirmative showing of reasonable cause for the failure to file a complete annual report or why the penalty, as calculated, should not be assessed. Paragraph (e) required that the statement be in the form of a written statement which sets forth all the facts alleged in support of reasonable cause and contains a declaration that the statement is made under penalties of perjury.

Paragraph (f) described the effect of a failure to file the statement of reasonable cause within the prescribed 30 day period. Paragraph (f) provided that a failure on the part of the administrator to file a timely statement of reasonable cause will constitute a waiver of the right to appear and contest the facts alleged in the notice and an admission of the facts alleged in the notice for purposes of any adjudicatory proceeding involving the assessment of a penalty under section 502(c)(2). Under paragraph (f), the Department s notice of intent to assess a penalty, described in paragraph (c), then becomes a final order of the Secretary, within the meaning of paragraph (g) of § 2570.61 (*See:* § 2570.60 et seq. published in today's **Federal Register**).

Paragraph (g)(1) provided that, following a review of the facts alleged in the statement of reasonable cause, the Department shall notify the administrator of its intention to waive the penalty, in whole or in part, and/or assess a penalty. If it is the intention of the Department to assess a penalty, the notice shall indicate the amount of the penalty. Under paragraph (g)(2), this notice becomes a final order 30 days after the date of the service of the notice, except as provided in paragraph (h). In general, paragraph (h) provided that the notice described in paragraph (g) shall not become a final order if, within the 30 days of the date of service of notice, the administrator initiates an adjudicatory proceeding under section 18 of Title 29, as modified by the 502(c)(2) procedural regulations (§ 2570.60 et seq.) also published in today's **Federal Register**. Specifically, the administrator is required to file, within 30 days of the date of the service of notice, an answer, as defined in § 2570.61(c), in accordance with § 2570.62.

One commentator, noting that paragraph (d) of the proposal permits, but does not require, the Department to waive all or part of a penalty on a showing of reasonable cause, recommended that the regulation be revised to require a waiver of the entire penalty where an administrator shows reasonable cause. The Department anticipates that 502(c)(2) penalties will be waived to the extent reasonable cause is demonstrated by a plan administrator. However, the Department also believes that there may be instances where the demonstrated reasonable cause justifies only a partial waiver of the penalty. For example, the Department proposes to assess a 60 day penalty and the administrator files a statement which demonstrates that reasonable cause existed for a 30 day period, but not for the 60 day period for which the penalty was assessed. Rather than having to assess or waive the entire penalty for the full 60 day period, the Department believes that it is in the interest of both the administrator and the Department to retain the flexibility to waive penalties in whole or in part. Accordingly, paragraph (d) is being adopted without modification.

With respect to paragraph (e), regarding the showing of "reasonable cause", one commentator suggested that the Department revise the regulation to clarify that administrators who make good faith and diligent efforts to comply with the reporting requirements will not be subject to a penalty. As explained above, the Department believes that the procedures established under the regulations for considering reasonable cause, as well as appeals of the Department's decisions on reasonable cause, are sufficiently flexible to ensure that appropriate consideration is given to good faith and diligent efforts to comply with the annual reporting requirements. Another commentator, noting that there are many factors that could result in a delay in filing or in an incorrect filing, supported the Department's approach is not attempting to specifically define the circumstances under which reasonable cause would exist. Accordingly, except for the clarification changes discussed with respect to paragraph (b)(2), paragraph (e) is being adopted without modification.

One commentator, noting that, under paragraph (f), a failure to file a statement of reasonable cause within the 30 day period described in paragraph (e) resulted in a waiver of the right to appear and contest the facts alleged in the notice of intent to assess a penalty and an admission of such facts for purposes of the 502(c)(2) penalty, indicated that it was unreasonable not to provide for some allowance for the possibility of mitigating circumstances which would explain the failure to respond within the 30 day period. It is the view of the Department that the 30 day period prescribed in the regulation provides administrators more than ample time to file a statement of reasonable cause and thereby apprise the Department of extenuating circumstances. Moreover, as discussed above, the notice of intent to assess a penalty will, in the case of a report which is rejected under section 104(a)(4), be preceded by an effort to obtain filer compliance, notice that the report has been rejected and an opportunity to correct, thereby providing the administrator with an early opportunity to apprise the Department of possible extenuating circumstances which might affect the assessment of a penalty. Paragraph (f), therefore, is being adopted as proposed.

No comments were received on paragraph (g); accordingly, paragraph (g) is being adopted without modification.

5. *Service of Notices.* Proposed § 2560.502c–2(i) described the manner in which the notice of intent to assess a penalty, described in paragraph (c), and the notice of determination on a statement of reasonable cause, described in paragraph (g), will be served. Under paragraph (i) of the proposed regulation service of notice could be accomplished by: (1) delivering a copy to the administrator or representative; (2) leaving a copy at the principal office, place of business, or residence of the administrator or representative thereof; or (3) mailing a copy to the last known address of the administrator or representative thereof. One commentator expressed concern that mailing notice to the last known address may not in every case be adequate, because some sponsors, particularly smaller ones, are in businesses which tend to move frequently. In response to this comment, the Department has revised paragraph (i) by adding a new subparagraph relating to when service is deemed to occur. Specifically, new subparagraph (i)(2) provides that if service is accomplished by certified mail, service is complete upon mailing, and if done by regular mail, service is complete only upon receipt.

6. *Liability.* Proposed § 2560.502c–2(j) clarified the liability of the parties for penalties assessed under section 502(c)(2). Paragraph (1) provided that, if more than one person is responsible as administrator for the failure to file the annual report, all such persons shall be jointly and severally liable for such failure. Paragraph (2) provided that any person against whom a penalty is assessed under section 502(c)(2) is personally liable for the payment of such penalty. Paragraph (2) is intended to make clear that liability for the payment of penalties assessed under section 502(c)(2) is a personal liability of the person against whom the penalty is assessed and not a liability of the plan. Accordingly, as indicated in the supplementary information accompanying the proposal, the payment of penalties assessed under section 502(c)(2) from assets of a plan would not constitute a reasonable expense of administering the plan for purposes of ERISA sections 403 and 404.

No comments were received on paragraph (j); therefore, paragraph (j) is being adopted without modification.

7. *Effective Date.* Pursuant to section 9342(d)(1) of the Omnibus Budget Reconciliation Act of 1987, the civil penalty provisions of section 502(c)(2) apply with respect to reports required to be filed after December 31, 1987. As indicated in the supplementary information accompanying the proposal, the Department has interpreted this effective date provision to refer to annual reports required to be filed for plan years beginning after December 31, 1987, rather than the 1987 plan year annual reports filed in 1988. Accordingly, the proposal provided that the regulation would, upon adoption, be effective with respect to annual reports required to be filed for plan years beginning on or after January 1, 1988.

One commentator suggested that employers with fewer than 100 employees be afforded the opportunity to file annual reports without penalty until the first plan year beginning in 1989. As discussed above, the effective date of the 502(c)(2) civil sanctions was established by Congress under section 9342(d)(1) of OBRA 1987. Moreover, the Department believes that, with the enactment of the 502(c)(2) civil sanction provisions on December 22, 1987 and the Department's publication in the **Federal Register** of proposed regulations relating to the 502(c)(2) civil sanctions on October 17, 1988, the public has had an adequate opportunity to become aware of the new sanctions for noncompliance with the annual reporting requirements. For these reasons, the final regulations will, as proposed, be effective with respect to annual reports required to be filed for plan years beginning on or after January 1, 1988. The Department notes that, in general, annual reports for calendar year plans would be filed in July 1989.

Executive Order 12291 Statement

The Department has determined that this regulation does not constitute a "major rule" as that term is used in Executive Order 12291 because the action would not result in annual effect on the economy of $100 million; a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act Statement

This regulation does not have any significant impact on a substantial number of small entities, and contains no reporting and disclosure requirements. The primary purpose of the regulation is to clarify the manner in which penalties under section 502(c)(2) of ERISA will be assessed by the Department for a failure or refusal to file the annual report in accordance with the statutory and regulatory annual reporting requirements. In the cases where a deficient report is filed, plan administrators will be afforded the opportunity to correct the deficiencies prior to the assessment of any penalty. In addition, in all cases in which the Department intends to assess a penalty, the penalty may be waived, in whole or in part, upon a showing of reasonable cause for the failure to comply. In view of the potentially limited circumstances under which penalties might be assessed pursuant to this regulation, the Department believes that this regulation will not have a significant impact on small employee benefit plans or substantially affect small entities which provide services to such plans.

Paperwork Reduction Act

This regulation does not contain any new information collection requirements and does not modify any existing requirements. Thus, the regulation is not subject to section 3504(h) of the Paperwork Reduction Act, 44 U.S.C. 3504(h).

Statutory Authority

The regulation set forth herein is issued pursuant to the authority contained in section 502(c)(2) and 505 of ERISA (Pub. L. 93-406, 88 Stat. 892, 894; 29 U.S.C. 1132(c)(2), 1135).

List of Subjects in 29 CFR Part 2560

Claims, Employee benefit plans, Employee Retirement Income Security Act, Law enforcement, Pensions.

Final Rule

In view of the foregoing, Part 2560 of Chapter XXV of Title 29 of the Code of Federal Regulations is amended as follows:

PART 2560—[AMENDED]

1. By revising the authority citation for Part 2560 to read as set forth below:

Authority: Section 502(b)(2), 502(c)(2), 502(i) and 503 of ERISA, 29 U.S.C. 1132(b)(2), 1132(c)(2), 1132(i), 1133, 1134, 1022, and Secretary's Order 1-87, 52 FR 13139 (April 21, 1987).

2. By adding a new § 2560.502c-2 in the appropriate place to read as follows:

§ 2560.502c-2 Civil penalties under section 502(c)(2).

(a) *In general.* (1) Pursuant to the authority granted the Secretary under section 502(c)(2) of the Employee Retirement Income Security Act of 1974, as amended (the Act), the administrator (within the meaning of section 3(16)(A)) of an employee benefit plan (within the meaning of section 3(3) and § 2510.3-1, *et seq.*) for which an annual report is required to be filed under section 101(b)(4) shall be liable for civil penalties assessed by the Secretary under section 502(c)(2) of the Act in each case in which there is a failure or refusal to file the annual report required to be filed under section 101(b)(4).

(2) For purposes of this section, a failure or refusal to file the annual report required to be filed under section 101(b)(4) shall mean a failure or refusal to file, in whole or in part, that information described in section 103 and § 2520.103-1, et seq., on behalf of the plan at the time and in the manner prescribed therefor.

(b) *Amount assessed.* (1) The amount assessed under section 502(c)(2) shall be determined by the Department of Labor, taking into consideration the degree or willfulness of the failure to file the annual report. However, the amount assessed under section 502(c)(2) of the Act shall not exceed $1,000 a day, computed from the date of the administrator's failure or refusal to file the annual report and, except as provided in paragraph (b)(2) of this section, continuing up to the date on which an annual report satisfactory to the Secretary is filed.

(2) If upon receipt of a notice of intent to assess a penalty (as described in paragraph (c) of this section) the administrator files a statement of reasonable cause for the failure to file, in accordance with paragraph (e) of this section, a penalty shall not be assessed for any day from the date the Department serves the administrator with a copy of such notice until the day after the Department serves notice on the administrator of its determination on reasonable cause and its intention to assess a penalty (as described in paragraph (g) of this section).

(3) For purposes of this paragraph, the date on which the administrator failed or refused to file the annual report shall be the date on which the annual report was due (determined without regard to any extension for filing). An annual report which is rejected under section 104(a)(4) for a failure to provide material information shall be treated as a failure to file an annual report when a revised report satisfactory to the Department is not filed within 45 days of the date of the Department's notice of rejection.

A penalty shall not be assessed under section 502(c)(2) for any day earlier than the day after the date of an administrator's failure or refusal to file the annual report if a revised filing satisfactory to the Department is not submitted within 45 days of the date of the notice of rejection by the Department.

(c) *Notice of intent to assess a penalty.* Prior to the assessment of any penalty under section 502(c)(2), the Department shall provide to the administrator of the plan a written notice indicating the Department's intent to assess a penalty under section 502(c)(2), the amount of such penalty, the period to which the penalty applies, and the reason(s) for the penalty.

(d) *Waiver of assessed penalty.* The Department may waive all or part of the penalty to be assessed under section 502(c)(2) on a showing by the administrator that there was reasonable cause for the failure to file the annual report.

(e) *Showing of reasonable cause.* Upon issuance by the Department of a notice of intent to assess a penalty, the administrator shall have 30 days from the date of the service of notice, as described in paragraph (i) of this section, to file a statement of reasonable cause for the failure to file a complete annual report or why the penalty, as calculated, should not be assessed. A showing of reasonable cause must be made in the form of a written statement setting forth all the facts alleged as reasonable cause. The statement must contain a declaration by the administrator that the statement is made under the penalties of perjury.

(f) *Failure to file a statement of reasonable cause.* Failure of an administrator to file a statement of reasonable cause within the 30 day period described in paragraph (e) of this section shall be deemed to constitute a waiver of the right to appear and contest the facts alleged in the notice, and such failure shall be deemed an admission of the facts alleged in the notice for purposes of any proceeding involving the assessment of a civil penalty under section 502(c)(2). Such notice shall then become a final order of the Secretary, within the meaning of § 2570.61(g).

(g) *Notice of the determination on statement of reasonable cause.* (1) The Department, following a review of all the facts alleged in support of a complete or partial waiver of the penalty, shall notify the administrator, in writing, of its intention to waive the penalty, in whole or in part, and/or assess a penalty. If it is the intention of the Department to assess a penalty, the notice shall indicate the amount of the penalty, not to exceed the amount described in paragraph (c) of this section.

(2) Except as provided in paragraph (h) of this section, a notice issued pursuant to this paragraph indicating the Department's intention to assess a penalty shall become a final order, within the meaning of § 2570.61(g), 30 days after the date of service of the notice.

(h) *Administrative hearing.* A notice issued pursuant to paragraph (g) of this section will not become a final order, within the meaning of § 2570.61(g), if, within 30 days from the date of service of the notice, an answer, as defined in § 2570.61(c), is filed in accordance with § 2570.62.

(i) *Service of notice.* (1) Service of notice shall be made either:

(i) By delivering a copy to the administrator or representative thereof;

(ii) By leaving a copy at the principal office, place of business, or residence of the administrator or representative thereof; or

(iii) By mailing a copy to the last known address of the administrator or representative thereof.

(2) If service is accomplished by certified mail, service is complete upon mailing. If done by regular mail, service is complete upon receipt by the addressee.

(j) *Liability.* (1) If more than one person is responsible as administrator for the failure to file the annual report, all such persons shall be jointly and severally liable with respect to such failure.

(2) Any person against whom a civil penalty has been assessed under section 502(c)(2) pursuant to a final order, within the meaning of § 2570.61(g), shall be personally liable for the payment of such penalty.

(k) *Cross-reference.* See §§ 2570.60 through 71 of this chapter for procedural rules relating to administrative hearings under section 502(c)(2) of the Act.

Signed at Washington, DC this 13th day of June 1989.

David M. Walker,

Assistant Secretary for Pension and Welfare Benefits, U.S. Department of Labor.

[FR Doc. 89-14576 Filed 6-23-89; 8:45 am]

BILLING CODE 4510-29-M

29 CFR Part 2570

RIN 1210-AA34

Regulation Establishing Procedures for Administrative Hearings Under ERISA Section 502(c)(2)

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: This document contains a final regulation that sets forth certain procedures relating to hearings before an administrative law judge, and appeals, in connection with the assessment of civil penalties under section 502(c)(2) of the Employee Retirement Income Security Act of 1974 (ERISA, or the Act). Section 502(c)(2) of the Act authorizes the Secretary of Labor to assess a civil penalty of up to $1,000 a day against a plan administrator who fails or refuses to file the annual report of an employee benefit plan required to be filed under section 101(b)(4) of the Act. A separate document is also being published today containing a final regulation which describes the manner in which the Department will assess civil penalties under ERISA section 502(c)(2) and certain procedures for agency review.

EFFECTIVE DATE: The regulation is effective for purposes of establishing procedures relating to administrative hearings under section 502(c)(2) of the Act at any time on or after July 26, 1989.

FOR FURTHER INFORMATION CONTACT: David Lurie, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, (202) 523-8671, U.S. Department of Labor, Washington, DC 20210, or Vicki Schteir-Dunn, Plan Benefit Security Division, Office of the Solicitor, (202) 523-9596, U.S. Department of Labor, Washington, DC 20210.

SUPPLEMENTARY INFORMATION:

Background

Section 502(c)(2) provides that the Secretary may assess a civil penalty of up to a $1,000 a day from the date of a plan administrator's failure or refusal to file the annual report required to be filed under section 101(b)(4).[1] ERISA section 101(b)(4) requires the administrator of an employee benefit plan to file an annual report containing the information required by section 103. Section 103 and the Department's regulations thereunder (29 CFR 2520.103-1 et seq.) describe the content of the annual report.

Section 502(c)(2) also provides that an annual report that has been rejected under section 104(a)(4) for failure to provide material information shall not be treated as having been filed with the Secretary. ERISA section 104(a)(4) provides, in relevant part, that the Secretary may reject any filing upon determining that such filing is incomplete. Section 104(a)(5) describes various remedies available to the Secretary where a filing is rejected and a revised filing satisfactory to the Secretary is not submitted within 45 days.[2]

On October 17, 1988, the Department published a notice in the **Federal Register** (53 FR 40677) containing proposed regulations § 2570.60 et seq. describing procedures relating to hearings before an administrative law judge, and appeals, on assessment of penalties under ERISA section 502(c)(2). On the same date, the Department also published in the **Federal Register** (53 FR 40674) a proposed regulation (§ 2560.502c-2(a) et seq.) describing the manner in which the Department will assess civil penalties under ERISA section 502(c)(2) and certain procedures for agency review. As discussed in the supplementary information accompanying that publication, the Department believes that the section 502(c)(2) sanction is a valuable additional enforcement tool which is necessary to ensure compliance with ERISA's annual reporting requirements. In this regard, the adoption of these regulations (§ 2570.60 et seq.) are necessary for the effective implementation of its annual reporting enforcement program.[3]

The Department received no comment in response to its October 17, 1988 solicitation of comments on proposed regulations § 2570.60 et seq. Therefore, except for two minor clarifications discussed below, the final rules contained herein are being adopted as proposed.

As noted in the supplementary information accompanying the proposed regulations, the Department has published rules of practice and procedure for administrative hearings before the Office of Administrative Law Judges at 29 CFR Part 18, 48 FR 32538 (1983). The proposed regulations presented for comment several modifications to the rules set forth in 29 CFR Part 18. The proposed modifications were designed to maintain the maximum degree of uniformity with the rules set forth in 29 CFR Part 18, consistent with the rules set forth in 29 CFR Part 18, consistent with the special characteristics of proceedings under ERISA section 502(c)(2). The final rules published herein relate specifically to proceedings under ERISA section 502(c)(2) and are controlling to the extent they are inconsistent with any portion of 29 CFR Part 18.

The following discussion summarizes the specific modifications to the rules in 29 CFR Part 18 being adopted in the final rules contained in this notice and the clarifying changes made to the proposed regulations.

General

The applicability of the procedural rules of 29 CFR Part 18 under section 502(c)(2) is set forth in § 2570.60. In this regard, it should be noted that the procedural rules contained herein apply only to adjudicatory proceedings before ALJs of the U.S. Department of Labor. Regulation § 2560.502c-2, also being published today, sets forth the procedures relating to issuance by the Department of notices of intent to assess a penalty under ERISA section 502(c)(2), as well as procedures for agency review of statements of reasonable cause filed by persons against whom a penalty is assessed. Under the procedural rules contained in this regulation, an adjudicatory proceeding before an ALJ

[1] Section 502(c)(2) was added to ERISA by section 9342(c)(2) of the Omnibus Budget Reconciliation Act of 1987 (OBRA 1987, Pub. L. 100-203).

[2] Under section 104(a)(5), the Secretary may, in addition to engaging an independent qualified public accountant or an enrolled actuary, bring a civil action for appropriate legal or equitable relief or take any other action authorized by Title I of ERISA, e.g., the assessment of a civil penalty under section 502(c)(2).

[3] Section 9342(d)(2) of OBRA 1987 provides that the Secretary shall issue regulations necessary to carry out the 502(c)(2) civil penalty provisions.

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is commenced only when a person against whom the Department intends to assess a penalty under section 502(c)(2) files an answer to a notice of the agency's determination on a statement of reasonable cause. *See:* § 2570.61(c) and (d) below, and regulation § 2560.502c-2(h).

The definitional section (§ 2570.61) incorporates the basic adjudicatory principles set forth at 29 CFR Part 18, but includes terms and concepts of specific relevance to proceedings under ERISA section 502(c)(2). In this respect it differs from its more general counterpart at § 18.2 of this title. Section 2570.61 states that the term "Secretary" means the Secretary of Labor and includes various individuals to whom the Secretary may delegate authority. This definition is not intended to suggest any limitation on the authority which the Secretary has delegated to the Assistant Secretary for Pension and Welfare Benefits. By Order 1-87, 52 FR 13139 (April 21, 1987), the Secretary has delegated most of his authority to make final decisions to assess the penalty provided under section 502(c)(2) to the Assistant Secretary for Pension and Welfare Benefits. Thus, the Department contemplates that the duties assigned to the Secretary under the procedural regulation will in fact be discharged by the Assistant Secretary for Pension and Welfare Benefits.

The definitions set forth in § 2570.61 are being adopted as proposed, except that the definition of "pleading", at paragraph (m), has been modified to clarify that the notice referred to therein is the notice described in 29 CFR 2560.502c-2(g), i.e., the notice of a determination by the Department on an administrator's statement of reasonable cause. This clarification is intended to remove any ambiguities as to which notice constitutes a part of the pleading in an adjudicatory proceeding before an ALJ.

Proceedings Before Administrative Law Judges

In general, the burden to initiate adjudicatory proceedings before an ALJ will be on the party against whom the Department is seeking to assess a civil penalty under ERISA section 502(c)(2) (the respondent). However, a respondent must comply with the procedures relating to agency review set forth in regulation § 2560.502c-2 before initiating adjudicatory proceedings. In this regard, it should be noted that both the notice of intent to assess a penalty, as described in regulation § 2560.502c-2(c), and the notice of determination on a statement of reasonable cause, as described in regulation § 2560.502c-2(g), will be issued by PWBA, the agency responsible for administration and enforcement of section 502(c)(2), in accordance with the service of notice provisions described in § 2560.502c-2(i). Regulation § 2570.61 (c) and (d), together with regulation § 2560.502c-2(h), contemplate that adjudicatory proceedings will be initiated with the filing by a respondent of an answer to a notice of the agency's determination on a statement of reasonable cause described in § 2560.502c-2(g).

The service of documents by the parties to an adjudicatory proceeding, as well as by the ALJ, will be governed by regulation § 2570.62. Section 2570.62(c), regarding service of documents by an ALJ, has been corrected in the final regulation to delete the reference to "notices". Notices, for purposes of proceedings under ERISA section 502(c)(2), are issued only pursuant to subsections (c) and (g) § 2560.502c-2, not by an ALJ. The provisions governing service of notices are set forth in § 2560.502-2(i).

Section 2570.64 of the final regulations describes the consequences of default. That section provides that, if the respondent fails to file an answer to the Department's notice of determination, described in §2560.502c-2(g), within the 30-day period provided by § 2560.502c-2(h), such failure shall be deemed to constitute a waiver of the right to appear and contest the facts alleged in the notice and an admission of the facts alleged in the notice for purposes of any proceeding involving the assessment of a civil penalty under section 502(c)(2). Regulation § 2570.64 makes clear that, in the event of such a failure, the assessment of the penalty becomes final.

Section 2570.65 provides with respect to consent orders or settlements that the ALJ's decision shall include the terms and conditions of any consent order or settlement which has been agreed to by the parties. That section also provides that the decision of the ALJ which incorporates such consent order shall become final agency action within the meaning of 5 U.S.C. 704.

The rules in 29 CFR Part 18 concerning the computation of time, pleadings, prehearing conferences and statements, and settlements, are adopted in these procedures for adjudications under ERISA section 502(c)(2). The section on the designation of parties (§ 2570.63) differs from its counterpart under § 18.10 of this title in that it specifies that the respondent in these proceedings will, as indicated above, be the party against whom the Department seeks to assess a civil penalty under ERISA section 502(c)(2).

Section 2570.66 states that discovery may be ordered by the ALJ only upon a showing of good cause by the party seeking discovery. This differs from the more liberal standard for discovery contained in 29 CFR 18.14. In cases in which discovery is ordered by the ALJ, the order shall expressly limit the scope and terms of discovery to that for which good cause has been shown. To the extent that the order of the ALJ does not specify rules for the conduct of the discovery permitted by such order, the rules governing the conduct of discovery from 29 CFR Part 18 are to be applied in these proceedings under section 502(c)(2). For example, if the order of the ALJ states only that interrogatories on certain subjects may be permitted, the rules under 29 CFR Part 18 concerning the service and answering of such interrogatories shall apply. The procedures under 29 CFR Part 18 for the submission of facts to the ALJ during the hearing are also to be applied in proceedings under ERISA section 502(c)(2).

The section on summary decisions (§ 2570.67) provides the requisite authorization for an ALJ to issue a summary decision which may become final when there are no genuine issues of material fact in a case arising under ERISA section 502(c)(2). The section concerning the decision of the ALJ (§ 2570.68) differs from its counterpart at § 18.57 of this title in that it states that the decision of the ALJ in section 502(c)(2) case shall become the final decision of the Secretary unless a timely appeal is filed.

Appeals

The procedures for appeals of ALJ decisions under ERISA section 502(c)(2) are governed solely by the rules set forth in §§ 2570.69 through 2570.71, and without any reference to the appellate procedures contained in 29 CFR Part 18. Regulation § 2570.69 establishes the time limit within which such appeals must be filed, the manner in which the issues for appeal are determined, and the procedures for making the entire record before the ALJ available to the Secretary. Regulation § 2570.70 provides that review of the Secretary shall not be on a de novo basis, but rather on the basis of the record before the ALJ, and without an opportunity for oral argument. Regulation § 2570.71 sets forth the procedure for establishing a briefing schedule for such appeals, and states that the decision of the Secretary on such an appeal shall be final agency action within the meaning of 5 U.S.C. 704. As noted above, the authority of the Secretary with respect to the appellate procedures has been delegated to an Assistant Secretary for Pension and Welfare Benefits. As required by the Administrative Procedures Act (5 U.S.C. 552(a)(2)(A)) all final decisions of the Department under section 502(c)(2) of ERISA shall be compiled in the Public Documents Room of the Pension and Welfare Benefits Administration, Room N-5507, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Regulatory Flexibility Act

The Regulatory Flexibility Act imposes certain requirements with respect to rules which would have a significant impact on a substantial number of small entities. A "rule" under the Regulatory Flexibility Act is one for which a general notice of proposed rulemaking is required under section 553(b) of the Administrative Procedure Act. Under section 553(b) of the Administrative Procedure Act a general notice of proposed rulemaking is not required for rules of agency organization, procedure or practice. Thus, such rules are excluded from the definition of "rule" under the Regulatory Flexibility Act. Since this procedural regulation is a rule of agency procedure or practice it is thus not subject to the requirements of the Regulatory Flexibility Act.

Executive Order 12291

The Department has determined that the regulation does not constitute a "major rule" as that term is used in Executive Order 12291 because the action would not result in: an annual effect on the economy of $100 million; a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The Paperwork Reduction Act mandates that agencies provide data with respect to information collection requirements which may be imposed by certain regulatory action. Section 3518(c)(1)(B) of the Paperwork Reduction Act provides that the requirements of that Act do not apply to administrative actions involving specific individuals or entities. The Department has determined that the administrative adjudications which would be conducted pursuant to the procedures contained in this regulation fall within the scope of this exemption from the Paperwork Reduction Act.

Statutory Authority

The regulation is adopted pursuant to the authority contained in sections 502(c)(2) and 505 of ERISA (Pub. L. 93-406, 88 Stat. 892, 894; 29 U.S.C. 1132(c), 1135).

List of Subjects in 29 CFR Part 2570

Adminstrative practice and procedure, Employee benefit plans, Employee Retirement Income Security Act, Party in interest, Law enforcement, Pensions, Pension and Welfare Benefits Administration, Prohibited transactions.

Final Rule

In view of the foregoing the Department is amending Part 2570 of Chapter XXV of Title 29 of the Code of Federal Regulations as follows:

PART 2570—[AMENDED]

1. By revising the authority citation for Part 2570 to read as set forth below:

Authority: Section 502(c)(2), 502(i), and 505 of ERISA, 29 U.S.C. 1132(c)(2), 1132(i), 1135, and Secretary's Order 1-87, 52 FR 13139 (April 21, 1987).

2. By adding in the appropriate place in Part 2570 the following new Subpart C:

Subpart C—Procedures for the Assessment of Civil Penalties Under ERISA Section 502(c)(2)

Sec.

2570.60 Scope of rules.
2570.61 Definitions.
2570.62 Service: copies of documents and pleadings.
2570.63 Parties, how designated.
2570.64 Consequences of default.
2570.65 Consent order of settlement.
2570.66 Scope of discovery.
2570.67 Summary decision.
2570.68 Decision of the administrative law judge.
2570.69 Review by the Secretary.
2570.70 Scope of review.
2570.71 Procedures for review by the Secretary.

Subpart C—Procedures for the Assessment of Civil Penalties Under ERISA Section 502(c)(2)

§ 2570.60 Scope of rules.

The rules of practice set forth in this subpart are applicable to "502(c)(2) civil penalty proceedings" (as defined in § 2570.61(n) of this subpart) under section 502(c)(2) of the Employee Retirement Income Security Act of 1974. The rules of procedure for administrative hearings published by the Department's Office of Law Judges at Part 18 of this Title will apply to matters arising under ERISA section 502(c)(2) except as modified by this section. These proceedings shall be conducted as expeditiously as possible, and the parties shall make every effort to avoid delay at each stage of the proceedings.

§ 2570.61 Definitions.

For 502(c)(2) civil penalty proceedings, this section shall apply in lieu of the definitions in § 18.2 of this title:

(a) "Adjudicatory proceeding" means a judicial-type proceeding before an administrative law judge leading to the formulation of a final order;

(b) "Administrative law ludge" means an administrative law judge appointed pursuant to the provisions of 5 U.S.C. 3105;

(c) "Answer" is defined for these proceedings as set forth in § 18.5(d)(1) of this title;

(d) "Commencement of proceeding" is the filing of an answer by the respondent;

(e) "Consent agreement" means any written document containing a specified proposed remedy or other relief acceptable to the Department and consenting parties;

(f) "ERISA" means the Employee Retirement Income Security Act of 1974, as amended;

(g) "Final Order" means the final decision or action of the Department of Labor concerning the assessment of a civil penalty under ERISA section 502(c)(2) against a particular party. Such final order may result from a decision of an administrative law judge or the Secretary, the failure of a party to file a statement of reasonable cause described in § 2560.502c-2(e) within the prescribed time limits, or the failure of a party to invoke the procedures for hearings or appeals under this title within the prescribed time limits. Such a final order shall constitute final agency action within the meaning of 5 U.S.C. 704;

(h) "Hearing" means that part of a proceeding which involves the submission of evidence, either by oral presentation or written submission, to the administrative law judge;

(i) "Order" means the whole or any part of a final procedural or substantive disposition of a matter under ERISA section 502(c)(2);

(j) "Party" includes a person or agency named or admitted as a party to a proceeding;

(k) "Person" includes an individual, partnership, corporation, employee benefit plan, association, exchange or other entity or organization;

(l) "Petition" means a written request, made by a a person or party, for some affirmative action;

(m) "Pleading" means the notice as defined in § 2560.502c-2(g), the answer to the notice, any supplement or amendment thereto, and any reply that may be permitted to any answer, supplement or amendment;

(n) "502(c)(2) civil penalty proceeding" means an adjudicatory proceeding relating to the assessment of a civil penalty provided for in section 502(c)(2) of ERISA;

(o) "Respondent" means the party against whom the Department is seeking to assess a civil sanction under ERISA section 502(c)(2);

(p) "Secretary" means the Secretary of Labor and includes, pursuant to any delegation of authority by the Secretary, any assistant secretary (including the Assistant Secretary for Pension and Welfare Benefits), administrator, commissioner, appellate body, board, or other official; and

(q) "Solicitor" means the Solicitor of Labor or his or her delegate.

§ 2570.62 Service: Copies of documents and pleadings.

For 502(c)(2) penalty proceedings, this section shall apply in lieu of § 18.3 of this title.

(a) *General.* Copies of all documents shall be served on all parties of record. All documents should clearly designate the docket number, if any, and short title of all matters. All documents to be filed shall be delivered or mailed to the Chief Docket Clerk, Office of Administrative Law Judges, Suite 700, 1111 Twentieth Street, NW., Washington, DC 20036, or to the OALJ Regional Office to which the proceeding may have been transferred for hearing. Each document filed shall be clear and legible.

(b) *By parties.* All motions petitions, pleadings, briefs, or other documents shall be filed with the Office of Administrative Law Judges with a copy, including any attachments, to all other parties or record. When a party is represented by an attorney, service shall be made upon the attorney. Service of any document upon any party may be made by personal delivery or by mailing a copy to the last known address. The Department shall be served by delivery to the Associate Solicitor, Plan Benefits Security Division, ERISA section 502(c)(2) Proceeding, P.O. Box 1914, Washington, DC 20013. The person serving the document shall certify to the manner and date of service.

(c) *By the Office of Administrative Law Judges.* Service of orders, decisions and all other documents shall be made by regular mail to the last known address.

(d) *Form of pleadings.* (1) Every pleading shall contain information indicating the name of the Pension and Welfare Benefits Administration (PWBA) as the agency under which the proceeding is instituted, the title of the proceeding, the docket number (if any) assigned by the Office of Administrative Law Judges and a designation of the type of pleading or paper (e.g., notice, motion to dismiss, etc.). The pleading or paper shall be signed and shall contain the address and telephone number of the party or person representing the party. Although there are no formal specifications for documents, they should be typewritten when possible on standard size 8½ x 11 inch paper.

(2) Illegible documents, whether handwritten, typewritten, photocopies, or otherwise, will not be accepted. Papers may be reproduced by any duplicating process provided all copies are clear and legible.

§ 2570.63 Parties, how designated.

For 502(c)(2) civil penalty proceedings, this section shall apply in lieu of § 18.10 of this title.

(a) The term "party" wherever used in these rules shall include any natural person, corporation, employee benefit plan, association, firm, partnership, trustee, receiver, agency, public or private organization, or government agency. A party against whom a civil penalty is sought shall be designated as "respondent." The Department shall be designated as the "complainant."

(b) Other persons or organizations shall be permitted to participate as parties only if the administrative law judge finds that the final decision could directly and adversely affect them or the class they represent, that they may contribute materially to the disposition of the proceedings and their interest is not adequately represented by existing parties, and that in the discretion of the administrative law judge the participation of such persons or organizations would be appropriate.

(c) A person or organization not named as a respondent wishing to participate as a party under this section shall submit a petition to the administrative law judge within fifteen (15) days after the person or organization has knowledge of or should have known about the proceeding. The petition shall be filed with the administrative law judge and served on each person or organization who has been made a party at the time of filing. Such petition shall concisely state:

(1) Petitioner's interest in the proceeding;

(2) How his or her participation as a party will contribute materially to the disposition of the proceeding;

(3) Who will appear for petitioner;

(4) The issues on which petitioner wishes to participate; and

(5) Whether petitioner intends to present witnesses.

(d) Objections to the petition may be filed by a party within fifteen (15) days of the filing of the petition. If objections to the petition are filed, the administrative law judge shall then determine whether petitioners have the requisite interest to be a party in the proceedings, as defined in paragraph (b) of this section, and shall permit or deny participation accordingly. Where petitions to participate as parties are made by individuals or groups with common interests, the administrative law judge may request all such petitioners to designate a single representative, or he or she may recognize one or more of such petitioners. The administrative law judge shall give each such petitioner as well as the parties, written notice of the decision on his or her petition. For each petition granted, the administrative law judge shall provide a brief statement of the basis of the decision. If the petition is denied, he or she shall briefly state the grounds for denial and shall then treat the petition as a request for participation as amicus curiae.

§ 2570.64 Consequences of default.

For 502(c)(2) civil penalty proceedings, this section shall apply in lieu of § 18.5 (a) and (b) of this title. Failure of the respondent to file an answer to the notice of determination described in § 2560.502c-2(g) within the 30-day period provided by § 2560.502c-2(h) shall be deemed to constitute a waiver of his or her right to appear and contest the allegations of the notice of determination, and such failure shall be deemed to be an admission of the facts as alleged in the notice for purposes of any proceeding involving the assessment of a civil penalty under section 502(c)(2). Such notice shall then become the final order of the Secretary.

§ 2570.65 Consent order or settlement.

For 502(c)(2) civil penalty proceedings, the following shall apply in lieu of § 18.9 of this title.

(a) *General.* At any time after the commencement of a proceeding, but at least five (5) days prior to the date set for hearing, the parties jointly may move to defer the hearing for a reasonable time to permit negotiation of a settlement or an agreement containing findings and an order disposing of the whole or any part of the proceeding. The allowance of such and the duration thereof shall be in the discretion of the administrative law judge, after consideration of such factors as the nature of the proceeding, the requirements of the public interest, the representations of the parties and the probability of reaching an agreement which will result in a just disposition of the issues involved.

(b) *Content.* Any agreement containing consent findings and an order disposing of a proceeding or any part thereof shall also provide:

(1) That the order shall have the same force and effect as an order made after full hearing;

(2) That the entire record on which any order may be based shall consist solely of the notice and the agreement;

(3) A waiver of any further procedural steps before the administrative law judge;

(4) A waiver of any right to challenge or contest the validity of the order and decision entered into in accordance with the agreement; and

(5) That the order and decision of the administrative law judge shall be final agency action.

(c) *Submission.* On or before the expiration of the time granted for negotiations, but, in any case, at least five (5) days prior to the date set for hearing, the parties or their authorized representative or their counsel may:

(1) Submit the proposed agreement containing consent findings and an order to the administrative law judge; or

(2) Notify the administrative law judge that the parties have reached a full settlement and have agreed to dismissal of the action subject to compliance with the terms of the settlement; or

(3) Inform the administrative law judge that agreement cannot be reached.

(d) *Disposition.* In the event a settlement agreement containing consent findings and an order is submitted within the time allowed therefore, the administrative law judge shall issue a decision incorporating such findings and agreement within thirty (30) days of his receipt of such document. The decision of the administrative law judge shall incorporate all of the findings, terms, and conditions of the settlement agreement and consent order of the parties. Such decision shall become final agency action within the meaning of 5 U.S.C. 704.

(e) *Settlement without consent of all parties.* In cases in which some, but not all, of the parties to a proceeding submit a consent agreement to the administrative law judge, the following procedure shall apply:

(1) If all of the parties have not consented to the proposed settlement submitted to the administrative law judge, then such non-consenting parties must receive notice, and a copy, of the proposed settlement at the time it is submitted to the administrative law judge;

(2) Any non-consenting party shall have fifteen (15) days to file any objections to the proposed settlement with the administrative law judge and all other parties;

(3) If any party submits an objection to the proposed settlement, the administrative law judge shall decide within thirty (30) days after receipt of such objections whether he shall sign or reject the proposed settlement. Where the record lacks substantial evidence upon which to base a decision or there is a genuine issue of material fact, then the administrative law judge may establish procedures for the purpose of receiving additional evidence upon which a decision on the contested issues may reasonably be based;

(4) If there are no objections to the proposed settlement, or if the administrative law judge decides to sign the proposed settlement after reviewing any such objections, the administrative law judge shall incorporate the consent agreement into a decision meeting the requirements of paragraph (d) of this section.

§ 2570.66 Scope of discovery.

For 502(c)(2) civil penalty proceedings, this section shall apply in lieu of § 18.14 of this title.

(a) A party may file a motion to conduct discovery with the administrative law judge. The motion for discovery shall be granted by the administrative law judge only upon a showing of good cause. In order to establish "good cause" for the purposes of this section, a party must show that the discovery requested relates to a genuine issue as to a material fact that is relevant to the proceeding. The order of the administrative law judge shall expressly limit the scope and terms of discovery to that for which "good cause" has been shown, as provided in this paragraph.

(b) A party may obtain discovery of documents and tangible things otherwise discoverable under paragraph (a) of this section and prepared in anticipation of or for the hearing by or for another party's representative (including his or her attorney, consultant, surety, indemnitor, insurer, or agent) only upon showing that the party seeking discovery has substantial need of the materials or information in the preparation of his or her case and that he or she is unable without undue hardship to obtain the substantial equivalent of the materials or information by other means. In ordering discovery of such materials when the required showing has been made, the administrative law judge shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representatives of a party concerning the proceeding.

§ 2570.67 Summary decision.

For 502(c)(2) civil penalty proceedings, this section shall apply in lieu of § 18.41 of this title.

(a) *No genuine issue of material of fact.* (1) Where no issue of a material of fact is found to have been raised, the administrative law judge may issue a decision which, in the absence of an appeal pursuant to §§ 2570.69 through 71 of this subpart, shall become a final order.

(2) A decision made under this paragraph shall include a statement of:

(i) Findings of fact and conclusions of law, and the reasons therefor, on all issues presented; and

(ii) Any terms and conditions of the rule or order.

(3) A copy of any decision under this paragraph shall be served on each party.

(b) *Hearings on issues of fact.* Where a genuine question of material of fact is raised, the administrative law judge shall, and in any other case may, set the case for an evidentiary hearing.

§ 2570.68 Decision of the administrative law judge.

For 502(c)(2) civil penalty proceedings, this section shall apply in lieu of § 18.57 of this title.

(a) *Proposed findings of fact, conclusions, and order.* Within twenty (20) days of the filing of the transcript of the testimony of such additional time as the administrative law judge may allow, each party may file with the administrative law judge, subject to the judge's discretion, proposed findings of fact, conclusions of law, and order together with a supporting brief expressing the reasons for such proposals. Such proposals and briefs shall be served on all parties, and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.

(b) *Decision of the administative law judge.* Within a reasonable time after the time allowed for the filing of the proposed findings of fact, conclusions of law, and order, or within thirty (30) days after receipt of an agreement containing

consent findings and order disposing of the disputed matter in whole, the administrative law judge shall make his or her decision. The decision of the administrative law judge shall include findings of fact and conclusions of law with reasons therefor upon each material issue of fact or law presented on the record. The decision of the administrative law judge shall be based upon the whole record. In a contested case in which the Department and the Respondent have presented their positions to the administrative law judge pursuant to the procedures for 502(c)(2) civil penalty proceedings as set forth in this subpart, the penalty (if any) which may be included in the decision of the administrative law judge shall be limited to the penalty expressly provided for in section 502(c)(2) of ERISA. It shall be supported by reliable and probative evidence. The decision of the administrative law judge shall become final agency action within the meaning of 5 U.S.C. 704 unless an appeal is made pursuant to the procedures set forth in §§ 2570.69 through 2570.71.

§ 2570.69 Review by the Secretary.

(a) The Secretary may review a decision of an administrative law judge. Such a review may occur only when a party files a notice of appeal from a decision of an administrative law judge within twenty (20) days of the issuance of such decision. In all other cases, the decision of the administrative law judge shall become final agency action within the meaning of 5 U.S.C. 704.

(b) A notice of appeal to the Secretary shall state with specificity the issue(s) in the decision of the administrative law judge on which the party is seeking review. Such notice of appeal must be served on all parties of record.

(c) Upon receipt of a notice of appeal, the Secretary shall request the Chief Administrative Law Judge to submit to him or her a copy of the entire record before the administrative law judge.

§ 2570.70 Scope of review.

The review of the Secretary shall not be *de novo* proceeding but rather a review of the record established before the administrative law judge. There shall be no opportunity for oral argument.

§ 2570.71 Procedures for review by the Secretary.

(a) Upon receipt of the notice of appeal, the Secretary shall establish a briefing schedule which shall be served on all parties of record. Upon motion of one or more of the parties, the Secretary may, in his or her discretion, permit the submission of reply briefs.

(b) The Secretary shall issue a decision as promptly as possible after receipt of the briefs of the parties. The Secretary may affirm, modify, or set aside, in whole or in part, the decision on appeal and shall issue a statement of reasons and bases for the action(s) taken. Such decision by the Secretary shall be final agency action within the meaning of 5 U.S.C. 704.

Signed at Washington, DC this 13th day of June, 1989.

David M. Walker,

Assistant Secretary for Pension and Welfare Benefits, U.S. Department of Labor.

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Monday
June 26, 1989

Part III

Department of Justice

Office of Justice Programs

Draft Report on Systems for Identifying Felons Who Attempt To Purchase Firearms; Notice and Request for Comment

DEPARTMENT OF JUSTICE

Office of Justice Programs

Draft Report on Systems for Identifying Felons Who Attempt To Purchase Firearms; Notice and Request for Comment

AGENCY: Office of Justice Programs, Justice.

ACTION: Request for public comment.

SUMMARY: The Office of Justice Programs is publishing for public comment, a Draft Report on Systems for Identifying Felons Who Attempt To Purchase Firearms. This report was prepared by the Task Force on Felon Identification in Firearm Sales.

The Anti-Drug Abuse Act of 1988 (Pub. L. 100-690, section 6213, 102 Stat. 4360) directs the Attorney General to develop a system for immediate and accurate identification of felons who attempt to purchase one or more firearms but are ineligible to purchase firearms by reason of section 922(g)(1) of title 18, United States Code. The system is to be accessible to dealers, but only for the purpose of determining whether a potential purchaser is a convicted felon. The Attorney General is directed to establish a plan (including a cost analysis of the proposed system) for implementation of the system. In developing the system, the Attorney General is required to consult with the Secretary of the Treasury, other Federal, State and local law enforcement officials with expertise in the area, and other experts. The Attorney General further is directed to begin implementation of the system 30 days after a report to the Congress, which is due no later than Nov. 18, 1989.

This report to Congress shall describe the system above referred to, together with a plan (including a cost analysis of the proposed system) for implementation of the system. The report may include, if appropriate, recommendations for modifications of the system and legislation necessary in order to fully implement the system.

Further, the Attorney General, in consultation with the Secretary of the Treasury, is directed to conduct a study to determine if an effective method is available for immediate and accurate identification of other persons who attempt to purchase one or more firearms, but are ineligible to do so by reason of section 922(g) of title 18, United States Code. In conducting the study the Attorney General is required to consult with the Secretary of the Treasury, other Federal, State and local law enforcement officials with expertise in the area, and other experts. Such study is to be completed by May 18, 1990. This report is to be submitted to the Congress and made available to the public. Such study may include, if appropriate, recommendations for legislation. The following draft report does not address this latter subject.

DATE: Interested persons are invited to submit written comments on or before July 26, 1989. It is requested that such comments be keyed to the Table of Contents which appears immediately following the Foreword.

ADDRESSES: Comments may be mailed to Office of the Assistant Attorney General, Office of Justice Programs, Department of Justice, Room 1290, 633 Indiana Avenue NW., Washington, DC 20531. Attention: Walter W. Barbee, Esq.

FOR FURTHER INFORMATION CONTACT: Walter W. Barbee, Esq., Room 1290, 633 Indiana Avenue NW., Washington, DC 20531. Telephone (202) 724-7788.

Draft Report on Systems for Identifying Felons Who Attempt to Purchase Firearms

June 1989.

Task Force on Felon Identification in Firearm Sales

Assistant Attorney General, Office of Justice Programs, Chairman,
Bureau of Alcohol, Tobacco and Firearms, Bureau of Justice Assistance, Bureau of Justice Statistics, Federal Bureau of Investigation, Immigration and Naturalization Service, National Institute of Justice, U.S. Marshals Service.

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Foreword

The Attorney General is required under Section 6213 of the Anti-Drug Abuse Act of 1988 to report to Congress by 18 November 1989 on a system for the immediate and accurate identification of felons who attempt to purchase firearms. Pursuant to this mandate, the Attorney General requested that the Assistant Attorney General for the Office of Justice Programs (OJP) establish a Task Force on Felon Identification in Firearm Sales to develop a range of options that would comport with the statute.

After preliminary research by components of the Departments of Justice and Treasury, the Task Force held its first meeting on 14 March. I cannot overstate my appreciation for the superlative efforts of all of the Task Force representatives, especially the staff of OJP's Bureau of Justice Statistics (BJS), which coordinated production of this Report. Under the direction of Dr. Joseph M. Bessette, BJS staff invested considerable talent and expertise, and many evenings and weekends, to produce this document.

The goal of the Task Force was to identify the entire range of issues that ought to be considered before implementing a felon identification system. Although this Report reflects an extensive and thoughtful review, it is important that the views of other Federal, State, and local officials, along with non-government experts, be taken into account before adopting any particular system. While the Task Force has addressed many difficult and complex issues raised during the course of our study, we would be most grateful for any comments on this Report or suggestions for new avenues to consider.

President Bush is determined to close loopholes that "allow deadly weapons to fall into deadly hands." Although an effective felon identification system will contribute toward achieving this goal, the President has proposed a more comprehensive approach, including enhanced penalties for crimes committed with firearms. The President has further recognized that one barrier to an immediate and accurate felon identification system, as noted in this Report, is incompleteness in criminal history reporting. The President has called upon the Federal, State, and local governments to provide timely and accurate reporting of arrest and disposition records. Such a reform would have benefits for a wide range of criminal justice applications.

In Section 6213 of the Anti-Drug Abuse Act, known as the "McCollum Amendment," Congress has similarly recognized the need to develop improved mechanisms to enforce current laws that prohibit felons from obtaining firearms. Recent developments in computerized criminal history information systems and improvements in Automated Fingerprint Identification Systems (AFIS) make possible the immediate identification of felons. The goal of immediately identifying felons in the gun shop will be increasingly feasible as the advance of technology continues at its remarkable pace. It is not the existence of the technology, but rather its costs, the need for trained personnel, and the incompleteness of criminal history records that present the greatest impediments to implementing such systems.

The Task Force does not in this Report make recommendations or reach conclusions. We are keenly aware of the significant concerns about protecting the privacy interests of all citizens, as well as enhancing the ability of law enforcement authorities to protect society from the criminal element. In addition, we recognize that those who select among the options must be mindful of preserving what Attorney General Thornburgh has called the "historic and honorable firearms tradition in this country."

The options contained in this Report fall into two basic categories: those where identification of felons is made at the point of sale versus those involving a pre-approval procedure. Reliability would be greater with prior approval if fingerprint checks are conducted requiring 4-6 weeks. The basic prior approval system, however, is considerably more expensive than the basic point-of-sale system—perhaps two to three times as costly—and raises other significant policy issues as well. It is clear to the Task Force, however, that considerably shorter waiting periods (7 days has been commonly suggested) do not significantly enhance reliability over point-of-sale systems.

The Report discusses options that range from lower-cost systems that minimize the burden placed on firearm purchasers to extremely costly systems that rely upon technology just now becoming available and that raise issues of the type involved in a national identification system. The most elaborate options presented in this report may cost up to $10 billion or more. But less exotic schemes, albeit less than perfect alternatives, are also presented for consideration. They could be implemented in the near term at substantially less cost.

In assessing this Report, it is important to note that there could be shortcomings in any felon identification system. In a 1984 study for the Department of Justice, it was determined that about five-sixths of convicted offenders in State prisons who admitted to ownership of firearms claimed to have acquired their weapons from sources other than a retail outlet. Through the use of "straw men" who lack a criminal record, and therefore may be eligible to purchase firearms, some felons are able to obtain the tools of their deadly trade. In addition, there is an active "black market" in firearms. Consequently, one major effect of a felon identification system may be to discourage felons from direct purchase and to encourage their use of alternative means to obtain prohibited weapons.

Although many of the options may be subject to intense public policy debate, the Task Force has attempted to remain assiduously neutral in preparing a complete and fair description of various alternatives. Each option presented is meant to be flexible and adaptable to numerous modifications. If this objective has been achieved, then the Report can serve as a skeleton onto which decisionmakers may add the details necessary to produce a viable felon identification system. Such a system must preserve legitimate rights to privacy and firearms ownership, while at the same time enhancing the ability of law enforcement to carry out its responsibility to maintain the domestic peace.

Richard B. Abell (Task Force Chairman),
Assistant Attorney General, Office of Justice Programs.
Charles A. Lauer,
General Counsel.

Acknowledgments

The following individuals served as Task Force members for their agencies: Richard B. Abell, Joseph M. Bessette, Joseph P. Briggs, Edward D. Conroy, Jack D. Kravitz, John B. Pickett, Charles P. Smith, Clifford J. White, and Lawrence York.

The Task Force gratefully acknowledges the following staff for their vital contribution to its deliberations and to the preparation of this report: Bureau of Justice Statistics—S.S. Ashton, Jr., Allen Beck, Lawrence Greenfeld, John Jones, Carol Kaplan, Norma Mancini, Brian Reaves, Benjamin Renshaw, and Bernard Shipley; Bureau of Alcohol, Tobacco and Firearms—Richard Cook and Charles R. Demski; Federal Bureau of Investigation—William H. Garvie, Walter F. Johanningsmeier, James Hoffman, and David T. Mitchell.

The Task Force would also like to thank the members of the "working group" established by the Department of Justice Research and Development Review Board and chaired by the Bureau of Alcohol, Tobacco and Firearms for their preliminary study of this issue prior to the establishment of the Task Force.

The Task Force expresses appreciation to the numerous State and local officials who provided information on current State practices regarding firearm sales in their States, especially William C. Corley, North Carolina; Paul E. Leuba, Maryland; and Lt. R.L. Vass, Virginia. Appreciation is also extended to Robert Belair and Robert Marx of SEARCH Group, Inc. and Thomas Orsagh of Fisher-Orsagh Associates,

Inc. for their studies which provided technical and policy-relevant information critical to the work of the Task Force.

Finally, the Task Force would like to express appreciation for the assistance provided by the publications unit of the Bureau of Justice Statistics—Marilyn Marbrook, Yvonne Shields, and Marianne Zawitz, with the additional services of Jeanne Harris.

I. Introduction and Summary of Findings

The Anti-Drug Abuse Act of 1988 (Section 6213(a) of Public Law 100-690, November 18, 1988) requires the Attorney General, in consultation with the Secretary of the Treasury and other Federal, State, and local law enforcement officials, to "develop a system for immediate and accurate identification of felons who attempt to purchase one or more firearms but are ineligible to purchase firearms by reason of section 922(g)(1) of Title 18, United States Code." The Attorney General is further required to make a report to Congress describing such a system no later than 1 year after passage of the Act (November 18, 1989) and to begin implementation of the system 30 days later (December 18, 1989). Finally, the Attorney General is required to conduct a study to determine whether an effective method can be designed to identify other persons prohibited by Federal law from purchasing firearms (Section 6213(c)). Such persons include fugitives from justice, those who use or are addicted to illegal drugs, those who have been adjudicated as mentally defective or have been committed to any mental institution, illegal aliens, those dishonorably discharged from the Armed Forces, and those who have renounced their American citizenship. This second study must be submitted to Congress by May 18, 1990.

This report represents the completion of the first phase of the task to design a system for identifying felons who attempt to purchase firearms. Its purpose is to describe a variety of possible options for such a system. It details the essential elements of each option; cost estimates; the impact of the system on firearm dealers and on local, State, and Federal law enforcement agencies; the strengths and weaknesses of each option; and associated legal and policy issues. The options are organized into two basic types: those that involve some kind of immediate verification at the gun shop of the prospective purchaser's eligibility, and those that require some kind of prior approval process and documentation of the purchaser's eligibility. Within each of these categories the options are arrayed from the lower-cost alternatives to higher-technology, more expensive options.

This report does not address the issue of identifying other persons, besides felons, who are ineligible under Federal law from purchasing firearms. The Task Force decided that this parallel activity ought to be initiated by a private contractor with expertise in criminal justice and information systems. The Bureau of Justice Statistics on behalf of the Task Force has issued a Request For Proposals for such a study. Applications are currently under review.

A. Scope of the Problem

The Bureau of Alcohol, Tobacco and Firearms (BATF) of the Department of the Treasury estimates that approximately 7.5 million new and used firearms are sold at the retail level each year in the United States through 270,000 Federally licensed firearm dealers.

Currently, those who purchase firearms are required to fill out BATF form 4473 at the dealership attesting that they do not fit into any of the categories of persons ineligible to purchase firearms. These forms include identifying information for the purchaser as well as the type and serial number of any firearms purchased. The forms are kept by the dealer and are subject to inspection later by BATF officials. They may be examined, for example, to try to track down the purchaser of a firearm left at the scene of a crime.

At this time there is no Federal requirement for any checking of the eligibility of the purchaser, either before or after the purchase. The dealer relies solely on the purchaser's signature attesting to his eligibility. False statements by the purchaser on the BATF form are a Federal felony punishable by a prison term of up to 5 years.

Although the Federal government does not require a criminal history or any other kind of check of firearm purchasers, the States are free to impose their own requirements. Currently 20 States and the District of Columbia (covering 55% of the Nation's population) stipulate that a pre-purchase criminal history check be made of anyone who wishes to buy a handgun. Four of these States and D.C. include the purchase of long guns in this requirement. These checks are done during a waiting period that ranges from 2 days to 6 months. Two States without waiting periods do a criminal history check only after the purchase is made. Twenty-eight States currently require no criminal history check for firearm purchases.

Any system for identifying felons who attempt to purchase firearms must confront two distinct issues of scope. One is the large number of firearm sales in this country. The estimated annual total of 7.5 million retail sales is equivalent to a daily average of more than 20,000 sales, assuming a 7-day business week. Since many stores are likely to be closed on Sundays and to be busier on Saturdays than mid-week, it is likely that on peak days as many as 30,000 or more firearms are sold. During hunting season peak-day sales may reach 50,000 firearms. Any new system for identifying felons must be capable of handling this heavy volume. Second, such a system must involve either the participation or cooperation (depending on the system) of 270,000 licensed firearms dealers. Although precise figures do not exist, it is estimated by the BATF that 60–70% of these dealers are not gun stores as such, but rather individuals who collect and deal in guns on a small scale (hobbyists, collectors, etc.). These small-scale dealers account for an estimated 20–25% of all firearm sales. Any system that placed special demands on gun dealers in terms of capital expenditures, training, or personnel resources would pose a particular problem for these small-scale operations. Other problems may arise in attempting to identify felons who purchase firearms during gun shows or in other ways outside of normal retail outlets.

B. Key Elements of a Felon Identification System

There are three key elements of the felon identification system mandated in Section 6213 of the Anti-Drug Abuse Act of 1988: (1) the definition of felon, (2) the meaning of "immediate," and (3) the level of accuracy required.

Definition of felon. Section 6213(a) relies on the definition of felon previously specified in the Gun Control Act of 1968 (with subsequent amendments). This definition includes those convicted of a "crime punishable by imprisonment for a term exceeding one year," but excludes (1) certain specified Federal or State offenses relating to the regulation of business practices and (2) any offense classified by the State as a misdemeanor and punishable by a term of imprisonment not exceeding 2 years. Also excluded are those whose conviction has been expunged or set aside and those who have been pardoned or who had their civil rights restored.

This definition presents certain problems for any system that would

access automated criminal history records as part of a clearance process:

First, automated conviction records do not show how long a person could have been sentenced. Approximately one-third of those convicted of felonies in State courts receive no incarceration sentence. Another fifth receive a sentence to a local jail, usually for less than 1 year. In these cases the automated conviction and sentencing records often will not show whether the conviction could have resulted in a sentence of more than 1 year and therefore whether the offense met the Federal definition of a felony.

Second, the offense identifiers contained in automated conviction records may not precisely show whether the offense is one of the business related crimes exempted from the Gun Control Act.

Third, automated criminal history records may not accurately show whether a conviction offense is a misdemeanor punishable by no more than 2 years of incarceration, also exempted from the Gun Control Act.

Finally, automated criminal history records often do not show whether a conviction has been set aside or led to an eventual pardon or the restoration of civil rights.

Immediate. The Anti-Drug Abuse Act does not define "immediate" with relation to the mandated felon identification system. In the absence of such a definition the Task Force has considered options that would meet the immediacy test in two distinct ways. One is a system that would involve on-site inquiries by gun dealers (by telephone, for example) to determine eligibility at the time of purchase with response times of one to several minutes. The other is a system involving a pre-approval mechanism whereby a prospective gun purchaser would apply for documentation (such as a license, permit, or identification card) authorizing him to purchase firearms and then use that documentation each time he makes a purchase. In such a system the application process would take approximately 4–6 weeks. Once the documentation was issued, however, the purchaser could buy a firearm without additional delay at the time of sale.

Accurate. Although the Anti-Drug Abuse Act mandates the "accurate identification of felons," it does not specify the level of accuracy that would be acceptable. Accurately determining who is a convicted felon involves two issues. First is the identification of the person attempting to purchase a firearm. Although standard identification documents such as driver's licenses and credit cards are regularly used in commercial and banking transactions, these are not definitive evidence of the identity of the bearer. Such documents may be altered or counterfeited or may be originally obtained with false information. Because identification documents cannot absolutely prove identity, "biometric" information (physical evidence such as fingerprints, retinal scans, DNA, etc.) is often used to establish positive identity for various purposes. New technologies, such as automated fingerprint identification systems (AFIS), have dramatically increased the speed and efficiency of using biometric information to establish identity. This report explores the possibility of using biometric information and biometric technologies to identify accurately convicted felons who attempt to purchase firearms.

The second issue regarding the accurate identification of convicted felons is the quality of the criminal history data bases that would have to be accessed to verify that a firearm purchaser was not a felon. A perfectly accurate criminal history data base would be up-to-date (new arrests, convictions, etc. would be entered promptly), complete (all official transactions would be entered), and devoid of any inaccurate data that might, for example, show a conviction in a case that resulted in acquittal or dismissal. The issue of accuracy and completeness of criminal history data bases is addressed in greater detail below.

C. The Quality of Felony Conviction Data

As discussed above, the congressional mandate to establish a felon identification system for firearm sales requires identifying those who have been convicted of a Federal or State offense punishable by imprisonment for more than 1 year (with certain exceptions). How accurate and complete are conviction records? To answer this question requires an examination of where and how criminal history records are maintained.

Criminal history data are maintained in either manual or automated form at three different levels of government: (1) operational law enforcement or criminal justice agencies such as police, prosecutors, and courts; (2) centralized State criminal history repositories (often run by the State police); and (3) the Federal Bureau of Investigation (FBI).

Within the States the criminal history repositories are responsible for maintaining complete and accurate information of official criminal justice transactions. Such transactions include arrests for serious crimes, decisions not to prosecute, court dismissals, convictions and acquittals, admissions to and releases from local jails and State prisons, and entries to and exits from probation and parole. A 1984 survey of State criminal history repositories conducted for the Bureau of Justice Statistics revealed that more than 35 million criminal history records were maintained in the States (State Criminal Records Repositories, Technical Report, Bureau of Justice Statistics, October 1985). In 11 States the records were not automated, and in most of the others automation was only partial. Half the States reported that they had a fully automated name index to their criminal history records, even when the records themselves were manual. Only seven States reported that they did not have at least a partially automated name index. A recent telephone survey of 20 States conducted for the Task Force in April of this year showed that only 3 of the 20 States had fully automated criminal history records, and half the States had less than 65% of their records automated (A Survey Of Twenty State Criminal History Repositories, Fisher-Orsagh Associates, June 1989). On the other hand, 14 of the 20 States had fully automated name indexes to their criminal history records.

Currently two telecommunications networks link law enforcement agencies to State repositories: the National Law Enforcement Telecommunications System (NLETS) and the network supported by the National Crime Information Center (NCIC). The NCIC network links law enforcement agencies with the Interstate Identification Index (III) maintained by the FBI. Law enforcement agencies use computer terminals to inquire whether a criminal history record exists for a named individual. If such a record exists in the repository of 1 or more of the 20 States that participate fully in the III system, the inquirer is notified and can request the criminal history record through NCIC. In addition to pointing to State data for the 20 fully participating States, the NCIC system makes directly available any other criminal history information from the FBI's own automated records maintained in its Identification Division. These records include information from the other 30 States as well as Federal criminal justice transactions.

The FBI's Identification Division is responsible for conducting fingerprint checks on individuals processed through the criminal justice system and on those who must pass a criminal history check for specified jobs or positions (such as Federal Government employees, child

care workers in some States, etc.). These fingerprint-based criminal justice transactions form the basis for substantial criminal history information. This information is maintained in three basic categories at the FBI. The largest is the group of automated criminal history records for 12.5 million persons arrested for a fingerprintable offense (a felony or serious misdemeanor) for the first time on or after july 1, 1974. Next largest is the group of manual records for 8.8 million persons born in or after 1929 and arrested for a fingerprintable offense for the first time before July 1, 1974. The smallest is the group of manual records for 3.6 million persons born before 1929 and arrested for a fingerprintable offense for the first time before July 1, 1974. The FBI maintains an automated name index both to the 12.5 million automated files and to the 8.8 million manual files of those born in or after 1929. There is no automated name index for the final group. Currently, the automated name index and the automated files for the 12.5 million persons arrested for the first time on or after July 1, 1974, are linked to the NCIC system. Thus, those who make inquiries through NCIC will access these automated records but not any of the manual records maintained by the Identification Division.

Given these data systems, the law enforcement official who wants immediate access to felony conviction data has two basic options: to access directly the automated records maintained by his own or another State or to access interstate and Federal records through the NCIC system. He may, of course, do both. The problem, however, is that the conviction records accessed through these computerized methods are not complete.

These conviction records are incomplete for two distinct reasons. First, as noted above, many records at both the State and Federal levels are not automated. Among States recently surveyed, an average of about one-third of criminal history records were not automated; at the FBI the proportion is about one-half. (It should be noted, however, that the automation of the records of young, active offenders is much more extensive than the records of older, less active offenders.) Second, and equally important, convictions, as well as other final dispositions, are often not reported to the State central repository or to the FBI even when an automated record exists of the individual's arrest. The FBI, for example, estimates that approximately one-half of the arrest charges in their records do not show a final disposition. Data from the 1984 survey of State repositories cited above show that about 34% fewer final dispositions than arrests were reported to the repositories in 1983. (Ideally, each arrest should eventually be matched by a final disposition.) In several States the proportion of underreporting was as high as 70–80%. Moreover, the April 1989 survey of 20 States revealed that 8 of the 17 States able to supply a figure estimated that at least 20% of convictions within the State were not reported to the repository.

Based on the combination of partial automation of criminal history records and underreporting of convictions, it is reasonable to estimate that nationwide the records of approximately 40–60% or more of felony convictions are not currently available in automated form and thus not immediately accessible by law enforcement authorities. Such a high level of undercoverage renders impracticable a felon identification system that relies principally on immediate access to automated conviction records.

This problem of undercoverage, however, can be significantly mitigated if the manual records maintained by the State repositories and the FBI are accessed. There are two ways to access these manual records. One is to use the automated name index to the manual records, if one exists, to identify a record and then manually retrieve and examine it. The other, more common, method is to do a fingerprint search based on a full 10-print fingerprint card. If a fingerprint match is found, then the manual file can be retrieved and examined. This method is by far the more reliable since it establishes a positive identification. Because both of these methods require direct human intervention at some stage, they are not as immediate as a computer-based search of automated files. For example, the FBI currently requires 14 business days to process a fingerprint card, and, depending on the location of the requesting agency, an additional 4–10 days may be required for mail handling. (For the sake of simplicity the rest of the report assumes an average of 7 days for mail handling.) A new automation system at the FBI holds the promise of reducing fingerprint processing time to somewhere between 2 and 10 business days, depending on a proposed expansion of computer facilities.

While accessing manual records reduces the undercoverage that exists in a search of only automated files, it does not eliminate the problem. As indicated above, a significant proportion of final dispositions are not reported to the State repositories or to the FBI for inclusion in either automated or manual records. In these cases the law enforcement official may be able to get the missing disposition information directly from the court or prosecutor's office for the jurisdiction where an arrest took place, but not through an on-line computer-based search.

D. Impediments to Creating a Perfect System

A perfect system for immediately and accurately identifying convicted felons who attempt to purchase firearms would have three key elements: (1) a complete and accurate automated data base showing every conviction for a State or Federal offense punishable by more than 1 year in prison and clearly showing the specified exceptions (such as business related offenses, misdemeanors punishable by 2 years or less in prison, convictions set aside or pardoned, and cases where civil rights were restored); (2) a means for positively verifying the identity of a prospective purchaser at the time of the sale of the firearm; and (3) a mechanism for immediately linking identifying information about the purchaser with the information in the data base.

Such a perfect system is not feasible or practical in the foreseeable future. There are several reasons for this conclusion.

First, as the above discussion has shown, automated conviction records are too incomplete to rely on to identify convicted felons. Moreover, even when conviction information is available it will not necessarily show whether that offense meets the Federal definition of a felony or whether the conviction was subsequently set aside or the offender had his civil rights restored.

Second, positive verification of identity at the time of the gun sale would necessarily require the collection of biometric information by the gun dealer. Based on the Task Force's review of state-of-the-art identification technology and its survey of the capabilities of the State repositories, it appears that the only feasible way to do this is with a 10-finger live scan that digitizes the prints and then transmits the digital representation over telephone lines to repositories capable of receiving this information and automatically searching their data bases for a match. Machines capable of collecting and digitizing a full set of prints currently cost approximately $35,000–100,000 each. This is prohibitively expensive to require of all gun dealers. If purchased by the government for use by 270,000 gun dealers, current prices would require an investment of at least $9 billion. No doubt, mass production would reduce the cost; nonetheless, the sophisticated optics and computer hardware used in these machines would limit the cost reductions. In addition, it takes a substantial amount of training to operate one of these machines, thus raising questions about the logistics of training 270,000 gun dealers. Moreover, because it takes about 6 minutes to get each set of 10 prints, gun dealers that average 10 sales an hour would have such a machine running constantly and would require an additional full-time trained employee just to operate it. This would further raise the cost to the dealer.

(Note that machines that take and digitize a single print for communication to an external data base are much less expensive—approximately $3,000–6,000— but these are not suitable for matching a single individual to a data base of millions of offenders. Such single-print searches are extremely computer-intensive, often requiring hours to complete, and are unreliable for proving identity in a search of a massive data base. Currently, such single-print searches are used as an investigative tool in serious crimes to produce a list of possible identities or are used for security purposes to compare one individual's prints against those already on file.)

Finally, even if sophisticated AFIS technology were made available to gun dealers, it would be necessary to convert and/or upgrade the technology in most of the State repositories and the FBI so that digitized fingerprint information could be received and compared to fingerprint-based data bases. This would be a massive and expensive operation.

E. Practical Alternatives

What, then, are the practical alternatives for establishing a reasonably effective system for identifying convicted felons who attempt to purchase firearms? The Task Force has identified two different kinds of systems that would meet the Congressional mandate and allow for the beginning of implementation by December of 1989. Both types of systems would rely on currently available identification techniques and technologies but would be open to improvements in identification documents and methods, including those involving biometric information. The two basic options are identified here as Option A and Option B. The body of the report includes a sample of possible modifications of these two basic options.

Option A: Point-of-sale approval through a telephone check. Option A provides for on-site, immediate access to automated name indexes maintained by State repositories and the FBI through telephone calls to the repository of the State in which the sale takes place. State officials would use computer terminals tied into their State records and into the NCIC and NLETS networks to determine whether there was an arrest record either within or out of State for someone with the name, race, sex, and date of birth of the prospective gun purchaser. If there was no "hit" during this immediate verification process, the gun dealer would be notified over the phone and the sale would be made. If there was a "hit," the sale would not be allowed at that time. If the prospective purchaser wished to pursue the sale, he would seek clearance through a secondary verification process. Under this procedure fingerprints would be taken at a local law enforcement agency and sent to the State repository. A fingerprint search would be conducted by the State and then by the FBI. Any criminal history records obtained through the fingerprint check would be examined by State officials for an indication of a conviction for a disqualifying offense. Incomplete information would be supplemented by inquiries to courts or prosecutors' offices. If no evidence of a conviction for a disqualifying offense was found, a Certificate to Purchase would be issued to the prospective buyer (valid for up to 1 year). The purchaser would present this documentation to the gun dealer certifying his eligibility.

The entire secondary verification process could take as long as 4–6 weeks. It is estimated, however, that approximately 84–88% of prospective gun purchasers would successfully pass the initial verification and thus would not have to go through the secondary verification. Reasonable modifications of this system might reduce some of the burdens placed on the eligible purchaser.

Option B: Firearm Owner's Identification Card. Option B is essentially the same as the secondary verification of Option A. The difference is that everyone who wanted to purchase a firearm would go through a fingerprint-based clearance process. If there was no evidence of a felony conviction, as defined by Federal law, the State would issue a Firearm Owner's Identification (FOID) Card valid for up to 3 years. This card would be presented whenever the bearer wished to purchase a firearm. The chief advantage of Option B over Option A is that it eliminates the problem of the false "hits" that occur in a name-based automated criminal history check because of mistaken identity. This option also has several disadvantages. The chief disadvantage is that it puts every prospective gun purchaser through a 4–6-week clearance procedure every several years. It also places much greater demands than Option A on existing criminal justice identification systems and is thus considerably more expensive.

The Task Force has also identified a variety of higher-technology variants of these two basic options. They are summarized here.

Option A1: Computer terminal access by gun dealer to disqualifying information. This option would replace the telephone calls of Option A with direct computer terminal access to an intermediary computer that would review the State and Federal criminal history indexes and transmit notices of approval or denial to the dealer. This would be considerably more expensive than Option A in the short run and would present no particular operational advantages over it.

Option A2: Touch-tone telephone access by gun dealer to disqualifying information. This option is similar to Option A1 but substitutes a touch-tone telephone for computer access. Like Option A1 it is more complicated and expensive than Option A, at least in the short run, without any corresponding advantages. It is possible that in the long run Options A1 and A2 would be less expensive than Option A by reducing the need for computer operators at the State repository to respond to the calls from the gun dealers.

Option A3: Live scan of fingerprints by gun dealer. This option, requiring that fingerprints be taken directly at the point of sale and digitized for transmission to the record repository, is similar to the biometrically-based system described previously in the discussion of a perfect felon identification system. While it would provide the greatest assurance of a positive identification, it would be the most difficult and expensive to implement.

Option A4: Biometric identification card. This option is not so much an alternative to the basic Option A as an additional feature that could be added to it. Under this option positive identification would be enhanced at the gun dealership by the comparison of a single fingerprint of the prospective purchaser with digitized information

from a biometrically-based identification card issued by the State.

Option B1: Live scan of fingerprints by local law enforcement and biometric check by gun dealer. This option combines elements of both prior approval and immediate check. Prospective gun purchasers would go to a designated law enforcement agency for a criminal history clearance. The agency would conduct a live 10-print fingerprint scan using AFIS equipment (as in Option A3). The digitized fingerprint information would be transmitted to the State repository and the FBI to check for arrest and conviction records. Applicants who passed this clearance would be issued a FOID card. Those wishing to purchase a firearm would present the FOID card to the gun dealer. Equipment at the dealership would allow a comparison of a single fingerprint from the purchaser to digitized information on the card (as in Option A4).

Option B2: Smart card containing disqualifying information. Under this option every adult would carry an identification card issued by the State of residence, such as a driver's license, that would have electronically imprinted identifying information, including biometric data and information such as felony convictions that would legally bar someone from purchasing a firearm. At the gun dealership such a card would be placed into a reader to verify identification (by comparison with a single fingerprint) and to determine whether the bearer was prohibited from purchasing a firearm.

F. Cost Estimates

All of the options detailed here would place substantial new demands on Federal and State criminal history repositories and law enforcement agencies. In the few months that the Task Force has been operating it has not been possible to develop precise estimates of the cost implications of each of the options. Nonetheless, some broad estimates have been derived. These should be taken only as a general indication of the cost implications of a felon identification system. They are conservative estimates that may have to be revised upward as the implications for local, State, and Federal practice are more fully explored.

Option A, which is judged to be the least expensive of the various possibilities, would have projected combined local, State, and Federal start-up costs of $36–44 million. Annual operating expenses would be an estimated $53–70 million. Other variants of Option A would cost some additional amount over the base system. (There is the possibility, however, that a more fully automated system that electronically connected gun dealers to the necessary disabling information would in the long run prove less expensive than Option A by reducing ongoing personnel costs.)

Option B, the basic pre-approval system, would have total estimated start-up costs of $148–153 million, and additional annual operating costs of $136–161 million. The two other variants of Option B would likely cost considerably more.

Note that if existing criminal history checks for gun purchasers are taken into account, the actual new cost would be somewhat lower than these estimates—perhaps 8–12% less for operational costs.

Part, or all, of these costs might be recouped by charging the gun purchaser a special fee. Assuming 7.5 million gun purchases per year, a fee in the range of $7–9 per firearm might cover the annual operating costs of Option A (although not the start-up costs). Assuming 6 million FOID cards issued in the first year under Option B and 5 million issued each subsequent year, a fee in the range of $27–32 per application would be necessary to cover annual operating costs.

The following summarizes cost information for the two basic options and those higher-technology variants for which enough information was available to approximate at least partial system costs:

Options	Start-up costs (millions)	Annual operating costs (millions)
A: Telephone check by gun dealer	$36-44	$53-70
A3: Live scan of fingerprints by all gun dealers	9,590–27,144	3,047–8,347
A4: Biometric identification card checked by all gun dealers	198–368	102–168
B: FOID card	148–153	136–161
B1: Live scan by law enforcement and biometric check by all gun dealers	344–572	203–295

G. Implementation issues

There are four broad possibilities for implementing a felon identification system: (1) To create a self-standing Federal system that is run entirely by Federal officials; (2) to mandate a cooperative Federal-State system in which State officials carry out a substantial portion of the criminal history checks; (3) to establish a mandatory Federal standard that States could meet in a variety of different ways; and (4) to offer the States several models for a cooperative Federal-State system and make Federal resources and leadership available to assist the States.

(1) The Task Force did not focus its research efforts on the creation of an independent Federal system because 90% or more of arrests and convictions in the United States are handled by State and local officials. Because of the variety of State laws, practices, and data systems, only State officials are in a position to properly interpret criminal history record information for their State and to determine whether a conviction meets the Federal standard for disallowing a firearm purchase. Moreover, State officials are in the best position to track down missing or incomplete information with local courts or prosecutors. Thus, the active involvement of State officials in the criminal history checks would seem essential to an effective felon identification system.

(2) Given the necessity for active State involvement, the Federal government could create a felon identification system by mandating that the States adopt a particular system, such as one of those detailed here or a modification thereof. Under this implementation strategy, the Federal government would select a felon identification system and each State would be required to work with Federal officials to implement it. The result would be a uniform system in each of the 50 States.

(3) Another possible implementation plan is to allow variation across the States in the kind of system established as long as each State's system met certain minimum Federal standards. As noted above, 20 States and the District of Columbia (covering more than half of the Nation's population) currently conduct some kind of criminal history check for those who wish to purchase handguns. There is, however, substantial variation among these systems. In some States checks are conducted by local authorities; in others by State authorities. Some States access only State records when conducting the check; others also access Federal records. A few States require fingerprints; most do not. Of these existing systems, some might be as effective as the options detailed in this report in keeping convicted felons from purchasing firearms through legitimate retail outlets. Others might be easily upgraded.

All of the options presented in this report meet at least two minimum standards: all firearm purchases from Federally licensed dealers are covered and a name check of both State and Federal automated data bases is conducted for evidence of an arrest for a serious crime (such checks usually also include date of birth, race, and sex). It appears that only four States and the District of Columbia currently meet both standards.

(4) Finally, the Federal Government could take a leadership role in designing one or more felon identification systems and in encouraging, but not mandating, State cooperation. Under this strategy the Federal Government would expand its own resources at the FBI and BATF to make such a system(s) possible and would provide expertise and technical assistance to State and local officials.

H. Legal and policy issues

Whatever option is chosen, new legislation would be required to address a number of issues: (1) To mandate a specific system on the States, to establish minimum Federal standards, or to base a system on voluntary compliance by the States; (2) to establish the funding mechanism for carrying out the criminal history checks, possibly involving user fees by gun purchasers; (3) (under some options) to authorize the release of limited criminal history information to gun dealers (e.g., whether there is a "hit" on a name search of automated arrest records); (4) to specify penalties for gun dealers who improperly disclose criminal history information obtained as part of a felon identification system; (5) to determine the minimum acceptable level of accuracy for the system; (6) to establish a statutory right of appeal for the prospective gun purchaser from any adverse decision, including the right to inspect records; and (7) to set forth policy regarding the use of information generated by a felon identification system, including any fingerprint data collected. (This is an illustrative, not an exhaustive, list.)

I. Solving the problem of felons acquiring firearms

In evaluating the various possibilities for identifying convicted felons who attempt to purchase firearms, it must be recognized that even a perfect felon identification system would not keep most felons from acquiring firearms. One study of convicted offenders in State prisons found that about five-sixths of those who admitted to ownership of a firearm claimed to have acquired the weapon through some means other than purchase through a retail outlet (*The Armed Criminal in America*, National Institute of Justice, November 1986). These other means included the black market, thefts, and informal transactions with friends or associates such as a purchase or trade. An effective felon identification system will do little to eliminate or reduce these off-the-record transactions. Indeed, a particularly effective system may force even more felons to turn to the black market for their weapons or to use accomplices without a criminal record to purchase guns for them. Nonetheless, a system that keeps felons from purchasing weapons over the counter may at least increase the difficulty, and perhaps the costs, of acquiring weapons for use in crime and may, in fact, deny weapons to some number of less sophisticated criminals unable to access the black market or to find willing accomplices.

II. Options for a Felon Identification System

A. Section 1. Schematic Overview

In considering the design of a system for identifying felons who attempt to purchase firearms, it is useful to begin with a general overview of the basic components. Any final system would be comprised of an approval procedure, a designated processing organization, access to data sources, a designated decision organization, final action, and an appeals process. Different systems are basically different combinations of options among these components. (See Exhibit 1.)

Approval procedures. Approval to purchase a firearm may occur either prior to an individual's trip to a gun dealer or at the point of sale in the shop. Prior approval schemes include the issuance of: (1) An identification card, which establishes in advance that the individual is eligible to purchase a firearm, (2) a certificate to purchase, which permits an individual to purchase a firearm for a limited period, or (3) a smart card on which basic data are encoded that establish an individual's eligibility. Point-of-sale approval procedures may involve telephone checks by the gun dealer of criminal history records through local or State law enforcement agencies or a regional office of the Bureau of Alcohol, Tobacco and Firearms. Direct checks of data bases could also be made over touch-tone telephone lines: dealers would access data with a series of identifying numbers and receive approval or denial from a State or Federal computer system. Dealers could also make electronic checks through terminals or automated biometric devices with direct lines to the National Crime Information Center (NCIC) and State criminal history repositories.

Processing organizations. Identification systems for firearm purchases may employ one or more organizations that process an application and search the criminal history data bases. For example, applicants may be required to appear in person at a local law enforcement agency, such as the police or sheriff's department, to obtain a permit or identification card. This agency would search local files and access State or Federal files through the NCIC and NLETS communication systems. Alternatively, the applicant could apply at the point of sale, and the gun dealer would call a local, State, or Federal agency to receive approval for the sale. A slightly different system could designate the regional offices of the Bureau of Alcohol, Tobacco and Firearms as processing agents for firearms applications and as conduits through which access is gained to State or Federal data bases.

Finally, a wholly separate agency could be established at the State or regional level to function as a Felon Identification Center.

Data sources. Currently, two basic sources of criminal history data (State and Federal) can be accessed to determine if an applicant has a disqualifying conviction. Any system of identification for firearm purchases must specify which data bases are to be used and how they will be accessed.

Most States maintain a repository of criminal history record information (CHRI); in a few States the repository is maintained by a municipality or consortium of local law enforcement agencies. States also maintain "hot files," listing outstanding wants and warrants. The degree of automation of the CHRI files varies considerably from State to State: some repositories are completely automated, others partially automated, and a few States maintain only paper files.

Criminal history data and "hot files" are also maintained at the Federal level within NCIC and the Identification Division of the FBI. The Federal files contain records from the applicant's State of residence as well as Federal and out-of-State records. These records may be accessed through fingerprint searches (via the mail) or through electronic name and date-of-birth searches (via NCIC access to the Interstate Identification Index [III]).

Finally, a new data source could be created for the specific purpose of identifying individuals with disqualifying convictions and other individuals prohibited from buying firearms. A national center, for example,

could create and maintain an index, which would merge indexes from current State and Federal data bases, mental health records, and records kept by the Immigration and Naturalization Service. This national index of individuals prohibited from purchasing firearms would be updated continuously. It would serve as the sole data source for Federal regulation of firearm purchases.

Decision organizations. Once the processing organization has checked the data bases, the data must be interpreted and a decision made. The processing organization may not necessarily be the decision organization. Local law enforcement may evaluate the data or rely on the State police or identification bureau to do so. In response to problems of evaluating out-of-State and Federal records, other system designs may designate regional or Federal agencies as the decision organization.

Action. The designated decision organization must either approve or prohibit an individual from purchasing a firearm. Depending on the type of approval system, the organization would transmit the decision to the applicant directly or through the gun dealer. Potential options include issuance of a card, a certificate, a notice of denial, or an electronic message of approval or denial.

Appeals process. Once an applicant receives final notice that the application has been denied, he may appeal this decision. The designated appeals organization may be the local police, a State agency, a regional office of BATF, or some other agency. Legislation may also establish a right to a judicial appeal once administrative appeals are exhausted.

Basic options and variants. Although there are numerous possible combinations among these components, the Task Force has detailed two basic options: Option A, which is a point-of-sale telephone check by gun dealers with secondary verification, and Option B, which is a pre-approval system requiring a firearm owner's identification card. The descriptions presented here specify for each basic option the type of approval procedure, the processing organization, the data sources, and the final decision organization. There is additional discussion of specific characteristics, estimates of volume, cost figures, advantages and disadvantages, and potential modifications. Each basic option is followed by several higher-technology variants.

II. B. Section 2. Point-of-Sale Approval Systems

(1) Option A: Telephone check by gun dealer with secondary verification. A cooperative Federal and State system would be established requiring that gun dealers obtain clearance from a designated law enforcement agency at the time of sale of all firearms. This system would include both (1) An immediate telephone check of automated criminal history records by gun dealers through a designated law enforcement agency and (2) a secondary fingerprint-based verification procedure for all individuals rejected through the initial telephone check. Each system would have the following elements:

Telephone check (Exhibit 2). 1. At the time of purchase each gun dealer would require the buyer to fill out an application and show two pieces of identification, with at least one having a current photo.

2. The gun dealer would be required to telephone a State law enforcement agency for a criminal records check. Appropriate security procedures (such as a call-back procedure or password system combined with additional dealer identification and access codes) would be introduced to protect against unauthorized entry and dissemination.

3. The designated State law enforcement agency would access existing telecommunications networks to check the master name index within the State of purchase and the FBI's Automated Identification System—Phase III (AIS–III). The AIS–III index contains pointers to the Interstate Identification Index (III) for out-of-State arrests. Both State and Federal "hot" files would also be checked.

4. Initial checks would be made of the State and Federal master name indexes. These indexes contain identifying information on persons previously arrested for "printable" offenses (felonies and serious misdemeanors). Since these are arrest-based indexes, some of the applicants found on these indexes (e.g., those arrested for a felony but not convicted, those convicted of misdemeanors only, and those who were pardoned) will be qualified to purchase firearms. In those States in which criminal history files are automated, it may be possible to access and evaluate individual files while the gun dealer remains on the phone. It may also be possible to access similarly and evaluate some out-of-State records. (Note that currently several hours are often required to obtain records for individuals arrested in the 20 III States.)

5. The gun dealer would immediately (i.e., within a few minutes) receive notice of permission or denial of sale from the designated law enforcement agency. The dealer would receive a transaction number for each inquiry and be required to record the number on each application. Regardless of whether or not the sale was made, the dealer would be required to retain a copy of the application and a record of the telephone inquiry. The designated law enforcement agency would retain records of all inquiries for use in audits of gun dealers. Names of applicants would not be retained on the inquiry data base.

6. If the sale was denied, the gun dealer would instruct the applicant that a Certificate to Purchase may be obtained from a local law enforcement agency.

Secondary verification (Exhibit 3). 1. An applicant who previously failed a telephone check would be required to appear in person, with two pieces of identification, at a law enforcement agency within the jurisdiction of the applicant's legal residence.

2. Each applicant would be fingerprinted, and the fingerprint cards would be mailed to the State criminal history repository.

3. The State agency would access in-State automated and manual criminal history records and also send the fingerprint cards to the FBI for a check of out-of-State records.

4. If an FBI rap sheet was found for the applicant, the State agency would receive by mail a copy of the records maintained by the FBI's Identification Division. These records would include Federal criminal justice transactions as well as transactions in the 30 States that do not participate in the Interstate Identification Index (III). Additional information from non-III participating States could be sought directly from these States through NLETS. If the applicant had been arrested in a III participating State, as indicated by the FBI records, the State agency would request via NCIC additional records from such a State. If the records so obtained were insufficiently complete to make a final determination of eligibility (e.g., lacking disposition data), additional information could be sought by telephone or mail inquiry to the relevant courts or prosecutors' offices.

5. Based on all the available information, the State agency would make a determination whether there was evidence of a disqualifying conviction and issue either a Certificate to Purchase or a Notice of Denial. The Certificate to Purchase would be valid for no more than 1 year. The designated State agency would maintain a data base of all certificates issued. Individuals could renew their certificates by submitting a written application—no fingerprints would be required. Names of individuals not renewing their certificates would be purged from the data base at the end of 1 year.

6. Copies of the Certificate to Purchase or Notice of Denial would be sent to the applicant and to the local law enforcement agency submitting the fingerprint card.

7. If a Notice of Denial was issued, the applicant would be informed of his right to appeal (see Part II, Section 4.)

8. If the applicant possessed a Certificate to Purchase and decided to purchase a firearm, the gun dealer would be required to verify, prior to sale, the identity of the purchaser—through two pieces of identification—and the validity of the certificate—by calling the designated State agency to check the validity of the Certificate to Purchase against the certificate data base.

Data sources. The initial telephone check would scan the State and Federal automated name indexes and would access whatever automated rap sheet data could be immediately retrieved. Access to this information would be through a designated law enforcement agency only. (See Part IV, Section 3 and Exhibit 4 for an overview of national access to criminal history files.)

Obtaining a complete check of out-of-State records would require expanding the FBI's Automated Identification System-Phase III (AIS–III), which is accessed through the NCIC telecommunications network. Currently, only those individuals first arrested on or after July 1, 1974, are listed in the AIS–III master name index (approximately 12.5 million persons). The records of approximately 8.8 million individuals born in or after 1929 but arrested before July 1, 1974, are not currently accessible through the NCIC network.

In general, the current name indexes to criminal history data at the State and Federal level are arrest-based data sets only, containing identifying information on individuals arrested for felonies and serious misdemeanors. In some instances, for example, if the charges are dropped or if the individual is acquitted or pardoned, States may purge the indexes of these names. With few exceptions, these indexes do not contain information on convictions.

The secondary verification procedure utilizes all criminal history data bases at the State and Federal levels, including automated and manual records. In addition these may be supplemented by direct queries to courts and prosecutors' offices. State law enforcement officials, who are in the best position to interpret criminal history records, will determine whether there is sufficient evidence of a conviction that meets the Federal standard for disqualification.

An inquiry data base would be created and maintained by the designated State agency. This data base would record basic information on all inquiries from the gun dealers. For each inquiry, a dealer's license number, a transaction number and date, and an outcome code (i.e., approval or denial) would be recorded. This information would be used by BATF for subsequent audits of gun dealers. Names of applicants would not be retained in this data base.

This data base containing a list of the Certificates to Purchase and Notices of Denial would also be created and maintained by the designated State agency. This data base would contain basic information on individual applicants who had previously received a Certificate to Purchase or Notice of Denial. It would contain an applicant's name, date of birth, race, sex, a flag indicating approval or denial, and (when appropriate) a number assigned to the Certificate to Purchase. The data base could be updated continuously for subsequent disqualifying convictions. After 1 year the Certificate to Purchase would expire. A new certificate would be issued if the applicant submitted a renewal form and passed subsequent State and NCIC checks. Identifying information on all other holders would be removed from the data base after 1 year. This data base would be used by the State agency to verify the validity of certificates at time of purchase. The data base would also be used to detect those individuals who were issued a Certificate to Purchase but who were subsequently convicted of a disqualifying offense.

This data base would also contain names of individuals issued a Notice of Denial. Such a data base could detect repeated attempts by disqualified applicants to purchase a firearm. Criminal penalties could then be levied against those individuals who attempted to purchase a firearm after receiving a Notice of Denial.

Verification and controls. Gun dealers would be required to maintain copies of approved applications and logs of inquiries. However, gun dealers would not keep copies of rejected applications, which would be sent to the State. Dealers would receive a transaction number for each inquiry and be required to retain this number for subsequent audits. No sale could be made without this number. The designated State law enforcement agency would be required to maintain records on all inquiries.

Gun dealers would be subject to criminal penalties for any false inquiry or disclosure of any information received from a telephone check.

Procedures would be adopted to verify the identity of gun dealers to the State agency. A call-back procedure could be used; for example, the gun dealer would call the State agency, provide the dealer codes (including dealer identifiers from State or Federal licenses), hang up the phone, and wait for a return call from the State agency. An alternative procedure is a single-call method, with a variable password system and dealer codes linked to a data base maintained by the State agency.

Positive identification. Positive identification of applicants by gun dealers prior to the initial telephone check will be limited by the quality of identification documents presented and by the range of data elements accessible on the State and Federal master name indexes. Currently, searches of the automated indexes are limited primarily to the applicant's name, date of birth, race, and sex. The use of additional data elements, such as place of birth, scars and marks, height, weight, eye and hair color, and miscellaneous numbers (e.g., social security number or driver's license number), depends on whether they appear on existing master name indexes and on their use and accuracy on identification documents. Despite problems of identifying individuals based on name and date of birth, numerous States currently conduct name-based checks on gun applicants. (See Part IV, Section 2 for a description of current State practices in conducting criminal history checks of prospective firearm purchasers.)

Additional efforts to ensure positive identification by the dealer at the time of purchase could include placement of the applicant's fingerprint on the application form (BATF form 4473, Exhibit 5). The dealer could roll the print of the applicant's right index finger at time of application. Though this print would not be submitted to the State identification bureau, it may serve as a deterrent to those possessing fraudulent identification cards. In the future the print on the application could be used in combination with an identification card containing a similar print. (See Option A3 for further elaboration of fingerprint checks by dealers.)

Even if positive identification could be established by the dealers, the State agency would face problems of

"multiple hits" (more than one person on the name index with a similar name, date of birth, sex, and race) and "false hits" (a person on the name index other than the applicant with a name and date of birth similar to the applicant's). Estimates obtained from the FBI, detailed below, indicate that approximately 50% of the cases where persons appear to have a criminal history record based on an initial name search are eventually found to be false hits.

Procedures similar to those employed in Illinois (see Part II, Section 2) may be adopted to reduce the number of false hits. Illinois uses place of birth and additional identifying features such as eye color, hair color, height, and weight to reduce identification problems. The more identifying information used, the less likely there is to be a false hit.

Estimates of volume. Figures obtained from the Bureau of Alcohol, Tobacco and Firearms indicate that approximately 7.5 million new and used firearms are sold annually. This figure represents a 10-year average of domestic firearms production (adjusting for imports and exports) plus used gun sales (estimated at about 50% of all sales of new firearms). The 7.5 million annual purchases is equivalent to a daily average of more than 20,000 sales. Since many stores are likely to be closed on Sundays and to be busier on Saturdays than mid-week and since firearm sales increase during hunting season, the number of sales may reach as high as 50,000 on peak days.

Assuming that a name check will be conducted prior to every purchase, the number of inquiries into the Interstate Identification Index (AIS–III) would increase by approximately 70% from the current level of 10.7 million inquiries a year. However, relative to all inquiries received daily by NCIC, including "hot" files as well as AIS–III inquiries, name checks of gun applicants would increase the total number of inquiries by about 5% at the peak time during hunting season. The 50,000 additional inquiries resulting from gun applicants are small relative to the recent 1-day record of 1.1 million inquiries into NCIC.

The number of additional fingerprint cards would vary depending on the hit rate from the name check. This rate can only be estimated indirectly. Assuming that the final hit rate on gun applicants will resemble the rate for fingerprint-based checks currently conducted by the FBI on applicant cards, an estimated 6–8% of all applicants will be rejected. (There are currently no National data on ultimate rejection rates for gun applicants.) Further, if half of all initial hits in a name and date-of-birth check of gun applicants are false hits (based on FBI estimates for all applicants), then the expected initial hit rate should be between 12% and 16% for all gun applicants. Finally, not all of the initially-rejected applicants may submit fingerprints for the secondary verification—perhaps 10–14% of all applicants will submit fingerprint cards.

The number of applicants for a Certificate to Purchase will be less than the number of purchases, since applicants may buy more than one firearm a year. Precise counts of the annual number of purchases per buyer do not exist. However, if we assume that the majority of applicants will buy only one firearm and a relatively small number will buy many firearms, the estimate of 1.25 firearms per buyer may be a reasonable expectation. Such an estimate suggests that an estimated 6 million individuals buy the 7.5 million firearms sold annually.

As a result of the above assumptions, we may expect approximately 725,000 fingerprint cards on gun applicants as a result of a rejection from the telephone inquiry by the dealer. Assuming the current 5-day week at the FBI's Identification Division, this represents an additional 3,000 fingerprint cards per day—an increase of nearly 10% in the number of cards received daily.

Additional system flows. The estimate of 7.5 million new name searches of automated records and 725,000 new fingerprint checks that would be generated by this option ignores the fact that many States currently conduct criminal history checks of gun purchasers. Twenty-two States and the District of Columbia (covering more than half of the Nation's population) now conduct a pre- or post-purchase criminal history check. Thirteen States and D.C. access Federal and interstate records through NCIC. Six States and D.C. take fingerprints. Four States and D.C. include the purchase of all types of firearms; the others, only handguns.

Presumably, if Option A were adopted, the new criminal history checks would not be conducted on top of existing checks, for this would create an unnecessary redundancy. Either (1) States would modify their existing systems and criminal history checks to conform to the elements of Option A, or (2) the Federal mandate would accept current pre-approval systems as effectively accomplishing the goals of Option A if certain minimum standards were met. In either case if current practice is taken into account, the net new impact on Federal and State repositories would be somewhat less than the estimate of 7.5 million new name searches of automated records and 725,000 new fingerprint checks.

Criminal history checks of gun purchasers currently conducted by the States account for approximately 15% of the projected 7.5 million annual inquiries into NCIC under Option A and 8% of the 725,000 fingerprint checks at the FBI. As a result, the additional impact of Option A on NCIC and the FBI Identification Division is estimated at 6.4 million inquiries and 664,000 additional fingerprint cards. At the State level current practices account for a somewhat greater proportion of the inquiries required by this option. An estimated 20% of the total 7.5 million name and date-of-birth searches projected for State identification bureaus under Option A are currently conducted. Consequently, 6.0 million additional inquiries would be required at the State level under Option A.

Finally, as a result of the proposed expansion of the AIS–III index, the FBI's Identification Division would also need to respond to requests for records on the 8.8 million individuals who were born in or after 1929 but arrested for the first time before July 1, 1974. Expansion of this index would necessitate the assembly, retrieval, and mailing of an estimated 4,000 manual files daily (including 3,000 files to meet anticipated criminal justice requests plus 1,000 files for firearm applicants).

Identifying convicted felons. In many, perhaps most, cases the actual criminal history record of an applicant would be examined only when a fingerprint card is submitted. For an estimated 80–90% of all prospective purchasers, a check would only be made for the existence of a criminal record. For the applicants who were identified by a name and date-of-birth search and who subsequently submitted fingerprints, a more complete assessment of the record would be required.

The difficulty of accurately identifying a convicted felon varies from State to State. In some States felony identification is automated: a felony conviction flag exists in the record. In other States felony identification is obtained from the State statutory code listed for each conviction offense. Interpretation of this code is typically achieved manually, unless a computer program exists to automatically classify statutory codes as either felony or non-felony offenses. In other States felony identification is only sometimes possible. In these States a felony may be determined when a conviction is unambiguously a felony (such as murder or rape) or when a free text field exists and the word felony appears in the field.

The issue is further complicated by the fact that the State definition of a felony may not correspond with the definition in the Gun Control Act (an act punishable by imprisonment for more than 1 year.)

The task of accurately interpreting criminal history records is even more difficult when an applicant has been arrested in States other than the current State of residence. FBI records do not contain sufficient information to identify felons or those convicted of crimes punishable by imprisonment for more than 1 year. FBI offense codes are typically recorded as literals (free text) or as numeric NCIC codes. State statutes and text containing the word "felony" are only infrequently reported.

Faced with these difficulties, States currently conducting criminal history searches on gun applicants employ three strategies: (1) Infer a felony conviction based on sentencing data (e.g., if the record contains a sentence to incarceration of greater than 1 year, the applicant is identified as a felon); (2) obtain more detailed out-of-State records via NCIC or NLETS, which may designate conviction offenses as felonies; and (3) infer a felony conviction from a literal description.

Response times. The initial telephone check would be immediate, within minutes, assuming sufficient resources. Electronic searches of State and Federal master name indexes could be conducted while the gun dealer remained on the line. Among the 20 State identification bureaus surveyed for the Task Force by Fisher-Orsagh Associates, the average in-house response time for a non-fingerprint search utilizing a terminal is about 20 seconds (A Survey Of Twenty State Criminal History Repositories, Fisher-Orsagh Associates, June 1989). Additional minutes would be needed if the State agency attempted to reduce the number of false hits by requesting additional information from the gun dealer. An additional 30 seconds would be required for an NCIC check of the AIS–III index.

The secondary verification procedure would require approximately 4–6 weeks to complete. Existing searches based on fingerprint cards at the FBI's Identification Division are processed within 14 working days. An estimated 7 days would also be required for submission of fingerprint cards via the mail and return of FBI rap sheets to the State agency. Some additional time would be necessary for evaluating criminal history records by the designated State agency, including, if necessary, calls to courts or prosecutors' offices.

The response time for secondary verification may be reduced once current automation procedures at the FBI are fully in place. The FBI anticipates that response times will be reduced to somewhere between 2 and 10 days, depending on a proposed expansion of their computer system.

Estimates for fingerprint searches conducted by State criminal history repositories, which would be simultaneous with the FBI checks, indicate a total response time for a criminal justice inquiry of 3 to 23 working days, including mail turn-around time. In the 20 States examined by Fisher-Orsagh Associates, the average response time for a fingerprint search was 5 days, assuming the search was for a criminal justice purpose. For non-criminal-justice searches the average increased to a total of 9 days. No significant reduction in this response time is expected in the near future.

Costs. Of all options, the telephone check with a secondary verification may be the least expensive to implement and operate. Costs are kept down by using existing technologies, telecommunication systems, and data sources. Costs are further reduced by limiting fingerprint checks only to those individuals appearing on the master name indexes and by creating a State-level data base of Certificates to Purchase and Notices of Denial.

For the telephone checks only, the total estimated cost at the State and local level includes a start-up cost of $14.3–$17.7 million and an additional annual operating cost of $30.0–$39.4 million. The estimated cost of the secondary verification would include a start-up cost of $8.6 million and an annual operating cost of $10.4–$13.3 million. The combined cost for the telephone checks and secondary verification at the State and local level would be between $22.8 and $26.2 million in start-up costs and between $40.3 and $52.6 million in annual operating costs. (For more detailed cost figures, see Exhibit 6 and Estimates of Start-up And Operational Costs Of Systems For Identifying Felons Who Attempt To Purchase Firearms, Fisher-Orsagh Associates, June 1989.)

At the Federal level the combined cost for the telephone check and secondary verification is estimated at $12.7–$17.8 million a year. The start-up cost is estimated at $13.1–$17.3 million.

When local, State, and Federal costs are added together, the total estimated annual operating cost for Option A ranges from $53 million to $70 million and the total estimated start-up cost ranges from $36 million to $44 million. Note that if existing criminal history checks for gun purchasers are taken into account, the actual new cost may be somewhat lower than these estimates—perhaps 11–13% lower for operational and start-up costs. On the other hand, these estimates do not include any costs to dealers for new phone lines or staff or to local police for their part in the secondary verification.

A substantial portion of the operating costs could be transferred to the individual applicant through fees for all gun purchases, whether or not a fingerprint search is performed. Given the total annual cost estimates, a fee of $7.07–$9.39 per applicant per purchase would be required to cover local, State, and Federal costs.

Impact. 1. *Purchasers:* The vast majority of individuals without criminal records would have the immediate ability to purchase a firearm. Except for individuals falsely rejected by the search of the master name indexes, those without criminal records would not be burdened by pre-approval procedures.

2. *Dealers:* In addition to current application procedures, dealers would be required to make a telephone call prior to every purchase and to create and maintain a log of all inquiries. The time necessary to make the checks is expected to average about 3 minutes per sale. An additional telephone line may be required for some dealers. Among high-volume dealers, additional staff may be required to handle multiple checks simultaneously without generating long waiting lines at the gun shop.

3. *Local law enforcement:* Local law enforcement agencies would process an estimated 725,000 applications and fingerprint cards a year as a result of the secondary verification procedures. This work load may require some additional staff and funds for agencies currently working at peak levels.

4. *State law enforcement:* The State identification agency or other designated agency for applicant checks would experience a large increase in its work load. To process the estimated 7.5 million telephone inquiries, States would need new communications lines, staff to respond to inquiries, additional office space, computer terminals to access the State master name indexes, and software to build the inquiry data base. State identification bureaus would also require a 7-day work week with longer hours (or 6 days if gun sales were prohibited on Sundays).

To process the estimated 10% increase in fingerprint cards, States would require funds, staff, space, and software to maintain a data base on the

Certificates to Purchase. (See *A Survey Of Twenty State Criminal History Repositories*, Fisher-Oresgh Associates, June 1989, for the ability of specific States to handle a 10% increase in in-house searches of their criminal history files.) States may also be required to establish an administrative appeals procedure for challenging adverse decisions.

5. *NCIC and FBI Identification Division:* The NCIC communications system would experience a minor increase in volume—an increase of 5% on a peak day during hunting season. To process this increase in volume, 16 additional lines plus an enhancement to the front-end capacity on the NCIC computers will be required. The number of additional inquiries into the AIS–III computer, however, would increase by approximately 70%. To handle this increase, the AIS–III computer must be significantly enhanced. The telephone search would also require additional staff at the FBI's Identification Division to process requests for the 8.8 million manual records of offenders arrested for the first time before July 1, 1974, and born in or after 1929. The manual records would be requested through NCIC for all criminal justice purposes and mailed to the requesting agency by the FBI Identification Division.

Based on the estimated 725,000 fingerprint cards submitted annually and the 4,000 daily requests for manual files through NCIC, approximately 395 additional employees may be needed by the Identification Division as a result of Option A. An estimated 126 of these employees would be technical (e.g., fingerprint technicians, classifiers, and verifiers) and 212 would be typists; all of these would require 3–6 months of training. The FBI would require 12–18 months to recruit and clear these 395 new employees. These new employees would require nearly 8,000 square feet of additional office space.

Impact of AFIS technology on secondary verification. At the present time the FBI and more than half of the States either have an automated fingerprint identification system (AFIS) or are in the process of procuring such a system. These systems, as currently utilized, require technicians to classify the prints according to pattern type; the prints are then scanned, digitized, and matched against prints from an AFIS data base. (Note that new AFIS equipment has recently been introduced that automates the classification process, but this is not yet a proven technology.) At the end of the matching process, a list of all potential identification candidates is produced, and a technician visually compares the print to the corresponding list and makes the identification decision. (See "Appendix" to *Legal And Policy Issues Relating To Biometric Identification Technologies*, SEARCH Group, Inc., June 1989.)

Despite the automation of the search process, further implementation of AFIS technologies will have little impact in the near future on the estimated response times and costs of processing the additional fingerprint cards generated by the secondary verification procedure. The AFIS matching process is time consuming and both labor and machine intensive.

Advantages. 1. Access to criminal history records would be limited to law enforcement agencies, except that gun dealers would receive notice of approval or denial.

2. With the exception of the addition of 8.8 million records to the AIS–III index, the system would utilize existing State and Federal criminal history data bases. The additional inquiry data base and Certificate data base would be easily established and maintained at a low cost.

3. Access through NCIC to the 8.8 million manual records maintained by the FBI's Identification Division would have added benefit to law enforcement. Currently, checks are limited to younger offenders and those first arrested after 1974. Addition of these records would enhance the level of service that the FBI could provide to law enforcement agencies nationwide.

4. Compared to other options, the initial telephone check would reduce the burden on State and Federal identification systems. Only an estimated 10–14% of all purchases would require a fingerprint search.

5. No list of applicants or purchasers would be created. Only those individuals issued a Certificate to Purchase or Notice of Denial could be identified in a data base. The identity of individuals holding certificates would be regularly expunged from the data set within a year of the date of issuance.

6. Purchases of firearms by applicants outside their State of residence would be permitted. Normal telephone checks and secondary verification procedures could be followed.

Disadvantages. 1. The validity of the telephone check is only as reliable as the purchaser's identification documents. It does not provide unique identification as do the more expensive fingerprint or other biometric systems. Consequently, prohibited individuals intent on obtaining a firearm with false identification documents would be able to pass the telephone check.

2. A major burden would be placed on the State agency accessing the repository data and on local law enforcement agencies that issue the fingerprint cards. The extent of the burden would depend on the volume of requests and degree of record automation. Further automation of State master name indexes and criminal history files would be encouraged.

3. The system would not be immediate for individuals rejected by the search of the master name indexes. In addition, some individuals may be falsely identified because their name and date of birth match those of another individual. Extensive false hits could generate considerable adverse reaction.

4. Rejection of prospective buyers as a result of telephone checks may be perceived by gun dealers as a cause for lost revenue. Buyers who ultimately qualify for purchase may not always return to the original dealer and make the purchase.

5. Occasionally the State or NCIC computer systems may not be operating at the time of purchase, resulting in delays and possibly loss of revenue to the gun dealer.

Potential modifications. 1. The secondary verification procedure could be modified so that applicants would only be required to appear at a law enforcement agency to be fingerprinted if the State repository was unable to make a positive determination of eligibility after receiving all automated criminal history records. If the State repository could not determine an applicant's identity or resolve questions of eligibility, the applicant would then be fingerprinted at a local law enforcement agency, and the fingerprint cards would be submitted to the State identification bureau and the FBI for evaluation.

This modification could reduce the burden on applicants eligible to purchase firearms. Applicants with prior arrests but qualified to purchase firearms (e.g., those not convicted of any offense, those convicted only of crimes not meeting the Federal definition of a felony, or those pardoned) would not automatically be fingerprinted or required to wait the projected 4–6 weeks for a complete fingerprint check and evaluation of records.

This modification would also reduce the volume of additional fingerprint cards submitted to the State identification bureaus and the FBI.

2. A fingerprint could be placed on the BATF application (form 4473). Once given approval for purchase, the gun dealer would roll a print of the applicant's right index finger, for example. Although this print would not be submitted to the State identification bureau, it could greatly enhance BATF's ability to prosecute applicants who provide false information. In addition, requiring an applicant to provide a fingerprint on the application form may serve as a deterrent to those who possess fraudulent indentification cards but who are reluctant to submit fingerprints.

3. An applicant data base could be created and maintained by the State identification bureau. This data base would be queried first when a purchaser check was conducted. It would contain basic information on individual applicants who had been previously approved through a point-of-sale name check or a secondary verification procedure. The data base would include an applicant's name, date of birth, race, sex, and a flag indicating approval for purchase. The data base could be updated continuously for subsequent disqualifying convictions. Once individuals received approval, no additional searches of their criminal history files would be conducted for subsequent purchases. This option could eliminate the need for a Certificate to Purchase.

If States constructed this data base, the number of name searches and print searches could be significantly reduced. Fears that such a data base would create a list of gun purchasers could be allayed by requiring States to systematically purge records after a 2 or 3 year period. Moreover, such a data base could be limited to those who failed the telephone check and then passed the secondary verification; thus, only a small portion of all gun purchasers would be included.

4. Point-of-sale approval requirements could be relaxed for certain types of dealers. Low-volume dealers and those selling at gun shows could be exempted from the telephone checks. However, to regulate purchases of firearms from these dealers, State law enforcement agencies could be required to perform random criminal history checks on those who have purchased firearms from these low-volume dealers.

5. Fingerprint searches in the secondary verification process could be limited to the repository within the applicant's State of residence. Federal data bases would be searched only on name, date of birth, race, and sex. Applicants found to have out-of-State rap sheets would be required to appeal to the State repositories maintaining the disqualifying records. This modification would have two good effects: (a) a reduction of response time for secondary verification, and (b) no need to evaluate out-of-State records. However, a major disadvantage is that once a hit is made through NCIC, the burden of certifying qualification to purchase would be shifted to the applicant.

6. To increase reliability, applicants for specific types of guns could be required to be fingerprinted and would not be eligible for a telephone check.

7. To ensure that excess delay in making an eligibility decision did not unduly interfere with the rights of qualified purchasers, the system could include firm deadlines for governmental action at various stages. Failure to meet a deadline would allow the sale to proceed. Ineligible purchasers would still be subject to subsequent prosecution.

(2) Option A1: Terminal access by gun dealer to disqualifying information. This option is a variant of Option A, described above, but instead of the gun dealer calling a law enforcement agency, which would access criminal history records electronically, the dealer would directly access an intermediary computer that would review the indexes and transmit "accept" or "reject" notices to the dealer. The system would work as follows:

1. The applicant would present the same identification documents to the dealer as required under Option A.

2. The dealer would use a terminal in the shop to access an intermediary computer that would review criminal history indexes and transmit authorization or denial notices to the gun dealer's terminal. (Special passwords would be required to prevent unauthorized access. Transaction logs would be maintained by the State or NCIC to monitor inquiries.)

3. If the notice was to "accept," the sale could be completed immediately. If the notice was to "reject" (indicating the existence of a printable offense), the applicant would be directed to a local police department to initiate the secondary verification process.

4. Subsequent procedures follow Option A.

Advantages and disadvantages. All advantages and disadvantages noted in Option A apply to this option except as follows:

1. The costs for installation of a terminal in each dealership would be substantial. Training would also be required in the use and maintenance of the terminals. Procedures for passwords and logs would also be required.

2. Access through an intermediary computer would require a new computer capability at the Federal level and in each of the 50 States. Such a capability could be costly.

3. There would be no noticeable reduction in response times, since telephone checks under Option A would also be completed on a real-time basis.

Estimated cost. See discussion under Option A2.

(3) Option A2: Touch-tone telephone access by gun dealer to disqualifying information. This option is the same as Option A1 above, but substitutes a touch-tone telephone for terminal access. The system would work as follows:

1. The applicant would provide identification to the dealer as required under Option A.

2. Using a touch-tone telephone and a toll-free number, the dealer would access an intermediary computer, as in Option A1, and would enter his license number to prove eligibility. The communications system would establish a log of the transaction. The dealer would then enter the applicant's digitized name and other identifiers.

3. The message would be received by the State repository or NCIC and checked against a master name index.

4. The dealer would be advised of the "accept" or "reject" status only.

5. If rejected, the applicant would be advised to seek secondary verification through a local police department. Subsequent procedures would follow Option A.

Advantages and disadvantages. The advantages and disadvantages would also be similar to those for Options A and A1; however, the costs may be lower than Option A1 since terminals would not have to be installed at all dealers.

Estimated cost. Although Options A1 and A2 do not present any particular operational advantages over the simpler Option A, they would be more complicated and costly to set up. Thus, in the short term they do not have any benefits over Option A. Nonetheless, it is possible that by directly and electronically connecting gun dealers to disqualifying information, Options A1 and A2, or others like them, would prove less expensive in the long run than Option A with its need for numerous new personnel in the State repositories to field the calls from gun dealers.

(4) Option A3: Live scan of fingerprints by gun dealer. This option differs from other variants of Option A in that fingerprints would be taken directly at the point of sale and digitized for transmission to the record repository. Records would be scanned on the basis of fingerprints. The system would work as follows:

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1. The applicant would place his hands into a fingerprint scanner, which would be maintained and operated by the dealer.

2. Digitized fingerprint data on all 10 fingers would be transmitted to the State repository.

3. At the State repository, a fingerprint technician would calculate the pattern types of the 10 fingers and then select a subfile of the data base for a subsequent automated search. Fingerprints would be checked against a criminal history data base, a fingerprint index, or a specially created data base of disqualified persons.

4. If the search resulted in a list of potential candidates, a fingerprint technician would examine the candidate prints and make a determination of identification.

5. Based on the search, an "accept" or "reject" message would be sent to the gun shop. Fingerprints of accepted applicants would not be retained by the State identification bureau.

6. If a rejection was based on a check against a fingerprint index only, the applicant would be advised to initiate secondary verification. If a rejection was based on a full record check or check against a special disqualification data base, the denial would be final, but the applicant would be advised of appeal procedures.

Additional characteristics. 1. Dealers would be required to install 10-finger scanning equipment including a capability to transmit the scan data to the State repository and the ability to receive "accept" or "reject" messages from the repository.

2. States would need: (a) The capability of receiving the 10-finger scan data, (b) fingerprint technicians to determine pattern types and subfiles to be searched, (c) the ability to search files based on pattern type and digitized minutiae, (d) the ability to compare applicant prints to candidate file-prints and determine identification, and (e) the ability to transmit results to the dealer.

3. In order to check for out-of-State arrests, the system would require the FBI to set up a mechanism for receiving digitized fingerprint data from State repositories, which currently use several incompatible AFIS systems.

4. Response times would include an estimated 6 minutes to scan 10 fingers at the shop, 1–6 minutes for a technician to classify the prints, and 1 minute to verify a match from the search file. An additional 5–15 minutes would likely be required to search the fingerprint file (depending on the search procedures, the size of the data base, and the availability of computer equipment). This is an estimated total of 13–28 minutes.

Advantages and disadvantages. 1. Use of fingerprints ensures accuracy of identification at the gun shop. In a properly functioning system, no one who had previously been fingerprinted for a crime would escape detection.

2. There would be a substantial reduction in the number of secondary verifications, perhaps as much as 50–80% over Option A.

3. A major disadvantage is the extremely high cost of developing, installing, and maintaining on-site equipment and transmission lines. Training for dealers would also be required to obtain properly scanned fingerprints. High-volume dealers would require multiple scanners and additional staff.

4. Indexes to Federal and State criminal history files would have to be upgraded and made compatible with fingerprint data transmitted from the on-site scanners. At a minimum, indexes to current criminal history files would require upgrading.

5. Response times (13–28 minutes) would be longer than the telephone check of the basic Option A.

Estimated cost. Because of the novel and complicated nature of this option and its use of technologies still under development, it has been possible to estimate only part of the costs of setting up such a system. Consequently, the following estimates should be viewed as only a rough measure of system costs.

For a system involving live fingerprint scan at all dealers, total start-up costs are estimated at $9.6–27.1 billion and annual operating costs (assuming equipment depreciation and maintenance) at $3.0–6.3 billion. For a system restricting live scan to commercial dealers (an estimated 35% of all dealers), total start-up costs would be an estimated $3.5–9.6 billion and annual operating costs would be $1.2–3.1 billion.

(5) Option A4: Biometric identification card. This option is not so much an alternative to the basic Option A as a distinct feature that could be added to it. The system requires that the applicant obtain a State-issued identification card that incorporates biometric information, name, date of birth, and other standard identifiers. This card could be a general-purpose card, such as a driver's license, or a special-purpose card for gun purchases. The biometric information could be an actual fingerprint on the card, or it could be a digitized representation of biometric information magnetically encoded on the card. This option also requires that dealers have equipment able to read the applicant's fingerprints, or other biometric information, and compare them against characteristics on the card. The system would work as follows:

1. The applicant would obtain a card from the State with biometric identifiers.

2. The applicant would present the card to the dealer. The dealer would then use equipment to compare the biometric data from the applicant with the information on the card.

3. If there was a match, the dealer would proceed with an inquiry to the State repository either (a) by telephone, as in Option A, or (b) if the card was in a digitized format, through a device that could communicate with an external database over telephone lines (as is used in approving credit card purchases).

4. The remaining procedures follow Option A.

Advantages and disadvantages. 1. The use of biometric information on the ID card and the subsequent biometric check at the gun shop would enhance the reliability of the identification check by making it substantially more difficult for such an identification document to be counterfeited or altered. However, other technologies also exist, such as holograms, to enhance the security of identification documents. Moreover, the biometric card does not solve the problem of individuals using fraudulent "breeder" documents, such as birth certificates, to obtain the biometric ID card.

2. Prior recording of biometric identification data on the card eliminates the need for transmission of biometric data from the dealer to the central facility.

3. On-site equipment to check biometric data at the point of sale would be expensive to install, maintain, and operate. Dealers would have to be trained.

4. Interstate coordination, perhaps requiring the collection and maintenance of fingerprints for all applicants, would be necessary to prevent applicants from obtaining separate ID cards in different States using different names. This would be important since subsequent inquiries to State or NCIC data bases would be based on name rather than fingerprints.

5. Biometrically-supported identification could be used to link the dealer with data bases of other ineligible firearm purchasers, such as those dishonorably discharged from the Armed Forces.

6. Regulations would have to be issued to govern action by dealers if applicants were discovered to be using false identification (for example, where an applicant's fingerprints did not match data on the card).

Estimated cost. The following cost estimates do not include any costs associated with producing and distributing a biometric identification card.

For a system involving a biometric check at all dealers, total start-up costs are estimated at $198–368 million and annual operating costs at $102–168 million. For a system restricting the biometric check to commercial dealers (an estimated 35% of all dealers), total start-up costs would be an estimated $93–158 million and annual operating costs would be $70–105 million.

II. C. Section 3. Prior approval systems

(1) Option B: Firearm Owner's Identification (FOID) Card. Each State would develop a system for issuing a Firearms Owner's Identification (FOID) Card, which would be required for purchasing any firearm and would be valid for up to 3 years from the date of issue. This system, which would be quite similar to the secondary verification of Option A, would have the following requirements:

System description (Exhibit 3). 1. Prior to purchase of a firearm, each applicant would be required to appear at a law enforcement agency within the jurisdiction of the applicant's legal residence.

2. Each applicant would be fingerprinted and photographed, and the fingerprint cards and photograph would be submitted to the State criminal history repository and to the FBI's Identification Division for a fingerprint check.

3. Results from the FBI fingerprint check would be returned to the designated State agency for evaluation.

4. Additional records could be obtained directly from other State repositories or from courts or prosecutors' offices, as described in the discussion of the secondary verification procedures of Option A.

5. State officials would evaluate the records from all sources to determine whether the applicant was eligible to purchase a firearm. The designated State agency would issue a FOID card or Notice of Denial. The State agency would maintain a data base on all FOID cards.

6. If a Notice of Denial was issued, the applicant would be informed of the right to appeal.

7. The State agency would periodically issue to all gun dealers a listing of all invalid FOID cards.

8. If the applicant possessed a FOID card and wished to purchase a firearm, the gun dealer would be required to verify, prior to sale, the identity of the purchaser and the validity of the card. The applicant would fill out an application for purchase, which would require an additional piece of identification. The gun dealer would check the listing of invalid FOID cards.

9. If the sale was denied, the gun dealer would instruct the applicant on the procedures for an appeal. The gun dealer would send a copy of the application to the appeals agency.

Data sources. Fingerprint searches would utilize all existing criminal history data bases at the State and Federal levels. Manual as well as automated files would be searched. Approval of an application for a FOID card would not require an immediate search for out-of-State records; consequently, the AIS-III index would not have to be modified (as in Option A). Searches of records on individuals who were arrested before 1974 would utilize the current procedures of the FBI's Identification Division.

A FOID card data base would be maintained by the State identification bureau or designated State agency. This data base would contain basic information on applicants who had previously received a card. It would contain the applicant's name, date of birth, race, sex, other identifying information, and the FOID card number and expiration date. The data base could be regularly updated by the State identification bureau for subsequent disqualifying convictions. The State agency would issue on a regular basis lists of invalid FOID cards. Unless the applicant elected to renew the FOID card, the data base would be purged of all applicant information after the expiration date.

Verification and controls. Gun dealers would be required to maintain copies of all applications and the purchaser's FOID card number. Gun dealers would be subject to State or Federal audits. Dealers would be subject to criminal penalties for false records of sale and to loss of license for incomplete records.

Access to criminal history records would be restricted to law enforcement agencies.

If a card holder became prohibited from purchasing firearms after the FOID card had been issued, a Letter of Revocation would be sent by the State agency to the individual. The State agency would be required to send all gun dealers a listing of invalid FOID cards. No attempt would be made to recall invalid cards or firearms.

Positive identification. Positive identification of applicants by gun dealers could be enhanced by placing the applicant's picture and fingerprint on the FOID card. Requiring the applicant to provide at least one additional document with a picture identification would provide further confirmation of identity by the gun dealer.

Security provisions could be introduced to the FOID card, which would increase the difficulty and costs of counterfeiting. States could also be encouraged to develop better procedures for issuing breeder documents and securing existing cards (such as driver's licenses) from counterfeiting.

An applicant's fingerprint could also be placed on the BATF application (form 4473, Exhibit 5) at the time of purchase. This requirement would not only enhance BATF's ability to prosecute applicants who provide false information but also serve as a deterrent to individuals with false documents who may be reluctant to provide a fingerprint.

Out-of-State sales. The sales of firearms to out-of-State residents either at a gun shop or through the mail is currently restricted by Federal law to long guns (e.g., rifles and shotguns). With few exceptions, interstate sales of handguns are prohibited. Under Option B applicants possessing a FOID card issued in one State would be permitted to purchase a long gun in another State; however, applicants could only obtain FOID cards in their State of residence.

Two procedures may be adopted to check qualifications of out-of-State purchasers: (a) Dealers may be required to call a national toll-free number for a name and date-of-birth check; or (b) out-of-State residents may be required to obtain a Certificate to Purchase from a local law enforcement agency.

The first procedure would require the non-resident applicant to fill out the BATF application and present the out-of-State FOID card plus another photo-identification card to the dealer. The dealer would be required to call a national center, which would conduct a name and date-of-birth search of State and Federal files through NCIC. The dealer would receive a message of acceptance or denial. If the sale was denied, the applicant would be advised of the right to appeal; however, all appeals would be conducted within the applicant's State of residence.

The second procedure for sales to nonresidents would require that these applicants obtain a Certificate to Purchase from a local law enforcement agency within the State of purchase. Prior to purchase of a long gun, the applicant would submit the out-of-State FOID card and other identification documents to a local law enforcement agency; a name and date-of-birth check

of NCIC files would be conducted; if the applicant had no prior disqualifying record, the applicant would be issued a Certificate to Purchase. The certificate would be valid for 1 month.

Identifying felons. The problems of interpreting criminal history records are the same as those discussed in Option A. Accurate interpretation of in-State, out-of-State, and Federal records, though difficult, could be achieved given sufficient resources and time.

Response times. The fingerprint search procedures (including mail handling) and evaluation of records would require under current practice an estimated 4–6 weeks. (See Option A for details on how response times are estimated for the equivalent secondary verification procedure.)

Some reduction in the average response time could be achieved if State fingerprint searches produced evidence of disqualifying convictions or yielded an FBI number before the results of the FBI fingerprint check were received. In the former case the applicant would be disqualified on the basis of the State records alone; in the latter case the FBI number could be used to do an immediate query of Federal and out-of-State records through NCIC.

Expected number of cards issued annually. The proposed FOID card would be required of all purchasers of firearms. Unlike the current system in Illinois (see Part IV, Section 2), FOID cards would not be required of current owners or those wishing to buy ammunition. Start-up of the proposed FOID card system would begin with new buyers only.

Data on FOID card applications in the State of Illinois provide some basis for estimating the number of cards to be issued nationwide under Option B. Nearly 200,000 FOID cards are issued annually in Illinois. Relative to the resident population age 18 or older in Illinois (8.5 million), this figure represents a rate of 2.4 cards per 100 adult residents. If this rate were applied to all adult residents in the United States, the expected number of cards issued annually would exceed 4.2 million in 1990. A FOID card valid for only 3 years, instead of 5 years in Illinois, would generate a larger estimate—nearly 6 million cards issued yearly.

Because the proposed FOID card system for the Nation is restricted to firearm purchases only (and excludes requirements for possession of a firearm or purchase of ammunition), the annual number of cards issued should be somewhat less than the 6 million, based on projections from the Illinois system. However, based on figures from Option A, an estimated 6 million individuals buy the 7.5 million firearms sold annually. Consequently, in the first year of start-up, the estimated number of FOID cards issued cannot be less than 6 million. Once the system has been implemented, the number of cards issued annually should diminish. Though no data exist on the number of repeat buyers from year to year, if we estimate that about a sixth of buyers in any one year purchased a firearm in the previous year, then the estimated number of cards issued annually should approach 5 million in the long run.

Current practices of the District of Columbia and the 22 States that conduct a pre- or post-purchase criminal history check would reduce the net impact of Option B by approximately 8%. As a result, the total projected increase in fingerprint cards at the State and Federal levels would be approximately 5.5 million in the first year and 4.6 million in subsequent years.

The resultant number of fingerprint checks at the FBI would represent more than a doubling of civil (applicant) fingerprint cards (from the current figure of 4 million cards). Overall, the FOID card procedure would increase the total number of fingerprint cards submitted to the FBI's Identification Division from 8.4 million to 13.0 million—an increase of approximately 55%.

Impact. 1. *Purchasers:* Individuals without criminal records would not have the immediate ability to purchase a firearm. Those without criminal records would be required to have fingerprints taken by a law enforcement agency and be required to wait an estimated 4–6 weeks to obtain a FOID card. Once a purchaser possessed a card, there would be no additional waiting period during the time the card was valid.

2. *Dealers:* Little additional burden would be placed on gun dealers. Gun dealers would not be required to place any calls to law enforcement agencies for clearance prior to a sale. Dealers would be required to enter the FOID card number on each application form and review the lists of invalid FOID cards prior to each sale. Dealers would not perceive a loss of sales as a result of buyers being rejected in the shop at time of sale.

3. *State law enforcement:* States would experience a substantial increase in work load. Local law enforcement agencies would process additional paperwork and fingerprint cards. In the long run, the number of fingerprint cards would increase on average by 55% in each of the State identification bureaus. States would also need to establish an administrative staff to coordinate processing of appeals, to conduct system audits, and to coordinate audits of gun dealers.

4. *FBI Identification Division:* The FBI's work load would dramatically increase. Based on the long-term projection of 5 million fingerprint cards submitted annually, as many as 1,700 additional employees may be needed by the Identification Division. Approximately 550 of these employees would hold technical positions (e.g., fingerprint technicians, classifiers, and verifiers) and 520 would be typists; all of these would require an estimated 3–6 months of training. The FBI would need several years to recruit and clear these 1,700 new employees, assuming this is even possible. Moreover, it would require an additional 31,000 square feet of office space.

Costs. The annual operating cost at the State and local level is estimated to be between $71 million and $91 million. (For detailed cost estimates, see Exhibit 6 and Estimates of Start-up and Operational Costs of Systems for Identifying Felons Who Attempt to Purchase Firearms, Fisher-Orsagh Associates, June 1989.) State and local law enforcement agencies would also require an estimated $72 million for start-up costs.

At the Federal level the estimated cost for processing the anticipated 5 million fingerprint cards a year is $65–70 million, and the cost for start-up is $77–81 million.

Overall, when local, State, and Federal costs are combined, the estimated annual operating cost for Option B is $136–161 million, and the estimated start-up cost is $148–153 million.

If the annual operating costs were transferred to applicants through user fees, a fee of $27.28–32.39 per FOID card application would be required to cover local, State, and Federal costs.

Note that if current fingerprint checks for gun purchasers are taken into account, the actual new costs may be slightly lower than these estimates—perhaps 5% lower for start-up costs and 8% lower for annual operating costs.

Advantages. 1. The system would utilize existing data sources, communications systems, and search procedures.

2. Access to criminal history records would be limited to law enforcement agencies. Gun dealers would receive only a listing of invalid card numbers.

3. Positive identification for those with a criminal history record could be established at the time of application for the FOID card. Unlike Option A, an estimated 6–8% of the individual applicants would not be falsely rejected because they had a name and date of birth similar to that of someone with a criminal history record.

4. Use of the FOID card would make purchase of firearms more convenient by eliminating point-of-sale criminal history checks. Only one criminal history check would be required in a 3-year period regardless of the number of firearms purchased.

5. This system would be much less burdensome to the gun dealer than the point-of-sale options.

Disadvantages. 1. Individuals without criminal records would not have the immediate ability to purchase a firearm and would be required to have fingerprints taken by a law enforcement agency. The processing of applications for FOID cards could take approximately 4–6 weeks. There may also be public resistance to systematic fingerprinting of all firearm purchasers.

2. Fingerprint searches are slow and costly and place heavy demands on State and Federal repositories, which are having difficulties with current work loads.

3. A State FOID card system would create a list of all persons with valid cards. Though essential to verification and prevention of forgery and fraud, the creation of such a list may be controversial.

Potential modifications. 1. Fingerprint searches may be limited to the repository within the applicant's State of residence. Federal data bases would be searched only on name, date of birth, race, and sex. In order to accomplish this, the AIS–III index would have to be expanded to include individuals arrested before 1974. State repositories would assemble Federal and out-of-State records from automated and manual FBI files plus additional records obtained from NCIC. This modification would substantially reduce the FBI's burden in conducting fingerprint checks while increasing its burden in providing manual records in response to NCIC inquiries. The net effect could be a reduction in burden to the FBI. This modification in Option B would also potentially reduce response times and system costs. A major disadvantage would be decreased reliability in searches of Federal and out-of-State records since name searches of automated records are less reliable than fingerprint-based searches.

2. A notarized statement of eligibility from an applicant could be substituted for fingerprint checks (similar to procedures in Illinois). Fingerprint checks would not be performed. Verification and control procedures could be introduced through random criminal history checks conducted by State identification bureaus. Criminal sanctions could be imposed on individuals who falsify information on the application form. State repositories and Federal officials would be given authority to conduct audits, to revoke FOID cards, and to impose criminal sanctions on fraudulent applicants.

Major advantages of this modification would include: (a) The burdens on State and Federal repositories would be reduced; (b) the burden on applicants would be limited to obtaining a notarized statement; and (c) response time from application to issuance of card could be reduced from the 4–6 weeks in Option B. The major disadvantage would be an increased potential for fraud by disqualified applicants.

3. Fingerprints could be required only for the initial issuance of the FOID card. Renewals could be based on a name and date-of-birth search only. As a result of this modification, the annual number of fingerprint searches could be reduced by about a third.

4. The FBI Identification Division could build a "stop file." Applicant print cards could be added to the existing criminal files or to a special FOID card file. State identification bureaus could then be notified by the FBI when a FOID card holder was subsequently convicted of a disqualifying offense. As a result of this modification, FOID cards would not have to be restricted to a 3-year term; consequently, the number of fingerprint cards sent to the State and the FBI would be reduced. Major disadvantages of this procedure would include: (a) A substantial increase in the number of non-criminal fingerprint cards retained by the FBI, and (b) increased fears that such a data base would create a Federal list of gun owners and that it could be used for other criminal justice or investigative purposes.

5. The proposed system could be modified so that FOID cards would be required only of purchasers of specific types of guns.

(2) Option B1: Live scan of fingerprints by local law enforcement and biometric check by gun dealer. This option is a variant of the pre-approval system described in Option B. In this variation gun buyers would be fingerprinted by local law enforcement; State and Federal criminal history files would be checked by the local law enforcement agency; individuals would be notified of the results while at the law enforcement agency; if approved, individuals would be issued a FOID card; if rejected, individuals would be advised of appeal procedures. The system would work as follows:

1. The applicant would go to a designated law enforcement agency to obtain a FOID card.

2. The applicant would place all 10 fingers into a fingerprint scanner, which would be maintained and operated by the local law enforcement agency.

3. Digitized fingerprint data would be transmitted to the State identification bureau (and to the FBI if the applicant was not disqualified by the State).

4. At the State identification bureau, a fingerprint technician would calculate the pattern type, which would identify the subfile of the State fingerprint data base. The subfile would then be searched for potential matches.

5. If the search resulted in a list of potential matches, a fingerprint technician would examine the prints and determine identity.

6. If a match was found, a technician at the State identification bureau would inspect the criminal record for disqualifying convictions. If the applicant was disqualified, the local law enforcement agency would be immediately notified and the applicant would receive a Notice of Denial.

7. If a match was not found in the State files (or if the applicant had no disqualifying convictions), the digitized fingerprints, pattern types, and other identifying information would be transmitted by the State identification bureau to the FBI. The FBI would subsequently conduct an electronic search of the national fingerprint files, master name index, and criminal history files.

8. If a match was found in the FBI files, the State identification bureau would receive (by NLETS) copies of the automated records and (by mail) copies of the manual records. If automated, the State would evaluate the records and transmit results to local law enforcement. If manual, the State would notify the law enforcement agency that a record was found and that the applicant could return within 7 work days to receive a FOID card or Notice of Denial.

9. If an applicant was issued a FOID card, the State identification bureau would retain a copy of the applicant's fingerprints. A print of either the thumb or index finger would be on the FOID card.

10. At the gun shop, purchasers would present the card to the dealer. The dealer would then use equipment to scan the applicant's fingerprint (one print). The equipment would compare the applicant's print to the print on the FOID card.

11. The dealer would call the State identification bureau. The FOID card

data base would be examined to determine whether the person in the gun shop was the same person who applied for the card, whether the card had been reported lost or stolen, or had expired, or whether the person had been subsequently convicted of a felony.

12. The dealer would receive notice of approval or denial of sale from the State identification bureau. As a result of a denial, applicants would be advised of appeal procedures.

Advantages and disadvantages. 1. *Advantages include:* (a) Shorter response time to obtain a permit—a majority of applicants could, within an hour, receive a valid FOID card from local law enforcement; (b) the ability to increase the reliability of identification at the gun shop; (c) the ability to identify FOID cards as lost, stolen, lapsed, or disqualified; and (d) the enhancement of automated fingerprint processing for all law enforcement purposes.

2. *Disadvantages include:* (a) The high costs of start-up and operations; (b) the requirement for equipment and software that are currently being tested or yet to be developed; (c) the need for modifying existing State and Federal data bases to interface with digitized fingerprint information; (d) additional automation of State indexes and criminal history files; (e) public resistance to a data base that identified all FOID card holders; (f) significant increased burden on local law enforcement agencies; and (g) the need for additional fingerprint technicians and record evaluators at State identification bureaus.

Estimated costs. Because of the novel and complicated nature of this option and its use of technologies still under development, it has been possible to estimate only part of the costs of setting up such a system. Consequently, the following estimates should be viewed as only a rough measure of system costs.

For a system involving a biometric check at all dealers, total start-up costs are estimated at $344–572 million and annual operating costs at $203–295 million. For a system restricting the biometric check to commercial dealers (an estimated 35% of all dealers), total start-up costs could be an estimated $239–382 million and annual operating costs would be $171–232 million.

(3) Option B2: Smart card containing disqualifying information. In this variation of a pre-approval system, everyone would carry a card (e.g., a driver's license) that would have electronically imprinted identification information, including biometric data such as fingerprints. Whenever someone became legally disqualified to purchase a firearm (for example, by being convicted of a felony), the card would be updated to contain this information.

Anyone attempting to buy a firearm would have to produce the card. The card would be put into a reader that would indicate whether the carrier was prohibited from purchasing firearms.

Advantages and disadvantages. 1. The major advantage is that this procedure would not require a communications system—the disqualifying information would be on the card itself.

2. A major disadvantage is the cost of implementing such a radically new identification system and providing criminal justice agencies with the facilities to update these cards.

3. There may be substantial public resistance to the requirement to carry such a card, especially since the need for interstate coordination may require the creation of biometric databases for the Nation's adult population.

Estimated costs. Sufficient information does not currently exist to make reliable cost estimates of this novel and far-reaching option.

II. D. Section 4. Appeal procedures. The appeals process commences at the point that the applicant receives final notice that the sale has been denied and has been notified of the reasons for denial. This may occur after "secondary verification" (Option A) or after denial of a firearm owner's identification (FOID) card (Option B). As described in both options, fingerprint checks against State and Federal data bases would have been completed prior to final denial and initiation of the appeal period.

During the appeal, the applicant may challenge the denial on grounds that the data are inaccurate (e.g., an acquittal was recorded as a conviction); that the record is incomplete (e.g., a subsequent pardon was not recorded in the data base); or that the offense does not represent a disqualifying offense under the Federal or State standards. Challenges based on inaccurate identification would not occur at the appeals stage since fingerprint checks prior to denial would, presumably, catch errors of this type. The appeals process would proceed as follows:

1. Following final denial, the applicant is advised of rights to appeal and given a document to initiate the appeal.

2. The applicant would go to the agency designated to handle appeals (or would submit documents to a non-local appeals agency).

3. The applicant would be provided a copy of the criminal history record that was used as the basis for disqualification.

4. The applicant would indicate the basis for the appeal. The appeals agency would assist the applicant either directly or indirectly by providing names, addresses, or telephone numbers for inquiries to in-State or out-of-State agencies.

5. If errors could not be corrected on the spot or by telephone, the applicant would obtain and submit to the appeals agency documents supporting eligibility (for example, court records of acquittal, pardon, or restoration of rights).

6. The appeals agency would then review the documentation and rule on the appeal. If eligibility was established, the individual would receive a FOID card or Certificate to Purchase.

7. If eligibility was denied, the applicant would be advised of rights to a court challenge.

Additional considerations. 1. The agency (or agencies) assigned responsibility for appeals must be determined. The agency could be the decision agency (State or Federal), a local agency, or a separate entity (State or Federal). Although the latter option would provide an independent review, the decision agency would probably be more familiar with the criminal history records. Local agencies would best serve as a conduit to the official appeals agency rather than as the agency responsible to rule on the appeal.

2. The degree of formality for the appeal must be determined. For example, a separate "Board" could be established, or alternatively, an existing unit within an agency could be designated.

3. Procedures for applicant assistance must be developed. In particular, procedures regarding challenges based on out-of-State records should be developed and coordinated on a national basis.

4. The time for the appeal and decisions may have to be limited.

5. Some States may consider their existing procedures for correcting or updating criminal history records as adequate for a felon identification system.

III. Legal and Policy Issues

Based upon legal research of State and Federal case law conducted for the Task Force, there appear to be no constitutional impediments to the creation of felon identification systems as described in this report. (See Legal and Policy Issues Relating to Biometric Identification Technologies, SEARCH Group, Inc., June 1989.) Criminal history checks, including those based on fingerprints, are currently required by State and Federal law for a variety of non-criminal justice purposes such as job applications and security clearances. Depending on the jurisdiction, such checks are conducted for those desiring to be lawyers, child care workers, State or Federal employees, bartenders, etc. The courts have generally upheld these requirements as rationally related to legitimate governmental purposes. Nonetheless, the use of felon identification systems in firearm sales does raise a variety of important policy issues that may have to be addressed in Federal and State legislation. Some of the major issues are outlined here.

A final selection of any particular identification system ought to be preceded by a rigorous legal review by appropriate divisions within the U.S. Department of Justice.

A. A Federal or State System; Mandatory or Voluntary?

There are four broad possibilities for implementing a felon identification system: (1) To create a self-standing Federal system that is run entirely by Federal officials; (2) to mandate a cooperative Federal-State system in which State officials carry out a substantial portion of the criminal history checks; (3) to establish a mandatory Federal standard that States could meet in a variety of different ways; and (4) to offer the States several models for a voluntary cooperative Federal-State system and make Federal resources and leadership available to assist the States.

(1) The Task Force did not focus its research efforts on the creation of an independent Federal system for the simple reason that 90% or more of arrests and convictions in the United States are handled by State and local officials. Because of the variety of State laws, practices, and data systems, only State officials are in a position to properly interpret criminal history record information for their State and to determine whether a conviction meets the Federal standard for disallowing a firearm purchase. Moreover, State officials are in the best position to track down missing or incomplete information with local courts or prosecutors. Thus, the active involvement of State officials in the criminal history checks would seem essential for an effective felon identification system.

(2) Given the necessity for active State involvement, the Federal government could create a felon identification system by mandating that the States adopt a particular system, such as one of those detailed here or a modification thereof. Under this implementation strategy, the Federal government would select a felon identification system and each State would be required to work with Federal officials to implement it. The result would be a uniform system in each of the 50 States. Such a mandate could be enforced by making State cooperation a condition for the receipt of specified Federal funds or, more directly, for the sale of firearms within the State (under the Federal authority over interstate commerce).

(3) Another possible implementation plan is to allow variation across the States in the kind of system established as long as each State's system met certain minimum Federal standards. As noted above, 20 States and the District of Columbia currently conduct a pre-purchase criminal history check for those who wish to buy handguns. There is, however, substantial variation among these systems. In some States checks are conducted by local authorities; in others by State authorities. Some States access only State records when conducting the check; others also access Federal records. A few States require fingerprints; most do not. Of these existing systems, some might be as effective as the options detailed in this report in keeping convicted felons from purchasing firearms through legitimate retail outlets. Others might be easily upgraded.

All of the options presented in this report meet at least two minimum standards: all firearm purchases from federally licensed dealers are covered; and a name check of both State and Federal automated data bases is conducted for evidence of an arrest for a serious crime (such checks usually also include date of birth, race, and sex). It appears that only four States and the District of Columbia currently meet both standards.

(4) Finally, the Federal government could take a leadership role in designing one or more felon identification systems and in encouraging, but not mandating, State cooperation. Under this strategy the Federal government would expand its own resources at the FBI and BATF to make such a system(s) possible and would provide expertise and technical assistance to State and local officials.

B. Sources of Funding for Criminal History Checks

The Federal government will be required to invest substantial resources in national data bases, including both personnel and equipment, in order to handle the increase in workload that would result from a felon identification system for firearm sales. State repositories also will require substantial additional resources to handle the work load increase and to continue to improve data quality. Given these resource needs, policymakers will have to determine the appropriate funding mechanism for carrying out the required criminal history checks. Such funding mechanisms could include one or more of the following: (1) direct appropriations by the Federal and State governments, (2) user fees by gun purchasers, and (3) increases in firearm dealers' licensing fees through the Bureau of Alcohol, Tobacco and Firearms. In addition, legislation would have to address whether the State and Federal governments would share any revenue generated by a felon identification system and in what proportion.

C. Release of criminal history information to gun dealers

The Task Force has not proposed any options that would give gun dealers direct access to criminal history record information. Such access would violate established standards of privacy and confidentiality as well as numerous State statutes that preclude access to criminal history records by non-law enforcement personnel. Nonetheless, several of the options do require notification to the dealer that a criminal history check has turned up evidence of an arrest for a felony or serious misdemeanor. Even this limited provision of information may violate some State statutes or regulations.

Under Option A and its variants, for example, the dealer would learn whether there was evidence that the prospective purchaser had a criminal history record, but the dealer would not learn the substance of the record itself. This may be viewed by some as a release of criminal history information to non-law enforcement personnel in a way that would embarrass or stigmatize the prospective purchaser. Indeed, in many (perhaps most) cases an initial indication of a criminal record would eventually be shown to be untrue because it resulted from a misidentification with someone else with a common name and date of birth. Yet a "hit" on the initial telephone check will be known to personnel at the gun store and perhaps to customers or others who are present. As a result, the purchaser's reputation within his community may be harmed through no fault of his own. This issue indicates the need for legislative prohibitions on the release by gun dealers and others of anything learned during the telephone check of purchasers, although it may be difficult to enforce such prohibitions against customers or others who may overhear or observe the results of a "hit" during the telephone check.

An important privacy consideration is whether gun dealers in a point-of-sale system would keep the records or lists of those who failed the initial check. Operationally, as in the options described in this report, such recordkeeping is not necessary and could be prohibited by law.

Note that under Option B and its variants the prospective purchaser has already completed a full-fledged criminal history check before going to the gun dealer. Thus, the gun dealer only sees those who have previously qualified to purchase a firearm. He does not learn about those who failed the pre-approval procedure. Only in the few cases where the purchaser had been arrested between issuance of the FOID card and his attempt to purchase a firearm would any disqualifying information become known to the gun dealer. Another issue of relevance to gun dealers is whether or to what extent their liability ought to be limited by law for providing firearms to disqualified persons on the basis of inaccurate information they received from law enforcement authorities.

D. The issue of accuracy

The Congressional mandate under Section 6213 of the Anti-Drug Abuse Act calls for the "accurate identification of felons" who attempt to purchase firearms. The statute, however, does not specify the level of accuracy that would be acceptable. Since, for the reasons elaborated earlier in this report, a perfectly accurate system is not feasible in the foreseeable future, policymakers will have to decide how much accuracy is required for an effective felon identification system. Generally speaking, the most accurate systems are those that are the most expensive and that create the greatest inconvenience for the gun purchaser.

The issue of accuracy has two sides: (1) to correctly identify felons who attempt to purchase firearms and (2) not to reject eligible persons who attempt to purchase firearms. Deficiencies in identification documents for positively establishing identity, incomplete criminal history records, and the prevalence of common names and dates of birth complicate these two tasks and make it that much more difficult to achieve both simultaneously. A system, for example, that focused primarily on not rejecting eligible persons might prove incapable of correctly identifying a large number of felons. On the other hand, a system that single-mindedly sought to keep convicted felons from purchasing firearms might catch in its nets numerous law-abiding individuals who have a right to purchase firearms. How the balance is to be struck between these two goals—to correctly identify felons and not to reject eligible persons—is a policy, not a technical, judgment. The options outlined in this report present a variety of schemes for meeting the two sides of the accuracy mandate.

Because criminal history records are subject to error, the dictate for an accurate system points to the need for mechanisms through which prospective gun purchasers can update and correct criminal history information. Fortunately, such procedures currently exist in all the States. Any felon identification system for firearm sales ought to have a linkage to these procedures so that corrections to criminal history records can be made in a timely fashion. Otherwise, persons eligible to purchase firearms may be improperly prohibited from doing so.

The requirements for establishing an accurate felon identification system highlight the need for complete and up-to-date criminal history records, preferably in an automated format. Improvements in the accuracy of criminal history records would generate benefits in a wide range of criminal justice applications.

E. Creating a data base of firearm purchasers

None of the options outlined in this report provide for or require the creation of a national data base of firearm purchasers. Since all the options are essentially State run, any recordkeeping, whether manual or automated, regarding the application to purchase, or the actual purchase of, firearms would be maintained at the State level, as is currently the case in the States that now require a written application and criminal history check for firearm purchases.

Operationally, the maintenance of computer inquiry logs—transaction records that do not necessarily require the applicant's name—is necessary to measure system traffic and cost and to ensure that inquiries are made only by legitimate dealers for legitimate purposes. In addition, any pre-approval system (such as Option B and its variants and the secondary verification of Option A) must maintain records of successful applicants if the system is to have the capability of revoking permits (or FOID cards) if a holder is convicted of a disqualifying felony. This could apply under systems that require the return of a revoked permit and under those in which dealers check the validity of a permit prior to sale.

The development of a data base of gun purchase applicants raises the possibility that such records might be used for other purposes. For example, individuals included in such a data base might be treated as possible suspects in crimes involving firearms. If fingerprint data were included in the file, latent fingerprints might be routinely run against the data base.

Policymakers, of course, could prohibit such use of applicant records through law. Moreover, strict limits could be placed on the time during which records of firearm applicants were maintained and on the extent to which applicant names would appear on transaction logs. In point-of-sale systems, time limits could be placed on the retention of initial inquiry records which do not result in a "hit."Pre-approval systems, however, have greater recordkeeping requirements if the possibility of revoking permits is to be maintained.

F. Potential "Tracking" of Firearm Purchasers

Any system that requires a criminal history record check prior to purchase of a firearm creates the potential for the automated tracking of individuals who seek to purchase firearms. It would be possible, for example, for authorities to "flag" the names of specific individuals, perhaps suspects in criminal cases, who might seek approval to purchase a firearm. If an automated criminal history check was conducted on such a flagged individual as part of an application to purchase a firearm, an electronic message to this effect could be sent to the interested law enforcement agency without the knowledge of the applicant. In this way authorities could learn about the potential purchase of a firearm by someone under investigation or surveillance as well as the geographic location of the purchaser.

Policymakers will have to decide whether to prohibit all such tracking activity or to permit it in some circumstances (for example, notifying the Secret Service when a person suspected of being a threat to the President purchases a firearm). If some tracking is to be permitted, then clear rules and conditions for such activity will have to be established.

G. Issuing Documents Authorizing Firearm Purchases

The pre-approval options outlined here (Option B and its variants) require the issuance of some kind of documentation (FOID card, certificate to purchase, permit, etc.) for the prospective gun purchaser to present to the gun dealer certifying that the purchaser is not a convicted felon. Moreover, the point-of-sale options (Option A and its variants) have a similar requirement for those who fail on the original telephone check.

Such a requirement, especially if mandated by Federal law, raises policy issues regarding whether the firearm purchaser ought to be singled out and forced to prove through documentation that he is not a convicted felon before he can engage in an otherwise lawful commercial activity. In addition to the inconvenience that such a requirement creates, it may be viewed as demeaning by some.

The other policy issue that such a requirement for documentation presents is that this may be interpretated as an initial step toward a national identification card, something that members of Congress and others have strongly opposed in the past. It should be noted, however, that there are several important differences between a national ID card system and the kinds of documentation required in the options in this report. As usually conceived, a national ID card would be an identification document that was issued to all adult Americans and which had to be carried at all times; yet neither of these conditions would apply to the kind of documentation discussed in this report. FOID cards or firearm purchase permits would be required only for those who wish to purchase firearms and would have to be carried only at the time of purchase. Legislation could prohibit the use of such cards for unrelated identification purposes.

H. The Use of Biometric Data

Many of the options detailed in this report require the collection of biometric data in the form of fingerprints at some stage in the approval process. Given the traditional association of fingerprints with law enforcement, there may be public resistance to the requirement to provide fingerprints at a law enforcement agency or at a gun dealership in order to purchase a firearm. Such concern may be heightened if the fingerprints are kept on file, manually or electronically, and are subsequently used for unrelated investigative purposes, criminal or otherwise. As noted earlier, such use of the fingerprints provided in a felon identification system could be prohibited by law.

Other biometric technologies, such as retinal scans, could be introduced into felon identification systems, especially to verify identity against a biometrically based identification card. Because some of these technologies might be perceived as physically more intrusive than fingerprints, public opposition to their use may be greater than to the use of fingerprints. On the other hand, this may be counterbalanced by the fact that these newer technologies are not as closely associated with law enforcement activities as fingerprints.

IV. Supplementary Materials

A. Section 1. Relevant Federal Statutes

Anti-Drug Abuse Act of 1988, Pub. L. 100-690, Sec. 6213, 102 Stat. 4360 (1988), as codified in 18 U.S.C. Sec. 922 note (1989)—Identification of Felons and Other Persons Ineligible to Purchase Handguns—(a) *Identification of Felons Ineligible to Purchase Handguns*—The Attorney General shall develop a system for immediate and accurate identification of felons who attempt to purchase 1 or more firearms but are ineligible to purchase firearms by reason of section 922(g)(1) of title 18, United States Code. The system shall be accessible to dealers but only for the purpose of determining whether a potential purchaser is a convicted felon. The Attorney General shall establish a plan (including a cost analysis of the proposed system) for implementation of the system. In developing the system, the Attorney General shall consult with the Secretary of the Treasury, other Federal, State, and local law enforcement officials with expertise in the area, and other experts. The Attorney General shall begin implementation of the system 30 days after the report to the Congress as provided in subsection (b).

(b) *Report to Congress*—Not later than 1 year after the date of the enactment of this Act, the Attorney General shall report to the Congress a description of the system referred to in subsection (a) and a plan (including a cost analysis of the proposed system) for implementation of the system. Such report may include, if appropriate, recommendations for modifications of the system and legislation necessary in order to fully implement such system.

(c) *Additional Study of Other Persons Ineligible to Purchase Firearms*—The Attorney General in consultation with the Secretary of the Treasury shall conduct a study to determine if an effective method for immediate and accurate identification of other persons who attempt to purchase 1 or more firearms but are ineligible to purchase firearms by reason of section 922(g) of title 18, United States Code. In conducting the study, the Attorney General shall consult with the Secretary of the Treasury, other Federal, State, and local law enforcement officials with expertise in the area, and other experts. Such study shall be completed within 18 months after the date of the enactment of this Act and shall be submitted to the Congress and made available to the public. Such study may include, if appropriate, recommendations for legislation.

(d) *Definitions*—As used in this section, the terms "firearm" and "dealer" shall have the meanings given such terms in section 921(a) of title 18, United States Code.

Gun Control Act of 1968, 18 U.S.C. Sec. 921 et seq., as amended by the Firearms Owners Protection Act, Pub. L. 99-308, 100 Stat. 449 (1986).

921 (20) The term "crime punishable by imprisonment for a term exceeding one year" does not include—

(A) Any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices, or

(B) Any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.

What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

922 (d) It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person—

(1) Is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) Is a fugitive from justice;

(3) Is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substance Act [21 U.S.C. 802]);

(4) Has been adjudicated as a mental defective or has been committed to any mental institution;

(5) Who, being an alien, is illegally or unlawfully in the United States;

(6) Who has been discharged from the Armed Forces under dishonorable conditions; or

(7) Who, having been a citizen of the United States, has renounced his citizenship. This subsection shall not apply with respect to the sale or disposition of a firearm or ammunition

to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector who pursuant to subsection (b) of section 925 of this chapter is not precluded from dealing in firearms or ammunition, or to a person who has been granted relief from disabilities pursuant to subsection (c) of section 925 of this chapter.

922 (g) It shall be unlawful for any person—

(1) Who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;

(2) Who is a fugitive from justice;

(3) [Who] is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act [21 U.S.C. 802];

(4) Who has been adjudicated as a mental defective or who has been committed to a mental institution;

(5) Who, being an alien, is illegally or unlawfully in the United States;

(6) Who has been discharged from the Armed Forces under dishonorable conditions; or

(7) Who, having been a citizen of the United States, has renounced his citizenship; to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

IV. B. Section 2. Current Practices

(1) Federal Control of Firearms

The Federal role in the control of firearms is derived primarily from the Gun Control Act of 1968 as amended and is overseen at the National level by the Bureau of Alcohol, Tobacco and Firearms (BATF) of the Department of the Treasury. BATF has over 40 field offices and 500 field agents used for the control of firearms, alcohol, and tobacco; over half of the agents are devoted to firearms control. There are approximately 270,000 federally licensed firearm dealers. It is estimated that 60–70% are noncommercial dealers (hobbyists, collectors, etc.) and account for 20–25% of all sales of firearms. Primary control is maintained through the licensing of dealers and the recording of sales.

Prospective dealers apply for a license through BATF. Ordinary dealers pay a fee of $10 a year; pawnbrokers pay $25 a year; and gun dealers who sell "destructive devices" may be required to pay a fee of up to $1,000 a year. Licenses are issued for 3 years after inquiry and investigation has determined that the applicant is legally qualified. Disqualification can be made if the applicant is under 21 years of age, has previously violated the laws and regulations governing firearms, or is ineligible to possess a firearm under Federal law. This license may be renewed, but may not be transferred if the business is sold. There are a variety of regulations that affect licensees; and licenses may be suspended or revoked for cause.

Retail firearm sales require the completion of BATF form 4473 (Exhibit 5) for each over-the-counter sale or transfer to an end user. This form requires the prospective owner's name, address, date and place of birth, height, weight, and race. It also requires a certification that the prospective buyer is not prohibited from owning a firearm because of a prior felony conviction or because he is in one of the several other categories of persons who are precluded from ownership by Federal law—including, among others, those dishonorably discharged from the Armed Forces, habitual drug users, and those who have been committed to a mental institution. The type and serial numbers of any weapons purchased are also recorded. The dealer is required to see appropriate identification from the prospective owner, such as a State driver's license, and must make a note of the method of identification on the BATF form 4473. There are stiff criminal penalties for false statements on the form—up to 5 years in prison.

Records relating to firearm transactions must be retained on the premises of the dealer for a period of 20 years. If the dealership is sold, the records be must transferred upon issuance of a new license. If the dealer goes out of business without a successor, the records of transactions must be shipped to BATF's long-term storage facility in Landover, Md. BATF agents may enter gun dealers' facilities and inspect any or all of the records that are required to be maintained by Federal law. These examinations are constrained by the law, which spells out in some detail the conditions (frequency and purpose) under which such investigations may be made. As an example, in the event of a crime involving a firearm, BATF secures a description of the weapon, including the serial number, and traces it from the manufacturer or importer through the distributor to the retail dealer where the records of sale are examined in an effort to trace the weapon to the owner of record.

Because of limitations in manpower, BATF agents concentrate their examination of records on high-volume retail stores, dealers who are suspected of illegal gun sales, and other individuals who come to the attention of the agents through other sources. In their examination of these records, the agents are especially alert to the sale of two or more handguns to the same purchaser within 3 days. Other causes for suspicion include sales to suspected gang members or sales of high-powered weapons to suspected "straw purchasers," those buying guns for others who are ineligible. If an inspection is not satisfactory, BATF (1) may note the problem and reinspect in about 3 months, (2) notify the dealer that his license is in jeopardy if corrective actions are not taken, (3) take other administrative action, or (4) initiate criminal proceedings.

(2) State Practices Regarding Firearm Sales

Currently, 20 States and the District of Columbia, covering 55% of the Nation's population, conduct a criminal history check of persons desiring to purchase a handgun prior to allowing that person to take possession of the weapon (Exhibit 7). Four of these States and D.C. include the purchase of long guns in this requirement. In 10 States and D.C. the burden of responsibility for pre-purchase criminal history checks falls solely on local law enforcement agencies (either the police or sheriffs department); in 5 States this responsibility is solely that of a State agency; and in another 5 States agencies at both State and local levels conduct criminal history checks prior to purchase.

The levels of criminal history information accessed in these checks vary among the States. Eight States access files no higher than those maintained at the State level; 12 States and D.C. access national criminal history records.

In most States this criminal history check is done using name, date of birth, and other identifying characteristics such as race and sex, but excluding fingerprints. In six States and D.C. fingerprints are taken from the applicant for use in the criminal history check. In one of these States only a thumbprint is obtained.

The criminal history check is conducted as part of an application process involving a mandatory waiting period. In 15 States this application process and waiting period are required for each handgun purchase (a permit is obtained through this process in four of these States). In six States a successful application for purchase of handguns results in a permit or identification card which allows purchases for a specified or indefinite time period. In the four States and D.C. that require criminal history checks for the purchase of long guns, a successful application results in an identification card, permit, or registration certificate.

In some instances, a criminal history check is conducted after the purchaser of a handgun has taken possession of the weapon. In Pennsylvania, a post-purchase check is conducted by the State agency (in addition to a pre-purchase check conducted locally). Two States (Michigan and South Carolina) conduct a criminal history check on handgun purchasers only after the buyer has taken possession of the weapon. In Michigan this check is done by the local agency, and in South Carolina it is done by the State agency.

State residents making their initial purchase of a handgun in the 20 States and D.C. conducting a pre-purchase criminal history check are subject to waiting periods ranging from 2 days to 6 months (Exhibit 8). The two States that conduct only a post-purchase criminal history check on handgun purchasers have no waiting period. One State (Wisconsin) requires a 2-day waiting period for handguns, but does not conduct a criminal history check on the purchasers of handguns. The waiting periods for the purchase of long guns in the four States and D.C. that require a criminal history check for such purchases range from 15 to 60 days. Local jurisdictions in many States may have additional restrictions or requirements for the purchase of handguns and long guns.

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Application Requirements for Firearm Purchases in the 10 Largest States (as of April 1988; Population Figures are for 1988)

California (pop. 28,074,000). A written application is required to purchase a handgun. This is submitted by the firearm dealer to the State Department of Justice. Purchaser must wait 15 days before taking possession. Within this 15-day period, the application may be rejected based on the results of name check done against State criminal history files. Eventually, but not necessarily during the 15-day waiting period, the State DOJ conducts a name check against NCIC.

New York (pop. 17,755,000). A written application is required for the purchase of handguns. This is made to the city or county licensing officer (usually the Police Commissioner or Sheriff). Purchaser pays for gun, then takes receipt and application for permit to local law enforcement agency where fingerprints are taken. Application materials are forwarded to the State Division of Justice Services for State records check and FBI check. Approval must be granted for purchaser to take possession of gun. Processing of application takes up to 6 months. The applicant must complete firearms safety and training course during this time. When the processing is complete, the local law enforcement agency informs the Superior Court Judge who issues the permit. If the application is denied, applicant receives a refund from the dealer. An application for permit is required for possession and purchase of all firearms in New York City.

Texas (pop. 17,182,000). No written application process is mandated by State law.

Florida (pop. 12,249,000). No written application process is mandated by State law.

Pennsylvania (pop. 11,860,000). A written application is required for handguns. Within 6 hours, the firearms dealer forwards this application to local Chief of Police or Sheriff. There is a 48-hour waiting period. The local law enforcement official may block the sale during this time. A copy of the application is forwarded to the State Police within 7 days. The State Police conduct a name check against their criminal history files, but generally this is done after the purchaser has taken possession of the weapon. If they get a "hit," a field investigation is initiated.

Illinois (pop. 11,584,000). A written application must be submitted to the State Police to obtain a Firearm Owner's Identification Card which is required for purchase of firearms. Application is checked against State and Federal criminal history files. If ID card is issued, it is valid for 5 years or until owner becomes prohibited from firearms possession. Waiting periods of 72 hours for handguns and 24 hours for long guns are in effect. Only pre-registered handguns are allowed in Chicago; no new handguns may be brought into the city.

Ohio (pop. 10,779,000). The written application mandated by State law pertains only to firearms designed for military use; however, some local jurisdictions have enacted stricter legislation. Among major cities, a permit to purchase is required for any firearm in Cleveland, Columbus, Dayton, and Toledo, and a Handgun Identification Card is required for the purchase of handguns in Cleveland, Dayton, and Toledo.

Michigan (pop. 9,231,000). The Michigan License to Purchase is required for all handgun purchases. This is obtained at the local police agency. Upon purchase, the seller documents the sale on the application and forwards copies to the local police agency and the Department of State Police. The local police are responsible for conducting State and Federal criminal history checks. No waiting period has been established. In Detroit a permit is required for all firearms purchases.

New Jersey (pop. 7,756,000). A Firearm Identification Card is required to purchase rifles and shotguns. This card is valid until holder becomes prohibited from possessing firearms. A handgun permit is required to purchase a handgun. This permit is valid for 90 days. A written application to the local Chief of Police is required for each. Fingerprints must be submitted with the application. Applications are sent to State Police for NCIC check. In reality, the processing time for applications is 6–10 weeks (somewhat longer than the time stated in the law). The local law enforcement agency receives results, then makes a recommendation to the District Court which is the actual issuing authority.

North Carolina (pop. 6,512,000). A permit is required for the purchase of a handgun. Written application is made to the local Sheriff. There is up to a 30-day waiting period for approval. The Sheriff conducts a name check against the State criminal history files. The Sheriff decides on the basis of this check (and any of his own information) whether to accept or reject the application.

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Illinois Firearm Owner's Identification Card

In 1968, the Illinois legislature enacted the Firearm Owner's Identification Act which provides "a system of identifying persons who are not qualified to acquire or possess firearms and firearm ammunition within the State of Illinois." The Act provides for the issuance of Firearms Owner's Identification (FOID) cards to persons authorized to acquire or possess firearms or ammunition.

The provisions of the Act are administered by the Illinois State Police. An applicant submits a notarized card application form (with photo) to the Illinois State Police. The applicant must indicate whether he:

(1) Has previously been convicted of a felony;

(2) Has been a patient in a mental institution within the preceding 5 years;

(3) Is addicted to narcotics; or

(4) Is mentally retarded.

Rejection of the application may occur for affirmative responses to any of the above or for perjured responses.

Upon receipt of an application, a criminal history check is conducted utilizing a name index search through both the Illinois and Federal criminal history records systems. An additional check is conducted with the Illinois Department of Mental Health and Disabilities. After determination that the applicant is not an ineligible person, a FOID card is issued with a 5-year expiration date.

Applicants who are rejected may appeal to the Chief of the Identification Bureau of the Illinois State Police for an administrative hearing for reconsideration and must, by personal appearance, present relevant documentation to support a reconsideration. Subsequent appeals must be made through the State Court.

If State authorities learn that a FOID cardholder has become ineligible (for example, by a felony conviction), the card is revoked and a voluntary return of the card is requested. The revocation is noted in the State criminal history files. If the card is not returned voluntarily, it may be retrieved by the local police.

Illinois authorities report that approximately 200,000 FOID cards are issued annually. An estimated 78% of all cards are issued with the first application; the final rejection rate is about 5%.

The Illinois State Police have noted three problem areas for administration of the program:

1. the identification procedures used do not insure a positive identification;
2. court notification of disposition of felony charges for inclusion in criminal history records has not been accurate or timely; and,
3. private mental health institutions are not required to share information for the record check.

Virginia's New Point-of-Sale Approval System

The following is a summary of procedures being established to implement the recently enacted Virginia statute requiring felony checks for persons wanting to purchase firearms within the State. The legislation was enacted by both houses of the Virginia legislature in February 1989 and was signed by the Governor in April 1989. The system is to be implemented by November 1, 1989. All information was obtained from the Virginia Department of State Police.

One of the unresolved issues is which gun dealers are covered by the Act. The implementing agency, the Department of Public Safety, would prefer that small local dealers be exempted from coverage. They indicate that in comparison to large dealers who may sell 1,400-2,000 weapons covered under the bill each month, small dealers may sell no more than one or two each year.

The statute applies to:

1. Handguns with a barrel of less than 5 inches, and
2. Semi-automatic center fire rifles or pistols that expel projectiles by action of an explosion, have a magazine that holds more than 20 rounds of ammunition, and are designed by the manufacturer to accommodate silencers, bayonets, tripods, flash suppressors, or folding stock.

Procedures for Implementation

1. The purchaser presents two pieces of ID to the dealer.
2. The dealer calls the State Police using a toll-free telephone number. (The system will operate 7 days a week from 8 AM to 10 PM. The Records Management Division estimates that they will receive 250,000 inquiries a year).
3. The dealer identifies himself by giving his firearm dealer ID number and the control number from the State firearm purchaser's application form.
4. The State checks the validity of the ID number and confirms that the control number has been assigned to that dealer. (This is designed to prevent invalid inquiries. A micro-computer system is being developed that will contain dealer identification information and list the control numbers assigned to each dealer.)
5. The dealer provides the State Police with the applicant's name, sex, race, date of birth, and social security number.
6. While the dealer remains on the phone, the State Police make a name check against the State index to criminal history records and the "wanted persons" list. An exact name, sex, race, and date-of-birth match will be required to make a "hit." It is estimated that 16-20% of the telephone inquiries will result in a "hit." The total time for a phone call is expected to be about 3 minutes.
7. If there is a hit against the State index, the dealer is advised that the sale cannot be completed. State Police then have until the dealer's next close of business day to determine if the applicant was actually convicted of a disqualifying felony. During this time, checks will be made against the State criminal history records, the NCIC "wanted persons" records, and the Interstate Identification Index (III). If no record is found within this time, the dealer is advised that the sale may proceed. If a disqualifying felony is found, the dealer is advised that the sale may not proceed. The dealer then forwards a copy of the State application form to the State Police to permit cross checking of the control number and an appeal by the applicant.
8. If the sale is approved, the application form (with the dealer's control number) is completed and forwarded to the State Police. A check is then made to verify the data.
9. If there is no "hit" against the State index in the initial inquiry, the dealer is advised that the sale may proceed immediately. The State application form containing the control number is then forwarded to the State Police. The form will have been signed by the applicant attesting to the absence of any disqualifying felonies. Upon receipt of the application form, a check is initiated against State and Federal criminal history records. If a disqualifying felony record is found, this information and a copy of the application form is forwarded to the dealer and to the chief law enforcement official in the jurisdiction in which the sale was made. It is anticipated that the law enforcement official will issue an arrest warrant and initiate efforts to retrieve the firearm.
10. Appeals are based on the applicant's general right to inspect and correct his record. In general, applicants will be directed to the local police department who may take fingerprints to support the record check. (The State does not require a fingerprint check.) The applicant would also be advised of any out-of-State records and would be assisted in contacting out-of-State officials.
11. The system described above applies to Virginia residents only. Out-of-State residents, who may legally purchase long guns but not handguns, must apply for a permit. This application process, during which a criminal history check is conducted, may take up to 10 days.

Maintenance of Records

If the applicant is approved, a log of the inquiry transaction (including the applicant's name) will be maintained in an active file for 30 days. Thereafter, the information will be kept in an inactive file for audit purposes.

If the applicant is disapproved, a record of the inquiry and the basis for the denial will be retained for 60 days (the length of time during which the applicant may appeal the denial). If the applicant does not appeal, the record of the denial will be transferred to an inactive file and maintained for audit purposes.

If an appeal is successful, the record will be maintained in accordance with the procedures established for approved applicants (as described above). If an appeal is denied, a copy of the application form, marked "appeal denied," will be forwarded to the dealer. No reason will be given for the denial to prevent the dissemination of criminal history to the dealer. A record of the appeal denial will be maintained in an inactive status for audit purposes.

Estimated Cost

Virginia officials estimate that this system will require 16 new full-time personnel and will cost $481,000 for 12 months operation ($90,000 for start-up costs and $391,000 for annual operating costs). This will cover staff, space, forms, communications, and equipment.

Differences Between the Virginia System and Option A

1. The Virginia system applies only to specific categories of firearms and may be further limited to selected categories of dealers.
2. In the Virginia system Federal and interstate records are not checked prior to sale unless there is a "hit" against the State index. Under Option A, a check is automatically made against State and Federal records.
3. Virginia checks are based on name only and do not require a personal appearance at a law enforcement agency until the final appeal. Under Option A, the secondary verification on which a disapproval is based is supported by a fingerprint check.
4. The Virginia system has strict deadlines for government action, which are not included in the basic Option A.

IV. C. Section 3: Access to Federal criminal history records

Through both its Identification Division and the National Crime Information Center (NCIC), the FBI serves as a central access point for Federal and State criminal history record information. The Identification Division maintains fingerprint-based criminal history records on approximately 25 million individuals who have been arrested at some time in their lives for a serious offense (felony or serious misdemeanor). These records are described below. In addition, the FBI operates the Interstate Identification Index (III), accessed through the NCIC telecommunications network, which notifies law enforcement agencies requesting criminal history information whether a record exists in one of the 20 States (listed below) that currently participate in III. The III is a cooperative Federal-State program for the interstate exchange of criminal history record information that makes available in a timely manner criminal history information to the law enforcement community.

III participating States maintain their own computerized criminal history (CCH) files at the State level and provide information from these files when a request comes either through the NCIC network or directly to the State through the National Law Enforcement Telecommunications System (NLETS). Most States that do not participate in III also maintain automated CCH systems, but these are not directly tied into the NCIC system. These data, if automated, can be accessed by a direct request through NLETS. In addition, when a request comes in to the FBI through NCIC, it provides whatever automated data it has in its Identification Division from non-participating States.

In order to provide rapid access to these State and Federal criminal history files, the FBI maintains an automated master name index (MNI) of over 12.5 million records, with over 70,000 new records being added each month. An index record contains an individual's name, aliases, physical description, identifying numbers, fingerprint classification, and the location(s) of the criminal history record(s).

Criminal history records, sometimes call "rap sheets," are cumulative, name-indexed histories of an individual's involvement in the criminal justice system for serious offenses (felonies and serious misdemeanors). Excluded are records on arrests and subsequent dispositions for such offenses as drunkenness, vagrancy, disturbing the peace, and traffic violations (except manslaughter, driving under the influence of alcohol or drugs, and hit-and-run). Offenses committed by juvenile offenders are excluded unless a juvenile is tried as an adult.

Access to these Federal data bases and indexes is through the NCIC system. The NCIC computer equipment is located at FBI headquarters in Washington, D.C. Connecting terminals are located throughout the United States, Canada, Puerto Rico, and the U.S. Virgin Islands in police departments, sheriffs' offices, State police facilities, Federal law enforcement agencies, and other criminal justice agencies. The system includes 37,000 terminals in 17,000 locations and provides uninterrupted service 24 hours a day, 7 days a week. Over 130 dedicated telecommunications lines link Federal and State agencies together. Each State maintains a central Control Terminal Agency (CTA), which is directly connected to NCIC. Telecommunications lines and equipment within the State provide State and local criminal justice agencies access to the control terminal.

The NCIC system provides direct, electronic access to the Interstate Identification Index of records maintained in the 20 participating States and to the Identification Division's automated records. This combined index is now known as the Automated Information System—Phase III (AIS–III). Moreover, NCIC maintains several national "hot files." These hot files contain identifying information concerning wanted and missing persons, stolen vehicles, and identifiable stolen property of several types.

In addition to the computerized AIS-III MNI, the Identification Division maintains three criminal history files designed for use by Federal and State agencies:

1. An automated criminal history file which contains rap sheet information on 12.5 million persons arrested for the first time and reported to the FBI since July 1, 1974, or known to the FBI with a year of birth 1956 or later.
2. Manual criminal history records on approximately 8.8 million individuals born in or after 1929 but arrested at some time before July 1, 1974. There is an automated master name index to these data, but it is available only for in-house use and not through the NCIC network. The manual rap sheet jackets are maintained at various locations in the Washington, D.C., area. Several of the options detailed above require merging the index for these records into the AIS–III index.
3. Manual criminal history records on about 3.6 million offenders born before 1929 whose files are maintained by the Identification Division. There is no automated index to this older information.

In general, indexes at the Federal level are arrest-based files containing only identifying information on individuals arrested for "fingerprintable" offenses. See Exhibit 4 for an overview of these indexes and data bases.

An authorized criminal justice agency can make an inquiry (a QH message) on name, sex, race, date of birth, and numeric identifiers such as Social Security Number, State Identification Number (SID), or FBI number. Most initial searches are on name, sex, race, and date of birth, if known. In response to a QH inquiry, the requester will be provided one of the following responses:

1. A single matching record response—a "hit."
2. A multiple matching response, up to a maximum of 15 records—a "hit."
3. A "no record" response—a "no hit."

A "no hit" response does not necessarily mean that there is no criminal history record on the individual being investigated. The FBI Identification Division maintains fingerprints on approximately 25 million persons (21 million automated). Of these, about half, 12.5 million, are contained in the AIS–III MNI, discussed above. In order to access the information in the additional records maintained by the FBI, a law enforcement agency can submit a fingerprint card, usually through the mail, to the Identification Division for a more detailed search. Additionally, there may be criminal history information at the local or State level for which the arrest fingerprint card was never forwarded to the FBI.

As indicated above, a positive response to an NCIC inquiry (called a QH response) can result in either a single record response (one individual) or a multiple record response (up to 15 individuals). The response provides the requester with three types of information:

1. The person's name, including aliases, physical descriptors, and numerical identifiers.

2. The identity of the data base(s) containing the criminal history record information.

3. The means to be used to obtain the record(s).

In order to retrieve a specific criminal history, a criminal history record request (QR message) containing the person's FBI or SID number must be used. The identifiers are obtained from the name-based QH inquiry or from other sources such as State CCH records or investigative files. The QR message will result in an automatic notification to all data bases identified as having information on the subject being investigated. The CCH systems of the States participating in III will be queried and the individual's rap sheet from one or more III States will automatically be forwarded via NLETS. FBI records on Federal offenders and non-participating III States will be sent on-line using NCIC telecommunications.

If the automated name index for the records of the 8.8 million persons born in or after 1929 and arrested before July 1, 1974, is integrated into the AIS–III index, then under the initial verification procedure proposed in Option A (telephone check by the gun dealer), an NCIC inquiry could be conducted within a matter of minutes on approximately 21.3 million individuals who have been arrested for a felony or serious misdemeanor.

The 20 States participating in III as of June 1989:

California	New Jersey
Colorado	New York
Connecticut	North Carolina
Delaware	Ohio
Florida	Oregon
Georgia	Pennsylvania
Idaho	South Carolina
Michigan	Texas
Minnesota	Virginia
Missouri	Wyoming

IV. D. Section 4. Study of Other Persons Ineligible to Purchase Firearms

Section 6213(c) of the Anti-Drug Abuse Act of 1988 requires the Attorney General to conduct a feasibility study to determine whether an effective method can be established for identifying "other persons" ineligible to purchase firearms (that is, other than convicted felons). Such persons include fugitives from justice, those who use or are addicted to illegal drugs, those who have been adjudicated as mentally defective or have been committed to a mental institution, illegal aliens, those dishonorably discharged from the Armed Forces, and those who have renounced their American citizenship. This study must be submitted to Congress by May 18, 1990.

On behalf of the Task Force the Bureau of Justice Statistics has solicited proposals from outside contractors with the expertise necessary to conduct such a study. The study, scheduled to begin on July 1, 1989, will include the following elements:

- The availability of existing data bases that can be utilized to identify ineligible individuals;
- The quality of these data bases in terms of completeness and accuracy of records;
- The remote accessibility of the data bases through a telecommunications system, particularly, the method and cost of access;
- Legal restrictions on the use of the data and an analysis of the relevant privacy and confidentiality considerations of accessing such data; and
- The feasibility of linking these data bases with a felon identification system.

V. Exhibits

1. Felon identification system for firearm sales: Schematic overview.
2. Option A: Telephone check by gun dealer: Immediate verification.
3. Option A: Secondary verification: Option B: Prior approval.
4. National access to criminal history data.
5. Firearms transaction record, BATF form 4473.
6. Estimated costs for felon identification options.
7. States requiring criminal history checks for firearm sales.
8. Maximum waiting periods required for initial firearm purchase by a State resident.

BILLING CODE 4410-18-M

Felon identification system for firearm sales

Schematic overview

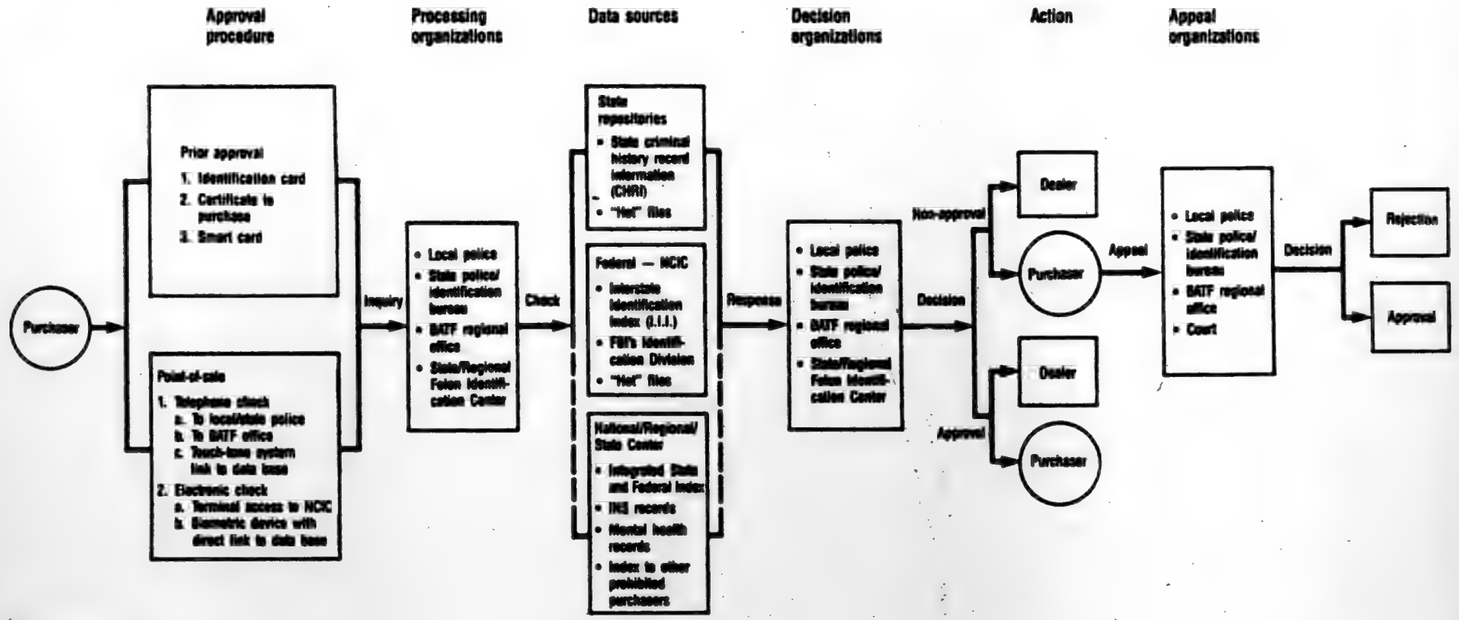


Exhibit 1
Bureau of Justice Statistics
June 1989

Option A: Telephone check by gun dealer

Immediate verification

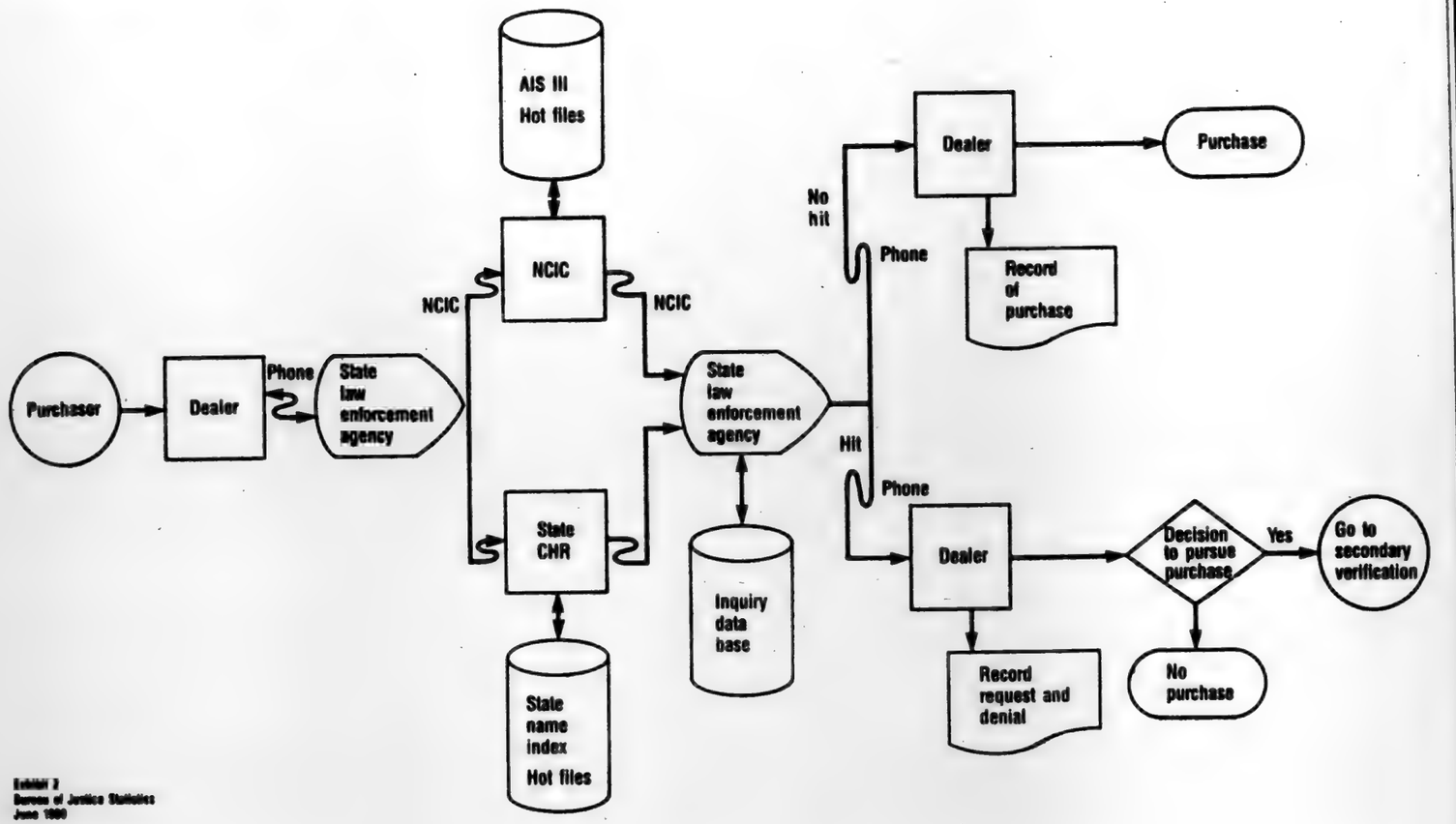


Exhibit 2
Bureau of Justice Statistics
June 1989

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UMI

Option A: Secondary verification

Option B: Prior approval

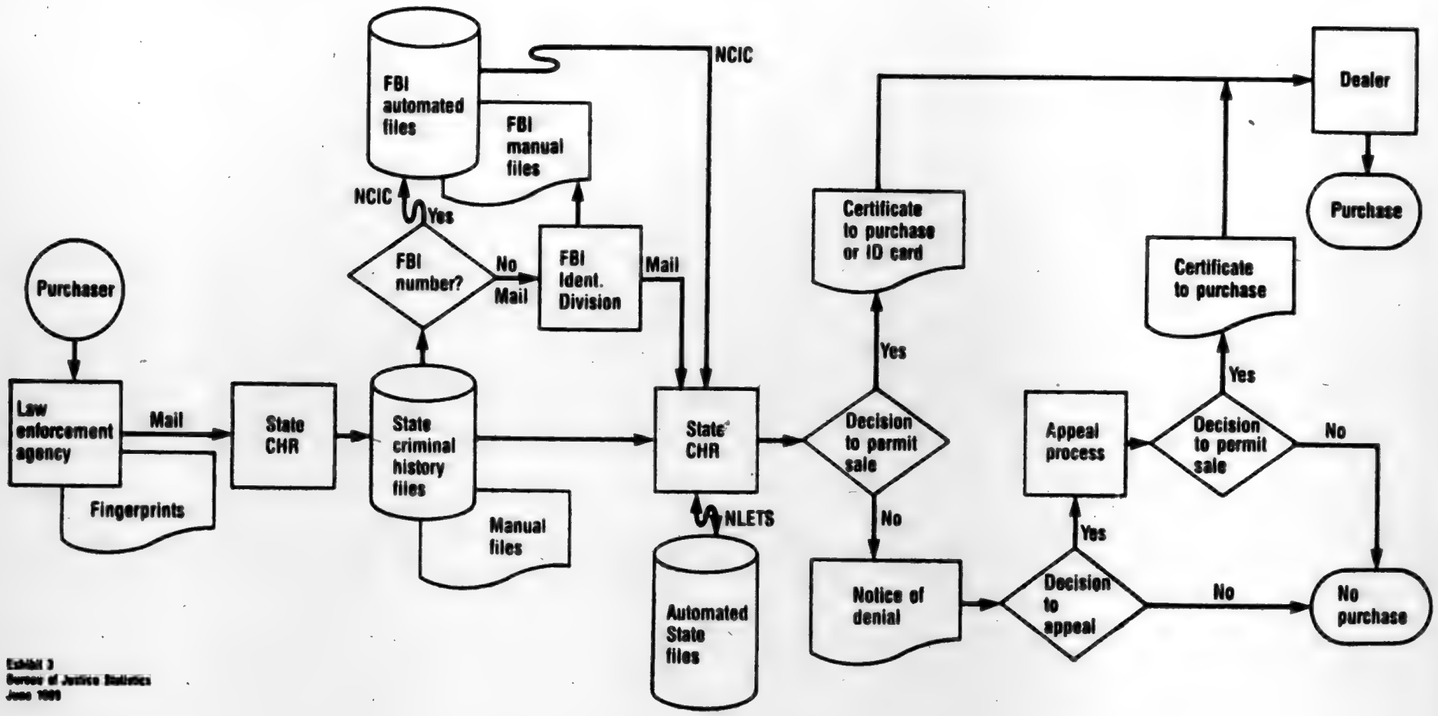


Exhibit 3
Bureau of Justice Statistics
June 1989

National access to criminal history data

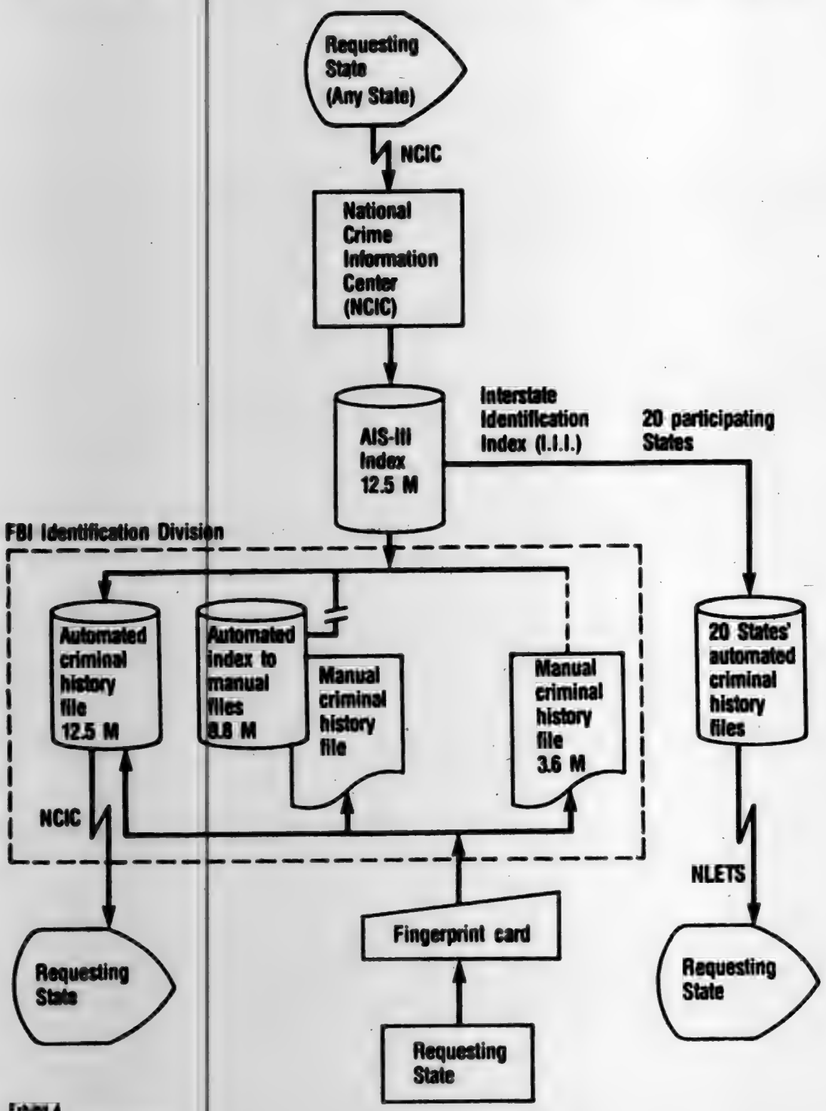


Exhibit 4
Bureau of Justice Statistics
June 1989

Form Approved: OMB No. 1512-0129 (3/31/91)

DEPARTMENT OF THE TREASURY — BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS
FIREARMS TRANSACTION RECORD
PART I — OVER-THE-COUNTER

TRANSFEROR'S TRANSACTION SERIAL NUMBER

NOTE: Prepare in original only. All entries on this form must be in ink. See Notices and Instructions on back.

SECTION A — MUST BE COMPLETED PERSONALLY BY TRANSFEREE *(BUYER) (See Notices and Instructions on reverse)*

1. TRANSFEREE'S *(Buyer's)* NAME *(Last, First, Middle)* ☐ MALE ☐ FEMALE | 2. HEIGHT | 3. WEIGHT | 4. RACE

5. RESIDENCE ADDRESS *(No., Street, City, County, State, ZIP Code)* | 6. DATE OF BIRTH (MONTH / DAY / YEAR) | 7. PLACE OF BIRTH *(City and State or City and Foreign Country)*

8. CERTIFICATION OF TRANSFEREE *(Buyer)*—An untruthful answer may subject you to criminal prosecution. Each question must be answered with a "yes" or a "no" inserted in the box at the right of the question:

a. Are you under indictment or information* in any court for a crime punishable by imprisonment for a term exceeding one year? **A formal accusation of a crime made by a prosecuting attorney, as distinguished from an indictment presented by a grand jury.*		c. Are you a fugitive from justice?	
b. Have you been convicted in any court of a crime punishable by imprisonment for a term exceeding one year? (NOTE: A "yes" answer is necessary if the judge could have given a sentence of more than one year. A "yes" answer is *not* required if you have been pardoned for the crime or the conviction has been expunged or set aside, or you have had your civil rights restored and, under the law where the conviction occurred, you are not prohibited from receiving or possessing any firearm).		d. Are you an unlawful user of, or addicted to, marihuana, or any depressant, stimulant, or narcotic drug, or any other controlled substance?	
		e. Have you ever been adjudicated mentally defective or have you ever been committed to a mental institution?	
		f. Have you been discharged from the Armed Forces under dishonorable conditions?	
		g. Are you an alien illegally in the United States?	
		h. Are you a person who, having been a citizen of the United States, has renounced his/her citizenship.	

I hereby certify that the answers to the above are true and correct. I understand that a person who answers "Yes" to any of the above questions is prohibited from purchasing and/or possessing a firearm, except as otherwise provided by Federal law. I also understand that the making of any false oral or written statement or the exhibiting of any false or misrepresented identification with respect to this transaction is a crime punishable as a felony.

TRANSFEREE'S *(Buyer's)* SIGNATURE | DATE

SECTION B — TO BE COMPLETED BY TRANSFEROR (SELLER) *(See Notices and Instructions on reverse)*

THIS PERSON DESCRIBED IN SECTION A: ☐ IS KNOWN TO ME ☐ HAS IDENTIFIED HIMSELF/HERSELF TO ME IN THE FOLLOWING MANNER

9. TYPE OF IDENTIFICATION *(Driver's license or identification which shows name, date of birth, place of residence, and signature.)* | 10. NUMBER ON IDENTIFICATION

On the basis of (1) the statements in Section A; (2) the verification of identity noted in Section B; and (3) the information in the current list of Published Ordinances, it is my belief that it is not unlawful for me to sell, deliver, transport, or otherwise dispose of the firearm(s) described below and on the back to the person identified in Section A.

	11. TYPE *(Pistol, Revolver, Rifle, Shotgun, etc.)*	12. MODEL	13. CALIBER OR GAUGE	14. SERIAL NO.	15 MANUFACTURER *(and importer, if any)*
1.					
2.					

16. TRADE/CORPORATE NAME AND ADDRESS OF TRANSFEROR *(Seller) (Hand stamp may be used)* | 17. FEDERAL FIREARMS LICENSE NO. *(Hand stamp may be used)*

THE PERSON MAKING THE ACTUAL FIREARMS SALE MUST COMPLETE ITEMS 18 THROUGH 20

18. TRANSFEROR'S *(Seller's)* SIGNATURE | 19. TRANSFEROR'S TITLE | 20. TRANSACTION DATE

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ATF F 4473 (5300.9) PART I (1-88)

Exhibit 5.1

11. TYPE (Pistol, Revolver, Rifle, Shotgun, etc.)	12. MODEL	13. CALIBER OR GAUGE	14. SERIAL NO.	15 MANUFACTURER (and importer, if any)
3.				
4.				
5.				
6.				
Complete ATF F 3310.4 for multiple purchases of handguns (See item 10 below)				

NOTICES AND INSTRUCTIONS

PAPERWORK REDUCTION ACT NOTICE

The information required on this form is in accordance with the Paperwork Reduction Act of 1980. The purpose of the information is to determine the eligibility of the buyer (transferee) to receive firearms under Federal law. The information is subject to inspection by ATF officers. The information on this form is required by 18 U.S.C. 922 and 923.

IMPORTANT NOTICES TO TRANSFEROR (SELLER) AND TRANSFEREE (BUYER)

1. Under 18 U.S.C. 921-929 firearms may not be sold to or received by certain persons. The information and certification on this form are designed so that a person licensed under 18 U.S.C. 921-929 may determine if he may lawfully sell or deliver a firearm to the person identified in Section A, and to alert the transferee (buyer) of certain restrictions on the receipt and possession of firearms. This form should not be used for sales or transfers where neither person is licensed under 18 U.S.C. 921-929.

2. WARNING—The sale or delivery of a firearm by a licensee to an eligible purchaser who is acting as an agent, intermediary or 'straw purchaser' for someone whom the licensee knows or has reasonable cause to believe is ineligible to purchase a firearm directly, may result in a violation of the Federal firearms laws.

3. The transferee (buyer) of a firearm should be familiar with the provisions of law. Generally, 18 U.S.C. 921-929 prohibit the shipment, transportation, receipt, or possession in or affecting interstate commerce of a firearm by one who is under indictment or information for, or who has been convicted of, a crime punishable by imprisonment for a term exceeding one year, by one who is a fugitive from justice, by one who is an unlawful user of, or addicted to, marihuana, or any depressant, stimulant, or narcotic drug, or any other controlled substance, by one who has been adjudicated mentally defective or has been committed to a mental institution, by one who has been discharged from the Armed Forces under dishonorable conditions, by one who, having been a citizen of the United States, has renounced his citizenship, or by one who is an alien illegally in the United States.

EXCEPTION: For one who has been convicted of a crime punishable by imprisonment for a term exceeding one year, the prohibition does not apply *if that individual has received a pardon for the crime or the conviction has been expunged or set aside or under the law where the conviction occurred that individual has had his/her civil rights restored and as a result of the civil rights restoration is not prohibited from receiving or possessing firearms.*

KNOW YOUR CUSTOMER—Before a licensee may sell or deliver a firearm to a nonlicensee, the licensee must establish the identity, place of residence, and age of the buyer. Satisfactory identification should verify the buyer's name, date of birth, address, and signature. Thus, a driver's license or identification card issued by a State in place of a license is particularly appropriate. Social Security cards are not acceptable because no address or date of birth is shown on the card. Also, alien registration receipt cards and military identification cards are not acceptable by themselves because the State of residence is not shown on the cards. However, although a particular document may not be sufficient to meet the statutory requirement for identifying the buyer, any combination of documents which together disclose the required information concerning the buyer is acceptable.

INSTRUCTIONS TO TRANSFEREE (BUYER)

4. The buyer (transferee) of a firearm will, in every instance, personally complete Section A of the form and certify (sign) that the answers are true and correct. However, if the buyer is unable to read and/or write, the answers may be written by other persons, excluding the dealer. Two persons (other than the dealer) will then sign as witnesses to the buyer's answers and signature.

5. When the transferee (buyer) of a firearm is a corporation, company, association, partnership or other such business entity, an officer authorized to act on behalf of the business will complete and sign Section A of the form and attach a writte.. statement, executed under penalties of perjury, stating

(a) that the firearm is being acquired for the use of and will be the property of that business entity, and

(b) the name and address of that business entity.

INSTRUCTIONS TO TRANSFEROR (SELLER)

6. Should the buyer's name be illegible the seller shall print the buyer's name above the name printed by the buyer.

7. The transferor (seller) of a firearm will, in every instance, complete Section B of the form.

8. Additional firearms purchases made by the same buyer may not be added to this form after the seller has signed and dated it.

9. If more than six firearms are involved, the identification required by Section B, items 11 through 15, must be provided for each firearm. The identification of the firearms transferred in a transaction which covers more than six weapons may be on a separate sheet of paper which must be attached to the form covering the transaction.

10. In addition to completing this record, you must report any multiple sale or other disposition of pistols or revolvers on ATF F 3310.4 in accordance with 27 CFR 178.126a.

11. The transferor (seller) of a firearm is responsible for determining the lawfulness of the transaction and for keeping proper records of the transaction. Consequently, the transferor should be familiar with the provisions of 18 U.S.C 921-929 and the Federal firearms regulations, Title 27, Code of Federal Regulations, Part 178. In determining the lawfulness of the sale or delivery of a rifle or shotgun to a non-resident, the transferor is presumed to know applicable State laws and published ordinances in both States.

12. After you have completed the firearm transaction, you must make the completed, original copy of the ATF F 4473, Part I part of your permanent firearms records including any supporting documents. Filing may be chronological (by date), alphabetical (by name), or numerical (by transaction serial number), so long as all of your completed Forms 4473, Part I are filed in the same manner.

DEFINITIONS

1. Over-the-counter Transaction—The sale or other disposition of a firearm by the transferor (seller) to a transferee (buyer), occurring on the transferor's licensed premises. This includes the sale or other disposition of a rifle or a shotgun to a non-resident transferee (buyer) occurring on such premises.

2. Published Ordinances—The publication (ATF P 5300.5) containing State firearms laws and local ordinances which is annually distributed to Federal firearms licensees by the Bureau of Alcohol, Tobacco and Firearms.

3. Under indictment or convicted in any court—An indictment or conviction in any Federal, State or Foreign court.

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*U.S. GPO: 1988-202-926/85228

ATF F 4473 (5300.9 PART I (1-88)

Exhibit 5.2

Form Approved: OMB No. 1512-0480 (3/31/91)

DEPARTMENT OF THE TREASURY — BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

FIREARMS TRANSACTION RECORD

PART I — LOW VOLUME — OVER-THE-COUNTER

TRANSFEROR'S TRANSACTION SERIAL NUMBER

THIS FORM MAY BE USED ONLY BY DEALERS SELLING OR DISPOSING OF 50 OR LESS FIREARMS PER YEAR (See Instructions On Reverse)

NOTE: Prepare in original only. All entries on this form must be in ink. See Notices and Instructions on back.

1. TRADE/CORPORATE NAME AND ADDRESS OF TRANSFEROR (Seller) (Hand stamp may be used)

2. FEDERAL FIREARMS LICENSE NO. (Hand stamp may be used)

3. FIREARM RECEIVED FROM:
a. NON LICENSEE (Name & address)
OR
b. LICENSEE (Name & License Number) ▶

4. DATE RECEIVED

5. DESCRIPTION OF FIREARM ▶

MANUFACTURER (and importer, if any)	TYPE (Pistol, Revolver, Rifle, shotgun, etc.)	MODEL	CALIBER OR GAUGE	SERIAL NUMBER

SECTION A — MUST BE COMPLETED PERSONALLY BY NONLICENSED TRANSFEREE (BUYER) (See NOTICE, Instructions on Reverse)

6. TRANSFEREE'S (Buyer's) NAME (Last, First, Middle) ☐ MALE ☐ FEMALE

7. HEIGHT

8. WEIGHT

9. RACE

10. RESIDENCE ADDRESS (No., Street, City, State, ZIP Code)

11. DATE OF BIRTH

MONTH	DAY	YEAR

12. PLACE OF BIRTH (City and State or City and Foreign Country)

13. CERTIFICATION OF TRANSFEREE (Buyer) — An untruthful answer may subject you to criminal prosecution. Each question must be answered with a "yes" or a "no" inserted in the box at the right of the question:

a.	Are you under indictment or information* in any court for a Crime punishable by imprisonment for a term exceeding one year? *A formal accusation of a crime made by a prosecuting attorney, as distinguished from an indictment presented by a grand jury.		
b.	Have you been convicted in any court of a crime punishable by imprisonment for a term exceeding one year? (NOTE: A "yes" answer is necessary if the judge could have given a sentence of more than one year. A "yes" answer is not required if you have been pardoned for the crime or the conviction has been expunged or set aside, or you have had your civil rights restored and, under the law where the conviction occurred, you are not prohibited from receiving or possessing any firearm).		
c.	Are you a fugitive from justice?		
d.	Are you an unlawful user of, or addicted to, marijuana, or any depressant, stimulant, or narcotic drug, or any other controlled substance.		
e.	Have you ever been adjudicated mentally defective or have you ever been committed to a mental institution?		
f.	Have you been discharged from the Armed Forces under dishonorable conditions?		
g.	Are you an alien illegally in the United States?		
h.	Are you a person who, having been a citizen of the United States, has renounced his/her citizenship?		

I hereby certify that the answers to the above are true and correct. I understand that a person who answers "Yes" to any of the above questions is prohibited from purchasing and/or possessing a firearm, except as otherwise provided by Federal law. I also understand that the making of any false oral or written statement or the exhibiting of any false or misrepresented identification with respect to this transaction is a felony.

14. TRANSFEREE'S (Buyer's) SIGNATURE

15. DATE

SECTION B — TO BE COMPLETED BY TRANSFEROR (SELLER) (See Notices and instructions on reverse)

THIS PERSON DESCRIBED IN SECTION A: ☐ IS KNOWN TO ME ☐ HAS IDENTIFIED HIMSELF/HERSELF TO ME IN THE FOLLOWING MANNER

16. TYPE OF IDENTIFICATION (Driver's license or identification which shows name, date of birth, place of residence, and signature)

17. NUMBER ON IDENTIFICATION

On the basis of (1) the statements in Section A; (2) the verification of identity noted in Section B; and (3) the information in the current list of Published Ordinances, it is my belief that it is not unlawful for me to sell, deliver, transport, or otherwise dispose of the firearm(s) described to the person identified in Section A.

18. TRANSFEROR'S (Seller's) SIGNATURE

19. DATE

SECTION C — TO BE COMPLETED WHEN THE TRANSFEREE (BUYER) IS A FEDERAL FIREARMS LICENSEE (INCLUDES NON OVER THE COUNTER)

20. ENTER FFL'S NAME AND LICENSE NUMBER	21. TRANSFEROR'S (Seller's) SIGNATURE	22. DATE

ATF F 4473 (5300.24) PART I (LV) (6-88)

Exhibit 5.3

BEST COPY AVAILABLE

NOTICES AND INSTRUCTIONS

PAPERWORK REDUCTION ACT NOTICE

The information required on this form is in accordance with the Paperwork Reduction Act of 1980. The purpose of the information is to determine the eligibility of the buyer (transferee) to receive firearms under Federal law. The information is subject to inspection by ATF officers. The information on this form is required by 18 U.S.C. 922, 923, and 926.

IMPORTANT NOTICES TO TRANSFEROR (SELLER) AND TRANSFEREE (BUYER)

1. Under 18 U.S.C. 921-929 firearms may not be sold to or received by certain persons. The information and certification on this form are designed so that a person licensed under 18 U.S.C. 921-929 may determine if he/she may lawfully sell or deliver a firearm to the person identified in Section A, and to alert the transferee (buyer) of certain restrictions on the receipt and possession of firearms. This form should not be used for sales or transfers where neither person is licensed under 18 U.S.C. 921-929.

2. WARNING—the sale or delivery of a firearm by a licensee to an eligible purchaser who is acting as an agent, intermediary or "straw purchaser" for someone whom the licensee knows or has reasonable cause to believe is ineligible to purchase a firearm directly, may result in a violation of the Federal firearm laws.

3. The transferee (buyer) of a firearm should be familiar with the provisions of the law. Generally, 18 U.S.C. 921-929 prohibits the shipment, transportation, receipt, or possession in or affecting interstate commerce of a firearm by one who is under indictment or information for, or who has been convicted of, a crime punishable by imprisonment for a term exceeding one year, by one who is a fugitive from justice, by one who is an unlawful user of, or addicted to, marijuana, or any depressant, stimulant, or narcotic drug, or any other controlled substance, by one who has been adjudicated mentally defective or has been committed to a mental institution, by one who has been discharged from the Armed Forces under dishonorable conditions, by one who, having been a citizen of the United States, has renounced his/her citizenship, or by one who is an alien illegally in the United States.

EXCEPTION: For one who has been convicted of a crime punishable by imprisonment for a term exceeding one year, this prohibition does not apply if that individual has received a pardon for the crime or the conviction has been expunged or set aside or under the law where the conviction occurred that individual has had his/her civil rights restored and as a result of the civil rights restoration is not prohibited from receiving or possessing firearms.

KNOW YOUR CUSTOMER—Before a licensee may sell or deliver a firearm to a nonlicensee, the licensee must establish the identity, place of residence, and age of the buyer. Satisfactory identification should verify the buyer's name, date of birth, address, and signature. Thus, a driver's license or an identification card issued by a State instead of a license is particularly appropriate. Social Security cards are not acceptable because no address or date of birth is shown on the card. Also, alien registration receipt cards and military identification cards are not acceptable by themselves because the State of residence is not shown on the cards. However, although a particular document may not be sufficient to meet the statutory requirement for identifying the buyer, any combination of documents which together disclose the required information concerning the buyer is acceptable.

INSTRUCTIONS TO TRANSFEREE (BUYER)

4. The nonlicensed transferee (buyer) of a firearm will, in every instance, personally complete Section A of the form and certify (sign) that the answers are true and correct. However, if the buyer is unable to read and/or write, the answers may be written by other persons, excluding the dealer. Two persons (other than the dealer) will then sign as witnesses to the buyer's answers and signature.

5. When the transferee (buyer) of a firearm is a corporation, company, association, partnership or other such business entity, an officer authorized to act on behalf of the business will complete and sign Section A of the form and attach a written statement, executed under penalties of perjury, stating:

   (a) that the firearm is being acquired for the use of and will be the property of that business entity, and

   (b) the name and address of that business entity.

☆ U.S.GPO:1988-0-202-429/65721

INSTRUCTIONS TO TRANSFEROR (SELLER)

6. Should the buyer's name be illegible the seller shall print the buyer's name above the name printed by the buyer.

7. The transferor (seller) of a firearm will, in every instance where Section A is completed, complete Section B of the form.

8. The transferor (seller) of a firearm will, in every instance, complete Section C of the form if disposing of a firearm to a transferee (buyer) who is a Federal Firearms Licensee. (Applies to both over the counter and non over the counter transactions between licensed dealers.)

9. In addition to completing this record, you must report any multiple sale or other disposition of pistols or revolvers on ATF F 3310.4 in accordance with 27 CFR 178.126a.

10. The transferor (seller) of a firearm is responsible for determining the lawfulness of the transaction and for keeping proper records of the transaction. Consequently, the transferor should be familiar with the provisions of 18 U.S.C. 921-929 and the Federal firearms regulations, Title 27, Code of Federal Regulations, Part 178. In determining the lawfulness of the sale or delivery of a rifle or shotgun to a non-resident, the transferor is presumed to know applicable State laws and published ordinances in both States.

11. Each transferor (seller) maintaining firearms acquisition and disposition records pursuant to 27 CFR 178.124a (Low Volume Dealers) shall retain form 4473-LV, Part I and II, reflecting firearms possessed by such business in chronological (by date of receipt) or numerical (by transaction serial number) order. Forms 4473-LV, Part I and II, reflecting the transferor's sale or disposition of firearms shall be retained in alphabetical (by name of purchaser), chronological (by date of disposition) or numerical (by transaction serial number) order.

DEFINITIONS

1. Low volume dealer—A licensed dealer contemplating the disposition of not more than 50 firearms within the succeeding 12-month period. Such 12-month period commences from the date the licensed dealer first records the purchase or acquisition of a firearm on the reverse side of this form. If during the course of the 12 month period, dispositions exceed the 50 firearm limitation, the licensed dealer should begin keeping standard records required in 27 CFR 178 for non low volume dealers.

2. Over-the-counter Transaction—The sale or other disposition of a firearm by the transferor (seller) to a transferee (buyer), occurring on the transferor's licensed premises. This includes the sale or other disposition of a rifle or a shotgun to a non-resident transferee (buyer) occurring on such premises.

3. Published Ordinances—The publication (ATF P 5300.5) containing State firearms laws and local ordinances which is annually distributed to Federal firearms licensees by the Bureau of Alcohol, Tobacco and Firearms.

4. Under indictment or convicted in any court—An indictment or conviction in any Federal, State or Foreign court.

ATF F 4473 (5300.24) PART I (LV) (5-88)
Exhibit 5.4

Form Approved: OMB No. 1512-0130 (05/29/91)

DEPARTMENT OF THE TREASURY—BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS
FIREARMS TRANSACTION RECORD
PART II—NON-OVER-THE-COUNTER

TRANSFEROR'S TRANSACTION SERIAL NUMBER

NOTE: Prepare in duplicate. All entries on this form must be in ink. See Notices and Instructions on back.

SECTION A—MUST BE COMPLETED PERSONALLY BY TRANSFEREE *(BUYER)* *(See Notices and Instructions on reverse)*

1. TRANSFEREE'S *(Buyer's)* NAME *(Last, First, Middle)* ☐ MALE ☐ FEMALE	2. HEIGHT	3. WEIGHT	4. RACE

5. RESIDENCE ADDRESS *(No., Street, City, County State, ZIP Code)*	6. DATE OF BIRTH MONTH	DAY	YEAR	7. PLACE OF BIRTH *(City and State or City and Foreign Country)*

8. CERTIFICATION OF TRANSFEREE *(Buyer)*—An Untruthful answer may subject you to criminal prosecution. Each question must be answered with a "yes" or a "no" inserted in the box at the right of the question:

a. Are you under indictment or information* in any court for a crime punishable by imprisonment for a term exceeding one year? **A formal accusation of a crime made by a prosecuting attorney, as distinguished from an indictment presented by a grand jury.*		c. Are you a fugitive from justice?	
		d. Are you an unlawful user of, or addicted to, marihuana, or any depressant, stimulant, or narcotic drug, or any other controlled substance?	
b. Have you been convicted in any court of a crime punishable by imprisonment for a term exceeding one year? (NOTE: A "yes" answer is necessary if the judge could have given a sentence of more than one year. A "yes" answer is *not* required if you have been pardoned for the crime or the conviction has been expunged or set aside, or you have had your civil rights restored and, under the law where the conviction occurred, you are not prohibited from receiving or possessing any firearm).		e. Have you ever been adjudicated mentally defective or have you ever been committed to a mental institution?	
		f. Have you been discharged from the Armed Forces under dishonorable conditions?	
		g. Are you an alien illegally in the United States?	
		h. Are you a person who, having been a citizen of the United States, has renounced his/her citizenship?	

Subject to penalties provided by law, I swear that, in the case of any firearm other than a shotgun or a rifle, I am 21 years or more of age, or that, in the case of a shotgun or rifle, I am 18 years or more of age; that I am not prohibited by the provisions of Chapter 44 of Title 18, United States Code, from receiving a firearm in interstate or foreign commerce, and that my receipt of this firearm will not be in violation of any statute of the State and published ordinance applicable to the locality in which I reside. Further, the true title, name, and address of the principal law enforcement officer of the locality to which the firearm will be delivered are:

TITLE	NAME

ADDRESS

I also hereby certify that the answers to the above are true and correct. I understand that a person who answers "Yes" to any of the above questions is prohibited from purchasing and/or possessing a firearm, except as otherwise provided by Federal law. I also understand that the making of any false oral or written statement or the exhibiting of any false or misrepresented identification with respect to this transaction is a crime punishable as a felony.

TRANSFEREE'S *(Buyer's)* SIGNATURE	DATE

SECTION B—MUST BE COMPLETED BY TRANSFEROR *(SELLER)* *(See Notices and Instructions on reverse)*

On the basis of (1) the statements in Section A; (2) my notification of the chief law enforcement officer designated above; and (3) the information in the current list of Published Ordinances, it is my belief that it is not unlawful for me to sell, deliver, transport, or otherwise dispose of the firearm described below to the person identified in Section A.

9. TYPE *(Pistol, Revolver, Rifle, Shotgun, etc.)*	10. MODEL	11. CALIBER OR GAUGE	12. SERIAL NO.

13. MANUFACTURER *(and importer, if any)*

14. TRADE/CORPORATE NAME AND ADDRESS OF TRANSFEROR *(Seller)* *(Hand stamp may be used)*	15. FEDERAL FIREARMS LICENSE NO. *(Hand stamp may be used)*

16. TRANSFEROR'S *(Seller's)* SIGNATURE	17. TRANSFEROR'S TITLE	18. TRANSACTION DATE

ATF F 4473 (5300.9) PART II (1-88)
Exhibit 5.5

PAPERWORK REDUCTION ACT NOTICE

The information required on this form is in accordance with the Paperwork Reduction Act of 1980. The purpose of the information is to determine the eligibility of the buyer (transferee) to receive firearms under Federal law. The information is subject to inspection by ATF officers. The information on this form is required by 18 U.S.C. 922.

IMPORTANT NOTICES TO TRANSFEROR (SELLER) AND TRANSFEREE (BUYER)

1. Under 18 U.S.C. 921-929 , firearms may not be sold to or received by certain persons. The information and certification on this form are designed so that a person licensed under 18 U.S.C. 921-929 may determine if he may lawfully sell or deliver a firearm to the person identified in Section A, and to alert the transferee (buyer) of certain restrictions on the receipt and possession of firearms. This form should not be used for sales or transfers where neither person is licensed under 18 U.S.C. 921-929.

2. Warning—The sale or delivery of a firearm by a licensee to an eligible purchaser who is acting as an agent, intermediary or 'straw purchaser' for someone whom the licensee knows or has reasonable cause to believe is ineligible to purchase a firearm directly, may result in a violation of the Federal firearm laws.

3. The transferee (buyer) of a firearm should be familiar with the provisions of the law. Generally, 18 U.S.C. 921-929 prohibit the shipment, transportation, receipt, or possession in or affecting interstate commerce of a firearm by one who is under indictment or information for, or who has been convicted of, a crime punishable by imprisonment for a term exceeding one year, by one who is a fugitive from justice, by one who is an unlawful user of, or addicted to, marihuana, or any depressant, stimulant, or narcotic drug, or any other controlled substance, by one who has been adjudicated mentally defective or has been committed to a mental institution, by one who has been discharged from the Armed Forces under dishonorable conditions, by one who, having been a citizen of the United States, has renounced his citizenship, or by one who is an alien illegally in the United States.

EXCEPTION: For one who has been convicted of a crime punishable by imprisonment for a term exceeding one year, the prohibition does not apply *if that individual has received a pardon for the crime or the conviction has been expunged or set aside or under the law where the conviction occurred that individual has had his/her civil rights restored and as a result of the civil rights restoration is not prohibited from receiving or possessing firearms.*

KNOW YOUR CUSTOMER—Before a licensee may sell or deliver a firearm to a nonlicensee, the licensee must establish the identity, place of residence, and age of the buyer. Satisfactory identification should verify the buyer's name, date of birth, address, and signature. Thus, a driver's license or an identification card issued by a State in place of a license is particularly appropriate. Social Security cards are not acceptable because no address or date of birth is shown on the card. Also, alien registration receipt cards and military identification cards are not acceptable by themselves because the State of residence is not shown on the cards. However, although a particular document may not be sufficient to meet the statutory requirement for identifying the buyer, any combination of documents which together disclose the required information concerning the buyer is acceptable.

INSTRUCTIONS TO TRANSFEREE (BUYER)

1. The buyer (transferee) of a firearm will, in every instance, personally complete Section A of the form and certify (sign) that the answers are true and correct. However, if the buyer is unable to read and/or write, the answers may be written by other persons, excluding the dealer. Two persons (other than the dealer) will then sign as witnesses to the buyer's answers and signature.

2. When the transferee (buyer) of a firearm is a corporation, company, association, partnership or other such business entity, an officer authorized to act on behalf of the business will complete and sign Section A of the form and attach a written statement, executed under penalties of perjury, stating

(a) that the firearm is being acquired for the use of and will be the property of that business entity, and
(b) the name and address of that business entity.

INSTRUCTIONS TO TRANSFEROR (SELLER)

1. Should the buyer's name be illegible the seller shall print the buyer's name above the name printed by the buyer.

2. The transferor (seller) of a firearm will, in every instance, complete Section B of the form.

3. If more than one firearm is involved, the identification required by Section B, items 9 through 13, must be provided for each firearm. The identification of the firearms transferred in a transaction which covers more than one weapon may be on a separate sheet of paper which must be attached to the form covering the transaction.

4. The transferor (seller) of a firearm in a interstate non-over-the-counter transaction must forward by registered or certified mail (return receipt requested) the copy of the form to the chief law enforcement officer of the transferee's (buyer's) locality of residence. The transferor must delay shipment or delivery of the firearm for a period of at least 7 days following receipt of the post office notification on the acceptance or non-acceptance of the envelope. The transferor will retain as a part of the records required to be kept by 18 U.S.C. 921-929 the original form with evidence of the receipt or rejection of the notification forwarded to the chief law enforcement officer of the transferee's locality of residence.

5. The transferor (seller) of the firearm is responsible for determining the lawfulness of the transaction and for keeping proper records of the transaction. Consequently, the transferor should be familiar with the provisions of 18 U.S.C. 921-929, and the Federal firearms regulations, Title 27, Code of Federal Regulations, Part 178.

6. After you have completed the firearm transaction, you must make the completed, original copy of the ATF F 4473, Part II part of your permanent firearms records including any supporting documents. Filing may be chronological (by date), alphabetical (by name), or numerical (by transaction serial number), so long as all of your completed Forms 4473, Part II are filed in the same manner.

NOTICE TO LAW ENFORCEMENT OFFICIALS

This copy of ATF Form 4473, Part II, is to advise you of a firearms transaction involving a resident in your jurisdictional area. The firearm described in Section B will not be shipped or delivered to the transferee (buyer) identified in Section A for a period of at least seven days following receipt of the notification of your acceptance or refusal of delivery, by registered or certified mail, of the form.

DEFINITIONS

1. *Non-over-the-Counter Transaction*—A mail-order transaction, or other transaction, where the transferee (buyer) does not appear in person at the transferor's (seller's) premises.

2. Published Ordinances—The publication (ATF P 5300.5) containing State firearms laws and local ordinances which is annually distributed to Federal firearms licensees by the Bureau of Alcohol, Tobacco and Firearms.

ATF F 4473 (5300.9) PART II (1-88)

Exhibit 5.6

Exhibit 6. Estimated costs for felon identification options (in millions of dollars)

Options	Total	Federal Government	State and local government	Gun dealer
Startup costs				
Options				
A. Telephone check by gun dealer and secondary verification	$ 36-44	$ 13-17	$ 23-26	---
A3. Live scan of fingerprints by dealer [a]				
(1) All dealers	9,590-27,144	47-51	93	9,450-27,000
(2) Commercial dealers only [b]	3,457-9,636	40-44	92	3,325-9,500
A4. Biometric identification card [c]				
(1) All dealers	198-368	13-17	23-26	162-324
(2) Commercial dealers only [b]	93-158	13-17	23-26	57-114
B. Prior approval — FOID card	148-153	77-81	72	*
B1. Live scan by law enforcement and biometric check by dealer [a]				
(1) All dealers	344-572	77-81	105-167	162-324
(2) Commercial dealers only [d]	239-362	77-81	105-167	57-114
Annual operating costs				
Options				
A. Telephone check by gun dealer and secondary verification	$ 53-70	$ 13-18	$ 40-53	---
A3. Live scan of fingerprints by dealer [a]				
(1) All dealers	3,047-8,347	104-109	108-138	2,835-8,100
(2) Commercial dealers only [b]	1,172-3,063	86-91	98-122	988-2,850
A4. Biometric identification card [c]				
(1) All dealers	102-168	13-18	40-53	49-97
(2) Commercial dealers only [b]	70-105	13-18	40-53	17-34
B. Prior approval — FOID card	136-161	65-70	71-91	*
B1. Live scan by law enforcement and biometric check by dealer [a]				
(1) All dealers	203-295	65-70	89-128	49-97
(2) Commercial dealers only [d]	171-232	65-70	89-128	17-34

Note: Detail may not add to toal because of rounding
--- Unknown
* Negligible
[a] Partial estimates only.
[b] Assumes that the non-commercial dealers (an estimated 65% of all dealers) would use the basic option A.
[c] Excludes all costs of producing and distributing the biometric cards.
[d] Assumes that the non-commercial dealers (65% of all dealers) would use basic option B.

BILLING CODE 4410-10-C

Exhibit 7. States requiring criminal history checks for firearm sales

States requiring criminal history checks	Type of firearm	Application required for--	Special requirements	Agency conducting checks	Highest level files examined
Prior to sale:					
Alabama	handguns	purchase		local	State
California	handguns	purchase		State	national
Connecticut	handguns	purchase		local, State	State
District of Columbia	all guns[a]	registration certificate	fingerprints gun law exam	local	national
Hawaii	long guns, handguns	permit (1 year) permit (each sale)	fingerprints	local	national
Illinois	all guns	ID card (5 years)		State	national
Indiana	handguns	license (4 years)	fingerprints	local, State	State
Iowa	handguns	permit (1 year)	fingerprints	local, State	national
Maryland	handguns	purchase		State	national
Massachusetts	all guns	ID card		local, State	national
Minnesota	handguns	permit (1 year)		local	national
Missouri	handguns	permit (each sale)			local State
New Jersey	long guns handguns	ID card permit (each sale)	fingerprints	State	national
New York	handguns	permit	fingerprints safety course	State	national
North Carolina	handguns	permit (each sale)			local State
Oregon	handguns	purchase		local	national
Pennsylvania	handguns	purchase		local, State[b]	State
Rhode Island	handguns	purchase	safety course	local, State	State
South Dakota	handguns	purchase		local	State
Tennessee	handguns	purchase	thumbprint	local	national
Washington	handguns	purchase		local	national
Only after sale:					
Michigan	handguns	license (each sale)	safety inspection	local	national
South Carolina	handguns	purchase		State	State

[a] Only preregistered handguns are allowed in the District of Columbia. No new handguns may be brought into the city.

[b] Criminal history check conducted by the local agency before the sale and by the State agency after the sale.

Exhibit 8. Maximum Waiting Periods Required for Initial Firearm Purchase by a State Resident

Handguns

180 days New York
60 days Indiana
40 days Massachusetts
30 days Illinois
New Jersey
North Carolina
15 days California
Hawaii
Tennessee
14 days Connecticut
9 days Missouri
7 days Maryland
Minnesota
5 days Oregon
Washington
3 days Iowa
Rhode Island
South Dakota
2 days Alabama
Pennsylvania
Wisconsin

Long Guns

60 days District of Columbia
40 days Massachusetts
30 days Illinois
New Jersey
15 days Hawaii

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H.R. 932/Pub. L. 101-41

Puyallup Tribe of Indians Settlement Act of 1989. (June 21, 1989; 103 Stat. 83; 8 pages) Price: $1.00

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Federal Register
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Tuesday, June 27, 1989

Presidential Documents

Title 3—

The President

Proclamation 5994 of June 23, 1989

United States Coast Guard Auxiliary Day, 1989

By the President of the United States of America

A Proclamation

This year marks the 50th anniversary of one of our Nation's most effective voluntary organizations: the United States Coast Guard Auxiliary.

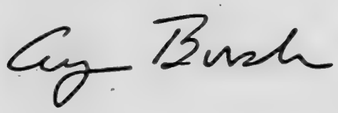
The United States Coast Guard Auxiliary is the civilian component of the U.S. Coast Guard. During the past 50 years, its members have helped to ensure the safety of those Americans who participate in water-related activities. Dedicated to promoting safe, efficient vessel operation and increased knowledge of the laws, rules, and regulations governing boating, the Coast Guard Auxiliary offers a variety of public education programs. It provides boating safety instruction from kindergarten to the college level, as well as a special course for physically challenged boaters. The Auxiliary also performs courtesy marine examinations of safety equipment on recreational boats.

Through its support of the Cooperative Charting Program conducted by the National Oceanic and Atmospheric Administration's National Ocean Survey, the Coast Guard Auxiliary assists in the updating of nautical charts. Auxiliary members also assist in search and rescue operations on the high seas or other navigable waters, even at the risk of their own safety.

As the popularity of recreational boating and other water-related activity increases, the voluntary efforts of the more than 35,000 members of the Coast Guard Auxiliary will become even more important. In recognition of the generosity, concern, and personal sacrifices of the members of the United States Coast Guard Auxiliary, the Congress, by House Joint Resolution 111, has designated June 23, 1989, as "United States Coast Guard Auxiliary Day" and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim June 23, 1989, as United States Coast Guard Auxiliary Day.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third day of June, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and thirteenth.



[FR Doc. 89-153[illegible]
Filed 6-23-89; 5:02 pm]
Billing code 3195-01-M

Presidential Documents

Presidential Determination No. 89-14 of May 31, 1989

Determination Under Section 402(d)(5) of the Trade Act of 1974—Continuation of Waiver Authority

Memorandum for the Secretary of State

Pursuant to the authority vested in me under the Trade Act of 1974 (Public Law 93-618), January 3, 1985 (88 Stat. 1978) (hereinafter "the Act"), I determine, pursuant to Subsection 402(d)(5) of the Act, that the further extension of the waiver authority granted by Subsection 402(c) of the Act will substantially promote the objectives of Section 402 of the Act. I further determine that the continuation of the waivers applicable to the Hungarian People's Republic and the People's Republic of China will substantially promote the objectives of Section 402 of the Act.

This determination shall be published in the **Federal Register.**

George Bush

THE WHITE HOUSE,
Washington, May 31, 1989.

[FR Doc. 89-15334
Filed 6-23-89; 4:39 pm]
Billing code 3195-01-M

Editorial note: For the text of the President's message to the Congress, dated May 31, on the waiver continuation, see the *Weekly Compilation of Presidential Documents* (vol. 25, p. 810).

Rules and Regulations

Federal Register
Vol. 54, No. 122
Tuesday, June 27, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1951

Administrative Changes to Salary Offset Instructions

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its Federal salary offset regulations to increase internal management control of offset procedures. It is common practice to notify delinquent borrowers eligible for salary offset as soon as eligibility has been determined. These amendments formalize the notification time period in order to ensure uniform practice in the field offices. The salary offset requests to creditor agencies will be channelled through the Financial and Management Analysis Staff, FmHA. The intended effect is to more accurately and efficiently track and tabulate salary offset implementation, thus increasing internal management control.

EFFECTIVE DATE: June 27, 1989.

FOR FURTHER INFORMATION CONTACT: Jeanne Hudec, Financial Analyst, Financial and Management Analysis Staff, Farmers Home Administration, U.S. Department of Agriculture, Room 5503 South Building, 14th Street and Independence Avenue SW., Washington, DC 20250, telephone (202) 382-8356.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291, and has been determined to be exempt from those requirements because it involves only internal agency management.

It is the policy of this Department to publish for comment rules relating to public property, loans, grants, benefits, or contracts, notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rule making since it involves only internal agency management, making publication for comment unnecessary.

The document has been reviewed in accordance with FmHA Instruction 1940-G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal Action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, and Environmental Impact Statement is not needed.

List of Subjects in 7 CFR Part 1951

Account servicing, Loan programs—agriculture, accounting, credit, low and moderate income housing loans—servicing.

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for Part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; CFR 2.70.

Subpart C—Offsets of Federal Payments to FmHA Borrowers

2. Section 1951.111 of Subpart C of Part 1951 is amended by removing the words, "FmHA Form Letter 1951-4," and inserting in their place the words, "FmHA Guide Letter 1951-C-4," in the following places:

(a) Paragraphs (f)(2), (f)(3), (f)(6), and (f)(7)
(b) Paragraph (g)(2)
(c) Paragraphs (h)(1)(i) and (h)(1)(ii).

3. Section 1951.111 is amended by revising paragraph (d)(1), the introductory text of paragraph (h)(1), and paragraphs (h)(3), (m) and (p)(1) to read as follows:

§ 1951.111 Salary offset.

(d) * * *

(1) After the Certifying Official determines that collection by salary offset is feasible, FmHA Guide Letter 1951-C-4 should be sent within 15 calendar days after that determination. This Guide Letter will notify the debtor of intended salary offset at least 30 days before the salary offset begins. FmHA Guide Letter 1951-C-4 will be personally delivered to the debtor or sent certified mail, Return Receipt Requested, with a copy sent by regular mail on the same day. If the certified mail receipt is returned, the date the debtor received the letter will be established and the time limits set out in FmHA Guide Letter 1951-C-4 will run from that date. If delivery by certified mail is not accomplished, FmHA will assume that the debtor received the letter by regular mail on the day the certified mail was refused or was unable to be delivered.

* * * * *

(h) * * *

(1) Form AD-343, "Payroll Action Request," and FmHA Form Letter 1951-6 will be prepared and submitted by the Certifying Official to the National Office, FMAS, for coordination and forwarding to the debtor's employing agency if:

* * * * *

(3) If the debtor is an FmHA employee, Form AD-343 will be sent to the National Office, FMAS, and a copy to the Finance Office, St. Louis, MO, Attn: Account Settlement Unit. This form can be signed for the Certifying Official by an employment officer, an Administrative Officer, or a personnel management specialist, or signed by the Certifying Official.

* * * * *

(m) *Cancellation of offset.* If a debtor's name has been submitted to another agency for offset and the debtor's account is brought current or otherwise satisfied, the Certifying Official will complete Form AD-343 and send it to the National Office, FMAS. FMAS will notify the paying agency with Form AD-343 that the debtor is no longer delinquent or indebted and to cancel the offset. A copy of the cancellation document will be sent to the debtor and the Finance Office, Attn: Account Settlement Unit.

* * * * *

(p) * * *

(1) If FmHA is the creditor agency but not the paying agency, the Certifying Official will submit Form AD-343 to the National Office, FMAS, to begin salary offset against an indebted employee.

The request will include a certification as to the determination of indebtedness, and that FmHA has complied with applicable regulations and instruction for submitting the funds to the Finance Office. (See FmHA Form Letter 1951–6).

Dated: May 30, 1989.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 89–15077 Filed 6–26–89; 8:45 am]

BILLING CODE 3410–07–M

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7 CFR Part 1980

RIN 0575–AA65

Drought and Disaster Guaranteed Loan Program

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) is amending its regulations to provide procedures for guaranteeing loans to rural businesses impacted by drought, hail, excessive moisture, or related conditions in 1988. This action is necessary to implement section 331 of the Disaster Assistance Act of 1988 ("the Act"). The intended effect of this action is to provide loan guarantees to businesses in rural areas which suffer losses or distress as a result of drought, hail, excessive moisture, or related conditions in 1988.

EFFECTIVE DATE: June 27, 1989.

FOR FURTHER INFORMATION CONTACT: Lawrence Bowles, Acting Branch Chief, Business and Industry Division, Farmers Home Administration, USDA, Washington, DC 20250, Telephone (202) 475–3811.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291 and has been determined to be non-major. This action will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940 Subpart G, "Environmental Program." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Intergovernmental Review

This program is listed in the catalog of Federal Domestic Assistance under number 10.422, and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR Part 3105, Subpart V; 48 FR 29112, June 24, 1983; 40 FR 2267, May 31, 1984; 50 FR 14088, April 10, 1985.

Discussion of Final Rule

An interim rule was published in the January 3, 1989, issue of the **Federal Register** (54 FR 2). It authorized and implemented a program of loan guarantees, patterned on FmHA's Business and Industrial (B&I) guaranteed loans, to assist in alleviating financial distress caused, directly or indirectly, by drought, hail, excessive moisture or related conditions in 1988 and to assist such entities which refinance or restructure debt as a result of losses incurred because of such natural disasters. Except as regards specific requirements of the Act, FmHA, in the interim rule, adopted for Drought and Disaster (D&D) guaranteed loans the regulations and requirements applying to B&I guaranteed loans.

A correction of a typographical error was published in the April 13, 1989, issue of the **Federal Register** (54 FR 14791). It corrected a typographical error in the Interim Rule.

This rule adopts as final that interim rule, with the correction, with one change adopted on the basis of public comments. That change deals with the eligibility of hotels, motels, tourist and recreation facilities.

Comments on the interim rule were invited from the public until March 6, 1989. Four comments were received from the public and have been carefully considered.

Comments were received from a lender, a prospective borrower, and a U.S. Senator urging the eligibility of hotels, motels, resorts and recreation facilities for D&D loans.

Commenters provided information showing that in some areas, hotel, motel, resort and recreation facilities constitute the only significant private sector employers and do create a significant number of jobs for local residents and were particularly damaged by drought, resulting fires and drops in water levels.

As a result, FmHA opts to modify the interim rule, permitting D&D loans for hotels, motels, resort and recreation facilities. This modification applies only to D&D loans.

This final rule amends 7 CFR Subpart 1980–E, Appendix I, paragraphs B and C, to provide for D&D loan guarantees for hotel, motel, resort and recreation facilities.

One commenter, a lender, noted that the B&I regulations governing D&D loans require audited financial statements on an annual basis, and recommended eliminating or modifying that requirement because of the cost of an audit. While an audit is not inexpensive, an audit assures an independent review which not only provides additional security for FmHA and the lender, but also serves as a valuable management tool for the entrepreneur.

List of Subjects in 7 CFR Part 1980

Loan programs—Business and industry—Rural development assistance, Rural areas.

Accordingly, the interim rule published in the January 3, 1989, **Federal Register**, with the correction published in the April 13, 1989, issue, are adopted as final with the following amendments to Title 7, Chapter XVIII, of the Code of Federal Regulations.

PART 1980—GENERAL

1. The authority citation for Part 1980 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; P.L. 100–387; 7 CFR 2.23; 7 CFR 2.70.

Subpart E—Business and Industrial Loan Program

2. In Appendix I, paragraph B is amended by adding the following sentence at the end of the paragraph and by revising the introductory text of paragraph C to read as follows:

Appendix I—Instructions for Loan Guarantees for Drought and Disaster Relief

* * * * *

B. *Loan purposes.* * * * In addition, D&D loan proceeds may be used for hotels, motels, tourist or recreation facilities which meet the eligibility requirements for D&D guaranteed loans.

C. *Ineligible loan purposes.* See § 1980.412. Except for hotels, motels, tourist and recreation facilities mentioned in section B of this appendix, purposes listed as ineligible B&I loan purposes are ineligible D&D loan purposes. In addition, D&D guaranteed loans may not be used for:

* * * * *

April 28, 1989.

Roland R. Vautour,

Under Secretary, Small Community and Rural Development.

[FR Doc. 89–15078 Filed 6–26–89; 8:45 am]

BILLING CODE 3410–07–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 7

RIN 3150–AD25

Advisory Committees; Policies and Procedures

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations that define the policies and procedures to be followed by the Nuclear Regulatory Commission (NRC) in the establishment, utilization, and termination of advisory committees. This amendment is intended to reflect administrative and management changes that have taken place since NRC's regulations were published in 1975 and to maintain consistency between NRC regulations and those issued by the General Services Administration in 1987.

EFFECTIVE DATE: June 27, 1989.

FOR FURTHER INFORMATION CONTACT: Susan Fonner, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–1632.

SUPPLEMENTARY INFORMATION: The Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App.) was enacted in 1972 to regulate the formation and operation of advisory committees by Federal agencies. Pursuant to authority provided by section 7(c) of the Act and Executive Order 12024 (42 FR 61445), the General Services Administration has the responsibility for providing government-wide guidelines on the subject. In implementation of this responsibility, GSA issued a final rule in late 1987 (effective January 4, 1988) providing administrative and interpretive guidelines and management controls for Federal agencies concerning the implementation of the Act.

Section 8(c) of the Federal Advisory Committee Act directs the head of each Federal agency to establish uniform administrative guidelines and management controls for advisory committees established by that agency. In 1975, the Nuclear Regulatory Commission implemented this requirement by issuing NRC's Advisory Committee regulations (10 CFR Part 7). The present revision of NRC's regulations is intended to reflect administrative and management changes that have taken place since NRC's regulations were published in 1975 and to maintain consistency between NCR regulations and those issued by the General Services Administration in 1987.

Because these amendments relate to matters of agency management or personnel, good cause exists for omitting notice of proposed rulemaking and public procedures thereon, as unnecessary, and for making the amendments effective upon publication in the **Federal Register**.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this rule.

Paperwork Reduction Act Statement

This final rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*).

Regulatory Analysis

In 1972, the Congress enacted the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App.) to regulate the formation and operation of advisory committees by Federal agencies. Section 8(a) of the Act directs the head of each Federal agency to establish uniform administrative guidelines and management controls for advisory committees established by that agency. NRC implemented this requirement by issuing Advisory Committee regulations (10 CFR Part 7) in 1975.

The Act also requires the establishment of administrative guidelines and of management controls on a government-wide basis (section 7(c)). In implementation of this requirement, the General Services Administration issued a final rule, effective January 4, 1988, providing administrative and interpretive guidelines and management controls for Federal agencies concerning the implementation of the Act.

Because most of NRC's regulations on the subject have not been revised since their issuance in 1975, they do not incorporate all of the requirements of the GSA rule. For example, GSA's regulations make it clear that whenever an agency proposes to establish an advisory committee, it is required to submit a written request for review of the proposal to GSA's Committee Management Secretariat, and the letter of request must contain certain prescribed information. While NRC's current regulations contain references to consultation with the GSA Secretariat, the form of consultation appears to be at the Commission's option.

NRC's current regulations also do not reflect many of the administrative and management changes that have taken place since 1975. For example, the NRC regulations do not reflect the fact that the principal functions of guiding and coordinating the administration of the Act, which the Act vested in the President and the Director of the Office of Management and Budget, were transferred to the Administrator of the General Services Administration by Executive Order 12024 of December 1, 1977 (42 FR 61445). They also do not reflect the current operational responsibilities of the Chairman of the Commission in such matters as personnel appointments and administrative support services.

In view of the above, the Commission has determined that NRC's Advisory Committee regulations should be revised to make them more consistent with current administrative and management practices and the Federal Advisory Committee Management regulations of the General Services Administration. The Commission believes that this alternative is to be preferred to the revised 10 CFR Part 7.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule and, therefore, that a backfit analysis is not required for this final rule because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 7

Advisory committees, Sunshine Act.

For the reasons set out in the preamble and under the authority of the Federal Advisory Committee Act, as amended, 5 U.S.C. App., the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, 41 CFR Part 101–6, and 5

U.S.C. 553, the NRC is amending 10 CFR Part 7 as set forth below.

1. Part 7 is revised to read as follows:

PART 7—ADVISORY COMMITTEES

Sec.
7.1 Policy.
7.2 Definitions.
7.3 Interpretations.
7.4 Establishment of advisory committees.
7.5 Review of establishment of advisory committees by GSA Secretariat; Advisory committee charters.
7.6 Amendments to advisory committee charters.
7.7 Termination, renewal, and rechartering of advisory committees.
7.8 Charter filing requirements.
7.9 Public notice of advisory committee establishment, reestablishment, or renewal.
7.10 The NRC Advisory Committee Management Officer.
7.11 The Designated Federal Officer.
7.12 Public participation in and public notice of advisory committee meetings.
7.13 Minutes of advisory committee meetings.
7.14 Public information on advisory committees.
7.15 Procedures for closing an NRC advisory committee meeting.
7.16 Annual comprehensive review.
7.17 Reports required for advisory committees.
7.18 Compensation and expense reimbursement of advisory committee members, staffs, and consultants.
7.19 Handicapped members of advisory committees.
7.20 Conflict of interest reviews of advisory committee members' outside interests.
7.21 Costs of duplication of documents.
7.22 Fiscal and administrative responsibilities.

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 92-463, 86 Stat. 770 (5 U.S.C. App.).

§ 7.1 Policy.

The regulations in this part define the policies and procedures to be followed by the Nuclear Regulatory Commission in the establishment, utilization, and termination of advisory committees. In general, it is the policy of the Commission that—

(a) Except where there is express legal authority to the contrary, the function of NRC advisory committees shall be advisory only.

(b) Each NRC advisory committee shall function in compliance with the Federal Advisory Committee Act and this part.

(c) The number of NRC advisory committees shall be kept to the minimum necessary, and the number of members of each NRC advisory committee shall be limited to the fewest necessary to accomplish committee objectives.

(d) An NRC advisory committee shall be established only when establishment of the committee is required by law or when the Commission determines that the committee is essential to the conduct of NRC business. In making such a determination, the Commission shall consider whether committee deliberations will result in a significant contribution to the creation, amendment, or elimination of regulations, guidelines, or rules affecting NRC business; whether the information to be obtained is available through another source within the Federal Government; whether the committee will make recommendations resulting in significant improvements in service or reductions in cost; or whether the committee's recommendations will provide an important additional perspective or viewpoint relating to NRC's mission.

(e) Except where otherwise required by law, an NRC advisory committee shall be terminated whenever the stated objectives of the committee have been accomplished, the subject matter or work of the committee has become obsolete, the committee's main functions have been assumed by another entity within the Federal Government, or the cost of operating the committee has become excessive in relation to the benefits accruing to the Federal Government from its activities.

(f) NRC advisory committees shall be balanced in their membership in terms of the points of view represented and the functions to be performed.

(g) The Congress shall be kept informed of the number, purpose, membership, activities, and cost of NRC advisory committees.

(h) NRC advisory committee meetings shall be open to the public, except where closure is determined to be justified under § 7.15.

§ 7.2 Definitions.

As used in this part:

(a) "Act" means the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

(b) "Administrator" means the Administrator of General Services.

(c)(1) "Advisory committee" means any committee, board, commission, council, conference, panel, task force, or similar group, or any subcommittee or other subgroup thereof, that is established by statute for the purpose of providing advice or recommendations on issues of policy to an official, branch, or agency of the Federal Government, or that is established or utilized by the President or any agency official to obtain advice or recommendations on issues or policies that fall within the scope of his or her responsibilities; except that the term "advisory committee" shall not include the groups listed in paragraph (c)(3) of this section.

(2) For purposes of the definition of "advisory committee" in paragraph (c)(1) of this section, a group shall be considered to be "utilized by the President or any agency official to obtain advice or recommendations on issues or policies that fall within the scope of his or her responsibilities" if (i) the group is composed in whole or in part of other than full-time officers or employees of the Federal Government, (ii) the group has an established existence outside the agency seeking the advice, (iii) the group is a preferred source from which to obtain advice or recommendations on a specific issue or policy within the scope of the President's or agency official's responsibilities, and (iv) such advice or recommendations are obtained in the same manner as advice or recommendations obtained from established advisory committees.

(3) The following advisory meetings or groups are not included in the definition of "advisory committee" in paragraph (c)(1) of this section:

(i) Any group composed wholly of full-time officers or employees of the Federal Government;

(ii) Any group specifically exempted from the Act or these regulations by an Act of Congress;

(iii) Any local civic group whose primary function is that of rendering a public service with respect to a Federal program, or any State or local committee, council, board, commission, or similar group established to advise or make recommendations to any State or local government unit or an official thereof;

(iv) Any group that performs primarily operational functions specifically provided by law, as opposed to advisory functions;

(v) Any meeting initiated by the President or one or more Federal officials for the purpose of obtaining advice or recommendations from one individual;

(vi) Any meeting that is initiated by a Federal official and that is held with more than one individual for the purpose of obtaining the advice of individual attendees and not for the purpose of utilizing the group to obtain consensus advice or recommendations, except where the agency accepts the group's deliberations as a source of consensus advice or recommendations;

(vii) Any meeting initiated by a group with the President or one or more Federal officials for the purpose of expressing the group's view, provided

that the President or Federal official does not use the group recurrently as a preferred source of advice or recommendations;

(viii) Any meeting of two or more advisory committee members convened solely to gather information or conduct research for a chartered advisory committee to analyze relevant issues and facts for a chartered advisory committee, or to draft proposed position papers for deliberation by a chartered advisory committee; and

(ix) Any meeting with a group initiated by the President or by one or more Federal officials for the purpose of exchanging facts or information.

(d) "Agency" means an agency of the Government of the United States as defined in 5 U.S.C. 551(1).

(e) "Commission" means the Nuclear Regulatory Commission of five members, or a quorum thereof, sitting as a body, as provided by section 201 of the Energy Reorganization Act of 1974, 42 U.S.C. 5841 (88 Stat. 1242).

(f) "Committee member" means an individual who is appointed to serve on an advisory committee and has the full right and obligation to participate in the activities of the committee, including voting on committee recommendations.

(g) "Designated Federal Official" means a government employee appointed, pursuant to § 7.11(a), to chair or attend each meeting of an NRC advisory committee to which he or she is assigned.

(h) "GSA" means the General Services Administration.

(i) "NRC" means the agency established by title II of the Energy Reorganization Act of 1974, 42 U.S.C. 5801 (88 Stat. 1233), and known as the Nuclear Regulatory Commission.

(j) "NRC Advisory Committee Management Officer" means the individual appointed, pursuant to § 7.10(a), to supervise and control the establishment and management of NRC advisory committees.

(k) "NRC Public Document Room" means the Public Document Room maintained by the NRC at 2120 L Street, NW., Washington, DC.

(l) "Presidential advisory committee" means an advisory committee that advises the President.

(m) "GSA Secretariat" means the Committee Management Secretariat of the General Services Administration, which was established pursuant to the Act.

(n) "Staff member" means any individual who serves in a support capacity to an advisory committee.

§ 7.3 Interpretations.

Except as specifically authorized by the Commission in writing, no interpretation of the meaning of the regulations in this part by an NRC officer or employee, other than a written interpretation by the General Counsel, shall be binding upon the Commission.

§ 7.4 Establishment of advisory committees.

(a) An NRC advisory committee may be established under this part only if its establishment—

(1) Is specifically directed or authorized by statute or by Executive Order of the President; or

(2) Has been determined by the Commission to be in the public interest and essential to the performance of the duties imposed on the Commission by law.

The determination required by paragraph (a)(2) of this section shall be a matter of formal record, and shall include a statement of a clearly defined purpose for the advisory committee.

§ 7.5 Review of establishment of advisory committees by GSA Secretariat; Advisory committee charters.

(a) Whenever the NRC proposes to establish or utilize an advisory committee, a letter requesting review of the proposal and transmitting a proposed charter for the committee shall be submitted to the GSA Secretariat by the Commission. The letter shall contain the following information:

(1) An explanation of why the committee is essential to the conduct of NRC business and is in the public interest;

(2) An explanation of why the committee's functions cannot be performed by NRC, another existing NRC advisory committee, or other means (such as a public hearing); and

(3) A description of NRC's plan to attain balanced membership on the committee.

For purposes of attaining balance in an NRC advisory committee's membership, the Commission shall consider for membership interested persons and groups with professional, technical, or personal qualifications or experience to contribute to the functions and tasks to be performed.

(b) Each proposed committee charter submitted for review pursuant to paragraph (a) of this section shall contain the following information:

(1) The committee's official designation;

(2) The committee's objectives and the scope of its activity;

(3) The period of time necessary for the committee to carry out its purposes;

(4) The NRC official to whom the committee will report;

(5) The NRC office responsible for providing support for the committee;

(6) A description of the duties for which the committee will be responsible, and if such duties are not solely advisory, a specification of the authority for the functions that are not advisory;

(7) The estimated annual operating costs, in dollars and man-years, for the committee;

(8) The estimated number and frequency of committee meetings; and

(9) The committee's termination date, if less than two years from the date of the committee's establishment.

The date the charter is filed pursuant to § 7.8 shall be added to the charter when such filing takes place.

(c)(1) A subcommittee that does not function independently of its parent advisory committee shall be subject to the requirements of this part, except that it shall not be subject to the requirements of paragraphs (a) and (b) of this section. Such a subcommittee shall not, however, be subject to the requirements of this part with respect to any meeting of its members devoted solely to a function described in § 7.2(c)(3)(viii).

(2) The requirements of this part, including the requirements of paragraphs (a) and (b) of this section, shall apply to any subcommittee that functions independently of the parent advisory committee (such as by making recommendations directly to the agency rather than to the parent advisory committee), regardless of whether the subcommittee's members are drawn in whole or in part from the parent advisory committee.

(d) After the GSA Secretariat has notified the Commission of the results of its review of a proposal to establish or utilize an NRC advisory committee, submitted pursuant to paragraph (a) of this section, the Commission shall notify the GSA Secretariat in writing whether the advisory committee is actually being established. Filing of the advisory committee charter pursuant to § 7.8 shall be deemed to fulfill this notification requirement. If the advisory committee is not being established, the Commission shall so advise the GSA Secretariat in writing, stating whether NRC intends to take any further action with respect to the proposed advisory committee.

(e) The date of filing of an advisory committee charter pursuant to § 7.8 shall appear on the face of the charter and shall constitute the date of establishment, renewal, or reestablishment of the committee.

§ 7.6 Amendments to advisory committee charters.

(a) Final authority for amending the charter of an NRC advisory committee established or utilized by the NRC is vested in the Commission.

(b) Any proposed minor technical changes made to a current charter for an NRC advisory committee whose establishment is required or authorized by statute or by Executive Order of the President shall be coordinated with the General Counsel to ensure that they are consistent with the applicable statute or Executive Order. When the statute or Executive Order that directed or authorized the establishment of an advisory committee is amended to change the language that has been the basis for establishing the advisory committee, those sections of the current charter affected by the statute or Executive Order shall also be amended, and the amended charter shall be filed as specified in § 7.8.

(c)(1) The charter of an NRC advisory committee established under general agency authority may be amended when the Commission determines that the existing charter no longer reflects the objectives or functions of the committee. Such changes may be minor (such as revising the name of the advisory committee or modifying the estimated number or frequency of meetings), or they may be major (such as revising the objectives or composition of the committee). The procedures specified in paragraph (b) of this section shall be used in the case of charter amendments involving minor changes.

(2) In the case of a major amendment to the charter of an advisory committee established under general agency authority, a letter requesting review of the proposed amendment and transmitting the proposed amended charter shall be submitted to the GSA Secretariat. The letter shall explain the purpose of the changes and why they are necessary.

(3) A committee charter that has been amended pursuant to this paragraph is subject to the filing requirements set forth in § 7.8.

(4) Amendment of an existing advisory committee charter pursuant to this paragraph does not constitute renewal of the committee for purposes of § 7.7.

§ 7.7 Termination, renewal, and rechartering of advisory committees.

(a) Except as provided in paragraph (b)(1) of this section, each NRC advisory committee shall terminate two years after it is established, reestablished, or renewed, unless—

(1) It has been terminated sooner;

(2) It has been renewed or reestablished before the end of such period in accordance with the procedures set forth in paragraph (b) of this section; or

(3) Its duration has been otherwise designated by law.

The NRC Committee Management Officer shall notify the GSA Secretariat in writing of the effective date of termination of any advisory commitee that has been terminated by the NRC.

(b)(1) An NRC advisory committee that is established by statute shall require rechartering by the filing of a new charter every 2 years after the date of enactment of the statute establishing the committee. If a new charter is not filed, the committee is not terminated, but it may not meet or take any actions.

(2) Any other NRC advisory committee may be renewed, provided that such renewal is carried out in compliance with the procedures set forth in § 7.5 at least 30 and not more than 60 days before the committee would otherwise terminate; except that an advisory committee established by the President may be renewed by appropriate action of the President and the filing of a new charter. Renewal of an NRC advisory committee shall not be deemed to terminate the appointment of any committee member who was previously appointed to serve on the committee.

§ 7.8 Charter filing requirements.

(a) Except as provided in paragraph (b) of this section, an NRC advisory committee may not operate, meet, or take any action unless a copy of the committee's charter has been filed with (1) the Committee on Environment and Public Works of the United States Senate, and the Committee on Interior and Insular Affairs and the Committee on Energy and Commerce of the United States House of Representatives; (2) the Library of Congress, Exchange and Gift Division, Federal Documents Section, Federal Advisory Committee Desk, Washington, DC 20540; and (3) the GSA Secretariat. The copy filed with the GSA Secretariat shall indicate the Congressional filing date.

(b) When either the President or the Congress establishes an advisory committee that advises the President and for which NRC is responsible, the Commission shall—

(1) File the committee's charter with the GSA Secretariat;

(2) File a copy of the committee's charter with the Library of Congress at the address listed in paragraph (a) of this section; and

(3) If specifically directed by law, file with the Congressional Committees listed in paragraph (a) of this section a copy of the charter that shows its date of filing with the GSA Secretariat.

(c) For purposes of the filing requirements established by this section, the filing date of an advisory committee charter shall be the date on which the charter, or a copy of the charter where appropriate, is offered for filing at the office in which it is required to be filed (in the case of hand delivery), or on which it is deposited in the mail (in the case of delivery by mail).

(d) The charter filing requirements established by this section are subject to the public notice requirements of § 7.9.

§ 7.9 Public notice of advisory committee establishment, reestablishment, or renewal.

(a) After the Commission has received the GSA Secretariat's response to a request (in accordance with § 7.5) for review of a proposal to establish, reestablish, renew, or utilize an NRC advisory committee, the Commission shall publish a notice in the **Federal Register** that the committee is being established, reestablished, renewed, or utilized. In the case of a new committee, the notice shall also describe the nature and purpose of the committee and shall include a statement that the committee is necessary and in the public interest. This notice requirement does not apply to any committee whose establishment is required by statute or which is established by Executive Order of the President.

(b) Notices required to be published pursuant to paragraph (a) of this section shall be published at least 15 calendar days before the committee charter is filed pursuant to § 7.8, except that the GSA Secretariat may approve less than 15 days for good cause shown. The 15-day advance notice requirement does not apply to committee renewals, notices of which may be published concurrently with the filing of the charter.

§7.10 The NRC Advisory Committee Management Officer.

(a) The Chairman of the Commission shall appoint an NRC Advisory Committee Management Officer to carry out the functions specified in paragraph (b) of this section.

(b) The NRC Advisory Committee Management Officer shall—

(1) Carry out all responsibilities relating to NRC advisory committees delegated to such officer by the Commission;

(2) Ensure that administrative guidelines and management controls are issued that apply to all NRC advisory committees;

(3) Exercise control and supervision over the establishment, procedures, and accomplishments of NRC advisory committees;

(4) Assemble and maintain the reports, records, and other papers of any such committee during this existence;

(5) Carry out, on behalf of NRC, the provisions of the Freedom of Information Act (5 U.S.C. 552) and NRC's Freedom of Information Act Regulations (10 CFR Part 9, Subpart A) with respect to such reports, records, and other papers;

(6) Ensure that, subject to the Freedom of Information Act and NRC's Freedom of Information Act Regulations, copies of the records, reports, transcripts minutes, appendices, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by each NRC advisory committee shall be available for public inspection and copying at the NRC Public Document Room until the advisory committee ceases to exist;

(7) Ensure that, subject to the Freedom of Information Act and NRC's Freedom of Information Act Regulations, at least eight copies of each report made by each NRC advisory committee and, where appropriate, background papers prepared by consultants, shall be filed with the Library of Congress;

(8) Ensure that NRC keeps such records as will fully disclose the disposition of any funds that may be at the disposal of NRC advisory committees and the nature and extent of their activities; and

(9) Ensure that NRC keeps such other records and provides such support services as are required by § 7.22.

(b) For purposes of paragraph (a) of this section, the term "records" includes (but is not limited to):

(1) A set of approved charters and membership lists for each NRC advisory committee;

(2) Copies of NRC's portion of the President's annual report to the Congress on Federal advisory committees required by section 6(c) of the Act;

(3) NRC guidelines on committee management operations and procedures as maintained and updated; and

(4) NRC determinations to close advisory committee meetings made pursuant to § 7.15.

§ 7.11 The Designated Federal Officer.

(a) The Chairman of the Commission shall appoint a Designated Federal Officer for each NRC advisory committee and its subcommittees. The individual holding this position must be employed by the Federal Government on either a full-time or a permanent part-time basis.

(b) All meetings of an NRC advisory committee must be convened or approved by the committee's Designated Federal Officer, and the agenda for each committee meeting (expect a meeting of a Presidential advisory committee) must be approved by that individual.

(c) An NRC advisory committee may not hold a meeting in the absence of its Designated Federal Officer.

(d) It shall also be the responsibility of the Designated Federal Officer to—

(1) Attend all meetings of the committee for which he or she has been appointed;

(2) Adjourn the meetings of the committee when such adjuornment is in the public interest;

(3) Chair the meetings of the committee when so directed by the Commission;

(4) Ensure compliance with the requirements of § 7.13 regarding minutes of meetings of the committee; and

(5) Provide to the NRC Public Document Room copies of committee documents required to be maintained for public inspection and copying pursuant to § 7.14(b).

§ 7.12 Public participation in and public notice of advisory committee meetings.

(a) Each meeting of an NRC advisory committee shall be held at a reasonable time and in a place reasonably accessible to the public. The size of the meeting room must be sufficient to accomodate advisory committee members, committee or agency staff, and interested members of the public; except that, the provisions of this paragraph shall not apply where an entire NRC advisory committee meeting has been closed pursuant to § 7.15.

(b) Any member of the public who wishes to do so shall be permitted to file a written statement with an NRC advisory committee regarding any matter discussed at a meeting of the committee. The committee chairman may also permit members of the public to speak at meetings of the committee in accordance with procedures established by the committee.

(c) Except when the President or his designee determines in writing that no notice should be published for reasons of national security, at least 15 days prior to an NRC advisory committee meeting, a notice that includes the following information shall be published in the **Federal Register**:

(1) The exact name of the advisory committee as chartered;

(2) The time, date, place, and purpose of the meeting;

(3) A summary of the agenda of the meeting; and

(4) Whether all or part of the meeting is open to the public.

If any part of the meeting is closed, the notice shall provide the reasons for the closure, citing the specific matter that has been determined to justify the closure under § 7.15.

(d) In exceptional circumstances, less than 15 days notice of an advisory committee meeting may be given, provided that there is as much prior notice as possible and the reasons for the shorter time are included in the committee meeting notice published in the **Federal Register**.

(e) In addition to notice required by paragraph (c) of this section, the NRC may also use other forms of notice, such as public releases and notice by mail, to inform the public of advisory committee meetings. To that end, the Designated Federal Officer of each NRC advisory committee will, to the extent practicable, maintain lists of people and organizations interested in that advisory committee and notify them of meetings by mail.

§ 7.13 Minutes of advisory committee meetings.

(a) Detailed minutes shall be kept of each NRC advisory committee meeting. The minutes shall include the following information:

(1) The time, date, and place of the meeting;

(2) A list of the attendees at the meeting who are advisory committee members or staff, agency employees, or members of the public who presented oral or written statements;

(3) An estimate of the number of other members of the public who were present;

(4) The extent of public participation; and

(5) An accurate description of each matter discussed during the meeting and its resolution, if any, by the committee.

(b) The minutes of an NRC advisory committee meeting shall include a copy of each report or other document received, issued, or approved by the committee in connection with the meeting. If it is impracticable to attach a document to the minutes, the minutes shall describe the document in sufficient detail to permit it to be identified readily.

(c) The chairperson of an NRC advisory committee shall certify to the accuracy of the minutes of each of the committee's meetings. In the case of a subgroup of an advisory committee, the chairperson of the subgroup shall certify to the accuracy of the minutes.

(d) A verbatim transcript of an advisory committee meeting may be substituted for minutes required by this section, providing that the use of such a transcript is in accordance with the requirements of paragraphs (a), (b), and (c) of this section.

§ 7.14 Public information on advisory committees.

(a) The Nuclear Regulatory Commission shall maintain systematic information on the nature, functions, and operations of each NRC advisory committee. A complete set of the charters of NRC advisory committees and copies of the annual reports required by § 7.17(a) shall be maintained for public inspection in the NRC Public Document Room.

(b) Subject to the provisions of the Freedom of Information Act (5 U.S.C. 552) and NRC's Freedom of Information Act Regulations (10 CFR Part 9, Subpart A), copies of NRC advisory committees' records, reports, transcripts, minutes, appendices, working papers, drafts, studies, agenda, and other documents shall be maintained for public inspection and copying in the NRC Public Document Room.

§ 7.15 Procedures for closing an NRC advisory committee meeting.

(a) To close all or part of a meeting of an NRC advisory committee, the committee shall submit a written request for closure to the Chairman of the Commission, citing specific matter listed in the Government in the Sunshine Act (5 U.S.C. 552b), as implemented by 10 CFR 9.104, to justify the closure. The request shall provide the Chairman sufficient time for review in order to make a determination prior to publication of the meeting notice pursuant to § 7.12.

(b) The General Counsel shall review all requests to close meetings of NRC advisory committees.

(c) If the Chairman of the Commission agrees that the request is consistent with the policies of this part, a determination shall be issued in writing that all or part of the meeting will be closed. The determination shall include a statement of the reasons for the closing.

(d) Except when the President or his designee determines in writing that no notice should be published for reasons of national security, the Chairman of the Commission shall make a copy of the determination to close all or part of an NRC advisory committee meeting available to the public upon request, and shall state the reasons why all or part of the meeting is closed, citing the specific matter listed in the Government in the Sunshine Act (as implemented by 10 CFR 9.104) in the meeting notice published in the **Federal Register** pursuant to § 7.12.

(e) The Chairman of the Commission may delegate the Chairman's functions under paragraphs (c) and (d) of this section to such officer of the Commission as the Chairman considers appropriate. The General Counsel shall review any determination to close a meeting made by a delegate.

§ 7.16 Annual comprehensive review.

(a) The Chairman of the Commission shall conduct an annual comprehensive review of the activities and responsibilities of each NRC advisory committee to determine whether the committee—

(1) Is carrying out its purposes or, consistent with the provisions of applicable statutes, its responsibilities should be revised.

(2) Should be merged with another advisory committee.

(3) Should be terminated.

(b) The comprehensive review required by paragraph (a) of this section shall include consideration of such information regarding the committee as is required for the Commission's annual report to the GSA Secretariat pursuant to § 7.27(a) and such other information as may be requested from the Committee by the NRC Advisory Committee Management Officer. The results of such review shall be included in the annual report to the GSA Secretariat.

(c) If, as a result of the review required by this section, the Commission determines that an advisory committee is no longer needed, the committee shall be terminated; except that in the case of an advisory committee established by an Act of Congress or the President, the committee's termination shall be recommended to the President or the Congress, as the case may be.

§ 7.17 Reports required for advisory committees.

(a) The Commission shall furnish a report on the activities of NRC advisory committees annually to the Administrator and the GSA Secretariat. The report shall be on a fiscal year basis. It shall contain such information regarding NRC advisory committees as is required by section 6(c) of the Act for the President's annual report to the Congress and shall be consistent with instructions provided by the GSA Secretariat. A copy of the report shall be placed in the NRC Public Document Room.

(b) Any NRC advisory committee holding closed meetings shall issue a report, at least annually, setting forth a summary of its activities consistent with the policy of the Government in the Sunshine Act (5 U.S.C. 552b), as implemented by 10 CFR 9.104. A copy of the report shall be placed in the NRC Public Document Room.

(c) Subject to the Freedom of Information Act (5 U.S.C. 552) and NRC's Freedom of Information Act Regulations (10 CFR Part 9, Subpart A), eight copies of each report made by an advisory committee, including any report on closed meetings pursuant to paragraph (b) of this section, and, where appropriate, background papers prepared by consultants, shall be filed for public inspection and use with the Library of Congress, Exchange and Gift Division, Federal Documents Section, Federal Advisory Committee Desk, Washington, DC 20540.

§ 7.18 Compensation and expense reimbursement of advisory committee members, staffs, and consultants.

(a) Except where otherwise provided by law, the Commission may accept the gratuitous services of an NRC advisory committee member, staff member, or consultant who agrees in advance to serve without compensation.

(b)(1) Subject to the provisions of paragraph (b)(2) of this section, if the Commission determines that compensation of a member of an NRC advisory committee is appropriate, the amount that will be paid shall be fixed by the Chairman of the Commission at a rate that is the daily equivalent of a rate of NRC's General Salary Schedule, unless the member is appointed as a consultant and compensated at a rate applicable to NRC consultants. (See NRC Manual for NRC's General Salary Schedule and rates applicable to NRC consultants.)

(2) In determining an appropriate rate of pay for a member of an NRC advisory committee, the Chairman of the Commission shall give consideration to the significance, scope, and technical complexity of the matters with which the advisory committee is concerned and the qualifications required of the committee member; provided that the Chairman may not set the rate of pay for an NRC advisory committee member higher than the daily equivalent of the maximum rate for a GG–15 under NRC's General Salary Schedule, unless a higher rate is mandated by statute or the Commission itself has determined that a higher rate is justified and necessary. The Commission may not delegate the responsibility for making a determination that such a higher rate of pay is necessary and justified for an NRC advisory committee member, and such a determination must be reviewed annually.

(3) An advisory committee member may not be paid at a rate higher than the daily equivalent of the maximum rate for a GG–18 under NRC's General Salary Schedule.

(c)(1) Each NRC advisory committee staff member may be paid at a rate that is the daily equivalent of a rate of NRC's General Salary Schedule in which the staff member's position would appropriately be placed.

(2) A staff member of an NRC advisory committee may not be paid at a rate higher than the daily equivalent of the maximum rate for a GG–15 under NRC's General Salary Schedule, unless the Chairman of the Commission determines that the staff member's position would appropriately be placed at a grade higher than GG–15; provided that in establishing rates of compensation, the Chairman shall comply with any applicable statutes, regulations, Executive Orders, and administrative guidelines.

(3) A determination to set the rate of pay of a staff position at a grade higher than GG–15 under the NRC's General Salary Schedule rate of pay shall be reviewed annually by the Chairman of the Commission.

(4) A Federal employee may serve as a staff member of an NRC advisory committee only with the knowledge of the Designated Federal Officer for the committee and the approval of the employee's direct supervisor. A staff member who is not otherwise a Federal employee shall be appointed in accordance with applicable agency procedures, following consultation with the advisory committee.

(d) The following factors shall be considered in determining an appropriate rate of pay for a consultant to an NRC advisory committee:

(1) The qualifications required of the consultant, and

(2) The significance, scope, and technical complexity of the work for which his services are required;

Provided that the rate of pay for an NRC advisory committee consultant may not be higher than the maximum rate of pay applicable to NRC consultants. In establishing such a rate of pay, NRC shall comply with any applicable statutes, regulations, Executive Orders, and administrative guidelines.

(e) A member or staff member of an NRC advisory committee engaged in the performance of duties away from his or her home or regular place of business may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703, title 5, United States Code, for persons employed intermittently in the Government service.

(f) Nothing in this section shall—

(1) Prevent any full-time Federal employee who provides services to an NRC advisory committee from receiving compensation at a rate at which he or she would otherwise be compensated as a full-time Federal employee.

(2) Prevent any individual who provides services to an NRC advisory committee, and who immediately before providing such services was a full-time Federal employee, from receiving compensation at a rate at which he or she was compensated as a full-time Federal employee.

(3) Affect a rate of pay or a limitation on a rate of pay that is specifically established by law or a rate of pay established under the NRC's General Salary Schedule and evaluation system (see NRC Manual).

§ 7.19 Handicapped members of advisory committees.

An NRC advisory committee member who is blind or deaf or otherwise handicapped may be provided services by a personal assistant for handicapped employees while performing advisory committee duties, if the member—

(a) Qualifies as a handicapped individual as defined by section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 794); and

(b) Does not otherwise qualify for assistance under 5 U.S.C. 3102 by reason of being an employee of NRC.

§ 7.20 Conflict of interest reviews of advisory committee members' outside interests.

The Designated Federal Officer of each NRC advisory committee and the General Counsel shall review the interests and affiliations of each member of the Designated Federal Officer's advisory committee annually, and upon the commencement and termination of the member's appointment to the committee, for the purpose of ensuring that such appointment is consistent with the laws and regulations on conflict of interest applicable to that member.

§ 7.21 Cost of duplication of documents.

Copies of the records, reports, transcripts, minutes, appendices, working papers, drafts, studies, agenda, or other documents that were made available to or prepared for or by an NRC advisory committee shall be made available to any person at the actual cost of duplication prescribed in Part 9 of this chapter. (For availability of information on advisory committees, see § 7.14.)

§ 7.22 Fiscal and administrative responsibilities.

(a) The Controller shall keep such records as will fully disclose the disposition of any funds which may be at the disposal of NRC advisory committees.

(b) The Office of Information Resources Management shall keep such records as will fully disclose the nature and extent of activities of NRC advisory committees.

(c) NRC shall provide support services (including staff support and meeting space) for each advisory committee established by or reporting to it unless the establishing authority provides otherwise. Where any such advisory committee reports to another agency in addition to NRC, only one agency shall be responsible for support services at any one time, and the establishing authority shall designate the agency responsible for providing such services.

Dated at Rockville, MD, this 21st day of June 1989.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 89–15080 Filed 6–26–89; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88–ASW–06; Amendment 39–6249]

Airworthiness Directives; Bell Helicopter Textron, Inc. (BHTI), Model 206A, 206B, 206B–1, 206L, 206L–1, and 206L–3 Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new Airworthiness Directive (AD) 88–23–03, which was previously made effective as to all known U.S. owners and operators of certain Bell Helicopter Textron, Inc. (BHTI), Model 206A, 206B, 206B–1, 206L, 206L–1, and 206L–3 helicopters by individual letters. The AD required an inspection of the tail rotor yoke assembly to determine the part number and serial number of the yoke assembly. If the numbers were listed in the body of the AD, replacement of the

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tail rotor yoke assembly was required prior to further flight. The AD was necessary to prevent failure of the tail rotor yoke, loss of a tail rotor blade, and subsequent loss of the helicopter.

EFFECTIVE DATE: Effective July 25, 1989, as to all persons except those persons to whom it was made immediately effective by Priority Letter AD 88-23-03, issued November 15, 1988, which contained this amendment.

Compliance: Required before further flight, after the effective date of this AD, unless already accomplished.

ADDRESSES: Applicable AD related material may be examined at the Regional Rules Docket, Office of the Assistant Chief Counsel, FAA, 4400 Blue Mound Road, Room 158, Bldg. 3B, Fort Worth Texas.

FOR FURTHER INFORMATION CONTACT: Ms. Michelle M. Corning, Rotorcraft Directorate, Rotorcraft Certification Office, ASW-170, FAA, Southwest Region, Fort Worth, Texas 76193-0170, telephone (817) 624-5128.

SUPPLEMENTARY INFORMATION: On November 15, 1988, Priority Letter AD 88-23-03 was issued and made effective immediately as to all known U.S. owners and operators of certain Bell Helicopter Textron, Inc., Model 206A, 206B, 206B-1, 206L, 206L-1, and 206L-3 helicopters. The AD required an inspection of the tail rotor yoke assembly to determine the part number and serial number of the yoke assembly. If the numbers were listed in the body of the AD, replacement of the tail rotor yoke assembly was required prior to further flight. The AD was prompted by a report that certain serial number tail rotor yoke assemblies, Part Number (P/N) 206-011-819-101, have the four tail rotor blade attach bolt holes machined in the wrong locations. These tail rotor yoke assemblies, if installed on the helicopter, may result in tail rotor vibration and failure of the tail rotor yoke. AD action was necessary to prevent failure of the tail rotor yoke, loss of a tail rotor blade, and subsequent loss of the helicopter.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued November 15, 1988, to all known U.S. owners and operators of certain Bell Helicopter Textron, Inc., Model 206A, 206B, 206B-1, 206L, 206L-1, and 206L-3 helicopters. These conditions still exist, and the AD is hereby published in the Federal Register as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Regional Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, and Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Bell Helicopter Textron, Inc. (BHTI): Applies to all BHTI Model 206A, 206B, 206B-1, 206L, 206L-1, and 206L-3 helicopters certificated in any category, with tail rotor yoke assembly, P/N 206-011-819-101, identified with the following serial numbers:

A-2009	A-2087	A-2203
A-2070	A-2150	A-2221
A-2076	A-2180	A-2228
A-2343	A-2213	A-2144
A-2010	A-2223	A-2173
A-2073	A-2234	A-2196
A-2078	A-2266	A-2218
A-2138	A-2025	A-2227
A-2167	A-2077	A-2236
A-2195	A-2084	

Compliance is required as indicated, unless already accomplished.

To prevent the failure of the tail rotor yoke assembly, loss of the tail rotor blade, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, inspect the aircraft to determine the part number and serial number of the installed tail rotor yoke assembly. If P/N 206-011-819-101 with a serial number listed above is installed on the helicopter, remove and replace the assembly with an airworthy yoke assembly.

(b) An alternate method of compliance or adjustment of the compliance time, which provides an equivalent level of safety, may be used when approved by the Manager, Rotorcraft Certification Office, Rotorcraft Directorate, Aircraft Certification Service, FAA, Southwest Region.

(c) In accordance with FAR Part 21.197 and 21.199, flight is permitted to a base where removal and replacement of the affected tail rotor yoke required by this AD may be accomplished.

This amendment becomes effective July 25, 1989, as to all persons except those persons to whom it was made immediately effective by Priority Letter AD 88-23-03, issued November 15, 1988, which contained this amendment.

Issued in Fort Worth, Texas, on June 13, 1989.

James D. Erickson,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 89-15124 Filed 6-26-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 773, 779, and 799

[Docket Nos. 71149-7249, 80484-8084, 71024-7224, 80580-8086, 80980-8166, 80513-8113, 80982-8182, 71098-7298, 80863-8163]

Export Administration Regulations: Technical Corrections

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule; Correction.

SUMMARY: This final rule makes several technical corrections to the Export Administration Regulations (EAR). These corrections address inconsistencies contained in the amendatory instructions of certain amendments to the EAR that were published since the 1988 revision of 15 CFR Parts 768-799. These changes, which neither expand nor limit the provisions of the EAR, affect § 773.3(d)(2)(iv), Supplement No. 4 to Part 779 (Additional Specifications for Certain Technical Data Requiring a Validated License to all Destinations Except Canada), and Supplement No. 1 to § 799.1 (the Commodity Control List).

EFFECTIVE DATE: This rule is effective January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Willard Fisher, Regulations Branch, Bureau of Export Administration, Telephone: (202) 377-3856.

SUPPLEMENTARY INFORMATION

Background

The specific technical corrections made by this final rule are listed below.

(a) A final rule, published on November 27, 1987 (52 FR 45309), added a new ECCN 6598F to the Commodity Control List. The phrase "Controls for ECCN 6598F" incorrectly read "Controls for ECCN 6568F." This final rule corrects the regulatory text by revising the phrase to read "Controls for ECCN 6598F".

(b) A final rule, published on November 18, 1987 (52 FR 44101), amended ECCN 1533A by adding a new paragraph (c) to (Advisory) Note 7 for the People's Republic of China. Another final rule, published on May 13, 1988 (53 FR 17021), also contained amendatory instructions for adding a new paragraph (c) to (Advisory) Note 7. This final rule clarifies the amendatory instructions in the final rule of May 13, 1988 by indicating that the rule revises existing paragraph (c), rather than adding a new paragraph (c).

(c) A final rule, published on March 10, 1988 (53 FR 7733), amended Supplement No. 1 to § 799.1 (the Commodity Control List) by redesignating paragraph (b)(ii) as (b)(iii) and adding a new paragraph (b)(ii) to the list of commodities controlled by ECCN 1091A. Another final rule, published on May 23, 1988 (53 FR 18271), also amended the list of commodities controlled by ECCN 1091A by revising paragraph (b)(ii) and adding a new paragraph (b)(iii). The amendatory language in the final rule of May 23, 1988 should have contained instructions revising paragraph (b)(iii) and adding a new paragraph (b)(iv). This final rule corrects the amendatory language in the final rule of May 23, 1988 by revising the references to paragraphs (b)(ii)(2) and (b)(iii) to read (b)(iii)(2) and (b)(iv), respectively.

(d) A final rule, published on July 5, 1988 (53 FR 25146), contained amendatory instructions to revise ECCN 1537A by redesignating the Advisory Note for the People's Republic of China as Advisory Note 8 for the People's Republic of China and by moving that Advisory Note to the end of text. The Advisory Note had already been placed at the end of the text when it was added to ECCN 1537A by a final rule published on December 27, 1985 (50 FR 52907). This final rule corrects the amendatory language in the final rule on July 5, 1988 by removing the instruction to place the Advisory Note at the end of the text.

(e) A final rule, published on September 14, 1988 (53 FR 35459) amended § 779.4(d) by redesignating paragraph (d)(21) as paragraph (d)(24) and by adding new paragraphs (d)(21), (d)(22), and (d)(23). Another final rule, published on September 15, 1988 (53 FR 35803) redesignated paragraph (d)(21) as (d)(22) and added a new paragraph (d)(21). The amendatory language in the final rule on September 15, 1988 failed to take into account the changes to § 779.4(d) that were made by the final rule of September 14, 1988. This final rule corrects the amendatory language in the September 15, 1988 rule to indicate that paragraph (d)(24) is redesignated as paragraph (d)(25) and a new paragraph (d)(24) is added.

The September 14, 1988 (53 FR 35459) final rule amended Supplement No. 4 to Part 779 (Additional Specifications for Certain Technical Data Requiring a Validated License to all Destinations Except Canada) by adding new paragraphs (5) through (9). The September 15, 1988 (53 FR 35803) final rule also added a new paragraph (5) to Supplement No. 4. The amendatory language in the final rule of September 15, 1988 should have indicated that a new paragraph (10) was added. This final rule corrects the amendatory language of the September 15, 1988 rule by including an instruction to designate the new paragraph as paragraph (10).

The September 14, 1988 (53 FR 35465) final rule amended ECCN 1746A by adding new paragraphs (k) and (l). The September 15, 1988 (53 FR 53805) final rule also added paragraphs (k) and (l), but with a text that differed slightly from that contained in the earlier rule. This final rule corrects the amendatory language for the final rule of September 15, 1988 to indicate that existing paragraphs (k) and (l) are revised.

(f) A final rule, published on September 19, 1988 (53 FR 36272), included amendatory instructions to revise ECCN 1460A by adding the phrase "and the People's Republic of China" after the phrase "Country Groups QSWYZ", in paragraphs (b), (c)(1) and (c)(2) of the list of equipment controlled. This change had already been made in a final rule published on September 14, 1988 (53 FR 35459). This final rule corrects the amendatory language in the final rule of September 19, 1988 by removing the instruction adding the phrase "and the People's Republic of China".

(g) A final rule, published on September 20, 1988 (53 FR 36439), included amendatory instructions to revise ECCN 1501A by changing the reference to "db" that appeared in paragraph (e) of the Technical Note following paragraph (c)(2)(iii) to read "dB". The amendatory instruction should have referenced paragraph (c), instead of paragraph (e), since there was no paragraph (e) in the Technical Note. This final rule corrects the amendatory instruction to indicate that ECCN 1501A is amended by revising the phrase "db" in paragraph (c) of the Technical Note following paragraph (c)(2)(iii) to read "dB".

(h) A final rule, published on September 21, 1988 (53 FR 36560), revised the "GLV $ Value Limit" paragraph for a number of Export Control Commodity Numbers (ECCNs). This rule inadvertently included nine ECCNs that had been removed from the Commodity Control List (CCL) by final rules published earlier in the month. ECCN 1133A was removed from the CCL by a final rule published on September 15, 1988 (53 FR 35799). ECCNs 4460B and 1801A were removed from the CCL by a final rule published on September 14, 1988 (53 FR 35459). ECCNs 1603A, 1649A, 1658A, 1670A, 1671A, and 1674A were removed from the CCL by a final rule published on September 15, 1988 (53 FR 35803). This final rule corrects the amendatory language in the final rule of September 21, 1988 by removing the references to these ECCNs.

(i) A final rule, published on October 27, 1988 (53 FR 43427), amended § 773.3 by removing paragraph (d)(4), which addressed processing data rate exception requests for distribution license applications. Paragraph (d)(2)(iv), which also addresses these requests and contains a reference to paragraph (d)(4), was not removed. This rule corrects the amendatory language of the October 27, 1988 rule by adding an instruction removing paragraph (d)(2)(iv).

Accordingly, the following corrections are made:

1. "Export Controls on Iran; Expansion of Foreign Policy Controls", which was published in the Federal Register on November 27, 1987 (52 FR 45309), is corrected as follows:

On page 45311, in the second column, under item 10, in the regulatory text,

revise the phrase "Controls for ECCN 6568F" that follows the heading for ECCN 6568F to read "Controls for ECCN 6598F".

2. "Amendments to the Commodity Control List Based on COCOM Review; Exports to the People's Republic of China", which was published in the Federal Register on May 13, 1988 (53 FR 17021), is corrected as follows:

On page 17021, in the third column, under item 6, lines 11 and 12 of the amendatory language are corrected to read "and by revising paragraph (c) to (Advisory) Note 7 for".

3. "Amendments to the Commodity Control List Based on Coordinating Committee Review", which was published in the Federal Register on May 23, 1988 (53 FR 18271), is corrected as follows:

On page 18272, in the first column, under item 2, in line 15 of the amendatory language, revise the reference to "(b)(ii)(2)" to read "(b)(iii)(2)".

On page 18272, in the second column, under item 2, in line 16 of the amendatory language, revise the reference to "(b)(iii)" to read "(b)(iv)".

On page 18272, in the second column, under item 2, correctly designate paragraph (b)(ii) of the regulatory text that follows the amendatory language as paragraph (b)(iii).

On page 18272, in the third column, under item 2, correctly designate paragraph (b)(iii) of the regulatory text that follows the amendatory language as paragraph (b)(iv).

4. "Revisions to the Export Administration Regulations Based on COCOM Review; Electronics and Precision Instruments", which was published in the Federal Register on July 5, 1988 (53 FR 25146), is corrected as follows:

On page 25149, in the third column, under item 7, lines 31 to 34 of the amendatory language are corrected to read "appears after paragraph (1) as 'Advisory Note 8 for the People's Republic of China', as follows:".

5. "Revisions to the Commodity Control List Based on COCOM Review: Metals, Minerals and Their Manufactures; Chemicals, Metalloids, Petroleum Products and Related Materials", which was published in the Federal Register on September 15, 1988 (53 FR 35803), is corrected as follows:

On page 35804, in the first column, under item 2, in the amendatory language, in the third line, revise the reference to "(d)(20)" to read "(d)(23)", in the fourth line, revise the reference to "(d)(21)" to read "(d)(24)" and the reference to "(d)(22)" to read "(d)(25)", and in the fifth line, revise the reference to "(d)(21)" to read "(d)(24)". Under item 2, in § 779.4 (formerly § 378.4), correctly designate paragraph (d)(21) as paragraph (d)(24) and revise the reference to "paragraph (5)" in line 4 of correctly designated paragraph (d)(24) to read "paragraph (10)";

On page 35804, in the first column, under item 3, in the seventh line of the amendatory language, revise the reference to "(5)" to read "(10)" and correctly designate paragraph (5) of the regulatory text that follows the amendatory language as paragraph (10); and

On page 35805, in the first column, under item 10, lines six and seven of the amendatory language are corrected to read "revising paragraphs (k) and (l) to read as follows: ".

6. "Editorial Clarifications and Corrections to the Export Administration Regulations", which was published in the Federal Register on September 19, 1988 (53 FR 36271), is corrected as follows:

On page 36272, in the second column, item 6 is removed and items 7 and 8 are redesignated as items 6 and 7, respectively.

7. "Revisions to the Commodity Control List Based on COCOM Review; Electronics and Precision Instruments", which was published in the Federal Register on September 20, 1988 (53 FR 36439), is corrected as follows:

On page 36440, in the second column, under item 3, in line 24 of the amendatory language, revise the reference to "paragraph (e)" to read "paragraph (c)".

8. "Revisions to General License GLV Dollar Value Limits", which was published in the Federal Register on September 21, 1988 (53 FR 36560), is corrected as follows:

On page 36561, in the second column, under item 2A, in the amendatory language, remove the reference to ECCN 1133A in Group 1 and remove the references to ECCNs 1649A, 1658A, 1670A, and 1671A in Group 6.

On page 36561, in the third column, under item 2A, in the amendatory language, remove the reference to "Group 6—Rubber and Rubber Products ECCN: 1801A".

On page 36561, in the third column, under item 2B, in the amendatory language, remove the reference to ECCN 4460B in Group 4 and remove the reference to ECCN 1603A in Group 6.

On page 36562, in the first column, under item 2D, in the amendatory language, remove the reference to ECCN 1674A in Group 6.

9. "Computers; Exports Under Special Licenses", which was published in the Federal Register on October 27, 1988 (53 FR 43427), is corrected as follows:

On page 43428, in the third column, under item 2, the amendatory language is corrected to read as follows:

2. In § 773.3, paragraphs (d)(2)(iv), (d)(4), and (l)(4)(ix) are removed.

Dated: June 21, 1989.

James M. LaMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 89-15113 Filed 6-26-89; 8:45 am]

BILLING CODE 3510-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

[T.D. 89-93]

Change in Customs Service Field Organization—Front Royal, Virginia (Virginia Inland Port)

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to establish a new port of entry to be known as the Virginia Inland Port (VIP) near Front Royal in the Norfolk, Virginia, Customs District of the Southeast Region. The change is part of a Customs continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the public.

EFFECTIVE DATE: July 27, 1989.

FOR FURTHER INFORMATION CONTACT: Joseph E. O'Gorman, Office of Inspection and Control (202-566-8157).

SUPPLEMENTARY INFORMATION:

Background

As part of Customs continuing program to obtain more efficient use of its personnel, facilities and resources, and to provide better service to carriers, importers, and the public, Customs published a notice in the Federal Register on March 22, 1989 (54 FR 11742) proposing to amend § 101.3, Customs Regulations (19 CFR 101.3), to change the Customs field organization by establishing a new Customs port of entry at the Virginia Inland Port (VIP) near Front Royal, Virginia, in the Norfolk, Virginia, Customs District, Southeast Region.

Discussion of Comments

Four comments were received in response to the Federal Register notice. Two commenters supported the proposal, but wanted the limits of the proposed port of entry to be expanded, one asking that the Winchester Regional Airport be included within the port limits, the other that an International Port Center being developed adjacent to the VIP location be included. It has been decided that these proposed expansions should not be approved at this time. This decision may be subject to reevaluation later, particularly if growing workload requirements make the suggested changes desirable.

Two commenters opposed the proposal. One questioned the basis for the finding that the VIP would meet the minimum annual formal entry workload to qualify for port of entry status. The other commenter essentially raised the following points against granting Customs port of entry status: current activity does not warrant it; it violates Customs stated intention to reduce ports of entry nationwide; and it is contrary to Customs efforts to have all cargo cleared at the first port of arrival. In this latter regard, it is specifically asserted that the proposed port designation is inconsistent with the PAIRED program ("Port of Arrival Immediate Release and Enforcement Determination" System), which allows an importer or broker to make entry at the destination port with examination and release at the initial port of arrival. This commenter also asked what the cost will be to establish Customs processing services at the VIP, whether this will have an impact on service levels at other locations, and whether similar locations on the East Coast have been considered for inland port status.

The workload projection for the VIP was provided by the Virginia Port Authority (VPA), which indicated that the annual formal entry count will be approximately 3000. The VPA established this projection on the basis of customer contacts to identify work that would be processed at the port.

Generally, Customs bases a decision to establish a port of entry on both existing and potential workload. But at locations where Customs services are not currently available, the decision must, of course, be made solely on the basis of the potential work volume. Customs practice, then, is to accommodate those communities that demonstrate that the criteria for port designation have been, or are very likely to be met if resources are available. As observed, this potential has been clearly demonstrated to be approximately 3000 formal entries per year. The PAIRED program, as noted above, allows entries to be made at the port of destination, and it calls for compliance inspections to be performed there. In this connection, the establishment of port status at the VIP will permit local importers to conduct business directly with Customs; and importers taking delivery further down the transportation chain will first be able to have their goods processed by Customs at the VIP, which would, in either case, be, for Customs purposes, the port of destination. No other comparable communities have requested Customs services along these lines.

In order to provide the necessary service levels at the VIP, a port director will be assigned there. The assignment of a port director at this location, however, will not result in service reductions at other locations.

Therefore, after further review of the matter, Customs has determined that it is in the public interest to establish a Customs port of entry at the VIP near Front Royal, Virginia.

Geographical Description

The geographical limits of the VIP will specifically be defined by the metes and bounds of the VIP of the Virginia Port Authority, located near Front Royal, Warren County, Virginia, on U.S. Route 340 and 522.

Authority

This change is made under the authority vested in the President by Section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by E.O. 10289, September 17, 1951 (3 CFR 1949-1953 Comp., Ch. II), and pursuant to the authority provided by Treasury Department Order No. 1010-5 (47 FR 2449).

Executive Order 12291 and Regulatory Flexibility Act

Because this document is related to agency management and organization, it is not subject to E.O. 12291. Accordingly, a regulatory impact analysis and the review prescribed by that E.O. are not required. Although Customs solicited public comments, no notice of proposed rulemaking was required pursuant to 5 U.S.C. 553(a)(2). Accordingly, this document is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Customs routinely establishes and expands Customs ports of entry throughout the U.S. to accommodate the volume of Customs-related activity in various parts of the country. Although the proposal may have a limited effect upon some small entities in the area affected, it is not expected to be significant because establishing and expanding port limits at Customs ports of entry in other areas has not had a significant economic impact upon a substantial number of small entities to the extent contemplated by the Act. Nor is it expected to impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Drafting Information

The principal author of this document was Russell Berger, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Exports, Imports, Organization and functions (Government agencies).

Amendments to the Regulations

Part 101, Customs Regulations (19 CFR 101) is amended as set forth below.

PART 101—GENERAL PROVISIONS

1. The authority citation for Part 101 continues to read as follows:

Authority: 5 U.S.C. 2, 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1624; Reorganization Plan 1 of 1965; 3 CFR 1965 Supp.

§ 101.3 [Amended]

2. The list of Customs regions, districts, and ports of entry in § 101.3(b), Customs Regulations (19 CFR 101.3(b)), is amended by inserting in appropriate alphabetical order "Front Royal, Va., as described in T.D. 89-93." in the column headed, "Ports of entry" in the Norfolk, Virginia, District of the Southeast Region.

Approved June 22, 1989.

William von Raab,

Commissioner of Customs.

Salvatore R. Martoche,

Assistant Secretary of the Treasury.

[FR Doc. 89-15192 Filed 6-26-89; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 555

Animal Drugs, Feeds, and Related Products; Change of Sponsor Name

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor of a new animal drug application (NADA) from Drummer Division of Phoenix Pharmaceuticals, Inc., to Vitarine Pharmaceuticals, Inc.

EFFECTIVE DATE: June 27, 1989.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV-130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1414.

SUPPLEMENTARY INFORMATION: The agency has been informed by Phoenix Pharmaceuticals, Inc., sponsor of NADA 65-345, which provides for use of chloramphenicol capsules in dogs, that it has transferred the ownership of the NADA from its subsidiary, Drummer Division of Phoenix Pharmaceuticals, Inc., to another subsidiary, Vitarine Pharmaceuticals, Inc. The agency is amending the lists of sponsors of approved NADA's in 21 CFR 510.600(c) to remove the entries for Drummer Division of Phoenix Pharmaceuticals, Inc., and to add entries for Vitarine Pharmaceuticals, Inc. The agency is also amending 21 CFR 555.110b(c) to reflect the change of sponsor name.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 555

Animal drugs, Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Parts 510 and 555 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Secs. 512, 701(a) (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

2. Section 510.600 is amended in paragraph (c)(1) by removing the entry "Drummer Division of Phoenix Pharmaceuticals, Inc.," and by alphabetically adding an entry "Vitarine Pharmaceuticals, Inc.," and in paragraph (c)(2) by removing the entry "052492" and by numerically adding an entry "000185" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
Vitarine Pharmaceuticals, Inc., 227-15 North Conduit Ave., Springfield Gardens, NY 11413.	000185
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
000185	Vitarine Pharmaceuticals, Inc., 227-15 North Conduit Ave., Springfield Gardens, NY 11413.
* * * * *	

PART 555—CHLORAMPHENICOL DRUGS FOR ANIMAL USE

1. The authority citation for 21 CFR Part 555 continues to read as follows:

Authority: Sec. 512 (i) and (n), 82 Stat. 347, 350-351 (21 U.S.C. 360b (i) and (n)); 21 CFR 5.10 and 5.83.

§ 555.110b [Amended]

4. Section 555.110b *Chloramphenicol capsules* is amended in paragraph (c)(2) by removing ", and 052492" and adding "000185, and" after "000172,".

Dated: June 16, 1989.

Robert C. Livingston,

Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 89-15138 Filed 6-26-89; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Parts 864, 866, 868, 870, 876, 880, 882, 884, and 890

[Docket No. 87N-0005]

Medical Devices; Exemptions from Premarket Notifications for Certain Classified Devices; Correction

AGENCY: Food and Drug Administration.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the inadvertent omission of an effective date in the final rule published in the **Federal Register** of June 12, 1989 (54 FR 25042). This document corrects that error by establishing the effective date as July 12, 1989, 30 days after the date of publication of the final rule. In the proposed rule upon which the final rule is based (53 FR 1574; January 20, 1988), FDA proposed that any final rule be effective 30 days after the date of its publication in the **Federal Register**.

EFFECTIVE DATE: The final rule will become effective on July 12, 1989.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

In FR Doc. 89-13802, appearing on page 25042, first column, in the **Federal Register** of Monday, June 12, 1989, the "**EFFECTIVE DATE**" caption is added before the caption "**FOR FURTHER INFORMATION CONTACT:**" to read as follows: **EFFECTIVE DATE:** The final rule will become effective on July 12, 1989.

Dated: June 20, 1989.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-15094 Filed 6-26-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 159a

[DoD 5200.1-R]

Information Security Program Regulation

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This document updates established policies of the Department of Defense (DOD) Information Security Program and outlines its objectives in compliance with, and in implementation of, Executive Order 12356, "National Security Information," Information Security Oversight Directive No. 1, National Security Information" (32 CFR Part 2001), and DoD Directive 5200.1, "DoD Information Security Program" (32 CFR Part 159). This part delegates authority and assigns responsibilities to ensure that the DoD Information Security Program is administered effectively.

EFFECTIVE DATE: June 1, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. D. Whitman, Office of the Deputy Under Secretary of Defense (Policy), the Pentagon, Washington, DC 20301-2200, telephone (202) 695-2289.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 159a

Classified information; Security.

Accordingly, Title 32, Subchapter D, is amended to add Part 159a as follows:

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Authority: E.O. 12356, 5 U.S.C. 301.

Subpart A—Policy

§ 159a.1 Purpose.

Information of the Department of Defense relating to national security shall be protected against unauthorized disclosure as long as required by national security considerations. This part establishes a system for classification, downgrading and declassification of information; sets forth policies and procedures to safeguard such information; and provides for oversight and administrative sanctions for violations.

§ 159a.2 Applicability.

This part governs the DoD Information Security Program and takes precedence over all DoD Component regulations that implement that Program. Under 32 CFR Part 159, E.O. 12356, and Information Security Oversight Office (ISOO) Directive No. 1, it establishes, for the Department of Defense, uniform policies, standards, criteria, and procedures for the security classification, downgrading, declassification, and safeguarding of information that is owned by, produced for or by, or under the control of the Department of Defense or its Components.

§ 159a.3 Nongovernment operations.

Except as otherwise provided herein, the provisions of this part that are relevant to operations of nongovernment personnel entrusted with classified information shall be made applicable thereto by contracts or other legally binding instruments. (See DOD Directive 5220.22 [1], DoD 5220.22-R [2], and DoD 5220.22-M [3].

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[1] Copies may be obtained, if needed, from the Naval Publications and Forms Center, Attn: Code 106, 5801 Tabor Avenue, Philadelphia, PA 19120.

[2] Copies may be obtained at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[3] Copies may be obtained, at cost, from the Government Printing Office.

§ 159a.4 Combat operations.

The provisions of this part relating to accountability, dissemination, transmission, or safeguarding of classified information may be modified by military commanders but only to the extent necessary to meet local conditions in connection with combat or combat-related operations. Classified information should be introduced into forward combat areas or zones or areas of potential hostile activity only when essential to accomplish the military mission.

§ 159a.5 Atomic energy material.

Nothing in this part supersedes any requirement related to "Restricted Data" in the Atomic Energy Act of August 30, 1954, as amended, or the regulations of the Department of Energy under that Act. "Restricted Data" and material designated as "Formerly Restricted Data," shall be handled, protected, classified, downgraded, and declassified to conform with Pub. L. 83–703 and the regulations issued pursuant thereto.

§ 159a.6 Sensitive compartmented and communications security information.

(a) Sensitive Compartmented Information (SCI) and Communications Security (COMSEC) information shall be handled and controlled in accordance with applicable national directives and DOD Directives and Instructions. Other classified information, while in established SCI or COMSEC areas, may be handled in the same manner as SCI or COMSEC information. Classification principles and procedures, markings, downgrading, and declassification actions prescribed in this part apply to SCI and COMSEC information.

(b) Pursuant to 32 CFR Part 159, the Director, National Security Agency/Chief, Central Security Service may prescribe special rules and procedures for the handling, reporting of loss, storage, and access to classified communications security devices, equipments, and materials in mobile, hand-held or transportable systems, or that are used in conjunction with commercial telephone systems, or in similar circumstances where operational demands preclude the application of standard safeguards. These special rules may include procedures for safeguarding such devices and materials, and penalties for the negligent loss of government property.

§ 159a.7 Automatic Data Processing systems.

This part applies to protection of classified information processed, stored or used in, or communicated, displayed or disseminated by an automatic data processing (ADP) system. Additional security policy, responsibilities, and requirements applicable specifically to ADP systems are contained in DoD Directive 5200.28 [4] and DoD 5200.28–M.

Subpart B—General Provisions

§ 159a.9 Definitions.

(a) *Access.* The ability and opportunity to obtain knowledge of classified information.

(b) *Applicable Associated Markings.* The markings, other than classification markings, and warning notices listed or refered to in § 159a.31(d).

(c) *Carve-Out.* A classified contract issued in connection with an approved Special Access Program in which the Defense Investigative Service has been relieved of inspection, responsibility in whole or in part under the Defense Industrial Security Program.

(d) *Classification Authority.* The authority vested in an official of the Department of Defense to make an initial determination that information requires protection against unauthorized disclosure in the interest of national security.

(e) *Classification Guide.* A document issued by an authorized original classifier that prescribes the level of classification and appropriate declassification instructions for specified information to be classified derivatively. For purposes of this part, this term does not include DD Form 254, "Contract Security Classification Specification."

(f) *Classified Information.* Information or material that is:

(1) Owned by, produced for or by, or under the control of the U.S. Government; and

(2) Determined under E.O. 12356 or prior orders and this part to require protection against unauthorized disclosure; and

(3) So designated.

(g) *Classifier.* An individual who makes a classification determination and applies a security classification to information or material. A classifier may be an original classification authority or a person who derivatively assigns a security classification based on a property classified source or a classification guide.

(h) *Communications Security (COMSEC).* The protection resulting from all measures designed to deny unauthorized persons information of value which might be derived from the possession and study of telecommunications and to ensure the authenticity of such communications. COMSEC includes cryptosecurity, emission security, transmission security, and physical security of COSMEC material and information.

(i) *Compromise.* The disclosure of classified information to persons not authorized access thereto.

(j) *Confidential Source.* Any individual or organization that has provided, or that may reasonably be expected to provide, information to the United States on matters pertaining to the national security with the expectation, expressed or implied, that the information or relationship, or both, be held in confidence.

(k) *Continental United States (CONUS).* United States territory, including adjacent territorial waters, located within the North American continent between Canada and Mexico.

(l) *Controlled Cryptographic Item (CCI).* A secure telecommunications or information handling equipment ancillary device, or associated cryptographic component, which is unclassified but controlled.

(Note: Equipments and components so designated bear the designator "Controlled Cryptographic Item" or "CCI.")

(m) *Critical Nuclear Weapon Design Information.* That Top Secret Restricted Data or Secret Restricted Data revealing the theory of operation or design of the components of a thermo-nuclear or implosion-type fission bomb, warhead, demolition munition or test device. Specifically excluded is information concerning arming, fuzing, and firing systems; limited life components; and total contained quantities of fissionable, fusionable, and high explosive materials by type. Among these excluded items are the components which DoD personnel set, maintain, operate, test, or replace.

(n) *Custodian.* An individual who has possession of or is otherwise charged with the responsibility for safeguarding or accounting for classified information.

(o) *Declassification.* The determination that classified information no longer requires, in the interest of national security, any degree of protection against unauthorized disclosure, together with a removal or cancellation of the classification designation.

(p) *Declassification Event.* An event that eliminates the need for continued classification of information.

(q) *Derivative Classification.* A determination that information is in substance the same as information currently classified, and the application of the classification markings.

(r) *Document.* Any recorded information regardless of its physical form or characteristics, including, without limitation, written or printed matter, data processing cards and tapes, maps, charts, paintings, drawings, engravings, sketches, working notes and papers, or reproductions by any means or process, and sound, voice, magnetic or electronic recordings in any form.

(s) *DoD Component.* The Office of the Secretary of Defense (OSD), the Military Departments, the Organization of the Joint Chiefs of Staff (OJCS), the Unified and Specified Commands, and the Defense Agencies.

(t) *Downgrade.* A determination that classified information requires, in the interest of national security, a lower degree of protection against unauthorized disclosure than currently provided, together with a changing of the classification designation to reflect such lower degree of protection.

(u) *Foreign Government Information.* Information that is:

(1) Provided to the United States by a foreign government or governments, an international organization of governments, or any element thereof with the expectation, expressed or implied, that the information, the source of the information, or both, are to be held in confidence; or

(2) Produced by the United States pursuant to or as a result of a joint arrangement with a foreign government or governments or an international organization of governments, or any element thereof, requiring that the information, the arrangement, or both, are to be held in confidence.

(v) *Formerly Restricted Data.* Information removed from the Restricted Data category upon a joint determination by the Department of Energy (or antecedent agencies) and the Department of Defense that such information relates primarily to the military utilization of atomic weapons and that such information can be safeguarded adequately as classified defense information. For purposes of foreign dissemination, however, such information is treated in the same manner as Restricted Data.

(w) *Information.* Knowledge that can be communicated by any means.

(x) *Information Security.* The result of any system of policies and procedures for identifying, controlling, and protecting from unauthorized disclosure, information whose protection is authorized by executive order or statute.

(y) *Intelligence Activity.* An activity that an agency within the Intelligence Community is authorized to conduct under E.O. 12333.

(z) *Limited Dissemination.* Restrictive controls for classified information established by an original classification authority to emphasize need-to-know protective measures available within the regular security system.

(aa) *Material.* Any product or substance on, or in which, information is embodied.

(bb) *National Security.* The national defense and foreign relations of the United States.

(cc) *Need-to-know.* A determination made by a possessor of classified information that a prospective recipient, in the interest of national security, has a requirement for access to, or knowledge, or possession of the classified information in order to accomplish lawful and authorized Government purposes.

(dd) *Original Classification.* An initial determination that information requires, in the interest of national security, protection against unauthorized disclosure, together with a classification designation signifying the level of protection required.

(ee) *Regrade.* A determination that classified information requires a different degree of protection against unauthorized disclosure than currently provided, together with a change of classification designation that reflects such different degree of protection.

(ff) *Restricted Data.* All data concerning:

(1) Design, manufacture or utilization of atomic weapons;

(2) The production of special nuclear material; or

(3) The use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category under Section 142 of Pub. L. 83–703.

(gg) *Security Clearance.* A determination that a person is eligible under the standards of DoD 5200.2–R for access to classified information.

(hh) *Senior Information Security Authority.* A senior official designated in writing by the head of each DoD Component to be responsible for implementation of the Information Security Program within the Component.

(ii) *Sensitive Compartmented Information.* Information and material that requires special controls for restricted handling within compartmented intelligence systems and for which compartmentation is established.

(jj) *Special Access Program.* Any program approved in accordance with subpart M of this part which imposes need-to-know or access controls beyond those normally required for access to Confidential, Secret, or Top Secret information.

(kk) *Special Activity.* An activity, or functions in support of such activity, conducted in support of national foreign policy objectives abroad that is planned and executed so that the role of the U.S. Government is neither apparent nor acknowledged publicly; but that is not intended to influence U.S. political processes, public opinion, policies, or media, and does not include diplomatic activities or the collection and production of intelligence or related support functions.

(ll) *Unauthorized Disclosure.* A communication or physical transfer of classified information to an unauthorized recipient.

(mm) *United States and Its Territories, Possessions, Administrative, and Commonwealth Areas.* The 50 States; the District of Columbia; the Commonwealth of Puerto Rico; the Territories of Guam, American Samoa, and the Virgin Islands; the Trust Territory of the Pacific Islands; and the Possessions, Midway and Wake Islands.

(nn) *Upgrade.* A determination that certain classified information requires, in the interest of national security, a higher degree of protection against unauthorized disclosure than currently provided, together with a changing of the classification designation to reflect such higher degree.

§ 159a.10 Policies.

(a) *Classification*—(1) *Basic Policy.* Except as provided in the Atomic Energy Act of 1954, as amended, E.O. 12356, as implemented by the ISOO Directive No. 1, and this part, provides the only basis for classifying information. It is the policy of the Department of Defense to make available to the public as much information concerning its activities as possible consistent with the need to protect the national security. Accordingly, security classification shall be applied only to protect the national security.

(2) *Resolution of Doubts.* Unnecessary classification and higher than necessary classification should be avoided. If there is reasonable doubt about the need to classify information, it shall be safeguarded as if it were classified "Confidential" pending a determination by an original classification authority, who shall make this determination within 30 days. If there is reasonable doubt about the appropriate level of classification, it shall be safeguarded at the higher level of classification pending a determination by an original classification authority, who shall make

[4] See footnote 1 to § 159a.3.

this determination within 30 days. Upon a classification determination, markings shall be applied in accordance with Subpart E of this part.

(3) *Duration.* Information shall be classified as long as required by national security considerations. Each decision to classify requires a simultaneous determination of the duration such classification must remain in force or that the duration of classification cannot be determined.

(b) *Declassification.* Decisions concerning declassification shall be based on the loss of the information's sensitivity with the passage of time or upon the occurrence of a declassification event.

(c) *Safeguarding.* Information classified under this part shall be afforded the level of protection against unauthorized disclosure commensurate with the level of classification assigned under the varying conditions that may arise in connection with its use, dissemination, storage, movement or transmission, and destruction.

§ 159a.11 Security classification designations.

(a) *General.* Information or material that requires protection against unauthorized disclosure in the interest of national security shall be classified in one of three designations, namely: "Top Secret," "Secret," or "Confidential." The markings "For Official Use Only," and "Limited Official Use" shall not be used to identify classified information. Moreover, no other term such as "Sensitive," "Conference," or "Agency" shall be used in conjunction with the authorized classification designations to identify classified information.

(b) *Top Secret.* "Top Secret" shall be applied only to information or material the unauthorized disclosure of which reasonably could be expected to cause exceptionally grave damage to the national security. Examples of exceptionally grave damage include armed hostilities against the United States or its allies; disruption of foreign relations vitally affecting the national security; the compromise of vital national defense plans or complex cryptologic and communications intelligence systems; the revelation of sensitive intelligence operations; and the disclosure of scientific or technological developments vital to national security.

(c) *Secret.* "Secret" shall be applied only to information or material the unauthorized disclosure of which reasonably could be expected to cause serious damage to the national security. Examples of serious damage include disruption of foreign relations significantly affecting the national security; significant impairment of a program or policy directly related to the national security; revelation of significant military plans or intelligence operations; compromise of significant military plans or intelligence operations; and compromise of significant scientific or technological developments relating to national security.

(d) *Confidential.* "Confidential" shall be applied only to information or material the unauthorized disclosure of which reasonably could be expected to cause damage to the national security. Examples of damage include the compromise of information that indicates strength of ground, air, and naval forces in the United States and overseas areas; disclosure of technical information used for training, maintenance, and inspection of classified munitions of war; revelation of performance characteristics, test data, design, and production data on munitions of war.

§ 159a.12 Authority to classify, downgrade, and declassify.

(a) *Original Classification Authority*—(1) *Control.* Authority for original classification of information as Top Secret, Secret, or Confidential may be exercised only by the Secretary of Defense, the Secretaries of the Military Departments, and by officials to whom such authority is specifically delegated in accordance with and subject to the restrictions of this Section of the part. In the absence of an original classification authority, the person designated to act in his or her absence may exercise the classifier's authority.

(2) *Delegation of Classification Authority.* Original classification authority shall not be delegated to persons who only reproduce, extract, or summarize classified information, or who only apply classification markings derived from source material or as directed by a classification guide. Delegations of original classification authority shall be limited to the minimum number required for efficient administration and to those officials whose duties involve the origination and evaluation of information warranting classification at the level stated in the delegation.

(i) *Top Secret.* Only the Secretary of Defense, the Secretaries of the Military Departments, and the senior official designated by each under § 5.3(a) of E.O. 12356, provided that official has original Top Secret classification authority, may delegate original Top Secret classification authority. Such delegation may only be made to officials who are determined to have a demonstrable and continuing need to exercise such authority.

(ii) *Secret and Confidential.* Only the Secretary of Defense, the Secretaries of the Military Departments, the senior official designated by each under § 5.3(a) of E.O. 12356, and officials with original Top Secret classification authority, may delegate original Secret and Confidential classification authority to officials whom they determine respectively to have a demonstrable and continuing need to exercise such authority.

(iii) Each delegation of original classification authority shall be in writing and shall specify the title of the position held by the recipient.

(3) *Requests for Classification Authority.* (i) A request for the delegation of original classification authority shall be made only when there is a demonstrable and continuing need to exercise such authority and the following conditions exist:

(A) The normal course of operations or missions of the organization results in the origination of information warranting classification;

(B) There is a substantial degree of local autonomy in operations or missions as distinguished from dependence upon a higher level of command or supervision for relatively detailed guidance;

(C) There is adequate knowledge by the originating level to make sound classification determinations as distinguished from having to seek such knowledge from a higher level of command or supervision; and

(D) There is a valid reason why already designated classification authorities in the originator's chain of command or supervision have not issued or cannot issue classification guidance to meet the originator's normal needs.

(ii) Each request for a delegation of original classification authority shall:

(A) Identify the title of the position held by the nominee and the nominee's organization;

(B) Contain a description of the circumstances, consistent with paragraph (a)(3)(i) of this section, that justify the delegation of such authority; and

(C) Be submitted through established channels to the Secretary of Defense, the Secretary of the Military Department concerned, the senior official designated by each under § 5.3(a) of E.O. 12356, or the appropriate Top Secret classification authority.

(4) *Training Requirements for Original Classification Authorities.* Heads of DoD Component shall establish procedures to ensure that all original classification authorities in their Component, to include themselves, are indoctrinated in the fundamentals of security classification, limitations on their authority to classify information, and their responsibilities as such. This indoctrination shall be a prerequisite to the exercise of such authority and shall be a matter of record that is subject to audit. Heads of DoD Components shall ensure this indoctrination is given to all present original classification authorities within 12 months of the effective date of this part.

(b) *Derivative Classification Responsibility.* Derivative application of classification markings is a responsibility of those who incorporate, paraphrase, restate, or generate in new form, information that is already classified, or those who apply markings in accordance with guidance from an original classification authority. Persons who apply derivative classifications should take care to determine whether their paraphrasing, restating, or summarizing of classified information has removed all or part of the basis for classification. Persons who apply such derivative classification markings shall:

(1) Respect original classification decisions;

(2) Verify the information's current level of classification as far as practicable before applying the markings; and

(3) Carry forward to any newly created documents the assigned dates or events for declassification and any additional authorized markings.

(c) *Record and Report Requirements.* (1) Records of designations of original classification authority shall be maintained as follows:

(i) *Top Secret Authorities.* A current listing by title and organization of officials designated to exercise original Top Secret classification authority shall be maintained by:

(A) The Office of the Deputy Under Secretary of Defense (Policy) (ODUSD(P)) for the Office of the Secretary of Defense; the Organization of the Joint Chiefs of Staff; the headquarters of each Unified Command and the headquarters of subordinate Joint Commands; and the Defense Agencies.

(B) The Offices of the Secretaries of the Military Departments for the officials of their respective departments, including Specified Commands but excluding officials from their respective departments wo are serving in headquarters elements of Unified Commands and headquarters of Joint Commands subordinate thereto.

(ii) *Secret and Confidential Authorities.* A current listing by title and organization of officials designated to exercise original Secret and Confidential classification authority shall be maintained by:

(A) The ODUSD(P) for the Office of the Secretary of Defense.

(B) The offices of the Secretaries of the Military Departments for the officials of their respective departments, including Specified Commands but excluding officials from their respective departments who are serving in headquarters elements of Unified Commands and headquarters elements of Joint Commands subordinate thereto.

(C) The Director, Joint Staff, for the OJCS.

(D) The Commanders-in-Chief of the Unified Commands, for their respective headquarters and the headquarters of subordinate Joint Commands.

(E) The Directors of the Defense Agencies, for their respective agencies.

(iii) If the listing of titles of positions and organizations prescribed in paragraphs (c)(1) (i) and (ii) of this section discloses intelligence or other information that either qualifies for security classification protection or otherwise qualifies to be withheld from public release under statute, some other means may be recommended by the DoD Component by which original classification authorities can be readily identified. Such recommendations shall be submitted to ODUSD(P) for approval.

(iv) The listings prescribed in paragraphs (c)(1) (i) and (ii) of this section shall be reviewed at least annually by the senior official designated in or pursuant to § 159a.92(a)(1), § 159a.93 (a) or (b) or designee to ensure that officials so listed have demonstrated a continuing need to exercise original classification authority.

(2) The DoD Components that maintain listings of designated original classification authorities shall, upon request, submit copies of such listings to ODUSD(P).

(d) *Declassification and Downgrading Authority.* (1) Authority to declassify and downgrade information classified under provisions of this part shall be exercised as follows:

(i) By the Secretary of Defense and the Secretaries of the Military Departments, with respect to all information over which their respective Departments exercise final classification jurisdiction;

(ii) By the official who authorized the original classification, if that official is still serving in the same position, by a successor, or by a supervisory official of either; and

(iii) By other officials designated for the purpose in accordance with paragraph (d)(2) of this section.

(2) The Secretary of Defense, the Secretaries of the Military Departments, the Chairman of the Joint Chiefs of Staff, the Directors of the Defense Agencies, or their senior officials designated under § 159a.93 (b) or (c) may designate additional officials at the lowest practicable echelons of command and supervision to exercise declassification and downgrading authority over classified information in their functional areas of interest. Records of officials so designated shall be maintained in the same manner as prescribed in § 159a.12(c)(1)(i) for records of designations of original classification authority.

Subpart C—Classification

§ 159a.14 Classification responsibilities.

(a) *Accountability of Classifiers.* (1) Classifiers are accountable for the propriety of the classifications they assign, whether by exercise of original classification authority or by derivative classification.

(2) An official who classifies a document or other material and is identified thereon as the classifier is and continues to be an accountable classifier even though the document or material is approved or signed at a higher level in the same organization.

(b) *Classification Approval.* (1) When an official signs or approves a document or other material already marked to reflect a particular level of classification, he or she shall review the information contained therein to determine if the classification markings are appropriate. If, in his or her judgment, the classification markings are not supportable, he or she shall, at that time, cause such markings to be removed or changed as appropriate to reflect accurately the classification of the information involved.

(2) A higher level official through or to whom a document or other material passes for signature or approval becomes jointly responsible with the accountable classifier for the classification assigned. Such official has discretion to decide whether a subordinate who has classification authority shall be identified as the accountable classifier when he or she has exercised that authority.

(c) *Classification Planning.* (1) Advance classification planning is an essential part of the development of any plan, operation, program, research and development project, or procurement action that involves classified information. Classification must be considered from the outset to assure adequate protection for the information

and for the activity itself, and to eliminate impediments to the execution or implementation of the plan, operations order, program, project or procurement action.

(2) The official charged with developing any plan, program or project in which classification is a factor, shall include under an identifiable title or heading, classification guidance covering the information involved. The guidance shall conform to the requirements contained in § 159a.17.

(d) *Challenges to Classification.* If holders of classified information have substantial reason to believe that the information is classified improperly or unnecessarily, they shall communicate that belief to their security manager or the classifier of the information to bring about any necessary correction.

(1) Each DoD Component shall establish procedures whereby holders of classified information may challenge the decision of the classifier.

(2) Challenges to classification made under this subsection shall include sufficient description of the information being challenged to permit identification of the information and its classifier with reasonable effort. Challenges to classification shall also include the reason or reasons why the challenger believes that the information is classified improperly or unnecessarily.

(3) Challenges received under this subsection shall be acted upon within 30 days of receipt. The challenger shall be notified of any changes made as a result of the challenge or the reasons why no change is made.

(4) Pending final determination of a challenge to classification, the information or document in question shall be safeguarded as required for the level of classification initially assigned.

(5) The fact that an employee or military member of the Department of Defense has issued a challenge to classification shall not in any way result in or serve as a basis for adverse personnel action.

(6) The provisions of this paragraph do not apply to or affect declassification review actions undertaken under the mandatory review requirements of § 159a.26 of this part or under the provisions of 32 CFR Part 285.

§ 159a.15 Classification principles, criteria, and considerations.

(a) *Reasoned Judgment.* Reasoned judgment shall be exercised in making classification decisions. A positive basis must exist for classification. Both advantages and disadvantages of classification must be weighed. If, after consideration of the provisions of this section, there is reasonable doubt, the provisions of § 159a.10(a)(2) apply.

(b) *Identification of Specific Information.* Before a classification determination is made, each item of information that may require protection shall be identified. This requires identification of that specific information that comprises the basis for a particular national advantage or advantages that, if the information were compromised, would or could be damaged, minimized, or lost, thereby adversely affecting national security.

(c) *Specific Classifying Criteria.* A determination to classify shall be made only by an original classification authority when, *first*, the information is within paragraphs (c) (1) through (10) of this section; and *second*, the unauthorized disclosure of the information, either by itself or in the context of other information, reasonably could be expected to cause damage to the national security. The determination involved in the first step is separate and distinct from that in the second. Except as provided in paragraph (d) of this section, the fact that the information falls under one or more of the criteria shall not mean that the information *automatically* meets the damage criteria. Information shall be considered for classification if it concerns:

(1) Military plans, weapons, or operations;
(2) Vulnerabilities or capabilities of systems, installations, projects, or plans relating to the national security;
(3) Foreign government information;
(4) Intelligence activities including special activities, or intelligence sources or methods;
(5) Foreign relations or foreign activities of the United States;
(6) Scientific, technological, or economic matters relating to the national security;
(7) U.S. Government programs for safeguarding nuclear materials or facilities;
(8) Cryptology;
(9) A confidential source; or
(10) Other categories of information that are related to national security and that require protection against unauthorized disclosure as determined by the Secretary of Defense or Secretaries of the Military Departments. Recommendations concerning the need to designate additional categories of information that may be considered for classification shall be forwarded through channels to the appropriate Secretary for determination. Each such determination shall be reported promptly to the Director of Security Plans and Programs, ODUSD(P), for promulgation in an Appendix to this part and reporting to the Director, ISOO.

(d) *Presumption of Damage.* Unauthorized disclosure of foreign government information, the identity of a confidential foreign source, or intelligence sources or methods is presumed to cause damage to the national security.

(e) *Limitations on Classification.* (1) classification may not be used to conceal violations of law, inefficiency, or administrative error, to prevent embarrassment to a person, organization or agency, or to restrain competition.

(2) Basic scientific research information not clearly related to national security may not be classified.

(3) A product of nongovernment research and development that does not incorporate or reveal classified information to which the producer or developer was given prior access may not be classified until and unless the government acquires a proprietary interest in the product. This prohibition does not affect the provisions of the Patent Secrecy Act of 1952.

(4) References to classified documents that do not reveal classified information may not be classified or used as a basis for classification.

(5) Classification may not be used to limit dissemination of information that is not classifiable under the provisions of E.O. 12356 or this part or to prevent or delay public release of such information.

(6) Information may be classified or reclassified after receiving a request for it under the Freedom of Information Act, the Privacy Act, or the mandatory review provisions of this part (§ 159a.26) if such classification is consistent with this part and is accomplished personally and on a document-by-document basis, except as provided in paragraph (e)(7) of this section, by the Secretary or Deputy Secretary of Defense, by the Secretaries or Under Secretaries of the Military Departments, by the senior official designated by each Secretary under § 5.3(a) of E.O. 12356, or by an official with original Top Secret classification authority.

(7) The Secretary of Defense and the Secretaries of the Military Departments may reclassify information previously declassified and disclosed, and they may classify unclassified information that has been disclosed, if they determine in writing that the information requires protection in the interest of national security and the information may reasonably be recovered. Any such reclassification or

classification shall be reported to the DUSD(P) for subsequent reporting to the Director, ISOO.

(f) *Classifying Scientific Research Data.* Ordinarily, except for information that meets the definition of Restricted Data, basic scientific research or its results shall not be classified. However, classification would be appropriate if the information concerns an unusually significant scientific breakthrough and there is sound reason to believe that it is not known or within the state-of-the-art of other nations, and it supplies the United States with an advantage directly related to national security.

(g) *Classifying Documents.* Each document and portion thereof shall be classified on the basis of the information it contains or reveals. The fact that a document makes reference to a classified document is not a basis for classification unless the reference citation, standing alone, reveals classified information. The overall classification of a document or group of physically-connected documents shall be at least as high as that of the most highly classified component. The subject or title of a classified document normally should be unclassified. When the information revealed by a subject or title warrants classification, an unclassified short title should be added for reference purposes.

(h) *Classifying Material Other Than Documents.* (1) Items of equipment or other physical objects shall be classified only when classified information may be derived from them by visual observation of their internal or external appearance or structure, or by their operation, test, application, or use. The overall classification assigned to end items of equipment or objects shall be at least as high as the highest classification of any of its integrated parts.

(2) If mere knowledge of the existence of the item of equipment or object would compromise or nullify its national security advantage, its existence would warrant classification.

(i) *State of the Art and Intelligence.* Classification requires consideration of the information available from intelligence sources concerning the extent to which the same or similar information is known or is available to others. It is also important to consider whether it is known, publicly or internationally, that the United States has the information or even is interested in the subject matter. The state-of-the-art in other nations may often be a vital consideration.

(j) *Effect of Open Publication.* Classified information shall not be declassified automatically as a result of any unofficial publication or inadvertent or unauthorized disclosure in the United States or abroad of identical or similar information. Appearance in the public domain of information currently classified or being considered for classification does not preclude initial or continued classification. However, such disclosures require immediate determination of the degree of damage to the national security and reevaluation of the information to determine whether the publication has so compromised the information that downgrading or declassification is warranted. Similar consideration must be given to related items of information in all programs, projects, or items incorporating or pertaining to the compromised items of information. Holders should continue classification until advised to the contrary by a competent government authority.

(k) *Reevaluation of Classification Because of Compromise.* Classified information, and information related thereto, that has been lost or possibly compromised, shall be reevaluated and acted upon as follows:

(1) The original classifying authority, upon learning that a loss or possible compromise of specific classified information has occurred, shall prepare a written damage assessment and;

(i) Reevaluate the information involved and determine whether (A) Its classification should be continued without change; (B) The specific information, or parts therof, should be modified to minimize or nullify the effects of the reported compromise and the classification retained; (C) Declassification, downgrading, or upgrading is warranted; and (D) Counter-measures are appropriate and feasible to negate or minimize the effect of the compromise.

(ii) Give prompt notice to all holders of such information when the determination is within categories (A), (C), or (D) of paragraph (k)(1)(i) of this section.

(2) Upon learning that a compromise or probable compromise has occurred, any official having original classification jurisdiction over related information shall reevaluate the related information and determine whether one of the courses of action enumerated in paragraph (k)(1)(i) of this section should be taken or, instead, whether upgrading of the related information is warranted. When such a determination is within categories (B), (C), or (D) of paragraph (k)(1)(i) of this section, that upgrading of the related items is warranted, prompt notice of the determination shall be given to all holders of the related information.

(l) *Compilation of Information.* Certain information that would otherwise be unclassified may require classification when combined or associated with other unclassified information. However, a compilation of unclassified items of information should normally not be classified. In unusual circumstances, classification may be required if the combination of unclassified items of information provides an added factor that warrants classification under paragraph (c) of this section. Classification on this basis shall be fully supported by a written explanation that will be provided with the material so classified.

(m) *Extracts of Information.* Information extracted from a classified source shall be derivatively classified or not classified in accordance with the classification markings shown in the source. The overall and internal markings of the source should supply adequate classification guidance. If internal markings or classification guidance are not found in the source, and no reference is made to an applicable and available classification guide, the extracted information shall be classified according either to the overall marking of the source, or guidance obtained from the classifier of the source material.

§ 159a.16 Duration of original classification.

(a) *General.* When a determination is made by an official with authority to classify originally information as Top Secret, Secret, or Confidential, such official must also determine how long the classification shall remain in effect.

(b) *Duration of Classification.* (1) Information shall be classified as long as required by national security considerations.

(2) When it can be determined, a specific date or event for declassification shall be set by the original classification authority at the time the information is classified originally. Such dates or events shall be consistent with national security. Any event specified for declassification shall be an event certain to occur.

(3) Original classification authorities may not be able to predetermine a date or event for automatic declassification in which case they shall provide for the indefinite duration of classification.

(4) Information classified under predecessor orders and marked for declassification review shall remain classified until reviewed for declassification under the provisions of this part.

(c) *Subsequent Extension of Duration of Classification.* The duration of classification specified at the time of original classification may be extended only by officials with requisite original classification authority and only if all known holders of the information can be notified of such action before the date or event previously set for declassification. Any decision to continue classification of information designated for automatic declassification under E.O. 12065 or predecessor orders, other than on a document-by-document basis, shall be reported to the DUSD(P) who shall, in turn, report to the Director, ISOO.

§ 159a.17 Classification guides.

(a) *General.* (1) A classification guide shall be issued for each classified system, program, plan, or project as soon as practicable before the initial funding or implementation of the system, program, plan or project. Successive operating echelons shall prescribe more detailed supplemental guides that are considered essential to assure accurate and consistent classification. In preparing classification guides, originators shall review DoD 5200.1–H [6].

(2) Classification guides shall:

(i) Identify the information elements to be protected, using categorization to the extent necessary to ensure that the information involved can be identified readily and uniformly;

(ii) State which the classification designations (that is, Top Secret, Secret, or Confidential) applies to each element or category of information;

(iii) State declassification instructions for each element or category of information in terms of a period of time, the occurrence of an event, or a notation that the information shall not be declassified automatically without approval of the originating agency; and

(iv) State any special public release procedures and foreign disclosure considerations.

(3) Each classification guide shall be approved personally and in writing by an official who:

(i) Has program or supervisory responsibility over the information or is the senior agency official designated by the Secretary of Defense or Secretaries of the Military Departments in accordance with § 5.3(a) of E.O. 12356; and

(ii) Is authorized to classify information originally at the highest level of classification prescribed in the guide.

(b) *Multiservice Interest.* For each classified system, program, project, plan, or item involving more than one DoD Component, a classification guide shall be issued by: (1) The element in the Office of the Secretary of Defense that assumes or is expressly designated to exercise overall cognizance over it; or (2) The DoD Component that is expressly designated to serve as the executive or administrative agent for the particular effort. When there is doubt which Component has cognizance of the information involved, the matter shall be referred to the DUSD(P) for resolution.

(c) *Research, Development, Test, and Evaluation.* A program security classification guide shall be developed for each system and equipment development program that involves research, development, test, and evaluation (RDT&E) of classified technical information. For each such program covered by an approved Decision Coordinating Paper (DCP) or Program Objective Memorandum (POM), initial basic classification guidance applicable to technical characteristics of the system or equipment shall be developed and submitted with the proposed DCP or POM to the Director, Defense Research and Engineering for approval. A detailed classification guide shall be developed and issued as near in time as possible to the approval of the DCP or POM.

(d) *Project Phases.* Whenever possible, classification guides shall cover specifically each phase of transition, that is, RDT&E, procurement, production, service use, and obsolescence, with changes in assigned classifications to reflect the changing sensitivity of the information involved.

(e) *Review of Classification Guides.* (1) Classification guides shall be reviewed by the originator for currency and accuracy not less than once every 2 years. Changes shall be issued promptly. If no changes are made, the originator shall so annotate the record copy and show the date of the review.

(2) Classification guides issued before August 1, 1982, that are in current use must be updated to meet the requirements of paragraph (a)(2) of this section. Such updating shall be accomplished by the next biennial review. Converting previous declassification determinations directed by classification guides shall be accomplished in accordance with the following:

(i) Automatic declassification dates or events remain in force unless changed by competent authority in accordance with § 159a.16(c).

(ii) Dates for declassification review shall be changed to automatic declassification dates or provide for the indefinite duration of classification.

(f) *Distribution of Classification Guides.* (1) A copy of each approved classification guide and changes thereto other than those covering SCI or a Special Access Program and which discloses information that require special access, shall be sent to the Director of Freedom of Information and Security Review, Office of the Assistant Secretary of Defense (Public Affairs), and to the Director of Security Plans and Programs, ODUSD(P). A copy of each approved classification guide covering SCI shall be submitted to and maintained by the Senior Intelligence Officer who has security cognizance over the issuing activity.

(2) Two copies of each approved classification guide and its changes shall be sent by the originator to the Administrator, Defense Technical Information Center (DTIC), Defense Logistic Agency, unless such guide is classified Top Secret, or covers SCI, or is determined by the approval authority of the guide to be too sensitive for automatic secondary distribution to DoD Components, such as a Special Access Program guide revealing the nature of the Program. Each classification guide forwarded to DTIC must bear distribution statement B, C, D, E, F, or X from DoD Directive 5230.24 [6] on its front cover or first page if there is no cover.

(g) *Index of Security Classification Guides.* (1) All security classification guides, except as provided in paragraph (g)(2) of this section, issued under this part shall be listed in DoD 5200.1–I [7], on the basis of information provided on DD Form 2024, "DoD Security Classification Guide Data Elements." The originator of each guide shall execute DD Form 2024 when the guide is approved, changed, revised, reissued, or canceled, and when its biennial review is accomplished. The original copy of each executed DD Form 2024 shall be forwarded to the Director of Security Plans and Programs, ODUSD(P) who will maintain the Index. Report Control Symbol DD–POL (B&AR)1418 applies to this information collection system.

(2) Any classification guide that because of classification considerations is not listed in accordance with paragraph (g)(1) of this section, shall be reported by the originator to the Director of Security Plans and Programs, ODUSD(P). The report shall include the title of the guide, its date, the classification of the guide, and identification of the originating activity. A separate classified list of such guides will be maintained. Report Control

[6] See footnote 2 to § 159a.3.

[6] See footnote 1 to § 159a.3.

[7] Controlled distribution.

Symbol DD–POL(B&AR)1418 applies to this information collection system.

§ 159a.18 Resolution of conflicts.

(a) *General.* When two or more offices, headquarters, or activities disagree concerning a classification, declassification, or regrading action, the disagreement must be resolved promptly.

(b) *Procedures.* If agreement cannot be reached by informal consultation, the matter shall be referred for decision to the lowest superior common to the disagreeing parties. If agreement cannot be reached at the major command (or equivalent) level, the matter shall be referred for decision to the headquarters office having overall classification management responsibilities for the Component. That office shall also be advised of any disagreement at any echelon if prompt resolution is not likely to occur.

(c) *Final Decision.* Disagreements between DoD Component headquarters, if not resolved promptly, shall be referred for final resolution to the ODUSD(P).

(d) *Timing.* Action under this section at each level of consideration shall be completed within 30 days. Failure to reach a decision within 30 days shall be cause for referral to the next level for consideration.

§ 159a.19 Obtaining classification evaluations.

Procedures. If a person not authorized to classify originates or develops information that he or she believes should be safeguarded, he or she shall:

(a) Safeguard the information in the manner prescribed for the intended classification.

(b) Mark the information (or cover sheet) with the intended classification designation prescribed in § 159a.11;

(c) Transmit the information under appropriate safeguards to an appropriate classification authority for evaluation. The transmittal shall state that the information is tentatively marked to protect it in transit. If such authority is not readily identifiable, the information should be forwarded to a headquarters activity of a DoD Component, to the headquarters office having overall classification management responsibilities for a DoD Component, or to the DUSD(P). A determination whether to classify the information shall be made within 30 days of receipt;

(d) Upon decision by the classifying authority, the tentative marking shall be removed. If a classification is assigned, appropriate markings shall be applied; but

(e) In an emergency requiring immediate communication of the information, after taking the action prescribed by paragraphs (a) and (b) of this section transmit the information and then proceed in accordance with paragraph (c) of this section.

§ 159a.20 Information developed by private sources.

(a) *General.* There are some circumstances in which information not meeting the definition in § 159a.9(f) may warrant protection in the interest of national security.

(b) *Patent Secrecy Act.* The Patent Secrecy Act of 1952 provides that the Secretary of Defense, among others, may determine that disclosure of an invention by granting of a patent would be detrimental to national security. See DoD Directive 5535.2 [8]. A patent application on which a secrecy order has been imposed shall be handled as follows within the Department of Defense:

(1) If the patent application contains information that warrants classification, it shall be assigned a classification and be marked and safeguarded accordingly.

(2) If the patent application does not contain information that warrants classification, the following procedures shall be followed:

(i) A cover sheet (or cover letter for transmittal) shall be placed on the application with substantially the following language:

> The attached material contains information on which secrecy orders have been issued by the U.S. Patent Office after determination that disclosure would be detrimental to national security (Patent Secrecy Act of 1952, 35 U.S.C. 181–188). Its transmission or revelation in any manner to an unauthorized person is prohibited by law. Handle as though classified CONFIDENTIAL (or such other classification as would have been assigned had the patent application been within the definition provided in § 159a.9(f)).

(ii) The information shall be withheld from public release; its dissemination within the Department of Defense shall be controlled; the applicant shall be instructed not to disclose it to any unauthorized person; and the patent application (or other document incorporating the protected information) shall be safeguarded in the manner prescribed for equivalent classified material.

(3) If filing of a patent application with a foreign government is approved under provisions of the Patent Secrecy Act of 1952 and agreements on interchange of patent information for defense purposes, the copies of the patent application prepared for foreign registration (but only those copies) shall be marked at the bottom of each page as follows:

> Withheld under the Patent Secrecy Act of 1952 (35 U.S.C. 181–188). Handle as CONFIDENTIAL (or such other level as has been determined).

(c) *Independent Research and Development.* (1) Information in a document or material that is a product of government-sponsored independent research and development conducted without access to classified information may not be classified unless the government first acquires a proprietary interest in such product.

(2) If no prior access was given but the person or company conducting the independent research or development believes that protection may be warranted in the interest of national security, the person or company should safeguard the information in accordance with § 159a.19 and submit it to an appropriate DoD element for evaluation. The DoD element receiving such a request for evaluation shall make or obtain a determination whether a classification would be assigned if it were government information. If the determination is negative, the originator shall be advised that the information is unclassified. If the determination is affirmative, the DoD element shall make or obtain a determination whether a proprietary interest in the research and development will be acquired. If so, the information shall be assigned proper classification. If not, the originator shall be informed that there is no basis for classification and the tentative classification shall be canceled.

(d) *Other Private Information.* The procedure specified in § 159a.19 shall apply in any case not specified in paragraph (c) of this section, such as an unsolicited contract bid, in which private information is submitted to a DoD element for a determination of classification.

§ 159a.21 Regrading.

(a) *Raising to a Higher Level of Classification.* The upgrading of classified information to a higher level than previously determined by officials with appropriate classification authority and jurisdiction over the subject matter is permitted only when all known holders of the information:

(1) Can be notified promptly of such action, and

(2) Are authorized access to the higher level of classification, or the information can be retrieved from those not authorized access to information at the contemplated higher level of classification.

[8] See footnote 1 to § 159a.3.

(b) *Classification of Information Previously Determined to be Unclassified.* Unclassified information, once communicated as such, may be classified only when the classifying authority:

(1) Makes the determination required for upgrading in paragraph (a) of this section;

(2) Determines that control of the information has not been lost by such communication and can still be prevented from being lost; and

(3) In the case of information released to secondary distribution centers, such as the DTIC, determines that no secondary distribution has been made and can still be prevented (see also § 159a.15(e) (6) and (7)).

(c) *Notification.* All known holders of information that has been upgraded shall be notified promptly of the upgrading action.

(d) *Downgrading.* When it will serve a useful purpose, original classification authorities may, at the time of original classification, specify that downgrading of the assigned classification will occur on a specified date or upon the occurrence of a stated event.

§ 159a.22 Industrial operations.

(a) *Classification in Industrial Operations.* Classification of information in private industrial operations shall be based only on guidance furnished by the government. Industrial management may not make original classification determinations and shall implement the classification decisions of the U.S. Government contracting authority.

(b) *Contract Security Classification Specification.* DD Form 254, "Contract Security Classification Specification," shall be used to convey contractual security classification guidance to industrial management. DD Forms 254 shall be changed by the originator to reflect changes in classification guidance and reviewed for currency and accuracy not less than once every 2 years. Changes shall confirm with this part and DoD 5220.22–R and DoD 5220.22–M and shall be provided to all holders of the DD Form 254 as soon as possible. When no changes are made as a result of the biennial review, the originator shall so notify all holders of the DD Form 254 in writing.

Subpart D—Declassification and Downgrading

§ 159a.24 General provisions.

(a) *Policy.* Information classified under E.O. 12356 and prior orders shall be declassified or downgraded as soon as national security considerations permit. Decisions concerning declassification shall be based on the loss of sensitivity of the information with the passage of time or on the occurrence of an event that permits declassification. Information that continues to meet the classification requirements of § 159a.15(c) despite the passage of time will continue to be protected in accordance with this part.

(b) *Responsibility of Officials.* Officials authorized under § 159a.12(c) to declassify or downgrade information that is under the final classification jurisdiction of the Department of Defense shall take such action in accordance with this subpart.

(c) *Declassification Coordination.* DoD Component declassification review of classified information shall be coordinated with any other DoD or non-DoD office, Component, or agency that has a direct interest in the subject matter.

(d) *Declassification by the Director of the ISOO.* If the Director of the ISOO determines that information is classified in violation of E.O. 12356, the Director may require the activity that originally classified the information to declassify it. Any such decision by the Director may be appealed through the Director of Security Plans and Programs, ODUSD(P), to the National Security Council (NSC). The information shall remain classified pending a prompt decision on the appeal.

§ 159a.25 Systematic review.

(a) *Assistance to the Archivist of the United States.* The Secretary of Defense and the Secretaries of the Military Departments shall designate experienced personnel to assist the Archivist of the United States in the systematic review of classified information. Such personnel shall:

(1) Provide guidance and assistance to National Archives and Records Administration (NARA) employees in identifying and separating documents and specific categories of information within documents that are deemed to require continued classification; and

(2) Refer doubtful cases to the DoD Component having classification jurisdiction over the information or material for resolution.

(b) *Systematic Review Guidelines.* The Director of Security Plans and Programs, ODUSD(P), in coordination with DoD Components, shall review, evaluate, and recommend revisions of DoD Directive 5200.30 [9] at least every 5 years.

[9] See footnote 1 to § 159a.3.

(c) *Systematic Review Procedures.* (1) Except as noted in this subsection, classified information transferred to the NARA that is permanently valuable will be reviewed systematically for declassification by the Archivist of the United States with the assistance of the DoD personnel designated for that purpose under paragraph (a) of this section as it becomes 30 years old. Information concerning intelligence (including special activities), sources, or methods created after 1945, and information concerning cryptology created after 1945, accessioned into the NARA will be reviewed systematically as it becomes 50 years old. Such information shall be downgraded or declassified by the Archivist of the United States under E.O. 12356, the directives of the ISOO, and DoD Directive 5200.30.

(2) All DoD classified information that is permanently valuable and in the possession or control of DoD Components, including that held in Federal Records Centers or other storage areas, may be reviewed systematically for declassification by the DoD Component exercising control of such information. Systematic declassification review conducted by DoD Components and personnel designated under paragraph (a) of this section shall proceed as follows:

(i) Information over which the Department of Defense exercises exclusive or final original classification authority and that under DoD Directive 5200.30, the responsible reviewer determines is to be declassified, shall be marked accordingly.

(ii) Information over which the Department of Defense exercises exclusive or final original classification authority that, after review, is determined to warrant continued protection shall remain classified as long as required by national security considerations.

(3) Classified information over which the Department of Defense does not exercise exclusive or final original classification authority encountered during DoD systematic review may not be declassified unless specifically authorized by the agency having classification jurisdiction over it.

(d) *Systematic Review of Classified Cryptologic Information.* Notwithstanding any other provision of this part, systematic review and declassification of classified cryptologic information shall be conducted in accordance with special procedures developed in consultation with affected agencies by the Director, National Security Agency/Chief, Central Security Service, and approved by the Secretary of Defense under E.O. 12356 and DoD Directive 5200.30.

(e) *Systematic Review of Intelligence Information.* Systematic review for declassification of classified information pertaining to intelligence activities (including special activities), or intelligence sources or methods shall be in accordance with special procedures to be established by the Director of Central Intelligence after consultation with affected agencies.

§ 159a.26 Mandatory declassification review.

(a) *Information Covered.* Upon request by a U.S. citizen or permanent resident alien, a Federal agency, or a State or local government to declassify and release such information, any classified information (except as provided in paragraph (b) of this section) shall be subject to review by the originating or responsible DoD Component for declassification in accordance with this section.

(b) *Presidential Information.* Information originated by a President, the White House staff, committees, commissions, or boards appointed by the President, or others specifically providing advice and counsel to a President or acting on behalf of a President is exempt from the provisions of this section.

(c) *Cryptologic Information.* Requests for the declassification review of cryptologic information shall be processed in accordance with the provisions of DoD Directive 5200.30.

(d) *Submission of Requests for Mandatory Declassification Review.* Requests for mandatory review of DoD classified information shall be submitted as follows:

(1) Requests shall be in writing and reasonably describe the information sought with sufficient particularity to enable the Component to identify documents containing that information, and be reasonable in scope; for example, the request does not involve such a large number or variety of documents as to leave uncertain the identity of the particular information sought.

(2) Requests shall be submitted to the Office of the Assistant Secretary of Defense (Public Affairs) (ASD(PA)) (entry point for OSD records), the Military Department, or other Component most concerned with the subject matter that is designated under 32 CFR Part 285 to receive requests for records under the Freedom of Information Act. These offices are identified in appropriate Parts of Title 32 of the Code of Federal Regulations for each DoD Component.

(e) *Requirements for Processing.* Unless otherwise directed by the ASD(PA), requests for mandatory review shall be processed as follows:

(1) The designated office shall acknowledge receipt of the request. When a request does not satisfy the conditions of paragraph (d)(1) of this section, the requester shall be notified that unless additional information is provided or the scope of the request narrowed, no further action will be undertaken.

(2) DoD Component action upon the initial request shall be completed within 60 days (45 working days). If no determination has been made within 60 days (45 working days) of receipt of the request, the requester shall be notified of his right to appeal and of the procedures for making such an appeal.

(3) The designated office shall determine whether, under the declassification provisions of this part, the requested information may be declassified, and, if so, make such information available to the requester, unless withholding is otherwise warranted under applicable law. If the information may not be released in whole or in part, the requester shall be given a brief statement as to the reasons for denial, notice of the right to appeal the determination within 60 days (45 working days) to a designated appellate authority (including name, title, and address of such authority), and the procedures for such an appeal.

(4) When a request is received for information classified by another DoD Component or an agency outside the Department of Defense, the designated office shall:

(i) Forward the request to such DoD Component or outside agency for review together with a copy of the document containing the information requested, when practicable and when appropriate, with its recommendation to withhold any of the information;

(ii) Notify the requester of the referral unless the DoD Component or outside agency to which the request is referred objects to such notice on grounds that its association with the information requires protection; and

(iii) Request, when appropriate, that the DoD Component or outside agency notify the referring office of its determination.

(5) If the request requires the rendering of services for which fees may be charged under Title 5 of the Independent Offices Appropriation Act in accordance with DoD Instruction 7230.7 [10] the DoD Component may calculate the anticipated amount of fees to be charged and ascertain the requester's willingness to pay the allowable charges as a precondition to taking further action upon the request.

(6) A requester may appeal to the head of a DoD Component or designee whenever that DoD Component has not acted on an initial request within 60 days or the requester has been notified that requested information may not be released in whole or in part. Within 30 days after receipt, an appellate authority shall determine whether continued classification of the requested information is required in whole or in part, notify the requester of its determination, and make available to the requester any information determined to be releasable. If continued classification is required under this part, the requester shall be notified of the reasons therefor. If so requested, an appellate authority shall communicate its determination to any referring DoD Component or outside agency.

(7) The ASD(PA) shall act as appellate authority for all appeals regarding OSD, OJCS, and Unified Command records.

(f) *Foreign Government Information.* Requests for mandatory review for the declassification of foreign government information shall be processed and acted upon under the provisions of this section subject to § 159a.76(c).

(g) *Prohibition.* No DoD Component in possession of a document shall in response to a request under the Freedom of Information Act or this section refuse to confirm the existence or nonexistence of the document, unless the fact of its existence or nonexistence would itself be classifiable under this part.

(h) *Restricted Data and Formerly Restricted Data.* Any proposed action on a request, including requests from Presidential libraries, for DoD classified documents that are marked "Restricted Data" or "Formerly Restricted Data" must be coordinated with the Department of Energy.

§ 159a.27 Declassification of transferred documents or material.

(a) *Material Officially Transferred.* In the case of classified information or material transferred under statute, E.O., or directive from one department or agency or DoD Component to another in conjunction with a transfer of functions, as distinguished from transfers merely for purposes of storage, the receiving department, agency, or DoD Component shall be deemed to be the original

[10] See footnote 1 to § 159a.3

classifying authority over such material for purposes of downgrading and declassification.

(b) *Material Not Officially Transferred.* When a DoD Component has in its possession classified information or material originated in an agency outside the Department of Defense that has ceased to exist and such information or material has not been transferred to another department or agency within the meaning of paragraph (a) of this section, or when it is impossible to identify the originating agency, the DoD Component shall be deemed to be the originating agency for the purpose of declassifying or downgrading such information or material. If it appears probable that another department, agency, or DoD Component may have a substantial interest in the classification of such information, the DoD Component deemed to be the originating agency shall notify such other department, agency, or DoD Component of the nature of the information or material and any intention to downgrade or declassify it. Until 60 days after notification, the DoD Component shall not declassify or downgrade such information or material without consulting the other department, agency, or DoD Component. During this period, the other department, agency, or DoD Component may express objections to downgrading or declassifying such information or material.

(c) *Transfer for Storage or Retirement.* Whenever practicable, classified documents shall be reviewed for downgrading or declassification before they are forwarded to a Records Center for storage or to the NARA for permanent preservation. Any downgrading or declassification determination shall be indicated on each document by markings as required by Subpart E of this part.

§ 159a.28 Downgrading.

(a) *Automatic Downgrading.* Classified information marked for automatic downgrading in accordance with this or prior regulations or E.Os. is downgraded accordingly without notification to holders.

(b) *Downgrading Upon Reconsideration.* Classified information not marked for automatic downgrading may be assigned a lower classification designation by the originator or by an official authorized to declassify the same information. Prompt notice of such downgrading shall be provided to known holders of the information.

§ 159a.29 Miscellaneous.

(a) *Notification of Changes in Declassification.* When classified material has been properly marked with specific dates or events for declassification, it is not necessary to issue notices of declassification to any holders. However, when declassification action is taken earlier than originally scheduled, or the duration of classification is extended, the authority making such changes shall ensure prompt notification of all holders to whom the information was originally transmitted. The notification shall specify the marking action to be taken, the authority therefor, and the effective date. Upon receipt of notification, recipients shall effect the proper changes and shall notify holders to whom they have transmitted the classified information. See § 159a.34 (a) and (e) for markings and the use of posted notices.

(b) *Foreign Relations Series.* In order to permit the State Department editors of *Foriegn Relations of the United States* to meet their mandated goal of publishing twenty years after the event, DoD Components shall assist the editors in the Department of State by easing access to appropriate classified materials in their custody and by expediting declassification review of items from their files selected for possible publication.

(c) *Reproduction for Declassification Review.* The provisions of § 159a.55(f) shall not restrict the reproduction of documents for the purpose of facilitating declassification review under the provisions of this subpart or the Freedom of Information Act, as amended. After review for declassification, however, those reproduced documents that remain classified must be destroyed in accordance with Subpart J of this part.

Subpart E—Marking

§ 159a.31 General provisions.

(a) *Designation.* Subject to the exceptions in paragraph (c) of this section, information determined to require classification protection under this part shall be so designated. Designation by means other than physical marking may be used but shall be followed by physical marking as soon as possible.

(b) *Purpose of Designation.* Designation by physical marking, notation, or other means serves to warn the holder about the classification of the information involved; to indicate the degree of protection against unauthorized disclosure that is required for that particular level of classification; and to facilitate downgrading and declassification actions.

(c) *Exceptions.* (1) No article that has appeared, in whole or in part, in newspapers, magazines or elsewhere in the public domain, or any copy thereof, that is being reviewed and evaluated to compare its content with classified information that is being safeguarded in the Department of Defense by security classification, may be marked with any security classification, control or other kind of restrictive marking. The results of the review and evaluation, if classified, shall be separate from the article in question.

(2) Classified documents and material shall be marked in accordance with paragraph (d) of this section unless the markings themselves would reveal a confidential source or relationship not otherwise evident in the document, material, or information.

(3) The marking requirements of paragraph (d) (1)(iv) and (2)(iv) of this section do not apply to documents or other material that contain, in whole or in part, Restricted Data or Formerly Restricted Data information. Such documents or other material or portions thereof shall not be declassified without approval of the Department of Energy with respect to Restricted Data or Formerly Restricted Data information, and with respect to any other national security information contained therein, the approval of the originating agency.

(d) *Documents or Other Material in General.* (1) At the time of original classification, the following shall be shown on the face of all originally classified documents or clearly associated with other forms of classified information in a manner appropriate to the medium involved:

(i) The identity of the original classification authority by position title, unless he or she is the signer or approver of the document;

(ii) The agency and office of origin;

(iii) The overall classification of the document;

(iv) The date or event for automatic declassification or the notation "Originating Agency's Determination Required" or "OADR"; and, if applicable,

(v) Any downgrading action to be taken and the date or event thereof.

(2) At the time of derivative classification, the following shall be shown on the face of all derivatively classified documents or clearly associated with other forms of classified information in a manner appropriate to the medium involved:

(i) The source of classification, that is, a source document or classification guide. If classification is derived from more than one source, the phrase "Multiple Sources" will be shown and the identification of each source will be maintained with the file or record copy of the document;

(ii) The agency and office of origin of the derivatively classified document;

(iii) The overall classification of the document;

(iv) The date or event for declassification or the notation "Originating Agency's Determination Required" or "OADR," carried forward from the classification source. If the classification is derived from multiple sources, either the most remote date or event for declassification marked on the sources or if required by any source, the notation "Originating Agency's Determination Required" or "OADR" shall be shown; and, if applicable,

(v) Any downgrading action to be taken and the date or event thereof.

(3) In addition to the foregoing, classified documents shall be marked as prescribed in § 159a.32, Subpart L of this part, if the document contains foreign government information, and with any applicable special notation listed in § 159a.35. Such notations shall be carried forward from source documents to derivatively classified documents when appropriate. Provides illustrated guidance on the application of classification and associated markings to documents prepared by the Department of Defense.

(4) Material other than paper documents shall show the required information on the material itself or if that is not practical, in related or accompanying documentation.

(e) *Identification of Classification Authority.* (1) Identification of a classification authority shall be shown on the "Classified by" line prescribed under § 159a.34(c) and shall be sufficient, standing alone, to identify a particular official, source document or classification guide.

(i) If all information in a document or material is classified as an act of original classification, the classification authority who made the determination shall be identified on the "Classified by" line, unless the classifier is also the signer or approver of the document.

(ii) If the classification of all information in a document or material is derived from a single source (for example, a source document or classification guide), the "Classified by" line shall identify the source document or classification guide, including its date when necessary to insure positive identification.

(iii) If the classification of information contained in a document or material is derived from more than one original classification authority, or an original classification authority and another source, or from more than one source document, classification guide, or combination thereof, the "Classified by" line shall be marked "Multiple Sources" and identification of all such authorities and sources shall be maintained with the file or record copy of the document.

(iv) If an official with requisite classification authority has been designated by the head of an activity to approve security classifications assigned to all information leaving the activity, the title of that designated official shall be shown on the "Classified by" line. The designated official shall maintain records adequate to support derivative classification actions.

(2) Guidance concerning the identification of the classification authority on electronically transmitted messages is contained in § 159a.32(h).

(3) Guidance concerning the identification of the classification authority on DoD documents that contain only foreign or NATO classified information is contained in § 159a.77(d).

(f) *Wholly Unclassified Material.* Normally, unclassified material shall not be marked or stamped "Unclassified" unless it is essential to convey to a recipient of such material that it has been examined with a view to imposing a security classification and that it has been determined that it does not require classification. However, the marking "Unclassified" may be applied to formerly classified material.

§ 159a.32 Specific markings on documents.

(a) *Overall and Page Marking.* Except as otherwise specified for working papers, the overall classification of a document, whether or not permanently bound, or any copy or reproduction thereof, shall be conspicuously marked, stamped or affixed permanently at the top and bottom on the outside of the front cover (if any), on the title page (if any), on the first page, and on the outside of the back cover (if any). Each interior page, except those that are blank, shall be marked top and bottom according to its content, to include "Unclassified" when no classified information is contained on such a page. Alternatively, the overall classification of the document may be conspicuously marked or stamped at the top and bottom of each interior page when such marking is necessary to achieve production efficiency and the particular information to which classification is assigned is otherwise sufficiently identified consistent with the intent of paragraph (c) of § 159a.32. In any case, the classification marking of a page shall not supplant the classification marking of portions paragraph (c) of this section of the page marked with lower levels of classification.

(b) *Marking Components.* The major components of some complex documents are likely to be used separately. In such instances, each major component shall be marked as a separate document in accordance with § 159a.31. Examples include each annex, appendix, or similar component of a plan, program, or operations order; attachments and appendices to a memorandum or letter; and each major part of a report. If an entire major component is unclassified, the first page of the component may be marked at the top and bottom with the designation "UNCLASSIFIED" and a statement included, such as, "All portions of this (annex, appendix, etc.) are UNCLASSIFIED." When this method of marking is used, no further markings are required on the unclassified major component.

(c) *Portion Marking.* (1) Each section, part, paragraph, or similar portion of a classified document shall be marked to show the level of classification of the information contained in or revealed by it, or that it is unclassified. Portions of documents shall be marked in a manner that eliminates doubt as to which of its portions contains or reveals classified information. Classification levels of portions of a document, except as provided in paragraph (e) of this section, shall be shown by the appropriate classification symbol placed immediately following the portion's letter or number, or in the absence of letters or numbers, immediately before the beginning of the portion. In marking sections, parts, paragraphs, or similar portions, the parenthetical symbols "(TS)" for Top Secret, "(S)" for Secret, "(C)" for Confidential, and "(U)" for unclassified, shall be used. When appropriate, the symbols "RD" for Restricted Data and "FRD" for Formerly Restricted Data shall be added, for example, "(S–RD)" or "(C–FRD)." In addition, portions that contain Critical Nuclear Weapon Design Information (CNWDI) will be marked "(N)" following the classification, for example, "(S–RD)(N)."

(2) Portion marking of DoD documents containing foreign government information shall be in accordance with § 159a.77(d).

(3) Illustrations, photographs, figures, graphs, drawings, charts and similar portions of classified documents will be clearly marked to show their classification or unclassified status. Such markings shall not be abbreviated

and shall be prominent and placed within or contiguous to the portion. Captions of such portions shall be marked on the basis of their content alone by placing the symbol "(TS)," "(S)," "(C)," or "(U)" immediately preceding the caption.

(4) If, in an exceptional situation, parenthetical portion marking is determined to be impracticable, the document shall contain a statement sufficient to identify the information that is classified and the level of such classification. Thus, for example, each portion of a classified document need not be marked separately if all portions are classified at the same level, provided a statement to that effect is included in the document. In the case of classified compilations, the explanations required by paragraph (d) of this section meet this requirement.

(5) When elements of information in one portion require different classifications, but segregation into separate portions would destroy continuity or context, the highest classification required for any item shall be applied to that portion or paragraph.

(6) Waivers of the foregoing portion marking requirements may be granted for good cause. Any request by a DoD Component senior official for a waiver of portion marking requirements shall be submitted to the DUSD(P) and include the following:

(i) Identification of the information or class of documents for which such waiver is sought;

(ii) Detailed explanation of why the waiver should be granted;

(iii) The Component's judgment of the anticipated dissemination of the information or class of documents for which the waiver is sought, and

(iv) The extent to which such information subject to the waiver may be a basis for derivative classification. Waivers shall be granted only upon a written determination by the DUSD(P) as the designee of the Secretary of Defense, that there will be minimal circulation of the specified documents or information, and minimal potential usage of these documents or information as a source for derivative classification determinations; or there is some other basis to conclude that the benefits of portion marking are clearly outweighed by the increased administrative burdens. The granting and revocation of portion marking waivers shall be reported to the Director of the ISOO by the DUSD(P).

(d) *Compilations*—(1) *Documents.* When classification is required to protect a compilation of unclassified information pursuant to § 159a.15(1), the overall classification assigned to such documents shall be placed conspicuously at the top and bottom of each page and on the outside of the front and back covers, if any, and an explanation of the basis for the assigned classification shall be included on the document or on its text.

(2) *Portions of Documents.* If a classified document contains particular portions that are unclassified when standing alone, but classified information will be revealed when they are combined or associated, those portions shall be marked as unclassified, the page shall be marked with the highest classification of any information on or revealed by the page, and an explanation shall be added to the page, or to the document, to explain the classification of the combination or association to the holder. This method of marking also may be used if classified portions on a page, or within a document, will reveal information of a higher classification when they are combined or associated than when they are standing alone.

(e) *Subjects and Titles of Documents.* Subjects or titles of classified documents shall be marked with the appropriate symbol, "(TS)," "(S)," "(C)," or "(U)" placed immediately following and to the right of the item. When applicable, other appropriate symbols, for example, "(RD)" or "(FRD)," shall be added. (Subjects or titles of documents should be unclassified, if possible.)

(f) *File, Folder, or Group of Documents.* When a file, folder, or group of classified documents is removed from secure storage it shall be marked conspicuously with the highest classification of any classified document included therein or shall have an appropriate classified document cover sheet affixed.

(g) *Transmittal Documents.* A transmittal document, including endorsements and comments when such endorsements and comments are added to the basic communication, shall carry on its face a prominent notation of the highest classification of the information transmitted by it, and a legend showing the classification, if any, of the transmittal document, endorsement, or comment standing alone. For example, an unclassified document that transmits as an attachment a classified document shall bear a notation substantially as follows: "UNCLASSIFIED WHEN SEPARATED FROM CLASSIFIED ENCLOSURE."

(h) *Electronically Transmitted Messages.* (1) The copy of a classified message (for example, DD Form 173, Joint Messageform) approved for electronic transmission and maintained as the record copy shall be marked as required by § 159a.31(d) for other documents. Additionally, copies not electronically transmitted (such as, mail and courier copies) shall be marked as required by § 159a.31(d).

(2) The first item of information in the text of a classified electronically transmitted message shall be its overall classification. Paper copies of classified electronically transmitted messages shall be marked at the top and bottom with the assigned classification. Portions shall be marked as prescribed herein for paper copies of documents. When such messages are printed by an automated system, classification markings may be applied by that system, provided that page markings so applied are clearly distinguishable on the face of the document from the printed text.

(3) The originator of a classified electronically transmitted message shall be considered the accountable classifier under § 159a.15(a). The highest level official identified on the message as the sender or, in the absence of such identification, the head of the organization originating the message, is deemed to be the classifier of the message. Thus, a "Classified by" line is not required on such messages. The originator is responsible for maintaining adequate records as required by § 159a.31(d)(2) to show the source of an assigned derivative classification.

(4) The last line of text of a classified electronically transmitted message shall show the date or event for downgrading, if appropriate, and the date or event for automatic declassification or "Originating Agency's Determination Required," by abbreviated markings from § 159a.34. The foregoing is not required for messages that contain information identified as Restricted Data or Formerly Restricted Data.

(5) Any document, the classification of which is based solely upon the classification of the content of a classified electronically transmitted message, shall cite the message on the "Classified by" line of the newly created document.

(i) *Translations.* Translations of U.S. classified information into a language other than English shall be marked to show the United States as the country of origin, with the appropriate U.S. classification markings and the foreign language equivalent thereof (see Appendix A to this part).

§ 159a.33 Markings on special categories of material.

(a) *General Provisions.* Security classification and applicable associated markings (see § 159a.31(d) and

§ 159a.33(k)) assigned by the classifier shall be conspicuously stamped, printed, written, painted, or affixed by means of a tag, sticker, decal, or similar device, on classified material other than paper copies of documents, and on containers of such material, if possible. If marking the material or container is not practicable, written notification of the security classification and applicable associated markings shall be furnished to recipients. The following procedures for marking various kinds of materials containing classified information are not all inclusive and may be varied to accommodate the physical characteristics of the material containing the classified information and to accommodate organizational and operational requirements.

(b) *Charts, Maps, and Drawings.* Charts, maps, and drawings shall bear the appropriate classification marking for the legend, title, or scale blocks in a manner that differentiates between the overall classification of the document and the classification of the legend or title itself. The higher of these markings shall be inscribed at the top and bottom of each such document. When folding or rolling charts, maps, or drawings would cover the classification markings, additional markings shall be applied that are clearly visible when the document is folded or rolled. Applicable associated markings shall be included in or near the legend, title, or scale blocks.

(c) *Photographs, Films, and Recordings.* Photographs, films (including negatives), recordings, and their containers shall be marked to assure that a recipient or viewer will know that classified information of a specified level of classification is involved.

(1) *Photographs.* Negatives and positives shall be marked, whenever practicable, with the appropriate classification designation and applicable associated markings. Roll negatives or positives may be so marked at the beginning and end of each strip. Negatives and positives shall be kept in containers bearing conspicuous classification markings. All prints and reproductions shall be conspicuously marked with the appropriate classification designation and applicable associated markings on the face side of the print if possible. When such markings cannot be applied to the face side, they may be stamped on the reverse side or affixed by pressure tape label, stapled strip, or other comparable means.

Note: When self-processing film or paper is used to photograph or reproduce classified information, all parts of the last exposure shall be removed from the camera and destroyed as classified waste, or the camera shall be protected as classified.

(2) *Transparencies and Slides.* Applicable classification markings shall be shown clearly in the image area of each transparency or slide, if possible. In the case of a 35mm or a similar size transparency or slide where the classification markings are not conspicuous unless projected on a screen, for example, the classification markings also shall be marked on its border, holder, or frame. Duplicate classification markings in image areas and on borders, holders, or frames are required if there is any doubt that the image area markings are not conspicuous enough to be seen when the transparencies or slides are not being projected. Other applicable associated markings shall be shown in the image area, or on the border, holder, or frame, or in accompanying documention. It is not necessary that each transparency or slide of a set of transparencies or slides bear applicable associated markings when the set is controlled as a single document. In such cases, the first transparency or slide shall bear the applicable associated markings.

(3) *Motion Picture Films and Video Tapes.* Classified motion picture films and video tapes shall be marked at the beginning and end by titles bearing the appropriate classification markings. Applicable associated markings shall be included at the beginning of such films or tapes. All such marking shall be visible when projected. Reels and cassettes shall be marked with the appropriate classification and kept in containers bearing conspicuous classification and applicable associated markings.

(4) *Recordings.* Sound, magnetic, or electronic recordings shall contain at the beginning and end a clear statement of the assigned classification that will provide adequate assurance that any listener or viewer will know that classified information of a specified level is involved. Recordings shall be kept in containers or on reels that bear conspicuous classification and applicable associated markings.

(5) *Microforms.* Microforms are images, usually produced photographically on transparent or opaque materials, in sizes too small to be read by the unaided eye. Accordingly, the assigned security classification and abbreviated applicable associated markings shall be conspicuously marked on the microform medium or its container, so as to be readable by the unaided eye. These markings shall also be included on the image so that when the image is enlarged and displayed or printed, the markings will be conspicuous and readable. Such marking will be accomplished as appropriate for the particular microform involved. For example, roll film microforms (or roll microfilm employing 16, 35, 70, or 105 mm films) may generally be marked as provided for roll motion picture film in § 159a.33(c)(3) and decks of "aperture cards" may be marked as provided in § 159a.33(d) for decks of automatic data processing punched cards. Whenever possible, microfiche, microfilm strips, and microform chips shall be marked in accordance with this paragraph.

(d) *Decks of ADP Punched Cards.* When a deck of classified ADP punched cards is handled and controlled as a single document, only the first and last card require classification markings. An additional card shall be added (or the job control card modified) to identify the contents of the deck and the highest classification therein. Such additional card shall include applicable associated markings. Cards removed for separate processing or use and not immediately returned to the deck shall be protected to prevent compromise of any classified information contained therein, and for this purpose shall be marked individually as prescribed in § 159a.32(a).

(e) *Removable ADP and Word Processing Storage Media*—(1) *External.* Removable information storage media and devices, used with ADP systems and typewriters or word processing systems, shall bear external markings clearly indicating the classification of the information and applicable associated markings. Included are media and devices that store information recorded in analog or digital form and that are generally mounted or removed by the users or operators. Examples include magnetic tape reels, cartridges, and cassettes; removable discs, disc cartridges, disc packs and diskettes; paper tape reels; and magnetic cards.

(2) *Internal.* ADP systems and word processing systems employing such media shall provide for internal classification marking to assure that classified information contained therein that is reproduced or generated, will bear applicable classification and associated markings. An exception may be made by the DoD Component head, or designee, for the purpose of exempting existing word processing systems when the internal classification and applicable associated markings cannot be implemented without extensive system modification, provided procedures are established to ensure

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that users and recipients of the media, or the information therein, are clearly advised of the applicable classification and associated markings. For ADP systems, exceptions may be authorized by the DoD Component Designated Approving Authority or Authorities, designated under DoD Directive 5200.28. For purposes of these exemption provisions, "existing systems" means word processing and ADP systems already acquired, or, in the case of associated automated information systems, those for which the life cycle management process has already progressed beyond the "definition/design" phase as set forth in DoD Directive 7920.1 [11]. Requirements for the security of nonremovable ADP storage media and clearance or declassification procedures for various ADP storage media are contained in DoD 5200.28–M [12].

(f) *Documents Produced by ADP Equipment.* The first page, and the front and back covers, if any, of documents produced by ADP equipment shall be marked as prescribed in § 159a.32(a). Interior pages also shall be marked as prescribed in § 159a.32(a) except that the classification markings of interior pages of fan-folded printouts may be applied by the ADP equipment. When the application of associated markings prescribed by § 159a.31(d) by the ADP equipment is not consistent with economical and efficient use of such equipment, such markings may be applied to a document produced by ADP equipment by superimposing upon the first page of such document a "Notice of Declassification Instructions and Other Associated Markings." Such notice shall include the date or event for declassification or the notation "Originating Agency's Determination Required" or "OADR" and all other such applicable markings. If individual pages of a document produced by ADP equipment are removed or reproduced for distribution to other users, each such page or group of pages shall be marked as prescribed in § 159a.31(d) or by superimposing upon each such page or group of pages, a copy of any "Notice of Declassification Instructions and Other Associated Markings" applicable to such page or group of pages.

(g) *Material for Training Purposes.* In using unclassified documents or material to simulate classified documents or material for training purposes, such documents or material shall be marked clearly to indicate the actual unclassified status of the information, for example, "(insert classification designation) for training; otherwise unclassified" or "UNCLASSIFIED SAMPLE."

(h) *Miscellaneous Material.* Documents and material such as rejected copy, typewriter ribbons, carbons, and similar items developed in connection with the handling, processing, production, and of use classified information shall be handled in a manner that assures adequate protection of the classified information involved and destruction at the earliest practicable time (see § 159a.32). Unless a requirement exists to retain this material or documents for a specific purpose, there is no need to mark, stamp, or otherwise indicate that the information is classified.

(i) *Special Access Program Documents and Material.* Additional markings as prescribed in directives, regulations and instructions relating to an approved Special Access Program shall be applied to documents and material containing information subject to the special access program. Such additional markings shall not serve as the sole basis for continuing classification of the documents or material to which the markings have been applied. When appropriate, such markings shall be excised to ease timely declassification, downgrading, or removal of the information from special control procedures.

(j) *Secure Telecommunications and Information Handling Equipment.* Applicable classification or Controlled Cryptographic Item (CCI) markings shall be applied to secure telecommunications and information handling equipment or associated cryptographic components. Safeguarding and control procedures for classified and CCI equipment and for safeguarding COMSEC facilities are contained in DoD Instruction 5230.22 [12], National Communications Security Committee (NCSC) Policy Directive 6, DoD Directive C–5200.5 [13], National Telecommunications and Information Systems Security Instruction 4001, and National COMSEC Instruction 4003, 4006, and 4008.

(k) *Associated Markings.* Other applicable associated markings required for documents by § 159a.31(d) shall be accomplished as prescribed in this section or in any other appropriate manner.

§ 159a.34 Classification authority, duration, and change in classification markings.

(a) *Declassification and Regrading Marking Procedures.* When classified information is downgraded or declassified in accordance with the assigned downgrading or declassification markings, such markings shall be a sufficient notation of the authority for such action. Whenever classified information is downgraded or declassified earlier than originally scheduled, or upgraded, the material shall be marked promptly and conspicuously to indicate the change, the authority for the action, the date of the action and the identity of the person taking the action. In addition, except for upgrading (see paragraph (d) of this section), prior classification markings shall be canceled, if practicable, but in any event those on the cover (if any) and first page shall be canceled, and the new classification markings, if any, shall be substituted.

(b) *Applying Derivative Declassification Dates.* (1) New material that derives its classification from information classified on or after August 1, 1982, shall be marked with the declassification date, event, or the notation "Originating Agency's Determination Required" or "OADR" assigned to the source information.

(2) New material that derives its classification from information classified prior to August 1, 1982, shall be treated as follows:

(i) If the source material bears a declassification date or event, that date or event shall be carried forward to the new material;

(ii) If the source material bears no declassification date or event, or bears an indeterminate date or event such as "Upon Notification by Originator," "Cannot Be Determined," or "Impossible to Determine," or is marked for declassification review, the new material shall be marked with the notation "Originating Agency's Determination Required" or "OADR"; or

(iii) If the source material is foreign government information bearing no date or event for declassification or is marked for declassification review, the new material shall be marked with the notation "Originating Agency's Determination Required" or "OADR."

(3) New material that derives its classification from a classification guide issued prior to August 1, 1982, that has not been updated to conform with this Regulation shall be treated as follows:

(i) If the guide specifies a declassification date or event, that date or event shall be applied to the new material; or

(ii) If the guide specifies a declassification review date, the notation "Originating Agency's Determination Required" or "OADR" shall be applied to the new material.

(c) *Commonly Used Markings.* Each classified document is marked on its face with one or more of the following markings:

(1) *Original Classification.* The following markings are used in original classification § 159a.31(d)(1):

Classified by _____ (See Note 1)

Declassify on _____ (See Note 2)

Message Abbreviation:

DECL _____ (See Note 3)

(2) *Derivative Classification.* The following markings are used in derivative classification § 159a.31(d)(2):

Classified by _____ (See Note 4)

Declassify on _____ (See Note 5)

Message Abbreviation:

DECL _____ (See Note 3)

(3) *Downgrading.* The following marking is used to specify a downgrading § 159a.31(d)(1) and (2):

Downgrade to _____ on _____ (See Note 6)

Message Abbreviation:

DNG/____/_____ (See Note 7)

Note 1: Insert identification (position title) of the original classification authority. This line may be omitted if the original classification authority is also the signer or approver of the document.

Note 2: Insert the specific date, an event certain to occur, or the notation "Originating Agency's Determination Required" or "OADR."

Note 3: Insert day, month, and year for declassification, for example, "6 Jun 90," an event certain to occur, or "OADR."

Note 4: Insert identity of the single security classification guide, source document, or other authority for the classification. If more than one such source is applicable, insert the phrase "Multiple Sources."

Note 5: Insert the specific date or event for declassification or the notation "Originating Agency's Determination Required" or "OADR." When multiple sources are used, either the most remote date or event for declassification marked on the sources or, if present on any source, the notation "Originating Agency's Determination Required" or "OADR" is applied to the new document.

Note 6: Insert Secret or Confidential and specific date or event, for example, "Downgrade to *CONFIDENTIAL* on *6 July 1988*."

Note 7: Insert "S" or "C" to indicate the downgraded classification and specific date or event, for example, "DNG/C/6 Jun 87."

(4) There is no requirement for adding declassification instructions on documents with Restricted Data or Formerly Restricted Data markings (see § 159a.31(b)(3) and § 159a.35 (a) and (b)). Except for electronically transmitted messages, only a completed "Classified by" line is added to documents so marked.

(5) Electronically transmitted messages do not require a "classified by" line (See § 159a.32(h)(3)).

(6) DoD 5200.1–PH provides additional marking guidance.

(d) *Upgrading.* When material is upgraded it shall be promptly and conspicuously marked as prescribed in paragraph (a) of this section except that in all such cases the old classification markings shall be canceled and new markings substituted.

(e) *Limited Use of Posted Notice for Large Quantities of Material.* (1) When the volume of material is such that prompt remarking of each classified item cannot be accomplished without unduly interfering with operations, the custodian may attach downgrading and declassification notices to the storage unit instead of the remarking required by paragraph (a) of this section. Each notice shall specify the authority for the downgrading or declassification action, the date of the action, and the storage unit to which it applies.

(2) When individual documents or materials are permanently withdrawn from storage units, they shall be remarked promptly as prescribed by paragraph (a) of this section. However, when documents or materials subject to a downgrading or declassification notice are withdrawn from one storage unit solely for transfer to another, or a storage unit containing such documents or materials is transferred from one place to another, the transfer may be made without remarking if the notice is attached to or remains with each shipment.

§ 159a.35 Additional warning notices.

(a) *General Provisions.* (1) In addition to the marking requirements prescribed in § 159a.31(d), the warning notices prescribed in this section shall be displayed prominently on classified documents or materials, when applicable. In the case of documents, these warning notices shall be marked conspicuously on the outside of the front cover, or on the first page if there is no front cover. Transmittal documents, including those that are unclassified (§ 159a.35(g)), also shall bear these additional warning notices, when applicable. In addition, abbreviated forms of the notices set forth in § 159a.35(a), (b), and (c) shall be included in portion markings, as applicable. Further, the warning notice in paragraph (d) of this section, in its short form, shall be included at least once on interior pages, as applicable.

(2) When display of warning notices on other materials is not possible, their applicability to the information shall be included in the written notification of the assigned classification.

(b) *Restricted Data.* Classified documents or material containing Restricted Data as defined in the Atomic Energy Act of 1954, as amended shall be marked as follows:

RESTRICTED DATA

This material contains Restricted Data as defined in the Atomic Energy Act of 1954. Unauthorized disclosure subject to administrative and criminal sanctions.

(c) *Formerly Restricted Data.* Classified documents or material containing Formerly Restricted Data, as defined in Section 142.d, Atomic Energy Act of 1954, as amended, but no Restricted Data, shall be marked as follows:

FORMERLY RESTRICTED DATA

Unauthorized disclosure subject to administrative and criminal sanctions. Handle as Restricted Data in foreign dissemination. Section 144.b, Atomic Energy Act, 1954.

(d) *Intelligence Sources or Methods Information.* (1) Documents that contain information relating to intelligence sources or methods shall include the following marking unless otherwise proscribed by DoD Instruction 5230.22:

WARNING NOTICE—Intelligence Sources or Methods Involved

(2) Existing stamps or preprinted labels containing the caveat "Warning Notice—Intelligence Sources and Methods Involved" may be used on documents created on or after the effective date of this part until replacement is required. Any replacement or additional stamps or labels purchased after the effective date of this part shall conform to the wording of paragraph (d)(1) of this section.

(e) *COMSEC Material.* Before release to contractors, COMSEC documents will indicate on the title page, or first page if no title page exists, the following notation:

COMSEC Material—Access by Contractor Personnel Restricted to U.S. Citizens Holding Final Government Clearance.

This notation shall be placed on COMSEC documents or material when originated and when release to contractors can be anticipated. Other COMSEC documents or material shall be marked in accordance with National COMSEC Instruction (NACSI) 4003. Foreign dissemination of COMSEC information is governed by NCSC Policy Directive 6.

(f) *Dissemination and Reproduction Notice.* Classified information that the

[11] See footnote 1 to § 159a.3.

[12] See footnote 7 to § 159a.10(g)(1)

[12] See footnote 1 to § 159a.3.

[13] Classified document. Not releasable to the public.

DoD originator has determined to be subject to special dissemination or reproduction limitations as outlined in § 159a.54(1) shall include, as applicable, a statement or statements on its cover sheet, first page, or in the text, substantially as follows:

Reproduction requires approval of originator or higher DoD authority.

Further dissemination only as directed by (insert appropriate office or official) or higher DoD authority.

(g) *Other Notations.* Other notations of restrictions on reproduction, dissemination or extraction of classified information may be used as authorized by DoD Directive C-5200.5, DoD Instruction 5230.22, DoD Directive 5210.2 [14], DoD Directive 5100.55 [15], DoD Directive 5200.30, Joint Army-Navy-Air Force Publication 119, DoD Directive 5230.24, and NACSI 4003.

§ 159a.36 Remarking old material.

(a) *General.* (1) Documents and material classified under E.O. 12065 and predecessor E.O.s that are marked for automatic downgrading or automatic declassification on a specific date or event shall be downgraded and declassified pursuant to such markings. Declassification instructions on such documents or material need not be restated to conform with § 159a.32(c). (See also § 159a.34(a)). Information extracted from these documents or material for use in new documents or material shall be marked for declassification on the date specified in accordance with § 159a.31(d)(2).

(2) Documents and material classified under DoD C-5105.21-M-1 [16] and predecessor E.O.s that are not marked for automatic downgrading or automatic declassification on a specific date or event shall not be downgraded or declassified without authorization of the originator. Declassification instructions on such documents or material need not be restated to conform with § 159a.32(a). Information extracted from these documents or material for use in new documents or material shall be marked for declassification upon the determination of the originator, that is, the "Declassify on" line shall be completed with the notation "Originating Agency's Determination Required" or "OADR" in accordance with § 159a.31(d)(2).

(b) *Earlier Declassification and Extension of Classification.* Nothing in this section shall be construed to preclude declassification under Subpart D of this part or subsequent extension of classification under § 159a.16(c).

[14] See footnote 1 to § 159a.3.

[15] See footnote 1 to § 159a.3.

[16] See footnote 13 to § 159a.33(j).

Subpart F—Safekeeping and Storage

§ 159a.37 Storage and storage equipment.

(a) *General Policy.* Classified information shall be stored only under conditions adequate to prevent unauthorized persons from gaining access. The requirements specified in this part represent the minimum acceptable security standards. DoD policy concerning the use of force for the protection of property or information is specified in DoD Directive 5210.56 [17]

(b) *Standards for Storage Equipment.* The GSA establishes and publishes minimum standards, specifications, and supply schedules for containers, vault doors, alarm systems, and associated security devices suitable for the storage and protection of classified information. Heads of DoD Components may establish additional controls to prevent unauthorized access. Security filing cabinets conforming to federal specifications bear a Test Certification Label on the locking drawer, attesting to the security capabilities of the container and lock. (On some older cabinets the label was affixed on the inside of the locked drawer compartment). Cabinets manufactured after February 1962 indicate "General Services Administration Approved Security Container" on the outside of the top drawer.

(c) *Storage of Classified Information.* Classified information that is not under the personal control and observation of an authorized person, will be guarded or stored in a locked security container as prescribed in the following:

(1) *Top Secret.* Top Secret information shall be stored in:

(i) A safe-type steel file container having a built-in, three-position, dial-type combination lock approved by the GSA or a Class A vault or vault type room that meets the standards established by the head of the DoD Component concerned. When located in buildings, structural enclosures, or other areas not under U.S. Government control, the storage container, vault, or vault-type room must be protected by an alarm system or guarded during nonoperating hours.

(ii) An alarmed area, provided such facilities are adjudged by the local responsible official to afford protection equal to or better than that prescribed in paragraph (c)(1) (i) of this section. When an alarmed area is used for the storage of Top Secret material, the physical barrier must be adequate to prevent:

(A) Surreptitious removal of the material, and

(B) Observation that would result in the compromise of the material. The physical barrier must be such that forcible attack will give evidence of attempted entry into the area. The alarm system must provide immediate notice to a security force of attempted entry. Under field conditions, the field commander will prescribe the measures deemed adequate to meet the storage standards contained in paragraphs (c)(1)(i) and (ii) of this section.

(2) *Secret and Confidential.* Secret and Confidential information shall be stored in the manner prescribed for Top Secret; or in a Class B vault, or a vault-type room, strong room, or secure storage room that meets the standards prescribed by the head of the DoD Component; or, until phased out, in a steel filing cabinet having a built-in, three-position, dial type combination lock; or, as a last resort, an existing steel filing cabinet equipped with a steel lock bar, provided it is secured by a GSA-approved changeable combination padlock. In this latter instance, the keeper or keepers and staples must be secured to the cabinet by welding, rivets, or peened bolts and DoD Components must prescribe supplementary controls to prevent unauthorized access.

(3) *Specialized Security Equipment.*—(i) *Field Safe and One-drawer Container.* One-drawer field safes, and GSA approved security containers are used primarily for storage of classified information in the field and in transportable assemblages. Such containers must be securely fastened or guarded to prevent their theft.

(ii) *Map and Plan File.* A GSA-approved map and plan file has been developed for storage of odd-sized items such as computer cards, maps, and charts.

(4) *Other Storage Requirements.* Storage areas for bulky material containing classified information, other than Top Secret, shall have access openings secured by GSA-approved changeable combination padlocks (federal specification FF-P110 series) or key-operated padlocks with high security cylinders (exposed shackle, military specification P-43951 series, or shrouded shackle, military specification P-43607 series).

(i) When combination padlocks are used, the provisions of paragraph (e) of this section apply.

(ii) When key-operated high security padlocks are used, keys shall be controlled as classified information with

[17] See footnote 1 to § 159a.3.

classification equal to that of the information being protected and:

(A) A key and lock custodian shall be appointed to ensure proper custody and handling of keys and locks;

(B) A key and lock control register shall be maintained to identify keys for each lock and their current location and custody;

(C) Keys and locks shall be audited each month;

(D) Keys shall be inventoried with each change of custodian;

(E) Keys shall not be removed from the premises;

(F) Keys and spare locks shall be protected in a secure container;

(G) Locks shall be changed or rotated at least annually, and shall be replaced upon loss or compromise of their keys; and

(H) Master keying is prohibited.

(d) *Procurement and Phase-In of New Storage Equipment.*—(1) *Preliminary Survey.* DoD activities shall not procure new storage equipment until:

(i) A current survey has been made of on-hand security storage equipment and classified records; and

(ii) Based upon the survey, it has been determined that it is not feasible to use available equipment or to retire, return, declassify or destroy enough records on hand to make the needed security storage space available.

(2) *Purchase of New Storage Equipment.* New security storage equipment shall be procured from those items listed on the GSA Federal Supply Schedule. Exceptions may be made by heads of DoD Components, with notification to the DUSD(P).

(3) Nothing in this subpart shall be construed to modify existing Federal Supply Class Management Assignments made under DoD Directive 5030.47.[18]

(e) *Designations and Combinations.*—(1) *Numbering and Designating Storage Facilities.* There shall be no external mark as to the level of classified information authorized to be stored therein. For identification purposes each vault or container shall bear externally an assigned number or symbol.

(2) *Combinations to Containers.*—(i) *Changing.* Combinations to security containers shall be changed only by individuals having that responsibility and an appropriate security clearance. Combinations shall be changed:

(A) When placed in use;

(B) Whenever an individual knowing the combination no longer requires access;

(C) When the combination has been subject to possible compromise;

(D) At least annually; or

(E) When taken out of service. Built-in combination locks shall be reset to the standard combination 50-25-50; combination padlocks shall be reset to the standard combination 10-20-30.

(ii) *Classifying Combinations.* The combination of a vault or container used for the storage of classified information shall be assigned a security classification equal to the highest category of the classified information authorized to be stored therein.

(iii) *Recording Storage Facility Data.* A record shall be maintained for each vault, secure room, or container used for storing classified information, showing location of the container, the names, home addresses, and home telephone numbers of the individuals having knowledge of the combination. Standard Form 700, "Security Container Information" shall be used for this purpose. (Use of this Standard Form is required when existing supplies of similar purpose forms are exhausted or by September 30, 1988, whichever occurs earlier).

(iv) *Dissemination.* Access to the combination of a vault or container used for the storage of classified information shall be granted only to those individuals who are authorized access to the classified information stored therein.

(3) *Electrically Actuated Locks.* Electricially actuated locks (for example, cypher and magnetic strip card locks) do not afford the required degree of protection of classified information and may not be used as a substitute for the locks prescribed in paragraph (c) of this section.

(f) *Repair of Damaged Security Containers.* Neutralization of lock-outs or repair of any damage that affects the integrity of a security container approved for storage of classified information shall be accomplished only by authorized persons who are cleared or continuously escorted while so engaged.

(1) A GSA-approved security container is considered to have been restored to its original state of security integrity if:

(i) All damaged or altered parts (for example, locking drawer, and drawer head) are replaced; or

(ii) When a container has been drilled immediately adjacent to or through the dial ring to neutralize a lock-out, the replacement lock is equal to the original equipment, and the drilled hole is repaired with a tapered, hardened tool-steel pin, or a steel dowel, drill bit, or bearing with a diameter slightly larger than the hole and of such length that when driven into the hole there shall remain at each end of the rod a shallow recess not less than ⅛ inch nor more than 3/16 inch deep to permit the acceptance of substantial welds, and the rod is welded both on the inside and outside surfaces. The outside of the drawer head shall then be puttied, sanded, and repainted in such a way that no visible evidence of the hole or its repair remains on the outer surface after replacement of the damaged parts (for example, new lock).

(2) GSA-approved containers that have been drilled in a location or repaired in a manner other than as described in paragraph (f)(1) of this section, will not be considered to have been restored to their original state of security integrity. The Test Certification Label on the inside of the locking drawer and the "General Services Administration Approved Security Container" label, if any, on the outside of the top drawer shall be removed from such containers.

(3) If damage to a GSA-approved security container is repaired with welds, rivets, or bolts that cannot be removed and replaced without leaving evidence of entry, the cabinet is limited thereafter to the storage of Secret and Confidential material.

(4) If the damage is repaired using methods other than those permitted in paragraphs (f) (1) and (3) of this section, use of the container will be limited to unclassified material and a notice to this effect will be permanently marked on the front of the container.

§ 159a.38 Custodial precautions.

(a) *Responsibilities of Custodians.* (1) Custodians of classified information shall be responsible for providing protection and accountability for such information at all times and for locking classified information in appropriate security equipment whenever it is not in use or under direct supervision of authorized persons. Custodians shall follow procedures that ensure that unauthorized persons do not gain access to classified information.

(2) Only the head of a DoD Component, or single designee at the headquarters and major command levels, may authorize removal of classified information from designated working areas in off-duty hours, for work at home or otherwise, provided that a GSA-approved security container is furnished and appropriate regulations otherwise provide for the maximum protection possible under the circumstances. (See also § 159a.55.) Any such arrangements approved before the effective date of this part shall be reevaluated and, if continued approval

[18] See footnote 1 to § 159a.3.

is warranted, compliance with this paragraph is necessary.

(b) *Care During Working Hours.* DoD personnel shall take precaution to prevent unauthorized access to classified information.

(1) Classified documents removed from storage shall be kept under constant surveillance and face down or covered when not in use. Cover sheets shall be Standard Forms 703, 704, and 705 for, respectively, Top Secret, Secret, and Confidential documents. (Use of these Standard Forms is required when existing supplies of similar purpose forms are exhausted or by September 30, 1986, whichever occurs earlier).

(2) Preliminary drafts, carbon sheets, plates, stencils, stenographic notes, worksheets, typewriter ribbons, and other items containing classified information shall be either destroyed immediately after they have served their purpose; or shall be given the same classification and secure handling as the classified information they contain.

(3) Destruction of typewriter ribbons from which classified information can be obtained shall be accomplished in the manner prescribed for classified working papers of the same classification. After the upper and lower sections have been cycled through and overprinted five times in all ribbon or typing positions, fabric ribbons may be treated as unclassified regardless of their classified use thereafter. Carbon and plastic typewriter ribbons and carbon paper that have been used in the production of classified information shall be destroyed in the manner prescribed for working papers of the same classification after initial usage. However, any ribbon in a typewriter that uses technology which enables the ribbon to be struck several times in the same area before it moves to the next position may be treated as unclassified.

(c) *End-of-Day Security Checks.* Heads of activities that process or store classified information shall establish a system of security checks at the close of each working day to ensure that the area is secure; Standard Form 701, "Activity Security Checklist" shall be used to record such checks. An integral part of the security check system shall be the securing of all vaults, secure rooms, and containers used for the storage of classified material; Standard Form 702, "Security Container Check Sheet" shall be used to record such actions. In addition, Standard Forms 701 and 702 shall be annotated to reflect after-hours, weekend, and holiday activity. (Use of these Standard Forms is required when existing supplies of similar purpose forms are exhausted or by September 30, 1986, whichever occurs earlier).

(d) *Emergency Planning.* (1) Plans shall be developed for the protection, removal, or destruction of classified material in case of fire, natural disaster, civil disturbance, terrorist activities, or enemy action. Such plans shall establish detailed procedures and responsibilities for the protection of classified material to ensure that the material does not come into the possession of unauthorized persons. These plans shall include the treatment of classified information located in foreign countries.

(2) These emergency planning procedures do not apply to material related to COMSEC. Planning for the emergency protection including emergency destruction under no-notice conditions of classified COMSEC material shall be developed in accordance with the requirements of NSA KAG I–D.

(3) Emergency plans shall provide for the protection of classified material in a manner that will minimize the risk of injury or loss of life to personnel. In the case of fire or natural disaster, the immediate placement of authorized personnel around the affected area, preinstructed and trained to prevent the removal of classified material by unauthorized personnel, is an acceptable means of protecting classified material and reducing casualty risk. Such plans shall provide for emergency destruction to preclude capture of classified material when determined to be required. This determination shall be based on an overall commonsense evaluation of the following factors:

(i) Level and sensitivity of classified material held by the activity;

(ii) Proximity of land-based commands to hostile or potentially hostile forces or to communist-controlled countries;

(iii) Flight schedules or ship deployments in the proximity of hostile or potentially hostile forces or near communist-controlled countries;

(iv) Size and armament of land-based commands and ships;

(v) Sensitivity of operational assignment; and

(vi) Potential for aggressive action of hostile forces.

(4) When preparing emergency destruction plans, consideration shall be given to the following:

(i) Reduction of the amount of classified material held by a command as the initial step toward planning for emergency destruction;

(ii) Storage of less frequently used classified material at more secure commands in the same geographical area (if available);

(iii) Transfer of as much retained classified material to microforms as possible, thereby reducing the bulk that needs to be evacuated or destroyed;

(iv) Emphasis on the priorities for destruction, designation of personnel responsible for destruction, and the designation of places and methods of destruction. Additionally, if any destruction site or any particular piece of destruction equipment is to be used by more than one activity or entity, the order or priority for use of the site or equipment must be clearly delineated;

(v) Identification of the individual who is authorized to make the final determination when emergency destruction is to begin and the means by which this determination is to be communicated to all subordinate elements maintaining classified information;

(vi) Authorization for the senior individual present in an assigned space containing classified material to deviate from established plans when circumstances warrant; and

(vii) Emphasis on the importance of beginning destruction sufficiently early to preclude loss of material. The effect of premature destruction is considered inconsequential when measured against the possibility of compromise.

(5) The emergency plan shall require that classified material holdings be assigned a priority for emergency evacuation or destruction. Priorities should be based upon the potential effect on national security should such holdings fall into hostile hands, in accordance with the following general guidelines:

(i) *Priority One.* Exceptionally grave damage (Top Secret material);

(ii) *Priority Two.* Serious damage (Secret material); and

(iii) *Priority Three.* Damage (Confidential material).

(6) If, as determined by appropriate threat analysis, Priority One material cannot otherwise be afforded a reasonable degree of protection from hostile elements in a no-notice emergency situation, provisions shall be made for installation of Anticompromise Emergency Destruct (ACED) equipment to ensure timely initiation and positive destruction of such material [a] in accordance with the following standard: "With due regard for personnel and structural safety, the ACED system shall reach a stage in destruction sequences at which positive destruction is irreversible within 60 minutes at shore installations, 30 minutes in ships, and 3 minutes in aircraft following activation of the ACED system." [b]

(7) An ACED requirement is presumed to exist and provisions shall be made for an ACED system to protect Priority One material in the following environments:

(i) Shore-based activities located in or within 50 miles of potentially hostile countries, or located within or adjacent to countries with unstable governments;

(ii) Reconnaissance aircraft, both manned and unmanned, that operate within JCS-designated reconnaissance reporting areas (see Memorandum by the Secretary, Joint Chiefs of Staff (SM) 701–76, Volume II, "Peacetime Reconnaissance and Certain Sensitive Operations"; [c]

(iii) Naval surface noncombatant vessels operating in hostile areas when not accompanied by a combatant vessel;

(iv) Naval subsurface vessels operating in hostile areas; and

(v) U.S. Navy Special Project ships (Military Sealift Command-operated) operating in hostile areas.

(8) Except in the most extraordinary circumstances, ACED is not applicable to commands and activities located within the United States. Should there be reason to believe that an ACED requirement exists in environments other than in those listed in paragraph (d)(7) of this section, a threat and vulnerability study should be prepared and submitted to the head of the DoD Component concerned or his designee for approval. The threat and vulnerability study should include, at a minimum, the following data, classified if appropriate:

(i) Volume and type of Priority One material held by the activity, that is, paper products, microforms, magnetic tape, and circuit boards.

(ii) A statement certifying that the amount of Priority One material held by the activity has been reduced to the lowest possible level;

(iii) An estimate of the time, beyond the time frames cited above, required to initiate irreversible destruction of Priority One material held by the activity, and the methods by which destruction of that material would be attempted in the absence of an ACED system;

(iv) Size and composition of the activity;

(v) Location of the activity and the degree of control it, or other United States authority, exercises over security; and

(vi) Proximity to potentially hostile forces and potential for aggressive action by such forces.

(9) When a requirement is believed to exist for ACED equipment not in the GSA or DoD inventories, the potential requirement shall be submitted to the DUSD(P) for validation in accordance with subsection V. B. of DoD Directive 3224.3 [19].

(10) In determining the method of destruction of other than Priority One material, any method specified for routine destruction or any other means that will ensure positive destruction of the material may be used. Ideally, any destruction method should provide for early attainment of a point at which the destruction process is irreversible. Additionally, classified material may be jettisoned at sea to prevent its easy capture. It should be recognized that such disposal may not prevent recovery of the material. Where none of the methods previously mentioned can be employed, the use of other means, such as dousing the classified material with a flammable liquid and igniting it, or putting to use the facility garbage grinders, sewage treatment plants, and boilers should be considered.

(11) Under emergency destruction conditions, destruction equipment may be operated at maximum capacity and without regard to pollution, preventive maintenance, and other constraints that might otherwise be observed.

(12) Commands and activities that are required to maintain an ACED system pursuant to paragraph (d)(7) of this section, shall conduct drills periodically to ensure that responsible personnel are familiar with the emergency plan. Such drills should be used to evaluate the anticipated effectiveness of the plan and the prescribed equipment and should be the basis for improvements in planning and equipment use. Actual destruction should not be initiated during drills.

(e) *Telecommunications Conversations.* Classified information shall not be discussed in telephone conversations except as authorized over approved secure communications circuits, that is, cryptographically protected circuits or protected distribution systems installed in accordance with National COMSEC Instruction 4009.

(f) *Security of Meetings and Conferences.* Security requirements and procedures governing disclosure of classified information at conferences, symposia, conventions, and similar meetings, and those governing the sponsorship and attendance of U.S. and foreign personnel at such meetings, are set forth in DoD Directive 5200.12[20], DoD Instruction 5230.20[21], DoD 5220.22–R, and DoD 5220.22–M.

(g) *Safeguarding of U.S. Classified Information Located in Foreign Countries.* Except for classified information that has been authorized for release to a foreign government or international organization pursuant to DoD Directive 5230.11[22], and is under the security control of such government or organization, the retention of U.S. classified material in foreign countries may be authorized only when that material is necessary to satisfy specific U.S. Government requirements. This includes classified material temporarily transferred into a foreign country via U.S. Government personnel authorized to escort or handcarry such material pursuant to § 159a.59, as applicable. Whether permanently or temporarily retained, the classified materials shall be stored under U.S. Government control as follows:

(1) At a U.S. military installation, or a location where the United States enjoys extraterritorial status, such as an embassy or consulate.

(2) At a U.S. Government activity located in a building used exclusively by U.S. Government tenants, provided the building is under 24-hour control by U.S. Government personnel.

(3) At a U.S. Government activity located in a building not used exclusively by U.S. Government tenants nor under host government control, provided the classified material is stored in security containers approved by the GSA and is placed under 24-hour control by U.S. Government personnel.

(4) At a U.S. Government activity located in a building not used exclusively by U.S. Government tenants but which is under host government control, provided the classified material is stored in GSA-approved security containers which are further secured in

[a] Technological limitations, particularly as to personnel and structural safety, place constraints on the amount of material that can be accommodated in buildings, ships, and aircraft by current ACED systems; therefore, only Priority One material reasonably can be so protected at this time. Nevertheless, after processing Priority One material in an emergency situation involving possible loss to hostile forces, it is imperative that Priority Two material and then Priority Three material be destroyed insofar as is possible by whatever means available.

Continued

[b] The time frames indicated above are those for the initiation of irreversible destruction, not necessarily for the completion of such destruction.

[c] SM 701–76 is available on a strict need-to-know basis from the Chief, Documents Division, Joint Secretariat, OJCS.

[19] See footnote 1 to § 159a.3.

[d] Information on ACED systems may be obtained from the Office of the Chief of Naval Operations (OP–09N), Navy Department, Washington, DC 20350.

[20] See footnote 1 to § 159a.3.

[21] See footnote 1 to § 159a.3.

[22] See footnote 1 to § 159a.3.

a locked room or area to which only U.S. personnel have access.

(5) When host government and U.S. personnel are co-located, U.S. classified material that has not been authorized for release to the host government pursuant to DoD Directive 5230.11, shall, to the extent possible, be segregated from releasable classified material to facilitate physical control and prevent inadvertent compromise. However, U.S. classified material that is releasable to the host country need not be subject to the 24-hour U.S. control requirement provided the host government exercises its own control measures over the pertinent areas or containers during non-duty hours.

(6) Foreign nationals shall be escorted while in areas where nonreleasable U.S. classified material is handled or stored. However, when required by operational necessity, foreign nationals may be permitted, during duty hours, unescorted entry to such areas provided the nonreleasable information is properly stored or is under the direct personal supervision and control of cleared U.S. personnel who can prevent unauthorized access.

§ 159a.39 Activity entry and exit inspection program.

(a) *Policy.* (1) Commanders and heads of activities shall establish and maintain an inspection program to deter and detect unauthorized introduction or removal of classified material from DoD owned or leased installations and facilities. This program does not replace existing programs for facility and installation security and law enforcement inspection requirements.

(2) The inspection program shall be implemented in a manner which does not interfere unduly with the performance of assigned missions.

(3) The inspection program shall be implemented in a manner which does not significantly disrupt the ingress and egress of persons who are employees of, or visitors to, defense installations and facilities.

(4) Inspections carried out under this program shall be limited to the extent feasible to areas where classified work is being performed, and cover only persons employed within, or visiting, such areas.

(5) Inspections carried out under this program shall be performed at a sufficient frequency to provide a credible deterrent to those who would be inclined to remove classified materials without authority from the installation or facility in question.

(6) The method and frequency of such inspections at a given installation or facility is at the discretion of the commander or head of the installation or facility, or other designated official. Such inspections shall conform to the procedures set forth in the following:

(i) *Inspection Frequency.* (A) Inspections may be aperiodic, that is, at irregular intervals.

(B) Inspections may be accomplished at one or more designated entry/exit points; they need not be carried out at all entry/exit points at the same time.

(C) Inspections may be done on a random basis using any standard which may be appropriate, for example, every third person; every tenth person; every hundredth person, at the entry/exit point(s) designated.

(D) Inspections at a particular entry/exit point(s) may be limited as appropriate to various periods of time, for example, one week, one day, or one hour.

(E) Inspections shall be conducted at all entry/exit points after normal duty hours, including weekends and holidays, on a continuous basis, if practicable.

(b) *Inspection Procedures and Identification.* (1) Inspections shall be limited to that which is necessary to determine whether classified material is contained in briefcases, shoulder or handbags, luggage, athletic bags, packages, or other similar containers being removed from or taken into the premises. Inspections shall not be done of wallets, change purses, clothing, cosmetic cases, or other objects of an unusually personal nature.

(2) DoD Components shall provide employees who have a legitimate need to remove classified material from the installation or activity with written or printed authorizations to pass through designated entry/exit points. (See § 159a.59(f)) This may include:

(i) The authorization statements prescribed in § 159a.59.

(ii) If authorized in Component instructions, wallet-size cards which describe in general terms the purpose(s) for authorizing the employee to remove classified material from the facility (for example, use at meetings or transmission to authorized recipients).

(3) Inspectors are to ensure that personnel are not removing classified material without authorization. Where inspectors determine that individuals do not appear to have appropriate authorization to remove classified material, they shall request such individual to obtain appropriate authorization before exiting the premises. If, due to the circumstances, this is not feasible, the inspector should attempt to verify by telephone the authority of the individual in question to remove the classified material with the employing office. When such verification cannot be obtained, and if removal cannot be prevented, the inspector shall advise the employing office and appropriate security office as soon as feasible that classified material was removed by the named individual at a particular time and without apparent authorization.

(4) If the employing office determines that classified material was removed by one of its employees without authority, it shall request an investigation of the circumstances of the removal by appropriate investigative authorities. Where such investigation confirms a violation of security procedures, other than espionage or deliberate compromise, for which § 159a.50 applies, appropriate administrative, disciplinary, or legal action shall be taken.

Subpart G—Compromise of Classified Information

§ 159a.41 Policy.

Compromise of classified information presents a threat to the national security. Once a compromise is known to have occurred, the seriousness of damage to U.S. interests must be determined and appropriate measures taken to negate or minimize the adverse effect of such compromise. When possible, action also should be taken to regain custody of the documents or material that were compromised. In all cases, however, appropriate action must be taken to identify the source and reason for the compromise and remedial action taken to ensure further compromises do not occur. The provisions of DoD Instruction 5240.4 [23] and DoD Directive 5210.50 [24] apply to compromises covered by this subpart.

§ 159a.42 Cryptographic and sensitive compartmented information.

(a) The procedures for handling compromises of cryptographic information are set forth in NACSI 4006 and implementing instructions.

(b) The procedures for handling compromises of SCI information are set forth in DoD TS–5105.21–M–2 [25] and DoD C–5105.21–M–1 [26].

§ 159a.43 Responsibility of discoverer.

(a) Any person who has knowledge of the loss or possible compromise of classified information shall immediately report such fact to the security manager of the person's activity (see § 159a.93(e)) or to the commanding officer or head of the activity in the security manager's absence.

(b) Any person who discovers classified information out of proper control shall take custody of such information and safeguard it in an appropriate manner, and shall notify immediately an appropriate security authority.

§ 159a.44 Preliminary inquiry.

The immediate commander, supervisor, security manager, or other authority shall initiate a preliminary inquiry to determine the circumstances surrounding the loss or possible compromise of classified information. The preliminary inquiry shall establish one of the following:

(a) That a loss or compromise of classified information did not occur;

(b) That a loss or compromise of classified information did occur but the compromise reasonably could not be expected to cause damage to the national security. If, in such instances, the official finds no indication of significant security weakness, the report of preliminary inquiry will be sufficient to resolve the incident and, when appropriate, support the administrative sanctions under § 159a.98; or

(c) That the loss or compromise of classified information did occur and that the compromise reasonably could be expected to cause damage to the national security or that the probability of damage to the national security cannot be discounted. Upon this determination, the responsible official shall:

(1) Report the circumstances of the compromise to an appropriate authority as specified in DoD Component instructions;

(2) If the responsible official is the originator, take the action prescribed in § 159a.47; and

(3) If the responsible official is not the originator, notify the originator of the known details of the compromise, including identification of the classified information. If the originator is unknown, notification will be sent to the office specified in DoD Component instructions.

§ 159a.45 Investigation.

If it is determined that further investigation is warranted, such investigation will include the following:

(a) Identification of the source, date, and circumstances of the compromise.

(b) Complete description and classification of each item of classified information compromised;

(c) A thorough search for the classified information;

(d) Identification of any person or procedure responsible for the compromise. Any person so identified shall be apprised of the nature and circumstances of the compromise and be provided an opportunity to reply to the violation charged. If such person does not choose to make a statement, this fact shall be included in the report of investigation;

(e) An analysis and statement of the known or probable damage to the national security that has resulted or may result (See § 159a.15(k)), and the cause of the loss or compromise; or a statement that compromise did not occur or that there is minimal risk of damage to the national security;

(f) An assessment of the possible advantage to foreign powers resulting from the compromise; and

(g) A compilation of the data in paragraphs (a) through (f) of this section, in a report to the authority ordering the investigation to include an assessment of appropriate corrective, administrative, disciplinary, or legal actions. (Also see § 159a.100).

§ 159a.46 Responsibility of authority ordering investigation.

(a) The report of investigation shall be reviewed to ensure compliance with this part and instructions issued by DoD Components.

(b) The recommendations contained in the report of investigation shall be reviewed to determine sufficiency of remedial, administrative, disciplinary, or legal action proposed and, if adequate, the report of investigation shall be forwarded with recommendations through supervisory channels (See § 159a.98 and § 159a.99).

(c) Whenever an action is contemplated against any person believed responsible for the compromise of classified information, damage assessments shall be coordinated with the legal counsel of the DoD Component where the individual responsible is assigned or employed. Whenever a violation of criminal law appears to have occurred and a criminal prosecution is contemplated, the DoD Component responsible for the damage assessment shall apprise the General Counsel, Department of Defense. See § 159a.101.

§ 159a.47 Responsibility of originator.

The originator or an official higher in the originator's supervisory chain shall, upon receipt of notification of loss or probable compromise of classified information, take action as prescribed in § 159a.15(k).

§ 159a.48 System of control of damage assessments.

Each DoD Component shall establish a system of controls and internal procedures to ensure that damage assessments are conducted when required and that records are maintained in a manner that facilitates their retrieval and use within the Component.

§ 159a.49 Compromises involving more than one agency.

(a) Whenever a compromise involves the classified information or interests of more than one DoD Component or other agency, each such activity undertaking a damage assessment shall advise the others of the circumstances and findings that affect their information and interests. Whenever a damage assessment incorporating the product of two or more DoD Components or other agencies is needed, the affected activities shall agree upon the assignment of responsibility for the assessment.

(b) Whenever a compromise of U.S. classified information is the result of actions taken by foreign nationals, by foreign government officials, or by U.S. nationals employed by international organizations, the activity performing the damage assessment shall ensure, through appropriate intergovernmental liaison channels, that information pertinent to the assessment is obtained. Whenever more than one activity is responsible for the assessment, those activities shall coordinate the request prior to transmittal through appropriate channels.

§ 159a.50 Espionage and deliberate compromise.

Cases of espionage and deliberate unauthorized disclosure of classified information to the public shall be reported in accordance with DoD Instruction 5240.4 and DoD Directive 5210.50 and implementing issuances.

§ 159a.51 Unauthorized absentees.

When an individual who has had access to classified information is on unauthorized absence, an inquiry as appropriate under the circumstances, to include consideration of the length of absence and the degree of sensitivity of the classified information involved, shall be conducted to detect if there are any indications of activities, behavior, or associations that may be inimical to the interest of national security. When such indications are detected, a report shall be made to the DoD Component counterintelligence organization.

[23] See footnote 1 to § 159a.3.
[24] See footnote 1 to § 159a.3.
[25] See footnote 13 to § 159a.33(j).
[26] See footnote 13 to § 159a.33(j).

Subpart H—Access, Dissemination, and Accountability

§ 159a.53 Access.

(a) *Policy.* (1) Except as otherwise provided for in paragraph (c) of this section, no person may have access to classified information unless that person has been determined to be trustworthy and unless access is essential to the accomplishment of lawful and authorized Government purposes, that is, the person has the appropriate security clearance and a need-to-know. Further, cleared personnel may not have access until they have been given an initial security briefing (see § 159a.70). Procedures shall be established by the head of each DoD Component to prevent unnecessary access to classified information. There shall be a demonstrable need for access to classified information before a request for a personnel security clearance can be initiated. The number of people cleared and granted access to classified information shall be maintained at the minimum number that is consistent with operational requirements and needs. No one has a right to have access to classified information solely by virtue of rank or position. The final responsibility for determining whether an individual's official duties require possession of or access to any element or item of classified information, and whether the individual has been granted the appropriate security clearance by proper authority, rests upon the individual who has authorized possession, knowledge, or control of the information and not upon the prospective recipient. These principles are equally applicable if the prospective recipient is a DoD Component, including commands and activities, other Federal agencies, DoD contractors, foreign governments, and others.

(2) Because of the extreme importance to the national security of Top Secret information and information controlled within approved Special Access Programs, employees shall not be permitted to work alone in areas where such information is in use or stored and accessible by those employees. This general policy is an extra safeguarding measure for the nation's most vital classified information and it is not intended to cast doubt on the integrity of DoD employees. The policy does not apply in those situations where one employee with access is left alone for brief periods during normal duty hours. When compelling operational requirements indicate the need, DoD Component heads may waive this requirement in specific, limited cases. This waiver authority may be delegated to the senior official (§ 159a.93 (b) and (c)) of the DoD Component who may redelegate the authority but only if so authorized by the head of the DoD Component. (Any waiver should include provisions for periodically ensuring the health and welfare of individuals left alone in vaults or secure areas).

(b) *Access by Persons Outside the Executive Branch.* Classified information may be made available to individuals or agencies outside the Executive Branch provided that such information is necessary for performance of a function from which the Government will derive a benefit or advantage, and that such release is not prohibited by the originating department or agency. Heads of DoD Components shall designate appropriate officials to determine, before the release of classified information, the propriety of such action in the interest of national security and assurance of the recipient's trustworthiness and need-to-know.

(1) *Congress.* Access to classified information or material by Congress, its committees, members, and staff representatives shall be in accordance with DoD Directive 5400.4 [27]. Any DoD employee testifying before a congressional committee in executive session in relation to a classified matter shall obtain the assurance of the committee that individuals present have a security clearance commensurate with the highest classification of the information that may be discussed. Members of Congress, by virtue of their elected positions, are not investigated or cleared by the Department of Defense.

(2) *Government Printing Office (GPO).* Documents and material of all classifications may be processed by the GPO, which protects the information in accordance with the DoD/GPO Security Agreement of February 20, 1961.

(3) *Representatives of the General Accounting Office (GAO).* Representatives of the GAO may be granted access to classified information originated by and in possession of the Department of Defense when such information is relevant to the performance of the statutory responsibilities of that office, as set forth in DoD Directive 7650.2 [28]. Officials of the GAO, as designated in Appendix B to this part, are authorized to certify security clearances, and the basis therefor. Certifications will be made by these officials pursuant to arrangements with the DoD Component concerned. Personal recognition or presentation of official GAO credential cards are acceptable for identification purposes.

(4) *Industrial, Educational, and Commercial Entities.* (i) Bidders, contractors, grantees, educational, scientific or industrial organizations may have access to classified information only when such access is essential to a function that is necessary in the interest of the national security, and the recipients are cleared in accordance with DoD 5220.22–R.

(ii) Contractor employees whose duties do not require access to classified information are not eligible for personnel security clearance and cannot be investigated under the DISP. In exceptional situations, when a military command is vulnerable to sabotage and its mission is of critical importance to national security, National Agency Checks may be conducted on such individuals with the approval of the DUSD(P).

(5) *Historical Researchers.* Persons outside the Executive Branch who are engaged in historical research projects may be authorized access to classified information provided that an authorized official within the DoD Component with classification jurisdiction over the information:

(i) Makes a written determination that such access is clearly consistent with the interests of national security in view of the intended use of the material to which access is granted by certifying that the requester has been found to be trustworthy pursuant to paragraph (a)(1) of this section;

(ii) Limits such access to specific categories of information over which that DoD Component has classification jurisdiction and to any other category of information for which the researcher obtains the written consent of a DoD Component or non-DoD department or agency that has classification jurisdiction over information contained in or revealed by documents within the scope of the proposed historical research;

(iii) Maintains custody of the classified material at a DoD installation or activity or authorizes access to documents in the custody of the NARA;

(iv) Obtains the researcher's agreement to safeguard the information and to submit any notes and manuscript for review by all DoD Components or non-DoD departments or agencies with classification jurisdiction for a determination that no classified information is contained therein by execution of a statement entitled, "Conditions Governing Access to Official Records for Historical Research Purposes"; and

[27] See footnote 1 to § 159a.3.

[28] See footnote 1 to § 159a.3.

(v) Issues an authorization for access valid for not more than 2 years from the date of issuance that may be renewed under regulations of the issuing DoD Component.

(6) *Former Presidential Appointees.* Persons who previously occupied policy making positions to which they were appointed by the President may not remove classified information upon departure from office as all such material must remain under the security control of the U.S. Government. Such persons may be authorized access to classified information that they originated, received, reviewed, signed, or that was addressed to them while serving as such an appointee, provided that an authorized official within the DoD Component with classification jurisdiction for such information:

(i) Makes a written determination that such access is clearly consistent with the interests of national security in view of the intended use of the material to which access is granted and by certifying that the requester has been found to be trustworthy pursuant to paragraph (a)(1) of this section;

(ii) Limits such access to specific categories of information over which that DoD Component has classification jurisdiction and to any other category of information for which the former appointee obtains the written consent of a DoD Component or non-DoD department or agency that has classification jurisdiction over information contained in or revealed by documents with the scope of the proposed access;

(iii) Retains custody of the classified material at a DoD installation or activity or authorizes access to documents in the custody of the National Archives and Records Service; and

(iv) Obtains the former presidential appointee's agreement to safeguard the information and to submit any notes and manuscript for review by all DoD Components or non-DoD departments or agencies with classification jurisdiction for a determination that no classified information is contained therein.

(7) *Judicial Proceedings.* DoD Directive 5405.2 [29] governs the release of classified information in litigation.

(c) *Access by Foreign Nationals, Foreign Governments, and International Organizations.* (1) Classified information may be released to foreign nationals, foreign governments, and international organizations only when authorized under the provisions of the National Disclosure Policy and DoD Directive 5230.11; and

(2) Access to COMSEC information by foreign persons and activities shall be in accordance with policy issuances of the National Telecommunications and Information Systems Security Committee (NTISSC).

(d) *Other Situations.* When necessary in the interests of national security, heads of DoD Components, or their single designee, may authorize access by persons outside the federal government, other than those enumerated in paragraphs (b) and (c) of this section, to classified information upon determining that the recipient is trustworthy for the purpose of accomplishing a national security objective; and that the recipient can and will safeguard the information from unauthorized disclosure.

(e) *Access Required by Other Executive Branch Investigative and Law Enforcement Agents.* (1) Normally, investigative agents of other departments or agencies may obtain access to DoD information through established liaison or investigative channels.

(2) When the urgency or delicacy of a Federal Bureau of Investigation (FBI), Drug Enforcement Administration (DEA), or Secret Service investigation precludes use of established liaison or investigative channels, FBI, DEA, or Secret Service agents may obtain access to DoD information as required. However, this information shall be protected as required by its classification. Before any public release of the information so obtained the approval of the head of the activity or higher authority shall be obtained.

(f) *Access by Visitors.* Procedures shall be established to control access to classified information by visitors. (DoD Instruction 5230.20 provides further guidance regarding foreign visitors.)

(1) Except when a continuing, frequent working relationship is established, through which current security clearance and need-to-know are determined, DoD personnel visiting other activities of the Department of Defense, its contractors, and other agencies shall provide advance notification of the pending visit that establishes the visitor's security clearance and the purpose of the visit. Visit requests shall be signed by an official other than the visitor who is in a position to verify the visitor's security clearance.

(2) Visit requests normally should include the following:

(i) Full name, date and place of birth, social security number, and rank or grade of visitor;

(ii) Security clearance of the visitor;

(iii) Employing activity of the visitor;

(iv) Name and address of activity to be visited;

(v) Date and duration of proposed visit;

(iv) Purpose of visit in sufficient detail to establish need-to-know; and

(vii) Names of persons to be contacted.

(3) Visit requests may remain valid for not more than 1 year.

§ 159a.54 Dissemination.

(a) *Policy.* DoD Components shall establish procedures consistent with this Regulation for the dissemination of classified material. The originating official or activity may prescribe specific restrictions on dissemination of classified information when necessary. (See § 159a.35(f). Particular emphasis shall be placed on traditional need-to-know measures to aid in the strict control of classified information.)

(b) *Restraints on Special Access Requirements.* Special requirements with respect to access, distribution, and protection of classified information shall require prior approval in accordance with Subpart M of this part.

(c) *Information Originating in a Non-DoD Department or Agency.* Except under rules established by the Secretary of Defense, or as provided by Section 102 of the National Security Act, classified information originating in a department or agency other than Department of Defense shall not be disseminated outside the Department of Defense without the consent of the originating department or agency.

(d) *Foreign Intelligence Information.* Dissemination of foreign intelligence information shall be in accordance with the provisions of DoD Instruction 5230.22 and DoD Directive C–5230.23 [30].

(e) *Restricted Data and Formerly Restricted Data.* Information bearing the warning notices prescribed in § 159a.35 (b) and (c) shall not be disseminated outside authorized channels without the consent of the originator. Access to and dissemination of Restricted Data by DoD personnel shall be subject to DoD Directive 5210.2.

(f) *NATO Information.* Classified information originated by NATO shall be safeguarded in accordance with DoD Directive 5100.55.

(g) *COMSEC Information.* COMSEC information shall be disseminated in accordance with NACSI 4005 and implementing instructions.

(h) *Dissemination of Top Secret Information.* (1) Top Secret information, originated within the Department of Defense, may not be disseminated

[29] See footnote 1 to § 159a.3.

[30] See footnote 13 to § 159a.33(j).

outside the Department of Defense without the consent of the originating DoD Component, or higher authority.

(2) Top Secret information, whenever segregable from classified portions bearing lower classifications, shall be distributed separately.

(3) Standing distribution requirements for Top Secret information and materials, such as distribution lists, shall be reviewed at least annually to verify the recipients' need-to-know.

(i) *Dissemination of Secret and Confidential Information.* (1) Secret and Confidential information, originated within the Department of Defense, may be disseminated within the Executive Branch, unless prohibited by the originator. (See § 159a.35(f)).

(2) Standing distribution requirements for Secret and Confidential information and materials, such as distribution lists, shall be reviewed at least annually to verify the recipients' need-to-know.

(j) *Code Words, Nicknames, and Exercise Terms.* The use of code words, nicknames, and exercise terms is subject to the provisions of Subpart M and Appendix C.

(k) *Scientific and Technical Meetings.* Use of classified information in scientific and technical meetings is subject to the provisions of DoD Directive 5200.12.

(l) *Limited Dissemination (LIMDIS).* This section establishes limits on measures for the protection of information beyond those involving access to classified information per se, but not so stringent as to require the establishment of a Special Access Program. It prohibits use of terminology indicating enhancements to need-to-know, such as Special Need-to-Know (SNTK), MUST KNOW, Controlled Need-to-Know (CNTK), or other similar security upgrade designations and associated unique security requirements such as specialized nondisclosure statements. Limited dissemination controls are the only security enhancement short of a Special Access Program which may be employed for control over specific information for specified periods of time. In this context, these procedures may be initiated and continued on a showing that additional access controls are required in order to assure the security of the designated information. The decision to apply these procedures shall be made at the original classification authority level of command or supervision in accordance with the implementing information security instructions promulgated by the DoD Component. Except by agreement, such requirements shall not be imposed outside of the approving DoD Component. LIMDIS protective measures are restricted to one or more of the following:

(1) Decentralized maintenance of disclosure listings, briefings concerning access limitations, and physical security restrictions limited to requirements such as placing the material in sealed envelopes within approved storage containers to avoid inadvertent disclosure and the commingling with other files;

(2) Using unclassified nicknames (no code words may be assigned to LIMDIS information);

(3) Marking the material as LIMDIS along with the assigned nickname;

(4) Marking inner envelopes containing designated LIMDIS information with the notation: "To be Opened Only By Personnel Authorized Access";

(5) Requiring electronically transmitted messages containing designated information to be marked with the uniform caveat LIMDIS; and

(6) Prescribing unique oversight procedures to be accomplished by Component professional security personnel (industrial security inspections will be conducted in the normal manner by the Defense Investigative Service).

§ 159a.55 Accountability and control.

(a) *Top Secret Information.* DoD activities shall establish the following procedures:

(1) *Control Officers.* Top Secret Control Officers (TSCOs) and alternates shall be designated within offices to be responsible for receiving, dispatching, and maintaining accountability registers of Top Secret documents. Such individuals shall be selected on the basis of experience and reliability, and shall have Top Secret security clearances. TSCOs need not be appointed in those instances where there is no likelihood of processing Top Secret documentation.

(2) *Accountability.*—(i) *Top Secret Registers.* Top Secret accountability registers shall be maintained by each office originating or receiving Top Secret information. Such registers shall be retained for 2 years and shall, as a minimum, reflect the following:

(A) Sufficient information to identify adequately the Top Secret document or material to include the title or appropriate short title, date of the document, and identification of the originator;

(B) The date the document or material was received;

(C) The number of copies received or later reproduced; and

(D) The disposition of the Top Secret document or material and all copies of such documents or material.

(ii) *Serialization and Copy Numbering.* Top Secret documents and material shall be numbered serially. In addition, each Top Secret document shall be marked to indicate its copy number, for example, copy –1– of –2– copies.

(iii) *Disclosure Records.* Each Top Secret document or item of material shall have appended to it a Top Secret disclosure record. The name and title of all individuals, including stenographic and clerical personnel to whom information in such documents and materials has been disclosed, and the date of such disclosure, shall be recorded thereon. Disclosures to individuals who may have had access to containers in which Top Secret information is stored, or who regularly handle a large volume of such information need not be so recorded. Such individuals, when identified on a roster, are deemed to have had access to such information. Disclosure records shall be retained for 2 years after the documents or materials are transferred, downgraded, or destroyed.

(3) *Inventories.* All Top Secret documents and material shall be inventoried at least once annually. The inventory shall reconcile the Top Secret accountability register with the documents or material on hand. At such time, each document or material shall be examined for completeness. DoD Component senior officials (§ 159a.93 (b) and (c)) may authorize the annual inventory of Top Secret documents and material in repositories, libraries, or activities that store large volumes of Top Secret documents or material to be limited to documents and material to which access has been granted within the past year, and 10 percent of the remaining inventory. If a storage system contains large volumes of information and security measures are adequate to prevent access by unauthorized persons, a request for waiver of the annual inventory requirement accompanied by full justification may be submitted to the DUSD(P).

(4) *Retention.* Top Secret information shall be retained only to the extent necessary to satisfy current requirements. Custodians shall destroy nonrecord copies of Top Secret documents when no longer needed. Record copies of documents that cannot be destroyed shall be reevaluated and, when appropriate, downgraded, declassified, or retired to designated records centers.

(5) *Receipts.* Top Secret documents and material will be accounted for by a continuous chain of receipts. Receipts shall be maintained for 2 years.

(b) *Secret Information.* Administrative procedures shall be established by each DoD Component for controlling Secret information and material originated or received by an activity; distributed or routed to a sub-element of such activity; and disposed of by the activity by transfer of custody or destruction. The control system for Secret information must be determined by a practical balance of security and operating efficiency and must meet the following minimum requirements:

(1) It must provide a means to ensure that Secret material sent outside a major subordinate element (the activity) of the DoD Component concerned has been delivered to the intended recipient. Such delivery may be presumed where the material is sent electronically over secure voice or data circuits. Ensuring physical delivery may be accomplished by use of a receipt as provided in § 159.58(c)(2) or through hand-to-hand transfer when the receiving party acknowledges responsibility for the Secret material.

(2) It must provide a record of receipt and dispatch of Secret material by each major subordinate element. The dispatch record requirement may be satisfied when the distribution of Secret material is evident from addresses or distribution lists for classified documentation. Records of receipt and dispatch are required regardless of the means used to ensure delivery of the material (see paragraph (b)(1) of this section).

(3) Records of receipt and dispatch for Secret material shall be retained for a minimum of 2 years.

(c) *Confidential Information.* Administrative controls shall be established to protect Confidential information received, originated, transmitted, or stored by an activity.

(d) *Receipt of Classified Material.* Procedures shall be developed within DoD activities to protect incoming mail, bulk shipments, and items delivered by messenger until a determination is made whether classified information is contained therein. Screening points shall be established to limit access to classified information to cleared personnel.

(e) *Working Papers.* (1) Working papers are documents and material accumulated or created in the preparation of finished documents and material. Working papers containing classified information shall be:

(i) Dated when created;

(ii) Marked with the highest classification of any information contained therein;

(iii) Protected in accordance with the assigned classification;

(iv) Destroyed when no longer needed; and

(v) Accounted for, controlled, and marked in the manner prescribed for a finished document of the same classification when:

(A) Released by the originator outside the activity or transmitted electrically or through message center channels within the activity;

(B) Retained more than 90 days from date of origin;

(C) Filed permanently; or

(D) Top Secret information is contained therein.

(2) Heads of DoD Components, or their single designees, may approve waivers of accountability, control, and marking requirements for working papers containing Top Secret information for activities within their Components on a case-by-case basis provided a determination is made that:

(i) The conditions set forth in paragraph (e)(1)(v) (A), (B), or (C) of this section, will remain in effect;

(ii) The activity seeking a waiver routinely handles large volumes of Top Secret working papers and compliance with prescribed accountability, control, and marking requirements would have an adverse affect on the activity's mission or operations; and

(iii) Access to areas where Top Secret working papers are handled is restricted to personnel who have an appropriate level of clearance, and other safeguarding measures are adequate to preclude the possibility of unauthorized disclosure.

(3) In all cases in which a waiver is granted under paragraph (e)(2) of this section, the DUSD(P) shall be notified.

(f) *Restraint on Reproduction.* Except for the controlled initial distribution of information processed or received electrically or as provided by § 159a.2(f) and § 159a.29(c), portions of documents and materials that contain Top Secret information shall not be reproduced without the consent of the originator or higher authority. Any stated prohibition against reproduction shall be observed strictly. (See § 159a.35(f)) To the extent possible, DoD Components shall establish classified reproduction facilities where only designated personnel can reproduce classified materials and institute key control systems for reproduction areas. Also, when possible, two people shall be involved in the reproduction process to help assure positive control and safeguarding of all copies. The following additional measures apply to reproduction equipment and to the reproduction of classified information:

(1) Copying of documents containing classified information shall be minimized;

(2) Officials authorized to approve the reproduction of Top Secret and Secret information shall be designated by position title and shall review the need for reproduction of classified documents and material with a view toward minimizing reproduction.

(3) Specific reproduction equipment shall be designated for the reproduction of classified information. Rules for reproduction of classified information shall be posted on or near the designated equipment;

(4) Notices prohibiting reproduction of classified information shall be posted on equipment used only for the reproduction of unclassified information;

(5) DoD Components shall ensure that equipment used for reproduction of classified information does not leave latent images in the equipment or on other material;

(6) All copies of classified documents reproduced for any purpose including those incorporated in a working paper are subject to the same controls prescribed for the document from which the reproduction is made; and

(7) Records shall be maintained for 2 years to show the number and distribution of reproduced copies of all Top Secret documents, of all classified documents covered by special access programs distributed outside the originating agency, and of all Secret and Confidential documents that are marked with special dissemination and reproduction limitations.

(See § 159a.35(f))

Subpart I—Transmission

§ 159a.57 Methods of transmission or transportation.

(a) *Policy.* Classified information may be transmitted or transported only as specified in this subpart.

(b) *Top Secret Information.* Transmission of Top Secret information shall be effected only by:

(1) The Armed Forces Courier Service (ARFCOS);

(2) Authorized DoD Component Courier Services,

(3) If appropriate, the Department of State Courier System;

(4) Cleared and designated U.S. military personnel and Government civilian employees traveling on a conveyance owned, controlled, or

chartered by the U.S. Government or DoD contractors;

(5) Cleared and designated U.S. Military personnel and government civilian employees by surface transportation;

(6) Cleared and designated U.S. Military personnel and government civilian employees on scheduled commercial passenger aircraft within and between the United States, its Territories, and Canada, when approved in accordance with § 159a.59(d)(1).

(7) Cleared and designated U.S. Military personnel and government civilian employees on scheduled commercial passenger aircraft on flights outside the United States, its territories, and Canada, when approved in accordance with § 159a.59(d)(2).

(8) Cleared and designated DoD contractor employees within and between the United States and its Territories provided that the transmission has been authorized in writing by the appropriate contracting officer or his designated representative, and the designated employees have been briefed on their responsibilities as couriers or escorts for the protection of Top Secret material. Complete guidance for Top Secret transmission is specified in DoD 5220.22-R and DoD 5220.22-M.

(9) A cryptographic system authorized by the Director, NSA, or via a protected distribution system designed and installed to meet the standards included in the National COMSEC and Emanations Security (EMSEC) Issuance System.

(c) *Secret Information.* Transmission of Secret information may be effected by:

(1) Any of the means approved for the transmission of Top Secret information except that Secret information may be introduced into the ARFCOS only when the control of such information cannot be otherwise maintained in U.S. custody. This restriction does not apply to SCI and COMSEC information;

(2) Appropriately cleared contractor employees within and between the United States and its Territories provided that:

(i) The designated employees have been briefed in their responsibilities as couriers or escorts for protecting Secret information;

(ii) The classified information remains under the constant custody and protection of the contractor personnel at all times; and

(iii) The transmission otherwise meets the requirements specified in DoD 5220.22-R and DoD 5220.22-M. In other areas, appropriately cleared DoD contractor employees may transmit classified material only as prescribed by DoD 5220.22-R and DoD 5220.22-M.

(3) U.S. Postal Service registered mail within and between the United States and its Territories;

(4) U.S. Postal Service registered mail through Army, Navy, or Air Force Postal Service facilities outside the United States and its Territories, provided that the information does not at any time pass out of U.S. citizen control and does not pass through a foreign postal system or any foreign inspection;

(5) U.S. Postal Service and Canadian registered mail with registered mail receipt between U.S. Government and Canadian Government installations in the United States and Canada;

(6) Carriers authorized to transport Secret information by way of a Protective Security Service (PSS) under the DoD Industrial Security Program. This method is authorized only within the U.S. boundaries and only when the size, bulk, weight, and nature of the shipment, or escort considerations make the use of other methods impractical. Routings for these shipments will be obtained from the Military Traffic Management Command (MTMC);

(7) The following carriers under appropriate escort: government and government contract vehicles including aircraft, ships of the U.S. Navy, civil service-operated U.S. Naval ships, and ships of U.S. registry. Appropriately cleared operators of vehicles, officers of ships or pilots of aircraft who are U.S. citizens may be designated as escorts provided the control of the carrier is maintained on a 24-hour basis. The escort shall protect the shipment at all times, through personal observation or authorized storage to prevent inspection, tampering, pilferage, or unauthorized access. However, observation of the shipment is not required during the period it is stored in an aircraft or ship in connection with flight or sea transit, provided the shipment is loaded into a compartment that is not accessible to any unauthorized persons or in a specialized secure, safe-like container that is:

(i) Constructed of solid building material that provides a substantial resistance to forced entry;

(ii) Constructed in a manner that precludes surreptitious entry through disassembly or other means, and that attempts at surreptitious entry would be readily discernible through physical evidence of tampering; and

(iii) Secured by a numbered cable seal lock affixed to a substantial metal hasp in a manner that precludes surreptitious removal and provides substantial resistance to forced entry.

(8) Use of specialized containers aboard aircraft requires that:

(i) Appropriately cleared personnel maintain observation of the material as it is being loaded aboard the aircraft and that observation of the aircraft continues until it is airborne;

(ii) Observation by appropriately cleared personnel is maintained at the destination as the material is being off-loaded and at any intermediate stops. Observation will be continuous until custody of the material is assumed by appropriately cleared personnel.

(c) *Confidential Information.* Transmission of Confidential information may be effected by:

(1) Means approved for the transmission of Secret information. However, U.S. Postal Service registered mail shall be used for Confidential only as indicated in paragraph (c)(2) of this section;

(2) U.S. Postal Service registered mail for:

(i) Confidential information of NATO;

(ii) Other Confidential material to and from FPO or APO addressees located outside the United States and its Territories;

(iii) Other addressees when the originator is uncertain that their location is within U.S. boundaries. Use of return postal receipts on a case-by-case basis is authorized.

(3) U.S. Postal Service first class mail between DoD Component locations anywhere in the United States and its Territories. However, the outer envelope or wrappers of such Confidential material shall be endorsed "POSTMASTER: Address Correction Requested/Do Not Forward." Certified or, if appropriate, registered mail shall be used for material directed to DoD contractors and to non-DoD agencies of the Executive Branch. U.S. Postal Service Express Mail Service may be used between DoD Component locations, between DoD contractors, and between DoD Components and DoD contractors.

(4) Within U.S. boundaries, commercial carriers that provide a Constant Surveillance Service (CSS). Information concerning commercial carriers that provide CSS may be obtained from the MTMC.

(5) In the custody of commanders or masters of ships of U.S. registry who are U.S. citizens. Confidential information shipped on ships of U.S. registry may not pass out of U.S. Government control. The commanders or masters must give and receive classified information receipts and agree to:

(i) Deny access to the Confidential material by unauthorized persons, including customs inspections, with the understanding that Confidential cargo that would be subject to customs inspection will not be unloaded; and

(ii) Maintain control of the cargo until a receipt is obtained from an authorized representative of the consignee.

(6) Such alternative or additional methods of transmission as the head of any DoD Component may establish by rule or regulation, provided those methods afford at least an equal degree of security.

(e) *Transmission of Classified Material to Foreign Governments.* After a determination by designated officials pursuant to DoD Directive 5230.11 that classified information or material may be released to a foreign government, the material shall be transferred between authorized representatives of each government in compliance with the provisions of this subpart. To assure compliance, each contract, agreement, or other arrangement that involves the release of classified material to foreign entities shall either contain transmission instructions or require that a separate transportation plan be approved by the appropriate DoD security and transportation officials prior to release of the material. (See DoD TS-5105.21-M-3 [31] for guidance regarding SCI.)

(1) Classified material to be released directly to a foreign government representative shall be delivered or transmitted only to a person who has been designated in writing by the recipient government as its officer, agent, or employee (hereafter referred to as the designated representative). Foreign governments may designate a freight forwarder as their agent. This written designation shall contain assurances that such person has a security clearance at the appropriate level and that the person will assume full security responsibility for the material on behalf of the foreign government. The recipient will be required to execute a receipt for the material, regardless of the level of classification.

(2) Classified material that is suitable for transfer by courier or postal service, and which cannot be transferred directly to a foreign government's designated representative as specified in paragraph (e)(1) of this section, shall be transmitted by one of the methods specified in paragraph (b), (c), or (d) of this section, for the designated classification level to:

(i) An embassy, consulate, or other official agency of the recipient government having extraterritorial status in the United States, or to

(ii) A U.S. Embassy or a U.S. military organization in the recipient country or in a third-party country, if applicable, for delivery to a designated representative of the intended recipient government. In either case, the assurance in paragraph (e)(1) of this section, and a receipt, must be obtained.

(3) The shipment of classified material as freight via truck, rail, aircraft, or ship shall be in compliance with the following:

(i) *Shipment Resulting from Foreign Military Sales (FMS).* DoD officials authorized to approve a FMS transaction that involves the delivery of U.S. classified material to a foreign purchaser shall, at the outset of negotiation or consideration of proposal, consult with DoD transportation authorities (Military Traffic Management Command, Military Sealift Command, Military Airlift Command, or other, as appropriate) to determine whether secure shipment from the CONUS point of origin to the ultimate foreign destination is feasible. Normally, the United States will use the Defense Transportation System (DTS) to deliver classified material to the recipient government. If, in the course of FMS case processing, the foreign purchaser proposes to take delivery and custody of the classified material in the United States and use it own facilities and transportation for onward shipment to its territory, the foreign purchaser or its designated representative shall be required to submit a transportation plan for DoD review and approval. This plan, as a minimum, shall specify the storage facilities, delivery and transfer points, carriers, couriers or escorts, and methods of handling to be used from the CONUS point of origin to the final destination and return shipment when applicable. (See Appendix E to this part) Security officials of the DoD Component that initiates the FMS transaction shall evaluate the transportation plan to determine whether the plan adequately ensures protection of the highest level of classified material involved. Unless the DoD Component initiating the FMS transaction approves the transportation plan as submitted, or it is modified to meet U.S. security standards, shipment by other than DTS shall not be permitted. Transmission instructions or the requirement for an approved transportation plan shall be incorporated into the security requirements of the United States Department of Defense Offer and Acceptance (DD Form 1513).

(ii) *Shipments Resulting from Direct Commercial Sales.* Classified shipments resulting from direct commercial sales must comply with the same security standards that apply to FMS shipments. Defense contractors, therefore, will consult, as appropriate, with the purchasing government, the DIS Regional Security Office, and the owning Military Department prior to consummation of a commercial contract that will result in the shipment of classified material to obtain approval of the transportation plan.

(iii) *Delivery within the United States, Its Territories, or Possessions.* Delivery of classified material to a foreign government at a point within the United States, its territories, or its possessions, shall be made only to a person identified in writing by the recipient government as its designated representative as specified in paragraph (e)(1) of this section. The only authorized delivery points are:

(A) An embassy, consulate, or other official agency under the control of the recipient government.

(B) Point of origin. When a designated representative of the recipient government accepts delivery of classified U.S. material at the point of origin (for example, a manufacturing facility or depot), the DoD official who transfers custody shall obtain a receipt for the classified material and assure that the recipient is cognizant or secure means of onward movement of the classified material to its final destination, consistent with the approved transportation plan.

(C) Military or commercial ports of embarkation (POE) that are recognized points of departure from the United States, its territories, or possessions, for onloading aboard a ship, aircraft, or other carrier authorized under paragraph (e)(3)(v) of this section. In these cases, the transportation plan shall provide for U.S.-controlled secure shipment to the CONUS transshipment point and the identification of a secure storage facility, government or commercial, at or in proximity to the POE. A DoD official authorized to transfer custody is to supervise or observe the onloading of FMS material being transported via the DTS and other onloading wherein physical and security custody of the material has yet to be transferred formally to the foreign recipient. In the event that transfer of physical and security custody cannot be accomplished promptly, the DoD official shall ensure that the classified material is either returned to a secure storage facility of the U.S. shipper (government or contractor); or segregated and placed under constant surveillance of a duly cleared U.S. security force at the POE; or

[31] See footnote 13 to § 159a.33(j)

held in the secure storage facility (government or commercial) designated in the transportation plan.

(D) Freight forwarder facility that is identified by the recipient government as its designated representative and that is cleared in accordance with paragraph (e)(3)(vi) of this section, to the level of the classified material to be received. In these cases, a person identified as a designated representative must be present to accept delivery of the classified material and receipt for it, to include full acceptance of security responsibility.

(iv) *Delivery Outside the United States, Its Territories, or Possessions.*—(A) *Delivery within the recipient country.* Classified U.S. material to be delivered to a foreign government within the recipient country shall be delivered on arrival in the recipient country to a U.S. Government representative who shall arrange for its transfer to a designated representative of the recipient government. If the shipment is escorted by a U.S. Government official authorized to accomplish the transfer of custody, the material may be delivered directly to the recipient government's designated representative upon arrival.

(B) *Delivery Within a Third Country.* Classified material to be delivered to a foreign government representative within a third country shall be delivered to an agency or installation of the United States, or of the recipient government, that has extraterritorial status or otherwise is exempt from the jurisdiction of the third country. Unless the material is accompanied by a U.S. Government official authorized to accomplish the transfer of custody, a U.S. Government official shall be designated locally to receive the shipment upon arrival and be vested with authority to effect delivery to the intended recipient government's designated representative.

(v) *Overseas Carriers.* Overseas shipments of U.S. classified material shall be made only via ships, aircraft, or other carriers that are:

(A) Owned or chartered by the U.S. Government or under U.S. registry,

(B) Owned or chartered by or under the registry of the recipient government, or

(C) Otherwise expressly authorized by the head of the DoD Component having classification jurisdiction over the material involved. Overseas shipments of classified material shall be escorted, prepared for shipment, packaged, and stored onboard as prescribed elsewhere in this subpart and in DoD 5220.22–R and DoD 5220.22–M.

(vi) *Freight Forwarders.* Only freight forwarders that have been granted an appropriate security clearance by the Department of Defense or the recipient government are eligible to receive, process, and store U.S. classified material authorized for release to foreign governments. However, a freight forwarder that does not have access to or custody of the classified material need not be cleared.

(f) *Consignor-Consignee Responsibility for Shipment of Bulky Material.* The consignor of a bulk shipment shall:

(1) Normally, select a carrier that will provide a single line service from the point of origin to destination, when such a service is available;

(2) Ship packages weighing less than 200 pounds in closed vehicles only;

(3) Notify the consignee, and military transshipping activities, of the nature of the shipment (including level of classification), the means of shipment, the number of seals, if used, and the anticipated time and date of arrival by separate communication at least 24 hours in advance of arrival of the shipment. Advise the first military transshipping activity that, in the event the material does not move on the conveyance originally anticipated, the transshipping activity should so advise the consignee with information of firm transshipping date and estimated time of arrival. Upon receipt of the advance notice of a shipment of classified material, consignees and transshipping activities shall take appropriate steps to receive the classified shipment and to protect it upon arrival.

(4) Annotate the bills of lading to require the carrier to notify the consignor immediately by the fastest means if the shipment is unduly delayed enroute. Such annotations shall not under any circumstances disclose the classified nature of the commodity. When seals are used, annotate substantially as follows:

DO NOT BREAK SEALS EXCEPT IN EMERGENCY OR UPON AUTHORITY OF CONSIGNOR OR CONSIGNEE. IF BROKEN APPLY CARRIER'S SEALS AS SOON AS POSSIBLE AND IMMEDIATELY NOTIFY CONSIGNOR AND CONSIGNEE.

(5) Require the consignee to advise the consignor of any shipment not received more than 48 hours after the estmated time of arrival furnished by the consignor or transshipping activity. Upon receipt of such notice, the consignor shall immediately trace the shipment. If there is evidence that the classified material was subjected to compromise, the procedures set forth in Subpart G of this part for reporting compromises shall apply.

(g) *Transmission of COMSEC Information.* COMSEC information shall be transmitted in accordance with National COMSEC Instruction 4005.

(h) *Transmission of Restricted Data.* Restricted Data shall be transmitted in the same manner as other information of the same security classification. The transporting and handling of nuclear weapons or nuclear components shall be in accordance with DoD Directives 4540.1 [23] and 5210.41 [23] and applicable DoD Component directives and regulations.

§ 159a.58 Preparation of material for transmission, shipment, or conveyance.

(a) *Envelopes or Containers.* (1) Whenever classified information is transmitted, it shall be enclosed in two opaque sealed envelopes or similar wrappings when size permits, except as provided by the following:

(2) Whenever classified material is transmitted of a size not suitable for transmission in accordance with paragraph (a)(1) of this section, it shall be enclosed in two opaque sealed containers, such as boxes or heavy wrappings.

(i) If the classified information is an internal component of a packageable item of equipment, the outside shell or body may be considered as the inner enclosure provided it does not reveal classified information.

(ii) If the classified material is an inaccessible internal component of a bulky item of equipment that is not reasonably packageable, the outside or body of the item may be considered to be a sufficient enclosure provided the shell or body does not reveal classified information.

(iii) If the classified material is an item or equipment that is not reasonably packageable and the shell or body is classified, it shall be concealed with an opaque covering that will hide all classified features.

(iv) Specialized shipping containers, including closed cargo transporters, may be used instead of the above packaging requirements. In such cases, the container may be considered the outer wrapping or cover.

(3) Material used for packaging shall be of such strength and durability as to provide security protection while in transit, prevent items from breaking out of the container, and to facilitate the detection of any tampering with the container. The wrappings shall conceal all classified characteristics.

[23] See footnote 1 to § 159a.3

[23] See footnote 1 to § 159a.3

(4) Closed and locked vehicles, compartments, or cars shall be used for shipments of classified information except when another method is authorized by the consignor. Alternative methods authorized by the consignor must provide security equivalent to or better than the methods specified herein. In all instances, individual packages weighing less than 200 pounds gross shall be shipped only in a closed vehicle.

(5) To minimize the possibility of compromise of classified material caused by improper or inadequate packaging thereof, responsible officials shall ensure that proper wrappings are used for mailable bulky packages. Responsible officials shall require the inspection of bulky packages to determine whether the material is suitable for mailing or whether it should be transmitted by other approved means.

(6) When classified material is hand-carried outside an activity, a locked briefcase may serve as the outer wrapper. In such cases, the addressing requirements of paragraph (b)(4) of this section do not apply; however, the requirements of paragraph (b)(3) of this section are applicable.

(b) *Addressing.* (1) Classified information shall be addressed to an official government activity or DoD contractor with a facility clearance and not to an individual. This is not intended, however, to prevent use of office code numbers or such phrases in the address as "Attention: Research Department," or similar aids in expediting internal routing, in addition to the organization address.

(2) Classified written information shall be folded or packed in such a manner that the text will not be in direct contact with the inner envelope or container. A receipt form shall be attached to or enclosed in the inner envelope or container for all Secret and Top Secret information; Confidential information will require a receipt only if the originator deems it necessary. The mailing of written materials of different classifications in a single package should be avoided. However, when written materials of different classifications are transmitted in one package, they shall be wrapped in a single inner envelope or container. A receipt listing all classified information for which a receipt is requested shall be attached or enclosed. The inner envelope or container shall be marked with the highest classification of the contents.

(3) The inner envelope or container shall show the address of the receiving activity, classification, including, where appropriate, the "Restricted Data" marking, and any applicable special instructions. It shall be carefully sealed to minimize the possibility of access without leaving evidence of tampering.

(4) An outer or single envelope or container shall show the complete and correct address and the return address of the sender.

(5) An outer cover or single envelope or container shall not bear a classification marking, a listing of the contents divulging classified information, or any other unusual data or marks that might invite special attention to the fact that the contents are classified.

(6) Care must be taken to ensure that classified information intended only for U.S. elements of international staffs or other organizations is addressed specifically to those elements.

(c) *Receipt Systems.* (1) Top Secret information shall be transmitted under a chain of receipts covering each individual who gets custody.

(2) Secret information shall be covered by a receipt when transmitted to a foreign government (including foreign government embassies located in the United States) and when transmitted between major subordinate elements of DoD Components and other authorized addressees except that a receipt is not required when there is a hand-to-hand transfer between U.S. personnel and the recipient acknowledges responsibility for the Secret information.

(3) Receipts for Confidential information are not required except when the information is transmitted to a foreign government (including foreign government embassies located in the United States) or upon request.

(4) Receipts shall be provided by the transmitter of the material and the forms shall be attached to the inner cover.

(i) Postcard receipt forms may be used.

(ii) Receipt forms shall be unclassified and contain only such information as is necessary to identify the material being transmitted.

(iii) Receipts shall be retained for at least 2 years.

(5) In those instances where a fly-leaf (page check) form is used with classified publications, the postcard receipt will not be required.

(d) *Exceptions.* Exceptions may be authorized to the requirements contained in this subpart by the head of the Component concerned or designee, provided the exception affords equal protection and accountability to that provided above. Proposed exceptions that do not meet these minimum standards shall be submitted to the DUSD(P) for approval.

§ 159a.59 Restrictions, procedures, and authorization concerning escort or handcarrying of classified information.

(a) *General Restrictions.* Appropriately cleared personnel may be authorized to escort or handcarry classified material between their duty station and an activity to be visited subject to the following conditions:

(1) The storage provisions of § 159a.37 and § 159a.38(g) of Subpart F of this part shall apply at all stops enroute to the destination, unless the information is retained in the personal possession and under constant surveillance of the individual at all times. The hand carrying of classified information on trips that involve an overnight stop is not permissible without advance arrangements for proper overnight storage in a U.S. Government facility or, if in the United States, a cleared contractor's facility that has the requisite storage capability.

(2) Classified material shall not be read, studied, displayed, or used in any manner in public conveyances or places.

(3) When classified material is carried in a private, public or government conveyance, it shall not be placed in any detachable storage compartment such as automobile trailers, luggage racks, aircraft travel pods, or drop tanks nor, under any circumstances, left unattended.

(4) Responsible officials shall provide a written statement to all individuals escorting or carrying classified material aboard commercial passenger aircraft authorizing such transmission. This authorization statement may be included in official travel orders and should ordinarily permit the individual to pass through passenger control points without the need for subjecting the classified material to inspection. Specific procedures for carrying classified documents aboard commercial aircraft are contained in paragraph (c) of this section.

(5) Each activity shall list all classified information carried or escorted by traveling personnel. All classified information shall be accounted for.

(6) Individuals authorized to hand-carry or escort classified material shall be fully informed of the provisions of this subpart, and shall sign a statement to that effect prior to the issuance of written authorization or identification media. This statement shall be retained for a minimum of 2 years; it need not be executed on each occasion that the individual is authorized to transport classified information provided a signed statement is on file.

(b) *Restrictions on Handcarrying Classified Information Aboard*

Commercial Passenger Aircraft. Classified information shall not be hand-carried aboard commercial passenger aircraft unless:

(1) There is neither time nor means available to move the information in the time required to accomplish operational objectives or contract requirements.

(2) The handcarry has been authorized by an appropriate official in accordance with paragraph (d) of this section.

(3) In the case of the handcarry of classified information across international borders, arrangements have been made to ensure that such information will not be opened by customs, border, postal, or other inspectors, either U.S. or foreign.

(4) The handcarry is accomplished aboard a U.S. carrier. Foreign carriers will be utilized only when no U.S. carrier is available and then the approving official must ensure that the information will remain in the custody and physical control of the U.S. escort at all times.

(c) *Procedures for Handcarrying Classified Information Aboard Commercial Passenger Aircraft.*—(1) *Basic requirements.* (i) Advance and continued coordination by the DoD activity and contractor officials shall be made with departure airline and terminal officials and, when possible, with intermediate transfer terminals to develop mutually satisfactory arrangements within the terms of this issuance and Federal Aviation Administration (FAA) guidance. Specifically, a determination should be made beforehand whether documentation described in paragraph (c)(4) of this section, will be required. Local FAA Security Officers can be of assistance in making this determination. To aid coordination and planning, a listing of FAA field offices is at Appendix D to this part.

(ii) The individual designated as courier shall be in possession of either DD Form 2, "Armed (or Uniformed) Services Identification Card" (any color), or other DoD or contractor picture identification card and written authorization to carry classified information.

(2) *Procedures for carrying classified information in envelopes.* Persons carrying classified information should process through the airline ticketing and boarding procedures the same as all other passengers except for the following:

(i) The classified information being carried shall contain no metal bindings and shall be contained in sealed envelopes. Should such envelopes be contained in a briefcase or other carry-on luggage, the briefcase or luggage shall be routinely offered for opening for inspection for weapons. The screening officials may check envelopes by X-ray machine, flexing, feel, and weight, without opening the envelopes themselves.

(ii) Opening or reading of the classified document by the screening official is not permitted.

(3) *Procedures for transporting classified information in packages.* Classified information in sealed or packaged containers shall be processed as follows:

(i) The government or contractor official who has authorized the transport of the classified information shall notify the appropriate air carrier in advance.

(ii) The passenger carrying the information shall report to the affected airline ticket counter before boarding, present his documentation, and the package or cartons to be exempt from screening. The airline representative will review the documentation and description of the containers to be exempt.

(iii) If satisfied with the identification of the passenger and his documentation, the official will provide the passenger with an escort to the screening station and authorize the screening personnel to exempt the container from physical or other type inspection.

(iv) If the airline official is not satisfied with the identification of the passenger or the authenticity of his documentation, the passenger will not be permitted to board, and not be subject to further screening for boarding purposes.

(v) The actual loading and unloading of the information will be under the supervision of a representative of the air carrier; however, appropriately cleared personnel shall accompany the material and keep it under surveillance during loading and unloading operations. In addition, appropriately cleared personnel must be available to conduct surveillance at any intermediate stops where the cargo compartment is to be opened.

(vi) DoD Components and contractor officials shall establish and maintain appropriate liaison with local FAA officials, airline representatives and airport terminal administrative and security officials. Prior notification is emphasized to ensure that the airline representative can make timely arrangements for courier screening.

(4) *Documentation.* (i) When authorized to carry sealed envelopes or containers containing classified information, both government and contractor personnel shall present an identification card carrying a photograph, descriptive data, and signature of the individual. (If the identification card does not contain date of birth, height, weight, and signature, these items must be included in the written authorization.)

(A) DoD personnel shall present an official identification issued by U.S. Government agency.

(B) Contractor personnel shall present identification issued by the contractor or the U.S. Government. Contractors' identification cards shall carry the name of the employing contractor, or otherwise be marked to denote "contractor."

(C) The courier shall have the original of the authorization letter. A reproduced copy is not acceptable; however, the traveler shall have sufficient authenticated copies to provide a copy to each airline involved. The letter shall be prepared on letterhead stationery of the agency or contractor authorizing the carrying of classified material in addition, the letter shall:

(*1*) Give the full name of the individual and his employing agency or company;

(*2*) Describe the type of identification the individual will present (for example, Naval Research Laboratory Identification Card, No. 1234; ABC Corporation Identification Card No. 1234);

(*3*) Describe the material being carried (for example, three sealed packages, 9" × 8" × 24", addressee and addressor);

(*4*) Identify the point of departure, destination, and known transfer points;

(*5*) Carry a date of issue and an expiration date;

(*6*) Carry the name, title, and signature of the official issuing the letter. Each package or carton to be exempt shall be signed on its face by the official who signed the letter; and

(*7*) Carry the name of the government agency designated to confirm the letter of authorization, and its telephone number. The telephone number of the agency designated shall be an official U.S. Government number.

(ii) Information relating to the issuance of DoD identification cards is contained in DoD Instruction 1000.13 [84]. The green, gray, and red DD Forms 2 and other DoD and contractor picture ID card are acceptable to FAA.

(iii) The Director, DIS, shall establish standards for the issuance of identification cards when required by contractor employees selected as couriers or whose duties will involve handcarrying of classified material.

(d) *Authority to Approve Escort or Handcarry of Classified Information Aboard Commercial Passenger Aircraft*—(1) *Within the United States, its Territories, and Canada.* (i) DoD Component officials who have been authorized to approve travel orders and designate couriers may approve the escort or handcarry of classified information within the United States, its Territories, and Canada.

(ii) The Director, DIS, may authorize contractor personnel to handcarry classified material in emergency or time-sensitive situations subject to adherence with the procedures and limitations specified in this Section.

(2) *Outside the United States, its Territories, and Canada.* The head of a DoD Component, or single designee at the headquarters or major command level, may authorize the escort or handcarrying of classified information outside the area encompassed by the boundaries of the United States, its Territories, and Canada upon certification by the requestor that:

(i) The material is not present at the destination;

(ii) The material is needed urgently for a specified official purpose; and

(iii) There is a specified reason that the material could not be transmitted by other approved means to the destination in sufficient time for the stated purpose.

[84] See footnote 1 to § 159a.3.

Subpart J—Disposal and Destruction

§ 159a.61 Policy.

Documentary record information originated or received by a DoD Component in connection with the transaction of public business, and preserved as evidence of the organization, functions, policies, operations, decisions, procedures, or other activities of any U.S. Government department or agency or because of the informational value of the data contained therein, may be disposed of or destroyed only in accordance with DoD Component record management regulations. Nonrecord classified information, and other material of similar temporary nature, shall be destroyed when no longer needed under procedures established by the head of the cognizant DoD Component. These procedures shall incorporate means of verifying the destruction of classified information and material and be consistent with the following requirements.

§ 159a.62 Methods of destruction.

Classified documents and material shall be destroyed by burning or, with the approval of the cognizant DoD Component head or designee, by melting, chemical decomposition, pulping, pulverizing, cross-cut shredding, or mutilation sufficient to preclude recognition or reconstruction of the classified information. (Strip shredders purchased prior to June 1, 1986 may continue to be used but only in circumstances where reconstruction of the residue is precluded. Shredding significant amounts of unclassified material together with classified material normally will meet this requirement.)

§ 159a.63 Destruction procedures.

(a) Procedures shall be instituted that ensure all classified information intended for destruction actually is destroyed. Destruction records and imposition of a two-person rule, that is, having two cleared persons involved in the entire destruction process, will satisfy this requirement for Top Secret information. Imposition of a two-person rule, without destruction records, will satisfy this requirement for Secret information, as will use of destruction records without imposition of the two-person rule. Only one cleared person needs to be involved in the destruction process for Confidential information.

(b) When burn bags are used for the collection of classified material that is to be destroyed at central destruction facilities, such bags shall be controlled in a manner designed to minimize the possibility of their unauthorized removal and the unauthorized removal of their classified contents prior to actual destruction. When filled, burn bags shall be sealed in a manner that will facilitate the detection of any tampering with the bag.

(c) Procedures to ensure that all classified information intended for destruction actually is destroyed, other than those in paragraphs (a) and (b) of this section, shall be submitted to the DoD Component's senior official (§ 159a.93(b) and (c)) for approval.

§ 159a.65 Records of destruction.

(a) Records of destruction are required for Top Secret information. The record shall be dated and signed at the time of destruction by two persons cleared for access to Top Secret information. However, in the case of Top Secret information placed in burn bags for central disposal, the destruction record may be signed by the officials when the information is so placed and the bags are sealed. Top Secret burn bags shall be numbered serially and a record kept of all subsequent handling of the bags until they are destroyed. This record may be in lieu of actual burn bag receipts and shall be maintained for a minimum of 2 years.

(b) Records of destruction of Secret and Confidential information are not required except for NATO Secret and some limited categories of specially controlled Secret information. When records of destruction are used for Secret information, only one cleared person has to sign such records. (DoD Directive 5100.55 provides guidance on the destruction of NATO classified material.)

(c) Records of destruction shall be maintained for 2 years.

§ 159a.65 Classified waste.

Waste material, such as handwritten notes, carbon paper, typewriter ribbons, and working papers that contains classified information must be protected to prevent unauthorized disclosure of the information. Classified waste shall be destroyed when no longer needed by a method described in § 159a.62. Destruction records are not required.

§ 159a.66 Classified document retention.

(a) Classified documents that are not permanently valuable records of the government shall not be retained more than 5 years from the date of origin, unless such retention is authorized by and in accordance with DoD Component record disposition schedules.

(b) Throughout the Department of Defense, the head of each activity shall establish at least one clean-out day each year where a portion of the work performed in every office with classified information stored is devoted to the destruction of unneeded classified holdings.

Subpart K—Security Education

§ 159a.68 Responsibility and objectives.

Heads of DoD Components shall establish security education programs for their personnel. Such programs shall stress the objectives of improving the protection of information that requires it. They shall also place emphasis on the balance between the need to release the maximum information appropriate under the Freedom of Information Act (32 CFR Part 285) and the interest of the Government in protecting the national security.

§ 159a.69 Scope and principles.

The security education program shall include all personnel authorized or expected to be authorized access to classified information. Each DoD Component shall design its program to fit the requirements of different groups of personnel. Care must be exercised to assure that the program does not evolve into a perfunctory compliance with formal requirements without achieving the real goals of the program. The

program shall, as a minimum, be designed to:

(a) Advise personnel of the adverse effects to the national security that could result from unauthorized disclosure and of their personal, moral, and legal responsibility to protect classified information within their knowledge, possession, or control;

(b) Indoctrinate personnel in the principles, criteria, and procedures for the classification, downgrading, declassification, marking, control and accountability, storage, destruction, and transmission of classified information and material, as prescribed in this Regulation, and alert them to the strict prohibitions against improper use and abuse of the classification system;

(c) Familiarize personnel with procedures for challenging classification decisions believed to be improper;

(d) Familiarize personnel with the security requirements of their particular assignment;

(e) Inform personnel of the techniques employed by foreign intelligence activities in attempting to obtain classified information, and their responsibility to report such attempts;

(f) Advise personnel of the penalties for engaging in espionage activities;

(g) Advise personnel of the strict prohibition against discussing classified information over an unsecure telephone or in any other manner that permits interception by unauthorized persons;

(h) Inform personnel of the penalties for violation or disregard of the provisions of this part (see § 159a.97(b));

(i) Instruct personnel that individuals having knowledge, possession, or control of classified information must determine, before disseminating such information, that the prospective recipient has been cleared for access by competent authority; needs the information in order to perform his or her official duties; and can properly protect (or store) the information.

§ 159a.70 Initial briefings.

DoD personnel granted a security clearance (see §159a.53) shall not be permitted to have access to classified information until they have received an initial security briefing and have signed Standard Form 189, "Classified Information Nondisclosure Agreement." DoD 5200.1-PH-1[35] provides a sample briefing and additional information regarding Standard Form 189. Cleared personnel employed prior to June 1, 1988 must sign Standard Form 189 as soon as practicable but not later than February 28, 1990.

[35] See footnote 2 to § 159a.3

§ 159a.71 Refresher briefings.

Programs shall be established to provide, at a minimum, annual security training for personnel having continued access to classified information. The elements outlined in § 159a.69 shall be tailored to fit the needs of experienced personnel.

§ 159a.72 Foreign travel briefings.

(a) Personnel who have had access to classified information shall be given a foreign travel briefing, before travel, to alert them to their possible exploitation under the following conditions:

(1) Travel to or through communist-controlled countries; and

(2) Attendance at international scientific, technical, engineering or other professional meetings in the United States or in any country outside the United States where it can be anticipated that representatives of Communist-controlled countries will participate or be in attendance. (See also DoD Directive 5240.6 [36].)

(b) Individuals who travel frequently, or attend or host meetings of foreign visitors as described in paragraph (a)(2) of this section, need not be briefed for each occasion, but shall be provided a thorough briefing at least once every 6 months and a general reminder of security responsibilities before each such activity.

§ 159a.73 Termination briefings.

(a) Upon termination of employment, administrative withdrawal of security clearance, or contemplated absence from duty or employment for 60 days or more, DoD military personnel and civilian employees shall be given a termination briefing, return all classified material, and execute a Security Termination Statement. This statement shall include:

(1) An acknowledgment that the individual has read the appropriate provisions of the Espionage Act, other criminal statutes, DoD regulations applicable to the safeguarding of classified information to which the individual has had access, and understands the implications thereof;

(2) A declaration that the individual no longer has any documents or material containing classified information in his or her possession;

(3) An acknowledgement that the individual will not communicate or transmit classified information to any unauthorized person or agency; and

(4) An acknowledgement that the individual will report without delay to the FBI or the DoD Component concerned any attempt by any unauthorized person to solicit classified information.

(b) When an individual refuses to execute a Security Termination Statement, that fact shall be reported immediately to the security manager of the cognizant organization concerned. In any such case, the individual involved shall be debriefed orally. The fact of a refusal to sign a Security Termination Statement shall be reported to the Director, Defense Investigative Service who shall assure that it is recorded in the Defense Central Index of Investigations.

(c) The security termination statement shall be retained by the DoD Component that authorized the individual access to classified information for the period specified in the Component's record retention schedules, but for a minimum of 2 years after the individual is given a termination briefing.

Subpart L—Foreign Government Information

§ 159a.75 Classification.

(a) *Classification.* (1) Foreign government information classified by a foreign government or international organization of governments shall retain its original classification designation or be assigned a U.S. classification designation that will ensure a degree of protection equivalent to that required by the government or organization that furnished the information. Original classification authority is not required for this purpose.

(2) Foreign government information that was not classified by a foreign entity but was provided with the expectation, expressed or implied, that the information, the source of the information, or both, are to be held in confidence must be classified by an original classification authority. The two-step procedure for classification prescribed in § 159a.15(c) does not apply to the classification of such foreign government information because E.O. 12356 states a presumption of damage to the national security in the event of unauthorized disclosure of such information. Therefore, foreign government information shall be classified at least Confidential, but higher whenever the damage criteria of § 159a.11 (b) or (c) are determined to be met.

(b) *Duration of Classification.* (1) Foreign government information shall not be assigned a date or event for automatic declassification unless specified or agreed to by the foreign entity.

[36] See footnote 1 to § 159a.3.

(2) Foreign government information classified by the Department of Defense under this or previous regulations shall be protected for an indefinite period (see § 159a.77(e)).

§ 159a.76 Declassification.

(a) *Policy.* In considering the possibility of declassification of foreign government information, officials shall respect the intent of this regulation to protect foreign government information and confidential foreign sources.

(b) *Systematic Review.* When documents containing foreign government information are encountered during the systematic review process they shall be referred to the originating agency for a declassification determination. Consultation with the foreign originator through appropriate channels may be necessary before final action can be taken.

(c) *Mandatory Review.* Requests for mandatory review for declassification of foreign government information shall be processed and acted upon in accordance with the provisions of § 159a.26, except that foreign government information will be declassified only in accordance with the guidelines developed for such purpose and after necessary consultation with other DoD Components or government agencies with subject matter interest. When these guidelines cannot be applied to the foreign government information requested, or in the absence of such guidelines, consultation with the foreign originator through appropriate channels normally should be effected prior to final action taken on the request. When the responsibile DoD Component is knowledgeable of the foreign originator's view toward declassification or continued classification of the types of information requested, consultation with the foreign originator may not be necessary.

§159a.77 Marking.

(a) *Equivalent U.S. Classification Designations.* Except for the foreign security classification designation RESTRICTED, foreign classification designations, including those of international organizations of governments, that is, NATO, generally parallel U.S. classification designations. A table of equivalents is contained in Appendix A to this part.

(b) *Marking NATO Documents.* Classified documents originated by NATO, if not already marked with the appropriate classification in English, shall be so marked. Markings required under § 159a.34(c) shall not be placed on documents originated by NATO. Documents originated by NATO that are marked RESTRICTED shall be marked with the following additional notation: "To be safeguarded in accordance with USSAN Instruction 1–69" (see DoD Directive 5100.55).

(c) *Marking Other Foreign Government Documents.* (1) If the security classification designation of foreign government documents is shown in English, no other classification marking shall be applied. If the foreign classification designation is not shown in English, the equivalent overall U.S. classification designation (see Appendix A to this part) shall be marked conspicuously on the document. When foreign government documents are marked with a classification designation having no U.S. equivalent, as in the last column of Appendix A to this part, such documents shall be marked in accordance with paragraph (c)(2) of this section.

(2) Certain foreign governments use a fourth classification designation as shown in the last column of Appendix A to this part. Such designations equate to the foreign classification RESTRICTED. If the foreign government documents are marked with any of the classification designations listed in the last column of Appendix A to this part, no other classification marking shall be applied. In all such cases, the notation, "This classified material is to be safeguarded in accordance with DoD 5200.1–R or DoD 5220.22–M," shall be shown on the face of the document.

(3) Other marking requirements prescribed by this Regulation for U.S. classified documents are not applicable to documents of foreign governments or international organizations of governments.

(d) *Marking of DoD Classification Determinations.* Foreign documents containing foreign government information not classified by the foreign government but provided to the Department of Defense in confidence shall be classified as prescribed in § 159a.75(a)(2) and marked with the appropriate U.S. classification.

(e) *Marking of Foreign Government Information in DoD Documents.* (1) Except where such markings would reveal that information is foreign government information when that fact must be concealed, or reveal a confidential source or relationship not otherwise evident in the document or information, foreign government information incorporated in DoD documents shall be identified in a manner that ensures that such information is not declassified prematurely or made accessible to nationals of a third country without consent of the originator. This requirement may be satisfied by marking the face of the document "FOREIGN GOVERNMENT INFORMATION," or with another marking that otherwise indicates that the information is foreign government information, and by including the appropriate identification in the portion or paragraph classification markings, for example, (NS) or (U.K.–C). All other markings prescribed by § 159a.31(d) are applicable to these documents. In addition, DoD classified documents that contain extracts of NATO classified information shall bear a marking substantially as follows on the cover or first page: "THIS DOCUMENT CONTAINS NATO CLASSIFIED INFORMATION."

(2) When foreign RESTRICTED or NATO RESTRICTED information is included in an otherwise unclassified DoD document, the DoD document shall be marked CONFIDENTIAL. All requirements of § 159a.31(d) apply to such documents. Portion markings on such a document include, for example "(U)," "(NR)," and "(FRG–R)." In addition, the appropriate caveat from paragraph (a) of this section, shall be included on the face of the document.

(3) The "Classified by" line of DoD documents containing only foreign government information normally shall be completed with the identity of the foreign government or international organization involved, for example, "Classified by Government of Australia" or "Classfied by NATO," provided that other requirements of § 159a.31(e) do not pertain to such documents.

(4) The "Declassify on" line of DoD documents containing foreign government information normally shall be completed with the notation "Originating Agency's Determination Required" or "OADR" (see § 159a.36 and § 159a.75(b)).

§ 159a.78 Protective measures.

(a) *NATO Classified Information.* NATO classified information shall be safeguarded in accordance with the provisions of DoD Directive 5100.55.

(b) *Other Foreign Government Information.* (1) Classified foreign government information other than NATO information shall be protected as is prescribed by this part for U.S. classified information of a comparable classification.

(2) Foreign government information, unless it is NATO information, that is marked under § 159a.77(c)(2) or § 159a.77(e)(2) shall be protected as U.S. CONFIDENTIAL, except that such information may be stored in locked

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filing cabinets, desks, or other similar closed spaces that will prevent access by unauthorized persons.

Subpart M—Special Access Programs

§ 159a.80 Policy.

It is the policy of the Department of Defense to use the security classification categories and the applicable sections of E.O. 12356 and its implementing ISOO Directive, to limit access to classified information on a "need-to-know" basis to personnel who have been determined to be trustworthy. It is further policy to apply the "need-to-know" principle in the regular system so that there will be no need to resort to formal Special Access Programs. Also, need-to-know control principles shall be applied within Special Access Programs. In this context, Special Access Programs may be created or continued only on specific showing that:

(a) Normal management and safeguarding procedures are not sufficient to limit "need-to-know" or access; and

(b) The number of persons who will need access will be reasonably small and commensurate with the objective of providing extra protection for the information invoved.

§ 159a.81 Establishment of special access programs.

(a) Procedures for the establishment of Special Access Programs involving NATO classified information are based on international treaty requirements (see DoD Directive 5100.55).

(b) The policies and procedures for access to and dissemination of Restricted Data and Critical Nuclear Weapon Design Information are contained in DoD Directive 5210.2.

(c) Special Access Programs for foreign intelligence information under the cognizance of the Director of Central Intelligence, or those of the National Telecommunications and Information Systems Security Committee originate outside the Department of Defense. However, coordination with the DUSD(P) and the Component's central point of contact is necessary before the establishment or implementation of any such Programs by any DoD Component. The information required by § 159a.80(f)(1) will be provided.

(d) Excluding those Programs and that information specified in paragraphs (a)(1), (2), and (3) of this section, Special Access Programs shall be established within the Military Departments by:

(1) Submitting to the Secretary of the Department the information required under § 159a.80(f)(1).

(2) Obtaining written approval from the Secretary of the Department;

(3) Providing to the DUSD(P) notice of the approval; and

(4) Maintaining the information and rationale upon which approval was granted within the Military Department's central office.

(e) Excluding those Programs and that information in paragraphs (d)(1), (2), and (3) of this section, Special Access Programs that are desired to be established in any DoD Component other than the Military Departments shall be submitted with the information referred to in § 159a.80(f)(1) to the DUSD(P) for approval.

(f) Upon specific written notice to one of the appropriate DoD Special Access Program approval officials, receipt of their written concurrence, protective Special Access Program controls may be applied to a prospective Special Access Program for up to a 6-month period from the date of such notice. However, in all instances, the Program must be terminated as a prospective Special Access Program or formally approved as a Special Access Program by the end of the 6-month time period.

(g) Unless under DoD Directive S-5210.36 [37], Special Access Programs which involve one or more DoD Components, or a DoD Component and a non-DoD activity, shall be covered by a written agreement which must document who has the principal security responsibility, who is the primary sponsor of the Program, and who is responsible for obtaining Special Access Program approval.

§ 159a.82 Review of special access programs.

(a) Excluding those Programs specified in § 159a.81 (a), (b), or (c), each Special Access Program shall be reviewed annually by the DoD Component responsible for establishment of the Program. To accommodate such reviews, DoD Components shall institute procedures to ensure the conduct of annual security inspections, with or without prior notice, and regularly scheduled audits by security, contract administration, and audit organizations. Also, Program managers shall ensure that Special Access Program activities have undergone a current review by legal counsel for compliance with law, executive order, regulation, and national policy. To accomplish such reviews, specially cleared pools of attorneys may be utilized, but in all cases legal counsel shall be provided with all information necessary to perform such reviews.

(b) Special Access Programs, excluding those specified in § 159a.81 (a), (b), or (c), or those required by treaty or international agreement, shall terminate automatically every 5 years unless reestablished in accordance with the procedures contained in § 159a.81.

§ 159a.83 Control and central office administration.

(a) Special Access Programs shall be controlled and managed in accordance with DoD Directive 5205.7 [38]. Each DoD Component shall appoint a Special Access Program coordinator to establish and maintain a central office and to serve as a single point of contact for information concerning the establishment and security administration of all Special Access Programs established by or existing in the Component. These officials shall report to the DUSD(P) on the status of DoD Special Access Programs within the Component to include:

(1) The establishment of a Special Access Program as required by § 159a.81(d)(3); and

(2) Changes in Program status as required by § 159a.85 (b) or (c).

(b) Officials serving as single points of contact, as well as members of their respective staffs and other persons providing support to Special Access Programs who require access to multiple sets of particularly sensitive information, shall be subject to a counterintelligence-scope polygraph examination periodically but not less than once every 5 years. Additionally, such testing will be subject to the limitations imposed by Congress. The program for each DoD Component, as well as requests for waiver, shall be submitted for approval by the DUSD(P).

§ 159a.84 Codewords and nicknames.

Excluding those Programs specified in § 159a.81 (a), (b), and (c), each Special Access Program will be assigned a classified code word, or an unclassified nickname, or both. DoD Components other than Military Departments may request codewords and nicknames from the DUSD(P) individually or in block. If codewords or nicknames are obtained in block, however, the issuing Component shall promptly notify the DUSD(P) upon activitation and assignment.

§ 159a.85 Reporting of special access programs.

(a) *Report of Establishment.* Reports to the Secretary of the Military Department or the DUSD(P) required

[37] See footnote 13 to § 159a.33(j)

[38] See footnote 1 to § 159a.3

under § 159a.81 for Special Access Programs shall include:

(1) The responsible department, agency, or DoD Component, including office identification;

(2) The codeword and/or nickname of the Program;

(3) The relationship, if any, to other Special Access Programs in the Department of Defense or other government agencies;

(4) The rationale for establishing the Special Access Program including the reason why normal management and safeguarding procedures for classified information are inadequate;

(5) The estimated number of persons granted special access in the responsible DoD Component; other DoD Components; other government agencies; contractors; and the total of such personnel;

(6) A summary statement pertaining to the Program security requirements with particular emphasis upon those personnel security requirements governing access to Program information;

(7) The date of Program establishment;

(8) The estimated number and approximate dollar value, if known, of carve-out contracts that will be or are required to support the Program; and

(9) The DoD Component official who is the point of contact (last name, first name, middle initial; position or title; mailing address; and telephone number).

(10) A security plan and appropriate security classification guide and notification that a proper DD Form 254, "Contract Security Classification Specification," has been issued to contractors participating in the Program.

(b) *Annual Reports.* DoD Component annual reports from other than the Military Departments to the DUSD(P) shall be submitted not later than January 31 of each year, showing the changes in information provided under paragraph (a) of this section, as well as the date of last review. Annual reports shall reflect *actual* rather than *estimated* numbers of carve-out contracts and persons granted access and shall summarize the results of the inspections and audits required by § 159a.82(a). Reports from the Military Departments which have approval authority will summarize the required reviews which have been conducted during the year by the central offices, to include details and numbers of carve-out contracts associated with approved Special Access Programs and their overall security posture and numbers of approved Programs by type. Additionally, the Military Department Secretaries authorized to approve such Programs shall furnish a name listing, by unclassified nickname if practicable, or approved Special Access Programs under their cognizance, and they will report any changes to the listing as they occur pursuant to the notification requirements of § 159a.81(d)(3), that is, additions, deletions, and corrections to the DUSD(P). The effective date of information in the annual reports shall be December 31.

(c) *Termination Reports.* The DUSD(P) shall be notified upon termination of a Special Access Program.

§ 159a.86 Accounting for special access programs.

Each of the central offices which must be identified in accordance with § 159a.83(a) shall maintain a complete listing of currently approved DoD Special Access Programs which encompasses the information outlined in § 159a.85(a). These listings shall be readily available to the DUSD(P) or his designated representatives.

§ 159a.87 Limitations on access.

Access to data reported under this subpart shall be limited to the DUSD(P) and the minimum number of properly indoctrinated staff necessary to perform the functions assigned the DUSD(P) herein. Access may not be granted to any other person for any purpose without the approval of the DoD Components sponsoring the Special Access Programs concerned.

§ 159a.88 "Carve-Out" contracts.

(a) The Secretaries of the Military Departments and the DUSD(P), or their designees, shall ensure that, in those Special Access Programs involving contractors, special access controls are made applicable by legally binding instruments.

(b) To the extent necessary for DIS to execute its security responsibilities with respect to Special Access Programs under its security cognizance, DIS personnel shall have access to all information relating to the administration of these Programs.

(c) Excluding those Programs specified in § 159a.81(c), the use of "carve-out" contracts that relieve the DIS from inspection responsibility under the Defense Industrial Security Program is prohibited unless:

(1) Such contract supports a Special Access Program approved and administered under § 159a.81;

(2) Mere knowledge of the existence of a contract or of its affiliation with the Special Access Program is classified information; and

(3) Carve-out status is approved for each contract by the Secretary of a Military Department, the Director, NSA, the DUSD(P), or their designees.

(d) Approval to establish a "carve-out" contract must be requested from the Secretary of a Military Department, or designee(s), the Director, NSA, or designee(s), or in the case of other DoD Components, from the DUSD(P). Approved "carve-out" contracts shall be assured the support necessary for the requisite protection of the classified information involved. The support shall be specified through a system of controls that shall provide for:

(1) A written security plan, oral waivers of which are prohibited except in critical situations that must be documented as soon as possible after the fact.

Note: The plan must identify that DD Forms 254 have been distributed to the Defense Investigative Service as outlined in DoD Directive 5205.7.

(2) Professional security personnel at the sponsoring DoD Component performing security inspections at each contractor's facility which shall be conducted, at a minimum, with the frequency prescribed by paragraph 4-103 of DoD 5220.22-R;

(3) "Carve-out" contracting procedures;

(4) A central office of record; and

(5) An official to be the single point of contact for security control and administration. DoD Components other than the Military Departments and NSA shall submit such appropriate rationale and security plan along with requests for approval to the DUSD(P).

(e) An annual inventory of carve-out contracts shall be conducted by each DoD Component which participates in Special Access Programs.

(f) This subsection relates back to the date of execution for each contract to which carve-out contracting techniques are applied. The carve-out status of any contract expires upon termination of the Special Access Program which it supports.

§ 159a.89 Oversight reviews.

(a) DUSD(P) shall conduct oversight reviews, as required, to determine compliance with this subpart.

(b) Pursuant to statutory authority, the Inspector General, Department of Defense, shall conduct oversight of Special Access Programs.

Subpart N—Program Management

§ 159a.91 Executive branch oversight and policy direction.

(a) *National Security Council.* Pursuant to the provisions of E.O. 12356, the NSC shall provide overall policy

direction for the Information Security Program.

(b) *Administrator of General Services.* The Administrator of General Services is responsible for implementing and monitoring the Information Security Program established under E.O. 12356. In accordance with E.O. 12356, the Administrator delegates the implementation and monitorship functions of the Program to the Director of the ISOO.

(c) *Information Security Oversight Office.*—(1) *Composition.* The ISOO has a full-time director appointed by the Administrator of General Services with approval of the President. The Director has the authority to appoint a staff for the office.

(2) *Functions.* The Director of the ISOO is charged with the following principal functions that pertain to the Department of Defense:

(i) Oversee DoD actions to ensure compliance with E.O. 12356 implementing directives, for example, the ISOO Directive No. 1 and this part;

(ii) Consider and take action on complaints and suggestions from persons within or outside the government with respect to the administration of the Information Security Program;

(iii) Report annually to the President through the NSC on the implementation of E.O. 12356;

(iv) Review this Regulation and DoD guidelines for systematic declassification review; and

(v) Conduct on-site reviews of the Information Security Program of each DoD Component that generates or handles classified information.

(3) *Information Requests.* The Director of the ISOO is authorized to request information or material concerning the Department of Defense, as needed by the ISOO in carrying out its functions.

(4) *Coordination.* Heads of DoD Components shall ensure that any significant requirements levied directly on the Component by the ISOO are brought to the attention of the Director of Security Plans and Programs, ODUSD(P).

§ 159a.92 Department of Defense.

(a) *Management Responsibility.* (1) The DUSD(P) is the Senior DoD Information Security Authority having DoD-wide authority and responsibility to ensure effective and uniform compliance with and implementation of E.O. 12356 and its implementing ISOO Directive No. 1. As such, the DUSD(P) shall have primary responsibility for providing guidance, oversight and approval of policy and procedures governing the DoD Information Security Program. The DUSD(P) or his designee may approve waivers or exceptions to the provisions of this part to the extent such action is consistent with E.O. 12356 and ISOO Directive No. 1.

(2) The heads of DoD Components may approve waivers to the provisions of this part only as specifically provided for herein.

(3) The Director, NSA/Chief, Central Security Service, under 32 CFR Part 159, is authorized to impose special requirements with respect to the marking, reproduction, distribution, accounting, and protection of and access to classified cryptologic information. In this regard, the Director, NSA, may approve waivers or exceptions to these special requirements. Except as provided in § 159a.6 the authority to lower any COMSEC security standards rests with the Secretary of Defense. Requests for approval of such waivers or exceptions to established COMSEC security standards which, if adopted, will have the effect of lowering such standards, shall be submitted to the DUSD(P) for approval by the Secretary of Defense.

§ 159a.93 DoD components.

(a) *General.* The head of each DoD Component shall establish and maintain an Information Security Program designed to ensure compliance with the provisions of this part throughout the Component.

(b) *Military Departments.* In accordance with 32 CFR Part 159 the Secretary of each Military Department shall designate a Senior Information Security Authority who shall be responsible for complying with and implementing this part within the Department.

(c) *Other Components.* In accordance with 32 CFR Part 159, the head of each other DoD Component shall designate a Senior Information Security Authority who shall be responsible for complying with and implementing this Regulation within their respective Component.

(d) *Program Monitorship.* The Senior Information Security Authorities designated under paragraphs (b) and (c) of this section, are responsible within their respective jurisdictions for monitoring, inspecting with or without prior announcement, and reporting on the status of administration of the DoD Information Security Program at all levels of activity under their cognizance.

(e) *Field Program Management.* (1) Throughout the Department of Defense, the head of each activity shall appoint, in writing, an official to serve as security manager for the activity. This official shall be responsible for the administration of an effective Information Security Program in that activity with particular emphasis on security education and training, assignment of proper classifications, downgrading and declassification, safeguarding, and monitorship, to include sampling classified documents for the purpose of assuring compliance with this part.

(2) Activity heads shall ensure that officials appointed as security managers either possess, or obtain within a reasonable time after appointment, knowledge of and training in the Information Security Program commensurate with the needs of their positions. The Director of Security Plans and Programs, ODUSD(P) shall, with the assistance of the Director, Defense Security Institute, develop minimum standards for training of activity security managers. Such training should result in appropriate certifications to be recorded in the personnel files of the individuals involved.

(3) Activity heads shall ensure that officials appointed as security managers are authorized direct and ready access to the appointing official on matters concerning the Information Security Program. They also shall provide sufficient resources of time, staff, and funds to permit accomplishment of the security manager's responsibilities, to include meaningful oversight of the Information Security Program at all levels of the activity.

§ 159a.94 Information requirements.

(a) *Information Requirements.* DoD Components shall submit on a fiscal year basis a consolidated report concerning the Information Security Program of the Component on SF 311, "Agency Information Security Program Data," to reach the ODUSD(P) by October 20 of each year. SF 311 shall be completed in accordance with the instructions thereon and augmenting instructions issued by the ODUSD(P). The ODUSD(P) shall submit the DoD report (SF 311) to the ISOO by October 31 of each year. Interagency Report Control Number 0230–GSA–AN applies to this information collection system as well as to that contained in § 159a.12.

§ 159a.95 Defense Information Security Committee.

(a) *Purpose.* The Defense Information Security Committee (DISC) is established to advise and assist the DUSD(P) and the Director, Security Plans and Programs (ODUSD(P)) in the formulation of DoD Information Security Program policy and procedures.

(b) *Direction and Membership.* The DISC shall meet at the call of the DUSD(P) or the Director, Security Plans and Programs. It is comprised of the DUSD(P) as Chairman; the Director, Security Plans and Programs, as Vice Chairman; and the senior officials (designated in accordance with section E.3.a., DoD Directive 5200.1,[39] or their representatives) responsible for directing and administering the Information Security Program of the OJCS, the Departments of the Army, Navy, and Air Force, the Defense Intelligence Agency, the Defense Nuclear Agency, the National Security Agency, and the Defense Investigative Service. Other DoD Components may be invited to attend meetings of particular interest to them.

Subpart O—Administrative Sanctions

§ 159a.97 Individual responsibility.

All personnel, civilian or military, of the Department of Defense are responsible individually for complying with the provisions of this part.

§ 159a.98 Violations subject to sanctions.

(a) DoD Military and civilian personnel are subject to administrative sanctions if they:

(1) Knowingly and willfully classify or continue the classification of information in violation of E.O. 12356, any implementing issuances, or this part.

(2) Knowingly, willfully, or negligently disclose to unauthorized persons information properly classified under E.O. 12356 or prior orders; or

(3) Knowingly and willfully violate any other provision of E.O. 12356, any implementing issuances or this part.

(b) Sanctions include but are not limited to a warning notice, reprimand, termination of classification authority, suspension without pay, forfeiture of pay, removal or discharge, and will be imposed upon any person, regardless of office or level of employment, who is responsible for a violation specified under this paragraph as determined appropriate under applicable law and DoD regulations. Nothing in this part prohibits or limits action under the Uniform Code of Military Justice based upon violations of that Code.

§ 159a.99 Corrective action.

The Secretary of Defense, the Secretaries of the Military Departments, and the heads of other DoD Components shall ensure that appropriate and prompt corrective action is taken whenever a violation under § 159a.98(a) occurs or repeated administrative discrepancies or repeated disregard of requirements of this Regulation occur (see § 159a.100). Commanders and supervisors, in consultation with appropriate legal counsel, shall utilize all appropriate criminal, civil, and administative enforcement remedies against employees who violate the law and security requirements as set forth in this part and other pertinent DoD issuances.

§ 159a.100 Administrative discrepancies.

Repeated administrative discrepancies in the marking and handling of classified information and material such as failure to show classification authority; failure to apply internal classification markings; failure to adhere to the requirements of this part that pertain to dissemination, storage, accountability, and destruction, and that are determined not to constitute a violation under § 159a.98(a) may be grounds for adverse administrative action including warning, admonition, reprimand or termination of classification authority as determined appropriate under applicable policies and procedures.

§ 159a.101 Reporting violations.

(a) Whenever a violation under § 159a.98(a)(2) occurs, the Director of Counterintelligence and Investigative Programs, ODUSD(P) shall be informed of the date and general nature of the occurrence including the relevent parts of this part, the sanctions imposed, and the corrective action taken. Whenever a violation under § 159a.98(a) (1) or (3) occurs, the Director of Security Plans and Programs, OSUSD(P) shall be provided the same information. Notification of such violations shall be furnished to the Director of the ISOO in accordance with § 5.4(d) of E.O. 12356 by the ODUSD(P).

(b) Any action resulting in unauthorized disclosure of properly classified information that constitutes a violation of the criminal statutes and evidence reflected in classified information of possible violations of federal criminal law by a DoD employee and of possible violations by any other person of those federal criminal laws specified in guidelines adopted by the Attorney General shall be the subject of a report processed in accordance with DoD Directive 5210.50 and DoD Instruction 5240.4.

(c) Any action reported under paragraph (b) of this section, shall be reported to the Attorney General by the General Counsel, Department of Defense.

(d) Reports shall be made to appropriate counterintelligence, investigative, and personnel security authorities concerning any employee who is known to have been responsible for repeated security violations over a period of a year, for appropriate evaluation, including readjudication of the employee's security clearance.

APPENDIX A—EQUIVALENT FOREIGN AND INTERNATIONAL PACT ORGANIZATION SECURITY CLASSIFICATIONS

Country	Top Secret	Secret	Confidential	
Argentina	Estrictamente Secreto	Secreto	Confidencial	Reservado.
Australia	Top Secret	Secret	Confidential	
Austria	Streng Geheim	Geheim	Verschluss	
Belgium:				
French	Tres Secret	Secret	Confidentiel Restraints	Difusion.
Flemish	Zeer Geheim	Geheim	Vertrouwelijk Verspreiding	Beperkte.
Bolivia	Supersecreto or Muy Secreto	Secreto	Confidencial	Resadrvado.
Brazil	Ultra Secreto	Secreto	Confidencial	Reservado.
Cambodia	Tres Secret	Secret	Secret/Confidential	
Canada	Top Secret	Secret	Confidential	Restricted.
Chile	Secreto	Secreto	Reservado	Reservado.
Columbia	Ultrasecreto	Secreto	Reservado Restringido	Confidencial.
Costa Rica	Alto Secreto	Secreto	Confidencial	
Denmark	Hojst Hemmiligt	Hemmiligt	Fortroligt	Til Tjenestebrug.
Ecuador	Secretisimo	Secreto	Confidencial	Reservado.
El Salvador	Ultra Secreto	Secreto	Confidencial	Reservado.

[39] See footnote 1 to § 159a.3

APPENDIX A—EQUIVALENT FOREIGN AND INTERNATIONAL PACT ORGANIZATION SECURITY CLASSIFICATIONS—Continued

Country	Top Secret	Secret	Confidential	
Ethiopia	Yemiaz Birtou Mistir	Kiflil		
Finland	Erittain Salainen	Salainen		
France	Tres Secret	Secret Defense	Confidentiel Defense Restreinte	Diffusion.
Germany	Streng Geheim	Geheim	Va-Vertraulich	
Greece	Akpra Anopphton	Anopphton	Emilisteytikon Xpheere	Mepinpiemenha.
Guatemala	Alto Secreto	Secreto	Confidencial	Reservado.
Haiti		Secret	Confidentiel	
Honduras	Super Secreto	Secreto	Confidencial	Reservado.
Hong Kong	Top Secret	Secret	Confidential	Restricted.
Hungary	Szigorusan Titkos	Titkos	Bizalmas	
India	Top Secret	Secret	Confidential	Restricted.
Indonesia	Sangat Rahasia	Rahasia	Terbatas	
Iran	Bekoli Serri	Serri	Kheili Mahramaneh	Mahramaneh.
Iraq	(Absolutely secret)	(Secret)		(Limited).
Ireland Gaelic	Top Secret An-Sicreideach	Secret Sicreideach	Confidential Runda	Restricted Srianta.
Israel	Sodi Beyoter	Sodi	Shamur	Mugbal.
Italy	Segretissimo	Segreto	Riservatissimo	Riservato.
Japan	Kimitsu	Gokuhi	Hi Bugaihi	Toriatsukaichui.
Jordan	Maktum Jiddan	Maktum	Sirri	Mahdud.
Korea				
Laos	Tres Secret	Secret	Secret/Confidentiel Restreinte	Difusion.
Lebanon	Tres Secret	Secret	Confidentiel	
Mexico	Alto Secreto	Secreto	Confidencial	Restringido.
Netherlands	Zeer Geheim	Geheim	Confidentieel or Vertrouwelijk	Dienstgeheim.
New Zealand	Top Secret	Secret	Confidential	Dienstgeheim.
Nicaragua	Alto Secreto	Secreto	Confidencial	Reservado.
Norway	Strengt Hemmelig	Hemmelig	Konfideneielt	Begrenset.
Pakistan	Top Secret	Secret	Confidential	Restricted.
Paraguay	Secreto	Secreto	Confidencial	Reservado.
Peru	Estrictamente Secreto	Secreto	Condifencial	Reservado.
Philippines	Top Secret	Secret	Confidential	Restricted.
Portugal	Muito Secreto	Secreto	Confidencial	Reservado.
Spain	Maximo Secreto	Secreto	Confidencial Limitada	Diffussion.
Sweden (Red Borders)	Hemlig	Hemlig	Hemlig	
Switzerland	(1)	(1)	(1)	
French	Secret	Secret	Secret Exclusive Du	Reserve A L'Usage.
German	Streng Geheim	Geheim	Vertraulich Lichen Gebrauch	Nur Fur Dienst-
Italian	Segreto	Segreto	Segreto Di Servizio	Ad Exclusive Uso.
Thailand	Lup Tisud	Lup Maag	Lup	Pok Pid.
Turkey	Cok Gizli	Gizli	Ozel	Hizmete Ozel.
Union of South Africa:				
English	Top Secret	Secret	Confidential	Restricted.
Afrikaans	Uiters Geheim	Geheim	Vertroulik	Reperk.
United Arab Republic (Egypt)	Top Secret	Very Secret	Secret	Official.

[1] Three languages. TOP SECRET has a registration number to distinguish from SECRET and CONFIDENTIAL.

Appendix B—General Accounting Office Officials Authorized To Certify Security Clearances (See § 159a.53(b)(3))

The Comptroller General, Deputy Comptroller General and Assistant Comptroller General and Assistants to the Comptroller General

The General Counsel and Deputy General Counsel

The Director and Deputy Director, Personnel; the Security Officer

The Director and Deputy Director, Office of Internal Review

The Director and Assistants to the Director of the Office of Program Planning and the Office of Policy

The Director and Deputy Directors of the Community and Economic Development Division

The Director, and Deputy Directors, Associate Directors, Deputy Associate Directors, Senior Group Directors, and the Assistant to the Director for Planning and Administration of the Energy and Minerals Division

The Director, Deputy Directors, Associate Directors and Division Personnel Security Officer of the Human Resources Division

The Directors, Deputy Directors, and Associate Directors, of the following Divisions:

Claims
Field Operations
Financial and General Management Studies
General Government
International
Logistics and Communications
Procurement and Systems Acquisition
Program Analysis Division

Directors and Managers of International Division Oversees Offices as follows:

Director European Branch, Frankfurt, Germany
Director Far East Branch, Honolulu, Hawaii
Manager, Sub Office, Bangkok, Thailand

Regional Managers and Assistsant Regional Managers of the Field Operations Division's Regional Offices as follows:

Atlanta, Georgia
Boston, Massachusetts
Chicago, Illinois
Cincinnati, Ohio
Dallas, Texas
Denver, Colorado
Detroit, Michigan
Kansas City, Missouri
Los Angeles, California
New York, New York
Norfolk, Virginia
Philadelphia, Pennsylvania
San Francisco, California
Seattle, Washingotn
Washington, D.C.

Appendix C—Instructions Governing Use of Code Words, Nicknames, and Exercise Terms (See § 159a.54(j))

1. Definitions

a. *Using Component.* The DoD Component to which a code word is allocated for use, and which assigns to the word a classified meaning, or which originates nicknames and exercise terms using the procedure established by the Joint Chiefs of Staff.

b. *Code Word.* A single word selected from those listed in Joint Army-Navy-Air Force Publication (JANAP) 299 and later volumes, and assigned a classified meaning by appropriate authority to insure proper security concerning intentions, and to safeguard information pertaining to actual military plans or operations classified as Confidential or higher. A code word shall not

be assigned to test, drill or exercise activities. A code word is placed in one of three categories:

(1) *Available.* Allocated to the using component. Available code words *individually* will be unclassified until placed in the active category.

(2) *Active.* Assigned a classified meaning and current.

(3) *Canceled.* Formerly active, but discontinued due to compromise, suspected compromise, cessation, or completion of the operation to which the code word pertained. Canceled code words *individually* will be unclassified and remain so until returned to the active category.

c. *Nickname.* A combination of two separate unclassified words which is assigned an unclassified meaning and is employed only for unclassified administrative, morale, or public information purposes.

d. *Exercise Term.* A combination of two separate unclassified words, normally unclassified, used exclusively to designate a test, drill, or exercise. An exercise term is employed to preclude the possibility of confusing exercise directions with actual operations directives.

2. Policy and Procedure

a. *Code Words.* The Joint Chiefs of Staff are responsible for allocating words or blocks of code words from JANAP 299 to DoD Components. DoD Components may request allocation of such code words as required and may reallocate available code words within their organizations, in accordance with individual policies and procedure, subject to applicable rules set forth herein.

(1) A permanent record of all code words shall be maintained by the Joint Chiefs of Staff.

(2) The using Component shall account for available code words and maintain a record of each active code word. Upon being canceled, the using component shall maintain the record for 2 years; thence the record of each code word may be disposed of in accordance with current practices, and the code word returned to the available inventory.

b. *Nicknames*

(1) Nicknames may be assigned to actual events, projects, movement of forces, or other nonexercise activities involving elements of information of any classification category, but the nickname, the description or meaning it represents, and the relationship of the nickname and its meaning must be unclassified. A nickname is not designed to achieve a security objective.

(2) Nicknames, improperly selected, can be counterproductive. A nickname must be chosen with sufficient care to ensure that it does not:

(a) Express a degree of bellicosity inconsistent with traditional American ideals or current foreign policy;

(b) Convey connotations offensive to good taste or derogatory to a particular group, sect, or creed; or,

(c) Convey connotations offensive to our allies or other Free World nations.

(3) The following shall not be used as nicknames:

(a) Any two-word combination voice call sign found in JANAP 119 or ACP 110. (However, single words in JANAP 119 or ACP 110 may be used as part of a nickname if the first word of the nickname does not appear in JANAP 299 and later volumes.)

(b) Combination of words including word "project," "exercise," or "operation." (The word "project" often is used as the first or second word with an unclassified nickname originating outside the Department of Defense.)

(c) Words that may be used correctly either as a single word or as two words, such as "moonlight."

(d) Exotic words, trite expressions, or well-known commercial trademarks.

(4) The Joint Chiefs of Staff shall:

(a) Establish a procedure by which nicknames may be authorized for use by DoD Components.

(b) Prescribe a method for the using Components to report nicknames used.

(5) The heads of DoD Components shall:

(a) Establish controls within their Components for the assignment of nicknames authorized under subparagraph 2.b.(4)(a), above.

(b) Under the procedures established, advise the Joint Chiefs of Staff of nicknames as they are assigned.

c. Exercise Term

(1) Unclassified exercise terms may be assigned only to tests, drills, or exercises for the purpose of emphasizing that the event is a test, drill, or exercise and not an actual operation. However, the description or meaning it represents, and the relationship of the exercise term and its meaning can be classified or unclassified. A classified exercise term is not authorized.

(2) Selection of exercise terms will follow the same guidance as contained in subparagraphs 2.b.(2) and (3), above.

(3) The Joint Chiefs of Staff shall:

(a) Establish a procedure by which exercise terms may be authorized for use by DoD Components.

(b) Prescribe a method for using Components to report exercise terms used.

(4) The heads of DoD Components shall:

(a) Establish controls within their Component for the assignment of exercise terms authorized under subparagraph 2.c.(3), above.

(b) Under the procedures established, advise the Joint Chiefs of Staff of exercise terms as they are assigned.

3. Assignment of Classified Meanings to Code Words

a. The DoD Component responsible for the development of a plan or the execution of an operation shall be responsible for determining whether to assign a code word.

b. Code words shall be activated for the following purposes only:

(1) To designate a classified military plan or operation;

(2) To designate classified geographic locations in conjunction with plans or operations referred to in subparagraph 3.b.(1), above; or,

(3) To cancel intentions in discussions and messages or other documents pertaining to plans, operations, or geographic locations referred to in subparagraphs 3.b.(1) and (2), above.

c. The using Component shall assign to a code word a specific meaning classified Secret or Confidential. Code words shall not be used to cover unclassified meanings. The assigned meaning need not in all cases be classified as high as the overall classification assigned to the plan or operation. Top Secret code words may be issued only with DUSD(P) or DoD Component head approval.

d. Code words shall be selected by each using Component in such manner that the word used does not suggest the nature of its meaning.

e. A code word shall not be used repeatedly for similar purposes; that is, if the initial phase of an operation is designated "Meaning," succeeding phases shall not be designated "Meaning II" and "Meaning III," but should have different code words.

f. Each DoD Component shall establish policies and procedures for the control and assignment of classified meanings to code words, subject to applicable rules set forth herein.

4. Notice of Assignment, Dissemination, and Cancelation of Code Words and Meanings

a. The using Component shall promptly notify the Joint Chiefs of Staff when a code word is made active, indicating the word, and its classification. Similar notice shall be made when any changes occur, such as the substitution of a new word for one previously placed in use.

b. The using Component is responsible for further dissemination of active code words and meanings to all concerned activities, to include classification of each.

c. The using Component is responsible for notifying the Joint Chiefs of Staff of canceled code words. This cancellation report is considered final action, and no further reporting or accounting of the status of the canceled code word will be required.

5. Classification and Downgrading Instructions

a. During the development of a plan, or the planning of an operation by the headquarters of the using Component, the code word and its meaning shall have the same classification. When dissemination of the plan to other DoD Components or to subordinate echelons of the using Component is required, the using Component may downgrade the code words assigned below the classification assigned to their meanings in order to facilitate additional planning implementation, and execution by such other Components or echelons, but code words shall, at a minimum, be classified Confidential.

b. A code word which is replaced by another code word due to a compromise or suspected compromise, or for any other reason, shall be canceled, and classified Confidential for a period of 2 years, after which the code word will become unclassified.

c. When a plan or operation is discontinued or completed, and is not replaced by a similar plan or operation but the meaning cannot be declassified, the code word assigned thereto shall be canceled and classified Confidential

for a period of 2 years, or until the meaning is declassified, whichever is sooner, after which the code word will become unclassified.

d. In every case, whenever a code word is referred to in documents, the security classification of the code word shall be placed in parentheses immediately following the code word, for example, "Label (C)."

e. When the meaning of a code word no longer requires a classification, the using Component shall declassify the meaning and the code word and return the code word to the available inventory.

6. Security Practices

a. The meaning of a code word may be used in a message or other document, together with the code word, only when it is essential to do so. Active code words may be used in correspondence or other documents forwarded to addresses who may or may not have knowledge of the meaning. If the context of a document contains detailed instructions or similar information which indicates the purpose or nature of the related meaning, the active code word shall not be used.

b. In handling correspondence pertaining to active code words, care shall be used to avoid bringing the code words and their meanings together. They should be handled in separate card files, catalogs, indexes, or lists, enveloped separately, and dispatched at different times so they do not travel through mail or courier channels together.

c. Code words shall not be used for addresses, return addresses, shipping designators, file indicators, call signs, identification signals, or for other similar purposes.

7. Former Words

All code words formerly categorized as "inactive" or "obsolete" shall be placed in the current canceled category and classified Confidential. Unless otherwise restricted, all code words formerly categorized as "canceled" or "available" shall be individually declassified. All records associated with such code words may be disposed of in accordance with current practices, provided such records have been retained at least 2 years after the code words were placed in the former categories of "inactive," "obsolete," or "canceled."

8. Non-DoD Words

Nicknames or code words originating outside of the Department of Defense that are jointly used by the originating organization and the Department of Defense shall be registered with the DUSD(P) to prevent confusion with DoD-originated words.

Appendix D—Federal Aviation Administration Air Transportation, Security Field Offices (See § 159a.57(c)(1)(i))

City	*State*
Anchorage	Alaska
Atlanta	Georgia
Baltimore	Maryland
Boston	Massachusetts
Chicago (O'Hare)	Illinois
Cleveland	Ohio
Dallas	Texas
Denver	Colorado
Detroit	Michigan
Honolulu	Hawaii
Houston	Texas
Kansas City	Missouri
Las Vegas	Nevada
Los Angeles	California
Miami	Florida
Minneapolis	Minnesota
Newark	New Jersey
New Orleans	Louisiana
New York (John F. Kennedy)	New York
New York (La Guardia)	New York
Philadelphia	Pennsylvania
Pittsburgh	Pennsylvania
Portland	Oregon
St. Louis	Missouri
San Antonio	Texas
San Diego	California
San Francisco	California
San Juan	Puerto Rico
Seattle	Washington
Tampa	Florida
Tucson	Arizona
Washington (Dulles)	Washington, DC
Washington (National)	Washington, DC

Appendix E—Transportation Plan (See § 159a.57(a))

The provisions of § 159a.57(e) of this part require that transmission instructions or a separate transportation plan be included with any contract, agreement or other arrangement involving the release of classified material to foreign entities. The transportation plan is to be submitted to and approved by applicable DoD authorities. As a minimum, the transportation plan shall include the following provisions:

a. A description of the classified material together with a brief narrative as to where and under what circumstances transfer of custody will occur;

b. Identification, by name or title, of the designated representative of the foreign recipient government or international organization who will receipt for and assume security responsibility for the U.S. classified material (person(s) so identified must be cleared for access to the level of the classified material to be shipped);

c. Identification and specific location of delivery points and any transfer points;

d. Identification of commercial carriers and freight forwarders or transportation agents who will be involved in the shipping process, the extent of their involvement, and their security clearance status;

e. Identification of any storage or processing facilities to be used and, relative thereto, certification that such facilities are authorized by competent government authority to receive, store, or process the level of classified material to be shipped;

f. When applicable, the identification, by name or title, of couriers and escorts to be used and details as to their responsibilities and security clearance status;

g. Description of shipping methods to be used as authorized by the provisions of subpart I, together with the identification of carriers (foreign and domestic);

h. In those cases when it is anticipated that the U.S. classified material or parts thereof may be returned to the United States for repair, service, modification, or other reasons, the plan must require that shipment shall be via a carrier of U.S. or recipient government registry, handled only by authorized personnel, and that the applicable Military Department (for foreign military sales (FMS)) or Defense Investigative Service (for commercial sales) will be given advance notification of estimated time and place of arrival and will be consulted concerning inland shipment;

i. The plan shall require the recipient government or international organization to examine shipping documents upon receipt of the classified material in its own territory and advise the responsible Military Department in the case of FMS, or Defense Investigative Service in the case of commercial sales, if the material has been transferred enroute to any carrier not authorized by the transportation plan; and

j. The recipient government or international organization also will be required to inform the responsible Military Department or the Defense Investigative Service promptly and fully of any known or suspected compromise of U.S. classified material while such material is in its custody or under its cognizance during shipment.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 16, 1989.

[FR Doc. 89-14748 Filed 6-26-89; 8:45 am]

BILLING CODE 3810-01-M

SELECTIVE SERVICE SYSTEM

32 CFR Part 1656

Selective Service Regulations

AGENCY: Selective Service System.

ACTION: Final rule.

SUMMARY: Procedures for the processing of registrants under the Military Selective Service Act (50 U.S.C. App. 451 et seq.) are revised to assure greater fairness and efficiency in administration in the processing of registrants.

EFFECTIVE DATE: June 27, 1989.

FOR FURTHER INFORMATION CONTACT: Henry N. Williams, General Counsel, Selective Service System, Washington, DC 20435, Phone (202) 724-1167.

SUPPLEMENTARY INFORMATION: This amendment to Selective Service Regulations is published pursuant to section 13(b) of the Military Selective Service Act (50 U.S.C. App. 463(b)) and Executive Order 11623. These regulations implement the Military Selective Service Act (50 U.S.C. App. 451 et seq.).

Analysis of Comments

The proposed amendment to Selective Service Regulations was published in the **Federal Register** on April 14, 1989 (54 FR 14968) for public comment. Two letters of comment were received, both favored the proposal.

The proposed regulation will become the final rule.

Determination

As required by Executive Order 12291, I have determined that this regulation is not a "Major" rule and therefore does not require a Regulatory Impact Analysis.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), I have determined that this regulation does not have a significant economic impact on a substantial number of small entities.

Certificate

Whereas, on April 14, 1989, the Director of Selective Service published a Notice of Proposed Amendments of Selective Service Regulations at 54 FR 14968; and whereas such publication complied with the publication requirement of section 13(b) of the Military Selective Service Act (50 App. U.S.C. 463(b)) in that more than 30 days have elapsed subsequent to such publication during which period comments from the public (summarized above) have been received and considered; and I certify that I have requested the view of officials named in section 2(a) of Executive Order 11623 and none of them has timely requested that the matter be referred to the President for decision.

Now therefore by virtue of the authority vested in me by the Military Selective Service Act, as amended (50 App. U.S.C. section 451 et seq.) and Executive Order 11623 of October 12, 1971, the Selective Service Regulations constituting a portion of Chapter XVI of Title 32 of the Code of Federal Regulations, are hereby amended, as stated below.

List of Subjects in 32 CFR Chapter XVI

Armed Forces—draft.

Dated: June 14, 1989.

Samuel K. Lessey Jr.,

Director of Selective Service.

The regulation is:

PART 1656—ALTERNATIVE SERVICE

(1) The authority citation for Part 1656 continues to read as follows:

Authority: Military Selective Service Act, 50 U.S.C. App. 451 et. seq.; E.O. 11623.

§ 1656.5 [Amended]

(2) Section 1656.5(a)(1)(iii) is removed and reserved.

[FR Doc. 89-15114 Filed 6-26-89; 8:45 am]

BILLING CODE 8015-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD1-89-048]

Safety Zone Regulations; Coney Island Channel, New York

AGENCY: Coast Guard, DOT.

ACTION: Emergency Rule.

SUMMARY: The Coast Guard is establishing a safety zone in Coney Island Channel, New York. This Zone is needed to protect the maritime community from the possible dangers and hazards to navigation associated with an airshow.

EFFECTIVE DATES: This regulation becomes effective at 1:00 p.m. local time on the 1st, 2nd, 3rd and 4th of July 1989. It terminates at 2:30 p.m. local time on the 1st, 2nd, 3rd and 4th of July 1989.

FOR FURTHER INFORMATION CONTACT: GMC H.J. Moss of Captain of the Port, New York (212) 668-7933.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was not published for this regulation and it is being made effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to respond to any potential hazards. This action has been analyzed in accordance with the principle and criteria of E.O. 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Drafting Information

The drafters of this regulation are LTJG. C.W. Jennings, Project Officer for the Captain of the Port, New York, and LT. J.B. Gately, Project Attorney, First Coast Guard District Legal Office.

Discussion of Regulation

The circumstances requiring this regulation result from an airshow display over Coney Island Channel, NY.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water) security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165 [AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 160-5, 49 CFR 1.46.

2. Part 165 is amended by adding section 165.T1029 to read as follows:

§ 165.T1029 Safety Zone; Coney Island Channel, New York, NY.

(a) *Location.* That portion of the waters of Coney Island Channel encompassed by a line drawn from Sheepshead Bay buoy "7"(LLN31685), thence southwest to approach buoy"1"(LLN31655), thence due west to Coney Island Channel buoy"11"(LLN32640), thence due north to Norton Pt. on Coney Island.

(b) *Effective date.* This regulation becomes effective at 1:00 p.m. local time on the 1st, 2nd, 3rd and 4th of July 1989. It terminates at 2:30 p.m. local time on the 1st, 2nd, 3rd and 4th of July 1989.

(c) *Regulations.* In accordance with the general regulations in Section 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

Dated: June 7, 1989.

R.C. North,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 89-15188 Filed 6-26-89; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 173

[CGD 89-048]

Vessel Numbering and Casualty Reporting

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is correcting statutory citations and restatements of legislative text to conform to changes made during recodification of Title 46 of the United States Code. The Coast Guard is also updating the lists of Issuing Authorities and Reporting Authorities. Since the lists of issuing and reporting authorities were last corrected, the Coast Guard has approved several State numbering and casualty reporting systems. The Coast Guard remains the issuing and reporting authority only for the State of Alaska. The effect of this rulemaking is to update statutory citations and restatements of legislative text related to reciprocity, and to accurately identify the appropriate issuing and reporting authority for each State.

EFFECTIVE DATE: June 27, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Carlton Perry, Office of Navigation Safety and Waterway Services (202) 267–0979.

SUPPLEMENTARY INFORMATION: In 1983, Congress recodified sections of the Federal Boat Safety Act of 1971 into Title 46 U.S.C., and changed the language of subsections 18(c) and 18(d) regarding reciprocity. This rulemaking amends several sections in Title 33 CFR Part 173 and revises the wording of § 173.17 to conform to the current text of 46 U.S.C. 12302. The changes do not substantively affect the existing regulations.

Appendix A of 33 CFR Part 173 lists States approved by the Coast Guard to conduct the functions of issuing vessel numbers and requiring the reporting of vessel accidents. Since the lists were last updated in 1976, the Coast Guard has approved three State numbering and casualty and accident reporting systems: American Samoa, 1982; Washington, 1984; and New Hampshire, 1988. The Coast Guard now issues vessel numbers and requires the reporting of accidents only for the State of Alaska. This rulemaking will incorporate the three most recently approved States into paragraph (a), alphabetically, along with the other State issuing and reporting authorities.

This final rule was not preceded by a notice of proposed rulemaking and is being made effective in less than 30 days after publication in the **Federal Register**. This rule relates to the Coast Guard's management, procedures and practices, and merely corrects the restatement of current law text and updates the Appendix A listing to reflect the current State issuing and reporting authorities. Therefore, the Coast Guard has determined that notice and opportunity for public comment is unnecessary under 5 U.S.C. 553(b)(3)(B). Since the changes reflected in this rule have already been accomplished, good cause exists, under 5 U.S.C. 553(d), for making it effective in less than 30 days after publication in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this rule are: Carlton Perry, Project Manager, and Christena Green, Project Attorney, Office of the Chief Counsel.

Regulatory Evaluation

This rulemaking is considered nonmajor under Executive Order No. 12291 and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of the rulemaking has been found to be so minimal that further evaluation is unnecessary. These amendments merely correct a listing of current issuing and reporting authorities. Since the impact of the proposal is expected to be minimal, the Coast Guard certifies that this final rule will not have significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 173

Marine safety, Reporting requirements.

In consideration of the foregoing, the Coast Guard is amending Part 173 of Title 33, Code of Federal Regulations as set forth below.

PART 173—[AMENDED]

1. The authority for Part 173 continues to read as follows:

Authority: 46 U.S.C. 6101, 12302; 49 CFR 1.46.

2. Section 173.1 is revised to read as follows:

§ 173.1 Purpose.

This part prescribes requirements for numbering vessels and for reporting casualties and accidents to implement sections 6101, 6102, 12301 and 12302 of Title 46, United States Code.

3. Section 173.3 is amended by removing and reserving paragraph (a) to read as follows:

§ 173.3 Definitions.

As used in this part:

(a) [Reserved.]

* * * * *

4. Section 173.13 is amended by revising the introductory text to read as follows:

§ 173.13 Exemptions.

Where the Coast Guard issues numbers, the following classes of vessels are exempt, under Section 12303 of Title 46, United States Code, from the numbering provisions of Sections 12301 and 12302 of Title 46, United States Code, and this part:

* * * * *

5. Section 173.17 is revised to read as follows:

§ 173.17 Reciprocity.

(a) Section 12302(c) of Title 46, United States Code, states:

When a vessel is numbered in a State, it is deemed in compliance with the numbering system of a State in which it temporarily is operated.

(b) Section 12302(d) of Title 46, United States Code, states:

When a vessel is removed to a new State of principal operation, the issuing authority of that State shall recognize the validity of the number issued by the original State for 60 days.

6. Section 173.21 is amended by revising paragraph (b) to read as follows:

§ 173.21 Certificate of number required.

* * * * *

(b) Section 12304(a) of Title 46, United States Code, states in part: The certificate of number for a vessel less than 26 feet in length and leased or rented to another for the latter's noncommercial operation of less than 7 days may be retained on shore by the vessel's owner or representative at the place from which the vessel departs or returns to the possession of the owner or the owner's representative.

Appendix A—[Amended]

7. In paragraph (a) of Appendix A of Part 173, the phrase "American Samoa–AS." is added immediately after the phrase "Alabama–AL."; the phrase "New Hampshire–NH." is added immediately after the phrase "Nevada–NV."; and the phrase "Washington–WN." is added immediately after the phrase "Virgin Islands–VI.".

8. In paragraph (b) of Appendix A of Part 173, the phrases "American Samoa–AS.", "New Hampshire–NH.", and "Washington–WN." are deleted.

Dated: June 21, 1989.

R. T. Nelson,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 89–15189 Filed 6–26–89; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3606–3]

Approval and Promulgation of Air Quality Implemenation Plans; Louisiana; Revision to Louisiana Lead SIP for the Baton Rouge Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action approves a revision to the Louisiana State Implementation Plan (SIP) for lead. On July 28, 1982, at 47 FR 32529 EPA proposed to approve the Louisiana lead SIP as submitted to EPA except for the portion dealing with the Baton Rouge area, because EPA required additional air quality modeling around the Ethyl Corporation's lead gasoline additive manufacturing plant ("Ethyl") in East Baton Rouge Parish. On May 1, 1984, (49 FR 18484), EPA fully approved the Louisiana lead SIP, which included the State's lead control plan for the Ethyl facility—a State Compliance Order issued October 31, 1983. In a letter dated July 18, 1986, the Governor of Louisiana submitted to EPA a new Compliance Order dated January 31, 1986, that amended the original Order in its entirety. Because the original Order was a part of the approved lead SIP for Baton Rouge, its amendment meant that the State had to seek an amendment to its SIP.

EFFECTIVE DATE: This action will be effective on July 27, 1989.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733.

Louisiana Department of Environmental Quality, P.O. Box 44096, 625 N. 4th Street, 8th Floor, Baton Rouge, Louisiana 70804–4096.

Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, DC 20460.

If you wish to view these documents, please contact the person named below to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: Barbara Durso at (214) 655–7214 or FTS 255–7214.

SUPPLEMENTARY INFORMATION: The pertinent background information concerning this notice was published in the proposed rulemaking on April 14, 1988, at 53 FR 12435. EPA did not receive any comments on the proposal.

In accordance with the proposal, the Louisiana Department of Environmental Quality (LDEQ) remodeled the impact of the Ethyl Corporation's lead emissions on ambient air quality in the Baton Rouge area using the ISCST model, Version 6.3, and submitted the new modeling analysis to EPA by letter dated May 27, 1988. On January 27, 1989, LDEQ submitted an explanatory letter to EPA in response to questions from EPA about emissions limits used in the May 1988 analysis. Since LDEQ satisfied EPA's concerns, the Agency finds the current modeling analysis to adequately demonstrate that ambient air quality concentrations of lead will not be adversely affected by lead emissions from the change in Ethyl's operations.

In general, there are four elements considered in the application of an air quality model: (1) Input of the sources of emissions, (2) selection of a meteorological data set which best represents dispersion and transport in the area, (3) identification of receptors (i.e., those points downwind), and (4) choice of model options. EPA's review of LDEQ's current air qualilty analysis of May 27, 1988, considered these elements.

EPA had two concerns with the air quality modeling first submitted to support the State's request to revise the lead SIP for the Baton Rouge area: (1) The use of appropriate versions of the air quality model and (2), the use of a fully adequate receptor network. Because of these concerns, EPA required that the State remodel the impact of Ethyl's lead emissions.

In its first attempt, LDEQ used Version 5 of the ISCST model even though Version 6 was designated the acceptable version for regulatory use at that time (52 FR 12435). In the current modeling for the revised lead SIP, LDEQ used Version 6.3 of ISCST, which was the appropriate supplemental version at the time the State did the current modeling.

EPA's second concern was with the limited nature of the receptor network near the plant property line used in the first modeling effort. LDEQ remedied this problem by adding more receptors in the current modeling, which resulted in fully acceptable receptor coverage.

The State's amended Compliance Order for the Ethyl Corporation facility in Baton Rouge limits emissions to 0.22 grams of lead per second from the two furnaces, based on a calendar quarterly averaging period. The input of emission sources and rates in the modeling for Ethyl are consistent with the requirements of the amended Order. Under a plantwide emissions limit of 0.22 grams of lead per second for a calendar quarterly averaging period, the LDEQ submittal allows for flexibility in the quarterly average emission rates from the individual furnaces: (1) 0.22 grams of lead per second per quarterly averaging period for the reverberatory furnace stack and, (2) 0.14 grams of lead per second, quarterly average, for the rotary furnace stack.

LDEQ properly selected the applicable options for the ISCST model to assess ambient air concentrations of lead in the Baton Rouge area. These options included the regulatory option, that is the model included certain features recommended by EPA in its guidelines. The State also used an acceptable meteorological data set, which included five years (1982–1986) of Baton Rouge surface data and Lake Charles upper air data. The State chose a receptor network that provided adequate coverage to identify the maximum predicted lead concentration on a calendar quarter basis. The results of the current modeling, including consideration of background lead air quality, showed no exceedances of the lead standard will occur in the Baton Rouge area as a result of this action.

Final Action

EPA has evaluated the revision to the Baton Rouge portion of the Louisiana lead SIP and finds that it meets the requirements of EPA regulations and policy, therefore, EPA approves the revision to Lousiana lead SIP as submitted by the Governor in a letter dated July 18, 1986. EPA finds that the amended Compliance Order issued by the Secretary of the Louisiana Department of Environmental Quality on January 31, 1986, to Ethyl Corporation of Baton Rouge, Louisiana, is adequate to attain and maintain the lead NAAQS throughout the Baton Route area.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 28, 1989. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by Reference, Lead, Reporting and Recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of Louisiana was approved by the Director of the **Federal Register** on July 1, 1982.

Authority: 42 U.S.C. 7401–7642.

Date: June 16, 1989.

Robert E. Layton, Jr.,

Regional Administrator.

40 CFR Part 52, Subpart T, is amended as follows:

PART 52—[AMENDED]

Subpart T—Louisiana

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.970 is amended by adding paragraph (c)(51) to read as follows:

§ 52.970 Identification of plan.

* * * * *

(c) * * *

(51) Revision to the Louisiana Lead State Implementation Plan (SIP) submitted by the Governor in a letter dated July 18, 1988.

(i) Incorporation by Reference.

(A) An amended Compliance Order dated January 31, 1988, issued by the Secretary of the State of Louisiana Department of Environmental Quality in the matter of Ethyl Corporation, Baton Rouge, Louisiana.

(ii) Additional material.

(A) Computer modeling submitted by letter dated May 27, 1988, from Doug Walters, Louisiana Department of Environmental Quality, to Joe Winkler, U.S. Environmental Protection Agency.

(B) Explanatory letter dated January 27, 1989, from Gustave Von Bodungen, Louisiana Department of Environmental Quality, to Gerald Fontenot, U.S. Environmental Protection Agency.

[FR Doc. 89–15188 Filed 6–26–89; 8:45 am]
BILLING CODE 6560–50–M

40 CFR Part 52

[FRL–3606–5]

Designation of Areas for Air Quality Planning Purposes

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: USEPA is disapproving a site-specific revision to the ozone portion of the Ohio State Implementation Plan (SIP) for the General Motors (GM) Lordstown auto assembly facility in Warren (Trumbull County), Ohio. On October 5, 1978 (43 FR 46011), USEPA designated Trumbull County as nonattainment for ozone. This action is based on a revision request submitted by Ohio on October 21, 1988, for a relaxation of emission limitations for GM's volatile organic compound (VOC) topcoat and final repair coatings operations, as established under Ohio Administrative Code (OAC) Rule 3745–21–09(C). USEPA has determined that this revision request would not constitute Reasonably Available Control Technology (RACT), as required under the Clean Air Act (CAA).

As a result of today's disapproval of the revision for GM's Lordstown facility, the source remains subject to the control requirements of OAC Rule 3745–21–09(C).

EFFECTIVE DATE: This final rulemaking becomes effective on July 27, 1989.

ADDRESSES: Copies of materials relating to USEPA's action may be inspected during normal business hours at the following address. (It is recommended that you telephone Maggie Greene, at (312) 886–6088, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR–26), 230 South Dearborn Street, Chicago, Illinois 60604

Ohio Environmental Protection Agency, Office of Air Pollution Control, 1800 WaterMark Drive, P.O. Box 1049, Columbus, Ohio 43266–0149.

FOR FURTHER INFORMATION CONTACT: Maggie Greene, U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR–26), 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6088.

SUPPLEMENTARY INFORMATION: On October 21, 1988, the Ohio Environmental Protection Agency (OEPA) submitted a request to revise the ozone portion of the State Implementation Plan (SIP) for the General Motors (GM) Lordstown auto assembly facility, which is located in Trumbull County, Ohio. On October 5, 1978 (43 FR 46011), USEPA designated Trumbull County as nonattainment for ozone. The revision requests a relaxation of emission limitations for GM's volatile organic compound (VOC) topcoat and final repair coatings operations, as established under Ohio Administrative Code (OAC) Rule 3745–21–09(C). USEPA has determined that this revision request would not constitute RACT as required under the CAA.

On June 29, 1988 (53 FR 24450), USEPA proposed to disapprove a site-specific SIP revision for the GM Lordstown auto assembly facility. Both OEPA and GM commented on the proposed disapproval. OEPA's comments are repeated in full in this final rule. However, due to their length, portions of GM's comments are abbreviated and/or paraphrased. USEPA's responses are based upon the full comments.

Public Comments and USEPA's Responses.

Ohio EPA's August 12, 1988, Comments

(1) USEPA FR Comment

GM's revised limit for its topcoat operation would amount to an average VOC content of 5.2 lbs VOC per gallon of coating, minus water. USEPA does not consider such a high VOC content as REACT for automotive topcoats, based upon past Agency analyses. USEPA must consider Ohio's request for GM Lordstown as a permanent relaxation, because Ohio has failed to specify a date for conversion of GM's coating operations to base coat/clear coat.

Ohio EPA Response. The USEPA refers to "past Agency analyses," but does not identify them in either the NPR or Region V's TSD. If this phrase refers to the CTG for automobile and light-duty truck assembly plants, it would not be a proper basis for disapproving the SIP revision. Obviously, the SIP revision is facility-specific. The approvability of the SIP revision must rise or fall based upon facility-specific considerations. The CTG establishes a presumptive norm for RACT, and the USEPA has indicated, as a matter of policy, that States have the latitude to establish an alternative definition of RACT for a particular facility if the presumptive norm is determined to be unreasonable. This is precisely what the Ohio EPA is proposing for the GM Lordstown facility—an alternative definition of RACT for the topcoat and final repair operations. Therefore, we must consider the statement that the "USEPA does not consider such a high VOC content as RACT" as nothing more than unsubstantiated opinion.

It is true that the variances for the topcoat and final repair operations do not contain a deadline for conversion to base coat/clear coat technology. Nevertheless, the USEPA has been fully aware of the fact that GM and the Ohio EPA have not considered the SIP revision to constitute a permanent relaxation. The Ohio EPA and GM have always considered the SIP revision to be a temporary relaxation. This was pointed out clearly to the USEPA in the Ohio EPA's Fact Sheet for the variances, as was the reason why GM could not commit to a firm date for the base coat/clear coat conversion as part of the terms and conditions of the variances. The fact that GM actually completely (sic) the conversion in September 1987, confirms the temporary nature of the SIP revision.

The USEPA's October 21, 1981, policy on automobile coatings provides for compliance date extensions through 1987 for topcoats. This approach was not pursued by the Ohio EPA because, as mentioned above, GM did not know exactly when the base coat/clear coat conversion would occur, and there was a good likelihood it would not occur by the end of 1987. In retrospect, if this approach had been followed, there would not have been a need for a redefinition of RACT for the GM Lordstown topcoat and final repair operations and there would not have been a basis for the USEPA's pending enforcement action against the Lordstown facility.

In order to remove the USEPA's concern that the SIP revision constitutes a permanent relaxation, the Ohio EPA will be modifying the variances in the near future to specify an expiration date of December 31, 1987. Once the variances have been officially modified, they will be submitted to the USEPA. In the meantime, however, the pending SIP revision should be evaluated as a temporary relaxation for the period from January 1, 1988 through December 31, 1987.

USEPA Response. Both USEPA's past guidance on RACT for automotive topcoat operations (the Control Technique Guideline (CTG) document for automotive coatings) and current guidance (the May 25, 1988, document titled "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations") present RACT for automotive topcoat operations to be 2.8 lbs VOC/gallon of coating. USEPA is not aware of having approved a permanent limit of 5.2 lbs/gallon as RACT for automotive topcoat operations. If Ohio's position is that GM Lordstown's topcoat operation is different from all other topcoat operations required to meet 2.8 lbs VOC/gallon at 30 percent transfer efficiency, or less than 5.2 lbs VOC/gallon, it has not demonstrated this position. This is the fundamental test that must be met to obtain a permanent relaxation substantially less stringent than what is generally required.

It does not matter "that GM and the Ohio EPA have not considered the SIP revision to constitute a permanent relaxation." USEPA is limited to reviewing what has been formally submitted to it and Ohio's October 21, 1988, submittal constitutes a permanent relaxation.

If Ohio submits a compliance date extension in the future, it will be reviewed as such. However, it is not possible for USEPA to do so with the submittal which is currently before it.

(2) USEPA FR Comment

In a memorandum of February 7, 1986, USEPA's Economic Analysis Branch (EAB) presented its evaluation of GM's cost analysis for spray booth controls. EAB's annualization techniques resulted in a systematic 19 percent reduction in GM's annualized costs. Therefore, GM's cost analysis appears to have overestimated these costs.

Ohio EPA Response. There is an underlying fallacy in this conclusion. The USEPA has assumed that the EAB's methods for calculating the annualized costs are more accurate than those used by GM. No information has been provided by the USEPA to support this assumption. In fact, the February 7, 1986, EAB memorandum referenced in the NPR states the following:

(a) GM's costing procedures are appropriate; and

(b) the capital and operating cost estimates prepared by GM are acceptable for this specific application; * * *

Also, the January 31, 1986, EAB memorandum, which provides the details of their cost estimates, states the following:

Note that, for all three options, the EAB C/E (cost effectiveness) is lower, and by the same amount (19 percent). This difference is solely due to the different methods and assumptions used in calculating the total annual/levelized costs.

Nowhere in the January 31, 1986, memorandum does the EAB characterize its cost estimates as being more accurate than GM's, nor does the EAB state that GM has "overestimated" the costs.

In summary, the difference between GM's and the EAB's cost estimation techniques cannot form a basis for disapproval of the SIP revision, especially when it has not been determined that the EAB's approach is more accurate.

USEPA Response. In order to evaluate C/E numbers, it is necessary that C/E results be based upon standard USEPA techniques. As stated in the January 31, 1986, memorandum titled "Carbon Adsorption Costs: GM Lordstown Assembly Plant" (which is referred to above by Ohio):

To put C/E results on an equal footing with those estimated for NSPS, NESHAP, CTG, and most other [Office of Air Quality Planning and Standards] OAQPS cost analyses, USEPA calculated the total annual cost and C/E for each option, using both the GM "raw" capital and operating and maintenance (O&M) costs, and the factors and assumptions normally employed in OAQPS cost analyses.

Comparing C/E values, as Ohio EPA has done, which have been developed differently is meaningless.

(3) USEPA FR Comment

GM currently uses a 27 percent solids dispersion lacquer (DL) topcoat coating. In a November 1978 report, entitled "Study to Determine Capabilities to Meet Federal USEPA Guidelines for VOC Emissions", GM proposed to convert operations to higher solids solvent systems until waterborne coatings could be used to achieve final compliance with RACT limits. At that time, the facility was at 17 percent solids DL, which formed the appropriate baseline from which to figure cost-effectiveness. An interim increase to 27 percent solids DL was part of GM's plan to obtain an additional 5 years to achieve final compliance with the emission limits. Therefore, it is inappropriate for GM to later revise its baseline for determining cost-effectiveness to the 27 percent solids content which GM previously identified as an interim limit to support a compliance date extension, which GM received on October 31, 1980 (45 FR 72122).

Ohio EPA Response. It is very interesting to note that the Ohio EPA initially raised the question concerning the proper baseline for calculating cost-effectiveness, i.e., 17 percent solids DL or 27 percent solids DL. The Ohio EPA's position was that 17 percent solids DL was the proper baseline. However, in discussions with the EAB, GM was informed that incremental cost-effectiveness, and hence a 27 percent solids DL, was the proper method for determining RACT. Now the USEPA is saying that the use of a 27 percent solids DL baseline is a reason for disapproving the SIP revision. Which position represents the real USEPA position on this issue?

In reviewing the variance applications submitted by GM, we considered the issue of economic reasonableness by looking at both a 17 percent solids DL baseline and a 27 percent solids DL baseline. The results of these analyses were discussed in detail in the following sections of the Fact Sheet for the variances:

If GM were to try to comply with the 2.8 lbs VOC/gallon limitation for the topcoat coating lines through the use of add-on control equipment, incinerators would have to be installed for the 2nd undercoat and 3rd lacquer ovens, and carbon adsorption would have to be installed for the 27 stack pairs associated with the 1st lacquer spray booth. This would require a capital expenditure of $36 million. *The overall cost-effectiveness of this control strategy from a 27 percent solids*

lacquer emission baseline would be in excess of $15,000/ton. From a 17 percent solids lacquer emission baseline (i.e., prior to the conversion to 27 percent solids DL and the installation of the incinerator for the 1st lacquer oven), the cost-effectiveness would be approximately $5,700/ton.

GM also investigated the cost-effectiveness of a "RACT equivalent bubble" for the topcoat coating lines. This control strategy would involve (a) the use of carbon adsorption for the 15 most concentrated stack pairs associated with the 1st lacquer spray booth, (b) conversion to a waterborne deadener material, and (c) conversion to a super high solids elpo (prime) material. A capital expenditure of $24 million would be required, and *the overall cost-effectiveness from a 27 percent solids lacquer emission baseline would be almost $8,500/ton. From a 17 percent solids lacquer emission baseline, the cost-effectiveness would be approximately $2,700/ton.*

The overall cost-effectiveness values for strict compliance with the 2.8 lbs VOC/gallon limitation (i.e. $5,700/ton and $15,000/ton) and for compliance by means of a "RACT equivalent bubble" (i.e., $2,700/ton and $6,600/ton) are well above the levels used by the USEPA in defining RACT for various VOC source categories. For example, *the definitions of RACT for the USEPA's RACT I, II and III source categories, of which the surface coating of automobiles is one, are generally based upon cost-effectiveness values that are well below $2000/ton. Furthermore, concerning the proposed "Standards of Performance for New Stationary Sources; Magnetic Tape Manufacturing Industry," the USEPA indicates that a cost-effectiveness of $1,100 per ton "is in the upper end of the range of cost-effectiveness values that EPA is currently using to make decisions on the appropriate levels of nontoxic VOC emissions.*

GM did not investigate the costs of employing add-on controls for the final repair topcoat coating lines because it is the company's opinion that due to the low VOC concentrations, the low annual VOC emission rates, and the large volumes of exhaust gases, the controls would not be any more cost-effective than the controls that were investigated for the topcoat spray booths and ovens (emphasis added throughout).

It is clear from the above that whichever baseline is used, the use of control equipment to achieve strict compliance with the existing regulations or RACT-equivalence is economically unreasonable. Therefore, GM's use of a 27 percent solids DL baseline cannot be a valid basis for disapproval of the SIP revision.

USEPA Response. USEPA has not established a specific policy on what place incremental cost-effectiveness plays in RACT evaluations. RACT is based upon a case-by-case evaluation of technical and economic feasibility. It is not possible to comment on OEPA's discussions with the EAB, as these discussions were not documented.

USEPA does not base economic feasibility upon a rigid C/E cutoff. As indicated by OEPA's response, use of a 17 percent solids DL baseline will result in substantially lower C/E values than use of a 27 percent DL baseline.

USEPA maintains the position stated in the NPR. The appropriate baseline from which to evaluate cost-effectiveness is 17 percent DL. The interim step of 27 percent was presented as part of GM's support to obtain an additional five years to achieve final compliance. It is, therefore, inappropriate for GM to later revise its baseline for determining cost-effectiveness to what was previously identified by GM as an interim limit to support a compliance date extension, which GM received. Also, refer to USEPA's response to GM's comment II C.3.

(4) USEPA FR Comment

OEPA determined the overall cost-effectiveness of each of the various combinations of control measures that GM could employ. For each combination, OEPA also determined whether a combination would result in a RACT equivalent VOC emission reduction. OEPA's analysis indicated that certain combinations of control measures, considered by OEPA to result in emission reductions equivalent to RACT, were reasonably cost-effective.

Ohio EPA Response. This issue is addressed above in the paragraphs excerpted from the Fact Sheet for the variances. A RACT-equivalent combination of control measures would have cost-effectiveness values of $6,600/ton and $2,700/ton for a 27 percent solids DL baseline and a 17 percent solids DL baseline, respectively. Even the lower of these 2 values cannot be considered reasonable when compared to the levels that are normally used by the USEPA to define RACT.

Please note that all of the cost estimates prepared by GM (and by the USEPA) assumed a 10-year useful life for the control equipment. If a useful life of 2 years were used, based upon the date the conversion to base coat/clear coat actually was completed, the cost-effectiveness values would be considerably higher than those mentioned above. The importance of the temporary nature of the SIP revision cannot be overemphasized.

Therefore, in summary, the USEPA's assertion that the RACT-Equivalent combination of control measures is "reasonably cost-effective" is false and is not a valid basis for disapproval of the SIP revision.

USEPA Response. As stated previously, USEPA has not set a C/E cutoff which can be used as the sole basis for determining whether a specific level of control is economically feasible. Ohio's comment that a 2-year, rather than a 10-year, control equipment useful life should be used in evaluating C/E is invalid. Ohio's proposed SIP revision is a permanent relaxation and must be evaluated as such.

(5) USEPA FR Comment

GM failed to investigate the option of continuing to use a 17 percent solids DL with add-on spray booth controls, which could result in VOC emission levels significantly less than current topcoat emissions.

Ohio EPA Response. This statement is inaccurate and surely is not a valid reason for disapproval of the SIP revision. This issue was specifically addressed in a June 4, 1986, letter from GM to the Ohio EPA. The letter was included as part of the technical support for the SIP revision. The information provided by GM indicates that it would be less cost-effective to achieve compliance with the existing regulations by using control equipment and a 17 percent solids DL than by using control equipment and a 27 percent solids DL. Therefore, both options must be considered to be economically unreasonable.

USEPA Response. GM's June 4, 1986, letter does address a 17 percent DL baseline and add-on controls. However, it appears that use of 17 percent DL, and 1st color spray booth and oven controls would result in substantially less emissions than use of 27 percent DL and incineration of the first color oven emissions. GM does not appear to have evaluated the feasibility of 1st color spray booth and oven controls (before converting to 27 percent DL) as an alternative to the permanent relaxation which was proposed by Ohio EPA. The cost-effectiveness value of spray booth controls is lower with 17 percent DL. RACT is defined as the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.

The existence of a more stringent alternative, which is economically and technically feasible, is a sufficient demonstration that Ohio's proposed revision does not constitute RACT.

(6) USEPA FR Comment

OEPA determined that the use of air cascading for three stack pairs would lower GM's cost-effectiveness estimates by approximately 20 percent.

Ohio EPA Response. It is true that the use of air cascading could potentially reduce the capital costs, and hence the cost-effectiveness, for any particular control measure or combination of measures. However, it is not likely that this change alone would be sufficient to enable compliance with the existing regulations in an economically reasonable manner. Also, if this reduction in cost-effectiveness is considered along with the increase in the cost-effectiveness that would result if the useful life of the control equipment were changed from 10 years to 2 years, the final conclusion that it is economically unreasonable to comply with the existing regulations definitely would not be changed. Here again, this reason cannot be a basis for disapproving the SIP revision, especially when considering the temporary nature of the SIP revision.

USEPA Response. Ohio EPA does not appear to disagree with the subject comment. As stated previously, basing cost-effectiveness on a useful life of 2 years (instead of 10 years) is inappropriate because this proposed SIP revision is a permanent relaxation. Ohio's reference to the "temporary nature of the SIP revision" is, therefore, incorrect.

(7) USEPA FR Comment

GM's variance would result in VOC emissions of 945 tons per year greater than the RACT allowable in an ozone nonattainment area.

Ohio Response. This statement is misleading. It is true that the SIP revision would allow an additional 945 tons of VOC emissions/year above the RACT allowable for the Lordstown facility. It is not accurate, however, to describe the Mahoning/Trumbull ozone demonstration area as a nonattainment area. It is a designated nonattainment area, but there have been no violations of the National Ambient Air Quality Standard for ozone in the area for the past 6 calendar years (1982–1987). Also, it is interesting to note that the air quality standards for ozone were maintained in the Mahoning/Trumbull demonstration area even before the Lordstown plant reduced VOC emissions by (a) conversion to the 27 percent solids DL and installation of the incinerator for the 1st lacquer oven emissions (1770 tons/year reduction) and (b) conversion to base coat/clear coat (909 tons/year reduction).

Furthermore, the Mahoning/Trumbull ozone demonstration area has a federally approved ozone SIP. The VOC emission reductions required by the approved SIP have been achieved in a timely manner and, in fact, have been far exceeded.

Neither the ambient air quality monitoring data nor the data generated to track compliance with the approved ozone SIP indicate that the SIP revision for the Lordstown plant has jeopardized the attainment or maintenance of the ozone standard.

On March 1, 1985, the Ohio EPA submitted a request to the USEPA to redesignate the Mahoning/Trumbull ozone demonstration area to an attainment status. The request was supplemented with additional data on November 1, 1986. To date, the USEPA has taken no action on this request. However, if the USEPA were to approve the redesignation request, and we believe there is no reason not to approve it, the SIP revision would immediately be approvable by the USEPA because all the issues relating to RACT would become moot.

In summary, the simple fact that the Mahoning/Trumbull ozone demonstration is designated nonattainment is not a sufficient reason to disapprove the SIP revision. The nonattainment designation belies the fact that there have been no monitored air quality violations. In actuality, the area is an attainment area, and the SIP revision has not prevented the maintenance of the attainment status. Even the TSD prepared by the USEPA states that "approval of the SIP revision would not interfere with attainment or maintenance of the NAAQS in the Youngstown demonstration area."

USEPA Response. Although, USEPA's February 9, 1989, TSD does state that the approved Youngstown attainment demonstration does have sufficient VOC increment available to accommodate this SIP revision, subsequent monitoring data showing violations call into question the adequacy of this demonstration. There have been six exceedances at the Mercer County (Pennsylvania) monitor in the period from 1986 through 1988. Mercer County is an adjoining downwind county to the Mahoning/Trumbull area. This County is viewed by USEPA as a recipient of ozone generated by Mahoning and Trumbull County VOC emissions. Trumbull County remains a designated ozone nonattainment area because of these violations.

(8) USEPA FR Comment

In a memorandum of December 19, 1986, EAB provided additional information on GM's cost assessment, which indicated that GM appeared to emphasize performance under all conceivable circumstances and a minimum adjustment of spray booth operations in analysis of its carbon adsorption equipment. EAB stated that an analysis which considers various engineering and operational compromises (e.g., reduced air flow through the paint booth) in order to lower overall cost would be a more appropriate basis by which to assess achievement of RACT.

Ohio EPA Response. The issues raised by the EAB in the December 19, 1986, memorandum, were addressed in detail in an April 2, 1987, letter from GM to the USEPA. It is apparent that GM has seriously considered all "engineering and operational compromises" that could significantly reduce the overall costs for various control measures. We believe that even though some improvements may be feasible, they would not be sufficient to result in a determination that the use of control equipment to achieve compliance with the existing regulations is economically reasonable. This is especially true when considering the temporary nature of the SIP revision.

USEPA Response. USEPA agrees that some improvements are feasible. Exhaust air recirculation is one of the approaches presented in GM's April 2, 1987, letter to USEPA. Spray booth recirculation is being used by automotive manufacturers outside the United States (including by GM in Ontario) and is planned for use within the United States. As stated previously, this is not a temporary SIP revision.

GM's July 28, 1988, Comments

GM Comment

I. *EPA is required to approve this SIP revision, whether or not it constitutes RACT*—A. *The variance will not interfere with attainment or maintenance of ambient air quality standards.* GM states that, according to Ohio's 1979 ozone SIP, total VOC reductions in the Mahoning/Trumbull County area exceeded the amount required to ensure attainment and maintenance of the NAAQS in the Youngstown area. GM also states that the Youngstown area has attained and consistently maintained the NAAQS since the end of 1981.

B. *EPA may not properly apply the RACT requirement to this variance.* GM's position is that Mahoning/Trumbull Counties are, in fact, attainment areas for ozone, even though they are designated nonattainment areas. "EPA may not disapprove a SIP revision on the grounds that it is not RACT, while at the same time it is unlawfully withholding action on a

redesignation request which, if approved, would eliminate the RACT requirement."

USEPA Response

There is no basis for GM's position that a designated ozone nonattainment area can be considered as an attainment area. The proposed redesignation of Mahoning/Trumbull is the subject of a separate rulemaking action.

The April 4, 1979, "General Preamble for Proposed Rulemaking" states (44 FR 20376) "For SIPs with attainment dates before the end of 1982 that do not use photochemical disperson modeling, these RACT requirements must apply to all major sources covered by each CTG, and in urbanized areas to enough additional sources covered by each CTG to provide for reasonable further progress and attainment as expeditiously as practicable."

Photochemical dispersion modeling was not used in the Mahoning/Trumbull attainment demonstration. Therefore, RACT is required regardless of whether the attainment demonstration indicates that RACT was required by GM Lordstown for attainment to be achieved in the Youngstown area.

In addition, please refer to USEPA's response to Ohio's Comment No. 7.

GM Comment

II. *EPA has articulated no rational basis for its conclusion that the variances do not constitute RACT.—A. The proposal does not provide an adequate explanation of the Agency's basis for its determination.*

USEPA Response

USEPA disagrees with GM's opinion. The notice of proposed rulemaking (NPR) provides an adequate basis for the proposed disapproval. As stated in 53 FR 24450.

USEPA has evaluated this revision to determine if Ohio has demonstrated that the revised limits would be RACT for GM Lordstown. To do this, Ohio would have had to demonstrate that the present VOC regulations are either economically or technically infeasible and the new limits are RACT. Ohio did not make such a showing.

The NPR lists a number of points which support USEPA's position, namely that Ohio did not demonstrate that the present VOC regulations are either economically or technically infeasible and the new limits are RACT.

GM Comment

B. *EPA has not articulated any rationale for disapproving the final repair variances.*

USEPA Response

USEPA policy has not been revised to consider RACT for automotive final repair coatings to be less stringent than 4.8 lbs VOC/gallon of coating. GM has not demonstrated that its Lordstown plant is unique from other automotive plants whose coatings comply with a limit consistent with USEPA guidance for RACT. Furthermore, GM has, in fact, converted its paint shop and appears to be using final repair coatings which do not exceed 4.8 lbs VOC per gallon. There does not appear to be a reasonable basis for approving a permanent relaxation from a limit which is being met.

GM Comment

C. *The conclusory statements listed by EPA do not provide a rational basis for disapproving the topcoat variances.*

USEPA bases its proposed disapproval of the Lordstown topcoat variances on eight unconnected and conclusory statements. Several of these statements are simply reiterations of statements made by others with no indication of whether the Agency has accepted them as true, or the reasons for that acceptance if it has occurred. Many of these statements are contradicted by the record. Others are based on mischaracterizations of facts and statements taken out of context. Finally, those statements which are accurate do not constitute a rational basis for rejection of the State's determination that the variances, rather than the existing SIP, constitute RACT.

GM listed its objections to each of the eight reasons for disapproval listed in the NPR.

1. *EPA Statement:* USEPA does not consider [5.2 lbs. VOC per gallon] as RACT for automotive topcoats, based on past Agency analysis.

EPA does not identify the "past Agency analyses" on which this assertion is based. Nor are any such analyses included in the record. For these reasons alone, this conclusion cannot provide a rational basis for disapproval. Furthermore, to the extent the "past Agency analyses" relied on are those contained in the Agency's May 1977, Control Technique Guideline ("CTG") for automobile surface coating operations, those analyses do not support a categorical assertion that 5.2 lbs. VOC per gallon of coating is not RACT.

The CTG is more than 10 years old and does not take into account several profound changes which have occurred in automotive coatings and in economic conditions during this period. GM described the following categories of changes: The demise of waterborne topcoats, development of Base Coat/Clear Coat (BC/CC), and the development of hi-solids lacquers and improved application techniques. GM added that in addition to being obsolete, the CTG analyses were never intended to define RACT. To the contrary, "[t]he primary purpose of each CTG [was] to inform the State and local air pollution control agencies of pollution control techniques available for reducing emissions of VOC from the class of sources covered by the CTG." 44 **Federal Register** 53762 (September 17, 1979).

GM added that RACT in short, is to be based on a "case-by-case review" of "the particular sources being regulated", not on a generalized analysis of "capabilities and problems general to the industry." The quotations are from the September 17, 1979, **Federal Register**.

When Ohio originally incorporated CTG recommendations into its SIP, it did not conduct any case-by-case analysis of the feasibility or reasonableness of those limits as applied to Lordstown. It undertook such an analysis for the first time in response to General Motors' request for the variances here at issue. Based on that analysis it concluded that the CTG recommendation was not RACT "for the particular sources being regulated" and submitted extensive justification to support this determination. USEPA may not properly rely on decade-old "past Agency analyses" of "capabilities and problems * * * general to the industry" as a basis for disapproving the resulting state-issued variances. It must deal directly with capabilities and problems of these particular sources at this particular point in time. To do otherwise is to arbitrarily ignore the express limitations on the "past Agency analyses" at issue and on the uses to which those analyses were intended to be put.

USEPA Response

As stated in the February 9, 1987, TSD, "USEPA has never considered a 5.2 lbs VOC/gallon, 27 percent DL coating as RACT for automotive topcoats. USEPA's October 20, 1981, policy (46 FR 51388) on automotive coatings provides for compliance date extensions through 1987, and not permanent relaxations, for topcoats."

Both USEPA's past guidance on RACT for automotive topcoat operations (the CTG document for automotive coatings) and current guidance (the May 25, 1988, document titled "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations") present RACT for automotive topcoat operations to be 2.8 lbs VOC/gallon of coating. USEPA is not aware of having approved a permanent limit of 5.2 lbs VOC/gallon as RACT for automotive topcoat operations. Neither Ohio nor GM have presented any cases in which USEPA has approved 5.2 lbs VOC/gallon as RACT for automotive topcoats. If Ohio's position is that GM Lordstown's topcoat operation is different from all other topcoat operations required to meet a limit equivalent to 2.8 lbs VOC/gallon at 30 percent transfer efficiency, or less than 5.2 lbs VOC/gallon, it has not demonstrated this position. This is the fundamental test that must be met to obtain a permanent relaxation substantially less stringent than what is generally required.

USEPA agrees with GM that a case-by-case evaluation of RACT is appropriate. However, neither Ohio nor GM has presented information which justifies approving a permanent topcoat limit relaxation for Lordstown which is less stringent than topcoat limits that have been established at other automotive plants. Furthermore, GM has converted its paint shop and is likely using coatings equivalent to 2.8 lbs per gallon at 30 percent TE or at least coatings with a VOC content lower than 5.2 lbs/gallon. There does not appear to be a reasonable basis for approving a permanent relaxation from a limit which is possibly being met (considering transfer efficiency).

GM Comment

2. *EPA Statement:* EAB's annualization Techniques Resulted In a Systematic 19 Percent Reduction In GM's Annualized costs. Therefore, GM's Cost Analysis Appears To Have Overestimated These Costs.

This statement is not logical unless one presumes that EAB's cost estimates are necessarily more accurate than those used by General Motors. The Agency provides no basis for such a presumption.

GM does not agree that EAB's annualization techniques are more accurate. It added that even if EAB's estimates were presumed more accurate, however, the resulting 19 percent reduction in costs is not a rational basis for concluding that the SIP revision does not reflect RACT. Second, in its submission to the State of Ohio, General Motors annualized its costs on both bases, and demonstrated that, under either method, the conclusion was the same: the costs of add-on controls far exceeded USEPA's own cost-effectiveness cutoffs for reasonable VOC controls.

GM referenced a September 11, 1985 USEPA memorandum of NSPS cost-effectiveness. This memorandum concluded that costs in excess of $1250 per megagram were unreasonable.

USEPA Response

Please refer to USEPA response to Ohio EPA comment 2. Also, this point was not the sole basis of USEPA's proposed disapproval. USEPA has not established cost-effectiveness cutoffs for RACT.

GM Comment

3. *EPA Statement:* [I]t is inappropriate for GM to * * * revise its baseline for determining cost-effectiveness to the 27 percent solids content which GM previously identified as an interim limit to support a compliance date extension, which GM received on October 31, 1980.

This statement is inaccurate in several respects. Demonstrating those inaccuracies, however, requires an understanding of the history of General Motors' Paint Plan and of the implementation of that plan over the last ten years.

GM provided a background before discussing "the factual inaccuracies in USEPA's assertions regarding the Yellow Book and General Motor's commitments."

First, General Motors did not receive a compliance date extension on October 31, 1980. The December 31, 1985, compliance date was the original compliance date established by the State and approved by USEPA. The fact that this date was three years beyond the attainment date approved in the SIP does not make it an extension. Since that Ohio SIP demonstrated that the emission reductions at Lordstown were not necessary to ensure either attainment of the NAAQS or reasonable further progress in the interim, the State was free to establish any compliance date it saw fit. Moreover, as discussed above, USEPA expressly determined in 1979, that the facts even as they then existed made the deadlines incorporated into General Motors "Yellow Book" as expeditious as practicable. Thus, the December 31, 1985, date would not have been an extension even if the reductions had been necessary to attainment. See CAA section 172(a)(2), 42 U.S.C. 7502(a)(2).

Second, General Motors did not include cost-effectiveness calculations, either generic or plant specific, in the "Yellow Book". Obviously, therefore, General Motors did not later revise its baseline for determining cost-effectiveness. No such baseline was ever established.

Third, the Yellow Book constituted a commitment by General Motors to meet the broad goal of achieving waterborne equivalence at all of its assembly plants by 1987, and correlative commitments by EPA to: (1) Work with General Motors to develop a workable schedule by which that goal could be achieved, and (2) to manage the changes in that schedule that were expected to result as economic and air quality conditions changed and as the technology necessary for achieving the goal was developed. It unequivocally was not a commitment to any particular control strategy or baseline for judging cost-effectiveness.

Finally, there is USEPA's assertion that General Motors should have used 17 percent DL, rather than 27 percent DL, as its baseline for determining cost effectiveness. This assertion is inconsistent with the rationale used to support it. USEPA and General Motors contemplated, in 1978, that the progression from 17 percent DL to waterborne equivalence at Lordstown would involve two distinct steps. First, the plant would be converted to 27 percent lacquers, since this would produce large emission reductions without the substantial facility impacts that were anticipated to be necessary for full waterborne equivalence. Second, the plant would achieve waterborne equivalence by means which had not yet been determined. It is the second step which is now at issue. Since the question is whether General Motors can reasonably go beyond 27 percent lacquer, 27 percent lacquer is the only proper baseline for evaluating the cost-effectiveness of the changes necessary to achieve that step.

In addition, USEPA's assertion that 17 percent DL should have been used as the baseline is inconsistent with USEPA's own practice. The same February 7, 1986, EAB memo which identifies the 19 percent difference in annualization technique results also specifically notes that the costs and cost-effectiveness ratios it was analyzing were incremental costs (i.e., were the costs of going beyond the controls required by the variance). At no point does EAB suggest that this approach is inappropriate. To the contrary, EAB specifically concluded that "GM's costing procedures are appropriate," and that "[t]he capital and operating cost estimates prepared by GM are acceptable for this specific application."

Moreover, when this issue was first raised by the State of Ohio, Mr. David Aldorfer of General Motors contacted Mr. John Calcagni, the principal author of the February 7, 1986, EAB memo, to inquire as to USEPA's position on this issue. Mr. Calcagni confirmed that

incremental cost-effectiveness was the appropriate metric for judging RACT In USEPA's view.

This point is confirmed by USEPA's rulemaking on NSPS for the Magnetic Tape Manufacturing Industry. 51 FR 2998 (January 22, 1986). In that rulemaking, USEPA expressly found costs in excess of $1200/[Megagram] Mg ($1088/ton) to be unreasonable:

> This [$1200/Mg] value is in the upper end of the range of cost-effective values that USEPA is currently using to make decisions on appropriate levels of nontoxic VOC emissions.

Id. at 3014.

Moreover, USEPA specifically confirmed that, when evaluating cost effectiveness in relation to this cutoff, each stage of an increasingly stringent series of "layered" controls is to be evaluated separately, with the appropriate level of control being determined by reference to the incremental cost of the last "layer."

The claim that General Motors should have used average cost-effectiveness from a 17 percent baseline is also inconsistent with sound economic theory. There are distinct capital costs associated with converting from 17 percent DL to 27 percent DL based on well-defined changes needed in mechanical components of the system such as pumps, filters, and oven time. There are other and entirely distinct capital costs associated with application of control devices to the resulting exhaust streams.

Finally as with the differences in annualization techniques discussed above, the differences between 17 percent and 27 percent DL baseline is not sufficient to change the essential conclusion. As Ohio EPA found, the cost-effectiveness of the controls required for compliance with OAC 3745–21–09(C) would be $5,700/ton even from a 17 percent DL baseline. Fact Sheet at 7. This is far in excess of USEPA's own estimates of the upper limits for reasonable VOC controls.

USEPA Response

The following responses are generally in the same order as the above comments. GM is correct in its statement that the December 31, 1985, compliance date is the original compliance date established by Ohio and approved by USEPA. However, the March 10, 1980, NPR (45 FR 15206), in its discussion of OAC 3745–21–04 states "For certain specific sources this regulation provides for an extension of the applicable final compliance date listed above." The final compliance date for GM Lordstown is December 31, 1985. This is an extension past December 1, 1982, which is the final compliance date for Ohio's automotive, light duty truck surface coating regulation. USEPA disagrees with GM's use of 27 percent DL as the baseline from which to evaluate cost-effectiveness. It is immaterial whether this constitutes a revision to GM's baseline or whether GM is using an inappropriate baseline.

GM's (11–1–78) Yellow Book contains its initial plan to comply with USEPA's RACT requirements for automotive coatings. Ohio's automotive coating RACT rules were adopted in 1979. GM Lordstown was using 17 percent volume solids dispersion lacquer as of the date of the Yellow Book and adoption of Ohio's autocoating rule. The level of control during this period (which is 17 percent DL) is, therefore, the appropriate baseline for evaluating cost-effectiveness. The subsequent implementation of any partial control measures (e.g., conversion to 27 percent DL) does not constitute a valid argument for the economic infeasibility of achieving compliance with an emission limit previously established as RACT.

There is no record of USEPA informing GM that conversion to 27 percent DL is an acceptable substitute for achieving final compliance with 2.8 lbs VOC/gallon at 30 percent TE. In fact, USEPA's October 31, 1980, notice of final rulemaking (45 FR 72122) approves a December 31, 1985, final compliance date with no requirement for an interim conversion to 27 percent DL.

The February 7, 1986, EAB memo does not address the issue of whether 17 percent DL or 27 percent DL is the appropriate baseline. GM has not sufficiently documented the communication between Mr. Calcagni and Mr. Aldorfer to enable a response to exactly what Mr. Calcagni confirmed.

USEPA has not established that cost-effectiveness cutoffs for NSPS, and the method for determining cost-effectiveness values, are appropriate for RACT determinations.

Establishing the appropriate baseline for determining cost-effectiveness does not necessarily consider the costs involved in going from an interim to a more stringent level of control. USEPA, therefore, disagrees with what GM believes to be sound economic theory. The issue of 17 percent DL vs 27 percent DL baseline is not the sole basis of USEPA's proposed disapproval.

USEPA agrees with the position stated by Ohio in its August 13, 1986, letter to GM. Ohio EPA states "The use of incremental cost-effectiveness would promote variances by allowing entities to employ marginally unacceptable control technology or only go part way in achieving compliance with an applicable emission limitation, and then argue that to achieve full compliance is not cost-effective."

GM Comment

4. *EPA Statement:* OEPA's analysis indicated that certain combinations of control measures, considered by OEPA to result in emission reductions equivalent to RACT, were reasonably cost effective.

This statement is apparently based on Ohio EPA's analysis of a bubble option considered by General Motors involving (in addition to the controls required by the variance): (1) Carbon adsorption on 15 stack pairs in the main color spray booth, (2) conversion of the deadener operation to a waterborne material, and (3) conversion of the prime operation to a "super hi-solids" waterborne material.

Ohio EPA determined that the average cost effectiveness of this approach, from a 17 percent baseline, was approximately $2700/ton. USEPA concluded that this analysis "supports the reasonableness of at least controlling the 15 stack pairs." USEPA TSD at 6.

The emission reductions achieved by application of carbon adsorption to 15 stack pairs are not sufficient to meet the requirements of the existing SIP. Thus, this option provides no support for USEPA's conclusion that the existing limit is RACT. To the contrary, since this is the only option which USEPA appears to consider reasonable, USEPA apparently concedes that the existing limit is not RACT.

Moreover, USEPA's conclusion that this option is reasonable is entirely dependent on the assumption that it has a cost-effectiveness of $2700/ton. This $2700 figure substantially understates the actual cost-effectiveness by analyzing only the average costs from a 17 percent baseline. As discussed above, this is improper. The actual cost-effectiveness of installing carbon adsorption on 15 stack pairs is over $8,000/ton of coating VOC removed, even if annualized in accordance with USEPA's technique. GM TSD at 26. In no sense can such costs be said to reflect "reasonably available controls."

Finally, Ohio EPA concluded that even the $2700/ton cost figure was unreasonable: "[t]he overall cost effectiveness values * * * for compliance via a RACT equivalent bubble (i.e., $2700/ton [on a 17 percent baseline] and $6600/ton [on a 27 percent baseline]) *are well above the levels used by EPA in defining RACT for various VOC source categories.*" Fact Sheet at 8 (emphasis added). USEPA cites no basis for its contrary conclusion. Indeed, as indicated above, this position is directly contrary to USEPA's own conclusion that $1200/Mg ($1088/ton) represents the upper limit of the range of values used by USEPA in determining reasonable VOC control, even in the context of NSPS. The costs in question here are more than double this upper limit.

EPA may not simply reject a state determination that $2700/ton represents an unreasonable cost absent some statement of basis for that rejection. There is no indication whatsoever of such a basis in the record here. If there is any published rule, guidance, or policy upon which USEPA is relying in this regard, General Motors is entitled to notice of, and an opportunity to comment on, that rule, guidance, or policy. If not, USEPA is required to defer to the State's judgment in this regard.

USEPA Response

The automotive coating limits, which currently apply to GM Lordstown, have been adopted by Ohio EPA and approved by USEPA as constituting RACT. In order to obtain a permanent relaxation from any of these limits, a demonstration must be made by Ohio EPA/GM that the existing limitation(s) are not RACT and that the limit being proposed constitutes the lowest emission limit that is capable of being met by the application of control technology that is reasonably available considering technological and economic feasibility.

The quote by GM from page 6 of USEPA's TSD, "Supports the reasonableness of *at least* controlling the 15 stack pairs, "(emphasis added) does not limit RACT to that control option. Rather, the statement comments on a potential control option (raised by Ohio EPA) that has not been adequatley documented to not constitute RACT.

The issue of incremental cost-effectiveness, which is brought up again by GM, was discussed as part of the prior comment.

An adequate basis has not been provided for dismissing control strategies with a $2700/ton cost-effectiveness as economically infeasible. USEPA has neither established cost-effectiveness cutoffs for assessing economic feasibility for RACT determinations nor determined that NSPS economic feasibility considerations are appropriate for RACT determinations.

GM Comment

5. *EPA Statement:* GM failed to investigate the option of continuing to use a 17 percent solids DL with add on spray booth controls, which could result in VOC emission levels significantly less than current topcoat emissions.

This statement is wrong. General Motors specifically addressed the option of continuing to use 17 percent DL with add-on spray booth controls in a letter submitted to Ohio EPA On June 4, 1986. This letter was submitted to both Region V and OAQPS under cover letters from Mr. Aldorfer dated June 11, 1986. Record Item E272–1. As stated in that letter, and as demonstrated by the information in the variance application itself, this alternative makes neither economic nor environmental sense.

In its TSD, USEPA observes that, on 17 percent lacquer, carbon adsorption and incineration controls on the main color spray booth would result in an emissions level 382 tons per year below that authorized by the variance. USEPA TSD at 3, 6. What it fails to note, however, is that this alternative would cost an additional $7.5 million dollars per year. Thus, each of these 382 tons would cost over $19,500 to remove. This can hardly be described as "reasonable" control.

For any given level of control, it is invariably more cost-effective to convert to 27 percent lacquer than to stay on 17 percent lacquer and employ more add-on controls. Conversely, for any given level of investment, more emission reductions are achieved by spending those dollars first on a 27 percent lacquer conversion. Thus, common sense as well as sound economic and environmental policy dictate that this be the first step in any "reasonable" control plan.

USEPA Response

GM's comment appears wrong. The $19,500 per ton removal cost is clearly contradicted by the $3,839 per ton, for 1st color booth control, in Table III of GM's June 4, 1986, letter. Presumably, the $19,500 per ton is based upon a 27 percent DL baseline. However, the point of USEPA's comment is that use of 17 percent DL, and 1st color booth and over controls, would result in 382 tons/yr less VOC emissions than the level of control in effect at the time of the submittal.

USEPA agrees with what appears to be GM's point, which is that it is cheaper to obtain reductions by conversion to 27 percent DL than by use of add-on controls. However, it appears that use of 27 percent DL and 1st color oven controls results in greater VOC emissions than use of 17 percent DL and 1st color spray booth and oven controls. It should be noted that GM is using spray booth control. GM's Arlington, Texas, plant, which uses 17 percent DL topcoats, controls VOC emissions from its 1st color spray booth with an incinerator. Also, refer to USEPA's response to Ohio EPA's comment No. 5.

GM Comment

6. *EPA Statement:* OEPA determined that the use of air cascading for three stack pairs would lower GM's cost effectiveness by approximately 20 percent.

This statement has been taken out of context and is misleading. Ohio EPA did determine that the air cascading would reduce costs for the three stack pairs in question. This option, however, is far short of SIP-equivalent emission limitations and involves costs far in excess of any reasonable measure of RACT, even with the 20 percent reduction. See April 15, 1986, letter from David Aldorfer to James Berry Re: "Spraybooth Air Staging" with attached "VOC Abatement Cost Analysis With Air Cascading for BOC group Lordstown Assembly Plant" dated March 1986.

Further, Ohio did not conclude that this 20 percent cost saving could be generalized beyond the three stack pairs at issue. Nor is there any rational basis for such a conclusion by USEPA. These three zones were intentionally selected to provide a "best-case" example for air cascading, i.e., to demonstrate the maximum cost saving that could be achieved through air cascading. They are the three richest zones in the booth, they are contiguous, and the two zones into which the air would be cascaded have no people working inside them. Further, as detailed in the above cited letter and study, the very substantial adverse impacts that air cascading might have on operation of the spray booth were not considered.

The point of the study was that even with these advantages, which are duplicated nowhere else in the paint line, and without considering the costs of adverse impacts on processing, air staging still reduced costs by only 20 percent, far short of what was needed to make add-on controls reasonably cost-effective. In short, the results of this study demonstrated, as OEPA concluded, that the potential cost savings from air cascading were not significant enough to undermine the basic conclusion that carbon adsorption costs were far higher than any accepted cut-offs for reasonably available control technology. Fact Sheet at 8. For a more detailed discussion of this point, as well as others relating to General Motors' investigations of air management techniques, see the April 2, 1987, letter from David Aldorfer to Joe Paisie, Re: "12/19/86 Memorandum from J. Calcagni to J. Paisie, Cost Assessments

for GM Lordstown—Additional Information."

USEPA Response

It appears that GM agrees with USEPA's comment.

GM Comment

7. *EPA Statement:* "GM's variance request would result in VOC emissions of 945 tons per year greater than RACT allowable in an ozone nonattainment area.

First, this area is designated nonattainment only because USEPA has unlawfully failed to act on a State request for redesignation for more than three years. This is not a nonattainment area. There have been no violations of the NAAQS for six years, and the "expected exceedance rate" has been less than 1 for each three year period since the end of 1981 (1982–84, 1983–85, 1984–86, 1985–87).

Further, actual emission reductions achieved in the area exceed those necessary for attainment under the federally approved SIP by over 9,000 tons per year. USEPA TSD at 7.

Second, this assertion begs the question at issue. Ohio EPA has determined that the variances are RACT; the variances thus result in no emissions above RACT allowable.

Third, the quantity of "excess" emission is irrelevant. As USEPA itself states, the growth margin under the federally approved SIP "can easily accommodate the 947 tons/yr used by the proposed variance." USEPA TSD at 7. Moreover, such "excess" emissions would be a cause for concern or a basis for disapproval only if they threatened attainment of maintenance of the NAAQS. USEPA has itself concluded that they do not: "[A]pproval of the SIP revision would not interfere with attainment or maintenance of the NAAQS in the Youngstown demonstration area." USEPA TSD at 7.

USEPA Response

Ohio's redesignation request is the subject of a separate rulemaking action. Also, refer to USEPA's response to Ohio EPA's comment No. 5.

GM Comment

8. *The December 19, 1986, EAB Memorandum.*

General Motors' response to this memorandum is set out in detail in an April 2, 1987, letter from David Aldorfer to Joe Paisie of Region V. That letter has been in USEPA's hands for over a year. It discusses and rebuts, point-by-point, every assertion contained in the December 19, 1986, memorandum. Yet, USEPA has not responded to any of the points in this letter, nor is the letter itself included in the record.

General Motors objects to this selective record building. If USEPA intends to rely, even in part, on the December 19, 1986, memorandum, General Motors is entitled to, and demands, a response to the points raised by General Motors in rebuttal of that memorandum and an opportunity to comment on USEPA's rationale for rejecting those rebuttals.

The December 19, 1986, memorandum consists of a series of speculative, unfounded, and unjustified criticisms of General Motors costs estimates. The conclusions expressed, moreover, have as their only basis a letter evaluating a control system that would not produce SIP-equivalent emission reductions by a vendor who has, in the past, underestimated the costs of, and overestimated the degree of control achieved by, systems he has sold to General Motors. *See* May 10, 1988, letter from David Aldorfer to Gerald Emison, Director OAQPS. Attachment K hereto. Moreover, this vendor's own bid on the Lordstown project was rejected because it was too high relative to other bids and to the costs General Motors itself used in making the cost-effectiveness estimates submitted to Ohio EPA. This memorandum does not provide a rational basis for any conclusion regarding the General Motors cost estimates or the reasonableness of requiring further controls beyond those required by the variances.

USEPA Response.

USEPA has not engaged in selective record building. The April 2, 1987, letter from David Aldorfer to Joseph Paisie was not submitted by Ohio EPA and, therefore, was not considered as part of the formal SIP submittal. Only States have authority to submit revisions to their SIPS. On a more technical basis, the April 2, 1987, letter does not adequately dismiss spray booth recirculation and control. As stated previously, in response to GM's April 2, 1987 letter, spray booth recirculation is being used by automotive manufacturers outside the United States (including GM in Ontario) and is planned for use within the United States.

GM Comment

D. USEPA has failed to consider the air quality needs of the area or General Motors' plans for conversion to BC/CC, both of which provide additional support for the variance.

GM cited 40 CFR 51.100(o), a February 7, 1986, USEPA memorandum, and a March 12, 1986, USEPA memorandum, as support for its position that considerations apart from pure economic and technical feasibility should be considered in defining RACT. GM concluded its discussion of this point with the following paragraph:

Considered in light of the poor cost-effectiveness ratios of control equipment, the demonstrated attainment of standards in the Youngstown area, and the interim nature of such controls, Ohio EPA's conclusion that the variances constituted RACT is fully supported by the record and should be accepted by USEPA.

USEPA Response

The definition of RACT in 40 CFR 51.100(o) is not applicable to this proposed SIP revision. § 51.100(o) "defines RACT for the purposes of §§ 51.100(c)(2) and 51.341(b) only." § 51.100(o) applies only to secondary nonattainment areas (as per §§ 51.100(c)(2) and 51.341(b)), and GM Lordstown is located in a primary ozone nonattainment area.

GM did not demonstrate that the level of control specified for GM Lordstown constitutes RACT for Mahoning, Trumbull Counties. As stated previously, the proposed level of control appears to be less stringent than what has been approved elsewhere as RACT by USEPA for any automotive plant.

The specific basis for GM's conclusionary statement (repeated below) regarding the March 12, 1986, memorandum has not been provided.

In that memorandum, Mr. Calcagni argues that specific cost-effectiveness values for RACT could not be defined, in large measure because differences in air quality needs of the areas in question could have a profound impact on what was deemed to be "reasonable" with regard to control options.

USEPA disagrees with GM's position that the GM Lordstown variance constitutes RACT because "no further controls beyond those variance are necessary to ensure attainment and maintenance of the ambient air quality standards." GM's comment appears equivalent to the position that RACT is only neccessary to the extent required to demonstrate attainment. This position is clearly refuted in the April 4, 1979, General Preamble for Proposed Rulemaking (44 FR 20376) which states "For SIPs with attainment dates before the end of 1982 that do not use photochemical dispersion modeling, these RACT requirements must apply to all major sources covered by each CTG, * * *" GM Lordstown is a major VOC source in an area which has not been subject to photochemical dispersion modeling.

Also, refer to USEPA responses to Ohio EPA comments Nos. 6 and 7. USEPA cannot consider GM's commitment to convert Lordstown to a waterborne equivalent base coat/clear coat technology because this commitment is not reflected in the proposed SIP revision. See also the second paragraph in response to Ohio EPA's comment No. 4. The issue of cost-effectiveness has been discussed with respect to previous comments.

GM Comment

III. At a minimum, USEPA should approve this SIP revision as a two-year compliance date extension pursuant to USEPA's October 20, 1981, policy on such extensions for automobile top coat operations.

USEPA Response

Neither GM's intent nor its paint shop conversion is a sufficient basis for approving a permanent relaxation. USEPA can only act on proposals that are before it and must base its decisions on the emission limitations contained in proposed SIP revisions.

GM Comment

A. An Extension to December 31, 1987, is justified under USEPA's October 20, 1981, policy.

B. The variance, at a minimum, constitutes RACT for the period from 1985 to 1987.

USEPA Response

USEPA will review the merits of a compliance date extension, through December 31, 1987, if and when such a compliance date extension is submitted to USEPA.

GM Comment

C. Given the foregoing facts USEPA should either directly approve the sip revision as a two-year extension or conditionally approve it subject to a requirement that the state revise the variances to incorporate a December 31, 1987, compliance date.

As the foregoing demonstrates, General Motors is entitled, at a minimum, to a 2-year variance on the terms proposed by Ohio based on both the 1981 policy and on General Motor's demonstration that these variances constituted RACT, at least for that 2-year period. Furthermore, approval of the variances on this basis is consistent with their original intent. When issued, those variances were indefinite in duration, but were never intended to be permanent relaxations. The Fact Sheet makes clear that their purpose was to provide interim relief until such time as it became feasible for General Motors to convert to BC/CC. That time has now come and gone, 5 years earlier than General Motors or Ohio EPA originally anticipated, and the conversion has in fact been made. Under such circumstances, it would be a triumph of form over substance for USEPA to disapprove the variances on the grounds that they are permanent relaxations.

Alternatively, if USEPA determines it is unable to approve the variances as temporary SIP revisions without a date certain incorporated therein, it should, at a minimum notify the State that the SIP revision would be approvable if it were revised to incorporate a December 31, 1987, compliance date and provide the State with a reasonable opportunity to modify the variances accordingly.

USEPA Response

USEPA cannot approve the proposed SIP revision as a 2-year extension because it is not a 2-year extension. Ohio has had the opportunity to modify the variances.

GM Comment

IV. Defects in the administrative record and substantial indicia of agency bias preclude disapproval of this variance request.

A. Omissions from the record deprive the proposal of its rational basis and deprive General Motors of its right to an opportunity for meaningful comment.

The Agency record for this proposal is incomplete. By far, the most important of these omissions is the April 1987 letter from David Aldorfer to J. Paisie of Region V, responding to the December 19, 1986, EAB memo referred to in the proposal. This letter responds directly to a number of the points on which USEPA relies in its proposed disapproval, and it has been in USEPA's possession for over a year. Yet, it is ignored by USEPA. This omission, and USEPA's consequent failure to consider and respond to the points raised by General Motors in that letter, undermine the rational basis for the proposal. Further, it deprives General Motors of any meaningful opportunity to comment on USEPA's view or evaluation of those points.

This is not, however, the only document missing from the record. There is, for instance, no information in the record on the air quality in the Youngstown area, on the area's attainment status, or on the status of the State's request for redesignation. For the reasons set forth above, this information is clearly relevant. Indeed, USEPA admits as much in the TSD.

Further, the record does not contain the federally appoved Ohio SIP, the RFP and attainment demonstrations, or any information on the State's "reasonable further progress" demonstrations. Again, this is information which is in USEPA's possession and which unquestionably should have been considered in reaching the conclusions expressed in the proposal.

Nor does the record contain any information on USEPA's criteria for reviewing site-specific RACT variances or for determining appropriate cost-effectiveness cut-offs. Yet, USEPA concludes that at least one option considered by Ohio EPA is reasonably cost-effective notwithstanding a directly contrary conclusion by the State.

Finally, with the exception of the two EAB memos cited in the proposal, the record contains no documents reflecting the substantial intra-agency communications which occurred regarding this variance. These communications unquestionably played a significant role in shaping the proposal. As such, they should be available for public comment. Moreover, due to the significant possibility, discussed below, of agency bias in this proceeding, this omission is crucial.

USEPA is required to base its proposed actions on the complete record and to make that complete record available for public comment. It has failed to fulfill these obligations here, and until it has, it may not lawfully or reasonably proceed to disapprove this variance.

USEPA Response

The Agency record in fact, is complete. The record is either contained in the sources specific revision file or located in other files available to the general public.

The April 1987 letter from David Aldorfer to Joe Paisie was not submitted to USEPA by Ohio EPA and was, therefore, not a part of the formal GM Lordstown SIP submittal. However this final rulemaking does reflect consideration of the April 1987 letter.

Information on the air quality in the Youngstown Area is not relevant to this action.

Information on the area's attainment status, the status of the State's request for redesignation, the federally approved Ohio SIP, the RFP and attainment demonstrations, the State's reasonable further progress demonstrations, and USEPA's criteria for reviewing site-specific RACT variances and for determining appropriate cost-effective cut-offs are not contained in the individual site-specific rulemaking file. Policy documents utilized by USEPA during evaluation of the revision request are referenced in the Technical Support Document or the notice.

With the exception of the two EAB memoranda cited in the proposed rulemaking notice, the record contains no documents reflecting substantial intra-Agency communication regarding the variances because no such documents exist.

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GM Comment

B. There is a substantial basis for believing that agency consideration of these variances has been biased by an improper mixture of its program and enforcement functions. USEPA must, at a minimum, open these contacts to public scrutiny.

USEPA Response.

There is no basis for GM's belief that the USEPA improperly mixed its program and enforcement functions in the rulemaking on this SIP revision request. It is well settled that a polluter is subject to the existing requirements of a SIP until the polluter obtains a variance and such variance is approved by both the State and the U.S. USEPA. *Train* v. *Natural Resources Defense Council* ("NRDC"), 421 U.S. 60, 92 (1975); *see also Duquesne Light Co.* v. *EPA*, 698 F.2d 458, 471 (D.C. Cir. 1983) (the current SIP remains in force until USEPA formally approves a revision); *NRDC* v. *EPA*, 507 F.2d 905, 915 (9th Cir. 1974). Accordingly, the United States initiated a civil action under the Clean Air Act to address GM's violations of the emission limitations of the federally-approved and enforceable Ohio SIP.

Moreover, no conflict of interest arose when the Agency initiated its enforcement action on August 1986, by issuing a Notice of Violation ("NOV") to GM for its failure to comply with the SIP by the statutory compliance date of December 31, 1985. GM did not file a SIP revision request until October 21, 1986, ten months after the compliance date and several months after the NOV was issued.

Coincidentally, the same date which GM had requested for (and was granted) a settlement conference (October 21, 1986) with the Agency's enforcement branch to resolve the allegations in the NOV, was the same date the Agency's rulemaking branch received the SIP revision request for GM. The Agency's enforcement branch, however, proceeded with its action against GM due to GM's failure to propose an expeditious compliance plan in settlement negotiations.

Additionally, the Agency's enforcement branch is not prohibited from having access to or knowledge of the SIP revision request documents filed on behalf of GM, even if GM is a defendant in a separate enforcement action. Any involvement by enforcement personnel with the SIP revision documents was inevitable here, in order for counsel to respond to GM's extensive discovery requests for identification and production of documents in the SIP revision files and in order to respond to the Court's inquiries during status conferences in the judicial action. Enforcement personnel's access to, knowledge of, and familiarity with the documents in the docket files is not only normal and acceptable, but sound legal practice. *See United States* v. *National Steel Corp.* 767 F.2d 1176, 1182 (1975). The Agency's enforcement personnel, however, had no role in the rulemaking decision of the rulemaking branch on the SIP revision request for GM. This rulemaking decision has been completely independent of the enforcement action, in keeping with the spirit and letter of the law as expressed by the Court in *Bethlehem Steel* v. *U.S. EPA*, 638 F.2d 994 (7th Cir. 1980).

Furthermore, any enforcement action taken against GM's Lordstown, Ohio, facility was initiated at the Regional level and not as a result of actions by OAQPS. The USEPA, Region V, Air Compliance Branch, determined that GM's Lordstown facility was violating the Ohio SIP based on reports from the Ohio EPA. Any policy prepared by OAQPS directed at automobile surface coating operations was national in scope, and had no impact on Region V's enforcement initiative against GM's Lordstown facility. OAQPS played no role in the enforcement action against GM's Lordstown facility and play a minimum role in reviewing Region V's Notice of Proposed Rulemaking on the SIP revision request involved here. Therefore, there has been no improper mixture of the rulemaking (program) and enforcement functions by OAQPS in the rulemaking on this SIP revision request.

Because the USEPA, in response to GM's discovery requests in the judicial action, has disclosed the identity of the persons involved in the Agency's review of this SIP revision request, and has produced all non-privileged documents relating to the Agency's review, there is no need for the Agency to re-identify or reproduce such data to GM. GM has had an adequate opportunity to comment on the above data, which was either produced to GM in response to discovery on October 21, 1987, or has been made available for inspection since at least that date.

GM Conclusion

For the reasons stated above, the variances at issue here should be approved as written. USEPA itself has determined that they will not interfere with attainment or maintenance of the NAAQS. This finding alone requires approval, whether or not the variances require RACT. Moreover, USEPA has failed to articulate any rational basis for rejecting the State's conclusion that the variance do require RACT. The "faults" it finds in the State's analysis are in many cases wrong and in others misleading. And, to the extent they are accurate, they do not undermine the basic conclusion that controls beyond those required by the variance are not reasonably cost-effective.

At a minimum, however, the Agency should approve the variances as a two-year extension, with interim RACT determinations pending development of methods for converting to BC/CC without a major reconstruction. Such approval is justified by the facts and by the Agency's 1981 policy on topcoat compliance extensions. If a date certain must be incorporated into the variances to justify that approval, USEPA should notify the State of that fact and provide the State with a reasonable opportunity to amend its submission.

USEPA Response

These issues have been previously addressed. USEPA conclusions are as follows:

1. GM Lordstown is located in an ozone nonattainment area and RACT is, therefore, required. The redesignation request for Mahoning and Trumbull counties is a separate action and USEPA has not yet acted on this request.

2. Ohio EPA/GM have not demonstrated that GM Lordstown's car plant is substantially different from other autocoating facilities which are subject to more stringent limits than are contained in GM's variance. The uniqueness of a facility, as compared to others in the same category, is a primary criteria in evaluating a proposed redefinition of RACT.

3. Ohio EPA/GM have requested a permanent relaxation from limits which it may be currently achieving. On page 45 of its comments, GM states that it has fulfilled its commitment to convert GM Lordstown to a waterborne equivalent base coat/clear coat technology. There is no apparent basis for approving a relaxation from a limit which is being met. If GM Lordstown has not totally achieved waterborne equivalence, it is clearly doing better than the limits proposed in its variance.

4. Ohio EPA/GM have not established, based upon its cost-effectiveness evaluation, that its proposal represents the most stringent (considering economic feasibility) limit capable of being met by GM Lordstown. USEPA has not established cost-effectiveness cutoffs for determining whether or not a specific control strategy constitutes RACT and the method of establishing New Source Performance Standards is not applicable for establishing RACT. It is Ohio's burden to demonstrate both that the existing SIP limit is not feasible and also that there is no other feasible limit more stringent that what is contained in GM's variance. This claim of infeasibility has not been adequately documented particularly in light of the fact that complying coating systems are available, booth incineration is in use by GM (including at its Arlington, Texas, plant), and spray booth recirculation is being used by automotive manufacturers outside the United States and is planned for use within the United States.

5. USEPA disagrees with the use of 27 percent DL as the baseline for evaluating cost-effectiveness. GM Lordstown was using 17 percent DL as of the date of GM's Yellow Book and adoption of Ohio's autocoating rule. The level of control during this period is, therefore, the appropriate baseline for evaluating cost-effectiveness. The subsequent implementation of any partial control measures (e.g., conversion to 27 percent DL) does not constitute a valid argument for the economic infeasibility of achieving compliance with an emission limit previously established as RACT. As stated by Ohio in its August 13, 1986, letter to GM, "[t]he use of incremental cost-effectiveness would promote variances by allowing entities to employ marginally unacceptable control technology or only go part way in achieving compliance with an applicable emission limitation and then argue that to achieve full compliance is not cost-effective."

Final Action

Based upon a review of the SIP revision request and the public comments raised on behalf of General Motors' Lordstown auto assembly plant in Warren, Ohio, USEPA is taking final action to disapprove this SIP revision as not constituting RACT, as required by the CAA. USEPA is not evaluating the merits of this proposal as a temporary relaxation, because it was submitted as a permanent relaxation. However, USEPA will evaluate any compliance date extension which is submitted for approval.

Under Executive Order 12291, today's action is not "Major". This action is not subject to review by the Office of Management and Budget.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 28, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See § 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Hydrocarbons.

Dated June 14, 1989.

Valdas V. Adamkus,

Regional Administrator.

Title 40 of the Code of Federal Regulations, Chapter I, Part 52, is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart KK—Ohio

1. This notice is issued under authority of the Clean Air Act, as amended.

Authority: 42 U.S.C. 7401—7642.

2. Section 52.1885 is revised by adding new paragraph (l) to read as follows:

§ 52.1885 Control strategy: Ozone.

* * * * *

(l) *Disapproval.* On October 21, 1986, the Ohio Environmental Protection Agency submitted a revision to the ozone portion of the Ohio State Implementation Plan (SIP) for Volatile Organic Compounds (VOC). This revision request is for a relaxation of emission limitation for topcoat and final repair coatings operations for General Motors Lordstown auto assembly facility in Warren (Trumbull County), Ohio. As a result of USEPA's disapproval, the source remains subject to the control requirements of the Ohio Administrative Code (OAC) Rule 3745-09(C).

[FR Doc. 89-14913 Filed 6-26-89; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 60

[AD-FRL-3605-5]

Standards of Performance for New Stationary Sources; Amendment to Test Methods and Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Technical Amendment.

SUMMARY: On October 6, 1988, a notice entitled "Sewage Treatment Plants" was published in the **Federal Register** (53 FR 39412). This rule added § 60.154(d). A notice entitled "Amendments to Test Methods and Procedures" was published in the **Federal Register** on February 14, 1989 (54 FR 6660). This rule consolidated all test methods and procedures necessary to determine compliance with the applicable standards or related monitoring requirements and clarified certain procedures. The rule revised § 60.154 (a), (b) and (c) into § 60.154 (a) and (b) and appears to delete § 60.154(d). The purpose of this action is to reserve § 60.154(c), state that § 60.154(d) remains unchanged from the October 6, 1988, rule, and will make minor corrections.

EFFECTIVE DATE: June 27, 1989.

FOR FURTHER INFORMATION CONTACT: Roger Shigehara, Emission Measurement Branch (MD-19), Technical Support Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-1058.

SUPPLEMENTARY INFORMATION:

List of Subjects in 40 CFR Part 60

Air pollution control.

Date: June 15, 1989.

Don R. Clay,

Acting Assistant Administrator for Air and Radiation.

40 CFR Part 60 is amended as follows:

PART 60—[AMENDED]

1. The authority citation for Part 60 continues to read as follows:

Authority: Sections 101, 111, 114, 116, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7411, 7414, 7416, and 7601).

2. In § 60.154, paragraphs (c) and (d) are added to read as follows:

§ 60.154 Test methods and procedures.

* * * * *

(c) [Reserved]

(d) The owner or operator of any sludge incinerator subject to the provisions of this subpart shall conduct a performance test during which the monitoring and recording devices required under § 60.153(a)(1), (b)(1), (b)(2), (b)(3), and (b)(4) are installed and operating and for which the sampling and analysis procedures required under § 60.153(b)(5) are performed. The owner or operator shall provide the Administrator at least 30 days prior notice of the performance test to afford the Administrator the opportunity to have an observer present.

(1) For incinerators that commenced construction or modification on or before April 18, 1986, the performance test shall be conducted within 360 days of the effective date of these regulations unless the monitoring and recording devices required under § 60.153(a)(1), (b)(1), (b)(2), (b)(3), and (b)(4) were installed and operating and the sampling and analysis procedures required under § 60.153(b)(5) were performed during the

most recent performance test and a record of the measurements taken during the performance test is available.

(2) For incinerators that commence construction or modification after April 18, 1986, the date of the performance test shall be determined by the requirements in § 60.8.

(3) For the initial performance test required by paragraph (d) of this section, the three samples collected by Test Method 5 shall be analyzed first for particulate mass and then in one of the following two ways:

(i) Two samples shall be analyzed by neutron activation for arsenic, cadmium, chromium, copper, nickel, selenium, and zinc; and one sample shall be analyzed by atomic absorption for beryllium and lead. The sample analyzed for beryllium and lead shall be analyzed according to Method 104 and Method 12, respectively.

(ii) Three samples shall be analyzed by atomic absorption for arsenic, beryllium, cadmium, chromium, copper, lead, nickel, selenium, and zinc. The samples shall be analyzed for arsenic, beryllium, and lead according to Method 108, Method 104, and Method 12, respectively. The samples shall be analyzed for cadmium, chromium, copper, nickel, selenium, and zinc according to standard analytical procedures as recommended by atomic absorption equipment manufacturers.

(4) During the initial performance test required by paragraph (d) of this section, sludge samples shall be collected for the purpose of determining the metals content of the sludge. Samples shall be collected from the sludge charged to the incinerator at the beginning of each run and at approximately 30 minute intervals thereafter until the test run ends. The sludge samples collected during each test run shall be combined into a single composite sample. During the performance test, three composite samples shall be generated. The composite samples shall be analyzed in one of the following two ways:

(i) The composite samples shall be analyzed for arsenic, cadmium, chromium, copper, nickel, selenium, and zinc by neutron activation procedures, and for beryllium and lead by atomic absorption according to Method 104 and Method 12, respectively.

(ii) The composite samples shall be analyzed by atomic absorption for arsenic, beryllium, cadmium, chromium, copper, lead, nickel, selenium, and zinc. The samples shall be analyzed for arsenic, beryllium, and lead according to Method 108, Method 104, and Method 12, respectively. The samples shall be analyzed for cadmium, chromium, copper, nickel, selenium, and zinc according to standard analytical procedures as recommended by atomic absorption equipment manufacturers.

(5) The requirements of paragraphs (d)(3) and (d)(4) of this section shall apply only during the first performance test required pursuant to these regulations.

§ 60.335 [Amended]

3. In § 60.335(c)(1), the first equation is revised to read as follows:

$$NO_x = (NO_{so}) (P_r/P_o)^{0.5} e^{19(H_o - 0.00633)} (288°K/T_a)^{1.53}$$

§ 60.474 [Amended]

4. In § 60.474(c)(4) introductory text "200 lb/ton" is revised to read "2000 lb/ton".

§ 60.485 [Amended]

5. In § 60.485(g)(4), the equation is revised to read as follows:

$$H_T = K \sum_{i=1}^{n} C_i H_i$$

[FR Doc. 89-14680 Filed 6-26-89; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 80

[AMS-FRL-3607-1]

Volatility Regulations for Gasoline and Alcohol Blends Sold in Calendar Years 1989 and Beyond; Correction

AGENCY: Environmental Protection Agency.

ACTION: Final rule; correction.

SUMMARY: This notice corrects minor errors in a notice of final rulemaking promulgating volatility regulations for gasoline and alcohol blends, which was published on March 22, 1989 (54 FR 11868).

FOR FURTHER INFORMATION CONTACT: Robert E. Kenney, Senior Staff Attorney, Field Operations and Support Division (EN-397F), EPA, 401 M Street SW., Washington, DC 20460. Telephone: (202) 382-2833.

SUPPLEMENTARY INFORMATION: This notice corrects minor errors in a notice of final rulemaking promulgating volatility regulations for gasoline and alcohol blends, which was published on March 22, 1989 (54 FR 11868). The reasons for these corrections are set forth below.

(1) In the final rulemaking, the Agency added a new definition of "ethanol blender" at 40 CFR 80.2(v). This definition created a special subcategory of refiner for persons who produce gasoline solely through the addition of ethanol to finished gasoline, with separate liability and defense provisions from other refiners. When the final regulations were drafted, these parties were inadvertently omitted from certain provisions which should have applied to them, specifically 40 CFR 80.27(a), 80.27(d)(3)(ii), and 80.28(g)(4)(iii)(F). This notice corrects these inadvertent omissions.

(2) Section 4.1 of 40 CFR Part 80, Appendix D, describes the types of sampling containers that can be used as part of the promulgated sampling procedures. As published, this section provides that the only cans that can be used for this purpose are "those with the seams soldered on the exterior surface with a flux of rosin in a suitable solvent." Since publication, EPA has learned that such cans may be difficult to procure. Therefore, the language in section 4.1 has been revised to state that cans soldered in this manner are preferred, but that if such cans are not available other cans made with a welded construction may be used as long as their construction is not affected by (and it does not affect) the gasoline being sampled.

(3) Section 12.6 of Appendix D sets forth a water displacement method of sampling gasoline. This method was promulgated erroneously because the sampling and testing methods were intended to eliminate all contact with water in order to allow their use with alcohol blends. The water displacement method, however, allows direct contact between water and product being sampled. Therefore, it is being deleted as an acceptable sampling method. The Agency notes that the American Society for Testing and Materials (ASTM) does not allow use of this sampling method in conjunction with alcohol blends. See ASTM D-4814-88, Annex A2, section A2.6.2.

(4) Figure 4 of Appendix D was drawn incorrectly. In each of the sample probes illustrated in this figure, the center line notation appeared to be a "W" rather than a "CL" (the proper notation). In addition, in Probe (C) the orifice facing upstream should have been a smooth curve instead of a sharp angle, and there should not have been a space in the line facing downstream. A new Figure 4 correcting these errors is included in this notice.

(5) Section 8.1 of Method 1 of 40 CFR Part 80, Appendix E, describes the sample transfer portion of the volatility test procedures. Language has been added to this section to make clear that the fuel chamber should be dried prior to the running of a volatility test (along with other parts of the test apparatus).

(6) Section 8 of Method 2 of Appendix E (the "dry Herzog" volatility test procedures) lists certain test procedure sections that are different from those in Method 1. One of these changed sections is section 7.4, which deals with preparation of the air chamber part of the test apparatus. As published, this provision of Method 2 requires that the lower connection of the Herzog air chamber be plugged with a #3 rubber stopper. EPA has subsequently detected leaks using this type of stopper and has learned that the manufacturer now sells its testing equipment with a screw-type cap threaded to plug this connection. Therefore, this section is being corrected to allow use of such a cap. As another alternative, it is also acceptable to use a spare fuel chamber to seal the lower connection.

(7) The cross-references in section 8.5 of both Methods 1 and 2 of Appendix E to Note 5 were incorrect. They are corrected to refer to Note 7.

(8) The amount of the special allowance for certain alcohol blends (1.0 pound per square inch) is clarified in section 80.27(d)(1).

(9) Misspellings and incorrect terminology are corrected in: section 80.28(f); Appendix E, Method 1, section 8.1; and Appendix E, Method 2, sections 7.4 and 8.5.

The regulatory corrections made in this notice do not significantly affect the stringency, applicability, compliance burden, or compliance costs of the gasoline volatility regulations. Because these corrections do not result in such changes and are necessary to the proper implementation of these regulations during the ozone season, I find that notice and comment rulemaking is impracticable and unnecessary and thus there is good cause to publish this corrections notice and to make it effective upon publication.

Date: June 16, 1989.

Don R. Clay,

Acting Assistant Administrator for Air and Radiation.

PART 80—[CORRECTED]

The following corrections are made in AMS-FRL-3538-5, the Volatility Regulations for Gasoline and Alcohol Blends Sold in Calendar Years 1989 and Beyond published in the **Federal Register** on March 22, 1989 (54 FR 11868):

§ 80.27 [Corrected]

1. On page 11883, third column, is § 80.27(a), third line, the phrase "ethanol blender," is added after "carrier,".

2. On page 11885, first column, in § 80.27(d)(1), last line, the phrase "(1.0 psi)" is added after "inch".

3. On page 11885, first column, in § 80.27(d)(3)(ii), ninth line, the phrase "ethanol blenders," is added after "carriers,".

§ 80.28 [Corrected]

4. On page 11885, third column, is § 80.28(f), eighth line, the word "refinery" is corrected to read "refiner".

5. On page 11886, second column, in § 80.28(g)(4)(iii)(F), tenth line, the words "or ethanol blender's" are added after "reseller's".

Appendix D—[Corrected]

6. On page 11887, second column, in Appendix D section 4.1 the last two sentences are deleted and replaced with the following sentences, "Cans with the seams soldered on the exterior surface with a flux of rosin in a suitable solvent are preferred because such a flux is easily removed with gasoline, whereas many others are very difficult to remove. If such cans are not available, other cans made with a welded construction that are not affected by, and that do not affect, the gasoline being sampled are acceptable."

7. On pages 11889, third column, through 11890, first column, Appendix D section 12.6 is removed and section 12.7 is redesignated as section 12.6.

8. On page 11893, in Appendix D, Figure 4 is corrected to appear as follows:

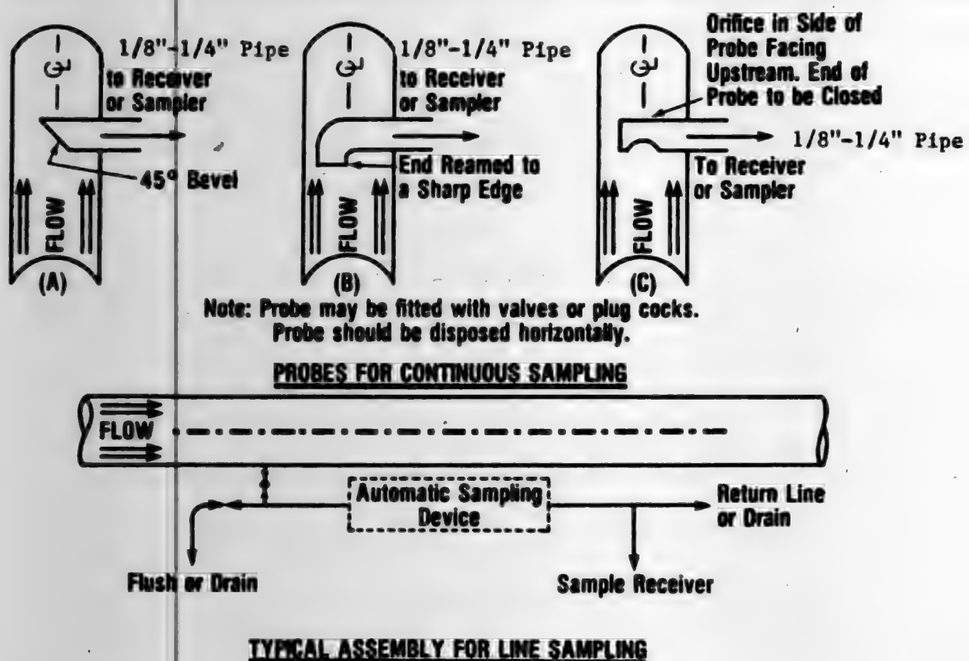


Figure 4. Probes for Continuous Sampling

Appendix E—[Corrected]

9. On page 11897, third column, in Appendix E, Method 1, section 8.1, line 5, the phrase "After drying with absorbent material," is added before the word "Quickly" (which is no longer capitalized).

10. On page 11897, third column, in Appendix E, Method 1, section 8.1, line 11, the word "botton" is corrected to read "bottom".

11. On page 11898, second column, in Appendix E, Method 1, section 8.5, line 4, the words "Note 5" are corrected to read "Note 7".

12. On page 11902, third column, in Appendix E, Method 2, under Part 8. Test Procedure, in section 7.4, line 6, the following sentences are added after "stopper.": "The lower connection of the Herzog air chamber may also be stoppered by utilizing a cap threaded to match the threads of the air chamber, or by attaching a spare fuel chamber to the air chamber. In any procedure used, the interior surfaces of the vapor pressure apparatus and the sample must be kept completely free of water."

13. On page 11902, third column, in Appendix E, Method 2, under Part 8. Test Procedure, in section 7.4, line 14, the word "for" is corrected to read "from".

14. On page 11903, first column, in Appendix E, Method 2, under Part 8. Test Procedure, in section 8.5, line 7, the words "Note 5" are corrected to read "Note 7".

15. On page 11903, first column, in Appendix E, Method 2, under Part 8. Test Procedure, in section 8.5, line 12, the word "vaccum" is corrected to read "vacuum".

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BILLING CODE 4910-14-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 161

[CGD 85-208]

RIN 2115-AC95

Floating Electric Waterlight

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising its regulation for designing, constructing, testing, and approving a floating electric waterlight by replacing the existing detailed requirements with the incorporation by reference of Underwriters Laboratories Inc. (UL), ANSI/UL 1196, Standard for Floating Waterlights. Also, the Coast Guard is replacing the plan approval process for a waterlight with an approval procedure which uses a test performed by an independent laboratory and a manufacturer certification method. Incorporation by reference of ANSI/UL 1196 allows a waterlight to be designed using the most current technological innovations. The end results will be the development of an improved waterlight design, and a reduction in time delays and administrative procedures.

DATES: This regulation is effective July 27, 1989. The incorporation by reference of certain publications listed in this regulation is approved by the Director of the **Federal Register** as of July 27, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Randall N. Crenwelge, Marine Technical and Hazardous Materials Division, Office of Marine Safety, Security and Environmental Protection, Room 1218, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593-0001, (202) 267-2206. Normal office hours are from 7:30 a.m. until 4:00 p.m., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking (NPRM) was published in the **Federal Register** on December 1, 1988 (53 FR 48558). Interested persons were requested to submit comments, and three were received. No requests for a public hearing were received, and one was not held.

Drafting Information

The principal persons involved in drafting this rulemaking are Mr. Randall N. Crenwelge, Project Manager, and Lieutenant Commander Don M. Wrye, Project Counsel, Office of Chief Counsel.

General Discussion

Coast Guard regulations require floating electric waterlights to be attached to lifebuoys, liferafts, lifefloats, and other buoyant apparatus. Floating electric waterlights are required to be constructed and marked in accordance with 46 CFR Subpart 161.010, and they must be U.S. Coast Guard approved.

The Coast Guard, waterlight manufacturers, and Underwriters Laboratories Inc. (UL), an independent standards development and product certification organization, have jointly developed an industry standard for waterlights. This standard, ANSI/UL 1196 (Standard for Floating Waterlights), specifies construction and test requirements, and it is equivalent to previous U.S. Coast Guard regulations. It also contains the requirements of the 1983 amendments to the International Convention for the Safety of Life at Sea of 1974 (SOLAS 74/83).

This rulemaking revises Subpart 161.010 by deleting the specific material, construction, performance, and test requirements, and incorporates ANSI/UL 1196 by reference. Also, the manufacturer must test the waterlight using an independent laboratory which complies with 46 CFR 159.010-3. The manufacturer of a new waterlight must submit to the Commandant (G-MTH-2), U.S. Coast Guard, a pre-approval sample, plans, specifications, a test report, and a self-certification statement indicating compliance with Subpart 161.010. After reviewing all the required items and ensuring compliance to the regulations, an approval certificate is then issued to the manufacturer, and the plans, test report, and other materials are retained by the Coast Guard for future reference. The manufacturer must then label the light with a Coast Guard approval number as required by the ANSI/UL standard. The light can then be mass produced.

Waterlights which have been previously approved and are currently being or will be manufactured with an existing approval number are not affected by this rulemaking, as long as the present certificate is up-to-date. The Coast Guard will continue to accept requests for extensions of approval for previously approved waterlights when their certificates expire.

Discussion of Comments

SOLAS 74/83, Chapter III, Regulation 31-1.7, requires that some lifebuoys have a mass sufficient to operate the quick release mechanism provided for the self-activating and self-igniting lights, or 8.816 pounds (4 kilograms), whichever is greater. Section 8.4 of ANSI/UL 1196 states that a waterlight shall not require more than 20 pounds-force (89N) of tension to release from the mounting bracket. One comment stated that this would require the ring buoy to weigh approximately 20 pounds in order to pull free both the waterlight and smoke signal when released from the bridgewing. This analogy is incomplete due to the fact that the pulling forces applied to the waterlight and smoke signals are dynamic forces. Their magnitude is a function of the mass of the lifebuoy, as well as the acceleration that the lifebuoy gains when released from the quick release mechanism. This force is significantly greater than the required twenty pounds maximum tension that is required to remove the waterlight from its bracket. Waterlights that have been tested to UL 1196 have an average release tension of six pounds. This force is two pounds less than the required eight pound weight of the lifebuoy. The Coast Guard feels the testing requirements in UL 1196 are adequate to ensure release of the waterlight without having to increase the weight of the lifebuoy.

Another comment questioned the justification of incorporating by reference ANSI/UL 1196 in lieu of the existing detailed-design requirements. The comment's position is that by incorporating this standard, the Coast Guard is actually "locking in" on the technology contained in the incorporated standard. The Coast Guard does not agree with this position. ANSI/UL 1196 was developed under a procedure which provides for participation and comment from the affected public, industry, and governmental organizations. This procedure takes into consideration a survey of known existing standards, and the needs and opinion of a wide variety of interests concerned with the subject matter. Thus, manufacturers, consumers, individuals associated with consumer-oriented organizations, academicians, industrial and commercial users, insurance interests, the Coast Guard, and others provide input in the formulation of this standard. These organizations keep this standard consonant with technological advances, and additions and changes are issued as needed to keep abreast with technology. The Coast Guard will revise the regulations as needed to incorporate the latest editions and revisions to this standard.

The Coast Guard has been actively involved in formulating nongovernment standards for over 20 years, working with industry in the interest of safety. This equal partner approach is vital to maintaining an acceptable level of safety while lessening the regulatory burden on our maritime industry. In the Marine Safety program, over 250 industry consensus standards have been adopted into the regulations.

A final comment expressed concern that the proposed rules do not contain provisions for a factory inspection. The comment also suggested that approval and production tests be conducted by a recognized independent laboratory; suggested specific criteria by which a recognized independent laboratory is accepted by the Coast Guard; suggested that accepted independent laboratories be listed in the regulations; suggested that a compliance label by a recognized independent laboratory accepted by the Coast Guard be allowed in lieu of a Coast Guard approval number; and suggested that the operational test be modified by reducing the float test to a duration of one hour and the light output test following the float test be a visual rather than a photometric test.

Section 161.010-4(d) of the rule states that the Coast Guard reserves the right to make any inspection or test it deems

necessary to determine the conformance of the materials and equipment to the regulations. The Coast Guard believes that this statement is sufficient to require and perform a factory inspection by the Coast Guard when sufficient information is available to indicate that a manufacturer's product does not conform to the regulations. As to laboratory testing, this rule requires that a waterlight manufacturer use an independent laboratory accepted by the Coast Guard to conduct approval and production testing. The Coast Guard's position is that an independent laboratory which meets the criteria stated in 46 CFR 159.010-3 is acceptable to perform the required testing. The Coast Guard has decided that it will no longer list those laboratories it accepts pursuant to Subpart 159.010. A provision for obtaining a list of Coast Guard accepted laboratories has been added to § 161.010-4(b). This procedure follows current Coast Guard practice for independent laboratories that test other life-saving appliances. The Coast Guard does not agree that a compliance label can be used in lieu of a Coast Guard approval number. Regulation 4 of Chapter III, SOLAS 74/83, which has been adopted by the United States, specifically requires approval by the Administration. The Coast Guard issued approval number satisfies the requirement of SOLAS 74/83.

The changes to the operational test suggested in the comment are not accepted. The operational test is an integral part of ANSI/UL 1196. By incorporating this standard by reference, the Coast Guard accepts the operational test as it is in the standard as a required element. As discussed either, this standard was developed in coordination with industry and is a consensus standard. This standard would not have been adopted if it was too severe or was impractical. The Coast Guard has independently evaluated this performance standard and concluded that it is a reasonable method of determining that the light will perform as required under actual use. In order to benefit from the incorporation by reference of an industry consensus standard, all technical changes should be accomplished by revising the standard itself.

Regulatory Evaluation

These regulations are considered to be nonmajor under Executive Order 12291 and nonsignificant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). They do not impose any new or additional submission requirements on manufacturers. Although they remove the manufacturer's option to perform tests under Coast Guard supervision, they only reflect current practice. Manufacturers, who usually do not have the equipment required to perform their own tests, currently rely on third party laboratories to perform testing. The Coast Guard has not been contacted to witness any manufacturer performed tests for several years. Therefore, the economic impact of these regulations has been found to be so minimal that further evaluation is unnecessary. Since the impact of this rulemaking is minimal, the Coast Guard certifies that it does not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

These regulations do not impose any new information collection or recordkeeping requirements on the public. The only paperwork requirements involve submittal of plans and test results for review, oversight, and recordkeeping purposes. These requirements have been previously approved by the Office of Management and Budget (OMB) and issued OMB Control Number 2115-0121, as displayed in 46 CFR 159.001-9.

Environmental Impact

The Coast Guard has considered the environmental impact of these regulations, and in accordance with section 2.B.2. of Commandant Instruction M16475.1B, has determined that this rule-making is categorically excluded from further environmental documentation.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

46 CFR Part 161

Fire prevention, Marine safety, Reporting and recordkeeping requirements; Incorporation by reference.

For the reasons set forth in the preamble, the Coast Guard is amending Part 161 of Chapter 1 of Title 46, Code of Federal Regulations, as follows:

PART 161—[AMENDED]

1. The authority citation for Part 161 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703, 4104; 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

2. Subpart 161.010 is revised to read as follows:

Subpart 161.010—Floating Electric Waterlight

Sec.

161.010-1 Incorporation by reference.
161.010-2 Design, Construction, and Test Requirements.
161.010-3 Inspections and methods of test.
161.010-4 Procedure for approval.

Subpart 161.010—Floating Electric Waterlight

§ 161.010-1 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of change must be published in the **Federal Register** and the material made available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G-MTH), 2100 Second Street SW., Washington, DC 20593-0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part, and the sections affected are:

Underwriters Laboratories, Inc.

333 Pfingsten Road, Northbrook, Illinois 60062, ANSI/UL 1196, Standard for Floating Waterlights, Second Edition March 23, 1987. 161.010-2; 161.010-4

§ 161.010-2 Design, Construction, and Test Requirements.

Each floating electric waterlight shall meet the requirements of ANSI/UL 1196.

§ 161.010-3 Inspections and methods of test.

(a) Each inspection and test report required by this subpart shall comply with § 159.005-11 of this chapter.

(b) The U.S. Coast Guard reserves the right to make any inspection or test it deems necessary to determine the conformance of the materials and equipment to this subpart.

(c) The facilities, materials, and labor for all tests shall be furnished at no cost to the U.S. Coast Guard.

§ 161.010-4 Procedure for approval.

(a) A request for approval of an automatic floating electric waterlight must be submitted to the Commandant (G-MTH-2), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593-0001.

(b) All inspections and tests must be performed by an independent laboratory which meets the requirements of § 159.010-3 of this chapter. A list of independent laboratories accepted by the Coast Guard as meeting § 159.010-3 of this chapter may be obtained by contacting the Commandant (G-MTH).

(c) Each request for approval must contain:

(1) The name and address of the applicant,

(2) One copy of all plans and specifications that meet the requirements of § 159.005-12 of this chapter,

(3) A pre-approval sample of the waterlight,

(4) An inspection and test report verifying compliance with the construction and test requirements of ANSI/UL 1196, and

(5) A statement by the manufacturer certifying that the waterlight complies with the requirements of this subpart.

Dated: May 2, 1989.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89-12398 Filed 6-26-89; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-533; RM-6398; RM-6470]

Radio Broadcasting Services; Clarksville and Lanesville, IN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 226A to Clarksville, Indiana, as that community's first local broadcast service. Coordinates for Channel 226A at Clarksville are 38-17-01 and 85-50-32. A mutually-exclusive proposal, filed by Janet Miller, seeking the allotment of Channel 226A to Lanesville, Indiana, as that community's first local broadcast service, is denied.

Our determination was reached after comparatively evaluating each proposal. That analysis revealed that each community receives at least five aural services. Therefore, Clarksville was preferred since it is the larger community. With this action, the proceeding is terminated.

DATES: Effective August 3, 1989; the window period for filing applications on Channel 226A at Clarksville, Indiana, will open on August 4, 1989, and close on September 5, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, (202) 632-0394.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-533, adopted May 31, 1989, and released June 20, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Indiana, by adding Clarksville, Channel 226A.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-15098 Filed 6-26-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-531; RM-6383, RM-6667]

Radio Broadcasting Services; Paris and Dover, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 231A to Paris, Tennessee, as that community's second local FM service, at the request of Benton-Weatherford Broadcasting of Tennessee, Inc. The allotment of Channel 231A can be made to Paris in compliance with § 73.207 of the Commission's Rules, at coordinates 36-18-12 and 88-19-24. With this action, this proceeding is terminated.

DATES: Effective August 3, 1989; the window period for filing applications will open on August 4, 1989, and close on September 5, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-531, adopted May 31, 1989, and released June 20, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Tennessee, by adding Channel 231A at Paris.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-15099 Filed 6-26-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-410; RM-5802, RM-6206, RM-6207]

Radio Broadcasting Services; Waterbury and Royalton, VT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 277C2 for Channel 276A at Waterbury, Vermont, and modifies the license of Station WGLY-FM to specify operation on the higher class channel at the request of Harvest Broadcasting, Inc. The upgrade could provide Waterbury with its first wide coverage area FM service. In addition, this action substitutes Channel 286A for Channel 278A at Plattsburg, New York, which is required in order to accomplish the

substitution at Waterbury. In response to the request of AGK Communications, Inc., Channel 259A is allotted to Royalton, Vermont, as that community's first local FM service. The coordinates for Channel 277C2 at Waterbury are 44–18–14 and 72–37–18, a restricted site 11.4 kilometers (7.1 miles) east of Waterbury. Channel 259A can be allotted Royalton at the reference coordinates, which are 43–48–57 and 72–32–48. Canadian concurrence has been obtained. With this action, this proceeding is terminated.

DATES: Effective August 3, 1989; the window period for filing applications for Channel 259A at Royalton, Vermont, will open on August 4, 1989, and close on September 5, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–410, adopted May 31, 1989, and released June 20, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended, under Vermont, by adding Channel 277C2 and removing Channel 276A at Waterbury; by adding Royalton, Vermont, Channel 259A; and amended, under New York, by adding Channel 286A and removing Channel 278A at Plattsburgh.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–15100 Filed 6–26–89; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 54, No. 122
Tuesday, June 27, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR–89–7]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: August 28, 1989.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on June 20, 1989.

Deborah Swank,

Acting Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Rulemaking

Docket No: 25924.

Petitioner: Air Transport Association (ATA).

Regulation Affected: 14 CFR Section 121.358.

Description of Petition: To amend the airborne low-altitude windshear rule to (1) remove the requirement that flight guidance equipment be installed on older, electro-mechanical airplanes, and (2) amend the condition for an extended compliance date to have that date be based on fleet compliance rather than phased compliance.

Petitioners' Reason for the Rule: The ATA maintains that the flight guidance equipment when retrofitted on older airplanes does not achieve recovery performance as well as unguided recovery using trained techniques in combination with the flight warning equipment.

Docket No: 24695.

Petitioner: Aircraft Owners and Pilots Association (AOPA).

Regulation Affected: 14 CFR 61.56(d) and 61.87.

Description of Petition: To amend § 61.56(d) of the recreational pilot rule to remove the requirement that non-instrument-rated private pilots with less than 400 hours must complete an annual flight review of a minimum of 1 hour flight instruction and 1 hour ground instruction. AOPA also petitions to amend § 61.87 to provide a grace period for student pilots to meet the requirements for solo flight of this section. Instead of the effective date of the rule, August 31, 1989, AOPA suggests December 1, 1989.

Petitioners' Reason for the Rule: The AOPA believes that the annual review requirement for non-instrument-rated private pilots with fewer than 400 hours flight time is inappropriate and the "grandfathering" of student pilot is a reasonable request.

[FR Doc. 89–15123 Filed 6–26–89; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 230 and 240

[Release Nos. 33–6837; 34–26949; 35–24907; IC–17016; File No. S7–17–89]

Request for Comment on Increasing the Level of Involvement of the Independent Accountant With Interim Financial Information

AGENCY: Securities and Exchange Commission.

ACTION: Request for public comment.

SUMMARY: The Commission is considering whether to propose amendments to its rules to improve the reliability of interim reporting by increasing the level of involvement of the independent accountant with interim financial information. Among the initiatives being considered by the Commission is a possible requirement that interim financial information of registrants be reviewed by their independent accountants before such information is filed with the Commission. In order to assist the Commission in determining whether to propose amendments to its requirements for interim financial information, the Commission is requesting comment regarding (1) the perceived need for revisions to the Commission's current Item 302(a) requirements and (2) any incremental costs and benefits of any suggested revisions, including the possible requirements for timely reviews of interim financial information.

DATE: Comments should be received on or before September 25, 1989.

ADDRESS: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Comment letters should refer to File No. S7–17–89. All comment letters received will be available for public inspection and copying in the Commission's Public Reference Room at the same address.

FOR FURTHER INFORMATION CONTACT: Jack C. Parsons or Robert E. Burns,

Office of the Chief Accountant, (202) 272-2130, or Robert A. Bayless, Division of Corporation Finance, (202) 272-2553, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

Complete and accurate financial reporting by public companies is of paramount importance to the disclosure system underlying the stability and efficient operation of our capital markets. Investors need reliable financial information when making investment decisions. Interim financial reporting is an important part of that full disclosure program because investors rely on, and react quickly to, quarterly results.

Since 1975, the Commission has required that independent accountants review quarterly financial information filed with annual financial statements of larger, more widely traded registrants.[1] Among the reasons for adopting this requirement, which increased the involvement of the independent accountant with quarterly reporting, were expectations that such a requirement would result in greater care and attention being devoted to quarterly reports, thereby increasing the likelihood that management would discover needed adjustments on a timely basis. The Commission also believed that the requirement would bring the reporting, accounting and analytical expertise of independent accountants to bear on the quarterly reporting process.[2]

Although the Commission did not require that reviews be done on a timely basis (*i.e.*, before the quarterly financial data is initially filed with the Commission) it strongly encouraged such a practice. The Commission stated its belief that it was likely that timely reviews would occur so that management would be less likely to face the necessity of revising quarterly data at the time year-end statements are published.[3]

The Commission continues to believe that timely involvement by the independent accountant with interim financial data would improve the reliability of such data, particularly in today's environment of increasingly complex financial transactions and rapidly changing business practices. Further, the National Commission on Fraudulent Financial Reporting (the "Treadway Commission") recently made a recommendation that the SEC should require independent accountants to review quarterly financial data of all public companies before release to the public. The recommendation was based on the Treadway Commision's belief that timely review would improve the reliability of quarterly reporting and increase the likelihood of preventing or detecting fraudulent financial reporting through auditor involvement with quarterly financial data.[4]

Given the Commission's continued belief that timely review by the independent accountant would enhance the reliability of interim data and increase the likelihood that the independent accountant will discover financial reporting problems, and considering the Treadway Commission recommendation, the Commission intends to reconsider the existing Item 302(a) requirements and determine whether any changes may be needed. Among the initiatives being considered by the Commission is a possible requirement that (10 interim [5] financial data of registrants be reviewed by independent public accountants before such information is filed with the Commission and (2) a report issued by the independent accountant upon completion of the review be included by the registrant in its Form 10-Q [6] and in any registration statements that include interim information.

Before proposing any rulemaking in this area, the Commission believes it is appropriate to obtain input from the public about both the experience of registrants and independent accountants with the Commission's existing Item 302(a) requirements and the estimated incremental costs and benefits that should be considered in assessing whether to propose a requirement for timely involvement by the independent accountant with interim financial information. The Commission also is requesting comments regarding whether such a requirement should apply to all interim periods and whether certain registrants should be excluded from such a requirement, as well as the potential impact of such a requirement in the following additional areas:

—Timely release of earnings
—Establish sufficient knowledge when accountant not engaged to perform prior year audit
—Adequacy of procedures performed by the accountant
—Inclusion of accountant's review report
—Potential for over-reliance on review reports
—Rules 436 [7] exemption

A more detailed discussion of these specific areas begins under Section III of this release.

The Commission also is considering whether to expand the number of registrants subject to Regulation S-K Item 302(a), which currently requires larger, more widely traded companies to disclose certain quarterly data in their annual audited financial statements. Subjecting additional registrants to Item 302(a) would resut in auditor review of their quarterly information, but the review would not necessarily have to occur on a timely basis. The benefits of such a review by the auditor are potentially relevant to registrants regardless of their size and trading activity.

Comments are also invited on any issues commentators believe are relevent to the Commission's consideration of auditor involvement with interim information.

II. Background

A. Historical Background

The Commission began considering disclosure of quarterly information in annual financial statements in 1974 when it published a proposal that this information be included in an audited footnote.[8] This proposal evolved to the present requirement for unaudited data adopted in Accounting Series Release (ASR) No. 177.[9] The Commission noted in ASR 177 that when the annual financial statements contained "unaudited" quarterly data it would be presumed that the auditor had followed "appropriate professional standards and procedure with respect to the data." [10] The Commission expressed its belief that the following benefits would also arise:

[1] Regulation S-K, Item 302(a); 17 CFR 229.302(a).

[2] *See generally*, Accounting Series Release No. (ASR) 177 (September 10, 1975) (40 FR 46107) (hereinafter "ASR 177").

[3] *Id.*

[4] Report of the National Commission on Fraudulent Financial Reporting (October 1987) (hereinafter "Treadway Commission Report") p. 53.

[5] For purposes of this concept release, it is contemplated that "interim financial data" would be data for periods currently addressed by Item 302(a). In general, then, "interim financial data," as used in this release, refers to *quarterly* data. *See* note 22, *infra*. In addition, the Commission is requesting comment on whether other interim periods should be subject to requirements of timely auditor review. *Infra*, Section IV.A. Thus, the meaning of "interim" in this context is flexible; it may be expanded in any proposed or final rulemakings on this subject in response to comments.

[6] 17 CFR 249.308a.

[7] 17 CFR 230.436.

[8] Securities Act Release No. 5549 (December 19, 1974) (40 FR 1079).

[9] ASR 177.

[10] *Id.*

Either timely or retrospective involvement should increase the care and attention devoted to quarterly reports which will increase the likelihood that management will discover needed adjustments on a timely basis. In addition, management may be able to identify problem areas more promptly so that unusual charges and credits are not made so frequently in the last month of a fiscal year. Finally, the involvement of independent accountants will add the expertise of professional accountants with wide experience in reporting problems to the quarterly reporting process. This should improve individual company reporting and direct greater professional attention to the general problems of interim reporting.[11]

While recognizing that involvement of the independent accountant with interim reporting would not prevent all deficiences, the Commission stated its belief that such involvement would enhance the reliability of interm reports and reduce the likelihood of abuse. The Commission concluded that, in the final analysis, the benefits of auditor involvement in quarterly data are expected primarily to result from improvement in the quality of interim reporting and the annual auditing process and only secondarily from the prevention of perceived abuses.[12]

Although the Commission has strongly encouraged timely reviews of quarterly data,[13] it has not required them. In fact, Regulation S-X states:

> The interim financial information included in filings with the Commission need not be reviewed by an independent public accountant prior to filing. If, however, a review of the data is made in accordance with established professional standards and procedures for such a review, the registrant may state that the independent accountant has performed such a review. If such a statement is made, the report of the independent accountant on such review shall accompany the interim financial information.[14]

Although not mandating the timely involvement of independent accountants with quarterly reporting, the Commission expected that such involvement would occur voluntarily so that management would be less likely to face the necessity of revising quarterly data at the time year-end statements are published.

The Commission also stated its belief that, as the reviews of quarterly information became a regular part of the audit examination of public companies, the timing of audit procedures would be revised so that testing of internal controls and the analytical reviews of financial reports would occur throughout the year. It was expected that this would increase the efficiency of the auditors in identifying and focusing promptly on potentially troublesome areas in the audit. As a result, it was the Commission's expectation that the costs of such reviews would not be entirely incremental and that such reviews should reduce the cost of the annual audit examination. It was further expected that such costs would not be continuing since audit programs and corporate control systems would be improved promptly to keep such costs at a minimum.[15]

The Commission's consideration of the costs and benefits of disclosure and auditor reviews of quarterly information also was evident in the Commission's determination that the present Item 302(a) disclosure requirements should not apply to registrants that do not meet certain criteria; *i.e.*, smaller, less actively traded registrants.[16] Although the Commission concluded that it was not clear that the benefits would outweigh the costs for smaller, less widely traded registrants, the Commission noted that it would continue to study the question.[17]

In ASR 177, the Commission also noted that an accountant's report based on its review of the quarterly data may provide significant and useful information to investors. Therefore, the Commission encouraged the issuance of such reports.[18]

B. Current Requirements

The requirements of the Commission concerning auditor involvement in interim financial data are currently addressed in Regulation S-K, Item 302(a).[19] This item requires, for certain registrants (essentially the larger, more widely traded),[20] disclosure, as supplementary financial information in the annual financial statement,[21] of selected quarterly [22] financial data, including: net sales, gross profit, income (loss) before extraordinary items and cumulative effect of a change in accounting, per share data based upon such income (loss), and net income (loss) for each quarter within the two most recent fiscal years and any subsequent interim period. The item also calls for appropriate reconciliations and descriptions of any adjustments to quarterly information previously reported in the Form 10-Q filed for any quarter. Item 302(a)(4) [23] states that if the related financial statements (*i.e.*, the annual financial statements containing the quarterly data) have been audited, then appropriate professional standards and procedures, as enumerated in the Statements of Auditing Standards issued by the Auditing Standards Board of the American Institute of Certified Public Accountants (AICPA),[24] shall be

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] Regulation S-X, Rule 10-01(d); 17 CFR 210.10-01(d).

[15] ASR 177.

[16] *See* Regulation S-K, Item 302(a)(5), regarding disclosure of selected quarterly financial data, note 20, *infra*.

[17] ASR 177.

[18] *Id.*

[19] *See* note 1, *supra*.

[20] Item 302(a)(5), 17 CFR 229.302(a)(5), generally requires any registrant, except a foreign private issuer eligible to use Form 20-F, that meets both of two tests to provide quarterly data in an unaudited footnote to the annual audited financial statements. The first test is whether the registrant:

(A) Has securities registered pursuant to section 12(b) of the Exchange Act (other than mutual life insurance companies); or

(B) Is an insurance company that is subject to the reporting requirements of section 15(d) of the Exchange Act and has securities which also meet the criteria set forth in paragraphs (C)(1) and (C)(2) immediately following; or

(C) Has securities registered pursuant to Section 12(g) of the Exchange Act that also

(1) Are quoted on the National Association of Securities Dealers Automated Quotation System, and

(2) Meet the following criteria:

(i) Three or more dealers make a market in such stock, or the stock is registered on a securities exchange that is exempted by the Commission from registration as a national securities exchange pursuant to Section 5 of the Exchange Act;

(ii) There are 800 or more holders of record, as defined in Rule 12g5-1 (17 CFR 240.12g5-1), under the Exchange Act, of the stock who are not officers, directors, or beneficial owners of 10 percent or more of the stock;

(iii) The registrant is a United States corporation;

(iv) There are 300,000 or more of such securities outstanding in addition to shares held beneficially by officers, directors, or beneficial owners of more than 10 percent of the stock; and

(v) In addition, the registrant meets two of the three following requirements:

(A) The shares described in paragraph (C)(2)(iv) above have a market value of at least $2.5 million;

(B) The minimum representative bid price of such stock is at least $5 per share; or

(C) The registrant continues to have at least $2.5 million of capital, surplus, and undivided profits.

The second test is whether the registrant and its consolidated subsidiaries (A) have had net income after taxes but before extraordinary items and the cumulative effect of a change in accounting, of at least $250,000 for each of the last three fiscal years; or (B) had total assets of at least $200,000,000 for the last fiscal year-end.

[21] Item 302(a) information is required to be disclosed in Form 10-K. In addition, Item 302(a) information is required to be disclosed in, among others, Registration Forms S-1 and S-2 under the 1933 Act, 17 CFR 239.11 and 239.12, respectively.

[22] Item 302(a) requires disclosure of selected data for each full quarter within the two most recent fiscal years and any subsequent interim period for which financial statements are included or required to be included by Article 3 of Regulation S-X. Therefore, Item 302(a) is addressed primarily to quarterly financial data; in addition, Item 302 addresses data for certain other interim periods. *See, e.g.*, Rule 3-12 of Regulation S-X.

[23] 17 CFR 229.302(a)(4).

[24] The Auditing Standards Board is the senior technical body designated by the AICPA to promulgate auditing standards.

followed by the reporting accountant with regard to this quarterly data. Because annual financial statements filed with the Commission are required to be audited,[25] the effect of Item 302(a)(4) is that the quarterly data included in the annual statement must be reviewed by the auditor.

The standards and procedures for this review of quarterly data are set forth in Statement on Auditing Standards No. 36, "Review of Interim Financial Information" (codified at AU section 722 and hereinafter referred to as SAS 36). Review procedures pursuant to SAS 36 consist primarily of inquiries and analytical review procedures concerning significant accounting matters relating to the financial information to be reported. A description of these procedures is included in the standard review report, which states in part:

> A review of interim financial information consists principally of obtaining an understanding of the system for the preparation of interim financial information, applying analytical review procedures to financial data, and making inquiries of persons responsible for financial and accounting matters.

SAS 36, paragraph 18.

SAS 36 does not require that interim data be reviewed on a timely basis. Thus, the quarterly data contained in the Form 10–Q filed with the Commission is not required to be reviewed before the Form 10–Q is submitted. Paragraph 27 of SAS 36 expressly permits the auditor to perform the review procedures at the time of the audit of the annual financial statements.

Review procedures pursuant to SAS 36 are substantially less in scope than those employed in audits in accordance with generally accepted auditing standards. Audit procedures require substantially more work, including detailed testing of account balances and transactions, confirmation of amounts due from third parties and observation of physical inventories, among other procedures. Accordingly, a review does not provide the basis for the expression of an audit opinion. SAS 36, paragraph 3 states:

> * * * A review of interim financial information does not provide a basis for the expression of such an [audit] opinion, because the review does not contemplate a study and evaluation of internal accounting control; tests of accounting records and of responses to inquiries by obtaining corroborating evidential matter through inspection, observation, or confirmation; and certain other procedures ordinarily performed during an audit. A review may bring to the accountant's attention significant matters affecting the interim financial information, but it does not provide assurance that the accountant will become aware of all significant matters that would be disclosed in an audit.

Further, the standard review report, as set out in SAS 36, paragraph 16, states that a review of interim financial information

> is substantially less in scope than an examination in accordance with generally accepted auditing standards the object of which is the expression of an opinion regarding the financial statements taken as a whole. Accordingly, we do not express such an opinion.

In summary, Commission rules require the involvement of the independent accountant with quarterly financial data that accompany annual financial statements of the larger, more widely traded registrants. No similar requirement presently exists for small registrants. When cost/benefit considerations were addressed, the Commission expressed its belief that significant benefits would be derived from the involvement of the independent accountant, whether the review is performed on a timely or retrospective basis. In addition, the Commission has encouraged the involvement on a timely basis and has supported issuance of a report by the independent accountant. The Commission has stated its expectation that management would elect timely reviews with the expectation of increasing the benefits derived from the review. The Commission has also specifically stated that it would continue to examine the question of auditor involvement with interim data as it gained experience with the Item 302(a) reporting requirement.

C. The Treadway Commission

During the period from October 1985 to September 1987, a study of the factors contributing to fraudulent financial reporting was conducted by the Treadway Commission.[26] In October 1987, the Treadway Commission issued its final report containing recommendations to reduce the incidence of fraudulent financial reporting.

Among the Treadway Commission's recommendations was the following specific recommendation regarding the timely review of quarterly financial data:

> The SEC should require independent public accountants to review quarterly financial data of all public companies before release to the public.[27]

The Treadway Commission expressed its view that timely auditor involvement would improve the reliability of quarterly reporting and increase the likelihood of preventing or detecting fraudulent financial reporting. The Treadway Commission further stated that the review of quarterly financial data before public release would assure the public of more frequent review of reporting practices of public companies by an independent and objective party, which should improve the financial reporting discipline in many public companies. Further, the Treadway Commission stated that the review should be a "limited" review, as described in existing auditing literature.[28] In its Report, the Treadway Commission specifically addressed the cost/benefit question in the aggregate and reached a general conclusion that the benefits of its recommendations (including timely review of quarterly reports) would justify the costs, stating as follows:

> For some companies, implementing these recommendations will require little or even no change from current practices; for other companies, it will mean adding or improving a recommended practice. Whether it means adding or improving a practice, the benefits justify the costs. Treadway Commission Report, at 11.
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> Costs must be viewed in two ways. The cost of implementation can be quantified. The other cost—the cost of failing to implement these recommendations—is impossible to quantify, yet it may be far larger and more important. This cost is the potential loss of confidence of investors and the public in corporate management and in the financial reporting system. Our capital markets and our private enterprise system cannot bear the loss of the public's trust and confidence in the integrity of the financial reporting system. Treadway Commission Report, at 29.

[25] Regulations S–X, Rule 3–01, 3–02; 17 CFR 210.3–01, 210.3–02.

[26] For purposes of its study and report, the Treadway Commission defined fraudulent financial reporting as "intentional or reckless conduct, whether act or omission, that results in materially misleading financial statements * * *. Fraudulent financial reporting differs from other causes of materially misleading financial statements, such as unintentional errors. The Commission also distinguished fraudulent financial reporting from other corporate improprieties, such as employee embezzlements, violations of environmental or product safety regulations and tax fraud, which do not necessarily cause the financial statements to be materially inaccurate." Treadway Commission Report, at 2. Copies of the Treadway Commission Report and related background materials are available from the American Institute of Certified Public Accountants, 1211 Avenue of the Americas, New York, NY 10036. Sponsoring organizations were the American Institute of Certified Public Accountants, the American Accounting Association, the Financial Executives Institute, the Institute of Internal Auditors and the National Association of Accountants.

[27] Treadway Commission Report, at 53.

[28] *Id.; see* Section II.B, *supra.*

The Treadway Commission's recommendations are generally consistent with the views expressed previously by the Commission, but they differ from the proposals being considered by the Commission in this concept release in two respects. First, the Treadway Commission report addresses quarterly information, while the Commission recognizes that registrants may include in filings with the Commisison financial information regarding interim periods other than quarterly periods.[29] Second, the Treadway Commission recommended that the reviews be performed prior to release of earnings to the public. The Commission is considering whether to propose that the reviews be performed prior to the filing of interim data with the Commission. The Commission believes that there may in fact be no substantive difference between the pre-release and pre-filing reviews since, as is understood to be the case with respect to the release of annual results, a practice may develop whereby interim financial results generally would not be released until the independent accountant has completed substantially all of the required procedures.

III. Possible Changes to Current Requirements

In view of the Commisison's experience with the current requirements concerning auditor involvement with interim data, and in view of the Treadway Commission recommendation described above, the Commission is considering requiring that

(1) Interim financial data required to be filed with the Commission be reviewed by an independent public accountant before it is filed; [30] and

(2) A report be issued by the independent accountant upon completion of the review and be included by the registrant in its Form 10–Q and in any registration statements that include interim information.

The Commission contemplates that the standards and procedures for the review and report would be the current standards for review of interim financial data as set forth in SAS 36, or, subject to revision of the current standards, might be carried out in accordance with more rigorous standards and procedures.[31]

If adopted, these requirements would expand on current requirements of Item 302(a) in three important respects because they would

(1) Apply to *all* registrants, as well as the larger, more actively traded registrants currently subject to Item 302(a); [32]

(2) Require auditor review of interim financial data to be timely; *i.e.*, to take place before the interim data is filed with the Commission, while Item 302(a) permits a review subsequent to filing; and

(3) Require the independent accountant to issue a report on the interim data and that the report be included with the data when it is filed; Item 302(a) contains no such requirement.

The Commission continues to believe that requiring timely auditor involvement with interim reports would serve to improve the reliability of financial reporting. Interim financial statements include estimates to a greater extent than is usual in annual financial statements. Such estimates are affected by judgments made at interim dates concerning anticipated results of operations for the remainder of the annual period and are thus inherently more uncertain. In addition, it appears that registrants in the current environment face increasingly complex financial transactions and events, the accounting for which may not be clearly defined in the accounting literature. Accordingly, it would appear that the reliability of interim financial statements would be improved if such estimates and the accounting for new transactions and events were reviewed by the independent accountant on a timely basis.

A. Costs and Benefits

The Commission notes that any incremental costs of requiring timely reviews of interim financial data by the independent accountant may differ between those companies presently subject to the Commission's requirements for disclosing selected quarterly financial data in their annual audited financial statements and those that are not. Although the Commission recognizes that timely reviews may have the greatest cost impact on those companies not presently subject cost impact on those companies not presently subject to Item 302(a), the Commission also acknowledges the Treadway Commission view that these companies may benefits the most from implementing such procedures.[33]

The Commission believes that due to the need for timely data and other factors, it is not necessary or practical to require that the independent accountant audit the interim financial statements. However, it is the staff's understanding that accountants presently performing timely reviews of quarterly information may be doing more extensive procedures than required by SAS 36. This could be due to the fact that it may be more efficient to perform certain audit procedures concerning significant transactions at the time of the quarterly review rather that at year-end. The timely performance of these audit procedures may result in efficiencies that mitigate any incremental costs incurred by performing the reviews on a timely basis.

The costs of auditor involvement with interim information may vary depending on whether the registrant would be required to include a report issued by its independent accountant on the interim financial information [34] in its filings with the Commission on Form 10–Q and in registration statements that include interim information. Such a report would provide a forum for auditor communication to the public of significant reservations about, or exceptions to, interim reports of the registrant.[35]

Presently, there may be situations where the auditor has performed procedures sufficient to issue a report [36] but either the report is never issued or it is issued but not included by the registrant in its quarterly filings with the Commission. It has been suggested that, even in situations where reviews are being performed on a timely basis in accordance with the existing professional standards, the imposition of a requirement to include a report would increase costs, perhaps significantly.

[29] In accordance with Regulation S–X, Rule 3–12, 17 CFR 210.3–12, financial statements included in a registration statement filed with the Commission must be updated to ensure that they are within 135 days of the date the registration statement is expected to become effective. This may result in certain registrants including interim financial statements for other than quarterly periods. *See, e.g.*, note 22, *supra.*

[30] Thus, quarterly data included in Form 10–Qs would be required to be reviewed by the independent public accountant *before* the 10–Q is filed, not afterwards, before the filing of the annual report, as is presently allowed.

[31] for the meaning of the term "interim" for purposes of this concept release. *See* note 5, *supra.*

[32] As stated, *infra*, Section IV.A., the Commission may consider narrowing the scope of the proposal so that smaller registrants may be exempt, and is seeking comments on that subject.

[33] The Treadway Commission Report notes that "these (smaller) entities may have a disproportionately greater risk of fraudulent financial reporting and thus may reap proportionately greater benefits" from implementing the recommendations contained in the Report. Treadway Commission Report, at 29.

[34] SAS 36 contains an example of an accountant's report at paragraph 18.

[35] *See* paragraphs 20–22 of SAS 36, "Circumstances Requiring Modification of the Accountant's Review Report."

[36] *See* paragraphs 4–15 of SAS 36, "Procedures for a Review of Interim Financial Information."

Additional cost factors include the possibility that a timely interim review requirement may result in delays in prompt public release of earnings information. In addition, incremental costs may be incurred by registrants that change auditors. As prescribed by SAS 36, knowledge of the company's accounting and financial reporting practices and its system of internal control is an important factor in the performance of interim review procedures [37] and, although usually obtained during the audit of the annual financial statements, the need for such knowledge is not diminished if an audit has not been performed. As such, "the accountant needs to consider whether, under the particular circumstances involved, he can acquire sufficient knowledge about these matters for the purposes contemplated in a review of interim financial information." [38]

B. Reliance on Auditor's Reports on Interim Data

Another aspect of requiring the inclusion of SAS 36 reports involves the reliance that may be placed on such a report by the readers of the financial statements. Some autitors may believe there is a risk that readers will place a higher level of reliance on the report than the underlying procedures may warrant, even though a general description of the procedures and their scope in comparison to an audit is provided in the middle paragraph to the standard accountant's review report.[39] Further, some may believe that there is potential for misunderstanding as to the meaning of the accountant's review report that expresses negative assurance that the accountant is not aware of any modifications that should be made to the financial statements. The sample report in SAS 36 states, in part:

> Based on our review we are not aware of any material modification that should be made to the accompanying financial (information or statements) for them to be in conformity with generally accepted accounting principles.[40]

As previously discussed, a review is substantially less in scope than an audit and situations may arise where the auditor may not perform extensive procedures on certain new transactions or events. As a result, during the performance of its year-end examination the auditor may conclude that the registrant has not adopted the appropriate method of accounting for these transactions in its interim reports. The Commission staff is concerned that some registrants may inappropriately interpret the issuance of a standard interim review report as an indication of the accountant's agreement with the accounting treatment adopted for these new transactions or events.

C. Possible Changes to the Rule 436 Exemption From Liability

Under existing Commission Rule 436,[41] reports by independent accountants on interim financial information that are included in a filing with the Commission are not considered to be a part of a registration statement, or a report, prepared or certified by an accountant within the meaning of Sections 7 and 11 of the Securities Act of 1933.[42] This exemption from the liability provisions of Section 11 was adopted by the Commission in 1979 to encourage increased auditor involvement with interim financial information and greater use of reports by accountants concerning unaudited financial information.[43] If such reports are required to be included in filings with the Commission, however, this encouragement would no longer be necessary.

Removal of the exemption may result in (1) increased attention by the independent accountant to the preparation of the review report and the performance of the review, and (2) the ability under Section 11 of persons to recover damages they have suffered as a result of any untrue statement in a required accountant's report that has been included in a registration statement under the Securities Act of 1933.[44]

Maintaining the exemption from Section 11 liability, however, may continue to be appropriate because of the limited nature of the review procedures being performed. In other words, Section 11 liability may not be appropriate unless the accountant performs full audit procedures. Further, the costs of removing the exemption could include increased litigation risks for accountants that may result in increased procedures being performed by the accountant and higher fees to the registrant.

D. Possible Changes to Item 302(a)

As part of its deliberations as to whether to propose a requirement for timely reviews, the Commission also intends to reconsider the existing requirements for disclosure of interim information pursuant to Regulation S–K, Item 302(a). If the Commission decides to propose a requirement for timely reviews, it may conclude that the Item 302(a) disclosure requirements should be (1) expanded so that all registrants that would be required to have timely reviews performed would also be required to disclose the quarterly data in their annual reports to shareholders or (2) deleted. Alternatively, if the Commission decides not to pursue a rule proposal that would require timely reviews, it may decide instead to propose deleting the Item 302(a) exclusion for the smaller, less actively traded registrants. Such a proposal could result in all registrants including summarized interim information in their annual reports and having their independent accountants perform reviews of such data, although not necessarily on a timely basis.

IV. Areas in Which the Commission is Inviting Comment

A. Potential Impact of Requiring that All Registrants Have Timely Reviews of Interim Data Performed by Their Independent Accountant

The Commission invites comments regarding the incremental costs and benefits expected to be derived from a requirement that all interim financial statements be reviewed by the independent accountant on a timely basis and whether such benefits are likely to exceed the incremental costs, although it recognizes that the benefits of requiring timely review may be difficult to quantify accurately. In this regard, the Commission is interested in comments concerning the experience of registrants and independent accountants with the existing Item 302(a) requirements regarding interim financial data.

Specifically, the Commission requests comments regarding the following:

(1) Costs and benefits experienced by registrants that have been required by the existing Item 302(a) requirements to involve their independent accountant with interim financial reporting;

(2) Cost and benefit considerations that led registrants subject to the existing Item 302(a) requirements to the decision either

(a) To involve their independent accountant with interim data on a timely basis or

(b) Not to involve their independent accountant with interim data on a timely basis;[45]

(3) For those registrants excluded from the existing Item 302(a) requirements, whether such registrants have elected to involve their independent accountants with interim data, the nature of such involvement (especially, whether that involvement is timely), and the estimated costs and benefits leading to that decision;

(4) Cost and benefit considerations regarding whether reports are issued to the registrant by the independent accountant and whether such reports are then included by the registrant in its filings with the Commission;

(5) The impact the performance of timely reviews has had on the cost and efficiency of the annual audit procedures; and

(6) Experiences of independent accountants with the cost and benefit considerations of the various registrant groups described above in determining the timing and nature of procedures to be performed.

In addition to comments regarding the experience of registrants and their auditors with existing requirements, the Commission is also inviting comment that would provide any other information that could be useful in estimating the incremental costs and benefits of implementing a recommendation for timely reviews of interim date.[46] For example, commentators might make projections regarding expected costs and benefits of prospective implementation of the timely review requirement contemplated by this release.

As discussed above, the Commission recognizes that certain registrants may include financial information for interim periods on other than a quarterly basis. Therefore, comments also are requested regarding the incremental costs and benefits of applying any proposed rulemaking for timely reviews to interim periods presented on other than a quarterly basis. The Commission also requests comment as to whether certain registrants, for example smaller, less widely-traded, or foreign registants, should be exempt from a requirement that their independent accountant perform timely reviews of interim financial data.

B. Additional Matters That Should be Considered in Determining Whether to Propose a Requirement for Timely Reviews

1. Impact on Timely Release of Earnings

The Commission requests comment on whether a requirement that registrants have their independent accountants perform timely reviews of interim financial data would delay registrants from promptly releasing earnings data to the public. The Commission also requests comments on whether there would be a resource limitation concerning the accountants' ability to perform timely reviews, particularly in view of the high percentage of registrants with calendar or calendar-quarter year-ends, and whether any such limitation would materially affect the timing of the release of earnings data to the public.

2. Accountant Not Engaged to Perform Prior Year Audit

The Commission requests comment on any incremental costs that may be incurred in complying with a potential requirement for timely reviews in those situations where the registrant changes auditors during the fiscal year. Comments should address whether this is expected to be a problem, provide an estimate of any additional costs a registrant may need to incur as a result of the new accountant's need to establish sufficient knowledge to conduct a required timely review, and discuss whether registrants may encounter difficulty in complying with such a requirement. The Commission is further interested in whether there may be a need for specific guidance in these situations.

3. Adequacy of Procedures Performed by the Accountant

As previously indicated, review procedures are substantially less in scope than an examination in accordance with generally accepted auditing standards.

Specific comment is requested on (1) whether the procedures prescribed by SAS 36 provide the auditor with sufficient guidance regarding procedures that must be performed in order to conduct a timely review of interim financial information; (2) what additional procedures, if any, are necessary, and what they should entail; and (3) whether any such additional procedures would increase total audit and interim review costs or merely have an impact on the timing of the performance of certain procedures.

The Commission staff intends to take into consideration the comments received on this concept release in its further discussions with the Auditing Standards Board [47] on the matter of review procedures.

4. Inclusion of Accountant's Report

The Commission invites specific comments as to the effect that requiring inclusion of the accountant's SAS 36 report in the Form 10–Q and in registration statements that include interim information will have on the costs of the review.

5. Potential for Over-Reliance on Review Reports

The Commission requests comments as to the potential for over-reliance on a review report by users of financial information. Specific comment is also requested as to whether revisions should be made to the format of the report to mitigate the potential risk of such over-reliance. Finally, as previously indicated, commentators should indicate whether additional guidance for performing timely reviews would mitigate any such concerns.

6. Rule 436 Exemption

The Commission is requesting comment on the relative costs and benefits that should be considered in assessing whether to maintain or rescind the liability exemption, if it proposes a requirement for timely reviews and report issuance.

C. Possible Revisions to Existing Disclosure Requirements and Possible Alternatives to Required Timely Reviews

The Commission requests comment on the changes regarding Item 302(a), if any, that should be considered as part of its effort to enhance the involvement of independent accountants with quarterly information. In addition, regardless of whether it proposes a requirement for timely reviews, the Commission requests comment on whether it would be useful to investors in analyzing operating trends of issuers to have Item 302(a) data disclosed in initial public offerings under the Securities Act of 1933 and Form 10 [48] under the Securities Exchange Act of 1934. If such disclosure were required, the Commission is interested in comments regarding the estimate of any incremental costs involved, including whether the auditor

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[37] SAS 36, paragraph 9.
[38] SAS 36, note 4.
[39] SAS 36, paragraph 18.
[40] *Id.*
[41] 17 CFR 230.436.
[42] 15 U.S.C. 77g, 77k.
[43] ASR 274 (December 28, 1979) (45 FR 1601).
[44] The accountants, however, would remain subject to liability under Section 17 of the Securities Act of 1933, and section 10(b) of the Securities Exchange Act of 1934. *See* ASR 274, note 43, *supra*.
[45] Comments may be particularly relevant from those registrants that have recently engaged their accountants to perform timely reviews and thus can provide the most recent information on the impact of such a change.
[46] Regarding costs of both existing and prospective interim review requirements, one of the issues in which the Commission is interested is the impact that timely reviews may have on the annual audit fee (*i.e.*, can it be expected that increased fees for timely reviews will be offset, to some extent, by reductions in audit fees?).
[47] *See* note 24, *supra*.
[48] 17 CFR 249.210.

should be required to review and issue a report on such data.

V. Solicitation of Comments

The Commission invites comments on each of the above issues as well as any other matters that should be considered in deciding whether to propose any amendments to its rules to improve the reliability of interim reporting, including a possible requirement that independent public accountant review quarterly financial data of registrants on a timely basis.

By the Commission.

Jonathan G. Katz,

Secretary.

June 20, 1989.

[FR Doc. 89-15178 Filed 6-26-89; 8:45 am]

BILLING CODE 8010-01-M

PANAMA CANAL COMMISSION

35 CFR Parts 101, 113, 121, and 123

RIN 3207-AA04

Arriving and Departing Vessels; Various Communication, Documentation; Dangerous Cargoes; Inspection and Registration of Vessels; Radio Communication

AGENCY: Panama Canal Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Panama Canal Commission is considering changes to parts of Title 35, Code of Federal Regulations concerning arriving and departing vessels, specifically those provisions relating to documentation, dangerous cargoes, inspection and registration of vessels, and radio communication. The proposed rule changes reflect a recent reorganization in the Commission's Marine Bureau which has resulted in changes of the titles of responsible officials. The proposal will clarify responsibility for reporting dangerous cargoes, as well as allow for greater consistency in the area of marine inspection.

DATE: Comments must be received on or before July 27, 1989.

ADDRESSES: Comments and other correspondence relating to this notice should be sent to the following individuals:

Mr. Michael Rhode, Jr., Secretary, Panama Canal Commissions, 2000 "L" Street NW., Suite 550, Washington, DC 20036-4996, Telephone: (202) 634-6441.

Mr. John L. Haines, Jr., General Counsel, Panama Canal Commission, APO Miami, FL 34011-5000, Telephone: 011-507-52-7511.

Comments also may be hand-delivered to: Office of the Secretary, Suite 550, 2000 "L" Street NW., Washington, DC 20036-4996. Normal office hours are between 8:00 a.m. and 4:30 p.m. Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Fuller (Assistant to the Secretary for Commission Affairs), (202)-634-6441, or Captain William Y. Clark II, USCG (Special Assistant to the Marine Director), telephone in Balboa Heights, Republic of Panama, 011-507-52-4243.

SUPPLEMENTARY INFORMATION: The Panama Canal Commission proposes to amend the rules for transporting dangerous cargoes. Since the adoption of International Maritime Organization's rules concerning dangerous or hazardous cargoes in June, 1985, considerable information has been gathered concerning the specifics necessary to the proper reporting of these cargoes and the need to be consistent throughout the regulations. The proposed amendments are mainly procedural. The intent is to clarify information for Canal users.

Further, it is proposed to revise the requirement for vessels carrying nuclear materials to provide proof of financial responsibility to establish that such vessels must have adequate provision for indemnity and loss comparable in general scope to the protection afforded under the United States Atomic Energy Act or consistent with international practice and standards. Vessels will also be required to furnish the Commission with the results of radiation survey reports prior to transiting.

Additionally, the Commission's Marine Bureau has been reorganized. The titles of heads of certain units have changed and are published for the benefit of our customers. For example, the inspection of floating equipment is now under the direction of the U.S. Coast Guard Liaison Officer, who is also the Special Assistant to the Marine Director for Marine Safety. He heads a Marine Safety Unit consisting of four members, two of whom are floating equipment inspectors. The main purpose served by the proposed changes to Part 121, "Inspection and Registration of Vessels", is to properly reflect the present area of responsibility and to include references pertinent to U.S. Coast Guard Marine Inspection Regulations contained in 46 CFR.

Request for Comments

Interested persons are invited to participate in this rulemaking by submitting written comments. Those desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed post care or envelope. The Commission will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of the comments received.

Economic Assessment and Certification

The Panama Canal Commission has determined that these proposed changes do not constitute major rules within the meaning of Executive Order 12291 dated February 17, 1981 (47 CFR 13193), inasmuch as these changes, when implemented, would not have an effect on the economy of $100 million or more per year. These proposed changes would not result in a major increase in cost or prices for consumers, individual industries, local government agencies or geographic regions.

Further, the agency has determined that implementation of the rules will have no adverse impact on competition, employment, investment, productivity innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Finally, the Commission has determined that these rules are not subject to the requirements of sections 603 and 604 of Title 5, United States Code, in that their promulgation will not have a significant impact on a substantial number of small entities.

Drafting Information

The drafters of this notice are Captain William Y. Clark II, USCG, Special Assistant to the Marine Director, and Cynthia Thomas, Assistant General Counsel, project attorney.

List of Subjects

35 CFR Part 101

Arriving and departing vessels: Documentation requirements.

35 CFR Part 113

Dangerous cargo transportation.

35 CFR Part 121

Inspection and registration of vessels.

35 CFR Part 123

Radio communication.

For the reasons set out in the premable, Title 35, Chapter I, Subchapter C of the Code of Federal Regulations is proposed to be amended as follows.

PART 101—ARRIVING AND DEPARTING VESSELS: VARIOUS COMMUNICATION, DOCUMENTATION, SANITATION AND ADMEASUREMENT REQUIREMENTS

1. The authority citation for Part 101 continues to read as follows:

Authority: 22 U.S.C. 3811, E.O. 12215, 45 FR 36043, 44 U.S.C. 3501.

2. Section 101.10 is amended by revising paragraphs (a)(3), (e) and (f) to read as follows:

§ 101.10 Same; list.

(a) *Documents for Commission Boarding Officer.* * * *

(3) Crew List (Panama Canal Form 1509)—1 Copy.

* * * * *

(e) *Dangerous cargo manifest.* The dangerous cargo manifest for vessels carrying packaged dangerous goods, as defined in § 113.2(m) of this title, shall show the correct technical name, United Nations number, International Maritime Organization class and division, storage location, and quantity for each packaged dangerous good carried as cargo.

(f) *Loading plan.* The loading plan for vessels carrying dangerous cargo in bulk, as defined in § 113.2.(f) of this title, shall show the location of cargo tanks or holds and the correct technical name, United Nations number, International Maritime Organization class and division, and quantity of dangerous cargo carried in each cargo tank or hold.

PART 113—DANGEROUS CARGOES

3. The authority citation for Part 113 continues to read as follows:

Authority: Issued under authority vested in the President by 22 U.S.C. 3811, E.O. 12215, 45 FR 36043.

4. Section 113.3 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 113.3 Classifications.

(a) Dangerous cargo shall be classified in accordance with the IMO class and division. Whenever there is a doubt as to the explosive or dangerous nature of any commodity, or in case of conflict as to its classification, determination of the nature and classification of such cargoes shall be made by the Marine Safety Advisor or his designeee. Dangerous cargoes shall be divided into the following classes:

* * * * *

5. Section 113.4 is amended by revising paragraph (a) to read as follows:

§ 113.4 Safety and alarm systems.

(a) All dangerous cargo alarms, safety devices, and the vessel's firefighting systems shall be tested 24 hours prior to arrival in Canal waters by any vessel carrying dangerous cargoes. An entry shall be made in the ship's log stating that such tests were conducted and the systems found in proper working order or, if not in proper order, a detailed listing of discrepancies shall be included.

* * * * *

6. Section 113.5 is revised to read as follows:

§ 113.5 Inspections.

The Canal Operations Captain or the Marine Safety Advisor or their designees may inspect vessels carrying dangerous cargoes to ensure that such vessels are in compliance with the requirements of this part.

Supart B—Vessels Carrying Dangerous Cargoes in Bulk

7. Section 113.21 is revised to read as follows:

§ 113.21 Application.

This subpart applies to vessels carrying dangerous liquified gases, liquids and solids in bulk, or tankers in ballast condition which are not gas free. It does not apply to vessels carrying combustible liquids in bulk as prescribed in § 113.3(b), subpart A, of this title.

8. Section 113.22 is revised to read as follows:

§ 113.22 Advance notice.

Vessels subject to this subpart shall provide not less than 48 hours advance notice to Canal authorities by radio of the information required by the "GOLF" item in the prearrival radio message prescribed in § 123.4(a) of this subchapter.

(Approved by the Office of Management and budget under control number 3207-0001)

9. Section 113.26 is amended by revising paragraph (a) to read as follows:

§ 113.26 Transit requirements.

(a) To better assure the safe passage of vessels subject to this subpart, operating restrictions beyond those applicable to other vessels may be imposed by the Canal Operations Captain or his designee.

* * * * *

10. Section 113.29 is amended by revising paragraphs (b) and (c) to read as follows:

§ 113.29 Prohibited cargoes.

* * * * *

(b) Bulk dangerous cargoes not listed in the Bulk Chemical Code, Gas Carrier Codes, or Solid Bulk Code are prohibited in Canal waters unless advance approval is given by the Marine Safety Advisor or his designee to carry such cargoes.

(c) Bulk chemical and liquified gas carriers are prohibited from carrying the Canal waters dangerous cargoes that are not listed on their Certificate of Fitness or Certificate of Compliance, unless 30 days advance notice is given by the vessel and the Marine Safety Advisor or his designee approves the carriage of such cargoes in Canal waters.

(Approved by the Office of Management and Budget under control number 3207-0001)

Subpart C—Vessels Carrying Dangerous Packaged Goods

11. Section 113.42 is revised to read as follows:

§ 113.42 Advance notice.

Vessels subject to this subpart shall provide not less than 48 hours advance notice to Canal authorities by radio of the information required in the "HOTEL" item of the radio message prescribed in § 123.4 of this subchapter, except that vessels carrying explosives shall provide the information required in the "GOLF" item of the message.

(Approved by the Office of Management and Budget under control number 3207-0001)

12. Section 113.43 is amended by revising paragraph (c) to read as follows:

§ 113.43 Anchoring requirements.

* * * * *

(c) Vessels carrying explosives or especially reactive or large amounts of dangerous materials as determined by the Canal Operations Captain, or his designee, may be instructed to anchor in one of the explosive anchorage areas described in § 101.8(a) (2), (3), and (c)(2) of this subchapter.

13. Section 113.45 is revised to read as follows:

§ 113.45 Transit requirements.

Normal operating restrictions will generally apply unless such vessels are carrying more than five tons of explosives or carrying especially more reactive or large amounts of dangerous goods as determined by the Marine Safety Advisor or his designee, in which case additional operating restrictions may be imposed.

14. Section 113.49 is amended by revising paragraphs (b) and (c) to read as follows:

§ 113.49 Class 1, Explosives.

* * * * *

(b) Explosive cargo may be loaded and discharged only at the Mindi Dock. Explosive anchorages prescribed in § 101.8(a) (2), (3) and (c)(2), respectively, may be used upon approval of the Marine Safety Advisor, or his designee.

(c) The Marine Safety Advisor or his designee, upon application, may permit the discharge of explosives, whether intended for civilian or military use, at Commission docks and other locations within Canal waters in an emergency or when the character or packing of the explosives permits their safe discharge there.

15. Section 113.50 is amended by revising paragraphs (c), (d) and (e) to read as follows:

§ 113.50 Class 7, Radioactive substances.

* * * * *

(c) For the purpose of approval of shipments and prior notification of radioactive substances under the IMDG Code, Panama Canal waters will be considered a country en route. Notification shall be given to Canal authorities 30 days in advance of the arrival of the vessel in Canal waters for all fissionable materials, in order that approval may be given by the Marine Safety Advisor, or his designee, to transit such cargoes.

(d) Vessels carrying nuclear materials shall be required to provide current proof of financial responsibility and adequate provision for indemnity covering public liability and loss to the United States or any agency thereof, comparable in general scope to the protection afforded under section 170 of the United States Atomic Energy Act of 1954, as amended, 68 Stat. 919, 71 Stat. 576, or consistent with international practice and standards as set forth by the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal. Vessels shall also be required to furnish the Commission with the results of cargo radiation survey reports in accordance with the standards in IMO class 7.

(e) For the following radioactive substances, not less than 48-hour advance information required under § 123.4 shall be provided, indicating the specifics required by the IMDG Code:

(1) Low Specific Activity Substances or Low Level Solid Radioactive Substances as specified in Class 7 schedules 5, 6, and 7 of the IMDG Code.

(2) Radioactive Substances carried in limited quantities as specified in Class 7 schedules 1, 2, 3, and 4 of the IMDG Code.

(Approved by the Office of Management and Budget under control number 3207–0001)

PART 121—INSPECTION AND REGISTRATION OF VESSELS

16. The authority citation for Part 121 continues to read as follows:

Authority: 22 U.S.C. 3811, E.O. 12215, 45 FR 36043, and 44 U.S.C. 3501.

Subpart A—General Provisions

17. Section 121.2 is revised to read as follows:

§ 121.2 Definitions.

As used in this part, the following terms have the meanings indicated:

(a) "Vessel" means any vessel as defined in §111.3 other than a motorboat as defined in this section.

(b) "Motorboat" means any vessel not more than 20 meters (65 feet) in length propelled by machinery except tugboats and towboats. The word "motorboat" includes a boat temporarily or permanently equipped with a detachable motor. Motorboats are classed as follows:

Class A—Any motorboat less than 7 meters (23 feet) in length.

Class B—Any motorboat 7 meters (23 feet) or over and less than 12 meters (40 feet) in length.

Class C—Any motorboat 12 meters (40 feet) or over and less than 20 meters (65 feet) in length.

Class D—Any cayuco or piragua not more than 20 meters (65 feet) in length equipped with an outboard motor or motors operating in Madden or Gatun Lakes.

§ 121.3 [Removed]

18. Section 121.3 is removed.

Subpart B—Inspection Vessels

19. Section 121.41 is amended by revising paragraphs (a) and (c) to read as follows:

§ 121.41 Certificates of inspection.

(a) Certificates of inspection shall be issued for a period of 1 year to passenger vessels, vessels equipped with boilers, and vessels whose hull or machinery is, in the judgment of the Marine Safety Unit, in such condition as to require inspection annually.

* * * * *

(c) Application shall be made by the owner or other responsible person for inspection and issuance of a new certificate of inspection prior to expiration of the certificate.

20. Section 121.42 is revised to read as follows:

§ 121.42 Distribution of certificates.

Two copies of the certificate of inspection shall be retained on file by the Marine Safety Unit. The original and one copy shall be given to the master or owner of the vessel named therein.

21. Section 121.45 is revised to read as follows:

§ 121.45 Drawings of new vessels to be furnished to the Marine Safety Unit.

The owner or other responsible person, when applying for the first inspection on a new vessel, shall furnish the Marine Safety Unit the following drawings and prints for review prior to construction: Midship section, inboard profile, outboard profile, arrangement of decks and hatch details, capacity of double bottoms and fuel compartments, hull penetrations and shell connections, machinery installation, piping systems, lifesaving equipment, fire fighting equipment, electrical, general alarm, radio, and emergency light circuits, and such other drawings or prints as show the general construction of the vessel, including dimensions, spacing of frames, disposition of hull plates, construction of transverse and longitudinal bulkheads, and location of same.

(Approved by the Office of Management and Budget under control number 3207–0001)

22. Section 121.47 is amended by revising paragraph (c) to read as follows:

§ 121.47 Inspection of hulls.

* * * * *

(c) The outboard shaft or shafts on evey ocean or coastwise vessel shall be drawn for examination at least once every 3 years: *Provided*, That when it is shown that a vessel has had a long period of lay-up the Marine Safety Unit may grant an extension equal to the time the vessel has been out of commission, but in no case shall the extension exceed 1 year.

* * * * *

23. Section 121.58 is revised to read as follows:

§ 121.58 Safety valves.

(a) At the annual inspection of each boiler, the marine safety inspector shall check the setting of each boiler safety valve and make any adjustments that may be necessary to keep the boiler within the maximum allowable pressure. After adjusting the boiler safety valves, the marine safety inspector shall seal each safety valve separately with the official seal of the Marine Safety Unit

(b) Each chief engineer, upon taking charge of the power plant of a vessel, shall examine all safety valves and if any seals are broken, or there is any evidence that valves have been tampered with, he shall report same in writing to the Marine Safety Unit. If at any time it is necessary to break the seal on a safety valve for any purpose, the chief engineer shall advise the Marine Safety Unit in writing, giving the reason for breaking the seal and requesting the valve be examined, adjusted, and resealed.

24. Section 121.63 is amended by revising the section heading to read as follows:

§ 121.63 Guards in dangerous places.

* * * * *

25. Section 121.65 is revised to read as follows:

§ 121.65 Notice to the Marine Safety Unit of vessel on dock; alterations.

(a) Whenever any vessel under the supervision of the Marine Safety Unit is placed upon the dock for repairs it shall be the duty of the owner or responsible official to report same to the Marine Safety Unit so that a thorough inspection may be made to determine what is necessary to make such vessel seaworthy. No repairs or alterations affecting the safety of the vessel, either in regard to hull or machinery, shall be made without the knowledge and authority of the Marine Safety Unit. Notice of such repairs and alterations is necessary even if such work does not require the vessel to be placed in a drydock.

(b) When a repair or alteration ordered by the Marine Safety Unit has been completed the same shall be reported to the Marine Safety Unit in writing by the owner or responsible official.

26. Section 121.66 is revised to read as follows:

§ 121.66 Whistles.

Every inspected vessel under the supervision of the Marine Safety Unit shall be provided with an efficient whistle suitable for sounding the necessary whistle signals. Means shall be provided to operate the whistle from a position adjacent to the main steering station and from the remote steering station where such steering station is fitted. Details of the whistle operating devices shall meet the requirements of 46 CFR Chapter I, Subchapter J (Electrical Engineering).

27. Section 121.67 is revised to read as follows:

§ 121.67 Fog bells.

Inspected vessels 12 meters in length or greater, under the supervision of the Marine Safety Unit, shall be provided with an efficient fog bell. The bell, of corrosion resistant material, shall produce a clear tone at a sound pressure level of not less than 110 decibels at a distance of 1 meter. The diameter of the mouth of the bell shall not be less than 300mm for vessels of 20 meters or more in length, and shall be not less than 200mm for vessels of 12 meters to 20 meters in length. The mass of the striker shall not be less than 3 percent of the mass of the bell.

28. Section 121.69 is revised to read as follows:

§ 121.69 Proceeding to another port for repairs.

The Marine Safety Unit may issue a permit to proceed to another port for repairs, if in its judgment this can be done with safety. Such a permit shall state the conditions upon which it is granted.

29. Section 121.70 is revised to read as follows:

§ 121.70 Marking of draft on vessel.

All vessels 20 gross tons and over, under supervision of the Marine Safety Unit, shall have the draft of the vessel plainly and legibly marked upon the stem and upon the stern post or rudder post or at such other place at the stern of the vessel as may be necessary for easy observance. The draft shall be taken from the bottom of the lowest part of the keel to the surface of the water, the bottom of the mark to indicate the draft in feet. Sufficient marks shall be used to cover all working and loading conditions of the vessel. If any part of the hull or permanent equipment extends below the lowest part of the keel, the master or other responsible person shall produce evidence from which the vessel's maximum immersion may be determined.

30. Section 121.71 is revised to read as follows:

§ 121.71 Emergency lighting system.

Provision shall be made on passenger vessels, tug boats and dredges for an electric system of lighting, sufficient for all requirements of safety, throughout the vessel. There shall be a self-contained electric source capable of supplying power when necessary. Emergency lights shall be tested at least once each week. The date of the tests required by this section shall be noted in the vessel's logbook.

31. Section 121.72 is revised to read as follows:

§ 121.72 Repairs to firefighting and lifesaving apparatus.

No extensive repairs or alterations, except in an emergency, shall be made to lifesaving or firefighting equipment without prior notice to the Marine Safety Unit.

32. Section 121.74 is revised to read as follows:

§ 121.74 Repairs on boilers and unfired pressure vessels.

(a) Before undertaking repairs to a boiler or unfired pressure vessel, the engineer in charge of such vessel shall report the condition necessitating repairs and the nature of the proposed repairs to the Marine Safety Unit in writing.

(b) When damage occurs to boilers or pressure vessels through an accident that tends to render the further use of such boilers or pressure vessels unsafe until repairs are made, the engineer in charge thereof shall promptly report the facts of the accident and the proposed repairs to the Marine Safety Unit in writing.

(c) In cases requiring a written report under this section, repairs shall not commence until the Marine Safety Unit's Inspector has approved the proposed plan of repairs.

33. Section 121.76 is revised to read as follows:

§ 121.76 Inclining test.

When the Marine Safety Unit has any reason to question the stability of any vessel under its supervision, it shall require the owners of the vessel to make inclining tests on such vessels, under the general supervision of the Marine Safety Unit.

34. Section 121.79 is revised to read as follows:

§ 121.79 Carrying of excess steam.

When it is known or comes to the knowledge of the Marine Safety Unit that any steam vessel is or has been carrying an excess of steam beyond that which is allowed by her certificate of inspection, the Marine Safety Unit shall require the owner of said vessel to place on the boiler a lockup safety valve, that will prevent the carrying of an excess of steam, which shall be under the control of the Marine Safety Unit.

35. Section 121.85 is revised to read as follows:

§ 121.85 Sanitation.

The master and chief engineer of any vessel under supervision of the Marine Safety Unit shall see that the vessel and the passenger and crew quarters are kept in a sanitary condition.

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38. Section 121.87 is revised to read as follows:

§ 121.87 Examination of boilers and machinery by engineer.

When an engineer assumes charge of the boilers and machinery of a vessel he shall examine the same immediately and thoroughly, and if he finds any part thereof in bad condition, he shall immediately report the fact to the master or employer and to the Marine Safety Unit, which shall thereupon investigate the matter to determine whether the former engineer has been negligent in his duties.

37. Section 121.88 is revised to read as follows:

§ 121.88 Fusible plug report.

The chief engineer of a steam vessel subject to this part shall report promptly to the Marine Safety Unit every renewal of every fusible plug in a boiler or boilers of a steam vessel upon which he is in charge as chief engineer.

38. Section 121.89 is amended by revising paragraphs (a) introductory text, (a)(1), and (b) to read as follows:

§ 121.89 Boiler steam hours.

(a) Boilers on floating equipment of the Panama Canal Commission which are inspected by the Marine Safety Unit may not be operated under steam for more than the following prescribed number of hours between boiler washout periods.

(1) Boilers which are operated under an approved system of boiler feed water conditioning with respect to which copies of reports of boiler water conditioning are filed with the Marine Safety Unit: 2,880 hours.

* * * * *

(b) The chief engineer of the vessel shall report all washouts to the Marine Safety Unit on Form 1588–4 when the washout is completed and steam raised in a boiler. The original of this report shall be forwarded to the Marine Safety Unit and a copy to his master or employer.

39. Section 121.90 is revised to read as follows:

§ 121.90 Annual report of floating equipment on hand.

The accountable officials of the Panama Canal Commission shall furnish the Marine Safety Unit with an annual report of all vessels and floating craft on hand by January 1st of each year.

This report shall show:

(a) The accountable official.

(b) The responsible official.

(c) The location of vessel or craft.

(d) The number or name of vessel or craft.

(e) The description of vessel or craft.

40. Section 121.92 is revised to read as follows:

§ 121.92 Lifesaving apparatus.

Unless otherwise provided by this part, lifesaving apparatus for vessels subject to this part shall be in accordance with the requirements of the general rules and regulations for vessel inspection of the United States Coast Guard, or with the requirements of the International Convention for the Safety of Life at Sea.

41. Section 121.99 is amended by adding paragraph (c) to read as follows:

§ 121.99 Fire axes

* * * * *

(c) The vessel's name shall be marked on each ax handle.

42. Section 121.102 is revised to read as follows:

§ 121.102 Portable fire extinguishers.

All vessels subject to this section shall be provided with good and efficient U.S. Coast Guard approved marine portable fire extinguishers. The number and type required shall be determined by the Marine Safety Unit.

42. Section 121.107 is amended by revising paragraphs (a), (b), and (c) and adding paragraph (d) to read as follows:

§ 121.107 Non-self-propelled vessels; equipment.

* * * * *

(a) Dredges, floating cranes, and drill boats:

4 Life rings (2 luminous), U.S. Coast Guard approved.
1 Life preserver for each person on board, U.S. Coast Guard approved.
1 Fire pump. Outlets from fire mains to be so arranged that one 50-foot length of hose can reach any part of the vessel.
6 Portable fire extinguishers.
4 Fire axes.
1 Anchor and anchor chain as approved by the Marine Safety Unit.

Lights and day marks as required by § 111.27 (Rule 27, 72 COLREGS).

(b) Floating pile drivers:

2 Life rings (1 luminous), U.S. Coast Guard approved.
1 Life preserver for each person on board, U.S. Coast Guard approved.
2 Fire axes.
2 Portable fire extinguishers.
1 Anchor and anchor chain as approved by the Marine Safety Unit.

Lights and day marks as required by § 111.27 (Rule 27, 72 COLREGS).

(c) Barges, lighters and scows:

1 Life ring, U.S. Coast Guard approved.
1 Suitable anchor with cable.
1 Life preserver for each person on board, U.S. Coast Guard approved.

Lights as required by Part 111 of this chapter and Rule 24 (72 COLREGS).

1 Stern light, white, and so fixed as to show the light 67.5 degrees from right aft on each side, an arc of 135 degrees, visibility of 3 miles.
1 Each sidelight, green starboard and red port, showing an unbroken light over an arc of the horizon of 112.5 degrees and so fixed as to show the light from right ahead to 22.5 degrees abaft the beam on its respective side, visibility of 3 miles.
1 Diamond black shape (on tows exceeding 200 meters) for daylight display where best seen.

(d) Inconspicuous, partly submerged vessels or objects, or combination of such vessels or objects being towed, shall exhibit:

(1) White, 32-point, 3-mile lights, one at or near the forward end and one at or near the after end, if less than 25 meters in breadth, except that dracones need not exhibit a light at or near the forward end;

(2) In vessels 25 meters or more in breadth, two additional all-round white lights at or near the extremities of its breadth;

(3) In vessels more than 100 meters in length, additional all-round white lights between the lights prescribed in subparagraphs (1) and (2) so that the distance between the lights shall not exceed 100 meters;

(4) A diamond shape at or near the aftermost extremity of the last vessel or object being towed; and, if the length of the tow exceeds 200 meters, an additional diamond shape where it can best be seen and located as far forward as is practicable.

44. Section 121.108 is revised to read as follows:

§ 121.108 Complement of officers and crew.

A certificate of inspection will not be granted to a vessel unless it has in service and on board such complement of officers and crew as may, in the judgment of the Marine Safety Unit, be necessary for safe navigation.

45. Section 121.131 is revised to read as follows:

§ 121.131 Equipment on Motorboats.

(a) Motorboats less than 7 meters (23') in length shall carry the following equipment:

2 Oars or paddles.
1 Whistle.
1 Bailer.

20 Meters (65') of manila line, not less than 15mm (⅝") diameter, or synthetic line of comparable strength.
2 Fire extinguishers, either 1¼ gallon foam, 4-lb. CO–2, or 2-lb. dry chemical, when engine is inboard, or one such extinguisher, if fixed system installed in engine space or if the engine is outboard. Extinguishers to be U.S. Coast Guard approved.
1 Combination light showing red to port and green to starboard or individual red and green side lights, visibility of one mile.
1 Stern light or all-round white light, visibility of two miles.
1. Anchor and suitable cable, 40 meters (130').
1 Red flag.
1 Live preserver for each person carried, U.S. Coast Guard approved.
1 Copy of the *Motorboat Operator's Handbook.*

(b) Motorboats 7 meters (23') or over and less than 12 meters (40') in length shall carry the following equipment:

1 Life ring buoy of not less than 600mm (24") outside diameter, U.S. Coast Guard approved.
1 Whistle, power-operated, audible at least one mile.
1 Bailer.
20 Meters (65') of manila line, not less than 18mm (3/4") diameter, or synthetic line of comparable strength.
3 Fire extinguishers, 2 of which shall be 2 ½ gallon foam, 15-lb. CO–2, or 10-lb. dry chemical. The third extinguisher shall be 1¼ gallon foam, 4-lb. CO–2, or 2-lb. dry chemical. This third extinguisher is not required if a fixed system is installed in the engine space. Extinguishers to be U.S. Coast Guard approved.
1 Boat hook
1 Combination light showing red to port and green to starboard, or individual red and green side lights, visibility one mile.
1 Stern light or all-round white light, visibility of two miles.
1 Anchor and suitable cable, 40 meters (130').
1 Red flag.
1 Red lantern.
1 Life preserver for each person carried, U.S. Coast Guard approved.
1 Copy of the *Motorboat Operator's Handbook.*

(c) Motorboats 12 meters (40') or over and not more than 20 meters (65') in length shall carry the following equipment:

2 Life ring buoys not less than 600mm (24") in outside diameter, U.S. Coast Guard approved.
1 Approved fog horn.
1 Whistle, power-operated, audible at least one mile.
1 Bailer.
25 Meters (82') of manila line, not less than 21mm (⅞") diameter, or synthetic line of comparable strength.
4 Fire extinguishers, 3 of which shall be 2½ gallon foam, 15–lb. CO–2, or 10-lb. dry chemical. The fourth extinguisher may be 1¼ gallon foam, 4-lb. CO–2, or 2-lb. dry chemical. This fourth extinguisher is not required if a fixed system is installed in engine space. Extinguishers to be U.S. Coast Guard approved.
2 Boat hooks.
1 Masthead light, white, 225 degrees, fixed to show the light from right ahead to 22.5 degrees abaft the beam on either side, minimum 2.5 meters above the gunwale, visibility three miles.
1 Combination light showing red to port and green to starboard or individual red and green sidelights, visibility two miles.
1 Stern light, white, 135 degrees, placed as nearly as practicable at the stern, and so fixed to show the light 67.5 degrees from right aft on each side, visibility two miles.
2 Emergency lights, red and all-round in a vertical line where they can best be seen, visibility two miles (daylight: two black balls) used when restricted in ability to maneuver.
1 Red lantern.
1 Red flag.
1 Anchor with 40 meters (130') suitable cable.
1 Fog bell.
1 Life preserver for each person carried, U.S. Coast Guard approved.
1 Copy of the *Motorboat Operator's Handbook.*

(1) Pilot vessels only:

2 Lights at or near the masthead, one all-round white upper and one all-round red lower not less than one meter apart, visibility two miles.

(2) For those vessels engaged in towing and pushing:

2 Masthead lights in a vertical line. When the length of the tow, measured from the stern of the towing vessel to the after end of the tow, exceeds 200 meters, three such lights in a vertical line (daylight: a black diamond shape where it can best be seen).

(d) Cayucos or piraguas less than 20 meters (65 feet) in length and equipped with an outboard motor or motors and operating in Madden and Gatun Lakes shall carry the following equipment:

2 Oars or paddles.
1 Whistle.
1 Bailer.
20 Meters (65') of manila line, not less than 21 mm (⅞") diameter, or synthetic line of comparable strength.
1 Flashlight.
1 Red flag.
1 Life preserver for each person carried, U.S. Coast Guard approved.
1 Copy of the *Motorboat Operator's Handbook.*

(e) Life preservers, ring buoys and fire extinguishers required by this section shall be U.S. Coast Guard approved and shall be permanently marked with the name of the motorboat on which they are carried.

Subpart C—Registration and Numbering

46. Section 121.171 is revised to read as follows:

§ 121.171 Registration and numbering of motorboats.

All motorboats shall be registered, certificated, and assigned numbers by the Marine Safety Unit.

47. Section 121.173 is revised to read as follows:

§ 121.173 Registration and numbering of vessels under 20 meters (65') in length not propelled by machinery.

Vessels not more than 20 meters (65') in length and not propelled in whole or in part by machinery shall be registered and numbered by the Marine Safety Unit.

PART 123—RADIO COMMUNICATION

48. The authority citation for Part 123 continues to read as follows:

Authority: Issued under authority of the President by 22 U.S.C. 3811, E.O. 12215, 45 FR 36043.

49. Section 123.3 is amended by revising paragraph (c) to read as follows:

§ 123.3 Radiotelephones required.

* * * * *

(c) A vessel of a type described in paragraph (a) of this section, which has

notified the Traffic Management Division that it is ready to transit or otherwise navigate in Panama Canal waters and requires a Panama Canal pilot, shall, until a pilot boards the vessel, maintain a continuous watch on Channel 12. Channel 12 will be used for notification to vessels of their transit time and for advisory harbor control communication in Limon Bay.

50. Section 123.4 is amended by revising its heading, paragraph (a), introductory text, and items GOLF and HOTEL thereunder to read as follows:

§ 123.4 Advance notification required by radio from vessels approaching the Canal.

(a) Vessels approaching the Panama Canal shall communicate by radio to the Traffic Management Division not less than 48 hours in advance of arrival at the Canal (or earlier if radio communication is practicable at an earlier time), the information required by this section unless this information has been previously communicated to the Canal authorities by other means. Symbols of the phonetic alphabet shall be used to identify each item and the word "NEGAT" shall be used after the items that can be answered "no", "none", or "not applicable". The following items of information shall be provided:

* * * * *

GOLF—If the vessel is carrying any explosives or bulk dangerous cargoes, as classified in § 113.3, state the technical name, quantity (in long tons), United Nations number, the International Maritime Organization class and division, (include compatibility group for explosives only), and the stowage for each dangerous cargo carried. If the vessel is a tanker in ballast condition and not gas free, state the technical name, United Nations number and the International Maritime Organization class and division of the previously carried cargo. Tankers reporting "GOLF:NEGAT" shall, in addition, state the technical names of non-dangerous cargoes carried.

HOTEL—If the vessel is carrying any packaged dangerous goods, as specified in § 113.3, other than explosives, state the International Maritime Organization class and division and the total quantity (in long tons) within each class.

* * * * *

Dated: June 12, 1989.

D.P. McAuliffe,

Administrator, Panama Canal Commission.

[FR Doc. 89-15119 Filed 6-26-89; 8:45 am]

BILLING CODE 3640-04-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL 3608-4]

Approval and Promulgation of State Implementation Plans; Colorado; Oxygenated Fuels and Inspection/Maintenance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to approve revisions to the Colorado Carbon Monoxide (CO) and Ozone State Implementation Paln (SIP) submitted on July 29, 1987, by the Governor of Colorado. The CO SIP revision included: (1) Regulation No. 11 (Inspection/Maintenance (I/M) program) and (2) Regulation No. 13 (oxygenated fuels program). The Ozone SIP revision included Regulation No. 11 (the I/M program). The Regulations apply to the Boulder, Colorado Springs, Denver Metropolitan, Fort Collins, and Greeley areas.

The revisions to Regulation No. 11 being proposed for approval today also incorporate earlier revisions submitted by the Governor of Colorado: (1) The legislative amendments authorizing the Regulation No. 11 revisions were submitted on July 1, 1986, and (2) the revised emission standards (cut points) for 1976 and 1977 vehicles were submitted January 30, 1986. The revisions are being proposed for approval because they reduce CO and ozone levels and, therefore, strengthen the existing SIPs.

DATES: Comments must be received on or before July 27, 1989.

ADDRESSES: Written comments should be addressed to: Douglas M. Skie, Chief, Air Programs Branch, Environmental Protection Agency, One Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202-2405.

Copies of the state submittal are available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at the following office: Environmental Protection Agency, Region VIII, Air Programs Branch, One Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202-2405.

FOR FURTHER INFORMATION CONTACT: Dale M. Wells, Air Programs Branch, Environmental Protection Agency, One Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202-2405. (303) 293-1773. (FTS) 564-1773.

SUPPLEMENTARY INFORMATION: On July 14, 1987 (52 FR 26419), EPA proposed to disapprove the Colorado CO SIP for the metropolitan Denver area for failing to demonstrate attainment of the CO standard by December 31, 1987, or any fixed date in the near term after 1987. In the General Preamble of that same notice, EPA also stated its intention to review the adequacy of the CO and Ozone SIPs in other areas. The proposal described below does not alter the July 14, 1987, proposed action.

On July 29, 1987, the Governor of Colorado submitted revisions to the Colordao CO and Ozone SIP. The CO SIP revision included: (1) Regulation No. 11 (Inspection/Maintenance (I/M) program) and (2) Regulation No. 13 (oxygenated fuels program). The Ozone SIP revision included Regulation No. 11 (the I/M program).

EPA Is proposing to approve these revisions because they strengthen the existing SIP by significantly reducing CO and ozone levels. The revisions also aid in attaining the standard at an earlier date, demonstrate that the State is currently making efforts to submit a plan that will produce timely attainment of the standard and will provide immediate health benefits to the population of the Boulder, Colorado Springs, Denver Metropolitan, Fort Collins and Greeley areas (inclusion of Greeley in the I/M program is the subject of a separate notice). However, as discussed in the July 14, 1987, **Federal Register** notice, these revisions are not sufficient to provide for attainment of the CO standard in the Denver/Boulder area in the near term. When a revised SIP is submitted that does address the issue of the attainment of the CO standard, the amount of emission reduction from Regulations 11 and 13 must be recalculated.

Regulation No. 11 I/M Amendments

The revisions to the I/M program (Regulation No. 11) were adopted by the Colorado Air Quality Control Commission (AQCC) on January 15, 1987, and went into effect on July 1, 1987. Regulation No. 11 applies to the Denver Metropolitan, Boulder, Colorado Springs, Fort Collins, and Greeley areas. The revisions provide for use of computerized "BAR 84" analyzers, registration enforcement, increased anti-tampering provisions (including catalyst replacement when the fuel-filler restrictor is tampered with), expanded coverage to all pre-1968 vehicles without antique license plates, and increased waiver cost limits.

The State of Colorado evaluated the old I/M program in 1985 and determined that the Mobile 3 credit for that program should be reduced by 45%. This reduced credit is due to design flaws in the old I/M program which caused low failure rate, low compliance rate and high waiver rate. The overall effectiveness of the old program was then adjusted given the reduced credit. When compared to the revised I/M program, the calculations show that these enhancements are expected to reduce 1992 mobile source CO and hydrocarbon (HC) emissions by 18% and 9.2%, respectively. These reductions are calculated from the Mobile 3 runs provided by the State of Colorado. As stated earlier, emission reduction credit is not being addressed at this time. Recalculation of such credit will be determined when a revised SIP is submitted.

The revisions to Regulation No. 11 being proposed for approval today also incorporate earlier revisions submitted by the Governor of Colorado: (1) The legislative amendments authorizing the Regulation No. 11 revisions were submitted on July 1, 1986, and (2) the revised emission standards for 1976 and 1977 vehicles were submitted January 30, 1986. The July 1, 1986 submittal contained only the authority to revise Regulation No. 11. EPA determined that the regulation, as well as the authority, was necessary to evaluate the State submittal. The January 30, 1986, submittal contained more stringent cut points for 1976 and 1977 model year vehicles. EPA considered the revisions minor and deferred action pending submittal of more substantial revisions.

Regulation No. 13 Oxygenated Fuels Program

Regulation No. 13 was adopted by the AQCC on July 29, 1987. The regulation requires all gasoline sold in the CO nonattainment areas (Boulder, Colorado Springs, Denver Metropolitan, Fort Collins and Greeley) to contain at least 1.5% oxygen from January 1, 1988 to March 1, 1988; and thereafter requires at least 2% oxygen during each period from November 1 to March 1.

The regulation would allow the use of either gasohol (90% gasoline and 10% ethanol) or a mixture of gasoline and methyltertiary-butyl-ether (MTBE). Other EPA-approved alcohol blends could also be used, but their use is not expected initially.

The State estimates that ambient CO levels will be reduced by about 14% through this requirement and that retail gasoline prices will be increased by 0.05 cents to 3.5 cents per gallon. Based on the emission testing and EPA Technical Report EPA-AA-TSS-PA-87-4, EPA believes that the 14% air quality benefit given in the State submittal of Regulation No. 13 is reasonable. EPA analysis of the cost estimates given for Regulation No. 13 is that these are also reasonable estimates.

As stated in Regulation No. 13, the AQCC has existing authority to require oxygenated fuels. Earlier EPA analysis confirmed this authority.

The State has also evaluated the impact of the regulation on ambient levels of ozone, oxides of nitrogen and aldehydes, and concluded that there would not be a significant increase in concentrations of these pollutants. EPA agrees with the State's evaluation, in that it believes that potential increases will be more than offset by the impact of vehicle turnover resulting in more vehicles with advanced emission controls. Ozone and aldehyde levels will also be mitigated by the decreases in hydrocarbon emissions produced by the Regulation 11 amendments and exhaust and evaporative hydrocarbon emission decreases discussed below. Both ozone and aldehydes are photochemically produced from hydrocarbons and oxides of nitrogen. The levels of these pollutants should actually continue to decline in the future due to the federally-required controls on new vehicles and efforts by the State of Colorado to reduce the rate of growth in vehicle miles traveled.

The impact of the oxygenated fuels regulation on increasing evaporative emissions of HC requires explanation. Gasohol has higher volatility than the base gasoline from which it is made, and increased HC emissions due to higher volatility could result in higher levels of ozone. MTBE does not increase gasoline volatility nearly as much. MTBE would also be blended to take advantage of its octane value, and would not likely be used in amounts which would significantly increase volatility when not required by Regulation No. 13, due to its higher cost. Regulation No. 13 only requires oxygenated fuel be used in the winter, when evaporative emissions do not lead to ozone formation. There may be increased gasohol use in the summer, however, from a carry-over effect.

The Denver Metropolitan Area Ozone SIP was approved by EPA on December 12, 1983 (48 FR 55284). The control measures in the SIP included I/M, stationary source controls, and various transportation control measures including mass transit. As discussed below, the State of Colorado has implemented measures since the approval of the Ozone SIP which will offset any increased HC emissions due to oxygenated fuels.

On March 22, 1989, EPA published a Notice of Rulemaking on controlling gasoline volatility (54 FR 11868). A Regulatory Impact Analysis (RIA) was performed for this action. The RIA included an estimate of the increase in HC emissions, a precursor to ozone, resulting from the use of gasohol. According to the RIA, if 40% of the fuel used in mobil sources was gasohol, HC emissions would increase 5.6 to 12.6% depending on the Reid Vapor Pressure (RVP) of the base gasoline. Gasoline in Colorado (required to meet ASTM volatility standards since July 1, 1986) has a RVP around the midpoint of the range defined in the RIA. This would put the estimated HC increase at about 9.1% with 40% gasohol use.

The 9.1% increase is a weighted average of the evaporative emissions increase due to the increase in the volatility of the blend and the exhaust HC emission reduction due to the better combustion of the fuel resulting from the additional oxygen provided by the ethanol. The RIA used an estimate for the reduction in exhaust emissions of 2.5%.

Utlizing the same methodology, but with Colorado test data for the exhaust hydrocarbon reduction, the Colorado test results indicate a reduction in HC exhaust emissions of 9.2%. The resulting estimate of the overall increase in HC emissions from 40% gasohol use in the Denver metropolitan area is 7.7%. This increase is much more than is actually expected, since less than 5% of the gasoline sold during the first year of the program contained ethanol.

There are two mitigating factors, each sufficient to overcome the estimated 7.7% HC emission increase due to gasohol use. First, there is the 9.2% decrease in overall vehicle HC emissions due to the Regulation No. 11 amendments discussed earlier. Second, there is the previously mentioned ASTM volatility requirement which is not part of the Denver Metropolitan area Ozone SIP. According to the RIA, the RVP of gasoline in July of 1983 in Colorado averaged about ten pounds. Data from the State of Colorado, in July of 1986, shows the average RVP of gasoline in Colorado was 8.7 pounds. The RIA indicates that a one pound decrease in RVP would offset the evaporative HC emission increase due to gasohol. The Colorado gasoline volatility controls have probably provided more than enough reduction to offset any evaporative emission increase due to gasohol.

In summary, the estimated increase in evaporative HC emissions due to the use of gasohol would be more than overcome by: (1) Reductions in exhaust HC attributable to the new I/M program, (2) emission reductions of exhaust HC due to the cleaner burning properties of

gasohol, and (3) evaporative emission reductions from ASTM volatility requirements for gasoline.

In developing this regulation, the State and EPA conducted extensive meetings with affected groups, including automobile manufacturers, the petroleum industry, and the oxygenated fuels industry. The State of Colorado, with EPA assistance, tested 140 vehicles using the Federal Test Procedure. A task force appointed by the Governor of Colorado in June of 1986 held extensive meetings before recommending adoption of the program in October of 1986. These recommendations were submitted to the Denver Metropolitan Air Quality Council, the lead planning agency for the Denver metropolitan area, which then recommended their adoption by the AQCC. The AQCC formed a subcommittee which, in turn, held separate hearings on emission reduction benefits, effects on materials and vehicle drivability, and cost and supply issues before recommending adoption of the program to the full Commission.

Proposed Action

EPA proposes to approve Regulation No. 13, "Oxygenated Fuels Program", and the revisions to Regulation No. 11, the I/M program, because they strengthen the existing CO SIP. The Regulation No. 11 amendments are also being proposed for approval as strengthening the Ozone SIP.

One issue raised by Colorado's submittal of Regulation No. 13 is whether EPA must make the finding described in section 211(c)(4)(C) of the Clean Air Act (hereinafter Act) prior to any approval of the regulation as part of the Colorado SIP. For the reasons discussed below, EPA believes that such a finding is not required before EPA can approve Regulation No. 13.

Section 211(c)(4)(A) states:

> Except as otherwise provided in subparagraph (B) or (C), no State (or political subdivision thereof) may prescribe or attempt to enforce, for the purposes of motor vehicle emission control, any control or prohibition respecting use of a fuel or fuel additive in a motor vehicle or motor vehicle engine—(i) if the Administrator has found that no control or prohibition under paragraph (1) is necessary and has published his finding in the **Federal Register**, or (ii) if the Administrator has prescribed under paragraph (1) a control prohibition applicable to such fuel or fuel additive, unless (the) state prohibition or control is identical to the prohibition or control prescribed by the Administrator.

Section 211(c)(4) provides that Federal preemption will not be a bar to a State-adopted fuel control measure if the measure is included in the SIP for such State and only if the Administrator approves the measure into the State's SIP on the ground:

> That the State control or prohibition is necessary to achieve the national primary or secondary ambient air quality standard which the plan implements.

Thus, the threshold question in analyzing whether section 211(c)(4) bars EPA from approving Regulation No. 13 is whether EPA has preempted such a State measure in either of the two ways described in paragraph (A). EPA does not believe that either form of preemption has occurred.

First, EPA has not made the finding, described in suparagraph (i) of paragraph (A), that no fuel control or prohibition under paragraph (1) of section 211(c) is necessary; and EPA clearly has not published any such finding in the **Federal Register**.

Second, EPA does not believe that it has prescribed the type of fuel control described in subparagraph (ii) of paragraph (A). As in the case of subparagraph (i), EPA interprets subparagraph (ii)'s reference to "a control or prohibition applicable to such fuel or fuel additive" as including only the same type of fuel control that the State in question is attempting to prescribe. Under this interpretation, section 211(c)(4)(A)'s prohibition of the State's adoption of a particular type of fuel control would be triggered only if EPA had already prescribed, by regulation under section 211(c)(1), the same type of fuel control proffered by the State—in this case, a control on the oxygen content of fuels. Since EPA has not prescribed any control on the oxygen content of any fuel by section 211(c) rulemaking [1], in the Agency's view the preemption described in subparagraph (ii) has not occurred and hence EPA is free to approve Regulation No. 13 into the SIP.

Interested parties are invited to comment on all aspects of these proposed actions.

Under 5 U.S.C. 605(b), I certify that this SIP Revision will not have a significant economic impact on a substantial number of small entities.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Authority: 42 U.S.C. 7401–7642.

[1] EPA has established limits on oxygen content for certain new fuels that have been granted waivers under Section 211(f) of the Act for introduction into commerce.

Date: March 31, 1989.

James J. Scherer,

Regional Administrator.

[FR Doc. 89–15169 Filed 6–26–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89–286, RM–6609]

Radio Broadcasting Services: Baker, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Mount Wilson FM Broadcasters, Inc., seeking the allotment of FM Channel 268B to Baker, California, as a first local broadcast service. Reference coordinates for this proposal are 35–15–54 and 116–04–25.

DATES: Comments must be filed on or before August 11, 1989, and reply comments on or before August 28, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitoners's counsel, as follows: Robert B. Jacobi, Esq., Cohn and Marks, 1333 New Hampshire Avenue, NW, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–286, adopted June 1, 1989, and released June 21, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court view, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communication Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–15104 Filed 6–26–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 89–288, RM–6606]

Radio Broadcasting Services; South Lake Tahoe, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Daniel S. Tankersley, seeking the allotment of Channel 268A to South Lake Tahoe, California, as that community's third local FM service. Coordinates used for this proposal are 38–56–30 and 119–58–30.

DATES: Comments must be filed on or before August 11, 1989, and reply comments on or before June 21, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner and his consultant, as follows: Daniel S. Tankersley, 707 Geneva St., Opelika, AL 36801 and Larry G. Fuss, P.O. Box 4010, Opelika, AL 36803.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–288, adopted May 31, 1989, and released June 21, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–15105 Filed 6–26–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 89–289, RM–6580]

Radio Broadcasting Services; Syracuse, IN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed on behalf of William A. Dixon, seeking the allotment of FM Channel 278A to Syracuse, Indiana, as that community's first local broadcast service. Coordinates for this proposal are 41–25–40 and 85–45–09.

DATES: Comments must be filed on or before August 11, 1989, and reply comments on or before August 28, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Robert G. Allen and Stephen E. Coran, Esqs., McCabe & Allen, P.O. Box 2126, Manassas Park, VA 22111.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–289, adopted May 31, 1989, and released June 21, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–15106 Filed 6–26–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 89–283, RM–6704]

Radio Broadcasting Services; Elkins, WV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Elkins Radio Corporation, proposing the substitution of Channel 234B1 for Channel 237A at Elkins, West Virginia, and modification of the license for Station WELK(FM) to specify operation on the higher powered channel. A site restriction of 12 kilometers (7.4 miles) east of the community is required, at coordinates 38–56–14 and 79–42–41.

DATES: Comments must be filed on or before August 10, 1989, and reply comments on or before August 25, 1989.

ADDRESS: Federal Communications Commission, Washington, DC, 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Kathryn R. Schmeltzer, Esquire, John Joseph McVeigh, Esquire, Fisher, Wayland, Cooper and Leader, 1255 23rd Street

NW., Suite 800, Washington, DC 20037-1125 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-283, adopted June 1, 1989, and released June 20, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-15107 Filed 6-26-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-282, RM-6630]

Radio Broadcasting Services; Whiting, Crandon and Oshkosh, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Sharon Broadcasting Corporation, licensee of Station WYTE(FM), Channel 244A at Whiting, Wisconsin, proposing the substitution of Channel 244C2 for Channel 244A at Whiting and the modification of its license to specify the higher class co-channel. In order to accomplish the co-channel upgrade at Whiting channel, substitutions are required at Crandon, Wisconsin, Channel 276A for vacant Channel 244A and Oshkosh, Wisconsin, Channel 245A for Channel 244A (Station WAHC(FM)). In addition, the substitution at Crandon requires concurrence of the Canadian government. The community of Whiting could receive its first wide coverage area FM service. Channel 244C2 can be allotted at the coordinates of the present transmitter site, which are 44-32-36 and 89-40-07.

DATES: Comments must be filed on or before August 10, 1989, and reply comments on or before August 25, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Jerrold Miller, Esquire, Miller & Fields, petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-282, adopted May 31, 1989, and released June 20, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-15108 Filed 6-26-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-287, RM-6605]

Radio Broadcasting Services; Valley, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf by Royal Broadcasting Company, Inc., seeking the allotment of FM Channel 251A to Valley, Alabama, as that community's first local broadcast service. Coordinates used for Channel 251A at Valley are 32-55-27 and 85-12-48.

DATES: Comments must be filed on or before August 11, 1989, and reply comments on or before August 28, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: M. Scott Johnson and Catherine M. Grofer, Esqs., Gardner, Carton & Douglas, 1001 Pennsylvania Avenue NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-287, adopted May 31, 1989, and released June 21, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-15101 Filed 6-26-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-285, RM-6582]

Radio Broadcasting Services; Gould, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Arkansas Radio Company, seeking the allotment of FM Channel 273A to Gould, Arkansas, as that community's first local broadcast service. Coordinates used for proposed Channel 273A at Gould, Arkansas, are 33-59-00 and 91-33-26.

DATES: Comments must be filed on or before August 11, 1989, and reply comments on or before August 28, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Arkansas Radio Company, Attn.: J. Boyd Ingram, P.O. Box 73, Batesville, MS 38606.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-285, adopted June 1, 1989, and released June 21, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-15102 Filed 6-26-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-284, RM-6492]

Radio Broadcasting Services; Greenwood, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed on behalf of Red, White and Blue Communications, Inc., licensee of Station KAJJ(FM), Channel 292A, Greenwood, Arkansas, seeking the substitution of Channel 292C2 for Channel 292A and modification of its license accordingly. Reference coordinates used for Channel 292C2 at Greenwood are 35-12-25 and 93-58-25.

DATES: Comments must be filed on or before August 10, 1989, and reply comments on or before August 25, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Aaron P. Shainis and Lee J. Peltzman, Esqs., Baraff, Koerner, Olender & Hochberg, P.C., Suite 203, 2033 M Street NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-284, adopted May 31, 1989, and released June 20, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-15103 Filed 6-26-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. PS-107; Notice 1]

RIN 2137-AB50

Determining the Extent of Corrosion on Gas Pipelines

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: Gas pipeline operators who must now inspect for corrosion on buried metallic pipe that is exposed, would be required to investigate further to determine the full extent of any corrosion that is found. At least one major gas pipeline accident might have been prevented had such further investigation been required. Such investigation is required for hazardous liquid pipelines, and this proposal should result in a comparable level of safety.

DATE: Comments must be received by September 25, 1989. Late filed comments will be considered so far as is practicable.

ADDRESS: Send comments in duplicate to the Dockets Unit, Room 8417, Office of Pipeline Safety (OPS), Research and Special Programs Administration, U.S. Department of Transportation, 400

Seventh Street, SW., Washington, DC 20590. Identify the docket and notice numbers stated in the heading of this notice. All comments and docketed material will be available for inspection and copying in Room 8426 between 8:30 a.m. and 5:00 p.m. each business day.

FOR FURTHER INFORMATION CONTACT: Bernard L. Liebler, (202) 366–2392, regarding the subject matter of this proposed rule or the Dockets Unit, (202) 366–4148, regarding copies of this final rule or other material in the docket.

SUPPLEMENTARY INFORMATION:

Background

On February 21, 1986, in Lancaster, Kentucky, a natural gas pipeline operated by a major interstate transmission company failed. The leaking gas was immediately ignited. The resulting fire injured 6 persons in varying degrees, destroyed several buildings and automobiles, and burned about 15 acres of pasture and woodland.

The 30-inch pipeline failed about 30 feet from the end of a casing where it crosses under State Highway 52. At the time of the failure, the pipeline was operating at 967 psig. The National Transportation Safety Board (NTSB) investigated the accident and concluded that the pipeline had failed at a region of external corrosion where the wall thickness had been reduced beyond its ability to contain the operating pressure of the pipeline.

As part of a rehabilitation program, the operator, in 1985, began to perform in-line inspections of its pipelines, and the in-line inspection of the line that would fail in 1986 had been completed. However, after an in-line inspection device is run and the data initially reviewed, it is standard procedure to excavate at least one location to verify the line location and calibrate the in-line inspection log. The location where the pipeline crossed Highway 52 was chosen as a verification location, excavated, and visually inspected on September 12, 1985.

Although the visual examination showed corrosion potentially requiring remedial action, the inspectors did not look for corrosion adjacent to and below the portion of pipe that had been exposed. Since the exposure was for vertification of the line log and the operator did not judge the observed corrosion to be serious enough to require immediate replacement of the pipe, the excavated pipeline segment was backfilled until such time as further examination could be scheduled. The location of the failure was only about one foot from the location of the last corrosion pit measured when the pipe was uncovered.

Because of the extreme proximity of the rupture to the pipeline segment that had been excavated to verify the in-line inspection predictions, the NTSB, in its report on the Beaumont and Lancaster incidents (NTSB/PAR—87–01), made the following recommendation to the OPS:

> Amend 49 CFR 192.459 External corrosion control, examination of buried pipelines when exposed, to require pipeline operators to fully expose and fully examine pipelines exposed for any reason. The exposure and examination should continue until corroded or other damaged areas are no longer encountered. (P–87–3)

Current Requirements

The corrosion control requirements for gas operators provide in § 192.459 that, "Whenever an operator has knowledge that any portion of a buried pipeline is exposed, the exposed portion must be examined for evidence of external corrosion if the pipe is bare, or if the coating is deteriorated."

Although the regulation places an obligation on the operator to examine the exposed portion of pipe for corrosion, when corrosion is found, there is no obligation to extend that examination beyond the area already exposed.

In contrast, a corrosion control rule for hazardous liquid pipelines (49 CFR 195.416(e)) requires the operator to examine any exposed pipe for corrosion, and then requires that "If the operator finds that there is active corrosion, that the surface of the pipe is generally pitted, or that corrosion has caused a leak, it shall investigate further to determine the extent of the corrosion."

Discussion

The purpose of §§ 192.459 and 195.416(e) is to ensure that the operator uses every reasonable opportunity to visually inspect its buried pipelines for external corrosion. Otherwise, when pipelines are buried it is usually necessary to rely on indirect electrical measurements like pipe-to-soil potentials to determine the existence of external corrosion or the effectiveness of cathodic protection systems.

OPS believes that to achieve maximum benefit from visual observation of the condition of a pipeline, the examination should be as complete as possible. This is why any time corrosion is discovered on a hazardous liquid pipeline, the operator has to determine the full extent of any active corrosion. To do so, the excavation might have to be enlarged or extended, or both, for further observation, or buried pipe at or near the excavation could be examined by indirect methods.

The approach recommended by NTSB is to always require further excavation until corrosion is no longer encountered. Unfortunately, if this approach were strictly followed, an operator could never be certain that the full extent of corrosion proximate to that observed in the original excavation had been determined. Corrosion pits are not all adjacent. Thus, there may be areas of uncorroded metal between any two small regions of corrosion. If an operator stopped excavating at the point where corrosion was no longer encountered, nearby corrosion might go undetected. OPS believes it is better for operators to use their own expert judgment on where excavation should stop when determining the extent of corrosion by this means. The flexible approach of § 195.416(e) permits this. It also permits the use of indirect methods when further excavation is unwise or impractical. In addition, surface corrosion of no consequence may be present, and may be widespread, particularly in old distribution lines, its pressure could cause the operator to continue excavating indefinitely.

Proposal

OPS believes that gas pipeline operators should be required to determine the extent of corrosion damage when a pipeline segment is inspected visually after being uncovered by excavation. However, because of the need for flexibility, as discussed above, OPS is proposing to adopt the same approach in Part 192 as is taken in Part 195. Section 192.459 would be amended to require the operator to investigate the extent of the corrosion, leaving the method and the amount of investigation to operator discretion. This performance-based appraoch would allow the operator to utilize any method of investigation appropriate under the circumstances.

In addition, this proposal is consistent with OPS's policy of making Parts 192 and 195 parallel wherever practicable. The remaing distinctions between § 192.459 and § 195.416(e) are to be incorporated as part of a separate project comparing all of the Part 192 and Part 195 corrosion control requirements.

Impact

Since the proposed rule would only extend the scope of specified operator activities under limited circumstances and would permit the operator to select the method to be used for investigating the extent of corrosion, the fiscal impact of the proposal should be small.

Therefore, this proposal is considered to be nonmajor under Executive Order 12291 and is not considered significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). Since the proposed rule should require minimal compliance expense, it does not warrant preparation of a Draft Evaluation. Also, based on the facts available concerning the impact of this proposal, I certify under Section 605 of the Regulatory Flexibility Act that it would not if adopted as final, have a significant economic impact on a substantial number of small entities. This action has been analyzed under the criteria of E.O. 12612 and found not to warrant preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 192

Pipeline safety, corrosion, pipe.

In consideration of the foregoing, OPS proposes to amend 49 CFR Part 192 as follows:

PART 192—[AMENDED]

1. The authority citation for Part 192 continues to read as follows:

> **Authority:** 49 App. U.S.C. 1672 and 1804; 49 CFR 1.53.

2. Section 192.459 would be revised to read as follows:

§ 192.459 External corrosion control: Examination of buried pipeline when exposed.

Whenever an operator has knowledge that any portion of a buried pipeline is exposed, the exposed portion must be examined for evidence of external corrosion if the pipe is bare, or if the coating is deteriorated. If external corrosion requiring remedial action is found, the operator shall investigate further to determine the extent of the corrosion and shall take remedial action to the extent required by § 192.483 and the applicable paragraphs of §§ 192.485, 192.487, or 192.489.

Issued in Washington, DC on June 21, 1989.

Richard L. Beam,

Director, Office of Pipeline Safety.

[FR Doc. 89–15121 Filed 6–26–89; 8:45 am]

BILLING CODE 4910–60–M

Notices

Federal Register
Vol. 54, No. 122
Tuesday, June 27, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Draft Supplement No. 1 to the Routt National Forest Land and Resource Management Plan

AGENCY: Forest Service, USDA.

ACTION: Notice of cancellation of supplementing an environmental impact statement.

SUMMARY: The Routt National Forest is rescinding Draft Supplement No. 1 to the Final Environmental Impact Statement (FEIS) for the Routt National Forest Land and Resource Management Plan (Forest Plan). This supplement was prepared to clarify language in the FEIS regarding oil and gas leasing.

On October 26, 1988, the Rocky Mountain Regional Office rendered an opinion that the Forest Plan for the Routt National Forest did not fully support oil and gas leasing decisions.

The Forest will be taking action to ensure that Forest Service consent/denial decisions regarding oil and gas leasing is fully supported by the Forest Plan, NEPA analysis, and site-specific evaluations. The material covered in Draft Supplement No. 1 will be addressed in this action. The public will be notified and invited to participate when this effort is initiated.

The Notice of Availability, published in the **Federal Register** of January 19, 1989, is hereby rescinded (54 FR 2226).

FOR FURTHER INFORMATION CONTACT: Direct questions about this action to Larry Keown, Land Management Planning Staff Officer, Routt National Forest, 29587 West U.S. 40—Suite 20, Steamboat Springs, Colorado 80487, phone 303–879–1722.

Date: June 19, 1989.

Jerry E. Schmidt,

Forest Supervisor.

[FR Doc. 89–15128 Filed 6–26–89; 8:45 am]

BILLING CODE 3410–11–M

Packers and Stockyards Administration

Certification of Central Filing System—West Virginia

The Statewide central filing system of West Virginia is hereby certified, pursuant to Section 1324 of the Food Security Act of 1985, on the basis of information submitted by Robert E. Wilkinson, Deputy Secretary of State, for all farm products produced in that State.

This is issued pursuant to authority delegated by the Secretary of Agriculture.

Authority: Sec. 1324(c)(2), Pub. L. 99–198, 99 Stat. 1535, 7 U.S.C. 1631(c)(2); 7 CFR 2.17(e)(3), 2.56(a)(3), 51 FR 22795.

Dated: June 20, 1989.

Calvin W. Watkins,

Acting Administrator, Packers and Stockyards Administration.

[FR Doc. 89–15079 Filed 6–26–89; 8:45 am]

BILLING CODE 3410–KD–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: Survey of Income and Program Participation 1988 Panel Wave 7.

Form Number: SIPP–8700, SIPP–8705.

Agency Approval Number: 0607–0595.

Type of Request: Revision of a currently approved form.

Burden: 12,180 hours.

Number of Respondents: 24,360.

Avg Hours Per Response 30 minutes.

Needs and Uses: This survey will provide statistics to estimate the effects of Executive and Legislative decisions. Data provided by SIPP are being used by economic policymakers, the Congress, state and local governments, and Federal agencies that administer social welfare or transfer payment programs such as the Department of Health and Human Services and the Department of Agriculture.

Affected Public: Individuals or households.

Frequency: One time only.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Don Arbuckle, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 21, 1989

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–15135 Filed 6–26–89; 8:45 am]

BILLING CODE 3510–07–M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: Survey of Income and Program Participation 1990 Panel Core, Waves 1–6.

Form Number: SIPP–10100, SIPP–10001, SIPP–10105.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 42,000 hours.

Number of Respondents: 42,000.

Avg. Hours Per Responses: 30 minutes.

Needs and Uses: This survey will provide statistics to estimate the effects of Executive and Legislative decisions. Data provided by SIPP are being used by economic policymakers, the Congress, state and local governments, and Federal agencies that administer social welfare or transfer payment programs such as the Department of Health and Human Services and the Department of Agriculture.

Affected Public: Individuals or households.

Frequency: Three times a year.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Don Arbuckle, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 21, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–15136 Filed 6–26–89; 8:45 am]

BILLING CODE 3510–07–M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: Carpets and Rugs & Broadwoven Fabrics (Gray).

Form Number: MQ–22Q and MQ–22T.

Agency Approval Number: 0607–0559 and 0607–0625.

Type of Request: Revision.

Burden: 1,547 hours.

Number of Respondents: Quarterly—407; Annual—75.

AVG Hours Per Responses: MQ–22Q—.5 hours; MQ–22T—1 hour.

Needs and Uses: The U.S. Government needs information on domestic output in the textile industry to monitor trade agreements with foreign countries. Government agencies, trade associations, and business firms use these data to make production, investment, and trade policy decisions.

Affected Public: Businesses or other for-profit institutions.

Frequency: Quarterly and Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Don Arbuckle. 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 21, 1989

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–15137 Filed 6–26–89; 8:45 am]

BILLING CODE 3510–07–M

National Oceanic and Atmospheric Administration

Caribbean Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Caribbean Fishery Management Council's Administrative Committee will meet on July 5, 1989, at 9:30 a.m., at the Council's office (address below). The Committee will discuss issues related to its regular administrative operations, and development of fishery management plans (FMPs).

For more information contact Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, Banco de Ponce Building, Suite 1108, Hato Rey, Puerto Rico 00918–2577; telephone: (809) 766–5926.

Date: June 21, 1989.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management National Marine Fisheries Service.

[FR Doc. 89–15175 Filed 6–26–89; 8:45 am]

BILLING CODE 3510–22–M

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council and its advisory bodies will meet on July 10–13, 1989, at the Casa Marina Hotel, 1500 Reynolds Street, Key West, FL. Except as noted below, the meetings are open to the public.

The Council will meet on July 12 at 8:30 a.m. From 8:45 a.m., to 9:30 a.m., the Council will allow public comments on the Tortugas Sanctuary. Then it will receive committee recommendations on the Sanctuary, review shrimp issues, receive an enforcement report, and review the Law Enforcement Committee report. From 1:30 p.m. to 2:30 p.m., the Council will allow public comments on measures in the Reef Fish Fishery Management Plan (FMP), Amendment #1, and be followed by a review and discussion of approval of the Regulatory Impact Review/Initial Regulatory Flexibility Analysis/Environmental Assessment (RIR/IRFA/EA)/Amendment #1, and final approval of the regulations. Also on July 12 at 4:30 p.m., the Council's Advisory Panel Selection Committee, followed by the Council's Scientific and Statistical Committee (SSC) Selection Committee will hold closed sessions (not open to the public), to discuss the background of nominees. The meeting will recess at 5 p.m.

The Council will reconvene its open session on July 13 at 8 a.m., to hear the Swordfish Management Committee report and recommendations. From 11 a.m. to 11:30 a.m., the Council will allow public testimony on the Spiny Lobster FMP, Amendment #2. It will also receive committee recommendations, review habitat protection, administrative policy, ad hoc limited access, and hear the Shark, and Billfish Committees' reports. The Council meeting will adjourn at 3:15 p.m.

On July 10 at 12:30 p.m., the Habitat Protection Committee will review mosquito control and other issues; the Spiny Lobster Management Commiteee will review the Spiny Lobster FMP, Amendment #2, the Administrative Policy Committee will review the Council's revised Statement of Organization, Practices and Procedures, and the Law Enforcement Committee will discuss the multi-day possession limit. Separately, the SSC Selection Committee will meet at 3 p.m., in a closed session, followed by a closed session of the Advisory Panel Selection Committee. (These meetings will not be open to the public for reasons already stated above.) The meeting will recess at 5:45 p.m.

On July 11 at 8 a.m., the Reef Fish Management Committee will review draft regulations, and the revised RIR/IRFA/EA/Amendment. The Shrimp Management Committee will review the Tortugas Sanctuary analyses, a triggering device for the Texas closure, shrimp stock assessment, and the impact of shrimp imports on domestic prices. The meeting will adjourn at 5 p.m.

For more information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL 33609; telephone: (813) 228–2815.

Date: June 21, 1989.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management National Marine Fisheries Service

[FR Doc. 89–15176 Filed 6–26–89; 8:45 am]

BILLING CODE 3510–22–M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council and its advisory entities will meet on July 10–13, 1989, at the Hanalei Hotel, 2270 Hotel Circle North, San Diego, CA. Except as noted below, the meetings are open to the public.

The Council will meet on July 12 at 8 a.m., to address numerous groundfish management issues, including but not limited to: (1) Inseason management measure adjustments to limit the harvest of rockfish and sablefish; (2) long-term sablefish management; (3) approval for public review of a draft plan amendment which will modify the process by which the groundfish fishery is managed; (4) means to minimize the incidental catch of yellowtail rockfish in the whiting joint venture fishery; (5) measures to extend the whiting joint venture season; (6) a proposal to prohibit foreign vessels from operating in the whiting fishery south of the Oregon-California border; (7) a National Oceanic and Atmospheric Administration (NOAA) survey of domestic whiting processing capacity and intent; (8) initial results of a survey of industry opinion on limited entry, and (9) consideration of a prohibition on automated hook extractors in the sablefish fishery. Groundfish agenda items will be completed on July 13. The Council will receive public comments on July 12 at 4 p.m., on any issue not on the agenda. Public comments on agenda items will be considered before Council action on each item.

The Council will convene on July 13 at 8 a.m., in closed session (not open to the public), to discuss litigation and personnel matters. The open session will start at 8:30 a.m., to finish groundfish matters. The Council will hear a report on the status of the 1989 Pacific halibut fisheries, and then discuss anchovy management for the upcoming 1989–1990 fishery. Under the topic of salmon management, the Council will hear a status report on the current ocean fisheries, and receive a technical analysis of the ocean troll closures north and south of the Klamath Management Zone. The Council also will select plan amendment issues and alternatives for review by Council advisory entities. The remaining items on the agenda include a report from the Council's Habitat Committee and various administrative matters, including adoption of a revised Statement of Organization, Practices and Procedures, as well as identification of research and data collection needs.

The Groundfish Select Group will meet on July 10 at 8 a.m., to address groundfish issues on the Council's agenda.

The Scientific and Statistical Committee (SSC) will meet on July 10 at 1 p.m., to address scientific issues on the Council's agenda, and will reconvene on July 11 at 8 a.m. The SSC will have a public comment period on July 10 at 4 p.m.

The Groundfish Advisory Subpanel will meet on July 10 at 2 p.m., to consider groundfish matters on the Council's agenda, and will reconvene on July 11 at 8 a.m.

The Budget Committee will meet on July 11 at 1 p.m., to review the status of the 1989 budget and to consider changes to the 1990 budget.

The Habitat Committee will meet on July 11 at 4 p.m., to consider timely and relevant habitat matters impacting fisheries in the Council's jurisdiction.

Detailed agenda for the above meetings will be made available to the public after June 28, 1989. For further information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2000 SW. First Avenue, Room 420, Portland, OR 97201; telephone: (503) 326–6352

Date: June 21, 1989.

David S. Crestin,

Acting Director Office of Fisheries Conservation and Management National Marine Fisheries Service

[FR Doc. 89–15177 Filed 6–26–89; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement concerning Computer Generation of Forms by the Public.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mrs. Victoria Moss, Office of Federal Acquisition and Regulatory Policy, (202) 523–5168.

SUPPLEMENTARY INFORMATION:

a. Purpose

This rule will allow computer generation of forms prescribed by the FAR and by FAR supplements. The rule will ultimately affect several existing OMB clearances and will require reestimation of the burden associated with those clearances. It is anticipated that this rule will reduce the burden on the public associated with acquisition procedures. This rule affects all firms which do business or seek to do business with the government. Use of computer generated forms is optional. No penalties or incentives associated with use of the forms.

b. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, *1*; responses per respondent, *1*; total annual responses, *1*; preparation hours per response, *1*; and total response burden hours, *1*.

Obtaining Copies of Proposals: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0XXX, Computer Generation of Forms by the Public.

Dated: June 19, 1989.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 89–15116 Filed 6–26–89; 8:45 am]

BILLING CODE 6820-JC-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Proposed Local Flood Protection (LFP) Project Along the Lackawanna River in Scranton and Olyphant, Pennsylvania

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The Baltimore District, U.S. Army Corps of Engineers is investigating the feasibility of local flood protection (LFP) projects along the Lackawanna River for the City of Scranton and Borough of Olyphant, Pennsylvania. A feasibility study of the potential projects is being conducted under authority of a U.S. House of Representatives Committee on Public Works and Transportation resolution; adopted October 1, 1986. The Commonwealth of Pennsylvania, City of Scranton, and Borough of Olyphant are the non-Federal sponsors for the feasibility phase of the LFP project.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be answered by Mr. Steven Stegner, Project Manager, Baltimore District, U.S. Army Corps of Engineers, ATTN: CENAB-PL-PR, P.O. Box 1715, Baltimore, Maryland 21203–1715, telephone (301) 962–4959.

SUPPLEMENTARY INFORMATION:.

1. The Lackawanna River, a tributary of the Susquehanna River, is located in northeastern Pennsylvania. The 346 square mile drainage basin lies mostly in Lackawanna County, with the river bisecting the City of Scranton. The Lackawanna River valley has experienced flooding for many years. Flooding in September 1985 resulted in a Presidental disaster declaration for the area and, most recently, floods caused serious damages throughout the valley in March 1986.

2. A variety of remedial measures and flood control structures are being considered along the Lackawanna River. Possible solutions in Scranton that are being investigated include 19,000 feet of channel improvement (dredging and/or realignment), 17,200 feet of levee, and 1,400 feet of flood wall. In Olyphant, proposed solutions include approximately 5,500 feet of levee, 300 feet of flood wall, and the dredging of 5,000 feet of river channel. Note that these solutions may be combined to form a variety of alternative proposals which will be evaluted for selection during the feasibility phase of the LFP project. Projects at both locations may also include features such as access ramps (for channel maintenance), interior drainage facilities (for levees), and closure structures. Acquisition of residential and business properties, and the relocation of public utilities are among actions that may be required as part of the project. Sediment and debris removed from project areas would be deposited in suitable upland disposal sites.

3. The Baltimore District is preparing a Draft Environmental Impact Statement (DEIS) which will describe the impacts of the proposed projects on environmental and cultural resources in the study area and the overall public interest. The DEIS will also apply guidelines issued by the Environmental Protection Agency, under authority of section 404 (b)(1) of the Clean Water Act of 1977 (Pub. L. 95–217).

4. The public involvement program will include meetings and close coordination with interested private individuals and organizations, as well as concerned local, state, and Federal agencies. A public notice requesting comment on the proposed project and DEIS will be provided to appropriate agencies and the public through the printed media and mailings. A scoping meeting is not planned at this time. The Baltimore District invites potentially affected Federal, state, and local agencies, and other interested organizations and parties to participate in this study. Agencies that are currently involved in the feasibility study and EIS process include, but are not limited to, the U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, U.S. Geological Service, U.S. Soil Conservation Service, National Park Service, Pennsylvania Department of Environmental Resources, Pennsylvania Historical and Museum Commission, Susquehanna River Basin Commission, Lackawanna County Regional Planning Commission, and Lackawanna River Corridor Association.

5. The DEIS is scheduled to be available for public review in September 1990.

Bernard E. Stalmann,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 89–15146 Filed 6–26–89; 8:45 am]

BILLING CODE 3710-41-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before July 27, 1989

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732–3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: June 21, 1989.

Carlos U. Rice,

Director of Information Resources Management.

Office of Special Education and Rehabilitative Services

Type of Review: New.

Title: Reporting Requirements for Free Appropriate Public Education for State Operated Programs.

Frequency: Annually.

Affected Public: State or local governments.

Reporting Burden:

Responses: 4,056.

Burden Hours: 40,560.

Recordkeeping Burden:

Recordkeepers: 0.

Burden Hours: 0.

Abstract: This form provides instructions and the forms necessary for States to report the settings in which handicapped children in State Operated

Programs receive special education and related services under Chapter 1 of the Elementary and Secondary Education Act, as amended. The information will be used by the Department to monitor States agencies and State education agencies and for Congressional reporting.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.
Title: Reporting Requirements for Free Appropriate Public Education (FAPE) under the Education of the Handicapped Act, as amended.
Frequency: Annually.
Affected Public: State or local governments.
Reporting Burden:
Responses: 15,058.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 150,580.
Burden Hours: 0.
Abstract: This form provides instructions and forms necessary for States to report the setting in which handicapped children served under the Education of the Handicapped Act, as amended, receive special education and related services. The information will be used to monitor State educational agencies and for Congressional reporting.

Office of Management

Type of Review: Reinstatement.
Title: Federal Cash Transactions Report.
Frequency: Quarterly.
Affected Public: State or local governments; businesses or other for-profit; non-profit institutions.
Reporting Burden:
Responses: 39,200.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 117,600.
Burden Hours: 0.
Abstract: Recipients report Federal cash disbursements and cash advances to the Department. The Department uses the information to monitor the Federal funds.

Office of Management

Type of Review: Reinstatement.
Title: Request for Advance or Reimbursement
Frequency: Monthly.
Affected Public: State or local governments; businesses or other for-profit; non-profit institutions.
Reporting Burden:
Responses: 66,000
Recordkeepers: 0.
Burden Hours: 16,500.
Burden Hours: 0.
Abstract: This form requires recipients to report cash balances at the end of the preceding advance period and to request cash advances for the next period. The Department uses the information to monitor Federal cash advances and to process recipient advance requests.

Office of Elementary and Secondary Education

Type of Review: Extension.
Title: Performance Report for the Women's Educational Equity Act Program.
Frequency: Annually.
Affected Public: Individuals or households; State or local governments; non-profit institutions.
Reporting Burden:
Responses: 30.
Recordkeeping Burden:
Recordkeepers: 30.
Burden Hours: 90.
Burden Hours: 6.
Abstract: This report is used by grantees who have participated in the Women's Educational Equity Act Program. The Department uses this information to assess the accomplishments of project goals and objectives, and to aid in effective program management.

[FR Doc. 89-15111 Filed 6-26-89; 8:45 am]
BILLING CODE 4000-01-M

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board.
ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Mathematics and Technical Methodology Standing Committees of the National Assessment Governing Board. This notice also describes the function of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

Date: July 11, 1989.
Time: 11:00 a.m. until adjournment
Location: U.S. Department of Education, National Assessment Governing Board, Suite 4060, Mary E. Switzer Building, 330 C Street, SW., Washington DC 20202-7583

FOR FURTHER INFORMATION CONTACT: Roy Truby, Executive Staff Director, National Assessment Governing Board, Suite 600, 555 New Jersey Avenue, NW., Washington DC 20208, Telephone: (202) 357-6050.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), Title III-C of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100-297); 20 U.S.C. 1221e-1)

The Board is established to advise the Commissioner of the National Center for Education Statistics and policies and actions needed to improve the form and use of the National Assessment of Educational Progress, and develop specifications for the design, methodology, analysis and reporting test results. The Board also is responsible for selecting subject areas to be assessed, identifying the objectives for each age and grade tested, and establishing standards and procedures for interstate and national comparisons.

The Mathematics and Technical Methodology Standing Committees of the National Assessment Governing Board will meet via teleconference on Tuesday, July 11, 1989 from 11:00 a.m. until the completion of business. The proposed agenda includes a consideration of a proxy measure for the Opportunity to Learn Survey to be used during the 1990 assessment cycle. Discussion of this matter will result in a decision by the two Standing Committees who have been authorized by the full Board to act in that capacity on this issue. Because this is a teleconference meeting, facilities will be provided so the public will have access to the Board's deliberations during the session which will take place from approximately 11:00 a.m. until the completion of business.

Records are kept of all Board proceedings, and until permanent office site for the Board has been established, are available for public inspection at the U.S. Department of Education, Office of Educational Research and Improvement, 555 New Jersey Avenue, NW., Suite 600, Washington, DC from 8:30 a.m. to 5:00 p.m., Monday through Friday.

Bruno V. Manno,
Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 89-14993 Filed 6-26-89; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

[FE Docket No. 89-25-NG]

Midwestern Gas Transmission Co., Viking Gas Transmission Co.; Granting Transfer of Authorizations To Import Natural Gas

AGENCY: Department of Energy, Office of Fossil Energy.
ACTION: Notice of an order granting transfer of authorizations to import natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued an order transferring authorizations to import natural gas from Canada granted to Midwestern Gas Transmission Company (Midwestern) to Viking Gas Transmission Company (Viking). The order issued in FE Docket No. 89-25-NG authorizes Viking to continue importing natural gas under authorizations granted to Midwestern.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 19, 1989.

J. Allen Wampler,
Assistant Secretary, Fossil Energy.

[FR Doc. 89-15145 Filed 6-26-89; 8:45 am]
BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 9049-001 West Virginia]

Carex Hydro; Availability of Environmental Assessment

June 20, 1989

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for minor license for the proposed Pioneer Hydroelectric Project located on Deckers Creek in Monongalia, near Morgantown, West Virginia, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,
Secretary.

[FR Doc. 89-15083 Filed 6-26-89; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 8404-000 Connecticut]

Windsor Locks Canal Co., Windsor Locks Hydroelectric Limited Partnership; Availability of Environmental Assessment

June 20, 1989

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for major license for the proposed Windsor Locks Hydroelectric Project located on the Connecticut River in Hartford County, Connecticut, near Windsor Locks Connecticut, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,
Secretary.

[FR Doc. 89-15084 Filed 6-26-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. CP89-1623-000, et al.]

Colorado Interstate Gas Co. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Colorado Interstate Gas Company

[Docket No. CP89-1623-000]

June 19, 1989.

Take notice that on June 13, 1989, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP89-1623-000 a request pursuant to § 157.205 of the Commission's Regulations (18 CFR 157.205) for authorization to transport natural gas on behalf of Cominco American Incorporated (Cominco), an end-user of natural gas, under CIG's blanket certificate issued in Docket No. CP86-589-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

CIG proposes to transport on a firm basis up to 5,000 Mcf of natural gas on a peak day, 4,500 Mcf on an average day and 1,642 Mmcf on an annual basis for Cominco's account. It is stated that CIG would receive the gas for Cominco's account at an existing point on CIG's system in Sweetwater County, Wyoming, and would deliver equivalent volumes of gas, less fuel and unaccounted-for gas, at two existing points on CIG's system in Hutchinson County, Texas. It is asserted that the transportation service would be effected using existing facilities and would require no construction of additional facilities. It is explained that the transportation service commenced April 6, 1989, under the automatic authorization provisions of § 284.223 of the Commission's Regulation, as reported in Docket No. ST89-3431. CIG states that the transportation service proposed herein would be pursuant to an agreement with Cominco dated April 1, 1989, which is an amendment to the transportation agreement between CIG and Cominco dated October 31, 1988. It is stated that the original transportation service was authorized under the prior notice procedure in Docket No. CP89-521-000.

Comment date: August 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Trunkline Gas Company

[Docket No. CP89-1626-000]

June 19, 1989.

Take notice that on June 14, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas, 77251-1642, filed in Docket No. CP89-1626-000 a request pursuant to Sections 157.205 and 284.223 of the Commission Regulations under the Natural Gas Act for authorization to transport natural gas for Transtate Gas Service Company (Transtate), a shipper and marketer of natural gas, under Trunkline's blanket certificate issued in Docket No. CP86-586-00 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with

the Commission and open for public inspection.

Specifically, Trunkline requests authority to transport up to 50,000 Dt. per day on an interruptible basis on behalf of Transtate pursuant to a Transportation Agreement dated January 3, 1989, between Trunkline and Transtate (Transportation Agreement). The Transportation Agreement provides for Trunkline to receive gas from various existing points of receipt on its system. Trunkline will then transport and redeliver subject gas, less fuel and unaccounted for line loss, to Consumers Power Company in Elkhart County, Indiana.

The Applicant further states that the estimated daily and estimated annual quantities would be 25,000 Dt. and 9,125,000 Dt., respectively. Service under § 284.223(a) commenced on May 6, 1989, as reported in Docket No. ST89-3698.

Comment date: August 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Natural Gas Pipeline Company

[Docket No. CP89-1594-000]

June 19, 1989.

Take notice that on June 8, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP89-1594-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Total Minatome Corporation (Total), under Natural's blanket certificate issued in Docket No. CP86-582-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural requests authorization to transport, on an interruptible basis, up to a maximum of 300,000 MMBtu of natural gas per day (plus any additional volumes accepted pursuant to the overrun provision's of Natural's Rate Schedule ITS) for Total from receipt points located in Iowa, Illinois, Louisiana, offshore Louisiana, Oklahoma, Texas, offshore Texas and Kansas to delivery points located in Kansas, Illinois, Louisiana, offshore Louisiana, Texas, Oklahoma, Missouri, New Mexico, Iowa, Arkansas and Nebraska. Natural anticipates transporting, on an average day 20,000 MMBtu and an annual volume of 7,300,000 MMBtu.

Natural states that the transportation of natural gas for Total commenced April 5, 1989, as reported in Docket No. ST89-3856-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Natural in Docket No. CP86-582-000.

Comment date: August 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. United Gas Pipe Line Company

[Docket No. CP89-1620-000]

June 19, 1989.

Take notice that on June 13, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1620-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation on behalf of EnTrade Corporation (EnTrade) under United's blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United requests authorization to transport, on an interruptible basis, up to a maximum of 103,000 MMBtu of natural gas per day for EnTrade from receipt points located in Alabama, Louisiana, Mississippi and Texas to delivery points located in Alabama, Florida, Louisiana, Mississippi and Texas. United anticipates transporting, on an average day 103,000 MMBtu and an annual volume of 37,595,000 MMBtu.

United States that the transportation of natural gas for EnTrade commenced May 1, 1989, as reported in Docket No. ST89-3721-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to United in Docket No. CP88-6-000.

Comment date: August 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Trunkline Gas Company

[Docket No. CP89-1625-000]

June 19, 1989.

Take notice that on June 14, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642 Houston, Texas 77251-1642 filed in Docket No. CP89-1625-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP89-586-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Trunkline proposes to transport natural gas for Southern Industrial Gas Corporation (Southern Gas), an intrastate pipeline, pursuant to a transportation agreement dated April 27, 1989. Trunkline explains that service commenced May 3, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-3692. Trunkline further explains that the peak day quantity would be 2,000 dekatherms, the average daily quantity would be 500 dekatherms, and that the annual quantity would be 182,500 dekatherms. Trunkline explains that it would receive natural gas for Southern Gas' account at existing points of receipt on its system. Trunkline states that it would transport and redeliver the natural gas to Transcontinental Gas Pipe Line Company in Beauregard Parish, Louisiana.

Comment Date: August 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Northwest Pipeline Corporation

[Docket No. CP89-1606-000]

June 19, 1989.

Take notice that on June 12, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-1606-000 a request for §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Columbia Aluminum Corporation (Columbia) under the blanket certificate issued in Docket No. CP86-578-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest states that pursuant to a Transportation Agreement dated February 10, 1989, as amended December 5, 1988, and April 11, 1989, it proposes to transport up 750 MMbtu per day for Columbia under Rate Schedule TI-1, for a term continuing on a year to year basis.

Northwest will transport the subject gas through its system from any transportation receipt point in its system to any transportation delivery point on its system.

Northwest also states that the maximum day, average day and annual transportation volumes would be approximately 750 MMbtu, 100 MMbtu, 36 MMbtu, respectively.

Northwest further states that it commenced May 5, 1989, as requested in Docket No. ST89-3762-000.

Comment date: August 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. United Gas Pipe Line Company

[Docket No. CP89-1619-000]

June 19, 1989.

Take notice that on June 13, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1619-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service on behalf of LaSER Marketing Company (LaSER), a marketer of natural gas, under its blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that it proposes to transport natural gas on behalf of LaSER from various points of receipt located in Mississippi, Alabama and Louisiana to various points of delivery located in Louisiana, Florida, Mississippi and Alabama.

United further states that the maximum daily, average daily and annual quantities that it would transport on behalf of LaSER would be 618,000 MMBtu equivalent, 618,000 MMBtu equivalent and 225,570,000 MMBbtu equivalent of natural gas, respectively.

United indicates that in Docket No. ST89-3761, filed with the Commission on June 2, 1989, it reported that transportation service for LaSER had begun under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: August 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. Northwest Pipeline Corporation

[Docket No. CP89-1525-000]

June 20, 1989.

Take notice that on May 26, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-1525-000, an application pursuant to section 7(b) and 7(c) of the Natural Gas Act for an order granting: (1) New or amended certificates of public convenience and necessity authorizing revisions to its storage service Rate Schedules SGS-1 and SGS-2, changes in its storage service levels for system supply and for storage customers under Rate Schedules SGS-1 and SGS-2, and construction and operation of a new meter station for delivery of natural gas to and from the Jackson Prairie storage field; and (2) permission and approval to abandon its existing Jackson Prairie meter station and a portion of its cushion gas in the Jackson Prairie storage field, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest requests the Commission to issue an order granting Northwest the following specific, interrelated authorizations: (1) Certificate authorization for Northwest to construct and operate a new Jackson Prairie meter station in Lewis County, Washington at the interconnection of Northwest's mainline facilities with the Jackson Prairie storage field pipeline operated by Washington Natural Gas Company (WNG). Northwest explains that the meter station will cost approximately $2.9 million and would be able to handle the increased storage field withdrawal capability proposed by WNG in Docket No. CP88-833, up to 450 MMcf/d firm plus up to 72 MMcf/d best efforts, while being able to provide deliveries to Jackson Prairie at essentially the same level as Northwest's existing meter station; (2) permission and approval for Northwest to abandon its existing Jackson Prairie meter station by removal of the facilities which would not be needed when the new meter station is operational; (3) blanket certificate authorization, with pre-granted abandonment upon expiration of applicable service agreements, for Northwest to provide additional open-access contract storage services under Rate Schedule SGS-2 utilizing: (a) Northwest's ownership share of the incremental expansion of the Jackson Prairie storage field capacity (766,668 Mcf storage capacity and 25,000 Mcf/d withdrawl capacity) and (b) Northwest's ownership share of the existing Jackson Prairie storage capacity which presently is certificated for Rate Schedule SGS-1 services to the extent that abandonment approval is hereafter received for such existing SGS-1 services; (4) certificate authorization to revise Northwest's SGS-2 Rate Schedule and form of service agreement thereunder to show that demand charges and capacity demand charges would not be applicable to SGS-2 services which utilize WNG's and The Washington Water Power Company's (WWP) owned capacity in the Jackson Prairie storage field; (5) certificate authorization for Northwest to utilize on an interruptible basis any unused injection and withdrawal capacity at Jackson Prairie and up to 1 Bcf of any available storage inventory capacity at Jackson Prairie for its system supply gas in order to help operationally balance its storage, sales and transportation services on a daily basis; (6) permission and approval to abandon 833,334 Mcf of cushion gas inventory in the Jackson Prairie storage field by conversion to working gas in the storage field for ultimate withdrawal and use as system supply. This volume represents Northwest's one-third ownership share of the 2.5 Bcf cushion gas decrease for the storage field which was proposed by WNG in Docket No. CP88-833; (7) certificate authorization to modify Rate Schedule SGS-1 storage service for WNG by increasing firm daily contract demand from 1,561,659 therms to 1,789,631 therms, decreasing best-efforts daily withdrawal volumes from 311,018 therms to 305,080 therms, increasing the maximum daily quantity (MDQ) Northwest shall be obligated to deliver to the South Seattle meter station from 572,350 therms to 743,000 therms, and adding the Duvall-Cottage Lake meter station as a delivery point with an MDQ of 56,540 therms; all in accordance with a new SGS-1 service agreement between Northwest and WNG, dated September 30, 1988; (8) certificate authorization to provide Rate Schedule SGS-2 storage service for Cascade Natural Gas Corporation (CNG) at a daily contract demand level of 150,000 therms and a seasonal capacity level of 4,800,000 therms; all in accordance with the *pro forma* proposed SGS-2 service agreement between Northwest and CNG. These service quantities are equivalent to the portion of WWP's ownership share of the incremental Jackson Prairie capacity proposed by WNG which WWP intends to release to CNG; (9) certificate authorization to modify Rate Schedule SGS-1 storage service for WWP by increasing firm daily contract demand from 680,000 therms to 762,000 therms, increasing firm seasonal capacity from 15,048,000 therms to 24,262,663 therms, decreasing best-efforts daily withdrawl volumes from 250,822 therms to 246,041 therms, and further conditioning Northwest's obligation to deliver the daily contract demand; all in accordance with a *pro firma* proposed new SGS-1 service agreement between Northwest and WWP. Northwest's concurrence to a new SGS-1 service agreement providing for increased service to WWP is contingent upon Pacific Gas Transmission Company (PGT) providing a requested transportation service from Stanfield, Oregon to Spokane, Washington for Northwest or the Commission acknowledging the inherent theoretical overcommitment of Northwest's firm capability to service WWP and explicitly absolving Northwest of any liability, other than the requisite demand charge adjustments under its tariff, its operational circumstances result in curtailments of SGS-1 service

to WWP; (10) certificate authorization to modify Rate Schedule SGS–1 storage services for CP National Corporation, CNG, Greeley Gas Company, Intermountain Gas Company, Northwest Natural Gas Company and Paiute Pipeline Company to: (a) Reflect the lower thermal quantities which result from application of an updated conversion factors (1028 Btu's per cubic foot instead of 1048) to the unchanged volumetric capacity allocated to these services; (b) further condition Northwest's obligation to deliver the daily contract demand to CPN and CNG; and (c) add the existing Aberdeen meter station as an SGS–1 delivery point to IGC with an MDQ of 25,000 therms, increase IGC's total MDQ's by an additional 4,191 therms and reallocate IGC's MDT's among the existing delivery points on its service agreement; all in accordance with the *pro forma* proposed new SGS–1 service agreements; (11) certificate authorization to revise Sections 5 and 10.4 of Rate Schedule SGS–1 and Section 5 and 8.2 of Rate Schedule SGS–2 to incorporate a modified formula tieing Northwest's daily delivery obligation for a customer to the amount of gas stored for the customer's account. The modified formula provides that Northwest's daily delivery obligation under an SGS–1 or SGS–2 service agreement would be at 100 percent of the contract demand under the service agreement only until 45 percent of the storage capacity volume under the service agreement is withdrawn (SGS–2) or delivered (SGS–1). For withdrawals or deliveries thereafter, Northwest's daily delivery obligation would be reduced by one percent of the contract demand for each additional one percent of the storage capacity volume withdrawn or delivered beyond said 45 percent. For the purpose of this calculation, the amount of storage capacity volume deemed to have been withdrawn or delivered under the service agreement is the volume equal to the full storage capacity covered by the service agreement less that actual volume of gas in storage for the customer's account under the service agreement on any day.

Comment date: July 11, 1989, in accordance with Standard Paragraph F at the end of this notice.

9. Northwest Pipeline Corporation

[Docket No. CP89–1580–000]

June 20, 1989.

Take notice that on June 6, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89–1580–000, pursuant to section 7(c) of the Natural Gas Act and section 157 of the Commission's Regulations, a petition for clarification of its existing certificate authorizations for open-access transportation and transportation on the system of Pacific Gas Transmission Company (PGT) or, in the alternative, a petition to amend those certificates to allow Northwest to provide open-access transportation to its sales delivery points located off PGT's pipeline, all as more fully set forth in the petition which is on file with the Commission and open to inspection.

Northwest states that pursuant to the certificate issued in Docket No. G–17350, PGT is authorized to transport, on a firm basis, up to 151,731 Mcf per day of natural gas from Kingsgate, British Columbia, for delivery to Northwest at the Spokane, Washington, interconnect with Northwest's Spokane Lateral and various points off PGT's transmission line in the states of Idaho, Washington and Oregon where Northwest has obligations to provide firm deliveries of sales and storage gas to Cascade Natural Gas Corporation (CNG), The Washington Water Power Company (WWP), and CP National Corporation (CPN). It is further stated that uncertainty over future availability of system supply at Kingsgate, coupled with a precipitous decline in Northwest's requirement for system supply in the current open-access transportation environment, have seriously eroded Northwest's confidence in its ability to rely upon displacement of system supply purchases at Kingsgate in order to continue guaranteeing firm deliveries of gas to delivery points located off PGT's system and off Northwest's Spokane Lateral.

Northwest avers that CPN, CNG and WWP would like Northwest to treat their off-PGT delivery points equivalently to their other delivery points with respect to the availability and flexibility of Northwest's sales and transportation service in order to take full advantage of Northwest's open-access status. Northwest states that with respect to that specific issue, the January 31, 1989, initial decision in Docket No. CP86–578–000, 46 FERC ¶ 63,006, involving Northwest's proposed gas inventory charge (GIC) created an exemption from the GIC for any customer requesting firm sales to transportation conversions at the off-PGT delivery points until Northwest is able to secure the right to use its firm transportation capacity on PGT to satisfy such conversion requests.

Further, Northwest states that CPN has elected to convert all of its remaining 7,000 MMBtu's per day of Rate Schedule ODL–1 sales contract demand to firm transportation subject to certain conditions. CPN's conditions primarily address its concern to maintain service to Klamath Falls, Oregon, its major market off the PGT system. Northwest requests that the Commission satisfy CPN's concerns prior to expiration of the existing sales service, by clarifying existing authority or granting new authority as necessary to allow transportation and storage gas to be delivered by Northwest and PGT to Klamath Falls. Accordingly, since Northwest's blanket transportation certificate and the PGT-Northwest transportation certificate do not unequivocally permit Northwest to provide the desired flexibility of service to off-PGT points, it is incumbent upon Northwest to seek the instant clarifications and/or authorizations.

Specifically, Northwest requests clarification that, in recognition of the up to 100 percent conversion opportunity mandated by 18 CFR 284.10(c)(3), its blanket transportation certificate implicitly authorized Northwest to utilize its certificated transportation service on PGT's system to implement conversions to open-access transportation at its off-PGT sales delivery points. It is suggested that this clarification apply only to the specific transportation agreements resulting from the CPN, CNG and WWP sales conversions and would be implemented by allowing such agreements to be amended to include off-PGT points at delivery points and Kingsgate as a receipt point.

With respect to the subject PGT transportation certificate, Northwest specifically requests clarification that it can tender for transportation under that authorization any gas which Northwest is authorized to transport off-PGT delivery points under its blanket transportation certificate.

Northwest alternatively requests that if the Commission declines to make the requested certifcate clarifications, the Commission amend Northwest's blanket transportation certificate and/or the PGT-Northwest transportation certificate to the extent necessary to explicitly authorize Northwest to provide transportation to off-PGT delivery points under its blanket certificate and to receive transportation service for customer owned gas under the PGT certificate to off-PGT points.

Northwest is proposing to use its transportation rights on PGT's system to allow service to Northwest's historic markets off-PGT to continue in circumstances where those markets would prefer transportation gas to sales gas. Northwest states that this flexibility would also ensure service to off-PGT markets at times when Northwest may not have system supply sales gas available, or possibly even sales authorization, to service those particular markets. Northwest asserts that the requested flexibility is mandatory to enable service to be maintained to CPN's Klamath Falls market after the October 1, 1989, effective date of CPN's 100 percent conversion of firm sales to firm transportation.

Comment date: July 11, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89–15085 Filed 6–26–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP89–1560–000, et al.]

ANR Pipeline Company, et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. ANR Pipeline Company

June 20, 1989.

[Docket No. CP89–1560–000]

Take notice that on June 2, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89–1560–000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88–532–000 pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

ANR proposes to transport gas on an interruptible basis for Sun Operating Limited Partnership (Sun), a marketer of natural gas. ANR explains that service commenced April 10, 1989, under the automatic authorization provisions of Section 284.223 of the Commission's Regulations, as reported in Docket No. ST89–3569. ANR states explains that the peak day quantity would be 95,000 dt equivalent, the average daily quantity would be 95,000 dt equivalent, and that the annual quantity would be 34,675,000 dt equivalent. ANR asserts that it would receive natural gas at designated points on its system in Oklahoma, offshore Texas and offshore Louisiana and would deliver equivalent volumes at designated points in Illinois, Indiana, Michigan, Iowa, Wisconsin, Kansas and Ohio.

Comment date: August 4, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. El Paso Natural Gas Company

[Docket No. CP89–1648–000]

June 20, 1989.

Take notice that on June 16, 1989, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP89–1648–000 a request pursuant to Section 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Cabot Energy Marketing Corporation (Cabot), under El Paso's blanket certificate issued in Docket No. CP88–433–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

El Paso requests authorization to transport, on an interruptible basis, up to a maximum of 105,000 MMBtu of natural gas per day for Cabot from any receipt point located on El Paso's system to various delivery points located at the borderline between the States of Arizona and California. El Paso anticipates transporting, on an average day 21,100 MMBtu and an annual volume of 7,701,500 MMBtu.

El Paso states that the transportation of natural gas for Cabot commenced April 20, 1989, as reported in Docket No. ST89–3516–000, for a 120–day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to El Paso in Docket No. CP88–433–000.

Comment date: August 4, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Panhandle Eastern Pipe Line Company

[Docket No. CP89–1638–000]

June 20, 1989.

Take notice that on June 15, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP89–1638–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a firm transportation service for Midland Cogeneration Venture, Limited Partnership (MCV), an end user, under the blanket certificate issued in Docket No. CP86–585–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

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Panhandle states that pursuant to a transportation agreement dated October 1, 1988, under its Rate Schedule PT, it proposes to transport up to 15,000 dekatherms (dt) per day equivalent of natural gas for MCV. Panhandle states that it would recieve the gas from various existing firm and optional interruptible points of receipt on its system as listed in Exhibit A of the agreement. It is further stated that Panhandle would transport and deliver such gas, less fuel used and unaccounted for line loss, to Michigan Gas Storage in Oakland County, Michigan.

Panhandle advises that service under § 284.223(a) commenced May 1, 1989, as reported in Docket No. ST89–3701. Panhandle further advises that it would transport 15,000 dt on an average day and 5,475,000 dt annually.

Comment date: August 4, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Panhandle Eastern Pipe Line Company

[Docket No. CP89–1640–000]

June 20, 1989.

Take notice that on June 15, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP89–1640–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a firm transportation service for Anadarko Trading Company (Anadarko), a marketer, under the blanket certificate issued in Docket No. CP86–585–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Panhandle states that pursuant to a transportation agreement dated May 1, 1989, under its Rate Schedule PT, it proposes to transport up to 100,000 dekatherms (dt) per day equivalent of natural gas for Anadarko. Panhandle states that it would receive the gas from various existing firm and optional interruptible points of receipt on its system as listed in Exhibit A of the agreement. It is further stated that Panhandle would transport and deliver such gas, less fuel used and unaccounted for line loss, to Haven Pool in Reno County, Kansas.

Panhandle advises that service under Section 284.223(a) commenced May 1, 1989, as reported in Docket No. ST89–3784. Panhandle further advises that it would transport 100,000 dt on an average day and 36,500,000 dt annually.

Comment date: August 4, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Texas Gas Transmission Corporation

[Docket No. CP89–1614–000]

June 20, 1989.

Take notice that on June 13, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89–1614–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Xebec Gas Company (Xebec), under Texas Gas' blanket certificate issued in Docket No. CP88–686–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Pursuant to a gas transportation agreement dated January 3, 1989, Texas Gas requests authorization to transport up to 20,000 MMBtu of natural gas per day for Xebec under its IT Rate Schedule. Texas Gas states that the agreement provides for it to receive the gas at various existing points of receipt along its system and deliver the gas to various existing points of delivery located in Illinois, Indiana and Kentucky. Xebec estimates that the average day and annual transportation quantities would be 1,800 MMBtu and 657,000 MMBtu, respectively. Texas Gas advises that the service commenced April 29, 1989, as reported in Docket No. ST89–3546–000, under § 284.223(a) of the Commission's Regulations.

Comment date: August 4, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Northern Natural Gas Company Division of Enron Corp.

[Docket No. CP89–1636–000]

June 20, 1989.

Take notice that on June 15, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP89–1636–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Superior Natural Gas Corporation (Superior), a marketer, under the blanket certificate issued in Docket No. CP86–435–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern states that pursuant to a transportation agreement dated May 12, 1989, under its Rate Schedule IT–1, it proposes to transport up to 20,000 MMBtu per day equivalent of natural gas for Superior. Northern states that it would transport the gas from multiple receipt points as shown in the transportation agreement and would deliver the gas to multiple delivery points also shown in the agreement.

Northern advises that service under § 284.223(a) commenced May 12, 1989, as reported in Docket No. ST89–3843–000 (filed June 7, 1989). Northern further advises that it would transport 15,000 MMBtu on an average day and 7,300,000 MMBtu annually.

Comment date: August 4, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. El Paso Natural Gas Company

[Docket No. CP89–1647–000]

June 20, 1989.

Take notice that on June 16, 1989, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP89–1647–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Union Oil Company of California (Union), a producer, under the blanket certificate issued in Docket No. CP88–433–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

El Paso states that pursuant to a transportation agreement dated April 10, 1989, under its Rate Schedule T–1, it proposes to transport up to 86,000 MMBtu per day equivalent of natural gas for Union. El Paso states that it would transport the gas from any receipt point on its system, as provided in Exhibit "A" of the transportation agreement, and would deliver the gas to delivery points on the borderline between the States of Arizona and California, as shown in Exhibit "B" of the agreement.

El Paso advises that service under § 284.223(a) commenced April 27, 1989, as reported in Docket No. ST89–3517. El Paso further advises that it would transport 45,000 MMBtu on an average day and 16,425,000 MMBtu annually.

Comment date: August 4, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. Trunkline Gas Company

[Docket No. CP89–1602–000]

June 21, 1989.

Take notice that on June 12, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP89–1602–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Anadarko Trading Company (Anadarko), a shipper and marketer of natural gas, under Trunkline's blanket certificate issued in Docket No. CP86–586–000 pursuat to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Trunkline states that pursuant to a Transportation Agreement dated March 27, 1989, between Trunkline and Anadarko (Agreement), it would transport up to 70,000 dekatherms (Dt) per day equivalent of natural gas for Anadarko. Trunkline further states that the Agreement provides for Trunkline to receive the natural gas from Anadarko at East Cameron 359, offshore Louisiana. Trunkline would then transport and redeliver the natural gas, less fuel and unaccounted-for line loss, to Stingray Subsea in East Cameron 338, offshore Louisiana.

Trunkline states that Anadarko has indicated that the estimated average day and estimated annual volumes that would be transported would be 70,000 Dt and 25,550,000 Dt, respectively.

Trunkline states that it commenced that transportation of natural gas for Anadarko on April 11, 1989, as reported in Docket No. ST89–3287, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations (18 CFR 284.223(a)).

Comment date: August 7, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. Panhandle Eastern Pipe Line Company

[Docket No. CP89–1639–000]

June 21, 1989.

Take notice that on June 15, 1989, Panhandle Eastern Pipe Line Company, (Panhandle) P.O. Box 1642, Houston, Texas, 77251–1642 filed in Docket No. CP89–1639–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Mobil Natural Gas, Inc. (Mobil), under its blanket authorization issued in Docket No. CP86–585–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle would perform the proposed interruptible transportation service for Mobil, a shipper and marketer of natural gas, pursuant to a transportation agreement for interruptible service under Rate Schedule PT dated April 10, 1989 (Contract No. P–PLT–2738). The term of the transportation agreement is for a primary term of one month from the initial date for service, and shall continue in effect month-to-month thereafter until terminated by either party upon at least 30 days' prior notice to the other party. Panhandle proposes to transport on a peak day up to 200,000 dekatherm equivalent; on an average day up to 200,000 dekatherm equivalent; and on an annual basis 73,000,000 dekatherm equivalent of natural gas for Mobil. Panhandle proposes to receive the subject gas from various exiting points of receipt on its system. The volumes would be transported and redelivered, less fuel used and unaccounted for line loss, to Haven Pool in Reno County, Kansas. Panhandle proposes to charge the then effective, applicable rates and charges under its PT rate schedule. Panhandle avers that no new facilities nor expansion of existing facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Panhandle commenced such self-implementing service on May 1, 1989, as reported in Docket No. ST89–3650–000.

Comment date: August 7, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. United Gas Pipe Line Company

[Docket No. CP89–1645–000]

June 21, 1989.

Take notice that on June 15, 1989, United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP89–1645–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to perform an interruptible transportation service for Texaco Gas Marketing (Texaco), a marketer, under United's blanket certificate issued in Docket No. CP88–6–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United states that pursuant to a transportation service agreement dated July 22, 1988, as amended, it proposes to receive up to 100,000 Mcf per day from Texaco at specified points located in Texas and in onshore and offshore Louisiana and redeliver the gas at specified points located in Louisiana, Texas, Alabama, Mississippi, and Florida. United states that the peak day and average day volumes would be 103,000 dt equivalent of natural gas and that the annual volumes would be 37,595,000 dt equivalent of natural gas. It is stated that on May 5, 1989, United initiated a 120-day transportation service for Texaco under § 284.223(a) as reported in Docket No. ST89–3750–000.

United further states that no facilities need be constructed to implement the service. United states that the primary term of the transportation service would expire one month from the date of first delivery but that the service would continue on a month-to month basis until terminated. United proposes to charge rates and abide by the terms and conditions of its Rate Schedule ITS.

Comment date: August 7, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. Texas Gas Transmission Corporation

[Docket No. CP89–1635–000]

June 21, 1989.

Take notice that on June 15, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89–1635–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of James River Corporation (James River), for their Brownsville Plant under its blanket authorization issued in Docket No. CP88–686–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas would perform the proposed interruptible transportation service for James River, pursuant to an interruptible transportation service agreement date November 23, 1988. The transportation agreement is effective through November 1988, and month to month thereafter until terminated by either party on thirty days written notice. Texas Gas proposes to transport 4,500 MMBtu on a peak day; approximately 415 MMBtu on an average day; and on annual basis

approximately 150,000 MMBtu of natural gas for James River. Texas Gas proposes to transport the subject gas from receipt points located in the states of Arkansas, Illinois, Indiana, Kentucky, Louisiana, Offshore Louisiana, Ohio, Tennessee, Texas and Offshore Texas. Texas Gas proposes to deliver the gas to James River at the existing interconnection with Consolidated Gas Transmission Corporation located in Warren County, Ohio.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Texas Gas commenced such self-implementing service on May 1, 1989, as reported in Docket No. ST89-3445-000.

Comment date: August 7, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. Texas Gas Transmission Corporation

[Docket No. CP89-1633-000]

June 21, 1989.

Take notice that on June 15, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-1633-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for James River Corporation—South Glens Falls (James River-South Glens) under its blanket certificate issued in Docket No. CP88-686-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Gas states pursuant to a Gas Transportation Agreement dated November 23, 1988, between Texas Gas and James River-South Glens (Agreement) it would transport on a peak day up to 4,500 MMBtu of natural gas for James River-South Glens. Texas Gas further states that the estimated average daily quantity and estimated annual volumes that would be transported would be 1,400 MMBtu and 500,000 MMBtu, respectively.

Texas Gas states that it would receive the natural gas from James River-South Glens at points of receipt in offshore Louisiana and offshore Texas and in the states of Arkansas, Illinois, Indiana, Kentucky, Louisiana, Ohio, Tennessee, and Texas and would redeliver the natural gas in the state of Ohio.

Texas Gas indicates that it commenced the transportation of natural gas for James River-South Glens on May 1, 1989, as reported in Docket No. ST89-3548, for 120-day period pursuant to § 284.223(a) of the Commission's Regulations (18 CFR 284.223(a)).

Comment date: August 7, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. Texas Gas Transmission Corporation

[Docket No. CP89-1691-000]

June 21, 1989.

Take notice that on June 15, 1989, Texas Gas Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-1633-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act to provide interruptible transportation service for Manville Sales Corporation (Manville Sales) under the blanket certificate issued in Docket No. CP88-686-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Gas indicates that service commenced April 20, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-3429 and estimates 20,000 MMBtu of gas volumes to be transported on a peak day, 10,000 MMBtu on an average day, and up to 3,650,000 MMBtu on an annual basis.

Comment date: August 7, 1989, in accordance with Standard Paragraph G at the end of this notice.

14. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1644-000]

June 21, 1989.

Take notice that on June 15, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston Texas 77251, filed in Docket No. CP89-1644-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP86-585-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Panhandle proposes to transport natural gas on an interruptible basis for Anadarko Trading Company (Anadarko). Panhandle explains that service commenced May 1, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-3732. Panhandle explains that the peak day quantity would be 150,000 Dt., the average daily quantity would be 100,000 Dt., and that the annual quantity would be 365,000,000 dekatherms. Panhandle explains that it would receive natural gas for Anadarko's account at various existing receipt points on its system. Panhandle states that it would redeliver the gas to Haven Pool in Reno County, Kansas.

Comment date: August 7, 1989, in accordance with Standard Paragraph G at the end of this notice.

15. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1642-000]

June 21, 1989.

Take notice that on June 15, 1989, Panhandle Eastern Pipe Line Company (Panhandle, P.O. Box 1642, Houston, Texas 77251, filed in Docket No. CP89-1642-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP86-585-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Panhandle proposes to transport natural gas on an interruptible basis for Mountain Iron and Supply Company (Mountain Iron). Panhandle explains that service commenced May 1, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-3699. Panhandle explains that the peak day quantity would be 100,000 Dt., the average daily quantity would be 10,000 Dt., and that the annual quantity would be 3,650,000 dekatherms. Panhandle explains that it would receive natural gas for Mountain Iron's account at various existing receipt points on its system. Panhandle states that it would redeliver the gas to Haven Pool in Reno County, Kansas.

Comment date: August 7, 1989, in accordance with Standard Paragraph G at the end of this notice.

16. Colorado Interstate Gas Company

[Docket No. CP89-1621-000]

June 21, 1989.

Take notice that on June 13, 1989, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP89-1621-000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act, to transport on an interruptible basis under its blanket certificate Docket No. CP89-589, a maximum of 6,000 Mcf of natural gas for Santa Fe Minerals, a division of Santa Fe International Corp. ("Santa Fe Minerals"), all as more fully set forth in the request on file with the Commission and open to public inspection.

CIG indicates that service commenced March 14, 1989, under § 284.223(a) of the Commission Regulations, as reported in Docket No. ST89-3125-000 and estimates the volumes transported to be 6,000 Mcf per day on peak day, 3,000 Mcf on an average day and 1,095 MMcf on an annual basis.

CIG states that it would receive gas at existing points of receipt on its systems in Kansas, and redeliver that gas, less fuel gas and lost and unaccounted-for gas, for the account of Santa Fe Minerals in Moore County, Texas.

Comment date: August 7, 1989, in accordance with Standard Paragraph G at the end of this notice.

17. El Paso Natural Gas Company

[Docket No. CP89-1540-000]

June 21, 1989.

Take notice that on May 30, 1989, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed an application in Docket No. CP89-1540-000, under Section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing the construction, uprate and operation of loop pipeline, compression and metering facilities, with associated appurtenances, on a segment of El Paso's existing California Mainline interstate transmission pipeline system (hereinafter referred to as the "California Mainline System") to facilitate the delivery of additional volumes of natural gas to Southern California Gas Company (SoCal), all as more fully set forth in the application on file with the Commission and open to public inspection.

The application states that El Paso's existing certificated California Mainline System is comprised, *inter alia*, of: (i) approximately 3,127 miles of pipeline ranging in size from 12¾ inch O.D. to 36 inch O.D. and extending from El Paso's Keystone Compressor Station in the State of Texas to El Paso's Wenden Compressor Station located in La Paz County, Arizona, thence to a point of interconnection between El Paso's interstate mainline system and SoCal's natural gas transmission facilities located at the boundary between the States of Arizona and California near Blythe, California; and (ii) approximately 423,660 compressor horsepower installed at twenty-six (26) mainline compressor stations. The presently authorized maximum summer capacity of El Paso's California Mainline System is a nominal 1,493.6 MMcf per day.

The application further states that El Paso understands that SoCal has actively participated in the Public Utilities Commission of the State of California's (CPUC) proceeding instituting an investigation into interstate natural gas pipelines' supply and capacity availabilities into the State of California. The CPUC's order instituting this investigation noted that the advent of open-access transportation programs on interstate pipelines may have altered the capacity requirements of local distribution companies and other shippers receiving gas at the California border such that capacity requirements today may be different from those of natural gas distributors and consumers in the gas industry's previous form, where interstate pipelines performed a gas merchant function as well as a transportation function. The CPUC's order questioned whether it was reasonable to expect the same level of interstate pipeline performance or efficiency in capacity utilization under open access service conditions. As a part of the CPUC's order, the CPUC then directed SoCal and other CPUC-regulated utilities, to examine these issues and to determine whether new capacity additions were necessary.

In light of these expressed policy statements issued by the CPUC, SoCal has advised El Paso that it has decided to undertake an expansion of capacity on its system and that it has notified the CPUC of such decision. El Paso understands that SoCal intends to reconfigure and expand its transmission system in a manner that will permit SoCal to accept an additional 200 MMcf per day from its interconnection with El Paso's facilities at the California/Arizona border near Blythe, California.[1] In this regard, El Paso has evaluated its ability to deliver an additional 200 MMcf per day at the Ehrenberg Delivery Point and has determined that the available capacity of the short segment of its California Mainline System extending from its Wenden Compressor Station to the Ehrenberg Delivery Point is not adequate to permit the delivery of the additional 200 MMcf per day. Accordingly, El Paso and SoCal have entered into a Letter Agreement dated April 14, 1989, which sets forth the mutual agreement of El Paso and SoCal as to the expansion of El Paso's delivery capacity and SoCal's receipt of this capacity at the Ehrenberg Delivery Point.

In order to provide additional capacity sufficient to permit the delivery of 200 MMcf per day to SoCal at the Ehrenberg Delivery Point by November 1990, El Paso proposes to construct and operate: (i) Approximately 12.96 miles of 30 inch O.D. loop pipeline on El Paso's existing 30 inch O.D. California 1st Loop Line; (ii) a 5,300 horsepower gas turbine-driven centrifugal compressor unit at its Wenden Compressor Station; and (iii) two (2) additional 16 inch O.D. meter runs at the Ehrenberg Meter Station. Additionally, El Paso will be required to hydrostatically test approximately 10.60 miles of existing 26 inch O.D. California Line and 30 inch O.D. California 1st Loop Line in order to increase the maximum allowable operating pressure of such pipeline to permit an uprate in the operating pressure from 806 psig to 846 psig. El Paso also proposes to construct and operate certain pressure monitors under the authority of Section 2.55(a) of the Commission's Statements of General Policy and Interpretations. All the facilities proposed herein to be constructed, uprated and operated are estimated to cost $13,232,280, said proposal will be financed through internally generated funds.

The facilities proposed herein to be constructed, uprated and operated are required to provide El Paso with the facility capacity necessary to accommodate the increase in delivery capability to SoCal's system. Such additional facilities will provide additional market access to shippers into SoCal's system, and will enhance El Paso's ability to deliver additional volumes at the Ehrenberg Delivery Point, with a corresponding enhancement of the effective utilization of El Paso's entire interstate system. As demonstrated by the Report on Environmental factors, the proposed construction will have no significant adverse environmental impact.

Comment date: July 12, 1989, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North

[1] SoCal's projected capital investment would consist of primarily the looping of portions of SoCal's southern system in three (3) separate segments (consisting of a total of 30.3 miles of 30-inch pipeline and 24.4 miles of 36-inch pipeline). Also required as part of the SoCal system expansion is the "re-wheeling" of units at three (3) compressor stations. SoCal estimates the cost of the southern system expansion to be approximately $44,100,000.

Capitol Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-15172 Filed 6-26-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CS71-92-001, et al.]

TGX Corp. (Temex Energy , Inc.), et al., Applications for Small Producer Certificates [1]

June 20, 1989

Take notice that each of the Applicants listed herein has filed an application pursuant to Section 7(c) of the Natural Gas Act and § 157.40 of the Commission's regulations thereunder for a small producer certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before July 5, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

Docket No.	Date filed	Applicant
CS87-13-000...	[2] 5-31-89	Permian Resources, Inc./ aka Earl R. Bruno and Bruno and Marshall Investments, (Permian Resources, Inc./ aka Earl R. Bruno), P.O. Drawer 590, Midland, Texas 79702.
CS89-32-000...	5-26-89	Centurion Energy Corporation, P.O. Box 11144, Midland, Texas 79702.
CS89-33-000...	5-23-89	Seafirst America Corporation, 800 Fifth Avenue, 29th Floor, Seattle, Washington 98104.
CS89-34-000...	6-5-89	M. S. Energy, Rt. 4, 201 Yucca, Midland, Texas 79701.
CS89-36-000...	6-12-89	Hal Rasmussen, Operating, Inc., Six Desta Drive, Suite 5650, Midland, Texas 79705.

[1] By letter dated May 11, 1989, Applicant states that effective August 8, 1988, Temex Energy, Inc., was merged into TGX Corporation and Temex Energy, Inc., ceased to exist.

[2] By letters dated January 26, 1989, and May 26, 1989, Applicant requests that the small producer certificate in Docket No. CS86-25-000 be amended to reflect THE CASWELL SILVER PARTNERSHIP as the certificate holder in lieu of CASWELL SILVER.

[3] By letter dated May 26, 1989, Applicant requests that the small producer certificate in Docket No. CS87-13-000 be amended to include Bruno and Marshall Investments.

[FR Doc. 89-15174 Filed 6-26-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI89-423-000, et al.]

Marathon Oil Co., et al.; Applications for Certificates and Abandonment of Service [1]

June 20, 1989.

Take notice that each of the Applicants listed herein has filed an application pursuant to Section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before July 10, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

Filing Code:
A—Initial service
B—Abandonment
C—Amendment to add acreage
D—Assignment of acreage
E—Succession
F—Partial succession

Docket No. and date filed	Applicant	Purchaser and location	Description
CI89-423-000..... (CI79-450) B 5-22-89	Marathon Oil Company, P.O. Box 3128, Houston, TX 77253.	ANR Pipeline Company, High Island Block A-279 Field, Offshore, Louisiana.	All wells plugged and abandoned.
CI89-425-000..... E 5-26-89	Grace Petroleum, Corporation, 6501 N. Broadway, Oklahoma City, OK 73116.	Transcontinental Gas Pipe Line Corporation, East Lake Decade Field, Terrebonne Parish, Louisiana.	Acreage acquired 10-1-88 from Bois D'Arc Resources, *et al.*
CI89-436-000..... E 6-5-89	Exxon Corporation, P.O. Box 2180, Houston, TX 77252-2180.	El Paso Natural Gas Company, West Levelland Field, Cochran County, Texas.	Acreage acquired 1-1-88 from Westland Oil Development Corporation and Westland Oil & Gas Properties, Inc.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

[FR Doc. 89-15173 Filed 6-26-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-50-000, et al.]

Florida Gas Transmission Co.; Informal Settlement Conference

June 20, 1989.

Take notice that an informal settlement conference will be convened in the above-captioned proceeding on July 12 and 13, 1989, at 10:00 a.m. at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC.

Participants, as defined by 18 CFR 385.102(b), are invited to attend. For additional information contact Donald A. Heydt, (202) 357-8570, or John J. Keating, (202) 357-5762.

Lois D. Cashell,

Secretary.

[FR Doc. 89-15086 Filed 6-26-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-158-002, RP89-12-005, TM89-3-25-001]

Mississippi River Transmission Corp.; Proposed Changes in FERC Gas Tariff

June 20, 1989

Take notice that on June 15, 1989, Mississippi River Transmission Corporation ("MRT") tendered for filing the following tariff sheets to its FERC Gas Tariff. Second Revised Volume No. 1:

Tariff sheet	Proposed effective date
Substitute third revised Sheet No. 4A.1.	May 1, 1989
Alternate Substitute third revised Sheet No. 4A.2.	May 1, 1989
Substitute original Sheet No. 4A.3	May 1, 1989

MRT states that its filing is being submitted to comply with the Commission's May 26, 1989 Order Accepting and Suspending Tariff Sheets subject to Refund and Conditions and the Commission's June 8, 1989 Order Accepting Tariff Sheets for Filing, and Rejecting Other Tariff Sheets.

MRT states that its filing is being submitted without prejudice to its continuing challenges to the requirements that it pay various of the subject costs which it is here proposing to recover, and that it allocate and recover such costs on the basis of the cumulative purchase deficiency methodology as previously required by the Commission.

MRT states that copies of its filing have been served on all jurisdictional sales customers and interested state commissions. Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such protests should be filed on or before June 27, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-15087 Filed 6-26-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-196-000]

Northwest Pipeline Corp.; Proposed Change in FERC Gas Tariff

June 20, 1989

Take notice that on June 14, 1989, Northwest Pipeline Corporation ("Northwest") submitted for filing, to be a part of its FERC Gas Tariff, the following tariff sheets:

First Revised Volume No. 1

Substitute Fifth Revised Sheet No. 33
Substitute Fourth Revised Sheet No. 41
Substitute First Revised Sheet No. 110
Second Revised Sheet. No. 112
Substitute Third Revised Sheet No. 117
Substitute Second Revised Sheet No. 118
Substitute Second Revised Sheet No. 119

Original Volume No. 1-A

Eighteenth Revised Sheet No. 201
Fifth Revised Sheet No. 400
Substitute Second Revised Sheet No. 417
Original Sheet No. 417-A
Substitute Third Revised Sheet No. 418
Substitute First Revised Sheet No. 418-A
Substitute Original Sheet No. 418-B
Substitute Fifth Revised Sheet No. 419

Substitute First Revised Sheet No. 420
Original Sheet No. 420-A
Substitute Second Revised Sheet No. 421

Northwest states that the aforementioned sheets were filed to revise the existing nomination, determination of deliveries, imbalances, penalties, and unauthorized overrun provisions currently stated in Northwest's FERC Gas Tariff, First Revised Volume No. 1 and Original Volume No. 1-A. Northwest has requested an effective date of August 1, 1989 for the tendered sheets.

A copy of this filing is being served on Northwest's jurisdictional sales and transportation customers and affected state commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 27, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-15088 Filed 6-26-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 9009-002]

Pan Pacific Hydro, Inc.; Surrender of Exemption from Licensing

June 20, 1989

Take notice that Pan Pacific Hydro, Inc., exemptee for the proposed Cherry Flat Project No. 9009, requested by letter filed May 15, 1989, that it's exemption be terminated. No construction has commenced at the project site. The project would have been located on the exemptee's land on Stuarts Fork Creek in Trinity County, California. The exemptee states that a preliminary study found that the project would not be economically feasible to develop at this time.

The exemption for Project No. 9009 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the exemption shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 89-15089 Filed 6-26-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-162-001]

Ringwood Gathering Co.; Compliance Filing

June 20, 1989.

Take notice that on June 15, 1989, Ringwood Gathering Company (Ringwood) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets:

First Substitute Fourth Revised Sheet No. 1
First Substitute First Revised Sheet No. 2
First Substitute First Revised Sheet No. 3
First Substitute First Revised Sheet No. 26
First Substitute Twelfth Revised Sheet No. 59
First Substitute First Revised Sheet No. 89
First Substitute Original Sheet No. 89-A
First Substitute First Revised Sheet No. 101
First Substitute First Revised Sheet No. 110
First Substitute First Revised Sheet No. 121

By means of the above tariff sheets, Ringwood proposes to comply with ordering paragraph (A) of the Commission's May 31, 1989 order in Docket No. RP89-162-000.

Copies of this filing have been served on all parties and the appropriate state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before June 27, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-15090 Filed 6-26-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-163-002]

Williams Natural Gas Co.; Proposed Changes in Commission Gas Tariff

June 20, 1989

Take notice that on June 15, 1989, Williams Natural Gas Company (WNG) filed revised tariff sheets to correct certain errors or omissions contained in: (1) the tariff sheets submitted in Volume IA, and (2) Statement G, Summary, and Statement G-2, Summary, as filed on May 31 in Volume II. The revised tariff sheets are proposed by WNG to be effective July 1, 1989.

WNG states that copies of the filing are being served on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before June 27, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-15091 Filed 6-26-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82-114-018]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

June 20, 1989

Take notice that on June 13, 1989, Williams Natural Gas Company (WNG) tendered for filing certain revised tariff sheets to its FERC Gas Tariff.

WNG states that April 4, 1989 and May 1, 1989 filings addressed in the Commission's June 8, 1989 order in this docket did not include the most recently updated cost of gas subsequently filed in WNG's annual PGA proceeding in Docket No. TA89-1-43 or the Take-Or-Pay Volumetric Surcharge (Top Surcharge) subsequently proposed in WNG's Order No. 500 proceeding in Docket No. RP89-140-000. WNG further states that the instant filing is being made to conform the May 1 filing to the April 4 base rates and to reflect the TA89-1-43 cost of gas and the RP89-140 TOP Surcharge. WNG explains that the Article 21 PGA Surcharge Adjustment is reflective of WNG's compliance filing made May 30, 1989 in Docket NO. TA89-1-43 which has not received Commission action and that the Article 29 TOP Surcharge is reflective of WNG's compliance filing made May 30, 1989 in Docket No. RP89-140 which has not received Commission action.

WNG proposes that the instant filing be effective June 1, 1989. In the event the rates filed in the compliance filings mentioned above are revised, WNG states that it will revise the instant filing to reflect any such revisions.

WNG states that copies of the filing were mailed to all of WNG's jurisdictional customers, and interested state commissions, as well as the parties listed on the Commission's official service list compiled in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulation Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such protests should be filed on or before June 27, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-15092 Filed 6-26-89; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in §§ 560.7 and/or 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before comunicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 003-010071-006.

Title: The Cruise Lines International Association Agreement.

Parties:

Admiral Cruises
Aloha Pacific Cruises
American Hawaii Cruises
Bermuda Star Line
Carnival Cruise Lines
Chandris Fantasy Cruises
Clipper Cruise Line
Commodore Cruise Line, Ltd.
Costa Cruises
Crown Cruise Line
Crystal Cruises
Cunard Line, Ltd.
Cunard/Norwegian American Cruises
Cunard Sea Goddess
Delta Queen Steamboat Co.
Dolphin Cruise Line
Dolphin Hellas Cruises
Epirotiki Lines, Inc.
Holland America Line
Norwegian Cruise Line
Ocean Cruise Lines, Inc.
Oceanic Cruises
Ocean Quest International
Pearl Cruises of Scandinavia, Inc.
Premier Cruise Lines
Princess Cruises/(SITMAR Cruises)
Regency Cruises
Royal Caribbean Cruise Line, Inc.
Royal Cruise Line
Royal Viking Line
Seabourn Cruise Line
Sea Venture Cruises
Society Expeditions Cruises
Sun Line Cruises
Windstar Sail Cruises
World Explorer Cruises

Synopsis: The proposed modification would add Ocean Quest International as a party to the Agreement, and would delete Aloha Pacific Cruises, and Sea Venture Cruises as parties to the Agreement. It would also make other nonsubstantive changes.

Filing Party: James G. Godsman, President, Cruise Lines International Association, 500 Fifth Avenue, Suite 1407, New York, NY 10110.

By Order of the Federal Maritime Commission

Ronald D. Murphy,

Assistant Secretary.

Dated: June 22, 1989.

[FR Doc. 89-15142 Filed 6-26-89; 8:45 am]

BILLING CODE 6730-01-M

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1964.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 232-011230-011.

Title: V.A.G. Transport/Tecomar Reciprocal Space Charter and Sailing Agreement.

Parties:

V.A.G. Transport GmbH
Tecomar S.A.

Synopsis: The proposed modification would add Pacific Coast ports to the geographic scope of the Agreement.

By Order of the Federal Maritime Commission.

Ronald D. Murphy,

Assistant Secretary.

Dated: June 22, 1989.

[FR Doc. 89-15143 Filed 6-26-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Barnett Banks, Inc., et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or

through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 14, 1989.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Barnett Banks, Inc., Jacksonville, Florida; to engage *de novo* through a proposed new subsidiary in making, acquiring, and servicing loans or other extensions of credit, directly or for the account of others, such as would be made by a consumer finance company pursuant to § 225.25(b)(1)(i) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Grand Bank Financial Corporation, Grand Rapids, Michigan; to engage *de novo* through its subsidiary, Grand Financial Associates, Inc., Grand Rapids, Michigan, in acting as an independent intermediary for the purpose of arranging mortgages and other extensions of credit for prospective borrowers with unaffiliated institutional lenders in exchange for a service fee pursuant to § 225.25(b)(1) of the Board's Regulation Y.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Landmark Bancshares Corporation, St. Louis, Missouri; to engage *de novo* through its subsidiary, Landmark BVI Limited, St. Louis, Missouri, in (i) carrying on the business of insurance and reinsurance companies; (ii) acting as agent and broker for insurance companies and syndicates; (iii) accepting risks, settling claims, soliciting business and all other matters incidental thereto; all of which shall be directly related to extensions of credit by Applicant or any of its subsidiaries and limited to assuring repayment of the outstanding balance due on such extensions of credit in the event of death, disability, or involuntary unemployment of the respective debtor pursuant to § 225.25(b)(8) of the Board's Regulation Y. These activities will be conducted in the states of Illinois and Missouri.

Board of Governors of the Federal Reserve System, June 21, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-15125 Filed 6-26-89; 8:45 am]

BILLING CODE 6210-01-M

First Union Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843 (c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any question of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 14, 1989.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. First Union Corporation, Charlotte, North Carolina; to merge with Florida National Banks of Florida, Inc., Jacksonville, Florida, and thereby indirectly acquire Florida National Bank, Jacksonville, Florida, and Kingsley Bank, Orange Park, Florida.

In connection with this application, Applicant also proposes to acquire Florida Investment Management Company, Jacksonville, Florida, and thereby engage in investment advisory services, including management and supervision of investment portfolios on both a discretionary and non-discretionary basis pursuant to § 225.25(b)(3); and providing portfolio investment advice pursuant to § 225.25(b0(4) of the Board's Regulation Y. Applicant also proposes to acquire Florida National Insurance Services, Inc., Jacksonville, Florida, and thereby engage in underwriting, as reinsurer, of credit-related life and credit-related accident, health and disability insurance in connection with extensions of credit by the banking subsidiaries of Florida National Banks of Florida, Inc., Jacksonville, Florida, pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 21, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-15126 Filed 6-26-89; 8:45 am]

BILLING CODE 6210-01-M

Livingston Southwest Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1843) and section 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than July 14, 1989.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Livingston Southwest Corporation, Chicago, Illinois, and Livingston & Company Southwest, L.P., Chicago, Illinois; to acquire up to 76.62 percent of the voting shares of First National Bank of North County, Carlsbad, California.

Board of Governors of the Federal Reserve System, June 21, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-15127 Filed 6-26-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee Meeting of the Microbiology Devices Panel

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meeting

The following advisory committee meeting is announced:

Microbiology Devices Panel

Date, time, and place. July 31, 1989, 9 a.m., Rm. 800, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m., to 5 p.m.; Joseph L. Hackett, Center for Devices and Radiological Health (HFZ-440), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7550.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before June 30, 1989, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss a premarket approval application for an over-the-counter group A *Streptococcus* device.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contract person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI-35), Food and Drug Administration, Rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Docket Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address

above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: June 8, 1989.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-15139 Filed 6-26-89; 8:45 am]

BILLING CODE 4160-01-M

Open Meeting of the Commissioner with Representatives of Health Professional Organizations

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a forthcoming open meeting of the Commissioner of Food and Drugs with representatives of health professional organizations. The meeting will be chaired by Commissioner Frank E. Young. The agenda is food safety and nutrition. Presentations will focus on pesticides in foods, microbiological contamination, tampering, food labeling, and health claims on foods.

DATE: The meeting will be held on Monday, July 10, 1989, 2:30 p.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at the Hubert H. Humphrey Bldg., Conference Room 703A, 200 Independence Ave. SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Robert Veiga, Office of Health Affairs (HFY-40) Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5470.

Dated: June 20, 1989.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-15095 Filed 6-26-89; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget for Clearance

AGENCY: Health Care Financing Administration.

The Department of Health and Human Services (HHS) previously published a list of information collection packages it submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (Pub. L. 96-511). The Health Care Financing Administration (HCFA), a component of HHS, now publishes its own notices as the information collection requirements are submitted to OMB. The HCFA has submitted the following requirements to OMB since the last HCFA list was published on April 28, 1989.

1. *Type of Request:* Reinstatement; *Title of Information Collection:* Home Health Agency Cost Report; *Form Number:* HCFA-1728-88; *Frequency:* Annually; *Respondents:* Businesses or other for profit; *Estimated Number of Responses:* 6,000; *Average Hours per Response:* 160; *Total Estimated Burden Hours:* 960,000.

2. *Type of Request:* New; *Title of Information Collection:* Pilot Study—Outcomes Management for Health Maintenance Organizations; *Form Number:* HCFA-R-125; *Frequency:* On occasion; *Respondents:* Individuals or households; *Estimated Number of Responses:* 1,066; *Average Hours per Response:* .233; *Total Estimated Burden Hours:* 249.

3. *Type of Request:* Revision; *Title of Information Collection:* Hospital and Hospital Health Care Complex Cost Report; *Form Number:* HCFA-2552-Demo; *Frequency:* Annually; *Respondents:* Businesses or other for profit, non-profit institutions, and small businesses or organizations; *Estimated Number of Responses:* 700; *Average Hours per Response:* 8 (Reporting) and 142 (Recordkeeping); *Total Estimated Burden Hours:* 5,600 (Reporting) and 99,400 (Recordkeeping) = 105,000 Total.

4. *Type of Request:* Reinstatement; *Title of Information Collection:* Request for Review of Part B Medicare Claim; *Form Number:* HCFA-1964; *Frequency:* On occasion; *Respondents:* Individuals/households; *Estimated Number of Responses:* 5,700,000; *Average Hours per Response:* .25; *Total Estimated Burden Hours:* 1,425,000.

5. *Type of Request:* Extension; *Title of Information Collection:* Information Collection Requirements—Conditions of Participation for Rural Health Clinics; *Form Number:* HCFA-R-38; *Frequency:* Annually; *Respondents:* Small businesses/organizations; *Estimated Number of Responses:* 462; *Average Hours per Response:* 2.28; *Total Estimated Burden Hours:* 1,054.

6. *Type of Request:* Reinstatement; *Title of Information Collection:* Information Collection Requirements—Physician/Supplier Background Information; *Form Number:* HCFA-R-88; *Frequency:* On occasion; *Respondents:* State/local governments and businesses/other for profit; *Estimated Number of Responses:* 30,474; *Average Hours per Response:* .25; *Total Estimated Burden Hours:* 7,617.

7. *Type of Request:* Extension; *Title of Information Collection:* Corrective Action Plan; *Form Number:* HCFA-320; *Frequency:* Annually; *Respondents:* State/local governments; *Estimated Number of Responses:* 55; *Average Hours per Response:* 368 (Reporting) and 32 (Recordkeeping); *Total Estimated Burden Hours:* 20,240 (Reporting) and 1,760 (Recordkeeping) = Total 22,000.

8. *Type of Request:* Extension; *Title of Information Collection:* Medicaid Eligibility Quality Control Re-review Process; *Form Number:* HCFA-9010; *Frequency:* Monthly; *Respondents:* State/local governments; *Estimated Number of Responses:* 9,677; *Average Hours per Response:* .25; *Total Estimated Burden Hours:* 2,419.

9. *Type of Request:* Unapproved, in use; *Title of Information Collection:* Request for Medical Review Information for Part B Outpatient Bills; *Form Number:* HCFA-9027; *Frequency:* On occasion; *Respondents:* Businesses/other for profit and small businesses/organizations; *Estimated Number of Responses:* 4,649,831; *Average Hours per Response:* .5; *Total Estimated Burden Hours:* 2,324,155.

10. *Type of Request:* Extension; *Title of Information Collection:* Medicare Qualification Statement for Federal Employees; *Form Number:* HCFA-565; *Frequency:* One-time; *Respondents:* Individuals/households; *Estimated Number of Responses:* 4,300; *Average Hours per Response:* .17; *Total Estimated Burden Hours:* 731.

11. *Type of Request:* Extension; *Title of Information Collection:* Requests for Medicare Payment by Municipal Health Services Program Clinics; *Form Number:* HCFA-127; *Frequency:* Weekly; *Respondents:* State/local governments and non-profit institutions; *Estimated Number of Responses:* 370,599; *Average Hours per Response:* .16; *Total Estimated Burden Hours:* 59,296.

12. *Type of Request:* Reinstatement; *Title of Information Collection:* Attending Physician's Statement and Documentation of Medicare Emergency; *Form Number:* HCFA-1771; *Frequency:* On occasion; *Respondents:* Businesses/other for profit; *Estimated Number of Responses:* 1,500; *Average Hours per Response:* .25 *Total Estimated Burden Hours:* 375.

13. *Type of Request:* Extension; *Title of Information Collection:* Information Collection Requirements in the Sterilization Regulations and Sterilization Consent Form; *Form Number:* HCFA-R-94; *Frequency:* On occasion; *Respondents:* State/local governments businesses/other for profit, and small businesses/organizations; *Estimated Number of Responses:* 123,040; *Average Hours per Response:* 1 (Reporting) and .25 (Recordkeeping); *Total Estimated Burden Hours:* 123,040 (Reporting) and 30,760 (Recordkeeping) = 153,800 Total.

14. *Type of Request:* Extension; *Title of Information Collection:* Hospital Providers of Long-term Care Services (Swing Bed Provisions); *Form Number:* HCFA-345; *Frequency:* Annually; *Respondents:* State/local governments, businesses/other for profit, and small businesses/organizations; *Estimated Number of Responses:* 50; *Average Hours per Response:* 10; *Total Estimated Burden Hours:* 500

15. *Type of Request:* Reinstatement; *Title of Information Collection:* Information Collection Requirements—Ambulance Service; *Form Number:* HCFA-R-88; *Frequency:* On occasion; *Respondents:* Businesses/other for profit; *Estimated Number of Responses:* 100; *Average Hours per Response:* .25; *Total Estimated Burden Hours:* 25.

16. *Type of Request:* Extension; *Title of Information Collection:* Skilled Nursing Facility and Skilled Nursing Facility Health Care Complex Cost Report; *Form Number:* HCFA-2540; *Frequency:* Annually; *Respondents:* State/local governments, non-profit institutions, and small businesses/organizations; *Estimated Number of Responses:* 6,500; *Average Hours per Response:* 103 (Reporting) and 132 (Recordkeeping); *Total Estimated Burden Hours:* 669,500 (Reporting) and 858,000 (Recordkeeping) = 1,527,500 Total.

17. *Type of Request:* New; *Title of Information Collection:* Health Maintenance Organizations Reporting Forms; *Form Number:* HCFA-HMOF-2-5; *Frequency:* Monthly; *Respondents:* Businesses/other for profit; *Estimated Number of Responses:* 216; *Average Hours per Response:* .25 (Reporting) and 12 (Recordkeeping); *Total Estimated Burden Hours:* 54 (Reporting) and 648 (Recordkeeping) = 702 Total. Additional Information or Comments: Call the Reports Clearance Officer on 301-966-2088 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent directly to the following address: OMB Reports Management Branch, Attention: Allison Herron, New Executive Officer Building, Room 3208, Washington, DC 20503.

Date: June 20, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 89-15097 Filed 6-26-89; 8:45 am]

BILLING CODE 4120-03-M

Health Resources and Services Administration

Advisory Council on Nurses Education; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of August 1989:

Name: Advisory Council on Nurses Education

Date and Time: August 16-17, 1989, 9:00 a.m.

Place: The Maryland Room, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open on August 16, 9:00 a.m.-12:30 p.m.

Closed for remainder of meeting.

Purpose: The Council advises the Secretary and Administrator, Health Resources and Services Administration, concerning general regulations and policy matters arising in the administration of the Nurse Education Amendments of 1985 (Pub. L. 99-92). The Council also preforms final review of grants applications for Federal Assistance, and makes recommendations to the Administrator, HRSA.

Agenda: The open portion of the meeting will announcements; considerations of minutes of previous meeting; report by the Director, Bureau of Health Professions, the Director, Division of Nursing and staff reports. The meeting will be closed to the public on August 16, at 12:30 p.m. for the remainder of the meeting for the review of grant applications for Advance Nurse Education applications, Nurse Practitioner/Nurse Midwifery applications, Special Project Grants applications and Nursing Opportunities for Individuals from Disadvantaged Backgrounds applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C. Code, and the Determination by the Administrator, Health Resources and Services Administration, pursuant to Pub. L. 92-463.

Anyone requiring information regarding the subject Council should contact Dr. Mary S. Hill, Executive Secretary, National Advisory Council on Nurse Training, Room 5C-14, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301)443-6193.

Agenda Items are subject to change as priorities dictate.

Date: June 22, 1989.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 89-15140 Filed 6-26-89; 8:45 am]

BILLING CODE 4160-15-M

Public Health Service

Announcement of Cooperative Agreement

Introduction

The Office of Disease Prevention and Health Promotion (ODPHP), Office of the Assistant Secretary for Health, announces the availability of funds in fiscal year 1989 for a cooperative agreement with the Association of Schools of Public Health (ASPH). This cooperative agreement will enable ASPH to facilitate an interdisciplinary collaboration among academicians in the fields of public health, business, and public administration/policy for the purpose of expanding the state of knowledge regarding worksite health promotion programs in public sector employment settings. Because of the importance of worksite health promotion as a means of reaching a majority of adult Americans with health information and services, this project will continue significantly to the achievement of the Nation's health objectives for the year 2000.

Authority

This program is authorized under section 301(a) and section 1701(a) of the Public Health Service Act [42 U.S.C. 241(a) and 300(u)], as amended. Program regulations are set forth in 42 CFR Part 52.

Eligible applicant

Assistance will be provided only to ASPH for this project. No other applications will be solicited or accepted. ASPH represents the 24 accredited schools of public health in the United States. Schools of public health are the primary academic centers for research and training relating to the Nation's health promotion and disease prevention programs and activities. A number of the schools are located in universities that also offer graduate programs in business, public administration and/or public policy. Faculties of each of these graduate schools are called upon to provide

technical consultation from the perspective of their specific fields of expertise, to assist in developing, evaluating, or improving health promotion programs operated by public and private sector employers. Although the issues involved in effective worksite-based prevention activities are multidisciplinary in nature, there has been no previous attempt to address the worksite as a setting for health promotion programs using an interdisciplinary, coordinated team approach.

As a first step in developing such an approach, ODPHP intends to establish this cooperative agreement with ASPH, serving as the coordinating agency, to form interdisciplinary teams, led by faculty of selected schools of public health and composed of colleagues from sister schools of business and public administration/policy. These teams will undertake case studies of public sector health promotion programs geographically proximate to their universities' locations. ASPH, serving as national coordinator to ensure consistency of approach, will make the findings of these case studies available to all of its member institutions both to enrich the state of knowledge regarding worksite health promotion programs and to stimulate replication of the demonstrated interdisciplinary approach.

ASPH, is the only national organization in a position to coordinate the lead faculties in these interdisciplinary teams (i.e. schools of public health) and to effect a unified approach that can substantially advance the state of knowledge on public sector worksite-based health promotion programs.

The cooperative agreement assistance mechanism will be used for this project because of the substantial interest and involvement of ODPHP as a Federal resource on health promotion programs at worksites. In addition, other Federal agencies, including the Office of Personnel Management (OPM) and the Office of Federal Employee Occupational Health (OFEOH), have indicated a commitment to be a part of a project management and review team that will participate with ASPH in refining the design and reviewing the findings of this project. Specifically, ODPHP will convene a Federal team with representatives of OPM and OFEOH to work collaboratively with ASPH in designing the case study protocols, selecting appropriate study sites, and arranging with study sites to cooperative with the project. The Federal team will participate in orientation of study teams and will review and comment on all draft materials produced by the project.

Availability of Funds

It is anticipated that approximately $325,000 will be available in fiscal year 1989 to fund the cooperative agreement beginning July 1, 1989, for a 15-month project and budget period. No continuation of this project is anticipated beyond the 15-month period.

Purpose

The purpose of this cooperative agreement is to assist ASPH in developing and implementing an interdisciplinary team approach to the study and improvement of worksite health promotion programs in public sector settings.

Program Requirements

The applicant will fulfill application requirements of P.H.S. Form 5161.

E.O. 12372 REVIEW

The application is not subject to review as governed by Executive Order 12372, Intergovernment Review of Federal Programs.

CFDA Number

The Catalog of Federal Domestic Assistance number is 13.990.

Application Submission and Deadline

ASPH has been notified of the availability of funds for this project and must submit an original and two copies of the application Form 5161 to James A. Harrell, Deputy Director, Office of Disease Prevention and Health Promotion, Office of the Assistant Secretary for Health, Department of Health and Human Services, Washington, DC 20201, before July 7, 1989.

Where To Obtain Additional Information

Additional information is available from James A. Harrell, Deputy Director, Office of Disease Prevention and Health Promotion, Office of the Assistant Secretary for Health, Department of Health and Human Services, Washington, DC 20201, Telephone 202-245-7611.

J. M. McGinnis,

Deputy Assistant Secretary for Health, (Disease Prevention and Health Promotion) Assistant Surgeon General.

[FR Doc. 89-15167 Filed 6-26-89; 8:45 am]

BILLING CODE 4161-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-89-2009]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). It is also requested that OMB complete its review within one day.

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: June 16, 1989.

John T. Murphy,

Director, Information Policy and Division.

Proposal: Request for Termination of Multifamily Mortgage Insurance
Office: Administration.
Description of the Need for the Information and its Proposed Use: HUD-9807 will be used to inform HUD that a mortgage has been paid in full or that a mortgagor and mortgagee mutually agree to terminate the contract of mortgage insurance with HUD
Form Number: HUD-9807.
Respondents: Businesses or Other For-Profit.
Frequency of Submission: On Occasion.
Reporting Burden:

	Number of respondents	×	Frequency of Response	×	Hours per response	=	Burden hours
HUD-9807	300		1		.125		38

Total Estimated Burden Hours: 38
Status: Reinstatement
Contact: Karen Lee, HUD, (202) 755-7022; John Allison, OMB, (202) 395-6880.

Date: June 16, 1989.

[FR Doc. 89-15183 Filed 6-26-89; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-89-2010]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: June 19, 1989.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Multifamily Mortgage Insurance Premium Billing Statement and Reconciliation
Office: Administration
Description of the Need for the Information and its Proposed Use: These forms will be used to rconcile the financial records of the mortgagees of their regular or deliquent payments made to HUD for Mortgage Insurance Premiums on Multifamily Housing Projects
From Number: HUD-27033, 27032A, and 27032B (Replaces 27032)
Respondents: Businesses or Other For-Profit
Frequency of Submission: Monthly
Reporting Burden:

	Number respondents	X	Frequency of resonse	X	Hours per response	=	Burden hours
HUD-27032A	491		12		.05		295
HUD-27032B	100		1		.05		5
HUD-27033	150		12		.03		54

Total Estimated Burden Hours: 354
Status: Extension
Contact: Karen Lee, HUD (202) 755-7022; John Allison, OMB, (202) 395-6880.

Date: june 19, 1989.

[FR Doc. 89-15184 Filed 6-26-89; 8:45 am]
BILLING CODE 4210-01-M

Office of Community Planning and Development

[Docket No. N-89-2003]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) or review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding the information collection in this proposal. Comments should refer to the proposal by name and should be sent within 21 days to: John Allison, OMB Desk Officer, Office of Management and Budget, New Excutive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755-6050. (This is not a toll-free number.) Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). HUD has requested that OMB complete its review following twenty-one days of comment on the information collection

The Notice lists the following: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare information submissions, including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department; and (10) a description of the information collections proposed to be included in the grant program to be announced.

Audrey E. Scott,
General Deputy, Assistant Secretary for Community Planning and Development.

Proposal: Notice of Fund Availability to Establish Youth Sports Clubs at Public Housing Sites.

Office: Community Planning and Development.

Description of the Need for the Information and Its Proposed Use: The growing crisis of drug use and drug related crime in public housing requires immediate action to protect residents' lives and property. To initiate this competition and to select those projects which will have the greatest impact in improving the environment for youths in public housing projects impacted by severe drug problems, we require the information requested to make the selections.

Form Number: SF 424 and narrative.
Respondents: States or Local Government.
Frequency of Submission: One-time.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
SF 424 and narrative	175		1		40		7,000

Total Estimated Burden Hours: 7,000.
Status: New.
Contact: Leroy P. Gonnella, HUD, (202) 755-6067; John Allison, OMB, (202) 395-6880.

Date: May 23, 1989.

Section III

Supporting Statement, Secretary's Discretionary Program

Justification

1. The growing crisis of drug abuse and drug related crime in public housing projects requires immediate action to protect residents' lives and property. One immediate approach is to establish positive youth programs in public housing projects impacted by severe drug problems. This effect will have an immediate impact by placing public housing youths in a positive environment and a long term impact by leading these youths into a productive life.

2. The information collected will be used by HUD to rate applications and to select 56 that best address the objective of this competition.

3. This is a one time emergency collection. This approach is considered to be the most cost-effective method of beginning to create a positive atmosphere for public housing youths.

4. The information required to rate these proposals does not currently exist.

5. There is no similar information available.

6. The programs proposed are not expected to be complicated and given the small amount of funds involved, there should not be a lot of paperwork.

7. This is a one time only competition.

8. The Secretary has recently made personal visits to public housing projects to observe the situation first hand and discuss his actions with local officials.

9. The information collected may be shared with others.

10. There is no request for information of a sensitive nature.

11. The only costs to the Department relating to this information collection will be the costs for receiving, reviewing proposals, awarding grants and monitoring them to close-out.

12. Receiving responses (175 responses × 15 min. × $17/hr) $744
Reviewing responses (175 responses × 4 hrs. × $17/hr)..... 11,900
Monitoring and Close-out (56 × 8 hrs. × $17/hr)..... 7,616
Awarding Grants (56 × 8 hrs. × $17/hr)..... 7,616
Total Cost to Government 27,876

13. Reporting Burden:
Number of Respondents 175
Average hours per response..... 40
Number of responses per respondent per year..... 1
Total Burden Hours..... 7,000

14. NA
15. NA

Public reporting burden for this collection of information is estimated to average forty hour(s) per response, including the time for reviewing instructions, searching existing data sources, gathering and compiling the data sources, and completing and submitting the proposal. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; and to the Office of Management and Budget, Paperwork Reduction Project (2506-xxxxx), Washington, DC 20503.

Description of the Program to which these Information Collections will Pertain:

As part of the Department's effort to promote a drug-free environment in public housing, the Secretary will make $1,400,000 available to aid public housing youths in areas affected by severe drug problems. The funds are to be used in conjunction with local CDBG and other public or private funds to establish positive youth programs, with sports, cultural and other activities as alternatives to the drug environment. Applicants for these funds must be planning or undertaking vigorous efforts to rid public housing areas of the drug problem. Each applicant will be given discretion to design a youth sports clubs program that best addresses its local situation and most effectively leverages local resources. It is expected that each application or proposal will include the involvement of local sports organizations or major sports figures.

This document, when published for effect, will (a) notify the public of the availability of funds for aiding in the establishment or enhancement of youth sports clubs to combat drugs at Public Housing Authority (PHA) sites; (b) identifies the objective of the program; (c) indicates the amount of funds available and matching requirements; (d) set forth eligible activities; (e) sets forth application requirements for the funds; (f) identifies the evaluation criteria for the award of funds; and (g) specifies notification procedures.

Program Objective: The objective of this program is to aid public housing youths in areas affected by severe drug problems, by providing positive youth programs, with sports, cultural and other activities, as alternatives to the drug environment. Such programs will be undertaken in conjunction with vigorous efforts to rid the areas of their drug problems.

Eligible Activities: All activities eligible under the Community Development Block Grant (CDBG) Program, 24 CFR Part 570, Subpart C. These include the acquisition, construction or rehabilitation of community centers, parks and playgrounds to be used by the youth sports clubs. Eligible activities also include redesigning and modifying public spaces in assisted housing projects to permit increased utilization of the areas by the youth sports clubs. Public service activities (including salaries and expenses for staff for the youth sports clubs, cultural activities, educational programs related to drug abuse, the purchase of sports equipment, etc.), are also eligible, subject to the limitation that no more than 15 percent of the Special Projects grant may be for public services. The entire local match can be used for public services except that any portion thereof comprised of local CDBG funds is subject to the 15 percent limitation. (The 15 percent limitation and other information about the eligibility of public services is found at 24 CFR 570.201(e) of the CDBG entitlement regulations.)

Amount of Funds Available: $1,400,000.

Amount of Awards: $25,000, with a required 100 percent cash match of local CDBG or other local public or private funds.

Application Requirements: The application or proposal must include the following elements:

1. A Standard Form 424 signed by the chief executive officer of the State or unit of local government;

2. An identification of the specific public housing site or sites to be assisted, the nature of the drug problem at each site, and the planned or actual efforts being undertaken to rid the site or sites of the drug problem;

3. A description of how the youth sports club is or will be organized, the nature of the services to be provided, the number of youth involved, the extent to which local sports organizations or major sports figures are involved, the facilities to be utilized, plans to continue the youth sports club in the future, and other facets of the program;

4. A narrative statement of the proposed activities to be funded with the Special Projects grant and the matching funds, along with an explanation of how the Federal grant, local CDBG funds, and other local funds will be used to establish or enhance youth sports clubs;

5. A work plan which describes the planned schedule and the financial and other resources committed to each task or activity;

6. The technical and financial feasibility of the activity;

7. The capacity of the community to carry out the activity and the level of support to be provided by local sports organizations.

8. The PHA support of the project and coordination with the applicant; and

9. A budget showing the HUD share of the costs and other sources of funds, including the required 100 percent cash match of local CDBG or other local public or private funds.

Evaluation Criteria: Each application or proposal will be reviewed against the following evaluation factors:

Total 100 Points

1. Unique or innovative methods, approaches or ideas originated or assembled by the applicant or proposer; (10 points)

2. Overall technical or socio-economic merits of the application or proposal; (5 points)

3. The qualifications, capabilities, and experience of the proposed key personnel who are critical to achieving the proposal objectives; (15 points)

4. The applicant's and any proposed subrecipient's capabilities, related experience, facilities, techniques, potential for continuing the youth sports club activities in the future, or unique combination of these which are integral factors for achieving the application or proposal objectives; (10 points)

5. The severity of the drug problem at the local public housing site or sites, and the extent of the planned or actual efforts to rid the site or sites of the drug problem; (20 points)

6. The extent to which local sports organizations or major sports figures are involved; (10 points)

7. The extent of the PHA support of the support or the project and coordination with the applicant; (20 points)

8. The extent of private sector contributions which exceed the required addition to the 100 percent match of local CDBG or other local funds. (10 points)

The Department reserves the right to select applications or proposals out of rank order to ensure an equitable geographical distribution.

Where to Apply: When published for effect, the notice will instruct applicants

to submit an original and two copies of your application or proposal to: Department of Housing and Urban Development, Office of Community Planning and Development, Secretary's Fund Division, Room 7144, 451 7th Street SW., Washington, DC 20410, Attention: Mr. Leroy P. Connella.

[FR Doc. 89-15165 Filed 6-26-89; 8:45 am]
BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment on the Proposed Construction of the Nisqually Fish Hatchery, Pierce County, Washington

AGENCY: Fish and Wildlife Service (Service), Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that an Environmental Assessment on the construction of the Nisqually Fish Hatchery, to be located within the boundaries of the Nisqually Indian Reservation on Clear Creek (a tributary to the Nisqually River), Pierce County, Washington is available for public review. Comments received during the 30 day review period following publication of this Notice will be considered.

Legislation enacted by Congress directed the Service, in coordination with the Nisqually Indian Tribe (Tribe), to construct a fish hatchery on Clear Creek, in Pierce County, Washington (Section 22, Township 18 North, Range 1 East, W.M.). The proposed action would include a hatchery building, rearing ponds, pollution abatement lagoons, fish barrier racks, fish ladder, and water distribution systems. As mitigation for lost spawning habitat resulting from the hatchery construction, a 2,000 foot long spawning channel would be constructed in Fishhouse Slough, Thurston County, Washington (Section 21 and 28, Township 18 North, Range 1 East, W.M.).

Water for the hatchery would be supplied through a gravity fed system which allows for low cost operation and efficient reuse. The system involves the construction of two small dams to impound water from springs and seeps into two small forebays. The forebays would be contained between a steep bluff and a series of constructed dikes. Water for incumbation would be piped directly from springs to the hatchery.

The hatchery would be operated and maintained by the Tribe under an agreement with the Service. Annual production from the hatchery would total 108,000 pounds of chinook, coho, and chum salmon.

DATES: Written comments can be provided up to July 27, 1989.

ADDRESS: Comments should be addressed to: Mr. Marvin L. Plenert, Regional Director, U.S. Fish and Wildlife Service, 1002 N.E. Holladay Street, Portland, Oregon 97232-4181.

FOR FURTHER INFORMATION CONTACT: Henry E. Forner, Jr., Senior Fishery Biologist, U.S. Fish and Wildlife Service, 1002 NE Holladay Street, Portland, Oregon 97232-4181. Phone: (503) 230-5972.

Individuals wishing copies of this Environmental Assessment should immediately contact Mr. Forner. Copies have been sent to all agenices and individuals who participated in the scoping process public meetings, and to those who previously requested copies.

SUPPLEMENTARY INFORMATION: The technical author of this document is: Ms. Joyce Mercuri, Natural Resources Planner, Nisqually Indian Tribe, 4820 She-Nah-Num Dr., S.E., Olympia, Washington 98503. Phone: (206) 456-5221.

This action is designed to construct a hatchery which would rebuild and enhance anadromous fish runs in the Nisqually River Basin, which have been depleted as a result of environmental degradation and interceptory fisheries. The rebuilding of fish runs is necessary to meet the needs of the Nisqually Indian Tribe, other domestic and International Treaties, and non-treaty commercial and sport fisheries utilizing the resource. When at full production, the estimated annual economic benefits from hatchery production is over $5.1 million.

Construction of the dikes to contain the forebays (hatchery water supply) would involve filling of 7.3 acres of wetlands. Eight (8) acres of wetlands would be created when the side slopes of the dikes and several upland areas are inundated by the forebays. Approximately 15 acres of vegetation on the project site would be permanently converted to buildings, roads, facilities, and developed areas. A total of 21.65 acres of uplands and wetlands would be flooded for impoundment of the forebays.

The hatchery is located within the floodplain, but is outside the floodway. All facilities would be built above the 100 year flood level. Pollution abatement lagoons would act as settling basins for effluent from the cleaning of rearing facilities. Hatchery waste water discharges would result in some organic enrichment to ¼ mile of Clear Creek. Organic enrichment of the Nisqually River would be negligible.

The Environmental Assessment considers three alternatives to the proposed action. Two of the alternatives are variations of fill to contain the forebays. The alternatives are (1) Fill Wetlands at Backswamp and (2) Use Perimeter Dike at Upper Forebay. The adverse impacts in comparison to the proposed action are: Alternative 1—Increased wetland fill and increased size of forebay; Alternative 2—Increased size of forebay.

The third alternative is No Action. This alternative would not fulfill the goal of restoring anadromous fish runs in the Nisqually River and delay meeting goals of the Tribe and the U.S./Canada Pacific Salmon Treaty.

Development of this environmental assessment has involved a lengthy scoping process. The process included input from the general public as well as extensive interagency involvement. The construction of a new Service National Fish Hatchery normally requires Environmental Impact Statement. However, based upon the little public response from the **Federal Register** Notice of Intent and the scoping process, the Service decided to prepare an Environmental Assessment instead of an Environmental Impact Statement.

Issued in Portland, Oregon, June 16, 1989.

William Martin,

Acting Regional Director.

[FR Doc. 89-15141 Filed 6-26-89; 8:45 am]
BILLING CODE 4310-55-M

Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgment of Existing as an Indian Tribe

June 9, 1989.

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.8(a) (formerly 25 CFR 54.8(a)) notice is hereby given that the Ohlone/Costanoan Muwekma Tribe, c/o Ms. Rosemary Cambra, 31 Fountain Alley, Ste. 2B, San Jose, California 95113, has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian Tribe. The petition was received by the Bureau of Indian Affairs on May 9, 1989, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time. Under § 83.8(d) (formely § 54.8(d)) of the Federal regulations, interested parties may submit factual and/or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the Bureau of Indian Affairs' files. Such submissions will be provided to the petitioner upon receipt by the Bureau. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined by appointment in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, Mail Stop 4627-MIB, 18th and C Streets, NW., Washington, DC 20240, Phone: (202) 343-3592.

W.P. Ragsdale,

Deputy to the Assistant Secretary—Indian Affairs (Operations).

[FR Doc. 89-15117 Filed 6-26-89; 8:45 am]
BILLING CODE 4310-02-M

Bureau of Land Management

[NV-930-09-4212-14; N-39982]

Battle Mountain District; Shoshone-Eureka Resource Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Realty Action; Noncompetitive Sale of Federal Lands in Lander County, Nevada.

SUMMARY: The following land has been found suitable for direct sale under Sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713) at no less than the appraised fair market value. The land will not be offered for sale until at least 60 days after the date of this Notice.

Mount Diablo Meridian

T. 16N., R. 44E.,
Sec. 17, Lot 7;
Sec. 20, NE¼NE¼,
Sec. 21, NE¼NE¼, NW¼NW¼;
Sec. 23, SE¼SE¼;
Sec. 24, NE¼NW¼, SW¼SW¼.

A parcel of land containing 268.96 acres, more or less.

The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action of 270 days from the date of publication of this Notice, whichever occurs first.

Ralph A. Young has asked to buy this land to expand his agricultural operation and to resolve a trespass of long standing in the Big Smoky Valley, Nevada. The lands are not required for any Bureau resource program. The sale is consistent with the Shoshone-Eureka Resource Management Plan. No conflicts with State or local land use plans have been identified. The subject lands are within the Kingston grazing allotment and grazing permittees will be sent the required two-year grazing notices prior to sale.

The mineral report prepared for this action recommends sale of the surface estate with simultaneous conveyance of the locatable, saleable, oil and gas, phosphate and energy solid leasable minerals estates. Acceptance of the sale offer will constitute an application for conveyance of the available mineral interests. A nonrefundable fee of $50 will be required from purchaser for purchase of the available mineral interests.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, in accordance with the Act of August 30, 1890 (26 Stat. 391; U.S.C. 945).

2. Geothermal, sodium and potassium resources together with the right to prospect for, mine and remove such deposits from the lands under applicable law.

And will be subject to valid existing rights, including:

CC-022622, 400' highway
N-34387, 20' telephone line
N-46509, 25' powerline
N-50104, 25' powerline

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 1420, Battle Mountain, Nevada 89820. Objections will be reviewed by the State Director who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Date Signed: June 14, 1989.

Thomas H. Jury,

Acting District Manager.

[FR Doc. 89-15118 Filed 6-26-89; 8:45 am]
BILLING CODE 4310-HC-M

Minerals Management Service

Outer Continental Shelf (OCS) Operations, Current List of Notices to Lessees and Operators (NTL) Issued by Each OCS Region

AGENCY: Minerals Management Service, Interior.

ACTION: Notice.

SUMMARY: This notice informs the public, industry, and other Government Agencies of NTL's that were current and effective as of June 1, 1989, in each OCS Region. If an NTL issued before June 1, 1989, is not included in this listing, it is hereby canceled and no longer in effect.

ADDRESSES: Requests to obtain a copy of an NTL should be directed in writing or by telephone to the Regional Director at the following appropriate address:

Alaska OCS Region, 949 East 36th Avenue, Room 110, Anchorage, AK 99508-4302—(907) 261-4010
Atlantic OCS Region, 381 Elden Street, Herndon, VA 22070—(703) 787-1110
Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, LA 70123-2394—(504) 736-2589
Pacific OCS Region, 1340 West 6th Street, Suite 244, Los Angeles, CA 90017—(213) 894-2048

FOR FURTHER INFORMATION CONTACT: Chief, Offshore Rules and Operations Division, Minerals Management Service, telephone (703) 787-1598 or FTS 393-1598.

SUPPLEMENTARY INFORMATION: The current NTL's for each OSC Region are as follows:

ALASKA OCS REGION

80-1	Feb. 05, 1980	Furnishing Food, Quarters, and Transportation to USGS Personnel.
80-2	June 13, 1980	Guidelines for Preparing Outer Continental Shelf Environmental Reports. Note: See additional guidelines prepared March 30, 1982, entitled "Guidelines for Outer Continental Shelf Exploration Plans, Environmental Reports and Application for Permit to Drill Exploratory Wells."
83-5	Sept. 07, 1983	Minimum requirements, Shallow Hazards Survey.
84-4	Aug. 01, 1984	Preliminary Activities Conducted on Leased Areas; Gulf of Alaska/Cook Inlet.
85-2	Aug. 09, 1985	Preliminary Activities Conducted on Leased Areas; Bering Sea (Supersedes NTL Nos. 83-2, 83-4, and 84-1).

86–1	Feb. 20, 1986	Submission of Digitized Well Log Data on Magnetic Tape.
86–2	Jan. 15, 1987	Preliminary Activities Conducted on Leased Area; Beaufort Sea (Supersedes NTL Nos. 83–1 and 84–3).
86–3	Oct. 06, 1986	New Form for Designation of Operator (MMS Form 1123).
87–1	Nov. 30, 1987	Preliminary and Other Activities Conducted on Leased Areas; Chukchi Sea.
87–2	Dec. 10, 1987	District Office Hours and Phone Call Procedures (Supersedes NTL No. 86–5).
		ATLANTIC OCS REGION
78–9	May 04, 1979	Requirements for Submission of Digitized Well Log Data on Magnetic Tape.
	June 22, 1979	Ban on the Use of Halogenated Phenols in OCS Oil and Gas Operations. (Published in the Federal Register on July 3, 1979.)
NA80–10	May 06, 1980	Minimum Criteria for Training Programs in Fishing Industry Operations.
83–2	Sept. 07, 1983	Minimum Requirements for Site Surveys for Exploration Activities (Supersedes NTL 78–2; NTL 78–2 South Atlantic Supplement 1; and NTL 80–2).
		GULF OF MEXICO OCS REGION
72–9	Sept. 22, 1972	OCS Operations Safety Alert Notice No. 1, Flash Fire From Liquid Phase Heat Transfer Unit.
73–3	Feb. 16, 1973	The Use of Polychlorinated Biphenyls (PCB's).
74–1	Jan. 04, 1974	Applicability of OCS Orders Nos. 2 and 4 to OCS Leases Issued off the Coasts of Mississippi, Alabama, and Florida. (Note: NTL will be updated to include reference to regulations rather than OCS Orders. The intent of the NTL remains in effect.)
82–7	Aug. 13, 1982	Clarification of Requirements of Subparagraph 5.7, Safety Device Training of OCS Order No. 5, "Production Safety Systems." (Note: NTL will be updated to include reference to Subpart O of 30 CFR Part 250 when it is issued. The intent of the NTL remains in effect.)
75–3	Oct. 01, 1982—Revision No. 1.	OCS Cultural Resource Requirements for the Gulf of Mexico OCS Region (See NTL 75–3, January 20, 1975, for copy of Revision No. 1).
83–3	Sept. 07, 1983	OCS Shallow Hazards Requirements for the Gulf of Mexico OCS Region (Cancels NTL Nos. 75–8 and 80–5).
85–2	Feb. 04, 1985	Effect of Drilling "Window" Approvals.
85–5	Apr. 15, 1985	Lake Jackson District Address, Office Hours, and Phone Call Procedures (Supersedes NTL Nos. 81–11, 79–3, 78–7, 76–3, 75–5, and 74–19).
85–6	Sept. 30, 1985	Submittal of Electric, Radioactive, and Other Wellbore Surveys.
85–8	Nov. 28, 1985	Minimizing Oil and Gas Structures in the Gulf of Mexico.
86–3	May 23, 1986	Gulf of Mexico OCS Region Relocation and Reorganization (Supersedes NTL 82–4).
86–5	June 18, 1986	New Forms for Designation of Operator.
86–9	Oct. 13, 1986	Outer Continental Shelf Environmental Report/Information Guidelines for Plans Submitted in the Gulf of Mexico OCS Region (Supersedes NTL 80–6).
86–11	Nov. 17, 1986	Guidelines for Reducing or Eliminating Trash and Debris in the Gulf of Mexico.
87–1	July 21, 1987	Houma District Office Hours and Phone Call Procedures.
88–2	June 10, 1988	Submission of List of Safety and Pollution-Prevention Equipment.
88–3	June 29, 1988	Information to be Made Available to the Public on the Reports Required in Subpart K of 30 CFR Part 250.
88–7	Sept. 15, 1988	Reorganization of Office of Field Operations and Realignment of New District Boundaries.
88–8	Oct. 06, 1988	New Orleans District Office Hours and Phone Call Procedures.
88–10	Nov. 06, 1988	LaFayette District Office Hours and Phone Call Procedures.
88–11	Feb. 01, 1989	Implementation of Measures to Detect and Protect Deepwater Chemosynthetic Communities.
		Outer Continental Shelf Functional Responsibility of New Regulations.
89–2	Mar. 30, 1989	Special Security Handling of Well Logs and Data Generated from Oil and Gas Leases.
		PACIFIC OCS REGION
77–3	Mar. 01, 1977	Minimum Cultural Survey Requirements, OCS Exploratory Drilling.
78–1	Oct. 23, 1978	Minimum Requirements for Biological Surveys (Supersedes NTL 77–4).
80–2	Mar. 20, 1980	Minimum Requirements for Environmental Reports.
86–4	Aug. 18, 1986	New Form for Designation of Operator.
88–1	June 27, 1988	Submission of List of Safety and Pollution-Prevention Equipment.
88–2	Sept. 28, 1988	NTL's Cancellation.
88–3	Dec. 20, 1988	Ventura District Office Hours and Phone Call Procedures (Supersedes NTL 87–01).
88–5	May 05, 1989	Requirements for Exploratory Operations OCS California (Supersedes NTL 82–3).
88–6	May 05, 1989	Guidelines for Shallow Hazards Survey for OCS Exploratory Drilling (Supersedes NTL 85–01).
88–7	May 05, 1989	Guidelines for Shallow Hazards Survey for OCS Development Platforms (Supersedes NTL 85–02).
88–8	May 05, 1989	Guidelines for Shallow Hazards Survey for OCS Pipeline Routes (Supersedes NTL 85–03).
88–9	May 05, 1989	Submission of Digitized Well Log Data on Magnetic Tape (Supersedes NTL 86–01).
89–01	Apr. 12, 1989	Santa Maria District Office Hours and Phone Call Procedures.

An updated NTL List will be published annually in the **Federal Register**.

Dated: June 1, 1989.

William D. Bettenberg,

Associate Director for Offshore Mineral Management.

[FR Doc. 89–15131 Filed 6–26–89; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nomination for the following properties being considered for listing in the National Register were received by the National Park Service before June 17, 1989. Pursuant to section 60. 13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by July 12, 1989.

Carol D. Shull,

Chief of Registration, National Register.

ARIZONA

Yavapai County

Mayer Apartments, Central Ave. SW of Ash St., Mayer, 89000860
Mayer Business Block, Oak St. and Central Ave., Mayer, 89000859

CALIFORNIA

Alameda County

Loring House, 1730 Spruce St., Berkeley, 89000857

Humboldt County

Andreasen, F.W.—John Rossen House, Port Kenyon Rd. and Bush St., Ferndale vicinity, 89000855

Los Angeles County

Lincoln, Abraham, Elementary School, 1200 M. Gordon Ave., Pomona, 89000935
Pacific Electric Railroad Bridge, Torrance Blvd. and Bow St., Torrance, 89000854

Santa Cruz County

Bockius, Godfrey M., House, 322 E. Beach St., Watsonville, 89000937

COLORADO

Pitkin County

Osgood Gamekeeper's Lodge (Redstone MPS), 18679 CO 133, Redstone, 89000933
Redstone Historic District (Redstone MPS) Roughly along the Crystal River from Hawk Creek to 226 Redstone Blvd., Redstone, 89000934

CONNECTICUT

Fairfield County

Cos Cob Railroad Station, 55 Station Dr., Greenwich vicinity, 89000928
Fairfield Railroad Stations, Carter Henry Dr., Fairfield vicinity, 89000926
Sound Beach Railroad Station, 160 Sound Beach Ave., Greenwich vicinity, 89000929
Southport Railroad Stations, 96 Station St. and 100 Center St., Fairfield, 89000927

Hartford County

Worthington Ridge Historic District, Roughly Worthington Ridge from Mill St. to Sunset Ln., Berlin, 89000925

FLORIDA

Dade County

Venetian Causeway, NE. 15th St. and Dade Blvd., Miami, 89000852

Liberty County

Hare, Otis, Archelological Site (8LI172), Address Restricted, Blountstown vicinity, 89000882

GEORGIA

Douglas County

Douglasville Commercial Historic District, Roughly bounded by Broad St., Adair St., Church St., and Club Dr., Douglasville, 89000850

Fulton County

Home Park School, 1031 State St., NW., Atlanta, 89000851

IOWA

Jasper County

Bergman, August H., House (Architectural Legacy of Proudfoot and Bird in Iowa, 1882–1940 MPS), 629 First Ave. E., Newton, 89000856

MAINE

Androscoggin County

Free Baptist Church, Riverside Dr., Auburn, 89000843
Lamoreau Site, Address Restricted, Auburn vicinity, 89000837
St. Joseph's Catholic Church, 253 Main St., Lewiston, 89000845

Aroostook County

Larsson—Noak Historic District, Station Rd. NE of New Sweden, New Sweden vicinity, 89000847

Cumberland County

Dunstan Methodist Episcopal Church, US 1, Starborough, 89000839

Franklin County

Rangeley Trust Company Building, Main St., Rangeley, 89000846
Union Church, Main and Pleasant Sts., Phillips, 89000844

Lincoln County

Hinton, Anne, Site, Address Restricted, Newcastle vicinity, 89000838

Penobscot County

Milford Congregational Church, Main and Perry Sts., Milford, 89000841

Sagadahoc County

Donnell, William T., House, 279 Washington St., Bath, 89000340
Purinton Family Farm, 65 Elm St., Topsham, 89000842

MINNESOTA

St. Louis County

WILLIAM A. IRUIN (freighter), Minnesota Slip, Duluth Harbor, Duluth 89000858

MISSISSIPPI

Lauderdale County

Meridian Waterworks Pumping Station and Clear Water Basin (Meridian MRA), B St. and 17th Ave., Meridian, 89000931

MISSOURI

Greene County

Mid-Town Historic District, Roughly bounded by Pacific, Clay, Pythian, Summit, Calhoun, Washington, Central, Benton, Division, and Jefferson, Springfield, 89000938

NORTH CAROLINA

Buncombe County

Guastavino, Rafael, Sr., Estate, NC 9, 0.8 mi. S of jct. with SR 2713, Black Mountain vicinity 89000849

OKLAHOMA

Garfield County

Jackson School, 415 E. Illinois, Enid, 89000848

OREGON

Linn County

Fields, Hugh, House, 36176 OR 228, Brownsville vicinity, 89000853

SOUTH DAKOTA

Beadle County

Grace Episcopal Church, Fourth St. and Kansas Ave., SE., Huron, 89000828

Codington County

Hanson, Mels M., Farmstead, 4 mi. N of Henry, Henry vicinity, 89000831
Watertown Commercial Historic District, Roughly bounded by First Ave. N., Third St., E., Second Ave. S., and First St. W., Jefferson, 89000834
Watertown Light and Power Company Plant, 524 W. Kemp St., Watertown, 89000830

Corson County

Harding Schoolhouse, 5.5 mi. NW of Trail City, Trail City vicinity, 89000832

Lawrence County

Dickey, Eleazer C. and Guinnie, House, 735 Eighth St., Spearfish, 89000824
Driskill, William D., House, 335 Canyon St., Spearfish, 89000822
Knight, Webb S., House, 514 Seventh St., Spearfish, 89000823
Riley, Almira, House, 938 Ames, Spearfish, 89000825
Uhlig, OTto L., House, 230 Jackson, Spearfish, 89000827
Walters, Benjamin F., House, 740 Seventh St., Spearfish, 89000826

BEST COPY AVAILABLE

Roberts County

New Effington Hospital, Odin Ave., New Effington, 89000829

Union County

St. Peter's Catholic Church, 400 Main St., Jerrerson, 89000833

TENNESSEE

Blount County

Alcoa West Plant Office (Blount County MPS), Lodge St., Alcoa, 89000863
Alexander, John, House (Blount County MPS), 714 Hillside Ave., Maryville, 89000884
Alumni Gym (Blount County MPS), Maryville College campus, Maryville, 89000865
Bartlett, Peter, House (Blount County MPS), 315 High St., Maryville, 89000866
Bethlehem Methodist Church (Blount County MPS), Bethlehem Rd., 0.5 mi. S of Ellejoy Rd., Wildwood vicinity, 89000867
Brick Mill Site (Blount County MPS), Brick Mill Rd., Maryville vicinity, 89000868
Brickey, Peter, House (Blount County MPS), Wears Valley Rd., 0.1 mi. W of Bonner Hollow Rd., Townsend vicinity, 89000869
Clark, Langston, Barn (Blount County MPS), Sixmile Rd., 0.4 mi. E of Knob Creek Rd., Maryville vicinity, 89000870
Clover Hill Mill (Blount County MPS), Jct. of Mill Rd. and Clover Hill Rd., Maryville vicinity, 89000871
Cloyd's Creek Presbyterian Church (Blount County MPS), Jct. of Buzzard's Roost Rd. and Kirk Rd., Friendsville vicinity, 89000873
Cochrane, Mary, Barn (Blount County MPS), Binfield Rd., 0.2 mi. N of Clover Hill Rd., Maryville vicinity, 89000872
Craig, John J., Quarry Historic District (Blount County MPS), Marmor Rd., 0.5 mi. S of Miser Station Rd., Friendsville vicinity, 89000874
Crawford, Gideon, House (Blount County MPS), Maryville College campus, Maryville, 89000875
Davis, James R., House (Blount County MPS), Jct. of River Rd. and Davis Ford Rd., Walland vicinity, 89000876
Fisher, A.J., House (Blount County MPS), Old Walland Hwy., Walland, 89000877
Frazier, Samuel, House (Blount County MPS), Jct. of Marble Hill Rd. and Big Springs Rd., Friendsville vicinity, 89000878
Friends Church (Blount County MPS), 314 W. Broadway, Maryville, 89000879
Gillespie, James, House (Blount County MPS), Lowes Ferry Rd., 1 mi. N of Louisville, Louisville vicinity, 89000880
Hackney, John, House (Blount County MPS), Front and Main Sts., Friendsville, 89000881
Hackney, John, Mill Site (Blount County MPS), Main St. near Front St., Friendsville, 89000882
Hamil, Alexander, House (Blount County MPS), Morganton Rd., 0.5 mi. E of Clover Hill Rd., Maryville vicinity, 89000883
Happy Valley School (Blount County MPS), Happy Valley Rd., Maryville vicinity, 89000884
Harper Memorial Library (Blount County MPS), 300 E. Church St., Maryville, 89000885
Henderson, William, House (Blount County MPS), Louisville Rd., 0.75 mi. S of Lowes Ferry Rd., Louisville vicinity, 89000886
Hood, Pete, House (Blount County MPS), 827 W. Broadway, Maryville, 89000888
Jones, David, House (Blount County MPS), 404 High St., Maryville, 89000889
Kerr, Macklin, House (Blount County MPS), Big Gully Rd., 0.3 mi. N of Kyker Rd., Maryville vicinity, 89000889
Kizer, Hezekiah, House (Blount County MPS), 0.5 mi. S of jct. of Marble Hill Rd. and Dunlap Hollow Rd., Maryville vicinity, 89000892
Martin, James, House (Blount County MPS), Martin Rd., 1 mi. E of East Millers Cove Rd., Walland vicinity, 89000893
Martin, John, Mill (Blount County MPS), Mill Rd., 0.3 mi. S of W. Millers Cove Rd., Walland vicinity, 89000894
Martin, Warner, House (Blount County MPS), Central Point Rd. at Old Nails Creek, Rockford vicinity, 89000895
McCampbell, James, Barn (Blount County MPS), Old Cades Cove Rd., 0.1 mi. S of Dry Valley Rd., Townsend vicinity, 89000896
McCampbell, Minnis Barn (Blount County MPS), Old Cades Cove Rd., 0.1 mi. S of Dry Valley Rd., Townsend vicinity, 89000897
McConnell, John, House (Blount County MPS), McConnell Rd., 0.5 mi. W of Maple Lane Rd., Maryville vicinity, 89000898
McCullock, Thomas, House (Blount County MPS), Jct. of Martin Mill Pike and IN 33, Rockford vicinity, 89000899
McNutt—Howard House (Blount County MPS), 825 W. Broadway Ave., Maryville, 89000900
McNutt—McReynolds House (Blount County MPS), 803 W. Broadway Ave., Maryville, 89000901
Miser Station Store (Blount County MPS), Jct. of Union Grove Rd. and Chestnut Hill Rd., Friendsville vicinity, 89000902
Montgomery, James, House (Blount County MPS), Tomotley Rd., 0.2 mi. S of Trigonia Rd., Maryville vicinity, 89000903
Morningside (Blount County MPS), Maryville College campus, Maryville, 89000904
Patton, Samuel A., Building (Blount County MPS), 114 E. Broadway Ave., Maryville, 89000905
Peery Mill Site (Blount County MPS), Old Walland Hwy, 0.1 mi. N of Cold Springs Rd., Walland vicinity, 89000887
People's Bank of Friendsville (Blount County MPS), College St., Friendsville, 89000906
Pistol Creek Dam and Mill Race (Blount County MPS), Pistol Creek between Church Ave. and Ellis St., Maryville, 89000907
Porter, Stephen, House (Blount County MPS), Martin Mill Pike, 0.2 mi. W of Glover Rd., Rockford vicinity, 89000908
Rorex, John M., House (Blount County MPS), Jct. of Brick Mill Rd. and Old Miles Ferry Rd., Maryville vicinity, 89000909
Shea, John F., House (Blount County MPS), Old Walland Hwy., Townsend, 89000910
Southern Railroad Bridge (Blount County MPS), Southern Railroad right-of-way over Little River, Rockford vicinity, 89000911
Southern Railroad Freight Depot (Blount County MPS), Southern Railroad right-of-way between Sevierville Rd. and Washington Ave., Maryville, 89000912
Stevenson, Dr. William P., House (Blount County MPS), Maryville College campus, Maryville, 89000913
Trundle, Carl., Barn (Blount County MPS), Jct. Wildwood Rd. and US 411, Wildwood vicinity, 89000890
Vineyard, Tobler. House (Blount County MPS), Hollybrook Rd., 1 mi. N of Martin Mill Pike, Rockford vicinity, 89000914
Walland Bridge (Blount County MPS), Old Walland Rd. over Little River, Walland, 89000915
Walland Power Plant (Blount County MPS), Old Walland Hwy., 0.75 mi. N of Walland, Walland vicinity, 89000916
Warren, Marcus, House (Blount County MPS), Miser Station Rd., 0.2 mi. S of Middle Settlement Rd., Louisville vicinity, 89000917
White's Mill (Blount County MPS), Old White's Mill Rd., Maryville vicinity, 89000918
Willard—Clark House (Blount County MPS), 1125 Broadway, Maryville 89000919
Yearout, Isaac, House (Blount County MPS), Big Springs Rd., 0.3 mi. M of Morganton Rd., Alcoa vicinity, 89000920

Hamilton County

Glenwood Historic District, Roughly bounded by Parkwood Dr., Glenwood Dr., Oak St., and Derby St., Chattanooga, 89000861

VIRGINIA

Arlington County

Pentagon Office Building Complex, Jefferson Davis Hwy./VA 110 at I-395, Arlington, 89000932

[FR Doc. 89-15052 Filed 6-26-89; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-6 (Sub 310X)]

Burlington Northern Railroad Co.—Abandonment Exemption—In Denver County, CO

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 3.26-mile line of railroad between milepost 0.45 near 6th Avenue and milepost 3.71 near Prospect Junction (Denver West Side Line), in Denver County, CO.

Applicant has certified that: (1) No local or overhead traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 27, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by July 7, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by July 17, 1989, with:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Steven A. Brigance, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by June 30, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Acting Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: June 20, 1989.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-15180 Filed 6-26-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-321X]

Kansas City Public Service Freight Operation—Exemption—Abandonment in Jackson County, MO; Exemption

Kansas City Area Transportation Authority (Transportation Authority) and Kansas City Public Service Freight Operation (Freight Operation) have filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances* to abandon and/or discontinue service [1] over a 7.4-mile line of railroad between milepost 7.40 and milepost 0.00 in Kansas City, Jackson County, MO.

Applicants have certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice. The circumstances surrounding the abandonment of this line are unusual. This Commission had previously authorized the abandonment of this line by its then owner, Freight Operation, in *Modern Handcraft, Inc.—Abandonment*, 363 I.C.C. 969 (1981) on petition by an adjacent property owner, and by its current owner, the Trasnportation Authority. We noted: "Although it is true that the grant of an abandonment application is permissive and the railroad can choose not to surrender its common carrier status and obligations, a certificate of abandonment is evidence in any court proceeding that the line is not required by the public for rail operations." 366 I.C.C. at 972. The Transportation Authority, which joined in Modern Handcraft's abandonment application to permit the line to be condemned, did not pursue condemnation. Rather, it acquired the line form Freight Operation. Thus Transportation Authority, applicant herein, states that the abandonment authorized by the Commission has not been consummated, despite a long and continuous cessation of service, and that this agency retains jurisdiction to issue this notice. Applicants also state that this class exemption presupposes the retention of Commission jurisdiction over lines which have been out of service for a long time.

Applicants have set forth a basis for Commission jurisdiction to issue this notice. Due to the unusual circumstances of this case, however, we will require applicants to serve a copy of this **Federal Register** notice on all adjacent landowners known to hold, or known to claim to hold, reversionary interests in the right of way.

The Transportation Authority also requests issuance of a Notice of Interim Trail Use or Abandonment (NITU). It indicates its willingness to assume financial responsibility for interim trails use and rail banking under the National Trails System Act, 16 U.S.C. 1247(d), and the corresponding regulations at 49 CFR 1152.29. We have authority to impose a NITU where discontinuance of operations rather than abandonment is involved. *See Vermont & VT RY—Discontinuance—Crittenden Co., VT*, 3 I.C.C.2d 903 (1987). However, offers of financial assistance under 49 U.S.C. 10905 take priority over interim trail use conditions. Since this notice involves only a discontinuance, there can be no offer to acquire the line. A request could be filed to subsidize the existing operator, however. Therefore, we will not issue a NITU until the time for filing offers of financial assistance has expired, or until it is clear that the line will not be subsidized under the financial assistance procedures. Moreover, other parties are not foreclosed form filing requests for interim trail use within 10 days after publication of this notice of exemption.

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C.2d 400 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440-48446).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

[1] The Transportation Authority claims ownership of the line, and Freight Operation claims trackage rights over the line. Under Pub. L. 88-598, in which the United States assented to the creation of the Transportation Authority by the States of Missouri and Kansas, the Transportation Authority was exempted from the applicability of the provisions of the Interstate Commerce Act and rules, regulations, and orders promulgated thereunder. The Transportation Authority is beyond our jurisdiction and may abandon this track without our authority. We will treat the notice as a request for discontinuance of the trackage rights operations only.

The Commission will also accept a late-filed trail use statement so long as it retains jurisdiction to do so.

Employee protective conditions will not be imposed because the discontinuance of operations over this line is equivalent to discontinuance of the entire operations of Freight Operation.[2]

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 27, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[3] formal expressions of intent to file an offer or financial assistance under 49 CFR 1152.27(c)(2)[4] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by July 7, 1989. Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by July 17, 1989. Any such petition must be filed with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representatives: L. John Osborn, Verner, Liipfert, Bernhard, McPherson and Hand, 901 15th Street, NW., Suite 700, Washington, DC 20005-2301; and Jerome D. Riffel, Lathrop Koontz & Norquist, Twenty-Sixth Floor, Mutual Benefit Life Building, 2345 Grand Avenue, Kansas City, MO 64108.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicants have filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by June 30, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Acting Chief, SEE at (202) 275-7004. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: June 22, 1989.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-15266 Filed 6-26-89; 8:45 am]

BILLING CODE 7035-01-M

[2] *See Modern Handcraft, Inc.—Abandonment*, 363 I.C.C. 969, 973 (1981), and cases cited thereunder.

[3] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C.2d 409 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[4] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the Federal Register on December 22, 1987 [52 FR 48440-48446].

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(h)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on May 17, 1989, Research Diagnostics, Inc., Attn: Bret G. Wien, President, Pleasant Hill Road, Flanders, New Jersey 07836, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Alfentanil (9737)	II
Fentanyl (9801)	II
Sufentanil (9740)	II

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (30 days from publication).

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42(b), (c), (d), (e) and (f). As noted in a previous notice at 40 FR 43745-46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42(a), (b), (c), (d), (e) and (f) are satisfied.

Dated: June 20, 1989.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 89-15082 Filed 6-26-89; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503, (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New Collection

Bureau of Labor Statistics
Permanent Mass Layoff and Plant Closing Program
State Operations Review
Biennially
State or local governments
51 responses; 1,632 hours; 32 hours per response; 1 form
The PMLPC State Operations Review is the principal source of information concerning State procedures used in the production of PMLPC data and their adherence to BLS program specifications. It is designed to examine each aspect of data production and provide documentation which can be used in future program analyses.

Extension

Bureau of Labor Statistics
Report on Occupational Employment
1220-0042; BLS-2877
Annually
State or Local Governments: Businesses or other for-profit; Non-profit institutions; Small businesses or organizations 240,375 respondents; 120,188 hours; 30 minutes per response;
32 forms
The OES Survey program is a Federal/State sample survey of employment by occupation in non-farm establishments that is used to produce data on current occupational employment and is a component in the development of employment and training programs and occupational information systems.

Extension

Employment Standards Administration
29 CFR Part 575—Waiver of Child Labor Provisions for Agricultural Employment of 10 and 11-year-old Minors in Hand Harvesting of Short Season Crops
1215-0120; FLSA 575
On occasion
Farms
1 respondent; 4 total hours; 4 hours per response
Agricultural employers are required to supply certain information to DOL when applying for a waiver of the FLSA child labor provisions to employ 10 and 11-year-olds in hand harvesting of short season crops. Agricultural employers granted waivers are required to maintain certain records regarding compliance with the waiver.

Extension

Mine Safety and Health Administration
Application for Waiver of Surface Facilities Requirement
1219-0024
On occasion
Businesses or other for profit; small businesses or organizations 1,730 respondents; 30 minutes per response; 865 total burden hours
Coal mine operators are required to provide bathing facilities, clothing change rooms, and sanitary flush toilet facilities in a location that is convenient for use of the miners. Regulations provide procedures by which an operator may apply for and be granted a waiver.

Extension

Employment and Training Administration
Service Delivery Area Job Training or Modification or Plan Revocation Appeals
1205-0208
On occasion
State or local governments
25 respondents; 50 total hours; 2 hrs. per response; no forms
The information collected will be used to determine whether the SDA Job Training Plan or Modification or the Plan Revocation disapprovals are in conformance with the Job Training Partnership Act (JTPA).

Signed at Washington, DC this 21st day of June, 1989.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 89-15163 Filed 6-26-89; 8:45 am]

BILLING CODE 4510-24-M

Employment and Training Administration

[TA-W-22,561]

Bates Fabrics, Inc., Lewiston, ME; Affirmative Determination Regarding Application for Reconsideration

The New England Regional Joint Board of the Amalgamated Clothing and Textile Workers Union requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for Workers and former workers of Bates Fabrics, Inc., Lewiston, Maine. The negative determination was issued on May 5, 1989.

The union claims that an entire department (Yarn Mill) was permanently closed as a result of the company imports of yarn.

Conclusion

After careful review of the application, I conclude that the claims are of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC this 19th day of June 1989.

Barbara Ann Farmer,

Director, Office of Program Management, UIS.

[FR Doc. 89-15164 Filed 6-26-89; 8:45 am]

BILLING CODE 4510-30-M

Dresser Industries, Incorporated, Guiberson Division; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In the matter of TA-W-22,355, Houston, Texas; TA-W-22,394, Dallas, Texas; TA-W-22,394A, all other locations in Texas; TA-W-22,394B, all locations in Wyoming; TA-W-22,394C, all locations in Illinois; TA-W-22,394D, all locations in Kansas; TA-W-22,394E, all locations in Louisiana; TA-W-22,394F, all locations in Oklahoma; TA-W-22,394G, all locations in New Mexico; TA-W-

22,394H, all locations in California; TA-W-22,394I, all locations in Alaska.

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 10, 1989 applicable to all workers of the Guiberson Division of Dresser Industries, Inc. The certification was amended on May 5, 1989 and on June 9, 1989 to include locations in additional States.

Information from the company was submitted that shows worker separations from the instant firm at Houston, Texas a few weeks prior to the August 1, 1988 impact date set in the certification.

The notice, therefore, is amended by including an impact date of June 1, 1988 for workers of the Guiberson Division of Dresser Industries, Houston, Texas.

The amended notice applicable to TA-W-22,355 and TA-W-22,394 is hereby issued as follows:

All workers of the Guiberson Division of Dresser Industries, Inc., in Houston, Texas who became totally or partially separated from employment on or after June 1, 1988 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974 and all workers of the Guiberson Division of Dresser Industries, Inc., Dallas, Texas and in all other locations of Texas and in all locations in the States of Wyoming, Illinois, Kansas, Louisiana, Oklahoma, New Mexico, California and Alaska who became totally or partially separated from employment on or after August 1, 1988 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 20th day of June 1989.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-15161 Filed 6-26-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-21,452]

Marine Drilling Co., Corpus Christi, Texas et al.; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In the matter of TA-W-21,452A, Operating at Various Other Locations, in the State of Texas, TA-W-21,452B, Operating at Various Locations in the State of Louisiana

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certificate of Eligibility to Apply for Worker Adjustment Assistance on December 20, 1988 applicable to all workers of Marine Drilling Company, Corpus Christi, Texas and in other locations in the State of Texas.

Based on new information from the company, additional workers were separated from Marine Drilling in the State of Louisiana. The notice therefore, is amended by including all locations of Marine Drilling in the State of Louisiana.

The amended notice applicable to TA-W-21,452 is hereby issued as follows:

All workers of Marine Drilling Company, Corpus Christi, Texas and in all other locations of Texas and all locations in the State of Louisiana who became totally or partially separated from employment on or after October 1, 1985 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 20th day of June 1989.

Stephen A. Wandner,

Deputy Director, Office of Legislative and Actuarial Services, UIS.

[FR Doc. 89-15162 Filed 6-26-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-22,526]

Petromar Corp., Rockport, TX; Negative Determination Regarding Application for Reconsideration

By an application dated May 31, 1989 the company requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on May 10, 1989 and will be published soon in the **Federal Register**.

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances;

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The company claims that the Department is inconsistent in denying certification for workers at Petromar while certifying workers for Tenneco Management and Tenneco Realty.

Petromar Corporation provided administrative activities and management services to affiliated firms engaged in transportation services to unaffiliated producers of petroleum products.

The Department's denial was based on the fact that the workers do not produce an article within the meaning of section 222(3) of the Trade Act. This was addressed in the Department's notice of negative determination. However, worker groups providing a service may be certified eligible for trade adjustment assistance if their layoffs were caused importantly by a reduced demand for their services from a production facility of a parent firm or a firm otherwise related by ownership or control whose workers independently meet the statutory criteria for certification. These conditions were not met for workers of Petromar.

Workers at Tenneco Management (TA-W-22,551) and Tenneco Realty (TA-W-22,554) were certified because their layoffs were directly related to a reduced demand for their services from Tenneco Oil Exploration and Production and Tenneco Oil Processing and Marketing whose workers independently met the worker group criteria for certification under (TA-W-22,187-96 and TA-W-22,552A-E), respectively.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law of the facts which would justify reconsiderable of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 20th day of June 1989.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-15165 Filed 6-26-89; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-89-90-C]

Drummond Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Drummond Company, Inc., P.O. Box 10246, Birmingham, Alabama 35202 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Bibby Mine (I.D. No. 01-02776) located in Jefferson County, Alabama. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on electric face cutting equipment, continuous mining machines, longwall face equipment and loading machines. The monitor is required to be properly maintained and frequently tested.

2. Petitioner presently operates the continuous miner by radio remote control and utilizes flooded-bed scrubbers.

3. The mine is located above the water table and there has been no methane detected.

4. In lieu of providing and maintaining a machine-mounted methane monitor on the continuous miner, petitioner proposes the following:

(a) A permissible hand-held (MX-240) combination methane and continuous oxygen detection instrument, or comparable device, would at all times be in possession of the continuous miner operator or helper while the miner is being operated in the working place;

(b) Each miner required to use the detector would be trained and would be made qualified in its use;

(c) Each detector would be inspected daily and calibrated at not less than 30 day intervals by a qualified person experienced in maintenance and calibration procedures; and

(d) An extra detector would be maintained available on the working section at all times during production shifts.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 27, 1989. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Dated: June 21, 1989.

[FR Doc. 89-15157 Filed 6-26-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-87-C]

McElroy Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

McElroy Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1403-5(g) (belt conveyors) to its McElroy Mine (I.D. No. 46-01437) located in Marshall County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a clear travelway at least 24 inches wide be provided on both sides of all belt conveyors.

2. With the longwall installations at the mine, a monorail cable handling system will be used to handle the electrical cable, water line and other cables, and will be installed on the tight side of the longwall belt conveyor.

3. In lieu of providing a clear travelway of at least 24 inches wide on both sidses of all belt conveyors, petitioner proposes the following procedures:

(a) Signs would be kept posted at the outby end and at all crosscuts leading into the monorail area informing miners not to enter the area of the monorail system for any purpose until the conveyor is deenergized;

(b) At the beginning of each production shift after the conveyor has been deenergized, a thorough examination of the monorail area would be performed by a certified person. Any coal spillage or sloughage material between the belt conveyor and solid rib would be removed. Belt rollers would be examined and replaced as needed. A rcord of the examination, including date, time ands corrective actions taken would be recorded in a ledger book located at the headgate and would be made available to interested parties;

(c) Any hazardous conditions encountered during the shift would be corrected immediately. A record of such occurrences and corrective actions would also be listed in the ledger book;

(d) All persons who are required to work in the longwall area would be trained in the proper procedures required to walk or work on the tight side of the belt in the affected area;

(e) A belt crossover would be provided and maintained immediately outby the monorail system; and

(f) Remote control (start/stop) switches would be provided on both sides of the conveyor at the outby end of the monorail system.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 27, 1989. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: June 16, 1989.

[FR Doc. 89-15158 Filed 6-26-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-92-C]

Peabody Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Peabody Coal Company, 301 North Memorial Drive, P.O. Box 373, St. Louis, Missouri 63166 has filed a petition to modify the application of 30 CFR 75.303 (preshift examination) to its Martwick Mine (I.D. No. 15-14074) located in Muhlenberg County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that belt conveyors on which coal is carried be examined after each coal producing shift has begun.

2. As an alternate method, petitioner proposes to examine the belts beginning at 6:00 a.m. and continuing through to the first shift, thereby eliminating the need to walk the belts at both midnight and 8:00 a.m.

3. In support of this request, petitioner states that—

(a) The belts don't begin to run until after 6:00 a.m., which is six hours after the midnight shift begins;

(b) The belts are only used to remove scoopings which contain coal and rock;

(c) No coal is mined on the midnight shift; and

(d) It takes a full shift to walk the entire belt system at the mine.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or

received in that office on or before July 27, 1989. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,
Director, Office of Standards, Regulations and Variances.

Dated: June 16, 1989.

[FR Doc. 89-15159 Filed 6-26-89; 8:45 am]
BILLING CODE 4510-43-M

[Docket No. M-89-81-C]

The Pittsburg and Midway Coal Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

The Pittsburg & Midway Coal Mining Company, 6400 South Fiddler's Green Circle, Englewood, Colorado 80111 has filed a petition to modify the application of 30 CFR 75.807 (installation of high-voltage transmission cables) to its North River No. 1 Mine (I.D. No. 01-00759) located in Fayette County, Alabama. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that all underground high-voltage transmission cables be guarded where persons regularly work or pass under them unless they are 6½ feet or more above the floor or rail.

2. As an alternate method to guarding such cables, petitioner proposes to use mine power feeder (MPF) cables with improved characteristics of insulation, jacketing, and shielding which are detailed in the petition.

3. The MPF cable would incorporate a neutral resistance grounding system which would automatically limit touch potential to 100 volts under fault conditions, thereby eliminating the possibility of exposing miners to fatal shocks.

4. The system would also incorporate a fail safe ground check circuit.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the Standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 27, 1989. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,
Director, Office of Standards, Regulations and Variances.

Date: June 16, 1989.

[FR Doc. 89-15160 Filed 6-26-89; 8:45 am]
BILLING CODE 4510-43-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of the Humanities Panel

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786-0322.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or (3) information the disclosure of which would significantly frustrate implementation of proposed agency action, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

1. *Date:* July 10, 1989.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications submitted to the Humanities Projects in Museums and Historical Organizations program, Division of General Programs, for projects beginning after September 1, 1989.

2. *Date:* July 13-14, 1989.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications submitted to the Humanities Projects in Museums and Historical Organizations program, Division of General Programs, for projects beginning after September 1, 1989.

3. *Date:* July 20-21, 1989.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications submitted to the Humanities Projects in Museums and Historical Organizations programs, Division of General Programs, for projects beginning after September 1, 1989.

4. *Date:* July 27-28, 1989.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications submitted to the Humanities Projects in Museums and Historical Organizations programs, Division of General Programs, for projects beginning after September 1, 1989.

Stephen J. McCleary,
Advisory Committee Management Officer.

[FR Doc. 89-15171 Filed 6-26-89; 8:45 am]
BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* 10 CFR Part 61—Licensing Requirements for Land Disposal of Radioactive Waste.

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* Applications for licenses are submitted once. Applications for renewals or amendments are submitted as needed. Other reports are submitted annually and as other events require.

5. *Who will be required or asked to report:* Applicants for and holders of an NRC license for land disposal of low-level radioactive waste.

6. *An estimate of the number of responses:* 98.

7. *An estimate of the total number of hours needed to complete the requirement or request:* The average burden is estimated to be approximately 164 hours per response, and 2,080 recordkeeping hours per licensee annually. The total industry burden is estimated to be 20,274 hours annually.

8. *An indication of whether section 3504(h), Pub. L. 96-511 applies:* Not applicable.

9. *Abstract:* 10 CFR Part 61 establishes the procedures, criteria, and license terms and conditions for the land disposal of low-level radioactive waste. The information collected in the applications, reports and records is evaluated by the NRC to ensure that the licensee's or applicant's physical plant, equipment, organization, training, experience, procedures and plans provide an adequate level of protection of public health and safety, common defense and security, and the environment.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW., Washington, DC.

Comments and questions may be directed by mail to the OMB reviewer: Nicolas B. Garcia, Paperwork Reduction Project (3150-0135), Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395-3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492-8132.

Dated at Bethesda, Maryland, this 19th day of June 1989.

For the Nuclear Regulatory Commission.

Joyce A. Amenta,
Designated Senior Official for Information Resources Management.

[FR Doc. 89-15156 Filed 6-26-89; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-10]

Commonwealth Edison Co.; Consideration of Issuance of Amendment to Facility License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to License No. DPR-2, issued to Commonwealth Edison Company (the licensee), for the Dresden Nuclear Power Station, Unit 1 (Dresden 1) located in Grundy County, Illinois. The amendment would involve approval of the Dresden 1 Decommissioning Plan and associated Technical Specifications (TS) and the renewal of License No. DPR-2.

In October, 1978 Dresden 1 was permanently shutdown. All spent fuel has been transferred from the reactor to the spent fuel pool and License No. DPR-2 was amended to possess-but-not-operate status on July 23, 1986. This amendment would accomplish the following:

(1) Approval of the licensee's Decommissioning Plan which involves on-site storage of residual radioactivity (SAFSTOR) until about 2029 followed by facility dismantling. The licensee also proposes to retain spent fuel onsite in the spent fuel pool until a Federal repository is available for spent fuel disposal. The Decommissioning Plan analyzes the proposed monitoring, maintenance and operation of the spent fuel pool and the monitoring maintenance of the remainder of the facility. The Plan also analyzes potential accidents at the facility and the controls established for radiation protection and the prevention of the release of radioactivity from the site. A supplement to the Dresden 1 Environmental Report analyzes the environmental impacts of the SAFSTOR decommissioning option;

(2) Revision of the TS to reflect the long term storage of fuel and residual radioactivity onsite. The TS requirements would be revised to reflect the SAFSTOR status such as requirements for radiation protection, monitoring, facility maintenance and spent fuel pool operations.

(3) Deletion of certain license conditions that were applicable for reactor operations but not permanent shutown Possession-Only conditions.

(4) Renewal of License No. DPR-2 from its May 4, 1996 expiration date to April 10, 2029 to be consistent with the licensee's Decommissioning Plan which proposes a SAFSTOR period followed by facility dismantling.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By July 27, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary of the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for

each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the licensing action under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Section, or may be delivered to the Commission's Public Document Room, at 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Charles L. Miller: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 and to Michael L. Miller, Esquire; Sidley and Austin, One First National Plaza; Chicago, Illinois 60603 attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and § 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment for Items 1, 2 and 3 above after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92. Issuance of the license renewal, Item 4, would require the completion of any required hearing regardless of the outcome of a no significant hazards consideration finding.

For further details with respect to this action, see the licensee's application dated January 7, 1988, as revised December 22, 1987, April 29, September 2 and November 21, 1988 and March 27, April 10 and May 16, 1989 which is available for public inspection at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC 20555 and at the Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

Dated at Rockville, Maryland this 21st day of June 1989.

For the Nuclear Regulatory Commission.

Peter B. Erickson,

Project Manager, Standardization and Non-Power Reactor Project Directorate, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–15155 Filed 6–26–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–423]

Northeast Nuclear Energy Co., Millstone Nuclear Power Station, Unit No. 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–49 to Northeast Nuclear Energy Company (the licensee), for Millstone Unit 3 located in the Town of Waterford, Connecticut.

Environmental Assessment

Identification of Proposed Action:

The proposed amendment would revise the provisions in the Technical Specifications (TS) relating to fuel enrichment.

The proposed action is in accordance with the licensee's application dated January 24, 1989.

The Need for the Proposed Action:

The proposed changes are needed so that the licensee can use higher enrichment fuel, and provide the flexibility of extending the fuel irradiation and permitting operation of longer fuel cycles.

Environmental Impacts of the Proposed Action:

The staff has completed its evaluation of the proposed revisions to the Technical Specifications. The proposed revision would permit use of fuel enriched with Uranium 235 up to 5.0 nominal weight percent. The expected Cycle 3 burnup is 17,000 MWD/MTU. The safety considerations associated with reactor operation with higher enrichment and extended irradiation have been evaluated by the NRC staff. The staff has concluded that such changes would not adversely affect plant safety. The proposed changes have no adverse effect on the probability of any accident. The increased burnup may slightly change the mix of fission products that might be released in the event of a serious accident but such small changes would not significantly affect the consequences of serious accidents. No changes are being made in the types or amounts of any radiological effluents that may be released offsite during normal operation. There is also no significant increase in the allowable individual or cumulative occupational radiation exposure.

With regard to potential nonradiological impacts of reactor operation with higher enrichment and extended irradiation, the proposed changes to the TS involve systems located within the restricted area as defined in 10 CFR Part 20. They do not affect nonradiological plant effluents and have no other environmental impact.

The environmental impacts of transportation resulting from the use of higher enrichment fuel and extended irradiation have been discussed in the staff assessment entitled, "NRC Assessment of the Environmental Effects of Transportation Resulting from Extended Fuel Enrichment and Irradiation," dated July 7, 1988 (53 FR 30355). As indicated therein, the environmental cost contribution of the proposed increase in the fuel enrichment and irradiation limits are either unchanged or may in fact be reduced from those summarized in Table S–4 as set forth in 10 CFR 51.52(c).

Therefore, the staff concludes that there are no significant radiological or nonradiological environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action:

Since the staff concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources:

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement related to the operation of Millstone Nuclear Power Station Unit No. 3" dated December 1984.

Agencies and Persons Consulted:

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The staff has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, the staff concluded that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated January 24, 1989, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Dated at Rockville, Maryland, this 20th day of June 1989.

For the Nuclear Regulatory Commission.

Alexander W. Dromerick,

Acting Director, Project Directorate I–4, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89–15151 Filed 6–26–89; 8:45 am]

BILLING CODE 7590–01–M

[Dockets Nos. 50–282 and 50–306]

Northern States Power Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–42 and DPR–60, issued to the Northern States Power Company (the licensee), for operation of the Prairie Island Nuclear Generating Plant, Units Nos. 1 and 2, located in Goodhue County, Minnesota.

In accordance with the licensee's application for amendments dated April 6, 1989, the amendments would change the fuel enrichment limits permitted in the storage pool from 3.9 wt% U–235 (39.0 gm U–235/axial cm of fuel assembly) average to 4.25 wt% U–235. The enrichment increase will result in a longer fuel cycle for the Prairie Island Nuclear Generating Plant.

Prior to issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By July 27, 1989, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors:: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter and the bases for each contention set fourth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Lawrence A. Yandell (petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

Nontimely filings for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the president Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendments after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendments dated April 6, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Dated at Rockville, Maryland, this 5th day of June 1989.

For the Nuclear Regulatory Commission.

Albert De Agazio,

Acting Director, Project Directorate III–1, Division of Reactor Projects—III, IV, V & Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–15152 Filed 6–25–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–263]

Northern States Power Co.; Issuance of Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has issued Amendment No. 67 to Facility Operating License No. DPR–22, issued to the Northern States Power Company (the licensee), which revised the Technical Specifications for operation of the Monticello Nuclear Generating Plant, located in Wright County, Minnesota. The amendment was effective as of the date of issuance.

The amendment changed Table 3.11.1 (page 214) of the plant Technical Specifications to add a 45,000 MWD/MTU Maximum Average Planar Linear Heat Generation Rate (MAPLHGR) for fuel types P8DRB285L and BP8DRB285L in order to extend the length of the current operating cycle through to August 1989 and meet expected power demands during the peak load summer months of 1989.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings, as required by the Act and the Commissions rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on February 22, 1989 (54 FR 7621). No request for hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see (1) the application for amendment dated January 31, 1989, as supplemented by letter dated February 3, 1989; (2) Amendment No. 67 to License No. DPR–22; (3) the Commission's related Safety Evaluation and Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401. A copy of items (2), and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20055, Attention: Director, Division of Reactor Project III, IV, V & Special Projects

Dated at Rockville, Maryland, this 19th day of June 1989.

For the Nuclear Regulatory Commission.

John J. Stefano,

Project Manager, Project Directorate III–1, Division of Reactor Projects—III, IV, V & Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–15153 Filed 6–26–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–483]

Union Electric Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–30, issued to Union Electric Company (the licensee), for operation of the Callaway Plant, located in Callaway County, Missouri.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would increase the allowed flow variations of the control room emergency ventilation system and reduce the control room pressurization requirement from ¼ inch water gauge to ⅛ inch water gauge.

The proposed action is in accordance with the licensee's application for amendment dated March 25, 1988, as supplemented by letters dated December 28, 1988 and March 31, 1989.

The Need for the Proposed Action

The proposed change to the technical specifications (TS) is necessary because of difficulties identified when verifying the capability of the emergency ventilation system to comply with the flow tolerances and pressurization level indicated in TS 3/4.7.6. This condition is caused by changes in filter loading as particulate accumulates over time.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to TS and finds that the resulting value of the iodine protection factor (IPF) for use in the radiological dose calculations for control room personnel is not decreased significantly with the proposed increase in flow variations and lower control room pressurization in comparison to the IPF without these changes. The staff has also calculated the potential radiation doses to control room operators following a design basis accident and finds them to be within the acceptance criteria of General Design Criterion 19 and Standard Review Plan Section 6.4. Therefore, the proposed changes do not increase the probability of consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

The Notice of Consideration of Issuance of Amendment and Opportunity for Prior Hearing in connection with this action was published in the **Federal Register** on May 20, 1988 (53 FR 18187). No request for hearing or petition for leave to intervene was filed following this notice.

With regard to potential nonradiological impacts, the proposed change to the TS involves systems located within the restricted area as defined by 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Callaway Plant dated January 1982.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated March 25, 1988 and supplements dated December 28, 1988 and March 31, 1989, which are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC and at the Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251 and the John M. Olin Library, Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Dated at Rockville, Maryland, this 16th day of June 1989.

For the Nuclear Regulatory Commission.

Timothy G. Colburn,

Acting Director, Project Directorate III–3, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–15154 Filed 6–26–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–320–OLA (Disposal of Accident-Generated Water)]

General Public Utilities Nuclear Corp. (Three Mile Island Nuclear Station, Unit 2); Oral Argument

Notice is hereby given that, in accordance with the Appeal Board's order of June 14, 1989, oral argument on the appeal of the Susquehanna Valley Alliance and Three Mile Island Alert from the Licensing Board's February 2, 1989, initial decision authorizing an operating license amendment, LBP–89–7, 29 NRC (1989), will be heard at 2:00 p.m., Wednesday, July 26, 1989, in the NRC Public Hearing Room, Fifth Floor, East-West Towers Building, 4350 East-West Highway, Bethesda, Maryland.

For the Appeal Board.

Barbara A. Tompkins,

Secretary to the Appeal Board.

Dated: June 20, 1989.

[FR Doc. 89–15081 Filed 6–26–89; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–17018; 811–3689]

Venture Trust Tax-Free Money Market Fund; Notice of Application

DATE: June 20, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Venture Trust Tax-Free Money Market Fund.

Relevant 1940 Act Section: Section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company under the 1940 Act.

Filing Date: The application on Form N–8F was filed on May 23, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 17, 1989, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 124 E. Marcy Street, Santa Fe, New Mexico 87501.

FOR FURTHER INFORMATION CONTACT: Patricia Copeland, Legal Technician, (202) 272–3009, or Brion Thompson, Branch Chief, (202) 272–3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant is a business trust organized under the laws of the Commonwealth of Massachusetts. Applicant is registered under the 1940 Act as an open-end, diversified management investment company. On March 19, 1983, Applicant filed a Notification of Registration pursuant to Section 8(a) of the 1940 Act on Form N–8A. On that same date, Applicant filed a registration statement under the Securities Act of 1933 on Form N–1 which was declared effective on June 10, 1983, and its initial public offering commenced.

2. On October 20, 1988, Applicant's Board of Trustees ("Board") authorized the Plan of Reorganization ("Plan") of Applicant into, Venture Trust Money Market Fund ("Venture", formerly First Trust Money Market Fund), a registered open-end management investment company (File No. 811–3078). Under the Plan, Applicant would become a new separate series portfolio of Venture by transferring its assets to Venture in return for shares of the Tax-Free Portfolio of Venture ("Tax-Free Portfolio"). On December 15, 1988, at a special meeting, Applicant's shareholders approved the Plan by a vote of a majority of its shares in accordance with the requirements of its Agreement and Declaration of Trust. In connection with such shareholder vote, the Applicant solicited proxies pursuant to a Proxy Statement sent to shareholders on or about November 11, 1988.

3. On February 1, 1989, all of Applicant's assets were transferred to the Tax-Free Portfolio of Venture at net asset value and assumption of Applicant's liabilities. On that same date, 14,192,117.648 shares of Tax-Free Portfolio, were distributed pro rata to the shareholders of the Applicant in

liquidation of their interests. After this distribution, the Applicant was left with one share outstanding owned by one shareholder, Venture Advisers, L.P., its former investment adviser and distributor. Both Applicant and the Tax-free Portfolio of Venture are money market funds which value securities on the basis of amortized costs. All securities transferred had maturities of one year or less as determined under Rule 2(a)(7) under the 1940 Act. The Tax-Free Portfolio of Venture was created initially for the purpose of this reorganization.

4. Applicant has total assets of $1.00 in cash to retain its identity as a trust and one shareholder, Venture Advisers, L.P. Expenses associated with the reorganization were paid by Applicant. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged, nor does it propose to engage in any business activities other than those necessary to wind up its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-15179 Filed 6-26-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

Strategic Minerals Certification

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State is considering possible revisions to the certification of strategic minerals, dated January 7, 1987 (Public Notice 997, 52 FR 4454), pursuant to Section 303(a)(2) of the Comprehensive Anti-Apartheid Act of 1986, Pub. L. 99-440, 100 Stat. 1086, as amended by H.J. Res. 788, Pub. L. 99-631, 100 Stat. 3515 ("the Act"). The Department requests written public comments not later than July 31, 1989.

FOR FURTHER INFORMATION CONTACT: John Medeiros or Jeffrey Cunningham, Office of International Commodities, (202) 647-6690, or John R. Byerly or Antonio F. Perez, Office of the Legal Adviser, (202) 647-4110, Department of State.

SUPPLEMENTARY INFORMATION: Section 303(a) of the Act prohibits the importation of articles "grown, produced, manufactured by, marketed, or otherwise exported by a parastatal organization of South Africa." Section 303(a)(2) contains an exception to this prohibition for "those strategic minerals for which the President has certified to the Congress that the quantities essential for the economy or defense of the United States are unavailable from reliable and secure suppliers." In Executive Order 12571 of October 27, 1986, 51 FR 39505 (Oct. 29, 1986), the President delegated authority to the Secretary of State, in consultation with the Secretary of Commerce and the Secretary of Defense, for determining which articles are strategic minerals within the meaning of the Act. Pursuant to this authority, the Acting Secretary of State certified the following list of strategic minerals on January 7, 1987: Andalusite; antimony; asbestos, chrysotile; chromium (includes ferrochromium); cobalt; diamonds, industrial (natural); manganese (includes ferromanganese and ferrosilicomanganese); platinum group metals; rutile (includes titanium-bearing slag); and vanadium (includes ferrovanadium).

A preliminary review of market developments, changes in consumption patterns, and other considerations which have come to the attention of the Department indicates that certain changes in the original list may be required. In particular, the Department, in consultation with other concerned Federal agencies, has under active consideration proposals for the deletion from the list of chrysotile asbestos, the substitution of type II-b diamonds for the generic category "diamonds, industrial (natural)," and the addition to the list of pyrophyllite and zirconium (including zircon sands, baddeleyite, and zirconium-bearing materials).

Changes in the certification of strategic minerals deal with a foreign affairs function of the United States and are thus excluded from the major rule procedures of Executive Order 12291 (46 FR 13193) and the procedures of 5 U.S.C. 553 and 554. In light of the desirability of obtaining the public's views, however, the Department is requesting public comments with respect to changes in the list of strategic minerals, particularly the specific changes noted above as under active consideration. Comments should address the essentiality of these materials for the national economy or the national defense and the degree and conditions of their availability from reliable and secure suppliers. All comments should be submitted in writing not later than July 31, 1989, to the Office of International Commodities (EB/ERF/ICD), Room 3425, Department of State, Washington, DC 20520-5816.

Dated: June 15, 1989

Eugene McAllister,

Assistant Secretary of State for Economic and Business Affairs

[FR Doc. 89-15132 Filed 6-26-89; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice 1113]

Delegation of Authority No. 178 Under Secretary for Economic Affairs Certifications Under 18 U.S.C. 203;

By virtue of the authority vested in me as Secretary of State, including by Sections 2656 and 2658 of Title 22 and the Note to Section 203 of Title 18 of the United States Code, I hereby delegate the functions vested in me by the Note to 18 U.S.C. 203 to the Under Secretary for Economic Affairs. The Under Secretary for Economic Affairs may redelegate this authority to the Under Secretary for Management.

May 25, 1989.

James A. Baker, III,

Secretary of State.

[FR Doc. 89-15133 Filed 6-26-89; 8:45 am]

BILLING CODE 4710-10-M

DEPARTMENT OF TRANSPORTATION

DEPARTMENT OF STATE

Statement of U.S. International Air Cargo Policy

AGENCIES: Office of the Secretary, DOT; Bureau of Economic and Business Affairs, State.

SUMMARY: This notice sets forth a final statement of U.S. international air cargo policy.

FOR FURTHER INFORMATION CONTACT: Mr. Edward P. Oppler, Office of International Aviation, Room 6402, Department of Transportation, 400 Seventh Street SW, Washington, DC 20590. Telephone (202) 366-2358.

SUPPLEMENTARY INFORMATION: This statement of U.S. international air cargo policy, which was developed jointly by the Departments of State and Transportation, sets forth objectives and guidelines for use by U.S. Government officials in carrying out U.S. air cargo policy. A proposed statement of U.S. international air cargo policy was published in the **Federal Register** on August 4, 1988 in order to provide interested persons an opportunity to comment on the proposed statement. After thorough consideration by the Departments of State and Transportation of the comments received, the Department of Transportation, on May 10, 1989, issued Order 89-5-29 which promulgated a final statement of policy in this area. The statement that follows is that final statement.

Statement of U.S. International Air Cargo Policy

In many respects, the air cargo industry is the most dynamic and fastest changing sector of air transportation. With an increasing percentage of U.S. exports and imports moving by air, the economic importance of air cargo services is expanding rapidly. A competitive air cargo industry ensures the availability of efficient freight services to exporters and importers, stimulates new service options and promotes trade. Competitive air cargo services also provide a stimulus to airport development, regional economies, and employment and make an important contribution to the national defense through industry participation in the Civil Reserve Air Fleet (CRAF) program.

The air cargo industry involves many participants engaged in a wide variety of cargo activities. Combination carriers, all-cargo carriers, charter specialists, firms providing door-to-door service, small package specialists, freight forwarders, airport operators and shippers all play a role in this industry.

Air cargo services have specific qualities and requirements which are significantly different from the passenger market. Unlike passengers, air cargo moves in one direction only. Speed is critical to competitive air cargo services. Nonetheless, cargo is less sensitive to the number of stops made enroute, to the circuitry of the routing or to changes in aircraft.

Cargo is nonambulatory. Therefore, the movement and storage of air cargo on the ground is a necessary part of the air cargo business. With the growth of door-to-door service between the U.S. and other countries, the oportunity to establish sort centers and hubs, to operate or contract for pickup and delivery services and to perform take-offs and landings during nightime hours has become increasingly important.

In order to develop an up-to-date information base and evaluate the air cargo industry's contribution to furthering broader U.S. economic objectives, the Departments of State and Transportation undertook a comprehensive study of the international air cargo industry. The findings and conclusions of the Study were carefully considered in the course of developing this statement.

The Federal Aviation Act

U.S. international air cargo policy is based on the principles and objectives contained in sections 102(a), 102(b), 1102(b) and 1102(c) of the Federal Aviation Act (Act), as amended by the International Air Transportation Competition Act of 1979. (The texts of these sections are included as Appendix A to this statement.)

Section 102(a) identifies a variety of "Factors for Interstate, Overseas, and Foreign Air Transportation" that are to be considered as being "in the public interest" by U.S. authorities in carrying out the duties and responsibilities mandated by the Act.

Section 102(b) sets forth additional public interest factors aimed specifically at all-cargo services. The provisions of this section include the encouragement and development of an all-cargo air service system "responsive to (A) the present and future needs of shippers, (B) the commerce of the United States, and (C) the national defense * * *."

Section 1102(b), added by the International Air Transportation Competition Act of 1979, establishes specific "Goals for International Aviation Policy" which the U.S. must pursue in the conduct of its aviation relations with foreign countries. These goals, some of which are similar to the public interest factors contained in section 102(a), identify "a negotiating policy which emphasizes the greatest degree of competition that is compatible with a well-functioning international air transportation system * * *."

Section 1102(c) requires that in developing and implementing international aviation negotiating policy, the Secretaries of State and Transportation consult "to the maximum extent practicable" with interested parties including government agencies, airport operators, air carriers, airline labor and consumer interest groups.

Thus, the policy principles enunciated by the Federal Aviation Act identify broad public interest considerations to be taken into account in the conduct of U.S. international aviation affairs. These principles are designed to apply over a long period of time and to a wide variety of circumstances. Within this general framework, this statement of air cargo policy provides specific policy objectives and guidelines. This statement also takes into consideration cargo airlift needs of the U.S. military as expressed in the National Airlift Policy Statement. (See Appendix B of this statement.)

Policy Objectives

Consistent with the Federal Aviation Act, the findings of the International Air Cargo Study, and broader U.S. economic and security interests, the principal aims of U.S. air cargo policy are to ensure the provision of efficient, competitive air transport services for U.S. shippers and consignees and to seek expansion of opportunities for the U.S. international air cargo industry. An open, liberal operating environment serves this end by facilitating the establishment and expansion of efficient, innovative, competitive air cargo services.

Accordingly, the United States seeks to achieve the following specific objectives for all types of cargo services including scheduled and charter services:

1. Freedom of Carrier Entry

The U.S. seeks unrestricted entry into international air cargo markets for all types of U.S. cargo operators, including direct air carriers and freight forwarders. Elimination of restrictions on entry is critical if the shipping public is to enjoy fully the benefits of a competitive international aviation marketplace.

2. Routing Flexibility

The U.S. seeks maximum international routing flexibility for U.S. carriers so that they can serve intermediate and beyond points freely and efficiently utilize their hubs in the U.S. and abroad. The U.S. also seeks broader rights to change aircraft at any point on a route and to position aircraft in the most cost effective manner to serve markets that are directionally imbalanced. Increased routing flexibiligy expands cargo opportunities, and in some cases may be critical to the viability of a cargo operation.

3. Pricing Freedom

The U.S. seeks to establish regimes that permit airline management maximum flexibility in the setting of prices. Government intervention in air cargo pricing should be limited to exceptional cases involving unfair and/or discriminatory practices. Pricing freedom for air cargo services promotes efficiency and cost competitiveness.

4. Elimination of Restrictions on Frequency and Capacity

The U.S. seeks to eliminate governmental controls on U.S. carrier cargo capacity that restrict frequency of service, aircraft type, and/or the amount of cargo that may be carried. These restrictions impair carrier efficiency and adversely affect the availability to

shippers of competitive air cargo services.

5. Efficient Ground-Side Environment

The U.S. seeks to eliminate restrictions, impediments or unduly burdensome requirements in the ground-side environment that interfere with efficiency of service and a carrier's ability to compete effectively. Among the areas the U.S. aviation authorities examine closely are: (1) The rights of an airline to perform its own ground handling and to offer ground handling services to other airlines, (2) the availability of adequate warehouse facilities at reasonable cost, and (3) the efficiency of the clearance process.

6. Broad Intermodal Rights

The U.S. seeks broad rights for U.S. carriers and freight forwarders to move cargo by truck and other surface means. Intermodal rights have become particularly critical as air cargo systems have evolved to include door-to-door services.

7. Elimination of Discriminatory Practices

The U.S. insists on elimination of discriminatory practices in all aspects of international air cargo operations. Restrictions which result in discrimination deny carriers the fundamental right of fair competition: they will not be tolerated and may result in countermeasures.

Negotiating Guidelines

In seeking to further U.S. policy objectives through the negotiating process U.S. authorities confront conflicting interests and objectives. For example, a city's desire to stimulate its local economy and promote commerce through additional air services may conflict with the U.S. airline industry's expectation that additional route rights will be offered to the carriers of a foreign country only in the context of a balanced exchange of new opportunities. Different objectives also exist between the U.S. and its aviation partners. Most foreign countries take a more regulatory and protectionist approach to international air cargo services.

Moreover, because negotiations involve issues that are complex and technical, differences in understanding can arise at the implementation stage. To minimize the possibility of such misunderstandings, U.S. negotiators will seek to commit agreements to writing and to define the terms of an agreement as precisely as possible.

The following guidelines are designed to assist U.S. negotiators in pursuing the above objectives:

1. Agreements and Proposals Will Be Evaluated in Terms of Actual Opportunities and Public Interest Factors

The value of air cargo opportunities granted to a country should be comparable to the value of opportunities available to U.S. interests in that country. In practice, air cargo opportunties conferred by an aviation agreement are only of value to the extent U.S. air cargo interests are able to capitalize on them. Key considerations in measuring actual opportunities available are the size of the air cargo market to be accessed through the agreement and quality of the operating environment in the foreign country. The airlines of a foreign country characterized by a restrictive operating environment should be granted less access than if its environment were more open.

U.S. aviation authorities will also take into account public interest factors in considering the value to the United States of a proposed exchange of new opportunities. Key factors include the vital importance of air services to remote locations and underutilized airports, the benefits for the local business economy of more convenient air services, and the important contribution of air cargo operators to the CRAF program.

Thus, in evaluating whether a proposed exchange would be in the overall interest of the United States, U.S. negotiators must consider a variety of factors, some of which may not be amenable to economic analysis. Certain factors, however, such as air transport revenues, are usually amendable to economic analysis. This analysis can assist U.S. negotiators in determining whether a proposed exchange is reasonably balanced. In evaluating a proposed exchange, therefore, U.S. negotiators will endeavor to estimate its economic impact.

2. Cargo Issues Merit Special Attention

Specific treatment of cargo issues in negotiations is essential. Cargo routes and routing flexibility, the pricing regime for cargo, capacity limitations (if any), the regime for cargo charters, the requirements of express traffic, and the ground-side operating environment are all matters that should be addressed. Specific treatment includes recognition of the important role combination service, including maindeck "combi" services, play in determining market shares of bilateral air cargo markets. This is particularly important in any negotiation involving a restricted cargo capacity regime.

The Government also must continue to develop expertise and commit resources to cargo issues. It must maintain a close dialogue with industry, as well as with other constitutency groups affected by air cargo operations, to ensure that air cargo issues are properly addressed.

3. A Flexible Negotiating Posture Best Serves U.S. Cargo Interests

If both the foreign government and the United States are seeking new cargo opportunities that are economically comparable, then a cargo-for-cargo exchange may represent a satisfactory exchange for the two sides. In many negotiations where the U.S. is seeking a new cargo opportunities, however, the foreign government involved is often primarily interested in obtaining new combination opportunities. In these cases, U.S. negotiators can maximize cargo benefits by negotiating agreements based on the leverage available—leverage that is a function of what the other side is seeking.

A flexible negotiating approach preserves the ability of the United States to pursue satisfactory resolution of cargo needs and issues, regardless of the particular circumstances. It should be emphasized, however, that trades between the passenger and cargo sectors will be entertained only when the U.S. Government determines such a trade to be in the overall interest of the United States.

4. Special Procedures May Be Necessary To Resolve Doing Business Problems

Regulations and policies of a foreign government that impede a carrier's ground-side operations have a serious impact on the competitiveness of that carrier's service. Such policies may interfere with the exercise of rights specifically conferred by a bilateral agreement and thus may represent a violation of that agreement. The United States is committed to seeking prompt resolution of such problems.

When a doing business issue arises, interested U.S. Government agencies involved will coordinate their actions to bring about a satisfactory resolution of the issue whether or not it involves a violation of bilateral agreement. U.S. authorities first will seek prompt resolution through diplomatic efforts including, if necessary, consultations with all foreign government agencies having relevant jurisdiction. When useful, the U.S. will seek to convene special working groups or task forces composed of industry representatives and U.S. and foreign government officials at an appropriately responsible level.

In cases involving actual violations of bilateral agreements where solutions are not found through diplomatic consultations, it may become necessary to take countermeasures against foreign governments or airlines.

Appendix A—Excerpts From the Federal Aviation Act

Section 102(a)—Factors for Interstate, Overseas, and Foreign Air Transportation

(a) In the exercise and performance of its powers and duties under this Act, the Board [1] shall consider the following, among other things, as being in the public interest, and in accordance with the public convenience and necessity:

(1) The assignment and maintenance of safety as the highest priority in air commerce, and prior to the authorization of new air transportation services, full evaluation of the recommendations of the Secretary of Transportation on the safety implications of such new services and full evaluation of any report or recommendation submitted under section 107 of this Act.

(2) The prevention of any deterioration in established safety procedures, recognizing the clear intent, encouragement, and dedication of the Congress to the furtherance of the highest degree of safety in air transportation and air commerce, and the maintenance of the safety vigilance that has evolved within air transportation and air commerce and has come to be expected by the traveling and shipping public.

(3) The availability of a variety of adequate, economic, efficient, and low-price services by air carriers and foreign air carriers without unjust discriminations, undue preferences or advantages, or unfair or deceptive practices, the need to improve relations among, and coordinate transportation by, air carriers, and the need to encourage fair wages and equitable working conditions for air carriers.

(4) The placement of maxmium reliance on competitive market forces and on acutal and potential competition (A) to provide the needed air transportation system, and (B) to encourage efficient and well-managed carriers to earn adequate profits and to attract capital, taking account, nevertheless, of material differences, if any, which may exist between interstate and overseas air transportation on the one hand, and foreign air transportation, on the other.

(5) The development and maintenance of a sound regulatory environment which is responsive to the needs of the public and in which decisions are reached promptly in order to facilitate adaption of the air transportation system to the present and future needs of the domestic and foreign commerce of the United States, the Postal Service, and the national defense.

(6) The encouragement of air service at major urban areas in the United States through secondary or satellite airports, where consistent with regional airport plans of regional and local authorities, and when such encouragement is endorsed by appropriate State entitles encouraging such service by air carriers whose sole responsibility in any specific market is to provide service exclusively at the secondary or satellite airport, and fostering an environment which reasonably enables such carriers to establish themselves and to develop their secondary or satellite airport services.

(7) The prevention of unfair, deceptive, predatory, or anticompetitive practices in air transportation, and the avoidance of—

(A) Unreasonable industry concentration, excessive market domination, and monopoly power; and

(B) Other conditions; that would tend to allow one or more air carriers or foreign air carriers unreasonably to increase prices, reduce services, or exclude competition in air transportation.

(8) The maintenance of a comprehensive and convenient system of continuous scheduled interstate and overseas airline service for small communities and for isolated areas in the United States, with direct Federal assistance where appropriate.

(9) The encouragement, development, and maintenance of an air transportation system relying on actual and potential competition to provide efficiency, innovation, and low prices, and to determine the variety, quality, and price of air transportation services.

(10) The encouragement of entry into air transportation markets by new air carriers, the encouragement of entry into additional air transportation markets by existing air carriers, and the continued strengthening of small air carriers so as to assure a more effective, competitive airline industry.

(11) The promotion, encouragement, and development of civil aeronautics and a viable, privately owned United States air transport industry.

(12) The strengthening of the competitive position of United States air carriers to at least assure quality with foreign air carrier, including the attainment of opportunities for United States air carriers to maintain and increase their profitability, in foreign air transportation.

Section 102(b)—Factors for All-Cargo Air Service

(b) In addition to the declaration of policy set forth in subsection (a) of this section, the Board [2] in the exercise and performance of its powers and duties under this Act with respect to all-cargo service shall consider the following, among other things, as being in the public interest:

(1) The encouragement and development of an expedited all-cargo air service system, provided by private enterprise, responsive to (A) the present and future needs of shippers, (B) the commerce of the United States, and (C) the national defense.

(2) The encouragement and development of an integrated transportation system relying upon competitive market forces to determine the extent, variety, quality, and price of such services.

(3) The provision of services without unjust discriminations, undue preferences and advantages, unfair or deceptive practices, or predatory pricing.

Section 1102(b)—Goals for International Aviation Policy

(b) In formulating United States international air transportation policy, the Congress intends that the Secretary of State, the Secretary of Transportation, and the Civil Aeronautics Board [2] shall develop a negotiating policy which emphasizes the greatest degree of competition that is compatible with a well-functioning international air transportation system. This includes, among other things:

(1) The strengthening of the competitive position of United States air carriers to at least assure equality with foreign air carriers, including the attainment of opportunities for United States air carriers to maintain and increase their profitability, in foreign air transportation;

(2) Freedom of air carriers and foreign air carriers to offer fares and rates

[1] On January 1, 1985, the international functions of the Civil Aeronautics Board were transferred to the Department of Transportation. See Civil Aeronautics Board Sunset Act of 1984. Pub. L. 96-443, October 4, 1984. 40 U.S.C. 1551.

[2] See footnote 1 of this Appendix A.

which correspond with consumer demand;

(3) The fewest possible restrictions on charter air transportation;

(4) The maximum degree of multiple and permissive international authority for United States air carriers so that they will be able to respond quickly to shifts in market demand;

(5) The elimination of operational and marketing restrictions to the greatest extent possible;

(6) To integration of domestic and international air transportation;

(7) An increase in the number of nonstop United States gateway cities;

(8) Opportunities for carriers of foreign countries to increase their access to United States points if exchanged for benefits of similar magnitude for United States carriers or the traveling public with permanent linkage between rights granted and rights given away;

(9) The elimination of discrimination and unfair competitive practices faced by United States airlines in foreign air transportation, including excessive landing and user fees, unreasonable ground handling requirements, undue restrictions on operations, prohibitions against change of gauge, and similar restrictive practices; and

(10) The promotion, encouragement, and development of civil aeronautics and a viable, privately owned United States air transport industry.

Section 1102(c)—Consultation with Affected Groups

(c) To assist in developing and implementing such an international aviation negotiating policy, the Secretaries of State and Transportation and the Civil Aeronautics Board [2] shall consult, to the maximum extent practicable, with the Secretary of Commerce, the Secretary of Defense, airport operators, scheduled air carriers, charter air carriers, airline labor, consumer interest groups, travel agents and tour organizers, and other groups, institutions, and government agencies affected by international aviation policy concerning both broad policy goals and individual negotiations.

Appendix B—National Airlift Policy Statement (National Security Decision Directive 280)

Key objectives and policies of the National Airlift Policy Statement which are significant to the U.S. international air cargo policy are as follows:

* * * The national defense airlift objective is to ensure that military and civil airlift resources will be able to meet defense mobilization and deployment requirements in support of U.S. defense and foreign policies * * * * * * The broad purpose of this directive is to provide a framework for implementing actions in both the private and public sectors that will enable the U.S. efficiently and effectively to meet established requirements for airlift in both peacetime and in the event of crisis or war * * *

1. United States policies shall be designed to * * * enhance the mobilization base of the U.S. commercial air carrier industry * * * * * * It is therefore the policy of the United States to recognize the interdependence of military and civilian airlift capabilities in meeting wartime airlift requirements, and to protect those national security interests contained within the commercial air carrier industry * * *

8. The Department of State and other appropriate agencies shall ensure that international agreements and federal policies and regulations governing foreign air carriers foster fair competition, safeguard important U.S. economic rights and protect U.S. national security interests in commercial cargo capabilities.

9. United States aviation policy, both international and domestic, shall be designed to strengthen the nation's airlift capability and where appropriate promote the global position of the United States aviation industry.

Approved:

Patrick V. Murphy,

Deputy Assistant Secretary for Policy and International Affairs, Department of Transportation.

Eugene J. McAllister,

Assistant Secretary for Economic and Business Affairs, Department of State.

[FR Doc. 89-15120 Filed 6-26-89; 8:45 am]

BILLING CODE 4910-62-M

[2] See footnote 1 of this Appendix.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-89-26]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: July 17, 1989.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on June 20, 1989.

Deborah Swank,

Acting Manager, Program Management Staff, Office of the Chief Counsel

Petitions for Exemption

Docket No: 24165
Petitioner: Headquarters United States Air Force, Military Airlift Command
Regulations, Affected: 14 CFR 91.73(a) and (b)
Description of Relief Sought: To extend and amend Exemption No. 4764 that permits petitioner to conduct night flight military training operations in helicopters without lighted aircraft position lights. The amended exemption would apply to fixed-wing aircraft also.

Docket No: 24541
Petitioner: Boeing Commercial Airplanes
Section of the FAR Affected: 14 CFR 91.45
Description of Relief Sought: To extend Exemption No. 4467, as amended, that allows petitioner to conduct ferry flights with one engine inoperative on its Boeing 707, 720, 727, or 747 turbine-engine-powered transport category airplanes without obtaining a special flight permit.

Docket No.: 24761
Petitioner: Executive Jet Aviation, Inc.
Sections of the FAR Affected: 14 CFR 91.191(a)(4) and 135.165(b)
Description of Relief Sought: To amend Exemption No. 4709A that allows petitioner to operate turbojet aircraft in extended overwater operations with single Omega/very low-frequency, long-range navigation systems and single high-frequency radios. The amended exemption would add LORAN-C as an approved long-range navigation system in extended overwater operations.

Docket No.: 25017
Petitioner: Systems International Airways, Inc.
Sections of the FAR Affected: 14 CFR 121.411(a)(4) and (5); 121.411(b)(2)(i) and (ii); 121.413(a)(1), (2), (3), (4)(i), and (4)(ii); 121.413(b)(1), (2), and (3); and 121.413(c)(1), (2), and (3)
Description of Relief Sought: To allow petitioner to train its pilots in the Martin 404 aircraft without meeting all of the applicable training requirements of the FAR.

Docket No.: 25815
Petitioner: Ameriflight, Inc.
Sections of the FAR Affected: 14 CFR 135.89(a)
Description of Relief Sought: To allow petitioner to carry crewmembers and employees of other companies, as well as petitioner's crewmembers and employees, without complying with the passenger-carrying provisions of Part 135.

Docket No.: 25897
Petitioner: MarkAir, Inc.
Sections of the FAR Affected: 14 CFR 121.590(a)
Description of Relief Sought: To allow petitioner to operate aircraft carrying more than 30 passengers into and out of McGrath Airport, McGrath, Alaska, a noncertificated airport.

Docket No.: 24715
Petitioner: American Cyanamid Company
Sections of the FAR Affected: 14 CFR 91.191(a)(4), 135.165(a), and 135.165(b)(6)(7)
Description of Relief Sought/ Disposition: To extend Exemption No. 4807 that allows petitioner to operate its Grumman Aircraft Corporation Gulfstream (G-1159A), registration number N750AC, and Gates Learjet Corporation Model 55 (Learjet 55), registration numbers N740AC and N760AC, with one long-range navigation system and one high-frequency communication system subject to certain conditions and limitations. *GRANT, June 9, 1989, Exemption No. 4807A.*

Docket No.: 22091
Petitioner: Garrett Engine Division of Allied-Signal Aerospace Company
Regulations Affected: 14 CFR 21.325(b)(1)
Description of Relief Sought/ Disposition: To allow Class I, II, and III products that are assembled and tested by Rolls-Royce Limited in East Kilbride, Scotland, to be eligible for issuance of export airworthiness approvals *GRANT, June 13, 1989, Exemption No. 4830A*

Docket No.: 25489
Petitioner: University of Alaska
Sections of the FAR Affected: 14 CFR 141.91(a), 141.93(a), and 141.93(b)
Description of Relief Sought/ Disposition: To allow petitioner of conduct instruction at satellite bases located more than 25 nautical miles from its main operations base. Additionally, to allow petitioner to issue a condensed version of the course outline on the first day of class rather than at the time of enrollment and allow a class roster to be submitted during the third week of the semester rather than submit individual certificates within 5 days of enrollment. *PARTIAL GRANT, June 9, 1989, Exemption No. 5060*

Docket No.: 25900
Petitioner: Aero Ventures, Inc.
Sections of the FAR Affected: 14 CFR 105.43(a)(2)
Description of Relief Sought/ Disposition: To allow foreign nationals from Canada to participate in a skydiving seminar on June 10 and 11, 1989, without having to comply with the parachute equipment and packing requirements of § 105.43(a)(2). *Grant, June 9, 1989, Exemption NO. 5059.*

[FR Doc. 89-15122 Filed 6-26-89; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement: Delaware and Franklin Counties, Ohio

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for a proposed highway project in Delaware and Franklin Counties, Ohio.

FOR FURTHER INFORMATION CONTACT: Mr. Fred J. Hempel, Division Administrator, or Mr. Roberto Fonseca-Martinez, District Engineer, Federal Highway Administration, 200 North High Street, Columbus, Ohio 43215; Telephone: (614) 469-6896 or 469-7443.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration, in cooperation with the Ohio Department of Transportation, will prepare an environmental impact statement on the proposed construction of a new interchange on Interstate Route 71 between the Delaware-Franklin County line and Powell Road in Delaware County with related improvements to Interstate 71 between its interchange with Interstate Route 270 in Franklin County and the proposed new interchange. The proposed construction would also include connecting roads with Powell Road to the north and west of the proposed interchange and Worthington Road to the east of it. There is currently no interchange on Interstate 71 between Interstate 270 in north Columbus and United States Route 36 to the north near the City of Delaware, a distance of 11.42 miles.

The build alternatives under consideration represent a range of interchange locations on Interstate 71 from approximately 1.75 miles to approximately 4.0 miles north of Interstate 270. The configuration of the interchange will be established during the design process. The no-build alternative is also being considered.

The proposed project would provide a needed interchange in an area of pronounced current and anticipated development, facilitate local access, relieve pressures on other area routes, divert traffic from existing interchanges on Interstate 270 now serving northern Franklin and southern Delaware Counties, give increased capacity to Interstate 71 north of the Columbus Outerbelt, and fulfill the goals of established planning for the region.

A program of public involvement and coordination with Federal, State, and local agencies has been conducted. It is envisioned that involvement with the public and other agencies will continue throughout the development of the project and, therefore, it is not anticipated that a formal scoping meeting will be held.

To insure that the full range of issues related to this proposed action are addressed and that all significant issues are identified, comments or questions concerning this action and the EIS should be addressed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning

and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Roberto Fonseca-Martinez,
Acting District Engineer.

[FR Doc. 89-15134 Filed 6-26-89; 8:45 am]

BILLING CODE 4910-22-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 122
Tuesday, June 27, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, July 7, 1989.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 89-15244 Filed 6-23-89; 10:03 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, July 14, 1989.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 89-15245 Filed 6-23-89; 10:03 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, July 21, 1989.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 89-15246 Filed 6-23-89; 10:03 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, July 28, 1989.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 89-15247 Filed 6-23-89; 10:03 am]

BILLING CODE 6351-01-M

FEDERAL ENERGY REGULATORY COMMISSION

June 21, 1989.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. 94-409), 5 U.S.C. 552B:

DATE AND TIME: June 28, 1989, 10:00 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Public Reference Room.

Consent Power Agenda, 888th Meeting—June 28, 1989, Regular Meeting (10:00 a.m.)

CAP-1.
Docket No. UL89-6-002, Sheldon Jackson College

CAP-2.
Project No. 10002-005, American Power Producers, Inc.

CAP-3.
Project No. 6191-019, BMB Enterprises, Inc.

CAP-4.
Project No. 6142-014, Henwood Associates, Inc.

CAP-5.
Project No. 9085-002, Richard Balagur

CAP-6.
Project No. 7267-006, Joseph Martin Keating

CAP-7.
Project Nos. 7802-006 and 10488-000, Natural Energy Resources Company

CAP-8.
Omitted

CAP-9.
Project No. 9175-001, Rivers Electric Company, Inc.

CAP-10.
Project No. 5073-016, Benton Falls Corporation

CAP-11.
Project Nos. 2322-006, 2325-003 and 2552-003, Central Maine Power Company

CAP-12.
Project No. 2574-007, Merinul Limited Partnership

CAP-13.
Project No. 2611-009, Scott Paper Company and UAH-Hydro Kennebec Limited Partnership

CAP-14.
Docket No. ER89-203-000, Carolina Power & Light Company

CAP-15.
Docket No. ER80-259-012, Kansas Gas and Electric Company

CAP-16.
Docket No. ER84-560-006, Union Electric Company

CAP-17.
Docket No. ER80-17-000, Cincinnati Gas & Electric Company
Docket No. EL89-10-000, City of Hamilton, Ohio v. Cincinnati Gas & Electric Company

CAP-18.
Docket No. ER84-348-012, American Electric Power Service Company

CAP-19.
Docket No. EC89-5-001, Southern California Edison Company and San Diego Gas and Electric Company

CAP-20.
Docket No. ER89-255-001, Arizona Public Service Company

CAP-21.
Docket No. ER88-554-000, Ohio Edison Company

CAP-22.
Docket No. ER88-562-000, New England Power Pool

CAP-23.
Docket Nos. ER88-630-001, ER88-631-001 and ER89-38-001, New England Power Company

Consent Miscellaneous Agenda

CAM-1.
Docket No. FA85-71-004, Central Illinois Public Service Company

CAM-2.
Docket No. GP84-42-000, The Oil Conservation Division of the State of New Mexico

CAM-3.
Docket No. GP89-40-000, Oil Conservation Division of the State of New Mexico

CAM-4.
Docket No. GP89-31-000, State of Kansas, Kansas Corporation Commission

Consent Gas Agenda

CAG-1.
Docket No. RP89-172-000, ANR Pipeline Company

CAG-2.

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Docket No. RP88-41-003, Algonquin Gas Transmission Company
CAG-3.
Docket Nos. RP89-183-000, RP89-183-002 and TC89-8-000, Williams Natural Gas Company
CAG-4.
Docket No. RP89-186-000, Great Lakes Gas Transmission Company
CAG-5.
Docket No. RP88-34-003, Williston Basin Interstate Pipeline Company
CAG-6.
Docket No. RP85-47-021, Northwest Pipeline Corporation
CAG-7.
Docket Nos. RP85-177-001, CP88-136-005 and RP88-67-012, Texas Eastern Transmission Corporation
CAG-8.
Docket Nos. RP89-23-000 and RP89-182-000, Northern Natural Gas Company, a Division of Enron Corp.
CAG-9.
Docket No. RP88-191-010, Tennessee Gas Pipeline Company
CAG-10.
Docket No. RP89-120-002, Questar Pipeline Company.
CAG-11.
Docket No. RP89-124-002, CNG Transmission Corporation.
CAG-12.
Omitted.
CAG-13.
Docket No. RP89-171-000, Northwest Alaskan Pipeline Company.
CAG-14.
Docket No. RP89-185-000, Panhandle Eastern Pipe Line Company.
CAG-15.
Docket No. RP89-184-000, Texas Eastern Transmission Corporation.
CAG-16.
Docket Nos. RP89-181-000 and TM89-4-21-000, Columbia Gas Transmission Corporation.
CAG-17.
Docket No. TA89-1-8-000, South Georgia Natural Gas Company.
CAG-18.
Docket No. TM89-2-2-000, Eastern Tennessee Natural Gas Company.
CAG-19.
Docket Nos. TM89-4-26-000, RP89-189-000, RP89-188-000 and RP89-188-001, Natural Gas Pipeline Company of America
CAG-20.
Docket No. TM89-1-23-000, Eastern Shore Natural Gas Company.
CAG-21.
Omitted.
CAG-22.
Docket No. TM89-2-37-000, Northwest Pipeline Corporation.
CAG-23.
Docket Nos. TQ89-2-1-000 and TQ89-3-1-001, Alabama-Tennessee Natural Gas Company.
CAG-24.
Docket No. TQ89-3-11-000, United Gas Pipe Line Company.
CAG-25.
Docket Nos. TA89-1-33-000, RP89-132-004 and TA89-1-33-001, El Paso Natural Gas Company.
CAG-26.
Docket No. TA89-1-42-000, Transwestern Pipeline Company.
CAG-27.
Docket No. RP89-47-000, Natural Gas Pipeline Company of America.
CAG-28.
Omitted.
CAG-29.
Docket Nos. RP89-140-002, TA89-1-43-001 and RP88-39-002, Williams Natural Gas Company.
CAG-30.
Docket No. RP89-145-003, Transcontinental Gas Pipe Line Company.
CAG-31.
Docket No. RP85-160-042, Consolidated Gas Transmission Corporation.
CAG-32.
Docket No. RP88-267-009, South Georgia Natural Gas Company.
CAG-33.
Docket No. RP89-118-001, Williston Basin Interstate Pipeline Company.
CAG-34.
Docket No. RP89-126-001, Southern Natural Gas Company.
CAG-35.
Docket Nos. RP89-132-005, RP88-184-000, RP88-184-010 and TA86-1-33-003, El Paso Natural Gas Company.
CAG-36.
Docket No. RP89-141-001, Sea Robin Pipeline Company.
CAG-37.
Docket Nos. RP89-116-001 and RP88-207-009, Columbia Gas Transmission Corporation.
CAG-38.
Docket No. RP89-120-001, Questar Pipeline Company.
CAG-39.
Docket Nos. RP88-363-012 and RP88-92-010, United Gas Pipe Line Company.
CAG-40.
Docket No. RP88-267-010, South Georgia Natural Gas Company.
CAG-41.
Docket Nos. RP88-27-015, RP88-242-012, CP87-524-006 and CP87-524-004, United Gas Pipeline Company and Texas Gas Transmission Corporation.
CAG-42.
Docket No. RP88-184-009, El Paso Natural Gas Company.
CAG-43.
Docket Nos. RP88-196-006 and RP89-59-002, Transwestern Pipeline Company.
CAG-44.
Docket No. RP89-119-001, Texas Gas Transmission Corporation.
CAG-45.
Docket No. RP89-75-002, Black Marlin Pipeline Corporation.
CAG-46.
Docket No. RP89-114-001, Trunkline Gas Company.
CAG-47.
Docket Nos. RP86-228-018 and RP89-149-001, Tennessee Gas Pipeline Company.
CAG-48.
Docket Nos. TA88-4-37-007 and RP89-1-010, Northwest Pipeline Company.
CAG-49.
Docket Nos. TA89-1-43-002 and RP89-39-001, Williams Natural Gas Company.
CAG-50.
Docket Nos. CP88-434-001 and RP88-185-001, El Paso Natural Gas Company.
CAG-51.
Omitted.
CAG-52.
Docket Nos. RP88-44-005 and RP85-58-018, El Paso Natural Gas Company.
CAG-53.
Docket Nos. ST88-5599-001 and ST88-5761-001 through ST88-5770-001, Gulf South Pipeline Company.
CAG-54.
Docket No. CS76-135-001, Grand Isle Corporation and the Estate of John Dabney Murchison, deceased (formerly, The Royal Gorge Company of Texas).
CAG-55.
Docket No. CP87-451-021, Northeast U.S. Pipeline Projects.
Docket Nos. CP88-329-001 and CP88-330-001, Erie Pipeline System.
Docket Nos. CP88-523-000, CP88-523-001, CP88-523-002, CP88-523-003, CP88-524-000 and CP88-196-000, Iroquois Gas Transmission System.
Docket Nos. CP88-168-000 and CP88-169-000, Champlain Pipeline Company.
Docket Nos. CP88-173-000, CP88-174-000 and CP88-176-000, Tennessee Gas Pipeline Company.
Docket No. CP88-175-000, Northeastern Gas Transmission Company.
Docket Nos. CP88-182-000 and CP88-182-001, PennEast Gas Service Company, CNG Transmission Corporation and Eastern Transmission Corporation.
Docket Nos. CP88-182-000 and CP88-192-000 and CP88-192-001, Algonquin Gas Transmission Company.
Docket Nos. CP88-190-000 and CP88-191-000, Greater Northeast Pipeline Corporation.
Docket No. CP88-193-000, Eastern American States Transmission Company.
CAG-56.
Docket No. CP88-332-003, El Paso Natural Gas Company.
CAG-57.
Docket Nos. CP89-1-001 and CP89-2-001, Mojave Pipeline Company.
CAG-58.
Docket Nos. CP84-441-027, CP84-441-028, CP84-441-029, CP80-65-002, CP80-65-003 and CP82-358-003, Tennessee Gas Pipeline Company.
CAG-59.
(A) Docket No. CP89-3-002, Panhandle Eastern Pipe Line Company.
(B) Docket Nos. CP88-490-001 and CP88-548-001, Panhandle Eastern Pipe Line Company.
(C) Docket Nos. CP89-23-000, CP89-64-000 and CP89-67-000, Williams Natural Gas Company.
CAG-60.
Omitted.
CAG-61.
Docket No. CP81-296-017, Tennessee Gas Pipeline Company.
CAG-62.
Docket No. RP86-14-017, Columbia Gulf Transmission Company.

Docket Nos. RP88-15-017 and CP83-452-034, Columbia Gas Transmission Corporation.
CAG-63.
Docket No. CP89-1555-000, United Gas Pipe Line Company.
CAG-64.
Docket No. CP88-418-000, Northwest Pipeline Corporation.
Docket No. CI88-489-000, ARCO Oil and Gas Company, Division of Atlantic Richfield Company.
CAG-65.
Omitted.
CAG-66.
Docket No. CP89-930-000, Texas Eastern Transmission Corporation.
CAG-67.
Docket Nos. CP89-966-000 and CP88-167-000, Trunkline Gas Company.
CAG-68.
Docket No. CP89-634-000, Panhandle Eastern Pipe Line Company.
CAG-69.
Docket No. CP89-959-000, Northern Natural Gas Company, Division of Enron Corp.
CAG-70.
Docket No. CP89-1134-000, Northern Natural Gas Company, Division of Enron Corp.
CAG-71.
Docket No. CP89-1621-000, Colorado Interstate Gas Company.
CAG-72.
Omitted.

I. Licensed Project Matters

P-1.
Reserved.

II. Electric Rate Matters

ER-1.
Docket No. EL88-39-000, Northern States Power Company (Wisconsin)
Docket No. EL89-9-000, Northern States Power Company (Minnesota). Order on recovery of minimum take payments.
ER-2.
Docket No. ER89-256-000, Palisades Generating Company. Order on proposed purchase agreement.

Miscellaneous Agenda

M-1.
Docket No. FA86-70-001, Missouri Public Service Company, A Division of UtiliCorp United, Inc. Opinion and order on accounting adjustment.
M-2.
Docket No. FA86-51-001, Indianapolis Power & Light Company. Opinion and order on accounting adjustment.
M-3.
Reserved.
M-4.
Reserved.
M-5.
Docket No. GP84-23-029 (Phase 2), Stowers Oil & Gas Company, Panhandle Energy Corporation, Prairie Oil Company, Sharon Oil Company, Almac Oil Company, Judy Oil Company, Kim Petroleum Company, Inc., Komanche Oil & Gas Company, Omega Energy, Tumbleweed Production, Panstar Oil & Gas, Inc., Dennis Mills Enterprises, Wy-Vel Corporation, Walker Operating Corporation, and 3W Oil, Inc. Order on rehearing of Opinion No. 307.
M-6.
Docket No. GP86-51-001, Northern Natural Gas Company, Division of Enron Corp. v. Cabot Pipeline Corporation and Texaco Producing Inc. Order denying request for rehearing.

I. Pipeline Rates Matters

RP-1.
(A) Docket Nos. RP86-169-000, RP86-105-000 and RP87-25-000, ANR Pipeline Company Order on settlement.
(B) Docket No. RP83-80-028, ANR Pipeline Company. Order on remand.
RP-2.
Docket Nos. RP86-68-000, RP87-7-012, RP87-7000,RP89-122-000, RP88-123-000, TA88-1-29-000, TA88-4-29-000, TQ88-1-29-000, TA88-5-29-000, TQ89-1-29-000, TQ89-2-29-000, TQ89-4-29-000, Transcontinental Gas Pipe Line Corporation. Order concerning settlement on take-or-pay liability.
RP-3.
Docket Nos. CP82-487-001, CP82-487-010, TA84-2-49-000, TA84-1-49-000 (Phase 3), CP82-487-014, RP84-62-000, CP82-45-014, RP84-93-000 (Phase 2), Williston Basin Interstate Pipeline Company. Initial decision on gas purchase contracts being prudent or abusive.

Lois D. Cashell,
Secretary.
[FR Doc. 89-15235 Filed 6-23-89; 9:02 am]
BILLING CODE 6717-01-M

FEDERAL HOME LOAN MORTGAGE CORPORATION

DATE AND TIME: Thursday, June 29, 1989, 2:00 p.m.

PLACE: 1776 G Street, NW., Board Room, Third Floor, Washington, DC 20006.

STATUS: Closed.

CONTACT PERSON FOR MORE INFORMATION: Keith Earley, 1759 Business Center Drive, P.O. Box 4115, Reston, Virginia 22090, (703) 759-8414.

MATTERS TO BE CONSIDERED:

Closed—Minutes of the May 3, 1989 Board of Directors' Meeting
Closed—President's Report
Closed—Mid-Year Operations Report

Date sent to Federal Register: June 22, 1989

Maud Mater,
Secretary.
[FR Doc. 89-15228 Filed 6-22-89; 4:07 pm]
BILLING CODE 6715-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

June 21, 1989.

TIME AND DATE: 9:30 a.m, Wednesday, June 28, 1989.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. *Pennsylvania Electric Co.*, Docket No. PENN 88-227 (Issues include whether the judge erred in finding that the Secretary had jurisdiction under the Mine Act to inspect head drives of two coal conveyors at Penn. Electric's generating station).

The Commission will then hear oral argument on the following:

2. *Westwood Energy Properties*, Docket No. PENN 88-42-R, etc. (Issues include whether the judge erred in finding that the Secretary had jurisdiction under the Mine Act to inspect operations, involving culm bank, at Westwood's power plant).

Any person intending to attend this hearing who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(e).

TIME AND DATE: Immediately following oral argument.

STATUS: Closed [pursuant to 5 U.S.C. 552b(c)(10)].

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Pennsylvania Electric Co.*, Docket No. PENN 88-227 (See oral argument listing)
2. *Westwood Energy Properties*, Docket No. PENN 88-42-R, etc. (See oral argument listing)

It was determined by a unanimous vote of Commissioners that these items be considered in closed session.

TIME AND DATE: 2:00 p.m. on same date as above items.

STATUS: Closed [pursuant to 5 U.S.C. 552b(c)(10)].

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Mid-Continent Resources, Inc.*, Docket No. WEST 87-88 (Issues include initial consideration of pending procedural motions).
2. *Birchfield Mining Company*, Docket No. WEVA 87-272. (Issues include initial consideration of pending procedural motions).

It was determined by a unanimous vote of Commissioners that these items be considered in closed session.

CONTACT PERSON FOR MORE INFORMATION: Sandra G. Farrow (202) 653-5629/(202) 566-2673 for TDD Relay.

Sandra G. Farrow,
Acting Agenda Clerk.
[FR Doc. 89-15253 Filed 6-23-89; 11:25 am]
BILLING CODE 6735-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 12:00 Noon, Monday, July 3, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 23, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–15305 Filed 6–23–89; 3:16 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of June 26, July 3, 10, and 17, 1989.

PLACE: Commissioner's Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of June 26

Wednesday, June 28

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Final Rule for Revisions to 10 CFR Part 2 to Improve the Hearing Process (Tentative) (*Postponed* from June 22)
b. Denial of Petitions for Rulemaking in Relation to Emergency Preparedness at Nuclear Power Plants (Tentative)
c. Review of Existing Regulatory Requirements for Extended Interim Storage of Low-Level Radioactive Waste (Tentative)

Week of July 3—Tentative

Thursday, July 6

10:00 a.m.
Briefing on Study of Adequacy of Regulatory Oversight of Materials Under General License (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)
2:00 p.m.
Briefing on Agency Human Factors Initiatives (Public Meeting)

Week of July 10—Tentative

Monday, July 10

2:00 p.m.
Briefing on Status of Emergency Response Data System (Public Meeting)

Tuesday, July 11

10:00 a.m.
Briefing on Staff Comments on DOE Site Characterization Plan for Yucca Mountain (Public Meeting)
2:00 p.m.
Briefing on Policy Statement on Rules for Exemption from Regulatory Control (Public Meeting)

Friday, July 14

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of July 17—Tentative

Wednesday, July 19

2:30 p.m.
Briefing on Status of Browns Ferry (Public Meeting)
4:00 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

ADDITIONAL INFORMATION: By a vote of 5–0 on June 22, the Commission determined pursuant to 5 U.S.C. 552b(e) and Sec. 9.107(a) of the Commission's rules that Commission business required that "Affirmation of Motion for Protective Order by Joseph J. Macktal" (Public Meeting) scheduled for June 22, be held on less than one week's notice to the public.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided inaccordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)—(301) 492–0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

William M. Hill, Jr.,

Office of the Secretary.

June 22, 1989.

[FR Doc. 89–15305 Filed 6–23–89; 3:16 pm]

BILLING CODE 7590–01–M

Corrections

Federal Register
Vol. 54, No. 122
Tuesday, June 27, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1951

Implementation of Salary Offset

Correction

In rule document 88-25391 beginning on page 44177 in the issue of Wednesday, November 2, 1988, make the following correction:

§ 1951.111 [Corrected]

On page 44178, in the second column, the fourth complete paragraph should be correctly designated as (e).

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[FRL-3535-9]

National Emission Standards for Hazardous Air Pollutants; Colorado; Delegation of Authority

Correction

In rule document 89-6109 beginning on page 10985 in the issue of Thursday, March 16, 1989, make the following correction:

On page 10986, in the table, in the last column, under WY, insert an asterisk in place of the first broken line.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88D-0347]

FDA Access To Results of Quality Assurance Program Audits and Inspections; Compliance Policy Guide; Availability

Correction

In notice document 89-14094 beginning on page 25346 in the issue of Wednesday, June 14, 1989, make the following corrections:

1. On page 25346, in the third column, under **ADDRESSES**, in the second line, the first "to" should read "of".
2. On page 25347, in the first column, in the 31st line, "1085" should read "10.85".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

National Park Service

Mississippi National River and Recreation Area; Boundary Description

Correction

In notice document 89-13798 beginning on page 24960 in the issue of Monday, June 12, 1989, make the following corrections:

1. On page 24960, in the 2nd column, immediately after the 13th paragraph, insert a paragraph reading, "Thence east to the west side of Section 35 (T32N, R25W);"
2. On page 24962, in the 1st column, in the 17th paragraph, in the first line "east" should "south".

BILLING CODE 1505-01-D

federal register

Tuesday
June 27, 1989

Part II

Department of Education

Perkins Loan, College Work-Study, Supplemental Educational Opportunity Grant, Income Contingent Loan, and Stafford Loan (Formerly the Guaranteed Student Loan) Programs; Notice

DEPARTMENT OF EDUCATION

Perkins Loan, College Work-Study, Supplemental Educational Opportunity Grant, Income Contingent Loan, and Stafford Loan (Formerly the Guaranteed Student Loan) Programs

AGENCY: Department of Education.

ACTION: Notice of procedures for certification of need analysis servicers' systems and notice of closing dates for requesting and returning agreements and transmittal of information.

SUMMARY: The Secretary of Education is informing individuals and organizations that operate need analysis systems (need analysis servicers) of the procedures the Secretary will use to certify need analysis systems.

FOR FURTHER INFORMATION CONTACT: Paula M. Husselmann or C. Lorraine Kennedy, Division of Policy and Program Development, Office of Student Financial Assistance, Department of Education, 400 Maryland Avenue, SW., Room 4613, ROB-3, Washington, DC 20202-5346, Telephone (202) 732-5579. For information regarding the specification package contact: Matina Koines, Telephone (202) 732-5579.

SUPPLEMENTARY INFORMATION:

Program Information

The Perkins Loan, College Work-Study, Supplemental Educational Opportunity Grant (known collectively as the campus-based program) and the Stafford Loan programs are "need-based" student financial aid programs. In order to award or approve financial aid under each program, an institution must determine whether a student has financial need. The institution determines a student's financial need by subtracting from the student's educational cost his or her expected family contribution, i.e., the amount the student, his or her spouse and, in the case of a dependent student, his or her parents may reasonably be expected to contribute toward his or her educational costs.

Institutions participating in the Income Contingent Loan (ICL) program must make ICLs reasonably available first to all eligible students who demonstrate financial need.

Part F of Title IV of the Higher Education Act of 1965, as amended, (HEA) provides detailed formulas for determining a student's expected family contribution for the campus-based, ICL and Stafford Loan programs. The statutory formulas specify the criteria, data elements and tables used for determining schedules of expected family contributions for these programs.

As authorized by the HEA and as a service to institutions, the Secretary will certify that an individual's or organization's system has the capability for determining an expected family contribution that is consistent with the calculation prescribed by Part F of Title IV of the HEA. If an institution uses a certified need analysis system in the calculation of an expected family contribution for the 1990-91 award year under the campus-based, ICL and Stafford Loan programs, the institution can be assured that the expected family contribution produced by the system will accurately reflect the expected family contribution described in Title IV, Part F, of the HEA. A need analysis servicer may also agree to incorporate Department of Education (ED) edits, specifications and/or selection criteria for verification as described in § 668.54 of the Student Assistance General Provisions regulations. Need analysis servicers must follow the procedures set forth below to have their systems certified by the Secretary. The Secretary will provide educational institutions with a list of certified systems in May 1990.

Certification Procedural Requirements

In order to have its system certified by the Secretary, a need analysis servicer must enter into an agreement with the Secretary and follow the procedural steps below:

Step 1: The need analysis servicer requests an agreement package from ED by August 4, 1989. The request must be in writing and either hand-delivered or mailed to the Department of Education, Office of Student Financial Assistance, Division of Policy and Program Development, Student Verification Branch, 400 Maryland Avenue, SW., Room 4613, Regional Office Building 3, Washington, DC 20202-5346.

Step 2: After ED receives a request, it provides an agreement package to the need analysis servicer. The agreement package includes the agreement and information that will enable the need analysis servicer to determine whether it wishes its system to become certified and to determine its type of participation.

Step 3: A need analysis servicer selects its participation type by indicating that type on the agreement and returning its signed agreement to ED by September 1, 1989.

Agreements Delivered by Mail

Agreements delivered by mail must be addressed to the Department of Education, Office of Student Financial Assistance, Division of Policy and Program Development, Student Verification Branch, 400 Maryland Avenue, SW., (Room 4613, Regional Office Building 3), Washington DC 20202-5346.

A need analysis servicer must show proof of mailing the agreement. Proof of mailing consists of one of the following: (1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service, (2) a legibly dated U.S. Postal Service postmark, (3) a dated shipping label, invoice, or receipt from a commercial carrier, or (4) any other proof of mailing acceptable to the U.S. Secretary of Education.

If agreements are forwarded using the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service. A need analysis servicer should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, confirmation should be obtained from the local post office. A need analysis servicer is encouraged to use certified or, at least, first-class mail.

Agreements Delivered by Hand

Agreements that are hand-delivered must be taken to the Department of Education, Office of Student Financial Assistance, Division of Policy and Program Development, Student Verification Branch, 7th & D Streets, SW., (Room 4613, Regional Office Building 3), Washington, DC 20202-5346.

Hand-delivered agreements will be accepted between 8:00 a.m. and 4:30 p.m. daily (Washington, DC time), except Saturdays, Sundays and Federal holidays. Agreements delivered by hand will not be accepted after 4:30 p.m. on the closing date.

Step 4: Following submission of the signed agreement to ED, ED provides the need analysis servicer with the appropriate software development package based on the participation type selected.

Step 5: Test cases and additional information pertaining to the submission of the processed test cases will be transmitted by ED to the need analysis servicer at a date agreed upon between ED and the need analysis servicer. The complexity and number of the test cases depend on the participation type the need analysis servicer has selected. (A test case is a discrete set of hypothetical applicant data which is used to test the accuracy and adequacy of a computer function and the need analysis servicer's implementation of Part F of Title IV of the HEA. A single test case may test one or more specific input, process, or output functions. An aggregate of test cases may test a particular computer process, computer run, process cycle, subsystem, or total system process.)

Each set of test cases is designed to provide evidence that will indicate the need analysis servicer's ability to perform accurately operational functions of the participation type selected. ED will evaluate two test case submissions at no charge; a fee of $3,000 will be charged for any additional test case submissions. A need analysis servicer will be given a choice of receiving its test cases by floppy disk or magnetic or cartridge tape.

Note: ED expects that a servicer will thoroughly test its system prior to submitting test cases to ED for evaluation.

Step 6: A need analysis servicer processes all the test cases provided and submits to ED the generated results on floppy disk or magnetic or cartridge tape by March 30, 1990. The need analysis servicer must demonstrate to the satisfaction of ED that there were no system deficiences in those test cases submitted by March 30, 1990. Any discrepancies in the test case results must be resolved to the satisfaction of ED by April 13, 1990 in order for the need analysis servicer's system to be certified and included in the list of certified systems to be provided by the Secretary in May 1990.

Test Case Results Delivered by Mail

Test cases delivered by mail must be addressed to Mr. Paul Z. Hill, Jr., Department of Education, Division of Policy and Program Development, 400 Maryland Avenue SW, Room 4004, ROB-3, Washington, DC 20202.

A need analysis servicer must show proof of mailing the test case results. Proof of mailing consists of one of the following: (1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service, (2) a legibly dated U.S. Postal Service postmark, (3) a dated shipped label, invoice, or receipt from a commercial carrier, or (4) any other proof of mailing acceptable to the U.S. Secretary of Education.

If test case results are forwarded using the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service. A need analysis servicer should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, confirmation should be obtained from the local post office. A need analysis servicer is encouraged to use certified or, at least, first-class mail.

Test Case Results Delivered by Hand

Test case results that are hand-delivered must to taken to Mr. Paul Z. Hill, Jr., Department of Education, Division of Policy and Program Development, 7th and D Streets SW, Room 4004, Regional Office Building 3, Washington, DC 20202-4004.

Hand-delivered test case results will be accepted between 8:00 a.m. and 4:30 p.m. daily (Washington, DC time), except Saturdays, Sundays, and Federal holidays. Test case results delivered by hand will not be accepted after 4:30 p.m. on the closing date.

Closing Dates

1. Deadline date to request agreement package—August 4, 1989.

2. Deadline date to submit agreement to ED—September 1, 1989.

3. Deadline date to submit test case results to ED—March 30, 1990.

4. Deadine date to resolve test case results—April 13, 1990.

(Catalog of Federal Domestic Assistance No. 84.038, Perkins Loan Program (formerly National Direct Student Loan); 84.038, Income Contingent Loan Program; 84.033, College Work-Study Program; 84.007, Supplemental Educational Opportunity Grant Program; and 84.032, Stafford Loan Program (formerly Guaranteed Student Loan))

Dated: June 16, 1989

James B. Williams,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 89-15112 Filed 6-26-89; 8:45 am]

BILLING CODE 4000-01-M

federal register

Tuesday
June 27, 1989

Part III

Department of Transportation

Research and Special Programs Administration

Department of the Navy Application for Inconsistency Ruling Concerning City of Oakland, CA Nuclear Free Zone Act; Notice

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. IRA-47]

Department of the Navy Application for Inconsistency Ruling Concerning City Oakland, CA; of Nuclear Free Zone Act

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Public notice and invitation to comment.

SUMMARY: The United States Department of the Navy (DON) has applied for an administrative ruling determining whether the Nuclear Free Zone Act of the City of Oakland, California code is inconsistent with the Hazardous Materials Transportation Act (HMTA) and the Hazardous Materials Regulations (HMR) issued thereunder and, therefore, preempted under section 112(a) of the HMTA.

DATES: Comments received on or before August 14, 1989, and rebuttal comments received on or before September 29, 1989, will be considered before an administrative ruling is issued by the Director of the Office of Hazardous Materials Transportation. Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

ADDRESSES: The application and any comment received may be reviewed in the Dockets Unit, Research and Special Programs Administration, Room 8421, Nassif Building, 400 7th Street SW., Washington, DC 20590. Comments and rebuttal comments on the application may be submitted to the Dockets Unit at the above address, and should include the Docket Number, IRA-47. Three copies are requested. A copy of each comment and rebuttal comment must also be sent to Lawrence L. Lamade, Esq., General Counsel of the Navy, Washington, DC 20350-1000 and to Mr. Henry Gardner, City Manager, City of Oakland, One City Hall Plaza, Oakland, CA 94612, and that fact certified to at the time each comment is submitted to the Dockets Unit. (The following format is suggested: "I hereby certify that copies of this comment have been sent to Mr. Lamade and Mr. Gardner at the addresses specified in the Federal Register.")

FOR FURTHER INFORMATION CONTACT: Edward H. Bonekemper, III, Senior Attorney, Office of the Chief Counsel, Research and Special Programs Administration, 400 7th Street SW., Washington, DC 20590, telephone 202-366-4382.

SUPPLEMENTARY INFORMATION:

1. Background

The HMTA (49 App. U.S.C. 1801 et seq.) at section 112(a) (49 App. U.S.C. 1811(a)) expressly preempts "any requirement, of a State or political subdivision thereof, which is inconsistent with any requirement" of the HMTA or the HMR issued thereunder.

Procedural regulations implementing section 112(a) of the HMTA and providing for the issuance of inconsistency rulings are codified at 49 CFR 107.201 through 107.211. An inconsistency ruling is an advisory administrative opinion as to the relationship between a state or political subdivision requirement and a requirement of the HMTA or HMR. Section 107.209(c) sets forth the following factors which are considered in determining whether a state or local requirement is inconsistent:

(1) Whether compliance with both the state or local requirement and the HMTA or HMR is possible (the "dual compliance" test); and

(2) The extent to which the state or local requirement is an obstacle to the accomplishment and execution of the HMTA and the HMR (the "obstacle" test).

Inconsistency rulings do not address issues of preemption under the Commerce Clause of the Constitution or under statutes other than the HMTA.

In issuing its advisory inconsistency rulings concerning preemption under the HMTA, OHMT is guided by the principles enunciated in Executive Order 12612 entitled "Federalism" (52 FR 41685, Oct. 30, 1987). Section 4(a) of that Executive Order authorizes preemption of state laws only when the statute contains an express preemption provision, there is other firm and palpable evidence of Congressional intent to preempt, or the exercise of state authority directly conflicts with the exercise of Federal authority. The HMTA, of course, contains an express preemption provision, which OHMT has implemented through regulations and interpreted in a long series of inconsistency rulings beginning in 1978.

2. The Application for Inconsistency Ruling

On May 17, 1989, the DON, through Lawrence L. Lamade, its General Counsel, applied for an inconsistency ruling concerning the Oakland Nuclear Free Zone Act, which is reproduced in Appendix A to this Notice.

In its application, DON, prior to discussing specific provisions of the Oakland Nuclear Free Zone Act (Ordinance), describes the scope of the Ordinance. DON states that this Ordinance applies to the transport of any nuclear weapon or hazardous radioactive material and that the scope of the Ordinance is evidenced by its stated purpose to "make Oakland a nuclear free zone."

DON stresses that the Ordinance addresses the transportation of nuclear weapons or other hazardous radioactive materials through, or over, Oakland and that it applies to *all* hazardous radioactive materials, regardless of their classification under the HMR. Section 11.g. of the Oakland Ordinance defines "Hazardous Radioactive Materials" as:

> * * * any radioactive isotope(s) resulting from the operation of, or intended for use in, nuclear fission reactors or nuclear weapons; the refined products of spent nuclear fission reactors, or of any device or component of a device that has been used to contain or process radioactive isotopes; or the tailings or similar debris resulting from the mining of uranium or other radioactive elements except as specifically exempted herein.

However, DON points out that Subsections 12.h and i. exempt (1) nuclear medicine research programs, (2) "unclassified" research, study, evaluation or teaching, (3) the operation of particle accelerators, (4) the construction and operation of experimental fusion reactors, and (5) consumer uses of radioactive material, from the provisions of the Ordinance.

Because section 11.a. defines "person" as any "natural person, corporation, college or university, laboratory, institution, governmental agency, or other entity," DON argues that the Ordinance is applicable to the activities and operations of both private entities and the Federal Government. Thus, says DON, the Ordinance applies to any nuclear weapon or radioactive material which is generated, utilized, or transported in, through, or over the City of Oakland.

DON contends that several provisions of the Ordinance are inconsistent with the HMTA and the HMR under both the "obstacle" and "dual compliance" tests described above.

First, citing numerous prior inconsistency rulings and 49 CFR Part 177, Appendix A, DON asserts that a 45-day advance notice provision is inconsistent because of delays and diversions resulting therefrom. It also argues that the requirement for 45 days' advance notice to the City of radioactive materials transportation is inconsistent because it applies to Department of Defense shipments exempt from the HMR under 49 CFR 173.7(b) and because it may violate the disclosure prohibitions of 10 CFR 73.21, which is incorporated by reference in 49 CFR 173.22(c).

Second, DON contends that routing requirements of the Ordinance are inconsistent. The Ordinance provides that, after a public hearing, the City Council will determine the safest route and means of transportation for radioactive materials transportation. According to DON, this process is inconsistent with the HMR's classification of radioactive materials and the routing requirements of 49 CFR 177.825, particularly the provision for transportation of highway route controlled quantities (HRCQ) of radioactive materials on preferred routes (Interstate highways and state-designated routes).

Other bases argued by DON for the alleged inconsistency of this process are the Ordinance's application to non-HRCQ radioactive materials and shipments excluded from regulation by the HMR, the City Council's unfettered discretion to select routes, and delays that will result from this process—particularly from a requirement that at least 15 days' public notice follow the Council's selection of a route.

Third, DON argues that the Ordinance contains an inconsistent placarding requirement, specifically a requirement for a sign reading "Transportation of Hazardous Radioactive Materials" clearly visible at least 150 feet in each direction. DON alleges an inconsistency with the placarding system of 49 CFR 172.500-558, particularly with 49 CFR 172.556 concerning radioactive materials placarding. It cites language in Inconsistency Ruling No. IR-24 (53 FR 19848, May 31, 1988) that "HMR placarding provisions do completely occupy the field and, therefore, preempt all state and local placarding and warning sign requirements for hazardous materials transportation which are not identical to the Federal requirements."

Fourth, DON cites several inconsistency rulings to support its contention that the following transportation ban in the Ordinance is inconsistent: "The present ban by the Port of Oakland on transportation of spent nuclear fuel rods through the Port is hereby confirmed and made permanent." DON states that the authority to ban or prohibit transportation is exclusively Federal and quotes the following language from Inconsistency Ruling No. IR-3 (Decision on Appeal):

> A unilateral local ban is a negation, rather than an exercise, of local responsibility, since it isolates the local jurisdiction from the risks associated with the commercial life of the nation.

Finally, DON argues that fee and criminal penalty provisions of the Ordinance are inconsistent insofar as they apply to inconsistent provisions.

3. Public Comment

Comments should be limited to the issue of whether the requirements of the Nuclear Free Zone Act of the City of Oakland, California, are inconsistent with the HMTA or the HMR. They should specifically address the "dual compliance" and "obstacle" tests described above under "Background."

Persons intended to comment on the application should examine the complete application in the RSPA Dockets Branch, Appendix A to this Notice, and the procedures governing the Department's consideration of applications for inconsistency rulings (49 CFR 107.201-107.211).

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

Issued in Washington, DC, on June 20, 1989.

Appendix A—Oakland Nuclear Free Zone Act

Section 1: Name

This Ordinance shall be known as the Oakland Nuclear Free Zone Act.

Section 2: Purpose

The purpose of this Act is to make Oakland a nuclear free zone by:

a. Prohibiting the production of nuclear weapons in Oakland;

b. Regulating the transportation of nuclear weapons and hazardous radioactive materials through Oakland, and informing the citizens of Oakland before such transportation takes place;

c. Banning the storage or reprocessing of hazardous radioactive materials in Oakland;

d. Prohibiting City contracts with or the investment of City funds in any business that knowingly engages in nuclear weapons work; and

e. Prohibiting nuclear reactors in Oakland.

Section 3: Findings

The people of Oakland find that:

a. Nuclear weapons are an intolerable danger to humanity in general and to Oakland in specific. In particular, they endanger the economic well-being of the people of Oakland, the environment in which we live, and our health and safety. The continued escalation of the arms race and threats to initiate the use of nuclear weapons increase the likelihood of nuclear war and diminish our security.

b. Even if nuclear weapons are never used, the transportation and storage of nuclear weapons or other hazardous radioactive materials are a serious threat to the health and safety of the people of Oakland. Exposure to these materials can cause cancer, birth defects and other diseases, while there is no scientific proof that any level of exposure is safe.

c. Nuclear reactors pose similar threats of exposure to radioactivity from transport or storage of nuclear materials, routine operations, and the inherent risk of catastrophic accidents, such as those at Three Mile Island and Chernobyl. Oakland is specifically threatened by Rancho Seco and nuclear reactors aboard Navy ships in Alameda and the San Francisco Bay.

d. The production of nuclear weapons is the major driving force of the nuclear fuel cycle, which includes mining, refining, nuclear reactors, food irradiation plants, waste storage, transportation and reprocessing activities, each stage of which poses serious risks to public health and safety. Because of the security requirements surrounding nuclear weapons and materials, these activities also abridge our civil liberties and limit our ability to make informed decisions affecting our future.

e. Money invested by the City of Oakland in businesses participating in nuclear weapons work helps support the arms race, diverts funds from needed human services, and is not a responsible use of City funds.

f. The people of Oakland have expressed their desire to end the arms race. In 1983 we voted to support a bilateral freeze on "the testing, production and further development of all nuclear weapons." In 1986 the City Council voted unanimously to support a comprehensive nuclear test ban.

Therefore, the people of Oakland join over 130 U.S. communities and thousands of other cities world-wide by declaring Oakland a nuclear free zone. The people of Oakland require that the City of Oakland use its legal and regulatory authority to eliminate threats to the public health and safety due to the presence of nuclear weapons work, nuclear reactors, or hazardous radioactive materials in Oakland, and to stop making investments or contracts that contribute to the nuclear arms race.

The people of Oakland also call upon the Board of the Oakland School District, the Commission of the Port of Oakland, the Alameda County Board of Supervisors, the Board of the Peralta Community College District, the Boards of all special districts serving the City of Oakland, and the managers of any autonomous pension funds or other investment funds of these agencies to examine the provisions of this Act and to implement them within their respective jurisdictions as applicable.

Section 4: Prohibition of Nuclear Weapons Work

No person shall, within the City of Oakland, knowingly engage in nuclear weapons work. (See Section 11 for definitions and exclusions.)

Section 5: Transportation

a. Any transportation of nuclear weapons or other hazardous radioactive materials through or over Oakland shall be subject to the following restrictions:

Oakland inconsistent with the intentions of this Act, the City shall so notify the nuclear weapons maker or other person with a formal order to cease and desist from such activities. Each person so notified may appeal this decision to the City Council within 30 days of receipt of said notice. The City Council may uphold an appeal only if it finds, after public hearing, that such person is not engaged in nuclear weapons work or other activity inconsistent with this Act within the City of Oakland. Failure of any person to comply with a cease and desist order within 60 days following its receipt or following an unsuccessful appeal shall be prosecuted to the full extent of City police powers. In addition, the City may impose any or all of the following sanctions:

i. Cut-off any or all city services to the person concerned;

ii. Levying of fines; and

iii. Advising citizens to avoid cooperation with the activities of the person concerned.

Section 11: Definitions and Exclusions

a. "Person" is any natural person, corporation, college or university, laboratory, institution, governmental agency, or other entity.

b. "Contract" is any agreement, written, oral or implied, made on behalf of or by the City of Oakland or any of its agencies, or by the City of Oakland on behalf of any other person, to receive or supply any funds, products, services or other consideration. A contract for any product or service orginally produced by a nuclear weapons maker shall be covered by the relevant provisions of this Act, notwithstanding that such product or service may be provided to the City through intermediary vendors who are not themselves engaged in such work.

c. "Nuclear weapon" is any device the intended explosion of which results from the energy released by reactions involving atomic nuclei, either fission or fusion or both. Nuclear weapon includes the means of transporting, guiding, propelling, triggering, or detonating the weapon. Nuclear weapon also includes any component of a nuclear weapon, i.e., any device, radioactive or non-radioactive, the primary intended function of which is to contribute to the operation of a nuclear weapon or be a part of a nuclear weapon.

d. "Nuclear weapons work" is any work that has as its purpose the development, testing, production, possession, maintenance or storage of nuclear weapons, the components of nuclear weapons, or any secret or classified research or evaluation of nuclear weapons.

e. "Nuclear weapons maker" is any person knowingly engaged in nuclear weapons work, or their agent, subsidiary or parent organization.

f. "Nuclear reactor" is any device that has as its purpose the release of energy from non-explosive reactions involving the fission of atomic nuclei.

g. "Hazardous radioactive material" is any radioactive isotope(s) resulting from the operation of, or intended for use in, nuclear fission reactors or nuclear weapons; the refined products of spent nuclear fission reactors, or of any device or component of a device that has been used to contain or process radioactive isotopes; or the tailings or similar debris resulting from the mining of uranium or other radioactive elements except as specifically exempted herein.

h. Nothing in this Act shall be construed to prohibit research on and the application of nuclear medicine or consumer uses of radioactive material for smoke detectors, light-emitting watches and clocks, and other similar applications.

i. Nothing in Section 4 or Section 8 of this Act shall be construed to prohibit the following:

i. Any unclassified research, study, evaluation or teaching;

ii. The operation of particle accelerators and related equipment; or

iii. The construction and operation of experimental fusion reactors.

j. The provisions of Sections 4 and 7 shall not be construed to prohibit contracts with, investments in, or any activities of any agency or branch of government, provided such agency or branch is not itself engaged in nuclear weapons work and is clearly distinguishable administratively from any parent governmental entity that is involved in nuclear weapons work. Any such exception for an agency or branch of a governmental entity may be allowed only upon a specific finding by the City Council, after public hearing, that the proposed activity, contract, or investment in no way supports nuclear weapons work.

Section 12: Effect

Unless otherwise specified, the provisions of this Act are effective immediately.

a. Cessation of Present Activities: The prohibitions contained in Sections 4, 6, and 8 (no nuclear weapons work, reprocessing, storage and use of hazardous radioactive materials, nor nuclear reactors in the City of Oakland) shall, as they apply to any such activity already occurring as of the date of passage of this Act, take effect two years after that date.

b. Prohibition of Commencement of Prohibited Activities: No person shall, within the City of Oakland, commence any such activities after the date of passage of this Act.

Section 13: Severability

This Act shall be enforced to the full extent of the authority of the City of Oakland. If any section, subsection, paragraph, sentence or word of this Act shall be held to be invalid, either on its face or as applied, the invalidity of such provision shall not affect the other sections, subsections, paragraphs, sentences or words of this Act, and the applications thereof; and to that end the sections, subsections, paragraphs, sentences or words of this Act shall be deemed severable.

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BILLING CODE 4910-88-M

i. Any person transporting such materials shall notify the City of Oakland at least 45 days prior to such transportation for review under provisions of this section.

ii. The City Council shall convene at least one public hearing with sufficient advance notice by radio, television, and press release, to ensure maximum public participation. After hearing public testimony, the City Council shall determine the safest route and means of transportation for the above-mentioned materials. Following selection and approval of route and means, the City shall give at least 15 days advance public notice of the selected route(s).

iii. The City of Oakland shall independently monitor transport of hazardous radioactive materials through or over Oakland and assess the adequacy of safety and notice provisions relating thereto.

iv. Each vehicle involved in such transport shall have signs warning "Transportation of Hazardous Radioactive Materials" clearly visible for at least 150 feet in each direction.

b. The present ban by the Port of Oakland on transportation of spent nuclear fuel rods through the Port is hereby confirmed and made permanent.

Section 6: Prohibition of Reprocessing, Storage and Use

No person shall reprocess, store, dump, or use hazardous radioactive materials for any purpose within the City of Oakland. (See Section 11 for definitions and exclusions.)

Section 7: Nuclear Weapons Free City Investment and Contracting

a. Contracts and Purchases:

The City of Oakland shall grant no contract, direct or indirect, to any nuclear weapons maker, unless the City Council makes a specific determination, after public hearing, that no reasonable alternative exists, taking into account each of the following factors:

i. The intent, purpose and findings of this Act;

ii. The availability of alternative services, goods, or other supplies substantially meeting the specifications of the proposed contract; and

iii. Unreasonable additional costs resulting from use of available alternatives.

Any such determination is prohibited absent a specific finding by the City Council that a given contract is essential to the continued proper functioning of the City government.

As soon as it appears that any person may be excluded from entering into a contract with the City of Oakland due wholly or partly to that person's designation as a nuclear weapons maker, such person shall be so notified and informed of the right to appeal such designation. The City Council shall establish an appropriate appeal process.

b. Investments:

As of the date of passage of this act, the City of Oakland shall refrain from making any new investments in nuclear weapons makers. Within two years after the date of passage of this Act, the City of Oakland shall divest itself of all such investments held or controlled by it, including pension funds.

The City of Oakland shall ensure that any City funds, or any funds controlled by the City, invested through trustees or other third parties are invested according to the provisions of this subsection, and to this end shall obtain written assurances to this effect from any such trustees or third parties.

This subsection is subject to the following exceptions:

i. Investment in United States Treasury securities may be made by the City of Oakland only when found necessary to avoid substantial financial losses, and only by specific resolution of the City Council for a period of time not to exceed 60 days. More than one resolution may be made so as to apply consecutively, but each such resolution must be made in separate meetings of the City Council, with one and no more than one additional resolution being made during the effective period of the one preceding it, if any. It is intended that such investments will normally not be made, that the City will endeavor to keep them to an absolute minimum, that in no case shall such investments exceed 20% of the total City portfolio, and that any investment made under provision of this exception will be terminated as rapidly as possible.

ii. City funds resulting from any bonded indebtedness entered into prior to the date of passage of this Act may be invested in U.S. Treasury securities only to the minimum extent required by the terms of the resolutions of issuance of such bonds, except as allowed in paragraph (i) of this subsection.

iii. This subsection does not restrict investments in securities that are guaranteed, rather than held by, agencies of the Federal government or other government entity.

iv. No provision of this subsection shall be construed to conflict with any relevant provisions of the Oakland City Charter.

Section 8. Prohibition of Nuclear Reactors

No person shall, within the City of Oakland, operate or cause to be built a nuclear reactor. (See Section11 for definitions and exclusions.)

Section 9: Public Notice of Nuclear Free Zone

a. Every road, including interstate highways, entering the City of Oakland, or any other major transportation facility which, as of the date of passage of this Act, has a sign marking the city limits, or where a new city limit sign is emplaced subsequent to the date of passage of this Act, will also be marked, equally prominently, with a sign reading "Nuclear Free Zone, established by City of Oakland initiative ordinance, 1988", and clearly displaying the standard yellow and black symbol for radiation with a red circle crossout overlay. These signs shall be posted no later than November 1, 1988, shall be at least 2 feet by 3 feet in size, and shall be maintained with at least the same standard of care as city limit signs.

b. Every facility within the City of Oakland engaged in nuclear weapons work shall, within 30 days of determination of applicability under this Act, be required to install and maintain signs, clearly visible to any passing person, identifying the facility with the legend "Nuclear Weapons Work Conducted Here". Such signs shall be placed in locations approved by the City.

Section 10: Enforcement, Sanctions and Citizens Suits

a. Public Hearings and Reports:

i. Within six months after the date of passage of this Act, the City Council shall hold at least three public hearings, at three different locations and at times designed to maximize public participation, to determine means of implementing and to evaluate compliance with all sections of this Act.

ii. Within six weeks after concluding these hearings, the City Council shall issue to the public a full report on City progress towards implementing this Act.

iii. Thereafter the City Council shall hold at least two public hearings a year, and shall present a report to the public six weeks after such hearings, as described in paragraphs (i) and (ii) above and (iv) below.

iv. In addition to evaluating and assuring compliance with the specific provision of this Act, such hearings and reports shall also include recommendations for additional regulatory or public actions to further the purposes of this Act.

b. Annual Reporting: Each nuclear weapons maker or other persons within the City of Oakland engaged in activities covered by the provisions of this Act, whether these activities are inside or outside of Oakland, shall prepare an annual report to the City that includes the following elements:

i. A description of the extent and nature of such activities and the hazardous radioactive materials or nuclear weapons involved; and

ii. A description of the steps being taken to cease such activities within two years of the date of passage of this Act, including any steps to provide alternative jobs for employees engaged in such activities.

These reports shall be filed with the City at least four weeks prior to the public hearings held pursuant to subsection (a) above and shall be made available for inspection and copying by any member of the public.

c. Fees: The City of Oakland shall assess reasonable fees toward the implementation of this Act from nuclear weapons makers and other persons engaged in activities covered by the provisions of this Act.

d. Information: The City of Oakland shall call upon any nuclear weapons maker or other person within the City engaged in activities covered by the provisions of this Act, whether those activities are inside or outside of Oakland, to provide further information as needed to keep the community adequately informed about such nuclear weapons work and about the health and safety consequences of all such activities The City shall use the power of subpoena where required to ensure compliance by such persons.

e. Any resident of Oakland has the right to enforce this Act by appropriate civil action for declaratory or injunctive relief. A prevailing plaintiff shall be awarded reasonable costs of suit and attorney's fees.

f. Each violation of this Act shall be punishable with the maximum penalty for a misdemeanor, and each day shall be deemed a separate violation.

g. Where the City of Oakland determines that any nuclear weapons work or other activity covered under this Act is occurring in

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Part IV

Department of Defense

Corps of Engineers, Department of the Army

33 CFR Part 282

Water Resources Policies and Authorities; Federal Participation in Shore, Hurricane, Tidal and Lake Flood Protection; Revocation of Final Rule

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 282

[ER 1165-2-130]

Water Resources Policies and Authorities: Federal Participation in Shore, Hurricane, Tidal and Lake Flood Protection

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule; revocation.

SUMMARY: The Corps of Engineers is removing the regulation in 33 CFR Part 282. This regulation, published 22 January 1979, no longer serves its intended purpose.

EFFECTIVE DATE: June 27, 1989.

FOR FURTHER INFORMATION CONTACT: Don Rogers at (202) 272-0123.

SUPPLEMENTARY INFORMATION:

Discussion

The purpose of the regulation was to provide "policies and guidelines for determining the extent of Federal participation in potential Federal projects for shore erosion control, and hurricane, abnormal tidal and lake flood protection." These were for observance by Corps of Engineers planners in study and formulation of project proposals for these purposes, when so directed, and calculation of appropriate Federal and non-Federal cost sharing therefor.

The legislative basis for Corps of Engineers involvement in Civil Works projects to serve these kinds of purposes was significantly changed by the Water Resources Development Act of 1986 (Pub. L. 99-662). Section 103(c)(5) of that Act designates cost sharing for the purpose of hurricane and storm damage reduction (HSDR). This introduces a new way of viewing shore protection projects which, previously, were viewed as either for "beach erosion control" or for hurricane, tidal or lake flood protection. Pursuant to section 103(d) of the Act, the costs of constructing "beach erosion control" measures are now assigned to one of the basic Federal project purposes designated in sections 103 (a), (b), or (c) of the Act—normally this would be either HSDR or recreation—and cost shared accordingly.

This, plus other comparably minor alterations in general policies and procedures that have taken place since 1979, necessitates complete revision of related guidance and restatement of policies in a new regulation. Development of a new regulation is in progress, to be issued to Corps of Engineers headquarters elements and field operating activities (FOAs) for their uniform guidance in considering shore protection proposals. The new regulation will be subject to progressive revisions in the future as experience in application of the new legislative provisions may indicate desirable. It is for the continuing, current guidance of Corps planners in carrying out their functions and responsibilities (one of a large body of similar regulations maintained by the Corps of Engineers), with no direct impact upon the public.

Note 1: This revocation is part of the Corps ongoing review of regulations as required by the semi-annual agenda of Federal regulations. We are of the opinion that notice of proposed rulemaking and public procedures thereto are unnecessary since these rules were administrative in nature and had no impact on the general public.

Note 2: We have determined that it is in the public interest to make this revocation effective upon publication in the **Federal Register**. Since these rules are obsolete and have no effect on the public, nothing would be achieved by delaying the effective date.

Note 3: I hereby certify that this regulation would not have a significant economic impact on a substantial number of entities and thus does not require preparation of a regulatory flexibility analysis.

In consideration of the foregoing, Part 282 of Title 33, Code of Federal Regulations is removed and reserved.

PART 282—[REMOVED]

Dated: June 12, 1989.

Approved

Wilbur T. Gregory, Jr.,

Colonel, Corps of Engineers, Executive Director of Civil Works.

[FR Doc. 89-15129 Filed 6-26-89; 8:45 am]

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federal register

Tuesday
June 27, 1989

Part V

Environmental Protection Agency

40 CFR Part 260
Hazardous Waste Management System: Requirements of Rulemaking Petitions; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 260

[SW-FRL-3532-2]

Hazardous Waste Management System: Requirements of Rulemaking Petitions

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On November 8, 1984, the President signed into law the Hazardous and Solid Waste Amendments (HSWA) of 1984. These amendments changed the hazardous waste management system established by the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6821 *et seq.* One of HSWA's several requirements was to establish additional and more specific criteria for evaluating petitions submitted under 40 CFR 260.20 and 260.22, to exclude ("delist") specific wastes from the lists of hazardous wastes contained in 40 CFR 261.31, 261.32 and 261.33. EPA incorporated these new HSWA criteria into its delisting rules by adding a new paragraph to 40 CFR 260.22 (a), (c), (d), and (e). [See 50 FR 28727–28728, July 15, 1985.] However, at that time, EPA inadvertently failed to alter 40 CFR 260.22(b) when modifying the other portions of § 260.22, to ensure that the entire delisting program is consistent with HSWA. On May 20, 1988, EPA proposed to amend the delisting rules to clarify the potential ambiguity created by that oversight and to fully reflect the HSWA requirements. [See 53 FR 18107.] Today's rule responds to comments on that proposal and makes the changes to § 260.22(b).

EFFECTIVE DATE: June 27, 1989.

ADDRESSES: The public docket for this final rule is located at the U.S. Environmental Protection Agency, 401 M Street SW., Room M2427, Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday excluding Federal holidays. Call (202) 475–9327 for appointments. The reference number for this docket is "F–88–RRPA–FFFFF." The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424–9346, or at (202) 382–3000. For technical information concerning this rule, contact Linda Cessar, Office of Solid Waste (OS–343), U.S. Environmental Protection Agency, 401 M Street SW., Washington DC 20460, (202) 475–9828.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

These regulations are issued under the authority of Sections 1004, 2002(a), 3001, 3006, and 7004 of the Solid Waste Disposal Act as Amended (42 U.S.C. 6903, 6912, 6921, 6926, and 6974).

B. History of this Rulemaking

On May 20, 1988 [53 FR 18107], EPA proposed to modify 40 CFR 260.22(b) to clarify the potential ambiguity created by EPA's inadvertent failure to alter that regulation when modifying other portions of § 260.22 to ensure that the delisting program is consistent with HSWA.

As currently worded, 40 CFR 260.22(b) can be read to imply that a petitioner requesting exclusion of a waste need only sample and analyze the listed constituents of concern for hazardous wastes in a waste mixture. Co-mingled, non-listed solid wastes, however, may contain the same and/or additional constituents of concern as those found in the listed wastes alone. Under 40 CFR 261.3(a)(2)(iv) and 261.3(b), mixtures of solid wastes and listed hazardous wastes are considered listed hazardous wastes. Making delisting decisions for such mixed waste streams without considering the constituents in co-mingled solid and listed wastes would not fully protect human health and the environment. Further, it would not satisfy the statutory mandate to HSWA to consider additional factors, including constituents other than those for which the waste was listed, if EPA has a reasonable basis to believe that such additional factors could cause the waste to be hazardous (see HSWA Section 3001(f)(1)). In the May 20, 1988 notice, EPA proposed that existing language in § 260.2(b) be deleted and that additional language be added to clarify that additional factors (including additional constitutents) in a mixture of solid waste and hazardous waste may be considered in the delisting evaluation. This rulemaking addresses public comments received on the May 20 proposal and finalizes the proposed rule.

II. Agency Response to Comments

The Agency received public comments on the proposed rule from one interested party. The commenter did not support the Agency's proposed rulemaking. The objections raised by the commenter are discussed below.

1. *Proposed rule allegedly goes beyond the intent of HSWA.*

The commenter opposes the Agency's proposed requirement that the constituents of any co-mingled solid wastes and hazardous wastes be included in the evaluation of delisting petitions. The commenter believes that this proposed requirement goes beyond the language and intent of HSWA. Citing Section 3001(f)(1) of HSWA, the commenter believes that HSWA requires that EPA only consider factors (including additional constituents) for the listed waste, and not for the waste mixture.

Section 3001(f)(1) of HSWA states that:

> [w]hen evaluating a petition to exclude a waste generated at a particular facility from listing under this Section, the Administrator shall consider factors (including additional constituents) other than those for which the wastes was listed if the Administrator has a reasonable basis to believe that such additional factors could cause the waste to be a hazardous waste.

The Agency believes that a situation in which a listed hazardous waste is mixed with a solid waste presents factors, particularly additional constituents originally present in the solid waste, that must be considered in such a delisting evaluation. Further, because EPA defines such co-mingled wastes as listed hazardous wastes and considers the waste codes to "carry through" to the mixture, the mixture must be viewed as a listed hazardous waste and evaluated for additional factors. This is described further below.

The Agency believes that the proposed rule is consistent with the Agency's previously developed position (codified at 40 CFR 261.3 (a) and (b)) that mixtures of solid wastes and listed hazardous wastes are considered hazardous wastes unless specifically exempted. The Agency's classification of such waste mixtures was originally promulgated on May 19, 1980 [45 FR 33073], and clarified in an interim final rule published on November 17, 1981 [46 FR 56582]. As noted in the preamble to the 1980 rule, the Agency intends waste mixtures containing listed hazardous wastes to be considered hazardous and managed accordingly. Without such a rule, generators could evade Subtitle C requirements simply by co-mingling listed wastes with non-hazardous solid wastes.

The Agency recognized, however, that designating all waste mixtures containing wastes listed as hazardous under Subtitle C could create some inequities. Thus, in the November 1981 rule, the Agency excluded from the presumption of hazardousness certain types of mixtures of listed hazardous wastes and wastewaters, and mixtures of solid wastes and listed hazardous wastes which are listed solely because they exhibit one or more of the hazardous waste characteristics, but which no longer exhibit any hazardous waste characteristic defined in Subpart C. [See 40 CFR 261.3 (a) and (b) of the regulations excluding certain waste mixtures from the presumption of hazardousness. See 40 CFR 261.21, 261.22, 261.23 and 261.24 for the hazardous waste characteristics.]

The November 1981 rule did not, however, exclude from the presumption of hazardousness those waste mixtures of solid wastes and listed hazardous wastes which are listed because they typically contain hazardous constituents (contained in Appendix VIII of 40 CFR Part 261) at levels of regulatory concern. (The rule also did not exclude acutely toxic mixtures from the presumption.) Such waste mixtures were designated as hazardous to minimize any threats to human health and to the environment that may occur when hazardous and solid wastes are mixed. Often hazardous constituents present in the listed waste (whether these constituents were the basis for listing the waste generically) remain present in hazardous concentrations after the listed waste is mixed with non-hazardous solid waste. Similarly, some solid wastes contain constituents which by themselves are not considered hazardous; when these non-hazardous constituents are mixed with listed hazardous wastes, the previously non-hazardous constituents may be rendered hazardous through any number of chemical interactions (such as oxidation or reduction reactions). Thus, if the resultant waste mixture is mismanaged, previously existing or newly formed hazardous constituents may escape into the environment at levels of concern.

The RCRA regulations which establish the lists of hazardous wastes therefore presume that the solid wastes mixed with listed hazardous wastes are generally hazardous. Considering hazardous constituents (that were not the basis for listing the waste as hazardous) present in some mixtures is therefore consistent with the HSWA requirement that delisting evaluations consider additional factors which could cause the petitioned waste to be a hazardous waste. Congress, in passing section 3001(f), was fully aware of how EPA regulated waste mixtures, and chose to eliminate a perceived loophole by which listed wastes (including mixtures) were deregulated although containing hazardous levels of additional (non-listed) constituents. See H.R. Rep. No. 98–198, 98th Cong., 1st Sess., 57–58 (1983).

The hazardous constituents in a solid waste co-mingled with one or more listed hazardous wastes can clearly be considered relevant additional factors, given EPA's regulatory approach described above, and evaluating such constituents is therefore fully within the intent of HSWA. Further, unless the mixed waste petitioned to be delisted were separated into its formative, unmixed waste streams, it would not be possible to know whether an additional constituent was originally present in the listed hazardous waste of the unlisted, non-hazardous solid waste. Finally, even if such consideration of additional constituents in listed waste mixtures was not compelled by section 3001(f), EPA would, through today's rulemaking, adopt the proposed rule to clarify that EPA can consider such additional constituents.

2. *Proposed rule allegedly is an arbitrary and capricious action.*

The commenter believes the Agency's proposed rulemaking is arbitrary and capricious when applied to a mixture of a listed (or derived-from a listed under 40 CFR 261.3(c)(2)(i)) hazardous waste and a solid waste, where the solid waste itself is a delisted (or derived-from a delisted) waste (*i.e.*, a waste which EPA has already excluded).

The Agency has not exempted from the presumption of hazardousness those waste mixtures that consist of listed hazardous wastes and solid wastes, when the solid wastes are delisted or derived-from a delisted waste. The whole waste mixture is presumed hazardous until proven otherwise (*i.e.*, excluded under 40 CFR 260.20 and 260.22). HSWA did not indicate that previously delisted solid wastes, wastes derived-from those wastes, and/or constituents in these delisted or derived-from wastes were not to be considered in the delisting evaluation when these wastes were mixed with listed hazardous wastes. Delisted wastes continue to be solid wastes and are subject to the mixture rule described above. [The Agency has not to date delisted a waste which it believes exhibits any of the hazadous waste characteristics. Once a waste is delisted, generators remain obligated to determine whether or not their waste remains non-hazardous based on the hazardous waste characteristics.]

When evaluating a delisting petition for a waste mixture of a listed hazardous waste and a previously delisted waste (*i.e.*, solid waste), the Agency must consider the potential for the hazardous waste to leach constituents of concern from the solid waste. These waste mixtures are presumptively hazardous just as mixtures of listed wastes with non-delisted, non-hazardous solid wastes; consideration of additional factors (including additional constituents) of mixtures of listed and delisted wastes is appropriate for the reasons described in the previous section.

3. *Proposed rule allegedly is unjustly retroactive to pending delisting petitions.*

The commenter believes the proposed action violates procedural and substantive due process to the extent it is applied retroactively to pending delisting petitions.

The Agency disagrees with the commenter and believes that today's rule merely codifies the intent of HSWA and thus, any application to pending delisting petitions is due to the application of the statute and not to today's rule amendment. Further, any current application of these criteria to pending petitions is prospective, not retroactive. Finally, even if today's rule was not compelled by HSWA, its current application to pending petitions would be permissible under applicable law established by *Securities and Exchange Commission v. Cheney Corp.*, 332 U.S. 155 (1947), and its progeny, and "good cause" exists for any retroactive application that might be construed, see *Citizens to Save Spencer County v. EPA* 600 F. 2nd 844, 880–81 (D.C. Cir. 1979), based upon past legislative and regulatory announcements.

4. *Proposed rule allegedly unjustly incorporates derived-from hazardous wastes.*

The commenter believes the proposed action violates procedural and substantive due process to the extent it incorporates derived-from hazardous wastes.

On May 19, 1980 [45 FR 33073], the Agency promulgated regulations, codified at 40 CFR 261.3(c)(2)(i), listing as hazardous those wastes which are derived from listed wastes. Thus, a derived-from waste is subject to the same Subtitle C regulations as all other types of hazardous wastes. When Congress enacted HSWA, this derived-from rule had been effective for four years. EPA will not respond to the comment to the extent that the commenter is attempting to challenge collaterally EPA's previously promulgated rule. However, given that these derived-from wastes are hazardous wastes of the same waste code as the listed wastes from which they are derived, EPA does not believe that applying the plain terms of Section

3001(f)(1) to these wastes can deny due process.

Although derived-from hazardous wastes or mixtures of listed waste and solid waste are not explicitly mentioned in the statute, the legislative history to new Section 3001(f) of RCRA shows that Congress was concerned that EPA's delisting evaluation was, in general, too narrow in scope. Congress believed that limiting the analysis to listed constituents could allow the Agency to "de-regulate" a waste that contained other harmful constituents. See H.R. Rep. No. 98-198, 98th Cong., 1st Sess., 57-58 (1983). Consequently, Congress amended RCRA to direct the Agency to consider factors (including additional constituents) other than those for which the waste was listed if the Administrator has a reasonable basis to believe that such additional factors could cause the waste to be a hazardous waste. Congress did not provide specific examples of "additional factors". Further, Congress did not specify, and the Agency does not believe that Congress intended, that application of this analysis be limited, excluding application to derived-from wastes and mixtures of listed hazardous wastes and solid wastes.

5. *Proposed rule allegedly is a major action.*

The commenter believes the proposed amendment goes "far beyond HSWA" and does not merely incorporate or codify a statutory requirement, but is "major" and is subject to regulatory impact analysis under Executive Order 12291.

Under the Executive Order, a major rule is any regulation that is likely to result in:

1. An annual effect on the economy of $100 million or more;

2. A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

3. Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Agency believes that today's rule does not meet these criteria for a major regulation. This rule will not approach any of the criteria listed above, because only a small number of facilities petitioning for delisting will be affected by this rule. Further, as explained above, this rule merely codifies existing statutory requirements and has no independent effect.

6. *Proposed rule allegedly requires a regulatory flexibility analysis.*

The commenter believes that the proposed amendment "may require a significant change in the amount of information required for RCRA delisting petitions, since HSWA does not require information on factors beyond those of the listed hazardous waste." As such, the commenter believes that the proposed amendment may have an adverse economic impact on small entities and that a regulatory flexibility analysis is required by the Regulatory Flexibility Act, 5 U.S.C. 601-612.

Section 3001(f) of HSWA clearly states that the Administrator shall consider factors (including additional constituents) other than those for which the waste was listed if the Administrator has a reasonable basis to believe that such additional factors could cause the waste to be a hazardous waste. As noted earlier, the Agency believes that a hazardous waste co-mingled with a solid waste is a hazardous waste, and the mixture is subject to the Section 3001(f) requirements for a delisting demonstration, including evaluation of additional constituents. Thus, a Regulatory Flexibility Analysis is not necessary, because the Agency is merely codifying existing statutory requirements, and this rule has no independent effect. Even if a Regulatory Flexibility Analysis were applicable, only a small number of facilities will be affected by this rule, and it will not require a significant increase in the amount of information required for delisting petitions.

III. Effective Date

This rule is effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule merely incorporates and codifies a statutory requirement. This reason provides a basis for making this rule effective immediately, upon promulgation, under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

IV. State Authority

Because this rule merely eliminates potential confusion as to existing regulatory requirements that were established on July 15, 1985 (50 FR 28702), this rule does not affect authorization status in regard to delisting. States currently authorized for delisting have already been required to provide the minimum Federal statutory level of protection to be authorized.

V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. As discussed in Section II.5 above, this rule is not major since it merely incorporates and codifies a statutory requirement. Furthermore, it does not meet any of the criteria for a major regulation. Therefore, no Regulatory Impact Analysis is required.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601-612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on small entities.

As discussed in Section II.6 above, this rule merely codifies existing statutory requirements. Furthermore, only a small number of facilities will be affected by this rule, and it will not require a significant increase in the amount of information required. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VII. List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling

Authority: 42 U.S.C. 6903, 6912, 6921, 6926, 6974.

Date: June 20, 1989.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, Part 260 of Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 26 continues to read as follows:

Authority: 42 U.S.C. 6903, 6912, 6921, 6926, 6974.

2. Section 260.22 is amended by revising paragraph (b) to read as follows:

§ 260.22 Petitions to amend Part 261 to exclude a waste produced at a particular facility.

* * * * *

(b) The procedures in this Section and § 260.20 may also be used to petition the Administrator for a regulatory amendment to exclude from § 261.3(a)(2)(ii) or (c), a waste which is described in these Sections and is either a waste listed in Subpart D, or is derived from a waste listed in Subpart D. This exclusion may only be issued for a particular generating, storage, treatment, or disposal facility. The petitioner must make the same demonstration as required by paragraph (a) of this section. Where the waste is a mixture of solid waste and one or more listed hazardous wastes or is derived from one or more hazardous wastes, his demonstration must be made with respect to the waste mixture as a whole; analyses must be conducted for not only those constituents for which the listed waste contained in the mixture was listed as hazardous, but also for factors (including additional constituents) that could cause the waste mixture to be a hazardous waste. A waste which is so excluded may still be a hazardous waste by operation of Subpart C of Part 261.

* * * * *

[FR Doc. 89-15166 Filed 6-26-89; 8:45 am]

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federal register

Tuesday
June 27, 1989

Part VI

Department of Justice

Immigration and Naturalization Service

Department of State

Bureau of Consular Affairs

8 CFR Part 217

Visa Waiver Pilot Program; Final Rule

22 CFR Part 41

Passports and Visas Not Required For Certain Nonimmigrants; Final Rule

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 217

[INS No. 1109R-89]

RIN 1115-AA75

Visa Waiver Pilot Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the regulations at 8 CFR 217.5 to waive nonimmigrant visas for certain visitors who are nationals of France and Switzerland (effective July 1, 1989); the Federal Republic of Germany and Sweden (effective July 15, 1989); and Italy and the Netherlands (effective July 29, 1989). Under the Visa Waiver Pilot Program, as provided by section 313 of the Immigration Reform and Control Act of 1986 (Pub. L. 99-603), certain nonimmigrants may apply for admission into the United States for up to ninety days without first obtaining nonimmigrant visitors visas. The United Kingdom was the first country designated to benefit from the program, effective July 1, 1988. Japan was designated next, effective December 15, 1988. This rule adds six additional countries to the program, for a total of eight as provided by statute.

DATES: This rule is effective July 1, 1989 for France and Switzerland; effective July 15, 1989 for the Federal Republic of Germany and Sweden; and effective July 29, 1989 for Italy and the Netherlands.

FOR FURTHER INFORMATION CONTACT: Yanghe Peggy Wong, Assistant Chief Inspector, Immigration and Naturalization Service, 425 I Street, NW., Room 7123, Washington, DC 20536, Telephone: (202) 633-4033.

SUPPLEMENTARY INFORMATION: The Visa Waiver Pilot Program was established by Congress to determine if a visa waiver provision could facilitate international travel and promote the more effective use of resources of affected government agencies while not posing a threat to the welfare, health, safety, or security of the United States. Implemented on July 1, 1988 for the United Kingdom (53 FR 24898) and on December 15, 1988 for Japan (53 FR 50160), over 800,000 visitors have entered the United States under the program for ninety days or less by arriving in the United States on one of the one hundred participating carriers.

The designation of the six additional countries, the Federal Republic of Germany, France, Italy, the Netherlands, Sweden, and Switzerland was accomplished by the Secretary of State and the Attorney General, acting jointly through their designees. (See the Department of State rule published elsewhere in this issue of the Federal Register). As set by statute, the designation of the countries was based upon reciprocity and the low visa refusal rate during two previous full fiscal years. In addition, consistent with the intent of the measure to promote and facilitate international travel, the volume of travel to the United States was used in the designation process. Together, the eight countries accounted for over 50% of the 12.4 million nonimmigrants who entered the United States in fiscal year 1987 and of the 14.6 million in fiscal year 1988. Section 217.5(a) is amended to add the additional six countries and effective dates of implementation for each.

The Service has continued to make extensive efforts to permit interested parties to provide comments on the progress of the program. Senior immigration officers were sent to the United Kingdom and Japan to provide assistance to carriers and to travel agencies prior to and subsequent to implementation. Similar assistance will be provided in the additional six countries. Much public attention has been focused on the expansion of the waiver program.

This rule grants or recognizes an exemption or relieves a restriction and therefore is being made effective less than thirty days after publication in the Federal Register, 5 U.S.C. 553(d)(1).

In accordance with 5 U.S.C. 605(b), the Commissioner certifies that this rule will not have a significant economic impact on a substantial number of small entities.

This is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget in accordance with the provisions of the Paperwork Reduction Act and are cited under § 299.5 of this chapter.

List of Subjects in 8 CFR Part 217

Administrative practice and procedures, Aliens, Reporting and recordkeeping requirements, Passports and visas.

Accordingly, Part 217 of Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 217—VISA WAIVER PILOT PROGRAM

1. The authority citation for Part 217 continues to read as follows:

Authority: 8 U.S.C. 1103, 1187, 8 CFR 2.

2. In § 217.5, paragraph (a) is revised to read as follows:

§ 217.5 Designated countries.

(a) *Countries.* United Kingdom (effective July 1, 1988); Japan (effective December 15, 1988); France and Switzerland (effective July 1, 1989); the Federal Republic of Germany and Sweden (effective July 15, 1989); and Italy and the Netherlands (effective July 29, 1989) have been designated as Visa Waiver Pilot Program countries based on the criteria set forth at sections 217(a)(2)(A) and 217(c) of the Act.

* * * * *

Dated: June 20, 1989.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

FR Doc. 89-15170 Filed 6-26-89; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 41

[108.887]

Visas: Passports and Visas Not Required for Certain Nonimmigrants

AGENCY: Bureau of Consular Affairs, Department of State.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations at 22 CFR 41.2(l) to bestow a benefit upon certain classes of aliens. Paragraph (l) waives the visa requirement for certain nonimmigrants applying for admission to the United States as visitors for a period not to exceed ninety days. Under established procedures, a nonimmigrant alien who wishes to enter the United States as a visitor must obtain a nonimmigrant B-1/B-2 visa. Only the United Kingdom was a designated country to receive this benefit as of July 1, 1988. Japan was added as a designated country, effective on December 15, 1988. France, The Federal Republic of Germany, Italy, The Netherlands, Sweden, and Switzerland are added as designated countries, effective on the followng dates: France and Switzerland on July 1, 1989; The Federal Republic of Germany and Sweden on July 15, 1989; Italy and The Netherlands on July 29, 1989. On and after those dates citizens of France, The Federal Republic of Germany, Italy, The Netherlands, Sweden and Switzerland, respectively, may avail themselves of this benefit.

DATES: This regulation is effective July 1, 1989 for France and Switzerland; effective July 15, 1989 for The Federal Republic of Germany and Sweden; and effective July 29, 1989 for Italy and The Netherlands.

FOR FURTHER INFORMATION CONTACT: A. Roy Mackay, Deputy Chief, Legislation and Regulations Division, Visa Office, Washington, DC 20522-0113 (202) 663-1205.

SUPPLEMENTARY INFORMATION: On pages 24903-24904 of the Federal Register of June 30, 1988 the Department of State published a final rule amending 22 CFR 41.2. The final rule contained provisions designed to facilitate the admission of nonimmigrant alien visitors through the use of the United States Visa Waiver Pilot Program established by section 313 of the Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 99-603 (section 217 of the Immigration and Nationality Act (8 U.S.C. 1187)). The Pilot Program waives the nonimmigrant visa requirement for admission of certain aliens into the United States for a period not to exceed ninety days. Under that final rule the United Kingdom was the only country designated to receive these benefits for its nationals. Japan, having agreed to reciprocal treatment for United States citizens entering Japan under similar circumstances, was added as a designated country under the Pilot Program effective on December 15, 1988 in a Final Rule published on pages 50161-50162 of the Federal Register of December 13, 1988. France, The Federal Republic of Germany, Italy, The Netherlands, Sweden, and Switzerland, having met all of the requirements for participants in the Nonimmigrant Visa Waiver Pilot Program, are added on their respective effective dates as designated countries participating in the Pilot Program by the Secretary of State and the Attorney General, acting jointly through their designees. (See the Immigration and Naturalization Service Rule published elsewhere in this issue of the Federal Register.) The last sentence of § 41.21(l) is amended by adding at the end thereof the names of the new designated countries, France, The Federal Republic of Germany, Italy, The Netherlands, Sweden and Switzerland, effective as of the dates applicable to each as noted therein. Therefore, effective on those noted dates, citizens of France, The Federal Republic of Germany, Italy, The Netherlands, Sweden and Switzerland shall be eligible for participation in the Nonimmigrant Visa Waiver Pilot Program.

This Rule grants or recognizes an exemption or relieves a restriction and therefore is being made effective less than thirty days after publication in the Federal Register. 5 U.S.C. 553(d)(1). This final rule is not considered to be a major rule for purposes of E.O. 12291 nor is it expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 22 CFR Part 41

Aliens, Nonimmigrants, Visas, Passports, Temporary Visitors, Waivers.

In view of the foregoing, Part 41 is amended as follows:

PART 41—NONIMMIGRANT CLASSES—WAIVER OF PASSPORT AND/OR VISA REQUIREMENTS

1. The authority citation for Part 41 continues to read as follows:

Authority: Sec. 104, 66 Stat. 174, 8 U.S.C. 1104; Sec. 109(b)(1), 91 Stat. 847; Sec. 313, 100 Stat. 3435, 8 U.S.C. 1187 and 1182.

2. In § 41.2 the last sentence of paragraph (l) is amended by removing "and" before Japan and the period at the end of the sentence and adding the following text:

§ 41.2 Waiver by the Secretary of State and Attorney General of passport and/or visa requirements for certain categories of nonimmigrants.

* * * * *

(l) *Visa Waiver Pilot Program.* * * *; France and Switzerland (effective July 1, 1989); The Federal Republic of Germany and Sweden (effective July 15, 1989); and Italy and The Netherlands (effective July 29, 1989).

Date: June 20, 1989.

Joan M. Clark,

Assistant Secretary for Consular Affairs.

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federal register

Tuesday
June 27, 1989

Part VII

Department of Transportation

Research and Special Programs Administration

National Tank Truck Carriers, Inc., and American Trucking Associations, Inc.; Application for Inconsistency Ruling Concerning New York City Personal and Training Requirements for Transporters of Hazardous Materials; Public Notice and Invitation to Comment

DEPARTMENT OF TRANSPORTATION

[Docket No. IRA-40C]

National Tank Truck Carriers, Inc. and American Trucking Associations, Inc.; Application for Inconsistency Ruling Concerning New York City Personal and Training Requirements for Transporters of Hazardous Materials

AGENCY: Research and Special Pograms Administration, DOT.

ACTION: Public notice and invitation to comment.

SUMMARY: The National Tank Truck Carriers, Inc. (NTTC) and the American Trucking Associations, Inc. (ATA) have applied for an administrative ruling concerning whether certain City of New York personal and training requirements for transporters of hazardous materials are inconsistent with the Hazardous Materials Transportation Act (HMTA) and the Hazardous Materials Regulations (HMR) issued thereunder and, therefore, preempted under section 112(a) of the HMTA.

DATES: Comments received on or before August 14, 1989, and rebuttal comments received on or before September 29, 1989, will be considered before an administrative ruling is issued by the Director of the Office of Hazardous Materials Transportation. Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

ADDRESSES: The application and any comment received may be reviewed in the Dockets Unit, Research and Special Programs Administration, Room 8421, Nassif Building, 400 7th Street, SW., Washington, DC 20590. Comments and rebuttal comments on the application may be submitted to the Dockets Unit at the above address, and should include the Docket Number, IRA-40C. Three copies are requested. A copy of each comment and rebuttal comment must also be sent to Clifford J. Harvison, President, NTTC, 2200 Mill Road, Alexandria, Virginia 22314; Daniel R. Barney, Director, ATA Litigation Center, 2200 Mill Road, Alexandria, VA 22314; and Doron Gopstein, Esq., Corporation Counsel, City of New York, 100 Church Street, Room 6C-37, New York, NY, 10017 [Attn: Grace Goodman, Esq., Assistant Corporation Counsel], and that fact certified to at the time the comment is submitted to the Dockets Branch. (The following format is suggested: "I hereby certify that copies of this comment have been sent to Messrs. Harvison, Barney, and Gopstein at the addresses specified in the Federal Register.")

FOR FURTHER INFORMATION CONTACT: Edward H. Bonekemper III, Senior Attorney, Office of the Chief Counsel, Research and Special Programs Administration, 400 7th Street, SW., Washington, DC 20590, telephone 202-366-4362.

SUPPLEMENTARY INFORMATION:

1. Background

The HMTA (49 App. U.S.C. 1801 et seq.) at section 112(a) (49 App. U.S.C. 1811(a)) expressly preempts "any requirement, of a State or political subdivision thereof, which is inconsistent with any requirement" of the HMTA or the HMR issued thereunder.

Procedural regulations implementing section 112(a) of the HMTA and providing for the issuance of inconsistency rulings are codified at 49 CFR 107.201 through 107.211. An inconsistency ruling is an advisory administrative opinion as to the relationship between a state or political subdivision requirement and a requirement of the HMTA or HMR. Section 107.209(c) sets forth the following factors which are considered in determining whether a state or local requirement is inconsistent:

(1) Whether compliance with both the state or local requirement and the HMTA or HMR is possible (the "dual compliance" test); and

(2) The extent to which the state or local requirement is an obstacle to the accomplishment and execution of the HMTA and the HMR (the "obstacle" test).

Inconsistency rulings do not address issues of preemption under the Commerce Clause of the Constitution or under statutes other than the HMTA.

In issuing its advisory inconsistency rulings concerning preemption under the HMTA, OHMT is guided by the principles enunciated in Executive Order 12612 entitled "Federalism" (52 F.R. 41685, Oct. 30, 1987). Section 4(a) of that Executive Order authorizes preemption of state laws only when the statute contains an express preemption provision, there is other firm and palpable evidence of Congressional intent to preempt, or the exercise of state authority directly conflicts with the exercise of Federal authority. The HMTA, of course, contains an express preemption provision, which OHMT has implemented through regulations and interpreted in a long series of inconsistency rulings beginning in 1978.

2. The Application for Inconsistency Ruling

In 1987 the American Trucking Associations, Inc. (ATA) and the National Tank Truck Carriers, Inc. (NTTC) filed an application for an administrative ruling seeking a determination that, *inter alia*, directives 3-76, 5-63, 6-76, and 7-74 of the New York City Fire Department's Bureau of Fire Prevention (BFP) are inconsistent with the HMTA and the HMR. BFP Directives 6-76 and 7-74 create permit systems that govern the use of tank trucks which transport combustible or flammable mixtures within New York City. BFP Directive 3-76 establishes a City permit system for transporting flammable and combustible liquids through the use of open and closed body platform trucks, while Directive 5-63 creates a permit system for the transportation of compressed gases within the City.

In Inconsistency Ruling No. IR-22 (IR-22), 52 FR 46574 (Dec. 8, 1987), *correction* 52 FR 49107 (Dec. 29, 1987), the Director of the Office Hazardous Materials Transportation found that most portions of those directives are inconsistent with the HMTA and the HMR. The basis for that ruling was that most provisions of those directives result in serious delays of transporation of Hazardous materials, regulate areas which RSPA has defined as exclusively Federal (particularly cargo containment system, equipment and related requirements), and undermine the likelihood of compliance with the HMR. The City of New York appealed IR-22 to the Administrator of RSPA, whose recent final decision has been published in the Federal Register.

In IR-22 the Director of OHMT deferred a decision on the consistency of subsections 2-2 and 2-3 of BFP Directive 7-74 concerning certificates of fitness requirements for persons in charge of tank trucks transporting flammable liquids or mixtures. 52 FR 46582-3. The deferral was due to the inadequacy of the record before the Director and the pendency of similar issues in Docket No. IRA-42, California Department of Motor Vehicles (DMV) Application for Inconsistency Ruling, 52 FR 43830 (Nov. 16, 1987).

The California DMV issues now have been addressed in IR-26, 54 FR 16314 (Apr. 21, 1989), *correction* 54 FR 21526 (May 18, 1989). There the Director of OHMT determined that state regulations requiring training for operators of motor vehicles carrying hazardous materials are consistent with respect to domiciliaries of that state but inconsistent with respect to non-domiciliaries. He also found that after April 1, 1992, such state requirements would be consistent with respect to non-domiciliaries not having a hazardous materials endorsement on their commercial drivers' licenses. No interested party appealed IR-26.

This Notice invites public comment on the consistency of subsections 2-2 and 2-3 of BFP Directive 7-74. Section 2, in its entirety, provides:

Section 2 CERTIFICATE OF FITNESS

2-1. Each tank truck for which a permit is required shall be in charge of a person holding a certificate of fitness issued by the Fire Commissioner, whose duty it will be to see that all safety devices are in place and in proper working order; that truck is properly grounded when filling or discharging and that all pipe connections and fill cap covers are oil tight, and shall produce on the demand of any representative of the Fire or Police Department his certificate of fitness, the Fire Department permit and the inspection card for that particular tank truck he is in charge of. (Administrative Code, Section C19-53.0). A person with a certificate of fitness shall also be required for those vehicles exempted from permit requirements under C19-53.0.c.6 and those under temporary emergency permission of the Fire Commissioner.

2-2. Applicants for a Certificate of Fitness must:

(a) Be at least 18 years old;

(b) Have a reasonable understanding of the English language and be able to answer satisfactorily such questions as may be asked upon his examination;

(c) Produce such evidence of his character, habits and past employment as may be satisfactory to the Fire Commissioner;

(d) Pass an examination by a person or body designated by the Fire Commissioner upon the law and ordinance regulations governing the transportation, storage and use of the article related to or connected with the services to be performed by him; upon the risks incident to his employment and upon his knowledge of the precautions necessary to be taken in connection therewith.

(e) Examination for renewals of certificates of fitness may be waived in the discretion of the Fire Commissioner. (Administrative Code, Section C19-14.0).

(f) Comply with applicable Fire Prevention Directives.

2-3. Unless otherwise provided, every certificate of fitness and the renewal thereof shall be for a period determined by the Fire Commissioner, but in no case to exceed three years, and is revocable and not transferable. The fee for such certificate shall be as provided in C19-24.0.

In IR-22, subsection 2-1 was determined to be inconsistent because of its interrelationship with the permitting system and equipment requirements found inconsistent in that ruling. Thus, the major issue requiring resolution and comment is whether the City may, consistent with the HMTA and the HMR, require a person in charge of a tank truck transporting flammable liquids and mixtures to hold a certificate of fitness and to qualify for such a certificate by meeting the personal and training requirements of subsection 2-2. Also at issue is whether the administrative and fee provisions of subsection 2-3 are consistent with the HMTA and the HMR.

3. Public Comment

Comments should be limited to the issue of whether the requirements of subsections 2-2 and 2-3 of City of New York BFP Directive 7-74 are inconsistent with the HMTA or the HMR. They should specifically address the "dual compliance" and "obstacle" tests described above under "Background."

Persons intending to comment on the application should examine the complete application in the RSPA Dockets Unit, Appendix A to this Notice, and the procedures governing the Department's consideration of applications for inconsistency rulings (49 CFR 107.201-107.211).

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

Issued in Washington, DC on June 21, 1989.

[FR Doc. 89-15191 Filed 6-26-89; 8:45 am]

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federal register

Tuesday
June 27, 1989

Part VIII

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

Community Development Work Study Program; Final Rule and Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

[Docket No. R-89-1406; FR-2475]

RIN 2506-AA81

Community Development Work Study Program

AGENCY: Office of Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: Section 501(b)(2) of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988), amended section 107 of the Housing and Community Development Act of 1974 to authorize the Community Development Work Study Program (CDWSP). This final rule adopts new regulations stating the requirements that will govern CDWSP and implements the CDWSP to provide assistance to economically disadvantaged students.

EFFECTIVE DATE: September 11, 1989.

FOR FURTHER INFORMATION CONTACT: James H. Turk, Technical Assistance Division, Office of Program Policy Development, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 755-6876. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

Information Collection Requirements

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and have been approved under OMB control number 2506-0104. Public reporting burden for each of these collections of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading.

Other Matters

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., Room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Background

Section 501(b)(2) of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988), amended the Housing and Community Development Act of 1974 (the Act) to add a new section 107(c). This section authorizes a new Community Development Work Study Program (CDWSP). Under CDWSP, HUD will provide grants to institutions of higher education, either directly or through areawide planning organizations or States, for the purpose of providing assistance to economically disadvantaged and minority students who participate in community development work study programs and are enrolled in full-time graduate or undergraduate programs in community and economic development, community planning, and community management.

On August 17, 1988 (53 FR 31226), HUD published a notice of funding availability announcing the requirements that HUD will use to govern the provision of available funding for CDWSP under the Department of Housing and Urban Development—Independent Agencies Appropriations Act, 1988 (Pub. L. 100-202, approved December 22, 1987). Simultaneously, HUD published a proposed rule (53 FR 31224). The proposed rule announced that HUD intended to use the requirements contained in the NOFA as the basis for a final rule amending 24 CFR Part 570, and invited public comment on the announced requirements. HUD received five comments on the proposed rule. These comments are addressed below.

Student Eligibility and Selection

The purpose of CDWSP, as stated in proposed rule, is to provide assistance to economically disadvantaged and minority students. One commenter asked whether a non-minority economically disadvantaged student is eligible for the program. If so, the commenter argued that the rule should be clarified on this point.

The primary eligibility requirement for student participation in CDWSP is that the student (whether non-minority or minority) must be economically disadvantaged under the applicable financial need guidelines at the participating institution of higher education. HUD will encourage the participation of minority students in several ways. First, recipients are required to establish recruitment procedures that identify eligible minority economically disadvantaged students pursuing a career in community and economic development and to make such students aware of the availability of assistance opportunities. Additionally, one of the ranking criteria that HUD will use in the selection of recipients is the recipient's commitment to meeting the needs of minority economically disadvantaged students. However, HUD will not limit student participation in the program to minorities. To preclude any possible confusion on this point, HUD has changed the definition of "economically disadvantaged student" to a definition of the statutory term, "economically disadvantaged and minority students", and has removed the separate definition of the term "minority student", which is not used by itself in the new regulatory provisions.

Another commenter asked how potential student participants (particularly individuals not currently enrolled in college) will be informed about program funding. Under the final rule, it is the responsibility of the recipient to recruit and select interested and eligible students. As noted above, recipients are required to establish their own recruitment procedures that will identify eligible economically disadvantaged students pursuing a career in community and economic development and make such students aware of the availability of assistance. While HUD anticipates that most of the recipient's recruitment efforts will be aimed at existing university students, nothing in the rules forbids recipients from making efforts to recruit nonstudents from the community.

Assistance Provided to Students

Assistance provided to students may include a student stipend. The amount of the stipend is based on the prevailing hourly rate for initial entry positions in the community and economic development field and the number of hours worked by the student at the work placement assignment, subject to stated maximum annual amounts. A participating student may receive stipend payment only during the period that the student is placed with the work placement agency.

A university noted that most of its work assignment agencies are located beyond the immediate geographic area of its campus. For this reason, most of its students are unable to work during the school year. Such students participate in intensive work study assignments full-time during the summer. This commenter opposed the provision which permits the payment of the stipend only during the period that the student is placed with the work placement agency and argued that its students would not be able to afford to attend classes during other terms without a steady stream of support.

The final rule is unchanged on this point. Under CDWSP, the stipend is intended to compensate the student for work performed rather than to serve as general financial aid. HUD will not expend funds intended as an incentive for such performance until the work is completed. Thus, if the student performs this work during the course of the regular academic year, the student will be paid the stipend during the academic year. If the work is performed during the summer, the stipend is paid during the summer. HUD notes that other financial support in the form of tuition, books, and travel is available to assist the student without regard to the ongoing work placement activity.

Repayment Responsibilities

Under the proposed rule, the student's participation in the program will be terminated for failure to meet certain responsibilities and standards. These responsibilities include: full-time enrollment in an approved academic progam; maintenance of a satisfactory level of performance in the community development academic program and in work placement assignments; and compliance with the professional conduct standards set by the recipient and the work placement agency. If a student's participation is terminated before the completion of the two-year term of the program:

—The student must repay to the recipient any tuition support and additional support received; and

—The recipient must repay to the Federal government the amount of the tuition support and additional support provided to the student. Recipients are required to make this repayment even though the student fails to fulfill his or her repayment obligation to the recipient. Stipends are not required to be repayed.

The proposed rule provides that HUD may, on a case-by-case basis and for good cause, make exceptions to this repayment requirement.

One commenter opposed provisions that would require student repayment where the student is terminated for academic reasons, unless the student has been clearly negligent or irresponsible. This commenter noted that the student target group will often include students who deserve a chance to pursue a professional degree, but who may be marginally prepared. The commenter felt that repayment is contrary to the spirit of the program in cases where the student, despite best efforts, cannot sustain satisfactory academic performance.

The objective of CDWSP is to attract economically disadvantaged and minority students to community development careers and to provide a cadre of well-qualified professionals to plan, implement, and administer community development programs. To this end, CDWSP recipients are expected to sponsor rigorous academic programs that demand a great deal of the student participants. Grantees are expected to recruit and select students who can fulfill the academic requirements of the program, not to provide educational opportunities to students that are marginally prepared. To emphasize this point, the program: limits student eligibility to students who demonstrate an ability to maintain a satisfactory level of performance in the academic program and work placement assignments; makes selections among eligible students based, in part, upon their relative abilities to complete academic and work placement responsibilities; and provides for the selection of recipients based, in part, upon the rates of graduation from CDWSP-funded academic programs. The proposed revision has not been made.

Another commenter requested clarification of the "good cause exception" to student and recipient repayment. This commenter felt that the good cause standard was too vague, and subject to individual interpretations by the recipient, the student, and HUD. To clarify this provision, HUD has redrafted the exception provision to reflect more closely the waiver provisions that govern Part 570 regulations. (See § 570.5, which permits the Secretary to waive any requirement whenever it is determined that undue hardship will result from the application of the requirement and where the application of the requirement will not adversely affect the purpose of the Act.) In addition, the final rule cites specific factual circumstances under which exceptions will be granted. These include situations where the student is unable to work or to complete the two-year program because of a documented serious illness or death, or is unable to fulfill his or her financial obligations under the program because of bankruptcy.

As noted above, recipients are required to make the repayment even though the student fails to fulfill the repayment obligation to the recipient. One commenter argued that the proposed regulations do not specify what efforts the recipient must go through to collect from the students. The commenter observed that few recipients will be able to undertake expensive collection action required to enforce this provision. The commenter suggested that HUD impose specific procedures for collections from students, which, if followed, would relieve the recipient of its repayment obligations to HUD. This commenter also argued that the method and timetable for recipient repayment to HUD in the event of student default needs to be more clearly defined. The commenter noted that if a student agrees to repay, repayment will probably be made by installments. Under such circumstances, the commenter felt that the recipient should be required to repay funds in accordance with the repayment agreement developed by the recipient and the student.

Under CDWSP it is the responsibility of the recipient to develop its own debt collection procedures. HUD will not prescribe collection procedures, nor will it provide relief to recipients whose debt collection activities are unsuccessful. Repayment must be made by the grantee from its own funds regardless of the success of the recipient's efforts to recover the money from the students. Overdue payments will be assessed interest at the rate set by the Department of the Treasury. All repayments due to HUD shall be made by the date specified in a demand letter, but in no case later than the close-out of the grant. Since the grants are funded over a five-year funding cycle, there should be sufficient time for the recipient to collect money owed by the student.

Participation by Neighborhood Associations

One commenter was concerned about the absence of a provision allowing neighborhood associations to participate in the program to provide input into the program content, to assist in the preparation of realistic grant applications, and to encourage students participating in the program to focus on the areas in which they live.

To the extent that neighborhood associations are private nonprofit organizations involved in comprehensive planning, land use, community development, or housing activities, such organizations may participate directly in CDWSP and influence program direction as work placement agencies. The participation of

such organizations as recipients, however, is not permitted under section 107(c) of the Act. This section provides that recipients of grants are limited to institutions of higher education, areawide planning organizations and States.

Applicability of CDWSP Requirements to Existing Work Study Program

Before the addition of section 107(c) to the Act, HUD funded a work-study program under authority of the Secretary's discretionary fund to provide grants to qualified entities for the provision of assistance to governmental units in carrying out programs under Title I of the Housing and Community Development Act of 1974 (the Act). (See section 107(b)(4) of the Act.) This program was governed by HUD's technical assistance program regulations (24 CFR 570.402).

Students currently receiving assistance under the technical assistance work study program argued that the current proposal creates inequity, since there will be two sets of guidelines within the same program. These commenters requested that their current contracts be amended to reflect CDWSP requirements (e.g., commenters wanted to receive the increased amounts of assistance available under CDWSP and be relieved of their two-year obligation to work after graduation in a governmental agency that is using Title I funds).

The technical assistance work study program and the new CDWSP operate under different statutory authority, which makes it impossible to apply some of the CDWSP requirements to the existing student. For example, the two-year postgraduation employment requirement was imposed under the technical assistance work study program in order to ensure that a governmental unit received assistance in carrying out its Title I program, as required by section 107(b)(4) of the Act. New section 107(c) does not require that the governmental unit receive assistance. This change has permitted HUD to eliminate the employment obligation from CDWSP.

Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 58, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Room 10276, at the address listed above.

This rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule does not involve the preemption of State law by Federal statute or regulation, and will not have substantial direct effects on States or their political subdivisions, or on the relationship or distribution of power among various levels of government.

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule does not have a potential significant impact on family formation, maintenance, and general well-being. The rule implements the Community Development Work Study Program to provide assistance to economically disadvantaged students, and, therefore is not subject to review under the Order.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. Both small and large entities are eligible for funding under the program. Since the total number of entities that will be funded under the program will be few and will include both small and large recipients, HUD does not believe that a significant number of small entities will be affected by this program.

This rule was listed as item 991 in the Department's Semiannual Agenda of Regulations published April 24, 1989 (54 FR 16706) under Executive Order 12291 and the Regulatory Flexibility Act.

The collection of information requirements contained in this rule have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980. This final rule has been determined by the Department to contain collection of information requirements, as follows:

Description of information collection	Section of 24 CFR affected	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours
Application	570.415(h)	100	1	100	20	2,000
Reports:						
Semester	570.415(d)	30	3	90	4	360
Final	& (f)	30	1	30	8	240
Total burden						2,600

(The Catalog of Federal Domestic Assistance program number is 14.234)

List of Subjects in 24 CFR Part 570

Community development block grants, Grant programs: Housing and community development, Loan programs: Housing and community development, Low- and moderate-income housing, New communities, Pockets of poverty, Small cities.

Accordingly, Title 24 of the Code of Federal Regulations is amended as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

1. The authority citation for Part 570 continues to read as follows:

Authority: Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301–20); and sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. Section 570.415 is added to read as follows:

§ 570.415 Community Development Work Study Program.

(a) *Applicability and objectives.* HUD makes grants under CDWSP to institutions of higher education, either directly or through areawide planning organizations or States, for the purpose of providing assistance to economically disadvantaged and minority students who participate in a work study program while enrolled in full-time graduate or undergraduate programs in community and economic development, community planning or community management. The primary objectives of the program are to attract economically disadvantaged and minority students to careers in community and economic development, community planning, and community management, and to provide a cadre of well-qualified professionals to plan, implement and administer local community development programs.

(b) *Definitions.* The following definitions apply to CDWSP:

"Applicant" means an institution of higher education, a State, or an areawide planning organization that submits an application for assistance under CDWSP.

"Areawide planning organization (APO)" means an organization authorized by law or by interlocal agreement to undertake planning and other activities for a metropolitan or nonmetropolitan area.

"CDWSP" means the Community Development Work Study Program.

"Community development academic program" or "academic program" means an undergraduate or graduate degree program in community and economic development, community planning, community management, or other related fields of study. Related fields include public administration, public policy, urban economics, urban management, or urban planning, and exclude social and humanistic fields such as law, economics (except for urban economics), education, and history. Community development academic program or academic program does not include academic programs that offer joint fields of study in related and unrelated fields.

"Economically disadvantaged and minority students" means students who satisfy all applicable guidelines established at the participating institution of higher education to measure financial need for academic scholarship or loan assistance, including, but not limited to, students who are Black, American Indian/Alaskan Native, Hispanic, or Asian/Pacific Island.

"Institution of higher educaiton" means a public or private educational institution that offers graduate or undergraduate degrees in a community development academic program and that is accredited by an accrediting agency or association recognized by the Secretary of Education under 34 CFR Part 603.

"Recipient" means an approved applicant that executes a grant agreement with HUD.

"Student" means a student enrolled in an eligible full-time academic program. He/she must be a first-year student in a two-year graduate program (or a junior in an undergraduate program). Students enrolled in Ph.D. programs are ineligible.

(c) *Assistance provided*—(1) *Types of assistance available.* HUD provides funding in the form of grants to recipients who make assistance available to eligible students. Grants are provided to cover the costs of student assistance and for an administrative allowance.

(i) *Student assistance.* Grants are made to recipients to cover the costs of assistance provided to eligible students in the form of student stipends, tuition support, and additional support.

(A) *Student stipend.* The amount of the student stipend is based upon the prevailing hourly rate for initial entry positions in the community and economic development field and the number of hours worked by the student at the work placement assignment. The amount of the student stipend may not exceed the actual cost incurred, up to a maximum of $6,000 per year (undergraduate student) and $9,000 per year (graduate student).

(B) *Tuition support.* The amount of the tuition support may not exceed the tuition charged at the participating institution of higher education up to a maximum of $3,000 per year (undergraduate student) and $3,500 per year (graduate student).

(C) *Additional support.* The recipient may provide additional support for books, and support for travel related to the academic program, work placement assignment, or attendance at conferences sponsored by professional organizations in the field of community and economic development. The amount of additional support may not exceed the actual costs incurred, up to a maximum of $1,000 per year (undergraduate student) and $1,500 per year (graduate student).

(ii) *Administrative allowance.* HUD provides an allowance to recipients to cover the administrative costs of the program. The administrative allowance is $1,000 per year for each student participating in the program.

(2) *Number of students assisted.* The minimum number of students that may be assisted is three students per participating institution of higher education. If an areawide planning organization or State receives assistance for a program that is conducted by two or more institutions of higher education, each participating institution must have a minimum of three students in the program. The maximum number of students that may be assisted under CDWSP is ten students per participating institution of higher education.

(d) *Recipient eligibility and responsibilities.*—(1) *Recipient eligibility.* (i) The following organizations are eligible to apply for assistance under the program:

(A) *Institutions of higher education.* Institutions of higher education offering graduate degrees in a community development academic program are eligible for assistance under CDWSP. Institutions of higher education that offer undergraduate degrees in a community development academic program are eligible if the institution is located in a metropolitan statistical area (MSA) and no institution of higher education located in that metropolitan area offers graduate degrees in a community development academic program, or if the institution is located in one of the nonmetropolitan areas (non-MSA) of a State and no institution of higher education located in that nonmetropolitan area offers graduate degrees in a community development academic program.

(B) *Areawide planning organizations and states.* An areawide planning organization or a State may apply for assistance for a program to be conducted by two or more institutions of higher education.

(*1*) Institutions of higher education participating in an APO program must be located within the metropolitan or nonmetropolitan area served by the APO. Institutions of higher education participating in a State program must be located within the State.

(*2*) Except as provided below, participating institutions must offer graduate degrees in a community development academic program. Programs involving a participating institution that offers only undergraduate degrees in a community development academic program are eligible under the following circumstances: In the case of institutions participating in an APO program, no institution of higher education located

within the metropolitan or nonmetropolitan area served by the APO offers graduate degrees in a community development academic program; or in the case of institutions participating in a State program, no institution of higher education located within the metropolitan or nonmetropolitan area in which the institution offering undergraduate degrees is located offers graduate degrees in a community development academic program.

(ii) If a State is approved for funding, institutions of higher education located in the State are not eligible recipients. If an APO is approved for funding, institutions of higher education located in the metropolitan area or nonmetropolitan area served by the APO are not eligible recipients. (Such institutions, however, may receive assistance through participation in an APO or State program.)

(iii) To be eligible in future funding competitions for CDWSP, recipients are required to maintain a 50 percent rate of graduation from a CDWSP-funded academic program.

(2) *Recipient responsibilities.* (i) The recipient is responsible for the administration of the program, for compliance with all program requirements, and for the coordination of program activities carried out by the work placement agencies and (if the recipient is an APO or State), by the participating institutions of higher education. The recipient must:

(A) Recruit and select students for participation in CDWSP. The recipient shall establish recruitment procedures that identify eligible minority economically disadvantaged students pursuing career in community and economic development, and make such students aware of the availability of assistance opportunities. Students must be selected before the beginning of the semester for which funding has been provided.

(B) Recruit and select work placement agencies, and negotiate and execute agreements covering each work placement assignment.

(C) Refer participating students to work placement agencies and assist students in the selection of work placement assignments.

(D) Provide regularly scheduled seminars designed to relate the work experience provided under CDWSP to the educational experience in the participating students' academic program and to address career planning and permanent job placement. At least one seminar each semester or quarter must address student obligations under CDWSP.

(E) Assign sufficient staff to administer and supervise the program on a day-to-day basis, and, where the recipient is an APO or State, to monitor the activities of the work study coordinating committee.

(F) Encourage participating students to obtain employment for a minimum of two years after graduation with a unit of State or local government, Indian tribe or nonprofit private organization that receives community development funds.

(G) Maintain records by racial and ethnic categories for each economically disadvantaged student enrolled in the CDWSP.

(H) Keep records and make such reports as HUD may require.

(I) Comply with all other applicable Federal requirements.

(ii) If the recipient is an APO or State, the recipient must also:

(A) Establish a committee to coordinate activities between program participants, to advise the recipient on policy matters, to assist the recipient in ranking and selection of participating students, and to review disputes concerning compliance with program agreements and performance. The committee shall be chaired by a representative of the recipient, and shall include representatives of the participating institutions of higher education, work placement agencies, students, and HUD.

(B) Allocate the assistance awarded under the program to the participating institutions of higher education. APOs and States may not make fractional awards to institutions. (E.g., awards to institutions must assist a fixed number of students and not, for example, 6.5 students.)

(e) *Institutions of higher education.* Institutions of higher education participating in a program are responsible for providing its educational component. Where the recipient is an APO or State, the institution of higher education shall assist the APO or State in the administration and operation of the program. Responsibilities include assisting the recipient in the selection of students by determining the eligibility of students for the academic program, and by making the analysis of students under the financial need guidelines established by the institution. All institutions of higher education must comply with other applicable Federal requirements.

(f) *Work placement agencies eligibility and responsibilities.*—(1) *Eligibility.* To be eligible to participate in the CDWSP, the work placement agencies must be an agency of a State or unit of general local government, an areawide planning organization, an Indian tribe, or a private nonprofit organization involved in comprehensive planning, land use, community development or housing activities.

(2) *Responsibilities.* Work placement agencies must:

(i) Provide practical experience and training in the community and economic development, community planning, or community management field to participating students through work placement assignments. Work placement assignments must offer students experience in planning, developing, and administering a local community or economic development program.

(ii) Consult with the institution of higher education (and the APO or State, where an APO or State is the recipient) to ensure that the student's work placement assignment provides the requisite experience and training to meet the required number of work hours specified in the student work placement agreement.

(iii) Provide a sufficient number of work placement assignments to provide participating students with a wide choice of work experience.

(iv) Require each student to devote 12–20 hours per week during the regular school year, or 35–40 hours a week during the summer, to the work placement assignment. Work placement agencies may provide flexibility in the work period, if such a schedule is consistent with the requirements of the student's academic program. However, a participating student may receive stipend payment only during the period that the student is placed with the work placement agency.

(v) Comply with all other applicable Federal requirements.

(vi) Maintain such records as HUD may require.

(g) *Student eligibility and responsibilities.* Students apply directly to recipients receiving grants under CDWSP. Students shall be selected in accordance with the following eligibility requirements and selection procedures.

(1) *Eligibility.* To be eligible for CDWSP, the student:

(i) Must satisfy all applicable guidelines established at the participating institution of higher education to measure financial need for academic scholarship or loan assistance.

(ii) Must be a full-time student enrolled in the first year of graduate study in a community development academic program at the participating institution of higher education. If an institution of higher education participating in CDWSP offers only undergraduate degrees in a community development academic program, the individual must be a junior enrolled full-time in an undergraduate degree program. Individuals enrolled in doctoral programs are ineligible.

(iii) Must demonstrate an ability to maintain a satisfactory level of performance in the community development academic program and in work placement assignments, and to comply with the professional standards set by the recipient and the work placement agencies.

(iv) May not have previously participated in CDWSP.

(v) Must provide appropriate written evidence that he or she is lawfully admitted for permanent residence in the United States, if the individual is not a citizen.

(2) *Selection.* In selecting among eligible students, the recipient must consider the extent to which each student has demonstrated:

(i) Financial need under the applicable financial need guidelines established at the institution of higher education;

(ii) An interest in, and commitment to, a professional career in community and economic development, community planning or community management;

(iii) The ability satisfactorily to complete academic and work placement responsibilities under CDWSP.

(3) *Student responsibilities.* Participating students must:

(i) Enroll in a two-year program. A student's academic and work placement responsibilities include: Full-time enrollment in an approved academic program; maintenance of a satisfactory level of performance in the community development academic program and in work placement assignments; and compliance with the professional conduct standards set by the recipient and the work placement agency. A satisfactory level of academic performance consists of maintaining a B average on the graduate level, and on the undergraduate level maintaining a grade-point average that would enable the student to graduate within the approval period of the grant. A student's participation in CDWSP shall be terminated for failure to meet these responsibilities and standards. If a student's participation is terminated, the student is ineligible for further CDWSP assistance and must repay to the recipient any tuition support and additional support received. (The student is not required to repay the stipend.)

(ii) Agree to make a good-faith effort to obtain employment with a unit of State or local government or Indian tribe administering community development programs, or a non-profit private organization that receives community development funds. The term of employment should be for at least two consecutive years following graduation from the academic program. If the student does not obtain such employment, the student is not required to repay the assistance received.

(h) *Notice of fund availability.* HUD will solicit grant applications from institutions of higher education, APO's and States by publishing a notice of fund availability in the Federal Register. The notice will:

(1) Explain how application packages (requests for grant applications) providing specific application requirements and guidance may be obtained;

(2) Specify the place for filing completed applications, and the date by which the applications must be physically received at that location;

(3) State the amount of funding available under the notice;

(4) Provide other appropriate program information and guidance.

(i) *Recipient selection process.* The selection process for applications under CDWSP consists of a threshold review, ranking of eligible applications and final selection.

(1) *Threshold.* To be eligible for ranking, applicants must meet each of the following threshold requirements:

(i) The application must be filed in the application form prescribed by HUD, and within the required time periods;

(ii) The applicant must demonstrate that it is eligible to participate;

(iii) The applicant must demonstrate that each institution of higher education participating in the program as a recipient has the required academic programs and faculty to carry out its activities under CDWSP. Each work placement agency must have the required staff and community development work study program to carry out its activities under CDWSP.

(2) *Ranking.* All applications that meet the threshold requirements will be placed in priority funding order. In ranking applications, HUD will consider:

(i) The relative quality of the academic program offered by the institution of higher education; quality of the academic supervision and amount of resources to be committed by the institution of higher education to the academic program; and the rate of graduation from previous CDWSP academic programs funded under these regulations.

(ii) The extent to which the participating students will receive a sufficient number and variety of work placement assignments, the assignments will provide practical and useful experience to students participating in the program, and the assignments will further the participating students' preparation for professional careers in community or economic development, community planning, or community management.

(iii) The degree to which proposed seminars will relate the experience provided under the work placement assignments with the educational experience provided under the academic program, and will address career planning and permanent job placement.

(iv) The extent to which the proposed program will lead participating students directly and immediately to permanent employment in community or economic development, community planning, or community management upon completion of the program.

(v) The degree to which an applicant will be able effectively to coordinate and administer the program.

(vi) The recipient's relative commitment to meeting the needs of minority economically disadvantaged students. If the applicant is an APO or State, HUD will also consider the extent of the APO's (or State's) commitment to meeting the needs of minority economically disadvantaged students.

(3) *Final selection.* Eligible applications will be considered for selection in their rank order. HUD may make awards out of rank order to achieve geographic diversity, and may provide assistance to support a number of students that is less than the number requested under applications in order to provide assistance to as many highly ranked applications as possible.

(j) *Agreements*—(1) *Grant agreement.* The responsibilities of the recipient under CDWSP will be incorporated in a grant agreement executed by HUD and the recipient.

(2) *Student agreement.* The recipient and each participating student must execute a written agreement incorporating their mutual responsibilities under CDWSP. The agreement must be executed before the student can be enrolled in the program. A student's participation in CDWSP shall be terminated for failure to meet the responsibilities and standards in the agreement.

(3) *Work placement assignment agreement.* The institution of higher education, the APO or state (if an APO or State is the grant recipient), the participating student, and the work placement agency must execute a written agreement covering each work placement assignment. The agreement must address the responsibilities of each

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of the parties, the educational objectives, the nature of supervision, the standards of evaluation, and the student's time commitments under the work placement assignment.

(4) *APO (or state) and institution of higher education.* Where the recipient is an APO (or a State), the recipient and each participating institution of higher education must execute a written agreement incorporating their mutual responsibilities under CDWSP.

(k) *Grant administration*—(1) *Initial obligation of funds.* When HUD selects an application for funding, and notifies the recipient, HUD will obligate funds to cover the amount of the approved grant. The initial obligation of funds will provide for student grants for two years.

(2) *Disbursement.* Recipients will receive grant payments by direct deposit on a reimbursement basis. If that is not possible, grant payments will be made by U.S. Treasury checks.

(3) *Deobligation and recipient repayment.* (i) HUD may deobligate amounts for grants if proposed activities are not begun or completed within a reasonable time after selection.

(ii) If a student's participation in CDWSP is terminated before the completion of the two-year term of the student's program, the recipient must repay to the Federal Government the amount of the tuition support and additional support provided to the student under CDWSP. Recipients are required to make this repayment even though the student fails to fulfill his or her repayment obligation to the recipient. The recipient is eligible to receive payment for the cost of the student stipend paid before the date of the student's termination, and for an administrative allowance that is based on the proportion of the two-year term completed by the student. The recipient may substitute a student to complete the two-year term of a student whose participation has been terminated. The substituted student must be otherwise eligible for participation in CDWSP and must have a sufficient number of academic credits to complete the degree program within the remaining portion of the terminated student's two-year term.

(iii) Where an undue hardship would result from the application of the repayment requirement and where the application of the requirement would not adversely affect the purposes of CDWSP, HUD may, on a case-by-case basis, exempt the student or the recipient from repayment requirements under CDWSP. Such exemptions will be granted where a student is unable to work or to complete the program because of serious illness or death, or is unable to fulfill his or her financial obligations due to bankruptcy.

(iv) Consistent with OMB Circulars No. A–101 and A–110, HUD, in the grant agreement, will set forth in detail other circumstances under which funds may be deobligated, recipients may be liable for repayment, or other sanctions may be imposed.

(*l*) *Other Federal requirements*—(1) *Handicap provision.* Recipients must provide a statement certifying that no otherwise qualified handicapped person shall, solely by reason of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under the CDWSP.

(2) *Nondiscrimination.* The recipient must adhere to the following nondiscrimination provisions: The requirements of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3600–20 (Fair Housing Act) and implementing regulations issued at Subchapter A of Title 24 of the Code of Federal Regulations; Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR Part 1; section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR Part 8; Executive Order 11063 and implementing regulations at 24 CFR Part 107; and the Age Discrimination Act of 1975, and implementing regulations at 24 CFR Part 146.

Date: June 21, 1989.

Audrey E. Scott,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 89-15161 Filed 6-26-89; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–89–1991; FR–2628]

Community Development Work Study Program

AGENCY: Office of Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of fund availability.

SUMMARY: Section 107(c) of the Housing and Community Development Act of 1974 authorizes the Community Development Work Study Program (CDWSP) under the Secretary's Discretionary fund. This notice announces the availability of $3 million for CDWSP from amounts that were appropriated in the Department of Housing and Urban Development—Independent Agencies Appropriations Act, 1989 (Pub. L. 100–404, approved August 19, 1988) and solicits applications for programs that begin in Fall 1989 or Fall 1990.

HUD is combining FY 1989 and FY 1990 appropriations (if authorized) to hold one competition. The FY 1989 appropriation of $3 million will be used to fund applicants for programs that begin in the Fall of 1989. This funding would support programs from September, 1989 to September 1991. If FY 1990 funds are appropriated as authorized, another $3 million will be made available to fund programs from September, 1990 to September, 1992. Applicants submitting proposals under this competition may apply for students to cover both grant periods (September, 1989 to September, 1991 and September, 1990 to September 1992); however, a separate budget breakdown of requested student participations must be submitted for each of the two funding cycles. HUD may award grants to cover two funding cycles but is not obligated to do so.

If an applicant wants to apply for one, but not both, of the funding cycles, the applicant must do so under this announcement. Applicants will not have an opportunity to apply for either of the funding cycles at a later date.

Elsewhere in today's issue of the **Federal Register**, HUD has published a final rule establishing the requirements for CDWSP.

EFFECTIVE DATE: June 27, 1989.

FOR FURTHER INFORMATION CONTACT: James H. Turk, Technical Assistance Division, Office of Program Policy Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755–6676. This is not a toll-free number. Application packages (requests for grant application) may be obtained immediately at the following address: Department of Housing and Urban Development, Office of Procurement and Contracts, Program Support Division, 451 Seventh Street, SW., Room 5252, Washington, DC 20410.

SUPPLEMENTARY INFORMATION:

A. Background

Section 107(c) of the Housing and Community Development Act of 1974 (the Act) authorizes the Community Development Work Study Program (CDWSP). Under this section, HUD is authorized to provide grants to institutions of higher education, either directly or through areawide planning organizations or States, for the purpose of providing assistance to economically disadvantaged and minority students who participate in community development work study programs and are enrolled in full-time graduate or undergraduate programs in community and economic development, community planning, and community management.

Under section 107(b) of the Act, the Department is authorized to set aside $60 million of the total amount provided in appropriations acts for the community development block grants program for a Secretary's Discretionary Fund. Section 107(c) of the Act provides that of the amounts set aside for use under the Secretary's Discretionary Fund, the Secretary shall, to the extent approved in appropriations acts, make available not less than $3 million under CDWSP. This notice announces the availability of $3 million of funds under the CDWSP and solicits applications for the use of these funds. The application procedures and filing deadlines are set forth in paragraph B below. Applicants may apply for funds for programs that begin in the Fall 1989 or Fall 1990 semester.

B. Application procedures

HUD has developed an application package (request for grant application) describing the information that applicants for CDWSP assistance must submit. The application package will be provided upon the written request of any party made to: Department of Housing and Urban Development, Office of Procurement and Contracts, Program Support Division, 451 Seventh Street, SW., Room 5252, Washington, DC 20410. Applications must be submitted on the forms prescribed by HUD and must be hand delivered and received, or postmarked, no later than September 25, 1989.

Following the expiration of the September 25, 1989 deadline, HUD headquarters will review, rate and rank applications consistent with the procedures announced in the final rule. Applicants awarded a CDWSP grant for programs that begin in either the Fall 1989 or Fall 1990 semester will be notified of their selection as soon as practicable following the completion of the selection process.

C. Other Information

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) and has been approved under OMB control number 2506–0104.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 58, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Room 10276, at the address listed above.

(The Catalog of Federal Domestic Assistance program number is 14.234)

D. Other Federal Requirements

a. *Handicap Provisions.* The recipient must provide a statement certifying that no otherwise qualified handicapped person shall, solely by reason of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination under the CDWSP.

b. *Nondiscrimination.* The requirements of Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3600–20 (Fair Housing Act) and implementing regulations issued at Subchapter A of Title 24 of the Code of Federal Regulations, as amended by 54 FR 3232 (published January 23, 1989); Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–4) Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR Part 1; Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations issued at 24 CFR Part 8; Executive Order 11063 and implementing regulations at 24 CFR Part 107 and the Age Discrimination Act of 1975, and implementing regulations at 24 CFR Part 146.

Authority: Sec. 107(c) Housing and Community Development Act of 1974 (42 U.S.C. 5307); sec. 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Date: June 21, 1989.

Audrey E. Scott,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 89-15182 Filed 6-26-89; 8:45 am]

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Part IX

Department of Transportation

Research and Special Programs Administration

49 CFR Part 171 et al.

Emergency Response Communication Standards; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173 and 176

[Docket No. HM-126C; Amdt. Nos. 171-102, 172-116, 173-213, 176-28]

RIN 2137-AA84

Emergency Response Communication Standards

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the Hazardous Materials Regulations (HMR; 49 CFR Parts 171 through 179) to impose new requirements for emergency response information on shipping papers, and placement of emergency response information on vehicles and at transportation facilities. This action is necessary to improve the emergency response information requirements in the HMR in order to enhance communication pertaining to the safe handling and identification of hazardous materials involved in transportation incidents.

FOR FURTHER INFORMATION CONTACT: Helen L. Engrum, Standards Division, Office of Hazardous Materials Transportation, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Telephone: (202) 366-4488.

EFFECTIVE DATE: These amendments are effective on April 2, 1990. However, compliance with the regulations amended herein is authorized as of July 31, 1989.

SUPPLEMENTARY INFORMATION:

I. Background and Summary of Comments

As a result of the investigation of an accident which occurred near Odessa, Delaware in October 1982, the National Transportation Safety Board (NTSB) recommended that the DOT ". . . Determine by mode of transportation, the feasibility of requiring comprehensive product-specific emergency response information, such as Material Safety Data Sheets, to be appended to shipping documents for hazardous materials transported in bulk quantities, giving particular attention to the early emergency response problems posed by n.o.s. commodities in transit." In October 1983, RSPA received a petition from the American Trucking Associations (ATA) which requested DOT "require, by rule, motor carriers involved in the transportation of hazardous materials to maintain a copy of the Emergency Response (Guidebook), DOT P 5800.2, at each motor carrier facility where hazardous materials shipments are loaded or unloaded from vehicles."

In response to concerns expressed in the NTSB recommendation (I-83-2) and the ATA petition (P-922), on March 16, 1984, RSPA published an advance notice of proposed rulemaking (ANPRM) under Docket HM-126C in the Federal Register (49 FR 10048). The ANPRM, entitled "Required Use of Emergency Response Guidebooks and Material Safety Data Sheets", quoted the NTSB recommendation and the ATA petition in their entirety, and solicited comments on the benefits and consequences of requiring the use of the Emergency Response Guidebook (ERG) or Material Safety Data Sheets (MDSD) to communicate information on the hazards of materials moving in commerce.

Evaluation of the comments to the ANPRM indicated a need for requiring additional emergency response information on hazardous materials transported in commerce. The majority of commenters supported RSPA requiring additional emergency response information. However, only two commenters supported the NTSB recommendation that an MSDS accompany every bulk shipment of hazardous materials. Several commenters stated that although some of the information on an MSDS might be useful, they believed that use of the ERG would be a more effective method of communicating fundamental hazard information to emergency response personnel, and that the ERG should be maintained as the primary reference.

Based on RSPA's evaluation of the merits of the comments to the ANPRM, on August 30, 1987, a notice of proposed rulemaking (NPRM) was published entitled "Emergency Response Communication Standards" under Docket No. HM-126C (53 FR 31486). The NPRM solicited comments on requiring improved emergency response information on shipping papers and packages, and placement of emergency response information on vehicles and at facilities involved in hazardous materials transportation. The NPRM addressed both bulk and non-bulk packages.

In the NPRM, it was noted that widespread support was expressed by commenters to the ANPRM for requiring use of the ERG. Many commenters believe that to better inform emergency response personnel about the hazards of a material, the use of the ERG would satisfy the emergency response information requirements. The NPRM included a proposal to require that persons offering hazardous materials for transportation provide on the shipping paper a twenty-four hour emergency response telephone number of a person knowledgeable about the hazardous materials being shipped. In addition, the NPRM contained a proposal to require that technical names be shown on shipping papers and packages for materials which are described under "n.o.s." or generic descriptions. A detailed discussion of these proposals, as well as the comments to these proposals follows.

II. Discussion of Comments Made to the NPRM

RSPA received more than seventy comments to the NPRM under Docket HM-126C. Comments were received from associations, chemical companies, emergency response organizations, and Federal and State agencies. Most commenters supported the intent of the proposed rule to improve emergency response communication during transportation incidents involving hazardous materials. However, many commenters expressed concern over certain aspects of the proposal and requested clarification on the use of certain technical names (i.e., proprietary or trade names) for "n.o.s." entries, maintenance of a twenty-four hour emergency response telephone number to obtain product-specific information on the hazardous material being transported, and the feasibility of requiring placement of the ERG, MSDS or other emergency response information on vehicles and at facilities.

Major Issues

A. Emergency Response Information

ATA strongly supported requiring additional emergency response information on shipping papers and packages, and placement of the ERG at facilities. However, ATA expressed concern about requiring the placement of the ERG on transport vehicles. ATA stated:

> (t)he cost of providing the ERG and insuring that it is on all transport vehicles will result in the expenditure of millions of dollars which would not be cost effective to safety in the trucking industry.

ATA did not provide quantitative or qualitative data in their comments to support this contention. It should be noted that the NPRM did not propose imposing mandatory use of the ERG on vehicles or at facilities to satisfy the emergency response information requirements, but rather the ERG could be used as one of several alternatives to satisfy those requirements. Although businesses may incur additional paperwork burdens, due to the requirement for placement of emergency response information on transport vehicles, RSPA believes that those burdens are justified because the requirement will improve the availability of information at the scene of an incident involving hazardous materials and thereby enhance emergency response efforts during such incidents.

RSPA did not propose that drivers of motor vehicles or crews aboard aircraft or trains attempt themselves to take emergency response measures. Instead, RSPA believes that during the initial stages of an emergency, having this information immediately available aboard a transport vehicle is important to convey information concerning the risks of materials, the basic precautions to be taken by transportation workers, and to improve the effectiveness of the first on the scene emergency responders.

The Association of American Railroads (AAR) commented that the notice as written would require that emergency response information be maintained on each rail car or "transport vehicle." They stated that there is no place on a rail car for this information to be placed and that there is no reason for this information to be placed on each individual rail car.

To clarify our intent in regard to maintenance of and accessibility to emergency response information on "transport vehicles", the requirement addressing carriers' responsibility for maintenance of written emergency response information on transport vehicles, such as trucks, rail cars or vessels and barges, has been restated to require that emergency response information be carried in the same manner as prescribed for shipping papers.

The AAR stated that additional written emergency response information (e.g., ERG) is unnecessary for rail shipments because they have the "Hazardous or Dangerous Commodity Reports" for each hazardous material in a train, which they feel satisfies the emergency response information requirements. Although having the ERG available would satisfy the emergency response information requirements, other documents, for shipments by aircraft, vessel and rail, such as the ICAO "Emergency Response Guidance for Aircraft Incidents Involving Dangerous Goods", the IMO "Emergency Procedures for Ships Carrying Dangerous Goods", and the "Hazardous or Dangerous Commodity Reports", respectively, may be used to satisfy the requirements for emergency response information, as long as they contain the required emergency response information and are present on the transport vehicle for each commodity.

Representative of commenters supportive of carrying the ERG on-board vehicles was the National Private Trucking Association (NPTA). NPTA stated:

> There are several sound reasons for carrying a copy of the ERG on-board transit vehicles. First, even though a significant number of ERGs have been distributed to emergency response organizations and personnel throughout the country, it is extremely unlikely that every emergency responder has one, or that one would always be on-scene. The presence of an ERG on each transport vehicle should effectively remedy this. Second, and perhaps more important, currently when most incidents involving hazardous materials occur, there is a period of time between the occurrence and the arrival of trained first responders with, presumably, copies of an ERG and/or other essential information to enable them to initiate an effective response. Consequently, as a rule for the majority of shipments currently taking place, during that critical period of time, the truck driver, as well as any other passers-by who may happen on the scene, are without essential information concerning the risk(s) which the materials being transported may pose to them and the public generally, or how to provide immediate and effective first aid should contact with a material have occurred.

RSPA agrees with NPTA that having a copy of the ERG immediately available during a hazardous material emergency would be useful. However, compliance with a requirement that emergency response information be immediately available for responders' use may also be accomplished in a number of other ways, such as by having emergency response information printed on the shipping paper or use of an MSDS (if it contains all of the required information).

Several commenters suggested that DOT require the ERG to be carried on all emergency response vehicles. DOT does not have statutory authority to require carriage of the ERG on emergency response vehicles operated by public entities. However, it has been the goal of RSPA, since the early 1980's, that all emergency response vehicles carry a copy of the ERG. To this end, approximately 2.5 million copies of the ERG have been distributed, without charge, to emergency response organizations by RSPA.

Widespread support was expressed in the comments to the NPRM for requiring additional emergency response information to accompany hazardous materials in transportation. Most commenters stated the ERG was the preferred source for obtaining emergency response information. In this final rule, RSPA adopts a requirement essentially as proposed in the NPRM, that emergency response information be maintained on transport vehicles, in the same manner as prescribed for shipping papers, and at facilities involved in the transportation of hazardous materials. While use of the ERG would be one method of compliance, flexibility is provided to afford use of other means to satisfy this requirement.

B. N.O.S. Descriptions/Generic Descriptions

The Chemical Waste Transportation Council (CWTC) supported showing the technical name for n.o.s. descriptions. However, CWTC stated that the requirement poses special administrative problems for non-bulk shipments of wastes. The CWTC stated:

> Keep in mind that non-bulk shipments of hazardous waste, as opposed to hazardous pure product, are normally comprised of a variety of waste stream packages. The extent of this variety becomes most complex with regard to the shipment of waste material packaged in accordance with 49 CFR 173.12(b). Yet, the risk presented by these divergent but compatible waste streams is no greater, and for the most part is less hazardous, than its source material. Waste, after all, is often the dilute by-product or residue of a pure hazardous material product. This is especially true of wastes with an n.o.s. status.

The CWTC requested that DOT allow shippers of hazardous wastes to show waste stream numbers in place of technical names for n.o.s. entries as provided under the requirement in § 172.203(c) for hazardous substances. CWTC petitioned RSPA (petition number P-1033) to amend the HMR at 49 CFR 172.203(c)(1) and 172.324(a) to exclude materials packaged in accordance with the lab pack provisions in § 173.12 from the requirement of showing technical names for n.o.s. entries.

RSPA did not intend to make the additional description and marking requirements for emergency response information for hazardous waste materials, packaged in accordance with the lab pack provisions, more burdensome to the hazardous waste industry. On the contrary, RSPA agrees with CWTC comments that for hazardous waste materials, packaged in accordance with the lab pack provisions, inclusion of waste stream numbers rather than technical names for n.o.s. descriptions would meet the additional emergency response

information requirements. Consequently, in § 173.12, a new paragraph (f) has been added to allow the use of waste stream numbers, instead of the required technical name description, for hazardous waste packaged in lab packs. It should be noted, however, that there is no exception in § 173.12, or elsewhere, from identifying the names of constituents contained in lab packs, if the constituent is a hazardous substance or a poison.

Most commenters supported including the technical name for n.o.s. or generic descriptions on shipping papers. However, because many technical names are quite lengthy or complicated, and commenters are concerned about the disclosure of proprietary information or trade secrets, they recommended including chemical family or generic names, common names, registered trade names, or other names in the NIOSH registry in place of technical names for n.o.s. entries. Trade secrets include chemical formulations, and the commenters believe that this information would not be protected if they were required to include the technical names of these constituents on shipping papers. RSPA believes that in emergency response situations, the addition of technical names for n.o.s. entries is the best way to identify the primary and subsidiary hazards associated with a material. RSPA also realizes that some chemical technical names are extremely complex. In order to accommodate the use of chemical names that are more readily recognizable and usable to emergency responders, the definition in § 171.8 for "technical name" includes chemical names designated or recognized by the International Union of Pure and Applied Chemistry (IUPAC), the Chemical Abstracts Service, or in the Registry of Toxic Effects of Chemical Substances (RTECS). However, trade names may not be used as technical names.

Further, RSPA believes there is sound reasoning to require improved identification of chemical constituents. Commenters' concerns that "trade secret" information may be disclosed by showing these constituents on shipping papers for "n.o.s." descriptions have not been substantiated. As required by this final rule, if a hazardous material is a mixture or solution of two or more hazardous materials, only the technical names of at least two components most predominantly contributing to the hazards of the mixture or solution are required to be entered on the shipping paper. Furthermore, this final rule does not impose mandatory revelation of an exact formulation, only disclosure of valuable safety related information to be used in the transportation network. Additionally, it is our belief that identifying the two major constituents which contribute to the hazards of a material will result in only limited, if any, instances where proprietary information would be revealed. Current provisions of the HMR for identifying constituents in poisons, hazardous substance mixtures and solutions, and any n.o.s. description for water shipments have not revealed a problem regarding the release of proprietary information.

Recently, RSPA has been made aware of a potential problem concerning the identification of constituents of materials that are subject to the provisions of 21 CFR 1301.74, as administered by the Drug Enforcement Administration (DEA). Paragraph (e) of that section states: "* * * In addition, the registrant shall employ precautions (e.g., assuring that shipping containers do not indicate that contents are controlled substances) to guard against storage or in-transit losses." RSPA is not aware that the current constituent identification requirements of the HMR have resulted in violations of the DEA requirements by persons shipping hazardous materials that are also controlled substances. The requirements of this final rule should not cause any significant compliance difficulties. Of the controlled substances reviewed by RSPA, each has a general or other technical name which may be used to identify the controlled substance in accordance with the requirements of this final rule, but which do not use terminology which readily identifies the hazardous material as a controlled substance.

C. Telephone Contact for Emergency Response Information

Comments to the notice generally supported RSPA's proposal to require that shipping papers contain the twenty-four hour telephone number of a person with detailed knowledge of the hazardous characteristics of the materials being shipped. The Chemical Manufacturers's Association (CMA) indicated support for the provision that allows shippers to list CHEMTREC, or other organizations, with similar capabilities, as the initial contact point for emergency response information. CMA pointed out that it would be impractical for an individual or small company to provide a phone number in the absence of this provision.

CHEMTREC is a public service of the CMA. CHEMTREC has the capability to provide immediate advice by telephone for the on-scene commander at a chemical emergency, and can then promptly contact the shipper of the hazardous material for detailed assistance and an appropriate response follow-up. CHEMTREC operates 24-hours a day, seven days a week to receive toll-free calls. CHEMTREC notifies the National Response Center (NRC) of significant incidents. If requested, they will connect a caller directly to the NRC, as required by Federal law and regulation. Other industry or government organizations may exist or be established which may provide similar services for specified categories of materials. RSPA recognizes the difficulty experienced by small companies, who may not always have a 24-hour telephone number or have an individual available to respond to inquiries on a 24-hour basis. This final rule allows for the use of an emergency response telephone number other than the shipper's, provided the shipper has furnished an agency or organization with detailed information concerning the hazardous material, and that the agency or organization is capable of, and has accepted responsibility for, providing such information. This option will provide a shipper the flexibility of selecting a name and number which will ensure a 24-hour availability of knowledgeable assistance.

Although most commenters supported the proposal to require a 24-hour emergency response telephone number on shipping papers, several expressed concern about the requirement in § 172.604(a)(2) for the telephone number to appear on the shipping paper "in association with the basic description". These commenters requested that the phone number be allowed anywhere on the shipping paper, as long as it is noted that the number is shown for the purpose of emergency response. In this final rule, the requirements in § 172.604(a)(2) (i) and (ii) have been modified to require shippers to: (1) enter the emergency response telephone number on shipping papers "following the description of the hazardous material", or (2) entered once on the shipping paper when the number applies to each material entered on the shipping paper, it is clearly highlighted for easy identification, and it is indicated that the telephone number is to be used to obtain emergency response information.

In the NPRM, RSPA proposed, as an option for a package having a gross weight of 30 kilograms or less, that the 24-hour emergency response telephone number may be displayed on the outside of the package in association with the proper shipping name rather than on the shipping paper. The United Parcel Service (UPS) and the Air Transportation Association of America supported the requirement that shipping papers contain a 24-hour emergency response telephone number to obtain emergency response information concerning hazardous materials, but suggested that the 24-hour emergency response telephone number should not be placed on packages instead of being placed on shipping papers for packages of 30 kilograms or less. This suggestion was based on their concern that, if a package is found to be damaged or leaking, emergency response personnel should not jeopardize their safety by coming into contact with a leaking or damaged package to obtain the emergency response telephone number.

Upon further consideration, RSPA agrees with the commenters. Consequently, the exception, as proposed in the NPRM, to allow shippers to place the emergency response telephone number on packages instead of being placed on shipping papers for packages of 30 kilograms or less has not been adopted.

D. Additional Considerations

Applicability of emergency response information requirements to international shippers. The NPRM did not propose to except persons importing or exporting hazardous materials from compliance with requirements for written emergency response information. To clarify the applicability of emergency response information requirements to import/export shipments of hazardous materials, § 171.11, applicable to shipments of hazardous materials conforming to the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), is revised in this final rule to require compliance with emergency response information requirements in Subpart G of Part 172 of this subchapter. It should be noted that no change in the requirements of § 171.12 have been adopted in this final rule, therein, shipments of hazardous materials made in accordance with the provisions of this section are not excepted from the shipping paper or emergency response information requirements. RSPA notes that both ICAO and the International Maritime Organization (IMO) publish documents containing emergency response information which could be used to satisfy the written emergency response information requirements specified in this final rule, when used in conjunction with a properly prepared shipping paper.

With regard to providing a 24-hour emergency response telephone number, the Hazardous Materials Advisory Council (HMAC) strongly urged RSPA to require foreign shippers that ship hazardous materials into the United States to designate a representative in the U.S., and to ensure that the contact is supplied with sufficient emergency response information to adequately assist emergency responders. Other commenters, such as the Air Transport Association of America and the International Air Transport Association (IATA) were concerned that overseas telephone numbers would be of little use in an emergency in the U.S., and that there could be some difficulty in obtaining emergency response information for import shipments of hazardous materials. RSPA has similar concerns regarding the effectiveness of an overseas 24-hour emergency response telephone number contact for foreign shippers. Although HMAC's proposal to require that foreign shippers designate a representative in the U.S. appears to have merit, it is beyond the scope of this rulemaking. RSPA anticipates addressing this issue in future rulemaking. Until that time, the emergency response information requirements of this final rule apply to all shippers of hazardous materials. Accordingly, the appropriate sections of the HMR, §§ 171.11, and 171.12a, have been revised to require that import shipments of hazardous materials, subject to the provisions of these sections, must conform to the requirements for emergency response information as prescribed in Subpart G of Part 172 of this subchapter.

Applicability of the emergency response information requirements to Canadian shipments of hazardous materials. The requirements under § 171.12a allow hazardous materials shipments from Canada to be transported in the United States, which are transported in accordance with the Canadian "Transport of Dangerous Goods Regulations" (TDG). The TDG regulations contain requirements for the use of certain emergency response information for shipments of hazardous materials. The requirements for completion of the "Emergency Response Form" are set out in the Canadian "Regulations for the Transportation of Dangerous Commodities by Rail." However, the Canadian "Emergency Response Form" only applies to carload, trailerload, truckload or containerload quantities of hazardous materials transported by rail. These Canadian requirements do not, in all instances, fulfill the requirements specified in this final rule. Therefore, § 171.12a has been revised by the addition of paragraph (a)(7) which requires compliance with the emergency response information provisions of Subpart G of Part 172.

Applicability of emergency response information requirements to empty packagings. The requirements under 49 CFR 173.29, for empty packagings that contain any residue of a hazardous material, specify that unless a packaging is cleaned and purged of all residue, or filled with materials not regulated under 49 CFR, it must be transported in the same manner as required when it previously contained a greater quantity of hazardous materials. This provision also applies to conformance with emergency response information requirements.

Requests for public hearing. Three commenters, the ATA, the Regular Common Carrier Conference (RCCC), and the International Association of Fire Fighters (IAFF) requested that RSPA conduct a public hearing on the merits of the proposals contained in the NPRM. ATA and RCCC requested a joint hearing with DOT and OSHA to address the nature and extent of hazardous materials incidents in the trucking industry and the information necessary to protect employees and others in the event of such incidents. ATA stated:

> (t)his hearing will allow both agencies to hear from the affected industries and to better understand the conflict which will arise as a result of the lack of delineation of regulatory authority of the two agencies. It would also provide DOT and OSHA with the opportunity to hear suggestions which could help to promote national uniformity and increased safety through practical and a realistic communication standard.

RSPA conducted a public hearing on certain aspects of this rulemaking action after issuance of the ANPRM. Comments received during the hearing and the comment period on the ANPRM generally supported the proposal to require that additional emergency response information be included on the shipping paper, such as a 24-hour emergency response information telephone number, and additional shipping descriptions. A majority of the commenters supported the use of the ERG as the document for providing emergency response information in the event of an incident involving hazardous materials. RSPA received over seventy responses to the ANPRM. Based on the responses received to the ANPRM, RSPA issued an NPRM proposing specific regulatory requirements dealing with emergency response communications. In response to the NPRM, more than seventy comments

were received and evaluated. Furthermore, comments to other pending rulemaking actions, such as Docket HM-181, dealing with similar topics addressed in this rulemaking (ie., additional requirements for technical names for n.o.s. descriptions), were evaluated. RSPA does not believe that a public hearing on the proposals contained in the NPRM would have provided substantive additional information beyond the comments already received, evaluated, and discussed in responses to the ANPRM and NPRM.

In specific response to the ATA and RCCC request, RSPA fully appreciates the necessity for uniform and non-conflicting requirements, to the maximum extent possible, between various agencies of the Government. In order to provide compliance flexibility, thereby limiting the potential for duplicative or conflicting requirements, RSPA has not required a specific form or document which would be necessary in order to comply with the requirements of this final rule. Emergency response information must be in a form or document that permits reference to the hazardous materials being shipped and provide guidance relative to the hazards, risks, precautions and mitigation methods necessary. This information can be transmitted using an MSDS, the ERG, or any other document that provides the information prescribed.

ATA also expressed concern about the potential overlap of DOT and OSHA regulations and suggested a memorandum of understanding (MOU) to delineate respective authorities. RSPAaagrees that it should coordinate with OSHA officials on a continuing basis, but a formal MOU only could constitute an agreement to coordinate interagency activities. Matters related to resolution of jurisdictional issues (e.g., the meaning of the "exercise" provision of the Occupational Safety and Health Act; 29 U.S.C. 653(b)(1)) must be handled in the manner specified by law (e.g., review and decision by the Occupational Safety and Health Review Commission). In order to facilitate interagency coordination, RSPA solicits information on hazardous materials issues that should be discussed with OSHA officials on an ongoing basis.

The IAFF also requested that a public hearing be held regarding the proposals contained in the NPRM and, in addition, stated the following:

> The IAFF strongly disagrees with the position of the DOT that material safety data sheets (MSDSs) not be provided and maintained in those locations as required in 172.600(a). We believe that the MSDS, the primary vehicle for transmitting chemical information, should be required and available for use by fire fighting and other emergency response personnel during a hazardous materials emergency. We believe that the reasons provided by the DOT in the Notice of Proposed Rulemaking are not only based on special interest (industry and/or those being regulated) but are significantly rhetorical and unsubstantiated. While we agree that MSDS were not *originally* developed for the purpose of providing information for emergency response, they are now in fact the most utilized vehicle for providing such information. As you are well aware, the Federal Hazard Communication Standard, most State Right-to-Know standards, SARA and many other federal, state and local regulations require the utilization of the MSDS. Fire fighters and emergency response personnel utilize this information at fixed facilities and would obviously be able to utilize this information equally as well when responding to transportation incidents.
>
> We also strongly disagree with the proposal that the DOT Emergency Response Guidebook be used to satisfy the proposed requirements. The DOT ERG has never had public review other than through an "unofficial" and very unbalanced advisory committee. If the ERG is to be utilized, we propose that it receive full review in accordance with the Administrative Procedures Act. Accordingly, we also do not agree with the allowance of the use of the CHEMTREC telephone to satisfy the requirements of 172.604, especially without further definition of what "accepting responsibility for" would mean and without public review of the CHEMTREC operation and their legal responsibilities. If a telephone number is to be included, aside from the responsible shipper, we propose the telephone number of the National Response Center be utilized. As you are aware, the NRC telephone number is a toll-free number that is staffed seven days a week, 24 hours a day. While the NRC has the capability to immediately patch the caller into CHEMTREC's information and referral service as well as into governmental agencies, utilizing the NRC has other valuable functions not performed by CHEMTREC. Notification of the NRC serves many vital functions, including permitting federal involvement to proceed in a timely and effective manner. We believe this would greatly assist fire fighters in handling hazardous materials incidents.

RSPA has not required nor prohibited the use of the MSDS as a means of providing information to workers covered by the Right-to-Know legislation and Superfund Amendment and Reauthorization Act of 1986 (SARA). We recognize the importance and use of the MSDS in providing information to employees and in planning functions. However, as has been made evident in the course of this rulemaking action, no single standard exists for the preparation of MSDS to provide emergency response information for transportation incidents. While an MSDS may provide information during an incident involving hazardous materials, the MSDS may not, in all instances, provide specific information relative to response actions to be taken during transportation related incidents. Conceivably, for "less-than-truckload" and "less-than-carload" shipments, a carrier would possess numerous MSDS for the different materials being transported. In the event of a hazardous materials emergency, they may not be the most appropriate means to ascertain the appropriate emergency response action to be taken. Additionally, a number of different MSDS may exist for the same material when shipped by different individuals. Information on these multiple MSDS may in fact vary, thus potentially leading to confusion during initial emergency response actions.

The requirements issued in this final rule are intended to provide specific information relative to the hazards of the materials being transported and provide immediate initial emergency response guidance until further specific information can be obtained from the shipper or others relative to long term mitigation actions. To date, only the ERG and similar documents such as those published by ICAO and IMO have consolidated this initial response information into a single, multimodal, easily understood, and recognizable document directly correlated with identification numbers and emergency response guidance. However, RSPA has not imposed a requirement that the ERG be carried on each transport vehicle and be maintained at facilities involved with the transportation of hazardous materials. Rather, this final rule requires that specific emergency response information accompany shipments of hazardous materials and be present at transportation facilities. This information may be in any format, including an MSDS, the ERG, or other similar document, so long as that document provides information, which at a minimum, provides the description of the hazardous material, immediate health hazard information, risks of fire and explosion, immediate precautions to be taken in the event of an accident or incident, immediate methods of handling large and small fires, initial methods for handling of spills or leaks, and preliminary first aid measures.

The IAFF asserts that the ERG has never had a public review other than through an "unofficial" and very "unbalanced" advisory committee. The ERG is not a regulatory document. There is no requirement currently in the HMR nor in this final rule which mandates the use of the ERG. The ERG was developed in an effort to fulfill RSPA's responsibilities to provide for a safe transportation environment for hazardous materials, and in an effort to provide better information to emergency responders in the event of an incident involving hazardous materials in transportation.

The ERG, first published in 1980 and republished in 1984 and 1987, was developed in cooperation with respresentatives from a number of diverse groups. Representatives include members of the DOT, firefighters, the International Association of Fire Chiefs, the International Association of Chiefs of Police, The Fire Marshal Association of North America, the National Fire Protection Association, a cross-section of major manufacturers of hazardous materials, including representatives from Dow Chemical, DuPont de Nemours, and Union Carbide, CHEMTREC and the International Association of Fire Fighters. Each participant in the development of the ERG was invited to present suggestions, recommendations and other information relative to the guidance presented in the ERG. A number of participants, including the IAFF, presented issues relative to the development of information and recommendations contained in the ERG. All issues were discussed and decisions made by RSPA relative to the final content of the ERG.

Since the issuance of the 1980 and subsequent editions of the ERG, more than 2.5 million copies have been distributed, without charge, to emergency response organizations. Thousands of other copies of the ERG have been purchased by others from commercial sources. Such wide distribution has provided extensive review by a large audience and constructive comments have been solicited, especially comments concerning its use in handling incidents involving hazardous materials. For example, the current edition of the ERG specifically requests such comments and provides an address to which such comments should be forwarded. RSPA maintains an open log on comments relative to the ERG, each comment is evaluated and an attempt is made to address each issue during development of subsequent editions.

The IAFF also objected to the allowance of the use of the CHEMTREC telephone number to satisfy the requirements of § 172.604 and recommended use of the National Response Center's telephone number. RSPA has not mandated the use of the CHEMTREC number, nor the specific use of any organization's number. Therefore, the CHEMTREC telephone number, or any other agency's or organization's telephone number may only be used if the shipper has supplied the required information, and the agency has accepted the responsibility for providing information relative to the shipper's hazardous material.

The NRC has generally not been provided with information relative to a specific shipper's hazardous materials shipments, and usually cannot identify a specific shipper contact, nor has it "accepted responsibility for" providing information relative to a specific shipper's hazardous materials shipments. A requirement that an emergency response telephone number be provided for each shipment of hazardous materials is an attempt to provide emergency responders with more product-specific information relative to the hazards of the materials being transported. Nothing in the current regulations or this final rule prohibits or limits an emergency responder's efforts in obtaining information from all available sources. This position is in fact borne out by a statement in the ERG which states, "As a first responder at the scene of a hazardous materials incident, you must seek additional and more specific information about any material in question as soon as you are able." RSPA certainly encourages those involved in responding to hazardous materials incidents to use all available sources of information in order to make better informed judgments on how to handle them.

III. Relationship to Requirements Under Other Federal Statutes

On August 24, 1987, OSHA published a final rule (52 FR 31852) which amended their Hazard Communication Standard (HCS). The amended HCS requires virtually all employers to establish hazard communication programs to provide information to employees on the hazards of chemicals in the workplace. The amended HCS recognizes a variety of work situations, including those where employees only handle chemicals in sealed containers that are not opened under normal conditions of use (e.g., trucking terminals, warehousing, marine cargo handling and retail sales). Under the HCS, such employees must be provided information and training to protect them in the event of a spill or leak. The emergency response communication requirements of this final rule complement those of the HCS.

In addition, RSPA believes that the use of the emergency response information required under this rule, in association with the shipping paper information, will also assist carriers in complying with portions of the emergency notification requirements of section 304 of Title III of the Superfund Amendments and Reauthorization Act (SARA). The emergency notification requirements of SARA, Title III, apply to transportation, and storage incident to transportation, as well as fixed or stationary facilities that are not transportation facilities.

IV. Review by Sections

Section 171.8. In § 171.8, the definition for "technical name" is revised to include chemical names recognized in scientific and technical journals and handbooks.

Section 171.11. In § 171.11, paragraph (d) is revised to require compliance with the emergency response information requirements for international shippers who import hazardous materials into the United States aboard aircraft.

Section 171.12a. In § 171.12a, a new paragraph (a)(7) is addd to require shipments of hazardous materials being imported into the United States from Canada to be in compliance with the requirements for emergency response information specified in the new Subpart G of Part 172.

Section 172.202. This section is revised by adding a new paragraph (d) to require that shipping papers must contain an emergency response telephone number for the description of the hazardous material being shipped as specified in the new Subpart G of Part 172.

Section 172.203. This section is revised by moving paragraph (i)(2) and redesignating paragraph (i)(3) as paragraph (i)(2). Paragraph (i)(3) is removed. The requirements from paragraph (i)(2) are incorporated into a revised paragraph (k) to require that the "technical name" must be shown on shipping papers than contain "n.o.s. and generic" descriptions for hazardous materials. A new paragraph (m) is added to this section incorporating some of the requirements for poisonous materials which previously appeared in paragraph (k) of this section.

Section 172.301. In § 172.301, paragraph (c) is redesignated as paragraph (d), and a new paragraph (c) is added to require marking of the technical name of the hazardous material on non-bulk packages which contain hazardous materials described under n.o.s. descriptions, and on non-bulk packages of certain poisonous materials described under generic descriptions. In both instances, the technical name must be shown in

parentheses, immediately following the proper shipping name.

Section 172.302. This section on marking requirements for export shipment of hazardous materials by water is rendered obsolete by the changes in § 172.301. Therefore, this section is removed.

Subpart G to Part 172. A new Subpart G is added to Part 172 containing requirements for emergency response information.

Section 173.12. This section is revised to add a new paragraph (f) which provides an exception from showing the technical name for n.o.s. descriptions in shipping papers and package markings for hazardous waste materials packaged in accordance with the lab pack provisions, unless the hazardous material is a hazardous substance or meets the definition of a poison.

Section 176.30. This section is revised to require that a dangerous cargo manifest contain a 24-hour emergency response telephone number.

V. Administrative Notices

A. Paperwork Reduction Act

The changes and new requirements for information collection in §§ 172.201, 172.203, 172.602, and 172.604 have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) under OMB control numbers 2137-0034 and 2137-0560 (expiration dates: June 30, 1992).

B. Executive Order 12291

The RSPA has determined that this final rule (1) does not meet the criteria specified in section 1(b) of Executive Order 12291 and is, therefore, not a major rule; (2) is not considered to be a "significant" rule under DOT Regulatory Policies and Procedures (44 FR 11034); (3) will not affect not-for-profit enterprises or small governmental jurisdictions; and (4) does not require a Regulatory Impact Analysis or an Environmental Impact Statement under the National Environmental Policy Act (49 U.S.C. 4321 et seq.) A regulatory evaluation is available for review in the Docket.

C. Executive Order 12612

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

D. Impact on Small Entities

Based on limited information concerning size and nature of entities likely affected by this final rule, I certify this regulation will not have a significant economic impact on a substantial number of small entities. A regulatory evaluation is available for review in the Docket.

E. Regulatory Information Number (RIN)

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 171

Hazardous materials transportation, Definitions.

49 CFR Part 172

Hazardous materials transportation, Shipping papers, Markings and Emergency response information.

49 CFR Part 173

Hazardous materials transportation, Packagings.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers.

In consideration of the foregoing, 49 CFR Parts 171, 172, 173 and 176 are amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for Part 171 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1806; 49 CFR Part 1.

§ 171.8 [Amended]

2. In § 171.8, the definition of "technical name" is revised to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

"Technical name" means the scientific designation of a chemical in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry (IUPAC) or the Chemical Abstracts Service (CAS) rules of nomenclature, or a name currently recognized in the Registry of Toxic Effects of Chemical Substances (RTECS). The term does not include trade names.

* * * * *

3. In § 171.11, a new paragraph (d)(10) is added to read as follows:

§ 171.11 Use of ICAO Technical Instructions.

(d) * * *

(10) Shipments of hazardous materials under this section must conform to the requirements for emergency response information as prescribed in Subpart G of Part 172 of this subchapter.

4. In § 171.12a, a new paragraph (a)(7) is added to read as follows:

§ 171.12a Canadian shipments and packagings.

(a) * * *

(7) Shipments of hazardous materials subject to the requirements of this section must conform to the requirements for emergency response information as prescribed in Subpart G of Part 172 of this subchapter.

* * * * *

5. The heading of Part 172 is revised to read as follows:

PART 172—HAZARDOUS MATERIALS TABLES, HAZARDOUS MATERIALS COMMUNICATIONS REQUIREMENTS AND EMERGENCY RESPONSE INFORMATION REQUIREMENTS

6. The authority citation for Part 172 is revised to read as follows:

Authority: 49 U.S.C. App. 1803, 1804, 1808; 49 CFR Part 1.

7. In § 172.201, a new paragraph (d) is added to read as follows:

§ 172.201 General entries.

* * * * *

(d) *Emergency response telephone number.* A shipping paper must contain an emergency response telephone number, as prescribed in Subpart G of Part 172 of this subchapter.

8. In § 172.203, paragraph (i)(2) is removed, paragraph (i)(3) is redesignated as paragraph (i)(2), paragraph (k) is revised and paragraph (m) is added to read as follows:

§ 172.203 Additional descriptions requirements.

* * * * *

(k) *Technical names for "n.o.s." and other generic descriptions.* Unless otherwise excepted, if a material is described on a shipping paper by one of the proper shipping names listed in paragraph (R)(3) of this section, the technical name of the hazardous material must be entered in parentheses in association with the basic

description. For example "Corrosive liquid, n.o.s. (Caprylyl chloride), UN1760" or "Corrosive liquid, n.o.s., UN1760 (contains caprylyl chloride)". The word contains may be used in association with the technical name, if appropriate.

(1) In addition to the n.o.s. descriptions listed herein, the requirements of this section apply to all shipping descriptions for poisonous materials which are subject to the requirements of paragraph (m) of this section, and for which the proper shipping name does not specifically identify the poisonous constituent by technical name. For example, "Motor fuel antiknock compound (Tetraethyl lead), Poison B, UN1649" or "Motor fuel antiknock compound, Poison B, UN1649, (Tetraethyl lead)".

(2) If a hazardous material is a mixture or solution of two or more hazardous materials, the technical names of at least two components most predominately contributing to the hazards of the mixture or solution must be entered on the shipping paper as required by this paragraph. For example, "Flammable liquid, corrosive, n.o.s. (contains Methanol, Potassium hydroxide), UN2924".

(3) Proper shipping names for which the provisions of this paragraph apply are as follows:

Acid, liquid, n.o.s.
Alcohol, n.o.s.
Alkaline liquid, n.o.s.
Cement, adhesive, n.o.s.
Combustible liquid, n.o.s.
Compressed gas, n.o.s.
Corrosive liquid, n.o.s.
Corrosive liquid, poisonous, n.o.s.
Corrosive solid, n.o.s.
Dispersant gas, n.o.s.
Etching acid, liquid, n.o.s.
Etiologic agent, n.o.s.
Flammable gas, n.o.s.
Flammable liquid, corrosive, n.o.s.
Flammable liquid, n.o.s.
Flammable liquid, poisonous, n.o.s.
Flammable solid, corrosive, n.o.s.
Flammable solid, n.o.s.
Flammable solid, poisonous, n.o.s.
Hazardous substance, liquid or solid, n.o.s.
Hazardous waste, liquid or solid, n.o.s.
Infectious substance, human, n.o.s.
Insecticide, dry, n.o.s.
Insecticide, liquid, n.o.s.
Irritating agent, n.o.s.
Nonflammable gas, n.o.s.
Organic peroxide, solid, n.o.s.
Organic peroxide, liquid or solution, n.o.s.
ORM-A, n.o.s.
ORM-B, n.o.s.
ORM-E, n.o.s.
Oxidizer, corrosive, liquid, n.o.s.
Oxidizer, corrosive, solid, n.o.s.
Oxidizer, n.o.s.
Oxidizer, poisonous, liquid, n.o.s.
Oxidizer, poisonous, solid, n.o.s.
Poisonous liquid or gas, flammable, n.o.s.
Poisonous liquid or gas, n.o.s.
Poisonous liquid, n.o.s.
Poison B liquid, n.o.s.
Poisonous solid, corrosive, n.o.s.
Poisonous solid, n.o.s.
Poison B, solid, n.o.s.
Pyrophoric liquid, n.o.s.
Pyroforic liquid, n.o.s.
Refrigerant gas, n.o.s.
Water reactive solid, n.o.s.

(4) The provisions of this paragraph do not apply—

(i) To a material that is described using the proper shipping name "Hazardous Substance, liquid or solid, n.o.s." provided the material is described in accordance with the provisions of § 172.203(c) of this part; or

(ii) To a material that is described using the proper shipping name "Hazardous Waste, liquid or solid, n.o.s." that is also a hazardous substance and which is described in accordance with the provisions of § 172.203(c) of this part.

* * * * *

(m) *Poisonous materials.* Notwithstanding the hazard class to which a material is assigned—

(1) If a liquid or solid material in a package meets the definition of a poison according to this subchapter, and the fact that it is a poison is not disclosed in the shipping name or class entry, the word "Poison" shall be entered on the shipping paper in association with the shipping description.

(2) If the technical name of the compound or principal constituent that causes a material to meet the definition of a poison (according to this subchapter) is not included in the proper shipping name for the material, the technical name shall be entered on the shipping paper in the manner prescribed in paragraph (k) of this section.

(3) If the inhalation toxicity of any material falls within the criteria specified in § 173.3a(b)(2) of this subchapter (subject to definitions and implementation conditions of paragraphs (c) and (d) of the same section), the words "Poison-Inhalation Hazard" shall be entered on the shipping paper in association with the shipping description. However, the word "Poison" need not be repeated if it is entered as part of the basic description or in conformance with paragraph (m)(1) of this section. This paragraph does not apply to packagings containing inner receptacles of one liter capacity or less.

* * * * *

9. In § 172.301, paragraph (c) is redesignated as paragraph (d) and paragraph (c) is added to this section to read as follows:

§ 172.301 General marking requirements.

* * * * *

(c) *Technical names.* Each non-bulk packaging containing hazardous materials subject to the provisions of § 172.203(k) of this part must be marked with the technical name of the hazardous material in parentheses immediately following the proper shipping name, in accordance with the requirements and exceptions specified for the display of technical descriptions on shipping papers in § 172.203(k) of this part.

* * * * *

§ 172.302 [Removed]

10. Section 172.302 is removed.

11. A new Subpart G is added to Part 172 to read as follows:

Subpart G—Emergency Response Information

Sec.

172.600 Applicability and general requirements.
172.602 Emergency response information.
172.604 Emergency response telephone number.

Subpart G—Emergency Response Information

§ 172.600 Applicability and general requirements.

(a) *Scope.* Except as provided in paragraph (d) of this section, this subpart prescribes requirements for providing and maintaining emergency response information during transportation and at facilities where hazardous materials are loaded for transportation, stored incidental to transportation or otherwise handled during any phase of transportation.

(b) *Applicability.* This subpart applies to persons who offer for transportation, accept for transportation, transfer or otherwise handle hazardous materials during transportation.

(c) *General requirements.* No person to whom this subpart applies may offer for transportation, accept for transportation, transfer, store or otherwise handle during transportation a hazardous material unless:

(1) Emergency response information conforming to this subpart is immediately available for use at all times and hazardous material is present; and

(2) Emergency response information required by this subpart is immediately available to any person who, as a representative of a Federal, state or local government agency, responds to an incident involving a hazardous material, or is conducting an investigation which involves a hazardous material.

(d) *Exception.* The requirements of this subpart do not apply to hazardous materials which are excepted from the shipping paper requirements of this subchapter.

§ 172.602 Emergency response information.

(a) *Information required.* For purposes of this subpart, the term "emergency response information" means information that can be used in the mitigation of an incident involving hazardous materials and, as a minimum, must contain the following information:

(1) The description of the hazardous material required by §§ 172.202 and 172.203;

(2) Immediate hazards to health;

(3) Risks of fire or explosion;

(4) Immediate precautions to be taken in the event of an accident or incident;

(5) Immediate methods for handling small or large fires;

(6) Initial methods for handling spills or leaks in the absence of fire; and

(7) Preliminary first aid measures.

(b) *Form of information.* The information required for a hazardous material by paragraph (a) of this section must be:

(1) Printed legibly in English;

(2) Available for use away from the package containing the hazardous material; and

(3) Presented—

(i) On a shipping paper;

(ii) In a document, other than a shipping paper, that includes both the basic description of the hazardous material as specified in § 172.101, and the emergency response information required by this subpart, (e.g., a material safety data sheet); or

(iii) In conjunction with a shipping paper, in a separate document, such as an emergency response guidance manual, in a manner that cross-references the basic description for the hazardous material on the shipping paper with the emergency response information contained in the document. For example, the ICAO "Emergency Response Guidance for Aircraft Incidents Involving Dangerous Goods" and the IMO "Emergency Procedures for Ships Carrying Dangerous Goods", for shipments by air and water respectively, could be used in association with a shipping paper to satisfy the requirements of this paragraph, if the document contains the information specified in paragraph (a) of this section.

(c) *Maintenance of information.* Emergency response information shall be maintained as follows:

(1) *Carriers.* Each carrier who transports a hazardous material shall maintain the information specified in paragraph (a) of this section in the same manner as prescribed for shipping papers (including dangerous cargo manifests). This information must be immediately accessible to a transport vehicle operator or crew in the event of an incident involving a hazardous material.

(2) *Facility operators.* Each operator of a facility where a hazardous material is received, stored or handled during transportation, shall maintain the information required by paragraph (a) of this section whenever the hazardous material is present. This information must be in a location that is immediately accessible to facility personnel in the event of an incident involving the hazadrous material.

§ 172.604 Emergency response telephone number.

(a) A person who offers a hazardous material for transportation must provide a 24-hour emergency response telephone number (including the area code or international access code) for use in the event of an emergency involving the hazardous material. The telephone number must be—

(1) Monitored at all times;

(2) The number of a person who is knowledgeable of the hazards and characteristics of the hazardous material being shipped, has comprehensive emergency response and accident mitigation information for that material, or has immediate access to a person who possesses such knowledge and information; and

(3) Entered on a shipping paper, as follows:

(i) Immediately following the description of the hazardous material required by Subpart C of this Part 172; or

(ii) Entered once on the shipping paper in a clearly visible location. This provision may be used only if the telephone number applies to each hazardous material entered on the shipping paper, and if it is indicated that the telephone number is for emergency response information (for example: "EMERGENCY CONTACT: ***").

(b) The telephone number required by paragraph (a) of this section must be the number of the person offering the hazardous material for transportation or the number of an agency or organization capable of, and accepting responsibility for, providing the detailed information concerning the hazardous material. A person offering a hazardous material for transportation who lists the telephone number of an agency or organization shall ensure that agency or organization has received current information on the material, as required by paragraph (a)(2) of this section before it is offered for transportation.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

12. The authority citation for Part 173 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1808; 49 CFR Part 1.

13. In § 173.12, a new paragraph (f) is added to read as follows:

§ 173.12 Exceptions for shipment of waste material.

* * * * *

(f) *Technical names for n.o.s. descriptions.* The requirements for the inclusion of technical names for n.o.s. descriptions on shipping papers and package markings, §§ 172.203 and 172.301 of this subchapter, respectively, do not apply to packagings prepared in accordance with the requirements of this section, except as follows:

(1) Packages containing materials meeting the definition of a hazardous substance must be described as required in § 172.203(c) and marked as required in § 172.324 of this subchapter; and

(2) Packages containing hazardous materials subject to the provisions of § 172.203(m) of this subchapter must be described in accordance with § 172.203(m) of this subchapter.

PART 176—CARRIAGE BY VESSEL

14. The authority citation for Part 176 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1808; 49 CFR Part 1.

15. In § 176.30, a new paragraph (a)(3)(i) is added to read as follows:

§ 176.30 Dangerous cargo manifest.

(a) * * *

(3) * * *

(i) An emergency response telephone number as prescribed in Subpart G of Part 172 of this subchapter.

* * * * *

Issued in Washington, DC on June 22, 1989, under authority delegated in 49 CFR Part 1.

Travis P. Dungan,

Administrator, Research and Special Programs Administration.

[FR Doc. 89-15190 Filed 6-26-89; 8:45 am]

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federal register

Tuesday
June 27, 1989

Part X

The President

Executive Order 12679—Level IV of the Executive Schedule

Federal Register
Vol. 54, No. 122
Tuesday, June 27, 1989

Presidential Documents

Title 3—

The President

Executive Order 12679 of June 23, 1989

Level IV of the Executive Schedule

By the authority vested in me as President by the Constitution and laws of the United States of America, including section 5317 of title 5 of the United States Code, and in order to place an additional position in level IV of the Executive Schedule, section 1–101 of Executive Order No. 12154, as amended, is hereby further amended by adding at the end the following new subsection:

"(g) Assistant Secretary of the Air Force (1)."

THE WHITE HOUSE,
June 23, 1989.

[FR Doc. 89-15351
Filed 6-26-89; 10:17 am]
Billing code 3195-01-M

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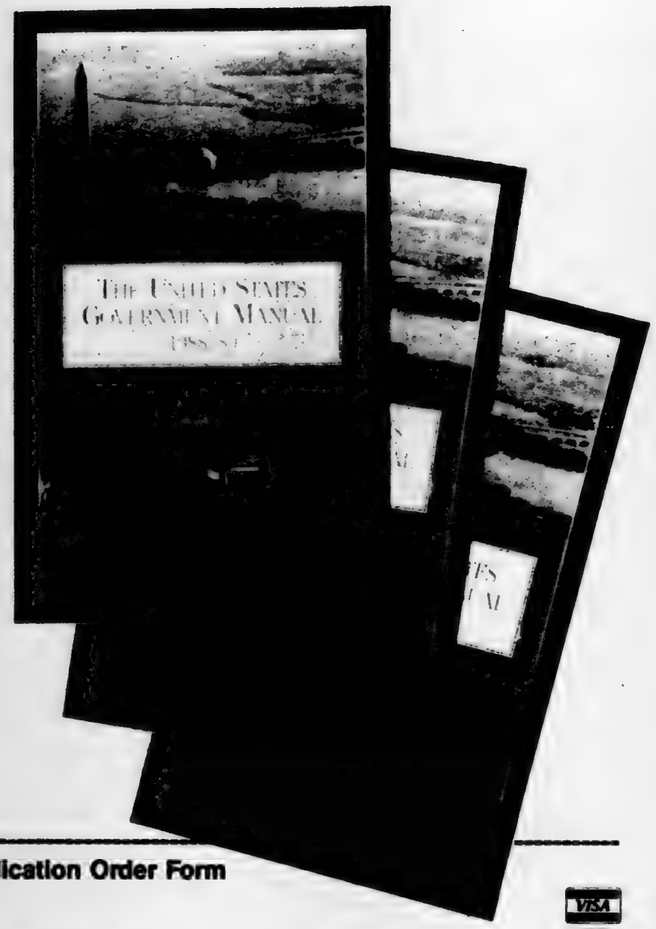
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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 225 and 226

[Amdt. No. 1 and 21, Respectively]

Summer Food Service Program and Child Care Food Program; Meat Alternates Used in the Supplement (Snack)

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends 7 CFR Parts 225 and 226 to allow the crediting of yogurt as a meat alternate component in the supplement (snack) meal patterns of the Summer Food Service Program (SFSP) and Child Care Food Program (CCFP) regulations. It applies to commercially prepared products covered by the Standard of Identity as established by the Food and Drug Administration (FDA) in the Code of Federal Regulations (CFR) for yogurt, lowfat yogurt, and nonfat yogurt, (21 CFR 131.200), (21 CFR 131.203), (21 CFR 131.206), respectively. It does not apply to noncommercial and/or nonstandardized yogurt products, such as frozen yogurt, yogurt flavored products, yogurt bars, yogurt covered fruit and/or nuts or similar products thereof. While commercial flavorings may be added, such as fruit, fruit juice, nuts, seeds, granola, etc., they shall not be credited towards meeting the second food component requirement in the supplement (snack). This rule is intended to maintain the nutritional integrity of the supplement (snack), while increasing local flexibility in menu planning to meet regional and ethnic food preferences. In addition, this rule amends the meal pattern charts for the Child Care Food Program to clarify the age categories and be consistent with previously distributed guidance.

EFFECTIVE DATE: July 28, 1989.

FOR FURTHER INFORMATION CONTACT: Cynthia Ford, Chief, Technical Assistance Branch, Nutrition and Technical Services Division, Food and Nutrition Service, U.S. Department of Agriculture, Room 607, 3101 Park Center Drive, Alexandria, Virginia 22302, telephone (703) 756–3556.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and has been classified nonmajor because it will not have an annual effect on the economy of $100 million or more; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule has also been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The Acting Administrator of the Food and Nutrition Service has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities.

These programs are listed in the Catalog of Federal Domestic Assistance under Nos. 10.550 and 10.558 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (7 CFR Part 3015, Subpart V, and final rule-related notice published in 48 FR 29114, June 24, 1983).

No new reporting or recordkeeping requirements are included which require Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Background

Sections 13(f) and 17(g) of the National School Lunch Act (42 U.S.C. 1761(f), 1766(g)) require that the Secretary of Agriculture set minimum nutritional requirements for meals including supplements (snacks) served in the Summer Food Service and Child Care Food Programs. Meal pattern requirements have been established for specific types and amounts of food for each component of the meal service in the Child Nutrition Programs administered by the Department. These meal patterns are designed to provide a flexible framework for food service managers to use in planning nutritious meals from a wide variety of foods and within a diversity of regional, cultural, and ethnic food preferences. From time to time, the Department has reviewed and revised these meal patterns to reflect new knowledge about food consumption habits and the food preferences, as well as nutritional needs, of children.

In accordance with this legislative responsibility, the Department published a proposed rule in the **Federal Register** on September 8, 1988 (53 FR 34761) to amend the Summer Food Service Program and Child Care Food Program regulations to allow the crediting of yogurt as a meat alternate in the supplement (snack). The proposed rule would allow up to four (4) ounces (weight) of plain or sweetened and flavored yogurt to fulfill the meat/meat alternate component of the supplement (snack). The Department proposed that four (4) ounces (weight) or ½ cup (volume) of yogurt be the equivalent of one (1) ounce of meat/meat alternate. This proposed rule applied only to products covered by the Standard of Identity as established by the FDA for yogurt (21 CFR 131.200), lowfat yogurt (21 CFR 131.203), and nonfat yogurt (21 CFR 131.206).

In current regulations, requirements for the supplement (snack) in the Summer Food Service Program and Child Care Food Program specify a choice of any two (2) of the following four (4) components: fluid milk; meat or meat alternate; vegetable or fruit or juice; and bread or bread alternate. The meat/meat alternate component currently includes lean meat, poultry, fish, egg, cheese, cooked dry beans or peas, peanut butter and other nut or seed butters, and nuts and seeds.

Commenter Reaction

During the 60-day comment period on the proposed rule, the Department received 171 comment letters. The majority of these letters (128) were from child care sponsors and providers. Twelve letters were received from State agencies. Seven letters were received from various food industries and associations and one from a university.

The remaining 23 letters were from the general public.

The overwhelming majority of commenters (170) expressed support for the proposal while one (1) expressed opposition. In general, comments in support of the proposed rule reaffirmed the widespread acceptability of yogurt by children, the nutritional benefits yogurt has in protein and calcium, and the variety it adds for menu planning in the supplemental (snack) meal. The one commenter in opposition to the proposed rule would not support yogurt as a meat alternate and preferred that it be offered as a milk alternate only. In the preamble of the proposed regulation, the Department pointed out the protein comparability of yogurt to other meat alternates such as cheese and cottage cheese and, therefore, offered it as a nutritious addition to the list of approved meat alternates. However, while the calcium contribution of yogurt is recognized, the Department prefers to maintain the nutritional integrity of meals served to children by offering only fluid milk as a beverage, to meet the milk requirement.

Of the total number of commenters, approximately 12 percent requested that the Department consider yogurt as a meat/meat alternate in other meals such as breakfast or lunch or supper. As indicated in the proposal, the Department's position was that yogurt is most appropriately served as one of the two components of a supplement (snack). The Department continues to believe that yogurt is less appropriate as a meat alternate in other meals, based on the sugar content of the majority of yogurt products, the likelihood of decreased fluid milk consumption when yogurt is served in meals which require milk as a beverage, and yogurt's inherently low iron content. These objections to yogurt as a meat alternate in breakfasts, lunches, and suppers are not necessarily relevant for supplements (snacks) where a choice of two out of four components may be served. The Department believes that foods served in the supplement (snack) should make a positive contribution to children's diets by providing additional food energy (calories) and other nutrients needed at mid-morning and mid-afternoon. From time to time, additional appropriate foods have been allowed to be credited in the supplement (snack) that cannot be credited in other meals. An example of such a policy is the crediting of cookies made from whole-grain or enriched flour or meal. While cookies are not creditable as bread alternates at breakfast, lunch, or supper, cookies can be considered an acceptable and appropriate item for the supplement (snack), if served in reasonable serving sizes and on an infrequent basis.

About 8 percent of the commenters in support of the rule also made a further recommendation that yogurt be considered as a milk alternate. Some claimed that serving yogurt as a milk alternate would respond to the needs of children who are lactose intolerant. The Department reminds those commenters and other program managers that if children are unable to drink milk because of a sound medical condition, such as lactose intolerance, the regulations permit documentation to be provided from a recognized medical authority and a recommended substitution may be made.

About the same number of favorable commenters (8 percent) requested that additional information be provided either in guidance or in the final rule as to the types of yogurt products that are acceptable and not acceptable under the Standard of Identity. In the preamble of this final rule, the Department has identified the types of yogurt products which are creditable and not creditable as meat alternates for supplements (snacks) in the Summer Food Service and Child Care Food Programs.

Approximately 6 percent of the commenters who are child care providers misinterpreted the proposed rule. Some had interpreted the proposal to mean that yogurt could be credited in all meals while others thought that yogurt could be used interchangeably as a milk alternate. The Department wishes, therefore, to clarify that this final rule applies only to the meat alternate component of the supplement (snack) meal pattern of the Summer Food Service Program and Child Care Food Program.

Some commenters were concerned about the added sweeteners in yogurt; two percent recommended that only plain yogurt be allowed. The Department is sensitive to commenter concerns on this issue, which is the primary reason yogurt was limited to the supplement (snack) only. And since both sweetened and unsweetened yogurts are available in the commercial market, the Department does not find it necessary to regulate the amounts or types of sweeteners and flavorings in the yogurts that meet the Standard of Identity.

Several commenters inquired whether yogurt can be used in the supplemental meal of the infant meal pattern. The Department's intent in publishing this rule is to affect the meat/meat alternate component of the supplement (snack) meal pattern for children ages 1 through 12 participating in the Summer Food Service Program and/or Child Care Food Program. The Department reminds providers that the infant meal pattern within the Child Care Food Program regulations does not require a meat/meat alternate component in the supplement (snack); therefore, the infant meal pattern is unaffected by the proposal.

A minimum number of commenters were concerned about the cost of yogurt; however, cost factors were apparently insignificant according to the majority of respondents in support of the proposed rule.

Several commenters expressed concern about the possibility of selecting both milk and yogurt as the two (2) components used in a supplement (snack). The Department discourages this practice and recommends the serving of a variety of food items from the vegetable or fruit component or bread or bread alternate component to complement the serving of yogurt. Milk and yogurt are too similar in nutritional value, texture, and color, and their simultaneous use would constitute poor menu planning practices.

Several commenters interpreted the proposed rule to allow the service of "homemade" yogurt prepared in an institutional setting. The intent of the proposed rule was to allow only commercially prepared yogurt products, which meet the Standard of Identity established in the CFR. The Department's rationale was based primarily on public health issues concerning safety and sanitation, all of which center on the probable lack of adequate controls. However, in order to be as responsive as possible to program providers, the Department seriously reconsidered the issue of "homemade" yogurt and sought the consultation of the FDA. After careful consideration, the exclusion of serving "homemade" yogurt is being retained in the final rule. The Department believes that, overall, this decision is in the best interest of the children being served under the Summer Food Service and Child Care Food Programs.

Of those who submitted comments, several inquired about the use of frozen yogurt. The Department reminds providers that frozen yogurt products are not covered under this final rule and are not acceptable as yogurt as they are not covered by a Standard of Identity, and are too dissimilar from yogurt in physical and nutritional characteristics. Currently, the Department does not credit nonstandardized foods for reimbursement in any of the Child Nutrition Programs.

Finally, about 3 percent of the total number of commenters took the opportunity to request that the Department consider tofu as a creditable meat/meat alternate, citing its high protein and low fat content. The Department solicited comments on tofu in a former proposed rule, and reminds these commenters that, in the final rule dated May 7, 1986 (51 FR 16807), the Department stated that "the comments did not provide any new nutritional research data on tofu * * * nor any sanitation information regarding the control of bacteria in tofu." Tofu, like frozen yogurt, is not a standardized food. Without such standards, there is no process within FNS that can assure the nutritional consistency of these products.

The Department would like to express its appreciation to all commenters who took the time to respond.

List of Subjects

7 CFR Part 225

Food assistance programs; Grant programs—health, infants and children, Reporting and Recordkeeping requirements.

7 CFR Part 226

Daycare; Food assistance programs. Grant programs—health, infants and children, Reporting and recordkeeping requirements.

Accordingly, Parts 225 and 226 are amended as follows:

PART 225—SUMMER FOOD SERVICE PROGRAM

1. The authority citation for Part 225 continues to read as follows:

Authority: Secs. 311, 323 and 326 of the School Lunch and Child Nutrition Amendments of 1986, Pub. L. 99–500 and 99–591, 100 Stat. 1783, 1783–359 to 362, 3341–363 to 365; Pub. L. 97–35, secs. 803, 809, 816, and 817(a)–(b), 95 Stat. 357, 524, 527 and 531 (42 U.S.C. 1759a, 1761, 1785, and 1759); Pub. L. 96–499, secs. 203 and 206, 94 Stat. 2599, 2600, and 2601 (42 U.S.C. 1759a and 1761); Pub. L. 95–627, secs. 5(c)–(d), 7(b), and 10(c)(2), 92 Stat. 3603, 3620, 3622, and 3624 (42 U.S.C. 1759a and 1761); Pub. L. 95–166, sec. 2, 91 Stat. 1325 (42 U.S.C. 1761); Pub. L. 91–248, sec. 7, 84 Stat. 207, 211 (42 U.S.C. 1759a); unless otherwise noted.

2. In Section 225.2 a new definition for yogurt is added in alphabetical order to read as follows:

§ 225.2 Definitions

* * * * *

"Yogurt" means commercially prepared coagulated milk products obtained by the fermentation of specific bacteria, that meet milk fat or milk solid requirements and to which flavoring foods or ingredients may be added. These products are covered by the Food and Drug Administration's Standard of Identity for yogurt, lowfat yogurt, and nonfat yogurt, (21 CFR 131.200), (21 CFR 131.203), (21 CFR 131.206), respectively.

3. In § 225.16, the table in paragraph (d)(3) is amended by adding a new entry for yogurt after the entry for "Peanuts or soynuts * * *" to read as follows:

§ 225.16 Meal service requirements.

* * * * *

(d) * * *

Supplemental Food

(3) * * *

Food components	Minimum amount
Meat and Meat Alternates	
• • • • •	
or	
Yogurt, plain, or sweetened and flavored.	4 oz. or ½ cup
• • • • •	
• • • • •	

PART 226—CHILD CARE FOOD PROGRAM

1. Authority citation for Part 226 continues to read as follows:

Authority: Secs. 9, 11, 14, 16 and 17, National School Lunch Act, as amended (42 U.S.C. 1758, 1759a, 1782a, 1765 and 1766).

2. In § 226.2 a new definition for yogurt is added in alphabetical order to read as follows:

§ 226.2 Definitions.

* * * * *

"Yogurt" means commercially coagulated milk products obtained by the fermentation of specific bacteria, that meet milk fat or milk solid requirements to which flavoring foods or ingredients may be added. These products are covered by the Food and Drug Administration's Standard of Identity for yogurt, lowfat yogurt, and nonfat yogurt, (21 CFR 131.200), (21 CFR 131.203), (21 CFR 131.206), respectively.

3. In § 226.20

a. the tables in paragraphs (c)(1), (c)(2), and (c)(3) are amended by revising the age category column headings.

b. the table in paragraph (c)(3) is amended by adding a new entry for yogurt after the entry for "Peanuts or soynuts * * *".

The revisions and addition read as follows:

§ 226.20 Requirements for meals.

* * * * *

(c) * * *

Breakfast

(1) * * *

Food components	Age 1 and 2	Age 3 through 5	Age 6 through 12
•	•	•	•

Lunch or Supper

(2) * * *

Food components	Age 1 and 2	Age 3 through 5	Age 6 through 12
•	•	•	•

Supplemental Food

(3) * * *

Food components	Age 1 and 2	Age 3 through 5	Age 6 through 12
•	•	•	•
Meat and Meat Alternates			
•	•	•	•
or			
Yogurt, plain, or sweetened and flavored.	2 oz or ¼ cup.	2 oz or ¼ cup.	4 oz or ½ cup.
•	•	•	•
•	•	•	•

* * * * *

George A. Braley,
Acting Administrator.

Date: June 22, 1989.

[FR Doc. 89-15248 Filed 6-27-89; 8:45 am]
BILLING CODE 3410-30-M

FEDERAL ELECTION COMMISSION

11 CFR Part 114

[Notice 1989-8]

Trade Association Solicitation

AGENCY: Federal Election Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: On March 15, 1989, the Commission published the text of a revision to 11 CFR 114.8(f), a regulation governing the solicitation of parent and subsidiary corporations by a trade association or a trade association's separate segregated fund. 54 FR 10622. This regulation applies the basic rule permitting trade associations to solicit the executive or administrative personnel, stockholders, and families of such personnel and stockholders (the "restricted class") of the trade

association's member corporations, subject to certain exceptions, established by the Federal Election Campaign Act of 1971, as amended. 2 U.S.C. 441b(b)(4)(D). Section 114.8(f) governs situations where a parent corporation is a member of a trade association but its subsidiary is not, or vice versa. The Commission announces that this rule is effective as of June 28, 1989.

EFFECTIVE DATE: June 28, 1989.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street NW., Washington, DC 20463, (202) 376-5690 or toll free (800) 424-9530.

SUPPLEMENTARY INFORMATION: 2 U.S.C. 438(d) requires that regulations prescribed by the Commission to implement Title 2, United States Code, be transmitted to the Speaker of the House of Representatives and the President of the Senate prior to final promulgation. The revision to 11 CFR 114.8(f) was transmitted to Congress on March 10, 1989. Thirty legislative days expired in the Senate on June 2, 1989 and in the House of Representatives on May 15, 1989.

Announcement of Effective Date: 11 CFR 114.8(f), as published at 54 FR 10622, is effective as of June 28, 1989.

Dated: June 22, 1989.

Danny L. McDonald,
Chairman, Federal Election Commission.

[FR Doc. 89-15295 Filed 6-27-89; 8:45 am]
BILLING CODE 6715-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 346

RIN 3064-AA78

Foreign Banks

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Final rule.

SUMMARY: The FDIC is publishing an addendum to its previously published (April 7, 1989) final regulation dealing with the International Banking Act ("IBA") which is to become effective on July 6, 1989. In regard to exemptions from deposit insurance for branches of foreign banks, the exemption for initial deposits of less than $100,000 by depositors who are neither citizens nor residents of the U.S. at the time of the initial deposit will be included in the final regulation. No other changes to the regulation will be made at this time.

FOR FURTHER INFORMATION CONTACT: Charles V. Collier, Assistant Director, or Joseph Duffy, Senior Financial Analyst, Division of Bank Supervision, (202) 898-6850 or (202) 898-6821, respectively, or Katharine H. Haygood, Senior Attorney, (202) 898-3732, 550 17th Street NW., Washington, DC 20429.

EFFECTIVE DATE: July 6, 1989.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The portions of the regulation affected by this publication contain no collections of information.

Discussion

On April 7, 1989 (at 54 FR 14064), the FDIC published a revision of its regulation dealing with foreign banks, 12 CFR Part 346. Although the regulation was published in final form with an effective date 90 days after publication (July 6), the FDIC requested comments on several points for a 60-day period (until June 6). Comment was specifically invited on the concept of the "initial deposit" as a means of measuring retail deposit activity (§ 346.6), on the exemptions from the deposit insurance requirement (§ 346.6(a)), and on the application of the waiver of offset to notes included by regulation within the term deposit (see § 346.19(d)(1)).

Eleven comments were received; and one of these comments concerned a matter not at issue, the denomination in U.S. dollars of assets pledged to the FDIC. The overwhelming majority of the comments related to the exemptions from deposit insurance, specifically to the deletion of the exemption currently embodied at § 346.6(a)(7). These comments argued that the exemption for initial deposits of a depositor who is neither a U.S. citizen nor resident at the time of the initial deposit should be retained, primarily because branches rely heavily on the exemption and its elimination would require substantial costs either to remain uninsured or to obtain insurance. Some argued that the International Banking Act was intended to cover only domestic deposits, the implication being that these deposits are not domestic, and that other entities accept such deposits without having to obtain deposit insurance. Commenters also maintained that the exemption has worked well as it currently exists and that the volume of these deposits is in excess of the "catchall" de minimis exemption, even at the 5% level included in the final regulation.

After considering all of the comments, the FDIC has decided to retain both the 5% de minimis provision (§ 346.6(a)(5)) and the current "noncitizen, nonresident" exemption (current § 346.6(a)(7), adopted here as § 346.6(a)(6)). (Although one comment related to computation of the de minimis provision using a base other than deposits, we believe that the basis for computation should be "deposits" pursuant to the definition in the Federal Deposit Insurance Act.) Although deposits of persons who remain noncitizens and nonresidents after the initial deposit are not domestic deposits and are not covered by the IBA, the FDIC does have concerns about depositors who become domestic depositors by either residence or citizenship in the United States. In this vein, it is crucial that proper notification of uninsured status be given to depositors. Each uninsured branch should verify that it is in compliance with § 346.7, which requires such notification. If a branch is not in compliance, that branch should notify the FDIC's Office of Analysis and Special Activities, Division of Bank Supervision, 550 17th Street NW., Washington, DC 20429, to determine what steps should be taken to attain compliance. In addition, it is recommended that uninsured branches consider notifying each depositor periodically (perhaps annually) of the uninsured status of the branch's deposits.

Comment also was sought on the use of the "initial deposit" as the tool for measuring retail activity. Two comments argued that the initial deposit does not reflect the true nature of the activity as retail or wholesale. Another comment believed the tool is acceptable. The FDIC continues to have concerns but believes that changes would require long-term study, so changes will not be made at this time. We continue to believe that many branches are not adequately monitoring initial deposits, and branches are once again cautioned to maintain records of initial deposits for the purposes of complying with this regulation.

The FDIC's proposed regulation on the extension of deposit liabilities has not been finalized, and the FDIC has decided to defer the question of the application of the waiver of offset to notes included as deposits. Only one comment referred to this matter, and it opposed the application of the waiver of offset.

This amendment will become effective on July 6, at the time the previously published regulation becomes effective. The amendment is restoring an exemption, so no delayed effective date is necessary.

Regulatory Flexibility Analysis

As stated in the final rule published on April 7, 1989 and in the proposed rule, the Board of Directors certified that the rule would not, if promulgated, have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). There are presently 24 foreign banks which have insured branches, and they are world-wide institutions with assets ranging from approximately $2 to $240 billion. The Regulatory Flexibility Act requirement of 5 U.S.C. 604 that a final regulatory flexibility analysis be prepared does not apply.

In addition, pursuant to the FDIC's statement of policy on the drafting of regulations, it has been determined that a cost-benefit analysis, including a small bank impact statement, is not required.

List of Subjects in 12 CFR Part 346

Bank deposit insurance, Foreign banks, banking, Banks, banking, Reporting and recordkeeping requirements.

For the reasons stated in this notice, and pursuant to the FDIC's authority under the Federal Deposit Insurance Act and the International Banking Act, FDIC hereby amends Part 346 of title 12 of the *Code of Federal Regulations* as follows:

PART 346—FOREIGN BANKS

1. The authority citation for Part 346 reads as follows:

Authority: 12 U.S.C. 1813, 1815, 1817, 1819, 1820, 3103, 3104, 3108.

2. In § 346.6, the introductory text to paragraph (a) is being republished, and a new paragraph (a)(6) is being added as follows:

§ 346.6 Exemptions from the insurance requirement.

(a) *Deposit activities not requiring insurance.* A State branch will not be deemed to be engaged in a domestic retail deposit activity which requires the branch to be an insured branch under § 346.4, if initial deposits in an amount of less than $100,000 are derived solely from the following:

* * * * *

(6) Any depositor who is not a citizen of the United States and who is not a resident of the United States at the time of the initial deposit.

* * * * *

By Order of the Board of Directors pursuant to a unanimous notational vote.

Dated at Washington, DC, this 20th day of June, 1989.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,
Executive Secretary.

[FR Doc. 89-15236 Filed 6-27-89; 8:45 am]
BILLING CODE 6714-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-91-AD; Amdt. 39-6244]

Airworthiness Directives; Aerospatiale Model ATR42 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Aerospatiale Model ATR42 series airplanes, which requires lockwiring of the engine oil pressure transmitter manifold drain plug. This amendment is prompted by reports of the plug working loose. This condition, if not corrected, could result in loss of oil and engine shutdown.

EFFECTIVE DATE: July 5, 1989.

ADDRESSES: The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert McCracken, Standardization Branch, ANM-113; telephone (206) 431-1979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain Aerospatiale Model ATR42 series airplanes. There have been reports of the engine oil pressure transmitter manifold drain plug becoming loose. This condition, if not corrected, could result in loss of oil and engine shutdown.

Aerospatiale has issued Service Bulletin ATR42-79-0006, Revision 1, dated April 18, 1989, which describes replacing and lockwiring the drain plug to an adjacent locknut. DGAC France has classified this service bulletin as mandatory, and has issued French Airworthiness Directive 89-042-018(B)R1 to address this subject.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD requires replacement and lockwiring of the engine oil pressure transmitter manifold drain plug, in accordance with the service bulletin previously described.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator,

the Federal Aviation Administration amends Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Aerospatiale: Applies to Model ATR42 series airplanes, Serial Numbers 003 through 138, certificated in any category. Compliance required within 10 days after the effective date of this AD, unless previously accomplished.

To prevent loss of engine oil and engine shutdown, accomplish the following:

A. Replace and lockwire the drain plug and adjacent locknut on the engine oil pressure manifold, in accordance with Aerospatiale Service Bulletin ATR42-79-0006, Revision 1, dated April 10, 1989.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Aerospatiale, 216 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective July 5, 1989.

Issued in Seattle, Washington, on June 9, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-14905 Filed 6-27-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-85-AD; Amdt. 39-6245]

Airworthiness Directives; McDonnell Douglas Model DC-8, DC-9, and C-9 (Military) Series Airplanes, Including Model DC-9-80 Series Airplanes and Model MD-88 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive, applicable to certain McDonnell Douglas Model DC-8, DC-9 and C-9 (Military) series airplanes, including Model DC-9-80 series airplanes and Model MD-88 airplanes, which requires an initial visual or dye penetrant inspection, repetitive dye penetrant inspections, and replacement, as necessary, of the rudder pedal bracket. This amendment is prompted by several reports of fatigue failures in the captain's rudder pedal bracket assembly on Model DC-9 series airplanes. This condition, if not corrected, could result in loss of rudder and braking control at either the captain's or first officer's position.

EFFECTIVE DATE: July 5, 1989.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Michael N. Asahara, DC9/MD80 Program Manager, Airframe Branch, ANM-122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5321.

SUPPLEMENTARY INFORMATION: One operator recently reported that a captain of a Model DC-9-31 series airplane tried to set the parking brakes, when a snap was heard, and the rudder pedals on the captain's side went to a horizontal position. Subsequent investigation revealed that the captain's pedal bracket assembly, P/N 5616067, had failed at all four points, where the bracket assembly attaches to the aircraft structure. The total accumulated time on the airplane was 50,426 hours and 66,765 total cycles.

In 1984, McDonnell Douglas received a report of a similar failure on a Model DC-9, which was attributed to fatigue. This part had accumulated 42,648 flight hours and 51,498 cycles. In this case, the captain was trying to set the parking brakes, but was unable to do so due to "mushy" rudder/brake pedals. The operator then accomplished a fleet-wide inspection campaign, but obtained negative results.

Metallurgical analysis by Douglas revealed that the bracket, which is a magnesium casting, had failed due to fatigue, initiating at the four attach points. Several other fatigue origins were observed in areas that had not failed. The consequence of such a failure is the loss of rudder and braking controls at the captain's position.

No failures of the rudder pedal bracket have been reported on Model DC-8 series airplanes; however, the bracket design on the Model DC-8 is similar to that of the Model DC-9. Therefore, the FAA has determined that Model DC-8 series airplanes would be subject to the same unsafe condition as described above.

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletins A27-273 (DC-8) and A27-307 (DC-9/DC-9-80/MD-88), both dated May 16, 1989, which describe procedures for accomplishing an initial visual or dye penetrant inspection of the rudder pedal bracket assembly, followed by repetitive dye penetrant inspections to ensure that no cracks exist.

Since this condition is likely to exist or develop on other airplanes of the same type design, this AD requires repetitive inspections for cracks in the first officer's rudder pedal bracket, and replacement of the bracket assembly if cracks are found, in accordance with the service bulletins previously described. Inspections are to continue after replacement is accomplished.

Due to the multiple-site nature of the reported cracking, the accumulated fatigue within the bracket, and the unpredictable nature of the crack propagation in the castings, there currently is no practical rework procedure or modification of the bracket which would preclude the necessity of the continual inspections required by this AD action. Accordingly, this AD does not permit "interim repairs." McDonnell Douglas is developing a design improvement which, when installed, would terminate the need for further inspections. When this design is developed and approved, the FAA may consider revising this AD to require its installation.

Since a situation exists, that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g). (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Applies to Model DC-8, DC-9 and C-9 (Military) series airplanes, including Model DC-9-80 series airplanes and Model MD-88 airplanes. Compliance is required as indicated, unless previously accomplished.

To prevent failure of the rudder pedal bracket assembly, which could result in the loss of rudder and braking control at either the captains' or first officer's positions, accomplish the following:

A. Prior to the accumulation of 40,000 landings or within 30 days after the effective date of this AD, whichever occurs later, perform either a visual or dye penetrant inspection for cracks of the captain's and first officer's rudder pedal bracket, part numbers (P/N) 5616067 and 5616068, respectively, in accordance with McDonnell Douglas Alert Service Bulletins A27-273 (for Model DC-8 series) or A27-307 (for Model DC-9 and DC-9-80 series and Model MD-88), as applicable, both dated May 16, 1989.

Note: McDonnell Douglas Alert Service Bulletins A27-273 (DC-8) and A27-307, both dated May 16, 1989, are hereinafter referred to as ASB A27-273 and ASB A27-307, respectively.

1. If an initial visual inspection is accomplished, and no cracks are found, perform a dye penetrant inspection of the rudder pedal bracket assembly within 180 days after the visual inspection, and thereafter accomplish dye penetrant inspections at intervals not to exceed 12 months or 2,500 landings, whichever occurs earlier.

2. If an initial dye penetrant inspection is accomplished, and no cracks are found, accomplish repetitive dye penetrant inspections at intervals not to exceed 12 months or 2,500 landings, whichever occurs earlier.

B. If cracks are detected, prior to further flight, remove and replace the rudder pedal bracket assembly in accordance with ASB A27-273 or A27-307, as applicable. Prior to the accumulation of 40,000 landings after replacement with the new part, resume the repetitive inspections in accordance with paragraph A., above.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the initial inspection requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This amendment becomes effective July 5, 1989.

Issued in Seattle, Washington, on June 9, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-14906 Filed 6-27-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-88-AD; Amdt. 39-6246]

Airworthiness Directives; Boeing Model 747-400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747-400 series airplanes, which requires replacement of electrical wiring to the fuel shutoff valve for each engine. This amendment is prompted by reports of the fuel shutoff valve wiring shorting to the surrounding electrical conduit, which resulted in circuit breaker tripping and inability to operate the associated fuel shutoff valve. This condition, if not corrected, could result in the inability to shutoff the supply of fuel in the event of an engine fire.

EFFECTIVE DATE: July 7, 1989.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Michael E. Dostert, Propulsion Branch, ANM-140S; telephone (206) 431-1974. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: This amendment adopts a new AD applicable to certain Boeing Model 747-400 series airplanes, which requires replacement of electrical wiring to the fuel shutoff valve for each engine. This amendment is prompted by three reported cases of engine fuel shutoff valve circuit breakers tripping, which resulted in the inability

to operate the associated fuel shutoff valve. The tripping of circuit breakers was caused by chafed wires shorting against surrounding conduit in the engine nacelle strut. This condition, if not corrected, could result in the inability to shutoff the supply of fuel to an engine. Replacing the length of wire in the conduit with new wire sleeved with teflon will reduce the possibility of chafing of the wire and subsequent shorting of the fuel shutoff valve wiring.

The FAA has reviewed and approved Boeing Alert Service Bulletin 747-28A2130, dated April 18, 1989, which describes procedures for replacement of a 15-foot section of engine fuel shutoff valve wiring in each engine nacelle strut with new wire in teflon sleeving.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD requires replacement of the wire in accordance with the service bulletin previously described.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 747-400 series airplanes, as listed in Boeing Alert Service Bulletin 747-28A2130, dated April 18, 1989, certificated in any category. Compliance required within 15 days after the effective date of this AD, unless previously accomplished.

To prevent inability to close the engine fuel shutoff valve, accomplish the following:

A. Modify the engine fuel shutoff valve wiring in accordance with the procedures described in Boeing Alert Service Bulletin 747-28A2130, dated April 18, 1989.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective July 7, 1989.

Issued in Seattle, Washington, on June 12, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-14894 Filed 6-27-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89-AWP-3]

Establishment of Transition Area, Lovelock, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a transition area at Lovelock, Nevada, to provide controlled airspace for instrument approaches to be conducted at Derby Field.

EFFECTIVE DATE: 0901 u.t.c., September 21, 1989.

FOR FURTHER INFORMATION CONTACT: Jon L. Semanek, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (213) 297-0433.

SUPPLEMENTARY INFORMATION:

History

On March 17, 1989, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a transition area at Lovelock, NV, to provide controlled airspace for instrument approaches to be conducted at Derby Field (54 FR 11232). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment of Part 71 of the Federal Aviation Regulations establishes a transition area at Derby Field, Lovelock, NV. This action will establish controlled airspace for aircraft executing instrument approach procedures at Derby Field.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71), is amended, as followed:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10654; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Lovelock, NV [NEW]

The airspace extending upward from 700 feet above the surface within a 5-mile radius of Derby Field, Lovelock, NV, lat. 40°04'05" N., long. 118°33'42" W. and within 4 miles each side of the 333° radial (317T) of Lovelock VORTAC extending to 12 miles north Lovelock VORTAC, and that airspace extending upward from 1,200 feet above the surface beginning at lat. 40°37'00" N., long. 118°36'30" W., to lat. 40°12'00" N., long. 118°55'00" W., to lat. 40°03'00" N., long. 118°52'00" W., to lat. 40°18'00" N., long. 118°22'00" W., to lat. 40°27'00" N., long. 118°34'00" W., to point of beginning and beginning at lat. 40°05'30" N., long. 118°27'00" W., to lat. 40°06'00" N., long. 118°23'00" W., lat 40°03'00" N., long. 118°22'00" W., to lat. 40°01'00" N., long. 118°28'00" W., thence via a 5-mile radius of Derby Field to point of beginning.

Issued in Los Angeles, California, on June 13, 1989.

Merle D. Clure,

Assistant Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 89-15209 Filed 6-27-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 771

[Docket No. 90402-9102]

General License GATS

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: General License GATS authorizes the departure from the United States of foreign registry civil aircraft on temporary sojourn in the United States and of U.S. registry civil aircraft for temporary sojourn abroad. The Bureau of Export Administration (BXA) is amending this General License by replacing the requirement for a letter requesting export authorization for non-returned U.S. registry aircraft, equipment, parts, accessories or components with a Form BXA-699P, Request to Dispose of Commodities or Technical Data Previously Exported.

EFFECTIVE DATE: This rule is effective June 28, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Muldonian, Regulations Branch, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377-2440.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule involves a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). The requirement for submitting a Form BXA-699P as set forth in § 771.19 supersedes the requirement for a letter request for export authorization for non-returned aircraft (approved by the Office of Management and Budget under Control Number 0694-0039). The Form BXA-699P is approved by the Office of Management and Budget under Control Number 0694-0010. Public reporting for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Office of Security and Management Support, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230; and to the Office of Management and Budget, Paperwork Reduction Project 0694-0010, Washington, DC 20503.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. Section 13(a) of the Export Administration Act of 1979, as amended (EAA) (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the EAA does not require this rule to be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 771

Exports, Reporting and recordkeeping requirements.

Accordingly, Part 771 of the Export Administration Regulations is amended as follows:

PART 771—[AMENDED]

1. The authority citation for 15 CFR Part 771 continues to read as follows:

Authority: Pub. L. 96-72, 83 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of Dec. 29, 1981, Pub. L. 99-64 of July 12, 1985 and Pub. L. 100-418 of Aug. 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223 of Dec. 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of Sept. 9, 1985 (50 FR 36861, Sept. 10, 1985) as affected by

notice of Sept. 4, 1986 (51 FR 31925, Sept. 8, 1986); Pub. L. 99-440 of Oct. 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of Oct. 27, 1986 (51 FR 39505, Oct. 29, 1986).

2. Section 771.19(c) is revised to read as follows:

§ 771.19 General license GATS; aircraft on temporary sojourn.

* * * * *

(c) *Request for authorization of non-return; use of form BXA-699P.* Where it is decided that a U.S. registered aircraft that departed the United States under authority of this General License GATS, or any of its equipment, parts, accessories, or components, will be sold or leased abroad, or will not be returned to the United States for any other reason, a request for authorization shall be submitted on a Form BXA-699P, Request to Dispose of Commodities or Technical Data Previously Exported, to the Office of Export Licensing at the address in § 771.2(h). (*See* § 774.3 for more information on reexport authorizations.) Such requests shall comply with all applicable provisions of the Export Administration Regulations covering exports directly from the United States to the proposed destination, and shall be accompanied by any documents that would be required in support of an application for export license for shipment of the same commodities directly from the United States to the proposed destination.

Dated: June 22, 1989.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 89-15300 Filed 6-27-89; 8:45 am]

BILLING CODE 3510-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 868

[Docket No. 87N-0113]

Cutaneous Carbon Dioxide ($PcCO_2$) Monitor

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it has issued orders in the form of letters to manufacturers to reclassify the cutaneous carbon dioxide ($PcCO_2$) monitor from class III to class II. The order is being codified in the Code of Federal Regulations as specified herein.

EFFECTIVE DATES: The reclassification was effective December 9, 1988. This regulation becomes effective July 28, 1989.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: FDA conducted an extensive literature review on cutaneous carbon dioxide ($PcCO_2$) monitors and sent this information to the Anesthesiology and Respiratory Therapy Devices Panel (the Panel) on January 17, 1986, requesting their comments on FDA's initiated reclassification of the cutaneous carbon dioxide ($PcCO_2$) monitor from class III to class II. The Panel members supported FDA's reclassification proposal. FDA announced in the notice in the **Federal Register** of May 16, 1986 (51 FR 18042), that a meeting of the Panel would be held to discuss and obtain a Panel recommendation on the proposed reclassification. During the open public meeting on June 5 and 6, 1986, the Panel considered FDA's reclassification proposal and its analysis of the data supporting the reclassification. The Panel recommended that the cutaneous carbon dioxide ($PcCO_2$) monitor be reclassified from class III (premarket approval) into class II (performance standards).

On July 25, 1988 (53 FR 27878), FDA published a notice of proposed reclassification. Interested persons were invited to submit comments by September 23, 1988. Two comments were submitted. The comments are addressed in the reclassification order.

On December 9, 1988, FDA sent to all known manufacturers of the device a letter (order) which reclassified the cutaneous carbon dioxide ($PcCO_2$) monitor, and substantially equivalent devices of this generic type, from class III to class II. Accordingly, as required by 21 CFR 860.134(b)(7) of the regulations, FDA is announcing the reclassification of the generic type of device from class III to class II. In addition, FDA is issuing a final regulation that codifies the reclassification of the device by adding new § 868.2480 *Cutaneous carbon dioxide ($PcCO_2$) monitor.*

After considering the economic consequences of approving this reclassification, FDA certifies that this final rule requires neither a regulatory impact analysis as specified in Executive Order 12291 nor a regulatory flexibility analysis as defined in the Regulatory Flexibility Act (Pub. L. 96-354). This reclassification will not have a significant economic impact on a substantial number of small entities.

All manufacturers of cutaneous carbon dioxide ($PcCO_2$) monitor devices will be relieved of the costs of complying with the premarket approval requirement in section 515 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e).

There are no offsetting costs that manufacturers would incur from reclassification into class II other than those associated with meeting a standard, once established. The magnitude of the economic savings attributable to this reclassification is dependent upon the number of premarket approval studies that would have been required of the manufacturers had reclassification not occurred. This savings may not be reliably calculated to permit an accurate quantification of the economic savings.

List of Subjects in 21 CFR Part 868

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 868 is amended to read as follows:

PART 868—ANESTHESIOLOGY DEVICES

1. The authority citation for 21 CFR Part 868 continues to read as follows:

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794-795 as amended, 90 Stat. 540-546, 552-559, 565-574, 576-577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

2. New § 868.2480 is added to Subpart C to read as follows:

§ 868.2480 Cutaneous carbon dioxide ($PcCO_2$) monitor.

(a) *Identification.* A cutaneous carbon dioxide ($PcCO_2$) monitor is a noninvasive heated sensor and a pH-sensitive glass electrode placed on a patient's skin, which is intended to monitor relative changes in a hemodynamically stable patient's cutaneous carbon dioxide tension as an adjunct to arterial carbon dioxide tension measurement.

(b) *Classification.* Class II (performance standards).

Dated: June 8, 1989.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-15194 Filed 6-27-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF EDUCATION

34 CFR Parts 74, 222, 251, 300, and 600

OMB Control Numbers; Correction

AGENCY: Department of Education.

ACTION: Final regulations; correction.

SUMMARY: This action corrects final regulations regarding display of valid OMB Control Numbers published on December 6, 1988 (53 FR 49141).

EFFECTIVE DATE: December 6, 1988.

FOR FURTHER INFORMATION CONTACT: Kenneth C. Depew, Telephone: (202) 732-2887.

SUPPLEMENTARY INFORMATION: In the December 6, 1988 **Federal Register:**

1. On page 49143, column one, the title of Part 74 is corrected to read "ADMINISTRATION OF GRANTS TO INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND NONPROFIT ORGANIZATIONS".

2. On page 49143, column three, item 13., the authority citation for Part 222 is corrected to read "Authority: 20 U.S.C. 236-241-1, and 242-244, unless otherwise noted.".

3. On page 49144, column three, item 36., "300.150" is removed from the list of sections amended.

4. On page 49146, column two, item 80., §§ 600.4, 600.5, 600.6, and 600.7 are added to the list of sections amended.

(44 U.S.C. 3501-/3520; 5 CFR Part 1320)

Dated: June 22, 1989.

Steven Y. Winnick,

Acting General Counsel.

[FR Doc. 89-15341 Filed 6-28-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900-AD90

Combined Ratings Table; Procedural Usage

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its regulation for procedural usage of the Combined Ratings Table. This change facilitates a uniform method of calculating the combined degree of disability where multiple disabilities arising from a single disease entity are combined with other disabilities. This change will eliminate an ambiguity regarding the stage at which disability evaluations are to be rounded in determining the combined degree of disability.

EFFECTIVE DATE: July 28, 1989.

FOR FURTHER INFORMATION CONTACT: Robert M. White, Chief, Regulations Staff, Compensation and Pension Service, Veterans' Benefits Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-3005.

SUPPLEMENTARY INFORMATION: On pages 7067-68 of the **Federal Register** of February 16, 1989 (54 FR 7067), the VA published a proposed regulatory amendment on usage of the Combined Ratings Table.

Interested persons were invited to submit comments, suggestions, or objections by March 20, 1989. Since no comments, suggestions, or objections were received, the proposed amendment is adopted as final.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is nonmajor for the following reasons.

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

(The Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.109)

List of Subjects in 38 CFR Part 4

Handicapped, Pensions, Veterans.

Approved: June 5, 1989.

Edward J. Derwinski,

Secretary.

PART 4—[AMENDED]

38 CFR Part 4 SCHEDULE OF RATING DISABILITIES, is amended by revising the introductory text, paragraphs (a) and (b) of § 4.25 as set forth below:

§ 4.25 Combined ratings table.

Table I, Combined Ratings Table, results from the consideration of the efficiency of the individual as affected first by the most disabling condition, then by the less disabling condition, then by other less disabling conditions, if any, in the order of severity. Thus, a person having a 60 percent disability is considered 40 percent efficient. Proceeding from this 40 percent efficiency, the effect of a further 30 percent disability is to leave only 70 percent of the efficiency remaining after consideration of the first disability, or 28 percent efficiency altogether. The individual is thus 72 percent disabled, as shown in table I opposite 60 percent and under 30 percent.

(a) To use table I, the disabilities will first be arranged in the exact order of their severity, beginning with the greatest disability and then combined with use of table I as hereinafter indicated. For example, if there are two disabilities, the degree of one disability will be read in the left column and the degree of the other in the top row, whichever is appropriate. The figures appearing in the space where the column and row intersect will represent the combined value of the two. This combined value will then be converted to the nearest number divisible by 10, and combined values ending in 5 will be adjusted upward. Thus, with a 50 percent disability and a 30 percent disability, the combined value will be found to be 65 percent, but the 65 percent must be converted to 70 percent to represent the final degree of disability. Similarly, with a disability of 40 percent, and another disability of 20 percent, the combined value is found to be 52 percent, but the 52 percent must be converted to the nearest degree divisible by 10, which is 50 percent. If there are more than two disabilities, the disabilities will also be arranged in the exact order of their severity and the combined value for the first two will be found as previously described for two disabilities. The combined value, exactly as found in table I, will be combined with the degree of the third disability (in order of severity). The combined value for the three disabilities will be found in the space where the column and row intersect, and if there are only three disabilities will be converted to the nearest degree divisible by 10, adjusting final 5's upward. Thus, if there are three disabilities ratable at 60 percent, 40 percent, and 20 percent, respectively, the combined value for the

first two will be found opposite 60 and under 40 and is 76 percent. This 76 will be combined with 20 and the combined value for the three is 81 percent. This combined value will be converted to the nearest degree divisible by 10 which is 80 percent. The same procedure will be employed when there are four or more disabilities. (See table I).

(b) Except as otherwise provided in this schedule, the disabilities arising from a single disease entity, e.g., arthritis, multiple sclerosis, cerebrovascular accident, etc., are to be rated separately as are all other disabling conditions, if any. All disabilities are then to be combined as described in paragraph (a) of this section. The conversion to the nearest degree divisible by 10 will be done only once per rating decision, will follow the combining of all disabilities, and will be the last procedure in determining the combined degree of disability.

* * * * *

(Authority: 38 U.S.C. 355)

[FR Doc. 89-15236 Filed 6-27-89; 8:45 am]

BILLING CODE 8320-01-M

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38 CFR Part 36

RIN 2900-AD39

Loan Guaranty; Payment of Loan Guaranty Claims

AGENCY: Department of Veterans Affairs.

ACTION: Final Regulations.

SUMMARY: The Department of Veterans Affairs (VA) is amending its loan guaranty regulations to implement the provisions of the Veterans' Home Loan Program Improvements and Property Rehabilitation Act of 1987. The law prescribes different dates for use in computation of the loan indebtedness in connection with the determination of net value and payment of the claim under loan guaranty in cases involving VA requested forbearance, voluntary bankruptcy or excessive delay, caused by VA, in the liquidation sale.

DATES: These regulations are effective July 28, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Leonard Levy, Assistant Director for Loan Management (261), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233-3378.

SUPPLEMENTARY INFORMATION: Under section 1810 of Title 38, United States Code, VA guarantees a portion of the loan made to an eligible veteran to acquire or refinance a home, condominium, or manufactured home which is treated as real estate under State law, or to install certain energy conservation features or other home improvements. The guaranty is a promise by the Government to pay a portion of the veteran's indebtedness in the event of a loan default and eventual termination through foreclosure or other proceedings.

On March 31, 1989, VA published in the **Federal Register** (54 FR 13321) proposed regulations to implement changes in the formulas used in paying loan guaranty claims which were prescribed by Pub. L. 100-198. Two public comments were received. Both commentators favored the proposed amendment. One, however, suggested that in cases where the liquidation sale is delayed by more than 30 days as a result of forbearance extended at the request of the Secretary or a voluntary case commenced under Title 11, United States Code (relating to bankruptcy), the cutoff date used for computation of the indebtedness should be the date the Secretary determines a foreclosure sale would have taken place if there had been no such delay. The proposed amendment to 38 CFR 36.4321 establishes a cutoff date 30 days after the date the Secretary determines a foreclosure sale would have taken place under these circumstances.

Although the commentator did not provide a justification for this suggestion, we understand that there will be situations in which the loan holder would have had the right to convey a property to the Secretary after foreclosure if the foreclosure sale had not been delayed but, based on the account indebtedness as of the cutoff date which would be applicable pursuant to this amendment, the holder would have no such right (i.e., the case would become and remain a no-bid). Such cases would not qualify for the no-bid relief intended by the statute.

Under 38 U.S.C 1832(c)(10)(C) provisions for no-bid relief are only applicable in cases where there is an "excessive" delay in foreclosure due to the extension of forbearance or a voluntary bankruptcy. The definition of "excessive" was left to administrative discretion and, in our opinion, a delay of 30 days constitutes a minimum period of delay to consider "excessive" in the context of foreclosure proceedings. The decision as to whether to establish a cutoff date prior to the 30 day point, at 30 days or after 30 days involved further discretion because there are advantages and disadvantages to all parties which will vary with the specific date adopted.

Use of the earliest possible cutoff date, which would be the date the sale would have taken place if there had been no delay, will avoid the maximum number of no-bids; use of later dates will progressively reduce the number of no-bids avoided. At the same time, however, it is important to remember that once a cutoff date is established no interest which accrues thereafter is allowable in the final accounting between the holder and the Secretary.

Only a small number of the cases which are subject to this paragraph will become no-bids on the 30th day after a foreclosure sale would have occurred had there been no delay; the others will be more or less evenly spaced over the five to nine month period during which foreclosure is typically delayed through bankruptcy (we anticipate few cases in which it would be appropriate for the Secretary to request forbearance under the circumstances addressed by this regulation because there is little reason to expect a borrower to reinstate an account when the net value of the property approximates the unguaranteed portion of the indebtedness; moreover, the loan holder has no obligation to agree to extend such forbearance). However, the earlier a cutoff date is established, the greater the amount of interest which will be excluded from the indebtedness in the loan holder's accounting with VA. Thus, if a case would become a no-bid 35 days after the original sale date, adoption of the suggestion would cost the loan holder 35 days worth of interest in its claim under the guaranty; in the same situation, applying the cutoff date specified in the amendment would only cost the loan holder 5 days worth of interest.

The determination to set a cutoff date 30 days after the date a foreclosure sale would have occurred involved balancing a reduction in the number of no-bids avoided with a reduction in the amount of interest loan holders would have to forego in their claims under loan guaranty in order to avoid no-bids. If the average delay in foreclosure due to a bankruptcy were seven months, and a loan holder had ten cases which would move from conveyance to no-bid status during each of those months, application of the amendment would result in ten of the cases remaining no-bids. Adoption of the suggestion would require VA to accept conveyance in all 70 cases, but would cost that loan holder one month's accrued interest in each case as a result of the earlier cutoff date. Assuming an average monthly interest accrual of $600 per case, the holder would avoid ten no-bids at a cost of $42,000.

In view of the need to balance no-bid avoidance with the loss of accrued interest otherwise payable to loan holders in their claims, it is our opinion that the provisions of the amendment as written are reasonable and they are being adopted as originally proposed, with one minor change. In section 36.4319, the regulation previously required the holder to forward a copy of a notice of foreclosure sale to VA at or before the date of first publication, posting or other notice, but in any event not less than 10 days prior to the date of sale. It was proposed to change this section to provide that a copy of the notice of sale be delivered within 30 days prior to the scheduled liquidation sale or 5 days after the date of first publication of the notice, whichever is later. This was an imprecise choice of words. The final regulations have been clarified to provide that the holder must deliver a copy of the notice of sale to VA at least 30 days prior to the liquidation sale or within 5 days after the date of first publication of the notice, whichever is later.

The Secretary hereby certifies that these regulatory amendments will not have a significant impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. These regulations simply implement new claims formulas in accordance with Pub. L. 100-198, for defaulted VA guaranteed loans, and will increase the number of cases on which lenders will have an option of conveying foreclosed properties to VA. Pursuant to 5 U.S.C. 605(b), these regulations are exempt from the initial and final regulatory analysis requirements of sections 603 and 604.

These regulatory amendments have been reviewed pursuant to Executive Order 12291 and have been found to be nonmajor regulation changes. The regulations will not impact on the public or private sectors as major rules. They will not have an annual effect on the economy of $100 million or more; cause a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or have other significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Catalog of Federal Domestic Assistance Program Number is 64.114.

List of Subjects in 38 CFR Part 36

Condominium, Handicapped, Housing loan programs-housing and community development, Veterans.

These amendments are promulgated under authority granted the Secretary by sections 210(c), 1803(c)(1), 1832 and 1820 of Title 38, United States Code, and the enabling legislation.

Approved: June 2, 1989.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR Part 36, LOAN GUARANTY, is amended as follows:

1. In § 36.4319, paragraph (b), the last sentence of paragraph (d), paragraph (f), and their authority citations and the authority citation for paragraph (e) are revised to read as follows:

§ 36.4319 Legal proceedings.

* * * * *

(b) A copy of a notice of sale shall be similarly delivered by the holder, or the holder's agent or trustee, to the Secretary at the VA Regional Office of jurisdiction at least 30 days prior to the scheduled liquidation sale, or within 5 days after the date of first publication of the notice, whichever is later. A copy of any other notice of sale or acquisition of the property served on the holder or advice of any sale of which the holder has knowledge shall be similarly delivered to the Secretary, including any such notice of a tax sale or other superior lien or judicial sale. Such notice shall be accompanied by a statement of the account indebtedness and a copy of the liquidation appraisal request, if not previously delivered.

(Authority: 38 U.S.C. 1832)

* * * * *

(d) * * * Within the time required by applicable law, or rule of court, the Secretary will cause appropriate special or general appearance to be entered in the case by an authorized attorney.

(Authority: 38 U.S.C. 1832)

(e) * * *

(Authority: 38 U.S.C. 1832)

(f) If following a default, the holder does not bring appropriate action within 30 days after requested in writing by the Secretary to do so, or does not prosecute such action with reasonable diligence, the Secretary may at the Secretary's option fix a date beyond which no further charges may be included in the computation of the indebtedness for the purposes of accounting between the holder and the Secretary. The Secretary may also intervene in, or begin and prosecute to completion any action or proceeding, in the Secretary's name or in the name of the holder, which the Secretary deems necessary or appropriate. The Secretary shall pay, in advance if necessary, any court costs or other expenses incurred by the Secretary or properly taxed against the Secretary in any such action to which the Secretary is a party, but may charge the same, and also a reasonable amount for legal services, against the guaranteed or insured indebtedness, or the proceeds of the sale of the security to the same extent as the holder (see § 36.4313 of this part), or otherwise collect from the holder any such expenses incurred by the Secretary because of the neglect or failure of the holder to take or complete proper action. The rights and remedies herein reserved are without prejudice to any other rights, remedies, or defenses, in law or in equity, available to the Secretary.

(Authority: 38 U.S.C. 1832)

2. In § 36.4320, the introductory text and authority citation for the introductory text of paragraph (f) are revised to read as follows:

§ 36.4320 Sale of security.

* * * * *

(f) The holder in accounting to the Secretary in connection with the disposition of any property in accordance with paragraph (a), (b), or (d) of this section, may include as a part of the indebtedness all actual expenses or costs of the proceedings, paid by the holder, within the limits defined in § 36.4313 of this part. In connection with the conveyance or transfer of property to the Secretary the holder may include in accounting to the Secretary the following expense items if actually paid by the holder, in addition to the consideration payable for the property under paragraph (g) of this section:

(Authority: 38 U.S.C. 1832)

* * * * *

3. Section 36.4321 is revised to read as follows:

§ 36.4321 Computation of guaranty claims; Subsequent accounting.

(a) Subject to the limitation that the total amounts payable shall in no event exceed the amount originally guaranteed, the amount payable on a claim for the guaranty shall be the percentage of the loan originally guaranteed applied to the indebtedness computed as of the earliest of the following dates:

(1) The date of the liquidation sale; or,

(2) The cutoff date established under paragraph (f) of § 36.4319 of this part; or,

(3) The cutoff date established under paragraph (b) of this section.

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Deposits or other credits or setoffs legally applicable to the indebtedness on the date of computation shall be applied in reduction of the indebtedness on which the claim is based. Any escrowed or earmarked funds not subject to superior claims of third persons must likewise be so applied.

(b) In any case in which there is a delay in the liquidation sale caused by:

(1) The holder of the loan extending forbearance in excess of 30 days at the request of the Secretary, the cutoff date for computation of the indebtedness shall be 30 days after the date the Secretary determines the liquidation sale would have taken place if there had been no such delay, provided: the net value of the real property securing the loan does not exceed the unguaranteed portion of the indebtedness as of the actual liquidation sale date *and* such net value will exceed the unguaranteed portion of the indebtedness as ofthe cutoff date;

(2) The Secretary, including the Secretary's failure to provide the holder with advice as to the net value of the security within two working days prior to a scheduled liquidation sale but excluding forbearance exercised at the request of the Secretary, with respect to a holder which has complied with the provisions of § 36.4319(b) of this part, the cutoff date for computation of the indebtedness shall be the date the liquidation sale would have taken place if there had been no such delay;

(3) A voluntary case commenced under Title 11, United States Code (relating to bankruptcy), the cutoff date for computation of the indebtedness shall be 30 days after the date the Secretary determines the liquidation sale would have taken place if there had been no such delay, provided: the net value of the real property securing the loan does not exceed the unguaranteed portion of the indebtedness as of the actual liquidation sale date *and* such net value will exceed the unguaranteed portion of the indebtedness as of the cutoff date.

(c) Adjustment of cutoff dates:

(1) Any cutoff date established under § 36.4319(f) of this part or paragraph (b) of this section will be adjusted by a period of months corresponding to the number of installment payments, if any, received by the holder and credited to the indebtedness after the cutoff date is established.

(2) When a cutoff date is established under paragraph (b)(2) of this section, the actual liquidation sale date will be used for purposes of computing the indebtedness in any subsequent accounting between the holder and the Secretary; if an earlier cutoff date is in effect at the time delay in a liquidation sale is caused by the Secretary, such date will not be modified by application of the provisions of paragraph (b)(2) of this section, but will be extended by an interval corresponding to the delay in the liquidation sale caused by the Secretary for purposes of computing the indebtedness in any subsequent accounting between the holder and the Secretary.

(3) Any cutoff date established under § 36.4319 of this part or paragraph (b) of this section will be considered to be the liquidation sale date. Such date will be modified in accordance with paragraph (b) of this section if the provisions of that paragraph are applicable after such date has been established.

(Authority: 38 U.S.C. 210(c))

(d) Credits accruing from the proceeds of a sale or other disposition of the security subsequent to the date of computation, and prior to the submission of this claim, shall be reported to the Secretary incident to such submission, and the amount payable on the claim shall in no event exceed the remaining balance of the indebtedness.

(Authority: 38 U.S.C. 210(c))

(e) The claimant shall be deemed to have received as trustee for the benefit of the United States any amounts received on account of the indebtedness after the date of the claim, from the proceeds of a sale of the security or otherwise, to the extent such credits exceed the balance of the indebtedness unsatisfied by the payment of the guaranty. The claimant shall immediately pay such amounts to the Secretary to the extent of the debtor's liability to the Secretary as guarantor.

(Authority: 38 U.S.C. 210(c))

[FR Doc. 89-15237 Filed 6-27-89; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

Approval and Promulgation of Implementation Plans; Tennessee: Source-Specific SIP Revisions for Fourteen Miscellaneous Metal Parts Coaters in Chattanooga

[TN-079; FRL-3608-9]

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today approves a request by the State of Tennessee that Tennessee Air Pollution Control Board Order 03-89 approving permits amended by agreed orders for fourteen miscellaneous metal parts coaters located within the city limits of Chattanooga, Tennessee (Hamilton County) be incorporated into the Tennessee State Implementation Plan (SIP). Volatile organic compound (VOC) emissions from miscellaneous metal parts coaters are governed by Tennessee Air Pollution Control Division (TAPCD) reasonably available control technology (RACT) regulation 1200-3-18-.21. Four of the permits amended by an agreed order contain VOC emission limits identical to the requirement of TAPCD regulation 1200-3-18-.21, which limits volatile organic compound (VOC) emissions to 3.5 pounds VOC per gallon of coating, excluding water. The remaining ten amended permits contain restrictions which limit the VOC emissions from each of the facilities below the 25 tons per year (tpy) applicability level for sources subject to VOC RACT regulations. The agreed orders contain provisions which are consistent with current Agency policy.

These agreed orders were submitted by the State of Tennessee to demonstrate full implementation of the ozone SIP in Chattanooga, Tennessee (Hamilton County). Such a demonstration is required in order for Hamilton County to be redesignated to attainment for ozone. EPA will act on Tennessee's redesignation request in a separate notice.

DATES: This action will become effective on August 28, 1989 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Written comments should be addressed to Kay Prince of EPA Region IV's Air Programs Branch (see EPA Region IV address below). Copies of the materials submitted by Tennessee may be examined during normal business hours at the following locations:

Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365

Tennessee Air Pollution Control Division, Customs House, 4th Floor, 701 Broadway, Nashville, Tennessee 37219

Chattanooga-Hamilton County Air Pollution Control Bureau, 3511 Rossville Boulevard, Chattanooga, Tennessee 37407

FOR FURTHER INFORMATION CONTACT: Kay Prince, Air Programs Branch, EPA Region IV, at the above address and telephone number (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: On July 7, 1986, the State of Tennessee requested that Hamilton County be redesignated from nonattainment to attainment for ozone. On April 1, 1987, sufficient monitoring data was received to demonstrate compliance with the National Ambient Air Quality Standard (NAAQS) for ozone and to meet the monitoring data requirements for Hamilton County to be redesignated to attainment for ozone. However, a demonstration that the ozone SIP has been completely implemented is also required for redesignation of a county from nonattainment to attainment. Because several miscellaneous metal parts coaters located in Hamilton County had neither installed a RACT level of control nor had their emissions appropriately limited below the applicability level of 25 tons of VOC emissions per year, the State of Tennessee was unable to demonstrate that the SIP had been fully implemented in Hamilton County.

Subsequently, on May 16, 1989, the State of Tennessee through the Tennessee Department of Health and Environment submitted to EPA a request that fourteen permits amended by agreed orders issued by the Chattanooga-Hamilton County Air Pollution Control Board be incorporated into the Tennessee SIP. Agreed orders were submitted for the following facilities located in Hamilton County:

(1) ASTEC Industries, Inc.
(2) Browning-Ferris Industries
(3) Chattanooga Armature Works
(4) Combustion Engineering, Inc.
(5) Cumberland Corporation
(6) Ekco/Glaco, Inc.
(7) Electrical Systems, Inc.
(8) The Landes Company, Inc. (formerly CFC Fabrication)
(9) McKee Baking Company
(10) Mueller Company
(11) Royal, Inc.
(12) Sherman & Reilly, Inc.
(13) Tuftco Corporation
(14) United States Stove Company

The permits amended by agreed orders for four of the facilities (ASTEC Industries, Inc., Combustion Engineering, Inc., The Landes Company, Inc., and Mueller Company) contain provisions which ensure compliance with the 3.5 lbs VOC per gallon of coating excluding water emission limitation in Tennessee regulation 1200-3-18-.21. Compliance with the emission limit is demonstrated using a 24-hour weighted average on a 1ine-by-line basis. Compliance on a 24-hour basis is consistent with Agency policy as stated in a January 20, 1984, memo from John R. O'Connor, Acting Director, Office of Air Quality Planning and Standards:

"Current Agency guidance specifies the use of a daily weighted average for VOC regulations as the preferred alternative where continuous compliance is not feasible."

In addition, the permits include EPA-approved test methods and adequate recordkeeping requirements. Therefore, the provisions of these four permits as amended by the agreed orders meet current Agency policy.

The permits amended by the agreed orders for the remaining ten facilities contain daily and yearly restrictions on VOC content in the coatings and coating usage which ensure the yearly emissions for each facility will be less than 25 tons per year of VOCs. EPA-approved test methods and adequate recordkeeping requirements are also included in the provisions of the permits. Therefore, the provisions of these ten permits as amended meet current Agency policy.

The current combined VOC emissions from the ten facilities limited below the applicability level equal 121.36 tons of VOC per year. The amended permits would allow a total of 237.49 tons of VOC emissions per year, thus creating the possibility of an increase in VOC emissions of 116.13 tpy. Should all ten of the facilities operate at full potential, such an increase in VOC emissions would not adversely affect the maintenance of the NAAQS for ozone. The control strategy of the Tennessee SIP required a 7% reduction in the Hamilton County 1977 VOC emissions inventory of over 23,000 tpy. By 1988, full implementation of the Tennessee regulations in Hamilton County would have provided a reduction exceeding 50% of the 1977 VOC emissions inventory. Therefore, a potential increase of 116.13 tpy, which is less than ½ of 1% of the 1977 emissions inventory, would not invalidate the control strategy for attainment of the ozone standard in Hamilton County.

Therefore, the permits as amended by the agreed orders for the fourteen facilities are consistent with current Agency policy. For the specific limitations in each permit, see the technical support document available at the EPA Region IV office.

Final Action

EPA approves the SIP revision which incorporates the orders for the fourteen facilities listed above into the Tennessee SIP. This action is being taken without prior proposal because the change is noncontroversial and EPA anticipates no significant comments on it. The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have significant economic impact on a substantial number of small entities (see 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 28, 1989. This action may not be challenged later in proceedings to enforce its requirements. (*See* 307(b)(2))

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone.

Note: The Director of the **Federal Register** approved the incorporation by reference of the Tennessee SIP on July 1, 1982.

Date: June 15, 1989.

Joe R. Franzmathes,

Acting Regional Administrator.

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

Subpart RR—Tennessee

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.2220 is amended by adding paragraph (c)(96) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(96) Tennessee Air Pollution Control Board Order 03-89 approving permits amended by agreed orders for fourteen sources was submitted to EPA on May 16, 1989, by the Tennessee Department of Health and Environment.

(i) Incorporation by reference. (A) Chattanooga-Hamilton County Air Pollution Control Board Agreed Order, Docket No. 582.01, Astec Industries, Inc., effective March 20, 1989.

(B) Chattanooga-Hamilton County Air Pollution Control Board Agreed Order, Docket No. 582.02, Browning-Ferris Industries, effective March 20, 1989.

(C) Chattanooga-Hamilton County Air Pollution Control Board Agreed Order, Docket No. 582.03, The Landes Company Inc., effective March 20, 1989.

(D) Chattanooga-Hamilton County Air Pollution Control Board Agreed Order, Docket No. 582.04, Chattanooga Armature Works, effective March 20, 1989.

(E) Chattanooga-Hamilton County Air Pollution Control Board Agreed Order, Docket No. 582.05, Combustion Engineering, Inc., effective March 20, 1989.

(F) Chattanooga-Hamilton County Air Pollution Control Board Agreed Order, Docket No. 582.06, Cumberland Corporation, effective March 20, 1989.

(G) Chattanooga-Hamilton County Air Pollution Control Board Agreed Order, Docket No. 582.07, Ekco/Glaco, Inc., effective March 20, 1989.

(H) Chattanooga-Hamilton County Air Pollution Control Board Agreed Order, Docket No. 582.08, Electrical Systems, Inc., effective March 20, 1989.

(I) Chattanooga-Hamilton County Air Pollution Control Board Agreed Order, Docket No. 582.09, Mueller Company, effective March 20, 1989.

(J) Chattanooga-Hamilton County Air Pollution Control Board Agreed Order, Docket No. 582.10, McKee Baking Company, effective March 20, 1989.

(K) Chattanooga-Hamilton County Air Pollution Control Board Agreed Order, Docket No. 582.11, Royal, Incorporated, effective March 20, 1989.

(L) Chattanooga-Hamilton County Air Pollution Control Board Agreed Order, Docket No. 582.12, Tuftco Corporation, effective March 20, 1989.

(M) Chattanooga-Hamilton County Air Pollution Control Board Agreed Order, Docket No. 582.13, Sherman & Reilly, Inc., effective March 20, 1989.

(N) Chattanooga-Hamilton County Air Pollution Control Board Agreed Order, Docket No. 582.14, United States Stove Company, effective March 20, 1989.

(O) Board Order 03–89 of the Tennessee Air Pollution Control Board which adopts fourteen miscellaneous metal parts coaters' permits for Chattanooga-Hamilton County on May 10, 1989.

(ii) Other materials. (A) Letter of May 16, 1989, from the Tennessee Department of Health and Environment.

[FR Doc. 89–15299 Filed 6–27–89; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 60

[AD–FRL–3606–7]

Standards of Performance for New Stationary Sources; Portland Cement Plants

AGENCY: Environmental Protection Agency.

ACTION: Denial of petition for reconsideration.

SUMMARY: The Portland Cement Association, et al., have petitioned the Environmental Protection Agency for a stay and reconsideration of a final rule amending the New Source Performance Standards (NSPS) for Portland Cement Plants published December 14, 1988 (53 FR 50354). This notice responds to the portion of the petition that seeks reconsideration of the Agency's decision to require revisions to the monitoring, recordkeeping, and reporting requirements associated with the NSPS. After careful review of the petition, the Agency has decided to deny the petition in full. By failing to present the Agency with new information of central relevance, petitioners have not met the criteria for reconsideration under the Clean Air Act. Accordingly, the Agency is denying the petition for reconsideration.

EFFECTIVE DATE: June 28, 1989.

ADDRESSES: *Docket.* Material relevant to the Agency's review and revision of the NSPS for Portland cement plants can be found in Docket No. A–84–06. The docket is available for public inspection between 8:30 a.m. and 3:30 p.m., Monday through Friday at the Agency's Air Docket Section (LE–131), Room M–1500, 1st Floor, Waterside Mall, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Tabler, Standards Development Branch (MD–13), Emission Standards Division, Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–5256.

SUPPLEMENTARY INFORMATION:

I. Background

An NSPS for Portland cement plants was promulgated on December 23, 1971 (36 FR 24876) and revised on November 12, 1974 (39 FR 39872). The NSPS established emissions limitations for any Portland cement plant that commenced construction, modification, or reconstruction after the Agency originally proposed the NSPS on August 17, 1971 (36 FR 15704).

Following its first 4-year review of the NSPS for Portland cement plants in 1979, the Agency did not revise either the standard or the associated monitoring and recordkeeping requirements (44 FR 60761). Four years later, the Agency reviewed the NSPS and the monitoring and recordkeeping requirements a second time. As a result, although the Agency did not alter the emission limits for Portland cement plants, it did propose amendments to the monitoring, recordkeeping, and reporting requirements associated with the NSPS (September 10, 1985; 50 FR 36956).

After taking public comments on the proposed amendments, the Agency promulgated a final rule on December 14, 1988 (53 FR 50354). The revisions required monitoring, recordkeeping, and reporting for all sources subject to the NSPS, i.e., all kilns and clinker coolers that were constructed, modified or reconstructed after August 17, 1971. The amendments required that each owner or operator subject to the standards install, calibrate, maintain and operate a continuous opacity monitoring system (COMS) within 180 days of promulgation of the amendments, i.e., by June 12, 1989.

On February 10, 1989, the Portland Cement Association, et al., filed an administrative petition with the Agency requesting reconsideration of the final rule or stay of the rule's effective date pending judicial review. Finding that petitioners had failed to meet the criteria for granting an administrative stay, the Agency denied the request for a stay in a letter dated March 10, 1989. This notice addresses the petition for reconsideration.

II. Criteria for Reconsideration

Section 307(b)(7)(B) of the Clean Air Act, 42 U.S.C. 7607(d)(7)(B), limits petitions for reconsideration in both time and scope. Specifically, it provides that the Agency shall convene a proceeding to reconsider a rule if a person raising an objection can demonstrate: (1) That it was impractical to raise the objection during the comment period, or that the grounds for such objection arose after the comment

period but within the time specified for judicial review; and (2) that the objection is of central relevance to the outcome of the rule. An objection is of central relevance only if it provides substantial support for the argument that the standards should be revised (see Denial of Petition to Reconsider National Ambient Air Quality Standards for Particulate Matter, December 29, 1988 (53 FR 52705, 52706); and Denial of Petition to Revise NSPS for Stationary Gas Turbines, December 11, 1980 (45 FR 81653–54), and decisions cited therein).

Congress sought to bring about a measure of finality in rulemakings under the Clean Air Act by requiring interested parties to raise all available objections during the rulemaking proceedings or not at all. The only exception provided is for objections based on "new information" of the type specified in section 307(d)(7)(B) (see id). Even if the petition were evaluated under section 4(d) of the Administrative Procedure Act, 5 U.S.C. 553(e), it would not affect the standard for reconsideration because the criteria for evaluating such petitions under the Administrative Procedure Act are essentially the same as those for section 307(d)(7)(B) petitions (see Denial of Petition to Reconsider National Ambient Air Quality Standards for Particulate Matter, December 29, 1988 (53 FR 52705, 52706); and Denial of Petition to Revise NSPS for Stationary Gas Turbines, December 11, 1980 (45 FR 81653–54)), and decisions cited therein.

III. Discussion

The notice of proposed rulemaking for Portland cement plants clearly indicated that the Agency was proposing to impose on existing Portland cement plants the COMS requirement and related amendments. The petitioners' argument that section 111 precludes the Agency from applying NSPS retroactively and that section 114 does not authorize the Agency to apply monitoring requirements to sources already subject to NSPS were addressed in the final rule, December 14, 1988 (53 FR 50354, 50360), and in a letter of March 10, 1989 denying the petitioners' request for a stay. The Agency explained that it had clear legal authority under section 114 to impose the requirements in question on existing sources. In asserting that compliance costs are expensive, petitioners are raising an issue that the Agency thoroughly addressed in the final rule in response to extensive comments (53 FR 50354, 50356–60). Furthermore, the cost estimates submitted during the comment period are generally similar to those submitted with the petition ((see e.g., figure of $128,000 for estimated installation costs for one plant submitted with petition compared to figures of $125,000–$130,000 submitted during comment period in a letter from the same company to the Central Docket Section, (Docket No. A–84–06, Item No. IV–D–6)). To the extent petitioners make new factual assertions regarding costs, petitioners have made no showing why these assertions could not have been raised during the rulemaking and in any event, these assertions do not rise to the level of "central relevance" to the outcome of the rule.

Moreover, the petitioners' arguments that the Agency was unjustified in applying the rule to the existing Portland cement plants is based on the mistaken premise that there were no environmental reasons to impose the requirements. The petitioners' arguments to the contrary are not supported by new information of central relevance. The petitioners' continuing disagreement with the Agency's conclusions does not establish grounds for reconsideration. The environmental justifications for the requirements were set forth in both the proposed and final rule of September 10, 1985 (50 FR 36956, 36961) and December 14, 1988 (53 FR 50353, 50361). Accordingly, petitioners have failed to present the Agency with new information that warrants reconsideration of its decision to impose COMS and other requirements on Portland cement plants. Hence, the petition for reconsideration is denied.

Docket

The docket is an organized and complete file of all the material relevant to EPA's review and revision of the promulgated rulemaking. The docketing system is intended to allow members of the public and industries involved to identify and locate documents so that they can effectively participate in the rulemaking process. The contents of the docket, except for interagency review materials, serves as the record in case of judicial review ((see Clean Air Act, section 307(d)(7)(A), 42 U.S.C. 7607(d)(7)(A)).

Paperwork Reduction Act

There are no information collection requirements associated with this action.

Executive Order 12291

Under Executive Order 12291, the Agency must judge whether a regulatory action is "major," and, therefore, subject to the requirement of a regulatory impact analysis. This action is not major because it does not change the existing regulation and, therefore, results in none of the significant adverse economic effects described in the Order.

List of Subjects in 40 CFR Part 60

Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Incorporation by reference, Portland cement plants.

Date: June 20, 1989.

William K. Reilly,
Administrator.

[FR Doc. 89–15268 Filed 6–27–89; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 261

[SW–FRL–3606–8]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is announcing its decision to grant a final exclusion to the EPA Combustion Research Facility (CRF), Jefferson, Arkansas, to exclude the scrubber water generated at its facility (during the incineration of still bottoms from the Vertac facility in Jacksonville, Arkansas) from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 268, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists.

EFFECTIVE DATE: June 28, 1989.

ADDRESSES: The public docket for this final rule is located at the U.S. Environmental Protection Agency, 401 M Street SW. (Room M2427), Washington DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475–9327 for appointments. The reference number for this docket is "F–89–CREF–FFFFF". The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424–9346, or at (202) 382–3000. For technical information concerning this notice, contact Terry Grist, Office of Solid Waste (OS–343), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382–4782.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

Under 40 CFR 260.20 and 260.22, facilities may petition the Agency to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained at 40 CFR 261.31 and 261.32. Petitioners must provide sufficient information to EPA to allow the Agency to determine (1) That the waste to be excluded is not hazardous based upon the criteria for which it was listed, and (2) that no other hazardous constituents are present in the waste at levels of regulatory concern.

B. History of the Rulemaking

The EPA Office of Research and Development submitted a petition to exclude, on a one-time basis, scrubber water generated from the incineration of dioxin-contaminated distillation bottoms at the Combustion Research Facility, located in Jefferson, Arkansas. The distillation bottoms referred to as the "Vertac waste", originated from the production of 2,4,5-trichlorophenol by the Vertac Chemical Company, located in Jacksonville, Arkansas. CRF incinerated this material as part of a research program to study the feasibility of incinerating hazardous waste. After evaluating the petition, EPA proposed, on April 14, 1989, to exclude CRF's waste from the lists of hazardous waste under 40 CFR 261.31 and 261.32 (see 54 FR 14971).

This rulemaking finalizes the proposed exclusion.

II. Disposition of Delisting Petition

EPA Combustion Research Facility, Jefferson, Arkansas.

1. Proposed Exclusion

CRF petitioned the Agency to exclude, on a one-time basis, scrubber water generated during the incineration of still bottoms from the Vertac facility in Jacksonville, Arkansas. CRF's waste is presently listed as EPA Hazardous Waste No. F020. CRF petitioned to exclude its waste based on the claim that the waste does not meet the criteria of the listing.

To support its claim that both the non-listed and listed constituents of concern are not present in the scrubber water above levels of concern, CRF submitted (1) A detailed description of its incinerator including schematic diagrams, an engineering description, and the incinerator operating conditions; (2) a description of the "Vertac waste" that was incinerated; (3) results from total constituent analyses of the scrubber water for the EP toxic metals and nickel; (4) results from total constituent analyses of the scrubber water for 40 CFR Part 261, Appendix VIII organics; and (5) analytical test results on chlorinated dioxin and furan (CDD/CDF) concentrations in the scrubber water. These analyses were performed on representative samples of CRF's scrubber water.

The Agency evaluated the information and analytical data provided by CRF in support of its petition and determined that the hazardous constituents found in the petitioned waste would not pose a threat to human health and the environment. In order to evaluate the potential hazards of the petitioned waste, the Agency considered the various possible exposure scenarios for this type of waste, including: (1) Spillage on the ground which could impact ground water, (2) discharge through sewers to a publicly owned treatment works (POTW), subsequent discharge to surface waters, and exposure through ingestion of surface water, and (3) discharge to surface water under the National Pollutant Discharge Elimination System (NPDES), and exposure through ingestion of surface water. Specifically, the Agency used its vertical and horizontal spread (VHS) model to evaluate the scenario where the petitioned waste is spilled on the ground and introduced directly to the ground water (*i.e.*, no unsaturated zone). The Agency also conducted worst-case evaluations of potential exposure due to discharge to surface water via a POTW or a NPDES permit. Based on these evaluations, the Agency determined that the constituents in CRF's waste would not migrate at concentrations above the health-based levels used in delisting decision-making. See 54 FR 14971, April 14, 1989, for a more detailed explanation of why EPA proposed to grant CRF's petition for a one-time exclusion of scrubber water generated at its facility during the incineration of still bottoms from the Vertac facility in Jacksonville, Arkansas.

2. Agency Response to Public Comments

The Agency did not receive any public comments regarding its decision to grant an exclusion to CRF for the petitioned scrubber water.

3. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that CRF's scrubber water should be excluded from hazardous waste control. The Agency, therefore, is granting a one-time final exclusion to the EPA Combustion Research Facility, located in Jefferson, Arkansas, for its scrubber water described in its petition as EPA Hazardous Waste No. F020. The exclusion only applies to the stored waste covered by the original demonstration. Because this is a one-time exclusion for the volume of scrubber water covered in its petition and evaluation by the Agency, CRF may modify the operation of its incinerator in the future without altering the regulatory status of the scrubber water excluded by this rulemaking so long as the scrubber water is not combined with hazardous wastes. Any new scrubber waters generated by CRF from the incineration of hazardous wastes would remain hazardous unless and until a separate delisting petition were granted.

Although management of the waste covered by this petition is relieved from Subtitle C jurisdiction, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

III. Limited Effect of Final Exclusion

The final exclusion being granted today is being issued under the Federal (RCRA) delisting program. States, however, are allowed to impose their own, non-RCRA regulatory requirements that are more stringent than EPA's, pursuant to Section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally-issued exclusion from taking effect in the State. Because a petitioner's waste may be regulated under a dual system (*i.e.*, both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact their State regulatory authority to determine the current status of their wastes under the State law.

IV. Effective Date

This rule is effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this rule should be effective immediately. These reasons also provide a basis for making this rule effective immediately, upon promulgation, under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This rule to grant an exclusion is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling the facility to treat its waste as non-hazardous. There is no additional economic impact, therefore, due to today's rule.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator or delegated representative may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations and is limited to one facility. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VII. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this final rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. 3501 *et. seq.*) and have been assigned OMB Control Number 2050–0053.

VIII. List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

June 19, 1989.

Jeffery D. Denit,

Deputy Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6905, 6912(a), 6921, and 6922].

2. In Table 1 of Appendix IX, add the following wastestream in alphabetical order:

Appendix IX—Wastes Excluded Under § 260.20 and § 260.22.

TABLE 1. WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
•	•	•
U.S. EPA Combustion Research Facility.	Jefferson, Arkansas.	One-time exclusion for scrubber water (EPA Hazardous Waste No. F020) generated in 1985 from the incineration of Vertac still bottoms. This exclusion was published on June 28, 1989.
•	•	•

[FR Doc. 89–15269 Filed 6–27–89; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 271

[FRL–3605–1]

Minnesota: Final Authorization of State Hazardous Waste Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correction and clarification.

SUMMARY: On April 24, 1989, the Environmental Protection Agency (EPA) published a **Federal Register** notice (54 FR 16361) indicating EPA's decision to grant final authorization to Minnesota for rules promulgated under the Resource Conservation and Recovery Act, and Hazardous and Solid Waste Amendments of 1984. No public comments adverse to EPA's decision were received by the end of the comment period on May 24, 1989. Therefore, final authorization for Minnesota will be effective on June 23, 1989.

The April 24, 1989, notice on page 16362, in the first column, inadvertently included a July 15, 1985, interim status rule amendment, "Permit Life," covering 40 Code of Federal Regulations §§ 270.10 (a), (c), (e); 270.30(j)(2); and 270.70 (a), (c), (d), (e), (f) (50 FR 28702–28755). While the State originally applied for authorization of this amendment, it has since determiend that additional rulemaking would be necessary. Therefore, this notice serves to correct the April 24, 1989, notice by omitting from final authorization the above interim stalus amendment. The State will seek authorization for this specific amendment in a future application.

EPA also wants to clarify that the State is receiving authorization for certain minor corrections to some of the rules listed in the April 24, 1989, **Federal Register** notice. Those corrections are as follows: Part B Information Requirements for Disposal Facilities, as amended September 9, 1987, (52 FR 33936); Liability Coverage, as amended November 18, 1987, (52 FR 44314–44321); Listing of Spent Solvents, as amended January 21, 1986, (51 FR 2702); Small Quantity Generators, as amended October 1, 1986, (51 FR 55190–55194); and, Liquids in Landfills, as amended May 28, 1986, (51 FR 19176).

EFFECTIVE DATE: Final authorization for Minnesota will be effective on June 23, 1989.

FOR FURTHER INFORMATION CONTACT: Christine Klemme, United States Environmental Protection Agency.

Waste Management Division, Region V, 230 South Dearborn, Chicago, Illinois 60604, (312) 886–3715.

Dated: May 30, 1989.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 89–15057 Filed 6–27–89; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 272

[FRL–3610–2]

Ohio; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination on application of Ohio for final authorization.

SUMMARY: The State of Ohio has applied for final authorization under the Resource Conservation and Recovery Act (RCRA). The United States Environmental Protection Agency (EPA) has reviewed Ohio's initial and revision applications and has reached a final determination that Ohio's hazardous waste management program satisfies all of the requirements necessary to qualify for RCRA final authorization. Thus, EPA is granting final authorization to the State of Ohio to operate its program in lieu of the Federal program subject to the limitations on its authority imposed by the Hazardous and Solid Waste Amendments of 1984 (Public Law 98–616, November 8, 1984) (HSWA).

EFFECTIVE DATE: Final authorization for the State of Ohio shall be effective at 1 p.m. on June 30, 1989. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 30, 1989.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Greenberg, Regulatory Development Section (5HR–JCK–13), Office of RCRA, U.S. EPA Region 5, 230 South Dearborn Street, Chicago, Illinois 60604, Phone (312) 886–4179.

SUPPLEMENTARY INFORMATION:

I. Background

Section 3006 of the RCRA allows EPA to authorize State hazardous waste management programs to operate in the States in lieu of the Federal hazardous waste program subject to the authority retained by EPA in accordance with HSWA.

On July 8, 1985, Ohio submitted an official application for final authorization. On March 29, 1989, EPA published a tentative decision announcing its intent to grant Ohio final authorization. Further background on the tentative decision to grant authorization appears at 54 FR 12931, March 29, 1989. Along with the tentative decision, EPA announced the availability of the application and other materials for public comment and the date of a public hearing on the tentative decision. A public hearing was held on April 28, 1989, in Columbus, Ohio, and the public comment period ended on May 5, 1989.

II. Comments/Responses

Four oral comments, some supplemented in writing, and ten letters containing written comments were received during the public comment period. Some of the commenters expressed support for EPA's tentative decision. The significant issues raised by the commenters and EPA's responses are summarized below.

1. *Comment:* Ohio's enforcement program is inadequate because it is understaffed and under funded. Also, regulated facilities are given too much time to correct violations.

Response: In the last three years, Ohio EPA has added 22 persons to its hazardous waste program staff. Also, based on a review of Ohio's application for final authorization and continuing periodic evaluations of its hazardous waste program, EPA has determined that Ohio operates a RCRA enforcement program which satisfactorily meets the requirements for compliance evaluation and enforcement authority of 40 CFR 271.15 and 271.16. Ohio's compliance and monitoring enforcement strategy contains enforcement timeframes which are at least equivalent to EPA's enforcement timeframes. EPA has evaluated Ohio's performance with respect to meeting those enforcement timeframes and has found that the State performance has been satisfactory.

2. *Comment:* Since it is important that Ohio's enforcement and permitting programs implement RCRA technical requirements in ways equivalent to and consistent with EPA interpretations, EPA must monitor and provide staff training for Ohio's RCRA program.

Response: EPA will continue to monitor the performance of Ohio's hazardous waste program through the Federal grant process which requires periodic evaluations of State performance. EPA will also continue to provide training and other technical support to the State.

3. *Comment:* Certain Ohio permit procedures are unnecessary and duplicative: (1) Ohio procedures for implementation of the Clean Air Act include a requirement for a "permit to install" for RCRA regulated facilities, and (2) Ohio requires RCRA-permitted facilities to obtain solid waste permits in order to dispose of non-hazardous wastes. Such unnecessary and duplicative requirements interfere with the treatment, storage or disposal of hazardous waste in Ohio.

Response: Ohio's Clean Air Act and solid waste permit provisions are not part of the State's RCRA program. When making authorization decisions, EPA may consider State provisions that are not part of the State's RCRA program only to the extent that such provisions may be inconsistent with the Federal and other authorized State RCRA programs (see 40 CFR 271.4) or otherwise affect the equivalence of the State's RCRA program. EPA has determined that Ohio's "permit to install" and solid waste permit provisions are not inconsistent with nor otherwise affect the equivalence of the State's RCRA program.

4. *Comment:* Under 40 CFR 271.4, two Ohio provisions are inconsistent with the Federal and authorized State RCRA programs. The inconsistent provisions are: (1) Ohio's new free structure (Ohio Revised Code 3734.18) which is inconsistent because fees for treatment or disposal of wastes are higher for wastes generated out-of-State than for wastes generated in-State, and (2) The Ohio consent-to-service provision (Ohio Revised Code 3734.131) which is inconsistent because it discourages the shipment of hazardous waste from out-of-state generators, brokers and transporters.

Response: Under section 3006(b) of RCRA, an authorized State's hazardous waste program must not be inconsistent with the Federal and other authorized State RCRA programs. EPA has defined consistency in 40 CFR 271.4. EPA reviewed Ohio's program and has determined, based on the available evidence, that the State's new fee structure and consent-to-service provisions are not inconsistent.

When reviewing Ohio's program under 40 CFR 271.4, EPA considered all relevant factors, but focused on objective evidence such as the quantities of wastes that are imported or exported into the State. If a provision has little or no impact on the flow of wastes, it is EPA's policy that the provision should not preclude authorization (50 *FR* 46439, November 8, 1985).

Ohio's new fee structure and consent-to-service provisions were enacted as parts of House Bill 592. The Ohio legislature passed House Bill 592 on June 2, 1988, the Governor of Ohio approved it, and the Bill was effective on June 24, 1988. The new fee structure was immediately effective while the consent-to-service provision did not become effective until January 1, 1989.

According to data compiled by the Ohio EPA for the period of January through March 1988, Ohio collected fees on the treatment and disposal of 121,139 tons of waste. During the same period of 1989, the State collected fees on 166,313 tons of waste, an increase of 45,174 tons.

The data provided by Ohio EPA does not distinguish between wastes generated in-state and out-of-state. However, at this time it is the best, and probably only, available evidence. Based on this data, EPA has determined that Ohio's new fee structure and consent-to-service provisions have not had a significant impact, if any, on the interstate movement of waste. EPA expects more detailed data will be available no later than the summer of 1990. When that new data or other reliable data becomes available, EPA will review it and reconsider whether Ohio's new fee structure and consent-to-service provisions are inconsistent.

5. *Comment:* Ohio needs hazardous waste management standards that are more stringent than the Federal RCRA standards.

Response: The Federal RCRA statutory standard for final authorization requires that State programs impose requirements that are at least as stringent as the Federal requirements (Section 3009 of RCRA). States may impose more stringent standards, but are not required to do so in order to be granted final authorization.

6. *Comment:* The commenter expressed concern that Ohio is not required to issue an environmental impact statement (EIS) as part of its RCRA permit process.

Response: Neither RCRA nor EPA's regulations require that an authorized State permitting process must include issuance of an EIS. Therefore, Ohio may receive authorization without including issuance of an EIS in its permitting process.

7. *Comment:* Section 3734(E)(3) of the Ohio Revised Code preempts local zoning codes. This prevents local authorities from ensuring that hazardous waste facilities meet the same public safety requirements other facilities must meet.

Response: Section 3734.05(E)(3) of the Ohio Revised Code prohibits the imposition of zoning requirements that are unique to hazardous waste management facilities. Section 3734.05(E)(3) does not exempt hazardous waste facilities from compliance with zoning requirements concerning, for example, fire hydrants and set back distances provided those requirements are applicable to all owners of similar types of property irrespective of whether or not they manage hazardous waste.

8. *Comment:* The State has not adopted requirements equivalent to those in 40 CFR 270.14 (Contents of Part B: General requirements).

Response: Ohio has adopted Rule 3745–50–44 which is virtually a verbatim incorporation of 40 CFR 270.14. Therefore, EPA has determined that Rule 3745–50–44 of the Ohio Administrative Code is at least equivalent to 40 CFR 270.14.

9. *Comment:* Ohio's procedures for public noticing of proposed permit actions are not in compliance with 40 CFR 124.6 through 124.21. Although the draft permit prepared by Ohio EPA and transmitted to the Hazardous Waste Facility Board (HWFB) is public noticed and there is opportunity for public comment, no one makes a determination whether the draft permit is in compliance with 40 CFR 271.13 or any other standard. Also, the public is not given adequate opportunity to participate in the Board's adjudicatory process.

Response: A State is not required to adopt procedures indentical to the Federal procedures listed in 40 CFR 271.14. A State may commit to many of the procedural requirements in a Memorandum of Agreement (MOA) with EPA, provided the State has adequate authority to enter into an MOA.

The Ohio Attorney General certified on July 1, 1985, that the Ohio EPA and HWFB have the authority to enter into the MOA, and that the "State statute and regulations provide requirements for permits as indicated in Checklist V." Checklist V lists the provisions of 40 CFR 124 which the State must have authority to implement for public notice of permit actions, public comment periods, and responses to comments. Checklist V was included in Ohio's application and identifies the State's analogues to 40 CFR Part 124.

EPA has reviewed Checklist V and determined that Ohio's hazardous waste program meets the requirements for permitting under 40 CFR 271.14. Draft Permits prepared by Ohio EPA must comply with Ohio Administrative Code rule 3745–50–21(A) which contains provisions at least equivalent to 40 CFR 124.6(d) and (e). Draft permits prepared by Ohio EPA and transmitted to HWFB are therefore equivalent to draft permits prepared by EPA pursuant to 40 CFR 124.6 and public noticed pursuant to 40 CFR 124.10.

10. *Comment:* What measures will be taken by the Ohio EPA's hazardous waste management program to ensure that significant historic, architectural, and archaeological resources are taken into consideration before permits are issued? How will Ohio EPA meet the requirements of the National Historic Preservation Act of 1966?

Response: Authorized State programs are required by 40 CFR 271.14 to comply with the provisions of 40 CFR 124.10, which includes a requirement for public notices of permit actions to be mailed to the Advisory Council on Historic Preservation and State Historic Preservation Officers for comment. Ohio has complied with the requirement by committing to compliance with 40 CFR 124.10 in a Memorandum of Agreement signed by the Ohio EPA, the chairman of HWFB and the EPA Regional Administrator. The State is allowed to comply with 40 CFR 271.14 in this manner since many of the provisions found therein are primarily administrative in nature. Any further compliance with the National Historic Preservation Act is not an authorization issue, but is dictated by the provisions of the Act itself.

11. *Comment:* Ohio's permitting process is more-burdensome than the Federal program because of the current division of responsibilities between Ohio EPA and the HWFB. Specifically, this division of responsibilities causes delays in Ohio's permitting process.

Response: Neither RCRA nor EPA regulations require States seeking final authorization to adopt permitting or other procedures identical to Federal procedures. State programs must only be consistent with, equivalent to, and no less stringent than the Federal program. EPA's authorization regulations do not require States to issue permits within specified time frames or under specified procedures. Such requirements could, in certain circumstances, be environmentally counter-productive if they were to force a decision that did not receive sufficient attention (e.g., complicated permitting decisions). RCRA does require that State programs be consistent with the Federal program, however, and EPA's regulations at 40 CFR 271.22(a)(2)(i) provide as a criterion for withdrawal of an authorized State program the failure to exercise control over regulated activities, including failure to issue permits. With respect to Ohio's permitting process, the commenter has provided no information indicating that any alleged delays reflect a failure of control over required activities. In fact, the commenter stated that the "typical [Ohio] permit process

time periods for new major TSD [treatment, storage, or disposal] facilities are twenty-four to thirty-six months." This time frame is typical of many States and permits are, in fact, being issued under Ohio's procedures.

EPA will continue to monitor Ohio EPA's issuance of permits after authorization. EPA does not believe that Ohio's permitting regulations, which allow for extensive and stringent review of applications to develop hazardous waste managment facilities, currently operate in any manner that is inconsistent with the Federal program.

12. *Comment:* After authorization of Ohio, EPA will continue to administer and enforce RCRA permits it has issued to facilities in the State until the permits expire or are terminated. This appears to be counter to Section 3006(b) of RCRA which provides that once a State receives final authorization for administration of the RCRA program, such a State is authorized to carry out the RCRA program in lieu of EPA.

Response: EPA routinely continues to enforce and administer the permits it issued to facilities in States prior to authorization of those States if the States choose not to issue their own authorized permits for those facilities or to adopt or enforce the Federal permits. Although authorization of a State program does allow a State to carry out the RCRA program in lieu of EPA, EPA retains it enforcement and oversight authorities. Therefore, the EPA issued permit continues in effect in an authorized State until it expires or is terminated and EPA may enforce and administer that permit.

13. *Comment:* Ohio should be required to adopt the Federal regulations promulgated on September 28, 1988, which streamlined the RCRA permit modification procedures to promote more efficient processing of permit modifications, and changes.

Response: The Federal regulations that EPA promulgated on September 28, 1988, are considered not to be any more stringent than the previous RCRA permit modification procedures. As explained in the preamble to that Rule, authorized States are only required to modify their programs to adopt amendments to Federal regulations that are more stringent that existing regulations (see 53 FR 37933–37934). Ohio is therefore not required to adopt the September 28, 1988, permit modification regulations.

III. Decision

After reviewing the public comments and the administrative record, I conclude that Ohio's application meets all of the requirements necessary to qualify for final authorization for the Federal RCRA program in effect as of July 8, 1984, and for non-HSWA revision Clusters I, II, and III. Accordingly, Ohio is granted final authorization to operate its program as revised and approved herein in lieu of the Federal RCRA program, subject to the limitations on its authority imposed by the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616, November 8, 1984) (HSWA).

Ohio now has the responsibility for permitting treatment, storage and disposal facilities within its borders and carrying out the other aspects of the RCRA program, subject to the HSWA. Ohio also has primary enforcement responsibility, although EPA retains the right to conduct inspections under Section 3007 of RCRA and to take enforcement actions under Sections 3008 and 3013 and 7003 of RCRA.

IV. Effect of HSWA on Ohio's Authorization

As stated above, Ohio's authority to operate a hazardous waste program under Subtitle C of RCRA is limited by the November 1984 HSWA to RCRA. Prior to that date, a State with final authorization would have administered its hazardous waste program entirely in lieu of EPA. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified timeframes. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under the amended section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by HSWA take effect immediately in all States regardless of their authorization status. EPA is directed to carry out those requirements and prohibitions. In authorized States, EPA implements the HSWA requirements or prohibitions, including the issuance of full or partial permits, until the State is granted authorization to do so. States must still adopt HSWA-related provisions as State law to retain final authorization.

As a result of the HSWA, there will be a dual State/Federal regulatory program in Ohio. To the extent the authorized program is unaffected by HSWA, the State program will operate in lieu of the Federal program. (Please note that all permits issued by EPA prior to the State being granted final authorization will continue in force until the effective date of the State's issuance or denial of a State RCRA permit.) To the extent HSWA-related requirements are in effect, EPA will administer and enforce those portions of HSWA in Ohio until the State receives authorization to do so. Among other things, this will entail the issuance of Federal RCRA permits for those areas in which the State is not yet authorized. Once Ohio is authorized to implement a HSWA requirement or prohibition, the State program in that area will operate in lieu of the Federal provision. Until that time, the State will assist EPA's implementation of HSWA under a Cooperative Agreement.

Today's final determination includes authorization of Ohio's program for a single requirement implementing HSWA, i.e., availability of information under Section 3006(f) of RCRA. Any State requirement that is more stringent than a Federal HSWA provision will also remain in effect under State law; thus, regulated handlers must comply with any more stringent State requirements.

EPA has published a **Federal Register** notice which explains in detail HSWA and its effect on authorized States. That notice was published at 50 FR 28702–28755, July 15, 1985.

V. Codification in Part 272

As part of its tentative decision published on March 29, 1989, EPA proposed to codify its approval of Ohio's program in Part 272 of Title 40, Code of Federal Regulations (CFR) and to incorporate by reference therein the State's statutes and regulations that EPA will enforce under section 3008 of RCRA. No comments were received concerning the proposed codification and it is being finalized today with only one change.

When the proposed rule was published, certain State regulations had not yet been published in the Ohio Monthly Record and were only available from the Ohio Secretary of State. Those regulations have now been published in the Ohio Monthly Record. The Ohio Monthly Record is a more readily available publication. Therefore, EPA has amended the proposed rule so that 40 CFR 272.1801 (a)(1) and (a)(2)(ii) now reference the pages of the Ohio Monthly Record where the State regulations can be found.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. The authorization suspends the applicability of certain Federal regulations in favor of the State program, thereby eliminating duplicative requirements for handlers of hazardous wastes in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Compliance With Executive Order 12291

The Office of Management and Budget (OMB) has exempted this rule from the requirements of section 3, Executive Order 12291.

List of Subjects in 40 CFR Part 272

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Incorporation by reference, Indian lands, Intergovernmental relations, penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority

This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b), and EPA Delegation 8–7.

Dated: June 21, 1989.

Frank Covington,

Acting Regional Administrator.

For the reasons set forth in the preamble, 40 CFR Part 272 is amended as follows:

PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

1. The authority for Part 272 continues to read as follows:

Authority: Secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

2. Subpart KK of Part 272 is revised to read as follows:

Subpart KK—Ohio

Sec.

272.1800 State authorization.
272.1801 State-Administered Program: Final Authorization.
272.1802–272.1849 [Reserved].

Subpart KK—Ohio

§ 272.1800 State authorization.

(a) The State of Ohio is authorized to administer and enforce a hazardous waste management program in lieu of the Federal program under Subtitle C of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6921*et seq.*, subject to the Hazardous and Solid Waste Amendments of 1984 (HSWA) (Pub. L. 98–616, Nov. 8, 1984), 42 U.S.C. 6926(c) and (g). The Federal program for which a State may receive authorization is defined in 40 CFR Part 271. The State's program, as administered by the Ohio Environmental Protection Agency, was approved by EPA pursuant to 42 U.S.C. 6926(b) and Part 271 of this Chapter. EPA's approval was effective on June 30, 1989. (See **Federal Register** of June 28, 1989.)

(b) Ohio is not authorized to implement any HSWA requirements in lieu of EPA unless EPA has explicitly indicated its intent to allow such action in a **Federal Register** notice granting Ohio authorization.

(c) Ohio has primary responsibility for enforcing its hazardous waste program. However, EPA retains the authority to exercise its enforcement authorities under Section 3007, 3008, 3013, and 7003 of RCRA, 42 U.S.C. 6927, 6928, 6934, and 6973, as well as under other Federal laws and regulations.

(d) Ohio must revise its approved program to adopt new changes to the Federal Subtitle C program, in accordance with section 3006(b) of RCRA and 40 CFR Part 271, Subpart A. Ohio must seek final authorization for all program revisions pursuant to section 3006(b) of RCRA but, on a temporary basis, may seek interim authorization for revisions required by HSWA pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(g). If Ohio obtains final authorization for the revised requirements pursuant to section 3006(b), the newly authorized provisions will be listed in 272.1801 of this Subpart. If Ohio in the future obtains interim authorization for the revised requirements pursuant to section 3006(g), the newly authorized provisions will be listed in § 272.1802.

§ 272.1801 State-administered program: final authorization.

Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b): Ohio has final authorization for the following elements submitted to EPA in Ohio's program application for final authorization and approved by EPA effective on June 30, 1989.

(a) State Statutes and Regulations.

(1) The following Ohio regulations are incorporated by reference and codified as part of the hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.* This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a). Ohio Administrative Code, Volume 4, Chapter 3745, Rules: 50–01; 50–03; 50–10; 50–11; 50–31 through 50–32; 50–40 through 50–44(C)(3)(j); 50–44(C)(4) through 50–44(C)(4)(k); 50–44(C)(5) through 50–44(C)(5)(h); 50–44(C)(6) through 50–44(C)(7)(i); 50–44(C)(8) through 51–03(C)(2)(b)(i); 51–03(D) through 51–03(E); 51–04 through 51–05(D)(2); 51–05(E) through 51–05(F)(2); 51–05(G) through 51–05(I); 51–06(A)(1) through 51–06(A)(3)(g); 51–06(B) through 52–20(E); 52–20 Appendix I through 52–34(C)(2); 52–40 through 52–43; 52–50 through 53–10; 53–11(D) through 53–20(G); 53–21 through 55–99; 56–20 through 56–31; 56–50 through 56–59; 56–70 through 56–82; 57–01 through 57–14(B); 57–15 through 57–17; 57–40 through 58–40; 58–43 through 58–44; 58–45(C); 58–46(C); 58–60 through 65–01(C); 65–10 through 68–14(C); 68–15 through 68–51; 68–70 through 68–82; 69–01 through 69–30 (OAC June 30, 1988, as supplemented by 1988–1989 Ohio Monthly Record, pages 430–495 (November 1988) and 848–868 (February 1989)). Copies of the Ohio regulations that are incorporated by reference in this paragraph are available from Banks-Baldwin Law Publishing Company, P.O. Box 1974, University Center, Cleveland, Ohio 44106–8697, Customer Service Department.

(2) The following statutory provisions and regulations concerning State enforcement, although not codified herein for enforcement purposes, are part of the authorized State program:

(i) Ohio Revised Code, Title 1, Chapter 119, Sections: 01 through 06.1, and 07 through 13; Ohio Revised Code, Title 1, Chapter 149, Sections 011, 43, and 44 (Page 1987); Ohio Revised Code, Title 37, Chapter 3734, Sections: 01 through 05, 07, 09 through 14.1, 16 through 17, 20 through 22, and 31 through 99 (Page, 1987).

(ii) Ohio Administrative Code, Volume 4, Chapter 3745, Rules: 49–031, 50–21 through 50–30; and 51–03(F) (OAC June 30, 1988, as supplemented by 1988–1989 Ohio Monthly Record, pages 430–495 (November 1988) and 848–868 (February 1989)).

(3) The following statutory and regulatory provisions are broader in scope than the Federal program, are not part of the authorized program, and are not codified for enforcement purposes.

(i) Ohio Revised Code, Title 37, Chapter 3734, Sections: 06, 08, 18 through 19, and 23 through 30 (Page, 1987).

(ii) Ohio Administrative Code, Volume 4, Chapter 3745, Rules: 50–33 through 50–37, and 53–11(A) through 53–11(C) (OAC June 30, 1988).

(b) Memorandum of Agreement. The Memorandum of Agreement between EPA Region V and the Ohio Environmental Protection Agency signed by the EPA Regional Administrator on

March 6, 1989, is codified as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(c) Statement of Legal Authority. (1) "Attorney General's Statement for Final Authorization," signed by the Attorney General of Ohio on July 1, 1985, is codified as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 et seq.

(2) Supplemental "Attorney General's Statements for Final Authorization," and addenda to such Statements signed by the Attorney General of Ohio on December 30, 1988, and February 24, 1989, are codified as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 et seq.

(d) Program Description. The Program Description and any other materials submitted as part of the original application or as supplements thereto are codified as part of the authorized hazardous waste management program under Subtitle of RCRA, 42 U.S.C. 6921 et seq.

§§ 272.1802 through 272.1949 [Reserved]

[FR Doc. 89-15409 Filed 6-27-89; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Parts 710 and 720

[OPTS-66038; FRL-3609-1]

Polymers Manufactured Using Free-Radical Initiators; Clarification of Reporting Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Clarification of rule.

SUMMARY: Under section 5 of the Toxic Substances Control Act (TSCA), any person who intends to manufacture or import a new chemical substance for non-exempt commercial purposes must notify EPA at least 90 days before manufacture or import begins. In this document, EPA is clarifying the section 5 premanufacture notification (PMN) requirements and section 8(b) Inventory reporting regulations for polymers manufactured using one or more free-radical initiators. To ensure that new chemical substances are properly reviewed before they are manufactured, EPA has concluded that free-radical initiators used at greater than two weight percent in the manufacture of a polymer must be included in the description of a polymer for the TSCA Inventory and for PMN purposes. However, EPA has decided to apply this policy only to polymers not listed on the Inventory as of the effective date of this document.

DATE: This document is effective July 28, 1989.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M Street, SW., Washington, DC 20460, (202-554-1404), TDD: (202-554-0551).

SUPPLEMENTARY INFORMATION: This document clarifies the PMN requirements and Inventory reporting regulations for polymers manufactured using one or more free-radical initiators.

I. Background

Several polymer manufacturers have raised the issue of whether or not free-radical initiators used in the manufacture of a polymer are required to be included in the TSCA section 8(b) Inventory description of the polymer. In particular, one polymer manufacturer asked if EPA had changed its policy regarding the description of polymers on the Inventory based on the Inventory Reporting Regulations (40 CFR Part 710) published in the **Federal Register** of December 23, 1977 (42 FR 64572), and the final PMN rule (40 CFR Part 720) and subsequent clarifications published in the **Federal Register** of May 13, 1983 (48 FR 21722), and September 13, 1983 (48 FR 41132), respectively. EPA's policy on polymers has not changed. However, EPA has become increasingly aware of the confusion surrounding this issue and polymer manufacturers' concerns regarding compliance with the PMN requirements in this area. Therefore, EPA has carefully reviewed its prior policy statements regarding the Inventory and PMN descriptions of polymers, including polymers manufactured using free-radical initiators.

In the Inventory Reporting Regulations (40 CFR Part 710), EPA required the reporting of polymers in terms of constituent monomers used at greater than two weight percent. Section 710.5(c) set out the reporting requirements:

Reporting polymers. (1) To report a polymer a person must list in the description of the polymer composition at least those monomers used at greater than two percent (by weight) in the manufacture of the polymer.

(2) Those monomers used at two percent (by weight) or less in the manufacture of the polymer may be included as part of the description of the polymer composition.

Note.—The "percent (by weight)" of a monomer is the weight of the monomer expressed as a percentage of the weight of the polymeric chemical substance manufactured.

The Inventory Rule did not define "monomer." However, also in December 1977, EPA published an instruction booklet, "Reporting for the Chemical Substance Inventory," which amplified the rule as follows:

The polymer description should identify only monomers and other reactive ingredients such as chain-transfer or cross-linking substances. Other additives, such as emulsifiers and plasticizers, which are not chemically a part of the polymeric composition should not be identified in the description of the polymer, and their weight should not be included in estimating the 'dry' weight of the polymer.

The phrase "monomers and other reactive ingredients" identifies reactivity as the feature required for an ingredient to be a part of the polymer composition. Thus chain-transfer agents, often thought of as merely controlling the molecular weight of the polymer without adding any properties of their own, are explicitly identified as reportable.

For the most part, the May 13, 1983 PMN rule (40 CFR Part 720) adopted the information requirements of the Inventory Reporting Regulations and of the October 1979 proposed PMN rule. However, the reporting requirements for polymers (40 CFR 720.45(a)(3)) were modified slightly. They read as follows:

For polymers, the notice must identify monomers and other reactants used in the manufacture of the polymer by chemical name and CAS Registry number (if available). The notice must indicate the typical percent of each monomer and other reactant in the polymer (by weight percent of total polymer); the maximum residual of each monomer present in the polymer; and a partial or incomplete structural diagram, if possible. The notice must provide estimates of the minimum number-average molecular weight of the polymer and the amount of low weight species below 500 and below 1,000 molecular weight and describe how the estimates were obtained.

In the PMN rule, monomers and other reactants were not distinguished. Although the phrase "maximum residual" was applied only to monomers, explanatory language (48 FR 21732) stated that: "[i]nstead of providing the range of composition of each monomer in the polymer, manufacturers need only estimate the typical composition of the monomers and other reactants, e.g., catalysts and initiators."

The purpose of the change from the October 1979 proposal was only to replace "range of composition" with "typical composition." Unfortunately, the juxtaposition of the terms

"catalysts" and "initiators" seems to have led to a misunderstanding. Free-radical initiators have often been loosely referred to in industrial parlance as "catalysts," because like catalysts they increase the rate of reactions. However, unlike true catalysts, they are not regenerated at the end of a cycle of the reaction sequence, but are consumed by the reactions they initiate. The explanatory language in the preamble of the PMN rule could be read to suggest that *both* initiators *and* catalysts should be included in the composition of the final polymer.

The September 13, 1983 (48 FR 41134), clarification stated that: "all monomers and other reactants used at greater than two percent are automatically included in the polymer name on the Inventory." There is also specific reference to initiators in the statement: "Reactants other than monomers include cross-linking agents, chain-terminating agents, free-radical initiators, and any other reactant which is intended to be incorporated into the structure of the polymer."

In response to comments on the October 1979 proposal and the May 1983 final rule, EPA indicated in the September 13, 1983 clarification that catalysts as such need not be included in the composition of a polymer:

* * * [S]ubstances should be listed in Part I(B)(2)(b) of the form only if they are intended to become incorporated into the polymer structure. If the manufacturer does not intend for the starting material to be incorporated into the polymer, it does not have to be listed in this section. For example, a starting material should not be listed in this section if it serves only to influence polymer formation without becoming a part of the new chemical substance, or if it is not intended to become part of the substance but is inadvertently incorporated into the polymer's structure. These materials, however, must be identified in other sections of the form.

Agents such as nonreactive surfactants, solvents, and catalysts and cocatalysts may be used during the manufacture of the polymer. If these agents are not intended to become chemically a part of the polymer, but if they remain in the polymer as impurities, they should be listed in Part I(B)(3) under impurities* * *. These agents must also be identified, whether or not they may occur as polymer impurities, in the Process Description (Part I(A)(1)] * * *.

EPA's clarification cannot be construed to extend the exemption of catalysts to the case of initiators. No general property of a catalyst requires it to become chemically incorporated in the polymer whose polymerization it is catalyzing (although such incorporation may in some cases occur). In contrast, fragments of free-radical initiators are almost always incorporated as end-groups of the polymers whose polymerization they initiate.

Some submitters have found the question of whether initiators should be included in the description of a polymer to be troublesome. Should an initiator be included if its presence in the polymer was unintentional? EPA addressed this question in a March 19, 1981 reply to a letter from a company. In its letter of reply, EPA stated that:

. . . a free-radical initiator may or may not be intended to become chemically a part of the polymeric composition. For example it may become a substituent of the growing polymer. On the other hand, it may serve primarily to react with a chain-transfer agent, which then in turn starts the growth of each polymer chain. If [it] is a free-radical initiator intentionally added to become part of the polymeric composition, then it is subject to the two percent rule. . . .

In other words, EPA took the position that initiators are ordinarily intended to become part of the polymeric composition, by becoming substituents of the growing polymer, unless other special effects, such as the intervention of chain-transfer agents, prevent them from doing so.

EPA attempted further clarification of this question of "intent" in the Polymer Exemption Rule (40 CFR 723.250), which was published in the **Federal Register** of November 21, 1984 (49 FR 46066). Section 723.250 defined "reactant" as ". . . a chemical substance that is used intentionally in the manufacture of a polymer to become chemically a part of the polymer composition." Expanding on this point in the discussion of the rule, EPA stated that reactants "include monomers, chain-transfer and cross-linking agents, monofunctional groups that act as modifiers, and other end groups that are not also monomers if they are incorporated into the polymer molecule." (49 FR 46069) Initiators, as the letter quoted above makes clear, fall into the category of "other end groups that are not also monomers."

Finally, in a letter to a company dated February 3, 1987, EPA stated that "intent" plays an important role in a company's determination of whether or not to include a free-radical initiator in the polymer description. While recognizing this, EPA reserved the right to raise questions relating to a reactant role for an initiator when it is charged at greater than two weight percent if there is obvious indication of significant incorporation of initiator into the polymer composition.

EPA believes that the record of its statements on polymer description supports its policy that free-radical initiators used at greater than two weight percent must be included in the polymer descriptions. This is consistent with the Congressional mandate that EPA review new chemical substances under TSCA section 5. However, EPA recognizes that polymer manufacturers may have in good faith misinterpreted this policy. Therefore, EPA is issuing this policy statement to eliminate the confusion regarding the PMN requirements for polymers manufactured using free-radical initiators at greater than two weight percent. Further, EPA has decided to apply this policy only to polymers not listed on the Inventory as of the effective date of this document, rather than requiring alternative methods to correct the Inventory. This approach will reduce the reporting burden for polymer manufacturers and will not adversely affect the integrity of the Inventory.

II. Polymers That Are Considered To Be on the TSCA Inventory

The Inventory currently covers more than 65,000 chemical substances of which approximately 16,000 are identified as polymers. Very few of the polymers currently listed on the Inventory include the identity of a free-radical initiator in the polymer name. EPA does not know how many of the 16,000 polymers were actually manufactured using a free-radical initiator at greater than two weight percent at the time they were reported for the Inventory.

Further, persons who did not understand EPA's policy for treatment of free-radical initiators may have manufactured polymers on the Inventory, with the addition of a free-radical initiator not included in the Inventory description, without concluding that it would be a new chemical substance. Although EPA recognizes that some of these polymers might not be correctly represented on the Inventory, the Agency believes it is impractical to attempt to correct the existing Inventory entries by including the identity of each free-radical initiator in the name of a polymer which was actually manufactured using that initiator at greater than two weight percent. Therefore, the following policies are adopted as of the effective date of this document:

A polymer to be manufactured with one or more free-radical initiators, in which at least one initiator is used at greater than two weight percent, is considered to be included on the Inventory:

(1) *Category 1:* If the identical polymer description, without any initiator(s) is on the Inventory as of the effective date of this document. (Substances that are

considered to be on the Inventory include those that were reported for the original Inventory as well as those reported following PMN review via a Notice of Commencement of Manufacture or Import under 40 CFR 720.102 that was received by EPA on or before the effective date of this document.) or

(2) *Category 2:* If the identical polymer description, including the same initiator(s) in the name, is on the Inventory.

To help subsequent manufacturers of polymers with free-radical initiators who must comply with this policy determine whether a polymer falls in Category 1 or 2, EPA will flag those polymers that are on the Inventory as of the effective date of this document, which do not have free-radical initiators in the polymer name (i.e., Category 1).

Further, EPA recommends that persons submitting a bona fide Notice of Intent to Manufacture or Import for a polymer (under 40 CFR 710.7(g) or 720.25(b)) clearly indicate which monomers and other reactants will be used at greater than two weight percent, and those used at two weight percent or less, in order to expedite the Inventory search.

III. PMN Requirements for New Polymers

As of the effective date of this document, a polymer manufactured using greater than two weight percent of an initiator will be subject to the PMN requirements unless (1) it is on the Inventory under the policy criteria outlined in Unit II of this preamble, or (2) EPA agrees with the manufacturer's (or importer's) claim that an initiator used at greater than two weight percent is not a reactant incorporated into the polymer structure.

A free-radical initiator used in the manufacture of a polymer is considered incorporated into the polymer structure if it is known or can be reasonably ascertained that the use primarily involves chemical incorporation of one or more initiator fragments (other than a hydrogen atom) into the polymer. A manufacturer's claim that a free-radical initiator used to manufacture a polymer is not incorporated into the polymer structure, must be substantiated by adequate supporting information. EPA will not accept mere assertion by a manufacturer that a free-radical initiator is simply not incorporated. Information to support such an assertion could include, for example, a description of the activity of the initiator and the extent to which this activity will operate; an explanation of what is intended by this activity role; the extent of incorporation of initiator-derived fragments; any measures taken to prevent or limit incorporation; any product properties or performance factors that would make incorporation undesirable; and any other technical, economic, or utility considerations that would sustain the manufacturer's claims.

If a polymer is manufactured using a free-radical initiator at two weight percent or less, the initiator does not have to be included in the Inventory description of the polymer. However, if at some future point, the manufacturer wants to increase the percentage of that free-radical initiator above two weight percent, this could require a PMN unless the polymer with the initiator is on the Inventory under the policy discussed above. Further, a manufacturer may request in a PMN for a new polymer that an initiator used at two weight percent or less be included in the Inventory description of the polymer by marking the appropriate "Identity" column in the polymer identification section on page 4 of the PMN form. This long-standing policy applies to any reactant used at two weight percent or less. If a manufacturer decides to include an initiator used at two weight percent or less as part of the Inventory name of a new polymer, the initiator may be used at levels greater than two weight percent, but may not be eliminated completely unless the polymer without the initiator is on the Inventory or if the manufacturer also submits a PMN for the polymer without the initiator. In such situations, it may be appropriate for a manufacturer to request permission from the section 5 Prenotice Coordinator (TS-794), U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460 or (202) 382-3745, to submit a consolidated PMN. (See discussion on consolidated notices in the preamble to the May 13, 1983 PMN final rule (48 FR 21734).

IV. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. EPA has determined that this document which clarifies a specific provision of the PMN rule is not "major" as that term is defined in section 1(b) because: The annual effect of the clarification of the rule on the economy will be less than $100 million; it will not cause any significant increase in costs or prices for any sector of the economy or for any geographic region; and it will not result in any significant adverse effects on competition, employment, investment, productivity, or innovation or on the ability of United States enterprises to compete with foreign enterprises in domestic or foreign markets. This document was submitted to the Office of Management and Budget (OMB) for review prior to publication.

B. Regulatory Flexibility Act

As required by the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA certifies that this document which clarifies a specific provision of the PMN rule will not have a significant economic impact on a substantial number of small businesses.

C. Paperwork Reduction Act

This document clarifies information collection requirements which have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and have been assigned OMB control number 2070-0012.

List of Subjects in 40 CFR Parts 710 and 720

Chemicals, Environmental protection, Premanufacture notification, Reporting and recordkeeping requirements.

Dated: June 19, 1989.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 89-15270 Filed 6-27-89; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6371

[CO-930-09-4214-10; C-45714]

Cancellation of Public Land Order No. 6730; Withdrawal of National Forest System Land for Protection of Recreational Values; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order cancels Public Land Order No. 6730 and withdraws approximately 374 acres of National Forest System lands from mining for a period of 50 years for the protection of existing and planned recreational facilities near Aspen, Colorado. The lands have been and remain open to such other forms of disposition as may

by law be made of National Forest System Lands and to mineral leasing.

EFFECTIVE DATE: June 28, 1989.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, Bureau of Land Management, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215-7076, 303-236-1768.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, it is ordered as follows:

1. Public Land Order No. 6730, signed June 13, 1989, FR Doc. 89-14513 appearing at pages 25855 and 25856 in the June 20, 1989, issue of the Federal Register is hereby canceled. The actions taken in said public land order are covered in the following paragraphs of this order.

2. Subject to valid existing rights, the following described National Forest System lands, which are under the jurisdiction of the Secretary of Agriculture, are hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2) to protect existing and planned recreational values which are a part of the Aspen Mountain Ski Area:

Sixth Principal Meridian

White River National Forest

T. 10 S., R. 84 W.,
- Sec. 18, S½SE¼NW¼NW¼, SW¼NW¼, W½SW¼, and W½E½SW¼, excluding patented lands;
- Sec. 19, W½E½W¼,W½W½,W½SE¼ NE¼NW¼,W½E½SE¼NW¼,E½E½ SW¼,W½SW¼NW¼SE¼,W½NW¼ SW¼SE¼, and SW¼SW¼SE¼, excluding patented lands;
- Sec. 30, W½W½NE¼,W½E½SW¼NE¼, NW¼,N½N½NE¼SW¼,SW¼NW¼ NE¼SW¼,SW¼NE¼NE¼SW¼, N½NE¼NW¼SW¼, and N½NW¼ NW¼SE¼, excluding patented lands.

T. 10 S., R. 85 W.,
- Sec. 13, SE¼NE¼,E½SW¼NE¼,E½W½ SE¼, and E½SE¼, excluding patended lands;
- Sec. 24, E½E½ and E½W½NE¼, excluding patented lands;
- Sec. 25, NE¼NE¼, NE¼SE¼NE¼, and NE¼SE¼SE¼NE¼, excluding patented lands.

The areas described aggregate approximately 374 acres in Pitkin County.

3. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of National Forest System lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

4. This withdrawal will expire 50 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

June 22, 1989.

Manuel Lujan Jr.,

Secretary of the Interior.

[FR Doc. 89-15294 Filed 6-27-89; 8:45 am]

BILLING CODE 4310-JB-M

Proposed Rules

Federal Register
Vol. 54, No. 123
Wednesday, June 28, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 945

[Docket No. FV-89-095]

Idaho-Eastern Oregon Potatoes; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order No. 945 for the 1989–90 fiscal period. Authorization of this budget would allow the Idaho-Eastern Oregon Potato Committee to incur expenses necessary to administer this program. Funds to administer this program would be derived from assessments on handlers.

DATE: Comments must be received by July 10, 1989.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–447–2431.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement No. 98 and Marketing Order No. 945 (7 CFR Part 945) both as amended, regulating the handling of Irish potatoes grown in designated counties in Idaho and Malheur County, Oregon. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 70 handlers of Idaho-Eastern Oregon potatoes under this marketing order, and approximately 3,650 potato producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

The budget of expenses for the 1989–90 fiscal year was prepared by the Idaho-Eastern Oregon Potato Committee (committee), the agency responsible for local administration of the order, and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of potatoes. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local area, and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected shipments of potatoes. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses.

The committee met on May 24, 1989, and unanimously recommended a budget for the 1989–90 fiscal period of $78,180 and an assessment rate of $0.0026 per hundredweight of potatoes handled. This compares to the 1988–89 budget of $82,200. The proposed assessment rate is the maximum permitted under the order and has remained the same for over two decades. The proposed budget is $4,020 less than last year, reflecting decreases of $2,320 for computer purchases and $5,400 for the purchase of an automobile for the manager's use. These decreases would be partially offset by a five percent increase in committee staff salaries as well as increases in rent, postage, telephone and gasoline. With the proposed assessment rate of $0.0026, anticipated fresh market shipments of 21 million hundredweight would yield $54,600 in assessment income. This, along with approximately $3,600 in fees, $1,000 in interest and $18,980 from the reserve, would be adequate for budgeted expenses. At the end of the fiscal period, the reserve fund is expected to approximate $22,000.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

This action should be expedited because the committee needs to have sufficient funds to pay its expenses. The 1989–90 fiscal period begins on August 1, 1989, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable potatoes handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the committee at a public meeting. Therefore, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approval for this program needs to be expedited. The committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 945

Marketing agreements and orders, potatoes (Idaho and Oregon).

For the reasons set forth in the preamble, it is proposed that § 945.242 be added as follows:

PART 945—POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR Part 945 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new section 945.242 is added to read as follows:

§ 945.242 Expenses and assessment rate.

Expenses of $78,180 by the Idaho-Eastern Oregon Potato Committee are authorized, and an assessment rate of $0.0026 per hundredweight of assessable potatoes is established for the fiscal period ending July 31, 1990. Unexpended funds may be carried over as a reserve.

Dated: June 22, 1989.

William J. Doyle,
Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–15278 Filed 6–27–89; 8:45 am]
BILLING CODE 3410–02–M

7 CFR Parts 1126 and 1106

[Docket Nos. AO–231–A56 and AO–210–A46; DA–88–110]

Milk in the Texas and Southwest Plains Marketing Areas; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision recommends the denial of proposals to amend the producer-handler definitions of the Texas and Southwest Plains Federal milk marketing orders. The decision concludes that there is insufficient evidence at this time to warrant the adoption of proposals intended to fully regulate any relatively large producer-handler unless such person limits his distribution of milk to home delivery routes and to sales from a store located on the same premises as his processing plant. The decision is based on the record of a public hearing held September 7–8, 1988, at Irving, Texas.

DATES: Comments are due on or before July 28, 1989.

ADDRESSES: Comments (five copies) should be filed with the Hearing Clerk, Room 1083, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–2089.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this rulemaking proceeding will not have a significant economic impact on a substantial number of small entities since no changes in the rules are being adopted.

Prior documents in this proceeding:

Notice of Hearing: Issued June 10, 1988; published June 16, 1988 (53 FR 22499).

Notice of Rescheduled Hearing: Issued July 14, 1988; published July 19, 1988 (53 FR 27174).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreements and the orders regulating the handling of milk in the Texas and Southwest Plains marketing areas. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, DC 20250, by the 30th day after publication of this decision in the Federal Register. Five copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The decision on the proposed amendments set forth below is based on the record of a public hearing held at Irving, Texas, on September 7–8, 1988, pursuant to notices of hearing issued on June 10, 1988 (53 FR 22499) and July 14, 1988 (53 FR 27174).

The material issues on the record of hearing relate to:

1. The producer-handler definition;
2. The producer definition; and
3. Whether emergency marketing conditions exist with respect to issue number one.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. The Producer-Handler Definition

No changes should be made to the producer-handler definitions of the Texas and Southwest Plains orders. The record does not demonstrate the existence of disorderly marketing conditions that warrant the adoption of proposals intended to fully regulate any relatively large producer-handler unless such person limits his milk distribution to home delivery and sales from a store on the premises of his plant.

Currently, producer-handlers are exempt from the pricing and pooling provisions of the orders. Generally, both orders define a producer-handler as a person who operates both the milk production and plant processing facilities as one enterprise, and who has route disposition of fluid milk products in the marketing area. The Texas order permits a producer-handler to purchase the lesser of five percent of his Class I disposition or 10,000 pounds per month from pool plants. The Southwest Plains order does not provide a limit on the pounds of milk that a producer-handler can purchase from pool plants and other order plants. Both orders do not permit a producer-handler to purchase milk from dairy farmers or to dispose of other source milk as Class I milk, with limited exceptions. Also, both orders specify that a producer-handler is a person who provides proof satisfactory to the market administrator that the care and management of the dairy farm and other resources necessary for own-farm production and the management and operation of the processing plant are the personal enterprise and risk of such person.

Three cooperative associations (Associated Milk Producers, Inc., Mid-America Dairymen, Inc., and Southern Milk Sales, Inc.) that represent a substantial proportion of the producers

who supply the markets proposed that the current producer-handler definitions be revised. The proposals for the two orders would establish additional requirements to qualify as a producer-handler for those fluid milk processors that sell more milk than is produced on an average size farm. Under the original proposal, any handler that had monthly route disposition of 150,000 pounds or less under the Texas order, or 100,000 pounds or less under the Southwest Plains order, would be exempt from the pricing and pooling provisions. At the hearing, the proposal was modified to provide under each order for a 300,000-pound per month limitation, which would apply only to producer-handlers rather than all handlers. As a result of the modification, there is some ambiguity as to the criteria that would apply in defining producer-handlers. However, the major emphasis of the proposal was to differentiate between producer-handlers on the basis of size with additional proposed requirements being applicable to relatively larger operations.

Under the proposal, larger operations that had both production and processing facilities would be limited to disposing of fluid milk products directly to consumers through home delivery retail routes or through a retail store located on the same property as the milk processing plant in order to qualify as a producer-handler. Any other type of distribution would result in a disqualification of producer-handler status, which proponents claimed would recognize those points in the marketing channel where a pricing advantage over regulated handlers contributes to disorderly marketing. In addition, the proposal would prohibit a producer-handler from having a financial interest in any other handler or dairy farm operation. It also would require that any producer-handler who loses such status meet all the conditions for such status for a period of one month before re-acquiring producer-handler status. The purpose of these conditions is to preclude a producer-handler from changing its regulatory status to fit sales conditions or change its organizational structure to gain benefits at the expense of others. Basically, the proposed conditions are a more specific statement of factors that would be reviewed by a market administrator in administering the "sole risk" criteria contained in the current producer-handler definitions of both orders.

The proposed definitions would limit a producer-handler's purchase of fluid milk products from pool plants to the lesser of five percent of Class I disposition or 5,000 pounds per month. In addition, the proposals would require that producer-handlers pay the administrative assessment that is applicable to handlers.

The proposals of the cooperative associations were supported by the Milk Industry Foundation, a national trade association of processors and distributors of fluid milk and fluid milk products. Also, three handlers who operate plants that are regulated under the orders supported the adoption of the proposals. Basically, all of the proponents contend that producer-handlers who are large enough to have a significant commercial impact on the market should be regulated to maintain orderly marketing conditions. They contend that producer-handlers, as a result of their exemption from the pricing and pooling provisions, have a substantial competitive advantage in the cost of milk over fully regulated handlers who are required to pay minimum order prices for milk on the basis of its use. They contend that full regulation of such operations would promote a greater degree of equity among all handlers as well as among all producers, who would be protected from a loss of Class I sales because of unfair competition.

One producer-handler under the Texas order and two producer-handlers under the Southwest Plains order opposed the restriction to the types of sales for larger producer-handlers. They also suggested increasing the size limitation for exemption to 500,000 or 700,000 pounds per month. One of these producer-handlers requested that the proposal for the Southwest Plains order be dismissed since there was no evidence offered to suggest that producer-handlers currently operating under that order were causing disorderly marketing conditions.

One other producer-handler who recently acquired such status under the Texas order, the Pure Milk and Ice Cream Company, presented testimony in opposition to the implementation of any part of the proposals. Basically, Pure Milk contends that the implementation of the proposals would be inconsistent with the longstanding policy of the Department and Congressional intent to exempt producer-handlers from full regulation. In addition, Pure Milk contends that it does not have a competitive advantage over fully regulated handlers and that there is no evidence of the existence of disorderly marketing conditions as a result of its acquiring producer-handler status.

A number of producer-handlers under other Federal orders filed briefs in opposition to the proposals. These producer-handlers contend that the adoption of the proposals would set a precedent to be followed under other Federal orders that would result in the full regulation of operations that are currently exempt from pricing and pooling provisions. These producer-handlers contend that adoption of the proposals would represent a deviation of policy, contrary to Congressional intent, to exempt producer-handlers who have no demonstrated advantage over regulated handlers as a result of the costs associated with maintaining the reserve supplies of milk that are necessary to balance fluid milk needs. They further contend that disorderly marketing conditions have not resulted in other markets where a relatively large number of producer-handlers compete with regulated handlers for fluid milk sales.

In their brief, the proponent cooperative associations indicated that they would not be opposed to a reliance on only a pound limitation as was suggested by various parties at the hearing, rather than their original proposal, as long as such limitation was low enough to fully regulate Pure Milk and other producer-handlers who are large enough to have a disruptive impact in the market. In its brief, one other handler also suggested that a pound limit should be adopted that would exempt smaller operations but regulate larger operations. The handler suggested that the limit should be related to the smallest size handler that could have an efficient and consistent supply relationship with producers or a cooperative association. The size limit, above which producer-handlers would be regulated without regard to any other criteria, would be equivalent to a handler who is large enough to receive a tanker load of milk every other day.

A significant proportion of proponent's testimony was centered on the legislative history of the Act as it relates to the authority to regulate handlers who sell fluid milk products derived solely from own-farm production. Proponents contend that it was the intent of Congress to fully regulate such type of handlers who are large enough to have an impact in the marketplace and that only relatively small operations were intended to be exempt from regulation. Proponents testified that the purpose of the Act, which they contend is to stabilize marketing conditions for producers, is primarily accomplished by establishing classified pricing and by the pooling of returns from the sale of milk among all producers. They further testified that, to the extent that unpriced milk is free to enter the regulatory scheme, the objective of the Act—to promote orderly marketing—is frustrated. Furthermore, they contend that a failure to regulate large producer-handlers results in nonuniform prices to handlers, which they claim also is contrary to requirements of the Act. Thus, they conclude that inequities exist between fully regulated handlers and exempt producer-handlers, which they contend caused the very same market disruption that is intended to be rectified by Federal regulation.

Proponents maintain that the proposals are consistent with the intent of Congress in that relatively small operations would continue to be exempt from full regulation. Also, producer-handlers, however large they might be, would also be exempt from full regulation if their sales of fluid milk products were not in direct competition with those of regulated handlers. Proponents testified that disruptive competition would not result to the extent that sales of large producer-handlers are restricted to home delivery and to sales from a plant store on the same premises as the processing plant. Proponents contend, however, that to the extent that sales are made in the same commercial channels used by regulatad handlers, the same regulatory provisions should apply to producer-handlers as to handlers. Otherwise, proponents contend, producer-handlers who have a significant pricing advantage can disrupt the marketing of milk to the detriment of regulated handlers and to the producers who supply the milk requirements of the market.

Proponents testified that it is necessary, as a result of changes in marketing conditions, to alleviate the potential for market disorder that may result because of unfair competition between regulated handlers and exempt producer-handlers. Proponents contend that with the trend towards fewer and larger producers and handlers, there is an increasing potential for the vertical integration of production and processing operations of sufficient size to be disruptive factors in these Federal order markets. With respect to the Southwest Plains order, proponents testified that no such larger operations exist. In fact, proponents testified that it was not the intent of the proposals to regulate any of the currently existing producer-handlers because, in their view, no disorderly marketing conditions have resulted from competition between handlers and producer-handlers. However, proponents expressed major concerns over the existence of one relatively large handler (Braums Dairy) who has a substantial amount of own-farm production. In proponents' view, such handler has the potential to avoid full regulation by becoming a producer-handler. Thus, proponents contend that the proposal should be adopted to prevent such a possibility.

With respect to the Texas order, proponents directed their concern towards the Pure Milk and Ice Cream Company (Pure Milk), which acquired producer-handler status in July of 1988. Proponents testified that Pure Milk had been a fully regulated handler under the Texas order for a long period of time. Producer-handler status was achieved as a result of the purchase of the Pure Milk fluid milk plant at Waco, Texas, by Gore, Inc., a family corporation that, as a producer, operated seven dairy farms under the Texas order. Proponents testified that during May 1988, when Pure Milk was a fully regulated handler, production of the seven farms was in excess of five million pounds while the plant received about 4.4 million pounds of milk, 3.4 million of which was for fluid use. Proponents claim that as a result of acquiring producer-handler status, Pure Milk has a significant competitive advantage over regulated handlers. Basically, proponents contend that the advantage is equivalent to the difference between the order Class I price, which is the minimum price that regulated handlers must pay, and the order blend price, which is what Gore, Inc., would receive as a producer under the order. On this basis, proponents contend, Pure Milk has as much as a 14-cent per gallon advantage over regulated handlers. On the basis of Pure Milk's May 1988 utilization, proponents testified that Pure Milk reduced its cost for milk by almost $34,000 by operating as a producer-handler, equivalent to 77 cents per hundredweight of milk received at the plant. Proponents testified that cost differences of such magnitude, when outlets change hands for a fraction of a cent, represents a disorderly marketing condition in and of itself. In addition, proponents testified that the acquisition of producer-handler status also resulted in a loss of income to dairy farmers by the removal of Class I sales from the market. Furthermore, proponents maintain that an operation the size of Pure Milk, which supplies supermarkets, institutions, restaurants and military bases, is clearly not the type of operation that was intended to be exempt from regulation.

In its testimony and brief, Pure Milk argues that the proposal to regulate producer-handlers on the basis of either size or method of distribution would be inconsistent with a longstanding policy of the Department. Furthermore, Pure Milk contends that the legislative criteria for regulation is not based on size itself, but rather on whether producer-handlers (independently or in the aggregate) represent so large a portion of sales in a Federal order market as to disrupt the operation of the order to the detriment of other dairymen in the market. In this context, Pure Milk argues that it is not a significant factor in the market because its production represents about one percent of producer milk and that its status as a producer-handler represents a loss to order producers of about one-half of one percent of total revenue. Thus, Pure Milk concludes that it represents a far lesser proportion of sales and has a lesser impact on producers than producer-handlers in other markets where similar proposals to fully regulate producer-handlers were denied. Pure Milk argues that it would be inappropriate and inconsistent for it to be fully regulated when producer-handlers representing from six to 20 percent of Class I sales in other markets were not found to be sufficiently large as to be disruptive.

Pure Milk also contends that it would not be an economically viable operation if it were fully regulated. Basically, Pure Milk contends that it does not have a competitive advantage over regulated handlers with its current producer-handler status. Pure Milk testified that it does not have a pricing advantage equal to the difference between the order Class I and blend price as testified by proponents since its plant utilization is not taken into consideration. Pure Milk testified that its plant utilization of milk reflects a blend price value that exceeds the order blend price by only 80 cents per hundredweight since an 80 percent Class I utilization must be maintained to balance its fluid milk needs. Also, Pure Milk contends that such figure does not include the costs associated with disposing of its reserve milk supplies or the offsetting value that accrues to the pool on its surplus milk that is allocated to Class I use at the regulated plant that purchases Pure Milk's surplus production. In addition, Pure Milk argues that the blend price or the plant utilization value has nothing to do with the cost of producing milk. Pure Milk testified that its cost of production exceeds the order blend price by about one dollar per hundredweight, which is a primary reason that producer-handler status was sought. Furthermore, Pure Milk argues that since the cost of raw milk represents about 43.5 percent of the cost of finished fluid milk products,

there are sufficient opportunities for cost reductions from increased efficiencies by larger operations to compete with smaller operations that may have a lower raw product cost.

Pure Milk also argues that even if it had a pricing advantage as suggested by proponents, other factors associated with the nature of its business would render the advantage meaningless. Basically, Pure Milk contends that any pricing advantage could not be exploited in the marketplace since its source of supply is limited to its own-farm production. Even increased distribution as a result of sales by Pure Milk's customers result in higher costs associated with additional hauling of partial loads of milk from its farms to meet additional milk needs, according to Pure Milk. In addition, Pure Milk contends that should it have some milk with quality problems it cannot replace this milk with milk from the open market as can be done by a regulated handler. Moreover, Pure Milk testified, for a handler no more than a load of milk is lost. For Pure Milk, it is argued, the load is lost and it also faces additional costs of full regulation if supplemental milk must be purchased. Pure Milk further argues that a large proportion of its income must be spent in quality assurance at the farm as well as at the plant.

Pure Milk also argues that there is no evidence of disorderly marketing conditions that might warrant adoption of the proposal. Pure Milk claims that producers are not materially affected by Pure Milk's producer-handler status and there is no significant evidence of a loss of accounts by any handlers. Also, there is no pattern of bids on sales to institutions, schools, military bases or prisons to suggest an unfair competitive advantage by Pure Milk. Furthermore, Pure Milk argues that there is no evidence of the trend towards vertical integration of production and processing functions as was indicated by proponents. Pure Milk testified that many factors are involved in this, such as the location of the plants and farms, the size of the farms compared to the size of plants, the availability of a plant, the economic viability of the plant, and the desire or ability to incur the additional management load and risk. In addition, Pure Milk contends that it must pursue a conservative marketing practice because of the substantial risks involved in being both a processor and a producer, including the threat of full regulation if supplemental supplies must be purchased.

The purpose of Federal milk marketing orders is to establish orderly marketing conditions for producers who are the regular suppliers of milk. In its simplest terms, this is accomplished by establishing minimum prices for milk in accordance with its use and providing for the pooling or equal sharing of the proceeds from the sale of milk in all uses among all dairy farmers supplying the market.

Any time that milk is sold within a Federal order marketing area and such milk is not priced by the order, the ability of the order to maintain orderly and stable marketing conditions for milk may be impaired. When milk of a producer-handler is sold in a Federal milk marketing area, such milk is not priced by the order. In such case, the order does not provide uniform regulated pricing among competing handlers since fully regulated handlers must pay the minimum order Class I price for milk in fluid uses while producer-handlers are not required to do so. This raises the potential for competitive inequities among handlers. Furthermore, there is not an equal sharing among all dairy farmers in the market of the returns from the sale of all milk in all uses since producers whose milk is being priced under the order do not share in the Class I sales of producer-handlers.

Although the marketing of milk by producer-handlers has the potential of creating disorderly marketing conditions, it has not been found necessary to regulate fully this type of operation. In fact, the policy has been to exempt such types of operations. Such policy has been based, generally, on findings in regulatory proceedings that producer-handlers have no significant advantage in the market in their capacity as either handlers or producers as long as they are solely responsible for their production and processing facilities and assume essentially the entire burden of balancing their production with their fluid milk requirements.

Although producer-handlers have not been fully regulated as a general practice, the Act provides the authority to regulate handlers of milk to carry out the purposes of the Act. With respect to producer-handlers, guidelines from the legislative history indicate that there is authority to regulate such operations if they are so large as to disrupt the market for producers. However, on the basis of the overall history of the treatment of producer-handlers, a size consideration, in and of itself, is not particularly relevant to the issue. Even large operations in relation to the markets they serve have continued to be exempt from full regulation. Consequently, any decision to fully regulate a producer-handler type operation must be supported by substantial evidence of the existence of disorderly marketing that is a direct result of producer-handler activity. Although the size of an operation obviously leads to concern, since relatively greater quantities of unpriced milk are involved, it does not in itself provide a basis for full regulation. The existence of large producer-handler operations merely implies that the conditions for disorderly and disruptive marketing conditions may exist.

Seven producer-handlers operate under the Southwest Plains order. Combined, they represent less than one-half of one percent of the fluid milk products distributed in the marketing area. Also, such operations do not restrict their sales to home delivery or to sales from a store on the same premises as the plant. They basically compete in the same marketing channels with handlers who are fully regulated "under the order.

There is no evidence of market disorder as a result of competition between such producer-handlers and fully regulated handlers. In addition, the proponents of the proposal did not intend that any of the existing producer-handlers be fully regulated as they are currently operating. In fact, the proposed exemption level was increased to accommodate two of the producer-handlers who testified at the hearing. The proposal was intended to prevent the acquisition of producer-handler status by a relatively large handler who has own-farm production. Such concern over the potential of a large handler who may have the ability to become a producer-handler does not provide a sufficient basis for a regulatory change.

In the Texas market, there are three producer-handlers who have route disposition in the marketing area. The point of concern, however, was directed only to Pure Milk. There is no evidence concerning the proportion of fluid milk sales in the Texas marketing area by Pure Milk or the three producer-handlers combined. However, other information clearly indicates that Pure Milk is a rather significant operation, size wise, in the Texas market.

Pure Milk was a fully regulated handler under the Texas order for a number of years. However, following the purchase of the milk plant by Gore, Inc., a producer who supplied the market for a long period of time, the entire operation was qualified as a producer-handler under the order in July 1988. The plant at Waco, Texas, is primarily a fluid milk operation, with some Class II use, that processes in excess of four million pounds of milk per month. The plant has a wide distribution area that covers about 16 counties with sales to supermarkets, institutions, restaurants, and military bases in direct competition with fully regulated handlers. The milk supply for the plant is produced on seven dairy farms in Comanche and Brown Counties that are located about 100 miles from the plant. Milk production averages about 4.6 million pounds per month, and ranges from about 4.2 to in excess of 5 million pounds per month. Milk production that is in excess of the plant's needs is shipped to a fully regulated distributing plant located in Wichita County, Texas. Such milk is normally allocated to the lowest class uses at the regulated handler's plant, with any allocation to Class I use requiring a payment to the producer-settlement fund by the regulated handler at the difference between the order Class I and Class III prices.

Proponents' contention that the plant continues to be operated in competition with regulated handlers, and that only an ownership change has resulted in the producer-handler's ability to avoid paying class prices for milk, is essentially correct. However, as a result of the ownership change, a number of different conditions apply. First of all, the plant is no longer in competition with other handlers for a supply of milk. Also, Pure Milk now bears the entire risk and cost of balancing its own supply of milk, whereas such burden was formerly borne by all producers who supply the market. Also, Gore, Inc., has now assumed all risks associated with the operation of the plant in addition to all the risks associated with the production of milk.

Proponents' major contention is that Pure Milk has a significant competitive advantage over regulated handlers in the sale of fluid milk products since it is not subject to classified pricing. The maximum advantage contended is the difference between the Class I price that fully regulated handlers must pay and the blend price, which is the alternative, or opportunity cost, that Gore, Inc., could receive as a producer. In terms of the plant's utilization, relative to that of the entire market, cost advantages of 77 to 90 cents per hundredweight are computed for its Class I sales relative to regulated handlers. However, such advantages do not reflect the costs that may be associated with disposing of production that is surplus to Pure Milk's needs. For example, the fact that Pure Milk would have been able to avoid about a $34,000 pool obligation by operating as a producer-handler in May 1988 does not include the lost revenue or costs associated with disposing of the additional 600,000 pounds of milk production that was surplus to the needs of, or receipts of, milk at the Pure Milk plant. Thus, the amount of the avoided pool obligation is not a measure of Pure Milk's economic advantage over regulated handlers since it does not encompass the entire operation.

It would appear logical that there must be some economic incentive for Pure Milk to operate as a producer-handler rather than as a handler. Otherwise, the action to attain producer-handler status would not have been taken. In fact, Pure Milk admits that it would not be economically viable for it to operate as a regulated handler. Basically, Pure Milk has decided to give up the blend price on all of its production (well in excess of $600,000 per month at the blend price) to avoid a pool obligation as a handler on its Class I sales (less than $34,000 per month) and to retain all of the proceeds from the sale of finished fluid milk products. However, this does not necessarily mean that Pure Milk as a producer-handler has an advantage over regulated handlers. It may merely mean that Pure Milk is expected to be competitive only as a producer-handler, but without any clearly demonstrated advantage. In conclusion, the degree of any cost or pricing advantage cannot clearly be determined.

The justified concern of proponents over the potential for unfair and disorderly marketing conditions has not manifested itself with any demonstrable evidence of disorder in the Texas market. This may be a result of the nonexistence of any pricing advantage or it may well be that not sufficient time has elapsed between the time that Pure Milk acquired producer-handler status and when the hearing was held. Consequently, in view of insufficient evidence of market disorder attributable to producer-handler operations, there is no basis for adopting the proposal to regulate relatively large producer-handlers.

A refinement of the current producer-handler provisions to set forth in more specific detail those factors that bear on the "sole risk" requirement of the order also does not appear to be necessary at this time. There was no demonstration on the record of attempts by Pure Milk, or other producer-handlers, to transfer the costs or risks of operating to others. Pure Milk has qualified as a single entity. There is no indication that Pure Milk has attempted organizational changes (such as splitting off some of the milk production facilities) to take advantage of the benefits (keeping the Class I sales) and to share the costs (burden of the surplus) with others. Also, there is no evidence that Pure Milk intends to follow a practice of shifting from exempt status to full regulation to meet changed circumstances, which would also amount to transferring costs and risks to others. Thus, in terms of the current situation, the current provisions have not been abused or circumvented in a way that could provide a basis for either clarification or modification of the current regulations.

Proponents, in conjunction with their proposal to revise the producer-handler definition, proposed that the administrative assessment that is applied to other handlers also apply to all producer-handlers. Proponents contend that it is unfair to other handlers to incur an administrative assessment as a result of costs that are incurred in determining whether certain operations should be qualified as producer-handlers and, thus, be exempt from the pricing and pooling provisions. Basically, proponents contend that producer-handlers should pay their pro rata share of at least the administrative costs involved in determining and monitoring their exempt status. Proponents contend that handlers should not have to bear such cost since they do not benefit from the producer-handler exemption.

Currently, the administrative assessment is applied to handlers on their receipts of producer milk and on other receipts on which there is a pool obligation. Producer-handlers on the other hand, who have no receipts of producer milk or any pool obligation, are not subject to an administrative assessment.

Contrary to proponents' views, handlers do derive a benefit from the administrative expense that they incur. To the extent administrative costs are incurred in administering the producer-handler provisions, handlers are assured that producer-handlers continue to operate in the manner provided under the order. As previously stated, this insures that producer-handlers are not able to transfer the costs and risks of their operation to others and, consequently, are not able to gain a demonstrable advantage relative to producers or handlers. In addition, the producer-handler exemption from the

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administrative assessment is similar to the exemption of the assessment on other handlers for receipts of other source milk that is allocated to other than Class I use. Such receipts affect the administrative costs and complicate the verification process involved in determining the utilization of producer milk. There is no indication that orderly marketing has suffered from the restriction of the application of administrative assessments to producer milk and other milk on which there is a pool obligation. Therefore, the proposal to apply an administrative assessment to producer-handlers is denied.

2. The Producer Definition

No changes should be made to the producer definition.

Proponents, in conjunction with their proposal to fully regulate certain producer-handlers, and exempt others, proposed a conforming amendment to the producer definition. The proposal would prohibit a dairy farmer from being a producer if such dairy farmer delivered milk to or received milk from a producer-handler. Proponents contend that if producer-handlers are to be exempt from the pricing and pooling provisions, it would not be fair for a producer-handler to receive milk from other dairy farmers or for a producer-handler to ship excess milk to a dairy farmer that could then receive the blend price under the order. Basically, proponents contend that such a situation would amount to a transfer of risks and costs associated with the maintenance of the reserve supplies of milk to others.

In addition, the proposal would exclude as a producer, any dairy farmer who disposes of more than 110 pounds of milk per day directly to consumers. Proponents contend that such dairy farmers should not share in the proceeds of Class I sales under the order since they maintain a portion of fluid milk sales for themselves. Proponents contend that since such dairy farmers do not operate plants, and thus cannot be regulated as handlers, they should at least be prevented from being producers under the orders.

The current producer-handler provisions provide that producer-handlers cannot receive milk from other dairy farmers. If milk were received from a dairy farmer, producer-handler status would be lost and full regulation would apply. Thus, the dairy farmer supplying the handler operating the regulated plant would be eligible for producer status. As a result, it is not necessary to specify that a dairy farmer who supplies a producer-handler could not be a producer, since such a situation is not permissible. Also, there is no indication on the record to suggest that any producer-handler has attempted to circumvent the "sole risk" standard of the current provisions by attempting to pool surplus milk production through another producer. Also, there is no indication of the extent to which dairy farmers may be involved in selling unprocessed milk directly to consumers. There is no evidence to suggest a problem of sufficient degree to warrant further restrictions through Federal milk order regulation at this time.

3. Whether Emergency Marketing Conditions Exist With Respect to Issue Number One

The request for emergency action is denied since proposals to modify the producer-handler provisions are denied for reasons previously stated.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

Determination

The findings and conclusions of this decision do not require any changes in the regulatory provisions of the orders regulating the handling of milk in the Texas and Southwest Plains marketing areas.

List of Subjects in 7 CFR Parts 1126 and 1106

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Parts 1126 and 1106 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Signed at Washington, DC, on June 22, 1989.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 89–15283 Filed 6–27–89; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89–ASO–27]

Proposed Amendment To Control Zone, Miami, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Miami, FL, control zone. An arrival area extension would be added to accommodate a planned Nondirectional Radio Beacon (NDB) Standard Instrument Approach Procedure (SIAP) to Runway 9L at the Miami International Airport based on the Cook NDB.

DATE: Comments must be received on or before: July 28, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO–530, Manager, Airspace and Procedures Branch, Docket No. 89–ASO–27, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia, 30344, telephone: (404) 763–7646.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia, 30320; telephone: (404) 763–7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89–ASO–27." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO–530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Miami, FL, control zone. An arrival area extension is necessary to provide controlled airspace for protection of aircraft executing an NDB SIAP planned for Runway 9L at the Miami International Airport. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Miami, FL [Amended]

Following the phrase, "• • • Miami International Airport (Latitude 25°47'34" N.; Longitude 80°17'10" W.);" insert the phrase, "within 2.5 miles each side of the 287° bearing from the Cook NDB, extending from the 6-mile radius area to 4 miles west of the NDB;"

Issued in East Point, Georgia, on June 14, 1989.

Don Case,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 89–15210 Filed 6–27–89; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 89–ASO–30]

Proposed Revision to Control Zone, Vero Beach, FL

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposed to revise the Vero Beach, FL, control zone. A Nondirectional Radio Beacon (NDB) is being installed and a Standard Instrument Approach Procedure (SIAP) has been developed based on the NDB. This revision would add an arrival area extension to the existing control zone to provide controlled airspace for aircraft executing the new NDB SIAP. Also, a minor correction would be made to the geographic position coordinates of the Vero Beach Municipal Airport.

DATES: Comments must be received on or before: July 28, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO–530, Manager, Airspace and Procedures Branch, Docket No. 89–ASO–30, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763–7646.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763–7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket NO. 89–ASO–30." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia, 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM)

by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO/530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the Vero Beach, FL, control zone. An arrival area extension would be added to provide controlled airspace for aircraft executing a new NDB SIAP planned for the airport. Also, a minor correction would be made to the geographic position coordinates of the Vero Beach Municipal Airport. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Public Law 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. § 71.171 is amended as follows:

Vero Beach, FL [Revised]

Within a 5-mile radius of Vero beach Municipal Airport (Latitude 27°39'16" N; Longitude 80°24'58" W); within 3 miles each side of the 261° bearing from the Vero Beach NDB (Latitude 27°39'50" N; Longitude 80°25'11" W) extending from the 5-mile radius area to 8.5 miles west of the NDB.

Issued in East Point, Georgia, on June 15, 1989.

Don Cass,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 89-15211 Filed 6-27-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89-ASO-29]

Proposed Amendment to Control Zone, Nashville, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Nashville, TN, Control Zone. A new runway (2R) is being built at the Nashville International Airport and an associated Standard Instrument Approach Procedure (SIAP) is being developed. Additional airspace is required for protection of Instrument Flight Rules (IFR) aircraft executing the new SIAP. The existing control zone extension on the south would be expanded to the east one additional mile.

DATE: Comments must be received on or before: July 28, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO-530, Manager, Airspace and Procedures Branch, Docket No. 89-ASO-29, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Patterson, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-ASO-29." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before the taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the Docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Nashville, TN, Control Zone. The increase in controlled airspace is required for protection of IFR aircraft executing a recently developed ILS SIAP to Runway 2R at the Nashville International Airport. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Nashville, TN [Amended]

By changing the phrase in the existing description, "within 1.5 miles each side of the ILS localizer south course, extending from the 5-mile radius zone to the LOM;" to read, "within 1.5 miles west and 2.5 miles east of the BNA ILS Localizer south course, extending from the 5-mile radius zone to 7 miles south of the airport;"

Issued in East Point, Georgia, on June 15, 1989.

Don Cass,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 89-15212 Filed 6-27-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89-ASO-28]

Proposed Designation of Transition Area, Philadelphia, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to designate the Philadelphia, MS, transition area to accommodate Instrument Flight Rules (IFR) operations at the Philadelphia Municipal Airport. This action will lower the base of controlled airspace from 1,200 feet to 700 feet above the surface in the vicinity of the airport. A Standard Instrument Approach Procedure (SIAP) is being developed to serve the airport and the controlled airspace is required for protection of IFR aeronautical operations. Concurrent with the publication of the SIAP, the operating status of the airport will change from Visual Flight Rules (VFR) to IFR.

DATE: Comments must be received on or before: July 28, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO-530, Manager, Airspace and Procedures Branch, Docket No. 89-ASO-28, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Patterson, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-ASO-28." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate the Philadelphia, MS, transition area. This action will provide controlled airspace for aircraft executing a new SIAP to the Philadelphia Municipal Airport. If the proposed designation of the transition area is found acceptable, the operating status of the airport will be changed to IFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is

so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Public Law 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. § 71.181 is amended as follows:

Philadelphia, MS [New]

"That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Philadelphia Municipal Airport (latitude 32°47'55" N, longitude 89°07'30" W); within 3.5 miles each side of the 001° bearing from the Philadelphia NDB (latitude 32°47'54" N, longitude 89°07'28" W), extending from the 6.5-mile radius area to 11.5 miles of the NDB."

Issued in East Point, Georgia, on June 14, 1989.

Don Case,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 89-15213 Filed 6-27-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 801

[Docket No. 86N-0479]

RIN 0905-AC54

Medical Devices; Labeling for Menstrual Tampons; Ranges of Absorbency; Reproposed Rule; Correction

AGENCY: Food and Drug Administration.

ACTION: Reproposed rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a reproposed rule to amend its tampon labeling regulations (21 CFR 801.430) that appeared in the **Federal Register** of June 12, 1989 (54 FR 25076). The correction will clarify that the agency is proposing that any final rule based on the reproposal would become effective 6 months after the date of publication of the final rule. The agency is also clarifying that the estimate of 1.05 per 100,000 per year as data extrapolated from the nationwide incidence of menstrual toxic shock syndrome (TSS) in 1986 refers to "menstruating women and girls."

FOR FURTHER INFORMATION CONTACT: Les Weinstein, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

In FR Doc. 89-13959, appearing at page 25076 in the **Federal Register** of Monday, June 12, 1989, the following corrections are made:

1. On page 25076, in the first column, under the caption "**DATES:**", the second sentence should read "The agency is proposing that any final rule based on the reproposal become effective for packages of tampons initially introduced or initially delivered for introduction into commerce 6 months after the date of publication of any final rule based on the reproposal.

2. On page 25079, in the first column, in the first complete paragraph, line 10, "estimated to be 1.05 per 100,000 per year." should read "estimated to be 1.05 per 100,000 menstruating women and girls per year."

§ 801.430 [Corrected]

3. On page 25092, in the second column, § 801.430(h) should be corrected to read as follows:

(h) Any menstrual tampon that is not labeled as required by paragraphs (c), (d), and (e) of this section and that is initially introduced or initially delivered for introduction into commerce after (insert date 6 months after date of publication of the final rule), is misbranded under sections 201(n), 502 (a) and (f) of the act.

Dated: June 23, 1989.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-15250 Filed 6-27-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 44

RIN 1219-AA45

Rules of Practice for Petitions for Modification of Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rule; extension of comment period.

SUMMARY: Due to request from the public, the Mine Safety and Health Administration (MSHA) is extending the period for public comment on its proposed rule for petitions for modification of mandatory safety standards in 30 CFR Part 44.

DATE: Written comments for the proposed rule on petitions for modification of mandatory safety standards should be received on or before August 7, 1989.

ADDRESS: Comments should be sent to the Mine Safety and Health Administration, Office of Standards, Regulations and Variances, Room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, (703) 235-1910.

SUPPLEMENTARY INFORMATION: On May 5, 1989, MSHA published in the **Federal Register** (54 FR 19492) a proposed rule to revise existing Part 44 by specifying time frames at all stages of the petition for modification process. The proposal would also include a revision of the Agency's existing procedures for evaluating applications for interim relief, conforming them to the decision of the United States Court of Appeals in *International Union, United Mine Workers of America (UMWA)* v. *Mine Safety and Health Administration (MSHA)*, 823 F.2d 606 (DC Cir. 1987).

The comment period was scheduled to close on July 5, 1989. Due to requests from the public MSHA is extending the comment period to August 7, 1989. All interested parties are encouraged to submit comments and comments must be received on or prior to that date.

Date: June 22, 1989.

David C. O'Neal,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 89-15203 Filed 6-27-89; 8:45 am]

BILLING CODE 4510-43-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPTS-42012E; FRL-3609-3

Diethylenetriamine (DETA); Proposed Amendments to Test Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to amend the test rule for DETA in 40 CFR 799.1575 by extending the deadline for submission of the final report on the chemical fate testing and by rescinding the requirement for dermal absorption testing. The proposed extension would require submission of the final report twelve months after the final rule incorporating this amendment is published in the **Federal Register**.

DATE: Submit written comments on or before July 28, 1989.

ADDRESS: Written comments, in triplicate, identified by docket number [OPTS-42012E], should be submitted to: TSCA Public Docket Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. NE-G004, 401 M Street SW., Washington, DC 20460

A public version of the administrative record supporting this action is available for inspection at the above address from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Rm. EB-44, 401 M Street SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: EPA is proposing under TSCA section 4(a) to modify the chemical fate and dermal adbsorption testing requirements for DETA in 40 CFR 799.1575.

I. Introduction

A. Regulatory History

Section 799.1575 of 40 CFR requires the testing of DETA for oral subchronic toxicity, dermal absorption (in the same animal species used for the subchronic testing), mutagenicity (tiered sequences of tests for detecting chromosomal aberrations and gene mutations), and chemical fate testing (for the detection of possible chemical or biological transformations of DETA to *N*-nitrosamines in samples of soil, lake water, and sewage sludge). The primary purpose if the dermal absorption testing of DETA was to relate potentially adverse effects which might be observed in the required 90-day oral subchronic toxicity study to expected exposure by the dermal route.

EPA has received and evaluated the final reports resulting from all of the testing required for DETA except for chemcial fate and dermal absorption. On two occasions, pursuant to 40 CFR 790.55, Dow Chemical Company (the test sponsor for both of these tests), requested that EPA extend the reporting requirement deadlines for the submission of the final reports for these two tests because it was unable to obtain the ^{14}C-radiolabelled DETA necessary for the conduct of these studies from reputable contract laboratories. In a letter of October 22, 1987 (Ref. 1), the test sponsor requested a 4-month extension of the reporting deadlines for these two tests. In its letter of February 15, 1988, (Ref. 3), the sponsor requested an additional 2-month extension. Both these requests were granted by EPA (Refs. 2 and 4).

In letters dated September 16, 1988 (Ref. 5), and September 29, 1988 (Ref. 6), the test sponsor requested an additional 1-year extension of the deadlines for the final reports for these two tests, due to continuing difficulties in obtaining the required radiolabelled DETA. The sponsor provided supplemental information to justify the request. Because the test sponsor has already received extensions totalling 6 months, any further extensions of these deadlines must be considered, pursuant to 40 CFR 790.55 (b)(3) and (4)(iv), to significantly change the schedule for completing testing, and require notice and public comment.

B. Proposed Modifications

EPA has carefully evaluated the data contained in references 1, 3, 5, and 6, and has concluded that the test sponsor's difficulties in obtaining the ^{14}C-radiolabelled DETA necessary to conduct the chemical fate and dermal absorption testing of DETA warranted the previous extensions of the deadlines for the final reports for these two tests already granted by EPA, and continues to warrant a further extension in the deadline for the chemical fate testing of DETA. EPA is proposing that the deadline for the chemical fate testing of DETA be extended by 12 months from the effective date of the final rule resulting from this proposal. EPA believes that this 12-month extension will provide the test sponsor adequate time to obtain the radiolabelled test substance, and conduct the testing.

EPA is proposing to rescind the requirement for dermal absorption testing of DETA for the following reasons: (1) The dermal absorption testing of DETA was required to relate potential adverse effects which might be observed in the required 90-day dietary subchronic toxicity study to the expected dermal route of human exposure; (2) EPA's evaluation of the 90-day dietary subchronic toxicity study (Ref. 8) indicates that no significant toxic effects were observed in this study; and (3) the available acute toxicity data indicate that DETA would be expected to be about equally or only slightly more toxic following administration by the dermal as compared with the oral route of administration (Ref. 9).

II. Rulemaking Record

EPA has established a record for this rulemaking (Docket Number OPTS-42012E). This record contains the basic information considered by EPA in developing this proposal and appropriate **Federal Register** notices.

This record includes:

A. Supporting Documentation

(1) Final Phase II rule on diethylenetriamine (52 FR 3230; February 3, 1987).

(2) Contact reports of telephone conversations.

B. References

(1) The Dow Chemical Company (Dow). Letter to the Director, Office of Compliance Monitoring (OCM), Office of Pesticides and Toxic Substances (OPTS), U.S. Environmental Protection Agency (EPA). (October 22, 1987).

(2) OPTS, EPA. Letter to John Gray, Dow. (December 16, 1987).

(3) Dow. Letter to the Director, OCM, OPTS, EPA. (February 15, 1988).

(4) OPTS, EPA. Letter to John Gray, Dow. (April 5, 1988).

(5) Dow. Letter to the Director, OCM, OPTS, EPA. (September 16, 1988).

(6) Dow. Letter to the Director, OCM, OPTS, EPA. (September 29, 1988).

(7) Existing Chemical Assessment Division, EPA. Letter to John Gray, Dow. (October 24, 1988).

(8) Health and Environmental Review Division (HERD), EPA. Memorandum to Richard Troast, Test Rules Development Branch (TRDB), EPA. (August 4, 1988).

(9) HERD, EPA. Memorandum to Richard Troast, TRDB, EPA. (October 21, 1988).

The record for this rulemaking is available for inspection in the OPTS Reading Room, G-004, NE Mall, 401 M Street SW., Washington, DC, from 8 a.m. to 4 p.m., Monday through Friday except legal holidays. EPA will supplement the record periodically with additional relevant information.

III. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA judged that the final Phase II test rule for DETA was not "major" and therefore was not subject to the requirement of a Regulatory Impact Analysis. The proposed modifications to the rule do not alter this determination.

This rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA, and any EPA responses to those comments, are included in the rulemaking record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, Pub. L. 96–354, September 19, 1980), EPA certified that the final Phase II rule for DETA would not have a significant impact on a substantial number of small businesses. The proposed modifications do not alter this certification.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3502 *et seq.* and have been assigned OMB control number 2070–0033.

Public reporting burden for the collection of information is expected to be altered by this modification by adding an estimated eight hours of time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information in preparing an additional semiannual progress report.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects in 40 CFR Part 799

Chemicals, Environmental protection, Hazardous sustances, Testing, Laboratories, Recordkeeping and reporting requirements.

Dated: June 19, 1989.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR Part 799 be amended as follows:

PART 799—[AMENDED]

1. The authority citation would continue to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. In § 799.1575 by removing paragraph (c)(4) and revising paragraph (d)(3) and (f) to read as follows:

§ 799.1575 Diethylenetriamine (DETA).

* * * * *

(d) * * *

(3) *Reporting requirements.* The testing shall be completed and a final report submitted to EPA within 12 months of (the effective date of the final rule granting a 12-month extension of the deadline for the final report).

* * * * *

(f) *Effective dates.* The effective date of 40 CFR 799.1575, final Phase II rule for DETA, is March 19, 1987, except for paragraph (d)(3) which is effective (44 days after publication in the Federal Register of the final rule granting a 12-month extension of the deadline for the final report).

[FR Doc. 89–15272 Filed 6–27–89; 8:45 am]

BILLING CODE 6560–50–M

Notices

Federal Register
Vol. 54, No. 123
Wednesday, June 28, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Public Comment Period Extended for the Alder Timber Sale Draft Environmental Impact Statement and the Polk Timber Sale Draft Environmental Impact Statement; Lassen National Forest, Including Tehama County, CA

AGENCY: USDA Forest Service.

ACTION: Notice.

The Lassen National Forest has extended the public comment period for the Draft Environmental Impact Statements for the Alder and Polk Timber Sales until July 31, 1989. A Cumulative Watershed Effects report has been prepared for these two sales and is now available for public review. Copies of this report may be obtained from the address below.

The Forest Service will respond to all public comments in the Final Environmental Statement for each of these timber sales. Written comments or requests for the Cumulative Watershed Effects report should be sent to Laurence Crabtree, District Planning Officer, Almanor Ranger District, Lassen National Forest, P.O. Box 737, Chester, California 96020. Public comments should be received by July 31, 1989.

For more information, contact Laurence Crabtree at the above address or phone: (916) 258–2141.

Richard A. Henry,

Forest Supervisor.

Date: June 20, 1989.

[FR Doc. 89–15254 Filed 6–27–89; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Materials Technical Advisory Committee; Partially Closed Meeting

A Meeting of the Materials Technical Advisory Committee will be held July 13, 1989, 10:30 a.m., Herbert C. Hoover Building, Room 1617–F, 14th Street and Constitution Avenue NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to materials or technology.

Agenda

General Session

1. Opening Remarks by the Chairman & Commerce Representative.
2. Introduction of Members and Visitors.
3. Presentation of Papers or Comments by the Public.
4. Introduction of New Members.
5. Discussion of Committee's Area of Responsibility.
6. Discussion by Committee on the Following New Responsibilities:

1001—Technology for Metal Working and Manufacturing
1110—Equipment for Production of Liquid Fluorine;
1129—Vacuum Pump Systems.
1131—Pumps.
1133—Valves, Locks, and Pressure Regulators.
1142—Tubing.
1145—Containers, Jacketed Only.
1203—Electric Furnaces.
1206—Electric Arc Devices.
1389—Materials and Coatings.
1561—Radar Absorbing Materials.
1573—Superconductive Electromagnets and Solenoids.
1587—Quartz Crystals.
1588—Materials Composed of Crystals.
1601—Inert Gas and Vacuum Atomizing.
1602—Pyrolitic Deposition Technology.

Executive Session

7. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings or portions thereof will be open to the public. A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, D.C. For further information or copies of the minutes call Ruth D. Fitts, 202–377–4959.

Betty A. Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology and Policy Analyses.

Date: June 19, 1989.

[FR Doc. 89–15193 Filed 6–27–89; 8:45 am]

BILLING CODE 3510–DT–M

International Trade Administration

[A–583–501]

Final Determination of Sales at Less Than Fair Value: 12-Volt Motorcycle Batteries From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: We determine that 12-volt motorcycle batteries from Taiwan are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to continue to suspend liquidation of all entries of the subject merchandise from Taiwan as described in the "Continuation of Suspension of Liquidation" section of this notice. The ITC will determine, within 45 days of the publication of this

notice, whether these imports materially injure or threaten material injury to a U.S. industry.

EFFECTIVE DATE: June 28, 1989.

FOR FURTHER INFORMATION CONTACT: John Gloninger or Gray Taverman, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377–8330 or 377–0161.

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that 12-volt motorcycle batteries are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). The estimated weight-average dumping margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

Since our notice of preliminary determination (54 FR 15507, April 18, 1989), the following events have occurred. Verification of the questionnaire responses submitted by Wei Long Electric Industrial Co. Ltd. (Wei Long), Ztong Yee Industrial Co. Ltd. (Ztong Yee) and Cheng Kwang Storage Battery Co. Ltd. (Cheng Kwang) was conducted in Taiwan in April 1989. A public hearing was held on May 25, 1989. Petitioner and respondents filed pre-hearing briefs on May 24, 1989 and posthearing briefs on June 2, 1989.

Scope of Investigation

The United States had developed a sysem of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the Harmonized Tariff Schedule (HTS) as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after that date is now classified solely according to the appropriate HTS item number(s). The Department is providing the appropriate HTS item number(s) for convenience and customs purposes. The Department's written description of the products under investigation remains dispositive as to the scope of the products covered by this investigation.

This determination covers 12-volt motorcycle batteries. Motorcycle batteries are lead-acid storage batteries which are rated from 2 to 32 ampere hours (10 hour rate) with voltage levels of either 6 or 12 volts. This investigation is limited to 12-volt motorcycle batteries. The batteries are mainly used as replacement batteries for motorcycles, but may, to a very limited extent, be used in snowmobiles, lawnmowers, and other such equipment. They are currently classifiable under HTS item number 8507.10.00.

Period of Investigation

This period of investigation is April 1, 1988 through September 30, 1988.

Fair Value Comparisons

To determine whether sales of certain 12-volt motorcycle batteries from Taiwan to the United States were made at less than fair value, we compared the United States price to the foreign market value, as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

For each of the respondents in this investigation, all sales used in our analysis were made directly to unrelated parties prior to importation into the United States. Therefore, we based the United States price on purchase price, in accordance with section 772(b) of the Act.

The calculation of United States price for each respondent is detailed below.

A. Ztong Yee: For the reasons detailed in the DOC Position to Comment 2, we have determined, in accordance with section 776(c) of the Act, that the use of best information available is appropriate for Ztong Yee.

B. Wei Long: We calculated purchase price based on the packed, F.O.B. or C.I.F. price to unrelated purchasers in the United States. We made deductions, where appropriate, for foreign inland freight, brokerage and handling charges, ocean freight, marine insurance, quantity disounts, port fees and bank processing fees. We also made a deduction for a discount which Wei Long claimed in its response to be a warranty expense, but which we verified was simply a reduction to the invoice price.

During verification, we found that Wei Long had not reported a 0.5 percent port tax on exports of the subject merchandise. Therefore, we made a deduction of 0.5 percent of gross unit price for this port tax.

C. Cheng Kwang: We calculated purchase price based on the packed, F.O.B. or C.I.F. price to unrelated purchasers in the United States. We made deductions, where appropriate, for foreign inland freight, brokerage and handling charges, ocean freight, marine insurance, bank processing fees, port charges, and customs inspection fees.

During verification, we found that on some sales, Cheng Kwang calculated brokerage and handling, ocean freight, foreign inland freight and packing expenses based on a catalog weight. These expenses were recalculated based on actual weights obtained at verification.

Foreign Market Value

In accordance with section 773(a)(1) of the Act, we calculated foreign market value based on home market or third country sales. The calculation of foreign market value for each respondent is detailed below.

A. Ztong Yee: For the reasons detailed in the DOC position to Comment 2, we have determined in accordance with section 776(c) of the Act, that the use of best information available is appropriate for Ztong Yee.

B. Wei Long: Wei Long had no home market sales during the period of investigation; therefore, we used third country sales for the purpose of determining foreign market value in accordance with section 773(a)(1)(B) of the Act. We calculated foreign market value based on the packed, F.O.B. price to the unrelated trading company, and F.O.B. or C.I.F. prices for the direct sales. We made deductions where appropriate for brokerage and handling charges, foreign inland freight, ocean freight, marine insurance, quantity discounts, and port fees. We made circumstances of sale adjustments for differences in credit and warranty expenses pursuant to section 353.56 of the department's new regulations, 54 FR 12742 (March 28, 1989) (to be codified at 19 CFR 353.56). We deducted third country packing and added U.S. packing.

In addition, we added commissions incurred on U.S. sales and offset these expenses by the verified indirect selling expenses incurred on third country sales, in accordance with § 353.56 of the antidumping regulations. (See DOC position to Comment 5).

All product matches claimed by Wei Long were identical; therefore, no adjustment was made for differences in physical characteristics.

C. Cheng Kwang: Cheng Kwang's home market sales during the period of investigation were inadequate for determining foreign market value; therefore, we used third country sales, for purposes of determining foreign market value in accordance with section 773(a)(1)(B) of the Act. We calculated foreign market value based on the packed, F.O.B. or C.I.F. prices. We made deductions, where appropriate, for foreign inland freight, brokerage and handling charges, ocean freight, marine insurance, port usage fees, banking charges, and customs inspection fees.

We made a circumstance of sale adjustment for differences in credit expenses pursuant to § 353.56 of the antidumpig regulations. We deducted third country packing and added U.S. packing.

We made adjustments, where applicable, for differences in the phyusical characteristics of the merchandise in accordance with § 353.57.

Cheng Kwang claimed an adjustment to third country price for additional costs incurred on smaller production lots. We disallowed this claim for the final determination because we were not able to verify a direct relationship between the costs of differing production lot sizes and selling price. (See DOC position to Comment 3).

Currency Conversion

Since we calculated United States price on a purchase price basis, we used the official exchange rates in effect on the date of sale, in accordance with § 353.60. All currency conversions were made at rates certified by the Federal Reserve Bank of New York.

Verification

We verified the information used in making our final determination in accordance with section 776(b) of the Act. We used standard verification procedures including examination of relevant accounting records and original source documents of the respondents. Our verification results are outlined in the public versions of the verification reports which are on file in the Central Records Unit (Room B–099) of the Main Commerce Building.

Comments

Comment 1. Petitioner contends that the responses of Ztong Yee and Wei Long should be rejected by the Department because the public versions wee inadequate and in direct violation of the Department's regulations. Petitioner also contends that while the public version of Cheng Kwang's response contained some summarization, it was incomplete, particularly in its summarizations of difference in merchandize adjustments.

Petitioner argues that the failure of these respondents to submit adequate public versions of their responses has prevented it from knowing the full extent and significance of respondents' claims. Petitioner further argues that the absence of adequate public versions has eliminated the possibility of any input by the company officials of Yuasa-Exide.

DOC Position

The original public versions of Wei Long's and Ztong Yee's responses did not provide adequate summarization of business proprietary information. Therefore, we issued a deficiency letter on February 21, 1989, requesting that respondents amend their non-confidential summaries by ranging or indexing numerical data in accordance with § 353.32. We further noted that if any information was not susceptible to such summary or presentation, then a statement of the reasons must be submitted. On February 28, 1989 and on March 1, 1989, we received revised public versions from Ztong Yee and Wei Long, respectively.

While certain summaries in the public version submitted by all three respondents were not as detailed as requested in our deficiency letter, it is our view that there was enough information contained in the summaries of each data set and in the summaries as a whole as to give petitioner the ability to participate fully in the investigation. Therefore, the public summaries are not so inadequate as to warrant the rejection of the responses as deficient. Furthermore, with the exception of customer or supplier names, sources of information, verification exhibits and trade secrets, petitioner's counsel received access to all business proprietary information under administrative protective order (APO) issued by the Department.

Comment 2. Petitioner asserts that the Department should not use Ztong Yee's response for purposes of the final determination due to extensive errors and discrepancies found during verification, contending that the errors reflect a basic unreliability in the responses themselves.

Petitioner argues that the product concordance reported some merchandise as being identical when significant cost differentials existed. Furthermore, labor costs for acid packaging were not verified, and claimed inspection expenses for special quality control were allegedly overstated and included expenses not associated with quality control. Home market and export packing were reported by Ztong Yee as identical, but they were found to be different at verification. The commission charge on U.S. sales was understated, and the claimed duty drawback adjustment was not in existence during the period of investigation. In addition, Ztong Yee failed to report all home market sales of the merchandise subject to investigation. In sum, petitioner argues, the sections of the response that cannot be used due to respondent's failure to support such claims during verification, plus the magnitude of errors found at verification, raise serious questions as to the accuracy of the entire response. Petitioner contends that the Department should reject Ztong Yee's response and use best information available for the final determination.

Ztong Yee argues that its concordance is correct and should be accepted by the Department, particularly since the criteria used for comparison purposes was proposed by the petitioner. The product characteristics listed in Appendix V of the Department's questionnaire were used in determining which merchandise is identical for purposes of the investigation. Ztong Yee further argues that its use of the criteria listed in Appendix V of the questionnaire was made clear in its response of January 11, 1989, and that petitioner should have objected to the concordance at that time.

With respect to petitioner's argument that respondent failed to report all home market sales of merchandise subject to investigation, Ztong Yee claimed that it reported these sales as being sold during the period of investigation, but did not report them in the Section B sales listing because they were not considered by Ztong Yee to be such or similar to any U.S. sales.

In its January 13, 1989 response, it indicated that given the large number of home market sales, it limited its questionnaire response to those home market sales which it felt the Department needed.

Furthermore, Ztong Yee disputes the statement in the verification report and petitioner's allegation that certain commissions were understated, claiming that its May 12, 1989 submission addressed this issue.

DOC Position

In accordance with section 776(c) of the Act, we have used best information available for Ztong Yee.

It is not uncommon to find minor methodological problems and mathematical errors during verification. However, during the verification of Ztong Yee's sales response, we found that the magnitude of the discrepancies, unreported expenses and costs, methodological errors, and information that could not be supported by sources documents were so extensive as to require completely new responses, which at that stage of the proceeding could not be subjected to satisfactory

analysis or verification. The deficiencies found during verifications are outlined in the public versions of our verification report.

In particular, we discovered at verification that for a substantial percentage of U.S. sales, Ztong Yee reported certain U.S. models as identical to home market models, when significant cost differences existed.

Faced with responses containing numerous fundamental flaws, the Department could not properly base its determination on the information submitted by Ztong Yee. Nor is it acceptable, in such situations, that the Department bear the responsibility of attempting to identify and perform numerous and substantial recalculations necessary for the development of accurate sales data. Such a role would place too great a burden on the resources of the Department under the time constraints and procedural framework of this investigation. As stated in *Photo Albums and Filler Pages from Korea; Final Determination of Sales at Less Than Fair Value* (50 FR 43754, October 29, 1985): "[I]t is the obligation of respondents to provide an accurate and complete response prior to verification so that the Department may have the opportunity to analyze fully the information and other parties are able to review and comment on it." Verification is intended to establish the accuracy of a response rather than to reconstruct the information to fit the requirements of the Department, or to perform the recalculations necessary to develop accurate information. Furthermore, the May 12, 1989 submission by Ztong Yee which addressed the issue of commissions was received after verification. The submission was not verified; therefore, it cannot be considered for purposes of this final determination.

For all of the reasons described above, we have determined that rejection of Ztong Yee's response and use of best information available is appropriate for this determination. Furthermore, because we have used best information available with respect to Ztong Yee, petitioner's and respondent's comments pertaining to specific charges, adjustments, and other issues concerning Ztong Yee's response need not be addressed. We have determined that the 28.06 percent rate calculated for Ztong Yee in the preliminary determination is the most appropriate basis for best information available. This rate is higher than either the rate alleged in the petition or the calculated rate for any other respondent in this investigation.

Comment 3. Petitioner argues that no quantity adjustment should be allowed because Cheng Kwang did not meet the requirements as outlined in § 353.55(b) of the antidumping regulations. In particular, petitioner argues that no price list or discount schedule was maintained, and that only one third country sale contained an actual discount. Furthermore, petitioner claims that although Cheng Kwang did quantify the cost of production differences between the United States and third country merchandise due to differences in the length of production runs, the formula presumed a standard of 250 units per changeover. Petitioner claims that during verification, the Department discovered that the average production run claimed did not accurately measure production run lengths during the period of investigation.

DOC Position

As stated in *Brass Sheet and Strip from the Netherlands*, 53 FR 2341, 2342 (1988), "the controlling requirement of § 353.14 [353.55 under the new antidumping regulations] is that, to be eligible for a quantity-based adjustment, a respondent must demonstrate a clear and direct correlation between price differences and quantities sold or costs incurred." The exporter must clearly demonstrate that discounts are warranted on the basis of savings which are specifically attributable to longer production runs. Cheng Kwang failed to establish that discounts granted in the United States are directly reflective of these savings. In its response, Cheng Kwang claimed that during the period of investigation, its minimum production quantity standard was 250 units per type of battery. Cheng Kwang was unable to provide any documents at verification to support this minimum standard nor its relationship to the actual prices charged.

Accordingly, we have disallowed Cheng Kwang's claim for an adjustment for differences in quantities.

Comment 4. Petitioner argues that due to the high number of errors in the packing and credit adjustments reported by Wei Long, best information should be used instead of the submitted information.

DOC Position

We disagree. At verification, we found only two discrepancies in packing charges for the preselected sales. Other errors in packing charges were noted by reviewing the database during verification. We found that many of these errors were the result of a faulty telefax transmission from Wei Long to the company in Washington which prepared its computerized database. The original values for packing were provided at verification and are noted in our verification report.

In the credit category, only two errors were noted in the preselected sales: A misreported date of shipment and date of payment. The correct information was noted at verification. Furthermore, for the final determination, we have recalculated Wei Long's credit expenses based on information obtained at verification.

Comment 5. Petitioner argues that for purposes of the final determination, no offset for indirect selling expenses claimed by Wei Long should be allowed. First, petitioner contends that Wei Long did not itemize its claimed expenses in a form that could be analyzed. Second, petitioner argues that several claimed expenses were not verified by the Department, inlcuding claims for bad debt and certain air freight charges for samples. Third, petitioner claims that Wei Long improperly included the salary of the general manager as part of the salaries paid to Export Department employees. Since the general manager has management and production responsibilities, peititioner argues his salary cannot be properly included. Finally, petitioner contends that Wei Long has misallocated its indirect selling expenses by including several claimed expenses attributable to sales other than to the United Kingdom.

DOC Position

We disagree and have allowed the offset for the final determination; however, we have recalculated the amount of the offset based on verified information. Wei Long's original submission did not itemize properly its claimed indirect selling expenses, but did so prior to verification in its revised submission of April 12, 1989. Furthermore, the expenses claimed were verified by checking source documents, and no errors were found in the amounts claimed. Certain changes were made, however, to properly allocate some of the expenses. Air freight sample expenses were allocated over the total U.K. order value; however, Wei Long was unable to support its claim that all samples were shipped to the U.K. during the period of investigation. We recalculated this amount by allocating the air freight expenses over Wei Long's total export sales value. We also made an adjustment to the total expenses claimed for saleman salaries. Since we found at verification that the general manager spends three out of five days a week in non-sales functions, we reduced this category of expenses by three-fifths of this salary. Two percent reserve for bad debts was not allowed as an indirect selling expenses, as respondent was unable to support its claim at verification.

Finally, we disagree with petitioner's assertion that respondent misallocated these expenses by including expenses which are attributable to sales other than to the U.K. In its April 12, 1989 submission, Wei Long properly allocated each category of expense.

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of 12-volt motorcycle batteries from Taiwan that are entered or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service will require a cash deposit equal to the estimated amounts by which the foreign market value of 12-volt motorcycle batteries from Taiwan exceeds the United States price as shown below. This suspension of liquidation will remain in effect unitl further notice. The margins are as follows:

Manufacturer/Producer/Exporter	Margin percentage
Ztong Yee	28.06
Wei Long	3.15
Cheng Kwang	0.74
All Others	5.65

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If the ITC determines that material injury or threat of material injury does not exist with respect to the products under investigation, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, the Department will issue an antidumping duty order.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673(d)).

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

June 22, 1989.

[FR Doc. 89-15301 Filed 6-27-89; 8:45 am]

BILLING CODE 3510-DS-M

[C-307-802]

Preliminary Negative Countervailing Duty Determination: Aluminum Sulfate From Venezuela

AGENCY: Import Administration International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that no benefits which constitute subsides within the meaning of the countervailing duty law are being provided to producers or exporters in Venezuela of aluminum sulfate, as described in the "Scope of Investigation" section of this notice. If this investigation proceeds normally, we will make a final determination on or before September 5, 1989.

We have notified the United States International Trade Commission (ITC) of our determination.

EFFECTIVE DATE: June 28, 1989.

FOR FURTHER INFORMATION CONTACT: Michelle L. O'Neill or Carole A. Showers, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-1673 or 377-3217.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based on our investigation, we preliminarily determine that no benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to producers or exporters in Venezuela of aluminum sulfate.

Case History

Since publication of the Notice of Initiation in the **Federal Register** (54 FR 18131, April 27, 1989), the following events have occurred. On May 1, 1989, we presented a questionnaire to the Government of Venezuela in Washington, DC concerning petitioner's allegations. On June 9 and 12, 1989, we received responses from the Government of Venezuela and Sulfatos del Orinoco, C.A. (SULFORCA).

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the *Harmonized Tariff Schedule* (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS sub-headings. The HTS sub-headings are provided for convenience and Customs purposes. The written description remains dispositive.

The product covered by this investigation is aluminuim sulfate from Venezuela, which is used in water purification, in waste water treatment, and for other industrial applications. Prior to January 1, 1989, such merchandise was classifiable under item 417.1600 of the *Tariff Schedules of the United States Annotated* (TSUSA). This merchandise is currently classifiable under HTS item 2833.22.00.

Analysis of Programs

Conistent with our practice in preliminary determinations, when a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibilty of a company or producer under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses, however, are subject to verification under section 776(b) of the Act. If the response cannot be supported at verification and a program is otherwise countervailable, the program will be considered a subsidy in our final determination.

For purposes of this preliminary determination, the period for which we are measuring subsidies (the review period) is calendar year 1988.

Based on our analysis of the petition and the responses to our questionnaire, we preliminarily determine the following:

I. Programs Preliminarily Determined Not To Be Used

We preliminarily determine that producers or exporters in Venezuela of the subject merchandise did not receive benefits during the review period for exports of the subject merchandise to

the United States under the following programs:

A. Export Bond Program

The Fund for Financing Exports (FINEXPO) was established in 1973 to promote the export of non-traditional goods and services of Venezuelan origin. The export bond program is administered by FINEXPO. Under this program, exporters are remunerated for their exports by the Government of Venezuela in the form of export bonds which may be used to pay taxes or sold for cash. The value of the export bond is based on a percentage, known as the export bond percentage, of the FOB value of the product exported. The applicable export bond percentage for a company corresponds to that company's national value added percentage.

B. Short-Term FINEXPO Financing

Under this program, FINEXPO, in conjunction with Venezuelan commercial banks, provides short-term loans to Venezuelan exporters. Export receivables, such as drafts under letters of credit, are used as collateral. FINEXPO provides up to 80 percent of the loan principal for these loans at five percent interest to the participating commercial bank. The commercial bank provides the remaining loan principal amount and is required to charge the exporter an average of the FINEXPO rate and its own commercial rate.

C. Other FINEXPO Programs

FINEXPO operates a variety of programs which provide financing at perferential rates to Venezuelan exporters and, under one program, foreign importers of Venezuelan goods. Operations or capital needs for which companies can receive this financing include feasibility studies, market research, promotional expenses, fixed capital investment, working capital, inventory financing, financing of services rendered abroad, and financing for importers representing foreign state-owned companies.

D. Preferential Tax Incentives

Certain tax benefits are available to Venezuelan manufacturers under Decrees 1775 and 1776, which were promulgated in December 1962. Decree 1775 established tax credits for manufacturers of finished or intermediate goods based on their level of domestic value-added. Eligible companies could receive tax credits ranging from 10 to 25 percent of the value of new investments depending on the percentage of domestic value-added of the acquired asset. These rates of credit applied only in the three years subsequent to the publication of the decree after which the rate fell to 10 percent for all eligible investments.

Decree 1776 seeks to stimulate the domestic production of capital goods in order to reduce Venezuela's dependence on foreign supplies of technology. The decree sets out a series of tax benefits for makers of specific capital goods which are listed in the decree. Eligible companies may receive a variety of fiscal and financial incentives.

E. Financing Company of Venezuela Loans (FIVCA)

FIVCA was established in 1976 as a financing subsidiary of the Industrial Bank of Venezuela. Its objective is to provide long-term financing to the Venezuelan industrial sector according to the economic policies established by the Government of Venezuela.

F. Other Government Loans and Loan Guarantees

Petitioner alleges that preferential government loans and loan guarantees are provided by the following institutions:

- Ministry of Finance (MOF).
- Venezuelan Investment Fund (FIV).
- Industrial Bank of Venezuela (BIV).

According to the response, MOF is responsible for the planning and implementation of economic and financial policy for the Government of Venezuela and does not provide loans of any kind. FIV provides capital to finance major investments in basic industries and BIV operates as a commercial bank. The response states that FIV and BIV had no outstanding loans to SULFORCA during the review period.

With respect to loan guarantees, the response states that the Government of Venezuela does not offer loan guarantees to private companies either directly or through any governmental agency. BIV offers loan guarantees in the ordinary course of business under terms and conditions that reflect ordinary commercial banking practice as well as the credit risk of the particular customer. According to the response, BIV did not issue any loan guarantees with respect to SULFORCA during the review period.

II. Programs Preliminarily Determined Not To Exist

We preliminarily determine that the following program does not exist:

Sales Tax Exemptions

Petitioner alleges that the Government of Venezuela, through various regional authorities, provides sales tax exemptions to specific enterprises or industries in Venezuela. The response states that there is no such benefit provided by the Government of Venezuela.

III. Programs for Which Additional Information Is Needed

We preliminarily determine that we need additional information to determine whether the following programs confer a benefit on the manufacture, production, or exportation of aluminum sulfate from Venezuela:

A. Preferential Pricing of Inputs

The petitioner alleges that government-owned firms are providing sulfuric acid, aluminum hydrate, and electricity to SULFORCA at preferential rates. In its response, SULFORCA confirmed that it purchased these inputs solely from government-owned suppliers. The response also reported the bases for the prices charged by the suppliers: (1) Petroquimian de Venezuela S.A. (PEQUIVEN), SULFORCA's sulfuric acid supplier, bases its price on its own production costs and the cost of the imported product; (2) Interamericana de Aluminia, C.A. (INTERALUMINA), SULFORCA's aluminum sulfate supplier, establishes its monthly price based on a formula comprising several cost factors; and (3) Electricfacion del Caroni, C.A. (EDELCA), SULFORCA's electricity supplier, determines its price based on the level of consumption of the customer or the level of tension supply to the customer.

We preliminarily determine that the information provided in the response is not sufficient to make a determination that inputs are being provided to a specific enterprise or industry, or group of enterprises or industries, at preferential rates. Therefore, we intend to gather information for our final determination.

B. Multiple Exchange Rate System

In *Final Affirmative Countervailing Duty Determination: Certain Electrical Conductor Aluminum Redraw Rod from Venezuela* (53 FR 24763, June 30, 1988), we found that redraw rod producers were able to buy imports at the fixed exchange rate and to convert a portion of their export earnings at the free market exchange rate, which was substantially higher. We determined that the exchange of export earnings under this multiple exchange system conferred an export subsidy. During verification, however, we found that there was a change in the multiple exchange rate system in December 1988 which eliminated the differential between the rate for purchasing imports and the rate at which export proceeds were converted. Therefore, we determined that the benefit to exporters of redraw rod under the multiple exchange rate system was eliminated. Since petitioner did not allege new facts or provide information or changed circumstances, we did not include this program in our initiation.

In response to general questions concerning exchange rates, the Government of Venezuela stated in its response in this investigation that there were changes in the December 1988 exchange rate regime in October 1988 and March 1989. The October change permitted exporters who waived the fiscal incentive to exchange export earnings at the free market exchange rate. In March, a free market exchange rate was adopted for all purposes, including imports and exports.

While SULFORCA stated in its response that it did not use fiscal incentives during 1988, neither do we have any information that it used the free market exchange rate during this period. Therefore, we intend to gather information for our final determination.

Verification

In accordance with section 776(b) of the Act, we will verify the information used in making our final determination.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If our final determination is affirmative, the ITC will make its final determination 45 days after the Department makes its final determination.

Public Comment

In accordance with § 355.38 of the Department's regulations published in the **Federal Register** on December 27, 1988 (53 FR 52306) (to be codified at 19 CFR section 355.38), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination on August 18, 1989, at 1:00 p.m., at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Assistant Secretary for Import Administration, Room B-099, at the above address within ten days of the publication of this notice in the **Federal Register**.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the arguments to be raised at the hearing. In accordance with 19 CFR 355.38 (c) and (d), case briefs and rebuttal briefs must be submitted to the Assistant Secretary in ten copies of the business proprietary version and seven copies of the nonproprietary version by August 11, 1989 and August 16, 1989, respectively. Oral presentations will be limited to issues raised in the briefs. In accordance with 19 CFR 355.38, written views will be considered if received not less than 30 days before the final determination is due or, if a hearing is held, within seven days after the hearing transcript is available.

This determination is published pursuant to section 703(f) of the Act [19 U.S.C. 1671(f)].

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-15302 Filed 6-27-89; 8:45 am]

BILLING CODE 3510-DS-M

[C-223-601]

Certain Cut Flowers From Costa Rica; Preliminarily Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Countervailing Duty Administrative Review.

SUMMARY: The Department of Commerce has conducted an administrative review of the agreement suspending the countervailing duty investigation on certain cut flowers from Costa Rica. We preliminary determine that the signatories have complied with the terms of the suspension agreement during the period January 13, 1987 through December 31, 1987. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: June 27, 1989.

FOR FURTHER INFORMATION CONTACT: Philip Pia or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On January 13, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 1356) a notice of suspension of countervailing duty investigation regarding certain cut flowers from Costa Rica. On January 28, 1988, the petitioner, the Floral Trade Council, requested an administrative review of the suspension agreement. We published the initiation of the administrative review on March 2, 1988 (53 FR 6681). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

The United States, under the auspices of the Customs Cooperation Council, has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by this review are shipments of Costa Rican miniature (spray) carnations, standard carnations and pompon chrysanthemums. During the review period, such merchandise was classifiable under items 192.17 and 192.21 of the Tariff Schedules of the United States. This merchandise is currently classifiable under HTS items 0603.10.30 and 0603.10.70.

The review covers 29 producers and exporters of the subject merchandise. These 29 producers and exporters, along with the Government of Costa Rica (GOCR) and the Associacion Costarricense de Floricultores (ACOFLOR), are the signatories to the suspension agreement (see Appendix A of this notice for a listing of the 29 signatory producers and exporters). The review covers the period January 13, 1987 through December 31, 1987, and six programs.

Analysis of Programs

(1) Tax Credit Certificates

Certificados de Abono Tributario (CAT) are bearer instruments issued by the Central Bank of Costa Rica. The

value of the CAT is equal to 15 percent of the f.o.b. value of a firm's shipments of non-traditional exports. The suspension agreement prohibits Costa Rican producers and exporters of cut flowers from applying for or receiving any benefits under the CAT program for shipments of the subject merchandise to the United States. Effective the date of the agreement (January 13, 1987), any unused certificates received on prior shipments of the subject merchandise to the United States were to be returned to the Central Bank of Costa Rica. During verification, we found that none of the signatory producers and exporters received or possessed unused CATs during the review period. Therefore, we preliminarily determine that with respect to this program the signatories have complied with the agreement.

(2) Certificates for Increasing Exports (CIEX)

This program provides grants to agricultural and agro-industrial producers who increase exports from one year to the next. In August 1984, the program was discontinued. However, the GOCR later appropriated additional monies to pay those companies that were eligible for, but had not yet received, benefits for increasing their exports in 1983. The suspension agreement prohibits Costa Rican producers and exporters of cut flowers from applying for or receiving any benefits under the CIEX program. During verification, we found that none of the signatory producers and exporters received benefits under this program during the review period. Therefore, we preliminarily determine that with respect to this program the signatories have complied with the agreement.

(3) Income Tax Exemptions for Export Earnings

Firms in Costa Rica are eligible for a tax exemption for export earnings. The suspension agreement prohibits Costa Rican producers and exporters of cut flowers from applying for or receiving any income tax exemption for income derived from exports of the subject merchandise to the United States. During verification, we found that none of the signatory producers and exporters applied for or received any income tax exemptions for export earnings during the review period. Therefore, we preliminarily determine that with respect to this program the signatories have complied with the agreement.

(4) Exporter Credit for Sales Tax and Consumption Tax on Certain Domestic Purchases

Exporting firms in Costa Rica are eligible for a rebate of sales taxes and selective excise taxes (*i.e.*, indirect taxes) paid on certain domestically-purchased articles. The suspension agreement prohibits Costa Rican producers and exporters of cut flowers from applying for or receiving any rebates of sales taxes and selective excise taxes on domestic purchases not physically incorporated into any exports. During verification, we found that none of the signatory producers and exporters applied for or received any rebates of these taxes during the review period on domestic purchases not physically incorporated into exports. Therefore, we preliminarily determine that with respect to this program the signatories have complied with the agreement.

(5) Exporter Exemptions for Taxes and Duties on Imports

Costa Rican firms with export contracts may be exempted from paying duties and taxes on imported raw materials, intermediate products and capital goods used to produce exported finished products. The suspension agreement prohibits Costa Rican producers and exporters of cut flowers from applying for or receiving any exemptions from taxes, surcharges and duties (*i.e.*, indirect taxes) on non-physically incorporated imports.

During verification, we found that the agency responsible for granting the exemptions, the Centro para la Promocion de las Exportaciones y de las Inversiones (CENPRO), had instituted a system of controls to ensure that no exemptions would be given for imports not physically incorporated into exports of the subject merchandise. As part of this system of controls, ACOFLOR received a list from CENPRO that showed those flower growers that applied for tax and duty exemptions. Before any applications were processed, a representative of ACOFLOR visited the flower growers claiming the exemptions and inspected the imported good in question and verified its intended use. If the ACOFLOR representative determined that the imported good would be used in the production of the subject merchandise, ACOFLOR would require that the flower grower promptly withdraw its application for exemption.

At verification, we examined the system of controls administered by ACOFLOR and CENPRO. We also visited a number of flower farms and inspected the imported items that received duty exemptions during the review period. We verified that, of forty imported items that received exemptions, only one had been used in the production of the subject merchandise, and such use had been inadvertent. ACOFLOR had discovered this oversight, and CENPRO subsequently revoked the duty exemption for the item; the producer paid the full duties and taxes required. Because we were able to satisfactorily verify that items receiving duty-free treatment did not provide benefits on the subject merchandise, we preliminarily determine that with respect to this program the signatories have complied with the agreement.

(6) Accelerated Depreciation

Exporting firms in Costa Rica may utilize accelerated depreciation for new equipment if they are approved for that benefit by specific provisions of their export contract and if they export over 50 percent of their sales (by value). The suspension agreement prohibits Costa Rican producers and exporters of cut flowers from making use of accelerated depreciation in the calculation of income taxes. During verification, we found that none of the signatory firms used this program during the review period. Therefore, we preliminarily determine that with respect to this program the signatories have complied with the agreement.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the signatories have complied with the terms of the suspension agreement for the period January 13, 1987 through December 31, 1987.

The agreement can remain in force only as long as shipments from the signatories account for at least 85 percent of imports of the subject cut flowers into the United States. Our information indicates that the 29 signatory companies accounted for substantially all of the imports into the United States of this merchandise during the review period.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days after the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday following. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.22 of the Commerce Regulations published in the **Federal Register** on December 27, 1988 (53 FR 52306) (to be codified at 19 CFR 355.22).

Date: June 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

Appendix A—List of Signatory Producers and Exporters

1. American Flower Corp., S.A.
2. Flores del Cerro
3. Agroflor de Paraiso, S.A.
4. Hermelink y Garces, S.A.
5. Tico Flor, S.A.
6. Cooexflo R.L.
7. Compania Agricola Flex, S.A.
8. Flor Bella, S.A.
9. Expoflor de Cartago, S.A.
10. Lianpa, S.A.
11. Floricultura de Costa Rica, S.A.
12. Vivero el Zamorano, S.A.
13. Flores de Iztaru, S.A.
14. Inversiones Costa Flor, S.A.
15. Coopeflor R.L.
16. Euroflores, S.A.
17. Flores y Follajes del Tirol, S.A.
18. Flores del Volcan CRP, S.A.
19. Goreza, S.A.
20. Llano Claro, S.A.
21. Ornamentales Cargil, S.A.
22. Floricultura La Colina, S.A.
23. Flores Intercontinentales, S.A.
24. Fincas Nabori, S.A.
25. Flores de Coris, S.A.
26. Florex, S.A.
27. C.R.B. Internacional, S.A.
28. Flores del Caribe, S.A.
29. Zurqui Flor de Costa Rica, S.A.

[FR Doc. 89-15303 Filed 6-27-89; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: 1990 Enumeration (Census) of DoD Employees and Dependents Overseas.

Type of Request: New.

Average Burden Hours/Minutes Per Response: .2964 hours.

Frequency of Response: One.

Number of Respondents: Estimated 900,000.

Annual Burden Hours: 266,787.

Annual Responses: 900,000.

Needs and Uses: The requested information provides complete-count and characteristic information on DoD employees and their dependents overseas which will be used for a variety of program-planning purposes, complete overseas evacuation planning and comparisons with 1990 decennial census data on the U.S. residents.

Affected Public: Individuals and households.

Frequency: One-time only.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Dr. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. Timothy Sprehe at Office of Management of Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone (202) 746-0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 21, 1989.

[FR Doc. 89-15229 Filed 6-27-89; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Per Diem, Travel and Transportation Allowance Committee

AGENCY: Per Diem, Travel and Transportation Allowance Committee.

ACTION: Publication of changes in per diem rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 149. This bulletin lists changes in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and possessions of the United States. Bulletin Number 149 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: June 1, 1989.

SUPPLEMENTARY INFORMATION: This document gives notice of changes in per diem rates prescribed by the Per Diem, Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. Distribution of Civilian Per Diem Bulletins by mail was discontinued effective June 1, 1979. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of change in per diem rates to agencies and establishments outside the Department of Defense.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 16, 1989.

BILLING CODE 3810-01-M

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	RATE	EFFECTIVE DATE
ALASKA:		
ADAK 1/	$ 25	01-01-88
ANAKTUVUK PASS	140	01-01-88
ANCHORAGE	125	01-01-88
ATQASUK	215	01-01-88
BARROW	148	05-01-89
BETHEL	135	02-01-89
BETTLES	110	01-01-88
COLD BAY	125	02-01-89
COLDFOOT	122	01-01-88
COLLEGE	122	02-01-89
CORDOVA	143	02-01-89
DILLINGHAM	114	01-01-88
DUTCH HARBOR-UNALASKA	127	01-01-88
EIELSON AFB	122	02-01-89
ELMENDORF	125	01-01-88
FAIRBANKS	122	02-01-89
FT. RICHARDSON	125	01-01-88
FT. WAINWRIGHT	122	02-01-89
HOMER	127	05-01-89
JUNEAU	117	02-01-89
KATMAI NATIONAL PARK	148	01-01-88
KENAI	119	04-01-88
KETCHIKAN	119	02-01-89
KING SALMON 3/	134	01-01-88
KODIAK	118	01-01-88
KOTZEBUE 3/	153	06-01-89
KUPARUK OILFIELD	127	01-01-88
MURPHY DOME 3/	122	02-01-89
NOATAK	143	04-01-88
NOME	129	01-01-88
NOORVIK	143	04-01-88
PETERSBURG	119	02-01-89
POINT HOPE	160	01-01-88
POINT LAY	179	01-01-88
PRUDHOE BAY	121	05-01-89
SAND POINT	103	01-01-88
SEWARD	109	02-01-89
SHEMYA AFB 3/	30	01-01-88
SHUNGNAK	143	04-01-88
SITKA-MT. EDGECOMBE	119	02-01-89
SKAGWAY	119	02-01-89

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	RATE	EFFECTIVE DATE
ALASKA: (CONT'D)		
SPRUCE CAPE	$118	01-01-88
ST. MARY'S	100	01-01-88
ST. PAUL ISLAND	115	01-01-88
TANANA	129	01-01-88
UMIAT	160	01-01-88
UNAKAKLEET	105	01-01-88
VALDEZ	157	05-01-89
WAINWRIGHT	165	01-01-88
WALKER LAKE	136	01-01-88
WRANGELL	119	02-01-89
YAKUTAT	110	01-01-88
OTHER 3, 4/	94	02-01-89
AMERICAN SAMOA	102	05-01-89
GUAM, M.I.	129	05-01-89
HAWAII:		
ISLAND OF HAWAII: HILO	76	05-01-89
ISLAND OF HAWAII: OTHER	99	05-01-89
ISLAND OF KAUAI	142	05-01-89
ISLAND OF KURE 1/	13	05-01-89
ISLAND OF MAUI: KIHEI		
04-01--12-19	135	05-01-89
12-20--03-31	147	12-20-89
ISLAND OF MAUI: OTHER	99	05-01-89
ISLAND OF OAHU	126	05-01-89
OTHER	99	05-01-89
JOHNSTON ATOLL 2/	35	02-01-89
MIDWAY ISLANDS 1/	13	01-01-88
NORTHERN MARIANA ISLANDS:		
ROTA	76	01-01-88
SAIPAN	115	02-01-89
TINIAN	68	01-01-88
OTHER	20	01-01-88
PUERTO RICO:		
BAYAMON		
05-16--12-15	133	11-01-88
12-16--05-15	163	12-16-88
CAROLINA		
05-16--12-15	133	11-01-88
12-16--05-15	163	12-16-88
FAJARDO (INCLUDING LUQUILLO)		
05-16--12-15	133	11-01-88
12-16--05-15	163	12-16-88

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	RATE	EFFECTIVE DATE
PUERTO RICO: (CONT'D)		
FT. BUCHANAN (INCL GSA SERV CTR, GUAYNABO)		
05-16--12-15	$133	11-01-88
12-16--05-15	163	12-16-88
ROOSEVELT ROADS		
05-16--12-15	133	11-01-88
12-16--05-15	163	12-16-88
SABANA SECA		
05-16--12-15	133	11-01-88
12-16--05-15	163	12-16-88
SAN JUAN (INCL SAN JUAN COAST GUARD UNITS)		
05-16--12-15	133	11-01-88
12-16--05-15	163	12-16-88
OTHER	121	11-01-88
VIRGIN ISLANDS OF THE U.S.		
05-01--11-30	144	05-01-88
12-01--04-30	180	01-01-88
WAKE ISLAND 2/	21	04-01-89
ALL OTHER LOCALITIES	20	01-01-88

FOOTNOTES

1/ Commercial facilities are not available. The per diem rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the traveler. For Adak, Alaska: on any day when Government quarters are not used and quarters are obtained at a construction camp, a daily travel per diem allowance of $69 is prescribed to cover the costs of lodging, meals and incidental expenses.

2/ Commercial facilities are not available. Only Government-owned and contractor operated quarters and mess are available at this locality. This per diem rate is the amount necessary to defray the cost of lodging, meals and incidental expenses.

3/ On any day when US Government or contractor quarters and US Government or contractor messing facilities are used, a per diem rate of $13 is prescribed to cover meals and incidental expenses at Shemya AFB and the following Air Force Stations: Cape Lisburne, Cape Newenham, Cape Romanzof, Clear, Fort Yukon, Galena, Indian Mountain, King Salmon, Sparrevohn, Tatalina and Tin City. This rate will be increased by the amount paid for

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

US Government or contractor quarters and by $4 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

4/ On any day when US Government or contractor quarters and US Government or contractor messing facilities are used, a per diem rate of $34 is prescribed to cover meals and incidental expenses at Amchitka Island, Alaska. This rate will be increased by the amount paid for US Government or contractor quarters and by $10 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

[FR Doc. 89-15227 Filed 6-27-89; 8:45 am]
BILLING CODE 3810-01-C

BEST COPY AVAILABLE

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Travel Costs.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson, Office of Federal Acquisition and Regulatory Policy, (202) 523–3781.

SUPPLEMENTARY INFORMATION: a. *Purpose:* FAR 31.205–46, Travel Costs, requires that, except in extraordinary and temporary situations, costs incurred by a contractor for lodging, meals, and incidental expenses shall be considered to be reasonable and allowable only to the extent that they do not exceed on a daily basis the per diem rates in effect as of the time of travel as set forth in the Federal Travel Regulations for travel in the conterminous 48 United States, the Joint Travel Regulations, Volume 2, Appendix A, for travel in Alaska, Hawaii, the Commonwealth of Puerto Rico, and territories and possessions of the United States, and the Department of State Standardization Regulations, section 925, "Maximum Travel Per Diem Allowances for Foreign Areas". The burden generated by this coverage is in the form of the contractor preparing a justification whenever a higher actual expense reimbursement method is used. This information is required for an adequate implementation of Pub. L. 99–234.

The information is used by contracting officers to ensure that the Government does not reimburse contractors for excessive travel costs.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, *10,000;* responses per respondent, *10;* total annual responses, *100,000;* hours per response, *.25;* and total response burden hours, *40,000.*

Obtaining Copies of Proposals

Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202 523–4755. Please cite OMB Control No. 9000–0088, Travel Costs.

Dated: June 21, 1989.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 89–15234 Filed 6–27–89; 8:45 am]

BILLING CODE 6820–JC–M

DEPARTMENT OF EDUCATION

Fund for the Improvement and Reform of Schools and Teaching Board; Meeting

AGENCY: Fund for the Improvement and Reform of Schools and teaching Board.

ACTION: Notice of a partially closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Fund for the Improvement and Reform of Schools and Teaching Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES: July 27, 1989—8:30 a.m.–12:00 Noon (Open); July 27–28, 1989—12:00 Noon to 5:00 p.m. on July 27 and from 9:00 a.m. to 5:00 p.m. on July 28 (Closed).

ADDRESS: U.S. Department of Education, OERI Headquarters, 555 New Jersey Avenue NW., Room 326, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Richard T. LaPointe, Director, Fund for the Improvement and Reform of Schools and Teaching, U.S. Department of Education, 555 New Jersey Avenue NW., Room 522, Washington, DC 20208–5524, (202) 357–6496.

SUPPLEMENTARY INFORMATION: The Fund for the Improvement and Reform of Schools and Teaching (FIRST) is established under section 3231 of the Hawkins-Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297). The Board is established to advise the Secretary concerning developments in education that merit his attention; identify promising initiatives to be supported under the authorizing legislation; and advise the Secretary and the Director of the Fund on the selection of projects under consideration for support, and on planning documents, guidelines and procedures for grant competitions carried out by the Fund.

The Board will convene in open session from 8:30 a.m. to 12:00 Noon on July 27 and conclude with a portion of the meeting closed to the public from 12:00 Noon to 5:00 p.m. on July 27 and from 9:00 a.m. to 5:00 p.m. on July 28. The closed portion of the meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. Appendix I) and under exemptions (4) and (6) of section 552b(c) of the Government in the Sunshine Act (Pub. L. 94–409; 5 U.S.C. 552b(c) (4) and (6)). This closed portion will involve discussion of matters that may disclose sensitive information about: (1) Applicants, (2) funding requests and levels, and (3) the names and comments of expert reviewers. Any such discussion would disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential, and disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of privacy if conducted in open session.

The proposed agenda for the open session from 8:30 a.m. to 12:00 Noon on July 27, includes: nomination/discussion of new (renewal) Board members; conversation/photo with Secretary Cavazos; Ethics and Standards of Conduct briefings; introduction of new staff members; discussion of FIRST/FIPSE joint October meeting.

The closed portion of the meeting from 12:00 Noon to 5:00 p.m. on July 27 and from 9:00 a.m. to 5:00 p.m. on July 28 will involve the application review. A summary of the activities at the closed session and related to matters, which are informative to the public consistent with the policy of Title 5 U.S.C. 552b, will be available to the public within fourteen days after the meeting.

Records are kept of all Board proceedings, and are available for public inspection at the Office of the Fund for the Improvement and Reform of Schools and Teaching, Room 522, 555 New Jersey Avenue NW., Washington, DC, from the hours of 8:30 a.m. to 5:00 p.m.

Dated: June 20, 1989.

Bruno V. Manno,

Acting Assistant Secretary, Office of Educational Research and Improvement.

[FR Doc. 89–15233 Filed 6–27–89; 8:45 am]

BILLING CODE 4000–01–M

Office of Educational Research and Improvement

National Center for Education Statistics; Reporting Deadline for Submission by State Educational Agencies of Revisions to State Revenue and Expenditure Reports for Fiscal Year 1988 Used in Allocating Certain Fiscal Year 1990 Appropriated Funds for Federal Education Programs

AGENCY: Department of Education.

ACTION: Notice of reporting deadline.

Deadline for receipt: September 1, 1989

SUMMARY: The National Center for Education Statistics (NCES) of the U.S. Department of Education, acting as the data collection agent for the Department, announces a September 1, 1989, closing date for submission of revisions to fiscal year (FY) 1988 current expenditure data and average daily attendance statistics submitted on or about March 15, 1989, by State educational agencies (SEAs) on ED form 2447, "Common Core of Data, Part VI—Revenues and Current Expenditures for Public Elementary and Secondary Education." This deadline for the submission of FY 1988 fiscal data is necessary to ensure timely distribution of Federal funds. The data are used to calculate allocations for Federal education programs, including Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965 (Chapter 1), Financial Assistance for Local Education Agencies in Areas Affected by Federal Activity (Impact Aid), Financial Assistance to Local Education Agencies for Education of Indian Children (Indian Education), Part B—Assistance for Education of All Handicapped Children (Education of the Handicapped), Title VII of the Stewart B. McKinney Homeless Assistance Act, and other programs whose allocations are based, in whole or in part, on the State per pupil expenditure (SPPE) data derived from the information reported by SEAs. These data will be published by NCES and will be used in the calculation of allocations for FY 1990 appropriated funds.

DATE: Fiscal data on Form 2447 are due at the address indicated in this notice on or before 4:00 p.m. (Washington, DC time) on Friday, September 1, 1989. SEAs may hand deliver Form 2447 to the address indicated in this notice by 4:00 p.m. (Washington, DC time) on the deadline date. Regular mail submissions of Form 2447 must be postmarked by midnight August 30, 1989, and express mail postmarked by midnight August 31, 1989. An SEA must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

If Form 2447 is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an SEA should check with its local post office.

ADDRESS: ED form 2447, "Common Core of Data, Part VI—Revenues and Current Expenditures for Public Elementary and Secondary Education—Fiscal Year 1988" (OMB No. 1850–0067) should be sent to the U.S. Department of Education, Office of Educational Research and Improvement, National Center for Education Statistics, 555 New Jersey Avenue NW., Washington, DC 20208–5651, Attention: GSAB–Fiscal Survey.

FOR FURTHER INFORMATION CONTACT: Dr. William J. Fowler, Jr., at the address shown above, or call (202) 357–6921.

SUPPLEMENTARY INFORMATION: NCES collects data annually from SEAs through ED form 2447, pursuant to section 406 (g) of the General Education Provisions Act, as amended (20 U.S.C. 1221e–1(g)), which authorizes NCES to collect data from the States on the financing of elementary and secondary education. This report includes attendance, revenue, and expenditure data from which NCES determines, among other statistics, the average State per pupil expenditure (SPPE) for elementary and secondary education. SPPE data provide useful statistical information, and they are needed for calculating State allocations under certain formula grant programs.

Initial FY 1988 data on ED Form 2447 were due on March 15, 1989, or as soon thereafter as possible. If an SEA did not submit FY 1988 data on or about March 15, 1989, it should have informed NCES, in writing, of the delay and the date by which it will submit FY 1988 data. Submissions by SEAs to NCES are edited by NCES and returned to each SEA for verification. NCES acknowledges that data submitted prior to September 1, 1989, may be preliminary and are subject to revision by an SEA by September 1, 1989.

To ensure timely distributions of Federal education funds based on the best, most accurate data available, NCES must establish, for allocation purposes, a final date by which ED form 2447 must be submitted. SEAs should be aware, however, that all of these data are subject to audit and that, if any inaccuracies are discovered in the audit process, the Department may seek recovery of overpayments for the applicable programs.

Program Authority: 20 U.S.C. 1221e–1(g).

Dated: June 22, 1989.

Bruno V. Manno,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 89–15232 Filed 6–27–89; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Intent to Award Grant to National Academy of Sciences

AGENCY: U.S. Department of Energy.

ACTION: Notice of intent to make a noncompetitive financial award.

SUMMARY: The Department of Energy announces that it plans to make a non-competitive award of $120,000, under grant number DE–FG01–89FE61873, to the National Academy of Sciences (NAS) to assist in the conduct of a study on the tropospheric ozone. The purpose of this study is to evaluate the scientific information and data bases in the tropospheric area and to recommend strategies for improving critical scientific and technical gaps in the information and data bases. The National Academy of Sciences is a uniquely qualified, unbiased, external organization chartered by Congress in 1863, to conduct studies in the fields of science and art when called upon by the Government. Executive Order 2859 established the role of the NAS to seek cooperative links between Government and nongovernment research activities, and Executive Order 10688 furthers the objectives for NAS promotion of research and efforts to avoid duplication in research. This latter Executive Order established roles for bringing foreign and U.S. research efforts and gathering scientific data from public and private sources. NAS is uniquely qualified to assemble scientific and engineering expertise of the highest reputation from the public and private sectors to address national problems of high priority. It is able, through its advisory panels and committees to provide independent and

objective findings and opinions as well as acceptance of these findings and opinions by the target audience. DOE's contribution represents 27% of the total estimated study cost of $850,000. The remaining funds will be provided by Environmental Protection Agency, Motor Vehicle Manufacturers Association, American Petroleum Institute, and the Department of Transportation.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, Attn: Earlette Robinson, MA-452.1, 1000 Independence Avenue SW., Washington, DC 20585. Telephone No. (202) 586-8709.

Jeffrey Rubenstein,

Director, Contract Operations Division "A", Office of Procurement Operations.

[FR Doc. 89-15297 Filed 6-27-89; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Energy.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act (Pub. L. 96-511, 44 U.S.C. 3501 et seq.).

The listing does not include information collection requirements contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, or management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, or extension; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden, and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before July 28, 1989.

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards, at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards (EI-73), Energy Information Administration, M.S. 1H-023, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-2171.

SUPPLEMENTARY INFORMATION: If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the OMB DOE Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395-3084. (Also, please notify the DOE contact listed above.)

The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission.
2. FERC-561.
3. 1902-0099.
4. Annual Report of Interlocking Positions.
5. Extention.
6. Annually.
7. Mandatory.
8. Individuals or Households.
9. 1,500 respondents.
10. 1,500 responses.
11. .25 hours per response.
12. 375 hours (total).
13. This information collection requirement is required by section 305(c) of the Federal Power Act. The information is collected by FERC to identify persons holding interlocking positions involving public utilities and possible conflicts of interest.

Statutory Authority: Section 5(a), 5(b), 13(b), and 52, Pub. L. 95-275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 89-15298 Filed 6-27-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 2528 Maine]

Central Maine Power Co; Availability of Environmental Assessment

June 22, 1989.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for major license for the proposed Cataract Project located on the Saco River in York County, in Saco and Biddeford, Maine, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 89-15291 Filed 6-27-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP89-42-000]

Transwestern Pipeline Co. v. Corinne Grace Petition To Reopen and Vacate Final Well Category Determination

June 22, 1989.

On May 22, 1989, Transwestern Pipeline Company (Transwestern) filed with the Federal Energy Regulatory Commission (Commission) a petition to reopen and vacate a final well category determination of continued stripper well classification for the City of Carlsbad #1 gas well in Eddy County, New Mexico under section 108 of the Natural Gas Policy Act of 1978 (NGPA).[1] The subject determination became final on December 27, 1985, in conformance with NGPA section 503(d) and 18 CFR 275.202(a).

Transwestern alleges that in making the determination the New Mexico Oil Conservation Division relied upon a misstatement of material fact. Specifically, Transwestern contends that Corrine Grace stated in her application for the continued section 108 determination that she had utilized enhanced recovery techniques, when in fact she recompleted into a separate reservoir. Transwestern requests the Commission to reopen and vacate the section 108 determination and issue a determination that the well qualifies under section 104 of the NGPA, and require Mrs. Grace to refund all overpayments, with interest, made since the date of the 1985 recompletion.

Notice is hereby given that, in the event the subject determination is reopened, the question of whether the Commission will require refunds, plus interest computed under § 154.102(c) of the regulations, is a matter subject to the review and final decision of the Commission.

Any person desiring to be heard or to make any protest to the requested reopening and withdrawal should, within 30 days after this notice is published in the **Federal Register** file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of Rules 214 or 211 of the Rules of Practice and Procedure. All protests filed will be considered but will not make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene in accordance with the Commission's rules.

Lois D. Cashell,

Secretary.

[FR Doc. 89-15290 Filed 6-27-89; 8:45 am]

BILLING CODE 6717-01-M

[1] 15 U.S.C. 3318 (1982).

[Docket No. TM89-2-23-000]

Eastern Shore Natural Gas Co.; Proposed Changes in FERC Gas Tariff

June 22, 1989

Take notice that Eastern Shore Natural Gas Company (ESNG) tendered for filing on June 16, 1989 certain revised tariff sheets included in Appendix A attached to filing. Such sheets are proposed to be effective February 1, 1989, April 1, 1989, May 1, 1989 and June 1, 1989 respectively.

ESNG states it is filing revised rates under its Rate Schedule LSS to track changes in the rates ESNG is charged under Transcontinental Gas Pipe Line Corporation's (Transco) Rate Schedule LSS. ESNG purchases storage service from Transco under ESNG's Rate Schedule LSS. Therefore, pursuant to Section 24 of ESNG's General Terms and Conditions, ESNG is submitting herewith for filing Second Substitute Forty-Fourth Revised Sheet No. 6 and Second Substitute Fifteenth Revised Sheet No. 14 in order to reflect under Rate Schedule LSS, the revised rates under Transco's Rate Schedule LSS. Such tariff sheets are proposed to be effective February 1, 1989.

Also, included herein for filing are revised tariff sheets proposed to be effective April 1, 1989 and May 1, 1989. ESNG states that such sheets incorporate the revised Rate Schedule LSS rates filed herein to be effective February 1, 1989, into tariff sheets which have been filed with the Commission subsequent to February 1, 1989.

ESNG states it further filing to revise the billing amounts shown on Second Revised Sheet No. 6B to comply with the provisions of Ordering Paragraph (B) of the Commission's August 26, 1988 order in the original Order 500 "tracking" filing in Docket No. RP88-228-000. The referenced order requires ESNG to filed revised billing amounts to "track" any modifications to Transco's take-or-pay charges ordered by the Commission. The Commission on May 31, 1989 accepted a May 1, 1989 filing made by Transco to recover 75% of the approximately $20.4 million of Litigant Producer Settlement Payments (LPSP). Transco states the LPSP costs are proposed to be recovered over a one year amortization period beginning June 1, 1989 through May 31, 1990. Transco's filing results in an increase of $5,561 per month (i.e. from $68,345 to $73,906) in the total amount of fixed monthy PSP Charges pertaining to ESNG, commencing June 1, 1989.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR § 385.211 and § 385.214). All such motions or protests should be filed on or before June 29, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-15288 Filed 6-27-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-10-51-000]

Great Lakes Gas Transmission Co.; Proposed Changes in FERC Gas Tariff Purchased Gas Adjustment Clause Provisions

June 22, 1989.

Take notice that Great Lakes Gas Transmission Company ("Great Lakes") on June 19, 1989 tendered for filing First Revised Second Substitute Twenty-First Revised Sheet Nos. 57(i) and 57(ii) and First Revised Second Substitute Eighth Revised Sheet No. 57(v) to its FERC Gas Tariff, First Revised Volume No. 1.

Great Lakes states that these tariff sheets reflect revised current PGA rates for the months of June and July, 1989. The tariff sheets were filed as an Out of Cycle PGA to reflect the latest estimated gas cost as provided to Great Lakes by its sole supplier of natural gas, TransCanada Pipelines Limited ("TransCanada"). These pricing arrangements were the result of contract renegotiation between each of Great Lakes' resale customers and the supplier.

Great Lakes requested waiver of the notice requirements of the provisions of § 154.309 of the Commission's Regulations and any other necessary waivers so as to permit the above tariff sheets to become effective as requested in order to implement the gas pricing agreements between Great Lakes' resale customers and TransCanada on a timely basis.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before June 29, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-15280 Filed 6-27-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-33-000]

Northern Border Pipeline Co; Informal Technical Conference

June 22, 1989.

Take notice that on July 10, 1989, at 1:30 p.m. there will be an informal technical conference in the above-captioned cause. Said conference will occur at the offices of the Commission at 825 North Capitol Street, Washington, DC, and will be for the purposes of providing information relevant to the Commissions May 30, 1989, Policy Statement Providing Guidance With Request To The Designing Of Rates in Docket No. PL89-2-000. All parties may at their option attend; however, mere attendance will not confer party status. Any person wishing to become a party must file a Motion to Intervene in accordance with 18 CFR 385.214 (1988).

Lois D. Cashell,

Secretary.

[FR Doc. 15292 Filed 6-27-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-00279; FRL-3609-4]

State FIFRA Issues Research and Evaluation Group (SFIREG); Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The State FIFRA Issues Research and Evaluation Group (SFIREG) will hold a two-day meeting, beginning on July 10, 1989 and ending on July 11, 1989. This notice announces the location and times for the meeting and sets a tentative agenda. The meeting is open to the public.

DATE: The SFIREG will meet on Monday, July 10, 1989 from 8:30 a.m. to 5:00 p.m. and on Tuesday, July 11, 1989 beginning at 8:30 a.m. and adjourning at approximately noon.

ADDRESS: The meeting will be held at: Hyatt Regency—Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202, (703) 486-1234.

FOR FURTHER INFORMATION CONTACT: By mail:

Arty Williams, Office of Pesticide Programs (H7506C), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Room 1007, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557-5077.

SUPPLEMENTARY INFORMATION: The tentative agenda includes the following:

1. Regional reports.
2. Reports from the SFIREG Working Committees.
3. Update on activities of Registration Division, Office of Pesticide Programs.
4. Update on activities of the Special Review and Reregistration Division, Office of Pesticide Programs.
5. Update on activities of the Office of Compliance Monitoring.
6. Presentation of final recommendations of the Termiticide Labeling Task Force.
7. A report on the EPA's Pesticide Monitoring Workshop of June 7 and June 8, 1989.
8. Briefing on the Office of Pesticide Programs' computer based systems.
9. Briefing on the Office of Pesticide Programs' Tolerance Assessment System (TAS)
10. Update on development of regulations pertaining to pesticide disposal.
11. Office of Enforcement and Compliance Monitoring's Reporting of State Enforcement Actions.
12. Other topics as appropriate.

Dated: June 22, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 89-15353 Filed 6-26-89; 11:07 am]

BILLING CODE 6560-50-M

[FRL-3608-5]

Proposed De Minimis Settlement Under 122(g), Wheeling Disposal Site

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement.

SUMMARY: The U.S. Environmental Protection Agency is proposing to enter into a de minimis administrative settlement to resolve claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9622(g). This settlement is intended to resolve the liabilities of three parties for response costs incurred and to be incurred at the Wheeling Disposal Site, Amazonia, Missouri.

DATE: Written comments must be provided on or before July 31, 1989.

ADDRESS: Comments should be addressed to the Regional Administrator, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, and should refer to: In the Matter of the Wheeling Disposal Site, Amazonia, Missouri, EPA Docket No. VII-89-F-0003.

FOR FURTHER INFORMATION CONTACT: Audrey Asher, U.S. Environmental Protection Agency, Office of Regional Counsel, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 236-2809.

SUPPLEMENTARY INFORMATION: The three proposed settlers, IHP Industrial, Inc., Performance Contracting, Inc., and St. Joseph Light & Power Company, are parties who contributed asbestos to the site in amounts constituting .010%, .021%, and .052%, respectively, of the total volume of wastes disposed at the site. The asbestos had been buried in drums and placed in trenches. There is no information that asbestos has been released to the environment. There is information that other wastes which were disposed at the site, volatile organic compounds, metals, and pesticides, were released to the environment.

Under the proposed agreement, each settler would pay a portion, equivalent to its fractional share of volume of wastes contributed to the site, of:

1. Past costs—$411,504,
2. Estimated cost of the Remedial Investigation/Feasibility Study—$1,260,000,
3. Estimated cost of the Remedial Design/Remedial Action—$13,420,000,
4. Estimated cost of Operation and Maintenance—$855,000.

In addition to paying a fractional share of total costs for each activity identified above, the settlers will pay an extra amount to cover any possible cost overruns. A multiplier of 2 was used as a premium for items #3 and #4 to cover cost overruns. The result of these calculations is a yield of $25,083; $24,037 of that sum would be paid to the Superfund. The remaining $1,046 is the volumetric share attributable to the proposed settlers for the Remedial Investigation/Feasibility Study and would be paid to the parties who are presently performing the Remedial Investigation/Feasibility Study.

The proposed settlement provides that in exchange for the settlement payment, EPA will covenant not to sue the de minimis parties for response costs or for injunctive relief pursuant to Sections 106 and 107 of CERCLA and section 7003 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6973. The proposed settlement agreement also contains a reopener provision if information not currently known to EPA is discovered which indicates that (1) any of the proposed settlers contributed hazardous substances to the site other than asbestos, (2) any of the proposed settlers contributed asbestos in an amount greater than assumed in the settlement agreement, (3) asbestos fibers were released to the air, or (4) any proposed settler no longer qualifies as a de minimis party pursuant to Section 122 of CERCLA. The proposed settlement further provides that subject to the aforementioned reservations, EPA will provide contribution protection to settlers in exchange for the settlement payment.

William Rice,

Acting Regional Administrator.

[FR Doc. 89-15274 Filed 6-27-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3608-6]

EPA List of Facilities Prohibited From Receiving Government Contracts Under 40 CFR Part 15

AGENCY: Environmental Protection Agency.

ACTION: EPA list of facilities prohibited from receiving government contracts under 40 CFR Part 15.

SUMMARY: 40 CFR 15.40 requires the Environmental Protection Agency (EPA) to publish in the **Federal Register** semi-annually a list of all persons and facilities prohibited under 40 CFR Part 15 from receiving federal government contracts, grants, loans, subcontracts, subgrants, or subloans. The following list contains the names and locations of the prohibited facilities, as well as the date they were placed on the list and the effective date of each listing.

DATE: This list is effective as of June 28, 1989.

FOR FURTHER INFORMATION CONTACT: A. A. Varela, Listing Official, Office of Enforcement and Compliance Monitoring, Environmental Protection Agency, Rm. 112 NE. Mall (LE-130A), 401 M Street SW., Washington, DC 20460. Telephone (202) 475-8777.

SUPPLEMENTARY INFORMATION: Pursuant to section 306 of the Clean Air Act [42 U.S.C. 1857 et seq., as amended by Pub. L. 91-604], section 508 of the Clean Water Act [33 U.S.C. 1251 et seq., as amended by Pub. L. 92-500], and E.O. 11738, EPA has been authorized to provide certain prohibitions and requirements concerning the administration of the Clean Air Act and the Clean Water Act with respect to federal contracts, grants, loans, subcontracts, subgrants, and subloans. On April 16, 1975, regulations implementing the requirements of the statutes and the Executive Order were promulgated in the **Federal Register** [see 40 CFR Part 15, 40 FR 17124, April 16, 1975, as amended at 44 FR 6911, February 5, 1979]. On September 5, 1985, revisions to those regulations were promulgated in the **Federal Register** [see 50 FR 36188, September 5, 1985]. The regulations provide for the establishment of a List of Violating Facilities which reflects those facilities ineligible for use in nonexempt federal contracts, grants, loans, subcontracts, subgrants, or subloans.

The List of Violating Facilities is comprised of two sublists. Sublist 1, mandatory listing (40 CFR 15.10), includes those facilities listed on the basis of a conviction under section 113(c)(1) of the Clean Air Act or section 309(c) of the Clean Water Act. Sublist 2, discretionary listing (40 CFR 15.11), includes those facilities listed on the basis of continuing or recurring noncompliance with clean air or clean water standards, and:

1. A conviction by a federal court under Section 113(c)(2) of the Clean Air Act, or
2. Any injunction, order, judgment, decree (including consent decrees), or other form of civil ruling by a federal, state or local court issued as a result of noncompliance with clean air or water standards, or
3. A conviction by a state or local court of a criminal offense on the basis of noncompliance with clean air standards or clean water standards, or
4. Violation of an administrative order issued under sections 113(a), 113(d), 167, or 303 of the Clean Air Act or section 309(a) of the Clean Water Act, or
5. A Notice of Noncompliance issued by EPA under Section 120 of the Clean Air Act, or
6. An enforcement action filed by EPA in federal court under sections 113(b), 167, 204, 205, or 211 of the Clean Air Act or section 309(b) of the Clean Water Act due to noncompliance with clean air or water standards.

This Notice reflects:

- The addition of the Apodaca & Sons Plating facility in El Monte, California, to sublist 1 of the List of Violating Facilities. These facilities are subject to Listing on the basis of a criminal conviction obtained against the facilities under section 309(c)(1) of the Clean Water Act. This facility is placed on the List as of the date of conviction, October 3, 1988.
- The addition of the Marathon Development, Inc. facility in Seekonk, Massachusetts, to sublist 1 of the List of Violating Facilities. This facility is subject to Listing on the basis of a criminal conviction obtained against the facilities under section 309 (c)(1) of the Clean Water Act. This facility is placed on the List as of the date of conviction, May 5, 1988.
- The addition of the Middle Keys Construction facility in Middle Keys, Florida, to sublist 1 of the List of Violating Facilities. This facility is subject to Listing on the basis of a criminal conviction obtained against the facility under section 309(c)(1) of the Clean Water Act. This facility is placed on the List as of the date of conviction, May 27, 1988.

This **Federal Register** Notice represents the facilities for which EPA has received and reviewed Listing and Delisting information. Facilities whose owners or operators have been convicted of criminal violations of the CAA or CWA are subject to the federal assistance prohibition automatically upon conviction.

Other additions to and deletions from the List of Violating Facilities will be published periodically as they occur. Facilities on the List also are included in the General Services Administration's "Consolidated List of Debarred, Suspended, and Ineligible Contractors." Subscriptions to this document may be obtained from the U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

List of Violating Facilities

Name and effective date	Location and basis for listing
Sublist 1: Mandatory Listing	
Chemical Formulators ..... Jan. 29, 1981	Nitro, West Virginia Facility. Clean Water Act Sec. 309(c)(1).
Waterbury House Wrecking Co., Dec. 19, 1985	Waterbury, Connecticut Facility. Clean Air Act Sec. 113(c)(1).
Fleischman's Yeast, Inc., Division of Burns, Philp & Company, Ltd. May 14, 1986, effective date of listing. Nov. 14, 1986, effective date of facility's transfer from Nabisco to Burns, Philp.	Sumner, Washington Facility. Clean Water Act Sec. 309(c)(1).
Hope Resource Recovery, Inc.	Long Island, New York Facility.

LIST OF VIOLATING FACILITIES—Continued

Name and effective date	Location and basis for listing
Sept. 18, 1988	Clean Air Act Sec. 113(c)(1).
Sea Gleaner Marine, Inc.	Bellevue, Washington Facility.
Oct. 6, 1988	Clean Water Act Sec. 309(c)(1).
Sea Port Bark Supply	Tacoma, Washington Facility.
Oct. 21, 1988	Clean Water Act Sec. 309(c)(1).
Ocean Reef Club, Inc.	Key Largo, Florida Facility.
Oct. 22, 1988	Clean Water Act Sec. 309(c)(1).
Irwin Peartmen	Pittsburgh, Pennsylvania Facility.
Dec. 30, 1988	Clean Air Act Sec. 113(c)(1).
Salvatore C. Williams	Pittsburgh, Pennsylvania Facility.
Dec. 30, 1988	Clean Air Act Sec. 113(c)(1).
Protex, Inc.	Denver, Colorado Facility.
Feb. 4, 1988	Clean Water Act Sec. 309(c)(1).
Reidy Terminal/ Wisconsin Barge Lines. Aug. 14, 1987	St. Louis, Missouri Facility. Clean Water Act Sec. 309(c)(1).
California Tank Lines/ Chemical Transfer Co. May 18, 1987	Los Angeles, California Facility. Clean Water Act Sec. 309(c)(1).
Gulf States Oil Co. July 22, 1987	Houston, Texas Facility. Clean Water Act Sec. 309(c)(1).
Colorado River Sewage Joint Venture. Aug. 31, 1987	Phoenix, Arizona Facility. Clean Water Act Sec. 309(c)(1).
Shenango Steel Co. March 22, 1988	Neville Island, Pennsylvania Facility. Clean Water Act Sec. 309(c)(1).
Valley Feeds, Inc. Sept. 16, 1987	Van Buren, Arkansas Facility. Clean Water Act Sec. 309(c)(1).
Wilgenburg Dairy Nov. 16, 1987	San Marcos, California Facility. Clean Water Act Sec. 309(c)(1).
Apodaca & Sons Oct. 3, 1988	El Monte, California Facility. Clean Water Act 309(c).
Marathon Development May 5, 1988	Seekonk, Massachusetts Facility. Clean Water Act 309(c).
Middle Keys Construction. May 27, 1988	Middle Keys, Florida Facility. Clean Water Act 309(c).

Sublist 2: Discretionary Listing

None.

Dated: May 16, 1989.

Edward E. Reich,

Acting Assistant Administrator for Enforcement and Compliance Monitoring.

[FR Doc. 89-15273 Filed 6-27-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[FCC 89-188; PRB-3]

Privatization of Special Call Sign System for Amateur Stations

AGENCY: Federal Communications Commission.

ACTION: Termination of proceeding.

SUMMARY: The Commission has terminated the proceeding (52 FR 4530; February 12, 1987) concerning a special call sign system. This order is necessary to advise amateur station licensees of the disposition of the proposal for a special call sign system in the private sector. The effect of the action is to maintain the *status quo* with respect to the assignment of amateur call signs.

EFFECTIVE DATE: May 31, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Private Radio Bureau, Washington, DC 20554, (202) 632-4964.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order adopted May 31, 1989, and released June 19, 1989.

1. The full text of this Commission document is available for inspection and copying during normal hours in the Private Radio Bureau Public Reference Room, 1270 Fairfield Road (Route 116 West), Gettysburg, PA 17325. The complete text of the Order may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., 1270 Fairfield Road (Route 116 West), Gettysburg, PA 17325, (717) 337-1433 or Suite 140, 2100 M Street NW., Washington, DC 20037, (202) 857-3800.

Summary of Order

2. The Commission has terminated PRB-3, a proceeding looking toward the establishment of a special call sign system in the private sector. The Commission said that its intention was to consider implementation of a special call sign system only if it could be done with no additional cost or workload. But, this was not the case. Thus, the Commission said it could not divert significant Commission resources from essential activities at this time. Various motions and allegations concerning violations of the Commission's *ex parte* rules were dismissed as moot.

3. The authority for this action is contained in 47 U.S.C. 154(i).

4. *It is ordered*, That this proceeding Is Terminated.

5. *It is further ordered*, that the Motion for Sanctions, Motion to Strike, Motion for an Order to Show Cause, and a document entitled "Disclosure in Compliance with Rule Section 1.1214, all filed by Dennis C. Brown and Robert H. Schwaninger *Are Dismissed* as moot.

Federal Communications Commission.

Donna Searcy,

Secretary.

[FR Doc. 89-15202 Filed 6-27-89; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension

Title: Certificate of Labor Standards Compliance

Abstract: Title 44 of the Code of Federal Regulations, § 308.7 requires State and local governments to certify that contractors and subcontractors are in compliance with the Federal labor standards (29 CFR Part 5) and the provisions of 44 CFR 308.4 when Federal funding is requested under section 201(i) of the Federal Civil Defense Act of 1950, as amended, for construction of emergency operating centers and emergency communications facilities. The information will be used by FEMA to approve or disapprove an advance of funds or final payment to a contractor on any contract involving construction work in excess of $2,000

Type of Respondents: State and local governments.

Estimate of Total Annual Reporting and Recordkeeping Burden: 150.

Number of Respondents: 150

Estimated Average Burden Hours Per Response: 1

Frequency of Response: On occasion.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C Street SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to the FEMA Clearance Officer at the above address; and to Pamela Barr, (202) 395-7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Date: June 20, 1989.

Gail L. Kercheval,

Acting Director, Office of Administrative Support.

[FR Doc. 89-15262 Filed 6-27-89; 8:45 am]

BILLING CODE 6718-01-M

[FEMA-829-DR]

Louisiana; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA-829-DR), dated May 20, 1989, and related determinations.

DATED: June 22, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice

The notice of a major disaster for the State of Louisiana, dated May 20, 1989, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 20, 1989: The parishes of Bienville and Claiborne for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89-15284 Filed 6-27-89; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Notice is given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR Part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarder and Passenger Vessel Operations, Federal Maritime Commission, Washington, DC. 20573.

Immediate Customs Service, Inc., 149-05 177th Street, Jamaica, NY 11434, Officers: James J. Rea, President, Robert Rea, Sen. Vice President, Michael Rea, Vice President

I.T.T., 20280 S. Vermont Ave. #245, Torrance, CA 90502, Officer: Young M. Kay, Sole Proprietor

Tom Usbay, 75-15 189th Street, Fresh Meadows, NY 11366, Officer: Tom Usbay, Sole Proprietor

Peter Youngsuk Kim, 711 West B Street, Wilmington, CA 90744, Officer: Peter Youngsuk Kim, Sole Proprietor

Peter Youngsuk Kim, 711 West B Street, Wilmington, CA 90744, Officer: Peter Youngsuk Kim, Sole Proprietor

American Freight International Inc., 8189 NW 67th Street, Miami, FL 33166, Officers: Felix R. Garcia, President, Amelia A. Garcia, Secretary/Treasurer

La Mar Line Corporation, 7964 N.W. 14th St., Miami, FL 33126, Officers: Ulises Perez, President/Director/Stockholder, Maria Antonia Perez, Director, Nelson Suarez, V. President/Director/Stockholder, Antonio Elortegui, Secretary/Stockholder

Alliance Shippers Inc. dba Alliance International, 100 Oceangate Ave., P-1, Long Beach, CA 90802, Officers: Ronald Lefcourt, President/Stockholder, Ronald T. Schwed, Secretary/Treasurer/Stockholder

Baltimore International Transport, Inc., 2801 Hawkins Point Rd., Baltimore, MD 21226, Officers: John Leo Alvey, President/Director, Thelma Evelyn Alvey, Secretary/Treasurer/Director, Terri Ann Alvey Moses, Vice President

American Drawback Agency, 7823 S. Harvard, Tulsa, Oklahoma 74136, Shane O'Neal, Sole Proprietor

Trust Air Cargo (U.S.A.) Co., 136 N. Wood Dale Rd., Wood Dale, IL 60191, Officers: Jade R. Wu, President, Russell A. Wu, Secretary

Casas International Brokerage, Inc., dba Casas Brokers, 8775 Customhouse Plaza, Ste. "J", San Ysidro, CA 92073, Officer: Sylvia Maria Casas, President.

Dated: June 22, 1989.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 89-15242 Filed 6-27-89; 8:45 am]

BILLING CODE 6730-01-M

GENERAL SERVICES ADMINISTRATION

Agency Information Collection Activities Under OMB Review

The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090-0038, Uniform Tender of Rates and/or Charges for Transportation Services, Optional Form 280. This Form is used to expedite the processing of rate tenders and contains explicit terms and conditions that would preclude misunderstanding between the contracting parties.

AGENCY: Transportation Management Division, GSA.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC, 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), F Street at 18th NW., Washington, DC 20405.

Annual Reporting Burden: Firms responding, 28,000; responses, 1 per year; average hours per response, 1; burden hours, 28,000.

FOR FURTHER INFORMATION CONTACT: Edward R. Kelliher, 703-557-7981.

Copy of Proposal: A copy of the proposal may be obtained from the Information Collection Management Branch (CAIR), Room 3014, GS Bldg., Washington, DC 20405, or by telephoning 202-535-7691.

Dated: June 20, 1989.

Emily C. Karam,

Director, Information Management Division (CAI).

[FR Doc. 89-15216 Filed 6-27-89; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Program Announcement and Proposed Funding Preference for Grants for Residency Training in General Internal Medicine and General Pediatrics

The Health Resources and Services Administration announces that applications for Fiscal Year 1990 Grants for Residency Training in General Internal Medicine and General Pediatrics are being accepted under the authority of section 784, Title VII, of the Public Health Service Act, extended by

the Health Professions Reauthorization Act of 1988, (Title VI), Pub. L. 100-607. Comments are invited on the proposed funding preference stated below.

Section 784 authorizes the award of grants for planning, developing and operating approved residency training programs which emphasize the training of residents for the practice of general internal medicine or general pediatrics. In addition, section 784 authorizes assistance in meeting the cost of supporting residents who are participants in any such programs, and who plan to specialize or work in the practice of general internal medicine or general pediatrics.

The Administration's budget request for Fiscal Year 1990 does not include funding for this program. Applicants should be advised that this program announcement is a contingency action being taken to ensure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the programs as well as to provide for even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any change in this policy.

Eligible applicants are accredited schools of medicine and osteopathic medicine, public and private nonprofit hospitals, or other public or private nonprofit entities.

To receive support, programs must meet the requirements of final regulations as specified in 42 CFR Part 57, Subpart FF.

Review Criteria

The review of applications will take into consideration the following criteria:

(1) The degree to which the proposed project adequately provides for the project requirements set forth in the regulations;

(2) The administrative and management capability of the applicant to carry out the proposed project in a cost-effective manner;

(3) The qualifications of the proposed staff and faculty; and

(4) The potential of the project to continue on a self-sustaining basis.

In addition, the following mechanisms may be applied in determining the funding of approved applications.

1. Funding preferences—funding of a specific category or group of approved applications ahead of other categories or groups of applications, such as competing continuations ahead of new projects.

2. Funding priorities—favorable adjustment of review scores when applications meet specified objective criteria.

3. Special considerations—enhancement of priority scores by merit reviewers based on the extent to which applicants address special areas of concern.

Proposed Funding Preference for Fiscal Year 1990

To encourage a level of continuity training which more effectively meets the purposes of the grant program, a funding preference will be provided to any approved applicant who demonstrates continuity of care experiences that meet the following criteria:

Each resident must serve a panel of patients and/or families who recognize him or her as their provider of longitudinal and comprehensive (including preventive and psychosocial) health care. This continuity experience must be scheduled principally in ambulatory care settings which actively promote the practice of general internal medicine or general pediatrics. A resident's time in these settings must:

(a) Comprise at least 10 percent of his or her total training time (excluding vacation time) during each year of the program (i.e., at least one half-day per week);

(b) Comprise at least 20 percent of his or her total training time (excluding vacation time) for the entire residency training period; and

(c) Be scheduled in at least nine months of each year of training.

Funding Priorities for Fiscal Year 1990

In determining the order of funding of approved applications, a funding priority will be given to the following:

1. Projects which satisfactorily demonstrate a net increase in enrollment of underrepresented minorities in proportion to or exceeding their percentage in the general population or can document an increase in the number of underrepresented minorities (i.e., Black, Hispanic and American Indian/Alaskan Native) over average enrollment of the past three years in postgraduate year (PGY) trainees.

2. Projects in which substantial training experience is in a PHS 332 health manpower shortage area and/or PHS 329 migrant health center, PHS 330 community health center, PHS 781 funded Area Health Education Center, or State designated clinic/center serving an underserved population.

3. Applications proposing to develop, expand or implement curricula concerning ambulatory and inpatient case management of those with HIV infection-related diseases.

4. Applications that demonstrate sufficient curricular time and offering devoted to assuring competence in quality assurance/risk management activities, monitoring and evaluation of health care services and utilization of peer-developed guidelines and standards.

These priorities were established in Fiscal Year 1989 and the Administration is extending these priorities in Fiscal Year 1990.

Interested persons are invited to comment on the proposed funding preference. Establishment of the final funding preference is also dependent upon publication of an amendment to the regulations to delete the current project requirements for the continuity of care experience that specifies the percentage of time that a resident must spend in serving patients in ambulatory care settings. All comments received on or before July 28, 1989 will be considered before the final funding preference is established. No funds will be allocated or final selections made until a final notice is published stating whether the final funding preference will be applied.

Written comments should be addressed to: Director, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 4C-25, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Medicine, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

Requests for grant application materials and questions regarding grants policy should be directed to: Grants Management Officer (D-28), Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C-22, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443-6960.

Should additional programmatic information be required, please contact: Primary Care Medical Education Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 4C-04, Rockville, Maryland 20857, Telephone: (301) 443-6820.

Completed applications should be returned to the Grants Management Officer at the above address.

The standard application form PHS 6025-1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915-0060.

Pub. L. 100-607, section 633(a) requires that for grants issued under sections 780, 784, 785 and 786 for Fiscal Year 1990 or subsequent fiscal years, the Secretary of Health and Human Services shall, not less than twice each fiscal year, issue solicitations for applications for such grants if amounts appropriated for such grants and remaining unobligated at the end of the first solicitation period, are sufficient with respect to issuing a second solicitation. Should a second cycle be necessary, the application deadline date will be approximately six months from the first deadline.

In reviewing applications for grants referred to in subsection (a), the Secretary shall: (1) Make a preliminary review of each such application in order to determine whether the application involved is sufficient with respect to the minimum technical requirements established by the Secretary for applications under the program involved; and (2) if the Secretary determines pursuant to the preliminary review that any such application is not sufficient with respect to such requirements—(a) prepare a statement explaining the insufficiencies of the application; and (b) return the application, together with such statement, by a date that permits the applicant involved a sufficient period of time in which to prepare a timely second application for submission pursuant to the solicitation with respect to which the first application is being returned.

The deadline date for receipt of applications is August 16, 1989.

Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or

2. Postmarked on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications received after the deadline date will be returned to the applicant.

This program is listed at 13.884 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, (as implemented through 45 CFR Part 100).

Dated: June 5, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89-15251 Filed 6-27-89; 8:45 am]

BILLING CODE 4160-15-M

Public Health Service

Office of the Assistant Secretary for Health; Statement of Organization, Functions, and Delegations of Authority

Part H, Public Health Service (PHS), Chapter HA (Office of the Assistant Secretary for Health), of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (DHHS) (42 FR 61318, December 2, 1977, as amended most recently at 54 FR 11080-81, March 16, 1989) is amended to reflect more accurately the functions within the Division of Grants and Contracts, Office of Resources Management, Office of Management, Office of the Assistant Secretary for Health (ORM/OM/OASH).

Office of the Assistant Secretary of Health

Under *Chapter HA, Office of the Assistant Secretary for Health, Section HA-20, Functions, Office of Management (HAU), Office of Resource Management (HAU4), Division of Grants and Contracts (HAU42),* delete "and prepares reports as required" and add "administers logistics policy activities; and prepares reports as required."

Date: June 20, 1989.

Wilford J. Forbush,

Director, Office of Management.

[FR Doc. 89-15204 Filed 6-27-89; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-89-1975; FR-2648]

Applications for Fiscal Year 1989 Funds for Public Housing Resident Management Technical Assistance; Correction

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice; Correction.

SUMMARY: This notice advises that the Department is changing the "Due Date" in the notice, similarly titled, published on May 11, 1989.

EFFECTIVE DATE: June 28, 1989.

FOR FURTHER INFORMATION CONTACT: Walter Preysnar, Project Management Division, Office of Public Housing, Department of Housing and Urban Development, Room 4122, 451 Seventh Street SW., Washington, DC 20410. Telephone number (202) 755-6182. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Department published a notice on May 11, 1989 (54 FR 20443, 20447), similarly titled, setting out the "Due Date", among other things, in the "Processing Schedule" for applications for funds under this program. The Department has now reconsidered the schedule and has determined that the "Due Date" in the May 11, 1989 Notice would place undue pressure on prospective applicants and that a change in the submission deadline to July 21, 1989 would provide an improved opportunity for participation in the program.

As a consequence, the other due dates set out in the May 11, 1989 notice for the "Processing Schedule" are being correspondingly altered, as follows:

PROCESSING SCHEDULE

Steps	Old due/date	New due/date
RCs/RMCs submit Applications & Budget to Headquarters and Field Offices	6-30-89	7-21-89
FO submits recommendations to RO	7-21-89	8-11-89
RO/FO submits recommendations to Headquarters	8-11-89	8-25-89
Headquarters makes final selections	9-01-89	9-08-89
Congressional Notification/Transmittal of Approval or Disapproval Letters	9-04-89	9-11-89
PHA Notification	9-06-89	9-29-89

Date: June 23, 1989.

Thomas Sherman,

Acting General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 89-15352 Filed 6-26-89; 11:19 am]

BILLING CODE 4210-33-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT-020-09-5101-09-XJAA]

Salt Lake District, UT; Availability of the Draft Environmental Import Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of the Draft Environmental Impact Statement (DEIS) for the Proposed USPCI Clive Incineration Facility.

SUMMARY: The Salt Lake District, Bureau of Land Management has completed a DEIS for a proposed incineration facility in Tooele County, Utah. The privately owned facility would be constructed and operated by USPCI, Incorporated. It would be designed to thermally destruct hazardous, infectious, and non-hazardous industrial wastes. Up to 130,000 tons of waste would be incinerated yearly.

The DEIS analyzes the environmental impacts of the construction, operation, and closure of the proposed transfer, storage, and incineration facility and linear support facilities for water, railway, electricity, and roadway. The BLM preferred alternative is the proposed Clive site. Two other siting alternatives are also analyzed along with the no action alternative. BLM has also identified public lands in the area that would be required to be exchanged under each alternative for private lands elsewhere in order to allow the facility and all access facilities to be located on private land. Two of the three alternative incinerator sites (Clive and Grassy Mountain) are presently owned by USPCI.

Comments on the DEIS will be accepted through September 5, 1989. Comments submitted after that date may not be responded to. Comments should be submitted to: Mr. Deane H. Zeller, District Manager, Bureau of Land Management, 2370 South 2300 West, Salt Lake City, Utah 84119.

Copies of the DEIS are available at the above address as long as supplies last. Business hours are 7:45 a.m. to 4:30 p.m. weekdays. Address requests for copies of the DEIS to: Dennis Oaks, EIS Team Leader.

Two public hearings will be held for the purpose of obtaining oral and/or written testimony concerning the DEIS. Meeting dates and locations are as follows:

August 9, 1989, South Auditorium. Tooele County Courthouse, 47 South Main, Tooele, Utah;

August 10, 1989, Campbell Room, Convention Center, Stateline Hotel, Wendover, Nevada.

Both hearings will start at 6:30 p.m. and continue until all who wish to give testimony do so.

James M. Parker,

Utah State Director.

[FR Doc. 89-15243 Filed 6-27-89; 8:45 am]

BILLING CODE 4310-DQ-M

[CA-010-09-4410-10]

Meeting of Bakersfield District Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting of the Bakersfield District Advisory Council.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92-463) and the Federal Land Policy and Management Act of 1976 (sec. 309), the Bakersfield District Advisory Council will meet in Bishop, California.

DATES: July 14-15, 1989.

ADDRESS: Field Trip to Bodie State Historic Park leaving from 1005 North Main Street, Bishop at 8:00 a.m. Friday, July 14, 1989. Meeting from 8:00 a.m. to 4:00 p.m. Saturday, July 15, 1989 at Bishop City Hall, 377 West Line Street, Bishop.

SUPPLEMENTAL INFORMATION: The Bakersfield Distict Advisory Council is a 10 person council appointed by the Secretary of the Interior to give counsel and advice regarding planning and management of the public lands resources to the District Manager of the Bureau of Land Management, Bakersfield District. The Council will meet in Bishop on Friday and Saturday, July 14-15, and the agenda will deal will land use planning. Resource Management Plans are currently being developed for the Bishop Resource Area and the Caliente Resource Area. The Resource Management Plans (RMP) will determine how the public land is to be used. The agenda will include a field trip to Bodie State Historical Park in Mono County where a large scale mining operation might be proposed. The meeting is open to the public and anyone wishing to make a comment about any public land issue is welcome to speak at the Saturday session. Written comments may be submitted in advance to the address below.

FOR FURTHER INFORMATION CONTACT: Larry Mercer, Public Affairs Officer, Bureau of Land Management, Bakersfield District Office, 800 Truxtun Avenue, Room 311, Bakersfield, CA 93301; (805) 861-4229.

Date: June 19, 1989.

Larry Mercer,

Acting District Manager.

[FR Doc. 89-15218 Filed 6-27-89; 8:45 am]

BILLING CODE 4310-40-M

[AK-910-09-4220-02-ADVB]

Fairbanks Support Center; Northern Alaska Advisory Council Meeting

The Northern Alaska Advisory Council will conduct a field trip to the Utility Corridor 89 inventory camp at Coldfoot, Alaska on July 31 and August 1, 1989. The Council members will drive to Coldfoot on Monday, July 31, and convene to hear public comment on Utility Corridor resource management issues from 7:30 to 8:30 p.m. on July 31, in the lobby of the Arctic Acres Inn, Coldfoot.

For information contact the Public Affairs Office, Bureau of Land Management, 1150 University Avenue, Fairbanks, Alaska 99709, telephone (907) 474-2231.

M. Thomas Dean,

Designated District Manager, Northern Alaska Advisory Council.

June 21, 1989.

[FR Doc. 89-15242 Filed 6-27-89; 8:45 am]

BILLING CODE 4310-84-M

[AZ-920-09-4212-12 & 15; AZA-23700]

Arizona; Realty Action; Transfer of Public Land to State of Arizona

June 20, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public that the Bureau of Land Management as directed by the Arizona-Idaho Conservation Act of 1988 (102 Stat. 4571) dated November 18, 1988, will convey certain public land and acquire certain State land. First, a portion of the land in the Santa Rita Experiment Station will be transferred to the State of Arizona to satisfy the remaining Federal debt for land taken for the Central Arizona Project. Second, the remaining Federal land in the Experiment Station, land by Red Mountain and land located in the Havasu National Wildlife Refuge will be transferred to the State in payment for State land to be acquired.

FOR FURTHER INFORMATION CONTACT: Barbara Ahearn, Phoenix District Office, Bureau of Land Management, 2015 W. Deer Valley Road, Phoenix, Arizona 85027 (602) 863-4464.

SUPPLEMENTARY INFORMATION: Pursuant to Title V of the Arizona-Idaho Conservation Act of 1988, the following land has been determined suitable for transfer to the State of Arizona:

Gila and Salt River Meridian

Santa Rita Experimental range

T. 17 S., R. 14 E.,
Sec. 33, all;
Sec. 34, all;
Sec. 35, all;
Sec. 36, all.
T. 17 S., R. 15 E.,
Sec. 31, lots 1 to 11, incl., NE¼, E½NW¼, NE¼SW¼, N½SE¼;
Sec. 32, lots 1 to 4, incl., N½, N½S½;
Sec. 33, lots 1 to 4 incl., N½, N½S½;
Sec. 34, lots 1 to 4, incl., N½, N½S½.
T. 18 S., R. 13 E.,
Sec. 24, lots 1 to 3, incl., SE¼SE¼;
Sec. 25, lots 2 to 6 incl., E½NE¼, SE¼.
T. 18 S., R. 14 E.,
Sec. 1, lots 1 to 4, incl., S½N½, S½;
Sec. 2, lots 1 to 4, incl., S½N½, S½;
Sec. 3, lots 1 to 4, incl., S½N½, S½;
Sec. 4, lots 1 to 4, incl., S½N½, S½;
Sec. 9, all;
Sec. 10, all;
Sec. 11, all;
Sec. 12, all;
Sec. 13, all;
Sec. 14, all;
Sec. 15, all;
Sec, 16, all;
Sec. 21, all;
Sec. 22, all;
Sec. 23, all;
Sec. 24, all;
Sec. 25, all;
Sec. 26, all;
Sec. 27, all;
Sec. 28, all;
Sec. 29, all;
Sec. 30, lots 1 to 4, incl., E½, E½W½;
Sec. 31, lots 1 to 4, incl., E½, E½W½;
Sec. 32, all;
Sec. 33, all;
Sec. 34, all;
Sec. 35, all;
Sec. 36, all.
T. 18 S., R. 15 E.,
Sec. 3, lots 1 to 4, Inc., S½N½, S½;
Sec. 4, lots 1 to 4, incl., S½N½, S½;
Sec. 5, lots 1 go 4, incl., S½N½, S½;
Sec. 6, lots 1 to 7, incl., S½NE¼, SE¼ NW¼, E½SW¼, SE¼;
Sec. 7, lots 1 to 4, incl., E½, E½W½;
Sec. 8, all;
Sec. 9, all;
Sec. 16, all;
Sec. 17, all;
Sec. 18, lots 1 to 4, incl., E½, E½W½;
Sec. 19, lots 1 to 4, incl., E½, E½W½;
Sec. 20, all;
Sec. 21, all;
Sec. 26, E½NW¼, SW¼NW¼;
Sec. 27, S½N½, SW¼;
Sec. 28, all;
Sec. 29, all;
Sec. 30, lots 1 to 4, incl., E½, E½W½;
Sec. 31, lots 1 to 4, incl., E½, E½W½;
Sec. 32, all;
Sec. 33, all;
Sec. 34, SW¼.
T. 19 S., R. 14 E.,
Sec. 1, lots 1 to 5, incl., S½N½, S½;
Sec. 2, lots 1 to 4, incl., S ½N½, S½;
Sec. 3, lots 1 to 4 incl., S½N½, S½;
Sec. 4, lots 1 to 4, incl., S½N½, S½;
Sec. 5, lots 1 to 4, incl., S½N½, S½;
Sec. 6, lots 1 to 11 incl., S½NE¼, SE¼ NE¼, E½SW¼, SE¼;
Sec. 9, all;
Sec. 10, all;
Sec. 11, all;
Sec. 12, all;
Sec. 13, lots 1 and 2, N½, N½SE¼;
Sec. 14, N½, N½S½, S½SW¼, SW¼SE¼;
Sec. 15, all;
Sec. 16, all;
Sec. 22, E½NE¼, NE¼SE¼;
Sec. 23, W½NE¼, NW¼, N½SW¼, NW¼ SE¼.
T. 19 S., R. 15 E.,
Sec. 3, lots 3 and 4, S½NW¼, SW¼;
Sec. 4, lots 1 to 4, incl., S½N½, S½;
Sec. 5, lots 1 to 4, incl., S½N½, S½;
Sec. 6, lots 1 to 6, incl., S½NE¼, SE¼;
Sec. 7, lots 1 to 4, incl., E½;
Sec. 8, all;
Sec. 9, SE¼NE¼, W½, SE¼;
Sec. 10, E½NW¼, SW¼NW¼, SW¼;
Sec. 16, lot 1, N½NW¼, SE¼NW¼;
Sec. 17, lots 1 and 2, NE¼NE¼, W½E½, W½, SE¼SE¼;
Sec. 18, lots 1 to 4, incl., E½.

Containing 50,810.94 acres in Pinal County.

Red Mountain

T. 2 N., R. 6 E.,
Sec. 24, lots 7, 9, 11, 13, 14, 15, lots 17, 18, 20, 22 and 24.

Containing 342.74 acres in Maricopa County.

Havasu National Wildlife Refuge

T. 14 N., R. 20 W.,
Sec. 17, SE¼, E½SW¼, E½W½SW¼;
Sec. 20, lots 3, 4, 5 and part of lot 6 lying east of a line connecting the NW corner of Tract 37 and the SE corner of the SW¼SW¼SW¼ of sec. 17;
T. 16 N., R. 21 W.,
Sec. 3, W½ lying east of Highway 95;
Sec. 10, W½ lying east of Highway 95.
T. 17 N., R. 21 W.,
Sec. 21, E½ lying of Highway 95;
Sec. 27, W½ lying east of Highway 95;
Sec. 34, E½.

Containing approximately 1,500 acres in Mohave County.

The land to be transferred to the State of Arizona will be subject to a reservation to the United States for rights-of-way for ditches or canals constructed by the authority of the United States pursuant to the Act of August 30, 1890, 43 U.S.C. 945; and will be subject to all valid existing rights of record. The actual land to be transferred will be based on final appraised values.

The State land that will be acquired for use by various Federal agencies for protection of public resource values are 5,400 acres in Catalina State Park, 11,500 acres in Buenos Aires National Wildlife Refuge, 1,563 acres at Arivaca Lake, 520 acres in Madera-Elephant Head Trail area, 60,000 acres in Black Canyon Corridor, and 16,800 acres near Lake Pleasant, A complete list of the legal descriptions of this land is available at the Phoenix District Office and will be sent upon request.

For a period of forty-five (45) days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Phoenix District Manager, Bureau of Land Management, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Ojbections will be reviewed by the State Director who may sustain, vacate, or modify this reality action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Henri R. Bisson,

District Manager.

[FR Doc. 89-15257 Filed 6-27-89; 8:45 am]

BILLING CODE 4310-32-M

California: Realty Action; Noncompetitive Sale of Public Land in Trinity County, Casefile, CA 17123

The following public land has been found suitable for direct sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713), at not less than the estimated fair market value of $11,000. The land will not be offered for sale until at least 60 days after the date of this notice.

Mount Diablo Meridian

T. 32 N., R. 10 W.,
Section 1: Lot 28
Containing approximately 0.210 acre

The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

This land is being offered by direct sale to James K. Wagner. It has been determined that the subject parcel contains no known mineral values; therefore, mineral interests may be conveyed simultaneously. Acceptance of the direct sale offer will qualify the purchaser to make application for conveyance of those mineral interests.

The patent, when issued, will contain reservations to the United States for ditches and canals, and will be subject to the following:

1. A right-of-way to Lawrence L. Lyons for a water pipeline (CA 13181).

2. A right-of-way to Douglas City School for a water pipeline (CA 20352).

Detailed information concerning specific conditions of the sale are available for review at the Redding Resource Area Office, Bureau of Land Management, 355 Hemsted Drive, Redding, California 96002.

For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the Area Manager, Redding Resource Area, at the above address. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Mark T. Morse,

Area Manager.

[FR Doc. 89-15256 Filed 6-27-89; 8:45 am]

BILLING CODE 4310-40-M

[Lease CACA-24467]

Road Closure Notice in the Big Butte Unit of the Yolla Bolly-Middle Eel Wilderness Area and Realty Action in Mendocino and Trinity Counties, CA

June 19, 1989.

SUMMARY: Under the authority granted in 43 CFR 8364.1, the Bureau of Land Management is designating a vehicle closure of all public lands, roads, and trails within the Big Butte Unit of the Yolla Bolly-Middle Eel Wilderness Area located in Mendocino and Trinity Counties, California. All vehicle use is prohibited except for administrative access and access for private landowners completely surrounded by federal wilderness who have obtained a lease for access issued by the Bureau of Land Management. This closure is effective July 31, 1989.

Any person violating the closure may be subject to a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months, under the authority of 43 CFR 8372.0-7.

On September 28, 1984, the California Wilderness Act included most of the Big Butte Wilderness Study Area into the Yolla Bolly-Middle Eel Wilderness Area. The California Wilderness Act of 1984 and the Wilderness Act of 1964 both emphasize that private inholders shall have reasonable access to their land. The Big Butte Road and a small section of jeep road does provide access to most of the existing landowners within the Wilderness Area.

The wilderness designation has precluded issuing a right-of-way under Title V of the Federal Land Policy and Management Act of 1976 (FLPMA). Section 501(a) states, "The Secretary, with respect to the public lands and, the Secretary of Agricultural, with respect to lands within the National Forest System (except in each case land designated as wilderness), are authorized to grant, issue, or renew rights-of-way * * *" Because of this exception within the right-of-way authority, a lease under the provisions of section 302 of FLPMA will be issued to authorize vehicle access to the private lands within the wilderness area. The lease will include public lands inside and outside of the Yolla Bolly-Middle Eel Wilderness Area and are described as follows:

T. 24 N., R. 12 W.
Section 11, SE¼,NE¼;
T. 25 N., R. 12 W.
Section 12, SW¼SW¼;
Section 23, SE¼SE¼;
Section 24, Lots 3, 6, SW¼, NW¼SE¼;
Section 25, Lot 3, NW¼,NW¼;
Section 26, SE¼NE¼, SE¼;
Section 35, Lots 3, 4, NW¼NE¼; E½NW¼, NE¼SW¼.

SUPPLEMENTARY INFORMATION: After July 31, 1989, the private land owners within the Big Butte Unit of the Yolla Bolly-Middle Eel Wilderness Area shall be required to have a certified copy of their lease in their possession when in a vehicle on the Big Butte Road in the Wilderness Area.

Applications will be accepted only from the private land owners who are completely surrounded by the Big Butte Unit of the Yolla Bolly-Middle Eel Wilderness Area. All applicants should reference this notice and serial number CACA-24467. Applications will be accepted at the Ukiah Bureau of Land Management District Office or the Arcata Resource Are Office, P.O. Box 1112, Arcata, California, 95521. In accordance with 43 CFR 2920.6, the applicants shall reimburse the United States for reasonable administrative and other costs incurred by the United States in processing and monitoring the leases. The lessee's shall also pay rent annually in advance of the rental period for use of this road. A formal appraisal has been requested to determine the rent.

This lease will be for ingress and egress to the lessee's property.

FOR FURTHER INFORMATION CONTACT: Alfred W. Wright, Ukiah District Manager at (707) 462-3873 or write to 555 Leslie Street, Ukiah, California 95482.

DATES: For a period of 30 days from date of publication of this notice within the Federal Register, interested parties may submit comments to the District Manager, Bureau of Land Management, 555 Leslie Street, Ukiah, CA 95482. Any adverse comments will be evaluated by the District Manager who may vacate or modify this Realty Action and issue a final determination. In the absence of any action by the District Manager, this Realty Action will become the final determination of the Bureau.

Alfred W. Wright,

Ukiah District Manager.

[FR Doc. 89-15255 Filed 6-27-89; 8:45 am]

BILLING CODE 4310-40-M

[NV-930-09-4212-11; N-50460]

Realty Action; Lease/Purchase for Recreation and Public Purposes Clark County, NV

Notice of Realty Action for N-50460 appearing on page 23711 of the Federal Register (Doc. No. 89-13106) published on Friday, June 2, 1989 is hereby corrected. The legal description is corrected as follows:

Mount Diablo Meridian, Nevada

T. 32 S., R. 66 E.
Sec. 15, NE¼.

The remainder of the Notice of Realty Action was correct as published.

Date: June 19, 1989.

Robert K. Taylor,

Acting District Manager, Las Vegas, NV.

[FR Doc. 89-15259 Filed 6-27-89; 8:45 am]

BILLING CODE 4310-HC-M

[CA-050-09-4410-08]

Availability of Draft Planning Criteria and Preplanning Analysis for the Redding Resource Management Plan

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to 43 CFR 1610.4-2, notice is hereby given of the availability of draft planning criteria and preplanning analysis for the Redding Resource Management Plan (RMP).

SUPPLEMENTARY INFORMATION: The Redding Resource Area contains approximately 240,000 acres of public land and approximately 160,000 acres of Federal Mineral estate in Butte, Shasta, Siskiyou, Tehama, and Trinity Counties in California. The criteria will guide the development of the RMP. The RMP, including an Environmental Impact Statement, is scheduled to be completed in June 1991. Copies of the draft planning criteria and the preplanning analysis are available upon request at the following locations: Ukiah District Office, 555 Leslie Street, Ukiah, California, 95482; and Redding Resource Area, 355 Hemsted Drive, Redding, California, 96002.

DATE: Comments should be sent to the Redding Resource Area not later than July 15, 1989.

FOR FURTHER INFORMATION CONTACT: Francis Berg, Team Leader, Redding Resource Area, at the Redding address listed above or telephone (916) 246-5325.

Date: June 9, 1989.

Mark T. Morse,

Area Manager.

[FR Doc. 89-15256 Filed 6-27-89; 8:45 am]

BILLING CODE 5310-40-M

[ID-942-09-4730-12]

Idaho; Filing of Plats of Survey

The plat of survey of the following described land, was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 10:00 a.m., June 19, 1989.

The plat representing the dependent resurvey of portions of the west and north boundaries, and subdivisional line and the subdivision of certain sections, T. 4 S., R. 31 E. Boise Meridian, Idaho, Group No. 768, was accepted June 15, 1989.

The survey was executed to meet certain administrative needs by this Bureau.

All inquiries about this land should be sent to the Idaho State Office Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

June 19, 1989.

[FR Doc. 89-15219 Filed 6-27-89; 8:45 am]

BILLING CODE 4310-GG-M

[OR-943-09-4214-10; GP9-247; OR-42920(WASH)]

Partial Termination of Proposed Withdrawal; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates a 50-acre portion of the proposed withdrawal for the North Cascades Scenic Highway Zone. The land remains closed to mining by another existing withdrawal.

EFFECTIVE DATE: June 28, 1989.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-231-6905.

SUPPLEMENTARY INFORMATION: Notice of proposed withdrawal, involving U.S. Department of Agriculture, Forest Service, application OR 42920(WASH), was published as FR Doc. 87-17511 on page 28765 of the issue of August 3, 1987. The applicant agency has cancelled the application insofar as it affects the following described land:

Williamettee Meridian

Okanogan National Forest

T. 36N., R. 26 E., unsurveyed, secs. 10, 11, 12 and 13, those portions lying from 300 to 1,000 feet on the southeasterly side and from 200 to 1,000 feet on the southwesterly side and running parallel and concentric with the monumented centerline of State Highway 20 between highway stations 1193+55.32 and 1227+95.79, except those portions lying North of a line extended East and West through highway station 1196+23.05 and South of a line extended East and West through highway station 1215+10.17.

The areas described, after making the aforesaid exceptions, aggregate approximately 50 acres in Skagit County, Washington.

The proposed withdrawal is hereby terminated insofar as it affects the above-described land.

Robert E. Mollohan

Acting Chief, Branch of Lands and Minerals Operations.

Dated: June 20, 1989.

[FR Doc. 89-15260 Filed 6-27-89; 8:45 am]

BILLING CODE 4310-33-M

Minerals Management Service

Pacific Northwest Outer Continental Shelf Task Force; Second Meeting

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Pub. L. No. 92-463, 5 U.S.C. Appendix 1, and the Office of Management and Budget's Circular No. A-63, Revised. The Pacific Northwest OCSD Task Force will hold its second meeting from 1:00 p.m. to 9:00 p.m., July 17, 1989, at the Westwood Lodge, 910 Simpson Avenue, Hoquiam, Washington, 98550 (phone 206-532-8161). The agenda for the meeting will cover the following principal subjects: Environmental studies, sensitive areas for deferral consideration, and lease sale timing. The meeting is open to the public.

The purpose of the Pacific Northwest OCS Task Force is to provide advice and recommendations to the Secretary of the Interior on issues related to potential leasing, exploration, and development of oil and gas for proposed OCS Sale 132 in the Washington/Oregon OCS Planning Area.

Minutes of the meeting will be made available for public inspecton and copying at the Minerals Management Service, Pacific OCS Region, Suite 244, 1340 West Sixth Street, Los Angeles, California 90017. They will also be made available at the Minerals Management Service, U.S. Department of the Interior, 18th and C Streets, NW., Washington, DC 20240. For more information, contact John Smith or Ann Copsey at (213) 894-4154 or 7107.

Signed:

J. Lisle Reed,

Regional Director, Pacific OCS Region, Minerals Management Service.

Dated: June 21, 1989.

[FR Doc. 89-15208 Filed 6-27-89; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[Section 5A Application No. 55; Amendment No. 2]

Motor Carriers Traffic Association, Inc.; Agreement

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision and request for comment.

SUMMARY: Motor Carriers Traffic Association, Inc. (Traffic Association), has filed, under section 14(e) of the Motor Carrier Act of 1980 (MCA), an application for approval of its ratemaking agreement under 49 U.S.C. 10706(b). Since modifications are required before the agreement receives final approval, and because new and complex questions are involved in determining whether the agreement is consistent with the MCA, the Commission solicits public comment on its interpretation and application of specific rate bureau provisions.

DATES: Comments from interested persons are due July 28, 1989. Replies are due 15 days thereafter.

ADDRESS: An original and 10 copies, if possible, of comments referring to Section 5a Application No. 55 should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Richard Johnson, (202) 275-7939 or Richard B. Felder, (202) 275-7691. (TDD for hearing impaired: (202) 275-1721)

SUPPLEMENTARY INFORMATION: We have provisionally approved Traffic Association's agreement as consistent with 49 U.S.C. 10706(b) and Motor *Carrier Rate Bureaus—Imp. Pub.L. 96-296*, 364 I.C.C. 464 (1980) and 364 I.C.C. 921 (1981) (*Rate Bureau*), subject to certain conditions and modifications in the following subject areas: territorial scope of the agreement; verification of

adoption of amended agreement; separation of profitmaking functions through two different corporations; identification and description of member carriers; right of independent action; rate bureau protests; employee docketing; open meetings; proxy voting; final disposition of cases; general standards; single-line rates; subcommittees; shipper affiliation information; board of directors and officers; amendments of bylaws and rules of procedure; meetings with other rate bureaus; president's agreements with other rate bureaus; and intrastate ratemaking. We have also offered comments and imposed requirements concerning the agreement generally. Traffic Association has been directed to file a revised agreement conforming to the imposed conditions within 120 days of service of the decision.

In light of the complexity of interpretation involved in determining whether the agreement is consistent with the MCA and *Rate Bureau*, we request applicant and other interested parties to comment on our interpretation of the controlling statutory and administrative, criteria, and their application to Traffic Association's agreement.

Copies of Traffic Association's proposed amended agreement are available for public inspection and copying at the Office of the Secretary, Interstate Commerce Commission, 12th St. and Constitution Ave., NW., Washington, DC 20423, and from Traffic Association's representatives:

Mr. J. Raymond Clark, 167 Saint Andrews Drive, St. Simons Island, GA 31522,

and

Mr. B.F. Moffitt, Motor Carriers Traffic Association, Inc., P.O. Box 1500, Greensboro, NC 27402.

A copy of any comments filed with the Commission must also be served on Traffic Association, which will have 15 days from the expiration of the comment period to reply. These comments will be considered in conjunction with our review of the modifications that Traffic Association must submit to the Commission as a condition to final approval of its agreement.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Additional information is in the Commission decision. To obtain a copy of the full decision, write to, call, or pick-up in person from: Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 275-7428 [Assistance for the hearing impaired is available through TDD services (202) 275-1721.]

Authority: 49 U.S.C. 10321 and 10706 and 5 U.S.C. 553.

Decided: June 20, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89-15267 Filed 6-27-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Information Collection(s) Under Review

June 23, 1989.

The Office of Management and Budget (OMB) has been sent the following proposals for the collection of information for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act. Entries are grouped into submission categories. Each entry contains the following information:

(1) The title of the form or collection;

(2) The agency form number, if any and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of estimated time it takes each respondent to respond;

(6) An estimate of the total public burden hours associated with the collection; and,

(7) An indication as to whether section 3504(h) of Public Law 96-511 applies.

Comments and/or questions regarding the item(s) contained in this notice, especially regarding the estimated response time, should be directed to the OMB reviewer, Mr. Edward Clarke, on (202) 395-7340 and to the Department of Justice's Clearance Officer. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should so notify the OMB reviewer and the Department of Justice's Clearance Officer of your intent as soon as possible. The Department of Justice's Clearance Officer is Mr. Larry E. Miesse who can be reached on (202) 633-4312.

All entries in this notice are for revisions of currently approved collections.

(1) *Request for Considerations as a Replenishment Agricultural Worker*

(2) I-807, Immigration and Naturalization Service.

(3) One-time registration.

(4) Individuals or households. Form is a request for consideration as a replenishment agricultural worker registration card to be filed by an alien is he/she desires to be considered for RAW status.

(5) 5,000,000 annual respondents at one-half hour each.

(6) 2,500,000 estimated annual burden hours.

(7) Not applicable under 3504(h).

(1) *Petition for Temporary Resident Status as a Replenishment Agricultural Worker (RAW).*

(2) I-805, Immigration and Naturalization Service.

(3) Annually.

(4) Individuals or households. The information on this petition will be used by the INS to determine whether a person is admissable into the United States as an immigrant and eligible for RAW status according to the eligibility requirements of the proposed regulations.

(5) 300,000 annual respondents at one-half hour each.

(6) 150,000 estimated annual burden hours.

(7) Not applicable under 3504(h).

(1) *Request for Consideration as a Replenishment Agricultural Worker (A)*

(2) I-807A. Immigration and Naturalization Service.

(3) One-time preregistration.

(4) Individuals or households. This registration card will be used by the INS to establish a list of potentially eligible aliens who will be invited to petition for RAW status.

(5) 100,000,000 estimated annual respondents at .5 hours each.

(6) 500,000 estimated annual burden hours.

(7) Not applicable under 3504(h).

(1) *Change of Address Card.*

(2) I-697 and 697A. Immigration and Naturalization Service.

(3) On occasion.

(4) Individuals or households. These forms solicit information needed to update an applicant's address in the Legalization Automated Database. The country, date of birth, and registration number are elements needed to identify specific applicants who have similar names and/or do not provide an A-number, registration number, or provide the wrong number.

(5) 300,000 estimated annual respondents at .083 hours each.

(6) 24,900 estiamted annual burden hours.

(7) Not applicable under 3504(h).

Larry E. Miesse,

Departmental Clearance Officer, Department of Justice.

[FR Doc. 89-15287 Filed 6-27-89; 8:45 am]

BILLING CODE 4410-10-M

Consent Decree in Action Under the Resource Conservation and Recovery Act and Alabama Hazardous Waste Management Act; American Brass, Inc., et al.

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a consent decree in *United States* v. *American Brass, Inc. et al.*, Civil Action No. 88-D-268-S, was lodged with the United States District Court for the Middle District of Alabama on June 7, 1989. The consent decree establishes a compliance program to bring the brass foundry facility operated by American Brass in Headland, Alabama into compliance with the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*, the Alabama Hazardous Waste Management Act, 22 Ala. Code, Chpt. 30, and the applicable regulations relating to the treatment, storage and disposal of hazardous waste. The decree calls for American Brass to achieve compliance by eliminating and closing its accumulated furnace slag pile and properly managing the facility's currently generated furnace slag and dust from its baghouse systems. The consent decree also requires payment of a civil penalty of $242,000.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, 10th and Pennsylvania Ave., NW., Washington, DC 20530 and should refer to *United States* v. *American Brass, Inc.*, D.J. Ref. No. 90-7-1-436.

The consent decree may be examined at the office of the United States Attorney, Middle District of Alabama, 306 U.S. Courthouse and Post Office Building, 15 Lee Street, Montgomery, Alabama 36104 and at the Region IV office of the Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365. A copy may be obtained by mail by written request to the Environmental Enforcement Section, Land and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530. In requesting a copy, please enclose a check in the amount of $18.80 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-15220 Filed 6-27-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to Clean Water Act; Clow Water Systems

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Clow Water Systems, a Division of McWane, Inc.*, Civil Action No. C2-87-270, has been lodged with the United States District Court for the Southern District of Ohio. The complaint filed by the United States alleged that the defendant violated the Resource Conservation and Recovery Act, 42 U.S.C. 6901, *et seq.*, by continuing to operate a hazardous waste land disposal facility despite its lack of legal authority to do so, and by failing to comply with the Act's implementing regulations as well as numerous requirements of a Consent Agreement previously entered into between the United States and the Defendant.

The proposed Decree requires Defendant to achieve and maintain compliance with the Act and its implementing regulations by closing it unpermitted hazardous waste surface impoundment in accordance with a closure plan approved by the United States Environmental Protection Agency ("U.S. EPA"), demonstrate compliance with specified operational regulatory requirements, and to perform corrective action pursuant to section 3008(h) of the statute, 42 U.S.C. 6928(h), to address releases of hazardous wastes and hazardous waste constituents from Defendant's facility. The proposed Consent Decree also requires Defendant to pay a civil penalty of $725,000 for its violations of the Act and a Consent Agreement and Final Order ("CAFO") previously entered, and provides for substantial stipulated penalties in the event that Defendant fails to comply with any Decree requirements.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to the *United States* v. *Clow Water Systems, a Division of McWane, Inc.*, D.J. Reference No. 90-7-1-400.

The proposed Consent Decree may be examined at the office of the United States Attorney, 85 Marconi Boulevard, Room 200, Columbus, Ohio 43215 and at the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Lands and Natural Resources Division of the Department of Justice, Room 1647(D), Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy please enclose a check in the amount of $3.60 (ten cents per page reproduction cost) payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-15221 Filed 6-27-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Stipulation and Agreement

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Stipulation and Agreement in *In re Storage Technology Corporation*, Case No. 84-B-5377-J and *In re Storage Technology Leasing Corporation*, Case No. 86-B-04222-J was lodged with the United States Bankruptcy Court for the District of Colorado on June 9, 1989. The proposed stipulation and agreement resolves the environmental claims of the United States against Storage Technology Corporation relating to the Lowry Landfill, under section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9607. The proposed stipulation provides for Storage Technology Corporation to pay the United States $5.4 million. The United States will release Storage Technology Corporation from all past, present and future liability associated with the cleanup of the Lowry Landfill relating to wastes generated by Storage Technology Corporation which have been disposed of at Lowry Landfill.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, written comments relating to the proposed stipulation and agreement of settlement. Comments should be addressed to the

Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *In re Storage Technology Corporation*, D. J. Ref. 90-11-2-93C.

The proposed stipulation and agreement may be examined at the office of the United States Attorney, Federal Building, Suite 1200, 1961 Stout Street, Denver, Colorado 80294 and at the Region VIII Office of the United States Environmental Protection Agency, One Denver Place, 999 18th Street, Denver, Colorado 80202 and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530.

A copy of the proposed stipulation and agreement may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.10 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-15222 Filed 6-27-89; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984; Portland Cement Association

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Portland Cement Association ("PCA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission on May 25, 1989, disclosing that there has been a change in the membership of PCA. Specifically, Capitol Cement Corporation has resigned from PCA effective May 1, 1989. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Accordingly, at present the members of the PCA are those companies listed below:

United States

Aetna Cement Corporation
Alamo Cement Company
Alaska Basic Industries
Ash Grove Cement Company
Ash Grove Cement West, Inc.
Blue Circle Atlantic, Inc.
Blue Circle, Inc.
Blue Circle West Inc.
Calaveras Cement Company
CalMat Co.
Capitol Aggregates, Inc.
Continental Cement Company Inc.
Coplay Cement Company
Davenport Cement Company
Dragon Products Company
Dundee Cement Company
Glen Falls Cement Company, Inc.
Hawaiian Cement
Ideal Basic Industries, Inc.
Independent Cement Corporation
Lafarge Corporation
Lehigh Portland Cement Company
Lone Star-Falcon
Lone Star Industries, Inc.
Lone Star Northwest
Medusa Cement Corporation
Missouri Portland Cement Company
The Monarch Cement Company
National Cement Company, Inc.
National Cement Company of California, Inc.
Northwestern States Portland Cement Co.
Phoenix Cement Company
Rinker Materials Corporation
RMC Lonestar
Rochester Portland Cement Corporation
St. Marys Peerless Cement Company
St. Marys Wisconsin Inc.
The South Dakota Cement Plant
Southwestern Portland Cement Company
Tarmac-LoneStar, Inc.
Tilbury Cement Company

Canada

Federal White Cement Ltd.
Ideal Cement Company Ltd.
Inland Cement Limited
Lafarge Canada Inc.
Lake Ontario Cement Limited
North Star Cement Limited
St. Lawrence Cement Inc.
St. Marys Cement Corporation
Tilbury Cement Limited

Mexico

Instituto Mexicano del Cemento y del Concreto (IMCYC)
Cementos Acapulco, S.A.
Cementos Apasco, S.A.
Cementos de Chihuahua, S.A.
Cementos Mexicanos, S.A.
Cementos Moctezuma, S.A.
Cooperative de Cementos Cruz Azul
Cooperative de Cementos Hidalgo

Affiliate Members

Cement and Concrete Promotion Council of Texas
Florida Concrete and Products Association
Mississippi Concrete Industries Association
North Central Cement Promotion Association
Northern California Cement Promotion Group
Northwest Concrete Promotion Group
Rocky Mountain Cement Promotion Council
South Central Cement Promotion Association
Southern California Cement Group

In addition, the following equipment suppliers are involved as "Participating Associates," together with PCA members, in the activities of the Manufacturing Process Subcommittee of PCA's General Technical Committee:

Baker-Dolomite (DBCA)
C-E Raymond
Holderbank Consulting Ltd.
Humboldt Wedag Company
F. L. Smidth and Company
Claudius Peters, Inc.
Magotteaux-Slegten Companies
Polysius Corp.
The Fuller Company
W.R. Grace & Company

On January 7, 1985, PCA filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 5, 1985, 50 FR 5015. On March 14, 1985, August 13, 1985, January 3, 1986, February 14, 1986, May 30, 1986, July 10, 1986, December 31, 1986, February 3, 1987, April 17, 1987, June 3, 1987, July 29, 1987, August 6, 1987, October 9, 1987, February 18, 1988, March 9, 1988, March 11, 1988, July 7, 1988, August 9, 1988, August 23, 1988, January 23, 1989, February 24, 1989, and March 13, 1989, PCA filed additional written notifications. The Department published notices in the **Federal Register** in response to these additional notifications on April 10, 1985 (50 FR 14175), September 16, 1985 (50 FR 37594), February 4, 1986 (51 FR 4440), March 12, 1986 (51 FR 8573), June 27, 1986 (51 FR 23479), August 14, 1986 (51 FR 29173), February 3, 1987 (52 FR 3356), March 4, 1987 (52 FR 6635), May 14, 1987 (52 FR 18295), July 10, 1987 (52 FR 28183), August 26, 1987 (52 FR 32185), November 17, 1987 (52 FR 43953), March 28, 1988 (53 FR 9999), August 4, 1988 (53 FR 29379), September 15, 1988 (FR 35935), September 28, 1988 (53 FR 37883), February 23, 1989 (54 FR 7894), March 20, 1989 (54 FR 11455), and April 25, 1989 (54 FR 17835), respectively.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89-15223 Filed 6-27-89; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL SCIENCE FOUNDATION

Materials Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public.

Agency Clearance Officer: Herman G. Fleming, (202) 357-9520.

OMB Desk Officer: Written comments to: Office of Information and Regulatory Affairs, ATTN: Jim Houser, Desk Officer, OMB, 722 Jackson Place, Room 3208, NEOB, Washington, DC 20503.

Title: Survey by the U.S.-Japan Task Force on Access of U.S. investigators who have done research in Japan since January 1, 1988.

Affected Public: Individuals.

Responses/Burden Hours: 200 responses, one hour each respondent.

Abstract: This modification of NSF Form 1244 is needed to record information from U.S. researchers, who, since January, 1988, have spent two months or more doing research in Japan. Annex II to the *Agreement between the Government of the United States of America and the Government of Japan on Cooperation in Research and Development in Science and Technology* (signed in June 1988) authorized a Task Force on Access, to survey major government-sponsored research and development programs in the U.S. and Japan. Perhaps 200 principal investigators will be affected.

Dated: June 22, 1989.

Herman G. Fleming,

NSF Clearance Officer.

[FR Doc. 89-15197 Filed 6-27-89; 8:45 am]

BILLING CODE 7555-01-M

Materials Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public.

Agency Clearance Officer: Herman G. Fleming, (202) 357-9520.

OMB Desk Officer: Written comments to: Office of Information and Regulatory Affairs, ATTN: Jim Houser, Desk Officer, OMB, 722 Jackson Place, Room 3208, NEOB, Washington, DC 20503.

Title: 1990 Survey of Science, Social Science, and Engineering Graduates.

Affected Public: Individuals.

Responses/Burden Hours: 10,050 respondents, 20 minutes each respondent.

Abstract: The information provided in this survey will enable the NSF to comply with the legislative requirement to collect information about scientific and technical personnel that may be used in policy and planning activities by private industry, educational institutions, and government agencies.

Dated: June 22, 1989.

Herman G. Fleming,

NSF Clearance Officer.

[FR Doc. 89-15198 Filed 6-27-89; 8:45 am]

BILLING CODE 7555-01-M

Materials Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public.

Agency Clearance Officer: Herman G. Fleming, (202) 357-9520.

OMB Desk Officer: Written comments to: Office of Information and Regulatory Affairs, ATTN: Jim Houser, Desk Officer, OMB, 722 Jackson Place, Room 3208, NEOB, Washington, DC 20503.

Title: Antarctic Conservation Act Application and Permit Form.

Affected Public: Individuals, For-profit, Federal agencies, Non-profit, Small businesses..

Responses/Burden Hours: 20 responses, one hour each respondent.

Abstract: The National Science Foundation, pursuant to the Antarctic Conservation Act of 1978 (Pub. L. 95-541, regulates via a permit system certain activities in Antarctica. The subject form is used by NSF to collect information needed in permit administration.

Dated: June 22, 1989.

Herman G. Fleming,

NSF Clearance Officer.

[FR Doc. 89-15199 Filed 6-27-89; 8:45 am]

BILLING CODE 7555-01-M

Materials Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public.

Agency Clearance Officer: Herman G. Fleming, (202) 357-9520.

OMB Desk Officer: Written comments to: Office of Information and Regulatory Affairs, ATTN: Jim Houser, Desk Officer, OMB, 722 Jackson Place, Room 3208, NEOB, Washington, DC 20503.

Title: Survey of Biotechnology R&D Performance in Industry.

Affected Public: Businesses or other for-profit.

Responses/Burden Hours: 500 responses, one hour each respondent.

Abstract: Quantitative information on S&T employment and funding in biotechnology related areas is needed to improve the ability of the Federal government to assess its policymaking and budget formulation activities in these areas. Executive branch agencies and the Congress use responses of industry leaders to make timely decision on S&E policy questions.

Dated: June 22, 1989.

Herman G. Fleming,

NSF Clearance Officer.

[FR Doc. 89-15200 Filed 6-27-89; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from June 5, 1989 through June 16, 1989. The last biweekly notice was published on June 14, 1989 (54 FR 25367).

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following

amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC The filing of requests for hearing and petitions for leave to intervene is discussed below.

By July 28, 1989 the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: June 21, 1987, as supplemented May 19, 1989

Description of amendment request: Presently, the Unit 1 Technical Specification 5.6.3 states "the fuel storage pool is designed and shall be maintained with a storage capacity limited to no more than 160 PWR fuel assemblies and 1803 BWR fuel assemblies." The Unit 2 Technical Specification 5.6.3 states "the fuel storage pool is designed and shall be maintained with a storage capacity limited to no more than 144 PWR fuel assemblies and 1839 BWR fuel assemblies." The proposed amendment would delete the words "a storage capacity limited to" from Technical Specification 5.6.3.

Basis for proposed no significant hazard consideration determination: The Commission has provided standards for determining whether a no significant hazard consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The Carolina Power & Light Company (CP&L) has reviewed the proposed changes to the Technical Specifications and has determined that the requested amendment does not involve a significant hazards consideration for the following reasons:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because the number of assemblies permitted to be stored in each spent fuel pool is not changed. The spent fuel pool criticality, thermal, seismic, and rack material analyses are not affected by the proposed amendment.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated because no aspect of plant operation will be altered as a result of the change. As stated above, the total number of fuel assemblies allowed in each spent fuel pool remains the same.

3. The proposed amendment does not involve a significant reduction in the margin of safety. The Company has reviewed this request and determined that it does not affect the criticality analysis, the thermal analysis, the seismic analysis, or the rack material analysis performed for the spent fuel pool. As such, the margin of safety is unaffected. In order to determine if the staff agrees with Carolina Power & Light Company's determination, the staff reviewed its Safety Evaluation of December 15, 1983 in support of the last reracking of the Brunswick spent fuel pool (Amendment No. 61 for Unit 1 and Amendment No. 87 for Unit 2). The introduction to the staff's Safety Evaluation states, in part, that the licensee proposed 160 PWR and 1803 BWR licensed spaces for Unit 1 and 144 PWR and 1839 BWR licensed spaces for Unit 2. Thus, the staff reviewed, evaluated, and approved the total number of licensed spaces versus the total possible storage capacity which in the Brunswick case, at the present time, is different.

Unit 1 now has one less 6x8 BWR rack than originally anticipated to be installed. Therefore, the storage capacity is not the same as the total permitted assemblies that could be put in storage. The rack may or may not be installed according to the licensee.

Unit 2 now has two less 6x8 BWR racks than originally anticipated to be installed. In addition, it has one extra 4x4 PWR rack installed. Although the installed capacity for the PWR racks is 160 PWR assemblies, the licensee is administratively holding the actual storage of PWR assemblies to the 144 TS value. The two BWR racks may or may not be installed according to the licensee. The one extra PWR rack may or may not be removed according to the licensee.

The staff has reviewed the CP&L determination of no significant hazards consideration and is in basic agreement with them as long as the licensee restricts the total number of assemblies placed in storage in each pool per the TS limits, as authorized by the above specified amendments. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Elinor G. Adensam

Commonwealth Edison Company, Docket Nos. 50-454 and 50-455, Byron Nuclear Station, Unit Nos. 1 and 2, Ogle County, Illinois; Docket Nos. 50-456 and 50-457, Braidwood Station, Units 1 and 2, Will County, Illinois

Date of application for amendments: March 6, 1989

Description of amendments request: These amendments would change Technical Specifications 3/4.7.6, 3/4.7.7 and 3/4.9.12 to incorporate revised ventilation flow rates and a revised heater dissipation rate, clarify a testing requirement, correct a typographical error, and delete a footnote that is no longer applicable.

Basis for proposed no significant hazards consideration determination: The staff has evaluated this proposed amendment and determined that it involves no significant hazards consideration. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated; or

2. Create the possibility of a new or different kind of accident from any accident previously evaluated; or

3. Involve a significant reduction in a margin of safety.

The proposed amendment makes several changes to the Technical Specifications. These changes are the (1) auxiliary building ventilation (VA) flowrates, (2) correction of a typographical error, (3) the deletion of the word "cold" when describing the dioctyl phthalate (DOP) used for VA system testing, (4) the changes in the control room ventilation (VC) flowrates for Byron Station, (5) the deletion of a footnote that is no longer applicable, and (6) the change in heater dissipation rate.

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. The VA non-accessible area ventilation system will be operated as described in the design and intent of the Updated Final Safety Analysis Report (UFSAR). The VA non-accessible area ventilation system bases is to ensure that radioactive materials, leaking from the ECCS equipment within non-accessible pump rooms following a LOCA, are filtered prior to reaching the

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environment. Though UFSAR changes will be required to reflect the proposed flowrates, the bases remain satisfied. The VC proposed flowrate change ensures that a pressure of greater than or equal to 1/8 inch water gauge relative to ambient pressure in areas adjacent to the control room, and .02 inch water gauge relative to the Upper Cable Spreading Room and adjacent areas (except the control room) are maintained. This is consistent with the design and intent of the UFSAR; however, the proposed flowrates will need to be reflected in the UFSAR. The bases for the VC System are satisfied such that the allowable temperatures will be maintained in the control room and the control room will be maintained habitable for operations personnel during and following all credible accident conditions. Deletion of the word "cold" from the description of DOP used in testing has no effect on the VA System operation per UFSAR design and/or analysis and has no significant consequences. The change removes an overly conservative restriction and revises Technical Specifications to allow testing consistent with ANSI N510-1980. The typographical correction does not affect any accident. The deletion of the footnote has no effect on any accident since the footnote is no longer applicable.

The control Room Emergency Make-Up Air Filter Unit heaters were designed to comply with ANSI N-509 and Regulatory Guide 1.52-1978 requirements of limiting the relative humidity (RH) entering the carbon absorbers to 70% RH at the design flowrate. The heater performance was evaluated considering a main steam line break (MSLB) accident and a loss of coolant accident (LOCA). The heaters are not required for the MSLB accident since only a fraction of a percent of iodine removal efficiency for the carbon absorbers is needed to reduce the postulated Control Room thyroid dose below 10 CFR Part 50, Appendix A, GDC-19 limits. For the LOCA, air conditions were assumed to conservatively reflect atmospheric conditions. It was determined that the relative humidity can be limited to approximately 70% with a heater capacity of 21.1 kW. The proposed Technical Specification change is consistent with this determination; therefore, the probability and consequences of an accident remain unaffected.

The proposed changes do not create the possibility of a new or different kind of accident from any previously analyzed. The new VA flowrates are a result of the Testing Adjusting and Balancing (TAB) of the VA System and achieved acceptable system performance characteristics per system design as outlined in the UFSAR though the UFSAR flowrates need to be changed. All cooling requirements, as well as pressure requirements, are maintained per the design and intent of the UFSAR as described in the bases for the VA non-accessible area system which is to ensure the system operability such that radioactive materials leaking from the ECCS equipment within the pump rooms following a LOCA are filtered prior to reaching the environment. The VC flowrates are changed due to a need for an increased range after actual air densities were considered for instrument drift. The changed airflow meets the requirement to maintain greater than or equal to +.125 inch Water Gauge (inwg) in the control room and .02 inwg between the upper cable spreading room and adjacent area (except the control room). The bases for the VC System remain satisfied as the allowable temperatures will be maintained in the control room, and the control room will be maintained habitable for operations personnel during and following all credible accident conditions. The deletion of the word "cold" from the DOP description has no effect on system operation per UFSAR design and/or analysis and thus has no effect on the significant hazards considerations. The typographical correction has no effect on any accident. The deletion of the footnote, which is no longer applicable, has no effect on the creation of any accident. The change to required heater capacity is based upon analysis which establishes a minimum heater capacity that envelopes the accident analysis results. Since no new equipment is being added or control changes being performed, the possibility of a new or different kind of accident is not created.

The proposed changes do not involve a significant reduction in the margin of safety. The VA System flowrates as a result of the TAB will still maintain all ECCS pump room pressures as required. The bases for Technical Specification 3/4.7.7 will be met as the system has been balanced, such that the airflows provide negative pressures in the Auxiliary Building and Fuel Handling Building and ensure that ALARA and EQ parameters are maintained in accordance with the UFSAR. This ensures that all radioactive materials leaking from ECCS equipment in the pump rooms following a LOCA are filtered prior to reaching the environment. Thus the VA flowrates will be revised in accordance with Byron and Braidwood specific system performance characteristics and analysis. The VC system flowrate change still ensures that control room pressure remains within the boundary for control room habitability per Technical Specification 3/4.7.6 bases. This provides for the bases being satisfied in that the allowable temperatures in the control room will be maintained and the control room will remain habitable for operations personnel during and following all accident conditions. The deletion of the word "cold" from the DOP description changes has no effect on the margin of safety for Technical Specification 3/4.7.7 and 3/4.9.12 as described in their bases.

The typographical correction has no effect on the margin of safety. The deletion of the footnote, which is no longer applicable, has no effect on the margin of safety. The Technical Specification Bases state that operation of the system with the heaters operating for at least 10 continuous hours in a 31-day period is sufficient to reduce the buildup of moisture on the absorbers and HEPA filters. The proposed change limits the relative humidity entering the absorbers to 70% in accordance with ANSI N-509 and Regulatory Guide 1.52-1978 design requirements. Therefore, the margin of safety is not affected.

Therefore, based upon the above analysis, the staff concludes that the proposed amendment to the Technical Specification does not involve a significant hazards consideration.

Local Public Document Room location: For Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61101; for Braidwood Station, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Attorney to licensee: Michael Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Acting Project Director: Paul C. Shemanski

Commonwealth Edison Company, Docket Nos. 50-454 and 50-455, Byron Nuclear Station, Unit Nos. 1 and 2, Ogle County, Illinois; and Docket Nos. 50-456 and 50-457 Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: May 22, 1989

Description of amendments request: The proposed amendment would revise Technical Specification 5.3.2 to allow the use of either hafnium, or silver-indium-cadmium, or a combination of both, as the absorber material in the rod control cluster assemblies.

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Basis for proposed no significant hazards consideration determination: The staff has evaluated this proposed amendment and determined that it involves no significant hazards consideration. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated; or
2. Create the possibility of a new or different kind of accident from any accident previously evaluated; or
3. Involve a significant reduction in a margin of safety.

The proposed change does not result in any increase in the probability or consequences of accidents previously evaluated. The probability for an accident is independent of the absorber material used in the Rod Control Cluster Assembly (RCCA). The consequences remain unchanged because the silver-indium-cadmium absorber material meets the mechanical, physical, nuclear, and thermal properties assumed in the accident analysis.

The proposed change does not create the possibility for a new or different kind of accident from those previously evaluated. The physical characteristics of the silver-indium-cadmium RCCA's are comparable to that of the hafnium RCCA's. The physical size and construction of the RCCA's are the same. Both absorbers exhibit similar neutron absorption characteristics, hence flux distribution and shutdown margins will remain within limits.

The weights of the two differing RCCA's are comparable. Rod drop times will remain well within the values assumed in the FSAR. Both absorber materials are compatible with reactor coolant and reactor materials.

The proposed change does not involve a reduction in the margin of safety. All safety limits and limiting conditions for operation will continue to be met. The use of silver-indium-cadmium RCCA's is consistent with all assumptions made in the accident analysis. Silver-indium-cadmium is currently in use at several Westinghouse plants. This absorber material has been shown through experience to be an effective and stable material.

Based on the preceding assessment, the staff believes these proposed amendments involve no significant hazards consideration.

Local Public Document Room location: For Byron Station, the Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61101; for Braidwood Station, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Attorney to licensee: Michael Miller, Esquire; Sidley and Austin, National Plaza, Chicago, Illinois 60603.

NRC Acting Project Director: Paul C. Shemanski

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Unit Nos. 1 and 2, Lake County, Illinois

Date of application for amendments: June 13, 1989

Brief description of amendments: This amendment request will modify Sections 4.0.3 and 4.0.4, General Surveillance Requirements, of the Technical Specifications for Zion Station. In addition to the proposed changes to the General Surveillance Requirements, changes are also proposed to Section 3.3.1.F, Reactor Coolant System, Operational Components-Relief Valves, and Section 3.9.3.A, Containment Isolation-Containment Isolation Valves. These later changes reflect the new guidance of the proposed General Surveillance Requirements and/or an upgrade to the requirements of Standardized Technical Specifications (STS). The proposed changes are expected to be consistent with the guidance contained in Generic Letter 87-09 dated June 4, 1987 which was issued to address several problems that were related to the General Limiting Conditions of Operations (LCO) of the STS.

Basis for proposed no significant hazards consideration determination: The staff has evaluated this proposed amendment and determined that it involves no significant hazards consideration. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequence of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commonwealth Edison Company (the licensee) provided the following discussion regarding the evaluation of the significant hazards consideration. Commonwealth Edison has evaluated this proposed amendment and determined that it involves no significant hazards consideration. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

The proposed changes involve Technical Specifications 3.0.4, 4.0.3 and 4.0.4, plus those Technical Specifications that are affected by these sections. These changes are being made and requested in accordance with NRC Generic Letter 87-09 issued on June 4, 1987.

Changes to Technical Specification, Appendix A, pages 27a, 27b and 27c through 27f, in this proposed amendment involve Specifications 4.0.3 and 4.0.4 and the corresponding Bases sections. Some Action requirements have allowable outage time limits that do not allow sufficient time for the completion of a missed surveillance before the Action requirements would necessitate a plant shutdown. If a plant shutdown is required before a missed surveillance is completed, it is likely that the surveillance would be conducted during the shutdown in an effort to terminate the shutdown requirements. This circumstance is undesirable for two reasons:

(1) increased pressure on plant staff to complete the surveillance could lead to errors that may result in plant upset, and

(2) the plant would be in a transient state involving potential upsets to the plant that could require a demand for the system when the system is removed from service for testing.

The proposed changes will also help clarify the potential conflicts between Specifications 4.0.3 and 4.0.4. The first conflict could arise when a plant shutdown is required as a consequence of an Action requirement. This will require a surveillance to performed, to become due prior to entry into a lower mode. This could result in delays in reaching lower modes as a result of a Technical Specification Action requirement.

The second conflict could arise when Surveillance Requirements can only be completed after entry into a mode or specified condition for which the Surveillance Requirements apply, and an exception to the requirements of Specification 4.0.4 is allowed. However, upon entry into this mode or condition, the requirements of Specification 4.0.3 may not be met because the

Surveillance Requirements may not have been performed within the allowed surveillance interval. Allowing for a delay in the applicability of Action Requirements for Specification 4.0.3 will provide an appropriate time limit for the completion of Surveillance Requirements that are allowed as an exception to Specification 4.0.4.

The proposed changes do not increase the probability or consequences of an accident previously evaluated. In regards to the changes to the General LCO's, the Surveillance Requirements are defined in 10 CFR 50.36 as those requirements that assure the necessary quality of systems and components are maintained such that safety limits are maintained and Limiting Conditions for Operation are met under these changes. The appropriate surveillances will still be performed. The proposed changes will only allow flexibility in performing these Surveillance Requirements prior to a plant shutdown being necessitated in the case of a surveillance being inadvertently missed.

The proposed change to be page 77, which excludes Specification 3.3.1.F from General LCO 3.0.4, does not involve a significant increase in the probability or consequences of an accident previously evaluated since this change will make Zion's Technical Specification the same as NRC approved Standard Technical Specification which allows this exemption.

The proposed changes to pages 199a and 199b, revise Specification 3.9.3.A to be the same as Commonwealth Edison's Byron and Braidwood Station Specifications. This change will not cause a significant increase in the probability or consequences of an accident previously evaluated since it requires the affected penetration and associated system to be declared inoperable within 4 hours and appropriate action to be taken. This change meets example (iv) of 48 FR 14869 i.e., a relief granted upon demonstration of acceptable operation from an operating restriction that was imposed because acceptable operation was not yet demonstrated. This assumes that the operating restriction and the criteria to be applied to a request for relief have been established in a *prior review* and that it is justified in a satisfactory way that the criteria has been met.

None of the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated. No new equipment is being introduced as a result of the changes. These changes do not result in equipment being introduced as a result of changes. These changes do not result in equipment being operated in a manner different from present requirements. No change is being made which alters the function of any plant equipment.

None of the proposed changes involve a significant reduction in a margin of safety. In regards to the changes related to Sections 4.0.3 and 4.0.4 (i.e. allowing an appropriate time period for performance of a missed surveillance), a surveillance required by entry into an Action statement or performance of one precluded by plant conditions would in effect reduce the possibility for a potential plant upset.

The proposed changes to Section 3.3.1.F and 3.9.3, also do not involve a significant reduction in a margin of safety since corrective action will be taken within a specified time limit to ensure that the release of radioactive material to the environment will be consistent with the assumptions used in the analyses of a LOCA.

Therefore, based on the above evaluation, Commonwealth Edison believes that these changes do not involve a significant hazards consideration.

Since the application for amendment satisfies the criteria specified in 10 CFR 50.92 and is similar to an example for which no significant hazards consideration exists, Commonwealth Edison Company has made a determination that the application involves no significant hazards consideration determination and agrees with the licensee's analysis.

Accordingly, the Commission proposed to determine that the proposed changes to the Technical Specifications involve no significant hazards consideration.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Attorney to licensee: Michael I. Miller, Esq., Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Paul C. Shemanski, Acting

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: May 26, 1989

Description of amendment request: The proposed amendment would revise Technical Specification 3.3 and its associated Basis to provide additional operational flexibility by decreasing the refueling water storage tank low level alarm setpoint and by increasing the minimum required concentration of sodium hydroxide in the spray additive tank.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee provided the following analysis of the proposed changes:

In accordance with the requirements of 10 CFR 50.92, the proposed changes to Technical Specification 3.3.A.1.k, Technical Specification 3.3.B.1.a and Technical Specification Basis 3.3 are deemed not to involve any Significant Hazards Consideration because operation of Indian Point Unit No. 2 in accordance with this change would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

As part of a previously proposed Technical Specification amendment (submitted June 12, 1987), we enclosed a revision to FSAR Section 14.3.5, entitled "Containment Integrity Analysis" (this revision is part of the forthcoming FSAR update). The Containment Pressure versus Time curves presented in this analysis assumed only one operating Containment Spray Pump, three operating Containment Fan Coolers and took no credit for Recirculation Spray. This analysis was approved by the NRC and an SER issued on June 29, 1988 with Technical Specification Amendment 132. The analysis assumed that the RWST was completely drained (340,000 gallons injected) prior to switchover to the Recirculation Phase for the RHR and SI pumps, thus minimizing the contribution of Containment Spray to the containment integrity analysis.

In actuality, operators would begin to initiate the changeover to the Recirculation Phase soon after 246,000 gallons from the RWST had been injected into the containment. Therefore, much more RWST water is available for Containment Spray than necessary for pressure suppression of the containment for the limiting design basis accident.

Since the above shows that 80,000 gallons is not needed to be reserved in the RWST for the Recirculation Phase, the proposed change would reserve 60,000 gallons for the Recirculation Phase. As shown in the proposed Technical Specification 3.3 Basis, the remaining 60,000 gallons would be utilized to provide additional leeway in the alarm setpoints and to provide additional margin in which to perform the injection to recirculation switchover.

The rational for not completely draining the RWST prior to initiating the Recirculation Phase is twofold:

a) To assure that the SI and RHR pumps will not be damaged due to insufficient water supply prior to switchover, and

b) To assure that an adequate amount of NaOH is provided to the containment via the Containment Spray System pathway during the Injection (246,000 gallons) and the Recirculation (80,000 gallons) Phases.

With respect to Item a, sufficient water is preserved in the RWST to preclude pump damage. With respect to Item b, [it has been determined] that an increase from 30% to 33% in the NaOH concentration in the Spray Additive Tank will compensate for the 20,000 gallon decrease in the RWST water reserved for the Containment Spray pumps to add NaOH into containment from the Spray Additive Tank after switchover. Thus the pH post-LOCA will be the same as the current FSAR analyses.

The proposed changes (i.e., the RWST alarm setpoints and the NaOH concentration) deal only with accident mitigation and do not provide any sort of automatic initiation. Thus, there are no credible equipment failures associated with these proposed changes that would initiate an accident. In addition, since these proposed changes are associated with equipment located outside containment, there are no credible failures attributable to these proposed changes that could directly affect the Reactor Coolant System. Thus, these proposed changes would not significantly increase the probability of an accident previously evaluated nor would they significantly increase in the consequences of an accident previously evaluated.

Therefore, these proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes (i.e., the RWST alarm setpoints and the NaOH concentration) deal only with accident mitigation and do not provide any sort of automatic initiation. Thus, there are no credible equipment failures associated with these proposed changes that would initiate an accident. In addition, since these proposed changes are associated with equipment located outside containment, there are no credible failures attributable to these proposed changes that could directly affect the Reactor Coolant System. Finally, these proposed changes do not modify the physical configuration of the plant. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

As discussed in Item 1 above, these changes are based on an approved revision to FSAR Section 14.3.5. This discussion shows that 80,000 gallons is not needed to be reserved in the RWST for the Recirculation Phase, the proposed change would reserve 60,000 gallons for the Recirculation Phase. As shown in the proposed Technical Specification 3.3 Basis, the remaining 60,000 gallons would be utilized to provide additional leeway in the alarm setpoints and to provide additional margin in which to perform the injection to recirculation switchover.

The rationale for not completely draining the RWST prior to initiating the Recirculation Phase is twofold:

a) To assure that the SI and RHR pumps will not be damaged due to insufficient water supply prior to switchover, and

b) To assure that an adequate amount of NaOH is provided to the containment via the Containment Spray System pathway during the Injection (246,000 gallons) and the Recirculation (80,000 gallons) Phases.

With respect to Item a, sufficient water is preserved in the RWST to preclude pump damage. With respect to Item b, it has been determined that an increase from 30% to 33% in the NaOH concentration in the Spray Additive Tank will compensate for the decrease 20,000 in the RWST water reserved for the Containment Spray pumps to add NaOH into containment from the Spray Additive Tank after switchover. Consequently, the post-LOCA pH will be the same as the current FSAR analyses. Thus, it has been demonstrated that the margin of safety is essentially unaffected. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Therefore, based on the above discussion the licensee has determined that the proposed changes to Technical Specification 3.3.A.1.k, Technical Specification 3.3.B.1.a and Technical Specification Basis 3.3 do not involve any Significant Hazards Consideration.

The staff agrees with the licensee's analysis. Therefore, based on the above, the staff proposes that the proposed amendment will not involve a Significant Hazards Consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003

NRC Project Director: Robert A. Capra

Consumers Power Company, Docket No. 50-155, Big Rock Point Plant, Charlevoix County, Michigan

Date of amendment request: May 25, 1989

Description of amendment request: The proposed changes to modify 3.7 of the Technical Specifications to represent 10 CFR Part 50, Appendix J, NUREG-0123 and the Standard Technical Specifications for General Electric Boiling Water Reactors requirements and to remove the 24 hour duration requirement to permit use of the "Total Time" and "Point-to-Point" methods described in ANS N45.4-1972 and Bechtel Topical Report BN-TOP-1.

Basis for proposed no significant hazards consideration determination: Consumers Power Company has reviewed the proposed changes in accordance with 10 CFR 50.92 and has concluded that they do not involve a significant hazards consideration. The licensee's basis for this conclusion is that the proposed amendment would not:

1. Alter the containment leakage rate acceptance criteria used to determine the consequences of accidents previously evaluated, thus does not affect the results of the previous evaluations. The proposed changes also do not require any system or component modifications nor a change to the operational mode in which the testing is performed thus concluding no effect in the probability of occurrence of an accident previously evaluated.

2. Integrated leak rate testing will still be performed during cold shutdown conditions which is unaffected by the proposed changes. Methods used to perform the test do not effect containment components or systems and modifications are not needed to implement the changes, thus avoiding the possibility to create a new or different kind of accident or malfunction.

3. The proposed changes do not involve a reduction in the margin of safety because the containment leakage rate limit is not being changed. Surveillance interval for performance of the test remains essentially unchanged (3 per 10 year service period). The changes do remove the 24 hour duration requirement, however, accuracy of the test will not be reduced because verification requirements are still in place to insure that the upper bound 95% confidence limit is achieved per 10 CFR Part 50, Appendix J.

The Staff has reviewed the licensee's determination that the proposed license amendment involves no significant hazards consideration and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: Lawrence A. Yandell, Acting.

Florida Power and Light Company, Docket No. 50-335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of amendment request: May 3, 1989

Description of amendment request: The proposed amendment would modify the St. Lucie Unit 1 Technical

Specifications (TS) to permit repair of steam generator tubes by the installation of mechanical sleeves. Currently, the St. Lucie Unit 1 TS do not include provisions for repair using sleeves with mechanical joints for those steam generator tubes with eddy current indications showing greater than 40% through-wall degradation. The current St. Lucie Unit 1 TS language was established before the sleeving repair method using mechanical joints to maintain the tubes in service was developed. The proposed TS changes would specify the requirements for repairing degraded or defective tubes using sleeves with mechanical joints in the St. Lucie Unit 1 steam generators.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee provided the following discussion regarding the above three criteria.

Criterion 1

The repair of degraded steam generator tubes using sleeves will result in tube bundle integrity consistent with the original design basis.

The sleeve configuration has been designed and analyzed in accordance with the rules of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code. Fatigue and stress analyses of the sleeved tube assemblies produced acceptable results. Mechanical testing has shown that the structural strength of the sleeves under normal, faulted and upset conditions is within acceptable limits. Leak rate testing has demonstrated that the leak rates of the joints between the sleeve and the existing tube under normal, faulted and upset conditions are well below acceptable rates. The existing Technical Specification leakage rate requirements and accident analysis assumptions remain unchanged in the event significant leakage from the sleeve would occur. Any leakage through the sleeved region of the tube due to potential localized tube degradation is fully bounded by leak-before-break considerations and ultimately by the existing steam generator tube rupture analysis included in the St. Lucie Unit 1 Updated Final Safety Analysis Report. The proposed Technical Specification change to support the installation of mechanical joint sleeves does not adversely impact any other previously evaluated design basis accident or the results of Loss of Coolant Accident (LOCA) and non-LOCA analyses. The results of the qualification testing, analyses, and plant operating experience demonstrate that the sleeve assembly is an acceptable means of maintaining tubes in service. Furthermore, per U.S. Nuclear Regulatory Commission Regulatory Guide 1.83 recommendations, the sleeved tube can be monitored through periodic inspections with present eddy current techniques. Plugging limit criteria are established in the Technical Specifications for the tube in the region of the sleeve and the sleeve. These measures demonstrate that installation of sleeves which span degraded areas of the tube will restore the tube to its original design basis.

The sleeve dimensions and joints were designed to the applicable ASME Boiler and Pressure Vessel Code. An extensive analysis and test program was undertaken to prove the adequacy of the welded sleeve. This program determined the effect of normal operating and postulated accident conditions on the sleeve-tube assembly, as well as the adequacy of the assembly to perform its intended function. Design criteria were established prior to performing the analysis and test program which, if met, would prove that the welded sleeve is an acceptable repair technique. Based upon the results of the analytical and test programs, the welded sleeve fulfills its intended function as a leak tight structural member and meets or exceeds all the design and operating criteria.

Criterion 2

Implementation of the proposed tube degradation repair method does not introduce significant changes to the plant design bases. Repair of tubes does not provide a mechanism to result in an accident outside of the sleeved area. Any hypothetical accident as a result of potential tube or sleeve degradation in the repaired portion of the tube would be bounded by the existing tube rupture accident analysis.

The installation of welded tube sleeves does not create the possibility of a new or different kind of accident from any previously analyzed. The installation of welded tube sleeves will be performed in a manner [consistent] with the applicable standards, will preserve the existing design bases, and will not adversely impact the qualification of any plant systems. This will preclude adverse control/protection systems interactions. The design, installation and inspection of the welded sleeve will be done in accordance with ASME Boiler and Pressure Vessel Code criteria. By adherence to industry standards, the pressure boundary integrity will be preserved. As such, the possibility of a new or different kind of accident is not created.

Criterion 3

The effect of sleeving on the design transients and accident safety analysis has been reviewed based on the installation of the maximum number of sleeves expected. The installation of sleeves can be evaluated as the equivalent of some level of steam generator tube plugging. The St. Lucie Unit 1 steam generators are currently licensed to 15 percent steam generator tube plugging (SGTP). Evaluation of the installation of sleeves is based on assuming that LOCA evaluations for 15 percent tube plugging bound the effect of a combination of tube plugging and sleeving up to an equivalent of 15 percent SGTP. For the purpose of assessing the impact on the non-LOCA safety analyses and the design transients, it is assumed that the reactor coolant flow rate used for these analyses and transients is less than that which results from 15 percent equivalent SGTP. Given that the reactor coolant flow rate up to 15 percent equivalent SGTP is greater than the flow rate used for these analyses, the non-LOCA safety analyses and design transients are not adversely impacted by steam generator sleeving.

The safety margins in the analyses of postulated accident conditions and design transients are provided in the assumptions and conservatism in the calculations and computer codes used and in the requirements and recommendations of the NRC. Accordingly, based on the information outlined above, there is no decrease in the safety margins defined in the basis of the plant Technical Specifications.

Implementation of tube repair by sleeving will decrease the number of tubes which must be taken out of service with tube plugs. Installation of tube plugs reduces the Reactor Coolant System (RCS) flow margin, thus implementation of tube repair by sleeving will maintain the margin of flow that would otherwise be reduced in the event of increased plugging. Based on the above, it is concluded that the proposed change does not result in a significant reduction in a loss of margin with respect to plant safety as defined in the Updated Final Safety Analysis Report or the basis for the St. Lucie Unit 1 Technical Specifications.

The installation of a sleeve in a steam generator tube increases the flow resistance through the tube. The increased resistance may result in reduced flow through the sleeved tube. To determine the effect of installing welded sleeves in the steam generators, an analysis was performed. A conservative sleeve length was used in evaluating the effects of the sleeves on the heat transfer and hydraulic capabilities of the steam generators. Using the head and flow characteristics of each of the four primary pumps in conjunction with the primary system hydraulic resistances, the flow rate was calculated as a function of the number of sleeved tubes. The Technical Specification minimum allowable flow rate was used to determine the maximum number of tubes per steam generator which can be sleeved at both hot and cold legs. The change in primary system flow rate based on the maximum number of tubes which can be sleeved per steam generator was calculated to be 2.6 percent.

The effect of the change in flow rate on heat transfer between the primary and secondary side of the steam generator was determined to be negligible. The overall resistance to heat transfer between the primary and secondary sides consists of the primary side film resistance, the resistance to heat transfer through tube wall, and the secondary side film resistance. Since the primary side film resistance is only a small portion of the total resistance, the effect of the calculated maximum change on flow rate on heat transfer is negligible.

The loss in heat transfer area associated with sleeving was also determined to be small. When the sleeve is installed on the steam generator tube, there is an annulus between the sleeve and the tube except in the sleeve tube weld regions. Hence, there is effectively little primary to secondary heat transfer in the region where the sleeve is installed. However, since negligible heat is transferred in the tubesheet region anyway, the loss in heat transfer area associated with sleeving is also negligible.

Based on the above, [the Florida Power & Light Company has] determined that the amendment request does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the probability of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety; and therefore does not involve a significant hazards consideration.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the proposed changes to the TS involve no significant hazards considerations.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: June 1, 1989

Description of amendment request: The proposed amendment would modify Technical Specifications 3/4.1, and 3/4.2, of Appendix A by replacing the values of cycle-specific parameter limits with a reference to the Core Operating Limits Report (COLR), which contains the values of those limits. Also, Figure 3.1-3 of the TS would be deleted. In addition, the COLR would be included in the Definitions Section of the Technical Specifications (TS) to note that it is the unit-specific document that provides these limits for the current operating reload cycle. Furthermore, the definition would note that the values of these cycle-specific parameter limits are to be determined in accordance with Specification 6.9.1.6. This Specification would require that the Core Operating Limits be determined for each reload cycle in accordance with the referenced NRC-approved methodology for these limits and consistent with the applicable limits of the safety analysis. Finally, this report and any mid-cycle revisions would be provided to the NRC upon issuance. Generic Letter 88-16, dated October 4, 1988, from the NRC provided guidance to licensees on requests for removal of the values of cycle-specific parameter limits from TS. The licensee's proposed amendment is in response to this Generic Letter.

Basis for proposed no significant hazards consideration determination: The staff has evaluated this proposed amendment and determined that it involves no significant hazards considerations. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated; or

2. Create the possibility of a new or different kind of accident from any accident previously evaluated; or

3. Involve a significant reduction in a margin of safety.

The proposed revision is in accordance with the guidance provided in Generic Letter 88-16 for licensees requesting removal of the values of cycle-specific parameter limits from TS. The establishment of these limits in accordance with an NRC-approved methodology and the incorporation of these limits into the COLR will ensure that proper steps have been taken to establish the values of these limits. Furthermore, the submittal of the COLR will allow the staff to continue to trend the values of these limits without the the need for prior staff approval of these limits and without introduction of an unreviewed safety question. The revised specifications with the removal of the values of cycle-specific parameter limits and the addition of the referenced report for these limits does not create the possibility of a new or different kind of accident for those previously evaluated. They also do not involve a significant reduction in the margin of safety since the change does not alter the methods used to establish these limits.

Consequently, the proposed change on the removal of the values of cycle-specific limits do not involve a significant increase in the probability or consequence of a previously evaluated accident.

Because the values of cycle-specific parameter limits will continue to be determined in accordance with an NRC-approved methodology and consistent with the applicable limits of the safety analysis, these changes are administrative in nature and do not impact the operation of the facility in a manner that involves significant hazards consideration.

The proposed amendment does not alter the requirement that the plant be operated within the limits for cycle-specific parameters nor the required remedial actions that must be taken when these limits are not met. While it is recognized that such requirements are essential to plant safety, the values of limits can be determined in accordance with NRC-approved methods without affecting nuclear safety. With the removal of the values of these limits from the Technical Specifications, they have been incorporated into the COLR which is submitted to the Commission. Hence, appropriate measures exist to control the values of these limits. These changes are administrative in nature and do not impact the operation of the facility in a manner that involves significant hazards considerations.

Based on the preceding assessment, the staff believes this proposed amendment involves no significant hazards considerations.

Local Public Document Rooms Location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488 and Austin Public Library, 810 Guadalupe Street, Austin, Texas 78701

Attorney for licensee: Jack R. Newman, Esq., Newman & Holtzinger, P.C., 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Frederick J. Hebdon

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499 South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: June 1, 1989

Description of amendment request: The proposed amendments would change the technical specifications to permit the use of both hafnium (Hf) and silver-indium-cadmium (Ag-In-Cd) design rod cluster control assemblies (RCCAs) within the reactor core.

Basis for proposed no significant hazards consideration determination: In evaluating the proposed changes, the licensee considered neutronic effects,

mechanical effects and both large and small loss-of-coolant accidents.

The licensee performed specific comparisons of Hf and Ag-In-Cd reactivity worth under plant operating conditions. It was determined that since the rod worth behavior is similar between a Ag-In-Cd and Hf RCCA, the core power distributions under rated conditions are essentially the same.

Based on neutronic calculations comparing Hf to Ag-In-Cd and to combinations of both types of RCCA during steady state operation and under accident conditions, it was concluded that the largest change in total rod worth resulting from the substitution of absorber materials was 100 pcm. The corresponding change in N-1 rod worth was limited to 50 pcm, and the largest increase in peaking factors would be 1%. This slight increase in the peaking factors is based on RCCA banks being Hf or Ag-In-Cd but not a mixture of the materials within any one bank.

With respect to mechanical effects, the overall RCCA design and the physical geometry remains the same for Hf or Ag-In-Cd. In addition, the total RCCA/drive rod assembly weight is 31 lbs. less for Ag-In-Cd. With respect to this difference in weight, the drop time limits corresponding to either Hf or Ag-In-Cd design remain within the Technical Specification limit of 2.8 seconds. Generic mechanical response calculations were performed to confirm that the rod drop time of the Ag-In-Cd RCCAs will not exceed that currently assumed for Hf RCCAs.

The licensee considered the following accidents or accident related situations; Large Break LOCA, Small Break LOCA, Hot Leg Switchover to Prevent Potential Boron Precipitation, Reactor Vessel and LOOP Blowdown Forcing Functions, Post-LOCA Long-Term Cooling Subcriticality Requirement, Rod Ejection Large Term Mass and Energy Release, and Containment Integrity. In each instance there was no change to previous analyses, because either no credit was taken for the RCCAs in the analysis, or the most severe conditions assumed for the accident occurred after all rods were fully inserted.

In addition, the licensee considered the following parameters as they would affect the non-LOCA safety analysis, in particular, trip reactivity, nomalized trip reactivity vs. axial position, shutdown margin, ejected rod worths, other rod worth parameters possibly affected by an RCCA change, and rod drop time. It was concluded that the values for the first five parameters noted above will remain within the values assumed in the non-LOCA safety analyses. Mechanical response calculations showed that the rod drop time of the Ag-In-Cd RCCAs will not exceed that currently assumed for Hf RCCAs. The values used in the non-LOCA safety analysis and Technical Specifications will remain bounding.

The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (51 FR 7751). An example of an amendment which involves a no significant hazards consideration is example (vi) a change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan: for example, a change resulting from the application of a small refinement of a previously used calculational model or design method.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussions, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration. Further the staff concludes that the proposed change is essentially a direct substitution of RCCA materials and is considered within example (vi).

Local Public Document Rooms Location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton Texas 77488 and Austin Public Library, 810 Guadalupe Street, Austin, Texas 78701

Attorney for licensee: Jack R. Newman, Esq., Newman & Holtzinger, P.C., 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Frederick J. Hebdon

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: June 30, 1987

Description of amendment request: The proposed amendment would revise Technical Specification 3.5.G.3 to clarify the Limiting Condition for Operation (LCO) which requires that certain emergency core cooling equipment be available when work is performed which has the potential for draining the reactor vessel. The revision of this LCO will minimize operator confusion by specifying the minimum emergency core cooling system operability requirements during periods when operations are being performed which have the potential for draining the reactor vessel. Additional restrictions in the Technical Specifications are proposed (Specification 3.5.G.4(d) and 3.5.G.5) which would prohibit operations which have the potential for draining the reactor vessel when the suppression pool water supply is unavailable. Administrative changes are also requested.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards (10 CFR 50.92(c)) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided the following analysis in support of a no-significant-hazards-consideration determination:

(1) The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The licensee has elected to adopt a more defined Limiting Condition for Operation (LCO) than is presently included in the Technical Specifications. It will apply when work is being performed which has the potential for draining the reactor vessel. The revised LCO defines the core cooling capability that must be available when such work is being performed. The licensee has previously performed a conservative evaluation of a water loss event while maintenance is performed on control rod drives (CRDs). The postulated worst case loss of reactor vessel inventory would be caused by failure of the velocity-limiter section of a control rod which would allow coolant to drain from the vessel through the CRD housing. The maximum leakage flow rate is 1328 gpm which is something less than one-half of the makeup capability of either one core spray pump (3020 gpm) or one Low Pressure Coolant Injection (LPCI) pump (4800 gpm). In addition, the revised LCO requires an independent onsite power source (at least one emergency diesel generator) which provides backup power to the core spray and residual heat removal (LPCI) pumps.

An additional restriction (new Specification 3.5.G.4(d)) must be met before core alterations can proceed if the suppression pool volume is below specified minimum values. The restriction has no effect on the probability or consequences of an accident previously evaluated.

(2) The proposed amendment does not create the possibility of a new or different kind of accident. The revised LCO is a procedural limitation which will ensure that adequate core cooling systems are available in the event of a postulated loss of reactor vessel coolant inventory.

During core alterations, with the suppression pool below the required minimum value and the reactor cavity flooded, prohibiting operations which have the potential for draining the vessel ensures that a new or different type of accident than previously evaluated will not be created.

(3) The proposed amendment does not involve a significant reduction in a margin of safety. The LCO ensures that adequate core cooling capability and an independent power source are available if needed. The proposed amendment will not reduce safety margins; in fact, the rewording of an ambiguous statement (Specification 3.5.G.3) will help avoid the possibility of operator confusion, thereby indirectly increasing the margin of safety.

The NRC staff has reviewed the licensee's proposed no significant hazards determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the proposed amendment would have no significant hazards considerations.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Attorney for licensee: Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036.

NRC Project Director: John N. Hannon.

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: April 14, 1989

Description of amendment request: The proposed license amendment would revise the Duane Arnold Energy Center (DAEC) Facility Operating License No. DPR-49, extending the DAEC Integrated Plan (Plan) 2 years beyond the current expiration date of May 3, 1989. The Plan requires that the Iowa Electric Light and Power Company (IELP/the licensee) follow the schedule of the DAEC plant modifications mandated or proposed by NRC, or identified by the licensee. The proposed amendment does not involve changes to plant systems, components, or Technical Specifications.

The Integrated Plan was originally approved in Amendment No. 91, dated May 3, 1983, and extended by Amendment No. 125, dated July 9, 1985 and Amendment No. 148, dated November 25, 1987. The objective of the Integrated Plan is to integrate all planned DAEC plant modifications over a period of 5 years to assure that individual tasks are scheduled and performed in an efficient and cost/resource-effective manner.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists, as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The extension of the DAEC Integrated Plan beyond its current expiration date of May 3, 1989, is intended to assure continuation of reliable and efficient planning of plant modifications to enhance plant safety. In addition, the extension is purely administrative in nature and has no effect on existing plant systems or equipment. Therefore, the Plan may reduce, but not increase, the probability or the consequences of an accident previously evaluated, will not create a new or different kind of accident from any accident previously evaluated, and will not involve any reduction in a margin of safety.

In the March 6, 1986 Federal Register the NRC published examples of amendments that are not likely to involve a significant hazards concern (51 FR 7751). Example number (i) of that list is a purely administrative change to the Technical Specifications. The incorporation of a license condition requiring continued use of a plan to provide for scheduling modifications and notification of scheduling changes is purely administrative.

Based on the above, the Commission's staff has made a proposed determination that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Attorney for licensee: Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036.

NRC Project Director: John N. Hannon.

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: May 31, 1989

Description of amendment request: The proposed amendment would delete the 20 second minimum stroke time requirement for the Reactor Recirculation Pump Discharge Valves.

Basis for proposed no significant hazards consideration determination: In accordance with the requirement of 10 CFR 50.92, the licensee submitted the following no significant hazards evaluation:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Evaluation:

The proposed change involves removal of the minimum stroke time requirement for the Recirculation Discharge Valves that are required to fully close following a Design Basis Loss of Coolant Accident (LOCA). Removal of the minimum valve stroke time requirement will not affect the probability of occurrence of a LOCA.

The LOCA analysis that assures compliance with 10 CFR 50.46 does not rely on the minimum valve closure time as an input. Rather, the maximum valve closure time is used as a key parameter in the analysis. The maximum valve closure time is unaffected by this proposed change. The minimum valve closure time was originally incorporated into Technical Specifications to ensure that the valves would stroke slow enough and hence would not exceed their maximum design differential pressure following a LOCA. If the differential pressure is exceeded, the valve may fail to fully close, thus invalidating the LOCA analysis.

Analysis shows that even with significantly faster valve stroke times, the valves will not be subject to a greater than design differential pressure due to the expected reactor pressure decay rate following a LOCA along with the setpoints specified in Technical Specification for the pressure permissive relays that actuate valve closure.

The LOCA analysis also takes credit for core heat removal that takes place during recirculation flow coastdown in the unbroken loop the first few seconds following a LOCA. The proposed change will not invalidate this assumption due to the expected reactor pressure decay rate and the pressure permissive setpoint.

Because the proposed change will not affect recirculation discharge valve closure or recirculation flow coastdown, there is no significant increase in the consequences of an accident previously evaluated.

The CNS LOCA Analysis does not rely on the minimum stroke time as an input. The two concerns identified with respect to fast closure of the Recirculation Discharge Valves (i.e., failure to close due to high differential pressure, and impact of fast closure on Recirculation Pump coastdown) are obviated by the CNS LOCA characteristics and the

CNS Recirculation Discharge Valve pressure permissive control logic.

2. Does the proposed license amendment create the possibility for a new or different kind of accident from any accident previously evaluated?

Evaluation:

Removal of the minimum stroke time surveillance requirement for the Reactor Recirculation Discharge Valves will not allow any new mode of plant operation or create the possibility for a new or different kind of accident from any accident previously evaluated. Removal of the minimum stroke time requirement for the Recirculation Discharge Valves does not create any new unanalyzed failure mode nor will it place the plant in an unanalyzed condition.

3. Does the proposed amendment involve a significant reduction in the margin of safety?

Evaluation:

This proposed change will remove a 20 second minimum stroke time from the surveillance requirements for the Recirculation Discharge Valves. This value is not an input for the CNS LOCA analysis.

The maximum stroke time, 20 seconds, is an input to the CNS LOCA analysis, and will remain in the CNS Technical Specifications. As explained above, removal of the minimum valve stroke time for the recirculation discharge valves will not invalidate any part of the CNS LOCA analysis. Therefore, the margin of safety with respect to the accidents analyzed for CNS will not be reduced.

Based on the previous discussion, the licensee concluded that the proposed amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated; nor create the possibility of a new or different kind of accident from any accident previously evaluated; nor involve a significant reduction in the required margin of safety. The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. The staff has, therefore, made a proposed determination that the licensee's request does not involve a significant hazards consideration.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Attorney for licensee: Mr. G.D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68601-0499.

NRC Project Director: Frederick J. Hebdon

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of amendment request: August 25, 1987 as supplemented May 5, 1989.

Description of amendment request: The amendment request proposes certain changes be made to the Technical Specifications. Table 3.2.7 is being proposed for amendment to increase the maximum operating (closure) time of the Emergency Cooling System high point vent and main steam warmup isolation valves to ten (10) seconds to be consistent with the closure time of the main steam isolation valves. The Emergency Cooling System drain line vent isolation valves would be added to Table 3.2.7. A closure time of ten (10) seconds is specified for these valves to be consistent with the closure time of the valves identified above. In addition, Table 3.2.7 would be revised to designate more accurately the motive power of the isolation valves.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has provided the following analysis:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response

The only previously evaluated accident associated with the closing time of the valves is the main steam line rupture event. Changing the closure time will have no effect on the probability of a main steam line rupture, as there is no credible relationship between these two actions. The Final Safety Analysis Report accident analysis includes sufficient conservatism so that the increase in valve closure time has no effect on the consequences of a main steam line break.

(2) Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response

As there is no mechanical or dynamic effect resulting from increasing the closure time, there is no increase in the possibility of creating a new kind of accident.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Response

The allowable Technical Specification closure times of the emergency cooling steam line drain, emergency cooling high point vent and main steam warmup valves have been increased to be consistent with the closure time assumed in the analysis of a main steam line rupture. As discussed above, the Final Safety Analysis Report accident analysis includes sufficient conservatism so that the increase in valve closure time has no significant effect on the consequences of a main steam line break.

The staff agrees with the above analysis and further concludes that the inclusion of the Emergency Cooling System drain line vent isolation valves in Table 3.2.7 does not involve a significant increase in the probability or consequences of an accident previously evaluated, create the possibility of a new or different kind of accident from any accident previously evaluated, or involve a significant reduction in a margin of safety because the valves had been installed earlier to improve the isolation characteristics of the drain lines. Their omission from Table 3.2.7 was an editorial oversight.

The changes made to the Motive Power column of Table 3.2.7 do not change the type of power for any valve operator; they merely identify the power more specifically. The changes are editorial and, therefore, do not involve a significant increase in the probability or consequences of an accident previously evaluated, create the possibility of a new or different kind of accident from any accident previously evaluated, or involve a significant reduction in a margin of safety.

Based on the above, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Troy B. Conner, Jr., Esquire, Conner & Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006.

NRC Project Director: Robert A. Capra

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: December 28, 1988

Description of amendment request: The proposed changes to Technical Specification pages 103, 110, 228 and 231 would revise the minimum count rate required on the source range monitors (SRM) to permit core alterations. A similar amendment to the Technical Specifications (TSs) was issued on March 15, 1989 to revise the minimum SRM count rate required for the withdrawal of rods for startup. This change affects refueling activities only. The current Technical Specification specifies the minimum count rate as a function of the signal-to-noise (S/N) ratio below a count rate of 3 counts per second (cps) for startup purposes. This relationship between count rate and the S/N ratio is defined by Figure 3.3.1. The licensee proposes, in its December 28, 1988 application, to extend the applicability of this count rate to S/N relationship to core alteration (refueling) activities. The specification is also revised such that when the reduced count rate is being utilized during refueling activities, at least two of the SRM channels must indicate on or above the curve provided in Figure 3.3.1. Several administrative changes are also proposed to correct the title of a management position and to revise the Bases to establish consistency with the TS.

The SRM system consists of four identical neutron detection channels that provide neutron flux information over a range sufficient to observe the core shutdown source level, the approach to criticality and the overlap with the intermediate range monitoring (IRM) system. The SRM system is not required to ensure that the safety design bases are maintained, and, accordingly, no credit is taken for action by the system in the Final Safety Analysis Report (FSAR) accident analyses. The only events related to the proposed change are those that potentially could occur during refueling; a continuous rod withdrawal, which is an anticipated operational transient, and a fuel assembly insertion error. No credit is taken for the SRM's in either of these analyses. An input assumption for several of the FSAR analyses is that they are initiated from power levels of at least ten-to-the-minus-eight of rated power. As indicated in the licensee's application, the proposed change in the minimum SRM count rate (the SRM downscale setpoint) will continue to ensure that the applicable events would also be initiated from at least ten-to-the-minus-eight of the rated power level. Therefore, the input to these analyses remains valid.

The proposed change is needed because Unit 3 has been shut down since March 1987 and it appears likely that the SRM count rate may not be above the minimum value of three cps on at least two channels when the unit is expected to be refueled. Therefore, the count rate specification is proposed to be revised to include values down to 0.7 cps with an associated S/N ratio. The augmentation of the count rate below three cps with an S/N specification ensures that the statistical neutron monitoring confidence level of 95% is maintained at the lower count rates. Unit 2 is proposed to be revised to provide consistency with Unit 3 TS.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee has provided a discussion of the proposed changes as they relate to these standards; the discussion is presented below:

Standard 1 - The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

These changes reduce the minimum SRM count rate required to permit core alterations. The revised count rate is still within the design range of the SRM and specifying a minimum signal-to-noise ratio assures the SRMs are responding to thermal neutron flux. No hardware changes are required to the SRM system; therefore, malfunction of an SRM will still produce the required rod withdrawal blocks.

The only applicable accidents related to the proposed change are those involving SRMs during refueling: control rod removal error during refueling and fuel assembly insertion error during refueling. However, no credit is taken for the SRMs in either of these accident analyses. Further discussion of these accidents is provided below.

Control Rod Removal Error During Refueling

The nuclear characteristics of the core assure that the reactor is subcritical even in its most reactive condition with the most reactive control rod fully withdrawn during refueling.

When the mode switch is in REFUEL, only one control rod can be withdrawn. Selection of a second rod initiates a rod block, thereby preventing the withdrawal of more than one rod at a time.

Therefore, the refueling interlocks prevent any condition which could lead to inadvertent criticality due to a control rod withdrawal error during refueling.

In addition, the design of the control rod assembly, incorporating the velocity limiter, does not physically permit the upward removal of the control rod without the simultaneous or prior removal of the four adjacent fuel bundles, thus eliminating any hazardous condition.

Fuel Assembly Insertion Error During Refueling

The core is designed such that it can be made subcritical under the most reactive conditions with the strongest control rod fully withdrawn. Therefore, any single fuel bundle can be positioned in any available location without violating the shutdown criteria, providing all the control rods are fully inserted. The refueling interlocks require that all control rods must be fully inserted before a fuel bundle may be inserted into the core.

Standard 2 - The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

No hardware modifications are required to implement these changes. The design functions of the SRM system are not being changed. The only effects of these changes are a reduction in the minimum count rate required for core alterations which remains bounded by the assumptions utilized in the UFSAR, and an administrative change to the *Bases* to reflect the current organization.

Standard 3 - The proposed changes do not involve a significant reduction in a margin of safety.

The *Bases* for Technical Specification 3.3.B and 4.3.B state in part that the requirement of at least 3 counts per second assures that any transient, should it occur, begins at or above the initial value of 10^{-8} of rated power used in analyses of transient cold conditions. In fact, any observable neutron count rate on the SRM is sufficient to ensure the analyses remain valid. Therefore, reduction of the minimum count rate for refueling from the nominal 3 cps to the values listed in Figure 3.3.1 will not significantly reduce this margin of safety because any transient will still begin at or above 10^{-8} of rated power. Further, the SRMs are not required to ensure the margin of safety as analyzed in Section 14 of the UFSAR.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission has proposed to determine that the above changes do not involve a significant hazards consideration.

The licensee has also proposed several administrative changes to correct the title of a management position and to revise the Bases on TS page 110 to reflect the above changes to the SRM minimum count rate. The Commission has provided guidance for the application of the criteria for no significant hazards consideration determination by providing examples of amendments that are considered not likely to involve significant hazards considerations (51 FR 7751). These examples include: Example (i) "A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an

error, or a change in nomenclature." The proposed changes are examples of such an administrative change. Since these proposed changes are encompassed by an example for which no significant hazard considerations exist, the staff has made a proposed determination that the proposed changes involve no significant hazard considerations.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126

Attorney for Licensee: Troy B. Conner, Jr., 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket No. 50-278, Peach Bottom Atomic Power Station, Unit No. 3, York County, Pennsylvania

Date of application for amendment: July 7, 1988

Description of amendment request: The proposed amendment consists of three categories of changes for fuel cycle 8 operation which involve the operating limits for all fuel types, a decrease in the slope of the Average Power Range Monitor scram and rod block setpoints and administrative changes, primarily to the Bases.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee has provided a discussion of the proposed changes as they relate to these standards; the discussion is presented below. The licensee has arranged these changes into three categories, with the first category having six sub parts. The licensee's discussion of each of these categories and sub parts is presented separately and is numbered consistently with the above standards.

Category I - Operating Limits for Fuel

A. Upgraded Safety Limit MCPR

Standard 1 - The Safety Limit MCPR is set such that no fuel damage is calculated to occur if the limit is not violated. It is determined using the NRC approved General Electric Thermal Analysis Basis (GETAB), which is a statistical model that combines uncertainties in operating parameters with uncertainties in the methods used to calculate critical power.

Upgrading the Safety Limit MCPR to 1.04 (1.05 for single recirculation loop operation) has been approved by the NRC for application to D-lattice plants operating with the second successive reload core of high bundle R-factor fuel types. This determination applies to Unit 3 since it is a D-lattice plant and all fuel types to be loaded for Cycle 8 operation (BP/P8X8R, LTA and GE8X8EB) are high bundle R-factor fuel types.

Because the new Safety Limit MCPR is set such that no fuel damage is calculated to occur and thereby accomplishes the same purpose as the previous limit, this change does not increase the probability or consequences of any accident previously evaluated.

Standard 2 - Because the Safety Limit MCPR cannot initiate an accident and imposing the new limit requires no changes in the current mode of operation, this change does not create the possibility of a new or different kind of accident than previously evaluated.

Standard 3 - Upgrading the Safety Limit MCPR maintains the margin of safety established by the current limit. Both limits have received previous NRC approval in NEDE-24011-P-A. Thus, this change does not involve a significant reduction in the margin of safety.

B. GE8X8EB MAPLHGRs

Standard 1 - 10CFR50.46 establishes acceptance criteria for fuel and Emergency Core Cooling Systems (ECCS). MAPLHGR limits are established to ensure that the acceptance criteria are met.

This change provides MAPLHGR limits for the BD319A and BD321A (GE8X8EB) fuel assemblies. The MAPLHGRs have been calculated using NRC approved methods and the results of the analysis (General Electric Company Document NEDE-24082-P-1, previously referenced) demonstrate that the acceptance criteria of 10CFR50.46 are met with substantial margin. This change therefore does not increase the probability or consequences of an accident previously evaluated (LOCA).

Standard 2 - Because MAPLHGR limits can not initiate an accident and imposing the limits does not require any changes to the current mode of operation, this change does not create the possibility of a new or different kind of accident than previously evaluated.

Standard 3 - The acceptance criteria of 10CFR50.46 establish the margins of safety for fuel and the ECCS. Calculations using NRC approved methods described in NEDE-24082-P-1 yield results well within these acceptance criteria. The maximum peak cladding temperature (PCT) for GE8X8EB fuel assemblies is evaluated to be [less than or equal to] 2080 F for a bounding value of MAPLHGR = 14.0 kw/ft, providing 111 F margin to the 2200 F limit. The actual MAPLHGR operating limits for the BD319A and BD321A fuel assemblies are [less than or equal to] 13.2 kw/ft, which results in a PCT for those fuels of [less than or equal to] 1980 F. Since the maximum PCT for previous reloads of P8X8R fuel is 1954 F, the proposed amendment does not result in a reduction in the margin of safety.

C. Constants Used to Determine Tau

Standard 1 - The constants used to calculate the adjusted analysis mean scram time (Tau) are the mean and standard deviation of the scram speed data base used in the determination of NRC approved MCPR adjustment factors. These new constants result in the calculation of a smaller and therefore more restrictive Tau. Plants unable to meet the Tau criterion must increase their operating limit MCPR. Plants that meet the Tau criterion operate with MCPR limit defined in the Technical Specifications.

In summary, the MCPR operating limit is set such that fuel damage is not calculated to occur during a transient. The criterion is applied to verify that the limit is appropriate. Since the new constants result in a more restrictive Tau, this change does not involve an increase in the probability or consequences of an accident previously evaluated.

Standard 2 - Based on the definition of Tau, Tau cannot initiate an accident, and establishing Tau does not require any changes to the current mode of operation; thus, this change does not create the possibility of a new or different kind of accident than previously evaluated.

Standard 3 - The change in the constants used to calculate Tau, results in a more restrictive criterion for applying the appropriate MCPR operating limit. The margin of safety is provided by the MCPR limit, which is increased if the Tau criterion is not met. Therefore, this change does not result in a reduction in the margin of safety.

D.LHGR Limit for GE8X8EB Fuel

Standard 1 - In NUREG-0800, "Standard Review Plan for 4.2, Fuel System Design, Revision 2, July, 1981," the NRC provides acceptance criteria for fuel designs under accident conditions. Evaluations of the GE8X8EB design with the higher (14.4 kw/ft) LHGR limit using NRC approved methods described in NEDE-24011-P-A have been performed. The results of these evaluations are documented in NEDE-24011-P-A, and demonstrate that the NRC acceptance criteria are met with the higher LHGR limit. Because the acceptance criteria in [NUREG-0800] are all met, the proposed change does not increase the probability or consequences of an accident previously evaluated.

Standard 2 - Because the LHGR limit cannot initiate an accident, and imposing LHGR limits does not require any changes in the mode of operation, the possibility of a new or different kind of accident than previously evaluated is not created.

Standard 3 - The margin of safety is defined by the NRC acceptance criteria of NUREG-0800. The NRC has reviewed and approved General Electric evaluations demonstrating that the GE8X8EB design is within the acceptance criteria with a LHGR of 14.4 kw/ft. Therefore, the proposed amendment does not involve a reduction in the margin of safety.

E. New Operating Limit MCPRs

Standard 1 - The operating limit MCPR is set such that the safety limit MCPR cannot be violated in the unlikely event of a transient. The operating limit MCPR is determined by adding the delta-CPR for the worst transient to the safety limit MCPR. The transient delta-CPR is calculated using NRC approved methods described in NEDE-24011-P-A. The limiting abnormal operational transients have been re-evaluated in detail for standard conditions: generator load rejection without bypass, loss of 100 degree F feedwater heating, rod withdrawal error and feedwater controller failure. The limiting abnormal operational transients, generator load rejection without bypass and feedwater controller failure, were re-evaluated in detail for operation at Increased Core Flow with or without Final Feedwater Temperature Reduction. The feedwater controller failure transient was also re-evaluated in detail for operation in the Extended Load Line Limit Analysis region. The Cycle 8 operating limits are based on the results given in General Electric Document No. 23A5889, previously referenced. Operation above these limits means that no fuel damage is calculated to occur in the event of a transient. Since Cycle 8 operating limits accomplish the same purpose as the previous limits, this change does not increase the probability or consequences of an accident previously evaluated.

Standard 2 - Because the operating limit MCPR cannot initiate an accident and imposing the MCPR limit does not require a change in the current mode of operation, the possibility of a new or different kind of accident than previously evaluated is not created.

Standard 3 - The operating limit MCPR is set to prevent calculated fuel damage during the worst transient. The delta-CPR for the worst transient is determined using NRC approved methods and procedures described in NEDE-24011-P-A. Margin is included in the delta-CPR for the worst transient by assuming conservative input parameters and by conservatively treating uncertainties. Margin is also included in the determination of the safety limit MCPR.

Changing the operating limit MCPR does not reduce the margin of safety included in the delta-CPR and safety limit MCPR calculations.

F. RBM 107% Clamp

Standard 1 - The rod withdrawal error analysis results reported for standard operating conditions in General Electric Document No. 23A5889 are not affected by operation at Increased Core Flow, assuming that the RBM is clamped at 107%. Previously, this operating restriction (RBM clamped at 107% prior to Increased Core Flow operation) has been imposed by procedure. Adding this restriction to the Technical Specifications provides more assurance of safe operation and, therefore this change does not increase the probability or consequences of an accident previously evaluated.

Standard 2 - Clamping the RBM setpoint impacts only the rod withdrawal error analysis which is set forth in General Electric Document No. 23A5889; thus, the possibility of a new or different kind of accident is not created.

Standard 3 - The rod withdrawal error analysis results reported in General Electric Document No. 23A5889 assume the RBM setpoint is clamped at 107%. Since this proposed revision specifies this restriction in the Technical Specifications, greater assurance will be provided that there will be no reduction in a margin of safety.

Category II - APRM Setpoints

Standard 1 - The change in APRM scram and rod block setpoint equations was evaluated using NRC approved procedures and methods. The results of this evaluation are demonstrated in NEDC-31298, previously referenced. Application of this change in APRM scram and rod block setpoint equations to Cycle 8 is confirmed in General Electric Document No. 23A5889, previously referenced.

In NEDC-31298, the impact of the new APRM scram and rod block equations on overpressure protection, stability, loss of coolant accident, containment, reactor internals, and anticipated transients without scram (ATWS) events was evaluated. The results of these evaluations demonstrated that all design limits identified in the FSAR are met.

Because operation with the APRM scram and rod block setpoint equation is well within the bases reviewed and approved by the NRC in the FSAR, this change does not increase the probability or consequences of an accident previously evaluated.

Standard 2 - The impact of changing the APRM scram and rod block setpoint equations has been considered for all transients and accidents identified in the FSAR. The possibility of a new or different kind of accident from any accident previously evaluated is not created.

Standard 3 - NEDC-31298 demonstrates that the change in slope of the APRM scram and rod block setpoint equations is within the limits identified in the FSAR. Analyses documented in General Electric Company Document No. 23A5889 confirm that the operating limit MCPRs set forth in General Electric Company Document No. 23A5889 bound operation with the new equations. Thus, a margin of safety is not significantly reduced.

Category III - Administrative Changes

Administrative changes are requested to 1) add the definition of APLHGR on Page 1; 2) modify the Bases on Pages 13 and 15 to include reference to "Peach Bottom Atomic Power Station, Units 2 and 3 Single-Loop Operation," NEDO-24229-1, May 1980; 3) modify the Bases on Page 140 to incorporate a new paragraph regarding APLHGR operating limits for multiple lattice fuel types; 4) modify the Bases on Pages 15, 17, 18, 33, 140b, 140c and 140d to eliminate redundant information that is subject to periodic revision due to amendment of "General Electric Standard Application for Reactor Fuel," NEDE-24011-P-A. These proposed changes are similar to those previously approved for Peach Bottom, Unit 2, Cycle 8. Page 140d is deleted due to a reduction of material.

Licensee also proposes to delete the MAPLHGR reduction factors for 7X7, 8X8, PTA and 8X8R fuel types from page 133a because these fuel types will not be used in the Cycle 8 core, and to correct a typographical error on page 133b. Specification 3.5.K is incorrectly identified on page 133b as 3.5.K.1.

Standard 1 - The proposed revisions do not involve a significant increase in the probability or consequences of an accident previously evaluated because they do not affect operations, plant equipment, or any safety-related activity. Thus, the administrative changes cannot affect the probability or consequences of any accident.

Standard 2 - The proposed revisions do not create the possibility of a new or different kind of accident from any accident previously evaluated because, as discussed previously, these changes are purely administrative and, therefore, cannot create the possibility of any accident.

Standard 3 - The proposed revisions do not involve a significant reduction in a margin of safety because the changes do not effect any safety-related activity or equipment. These changes are purely administrative in nature and increase the probability that the Technical Specifications are correctly interpreted by adding clarifying information and deleting inappropriate information. Thus, these changes cannot reduce a margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission has proposed to determine that the above changes do not involve a significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126

Attorney for Licensee: Troy B. Conner, Jr., 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: March 9, 1989

Description of amendment request: The proposed amendments to Technical Specification pages 217, 219 and 222 would reflect the installation of an additional transformer (the no. 343 startup transformer) to supply offsite power to the station. The amendment would eliminate uncertainty as to whether the new transformer is a permissible offsite source, would achieve more consistency with the

Standard Technical Specifications for boiling water reactors and would include the additional transformer in the Bases.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee has provided a discussion of the proposed changes as they relate to these standards; the discussion is presented below.

Standard 1: The proposed revisions do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Having two Unit 3 startup transformers available could increase the availability of off-site power to support the required loads of the engineered safeguards equipment by decreasing the duration of a No. 3 startup source outage in the event of a failure or scheduled maintenance. The No. 343 startup transformer provides acceptable voltages to the plant as confirmed by calculations. Therefore, use of the No. 343 transformer and the proposed Technical Specification revisions do not increase the probability of an off-site power source trip or transient and, in turn, do not increase the probability of an accident. The consequences of an accident are not affected because the No. 343 transformer supplies sufficient power to mitigate the consequences of design basis events in accordance with General Design Criterion 17. Furthermore, without any off-site power available the diesel generators supply sufficient power to mitigate the consequences of an accident.

Standard 2: The proposed revisions do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The No. 343 transformer design and installation were in accordance with Peach Bottom licensing design criteria which ensure that its operation does not introduce any new unacceptable voltage conditions and that no new failure modes were created. Furthermore, loss of all off-site power (all grid connections) has been evaluated and is within the plant's safety design basis (see UFSAR Sections 14.5.4.4 and 14.8.3.1). The diesel generators provide sufficient power to support engineered safeguards equipment for one unit and the safe shutdown of the other unit, assuming loss of all off-site power and failure of one diesel generator. In addition, each off-site source alone is sufficient for safe shutdown by supplying each of the 4kV emergency buses.

Standard 3: The proposed revisions do not involve a significant reduction in a margin of safety.

The No. 343 startup transformer is a qualified alternate for the No. 3 startup transformer, and provides additional redundancy in off-site power supply for the engineered safeguards systems. Consequently, the availability of the No. 3 off-site power source could be increased. The proposed Technical Specification revisions do not alter the intent of those Specifications and the revisions do not reduce any safety margins as defined in Technical Specification Bases.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis.

Accordingly, the Commission has proposed to determine that the above changes do not involve a significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17128

Attorney for Licensee: Troy B. Conner, Jr., 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego, New York

Date of amendment request: May 19, 1989

Description of amendment request: The proposed amendment would revise Specification 4.7.A.3 by replacing the word "Monitor" with "Monitoring," by deleting the last sentence, and moving the entire specification to page 178. As currently written, the specification could be misinterpreted to imply that a continuous primary containment leak rate monitor system exists. There is no such system. Leakage is monitored by periodically calculating the makeup requirements of the Containment Air Dilution Inerting System, by recording flow integrator readings on the nitrogen makeup trains, and by operator awareness of abnormal makeup valve manipulation requirements. A significant increase in the amount of nitrogen required to maintain the differential pressure between the drywell and the suppression chamber would be a direct indication that a problem exists, and would prompt an immediate investigation.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards provided above and had made the following determination:

Operation of the James A. FitzPatrick Nuclear Power Plant in accordance with the proposed amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated. The changes to Specification 4.7.A.3 are purely administrative in nature and remove a misleading reference to a dedicated continuous leak rate monitoring system. There is no dedicated monitoring system. Containment leakage is determined by periodically calculating the Containment Air Dilution System makeup requirements and by review of the drywell to suppression chamber differential pressure instrumentation. These changes do not involve the modification of any existing equipment, systems, or components; nor do they relax any administrative controls or limitations imposed on existing plant equipment. These changes cannot increase the probability or consequence of a proposed accident previously evaluated.

2. create the possibility of a new or different kind of accident from those previously evaluated. The proposed changes are purely administrative in nature. The changes do not alter the conclusions of the plant's accident analyses as documented in the FSAR or the NRC staff's SER. They do not create any new failure modes; nor do they place the plant in an unanalyzed condition.

3. involve a signficant reduction in the margin of safety. The proposed changes improve the consistency of the Technical Specifications and reflect present plant practices. These changes improve the clarity of the Technical Specifications by removing a misleading reference. These changes do not involve a reduction in the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determine. Based on the review and the above discussion, the staff proposed to determine that the proposed changes do not involve a signficant hazards consideration.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego, New York

Date of amendment request: May 19, 1989

Description of amendment request: The proposed amendment would replace the organizational charts presently existing in the Technical Specifications (TS) with more generalized organizational statements and follows the guidance given in Generic Letter 88-06, "Removal of Organizational Charts from Technical Specification Administrative Control Requirements," dated March 22, 1988. Specifically, Figures 6.1-1 and 6.2-1 and references to them in other TS sections would be deleted or modified. Also, other minor editorial corrections would be made to Sections 6.3.2 and 6.4.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards provided above and has made the following determination:

Operation of the James A. FitzPatrick Nuclear Power Plant in accordance with the proposed amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated. The deletion of the organization charts from the Technical Specifications does not affect plant operation. The NRC will still be informed of organization changes through annual updates to the FSAR. The Code of Federal Regulations, Title 10, Part 50.34(b)(6)(i) requires that the licensee's organization structure, responsibilities and authorities and personnel qualification requirements be included in the FSAR. Chapter 13 of the James A. FitzPatrick FSAR provides a description of the organization and organization charts to the same level of detail as currently exists in the Technical Specifications.

2. create the possibility of a new or different kind of accident from those previously evaluated. The proposed amendment replaces the organization charts in the Technical Specifications with more general requirements. The proposed amendment provides greater flexibility to implement changes in both onsite and offsite organizational structure without the need for a license amendment. These changes cannot create the possibility of a new or different kind of accident.

3. involve a significant reduction in the margin of safety. The proposed change removes the onsite and offsite organizational charts from the Technical Specifications and adds general requirements to Section 6.2 of the Technical Specifications that capture the essential safety aspects of the organizational structure defined by the organization charts. These changes do not involve a reduction in the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego, New York

Date of amendment request: May 19, 1989

Description of amendment request: The proposed amendment would revise Technical Specification Tables 4.1-1, 4.1-2, and 4.2-1 to correct typographical errors, add modifications inadvertently omitted from previous amendments, and improve consistency for the items addressed. The change to Table 4.1-1 removes the functional test and instrument calibration requirements concerning the four reactor pressure switches which were removed when Amendment 122 was issued. The switches were originally installed to establish the pressure setpoint below which a scram and isolation is bypassed. Amendment 122 removed the switch and bypass requirements but did not address removal of the testing requirements. The change to Table 4.1-2 corrects a typographical error by changing the Local Power Range Monitor (LPRM) Signal calibration method from "Trip System Traverse" to "TIP System Traverse," to refer to the Traversing Incore Probe. The change to Table 4.2-1 identifies the reactor water level instrument associated with the Primary Containment Isolation System as "low-low-low" rather than "low-low." This change reflects the isolation setpoint which was incorporated when Amendment 103 was issued but was not included in the amendment request.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards provided above and has made the following determination:

Operation of the James A. FitzPatrick Nuclear Power Plant in accordance with this proposed amendment would not involve a significant hazards consideration, as defined in 10 CFR 50.92, since the proposed changes are purely editorial/typographical in nature and would not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated. The changes correct errors of the Technical Specifications in regard to calibration and testing requirements for the PCIS [Primary Containment Isolation System], reactor pressure permissive, and proper calibration methodology for the LPRMS [Local Power Range Monitor System]. They do not involve the modification of any existing equipment, systems or components nor do they alter the conclusions of the plant's accident analyses as documented in the FSAR [Final Safety Analysis Report] or the NRC staff's SER [Safety Evaluation Report].

2. create the possibility of a new or different kind of accident from those previously evaluated. The changes are editorial in nature, update the Technical Specifications and improve consistency.

3. involve a significant reduction in the margin of safety. The proposed changes do not alter any established instrument calibration/test frequencies, methods of calibration, or instrument channel designations. The changes do not relax any administrative controls or limitations

imposed on existing plant equipment nor do they involve the modification of any system or component.

The staff has reviewed the licensee's no signficiant hazards consideration determination. Based on the review and the above discussion, the staff proposes to determine that the proposed changes do not involve a signficiant hazards consideration.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego, New York

Date of amendment request: May 19, 1989

Description of amendment request: The proposed amendment would revise the Technical Specification (TS) surveillance requirements concerning the automatic initiation pressure setpoints for the existing fire protection pumps to reflect installation of a new diesel driven fire pump and a new site utility fire protection yard loop. The new loop was installed to provide fire protection water to the new training facility sprinkler systems and hose stations. The change to Specification 4.12.A.1.e.4 would raise the electric fire pump automatic start setpoint from 95 psig to 105 psig and the existing diesel driven pump automatic start setpoint from 85 psig to 95 psig. These pressure setpoints would also be reflected in a change to the 3.12 and 4.12 Bases sections, along with information stating that the third fire pump would actuate upon decreasing pressure after actuation of the first two fire pumps, a statement that no credit is taken for the new pump in any analysis, and that the testing or operability requirements of the existing pumps do not apply to the new pump. A change to these Bases would also reflect changing the system pressure which is being maintained by the pressure maintenance subsystem from 100 psig to 115 psig. Changes to Tables 3.12.1 and 4.12.1 would change the "Diesel Fire Pump Room" to the "West Diesel Fire Pump Room."

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards provided above and has made the following determination:

Operation of the James A. FitzPatrick Nuclear Power Plant in accordance with the proposed amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated. The installation of the site utility yard loop and the new diesel driven fire pump, its driver and accessories and the revision of the existing pump setpoints do not affect the assumptions used in the FSAR or any other safety analysis reports. The revision of the existing pump setpoints makes the operation of the fire protection system more conservative as the pumps will be started sooner. These changes have no impact on plant safety operations. The changes will have no impact on previously evaluated accidents.

2. create the possibility of a new or different kind of accident from those previously evaluated. The proposed amendment involves the changing of the existing pump setpoints to a more conservative value. These changes cannot create the possibility of a new or different kind of accident.

3. involve a significant reduction in the margin of safety. The installation of the new site utility yard loop and the diesel driven pump including its driver and accessories do not cause any reduction in safety margins nor do they affect any plant safety system. The changing of the existing fire pump setpoints increases the margin of safety for the Fire Protection System by starting the fire pumps sooner.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego, New York

Date of amendment request: May 19, 1989

Description of amendment request: The proposed amendment would increase the frequency of the resistance to ground Technical Specification (TS) surveillance requirement of Section 4.11.E.3 from once per operating cycle to once per year. This would make the test consistent with the TS Bases and present plant practices. Additional proposed changes to Specifications 3.11.E and 4.11.E would correct minor editorial errors to improve the readability of the TS.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards provided above and has made the following determination:

Operation of the James A. FitzPatrick Nuclear Power Plant in accordance with the proposed amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not

1. involve a significant increase in the probability or consequences of an accident previously evaluated. The changes to Specifications 3.11.E and 4.11.E are purely administrative in nature and improve the consistency of the Technical Specifications. These changes increase the frequency of the resistance to ground surveillance requirement for the intake deicing heaters from once per operating cycle to once per year to be consistent with Bases 3.11 and with present plant practices. The editorial changes improve the readability of the Technical Specifications. The increased test frequency can not increase the probability or consequence of a proposed accident previously evaluated.

2. create the possibility of a new or different kind of accident from those previously evaluated. The proposed changes are purely administrative in nature. They do not create any new failure modes; nor do they place the plant in an unanalyzed condition.

3. involve a significant reduction in the margin of safety. The proposed changes improve the consistency of the Technical Specifications and reflect actual plant practice. These changes do not involve a significant reduction in the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego, New York

Date of amendment request: May 31, 1989

Description of amendment request: The proposed amendment would update Table 3.7-2, "Exception to Type C Tests," to accurately reflect the as-built configuration of the plant and correct related editorial errors for consistency and improved format. The changes affect Technical Specification pages 211, 212, 213, 213a and 213b.

Specifically the proposed change would: (1) change the number of the table from 3.7-2 to 4.7-2 to correct a typographical error introduced in a previous amendment; (2) remove extraneous information and cross-references from the "Local Leak Rate Test Performed" column and insert appropriate information for clarity; (3) insert appropriate valve name and tag numbers to better identify the valves; and (4) remove some penetration and valve numbers and add other penetration and valve numbers to more accurately reflect the plant configuration and redesign of some equipment.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards provided above and has made the following determination:

Operation of the James A. FitzPatrick Nuclear Power Plant in accordance with the proposed amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated. The changes which update and clarify Table 4.7-2 to accurately reflect the as-built configuration of the plant are purely editorial in nature and can not increase the probability or consequence of a proposed accident previously evaluated.

The corrections to Table 4.7-2 do not increase the potential for undetectable containment leakage. The Type C leak testing capability was incorporated for six containment penetrations and they were deleted from the table. Four penetrations were added as exceptions from Type C leak rate testing in accordance with the plants original licensing design basis. These changes do not alter the conclusions of the plant's accident analyses as documented in the FSAR [Final Safety Analysis Report] or the NRC staff's SER [Safety Evaluation Report].

2. create the possibility of a new or different kind of accident from those previously evaluated. The changes are purely administrative in nature. They clarify which containment penetration isolation valves are excepted from the 10 CFR Part 50, Appendix J, Type C leak rate testing requirements. Plant modifications which introduced changes to Table 4.7-2 do not involve any unreviewed safety questions. The changes do not create any new failure modes; nor do they place the plant in an unanalyzed condition.

3. involve a significant reduction in the margin of safety. The changes increase the margin of safety by removing the exception to Type C testing for six penetrations. Four penetrations were added, but these exceptions to Type C leak rate testing were part of the original licensing design basis. These changes do not involve a reduction in the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra

Public Service Company of Colorado, Docket No. 50-267, Fort St. Vrain Nuclear Generating Station, Weld County, Colorado

Date of amendment request: April 14, 1989

Description of amendment request: This proposed amendment supersedes a similar proposed amendment submitted on October 1, 1987 which was previously noticed in the Federal Register on April 25, 1988 (53 FR 13457). The amendment would revise the provisions in the Technical Specifications relating to radiological effluents. In particular, this proposed amendment changed ELCO 8.1.1, ESR 8.1.1 and ESR 8.1.2. These changes are related to the design of the effluent monitor hand switches and the time allowed to report an inoperable monitor. Other changes are being made for clarification in accordance with the licensee's application for amendment dated April 14, 1989.

Basis for proposed no significant hazards consideration determination: The licensee has analyzed the proposed amendment request for significant hazards consideration using the standards in Title 10, Code of Federal Regulations, Part 50.92. The licensee has concluded that the proposed amendment request involves no significant hazards consideration, based on the following analysis:

The changes to ELCO 8.1.1.g)1) include a requirement for a four hour check of any relied upon monitor having only a local alarm and a 90 day time limit. Currently, if the halogen or the particulate monitor becomes inoperable, gaseous effluents may continue to be released from the reactor building vent system provided the effluent is continuously monitored with auxiliary sampling equipment. For noble gas, a grab sample taken every 8 hours and analyzed within 24 hours is required when no alarmed monitor is available. These requirements will be maintained.

The local alarming monitors are installed as backup ventilation exhaust monitors and powered from the Alternate Cooling Method (ACM) bus. The requirement to check the local alarm monitors every four hours will ensure any abnormal release is discovered and the problem corrected promptly. The 90 day time limit on use of local alarming monitors will allow monitors which alarm in the Control Room to be repaired without unnecessarily reverting to grab sample mode.

The change to ELCO 8.1.1.g)2) clarifies the action when the required halogen and particulate monitors are out of service. Power operation and effluent releases may continue provided a continuous sample is collected. The sample will be obtained for analysis every 7 days and that analysis will be performed within 48 hours. These changes are in accordance with the intent of the Standard Technical Specifications.

The changes in ELCO 8.1.1.g)3) and 8.1.1.g)4) from "both" noble gas monitors to "the required" noble gas monitor are appropriate because there are more than two noble gas monitors which can serve this function. Only one noble gas monitor is required per ELCO 8.1.1.g)1).

The words "or auxiliary sampling equipment" have been deleted from section 8.1.1.g)3) because the devices previously considered to fulfill this requirement are now considered to be among the devices which may be considered to be the required noble gas monitor. Additionally, the requirement to take eight hour grab samples and analysis within 24 hours is not altered. The grab samples will be taken if the required noble gas monitor becomes inoperable.

The change to ELCO 8.1.1.g)8) is in accordance with commitments made as part of Public Service Company of Colorado's response to NUREG-0737 open items. The restoration time of 7 days and requirement for a special report within 14 days, if not restored in 7 days, is in accordance with the guidance provided in Generic Letter 83-37, Item II.F.1.1.

The clarification of which instruments are to be reported for extended periods of inoperability is also included in ELCO 8.1.1.g)6). This is consistent with the wording in the Standard Technical Specifications and PSC letter from Warembourg to Eisenhut, dated 2/9/84.

The change to ESR 8.1.1.d) is to clarify when a gamma spectral analysis of a sample from the in service gas waste tank is required. The purpose of this test is to maintain an inventory of the tanks' equivalent curies (Kr-88). This inventory is taken as the tanks are taken out of service. Therefore, only when a gas waste tank has been in service for 7 days or more is it necessary to perform this test. 48 hours to complete the analysis of this sample is more definitive than the previous "as soon as practicable".

As stated in LER-87-012-00, the instrument controls for Fort St. Vrain's (FSV) Gaseous and Liquid Effluent Monitors cannot be set to a mode other than operate, designated "MEASURE" at FSV. The switch is spring loaded and will automatically return to "MEASURE". If the switch malfunctions and remains in one of the other two possible positions, either a high radiation alarm will be received in the Control Room or the monitor's background count will be artificially elevated while it continues to measure effluent radiation levels. Thus, if the controls are not operating properly and the mode switch is not in the "MEASURE" position, no unsafe condition would result. The testing of the switch for downscale failure, high count rate, and circuit failure will continue to be performed.

Based on the above evaluation, it is concluded that operation of Fort St. Vrain in accordance with the proposed changes will not (1) involve a significant increase in the probability or the possibility of a new or different kind of accident from any accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. Therefore, this change will not increase the risk to the health and safety of the public nor does it involve any significant hazards consideration.

Based on the above evaluation, the licensee has concluded that the operation of Fort St. Vrain in accordance with proposed changes will involve no significant hazards consideration.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussions, the staff proposes to determine that the proposed changes do not involve significant hazards consideration.

Local Public Document Room location: Greeley Public Library, City Complex Building, Greeley, Colorado

Attorney for licensee: J. K. Tarpey, Public Service Company Building, Room 900, 550 15th Street, Denver, Colorado 80202

NRC Project Director: Frederick J. Hebdon

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: May 18, 1989

Description of amendment request: The proposed amendment would revise Technical Specifications 3/4.2 and B 3/4.2 to replace the values of cycle-specific parameter limits with a reference to the Core Design and Operating Limits Report, which contains the values of those limits. Also included in this request are proposed changes to 5.3.1, "Fuel Assemblies" and 5.3.2, "Control Rod Assemblies." The fuel and control rod assemblies will be described in the Core Design and Operating Limits Report and will be evaluated in accordance with NRC approved methodologies. In addition, the Core Design and Operating Limits Report has been included in the definitions Section of the Technical Specifications (TSs) to note that it is the unit-specific document that provides these limits for the current operating reload cycle. Furthermore, the definition notes that the values of these cycle-specific parameter limits are to be determined in accordance with the Specification 6.9.1.9. This Specification requires that the Core Operating Limits be determined for each reload cycle in accordance with the referenced NRC-approved methodology for these limits and consistent with the applicable limits of the safety analysis. Finally, this report and any mid-cycle revisions shall be provided to the NRC upon issuance. Generic Letter 88-16, dated October 4, 1988, from the NRC, provided guidance to licensees on requests for removal of the values of cycle-specific parameter limits from TS. The licensee's proposed amendment is in response to this Generic Letter.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed revision to the License Condition is in accordance with the guidance provided in Generic Letter 88-16 for licensees requesting removal of the values of cycle-specific parameter limits from TS. The establishment of these limits in accordance with an NRC-approved methodology and the incorporation of these limits into the Core Design and Operating Limits Report will ensure that proper steps have been taken to establish the values of these limits. Furthermore, the submittal of the Core Design and Operating Limits Report will allow the staff to continue to trend the values of these limits without the need for prior staff approval of these limits and without introduction of an unreviewed safety question. The revised specifications with the removal of the values of cycle-specific parameter limits and the addition of the referenced report for these limits does not create the possibility of a new or different kind of accident for those previously evaluated. They also don't involve a significant reduction in the margin of safety since the change does not alter the methods used to establish these limits. Consequently, the proposed change on the removal of the values of cycle-specific limits does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Because the values of cycle-specific parameter limits will continue to be determined in accordance with an NRC-approved methodology and consistent with the applicable limits of the safety analysis, these changes are administrative in nature and do not impact the operation of the facility in a manner that involves significant hazards considerations.

The proposed amendment does not alter the requirement that the plant be operated within the limits for cycle-specific parameters nor the required remedial actions that must be taken when these limits are not met. While it is recognized that such requirements are essential to plant safety, the values of limits can be determined in accordance with NRC-approved methods without affecting nuclear safety. With the removal of the values of these limits from the Technical Specifications, they have been incorporated into the Core Design and Operating Limits Report that is submitted to the Commission. Hence, appropriate measures exist to control the values of these limits. These changes are administrative in nature and do not impact the operation of the facility in a manner that involves significant hazards considerations.

The staff has evaluated this proposed amendment and proposes to determine that it involves no significant hazards consideration.

Local Public Document Room Location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: Troy B. Conner, Jr., Esquire, Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: January 15, 1988 and February 17, 1988.

Description of amendment request: The proposed amendment would delete requirements relating to Chlorine Detection Systems from the Davis-Besse Nuclear Power Station, Unit No. 1, Technical Specifications (TSs). Specifically, the proposed amendment would delete TS Section 3/4.3.3.7, Chlorine Detection Systems and the associated Basis Section 3/4.3.3.7. TS Section 4.7.6.1.e.2 would also be modified to eliminate the phrase "Control Room Ventilation Air Intake Chlorine Concentration - High Test Signal." The changes are proposed due to the replacement of the gaseous chlorination system with a liquid sodium hypochlorite system.

Basis for proposed no significant hazards consideration determination: The Commission has made a proposed determination that the amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.58, this means that the operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has evaluated the proposed change against the above standards as required by 10 CFR 50.91(a). The Commission has concluded that:

A. The proposed change would not involve a significant increase in the probability or consequences of an an accident previously evaluated because there no longer is any source of chlorine on or near the Davis-Besse site that would pose a threat to control room habitability, and thus require automatic isolation of the Control Room ventilation system. The proposed change would not modify any accident conditions or assumptions.

B. The proposed change would not create the possibility of a new or different kind of accident from any accident previously evaluated because there is no source of chlorine that would require automatic isolation of the Control Room ventilation system, and it is not possible to generate and release the quantity of chlorine with the new sodium hypochlorite system that would require automatic isolation.

C. The changes would not involve a significant reduction in a margin of safety because the Chlorine Detection System is no longer needed to isolate automatically the Control Room ventilation system. Furthermore, the proposed change would not affect any operating practices, limits or equipment important to safety.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon

Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: March 8, 1988 as clarified May 24, 1988.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) relating to organization, both with respect to offsite and facility (on site). The proposed changes are administrative and editorial revisions to TSs. The amendment proposes to change the title of Chemistry and Health Physics General Superintendent to Radiological Controls Superintendent, reflecting the separation of the Chemistry and Health Physics Department, consistent with Regulatory Guide 1.8 (September 1975); this title change should also be reflected for the Station Review Board member. The proposed changes would delete the Performance Engineering Manager position from the TSs, and instead include this administrative position in the reflected title Performance Engineering Director. Finally, the proposal requests that the title of Senior Vice President, Nuclear, be changed to Vice President Nuclear.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards (10 CFR 50.92) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new of different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety

The licensee has provided the following analysis in support of a no significant hazards consideration determination:

The proposed changes would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated because the accident conditions and assumptions are not affected by the proposed Technical Specifications changes. The proposed changes do not involve a test, experiment or a modification to a system. The proposed changes are administrative in nature and do not increase the probability or consequences of an accident previously evaluated.

Also, the proposed changes would not (2) create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed changes do not affect any plant equipment or operational procedures which could impact the probability of an accident, nor is the physical plant design being changed.

Finally, the licensee's proposed changes would not (3) involve a significant reduction in a margin of safety because it would not affect any operating practices or limits nor would it affect any equipment or system

important to safety. The proposed changes are administrative in nature and would not reduce the margin of safety.

The NRC staff has reviewed the licensee's proposed no significant hazards determination and agrees with the licensee's analysis.

Furthermore, the Commission has provided guidance concerning the application of criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving no significant hazards consideration (51 FR 7751). As stated, in example (i), "A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature." The proposed changes associated with this amendment are within the scope of this example.

Accordingly, the staff proposes to determine that the proposed changes involve no significant hazards consideration.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon

Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: May 26, 1989

Description of amendment request: The proposed amendment would revise the 18-month inspection interval for functional testing of snubbers to allow for an increased interval up to a maximum of 30 calendar months. This would be accomplished by proportionally increasing the sample size for those inspection intervals which exceed 18 months, thus retaining the requirement that all snubbers be functionally tested every 15 years.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards in 10 CFR 50.92(c) for determining whether a significant hazard exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has reviewed the proposed changes in accordance with the requirements of 10 CFR 50.92 and has determined that the request does not involve a significant hazard consideration.

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because the accident conditions and assumptions are not affected by the proposed Technical Specification and Bases changes. The effect on the availability of the snubbers due to an increase in the test interval has been shown to be negligible. The Technical Specification requirement that all snubbers be functionally tested at least once every 15 years will be retained by increasing the initial sample size accordingly for those inspection intervals greater than 18 months. This will ensure that system reliability remains essentially unchanged. Furthermore, the proposed changes will allow the required snubber surveillance to be performed during scheduled refueling outages, as was intended, and eliminate the need for mid-cycle shutdowns solely for the purpose of performing the surveillance.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because the accident conditions and assumptions are not affected by the proposed Technical Specification and Bases changes. On matters related to nuclear safety, all accidents are bounded by previous analysis. The proposed changes do not add to or modify any equipment or system design nor do they involve any changes in the operation of any plant system.

The proposed changes do not involve a significant reduction in a margin of safety because the Technical Specification requirement that all snubbers be functionally tested at least once every 15 years will be retained by increasing the initial sample size accordingly for those inspection intervals greater than 18 months. The effect on the availability of the snubbers due to an increase in the test interval has been shown to be negligible. Equipment reliability and margin of safety will be maintained. The proposed changes will allow the required snubber surveillance to be performed during scheduled refueling outages, as was intended, and eliminate the need for mid-cycle shutdowns solely for the purpose of performing the surveillance.

The NRC staff has reviewed and agrees with the licensee's evaluation. Therefore, the NRC staff proposes to determine that the proposed amendment involves no significant hazard consideration.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station Vernon, Vermont

Date of application for amendment: May 12, 1989

Description of Amendment request: The proposed amendment consists of changes made as a result of the ATWS rule (10 CFR 50.62), and involves changes 1 and 2.

Change 1 modifies the Technical Specifications to add limiting conditions for operation and surveillance requirements dealing with the standby liquid control (SLC) system, which will be enhanced by requiring an increased concentration of Boron-10.

Change 2 modifies the Technical Specifications to add limiting conditions for operation and surveillance requirements for alternate rod injection (ARI) system.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards in 10 CFR 50.92 and has determined the following:

Change 1. Vermont Yankee has determined that the requested changes associated with the SLC System do not:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the increase in SLC System control capacity via Boron-10 enrichment effectively increasing the Boron-10 injection rate does not alter the function of the system, method of operation or dual train configuration; the system response time to an ATWS event has been reduced as the increased Boron-10 enrichment of the solution provides faster negative reactivity insertion thus reducing the consequences of the ATWS event; the SLC System is not credited in any of the design basis accident analyses and, as such, is considered to provide only an additional mitigative feature in the event of an accident; the SLC System sodium pentaborate solution concentration and flow rate required by the NRC for reactivity control independent of the control rods are not reduced from the values previously evaluated and presented in the Technical Specifications; the addition of enriched boron provides a shutdown margin greater than the previously calculated shutdown reactivity control capacity, and the change does not affect the possibility of an ATWS.

2) Create the possibility of a new or different kind of accident than previously evaluated because the proposed changes involve a system whose function is to provide an additional mitigative shutdown capability and no system modifications are made; the addition of enriched boron does not effect any system or component which could initiate an accident. Thus, no new or different unevaluated accident is created.

3) Involve a significant reduction in a margin of safety because the addition of enriched boron to the SLC System tank solution concentration actually increases the capa bility of the SLC System to achieve cold shutdown; thus no margin of safety is reduced.

Change 2. Vermont Yankee has determined that the requested changes associated with the ARI System do not:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the addition of a specific reference to the ARI System in the Technical Specification does not result in any system hardware modification or new plant configuration for operation. Thus, no FSAR accident consequences previously evaluated are impacted. Further, the ARI System is not postulated to initiate any accident scenarios; thus this change does not affect the probability of previously evaluated accidents.

2) Create the possibility of a new or different kind of accident than previously evaluated because no new plant configuration for operation results from this change. The ARI System is a parallel to the RPT System and is actuated by the same trip circuitry and utilizes the same logic arrangement and sensors. Thus, no new or different unevaluated accident is created by incorporating a specific reference to the ARI System within the Technical Specifications.

3) Involve a significant reduction in a margin of safety because this change involves no physical or procedural modifications. The change provides specific reference in the Technical Specifications to the ARI System by incorporating limiting conditions for operation and surveillance requests consistent with those previously approved for the RPT System; thus no margin of safety is reduced.

Additionally, because these proposed amendments to the Vermont Yankee Technical Specifications are directly associated with compliance with the ATWS rule, they are similar to Example (vii) provided by the Commission (51FR7751, dated March 6, 1986) as one of the types of amendments not likely to involve a significant hazards consideration. Example (vii) denotes an amendment to make a license conform to changes in the regulation when the license change results in very minor changes to facility operations clearly in keeping with the regulations. Additionally, the changes proposed herein also resemble Example (ii), which denotes an amendment that constitutes an additional limitation, restriction or control not presently included in the Technical Specifications, in that stricter operating and surveillance requirements reflect additional conservatism. Based on the above, Vermont Yankee has determined that the proposed amendment involves no significant hazards considerations.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Based on this review, the staff therefore proposed to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Attorney for Licensee: John A. Ritsher, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110.

NRC Project Director: Richard H. Wessman

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: May 12, 1989

Description of amendment request: The amendment would revise the license by eliminating cycle-specific parameter limits from the Technical Specifications and placing them in a Core Operating Limits Report. This report is referenced in the Technical Specifications.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards in 10 CFR 50.92 and has determined the following:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because the cycle-specific limits will still be determined by analyzing the same postulated events previously analyzed. The removal of the cycle-specific limits from the Technical Specifications has no influence or impact on a Design Basis Accident occurrence. Each accident analysis previously addressed will be examined with respect to changes in the cycle dependent parameters using the NRC-approved reload design methodologies to ensure that the transient evaluation of new reloads are bounded by previously accepted analyses. This examination, which will be performed per requirements of 10CFR50.59, ensure that future reloads will not involve a significant increase in the probability or consequences of an accident previously evaluated. The plant will continue to operate within the limits specified in the COLR and to take the same actions when, or if, the limits are exceeded as required by the current Technical Specifications.

2. The proposed changes do not create the possibility of a new or different kind of accident previously evaluated because no physical alterations of plant configuration, changes to setpoints, or safety limits are proposed. As stated above, the removal of the cycle-specific limits does not influence, impact, nor contribute in any way to the improbability or consequences of any accident. The cycle-specific limits will be calculated using the NRC-approved methods. The Technical Specifications will continue to require operation within the required core operating limits and appropriate actions will be taken when, or if, limits are exceeded.

3. The proposed changes do not involve a significant reduction in a safety margin because they do not affect any operating practices, limits, or safety-related equipment. The margin of safety presently provided by the current Technical Specifications remains unchanged. The proposed amendment still requires operation within the core limits as obtained from the NRC-approved reload design methodologies and appropriate actions to be taken when, or if, limits are violated remain unchanged. The development of the limits for future reloads will continue to conform to those methods described in the NRC-approved documentation. In addition, each future reload will involve a Part 50.59 safety review to assure that operation of the plant within the cycle-specific limits will not involve a significant reduction in a margin of safety.

The NRC staff has revised the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Based on

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this review, the staff therefore proposed to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Attorney for licensee: John A. Ritsher, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110.

NRC Project Director: Richard H. Wessman, Director.

Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, (NA-1&2) Louisa County, Virginia

Date of amendment request: May 23, 1989

Description of amendment request: The proposed change would reduce the Technical Specifications (TS) 3/4.2.5 limit on the minimum measured flow rate in the reactor coolant system (RCS) for both NA-1&2.

Both NA-1&2 are currently experiencing RCS flow reductions caused by steam generator tube plugging (SGTP). As expected, the RCS flow has decreased with increased SGTP. Although resolution of the steam generator tube degradation problem is being pursued by both Virginia Electric and Power Company and the industry, lower RCS flow rates due to SGTP are expected. The TS change would provide margin for the anticipated NA-1&2 lower RCS flow rates, while still maintaining operational parameters within the Updated Final Safety Analysis Report (UFSAR) analysis envelope.

The proposed TS change would lower the total RCS flow from 289,200 gallons per minute (gpm) to 284,000 gpm by taking credit for previously unused design margin without requiring an reanalysis of the UFSAR Chapter 15 accident analyses. The reduced RCS flow rate will be offset by the conservatism inherent in the existing calculated Departure from Nucleate Boiling Rates (DNBR) design margin.

The RCS flow limit of TS Table 3.2-1 will therefore be lowered to 284,000 gpm. This reduction will be offset by a retained DNBR margin penalty of 2.9%, which is easily absorbed by the available retained DNBR margin. The total remaining DNBR margin will still be approximately 7%.

There are no other areas which are impacted by the limit change. Flow-rated items such as loop transport times or RTD response times either include substantial margin in the safety analyses when compared to a change of less than 2% or are insensitive to the actual value of the flow (i.e., they are sensitive only to relative changes such as a fractional deviation from the measured full power delta T). Therefore, it is only necessary to absorb the penalty on retained DNBR margin in order to support the flow limit reduction.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided the following discussion regarding the above three criteria.

The proposed change to the [NA-1&2 TS] minimum measured reactor coolant system flow from 289,200 gpm to 284,000 gpm does not involve a significant hazards consideration. The basis for this determination is as follows.

* There is no significant increase in the probability or consequences of an accident previously evaluated. Accident probability is not dependent upon the flow limit and as such is not affected by the limit change. Potential accident consequences remain within the bounds of the UFSAR accident analyses because the flow limit reduction is fully compensated by a penalty on retained DNBR margin. As such there is no increase in potential consequences.

* The possibility of a new or different kind of accident from any accident previously evaluated is not created. The absence of a hardware change means that the accident initiators remain unaffected, so that no unique accident probability is created.

* No significant reduction in the margin of safety is involved. These changes simply reflect the use of part of the available retained DNBR margin in order to offset the flow limit reduction. The margin of safety for accident analysis does not include retained DNBR margin and thus is not impacted by this proposed change.

The NRC staff has made a preliminary review of the licensee's analyses of the proposed change and agrees with the licensee's conclusion that the three standards in 10 CFR 50.92(c) are met. Therefore, the staff proposes to determine that the proposed amendments do not involve a significant hazards consideration.

Local Public Document Room location: The Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, P.O. Box 1535, Richmond, Virginia 23212.

NRC Project Director: Herbert N. Berkow

Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, (NA-1&2) Louisa County, Virginia

Date of amendment request: June 8, 1989

Description of amendment request: The proposed change would modify NA-1&2 Technical Specification (TS) Section 3.3.3.5, Table 3.3-9, which addresses the auxiliary shutdown panel monitoring instrumentation. The measurement range of the charging flow instrument will be changed from "0-150 gpm" to "0-180 gpm." The need for an expanded range was identified by the control room design review. In addition, Table 4.3-6 will be reoriented from a horizontal to a vertical format to agree with Table 3.3-9. There are no other changes to Table 4.3-6.

During the performance of the Control Room Design Review (CRDR) for NA-1&2, various indicators were cited as requiring modification, including charging flow. The CRDR identified that the existing square root scale of the charging flow instrumentation would make it difficult to read flow accurately and that the range of 0-150 gpm was too narrow. To relieve these problems, the charging flow instrumentation will be changed to a linear output indication and the range expanded to 0-180 gpm.

Expanding the display range and providing the indication in a linear scale will allow the operator to more accurately determine the charging flow rate during high or low flow rate conditions without decreasing accuracy during middle of scale operations. This will provide for a more accurate determination of the charging flow rate during abnormal as well as normal plant conditions.

TS 3.3.3.5, Table 3.3-9, identifies the instrumentation and ranges required in the auxiliary shutdown panel. The charging flow is specified as 0-150 gpm and will be changed to 0-180 gpm as required by CRDR findings as noted above.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the change to TS 3.3.3.5, Table 3.3-9 and has found that it will not involve a significant hazards consideration because the change will not:

(1) result in a significant increase in the probability or consequences of an accident previously evaluated because the change will not alter the setpoints or decrease the accuracy of the [c]harging [f]low indication. Expanding the display range and providing the indication in a linear scale will allow the operator to more accurately determine the charging flow rate during high or low flow rate conditions without decreasing accuracy during middle of scale operations.

(2) create the possibility of a new or different kind of accident because this change will not alter plant operations except to allow for more accurate determination of the [c]harging [f]low rate. Expanding the display range and providing the indication in a linear scale will allow the operator to more accurately determine the charging flow rate during high or low flow rate conditions without decreasing accuracy during middle of scale operations.

(3) result in a significant reduction in the margins of safety because this change will allow for more accurate determination of the [c]harging [f]low rate during abnormal as well as normal plant conditions. This will enhance the margin of safety. The requirements of Specification 3.3.3.5 are not changed nor are the Surveillance Requirements of 4.3.3.5. Only the "Measurement Range" of [Table] 3.3-9 is affected.

The NRC staff has made a preliminary review of the licensee's analyses of the proposed change and agrees with the licensee's conclusion that the three standards in 10 CFR 50.92(c) are met. In addition, the Commission has provided guidance concerning the application of standards in 10 CFR 50.92 by providing certain examples (51 FR 7750). One of the examples of actions involving no significant hazards considerations is example (i), "a purely administrative change to the technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error or a change in nomenclature." The proposed reformatting of Table 4.3-6 is consistent with the standard in example (i). Therefore, the staff proposes to determine that the proposed amendments do not involve a significant hazards consideration.

Local Public Document Room location: The Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, P.O. Box 1535, Richmond, Virginia 23212.

NRC Project Director: Herbert N. Berkow

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the Federal Register as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Arizona Public Service Company, et al, Docket No. STN 50-530, Palo Verde Nuclear Generating Station, Unit 3, Maricopa County, Arizona

Date of application for amendment: December 14, 1988

Brief description of amendments: The amendment revises several portions of the Technical Specifications to incorporate changes in support of Cycle 2 operation.

Date of issuance: June 9, 1989

Effective date: June 9, 1989

Amendment No.: 18

Facility Operating License No. NPF-74: Amendment changed the Technical Specifications.

Date of initial notice in **Federal Register:** February 22, 1989 (54 FR 7623). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 9, 1989

No significant hazards consideration comments received: No.

Local Public Document Room location: Phoenix Public Library, Business and Science Division, 12 East McDowell Road, Phoenix, Arizona 85004.

Arkansas Power & Light Company, Docket Nos. 50-313 and 50-368, Arkansas Nuclear One, Units 1 and 2, Pope County, Arkansas

Date of applications for amendments: December 12, 1986 and as supplemented on April 14, 1988.

Brief description of amendment: The amendments establish a range of membership of the Safety Review Committee (SRC) from 8 to 12 members instead of strictly 8 members as previously specified in the TS for each Unit. It also provides an equivalent SRC meeting quorum requirement.

Date of issuance: June 2, 1989

Effective date: June 2, 1989

Amendment Nos.: 123 and 97

Facility Operating License Nos. DPR-51 and NPF-6. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 3, 1989 (54 FR 18945). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 2, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: September 27, 1988, as supplemented May 24, 1989.

Description of amendments: The amendments change the Technical Specifications (TS) to: (1) revise TS section 3/4.3.2 to include Limiting Conditions for Operations and Surveillance Requirements to ensure the capability of the main stack monitor signal circuitry to isolate containment purge and vent valves, and (2) revise pages affected by the above proposed TS changes as necessary to correct editorial errors and to conform to other formatting requirements.

Date of issuance: June 12, 1989

Effective date: June 12, 1989

Amendment Nos.: 132 and 162

Facility Operating License Nos. DPR-71 and DPR-62. Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** April 5, 1989. The May 24, 1989 letter provided updated TS pages and did not change the initial determination of no significant hazards consideration as published in the **Federal Register**. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 12, 1989

No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Dates of application for amendments: July 11, 1988, as supplemented April 11, 1989.

Description of amendments: The amendments change the Technical Specifications (TS) to revise (1) the titles listed in the index section of the TS to be consistent with the titles shown in the text and (2) to revise two titles provided in the text for consistency in the TS between the two units.

Date of issuance: June 13, 1989

Effective date: June 13, 1989

Amendment Nos.: 133 and 163

Facility Operating License Nos. DPR-71 and DPR-62. Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** February 1, 1989 (54 FR 5160). The April 11, 1989 letter provided updated TS pages and clarification for these updated TS pages that did not change the initial determination of no significant hazards considerations as published in the **Federal Register**. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 13, 1989

No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Commonwealth Edison Company, Docket Nos. 50-454 and 50-455, Byron Station, Units 1 and 2, Ogle County, Illinois; Docket Nos. 50-456 and 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: January 25, 1989, supplemented February 3, 1989.

Brief description of amendments: These amendments modify Technical Specifications having cycle-specific limits of reload fuel enrichment by replacing the values of those limits with a reference to a report entitled "Criticality Analysis of Byron and Braidwood Station Fuel Storage Racks" for the value of those limits.

Date of issuance: June 5, 1989

Effective date: June 5, 1989

Amendment Nos.: 29 for Byron and 18 for Braidwood

Facility Operating License Nos. NPF-37, NPF-66, NPF-72, and NPF-77: The amendments revised the Technical Specification.

Date of initial notice in **Federal Register:** May 3, 1989 (54 FR 18945). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 5, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: For Byron Station, Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61101; for Braidwood Station, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Commonwealth Edison Company, Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: April 11, 1989

Brief description of amendments: Revise requirement for frequency of Type A Containment Leak Rate Surveillance Retest prescribed by Technical Specification to conform with 10 CFR Part 50, Appendix J.

Date of issuance: June 5, 1989

Effective date: June 5, 1989

Amendment Nos.: 118, 114

Facility Operating License Nos. DPR-29 and DPR-30: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 3, 1989 (54 FR 18946). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 5, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: September 23, 1988

Brief description of amendment: This amendment adds a surveillance requirement to the Technical Specifications requiring periodic testing of the backup nitrogen supply system for operating the pressurizer power operated relief valves.

Date of issuance: June 5, 1989

Effective date: June 5, 1989

Amendment No.: 141

Facility Operating License No. DPR-26: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 14, 1988 (53 FR 50324). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 5, 1989

No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Consumers Power Company, Docket No. 50-155, Big Rock Point Plant, Charlevoix County, Michigan

Date of application for amendment: February 6, 1987, which superseded previous submittals on September 30, 1985, March 4, April 21, and December 17, 1986 plus additional information provided on August 27, 1986.

Brief description of amendment: This amendment revises Sections 11 and 12 of the Big Rock Point Technical Specifications to add operability and surveillance requirements for the alternate shutdown system. This amendment also includes technical specifications for the active fire barriers and the fire detection instrumentation for the Auxiliary Shutdown Building. All these changes apply to equipment required by Appendix R to 10 CFR Part 50.

Date of issuance: May 31, 1989

Effective date: May 31, 1989

Amendment No.: 97

Facility Operating License No. DPR-6. The amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** May 7, 1986 (51 FR 16924). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 31, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: February 17, 1987, as supplemented November 19, 1987, and April 1 and October 3, 1988

Brief description of amendments: The amendments made editorial, administrative, or other minor changes to the Technical Specifications to add clarification, consistency, and conciseness. Also, license condition 2.C.(8) was deleted from the operating license for Unit 2.

Date of issuance: June 6, 1989

Effective date: June 6, 1989

Amendment Nos.: 97 and 79

Facility Operating License Nos. NPF-9 and NPF-17: Amendments revised the Technical Specifications and the Unit 2 operating license.

Date of initial notice in **Federal Register:** May 4, 1989 (54 FR 19268). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 6, 1989

No significant hazards consideration comments received: No.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Dates of application for amendments: March 9, 1989, as revised March 20 and May 19 and 23, 1989.

Brief description of amendments: The amendments relocated fire protection requirements from the operating licenses and the Technical Specifications to the Final Safety Analysis Report.

Date of issuance: June 6, 1989

Effective date: June 6, 1989

Amendment Nos.: 98 and 80

Facility Operating License Nos. NPF-9 and NPF-17: Amendments revised the Technical Specifications and the operating licenses.

Date of initial notice in **Federal Register:** May 4, 1989 (54 FR 19266) and August 28, 1985 (50 FR 34938). Because the May 19 and 23, 1989, submittals clarified certain aspects of the original request, the substance of the changes noticed in the **Federal Register** and the proposed no significant hazards determination were not affected. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 6, 1989

No significant hazards consideration comments received: No.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Duke Power Company, Docket Nos. 50-269, 50-270 and 50-287, Oconee Nuclear Station, Units 1, 2 and 3, Oconee County, South Carolina

Dates of applications for amendments: October 8, 1984, January 6 and March 15, 1988, as supplemented or revised August 27, 1985, January 30, June 27, August 13, and September 19, 1986, January 18, May 13, September 16, and December 29, 1988, and May 17, 1989.

Brief description of amendments: The amendments modified the Technical Specifications related to NUREG-0737 "Clarification of TMI Action Plan Requirements" to add specifications dealing with (1) containment high-range radiation monitor, (2) containment pressure monitor, (3) containment water level monitor, (4) containment hydrogen monitor and (5) control room habitability. Requirements dealing with reactor coolant system vents and noble gas monitors are to be incorporated into licensee controlled documents rather than the TS.

Date of issuance: June 6, 1989

Effective date: June 6, 1989

Amendment Nos.: 174, 174, and 171

Facility Operating License Nos. DPR-38, DPR-47 and DPR-55. Amendments revised the Technical Specifications.

Dates of initial notices in **Federal Register:** May 21, 1985 (50 FR 20975) April 20, 1988 (53 FR 13037), and June 3, 1988 (53 FR 20394). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 6, 1989 and an Environmental Assessment dated May 30, 1989 (54 FR 24055).

No significant hazards consideration comments received: No.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: April 5, 1989

Brief description of amendments: The amendments modified the Technical Specifications to allow a separate Safety Review Board for each Georgia Power Company nuclear plant.

Date of issuance: June 9, 1989

Effective date: June 9, 1989

Amendment Nos.: 20 and 1

Facility Operating License Nos. NPF-68 and NPF-81: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 3, 1989 (54 FR 18947). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 9, 1989

No significant hazards consideration comments received: No.

Local Public Document Room location: Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830

Indiana Michigan Power Company, Docket No. 50-315, Donald C. Cook Nuclear Plant, Unit No. 1, Berrien County, Michigan

Date of application for amendment: October 14, 1988 as supplmented December 30, 1988 and June 5, 1989.

Brief description of amendment: This amendment revises the TS's to allow operation of future reload cycles of D. C. Cook Unit 1 at reduced primary coolant system temperature and pressure conditions. The reduced temperature and pressure (RTP) conditions will decrease the steam generator U-tube stress corrosion cracking of the type observed at D. C. Cook Unit 2.

Date of issuance: June 9, 1989

Effective date: June 9, 1989

Amendment No.: 126

Facility Operating License No. DPR-58. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 19, 1989 (54 FR 15851). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 9, 1989

No significant hazards consideration comments received: No.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit No. 2, Scriba, New York

Date of application for amendment: November 10, 1988

Brief description of amendment: This amendment revises the Technical Specifications to incorporate the requirements of Generic Letter 88-01 concerning intergranular stress corrosion cracking into the surveillance requirements for Inservice Inspection.

Date of issuance: June 14, 1989

Effective date: June 14, 1989

Amendment No.: 8

Facility Operating License No. NPF-69: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** May 3, 1989 (54 FR 18948). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 14, 1989

Significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: December 5, 1988

Brief description of amendment: The amendment revises the plant Technical Specifications to implement surveillance requirements for the modified reactor vessel water level instrumentation, and to reflect the replacement of mechanical level switches with new analog instrumentation in accordance with the recommendations made in NRC Generic Letter 84-23 (October 24, 1984). This new instrumentation increases the reliability of instruments installed to meet the provisions of TMI Action Plan Item II.F.2 (NUREG-0737).

Date of issuance: May 30, 1989

Effective date: May 30, 1989

Amendment No.: 66

Facility Operating License No. DPR-22. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 9, 1987 (52 FR 34016). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 30, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: January 6, 1989 as supplemented on February 28, 1989

Brief description of amendment: This amendment modified the Technical Specifications to: (1) extend the surveillance interval by 25 percent, but the total interval for three consecutive intervals shall not exceed 3.25 times the specific interval, (2) define the regular surveillance intervals, (3) include the 25 percent extension applicable to all codes and standards referenced within, (4) delay an action statement for up to 24 hours to permit the completion of the surveillance when the allowable outage time limit of the action requirement is less than 24 hours, and (5) eliminate the need to perform surveillance on inoperable equipment.

Date of issuance: June 2, 1989

Effective date: 90 days from date of issuance.

Amendment No.: 122

Facility Operating License No. DPR-40. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 22, 1989 (54 FR 11840). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 2, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Units 1 and 2, San Luis Obispo County, California

Date of application for amendments: March 29, 1989 (Reference LAR 89-04)

Brief description of amendments: The amendments revised Technical Specification (TS) to require that at least 23 feet of water be maintained above the top of irradiated fuel assemblies within the vessel during movement of rod cluster control assemblies.

Date of issuance: June 7, 1989

Effective date: June 7, 1989

Amendment Nos.: 39 and 38

Facility Operating License Nos. DPR-80 and DPR-82: Amendments changed the Technical Specifications.

Date of initial notice in **Federal Register:** May 3, 1989 (54 FR 18951). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 7, 1989.

No significant hazards considerations comments received: No.

Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Units 1 and 2, San Luis Obispo County, California

Date of application for amendments: December 19, 1988 (Reference LAR 88-09)

Brief description of amendments: The amendments revised Technical Specification to allow the fully withdrawn position for the shutdown and control rod banks to be redefined as 225 steps or greater, rather than 228 steps, with insertion limits remaining the same.

Date of issuance: June 7, 1989

Effective date: June 7, 1989

Amendment Nos.: 40 and 39.

Facility Operating License Nos. DPR-80 and DPR-82: Amendments changed the Technical Specifications.

Date of initial notice in **Federal Register:** May 3, 1989 (54 FR 18949). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 7, 1989.

No significant hazards considerations comments received: No.

Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of application for amendment: February 22, 1989

Brief description of amendment: The amendment revised the Technical Specifications (TSs) related to the Standby Liquid Control System to ensure compliance with paragraph (c)(4) of the Anticipated Transient Without Scram Rule, 10 CFR 50.62, and to simplify and improve the TS requirements for the system.

Date of issuance: June 8, 1989

Effective date: June 8, 1989

Amendment No. 22

Facility Operating License No. NPF-39. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 3, 1989 (54 FR 18952). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 8, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of application for amendment: January 27, 1989

Brief description of amendment: This amendment changed the Unit 1 Technical Specifications (TSs) to reflect the completion and tie-in of the Unit 2 Standby Gas Treatment System (SGTS) and the Unit 2 Refueling Area Heating, Ventilating and Air Conditioning (HVAC) System. The changes to the TSs allow the inclusion of Unit 2 equipment that will be relied upon or required to be operable to support the operation of Unit 1 when Unit 2 is issued an Operating License.

Date of issuance: June 14, 1989

Effective date: Upon issuance of an operating license to Limerick Generating Station, Unit 2.

Amendment No. 23

Facility Operating License No. NPF-39. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 8, 1989 (54 FR 9924). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 14, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of application for amendment: April 10, 1989

Brief description of amendment: Revised the Technical Specifications to reflect the incorporation of Unit 2 power supplies needed to support common equipment used in operation of Unit 1.

Date of issuance: June 15, 1989

Effective date: Upon issuance of an operating license to Limerick Generating Station, Unit No. 2.

Amendment No. 24

Facility Operating License No. NPF-39. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 3, 1989 (54 FR 18955). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 15, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Power Authority of The State of New York, Docket No. 50-286, Indian Point Unit No. 3, Westchester County, New York

Date of application for amendment: January 20, 1989 as supplemented February 2, February 15, May 5, and May 23, 1989.

Brief description of amendment: The amendment revises The Technical Specifications to reflect changes proposed as a result of the transition to Westinghouse 15 X 15 Vantage 5 fuel from Westinghouse 15 X 15 low-parasitic (LOPAR) assemblies and 15 X 15 optimized Fuel Assemblies (OFAS).

Date of issuance: June 6, 1989

Effective date: June 6, 1989

Amendment No.: 86

Facility Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 8, 1989 (54 FR 9927). The letters dated February 15, May 5, and May 23 provide additional clarifying information that do not make significant changes to any Technical Specifications. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 6, 1989

No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: February 6, 1989, supplemented on May 4, 1989

Brief description of amendment: Revised Technical Specification Section 3.3.1, the associated bases, and Tables 4.3.1.1-1 and 3.3.1-1 to increase the surveillance test intervals (STIs) and allowable out-of-service times (AOTs) for the Reactor Protection System in accordance with General Electric Company Licensing Topical Report (LTR) NEDC-30851P-A. The supplemental information clarifies, and does not change, the technical content of the original change request.

Date of issuance: June 5, 1989

Effective date: June 5, 1989

Amendment No. 26

Facility Operating License No. NPF-57. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 3, 1989 (54 FR 18956). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 5, 1989.

No significant hazards consideration comments received: Yes. The comment received from the Bureau of Nuclear Engineering of the State of New Jersey was addressed in the Safety Evaluation issued with the amendment.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: October 26, 1988

Brief description of amendment: The amendment request increased the Technical Specification spent fuel storage capacity limitation presently in the Design Features Section 5.6.3 to 1290 fuel assemblies.

Date of issuance: June 12, 1989

Effective date: June 12, 1989

Amendment No. 27

Facility Operating License No. NPF-57. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 12, 1988 (53 FR 49945). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 12, 1989 and an Environmental Assessment dated June 5, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of application for amendment: October 25, 1988

Brief description of amendment: This amendment revised Technical Specification Table 3.14-3 by removing the requirements for carbon dioxide fire suppression systems in fire zones 75, 76, 77, 78, 79 and 80. This amendment allows permanent disabling of the carbon dioxide fire suppression systems from those Nuclear Service Electrical Building zones that were required to be operable by Technical Specification 3.14.4.

Date of issuance: June 5, 1989
Effective date: June 5, 1989
Amendment No.: 107
Facility Operating License No. DPR-54: Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** May 3, 1989 (54 FR 18958). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 5, 1989
No significant hazards consideration comments received: No.
Local Public Document Room location: Martin Luther King Regional Library, 7340 24th Street Bypass, Sacramento, California 95822.

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of application for amendment: November 24, 1986, September 21, 1987, and December 14, 1987.
Brief description of amendment: The amendment modified paragraph 2.C.(3) of the license to require compliance with the amended Physical Security Plan. This Plan was amended to conform to the requirements of 10 CFR 73.55. Consistent with the provisions of 10 CFR 73.55, search requirements must be implemented within 60 days and miscellaneous amendments within 180 days from the effective date of this amendment.
Date of issuance: June 5, 1989
Effective date: June 5, 1989
Amendment No. 108
Facility Operating License No. DPR-54. This amendment revised the license.
Date of initial notice in **Federal Register:** May 3, 1989 (54 FR 18957). The Commission's related evaluation of the amendment is contained in a letter to Rancho Seco Nuclear Generating Station dated May 5, 1989 and a Safeguards Evaluation Report dated May 5, 1989
No significant hazards consideration comments received: No
Local Public Document Room location: Martin Luther King Regional Library, 7340 24th Street Bypass, Sacramento, California 95822

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of application for amendment: September 24, 1986, and April 27, 1989
Brief description of amendment: The amendment revises Technical Specification 4.17, "Steam Generators," and its related bases and tables to permit repairs of steam generator tubes by using tube sleeves.

Date of issuance: June 5, 1989
Effective date: June 5, 1989
Amendment No.: 109
Facility Operating License No. DPR-54: Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** September 23, 1987 (52 FR 35803). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 5, 1989
No significant hazards consideration comments received: No.
Local Public Document Room location: Martin Luther King Regional Library, 7340 24th Street Bypass, Sacramento, California 95822.

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of application for amendment: October 8, 1986, revised September 8, 1987.
Brief description of amendment: The amendment removed from the Technical Specification the tabular listing of snubbers, as suggested by Generic Letter 84-13, dated May 3, 1984.
Date of issuance: June 9, 1989.
Effective date: Thirty days after date of issuance.
Amendment No.: 110
Facility Operating License No. DPR-54: Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** November 19, 1986 (51 FR 41869). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 9, 1989.
No significant hazards consideration comments received: No.
Local Public Document Room location: Martin Luther King Regional Library, 7340 24th Street Bypass, Sacramento, California 95822.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: January 20, 1989, as supplemented March 20, 1989
Brief description of amendment: The amendment implements the NRC staff recommendations of Generic Letter 85-09, "Technical Specifications for Generic Letter 83-28, Item 4.3," regarding reactor trip breaker testing. Specifically, the changes involve revisions to TS Tables 3.3-1 and 4.3-1 relating to the reactor trip breakers.
Date of issuance: June 6, 1989
Effective date: June 6, 1989
Amendment No.: 78
Facility Operating License No. NPF-12. Amendment revises the Technical Specifications.
Date of initial notice in **Federal Register:** May 3, 1989 (54 FR 18960). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 6, 1989
No significant hazards consideration comments received: No
Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: August 5, 1983 as supplemented on March 4, 1985 and clarified on May 18, 1989.
Brief Description of amendment: This amendment revises the Technical Specifications for the power protection panels, which were installed to provide an enhanced level of protection for the Reactor Protection System.
Date of issuance: June 2, 1989
Effective date: June 2, 1989
Amendment No.: 112
Facility Operating License No. DPR-28: Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** October 26, 1983 (48 FR 49596) and July 1, 1987 (52 FR 24562). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 2, 1989.
No significant hazards considerations comments received: No.
Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of application for amendment: February 10, 1987 as supplemented, March 31, 1989
Brief description of amendment: This amendment revises license condition 2.C.(14) to incorporate the standard condition for fire protection set forth in Generic Letter 86-10. It removes Sections 3/4.3.7.9, 3/4.7.6, 3/4.7.7, and 6.2.2.e from the WNP-2 Technical Specifications. It also modifies the Bases sections and the Index of the Technical Specifications to reflect the above changes.
Date of issuance: May 25, 1989
Effective date: May 25, 1989
Amendment No.: 67
Facility Operating License No. NPF-21: Amendment changed the License, and the Technical Specifications.
Date of initial notice in **Federal Register:** April 19, 1989 (54 FR 15839). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 25, 1989.
No significant hazards consideration comments received: No.
Local Public Document Room location: Richland City Library, Swift and Northgate Streets, Richland, Washington 99352.

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of application for amendment: March 3, 1989, as supplemented April 20 and June 1, 1989.
Brief description of amendment: The amendment revised certain technical specifications to provide the operating limits established for the fifth cycle of operation, and to accommodate the inclusion of four Advanced Nuclear Fuel 9 x 9 lead fuel assemblies in the reactor core.
Date of issuance: June 7, 1989
Effective date: June 7, 1989
Amendment No.: 69
Facility Operating License No. NPF-21: Amendment changed the Technical Specifications.
Date of initial notice in **Federal Register:** April 5, 1989 (54 FR 13771). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 7, 1989.
No significant hazards consideration comments received: No.
Local Public Document Room location: Richland City Library, Swift and Northgate Streets, Richland, Washington 99352.

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of application for amendment: March 8, 1989
Brief description of amendment: This amendment revises Technical Specification Table 4.3.2.1.-1, "Isolation Actuation Instrumentation Surveillance Requirements," by deleting channel check and channel functional test requirements for certain systems using temperature signals.
Date of issuance: June 6, 1989
Effective date: June 6, 1989
Amendment No.: 70
Facility Operating License No. NPF-21: Amendment changed the Technical Specifications.
Date of initial notice in **Federal Register:** May 3, 1989 (54 FR 18962). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 6, 1989
No significant hazards consideration comments received: No.
Local Public Document Room location: Richland City Library, Swift and Northgate Streets, Richland, Washington 99352.

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: September 9, 1988
Brief description of amendments: These amendments revised portions of Technical Specification Section 15.3.8, "Refueling," in order to provide more specific and precise requirements regarding the Containment Purge and Vent System. Additionally, minor editorial changes to Technical Specification Tables 15.7.3-2, 15.7.4-2, and 15.7.6-2 were made.
Date of issuance: June 9, 1989
Effective date: June 9, 1989
Amendment Nos.: 122 and 125
Facility Operating License Nos. DPR-24 and DPR-27. Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** May 3, 1989.
The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 9, 1989
No significant hazards consideration comments received: No.
Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing. For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may

provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By July 28, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Public Service Electric & Gas Company, Docket No. 50-272, Salem Generating Station, Unit No. 1, Salem County, New Jersey

Date of Application for amendment: May 5, 1989

Brief description of amendment: The amendment changed the Technical Specifications to delete the requirement that the measured drag force of mechanical snubbers should not have increased more than 50% since the last test.

Date of Issuance: June 5, 1989

Effective Date: May 12, 1989

Amendment No.: 98

Facility Operating License No. DPR-70: Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendment, consultation with the State of New Jersey and final no significant hazards consideration determination are contained in a Safety Evaluation dated June 5, 1989.

Attorney for licensee: Conner and Wetterhahn, 1747 Pennsylvania Avenue, Washington, DC 20006

Local Public Document Room Location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

NRC Project Director: Walter R. Butler

Dated at Rockville, Maryland, this 20th day of June, 1989.

For the Nuclear Regulatory Commission

Gary M. Holahan,

Acting Director, Division of Reactor Projects - III, IV, V and Special Projects Office of Nuclear Reactor Regulation

[Doc. 89-15149 Filed 6-27-89; 8:45 am]

BILLING CODE 7590-01-D

[Docket Nos. 50-361 and 50-362]

Southern California Edison Co. et al., San Onofre Nuclear Generating Station, Units 2 and 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License No. NPF-10 and Facility Operating License No. NPF-15 issued to Southern California Edison Company, San Diego Gas and Electric Company, the City of Riverside California and the City of Anaheim, California (the licensees), for operation of San Onofre Nuclear Generating Station, Units 2 and 3, located in San Diego County, California.

Environmental Assessments

Identification of Proposed Action

The proposed amendments would revise Technical Specification 3/4.8.2.1, "DC Sources," to increase the interval for the 18 month surveillance tests to at least once per refueling interval, which is defined as 24 months, in support of the nominal 24 month fuel cycle.

The Need for the Proposed Action

The proposed amendments are required to prevent unnecessary plant shutdowns to perform a surveillance test which cannot be performed during plant operation.

Environmental Impacts of the Proposed Action

The proposed action would not involve a significant change in the probability or consequences of any accident previously evaluated, nor does it involve a new or different kind of accident. Consequently, any radiological releases resulting from an accident would not be significantly greater than previously determined. The proposed amendments do not otherwise affect routine radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendments. The Commission also concludes that the proposed action will not result in a significant increase in individual or cumulative occupational radiation exposure.

With regard to nonradiological impacts, the proposed amendments do not affect nonradiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendments.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the Federal Register on February 14, 1989 (54 FR 6791). No request for hearing or petition for leave to intervene was filed following this notice.

Alternatives to the Proposed Action

Because the Commission has concluded that there are no significant environmental impacts associated with the proposed action, there is no need to examine alternatives to the proposed action.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Final Environmental Statement related to operation of San Onofre Nuclear Generating Station, Unit 2 and 3, dated April 1981 and its Errata dated June 1981.

Agencies and Persons Consulted

The NRC staff has reviewed the licensee's request that supports the proposed amendments. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendments.

Based upon the foregoing environmental assesament, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendments dated December 29, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the General Library, University of California, P.O. Box 19557, Irvine, California 9271 .

Dated at Rockville, Maryland, this 21st day of June 1989.

For the Nuclear Regulatory Commission.

Robert B. Samworth,

Senior Project Manager, Project Directorate V, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-15285 Filed 6-27-89; 8:45 am]

BILLING CODE 7590-01-M

[License No. SNM-1986; Docket No. 70-3057]

Finding of No Significant Impact and Opportunity for a Hearing; Issuance of Special Nuclear Material; Texas Utilities Electric Co. et al.

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of Special Nuclear Material License No. SNM-1986 to Texas Utilities Electric Company, Texas Municipal Power Agency, and Tex-La Electric Cooperative of Texas, Inc., (the applicants) for the Comanche Peak Steam Electric Station, Unit 2, located in Somervell County, Texas.

Summary of the Environment Assessment

Identification of Proposed Action:

The proposed action would authorize the applicants to receive, possess, inspect, and store special nuclear material in the form of unirradiated fuel assemblies. In addition, the license would authorize the applicants to receive, possess, inspect, store, and use neutron detector assemblies containing enriched U-235. Because the detector assemblies are sealed, storage and use of these materials wil pose no threat to the environment. Therefore, the discussion below will be limited to assessing the potential for environmental impacts resulting from the handling and the storage of new fuel assemblies at Comanche Peak, Unit 2.

The Need for the Proposed Action

The proposed license will allow the applicants to receive and store fresh fuel prior to issuance of the Part 50 operating license in order to inspect the fuel assemblies and to finalize fuel preparation needed to load the fuel into the reactor vessel. Actual core loading, however, will not be authorized by the proposed license.

Environmental Impacts of the Proposed Action

Once at Comanche Peak, Unit 2, the new fuel assemblies may be temporarily stored in their shipping containers prior to placement in their designated storage locations: the new fuel storage racks and the spent fuel pool racks located in the Fuel Handling Building. Temporary storage will be on the transportation vehicle or in the new fuel receipt area of the Fuel Building. This temporary storage of assemblies in their shipping containers will present no significant environmental impact or significant radiation exposure to plant workers.

Upon removal of the fuel assemblies from the shipping containers, they are inspected and surveyed for external contamination. The fuel assemblies are then transferred to their designated locations. Criticality safety in the storage locations is maintained by limiting interaction between adjacent fuel assemblies. In addition, the design of these storage locations, combined with plant procedures, will ensure acceptable protection of the general public and plant personnel either under normal or abnormal conditions.

Since the fresh fuel assemblies are sealed sources, the principal exposure pathway to an individual is via external radiation. For a low-enriched uranium fuel assembly (<4 percent U-235 enrichment), the exposure at 1 foot from the surface is normally less than 1 mR/hr; therefore, it is estimated that the exposure level to an individual from unirradiated fuel would be less than 25 percent of the maximum permissible exposure specified in 10 CFR Part 20. Because of the low-radiation exposure levels associated with the requested materials and activities and the applicants' radiation protection procedures, the staff concludes that fuel handling and storage activities can be carried out without any significant occupational dose to workers or radiological impact to the environment.

Only a small amount, if any, of radioactive waste (e.g., smear papers and/or contaminated packing material) is expected to be generated during fuel handling and storage operations. Any waste that is produced will be properly stored onsite until it can be shipped to a licensed disposal facility.

In the event that assemblies must be returned to the fuel fabricator, all packaging and transport of fuel will be in accordance with 10 CFR Part 71. The package will meet NRC approval requirements for normal conditions of transport and hypothetical accident conditions. No significant external radiation hazards are associated with the unirradiated assemblies because the radiation level from the clad fuel pellets is low and because the shipping packages meet the external radiation standards in 10 CFR Part 71. Therefore, any shipment of unirradiated fuel is expected to have an insignificant impact.

In the unlikely event that an assembly (either within or outside its shipping container) is dropped during transfer, fuel cladding is not expected to rupture. Even if the cladding were breached and the pellets were released, an insignificant environmental impact would result. The fuel pellets are composed of a ceramic UO_2 that has been pelletized and sintered to a very high density. In this form, release to UO_2 aerosol is highly unlikely except under conditions of deliberate grinding. Additionally, UO_2 is soluble only in acid solution so dissolution and release to the environment are extremely unlikely.

Conclusion

The environmental impacts associated with the handling and storage of new fuel at Comanche Peak, Unit 2, are expected to be insignificant. Essentially no effluents, liquid or airborne, will be released, and acceptable controls will be implemented to prevent a radiological accident. Therefore, the staff concludes that there will be no significant impacts associated with the proposed action.

Alternatives to the Proposed Action

The principal alternative would be to deny the requested license. Assuming the operating license will eventually be issued, denial of the storage only license would merely postpone new fuel receipt at Comanche Peak, Unit 2. Although denial of the special nuclear material license for Comanche Peak, Unit 2, is an alternative available to the Commission, it would be considered only if significant issues of public health and safety could not be resolved.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Commission's Final Environmental Statement (NUREG-0775) dated September 1981 related to this facility.

Agencies and Persons Consulted

The Commission's staff reviewed the applicants; request of January 29, 1988, and supplements dated March 25 and July 22, 1988, and May 4, 1989, and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has prepared an Environmental Assessment related to the issuance of Special Nuclear Material License No. SNM-1986. On the basis of this assessment, the Commission has concluded that environmental impacts that would be created by the proposed licensing action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

The Environmental Assessment and the above documents related to this proposed action are available for public inspection and copying at the Commission's Public Document Room at the Gelman Building, 2120 L Street NW., Washington, DC. Copies of the Environmental Assessment may be obtained by calling (301) 492-3358 or by writing to the Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Opportunity for a Hearing

Any person whose interest may be affected by the issuance of this license may file a request for a hearing. Any request for hearing must be filed with the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555 within 30 days of the publication of this notice in the **Federal Register**, and must comply with the procedures set forth in the Commission's regulation, 10 CFR Part 2, Subpart L, "Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings." Subpart L of 10 CFR Part 2, which became effective March 30, 1989, was published in the **Federal Register** on February 28, 1989.

Dated at Rockville, Maryland, this 20th day of June 1989.

For the Nuclear Regulatory Commission.

Leland C. Rouse,

Chief, Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 89-15286 Filed 6-27-89; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Auxiliary and Secondary Systems; Meeting

The ACRS Subcommittee on Auxiliary and Secondary Systems will hold a meeting on July 12, 1989, Room P-110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting will be as follows:

Wednesday, July 12, 1989—1:30 p.m.-6:00 p.m.

The Subcommittee will review the adequacy of the staff's proposed plans to implement the recommendations resulting from the Fire Risk Scoping Study, and other matters related to fire protection systems.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS Staff member, Mr. Sam Duraiswamy (telephone 301/492-9522) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: June 21, 1989.

Gary Quittschreiber, *Chief,*

Project Review Branch No. 2.

[FR Doc. 89-15195 Filed 6-27-89; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Generic Items; Meeting

The ACRS Subcommittee on Generic Items will hold a meeting on July 12, 1989, Room P-110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting will be as follows:

Wednesday, July 12, 1989—8:30 a.m. until 12:30 p.m.

The Subcommittee will discuss the Multiple System Responses Program (MSRP).

Oral statements may be presented by members of the public with the concurrence of the Subcommitee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Staff member named below as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or reacheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS Staff member, Mr. Sam Duraiswamy (telephone 301/492-9522) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: June 21, 1989.

Gary Quittschreiber,

Chief, Project Review Branch No. 2.

[FR Doc. 89-15196 Filed 6-27-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 72-3 (50-261)]

Carolina Power & Light Co.; Issuance of Amendment to Materials License SNM-2502

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 7 to Materials License No. SNM-2502 held by the Carolina Power and Light Company for the receipt and storage of spent fuel at the H.B. Robinson Independent Spent Fuel Storage Installation, located on the H.B. Robinson Steam Electric Plant Unit No. 2 site, Darlington County, South Carolina. The amendment is effective as of the date of issuance.

The amendment revises the Technical Specifications in Appendix A. Changes were made to Specification 5.0 and 6.1.1.b of Appendix A to update the revisions to appropriate drawings, to reflect a different method for sealing the thermocouple penetration plug assembly, and to alter the timing of a required leakage test.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of the amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of the amendment will not result in any significant environmental impact and that, pursuant to 10 CFR 51.22(c)(11), an environmental assessment need not be prepared in connection with issuance of the amendment.

For further details with respect to this action, see (1) the application for amendment dated January 11, 1989, and supplementary information submitted on April 28, 1989, and June 2, 1989, (2) Amendment No. 7 to Materials License No. SNM-2502, and (3) the Commission's letter to the licensee dated June 22, 1989. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the Local Public Document Room at

the Hartsville Memorial Library, 220 N. Fifth Street, Hartsville, South Carolina 29550.

Dated at Rockville, Maryland, this 22nd day of June 1989.

For the U.S. Nuclear Regulatory Commission.

Leland C. Rouse,

Chief, Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 89-15284 Filed 6-27-89; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Center for Information Technology Management Alternatives

AGENCY: Office of Management and Budget.

ACTION: Extension of deadline on request for comments: Center for Information Technology Management.

SUMMARY: Office of Management and Budget is extending the deadline for the comment period on alternatives for a center for information technology management to July 28, 1989. As printed in a **Federal Register** entry dated May 12, 1989, the purpose of such a center would be to provide agencies with advice and assistance regarding the technical management of major government information technology initiatives, not to design or build systems, or provide other functions already available from other sources.

Alternatives being considered include: (1) Using an existing commercial source(s): (2) establishing a center as part of a Federal agency; or (3) establishing a private, not-for-profit entity as a Federally Funded Research and Development Center in accordance with Office of Federal Procurement Policy Letter No. 84-1. OMB is seeking comments on alternatives. As a result of a review of comments received, OMB will determine the need for, and its approach to establishing such a center.

DATE: OMB will accept comments submitted by July 28, 1989.

ADDRESS: Written comments should be submitted to "CITEM" New Executive Office Building, Room 3235, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Judith Poorbaugh, Office of Management and Budget, Office of Information Technology Management, 725 17th Street, NW., Room 3235, Washington, DC 20503, (202) 395-7231.

Jay Plager,

Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget.

[FR Doc. 89-15338 Filed 6-27-89; 8:45 am]

BILLING CODE 3110-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s):

(1) *Collection title:* RUIA Claims Notification and Verification System.

(2) *Form(s):* N.A.

(3) *OMB Number:* New Collection.

(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval.

(5) *Type of request:* New Collection.

(6) *Frequency of response:* On occasion.

(7) *Respondents:* Businesses or other for-profit.

(8) *Estimated annual number of respondents:* 500.

(9) *Total annual responses:* 635,000.

(10) *Average time per response:* .017359 hours.

(11) *Total annual reporting hours:* 11,023.

(12) *Collection description:* Section 5b of the RUIA Act, as amended by the Railroad Unemployment Insurance and Retirement Improvement Act of 1988 (Pub. L. 100-647) requires that effective January 1, 1990, "when a claim for benefits is filed with the Railroad Retirement Board (RRB), the RRB shall provide notice of such claim to the claimant's base year employer(s) and afford such employer(s) an opportunity to submit information relevant to the claim." The collection obtains from such employer(s) information which may be relevant to proper adjudication by the RRB of the employee's claims.

Additional Information or Comments:

Copies of the proposed forms and supporting documents can be obtained from Ronald Ritter, the agency clearance officer (312-751-4692). Comments regarding the information collection should be addressed to Ronald Ritter, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Justing Kopca (202-395-7316), Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503.

Ronald Ritter,

Acting Director of Information Resources Management.

[RF Doc. 89-15261 Filed 6-27-89; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-26952; File Nos. SR-Amex-89-03; SR-CBOE-89-01; SR-NASD-89-17; SR-Phlx-89-24; SR-PSE-89-14]

Self-Regulatory Organizations; American Stock Exchange, Inc. et al.

In the Matter of Self-Regulatory Organizations; American Stock Exchange, Inc., Chicago Board Options Exchange, Inc., National Association of Securities Dealers, Philadelphia Stock Exchange, Inc., and Pacific Stock Exchange, Inc.; Order Approving and Notice and Order Granting Accelerated Approval to Proposed Rule Changes Relating to Sales Practice and Suitability Rules Concerning Uncovered Short Options Transactions.

On Feburay 14, 1989, the American Stock Exchange, Inc. ("Amex") and the Chicago Board Options Exchange, Inc. ("CBOE") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 [2] thereunder, proposed rule changes to establish specific written sales practice and suitability criteria and standards concerning uncovered short options transactions.[3]

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1988).

[3] On May 19 and 22, 1989, the Amex and CBOE, respectively, amended their proposed rule changes to modify the Special Statement for Uncovered Option Writers. *See* Letter from Ellen T. Kander, Staff Attorney, Amex, to Joseph Furey, Branch Chief, Division of Market Regulation, SEC, dated May 19, 1989; File No. SR-CBOE-89-01, Amendment No. 1. In addition, on March 24, 1989, the National Association of Securities Dealers, Inc. ("NASD") submitted to the Commission a proposed rule change similar to the Amex and CBOE original proposed rule changes. *See* File No. SR-NASD-89-17. On June 14, 1989, however, the NASD amended its original proposal to conform with the amended Amex and CBOE proposed rule changes. *See* File No. SR-NASD-89-17, Amendment No. 1. Further, on May 25 and June 5, 1989, the Philadelphia ("Phlx") and Pacific ("PSE") Stock Exchanges submitted to the Commission proposed rule changes substantially identical to the amended Amex and CBOE proposed rule changes. *See* File Nos. SR-Phlxz-89-24; SR-PSE-89-14. Hereinafter, the terms "self-regulatory organizations" and "exchanges" refer to the Amex, CBOE, NASD, Phlx, and PSE.

The Amex and CBOE proposed rule changes were noticed in Securities Exchange Act Release No. 26621 (March 9, 1989), 54 FR 10769 (March 15, 1989).[4] No comments were received on the proposed rule changes.

The exchanges' proposed rule changes require that member and member organizations transacting business with the public in writing uncovered short options contracts develop, implement, and maintain specific written criteria and standards for approving customer accounts for uncovered short options transactions. The proposed rule changes also require that member and member organizations establish a minimum net equity requirement for approving and maintaining such customer accounts. If a customer does not meet the member or member organization's specific criteria/standards, the customer's account may be approved for uncovered short options transactions only by the member or member organization's Senior Registered Options Principal or Compliance Registered Options Principal. The reasons for approving any such account must be recorded and the records maintained by the member or member organization. The exchanges' proposed rule changes further require that the member or member organization develop, implement, and maintain specific written procedures concerning the member or member organization's supervisory review of customer accounts which have established uncovered short options positions. In addition, the exchanges' proposed rule changes require that member or member organizations furnish to customers a written description of the risks involved in writing uncovered short options transactions, at or prior to the customers' initial uncovered short options transaction. *See* Exhibit A. This written disclosure document must be furnished to customers in addition to the Options Disclosure Document required to be provided to customers trading in options pursuant to existing rules of the exchanges.[5]

The exchanges state that the proposed rule changes are designed to increase customer awareness of the risks entailed in writing uncovered short options contracts and to intensify member or member organization supervision of customer accounts engaged in uncovered short options transactions.

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 and the rules and regulations thereunder. More specifically, the Commission believes that the exchanges' development and implementation of specific written procedures governing (1) the suitability of customers for writing uncovered short options transactions, (2) the approval of accounts engaged in such uncovered writing, and (3) the establishment of specific minimum net equity requirements for initial approval and maintenance of customer accounts will help ensure that only those individuals who possess the financial resources, investment background and objectives, and risk tolerance suitable for uncovered options writing will be approved for writing uncovered short options tranactions.

In addition, the Commission believes that the distribution to customers of a short succinct written statement which describes the risks associated with uncovered short options writing, at or prior to the customers' initial uncovered short options transaction, will help ensure investor protection because it should increase customer awareness of the potential for significant loss in writing uncovered short options contracts. In this regard, the Commission notes that since disclosure is an important component of investor protection under the federal securities laws, providing investors with a special uncovered short options risk statement may help ameliorate problems associated with uncovered short options transactions (*e.g.*, significant margin calls), especially during volatile markets such as those experienced in October 1987.[6]

The Commission finds good cause for approving the Phlx and PSE proposed rule changes prior to the thirtieth day after the date of publication in the **Federal Register** because the Phlx and PSE proposed rule changes are substantially identical to the amended Amex and CBOE proposed rule changes. Moreover, the Phlx and PSE rule changes are part of an agreement among the options exchanges to adopt new uniform sales practice standards for short uncovered options writing.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filings also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organizations. All submissions should refer to the file numbers in the caption above and should be submitted by July 19, 1989.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule changes be, and hereby are, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Dated: June 21, 1989.

Shirley E. Hollis,

Assistant Secretary.

Exhibit A—Special Statement for Uncovered Option Writers

There are special risks associated with uncovered option writing which expose the investor to potentially significant loss. Therefore, this type of strategy may not be suitable for all customers approved for options transactions.

1. The potential loss of uncovered call writing is unlimited. The writer of an uncovered call is in an extremely risky position, and may incur large losses if the value of the underlying instrument increases above the exercise price.

2. As with writing uncovered calls, the risk of writing uncovered put options is substantial. The writer of an uncovered put option bears a risk of loss if the value of the underlying instrument declines below the exercise price. Such loss could be substantial if there is a significant decline in the value of the underlying instrument.

3. Uncovered option writing is thus suitable only for the knowledgeable investor who understands the risks, has the financial capacity and willingness to incur potentially substantial losses, and has sufficient liquid

[4] Because the NASD, Phlx and PSE proposed rule changes are substantially identical to the Amex and CBOE amended proposed rule changes this order also serves as the notice and order granting accelerated approval to File Nos. SR-NASD-89-17, SR-NASD-89-17, Amendment No. 1, SR-Phlx-89-24, and SR-PSE-89-14.

[5] *See, e.g.*, Amex Rule 926(a); CBOE Rule 9.15(a).

[6] *See* Division of Market Regulation, *The October 1987 Market Break* (Feburary 1988) at 12-15 through 12-18.

[7] 15 U.S.C. 78s(b)(2) (1982).

[8] 17 CFR 200.30-3(a)(12) (1988).

assets to meet applicable margin requirements. In this regard, if the value of the underlying instrument moves against an uncovered writer's options position, the investor's broker may request significant additional margin payments. If an investor does not make such margin payments, the broker may liquidate stock or options positions in the investor's account, with little or no prior notice in accordance with the investor's margin agreement.

4. For combination writing, where the investor writes both a put and a call on the same underlying instrument, the potential risk is unlimited.

5. If a secondary market in options were to become unavailable, investors could not engage in closing transactions, and an option writer would remain obligated until expiration or assignment.

6. The writer of an American-style option is subject to being assigned an exercise at any time after he has written the option until the option expires. By contrast, the writer of a European-style option is subject to exercise assignment only during the exercise period.

Note: It is expected that you will read the booklet entitled CHARACTERISTICS AND RISKS OF STANDARDIZED OPTIONS available from your broker. In particular your attention is directed to the chapter entitled Risks of Buying and Writing Options. This statement is not intended to enumerate all of the risks entailed in writing uncovered options.

[Rel. No. 34-26953; File No. SR-MSRB-89-3]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change Amending the MSRB's Arbitration Code Concerning Payment of Awards

On March 14, 1989, the Municipal Securities Rulemaking Board ("MSRB") submitted a proposed rule change (File No. SR-MSRB-89-3) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") to amend MSRB rule G-35, the Arbitration Code, to require that a dealer, within 20 days after receipt of an arbitration award against it, either pay the award or deposit the award amount in an escrow account; or provide the prevailing party with an irrevocable standby letter of credit.

Notice of the proposed rule change was given in Securities Exchange Act Release No. 26825 (May 15, 1989), 54 FR 22044. The Commission received no comments on the proposal.[1] This order approves the proposal.

The MSRB's Arbitration Code and rule G-17 on fair dealing require dealers to pay arbitration awards promptly, unless a timely motion to vacate the award has been made according to applicable law. In its filing with the Commission, the MSRB stated that it is concerned that a number of dealers do not pay arbitration awards until the very end of the appeal period, even when they do not intend to appeal the award. The MSRB also stated that it is concerned about certain cases in which appeals have been filed solely to delay the payment of awards. The MSRB believes that such situations undermine the arbitration program's goal of providing a relatively quick and inexpensive means of resolving disputes involving municipal securities dealers, and that such situations are inconsistent with the MSRB's statutory mandate to protect investors. Therefore, the proposed rule change would require that a dealer, within 20 days after receipt of an arbitration award against it, either pay the award or, if the dealer is considering an appeal of the award, deposit the award amount in an escrow account established for this purpose by the dealer, or provide to the prevailing party an irrevocable standby letter of credit for the amount of the award.

If the dealer chooses to escrow the amount of the award, the amount of the award would be deposited with the bank in an escrow account pursuant to an escrow agreement subject to instructions consistent with the requirements of the proposed rule change. If an appeal is not filed by the relevant state or federal law deadline, or is filed but later withdrawn by the dealer prior to the entry of a final court order on the appeal, the escrow agreement must provide that the deposited funds would be delivered by the escrow agent to the prevailing party. If a final court order is obtained, the escrow agreement must provide for the delivery of the deposited funds pursuant to the court order.

If a dealer chooses to provide a letter of credit for the amount of the award, the dealer must provide that the amount of the award will be distributed to the prevailing party by the letter of credit issuer under certain circumstances. The letter of credit must provide for payment upon certification by the prevailing party that the dealer has not paid the amount of the award and (1) an appeal has not been filed by appeal date, or (2) an appeal was filed but later withdrawn by the dealer prior to the entry of a final court order, or (3) a final court order on the appeal has been entered in favor of the prevailing party. Any costs incurred in the escrow account or in the application for and issuance of the letter of credit would be borne by the dealer.

The MSRB believes that a dealer should pay an arbitration award promptly, and that the 20-day period stated in the proposed rule change will afford the dealer adequate time to obtain the required funds or make escrow or letter of credit arrangements. The MSRB believes that the proposed rule change will benefit the prevailing party in situations where that party does not receive payment of the award or notice that the funds have been deposited within the 20-day period. In such situations, the prevailing party could contact the appropriate enforcement agency which, instead of waiting for the statutory appeal period to expire, could bring an immediate action against the dealer for failing to comply with the rule.

The Commission agrees with the MSRB that a dealer should promptly pay an arbitration award, and that the 20-day period stated in the proposed rule change will afford the dealer adequate time to obtain the necessary funds or make escrow or letter of credit arrangements. Furthermore, the proposed rule change would foster the arbitration program's goal of providing a relatively quick and inexpensive means of resolving disputes involving municipal securities dealers, and thus would fulfill the MSRB's statutory mandate to protect investors. Thus, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB. In particular, the Commission finds that the proposal is consistent with section 15B(b)(2)(C), which requires MSRB rules to, among other things, "promote just and equitable principles of trade * * * to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest * * *." The Commission also finds that the proposal is consistent with section 15B(b)(2)(D), which states that the MSRB shall, if it deems appropriate—

> provide for the arbitration of claims, disputes, and controversies relating to transactions in municipal securities: Provided, however, That no person other than a municipal securities broker, municipal securities dealer, or person associated with such a municipal securities broker or municipal securities dealer may be compelled to submit to such arbitration except at his instance and in accordance with section 29 of this title.

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[1] The MSRB solicited comments on the proposed rule change in an exposure draft published in December 1988, and received seven comment letters and one oral comment in response thereto. The MSRB responded to these comments in its filing with the Commission. The comment letters and the MSRB's filing are available for inspection and copying in the Commission's Public Reference Room and at the MSRB's principal offices.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that File No. SR-MSRB-89-3, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(12).

Dated: June 21, 1989.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89-15225 Filed 6-27-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-26959; File No. SR-NYSE-88-19, Amdt. 2]

Self-Regulatory Organizations; Amendments to Proposed Rule Change by the New York Stock Exchange Relating to Shareholder Approval Policy for Domestic Companies

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 26, 1989, the New York Stock Exchange ("NYSE" or "Exchange") filed with the Securities and Exchange Commission amendments to proposed rules changes as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rules changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rules Changes

On July 13, 1988, the Exchange filed a proposed rule change relating to modifications to the shareholder approval policy. On December 8, 1988, the Exchange filed Amendment No. 1 to the shareholder approval policy. This Amendment No. 2 reiterates the revisions of Amendment No. 1, extends the grandfather period through the filing of this Amendment No. 2 and revises the original July 13, 1988 filing solely in the following respect:

Additions [Deletion]

* * * * *

312.00 Shareholder Approval Policy

312.01 Shareholder's interest and participation in corporate affairs has greatly increased. Management has responded by providing more extensive and frequent reports on matters of interest to investors. In addition, an increasing number of important corporate decisions are being referred to shareholders for thier approval. This is especially true of transactions involving the issuance of additional securities. Good business practice is frequently the controlling factor in the determination of management to submit a matter to shareholders for approval even though neither the law nor the company's charter makes such aprovals necessary. The Exchange encourages this growth in corporate democracy.

312.02 Companies are urged to discuss questions relating to this subject with their Exchange representative sufficiently in advance of the time for the calling of a shareholders' meeting and the solicitation of proxies where shareholder approval may be involved. All relevant factors will be taken into consideration in applying the policy expressed in this Para. 312.00 and the Exchange will advise whether or not shareholder approval will be required in a particular case.

312.03 Shareholder approval [prior to adoption] of a plan or arrangement (under (a) below) or prior to the issuance of securities (under (b), [or] (c) or (d) below) will be a prerequisite to listing when:

(a) A stock option or purchase plan is to be established or other arrangements made pursuant to which stock may be acquired by officers or directors, except for warrants or rights issued generally to security holders of the company or broadly-based plans or arrangements including other employees (e.g., ESOPS). In a case where shares are issued to a person not previously employed by the company, as an inducement essential to his entering into an employment contract with the company, shareholder approval may not be required.

(b) A business, a company, tangible or intangible assets or property or securities representing any such interest are to be acquired, directly or indirectly, from a director, officer or substantial security holder of the company (including its subsidiaries, affiliates or other closely related persons) or from any company or party in which one of such persons has a substantial direct or indirect interest if the number of shares of common stock to be issued or the number of shares of common stock into which the securities may be convertible exceeds one percent of the number of shares of common stock or one percent of the voting power outstanding* before the issuance.

An interest consisting of less than either 5% of the number of shares of common stock or 5% of the voting power outstanding* of a company or party shall not be considered a substantial interest or cause the holder of such an interest to be regarded as a substantial security holder.

(c) Common stock or securities convertible into or exercisable for common stock are to be issued in any transaction or series of *related* transactions, other than a public offering for cash, (i) if the common stock has or will have upon issuance voting power equal to or in excess of [25%] *20%* of the voting power outstanding* before the issuance of such stock or securities convertible into or exercisable for common stock, or (ii) the number of shares of common stock to be issued is or will be equal to or in excess of [25%] *20%* of the number of shares of common stock outstanding before the issuance of the stock. Exceptions may be made upon application to the Exchange when: (1) The delay in securing stockholder approval would seriously jeopardize the financial viability of the enterprise and (2) reliance by the company on this exception is expressly approved by the Audit Committee of the Board.

A company relying on this exception must mail to all shareholders not later than ten days before issuance of the securities a letter alerting them to its omission to seek the shareholder approval that would otherwise be required under the policy of the Exchange and indicating that the Audit Committee of the Board has expressly approved the exception.

(d) The issuance will result in a change of control of the issuer.

(e) [(d)] Only shares actually issued and outstanding (excluding treasury shares or shares held by a subsidiary) are to be used in making any calculation provided for in this paragraph. Unissued shares reserved for issuance upon conversion of securities or upon exercise of options or warrants will not be regarded as outstanding.

312.04 In the event that some or all of the shares to be issued in a transaction subject to shareholder approval under Para 312.03 must be listed, Exchange procedures will ordinarily permit the filing of applicable listing applications and Exchange approval to precede the shareholder vote subject to notice to the Exchange of the results of the shareholder vote and the issuance of the shares to be listed.

312.05 Where shareholder approval is a prerequisite to the listing of any additional or new securities of a listed company, the minimum vote which will constitute shareholder approval for listing purposes is defined as approval

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* "Voting power outstanding" refers to the aggregate number of votes which may be cast by holders of those securities outstanding which entitle the holders thereof to vote generally on all matters submitted to the company's security holders for a vote.

by a majority of votes cast on a proposal in a proxy bearing on the particular matter, provided that the total vote cast on the proposal represents over 50% in interest of all securities entitled to vote on the proposal.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rules changes and discussed any comments it received on the proposed rules changes. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

(1) Purpose

The Exchange has a policy which requires shareholder approval as a prerequisite to the listing of securities issued in connection with certain transactions, as more fully set forth in the Exchange's proposed rule change filing of July 13, 1988 and Amendment No. 1 filed December 8, 1988.

This Amendment No. 2 revises the original filing of July 13, 1988, reiterates Amendment No. 1 and incorporates certain changes resulting from conversations with and at the suggestion of SEC staff.

The proposed rule changes are consistent with Section 6(b)(5).

(2) Statutory Basis

The proposed rules changes are consistent with Section 6(b)(5) of the Securities Exchange Act of 1934 as amended ("the Act"). This section, among other things, requires Exchange rules to be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by this title matters not related to the purposes of this title or the administration of the Exchange. Furthermore, the proposed rules amendments are consistent with Section 11A(a)(1)(c)(ii) of the Act in that they will tend to assure fair competition among exchange markets and between exchange markets and markets other than exchange markets.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rules changes will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rules Changes Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments concerning its proposed rules change.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rules changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rules changes that are filed with the Commission, and all written communications relating to the proposed rules changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 10, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 23, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-15401 Filed 6-27-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26954; File No. SR-SCCP-87-3]

Self-Regulatory Organizations; Filing of an Amended Proposed Rule Change by the Stock Clearing Corporation of Philadelphia, Relating to Trade Guarantee Policy

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 8, 1989, the Stock Clearing Corporation of Philadelphia filed with the Securities and Exchange Commission the amended proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the amended proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Stock Clearing Corporation of Philadelphia ("SCCP") submits this amendment to the proposed rule change regarding the implementation of a policy to guarantee all pending Continuous Net Settlement ("CNS") trades as of midnight plus 1 day after the trade date for locked-in trades and on midnight on the day trades are reported to members as compared for non-locked-in trades. The new calculation for contributions to the Participants Fund which was set forth in the original filing is restated here but has not been further amended by this filing. The full text of the notice of the new policy is attached hereto.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for the Proposed Rule Change

The proposed rule change will authorize SCCP to guarantee the completeness of all pending CNS trades as of midnight plus 1 day after the trade date for locked-in trades and on midnight on the day trades are reported to members as compared for non-locked-in trades.[1]

The proposed rule change would also authorize SCCP to revise its Participants Fund contribution calculation so as to help offset the increased risks to SCCP or its Participants because of the improved trade guarantee.

At the present time, SCCP guarantees Regional Interface Organization (RIO) trades with other clearing corporations as of the fourth day after trade date. Until T+4 or the applicable settlement date, the Participant incurs the risk for the contra-side of the trade defaulting if SCCP ceases to act for a Participant experiencing difficulty. Pending CNS trades that do not meet specified guarantees are then cancelled and "exited" from the CNS system. It is then the responsibility of the defaulting and non-defaulting firms to settle the transaction on an individual basis.

Under the proposed new Trade Guarantee policy, SCCP will guarantee the completeness of all non-locked-in trades as of midnight on the day the trades are reported to Participants as compared (usually T+1 or T+2) and as of midnight plus 1 day after trade date for locked-in trades executed on the PHLX floor that are settled through SCCP. The latter trades are assured of no comparison problems as the PHLX computer captures both sides of the trade at the time the trade is entered into the system. Nevertheless, SCCP will wait until T+1 to guarantee such trades to conform with the timing of the guarantee provided to other trades.

RIO CNS trades will be guaranteed by the receiving clearing agency in accordance with the above-described policy. SCCP will not, however, guarantee such trades to any clearing agency unless such agency has also adopted a comparable trade guarantee.

In order to help minimize any additional risks to SCCP or its Participants resulting from the new Trade Guarantee, and to more adequately collateralize any CNS system risks, SCCP also proposes modification to the existing formula for calculating SCCP Participant Fund contributions. The new formula will now enable SCCP to collect the current mark to market value of the securities still pending to settlement, whereas under the old system, SCCP only collected the value of the securities on or after the settlement date (T+5).

On the effective date of approval of the proposed Trade Guarantee policy, contributions to the Participants Fund will be assessed to Participants based on the following formula:

Contribution will be based upon the larger of:

(a) A Participant's monthly average of trading activity based on the preceding quarter, $1,000 for every 25 trading units of 100 shares (with a $5,000 minimum and $50,000 maximum contribution.) The first $25,000 must be in cash and the remainder may be in high grade bond; [2] or

(b) A Participant's aggregate dollar amount of all long trades at their execution price for each quarter divided by the number of days in such quarter × 2% (with a maximum $100,000 contribution.[3] In addition to the above adjustments and as a further means of reducing enhanced trade guarantee generated risks, all Participant's Fund contributions will be adjusted daily with respect to any mark to the market exposure (with adjustments of less than $10,000 waivable by SCCP).

SCCP has examined the potential effects of this new formula for calculating Participants Fund Contributions. Only a few participants will be significantly effected and those firms have been made aware of their potential exposure. SCCP has also placed a $100,000 cap on any Participant's contribution in order to limit extreme increases.

The proposed rule change is consistent with section 17A of the Securities Exchange Act of 1934 (the "Act") in that it is consistent with the prompt and accurate clearance and settlement of securities transactions and fostering cooperation and coordination with persons engaged in the clearance and settlement of securities transactions by providing an efficient mechanism for the transfer of customer securities accounts with participants of registered clearing agencies.

B. Self-Regulatory Organization's Statement on Burden on Competition

SCCP does not believe that the rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments on the proposed rule change have not been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the SCCP consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of File No. SR-SCCP-87-03 will also be available for inspection

[1] This new trade guarantee does not alter the existing policy with respect to specialists. Under this existing policy, which has been in effect since 1982, SCCP guarantees, as of trade date, all trades executed by a specialist with a SCCP participant as the contra-side of the trade and which has been recorded in a SCCP margin account. Such trades are guaranteed to the extent of 1000 shares.

[2] This formula is the current one in use today.

[3] As a starting point, SCCP will base its initial calculation under this formula on a daily average of the last complete one month period (as opposed to quarter) before the effective date of the trade guarantee policy.

and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 19, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

June 22, 1989.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89-15226 Filed 6-27-89; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 2359]

Louisiana and Contiguous Counties in the States of Mississippi and Texas; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on June 16, 1989, I find that East Baton Rouge, Iberville, Livingston, St. Helena, Vernon, and West Baton Rouge Parishes, in the State of Louisiana, constitute a disaster loan area due to damages from severe thunderstorms and tornadoes which occurred on June 7 and 8, 1989. Eligible persons, firms, and organizations may file applications for physical damage until the close of business on August 14, 1989, and for economic injury until the close of business on March 16, 1990, at the address listed below: Disaster Area 3 Office, Small Business Administration, 2306 Oak Lane, Suite 110, Grand Prairie, Texas 75051.

or other locally announced locations. In addition, applications for economic injury from small businesses located in the contiguous parishes of Allen, Ascension, Assumption, Beauregard, East Feliciana, Iberia, Natchitoches, Pointe Coupee, Rapides, Sabine, St. John The Baptist, Tangipahoa, Upper St. Martin, and West Feliciana, in the State of Louisiana; the counties of Amite and Pike, in the State of Mississippi; and the counties of Newton and Sabine, in the State of Texas, may be filed until the specified date at the above location.

The interest rates are:

	Percent
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Businesses and Non-Profit Organizations (EIDL) Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations (EIDL) With Credit Available Elsewhere	8.125

The number assigned to this disaster for physical damage is 235912 and for economic injury the number are 677700 for the State of Louisiana; 677800 for the State of Mississippi, and 677900 for the State of Texas.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: June 19, 1989.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89-15205 Filed 6-27-89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2353; Amendment No. 4]

Texas (and Contiguous Counties in the State of Oklahoma); Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with the Notices of Amendment to the President's declaration, dated June 15 and 16, 1989, to include the counties of Archer, Clay, Hale, Knox, Marion, Rockwall, Sabine, Shelby, Taylor, Titus, and Trinity, in the State of Texas, as a result of damages from severe storms, tornadoes, and flooding, and to establish the incident period as May 4 through June 15, 1989.

In addition, applications for economic injury from small businesses located in the contiguous counties of Callahan, Castro, Coleman, Crosby, Fisher, Floyd, Foard, Frankline, Haskell, Hockley, Jones, King, Lamb, Lubbock, Nolan, Red River, Runnels, Stonewall, and Swisher, in the State of Texas, may be filed until the specified date at the previously designated location.

Any countries contiguous to the above-named primary counties and not listed herein have previously been named as contiguous or primary counties for the same occurrence.

All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business of July 17, 1989, and for economic injury until the close of business of February 20, 1990.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Date: June 20, 1989.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89-15206 Filed 6-27-89; 8:45 am]

BILLING CODE 8025-01-M

Small Business Investment Co.; Maximum Annual Cost of Money to Small Business Concerns

13 CFR 107.302 (a) and (b) limit maximum annual Cost of Money (as defined in 13 CFR 107.3) that may be imposed upon a Small Concern in connection with Financing by means of Loans or through the purchase of Debt Securities. The cited regulation incorporates the term "Debenture Rate", which is defined elsewhere in 13 CFR 107.3 in terms that require SBA to publish, from time to time, the rate charged on ten-year debentures sold by Licensees to the public. Notice of this rate will be published upon change in the Debenture Rate.

Accordingly, Licensees are hereby notified that effective the date of publication of this Notice, and until further notice, the Debenture Rate to be used for computation of maximum cost of money pursuant to 13 CFR 107.302 (a) and (b) is 8.95 percent per annum.

13 CFR 107.302 does not supersede or preempt any applicable law imposing an interest ceiling lower than the ceiling imposed by its own terms. Attention is directed to Section 308(i) of the Small Business Investment Act, as further amended by Section 1 of Pub. L. 99-226, December 28, 1985 (99 Stat. 1744), to that law's Federal override of State usury ceilings, and to its forfeiture and penalty provisions.

(Catalog of Federal Domestic Assistance Program No. 59.011, small business investment companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: June 21, 1989.

[FR Doc. 89-15207 Filed 6-27-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA); Special Committee 147—Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance Systems Airborne Equipment, Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given for the twenty-ninth meeting of RTCA Special Committee 147 on Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance Systems Airborne Equipment to be held July 18-20, 1989, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, D.C. 20005, commencing at 9:00 a.m.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) approval of the minutes of the twenty-eighth meeting, RTCA Paper No. 110-89/SC147-343; (3) TCAS Program status reports on FAA TCAS Program and Phase III Limited Implementation Program; (4) report of Pilot Working Group activities; (5) TCAS II change 6 validation summary; (6) review and approval of change 6 to RTCA Document DO-185; (7) other business; and (3) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC., on June 19, 1989.

Geoffrey R. McIntyre,

Designated Officer.

[FR Doc. 89-15215 Filed 6-27-89; 8:45 am]

BILLING CODE 4910-13-M

Maritime Administration

Change of Name of Approved Trustee; Continental Bank, National Association

Notice is hereby given that effective at the close of business December 12, 1989, Continental Illinois National Bank and Trust Company of Chicago, Chicago, Illinois, changed its name to Continental Bank, National Association.

Dated: June 20, 1989.

By Order of the Maritime Administrator.

James E. Saari,

Secretary.

[FR Doc. 89-15281 Filed 6-27-89; 8:45 am]

BILLING CODE 4910-81-M

Approval of Applicant as Mortgagee, First National Bank of Maryland

Notice is hereby given that The First National Bank of Maryland, having offices at 25 S. Charles Street, Baltimore, MD 21201, has been approved as Mortgagee pursuant to Pub. L. 100-710 and 46 CFR 221.43.

Dated: June 22, 1989.

By Order of the Maritime Administrator

James E. Saari,

Secretary.

[FR Doc. 89-15279 Filed 6-27-89; 8:45 am]

BILLING CODE 4910-81-M

Removal From Roster of Approved Trustee; Mercantile Bank National Association

Notice is hereby given that effective March 25, 1988, Mercantile Bank National Association (Charter No. 21073), St. Louis, Missouri 63101, was merged into Mercantile Bank of St. Charles County National Association under the charter of the latter company and ceased to exist.

Therefore, pursuant to Pub. L. 89-346 and 46 CFR 221.21-221.30, Mercantile Bank National Association (Charter No. 21073) is removed from the Roster for Approved Trustees.

This notice shall become effective on date of publication.

Dated: June 22, 1989.

James E. Saari,

Secretary.

[FR Doc. 89-15282 Filed 6-27-89; 8:45 am]

BILLING CODE 4910-81-M

Approval of Applicant as Trustee; Mercantile Bank National Association

Notice is hereby given that Mercantile Bank National Association (Charter No. 21684), with offices at 721 Locust Street, St. Louis, Missouri 63101, has been approved as Trustee as of March 25, 1988, pursuant to Pub. L. 89-346 and 46 CFR 221.21-221.30.

Dated: June 22, 1989.

By Order of the Maritime Administrator.

James E. Saari,

Secretary.

[FR Doc. 89-15280 Filed 6-27-89; 8:45 am]

BILLING CODE 4910-81-M

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition

This notice sets forth the reasons for the denial of a petition submitted to NHTSA under Section 124 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1381 *et seq.*).

Russell J. Shew, on behalf of the Center for Auto Safety, petitioned the agency on January 23, 1989, to conduct an investigation for alleged sudden acceleration that would lead to the recall of all 1982 through 1988 General Motors Cadillac vehicles equipped with the 4.1-liter HT-4100 engine, not otherwise included in Engineering Analysis (EA) 88-031 which involves sudden acceleration in 1985-1988 General Motors C-cars. The petitioner did not identify, describe, or imply that any particular vehicular component, subsystem, or system malfunction or failure was responsible for the reports of "sudden acceleration." Based on complaints it has received in recent years, NHTSA has defined "sudden acceleration" as: unintended, unexpected high-power accelerations from a stationary petition or a very low initial speed accompanied by an apparent loss of braking effectiveness. However, in recent complaints to the agency the public has begun to label any instance of unwanted engine power, even if controllable by a brake application, as suden acceleration. In light of this, the petition was evaluated with regard to the possibility of either a sudden acceleration problem or an unwanted engine power problem. More than 90 percent of the subject vehicle population was previously analyzed in Engineering Analysis, EA78-110, which involved sudden acceleration in 1973-1986 General Motors passenger cars, and which was closed on August 5, 1986, with no common defect being identified.

With regard to unwanted engine power, there have been two safety recall campaigns in the subject vehicle population. Safety recall 87V-082 involved the potential for the floor mat to become mispositioned and interfere with the accelerator pedal in 1986 El Dorado and Seville models. Safety recall 82V-060 involved the replacement of a faulty accelerator cable bracket to prevent the cruise control servo rod from binding on the accelerator cable bracket in certain 1982 El Dorado and Seville vehicles.

A review of the complaints on file for

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the subject vehicles reveals that there are very few complaints of unwanted engine power. Moreover, the complaint rate for sudden acceleration for these vehicles is relatively low compared to the rates for other vehicles recalled for sudden acceleration (Audi and Nissan in recalls 87V-008 and 87V-098, respectively), and also compared to those vehicles currently under investigation for sudden acceleration.

Based upon this information, there is not a reasonable possibility that an order concerning the notification and remedy of a safety-related defect would be issued at the conclusion of an investigation into either sudden acceleration or unwanted engine power for these vehicles. In addition, in view of its overall enforcement efforts and resources, it would not be appropriate for the agency to commit additional investigative resources to the alleged defect. Therefore, the petition is denied.

Authority: Sec. 124, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1410a); delegations of authority at 49 CFR 1.50 and 501.8

Issued on June 22, 1989.

George L. Parker,

Associate Administrator for Enforcement.

[FR Doc. 89-15241 Filed 6-27-89; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: June 22, 1989.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New
Form Number: 8804, 8805 and 8813
Type of Review: Resubmission
Title: Partnership Withholding Tax Payment (Section 1446) (8813); Annual Return for Partnership Withholding Tax (Section 1446)-(8804); Foreign Partner's Information Statement of Section 1446 Withholding Tax (8805)
Description: Federal Form, Compliance Code Section 1446 requires partnerships to pay a withholding tax if they have effectively connected taxable income that is allocable to foreign partners. Forms 8804, 8805 and 8813 are used by withholding agents to provide IRS and affected partners with data to assure proper withholding, crediting to partners' accounts and compliance.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 5,000
Estimated Burden Hours Per Response/ Recordkeeping:

	8804	8805	8813
Recordkeeping	1 hr. 12 min	1 hr. 5 min.	7 min.
Learning about the law or the form	54 min	53 min	46 min.
Preparing the form	26 min	29 min	5 min.
Copying, assembling, and sending the form to IRS	20 min	17 min	10 min.

Frequency of Response: Quarterly, Annually
Estimated Total Recordkeeping/ Reporting Burden: 120,000 hours
Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89-15275 Filed 6-27-89; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: June 22, 1989.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New
Form Number: None
Type of Review: New Collection
Title: Customer Survey on Choice of Tax Forms
Description: The data collected will be used to identify the major reasons that taxpayers do not file the simplest tax form possible. This survey will enable the Service to explore more effective means to bring about a greater use of the appropriate forms that are sent to taxpayers
Respondents: Individuals or households
Estimated Number of Respondents: 2,400
Estimated Burden Hours Per Response: 10 minutes
Frequency of Response: One time survey
Estimated Total Reporting Burden: 400 hours
OMB Number: 1545-0002
Form Number: CT-2
Type of Review: Extension
Title: Employee Representative's Quarterly Railroad Tax Return
Description: Employee representatives file Form CT-2 quarterly to report compensation on which railroad retirement and on which railroad unemployement repayment taxes are due. IRS uses this information to ensure that employee representatives have paid the correct tax. Form CT-2 also transmits the tax payment
Respondents: Individuals or households
Estimated Number of Respondents: 28
Estimated Burden Hours Per Response/ Recordkeeper:
Recordkeeping, 26 minutes
Learning about the law or the form, 13 minutes
Preparing the form, 31 minutes
Copying, assembling, and sending the form to IRS, 17 minutes
Frequency of Response: Quarterly
Estimated Total Recordkeeping/ Reporting Burden: 162 hours
OMB Number: 1545-0718
Form Number: 941-M
Type of Review: Extension
Title: Employer's Monthly Federal Tax Return
Description: Form 941-M is used by certain employers to report payroll taxes on a monthly rather than quarterly basis. Employers who have failed to file Form 941 or who have failed to deposit taxes as required are notified by the District Director that they must file Form 941-M monthy.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 1,000
Estimated Burden Hours Per Response/ Recordkeeper:
Recordkeeping, 13 hours 52 minutes
Learning about the law or the form, 12 minutes
Preparing, copying, assembling, and sending the form to IRS, 26 minutes
Frequency of Response: Monthly
Estimated Total Recordkeeping/ Reporting Burden: 174,000 hours
Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89-15276 Filed 6-27-89; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: June 22, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

On June 22, 1989, the U.S. Customs Service, Department of the Treasury, requested an expedited approval by the Office of Management and Budget by July 7, 1989. The reason for requesting expected handling is to enable the attached worksheet to be mailed out prior to a late-July/early-August symposium concerning Intellectual Property Rights Protection.

U.S. Customs Service.

OMB Number: New.
Form Number: None.
Type of Review: New collection.
Title: Intellectual Property Rights.
Description: The information will be used to establish subject areas of interest to the public, outline legal protection presently available to U.S. individuals and to outline efforts underway to strengthen these protections and increase enforcement in this area.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 82.
Estimated Burden Hours Per Response/ Recordkeeping: 20 minutes.
Frequency of Response: One time only.
Estimated Total Recordkeeping/ Reporting Burden: 27 hours.

Letter and Worksheet

Dear _____:

The U.S. Customs Service has initiated a nationwide enforcement effort dealing with the protection of intellectual property rights. Our initial implementation will focus on violations affecting high technology industries. The Omnibus Trade and Competitiveness Act of 1988 provides expanded protection for intellectual properties. The "intellectual property" is generally used in the protection of patents, copyrights, trademarks and trade secrets. We believe that protection of intellectual property rights is vital in insuring that U.S. industry compete fairly in international markets.

As you are aware, the New England economy consists of many of the leading hight-tech companies in the country. This offers the Northeast Region of the Customs Service the opportunity to be in the forefront of this nationwide endeavor. Although the Customs Service is committed to increasing our efforts in enforcing intellectual property rights violations, it will require an equal commitment from the industries affected.

In the near future we are planning to host a symposium concerning Intellectual Property Rights Protection. The symposium will outline legal protections presently available to U.S. industries along with efforts currently underway to strengthen those protections and increase our enforcement in this area.

In order to assist the industries most affected, we would like to learn more about your concerns in this area. Please complete the enclosed worksheet and return it within ten days in the self-addressed envelope.

Should you have any questions concerning this letter or the worksheet enclosed, please feel free to contact Program Analyst Ruthann LaBay at (617) 565-6323 or Program Analyst Rick Wilcox at (617) 565-6324.

Sincerely,

Philip W. Spayd,

Regional Commissioner.

Enclosure.

The U.S. Customs Service is studying its efforts to help U.S. companies protect their intellectual property rights (IPRs)—such as trademarks and copyrights—in international trade. As part of the study, we have developed this worksheet to help us assess the Customs Service's ability to keep goods that violate U.S.-held trademarks, copyrights, and ITC Exclusion Orders issued on patent-infringing goods from entering or illegally exiting the county. Please complete the worksheet and return it within ten days in the self-addressed envelope.

Name _____
Title _____
Telephone _____
FAX _____

1. Is your company interested in actively participating with the U.S. Customs Service in an initiative aimed at the protection of your IPRs?
A. Yes _____
B. No _____

2. Is your company:
A. An importer _____
B. an exporter _____
C. both A&B _____
D. a domestic manufacturer only _____

[FR Doc. 89- Filed -89; 8:45 am]

BILLING CODE -M

3. What commodities does your company deal in (general description, i.e. computer software, integrated circuits, etc.)?

4. Check the appropriate response(s):
A. Does your company own:
A. patents _____
B. copyrights _____
C. trademarks _____

B. if your company owns patents, have ITC Exclusion Orders been issued against infringing goods?
A. Yes _____
B. No _____

C. Are your registered copyrights and trademaks recorded with U.S. Customs?
A. Yes _____
B. No _____

5. Does your company hold a governmental security clearance and/or classified export license?

6. Do you know of or suspect any foreign companies duplicating the goods covered by your IPRs and exporting them to the U.S.?
A. Yes _____
B. No _____
C. Unable to determine _____

7A. To what extent have counterfeit or infringing imports hurt your product's reputation with the consumer?
A. Little or none _____
B. Some _____
C. Substantially _____

7B. If substantial, estimate the value of lost sales since January 1, 1984.

8A. Have you provided Customs with information regarding the suspected or alleged production, importation, or exportation of goods and/or technical data infringing on IPRs held by your company?
A. Yes
B. No

8B. How satisfied have you been with the Customs Service's response?
A. Satisfied
B. Dissatisfied
C. Not Applicable

9. To what extent has Customs interdicted shipments of goods infringing on IPRs held by your company, without advance information from your firm?

10. Does your company use an in-house or outside investigative group to identify foreign-made counterfeit or otherwise infringing copies of goods destined to the U.S.?
A. Yes
B. No

11. How satisfied, or dissatisfied, are you with the ability of the Customs Service to protect IPRs?
A. Satisfied
B. Dissatisfied
C. Not Applicable

12. Would your company be willing to provide the Customs Service with the resources (testing equipment, specifications, training, etc.) necessary to verify potential violations?
A. Yes
B. No

13A. Would your company be interested in participating in a symposium sponsored by the Customs Service?
A. Yes
B. No

If the answer to 13A is "no," please go to question 14.

13B. How many representatives would you send?

13C. Would you like to provide a speaker? If yes, what topic?

14. Would you be willing to meet with a representative of the Customs Service and further discuss these issues prior to the planned symposium?
A. Yes
B. No

15. Please provide any comments, questions, or concerns:

Clearance Officer: Dennis Dore, (202) 535-9267, U.S. Customs Service, Paperwork Management Branch, Room 6316, 1301 Constitution Avenue NW., Washington, DC 20229
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 89-15277 Filed 6-27-89; 8:45 am]
BILLING CODE 4820-02-M

Fiscal Service

Renegotiation Board Interest Rate; Prompt Payment Interest Rate; Contracts Disputes Act

Although the Renegotiation Board is no longer in existence, other Federal Agencies are required to use interest rates computed under the criteria established by the Renegotiation Act of 1971 (Pub. L. 95-41). For example, the Contracts Disputes Act of 1978 (P.O. 92-563) and the Prompt Payment Act (Pub. L. 97-177) are required to calculate interest due on claims "* * * at a rate established by the Secretary of the Treasury pursuant to Pub. L. 92-41 (85 Stat. 97) for the Renegotiation Board."

Therefore, notice is hereby given that, pursuant to the above mentioned sections, the Secretary of the Treasury has determined that the rate of interest applicable for the purpose of said sections, for the period beginning July 1, 1989 and ending on December 31, 1989, is 9-1/8 per centum per annum.

Dated: June 21, 1989.
Gerald Murphy,
Fiscal Assistant Secretary.
[FR Doc. 89-15265 Filed 6-27-89; 8:45 am]
BILLING CODE 4810-35-M

DEPARTMENT OF VETERANS AFFAIRS

Notice of Evaluations by the Department of Veterans' Affairs of Scientific Studies Related to the Effects of Exposure to Ionizing Radiation

AGENCY: Department of Veterans Affairs.

ACTION: Notice of evaluations.

SUMMARY: The "Veterans' Dioxin and Radiation Exposure Compensation Standards Act," (Pub. L. 98-542) and implementing regulations, 38 CFR 1.17, require that there be published from time to time evaluations by the Department of Veterans Affairs (VA) of scientific or medical studies relating to the adverse health effects of exposure to ionizing radiation. This notice is concerned with the following scientific studies reviewed in April 1987 by the Scientific Council of the Veterans Advisory Committee on Environmental Hazards, an advisory committee established pursuant to Pub. L. 98-542.

FOR FURTHER INFORMATION CONTACT: Roger H. Shannon, M.D., F.A.C.R., Director, Radiology Service (114), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233-2134.

SUPPLEMENTARY INFORMATION: In reviewing each of these studies, the following factors were considered:

(a) Whether the study's findings are statistically significant and replicable,

(b) Whether the study and its findings have withstood peer review,

(c) Whether the study's methodology has been sufficiently described to permit replication,

(d) Whether the findings of the study are applicable to the veteran population of interest, and

(e) The views of the Veterans Advisory Committee on Environmental Hazards. (The views of the advisory committee are contained in the minutes of these meetings. Copies of the minutes may be obtained from Frederic Conway (02C), Special Assistant to the General Counsel, Department of Veterans' Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-2182.)

Studies Reviewed

(a) Darby, "Some Recent Statistical Analyses of Two Long-Term Studies of Exposure to Ionizing Radiation." (Stats. in Med. 5:539-546 (1986).)

(b) Editorial, "Dermatologic Radiotherapy, the Risk-Benefit Ratio." (Arch. Dermatol. 122:1385-1388 (1986).)

(c) Editorial, "Human Effects Following Exposure to Ionizing Radiation." (Arch. Dematol. 122:1380-1382 (1986).)

(d) Evans, et al., "The Influence of Diagnostic Radiography on the Incidence of Breast Cancer and Leukemia." (N. Eng. J. Med. 315:810-815 (1986).)

(e) Goffman, "The Plutonium Controversy." (JAMA 236:284-286 (1976).)

(f) Ichimaru, et al., "Multiple Myeloma Among Atomic Bomb Survivors in Hiroshima and Nagasaki, 1950-1976; Relationship to Radiation Dose Absorbed by Marrow." (JNCI 69:323-328 (1982).)

(g) Johnson, "Cancer Incidence in an Area of Radioactive Fallout Downwind From the Nevada Test Site." (JAMA 251:230-236 (1984).)

(h) Linos, et al., "Low-dose Radiation and Leukemia." (N. Eng. J. Med. 302:1101-1105 (1980) and Letter to the Editor.

(i) Machado, et al., "Cancer Mortality and Radioactive Fallout in Southwestern Utah." (Am. J. Epidemiol. 125:44-61 (1987).)

(j) Nussbaum, "Survivor Studies and Radiation Standards." (Bull. of the Atomic Scientists 41:62- (1985).)

(k) Zufan, et al., "Epidemiological Investigation of Mutational Disease in the High Background Radiation Area of Jangjiang, China." (J. Radiat. Res. 27:141-150 (1986).)

Dated: June 23, 1989.
Edward J. Derwinski,
Secretary of Veterans' Affairs.

Evaluations

(a) Darby, "Some Recent Statistical Analyses of Two Long-Term Studies of Exposure to Ionizing Radiation." Stats. in Med. 5:539-546 (1986).)

The author looked at two major studies for agreement or reinforcement. The two studies were the life span study of the survivors of the Hiroshima and Nagasaki bombings and a study of a group of patients who had been treated with x-rays for ankylosing spondylitis. The author looked at the question of the relative risk for leukemia and other kinds of malignant disease, finding substantial constancy of relative risk, with the exception of leukemia and central nervous system tumors. She also noted substantial agreement in the risk per rad for leukemia in the two studies of approximately two cases per million per year per rad. Additionally, she noted a reinforcement between the two studies for the adult age groups in the relative risk for leukemia and solid cancers. The relative risk for solid cancers in both studies looked ostensibly constant as a function of progressing time. The conclusion reached by the author was that statistically the relative risk model appeared to be the most consistent with the data. She further concluded, "the similarity of the findings in two high dose studies, where exposure took place under very different conditions, increases confidence in generalizing from these studies to other irradiated populations and detailed modeling of the radiogenic risk indicates a simple relative risk model for a particular group of cancers."

Commentary: The Veterans Advisory Committee on Environmental Hazards (the Committee) believed that the paper presented strong evidence in support of the relative risk model and that the absolute risk model was not compatible with the data. Relatively wide error bars were noted by the Committee, however, and these were not commented on in the paper. The Committee further observed that this kind of study could only deal with all solid tumors as a group. It believed that while the analysis was relevant in terms of risk analysis it did not assist in answering the issue of probability of developing a radiogenic cancer.

An additional limitation of this analysis is that in both groups of irradiated subjects, the radiation was delivered at a high dose rate. It is also noted that risk estimates can only be derived from high dose studies where the exposure increases cancer mortality rates by 40 percent or more. The study is relevant to risk assessment at high doses and dose rates. It affords no basis for modifying VA's guidelines concerning the adjudication of claims based upon exposure to ionizing radiation.

(b) Editorial, "Dermatologic Radiotherapy, the Risk-Benefit Ratio." (Arch. Dermatol. 122:1385-1388 (1986).)

The editorial was occasioned by a paper on the results of a study of 14,140 patients in Sweden who had received Grenz ray for superficial skin cancer. That study indicated that these ultrasoft x-rays could cause a very small number of cancers in those who received high doses. The editorial commented that the risk of Grenz ray therapy was small and noted the non-stochastic and other effects of radiation therapy.

Commentary: The Committee believed the commentary to be of marginal relevance to the veterans' situation particularly since the veterans' exposure was to radiation of a different quality than that used in the study commented on by the editorial. The doses of the soft x-rays were very high and the results are not applicable for situations other than induction of skin cancer as a consequence of superficial radiotherapy.

(c) Editorial, "Human Effects Following Exposure to Ionizing Radiation." (Arch. Dermatol. 122:1380-1382 (1986).)

The paper discussed a few reports concerning injuries associated with the accident at Chernobyl. The editorial noted the increase in malignancies in the Hiroshima-Nagasaki population and the threat of radiation exposure to overall human health.

Commentary: The Committee considered this paper to be factually erroneous, uninformed and not of any significance. It is more a philosophical reflection of the relation of radiation to culture than a scientific statement. It bears no relevance to the veterans' experience. The Department concurs with this assessment.

(d) Evans, et al., "The Influence of Diagnostic Radiography on the Incidence of Breast Cancer and Leukemia." (N. Eng. J. Med. 315:810-815 (1986).)

This study sought to estimate the numbers of excess cases of leukemia and breast cancer attributable to diagnostic radiotherapy. The authors concluded that there was a small effect of radiation-induced carcinogenisis in relation to tumors of the bone marrow and breast. Induced cases of leukemia were estimated to be 1 percent of all cases of leukemia and somewhat less than 1 percent for induced cases of breast cancer.

Commentary: The Committee believed that some of the age-specific coefficients used to predict radiation-induced breast cancer were outdated and agreed with the criticism expressed in an accompanying series of Letters to the Editor. The study was based upon information on a closed population of 75,000 people in Maine to estimate exposure due to diagnostic x-ray procedures as a function of age. These data were then used to calculate dose to bone marrow and breast. Then using usual risk calculations and the calculated doses, the study reached the conclusion that 1 percent of the leukemias and less than 1 percent of breast cancer occurring in the United States might be associated with diagnostic radiography. The associated commentary analyzed the data and properly pointed out that the over-40 group for whom mammography is recommended are at little or no risk for breast cancer. The paper is relevant to veterans in the sense that they may have greater than average diagnosic x-ray exposure due to injuries received during their period of service and perhaps because of more extensive medical care received through the VA health care system than may be available to the general population. No basis for changing VA's guidelines was presented in this paper.

(e) Goffman, "The Plutonium Controversy." (JAMA 236:284-286 (1976).)

This paper focused on lung cancer. The author contended that plutonium's carcinogenicity had been seriously underestimated and that reliance upon a plutonium based energy economy would result in an excess of 130,000 additional fatalities per year in the United States.

Commentary: The Committee questioned the paper's conclusions and noted that the author in every choice he made took the higher figure with a resultant multiplicative effect. The Committee believed that the paper may be somewhat relevant to the veterans' experience but that the conclusions expressed were not supported by the data. The Department concurs with this assessment.

(f) Ichimaru, et al., "Multiple Myeloma Among Atomic Bomb Survivors in Hiroshima and Nagasaki, 1950-1976; Relationship to Radiation Dose Absorbed by Marrow." (JNCI 69:323-328 (1982).)

This paper deals with the estimated risk for multiple myeloma associated with the Hiroshima-Nagasaki bombings. The data suggest no increased incidence

of multiple myeloma in the 20 to 59 age group at the time of the bombing who received less than 50 rads. Also, the excess did not appear until more than 20 years following the exposure. The authors concluded that their analysis showed that the standardized relative risk adjusted for city, sex, and age at the time of the bombings increased with absorbed radiation dose to the bone marrow. The increased relative risk, the authors noted, did not appear to differ between cities or sexes and was demonstrable only for those survivors whose age at the time of the bombings was between 20 and 59 years. The estimated risk for those individuals was appproximately 0.48 cases per million person years per rad for bone marrow total dose.

Commentary: The Committee noted that the earlier literature generally did not conclusively relate the induction of multiple myeloma to radiation exposure but that more recent data from Japan does not show an apparent excess of multiple myeloma among the heavily irradiated survivors. The Department believes that the number of cases is so small that it is difficult to reach statistically significant conclusions. Among the over 50 rad group, there were a total of 5 cases. The Committee expressed concern that the Department's current guideline of a 5-year minimum latency period may be unreasonably short, a more reasonable minimum latency being 15 years. The Committee expressed criticism that the authors failed to look more closely at the below 50 rad exposure group. The Department is of the opinion that the paper would suggest that the exposure of veterans during the atomic weapons tests was too low to produce a measurable increase of multiple myeloma. A reassessment would be appropriate following a reevaluation of data accumulated between 1976 and 1982.

(g) Johnson, "Cancer Incidence in an Area of Radioactive Fallout Downwind From the Nevada Test Site." (JAMA 251:230–236 (1984).)

This study looked at Mormon populations in southwestern Utah exposed to radioactive fallout from atmospheric testing or from venting of underground nuclear detonations. The control population was the Mormon population for all of Utah. In looking at cancer incidence the author found 109 more cases of cancer than expected, with leukemia being the most prominent early (1958 through 1966). The excess of leukemia persisted into the later period examined, 1972 through 1980. Also observed were excess cases of lymphoma, thyroid cancer, breast cancer, gastrointestinal tract cancers, melanoma, bone cancer, and brain tumors.

Commentary: The Committee criticized the author for not having complete references to the sources upon which a number of statements in the paper were based. The Committee also believed that there were no organized data in the paper regarding the integrated exposure in residential communities in southwest Utah which might relate to personal doses actually received. Another criticism of the Committee was the failure to verify the cases by checking with the Utah Cancer Registry or with physicians, hospitals or the State Registrar of Vital Statistics. This failure may have resulted in an exaggeration of the excess solid cancers. Other criticisms included that the opportunity for media bias resulting in overreporting or exaggeration of reports of disease was very high and yet was not discussed in the paper. An additional criticism was the nonrandom selection for the individuals selected for interview and the town selected for examination. The Committee offered the opinion that the study was seriously flawed by methodological problems. The Department concurs with the Committee's assessment and further notes that while there was a claim that there was a subgroup with a history of acute radiation effects from fallout, no medical records of acute radiation fallout effects were reported on although this was a population with ready access to good medical care. Furthermore, the Department notes that the claim is made that in the period from 1967 to 1975, there was a 60 percent increase in cancer in the fallout group compared to the control group. The Department notes in this regard that there was only a 6 to 8 percent increase in malignancies through 1982 in the survivors of the Hiroshima-Nagasaki bombing. The Department concludes that the paper is not scientifically designed and cannot withstand strict scientific scrutiny.

(h) Linos, et al., "Low-dose Radiation and Leukemia." (N. Eng. J. Med. 302:1101–1105 (1980) and Letter to the Editor.

This paper presented a case control study on 138 patients with leukemias and the exposures that they had received from diagnostic x-rays with matched controls. The authors concluded that there was no statistically significant increase in the risk of developing leukemia after radiation doses of 0 to 300 rads (3 gy) to the bone marrow when the amounts were administered in small doses over long periods of time.

Commentary: A series of letters followed this study. The principal criticism expressed was that analyses were based on a small number of cases and that the authors had mixed together types of leukemia known to be induced by exposure to ionizing radiation with those that are not. The Committee agreed with the criticism that the study was of too low statistical power for the study's negative findings to be conclusive. The Department believes that the study is relevant to the veteran population in that it demonstrates that fractionated exposure even at high doses does not result in a detectable increase in leukemia—the malignancy most easily detectable after radiation exposure.

(i) Machado, et al., "Cancer Mortality and Radioactive Fallout in Southwestern Utah.," (Am. J. Epidemiol. 125:44–61 (1987).)

The study looked at three counties in southwestern Utah, an area where fallout levels were recorded to be higher, on the average, than elsewhere. The authors found no evident site-specific excess of any forms of cancer except leukemia. Mortality from all cancer sites combined was significantly lower in southwestern Utah than in the remainder of the State. Also, there were no significant changes between the pre- and post-fallout periods in comparisons of mortality in southwestern Utah with the rest of the State or with the United States. The study did find a significant excess of childhood leukemia. The authors did not see this excess as conclusive but rather as hypothesis generating.

Commentary: The Committee believed this to be a well-designed and well-conducted study. It did believe, however, that more work should have been done to determine whether the leukemia and mortality incidence was real. The Department concurs with this assessment. The paper notes that there were only 12 childhood deaths from leukemia in southwest Utah during 1950 to 1980 and so there is the problem of small number statistics. Bader (N. Eng. J. Med. 300:1491– (1979)) pointed out that in King County (Seattle), Washington, that although there were 217 childhood leukemia deaths from 1950 to 1952, in 1959 there were only 2 deaths and in 1963 there were 20. For successive 3 year periods the leukemia deaths were 25, 19, and 41. Thus, even with larger numbers, successive periods show a twofold difference in rates. It would appear that the increase in odds for leukemia and the decrease in odds for solid tumors may simply represent statistical variation.

(j) Nussbaum, "Survivor Studies and Radiation Standards." (Bull. of the Atomic Scientists 41:62– (1985).)

The principal thesis of this article was that cancer risks from low level radiation exposure are significantly higher than would be expected on the basis of internationally accepted standards for radiation protection. The author questioned the reliance upon the atomic bomb survivor data noting that the data collection did not begin until 1950. He noted that during the interval between 1945 and 1950, the survivors had experienced harsh weather conditions and inadequate food and medical supplies and poor sanitation services. He suggested, therefore, that those surviving until 1950 experienced the equivalent of the healthy worker or "survivor" effect with the result that the death rate among these individuals should have been significantly lower than the national average for Japan. Since it was not, the author questioned the conclusion that the only correlation with exposure was increased mortality due to cancer. The author also criticized other studies and put forward several studies which are contended to be supportive of the author's thesis that radiation is far more dangerous than officially acknowledged.

Commentary: The Committee noted that the author failed to note the existence of a number of studies and reviews which refute or question the papers that the author relied upon. Consequently, the Committee did not believe that the paper was credible and that it had little relevance to the veteran population of interest. The Department agrees with this assessment.

(k) Zufan, et al., "Epidemiological Investigation of Mutational Disease in the High Background Radiation Area of Jangjiang, China." (J. Radiat. Res. 27:141–150 (1986).)

This paper concerns an Epidemiological investigation of whether or not there is a higher rate of mutation-based disease (cancer, hereditary disease, and congenital defects) in inhabitants exposed to high levels of background radiation versus those that were exposed to normal levels of background radiation in a control area. The annual individual external exposure to environmental gamma radiation was 330 millirad per year in the high background radiation area and 114 millirad per year in the control area. The interim conclusions reported by the authors were: (1) no statistically significant differences were noted for total nor site specific cancer mortality rates between the two areas; (2) the rates for hereditary disease and congenital defects were almost identical in the two areas; and (3) a higher frequency of Down's Syndrome was noted in the high background area which may be due to the age of the mothers at the time of birth as well as the age distribution of the children examined. The authors noted that further study was needed before conclusions could be arrived at.

Commentary: The Committee had difficulty assessing this paper because of the incomplete presentation of data. The Department agrees with this assessment and notes that while the study was well formulated, it does need to be extended to gain credibility and/or ability.

Summary Comments and Conclusions

This group of 11 papers again indicates how difficult it is to produce incontestable epidemiological evidence. In spite of many projects being well covered and much effort being applied to their planning, implementation and interpretation, few ultimately withstand expert scrutiny and fewer shift the balance of existing precepts. Our solid knowledge is hard earned. For the most part, the questions that were elusive in the first pass of research remain difficult and yield to answers reluctantly.

Nevertheless, some advances have been suggested, if not established, such as the probably radiogenic qualities of multiple myeloma, the resilience of the body exposed to low doses of ionizing radiation, and some of the possible responses of the skin to radiation exposure.

Several items demonstrated the difficulty of dealing with stochastic effects which we know occur but which we cannot so easily identify in the pool. The uncertainty creates problems of judgment and, as some of the papers show, opens the issues at hand to a wide range of political and emotional interpretations that further compound the quest for oblectivity.

[FR Doc. 89–15252 Filed 6–27–89; 8:45 am]
BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 123
Wednesday, June 28, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMITTEE ON EMPLOYEE BENEFITS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 2:30 p.m., Monday, July 3, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

9. The Committee's agenda will consist of matters relating to: (a) The general administrative policies and procedures of the Retirement Plan, Thrift Plan, Long-Term Disability Income Plan, and Insurance Plan for Employees of the Federal Reserve System; (b) general supervision of the operations of the Plans; (c) the maintenance of proper accounts and accounting procedures in respect to the Plans; (d) the preparation and submission of an annual report on the operations of each of such Plans; (e) the maintenance and staffing of the Office of the Federal Reserve Employee Benefits System; and (f) the arrangement for such legal, actuarial, accounting, administrative, and other services as the Committee deems necessary to carry out the provisions of the Plans.

Specific items include: Salary administration for the Office of Employee Benefits.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: June 26, 1989.

William W. Wiles,
Secretary of the Board

[FR Doc. 89-15431 Filed 6-26-89; 2:55 pm]
BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

"FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 54 FR 26139, June 21, 1989.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11:00 a.m., Monday, June 26, 1989.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting:

Consideration of exception from the Board's policy on partisan political service by an employee of the Federal Reserve System.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Date: June 26, 1989.

Jennifer J. Johnson,
Associate Secetary of the Board.

[FR Doc. 89-15434 Filed 6-26-89; 3:27 pm]
BILLING CODE 6210-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m. Thursday, July 6, 1989.

PLACE: Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: The first three items are open to the public. The last item is closed under Exemption 10 of the Government in Sunshine Act.

MATTERS TO BE CONSIDERED:

1. Railroad Accident Report: Head-On Collision Between Iowa Interstate Railroad Extra 470 West and Extra 406 East, Altoona, Iowa, July 30, 1988.
2. Marine Accident Report: Fire On Board the Bahamian Passenger Ship SCANDINAVIAN STAR, Gulf of Mexico, May 15, 1988.
3. Reconsideration of Probable Cause: Aircraft Accident—Grand Canyon Airlines, Inc., and Helitech, Inc., Midair Collision, Grand Canyon National Park, June 18, 1986.
4. Opinion and Order: Administrator v. Thorn, Docket SE-8153; disposition of respondent's appeal.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382-6525.

Bea Hardesty,
Federal Register Liaison Officer.
June 23, 1989.

[FR Doc. 89-15343 Filed 6-26-89; 8:57 am]
BILLING CODE 7533-01-M

Corrections

Federal Register
Vol. 54, No. 123
Wednesday, June 28, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 998

[Docket No. FV-89-040]

Marketing Agreement 146 Regulating the Quality of Domestically Produced Peanuts; Relaxation of Outgoing Quality Regulations and Changes in the Terms and Conditions of Indemnification for 1989 Crop Peanuts

Correction

In rule document 89-14135 beginning on page 25439 in the issue of Thursday, June 15, 1989, make the following corrections:

1. On page 25442, the table heading "INDEMNIFIABLE GRADES" should be flush with the left margain and the heading "Maximum Limitations" should be centered immediately above the table.

2. On the same page, in the table, in the fourth column, in the 10th line, the entry corresponding with "Runner U.S. Splits (not more than" should read "2.00".

BILLING CODE 1505-01-D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 570

[Docket No. R-89-1440; FR-2647]

RIN 2501-AA83

Urban Development Action Grants (UDAG) Program; Changes to Project Selection System

Correction

In rule document 89-11736 beginning on page 21388 in the issue of Wednesday, May 17, 1989, make the following correction:

On page 21390, in the second column, in the third column of the table, under the heading "Maximum points" the third entry should read "33".

BILLING CODE 1505-01-D

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 103

Collective-Bargaining Units in the Health Care Industry

Correction

In rule document 89-9654 beginning on page 16336 in the issue of Friday, April 21, 1989, make the following corrections:

1. On page 16343, in the first column, in the eighth line, "herein" should read "therein".

2. On page 16344, in the third column, in the fourth complete paragraph, in the fifth line "necessary" should read "necessity".

BILLING CODE 1505-01-D

federal register

Wednesday
June 28, 1989

Part II

Environmental Protection Agency

40 CFR Parts 51 and 52
Requirements for the Preparation, Adoption, and Submittal of Implementation Plans; Air Quality, New Source Review; Final Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[AD-FRL 3603-7]

Requirements for the Preparation, Adoption, and Submittal of Implementation Plans; Approval and Promulgation of Implementation Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On August 25, 1983, EPA proposed amendments to its regulations addressing the construction of new and modified stationary sources of air pollution (48 FR 38742). The EPA proposed changes in eight areas of those regulations and provided additional guidance in three other areas. Today's notice announces final action on that part of the August 25 proposal dealing with "Federal enforceability" of emissions controls and limitations at a source. Essentially, EPA is retaining the existing Federal enforceability requirement. However, EPA is clarifying its regulation to specify that stationary source operating permits issued by a State may be treated as federally enforceable in certain situations, provided that the State's operating permit program has been approved by EPA and incorporated into the State implementation plan (SIP) under section 110 of the Clean Air Act (Act).

DATES: This action is effective on June 28, 1989.

ADDRESS: The public docket for this rulemaking, A-82-23, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section (LE-131), Room M-1500, Waterside Mall, 401 M Street, SW., Washington, DC. A reasonable fee may be charged for copying, as provided by the Act.

FOR FURTHER INFORMATION CONTACT: For Federal enforceability issues (except operating permits), Mr. David Solomon, EPA, New Source Review Section, Office of Air Quality Planning and Standards (MD-15), Research Triangle Park, North Carolina 27711; (919) 541-5375, (FTS) 629-5375. For operating permit issues, Mr. Kirt Cox, EPA, Air Quality Management Division, Office of Air Quality Planning and Standards (MD-15), Research Triangle Park, North Carolina 27711: (919) 541-5399, (FTS) 629-5399.

SUPPLEMENTARY INFORMATION:

I. Introduction

In August 1980, EPA extensively revised its regulations concerning the preconstruction review of new and modified stationary sources under the Act, 42 U.S.C. 7401-7642, in response to *Alabama Power Company* v. *Costle*, (the *Alabama Power* case) 636 F.2d 323 (D.C. Cir. 1979) (see 45 FR 52676, August 7, 1980). Five sets of regulations resulted from those revisions. One set, 40 CFR 51.166 (formerly 40 CFR 51.24), specifies the minimum requirements that a prevention of significant deterioration (PSD) [1] program must contain in order to warrant approval by EPA as a revision to a SIP under section 110 of the Act. Another set, 40 CFR 52.21, establishes the Federal PSD program, which is currently applied in many States as part of the SIP. Another set, consisting of two regulations, 40 CFR 51.165 (a) and (b) (formerly 40 CFR 51.18 (j) and (k)), specifies the elements of an approvable State permit program for preconstruction review in, or affecting, nonattainment areas. The fourth set, 40 CFR Part 51, Appendix S, embodies the nonattainment area Emissions Offset Interpretative Ruling (Offset Ruling), previously revised in January 1979 (44 FR 3273). The fifth set, 40 CFR 52.24, embodies the construction moratorium which applies in certain nonattainment areas.

In the fall of 1980, numerous organizations petitioned the U.S. Court of Appeals for the D.C. Circuit to review various provisions of those PSD and nonattainment preconstruction regulations. The court consolidated those petitions with a collection of challenges to the 1979 revisions to the Offset Ruling in *Chemical Manufacturers Association (CMA)* v. *EPA*, No. 79-1112 (D.C. Cir.). In June 1981, EPA began negotiations with the industry petitioners to settle the *CMA* case. The EPA entered into a comprehensive settlement agreement with the *CMA* petitioners in February 1982. Subsequently, the court granted a stay of the case pending implementation of the settlement agreement.

In the settlement agreement, EPA committed to propose certain amendments set forth in Exhibit A to eight parts of the regulations pertaining to new source review (NSR or preconstruction review) [2], to provide guidance in three additional areas, and to take final action on the proposals. On August 25, 1983, EPA published a notice of proposed rulemaking in accordance with that agreement (48 FR 38742). Among other things, EPA proposed to delete from certain provisions the requirement that controls or limitations on a source's emissions must be "federally enforceable" (i.e., enforceable by EPA) in order to be considered in determining whether a new or modified source will be "major" and therefore subject to PSD or nonattainment permitting requirements (applicability determination). The EPA also proposed to delete the requirement in § 51.18(j)(3)(ii)(e) (now § 51.165(a)(3)(ii)(e)) that emissions reductions obtained by one source from another (offsets) in order to obtain a nonattainment permit be federally enforceable.[3]

In the August 25, 1983 notice of proposed rulemaking, the Administrator stated that EPA would review comments on the proposed amendments carefully and with an open mind in order to make an independent judgment on their merits prior to taking any final action. The EPA has since received extensive public comment, including that presented at a public hearing held on September 29, 1983.

Today EPA is taking final action on the proposed changes to the "Federal enforceability" provisions. Essentially, as discussed in detail below, EPA is retaining the existing "Federal enforceability" requirements without change. However, EPA is amending the definition of "federally enforceable" and 40 CFR 52.23 to specify that State-issued operating permits are federally enforceable under certain circumstances. In another notice being published today, EPA is also taking final action on the remaining August 25, 1983 rulemaking proposals. Accordingly,

[1] A PSD program refers to requirements that must be met in an area designated as being in attainment of a national ambient air quality standard (NAAQS) or unclassifiable (see 40 CFR 51.166 and 52.21). Areas that are designated as nonattainment for a NAAQS must meet certain other requirements aimed at ultimate attainment of the NAAQS (see, e.g., 40 CFR 51.165(a) (formerly 40 CFR 51.18(j)) and 52.24).

[2] An NSR, or preconstruction review, is required as part of a SIP under 40 CFR Part 51, Subpart I (formerly 40 CFR 51.18 and 51.24) to ensure that construction or modification of a source will not cause violations of the State's control strategy or interfere with attainment or maintenance of a NAAQS. An NSR program includes permit programs satisfying the Act's requirements for review of major stationary sources in nonattainment and PSD areas (40 CFR 51.165(a) and 51.166) under circumstances described in more detail later in this notice. In addition to the major source NSR provisions, which are the focus of this rulemaking, virtually all States have a general NSR program applying to most minor sources.

[3] A basic requirement of nonattainment NSR of a potential major source is that the applicant for a nonattainment construction permit must show that its new emissions will be offset by emission reductions elsewhere (42 U.S.C. 7503(1)).

today's final actions fulfill EPA's commitments under Exhibit A of the *CMA* settlement agreement.

II. Background of Federal Enforceability Requirements

The five sets of PSD and nonattainment regulations promulgated in 1980 aim their substantive preconstruction review requirements at new "major stationary sources." Each set of rules defines a "major stationary source" as any stationary source that would have the potential to emit certain specified amounts of air pollutants (e.g., 40 CFR 51.165(a)(1)(iv) and 52.21(b)(1)). In each case, "potential to emit" is then defined as the "maximum capacity of a stationary source to emit a pollutant under its physical and operational design," but any limitation [4] on the capacity of a source to emit a pollutant is treated as part of its design only if the control or limitation is federally enforceable (e.g., id. at §§ 51.165(a)(1)(iii) and 52.21(b)(4)). The regulations then define "federally enforceable" as "enforceable by the Administrator" (e.g., id. at § 52.21(b)(17)).[5] The definition of "federally enforceable" adds that limitations that are enforceable by the Administrator include (but are not limited to) limitations imposed by: (1) The SIP itself, (2) a Federal PSD construction permit issued under 40 CFR 52.21 or any construction permit issued under regulations approved by EPA in accordance with Subpart I of 40 CFR Part 51 or 40 CFR 51.166, (3) a new source performance standard (NSPS) promulgated under section 111 of the Act (see 40 CFR Part 60), or (4) a national emission standard for hazardous air pollutants (NESHAP) promulgated under section 112 (see 40 CFR Part 61). In practice, EPA previously has declined to consider most other types of limitations as being "federally enforceable," including limitations that are enforceable by the Administrator under statutes other than the Clean Air Act.

In effect, those definitions require EPA and State authorities, in calculating the potential to emit of a proposed new source for a particular pollutant, to assume that the source would emit the pollutant at the maximum rate that the source could physically emit it, unless the source were subject to a limitation on its operation that EPA could enforce directly.

Each of the five sets of regulations also aims its substantive NSR requirements at "major modifications," a term which includes any significant net emissions increase at a major stationary source. The accounting system for determining such significant increases closely parallels the one described above for determining whether new sources exceed specific emission thresholds [6] (e.g., id. at § 52.21(b)(2)). Specifically, the regulations define a "net emissions increase" as the amount by which the sum of: (1) The increase in "actual" emissions from the proposed change, and (2) any contemporaneous and otherwise "creditable" increases and decreases in "actual" emissions at the source would exceed zero (e.g., id. at § 52.21(b)(3)(i)). The regulations then provide that a contemporaneous decrease in emissions is creditable only to the extent that it "is federally enforceable at and after the time that actual construction on the particular change begins" (e.g., id. at § 52.21(b)(3)(vi)(b) (emphasis added)).

Since a proposed new unit at an existing source has yet to produce emissions, each set of regulations also defines the actual emissions of any such change as its potential to emit (e.g., id. at § 52.21(b)(21)(iv)). The definition of "potential to emit," as noted above, contains a requirement for Federal enforceability of controls and limits.

Finally, for sources already in operation, each set of regulations provides that actual emissions, when they cannot be determined, may be presumed to equal any source-specific allowable emissions for the unit (e.g., id. at § 52.21(b)(21)(iii)). The definition of allowable emissions, like the definition of potential to emit, also requires, in many cases, Federal enforceability of any applicable limitations (e.g., id. at § 52.21(b)(16)).

The general purposes of the Federal enforceability requirements were: (1) To corroborate, through the procedures for obtaining SIP revisions or federally approved construction permits, that any voluntarily imposed limits on a source's capacity to emit are, in fact, part of its physical and operational design, and that any claimed limitations will be observed; (2) to ensure that an entity with strong enforcement capability has legal and practical means to make sure that such commitments are actually carried out; and, generally, (3) to support the goal of the Act that EPA be able to enforce all relevant features of SIP's that are necessary for attainment and maintenance of NAAQS and PSD increments (see 48 FR 38748, August 25, 1983).

III. Proposed Amendments to the Federal Enforceability Requirements

Shortly after the Federal enforceability requirements were promulgated, several parties to the *CMA* settlement agreement, representing industry, challenged requirements for Federal enforceability in the "potential to emit" and "net emissions increase" definitions, in court and in administrative petitions for reconsideration. They claimed that the Federal enforceability requirements were unnecessary and unduly burdensome. Specifically, they claimed that each approved SIP already prohibits construction of a new major stationary source or major modification without a PSD or nonattainment construction permit. Accordingly, any company that builds a project that emits, or has the potential to emit, pollution in excess of the applicable thresholds for classification as "major," without first obtaining such a permit, would be in violation of the law and therefore subject to subsequent enforcement action by EPA. Thus, they argued, EPA does not need the Federal enforceability requirement to deter a source operator from using a non-Federal control or limit to escape PSD or nonattainment NSR and then violating those controls or limits since, even if EPA could not enforce the limitations, it could enforce the prohibition against construction or modification without a PSD or nonattainment permit and shut down the source.[7]

The petitioners also pointed out that, to obtain a federally enforceable limitation, a company would have to apply to the State agency for the change

[4] As used in the rules and throughout this notice, "limitations" on a source's capacity to emit include such things as pollution control equipment, restrictions on operating hours, and restrictions on types or quantity of fuels to be used (see 40 CFR 51.165(a)(1)(iii)).

[5] The EPA's primary enforcement authority in such cases derives from section 113 of the Act, which authorizes EPA, under certain conditions, to enforce violations of a SIP and of certain orders and emissions standards. The EPA may also enforce, under section 304(a) of the Act, against any person: (1) Who violates any emissions standard or limitation (or order issued) under such standards or limitations, (2) or who constructs any new or modified major stationary source without a proper PSD or nonattainment construction permit, or (3) who violates any conditions of such a permit.

[6] For PSD purposes, pollutants currently included in this review are: (1) The pollutants for which a NAAQS, NSPS, or NESHAP exists; and (2) their precursors (e.g., 40 CFR 52.21(b)(2)(i) and (b)(23)(i)). For nonattainment purposes, they are the pollutants for which NAAQS exist and their precursors (see 45 FR 52711 (August 7, 1980)(col. 3); 40 CFR 51.165(a)(1)(v)(A)).

[7] The industry parties apparently assumed EPA would be aware of any actual violations of limitations and thresholds, but did not elaborate on that or on how monitoring of actual emissions would be as effective in preventing violations as the current regulations.

and then await whatever public procedures and EPA scrutiny were required. As a result, industry contended, a company could experience substantial expense and delay just in obtaining the necessary limitation.

In the August 25, 1983 notice of proposed rulemaking, EPA stated preliminarily that the Federal enforceability requirement might be unnecessary to some extent and that it would consider deleting it. The proposal was based on the possibility of delay and consequent expense that could arise from processing certain construction permit limitations or revising the SIP to make the applicable limitations federally enforceable. However, EPA emphasized that it still intended to achieve the purposes for which Federal enforceability was originally designed (48 FR 38748, August 25, 1983). Nonetheless, EPA was inclined at that time to think that the purposes of the Federal enforceability requirements could also be served by a requirement that limitations be enforceable by State or local governments, provided that such limitations were discoverable by EPA and the public (id). Accordingly, EPA proposed to: (1) Delete the word "federally" from the term "federally enforceable" in the definitions of "potential to emit," "net emissions increase," "allowable emissions," and "major modification,"[8] and from § 51.18(j)(3)(ii)(e) (now § 51.165(a)(3)(ii)(e)) (regarding offsets);[9] and (2) to replace the definition of "federally enforceable" with an expanded definition of "enforceable" (including discoverable limitations enforceable under State or local law).

IV. Summary of Comments on August 1983 Proposal[10]

A. Comments Generally Supporting the Proposal

As expected, many industry representatives expressed strong support for the proposed deletion of the Federal enforceability requirements. Most of these comments also supported the proposed new definition of "enforceable," although two industry associations suggested that no definition of "enforceable" was necessary.

In addition to the arguments discussed in the preceding section, the industry commenters made several general assertions in support of the proposal. First, they argued that since State and local operating permits and other requirements are still enforceable by the non-Federal authorities, source operators would comply with the State and local limitations even without Federal enforcement. Second, several commenters claimed that Federal enforceability requirements are inconsistent with the requirement in section 101 of the Act that State and local authorities be given primary responsibility for preventing and controlling air pollution. Third, all the industry commenters asserted that elimination of the Federal enforceability requirement would substantially reduce red tape and the delays and costs of obtaining a federally enforceable permit or SIP limitation. Fourth, several commenters claimed that Federal enforceability in the definition of "potential to emit" is inconsistent with the decision of the D.C. Circuit Court of Appeals in the *Alabama Power* case, 636 F.2d 323 (1979). In that case, the court clarified that a source's potential to emit must be based on actual emissions or "design capacity" for emissions of a source, including the effects of pollution control equipment required by law to be included in the design. The commenters argued that this focus on actual emissions or design implicitly requires EPA to give credit, in calculating a source's emission potential, for any controls or limitations required by State or local law or permits, even if they are not federally enforceable.

Fifth, several commenters argued that citizen enforcement of State and local permit limitations under the citizen suit provisions of section 304 of the Act would be preserved, even without the additional requirement of Federal enforceability, provided that the State/local permit processes are "coherent" and the permits themselves remain on file.[11]

One commenter also suggested, contrary to the position EPA took in the proposal, that offset credits should be considered enforceable (by a State, if not by EPA) even if the source providing the offset is not bound to reduce its emissions by a permit or other State limitation, provided that the offset source stipulates to the State that it will reduce its emissions and that the SIP allows such stipulations. The commenter argued that a State could enforce such a stipulation under its authority to prevent violations of the SIP.

B. Comments Opposing the Proposal

Several State air quality programs and environmental groups strongly opposed the proposed deletion of the Federal enforceability requirements on several grounds. First, the association of State and Territorial Air Pollution Program Administrators (STAPPA) commented that even though State and local governments have primary pollution control responsibility, they need the support of a credible Federal enforcement program to be most effective.

Two commenters asserted that Federal enforceability is the only effective means of assuring, during applicability determinations, that limitations are really intended to be observed and for assuring that offsets and limits are actually implemented. These commenters apparently felt that State and local enforcement is often less vigorous and effective than Federal enforcement, especially in light of the economic and other pressures some businesses can exert on State and local enforcement authorities. One commenter felt that the procedures involved in obtaining a federally enforceable limitation or offset are the only effective means of assuring that EPA and the public have a chance to identify and evaluate the intended limitation in advance.

With regard to offsets, one commenter pointed out that section 173 of the Act requires offset commitments to be "legally binding" and that when Congress enacted section 173, in 1977, it implicitly ratified EPA's Offset Ruling which required Federal enforceability. Thus, the commenter concluded, legally binding commitments probably refer to federally enforceable commitments.

Finally, the same commenter argued that citizen enforcement of offset transactions under section 304 would only be effective, as a practical matter, if the records of all such transactions are centrally located (i.e., at EPA's Regional Offices) in a standardized system, as they are under the existing

[8] The definitions of "major modification" exempt from applicability determinations certain increases in operating hours and switches in fuel or material used, unless the increase or switch is barred by a federally enforceable limit (e.g., 40 CFR 52.21(b)(2)(iii)(e)(1)).

[9] Although external offsets are not used to avoid nonattainment NSR, the purposes of requiring Federal enforceability of such offsets are essentially the same as for requiring Federal enforceability of limitations used to avoid such review.

[10] A more detailed "Summary of Comments" has been placed in the public docket for this rulemaking.

[11] Two industry commenters also alleged that the 1980 Federal enforceability requirements were procedurally invalid because, in their view, EPA did not provide adequate prior notice or opportunity to comment on the concept and lacked adequate record support for the requirement. The EPA disagrees with those comments and believes that the 1980 requirements were a logical outgrowth of the preceding proposal (44 FR 51924, September 5, 1979) and were amply supported by the rulemaking record at the time. However, those comments are now moot. Any possible procedural defects in the 1980 rules regarding Federal enforceability have been cured by this rulemaking.

Federal enforceability regulations. This commenter also criticized the proposal as it would affect Federal enforcement efforts, since enforcement actions against sources already constructed could be more difficult than action taken prior to construction.

V. Decision and Response to Comments

After consideration of the comments and reevaluation of the preliminary statements made in the August 1983 proposal, EPA has decided to retain the Federal enforceability requirement in all the provisions discussed above. In addition, to provide full internal consistency within the Federal enforceability provisions of 40 CFR Part 51, Appendix S (known as the "Offset Ruling"), EPA is, in a separate document also being published in today's **Federal Register**, amending section IV.C.3. of the Offset Ruling to clarify that emissions offsets involving reduced operating hours or source shutdowns must, like all emissions offsets, be federally enforceable (see Appendix S, section II.A.6.(v)(b)). In light of today's decision, EPA will not add the proposed new definition of "enforceable" to the regulations. However, as discussed below, EPA is clarifying that State operating permits may be treated as federally enforceable under certain conditions. This clarification will reduce any problems which may arise from the Federal enforceability requirements. The clarification is formally indicated by slight amendments to the definition of "federally enforceable" and to 40 CFR 52.23.

A. Federal Enforceability Is Necessary to Ensure That Limitations and Reductions Are Implemented

Since sources may avoid the protective requirements of PSD and nonattainment NSR by relying on State or local limitations or reductions, it is essential to the integrity of the PSD and nonattainment program that such State or local limitations be actually and effectively implemented.[12] The EPA continues to believe, as it did in 1980 (45 FR 52688–89), that Federal enforceability is both necessary and appropriate to ensure that such limitations and reductions are actually incorporated into a source's design and followed in practice.

The EPA agrees with those commenters, including STAPPA, who asserted that Federal enforceability is necessary to support State and local enforcement efforts. Although EPA believes that most State and local governments are committed to effective enforcement of their permit programs, it is true—as STAPPA and some environmental commenters pointed out—that the level of State and local enforcement is uneven, and that some States and localities have been unwilling or unable to enforce their programs effectively. It follows that, in the absence of a Federal enforcement capability to back up State and local efforts, there would be somewhat less incentive for sources to actually observe non-Federal limitations or, in the case of offsets, to make the reductions for which credit has already been given. The EPA cannot agree, contrary to the suggestions of some source operators, that State and local enforcement alone would always provide enough incentive to source operators to ensure adequate compliance.

The EPA also believes, as suggested by some environmental commenters, that, absent Federal enforcement capability, some State and local governments would be more susceptible to economic and other pressures from industry that could actually make State and local enforcement less effective than it currently is.[13] Conversely, the presence of a Federal ability to enforce limitations and reductions can give State and local bodies more leverage in dealing with sources to ensure compliance and should make such bodies more effective in their enforcement efforts.

The EPA also agrees with those commenters who pointed out that the processes by which federally enforceable limits or offset reductions are imposed (e.g., public notice and comments, notification to EPA) are the best and most reliable ways to ensure, in advance, that a source actually intends to observe a limitation or make a reduction in the future. Whether the limitation is contained in a SIP revision or a State permit issued under regulations approved by EPA and included in the SIP, public notice and opportunity for participation prior to construction is virtually guaranteed. At that point, EPA, or anyone else, can analyze the record to determine: (1) Whether a proposed limitation or reduction will produce the benefits claimed, (2) whether the applicant is seriously committed to the limitation, and (3) whether practical means to monitor compliance exist. Even though EPA has confidence that most State and local procedures would allow for some sort of public scrutiny even if Federal enforceability were deleted and the proposed expanded definition of "enforceable" adopted, there would be no assurance that every permit or limitation would receive effective scrutiny.

Similarly, as one environmental group pointed out, the current Federal enforceability requirement facilitates citizen enforcement of offsets (and, implicitly, other limitations) under section 304 of the Act, since all permits and commitments meeting the definition of Federal enforceability must undergo some public scrutiny and are kept in standardized files in EPA's Regional Offices. By contrast, without such a requirement, as under the proposed definition of "enforceable," the only records of many such transactions would be scattered around various State and local offices and would be more difficult to obtain. At a minimum, this could make citizen enforcement more difficult and costly and, therefore, less effective as a means of ensuring that limitations and reductions are actually implemented.[14]

For the reasons discussed above, EPA disagrees with those industry commenters who claimed that nonfederally enforceable State and local permits, if discoverable, would be an adequate substitute for Federal enforceability. The absence of potential Federal enforcement could result in: (1) Less incentive for sources to observe limitations; (2) more pressure on, and incentive for, State and local authorities to relax enforcement; and (3) decreased opportunities for effective citizen enforcement. Mere discoverability of permit limitations would not necessarily correct any of these problems, although it could create somewhat greater

[12] Similarly, it is important to the statutory goals of the nonattainment permit program (e.g., that all new construction is accompanied by offsets to assure "reasonable further progress" toward attainment, section 173(1)(A)) that external offsets from outside sources be actually implemented.

[13] The EPA also recognizes, as pointed out by the California Air Resources Board, that absent a nationwide, Federal enforcement presence, industry would be inclined to build, or move, sources to States with the least effective enforcement efforts. Such a possibility would give businesses more leverage over the State governments and could foster a competition among the States to actually relax enforcement efforts. The legislative history of the 1977 Act confirms that Congress intended the PSD requirements (by setting minimum criteria to be met in all States) to reduce such competition (H.R. Rep. No. 95–294, 95th Cong., 1st Sess. 140 (1977)).

[14] In addition, it is not certain that nonfederally enforceable State permit limitations or other commitments could be enforced under section 304 at all. That section allows citizen suits against any person who violates any limitation under the Act or any order issued by a State with respect to such a limitation, or who proposes to construct or does construct a major new source without a PSD or nonattainment construction permit (42 U.S.C. 7604(a)(1)). While violations of federally enforceable permit limitations may be subject to section 304 citizen suits, violations of nonfederal limitations or offsets arguably might not be.

incentives for compliance than would exist without it. Moreover, discoverability could itself pose practical problems, for both EPA and citizens, in those situations where the State or local permit process is incomplete or poorly organized or recorded.

The EPA also believes, contrary to some commenters' suggestions, that EPA's authority to enforce the prohibitions in most SIP's and in the Act (see sections 110(a)(2)(I), 165(a)(1), 167, and 304(a)(3)) against construction of major sources without a PSD or nonattainment permit (see also sections 113 and 167 of the Act) is not a completely satisfactory substitute for the current Federal enforceability requirements.[15] The commenters claimed that if any sources escaped PSD or nonattainment permit requirements solely because of a nonfederally enforceable State or local limitation, and later violated that limitation, then EPA could treat that source as major and enforce the construction prohibitions to maintain the integrity of the PSD and nonattainment programs (see 40 CFR 51.166(r)(2)) (formerly 40 CFR 51.24(r)(2)).[16] However, the exercise of this authority depends in large part on EPA's ability to show that the new source or modification is actually emitting a pollutant at levels above the relevant annual threshold. This is much more difficult in practice than showing that an instantaneous emissions limitation in a federally enforceable permit has been exceeded. This is often difficult to do as a practical matter and may be even more difficult in situations involving nonfederally enforceable permits or limitations where EPA had little or no notice of, or opportunity to participate in, that process. In addition, courts may be less willing to order strict compliance with the PSD and nonattainment construction prohibitions in those situations (e.g., to shut down the major source until the appropriate permit is obtained), given the impact that such an order could have on the source operator's investment and operation. In short, EPA does not believe that the ability to enforce PSD and nonattainment construction prohibitions, in these cases, in the absence of current Federal enforceability, would be a sufficient deterrent to prevent violation of nonfederally enforceable limitations or to maintain the integrity of the PSD and nonattainment programs.[17]

In summary, EPA has concluded that the specific purposes for which the Federal enforceability requirement was originally intended, and to which EPA recommitted itself in the August 1983 proposal, cannot be fully or adequately achieved in the absence of Federal enforceability. The EPA recognizes that those purposes—i.e., corroboration prior to construction or modification that limitations will be included in a source's design and observed in operation, and the presence of a strong enforcement authority capable of holding a company to its commitments—can sometimes be achieved by State or local authorities implementing nonfederal limitations. However, in general, State and local enforceability alone will not fully assure that those purposes are met across the nation. Rather, State and local enforcement, supplemented by potential Federal enforcement of limitations, is a much more effective and efficient method of achieving those goals and protecting the integrity of the PSD and nonattainment NSR programs.

The EPA also recognizes, however, as several commenters pointed out, that the Federal enforceability requirements could result in some lengthy and expensive delays in obtaining federally enforceable permits or SIP revisions. However, some delays can be minimized by streamlined processes for certain SIP revisions, including the direct final rulemaking process (47 FR 27073, June 23, 1982). The latter procedure can often be used by EPA to process and publish noncontroversial SIP revisions in less than 6 months. More significantly, today's action clarifies that States have the option of implementing a program pursuant to which State operating permits could be treated as federally enforceable. Pursuant to this approach, States have the option of adopting certain permit processing procedures such that operating permits issued under them would be considered federally enforceable, with no need for the individual permits to be submitted as SIP revisions. Such a program can reduce the potential for delay which exists in the present system, while serving to enhance the permitting process generally.

B. Federal Enforceability Is Consistent With the Requirements of the Act and the Alabama Power Case

Several industry commenters claimed that Federal enforceability is inconsistent with various provisions of the Act and with the decision in the *Alabama Power* case. The EPA disagrees.

First, EPA disagrees with those commenters who claimed that Federal enforceability is inconsistent with section 101(a)(2) of the Act, which states that regulation of air pollution sources is the primary responsibility of States and local governments. The EPA has always recognized this and encouraged and assisted the States in exercising their responsibility. The fact is, however, that the Federal enforceability requirements do not supersede or interfere with State and local governments' responsibility or their ability to take the primary role in regulating sources. Rather, as STAPPA recognized, the Federal enforceability requirements supplement and provide necessary support to State/local enforcement efforts. Indeed, as discussed above, Federal enforceability may promote more effective State/local enforcement by giving sources more incentive to comply and providing the States and localities more leverage over industrial sources. In any case, consistent with the primary role of State/local governments, EPA generally would not get involved in enforcing limitations unless those other bodies failed to enforce adequately.

Moreover, the Act itself, far from requiring EPA to remove itself from the enforcement of limitations or offsets, expressly authorizes EPA to enforce violations of SIP's by any person (which includes many source limitations under the definition of federally enforceable), with due deference to State/local primacy (see sections 113 and 167 of the Act). Thus, Congress intended that EPA play an important role in the enforcement of SIP requirements, and the Federal enforceability requirements are consistent with that intent.

The EPA also disagrees with those commenters who claimed that the Federal enforceability of limitations in the potential to emit definition is inconsistent with Congress' intent in using that term in section 169 of the Act.[18] Those commenters pointed out

[15] The EPA did suggest in the August 1983 proposal that that authority would help make the Federal enforceability requirements unnecessary (48 FR 38747). However, EPA did not suggest that this could be a complete substitute for the existing requirements.

[16] In some such cases, the State probably could enforce the PSD and nonattainment construction prohibitions as well. However, as discussed above, States may be less willing or able to do so in the absence of potential EPA enforcement than they now are.

[17] The comment of one industry source that stipulations by a source to reduce emissions for offset purposes should be considered enforceable by a State is now moot, since EPA has decided to retain the Federal enforceability requirement.

[18] The definition of "major emitting facility" in section 169, which is based on a source's potential to emit, on its face applies only to the PSD program.

Continued

that the court in the *Alabama Power* case found that a source's potential to emit must be based on its design capacity, including pollution control equipment required by law to be installed and used at the source (636 F.2d at 354). However, the court declined to express any opinion on whether, and to what extent, legal limitations on the operation of a source should be included in a source's design capacity (id. at 355 n.73). The industry commenters suggested, nonetheless, that Congress intended any legal limitations, including operational limits, whether or not enforceable by EPA, to be included in a source's design capacity.

However, EPA does not believe that anything in the court's opinion, or in the language, or in the legislative history, of section 169 requires that every legal limitation, of any type, be included in a source's design capacity. In fact, the court implicitly left it to EPA's discretion (in the first instance) to determine what type of operational limits, if any, should be credited to a source (id.). The EPA believes that it is within its discretion in requiring Federal enforceability of an operational limit before including it in a source's design, consistent with the court's analysis of "potential to emit" (see 45 FR 52888, August 7, 1980).

In the *Alabama Power* case, the court concluded that whether a source is major depends on its maximum actual emissions or its design capacity, which includes anticipated functioning of pollution controls (636 F.2d at 353). It then referred to pollution controls required by law as examples where the functioning of such controls can be anticipated. Essentially, the court said that EPA must predict a source's future maximum emissions in determining design capacity and that pollution controls required by law are a reasonable means of predicting such future emissions. Although the court did not otherwise indicate how EPA should make such predictions, the court was evidently referring to predictions of actual emissions (id.). The EPA believes, therefore, that Congress (and the court) intended, or would have intended, such predictions to be reliable and reasonably accurate projections of future emissions.[19] As discussed above, EPA does not believe that nonfederally enforceable limitations are as likely to be as uniformly observed as federally enforceable limits and that requiring Federal enforceability is the best and most effective way to ensure maximum compliance by sources with limits. Thus, EPA believes that the Federal enforceability requirement is the most appropriate and reliable way to predict maximum future emissions and that it is, therefore, consistent with section 169 to define "potential to emit" to include that requirement (see 45 FR 52688).[20]

Similarly, EPA believes (as one commenter pointed out) that the Federal enforceability requirement in 40 CFR 51.165(a)(3)(ii)(e), requiring all emissions offsets used to satisfy the nonattainment preconstruction review requirements to be federally enforceable, is consistent with the requirement of section 173 that such offsets must be "legally binding." The 1977 legislative history of the Act supports that interpretation of section 173. It is clear that Congress was well aware at the time that EPA was then operating under an early (1976) version of an Offset Ruling (41 FR 55524, December 21, 1976) (see, e.g., 42 U.S.C. 7502 note (1982) H.R. Rep. No. 95-294, supra, at 13-14, 206). Congress implicitly ratified the 1976 Offset Ruling approach by giving each nonattainment State the option of choosing to remain under that Offset Ruling indefinitely, and by requiring that that Offset Ruling remain in effect [21] in every State, unless and until the State revised its SIP to comply with the nonattainment provisions in sections 172-173 (See 42 U.S.C. 7502 note; H.R. Rep. No. 95-294, supra, at 206; H.R. Rep. No. 95-564 (Conf. Rep.), 95th Cong., 1st Sess. 156 (1977)). The 1976 Offset Ruling, in turn, required that offsets be enforceable by EPA as well as by States and private parties (41 FR 55530). As one commenter correctly observed, since there is no indication in the legislative history that Congress intended to revise that early Federal enforceability requirement in the Offset Ruling, it is likely that the reference to legally binding offsets in section 173 was based on that same concept. Thus, 40 CFR 51.166(a)(3)(ii)(e) is consistent with section 173.[22]

Moreover, Federal enforceability is often even more appropriate and more important for offsets in nonattainment permits than it is for limitations that are used by a source to avoid nonattainment permits. In the latter situations, even if the limitations were not federally enforceable, EPA would still have potential power to enforce construction prohibitions against sources that subsequently become major by virtue of their failure to observe such limitations. By contrast, without Federal enforceability of offsets, EPA would have no such leverage against an external offset source where that source fails to make the promised emissions reduction. For the same reasons that State and local enforcement are not, in general, an adequate substitute for Federal enforceability in the context of making applicability determinations, they are even less satisfactory in the context of offsets.

C. Response to Other Comments

One industry commenter, although urging EPA to drop the Federal enforceability requirement in general, argued that EPA should retain Federal enforceability in the definition of "major modification." That definition exempts certain fuel switches and increases in operating hours from being considered as modifications, even if they would increase emissions from the source,

However, those terms are equally applicable to NSR under the Offset Ruling, nonattainment requirements under Part D of Title I of the Act, and the construction prohibitions of sections 110(a)(2)(I) and 173(4) (see 45 FR 52880, August 7, 1980). Therefore, EPA's "potential to emit" definition is the same in all the PSD and nonattainment regulations, and EPA's analysis of what Congress (and the court) meant by potential to emit applies to all those regulations.

[19] In fact, the two examples the court gave (636 F.2d at 353) of controls required by law—i.e., NSPS and SIP provisions—are included in EPA's definition of "federally enforceable." Moreover, as the court indicated, Congress meant for major sources to be those that actually emit certain amounts of a pollutant, either at present or in the future (id.). It would not make sense for a source to be given credit for future emission limitations if there is no reasonable expectation that those limitations will actually be observed.

[20] For essentially the same reasons Federal enforceability is an appropriate part of the definition of allowable emissions," which may be used to define a new unit's actual emissions in applicability determinations (e.g., 40 CFR 52.21 (b)(21)(iii)). Since Congress meant for the statutory PSD and nonattainment requirements to apply only to sources actually emitting major quantities of pollutants, (see the *Alabama Power* case, 636 F.2d at 352-53), it follows that any method used to estimate actual emissions (other than direct measurement) should be as reliable and accurate as possible. Federal enforceability of emissions limitations is the best available means of estimating actual emissions for a new unit which has yet to produce any emissions.

[21] Congress intended that EPA have authority to amend the Offset Ruling (see 42 U.S.C. 7502; H.R. Rep. No. 95-294, supra, at 211), as EPA did in 1979 and 1980. A few areas are subject to that Offset Ruling.

[22] For essentially the same reasons that Federal enforceability of external offsets is consistent with the Act, Federal enforceability of internal emission reductions as an element of avoiding nonattainment or PSD permits is also consistent with the Act. Under the definition of "net emissions increase" (e.g. 40 CFR 52.21(b)(3)), a modification at a source may escape classification as "major" if its creditable (i.e., federally enforceable) emission decreases are large enough. If emission offsets in nonattainment permits must be federally enforceable, it makes sense that internal reductions used to escape such permit requirements should be no less enforceable.

unless those changes were prohibited by a federally enforceable (construction) permit condition. The industry commenter apparently feared that deletion of the requirement for Federal enforceability of such prohibitions in that definition, as proposed in the 1983 notice of proposed rulemaking, would work against industry since it would require many more fuel switches and operating hour changes to be counted as modifications than under the current rules. In fact, the commenter suggested that EPA increase the number of changes exempt from the modification definition by completely eliminating any reference to prohibited changes.

The EPA has decided not to amend the definition of major modification. The EPA believes that all NSR definitions should be as consistent as possible and that deleting the requirement for Federal enforceability in the definition of major modification would be inconsistent with its decision to retain Federal enforceability elsewhere. Moreover, the proposed revision of that definition could have created confusion and uncertainty as to which State and local prohibitions were enforceable. The EPA also agrees with the commenter that deletion of the word "federally" potentially could increase the number of prohibited fuel switches and other changes dramatically and could largely defeat the purpose for which the exemption was originally intended.

On the other hand, EPA must reject the commenter's suggestion that the definition be revised to exclude all fuel switches and operating hour changes from being considered modifications. One of the purposes of the Federal enforceability provision is the current definition is to support the prohibitions against such changes in SIP construction permits by making a violation of such a prohibition grounds, if the modification is major, for requiring a new PSD or nonattainment permit. The EPA believes this provision provides valuable added incentive to sources to comply with their permit limitations, and EPA is not persuaded that it should give up that leverage.

Another industry commenter suggested that if EPA deleted the Federal enforceability requirements and substituted a broader definition of "enforceable," as proposed, that the definition be narrowed to include only enforceability under Federal, State, or local air pollution control laws. Since EPA has decided not to adopt the proposed definition of enforceable, that comment is now moot.

D. General Enforcement Issues

Although EPA today concludes that it is appropriate to retain the Federal enforceability requirement, EPA agrees with the suggestions of some commenters that its authority to enforce prohibitions against construction of major sources which lack PSD or nonattainment permits through the "source obligation" regulations (e.g. 40 CFR 52.21(r) (1)–(4)) is an important deterrent to sources which might otherwise construct without a PSD or nonattainment NSR permit. Moreover, EPA believes that these regulations are significantly enhanced by the presence of the Federal enforceability requirement. If the permit obtained by a source is to be given status as federally enforceable in order to avoid NSR, it must have met the notice, source information, practical enforceability, and other strictures set forth in this document.

These same qualities of a federally enforceable permit make it much easier to determine, at a later date, whether the terms or intent of the permit have been violated and, if so, what enforcement action is appropriate. There are three options available to EPA for when a federally enforceable State permit has been or will be violated.

One option is simply to enforce, under section 113, the limitations in the permit which enabled the source to avoid NSR in the first instance, with the result that the source retains its minor status. This is appropriate where, despite the permit violations, it appears that the source intends to adhere to the emissions limitations in the future. However, EPA retains the right to enforce the PSD or nonattainment NSR violation as well.

The second option is to invoke the "source obligation" regulations, e.g., 40 CFR 52.21(r)(4), and treat the source as major by requiring it to obtain a PSD or nonattainment major source permit. This course is appropriate where the source, through a change in business plans, or through the belated realization that its original plans cannot accommodate the design or operational limitations reflected in its minor source permit, can no longer adhere to the limitations in that permit, and so exceeds them. As discussed in the preamble to the 1980 regulations, this option is also appropriate where the source (after receipt of its minor source permit) notifies the permitting authority in advance of its changed plans or expectations and the need for a future relaxation of the limitations in its current permit, without actually violating those limitations before obtaining a major source permit (see 45 FR 52689). Under either set of circumstances, pursuant to the "source obligation" regulations, EPA treats the source "as though construction had not yet commenced" for PSD and nonattainment permitting purposes.

The EPA believes that the exceedance or relaxation of a minor source permit, and the subsequent obtaining of a major source permit through compliance with the "source obligation" regulation, may not routinely involve penalties or additional sanctions other than those provided in section 113 for any period in which the source actually exceeded the limitations in its minor source permit. The EPA today clarifies, though, that a third general enforcement option is necessary and available under the Act and EPA's regulations in certain situations.

This third enforcement option is appropriate where EPA determines that a source obtained a permit containing limitations allowing it to escape preconstruction review as a major new source or major modification, not for the purpose of adhering to those limitations for an appreciable period of time in accordance with some legitimate business plan, but primarily with an intent to construct, and possibly begin operation of, a major new source or major modification without first obtaining a PSD or nonattainment permit. In such circumstances, EPA enforces the "source obligation" regulations, as in option two above, and requires the source to obtain a PSD or nonattainment permit "as though construction had not yet commenced." In keeping with the retrospective orientation of the "source obligation" regulations, however, EPA also looks to the beginning of actual construction on the new source or modification for purposes of additional enforcement action under sections 113 and 167 as well. Thus, under these circumstances, EPA treats the original permit obtained by the source, which previously allowed it to enjoy minor status, as not "federally enforceable" from the time construction begins on the new source or modification in question. It follows that EPA also treats the source's "potential to emit," as defined in 40 CFR 52.21(b)(4), as not being limited by the restrictions in the original permit. The net result is that EPA deems the new source or modification to have been major ab initio, and EPA considers seeking injunctive relief, civil penalties, and criminal sanctions, as appropriate, against the source under sections 113 and 167 from the beginning of actual construction.

The EPA today also wishes to briefly discuss the need and appropriate circumstances for resort to the third enforcement option. As a general matter, it is abundantly clear that Congress intended the NSR provisions in Parts C and D to require preconstruction review of major new sources and modifications. See, e.g., sections 160(5), 165(a), 165(e)(1) and (2), 110(a)(2)(I), 172(a)(1), 172(b)(6), and 173. The evident air quality planning and technology-forcing purposes of the Act's NSR provisions make the reasons for Congress' choice of statutory framework equally obvious. It is much easier, both in technical and practical terms, to consider the air quality impacts and pollution control requirements of a major new source of air pollution before it has been constructed and has begun operation rather than after. Nevertheless, there is a need to accommodate sources which, for legitimate business reasons, have constructed and begun operation as minor sources, but later discover that they now do, or in the future will, emit air pollutants at levels that will require them to be treated as major. In those circumstances, postconstruction review is unavoidable, and the "source obligation" regulations in 40 CFR 52.21(r)(4) and elsewhere are designed to fulfill this need.

At the same time, in keeping with the general legislative purpose, it is necessary that EPA take steps to prevent owners or operators from turning the statutory scheme on its head by using federally enforceable minor source permits in a manner inconsistent with the statute and with EPA's intention. In particular, EPA must discourage sources that would manipulate the NSR system by improperly obtaining minor status for a new source or modification. This could occur, for example, where the owner or operator's purpose is, from the start, to construct a new source or modification that would not be economically viable for any appreciable period of time if it were restricted to emitting at minor levels. If the source could construct, and even begin operation, under a minor source permit, and shortly thereafter obtain a postconstruction PSD or nonattainment permit when it is convenient to exceed minor emissions levels, with no possibility of other sanctions, it might encourage many owners or operators to proceed in this fashion. The result would be that the exception—postconstruction review in narrow, unavoidable circumstances—could swallow the general rule of preconstruction review. This result was not intended by Congress or EPA, and cannot be allowed.

It is not possible to set forth, in detail, the circumstances in which EPA considers an owner or operator to have evaded preconstruction review in this way, and thus subjected itself to enforcement sanctions under sections 113 and 167 from the beginning of construction. This is ultimately a question of intent. However, EPA will look to objective indicia to establish that intent. For example, if an application for a Federal PSD permit is filed at or near the same time as a State minor source permit, EPA will carefully scrutinize the transaction. The EPA will also look carefully at the economic realities surrounding a transaction. For instance, where it appears obvious that a proposed source or modification, by its physical and operational design characteristics, could not economically be run at minor source levels for an appreciable length of time, EPA will take notice. Examples include the construction of an electric power generating unit, which by its nature can only be economical if it is used as a base-load facility, that is proposed to be operated as a peaking unit, and the construction of a manufacturing facility with a physical capacity far greater than the limits specified in a minor source permit. The EPA may consider how a project's projected level of operation was portrayed to lending institutions, and may examine other records concerning projected demand or output. Significant discrepancies between operating levels as portrayed in these documents and operating restrictions in a minor source permit would justify consideration of enforcement action.

The EPA wants to emphasize, that under the third enforcement option, it does not generally seek monetary penalties, or any remedies other than those provided in the "source obligation" regulations, except in those cases where it believes it could show to the satisfaction of a court that a source owner or operator had obtained a minor source permit with the purpose of obtaining, after construction, a major source permit, so as to evade preconstruction review. The EPA in no way seeks to discourage or intends to penalize those owners or operators who accept emissions limitations in pursuit of legitimate business purposes, and who in good faith later seek a relaxation of those limitations. As discussed above, the "source obligation" regulations and section 113 enforcement sanctions (for any period in which minor source permit limits are actually exceeded) provide a complete remedy in those situations.

There is no need to revise the text of the NSR rules to explicitly provide for this third enforcement option. The "source obligation" regulations do not by their terms preclude—or even address—the issue of civil penalties or other enforcement action under sections 113 and 167. Similarly, it is not necessary to specify in the definitional provisions that a minor source permit obtained in order to evade the Act's preconstruction review requirements is invalid for the purpose of "federally enforceable" limitations on a source's "potential to emit," and cannot be used as a shield against enforcement action. Implicit in any regulatory scheme is the unwillingness to countenance fraud, misrepresentation, or other misuse, particularly where the result would contravene the underlying statutory or regulatory purposes. Today's action clarifies the purposes served by the EPA regulations in question and outlines the circumstances in which their misuse may lead to enforcement action.[23]

VI. State Operating Permit Program

A. Introduction

As noted above, today's final action includes clarification of EPA's policy on implementing its definition of Federal enforceability. Under this policy clarification, all terms and conditions contained in State operating permits will be considered federally enforceable, provided that the State's operating permit program is approved by EPA and incorporated into the applicable SIP under section 110 of the Act, and provided that the operating permit meets certain requirements.[24] This clarification of the Federal enforceability definition can minimize the time and expense required to obtain federally enforceable limitations. The EPA believes that by encouraging States to adopt federally enforceable operating permit programs, EPA has largely satisfied certain objections to the current definition of "federally enforceable" voiced by industry commenters.

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[23] Today's action also serves to clarify that EPA never intended that the source obligation regulations would serve to insulate a source owner or operator from penalties or other enforcement sanctions in cases of fraud or other misuse involving minor source permits. Any contrary interpretation that might be drawn from the preamble to the 1980 regulations (see 45 FR 52689) is thus inaccurate, and is hereby rejected.

[24] Various local air pollution programs operate air quality programs under their own regulations, which are approved into the SIP. The reader should understand that "State" operating permit programs encompass those local programs with jurisdiction over only part of a State as well as to statewide programs.

As discussed above, EPA recognizes that its previous application of the definition of "federally enforceable" could sometimes cause delay or expense in obtaining a limitation or control that EPA considers federally enforceable. That application of the definition treats, as federally enforceable, PSD construction permits issued under 40 CFR 51.166 (formerly 40 CFR 51.24) or 52.21, as well as all construction permits issued under regulations approved pursuant to 40 CFR 51.160–165 (formerly 40 CFR 51.18).[25] Under § 52.23, "[f]ailure to comply with * * * any permit condition or permit denial issued pursuant to approved or promulgated regulations for the review of new or modified stationary or indirect sources" is a violation of the implementation plan and may result in enforcement action under section 113 of the Act.

The EPA has always been concerned with the prompt processing of SIP revisions and permits. For example, to minimize delay in processing certain types of SIP revisions, EPA previously set up a streamlined process called direct final rulemaking (47 FR 27073 (June 23, 1982)). That process can shorten EPA's time for processing SIP revisions, in noncontroversial cases, to less than 6 months. The EPA will continue to use that procedure to process source-specific SIP limitations whenever possible.

The EPA is today emphasizing a more fundamental way to minimize delay and expense. Specifically, EPA is expressly expanding its definition of "federally enforceable" to include limitations and controls imposed in State operating permits, provided that the applicable State operating permit program has been approved by EPA as meeting certain conditions and has been incorporated in an appropriate SIP, and that the permit in fact conforms to the requirements of the approved program.

B. Discussion

State operating permit programs, although in common use in many States, have not been required to be included in the SIP,[26] although some States have voluntarily submitted various types of operating permit programs to EPA for approval and inclusion in a SIP. The EPA has authority to approve such programs into SIP's under section 110(a)(2) (B) and (D) of the Act. A few of these programs (e.g., Oregon's, 49 FR 36843 (September 20, 1984) and 51 FR 12324 (April 10, 1986) and Idaho's, 51 FR 22811 (June 23, 1986)) provide for sophisticated permit review and procedural safeguards. The EPA has already concluded that permits issued under those programs are federally enforceable. In addition, some States have operating permit programs that are not included in a SIP.

Traditionally, with a few exceptions such as Oregon and Idaho, EPA has not considered State operating permits, per se, to be federally enforceable.[27] However, EPA believes it has the authority to enforce limitations in certain types of operating permits and to consider operating permits as federally enforceable if they are issued pursuant to permitting programs (approved into the SIP) that meet the following criteria:

(1) The State operating permit program (i.e., the regulations or other administrative framework describing how such permits are issued) is submitted to and approved by EPA into the SIP.[28]

(2) The SIP imposes a legal obligation that operating permit holders adhere to the terms and limitations of such permits (or subsequent revisions of the permit made in accordance with the approved operating permit program) and provides that permits which do not conform to the operating permit program requirements and the requirements of EPA's underlying regulations may be deemed not "federally enforceable" by EPA.

(3) The State operating permit program requires that all emissions limitations, controls, and other requirements imposed by such permits will be at least as stringent as any other applicable limitations and requirements contained in the SIP or enforceable under the SIP, and that the program may not issue permits that waive, or make less stringent, any limitations or requirements contained in or issued pursuant to the SIP, or that are otherwise "federally enforceable" (e.g. standards established under sections 111 and 112 of The Act).

(4) The limitations, controls, and requirements in the operating permits are permanent, quantifiable, and otherwise enforceable as a practical matter.

(5) The permits are issued subject to public participation. This means that the State agrees, as part of its program, to provide EPA and the public with timely notice of the proposal and issuance of such permits, and to provide EPA, on a timely basis, with a copy of each proposed (or draft) and final permit intended to be federally enforceable. This process must also provide for an opportunity for public comment on the permit applications prior to issuance of the final permit.

States are free to continue issuing operating permits that do not meet the above requirements. However, such permits would not be "federally enforceable" for NSR and other SIP purposes. The EPA anticipates that some States may choose to continue current practices rather than alter their permit programs so as to render operating permits federally enforceable, particularly with respect to small sources. Other States may wish to subject only certain types or classes of permits to these requirements. For example, a State may decide to not follow public participation procedures for, and not submit to EPA, large numbers of permits for very small sources, because the State has no intention of using such permits as external emissions offsets, to qualify as a minor source or "net out" of NSR, or to demonstrate attainment of the NAAQS. The EPA expects that States will, for purposes of clarity and administrative efficiency, indicate within the federally enforceable permits that they are being accorded such status.

The above five criteria are modeled on the requirements for issuance of federally enforceable construction

[25] Sections 51.160–163 [formerly § 51.18 (a)–(i)] specify criteria for all new sources under section 110 (a)(2)(D) and (a)(4) of the Act that NSR programs must meet to be included in a SIP. Sections 51.165 (a) and (b) (formerly § 51.18 (j) and (k) , respectively, establish additional criteria that must be met for approval of construction permit programs under Part D of the Act for major new sources in nonattainment areas. However, EPA may also approve construction permit programs meeting §§ 51.160–51.163 that do not satisfy § 51.165(a) or (b), including construction permit programs for nonmajor sources. Permits issued under programs approved pursuant to §§ 51.160–51.163 are federally enforceable.

[26] Section 110(a)(2)(D) of the Act does require that a SIP include a "program to provide for * * * regulation of the modification, construction, and operation of any stationary source including" permitting programs for major sources. Similarly, section 172(b)(6) requires that a nonattainment SIP "require permits for the construction and operation of new or modified major stationary sources." However, those statutory provisions regarding operation of a source are satisfied by the requirement in EPA's rules that the terms of a PSD or nonattainment construction permit remain in effect throughout the life of the source (unless modified lawfully) (40 CFR 52.21(w)(1)) (see also section 173 of the Act (treats nonattainment permits to construct and operate as if they were one)).

[27] Although certain operating permits have not been considered federally enforceable, some of the terms and conditions appearing in such permits may be federally enforceable through other means. For example, if the terms of an operating permit are the same as those in a federally enforceable construction permit or the same as the limitations in a SIP or an NSPS, those terms are federally enforceable by virtue of EPA's authority to enforce the construction permit, the SIP, and the NSPS, but not the operating permit.

[28] EPA wishes to make it clear that no State is required to include operating permit programs in its SIP. Participation is voluntary.

permits. The first two general requirements outlined above are necessary so that EPA can invoke sections 113 and 167 of the Act and 40 CFR 52.23 to enforce the terms of the operating permit. These provisions essentially allow EPA to enforce against violations of an applicable SIP. By making the operating permit program part of the SIP and legally requiring, in the SIP, that permittees comply with such permits, any violation of such a permit will be enforceable under the SIP and subject to EPA enforcement.[29] In addition, by providing that an operating permit which does not conform to a SIP-approved program and EPA's underlying regulations may be deemed not "federally enforceable" by EPA, sources and States are placed on notice that EPA may find that such nonconforming permits cannot be used as external emissions offsets or to "net out" of PSD or nonattainment permitting requirements, or be considered as part of a State's demonstration of reasonable further progress toward attainment and maintenance of the NAAQS. Thus, for example, a State may issue an operating permit placing emissions limitations on an existing emissions unit at a source for the purpose of accommodating a new emissions unit at the source without triggering PSD review of the new emissions unit. If EPA later determines that permit conditions do not comport with EPA standards for enforceability, it may notify the permit-issuing agency and the source that EPA intends to enforce against the source for violations of PSD requirements regarding the new emissions unit if the operating permit conditions for the existing unit are not changed to EPA's satisfaction. For example, should EPA find that the limitations on the existing unit are not, in practical terms, enforceable (e.g., because of excessively long averaging times), EPA may deem those limitations not federally enforceable for purposes of the netting transaction, thereby triggering PSD review of the new unit.

The third condition is appropriate for two reasons. First, operating permit conditions that are at least as tight as existing SIP limitations will be consistent with, and promote the purposes of, section 110(a)(2)(B) of the Act, which requires all approvable SIP's to include "such * * * measures as may be necessary to ensure attainment and maintenance" of national ambient standards.[30] Moreover, section 116 provides that where an emissions limitation is in effect under an applicable SIP, a State "may not adopt or enforce any emissions standard or limitation which is less stringent."

The permitting process may not be used to create exemptions from any requirement contained in the SIP. Any such waiver or variance must be created through a formal SIP revision. The EPA also recognizes that, in some cases, individuals could differ as to whether a particular limitation is "as stringent as" another limitation. The EPA encourages review authorities to express new limitations in terms similar to those in the SIP (e.g., with respect to averaging times) to facilitate comparison with the existing SIP limitation. Where compelling reasons weigh heavily in favor of expressing the new limitation in different terms than the current SIP limit, the burden to demonstrate the equal or greater stringency of the new limit rests with the State. Such demonstrations must accompany the proposed and final versions of any applicable permit action.

The fourth condition for Federal enforceability—that the permit limitations be enforceable as a practical matter—is an essential element in EPA's implementation of the existing Federal enforceability requirement. If permit limitations, whether in operating or construction permits, were not practical to enforce, the purposes for which Federal enforceability was intended could not be met. Thus, all emissions units must be reasonably described, and verifiable, enforceable emissions limits must be assigned to them. For example, an emissions limit expressed only in tons of pollution per year would not be considered practically enforceable. Useful guidance as to what makes a permit condition enforceable is, however, contained in a document issued by EPA on September 23, 1987 entitled "Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency." That guidance contains a checklist which lists key areas to consider in determining enforceability. These areas include applicability, compliance date, specificity of conduct, any incorporation by reference, recordkeeping requirements, and exemptions and exceptions.

Similarly, the fifth condition—that EPA and the public be notified and given opportunity to comment on the issuance of operating permits—is consistent with EPA's current practice for construction permits (e.g., 40 CFR 51.161 (formerly 40 CFR 51.18(h))) and would make enforcement by EPA and private citizens much more effective and practical. Public notice and opportunity for comment are important parts of an operating permit program, but the form of such notice is subject to debate. Some States regard individual newspaper notices for permit applications as needlessly expensive and time consuming, especially since they process many permit applications but few are controversial. Several States have addressed these concerns through the use of State administrative registers, notice and distribution mailing lists, or monthly multiple application notices. In reviewing SIP submittals for operating permit programs, EPA will consider these and other techniques for meeting the twin goals of procedural completeness and administrative efficiency as long as ample opportunity is provided for comment on permits prior to their final issuance.

It is important that EPA maintain an effective oversight of permit decisions made pursuant to these programs. The EPA is not now implementing a formal review program with procedural tools such as a veto provision to address inappropriate permitting actions (see, e.g., 40 CFR 123.44 with respect to certain permits issued under the Clean Water Act). However, EPA will comment on proposed permits as may be reasonable. The EPA stresses that, in order to implement this review, States will be required to provide draft permits to EPA for comment. In addition, the State must provide EPA with copies of all final permits upon their issuance. If permits are issued inconsistent with the SIP as discussed above, EPA will consider those permits to be invalid and will pursue such enforcement action as may be appropriate. It should be noted that EPA's intent is to review these permitting actions in parallel with, and within the same schedule as, routine State procedural steps. The EPA intends to work with State programs to minimize any delay or intrusiveness from this activity.

The EPA realizes that the above five program criteria are general and do not address many details of implementation. This is, in part, desirable: the EPA invites States to develop programs that are consistent with their program needs and resources. The EPA will consult with States on the approvability of their

[29] Section 52.23 also provides that a violation of a condition in a permit issued pursuant to an approved regulation for review of new or modified sources is also a violation of the SIP.

[30] Requiring federally enforceable permit limitations to be at least as stringent as other SIP limitations is also consistent with the existing rules for NSR construction permits which require that such permits not result in violations of the SIP control strategy or interfere with attainment or maintenance of the ambient standards (e.g., 40 CFR 51.160(a) (formerly 40 CFR 51.18(a))).

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particular plan proposals. (It should be noted that an operating permit program will not become effective for the purposes described in this document until it is specifically so approved.) The EPA plans to issue further, more detailed, guidance as needed to assist States in developing and implementing approvable programs.

C. Policy and Regulation

The EPA believes that the definition of "federally enforceable" is broad enough to include operating permit limitations under the conditions discussed above, since it includes "all limitations and conditions which are enforceable by the Administrator" (id.). However, for the sake of clarity, EPA is amending the definition of federally enforceable to specify that operating permits issued under programs approved by EPA and incorporated into a SIP are federally enforceable.[31]

Similarly, even though 40 CFR 52.23—confirming that violations of SIP regulatory provisions and certain permits are subject to enforcement by EPA under section 113 of the Act—is broad enough to cover operating permit violations (under the previous conditions), EPA is also amending that section to clarify its applicability to operating permits. On the other hand, EPA does not believe that it is necessary to amend the "source obligation" regulations at 40 CFR 51.166(r)(2) (formerly 40 CFR 51.24(r)(2)) and 52.21(r)(4). As discussed previously, those sections require any source that was not subject to PSD permit requirements because of any enforceable limitation, and that later becomes "major" solely because of a relaxation in such a limitation, to undergo NSR as if it had not yet been constructed. This is in addition to possible enforcement action for violation of federally enforceable permit terms or circumvention of the preconstruction review requirements of the NSR program. The source obligation regulations extend, as written, to any source that used a federally enforceable operating permit limitation to avoid PSD NSR and later obtained a rescission or relaxation of that limitation. However, EPA will review each existing PSD SIP for any State seeking EPA approval of its operating permit program to ensure that the SIP contains a provision meeting the requirements of 40 CFR 51.166(r)(2) with respect to operating permits. In such cases, if the current SIP provision does not extend to operating permits, EPA would require an appropriate SIP revision as a prerequisite to approval of the operating permit program.

The EPA will respond to questions from the public on all of the operating permit issues discussed in this notice. In particular, EPA will respond to views on the need for further guidance specifying in greater detail the substantive and procedural elements that should be contained in an approvable operating permits program. In this regard, EPA points out that any State program that contains essentially the same provisions indicated above as conditions "1"–"5" would almost certainly be approved by EPA. Useful examples of a State operating permit program are offered by Oregon and Idaho. Those programs provide that the proposed source and its projected emissions and pollution control techniques must be described in detail. The programs also provide for notice to the public of permit applications and an opportunity to comment prior to permit issuance. The process is not available for permits that would constitute relaxations of the SIP. Copies of each permit are submitted to EPA (e.g., Oregon Administrative Rules, Chapter 340–20). The EPA is not now suggesting that every State program would need to be substantially the same as Oregon's or Idaho's, only that those programs could be used as models for an operating permit program that EPA likely will approve for federal enforceability purposes.

The EPA will also consult with States on methods by which existing operating permits could be made federally enforceable under a subsequently approved State operating permits program. The EPA suggests that in these cases, where a State can show that the existing operating permits were issued pursuant to a program later approved by EPA, the State could also submit such permits in bulk as revisions to the SIP. Such revisions could be processed in much less time than if each permit were processed separately.[32]

VII. Miscellaneous

A. Under Executive Order 12291, EPA must determine whether a regulatory action would be a major rule and therefore subject to the requirement for preparation of a Regulatory Impact Analysis. This action is not a major rule because it merely retains the current regulatory requirements, while offering States a more efficient means of complying with those requirements. It, thus, will not have any significant new economic impacts.

As required by Executive Order 12291, this action has been submitted to the Office of Management and Budget (OMB) for review. Any written comments from OMB on this action and any EPA written responses have been placed in the docket for this proceeding.

B. Since today's action merely retains or clarifies the existing regulations and does not promulgate significant changes to any rules, section 317 of the Act regarding an economic impact assessment does not apply.

C. In accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), I hereby certify that this action will not have a significant adverse impact on a substantial number of small entities, primarily because it retains the existing rules and creates no new burdens. Accordingly, no regulatory flexibility analysis is required.

D. The EPA has determined that this final EPA action has nationwide applicability. Accordingly, under section 307(b) of the Act, judicial review of this final action may be obtained only by filing a petition for review in the U.S. D.C. Circuit Court of Appeals within 60 days from the date of this notice. This action is not subject to judicial review in any subsequent civil or criminal proceedings for enforcement.

E. As provided by section 307(d)(1) of the Act, this rule is not subject to section 553(d) of the Administrative Procedure Act. Section 553(d) requires that substantive rules not take effect until 30 days after their publication unless they relieve a restriction or an agency finds good cause to make them effective sooner. Nevertheless, there is good cause to make this action effective immediately since it merely retains existing regulations while offering a more efficient means of implementation. Persons affected by the "Federal enforceability" requirements need not change their activities or plans in any way as a result of today's action, and a 30-day waiting period would serve no purpose.

F. Under Executive Order 12612, EPA must determine if a rule has federalism implications. Federalism implications refer to substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. For those rules which have federalism implications, a Federalism Assessment is to be made.

The Executive Order also requires that agencies, to the extent possible, refrain from limiting State policy options, consult with States prior to taking any actions that would restrict State policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. The Executive order provides for preemption of State law, however, if there is a clear congressional intent for the agency to do so. Any such preemption, however, is to be limited to the extent possible.

This final rule essentially retains the current rule as written. The action provides an opportunity for certain State operating permits to be considered federally enforceable, thus increasing State options for addressing the applicability of NSR rules to modified existing sources. Previously, the federally enforceable limits recognized by EPA for existing sources generally consisted of more time-consuming SIP revisions.

List of Subjects in 40 CFR

Part 51

Administrative practice and procedures, air pollution control, intergovernmental relations, reporting and recordkeeping requirements, ozone, sulfur oxides, nitrogen dioxide, lead, particulate matter, hydrocarbons, carbon monoxide.

Part 52

Air pollution control, ozone, sulfur oxides, nitrogen dioxide, lead, particulate matter, carbon monoxide, hydrocarbons.

Date: June 12, 1989.

William K. Reilly,

Administrator.

For reasons set forth in the preamble, Parts 51 and 52 of Chapter I of Title 40 of the Code of Federal Regulations are amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

1. The authority citation for Part 51 continues to read as follows:

Authority: Secs. 101(b)(1), 160–169, 171–178, and 301(a) of the Clean Air Act, 42 U.S.C. 7401(b)(1), 7410, 7470–7479, 7501–7508, and 7601(a).

2. Section 51.165 is amended by revising paragraph (a)(1)(xiv) to read as follows:

§ 51.165 Permit requirements.

(a) * * *

(1) * * *

(xiv) "Federally enforceable" means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within any applicable State implementation plan, any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I, including operating permits issued under an EPA-approved program that is incorporated into the State implementation plan and expressly requires adherence to any permit issued under such program.

* * * * *

3. Section 51.166 is amended by revising paragraph (b)(17) to read as follows:

§ 51.166 Prevention of significant deterioration of air quality.

* * * * *

(b) * * *

(17) "Federally enforceable" means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within any applicable State implementation plan, any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I, including operating permits issued under an EPA-approved program that is incorporated into the State implementation plan and expressly requires adherence to any permit issued under such program.

* * * * *

4. Appendix S is amended by revising paragraph II.A.12 to read as follows:

APPENDIX S—EMISSION OFFSET INTERPRETATIVE RULING

* * * * *

II. * * *

A. * * *

12. "Federally enforceable" means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within any applicable State implementation plan, any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I, including operating permits issued under an EPA-approved program that is incorporated into the State implementation plan and expressly requires adherence to any permit issued under such program.

* * * * *

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.21 is amended by revising paragraph (b)(17) to read as follows:

§ 52.21 Prevention of significant deterioration of air quality.

* * * * *

(b) * * *

(17) "Federally enforceable" means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within any applicable State implementation plan, any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I, including operating permits issued under an EPA-approved program that is incorporated into the State implementation plan and expressly requires adherence to any permit issued under such program.

* * * * *

3. Section 52.23 is amended by revising the first sentence to read as follows:

§ 52.23 Violation and enforcement.

Failure to comply with any provisions of this part, or with any approved regulatory provision of a State implementation plan, or with any permit condition or permit denial issued pursuant to approved or promulgated regulations for the review of new or modified stationary or indirect sources, or with any permit limitation or condition contained within an operating permit issued under an EPA-approved program that is incorporated into the State implementation plan, shall render the person or governmental entity so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement action under section 113 of the Clean Air Act. * * *

4. Section 52.24 is amended by revising paragraph (f)(12) to read as follows:

§ 52.24 Statutory restriction on new sources.

* * * * *

(f) * * *

(12) "Federally enforceable" means all limitations and conditions which are enforceable by the Administrator, including those requirements developed

[31] The subject proposal of August 25, 1988, although not specifically addressing this particular regulatory language, described the subjects and issues involved in detail. Today's regulatory clarification to reflect the policy on Federal enforceability is a logical outgrowth of the 1988 proposal for which EPA concludes that further notice and comment are unnecessary.

[32] Alternatively, a State might simply choose to wait until it has an approved operating permit program included in its SIP and then either renew or release existing permits under the approved program.

pursuant to 40 CFR Parts 60 and 61, requirements within any applicable State implementation plan, any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I, including operating permits issued under an EPA-approved program that is incorporated into the State implementation plan and expressly requires adherence to any permit issued under such program.

* * * * *

[FR Doc. 89-14661 Filed 6-27-89; 8:45am]
BILLING CODE 6560-50-M

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40 CFR Parts 51 and 52

[AD-FRL-3511-2a]

Requirements for Implementation Plans; Air Quality New Source Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On August 25, 1983, EPA proposed amendments to its regulations addressing the construction of new and modified stationary sources of air pollution which appear at 40 CFR 51.24 (now 40 CFR 51.166), 52.21, Appendix S to Part 51, 51.18(j) (now 51.165(a)) and 52.24 (see 48 FR 38742). That document presented eight areas of proposed rulemaking and additional guidance in three other areas. The EPA proposed those amendments and provided guidance in order to meet the terms of a settlement agreement between EPA and various industries and trade associations challenging the particular regulations in *Chemical Manufacturers Association (CMA)* v. *EPA*, D.C. Cir. No. 79-1112 (settlement agreement entered into February 22, 1982).

On October 26, 1984 (49 FR 43202), EPA took action on the component of the August 25, 1983 proposal dealing with fugitive emissions. This document constitutes final action on six of the seven other remaining issues in the August 25 proposal: (1) The definition of "significant" as it affects Class I area protection, (2) the innovative control technology waiver for sources which would impact Class I areas, (3) secondary emissions, (4) the crediting of source shutdowns and curtailments as emissions offsets in nonattainment areas, (5) banking of emissions offsets under 40 CFR Part 51, Appendix S, and (6) the requirement for health and welfare equivalence for netting. In addition, final action with respect to the other remaining issue, the Federal enforceability requirement, is being published in parallel with this document.

DATES: This rule takes effect on June 28, 1989. Under section 307(b)(1) of the Clean Air Act (Act), 42 U.S.C. 7607(b)(1), petitions for judicial review must be filed on or before August 28, 1989, in the U.S. Court of Appeals for the D.C. Circuit.

ADDRESSES: Material relevant to this rulemaking may be found in Public Docket A-82-23. This docket is located in U.S. EPA's Central Docket Section (LE-131), Waterside Mall, M-1500, 401 M Street, SW., Washington, DC 20460. The docket may be inspected between 8:00 a.m. and 3:00 p.m. on weekdays and a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. David Solomon, New Source Review Section, Office of Air Quality Planning and Standards (MD-15), Research Triangle Park, North Carolina 27711; (919) 541-5375; FTS 629-5375.

SUPPLEMENTARY INFORMATION:

I. Introduction

On August 7, 1980, EPA extensively revised its regulations concerning the preconstruction review of new and modified stationary sources "new source review" (NSR)) under the Act, 42 U.S.C. 7401-7642, in response to *Alabama Power Company* v. *Costle*, 636 F.2d 323 (D.C. Cir. 1979) (see 45 FR 52676). Five sets of regulations resulted from those revisions. The first set, 40 CFR 51.166 (formerly 40 CFR 51.24), specifies the minimum requirements that a prevention of significant deterioration (PSD) air quality permit program under Part C of the Act must contain in order to warrant approval by EPA as a revision to a State implementation plan (SIP). The second set, 40 CFR 52.21, delineates the Federal PSD permit program, which currently applies, as part of the SIP, in the roughly 20 States that have not submitted a PSD program meeting the requirements of 40 CFR 51.166. The third set, 40 CFR 51.165(a) and (b) (formerly 40 CFR 51.18 (j) and (k)), specifies the elements of an approvable State permit program for preconstruction review for nonattainment purposes under Part D of the Act. It elaborates on section 173 of the Act, 42 U.S.C. 7503. The fourth set, 40 CFR Part 51, Appendix S, embodies the "Emissions Offset Interpretative Ruling" (Offset Ruling), which EPA revised previously in January 1979 (44 FR 3274). The fifth set, 40 CFR 52.24, embodies the construction moratorium which EPA implements in certain nonattainment areas.

In the fall of 1980, numerous organizations petitioned the U.S. Court of Appeals for the D.C. Circuit to review various provisions of those PSD and nonattainment preconstruction regulations. Subsequently, the court consolidated those petitions into *CMA*, a collection of challenges to the 1979 revisions to the Offset Ruling. In June 1981, EPA began negotiations with the industry petitioners to settle the *CMA* case. The EPA entered into a comprehensive settlement agreement with those petitioners in February 1982. Subsequently, the court granted a stay of the case pending implementation of the agreement.

In the settlement agreement, EPA committed to propose certain amendments (set forth as Exhibit A of the agreement) to eight portions of the NSR regulations and to provide guidance in three additional areas, and to take final action on those proposals. Accordingly, EPA published a notice of proposed rulemaking in the August 25, 1983 **Federal Register** (48 FR 38742). The EPA noted that it would review the comments carefully and with an open mind and that it would take a new look at the proposals in order to make an independent judgment on the merits. The EPA received extensive public comment regarding the August 25, 1983 document, including that presented at a public hearing. In light of the public comments and on the basis of further evaluation, EPA has determined that it is appropriate to retain various portions of the regulations that had been proposed for deletion or revision, while making final certain other portions of the proposed changes.

The EPA addressed fugitive emissions in a separate **Federal Register** notice that was published on October 26, 1984 (49 FR 43202). This document constitutes final action on six of the remaining seven issues in the August 25, 1983 proposal.

With respect to the other remaining issue, Federal enforceability, EPA is today announcing, in a separate **Federal Register** item published in conjunction with this one, its decision to retain the Federal enforceability requirement.

Accordingly, today's final actions fulfill EPA's commitments under Exhibit A of the *CMA* settlement agreement.

II. Final Action on Proposal

A. Definition of "Significant"

1. Background

In revising the NSR regulations on August 7, 1980, EPA introduced provisions which use the term "significant." One of those provisions

defines a "major modification" subject to the PSD requirements as any change at a major stationary source that would result in a "significant net emissions increase" in any one of certain pollutants (e.g., § 52.21(b)(2)(i) (45 FR 52735)). The other provisions require an applicant for a PSD permit to meet certain requirements for control technology and air quality impact assessment for each pollutant regulated under the Act that the proposed project would emit in a "significant" amount (e.g., § 52.21(j) (45 FR 52740)).

In revising the PSD regulations, EPA also introduced a definition of "significant" (e.g., § 52.21(b)(23) (45 FR 52739)). The first paragraph of that provision defines "significant" in terms of rates of emissions. For example, a rate of 40 tons per year (tpy) or more is "significant" for sulfur dioxide (SO_2). Another paragraph of the definition, however, also defines "significant" in terms of ambient air impacts in Class I areas:

> Notwithstanding (the first paragraph), significant one means any emissions rate or any net emissions increase associated with a major stationary source or major modification which would construct within 10 kilometers of a Class I area, and have an impact on such an area equal to or greater than 1 microgram per cubic meter ($\mu g/m^3$), (24-hour average). * * *

(e.g., Section 52.21(b)(23)(iii) (45 FR 52739)).

In the *CMA* case, certain industry petitioners challenged the ambient-based threshold for "significant" emissions embodied in the paragraph quoted above. They contend that EPA, in promulgating it, violated section 165(e)(3)(A) of the Act, which prohibits EPA from requiring "the use of any automatic or uniform buffer zone or zones" respecting the assessment an applicant must perform of existing air quality within the impact area of it proposed project (42 U.S.C. 7475(e)(3)(A)—see Brief for Industry Petitioners on Fugitive Emissions (February 11, 1981) at 54; American Mining Congress Petition for Reconsideration, at 35-36).

In the August 25, 1983 rulemaking proposal, EPA proposed deletion of the ambient-based portion of the definition of "significant." It did so roughly on the grounds advocated by industry: That the definition constitutes a sufficiently low threshold for review as to arguably create a virtually uniform buffer zone with respect to air quality analyses (48 FR 38749).

2. Public Comment

a. *Comments Generally Favoring the EPA Proposal.* Various industry commenters agreed with the basis of the proposal that the 10 kilometer provision in the existing rules violates the section 165(e)(3)(A) proscription of buffer zones. Several industry commenters also stated that the general significance levels provide adequate protection, and that their use would be more workable and appropriate. An industry trade group stated that field instruments cannot detect changes in SO_2 or particulate matter as small as 1 microgram per cubic meter ($\mu g/m^3$) and that a threshold that small would prompt NSR over very broad areas in the west. Another commenter observed that sources subject to NSR would be required to analyze the impact of smaller sources that had avoided review.

b. *Comments Generally Opposing the EPA Proposal.* A Federal agency opposed the proposal since it would remove a requirement for analysis of potential adverse impacts on air quality related values in Class I areas, which Congress intended to receive the highest protection. These comments were supported by environmental groups. The Federal agency stated that applicability thresholds keyed to significant emissions rates do not provide adequate protection. First, they are based on tpy, and do not specify a maximum hourly or daily rate. Second, the agency stated it can be easily shown that sources with total emissions less than the significant rates can contribute to ambient concentrations greater than 1 $\mu g/m^3$ and, in cases of SO_2, may cause exceedances of the short-term Class I increment.

Third, that commenter noted further that, under the proposal, new source growth and modifications having emissions of total particulate matter or SO_2 less than the significance levels would neither establish baselines in affected Class I areas, nor consume PSD increments in areas where baselines had not been previously established. Conceivably, increases in particulate and sulfur oxides concentrations could reach national ambient air quality standards (NAAQS) levels in Class I areas from the cumulative effect of such sources without any review of the contributing sources under the PSD program.

With regard to industry's buffer zone argument, that commenter stated that the 10 kilometer distance in the definition of "significant" is really a technical analysis zone, not a prohibited no-growth buffer zone. Other commenters agreed that the 10 kilometer criterion was not a proscribed buffer zone, since it does not prohibit construction of a major source or determine in any automatic or uniform manner whether a proposed source may be permitted.

This commenter noted that if the 10 kilometer distance criterion were deleted, the 1 $\mu g/m^3$ impact criterion should be retained for sources at any distance from a Class I area, since it will assure establishment of a baseline when such impacts occur. Other commenters also urged that the 10 kilometer provision be dropped, but the 1 $\mu g/m^3$ threshold be retained, on the grounds that a source's distance from a Class I area is irrelevant to achieving the stated purposes of the Act and protecting air quality in Class I areas.

Two State air quality programs agreed that the general tpy significance levels will not protect a Class I area. One stated that, using EPA's recommended modeling criteria, a major source within 2 kilometers of a Class I area with complex terrain could probably consume the entire Class I 24-hour SO_2 increment by increasing SO_2 emissions 39 tpy. That program added that it is important to remember that 1 $\mu g/m^3$ is a 20 percent consumption of the 24-hour PSD increment for SO_2. An environmental group noted that an impact on air quality related values in a Class I area is a function of the amount of the pollution actually reaching an area rather than amount of pollution emitted from a source, and whether pollutants reach an area is influenced by the mode of emissions (stack versus fugitive) as much as by the amount of pollution. This group stated further that small changes as low as 1 $\mu g/m^3$ in ambient concentrations can have very significant effects on the acidity of water and on visibility in an area and that the 1 $\mu g/m^3$ threshold could be easily reached by a relatively modest shift of ground level fugitive emissions to stack plumes. In all of this, it is important to remember, the group concluded, that the Act's purposes focus on protecting and remedying the actual adverse effects of air pollution in Class I areas.

Finally, another commenter expressed concern that in unusual terrain the significance levels would not provide adequate protection for Class I areas, and a private commenter stated that his modeling showed that an existing 10 tpy emissions rate from a source within 10 kilometers of a national park exceeded the 1 $\mu g/m^3$ threshold.

3. EPA Analysis

Public comments and reconsideration of the legal issues have persuaded EPA to retain the current definition of "significant." A review of legislative

history indicates that Congress was concerned only about the potential for a "mandatory no-growth buffer zone" around Class I areas. The subject regulation does not violate this congressional directive. Rather, it merely triggers the requirement to get a PSD permit before constructing, so as to provide for additional protection for Class I areas. The commenting government agency adequately refuted the argument that the current requirement establishes a "no-growth" buffer zone by supplying several examples of sources which were permitted for locations within 10 kilometers of a Class I area.

The EPA concludes that the subject provision is a useful tool in implementing the important congressional purpose of protection of Class I areas. The general significant emissions rates do not assure this and EPA reaffirms that, standing alone, they are adequate only for Class II and III areas. It should be noted that the substantive comments favoring deletion of the requirement rely on the questionable premise that the tpy significance numbers would provide adequate Class I protection. Even one of those comments, from a State air quality program, indicates that this might not be enough under some circumstances and recommends a screening procedure based on increment consumption. Finally, promulgation of the proposal could prompt pressure to lower the tpy significance numbers, since those values would then have to protect Class I increments as well as the less stringent Class II values.

B. Innovative Control Technology Waiver

1. Background

When revising the PSD regulations in August 1980, EPA established, for the first time, a procedure for granting innovative control technology waivers of certain PSD requirements (see 45 FR 52735, 52741). The EPA patterned this procedure after the innovative control technology waiver in section 111 of the Act 42 U.S.C. 7411, for new source performance standards (NSPS). The regulations, however, entirely disallow such a waiver if a proposed project would impact any Class I area (e.g., 40 CFR 52.21(v)(2)(iv)(*b*)).

In the *CMA* case, certain industry petitioners challenged that disallowance provision. They contend primarily that the provision is arbitrary because it disallows the waiver even if an impact is insignificant or temporary (Fugitive Emissions Brief, at 55).

In the August 1983 rulemaking proposal, EPA preliminarily agreed with industry that the current formulation of the waiver is overly stringent with respect to Class I areas. Accordingly, EPA proposed to delete the current disallowance provision and to insert a new provision authorizing a waiver only if the requirements relating to Class I areas have been satisfied as to all periods during the life of the source or modification (48 FR 38750).

2. Public Comment

This part of the proposal attracted relatively little interest, with those commenting generally supporting the proposal. One commenter stated that it would be beneficial to allow this waiver, since it would provide an opportunity to achieve greater emission reductions at the same or lower cost. A State air quality program supported the proposal but would modify it to ensure that sources receiving waivers would not cause a violation of the air quality increment and would not be eligible for any special variance procedures for Class I areas provided by 40 CFR 52.21(p) (4)–(7). A local air pollution control agency opposed the proposal generally, stating that Congress intended that Class I areas receive maximum protection.

3. EPA Analysis

The EPA has decided to promulgate the deletion of this restriction as proposed. The EPA concludes that the limitation on the innovative control technology waiver is not necessary. As stated in the proposal, any applicant whose project would affect a Class I area can nevertheless obtain a PSD permit, if the applicant shows that the project would not cause or contribute to a violation of an increment for the area and the Federal land manager (FLM) fails to show that the project would adversely impact any air quality related values of the area (e.g., 40 CFR 52.21(p)(3)). In fact, even an applicant whose project would violate a Class I increment might be able to obtain a permit through special variance procedures under paragraphs (p)(4)–(7) of the regulations. In contrast, an applicant whose project would merely affect a Class I area cannot get the innovative control technology waiver under any circumstances. It is, therefore, inappropriate to deny an innovative control technology waiver to a source merely because it would affect a Class I area.

The EPA, in creating the original disallowance, sought to counter-balance an exemption that the waiver provision extends to applicants. Under paragraph (v)(2)(iii), an applicant does not have to show that the proposed project would not cause or contribute to an increment violation while operating under the waiver (45 FR 52727). As a result, but for the disallowance, a project under a waiver could violate a Class I increment or adversely affect an air quality related value. The EPA agrees, however, that the waiver provision can be refined to exempt an applicant from providing most of the air quality impact analysis that it would otherwise have to provide with respect to the waiver period and still protect Class I areas fully.

To assure adequate protection of Class I areas, EPA is inserting a provision that allows the permitting authority to grant a waiver only if the provisions relating to Class I areas (i.e., subsection (p)) have been satisfied with respect to all periods during the life of the source or modification. This provision expands the circumstances in which a waiver is available, but with additional demonstrations for some applicants.

C. Secondary Emissions

1. Background

The 1978 version of the Part 52 PSD regulations provided in 40 CFR 52.21(1) that, to obtain a permit, an applicant had to show, among other things, that the proposed project would neither cause nor contribute to a violation of a PSD increment or NAAQS (43 FR 26407). The preamble to the regulations added that an applicant, in making that showing, generally had to include any quantifiable "secondary emissions" of the proposed project (43 FR 26403).[1] The 1978 Part 51 PSD regulations echoed those requirements: it required any State PSD program to contain a provision equivalent to § 52.21(1). A definition of "secondary emissions" did not appear in the Part 51 or Part 52 regulations or in the preambles to them at that time.

In revising the PSD regulations in August 1980, EPA retained, in the form of new §§ 52.21(k) and 51.24(k) (now § 51.166(k)), the requirement for a demonstration that a proposed project would neither cause nor contribute to a violation of a PSD increment or NAAQS (45 FR 52741, 51784). The EPA, however, added a parenthetical clarification to those provisions which expressly

[1] In view of the restrictions on indirect source review in section 110(a)(5) of the Act, EPA added that the applicant could exclude any "secondary emissions" from motor vehicles or aircrafts (43 FR 26403 n.9). The EPA added vessels to the list so that emissions from vessels going to and from marine terminals are now to be excluded as well (see 47 FR 27544 (June 25, 1982)). See also *NRDC* v. *EPA*, 725 F.2d 761 (D.C. Cir. 1984).

required the inclusion of "secondary emissions." It also put a definition of that term into both sets of regulations. Now, "secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions include emissions from any off-site support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. For the purpose of PSD, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification. Secondary emissions do not include any emissions from any off-site support facility which would be constructed or increase its emissions for some reason other than the construction or operation of the major stationary source or major modification. Secondary emissions also do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle or from the propulsion unit of a train or a vessel (e.g., 40 CFR 52.21(b)(18) (1981), as amended 47 FR 27554 (June 25, 1982)).

An example of an off-site support facility included in the ambient impact demonstration is a strip mine owned by one company that would be located next to a proposed power plant owned by another and that would supply the power plant. Another example is a quarry owned by one company that would be located next to a proposed cement plant owned by another and that would supply the cement plant.

Certain of the industry petitioners in the *CMA* case challenged this requirement on the grounds that EPA exceeded its authority in creating it (see Fugitive Emissions Brief, at 48–50; American Mining Congress Petition for Reconsideration, at 29–32). They assert that a relevant statutory provision (section 165(a)(3)) requires only that an applicant include those emissions that would come from the proposed project, since that section refers only to "emissions from the construction or operation *of such facility*" (42 U.S.C. 7475(a)(3) (emphasis added)).[2]

The August 1983 **Federal Register** document proposed deletion of the requirement, but did so on the grounds that secondary emissions are not quantifiable unless the source is already permitted or in operation. The EPA noted that section 165(a)(3) also provides that an applicant must show that the proposed project "will not cause *or contribute to* air pollution" in violation of a PSD increment or NAAQS ((id.) (emphasis added)). This "contribute" language persuaded EPA that Congress intended "secondary emissions" to be taken into account for this limited purpose. Consequently, EPA based the proposed deletion of this requirement upon the premise that secondary emissions are "arguably not reasonably quantifiable" unless from sources already permitted or in operation (48 FR 38750–51).

2. Public Comment

a. *Comments Generally Favoring the Proposal.* Commenters in support of the proposal generally claimed that permit applicants have little control over secondary emissions and that their quantification is complex and burdensome. As a result, such emissions should be reviewed and controlled directly. One commenter observed that secondary emissions review is superfluous in those cases in which the secondary emitter is major, since that source would be subject to PSD review in any case.

Some of these commenters suggested legal interpretations of section 165. Several noted that section 165(a)(3) requires that the applicant demonstrate "that emissions from construction or operation" of the facility will not endanger ambient values. Consequently, emissions from support facilities cannot be included in secondary emissions review since the word "from" implies a direct connection. An industry trade group contended that section 165(a)(6), which requires "an analysis of any air quality impacts projected for the area as a result of growth associated with the facility," does not preclude the proposed regulatory deletion since it does not equate such analyses with ambient standards or increment assessments.

Mining industry commenters asserted that EPA has no authority to regulate fugitive dust from coal strip mining operations unless EPA complies with the rulemaking requirements of section 302(j). This section provides that fugitive emissions may be included in determining whether a proposed new source is "major" and subject to review only "as determined by rule by the Administrator." (See Alabama Power Co. v. Costle, 636 F.2d 323, 369 (D.C. Cir. 1979)). These commenters were particularly concerned with the inclusion of fugitive dust emissions from strip mines in the ambient air quality analyses of co-located, coal-fired electric generating facilities.

b. *Comments Generally Opposing the Proposal.* The provisions of section 165(a) (3) and (6) were also interpreted by commenters opposing the proposal. They stated that the industry interpretation of section 165(a)(3) is too narrow since, in using the words "contribute to," Congress indicated that the sum of the emissions of the proposed source and other projects affected by it be taken into account in the ambient demonstration. They concluded that it was reasonable for EPA to have determined in the existing regulations that secondary emissions, which would not be produced "but for" the new facility, should be included as part of the emissions from the facility's construction or operation. Commenters also pointed out that section 165(a)(6) requires an analysis of associated growth and that this cannot be complied with unless secondary emissions are considered. An environmental group cited section 165(a)(6) and concluded that it would be anomalous to suggest that the air quality analysis must be performed, but that a finding that secondary emissions would violate increments or standards must be ignored in the permitting decision.

Several commenters challenged the proposal's conclusion that secondary emissions are not quantifiable. A Federal agency noted that secondary emissions have been quantified in numerous environmental impact statements. They added that there is no major difference between quantifying emissions from a source that does not have a permit and one that does, since many operating parameters are known before a source is constructed and, conversely, many permits are issued on the basis of preliminary design information. A State air quality program reported that it disagrees with the contention that secondary emissions are significantly more difficult to measure.

Commenters also noted that secondary emissions can be important. One commenter reported that, as the result of a proposed oil shale processing facility, an entire town was planned with all the quantifiable emissions sources associated with major urban areas, such as space heaters and incinerators. Another commenter stated

[2] Section 165(a)(3) provides, in relevant part, as follows:

(a) No major emitting facility on which construction is commenced after the date of enactment of this part may be constructed in any area to which this part applies unless * * *.

* * * * *

(3) * * * the owner or operator of such facility demonstrates * * * that emissions from construction or operation of such facility will not cause, or contribute to, air pollution in excess of * * * (42 U.S.C. 7475(a)).

that EPA should not exempt all sources from assessing secondary emissions simply because of a few cases in which such emissions are not reasonably quantifiable.

3. EPA Analysis

After review of the public comments and further analysis of the subject provision, EPA has decided to retain the current regulation. Evaluation of secondary emissions is consistent with section 165 of the Act. Section 165(a)(6), in particular, indicates strong congressional concern that secondary emissions be reviewed as part of the applicant's ambient impact assessment. The regulation also furthers the broader purposes of an NSR program that emphasizes prospective review of all the consequences of growth so as to minimize the risk of future ambient air quality problems. The EPA acknowledges that there may be situations in which quantification of secondary emissions may be unduly speculative or complex. The "reasonably quantifiable" condition in this requirement provides an appropriate response to those problems.

The EPA disagrees with the comments of mining industry representatives that it must conduct a separate rulemaking under section 302(j) before it can consider secondary emissions from strip mines or any other industrial category. Section 302(j) only addresses whether fugitive emissions should be included in threshold applicability determinations. Once a source is found to be major, section 302(j) is irrelevant to the application of substantive NSR requirements. Thus, in Alabama Power, the D.C. Circuit upheld EPA's position that section 302(j) has no bearing whatsoever on the applicability of substantive PSD requirements under section 165 after a source is determined to be major. 636 F.2d at 369 ("[t]he terms of section 165 * * * apply with equal force to fugitive emissions and emissions from industrial point sources").

D. Offset Credit for Source Shutdowns and Curtailments

1. Background

The concept of "offsetting" is the core of nonattainment NSR permitting. An applicant (for a permit for a "major" project that would be located in an area that is nonattainment for a pollutant for which the project is major) must show that the emissions of the pollutant from the project will be offset by sufficient creditable reductions in emissions elsewhere so as to assure reasonable further progress (RFP) toward attainment and a net air quality benefit (see section 173(1) of the Act; 40 CFR 51.165(a)(2) (formerly 40 CFR 51.18(j)(2)), 40 CFR Part 51, Appendix S (known as the "Offset Ruling"), Section IV.A).[3] The relevant regulations (40 CFR 51.165(a) (formerly 40 CFR 51.18(j)) and the Offset Ruling contain detailed criteria for determining the creditability of emissions reductions that come from the permanent shutdown or curtailment of a source. They allow a reduction from a shutdown or curtailment that occurred before the date of the preconstruction permit application to be creditable only if: (1) The curtailment occurred after August 7, 1977, and (2) the proposed source is a replacement for the productive capacity represented by the proposed offset credit [4] (40 CFR 51.165(a)(3)(ii)(c) (formerly 51.18(j)(3)(ii)(c)) and 40 CFR Part 51, Appendix S, Section IV.C.3 footnote 9).[5] The stated purpose of this restriction was "to ensure that an offset relates to the current air quality problem * * *" (see 44 FR 3280).[6]

In the *CMA* case, certain industry petitioners challenged the restriction in 40 CFR 51.18(j) (now 40 CFR 61.165(a)) and the Offset Ruling, claiming that EPA violated the intent of Congress and acted arbitrarily and capriciously (see Brief for Industry Petitioners on Source Shutdown and Curtailment, February 12, 1981).

The August 25, 1983 **Federal Register** document proposed deletion of the restriction. The EPA's action was based on its preliminary agreement with the *CMA* case petitioners that section 173 of the Act does not allow a restriction on the creditability of offsets. The proposal also agreed preliminarily that the restriction is unnecessary and, therefore, undesirable. The EPA also proposed to change the cutoff dates in the provisions from August 7, 1977 to "a reasonable date specified in the plan," in the case of 40 CFR 51.18 (now Subpart I) and to the date of original promulgation of the Offset Ruling (December 21, 1976). Finally, EPA proposed to delete the restriction that relates to notification of the work force (48 FR 38751–52).

2. Comments Supporting the Proposal

This issue attracted the greatest number of comments, although many were quite similar. Industry in southern California expressed special interest in this topic. Comments received on EPA's separate notice regarding the possible uses of shutdown credits for bubbles under EPA's Emissions Trading Policy Statement (ETPS) (48 FR 39580, August 31, 1983) were also taken into account in the present rulemaking. A great majority of the commenters supported the proposal in whole or in part.

a. *Restriction of Credits to Replacement Facilities.* Several of the commenters stated that this restriction violates section 173 of the Act and is arbitrary. One industry commenter explained that the existing rule infringes on the authority of a State to make growth management decisions, and that a State's internal growth decisions must be approved by EPA under sections 172 and 173 if RFP and attainment are assured. Moreover, this commenter claimed that the existing provision is arbitrary, since there is no rational basis to distinguish emissions reductions achieved by shutdowns and curtailments from emissions reductions achieved by other means.

The bulk of the comments stressed the practical need to allow this potential avenue for offset credits. Many of these commenters noted that industries in nonattainment areas find it difficult to obtain emissions reduction credits to use as offsets, since sources in those areas are already subject to rigorous pollution control requirements. In particular, they claimed that allowing credit for past shutdowns and curtailments is the only hope for continued growth and the replacement of older, more polluting facilities with newer, better controlled facilities in southern California. A local air pollution authority supported this contention by stating that it already requires the highest level of reasonably available control technology (RACT), and there is no reasonable opportunity for proposed sources to get credit from improved control by existing sources. Practically, therefore, all credits banked in the district are the result of shutdowns or curtailments. Thus, unless EPA's proposal is adopted, emission "banks" could be without assets available for new source offsets, which would adversely affect even the best controlled growth, employment, and the value of the emissions reduction credits already filed by over 100 companies. Several projects were described that would be adversely affected by retention of the restriction on offset credits.

Some of the supporting commenters argued that since air pollution agencies must require a greater than one-to-one ratio in crediting past reductions to proposed increases in emissions, trading (including credit for prior shutdowns and curtailments) should be encouraged since every time there is a trade, a net air quality benefit results. In this view, the ability to trade serves the Act's air quality purposes, since it provides an incentive for industries to look for ways to reduce emissions and, in particular, to replace old polluting facilities with newer and cleaner ones.

One commenter opposed discounting of offsets from prior source shutdowns but stated that, if EPA feels it necessary to require special discounting of such credits to achieve ambient standards in severe nonattainment areas, then the definition of "shutdown" should refer to only an "entire plant," rather than to specific equipment, thus allowing sources some flexibility and consequent economic benefit.

One air pollution control agency addressed the issue of credit from prior shutdowns or curtailments in nonattainment areas without a demonstration of attainment and stated that EPA should allow such credits but set certain additional conditions on their use. These conditions should be, it continued, that such emissions reductions: (1) Not be double-counted, (2) be discounted at a greater than one-to-one ratio, and (3) not be used to "net out" of best available control technology. The EPA was also urged to define "shutdown" as removal from service of an individual piece of equipment, a process line, or an entire plant. This commenter stated further that EPA should not include replacement of an individual piece of equipment, or relocation of equipment without modification to a nearby noncontiguous property, in the definition of "shutdown." This commenter stated EPA should also not consider the motive for the shutdown, which is subjective and would be difficult to discern.

Another air pollution control agency also supported the proposal, but was concerned over potential double counting. To prevent abuses, this commenter advised that a person creating an emissions reduction credit from a shutdown of equipment later be required to offset emissions increases, at least equal to the amount of the emissions credit, from similar types of new or modified major or nonmajor equipment.

b. *Time Limitations.* Arguing that the use of shutdown credits promotes RFP toward attainment of the Act's goals by securing more reductions than increases and by facilitating the replacement of old, dirty facilities with new, clean ones, and given the great need for offsets by companies in nonattainment areas who seek to modernize or expand, several commenters stated that there should be no time limitations on the use of credits, as long as the State is not explicitly taking credit for the shutdown in its applicable air quality plan. Some of these commenters stated that, at a minimum, all credits for shutdowns and curtailments occurring after December 21, 1976 should be allowed.

Two other commenters stated they had no objection to the "reasonable date" time limitation in 40 CFR 51.18(j) (now 40 CFR 51.165(a)), or to the proposed December 21, 1976 date for offsets, since both those proposals are consistent with the *CMA* settlement agreement. Both commenters stated, however, that they favor the removal of any time limitation in order to provide flexibility, so long as a State did not take that shutdown or curtailment credit into account when formulating its attainment plan. Other commenters supported the December 21, 1976 cutoff date.

Commenters from local air pollution control agencies also suggested alternative cutoff dates, generally based on the year a State established an emissions inventory for purposes of preparing its plan for attainment. For example, one local authority stated that the proper baseline date for crediting an offset is that of the SIP base year inventory. A group of local agencies recommended: (1) That EPA specify an appropriate baseline date from which State and local agencies can compute shutdown credits on grounds that any credits from plant closings should not be open-ended, and (2) that any benefits from the shutdowns should compensate directly those citizens in the community where the shutdown occurred. Another local control group suggested that the cutoff date should be related to the date of adoption of the local NSR rule.

Another commenter, in noting that the December 21, 1976 cutoff date may be reasonable, observed that there may well be a "natural" limit to the date which can be established, since even process and fuel use records become difficult to find as one goes back in time. The best approach, the commenter stated, is for the States to determine what date is "reasonable" based on inventory information, enabling legislation, or other criteria, and then use this date for both 40 CFR 51.18(j) (now 40 CFR 51.165(a)) and the Offset Ruling.

State agencies asserted that a baseline date should be established to limit shutdown credits, but differed as to the amount of State discretion that could be used in setting such baseline dates. One State control agency agreed that EPA should allow the States to set a "reasonable" date for both the 40 CFR 51.18(j) and Offset Ruling credit determinations. This agency and an agency from another State specifically recommended that the cutoff date be a moving date, not earlier than 5 years before the application date. They noted that permitting authorities do not have unlimited time to delve into past records, if such records exist at all. A different State control agency maintained that the cutoff date should be concurrent with the date of emissions inventory, which would preclude a windfall for sources that shut down after an arbitrary date like August 7, 1977. In no event, however, should the cutoff date be before August 7, 1977, the State concluded. Another State group noted that the requirements in sections 129 and 172 of the Act (that offsets provide a net air quality benefit and not interfere with RFP toward attainment) would preclude the use of emissions reductions for shutdowns before the date of the baseline inventory on which the nonattainment plan is based.

Finally, one commenter claimed that businesses in nonattainment areas are often advised by legal counsel to delay installation of control equipment, implementation of cleaner production methods, or removal of older equipment in order to preserve credit for the company's own expansion or sale of the credits to other businesses. This, the commenter stated, is because the existing EPA rule denies offsets for any reduction in air pollution due to a shutdown or curtailment occurring before credit is applied for regarding new construction.

c. *Notification of the Work Force.* The several commenters who addressed EPA's proposed deletion of the rule regarding notification of the work force supported it on the grounds that EPA lacks statutory authority for this requirement.

3. Comment Opposing the Proposal

The primary comment in opposition to the proposal came from a coalition of several environmental groups. Their analysis is based on a fundamental distinction between emissions

[3] The Offset Ruling currently applies in only a few circumstances. In general, the construction moratorium, or preconstruction review programs approved as meeting the requirements of section 173, as set forth in 40 CFR 51.165(a), have supplanted it.

[4] This provision first appeared in the original Offset Ruling, 41 FR 55529 (December 21, 1976). The EPA repromulgated it, with some refinement, when it revised the Offset Ruling in January 1979 (44 FR 3284). It was included in 40 CFR 51.18(j) (now 40 CFR 51.165(a)) (see 45 FR 52672, August 7, 1980).

[5] The regulations also provide that a reduction from a shutdown or curtailment that occurs after the date of application is creditable only if: (1) the work force has been notified of the shutdown or curtailment, and (2) the shutdown or curtailment is federally enforceable (40 CFR 51.165(a)(3)(ii) (c) and (e); Appendix S, Section IV.C.3).

[6] In September 1980, EPA declined to revise the restriction in the Offset Ruling in response to comments opposing it (see 45 FR 59876–77).

reductions achieved through shutdowns and curtailments and those achieved by actually installing pollution controls. They observed that sources have a limited life and a natural cycle of operation within that span, with the older units often being used for a relatively small portion of the time. Since a company's plans regarding capacity utilization and ultimate retirement of the unit are generally not public, a SIP, of necessity, exaggerates the emissions and longevity of many sources in its emissions inventory. This means that source owners may be able to get inappropriately large "paper" credits that would lead to actual worsening of air quality when used to offset emissions from new sources that would be operating at a higher capacity utilization. These commenters also asserted that the requirement, in section 172 of the Act, that attainment of the standards be achieved "as expeditiously as practicable," disallows crediting of any noncontemporaneous shutdowns. They contended that emissions reductions due to such noncontemporaneous shutdowns are "environmental windfalls" and, as the current regulations provide, should not be creditable for offsetting purposes. Similarly, they opposed the proposed change in cutoff dates for these credits as a further expansion of windfall credits.

4. EPA Analysis

After careful consideration of the comments received and further analysis of the issues involved, EPA has decided to promulgate the proposed elimination of the restriction on the use of prior shutdown credits for offset purposes only where the SIP contains an approved attainment demonstration. The EPA is retaining the current restrictions on crediting, for offset purposes, emissions reductions attributable to the prior shutdown or curtailment of an existing source in those nonattainment areas for which there is not an approved demonstration of attainment of the NAAQS. In addition, EPA is adding certain safeguards to assure that prior shutdown credits, where they are allowed, are consistent with the area's SIP.

The EPA believes that this decision to relax the current regulations comports with congressional intent regarding the offset program. However, as a preliminary matter, it is appropriate to point out that the Act does not expressly mandate any particular treatment of shutdowns for offset crediting purposes. Rather, this question is a matter within the administrative discretion delegated to EPA under the Act. In *Chevron, U.S.A. Inc.* v. *NRDC, Inc.*, 467 U.S. 837 (1984), the Supreme Court reaffirmed that Congress intended to grant EPA broad discretionary authority in implementing the 1977 Amendments to the Act. This discretion extends to rules implementing the nonattainment plan provisions in Part D generally and, in particular, the offset program in section 173. (Indeed, Congress made an explicit delegation by incorporating the Offset Ruling, and authorizing EPA to amend it, in an uncodified provision of the 1977 Amendments o the Act (section 129 of Pub. L. 95-95), 42 U.S.C. 7502 Note.) Thus, although it is true, as noted in the proposed regulations, that section 173 requires EPA to allow the construction of new sources in nonattainment areas where such construction will be consistent with RFP toward attainment, EPA retains broad discretion to establish criteria for determining when RFP has been assured. In this regard, EPA believes that it is certainly a reasonable exercise of its discretion to distinguish between the showing necessary to represent RFP where there is an attainment demonstration and the showing needed where an attainment demonstration is lacking. In the latter situation, EPA can properly require greater assurances that offset transactions will result in the improvement of air quality. The final rules reflect this position.

The essence of the Act's offset provision is that a new source may be allowed in a nonattainment area only where its presence would be consistent with RFP toward attainment of the NAAQS. The EPA's primary concern in this regard is that State plans provide reliable assurance of steady improvement in air quality and attainment by the target dates. Thus, where a fully approved SIP demonstrates RFP and attainment, it is appropriate to grant that State maximum flexibility in its nonattainment plan, under section 173, within the constraint that the demonstration not be invalidated. By definition, any fully approved SIP has independently assured RFP and attainment. Therefore, allowing credit for the prior shutdown of sources which the SIP assumed are currently in operation generally is appropriate in this context, because it will not endanger the overall showing of RFP and attainment. Of course, this independent assurance would be lacking to the extent that the SIP has relied on such prior shutdowns in its attainment demonstration, or to the extent that the emissions reductions attributable to the prior shutdowns cannot reasonably be ascertained.

Following these principles, EPA has concluded that, so long as adequate safeguards are in place to prevent possible abuses (e.g., provisions to avoid double counting and ensure proper quantification of credits), it is no longer necessary to restrict shutdown credits under a fully approved SIP in the manner currently provided by 40 CFR 51.165(a)(3)(ii)(c) and the Offset Ruling (40 CFR Part 51, Appendix S, section IV.A). In contrast, where a SIP, at this late date, lacks an approved attainment demonstration, EPA has a responsibility under sections 110(a)(2)(I), 172(a)(1), and 173(1)(A) to disallow offset transactions that do not clearly demonstrate RFP toward timely attainment. The EPA has concluded that, where an attainment demonstration is lacking, retention of the current shutdown credit restriction on offset transactions is necessary both to assure RFP and to guarantee that a new source does not cause or contribute to a violation of the NAAQS.

At the outset, EPA should point out that the nonattainment areas requiring but lacking attainment demonstrations, which are at the center of EPA's current concern regarding the shutdown credit issue, were not specifically addressed in the proposed rule. The August 1983 proposal assumed that, in general, nonattainment areas would either be governed by a preconstruction review program approved as meeting the requirements of section 173 (i.e., where there was an approved demonstration of attainment), or be subject to a construction moratorium under section 110(a)(2)(I) (i.e., where there was no such demonstration) (see 48 FR 38742, 38751 and n. 23). In fact, there are currently several categories of SIP's, listed below, which have neither fully demonstrated attainment nor are currently subject to a construction moratorium. It is these areas which, for the reasons detailed below, must remain subject to the shutdown credit restriction.

As noted previously, the essence of the offset program is to ensure that additional emissions from a new source will be offset by corresponding reductions elsewhere so as to result in RFP toward attainment. Although neither the Act itself nor the legislative history is explicit regarding the source of these offsetting emissions reductions, it seems clear that Congress contemplated a relatively well-defined transactional relationship between the existing offsetting source(s) and the new source. Thus, the Senate Report on the 1977 Amendments emphasized that the offset program was meant to entail a case-by-case review, in which a new

source would obtain "matching reductions from existing sources" (S. Rep. No. 127, 95th Cong., 1st. Sess. 55, reprinted in "3 Legislative History of the Clean Air Act Amendments of 1977," at 1429). Certainly, this transactional approach has been followed since EPA's original 1976 Offset Ruling, which Congress did not alter in pertinent part when it enacted Part D. At one extreme under the current rules, the new source may actively and directly induce specific emissions reductions, such as by causing an existing source to install control equipment not otherwise required under the Act, or by replacing its own existing facilities with newer, cleaner facilities. A somewhat more attenuated market relationship is present when an existing source voluntarily installs pollution controls to reduce emissions below legally required levels and places the surplus in a "bank" from which that surplus is later purchased by a prospective new source needing offsets. Toward the other extreme, there is a temporal relationship between a new source which applies for a construction permit on a certain date, and unrelated existing sources which shut down or curtail operations after that date.

The 1977 Amendments sought to reconcile the need for economic growth in nonattainment areas and the environmental interest in improving air quality in those same areas by granting States greater flexibility in accommodating these often conflicting goals (see H. R. Rep. No. 294, 95th Cong., 1st Sess. 211, reprinted in "4 Legislative History of the Clean Air Act Amendments of 1977," at 2678). Recognizing this congressional direction, EPA has taken affirmative steps to encourage early replacement of existing, dirtier sources with newer, cleaner ones without requiring NSR when there would be no significant net increase in emissions as a result of that change. Examples include EPA's decision to allow States to adopt a "plantwide" definition of "source" for purposes of the preconstruction review program in nonattainment areas where it is consistent with RFP and attainment (see 46 FR 5076 (1981)). The Supreme Court upheld this approach in *Chevron, U.S.A., Inc.* v. *NRDC, Inc.*, 467 U.S. 837 (1984).

As noted above, several industry commenters likewise favored elimination of the prior shutdown offset credit restriction on grounds that the present rules discourage early replacement of older, dirtier facilities. The EPA agrees with the general thrust of this proposition—that the offset rules should encourage construction of new sources, so long as there is a linkage to the removal from service of older and dirtier sources, and that such removal results in progress toward attainment. Indeed, the purpose of the present offset rules is to allow offset credit for prior shutdowns in those circumstances where EPA has a reasonable assurance that the shutdown is sufficiently "matched" with the new source, such that use of the offset credit can be said to represent RFP. Similarly, for the reasons stated above, where a SIP contains an adequate demonstration of attainment—and hence an independent assurance of RFP—EPA has determined that a significantly more attenuated link between a prior shutdown and the construction of a new source may be sufficient to constitute RFP, and thus the prior shutdown credit restriction may be deleted. However, with respect to those areas without the attainment demonstration mandated by section 172(a)(1), and therefore no independent assurance of RFP, EPA has concluded that it remains inappropriate, under the present NSR structure, to attribute preapplication shutdowns to the construction of an unrelated new source for offset purposes. The EPA believes that this is a reasonable basis upon which to distinguish the creditability of prior shutdowns and offsets generated by other means.

The restriction on crediting of prior shutdowns for NSR offset purposes in areas without adequate plans rests on logic similar to the logic reflected in EPA's Emissions Trading Policy Statement, which governs trades between existing sources (i.e., bubbles) (see generally 51 FR 43814–43860, December 4, 1986). In the ETPS, EPA decided to allow, with stringent qualitative safeguards, the use of shutdown credits for bubbles with case-by-case EPA approval as a SIP revision, or under generically approved State programs in areas lacking approved attainment demonstrations, so long as the shutdown of a source occurred after its application to bank or trade, special baseline and extra reduction requirements were met, and the State gave assurances of noninterference with future SIP planning. The EPA concluded that it was plausible to presume that such a source's decision to shut down was elicited "at least in part" by an opportunity to trade or bank emissions reduction credits (see 51 FR 43822). Thus, in the ETPS, EPA did not pretend that it had divined an unvarying, dominant economic motive behind all existing source trades involving shutdowns, but rather that it had resolved a close question in a generic fashion as a practical necessity (see 51 FR 43811). Applying a presumption as to transactional relationship under both NSR and the ETPS is a reasonable accommodation, administratively necessary to avoid extraordinarily difficult, case-by-case determinations of subjective motive.

However, EPA also believes it is reasonable to continue on somewhat different paths to these common goals of NSR and emissions trading given the longstanding distinctions between the two programs. For example, in emissions trading, EPA presumes that even shutdowns occurring before an application to trade were elicited by an opportunity to trade if they occurred after an application to bank. Any doubts about that presumption are compensated for by other program-wide safeguards. These include the requirements that all trades under generic programs in nonattainment areas without adequate plans—not just those trades involving banking or shutdowns—use a very stringent baseline, produce a net reduction in actual emissions of at least 20 percent, and be accompanied by State assurances that a trade is consistent with ambient progress and future air quality planning goals (see 51 FR 43832). For NSR offset purposes, EPA has presumed that shutdowns banked prior to a new source application are not transactionally related to the new source, but EPA historically has not required a lower-of-actual-or-allowable baseline, an across-the-board minimum offset ratio, or State assurances for offset transactions generally.

Nothing in the Act requires that emissions trading and NSR programs treat shutdown credits or other credits in precisely the same way. Moreover, revamping the longstanding NSR offsets system to incorporate all of the provisions of the ETPS would be a time-consuming and burdensome process.

Accordingly, issuance of the ETPS does not, as the ETPS itself indicated, force EPA to abandon the longstanding restriction on use of shutdown offset credits in areas without adequate plans.[7] Likewise, the ETPS does not independently require EPA to adopt a uniformly tighter baseline, a minimum 20 percent reduction in emissions, or a State assurance provision in its NSR program as a general matter. The end result is that EPA has rationally chosen different administrative mechanisms which it believes will serve equally well

[7] In adopting the ETPS, EPA noted that nothing therein altered existing NSR requirements or the need for compliance with them (see 51 FR 43831).

the statutory goals of RFP and attainment.

An additional consideration in this regard is EPA's developing program to address the failure of many metropolitan areas to meet the December 31, 1987 attainment date for ozone and carbon monoxide, which is the latest one specified in the Act. On November 24, 1987, EPA published a comprehensive proposed policy that spells out, in detail, the planning requirements that EPA expects to impose on areas that still lack adequate plans for attainment, or have otherwise failed to meet the NAAQS (see 52 FR 45044). Although EPA has not yet issued a final policy, in May 1988, the Agency issued notices that the SIP's for numerous areas are "substantially inadequate" within the meaning of section 110(a)(2)(H) of the Act. The notices call for SIP revisions in those areas, so that States will begin the fundamental activities necessary to make progress toward attainment of the ozone and carbon monoxide NAAQS (see 53 FR 20722, 20724 (June 6, 1988)). Although the final contours of EPA's post-1987 policy have not been drawn, it is clear that many States will face substantial planning burdens and the need to adopt additional control measures for the areas in question. Under these circumstances, EPA believes it would be inappropriate even to hold out the possibility that States could obtain approval at this time for expanded use of shutdown offset credits in areas with inadequate plans. In light of the continued severe ozone and CO nonattainment in many metropolitan areas beyond the 1987 statutory deadline, any such approval would need to be conditioned on the adoption of safeguards at least as stringent as those now required for approval of generic bubble rules under the ETPS.[8] But it is doubtful that affected States could provide, for example, the necessary assurances that prior shutdown offset credits would be consistent with ambient progress and future air quality planning goals. In particular, EPA could not approve a general relaxation on the current restriction on the use of prior shutdown offsets until, at a minimum, a State has completed a draft emissions inventory, which is required within 12 months of the SIP call (see 52 FR 45056). This is so because, if the State lacks an approved attainment plan, the absence of an emissions inventory means that EPA has no assurance that use of prior shutdown offset credits for an indefinite period of time, without further review by EPA, would be consistent with further SIP planning for attainment. (For the same reason, the State would be unable to determine whether a 20 percent net reduction in emissions or some larger percent reduction would be consistent with that needed to attain in the area.)[9]

The final factor in today's decision is that the possibility that elimination of the shutdown credit restriction would serve to encourage economic growth and early cleanup is insufficient to justify a radical departure from the present NSR offset rules in nonattainment areas lacking adequate attainment demonstrations. In contrast to situations where a new source is responsible for the installation of additional control equipment by an existing source, or where an existing source replaces an old item of process equipment with a newer one, the relationship between the prior shutdown of an existing source and the later construction of an unrelated new source is not obvious. In an August 31, 1983, **Federal Register** notice, EPA solicited comments on the issue of whether the restriction on shutdown crediting induced sources to keep older, dirtier facilities on line beyond their economically optimum period of use in order to preserve potential emissions reduction credits (48 FR 39585). No definitive evidence that such is the case was received. In the absence of such evidence, EPA is not compelled to adopt this change in areas lacking adequate attainment demonstrations.

Accordingly, at this time EPA is retaining the offset restrictions on shutdowns which occurred prior to the date of the construction permit application where there is no adequate attainment demonstration. The EPA believes it is reasonable to deem that postapplication shutdowns may be transactionally linked to the new source for purposes of demonstrating RFP under the NSR offset requirement. Conversely, a preapplication shutdown (other than a replacement) can reasonably be viewed as insufficiently related to the new source, and therefore unavailable for purposes of demonstrating that the net result of construction of the new source is RFP, in those nonattainment areas lacking an adequate independent demonstration of RFP and timely attainment.

The EPA believes that this position comports with congressional intent regarding the proper role of the offset program. Moreover, EPA believes that this position is generally consistent with requirements for bubbles under the ETPS, taking into account the different history and functions of these programs. It is also consistent with EPA's emerging post-1987 nonattainment policy. Finally, EPA's position follows the recommendation of many pollution control agencies by avoiding the difficult and intrusive task of determining a source's subjective motive for shutting down or curtailing production.

The EPA wishes to clarify the four types of planning circumstances in which EPA considers the SIP to be inadequate and will continue to restrict offset credits for prior shutdowns. In all but the following situations, EPA will consider the SIP to contain an acceptable attainment demonstration and will allow the general offsetting use of prior source shutdowns, provided all other criteria regarding creditable emissions reductions are met:

a. The total suspended particulates (TSP) areas that are designated nonattainment under section 107 in States which failed to submit a 1979 Part D attainment demonstration or submitted one that did not receive full EPA approval. This also includes both primary and secondary TSP nonattainment areas that submitted a SIP that did not include an actual demonstration of attainment but still received EPA approval (e.g., a "RACT plus studies" SIP). Although EPA has changed the NAAQS indicator for particulate matter from TSP to particulate matter nominally 10 microns and less (PM_{10}), the TSP nonattainment designations will remain in place at least until a State receives EPA approval of its PM_{10} attainment plan. Until such time, State NSR provisions requiring compliance with the old TSP requirements—including offsets—remain in effect (see 52 FR 24672, 24682, and 24684).

b. Nonattainment areas that have received a final notice of disapproval of their current SIP.

c. Nonattainment areas that have received either a section 110(a)(2)(H) notice of deficiency based on failure to attain or maintain the primary NAAQS, or a notice of failure to implement an approved SIP. This includes newly designated primary nonattainment areas that do not yet have an EPA-approved attainment demonstration to address the new-found nonattainment problem.

d. Nonattainment areas that received notice from EPA that they have failed to meet conditions in their EPA-approved SIP's, including commitments to adopt particular regulations by specified dates.

There may be circumstances where, subsequent to the submittal of a complete permit application which relies on a specific prior shutdown or curtailment which is otherwise creditable, the SIP's attainment demonstration is no longer considered adequate for one of the four reasons outlined above. In such cases, the criteria for crediting prior source shutdowns in areas with an acceptable demonstration will continue to apply to the processing of the permit.

Regarding the comments pertaining to the proper definition of shutdown for offsetting purposes, EPA wishes to clarify that where the prior shutdown restrictions remain in place, "source shutdown" refers to the permanent withdrawal from productive capacity of any building, structure, facility, installation, item of process equipment, or combination thereof. This nontechnical definition of the potential sources of offset credits has been followed by EPA since adoption of the original Offset Ruling, and clearly comports with the purpose of the offset program. The EPA did not intend to alter its policy in October 1981 (see 46 FR 50766), when EPA adopted a "plantwide" definition of "source" for determining the overall applicability of the NSR requirements.

With respect to the question of discounting of shutdown offsets, EPA's position is that where offset credit for shutdowns is appropriate, such credits may be treated in the same fashion as any other type of emissions reduction. Thus, shutdown offset credits continue to be subject to any general offset ratio specified in an applicable SIP unless the State in its discretion establishes a different ratio for such credits, and are not subject to the special baseline, across-the-board 20 percent net emissions reduction, or State assurance requirements applicable to "progress" bubbles under EPA's ETPS.

Regarding time limitations, the EPA agrees with the reasoning of those commenters who favored removal of inflexible nationwide time limitations on the crediting of prior shutdowns. However, EPA does not concur that time limitations are wholly unnecessary, so long as a State has not explicitly taken credit for the shutdown in its SIP. Rather, some limitations must be retained to provide adequate assurance for air quality planning and administrative reasons that shutdown credits are allowed only where they will, in fact, result in RFP.

As noted by several States and local air pollution control agencies, shutdowns which occurred prior to a State's establishment of the emissions inventory used in its attainment demonstration should not be available as credit. In general, States have at least implicitly taken account of all such preinventory shutdowns and curtailments in their nonattainment plans. It would constitute "double counting" of these emissions reductions to allow their unrestricted use as shutdown offset credits by potential new sources. Accordingly, emissions from a new source whose construction is premised upon such shutdowns cannot reliably be said to be consistent with RFP, unless the emissions inventory explicitly treats the emissions from the shutdown source as current actual emissions.

The EPA believes that the final rule should also reflect the concerns of State commenters who pointed to a range of practical difficulties in verifying the existence and extent of past emissions reductions. Accordingly, in order to afford individual States maximum flexibility, while ensuring that prior shutdown credits will result in RFP, the final rule in Subpart I provides that the time limit for use of shutdown credits may be any reasonable cutoff date after August 7, 1977, as specified in the SIP, so long as that date is on or after the date of the most recent emissions inventory used in the plan's EPA-approved demonstration of attainment. In addition, where the emissions inventory explicitly lists the emissions from a previously shut down or curtailed source as still existing, the State may choose to allow such emissions for offset credit purposes. The Offset Ruling has been revised to contain the same cutoff date provisions as Subpart I. In addition, the final rules provide that, in order to be creditable, prior shutdowns must be permanent, quantifiable, and federally enforceable when used.

The final rules also promulgate the proposed deletion of the work force notification provision. This requirement served no purpose in assuring attainment of the NAAQS and, thus, its retention would be inappropriate.

E. Banking of Offsets

1. Background

The current Offset Ruling contains a provision, subparagraph IV.C.5., which affirms that a permitting authority may give credit under the Offset Ruling for past "banked" reductions and which sets some boundaries on the circumstances under which it may grant this credit. The third and last sentences of that subparagraph also contain guidance on the approvability, under section 173, of a permit program that would give credit for "banked" offsets. Since adding that guidance to the Offset Ruling in January 1979, EPA has issued regulatory guidance on banking for purposes of nonattainment NSR in the form of § 51.165(a)(3) (formerly § 51.18(j)(3)) and policy guidance in the form of the ETPS (51 FR 43814, December 4, 1986). This newer guidance renders the guidance in the Offset Ruling superfluous. To avoid confusion, EPA proposed to delete the third and last sentences.

2. Public Comments

Comment on this issue was limited but generally favorable. Several commenters supported what they termed "the removal of artificial distinctions against the use of shutdown emissions," noting that crediting of such emissions was very important, especially in California, where shutdowns are the only area source of emissions credit. Others agreed with EPA's proposal to eliminate the banking guidance in the Offset Ruling in favor of more recent guidance in the ETPS.

One State agency opposed the proposed deletion of the two provisions in the Offset Ruling because, until the final ETPS is promulgated, there would be no official regulatory replacement of these limitations on abuse of emissions reduction credits. Finally, one commenter stated that the ETPS should be combined with a formal emissions banking and trading program, subject to notice and public comment, in order to reduce confusion and provide the maximum flexibility in the use of credits.

3. EPA Analysis

The EPA is today deleting the subject provisions, as proposed. They are unnecessary in view of the ETPS.

F. Health and Welfare Equivalence

1. Background

The five sets of PSD and nonattainment NSR regulations define "major modification," roughly, as any change at a major source that would result in a "significant net emissions increase" in any one of certain pollutants. "Net emissions increase," in turn, is defined as the amount by which the sum of: (1) The increase in emissions from the proposed change, and (2) any

[8] State generic bubble rules under the ETPS and State offset rules under NSR are structurally similar because, in both programs, EPA reviews and approves the rules governing the overall conduct of such programs by the States indefinitely into the future but does not pass judgment on individual transactions which these programs share.

[9] It should be noted that State rules may at the present time allow sources to preserve prior shutdown credits for future use at such time as an attainment demonstration has been approved by EPA, provided that the emissions inventory used in the development of the approved attainment demonstration explicitly includes as current "existing" emissions the emissions from the previously shutdown sources. In addition, the emissions reductions from such shutdown sources must be permanent, quantifiable, and federally enforceable at the time of use.

creditable increases and decreases elsewhere at the source would exceed zero (e.g., 40 CFR 52.21(b)(3)(i)). This process of summing increases and decreases in emissions in order to avoid NSR is commonly referred to as "netting." The regulations restrict the creditability of some decreases in emissions. One provision, in particular, allows credit for a reduction only to the extent that it has approximately the same qualitative significance for public health and welfare as the increase from the proposed change (e.g., Id. § 52.21(b)(3)(vi)(c)). Examples of specific concerns are variations in pollutant carcinogenicity and volatile organic compounds (VOC) reactivity, and in air quality impact as a result of different stack heights.

Several of the industry petitioners in the *CMA* case have challenged that restriction on the creditability of emissions reductions. The basis of this argument is that the relevant statutory definition of "modification," section 111(a)(4) of the Act, includes any change "which increases the amount of any air pollutant emitted. * * *" This reference to "amount" is argued to mean that the definition only applies to the quantity of air pollutants, by weight, rather than to any qualitative criteria regarding amount of impact, such as toxicity or impact area. The EPA proposed to delete this requirement on those grounds, stating that NSR of modifications primarily is triggered by quantitative increases in emissions and, therefore, it lacks authority to limit netting credits based on purely qualitative reasons. In addition, the proposal concluded that, even if EPA did have authority to impose this restriction, it could not do so because the wording is unlawfully vague.

In conjunction with the issue of health and welfare equivalence, EPA proposed to exclude certain compounds from the term VOC's as that term is used in the PSD and nonattainment regulations, because EPA has determined them to be negligibly photochemically reactive and, hence, not precursors of ozone.

2. Public Comment on Health and Welfare Equivalence

a. *Comments Generally Favoring the Proposal.* Industry commenters generally supported the proposal. Some stated that there is no reason to differentiate between types of emissions which contribute to ambient levels of a criteria pollutant. For example, all reductions in particulate matter emissions help to attain the TSP standard. Consequently, if EPA's concern is with fine particulates, it should directly address them in a rulemaking. Similarly, these commenters stated, mechanisms from other programs—such as RACT, NSPS, and national emission standards for hazardous air pollutants (NESHAP)—exist to address toxic pollutants directly. Some commenters also criticized the restriction as vague and potentially burdensome if case-by-case analyses were required. One State air quality program added that it has authority to ban netting in any case where such could cause hazardous emissions problems.

b. *Comments Generally Opposing the Proposal.* Several commenters representing State air quality programs opposed the proposal, arguing that it should be the quality, not merely the quantity, of emissions that determine creditability for netting purposes. If this were not the case, trades could proceed that allowed increases in toxic pollutants in place of criteria pollutants, or between large and small particulate emissions, even though there would be a significantly greater adverse effect on public health and welfare.

A Federal agency noted that the rerouting of fugitive emissions through a stack to achieve a net decrease in emissions could still cause greater ambient concentrations of a pollutant further downwind, such as at a national park. Since a PSD applicant would thereby avoid having to demonstrate a lack of adverse impact on such a downwind Class I area, the FLM's ability to exercise his affirmative responsibility to protect air quality-related values would be impaired. Therefore, the only creditable emissions decreases should be those for which points of emissions have the same emissions characteristics, and the FLM should be notified if a Class I area would be potentially affected by emissions from a source modified through such netting.

An environmental group stated that the *Alabama Power Company* v. *Costle* case, contrary to EPA's assertion in the proposal, provides no authority against a health and welfare equivalency criterion since no party raised this question in the litigation, and the court had no occasion to address it. The language from the court opinion which EPA quotes is, therefore, simply not relevant.

3. Public Comment on Exclusion of Nonreactive VOCs.

a. *Comments Generally Favoring the EPA Proposal.* Several commenters supported EPA's decision to exclude certain compounds from the term VOC's as that term is used in the PSD and nonattainment regulations. A petroleum company urged EPA to also delete propane, acetone, methanol, acetylene, and tertiary alkyl alcohols from the definition, arguing that these compounds are also nonreactive. A manufacturing company urged EPA to delete fluorinated organic compounds (citing an EPA letter that such substances were negligibly photochemically reactive); a chemical company urged EPA to delete tetrachloroethylene (citing an EPA report); and a trade association urged EPA to clarify that other nonreactive VOC's may, in the future, be added to the present list as soon as they are shown not to be precursors of ozone.

One commenter, although supporting the EPA proposal, urged that the new definition of VOC not be retroactive to previous applicability determinations or emissions banking determinations, since this would create an administrative nightmare and change the basic principles under which industry has been operating.

b. *Comments Generally Opposing the EPA Proposal.* A local air quality program opposed the proposed definition of VOC unless EPA institutes measures to consider the compounds deleted from the definition under separate provisions of the Act. That commenter noted that these compounds are a potential public health hazard.

Another commenter stated that the proposed exclusions from the VOC definition were shortsighted since a number of the substances to be deleted are candidates for listing under section 112. The commenter stated that the effect of the proposal would be to encourage greater use of these substances which may in the future have to be regulated more tightly than the average hydrocarbon.

4. EPA Analysis

Upon consideration of the public comments and of its duties and authority under the Act, EPA has decided to retain the current regulation allowing netting credit for a reduction in emissions only to the extent that the reduction has "approximately the same qualitative significance for public health and welfare" as the proposed emissions increase. However, as explained below, today's action clarifies that the implementation of this regulation is temporarily limited in certain ways, described below, pending further improvements in EPA's ability to assess qualitative differences in the effects, including toxic effects, of pollutants that are similar in quantity.

In view of substantial arguments on both sides of the health and welfare issue, EPA has reassessed the question

of EPA's authority to promulgate this regulation. The EPA has concluded that congressional intent behind the adoption of section 111(a)(4) to guide the definition of "modification" for NSR purposes is ambiguous, and that EPA possesses adequate authority to maintain the health and welfare requirement.

Industry commenters have urged EPA to strictly construe the operative phrase "'* * * which increases the amount of any air pollutant emitted * * *'" so as to exclude consideration of qualitative impacts. However, although strict construction might require exclusive focus on the amount of pollution, it would also demand close adherence to the "any air pollutant" portion of the definition. This could lead to anomalous results that no party has sought, and which would not further the statutory purposes of the Act. This is because section 302(g) defines "air pollutant" very broadly to include:

> Any air pollutant agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and by-product material) substance or matter which is emitted into or otherwise enters the ambient air.

However, under the PSD program, EPA, to date, has equated "any air pollutant" with pollutants "subject to regulation under (the Act)" as that term is used in section 165(a)(3). In contrast, in the "NSPS" program from which the definition is borrowed, EPA has consistently treated "any air pollutant" as referring only to those pollutants for which a performance standard has been promulgated under section 111 for the specific source category in question.

Thus, a strict reading of section 111(a)(4), together with section 302(g), might require vastly expanded regulation, under both the NSPS and NSR provisions of the Act, of any air pollutant, including discrete subspecies of criteria pollutants, regardless of whether such pollutant is otherwise regulated under the Act or the program in question. In the context of NSR netting calculations, such a reading would require that netting be strictly quantitative by focusing on the amounts of individual air pollutant agents, yet be qualitative in nature by allowing only netting of air pollutant agents of the same type.

There is no indication that Congress required EPA to administer the Act in this fashion. Rather, EPA believes that there is an inherent tension between the statutory terms "amount" and "any air pollutant," and that congressional intent is thus ambiguous. Where a clear expression of legislative purpose is lacking, EPA may interpret statutory language reasonably so as to further the general legislative purposes (see *Chevron, U.S.A., Inc.* v. *NRDC*, 467 U.S. 837 (1984)). Here, EPA believes that the central purposes of the Act, to protect public health and welfare (see sections 101(b)(1) and 160(1)), and to allow increases in pollution only after careful evaluation of all the consequences (see section 160(5)), will be served by retaining this regulatory requirement, because it helps ensure that modified sources that would otherwise "net out" of review do not inadvertently cause a significant adverse health or welfare impact. This position is also supported by *Alabama Power Co.* v. *Costle*, wherein the court recognized that EPA retains substantial discretion in applying the bubble concept (see 636 F.2d at 402).

Some commenters have argued that these goals should be pursued exclusively through the NSPS and NESHAP programs, not through NSR. The EPA's response to these commenters is two-fold. First, the Act clearly does not limit control of these problems to only those two programs. Indeed, the Act provides for complementary, but distinctly different, roles for all three programs. Section 112 addresses "hazardous air pollutants," defined as those which

> * * * cause[s], or contribute[s] to, air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness (section 112(a)(1)).

This program provides for the identification of these hazardous air pollutants and control of emissions from source categories designated by EPA. The PSD provisions of the Act provide a very different focus and standard for regulation. For example, the PSD program addresses all major sources and is designed "to protect public health and welfare from any actual or potential adverse effect" from any air pollutant (section 160(1)).

Second, NSR possesses an inherent speed and flexibility in its ability to protect public health and welfare that those other programs lack. The NSR programs provide timely and focused responses to health and welfare issues arising from specific sources. These responses complement the type of long-range and general studies performed pursuant to sections 111 and 112. The NSR programs also address all pollutants from each source in every source category, while the NSPS and NESHAP programs do not.

Although EPA believes it has adequate authority to consider differences in the toxicity of various subspecies of pollutants in netting calculations, EPA has not yet set forth criteria by which to delineate these differences so as to ensure reasonable and nationally consistent implementation. Thus, while EPA believes that sources should not trade decreases in compounds of lesser toxicity (considered in terms of acute or carcinogenic effects) if this results in adverse health or welfare consequences, specific limitations on sources' ability to net must await further development of objective criteria by which to judge these differences.

Toward this goal, EPA now solicits comments to be used in the development of guidance for implementing this provision. Certainly, an exact and detailed approach to ranking all toxics is impossible; there are 4,500,000 chemicals listed by the American Chemical Society, with 70,000 chemicals in commercial use and 1,000 new ones added each year. Furthermore, toxicity is an art, as well as a science, with the level of knowledge constantly evolving. It would be irresponsible and contrary to the Act, however, to ignore potential public health problems because of the inability to precisely discriminate among all chemicals. Prudent regulatory strategy entails the broad examination and classification of toxic air pollutants in such a way as to provide for reasonable and predictable implementation of the NSR program while preventing appreciable increases in public health risk.

There are a variety of sources of information to assist permitting authorities and affected industry in assessing relative risk of toxic air pollutants. For example, the American Conference of Governmental Industrial Hygienists publishes "Threshold Limit Values," indicating safe worker exposure concentrations for numerous pollutants. The Carcinogen Assessment Group provides a broad classification system for carcinogens, as well as unit risk factors for carcinogenic potency. Such sources of information on toxicity could well serve as the basis for classifications of pollutants for purposes of determining appropriateness of netting transactions. One initial approach might be to group the toxic air pollutants likely to be encountered into four or five classifications based on variances in toxicity, with netting credits being allowed for reductions in any other chemical contained in the same group.

In the meantime, section 116 allows, and EPA encourages, the States to continue development and implementation of their own air toxics programs, including case-by-case analysis of proposed netting transactions. The EPA will continue to closely monitor these State efforts, and will consider the approaches being used by the various States (such as prohibiting netting between certain groups of toxic subspecies, or establishing netting ratios between certain groups of toxic pollutants) in developing specific Federal regulatory requirements in this area.

The EPA also agrees with those commenters who pointed out a vagueness problem with the area impact aspect of the health and welfare equivalence regulation. Specifically, industry comments criticizing netting restrictions determined by area or concentration of pollutant impact, such as stack height, plume temperature, and impact on visibility or vegetation, are well taken. Absent more specific guidance on the reach of this provision, it is unduly vague and, hence, difficult to implement in a consistent manner. Consequently, EPA policy will be to limit this aspect of the health and welfare provision unless, and until, specific guidance on how to address these comparisons is issued.

Accordingly, the area impacts aspect of the regulation will apply only where the State has reason to believe that the reduction in ambient concentrations from the emissions decrease will not be sufficient to prevent the proposed emissions increase from causing or contributing to a violation of any NAAQS or PSD increment, despite the absence of a significant net increase in emissions. In such cases, an applicant for a federally enforceable permit must demonstrate that the proposed netting transaction will not cause or contribute to an air quality violation before the emissions reduction may be credited. This requirement serves as a "safety valve" for circumstances not contemplated by the calculation of significance values in the NSR regulations, and is amply specific to allow consistent application. This requirement is also appropriate because it provides, as to sources that would be considered major but for their ability to net out of NSR review, air quality protection equivalent to that mandated under section 165(a)(3) of the Act.

As indicated above, the concerns addressed by this regulation relate to differences in the toxicity and impact areas of emissions subject to a netting calculation. However, many common types of emissions can be considered the same pollutant in terms of health and welfare impacts. In addition, many industrial processes are sufficiently similar that they can be considered as having an equivalent impact on health and welfare. Therefore, where netting takes place between the same or similar combustion units, fuels, or processes, equivalency may, in most cases, be assumed. As is the case with all other criteria for the crediting of emissions reductions, it is the responsibility of the source attempting to net emissions to support, where necessary, a finding of equivalence of health and welfare equivalence. Nevertheless, EPA has no evidence to indicate that the requisite health and welfare equivalency demonstration has been burdensome or has resulted in any undue delay or prohibition in the construction of a major modification to a major source. Furthermore, any burdens that currently exist would be reduced as a result of today's action.

The EPA is also promulgating a new definitional provision that, in general, excludes certain organic compounds from the term "VOC" as that term is used in the PSD and nonattainment regulations.[10] The compounds are those that EPA has determined to be negligibly photochemically reactive and, hence, not important precursors of ozone (see 42 FR 35314, July 8, 1977; 44 FR 32043, June 4, 1979; 45 FR 32424, May 15, 1980; 45 FR 48941, July 22, 1980; 54 FR 1967, January 18, 1989). They are, therefore, not considered to be VOC's within the meaning of the PSD and nonattainment regulations. The purpose of the revision is to clarify that increases and decreases in emissions of those compounds are to be ignored completely in any applicability determination with respect to VOC's. Although this is a new provision for the NSR regulations, it does not change the chemicals on EPA's list of organic compounds determined to be negligibly photochemically reactive. Thus, it does not change any EPA applicability determinations, since this list has already been relied on in those transactions.

[10] It would not exclude a compound if it were subject to an NSPS or NESHAP.

III. Miscellaneous

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is a "major rule" and therefore subject to the requirement for preparation of a Regulatory Impact Analysis. The EPA has determined that this regulation is not a "major rule," because it either relaxes a regulatory requirement or retains existing provisions and will not have any significant effects on the economy.

This regulation has been submitted to the Office of Management and Budget for review under Executive Order 12291. Any written comments from that office, and EPA's written responses to any such comments, have been placed in the docket for this proceeding and are available for public inspection at the times and place described earlier in this preamble.

B. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2060–0003.

The public reporting burden resulting from this rulemaking is estimated to decrease 2,920 hours overall as a result of today's rulemaking. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

C. Economic Impact Assessment

The requirement for performing an Economic Impact Assessment under section 317 of the Act (42 U.S.C. 7617), does not apply, because this regulation does not make "substantial revisions" to existing regulations. These revisions are not "substantial," because they either relieve a current regulatory burden or retain existing provisions.

D. Regulatory Flexibility Act Certification

As required by section 3(a) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), I certify that this regulation will not have a significant adverse impact on any small entities, because it relieves an existing regulatory burden and imposes no significant new burdens.

E. Effective Date

As stated earlier in this notice, this rule is effective immediately upon publication in the **Federal Register.** The EPA has concluded that, under section 307(d)(1) of the Act, the requirement of section 4(d) of the Administrative Procedures Act, 5 U.S.C. 553(d), for a 30-day waiting period before making a rule effective is not applicable.

F. Federalism Implications

Under Executive Order 12612, EPA must determine if a rule has federalism implications, i.e., substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. For those rules which have federalism implications, a Federalism Assessment is to be made.

The Executive order also requires that agencies, to the extent possible, refrain from limiting State policy options, consult with States prior to taking any actions that would restrict State policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. The Executive order provides for preemption of State law, however, if there is a clear congressional intent for the agency to do so. Any such preemption, however, is to be limited to the extent possible.

This final rule either retains the current rules or provides increased State policy options. The only change with federalism implications is the action which allows use of certain emissions reductions (e.g., prior shutdowns) in certain areas for offsets. Previously, such reductions could not be used. The change increases State policy options, allowing them to prohibit, use, or partially use these reductions as a part of their air quality management plans.

List of Subjects

40 CFR Part 51

Administrative practices and procedures, air pollution control, intergovernmental relations, reporting and recordkeeping requirements, ozone, sulfur oxides, nitrogen dioxide, lead, particulate matter, hydrocarbons, carbon monoxide.

40 CFR Part 52

Air pollution control, ozone, sulfur oxides, nitrogen dioxide, lead, particulate matter, carbon monoxide, hydrocarbons.

Date: June 12, 1989.

William K. Reilly,

Administrator.

For reasons set forth in the preamble, Parts 51 and 52 of Chapter I of the Title 40 of the Code of Federal Regulations are amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

1. The authority citation for Part 51 continues to read as follows:

Authority: Secs. 101(b)(1), 110, 160–169, 171–178, and 301(a) of the Clean Air Act, 42 USC 7401(b)(1), 7410, 7470–7479, 7501–7508, and 7601(a).

2. Section 51.165 is amended by adding paragraph (a)(1)(xix) and revising paragraph (a)(3)(ii)(C) to read as follows:

51.165 Permit requirements.

(a) * * *

(1) * * *

(xix) "Volatile organic compounds" excludes: methane; ethane; methylene chloride: 1,1,1 tricholoroethane (methyl chloroform); trichlorotrifluoroethane (CFC–113) (Freon 113); trichlorofluoromethane (CFC–11); dichlorodifluoromethane (CFC–12); chlorodifluoromethane (CFC–22); trifluoromethane (FC–23); dichlorotetrafluoroethane (CFC–114); chloropentafluoroethane (CFC–115); dichlorotrifluoroethane (HCFC–123); tetrafluoroethane (HFC–134a); dichlorofluoroethane (HCFC–141b); and chlorodifluoroethane (HCFC–142b).

* * * * *

(3) * * *

(ii) * * *

(C)(*1*) Emissions reductions achieved by shutting down an existing source or curtailing production or operating hours below baseline levels may be generally credited if such reductions are permanent, quantifiable, and federally enforceable, and if the area has an EPA-approved attainment plan. In addition, the shutdown or curtailment is creditable only if it occurred on or after the date specified for this purpose in the plan, and if such date is on or after the date of the most recent emissions inventory used in the plan's demonstration of attainment. Where the plan does not specify a cutoff date for shutdown credits, the date of the most recent emissions inventory or attainment demonstration, as the case may be, shall apply. However, in no event may credit be given for shutdowns which occurred prior to August 7, 1977. For purposes of this paragraph, a permitting authority may choose to consider a prior shutdown or curtailment to have occurred after the date of its most recent emissions inventory, if the inventory explicitly includes as current "existing" emissions the emissions from such previously shutdown or curtailed sources.

(*2*) Such reductions may be credited in the absence of an approved attainment demonstration only if the shutdown or curtailment occurred on or after the date the new source permit application is filed, or, if the applicant can establish that the proposed new source is a replacement for the shutdown or curtailed source, and the cutoff date provisions of § 51.165(a)(3)(ii)(C)(*1*) are observed.

* * * * *

3. Section 51.166 is amended by adding paragraphs (b)(29) and (s)(2)(vi) to read as follows:

§ 51.166 Prevention of significant deterioration of air quality.

* * * * * * *

(b) * * *

(29) "Volatile organic compounds" excludes each of the following compounds, unless the compound is subject to an emissions standard under sections 111 or 112 of the Act: methane; ethane; methylene chloride; 1,1,1 trichloroethane (methyl chloroform); trichlorotrifluoroethane (CFC–113) (Freon 113); trichlorofluoromethane (CFC–11); dichlorodifluoromethane (CFC–12); chlorodifluoromethane (CFC–22); trifluoromethane (FC–23); dichlorotetrafluoroethane (CFC–114); chloropentafluoroethane (CFC–115); dichlorotrifluoroethane (HCFC–123); tetrafluoroethane (HCFC–134a); dichlorofluoroethane (HCFC–141b); and chlorodifluoroethane (HCFC–142b).

* * * * *

(s) * * *

(2) * * *

(vi) The provisions of paragraph (p) of this section (relating to Class I areas) have been satisfied with respect to all periods during the life of the source or modification.

* * * * * *

4. Section 51.166 is amended by removing paragraph (s)(2)(iv)(*b*) and redesignating paragraph (s)(2)(iv)(*c*) as (s)(2)(iv)(*b*).

5. Appendix S is amended by adding paragraph II.A.20 and revising paragraph IV.C.3. to read as follows:

Appendix S—Emission Offset Interpretative Ruling

* * * * * *

II. * * *

A. * * *

20. "Volatile organic compounds" excludes: methane; ethane; methylene chloride; 1,1,1

tricholoroethane (methyl chloroform); trichlorotrifluoroethane (CFC–113) (Freon 113); trichlorofluoromethane (CFC–11); dichlorodifluoromethane (CFC–12); chlorodifluoromethane (CFC–22); trifluoromethane (FC–23); dichlorotetrafluoroethane (CFC–114); and chloropentafluoroethane (CFC–115); dichlorotrifluoroethane (HCFC–123); tetrafluoroethane (HCFC–134a); dichlorofluoroethane (HCFC–141b); and chlorodifluoroethane (HCFC–142b).

* * * * *

IV. * * *

C. * * *

3. (i) *Operating hours and source shutdown.*

A source may generally be credited with emissions reductions achieved by shutting down an existing source or permanently curtailing production or operating hours below baseline levels (see initial discussion in this Section IV.C), if such reductions are permanent, quantifiable, and federally enforceable, and if the area has an EPA-approved attainment plan. In addition, the shutdown or curtailment is creditable only if it occurred on or after the date specified for this purpose in the plan, and if such date is on or after the date of the most recent emissions inventory used in the plan's demonstration of attainment. Where the plan does not specify a cutoff date for shutdown credits, the date of the most recent emissions inventory or attainment demonstration, as the case may be, shall apply. However, in no event may credit be given for shutdowns which occurred prior to August 7, 1977. For purposes of this paragraph, a permitting authority may choose to consider a prior shutdown or curtailment to have occurred after the date of its most recent emissions inventory, if the inventory explicitly includes as current "existing" emissions the emissions from such previously shutdown or curtailed sources.

(ii) Such reductions may be credited in the absence of an approved attainment demonstration only if the shutdown or curtailment occurred on or after the date the new source application is filed, or, if the applicant can establish that the proposed new source is a replacement for the shutdown or curtailed source and the cutoff date provisions of section IV.C.3.(i) are observed.

* * * * *

6. Appendix S, paragraph IV.D. is amended by redesignating footnote 10 as footnote 9 and paragraph V.A.(1) is amended by redesignating footnote 11 as footnote 10.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.21 is amended by adding paragraphs (b)(30) and (v)(2)(vi) to read as follows:

§ 52.21 Prevention of significant deterioration of air quality.

* * * * *

(b) * * *

(30) "Volatile organic compounds" excludes each of the following compounds, unless the compound is subject to an emissions standard under sections 111 or 112 of the Act: methane; ethane; methylene chloride; 1,1,1 trichloroethane (methyl chloroform); trichlorotrifluoroethane (CFC–113) (Freon 113); trichlorofluoromethane (CFC–11); dichlorodifluouromethane (CFC–12); chlorodifluoromethane (CFC–22); trifluoromethane (FC–23); dichlorotetrafluoroethane (CFC–114); and chloropentafluoroethane (CFC–115); dichlorotrifluoroethane (HCFC–123); tetrafluoroethane (HFC–134a); dichlorofluoroethane (HCFC–141b); and chlorodifluoroethane (HCFC–142b).

* * * * *

(v) * * *

(2) * * *

(vi) The provisions of paragraph (p) of this section (relating to Class I areas) have been satisfied with respect to all periods during the life of the source or modification.

* * * * *

3. Section 52.21 is amended by removing paragraph (v)(2)(iv)(*b*) and redesignating paragraph (v)(2)(iv)(*c*) as (v)(2)(iv)(*b*).

4. Section 52.24 is amended by adding paragraph (f)(18) to read as follows:

§ 52.24 Statutory restriction on new sources.

* * * * *

(f) * * *

(18) "Volatile organic compounds" excludes: methane; ethane; methylene chloride; 1,1,1 tricholoroethane (methyl chloroform); trichlorotrifluoroethane (CFC–113) (Freon 113); trichlorofluoromethane (CFC–11); dichlorodifluoromethane (CFC–12); chlorodifluoromethane (CFC–22); trifluoromethane (FC–23); dichlorotetrafluoroethane (CFC–114); and chloropentafluoroethane (CFC–115); dichlorotrifluoroethane (HCFC–123); tetrafluoroethane (HFC–134a); dichlorofluoroethane (HCFC–141b); and chlorodifluoroethane (HCFC–142b).

* * * * *

[FR Doc. 89–14682 Filed 6–27–89; 8:45 am]

BILLING CODE 6560–50–M

federal register

Wednesday
June 28, 1989

Part III

Department of Education

34 CFR Part 300

Assistance to States for Education of Handicapped Children; Final Rule; Correction

DEPARTMENT OF EDUCATION

34 CFR Part 300

RIN 1820-AA71

Assistance to States for Education of Handicapped Children; Correction

AGENCY: Department of Education.

ACTION: Final rule; correction.

SUMMARY: On April 27, 1989, final regulations for 34 CFR Part 300, titled "Assistance to States for Education of Handicapped Children," were published at 54 FR 18248. The regulations are corrected as follows:

§ 300.138 [Corrected]

1. On page 18253, in the second column, under § 300.138 (Amended), the fourth line is corrected to read "(20 U.S.C. 241e–2), section 305(b)(8) of".

2. On the same page, in the same column, under § 300.138 (Amended), the ninth line is corrected to read "Subpart 2 of Part D of Chapter 1".

3. On same page, in the same column and section, the thirteenth line is corrected to read "Vocational Education Act,".

§ 300.589 [Corrected]

4. On page 18255, in the first column, "supplement" in the heading for § 300.589 is corrected to read "supplementing".

§ 300.702 [Corrected]

5. On the same page, in the third column, in § 300.702(a)(3), paragraph (3) beginning with the third line is corrected to read "under Subpart 2 of Part D of Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965.".

§ 300.751 [Corrected]

6. On page 18256, in the third column, in § 300.751, the second line of paragraph (d)(2) is corrected to read "disability (other than a deaf-blind child) must".

§ 300.753 [Corrected]

7. On the same page, in the same column, under § 300.753 (Amended) the third and fourth lines are corrected to read "adding, in its place, "Subpart 2 of Part D of Chapter 1 of Title I of".

FOR FURTHER INFORMATION CONTACT: Lucille Sleger, Office of Special Education and Rehabilitative Services, Division of Assistance to States, 400 Maryland Avenue, SW., Room 3615, Switzer Building, Washington, DC 20202; Telephone: (202) 732–1104.

Authority: 20 U.S.C. 1411–1420, unless otherwise noted.

Dated: June 22, 1989.

Patricia McGill Smith,

Acting Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 89–15230 Filed 6–27–89; 8:45 am]

BILLING CODE 4000–01–M

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federal register

Wednesday
June 28, 1989

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Proposed Establishment of the Phoenix Terminal Control Area and Revocation of the Phoenix Airport Radar Service Area; AZ; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89-AWA-6]

Proposed Establishment of the Phoenix Terminal Control Area and Revocation of the Phoenix Airport Radar Service Area; AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This action corrects the description of the Phoenix Terminal Control Area (TCA) (54 FR 23822, June 2, 1989). Due to the difficulty of using geographical landmarks to depict TCA boundaries, some coordinates of latitudes and longitudes of Area B were incorrectly stated in the NPRM. Subarea B-1 is proposed by this action to depict that correction. No airspace is added by this correction. Also, a boundary was incorrectly described in Area H. In addition, some minor editorial changes were made for clarification.

DATES: Comments must be received on or before August 1, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC-10], Airspace Docket No. 89-AWA-6, 800 Independence Avenue SW., Washington, DC 20591.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Betty Harrison, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9255.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-AWA-6." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

History

Federal Register Document 89-13135 published June 2, 1989, proposed a TCA at Phoenix, AZ (54 FR 23822). Because of the difficulty involved with the TCA alignment using geographical landmarks, errors were made in some latitude and longitude coordinates in Area B. To correct the error, a new subarea, B-1, is proposed and is designed for terrain clearance using prominent visual landmarks. No additional airspace is contemplated by this correction. Further, although the altitudes for the visual flight rules transition area were described correctly in the proposal as 3,500 to 5,500 feet mean sea level (as assigned by air traffic control), the chart depiction was incorrect. In Area H, a boundary was incorrectly described as a bearing from the instrument landing system localizer antenna instead of a radial from the Salt Lake City very high frequency omni-directional radio range and tactical air navigational aid. In addition, some minor editorial changes were made for clarification.

The FAA has determined that this proposed regulation is not a "major rule" under Executive Order 12291, and it is certified that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities. This rule is considered a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

List of Subjects in 14 CFR Part 71

Aviation safety, Terminal control areas and airport radar service areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, Federal Register Document 89-13135, as published in the Federal Register on June 2, 1989 (54 FR 23822), is corrected by substituting the following:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.403 [Amended]

2. § 71.403 is amended as follows:

Phoenix, AZ [New]

Primary Airport
Phoenix Sky Harbor International Airport (lat. 33°26'10"N., long. 112°00'32"W.)
Phoenix Sky Harbor International Airport Runway 8R Instrument Landing System (ILS) Localizer Antenna (lat. 33°25'52"N., long. 111°59'11"W.) Salt River VORTAC (SRP) (lat. 33°25'53"N., long. 111°53'17"W.)

Boundaries

Area A. That airspace extending upward from the surface to and including 10,000 feet MSL within the area bounded on the north by a point at lat. 33°30'34"N., long. 112°10'06"W., (intersection of 51st Avenue and Camelback Road) extending east along Camelback Road until a point at lat. 33°30'07"N., long. 111°53'26"W., (intersection of Camelback Road and Pima/Price Road), on the east by Pima/Price Road until a point at lat. 33°21'49"N., long. 111°53'34"W., (Pima/Price Road and Guadalupe Road), on the south by Guadalupe Road to a point at lat. 33°21'50"N., long. 111°58'05"W., (intersection of Guadalupe Road and Interstate 10) direct to a point at lat. 33°21'48"N., long. 112°06'27"W., direct to a point at lat. 33°21'46"N., long. 112°10'06"W., on the west by 51st Avenue to the point of beginning.

Area B. That airspace extending upward from 3,000 feet MSL to and including 10,000 feet MSL within an area bounded on the north by a point at lat. 33°30'29"N., long. 112°21'26"W., (intersection of Litchfield Road and Camelback Road) extending east on Camelback Road to a point at lat. 33°30'27"N., long. 112°18'14"W., (Camelback Road and Agua Fria River) north along Agua Fria River to a point at lat. 33°32'11"N., long. 112°18'23"W., (Agua Fria River and Glendale Avenue) extending east on Glendale Avenue to a point at lat. 33°32'19"N., long. 112°06'42"W., (intersection of Glendale Avenue and Interstate 17), on the east by Interstate 17 to a point at lat. 33°30'34"N., long. 112°06'42"W., (intersection of Interstate 17 and Camelback Road) west on Camelback Road to a point at lat. 33°30'34"N., long. 112°10'05"W., (intersection of Camelback Road and 51st Avenue) south of 51st Avenue to a point at lat. 33°21'46"N., long. 112°10'06"W., east to a point at lat. 33°21'48"N., long. 112°06'27"W., south to a point at lat. 33°18'18"N., long. 112°06'27"W., on the south by an extension of Chandler Boulevard extending west to a point at lat. 33°18'18"N., long. 112°21'26"W., on the west by Litchfield Road and an extension of Litchfield Road to the point of beginning, excluding that airspace west of the Gila River.

Area B-1. That airspace extending upward from 4,000 feet MSL to and including 10,000 feet MSL within an area bounded by a point beginning at the intersection of the Gila River and an extension of Chandler Boulevard at lat. 33°18'18"N., long. 112°12'00"W., extending west on an extension of Chandler Boulevard to a point at lat. 33°18'18"N., long. 112°21'26"W., extending north along an extension of Litchfield Road and Litchfield Road until intercepting the Gila River extending southeast along the Gila River to the point of beginning.

Area C. That airspace extending upward from 3,000 feet MSL with the airspace bounded on the north by a point at lat. 33°32'16"N., long. 111°53'26"W. (intersection of Indian Bend Road and Pima/Price Road) east on Indian Bend Road and an extension of Indian Bend Road until a point at lat. 33°32'20"N., long. 111°47'20"W., (extension of Indian Bend Road intercepts Gilbert Road), on the east by Gilbert Road and an extension of Gilbert Road to a point at lat. 33°18'18"N., long. 111°47'20"W., (extension of Gilbert Road intercepts Chandler Boulevard) on the south by Chandler Boulevard to a point at lat. 33°18'19"N., long. 111°58'18"W., (intersection of Chandler Boulevard and Interstate 10), on the west by Interstate 10 to a point at lat. 33°21'50"N., long. 111°58'05"W., (the intersection of Guadalupe Road and Interstate 10) then east on Guadalupe Road to a point at lat. 33°21'49"N., long. 111°53'34"W., (intersection of Guadalupe Road and Pima/Price Road), then north on Pima/Price Road until the point of beginning.

Area D. That airspace extending upward from 4,000 feet MSL to and including 10,000 feet MSL within an area bounded by a point at lat. 33°36'32" N., long. 112°18'15" W., (Agua Fria River and Thunderbird Road) extending east on Thunderbird Road and Cactus Road and an extension of Cactus Road (lat. 33°35'45" N., long. 111°38'30" W.) until intercepting the 20-mile arc from the ILS localizer antenna clockwise to the Williams 1 MOA, AZ, boundary, then south along the Williams 1 MOA boundary until intersecting Riggs Road and an extension of Riggs Road, extending west on Riggs Road and an extension of Riggs Road to a point at lat. 33°13'10" N., long. 112°09'55" W., (intersection of Valley Road and Riggs Road) north on Valley Road to a point at lat. 33°15'20" N., long. 112°10'10" W., (intersection of Valley Road and Gila River) north along Gila River until intercepting an extension of Chandler Boulevard at lat. 33°18'18" N., long. 112°12'00"W., extending east on an extension of Chandler Boulevard to a point at lat. 33°18'18" N., long. 112°06'27" W., north to a point at lat. 33°21'48" N., long. 112°06'27" W., east to a point at lat. 33°21'50" N., long. 111°58'05" W., (intersection of Guadalupe Road and Interstate 10) south on Interstate 10 to a point at lat. 33°18'19" N., long. 111°58'18" W., (intersection of Chandler Boulevard and Interstate 10) east on Chandler Boulevard to a point at lat. 33°18'19" N., long. 111°47'20" W., (intersection of Gilbert Road and Chandler Boulevard) north on Gilbert Road and an extension of Gilbert Road to a point at lat. 33°32'20" N., long. 111°47'20" W., (intersection of Gilbert Road and Indian Bend Road) west on Indian Bend Road to a point at lat. 33°32'16" N., long. 111°53'26" W., (intersection of Indian Bend Road and Pima/Price Road) south on Pima/Price Road to a point at lat. 33°30'07" N., long. 111°53'26" W., (intersection of Camelback Road and Pima/Price Road) west on Camelback Road to a point at lat. 33°30'34" N., long. 112°06'42" W., (intersection of Camelback Road and Interstate 17) north on Interstate 17 to a point at lat. 33°32'19" N., long. 112°06'42" W., (Interstate 17 and Glendale Avenue) west on Glendale Avenue to a point at lat. 33°32'11" N., long. 112°18'23" W., (intersection of Glendale Avenue and Agua Fria River) north on Agua Fria River until the point of beginning.

Area E. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL within an area bounded by a point at the Agua Fria River and the 20-mile arc of the ILS localizer antenna (lat. 33°37'45" N., long. 112°16'25" W.), clockwise until intercepting an extension of Cactus Road (lat. 33°35'45" N., long. 111°38'30" W.), west on an extension of Cactus Road and Cactus Road and Thunderbird Road until a point at lat. 33°36'32" N., long. 112°18'15" W., (intersection of Agua Fria River and Thunderbird Road) north along Agua Fria River until the point of beginning.

Area F. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL within an area bounded by a point at lat. 33°13'10" N., long. 112°09'55" W., (intersection of Valley Road and Riggs Road and an extension of Riggs Road) extending east on an extension of Riggs Road and Riggs Road until intercepting the Williams 1 MOA extending south along the Williams 1 MOA boundary until intercepting the 20-mile arc of the ILS localizer antenna clockwise until intercepting a point at lat. 33°07'30" N., long. 112°06'45" W., on Valley Road, north on Valley Road until the point of beginning.

Area G. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL within an area bounded by a point on the 25-mile arc of the ILS localizer antenna and Camelback Road, east on Camelback Road to a point at lat. 33°30'29" N., long. 112°21'26" W., (intersection of Camelback Road and Litchfield Road) south on Litchfield Road to a point at lat. 33°18'18" N., long. 112°21'26" W., (intersection of Litchfield Road and an extension of Chandler Boulevard) west on an extension of Chandler Boulevard to a point on the 25-mile arc of the ILS localizer antenna, clockwise until the point of beginning.

Area H. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL within an area bounded by a point on the 25-mile arc of the ILS localizer antenna and the Agua Fria River clockwise to the Williams 1 MOA, west along the Williams 1 MOA until intercepting the 20-mile arc of the ILS localizer antenna counterclockwise to a point at lat. 33°37'45" N., long. 112°16'25" W., on the Agua Fria River, extending north along the Agua Fria River until the point of beginning, excluding that airspace between Interstate 17 and the 009° radial from the Salt River VORTAC.

Area I. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL within an area bounded by a point at lat. 33°05'40" N., long. 111°59'50" W., on the 20-mile arc of the ILS localizer antenna counterclockwise to the Williams 1 MOA south along Williams 1 MOA to the 25-mile arc of the ILS localizer antenna clockwise to a point at lat. 33°00'35" N., long. 111°59'50" W., (power transmission line) north along the power transmission line to the point of beginning.

§ 71.501 [Amended]

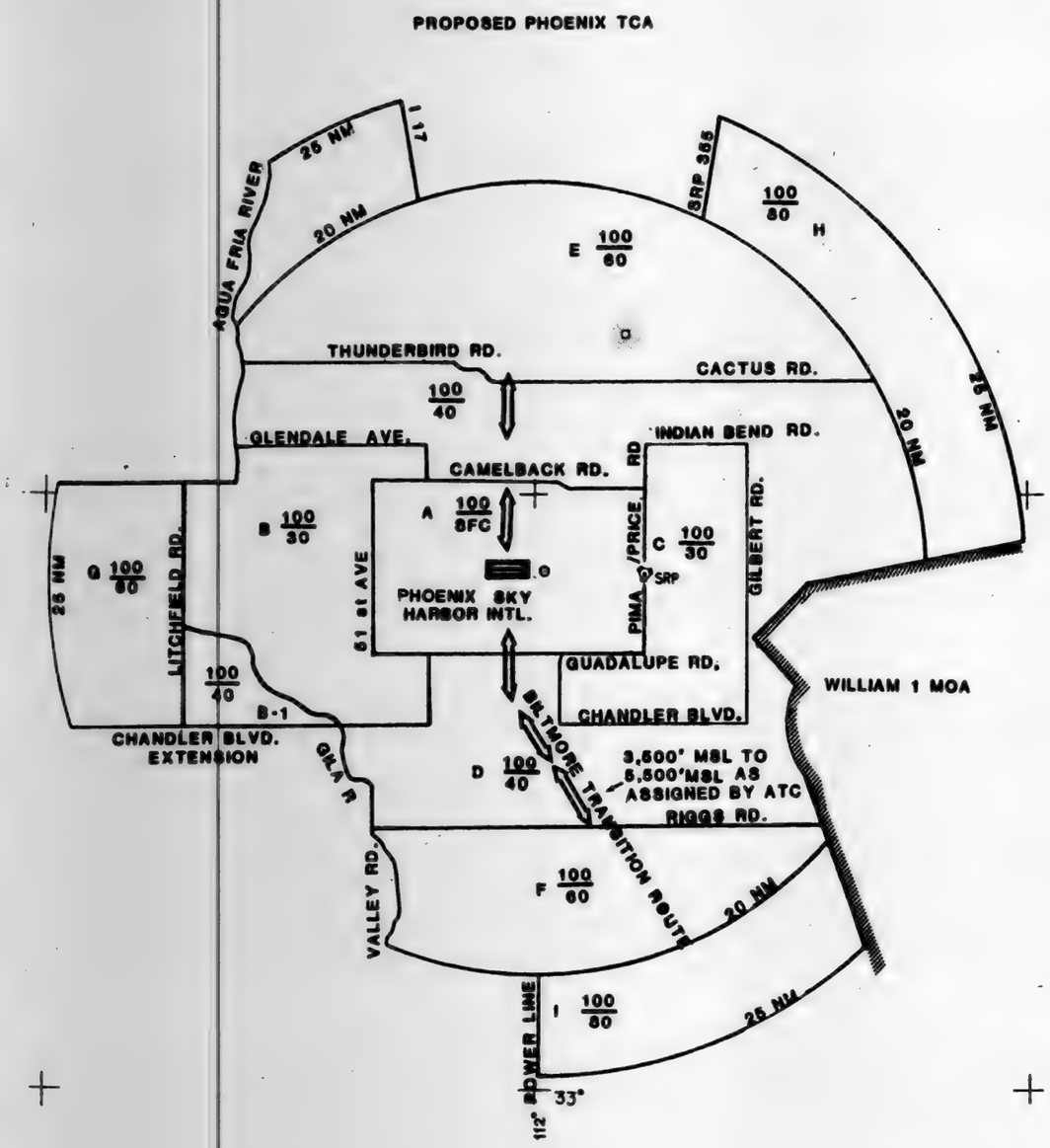
3. Section 71.501 is amended as follows: Phoenix Sky Harbor International Airport, AZ [Removed].

Issued in Washington, DC, on June 20, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

BILLING CODE 4910-13-M



[FR Doc. 89-15214 Filed 6-27-89; 8:45 am]
BILLING CODE 4910-13-C

federal register

Wednesday
June 28, 1989

Part V

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 5, 6, 19, and 52
Federal Acquisition Regulation (FAR); Competitive Thresholds; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 5, 6, 19, and 52

Federal Acquisition Regulation (FAR); Competitive Thresholds

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are proposing a revision to Federal Acquisition Regulation (FAR) Parts 5, 6, Subpart 19.8, and Part 52 to implement sections 303(b) and 303(d) of the Business Opportunity Development Reform Act of 1988, Pub. L. 100-656.

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before July 28, 1989, to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 89-53 is all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523-4755. Please cite FAR Case 89-53.

SUPPLEMENTARY INFORMATION:

A. Background

Section 303(b) of the Business Opportunity Development Reform Act of 1988 requires that acquisitions offered for award pursuant to section 8(a) of the Small Business Act be awarded on the basis of competition restricted to eligible program participants if (a) there is a reasonable expectation that at least two eligible program participants will submit offers and that award can be made as a fair market price, and (b) the anticipated award price of the contract (including options) will exceed $5,000,000 in the case of a contract opportunity assigned a standard industrial classification code for manufacturing and $3,000,000 (including options) in the case of all other contract opportunities.

Section 303(d) amends the current appeal authority of the Small Business Administration to permit appeals as to whether a requirement should be offered to the section 8(a) program and as to whether the estimated fair market price as determined by the contracting agency is correct.

B. Regulatory Flexibility Act

The requirements of the Act are being addressed by the Small Business Administration in development of its regulations implementing the "Business Opportunity Development Reform Act of 1988," Pub. L. 100-656, published in the **Federal Register** on March 23, 1989 (54 FR 12054).

C. Paperwork Reduction Act.

The requirements of the Paperwork Reduction Act are being addressed by the Small Business Administration in development of its regulations published in the **Federal Register** on March 23, 1989 (54 FR 12054) implementing the Business Opportunity Development Reform Act of 1988, Pub. L. 100-545.

List of Subjects in 48 CFR Parts 5, 6, 19, and 52

Government procurement.

Dated: June 23, 1989.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, 48 CFR Parts 5, 6, 19, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 5, 6, 19, and 52 continues to read as follows:

Authority: 40 U.S.C. 488(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

PART 5—PUBLICIZING CONTRACT ACTIONS

2. Section 5.202 is amended by revising paragraph (a)(4) to read as follows:

5.202 Exceptions.

(a) * * *

(4) The contract action is expressly authorized or required by a statute to be made through another Government agency, including acquisitions from the Small Business Administration (SBA) using the authority of section 8(a) of the Small Business Act (but see 5.205(e)), or from a specific source such as a workshop for the blind under the rules of the Committee for the Purchase from the Blind and Other Severely Handicapped;

* * * * *

3. Section 5.205 is amended by adding paragraph (e) to read as follows:

5.205 Special situations.

* * * * *

(e) *Section 8(a) competitive acquisition.* When a national buy requirement is being considered for competitive acquisition limited to eligible 8(a) concerns under Subpart 19.8, the contracting officer shall transmit a synopsis of the proposed contract action to the CBD in accordance with 5.207. The synopsis may be transmitted to the CBD concurrent with submisson of the agency offering (see 19.804-2) to the Small Business Administration (SBA). The synopsis should also include information—

(1) Advising that the acquisition is being offered for competition limited to eligible 8(a) concerns;

(2) Specifying the Standard Industrial Classification (SIC) code;

(3) Advising that eligibility to participate may be restricted to firms in either the developmental or transitional stage; and

(4) Encouraging interested 8(a) firms to request a copy of the solicitation as expeditiously as possible since the solicitation will be issued without further notice upon SBA acceptance of the requirement for the section 8(a) program.

PART 6—COMPETITION REQUIREMENTS

4. Section 6.204 is added to read as follows:

6.204 Section 8(a) competition.

(a) To fulfill statutory requirements relating to section 8(a) of the Small Business Act, as amended by Pub. L. 100-656, contracting officers may limit competition to eligible 8(a) contractors (see Subpart 19.8).

(b) No separate justification or determination and findings is required under this part to limit competition to eligible 8(a) contractors.

5. Section 6.302-5 is amended by revising paragraph (b)(4) to read as follows:

6.302-5 Authorized or required by statute.

(b) * * *

(4) Sole source awards under the 8(a) Program—15 U.S.C. 637 (see Subpart 19.8).

* * * * *

PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

6. Subpart 19.8 is revised to read as follows:

Subpart 19.8—Contracting With the Small Business Administration (The 8(a) Program)

Sec.

19.800 General.
19.801 Definitions.
19.802 Selecting concerns for the 8(a) program.
19.803 Selecting acquisitions for the 8(a) program.
19.804 Evaluation, offering, and acceptance.
19.804-1 Agency evaluation.
19.804-2 Agency offering.
19.804-3 SBA acceptance.
19.804-4 Repetitive acquisitions.
19.805 Competitive 8(a).
19.805-1 General.
19.805-2 Procedures.
19.806 Pricing the (8a) contract.
19.807 Estimating the fair market price.
19.808 Contract negotiation.
19.808-1 Sole source.
19.808-2 Competitive.
19.809 Preaward considerations.
19.810 SBA appeals.
19.811 Preparing the contracts.
19.811-1 Sole source.
19.811-2 Competitive.
19.811-3 Contract clauses.
19.812 Contract administration.

Subpart 19.8—Contracting With the Small Business Administration (The 8(a) Program)

19.800 General.

(a) Section 8(a) of the Small Business Act (15 U.S.C. 637(a)) established a program that authorizes the Small Business Administration (SBA) to enter into all types of contracts with other agencies and let subcontracts for performing those contracts to firms eligible for program participation. SBA's subcontractors are referred to as "8(a) contractors."

(b) Contracts may be awarded to the SBA for performance by eligible 8(a) firms on either a sole source or competitive basis.

(c) When, acting under the authority of the program, the SBA certifies to an agency that the SBA is competent and responsible to perform a specific contract, the contracting officer is authorized, in the contracting officer's discretion, to award the contract to the SBA based upon mutually agreeable terms and conditions.

19.801 Definitions.

"Local buy requirement" as used in this subpart means a supply or service purchased to meet the specific needs of one user in one location.

"National buy requirement" as used in this subpart means a supply or service purchased to meet the needs of one or more users in two or more locations where supply control, inventory management, or acquisition responsibility have been assigned to a central contracting activity.

19.802 Selecting concerns for the 8(a) program.

Selecting concerns for the 8(a) program is the responsibility of SBA and is based on the criteria established in 13 CFR 124.101-113.

19.803 Selecting acquisitions for the 8(a) program.

Through their cooperative efforts, the SBA and an agency match the agency's requirements with the capabilities of 8(a) concerns to establish a basis for the agency to contract with the SBA under the program. Selection is initiated in one of three ways.

(a) The SBA advises an agency through a search letter of an 8(a) firm's capabilities and asks the agency to identify acquisitions to support the firm's business plans. In these instances, the SBA will provide at least the following information in order to enable the agency to match an acquisition to the firm's capabilities.

(1) Identification of the concern and its owners.

(2) Background information on the concern, including any and all information pertaining to the concern's technical ability and capacity to perform.

(3) The firm's present production capacity and related facilities.

(4) The extent to which contracting assistance is needed in the present and the future, described in terms that will enable the agency to relate the concern's plans to present and future agency requirements.

(5) If construction is involved, the request shall also include the following:

(i) The concern's capabilities in and qualifications for accomplishing various categories of maintenance, repair, alteration, and construction work in specific categories such as mechanical, electrical, heating and air conditioning, demolition, building, painting, paving, earth work, waterfront work, and general construction work.

(ii) The concern's capacity in each construction category in terms of estimated dollar value (e.g., electrical, up to $100,000).

(b) The SBA identifies a specific requirement for a particular 8(a) firm or firms and asks the agency to offer the acquisition to the 8(a) program for the firm(s). In these instances, in addition to the information in paragraph (a) of this section, the SBA will provide—

(1) A clear identification of the acquisition sought; e.g., project name or number;

(2) A statement as to how any additional needed facilities will be provided in order to ensure that the firm will be fully capable of satisfying the agency's requirements; and

(3) If a sole source request: (i) The reasons why the firm is considered suitable for this particular acquisition; e.g., previous contracts for the same or a similar supply or service; and (ii) a statement that the firm is eligible in terms of STC code, business support levels, and business activity targets.

(4) If competitive, a statement identifying at least two 8(a) firms considered capable of satisfying the agency's requirements which are also eligible in terms of the SIC code, business support levels, and business activity targets.

(c) Agencies may also review other proposed acquisitions for the purpose of identifying requirements which may be offered to the SBA. Where agencies independently, or through the self-marketing efforts of an 8(a) firm, identify a requirement for the 8(a) program, they may offer on behalf of a specific 8(a) firm, for the 8(a) program in general, or for 8(a) competition.

19.804 Evaluation, offering, and acceptance.

19.804-1 Agency evaluation.

In determining the extent to which a requirement should be offered in support of the 8(a) program, the agency should evaluate—

(a) Its current and future plans to acquire the specific items or work that the SBA's contractor is seeking to provide, identified in terms of—

(1) Quantities required or the number of construction projects planned; and

(2) Performance or delivery requirements, including required monthly production rates, when applicable.

(b) Its current and future plans to acquire items or work similar in nature and complexity to those specified in the business plan, if there are no known requirements for the specified items or work;

(c) Problems encountered in previous acquisitions of the items or work from the SBA's contractor and/or other contractors;

(d) The impact of any delay in delivery;

(e) Whether the items or work have previously been acquired using small business set-asides; and

(f) Any other pertinent information about the SBA's contractor, the items, or the work. This includes any information concerning the firm's capabilities. When necessary, the contracting agency shall make an independent review of the factors in 19.803(a) and other aspects of

the firm's capabilities which would ensure the satisfactory performance of the requirement being considered for commitment to the 8(a) program.

19.804-2 Agency offering.

(a) After completing its evaluation, the agency shall notify the SBA of the extent of its plans to place 8(a) contracts with the SBA for specific quantities of items or work. The notification must identify the time frames within which prime contract and subcontract actions must be completed in order for the agency to meet its responsibilities. The notification must also contain the following information applicable to each prospective contract:

(1) A description of the work to be performed or items to be delivered, and a copy of the statement of work, if available.

(2) The estimated period of performance.

(3) The SIC code that applies to the principal nature of the acquisition.

(4) The anticipated dollar value of the requirement, including options, if any.

(5) Any special restrictions or geographical limitations on the requirement (for construction and services include the location of the work to be performed).

(6) Any special capabilities or disciplines needed for contract performance.

(7) The type of contract anticipated.

(8) The acquisition history, if any, of the requirement; including the names and addresses of any small business contractors which have performed this requirement during the previous 24 months.

(9) A statement that no solicitation for this specific acquisition has been issued as a small business set-aside or a small disadvantaged business set-aside, and that no other public communication (such as a notice in the Commerce Business Daily) has been made evidencing the contracting agency's clear intention to set aside the acquisition for small business or small disadvantaged business.

(10) Identification of any particular 8(a) concern designated for consideration, including a brief justification, such as—

(i) The 8(a) concern, through its own efforts, marketed the requirement and caused it to be reserved for the 8(a) program; or

(ii) The acquisition is a follow-on or renewal contract and the nominated concern is the incumbent.

(11) Bonding requirements, if applicable.

(12) Identification of all 8(a) concerns which have expressed an interest in being considered for the acquisition.

(13) Identification of all SBA district or regional offices which have asked for the acquisition for the 8(a) program.

(14) A recommendation, if appropriate, as to whether the acquisition should be competitive or sole source; and

(15) Any other pertinent and reasonably available data.

(b) An agency offering for a local buy requirement should be submitted to the SBA Regional Office for the geographical area where the user is located. An agency offering for a national buy requirement should be submitted to the Office of Program Development, Office of Minority Small Business and Capital Ownership Development, Small Business Administration, 1441 L Street NW., Washington, DC 20416.

19.804-3 SBA acceptance.

(a) Upon receipt of the contracting agency's offer, SBA will determine whether to accept the requirement for the 8(a) program. SBA's decision whether to accept the requirement will be transmitted to the contracting agency in writing within 15 working days of receipt of the offer, unless SBA requests, and the contracting agency grants, an extension.

(b) If the acquisition is accepted for sole source, the SBA will advise the contracting activity of the 8(a) firm selected for negotiation. Generally, SBA will accept a contracting activity's recommended source.

(c) If the acquisition is accepted for competition: (1) For a local buy requirement, SBA will advise as to which SBA districts or regions the competition is restricted and provide the list of the 8(a) firms in those districts or regions which are eligible for the designated SIC code; or (2) for a national buy requirement, the SBA will identify at least two eligible sources; and the contracting officer, in coordination with the small business specialist, will augment the source list based on results of the synopsis (see 5.205(e)) and other available information. The SBA will advise of any program participation stage restrictions. The SBA may limit competition to 8(a) concerns in the developmental stage of program participation, it may limit competition to 8(a) concerns in the transitional stage, or it may permit competition among firms in either stage.

19.804-4 Repetitive acquisitions.

In order for repetitive acquisitions to be awarded through the 8(a) program, there must be separate offers and acceptances. This allows the SBA to revalidate a firm's eligibility, to evaluate the suitability of each acquisition for competitive 8(a), and to determine whether the requirement should continue under the 8(a) program.

19.805 Competitive 8(a).

19.805-1 General.

(a) Except as provided in paragraph (b) of this subsection, an acquisition offered to the 8(a) program shall be awarded on the basis of competition limited to eligible 8(a) firms if—

(1) There is a reasonable expectation that at least two eligible and responsible 8(a) firms will submit offers and that award can be made at a fair market price; and

(2) The anticipated award price of the contract, including options will exceed $5,000,000 for acquisitions assigned manufacturing standard industrial classification (SIC) codes and $3,000,000, for all other acquisitions.

(b) Where an acquisition excees the competitive threshold, SBA may accept the requirement for sole source 8(a) award if—

(1) There is not a reasonable expectation that at least two eligible and responsible 8(a) firms will submit offers at a fair market price; or

(2) SBA determines that an 8(a) concern owned and controlled by an economically disadvantaged Indian tribe is eligible and responsible and needs the acquisiton for its business development.

(c) On a limited basis, the SBA Associate Administrator for Minority Small Business and Capital Ownership Development, may approve an agency recommendation for a competitive 8(a) award below the competitive thresholds. The agency recommendation may be included in the offering letter or may be submitted by separate correspondence through the SBA region or headquarters, depending upon whether the acquisition is a local or national buy requirement. Agency recommendations for competition below the threshold will be given favorable consideration primarily in acquisitions requiring formal technical evaluation or where a large number of responsible 8(a) firms are available for the competition.

19.805-2 Procedures.

(a) Competitive 8(a) acquisitions shall be conducted by contacting agencies by using sealed bids (see Part 14) or competitive proposals (see Part 15).

(b) Offers will be solicited from those sources identified in accordance with the SBA instructions provided in accordance with 19.804-3.

(c) Upon receipt of offers, the contracting officer will provide the SBA a copy of the solicitation and the fair market price and, in a sealed bid acquisition, a list of offerors ranked in the order of their standing for award; i.e., first low, second low, etc., with the total evaluated price for each offer, differentiating between basic and any options. In negotiated acquisition, in addition to a copy of the solicitation and fair market price, the contracting officer will submit an unranked list of offerors within the competitive range. Actual offered prices in a negotiated acquisition will not be submitted or revealed to SBA. The SBA will determine the offerors' business support level and business activity target potential eligibility on the basis of the estimated fair market price.

(d) Within 5 working days after receipt of the list of offerors, SBA will determine eligibility of the firms for award of the contract and advise the contracting officer. Eligibility is based on whether the firm has the SIC code for this acquisition in its approved business plan, whether the firm is currently small under the SIC code, whether the firm is in developmental or transitional stage (if the acquisition is restricted by stage), whether the firm has exeeded its approved business support level, and whether the firm is in conformance with its 8(a) buisness activity targets. In sealed bid acquisitions, SBA will consider the eligibility of the first low bidder. If the first low bidder is not determined eligible, SBA will consider the eligibility of the next low bidder until an eligible bidder is identified. In negotiated acquisitons, SBA will determine the eligibility of all firms within the competitive range. If the contracting officer has not received a response from SBA within the 5-day period, the contracting officer may continue to process the acquisition but should recognize that SBA will not enter into the resultant contract unless the offeror is eligible.

(e) Once eligibility has been established by SBA, the successful offeror will be determined by the contracting activity in accordance with normal contracting procedures.

19.806 Pricing the 8(a) contract.

(a) The contracting officer shall price the 8(a) contract in accordance with Subpart 15.8. If required by Subpart 15.8, the SBA shall obtain certified cost or pricing data from its contractor. If the SBA requests audit assistance to determine the reasonableness of the proposed price in a sole source acquisition, the contracting activity shall furnish it to the extent it is available.

(b) An 8(a) contract, sole source of competitive, may not be awarded if the price of the contract results in a cost to the awarding agency which exceeds a fair market price.

(c) If requested by SBA, the contracting officer shall make available the data used to estimate the fair market price.

(d) The negotiated contract price and the estimated fair market price are subject to the concurrence of the SBA. In the event of a disagreement between the contracting officer and the SBA, the SBA may appeal in accordance with 19.810.

19.807 Estimating fair market price.

(a) The contracting officer shall estimate the fair market price of the work to be performed by the SBA's contractor.

(b) In estimating the fair market price for an acquisition other than those covered in paragraph (c) of this section, the contracting officer shall use price or cost analysis and consider commercial prices for similar products and services, available in house cost estimates, data (including cost or pricing data) submitted by the SBA or its contractor, and data obtained from any other Government agency.

(c) In estimating a fair market price for a repeat purchase, the contracting officer shall consider recent award prices for the same items or work if there is comparability in quantities, conditions, terms, and performance times. The estimated price should be adjusted to reflect differences in specifications, plans, transportation costs, packaging and packing costs, and other circumstances. Price indices may be used as guides to determine the changes in labor and material costs. Comparison of commercial prices for similar items may also be used.

19.808 Contract negotiation.

19.808-1 Sole source.

(a) The SBA is responsible for initiating negotiations with the agency within the time established by the agency. If the SBA does not initiate negotiations within the agreed time and the agency cannot allow additional time, the agency may, after notifying the SBA, proceed with the acquisition from other sources.

(b) The SBA's contractor should participate, whenever practicable, in negotiating the contract terms. When mutually agreeable, the SBA may authorize the contracting activity to negotiate directly with the SBA's contractor. Whether or not direct negotiations take place, the SBA is responsible for approving the resulting contract before award and determining whether its contractor shall be required to provide a performance bond.

19.808-2 Competitive.

In competitive 8(a) acquisitions, subject to Part 15, the contracting officer conducts negotiations directly with the competing 8(a) firms.

19.809 Preaward considerations.

The contracting officer should request a preaward survey of the SBA's contractor whenever considered useful. A cognizant contract administration office may be requested to assist in reviewing a specific element of responsibility. If the results of the preaward survey or other information available to the contracting officer raise substantial doubt as to the firm's ability to perform, the contracting officer should refer the matter to the SBA for its consideration in deciding whether SBA should certify that it is competent and responsible to perform. This is not a referral for Certificate of Competency consideration under Subpart 19.6. Within 15 working days of the receipt of the referral or a longer period agreed to by SBA and the contracting activity, the SBA Assistant Regional Administrator for Minority Small Business and Capital Ownership Development in the regional office which services the 8(a) firm will advise the contracting officer as to SBA's willingness to certify its competency to perform the contract using the 8(a) concern in question as its subcontractor. The contracting officer shall proceed with the acquisition and award the contract to another appropriately selected 8(a) offeror if SBA has not certified its competency within 15 working days (or a longer period agreed to).

19.810 SBA appeals.

(a) The following matters may be submitted for determination to the agency by the SBA Administrator if the SBA and the contracting officer fail to agree on them:

(1) The decision not to make a particular acquisition available for award under the 8(a) program.

(2) The terms and conditions of a particular sole source acquisition to be awarded under the 8(a) program.

(3) The estimated fair market price.

(b) Notification of a proposed referral to the agency head by SBA must be received by the contracting officer within 5 working days after SBA is formally notified of the contracting officer's decision. The SBA must provide

the request for determination to the agency head within 15 working days of SBA's receipt of the adverse decision. Pending issuance of a decision by the agency head, the contracting officer shall suspend action on the acquisition. Action on the acquisition need not be suspended if the contracting officer makes a written determination that urgent and compelling circumstances which significantly affect interests of the United States will not permit waiting for a decision.

(c) If the SBA appeal is denied, the decision of the agency head shall specify the reasons for the denial, including the reasons why the selected firm was determined incapable of performance, if appropriate. The decision shall be made a part of the contract file.

19.811 Preparing the contracts.

19.811-1 Sole source.

(a) The contract to be awarded by the agency to the SBA shall be prepared in accordance with agency procedures and in the same detail as would be required in a contract with a business concern. The contracting officer shall use the Standard Form 26 as the award form, except for construction contracts, in which case Standard Form 1442 shall be used as required in 36.701(b).

(b) The agency shall prepare the contract that the SBA will award to its contractor in accordance with agency procedures, as if the agency were awarding the contract directly to the SBA's contractor, except for the following:

(1) The award form shall cite 41 U.S.C. 253(c)(5) or 10 U.S.C. 2304(c)(5) (as appropriate) as the authority for use of other than full and open competition.

(2) Appropriate clauses shall be included, as necessary, to reflect that the contract is between SBA and its contractor.

(3) The following items shall be inserted by the SBA when it makes the award—

(i) The SBA contract number.

(ii) The effective date.

(iii) The typed name of the SBA's contracting officer.

(iv) The signature of the SBA's contracting officer.

(v) The date signed.

(4) The SBA will obtain the signature of its contractor prior to signing and returning the prime contract to the contracting officer for signature.

(5) If the contract is for construction work, it shall include requirements of the Miller Act with respect to performance and payment bonds (see Part 28).

(c) SBA shall provide the contracting activity the certifications, from both the 8(a) contractor and SBA, required by 3.104-9 related to procurement integrity. SBA shall also provide the contracting activity a list of those persons having had access to proprietary or source selection information (see 3.104-9(f)(2)).

19.811-2 Competitive.

(a) The contract will be prepared in accordance with 14.407-1(d), except that appropriate blocks on the Standard Form 26 or 1442 will be asterisked and a continuation sheet appended which includes the following:

(1) Agency acquisition office, prime contract number, name of agency contracting officer, and lines for signature, date signed, and effective date.

(2) SBA office, SBA subcontract number, name of the SBA contracting officer and lines for signature and date signed.

(b) SBA shall provide the contracting activity the certifications, from both the 8(a) contractor and SBA, required by 3.104-9 related to procurement integrity. SBA shall also provide the contracting activity a list of those persons having had access to proprietary or source selection information (see 3.104-9(f)(2)).

19.811-3 Contract clauses.

(a) The contracting officer shall insert the clause at 52.219-11, Special 8(a) Contract Conditions, in contracts between the SBA and the agency when the acquisition is accomplished using the procedures of 19.811-1.

(b) The contracting officer shall insert the clause at 52.219-12, Special 8(a) Subcontract Conditions, in contracts between the SBA and its 8(a) contractor when the acquisition is accomplished using the procedures of 19.811-1.

(c) The contracting officer shall insert the clause at 52.219-17, Section 8(a) Award, in competitive solicitations and contracts when the acquisition is accomplished using the procedures of 19.805.

(d) The contracting officer shall insert the clause at 52.219-18, Notification of Competition Limited to Eligible 8(a) Concerns, in competitive solicitations and contracts when the acquisition is accomplished using the procedures of 19.805. The clause at 52.219-18 with its Alternate I will be used when competition is to be limited to 8(a) concerns within one or more specific SBA districts/regions pursuant to 19.804-3. The clause at 52.219-18 with its Alternate II will be used when competition is to be limited to 8(a) concerns within a specific stage of 8(a) program participation (i.e. developmental or transitional) pursuant to 19.804-3.

(e) The contracting officer shall insert the clause at 52.219-14, "Limitations on Subcontracting," in any solicitation and contract resulting from this Subpart.

19.812 Contract administration.

(a) The contracting officer shall assign contract administration functions, as required, based on the location of the SBA's contractor (see DoD Directory of Contract Administration Services Components (DoD 4105.59-H)).

(b) The contract for the SBA and its contractor shall be provided to the SBA along with the one between the SBA and the agency, and shall be distributed by the SBA. Both contracts shall be executed and distributed in accordance with Part 4.

(c) To the extent consistent with the awarding agency's capability and resources, SBA contractors furnishing requirements shall be afforded production and technical assistance, including, when appropriate, identification of causes of deficiencies in their products and suggested corrective action to make such products acceptable.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

7. Section 52.219-11 is amended by revising the introductory text to read as follows:

52.219-11 Special 8(a) contract conditions.

As prescribed in 19.811-3(a), insert the following clause:

* * * * *

8. Section 52.219-12 is amended by revising the introductory text to read as follows:

52.219-12 Special 8(a) subcontract conditions.

As prescribed in 19.811-3(b), insert the following clause:

* * * * *

52.219-16 [Reserved]

9. Section 52.219-16 is added and reserved.

10. Section 52.219-17 is added to read as follows:

52.219-17 Section 8(a) award.

As prescribed in 19.811-3(c), insert the following clause:

Section 8(a) Award (Oct 1989)

(a) By execution of a contract, the Small Business Administration (SBA) agrees to the following:

(1) To furnish the supplies or services set forth in the contract according to the specifications and the terms and conditions by subcontracting with the Offeror who has been determined an eligible concern pursuant to the provisions of Section 8(a) of the Small Business Act, as amended (15 U.S.C. 637(a)).

(2) Delegates to the ..... (*insert name of contracting agency*) the responsibility for administering the contract with complete authority to take any action on behalf of the Government under the terms and conditions of the contract; *provided, however* that the contracting agency shall give advance notice to the SBA before it issues a final notice terminating the right of the subcontractor to proceed with further performance, either in whole or in part, under the contract.

(3) That payments to be made under the contract will be made directly to the subcontractor by the contracting agency.

(b) The Offeror/Subcontractor agrees and acknowledges as follows:

(1) That it will, for and on behalf of SBA, fulfill and perform all of the requirements of the contract.

(2) That it will not subcontract the performance of any of the requirements of the contract without the prior written approval of the SBA and the designated Contracting Officer of the contracting agency.

(End of clause)

11. Section 52.219-17 is added to read as follows:

52.219-17 Notification of competition limited to eligible 8(a) concerns.

As prescribed in 19.811-3(d), insert the following clause:

Notification of Competition Limited to Eligible 8(A) Concerns (Oct 1989)

(a) Offers are solicited only from small business concerns expressly certified by the Small Business Administration (SBA) for participation in the SBA's 8(a) Program and which meet the following criteria at the time of submission of offer—

(1) SIC code* is specifically included in the Offeror's approved business plan;

(2) The Offeror is in conformance with the 8(a) support limitation set forth in its approved business plan; and

(3) The Offeror is in conformance with the Business Activity Targets set forth in its approved business plan or any remedial action directed by the SBA.

(b) By submission of its offer, the Offeror certifies that it meets all of the criteria set forth in paragraph (a) of this clause.

(c) Any award resulting from this solicitation will be made to the Small Business Administration which will subcontract performance to the successful 8(a) offeror, selected through the evaluation criteria set forth in this solicitation.

(d) *Agreement.* A manufacturer or regular dealer submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by small business concerns inside the United States, its territories and possessions, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. However, this requirement does not apply in connection with construction or service contracts.

(End of clause)

(*Insert SIC code assigned to the procurement by the buying agency.)

Alternate I (Oct 1989). If the competition is to be limited to 8(a) concerns within one or more specific SBA regions or districts, add the following subdivision (a)(3)(iv) to subparagraph (a)(3) of the clause:

(iv) The Offeror's approved business plan is on the file and serviced by* (*Contracting Officer completes by inserting the appropriate SBA District and/or Regional Office(s) as identified by the SBA).

Alternate II (Oct 1989). If the competition is to be limited to 8(a) concerns within a particular program participation stage, add the following subdivision to subparagraph (a)(3) of the clause. When used in conjunction with Alternate I, this subdivision should be renumbered (a)(3)(v).

(iv) The Offeror is in the* stage of 8(a) program participation. (**Contracting Officer completes by inserting the appropriate stage of participation as identified by SBA (i.e. developmental or transitional).*)

[FR Doc. 89-15337 Filed 6-27-89; 8:45 am]

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federal register

Wednesday
June 28, 1989

Part VI

Department of Transportation

Office of the Secretary

Windward Viaduct Project on Interstate Highway H-3 In Hawaii; Waiver; Notice

DEPARTMENT OF TRANSPORTATION

Windward Viaduct Project on Interstate Highway H-3 in Hawaii; Waiver

AGENCY: Department of Transportation, (DOT) Office of the Secretary.

ACTION: Notice of waiver of restriction against participation in public works projects by Japanese firms with respect to Hawaii's Windward Viaduct Project on Interstate Highway H-3.

SUMMARY: The Secretary of the Department of Transportation waives application of the so-called "Brooks-Murkowski Amendment," Continuing Resolution on the Fiscal Year 1988 Budget, Pub. L. No. 100-202, section 109(a) (1987), to Hawaii Department of Transportation highway project FAIP No. I-H3-1(57) and ACI(58), which involves the Windward Viaduct Project on Interstate Highway H-3. The waiver permits the state of Hawaii to use Federal funds for procuring construction services and products for U.S. public works projects from Japanese firms, should they otherwise qualify for participation.

EFFECTIVE DATE: June 15, 1989.

FOR FURTHER INFORMATION CONTACT: William A. Weseman, Chief, Construction and Maintenance Division, Federal Highway Administration, 400 7th Street, SW., Washington, DC 20590, telephone 202-366-0392.

SUPPLEMENTARY INFORMATION: The text of the letter granting the waiver is set forth below.

Date: June 15, 1989.

Samuel K. Skinner,

The Secretary.

June 15, 1989

Mr. Edward Y. Hirata,

Director, Hawaii Department of Transportation, 869 Punchbowl Street, Honolulu, Hawaii 96813-5097

Re: Interstate Route H-3; Windward Viaduct, FAIP No. I-H3-1(57) & ACI (58)

Dear Mr. Hirata: By letter dated December 21, 1988 to the division administrator of the Federal Highway Administration, you asked that I waive application of the restriction on the use of products and services of Japanese contractors imposed by the Continuing Resolution on the Fiscal Year 1988 Budget, Pub. L. No. 100-202, section 109(a) (1987) for the construction of the H-3 Windward Viaduct Project. The Federal Highway Administration concurred in your request.

The Brooks-Murkowski Amendment and the Department's implementing regulations, 53 FR 19914, 19919 (1988) (to be codified at 49 CFR 30.17), provide for Secretarial waiver of the restriction when application of the restriction would not be in the public interest. I have determined that application of the Brooks-Murkowski Amendment to the Windward Viaduct Project would not be in the public interest, for the following reasons:

- The Windward Viaduct Project is crucial to completion of Interstate Highway H-3, which will complete the construction of the National System of Interstate and Defense Highways in Hawaii. Congress has repeatedly declared completion of the system to be a national priority. 23 U.S.C. § 101 (West Supp. 1989).
- The Windward Viaduct will provide a direct, multi-lane, limited-access highway connection between the military installations of central Oahu (Pearl Harbor industrial/defense complex, Hickam AFB, NAS Barber's Point, and Schofield Barracks) with the installations of Windward Oahu (MCAS Kaneohe Bay, the Coast Guard OMEGA facility, and Bellows AFB). Completion of H-3 will thus improve the overall effectiveness of the Defense-related transportation system on Oahu and have a beneficial impact on national defense and civil defense readiness.
- The Department of Defense has designated H-3 as important to national defense.
- Congress has recognized the importance of the Windward Viaduct by ordering the Secretary to approve the construction of H-3 notwithstanding the restrictions on the taking of public parklands for highways in the Department of Transportation Act of 1966, section 4(f), 49 U.S.C. 303 (West Supp. 1989), Continuing Appropriations Bill for Fiscal Year 1987, Pub. L. No. 99-500, section 114, 100 Stat. 1783. The conference report accompanying the legislation recites the importance of avoiding "unnecessary delay in the completion of this important highway project" and notes the continuing substantial escalation of construction costs in Hawaii. Conference Report to Accompany H.J. Res. 738, H. Rep. No. 1005, 99th Cong., 2d Sess. 783-84 (1986).
- The Windward Viaduct project will be one of the largest Federal-aid highway contracts ever awarded and certainly the largest in the last several years. The total will be in excess of $100 million. Large contracting firms and multinational joint ventures are expected to tender bids. If the waiver request is approved, it is likely that some U.S. firms will enter into joint ventures with Japanese firms that would otherwise be prohibited from particupating in the project by the Brooks-Murkowski Amendment.
- Participation of Japanese firms as low bidders in previous, much smaller Hawaii Federal-aid highway projects has resulted in significant cost savings.
- Because of the size of the project, the urgency in completing it, and its potential fiscal impact on the Federal-aid highway program, maximum competition is essential to obtain the lowest possible overall project cost. Federal funds represent 90 percent of the cost of the project. Increased competition may also increase the likelihood of completing the project quickly.

I therefore waive application of the Brooks-Murkowski Amendment to the Windward Viaduct Project. Notice of this waiver will be published in the **Federal Register.**

If you have any questions regarding the issuance of an addendum to this project's invitation for bids advising of this waiver, please contact William R. Lake, Division Administrator, Federal Highway Administration, Box 50206, Honolulu, Hawaii 96850.

Sincerely yours,

Samuel K. Skinner.

[FR Doc. 89-15505 Filed 6-27-89; 11:38 am]

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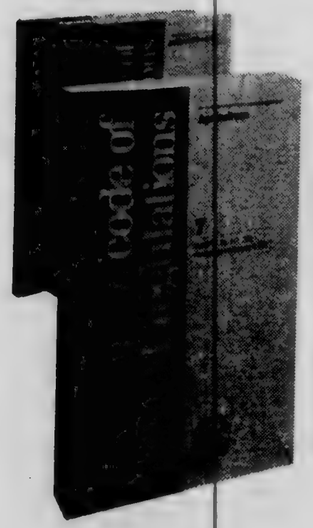
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 89-106]

Importation of Apples, Peaches, and Citrus From Sonora, Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the Fruits and Vegetables regulations by removing Empalme from the list of definite areas in Sonora, Mexico, determined to be free from certain injurious insect pests and from which apples, grapefruit, oranges, peaches and tangerines may be imported without treatment for these pests. This action is necessary to prevent the introduction into the United States of injurious insects.

EFFECTIVE DATE: July 31, 1989.

FOR FURTHER INFORMATION CONTACT: Frank E. Cooper, Senior Operations Officer, Port Operations Staff, PPQ, APHIS, USDA, Room 632, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8645.

SUPPLEMENTARY INFORMATION:

Background

The Fruits and Vegetables regulations in 7 CFR 319.56 *et seq.* (referred to below as the regulations) impose restrictions on the importation of fruits and vegetables in order to prevent the introduction and dissemination of injurious insects, including fruit and melon flies, that are new to or not widely distributed within and throughout the United States. Section 319.56-2(h) of the regulations allows apples, grapefruit, oranges, peaches and tangerines to be imported from certain municipalities in Sonora, Mexico, without treatment for five fruit flies known to occur in Mexico (*Ceratitis capitata, Anastrepha ludens, A. serpentina, A. obliqua,* and *fraterculus*). Section 319.56-2(f) allows a municipality to be listed in § 319.56-2(h) only if surveys show it to be free from infestations of these insect pests.

In an interim rule effective March 24, 1989, and published in the Federal Register on March 29, 1989 (54 FR 12872-12873, Docket Number 89-028), we removed Empalme, Sonora, Mexico, from the list of municipalities in § 319.56-2(h) of the regulations.

Comments on the interim rule were required to be postmarked or received on or before May 30, 1989. We received two comments, one from a State farm bureau federation and the other from a State agricultural official. Both commenters supported the interim rule as necessary to protect against the introduction of the Mexican fruit fly (*Anastrepha ludens*). The facts in the interim rule still provide a basis for the rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This action will prevent the importation of apples, grapefruit, oranges, peaches, and tangerines from Empalme into the United States, unless they are treated for the five listed fruit flies. Only the movement of oranges and grapefruit will be affected, since these are the only citrus fruits that were shipped from Empalme last year. This change will have little economic effect on small entities because the quantity of fruit moved from Empalme last year is insignificant compared to the total quantity of these fruits produced in Mexico or in the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The regulations in this subpart contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 7 CFR Part 319)

Agricultural commodities, Fruit, Imports, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

PART 319—FOREIGN QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule amending 7 CFR 319.56-2(h) that was published at 54 FR 12872-12873 on March 29, 1989.

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151-167; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 23d day of June 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-15398 Filed 6-28-89; 8:45 am]
BILLING CODE 3410-34-M

Rural Electrification Administration

7 CFR Part 1715

Criteria for Securing REA Approvals Required Under the Mortgage by Electric Borrowers Relating to Financial and Management Matters

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration (REA) hereby amends 7 CFR Chapter XVII, by adding a new Part 1715, Criteria for Securing REA Approvals Required Under the Mortgage by Electric Borrowers Relating to Financial and Management Matters consisting of Subpart B, §§ 1715.20–1715.28, Investments, Loans and Guarantees by Electric Borrowers. The new Part establishes REA policies for borrowers of electric loans made or guaranteed under the Rural Electrification Act of 1936, as amended (7 U.S.C. 901–950b) ("RE Act"). The rule also clarifies the effect of new section 312 of the RE Act concerning provisions in existing REA mortgages and bulletins which would otherwise conflict with this recent amendment. Generally, section 312 of the RE Act authorizes a borrower to make investments, loans and guarantees up to 15 percent of its total utility plant.

EFFECTIVE DATE: July 31, 1989.

FOR FURTHER INFORMATION CONTACT: Robert W. Ford, Chief, Loans and Management Branch, Electric Staff Division, U.S. Department of Agriculture, Rural Electrification Administration, Room 1245–S, 14th & Independence Avenue SW., Washington, DC 20250–1500; Telephone: (202) 382–1932. The Final Regulatory Impact Analysis describing the options considered in developing this rule and the impact of implementing the rule is available on request from the above office.

SUPPLEMENTARY INFORMATION: This rule implements the provisions of section 312 of the RE Act which was enacted as section 1402 of the Omnibus Budget Reconciliation Act of 1987 (OBRA) (Pub. L. 100–203).

This action has been reviewed in conformity with Executive Order 12291, Federal Regulations. Since this rule only defines the requirements of OBRA, it does not: (1) Have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices to consumers, individual industries, Federal, State or local government agencies, or geographic regions; (3) result in significant adverse affects on competition, employment, investment or productivity, and therefore, has been determined to be "not major."

REA has concluded that promulgation of this rule does not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969, as amended, (42 U.S.C. 4321 *et seq.*), and therefore, does not require an environmental impact statement or an environmental assessment. This rule is a categorical exclusion under REA's 7 CFR Part 1794, Environmental Policies and Procedures (*i.e.*, 7 CFR 1794.31(b)(17)).

The reporting and/or recordkeeping requirements contained in these rules have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). The OMB approval numbers for these requirements are 0572–0032 and 0572–0017.

Public reporting burden for this collection of information is estimated to average one hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, DC 20250; and to Office of Management and Budget, Paperwork Reduction Project (OMB #0572–0032 and 0572–0017), Washington, DC 20503.

This action does not fall within the scope of the Regulatory Flexibility Act. This program is listed in the Catalog of Federal Domestic Assistance under No. 10.850, Rural Electrification Loans and Loan Guarantees. For the reasons set forth in the Final Rule related Notice to 7 CFR Part 3015, Subpart V in 50 FR 47034, November 14, 1985, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Background

On December 22, 1987, Section 312, Use of Funds, was added to the RE Act. Congress expressed concern that REA borrowers were restricted in their ability to make needed investments in rural community infrastructure projects (such as water and waste systems, garbage collection services, etc.) and in job creation activities (such as providing technical, financial, managerial assistance) and other activities to promote business development in rural communities. By section 312, Congress directed REA to replace its traditional 3 percent policy with a 15 percent limit as a small incremental contribution to rebuilding a more diversified economy in rural communities. The legislative history surrounding the enactment of section 312 is clear that Congress intended that the new permitted level of investments should not in any way put government funds at risk or impair a borrower's ability to repay its indebtedness.

On November 28, 1988, REA published a proposed rule in 53 FR 47820 to amend 7 CFR Chapter XVII by adding a new Part 1715, Criteria for Securing REA Approvals Required Under the Mortgage by Electric Borrowers Relating to Financial and Management Matters consisting of Subpart B, §§ 1715.20–1715.28, Investments, Loans and Guarantees by Electric Borrowers. REA invited interested parties to file comments on or before January 27, 1989.

Comments

REA received 7 written comments from the following:

(1) National Rural Electric Cooperative Association
(2) National Rural Utilities Cooperative Finance Corporation
(3) Oglethorpe Power Corporation
(4) Basin Electric Power Cooperative
(5) Garkane Power Association, Inc.
(6) Tri-State Generation and Transmission Association, Inc.
(7) Blue Ridge Electric Corporation

All received comments were considered in preparing the final rule. These comments are addressed in the following paragraphs, along with REA's position on each comment and/or a discussion of REA's modification to the proposed rule.

Three of the seven organizations responding gave unequivocal support to the rule as written.

One comment suggested that REA take an activist role in offering advice to borrowers in investment activities. REA does not believe that the Rural Electrification Act authorizes the agency to act as an investment adviser to its borrowers and REA does not believe that it is appropriate to act in this role. Consequently, responsibility for making investment decisions will remain with the borrowers. REA encourages its borrowers to obtain competent investment advice by using qualified professional staff and by consulting trained investment advisors.

Three comments suggested revising the general rule in order to clarify its meaning or more closely follow what the commentators considered to be the intent of section 312 of the Act. As written, § 1715.23 is intended to constitute the written consent under existing mortgages of REA which require approval for certain investments in excess of 3 percent of a borrower's total utility plant. Accordingly, REA does not believe that individual written consents from REA are necessary for borrowers to be able to invest their own funds, make loans, or guarantees up to 15 percent of their total utility plant. REA believes that § 1715.23, as originally proposed, clearly states a general rule which is consistent with section 312 of the Act. Thus, REA is making no changes in § 1715.23.

One comment from a financial institution objected to REA's statement of policy because section 312 of the Act did not limit the discretion granted to a borrower to invest, make loans, or guarantees only to instances where the activities are directed toward rural development. REA agrees that the language of section 312 omits such limitation but points out that the legislative history of section 312 clearly evidences a congressional intention that borrowers will use their new latitude primarily to stimulate economic development in their own communities. Accordingly, REA believes that it is both authorized and appropriate to adopt a policy statement encouraging borrowers to exercise their broader latitude under section 312 in this manner. However, § 1715.23 of the rule (the section which operates as the written REA consent called for in REA mortgages) omits any reference to investment purposes. Thus, borrowers are encouraged by REA to invest in rural development, but are not required by the rule to do so.

The above commentator also objected to REA's policy that investment activity "not in any way put government * * * security at risk." This commentator interpreted the policy statement as a restriction which would preclude virtually all investment and guarantee activity since REA's security interest typically includes funds used to make investments or funds that would be used to honor a guarantee. REA disagrees with this interpretation. The mere existence of an REA security interest in a borrower's funds will not preclude investment and guarantee activity that is otherwise permissible under § 1715.23 of this subpart. On the other hand, a borrower's obligation to make timely payments on loans made or guarnateed by REA is not excused because of any financial or liquidity problems associated with activities authorized under § 1715.23. The policy statement makes it clear that although REA considers rural development to be a laudable objective, REA affords timely loan repayment and adequate loan security higher priority. REA believes that the policy as proposed is authorized and appropriate when viewed in the context of the legislative history of section 312 and the rule as an entirety. Nevertheless, REA is revising the language of § 1715.21 to clarify that the statement is one of policy and not a legal restriction.

Four of the comments disagreed with various elements of the definitions (§ 1715.22) either because they thought certain definitions contained ambiguities or were overly restrictive. After considering the comments, REA is revising the definition of "invest" by replacing the broad reference to assets, "which are not expected to be used or useful in furnishing electrical service" with the more precise term "and includes all financial transactions recorded on the borrower's books and records in investment accounts, as those accounts are used in the Uniform System of Accounts for REA Borrowers." This provision makes it clear that section 312 is not intended to authorize a borrower to make extensions to its electric system in contravention of REA limitations by characterizing them as "investments."

One commentator also suggested that this definition be revised by eliminating the reference to earning a financial return. REA believes that the expectation of earning a financial return is an integral part of the meaning of the term "invest," and thus is retaining that element of the definition.

Three comments suggested that the definition of "own funds" be changed, each in a different way. One wanted the definition changed to clarify that loan fund proceeds which have been advanced to a borrower (as reimbursement for plant costs temporarily financed by the borrower with general funds) would be considered to be the borrower's "own funds." REA believes the definition is clear that such funds are the borrower's "own funds." Thus, REA believes that no change is needed. This commentator sought a similar modification for each of the other elements in this definition, apparently for clarification. REA believes that the definition as originally proposed is clear.

One comment suggested that the definition of "own funds" be modified to classify "own funds" as any funds which a borrower may receive from sale proceeds which exceed book value. REA thinks that such a definition would be difficult to administer and would create in every case (where a borrower has sold property) a factual question about whether the funds so invested were attributable to the proceeds in excess of book cost. The suggestion would also be inconsistent with REA's long-standing approach of valuing loan collateral on a system-wide basis, as contrasted with a project-by-project or line-by-line basis. REA does not wish in this rule to abandon its established practice of requiring that proceeds from sales of mortgaged property be applied either towards retirement of debt or to system improvements and extensions. Should REA consider changing its policy in this regard, it will do so in a different rule concerning asset sales.

One comment, while admitting that Congress presumably did not intend for borrowers to otherwise invest funds that would be necessary for timely debt repayments, objected to the exclusion of those funds necessary to make timely payments of principal and interest on loans made, guaranteed, or lien accommodated by REA from the definition of "own funds". If this interpretation were chosen, a borrower could invest cash which is necessary to make timely payments of principal and interest on loans made, guaranteed, or lien accommodated by REA. Also, if this interpretation were chosen, a borrower could invest cash necessary to make timely loan repayments in non-liquid, long-term investments causing it to default on its REA mortgage obligations. In such circumstances, REA would be effectively forced to acquiesce in the default or liquidate mortgage collateral, including these investments, at less than the face amount of the debt. REA anticipates that such a borrower might even assert in defense of its conduct, that REA consented to such activity by section 312 of the Act and § 1715.23 of this rule. In support of its position, the commentator cited a statement in the House Report No. 391(I), 100th Cong. 1st Sess. 20) to the effect that investments less than 15 percent of total utility plant should not in any way put government funds or security interest at risk. Apparently, the commentator views the report language as a conclusion. Since the report contained no basis for such a sweeping conclusion, REA interprets the statement to be a directive. Accordingly, REA sees no conflict between the latitude given to borrowers to invest their own funds and an administrative interpretation that when payment is due, funds needed for debt service are no

longer the borrower's "own funds" as that phrase is used in section 312 of the RE Act.

One comment objected to the definition of "Total Utility Plant" because it is limited to total electric utility plant. Although section 312 uses the term "total utility plant," it does not define the term nor does the legislative history amplify its meaning. However, section 312 is, by its express terms, limited to borrowers of "electric" loans. The overwhelming majority of electric borrowers have no utility plant which is not electric utility plant. Therefore, REA thinks that the reference in section 312 to an electric program borrower's total utility plant means the total electric utility plant of that borrower and has so defined the term. The definition of total utility plant does not restrict borrowers from investing in other utilities if they chose to do so. Thus, for most REA electric progam borrowers, the definition makes no difference. For the limited number of REA program borrowers which operate more than one utility service, this interpretation will preclude such borrowers from leveraging the amount of unrestricted investments they otherwise could make by acquiring controlling interests in other utilities and then including the value of such utilities in the computation of "total utility plant" for the purposes of section 312.

One comment suggested that REA delete the definition of subsidiary and remove the requirement in § 1715.25(b) that subjects the records of borrowers to auditing procedures prescribed in 7 CFR Part 1789. As defined in this rule, a subsidiary is another organization which the borrower controls. Thus, the borrower is in a position to cause its subsidiary to make records available and to comply with REA accounting requirements. REA considers these requirements to be justifiable in furthering its obligations under the Act to see that loans made or guaranteed by it remain adequately secured and that such loans are repaid in accordance with their terms. The commentator conceded that REA might have such authority under other statutory provisions or agreements but objected to REA's inclusion in this rule as a condition for exercising investment and guarantee authority. However, the records and accounting requirements in § 1715.25(b) do not condition the ability of borrowers to make investments or guarantees under section 312. REA inserted these requirements in this rule at § 1715.25(b) because REA is broadening the scope of its financial monitoring in response to the increased level of investment, loan, and guarantee activity generated by section 312.

REA received a few comments objecting to the exclusions in § 1715.24. Generally these objections were based on two grounds. First, a belief that section 321 prevents the Administrator from changing in any way REA's administrative practices concerning investments, loan and guarantee activities except to make them more permissive than they were when section 312 was enacted. While section 312 and its legislative history show an unmistakable intention to raise the level of unclassified investments, loans and guarantees requiring prior REA approval from 3 percent to 15 percent, the language of section 312 does not impose any limitation on the discretion of the Administrator to restrict such activities when they exceed 15 percent of a borrower's total utility plant. Accordingly, REA does not agree with comments suggesting that section 312 precludes the Administrator from reconsidering whether investments, loans and guarantees that were not subject to REA approval under REA's past administrative practices should be restricted when they exceed 15 percent of a borrower's total utility plant. REA believes that section 312 does not address this issue and thus leaves the Administrator's authority under the RE Act unchanged in this respect. Second, some objections noted that the existing REA mortgages were multiparty agreements and thus in proposing to restrict certain investments that had previously been unrestricted, REA was exceeding its authority under the terms of existing legal agreements, i.e. REA mortgages, by in effect amending them unilaterally. In response to this second argument, REA has modified § 1715.24 to permit borrowers to continue to make investments, loans and guarantees without prior REA approval in circumstances where such approval is not required under their existing REA mortgages.

As a result of the above change, paragraphs (a), (b), and (c) in § 1715.24 which proposed specific uniform exclusions have been limited in the final rule to those instances where REA is making a new loan or guarantee and the co-mortgagees, if any, consent to the modification of the REA mortgage. Those paragraphs have been further modified to limit the exclusion of those investments from the computation only in those instances where the borrower pledges those investments under the REA mortgage. In those limited instances where such assets may not be pledged, e.g., restricted stock, borrowers could still make such investments but they would be subject to the 15 percent restriction expressed in the general rule. Paragraph (d) in § 1715.24 excluding certain commitments incurred prior to the original mortgage has been deleted from the final rule since it is unnecessary in the case of existing mortgages which contain a similar provision and unnecessary for future mortgages since the authorization of 15 percent in section 312 of the RE Act provides ample authority of the very limited number of borrowers that have this type of commitment.

The final rule now clearly permits the continuation of borrower investments in securities of CFC, the National Bank for Cooperatives and the Saint Paul Bank for Cooperatives as excluded investments in determining compliance with § 1715.23 of the rule. The rule also clarifies that permitted exclusions in § 1715.24 are the same as those in a borrower's current mortgage.

REA does not agree with comments suggesting that the passage of section 312 in effect statutorily "froze" existing REA mortgage provisions dealing with this subject. Accordingly, a new paragraph (d) has been added to § 1715.24 to make it clear that REA is not adopting this interpretation. REA is reserving in § 1715.24 its historic right to make case by case revisions in REA mortgages in connection with any new REA financial assistance. To clarify the interaction of the currently existing Mortgage provisions with the requirements of this Rule, an Appendix is included with the Rule to set forth a hypothetical example of how §§ 1715.23 and 1715.24 would apply.

One respondent requested REA to be specific in determining the amount available for investing, if a borrower must include the unrecovered investments (losses on investments and guarantees) in determining its future compliance with the rule. REA accepts the request, and has added a new paragraph (d) to § 1715.25, Records, to clarify this determination to assure that: (1) Losses occurring on an investment will not be counted against the 15 percent in future calculations, and (2) an investment which is "rolled over" is not accumulated or counted against the 15 percent in future calculation, but rather treated as only one investment. This is accomplished by requiring the borrower to use the amounts actually reflected on it books and records for the investments.

The final rule will become effective thirty days after its publication.

List of Subjects in 7 CFR Part 1715

Electric power, Loan programs-energy, Reporting and recordkeeping requirements, Rural areas.

In view of the above, REA hereby amends 7 CFR Chapter XVII by adding a new Part 1715 consisting of Subpart B (§§ 1715.20–1715.28) to read as follows:

PART 1715—CRITERIA FOR SECURING REA APPROVALS REQUIRED UNDER THE MORTGAGE BY ELECTRIC BORROWERS RELATING TO FINANCIAL AND MANAGEMENT MATTERS

Subpart A—[Reserved]

Subpart B—Investments, Loans, and Guarantees by Electric Borrowers

Sec.

1715.20 Purpose.
1715.21 Policy.
1715.22 Definitions.
1715.23 General.
1715.24 Exclusions.
1715.25 Records.
1715.26 Effect of this subpart on REA loan contract and mortgage.
1715.27 Restrictions imposed by other lenders.
1715.28 Investments, loans, and guarantees in excess of 15 percent of Total Utility Plant.

Authority: 7 U.S.C. 901–950b; Title I, Subtitle D, sec. 1402, Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203; Delegation of Authority by the Sec'y of Agriculture, 7 CFR 2.23; Delegation of Authority by the Under Sec'y for Small Community and Rural Development, 7 CFR 2.72.

Subpart A—[Reserved]

Subpart B—Investments, Loans, and Guarantees by Electric Borrowers

§ 1715.20 Purpose.

This subpart contains the general regulations of the Rural Electrification Administration (REA) for implementing and interpreting the provisions of the Rural Electrification Act of 1936, as amended, including section 312 (7 U.S.C. 901 *et seq.*) (RE Act), permitting, in certain circumstances, that borrowers of insured or guaranteed electric loans under the RE Act may, without restriction or prior approval of the Administrator of REA, invest their own funds and make loans or guarantees.

§ 1715.21 Policy.

REA electric borrowers are encouraged to utilize their own funds to participate in the economic development of rural areas, provided that such activity does not in any way put government funds at risk or impair a borrower's ability to repay its indebtedness to REA and other lenders. In considering whether to make loans, investments, or guarantees, borrowers are expected to act in accordance with prudent business practices and in conformity with the laws of the jurisdictions in which they serve. REA assumes that borrowers will use the latitude afforded them by section 312 of the RE Act primarily to make needed investments in rural community infrastructure projects (such as water and waste systems, garbage collection services, etc.) and in job creation activities (such as providing technical, financial, managerial assistance) and other activities to promote business development and economic diversification in rural communities. Nonetheless, REA believes that borrowers should continue to give primary consideration to safety and liquidity in the management of their funds.

§ 1715.22 Definitions.

As used in this subpart:

"Borrower" means a corporation or other legal entity engaged, or intending to become engaged, in the generation, transmission or distribution of electricity, and whose outstanding obligations resulting from RE Act loans or guarantees are not in default.

"Cash-Construction Fund-Trustee Account" means the account described in the REA Uniform System of Accounts as one to which funds are deposited for financing the construction or purchase of electric facilities.

"Guarantee" means to undertake collaterally to answer for the payment of another's debt or the performance of another's duty, liability, or obligation, including, without limitation, the obligations of subsidiaries. Some examples of such guarantees would include guarantees of payment or collection on a note or other debt instrument (assuring returns on investments); issuing performance bonds or completion bonds; or cosigning leases or other obligations of third parties.

"Invest" means to commit money in order to earn a financial return on assets, including, without limitation, all financial transactions properly recorded on the borrower's books and records in investment accounts as those accounts are used in the Uniform System of Accounts for REA Borrowers.

"Make loans" means to lend out money for temporary use on condition of repayment with interest.

"Mortgaged Property" means any asset of the borrower which is pledged in the REA mortgage.

"Own Funds" means money belonging to the borrower other than: (i) Proceeds of loans made, guaranteed or lien accommodated by REA; (ii) funds necessary to make timely payments of principal and interest on loans made, guaranteed or lien accommodated by REA; (iii) insurance proceeds from mortgaged property; (iv) damage awards and sale proceeds resulting from eminent domain and similar proceedings involving mortgaged property; (v) sale proceeds from mortgaged property sales requiring specific REA approval; and (vi) funds on deposit in the cash construction trustee account.

"REA Mortgage" means any and all instruments creating a lien on or security interest in the borrower's assets in connection with loans or guarantees under the RE Act.

"Sale Proceeds" means all consideration received from the sale of assets after deducting reasonable transaction expenses, if any, and after deducting, in the case of assets taken by power of eminent domain, the amount, if any, of the damage award paid to the borrower as compensation for lost future revenues.

"Subsidiary" means a corporation the majority stock of which is owned or controlled by a borrower.

"Supplemental Lender" means a lender that has provided a supplemental source of financing that is secured by the REA mortgage.

"Total Utility Plant" means the sum of the borrower's "electric plant accounts" and "construction work in progress—electric accounts," as such terms are used in the REA Uniform System of Accounts, for REA Borrowers.

"Uniform System of Accounts for REA Borrowers" means the system of accounts prescribed in 7 CFR Part 1718.

§ 1715.23 General.

A borrower may, without prior written approval of the Administrator, invest its own funds or make loans or guarantees not in excess of 15 percent of its total utility plant without regard to any provision contained in any REA mortgage to the effect that the borrower must obtain prior approval from REA.

§ 1715.24 Exclusions.

(a) In calculating the amount of investments, loans and guarantees permitted under § 1715.23, there is excluded from the computation any investment, loan or guarantee of the type which by the terms of the borrower's REA mortgage the borrower may make in unlimited amounts without REA approval.

(b) Except in instances where the consent of third parties is required and cannot be obtained, REA will require

that any electric loan made or guaranteed by REA after July 31, 1989, shall be secured by a mortgage restricting investments, loans and guarantees by the Borrower substantially as follows:

(1) The borrower may, to the extent permitted by 7 CFR 1715.23, invest its own funds or make loans or guarantees not in excess of 15 percent of its total utility plant, as those terms are used in 7 CFR Part 1715, Subpart B.

(2) The borrower may also make unlimited investments, without prior approval of the Administrator, in:

(i) Securities or deposits issued, guaranteed or fully insured as to payment by the United States Government or any agency thereof;

(ii) Capital term certificates, bank stock, or other similar securities of the supplemental lender which have been purchased as a condition of membership in the supplemental lender, or as a condition of receiving financial assistance from such lender;

(iii) Patronage capital allocated from a power supply cooperative of which the borrower is a member.

§ 1715.25 Records.

(a) Every borrower shall maintain accurate records concerning all investments, loans and guarantees made by it. Such records shall be kept in a manner that will enable REA to readily determine:

(1) The nature and source of all income, expenses and losses generated from the borrower's loans, guarantees and investments;

(2) The location, identity and lien priority of any loan collateral resulting from activities permitted by this subpart; and

(3) The effects, if any, which such activities may have on the feasibility of loans made, guaranteed or lien accommodated by REA.

(b) The records of borrowers and their subsidiaries shall be subject to the auditing procedures prescribed in Part 1789 of this chapter. REA reserves the right to review the financial records of any subsidiaries of the borrower to ascertain if the debts, Guarantees (as defined herein), or other obligations of the subsidiaries, could adversely affect the ability of the borrower to repay its debts to the Government or to determine if the borrower is in compliance with this subpart.

(c) Every borrower shall report to REA, in the manner and on the form specified by the Administrator, the current status and principal amount of each outstanding loan and guarantee which it has made pursuant to § 1715.23 of this subpart.

(OMB Nos. 0572-0032 and 0572-0017)

(d) In determining the level of investments as a percent of total utility plant (as defined in this subpart) for reporting to REA during any calendar year, the borrower shall use the recorded value of each qualifying investment as reflected on its books and records for the next preceding end-of-month, except for the end-of-year report which shall be based on December 31 information.

§ 1715.26 Effect of this subpart on REA loan contract and mortgage.

(a) Nothing in this subpart shall affect any rights which supplemental lenders have under the REA mortgage to limit investments, loans and guarantees by their borrowers to levels below 15 percent of total utility plant.

(b) Nothing in this subpart shall relieve a borrower of its obligation under the REA mortgage to preserve the lien of the REA mortgage as a first lien on all of the borrower's assets, subject to such limited exceptions as may be provided for therein.

(c) Nothing in this subpart authorizes a borrower to make extensions or improvements to its electric system without prior approval of REA.

(d) REA reserves the right to change the provisions of the REA mortgage, on a case-by-case basis, in connection with providing additional financial assistance to a borrower after July 31, 1989.

§ 1715.27 Restrictions imposed by other lenders.

Nothing in this subpart is intended to prevent a supplemental lender from imposing, enforcing, or modifying restrictions contained in its loan documentation that limit the rights of a borrower to make loans, guarantees or investments.

§ 1715.28 Investments, Loans, and Guarantees in excess of 15 percent of Total Utility Plant.

If a borrower wishes to exceed the aggregate amount of investments, loans, and guarantees permitted under § 1715.23 of this subpart, the borrower must comply with the provisions contained in the REA mortgage to the effect that it must obtain prior approval from REA. Requests of the type described immediately above should be made in writing for consideration by REA on a case-by-case basis.

Dated: June 22, 1989.

Jack Van Mark,

Acting Administrator.

Appendix I—Final Rule 7 CFR Part 1715, Subpart B, §§ 1715.20–1715.28, Investments, Loans and Guarantees by Electric Borrowers.

Note: This Appendix is published for information only and will not be codified in the Code of Federal Regulations.

The following information is presented to illustrate the relationship between the REA-Borrower Mortgage, and the type and level of investments, loans or loan guarantees that borrowers may make and be in compliance with § 1715.23 of this subpart.

Sample Applicable Mortgage Provision—Note that REA-Borrower Mortgages are not uniform. However, the following sample Mortgage provision is representative and is used to illustrate how § 1715.23 would apply in the cases of a borrower that had the most common type of mortgage currently used in the REA program. The following example below is presented here for illustrative purposes only, and does not mean that future mortgages will contain the provisions used in this example.

Sample Article II, Section 22 of the REA Mortgage for Wyngate Electric Cooperative (hypothetical name) reads as follows:

Section 22. The Mortgagor will not, without the written approval of both of the Mortgagees, hereafter make any loan or advance to, or make any investment in, or purchase or make any commitment to purchase any stock, bonds, notes or other securities of, or guaranty, assume or otherwise become obligated or liable with respect to the obligations of, any person, firm or cooperative, except (i) securities or deposits issued, guaranteed or fully insured as to payment by the United States Government or any agency thereof, (ii) Capital Term Certificates or other securities of CFC, (iii) capital credits resulting from the payment for power and energy purchased and actually received from a generating and transmission cooperative of which the Mortgagor is a member, (iv) loans, deposits, advances, investments, securities and obligations which the Mortgagor has, prior to the date hereof, committed itself to make, purchase or undertake, as the case may be, and as to which the Mortgagor has given the Mortgagees notice in writing prior to the date hereof, and (v) such other loans, deposits, advances, investments and obligations as may from time to time be made, purchased or undertaken by the Mortgagor; *provided, however,* That the aggregate cost of investments, plus the total unpaid principal amount of loans, deposits, advances and obligations, permitted under this clause (v) shall not at any time exceed 3 percent of the total utility plant (as such term is defined in the Uniform System of Accounts) of the Mortgagor.

Selected Borrower Financial Data as of 12/31/89:

Total Utility Plant in Service..... $20,000,000

a. Cash Deposits in two FDIC Insured Banks with $100,000 insurance limits..... 600,000

b. Capital Term and Subscription Term Certificates of the National Rural Utilities Finance Corporation (CFC)..... 200,000

c. CFC Commercial Paper..... 4,000,000

d. Capital Credits accrued with its power supply cooperative..... 250,000

e. Unsecured Loan which preceded the date of this Mortgage and REA had been notified in writing prior to the execution of this Mortgage..... 200,000

f. Investment in Land purchased for an Industrial Park..... 15,000

g. Loan guarantee issued to support Bonds issued by local rural water and sewer system..... 1,000,000

Allowable total investments, loans and guarantees that the borrower may make without the written approval of the Administrator pursuant to § 1715.23

15 percent × Total Utility Plant Level of $20,000,000 = $3,000,000

Shown below are the investments, loans and guarantees which are not excluded per terms of the Mortgage and, therefore, are used to determine compliance with § 1715.23.

Mortgage Related Provision

Uninsured Portion of FDIC Bank Accounts (i)..... $400,000

Investment in land purchased for Industrial Park (v)..... 15,000

Loan Guarantee to support Water and Sewer Bonds (v)..... 1,000,000

Total Nonexempted Investments, Loans and Guarantees..... $1,415,000

All other above described investments, loans and guarantees are exempted by virtue of specific Mortgage Section 22 provisions and are not considered in determining compliance with § 1715.23. Wyngate Electric Cooperative's total nonexempted investments, loans and guarantees of $1,415,000 are lower than the $3,000,000 compliance level and, therefore, the amount is in compliance with § 1715.23.

The Co-op has $250,000 on deposit in a local bank to meet its working capital needs. $100,000 of this amount is covered by FDIC insurance (i). The balance ($150,000) is uninsured. It has invested $100,000 in Capital Term Certificates of The National Rural Utilities Finance Cooperative (CFC) in order to become a member of CFC (ii). It has also purchased "Subscription Term Certificates" (STC's) issued by CFC and bearing interest at 3 percent (ii). The STC's were purchased from CFC in the amount of 5 percent of a $25,000,000 long term loan (i.e. $125,000) pursuant to CFC lending requirements. The Co-op has also invested $10,000,000 in surplus general funds in CFC's commercial paper program and CFC has issued its note to the Co-op to evidence the investment (ii). The Co-op is a member of a generation and transmission cooperative (G&T) from which it purchases electricity for distribution to its members. The G&T routinely allocates a portion of its net margins to the Co-op as one of its members. The G&T has allocated capital credits of $250,000 to the Co-op but has not yet distributed them (iii). In 1971 the Co-op borrowed $200,000 on an unsecured basis from a local lender which is due in full in 1991 and so notified REA in writing prior to the execution of its REA mortgage in May of 1973 (iv). The Co-op has invested $15,000 to purchase land for an industrial park (v). Except for the amount of the Co-op's bank deposit which exceeds FDIC insurance coverage and the investment in the industrial park, all of the foregoing are excluded for purposes of determining compliance with § 1715.23. Thus, if the Co-op had total utility plant amounting to $35,000,000, the aggregate amount of otherwise investments, loans or guarantees it may undertake under this rule would be computed as follows:

[$35,000,000 × 15 percent)—($150,000 + $15,000)] + $100,000 + $125,000 + $10,000,000 + $250,000 + $200,000 = $15,560,000.

[FR Doc. 89-15296 Filed 6-28-89; 8:45 am]

BILLING CODE 3410-15-M

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 89-107]

Restrictions on Importation of Horses From Czechoslovakia

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the regulations by adding Czechoslovakia to the list of countries in which contagious equine metritis (CEM) exists. Because Czechoslovakia is no longer free of CEM, we are restricting the importation of certain horses from that country to prevent the livestock of the United States from contracting the disease.

Stallions and mares over 731 days of age from Czechoslovakia are no longer allowed entry into the United States under standard 3-day quarantine and testing procedures. Instead, these horses must be tested and treated in accordance with procedures established to qualify stallions and mares from CEM-affected countries for importation into the United States.

EFFECTIVE DATE: July 31, 1989.

FOR FURTHER INFORMATION CONTACT: Dr. Harvey A. Kryder, Senior Staff Veterinarian, Import-Export Products Staff, VS, APHIS, USDA, Room 753, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7885.

SUPPLEMENTARY INFORMATION:

Background

The regulations on animal importations in 9 CFR Part 92 (referred to below as the regulations) restrict the importation of horses that could introduce various diseases, including contagious equine metritis (CEM), into the United States. CEM, a venereal disease, affects horses' fertility and breeding.

In an interim rule effective March 24, 1989, and published in the **Federal Register** on March 29, 1989 (54 FR 12897-12898, Docket Number 89-033), we amended § 92.2(i)(1) of the regulations by adding Czechoslovakia to the list of countries in which CEM exists.

Comments on the interim rule were required to be postmarked or received on or before May 30, 1989. This corrected date for receipt of comments was published in the **Federal Register** on April 17, 1989 (54 FR 15302). We did not receive any comments. The facts in the interim rule still provide a basis for the rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

Stallions and mares from Czechoslovakia that are older than 731 days must undergo testing and treatment in Czechoslovakia and the United States that is more extensive than is standard during a 3-day quarantine. The extra time required for this additional testing and treatment will delay the horses importation into this country and therefore, increase the cost to importers of horses from Czechoslovakia. However, of the approximately 30,000 horses imported into the United States in 1988, only 1 came from Czechoslovakia. We estimate the number of horses affected by this interim rule to be small. We therefore expect this rule to have little or no effect on importers. Those deterred by the cost of testing and quarantining a stallion or mare affected by this rule could, instead, import geldings or, for breeding, horses younger than 731 days. Alternatively, they could import horses from any CEM-free country.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have

a significant economic impact on a substantial number of small entities.

Executive Order 12372

The program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.035 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock, and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Accordingly, we are adopting as a final rule, without change, the interim rule amending 9 CFR 92.2(i)(1) that was published at 54 FR 12897-12898 on March 29, 1989.

Authority: 7 U.S.C. 1622, 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 138; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 23rd day of June 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-15399 Filed 6-28-89; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

Animal Drugs, Feeds, and Related Products; Change of Sponsor Name

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor name from Nutrius, Inc., to Bioproducts, Inc.

EFFECTIVE DATE: June 29, 1989.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV-130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1414.

SUPPLEMENTARY INFORMATION: Bioproducts, Inc., Two Brecksville Commons, 8221 Breckaville Rd., Brecksville, OH 44141, advised FDA of a change of corporate name from Nutrius, Inc., to Bioproducts, Inc. The agency is amending the regulations in 21 CFR 510.600(c) (1) and (2) to reflect the change.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Secs. 512, 701(a) (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

2. Section 510.600 is amended in the table in paragraph (c)(1) by removing the entry "Nutrius, Inc.," and by alphabetically adding a new entry "Bioproducts, Inc.," and in paragraph (c)(2) in the entry "051359" by revising the sponsor name to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1)* * *

Firm name and address	Drug labeler code
* * * * *	
Bioproducts, Inc., Two Brecksville Commons, 8221 Brecksville Rd., Brecksville, OH 44141	051359
* * * * *	

(2)* * *

Drug labeler code	Firm name and address
* * * * *	
051359	Bioproducts, Inc., Two Brecksville Commons, 8221 Brecksville Rd., Brecksville, OH 44141.
* * * * *	

Dated: June 23, 1989.

Robert C. Livingston,

Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 89-15354 Filed 6-28-89; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 700

[Docket No. 85N-0036]

RIN 0905-AC00

Cosmetics; Ban on the Use of Methylene Chloride as an Ingredient of Cosmetic Products

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to ban the use of methylene chloride as an ingredient of cosmetic products. Scientific studies have shown that inhalation of methylene chloride causes cancer in laboratory animals. The available information shows that the continued use of methylene chloride in cosmetic products may pose a significant risk to human health, especially to specific segments of the population that are continually exposed to aerosol cosmetics containing this ingredient. Therefore, the agency has decided to take this action because it has concluded that cosmetic products that contain methylene chloride may be injurious to users under their conditions of use.

EFFECTIVE DATE: August 28, 1989, for products initially introduced or initially delivered for introduction into interstate commerce.

FOR FURTHER INFORMATION CONTACT: Terry C. Troxell, Center for Food Safety and Applied Nutrition (HFF-312), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0229.

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I. Background

A. Description of Methylene Chloride

Methylene chloride (CAS Reg. No. 75–09–2, dichloromethane) is a colorless, volatile liquid that is used in a variety of consumer and industrial products as a solvent and flame suppressant. The primary cosmetic use of methylene chloride has been in hair sprays. Because of its volatility, it causes quick drying and setting of the applied hair spray resin.

Methylene chloride has also been used in foods as an extraction solvent in the processing of coffee beans, spices, and hops. When used in this manner, methylene chloride is a food additive within the meaning of section 201(s) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(s)). Methylene chloride has also been used in the manufacture of food-contact articles. In some of these cases, methylene chloride may be a food additive within the meaning of section 201(s) of the act, while in other cases, methylene chloride may remain as an impurity in the indirect food additive. The food uses of methylene chloride are beyond the scope of this final rule on cosmetic uses.

B. Procedural History

In the **Federal Register** of December 18, 1985 (50 FR 51551), FDA proposed to prohibit the use of methylene chloride as an ingredient of cosmetic products. The agency stated that the data before it revealed that methylene chloride is carcinogenic by inhalation to the liver and lung of male and female mice. It also stated that the data suggested that this substance has a tumorigenic effect on the mammary glands of female rats and produces sarcomas of the salivary gland/integument of rats upon inhalation (50 FR 51551). Therefore, the agency tentatively concluded that methylene chloride is an animal carcinogen by inhalation and may be carcinogenic to humans.

Epidemiology studies and other information that FDA considered at the time of the proposal did not alter the agency's tentative conclusion. The proposal described the agency's assessment of the risk to humans from exposure to methylene chloride used in hair spray-type cosmetics. FDA estimated the upper bound lifetime risk of cancer from the lifetime use of hair sprays containing methylene chloride to be in the range 10^{-3} (1 in 1,000) to 10^{-4} (1 in 10,000) for the consumer and in the range 10^{-2} (1 in 100) to 10^{-3} (1 in 1,000) for the hair care specialist. Therefore, the agency proposed to find that the use of this substance as an ingredient in cosmetics may render those cosmetics injurious to the health of users.

In the proposal, the agency deferred consideration of the food uses of methylene chloride listed in the food and color additive regulations, except for its use in decaffeinating coffee beans, because the agency knew of no indications of a hazard to the public health from these uses. With regard to its use in decaffeinating coffee, the agency stated that even though methylene chloride had been shown to be carcinogenic by inhalation, no action on this use was necessary because any risk from the low exposures resulting from this use would be essentially nonexistent.

On February 24, 1986 (51 FR 6494), the agency extended the comment period on the proposal until April 4, 1986, to provide additional time for comments on the use of methylene chloride as a decaffeinating agent. On October 10, 1986, FDA received four new studies concerning comparative pharmacokinetics, metabolism, and genotoxicity of methylene chloride. These studies were sponsored by the European Council of Chemical Manufacturers' Federation (CEFIC). The agency reopened the comment period for 30 days on December 5, 1986 (51 FR 43935), to allow an opportunity for comment on these new studies. After the close of this comment period, the agency received several additional submissions relevant to the methylene chloride proceeding, including reports of studies extending the pharmacokinetic and metabolism work, two reports on pharmacokinetic (PB–PK) modeling, and an epidemiology study on Canadian General Electric employees. Although FDA has not formally reopened the comment period for this new information, the information has been on display at the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm 4–62, 5200 Fishers Lane, Rockville, MD 20857, in the file on this rulemaking for several months and has been considered by the agency.

C. Description of Comments

About 60 comments were submitted during the comment periods from consumers, consumer groups, industry associations, and manufacturers. Three comments were sent in during the reopened comment period on the CEFIC studies. Some comments included data and reports of studies concerning methylene chloride. Reports of genotoxicity studies, pharmacokinetics and metabolism of methylene chloride in different mammalian species, pharmacokinetic modeling, and new and expanded epidemiology studies were submitted. Information on human exposure to methylene chloride was also submitted.

Twelve of the comments agreed with FDA's proposal to prohibit the use of methylene chloride in cosmetics. Five comments expressed disagreement with the proposed ban and argued for continued use in cosmetics. The majority of the comments that stated a position on the use of methylene chloride in the decaffeination of coffee and wanted the use ended. Many of the comments expressed an opinion only and did not provide supporting data or arguments. The substantive comments relevant to the cosmetic use and FDA's response to each are discussed below.

II. Methylene Chloride—Decaffeination of Coffee

In the proposal, the agency stated that it was not proposing to change the existing regulation (21 CFR 173.255) authorizing the use of methylene chloride for decaffeination of coffee. The agency stated that even though methylene chloride had been shown to cause cancer, the residue limitation for this substance prescribed in § 173.255(c) provided safe conditions of use for this additive. The agency based its position on two factors. First, on evaluating the risk from use of the additive for decaffeinating coffee under the intended conditions of use, the agency determined that the potential carcinogenic risk is negligible. Second, FDA determined that the Delaney anticancer clause of the Food Additives Amendment (section 409(c)(3)(A) of the act (21 U.S.C. 348(c)(3)(A))) does not require a ban in this case because the risk is negligible, and that there would be no significant gain to the public health if this use of methylene chloride were banned.

This determination was based on the principle that the law does not concern itself with trifling or de minimis matters. The agency also applied this principle in listing the color additives D&C Red No. 19 and D&C Orange No. 17, which the agency found to be carcinogenic but to present insignificant risk under their prescribed conditions of use. The agency's decision to list these color additives was reviewed by the U.S. Court of Appeals for the District of

Columbia as a result of a suit filed by the Public Citizen Litigation Group (*Public Citizen* v. *Young*, 831 F.2d 1108 (D.C. Cir. 1987)). In its opinion, dated October 23, 1987, the court held that "* * * the Delaney Clause of the Color Additive Amendments does not contain an implicit de minimis exception for carcinogenic dyes with trivial risks to humans," and that the listing of carcinogenic color additives is contrary to law. The court, however, made no decision about the food additive Delaney clause, stating in the discussion on food additives:

> Moreover, we deal here only with the color additive Delaney clause, not the one for food additives. Although the clauses have almost identical wording, the context is clearly different.

On April 18, 1988, the U.S. Supreme Court denied a petition for a writ of certiorari that had been filed by the Cosmetic, Toiletry and Fragrance Association.

The agency expects that it will take a substantial amount of time for it to consider what effect, if any, the court decision in *Public Citizen* v. *Young* will have on FDA's regulation of food additives, including methylene chloride. Therefore, to avoid further delay in acting on the proposed ban of the use of methylene chloride in cosmetics, the agency has decided to separate the cosmetic and food additive issues and to defer any necessary action on the food additive use of methylene chloride until a future date. FDA will consider the substantive comments that it has received in this rulemaking that pertain to the food additive use of methylene chloride in developing any action on this issue.

III. Introduction—Safety Assessment

In 1985, the Office of Science and Technology Policy (OSTP), in describing how to assess the human cancer risk associated with chemical exposure, captured the essential features of any safety assessment that FDA conducts:

> The first [step], which is often referred to as hazard identification, entails a qualitative evaluation of both the data bearing on an agent's ability to produce carcinogenic effects and the relevance of this information to humans. The second, exposure assessment, is concerned with the number of individuals who are likely to be exposed and with the types, magnitudes, and durations of their anticipated exposures. The third component, hazard or dose-response assessment, uses the information on carcinogenicity from the hazard identification phase together with mathematical modeling techniques to estimate the magnitude or an upper bound on the magnitude of the carcinogenic effect at any given dose level. Finally, one may combine the information from the first three components or steps to characterize the carcinogenic risk associated with the expected human exposure to the compound of interest.
>
> [50 FR 10436 and 10437; March 14, 1985]

The OSTP discussion also provides a convenient structure for this document. FDA will first consider the comments that it has received that bear on the agency's evaluation of the carcinogenic hazard posed by methylene chloride to humans. Second, it will evaluate the comments that bear on the agency's assessment of the extent of exposure to methylene chloride from its use in cosmetics. Third, it will evaluate the comments on the magnitude of the hazard that those who are exposed face. Finally, the agency will consider comments on its tentative determination that the hazard is sufficiently large that use of methylene chloride in cosmetic products will render those products adulterated.

However, before beginning this evaluation, the agency will consider a number of comments that it received that asserted that FDA consideration of the safety of the use of methylene chloride in cosmetics was premature.

(1) Five comments received during the comment period which closed April 4, 1988, stated that the agency should wait for new information from the pharmacokinetic, metabolism, and epidemiology studies that were in progress before reaching any conclusion on methylene chloride. A trade association said it was cooperating with the National Cancer Institute (NCI) to develop a new epidemiology study. It pointed out that relevant information would be presented at meetings and workshops during 1988. Another trade association stated that it was sponsoring comparative metabolic studies on methylene chloride.

Adequate time has elapsed for submission of studies that were in progress when the proposal issued on December 18, 1985. The agency has received and considered in this rulemaking final reports on epidemiology, metabolism, pharmacokinetics, cytotoxicity, and genotoxicity studies that were in progress at the time of the proposal and, in some cases, that were initiated after the proposal was issued.

The new epidemiology study that was to be done in cooperation with NCI has not been undertaken to date. At a June 10, 1987, meeting, NCI's advisory panel on the proposed epidemiology study recommended against proceeding with the study because the methylene chloride exposure levels were too low and the potential size of the cohort too small to achieve the desired goals (Ref. 1). While NCI apparently has not totally abandoned the possibility of further epidemiology work, FDA does not believe that it is appropriate to delay action further for a study that has not been started and may not be done.

(2) Several comments said that the agency had not adequately reviewed the available metabolism, pharmacokinetics, and human epidemiology data on methylene chloride.

FDA did review the available studies on these subjects before publishing the proposal but made only very brief comments on them because the data from these studies were insufficient to affect its decision. The pharmacokinetic and metabolism data available before the proposal was published did not provide convincing evidence to the agency on the mechanism of carcinogenesis of methylene chloride. Therefore, the agency was not able to use this information in risk assessment. Furthermore, the agency could not draw any definitive conclusions from the available epidemiology studies because of study design limitations, such as the small number of workers and the short period of exposure. Additional data on these and other subjects that are related to the toxicity of methylene chloride were submitted to the agency in response to the proposal. FDA has carefully reviewed all of the available information on the metabolism, pharmacokinetics, genotoxicity, cytotoxicity, and human epidemiology of methylene chloride in reaching the decision announced in this final rule. The agency's evaluations of these complex issues are discussed in the following sections on the individual subjects.

IV. Hazard Identification—The Carcinogenicity of Methylene Chloride

A. Introduction

The proposal described several recent chronic studies on methylene chloride, some of which raise questions about the safety of the chemical: (1) the National Toxicology Program (NTP) sponsored inhalation studies in rats and mice; (2) the National Coffee Association (NCA) sponsored drinking water studies in rats and mice; and (3) the three inhalation studies, two in rats and one in hamsters, performed by The Dow Chemical Co. (Dow).

In the proposal, FDA stated its tentative conclusions on the carcinogenicity studies. From the NTP mouse study, the agency concluded that "* * * methylene chloride is carcinogenic to the liver and lung of male and female mice. This study also demonstrates that methylene chloride induces cancer at a site (the liver) remote from the tissue directly exposed by the inhalation treatment" (50 FR 51551).

The agency also concluded that the results in the NTP rat inhalation study are suggestive of a tumorigenic effect of methylene chloride on the mammary glands of the female rats. FDA concluded that the observations from this NTP rat study and from the high dose rat study conducted by Dow provide suggestive evidence that methylene chloride also induces sarcomas of the salivary gland/integument in rats upon inhalation.

There were no treatment-related neoplastic effects observed in the Dow inhalation study with hamsters or in the NCA drinking water studies with rats and mice.

B. Comments on FDA's Evaluation of the Available Carcinogenicity Studies

(3) In discussing the methylene chloride carcinogenicity studies, one comment said that several experimental studies other than the NTP bioassay have also reported increases in mammary and liver tumors. The comment did not identify any such studies, however.

None of the carcinogenicity studies for which FDA has reports, other than the NTP study on mice, showed significant increases in liver tumors. The NTP and Dow inhalation studies indicated slight increases in the incidence of benign mammary tumors in rats. The agency cannot say conclusively that these increases were treatment-related effects but considers them to be suggestive evidence.

The comment may be referring to studies mentioned in a talk presented by Prof. C. Maltoni, Bologna, Italy, at a 1984 workshop on methylene chloride (Ref. 2). Prof. Maltoni stated in his talk that he had found an increased incidence of mammary tumors and liver nodular hyperplasia in his methylene chloride study with rats. However, despite numerous requests by the organizers of the workshop for a manuscript of his talk to distribute to participants, including FDA toxicologists, no written reports have been received. Consequently, the agency cannot use these studies in its decision.

(4) One comment contended that there is not sufficient evidence to call methylene chloride a carcinogen because positive results from a single study in a single species do not provide sufficient evidence to call a substance a carcinogen except where unusual tumors are found that do not occur spontaneously, or where the tumor incidence can be related to an alkylating agent.

FDA believes that the comment provides an incorrect description of the evidence on methylene chloride. As explained in the proposal, the agency has considered and carefully evaluated seven chronic studies of methylene chloride.

In the NTP 2-year inhalation study in mice, methylene chloride induced significantly increased incidences in alveolar/bronchiolar adenomas, alveolar/bronchiolar carcinomas, and alveolar/bronchiolar adenomas and carcinomas (combined) in male and female mice of both dose groups compared to the controls. Methylene chloride also induced significantly increased incidences of hepatocellular adenomas in high-dose male and female mice, of hepatocellular carcinomas in high-dose males and low- and high-dose females, and of the combined adenomas and carcinomas in all treated groups of both sexes. These increased incidences were distinctly dose related.

In addition, other biological evidence from this study is consistent with the carcinogenic effect of methylene chloride in mice. There were dose-related increases in the incidences of mice bearing multiple tumors of either the lung or liver. None of the control mice with lung tumors had more than one lung tumor, whereas more than 37 percent of lung tumor-bearing mice in both treated groups and in both sexes had multiple lung tumors. Only 9 percent of control males and none of control females had multiple tumors in the liver. In contrast, 46 percent of low-dose males, 48 percent of high-dose males, 19 percent of low-dose females, and 70 percent of high-dose females had multiple liver tumors. The percentage of mice having both lung tumors and liver tumors also increased in a dose-related fashion (Ref. 3).

There is also supporting evidence from studies conducted with rats. There was an increase in incidence of salivary gland sarcomas in the Dow inhalation study with rats that appears to be related to treatment. Two of these same tumors that are rarely observed spontaneously occurred in the high dose treatment groups of the NTP rat study. The agency also found evidence suggestive of a tumorigenic effect of methylene chloride on the mammary glands of female rats in both the NTP and the Dow studies.

Therefore, the agency concludes that there is sufficient evidence that methylene chloride has a carcinogenic effect in $B_6C_6F_1$ mice of both sexes, and that there is supporting evidence in another species, the rat. IARC reached a similar conclusion in its recent evaluation. It concluded that, "There is sufficient evidence for the carcinogenicity of dichloromethane to experimental animals" (Ref. 4). Finally, NTP concluded, with respect to their inhalation study on methylene chloride, that there was clear evidence of carcinogenicity in $B_6C_6F_1$ mice and female F344 rats and some evidence of carcinogenicity in male F344 rats (Ref. 5).

(5) Four comments argued that the mammary gland tumors in the rats exposed to methylene chloride in the NTP study are not evidence of true carcinogenicity. They said that these were benign tumors, and that the tumors did not progress to malignant tumors. Furthermore, the comments characterized the incidences of the mammary tumors at the lower dose levels as within the range of historical controls and the top dose response as barely above the highest incidences in historical controls. The comments noted that IARC considers increases of only malignant tumors as sufficient evidence of carcinogenicity, and that the Past Presidents of the Society of Toxicology have said that when incidence rates in treated groups are within historical control ranges, differences between treated and concurrent control groups are not biologically significant.

The agency has not used the mammary tumorigenic effect in rats as the primary evidence for the carcinogenicity of methylene chloride. Rather, the agency has stated that the evidence of lung and liver tumors in mice provides an appropriate basis to conclude that methylene chloride is carcinogenic in mice of both sexes.

As stated in response to comment 4, however, the agency believes that data from the rat studies provide supporting evidence of the carcinogenicity of methylene chloride. FDA also points out that, as mentioned in the comments, the incidence of mammary tumors in at least the high dose group was above, rather than within, the range of historical controls. The evidence of a dose-response effect in the induction of mammary fibroadenomas in the female F344 rats in the NTP study is suggestive of a tumorigenic effect of methylene chloride. Observations from Dow's studies lend further support to an indication of a tumorigenic effect of this chemical in rat mammary glands.

(6) Four comments urged caution in determining carcinogenicity from the increased incidences of the types of tumors that occur spontaneously at high incidences in untreated groups. The

comments argued that the lung and liver tumors found in mice exposed to methylene chloride in the NTP study are types of tumors that occur spontaneously with high and variable incidence. The comments cited statements made by several expert bodies in support of their argument and quoted IARC as saying: " * * * [T]here are certain neoplasms, including lung tumors and hepatomas in mice, which have been considered of lesser significance than neoplasms occurring at other sites for the purpose of evaluating the carcinogenic risk of chemicals to humans." The comments also pointed out that similar statements have been made in documents issued by OSTP and by the Environmental Protection Agency (EPA).

The agency agrees with this concern and is fully aware of the difficulties encountered in the interpretation of a tumor response at a site of high background incidence. Although the male $B_6C_3F_1$ mice have relatively high spontaneous tumor incidences in the liver and lung, the female mice generally have low background rates at these organ sites (Ref. 6). Thus, these comments bear consideration only for the males. Yet, in the NTP inhalation studies, methylene chloride was shown to induce significant increases above the background rate in incidences of lung and liver tumors in both sexes of mice.

These increases were distinctly dose related. In addition, other biological evidence strongly supports the carcinogenicity of methylene chloride in both sexes of mice. This evidence includes the increased incidences of dosed mice bearing multiple lung or liver tumors as compared to control mice, and the increased incidences of dosed mice having both lung and liver tumors in the same animal.

FDA is aware that the relevance of hepatocellular tumors in mice for predicting cancer risk in humans has been debated extensively over the past several years. This debate does not obviate the need for a careful evaluation of each study in which there is a finding of an elevated incidence of hepatocellular tumors and a determination as to whether the finding is valid.

Finally, even though IARC holds the general position cited in the comments, IARC itself concluded in the specific case of methylene chloride that there is sufficient evidence for its carcinogenicity in animals (Ref. 4).

(7) Two comments took issue with a point in the proposal that they understood to be a statement that the salivary gland sarcomas in treated rats in the NTP study provide suggestive evidence of carcinogenicity. One comment argued that these sarcomas lack significance. This comment argued that the agency's apparent position was unwarranted because the NTP draft transcript indicated that there was no evidence of salivary gland anomalies related to treatment, and because one such tumor was found in a control rat in the earlier Dow study. The other comment stated that these sarcomas are not discussed in the draft NTP report.

In the proposal, FDA considered the significance of the Dow and NTP results together. The agency pointed out that there was an increased incidence of male rats with sarcomas in the region of the salivary gland in the high-dose Dow inhalation study, and that there were two sarcomas of the salivary gland/integument in treated rats in the NTP study. The fact that these rare tumors were seen in the NTP study adds some credibility to the results of the Dow study even though by themselves the occurrence of these two tumors would arouse little suspicion. Therefore, FDA does not find any significance in the fact that NTP did not discuss these tumors.

FDA pathologists have had the opportunity to review the morphologic characteristics of the salivary gland sarcomas seen in Dow's inhalation study in Sprague-Dawley rats (Ref. 7) and of the two salivary gland sarcomas in the NTP study with F344 rats. The morphologic pattern of the latter tumors is unusual but similar to that of the salivary gland sarcomas found in the Dow study. The agency considers the presence of two unusual salivary gland tumors in the NTP study and the occurrence of a larger number of salivary gland sarcomas in the Dow study to be suggestive evidence of a treatment related effect.

(8) One comment stated a belief that the agency used data for calculating potency different from those data given in the draft NTP report for the female mice treated by inhalation of 2,000 parts per million (ppm) methylene chloride. The comment stated that this belief was based on a calculation using the cancer potency of 4.4×10^{-4} (mg/kg/day)$^{-1}$ (i.e., 4.4×10^{-4} per milligram per kilogram of body weight per day) stated by the agency in the proposal.

The agency did use the dose and tumor incidence data that were presented in the draft NTP report in calculating the carcinogenic potency of methylene chloride. However, the agency described the calculations only in general terms in the proposal. The following discussion provides further details.

FDA computed the carcinogenic potency as the risk (the probability that an animal will develop a tumor) divided by the dose that produced that risk (Ref. 8). To estimate the risk, the agency considered the lung and liver neoplasia of the 2,000 ppm-treated female mice to be independent and added them together. Therefore, the sum of the tumor incidences in this group of mice becomes approximately 100 percent (33 percent for liver neoplasms plus 63 percent for the lung neoplasms, as reported in the NTP report). To calculate the dose, the ageney converted dose expressed in air concentration (ppm) to a body weight (bw) basis. For methylene chloride, 1 ppm=0.0035 milligram per liter (mg/L). Thus, 2,000 ppm=7 mg/L. The mice were dosed 6 hours per day for 5 days out of 7. Using an inhalation rate of 0.025 liter per minute (L/minute) for the mouse, the time weighted average dose is 7 mg/L×0.025 L/minute×60 minutes/hour×6 hours/day×5 out of 7 days=45 mg/day. For a 20-gram-mouse, the dose thus becomes 45 mg/day/0.020 kg=2250 mg/kg bw/day. Therefore, the carcinogenic potency=1/2250=4.4×10^{-4} (mg/kg bw/day)$^{-1}$.

C. Cytotoxicity Data and Evaluation

(9) Some comments declared that the lung tumors in the mouse could be explained by the cytotoxicity of methylene chloride to the nonciliated bronchiolar epithelial (Clara) cells in the lungs. They said that the Clara cell had been shown to be the cell of origin of lung tumors for several chemicals. They suggested that the sensitivity of the Clara cells to methylene chloride seen in the mouse was not likely to occur in humans. The comments submitted evidence to support the point that there is Clara cell injury in mice, but not in rats, when exposed to methylene chloride and argued that this finding correlated with the occurrence of lung tumors in mice but not in rats.

The comments also submitted evidence that they believed demonstrated that the cytotoxicity of methylene chloride resulted in the loss of the ability of Clara cells to metabolize methylene chloride by one (the mixed function oxidase (MFO) pathway, also referred to as the cytochrome P-450 pathway) of the two known metabolic pathways (a sequence of enzyme-catalyzed reactions by which a cell metabolizes a compound) for methylene chloride. They argued that the loss of this pathway would result in greater metabolism by the second metabolic pathway (the glutathione-S-transferase (GST) pathway) and "have a significant impact on the risk of those cells becoming malignant" because, these comments believe, the GST metabolism

is responsible for the lung and liver tumors. One comment pointed out that the number, distribution, and ultrastructural morphology of Clara cells in mouse lungs are different from those in humans and other animals.

In support of these comments, reports entitled "Methylene Chloride (Dichloromethane): 10-Day Inhalation Toxicity Study to Investigate the Effects on Rat and Mouse Liver and Lungs" and "Methylene Chloride (Dichloromethane): The Effects of Exposure to 4000 ppm on Mouse Lung Enzymes," conducted by Imperial Chemical Industries, were submitted (Refs. 9 and 10).

The agency has evaluated both of these studies. While the results of these studies on the cytotoxicity of methylene chloride may be relevant to the observed lung cancer induction in mice, the agency finds that at best they provide, as stated by the investigators, only circumstantial evidence that the Clara cell is the cell of origin of the lung tumors in the case of methylene chloride. The reported cytotoxicity to the Clara cells was observed in 10-day studies. Cytotoxicity studies of this duration are not adequate to explain the mechanism by which mice get lung tumors after 2 years of treatment.

Scientific debate persists on the cells of origin of chemically-induced lung tumors in mice. Some investigators believe that the lung tumors in mice are derived solely from alveolar type II cells. Some assume that they arise from Clara cells. Others believe that lung tumors in mice may arise from either alveolar type II or Clara cells (Refs. 11 and 12). NTP, in the report on the bioassay of methylene chloride, did not identify the cell of origin of the mouse lung tumors. It classified the tumors only as alveolar/bronchiolar adenomas or carcinomas (Ref. 5).

Consequently, the agency concludes that the evidence submitted with the comment does not support the claim that the lung tumors arise from cytotoxic effects on the Clara cells, or that the Clara cells are necessarily the cell of origin of the lung tumors. The relationship, if any, among the cytotoxic effects in the Clara cells observed during subacute exposure to methylene chloride; the lung cancer, a chronic effect found in the NTP study on mice; and potential carcinogenesis in humans, is not clear.

D. Genotoxicity Studies and Findings

(10) Three comments argued that methylene chloride is not carcinogenic for humans. In support of this argument, the comments asserted that methylene chloride is not genotoxic because it does not act directly on mammalian deoxyribonucleic acid (DNA). They pointed out that the available experiments did not show alkylation of DNA, or unscheduled DNA synthesis (UDS), by methylene chloride in rats or mice. One comment discussed a number of mutagenicity studies and concluded that, although there were some positive genotoxic responses to methylene chloride in some bacteria, yeasts, and plants, the effects in these simpler systems do not necessarily bear on animal cells. The comments asserted that the genotoxicity testing that has been done in animal cells, including a micronucleus test, yielded doubtful or negative results.

The comments argued that this information should be used in evaluating the mechanism of cancer induction because it suggests that methylene chloride causes only a secondary effect on DNA, and that this secondary effect should have a threshold below which no carcinogenic effect would be expected.

A consumer organization argued that the micronucleus test for genetic damage sheds little light on the potential for methylene chloride to be hazardous to humans.

The agency has evaluated the relevant studies on the genotoxicity of methylene chloride, including new studies that were submitted with the comments. The agency does not agree that methylene chloride has been shown to be nongenotoxic. After evaluating all the available data (Ref. 13), including the above mentioned studies, the agency concludes that the evidence on the genotoxicity of methylene chloride is inconclusive.

Methylene chloride was positive in several types of tests (Ref. 13). The agency finds that methylene chloride induces mutation in *Salmonella typhimurium, Escherichia coli*, and mouse lymphoma cells; gene conversion and mitotic recombination in *Saccharomyces cerevisiae*; chromosomal aberrations in Chinese hamster ovary cells; DNA damage in *E. coli*; and transformation in SA7 adenovirus-infected Syrian hamster embryo cells, mouse BALB/3T3 cells, and Fischer 344 rat cells infected with C-type virus. The results on induction of sister chromatid exchange were positive in one study and negative in another study, although the reasons for this discrepancy are not clear. The agency places greater weight on the positive result because the effect was reproduced in different tests performed within the study.

Methylene chloride was negative in other tests (Ref. 13). It did not induce sex-linked recessive lethal mutations in *Drosophila melanogaster*; micronuclei in mouse bone marrow; or UDS in rat hepatocytes, primary human fibroblasts, and hamster V79 cells. The results of the in vivo DNA binding study with rat and mouse liver and lung also were negative under the experimental conditions employed.

The agency believes that the results in some studies that were reported to be negative are questionable (Ref. 13). The negative results of the in vitro and in vivo/in vitro studies for UDS with mouse hepatocytes are questionable because of the lack of cytotoxicity information on mouse hepatocytes exposed to methylene chloride in vitro or in vivo and because of the slight but significant increases in the percentage of cells in repair which suggests that a higher concentration might induce a positive response. The results of the tests for chromosomal aberrations in rat bone marrow are also questionable because, in addition to the more commonly observed chromatid and chromosomal breaks, an exchange figure and rings, which are significant chromosomal aberrations, were observed at the two highest doses tested. Finally, although no actual data were included in the report on a micronucleus test in *Tradescantia paludosa*, the summary table in the report indicates that the response was borderline.

The agency does not agree that the genotoxic effects observed in the assays on methylene chloride are not relevant to animal cells. A simple demarcation between different kinds of cells cannot be made. Although there were both positive and negative results with methylene chloride, positive responses were obtained with various types of cells, including animal cells, and these findings indicate that this chemical is potentially genotoxic to animal cells. Data obtained in the cell transformation assays together with that from the genetic assays appear to signal the potential oncogenicity of methylene chloride.

The agency also cannot agree with the hypothesis that methylene chloride acts through a secondary mechanism rather than a direct effect on DNA. Although the genetic toxicology assay results are not conclusive, given these results, the agency cannot exclude the possibility that methylene chloride has a direct genotoxic effect on animal DNA.

Therefore, the agency concludes that the genotoxicity studies do not provide a basis on which to conclude that methylene chloride is not carcinogenic for humans.

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V. Exposure Assessment

(11) One comment agreed broadly with FDA's findings on human exposure levels from the use of methylene chloride in cosmetics and submitted a review of available information on exposure from consumer and professional use of hair spray containing methylene chloride to assist the agency in this rulemaking. The review included studies involving fluorocarbons and dimethyl ether and two reports on methylene chloride that the agency had not evaluated earlier.

FDA has evaluated the information submitted concerning exposure to methylene chloride from aerosol cosmetics. The new data do not differ substantially from the data that FDA previously used. The agency concludes that its tentative findings are appropriate (Ref. 14).

(12) One comment discussed the calculation of 8-hour time-weighted average exposure estimates for humans through hair spray use. The comment stated that FDA prorated the mouse inhalation exposure to a 24-hour time-weighted average without similarly prorating the human exposure to the same basis and said that this procedure is incorrect.

The comment is incorrect. In calculating the risks discussed in the proposal, the agency used two different dose-scaling methods for comparing the exposure of the mice in the NTP inhalation study to the probable exposure of humans (Ref. 6). These methods employ 24-hour time-weighted average concentrations of methylene chloride, one expressed in parts per million in air and one in milligrams of methylene chloride per kilogram body weight per day. In each case, the agency used the same 24-hour time-weighted basis for humans as for mice. The risks that were discussed in the proposal do not change if an 8-hour time-weighted average exposure is used for both species rather than a 24-hour time-weighted average exposure.

VI. Dose Response Assessment

A. Introduction

In the proposal, the agency estimated the risk from the use of methylene chloride in cosmetics by extrapolating from the incidence of benign and malignant neoplasms in female mice exposed to 2,000 ppm methylene chloride in the NTP study to average human exposure from use of the aerosol cosmetics. For the extrapolation, the agency assumed a linear dose-response model. By this procedure, FDA estimated the upper bound lifetime risk of cancer from the use of hair sprays containing methylene chloride to be in the range 10^{-3} (1 in 1,000) to 10^{-4} (1 in 10,000) for the consumer and in the range 10^{-2} (1 in 100) to 10^{-3} (1 in 1,000) for the hair care specialist.

B. How to Estimate Risk

(13) Some comments stated that FDA should use the principles outlined in the OSTP document "Chemical Carcinogens: A Review of the Science and Its Associated Principles, February 1985" as guidelines for doing risk assessment (50 FR 10372; March 14, 1985).

The agency has adopted the principles for doing risk assessment of chemicals that are set out in the OSTP review and has applied them in the risk assessment for methylene chloride. For example, the agency has used low dose linearity in its risk extrapolation for methylene chloride as recommended in the OSTP document for cases, like methylene chloride, where there is uncertainty about the mechanism of carcinogenicity.

(14) Two comments stated that the agency should incorporate all available data into its risk evaluation process and should make a best estimate of true risk for methylene chloride, not just a worst-case analysis.

The agency incorporates all the available data into its risk assessment process to the extent that it is appropriate to do so based on considerations such as validation of studies and uncertainties in the data. The agency uses upper bound estimates of risk to account for the uncertainties in the data and in the risk assessment procedures. Because of these uncertainties, attempts to develop "best" estimates of true risk may underestimate true risk in specific instances. Therefore, to avoid underestimating risk, the agency relies upon upper bound estimates in making regulatory decisions that involve the public health.

(15) Two comments said that the agency's quantitative risk estimates are highly exaggerated because of many conservative assumptions. They suggested that the agency use a more realistic risk assessment model. They contended that the risks from the use of methylene chloride in hair spray are not significant. One of these comments referred to a similar comment it had sent to FDA earlier complaining that FDA's Sensitivity of the Method (SOM) Carcinogen Policy [50 FR 45530; October 31, 1985] also exaggerated risk estimation in the context of carcinogenesis in certain animal drugs.

The agency agrees that the risk estimates from exposure to methylene chloride discussed in the proposal may be exaggerated. In fact, the agency characterized its risk estimates as being an upper bound. To assure public health protection, however, FDA believes that risk assessment procedures should include upper bound estimates. FDA, in its risk assessment for methylene chloride, used conservative assumptions where data relating to any particular element of the assessment were either absent or inconclusive. On the other hand, FDA agrees that the best available information should be used to avoid unnecessarily conservative estimates.

As discussed elsewhere in this document, the agency has now incorporated into its risk assessment every valid piece of information available to it. Having used this information, the agency finds that the estimated upper bound risks from the use of aerosol cosmetics that contain methylene chloride are high enough that it is appropriate to conclude that the use of these cosmetics may be injurious to the health of consumers and of hair care professionals.

The SOM rulemaking resulted in the promulgation of regulations to deal with cancer-causing residues in edible products of food-producing animals as the result of administration of drugs, food additives, or color additives and, therefore, is not directly relevant to this rulemaking on methylene chloride in cosmetics. Although the principles underlying the SOM approach are similar to those used here to estimate the risk, the estimation of risk under the SOM approach is more complex because of the need to assess two exposures, exposure of the animal to the drug or additive and exposure of the human to the carcinogenic residue remaining in the animal. All issues relating to exaggeration in the SOM risk estimation were addressed in that rulemaking.

(16) A few comments said that the agency should not use a nonthreshold model for risk extrapolation for methylene chloride but should consider that the situation may have a threshold. They claimed that methylene chloride is not a genotoxic carcinogen.

The selection of the appropriate model for estimating cancer risks at low doses is often extremely difficult because of the lack of information on the mechanism of carcinogenesis and on the dose response for the chemical. In most cases, the models require many theoretical assumptions about the mathematical form of the dose-response relationship and the mechanisms underlying the cancer induction.

A great deal of uncertainty still remains about the mechanism of action of methylene chloride. Questions about the genotoxicity of methylene chloride, and about how metabolism of this substance affects its carcinogenicity, have not been convincingly resolved. Therefore, the agency does not believe that the available evidence is sufficient to show that a threshold exists for tumor induction by methylene chloride or to show how to determine that threshold, if one does exist. In the absence of convincing evidence for a threshold or of knowledge of the mechanism of carcinogenesis, as an agency charged with protection of the public health, FDA will continue to rely on a nonthreshold procedure to estimate risk for exposures below the measured dose response.

C. Metabolic and Pharmacokinetic Data

1. Comments

(17) FDA received three comments in response to the proposal that, based on how methylene chloride is metabolized in certain animals, advocated the use of a physiologically-based pharmacokinetic (PB–PK) model approach for estimating the risk from methylene chloride. In May 1986, the agency received a preprint of a paper by Andersen et al. on the PB–PK model and risk assessment for methylene chloride (Ref. 15). (The agency had received preliminary drafts of this paper from Dr. Richard Reitz of Dow before publication of the December 1985 proposal.) In October 1986, CEFIC submitted papers on in vivo inhalation pharmacokinetics and metabolism of methylene chloride in rats and mice (Ref. 18) and on in vitro metabolism of methylene chloride in rat, mouse, and hamster liver and lung fractions and in human liver fractions (Ref. 19).

On December 5, 1986, FDA reopened the comment period for public comment on these studies, as well as on two studies concerning the genotoxicity of methylene chloride that were also submitted by CEFIC in October 1986 (51 FR 43935).

FDA received three comments during the reopened comment period. Two comments simply stated that the studies were of excellent quality and should be accepted by the agency. The third comment was from a consumer organization. It stated that the four CEFIC studies do not support CEFIC's contention that methylene chloride is not carcinogenic to humans. The comment pointed out that no correlations between a metabolic pathway and lung cancer in humans can be made because human lung tissue has not been tested. The comment questioned the relevance of in vitro studies to in vivo conditions because species may differ in various ways that affect the reactions in intact organisms. In addition, the comment noted that the metabolic studies do not explain the bioassay evidence for carcinogenicity in rats. It also emphasized that different species may differ in the organ site affected and in sensitivity to a carcinogen.

After the close of the December 1986 comment period several more reports were submitted by CEFIC and Dr. Reitz. In July 1987, Dr. Reitz submitted a report on in vitro studies on GST metabolism of methylene chloride in preparations from mouse, rat, and hamster lung and liver tissues and human liver tissues and on the implications of the results of these studies for PB–PK based risk estimation (Ref. 20). In November 1987, CEFIC submitted three additional reports on methylene chloride: (1) A report on in vivo inhalation pharmacokinetics in mice and rats (Ref. 21), (2) a report on in vitro GST metabolism in rat, mouse, hamster, and human liver cytosol fractions (Ref. 22), and (3) a report on the effects of exposure to 4,000 ppm methylene chloride on mouse lung enzymes (Ref. 10). In early 1988, Dr. Reitz submitted a preprint of a scientific paper on in vitro metabolism studies of methylene chloride, incorporation of these data into the PB–PK model for methylene chloride, and risk estimation (Ref. 16). In June 1988, CEFIC submitted a report on human risk assessment of methylene chloride based on PB–PK modeling that incorporated CEFIC's recent pharmacokinetic and metabolism results and on two risk extrapolation procedures (Ref. 17).

2. The Metabolic Hypothesis

The comments from CEFIC, Dr. Reitz, and colleagues argued that the evidence submitted in response to the proposal, as well as the considerable body of research existing before the proposal, support the following hypothesis:

Methylene chloride is metabolized via two metabolic pathways in mammals (Ref. 23). These pathways (according to this hypothesis) account for virtually all of the metabolism of methylene chloride. One pathway is the mixed function oxidase (MFO) pathway, also referred to as the cytochrome P450 pathway. This oxidative pathway is located in the smooth endoplasmic reticulum of cells and is present in the human, rat, hamster, and mouse. It saturates (i.e., higher dose levels of methylene chloride do not significantly increase the amount of this substance that is metabolized by this pathway) at about 500 ppm inhalation exposure in rats and mice.

The second pathway is referred to as the GST pathway. This pathway is located in the soluble fraction of the cytoplasm and produces carbon dioxide as the end product (Ref. 24). This pathway does not saturate at high doses and is more active in its metabolism of methylene chloride in the mouse than in humans or in other mammals.

The comments hypothesized that reactive intermediates produced during the metabolism of methylene chloride by the GST pathway cause changes that lead ultimately to the formation of tumors found in the NTP bioassay on the mouse. The comments postulated further that neither methylene chloride itself nor the intermediates or products of the MFO pathway contribute to this carcinogenic effect.

The theory presented in these comments uses a PB–PK model for assessing and comparing the internal exposure of tissues to toxic chemicals and their metabolites in mammalian species. The PB–PK model mathematically simulates the absorption, distribution, metabolism, and elimination of methylene chloride in different species. These comments argued that with the use of the proper anatomical, physiological, and metabolic parameters, the PB–PK model approach allows the use of the "internal dose" to the target organ in the quantitative assessment of risk. The comments argued that use of this internal dose is more appropriate than use of the external dose of the parent compound and permits more realistic high dose to low dose and interspecies extrapolations in the quantitative assessment of risk.

The comments stated that the metabolic data and PB–PK modeling correlate well with the bioassay data and thus support the hypothesis that the GST pathway produces the carcinogenic metabolite. They pointed to the relatively high levels of GST metabolites in mouse lung and liver, where tumors were produced, as compared to the levels calculated with the PB–PK model for the respective organs in the rat and hamster, in which no increased incidences of liver or lung tumors were observed.

The comments also argued that, in contrast, the metabolic data for the MFO pathway do not correlate well with the bioassay findings for the lung and liver. The comments pointed out that the metabolism studies by Green et al., Reitz et al., and others have shown that MFO metabolism approaches saturation at exposure levels lower than those used in the inhalation bioassay on the mouse. Once saturation is reached,

concentration of MFO metabolic products would not increase with increasing dose levels of methylene chloride. If an MFO metabolite were responsible for the cancer, the comments argued, then cancer incidence also should not increase at dose levels above the saturation dose. Yet, there is a dose-related increase in cancer incidence with methylene chloride at doses above MFO pathway saturation in the mouse study. In addition, the hamster bioassay was negative even though the MFO metabolic rates in the liver preparations were comparable to the rates in the mouse preparations. For these reasons, the comments concluded that the MFO pathway does not produce a carcinogenic metabolite during metabolism of methylene chloride.

In support of their claim that the parent, unmetabolized methylene chloride is not responsible for the cancer induction in the NTP inhalation bioassay, the comments contended that methylene chloride has a very low level of chemical reactivity. They argued that therefore it is unlikely that this substance can directly react with DNA, and that, if it could, methylene chloride would be expected to be an extremely weak alkylating agent.

The comments stated that the pharmacokinetic data of Green et al. (Ref. 18) show higher blood, and presumably lung and liver, concentrations of methylene chloride in rats than in mice inhaling 2,000 ppm or 4,000 ppm of methylene chloride. They stated that the induction by methylene chloride of liver and lung tumors only in mice and not in rats supports their postulate that unmetabolized methylene chloride is not responsible for inducing tumors.

The comments included data on in vitro metabolism of preparations made from a limited number of human liver and 2 human lung autopsy samples. The comments stated that the evidence shows that the activity of the GST pathway is at least 10 times lower in human liver and lung than in the respective tissues in the mouse. Furthermore, because of the relatively weak affinity of methylene chloride to the GST enzyme, the MFO pathway would metabolize a greater proportion of the methylene chloride than the GST pathway at the very low exposures typically encountered by humans as compared to the high dose levels used in the mouse bioassay, where the MFO pathway became saturated. Based on the hypothesized carcinogenic metabolic pathway, the metabolism data, PB–PK modeling, and several quantitative risk extrapolation procedures, the comments concluded that the "internal dose" of GST metabolites in lung and liver is small for humans exposed to methylene chloride from hair sprays, and that the carcinogenic risk to the lung and the liver presented by this use is insignificant.

The crucial postulates for the mechanism of methylene chloride carcinogenicity proposed by the comments are: (1) The metabolism of methylene chloride in mice, rats, hamsters, and humans by two and only two significant pathways, (2) the lack of direct carcinogenic activity of methylene chloride itself at all doses, (3) the lack of carcinogenic activity of MFO metabolites at all doses and the saturation of this pathway at higher doses, and (4) the carcinogenicity of GST metabolites and their increased importance at higher doses as the metabolism of methylene chloride is increasingly shifted to the GST pathway. The evidence bearing on these propositions is discussed below. In brief, the agency believes that the evidence appears to support postulates (1) and (3), but it has significant reservations about the validity of postulates (2) and (4).

3. FDA's Response

The agency did not use either metabolic data or pharmacokinetic models in the risk assessment that it published in the proposal of December 18, 1985, although it did consider them. At the time of publication of the proposal, the agency did not believe that the available pharmacokinetic information on methylene chloride was sufficiently complete for it to accept the hypothesized mechanism and the model based on this mechanism, or for it to adjust the estimated risk for either the lung or liver tumors on the basis of this mechanism.

In developing this final rule, the agency has evaluated all studies relevant to the pharmacokinetics and metabolism of methylene chloride, particularly the new information submitted in response to the proposal, and considered their impact on the risk assessment that FDA has done for this chemical (Ref. 25).

Based on the available evidence, the agency agrees that the MFO and GST pathways appear to be the principal metabolic routes of elimination of methylene chloride.

The agency also agrees that the submitted in vivo and in vitro metabolic data support the postulated saturation of the MFO pathway at high doses. The agency believes that the observed correlation between the PB–PK model predictions of MFO metabolite levels in the target organs and the bioassay results in rodents is consistent with the postulated lack of carcinogenic activity for the MFO metabolites.

Moreover, the agency believes that the results of the pharmacokinetics and metabolism studies, as well as of the PB–PK modeling, show a correlation between GST metabolism data and certain bioassay results. In vitro GST metabolic activity is high in the mouse liver, where methylene chloride caused cancer in the NTP bioassay, and in vitro GST activity is lower or not detected in rat and hamster lung and liver, where no increase in incidence of cancer was observed.

However, there is an apparent contradiction of the hypothesis from the data reported for GST metabolism in mouse lung tissue. The contradiction is that in vitro GST metabolic activity in lung tissue is only a small fraction of the activity in mouse liver tissue. Nevertheless, lung tumors were induced at approximately the same level as liver tumors. Moreover, in rat liver tissue the in vitro GST metabolic activity was greater than in mouse lung tissue. However, liver tumors were not induced in the rat.

To explain this apparent contradiction, CEFIC hypothesized that the Clara cell is the cell of origin of pulmonary tumors, and that most of the metabolism takes place in these cells. CEFIC postulated that, because Clara cells make up only about 5 percent of lung tissue, and presumably the amount of GST metabolism is proportionately higher in these cells than in the other cells of the lung, the Clara cells may be exposed to considerably higher levels of GST metabolites than other pulmonary cells. CEFIC argued that this could explain the contradiction because the Clara cells would be exposed to comparable levels of GST metabolites as mouse liver tissue.

As discussed in comment 9, the cell of origin of the lung cancer in the mouse was not identified by NTP or anyone else. Furthermore, the comment's postulate on the cellular origin of the lung tumors is based in part on the assumption that the GST metabolic activity of Clara cells is high as compared to the GST metabolic activity of other types of lung cells in the mouse. No data on relative GST pathway metabolic activity with methylene chloride in different lung cells were presented to support this assertion. The agency concludes that the submitted evidence does not demonstrate that the Clara cell is the cell of origin of the lung tumors in the mouse, or that GST pathway metabolism of methylene chloride is elevated in these cells. Thus, the contradiction described above remains unexplained.

A further problem in accepting the hypothesis that methylene chloride induces cancer in animals through the production of GST metabolites is that proponents have not provided a clear and self-consistent picture of this mechanism. On the one hand, they argued that the GST pathway produces a genotoxic intermediate that was responsible for the cancer observed in the NTP study with mice (Ref. 26). On the other hand, they argued that methylene chloride produces its effects by a nongenotoxic mechanism and asserted that a threshold model would be most appropriate for risk extrapolation of the PB–PK calculated "internal" dose of the GST metabolites presumably because these metabolites are nongenotoxic (Refs. 15 and 26). Such inconsistencies with respect to the mechanism make it more difficult for the agency to credit the hypothesis.

Another problem relates to the role of the parent, unmetabolized methylene chloride in carcinogenesis. The arguments presented in the comments that parent, unmetabolized methylene chloride plays no direct role in the induction of cancer by inhalation have some merit. However, in the mouse bioassay, the cells lining the lung in particular are continuously exposed to high concentrations of the parent, unmetabolized methylene chloride upon inhalation. The comments have not demonstrated that the parent methylene chloride plays no role in the carcinogenicity, especially in the lung. That methylene chloride has not been found to interact with DNA in rodent liver and lung may be the result of inadequate sensitivity of current methods. It is known that methylene chloride is mutagenic in some tests with microorganisms where there is no metabolic activation through added microsomal preparations. Also, it is possible that the parent methylene chloride may induce tumors by a mechanism that does not involve DNA alkylation.

The evidence cited by the comments does not differentiate between the case for unmetabolized methylene chloride and the case for some metabolite from the GST pathway being responsible for tumor induction. The exposure of the lung to both unmetabolized methylene chloride and metabolites from the GST pathway increases with increasing external dose of methylene chloride as does the incidence of lung tumors. The evidence only appears to rule out any substantial role for metabolites from the MFO pathway. (This pathway is saturated at high doses, and the amount of MFO metabolites do not increase with increasing dose. Thus, this saturation is inconsistent with the observed tumor incidence in the mouse which does increase with increasing dose.)

Moreover, not only is it possible that unmetabolized methylene chloride is solely responsible for inducing the lung tumors in the mouse, but more than one chemical species, methylene chloride and one or more of its metabolic derivatives, could be responsible. If unmetabolized methylene chloride is involved in the induction of lung tumors, either alone or in combination with metabolites, the PB–PK model predicts that there will be no significant alteration of risk by using "internal" dose from that presented in the proposal using external dose.

Furthermore, the agency believes that the lack of lung and liver tumors in the rats, which were exposed to high levels of methylene chloride, could have resulted from factors other than difference in metabolism, such as a difference in intrinsic sensitivity between mouse and rat.

In addition, as discussed in the proposal and comments 4, 5, and 7, there is suggestive evidence of a tumorigenic effect of methylene chloride on mammary glands and salivary glands in rats for which no mechanistic or pharmacokinetic information is available.

The comments have not met their burden of demonstrating that the adjustments in the risk assessment that they have suggested are appropriate. Therefore, the agency concludes that the estimated risk to humans should not be changed from the estimates in the proposal based on the pharmacokinetic and metabolic data and hypothesized GST metabolic mechanism of carcinogenicity.

D. Epidemiology in Risk Assessment

1. The Kodak Study

(18) Seven comments contended that the agency should use the data from human epidemiology studies in the evaluation of methylene chloride. Some of these comments said that the new information in an expanded study on Kodak employees exposed to methylene chloride is now adequate to be used, instead of animal testing data, to analyze the risks from methylene chloride use. They also stated that the epidemiology data do not indicate a risk of cancer for humans from use of methylene chloride.

On the other hand, one comment stated that epidemiological studies on methylene chloride are inadequate to determine carcinogenicity in humans because of design limitations, such as small sample size, ill-defined exposure levels, and insufficient latency periods.

A cohort of employees chronically exposed to methylene chloride at the Eastman Kodak facility in Rochester, NY, has been followed since 1964, and its mortality experience has been examined (Refs. 27, 28, and 29). The agency has reviewed the reports on this epidemiology study as completely as possible (Refs. 30, 31, and 32).

The agency finds that the most recent update on the Eastman Kodak study on the chronic health effects of methylene chloride contains improvements over the original report on this study (Ref. 27) and the 1980 update (Ref. 28), including a larger sample of workers, improved exposure estimates, and an effective average latency period. The agency also finds, however, that because the average levels at which the Kodak employees were exposed to methylene chloride were very low, the study has only a limited ability to detect an increase in cancer risk.

Hearne et al. in the most recent update of this study (Ref. 29), draw two major conclusions from their analysis: (1) That the epidemiology data show no adverse health effects associated with exposure to methylene chloride through 1984, and (2) that predictions of risk of neoplasia to humans based upon extrapolation from methylene chloride animal studies are "clearly inconsistent" with human experience. FDA agrees that the study did not detect an increased risk of cancer among employees exposed to methylene chloride. However, FDA's analysis of the available data shows that the upper bound potency (unit risk) implied by the human epidemiology study is consistent with the risk estimated from animal data (Ref. 31).

To compare the results of the epidemiology study with the animal bioassay evidence on the carcinogenicity of methylene chloride, the Kodak investigators used the cancer incidence of the NTP mouse study to calculate the excess number of methylene chloride-exposed workers (that is, the number above the background rate) predicted to die through 1984 from lung or liver cancer. The upper bound on the excess lung and liver cancer deaths that might occur in humans through 1984 that the investigators calculated based on the animal data was larger than the number of such deaths actually found by the

epidemiology study. For this reason, the Kodak investigators concluded that the animal data are inappropriate for estimating the risk of methylene chloride to humans.

However, in extrapolating from the animal data to estimate this upper bound on the excess worker deaths expected, the Kodak investigators used a number of assumptions and adjustment factors that FDA does not believe are valid (Ref. 31). Using what FDA believes to be more realistic interspecies comparative assumptions and lifetime adjustment factors, the agency calculated that far fewer excess lung and liver cancer deaths would be expected through 1984 among the methylene chloride-exposed workers than were predicted by the Kodak investigators (Ref. 31).

The Kodak investigators concluded only that the potential upper bound human risk of methylene chloride, calculated using linear-at-low-dose extrapolation from the animal data, is clearly inconsistent with the epidemiology results. This conclusion is hardly surprising, however, since it is of course unlikely that the actual risk of dying from lung or liver cancer is as high as the conservatively estimated upper bound risk. The actual risk can be anywhere from zero to the upper bound estimate.

FDA has found that the Kodak epidemiology study is marginally adequate to detect excess deaths from lung and liver cancer if the risk of these cancers for the exposed workers is 160 percent that of the unexposed workers, but that the study is not able to reliably detect lower risks (Ref. 31). FDA calculations show that the highest risk predicted by the animal data would be no more than 140 percent that of unexposed workers at the exposure levels experienced by the Kodak cohort (Ref. 31), a level of risk that is thus not detectable by the Kodak epidemiology study.

Therefore, FDA does not believe that the data from the Eastman Kodak human epidemiology study refute the animal evidence of the carcinogenicity of methylene chloride or the upper bound human risk calculated from the most sensitive species tested (mouse).

2. The General Electric Study

(19) The agency received two documents, including a preprint of a paper submitted for publication in a scientific journal (Ref. 33), that describe an epidemiology study on women employees in the coiling and wire drawing area of the lamp manufacturing department at the Canadian General Electric plant in Toronto, ON, Canada. The study investigators reported a higher than normal occurrence of breast and gynecological cancers among these employees. The submitters of this study believe that the study implicates methylene chloride as the causative agent.

The agency disagrees that this study shows an association between methylene chloride and the reported excess breast and gynecological cancers found in women employees (Ref. 34). No exposure assessment was done, either qualitatively or quantitatively, for methylene chloride. Although methylene chloride is on a list of chemicals purchased for use in the coiling and wire drawing area in 1984, there is no indication as to how much was actually used in 1984 or other years; as to the methylene chloride levels present in the coiling and wire drawing area; and as to the methylene chloride levels present in other areas of the plant. Finally, the study investigators themselves state that no conclusions can be drawn about the relationship between the use of methylene chloride and the reported increase in cancer.

In addition, the agency believes that the finding of a significant excess of breast and gynecological cancers in this study is of questionable validity. This result was obtained by grouping increases in breast cancer and gynecological cancer incidence that were individually insignificant, without increasing the criterion for statistical significance to allow for a greater number of comparisons. In fact, if the appropriate adjustment for multiple comparisons is made, the study does not show a significant increase in the incidence of breast and gynecological cancer among these employees.

VII. Characterizing the Risks

(20) One comment suggested that there is only weak evidence that methylene chloride is a carcinogen. The comment pointed out that the International Working Party of Experts had developed a set of categories for classifying carcinogens. The comment argued that methylene chloride should be placed in the fourth of these categories, which includes substances that have only potential relevance to humans and that do not require an automatic regulatory response.

The agency does not agree with the comment's conclusion on evidence of carcinogenicity. As explained above, the agency has determined that the evidence of carcinogenicity for methylene chloride is sufficient to conclude that this substance is an animal carcinogen. An International Agency for Research on Cancer (IARC) working group also reviewed the carcinogenicity data on methylene chloride and concluded that "There is sufficient evidence for the carcinogenicity of dichloromethane to experimental animals" (Ref. 4.). Furthermore, NTP concluded, with respect to their inhalation study on methylene chloride, that there was clear evidence of carcinogenicity in $B_6C_3F_1$ mice and female F344 rats and some evidence of carcinogenicity in male F344 rats (Ref. 5).

(21) Some comments objected to the agency's proposal on the basis that it called methylene chloride a probable human carcinogen.

In the proposal of December 18, 1985, FDA did not state that methylene chloride was a probable human carcinogen, but rather that methylene chloride "* * * may be carcinogenic to humans." FDA based this statement on the findings from animal bioassays. It is the agency's policy that substances that are carcinogenic to animals, as methylene chloride has been found to be, should be considered potential human carcinogens unless there is evidence to the contrary.

Rodent species such as rats and mice have been accepted by the scientific community as appropriate surrogates for humans in toxicity testing, including carcinogenesis testing. Experimental evidence has established a high correlation between the ability of a substance to induce cancer in rodents and its ability to induce cancer in humans (Refs. 35, 36, and 37). The agency concluded, based on the NTP inhalation studies on rodents and other relevant information, that methylene chloride is an animal carcinogen by inhalation. Because methylene chloride induces cancer in rodents, it may also do so in humans. This view is shared by IARC, which stated that "in the absence of adequate data on humans, it is reasonable, for practical purposes, to regard chemicals for which there is sufficient evidence for carcinogenicity in animals as if they presented a carcinogenic risk to humans" (Ref. 38). To ensure protection of the public health, the agency will treat positive results from well-conducted carcinogenicity studies in animals as strong evidence that the compound considered represents a carcinogenic hazard to humans and will characterize the risk using these studies unless evidence from studies on humans indicates otherwise.

(22) One comment stated: "According to the FDA, 1 in every 100 hairdressers will die from continued use of aerosol hair sprays that contain methylene chloride. This is clearly an unacceptable risk."

The agency did not state that a number of hairdressers will die from this use. The proposal said that for hair care specialists, the upper bound of lifetime risk of contracting cancer (not the risk of dying) is in the range of 1 in 100 to 1 in 1,000. This estimate is not an actuarial risk. Moreover, it does not refer to every hairdresser but only to those that use aerosol cosmetic products that contain methylene chloride consistently over a prolonged period. Nonetheless, the agency does believe, based on the available data, that there is a significant potential risk to users. Therefore, the agency is prohibiting the use of methylene chloride in aerosol cosmetics.

VIII. Other Comments

A. Halogenated Solvents Industry Petition

(23) The Halogenated Solvents Industry Alliance (HSIA) submitted a petition (Docket No. 86P-0443) requesting that FDA terminate its rulemaking to ban the use of methylene chloride as an ingredient in cosmetic products. HSIA argued that there are apparently acceptable substitutes for methylene chloride in cosmetics, and that, to their knowledge, "all or virtually all manufacturers or formulators have now switched to other ingredients for cosmetic uses in which methylene chloride was previously employed." Thus, HSIA concluded that actual consumer exposure is truly de minimis, and that no benefits would result from regulating the use of methylene chloride in cosmetics. HSIA stated further that, because consumer exposure to methylene chloride from cosmetics is negligible, it is unnecessary and inappropriate for FDA to continue devoting resources to resolving scientific uncertainties inherent in what would now be only a hypothetical situation. HSIA cited as its basis regulatory policy guideline number 4 from the August 11, 1983, Report of the Presidential Task Force on Regulatory Relief, "Reagan Administration Regulatory Achievements," which is referenced in section 1(d) of Executive Order 12498. Guideline number 4 states that regulations should address risks that are real and significant rather than hypothetical or remote. HSIA further requested that FDA reopen the comment period for submission of comments on the issue of actual use and consumer exposure if FDA believes that additional data are needed to show the absence of any use of methylene chloride in cosmetics.

The agency does not agree that a regulation prohibiting use of methylene chloride as an ingredient in cosmetics is no longer necessary. The agency is concerned that in the absence of a regulation prohibiting such use, firms could subject the public to methylene chloride exposure from aerosol cosmetic products at any time. Until recently, the information available to the agency was consistent with HSIA's claim that methylene chloride is not being used as an ingredient in cosmetic products. However, the agency received a letter dated November 30, 1988, from a law firm stating that its client uses methylene chloride in certain aerosol cosmetic products. This letter explained that this company had removed methylene chloride from its products after FDA published its proposal, but that the company decided to resume use of methylene chloride because company officials believed that (1) more favorable information had appeared to support the safety of methylene chloride, (2) FDA had stayed the final action (which it had not), and (3) consumers of their products preferred them formulated with methylene chloride.

The company's actions demonstrate why this regulation is needed to avoid ambiguity about both the legal status of methylene chloride and the risk associated with its use. Although the agency could take enforcement action under section 601 of the act (21 U.S.C. 361) in cases involving the use of methylene chloride in a cosmetic product when the agency becomes aware of such a product, the agency believes that a prohibitive regulation is a more effective way of protecting the public health. This regulation provides notice to future as well as current manufacturers of cosmetic products that methylene chloride should not be used because of the significant potential risk.

With respect to application of regulatory policy guideline number 4, the agency has concluded that methylene chloride may be a human carcinogen, and that the potential risk from the use of this substance in cosmetics is not hypothetical or remote. Furthermore, a primary concern of guideline 4 is cost-benefit assessment. If, as HSIA argued, manufacturers were no longer using methylene chloride in cosmetics, and if, as HSIA presumably believed, a prohibitive regulation is not necessary to preclude the use of methylene chloride in cosmetics, this action would have no or negligible costs. The resumption of use of methylene chloride by one manufacturer that has methylene chloride-free formulations available does not change the conclusion that the costs of this action will be negligible.

B. Other Agencies' Regulation of Methylene Chloride

(24) Two comments pointed out that the Environmental Protection Agency (EPA), the Consumer Product Safety Commission (CPSC), and the Occupational Safety and Health Administration (OSHA), as well as FDA, are evaluating the data on methylene chloride. The comments argued that these other agencies are not proposing any regulatory action at this time and urged FDA not to be precipitous in acting on methylene chloride. These comments urged FDA to be consistent with the other agencies.

FDA is aware of the consideration of methylene chloride by other agencies. However, each agency administers different statutes, and its regulatory response must meet the requirements of the applicable statute.

FDA's findings are consistent with the conclusions of the CPSC on methylene chloride. On August 20, 1986 (51 FR 29778), CPSC proposed to find that methylene chloride may be a human carcinogen by inhalation and may be considered a hazardous substance under the Federal Hazardous Substances Act (FHSA). Without withdrawing the proposed rule, CPSC published a notice of interpretation and enforcement policy on September 14, 1987 (52 FR 34698). This notice concluded that "* * * the Commission believes that household products that present a significant exposure to methylene chloride vapor are hazardous substances due to a potential hazard of human carcinogenicity." CPSC stated its intention to bring enforcement actions under FHSA for products that do not comply with the labeling required by FHSA for hazardous substances. Full compliance of labels for these products was required by September 14, 1988.

FDA also notes that OSHA published an advance notice of proposed rulemaking on methylene chloride (51 FR 42257; November 24, 1986) in which it concluded that there is sufficient evidence of carcinogenicity in two species and positive indications of mutations in three organisms, but that the human epidemiology data are inconclusive. In addition, EPA has initiated a regulatory investigation [50 FR 42037; October 17, 1985].

Concerning the timing of FDA's action relative to actions by other agencies, FDA believes that, when faced with a public health hazard such as the hazard from methylene chloride in aerosol cosmetics, it is obligated to act when it

has a sound basis for a decision. FDA has completed its evaluation of the comments and other relevant information and has determined that it has a sound basis for this action. Therefore, FDA is taking this action even though other agencies may not have reached the same point in their rulemaking.

C. Effective Date

(25) Three comments requested that any final regulation to prohibit the use of methylene chloride in cosmetics provide more time than that provided in the proposal for distribution of products already manufactured and for development of replacement products. One comment requested a 6-month period and a second comment requested at least a 1-year period between publication of the final order and its effective date to allow reformulation of products and testing for stability.

The agency proposed that a regulation in this proceeding would take effect 60 days after the date of publication of the final rule and would be applicable only to products initially introduced or initially delivered for introduction into interstate commerce after that time. This final rule affirms the 60-day period between publication and the effective date. Thus, the ban applies only to products initially introduced or initially delivered for introduction into interstate commerce on or after August 28, 1989. Products introduced into interstate commerce before that date will not be affected.

FDA concludes that a 6-month or a 1-year delay in the effectiveness of this regulation is not necessary. The 60-day period following the publication of this final rule is sufficient for cosmetic manufacturers to comply with the requirements of this regulation.

Information submitted by a trade association and a law firm and the results of a survey of firms participating in the voluntary filing of cosmetic product ingredient statements (under 21 CFR Part 720) demonstrate that the manufacturers of hair sprays generally reformulated their products to replace methylene chloride either before or shortly after the publication on December 16, 1985, of the proposal to ban its use as a cosmetic ingredient. Furthermore, firms have had more than 3 years' notice of this action and, therefore, have had ample time to refine methylene chloride-free formulations and to develop contingency plans to deal with the proposed 60-day effective date. Accordingly, the agency believes that the 60-day period is sufficient for the manufacturers and the marketers of aerosol cosmetics to resolve whatever matters may be pending with respect to the manufacture and distribution of their methylene chloride-free formulations.

D. Request to Reopen Record

(26) One comment in a letter dated November 30, 1988, requested that FDA reopen the record to reconsider the need to ban the use of methylene chloride in aerosol cosmetics based on new risk assessment data submitted to FDA in June 1988. The comment also stated that, if FDA still chooses to ban methylene chloride, the agency should inform consumers in the preamble to any final rule as to the lack of any proof that methylene chloride presents a risk to humans when used in aerosol cosmetic products.

The agency disagrees that the record should be reopened. Even though the report submitted in June 1988 (Ref. 18) was submitted to the agency well after the close of the last official comment period (January 5, 1987), the agency reviewed it, as well as other reports that were submitted late, and found nothing in these reports that would affect FDA's decision to prohibit the use of methylene chloride as an ingredient in cosmetics. Furthermore, the new information has been on display at the Dockets Management Branch in the file on this rulemaking for a number of months. Therefore, the agency believes interested persons have had ample opportunity to comment on it.

FDA also disagrees that it should inform consumers that there is no proof that methylene chloride presents a risk to humans when used in aerosol cosmetic products. It is because of the evidence that risks to consumers may be high that the agency is concluding that methylene chloride as an ingredient in cosmetics may render these cosmetics injurious to users. If FDA were convinced that there was no evidence that this use of methylene chloride presented a significant public health hazard, the agency would not issue this rule prohibiting this use of methylene chloride.

IX. Summary and Conclusions

After evaluating all available data the agency concludes that methylene chloride is carcinogenic by inhalation in mice, and that there is suggestive evidence of a tumorigenic effect of methylene chloride in rats.

Epidemiological data on workers exposed to methylene chloride do not indicate any carcinogenic effect in humans. However, FDA finds that the sensitivity of the study is insufficient to rule out the possibility that methylene chloride can cause cancer in humans, as inferred from the rodent studies.

Substantial new information on the metabolism and mechanism of action of methylene chloride was submitted to the agency. Several comments argued that these metabolic data should be incorporated into the carcinogenic risk assessment process through the use of a physiologically-based pharmacokinetic model approach.

The postulated metabolic mechanism is that the carcinogenicity of methylene chloride in rodents, and any potential carcinogenicity in humans, is caused solely by the formation of active GST metabolites. FDA concludes that this postulated mechanism is scientifically plausible but has not been adequately supported. The available evidence is insufficient to explain how lung or liver tumors were caused in the mouse by the postulated mechanism and to rule out that inhaled methylene chloride directly causes lung tumors in mice, and that it may have the same effect in humans. Therefore, the agency has not used the physiologically-based pharmacokinetic model approach to reduce the estimated risk of cancer for users of aerosol cosmetics containing methylene chloride. Consequently, the agency affirms that the estimated risks presented in the proposal are appropriate upper bound estimates of risk for humans exposed to methylene chloride from aerosol cosmetics.

Because the exposure to methylene chloride from hair spray use can be high, the potential cancer risk from this use may be high. Therefore, the agency concludes that methylene chloride is a poisonous or deleterious substance that may render cosmetic products injurious to users.

X. Impact Analyses

In the proposed rule, the agency explained that the effects of this action had been considered in accordance with the Regulatory Flexibility Act and with Executive Order 12291.

(27) One comment said that the proposal violated Executive Orders 12498 and 12291 because the agency did not make the best estimates of the risks from methylene chloride uses, only extremely conservative estimates. The comment argued that without the best estimates of risks, it is not possible to know what value to put on the costs of the action or what degree of protection the public received from the action.

The agency disagrees with the comment and finds that it is possible to estimate the cost of the proposed ban without a best estimate of risk. The agency estimated the cost of the proposed ban in its threshold assessment in 1985 by calculating the amount of methylene chloride then used in cosmetics, the changes required by a ban, and the costs of these changes. The agency found that the proposed action did not meet the criteria for a major rule described in Executive Order 12291.

In addition, since the proposal was published, the Halogenated Solvents Industry Alliance has submitted a citizen petition that states that manufacturers of cosmetics in the United States have already reformulated their hair sprays to remove methylene chloride on their own initiative, and that there is practically no use of methylene chloride in cosmetics in this country. In a letter dated November 30, 1988, FDA has been told that one firm has resumed using methylene chloride in certain aerosol cosmetics. Notwithstanding the cost to this firm of converting production back to its methylene chloride-free formulations, the agency finds that the costs of prohibiting the use of methylene chloride in hair spray are essentially negligible. The agency has received no other relevant information on the economic impact of this action.

The agency has previously considered the environmental effects of this rule as announced in the proposed rule (50 FR 51551). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required. The information that use of methylene chloride in cosmetics has essentially ceased serves to reinforce this finding of no significant impact.

XI. References

The following references have been placed on display in the Dockets Management Branch, Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum of Meeting of Advisory Panel to the National Cancer Institute on the proposed methylene chloride epidemiology study, June 10, 1987.
2. Maltoni, C., Food Solvents Workshop I: Methylene Chloride, Nutrition Foundation, Bethesda, MD., pp. 67–75 and 92–95, March 8 and 9, 1984.
3. Memorandum of August 22, 1985, by C. Lin, Division of Toxicology, FDA.
4. International Agency for Research on Cancer, "Dichloromethane," IARC Monographs on the Evaluation of the Carcinogenic Risk of Chemicals to Humans, 41:43–85, 1986.
5. National Toxicology Program, "NTP Technical Report on the Toxicology and Carcinogenesis Studies of Dichloromethane (Methylene Chloride) in F344/N Rats and $B_6C_6F_1$ Mice (Inhalation Studies)," NTP TR 306, January 1986.
6. Haseman, J.K., et al., "Neoplasms Observed in Untreated and Corn Oil Gavage Control Groups of F344/N Rats and (C57BL/6N X C3H/Hen) F1 ($B_6C_6F_1$) Mice," *Journal of the National Cancer Institute*, 75:975–984, 1985.
7. Cancer Assessment Committee, Memorandum of Conferences, "Methylene Chloride," January 20, 1983, August 8, 1984, and June 13, 1985.
8. Memorandum of April 23, 1985, by the Quantitative Risk Assessment Committee, FDA.
9. Hext, P.M., J. Foster, and S.W. Millward, "Methylene Chloride (Dichloromethane): 10 Day Inhalation Toxicity Study to Investigate the Effects on Rat and Mouse Liver and Lungs," January 1986.
10. Green, T., et al., "Methylene Chloride (Dichloromethane): The Effects of Exposure to 4000 ppm on Mouse Lung Enzymes," October 1987.
11. Witschi, H., and W.M. Haschek, "Cells of Origin of Lung Tumors in Mice," *Journal of the National Cancer Institute*, 70:991, 1983.
12. Beer, D.G., and A.M. Malkinson, "Genetic Influence on Type 2 or Clara Cell Origin of Pulmonary Adenomas in Urethan-treated Mice," *Journal of the National Cancer Institute*, 75:983–987, 1985.
13. Memorandum of October 27, 1986, by V.C. Dunkel, Genetic Toxicology Branch, FDA, with attachments and references.
14. Memoranda of January 5, 1987, and May 20, 1986, by G. Cramer, Regulatory Food Chemistry Branch, FDA.
15. Andersen, M.E., et al., "Physiologically Based Pharmacokinetics and the Risk Assessment Process for Methylene Chloride," preprint, January 19, 1988. (Since published in *Toxicology and Applied Pharmacology*, 87:185–205, 1987.)
16. Reitz, R.H., et al., "Incorporation of In Vitro Enzyme Data into the PB–PK Model for Methylene Chloride (CH_2Cl_2): Implications for Risk Assessment," preprint, dated 4/18/88. (Since published in *Toxicology Letters*, 43:97–116, 1988.)
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18. Green, T., et al., "Methylene Chloride (Dichloromethane): *In Vivo* Inhalation Pharmacokinetics and Metabolism in F344 Rats and $B_6C_6F_1$ Mice," September 1988.
19. Green, T., J.A. Nash, and G. Mainwaring, "Methylene Chloride (Dichloromethane): *In Vitro* Metabolism in Rat, Mouse and Hamster Liver and Lung Fractions and in Human Liver Fractions," September 1988.
20. Reitz, R.H., A.L. Mendrala, and A.M. Schumann, "Methylene Chloride-Glutathione S-Transferase Studies: *In Vitro* Experiments in Humans, Mice, Rats, and Hamsters," July 1987.
21. Green, T., W.M. Provan, and N. Gowans, "Methylene Chloride (Dichloromethane): *In Vivo* Inhalation Pharmacokinetics in $B_6C_6F_1$ Mice (Using Stable Isotopes) and F344 Rats," October 1987.
22. Green, T., J.A. Nash, and S.J. Hill, "Methylene Chloride (Dichloromethane): Glutathione-S-Transferase Metabolism In Vitro in Rat, Mouse, Hamster and Human Liver Cytosol Fractions," October 1987.
23. Memorandum of June 27, 1984, by V. Frankos, Division of Toxicology, FDA.
24. Gargas, M.L., H.J. Clewell III, and M.E. Andersen, "Metabolism of Inhaled Dihalomethanes *In Vivo*: Differentiation of Kinetic Constants for Two Independent Pathways," *Toxicology and Applied Pharmacology*, 82:211–223, 1986.
25. Memoranda of December 19, 1986, by the Quantitative Risk Assessment Committee; of December 23, 1986, by R. Brown, Division of Mathematics; and of December 19, 1986, by the Quantitative Risk Assessment Committee, FDA.
26. European Chemical Industry Ecology and Toxicology Centre, "Technical Report No. 26: The Assessment of Carcinogenic Hazard for Human Beings Exposed to Methylene Chloride," Brussels, January 1987.
27. Friedlander, B.R., T. Hearne, and S. Hall, "Epidemiologic Investigation of Employees Chronically Exposed to Methylene Chloride: Mortality Analysis," *Journal of Occupational Medicine*, 20:657–666, 1978.
28. Hearne, F.T., and B.R. Friedlander, "Follow-up of Methylene Chloride Study," *Journal of Occupational Medicine*, 23:660, 1981.
29. Hearne, F.T., et al., "Methylene Chloride Mortality Study: Dose-Response Characterization and Animal Model Comparison," *Journal of Occupational Medicine*, 29:217–228, 1987.
30. Memorandum of December 2, 1985, by L. Tollefson, Epidemiology and Clinical Toxicology Unit, FDA.
31. Memoranda of November 10, 1986 and August 27, 1987, by the Quantitative Risk Assessment Committee, FDA.
32. Tollefson, L., et al., "Human and Animal Risk Comparisons," *Journal of Occupational Medicine*, 30:18–19, 22, 1988.
33. Shannon, H.S., et al., "Cancer Morbidity in Lamp Manufacturing Workers," Preprint.
34. Memorandum of July 22, 1987, by L. Tollefson, Epidemiology and Clinical Toxicology Staff, FDA.
35. Wilbourn, J.D., et al., "Response of Experimental Animals to Human Carcinogens: An Analysis Based upon the IARC Monographs Programme," *Carcinogenesis*, 7:1853–1863, 1986.
36. Wilbourn, J.D., et al., "Identification of Chemicals Carcinogenic to Man," *Toxicologic Pathology*, 12:397–399, 1984.
37. Tomatis, L., "The Predictive Value of Rodent Carcinogenicity Tests in the Evaluation of Human Risks," *Annual Review of Pharmacology and Toxicology*, 19:511–530, 1979.
38. International Agency for Research on Cancer, IARC Monographs on the Evaluation of the Carcinogenic Risk of Chemicals to Humans, 41:13–32 (preamble), 1986.

XII. Agency Action

FDA has evaluated the comments on the proposal of December 16, 1985, the new information submitted with the comments, and the information already in the agency's files.

FDA believes that the evidence establishes that methylene chloride is a poisonous or deleterious substance, and that its use in cosmetic products may render those products injurious to users.

Under section 601(a) of the act (21 U.S.C. 361(a)), a cosmetic is deemed to be adulterated "(i)f it bears or contains any poisonous or deleterious substance which may render it injurious to users under the conditions of use prescribed in the labeling thereof, or, under such conditions of use as are customary or usual * * *." Therefore, FDA concludes that cosmetics that contain methylene chloride are adulterated under section 601(a) of the act, and the agency is consequently prohibiting the use of methylene chloride in cosmetic products.

FDA has been informed that, except for one firm that has resumed use of methylene chloride in aerosol cosmetics, the use of methylene chloride in manufacturing hair sprays has virtually ceased in the United States. The agency believes, however, that a regulation is necessary to ensure that all hair spray manufacturers cease using methylene chloride, that hair sprays containing methylene chloride are not imported into this country, and that no new hair sprays or other cosmetics using methylene chloride as an ingredient are introduced into the market.

This prohibition of the use of methylene chloride in cosmetics is effective August 28, 1989. This effective date applies to the initial introduction of products, and the initial delivery of products for introduction, into interstate commerce.

List of Subjects in 21 CFR Part 700

Cosmetics, Packaging and containers.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 700 is amended as follows:

PART 700—GENERAL

1. The authority citation for 21 CFR Part 700 is revised to read as follows:

Authority: Secs. 601, 602, 701(a), 704, 52 Stat. 1054 as amended, 1055, 67 Stat. 477 as amended (21 U.S.C. 361, 362, 371(a), 374); 21 CFR 5.10, 5.11.

2. A new § 700.19 is added to Subpart B to read as follows:

§ 700.19 Use of methylene chloride as an ingredient of cosmetic products.

(a) Methylene chloride has been used as an ingredient of aerosol cosmetic products, principally hair sprays, at concentrations generally ranging from 10 to 25 percent. In a 2-year animal inhalation study sponsored by the National Toxicology Program, methylene chloride produced a significant increase in benign and malignant tumors of the lung and liver of male and female mice. Based on these findings and on estimates of human exposure from the customary use of hair sprays, the Food and Drug Administration concludes that the use of methylene chloride in cosmetic products poses a significant cancer risk to consumers, and that the use of this ingredient in cosmetic products may render these products injurious to health.

(b) Any cosmetic product that contains methylene chloride as an ingredient is deemed adulterated and is subject to regulatory action under sections 301 and 601(a) of the Federal Food, Drug, and Cosmetic Act.

Dated: January 12, 1989.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 89-15355 Filed 6-28-89; 8:45 am]

BILLING CODE 4160-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[FRL-3607-6]

Designation of Areas for Air Quality Planning Purposes: Various States

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: By this rule, EPA is amending the Title 40, Chapter I, Part 81 of the Code of Federal Regulations for the states of Alaska, Idaho, Oregon, and Washington in order to clarify that the attainment and unclassifiable areas are designated on the basis of air quality control regions (AQCRs), or portions thereof, rather than the "entire state" or "remainder of state" as currently listed in some cases. No changes to the attainment status of any area are made by this rule. This action is being taken to ensure that the attainment and unclassifiable area designations for these four states conform with the requirements of section 107(d) of the Clean Air Act.

EFFECTIVE DATE: June 29, 1989.

ADDRESSES: Copies of the materials submitted to EPA may be examined during normal business hours at: Air Programs Branch, Docket 10A-89-7, Environmental Protection Agency, 1200 Sixth Avenue, AT-082, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: David C. Bray, Air Programs Branch, Environmental Protection Agency, 1200 Sixth Avenue, AT-082, Seattle, Washington 98101. Telephone: 206-442-4253 FTS: 399-4253.

SUPPLEMENTARY INFORMATION:

I. Introduction

Under section 107(d) of the Clean Air Act, each air quality control region (AQCR), or portion thereof, is to be identified as to whether it meets or does not meet each national primary and secondary ambient air quality standard, or whether there is insufficient data to be so classified. Each state submitted a list of areas to EPA in late 1977 or early 1978, and EPA published a compilation of these "attainment," "nonattainment," and "unclassifiable" areas in the Federal Register on March 3, 1978 (43 FR 8962).

In general, the March 3, 1978 Federal Register listed areas by AQCRs or portions of AQCRs (e.g., counties or cities). However, for the attainment or unclassifiable listings, EPA sometimes condensed the listing, indicating only that the "entire state," or the "remainder of state," was "attainment" or "unclassifiable" for a specific pollutant. EPA expected that, for Clean Air Act purposes, it would be understood that each AQCR represented a separate "attainment" or "unclassifiable" area in accordance with section 107(d).

The "attainment" or "unclassifiable" areas are important to the prevention of significant deterioration (PSD) program under Part C of the Clean Air Act, because they define the "baseline areas" within which the PSD "increments" are applicable. In recent years, some confusion has arisen with regard to the PSD "baseline areas" in states for which the "attainment" and "unclassifiable" areas are listed as the "entire state" or the "remainder of state."

In order to clearly specify the "attainment" and "unclassifiable" areas in accordance with the requirements of section 107(d), EPA is today amending portions of Title 40, Chapter I, Part 81 of the Code of Federal Regulations (Designations of Areas for Air Quality Planning Purposes) for the states of Alaska, Idaho, Oregon, and Washington. Specifically, EPA is replacing each "entire state" or "remainder of state" entry with AQCR-specific listings in order to clarify that the "attainment" and "unclassifiable areas" are designated on the basis of air quality control regions (AQCRs), or portions thereof. This action does not change the current attainment status of any area—it only reformats the listings by identifying each AQCR.

II. Administrative Review

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of the Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Courts of Appeals for the appropriate circuit by August 28, 1989. This action may not be challenged later in proceedings to enforce its requirement (See 307(b)(2)).

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Date: June 15, 1989.

Robert S. Burd,

Acting Regional Administrator.

Part 81 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 81—[AMENDED]

Subpart C—Section 107 Attainment Status Designations

1. The authority citation for Part 81 is as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 81.302 is revised to read as follows:

§ 81.302

Alaska.

ALASKA—TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Cook Inlet Intrastate AQCR 8				X
Northern Alaska Intrastate AQCR 9				X
South Central Alaska Intrastate AQCR 10				X
Southeastern Alaska Intrastate AQCR 11				X

ALASKA—SO_2

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Cook Inlet Intrastate AQCR 8				X
Northern Alaska Intrastate AQCR 9				X
South Central Alaska Intrastate AQCR 10				X
Southeastern Alaska Intrastate AQCR 11				X

ALASKA—O_3

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
Cook Inlet Intrastate AQCR 8		X
Northern Alaska Intrastate AQCR 9		X
South Central Alaska Intrastate AQCR 10		X
Southeastern Alaska Intrastate AQCR 11		X

ALASKA—CO

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
Cook Inlet Intrastate AQCR 8		X
Northern Alaska Intrastate AQCR 9:		
Fairbanks	X	
Remainder of AQCR 9		X
South Central Alaska Intrastate AQCR 10:		
Anchorage	X	
Remainder of AQCR 10		X
Southeastern Alaska Intrastate AQCR 11		X

ALASKA—NO_2

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
Cook Inlet Intrastate AQCR 8		X
Northern Alaska Intrastate AQCR 9		X
South Central Alaska Intrastate AQCR 10		X
Southeastern Alaska Intrastate AQCR 11		X

3. Section 81.313 is revised to read as follows:

§ 81.313 Idaho.

IDAHO—TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Eastern Idaho Intrastate AQCR 61:				
Pocatello—12 square mile industrial area northwest of Pocatello	X			
Pocatello—338 square mile area from Schiller at the northwest to Inkom at southeast, including Pocatello.		X		
Soda Springs—4½ square mile area encompassing Conda and the surrounding industrial area	X			
Soda Springs—86 square mile area encompassing Soda Springs, Conda and the industrial area in between.		X		
Remainder of AQCR 61				X
Eastern Washington-Northern Idaho Interstate AQCR 62 (Idaho Portion):				
Silver Valley (Shoshone County)			X	
Lewiston		X		
Remainder of AQCR 62 (Idaho Portion)				X
Idaho Intrastate AQCR 63				X
Metropolitan Boise Intrastate AQCR 64				X

IDAHO—SO_2

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Eastern Idaho Intrastate AQCR 61:				
Pocatello				X
Remainder of AQCR 61				X
Eastern Washington-Northern Idaho Interstate AQCR 62 (Idaho Portion):				
Silver Valley (Shoshone County)			X	
Remainder of AQCR 62 (Idaho Portion)				X
Idaho Intrastate AQCR 63				X
Metropolitan Boise Intrastate AQCR 64				X

IDAHO—O_3

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
Eastern Idaho Intrastate AQCR 61		X
Eastern Washington-Northern Idaho Interstate AQCR 62 (Idaho Portion)		X
Idaho Intrastate AQCR 63		X
Metropolitan Boise Intrastate AQCR 64		X

IDAHO—CO

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
Eastern Idaho Intrastate AQCR 61		X
Eastern Washington-Northern Idaho Interstate AQCR 62 (Idaho Portion)		X
Idaho Intrastate AQCR 63:		

IDAHO—CO—Continued

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
Boise	X	
Remainder of AQCR 63		X
Metropolitan Boise Intrastate AQCR 64		X

IDAHO—NO_2

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
Eastern Idaho Intrastate AQCR 61		X
Eastern Washington-Northern Idaho Interstate AQCR 62 (Idaho Portion)		X
Idaho Intrastate AQCR 63		X
Metropolitan Boise Intrastate AQCR 64		X

4. Section 81.338 is revised to read as follows:

§ 81.338 Oregon.

OREGON—TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Central Oregon Intrastate AQCR 190				X
Eastern Oregon Intrastate AQCR 1191				X
Northwest Oregon Intrastate AQCR 192				X
Portland Interstate AQCR 193 (Oregon Portion):				
Portland-Vancouver AQMA (portion of the Oregon portion)		X		
Eugene-Springfield AQMA		X		
Remainder of AQCR 193 (Oregon portion)				X
Southwest Oregon Intrastate AQCR 194:				
Medford-Ashland AQMA	X			
Remainder of AQMA 194				X

OREGON—SO_2

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Central Oregon Intrastate AQCR 190				X
Eastern Oregon Intrastate AQCR 191				X
Northwest Oregon Intrastate AQCR 192				X
Portland Interstate AQCR 193 (Oregon Portion)				X
Southwest Oregon Intrastate AQCR 194				X

OREGON—O_3

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
Central Oregon Intrastate AQCR 190		X
Eastern Oregon Intrastate AQCR 191		X
Northwest Oregon Intrastate AQCR 192		X
Portland Interstate AQCR 193 (Oregon Portion):		
Portland-Vancouver AQMA (portions of the Oregon portion)	X	
Salem	X	
Eugene-Springfield AQMA		X
Remainder of AQCR 193 (Oregon Portion)		X
Southwest Oregon Intrastate AQCR 194		X
Medford-Ashland AMQMA		X

OREGON—O_3—Continued

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
Remainder of AQCR 193		X

OREGON—CO

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
Central Oregon Intrastate AQCR 190		X
Eastern Oregon Intrastate AQCR 191		X
Northwest Oregon Intrastate AQCR 192		X
Portland Interstate AQCR 193 (Oregon Portion):		X
Portland-Vancouver AQMA (portions of the Oregon Portion)	X	
Eugene-Springfield AQMA	X	
Remainder of AQCR 193 (Oregon Portion)		X
Southwest Oregon Intrastate AQCR 194:		
Medford (an area contained within the central commercial area of city)	X	
Grants Pass	X	
City of Salem	X	
Remainder of AQCR 194		X

OREGON—NO_2

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
Central Oregon Intrastate AQCR 190		X
Eastern Oregon Intrastate AQCR 191		X
Northwest Oregon Intrastate AQCR 192		X
Portland Interstate AQCR 193 (Oregon Portion)		X
Southwest Oregon Intrastate AQCR 194		X

5. Section 81.348 is revised to read as follows:

§ 81.348 Washington.

WASHINGTON—TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Eastern Washington-Northern Idaho Interstate AQCR 62 (Washington Portion):				
Spokane	X			
Clarkston		X		
Remainder of AQCR 62 (Washington Portion)				X
Portland Interstate AQCR 193 (Washington Portion):				
Longview—industrial area		X		
Vancouver—small portions of the industrial port area	X			
Remainder of AQCR 193 (Washington Portion)				X
Northern Washington Intrastate AQCR 227				X
Olympic-Northwest Washington Intrastate AQCR 228:				
Port Angeles—small area of the CBD				X
Remainder of AQCR 228				X
Puget Sound Intrastate AQCR 229 Seattle—that area including the north portion of the Duwamish industrial area, and extending to the southern boundary of the CBD.	X			
Seattle—an area of the Duwamish extending approximately 2½ miles further south than the above area.		X		
Renton		X		
Kent		X		
Tacoma—that area, including the Tide Flats industrial area, east end of the CBD and the north end of the South Tacoma Way corridor.	X			
Remainder of AQCR 229				X
South Central Washington Intrastate AQCR 230				X

WASHINGTON—SO_2

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Eastern Washington-Northern Idaho Interstate AQCR 62 (Washington Portion)				X
Portland Interstate AQCR 193 (Washington Portion)				X
Northern Washington Intrastate AQCR 227				X
Olympic-Northwest Washington Intrastate AQCR 228				X
Puget Sound Intrastate AQCR 229:				
Tacoma—a parabolic shaped area extending approximately 3½ miles SSW from the ASARCO copper smelter.			X	
Remainder of AQCR 229				X
South Central Washington Intrastate AQCR 230				X

WASHINGTON—O_3

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
Eastern Washington-Northern Idaho, Interstate AQCR 62 (Washington Portion):		
Spokane		X [1]
Remainder of AQCR 62 (Washington Portion)		X
Portland Interstate AQCR 193 (Washington Portion):		
Portland-Vancouver AQMA Washington Portion)	X [1]	
Remainder of AQCR 193 (Washington Portion)		X
Northern Washington Intrastate AQCR 227		X
Olympic-Northwest Washington Intrastate AQCR 228		X
Puget Sound Intrastate AQCR 229:		
Greater Seattle-Tacoma Area—in general, from Puget Sound at the west to North Bend at the east, from Puyallup at the south to Edmonds at the north.		X
Remainder of AQCR 229		X
South Central Washington Intrastate AQCR 230		X

[1] EPA designation replaced State designation.

WASHINGTON—CO

Designated area	Does not meet primary standards	Cannot be classified	Better than national standards
Eastern Washington-Northern Idaho, Interstate AQCR 62 (Washington Portion):			
City of Spokane	X [1]		
Remainder of AQCR 62 (Washington Portion)			X
Portland Interstate AQCR 193 (Washington Portion)			X
Northern Washington Interstate AQCR 227			X
Olympic-Northwest Washington, Interstate AQCR 228			X
Puget Sound Intrastate AQCR 229:			
Seattle—Central Business District (CBD)	X		
Seattle—Dearborn Street and Rainier Avenue Corridor	X		
Seattle—University District	X		
Remainder of Seattle		X	
Bellevue-Central Business District (CBD)	X		
Remainder of Bellevue		X	
Tacoma-Central Business District (CBD)	X		
Remainder of Tacoma		X	
Everett		X	
Puyallup		X	
Auburn		X	
Remainder of AQCR 229			X
South Central Washington Interstate AQCR 230:			
Yakima-portion of the Central Business District	X		
Remainder of AQCR 230			X

[1] EPA designation replaced State designation.

WASHINGTON—NO_2

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
Eastern Washington-Northern Idaho, Interstate AQCR 62 (Washington Portion)		X
Portland Interstate AQCR 193 (Washington Portion)		X
Northern Washington Intrastate AQCR 227		X

WASHINGTON—NO_2—Continued

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
Olympic-Northwest Washington, Intrastate AQCR 226		X
Puget Sound Intrastate AQCR 229		X
South Central Washington Intrastate AQCR 230		X

[FR Doc. 89-15066 Filed 6-28-89; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 180

[OPP-300291; FRL-3609-8]

Updating of Definitions; Technical Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendments.

SUMMARY: This document updates two definitions listed in 40 CFR Part 180 to reflect the current citations in the references to the United States Code (U.S.C.) and the Code of Federal Regulations (CFR). These are merely technical amendments that impose no new regulatory requirements; therefore, advance notice and public comment are unnecessary.

EFFECTIVE DATE: June 29, 1989.

FOR FURTHER INFORMATION CONTACT:
Patricia Critchlow, Registration Division (H7505C), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460
Office location and telephone number: Registration Support Branch, Room 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703)-557-1800.

SUPPLEMENTARY INFORMATION: This document updates two definitions currently included in 40 CFR 180.1.

The definition of the term "pesticide chemical" in 40 CFR 180.1(k) is being amended to reflect current statutory language and to update the included citations referencing various statutory instruments. The definitive term "economic poison" and the citations "7 U.S.C. 135–135k," "§ 362.2," and "7 CFR 362.2" are being replaced by the definitive term "pesticide" and the citations "7 U.S.C. 136(u)," "§ 152.3," and "40 CFR 152.3."

EPA published in the **Federal Register** on December 29, 1988 (51 FR 46858), a final rule which amended 40 CFR 180.1 by adding new paragraph (n) to define the term "tolerance with regional registration." An included reference to certain sections of 40 CFR Part 180 was cited incorrectly as "40 CFR 189.101 through 180.999" but should have been cited as "40 CFR 180.101 through 180.999."

List of Subjects in 40 CFR Part 180

Administrat ve practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 19, 1989.

Franklin D. Gee,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, the following technical amendments are made to 40 CFR Part 180:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.1 is amended by revising paragraph (k) and by amending paragraph (n) in the third sentence by changing "40 CFR 189.101" to read "40 CFR 180.101" as follows:

§ 180.1 Definitions and interpretations.

* * * * *

(k) The term "pesticide chemical," as defined in section 201(q) of the act, means any substance which, alone, in chemical combination, or in formulation with one or more other substances, is a "pesticide" within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136(u)) and as defined in § 152.3 of regulations for its enforcement (40 CFR 152.3), as now in force or as hereafter amended, and which is used in the production, storage, or transportation of raw agricultural commodities.

* * * * *

[FR Doc. 89-15410 Filed 6-28-89; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 180

[PP 8F3573/R1021; FRL 3609-7]

Pesticide Tolerances for Fluazifop-Butyl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the resolved isomer of the herbicide fluazifop in or on pecans and stone fruits. This regulation to establish the maximum permissible level for residues of the herbicide in or on the raw agricultural commodities (RACs) was requested by ICI Americas, Inc.

EFFECTIVE DATE: June 16, 1989.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:
By mail: Lawrence J. Schnaubelt, Acting Product Manager (PM) 23, Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.
Office location and telephone number: Rm. 237, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1830.

SUPPLEMENTARY INFORMATION: EPA issued a notice in the **Federal Register** of December 16, 1987 (52 FR 47754), that ICI Americas, Inc., Agricultural Products, Concord Pike & New Murphy Rd., Wilmington, DE 19897, had filed a pesticide petition (8F3573) with EPA. The petition proposed amending 40 CFR 180.411 by establishing a regulation to permit the residues of the herbicide [R]-2[4-[[5-(trifluoromethyl)-2-pyridinyl]oxy]phenoxy] propanoic acid (fluazifop), both free and conjugated, and of butyl [R]-2-[4-[[5-(trifluoromethyl)-2-pyridinyl]oxy]-phenoxy]propanoate (fluazifop-p-butyl), all expressed as fluazifop, in or on apples, grapes, pecans, and stone fruits at 0.03 part per million (ppm). The petitioner subsequently amended the petition in the **Federal Register** of August 24,1988 (53 FR 32276), by increasing proposed levels for pecans, stone fruits, apples, and grapes to 0.05. The petitioner has since withdrawn the request for tolerances for apples and grapes.

There were no comments received in response to the initial or amended notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purposes for which the tolerances are sought. The data submitted in support of the tolerances include:

1. Plant and animal metabolism studies.
2. A rat oral lethal dose (LD_{50}) with an LD_{50} of 3,300 milligrams (mg) per kilogram (kg) of body weight (bwt)
3. A rabbit subchronic dermal study (3-week) with a no-observed-effect level (NOEL) of 100 g/kg/day.
4. A 90-day rat feeding study with a NOEL of 0.5 mg/kg/day.
5. A 90-day dog feeding study with a NOEL of 25 mg/kg/day.
6. A rat teratology study with a teratogenic and maternal toxicity NOEL of 10 mg/kg/day (the teratogenic and maternal toxic level is 200 mg/kg/day (highest dose) with diaphragmatic hernia) and the fetotoxic NOEL of 1 mg/kg/day (Margin of Safety values are based on the developmental toxicity NOEL of 1 mg/kg/day).
7. A rabbit teratology study with no terata at 90 mg/kg/day (highest dose) and a fetotoxic NOEL of 10 mg/kg/day.
8. A two-generation rat reproduction study with a NOEL of 80 ppm (4 mg/kg/day).
9. A 2-year chronic feeding/oncogenicity study in rats with no observed oncogenic potential under conditions of the study up to and including 3.0 mg/kg/day (highest dose) and a systemic toxicity NOEL of 1 mg/kg/day.
10. An 18-month mouse chronic feeding/oncogenicity study with no observed oncogenic potential up to and including 3.0 mg/kg/day (highest dose) and a systemic toxicity NOEL of 1.0 mg/kg/day.
11. An Ames test (negative).
12. A rat cytogenetic study (negative).
13. An *in vitro* cell transformation assay (negative).
14. An acute delayed neurotoxicity study in hens (negative).
15. A 1-year dog feeding study with a NOEL of 5 mg/kg/day.

Based on a NOEL of 1.0 mg/kg/day in the 2-year rat feeding study and a hundredfold safety factor, the acceptable daily intake (ADI) has been set at 0.01 mg/kg bwt/day. The theoretical maximum residue contribution (TMRC) from existing tolerances is 0.002100 mg/kg bwt/day. The current action will increase the TMRC by 0.000012 mg/kg/day (an increase of 0.57 percent). Published tolerances utilize 20.993 percent of the ADI; the current action will utilize an additional 0.111 percent.

The nature of the residues is adequately understood, and an adequate analytical method, high-pressure liquid chromatography using an ultraviolet detector, is available in the Pesticide Analytical Manual, Vol. II (PAM-II), for enforcement purposes.

There are no regulatory actions pending against the registration of fluazifop-p-butyl. Based on the above information, the Agency concludes that the tolerances established by amending 40 CFR 180.411 will protect the public health. Established tolerances for meat, milk, poultry, and eggs are adequate to cover any secondary residues transferring to animal tissues as a result of the proposed use.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (40 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 16, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.411(c) is amended by adding and alphabetically inserting the additional commodities, to read as follows:

§ 180.411 Fluazifop-butyl; tolerances for residues.

* * * * *

(c) * * *

Commodities	Part per million
* * * * *	
Pecans	0.05
* * * * *	
Stone fruits	0.05
* * * * *	

[FR Doc. 89-15412 Filed 6-28-89; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 180

[PP 8F3694/R1031; FRL-3609-9]

Pesticide Tolerance for Chlorimuron Ethyl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the herbicide chlorimuron ethyl in or on the raw agricultural commodities (RACs) peanuts at 0.02 part per million (ppm) and peanut hulls at 0.05 ppm. This regulation was requested by E.I. du Pont de Nemours & Co., Inc., and establishes the maximum permissible level for residues of the herbicide on these RACs.

EFFECTIVE DATE: June 29, 1989.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 2708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:
By mail: Robert J. Taylor, Product Manager (PM) 25, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 243, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–1800.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of February 22, 1989 (54 FR 7596), which announced that E.I. du Pont de Nemours & Co., had submitted pesticide petition 8F3694 proposing to amend 40 CFR Part 180 by establishing a regulation to permit the residues of the herbicide chlorimuron ethyl, ethyl 2-[[[[(4-chloro-6-methoxypyrimidin-2yl)amino]carbonyl] amino]sulfonyl]benzoate in or on peanut nutmeats at 0.05 ppm and peanut hulls at 0.1 ppm.

There were no comments received in response to the notice of filing.

The petitioner subsequently submitted a revised section F proposing establishment of tolerances for residues of chlorimuron ethyl in or on peanut nutmeats at 0.02 ppm and peanut hulls at 0.05 ppm. Because these tolerances do not result in any increased risk to humans over those previously filed, a period of public comment is not necessary.

The data submitted in the petition and other relevant material have been evaluated. The data considered in the petition include several acute studies, a 90-day feeding study in mice fed dosages of 0, 3.75, 18.75, 187.5, and 750 milligrams/kilogram/day (mg/kg/day) with a no-observable-effect level (NOEL) of 18.75 mg/kg/day; a 90-day feeding study in dogs fed dosages of 0, 2.5, 37.5, and 187.5 mg/kg/day with a NOEL of 2.5 mg/kg/day; a 1-year feeding study in dogs fed dosages of 0, 0.625, 6.25, and 37.5 mg/kg/day with a NOEL of 6.25 mg/kg/day; an 18-month chronic feeding study in mice fed dosages of 0, 1.875, 18.75, and 187.5 mg/kg/day with a NOEL of 18.75 mg/kg/day and no oncogenic effects observed under the conditions of the study at doses up to and including 187.5 mg/kg/day (highest dosage tested (HDT)); a chronic feeding (oncogenicity) study in rats fed 0, 1.25, 12.5, and 125 mg/kg/day with a NOEL of 12.5 mg/kg/day and no oncogenic effects observed under the conditions of the study at doses up to and including 125 mg/kg/day (HDT); a two-generation reproduction study in rats fed dosages of 0, 1.25, 12.5, and 125 mg/kg/day with a maternal NOEL of 12.5 mg/kg/day and a fetotoxic NOEL of 1.25 mg/kg/day; a teratology study in rats fed dosages of 0, 30, 150, and 600 mg/kg/day with a teratogenic NOEL of 150 mg/kg/day, a fetotoxic NOEL of 30 mg/kg/day, and a maternal toxicity NOEL of 30 mg/kg/day; a teratology study in rabbits fed dosages of 0, 15, 60, and 300 mg/kg/day with a maternal toxicity NOEL of 60 mg/kg/day, a fetotoxic NOEL of 15 mg/kg/day, and no teratogenic effects at 300 mg/kg/day (HDT); and a battery of mutagenicity testing (Ames test, *in vivo* bone marrow assay, and unscheduled DNA synthesis assay), all negative.

The acceptable daily intake (ADI) based on the two-generation rat reproduction study (NOEL of 1.25 mg/kg/day) and using a hundredfold safety factor is calculated to be 0.013 mg/kg/day. The theoretical maximum residue contribution (TMRC) for this tolerance for a 1.5-kg diet is calculated to be 0.000001 mg/day and will utilize 0.01 percent of the ADI. Published tolerances utilize 0.01 percent of the ADI.

No desirable data are lacking.

The nature of the residue is adequately understood, and an adequate analytical method (high-pressure liquid chromatography using a photoconductivity detector) is available for enforcement purposes.

Because of the long lead time from establishing this tolerance to publication of the enforcement methodology in the Pesticide Analytical Manual II, an interim analytical methods package is being made available to State pesticide enforcement chemists when requested from:

By mail: Calvin Furlow, Public Information Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. *Office location and telephone number:* Rm. 242, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–4432.

There are currently no actions pending against registration of this chemical. Negligible secondary residues are expected to occur in meat, milk, poultry, or eggs from this use.

Based on the information considered by the Agency, it is concluded that the tolerance will protect the public health and is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after the date of publication in the Federal Register, file written objections with the Hearing Clerk, Environmental Protection Agency, Rm. M–3708 (A–110), 401 M St., SW., Washington, DC 20460. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are legally sufficient to justify the relief sought.

The Office of Management and Budget (OMB) has exempted this regulation from OMB requirements of Executive Order 12291 pursuant to section 8(b) of that Order.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have significant economic impact on substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

(Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2)).)

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: June 16, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR Part 180 is amended as follows:

1. The authority citation continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By revising § 180.429, to read as follows:

§ 180.429 Chlorimuron ethyl; tolerance for residues.

A tolerance is established for the residues of the herbicide chlorimuron ethyl [ethyl 2-[[[[(4-chloro-6-methoxypyrimidin-2yl) amino]carbonyl]amino]s ulfonyl]benzoate] in or on the following raw agricultural commodities:

Commodities	Parts per million
Peanuts	0.02
Peanut, hulls	0.05
Soybeans	0.05

[FR Doc. 89–15411 Filed 6–28–89; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 414

[FRL 3577–9]

Organic Chemicals, Plastics and Synthetic Fibers Category Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendments and revocation of regulations.

SUMMARY: EPA is amending 40 CFR Part 414 to correct errors in the effluent limitations guidelines, pretreatment standards, and new source performance standards for the organic chemicals, plastics and synthetic fibers (OCPSF) manufacturing point source category; and to revoke limitations for bis (2-chloroisopropyl) ether in accordance with an order issued by the U.S. Court of Appeals for the Fifth Circuit.

EFFECTIVE DATE: This amendment is effective June 29, 1989.

FOR FURTHER INFORMATION CONTACT: Elwood H. Forsht, Project Officer, Chemicals Industry Branch, Industrial Technology Division (WH–552), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20406; (202) 382–7190.

SUPPLEMENTARY INFORMATION: On November 5, 1987, EPA promulgated regulations for the organic chemicals, plastics, and synthetic fibers (OCPSF) manufacturing point source category (52 FR 42522).

I. Correction of Technical Errors

Today's amendments to the July 1, 1988 Code of Federal Regulations correct typographical errors and delete misleading language regarding the applicability of the OCPSF regulations in Appendices A and B to Part 414.

The effluent limitations listed in § 414.91 include duplicate entries for two pollutants. The second entry for 1,2-dichloroethane is corrected to read 1,1-dichloroethane; the second entry for 1,1,1-trichloroethane is corrected to read 1,1,2-trichloroethane.

The final regulations apply to wastewater discharges from the manufacture of OCPSF product/processes. See 40 CFR 414.11(a). OCPSF manufacture consists of chemical syntheses such as esterification, hydroacetylation, and oxidation and chemical engineering processes such as distillation and extraction. See Industry Description—Section III of the October 1987 "Development Document for Effluent Limitations and Standards for the Organic Chemicals, Plastics, and Synthetic Fibers Point Source Category," (EPA 440/1–87/009). In contrast, the regulations do not apply to the formulation of chemical products through blending and mixing operations. See page 102478, Vol. I–30 of the 1987 OCPSF Public Record. Therefore, since the OCPSF regulations do not apply to production consisting exclusively of blending, mixing and formulation of purchased raw materials, several references purporting to include or exclude blending and mixing operations in Appendices A and B were erroneous and hence are being deleted.

II. Revocation of Bis (2-chloroisopropyl) ether Limitations

In accordance with an order issued by the United States Court of Appeals for the Fifth Circuit on June 27, 1988, the Environmental Protection Agency today revokes the bis (2-chloroisopropyl) ether limitations of 40 CFR Part 414 promulgated on November 5, 1987 (52 FR 42522).

As a result of the Agency's review of the data base occasioned by the petitions for review filed in the Fifth Circuit Court of Appeals (No. 87–4849, *et al.*), the Agency has determined that it has committed procedural errors in promulgating the effluent limitations guidelines and standards for bis (2-chloroisopropyl) ether. Upon consideration of these errors, EPA has concluded that reconsideration of the effluent limitations guidelines and standards for this pollutant is warranted.

EPA will either decide to re-promulgate effluent limitations guidelines and standards for this pollutant (after notice and comment), or alternatively, determine that national regulation of this pollutant is unwarranted. Until any new effluent limitations guidelines and standards are promulgated, any decision as to whether and how to regulate this pollutant at a particular direct discharging plant would be made by a permit-issuing authority on a case-by-case basis, as provided by section 402 of the Clean Water Act, 33 U.S.C. 1342.

The order issued by the United States Court of Appeals for the Fifth Circuit requires EPA to revoke the bis (2-chloroisopropyl) ether limitations. Therefore, the Agency finds that public participation in this revocation is unnecessary and contrary to the public interest. The amendment set forth below is to be effective June 29, 1989.

III. Executive Order 12291

Executive Order 12291 requires EPA and other agencies to perform regulatory analyses of major regulations. Major rules are those which impose a cost on the economy of $100 million or more annually or have certain other economic impacts. This action is not a major rule because it merely corrects errors and revokes a portion of an existing regulation and imposes no new requirements; thus, it meets none of the criteria of a major rule as set forth in section 1(b) of the Executive order. This rule was submitted to the Office of Management and Budget for review.

IV. Regulatory Flexibility Analysis

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires EPA and other agencies to prepare an initial regulatory flexibility analysis for all proposed regulations that have a significant impact on a substantial number of small entities. No regulatory flexibility analysis is required, however, where the head of the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Based on the reasons discussed in the preceding paragraph, I hereby certify, pursuant to 5 U.S.C. 605(b), that this regulation will not have a significant impact on a substantial number of small entities.

V. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3500 *et seq.*, EPA must submit a copy of any rule that contains a collection of information requirement to the Director of the Office of Management and Budget for review and approval. This correction and revocation notice contains no additional information collection requirements, and therefore the Paperwork Reduction Act is not applicable.

VI. List of Subjects in 40 CFR Part 414

Organic chemicals manufacturing, Plastics manufacturing, Synthetic fibers manufacturing, Water pollution control, Water treatment and disposal.

Dated: June 26, 1989.

William K. Reilly,

Administrator.

For the reasons set out in the Preamble, 40 CFR Part 414 is amended as set forth below.

PART 414—ORGANIC CHEMICALS, PLASTICS, AND SYNTHETIC FIBERS

40 CFR Part 414 is amended as follows:

§ 414.91 [Amended]

1. In § 414.91, rows 11 and 12 in the table for "Effluent characteristics, Maximum for any one day," and

"Maximum for monthly average," which read,

"1,2-Dichloroethane—59—22
1,1,1-Trichloroethane—54—21"

are revised to read as follows:

"1,1-Dichloroethane—59—22
1,1,2-Trichloroethane—54—21."

Appendix A to Part 414 [Amended]

2. In Part 414 Appendix A, the third item under "Lead" which reads, "Anti-knock fuel additive/Blending purchased tetraethyl lead & tetramethyl lead additives" is removed.

Appendix B to Part 414 [Amended]

3. In Part 414 Appendix B, the second item under "Chromium" which reads, "Vat Dyes/Mixing purchased dyestuffs (Anthraquinones, polycyclic Quinones and Indigoids)" is revised to read as follows: "Vat dyes."

4. In Part 414 Appendix B, the second item under "Copper" which reads, "Vat Dyes/Mixing purchased dyestuffs (Anthraquinones, polycyclic Quinones and Indigoids)" is removed.

§ 414.91 [Amended]

5. In § 414.91, row 29 in the table for "Effluent characteristics, Maximum for any one day," and "Maximum for monthly average," which reads, "Bis (2-chloroisopropyl) ether—757—301," is removed.

§ 414.101 [Amended]

6. In § 414.101, row 25 in the table for "Effluent characteristics, Maximum for any one day," and "Maximum for monthly average," which reads, "Bis (2-chloroisopropyl) ether—709—196," is removed.

[FR Doc. 89-15418 Filed 6-28-89; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 799

[OPTS-42113; FRL-3606-2]

Technical Amendments to Test Rules and Consent Orders

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to 40 CFR 790.55 and 790.68, EPA has approved by letter certain modifications to test standards and schedules for chemical testing programs under section 4 of the Toxic Substances Control Act (TSCA). These modifications, requested by test sponsors, will be incorporated and codified in the respective test regulation or consent order. Because these modifications do not significantly alter the scope of a test or significantly change the schedule for its completion, EPA approved these requests without seeking notice and comment. EPA will annually publish a notice describing all of the modifications granted by letter for the previous year. This is the first such annual notice.

EFFECTIVE DATE: This rule is effective on June 29, 1989.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Rm. EB-44, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: EPA issued an interim final rule published in the **Federal Register** of September 30, 1987 (52 FR 36569), amending procedures for modifying test standards and schedules for test rules and testing consent orders under section 4 of TSCA. The amended procedures allow EPA to approve requested modifications which do not alter the scope of a test or significantly change the schedule for its completion. These modifications were approved by letter without the need for public comment. The rule also requires immediate placement of these letters in EPA's public files and publication of these modifications in the **Federal Register**. This document includes modifications approved through October 1, 1988. For a detailed description of the rationale for these modifications, refer to the submitters' letters and EPA's responses in the public record for this rulemaking.

I. Discussion of Modifications

Each chemical discussed in this rule is identified by a specific docket number. Copies of correspondence relating to these modifications may be found in docket number (OPTS-42113) or the chemical-specific docket established for this rule. The chemicals and docket numbers are:

Anthraquinone (CAS No. 84-65-1)	[OPTS-42113/42076B]
Biphenyl (CAS No. 92-52-4)	[OPTS-42113/42031D]
1,2,4,5-Tetrachlorobenzene (CAS No. 95-94-3	[OPTS-42113/47002I]
Cresols (CAS Nos. 95-48-7, 108-39-4, and 106-44-5)	[OPTS-42113/42033E]
1,2-Dichloropropane (CAS No. 78-87-5)	[OPTS-42113/42043D]
Diethylenetriamine (CAS No. 111-40-0)	[OPTS-42113/42012F]
Diethylene glycol butyl ether and diethylene glycol butyl ether acetate (CAS Nos. 112-34-5 and 124-17-4)	[OPTS-42113/42065C]
Fluoroalkenes (vinyl fluoride, vinylidene fluoride, tetrafluoroethene, and hexafluoropropene, CAS Nos. 75-02-5, 75-38-7, 116-14-3, and 116-15-4)	[OPTS-42113/42002I]
C9 Aromatic hydrocarbon fraction	[OPTS-42113/42034E]
Hydroquinone (CAS No. 123-31-9)	[OPTS-42113/42048E]
Tetrabromobisphenol A (CAS No. 79-94-7)	[OPTS-42113/42063B]
3,4-Dichlorobenzotrifluoride (CAS No. 328-84-7)	[OPTS-42113/42069A]
Methyl tertiary butyl ether (CAS No. 1634-04-4)	[OPTS-42113/42066B]

A. Anthraquinone

EPA approved a modification to the test rule in 40 CFR 799.500 for anthraquinone. The modification granted a 3-month extension of reporting deadlines for three Tier I tests. The deadline for final reports for water solubility, fish acute toxicity, and invertebrate acute toxicity tests was extended to October 21, 1988.

B. Biphenyl

EPA approved modifications to the test rule in 40 CFR 799.925 for biphenyl. Modifications to the study plans "Biphenyl: Flow-Through Chronic Toxicity Test with *Daphnia magna* Straus," and "Biphenyl: Embryo-Larval Toxicity Test with Rainbow Trout, *Salmo gairdneri* Richardson," include additions of dates and signatures, changes in personnel, and updated purity data on the test substance and trout diet. An additional modification to these study plans clarified the procedures for using acetone as a carrier for biphenyl in both tests.

EPA also approved modifications to the final study plan for the partitioning water/sediment testing and biodegradation testing of biphenyl. These included changes in personnel and minor clarifications describing the core-sampling equipment and solvent extraction procedures. Additional modifications to this study plan regarding coring equipment and chemicals used to perform the testing were approved. EPA approved the sponsor's request to divide the reporting phases for these studies differently; from partitioning, aerobic, and anaerobic studies, to river partitioning and aerobic studies, lake partitioning and aerobic studies, and anaerobic studies.

EPA approved changes in test schedules. The deadline for submission of the final report for anaerobic biodegradation testing was extended 8 weeks to October 7, 1988. The deadline for submission of the final report from the river partitioning test was extended from April 15, 1988, to June 1, 1988. The deadline for submission of the final report for the lake partitioning test was extended from April 15, 1988, to July 15, 1988.

C. 1,2,4,5-Tetrachlorobenzene

EPA approved a modification to the test rule in 40 CFR 799.1054 for 1,2,4,5-tetrachlorobenzene. The modification allows a 3-month extension of the reporting deadline for submission of the final report for the reproductive effects and fertility study. The deadline was extended from January 21, 1989, to April 21, 1989.

D. Cresols

EPA approved modifications to the test rule in 40 CFR 799.1250 for cresols. Two extensions to the in vivo mammalian bone marrow cytogenetics test were granted. The first extended the reporting deadline 3 months, the second extended it an additional 2 months. The deadline for the final report was extended to February 1, 1989.

A 5-month extension of the reporting schedule for the morphologic transformation of mammalian cells in culture assay was granted. The deadline for the final report was extended to November 28, 1988.

E. 1,2-Dichloropropane

EPA approved modifications to the test rule in 40 CFR 799.1550 for 1,2-dichloropropane (1,2-DCP). The modifications to the oral/inhalation pharmacokinetics test included the following: Allow the use of a test substance that is slightly less than 99 percent pure; allow the use of prior repeated dosing studies in the selection of high dose gavage and inhalation concentrations, and state that overt toxicity need not be elicited by the single exposure given in the pharmacokinetics study; make intervals used for collection of excreta as described in the test guideline consistent with one another; allow determination of parent compound concentration in blood used in kinetic studies to be obtained from test animal groups F through H instead of groups C through E; and allow pooling of samples from each animal per time point for the analytical determination of parent compound and metabolite identification when determining biotransformation after oral and inhalation exposure. The deadline for submission of the final pharmacokinetics report was extended 5 months to April 19, 1989.

The modifications to the algal acute toxicity tests included the following: Allow the use of a 5-day test; require monitoring of algal growth on days 2, 3, 4 and 5; eliminate the requirement to measure the 1,2-DCP concentration associated with algae; eliminate the 30-minute transition period between light and dark cycles; allow hand shaking of culture flasks; and require reporting of the 5-day EC10, EC50 and EC90 and 95 percent confidence limits and, if they can be determined, the 2, 3, and 4 day EC50,s and confidence limits.

The modification to the dominant lethal assay extends the deadline for submission of the final report 6 months to May 19, 1989.

F. Diethylenetriamine

EPA approved modifications to the test rule in 40 CFR 799.1575 for diethylenetriamine (DETA). Modifications included changes in personnel, changes in instrumentation for tests, a modification to the purity of the test substance used in chemical fate testing and dermal absorption study plans, non-substantive technical modifications to the study plan for the 90-day subchronic dietary toxicity study, and substitution of test lots of DETA used in dermal absorption, in vitro cytogenetics, in vivo cytogenetics and the sex-linked recessive lethal test in *Drosophila melanogaster*.

EPA also approved modifications to test schedules for the DETA test rule. The deadline for submission of the dermal absorption final study was extended 6 months to May 19, 1989. The deadline for submission of the chemical fate test final reports was extended 6 months to March 20, 1989.

G. Diethylene Glycol Butyl Ether and Diethylene Glycol Butyl Ether Acetate

EPA approved modifications to the test rule in 40 CFR 799.1560 for diethylene glycol butyl ether and its acetate (DGBE and DGBA). The modifications permit use of test animals of both sexes in the dermal pharmacokinetics test, and require that four animals per sex per dose group shall be used in the determination of absorption, biotransformation and excretion.

H. Fluoroalkenes

EPA approved modifications to the test rule in 40 CFR 799.1700 for fluoroalkenes. In the CHO/HPRT gene mutation assay, EPA approved use of nitrogen as the negative control and diluting gas, a 10 L/min flow rate, and an 18- to 19-hour treatment time for the non-activated portion of the test. A modification to the test schedule, extending the deadline for submission of final reports from January 22, 1988, to May 16, 1988, was also approved.

In the sex-linked recessive lethal tests with vinyl fluoride and vinylidene fluoride, EPA approved two extensions of the deadline for submission of final reports. The deadline was extended to August 15, 1988.

In the dominant lethal assay, EPA approved two 3-month extensions of the deadline for submission of final reports for hexafluoropropene and vinyl fluoride. The deadline was extended to October 22, 1988.

In the mouse micronucleus cytogenetics assay, EPA approved the use of a single exposure of 6 hours with three sampling times in the testing regimen for tetrafluoroethene and vinylidene fluoride. Two modifications to the test schedule for vinylidene fluoride, extending the date for submission of the final report 1 month and 5 months respectively, were approved. The deadline was extended to November 22, 1988.

I. C9 Aromatic Hydrocarbon Fraction

EPA approved a modification to the test rule in 40 CFR 799.2175 for the C9 aromatic hydrocarbon fraction. The modification extends the required reproductive effects test from a two-generation to a three-generation study.

J. Hydroquinone

EPA approved modifications to the test rule in 40 CFR 799.2200 for hydroquinone. Standards for developmental toxicity testing and reproductive effects testing were modified to require the use of TSCA test guidelines, published on May 20, 1987 (52 FR 19056), instead of the previously specified protocols included as part of study plans submitted by industry on June 15, 1983.

Other modifications include: (1) Changes in housing of animals in the toxicokinetic test; (2) changes in examination of tissues in neuropathology designed to increase sensitivity of the test; (3) the use of special staining and tissue sections in the neuropathologic examination; (4) the addition of two animals per treatment group and the measurement of whole-brain weight on perfused tissue without requiring whole-brain length and width measurements; and (5) alterations in the procedures for fixation of tissues in the neuropathology studies. EPA also approved modifications to the neurotoxicity test schedules. A 120-day extension was approved. The deadline for submission of final reports was extended to November 11, 1988.

BEST COPY AVAILABLE

K. Tetrabromobisphenol A

EPA approved modifications to the test rule in 40 CFR 799.4000 for tetrabromobisphenol A. Deadlines for the biodegradation test in sediment/water, inherent biodegradation in soil tests, and bioconcentration in fish tests were extended 6 months to February 19, 1989.

The deadline for the acute algal toxicity test and the acute fish toxicity test was extended 3 months to November 19, 1988.

Modifications were made to the fish early life stage toxicity test. These included a change in feeding of test animals, a change in the concentration of dissolved oxygen in the dilution water, and changes in the photoperiod for the trout early life stage test.

L. 3,4-Dichlorobenzotrifluoride

EPA approved modifications to test schedules for 3,4-dichlorobenzotrifluoride (DCBTF); these schedules were specified in the consent order signed on June 10, 1987. This chemical is listed in the table of consent orders at 40 CFR 799.5000.

The modifications extended reporting deadlines for algal acute and ready biodegradability tests 3 months to June 9, 1988. They extended reporting deadlines for acute gammarid, fathead minnow, and rainbow trout tests 4 months to July 9, 1988.

M. Methyl Tertiary Butyl Ether

EPA approved modifications to the test standards for methyl tertiary butyl ether; these standards were specified in the consent order signed on March 16, 1988. This chemical is listed in the table of consent orders at 40 CFR 799.5000. The changes clarify when radioactive or non-radioactive test compounds may be used, and how and when the radioactive material should be measured after administration to the test animals.

II. Public Record

EPA has established a public record for this rulemaking (docket number OPTS-42113). The record includes the information considered by EPA in evaluating the requested modifications.

The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in Rm. G-004, NE Mall, 401 M St., SW., Washington, DC 20460.

III. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This rule, listing modifications of test standards and schedules for tests required under test rules and testing consent agreements under the authority of section 4 of TSCA, is not major because it does not meet any of the criteria set forth in section 1(b) of the Order.

This rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA, and any EPA response to those comments, are included in the rulemaking record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, Pub. L. 96-354, September 19, 1980), EPA is certifying that this rule will not have a significant impact on a substantial number of small businesses because the modifications listed in this rule have been made to expedite the development of test data and to reduce certain paperwork burdens associated with current regulations.

C. Paperwork Reduction Act

The information collection requirements associated with this rule have been approved by OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2070-0033.

EPA has determined that this rule does not change existing recordkeeping or reporting requirements nor does it impose any additional recordkeeping or reporting requirements on the public.

Send comments regarding this rule to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

List of Subjects in 40 CFR Part 799

Testing, Environmental protection, Hazardous substances, Chemicals, Recordkeeping and reporting requirements, Incorporation by reference.

Dated: June 19, 1989.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

PART 799—[AMENDED]

Therefore, 40 CFR Part 799 is amended as follows:

1. The authority citation for Part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. In § 799.500, by revising paragraphs (c) (1)(ii)(A), (2)(ii)(A), and (3)(ii)(A) to read as follows:

§ 799.500 Anthraquinone.

* * * * *

(c) * * *

(1) * * *

(ii) * * *

(A) The water solubility tests shall be completed and the final results submitted to EPA within 15 months of the effective date of the final rule.

* * * * *

(2) * * *

(ii) * * *

(A) The fish acute toxicity tests shall be completed and the final results submitted to EPA within 15 months of the effective date of the final rule.

* * * * *

(3) * * *

(ii) * * *

(A) The invertebrate acute toxicity tests shall be completed and the final results submitted to EPA within 15 months of the effective date of the final rule.

* * * * *

3. In § 799.925, by revising paragraphs (c) (1)(ii), (2)(ii), (d) (1)(ii), (2) (ii) and (iii), (3) (ii) and (iii) to read as follows:

§ 799.925 Biphenyl.

* * * * *

(c) * * *

(1) * * *

(ii) *Test standard.* The test shall be conducted in accordance with the revised EPA-approved modified study plan submitted to EPA by the Biphenyl Work Group: "Embryo-Larval Toxicity Test with Rainbow Trout, *Salmo gairdneri* Richardson." This revised EPA-approved modified study plan, with modifications approved by EPA on August 7, 1987, and October 16, 1987, is available for inspection in EPA's OPTS Reading Room, Rm. NE G-004, 401 M St. SW., Washington, DC 20460. Copies of this study plan are available to the public in the OPTS reading room.

* * * * *

(2) * * *

(ii) *Test standard.* The test shall be conducted in accordance with the revised EPA-approved modified study plan submitted to EPA by the Biphenyl Work Group: "Flow-Through Chronic Toxicity Test with *Daphnia magna* Straus." This revised EPA-approved modified study plan, with modifications approved by EPA on August 7, 1987, and October 16, 1987, is available for inspection in EPA's OPTS Reading Room, Rm. NE G-004, 401 M St. SW., Washington, DC 20460. Copies of this study plan are available to the public in the OPTS reading room.

* * * * *

(d) * * *

(1) * * *

(ii) *Test standard.* The testing shall be conducted in accordance with the revised EPA-approved modified study plan submitted to EPA by the Biphenyl Work Group: "Aerobic Biodegradation Study." This revised EPA-approved modified study plan, with modifications approved by EPA on October 13, 1987, is available for inspection in EPA's OPTS Reading Room, Rm. NE G-004, 401 M St. SW., Washington, DC 20460. Copies of this study plan are available to the public in the OPTS reading room.

* * * * *

(2) * * *

(ii) *Test standard.* The testing shall be conducted in accordance with the revised EPA-approved modified study plan submitted to EPA by the Biphenyl Work Group: "Anaerobic Biodegradation Study." This revised EPA-approved modified study plan, with modifications approved by EPA on October 13, 1987, is available for inspection in EPA's OPTS Reading Room, Rm. NE G-004, 401 M St. SW., Washington, DC 20460. Copies of this study plan are available to the public in the OPTS reading room.

(iii) *Reporting requirements.* The anaerobic biodegradation study with biphenyl shall be completed and a final report submitted to EPA within 64 weeks of the effective date of the final Phase II rule. Progress reports shall be submitted at 6-month intervals beginning 6 months after the effective date of the final Phase II rule.

(3) * * *

(ii) *Test standard.* The testing shall be conducted in accordance with the revised EPA-approved modified study plan submitted to EPA by the Biphenyl Work Group: "Partitioning Water/Sediment Study." This revised EPA-approved modified study plan, with modifications approved by EPA on October 13, 1987, is available for inspection in EPA's OPTS Reading Room, Rm. NE G-004, 401 M St., SW., Washington, DC 20460. Copies of this study plan are available to the public in the OPTS reading room.

(iii) *Reporting requirements.* The partitioning water/sediment testing shall be completed and a final report submitted to EPA BY June 1, 1988, for the river test, and by July 15, 1988, for the lake test. Progress reports shall be submitted to EPA at 6-month intervals beginning 6 months after the effective date of the final Phase II rule.

* * * * *

4. In § 799.1054, by revising paragraph (c)(1)(ii)(A) to read as follows:

§ 799.1054 1,2,4,5-Tetrachlorobenzene.

* * * * *

(c) * * *

(1) * * *

(ii) * * *

(A) The reproduction and fertility test shall be completed and the final results submitted to EPA within 32 months of the effective date of this final rule.

* * * * *

5. In § 799.1250, by revising paragraphs (c) (1)(iii)(A)(*1*) and (3)(iii)(A) to read as follows:

§ 799.1250 Cresols.

* * * * *

(c) * * *

(1) * * *

(iii) * * *

(A) * * *

(*1*) The *in vitro* and *in vivo* (conditional) tests shall be completed and the final results submitted to EPA within 12 and 19 months, respectively, of the effective date of the final Phase II test rule.

* * * * *

(3) * * *

(iii) * * *

(A) The morphologic transformation of mammalian cells in culture assay shall be completed and final results submitted to EPA within 17 months of the effective date of the final Phase II test rule.

* * * * *

6. In § 799.1550, by revising paragraphs (c) (2)(iii)(A), (5) (ii) and (iii)(A), and (d)(2)(ii) to read as follows:

§ 799.1550 1,2-Dichloropropane.

* * * * *

(c) * * *

(2) * * *

(iii) * * *

(A) The dominant lethal assay shall be completed and the final report submitted to EPA within 18 months of the effective date of the final Phase II rule.

* * * * *

(5) * * *

(ii) *Test standard.* (A) The oral and inhalation pharmacokinetic testing with 1,2-dichloropropane shall be conducted in accordance with § 795.230 of this chapter, except for the provisions in paragraphs (c)(2) (i), (ii) (A) and (B), (iii) (C) and (D), and (3)(ii) of § 795.230.

(B) For the purpose of this section, the following provisions also apply:

(*1*) *Test Substance.* The studies require the use of both non-radioactive and ^{14}C-labeled test substance. The non-radioactive test substance shall be at least 99 percent pure, while the radiochemical purity of the ^{14}C-labeled test substance may be slightly less than 99 percent. Both preparations are needed to investigate the provisions of paragraph (a)(2) of this section. The use of ^{14}C-test substance is recommended for the provisions in paragraph (a)(1), (2), and (3) of this section in order to facilitate the work, improve the reliability of quantitative determinations, and increase the probability of observing previously unidentified metabolites.

(*2*) *Oral study.* At least two doses shall be used in the study, a "low" and "high" dose. When administered orally, the "high" doses should induce some overt toxicity such as weight loss. If data from prior repeated dosing studies is utilized to select the "high" dose, overt toxicity need not be elicited in this exposure group. The "low" dose shall not induce observable effects attributable to the test substance. Oral dosing shall be performed by gavage using an appropriate vehicle.

(*3*) *Inhalation study.* Three concentrations shall be used in the study. Upon exposure, two higher concentrations should ideally induce some overt symptoms of toxicity, although the intermediate concentration may be excluded from this condition. If data from prior repeated dosing studies is utilized to select the high dose, overt toxicity need not be elicited in this exposure group. The lowest concentration shall not induce observable effects attributable to the test substance.

(*4*) *Collection of excreta.* After oral administration (Groups A and B) and inhalation exposure (Groups F through H) the rats shall be placed in individual metabolic cages and excreta (urine, feces and expired air) shall be collected from 0 to 24 hours and from 24 to 48 hours after dosing and, if necessary, daily thereafter until at least 90 percent of the dose has been excreted or until 7 days after dosing, whichever occurs first.

(*5*) *Kinetic studies.* Groups C through E should be used to determine the concentration of the test substance in blood at 0, 5, 10, 15, and 30 minutes, and at 1, 2, 4, 8, 16, 24, and 48 hours after initiation of inhalation exposure. If experimentally feasible, blood obtained from the ^{14}C-exposed rats from Groups F through H may be used to determine the test substance concentrations.

(*6*) *Biotransformation after oral and inhalation exposure.* Appropriate qualitative and quantitative methods shall be used to assay urine specimens collected from each rat in Groups A and

B and F through H. The radiometric analyses of urine, feces and expired air should be conducted individually for each rat, but samples from each rat per time point may be pooled for analytical determination of parent compound and metabolite identification. Metabolite identification shall be attempted for those routes of excretion which contain greater than 10 percent of the oral dose or, in the inhalation study, greater, than 10 percent of the body burden at the end of exposure.

(iii) * * *

(A) The pharmacokinetic test shall be completed and the final report submitted to EPA within 17 months of the effective date of the final single-phase pharmacokinetics rule.

* * * * *

(d) * * *

(2) * * *

(ii) *Test standard.*

(A) The algal acute toxicity tests with 1, 2-dichloropropane shall be conducted with marine and freshwater algae using systems that control for 1,2-dichloropropane evaporation in accordance with § 797.1050 of this chapter, except for the provisions in paragraph (c)(1)(ii), (3)(ii), (4)(iv), (6)(i)(B), (d)(3)(ii) and (iii), (e)(4) and (5) of § 797.1050.

(B) For the purpose of this section, the following provisions shall also apply to the algal acute toxicity tests:

(*1*) At 48, 72, 96, and 120 hours, enumerate the algal cells in all containers to determine the inhibition or stimulation of growth in test containers compared to controls. Use data to define the concentration-response curve, and calculate the EC_{10}, EC_{50}, and EC_{90} values.

(*2*) The test is performed once for each of the recommended algal species or selected alternates. Test chambers should contain equal volumes of test solution and approximately 1×10^4 *Selenastrum* cells/ml or 7.7×10^4 *Skeletonema* cells/ml of test solution. The algae should be exposed to each concentration of test chemical for up to 120 hours. The exposure period may be shortened if data suitable for the purposes of the range-finding tests can be obtained in less time.

(*3*) The test begins when algae from 7 to 10-day-old stock cultures are placed in the test chambers containing test solutions having the appropriate concentrations of the test substance. At the end of 120 hours, the algal growth response (number or weight of algal cells/ml) in all test containers and controls should be determined by an indirect (spectrophotometry, electronic cell counters, dry weight, etc.) or a direct (actual microscopic cell count) method. Indirect methods should be calibrated by a direct microscopic count. The percentage inhibition of stimulation of growth for each concentration, EC_{10}, EC_{50}, EC_{90}, and the concentration-response curves are determined from these counts.

(*4*) At the end of the test and after aliquots have been removed for algal growth-response determinations, microscopic examination, mortal staining, or subculturing, the replicate test containers for each chemical concentration may be pooled into one sample. An aliquot of the pooled sample may then be taken and the concentration of test chemical determined. In addition, the concentration of test chemical associated with the algae alone should be determined. Separate and concentrate the algal cells from the test solution by centrifuging or filtering the remaining pooled sample and measure the test substance concentration in the algal-cell concentrate. The concentrations associated with the algae do not have to be measured if data are provided that demonstrate that substantive amounts of the test substance are lost during transfer of algae to centrifuge tubes or during centrifugation.

(*5*) Test chambers containing *Selenastrum* shall be illuminated continuously and those containing *Skeletonema* shall be provided a 14-hour light and 10-hour dark photoperiod under fluorescent lamps providing $300 \pm 25 uEin/m^2$ sec (approximately 400 ft-c) measured adjacent to the test chambers at the level of test solution.

(*6*) Stock algal cultures should be shaken twice daily by hand. Test containers may be shaken by hand or placed on a rotary shaking apparatus and oscillated at approximately 100 cycles/minute for *Selenastrum* and at approximately 60 cycles/minute for *Skeletonema* during the test. The rate of oscillation should be determined at least once daily during testing.

(*7*) The number of algal cells per milliliter in each treatment and control and the method used to derive these values at the beginning, 48, 72, and 96 hours, and end of the test; the percentage of inhibition or stimulation of growth relative to controls; and other adverse effects in the control and in each treatment.

(*8*) The 120-hour EC_{10}, EC_{50}, and EC_{90}, values, and when sufficient data have been generated, the 48, 72, and 96 hour LC_{50}'s and 95 percent confidence limits, the methods used to derive these values, the data used to define the shape of the concentration-response curve and the goodness-of-fit determination.

* * * * *

7. In § 799.1575, by revising paragraphs (c)(1)(ii), (2)(ii), (3)(ii), (4)(ii), and (d)(2) to read as follows:

§ 799.1575 Diethylenetriamine (DETA).

* * * * *

(c) * * *

(1) * * *

(ii) *Test standards.* (A) The testing for the sex-linked recessive lethal assay shall be conducted in accordance with the following revised EPA-approved modified study plan (June 19, 1986) originally submitted by the Diethylenetriamine Producers/Importers Alliance (DPIA): "Sex-linked recessive lethal test in *Drosophila melanogaster*," with modifications as approved by EPA on March 9, 1987, and May 21, 1987.

(B) The testing for the mouse visible specific locus assay shall be conducted in accordance with the following revised EPA-approved modified study plan (June 19, 1986) originally submitted by the Diethylenetriamine Producers/Importers Alliance (DPIA): "Mouse specific locus test for visible markers."

(C) These revised EPA-approved modified study plans are available for inspection in EPA's OPTS Reading Room, Rm. NE–G004, 401 M St., SW., Washington, DC 20460.

* * * * *

(2) * * *

(ii) *Test standards.* (A) The testing for cytogenetic effects shall be conducted in accordance with the following revised EPA-approved modified study plan (June 19, 1986) originally submitted by the Diethylenetriamine Producers/Importers Alliance (DPIA): "*In vitro* cytogenetics test" and "*In vivo* cytogenetics test," with modifications as approved by EPA on March 9, 1987, and May 21, 1987.

(B) Other testing for cytogenetic effects shall be conducted in accordance with the following revised EPA-approved modified study plans (June 19, 1986) originally submitted by the Diethylenetriamine Producers/Importers Alliance (DPIA): "Dominant lethal assay of diethylenetriamine in CD rats," and "Heritable translocation of diethylenetriamine in CD–1 mice."

(C) These revised EPA-approved modified study plans are available for inspection in EPA's OPTS Reading Room, Rm. NE–G004, 401 M St., SW., Washington, DC 20460.

* * * * *

(3) * * *

(ii) *Test Standard.* The testing shall be conducted in accordance with the following revised EPA-approved

modified study plans (June 19, 1986) originally submitted by the Diethylenetriamine Producers/Importers Alliance (DPIA): "Ninety-Day (subchronic) dietary toxicity study with diethylenetriamine in albino rats," with modifications approved by EPA on March 9, 1987, and May 21, 1987. This revised EPA-approved modified study plan is available for inspection in EPA's OPTS Reading Room, Rm. NE–G004, 401 M St., SW., Washington, DC 20460.

* * * * *

(4) * * *

(ii) *Test standard.* The testing shall be conducted in accordance with the following revised EPA-approved modified study plan (June 19, 1986) originally submitted by the Diethylenetriamine Producers/Importers Alliance (DPIA): "Dermal absorption," with modifications approved by EPA on March 9, 1987, May 21, 1987, and December 16, 1987. This revised EPA-approved modified study plan is available for inspection in EPA's OPTS Reading Room, Rm. NE–G004, 401 M St., SW., Washington, DC 20460.

* * * * *

(d) * * *

(2) *Test standard.* The testing shall be conducted in accordance with the following revised EPA-approved modified study plan (June 19, 1986) originally submitted by the Diethylenetriamine Producers/Importers Alliance (DPIA): "Chemical fate," with modifications approved by EPA on March 9, 1987, May 21, 1987, July 9, 1987, and December 16, 1987. This revised EPA-approved modified study plan is available for inspection in EPA's OPTS Reading Room, Rm. NE–G004, 401 M St., SW., Washington, DC 20460.

* * * * *

8. In § 799.1560, by revising paragraph (c)(4)(i) to read as follows:

§ 799.1560 Diethylene glycol butyl ether and diethylene glycol butyl ether acetate.

* * * * *

(c) * * *

(4) * * *

(i) *Required testing.* (A) Pharmacokinetics testing of DGBE and DGBA will be conducted in rats by the dermal route of administration in accordance with § 795.225 of this chapter, except for the provisions in paragraphs (b) (1)(ii) and (3)(i) of § 795.225.

(B) For the purpose of this section, the following provisions also apply:

(*1*) *Animals.* Adult male and female Sprague Dawley rats shall be used. The rats shall be 7 to 8 weeks old and weigh 180 to 220 grams. Prior to testing, the animals shall be selected at random for each group. Animals showing signs of ill health shall not be used.

(*2*) *Observation of animals—Urinary and fecal excretion.* The quantities of ^{14}C excreted in urine and feces by rats dosed as specified in paragraph (b)(2)(iv) of § 795.225 shall be determined at 8, 24, 48, 72, and 96 hours after dosing, and if necessary, daily thereafter until at least 90 percent of the dose has been excreted or until 7 days after dosing (whichever occurs first). Four animals per sex per dose group shall be used for this purpose.

* * * * *

9. In § 799.1700, by revising paragraphs (c) (1) (i)(A)(*2*) (*iv*) and (*vi*), (ii)(A), (2) (i)(A)(*2*)(*iii*) and (ii)(A) to read as follows:

§ 799.1700 Fluoroalkenes.

* * * * *

(c) * * *

(1) * * *

(i) * * *

(A) * * *

(*2*) * * *

(*iv*) *Test method—Control groups.* Positive and negative controls shall be included in each experiment. In assays with metabolic activation, the positive control substance shall be known to require such activation. Nitrogen shall serve as the negative control and diluting gas.

* * * * *

(*vi*) *Test performance.* Cells in treatment medium with and without metabolic activation shall be exposed to varying concentrations of test gas-air mixtures by flushing treatment flasks (or chambers) with 10 volumes of test gas-air mixture at a rate of 500 mL/min or that rate which will allow complete flushing within 1 minute. In the case of a test chamber volume of 1.67 L, a flow rate of 10 L/min is appropriate. Each flask shall be closed with a cap with a rubber septum. Headspace samples shall be taken at the beginning and end of the exposure period and analyzed to determine the amount of test gas in each flask. Flasks shall be incubated on a rocker panel at 37 °C for 5 hours for tests with metabolic activation. For the non-activated portion of the test, the incubation time shall be 18 to 19 hours at 37 °C. At the end of the exposure period, cells treated with metabolic activation shall be washed and incubated in culture medium for 21 to 26 hours prior to subculturing the viability and expression of mutant phenotype. Cells treated without metabolic activation shall be washed and subcultured immediately to determine viability and to allow for expression of mutant phenotype. Appropriate subculture schedules (generally twice during the expression period) shall be used. At the end of the expression period, which shall be sufficient to allow near optimal phenotypic expression of induced mutants (generally 7 days for this cell system), cells shall be grown in medium with and without selective agent for determination of numbers of mutants and cloning efficiency, respectively. This last growth period is generally 7 days at 37 °C. Results of this test shall be confirmed in an independent experiment.

* * * * *

(ii) * * *

(A) Mutagenic effects-gene mutation tests shall be completed and the final results submitted to EPA as follows: Somatic cells in culture assay, by May 16, 1988; *Drosophila* sex-linked recessive lethal, by August 15, 1988 (for VF and VDF), and within 15 months (for TFE and HFP) after the effective date of the final rule; mouse visible specific locus assay, within 51 months after the date of EPA's notification of the test sponsor by certified letter or **Federal Register** notice that testing shall be initiated.

* * * * *

(2) * * *

(i) * * *

(A) * * *

(*2*) * * *

(*iii*) *Test method—route of administration.* Animals shall be exposed by inhalation with a single 6-hour exposure, with three sampling times between 29 and 72 hours.

* * * * *

(ii) * * *

(A) Mutagenic effects-chromosomal aberration testing shall be completed and final results submitted to EPA after the effective date of the rule as follows: mouse micronucleus cytogenetics for VDF by November 22, 1988, and for TFE within 10 months after the effective date of the final rule; dominant lethal assay for VF and HFP by October 22, 1988, and for VDF and TFE within 19 months after the effective date of the rule; heritable translocation assay, within 25 months after the date of EPA's notification of the test sponsor by certified letter or **Federal Register** notice that testing shall be initiated.

* * * * *

10. In § 799.2175, by revising paragraph (e)(1)(i) to read as follows:

§ 799.2175 C9 aromatic hydrocarbon fraction.

* * * * *

(e) * * *

(1) * * *

(i)(A) The required testing specified in paragraphs (d) (1), (2), (3), and (4) of this section shall be conducted in accordance with the study plans for testing the C9 fraction developed by the American Petroleum Institute (API), submitted to EPA on September 30, 1985, modified in a submission dated January 10, 1986, and the additional requirements specified in this paragraph.

(B) The required testing specified in paragraph (d)(5) of this section shall be conducted in accordance with the study plans for testing the C9 fraction developed by the American Petroleum Institute (API), submitted to EPA on September 30, 1985, and modified in submissions dated January 10, 1986, and September 13, 1988.

* * * * *

11. In § 799.2200, by revising paragraphs (c) (1)(ii), (2)(ii), (3)(ii), (4) (ii) and (iii)(A) to read as follows:

§ 799.2200 Hydroquinone.

* * * * *

(c) * * *

(1) * * *

(ii) *Test standard.* (A) The toxicokinetic testing shall be conducted in accordance with § 795.235 of this chapter except for the provisions in paragraph (c)(1)(iii)(C) of § 795.235.

(B) For the purpose of this section, the following provisions also apply:

(*1*) During the acclimatization period, rats shall be housed in polycarbonate cages on hardboard chip bedding, or suspended steel cages with no bedding material.

(*2*) [Reserved]

* * * * *

(2) * * *

(ii) *Test standards.* The developmental toxicity testing shall be conducted in accordance with § 798.4900, as revised July 1, 1987.

* * * * *

(3) * * *

(ii) *Test standards.* The reproductive effects testing shall be conducted in accordance with § 798.4700, as revised July 1, 1987.

* * * * *

(4) * * *

(ii) *Test standards.* (A) The neurotoxicity testing of hydroquinone, consisting of a functional observational battery and neuropathology, shall be conducted in accordance with §§ 798.6050 and 798.6400, respectively, of this chapter, except for the provisions of paragraphs (d)(8) (ii) (C) and (D), (iv) (A), and (E)(2) of § 798.6400. The functional-observational battery and the neuropathology assessment may be conducted sequentially on the same group of rats. Neuropathological assessment should begin with the highest dose level and work downward until a no-observable-adverse-effects dose is reached.

(B) For the purpose of § 798.6400, the following provisions also apply:

(*1*) *Removal of brain and cord.* After perfusion, the bony structure (cranium and vertebral column) should be exposed. Animals should then be stored in fixative-filled bags at 4 °C for 8–12 hours. The cranium and vertebral column shall be removed carefully by trained technicians without physical damage of the brain and cord. Detailed dissection procedures may be found in the text by Palay and Chan-Palay (1974) under paragraph (f)(4) of this section. After removal, simple measurement of the weight of the whole brain (cerebrum, cerebellum, pons-medulla) should be made. Any abnormal coloration or discoloration of the brain and cord should also be noted and recorded.

(*2*) *Sampling.* Unless a given test rule specifies otherwise, cross-sections of the following areas shall be examined: The forebrain, the center of the cerebrum, the midbrain, the cerebellum and pons, and the medulla oblongata; the spinal cord at cervical and lumbar swelling (C3–C6 and L1–L4); dorsal root ganglia (C3–C6 and L1–L4), dorsal and ventral root fibers (C3–C6 and L1–L4), sciatic nerve (mid-thigh) and tibial nerve (at knee). The aforementioned areas will be examined with special stains (a combined Luxol Fast Blue Stain-Bodian Silver Protargol impregnation).

(*3*) *Histopathology examination.* Tissue specimens stored in 10 percent buffered formalin may be used for this purpose. All tissues must be immersion-fixed in fixative for at least 48 hours prior to further tissue processing. Alternative fixation procedures may be employed. Tissues for plastic embedment may be fixed for an additional period of at least 2 hours in glutaraldehyde. Tissues from perfused animals not destined for plastic embedment and all tissues from unperfused animals may be fixed in 10 percent neutral buffered formalin.

(*4*) *Special stains.* Regardless of the results of the general staining, selected sites and cellular components shall be further evaluated by the use of certain special stains (a combined Luxol Fast Blue Stain-Bodian Silver Protargol impregnation) and plastic embedded 1 micron sections. These stains and sections shall be used to detect chemical-induced damage to neuronal body, axon, myelin sheath and neurofibrils. A section of normal tissue shall be included in each staining to assure that adequate staining has occurred. Any changes shall be noted and representative photographs shall be taken. If a lesion(s) is observed, the special techniques shall be repeated in the next lower treatment group until no further lesion is detectable.

(iii) * * *

(A) The neurotoxicity tests shall be completed and final results submitted to EPA within 18 months of the effective date of the final Phase II rule.

* * * * *

12. In § 799.4000, by revising paragraphs (c)(1)(ii)(A), (2)(ii)(A), (d)(1)(ii)(A), (2)(ii)(A), (5), and (6)(ii)(A) to read as follows:

§ 799.4000 Tetrabromobisphenol A.

* * * * *

(c) * * *

(1) * * *

(ii) * * *

(A) The biodegradation test in sediment/water shall be completed and the final report submitted to EPA within 18 months of the effective date of the final rule.

* * * * *

(2) * * *

(ii) * * *

(A) The inherent biodegradability in soil tests shall be completed and the final reports submitted to EPA within 18 months of the effective date of the final rule.

* * * * *

(d) * * *

(1) * * *

(ii) * * *

(A) The algal acute toxicity test shall be completed and the final report submitted to EPA within 15 months of the effective date of the final rule.

* * * * *

(2) * * *

(ii) * * *

(A) The fish acute toxicity test shall be completed and the final report submitted to EPA within 15 months of the effective date of the final rule.

* * * * *

(5) *Fish early life stage toxicity.*—(i) *Required testing.* (A) A fish early life stage toxicity test shall be conducted with TBBPA. The test species shall be fathead minnow (*Pimephales promelas*) if the 96-hour LC_{50} for fathead minnow conducted in accordance with paragraph (d)(2) of this section is equal to or less than 0.8 mg/L; the test species shall be either fathead minnow or rainbow trout if the 96-hour LC_{50} for fathead minnow is between 0.08–2.0 mg/L; the test species shall be rainbow trout if the 96-hour LC_{50} for fathead minnow is greater than or equal to 2.0 mg/L. The fish early life stage toxicity test shall be conducted in accordance with § 797.1600 of this chapter, except for the provisions in paragraphs (c)(4)(iv)(A), (d)(2)(vii)(A)(*2*), (3)(i) and (ii)(B)(*1*), and (iv)(A) of § 797.1600.

(B) For the purpose of this section, the following provisions also apply:

(*1*) The first feeding for the fathead and sheepshead minnow fry shall begin shortly after transfer of the fry from the embryo cups to the test chambers. Silversides are fed the first day after hatch. Trout species initiate feeding at swim-up. The trout fry shall be fed trout starter mash or live newly-hatched brine shrimp nauplii (*Artemia salina*) three times a day *ad libitum*, with excess food siphoned off daily. The minnow fry shall be fed *Artemia salina* at least three times a day.

(*2*) The concentration of dissolved oxygen in the dilution water (fresh or salt) shall be greater than 75 percent of air saturation. When necessary, dilution water should be aerated by means of airstones, surface aerators, or screen tubes before the introduction of the test substance.

(*3*) Dissolved oxygen concentration. It is recommended that the dissolved oxygen concentration be maintained between 90 and 100 percent saturation; but it shall be no less than 75 percent saturation at all times for both minnow species, silversides, and the trout species in all test chambers. Dilution water in the head box may be aerated, but the test solution itself shall not be aerated.

(*4*) The concentration of dissolved oxygen shall not fall below 75 percent saturation for the fathead and sheepshead minnows and for the rainbow and brook trout.

(*5*) Brook and rainbow trout embryos shall be maintained in darkness or very low light intensity through 1-week post-hatch, at which time a 16-hour light and 8-hour dark photoperiod shall be provided.

* * * * *

(6) * * *

(ii) * * *

(A) The bioconcentration test in fish shall be completed and the final report submitted to EPA within 18 months after the effective date of the final rule.

* * * * *

[FR Doc. 89-15271 Filed 6-28-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6837]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities were required to adopt floodplain management measures compliant with the NFIP revised regulations that became effective on October 1, 1986. If the communities did not do so by the specified date, they would be suspended from participation in the NFIP. The communities are now in compliance. This rule withdraws the suspension. The communities' continued participation in the program authorizes the sale of flood insurance.

EFFECTIVE DATE: As shown in fifth column.

ADDRESS: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: P.O. Box 457, Lanham, Maryland 20706, Phone: (800) 638-7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding.

In addition, the Director of the Federal Emergency Management Agency has identified the Special Flood Hazard Areas in these communities by publishing a Flood Insurance Rate Map. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the Special Flood Hazard Area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Food Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on these participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance and floodplains.

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to reads as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, the suspension for each listed community has been withdrawn. The entry reads as follows:

§ 64.6 List of Eligible Communities.

State	Community name	County	Community No.	Effective date
Colorado	Akron, town of	Washington	080177	June 19, 1989, suspension withdrawn.
Do	Buena Vista, town of	Chaffee	080030	Do.
Do	Unincorporated areas	Clear Creek	080034	Do.
Do	Crested Butte, town of	Gunnison	080079	Do.
Do	Erie, town of	Weld	080181	Do.
Do	Fort Morgan, city of	Morgan	080131	Do.

State	Community name	County	Community No.	Effective date
Do	Unincorporated areas	Garfield	080205	Do.
Do	Milliken, town of	Weld	080187	Do.
Do	Monte Vista, town of	Rio Grande	080155	Do.
Do	Unincorporated areas	Ouray	080138	Do.
Do	Ouray, city of	Ouray	080137	Do.
Do	Peonia, town of	Delta	080045	Do.
Do	Rockvale, town of	Fremont	080211	Do.
Do	Unincorporated areas	San Miguel	080166	Do.
Do	Silverthorne, town of	Summit	080201	Do.
Do	Steamboat Springs, city of	Routt	080159	Do.
Do	Superior, town of	Boulder	080203	Do.
Do	Thornton, city of	Adams	080007	Do.
Do	Wellington, town of	Larimer	080104	Do.
Do	Wiggins, city of	Morgan	080204	Do.
Kansas	Unincorporated areas	Labette	200590	Do.
Nebraska	Unincorporated areas	Buffalo	310419	Do.
Do	Peru, city of	Nemaha	310157	Do.
Do	Pleasanton, village of	Buffalo	310017	Do.
Do	Raymond, village of	Lancaster	310136	Do.
Do	Salem, village of	Richardson	310185	Do.
Do	Scottsbluff, city of	Scotts Bluff	310206	Do.
Do	St. Edward, city of	Boone	310010	Do.
Do	Tecumseh, city of	Johnson	310127	Do.
Do	Tekamah, city of	Burt	310024	Do.
Do	Union, village of	Cass	310035	Do.
Do	Weeping Water, city of	Cass	310036	Do.
Do	Winnebago, village of	Thurston	310223	Do.
Do	Wisner, city of	Cuming	310049	Do.
Do	Wymore, city of	Gage	310095	Do.
Do	Unincorporated areas	York	310466	Do.
North Dakota	North River, city of	Cass	380623	Do.
South Dakota	Hudson, town of	Lincoln	460049	Do.
Do	Rapid City, city of	Pennington	465420	Do.
Utah	Helper, city of	Carbon	490034	Do.
Do	Moab, city of	Grand	490072	Do.
Do	Riverside, city of	Weber	490190	Do.
Do	Salt Lake City, city of	Salt Lake	490105	Do.
Do	South Jordan, city of	Salt Lake	490107	Do.

Issued: June 20, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR. Doc. 89-15303 Filed 6-28-89; 8:45 am]

BILLING CODE 6718-01-M

44 CFR Part 64

[Docket No. FEMA 6836]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective date shown in this rule because of noncompliance with the revised floodplain management criteria of the NFIP. If FEMA receives documentation that the community has adopted the required revisions prior to the effective suspension date given in this rule, the community will not be suspended and the suspension will be withdrawn by publication in the Federal Register.

EFFECTIVE DATE: As shown in fifth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, Federal Center Plaza, 500 C Street SW., Room 416, Washington, DC 20472, (202) 646-2717.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the NFIP (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures.

On August 25, 1988, FEMA published a final rule in the Federal Register that revised NFIP floodplain management criteria. The rule became effective on October 1, 1988. As a condition for continued eligibility in the NFIP, the criteria at 44 CFR 60.7 require communities to revise their floodplain management regulations to make them consistent with any revised NFIP regulation within 6 months of the effective date of that revision or be subject to suspension from participation in the NFIP.

The communities listed in this notice have not amended or adopted floodplain management regulations that incorporate the rule revision. Accordingly, the communities are not compliant with NFIP criteria and will be suspended on the effective date shown in this final rule. However, some of these communities may adopt and submit the required documentation of legally enforceable revised floodplain management regulations after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the Federal Register. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

The Administrator finds that notice and public procedures under 5 U.S.C. 533(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 90- and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to adopt adequate floodplain management measures, thus placing itself in noncompliance with the Federal standards required for community participation.

List of Subjects in 44 CFR Part 64

Flood insurance and floodplains.

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State	Community name	County	Community No.	Effective date
Missouri	Matthews, city of	New Madrid	290254	July 4, 1989.
Do	North Lilbourn, village of	New Madrid	290257	Do.
North Dakota	Drayton, township of	Pembina	380276	Do.
Do	Dunseith, city of	Rolette	380103	Do.
Do	Dwight, township of	Richland	380657	Do.
Do	Eldorado, township of	Traill	380645	Do.
Do	Unincorporated areas	Grand Forks	380033	Do.
Do	Marmarth, city of	Slope	380115	Do.
Do	Mooreton, township of	Richland	380654	Do.
Do	Souris, city of	Bottineau	380010	Do.
Do	Velva, city of	McHenry	380051	Do.
Do	Walhalla, city of	Pembina	380254	Do.
Do	Wishek, city of	McIntosh	380053	Do.
Ohio	Huron, city of	Erie	390154	Do.
Do	Kipton, village of	Lorain	390743	Do.
Do	Madison, village of	Lake	390316	Do.
Do	Napoleon, city of	Henry	390266	Do.
Do	Newton Falls, city of	Trumbull	390539	Do.
Do	North Lewisburg, village of	Champaign	390056	Do.
Wyoming	Unincorporated areas	Laramie	560029	Do.
Colorado	Calhan, town of	El Paso	080192	July 17, 1989.
Do	Central City, city of	Gilpin	080077	Do.
Do	Creede, town of	Mineral	080118	Do.
Do	Unincorporated areas	Garfield	080205	Do.
Do	Unincorporated areas	Gilpin	080075	Do.
Do	Granada, town of	Prowers	080144	Do.
Montana	Boulder, town of	Jefferson	300035	Do.
Do	Unincorporated areas	Broadwater	300145	Do.
Do	Browning, town of	Glacier	300030	Do.
Do	Chester, town of	Liberty	300041	Do.
Do	Circle, town of	McCone	300106	Do
Do	Columbia Falls, city of	Flathead	300024	Do.
Do	Unincorporated areas	Custer	300147	Do.
Do	Dodson, town of	Phillips	300053	Do.
Do	Ennis, town of	Madison	300044	Do.
Do	Roundup, city of	Musselshell	300050	Do.
Do	Townsend, city of	Broadwater	300131	Do.
Do	White Sulphur Springs, city of	Meagher	300047	Do.
North Dakota	Anamoose, city of	McHenry	380154	Do.
Do	Antelope, township of	Richland	380663	Do.
Do	Arthur, city of	Cass	380156	Do.
Do	Caledonia, township of	Traill	380638	Do.
Ohio	Benton Ridge, village of	Hancock	390243	Do.
Do	Berea, city of	Cuyahoga	390097	Do.
Do	Brairwood Beach, village of	Medina	390379	Do.
Do	Clarington, village of	Monroe	390405	Do.
Do	Pepper Pike, city of	Cuyahoga	390125	Do.
Do	Powhatan Point, village of	Belmont	390030	Do.
Do	Yorkville, village of	Belmont	390033	Do.
South Dakota	Brandon, city of	Minnehaha	460296	Do.
Do	Unincorporated areas	Brookings	460004	Do.
Do	Unincorporated areas	Clay	460259	Do.
Do	Unincorporated areas	Codington	460260	Do.
Do	Colome, town of	Tripp	460064	Do.
Do	Corona, town of	Roberts	460071	Do.
Utah	Unincorporated areas	Wasatch	490164	Do.
Do	Unincorporated areas	Washington	490162	Do.
Do	Wellsville, city of	Cache	490031	Do.

State	Community name	County	Community No.	Effective date
Do	Wendover, town of	Tooele	490222	Do.
Do	Woodruff, town of	Rich	490101	Do.

Harold T. Duryee,
Administrator, Federal Insurance Administration.

Issued: June 23, 1989.

[FR Doc. 89-15394 Filed 6-28-89; 8:45 am]

BILLING CODE 6718-21-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 81-11; Notice 27]

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This notice adopts an additional type of a standardized replaceable light source to be used in replaceable bulb headlamps on motor vehicles. The light source, which will be known as Type HB2, is a modification of the European bulb known as the H-4. The final rule follows a notice of proposed rulemaking issued in May 1985, and a supplemental notice published in June 1986.

This final rule adopts more stringent bulb filament and bulb/socket fit tolerances than those permitted on the H-4, but allows a ¼ degree reaim provision in the photometric test. Headlamps equipped with Type HB2 light sources are required to meet the same photometric requirements as Type F sealed beam headlamps.

The final rule does not allow "European Headlamps" nor does it allow the European (ECE) H-4 bulb to be used in passenger cars, multipurpose passenger vehicles, trucks, or buses. The effect of the rule is only to permit the HB2 light source in headlamps designed to meet rigorous environmental tests imposed by Standard No. 108 for all replaceable bulb headlamps intended for sale in the U.S. The HB2 bulb is an improved, tighter-toleranced version, of the H-4 bulb, and it is designed to be used in mechanically aimable headlamps. The HB2 bulb has to be marked "D.O.T." to certify compliance with these requirements. The H-4 bulb may not legally be so marked.

Because their headlamps are not required to be mechanically aimable, motorcycles may use an H-4 bulb, however, under the final rule, the lenses of these headlamps are required to be marked "Motorcycle", and they may not be used in other motor vehicles.

This notice completes action on a petition for rulemaking submitted by Volkswagen of America Corp.

DATES: The effective date of the final rule is July 31, 1989. Pursuant to 49 CFR 553.35(a), petitions for reconsideration must be received by the agency not later than July 31, 1989.

ADDRESS: Petitions for reconsideration should refer to the docket number and notice number of the notice and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Jere Medlin, Office of Rulemaking, NHTSA, (202-366-5276).

SUPPLEMENTARY INFORMATION:

Background of these Amendments

For over 40 years, the sealed beam headlamp in standardized shapes and sizes was the principal motor vehicle headlamp unit on the American market. With the advent of Federal Motor Vehicle Safety Standard No. 108, effective January 1, 1968, the sealed beam headlamp became the only permissible one.

In August 1981, Ford Motor Company filed a petition for rulemaking to amend Standard No. 108, to allow a new type of headlamp that it had developed in conjunction with GTE Products Corp. ("Sylvania"). This headlamp differed from those previously permitted in that it was not an indivisible unit, but one consisting of two parts, a lens-reflector assembly bonded together, and a standardized light source that could be replaced in the event of burn-out. The agency granted the petition, and proposed adoption of the Ford/Sylvania light source on January 17, 1983 (48 FR 1992). NHTSA amended the standard on June 2, 1983, to allow headlamps with the Ford/Sylvania light source (48 FR 24690).

Subsequently, Volkswagen of America petitioned NHTSA for rulemaking to allow the H-4. Although the H-4 has always been allowed under Standard No. 108 for motorcycle usage because mechanically aimable headlamps were not required for this type of motor vehicle, it had not been allowed for other motor vehicles which were required to have such headlamps. This petition was granted in part. On May 13, 1985, the agency proposed the adoption not of the H-4, but of a modified version of that light source called the HB2 (50 FR 19961). At the same time, the agency also proposed allowing two additional light sources for which General Motors Corporation ("GM") had petitioned.

The May 1985 proposal highlighted significant differences between the European H-4 and the proposed Type HB2. First, a headlamp with a Type HB2 light source would be required to meet the photometrics of Motor Vehicle Safety Standard No. 108 rather than those of the European regulation. Second, because no life requirement was prescribed by the European standard, NHTSA proposed the HB2 be designed to meet the same average life requirements as the Ford/Sylvania HB1, 320 hours for the lower beam and 150 hours for the upper beam, at 14 volts. Third, because no durability requirements were prescribed by the European standard, NHTSA proposed that headlamps which use the HB2, meet the same environmental test requirements as headlamps which use the HB1.

NHTSA also observed that some special interface between the bulb and socket was needed to distinguish between lamp systems presently using the existing H-4 bulb and those that would use the proposed HB2 bulb. In the agency's view, these modifications would help prevent inadvertent use of light source and lamp assemblies that may be available and legal for single headlamp motorcycle use under standard No. 108, but which do not meet all specifications set forth for multiple headlamp passenger cars. To assure the capability of mechanical aim, tighter specifications and tolerances for fit between the HB2 light source and the headlamp socket and for filament position with respect to the base were proposed which were comparable to those already required for the Ford/Sylvania HB1. This was intended to help reduce the problems associated with

mechanical aiming that would exist if the European specifications were used. Mechanical aim is not required on ECE headlamps and the tolerances on bulb-socket fit and filament location are not adequate to assure mechanical aim capability for headlamps using the H-4 bulb.

The principal commenters on the proposed HB2 were six manufacturers of lighting equipment: Sylvania, General Electric Corp. ("GE"), OSRAM, Hella, Thorn, and North American Philips Co. ("Philips"). Nine vehicle manufacturers also commented: Volkswagen, Rolls-Royce, GM, AMC, Chrysler, Fiat, Mercedes Benz, BMW, and Ford. Although use of the existing H-4 was oposed by Sylvania, GE, and Ford, the majority of the commenters supported the May 1985 proposal but urged modifications in it.

On May 2, 1986, NHTSA amended Standard No. 108 to allow the two GM light sources (51 FR 16235) set forth in the May 1985 proposal. At that time, the agency adopted its 1985 proposal to designate the Ford/Sylvania light source as Type HB1, and the GM sources as Types HB3 and HB4. Final action was not taken in that notice on Type HB2. Instead of proceeding directly to a final rule, the agency issued a supplementary proposal regarding Type HB2 on June 13, 1986 (51 FR 21696), to consider the modifications urged by the commenters on the May 1985 proposal. The June 1986 proposal stated that issues relating to the other aspects of the May 1985 proposal would be addressed in the next rulemaking action.

Technical Issues of the May 1985 and June 1986 Proposals

The June 1986 proposal addressed four major issues.

1. Design of the Base of the HB2

The May 1985 notice proposed that there be a difference in physical appearance and type of fit between the bases of the HB2 and H-4 light sources in order to minimize the potential misuse of bulbs that had higher-than-permitted light output, broader tolerances, etc. Virtually all of the 12 commenters on this issue objected on the ground that it would result in increased manufacturing costs and probably not have the desired effect as illegal versions of the HB2 lacking the different base could easily be developed. The June 1986 notice therefore proposed that the HB2 use the IEC P43t-38 base found on existing H-4 bulbs but with tighter fit tolerances. As an additional aid to proper use of replaceable lighting sources, that proposal also proposed that bulbs and lenses of motorcycle headlamps be labeled "motorcycle" if the replaceable light source were other than the HB series (e.g., an unmodified H-4).

2. Tolerances on the Fit Between the Base and Socket of the HB2

In response to the May 1985 proposal, GE, OSRAM, Hella, Philips, Volkswagen, GM, and Rolls-Royce supported use of the existing H-4 but with reduced filament, filament-to-shield, and filament location tolerances, as well as new socket fit specifications. OSRAM suggested additional changes to assure that beam pattern and aim requirements would be met after bulb replacement when using mechanical aiming. Thorn recommended changes in dimensions and tolerances to improve manufacturability. OSRAM and Volkswagen suggested new ECE references for referral to the H-4 bulb and socket. In response, the June 1986 notice proposed reductions in tolerances on reflector cavity dimensions, and the angle locating the two lower sockets for reference lugs. HB2 cap tolerance reductions were also proposed. Other changes were also proposed to ensure a tighter bulb-socket fit to assure correct aim with any HB2 bulb in a mechanically aimed headlamp.

3. Tolerances on the Location of HB2 Filaments

The consensus of the commenters on the May 1985 proposal was that the proposed tolerances on the location of the HB2 filaments were not sufficiently small to assure proper aim after bulb replacement. Accordingly, the June 1986 notice proposed reduced bulb filament tolerances suggested by OSRAM and Philips, and bulb/socket fit tolerances revised from those of the May 1985 proposal.

The June 1986 notice also proposed elimination of the ¼ degree reaim allowance on each test point during photometric testing, a proposal not included in the May 1985 notice. Such an allowance had been permitted heretofore to compensate for variations in the accuracy of laboratory equipment and to ensure a greater degree of repeatability when headlamps are tested by different laboratories. However, data submitted by VW on prototype headlamps using the H-4 bulb, indicated that the H-4 can produce a high gradient photometric pattern, with the result that a shift of ¼ degree can produce up to a 5000 candela change in intensity. This would allow the intensity at a test point such as ½D-1½R to be as low as 3000 candela compared with the 8000 candela minimum required by Standard No. 108. Such a disparity does not exist in the lower gradient beam patterns produced by most headlamps heretofore designed to meet Standard No. 108. The proposed reduced filament tolerances were intended as a complement because NHTSA concluded that HB2 replacement bulbs covering the full range of permissible H-4 European tolerances could not meet photometric requirements when the reaim allowance was eliminated.

4. Bulb Rating, Performance Requirements

NHTSA originally proposed that maximum power and luminous flux be measured at 13.2 volts, but in response to a comment by GM, the June 1986 proposal substituted 12.8 design volts. It was also proposed that the design luminous flux be changed from 1000 to 910 lumens on the lower beam and from 1650 to 1500 lumens on the upper beam (with tolerances of 10 percent for each), when measured at the lower design voltage.

Finally, the June 1986 notice proposed deleting the note in the European H-4 drawings which allows obscuration of light output from the bulb by means other than a black cap.

Type HB2 as Adopted

Therefore, on the basis of the proposals in the May 1985 and June 1986 notices, and available information, including the comments submitted in response to these notices, NHTSA is amending Federal Motor Vehicle Safety Standard No. 108 to allow the HB2 replaceable light source with the following characteristics:

1. Photometrics

In the May 1985 proposal, NHTSA asked for comments on alternative proposals, that a headlamp with a Type HB2 light source meet photometrics required for Type F sealed beam headlamps, or that it meet the requirements for headlamps designed to conform to SAE Standard J579c. In response to the May 1985 proposal, Volkswagen, as petitioner, commented that it had no preference. However, it recommended that NHTSA remove the 20,000 candela maximum at the seeing distance pint ½D, 1½R to R, to take full advantage of H-4 capabilities. NHTSA will not remove the 20,000 candela limit at the test point noted above. The possibility of new photometric requirements is being studied, and VW's recommendation is properly a part of that study.

NHTSA has decided that Type HB2 shall meet Type F photometrics. Higher

minimum light levels at critical seeing distance points can be achieved with Type F photometrics.

2. Design of the Base of the HB2 and Fit/Socket Tolerances

Volkswagen, Hella, and OSRAM agreed that the dimension of the bulb base, Dimension "M", can be tightened to improve mechanical aim, supporting the agency opinion that eccentricity control of the diameter is essential for accurate mechanical aim. The headlamp socket Dimension "Z" will also be tightened to improve mechanical aim capability. Otherwise, the bulb base tolerances will remain identical to those specified for the H–4, as will the headlamp socket dimensions.

3. Tolerances on Filament Locations

The tolerances that were proposed in the June 1986 notice have been adopted, with only minor changes. They are more stringent than the ECE standard requires of the H–4. This restriction is necessary to ensure that a headlamp with any Type HB2 replaceable bulb installed will continue to meet original equipment photometrics when mechanically aimed.

4. Allowance of Reaim During Photometric Tests

Commenters generally did not favor elimination of the ¼ degree reaim allowance. The high gradient beam pattern condition can exist even if a shielded filament light source like the HB2 is not used. Thus, the condition can exist even if an H–4 type light source is not used. The agency believes that the gradient issue is a separate one and has decided to defer the issue for consideration in future rulemakings on beam patterns.

5. HB2 Performance and Ratings

NHTSA proposed a lumen tolerance of 10 percent, as contrasted with an ECE tolerance of 15 percent. Since no commenters opposed this proposal, it has been adopted. Further, performance will be measured at 12.8 volts as with other replaceable light sources, and not 13.2 as with ECE ratings. The wattage values have been changed to reflect the test voltage. As with all other replaceable bulbs, a white shield will be used over the rear of the HB2 bulb base during the bulb lumen test.

6. Marking of Motorcycle Headlamps

The agency had proposed the marking of motorcycle headlamp lenses and bulbs with the words "For motorcycle use only" in characters 4mm high. A new commenter to the June 1986 proposal, American Honda, objected on the grounds that H–4 bulbs also have off-road applications in vehicles other than motorcycles. Another commenter, Stanley Electric Co., stated that it already uses the word "Motorcycle" in 3mm characters on its headlamps, and therefore did not agree with the agency's rather different proposal. NHTSA considers these points well made, and is amending Standard No. 108 to require the word "Motorcycle" to appear on the lens, and in characters 3mm high, on motorcycle headlamps equipped with a replaceable bulb other than one specified in Standard No. 108. No bulb marking will be required. Standard No. 108 does not require the type of bulb used in motorcycle headlamps to be marked on the lens.

Comments in Opposition

Issues of safety, economic impact, and fairness have been raised by the two principal opponents of Type HB2, Sylvania and GE. Sylvania argues that "NHTSA's finding that the H–4 light source meets U.S. safety standards would effectively lower U.S. standards rather than enhance the safety of replaceable light sources". It bases this conclusion upon the following concerns:

1. "Because the H–4 is designed for use in a non-sealed headlamp system, the system is prone to reflector and lens corrosion, reducing light output to unsafe levels over time."

2. "The looser 'fit' and tolerances of the H–4 increases significantly the potential for unsafe oncoming driver glare."

3. "The H–4 lamp, which incorporates an internal light-absorbing shield over the low beam filament, provides less on-the-road light for the driver compared to the HB1."

4. "The shield in the H–4 reflects more light upwards in front of the driver, resulting in excessive glare when driving in snow or fog."

5. "Headlamps that are equipped with H–4 bulbs may not provide adequate light for visibility of overhead interstate highway signs that are not artificially lighted."

6. "As the H–4 is currently available in wattages higher than the petition permits (e.g., 100W vs. 65W high beam), there is potential that oncoming drivers can experience disabling glare coming from these higher wattage bulbs. There is no provision in the proposed rules for making such bulbs noninterchangeable."

NHTSA agrees that the H–4 is designed for use in a non-sealed headlamp system, and that, in the absence of environmental testing designed to address the problem, non-sealed systems can be prone to reflector and lens corrosion, which over time will reduce light output. One of the agency's primary and long-standing concerns about non-sealed beam headlamps was the marginal resistance to corrosion of the reflectors, as noted in the German TUV inspection reports, and Swedish "Weak Points of Motor Vehicles", among other sources. This was one of the reasons that the agency in the late 1970's denied several petitions for rulemaking to allow European headlamps. Accordingly, when NHTSA amended Standard No. 108 to allow a headlamp that was not a sealed beam (incorporating the HB1 light source), it adopted stringent environmental tests including a 240-hour salt spray test to demonstrate corrosion resistance. Volkswagen, in fact, petitioned NHTSA to reduce the length of this test, and its petition was denied. Because all replaceable bulb headlamps must meet this corrosion performance test, NHTSA believes it consistent with the intent of the National Traffic and Motor Vehicle Safety Act to leave the design solution (i.e., seal or no seal) to the manufacturer.

The petitioner for the HB1 included a seal in its design. Originally, the petitioner for the HB3 and HB4 submitted drawings in which a seal was lacking; however, subsequently it revised its design to include a seal because it appeared to provide a better control of the positioning of the filament and the HB3 and HB4 as adopted contain a sealing feature. Because all replaceable bulb headlamps must meet identical environmental performance requirements, NHTSA does not agree that all future replaceable bulbs must also have a seal.

The sealing issue was the basis of an argument by Sylvania that the June 1986 notice was ambiguous and hence procedurally deficient. The Summary to that notice stated that it would cover only bulb and socket dimensions, and bulb rating and performance, and that "other HB2 issues will be addressed in the next rulemaking action". According to its comment, NHTSA's statement could mean either that the matter is deferred or that the agency had nothing further to add to its May 1985 notice. Sylvania believes that "it seems plain that some reasonable laymen could have reserved comment on sealing under the belief that the matter had been deferred. Such ambiguity renders the notice legally defective." Sylvania cites NHTSA's actions in proposing no-seal designs for HB2, HB3 and HB4 in May 1985, and subsequently adopting seal designs for HB3 and HB4 shortly before the June 1986 notice appeared. Comments Sylvania: "(The June 1986 notice) * * * was silent on how the new

safety rationale of venting-plus-sealing should apply to the HB2. Like the HB3 and HB4, the HB2 is designed for use in vented assemblies * * * If NHTSA has grounds to believe that safety requires seals for the vented HB3 and HB4 lamps but not for the vented HB2 lamp, it should expose those reasons to public scrutiny and comment."

NHTSA finds Sylvania's position without legal merit, and has concluded that the spirit and the letter of the Administrative Procedure Act have been met by the rulemaking history of HB2, and HB3 and HB4. The May 1985 notice provided an opportunity to comment on the subject matter therein, including the fact that, unlike the HB1, the proposed additional light sources did not incorporate seals. Because the notice adopting the modified HB3 and HB4 light sources appeared in advance of the supplemental proposal on HB2, the June 1986 notice provided a further opportunity for comment on the sealing issue, even if that issue was not directly addressed. Those aspects of the May 1985 proposal that were not addressed in June 1986 remained in effect and were not suspended pending "the next rulemaking action," whether that action was an amendment or a further proposal.

As to Sylvania's second concern about the H–4, NHTSA also agrees that the looser "fit" and tolerances of H–4 are undesirable, and that is why they have been tightened on Type HB2. With regard to Sylvania's arguments that the H–4 bulb would provide less light on the road and be more prone to glare problems because of its internal shield, again NHTSA has proposed the same photometric performance specifications for the HB2 bulb as exist for other conforming headlamps. As long as the headlamp is made to comply with these performance requirements, its internal design features are not at issue.

Because the shield may restrict the upper portion of the beam, Sylvania believes that visibility of overhead signs will be impeded. It is true that a shield can restrict a bulb's upper directed light, however homofocal reflector designs or lensing can compensate for it by directing the bulb's unshielded light upward.

There is no way that NHTSA can prevent deliberate substitution by an owner of an H–4 bulb for an HB2, but the tighter bulb-socket fit tolerances will ensure that not all H–4s will be interchangeable with Type HB2.

Another concern expressed by Sylvania is that of energy efficiency. Both Sylvania and GE argue that inefficiency results with a 55 watt lower beam and use of the internal shield. The agency acknowledges these remarks, but believes that they do not bear on the question of whether HB2 should be permitted, since they relate to efficiency of operation and not to motor vehicle safety. The agency notes, for example, that Sylvania's own HB1 requires a high profile reflector. Since 1981, NHTSA's policy has been to try to remove restrictions barring the entry in the marketplace of products of comparative safety performance; Sylvania was one of the first beneficiaries of this policy. No manufacturer is required to adopt HB2. Since its use is optional, potential users in the marketplace will decide the importance of the energy issues raised by the commenters.

Some commenters strongly opposed the rulemaking on economic grounds, citing alleged competitive disadvantages. While, as discussed below, NHTSA concludes that the record in any event does not support those commenters' allegations, the agency has also considered how such arguments should be viewed in light of the statutory criteria for establishing standards. Section 103 of the National Traffic and Motor Vehicle Safety Act requires that each Federal motor vehicle safety standard must be practicable, meet the need for motor vehicle safety, and be stated in objective terms.

Since there is no statutory definition of "practicable," this agency follows the example of the courts and other agencies under other statutes of using the dictionary to interpret the term. The dictionary defines "practicable" as "capable of being done, effected, or put into practice, with the available means; feasible." *Random House Dictionary of the English Language*, unabridged edition. Thus, the requirement that a standard be practicable means that a standard must be "capable of being done," i.e., capable of being complied with. Court decisions indicate that a number of economic factors are comprehended by the term "practicable," including economic hardship of compliance. For example, in *H & H Tire Co.* v. *Department of Transportation*, 471 F.2d 350 (7th Cir. 1972), the court concluded that NHTSA, in establishing a standard for retreaded tires, must consider the deleterious economic impact that the retreaded tire industry would experience if it had to comply with the standard. Where the addition of a compliance option is at issue, however, alleged economic hardship is not related to whether compliance with the standard is capable of being done, since no manufacturer is required to choose the new option. Instead, what is alleged to be economic hardship is simply the result of competition in the marketplace by various manufacturers making different choices among the available compliance options.

As indicated above, NHTSA has striven since 1981 to remove restrictions barring the entry into the marketplace of products of comparative safety performance. This policy has been pursued evenhandedly, and a number of companies, as well as the public as a whole, have been its beneficiaries. While NHTSA recognizes that the statutory criterion of practicability requires it to consider economic factors, it rejects any notion that Congress intended that the Safety Act be used to prohibit or inhibit technological alternatives in order to favor existing products and companies. To the contrary, Congress specified that safety standards be expressed in terms of performance rather than design because it did not want the standards to "stifle innovation in automobile design." See S. Rep. No. 1301, 89th Cong., 2d Sess. (1966). Further, the Trade Agreements Act of 1979 admonishes Federal regulatory agencies not to establish or retain standards that act as non-tariff trade barriers by excluding products on grounds unrelated to the purposes of those standards.

NHTSA believes that the case of *Chrysler* v. *Department of Transportation*, 515 F.2d 1053 (6th Cir. 1975), supports its view of practicability, with respect to optional provisions in safety standards. In that case, Chrysler sought review of a lighting standard amendment which permitted the use of rectangular headlamps for a specified period of time, during which the agency would decide whether to permit such headlamps permanently. The company stated that it would be unable to take advantage of the option because it could not complete the necessary engineering and retooling in time to produce automobiles equipped with the new headlamps before the option expired, and that the earlier termination date was therefore impracticable. The court stated:

> We have some doubt that practicability is a significant principle in the context of an optional provision in a safety standard. A review of the cases in this area suggests the practicability requirement was designed primarily to prevent the NHTSA from establishing mandatory safety standards that are economically or technologically infeasible * * *. In the case at bar, however, the use of rectangular headlamps is not required, and Chrysler is subject to none of the statutory penalties if it fails to comply with this aspect of Standard No. 108.

Even assuming that the practicability requirement is fully applicable in this

situation, it would be difficult to conclude that the rectangular headlamp option is impracticable in any absolute sense. The record reveals that at least two manufacturers are presently capable of producing rectangular headlamps. It may be that lead-time problems will make it difficult or impossible for Chrysler to take advantage of the new headlamp option, but we decline to construe the practicability requirement to invalidate a permissive safety standard merely because all manufacturers do not derive benefits from it. (515 F.2d at 1060.)

The agency notes that Chrysler also argued that the time limitation would confer a competitive advantage upon General Motors, thereby violating both the reasonableness standard of the Safety Act and the "arbitrary and capricious" standard of the Administrative Procedure Act. The court stated that it was not unsympathetic to this predicament, but also stated that the early effective date seemed more justifiable since any delay would be at the expense of the manufacturer which had invested time and money to incorporate new headlamps and taken the risk that NHTSA might reject its proposal. (See 515 F.2d at 1060.)

In the current factual situation, NHTSA has already permitted opponents' new headlamps. For example, in the rulemaking to permit headlamps with the Ford/Sylvania light source, Sylvania requested (through its co-developer's petition) and received the benefits from the very type of rulemaking it now opposes. Now, as discussed below, Sylvania asserts that this rulemaking is unfair to it, since it has invested substantial money to manufacture its product. NHTSA, however, sees nothing fair in permitting one manufacturer's new product and then declining to permit another manufacturer's competing product of comparative safety performance, simply to confer a competitive advantage on the first manufacturer.

The economic impact issue raised by the opponents is essentially one of competitiveness. HB2's principal opponents are manufacturers of the HB1, which for three years was the only type of standardized replaceable light source permitted by standard No. 108. NHTSA believes the following summarizes Sylvania's position on trade and U.S. employment implications if the HB2 were approved:

1. Because the HB2 is less complex than the HB1, it is "less costly to manufacture."

2. With substantial foreign lighting and automobile manufacturer experience with the H–4, relatively easy convertibility to the HB2, and lower cost, the HB2 bulb would then become the "de facto world standard."

3. There are no domestic producers of the H4 or HB2. There are a number of foreign manufacturers of the H4. As there is excess capacity of H4 production worldwide, these manufacturers would have "unfettered access to the U.S. market."

4. Asian and European automobile manufacturers would switch to the H4 light source in automobiles targeted for the U.S. market. Thus, approval of the H4 light source would immediately deprive U.S. manufacturers of millions of dollars of export sales and, while the American automobile manufacturers indicated they would not switch to the H4 immediately because of the investment in current tooling, they would likely switch in the future when new cars are designed for the world market.

5. Auto companies "want to deal only with automotive lighting manufacturers who can provide them with a full line of products." Thus, if Sylvania and other U.S. manufacturers "are driven out of the replaceable light source business, it will put them in an untenable position with respect to other automotive lighting products."

6. The end result of the above could be "no U.S. manufacturers left in the U.S. automotive lighting business." "If U.S. manufacturers are unable to compete in the automotive lighting business, as many as 15,000 U.S. jobs could be lost."

In amplification, Sylvania has commented that because the HB2 does not incorporate an "O" ring and a base of high temperature plastic, manufacturing costs will be less, and manufacturers of motor vehicles will shift to the HB2. Accordingly, Sylvania predicts that it and GE will lose not only the original equipment market, but also the associated replacement market that would have accrued to those headlamps. Sylvania predicted that adoption of HB2 "could lead to the eventual demise of the U.S. domestic headlamp industry."

The agency has carefully considered the remarks of the commenters. It is true that there is a difference in design and materials among the HB series of replaceable light sources. This is because NHTSA has sought to respond in a positive manner to the particular, differing designs of the petitioners for these sources. Both the Sylvania/Ford (HB1) and GM (HB3 and HB4) designs incorporated "O" rings, Ford/Sylvania's to provide a semi-deal for non-vented headlamps, and GM's as an aid to correctly seating the bulb in the lamp. On the other hand, Volkswagen's petition for the adoption of the H–4 did not include an "O" ring as a feature of the design. Although one design may differ from another, all replaceable bulb headlamps must meet the same environmental performance test requirements.

NHTSA is cognizant of the commenter's argument that allowance of the HB2 "would result in the H–4 becoming the de facto world standard," but the truth of the matter is that the H–4 appears already to be acceptable in every country of the world except the United States.

The opponents did not submit any comparative cost figures. The agency concluded that the HB2 could initially cost vehicle manufacturers about $0.15 to $0.60 less than the HB1, primarily because manufacturers of the HB2 have over 20 years of experience in producing a similar bulb (the H–4) and in many cases, their facility costs have been amortized. However, GE, a U.S. light source manufacturer, believes that the HB2 and HB1 will eventually cost the same, as manufacturers of the HB1 convert to highly automated and efficient production, which they have already begun to do. The agency also believes that any competitive advantage the HB2 might have (bulb cost, ease of meeting U.S. and European photometric requirements) would be very slight, if any, and may be balanced by an advantage for the HB1 in meeting U.S. durability requirements, its energy efficiency, and its more familiar U.S. lower beam pattern.

On the trade issue, the agency believes that adoption of the HB2 will allow domestic motor vehicles produced for foreign markets to be equipped with the same light source that require no prior approval before sale. General Motors has argued that NHTSA should adopt the HB2 for trade purposes. And while Sylvania argued that adoption of the HB2 will result in the loss of all U.S. automotive lighting business, it failed to support this allegation, after repeated agency attempts to obtain such documentation. The agency's own questioning of GM, Ford, and Chrysler, all of whom are Sylvania customers, uncovered little or no interest in the HB2, thus negating Sylvania's claim.

This comparison of cost and competitiveness may well be academic because the agency also believes that future headlamp designs for both HB1 and HB2 sources will be limited in number. NHTSA believes that, except for certain European makes retaining traditional vertical or squared grilles and associated buff frontal surfaces, there is an almost universal trend in vehicle design worldwide to aerodynamic low profile front ends, and smaller lamps with axial filaments are

being developed in response to manufacturers' needs for them. The high profile HB1 or HB2 lamps are not as suitable for these needs as the HB3 or HB4 lamps, or other lighting systems known to be under development, such as Sylvania's own eight-unit "multi-beam" system (whose petition for rulemaking is now pending at NHTSA). If there is a competitive challenge to HB1, it does not come from HB2 in the agency's view. It comes from the exigencies of future design. For example, Sylvania's low profile system seems likely to cut into the market for its higher profile HB1. As Sylvania itself has recently said: "In the increasingly technologic world of automotive lighting, the only constant is change" (advertisement, Automotive Engineering, February 1987, p. 161).

Finally, the commenters raise the fairness issue, stated as follows:

1. "Sylvania and other U.S. manufacturers have invested substantial sums of money to manufacture a product in accordance with NHTSA's recent 1983 rulemaking (HB1 approval). Approval of the H–4 would render obsolete this investment."

2. "U.S. manufacturers cannot sell U.S. standard headlamps in most foreign markets because of foreign standards."

3. "Approval of the H–4 would expose U.S. manufacturers to competition in the U.S. market with no reciprocal trade opportunities made available in foreign markets."

4. "The major beneficiaries of the NHTSA proposal would be European and Japanese lighting companies."

As the agency commented above, the investment represented in HB1 tooling may be rendered obsolete by advancements in lighting technologies rather than by competition from a newly-permitted but existing light source, and U.S. lighting manufacturers themselves will be the major contributors to this normal process of technological changeover. As to the lack of reciprocal trade opportunities, NHTSA notes that developers of the HB1 had not tried to get permission to market it in Europe. Therefore, on April 22, 1986, NHTSA formally petitioned the Economic Commission for Europe (ECE) to amend its relevant regulations to permit the use of the HB1, HB3, and HB4 replaceable light sources. The proposal was considered at the June 1987 meeting of WP29 (the Working Party on Construction of Vehicles), and referred to its Meeting of Experts on Lighting (GRE) for action. The Groupe de Travail de Bruxelles (GTB), an active participant in the GRE, was asked by the GRE to review the request. As of January 1989, that review was not complete, but it is expected that the review of HB3 and HB4 will be completed soon. In the meantime, use of headlamps with HB3 and HB4 light sources has become legal in Germany (through exemptions granted individual vehicle lines by the Senator for the Interior of the Free Hanseatic City of Bremen). With respect to HB1, a study is underway in GTB to determine if it is feasible to produce a sharp cut-off beam pattern. NHTSA is an active participant in the work of the GRE, and will continue to pursue the matter aggressively within that group and at WP29. Given the likelihood that HB3 and HB4 will be approved in the near term, NHTSA declines to accept the commenter's recommendation that the allowance of HB2 be tabled "until such time as a worldwide headlamp standard is established under the auspices of the Society of Automotive Engineers (SAE) and Brussels Working Group (GTB)."

After the close of the comment period Sylvania sought to persuade the agency that allowance of the HB2 would result in a substantial loss of sales. NHTSA asked Sylvania, in an effort to obtain more information, to support its allegations. Sylvania submitted a document under a claim of confidentiality, which it claimed supported its position. The agency reviewed this information and concluded that it provided little support. It showed some interest on the part of some unidentified manufacturers to use the European H–4 (although not necessarily the HB2). However, Sylvania's submission included some manufacturers who are not presently selling vehicles in the United States. Although repeatedly requested by the agency to do so, as the record indicates, Sylvania did not disaggregate its data; therefore the agency could not assess the impact on Sylvania's sales since it did not have the data to do so. Subsequently, NHTSA independently sought and obtained data from several vehicle manufacturers who sell their products in the United States (including the largest domestic manufacturers). The data, which is available in the Docket, indicates that the largest manufacturers have little interest in and no immediate plans to switch to the Type HB2 in the event that Standard No. 108 is amended to allow it. Although the precise quantification of Sylvania's market share and its distribution among its customers (the vehicle manufacturers) is confidential, the agency is of the opinion that, based on the information it obtained, Sylvania's volume of lighting products will not be substantially affected by allowing the HB2. Sylvania did not submit any actual data to contradict this conclusion.

This amendment becomes effective in 30 days. Since the amendment does not impose any new requirements but instead relieves a restriction, the agency finds for good cause shown that an effective date earlier than 180 days is in the public interest.

NHTSA has considered this rule and has determined that it is not major within the meaning of Executive Order 12291 "Federal Regulation," but is significant under Department of Transportation regulatory policies and procedures. A preliminary regulatory analysis was prepared for the May 1985 proposal (Notice 12) and placed in the public docket. For purposes of this final rule, a final regulatory evaluation is being placed in the docket. Since use of the HB2 replaceable light source is optional, the rule will not impose additonal costs or requirements but would permit manufacturers greater flexibility in the use of headlighting systems.

NHTSA has analyzed this rule for the purposes of the National Environmental Policy Act. The rule may have a small, but not significant, positive effect upon the human environment since the weight and quantity of materials used in the manufacture of headlamps could be reduced.

The agency has also considered the impacts of this rule in relation to the Regulatory Flexibility Act. I certify that this rule would not have a significantly economic impact on a substantial number of small entities. Accordingly, no initial regulatory flexibility analysis has been prepared. Manufacturers of motor vehicles and motor vehicle headlamps, those affected by the rule, are generally not small businesses within the meaning of the Regulatory Flexibility Act. Finally, small organizations and governmental jurisdictions would not be significantly affected since the price of new vehicles, headlamps, and aimer adjusters will be minimally impacted.

Finally, the agency has considered this rule as it relates to Executive Order 12612 "Federalism." The rule will preempt any State law that differs from the rule, but will not preempt any State law that is identical to the rule, according to the express preemption provision of 15 U.S.C. 1392(d).

The engineer and lawyer primarily responsible for this rule are Jere Medlin and Taylor Vinson respectively.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR Part 571, § 571.108, Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment*, is amended as follows:

1. The authority citation for Part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.108 [Amended]

2. A new paragraph S5.1.1.29 is added to read:

S5.1.1.29 Each replaceable bulb headlamp that is designed to meet the photometric requirements of SAE Recommended Practice J584, *Motorcycle Headlamps*, April 1984, and that is equipped with a light source other than a standardized replaceable light source, shall have the word "motorcycle" permanently marked on the lens in characters not less than 0.114 inch (3 mm.) in height.

3. The introductory text of paragraph (d) of section S7.5 is revised to read: "For a headlamp equipped with one or two Type HB1 light sources, or one or two Type HB2 light sources, the following requirements apply:"

4. Paragraphs (d)(2)(i) (A) and (B) of section S7.5 are removed, and new paragraphs (d)(2)(i)(A), (2)(i)(A)(*1*), (*2*), and (B) are added to read:

* * * * *

(d) * * *

(2)(i)(A) By the outboard light source (or upper one if arranged vertically) designed to conform to:

(*1*) The lower beam requirements of Table 1 of SAE Standard J579 DEC84, if the light sources are Type HB1; or

(*2*) The lower beam requirements of Figure 17, if the light sources are Type HB2; or

(B) By both light sources, designed to conform to the lower beam requirements specified above for their Type.

* * * * *

5. Paragraphs (d)(2)(ii) (A) and (B) of section S7.5 are removed, and new paragraphs (d)(2)(ii)(A), (2)(ii)(A) (*1*), (*2*) and (B) are added to read:

* * * * *

(d) * * *

(2)(ii)(A) By the inboard light source (or the lower one if arranged vertically) designed to conform to:

(*1*) the upper beam requirements of Table 1 of SAE Standard J579 DEC84, if the light sources are Type HB1; or

(*2*) The upper beam requirements of Figure 17, if the light sources are Type HB2; or

(B) By both light sources, designed to conform to the upper beam photometrics specified above for their type.

* * * * *

6. Paragraphs (d)(3)(i) and (d)(3)(ii) of section S7.5 are revised to read:

* * * * *

(d) * * *

(3) * * *

(i) The lower beam shall be provided by the outboard lamp (or the upper one if arranged vertically), designed to conform to:

(A) The lower beam requirements of Table 1 of SAE Standard J579 DEC84, if the light sources are Type HB1; or

(B) The lower beam requirements of Figure 15, if the light sources are Type HB2; and the lens of each such headlamp shall be marked with the letter 'L'.

(ii) The upper beam shall be provided by the inboard lamp (or the lower one if arranged vertically), designed to conform to:

(A) The upper beam requirements of Table 1 of SAE Standard J579 DEC84, if the light sources are Type HB1; or

(B) The upper beam requirements of Figure 15, if the light sources are Type HB2; and the lens of each such headlamp shall be marked with the letter 'U'."

* * * * *

7. In the introductory text of paragraph (e) of S7.5, the words "or Type HB2 and any Type" are added between the words "HB1 and HB4" and "light sources."

8. In paragraph (e)(2) of S7.5, the parenthetical phrase is revised to read: "(Type HB1 with Types HB3 or HB4, Type HB2 and any Type, and Types HB3 and HB4)".

9. The introductory text of Paragraph (e)(3) of section S7.5 is revised to read: "The lower and upper beams of a headlamp system consisting of four lamps, using Type HB1 and Types HB3 or HB4, Type HB2 and any Type, and Types HB3 and HB4 light sources, each containing only a single light source, shall be provided only as follows:"

10. Paragraph (g) of section S7.5 is revised to read:

* * * * *

"(g) The lens of each replaceable bulb headlamp using Type HB2, Type HB3, or Type HB4 light sources, or Type HB1 light sources in conjunction with any other Type of light source within a headlamp system on a motor vehicle, shall permanently display the Type designation(s) for that light source on the lens in front of each light source.

11. In section S7.6, paragraphs (b), (c), (d), (e), (f), (g), (h), and (i), are redesignated respectively (c), (d), (e), (f), (g), (h), (i), and (j), and a new paragraph (b) is added to read:

* * * * *

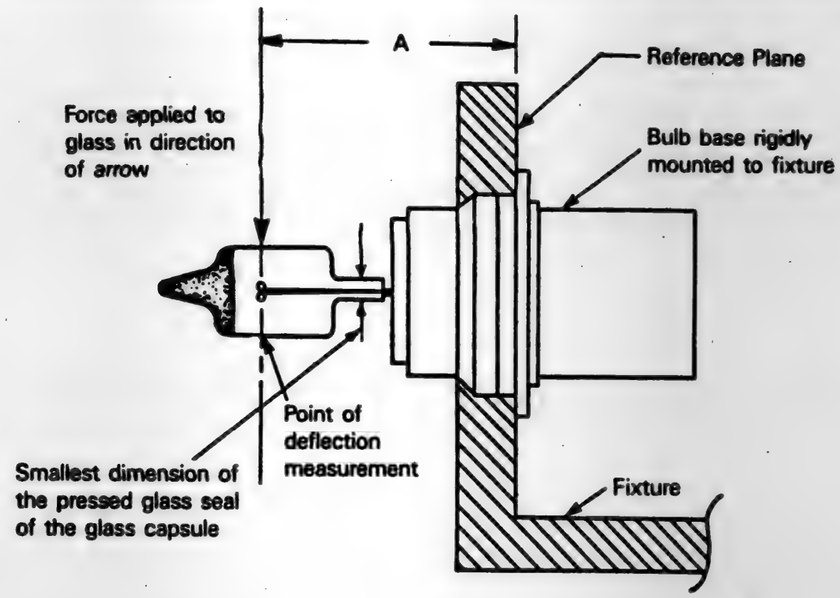
(b) A type HB2 light source shall be designed to conform with the dimensions specified in Figure 23. Its maximum power on the lower beam shall be 66 watts, and on the upper beam, 75 watts. Its luminous flux in lumens shall be 1000 plus or minus 10% on the lower beam, and 1650 plus or minus 10% on the upper beam.

* * * * *

12. In paragraphs S8.6, and S8.6.2 the word "HB1" is removed and the words "Types HB1 or HB2" substituted.

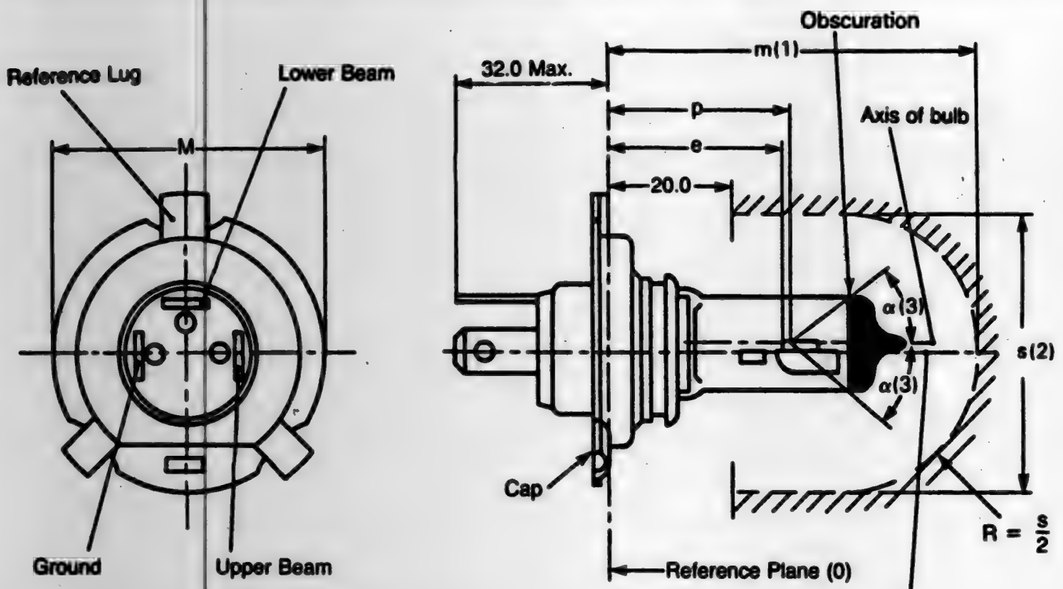
13. Figures 23–1 through 23–7 are added, and Figure 8 is revised as follows:

BILLING CODE 4910-59-M



Standardized Replaceable Light Source Type	Dimension "A"
HB1	44.50 ± 0.38 mm (1.75 ± 0.015 in)
HB2	31.25 ± 0.40 mm (1.23 ± 0.012 in)
HB3	31.50 ± 0.20 mm (1.24 ± 0.008 in)
HB4	31.50 ± 0.20 mm (1.24 ± 0.008 in)

Figure 8. Bulb Deflection Test



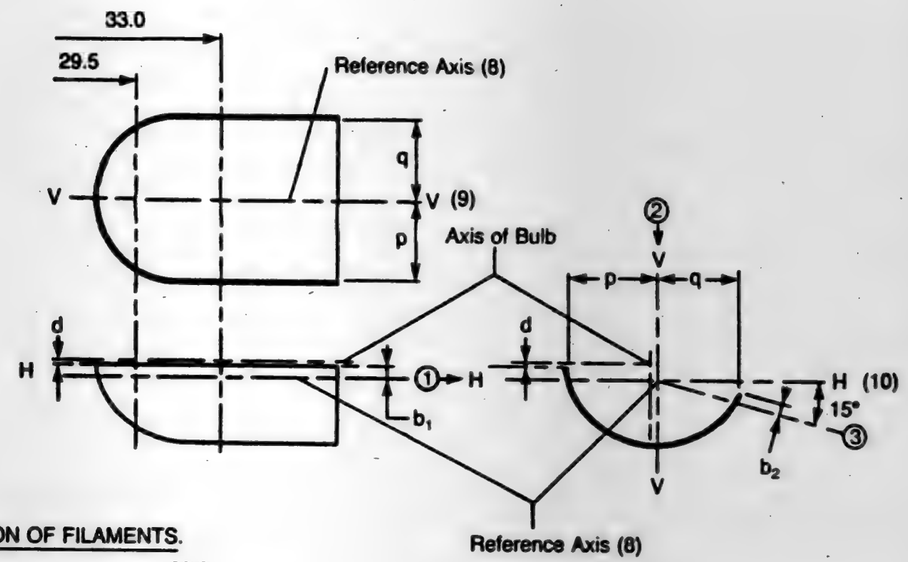
Reference	Dimension	Tolerance
e	28.5	+0.35 −0.15
p	28.95	—
m(1)	max. 60.0	—
s(2)	45.0	—
α(3)	max. 40°	—

Dimensions in millimeters

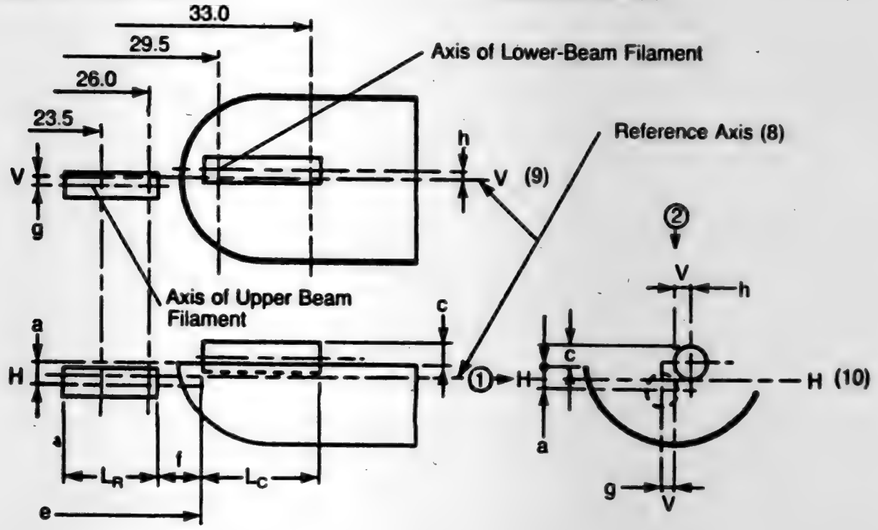
(0) The reference plane is the plane formed by the seating points of the three lugs of the base ring.
(1) "m" denotes the maximum length of the light source.
(2) It must be possible to insert the light source into a cylinder of diameter "s" concentric with the reference axis and limited at one end by a plane parallel to and 20 mm distant from the reference plane and at the other end by a hemisphere of radius s/2.
(3) The obscuration must extend at least as far as the cylindrical part of the glass bulb. It must also overlap the internal shield when the latter is viewed in a direction perpendicular to the reference axis.

Figure 23-1. Type HB-2 Replaceable Light Source — Dimensional Specifications

POSITION OF SHIELD



POSITION OF FILAMENTS.



(Also see continuation page)

Figure 23-2. Type HB-2 Replaceable Light Source — Shield and Filament Position Dimensional Specifications

Reference	Dimension	Tolerance
a/26°	0.8	±0.30
a/23.5°	0.8	±0.40
b_1/29.5°	0	±0.25
b_1/33°	b_1/29.5vm°°	± 0.20
b_2/29.5°	0	±0.25
b_2/33°	b_2/29.5vm°°	± 0.20
c/29.5°	0.6	± 0.30
c/33°	c/29.5vm°°	±0.30
d	min 0.1	—
e(6)	28.5	+ 0.35 − 0.15
f(4)(5)(7)	1.7	− 0.30 + 0.30

Dimension	Reference	Tolerance
g/26°	0	±0.4
g/23.5°	0	±0.5
h/29.5°	0	±0.5
h/33°	h/29.5vm°°	± 0.35
$l_{R(5)(7)}$	4.5	±0.8
$l_{c(5)(5)}$	5.5	±0.8
P/33°	Depends on the shape of the shield	—
q/33°	$\frac{p+q}{2}$	±0.6
b_1-b_2	0	± 0.25

° Dimension will be measured at the distance from the reference plane indicated in mm afer the stroke.

°° ./29.5vm means the value measured at a distance of 29.5 mm from the reference plane.

Dimensions indicated in the table above are measured in three directions:

Direction ① for dimensions a, b_1, c, d, e, f, 1_R and 1C;

Direction ② for dimensions g, h, p and q;

Direction ③ for dimensions b_2.

Dimensions p and q are measured in a plane parallel to and 33 mm away from the reference plane.

Dimensions b_1, b_2, c and h are measured in planes parallel to and 20.5 mm and 33 mm away from the reference plane.

Dimensions a and g are measured in planes parallel to and 26.0 mm and 23.5 mm away from the reference plane.

(4) The end turns of the filaments are defined as being the first luminous turn and the last luminous turn that are at substantially the correct helix angle.

(5) For the lower-beam filament the points to be measured are the intersections, seen in direction ①, of the lateral edge of the shield with the outside of the end turns defined under footnote 4.

(6) "e" denotes the distance from the reference plane to the beginning of the lower-beam filament as defined under footnote 4.

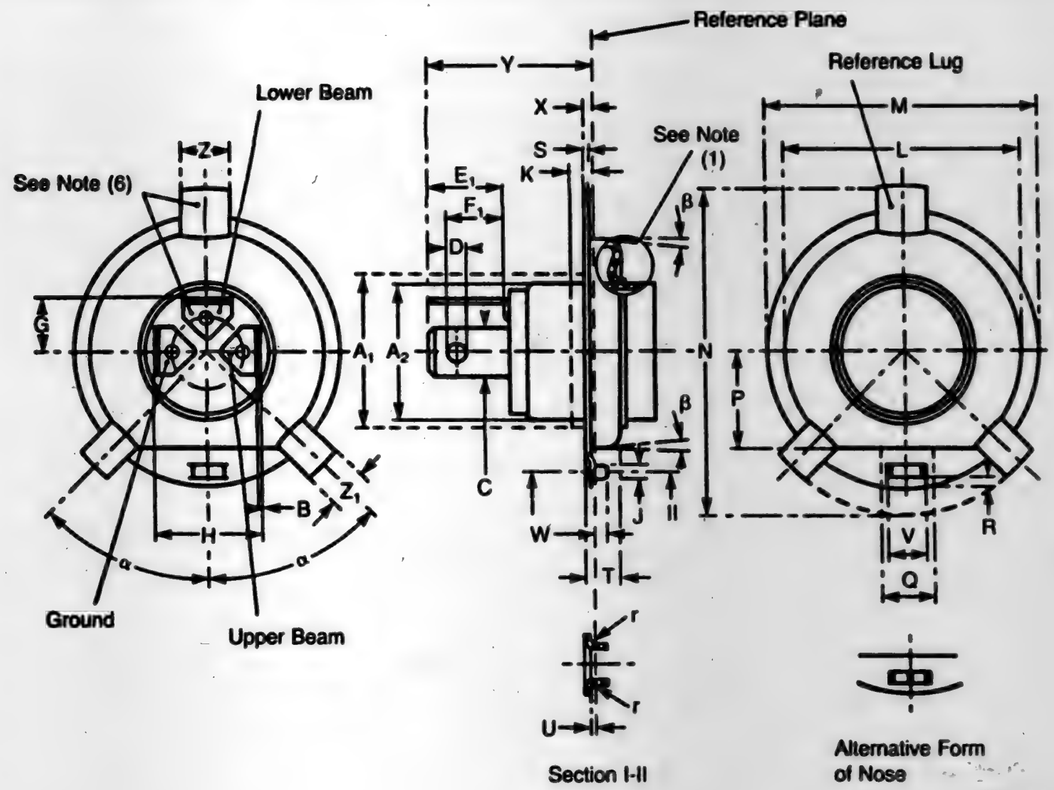
(7) For the upper-beam filament the points to be measured are the intersections, seen in direction ①, of a plane parallel to plane HH and situated at a distance of 0.8 mm below it, with the end turns defined under footnote 4.

(8) The reference axis is the line perpendicular to the reference plane and passing through the center of the circle of diameter "M".

(9) Plane VV is the plane perpendicular to the reference plane and passing through the reference axis and through the intersection of the circle of diameter "M" with the axis of the reference lug.

(10) Plane HH is the plane perpendicular to both the reference plane and plane VV and passing through the reference axis.

Figure 23-3. (Continued) Type HB-2 Replaceable Light Source — Shield and Filament Position Dimensional Specifications



(Also see continuation page)

Figure 23-4. Type HB-2 Replaceable Light Source — Assembled Base P43t-38 on Finished Light Source — Dimensional Specifications

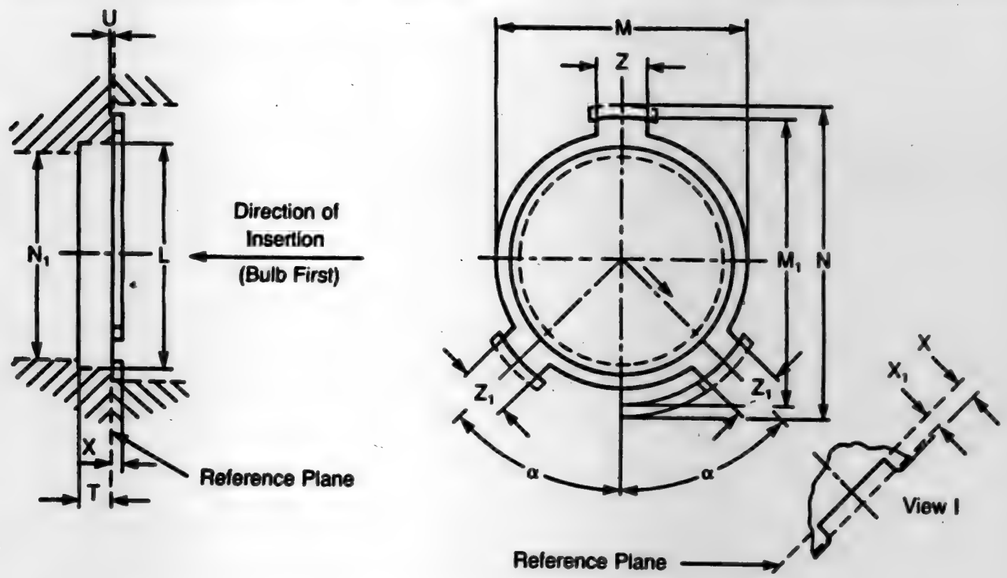
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Dimension	Min.	Max.	Dimension	Min.	Max.
A_1 (8)	25.0		Q (2) (7)	8.5	—
A_2 (10)	Nominal	22.0	R	1.3	1.7
B	0.7	0.8	S	0.5	—
C	7.7	8.1	T	5.0	6.0
D	3.0	3.3	U	(9)	
E_1	11.8	13.6	V (2) (5)	6.3	6.5
F_1	8.8	10.3	W	1.8	2.2
G	8.5	9.0	X	1.1	1.3
H	17.0	17.9	Y	—	32.0
J	1.9	2.1	Z	7.9	8.0
K (10)	2.0		Z_1	5.8	6.2
L (2) (4)	37.8	38.0	r	(9)	
M (3)	42.9	43.0	α	44°	46°
N	51.6	52.0	β	—	5°
P (2) (7)	15.3	15.5			

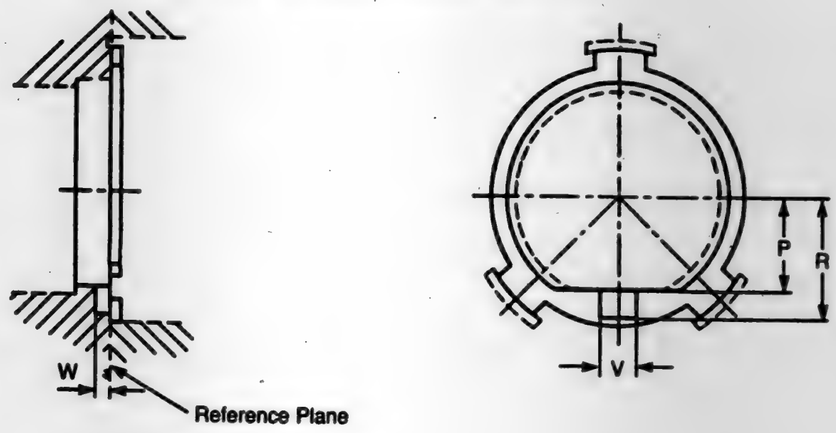
Dimensions in millimeters.
The drawing is intended only to indicate the dimensions essential for interchangeability

(1) The form of this part of the ring is optional and may be flat or recessed. However, the form shall be such that it will not cause any abnormal glare from the lower beam filament when the light source is in its normal operating position in the vehicle.
(2) This dimension is measured at the reference plane.
(3) Dimension M is the diameter on which the light source is centered when checking its dimensional characteristics.
(4) The maximum allowable eccentricity of cylinder L with respect to the circle of diameter M is 0.05 mm.
(5) The maximum allowable displacement of the center of the nose from the line running through the centers of the reference lug and the circle of diameter M is 0.05 mm. The sides of the nose shall not bend outwards.
(6) [Reserved]
(7) Dimension Q denotes the minimum width over which both the minimum and maximum limits of dimension P shall be measured. Outside dimension Q, the maximum limit for dimension P shall not be exceeded.
(8) The means of securing the ring in the headlamp shall not encroach on this cylindrical zone, which extends over the full length of the shell shown on this side of the ring.
(9) The radius r shall be equal to or smaller than dimension U.
(10) Beyond distance K, in the direction of the contact tabs, both the minimum and the maximum limits of dimension A_2 shall be measured.

Figure 23-5. (Continued) Type HB-2 Replaceable Light Source — Assembled Base P43t-38 on Finished Light Source — Dimensional Specifications



OPTIONAL FEATURES TO ENSURE CORRECT INSERTION



(Also see continuation page)

Figure 23-6. Type HB-2 Replaceable Light Source — Reflector Bulb Cavity P43t — Dimensional Specifications

Dimension	Min.	Max.
L(4)	38.2	None
M	43.02(1)	43.2
M_1	—	49.0
N(5)	52.5	
N_1	(6)	
P(3)	16.0	—
R(4)	20.5	—
T	5.5	—

Dimension	Min.	Max
U	0.4	—
V(4)	6.8	—
W(4)	2.5	—
X(3)	1.8	—
X_1(2)	1.4	—
Z(3)	8.05	8.13
Z_1(3)	8.0	8.5
α	44°	46°

Dimensions in millimeters
The drawing is intended only to indicate the dimensions essential for interchangeability.

The socket shall be so designed that the light source will be retained in it only when the light source is in the correct position.

The means of retention shall make contact only with the prefocus base ring and the total force exerted, when the light source is in position, shall be not less than 10 N and be not more than 60 N.

(1) This value shall be complied with between the rim of the socket and the reference plane (dimension X). However, it may be reduced to 38.5 mm within the dimensions Z and Z_1 which correspond with the support points for the lugs of the ring.

(2) Dimension X_1 denotes the minimum distance over which dimensions Z and Z_1 shall apply. Outside dimension X_1 the slots may be chamfered or rounded.

(3) Wrong adjustment of the light source in the socket can be prevented in different ways, e.g.:
— by applying the additional optional features. (See lower drawing on Figure 23.6).
— by decreasing dimension Z_1 to 7.5–7.7 mm followed by a decrease of the tolerance for α to give values of 44°40'–45°20'.
— by using a sufficiently large value of X depending on the construction of the socket.

(4) If dimension L is smaller than 40.5 mm, dimension V, R and W shall apply.

(5) Dimension N delineates the minimum free space to be reserved for the three lugs of the ring.

(6) Dimension N_1 shall be not less than 35 mm diameter over a distance of 20 mm from the reference plane and shall be not less than 45 mm diameter at any distance greater than 20 mm from the reference plane.

Figure 23-7. (Continued) Type HB-2 Replaceable Light Source Reflector Bulb Cavity P43t — Dimensional Specifications

Issued on: June 22, 1989.
Jeffrey R. Miller,
Acting Administrator.
[FR Doc. 89-15230 Filed 6-28-89; 9:00 am]
BILLING CODE 4910-60-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB27

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Threatened Concho Water Snake (Nerodia harteri paucimaculata)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service is designating critical habitat for the Concho water snake (*Nerodia harteri paucimaculata*) under the authority of the Endangered Species Act of 1973 (Act), as amended. The Concho water snake was listed as a threatened species on September 3, 1986 (51 FR 31412); however, final designation of the proposed critical habitat was postponed at that time in accordance with section 4(*b*)[6][C] of the Act. Critical habitat is now being designated in portions of the Concho and Colorado Rivers in Runnels, Tom Green, Concho, Coleman, and McCulloch Counties, Texas, with minor modification from the critical habitat originally proposed. Federal actions that may affect the areas designated as critical habitat are now subject to consultation with the Service, pursuant to section 7[a][2] of the Act.

EFFECTIVE DATE: July 31, 1989.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service Ecological Services Field Office, Room 9A33, 819 Taylor Street, Fort Worth, Texas 76102.

FOR FURTHER INFORMATION CONTACT: Alisa Shull, (See **ADDRESSES** above) at 817/334–2961 or FTS 334–2961.

SUPPLEMENTARY INFORMATION:

Background

The Concho water snake (*Nerodia harteri paucimaculata*), a nonpoisonous snake, is a member of the family Colubridae, and together with the Brazos water snake (*Nerodia harteri harteri*) constitutes the species *Nerodia harteri*, collectively known as the Harter's water snake. The Concho water snake was discovered in 1944 by J. Marr and was described as a distinct subspecies by Tinkle and Conant in 1961. This subspecies is relatively small for *Nerodia;* adults rarely exceed 600 millimeters (3 feet) total length. There are 21–23 dorsal scale rows, four rows of dark brown blotches arranged in alternate fashion on the grayish dorsal surface, and distinct to obscure dark spots along either side of the pink to orange venter (Wright and Wright 1957).

Adult Concho water snakes live in either shallow or deep water over a variety of substrates, as long as there is sufficient deep, secure shelter from predators near nursery grounds. Adults also use woody vegetation along the banks for basking. Juvenile Concho water snakes, however, have much more rigid habitat requirements, the two most important features of which are shallow water with a rocky substrate and medium to large flat rocks on the shore that provide hiding places (Scott and Fitzgerald 1985).

Historically, the Concho water snake occurred over about 330 miles of the Concho and Colorado Rivers and their tributaries. It is presently distributed discontinuously over a reduced range in Irion, Coke, Tom Green, Concho, Runnels, McCulloch, Coleman, Brown, Mills, San Saba, an Lampasas Counties (Williams 1971, Flury and Maxwell 1981, Brnovak 1975, Scott and Fitzgerald 1985, Rose 1985).

On December 30, 1982, the Service published a Notice of Review of Vertebrate Wildlife in the Federal Register (47 FR 58454). *Nerodia harteri* was included in category 1 of that notice. Category 1 includes those taxa for which the Service has substantial information on hand to support the biological appropriateness of a proposal to list the species as endangered or threatened.

On February 14, 1984, the New Mexico Herpetological Society petitioned the Service to list *Nerodia harteri* (including both subspecies) as threatened and designate its critical habitat. The Service found that substantial information had been presented indicating that the petitioned action might be warranted. A notice of this finding was published on May 16, 1984 (49 FR 21089). A 1-year finding was reported on July 16, 1985 (50 FR 29236). That finding held that the petitioned action was warranted for the Concho water snake but that such action was precluded by work on other pending proposals, in accordance with section 4(b)(3)(B)(iii) of the Act. The 1-year finding for the remaining subspecies, the Brazos water snake, was reported concurrently and held that the petitioned action was not warranted for that subspecies. A proposed rule to list the Concho water snake and designate critical habitat was published on January 22, 1986 (51 FR 2923). The final rule listing the Concho water snake as a threatened species was published on September 3, 1986 (51 FR 31412). In accordance with section 4(b)(6)(C) of the Act, the proposed critical habitat designation was not made final at the time of listing, but was postponed for an additional year from the January 22, 1987, 1-year deadline to allow for gathering and analyzing of economic data.

Summary of Comments and Recommendations

In the January 22, 1986, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. The original comment period closed on March 24, 1986, but was reopened on April 3, 1986 (51 FR 9081), to accommodate a public hearing and remained open until May 2, 1986. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice inviting general public comment was published in the San Angelo, Texas, *Standard-Times* on February 10, 1986. One hundred fifty-seven comment letters were received, and are discussed below. Two requests for a public hearing were received, and a hearing was held in Ballinger, Texas, on April 3, 1986. Interested parties were contacted and notified of that hearing, and notices of the hearing were published in the Federal Register on March 17, 1986; the Abilene, Texas, *Reporter-News* on March 18, 1986; the Big Spring, Texas, *Herald* on March 19, 1986; the Midland, Texas, *Reporter-Telegram* on March 15, 1986; and the San Angelo, Texas, *Standard-Times* on March 26, 1986. Comments received in the hearing are also summarized below.

The public hearing held in Ballinger, Texas, was attended by about 350 people. Fifty-seven oral or written statements were given, 5 in support of the proposal, 46 questioning or in opposition, and 6 neither in support nor opposition. A transcript of this hearing is available for inspection (see **ADDRESSES**). Organizations represented at the hearing included: U.S House of Representatives; Texas Governor's Office; U.S. Geological Survey; U.S. Army Corps of Engineers; USDA Soil Conservation Service; Texas Parks and

Wildlife Department; Texas Department of Highways; Texas General Land Office; Texas Water Development Board; Big Country Audubon Society; Sierra Club; National Audubon Society; Cities of Midland, San Angelo, Ballinger, Coleman, Odessa, Abilene, Paint Rock, and Winters; Counties of Concho, Runnels, Coleman, and Tom Green; five State legislative districts; six local and regional water boards; and several local governmental or business organizations.

The 157 letters received were from 460 parties; several multiple-party and petition letters were received. Of those, 88 letters from 111 parties were in support of the proposed critical habitat, 51 letters from 322 parties questioned or opposed the proposal, and 18 letters from 27 parties were neither in support nor opposition.

All letters and written or oral statements received regarding critical habitat designation are combined in the following discussion. Comments in the letters and statements concerning the proposed listing of the Concho water snake have already been addressed in the final listing rule published in the Federal Register on September 3, 1986 (51 FR 31412). Comments on specific water projects (the need for each project, possible effects of this proposal on such projects, and specific features of alternative projects) are addressed here only if they requested or resulted in specific changes to the proposal or to the rule procedure on critical habitat designation. Information regarding the possible economic effects of the proposed critical habitat on such projects can be found in the Economic Analysis, which is summarized later in this rule. Comments received are available for inspection (see **ADDRESSES**).

Comments of support were received from Texas Parks and Wildlife Department; Texas General Land Office; National Audubon Society; Big Country Audubon Society; Defenders of Wildlife; Sierra Club; Texas Chapter of the Wildlife Society; American Society of Ichthyologists and Herpetologists; New Mexico Herpetological Society; Society for the Study of Amphibians and Reptiles; 94 private individuals or groups; and biologists from Texas A&I University, New York Zoological Society, Midland College, Angelo State University, Dallas Zoo, Central Texas College, Hardin-Simmons University, Texas A&M University, and Texas Tech University.

Comments questioning or in opposition to the proposal were received from Congressman Charles Stenholm; Texas Water Development Board; Texas Water Commission; Cities of Big Spring, Winters, Midland, San Angelo, Ballinger, Coleman, Odessa, Abilene, and Paint Rock; Counties of Brown, Concho, Runnels, and Coleman; six state legislators; Upper Colorado River Authority; Colorado River Municipal Water District; San Angelo Water Advisory Board; Central Colorado River Authority; West Central Texas Municipal Water District; and 324 private individuals or groups.

Economic information or neutral letters were received from the Bureau of Reclamation, Bureau of Land Management, Environmental Protection Agency, Federal Highway Administration, Soil Conservation Service, U.S. Army Corps of Engineers, Federal Emergency Management Agency, Texas Governor's Office, Texas System of Natural Laboratories, and 3 private individuals.

Summaries of all substantive comments addressing the issue of critical habitat designation for the Concho water snake are covered in the following discussion. Comments of similar content are grouped in a number of general issues with the Service's response to those issues and comments.

Issue 1: The sufficiency of the size of the critical habitat was questioned by two commenters. The Lone Star Chapter of the Sierra Club stated that they do not believe the proposed critical habitat goes far enough in securing all Concho water snake habitat and ensuring that areas are protected for reintroduction or population supplementation. They requested that the entire 199 miles of occupied range known at the time of proposal be included in the critical habitat designation, and that other areas be identified in the designation for reintoduction sites. Dr. John Peslak, of Hardin-Simmons University in Abilene, Texas, questioned whether the proposed critical habitat is "sufficient to insure the survivial of the snake even if the Stacy Dam becomes a reality?"

Service Response: The critical habitat designated in this rule includes all known occupied Concho water snake habitat that contains those constituent elements that are essential to the conservation of the species and that may require special management considerations or protection. Stream and reservoir banks that are essential for the conservation of the species are included. The Service will continue to evaluate other areas for future inclusion in the critical habitat.

Issue 2: Three commenters requested removal of, or questioned the need for, various areas of the proposed critical habitat. Both the Texas Water Development Board and the Texas Water Commission requested that the Stacy Reservoir area be excluded from the critical habitat designation for economic reasons. Section 4(b)(2) of the Endangered Species Act provides that the Secretary of the Interior may exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as critical habitat, unless failure to designate such area as critical habitat would result in the extinction of the species. The two agencies believe that the economic benefits of the water supply to be provided by the construction of Stacy Reservoir outweigh the benefits of the critical habitat designation.

Service Response: The reservoir basin is not withdrawn from the critical habitat designation. Concho water snake populations were found at Lake Spence and Lake Moonen in both 1987 and 1988 (Thornton and Dixon 1988). With this information on occurrence of Concho water snakes in reservoirs, and from a survey of the potential Concho water snake habitat on the future Stacy Reservoir shoreline, the recognized potential for the snake to inhabit Stacy Reservoir is substantially greater than when the designation of critical habitat was proposed. The retention of the critical habitat designation for the reservoir basin is necessary to provide protection for the potential habitat sites within the reservoir basin. In light of the Service's biological opinion that the Stacy project is not likely to jeopardize the continued existence of the Concho water snake or to result in the destruction or adverse modification of the proposed critical habitat, no disruption to the construction or operation of Stacy Dam and Reservoir is expected. Any impacts from the designation would be limited to possible restrictions on land use along those shoreline areas surrounding the reservoir that are potential or occupied Concho water snake habitat. Therefore, the benefits of retaining these areas in the critical habitat outweigh the benefits of excluding them.

A private landowner on the Concho River inquired about the basis for the 15 vertical foot provision in the proposed critical habitat designation. This commenter pointed out that the provision would result in extension of the critical habitat 1½ miles up Concho Creek, and states that although he has observed the Concho water snake many times, he has never found one more than 10 feet from the edge of the water.

Service Response: The basis of the 15 foot elevation line is the average general depth of the incision of the river into the surrounding countryside. The 15 feet is not a measurement along the surface of the ground, but is instead a horizontal line rising 15 feet above the water surface at median discharge. The distance from the water's edge to the point at which that line intersects the bank will depend upon the flow at the specific point in time, as well as the degree of slope of the channel banks. The importance of these riparian areas is the maintenace of stream bank integrity, which is important for preservation of actual water snake habitat. The Service acknowledges that there is no benefit to the snake from extension of the critical habitat more than ½ mile upstream into most tributary streams. The Concho water snake generally does not use tributary streams, particularly those that have only ephemeral flow. Therefore, the critical habitat has been modified in this rule to limit the extension of the critical habitat to ½ mile upstream into any tributary of the Concho and Colorado Rivers or to Stacy Reservoir at the conservation pool level.

Issue 3. Three commenters questioned the process for economic analysis of the critical habitat, or asked for specific considerations in that process. The Lone Star Chapter of the Sierra Club asked that economics not be considered in the critical habitat designation.

Service Response: The Endangered Species Act (section 4(b)(2)) specifies that the "economic impact, and any other relevant impact" be considered in the final designation of critical habitat. In addition, critical habitat designation is also subject to Executive Order 12291, which requires, to the extent permitted by law, that all regulatory actions will have benefits outweighing costs, and that the alternative with the largest net benefit shall be chosen; to the Regulatory Flexibility Act, which requires analysis of the impacts of regulatory actions on small entities; and, to the Paperwork Reduction Act, the purpose of which is to minimize the paperwork and resulting costs of regulatory actions. Only the listing portion of the proposed rule was exempt from economic considerations.

The Texas Water Development Board objected to the delay in completing an economic analysis of the critical habitat. The Board pointed out that in July 1983 they notified the Service of potential conflicts between water development and the proposed critical habitat and recommended that a comprehensive economic analysis be conducted. They questioned why no analysis had yet been done at the time of the publication of the proposed rule on listing and critical habitat in January 1986.

Service Response: When critical habitat designation is proposed concurrently with the listing of a species, as is required (with certain exceptions) by the Act, the economic analysis is not conducted prior to proposal to avoid non-biological considerations from influencing or delaying the listing. This procedure is based upon the specific requirement of the Act that listing actions be based on the best biological and commercial data available.

The Big Country Audubon Society requested that the Service's economic analysis focus on patterns of water use in the area.

Service Response: As a result of the reasonable and prudent alternatives developed for the Stacy Reservoir, there are no known conflicts between the critical habitat designation and any specific water development in the area. Therefore, the economic analysis addresses water use patterns only to the extent that the Stacy biological opinion results in economic costs for such use patterns.

Compensation costs that must be paid by the Colorado River Municipal Water District for construction of Stacy Reservoir include hiring of a biologist to oversee all phases of construction, funding studies on Concho water snake life history, genetics, and habitat requirements, and construction of riffle habitats in the river. However, these costs are part of the reasonable and prudent alternatives needed to relieve jeopardy to the Concho water snake and would be required even if no critical habitat were proposed.

Issue 4: One commenter presented several questions regarding the impacts of critical habitat designation on private property fronting on the critical habitat. He specifically questioned if the critical habitat designation would affect his water rights or his ability to control brush along the river and draws. He states that landowners will suffer economically from the critical habitat designation through loss of control and full use of their property and water rights.

Service Response: The land and water rights of private landowners are in no way affected or limited by the designation of critical habitat. Critical habitat provides protection only from Federal actions. It does not affect private actions, lands, water or any other rights, unless the private actions are Federally funded or if they require a Federal permit. Brush control by a private individual on private lands would not be affected unless Federal money is being used in the project. Private water rights would not be affected per se. However, if the mechanism used to develop the water right involves actions in the river channel that require a permit under the Clean Water Act, the Rivers and Harbors Act, or other such Federal legislation, then the proposed permit for the mechanism would be subject to consultation with the Service under section 7 of the Endangered Species Act. The effect, if any, of the consultation on the mechanism for implementing the water right would vary depending on the location and type of action. Such effects are generally minor and may involve some modifications to the project to accommodate the species and/or its critical habitat.

Issue 5: Several commenters suggested actions that they think should be taken instead of critical habitat designation, or as a necessary adjunct to the designation. The Texas General Land Office, Natural Heritage Program, believes that assurances of adequate stream flows for reproduction and growth of the Concho water snake should be included in the critical habitat designation.

Service Response: Minimum stream flows and flood or channel maintenance flows are provided for most of the critical habitat as a part of the reasonable and prudent alternatives set forth in the Service's biological opinion resulting from the consultation on Stacy Reservoir. These flow requirements are included in the constituent elements for the designated critical habitat at the end of this rule.

The Lone Star Chapter of the Sierra Club requested that the Service seek easement, water rights, or fee title to riparian areas critical to the Concho water snake.

Service Response: At present none of these measures appear to be necessary to the continued survival and recovery of the Concho water snake. As the implementation of the reasonable and prudent alternatives of the Section 7 consultation on Stacy Reservoir proceeds, areas may be identified for which easement or full-title acquisition may be desirable.

A private landowner questioned whether critical habitat will do anything to enhance the Concho water snake as long as nothing is done to eliminate natural predators.

Service Response: Although fish may prey upon young Concho water snakes, there are no data that suggest fish or predation in general, have been a major factor in the overall decline of the Concho water snake.

Critical Habitat

Critical habitat, as defined by section 3 of the Act means: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

The future Stacy Reservoir basin will be included in the final designation of critical habitat. With recent information on occurrence of Concho water snakes at Spence and Moonen reservoirs, and from a survey of the potential water snake habitat on the future Stacy Reservoir shoreline, the potential for the snake to inhabit Stacy Reservoir appears significantly greater than previously thought. About 63 km of the future lake shoreline between elevations 1,530 feet and 1,551.5 feet (conservation pool level) were found to contain rocky habitat similar to that found in Spence and Moonen reservoirs. This is 26 and 33 percent of the shoreline at the two elevations, respectively. Open spaces between rocky habitat areas are less than 800 meters, which would allow at least some movement of snakes between sites.

Because of the uncertain time factor and other variables, the Service does not believe that future reservoir habitat will be equal to the amount of stream habitat lost to impoundment. However, the Service believes that successful occupation of a number of sites around Stacy Reservoir by the Concho water snake would significantly reduce the fragmentation effect by providing a corridor for gene flow through snake movement. Translocation of snakes above and below the Dam may be necessary to augment natural movements if they are found to be insufficient.

In addition, the March 7, 1989 amendment to the biological opinion provides that the 17 segments of future Stacy Reservoir shoreline identified in the 1988 Annual Report (Thorton and Dixon 1988) and maps as potential Concho water snake habitat are to be protected by the Colorado River Municipal Water District from development for housing, industry, agriculture, recreation or other activities that could have an adverse effect on snake habitat.

The areas that are included in the critical habitat designation contain essential elements for the conservation of the Concho water snake. These include: riffles for feeding and resting, rocky gravel bars that provide shelter for neonates, larger rocks that adults and subadults use for basking or for shelter, brush/debris piles adjacent to riffles for shelter, low tree limbs overhanging the river for basking (usually adjacent to riffles), minimum stream flows (see item 4 of amendment to 50 CFR 17.95(c) at end of this rule), and rocky areas and stream pool banks for movement to other areas (Dixon, Greene, and Mueller 1988; Thorton and Dixon 1988).

The Concho water snake is protected from taking and harm by section 9 of the Act, and is protected against adverse impacts to the snake itself from Federal actions. Critical habitat designation provides that additional protection of that habitat from adverse impacts of Federal actions. This habitat protection is consistent with the habitat protection needs outlined in the biological opinion, as amended, on Stacy Dam. These needs include protection of approximately 17 segments of reservoir shoreline habitat, restoration of riffle habitats, stream and habitat monitoring, and maintenance of minimum flows.

Section 4(a)(3) of the Act requires that critical habitat be designated to the maximum extent prudent and determinable concurrently with the determination that a species is endangered or threatened. Section 4(b)(6) requires that a proposed listing be made final within one year from the publication of the proposal, but provides for an additional one-year extension for the final designation of critical habitat, if necessary. Critical habitat is being designated for the Concho water snake (*Nerodia harteri paucimaculata*) in the following areas:

1. Concho River in Tom Green and Concho Counties, Texas. A stretch extending from Mullin's Crossing located 5 miles northeast of the town of Veribest, downstream to the confluence of the Concho and Colorado Rivers.

2. Colorado River in Runnels, Concho, Coleman, and McCulloch Counties, Texas. A stretch extending from the Farm to Market Road 3115 bridge near the town of Maverick downstream to the confluence of the Colorado River and Salt Creek, northeast of the town of Doole.

Both stretches include both the river channel and the river banks up to 15 vertical feet above the water level at median discharge. However, the critical habitat is limited to no more than ½ mile upstream on any tributaries of either the Concho or Colorado Rivers. The Service will continue to evaluate other areas for future designation as critical habitat.

3. The entire future Stacy Reservoir basin up to the maximum water level of 1551.5 foot elevation, and including reservoir banks up to 15 vertical feet above the 1551.5 foot elevation.

This critical habitat designation has been modified from the area proposed. Critical habitat is limited to no more than ½ mile upstream on any tributary of either the Concho or Colorado Rivers, and the portions of the Concho and Colorado Rivers that will become Stacy Reservoir have been retained in the critical habitat designation. The dam that will create the reservoir is currently under construction and was the subject of consultation under section 7 of the Act. The December 19, 1986, biological opinion (as amended March 7, 1989) resulting from that consultation, set forth reasonable and prudent alternatives for creating and preserving habitat elsewhere. If implemented, those alternatives would reduce the impacts of the reservoir on proposed critical habitat to levels that would not significantly diminish the value of the proposed critical habitat (or its constituent elements) for the survival and recovery of the Concho water snake.

The Service issued an amended biological opinion on March 7, 1989, based on its review of new information, including the discovery of Concho water snake populations in two reservoirs. Concho water snakes are expected to colonize the Stacy Reservoir. Therefore, certain requirements in the original biological opinion have been reduced or eliminated. The eliminated requirements include construction of artificial habitats in the reservoir basin, and construction of low head dams, gabions, and aritificial riffle habitats on the lower Colorado River from Winchell to a point about 33 miles downstream. Monitoring of stream and stream habitat has also been reduced. Riffle habitats are to be restored in the upper Colorado River. Construction of other low head dams, gabions, and artificial riffles on the lower Colorado River from a point about 33 miles below Winchell downstream about 16 miles to Pecan Bayou has been delayed pending evaluation of prototype structures in the upper Colorado River and changes in the lower Colorado River. The approximately seventeen segments of reservoir shoreline habitat that were identified in the 1988 Annual Report (Thornton and Dixon 1988) must be protected from adverse impacts.

The entire Stacy Reservoir basin has been included in designation of critical habitat because this area is expected to contribute to viable Concho water snake populations. This is a change from the proposed critical habitat because it include all areas that will be inundated following construction of Stacy Dam.

In addition, the proposed critical habitat has been modified to limit designation of critical habitat to the lower ½ mile of streams tributary to the Concho and Colorado Rivers or to Stacy Reservoir at the conservation pool level. The proposed critical habitat included land areas inside of a horizonal line drawn outward from a point 15 vertical feet above the level of median discharge of the river. It was pointed out during the comment period that because of the low topographic relief of the area, this provison allowed the proposed critical habitat to extend upstream into some tributaries for 1 to 2 miles. However, only the mouths of these tributaries and their banks are considered to be critical to the species' survival. Therefore, the extension of the critical habitat up the tributary streams has been limited to ½ mile.

The constituent elements of the final critical habitat are biologically important to the survival of viable Concho water snake populations. Stream and reservoir bank integrity must be maintained to provide areas for the water snakes to rest, bask, and travel between sites. Riffle habitats are important feeding and resting areas for water snakes, especially neonates. Rocky substrates of different sizes provide shelter sites for water snakes of all age groups. Minimum stream flow requirements must be met (see item 4 of amendment to 50 CFR 17.95(c) at end of this rule). Water quality maintenance contributes to an ample prey base. The stretches of river and the reservoir basin in this critical habitat designation contain the constituent elements that are necessary for Concho water snake survival.

Section 4(b)(8) requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public or private) that may adversely modify such habitat or may be affected by such designation. Any activity that would lessen the amount of minimum flow, or would significantly alter the natural flow regime in those portions of the Concho and Colorado Rivers, could adversely impact the critical habitat. Such activities include, but are not limited to, impoundment and water diversion. Any activity that would extensively alter the channel and bank morphology in those river portions and result in a significant decrease in the amount or quality of riffle habitat could adversely impact the critical habitat. Such activities include, but are not limited to, channelization, excessive sedimentation, mining or rock and gravel, pollution, impoundment, and removal of riparian vegetation. Any activity that would significantly alter the water chemistry or temperature regime in those river portions could adversely impact the critical habitat. Such activities include, but are not limited to, release of chemical or biological pollutants into the waters at a point source or by dispersed release.

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. The Service has considered the critical habitat designation in light of all additional relevant information obtained during the public comment period and public hearings. An Economic Analysis and Determination of Effects of Rules for the critical habitat designation have been prepared and are available upon request. No significant economic or other impacts are expected from this designation of critical habitat for the Concho water snake. The additional information received has been addressed in the "Summary of Comments" section of this rule or in the economic documents prepared on the rule. Conclusions of the economic assessments are summarized in the "Regulatory Flexibility Act and Executive Order 12291" section of this rule.

Available Conservation Measures

Section 7(a)(2) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is listed as endangered or threatened and with respect to the habitat that has been designated as critical. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect the listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Concho water snakes are found only in rivers, reservoirs and their shorelines, and adjacent riparian areas on private, State, or county owned lands. This critical habitat designation is expected to have little effect upon the present land and water uses in the area. Known Federal activities that may be affected by this critical habitat designation are future federally funded or authorized dam and reservoir construction; highway, bridge, and pipeline construction; or irrigation projects. Such activities, although on private lands, would be subject to section 7 consultation if Federal funding were involved, or if the activity requires Federal authorization.

The threatened status of the Concho water snake, under provisions of section 4(a)(1) of the Endangered Species Act of 1973, as amended, is not affected by this designation of its critical habitat.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Regulatory Flexibility Act and Executive Order 12291

The Department of the Interior has determined that designation of critical habitat for this species is not a major rule under Executive Order 12291 and certifies that this designation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). No additional costs to Federal or non-Federal entities caused by critical habitat designation have been identified. The Service and the Soil Conservation Service (SCS) completed an informal consultation on a planned floodwater retention project. The SCS determined that the project would have no adverse effect on the Concho water snake or its critical habitat, and the Service concurred with this conclusion. The above findings are based on opinions rendered by the agencies involved, and on the following: Bureau of Reclamation's normal and expected management of water releases from upstream reservoirs; the expectation that no additional economic impacts will accrue to Stacy Dam and Reservoir as a result of the designation of critical habitat; the absence of other ongoing or planned Corps of Engineers or Federal Emergency Management Agency projects in the vicinity of the critical habitat; the expectation of either no impacts or beneficial impacts from

existing and partially completed SCS projects in the vicinity of the critical habitat; the existence of easily added protective mechanisms that can be used to protect against adverse modification of critical habitat by the All-American pipeline; current Environmental Protection Agency standards on National Pollution Discharge Elimination System permits in the river basin; and Federal Highway Administration policies for avoiding adverse environmental effects. In addition, no State or private activities involving Federal funds or permits are expected to affect or be affected by the critical habitat designation.

Therefore, no significant economic impacts are expected to result from the critical habitat designation. In addition, no direct costs, enforcement costs, or information collection or recordkeeping requirements are imposed on small entities by the designation. These determinations are based on a Determination of Effects of Rules that is available upon request (see **ADDRESSES**).

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Author

This rule was prepared by the Endangered Species Staff, Region 2, U.S. Fish and Wildlife Service, Albuquerque, New Mexico.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500 (1986); Pub. L. 100–478, 102 Stat. 2306 (1988), unless otherwise noted.

2. Amend § 17.95(c) by adding the critical habitat of the Concho water snake in the same alphabetical order as the species occurs in § 17.11(h):

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(c) * * *

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Concho Water Snake (*Nerodia harteri paucimaculata*)

Texas: Areas of land and water as follows:

1. *Tom Green and Concho Counties.* Concho River: The mainstream river channel and river banks, up to a level on both banks that is 15 vertical feet above the water level at median discharge (but not extending more than ½ mile upstream on any tributary stream); extending from Mullin's Crossing, northeast of the town of Veribest downstream to the confluence of the Concho and Colorado Rivers.

2. *Runnels, Concho, Coleman, and McCulloch Counties.* Colorado River: The mainstream river channel and river banks, up to a level on both banks that is 15 vertical feet above the water level at median discharge (but not extending more than ½ mile upstream on any tributary steam); extending from the Farm to Market Road 3115 bridge near the town of Maverick downstream to the confluence of the Colorado River and Salt Creek, northeast of the town of Doole.

3. The entire future Stacy Reservoir basin up to the conservation pool level of 1551.5 feet elevation, and including reservoir banks up to 15 vertical feet above the 1551.5 feet elevation, and including tributary streams for not more than ½ mile upstream from the conservation pool level.

4. Constituent elements include shallow riffles and rapids with rocky cover, minimum steam flows, dirt banks, rocky shorelines, and woody riparian vegetation. Minimum flows include the following:

(a) A continous, daily flow of 10.0 cubic feet/second (cfs) in the Colorado River from E.V. Spence Reservoir to Ballinger, Texas.

(b) A flushing flow of 600 cfs from E.V. Spence Reservoir for a duration of 3 consecutive days (at any time during the months of November through February), at least every other year for channel maintenance.

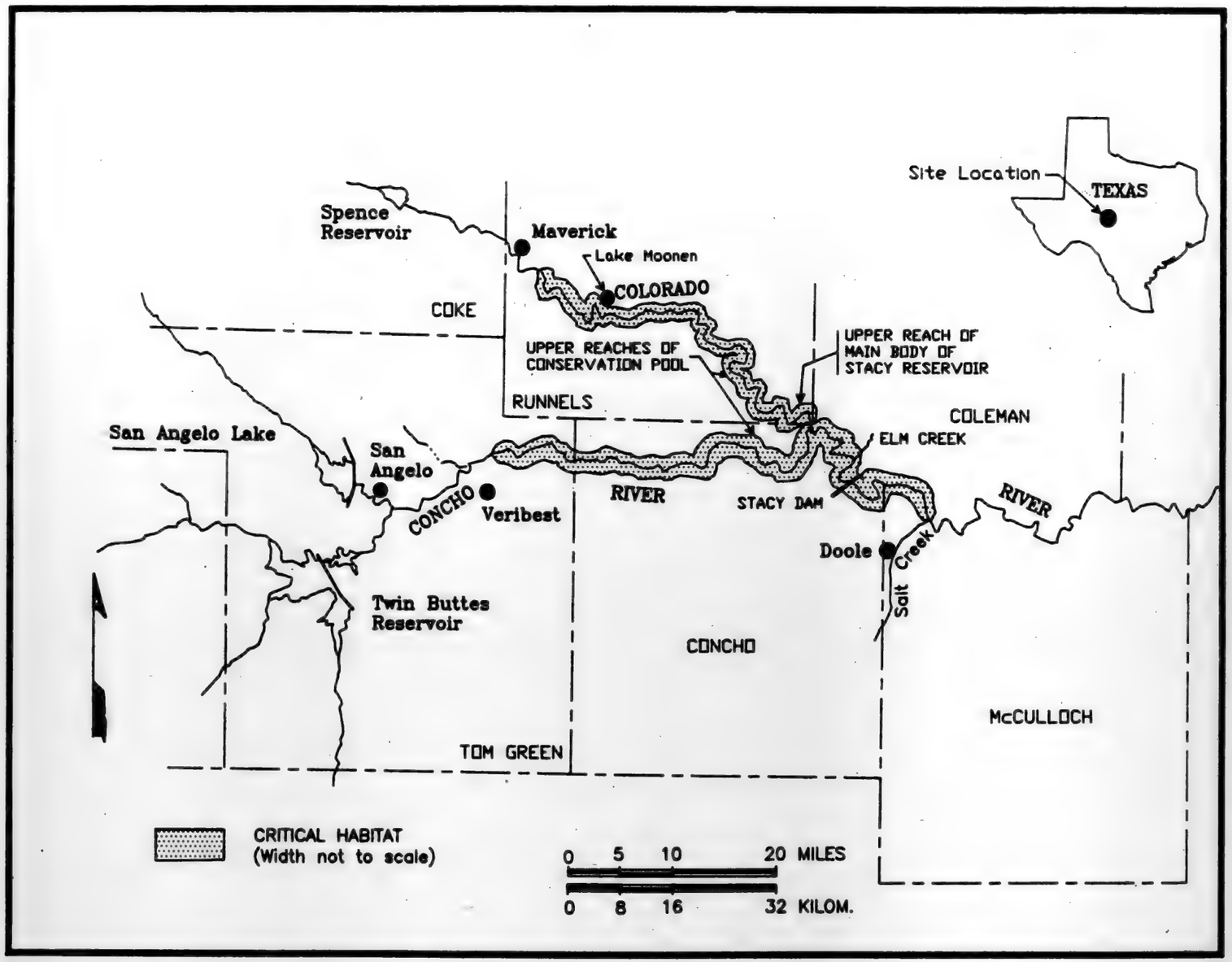
(c) A continuous, daily minimum flow of 11.0 cfs in the Colorado River between Stacy Dam and Pecan Bayou between April and September each year, and a minimum of 2.5 cfs between October and March of each year.

(d) Flushing flows of 2500 cfs from Stacy Reservoir for 2 consecutive days at least once every 2 years for channel maintenance.

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Dated: June 20, 1989.

Susan Recce Lamson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89-15496 Filed 6-27-89; 12:18 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611, 672 and 675

[Docket No. 90370-9070]

Foreign Fishing; Groundfish of the Gulf of Alaska; Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule, extension of effective date.

SUMMARY: An emergency interim rule amending definitions of directed fishing in the exclusive economic zone (EEZ) in the Gulf of Alaska (GOA) and in the Bering Sea and Aleutian Islands area (BSAI) is in effect until June 26, 1989. The Secretary of Commerce (Secretary) extends the emergency interim rule for an additional 90 days (through September 23, 1989). The extension of the emergency interim rule is necessary to promote effective management of the groundfish fishery, to relieve an enforcement burden on fishermen, and to prevent wastage of sablefish. The definitions of directed fishing were changed temporarily to lower the percentage of sablefish that may be retained as bycatch. These changes were intended and continue to be necessary in order to prolong the seasons for these fisheries and to reduce the amounts of sablefish which are required to be discarded at sea.

EFFECTIVE DATE: Effective from 0001 hours, Alaska Daylight Time, June 26, 1989 through 2400 hours Alaska Daylight Time, September 23, 1989.

ADDRESS: Copies of the environmental assessment may be obtained from Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Biologist, NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION: Under section 305(e) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), the Secretary promulgated an emergency interim rule redefining directed fishing in the Gulf of Alaska and in the Bering Sea and Aleutian Islands area (54 FR 13191, March 31, 1989). That rule was effective for 90 days, from March 28, 1989, until June 26, 1989. With agreement of the Council, the Secretary extends the emergency interim rule for an additional 90 days under section 305 (e)(3)(B) of the Magnuson Act, because conditions justifying the emergency rule remain unchanged.

List of Subjects in 50 CFR Parts 611, 672 and 675

Fisheries.

Dated: June 23, 1989.

James E. Douglas, Jr.,

Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Parts 611, 672 and 675 are amended to read as follows:

PART 611—FOREIGN FISHING

1. The authority citation for Part 611 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.* 16 U.S.C. 971 *et seq.*, 22 U.S.C. 1971 *et seq.*, and 16 U.S.C. 1361 *et seq.*

§ 611.92 [Amended]

2. In § 611.92, the effective date for which paragraph (c)(1)(iii) is temporarily added, should be revised to read "June 26, 1989 through September 23, 1989."

§ 611.93 [Amended]

3. In § 611.93, the effective date for which paragraph (b)(1)(iii) is temporarily suspended and paragraph (b)(1)(iv) is temporarily added, should be revised to read "June 26, 1989 through September 23, 1989."

PART 672—GROUNDFISH OF THE GULF OF ALASKA

4. The authority citation for Part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 672.2 [Amended]

5. In § 672.2, the effective date for the temporary revision of the definition for *Directed Fishing*, should be revised to read "June 26, 1989 through September 23, 1989."

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS

6. The authority citation for Part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 675.2 [Amended]

7. In § 675.2, the effective date for the temporary revision of the definition for *Directed Fishing*, should be revised to read "June 26, 1989 through September 23, 1989."

[FR Doc. 89-15362 Filed 6-26-89; 11:31 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 124
Thursday, June 29, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[FV-88-120PR-A]

Handling of Almonds Grown in California; Proposed Revision of Salable, Reserve, and Export Percentages for the 1988-89 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the salable and reserve percentages for marketable California almonds received by handlers during the 1988-89 crop year, which began July 1, 1988. The salable percentage would be increased from 75 to 100 percent, and the reserve percentage would be correspondingly decreased from 25 percent to 0 percent. This proposed action would relieve restrictions on handlers.

DATES: Comments must be received by July 10, 1989.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456. All comments should reference the docket number and the date and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Allen Belden, Marketing Specialist, Marketing Order Administration Branch, Room 2524-S, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5120.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under marketing agreement and Order No. 981, both as amended (7 CFR Part 981), regulating the handling of almonds grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

This proposed rule has been reviewed under guidelines implementing Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 115 handlers of almonds subject to regulation under the almond marketing order and approximately 7,500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California almonds may be classified as small entities.

This proposed action would remove a requirement that all handlers of California almonds hold 25 percent of marketable almonds received during the 1988-89 crop year in reserve. Handlers would be permitted to ship 100 percent of their merchantable almonds received during the 1988-89 crop year to any markets they desire. Therefore, this action would relax restrictions on almond handlers and would not impose any additional burden or costs on handlers.

Based on the above, the Administrator of the AMS has determined that the issuance of this proposed rule would not have a significant economic impact on a substantial number of small entities.

On January 25, 1989, a final rule was published in the **Federal Register** [54 FR 3584] establishing salable, reserve, and export percentages of 75 percent, 25 percent, and 0 percent, respectively, for the 1988-89 crop year. That action was based on a recommendation of the Almond Board of California (Board), which works with the U.S. Department of Agriculture in administering the order. The recommendation was made pursuant to §§ 981.47 and 981.49 of the order, based on the then current estimates of marketable supply and combined domestic and export trade demand for the 1988-89 crop year. This recommendation was made at the Board's July 20, 1988, meeting.

On May 12, 1989, the Board met to review the salable and reserve percentages that had been established for the 1988-89 crop year and the supply and demand estimates from which those percentages were derived.

At that meeting, pursuant to § 981.48 of the order, the Board recommended an increase in the salable percentage from 75 percent to 100 percent of the 1988-89 marketable production, and a corresponding decrease in the reserve percentage from 25 percent to 0 percent. The Board recommended that this revision take place effective August 1, 1989.

The estimates used in reviewing the salable and reserve percentages are shown below. The Board's July 20, 1988, estimates are shown as a basis for comparison.

MARKETING POLICY ESTIMATES—1989 CROP

[Kernelweight basis in millions of pounds]

	Initial estimate	Revised estimate
Estimated Production		
1. 1988 Production	580.0	595.5
2. Less and Exempt—4.0%	23.2	23.4
3. Marketable Production	556.8	562.1
Estimated Trade Demand		
4. Domestic	160.0	159.0
5. Export	370.0	383.1
6. Total	530.0	542.1
Inventory Adjustment		
7. Carryin 7/1/88	112.8	117.5

MARKETING POLICY ESTIMATES—1989 CROP—Continued

[Kernelweight basis in millions of pounds]

	Initial estimates	Revised estimates
8. Additional Carryin 8/1/89	112.8	112.8
9. Desirable Carryover 8/30/89	113/2	113/2
10. Desirable Additional Carryover 8/1/89	0	137.1
11. Adjustment (item 9 plus item 10 minus item 7 minus item 6)	−112.4	20.0
Salable and Reserve Percentages		
12. Adjusted Trade Demand (item 6 plus item 11)	417.6	562.1
13. Reserve (item 3 minus item 12)	139.2	0
14. Salable % (item 12÷item 3×100)	75%	100%
15. Reserve % (100% minus item 14)	25%	0%

Estimated 1988 crop production has increased from 560.0 million kernelweight pounds to 585.5 million kernelweight pounds. Estimated weight loss resulting from the removal of inedible kernels by handlers and losses during manufacturing has increased from 23.2 million kernelweight pounds to 23.4 million kernelweight pounds. Therefore, marketable production is increased from 556.8 million kernelweight pounds to 562.1 million kernelweight pounds.

Estimated 1988–89 domestic trade demand has decreased from 160.0 to 159.0 million kernelweight pounds. Estimated 1988–89 export trade demand has increased from 370.0 to 383.1 million kernelweight pounds. Therefore, total estimated 1988–89 trade demand is increased from 530.0 to 542.1 million kernelweight pounds.

Carryin on July 1, 1988, has increased from 112.8 to 117.5 million kernelweight pounds. Estimated salable carryover on June 30, 1989, based on the 75 percent salable percentage in effect at that time, is expected to remain at 113.2 million kernelwight pounds.

The revised estimates include an additional desirable carryover of salable almonds on August 1, 1989, of 137.1 million kernelweight pounds. At its May 12, 1989, meeting, the Board reported that as of April 30, 1989, 190.2 million kernelweight pounds of salable almonds remained unshipped to supply domestic and export trade demand. The Board indicated that this quality was ample to supply market needs through July 31, 1989. The Board also reported that for the period August 1, 1989, through September 15, 1989 (at which time 1989 crop almonds are expected to be available) shipments are estimated to total 636.9 million pounds and that a comparable quantity of almonds would be needed to supply domestic and export trade demand for the period August 1, 1989, through September 15, 1990 (at which time 1990 crop almonds are expected to be available). However, the Board reported that the National Agricultural Statistical Service's preliminary estimate of 1989 crop production is only 450.0 million kernelweight pounds and that the Board's preliminary estimate of 1989 marketable production is only 427.5 million kernelweight pounds. Therefore, it appears that the 1989 crop would not be sufficient to meet 1989–90 crop year trade demand needs and carryover requirements for use during the early months of the 1990–91 crop year until 1990 crop almonds are available for shipment. While the carryover of an estimated 113.2 million kernelweight pounds of salable almonds on June 30, 1989, would make up part of the deficiency, the release of the estimated 137.1 million kernelweight pound reserve would be necessary to ensure that sufficient quantities of almonds are available to meet 1989–90 trade demand needs. Therefore, an increase of the salable percentage from 75 percent to 100 percent as of August 1, 1989, would be warranted.

Interested persons are invited to submit their views and comments on this proposed rule. A 10-day comment period is considered adequate because this action would relax restrictions on handlers by allowing them to ship additional almonds to salable outlets and if adopted, it should be made effective by August 1, 1989, to ensure a sufficient quantity of almonds for normal domestic and export needs and to maintain the current momentum of sales.

List of Subjects in 7 CFR Part 981

Almonds, California, and Marketing agreements and orders.

PART 981—ALMONDS GROWN IN CALIFORNIA

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 981 be amended as follows:

1. The authority citation for 7 CFR Part 981 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Subpart—Salable, Reserve, and Export Percentages

2. Section 981.236 is revised to read as follows:

§ 981.236 Salable, reserve and export percentages for almonds during the crop year beginning July 1, 1988.

The salable reserve, and export percentages, during the crop year beginning July 1, 1988, shall be 100 percent, 0 percent, and 0 percent, respectively.

Dated: June 23, 1989.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–15317 Filed 6–28–89; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 981

[FV–89–055PR]

Handling of Almonds Grown in California; Proposed Extension of Date for Satisfying Inedible Disposition Obligation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed action would temporarily change the date from July 31, 1989, to August 31, 1989, by which handlers of California almonds must satisfy 25 percent of their 1988–89 crop year inedible disposition obligations. Handlers must satisfy the remaining 75 percent of their inedible disposition obligations by the current July 31, 1989, date. This action is taken in conjunction with a recommendation by the Almond Board of California (Board), the agency responsible for local administration of the order, which would transfer a 25 percent reserve percentage in effect for the 1988–89 crop year to the salable category.

DATE: Comments must be received by July 10, 1989.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Allen Belden, Marketing Specialist, Marketing Order Administration Branch, Room 2525, South Building, F&V, AMS, USDA, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under marketing agreement and Order No. 981, both as amended (7 CFR Part 981), regulating the handling of almonds grown in California, hereinafter referred to as the "order". The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "nonmajor" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are an estimated 115 handlers of almonds subject to regulation under the marketing order for California almonds during the current season. There are approximately 7,500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California almonds may be classified as small entities.

This proposed action would give handlers of California almonds an additional month to satisfy 25 percent of their 1988–89 crop year inedible disposition obligation. Therefore, this proposed action would relax restrictions on almond handlers and would not impose any additional burden or costs on handlers.

Based on the above, the Administrator of the AMS has determined that the issuance of this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would revise, for 1989 only, § 981.442 of "Subpart—Administrative Rules and Regulations." The action is based on the unanimous recommendation of the Board and upon other available information.

Section 981.42 of the order provides that handlers are required to deliver a quantity of almond kernels equal to their inedible disposition obligation to the Board or Board-accepted crushers, feed manufacturers, or feeders. A handler's inedible disposition obligation is the percentage of inedible kernels in lots received by such handler during a crop year, as determined by the Federal-State Inspection Service, less any tolerance in effect for the crop year. Section 981.42 also provides that the Board may establish rules and regulations necessary to the administration of these provisions.

Section 981.442(a)(5) of the rules and regulations provides that each handler's inedible disposition obligation is satisfied when the almond meat content of the material delivered to accepted users equals the inedible disposition obligation, but no later than July 31 succeeding the crop year in which the obligation was incurred. This action would extend the July 31 date to August 31 for 25 percent of handler's disposition obligations incurred during the 1988–89 crop year only. Thus, handlers would have until August 31, 1989, to satisfy the final 25 percent of their 1988–89 crop year inedible disposition obligation. This corresponds to the 25 percent of the 1988–89 merchantable almond crop which handlers have held in reserve, and which was recommended to be released to the salable category effective August 1, 1989. A proposed rule to release the 25 percent reserve to the salable category is published in this issue of the **Federal Register**. Handlers still would have to satisfy the other 75 percent of their inedible disposition obligations by July 31, 1989.

While the reserve is in effect, handlers are required to withhold 25 percent of their marketable almond receipts from normal domestic and export markets. Consequently, many handlers take no action to process those almonds. Handlers customarily satisfy their inedible disposition obligations with inedible quality almonds removed during processing. Therefore, since the 25 percent reserve would not be released to the salable category until August 1, 1989, if that proposal is adopted, handlers may need additional time to process those almonds to satisfy the 25 percent of their inedible disposition obligations which corresponds to the 25 percent reserve.

Interested persons are invited to submit their views and comments on this proposed rule. A 10-day comment period is considered adequate because this action would relax restrictions on handlers by extending a July 31, 1989, deadline concerning 25 percent of their inedible disposition obligations and, if adopted, it should be finalized before July 31, 1989, so that handlers may plan their operations accordingly.

List of Subjects in 7 CFR Part 981

Almonds, California, and Marketing agreements and orders.

PART 981—ALMONDS GROWN IN CALIFORNIA

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 981 be amended as follows:

1. The authority citation for 7 CFR Part 981 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Subpart—Administrative Rules and Regulations

2. The last sentence in paragraph (a)(5) of § 981.442 is revised to read as follows:

§ 981.442 Quality control.

(a) * * *

(5) * * * Each handler's disposition obligation shall be satisfied when the almond meat content of the materials delivered to accepted users equals the disposition obligation, but no later than July 31 succeeding the crop year in which the obligation was incurred: *Provided,* That for 1988–89 crop year almonds, handlers have until August 31, 1989, to satisfy the 25 percent of their disposition obligation which corresponds to the 25 percent reserve almonds released to salable almonds.

* * * * *

Dated: June 23, 1989.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–15318 Filed 6–28–89; 8:45 am]

BILLING CODE 3410–02–M

Farmers Home Administration

7 CFR Part 1910

Receiving and Processing Applications, Securing Credit and Reports on Initial Farmer Program and Single Family Housing Loan Applications

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its regulations to change the

internal processing of applications. This action is necessary to require credit bureau reports on new and rescheduled loan applications and to screen for previous debts with FmHA, using the Current/Past Debt Inquiry and Borrower Cross-Reference Systems. The intended effect of this action is to provide each FmHA office with the necessary credit information to make a sound credit decision, thereby reducing the Government's exposure to losses.

DATE: Comments must be submitted on or before August 28, 1989.

ADDRESS: Submit written comments, in duplicate, to the Office of the Chief, Directives and Forms Management Branch, Farmers Home Administration, USDA, Room 6346, South Agriculture Building, Washington, DC 20250. Written comments made pursuant to this notice will be made available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ed Douglas, Financial Analyst, Farmers Home Administration, U.S. Department of Agriculture, Room 5507, South Agriculture Building, Washington, DC 20250. Telephone (202) 475–4425.

SUPPLEMENTARY INFORMATION: This proposed rulemaking action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined "non-major" since the annual effect on the economy is less than $100 million and there will be no major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Furthermore, there will be no significant adverse effects on competition, employment, investment, producivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Discussion of Background

Currently the ordering of credit bureau reports is at the discretion of the county supervisor. This revision will call for credit bureau reports on all initial and rescheduled Farmer Program and on all initial Single Family Housing applications, with the exception of 502 and 504 applications under $7,500 unless the county supervisor feels it necessary. In so much as Farmers Home Administration is the lender of last resorts, it is incumbent on FmHA to have sound credit management policies. What is set forth in this proposed rule is fundamental to all financial institutions that make loans. Once a lender has secured a completed loan application, the next logical step is to secure a credit report. This is generally standard operating procedure in the industry. Since it is incumbent on the lender to determine the history of both the applicant's willingness and ability to repay and and all debts incurred, a credit report is often an excellent source for this type of information. Another very valuable source of this type of information concerning an applicant's willingness and ability to pay would be prior loan experience with the lender, which this proposed rule also seeks to impose. These two changes should enhance the decision making ability of FmHA employees, thus reducing the Government's exposure to losses.

Environmental Impact Statement

This proposed rule has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of human environment and since it is in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

For reasons set forth in the Final Rule related to Notice, 7 CFR Part 3015, Subpart V (48 F.R. 29115, June 24, 1983), and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), this program is related to the following programs that are subject to intergovernment consultation with state and local officials:

10.405—Farm Labor Housing Loan and Grants
10.411—Rural Housing Site Loans (Section 523 and 524 Site Loans)
10.414—Resource Conservation and Development Loans
10.415—Rural Rental Housing Loans
10.416—Soil and Water Loans
10.418—Water and Waste Disposal System for Rural Communities
10.419—Watershed Protection and Flood Prevention Loans
10.420—Rural Self-Help Housing Technical Assistance (Section 523 Technical Assistance)
10.422—Business and Industrial Loans
10.423—Community Facilities Loans
10.427—Rural Rental Assistance Payment (Rental Assistance)

In turn, the following programs to which this program is also related, are not subject to Executive Order 12372:

10.404—Emergency Loans
10.406—Farm Operating Loans
10.407—Farm Ownership Loans
10.421—Indian Tribes and Tribal Corporation Loans
10.428—Economic Emergency Loans

List of Subjects in 7 CFR Part 1910

Applications, Credit, Loan programs—Agriculture, Loan Program—Housing and community development, Moderate income housing, Marital status discrimination, Reporting requirements and Sex discrimination.

PART 1910—GENERAL

Therefore, as proposed, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

1. The authority citation for Part 1910 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70

Subpart A—Receiving and Processing Applications

2. In § 1910.4, paragraph (a)(10) is added to read as follows:

§ 1910.4 Processing applications.

* * * * *

(a) * * *

(10) The Current/Past Debt Inquiry and Borrower Cross-Reference Inquiry System. Copies of the screens must be attached to the applicant's file.

* * * * *

3. In § 1910.5, paragraph (d) is added to read as follows:

§ 1910.5 Evaluating applications.

* * * * *

(d) *Current/Past FmHA Loan History.* Current or previous delinquent FmHA loans, as determined by reviewing the Current/Past Debt Inquiry System or the Borrower Cross-Reference Inquiry System, may be used to help determine the credit history of an applicant.

Subpart B—Credit Reports (Individual).

4. In § 1910.51 is revised to read as follows:

§ 1910.51 Purpose.

This subpart prescribes the policies and procedures for obtaining individual credit reports. Credit reports will be ordered to help determine the eligibility of applicants requesting Farmers Home Administration (FmHA) loans.

5. In § 1910.52(b) is amended by revising the last sentence to read as follows:

§ 1910.52 General.

* * * * *

(b) * * * In the meantime, follow § 1910.4(a) (1), (2), (4), (5), (6), (7), (8), (9), and (10) of Subpart A of this part to verify the applicants' qualifications and credit needs.

* * * * *

6. In § 1910.53 is amended by revising paragraph (a) to read as follows:

§ 1910.53 Policy

(a) The County Supervisor will be responsible for ordering individual credit reports. These will be obtained on initial and rescheduled Farmer Program and on all initial Single Family Housing applications, except for those situations outlined in paragraph (c) of this section, to help determine the eligibility of the loan applicant, and when it appears the credit report will not have to be updated before loan closing.

* * * * *

Date: May 4, 1989.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 89–15318 Filed 6–28–89; 8:45 am]

BILLING CODE 3410–07–M

7 CFR Part 1942

Industrial Development Grants; Correction

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule; correction.

SUMMARY: This action corrects a proposed rule published June 16, 1989, (54 FR 25588) regarding the amendment of the Agency's policies and procedures governing the administration of Industrial Development Grants by clarifying the requirements for the financing of small and emerging private business enterprises through the Industrial Development Grant Program. The intended effect of this action is to remove the "Effective Date" line and insert in its place a "Date" line and to add an "Address" line to read as follows:

DATE: Comments to be received on or before July 31, 1989.

ADDRESS: Submit written comments in duplicate to the Office of the Chief, Directives and Forms Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6349, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: Bonnie S. Justice, Telephone: (202) 382–1490.

Date: June 23, 1989.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 89–15419 Filed 6–28–89; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 610

[Docket No. 89N–0109]

General Biological Products Standards; Test for Residual Moisture

AGENCY: Food and Drug Administration; Health and Human Services.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the test for residual moisture found in the general biological products standards to reflect more recent scientific knowledge and experience for determining residual moisture levels in dried biological products.

DATES: Comments by August 28, 1989. FDA is proposing that any final rule based on this proposal be effective 30 days after the date of its publication in the **Federal Register.**

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joseph Wilczek, Center for Biological Evaluation and Research (HFB–130), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301–295–8188.

SUPPLEMENTARY INFORMATION: Under section 351 of the Public Health Service Act (42 U.S.C. 262), biological products offered for sale in interstate commerce must be licensed and meet certain standards that ensure their continued safety, purity, and potency.

Section 610.13 of the biologics regulations (21 CFR 610.13) provides requirements for assuring the purity of biological products, including, in § 610.13(a), a test for residual moisture in dried biological products. Certain biological preparations are lyophilized to maintain the integrity, potency, and other properties of the product, when freezing alone or addition of a preservative does not provide sufficient stability. Levels of residual moisture in the freeze-dried product should be low so that the stability of the product is not compromised over time by degradation.

The current requirement in § 610.13(a)(1) prescribes specific procedures for testing residual moisture in dried biological products, and in § 610.13(a)(2) requires a moisture limit of no greater than 1 percent for most biological products. Several products, such as Measles Virus Vaccine Live and Rubella Virus Vaccine Live, have higher moisture limits specified in the current regulations. For other products, product license applications have provided stability data in the form of product potency and residual moisture to establish residual moisture limits higher than 1 percent throughout the product's dating period.

The codified test procedure for determining moisture levels utilizes a vacuum and phosphorus pentoxide at room temperature for 3 or more days to remove residual moisture. This gravimetric, or loss-on-drying, method requires large sample sizes and is not capable of measuring all the water of hydration and other types of bound water in the biological product which new technological methods can detect. Although the gravimetric method will measure some loosely bound water or hydration, this method most accurately measures the surface moisture of the freeze-dried product, which is the original definition of residual moisture.

Newer methods can now serve as acceptable alternative testing to the gravimetric method for some products. For example, the coulometric Karl Fischer method for moisture determination detects smaller amounts of moisture than the gravimetric method and requires less sample for analysis. This procedure is particularly useful for analyzing the moisture content in freeze-dried products in single-dose vials that contain only a few milligrams of biological material. In addition, the Karl Fischer method takes less time to perform than the gravimetric method. There are also other newer technologies for determining moisture content, for example, gas chromatographic methods and thermogravimetric analysis which combines a mircobalance and heat to determine moisture content. The thermogravimetric method can determine moisture content in very small samples (i.e., 1 to 3 milligrams per vial).

Because § 610.13(a)(1) specifically requires use of the gravimetric method, these new technologies cannot be used for determining the residual moisture of dried biological products without the submission of comparative data under § 610.9 *Equivalent methods and*

processes. In addition, because these new technologies may detect increased levels of moisture, the 1.0 percent moisture limit may not be appropriate for some products when tested by one of the new methods.

Accordingly, in concert with newer technology and more recent scientific knowledge, FDA is proposing to amend the test for residual moisture in § 610.13 by providing more flexibility in the residual moisture test requirements. The proposed changes would delete the specific test procedures now in § 610.13(a)(1) and, in § 610.13(a)(2), remove the upper moisture limit of 1.0 percent, and the listed exceptions. Proposed § 610.13(a)(1) would require each lot of dried product to be tested for residual moisture and other volatile substances, and to meet and not exceed established limits as specified by an approved method on file in the product license application. Another proposed change in § 610.13(a)(1) would allow the Director, Center for Biologics Evaluation and Research, to permit exemptions from this testing requirement when deemed not necessary for the continued safety, purity, and potency of the product. Manufacturers of dried products may at any time request an exemption from this testing requirement. However, manufacturers of these products must continue to perform the test unless notified otherwise in writing by the Director, Center for Biologics Evaluation and Research. Proposed § 610.13(a)(2) also would require that records concerning the test for residual moisture be maintained in accordance with applicable provisions of §§ 211.188 and 211.194 of the current good manufacturing practice regulations for finished pharmaceuticals (21 CFR Part 211).

Elsewhere in this issue of the Federal Register, FDA is announcing the availability of a draft guideline to interested persons that discusses test procedures, testing results, and standards for determining residual moisture in freeze-dried products.

Environmental Impact

The agency has determined under 21 CFR 25.24(a)(10) that this proposed action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Paperwork Reduction Act

Section 610.13(a)(2) of this proposed rule contains cross-references to 21 CFR 211.188 and 21 CFR 211.194 which contain information collection requirements that were submitted for review and approval of the Director, Office of Management and Budget (OMB), as required by section 3507 of the Paperwork Reduction Act of 1980. Those requirements were approved and assigned OMB control number 0910–0139.

Economic Assessment

The agency has examined the economic consequences of this proposed rule and has determined that it does not require either a regulatory impact analysis, as specified in Executive Order 12291, or a regulatory flexibility analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96–354). The proposed rule increases the flexibility of the testing requirement for biological products in determining residual moisture content. The proposed change also permits the Director, Center for Biologics Evaluation and Research, to exempt manufacturers from this testing requirement. Therefore, the agency has determined that the proposed rule is not a major rule as defined in Executive Order 12291. Further, FDA certifies that the proposed rule will not have a significant impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act.

Comments

Interested persons may, on or before August 28, 1989, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 610

Biologics, Labeling, Reporting and recordkeeping requirements.

PART 610—GENERAL BIOLOGICAL PRODUCTS STANDARDS

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR Part 610 be amended as follows:

1. The authority citation for 21 CFR Part 610 continues to read as follows:

Authority: Secs. 201, 501, 502, 505, 510, 701, 52 Stat. 1040–1042 as amended, 1049–1051 as amended by 76 Stat. 780, 1053–1063 as amended, 1055–1056 as amended, 76 Stat. 794 as amended, and sec. 301 of Pub. L. 87–781 (21 U.S.C. 321, 351, 352, 355, 360 and note, 371), the Public Health Service Act (secs. 351 and 361, 58 Stat. 702 and 703 as amended (42 U.S.C. 262 and 264)), and the Administrative Procedure Act (secs. 4, 10, 60 Stat. 238 and 243, ad amended (5 U.S.C. 553, 702, 703, 704)); 21 CFR 5.10 and 5.11.

2. Section 610.13 is amended by revising paragraph (a), and by adding an OMB control number at the end of the section to read as follows:

§ 610.13 Purity.

* * * * *

(a) (1) *Test for residual moisture.* Each lot of dried product shall be tested for residual moisture and other volatile substances and shall meet and not exceed established limits as specified by an approved method on file in the product license application. The test for residual moisture and other volatile substances may be exempted by the Director, Center for Biologics Evaluation and Research, when deemed not necessary for the continued safety, purity, and potency of the product.

(2) *Records.* Appropriate records for residual moisture under paragraph (a)(1) of this section shall be prepared and maintained as required by the applicable provisions of §§ 211.188 and 211.194 of this chapter.

* * * * *

(Information collection requirements were approved by the Office of Management and Budget (OMB) and assigned OMB control number 0910–0139)

Dated: June 12, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–15356 Filed 6–28–89; 8:45 am]

BILLING CODE 4160–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 353

RIN 3067–AB49

Fee for Services in Support, Review and Approval of State and Local Government or Licensee Radiological Emergency Plans and Preparedness

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: FEMA proposes to establish a fee for services the agency provides in the review and approval of State and local government or licensee site-specific offsite radiological emergency plans and preparedness for commercial nuclear power plants. These services are provided pursuant to Presidential Directive and Memorandum of Understanding between FEMA and the Nuclear Regulatory Commission (NRC). FEMA's services contribute to the emergency preparedness requirements needed for the NRC's licensing purposes under the Atomic Energy Act of 1954, as amended. The proposed fees are based on site-specific costs incurred by FEMA's Radiological Emergency Preparedness (REP) Program and related site-specific litigation costs associated with the NRC licensing process as a result of FEMA's support, review and approval of offsite radiological emergency plans and preparedness. The proposed fees are applicable to the full range of situations involving emergency planning, preparedness and response, including emergency response planning by a utility.

DATE: Comments must be received August 28, 1989.

ADDRESS: Comments should be sent to Rules Docket Clerk, Office of General Counsel, Room 1840, 500 C Street SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Vernon Adler, Acting Chief, Program Development Branch, Technological Hazards Division, Washington, DC 20472 (202) 646–3348.

SUPPLEMENTARY INFORMATION:

Background

Following the 1979 accident at the Three Mile Island nuclear power plant, a Presidential Directive transferred the lead for offsite radiological emergency activities from the U.S. Nuclear Regulatory Commission (NRC) to the Federal Emergency Management Agency (FEMA). Upon assuming this responsibility, FEMA in cooperation with the NRC established the regulatory foundation for a joint FEMA/NRC Radiological Emergency Preparedness (REP) program. This foundation consists of (1) an agreed upon working framework between FEMA and the NRC reflected in two separate Memoranda of Understanding (MOU) (see 50 FR 15485, April 18, 1985, and 45 FR 82713, December 18, 1980), (2) issuance of separate regulations by both FEMA and NRC, (3) publication of joint FEMA/NRC planning guidance, and (4) development of a Federal Radiological Emergency Reponse Plan (FRERP) among FEMA, the NRC and other Federal departments and agencies.

FEMA has the lead responsibility for review and assessment of the adequacy of offsit emergency plans developed by State and local governments or licensees and their capability to implement such plans (e.g., adequacy and maintenance of procedures, training, resources, staffing levels and qualification and equipment adequacy). These assessments, findings, and determinations are used by the NRC in connection with its own licensing and regulatory responsibilities under the Atomic Energy Act of 1954, as amended. FEMA will support these assessments, findings, and determinations in the NRC licensing process and related administrative and court proceedings (See 10 CFR Part 50).

Pursuant to 44 CFR Part 350, FEMA's assessments, findings, and determinations are based upon the level of preparedness demonstrated by the plan submission and the exercising of plans by State and local governments. The plans and exercises are evaluated under joint FEMA–NRC criteria, NUREG–0654/FEMA–REP–1, Rev. 1. When State and local governments do not participate in the development of an emergency plan, the utility can submit a utility plan to the NRC (see 10 CFR Part 50). FEMA, if requested by the NRC through the MOU, can make an assessment, finding and determination on such utility developed plans and exercises, which shall be evaluated under joint FEMA–NRC criteria, NUREG–0654/FEMA–REP–1, Rev. 1, Suppl. 1. The NRC under the MOU can also request from FEMA an interim finding, which represents a "snapshot" of radiological emergency planning and preparedness at a specific point in time.

On November 16, 1988, the President issued Executive Order 12657 (53 FR 47513) "Federal Emergency Management Agency Assistance in Emergency Preparedness Planning at Commercial Nuclear Power Plants." This Order was issued to ensure that adequate offsite radiological emergency planning and preparedness is in place at commercial nuclear power plants to satisfy the emergency planning requirements of the NRC for the issuance or retention of operating licenses. The order applies to those situations where State and local governments, either individually or together, decline to or inadequately prepare radiological emergency plans to meet NRC licensing requirements or to participate adequately in the preparation, demonstration, testing exercise or use of such plans. 44 CFR 352 provides a framework pursuant to the Executive Order for FEMA to provide Federal assistance in situations where State and local governments decline to or inadequately prepare plans or participate in NRC licensing requirements.

Guidelines for Fee Development

FEMA has developed guidelines for use in establishing a fee for individually identifiable services provided to recipient licensees under the REP program. The proposed fee is based upon Title V of the Independent Offices Appropriation Act (IOAA) of 1952, 31 U.S.C. 9701, which authorizes Federal regulatory agencies to recover to the fullest extent possible costs attributable to services provided to identifiable recipients.

FEMA proposes, that each licensee be identified as the recipient and payor of fees assessed for FEMA's services rendered on a site-specific basis. Licensees have been selected because they are the ultimate beneficiaries of FEMA's services since such services assist licensees to comply with NRC regulatory requirements. While State and/or local governments may derive some benefit and assistance from FEMA's services, the licensees must comply with NRC regulatory requirements in order to obtain or maintain an operating license from the NRC. FEMA's services convey the benefit of regulatory compliance to the licensees, which are therefore the ultimate recipients of FEMA services.

The fees proposed will be for services that provide a special benefit to the recipient licensees in complying with NRC statutory and regulatory obligations. The guidelines for development of FEMA's fees are based upon the Supreme Court decisions in *National Cable Television Association, Inc.* v. *United States, et al.*, 415 U.S. 336 (1974), and *Federal Power Commission* v. *New England Power Company, et al.*, 415 U.S. 345 (1974), and further guidance provided by the United States Court of Appeals for the District of Columbia Circuit in *National Cable Television Association, Inc.* v. *Federal Communications Commission*, 554 F. 2d 1094 (1976); *National Association of Broadcasters* v. *Federal Communications Commission*, 554 F. 2d 1118 (1976); *Electronic Industries Association* v. *Federal Communications Commission*, 554 F. 2d 1109 (1976); and *Capital Cities Communication, Inc., et al.* v. *Federal Communications Commission*, 554 F. 2d 1135 (1976). In summary, the guidelines provide that:

1. Fees may be assessed to persons who are identifiable recipients who derive a benefit from services conferred by FEMA in the review and approval of site-specific offsite radiological emergency plans and preparedness. This includes all services necessary for the issuance of a FEMA assessment, finding

or determination, and all services provided by FEMA that are necessary for the recipient to comply with NRC licensing requirements.

2. All direct and indirect costs incurred by FEMA in providing identifiable services to the recipient may be recovered by fees.

3. It is not necessary to allocate costs in proportion to the degree of public or private benefit resulting from conferring a special benefit on a recipient.

4. Where the identification of the ultimate beneficiary of FEMA activity is obscure, the cost of the activity may not be included in the cost basis for the fee.

5. A fee should not exceed the sum of direct and indirect costs which FEMA incurs in furnishing the service for the recipient.

6. Calculation of FEMA costs shall be performed as accurately as is reasonable and practical based upon a professional hourly rate charged for the specific service rendered to the recipient.

Services Provided

A. General Information

FEMA is responsible for review and assessment of the adequacy of offsite emergency plans developed by State and local governments or licensees and the capability of implementation of these plans. This review and assessment function can be carried out in four different types of situations: (1) Upon formal submission of a State and local emergency plan by the Governor pursuant to 44 CFR Part 350 (Review and Approval Process of State and Local Radiological Emergency Plans and Preparedness); (2) at the request of the NRC for an interim finding by FEMA pursuant to the FEMA–NRC MOU (50 FR 15485, April 18, 1989); (3) at the request of the NRC pursuant to the FEMA–NRC MOU where a utility submits a utility-developed emergency response plan in lieu of a State and local plan; and (4) upon the certification from a utility that State or local governments have refused or failed to adequately participate in emergency planning in accordance with 44 CFR Part 352 (Commercial Nuclear Power Plants; Emergency Preparedness Planning). FEMA also may be called upon to render technical assistance to State and local governments or licensees, separate from its formal review and assessment function for the NRC. And in the event of an actual radiological emergency involving a commercial nuclear power plant, FEMA may be called upon to respond and provide support under the FRERP or any other Federal response effort.

FEMA's services in providing support, review and assessment of the adequacy of offsite emergency plans provide assurance that the public health and safety of citizens living around nuclear power plants are adequately protected from the offsite consequences of radiological accidents. The public derives a benefit from FEMA's services by securing an understanding and knowledge that a cooperative system is in place that assures radiological emergency planning and preparedness. FEMA's support, review and assessment services rendered also directly benefit the licensee by assuring its compliance with the statutory and regulatory requirements of the NRC. Any response by FEMA to a radiological emergency also would benefit licensees by providing them assistance and support in an actual emergency.

B. "350" Process

When a State seeks formal review and approval by FEMA of the State's radiological emergency plan pursuant to 44 CFR Part 350 (Review and Approval Process of State and Local Radiological Emergency Plans and Preparedness), FEMA provides the services described in 44 CFR Part 350 in regard to that request, and fees will be charged for such services to the licensee, which is the ultimate beneficiary of FEMA's services. Fees will be charged for all FEMA conducted activities related to such services on a site-specific basis, including but not limited to the following:

a. Acknowledgement of the State application and publication of notice of FEMA's receipt of State plan.

b. Plan distribution to and reviews by the Regional Assistance Committee (RAC).

c. Plan evaluation and FEMA's determination.

d. Exercise observation and evaluation, post-exercise briefing, and written evaluation.

e. Notice and conduct of public meeting.

f. Regional finding and determination of adequacy of plans and preparedness followed by review by Federal Radiological Preparedness Coordinating Committee and FEMA Headquarters resulting in final FEMA determination of adequacy of plans and preparedness.

g. Notice of determination to Governor, NRC, FEMA Region and by publication in **Federal Register**.

h. Conduct and evaluation of any remedial exercises and/or review and evaluation of any plan revisions.

The above services are designed to protect the health and safety of the public living in the vicinity of the nuclear power facility by providing reasonable assurance that appropriate protective measures can be taken offsite in the event of a radiological emergency and that such plans are capable of being implemented. Successful completion of these services benefits the licensees since the rendering of these services assists the licensees in their compliance with NRC licensing requirements.

C. Interim Findings

Where the NRC seeks from FEMA under the FEMA–NRC MOU (50 FR 15845, April 18, 1985) an interim finding, which represents a "snapshot" of radiological emergency planning and preparedness at the specific point in time for a specific nuclear power plant, FEMA proposes to assess a fee to the plant licensee for providing this service. The rendering of this service consists of making a determination whether the plans are adequate to protect the health and safety of the public living in the vicinity of the nuclear power facility by providing reasonable assurance that appropriate protective measures can be taken offsite in the event of a radiological emergency and that such plans are capable of being implemented. This service benefits the licensee since FEMA's rendering of such service assists the licensee in its compliance with NRC regulatory requirements.

D. NRC Utility Plan Submissions

Where the NRC, under the FEMA–NRC MOU (50 FR 15845, April 18, 1985), requests FEMA to review and evaluate the adequacy of an emergency response plan developed by the utility absent participation by State and/or local governments, FEMA shall provide these services, and fees will be assessed to the licensee, which is the ultimate beneficiary of such FEMA services. Fees will be charged for all FEMA conducted activities related to such services on a site-specific basis, including but not limited to the following:

a. Publication of notice of FEMA's receipt of the utility's plan.

b. Plan distribution to and review by the Regional Assistance Committee (RAC).

c. Plan evaluation and FEMA determination.

d. Exercise observation and evaluation, post-exercise briefing, and written evaluation.

e. Notice and conduct of pubic meeting.

f. Regional finding and determination of adequacy of plans and preparedness followed by review by Federal Radiological Preparedness Coordinating Committee and FEMA Headquarters resulting in final FEMA determination of adequacy of plans and preparedness.

g. Notice of determination to NRC and FEMA Region, and by publication in **Federal Register**.

h. Conduct and evaluation of any remedial exercises and/or review and evaluation of any plan revisions.

The above services are designed to protect the health and safety of the public living in the vicinity of the nuclear power facility by providing reasonable assurance that appropriate protective measures can be taken offsite in the event of a radiological emergency and that such plans are capable of being implemented. Successful completion of these services benefits and licensee since the rendering of these services assists the licensee in its compliance with NRC licensing requirements.

E. Utility Certification Submission

When a licensee seeks Federal assistance pursuant to 44 CFR Part 352 due to the decline or failure of a State or local government to adequately prepare emergency plans, FEMA shall process the licensee's certification request and make the determination whether a decline or fail situation exists. Fees will be assessed for all FEMA services rendered in making the determination. Upon the determination that a decline or fail situation does exist, fees will be assessed for any services provided or secured by FEMA which result in a benefit to the licensee, as described in 44 CFR Part 352. These services may include technical assistance, and consultation and coordination with other Federal agencies on providing Federal technical assistance, resources or facilities as required.

F. FEMA Participation in NRC Adjudicatory Proceedings

Where FEMA must participate in NRC licensing proceedings and any related court actions to support FEMA findings as a result of its support, review and approval of offsite emergency plans and preparedness, fees will be assessed to the licensee for such participation.

G. FEMA Response to a Radiological Emergency

In the event of a radiological emergency requiring a Federal response, any actions taken by FEMA to carry out such a response either under the Federal Radiological Emergency Response Plan or 44 CFR Part 352, pursuant to Executive Order 12657, will be assessed to the licensee of the site requiring a Federal response.

Fee Development

A. Radiological Emergency Plans and Preparedness

The Radiological Emergency Preparedness (REP) Program within FEMA is responsible for processing applications for the review and approval of offsite radiological emergency plans and preparedness requested directly by a State under 44 CFR Part 350 or by the NRC under the MOU (50 FR 15485, April 18, 1985) on behalf of the licensee. The REP Program also has responsibility for processing a licensee's certification when a E.O. 12857 request is made for Federal assistance and for providing such assistance if warranted under 44 CFR Part 352.

In identifying the site-specific services FEMA renders to licensees, it was determined that only those elements of the agency that provide such services benefitting licensees would be considered. Therefore, only three organizational units of the agency involved in the REP program were analyzed since they provide site-specific services. These units are the Field Operations Branch of the Technological Hazards Division of the Office of Natural and Technological Hazards/ State and Local Programs and Support Directorate, the FEMA Regional Offices/ Natural and Technological Divisions, and the Office of General Counsel. Agency units with REP responsibilities, but which are involved in developing policy guidance, planning FEMA emergency response actions, and providing generic training on a non-site-specific basis were excluded from fee calculations.

The program's professional staff time is necessary to calculate the fee for site-specific offsite radiological emergency plans and preparedness services provided by FEMA. Personnel that provide these services were identified resulting in professional staff figures, which were calculated into an average cost per work-year rate to maintain a professional employee who provides site-specific services for offset radiological emergency plans and preparedness. This rate was developed by using (1) the program's cost of personnel compensation (salaries) for professional REP and legal staff, (2) personnel benefits for the professional REP and legal staff, (3) administrative support (e.g., clerical salaries and benefits, and printing), (4) travel, (5) cost of contractor support, and (6) overhead support (e.g., rent, utilities, etc.). This rate will be applied for site-specific services provided for licensees on a professional staff hourly rate.

The following shows how the professional staff work-year rate was developed for site-specific services in support, review and approval of offsite radiological emergency plans and preparedness:

Personnel compensation:		
REP Headquarters	$444,814	(9.5 FTE)
REP Regions	1,940,460	(51.0 FTE)
Legal	101,677	(2.0 FTE)
Total	$2,486,960	

This represents Full-Time Equivalent (FTE) professional staff dedicated to performing services in Radiological Emergency Preparedness (REP) on a site-specific basis. The calculation omits professional staff used in developing generic program policy guidance, planning generic emergency response actions, and providing generic training.

Benefits:	
REP Headquarters	71,170
REP Regions	310,474
Legal	16,268
Total	$397,912

Employee benefits for professional staff that perform site-specific services are estimated at 16 percent of salary, the rate used in FEMA's FY 1990 Budget Request.

Program Administrative Support:	
Clerical (salaries & benefits)	174,751
Printing	20,000
Total	$194,751

This calculation is based on Full-Time Equivalent (FTE) clerical support to professional staff in the performance of site-specific services and related printing costs for site-specific reports, hearings and transcripts.

Travel: Total	$480,000

This is based on budgeted travel allocations to support professional staff in performing site-specific exercises, plan reviews, technical assistance, adjudicatory hearings, and site visits.

Contractor Support:	
Findings & determinations of plans and exercises	100,000
Support for licensing	110,000
Performance of plan reviews and exercises	3,286,000
Total	$3,556,000

This is based on budgeted costs related to support to professional staff in performing site-specific services.

Overhead Costs: Total	$540,666

This is based on rent, supplies, telephone, and wordprocessing costs at FEMA headquarters and analogous costs at the FEMA Regional Offices to support professional staff in performing site-specific services. These costs were identified on a FEMA agency-wide per capita basis, then extrapolated to the number of REP and legal professional staff performing site-specific services. Excluded were any costs toward personnel-related administration or services and agency management.

Total yearly costs to maintain professional staff in performing site-specific services	$7,656,311

Average cost/work-year to maintain one professional staff employee in performing site-specific services:

$7,656,311 divided by 62.5 (FTE performing site-specific services) = $122,500

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Professional staff hourly rate:

$122,800 divided by 1744 work hours=$70.24

The professional staff hourly rate is based upon the average yearly cost to maintain one professional staff employee in performing site-specific services divided by the number of productive employee hours in a work-year as determined by the Office of Management and Budget (see OMB Circular A-76).

The professional staff hourly rate will be charged when any FEMA professional staff member works on a site-specific project that contributes to a licensee's compliance with the NRC's regulatory scheme. No charge will be made for work not related to a site-specific project.

The estimated fees licensees can expect to be charged will vary because FEMA's services will be based on work performed on a site-specific basis. The amount of work-performed will vary due to complexity of the work, for example, plan review, exercises, federal coordination of resources, and Federal response. FEMA will only charge fees to licensees for site-specific services rendered by FEMA personnel and/or FEMA contractors. FEMA will not charge fees for services rendered to benefit a licensee by another Federal department or agency, consistent with authority granted under 31 U.S.C. 9701.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Director has certified that this rule will not have a significant economic impact upon a substantial number of small entities. The rule places obligations and burdens only on nuclear power plant licensees. These licensees are not "small entities" as set forth in the Regulatory Flexibility Act and do not meet the small business size standards (set forth in Small Business Administration regulations in 13 CFR Part 121.) A copy of the certification and attendant material is available for inspection and copying in the Rules Docket.

Environmental Assessment and Finding of No Significant Environmental Impact

The Director has determined under the National Environmental Policy Act of 1969 and FEMA Regulation 44 CFR Part 10, "Environmental Consideration" that this rule is not a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required. In support of this finding, an environmental assessment has been prepared which is available for inspection and copying for a fee in the Rules Docket.

Regulatory Analysis

This rule is not a major rule as the term is used in Executive Order 12291 and implementing OMB guidance. It will not have an annual effect on the economy of $100 million or more, will not result in a major increase in costs or prices to consumer, individual industries, Federal, State or local agencies, or geographic regions and will not have a significant adverse impact on competition, employment, investment, productivity, innovation or the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets.

Paper Work Reduction Act

This rule does not contain collection of information requirements and is therefore not subject ato the Paper Work Reduction Act of 1980, as amended (44 U.S.C. 3501 *et seq.*).

Federalism Executive Order

A Federalism assessment under E.O. 12612 has been prepared and a copy is available for inspection and copying for a fee at the Rules Docket.

List of Subjects in 44 CFR Part 353

Nuclear power plants and reactors, radiation protection, Intergovernmental relations and Federal assistance.

Accordingly, Subchapter E Chapter 1, Title 44, Code of Federal Regulations is proposed to be amended by adding Part 353.

PART 353—FEE FOR SERVICES IN SUPPORT, REVIEW AND APPROVAL OF STATE AND LOCAL GOVERNMENT OR LICENSEE RADIOLOGICAL EMERGENCY PLANS AND PREPAREDNESS

Sec.

353.1 Purpose.
353.2 Scope.
353.3 Definitions.
353.4 Payment of fees.
353.5 Average cost per professional staff-hour.
353.6 Schedule of services.
353.7 Failure to pay.

Authority: 31 U.S.C. 9701; E.O. 12657 and E.O. 12148.

§ 353.1 Purpose.

The regulations in this part set out fees charged for site-specific radiological emergency planning and preparedness services rendered by the Federal Emergency Management Agency, as authorized by 31 U.S.C. 9701.

§ 353.2 Scope.

The regulations in this part apply to all licensees who have applied for or have received a license from the Nuclear Regulatory Commission to operate a commercial nuclear power plant.

§ 353.3 Definitions.

As used in this part, the following terms and concepts are defined:

(a) FEMA means the Federal Emergency Management Agency.

(b) NRC means the Nuclear Regulatory Commission.

(c) Certification means the written justification by a licensee of the need for Federal compensatory assistance, as authorized in 44 CFR Part 352 and E.O. 12657.

(d) Technical assistance means services provided by FEMA to facilitate offsite radiological emergency planning and preparedness such as: provision of support for the preparation of offsite radiological emergency response plans and procedures; provision of advice and recommendations for specific aspects of preparedness such as alert and notification and emergency public information.

(e) Federal facilities and resources means personnel, property (land, buildings, vehicles, equipment) and operational capabilities controlled by the Federal government related to establishing and maintaining radiological emergency response preparedness.

(f) Licensee means the utility which has applied for or has received a license from the NRC to operate a commercial nuclear power plant.

(g) Governor means the Governor of a State or his/her designee.

(h) RAC means Regional Assistance Committee chaired by FEMA with representatives from the NRC, Environmental Protection Agency, Department of Health and Human Services, Department of Energy, Department of Transportation, Department of Agriculture, Department of Commerce and other Federal Departments and agencies as appropriate.

(i) REP means FEMA's Radiological Emergency Preparedness Program.

(j) Fiscal Year means Federal fiscal year commencing on the first day of October through the thirtieth day of September.

(k) Federal Radiological Preparedness Coordinating Committee is the national level committee chaired by FEMA with representatives from the NRC, Environmental Protection Agency, Department of Health and Human Services, Department of Energy, Department of Transportation, Department of Agriculture, Department of Commerce and other Federal Departments and agencies as appropriate.

§ 353.4 Payment of fees.

Fees for site-specific offsite radiological emergency plans and preparedness services and related site-specific legal services are based on the full cost of such services and are payable upon notification by FEMA. Each FEMA services will be billed at six-month intervals for all accumulated costs on a site-specific basis. Each bill will identify the costs related to services for each nuclear power plant site.

§ 353.5 Average cost per professional staff-hour.

(a) Services rendered will be calculated based upon the full costs for such services using a professional staff rate per hour equivalent to the sum of the average cost to the agency of maintaining a professional staff member performing site-specific services related to the Radiological Emergency Preparedness Program, including salary, benefits, administrative support, travel, contractor support, and overhead. The professional staff rate for FY 90 is $70.24 per hour. This rate will be charged when FEMA performs such services as (a) the review and approval of State and local or licensee developed offsite radiological emergency plans and preparedness pursuant to 44 CFR Part 350 and the FEMA–NRC MOU (50 FR 15484, April 18, 1985), (b) the issuance of interim findings pursuant to the FEMA–NRC MOU, (c) the processing of a certification request by a utility that a situation exists where a State or local government declines or fails to participate in emergency planning as provided for under 44 CFR Part 352, (d) the coordination and provision of federal assistance under 44 CFR Part 352, (e) the provision of all technical assistance, (f) the performance of any adjudicatory services, and (g) any response action provided by FEMA in the event of a radiological emergency.

(b) The professional staff rate for the REP Program and related legal services will be revised on a fiscal year basis using the most current fiscal data available and the revised hourly rate will be published as a notice in the **Federal Register** for each fiscal year if the rate increases or decreases.

§ 353.6 Schedule of services.

Recipients shall be charged the full cost of the service based upon the appropriate professional hourly staff rate for the services described in paragraph (a) through (g) of this section.

(a) *Formal review and approval of State plan.* When a State seeks formal review and approval by FEMA of the State's radiological emergency response plan pursuant to 44 CFR Part 350 (Review and Approval Process of State and Local Radiological Emergency Plans and Preparedness), FEMA shall provide the services as described in 44 CFR Part 350 in regard to that request and fees will be charged for such services to the licensee which is the ultimate beneficiary of FEMA's services. Fees will be charged for all FEMA activities related to such services, including but not limited to the following:

(1) Acknowledgement of the State application and publication of notice of FEMA's receipt of State plan.

(2) Plan distribution to and review by the Regional Assistance Committee (RAC).

(3) Plan evaluation and FEMA determination.

(4) Exercise observation and evaluation, post-exercise briefing, and written evaluation.

(5) Notice and conduct of public meeting.

(6) Regional finding and determination of adequacy of plans and preparedness followed by review by Federal Radiological Preparedness Coordinating Committee and FEMA Headquarters resulting in final FEMA determination of adequacy of plans and preparedness.

(7) Notice of determination to Governor, NRC, FEMA Region and by publication in **Federal Register**.

(8) Conduct and evaluation of any remedial exercises and/or review and evaluation of any plan revisions.

(b) *Interim findings.* Where the NRC seeks from FEMA under the FEMA–NRC MOU (50 FR 15485, April 18, 1985) an interim finding, which represents a "snapshot" of radiological emergency planning and preparedness at a specific point in time for a specific nuclear power plant, FEMA shall assess a fee to the licensee for providing this service. The rendering of this service consists of making a determination whether the plans are adequate to protect the health and safety of the public living in the vicinity of the nuclear power facility by providing reasonable assurance that appropriate protective measures can be taken offsite in the event of a radiological emergency and that such plans are capable of being implemented.

(c) *NRC utility plan submissions.* Where the NRC, under the FEMA–NRC MOU (50 FR 15485, April 18, 1985), requests FEMA to review and evaluate the adequacy of an emergency response plan developed by the utility absent participation by State and/or local government, FEMA shall provide these services and fees will be charged for such services to the licensee which is the ultimate beneficiary of FEMA's services. Fees will be charged for all FEMA activities related to such services, including but not limited to the following:

(1) Publication of notice of FEMA's receipt of the utility's plan.

(2) Plan distribution to and review by the Regional Assistance Committee (RAC).

(3) Plan evaluation and FEMA determination.

(4) Exercise observation and evaluation, post-exercise briefing, and written evaluation.

(5) Notice and conduct of public meeting.

(6) Regional finding and determination of adequacy of plans and preparedness followed by review by Federal Radiological Preparedness Coordinating Committee and FEMA Headquarters resulting in final FEMA determination of adequacy of plans and preparedness.

(7) Notice of determination to NRC and FEMA Region, and by publication in **Federal Register**.

(8) Conduct and evaluation of any remedial exercises and/or review and evaluation of any plan revisions.

(d) *Utility certification submission.* When a licensee seeks Federal assistance within the framework of 44 CFR Part 353 due to the decline or failure of a State or local government to adequately prepare an emergency plan, FEMA shall process the licensee's certification and make the determination whether a decline or fail situation exists. Fees will be charged for services rendered in making the determination. Upon the determination that a decline or fail situation does exist, any services provided or secured by FEMA consisting of assistance to the licensee, as described in 44 CFR Part 352, will have a fee charged for such services. These services may include technical assistance, and consultation and coordination with other Federal agencies on providing Federal technical assistance, resources, or facilities as required.

(e) *FEMA participation in NRC adjudicatory proceedings.* Where FEMA participates in NRC licensing

proceedings and any related court actions to support FEMA findings as a result of its review and approval of offsite emergency plans and preparedness, fees will be charged to the licensee for such participation.

(f) *Rendering technical assistance.* Where FEMA is requested to provide any technical assistance, such assistance will be charged to the licensee for the rendering of such service.

(g) *FEMA response to a radiological emergency.* In the event of a radiological emergency requiring a Federal response, the costs of any actions taken by FEMA to carry out such a response will be assessed to the licensee of the site requiring a Federal response, regardless of whether the response is under (a) the Federal Radiological Emergency Response Plan, (b) 44 CFR Part 352, pursuant to Executive Order 12657, or (c) any other Federal response authority.

§ 353.7 Failure to pay.

In any case where FEMA finds that a licensee has failed to pay a prescribed fee required under this part, procedures will be implemented in accordance with 44 CFR Part 11 Subpart C to effectuate collections under the Debt Collection Act of 1982 (31 U.S.C. 3711 *et seq.*).

Dated: June 22, 1989.

Grant C. Peterson,

Associate Director, State and Local Programs and Support.

[FR Doc. 89-15305 Filed 6-28-89; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR—Part 15

[General Docket 89-44]

Procedure for Measuring Electromagnetic Emissions From Digital Devices

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; order extending time to file comments.

The adoption of this Order extends the times to file comments and reply comments in the above captioned proceeding published March 20, 1989 (54 FR 11415). This action is being taken in response to a petition filed by American Telephone and Telegraph Company (AT&T), requesting extension of times for filing comments and reply comments in this proceeding.

DATES: Comments are due to be filed July 7, 1989. Reply comments are due to be filed August 7, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Richard Fabina, telephone (301) 725-1585.

List of Subjects in 47 CFR Part 15

Radio frequency devices.

Order Extending Time to File Comments

Adopted: June 7, 1989

Released: June 9, 1989

By the Chief Engineer

1. A Notice of Proposed Rule Making in the above entitled proceeding, FCC 89-53, was adopted by the Commission on February 13, 1989, and released on March 7, 1989. In an Order in this proceeding, approved by the Chief Engineer on April 10, 1989, and released on April 26, 1989, the time for filing comments and reply comments was extended to June 7, 1989, and July 7, 1989, respectively.

2. On May 30, 1989, American Telephone and Telegraph Company ("AT&T") filed with the Commission a petition requesting extension of the times for filing comments and reply comments to July 10, 1989, and September 11, 1989, respectively. In their further petition, AT&T states that it participates in national and international organizations which develop test and measurement standards. The petitioner further states that its technical experts in this area are currently involved in standards development which was planned months before this proceeding was initiated. AT&T asserts that these experts cannot review the test results from the multiple testing locations used by the petitioner, both company owned and independent contractors, and make significant comments on the proposed test procedure in the time presently allotted.

3. Because of the technical information and experience which can be added to this proceeding by AT&T and other companies, as well as our desire to have a fully developed record before us, it has been determined that a further extension of the comment and reply comment dates is appropriate. However, due to our desire to resolve this proceeding as soon as possible, we feel that extending the comment and reply comment periods as requested will prolong this proceeding unnecessarily. We believe that the concerns of all interested parties can still be resolved with a reply comment period of 30 days, instead of the 60 days requested. Accordingly, *It is ordered*, pursuant to the delegated authority contained in 47 CFR 0.241(a)(5), that the period of time for the filing of comments in the above proceeding is extended until July 7, 1989, and the period of time for filing of reply comments is extended until August 7, 1989.

Thomas P. Stanley,

Chief Engineer.

[FR Doc. 89-15322 Filed 6-28-89; 8:45 am]

BILLING CODE 6712-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 532 and 552

[GSAR Notice No. 5-272]

General Services Administration Acquisition Regulation, Authorizing Payment by Credit Card Under GSA Schedule Contracts

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Proposed rule.

SUMMARY: This notice invites comments on a proposed change to the General Services Administration Acquisition Regulation (GSAR) that would add Subpart 532.70 to establish criteria for including a contract clause that would authorize GSA schedule contractors to accept the Government commercial credit card as an alternative method of payment for orders of $25,000 or less; revise Section 552.210-79, Packing List, to add supplemental information, which must be included on the packing list or other shipping document when payment will be made by Government commercial credit card; and add Section 552.232-80 to provide the text of clause authorizing GSA schedule contractors to be paid for oral or written orders of $25,000 or less by using the Government commercial credit card.

DATE: Comments are due in writing on or before July 31, 1989.

ADDRESS: Comments should be addressed to Ms. Marjorie Ashby, Office of GSA Acquistion Policy and Regulations (VP), 18th and F Streets, NW., Room 4026, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Paul Linfield, Office of GSA Acquisition Policy and Regulations, (202) 566-1224.

SUPPLEMENTARY INFORMATION: The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this proposed rule.

Pursuant to the Regulatory Flexibility Act 5 U.S.C. 601 *et seq.*, GSA certifies that the rule will not have a significant impact on a substantial number for small entities since the acceptance of credit cards by vendors is widespread and will be voluntary under this program.

Credit cards provide a mechanism for payment to the vendor's bank account, usually within one day, instead of the normal invoicing and processing time associated with receiving payment from Federal agencies. Consequently, the

impact on vendors, including small entities is expected to be beneficial and no regulatory flexibility analysis has been prepared. However, comments from small entities are hereby solicited and will be considered in accordance with section 610 of the Regulatory Flexibility Act. The Packing List clause at GSAR 552.210-79 contains an information collection requirement that requires the approval of OMB under Section 3504(h) of the Paperwork Reduction Act. This proposed rule has been submitted to OMB for approval. Comments on the information collection requirement in GSAR 552.210-79 may be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Washington, DC 20503. The title of the collection is "48 CFR 552.210-79, Packing List." The clause requires GSA schedule contractors shipping items that will be paid for by Government commercial credit card to include on the packing list or other suitable shipping document the name and telephone number of the cardholder and the term "Credit Card." This information is needed by the cardholder to verify receipt of the order, reconcile the monthly credit card statement, and expeditiously authorize payment to the credit card issuer. The respondents are GSA schedule contractors. The estimated annual burden for this collection is 2,427 hours. This is based on an estimated average burden hour per response of 0.0167, a proposed frequency of 48.4 responses per respondent, and an estimated number of respondents of 3,000.

List of Subjects in 48 CFR Parts 532 and 552

Government procurement.

1. The authority citation for 48 CFR Parts 532 and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 532—[AMENDED]

2. Subpart 532.70 is added to read as follows:

Subpart 532.70—Authorizing Payment by Credit Card Under Schedule Contracts

532.7001 Definitions.

"Government commercial credit card," as used in this subpart, means the uniquely numbered credit card issued by the contractor under single award schedule, Federal Supply Schedule IG 615, Governmentwide Commercial Credit Card Service, to named individual Government employees to pay for official Government purchases.

532.7002 Solicitation requirements.

(a) Solicitations for schedule contracts for supplies (other than telecommunications and telephone equipment) and service must invite offerors to quote a discount for credit card orders to be applied when payments of $25,000 or less are made using the Government credit card. Payments by credit card will not be made unless an additional discount is provided in consideration for making such payments. Acceptance of the Government credit card by contractors is voluntary and the failure of an offeror to quote an additional discount will not affect consideration of the offer.

(b) The contracting officer shall identify the clearinghouse that is being used by the contractor issuing credit cards under single award schedule, Federal Supply Schedule IG 615, for Governmentwide Commercial Credit Card Service on the cover page or in section L of the solicitation. The name of the clearinghouse is provided for offerors information and use in responding to the schedule solicitation.

532.7003 Contract clause.

The contracting officer shall insert the clause at 552.232-80, Payment By Credit Card, in schedule solicitations and contracts for supplies (other than telecommunication and telephone euqipment) and services to provide for payment for Government commercial credit card as an alternative method of payment for orders under $25,000.

PART 552—[AMENDED]

3. Section 552.210-79 is revised to read as follows:

552.210-79 Packing list.

As prescribed in 510.001(j), insert the following clause:

Packing List (XXX 1989)

(a) A packing list or other suitable shipping document shall accompany each shipment and shall indicate: (1) Name and address of the consignor; (2) Name and complete address of the consignee; (3) Government order or requisition number; (4) Government bill of lading number covering the shipment (if any); and (5) Description of the material shipped, including item number, quantity, number of containers, and package number (if any).

(b) When payment will be made by Government commercial credit card, in addition to the information in (a) above, the packing list or shipping document shall include: (1) Cardholder name and telephone number and (2) the term "Credit Card."

(End of Clause)

4. Section 552.232-80 is added to read as follows:

552.232-80 Payment by credit card.

As prescribed in 532.7003, insert the following clause:

Payment by Credit Card (XXX 1989)

(a) Definitions.

"Government commercial credit card" means the uniquely numbered credit card issued by the contractor under single award schedule, Federal Supply Schedule IG 615, Governmentwide Commercial Credit Card Service, to named individual Government employees to pay for official Government purchases.

"Oral delivery order" means an order placed orally either in person or by telephone, which is paid for by Government commercial credit card.

(b) Payments of $25,000 or less for oral or written delivery orders may be made to the Contractor using the Government credit card when a discount from the contract price is provided for credit card orders in consideration for making such payments under this contract.

(c) The Contractor shall not process a transaction for payment through the credit card clearinghouse until the purchased supplies have been shipped or services performed. Unless the cardholder requests correction or replacement of a defective or faulty item in accordance with other contract requirements, the Contractor shall immediately credit a cardholder's account for items returned as defective or faulty.

(End of Clause)

Dated: June 21, 1989.

Richard H. Hopf, III,

Associate Administrator for Acquisition Policy.

[FR Doc. 89-15326 Filed 6-28-89; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

National Highway Traffic Safety Administration

49 CFR Parts 393 and 571

[BMCS Docket No. MC-110, Notice No. 84-4; NHTSA Docket No. 84-06; Notice No. 2]

Parts and Accessories Necessary for Safe Operation; Federal Motor Vehicle Safety Standards

AGENCIES: Federal Highway Administration (FHWA), National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of termination of rulemaking.

SUMMARY: This notice terminates the activity of the Federal Highway Administration and National Highway Traffic Safety Administration regarding a jointly published advanced notice of

proposed rulemaking (ANPRM) requesting comments on the appropriateness at this time of revising the Federal Motor Carrier Safety Regulations (FMCSR) and the Federal Motor Vehicle Safety Standards (FMVSS) by adding a requirement that 102-inch wide trailers have a minimum axle width of 77 inches. This requirement would provide the trailers with an axle/tire track of 102 inches. The agencies conclude that a regulatory requirement for 102 inch axle/tire tracks is unnecessary since available data show that the industry is voluntarily adopting the 102 inch axle/tire track.

FOR FURTHER INFORMATION CONTACT: NHTSA: Mr. Scott Shadle, Office of Vehicle Safety Standards, (202) 366–5273; Ms. Dorothy Nakama, Office of Chief Counsel, (202) 366–2992, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590; or FHWA: Mr. Thomas P. Kozlowski, Office of Motor Carriers, (202) 366–2981; Mr. Paul Brennan, Office of Chief Counsel, (202) 366–1394, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 8:00 a.m. to 4:00 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: On May 22, 1984, the Bureau of Motor Carrier Safety (which is now called the Office of Motor Carriers) in the Federal Highway Administration (FHWA), and the National Highway Traffic Safety Administration (NHTSA) published an ANPRM (49 FR 21551) seeking comments on the desirability of requiring the operation of 102 inch wide vehicles on a minimum axle width of 77 inches. This requirement would provide the trailers with an axle/tire track of 102 inches. In 1982, the Surface Transportation Assistance Act of 1982 (STAA) (Pub. L. 97–424, 96 Stat. 2097), amended effective April 6, 1983 by Pub. L. 98–17 (97 Stat. 59), made several significant changes to provisions governing a vehicle's width, weight, and overall length. Section 416 of the STAA requires that States allow the operation of 102-inch wide vehicles on the Interstate and other qualifying Federal-Aid Primary Systems highways. The statute set no requirements for axle width of the vehicles. Prior to the enactment of Section 416, although several states had set vehicle width maxima standards from 96 to 102 inches for vehicles operating without special permits, there was no Federal standard regulating width.

As a Federal request for comment on the desirability of mandating a minimum axle/tire track width, the ANPRM was issued in response to November 1983 rulemaking petitions by the International Brotherhood of Teamsters (IBT) which requested FHWA and NHTSA to adopt a regulation requiring new 102-inch wide trailers to have axle/tire tracks which are also 102 inches wide. "Axle/tire track width" measurements include the width of the tires which are attached to both ends of the axle whereas "axle width" includes only the actual axle itself. The axle width would change from an industry standard 71 inches–71⅛ inches (found on the standard 96-inch wide trailer) to 77 inches–77⅛ inches. The IBT requested the change to increase the operating stability of the wider trailers.

A March 1983 research study conducted by the University of Michigan on vehicle roll stability found that the rollover threshold of a 102 inch wide semitrailer having a 102 inch wide axle/tire track is greater than the threshold of the same semitrailer having a 96-inch axle/tire track. This shows that using a 102-inch trailer with the wider track provides more vehicle stability than one with a narrower track. The study estimated that the improved stability would result in a 20-percent reduction in the rollover accident rate. In addition, the study described other factors influencing vehicle stability such as tractor width, cargo type, cargo density, and loading.

In the May 1984 ANPRM, the FHWA and NHTSA sought more information on these factors from the public. The agencies asked 13 questions in the ANPRM, relating to the issues of safety, economic, and cost benefits or liabilities derived from requiring 102 inch wide trailers to have axle/tire tracks of 102 inches. They specifically asked whether the railroad industry, including trailer on flatcar operations (TOFC), would have a problem if wider axle tracks were required, and that if wider axle/tire tracks were required on trailers, whether tractors should also be required to have the wider tracks.

Various businesses and other organizations that are involved in TOFC and other intermodal transportation operations strongly opposed the IBT petition. The commenters involved in TOFC or other intermodal operations, such as Roll-on-Roll-off (RO–RO) barge transport and containerized ship transport were concerned about physical incompatibilities between some TOFC railroad flatcars, RO–RO barges, and accompanying loading facilities, and trailers equipped with axles having an axle/tire track of 102 inches, as opposed to the past standard of 96 inches.

Although most of those commenters who opposed the petition indicated that the TOFC and RO–RO operations are converting to be compatible with wider axle/tire tracks, they gave no firm indication of when such conversions would be completed. One opposing commenter, a national association of entities concerned with freight transportation services, suggested that "a four or five year phase-in period be granted to help defray the enormous costs" in redesigning transportation facilities to eliminate or reduce incompatibility problems.

No opposition was expressed from those involved in only over-the-road (OTR) trucking operations. In fact, two national organizations, representing a large portion of the OTR trucking operations in the United States, supported the IBT petition.

To gather more information about the issue, the Department of Transportation's Transportation Systems Center (TSC) conducted a study and issued a report titled, "Safety and Economic Impact Assessment of Requiring Wider Axles on 102-Inch Trailers" (January 1986). The report found that under the various regulatory schemes studied, the potential number of lives saved as a result of requiring the wider 102 inch axle/tire tracks was estimated to be from 0.2 to 0.8 per year, and the potential number of accidents prevented was estimated to be from 7 to 25 per year. The TSC estimate of 7 to 25 accidents per year prevented was consistent with the 1983 University of Michigan study which had estimated that a 102 inch trailer with a wider 102 inch wide axle/tire track would result in a 20 percent reduction in the rollover accident rate.

The major reason for the relatively small overall benefits, despite the 20 percent rollover rate reduction estimated for trailers with 102 inch, rather than 96 inch, axle/tire track widths, is the small number of vehicles that would be affected by the regulation. All available information indicates that 102 inch wide trailers used in OTR trucking operations are currently built with 102 axle/tire tracks. Benefits estimated in the TSC study would result only from building TOFC trailers in the same fashion.

The TSC report emphasized the special situation of the TOFC industry by noting that TOFC trailers with 102 inch bodies and 96 inch axle track widths have been purchased because a portion of the then current railroad flatcar fleet could not accommodate the wider axle trailers. If a regulation requiring wider axles were adopted, the TOFC industry would be forced to speed up the rate at which it converts or retires these incompatible flatcars. If all 102 inch trailers with narrow axles are eventually prohibited from the highways (assuming no "grandfathering" of existing equipment), the industry would also be forced to convert its existing trailers at an additional cost. With or without grandfathering, the TOFC industry would be prohibited from reusing narrow axle bodies as part of a wide van, narrow axle remanufactured trailer.

The TSC report further noted that the total costs of a wider axle rule to the TOFC industry could exceed $100 million unless the regulation included grandfathering of existing equipment and the enforcement date was extended so far into the future that industry would be able to make adjustments that they would have made without a regulation. Regulatory alternatives to full and immediate enforcement of the regulation could bring costs down to as low as $9 million. However, because this would entail grandfathering and extension of the enforcement date, delaying the time when additional wider axle trailers are put to use, the regulation's benefits would be reduced. The TSC report concluded that the cost of a proposed regulation appeared to be high relative to the derived benefits under any regulatory scenario, especially if existing equipment could not be grandfathered.

Since the economic impact estimates were made in the TSC study, it has become more evident that the problem of incompatibility between some portion of the trailer-on-flatcar (TOFC) railcar fleet and trailers with 102 inch axle/tire track widths is the only significant incentive to continue using trailers with 102 inch body widths and 96 inch axle/tire track widths, narrow axle trailers. It is believed that essentially all new vehicles, other than those designed for TOFC applications, will be built with 102 inch axle/tire track widths. Since the major cost impact of a requirement for 102 inch axle/tire track widths on trailers with 102 inch body widths is that related to the early retirement and/or conversion of TOFC railcars that are not compatible with trailers having 102 inch axle/tire track widths, the agency believed that it was important to update its information on the makeup of the TOFC railcar fleet generally and the fleet's compatibility with the 102 inch axle/tire track width trailers.

Therefore, the agency sought and recently received information regarding the current makeup of the TOFC railcar fleet and has placed that information in the public docket. For various economic reasons not related to the 102 inch axle/tire track width issue, the railcars not compatible with wide axle trailers are being replaced/converted at a rate greater than that assumed in the "no regulation" baseline case used in the TSC study. This should reduce the incentive for the production and use of narrow axle trailers, which would, in turn, reduce the already relatively small safety benefits of the various regulatory approaches examined by TSC.

Accordingly, the NHTSA and the FHWA have determined that it is no longer necessary to pursue this rulemaking. Because of the increasing trend toward the 102 inch axle/tire width, the agencies believe that industry itself is aware of the desirability of using that axle/tire width on 102 inch wide trailers, and see no reason to establish a Federal requirement to do something the affected parties are already doing voluntarily.

Should the ongoing industry voluntary changeover to 102 inch axle/tire track widths on 102 inch wide trailers (both TOFC and OTR) not continue in future years, it may be necessary for the NHTSA and the FHWA to reconsider the need for Federal regulation.

Issuing Date: June 23, 1989.

Jeffrey R. Miller,
Deputy Administrator, National Highway Traffic Safety Administration.

R.D. Morgan,
Executive Director, Federal Highway Administration.

[FR Doc. 89–15344 Filed 6–28–89; 8:45 am]
BILLING CODE 4910–59–M

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49 CFR Part 571

[Docket No. 89–10; Notice 1]

RIN 2127–AC59

Federal Motor Vehicle Safety Standards Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes a new type of standardized replaceable light source to be used in replaceable bulb headlamps systems on motor vehicles. Following the nomenclature presently used, the light source, which has a trade designation as 9007, would be known as "HB5". The new source would employ a base similar to that of the HB1, but would not be interchangeable with it. Like the HB1, it would have two filaments. The filaments, however, would be positioned axially, rather than transversely as with the HB1. This could allow use of a reflector with a lesser vertical height, resulting in a headlamp of lower profile, allowing lower front ends with the potential to improve fuel economy through reduction of aerodynamic drag. Headlamps with HB5 light sources would be designed to provide the photometrics presently specified in Standard No. 108.

This notice grants and implements a petition for rulemaking by Ford Motor Co.

DATES: The comment closing date for the proposal is August 14, 1989. Any request for an extension of time in which to comment must be received not later than 10 days before that date (49 CFR 553.19). The proposed effective date for the amendment is 30 days after publication of the final rule in the Federal Register.

ADDRESS: Comments should refer to the docket number of notice number of the notice and be submitted to: Docket Section, Room 5109, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590 (Docket hours are from 8 a.m. to 4 p.m.).

FOR FURTHER INFORMATION CONTACT: Jere Medlin, Office of Rulemaking, NHTSA (202–366–5276).

SUPPLEMENTARY INFORMATION: On June 2, 1983, NHTSA amended Motor Vehicle Safety Standard No. 108, *Lamps Reflective Devices, and Associated Equipment*, to allow, for the first time, the use of a replaceable bulb headlamp system (48 FR 24690). This action completed rulemaking on a petition submitted by Ford Motor Company. Subsequently, the light source was designated "HB1", to distinguish it from additional light sources that were incorporated into the standard (50 FR 19961). HB1 contains both an upper and lower beam filament, and thus far has been used in headlamp systems comprised of two lamps.

Ford has not petitioned NHTSA for rulemaking to amend Standard No. 108 to permit use of another dual filament light source. For the reasons discussed below, NHTSA grants the Ford petition, and proposes the adoption of the light source that would be known as "HB5".

The petitioner ascribes the following benefits to HB5. The two filaments are oriented axially (rather than transversely as in the HB1) for more efficient light distribution. Ford says that it achieves greater efficiency by reason of the axial filament position, thereby improving the optical relationship between the filaments and the reflector. With a typical parabolic reflector, the HB5, because of its axial filament configuration, permit more

effective use of the reflector area and allows the design of headlamps with small vertical dimensions than are practicable with the HB1 bulb. Installation of lower profile lamps, in turn, encourages the design of lower front ends with reduction in aerodynamic drag, with has the protential of improving fuel economy.

Ford also explains that the design of the base, although similar to that of the HB1, differs sufficiently that HB1 and HB5 could not be interchanged in a given headlamp body. Other features of the HB5 are that the lower beam filament is designed to operate at a maximum of 60 watts, and the upper beam filament at a maximum of 70 watts. As the agency moves toward more performance oriented lighting requirements, it believes that compliance with any of the existing photometric prescriptions is appropriate, thus, a headlamp using the HB5 would be designed to conform to the photometric specifications presently incorporated in Standard No. 108, those of its Figure 15 or figure 17, or Table 1 of SAE Standard J579 DEC84 *Sealed Beam Headlamp Units for Motor Vehicles.*

As with some other standardized replaceable light sources, the HB5 is designed to use a seal on the capsule, as suggested by Ford, to assure proper centering of the filament in order to meet the photometric requirements, and to protect the interior of the lamp housing from the environment.

Assessment of Impacts and Request for Comments

NHTSA has preliminarily considered the economic impacts of this rulemaking proposal and has made a tentative determination that it is not major within the meaning of Executive Order 12291 "Federal Regulation," or significant under Department of Transportation regulatory policies and procedures. Therefore, neither a regulatory impact analysis nor a full regulatory evaluation is required. However, a regulatory evaluation has been prepared and is in the public docket. Since use of the proposed light source is optional, the proposal would not impose additional requirements or costs but would permit manufacturers greater flexibility in the use of headlighting systems.

NHTSA has analyzed this proposal for the purposes of the National Environmental Policy Act. The proposal may have a small positive effect on the human environment since the weight and quantity of materials used in the manufacture of headlamps would be reduced.

The agency has also considered the impacts of this proposal in relation to the Regulatory Flexibility Act. I certify that this proposal would not have a significant impact upon a substantial number of small entities. Accordingly, no initial regulatory flexibility analysis has been prepared. Manufacturers of motor vehicles and headlamps, those affected by the proposal, are generally not small businesses within the meaning of the Regulatory Flexibility Act. Finally, small organizations and governmental jurisdictions would not be significantly affected since the price of new vehicles and headlamps will be minimally impacted.

This action has been analysed in accordance with the principles and criteria contained in Executive Order 12612, and it has been established that the proposed rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism assessment.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the docket section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR Part 512).

All comments received before the close of business on the closing date indicated above, will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—[AMENDED]

In consideration of the foregoing, it is proposed that 49 CFR 571.108 Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment* be amended as follows:

1. The authority citation for Part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.108 [Amended]

2. Paragraph S7.5 would be revised to read as follows:

S7.5 *Replaceable Bulb Headlamp System.* Each replaceable bulb headlamp system shall be designed to conform to the following requirements:

(a) The system shall provide only two lower beams and two upper beams and shall incorporate not more than two standardized replaceable light sources in each headlamp.

(b) The photometrics as specified in paragraph (c) through (e) of this section, using any standardized light source of the Type intended for use in such system.

(c) The test requirements of section 4.1 and 4.1.4 of SAE J1383 APR85, using the photometric requirements specified in paragraphs (d) and (e) of this section. The term "aiming plane" means "aiming reference plane," or an appropriate vertical plane defined by the manufacturer as required in paragraph S7.7.1. A ¼ degree reaim tolerance is permitted for any test point. The test points 10U–90U shall be measured from the normally exposed surface of the lens face.

(d) For a headlamp equipped with one or two Type HB1 light sources, one or two Type HB2 light sources, or one or two Type HB5 light sources, the following requirements apply: (1) There shall be no mechanism that allows adjustment of an individual light source, or, if there are two light sources, independent adjustment of each reflector. (2) The lower and upper beams of a headlamp system consisting of two lamps, each containing two light sources, shall be provided as follows:

(i) The lower beam shall be provided in one of the following ways:

(A) By the outboard light source (or upper one if arranged vertically) designed to conform to:

(*1*) The lower beam requirements of Table 1 of SAE Standard J579 DEC84, if the light sources in the headlamp system are only Type HB1 or Type HB5; or

(*2*) The lower beam requirements of Figure 17, if the light sources are Type HB2; or

(B) By both light sources in the headlamp, designed to conform to the lower beam requirements specified above for their Type.

(ii) The upper beam shall be provided in one of the following ways:

(A) By the inboard light source (or the lower one if arranged vertically) designed to conform to:

(*1*) The upper beam requirements of Table 1 of SAE Standard J579 DEC84, if the light sources in the headlamp system are only Type HB1 or Type HB5; or

(*2*) The upper bean requirements of Figure 17, if the light sources are Type HB2; or

(B) By both light sources in the headlamp, designed to conform to the lower beam photometrics specified for their Type.

(3) The lower and upper beams of a headlamp system consisting of four lamps, each containing a single light source, shall be provided as follows:

(i) The lower beam shall be provided by the outboard lamp (or the upper one if arranged vertically), designed to conform to:

(A) The lower beam requirements of Table 1 of SAE Standard J579 DEC84, if the light sources in the headlamp system are only Type HB1 or Type HB5; or

(B) The lower beam requirements of Figure 15, if the light sources are any combination other than two Type HB1s or two Type HB5s; and the lens of each such headlamp shall be marked with the letter "L".

(ii) The upper beam shall be provided by the inboard lamp (or the lower one if arranged vertically), designed to conform to:

(A) The upper beam requirements of Table 1 of SAE Standard J579 DEC84, if the light sources in the headlamp system are only Type HB1 or Type HB5; or

(B) The upper beam requirements of Figure 15, if the light sources are any combination other than two Type HB1s or two Type HB5s; and the lens of each such headlamp shall be marked with the letter "U."

(e) The following requirements apply to a headlamp system equipped with any combination of light sources except two Type HB1s or two Type HB5s:

(1) There shall be no mechanism that allows adjustment of an individual light source, or, if there are two light sources, independent adjustment of each reflector.

(2) The lower and upper beams of a headlamp system consisting of two lamps, each containing two light sources (in any combination except two Type HB1s or two Type HB5s) shall be provided only as follows:

(i) The lower beam shall be provided in one of the following ways:

(A) By the outboard light source (or the uppermost if arranged vertically) designed to conform to the lower beam requirements of Figure 17; or

(B) By both light sources, designed to conform to the lower beam requirements of Figure 17.

(ii) The upper beam shall be provided in one of the following ways:

(A) By the inboard light source (or the lower one if arranged vertically) designed to conform to the upper beam requirements of Figure 17; or

(B) By both light sources, designed to conform to the upper beam requirements of Figure 17.

(3) The lower and upper beams of a headlamp system consisting of four lamps, using any Type light source except a Type HB1 or a Type HB5, each containing only a single light source, shall be provided only as follows:

(i) The lower beam shall be produced by the outboard lamp (or upper one if arranged vertically), designed to conform to the lower beam requirements of Figure 15. The lens of each such headlamp shall be permanently marked with the letter "L."

(ii) The upper beam shall be produced by the inboard lamp (or lower one if arranged vertically), designed to conform to the upper beam requirements of Figure 15. The lens of each such headlamp shall be marked with the letter "U."

(f) Each lens reflector unit manufactured as replacement equipment shall be designed to conform to the requirements of paragraphs (d) and (e) of this section when any standardized replaceable light source appropriate for such unit is inserted in it.

(g) The lens of each replaceable bulb headlamp using any Type light source, except HB1 used singly or dually, within a headlamp system on a motor vehicle, shall permanently display the Type designation for that light source on the lens in front of each light source.

(h) The system shall be aimable in accordance with paragraph S7.7.

(i) Each headlamp shall meet the requirements of paragraphs S7.4 (k) and (l), except that the sentence in (k) to verify sealing according to S8.10 *Sealing* does not apply.

3. Paragraph S7.6 would be revised to read as follows:

S7.6 *Standardized Replaceable Light Sources.* Each standardized replaceable light source shall be designed to conform to the following requirements:

(a) A Type HB1 light source shall be designed to conform to the dimensions specified in Figure 3 and shall incorporate a silicone O-ring. Its maximum power on the lower beam shall be 50 watts, and on the upper beam, 70 watts. Its luminous flux in lumens shall be 700±15% on the lower beam and 1200±15% on the upper beam.

(b) A type HB2 light source shall be designed to conform to the dimensions specified in Figure 23. Its maximum power on the lower beam shall be 66 watts, and on the upper beam, 75 watts. Its luminous flux in lumens shall be 1000 plus or minus 10% on the lower beam, and 1650 plus or minus 10% of the upper beam.

(c) A Type HB3 light source shall be designed to conform to the dimensions specified in Figure 19. Its maximum power on the upper beam shall be 70 watts. Its luminous flux in lumens shall be 1700±12% on the upper beam.

(d) A Type HB4 light source shall be designed to conform to the dimensions specified in Figure 20. Its maximum power shall be 60 watts on the lower beam, and its luminous flux in lumens on the lower beam shall be 1000±15%.

(e) A Type HB5 light source shall be designed to conform to the dimensions specified in Figure 24. Its maximum power shall be 60 watts on the lower beam, and 70 watts on the upper beam. Its luminous flux in lumens shall be 100±12% on the lower beam, and 1350±12% on the upper beam.

(f) The Filament of a light source shall be seasoned before measurement of maximum power and luminous flux.

(g) Measurement of maximum power and luminous flux shall be made with the direct current test voltage regulated within one quarter of one percent. The test voltage shall be design voltage, 12.8v. The measurement of luminous flux shall be in accordance with the Illuminating Engineering Society of North America, LM–45; *IES Approved Method for Electrical and Photometric Measurements of General Service Incandescent Filament Lamps* (April 1980), shall be made with the black cap installed on Type HB1, Type HB2, and Type HB4, and shall be made with the electrical conductor and light source base shrouded with an opaque white

colored cover, except for the portion normally located within the interior of the lamp housing. The measurement of lumunous flux for the Types HB3 and HB4 shall be with the base covered with a white cover shown in Figures 19–1 and 20–1. The white covers are used to eliminate the likelihood of incorrect lumen measurement that will occur should the reflectance of the light source base and electrical connector be low.

(h) The capsule, lead wires and/or terminals, and seal on each Type HB1, Type HB3, Type HB4, and Type HB5 light source shall be installed in the base so as to provide an airtight seal. Such a seal exists when no air bubbles shall appear on the low pressure (connector) side after the light source has been immersed in water for one minute while inserted in a cylindrical aperture of 1.350 to 1.346 in. (34.30 to 34.2 mm) (Type HB1 and Type HB5), or 0.796±0.004 in (20.22±0.10 mm) Type HB3), or 0.875±0.004 in (22.2±0.1 mm) (Type HB4) and subjected to a minimum air pressure of 70kPa (10 P.S.I.G.) on the glass capsule side.

(i) After the force deflection test conducted in accordance with S9, the permanent deflection of the glass envelope shall not exceed 0.005 in. (0.13 mm) in the direction of the applied force.

(j) A general tolerance shall apply to Figure 3 as follows: ±0.004 in. (0.10 mm) to all linear dimensions and ±1 degree 00 minutes to all angular dimensions except for referenced dimensions and unless otherwise specified.

(k) Each standardized light source manufactured on or after [the effective date of the rule], shall be marked with the symbol DOT horizontally or vertically, which shall constitute the certification required by 15 U.S.C. 1403. Its base shall be marked with its HB Type designation, and with the manufacturer's or importer's name, or trademark registered with the U.S. Patent Office.

4. Figure 8 would be revised to add to the Table: HB5 44.50±.25 mm (1.75±0.10 in.)

5. New Figures 24–1 through 24–9 and 25 would be added as follows:

BILLING CODE 4910-59-M

FIGURE 24-1
SPECIFICATION FOR THE HB5
REPLACEABLE BULB

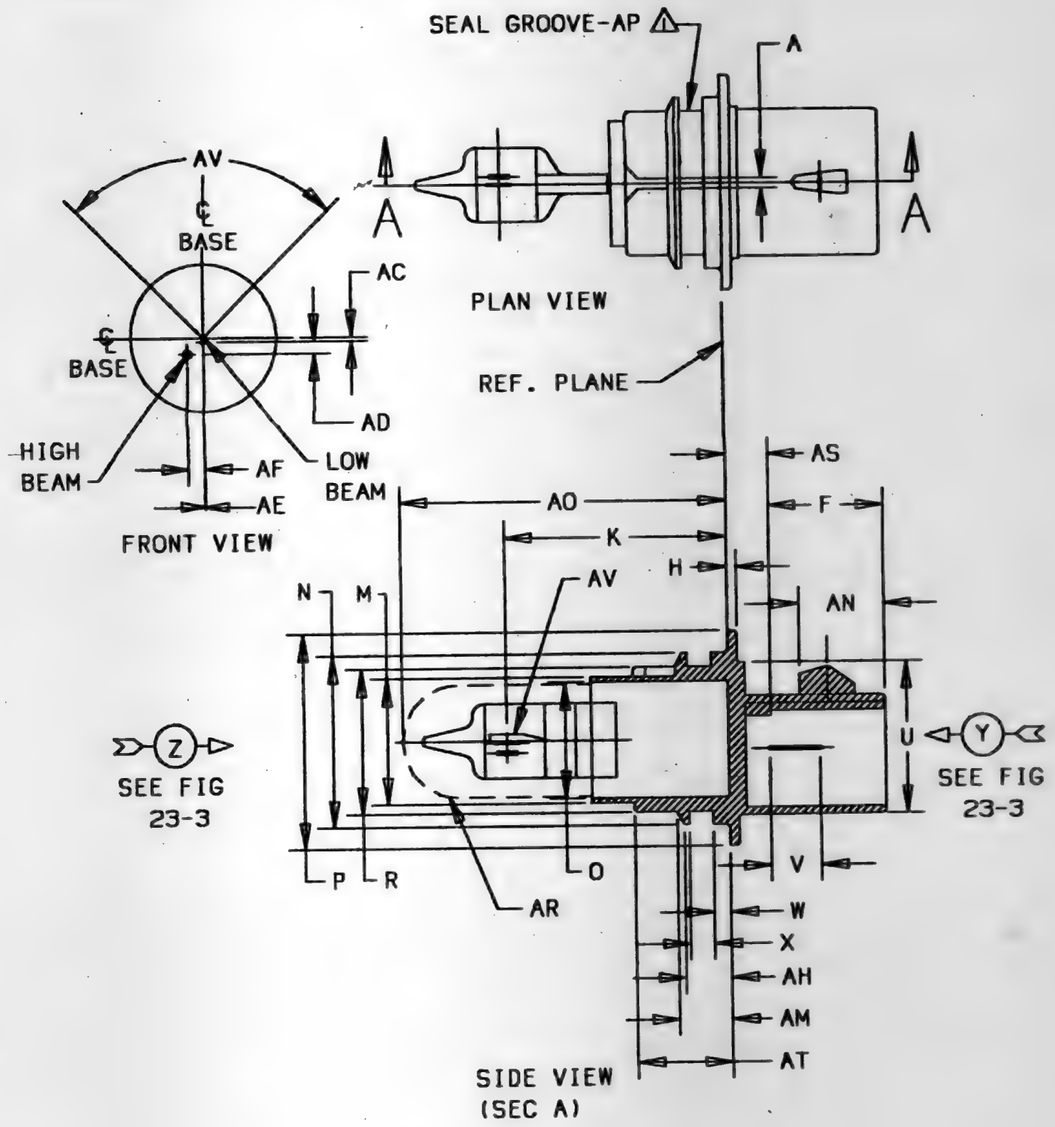


Figure 24-2

SPECIFICATION FOR THE HB5
REPLACEABLE BULB

Dimensional Specifications
Figure 23-1

Dimension	Inches	Millimeters
A	(0.085/.083) .002 Either Side CL	(2.15/2.10) .05 Either Side CL
F	.906 ± .008	23.00 ± .20
H	.079 ± .004	2.00 ± .20
K Low Beam	1.752 ± .010	44.50 ± .25
High Beam	CL High Beam to be within ± .025 of CL of low beam	CL High Beam to be within ± .64 of CL of low beam
M	.978 Max.	24.85 Max.
N	(1.335/1.331) .002 Either Side CL	(33.90/33.80) .05 Either Side CL
O	.965 Max.	24.5 Max.
P	1.673 ± .008	42.50 ± .20
R	(1.126/1.122) .002 Either Side CL	(28.60/28.50) .05 Either Side CL
U	1.181 ± .008	30.00 ± .20
V	.413 ± .020	10.50 ± .50
W	.128 ± .008	3.25 ± .20
X	.189 ± .008	4.80 ± .20
AC	.015 ± .015	0.38 ± .38
AD	.063 ± .025	1.60 ± .64
AE	.000 ± .015	.000 ± .38
AF	.063 ± .032	1.60 ± .81
AH	.356 ± .008	9.05 ± .20
AM	.415 ± .008	10.54 ± .20
AN	.673 ± .008	17.10 ± .20
AO	2.756 Max.	70.0 Max.
AP	Seal must withstand a minimum of 70 kPa (10 PSIG) when bulb-seal assembly is inserted into a cylindrical aperture of 34.3/34.2 mm (1.350/1.346 in).	
AR	Glass capsule and supports shall not exceed this envelope.	
AS	.335 ± .079	8.5 ± 2.0
AT	.665 ± .035	16.9 ± .90
AV	Support wires extending forward of the filaments shall be within ± 45° of vertical.	

⚠1 Bulb must be equipped with a seal.

FIGURE 24-3
SPECIFICATION FOR THE HB5
REPLACEABLE BULB

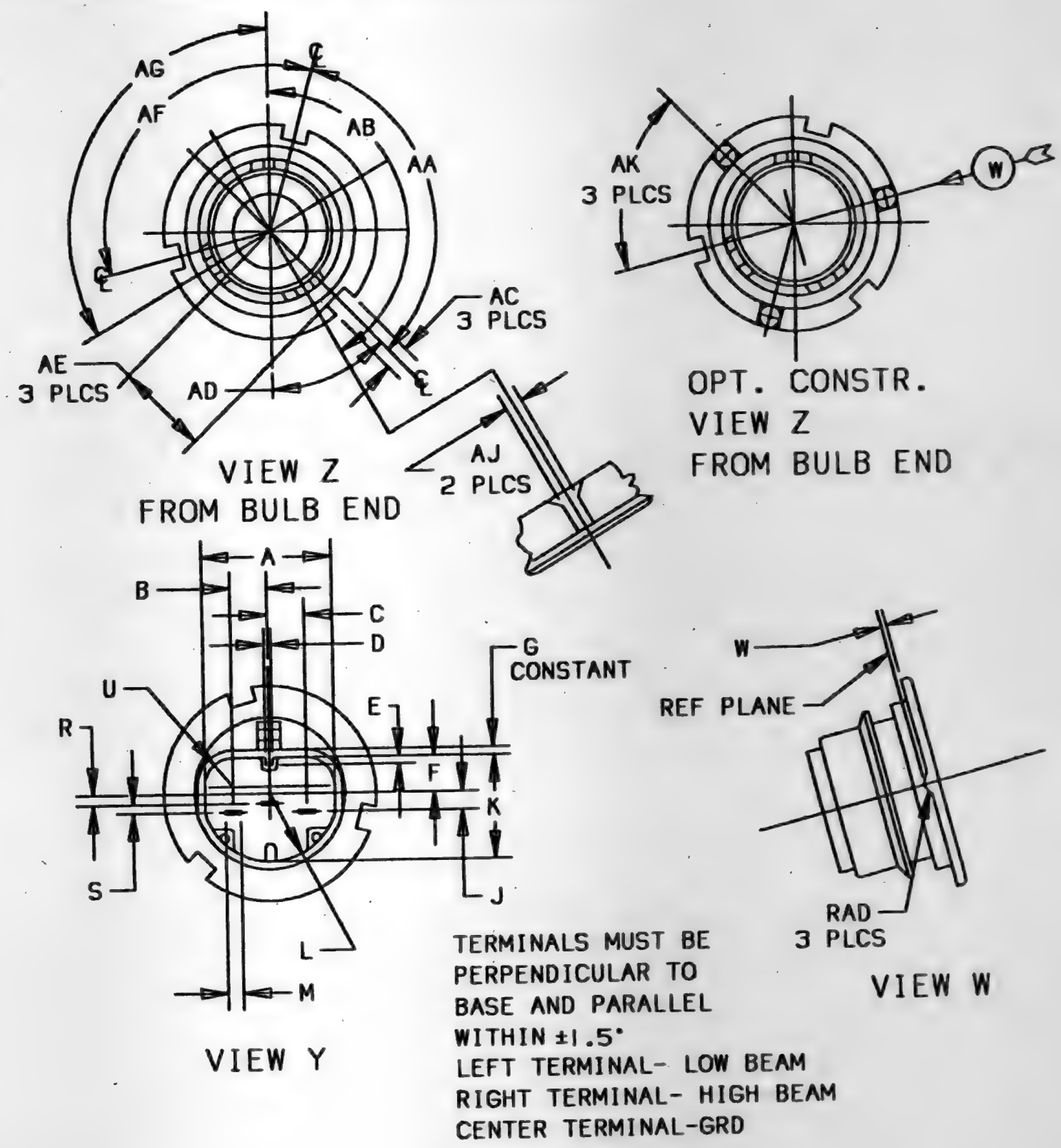


Figure 24-4

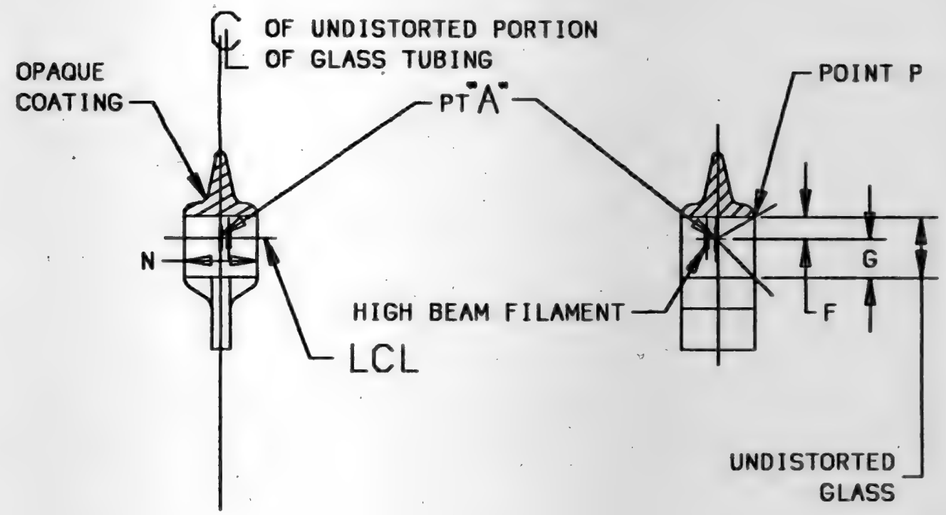
SPECIFICATION FOR THE HB5
REPLACEABLE BULB

Dimensional Specifications
Figure 23-3

Dimension	Inches	Millimeters
AA	120°	120°
AB	150°	150°
AC	.193 Min.	4.9 Min.
AD	44° 30'	44° 30'
AE	.722 ± .008	18.35 ± 0.20
AF	120°	120°
AG	120°	120°
AJ	.142 ± .008	3.6 ± .20
AK	60°	60°
A	1.028 ± .008	26.10 ± .20
B	.289 ± .010	7.35 ± .25
C	.289 ± .010	7.35 ± .25
D	.051 ± .008	1.30 ± .20
E	.055 ± .008	1.40 ± .20
F	.278 ± .006	7.05 ± .15
G	.059 ± .008	1.50 ± .20
J	.142 ± .010	3.60 ± .25
K	.811 ± .008	20.60 ± .20
L	.535 ± .008R	13.60 ± .20R
M	.118 ± .004	3.00 ± .10
R	.075 ± .010	1.90 ± .25
S	.025 ± .002	.63 ± .05
U	.222 ± .008R	5.65 ± .20R
W	.010 ± .006	.25 ± .15

TOLERANCE FOR ALL ANGULAR
DIMENSIONS ± 1°

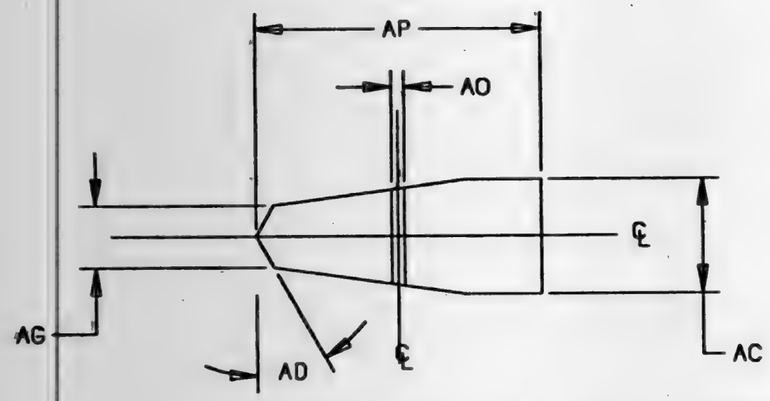
FIGURE 24-5
SPECIFICATION FOR THE HB5
REPLACEABLE BULB



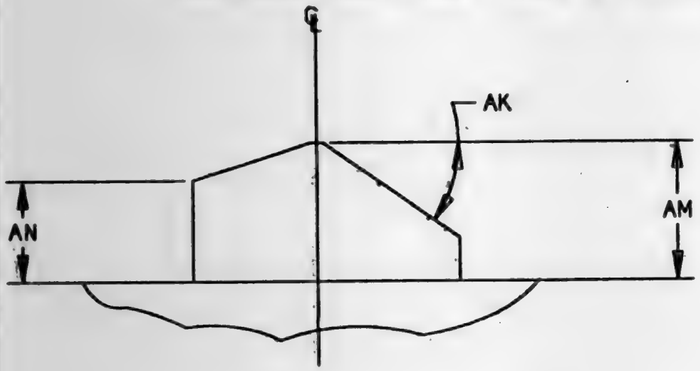
DIMENSIONAL SPECIFICATIONS

DIMENSION	
F	(N/2)TAN 38°±1.0 MM (±.039 IN)
G	(N/2)TAN 43° MINIMUM
N	ACTUAL CAPSULE DIA. (TO BE ESTABLISHED BY MANUFACTURER)
P	ENTIRE RADIUS AND DISTORTED GLASS SHALL BE COVERED TO THE PLANE PASSING THROUGH POINT "P" PERPENDICULAR TO THE GLASS CAPSULE CENTERLINE.

FIGURE 24-6
SPECIFICATION FOR THE HB5
REPLACEABLE BULB
LOCKING FEATURE



EXPLODED PLAN VIEW MUST BE FREE OF FLASH



EXPLODED SIDE VIEW

Figure 24-7

SPECIFICATION FOR THE HB5
REPLACEABLE BULB

LOCKING FEATURE

Dimensional Specifications
Figure 23-6

Dimension	Inches	Millimeters
AC	.179 ± .008	4.55 ± .20
AD	30° ± 3°	30° ± 3°
AG	.098 ± .008	2.50 ± .20
AK	35° ± 3°	35° ± 3°
AM	.217 ± .008	5.50 ± .20
AN	.157 ± .008	4.00 ± .20
AO	.02 ± .008	.5 ± .20
AP	.45 ± .008	11.4 ± .20

FIGURE 24-8
SPECIFICATION FOR THE HB5
REPLACEABLE BULB

BULB HOLDER

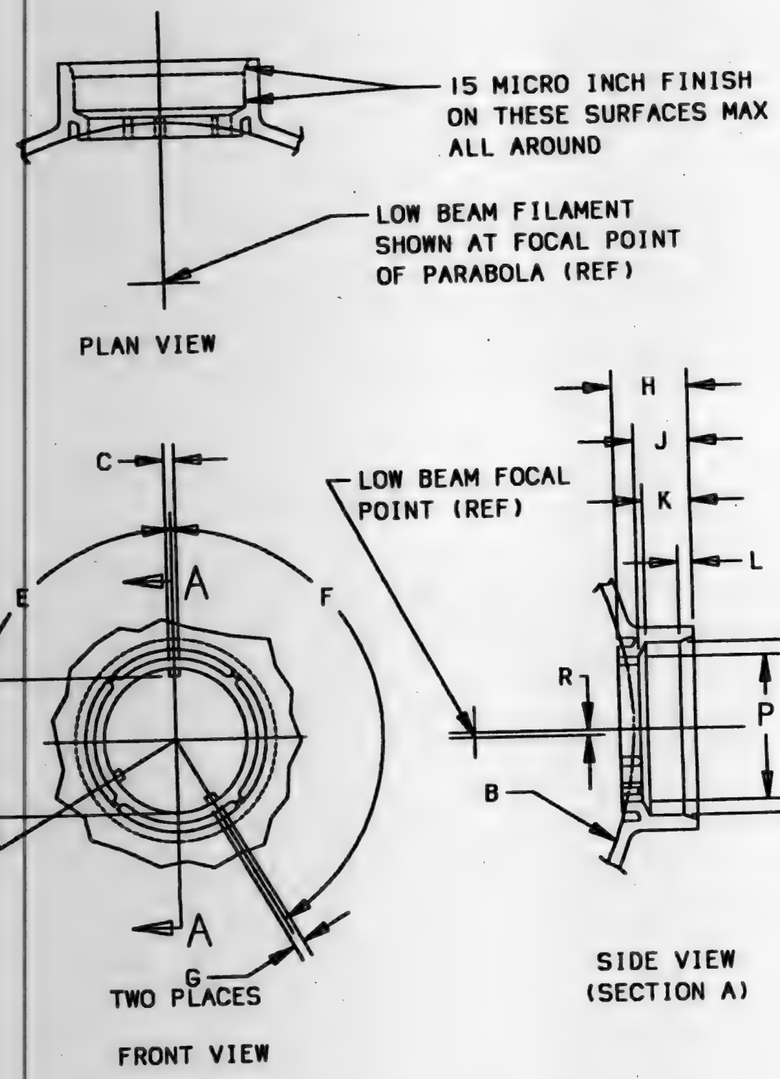


Figure 24-9

SPECIFICATION FOR THE HB5
REPLACEABLE BULB

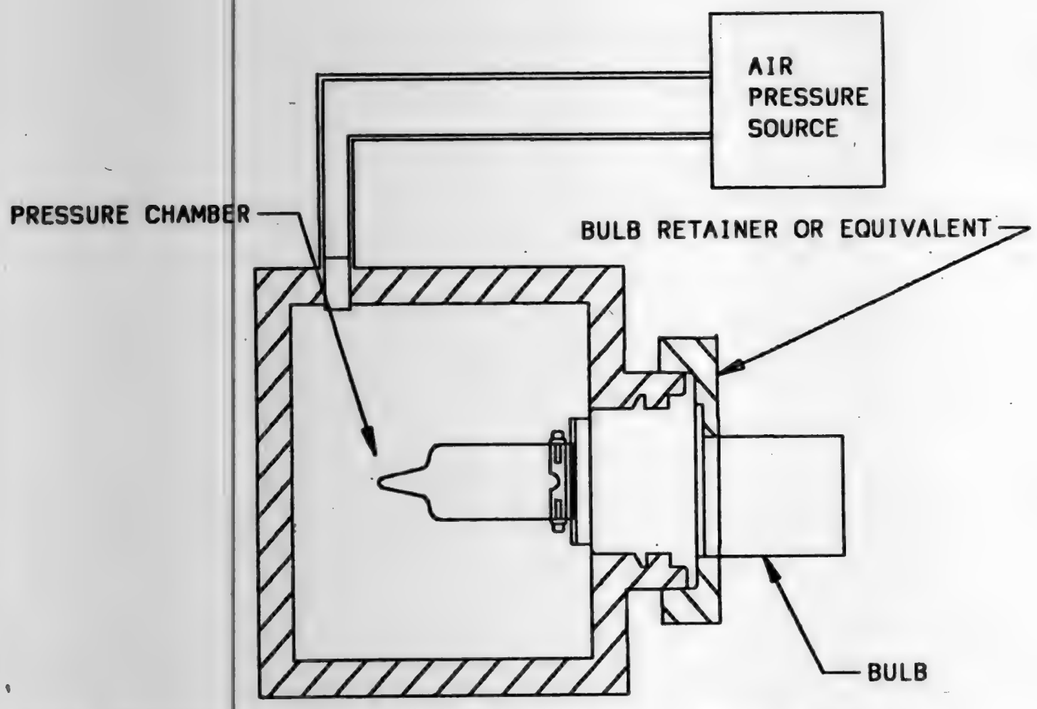
BULB HOLDER

Dimensional Specifications
Figure 23-8

Dimension	Inches	Millimeters
B	Ref Line Lamp Parabola	Ref Line Lamp Parabola
C	.079 ± .002 .002 Either Side of CL	2.00 ± .05 .05 Either Side of CL
D	1.067 ± .008	27.10 ± .20
E	120°	120°
F	150°	150°
G	.079 ± .008	2.00 ± .20
H	.596 ± .008	15.15 ± .20
J	.437 ± .008	11.10 ± .20
K	.374 ± .008	9.50 ± .20
L	.108 ± .008	2.75 ± .20
N	1.348 +.003/-.002	34.24 +.08/-.05
P	1.130 +.004/-.002 Diameter P shall be concentric to diameter N within ± .002	28.70 +.10/-.05 Diameter P shall be concentric to diameter N within ± .05
R	.015 ± 0.004	0.38 ± 0.10

TOLERANCE FOR ALL ANGULAR
DIMENSIONS ± 1°

FIGURE 25
PRESSURE CHAMBER



BULB APERTURE MANUFACTURED TO DIMENSIONS AS REFERENCED BELOW:

BULB TYPE	APERTURE DIAMETER	
	INCHES	MILLIMETERS
HB1 ,HB5	1.350/1.346	34.3/34.2
HB3	0.796 ±.004	20.22 ± 0.10
HB4	0.875± .004	22.22 ± 0.10

BILLING CODE 4910-60-C

June 22, 1989.
Barry Felrice,
Associate Administrator for Rulemaking.
[FR Doc. 89-15240 Filed 6-26-89; 9:10 am]
BILLING CODE 4910-60-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AA10

Endangered and Threatened Wildlife and Plants; Withdrawal of the Proposed Rule To List Boerhavia mathisiana as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Service is withdrawing the proposed rule (July 10, 1987; 52 FR 26033) to list the plant, *Boerhavia mathisiana* (Mathis spiderling), as an endangered species. New data reveal that the range of *Boerhavia mathisiana* extends into Tamaulipas and San Luis Potosi, Mexico, and that the species does not face the degree of threats in Mexico that it does in the United States. The Service has determined that this species is not likely to become either endangered or threatened throughout all or a significant portion of its range in the foreseeable future.

ADDRESSES: The complete file for this notice is available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service Ecological Services Field Office, 6300 Ocean Drive, Corpus Christi, Texas 78412.

FOR FURTHER INFORMATION CONTACT: Robyn Cobb, U.S. Fish and Wildlife Service, c/o Corpus Christi State University, Campus Box 338, 6300 Ocean Drive, Corpus Christi, Texas 78412 (512/888-3346 or FTS 529-3346).

SUPPLEMENTARY INFORMATION:

Background

The proposed rule to list *Boerhavia mathisiana* as an endangered species was published in the **Federal Register** on July 10, 1987 (52 FR 26033). This proposal was supported by biological information (Gardner and O'Brien 1986, Turner 1983) indicating the species was extremely limited in distribution and subject to a variety of threats. At the time of the proposal, *Boerhavia mathisiana* was known from only two localities, one in San Patricio County, Texas, and the other approximately 7 miles south in adjacent Live Oak County. Fewer than 250 plants were believed to exist. The caliche (limestone) outcrop habitat of *Boerhavia mathisiana* at these localities is threatened by destruction from gravel mining, road building, and commercial and residential development.

A newspaper notice, inviting general public comment, was published in the *Corpus Christi Caller-Times* on August 1, 1987. Comments of support were received from the Texas Natural Heritage Program and the Texas Parks and Wildlife Department. A neutral comment that provided no additional biological information was received from a private citizen.

A comment on the proposed rule by Ms. Jackie M. Poole of the Texas Natural Heritage Program indicated that specimens of *Boerhavia mathisiana* from Tamaulipas, Mexico, are present in the herbarium of the University of Texas at Austin. The specimens collected between 1947 and 1982 were mostly identified originally only as *Boerhavia*. Six specimens were annotated as *Boerhavia mathisiana* in January 1986, by Dr. Richard Spellenberg of New Mexico State University during his study of the Nyctaginaceae (four o'clock family) for the Chihuahuan Desert Flora. Two additional specimens were annotated as *Boerhavia mathisiana* by Poole during her inspection of the other material. The specimens were all collected within a 125 kilometer (78 mile) radius of Ciudad Victoria in southern Tamaulipas. These localities are approximately 500 kilometers (310 miles) disjunct from the two localities in Texas.

Because of this new information, more time was needed to locate and assess the status of *Boerhavia mathisiana* in Mexico. Therefore, the Service, under section 4(b)(6)(B)(i) of the Endangered Species Act of 1973, as amended, extended for 6 months the 1-year deadline for a final rule on *Boerhavia mathisiana* (July 14, 1988; 53 FR 26616). A newspaper notice, announcing the extension, was published in the *Corpus Christi Caller-Times* on July 26, 1988. The Texas Parks and Wildlife Department supported the decision to extend the comment period.

The Service contracted with Mr. Rafael Corral of New Mexico State University, Las Cruces, New Mexico, to investigate the status of *Boerhavia mathisiana* in Mexico (Corral 1988). Mr. Corral and a field assistant spent July 16-25, 1988, searching for *Boerhavia mathisiana* in previously known localities and other potential habitat in the states of Tamaulipas and San Luis Potosi. Five of the eight former collection sites were located but no plants were found. At one site, the present vegetation was too dense and tall to provide suitable habitat. At several sites the soil was extremely dry, so if plants were present their foliage likely had dried out, making the plants very difficult to find.

Boerhavia mathisiana was found at four new localities, three in Tamaulipas and one in San Luis Potosi. These sites represent a known Mexican range for the species extending approximately 275 kilometers (170 miles) north to south and approximately 175 kilometers (110 miles) east to west. At the new sites, *Boerhavia mathisiana* grows on thin soils over limestone, in limestone cracks, or in linestone rubble. Associated vegetation is low to tall thorn scrub typical of the Tamaulipan Thorn-Scrub Floristic Subprovince (Takhtajan 1986). *Boerhavia mathisiana* grows both under shrubs and in the open.

Boerhavia mathisiana is abundant at three of the four sites. Twelve plants were observed in about 2 hectares (4.9 acres) at the least abundant site. Approximately 1,000 plants per hectare were estimated in 4 hectares (9.9 acres) surveyed at the second site and the population extended far beyond the survey limits. Approximately 500 plants per hectare were estimated in 2-3 hectares (4.9-7.4 acres) surveyed at the third site. Plants were most abundant at the fourth site where 4-5 hectares (9.9-12.4 acres) were surveyed and approximately 9,000 plants per hectare were estimated. Sometimes plants at this site were as dense as 8-10 per square meter.

Grazing is the predominant land use for the sites. The site with approximately 500 plants per hectare is severely overgrazed, by *Boerhavia mathisiana* is growing both protected by shrubs and in the open where cattle walk and graze. The site where plants are most abundant is partly occupied by a field of henequen (*Agave fourcroydes*). Here, *Boerhavia mathisiana* occurs in the field itself, on mounds of limestone gravel removed from the field, on mounds of soil around fence posts, and in areas around the field where the soils are less disturbed.

Plants appear to be reproducing successfully at all sites. Flowering and fruiting plants were observed at all sites, as well as plants with both thick and thin root stocks, which is taken as an indication that the populations contain plants of various ages.

Finding and Withdrawal

Data collected by Corral in July 1988, indicate *Boerhavia mathisiana* is thriving in Tamaulipas and San Luis

BEST COPY AVAILABLE

Potosi, Mexico. Plants are growing in both natural and highly disturbed habitats. In addition, the populations in Mexico are not subject to the threats described for the populations in Texas. Urban development is unlikely at the rural Mexican localities and stone is abundant in the region making it unlikely the Mexican sites will be destroyed by stone or gravel mining. Further, *Boerhavia mathisiana* appears to tolerate grazing, which is the predominant land use for most of the species' rocky limestone habitat. Under these circumstances, it is apparent that *Boerhavia mathisiana* is not endangered throughout all or a significant portion of its range. Consideration was given to listing the species as threatened, but the Service determined that this action was not necessary because of the number of plants found, the lack of threats in Mexico, and the successful reproduction observed at all sites. Therefore, in compliance with section 4(b)(6)(B)(ii) of the Endangered Species Act of 1973, as amended, the Service withdraws its proposed rule of July 10, 1987 (52 FR 26033), to list *Boerhavia mathisiana* F.B. Jones (Mathis spiderling) as endangered.

References Cited

Correl, R. 1988. Status report on *Boerhavia mathisiana*. U.S. Fish and Wildlife Service, Albuquerque, New Mexico. 21 pp.

Gardner, S. and R. O'Brien. 1988. Status survey update on *Boerhavia mathisiana*. U.S. Fish and Wildlife Service, Albuquerque, New Mexico. 9 pp.

Takhtajan, A. 1986. Floristic regions of the world. University of California Press, Berkeley, California. 552 pp.

Turner, B.L. 1983. Status Survey on *Boerhavia mathisiana*. U.S. Fish and Wildlife Service, Albuquerque, New Mexico. 9 pp.

Author

The author of this notice is Charles McDonald, U.S. Fish and Wildlife Service, 3530 Pan American Highway NE, Suite D, Albuquerque, New Mexico 87107 (505/883-7877 or FTS 474-7877).

Authority: The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*; Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat 1225; Pub. L. 97-304, 96 Stat. 1411; Pub. L. 100-478, 102 Stat. 2306; Pub. L. 100-653, 102 Stat. 3825); Pub. L. 99-625, 100 Stat. 3500, unless otherwise noted.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: June 7, 1989.

Susan Recce Lamson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89-15416 Filed 6-28-89; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Findings on Petitions To List Four Puerto Rican Waterfowl and Sherman's Fox Squirrel

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition findings.

SUMMARY: The Service announces three 12-month findings for petitions to amend the Lists of Endangered and Threatened Wildlife and Plants. All three of the requested actions have been determined to be warranted but precluded by other actions to amend the lists.

DATES: The findings reported in this notice were made from December 1988 to March 1989. Comments and information may be submitted until further notice.

ADDRESSES: Information, comments, or questions regarding the petition findings for the Puerto Rican waterfowl may be submitted to the Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boqueron, Puerto Rico 00622 (telephone 809/851-7297); and for Sherman's fox squirrel to the Jacksonville Field Office, U.S. Fish and Wildlife Service, 3100 University Boulevard South, Suite 120, Jacksonville, Florida 32216 (telephone 904/791-2580, FTS 946-2580). The petitions, findings, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the addresses listed above.

FOR FURTHER INFORMATION CONTACT: Hilda Diaz-Soltero at the Caribbean Field Office, or Mr. David Wesley at the Jacksonville, Florida, Field Office (telephone numbers are listed above under "ADDRESSES").

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended in 1982 (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information, the U.S. Fish and Wildlife Service (Service) should make a finding within 12 months of the date of receipt of the petition on whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted, but precluded from immediate proposal by other pending proposals. Section 4(b)(3)(C) requires that petitions for which the action requested is found to be "warranted but precluded by other actions to amend the lists" should be treated as though resubmitted on the date of such finding, i.e., requiring a subsequent finding to be made within 12 months. Such 12-month findings are to be published promptly in the Federal Register.

A petition to add the white-cheeked pintail, *Anas bahamensis*, to the List of Endangered and Threatened Wildlife was contained in a memorandum from the refuge staff of Caribbean Islands National Wildlife Refuge. It was dated November 21, 1985, and was accepted for consideration on November 22, 1985. The petition contained documentation of a serious island-wide decline in this species in Puerto Rico since the 1950's, from a former condition of being one of the most abundant waterfowl there. Habitate losses and illegal taking were suggested as causes for the decline. The Service found at 90 days that the petition presented substantial information that the requested action may be warranted, and the finding was reported in the Federal Register for August 20, 1986 (51 FR 29671). That publication also initiated formal status review for the white-cheeked pintail. A 12-month finding for this species determined that the action requested was warranted but precluded, and was reported in the Federal Register on July 1, 1987 (52 FR 24485). A subsequent 12-month finding that the requested action was warranted but precluded by work on other species having higher priority for listing was reported in the Federal Register for October 4, 1988 (53 FR 38969).

Review of the available evidence by Service biologists continues to indicate that listing of this species is warranted, but precluded by work on species having higher priority for listing. The status of this duck is generally comparable to that of the three other waterfowl species now under petition for Federal listing from the Puerto Rican Department of Natural Resources (see next petition finding below). The action requested by this petition for the white-cheeked pintail has again been determined to be warranted according to the best information available, but precluded by work on other species having higher priority for listing.

In a petition, dated December 27, 1984, and received January 3, 1985, the Service was requested by the Department of Natural Resources of the Commonwealth of Puerto Rico to list the Puerto Rican populations of the following three species of waterfowl: Caribbean coot, *Fulica caribea*; ruddy duck, *Oxyura jamaicensis*; West Indian whistling duck, *Dendrocygna arborea*.

All three of the above waterfowl species have declined significantly in Puerto Rico, but information on their status throughout the rest of their respective ranges and the relationships between various island stocks is still sketchy. An administrative finding that the action requested may be warranted was announced in a Federal Register notice published on July 5, 1985 (50 FR 27637). Subsequent 12-month findings that the requested action was warranted but precluded by work on other species having higher priority for listing were reported in the Federal Register for August 20, 1986 (51 FR 29671), July 1, 1987 (52 FR 24485) and for October 4, 1988 (53 FR 38969). The action requested by this petition for the three Puerto Rican waterfowl species was again determined to be warranted according to the best information available, but precluded by work on other species having higher priority for listing.

In a petition dated November 21, 1987, and received by the Service on November 27, 1987, the Service was requested by Mr. Reed F. Noss to list Sherman's fox squirrel, *Sciurus niger shermani*, as a threatened species with critical habitat. The petition cited the species' category 2 listing on the most recent vertebrate notice of review (September 18, 1985, 50 FR 37458), some status work conducted by the petitioner, and other data in the possession of Florida Natural Areas Inventory in support of the action requested. Formal status review for this species was initiated by the 1982 Vertebrate Notice of Review. An administrative finding that the action requested may be warranted was made on March 1, 1988. A Federal Register notice announced the 90-day petition finding on July 19, 1988 (53 FR 31723). A 12-month finding has subsequently been made that the action requested in respect to Sherman's fox squirrel is warranted but precluded by work on other species having higher priority for listing.

Section 4(b)(3)(B)(iii) of the Act states that petitioned actions may be found to be warranted but precluded by other listing actions when it is also found that the Service is making expeditious progress in revising the lists. Expeditious progress is being made in listing endangerd and threatened species and is reported annually in the Federal Register. The most recent progress report was published on December 29, 1988 (53 FR 52746).

Author

This notice was prepared by Thomas W. Turnipseed, Division of Endangered Species, U.S. Fish and Wildlife Service, 75 Spring St., SW., Atlanta, Georgia 30303 (404/331-3583 or FTS 242-3583).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*; Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411; Pub. L. 100-478, 102 Stat. 2306; Pub. L. 100-653, 102 Stat. 3825), unless otherwise noted.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: June 12, 1989.

Susan Recce Lamson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89-15417 Filed 6-28-89; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 54, No. 124
Thursday, June 29, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

June 23, 1989.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250 (202) 447–2118.

Revision

Agricultural Stabilization and Conservation Service

Report of Acreage/and Highly Erodible Land and Wetland Conservation Certification
AD–1026, ASCS–578, ASCS-492, CCC–21
Annually
Farms; 3,003,538 responses; 1,601,38 hours; not applicable under 3504(h)
Robert Eaddy (202) 382–9883

Food and Nutrition Service

Food Stamp Redemption Certificate
Form FNS 278B
On occasion
Businesses or other for-profit; 23,184,800 responses; 463,696 hours; not applicable under 3504(h)
Jordan Benderly (703) 756–3756

Extension

Food and Nutrition Service

Emergency Food Stamp Assistance for Victims of Disasters
FNS 447
On occasion
Individuals or households; State or local governments; 4,690 responses; 874 hours; not applicable under 3504(h)
Paul Jones (703) 756–3476

Extension

Food and Nutrition Service

7 CFR Part 215—Special Milk Program for Children
None
Recordkeeping; Monthly; Quarterly; Annually
States or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 181,586 responses; 814,089 hours; not applicable under 3504(h)
Marian L. Stroud (703) 756–3598

Animal and Plant Health Inspection Service

Report of Violation, PPQ Form 518
PPQ 518
On occasion
Individuals or households; Farms: Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 600 responses; 102 hours; not applicable under 3504(h)
E. Elliot Crooks (301) 436–8271

Donald E. Hulcher,
Acting Departmental Clearance Officer.

[FR Doc. 89–15315 Filed 6–28–89; 8:45 am]
BILLING CODE 3410–01–M

Animal and Plant Health Inspection Service

[Docket No. 89–112]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit to Field Test Genetically Engineered Plant-Associated Micro-Organisms; Correction

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice; correction.

SUMMARY: We are correcting an editorial error that appeared in a notice published on May 19, 1989 (54 FR 21643–31644, Docket Number 89–075). The notice advised the public that an environmental assessment and finding of no significant impact had been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to Crop Genetics International, to allow the field testing of genetically engineered plant-associated micro-organisms in the States of Illinois, Maryland, Minnesota and Nebraska. In the last line under the heading "**FOR FURTHER INFORMATION CONTACT**," the accession number was incorrectly stated as "89–355–01." The correct accession number is "88–355–01."

FOR FURTHER INFORMATION CONTACT: Dr. Sally McCammon, Biotechnologist, Biotechnology Permit Unit, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612.

Done at Washington, DC, this 23rd day of June 1989.

James W. Glosser,
Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–15400 Filed 6–28–89; 8:45 am]
BILLING CODE 3410–34–M

Forest Service

Management Guidelines and Inventory Protocols for the Mexican Spotted Owl in the Southwestern Region

AGENCY: Forest Service, USDA.

ACTION: Notice, adoption of interim policy.

SUMMARY: Because of concern for the habitat needs of the Mexican spotted owl (*Strix occidentalis lucida*), the Regional Forester, Southwestern Region of the U.S. Forest Service, is issuing interim management guidelines to provide protection for the Mexican spotted owl, while allowing for continued, but modified, multiple-use activities within occupied Mexican spotted owl habitat, including limited timber harvest. These guidelines are being issued as interim policy in the Forest Service Manual while the Southwestern Region collects more information on this sensitive species to provide a better understanding of their habitat preferences and other characteristics of the population.

Concern about the habitat needs and population viability of the Mexican spotted owl led the Regional Forester, Southwestern Region, to classify it as a sensitive species on all National Forest System lands in Arizona and New Mexico in 1987. The U.S. Fish and Wildlife Service currently classifies the Mexican spotted owl as a Candidate II species, defined as one for which there is not sufficient information to determine whether listing as a threatened or endangered species is warranted. Unlike the northern spotted owl (*S. o. caurina*), which is found in British Columbia, Washington, Oregon and northern California, the Mexican spotted owl is not being considered for listing as a threatened species by the U.S. Fish and Wildlife Service.

These interim management guidelines provide direction for Southwestern Regional forests to use when Mexican spotted owls are found on National Forest System lands, especially when found in an area where timber sales or other ground disturbing activities exist or are proposed. The guidelines call for Mexican spotted owl territories to be identified and habitat provided whenever and wherever a Mexican spotted owl is located. The guidelines also provide standard definitions to use when determining habitat suitability and owl occupancy, and methodology to use to establish and manage a Mexican spotten owl territory.

Besides issuing the management guidelines, this interim policy also provides an inventory protocol to standardize methods used during inventory work in suitable Mexican spotted owl habitat. The protocol ensures consistency across the Region in the effort necessary to obtain complete coverage of all suitable habitat while still providing reasonable assurance all occupied Mexican spotted owl habitat is identified.

The guidelines were developed and recommended by the Mexican spotted owl Task Force, an informal group with representatives from Federal and State agencies, Mexican spotted owl researchers, and interested publics from within New Mexico and Arizona. This task force will continue to provide recommendations to the Regional Forester, Southwestern Region on Mexican spotted owl management. The task force will review the findings of current studies being conducted by the Southwestern Region and the comments received by the Region concerning these guidelines when providing recommendations to the Regional Forester during future revisions of these guidelines.

This interim policy is being published under Forest Service regulations at 36 CFR 216, Involving the Public in the Formulation of Forest Service Directives. It is being published in advance of giving the public an opportunity to comment because of the immediate need to protect occupied Mexican spotted owl habitat while gathering additional data about the Mexican spotted owl during this field season. However, the Forest Service welcomes comments on this interim policy. These comments will be used when making future revisions to the management guidelines.

DATES: This policy is effective June 30, 1989. Comments on the guidelines must be received on or before September 1, 1989.

ADDRESS: Direct comments to: David F. Jolly, Regional Forester, 2670, Southwestern Region, USDA Forest Service, 517 Gold Avenue SW, Albuquerque, New Mexico 87102.

FOR FURTHER INFORMATION CONTACT: William D. Zeedyk, Director, Wildlife and Fisheries or Keith W. Fletcher, Assistant Threatened, Endangered and Sensitive Species Program Manager (505) 842–3260 or 842–3267. Direct requests for a complete copy of the guidelines to Keith W. Fletcher at the above address.

SUPPLEMENTARY INFORMATION:

Background and Need for Guidelines

The Mexican spotted owl has been known to inhabit forested areas within Arizona since the 1870's and in New Mexico since at least the 1920's. Other than sightings and collections made during the 1920's, little information had been collected on the Mexican spotted owl until the 1980's.

Beginning in the early 1980's the Southwestern Region's interest in this species increased. Several of the National Forests in the Southwestern Region were proposing changes in timber harvest methods and increased harvesting on steeper ground with their draft Forest Plans. Because of the Mexican spotted owls' apparent preference for mixed conifer stands, which are found primarily on north-facing slopes and in canyons, and because of the lack of information available on the Mexican spotted owl, the Southwestern Region initiated and funded a study to provide radio telemetry data on Mexican spotted owl habitat use and home range size. This study was completed in 1988 in conjunction with Northern Arizona University.

To improve our information base about this species, the Southwestern Region is continuing to inventory suitable habitat and conduct studies on the Mexican spotted owl. In 1988, the Region funded inventories on over 200,000 acres of National Forest System land and began several studies to provide information on the distribution and habitat preferences of this species. The Region received increased funding in 1989 and is inventorying over 400,000 acres of National Forest System Lands during the 1989 field season. In addition, the Region is funding several radio telemetry studies and a prey base relative density study to provide more information on habitat use, home range size and the use and availability of prey species.

In January 1988, the Regional Forester formed the Mexican spotted owl Task Force. Representatives from the Forest Service, State and Federal wildlife agencies, Mexican spotted owl researchers, the environmental community and timber industry were asked to make recommendations on Mexican spotted owl habitat management within the Southwestern Region. During the course of the next one and one-half years, the task force developed a set of guidelines based on the most current research available for the species. These guidelines were developed to maintain sufficient suitable Mexican spotted owl habitat within each territory to ensure continued occupancy and reproduction by Mexican spotted owls while still allowing for continued, but modified management activities to occur in occupied habitat, including limited timber harvest.

During the course of the inventory work conducted in 1988 it became evident a consistent method of inventorying Mexican spotted owl habitat throughout the Region was

needed. The inventory protocol, being issued as an interim directive to the Forest Service Manual, is to be used during the 1989 field season. This protocal will be reviewed at the end of the field season to incorporate changes found necessary or desirable to provide a consistent, efficient and economical method of searching potential Mexican spotted owl habitat to determine the presence or absence of Mexican spotted owls prior to management activities occurring in an area.

Key Features of the Interim Guildelines

There are three categories identified in the interim management guidelines. Each category gives direction necessary to establish and manage a Mexican spotted owl territory no matter what phase of the National Environmental Policy Act of 1969 (NEPA) process the activity is at the time a Mexican spotted owl is found.

The guidelines allow for territories to overlap in all three categories where owls are found in close proximity to one another, but core areas (key nesting, feeding and roosting habitat) cannot overlap. The acreage figure for management activities which presently occur or are proposed within the area of territory overlap count toward the maximum acreage limit where activities are allowed for each territory.

The core area size for all Southwestern Region forests except the Lincoln National Forest in southeast New Mexico in 450 acres. Because of special circumstances and an apparent high density of owls in the Sacramento Mountains of the Lincoln National Forest, the core area for territories established on National Forest lands in the Sacramento Mountains is a minimum of 300 acres for all three categories.

Category I of the interim guidelines is used when a Mexican spotted owl is found in an area where no NEPA decision document has been signed for a proposed activity or where no activity has been proposed. Here, a 2,000 acre territory shall be established for known nest and roost sites or where multiple sightings occur in an area but no nest nor roost has been found. Within a 450 acre core area within the territory, no activities shall be allowed except road building and then only when the NEPA documentation and decision document indicate that no other feasible route is available. Management activities are allowed in up to 516 of the remaining 1550 (2,000–450) acres of the territory. On a case by case basis, this 516 acres where activities are allowed can be expanded to a maximum of 775 acres. The intent is to limit management activities within a territory to a maximum of 516 acreas. However, this additional 259 (775–516) acres provides some degress of flexibility when dealing with difficult situations that occur on occasion.

Category II of the interim guidelines is used when a Mexican spotted owl is found in an area where there is a signed NEPA decision document but the activity is not yet under contract. The guidelines are the same as identified for Category I activities except that the 516 acres where activities are allowed can be expanded to a maximum of 775 acres when the timber sale volume identified in the environmental and decision documents can not be met in the 516 acre area. All other aspects remain as identified in Category I. This Category also requires NEPA decision documents be supplemented, corrected, or revised as appropriate.

Category III of the interim guidelines is used when a Mexican spotted owl is found in a area where activities are under contract. Here, the guidelines call for establishing a 2,000 acre territory and 450 acre core area as in Category I. No limit is set on the acreage where activities can occur for those activities identified in the contract. Timber sale contracts with harvest units within the core area shall be modified to restrict further harvest activities from occurring within the core area.

All unharvested volume within the core area shall be replaced with volume from other stands within the sale area boundary where it is silviculturally and environmentally acceptable to do so. On occasion, situations may arise where it is economically or environmentally unfeasible to replace all unharvested volume. NEPA decision documents shall be supplemented, corrected, or revised as appropriate.

Summary of the Inventory Protocol

The objectives of the Southwestern Region's Mexican spotted owl Inventory Protocol are to: standardize the survey methods used in the Region; ensure an adequate search effort is conducted in suitable Mexican spotted owl habitat to identify general areas where territories would be placed and to locate nest and roost sites to aid in identifying core areas; provide reasonable assurance of the absence of Mexican spotted owls prior to any management activities occurring in an area; provide standard forms for collection and compilation of inventory, monitoring and suitable habitat stand characteristic data; and, to coordinate a Regional Mexican spotted owl data base.

The protocol provides standard definitions of terms used during inventory work. It provides the methods used to design survey routes, conduct the field outings, complete follow-up visits and complete all record keeping. It also requires a second year of inventory be completed for all sales selling after Fiscal Year (FY) 1990, and encourages a second year of inventory for sales selling prior to FY 1991, within funding and staffing levels.

Summary of Management Guidelines and Inventory Protocol

These management guidelines and inventory protocol, issued through an interim directive at Forest Service Manual 2676.2, are in keeping with the provisions of the National Cooperative Agreement on Mexican spotted owl Management signed December 1987 between the Forest Service and the U.S. Fish and Wildlife Service, and later signed by the Bureau of Land Management and National Park Service. Analysis by the Forest Service indicates there will be little or no reduction in the amount of timber offered for harvest or under contract during the 1 year life of this interim directive on any given Forest in the Region, nor will the guidelines preclude other activities described in the Forest Plans.

David F. Jolly,

Regional Forester.

Date: June 23, 1989.

[FR Doc. 89-15340 Filed 6-28-89; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Permits; Foreign Fishing

This document publishes for public review and comment a summary of applications received by the Secretary of State. The applications request permits for foreign vessels to fish in the Exclusive Economic Zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*). Send comments on applications to:

NOAA—National Marine Fisheries Service, Office of Fisheries Conservation and Management, Operations Support and Analysis Division, 1335 East West Highway, Silver Spring, Maryland 20910.

or, to the appropriate Regional Fishery Management Council reviewing applications, as listed below:

Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906, 617/231-0422.

John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building Room 2115, 320 South New Street, Dover, DE 19901, 302/674/2331.

Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, SC 29407, 803/571-4366.

Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, Banco De Ponce Building, Suite 1108, Hato Rey, PR 00918, 809/753-6910.

Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Blvd., Tampa, FL 33609, 813/228-2815.

Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Building, Suite 420, 2000 SW. First Avenue, Portland, OR 97201, 503/326-6352.

Clarence Pautzke, Executive Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510, 907/271-2809.

Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813, 808/523-1368.

For further information contact John D. Kelly or Robert A. Dickinson (Office of Fisheries Conservation and Management, 301-427-2337).

The Magnuson Act requires the Secretary of State to publish a notice of receipt of applications for foreign fishing permits, summarizing the contents of the applications in the Federal Register. The National Marine Fisheries Service, under the authority granted in a memorandum of understanding with the Department of State effective November 29, 1983, issues this notice on behalf of the Secretary of State.

Individual vessel applications summarized below were received from the Governments of Denmark and the Union of Soviet Socialist Republics.

Dated: June 23, 1989.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management.

Fishery codes and designations of Regional Fishery Management Councils which review applications for individual fisheries are as follows:

Code	Fishery	Regional fishery management councils
ABS	Atlantic billfish and Sharks.	New England, Mid-Atlantic, South Atlantic, Gulf of Mexico, Caribbean.
BSA	Bering Sea and Aleutian Islands Groundfish.	North Pacific.
GOA	Gulf of Alaska Groundfish.	North Pacific.
NWA	Northwest Atlantic Ocean.	New England, Mid-Atlantic.
SNA	Snail (Bering Sea)	North Pacific.
WOC	Pacific Coast Groundfish (Washington, Oregon and California).	Pacific.
PBS	Pacific billfishes, Oceanic Sharks, Wahoo, and Mahi-mahi.	Western Pacific.

Activity codes which specify categories of fishing operations applied for are as follows:

Activity code	Fishing operations
1	Catching, processing and other support
2	Processing and other support only
3	Other support only
*	Vessel supporting U.S. vessels (Joint Venture (JV))
**	Cargo transport vessels with fish finding equipment on board receive an activity code "2" to enable them to scout as well as perform other support activities
Pending	Number to be assigned at a later date

The Government of the Union of Soviet Socialist Republics submitted an application to take 5,750 metric tons of silver hake in a JV operation in the Northwest Atlantic Ocean. The designated U.S. partner for the JV is Mayflower International, Ltd.

Nation, vessel name (vessel type)	Application number	Fishery	Activity
Government of Denmark			
New Zealand Reefer (Cargo Transport).	DA-89-0011.	BSA, GOA, WOC.	3
Nippon Reefer (Cargo Transport).	DA-89-0012.	BSA, GOA, WOC.	3
Government of the Union of Soviet Socialist Republics			
Kulikovo (Cargo Transport).	LPI-89-0820.	NWA	3

[FR Doc. 89-15338 Filed 6-28-89; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Intent To Grant Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Gilead Sciences, having a place of business at 344 Lakeside Dr., Foster City, CA 94404, an exclusive license in the United States and certain foreign countries to practice the invention entitled "Method of Treatment of Hepatitis," U.S. Patent Application Serial Number 7-351,502. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Interior.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

A copy of the instant patent application may be purchased from the NTIS Sales Desk by telephoning (703) 487-4650 or by writing to the Order Department, NTIS 5285 Port Royal Road, Springfield, VA 22161.

Inquiries, comments, and other materials relating to the proposed license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Associate Director, Office of Federal Potent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 89-15365 Filed 6-28-89; 8:45 am]

BILLING CODE 3510-04-M

Intent To Grant Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Gilead Sciences, having a place of business at 344 Lakeside Dr., Foster City, CA 94404, an exclusive license in the United States and certain foreign countries to practice the invention entitled "Novel Oligonucleotides with 5' Linked Chemical Groups, Methods of Production Thereof and Use Thereof", U.S. Patent Application Serial Number 7-340,073. The patent rights in this

invention have been assigned to the United States of America, as represented by the Secretary of Interior.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

A copy of the instant patent application may be purchased from the NTIS Sales Desk by telephoning (703) 487-4650 or by writing to the Order Department, NTIS 5285 Port Royal Road, Springfield, VA 22161.

Inquiries, comments, and other materials relating to the proposed license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 89-15366 Filed 6-28-89; 8:45 am]

BILLING CODE 3510-04-M

COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts' next scheduled meeting is Wednesday, 26 July 1989 at 10:00 a.m. at the Commission's offices at 708 Jackson Place, NW., Washington, DC 20006 to discuss various projects affecting the appearance of Washington, DC, including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government. Handicapped persons should call the offices (566-1066) for details concerning access to meetings.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Mr. Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC, 22 June 1989.

Please note Commission meeting date of Wednesday, 26 July, a departure from our usual meeting date of the third Thursday of each month.

Charles H. Atherton,

Secretary.

[FR Doc. 89-15364 Filed 6-28-89; 8:45 am]

BILLING CODE 6330-01-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under Office of Management and Budget Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a revision of a currently approved information collection requirement concerning SF 294, Subcontracting Report for Individual Contracts.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Victoria Moss, Office of Federal Acquisition and Regulatory Policy, (202) 523-5166.

SUPPLEMENTARY INFORMATION: a. *Purpose:* In accordance with the Small Business Act 15 U.S.C. 631 *et seq.*) contractors receiving a contract for more than $10,000 agree to have small and small disadvantaged business concerns participate in the performance of the contract as far as practicable. Contractors receiving a contract or a modification to a contract expected to exceed $500,000 ($1,000,000 for construction) must submit a subcontracting plan that provides maximum practicable opportunites for small and small disadvantaged business concerns. Specific elements required to be included in the plan are specified in the section 8(d) of the Small Business Act and implemented in FAR 19.7.

In conjunction with these plans, contractors must submit semiannual reports of their progress on SF 294, Subcontracting Report for Individual Contracts.

A satisfactory subcontracting plan is required before a contract exceeding $500,000 ($1,000,000 for construction) can be awarded. The contracting officer must examine the information in the proposed plan to determine if the plan is in compliance with the Small Business Act and the FAR. In addition, the information is used for policy and management control purposes.

Information submitted on SF 294 is used to assess contractors' compliance with their subcontracting plans.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, 1,533; responses per respondent, 34.47; total annual responses, 52,850; preparation hours per response, 5.73; and total response burden hours, 303,108.

c. *Annual recordkeeping burden:* The annual recordkeeping burden is estimated as follows: Recordkeepers, 1,533; hours per recordkeeper, 121; and total recordkeeping burden hours, 185,556.

Obtaining Copies of Proposals: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523-4755. Please cite OMB Control No. 9000-0006, SF 294, Subcontracting Report for Individual Contracts.

Dated: June 21, 1989.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 89-15368 Filed 6-28-89; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Regulatory Program of the Corps of Engineers, Categorical Exclusions

AGENCY: Corps of Engineers, Department of the Army, DoD.

ACTION: Notice, request for comment.

SUMMARY: The nationwide permit in 33 CFR 330.5(a)(23) published by the Corps of Engineers in its rules published on November 13, 1986, provided for authorization of certain Federal activities that are categorically excluded from environmental documentation provided certain conditions are met. The U.S. Coast Guard has requested the Corps concurrence in that agency's revised categorical exclusions for the purpose of authorization under Nationwide Permit 23. The Corps of Engineers is soliciting comments on this proposal which will be used in making final decisions on this matter.

DATES: Comments may be submitted until July 31, 1989.

ADDRESS: HQ USACE, CECW-OR, Washington, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Eppard or Mr. Sam Collinson at (202) 272-1783.

SUPPLEMENTARY INFORMATION: The U.S. Coast Guard has requested that the Office of the Chief of Engineers concur

in their categorical exclusion determination for the purpose of authorizing those activities by the nationwide permit published at 33 CFR 330.5(a)(23). That permit reads: Activities, work and discharges undertaken, assisted, authorized, regulated, funded, or financed, in whole or in part, by another federal agency or department where that agency or department has determined, pursuant to the CEQ Regulation for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR Part 1500 et seq.), that the activity, work, or discharge is categorically excluded from environmental documentation because it is included within a category of actions which neither individually nor cumulatively have a significant effect on the human environment, and the Office of the Chief of Engineers (ATTN: DAEN-CWO-N) has been furnished notice of the agency's or department's application for the categorical exclusion and concurs with that determination.

That permit is subject to conditions listed at 33 CFR 330.5(b) and the management practices listed at 33 CFR 330.6. Upon concurrence by the Chief of Engineers, such activities categorically excluded by the Coast Guard, with any special conditions imposed by the Chief of Engineers, will be authorized by nationwide permit No. 23. Those categorical exclusions which may be subject to Department of the Army permit authority are listed below. Comments are invited on the appropriateness of authorizing the Coast Guard's categorically excluded activities under the subject nationwide permit and if necessary, any conditions that should be imposed to insure that the activities comply with the provisions of the Clean Water Act.

The U.S. Coast Guard's previous list of categorical exclusions were approved for authorization by nationwide permit No. 23. The revised list of categorical exclusions is similar to those previously authorized with only minor changes to those that would be authorized by nationwide permit No. 23.

List of Those U.S. Coast Guard Categorical Exclusions Which May Be Subject to Department of The Army Permit Authority

Categorical Exclusions (CE)

a. Routine repair, renovation, and maintenance actions of a limited scope as well as minor additions to existing buildings which do not result in a substantial change in functional use. Examples of these actions are equipment purchases, custodial actions, painting, minor interior or exterior repair and rehabilitation, replacement of existing structures, roads, buildings, and utilities, as well as maintenance of floating and fixed aids to navigation, etc.

b. Demolition of architectural structures not protected under the National Historic Preservation Act.

c. Actions performed as a part of Coast Guard operations to carry out statutory authority in the areas of maritime safety, protection of the environment, or military readiness (e.g., disestablishment or reduction in the size of anchorage areas where no significant comments are received, establishment of security zones, search and rescue, law and treaty enforcement, removal of oil or hazardous substances, military operations to maintain proficiency, actions to protect public safety, establishment of floating and minor fixed aids to navigation except electronic sound signals, etc.).

d. Actions to lease, acquire or construct facilities for Coast Guard personnel and activities in areas currently zoned for that purpose. Such facilities are to be consistent with or approved by the local land use authority (e.g., lease or purchase of existing buildings without changing functional use, purchase or construction of housing in an approved residential subdivision, replacement in-kind of a building or buildings where the cumulative environmental impact is determined to be minimal, etc.).

e. Outleasing of historic lighthouse properties as outlined in the Memorandum of Agreement between the U.S. Coast Guard, the Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers.

f. Maintenance dredging of small navigation projects and boat facilities using existing disposal sites or involving less than 5,000 cubic yards of uncontaminated (passes elutriate testing) dredge material to be placed in an upland site or in an area designated by the Army Corps of Engineers for dredge disposal.

g. Bridge Administration Program actions which can accurately be described as one of the following:

(1) Reconstruction or modification of an existing bridge structure on essentially the same alignment or location. This is not to include bridges with historic significance or bridges providing access to undeveloped barrier islands and beaches;

(2) Construction of pipeline bridges for transporting potable water;

(3) Construction of pedestrian, bicycle, and/or equestrian bridges and stream gaging cableways used to transport people;

(4) Temporary replacement of a bridge which commences immediately after the occurrence of a natural disaster or catastrophic failure where such bridge project is related to public safety, health and welfare;

(5) Promulgation of operating requirements or procedures for drawbridges.

(6) Identification of advance approval waterways under 33 CFR Section 115.70.

(7) Any Bridge Program action which is classified as a categorical exclusion by another Department of Transportation operating administration acting as the lead agency for such an action.

h. Review of studies, reports, analyses, etc., of legislative proposals not originating in DOT and relating to matters which are not the primary responsibility of the Coast Guard.

i. Planning and technical studies which do not contain recommendations for authorization or funding for future construction, but may recommend further study. This does not exclude consideration of environmental matters in the studies.

j. Excessing of Coast Guard real property to the General Services Administration and other Federal departments and agencies.

k. Exchanges of excess real property and interests therein for property required for project purposes. (Environmental documentation would be required for any Coast Guard actions on the newly acquired property.)

l. Administrative actions or procedural regulations and policies which clearly do not have any environmental impacts.

m. Restrictions on Categorical Exclusions. The above activities do not qualify as categorical exclusions if the Coast Guard determines they are likely to involve: (1) Significant cumulative impacts on the environment; (2) substantial controversy because of effects on the human environment; (3) impacts which are more than minimal on properties protected under section 4(f) of the DOT act or findings which would result in a Finding of Adverse Affect on properties protected under Section 106 of the National Historic Preservation Act; or (4) inconsistencies with any Federal, state, or local law or administrative determination relating to the environment.

Dated: May 22, 1989.

Wilbur T. Gregory, Jr.,

Colonel, Corps of Engineers, Executive Director of Civil Works.

[FR Doc. 89-15150 Filed 6-28-89; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before July 31, 1989.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732-3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: June 23, 1989.

Carlos U. Rice,

Director, for Office of Information Resources Management.

Office of Elementary and Secondary Education

Type of Review: Reinstatement
Title: Application for Grants under the Women's Educational Equity Act (WEEA) Program
Frequency: Annually
Affected Public: Individuals or households; State or local government
Reporting Burden:
Responses: 400
Burden Hours: 6,400
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will be used by applicants to apply for funding under the Women's Educational Equity Act (WEEA) Program. The Department uses the information to make grant awards.

Office of Elementary and Secondary Education

Type of Review: Reinstatement
Title: Application for Disaster Assistance
Frequency: On Occasion
Affected Public: State and local governments
Reporting Burden:
Responses: 250
Burden Hours: 500
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will be used by local educational agencies to apply for Federal assistance in case of certain disasters under section 7 of Pub. L. 81-874, as amended and/or section 16 of Pub. L. 81-815, as amended. The Department uses the information to make grant awards.

Office of Planning, Budget and Evaluation

Type of Review: New
Title: National Study of Title II of the Education for Economic Security Act
Frequency: One time only
Affected Public: State or local governments; non-profit institutions
Reporting Burden:
Responses: 2,364
Burden Hours: 1,546
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This study will describe how federal funds are used under the Title II program and determine the program's effectiveness. The Department will use the data to evaluate the program and provide information for subsequent reauthorizations.

Office of Postsecondary Education

Type of Review: Extension
Title: Federal Loan Transaction Statement
Frequency: Monthly
Affected Public: Businesses or other for-profit
Reporting Burden:
Responses: 920
Burden Hours: 920
Recordkeeping Burden:
Recordkeepers: 184
Burden Hours: 230
Abstract: This form is used by lenders to report changes in the status of existing borrowers of Federal Insured Student Loans (FISL). The Department uses the information to correct records on FISL loans.

[FR Doc. 89-15335 Filed 6-28-89; 8:45 am]

BILLING CODE 4000-01-M

ENVIRONMENTAL PROTECTION AGENCY

[PF-518; FRL-3610-1]

Pesticide Tolerance Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the filing of pesticide petitions proposing the establishment of tolerances and/or regulations for residues of certain pesticide chemicals in or on certain agricultural commodities.

ADDRESS: By mail, submit written comments to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (TS-767C), Attn: Product Manager (PM) named in the petition, Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

In person, contact the PM named in each petition at the following office location/telephone number:

Product manager	Office location/ telephone number	Address
Dennis Edwards (PM 12).	Rm. 202, CM #2, 703-557-2386.	1921 Jefferson Davis Hwy., Arlington, VA.
Phil Hutton (PM 17).	Rm. 207, CM #2, 703-557-2690.	Do.
Lois Rossi (PM 21).	Rm. 227, CM #2, 703-557-1900.	Do.
Lawrence Schnaubelt (PM 23).	Rm. 237, CM #2, 703-557-1830.	Do.
Robert Taylor (PM 25).	Rm. 237, CM #2 703-557-1800.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide (PP) and/or food and feed additive (FAP) petitions as follows proposing the establishment and/or amendment of tolerances or regulations for residues of certain pesticide chemicals in or on certain agricultural commodities.

Initial Filings

1. *PP 9F3755.* BASF Corp., Chemicals Division, 100 Cherry Hill Rd., Parsippany, NJ 07054, proposes to amend 40 CFR Part 180 by establishing a regulation to permit the residues of the herbicide 3,7-dichloro-8-quinolinecarboxylic acid in or on rice at 5.0 ppm, rice straw at 12.0 ppm, milk at 0.05 ppm, fat, meat and meat byproduct of cattle, goats, hogs, horses, and sheep at 0.05 ppm, fat and meat of poultry at 0.05 ppm, meat byproduct of poultry at 0.10 ppm, and eggs at 0.05 ppm. The proposed analytical method for determining residues is liquid gas chromatography. (PM 25)

2. *PP 9F3758.* Ciba-Geigy Corp., Agricultural Division, P.O. Box 18300, Greensboro, NC 27419, proposes to amend 40 CFR 180.434 by establishing a regulation to permit the residues of the fungicide 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1H-1,2,4-triazole and its metabolities determined as 2,4-dichlorobenzoic acid and expressed as parent compound equivalents in or on wild rice at 0.50 ppm and stone fruit at 1.0 ppm. The proposed analytical method for determining residues is gas chromatography. (PM 21)

3. *PP 9F3761.* Monsanto Co., 1101 17th St., NW., Washington, DC 20036, proposes to amend 40 CFR 180.364 by establishing a regulation to reexpress the glyphosate tolerances as written in 40 CFR 180.364 to include the application of the monoammonium salt of glyphosate and its metabolite aminomethyl-phosphonic acid. The proposed analytical method for determining residues is high-performance liquid chromatography. (PM 25)

4. *PP 9F3762.* BASF Corp., Chemicals Division, 100 Cherry Hill Rd., Parsippany, NJ 07054, proposes to amend 40 CFR 180.380 by establishing a regulation to permit the residues of the fungicide 3-(3,5-dichloro-phenyl)-5-ethenyl-5-methyl-2,4 oxazolidinedione and its metabolities containing the 3,5-dichloroaniline moiety in or on succulent beans (seed and pod) at 3.0 ppm. The proposed analytical method for determining residues is gas chromatography. (PM 21)

5. *PP 9F3763.* E. I. DuPont DeNemours & Co., Inc., Agricultural Products Department, Barley Mill Plaza, Walker's Mill 6-174, Wilmington, DE 19880-6260, proposes to amend 40 CFR Part 180 by establishing a regulation to permit the residues of the herbicide 2-[[(4,6-dimethoxypyrimidin-2-yl) aminocarbonyl]-aminosulfonyl]-N,N-dimethyl-3-pyridinecarboxamide monohydrate (DPX-V9360) in or on field corn (grain, forage, fodder, and silage) at 0.1 ppm. The proposed analytical method for determining residues is gas chromatography. (PM 25)

6. *PP 9F3764.* Dow Chemical U.S.A., P.O. Box 1706, Midland, MI 48641-1706, proposes to amend 40 CFR Part 180 by establishing a regulation to permit the residues of the herbicide haloxyfopmethyl, 2-[4-[(3-chloro-5-(trifluoromethyl)-2-pyridinyl)oxy)phenoxy]propanoate, and its metabolite haloxyfop, 2-[4-[(3-chloro-5-(trifluoromethyl)-pyridinyl)oxy)phenoxy) propanoic acid, free and conjugated, all expressed as haloxyfop in or on apples at 0.05 ppm. The proposed analytical method for determining residues is gas chromatography. (PM 23)

7. *PP 9F3768.* Sandoz Crop Protection Corp., 1300 East Touhy Ave., Des Plaines, IL 60018, proposes to amend 40 CFR Part 180 by establishing a regulation to permit the residues of the herbicide norflurazon, 4-chloro-5-(methylamino)-2-(alpha, alpha, alpha-trifluoro-m-tolyl-3-(2H)-pyridazinone, and its desmethyl metabolite, 4-chloro-5-(amino)-2-(alpha, alpha, alpha-trifluoro-m-tolyl)-3-(2H)-pyridazinone, in or on alfalfa forage at 3.0 ppm, alfalfa hay at 5.0 ppm, alfalfa seed at 0.1 ppm, and asparagus at 0.05 ppm. The proposed analytical method for determining residues is gas chromatography. (PM 23)

8. *FAP 9H5573.* Zoecon Corp., A Sandoz Co., 12200 Denton Drive, Dallas, TX 75234, proposes to amend 40 CFR Part 185 by establishing a regulation to permit the residues of the insecticide hydroprene in food commodities exposed during treatment of food-handling establishments. (PM 17)

9. *FAP 9H5583.* BASF Corp., Chemicals Division, 100 Cherry Hill Rd., Parsippany, NJ 07054, proposes to amend 40 CFR Part 186 by establishing a regulation to permit the residues of the herbicide 3,7-dichloro-8-quinoline-carboxylic acid in or on rice bran at 15.0 ppm. The proposed analytical method for determining residues is liquid gas chromatography. (PM 25)

10. *FAP 9H5584.* E.I. DuPont DeNemours & Co., Inc., Agricultural Products Department, Barley Mill Plaza, Walker's Mill 6-174, Wilmington, DE 19880-6260, proposes to amend 40 CFR 185.4100 by establishing a regulation to permit the residues of the insecticide methomyl (S-methyl-N-[(methyl-carbomyl)oxy]thioacetimidate) in or on dried hops at 12.0 ppm. The proposed analytical method for determining residues is gas chromatography. (PM 12)

11. *FAP 9H5585.* BASF Corp., Chemicals Division, 100 Cherry Hill Rd., Parsippany, NJ 07054, proposes to amend 40 CFR 186.1850 by establishing a regulation to permit the residues of the fungicide 3-(3,5-dichloro-phenyl)-5-ethenyl-5-methyl-2,4 oxazolidinedione and its metabolites containing the 3,5-dichloroaniline moiety in or on cannery waste of succulent beans at 10.0 ppm. The proposed analytical method for determining residues is gas chromatography. (PM 21)

Authority: 7 U.S.C. 136a.

Dated: June 16, 1989.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 89-15413 Filed 6-28-89; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59286A, 59286A; FRL 3609-5]

Certain Chemicals; Approval of Test Marketing Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of applications for test marketing exemptions (TMEs) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated these applications as TME-89-3, TME-89-4 and TME-89-6.

EFFECTIVE DATE: June 21, 1989.

FOR FURTHER INFORMATION CONTACT: Robert Wright, III, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-613, 401 M St. SW., Washington, DC 20460, (202) 382-7800.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify, revoke or deny a test marketing exemption upon receipt of information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME-89-3, TME-89-4 and TME-89-6. EPA has determined that test marketing of the new chemical substances described below, under the conditions set out in the TME applications, and for the time period and restrictions specified below, will not present any unreasonable risk of injury to health or the environment. Production volumes, use, and the number of customers must not exceed that specified in the applications as amended. All other conditions and restrictions described in the applications, and amendments thereto and in this notice must be met.

The following additional restrictions apply to TME-89-3, TME-89-4 and TME-89-6. A bill of lading accompanying each shipment must state that the use of the substances are restricted to that approved in the TMEs. In addition, the applicant shall maintain the following records until five years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substances produced and the date of manufacture.

2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.

3. Copies of the bill of lading that accompanies each shipment of the TME substances.

T-89-3

Date of Receipt: October 31, 1988.

Notice of Receipt: November 28, 1988 (53 FR 47867).

Applicant: Confidential.

Chemical: (G) Trialkylalkylene-heterocyclazolium derivative of copper-heterocyclanine, mixed salt.

Use: Fiber dye.

Production Volume: Confidential.

Number of Customers: Confidential.

Worker Exposure: None.

Test Marketing Period: 2 Years.

Risk Assessment: EPA identified no significant health concerns for the test market substances. EPA identified environmental concerns for the TME substance, based on analogy to cationic dyes, and a concern concentration level of 2 parts per billion was established. These concerns were mitigated when the submitter amended the TME application with specific site information which resulted in the surface water concentration never exceeding the established concern concentration level. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.

Public Comments: None.

T-89-4

Date of Receipt: October 31, 1988.

Notice of Receipt: November 28, 1988 (53 FR 47867).

Applicant: Confidential.

Chemical: (G) Alkylalkylene-heterocyclazolium derivative of copper-heterocyclanine, mixed salt.

Use: Paper dye.

Production Volume: Confidential.

Number of Customers: Confidential.

Worker Exposure: None.

Test Marketing Period: 2 Years.

Risk Assessment: EPA identified no significant health concerns for the test market substance. EPA identified environmental concerns for the TME substance, based on analogy to cationic dyes, and a concern concentration level of 2 parts per billion was established. These concerns were mitigated when the submitter amended the TME application with specific site information which resulted in the surface water concentration never exceeding the established concern concentration level. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.

Public Comments: None.

T-89-6

Date of Receipt: February 22, 1989.

Notice of Receipt: March 29, 1989 (54 FR 12953).

Applicant: Confidential.

Chemical: (G) Methimidaz substituted Cu Phthal.

Use: (G) Paper dye Intermediate used in further manufacture of a dye.

Production Volume: Confidential.

Number of Customers: Confidential.

Worker Exposure: None.

Test Marketing Period: 2 Years.

Risk Assessment: EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.

Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: June 21, 1989.

John W. Melone,

Director, Chemcial Control Division, Office of Toxic Substances.

[FR Doc. 89-15415 Filed 6-28-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Technical Subgroup of Radio Advisory Committee; Meeting

June 22, 1989.

The Technical Subgroup of the Advisory Committee on Radio Broadcasting will reconvene at 10 a.m. on Thursday, July 13, 1989, in the Vincent Wasilewski Room of the National Association of Broadcasters, 1771 N Street, NW., Washington, DC.

As decided and announced at the June 14, 1989 meeting of the Subgroup, this next session will be a continuation of that meeting, and will address the same agenda, which is set out below.

At the forthcoming July 13, 1989 session, the Subgroup will continue its consideration of:

—Adjacent channel interference standards for AM stations;
—Engineering standards for FM broadcasting; and
—Other business relating to radio broadcasting.

The Subgroup's meetings are continuing ones, and may be resumed after each session as decided by the participants. All meetings of the Radio Advisory Committee and the Technical Subgroup, are open to the public. All interested persons are invited to participate.

For further information, please call Wallace Johnson, Chairman of the Technical Subgroup, at (703) 824-5660.

Donna R. Searcy,

Secretary, Federal Communications Commission.

[FR Doc. 89-15323 Filed 6-28-89; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1785]

Petitions for Reconsideration and Clarification of Actions in Rule Making Proceedings

June 22, 1989-G4.

Petitions for reconsideration and clarification have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor International Transcription Service (202-857-3800). Oppositions to these petitions must be filed July 17, 1989. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Provision of Access for 800 Service. (CC Docket No. 86-10, RM-510) Number of petitions received: 15.

Subject: Policy and Rules Concerning Rates for Dominant Carriers. (CC Docket No. 87-313) Number of petitions received: 18.

Subject: Revision of Application for Construction Permit for Commercial Broadcast Stations, FCC Form 301. (Gen Docket No. 88-328) Number of petitions received: 1.

Subject: Amendment of the Commission's Rules to improve the quality of the AM Broadcast Service by reducing adjacent channel interference and by eliminating restictions pertaining to the protected daytime contour. (MM Docket No. 88-276, RM's 5532 & 6174) Number of petitions received: 1.

Donna R. Searcy,

Secretary, Federal Communications Commission.

[FR Doc. 89-15324 Filed 6-28-89; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Title: Jacksonville Terminal Agreement.

Parties:

Jacksonville Port Authority
Trailer Marine Transport Corporation (TMT)

Synopsis: The Agreement provides TMT with the exclusive use of 24 acres at the Talleyrand Dock and Terminal in Jacksonville. The Agreement provides that TMT will pay charges for dockage, wharfage, terminal use and land rental. The term of the Agreement is for one year and provides for four additional one-year renewal options.

Title: Virginia International Terminals Terminal Agreement.

Parties:

Virginia International Terminals, Inc. (VIT)
Hapag Lloyd (America) Inc. (HL)

Synopsis: The Agreement provides HL with non-exclusive use of VIT's terminal facilities at Norfolk and Portsmouth (facilities). VIT will furnish HL services connected with HL's terminal operations. The Agreement also provides rates on dockage, wharfage and portainer rental charges conditioned on HL's guarantee for the movement of a minimum of 200,000 tons annually through the facilities each year of the Agreement's three year term. If HL fails to move 200,000 tons through the facilities each year, VIT's volume incentive rates will not apply.

Title: City of Kodiak Terminal Agreement.

Parties:

City of Kodiak
Kodiak Oil Sales, Inc. (KOS)

Synopsis: The Agreement provides KOS a five-year lease of an easement for the location and maintenance of a pipeline to transport petroleum products between KOS's facilities located on the Tideland Tract and the City of Kodiak Pier II.

Dated: June 23, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-15304 Filed 6-28-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

June 23, 1989.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulation on Controlling Paperwork Burdens on the Public)

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822)

OMB Desk Officer—Gary Waxman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7340)

Final approval under OMB delegated authority of the extension, with revision, of the following reports:

Report title: Report of Selected Borrowings; Daily Telephone Report of Selected Borrowings; and Report of Repurchase Agreements on U.S. Government and Federal Agency Securities with Specified Holders.

Agency form number: FR 2415, FR 2415a, and FR 2415t.
OMB Docket number: 7100-0074.
Frequency: Daily and Weekly.
Reporters: Depository institutions.
Annual reporting hours: 25,584.
Estimated average hours per response: 3.75 (FR 2415); 0.33 (FR 2415a); 0.75 (FR 2415t).
Estimated number of respondents: 112 (FR 2415); 15 (FR 2415a); 63 (FR 2415t).
Small businesses are affected.
General description of report: This information collection is voluntary (12 U.S.C. 248(a), 353 *et seq.*) and is given confidential treatment (5 U.S.C. 552b(4) and b(8).

This package of reports collects information on selected nonreservable borrowings. The weekly FR 2415 and 2415t, submitted by large commercial banks and thrifts, respectively, collect data on overnight and term repurchase agreements by type of customer. The data are necessary for the construction of the monetary aggregates. In addition, the FR 2415 obtains data on federal funds transactions and repurchase agreement lending. The FR 2415a collects information on repurchase agreements and federal funds from the large money center banks and subsequently provides the Open Market Trading Desk with timely information on these transactions for their market assessments.

Board of Governors of the Federal Reserve System, June 23, 1989.
William W. Wiles,
Secretary of the Board.
[FR Doc. 89-15348 Filed 6-28-89; 8:45 am]
BILLING CODE 6210-01-M

First of America Bancorporation—Illinois, Inc., et al; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 21, 1989.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First of America Bancorporation—Illinois, Inc.*, Libertyville, Illinois; to acquire 100 percent of the voting shares of Midwest Financial Group, Inc., Peoria, Illinois; thereby indirectly acquire BancMiwest McLean County, National Association, Bloomington, Illinois; First National Bank in Champaign, Champaign, Illinois; the DeKalb Bank National Association, DeKalb, Illinois; Citizens National Bank of Decatur, Decatur, Illinois; First Trust Bank National Association, Kankakee, Illinois; First National Bank of Morton, Morton, Illinois; Commercial National Bank of Peoria, Peoria, Illinois; United Bank of Illinois, National Association, Rockford, Illinois; and Illinois National Bank of Springfield, Springfield, Illinois.

In connection with this application, Applicant has also applied to acquire Midwest Financial Mortgage Company, Midwest Financial Life Insurance Company, Midwest Financial Group Brokerage Services, Inc., and Midwest Financial Investment Management Company, all of Peoria, Illinois; and thereby engage in marketing and servicing loans secured by mortgages on real estate pursuant to § 225.25(b)(1), underwriting as reinsurer, credit life and credit and accident and health insurance directly related to extensions of credit pursuant to § 225.25(b)(8)(i), securities brokerage pursuant to § 225.25(b)(15), and investment or financial advice pursuant to § 225.25(b)(4) of the Board's Regulation Y.

2. *First of America Bank Corporation*, Kalamazoo, Michigan; to acquire 100 percent of the voting shares of Midwest Financial Group, Inc., Peoria, Illinois; thereby indirectly acquire BancMidwest McLean County, National Association, Bloomington, Illinois; First National Bank in Champaign, Champaign, Illinois, the DeKalb Bank National Association, DeKalb, Illinois; Citizens National Bank of Decatur, Decatur, Illinois; First Trust Bank National Association, Kankakee, Illinois; First National Bank of Morton, Morton, Illinois; Commercial National Bank of Peoria, Peoria, Illinois; United Bank of Illinois, National Association, Rockford, Illinois; and Illinois National Bank of Springfield, Springfield, Illinois.

In connection with this application, Applicant has also applied to acquire Midwest Financial Mortgage Company, Midwest Financial Life Insurance Company, Midwest Financial Group Brokerage Services, Inc., and Midwest Financial Investment Management Company, all of Peoria, Illinois; and thereby engage in marketing and servicing loans secured by mortgages on real estate pursuant to § 225.25(b)(1), underwriting as reinsurer, credit life and credit and accident and health insurance directly related to extensions of credit pursuant to § 225.25(b)(8)(i), securities brokerage pursuant to § 225.25(b)(15), and investment or financial advice pursuant to § 225.25(b)(4) of the Board's Regulation Y.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Community First South Dakota Bankshares, Inc.*, Fargo, North Dakota; to acquire 100 percent of the voting shares of Community First Minnesota Bankshares, Inc., Fargo, North Dakota, thereby indirectly acquire Community First National Bank of Benson, Benson, Minnesota; American National Bank of Little Falls, Little Falls, Minnesota; Community First National Bank of Marshall, Marshall, Minnesota; Community First State Bank of Paynesville, Paynesville, Minnesota; Community First National Bank of Wheaton, Wheaton, Minnesota; and Community First National Bank of Windom, Windom, Minnesota.

In connection with this application, Applicant has also applied to acquire Community First Service Corporation, Fargo, North Dakota; and thereby engage in providing data processing and data transmission services as permitted under § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 23, 1989.
William W. Wiles,
Secretary of the Board.
[FR Doc. 89-15349 Filed 6-28-89; 8:45 am]
BILLING CODE 6210-01-M

Osterreichische Landerbank Aktiengeselischaft; Notice of Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 20, 1989.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Osterreichische Landerbank Aktiengeselischaft*, Vienna, Austria; to engage *de novo* through Unnamed Subsidiary, New York, New York; in making, acquiring, or servicing loans or other extensions of credit (including letters of credit and drafts) such as would be made, for example, by the following types of companies: (1) consumer finance, (2) credit card, (3) mortgage, (4) commercial finance, and (5) factoring, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 23, 1989.
William W. Wiles,
Secretary of the Board.
[FR Doc. 89-15350 Filed 6-28-89; 8:45 am]
BILLING CODE 6210-01-M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Employee Thrift Advisory Council; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), a notice is hereby given of the following committee meeting:

Name: Employee Thrift Advisory Council.

Time and date: 10:00 a.m., July 12, 1989.

Place: Fifth Floor Conference Room, Federal Retirement Thrift Investment Board, 805 Fifteenth Street, NW., Washington, DC.

Status: Open.

Matters to be considered: Approval of the minutes of the March 14, 1989, meeting; report of the Executive Director on the status of the Thrift Savings Plan; legislation; investment policy of the Fixed Income Investment Fund; and new business.

Any interested person may attend, appear before, or file statements with the Council. For further information contact John J. O'Meara, Committee Management Officer, on (202) 523-6367.

Date: June 23, 1989.
Francis X. Cavanaugh,
Executive Director.
[FR Doc. 89-15314 Filed 6-28-89; 8:45 am]
BILLING CODE 6760-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration; Delegation of Authority

Notice is hereby given that I have granted to the Assistant Secretary for Family Support (ASFS), Family Support Administration (FSA), all authorities vested in me under section 121(c) (4), of the Immigration Reform and Control Act of 1986, Pub.L. 99-603. This authority allows the ASFS to approve or disapprove States's requests for waivers from participation in the SAVE program. It is subject to the Health Care Financing Administration's staff input into the final decision as well as concurrence with the final decision ultimately signed and issued by the ASFS.

This delegation excludes authority to issue regulations or submit reports to Congress. It is effective upon the date of signature. In addition, I hereby affirm and ratify any actions taken by the ASFS or other FSA officials which, in effect, involved the exercise of this authority prior to the effective date of this delegation.

Louis W. Sullivan,
Secretary.
Date: June 16, 1989.
[FR Doc. 89-15320 Filed 6-28-89; 8:45 am]
BILLING CODE 4150-04-M

Centers for Disease Control

CDC Advisory Committee for Elimination of Tuberculosis; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), the Centers for Disease Control (CDC) announces the following committee meeting.

Name: Advisory Committee for Elimination of Tuberculosis (ACET)

Time and Date: 8:00 a.m.—4:30 p.m.—July 26, 1989: 8:00 a.m.—2:30 p.m.—July 27, 1989.

Place: Executive II & III Conference Rooms, Lanier Plaza Conference Center, 418 Armour Drive, NE., Atlanta, Georgia 30324.

Status: Open.

Purpose: This Committee advises and makes recommendations to the Secretary, Department of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding feasible goals for eliminating tuberculosis. Specifically, the Committee makes recommendations regarding policies, strategies, objectives, and priorities, addresses the

development of new technologies and their subsequent application, and reviews progress toward elimination.

Matters to be Discussed: Tuberculosis control among the foreign-born, tuberculosis control in nursing homes, and statements on preventive therapy and screening. Agenda items are subject to change as priorities dictate.

Contact Person For More Information: Dixie E. Snider, Jr., M.D., Director, Division of Tuberculosis Control, and Executive Secretary, ACET, Center for Prevention Services, CDC, 1600 Clifton Road, NE., Mailstop E-10, Atlanta, Georgia 30333, Telephones: FTS: 236-2501; Commercial: 404/639-2501.

Dated: June 22, 1989.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 89-15345 Filed 6-28-89; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 89D-0140]

Test for Residual Moisture for Biological Products; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guideline that discusses test procedures, testing results, and recommended standards for determining residual moisture in dried biological products. Elsewhere in this issue of the Federal Register, FDA is proposing to amend the general biological products standards concerning the test for residual moisture for these products.

DATES: Comments by August 28, 1989.

ADDRESSES: Submit written requests for single copies of the draft guideline to the Congressional, International, and Consumer Affairs Staff (HFB-142), Park Bldg., Rm. 158, 5600 Fishers Lane, Rockville, MD 20857, 301-443-7532. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the draft guideline to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of the draft guideline and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Joan C. May, Center for Biologics Evaluation and Research (HFB-740), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301-496-4570.

SUPPLEMENTARY INFORMATION: Elsewhere in this issue of the **Federal Register**, FDA is proposing to amend requirements for the test for residual moisture found in the general biological products standards (21 CFR Part 610.13). FDA is revising the regulations to reflect more recent scientific knowledge and experience for determining residual moisture levels in dried biological products. Concurrently, FDA is announcing the availability of a draft guideline that discusses test procedures, testing results, and recommended standards for determing residual moisture in biological freeze-dried products.

This notice of availability of the draft guideline for determining residual moisture levels in dried biological products is announced under 21 CFR 10.90(b), which provides for use of guidelines to establish procedures of general applicability that are not legal requirements but are acceptable to the agency. A person who follows the guideline is assured that his or her conduct will be acceptable to the agency. A person who chooses to use alternative procedures or standards even though they are not provided for in the guideline. A person who chooses to do so may discuss the matter further with the agency to prevent expenditure of money and effort for work that the agency may later determine to be unacceptable.

Interested persons may submit written comments to the Dockets Management Branch (address above). FDA will consider such comments in determining whether further amendments to the guideline are warranted. Two copies of all comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guideline and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 12, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-15357 Filed 6-28-89; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Advisory Commission on Childhood Vaccines; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of July 1989.

Name: Advisory Commission on Childhood Vaccines.

Date and Time: July 26-27, 1989, 9:00 a.m.-5:00 p.m.

Place: Conference Room D., Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, the meeting is open to the public.

Purpose: The Commission: (1) Advises the Secretary on the implementation of the Program, (2) on its own initiative or as the result of the filing of a petition, recommends changes in the Vaccine Injury Table, (3) advises the Secretary in implementing the Secretary's responsibilities under section 2127 regarding the need for childhood vaccination products that result in fewer or no significant adverse reactions, (4) surveys Federal, State, and local programs and activities relating to the gathering of information on injuries associated with the administration of childhood vaccines, including the adverse reaction reporting requirements of section 2125(b), and advises the Secretary on means to obtain, compile, publish, and use credible data related to the frequency and severity of adverse reactions associated with childhood vaccines, and (5) recommends to the Director of the National Vaccine Program research related to vaccine injuries which should be conducted to carry out the National Vaccine Injury Compensation Program.

Agenda: Agenda items for the meeting will include presentations and discussions on: the adverse reaction reporting system; overviews from the U.S. Claims Court, the Department of Justice, and the Department of Health and Human Services regarding their respective roles in the implementation of the Vaccine Injury Compensation Program; smallpox vaccine policy; and the vaccine injury material distribution activity.

Public comment will be permitted on at the end of each meeting day. Oral presentation will be limited to 5 minutes per public speaker. Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation, by July 14th to Ms. Rosemary Havill, Vaccine Injury Compensation Program, Bureau of Health Professions, Room 4-101, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-6593.

Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. The Vaccine Injury Compensation Program will notify each presenter by mail or telephone of their assigned presentation time. Persons who do not file an advance request for presentation, but desire to make an oral statement, may sign up in conference room "D" before 10:00 a.m., July 26 and 27, 1989. These persons will be allocated time as time permits.

Anyone requiring information regarding the subject Council should contact Ms. Rosemary Havill, Vaccine Injury Compensation Program, Bureau of Health Professions, Room 4-101, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-6593.

Agenda Items are subject to change as priorities dictate.

Date: June 23, 1989.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 89-15358 Filed 6-28-89; 8:45 am]

BILLING CODE 4160-15-M

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Public Health Service (PHS) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program ("the Program"), as required by section 2112(b)(2) of the PHS Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Claims Court is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program generally, contact the Clerk, United States Claims Court, 717 Madison Place, NW., Washington, DC 20005, (202) 633-7257. For information on the Public Health Service's role in the Program, contact the Director, Vaccine Injury Compensation Program, Parklawn Building, 5600 Fishers Lane, Room 4-101, Rockville, MD 20857, (301) 443-6593.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa-10 *et seq.*, provides that those seeking compensation are to file a petition with the U.S. Claims Court and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated his responsibility under the Program to PHS. The Claims Court is directed by statute to appoint special masters to take evidence, conduct hearings as appropriate, and to submit to the Court proposed findings of fact and conclusions of law.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table set forth at section 2114 of the PHS Act. This Table lists for each covered childhood vaccine the conditions which will lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested after the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa-12(b)(2), requires that the Secretary publish in the **Federal Register** a notice of each petition filed. Set forth below is a list of petitions received by PHS from May 23 through June 12, 1989. Section 2112(b)(2) also provides that the special master "shall afford all interested persons an opportunity to submit relevant, written information" relating to the following:

1. The existence of evidence "that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition," and

2. Any allegation in a petition that the petitioner either:

(a) "sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table (see section 2114 of the PHS Act) but which was caused by" one of the vaccines referred to in the table, or

(b) "sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine" referred to in the Table.

This notice will also serve as the special master's invitation to all interested persons to submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Claims Court at the address listed above (under the heading "For Further Information Contact"), with a copy to PHS addressed to Director, Bureau of Health Professions, 5600 Fishers Lane, Room 8-05, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission.

Chapter 35 of Title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

List of Petitions

1. John M. Gunnels and Brenda Lee Seman on Behalf of Jessica Lee Gunnels, Wandotte, Kansas, Claims Court Docket No. 89-56 V
2. Ann Essex on Behalf of Melanie Essex, Reno, Nevada, Claims Court Docket No. 89-57 V
3. Hugh Hammond and Sarah Hammond on Behalf of Amy Hammond, Fulton County, Ohio, Claims Court Docket No. 89-58 V
4. Rose Craft Ross and William H. Kirkland on Behalf of Jeffrey Craft, New Orleans, Louisiana, Claims Court Docket No. 89-59 V
5. Ann Tom on Behalf of Manchester Tom, Honolulu, Hawaii, Claims Court Docket No. 89-60 V and 89-61 V

Dated: June 23, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89-15359 Filed 6-28-89; 8:45 am,

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[516DM6, Appendix 9]

National Environmental Policy Act; Proposed Implementing Procedures

AGENCY: Department of the Interior.

ACTION: Notice of proposed additional instructions for the Bureau of Reclamation.

SUMMARY: This notice announces a proposed additional categorical exclusion in the appendix to the Department's National Environmental Policy Act (NEPA) procedures for the Bureau of Reclamation. The proposed categorical exclusion pertains to activities conducted pursuant to the Disaster Assistance Act of 1988.

DATE: Comments due July 31, 1989.

ADDRESS: Comments to the Manager, Environmental Services, Bureau of Reclamation, Code D-5150, P.O. Box 25007, Denver, CO, 80225-007.

FOR FURTHER INFORMATION CONTACT: Director, Office of Environmental Project Review, telephone (202) 343-3891. For Bureau of Reclamation, contact Dr. Wayne Deason, Manager, Environmental Services, address above, telephone (303) 236-9338.

SUPPLEMENTARY INFORMATION: The proposed additional categorical exclusion in the appendix to the Departmental Manual (516DM6, Appendix 9) would exclude certain activities under the Disaster Assistance Act of 1988 from the NEPA process. Section 412, Part 1—Reclamation States Drought Assistance, Subtitle B—Emergency Drought Authority, Title IV—Water-Related Assistance of the act provides:

Sec. 412. Assistance During Drought

The Secretary of the Interior, acting under the authorities of the Federal Reclamation Laws (the act of June 17, 1902 (32 Stat. 388), and acts supplementary thereto and amendatory thereof) and other appropriate authorities of the Secretary shall—

(1)(A) Perform studies to identify opportunities to augment, make use of, or conserve water supplies available to Federal Reclamation Projects and Indian water resources developments, which studies shall be completed no later than March 1, 1990; and

(B) Consistent with existing contractual arrangements and state law, and without further authorization, undertake construction management, and conservation activities that will mitigate or can be expected to have an effect in mitigation losses and damages resulting from drought conditions in 1987, 1988, or 1989, which construction shall be completed by December 31, 1989; and

(2) Assist willing buyers in their purchase of available water supplies from willing sellers and redistribute such water based upon priorities to be determined by the Secretary consistent with state law, with the objective of minimizing losses and damages resulting from drought conditions in 1987, 1988, and 1989.

The Department has reviewed the range of possible activities authorized by Sec. 412 of the act and proposes to add a categorical exclusion as subparagrpah 9.4.E(4) to Appendix 9. The excluded activities would be limited to those areas: already developed or impacted by farming; involving minor construction, repair, replacement or modification of facilities; and where impacts are expected to be local in nature. These activities have been determined not to have significant effects on the quality of the human environment and not to involve unresolved conflicts concerning alternative uses of available resources. However, if any of the exceptions to categorical exclusion listed in Appendix 2 to 516DM2 apply to individual actions within this proposed exclusion, an enviormental document must be prepared (516DM2.3.A.).

Appendix 9 must be taken in conjunction with the Department's procedures (516DM1-6) and the Council on Environmental Quality's regulations implementing the procedural provisions of NEPA (40 CFR 1500-1508). The Department's procedures were published in the **Federal Register** on April 29, 1980 (45 FR 27541) and revised on May 21, 1984 (49 FR 21437). Appendix 9 for the Bureau of Reclamation was published on April 21, 1983 (48 FR 17151).

Comments on this proposed addition to Appendix 9 which are received by July 31, 1989, will be carefully considered in preparing the final addition.

Comments received after that date will also be considered to the extent practicable.

Outline

Chapter 6(516DM6) Managing the NEPA Process

Appendix 9—Bureau of Reclamation

9.4 Categorical Exclusions.

Date: June 20, 1989.

John H. Farrell,

Acting Director, Office of Environmental Project Review.

516DM6, Appendix 9

Bureau of Reclamation

9.4 Categorical Exclusions

* * * * *

E. Grant and Loan Activities

* * *

4. Disaster Assistance Act studies, construction, management, conservation, loans, water purchasing assistance, and water distribution where the activity is confined to areas already impacted by farming or development; is limited to minor construction or repair, replacement, or modifications of existing facilities, and the impacts are expected to be local in nature.

[FR Doc. 89-15327 Filed 6-28-89; 8:45 am]

BILLING CODE 4310-10-M

Bureau of Land Management

[NV-010-09-4130-09]

Elko District, Nevada

AGENCY: Bureau of Land Management.

ACTION: Notice of intent to prepare an environmental impact statement on an amendment to a mining plan of operations for the Goldstrike mine, Elko and Eureka Counties, Nevada; and notice of scoping period and public meetings.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 and 43 CFR Part 3809, the Bureau of Land Management will be directing the preparation of an environmental impact statement to be prepared by a third-party contractor on the impacts of a proposed amendment to an existing Plan of Operations for gold mining by Barrick Goldstrike Mines Inc., in Eldo and Eureka counties, Nevada. The Bureau invites comments and suggestions on the scope of the analysis.

DATES: Scoping meetings will be held July 19, 1989 at the Bureau of Land Management, Elko District Office, 3900 E. Idaho, Elko NV., and on July 20, 1989 at the Holiday Inn, 1000 E. 6th St., Reno, NV., to identify issues and concerns to be addressed in the environmental impact statement (EIS) and to encourage public participation in the environmental review process. Both meetings are scheduled from 7:00 pm-9:00 pm. Representatives of Barrick Goldstrike Mines Inc. will be available to answer questions about the Plan of Operations amendment. Additional scoping meetings may be held as appropriate. Written comments on the Plan of Operations amendment and the scope of the EIS will be accepted until September 5, 1989. A draft environmental impact statement (DEIS) is expected to be completed by March 1990 and made available for public review and comment. At that time a Notice of Availability of the DEIS will be published in the **Federal Register**. The comment period on the DEIS will be 60 days from the date the Notice of Availability is pubished.

ADDRESS: Scoping comments may be sent to the District Manager, Bureau of Land Management, P.O. Box 831, Elko, NV 89801. ATTN: Goldstrike Coordinator.

FOR FURTHER INFORMATION CONTACT: For additional information, write to the above address or call Nancy Phelps-Dailey at (702) 738-4071.

SUPPLEMENTARY INFORMATION: Barrick Goldstrike Mines Inc. of Elko, Nevada has submitted an amendment to its existing Plan of Operations for the Goldstrike Mine located in Township 35 North, Range 49 East and Township 36 North, Range 50 East; approximately 25 miles northwest of the town of Carlin, Nevada. The presently authorized operation includes open-pit mines, heap leach facilities, a crushing and agglomeration plant, administrative and maintenance buildings, an oxide mill and a tailings impoundment involving approximately 2,400 acres, including approximately 1800 acres of public land. The proposed action is to expand the Goldstrike Mine open pit mining and increase milling operations from approximately 6,000 tons per day to approximately 12,700 tons per day. While much of the proposed expansion is expected to the confined to previously disturbed areas, additional disturbance is anticipated on approximately 35 acres of private land and approximately 1,770 acres of public land.

A Notice of Intent to prepare an environmental document on the Plan of Operations amendment was published in the **Federal Register** on page 15815, April 19, 1989. The Notice did not specify whether the document would be an environmental assessment or an EIS. Based on public comments and Bureau review of the Plan of Operations amendment, the Bureau has determined that the proposed action requires an EIS.

The issues expected to be analyzed in the EIS are impacts to cultural resources, wildlife and fisheries, water quantity and quality, air quality, soils and vegetation, social and economic values and cumulative impacts.

Disciplines represented on the interdisciplinary team that will review the Plan amendment and environmental documentation include: wildlife, recreation, geology, cultural resources, soil, water and air quality, range management, lands and realty and land use planning.

A range of alternatives, stipulations and mitigation measures, including but not limited to alternative reclamation measures, monitoring requirements and the no-action alternative, will be considered to evaluate and minimize environment impacts and to assure that the proposed action does not result in undure or unnecessary degradation of public lands.

Federal, state and local agencies and other individuals or organizations who may be interested in or affected by the Bureau's decision on the amended Plan of Operations are invited to participate in the scoping process with respect to this environmental analysis. These entities and individuals are also invited to submit comments on the DEIS.

It is important that those interested in the Plan of Operations amendment participate in the scoping and commencing processes. To be most helpful, comments should be as specific as possible. Federal court decisions have established that entities and individuals must structure their participation in the environmental review process so that it is meaningful and alerts the agency to the reviewer's position and contention and that objections that could have been raised at the draft stage may be waived if not raised until after completion of the final EIS. This is to ensure that substantive comments and objections are made available to the agency at a time when it can meaningfully consider and respond to them in the final EIS.

After the comment period ends on the DEIS, the comments will be analyzed and considered by the Bureau in preparing the final EIS. In the final EIS, the Bureau is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, and environmental consequences discussed in the EIS, and the applicable laws, regulations, and policies in making a decision regarding the proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under 43 CFR Part 4.

Date: June 23, 1989.

Rodney Harris,

District Manager.

[FR Doc. 89-15361 Filed 6-28-89; 8:45 am]

BILLING CODE 4310-HC-M

[CA-050-4410-04]

Intent To Prepare an Environmental Impact Statement on the South Fork Eel River Watershed and Associated Activity Level Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an Environmental Impact Statement and Management Plan for the South Fork Eel River Watershed and notice of scoping.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Bureau of Land Management Ukiah District, Arcata Resource Area, will be preparing a management plan and environmental impact statement on the activity plan for the South Fork of the Eel River. The management plan will address a total of 17,200 acres of public lands located in Mendocino County, in northern California. Activities analyzed in this plan and EIS are consistent with management decisions made in the Arcata RMP and the Red Mountain MFP for 7400 acres in the Elkhorn Ridge and Brush Mountain Blocks plus 2800 acres of acquired lands along the South Fork of the Eel River. The South Fork Eel River has been designated by the Secretary of the Interior and the Governor of California as Wild & Scenic. The Cahto Peak block (7,000 acres) will also be analyzed in this plan, including the Elder Creek ACEC which is managed in cooperation with The Nature Conservancy.

DATES: A 60 day public scoping period will begin with publication of this Notice and will end on August 30, 1989. Scoping meetings are being scheduled to solicit public input to ensure that public concerns are considered in the decision making process for management of the area. The scoping process will identify issues to be assessed in the development of the Draft EIS and identify affected or interested parties in this planning effort. Scoping meetings will be held beginning at the Laytonville Elementary School Multipurpose Room on Wednesday, August 2, 1989 beginning at 7 p.m. and at the Eureka Inn in the Colonade Room on Thursday, August 3, 1989, beginning at 7 p.m. Additional briefing meetings may be considered as appropriate. Written comments on the

proposal will be accepted until August 30, 1989.

ADDRESS: Written comments should be sent to the District Manager, Bureau of Land Management, 555 Leslie Street, Ukiah, California 95482, ATTN: EIS Team Leader.

FOR FURTHER INFORMATION CONTACT: Linda Hansen, Planning and Environmental Coordinator, Bureau of Land Management, 555 Leslie Street, Ukiah, California 95482; or John Lloyd, Arcata Resource Area Manager, Bureau of Land Management, 1125 16th Street, Room 219, Arcata California 95521.

SUPPLEMENTARY INFORMATION: The activity plan will be prepared with a multi-resource approach through the use of an interdisciplinary team under the direction of the team leader. The plan will be developed utilizing maximum public involvement to ensure public input is considered in making decisions. Special emphasis will also be placed on working with local groups and organizations who have in the past expressed an interest in BLM activity in the area of Elkhorn Ridge and Cahto Peak.

Anticipated issues and environmental resources of concern include: Impacts from timber Management, impacts from recreational use, management direction for the wild and scenic river, impacts on spotted owl habitat, management of the Elder Creek ACEC, impacts from communication sites on Cahto Peak and Impacts to Native American ancestral/ceremonial areas.

The following environmental factors will also be analyzed in the EIS: water quality, soil erosion, visual resources, wildlife values, fisheries, old growth forests, recreation use and cultural resources.

Linda D. Hansen,

Acting District Manager, Ukiah.

Date: June 22, 1989.

[FR Doc. 89-15328 Filed 6-28-89; 8:45 am]

BILLING CODE 4310-40-M

Geothermal Resource Areas; Baltazore; NV

June 22, 1989.

AGENCY: Bureau of Land Mangement, Interior.

ACTION: Declassification of the Baltazor known geothermal resources area, Nevada.

SUMMARY: Pursuant to the authority vested in the Secretary of the Interior by sec. 21(a) of the Geothermal Steam Act of 1970 (84 Stat. 1566, 1572; 30 U.S.C. 1020), the delegations of authority in 235 Department Manual 1.1k, Bureau of Land Management, the Baltzaor Known Geothermal Resources Area, which includes the following lands, is hereby declassified.

EFFECTIVE DATE: July 1, 1989.

Nevada, Ballazar Known Geothermal Resource Area

Mt. Diablo Meridian, Nevada

T. 46 N., R. 36 E.
Secs. 11–14, 23–25;
T. 47 E., R. 29 E.
Secs. 24, 28.

The above area aggregates 5,537.25 acres, more or less.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 89-15380 Filed 6-28-89; 8:45 am]

BILLING CODE 4310-HC-M

Geothermal Resource Areas; Colado; NV

June 22, 1989.

AGENCY: Bureau of Land Mangement, Interior.

ACTION: Declassification of the Colado known geothermal resources area, Nevada.

SUMMARY: Pursuant to the authority vested in the Secretary of the Interior by sec. 21(a) of the Geothermal Steam Act of 1970 (84 Stat. 1566, 1572; 30 U.S.C. 1020), the delegations of authority in 235 Department Manual 1.1k, Bureau of Land Management, the Colado Known Geothermal Resources Area, which includes the following lands, is hereby declassified.

EFFECTIVE DATE: July 1, 1989.

Nevada, Colado Known Geothermal Resource Area

Mt. Diablo Meridian, Nevada

T. 28 N., R. 32 E.
Sec. 34.

The above area aggregates 640.00 acres, more or less.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 89-15383 Filed 6-28-89; 8:45 am]

BILLING CODE 4310-HC-M

Geothermal Resource Areas; Darrough Hot Springs; NV

June 22, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Declassification of the Darrough Hot Springs known geothermal resources area, Nevada.

SUMMARY: Pursuant to the authority vested in the Secretary of the Interior by sec. 21(a) of the Geothermal Steam Act of 1970 (84 Stat. 1566, 1572; 30 U.S.C. 1020), the delegations of authority in 235 Department Manual 1.1k, Bureau of Land Management, the Darrough Hot Springs Known Geothermal Resources Area, which includes the following lands, is hereby declassified.

EFFECTIVE DATE: July 1, 1989.

Nevada, Darrough Hot Springs Known Geothermal Resources Area

Mt. Diablo Meridian, Nevada

T. 11 N., R. 42 E.
Secs. 1, 12, 13;
T. 11 N., R. 43 E.
Secs. 5–9, 16–20.

The above area aggregates 8,363.18 acres, more or less.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 89-15381 Filed 6-28-89; 8:45 am]

BILLING CODE 4310-HC-M

Geothermal Resource Areas; Double Hot Springs; NV

June 22, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Declassification of the Double Hot Springs known geothermal resources area, Nevada.

SUMMARY: Pursuant to the authority vested in the Secretary of the Interior by sec. 21(a) of the Geothermal Steam Act of 1970 (84 Stat. 1566, 1572; 30 U.S.C. 1020), the delegations of authority in 235 Department Manual 1.1k, Bureau of Land Management, the Double Hot Springs Known Geothermal Resources Area, which includes the following lands, is hereby declassified.

EFFECTIVE DATE: July 1, 1989.

Nevada, Double Hot Springs Known Geothermal Resources Area

Mt. Diablo Meridian, Nevada

T. 35½ N., R. 26 E.
Secs. 25, 26, 33–36;
T. 35½ N., R. 27 E.
Secs. 30, 31;
T. 36 N., R. 26 E.
Secs. 3–10, 15–18, 20–23, 26–29, 32–34;
T. 37 N., R. 26 E.
Secs. 4, 9, 10, 15, 16, 20–22, 28–33.

The above area aggregates 29,325.70 acres, more or less.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 89-15369 Filed 6-28-89; 8:45 am]

BILLING CODE 4310-HC-M

Geothermal Resource Area; Elko Hot Springs, NV

June 22, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Declassification of the Elko Hot Springs known geothermal resources area, Nevada.

SUMMARY: Pursuant to the authority vested in the Secretary of the Interior by sec. 21(a) of the Geothermal Steam Act of 1979 (84 Stat. 1566, 1572; 30 U.S.C. 1020), the delegations of authority in 235 Department Manual 1.1k, Bureau of Land Management, the Elko Hot Springs known geotheramal resources area, which includes the following lands, is hereby declassified.

EFFECTIVE DATE: July 1, 1989.

Nevada, Elko Hot Springs Known Geothermal Resources Area

Mt. Diablo Meridian, Nevada

T. 34 N., R. 55 E.
Secs. 14–17, 20–23, 26–29, 33, 34.

The above area aggregates 8,960.00 acres, more or less.

Edward F. Spang,

State Director, Nevada

[FR Doc. 89-15370 Filed 6-28-89; 8:45 am]

BILLING CODE 4310-HC-M

Geothermal Resource Area; Fly Ranch; NV

June 22, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Declassification of the Fly Ranch known geothermal resources area, Nevada.

SUMMARY: Pursuant to the authority vested in the Secretary of the Interior by sec. 21(a) of the Geothermal steam Act of 1970 (84 Stat. 1566, 1572; 30 U.S.C. 1020), the delegations of authority in 235 Department Manual 1.1k, Bureau of Land Management, the Fly Ranch known geothermal resources area, which includes the following lands, is hereby declassified.

EFFECTIVE DATE: July 1, 1989.

Nevada, Fly Ranch Known Geothermal Resources Area

Mt. Diablo Meridian, Nevada

T. 33 N., R. 23 E.
Secs. 1, 2, 11, 12;
T. 34 N., R. 23 E.
Secs. 1, 2, 9–16, 22–27, 34–36;
T. 34 N., R. 24 E.
Secs. 6–8, 16–21, 29–31.

The above area aggregates 20,662.66 acres, more or less.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 89-15371 Filed 6-28-89; 8:45 am]

BILLING CODE 4310-HC-M

Geothermal Resource Areas; Gerlach; NV

June 22, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Deletion from the Gerlach known geothermal resources area, Nevada.

SUMMARY: Pursuant to the authority vested in the Secretary of the Interior by sec. 21(a) of the Geothermal Steam Act of 1970 (84 Stat. 1566, 1572; 30 U.S.C. 1020), the delegations of authority in 235 Department Manual 1.1k, Bureau of Land Management, the following lands are hereby deleted from the Gerlach Known Geothermal Resource Area.

EFFECTIVE DATE: July 1, 1989.

Nevada, Gerlach Known Geothermal Resources Area

Mt. Diablo Meridian, Nevada

T. 31 N., R. 23 E.
Secs. 3–5, 8;
T. 32 N., R. 23 E.
Secs. 8, 17, 20, 24–29, 32–36;
T. 32 N., R. 24 E.
Secs. 6;
T. 33 N., R. 23 E.
Secs. 25, 26, 35, 36;
T. 33 N., R. 24 E.
Secs. 30.

The above area aggregates 15,217.50 acres, more or less.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 89-15385 Filed 6-28-89; 8:45 am]

BILLING CODE 4310-HC-M

Geothermal Resource Areas; Hot Springs Point; NV

June 22, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Declassification of the Hot Springs Point known geothermal resources area, Nevada.

SUMMARY: Pursuant to the authority vested in the Secretary of the Interior by sec. 21(a) of the Geothermal Steam Act of 1970 (84 Stat. 1566, 1572; 30 U.S.C. 1020), the delegations of authority in 235 Department Manual 1.1k, Bureau of Land Management, the Hot Springs Point Known Geothermal Resources Area, which includes the following lands, is hereby declassified.

EFFECTIVE DATE: July 1, 1989.

Nevada, Hot Springs Point Known Geothermal Resources Area

Mt. Diablo Meridian, Nevada

T. 29 N., R. 48 E.
Secs. 1, 2, 10–12, 14, 15, 22;
T. 30 N., R. 48 E.
Secs. 25, 26, 35, 36;
T. 30 N., R. 49 E.
Secs. 16, 30.

The above area aggregates 8,549.00 acres, more or less.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 89-15372 Filed 6-28-89; 8:45 am]

BILLING CODE 4310-HC-M

Classification of Public Lands; Kyle Hot Springs; NV

June 22, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Declassification of the Kyle Hot Springs known geothermal resources area, Nevada.

SUMMARY: Pursuant to the authority vested in the Secretary of the Interior by sec. 21(a) of the Geothermal Steam Act of 1970 (84 Stat. 1566, 1572; 30 U.S.C. 1020), the delegations of authority in 235 Department Manual 1.1k, Bureau of Land Management, the Kyle Hot Springs Known Geothermal Resources Area, which includes the following lands, is hereby declassified.

EFFECTIVE DATE: July 1, 1989.

Nevada, Kyle Hot Springs Known Geothermal Resources Area

Mt. Diablo Meridian, Nevada

T. 29 N., R. 36 E.,
Secs. 1, 2, 11, 12.

The above area aggregates 2,561.00 acres, more or less.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 89-15373 Filed 6-28-89; 8:45 am]

BILLING CODE 4310-HC-M

Classification of Public Lands; Leach Hot Springs, NV

June 22, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Declassification of the Leach Hot Springs known geothermal resources area, Nevada.

BEST COPY AVAILABLE

SUMMARY: Pursuant to the authority vested in the Secretary of the Interior by sec. 21(a) of the Geothermal Steam Act of 1970 (84 Stat. 1566, 1572; 30 U.S.C. 1020), the delegations of authority in 235 Department Manual 1.1k, Bureau of Land Management, the Leach Hot Springs Known Geothermal Resources Area, which includes the following lands, is hereby declassified.

EFFECTIVE DATE: July 1, 1989.

Nevada, Leach Hot Springs Known Geothermal Resources Area

Mt. Diablo Meridian, Nevada

T. 31 N., R. 38 E.,
Secs. 1, 2, 12;
T. 31 N., R. 39 E.,
Secs. 5–7;
T. 32 N., R. 38 E.,
Secs. 13, 14, 23–26, 35, 36;
T. 32 N., R. 39 E.,
Secs. 18, 19, 29–32.

The above area aggregates 12,846.21 acres, more or less.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 89–15374 Filed 6–28–89; 8:45 am]

BILLING CODE 4310–HC–M

Geothermal Resource Areas; Moana; NV

June 22, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Declassification of the Moana known geothermal resources area, Nevada.

SUMMARY: Pursuant to the authority vested in the Secretary of the Interior by sec. 21(a) of the Geothermal Steam Act of 1970 (84 Stat. 1566, 1572; 30 U.S.C. 1020), the delegations of authority in 235 Department Manual 1.1k, Bureau of Land Management, the Moana Known Geothermal Resources Area, which includes the following lands, is hereby declassified.

EFFECTIVE DATE: July 1, 1989.

Nevada

Moana Known Geothermal Resources Area

Mt. Diablo Meridian, Nevada

T. 19 N., R. 19 E.,
Secs. 13, 22–26, 35, 36.

The above area aggregates 5,120.00 acres, more or less.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 89–15382 Filed 6–28–89; 8:45 am]

BILLING CODE 4310–HC–M

Geothermal Resource Areas; Pinto Hot Springs; NV

June 22, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Declassification of the Pinto Hot Springs known geothermal resources area, Nevada.

SUMMARY: Pursuant to the authority vested in the Secretary of the Interior by sec. 21(a) of the Geothermal Steam Act of 1970 (84 Stat. 1566, 1572; 30 U.S.C. 1020), the delegations of authority in 235 Department Manual 1.1k, Bureau of Land Management, the Pinto Hot Springs Known Geothermal Resources Area, which includes the following lands, is hereby declassified.

EFFECTIVE DATE: July 1, 1989.

Nevada

Pinto Hot Springs Known Geothermal Resources Area

Mt. Diablo Meridian, Nevada

T. 40 N., R. 28 E.
Secs. 16–21, 27–34.

The above area aggregates 8,065.00 acres, more or less.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 89–15384 Filed 6–28–89; 8:45 am]

BILLING CODE 4310–HC–M

Classification of Public Lands; Ruby Valley; NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Declassification of the Ruby Valley known geothermal resources area, Nevada.

SUMMARY: Pursuant to the authority vested in the Secretary of the Interior by sec. 21(a) of the Geothermal Steam Act of 1970 (84 Stat. 1566, 1572; 30 U.S.C. 1020), the delegations of authority in 235 Department Manual 1.1k, Bureau of Land Management, the Ruby Valley Known Geothermal Resources Area, which includes the following lands, is hereby declassified.

EFFECTIVE DATE: July 1, 1989.

Nevada, Ruby Valley Known Geothermal Resources Area

Mt. Diablo Meridian, Nevada

T. 31 N., R. 59 E.
Secs. 2, 3, 10–13, 15;
T. 32 N., R. 59 E.
secs. 34, 35.

The above area aggregates 5,743.00 acres, more or less.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 89–15375 Filed 6–28–89; 8:45 am]

BILLING CODE 4310–HC–M

Classification of Public Lands; Soldier Meadow, NV

June 22, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Declassification of the Soldier Meadow known geothermal resources area, Nevada.

SUMMARY: Pursuant to the authority vested in the Secretary of the Interior by sec. 21(a) of the Geothermal Steam Act of 1970 (84 Stat. 1566, 1572; 30 U.S.C. 1020), the delegations of authority in 235 Department Manual 1.1k, Bureau of Land Management, the Soldier Meadow Known Geothermal Resources Area, which includes the following lands, is hereby declassified.

EFFECTIVE DATE: July 1, 1989.

Nevada, Soldier Meadow Known Geothermal Resources Area

Mt. Diablo Meridian, Nevada

T. 40 N., R. 24 E.
Secs. 12–14, 23, 24, 26, 35;
T. 40 N., R. 25 E.
Secs. 7, 18.

The above area aggregates 5,966.00 acres, more or less.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 89–15376 Filed 6–28–89; 8:45 am]

BILLING CODE 4310–HC–M

Geothermal Resource Area; Trego; NV

June 22, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Declassification of the Trego known geothermal resources area, Nevada.

SUMMARY: Pursuant to the authority vested in the Secretary of the Interior by sec. 21(a) of the Geothermal Steam Act of 1970 (84 Stat. 1566, 1572; 30 U.S.C. 1020), the delegations of authority in 235 Department Manual 1.1k, Bureau of Land Management, the Trego Known Geothermal Resources Area, which includes the following lands, is hereby declassified.

EFFECTIVE DATE: July 1, 1989.

Nevada

Trego Known Geothermal Resources Area

Mt. Diablo Meridian, Nevada

T. 34 N., R. 25 E.
Sec. 25;
T. 34 N., R. 26 E.
Secs. 1, 2, 10–13, 29–32.

The above area aggregates 7,013.00 acres, more or less.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 89–15377 Filed 6–28–89; 8:45 am]

BILLING CODE 4310–HC–M

Geothermal Resource Areas: Warm Springs; NV

June 22, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Declassification of the Warm Springs known geothermal resources area, Nevada.

SUMMARY: Pursuant to the authority vested in the Secretary of the Interior by sec. 21(a) of the Goethermal Steam Act of 1970 (84 Stat. 1566, 1572; 30 U.S.C. 1020), the delegations of authority in 235 Department Manual 1.1k, Bureau of Land Management, the Warm Springs Known Geothermal Resources Area, which includes the following lands, is hereby declassified.

EFFECTIVE DATE: July 1, 1989.

Nevada; Warm Springs Known Geothermal Resources Area

Mt. Diablo Meridian, Nevada

T. 4 N., R. 50 E.
Secs. 19–21, 28–30.

The above area aggregates 3,612.00 acres, more or less.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 89–15378 Filed 6–28–89; 8:45 am]

BILLING CODE 4310–HC–M

Geothermal Resource Areas: Wilson Hot Springs; NV

June 22, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Declassification of the Wilson Hot Springs known geothermal resources area, Nevada.

SUMMARY: Pursuant to the authority vested in the Secretary of the Interior by sec. 21(a) of the Geothermal Steam Act of 1970 (84 Stat. 1566, 1572; 30 U.S.C. 1020), the delegations of authority in 235 Department Manual 1.1k, Bureau of Land Management, the Wilson Hot Springs Known Geothermal Resource Area, which includes the following lands, is hereby declassified.

EFFECTIVE DATE: July 1, 1989.

Nevada; Wilson Hot Springs Known Geothermal Resources Area

Mt. Diablo Meridian, Nevada

T. 10 E., R. 25 E.,
Sec. 3;
T. 11 N., R. 25 E.,
Sec. 34.

The above area aggregates 1,294.00 acres, more or less.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 89–15379 Filed 6–28–89; 8:45 am]

BILLING CODE 4310–HC–M

[OR–030–09–4212–13; GP9–259, OR 39525]

Realty Action, Exchange of Public Lands in Malheur County, OR

The following described lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Willamette Meridian

T. 23 S., R. 38 E.,
Sec. 31: lot 1, 2, 3, 4, NE¼, E½NW¼, NE¼SW¼, NW¼SE¼,E½SE¼;
Sec. 32: all;
Sec. 33: W½SE¼.
T. 24 S., R. 38 E.:
Sec. 4: lot 4.

The area described above aggregates 1332.51 acres in Malheur County, Oregon.

In exchange for these lands, the Federal Government will acquire the following described private lands from Walter T. McEwen:

Willamette Meridian

T. 24 S., R. 38 E.,
Sec. 11: S½W¼.
T. 25 S., R. 38 E.:
Sec. 13: SW¼SW¼;
Sec. 14: S½SE¼;
Sec. 15: SW¼NE¼;
Sec. 24: N½;
T. 24 S., R. 39 E.,
Sec. 19: SW¼SE¼;
Sec. 30: SE¼NE¼, W½E½, E½SW¼.
T. 25 S., R. 39 E.,
Sec. 3: NW¼SW¼;
Sec. 4: NE¼SE¼;
Sec. 19: lot 2.
T. 26 S., R. 39 E.,
Sec. 7: E½SE¼;
Sec. 8: S½SW¼, SW¼SE¼;
Sec. 17: N½NW¼, NW¼NE¼.

The area described above aggregates 1319.61 acres in Malheur County, Oregon.

The purpose of the land exchange is to facilitate resource management opportunities as identified in the Management Framework Plan for the Northern Malheur (Malheur) Resource Area. The exchange is needed to effect a land tenure adjustment in which intermingling lands will be separated into solid ownership blocks. The tenure adjustment is prerequisite to intensive resource management and conservation treatment on the lands involved. The public interest will be highly served by making this exchange.

The exchange will be subject to:

1. The reservation to the United States of a right-of-way for ditches and canals constructed by the authority of the United States. Act of August 30, 1890 (43 U.S.C. 945).

2. All other valid existing rights, including but not limited to any right, easement or lease of record. The valid existing rights of record are as follows: OR–18233—Irrigation Reservoir—Walter T. McEwen, and OR–23027—Powerline—Harney Electric Cooperative.

3. Grazing permits authorized under the Taylor Grazing Act of 1934, as amended (43 US.C. 315), will remain in effect until the end of the two year prior notification period, unless unconditionally waived by the permittee.

4. Non-Permanent improvement belonging to Star Mountain Ranch (Walter McEwen) on the offered lands may be removed within a period of time designated by the Authorized Officer. If not removed, the improvement will either be authorized by the Bureau of Land Management or become the property of the United States, with the exception of fences located on the boundary between the offered and private lands.

5. All minerals owned by Walter McEwen will be conveyed to United States in the exchange and United States will convey equal amount of mineral to Walter McEwen.

Publication of this notice in the **Federal Register** segregates the public lands described above from appropriation under the public land laws, including the mining laws, but not from exchange pursuant to Section 206 of the Federal Land Policy and Management Act of 1976. The segregative effect of this Notice will terminate upon issuance of patent or in two years, which ever occurs first.

Detailed information concerning the exchange, including the environmental analysis and record of public discussions, will be available for review at the Vale District Office, 100 East Oregon Street, Vale, Oregon 97918.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may

submit comments to the Vale District Manager at the above address. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

William C. Calkins,

District Manager.

June 22, 1989.

[FR Doc. 89-15386 Filed 6-28-89; 8:45 am]

BILLING CODE 4310-33-M

[OR-030-09-4212-12; GP9-260; OR 44787]

Exchange of Public Lands in Malheur County, OR

The following described lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Willamette Meridian

T. 17 S., R. 44 E.,
Sec. 14: NE¼, N½NW¼, SE¼NW¼, NE¼SW¼, N½SE¼,
T. 17 S., R. 45 E.,
Sec. 17: W½;
Sec. 18: lot 1, 2, 3, 4, E½W½,E½.

The area described above aggregates 1353.01 acres in Malheur County, Oregon.

In exchange for these lands, the Federal Government will acquire the following described private lands from OT Farms:

Willamette Meridian

T. 17 S., R. 45 E.,
Sec. 8: E½W½;
T. 18 S., R. 45E.,
Sec. 3: lot 1, 2, 3, 4, S½N½, S½.

The area described above aggregates 1319.61 acres in Malheur County, Oregon.

The purpose of the land exchange is to facilitate resource management opportunities as identified in the Management Framework Plan for the Northern Malheur (Malheur) Resource Area. The exchange is needed to effect a land tenure adjustment in which portion of the Oregon Trail is acquired by the United States and intermingling lands are separated into solid ownership blocks. The tenure adjustment is prerequisite to intensive resource management and conservation treatment on the lands involved. The public interest will be highly served by making this exchange.

The exchange will be subject to:

1. The reservation to the United States of a right-of-way for ditches and canals constructed by the authority of the United States. Act of August 30, 1890 (43 U.S.C. 945).

2. All other valid existing rights, including but not limited to any right, easement or lease of record. The valid existing rights of record are as follows: Malheur County Roads—Old Oregon Trail No. 751, Dry Gulch No. 531, Hillroad No. 681, and North Road D No 1109; Vale-Warm Springs Lateral Canal No. 430 Reserved to USA Act of 8-30-1890 and pioneer grave site (Oregon State law prohibits disturbance).

3. Grazing permits authorized under the Taylor Grazing Act of 1934, as amended (43 U.S.C. 315), will remain in effect until the end of the two year prior notification period, unless unconditionally waived by the permittee.

4. Non-permanent improvements belonging to OT Farms on the offered lands may be removed within a period of time designated by the Authorized Officer. If not removed, the improvements will either be authorized by the Bureau of Land Management or become the property of the United States, with the exception of fences located on the boundary between the offered and private lands.

5. All minerals owned by OT Farms will be conveyed to United States in the exchange and United States will convey equal amount of mineral to OT Farms.

Publication of this notice in the **Federal Register** segregates the public lands described above from appropriation under the public land laws, including the mining laws, but not from exchange pursuant to Section 206 of the Federal Land Policy and Management Act of 1976. The segregative effect of this Notice will terminate upon issuance of patent or in two years, whichever occurs first.

Detailed information concerning the exchange, including the environmental analysis and record of public discussions, will be available for review at the Vale District Office, 100 East Oregon Street, Vale, Oregon 97918.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Vale District Manager at the above address. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

William C. Calkins,

District Manager.

June 22, 1989.

[FR Doc. 89-15387 Filed 6-28-89; 8:45 am]

BILLING CODE 4310-33-M

[ID-942-09-4730-12]

Filing of Plats and Survey; Idaho

The plats of survey of the following described lands were officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 10:00 a.m., June 23, 1989.

The plat representing the dependent resurvey of portions of the west boundary, subdivisional lines and the meanders of the right bank of the Salmon River, and the subdivision of section 18, T. 23 N., R. 22 E., Boise Meridian, Idaho, Group No 748, was accepted June 19, 1989.

This survey was executed to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

June 23, 1989.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 89-15388 Filed 6-28-89; 8:45 am]

BILLING CODE 4310-GG-M

[NV-920-09-4133-12]

Wilderness Study Areas; Availability of Mineral Survey Reports; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of the availability of two (2) mineral survey reports produced by the U.S. Geological Survey/U.S. Bureau of Mines on two (2) Bureau of Land Management Wilderness Study Areas (WSAs) in Nevada. Announcement of a 60-day comment period to obtain previously unknown mineral information on the areas.

SUMMARY: The Federal Land Policy and Management Act (Pub. L. 94-579) requires the U.S. Geological Survey and the U.S. Bureau of Mines to conduct mineral surveys on certain Bureau of Land Management (BLM) WSAs to determine the mineral values, if any, that may be present. In Nevada, two (2) new reports on WSAs have been completed. This is the third set of reports to be released. This notice gives the public an opportunity to obtain the reports and to review and offer previously unknown mineral information on the WSAs. New public comment information/data will be screened by the BLM. The State Director of that agency may ask the Geological Survey or the Bureau of Mines to determine if the information contains significant new data or an interpretation that was not available at the time the mineral survey report was prepared. Geological Survey or the Bureau of Mines would determine if additional field investigations should be undertaken. Recommendations for the designation of an area as wilderness will be made to the Secretary of the Interior by the BLM. The Secretary shall, in turn, make recommendations to the President who will advise Congress. A recommendation of the President for designation as wilderness shall become effective only if so provided by an Act of Congress.

DATES: The public review of the two (2) mineral survey reports named in this notice shall begin on July 10, 1989, and shall continue for 60 days (September 10, 1989).

ADDRESS: All data and written comments should be directed to the State Director (NV-920), Bureau of Land Management, P.O. Box 12000, Reno, Nevada 89520. Copies of the bulletins may be purchased from: Books and Open-File Reports Section, U.S. Geological Survey, Federal Center, Box 25425, Denver, CO 80225, telephone (303-236-7476).

FOR FURTHER INFORMATION CONTACT: Jack Crowley, Minerals Division, (702) 328-6376, or Dave Wolf, Wilderness Coordinator, (702) 328-6283, Nevada State Office, Bureau of Land Management, P.O. Box 12000, 850 Harvard Way, Reno, Nevada 89520.

SUPPLEMENTARY INFORMATION: The two mineral reports available for review and for purchase are listed below. The price noted on bulletins is that charged by the Books and Open-File Reports Section, U.S. Geological Survey (303-276-7476) and includes third or fourth class mailing. Firest class or foreign mailings require an addition of ten percent.

Clover Mtns., WSA Lincoln County (USGS 1729-D).....$3.25
South McCullough WSA, Clark County (USGS 1730-C).....$2.00

The reports are also available for review in the offices of the BLM in Nevada. Those are in Reno, Elko, Winnemucca, Carson City, Ely, Las Vegas, Battle Mountain, Caliente and Tonopah. Libraries with copies include the Nevada State Library in Carson City; the Government Documents Section of the University of Nevada, Las Vegas, Library; and the Mines Library of the University of Nevada, Reno. Community libraries which have been sent copies are Fallon, Minden, Elko, Winnemucca, Pioche, Yerington, Hawthorne, Lovelock, Ely, Austin, Eureka, Caliente, Tonopah, Pahrump, Goldfield and Battle Mountain.

Upon receipt of additional mineral survey reports on Nevada WSAs, additional comment periods will be held.

Date: June 23, 1989.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 89-15389 Filed 6-28-89; 8:45 am]

BILLING CODE 4310-HC-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-276]

Certain Erasable Programmable Read Only Memories, Components Thereof, Products Containing Such Memories, and Processes for Making Such Memories; Commission Decision Denying Motion for Reconsideration

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has denied a motion for reconsideration filed by Intel Corporation, complainant in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Judith M. Czako, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-252-1093.

SUPPLEMENTARY INFORMATION: The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in section 210.60 of the Commission's Interim Rules of Practice and Procedure, 53 **Federal Register** 33073 (Aug. 29, 1988), to be codified at 19 CFR 210.60.

On March 16, 1989, the Commission issued its final determination in the above-captioned investigation. The Commission determined that there was a violation of section 337 in the unlicensed importation and sale of certain erasable programmable read only memories. The Commission determined that a limited exclusion order and cease and desist orders were the appropriate remedy. On March 30, 1989, complainant Intel Corporation filed a petition for reconsideration of six determinations made by the Commission in the course of reaching its final determination. Having considered Intel's petition for reconsideration, and the responses thereto, the Commission has determined that Intel has not demonstrated that reconsideration is warranted under the Commission's rules.

Notice of this investigation was published in the **Federal Register** of September 16, 1987 (52 FR 35004).

Copies of the Commission's Order and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: June 20, 1989.

[FR Doc. 89-15339 Filed 6-28-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-276]

Institution of Advisory Opinion Proceeding

In the matter of Certain Erasable Programmable Read Only Memories, Components Thereof, Products Containing such Memories, and Processes for Making such Memories.

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has instituted an advisory opinion proceeding relating to the limited exclusion order issued on March 16, 1989, at the conclusion of the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Judith M. Czako, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-252-1093.

SUPPLEMENTARY INFORMATION: The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in § 210.54 of the Commission's Interim Rules of Practice and Procedure, 53 **Federal Register** 33034, 33059 (Aug. 29, 1988), to be codified at 19 CFR 210.54.

On March 16, 1989, the Commission issued its final determination in the above-captioned investigation. The Commission determined that there was a violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), in the unlicensed importation and sale of certain erasable programmable read only memories (EPROMs) by, *inter*

alia, Atmel Corporation. The Commission determined that a limited exclusion order and cease and desist orders were the appropriate remedy. The Commission's determination and orders became final on May 22, 1989, the President having determined to take no action with respect to the Commission's determination and orders.

On March 31, 1989, respondent Atmel filed two petitions for advisory opinions, concerning two of the patents its EPROMs had been found to infringe, U.S. Letters Patent 4,2323,394 (the '394 patent) and U.S. Letters Patent 4,519,050 (the '050 patent). In both petitions, Atmel stated that it had redesigned the infringing EPROMs to eliminate the elements determined to infringe, such that the designing products products no longer infringe either the '394 or '050 patents.

The Commission has examined the petitions for advisory opinions filed by Atmel and the responses thereto, and having found that the requests comply with the requirements for institution of an advisory opinion proceeding, determined to institute an advisory opinion proceeding and referred the requests to the Chief Administrative Law Judge for issuance of an initial opinon.

Copies of the Commission's Order and all the nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: June 23, 1989.

[FR Doc. 89-15310 Filed 6-28-89; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31480]

Wisconsin Central Ltd.; Purchase Exemption; Lake Superior & Ishpeming Railroad Co. Line Between Munising and Munising Junction, MI

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission, under 49 U.S.C. 10505, exempts from the requirements of 49 U.S.C. 11343–11345, the purchase from Lake Superior & Ishpeming Railroad Company and operation by Wisconsin Central Ltd. of approximately 5.5 miles of rail line and rail-related properties between milepost 0.00 at Munising and milepost 5.88 at Munising Junction, MI. The exemption is granted subject to appropriate labor protective conditions and an historic preservation condition.

DATES: This exemption is effective July 10, 1989. Petitions for reconsideration must be filed by July 25, 1989.

ADDRESSES: Send pleadings referring to Finance Docket No. 31480 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representatives: Janet H. Gilbert, Wisconsin Central Ltd., P.O. Box 5062, Rosemont, IL 60017.

William C. Sippel, 233 North Michigan Avenue, Suite 2400, Chicago, IL 60601.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245 (TDD for hearing impaired: (202) 275–1721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275–1721.)

Decided: June 22, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89-15396 Filed 6-28-89; 8:45 am]

BILLING CODE 7035-01-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before August 14, 1989. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions

requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Defense Contract Audit Agency (N1–372–89–1). Records relating to implementation of the Drug-Free Federal Workplace Program.

2. Defense Intelligence Agency (N1–373–89–6). Routine administrative support and logistics/engineering records (permanent records retained elsewhere).

3. Agency for International Development, USAID/Jamaica (N1–286–89–2). Reduced retention period for administrative records which sustained extensive hurricane damage.

4. Department of Education (N1–12–89–2). Routine administrative records of the former Office of the Assistant Secretary for Education, Department of Health, Education, and Welfare.

5. Federal Communications Commission, Common Carrier Bureau (N1–173–89–2). Cellular Radio Service Applications.

6. Department of Health and Human Services, Public Health Service (N1–90–89–3). General accounting ledger created by the U.S. Interdepartmental Social Hygience Board.

7. Department of Justice, Antitrust Division (N1–60–89–6). Records relating to requests that this Department participate in private antitrust suits as *amicus curiae*.

8. Department of Justice, Federal Bureau of Investigation (N1–65–89–5). Documentation whose destruction has been mandated by court order and whose continued maintenance may conflict with the Privacy Act.

9. Department of Justice, Federal Bureau of Investigation (N1–65–89–6). Documentation containing personal information whose destruction has been requested under the Privacy Act of 1974 by the subject of the files.

10. Department of Justice, Department of Foreign Claims Settlement Commission (N1–299–89–3). Facilitative correspondence of the China and Cuba Claims Programs.

11. National Archives and Records Administration, Office of Records Administration (N1–GRS–89–3). Revisions to General Records Schedules 20 and 23, covering printouts from disposable master files and data bases.

12. National Security Agency (N1–457–89–10). This NSA schedule is classified in the interest of national security pursuant to Executive Order 12356 and is further exempt from public disclosure pursuant to the National Security Act of 1947, 50 U.S.C. 403(d)[3], and Pub. L. 86–36.

13. Department of Transportation, United States Coast Guard (N1–26–89–1). Routine automated quarterly military justice work files (permanent information maintained elsewhere).

14. Department of Transportation, Federal Highway Administration, (N1–406–89–2). Copies of resolutions and routine administrative materials relating to the hearings held by the National Advisory Committee on Outdoor Advertising and Motorist Information.

15. Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Office of Law Enforcement, headquarters and subordinate field offices (N1–436–88–4). Quarterly certification files and time and activity summary files relating to administratively uncontrollable overtime.

16. U.S. District Courts (N1–21–89–1). Reduction in retention period for disposable bankruptcy case files retired to Federal records centers before 1984.

Dated: June 22, 1989.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 89-15329 Filed 6-28-89; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL SCIENCE FOUNDATION

Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Review Panel for Engineering Research Centers.

Date and Time: July 19, 20, and 21, 1989.

Place: Ramada Renaissance Hotel, 1143 New Hampshire Avenue NW., Washington, DC 20037.

Type of Meeting: Closed.

Contact Person: Marshall M. Lih, Division Director, Engineering Centers Division, National Science Foundation, 1800 G Street NW., Room 1121, Washington, DC 20037.

Purpose of Meeting: Proposal Review.

Agenda: To review and evaluate Engineering Research Center proposals requesting NSF support to establish a center to develop fundamental knowledge in engineering fields that will enhance the international competitiveness of U.S. industry and prepare engineers to contribute through better engineering practice.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

June 26, 1989.

[FR Doc. 89-15360 Filed 6-28-89; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-261]

Carolina Power & Light CO., H.B. Robinson Steam Electric Plant, Unit No. 2; Issuance of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–23 issued to the Carolina Power & Light Company, for operation of H.B. Robinson Steam Electric Plant, Unit No. 2 located in Darlington County, South Carolina.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the provisions in the Technical Specifications (TS) relating to the minimum inventory of diesel generator fuel oil to be stored onsite. The proposed TS also include provisions for surveillance requirements on testing of the diesel generator fuel oil inventory. The proposed action was requested by the licensee's application dated November 30, 1988, as supplemented by a letter May 5, 1989.

The Need for the Proposed Action

The proposed changes are needed to ensure that sufficient diesel generator fuel oil will be available onsite for one diesel generator to operate at full load for seven days. The proposed TS would increase the minimum fuel oil inventory and resolve the inconsistency between the TS and Section 8.3.1.1.5.1 of the updated Final Safety Analysis Report.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the TS. The proposed revisions would require that a minimum fuel oil inventory be stored onsite. The TS proposed also impose surveillance requirements on testing and sampling of the diesel fuel oil inventory.

The safety considerations associated with the TS requirement to store onsite an increased minimum diesel fuel oil

have been evaluated by the NRC staff. The staff has concluded that such changes would have no adverse effect on plant safety. The existing capacities of the Unit 2 diesel generator fuel oil storage tank (25,000 gallons) and the Unit 1 I–C turbine fuel oil storage tanks (95,000 gallons) exceed the minimum fuel oil inventory requirements of the proposed TS. The proposed TS change to maintain an increased minimum fuel oil inventory in those tank does not impact on the combustible loading for the H.B. Robinson Steam Electric Plant, Unit No. 2, fire hazard analysis, which took into consideration the full capacities of the fuel oil storage tanks. Therefore, the proposed change will have no adverse effect on the probability or the consequences of any accident. No changes are being made in the types or amounts of any radiological effluents that may be released offsite and there is no significant increase in the allowable individual or cumulative occupational radiation exposure.

The staff has evaluated the potential non-radiological impact of reactor operation because of the required diesel fuel oil inventory storage onsite. The diesel fuel oil will be stored in existing on-site storage tanks. The license routinely has maintained an on-site diesel fuel inventory in excess of that in the proposed TS. The proposed changes to the TS do not affect non-radiological plant effluents and have no other environmental impact.

Therefore, the Commission concludes that there is no significant environmental impact associated with the proposed amendment.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and could result in reduced time period for diesel generator availability.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement related to the operation of H.B. Robinson Nuclear Steam-Electric Plant Unit 2," dated April 1975.

Agencies and Persons Consulted

The NRC reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon his foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated November 30, 1988, as supplemented by letter dated May 5, 1989, which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535.

Dated at Rockville, Maryland, this 21st day of June 1989.

For the Nuclear Regulatory Commission

Elinor G. Adensam,

Director, Project Directorate II–I, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89–15405 Filed 6–28–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–213]

Connecticut Yankee Atomic Power Co., Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of schedular and permanent exemptions from the requirements of 10 CFR Part 50, Appendix J to the Connecticut Yankee Atomic Power Company (CYAPCO or the licensee) for the Haddam Neck Plant, located at the licensee's site in Middlesex County, Connecticut.

Environmental Assessment

Identification of the Proposed Action

The proposed action would grant schedular exemptions from 10 CFR Part 50, Appendix J for the requirements of Section III.A.6.(b), Type A test, Section III.D.2(a), Type B test, and Section III.D.3, Type C test. The proposed action is in accordance with the licensee's request for exemption dated April 26, 1989.

The Need for the Proposed Action

One of the conditions of all operating licenses for water-cooled power reactors, as specified in 10 CFR 50.54(o), is that primary reactor containments shall meet the containment leakage test requirements set forth in 10 CFR Part 50, Appendix J.

The licensee has proposed the requested exemptions because performing the Type A, B and C test as required by Appendix J would require a midcycle shutdown.

Environmental Impacts of the Proposed Action

The proposed exemption would postpone the Type A test approximately 6 months and the Type B and C test approximately 2 months. The NRC staff has reviewed this proposed exemption and concluded the extension of the test period for the Type A, B and C test will not compromise containment integrity. This conclusion is based, in general, on an aggressive program to limit Type C leakage, the unexpected delay in start-up from the last refueling, extending the refueling cycle length, and that the time for which the containment was actually exposed to normal plant operating environment is less than the recommended Type A, B and C test periods.

Thus, radiological releases will not differ from those determined previously and the proposed exemptions do not otherwise affect facility radiological effluent or occupational exposures. With regard to potential nonradiological impacts, the proposed exemptions do not affect plant nonradiological effluents and have no other environmental impact. Therefore, the Commission concludes there are no measurable radiological or nonradiological environmental impact associated with the proposed exemptions.

Alternatives to the Proposed Action

Since the Commission has concluded that is no measureable environmental impact associated with the proposed exemptions, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the schedular exemptions would be to deny the exemption requested. Such action would not enhance the protection of the environment and would result in unjustified costs for the licensee.

Alternative Use of Resources

This action does not involve the use of resources not considered previously in the Final Environmental Statement for Haddam Neck.

Agencies and Person Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemptions.

For further details with respect to this proposed action, see the licensee's letter dated April 26, 1989. This letter is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the Russell Library, 123 Broad Street, Middletown, Connecticut 06547.

Dated at Rockville, Maryland this 23rd day of June, 1989.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89–15406 Filed 6–28–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–282 and 50–306]

Northern States Power Co., Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. DPR–42 and DPR–60, issued to Northern States Power Company (licensee), for operation of the Prairie Island Nuclear Generating Plant, Units Nos. 1 and 2, located in Goodhue County, Minnesota.

Environmental Assessment

Identification of the Proposed Action

The proposed amendments would revise the license by adding the provisions allowing the transfer of by-product material to the Prairie Island Nuclear Generating Plant from other NSP job sites.

The proposed action is in accordance with the licensee's application for amendment dated October 24, 1988.

The Need for the Proposed Action

The proposed changes to the licenses are required in order to make more efficient use of special facilities for decontaminating equipment, cleaning protective clothing, and volume reduction of radioactive waste.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the licenses. The proposed revisions would allow the transfer of by-product materials to Prairie Island Nuclear Generating Plant from other NSP job sites. The proposed change would result in a dose to the general public that would be much less than the 0.2 man rem referenced in the Final Environmental Statements (FES) regarding the transportation of solid wastes. Collective doses of this magnitude are very unlikely to pose a significant impact on the quality of the human environment.

With regard to potential non-radiological impacts, the proposed change involves facilities located entirely within the restricted area as defined in 10 CFR Part 20, 10 CFR 51.31, and Regulatory Guide 8.8. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the Federal Register on March 7, 1989 (54 FR 9584). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Since the Commission has concluded there are no significant environmental effects that would result from the proposed action, any alternative with equal or greater environmental impact need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operation flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statements related to the Prairie Island Nuclear Generating Plant Unit Nos. 1 and 2 dated May 1973.

Agencies and Persons Contacted

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated October 24, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and the Technology and Science Department, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Dated at Rockville, Maryland this 23rd day of June 1989.

For the Nuclear Regulatory Commission.

Lawrence A. Yandell,

Acting Director, Project Directorate III–1, Division of Reactor Projects—III, IV, V & Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–15407 Filed 6–28–89; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on July 13–15, 1989 in Room P–110, 7920 Norfolk Avenue, Bethesda, Md. Notice of this meeting was published in the Federal Register on June 20, 1989.

Thursday, July 13, 1989, Room P–110, 7920 Norfolk Avenue, Bethesda, Md.

8:30 a.m.–8:45 a.m.: Comments by ACRS Chairman (Open)—The ACRS Chairman will report on items of current interest.

8:45 a.m.–12:00 Noon and 1:00 p.m.–2:00 p.m. Advanced Light-Water Reactors (Open)—The Committee will hear a report regarding proposed EPRI requirements for advanced LWRs.

2:00 p.m.–3:30 p.m.: USI A–40, Seismic Design Criteria (Open)—The Committee will review and comment on proposed resolution of USI A–40, Seismic Design Criteria-Short Term Program.

3:45–4:45 p.m.: Containment Performance Improvement Program (Open)—A briefing will be presented regarding the status of this program.

4:45–6:15 p.m.: Reactor Pressure Vessel Integrity (Open)—A briefing and discussion will be held regarding the

status of radiation damage to operating nuclear power plant reactor pressure vessels.

6:15–6:45 p.m.: Future ACRS Activities (Open)—The Committee will discuss anticipated subcommittee activities and items proposed for consideration by the full Committee.

Friday, July 14, 1989, Room P–110, 7920 Norfolk Avenue, Bethesda, Md.

8:30 a.m.–10:00 a.m.: Multiple System Responses Program (Open)—A briefing and discussion will be held regarding the status of this program.

10:15 a.m.–12:00 Noon: Fire Risk Scoping Study (Open)—The Committee will review and report regarding the staff's proposed plans to implement the recommendations resulting from the Fire Risk Scoping Study.

1:00 p.m.–3:00 p.m.: Comanche Peak Nuclear Station, Units 1 and 2 (Open)—The Committee will hear a briefing by the NRC staff regarding proposed issuance of an operating license for this facility.

3:15 p.m.–4:15 p.m.: Human Factors (Open)—A briefing and discussion will be held regarding the Chernobyl "spin-off" study.

4:15 p.m.–4:45 p.m.: Nuclear Power Plant Valve Performance (Open)—A briefing and discussion will be held regarding reliability of check valves in nuclear power plants.

4:45 p.m.–5:15 p.m.: ACRS Subcommittee Activities—A discussion will be held regarding the status of assigned subcommittee activities including consideration of the power level increase required for the Indian Point Nuclear Plant, Unit 2.

5:15 p.m.–5:30 p.m.: Appointment of ACRS Members (Open/Closed)—A discussion will be held regarding the qualifications and status of candidates proposed for appointment to the ACRS.

Portions of this session will be closed as required to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

Saturday, July 15, 1989, Room P–110, 7920 Norfolk Avenue, Bethesda, Md.

8:30 a.m.–12:00 Noon: Preparation of ACRS Reports (Open)—Discuss proposed ACRS reports regarding items considered during this meeting.

1:00 p.m.–2:30 p.m: Miscellaneous (Open)—The Committee will complete discussion of items considered during this meeting.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 27, 1988 (53 FR 43487). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 301/492–8049), between 8:15 a.m. and 5:00 p.m.

Date: June 23, 1989.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 89–15306 Filed 6–28–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–348–CivP; 50–364–CivP; ASLBP No. 89–591–01–CivP]

Atomic Safety and Licensing Board; Alabama Power Co.; Joseph M. Farley Nuclear Plant (Units 1 and 2)

June 22, 1989.

Before Administrative Judges: John H. Frye, III, Chairman, Dr. James H. Carpenter, Dr. Walter H. Jordan.

On March 28, 1989, NRC Staff issued an Order Imposing Civil Monetary Penalty on Alabama Power Company (APCo). See 54 FR 13962, April 6, 1989. On June 1, APCo requested a hearing on the Order pursuant to 10 CFR 2.205, and on June 14, the Chief Administrative Judge of the Commission's Atomic Safety and Licensing Board Panel appointed this Board to conduct that hearing.

Please take notice that, pursuant to 10 CFR 2.205(e), a hearing in this matter will be held at a time and place to be designated. A prehearing conference will be held at 9:00 a.m., Friday, July 21, 1989, at the Hugo L. Black U.S. Courthouse, 1729 5th Avenue North, Birmingham, Alabama, in a courtroom to be designated.

It is so *Ordered*

For the Atomic Safety and Licensing Board.

John H. Frye III,

Chairman Administrative Judge.

[FR Doc. 89–15307 Filed 6–28–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–353]

Philadelphia Electric Co., Limerick Generating Station, Unit No. 2; Issuance of Facility Operating License

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission), has issued Facility Operating License No. NPF–83 to the Philadelphia Electric Company (the licensee), which authorizes operation of the Limerick Generating Station, Unit No. 2 (the facility), by Philadelphia Electric Company for fuel loading and precriticality testing in accordance with the provisions of the License, the Technical Specifications and the Environmental Protection Plan.

The Limerick Generating Station, Unit No. 2, is a boiling water nuclear reactor located on the licensee's site in Montgomery and Chester Counties, Pennsylvania on the banks of the Schuylkill River approximately 1.7 miles southeast of the city limits of Pottstown, Pennsylvania and 21 miles northwest of the city limits of Philadelphia, Pennsylvania.

The application for the license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the License. Prior public notice of the overall action involving the proposed issuance of an operating license was published in the **Federal Register** on August 21, 1981 (46 FR 42557–42558).

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement since the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of the exemption included in this license will have no significant impact on the environment (54 FR 15851) and (54 FR 24607).

For further details in respect to this action, see (1) Facility Operating License NPF–83 complete with Technical Specifications and the Environmental Protection Plan; (2) the final report of the Advisory Committee on Reactor Safeguards, dated May 11, 1989; (3) the Commission's Safety Evaluation Report, dated August 1983 (NUREG–0991), Supplements 1 through 8; (4) the Final Safety Analysis Report and Amendments thereto; (5) the Environmental Report and supplements thereto; (6) the Final Environmental Statement dated April 1984 (NUREG–0974); (7) the Atomic Safety and Licensing Board Decision, LBP–85–25, dated July 22, 1985; and (8) the Commission's Order dated June 8, 1989.

These items are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464. A copy of Facility Operating License NPF–83 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II. Copies of the Safety Evaluation Report and its Supplements 1 through 8 (NUREG–0991) and the Final Environmental Statement (NUREG–0974) may be purchased through the U.S. Government Printing Office by calling (202) 275–2060 or by writing to the U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies may also be purchased from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Rockville, Maryland, this 22nd day of June 1989.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, Project Directorate I–2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89–15408 Filed 6–28–89; 8:45 am]

BILLING CODE 7590–01–M

PENSION BENEFIT GUARANTY CORPORATION

Request for Extension of Approval by OMB of a Collection of Information: Interim Procedures for Single-Employer Plan Terminations, Forms 444, 445, and 5310

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for OMB extension of approval.

SUMMARY: The Pension Benefit Guaranty Corporation ("PBGC") has requested approval by the Office of Management and Budget ("OMB") for an extension of the expiration date of a currently approved collection of information (1212–0036) covering Forms 444, 445, and 5310, without any change in the substance or in the method of collection. The collection of information covers the information that must be submitted to the PBGC to effect either a standard or distress termination under PBGC's interim termination procedures issued pursuant to the Single-Employer Pension Plan Amendments Act of 1986, as modified by the Omnibus Budget Reconciliation Act of 1987. The effect of this notice is to advise the public that PBGC has requested OMB approval for a short extension of this collection of information through December 31, 1989, by which time PBGC will have issued a new set of termination forms.

ADDRESSES: All written comments (at least three copies) should be addressed to: Office of Management and Budget, Paperwork Reduction Project (1212–0036), Washington, DC 20503. The request for extension will be available for public inspection at the PBGC Communication and Public Affairs Department, Suite 7100, 2020 K Street, NW., Washington, DC 20006, between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: J. Ronald Goldstein, Senior Counsel, Office of General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, (202) 778–8850 (202–778–8859 for TTY and TDD). (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Single-Employer Pension Plan Amendments Act of 1986 (SEPPAA) imposed new restrictions on and rules governing the voluntary termination of single-employer plans. Under SEPPAA, plans may voluntarily terminate only in a standard or distress termination, and then, only if several statutory prerequisites are satisfied. The law also includes several detailed requirements mandating the submission to PBGC of the information necessary for it to determine whether the requirements for a standard or distress termination have been met. On April 10, 1986 (at 51 FR 12491), the PBGC issued a Notice of Interim Procedures providing plan administrators with detailed guidance on complying with these statutory notice requirements.

The Omnibus Budget Reconciliation Act of 1987 modified some of the substantive requirements for voluntary plan terminations and, as a consequence, also modified the various notice requirements. On January 22, 1988 (53 FR 1904), the PBGC published a notice advising plan administrators of these changes.

The information submitted to the PBGC is used by it to make the several statutorily mandated determinations it must make relative to a proposed termination. For both standard and distress terminations, the PBGC must determine whether the statutory requirements therefor have been satisfied. For distress terminations, the PBGC must also determine the level of plan funding.

These notices are filed by the plan administrator of a terminating plan. As a rule, plan termination is only initiated once, and therefore these notices are typically filed only once per plan. Moreover, the notice requirements themselves constitute a relatively minor burden on plan administrators because virtually all of the information/data that must be submitted is information or data that must be collected or created in order to carry out the plan termination. The PBGC, therefore, estimates that the aggregate annual burden imposed on plan administrators in filing these notices is 4,712 hours. This reflects an assumption, for fiscal year 1989, of 9,000 standard terminations and 100 distress terminations.

Issued at Washington, DC, this 23rd day of June, 1989.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 89–15342 Filed 6–28–89; 8:45 am]

BILLING CODE 7708–01–M

POSTAL RATE COMMISSION

[Docket No. A89–9; Order No. 828]

Elsmere, Nebraska 69135, (Malcolm S. Smith, Petitioner); Notice and Order Accepting Appeal and Establishing Procedural Schedule

Issued June 21, 1989.

Before Commissioners: Janet D. Steiger, Chairman; Patti Birge Tyson, Vice-Chairman;

John W. Crutcher; Henry R. Folsom; W. H. "Trey" LeBlanc III

Docket Number: A89–9.
Name of Affected Post Office: Elsmere, Nebraska 69135.
Name(s) of Petitioner(s): Malcolm S. Smith.
Type of Determination: Closing.
Date of Filing of Appeal Papers: June 19, 1989.
Categories of Issues Apparently Raised:

1. Effect on postal service (39 U.S.C. 404(b)(2)(C)).
2. Effect on the community (39 U.S.C. 404(b)(2)(A)).
3. Economic savings (39 U.S.C. 404(b)(2)(D)).

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule (39 U.S.C. 404(b)(5)), the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the petitioner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission Orders

(A) The record in this appeal shall be filed on or before July 5, 1989.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the Federal Register.

By the Commission.
Charles L. Clapp,
Secretary.

Appendix

Docket No. A89–9
Elsmere, Nebraska 69135

June 19, 1989	Filing of Petition.
June 21, 1989	Notice and Order of Filing of Appeal.
July 14, 1989	Last day of filing of petitions to intervene (*see* 39 CFR 3001.111(b)).
July 24, 1989	Petitioner's Participant Statement or Initial Brief (*see* 39 CFR 3001/115 (a) and (b)).
August 14, 1989	Postal Service Answering Brief [*see* 39 CFR 3001.115(c)).
August 29, 1989	Petitioner's Reply Brief should Petitioner choose to file one (*see* 39 CFR 3001.115(d)).
September 5, 1989	Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
October 17, 1989	Expiration of 120-day decisional schedule (*see* 39 U.S.C. 404(b)(5)).

[FR Doc. 89–15402 Filed 6–28–89; 8:45 am]
BILLING CODE 7715–01–M

[Docket No. A89–8; Order No. 827]

Lafontaine, Kansas 66750 (Mary Compton, Petitioner); Notice and Order Accepting Appeal and Establishing Procedural Schedule

Issued June 21, 1989.

Before Commissioners: Janet D. Steiger, Chairman; Patti Birge Tyson, Vice-Chairman; John W. Crutcher; Henry R. Folsom; W. H. "Trey" LeBlanc III.

Docket Number: A89–8.
Name of Affected Post Office: Lafontaine, Kansas.
Name(s) of Petitioner(s): Mary Compton.
Type of Determination: Closing.
Date of Filing of Appeal Papers: June 9, 1989.
Categories of Issues Apparently Raised:

1. Whether the closing is observant of procedure required by law (39 U.S.C. 404(b)(5)(B)).

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule (39 U.S.C. 404(b)(5)), the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the petitioner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission Orders

(A) The record in this appeal shall be filed on or before June 26, 1989.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the Federal Register.

By the Commission.
Charles L. Clapp,
Secretary.

Appendix

Docket No. A89–8
Lafontaine, Kansas 66750

June 9, 1989	Filing of Petition.
June 21, 1989	Notice and Order of Filing of Appeal.
July 5, 1989	Last day of filing of petitions to intervene (*see* 39 CFR 3001.111(b)).
July 14, 1989	Petitioners' Participant Statement or Initial Brief (*see* 39 CFR 3001.115(a) and (b)).
August 3, 1989	Postal Service Answering Brief (*see* 39 CFR 3001.115(c)).
August 18, 1989	Petitioners' Reply Brief should Petitioners choose to file one (*see* 39 CFR 3001.115(d)).
August 25, 1989	Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
October 6, 1989	Expiration of 120-day decisional schedule (*see* 39 U.S.C. 404(b)(5)).

[FR Doc. 89–15403 Filed 6–28–89; 8:45 am]
BILLING CODE 7715–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Pay Rate Reports.
(2) *Form(s) submitted:* UI–1e, UI–1g.
(3) *OMB Number:* 3220–0097.
(4) *Expiration date of current OMB clearance:* 8–31–89.
(5) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.
(6) *Frequency of response:* On occasion.
(7) *Respondents:* Individuals or households, Businesses or other for-profit.
(8) *Estimated annual number of respondents:* ————.
(9) *Total annual responses:* 1,950.
(10) *Average time per response:* .141 hours.
(11) *Total annual reporting hours:* 275.
(12) *Collection description:* Under the RUIA, the daily benefit rate for unemployment and sickness benefits depends on the employee's last daily date of pay. The reports obtain information from the employee and verification from the employer of the claimed rate of pay for use in determining whether an increase in the benefit rate is due.

Additional Information or Comments

Copies of the proposed forms and supporting documents can be obtained from Ronald Ritter, the agency clearance officer (312–751–4692). Comments regarding the information collection should be addressed to Ronald Ritter, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Justin Kopca (202–395–7316), Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503.

Ronald Ritter,
Acting Director of Information Resources Management.

[FR Doc. 89–15390 Filed 6–28–89; 8:45 am]
BILLING CODE 7905–01–M

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s):

(1) *Collection title:* Application and Claim for Unemployment Benefits and Employment Service.
(2) *Form(s) submitted:* UI–1(ES–1), UI–3.
(3) *OMB Number:* 3220–0022.
(4) *Expiration date of current OMB clearance:* 06–30–90.
(5) *Type of Request:* Revision of a currently approved collection.
(6) *Frequency of response:* On occasion.
(7) *Respondents:* Individuals or households.
(8) *Estimated annual number of respondents:* 55,000.
(9) *Total annual responses:* 405,000.
(10) *Average time per response:* .0901234 hours.
(11) *Total annual reporting hours:* 36,500.
(12) *Collection description:* Under section 2 of the RUIA, unemployment benefits are provided for qualified railroad workers. The collection obtains from railroad employees who apply for and claim unemployment benefits, information needed for determining eligibility for and amount of such benefits.

Additional Information or Comments: Copies of the proposed forms and supporting documents can be obtained from Ronald Ritter, the agency clearance officer (312–751–4692). Comments regarding the information collection should be addressed to Ronald Ritter, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Justin Kopca (202–395–7316), Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503.

Ronald Ritter,
Acting Director of Information Resources Management.

[FR Doc. 89–15391 Filed 6–28–89; 8:45 am]
BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–26957; File No. SR–PSE–89–16]

Pacific Stock Exchange; Pilot Program; Proposed Rule Change

Proposed Rule Change By The Pacific Stock Exchange Incorporated Relating to a one-year pilot program which would require a trading crowd to provide a depth of ten contracts on non-broker/dealer customer orders, at the disseminated market quote.

Comments requested with 21 days after the date of this publication.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 7, 1989, the Pacific Stock Exchange Incorporated ("PSE" or the "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Pacific Stock Exchange Incorporated ("PSE" or the "Exchange"), proposes to add Rule VI, section 87, to create a one-year pilot program which would require trading crowds to provide a depth of ten contracts on non-broker/dealer customer orders, at the disseminated market quote. Additionally, the PSE proposes to amend Rule VI, Sections 1, 39, 62, and 79, to supplement and reflect the proposed Rule VI, Section 87 (Brackets indicate language to be deleted, italics indicates new language.)

Rule VI, Section 87

Trading Crowd Firm Disseminated Market Quotes

Sec. 87 Each trading crowd is required to provide a depth of ten (10) option contracts for all non-broker/dealer customer orders, at the bid/offer which is displayed as the disseminated market quote at the time such orders are announced or displayed at the trading post designated for trading the subject option class.

(a) The member/member organization entering an order for execution pursuant to this Rule is responsible for ascertaining the account origin of such order and for providing notation on the subject order ticket of such order's account origin.

(b) The Rule shall be in effect at all times other than during a trading rotation at the subject trading post and a reasonable period of time immediately following a trading rotation, not to exceed five (5) minutes.

(c) Should the executing Floor Broker attempt to split the disseminated market quotes, or upon the declaration of a "fast market" pursuant to Rule VI, Section 38, the trading crowd shall be exempt from the provisions of this Rule.

(d) Should the response of members present at a trading post be insufficient to provide a depth of ten (10) contracts, the Order Book Official shall allocate among the Market Makers present at the trading post the balance of contracts necessary to provide an execution on ten contracts. The Order Book staff shall record and maintain lists of the individual Market Makers who were allocated contracts, and consider such allocations when similar occasions arise within the same trading session. The Order Book Official shall seek, as reasonably as possible, to equalize such allocations.

(e) The enforcement of this Rule, and the expiration months and strike prices

subject to the provisions of this Rule shall be determined by the Options Floor Trading Committee. Two Options Floor Officials may grant exemptions to the provisions of this Rule for either a class or series within a class of option contracts if, in their determination, the individual situation warrants such action, or upon their determination that an error occurred in the dissemination of a market quote.

(f) This Rule is effective on (approval by Commission) and shall continue in effect to and including (date one year after approval). Any extension of the effectiveness of this Rule shall require further approval by the Securities and Exchange Commission.

Commentary:

.01 If a bid/offer displayed as a disseminated market quote is on behalf of an order represented by a Floor Broker or the Order Book Official and is for less than ten (10) contracts, the trading crowd is obligated to buy/sell the balance of contracts necessary to provide a depth of ten (10) contracts at the disseminated bid/offer.

.02 Should a Floor Broker cause a bid/offer to be disseminated and the order is subsequently executed or cancelled, the Floor Broker shall be responsible for causing the removal of such disseminated bid/offer. Failure to remove such bid/offer may result in the Floor Broker being held responsible for providing a depth of ten (10) contracts. A Market Maker who has caused a bid/offer to be disseminated is equally responsible for causing the removal of such bid/offer upon leaving a trading post.

.03 Market Maker orders for less than ten (10) contracts that are represented at a trading post by a Floor Broker shall not be disseminated. Floor Brokers shall remain obligated to use due diligence in the representation of orders pursuant to Rule VI, Section 62(a).

.04 Options Floor Officials, pursuant to Rule VI, Section 39, and Commentary .05 thereunder, may issue Floor Citations for violations of this Section and its Commentary.

Rule VI, Section 1

Sec. 1 No change.

(a) through (a)(28) No change.

(29) The term "trading crowd" means all Market Makers who hold an appointment in the option classes at the trading post where such trading crowd is located and all Market Makers who regularly effect transactions in person for their Market Maker accounts at that trading post, but generally will consist of the individuals present at the trading post.

Rule VI, Section 39

Admission to and Conduct on the Trading Floor

Sec. 39 (a) and (b) No change.

Commentary:

.01 through .04 No change.

.05 Two Options Floor Officials may nullify a transaction or adjust its terms if they determine the transaction to have been in violation of any of the following: (i) Rule VI, Section 47 (Manner of Bidding and Offering); (ii) Rule VI, Section 49 (Priority of Bids and Offers); (iii) Rule VI, Section 50 (Transactions Outside the Order Book Official's Last Quoted Range); (iv) Rule VI, Section 51 (Priority on Split Price Transactions); and (v) Rule VI, Section 87 (Trading Crowd Firm Disseminated Market Quotes).

Rule VI, Section 62

Responsibilities of Floor Brokers

Sec. 62 (a) through (z) No change.

Commentary:

.03 through .03 No change.

.04 A Floor Broker's use of due diligence in handling an order is applicable to the provisions of Rule VI, Section 87, in that it includes taking the necessary measures to ensure the proper execution of an order as it pertains to the executable quantity for a trading crowd's firm disseminated bid/offer. The failure of a Floor Broker to remove a bid/offer that he has caused to be disseminated, upon his leaving the trading post shall constitute a violation of this Section.

.05 A Floor Brokers's use of due diligence in handling an order shall include the immediate and continuous representation of market and marketable orders at the trading post where the option class represented by his order is designated for trading.

Rule VI, Section 79

Obligations of Market Makers

Sec. 79 No change.

Commentary:

.01 through .07 No change.

.08 A Market Maker may be compelled to buy/sell a specified quantity of option contracts at the disseminated bid/offer pursuant to his obligations under Rule VI, Section 87.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

The Exchange proposes that Rule VI, Section 87, which would require that a trading crowd provide a depth of ten contracts on non-broker/dealer customer orders, at the disseminated market quote, be instituted as a one-year pilot program. A trading crowd would be exempt from the requirement immediately following a trading rotation, so as to provide an opportunity for quotes to be updated that may have become obsolete during the rotation. A trading crowd would also be exempt from the requirement in the event a floor broker attempts to split the disseminated market quotes, or upon the declaration of a "fast market."

Enforcement of the pilot would be the responsibility of the Options Floor Trading Committee ("OFTC"). The Exchange proposes to amend its Minor Rule Violation Procedures (SR-PSE-85-24) to include the refusal by a market maker to accept an allocation of contracts by an Order Book Official pursuant to the proposed Rule VI, Section 87(d). Included as Exhibit 1 of this filing is a proposed addition to the Floor Citation Fine Schedule. (SR-PSE-89-08, which was filed with the Commission by the Exchange on May 11, 1989, also includes an amendment to the Floor Citation Fine Schedule.)

The determination of expiration months and strike prices to be included would also be the responsibility of the OFTC. The OFTC has determined to include, initially, only options of the near-term expiration month, which are at, just in, and just out-of-the-money.

For the purpose of enforcing the proposed Rule VI, Section 87, the Exchange proposes to add to Rule VI, Section 1, a definition of the term "trading crowd."

The Exchange proposes add Commentary .05 to Rule VI, Section 39, to codify instances when two Options Floor Officials may nullify or adjust the terms of a transaction which they believe to be in violation of Exchange Rules, including the proposed Rule VI, Section 87.

The Exchange proposes the addition of Commentary .04 to Rule VI, Section 62, for the purpose of ensuring that floor brokers take the necessary measures to obtain an execution on a minimum of ten contracts, when appropriate, pursuant to the proposed Rule VI, Section 87. The proposed Rule VI, Section 62, Commentary .05, specifically sets forth that a floor broker must immediately and continuously represent market and marketable orders, which is currently Exchange policy.

The Exchange proposes to add Commentary .08 to Rule VI, Section 79, to specify that a market maker's obligations may include the buying or selling of a specified quantity of option contracts at the disseminated bid or offer.

The Exchange believes that the proposed rule change will protect investors and promote the public interest by assuring a minimum ten contract execution of public customer orders at the displayed bid or offer.

The proposed rule changes are consistent with Section 6(b)(5) of the 1934 Act, which provides, in pertinent part, that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of the publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned, self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 20, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

June 22, 1989.

Exhibit 1—List of Exchange Rule Violations and Fines Applicable Therein Pursuant to "Minor Rule Violation" Procedures

1. through 14. No change.

15. Market Maker failed to accept an allocation of option contracts made by an Order Book Official (Rule VI, Section 87). Monetary fine based upon, but not less than, premium of refused contracts.

[FR Doc. 89-15330 Filed 6-28-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17026; 812-7099]

Ballard, Biehl and Kaiser International Fund, Inc.; Application

June 22, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: Ballard, Biehl & Kaiser International Fund, Inc.

Relevant 1940 Act Sections: Retroactive Exemption requested under section 6(c) from sections 18(d), 18(f), 22(c) and 22(d) and Rule 22c-1 thereunder.

Summary of Application: Applicants seek retroactive relief exempting Applicant from the provisions of sections 18(d), 18(f), 22(c) and 22(d) and Rule 22c-1 thereunder in connection with (1) the sale of Applicant's shares beyond the amount authorized by its Certificate of Incorporation, (2) the subsequent rescission offer to holders of such shares, and (3) the issuance of duly authorized shares to replace the overissued shares under the 1940 Act.

Filing Date: The application was filed on August 18, 1988 and amended on March 2, 1989 and May 18, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 17, 1989, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 2755 Campus Drive, San Mateo, California 94403.

FOR FURTHER INFORMATION CONTACT: Barbara Chretien-Dar, Staff Attorney at (202) 272-3022 or Stephanie M. Monaco, Branch Chief, at (202) 272-3030.

Supplementary Information: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant, a Delaware Corporation, is a diversified open-end, management investment company registered under the 1940 Act. Ballard, Biehl & Kaiser, Inc. ("BB&K") is Applicant's sponsor.

2. On November 23, 1987, the Applicant's Board of Directors declared a dividend sufficient to distribute $42,614,986 in capital gains and net investment income, payable November 25, 1987. As of November 24, 1987, the Fund had issued and outstanding approximately 3,229,452 shares of authorized Common Stock. Applicant's Certificate of Incorporation authorized 10,000,000 shares of Common Stock. The Applicant was required by certain provisions of the Internal Revenue Code of 1986, as amended, and by distribution policies set forth in its Prospectus, to distribute such gains and investment income to its stockholders by December

31, 1987. All but six of the Applicant's 390 stockholders of record had instructed the Applicant to reinvest any dividends in shares of Common Stock. As a result, when such dividends were reinvested, the Applicant was required to issue 8,248,780 shares of Common Stock. The dividend reinvestments resulted in an overissuance on November 27, 1987 of approximately 1,476,000 shares of Common Stock at $5.15 per share. On December 2, 1987, Applicant issued approximately 3,800 additional shares at $5.12 per share (collectively, the "Overissue Shares"). From November 27, 1987 to December 31, 1987, approximately 2,850,000 shares of authorized Common Stock were redeemed by the Applicant's stockholders. As a result of these redemptions, the number of outstanding shares of Common Stock dropped below 10,000,000 to approximately 8,850,000 shares as of December 31, 1987, and a significant number of authorized shares became available for valid issuance. Consequently, only the approximately 1,479,800 shares issued on November 27 and December 2, 1987 constituted Overissue Shares. Approximately 196,000 Overissue Shares were redeemed prior to discovery of the overissuance at the regular redemption price, which was in all cases in excess of the purchase price of the Overissue Shares, plus interest. When management of Applicant became aware of the overissuance on May 6, 1988, it discontinued further sales of Common Stock.

3. On June 3, 1988, Applicant mailed a Proxy Statement to all the stockholders of record as of May 13, 1988. The Proxy Statement was furnished in connection with the solicitation of stockholders to approve an amendment to the Applicant's Certificate of Incorporation to increase the number of authorized shares of Common Stock from 10,000,000 to 100,000,000 shares. The Proxy Statement disclosed that stockholders would be offered the opportunity to rescind purchases of Overissue Shares on the basis described below, and that, if the amendment were approved, an appropriate number of duly authorized shares would be issued to the holders of the Overissue Shares who had elected to receive such shares instead of rescinding their purchases. The remaining duly authorized shares would be available for future issuance. The Overissue Shares of holders who failed to elect to receive either the Rescission Price (as defined below) or the duly authorized shares would be retired at the Rescission Price. If the stockholders did not approve the Amendment, all of the Overissue Shares then outstanding would be retired at the Rescission Price.

4. Applicant commenced a Rescission Offer on June 6, 1988, until June 30, 1988, with respect to the outstanding Overissue Shares. Pursuant to the Rescission Offer, a holder of Overissue Shares could elect either (a) to receive duly authorized shares in lieu of his Overissue Shares, or (b) to rescind the purchase of the Overissue Shares and receive cash. Investors electing cash were to receive the higher of (a) the purchase price for the Overissue Shares, plus interest, or (b) the regular redemption price of authorized shares of Common Stock next calculated after the acceptance of the offer was received (the "Rescission Price"). Stockholders failing to elect would be deemed to have elected to receive cash. To the extent the purchase price for the Overissue Shares, plus interest, exceeded the regular redemption price, BB&K agreed to pay the difference in accordance with the terms of an agreement between Applicant and BB&K. Pursuant to such agreement, BB&K has agreed to pay any losses, claims and expenses which the Applicant may incur in connection with the overissuance of Common Stock, including the costs associated with the Rescission Offer.

5. Applicant's stockholders approved the amendment to increase the number of authorized shares by written consent on June 13, 1988, and the amendment was filed with the Delaware Secretary of State on June 16, 1988. When the Rescission Offer expired on June 30, 1988, all of the holders of the Overissue Shares had elected to receive duly authorized shares. Consequently, (a) none of the holders of the Overissue Shares received cash for their Overissue Shares, (b) BB&K was not required to make a cash payment reflecting any difference between the regular redemption price of the shares and the purchase price of the Overissue Shares, plus interest, and (c) all holders of outstanding Overissue Shares were issued duly authorized shares. Applicant's share price as of June 30, 1988 was $5.59.

6. Applicant seeks retroactive exemptive relief from the provisions of sections 18(d), 18(f), 22(c), 22(d) of the 1940 Act and Rule 22c-1 thereunder. Applicant believes that while the sale of the Overissue Shares and the Rescission Offer may have resulted in technical violations of these provisions, the sale of the Overissue Shares and the Rescission Offer did not contravene the policies behind them.

7. It could be argued that the right of holders of the Overissue Shares pursuant to the Rescission Offer constituted a warrant or right to subscribe to Applicant's shares issued in violation of section 18(d) or that the rights under the Rescission Offer constituted a "senior security" in violation of section 18(f). However, Applicant believes that the policies underlying these provisions were not violated, because none of the holders of Overissue Shares received preferential treatment which section 18(d) is designed to prevent. In addition, Applicant argues that the basic policy of section 18(f) to limit the extent of leveraging an open-end investment company can engage in was not violated. According to Applicant, leveraging was not involved with either the Overissue Shares or the Rescission Offer because Applicant in no event would have had to pay more than the equivalent of the then current net asset value of its shares, since BB&K had agreed to pay any difference between such a value and the purchase price plus interest.

8. Applicant also seeks exemption from section 22(c) and Rule 22c-1 thereunder and section 22(d) to the extent necessary to authorize retroactively (a) the issuance of authorized shares to replace Overissue Shares, and (b) the Rescission Offer to holders of Overissue Shares at prices other than the current net asset value per share or the current public offering price described in Applicant's prospectus at the time of issuance. Applicant believes that the policies underlying these provisions were not violated because the Rescission Offer did not result in the dilution in value of the outstanding shares of Common Stock. All Overissue Shares were issued at the same price as the authorized shares, which was the then current net asset value per share. No holder of Overissue Shares elected to receive the Rescission Price, so no shares were redeemed at a price in excess of the then current net asset value per share. Moreover, had the net asset value of the Common Stock declined below the purchase price of the Overissue Shares plus interest, resulting in the Rescission Price being greater than the then current net asset value, BB&K and not Applicant would have been liable for the excess. Consequently, the Rescission Offer did not and could not have a dilutive effect.

9. Duly authorized shares were issued in place of Overissue Shares at the current net asset value on the date of issuance. While that price differed from the net asset value of Applicant's shares on the dates on which the Overissue Shares were issued, the issuance of duly authorized shares did not have a dilutive effect on the Applicant's shares, since the amount paid by the holders of the Overissue Shares were at all times invested. Moreover, Applicant shares that the issuance to holders of Overissue Shares of shares to which they were entitled was fair and equitable to all stockholders of Applicant because duly authorized shares were issued on the same terms as would have prevailed if such authorized shares had been available for issuance at the proper time.

10. Applicant argues that it is necessary and appropriate for the requested relief to be granted retroactively. Applicant believes that the status of the holders of Overissue Shares had to be fully regularized as soon as possible so that the holders of such shares could participate in all rights of stockholders pertaining to such shares without fear of legal recourse against Applicant. Consequently, Applicant made the Rescission Offer and the Applicant's stockholders approved the increase in the authorized number of shares to cover the Overissue Shares prior to obtaining exemptive relief from the SEC. Finally, the Proxy Statement disclosed that Applicant intended to apply for retroactive exemptive relief from the SEC. In addition, the Applicant disclosed therein that there could be "no assurance that a SEC order will be granted, or if granted, that it will provide for the full relief requested."

For the Commission by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-15331 Filed 6-28-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-17025; File No. 812-7154]

The Equitable Trust; Application for Exemption

June 22, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicant: The Equitable Trust

Relevant 1940 Act Sections: Exemption requested under section 6(c) from sections 13(a)(2), 18(f)(1), 22(f), and 22(g) and approval requested under section 17(d) and Rule 17d-1 thereunder.

Summary of Application: Applicant seeks an order or the SEC granting exemptions from the Act to the extent necessary to implement a deferred compensation plan for its trustees (the "Plan").

Filing Date: The application was filed on October 20, 1988 and amended on May 4, 1989 and June 8, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on July 17, 1989. Request a hearing in writing , giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 787 Seventh Avenue, New York, NY 10019.

FOR FURTHER INFORMATION CONTACT: Heidi Stam, Staff Attorney, (202) 272-3017 or Clifford E. Kirsch, Special Counsel, (202) 272-2061, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's Commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. The Equitable Trust (the "Applicant"), was organized as a business trust under the laws of the Commonwealth of Massachusetts on December 15, 1986. It is registered under the Act as an open-end, diversified management investment company.

2. Applicant currently offers its shares exclusively to Separate Account A of the Equitable Life Assurance Society of the United States ("Equitable"). The Applicant's investment advisers are Equitable Capital Management Corporation ("Equitable Capital"), an indirect wholly-owned subsidiary of Equitable, and Equitable.

3. Two of the six members of Applicant's present Board of Trustees may be considered "interested persons," as defined in the Act, of Applicant. One of these trustees is an Equitable employee and receives no compensation for this services as trustee. The other trustee may be considered an "interested person" of the Applicant becuase his son is an employee of an Equitable subsidiary. Each of the other five trustees receives from Applicant an annual retainer fee of $12,000 and fees of $1,000 per Board meeting (four are regularly scheduled annually), $800 per committee meeting attended and $600 for each day spent performing special services for the Applicant as may be requested by the Chairman or the President. The meeting fee paid to the trustee acting as meeting chairman is increased by 50%.

4. The purpose of the Plan is to permit any trustee to elect to defer the receipt of all or a portion of the fees he or she is due for services as a trustee of Applicant. A trustee may wish to defer fees in order to delay the payment of income taxes or for other reasons. The Applicant believes that the Plan will better enable Applicant to attract and retain high caliber trustees, thereby benefiting Applicant, its shareholders and ultimately the holders of contracts and policies supported by shares of Applicant.

5. Each trustee electing to defer the receipt of fees will enter into an agreement with Applicant and an account will be established under the Plan for each trustee with whom Applicant has entered into an agreement. The deferred fees will be credited to the account. In addition, applicant states that it will, from time to time, credit to the account balance interest in an amount equal to the interest rate credited to fixed income accounts under Equitable's Investment Plan for Employees, Managers and Agents ("Equitable's Investment Plan"). Applicant has reserved the right to prospectively change the rate of interest credited to account balances ("Account Rate") in accordance with changes that may be made from time to time to the interest rate credited to fixed income accounts under Equitable's Investment Plan ("Equitable Rate"). Applicant need not change the Account Rate each time the Equitable Rate changes. However, any change that may be made from time to time to the Account Rate will always be a change to bring the Account Rate into accordance with the then current Equitable Rate. Payments of deferred frees and credited interest are to commence on an initial disbursement date specified by the trustee, which may be the earlier of the trustee's retirement from the Board or the attainment of a designated age. The payments will be made in monthly installments for the number of years elected by the trustee, or until the amount credited under the account is exhauated. Account balances will continue to be credited with interest during the payout period.

6. The amounts credited to an account, including deferred fees and accrued interest, will represent an unsecured obligation of Applicant to the trustee, payable solely from the Applicant's general assets. Applicant will not purchase any of its shares for any account, nor create any specified fund or segregate any of its assets for purposes of the Plan. Trustees will have the status of general creditors. Neither the Plan, nor any agreement or account, will create a trust or fiduciary relationship between Applicant and any trustee, nor will those arrangements constitute a security interest of any kind in any of Applicant's assets. No provision of the Plan requires Applicant to retain a trustee on its Board or to pay a trustee any level of fee income, nor is a trustee obliged to continue as such in order to receive payment of any amounts credited to his or her account. Account balances may not be assigned, commuted or encumbered by the trustee. The amounts to be paid under the Plan will not depend upon, or in any way reflect, the investment performance of Applicant.

7. Applicant states that the interest rate for fixed income accounts under Equitable's Investment Plan is inherently no different from a prime rate, the interest rate on U.S. Treasury Bills, or other assumed rates of interest for fixed retirement-type obligations. Amounts credited to an account do not represent a participation in Equitable's Investment Plan or the investment performance of the Trust. The interest rate under Equitable's Investment Plan is merely a convenient reference.

8. Applicant requests exemption from sections 13(a)(2), 18(f)(1), 22(f) and 22(g) of the Act, and an order pursuant to Section 17(d) and Rule 17d–1 thereunder, to the extent necessary to permit implementation of the Plan described above.

9. With respect to sections 13(a)(2) and 18(f)(1), Applicant submits that the agreements are contractual arrangements, not in the nature of securities, and do not give rise to any of the concerns of Congress that led to the enactment of sections 13(a)(2) or 18(f)(1). In that regard, Applicant states that it will not be "borrowing" from its trustees for securities speculation; the agreements will not disturb the perception of an investment company as a mutual enterprise with mutuality of risk; they will not provide an opportunity for manipulation of expenses and profits; and control of Applicant will not be affected. Applicant further submits that in view of the widespread use of deferred compensation arrangements today and the immaterial amounts expected to be involved relative to Applicant's size, the Plan will not confuse investors, make it difficult for them to value Applicant's shares or convey a false impression of safety.

10. As to section 22(f), Applicant represents that the agreements will plainly set forth applicable restrictions against the assignment, commutation and encumbrance of any amounts credited to an account under the Plan. These restrictions, Applicant states, are designed to benefit trustees and would not adversely affect their interests or the interests of any shareholder of Applicant.

11. With respect to section 22(g), Applicant submits that the agreements will not be "issued" for services, but for Applicant not having to pay trustees' fees on a current basis. Applicant notes that the deferred fees would, in any event, be due the trustee independent of the Plan, and that the trustees' compensation arrangements, including the right to defer fees under the Plan, will be described in Applicant's proxy statements pursuant to the Commission's disclosure requirements.

12. Applicant submits, with respect to section 17(d) and Rule 17d–1, that the agreements do not possess "profit-sharing" characteristics as contemplated by Rule 17d–1 and that the participating trustees will be deferring fees they are otherwise entitled to receive on a current basis. In support of its requested order, Applicant points out that the amounts deferred will remain as assets of Applicant until eventually paid to the trustee; there will be no segregation of any monies or assets for purposes of the Plan; and trustees will not share in any increase or decrease in the value of amounts retained by Applicant or otherwise participate in its investment experience. Applicant further states that except for accrued interest to be paid on account balances, the trustee will receive the same fixed amount he or she would have received if fees were paid on a current, rather than on a deferred basis. Applicant asserts that the deferral of trustees' fees will have a negligible effect on its assets, liabilities and net income per share, and that, under the Plan, the trustees essentially will be in the same position as if their fees were paid on a current basis. In Applicant's view, its "participation" in the Plan would not be different from or less advantageous than that of the trustees in all the circumstances.

13. Applicant believes that the benefits to its shareholders will outweigh any benefit that may be realized by a trustee under the Plan because Applicant will be in a better position to attract and retain qualified trustees if it is able to offer them the opportunity to defer receipt of their fees.

14. Applicant submits that the requested order is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Johathan G. Katz,

Secretary.

[FR Doc. 89-15332 Filed 6-28-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24909]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

June 22, 1989.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 17, 1989 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Maine Yankee Atomic Power Company (70–7627)

Maine Yankee Atomic Power Company ("Maine Yankee"), Edison Drive, Augusta, Maine 04336, a subsidiary of New England Electric System and Northeast Utilities, both registered holding companies, has filed a declaration pursuant to sections 6(a) and 7 of the Act.

Maine Yankee proposes to enter into and borrow under a revolving credit agreement ("Credit Agreement") with a syndicate of commercial banks, for which The Bank of New York is acting as agent (collectively, "BNY Banks") through August 31, 1992. Under the Credit Agreement, Maine Yankee will issue promissory notes ("Notes") to the BNY Banks in an aggregate principal amount of up to $50 million at any one time outstanding with maturities of from one day to ten years from the date of issuance. The Credit Agreement will replace an existing commercial paper facility currently in place between Maine Yankee and the MYA Fuel Company, authorized by orders of the Commission dated August 23, 1976 and September 29, 1989 (HCAR Nos. 19657 and 22651).

The term of the Credit Agreement will be three years, with a right for Maine Yankee, with the consent of the BNY Banks, to extend the term on a year-by-year basis. The Credit Agreement provides that the Notes will bear interest at one of four rates, to be specified at Maine Yankee's option, including a competitive bid option which will be used only if it is more advantageous than the other three rates.

The Notes will be secured by a first lien on Maine Yankee's nuclear fuel inventory, its rights to payment for fuel costs from the ten electric utility companies that sponsor Maine Yankee ("Sponsors") pursuant to power contracts ("Power Contracts"), and its rights to require the Sponsors to finance the costs of obtaining and maintaining an inventory of nuclear fuel ("Capital Funds Agreement").

Maine Yankee further proposes to enter into and borrow under a Eurodollar revolving credit agreement ("Eurodollar Agreement") with a group of international banks for which the Union Bank of Switzerland is acting as agent (collectively, "Eurodollar Banks") through August 31, 1992. Under the Eurodollar Agreement, Maine Yankee will issue promissory notes ("Euro Notes") to the Eurodollar Banks in an aggregate principal amount of up to $20 million at any one time outstanding with maturities of from one day to ten years from the date of issuance.

The Eurodollar Agreement provides that Maine Yankee may select interest periods for each Euro Note of one, three or six months. The interest rate on each revolving credit loan will be the London Inter-Bank Offering Rate ("LIBOR") for the interest period selected, plus ¾%; provided that if by reason of circumstances affecting the Eurodollar market, adequate and reasonable means do not exist for ascertaining LIBOR, the interest rate shall be determined on the basis of the Eurodollar Banks' actual costs of funding such loan. The Euro Notes will be secured by a second lien on Maine Yankee's nuclear fuel inventory, the Power Contracts and the Capital Funds Agreement.

Maine Yankee will use the proceeds of the Notes and Euro Notes for general corporate purposes, including the acquisition of nuclear fuel, the construction, extension or improvement of its facilities, and the improvement and maintenance of its service. Maine Yankee may also acquire, redeem or retire its securities pursuant to the exceptions available under Rule 42(b).

Columbus Southern Power Company (70–7629)

Columbus Southern Power Company ("CSPC"), 215 N. Front Street, Columbus, Ohio, 43215, an electric public utility subsidiary of American Electric Power Company, Inc., a registered holding company, has filed a declaration pursuant to Section 12(d) of the Act and Rule 44 thereunder.

CSPC proposes to sell to its industrial customer, Fisher Guide Division—General Motors Corporation ("FGD"), certain transformation equipment and other related equipment ("Facilities") located at CSPC's GM Substation No. 63 in Columbus, Ohio, for a purchase price of $560,736 in cash. The Facilities are situated on real property owned by FGD in Columbus, Ohio and are now employed by CSPC for providing service exclusively to FGD. It is stated that the Facilities are not adaptable, at that location, for use in serving any other customer.

Central and South West Corporation, et al. (70–7643)

Central and South West Corporation ("CSW"), 2121 San Jacinto Street, Suite 2500, Dallas, Texas 75201, a registered holding company, and five of its subsidiaries, Central Power and Light Company ("CPL"), P.O. Box 2121, Corpus Christi, Texas 78403, Public Service Company of Oklahoma ("PSO"), P.O. Box 201, Tulsa, Oklahoma 74102, Southwestern Electric Power Company ("SWEPCO"), P.O. Box 21106, Shreveport, Louisiana 71156, West Texas Utilities Company ("WTU"), P.O. Box 841, Abilene, Texas 79604, and Transok, Inc. ("Transok"), P.O. Box 3008, Tulsa, Oklahoma 74101 and CSW's service company subsidiary, Central and South West Services, Inc. ("CSWS"), 2121 San Jancinto Street, Suite 2500, Dallas, Texas 75201, (together, "Subsidiaries") have filed a post-effective amendment to their application-declaration pursuant to sections 6(a), 7, 9(a), 10, 12(b) and 12(f) of the Act and Rules 43, 45 and 50(a)(5) thereunder.

By prior Commission order, CSW and its Subsidiaries wree authorized to continue through March 31, 1991 their short-term borrowing program (HCAR No. 24855, April 5, 1989). The borrowing program is coordinated through the use of the CSW system money pool ("Money Pool"), as the primary lender, but allows for CSW and the Subsidiaries to borrow from banks under certain circumstances. The program makes funds available to the Subsidiaries for interim financing of their capital expenditure programs and their other working capital needs, and to repay previous borrowings incurred for such purposes. Funds for the Money Pool are made available from surplus funds from the treasuries of CSW and its operating subsidiaries, from proceeds from the sale of commercial paper notes by CSW and bank borrowings by CSW and the Subsidiaries.

The maximum borrowing levels authorized for CSW and its Subsidiaries are as follows: CSW—$600 million, CPL—$200 million, PSO—$100 million, SWEPCO—$150 million, WTU—$50 million, Transok—$80 million, and CSWS—$25 million, with an aggregate principal amount not to exceed $600 million.

In order to provide direct access to new gas reserves presently being developed in southeastern Oklahoma and to increase utilization of existing pipeline capacity Transok will spend approximately $31 million in 1989 and approximately $9 million in 1990 for construction of additional natural gas transmission pipeline and related facilities in Oklahoma. These facilities will consist of approximately 25 miles of 16-inch, high pressure natural gas transmission pipeline and related facilities in Latimer County, Oklahoma and approximately 61 miles of 24-inch, high pressure natural gas transmission pipeline and related facilities in Latimer, Pittsburgh and Atoka Counties, Oklahoma. Construction of the new pipeline will provide Transok with access to significant sources of gas supplies which are presently being developed, additional flexibility to meet the gas requirements of PSO and the other CSW electric utilities, more efficient utilization of current existing pipeline capacity and additional income. Transok requests that their borrowing

limit to $80 million as authorized by the Commission in this file be increased $40 million to a total aggregate authorized borrowing limit of $120 million.

Energy Initiatives, Incorporated (70–7060)

Energy Initiatives, Incorporated ("EII"), One Gatehall Drive, Gatehall Center I, Parsippany, New Jersey 07054, a subsidiary of General Portfolios Corporation, a subsidiary of General Public Utilities Corporation, a registered holding company, has filed an application-declaration pursuant to sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rule 45 thereunder.

EII proposes to acquire, either directly or indirectly through a New York limited partnership to be formed ("Partnership"), all of the outstanding shares of common stock ("Common Stock") of a closely held New York corporation ("Cogen Corp"). Cogen Corp is engaged in the development of a proposed 40 MW natural gas-fired cogeneration facility ("Project") in New York State which has been certified as a qualifiying facility under the Public Utility Regulatory Policies Act of 1978.

EII proposes to organize a wholly owned subsidiary corporation ("EII Sub") which would be both the general and a limited partner of the Partnership. The Partnership will acquire the Common Stock from the owners thereof for a total purchase price not to exceed $6 million. EII therefore proposes to contribute to the Partnership, either directly or indirectly through EII Sub, up to $6 million in exchange for which (i) EII would acquire all of the outstanding common stock of EII Sub for $1,000 and (ii) EII Sub will acquire its general and limited partnership interests in the Partnership.

EII expects that the rate of return of its equity investment in the Partnership will not be lower than 12.38%, the latest generic rate of return on common equity for public utilities allowed by the Federal Energy Regulatory Commission under the Federal Power Act.

Prior to the date the Project enters commercial service, EII Sub's aggregate interests in the Partnership, both as a general and limited partner, will be reduced so that they do not in the aggregate exceed 50% thereof.

EII estimates that the cost to construct the Project wil be approximately $45 million. A request for authorization with respect to the financing of the Project will be the subject of a subsequent application with the Commission.

Energy Initiatives, Inc. (70–7061)

Energy Initiatives, Incorporated ("EII"), One Gatehall Drive, Gatehall Center I, Parsippany, New Jersey 07054, a subsidiary of General Portfolios Corporation, a subsidiary of a registered holding company, General Public Utilities Corporation, has filed an application-declaration pursuant to sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rule 45 thereunder.

EII proposes to acquire, through a wholly owned New York subsidiary corporation to be formed ("EII Sub"), all of the general and limited partnership interests ("Partnership Interests") in a New York limited partnership ("Cogen Partnership"). Cogen Partnership is engaged in the development of a proposed 79 NW natural gas-fired cogeneration facility which is a qualifying facility under the Public Utility Regulatory Policies Act of 1978.

In order to acquire the Cogen Partnership, EII proposes to organize EII Sub, which will be a wholly owned subsidiary of EII. EII proposes to contribute to EII Sub up to $9 million in exchange for which: (i) EII will acquire all of the outstanding common stock of EII Sub for $1,000; and (ii) EII Sub will acquire the Partnership Interests in Cogen Partnership for a total purchase price not to exceed $9 million.

Prior to the date the Project enters commercial service, EII Sub's aggregate interests in Cogen Partnership, both as a general and limited partner, will be reduced so that they do not in the aggregate exceed 50% thereof.

EII expects that the rate of return of its equity investment in the Partnership will not be lower than 12.38%, the latest generic rate of return on common equity for public utilities allowed by the Federal Energy Regulatory Commission under the Federal Power Act.

EII estimates that the cost to construct the Project will be approximately $75,000,000. A request for authorization with respect to the financing of the Project will be the subject of a subsequent application with the Commission.

Central Power and Light Company (70–7062)

Central Power and Light Company ("CPL"), P.O. Box 2121, Corpus Christi, Texas 78403, an electric-utility subsidiary of Central and South West Corporation, a registered holding company, has filed an application pursuant to sections 9(a) and 10 of the Act.

CPL has in the past conducted exploration and development activities to supplement other gas supplies available to it. While CPL has diversified its fuel mix substantially over the last ten years, natural gas is, and will continue to be, CPL's primary fuel for at least the next ten years. CPL is seeking authority to spend up to $20 million through the period ending September 30, 1992, for exploration, development and production of natural gas supplies for use in its gas-fired generating plants.

Louisiana Power & Light Company (70–7063)

Louisiana Power & Light Company ("LP&L"), 317 Baronne Street, New Orleans, Louisiana 70112, a subsidiary of Entergy Corporation (formerly Middle South Utilities, Inc.), a registered holding company, has filed an application pursuant to section 9(a) and 10 of the Act.

In the interest of examining possible future supplies for a portion of the enriched uranium fuel requirements of its Waterford Steam Electric Generating Station-Unit No. 3 (nuclear), LP&L has been conducting, with certain other utility and non-utility parties (collectively, the "Parties"), preliminary analyses to evaluate the feasibility and desirability of their participation in a joint venture that would result in the licensing and construction of a 1.5 million separative work unit (SWU)/year centrifuge uranium enrichment plant ("Project"), employing technology developed by one of the Parties. Such preliminary analyses found that the Project appears to be economically attractive, and the Parties have now determined that additional studies are desirable and wish to formalize their arrangements for such additional studies. In this connection, LP&L, subject to Commission approval, has entered a Memorandum of Understanding ("MOU") with the other Parties for the stated purposes, among others, of (1) engaging in certain joint activities, including siting, licensing and design, to be performed during the term of the MOU ("MOU Activities"); (2) establishing an Interim Project Organization for the management and administration of the Project during the term of the MOU; (3) setting forth the bases for contribution by the Parties to Project expenses associated with the MOU Activities and (4) setting forth certain general principles for negotiation of an agreement or agreements ("Project Agreements") among the Parties subject to, among other things, the receipt of requisite regulatory approvals, necessary for the Project to go forward following termination of the MOU. The term of the MOU is until the earlier of (i) March 31, 1990, (ii) the effective date of the applicable Project Agreements superseding the MOU or (iii) the expenditure of all funds budgeted for

MOU Activities. The MOU also provides for participation by additional utility parties with a resulting reduction in the proportional share of each Party's contributions to MOU Activities costs.

The MOU phase of the Project has a projected maximum budget of $10 million. LP&L's proportionate share of MOU Activities costs, and the maximum amount that would be payable by LP&L during the term of the MOU, is expected not to exceed approximately $475,000. LP&L requests authority to contribute this amount during the term of the MOU in connection with the phase of the Project.

In addition, during the term of the MOU and prior to the expenditure of all funds committed thereunder by the Parties, the Parties will negotiate the Project Agreements setting forth, among other things, the organizational structure for the Project and the financial and contractual bases upon which the Parties may elect to participate in the Project following completion of preliminary activities provided for in the MOU. By participating as a party to the MOU and agreeing to pay its proportionate share of MOU Activities costs, PL&L would have the right, subject to any necessary regulatory approval, to participate in the next phase of the Project on terms that will be negotiated by the Parties and contained in the Project Agreements. The Project Agreement would cover, among other things, the allocation of responsibility for expenditures during the remaining term of the venture period, expected to run through November 1992. LP&L's presently estimated share of these expenditures during the entire venture period would not exceed $1.3 million, including the $475,000 for the MOU phase of the venture period. Should LP&L determine to continue its participation through the next phase of the Project following the termination of the MOU through entry into Project Agreements, LP&L will, by appropriate amendment to this application, disclose the terms and conditions of such participation and seek Commission approval.

For the Commission by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–15333 Filed 6–28–89; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2350; Amdt. 1]

North Dakota; (And Contiguous Counties in the State of South Dakota); Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended to include Steele County, in the State of North Dakota, which was inadvertently omitted as a contiguous county, as a result of damages from flooding which began on March 29, 1989.

Applications for economic injury from small businesses located in the above-named county may be filed until the specified date at the designated location. All other information remains the same.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Date: May 12, 1989.

Alfred E. Judd,

Acting Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89–15312 Filed 6–28–89; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2350; Amdt. 2]

North Dakota; (And Contiguous Counties in the State of South Dakota); Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with the Notices of Amendment to the President's declaration, dated May 16 and May 17, 1989, to include Pembina County, in the State of North Dakota, as a result of damages from severe storms and flooding, and to establish the incident period as between March 29 and May 8, 1989.

All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on July 10, 1989, and for economic injury until the close of business on February 9, 1990.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Date: May 19, 1989.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89–15313 Filed 6–28–89; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular—Public Debt Series—No. 17–89]

Treasury Notes of June 30, 1991, Series AB–1991

June 22, 1989.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $8,750,000,000 of United States securities, designated Treasury Notes of June 30, 1991, Series AB–1991 (CUSIP No. 912827 XR 8), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated June 30, 1989, and will accrue interest from that date, payable on a semiannual basis on December 31, 1989, and each subsequent 6 months on June 30 and December 31 through the date that the principal becomes payable. They will mature June 30, 1991, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $5,000, $10,000, $100,000 and $1,000,000, and in multiples of those amounts. They

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will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239–1500, prior to 1:00 p.m., Eastern Daylight Saving time, Tuesday, June 27, 1989. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, June 26, 1989, and received no later than Friday, June 30, 1989.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or more of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Friday, June 30, 1989. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Wednesday, June 28, 1989. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Friday, June 30, 1989. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securites tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 89–15516 Filed 6–27–89; 12:47 pm]

BILLING CODE 4810–40–M

[Department Circular—Public Debt Series—No. 18–89]

Treasury Notes of June 30, 1993, Series P–1993

June 22, 1989.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $7,500,000,000 of United States securities, designated Treasury Notes of June 30, 1993, Series P–1993 (CUSIP No. 912827 XS 6), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated June 30, 1989, and will accrue interest from that date, payable on a semiannual basis on December 31, 1989, and each subsequent 6 months on June 30 and December 31 through the date that the principal becomes payable. They will mature June 30, 1993, and will not be subject to call for redemption prior to maturity. In the event and payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $1,000, $5,000, $10,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239–1500, prior to 1:00 p.m., Eastern Daylight Savings time, Wednesday, June 28, 1989. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, June 27, 1989, and received no later than Friday, June 30, 1989.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A concompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of acepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one

percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.000. The stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price of each competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g. 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over pay.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Friday, June 30, 1989. Payment in full must accompany tenders submitted by all other investors. Payments must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Wednesday, June 28, 1989. In addition, Treasury Tax and Loan Note Options Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Friday, June 30, 1989. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription of the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 89-15517 Filed 6-27-89; 12:47 pm]

BILLING CODE 4810-40-M

UNITED STATES INFORMATION AGENCY

American Studies Summer Institute; Bureau of Educational and Cultural Affairs; Grant Program

Contingent upon the availability of funds, the Bureau of Educational and Cultural Affairs of the United States Information Agency (USIA) is soliciting proposals for a graduate-level American studies institute to take place from July 5 to August 19, 1990. Due date for receipt of proposals is COB September 29, 1989. The institute is designed for approximately 35 secondary school educators in English language, American literature, government, history, society and culture and geography. The institute is conducted entirely in English. Participants will come from countries in Europe, Asia, Africa, Latin America and the Middle East. USIA is asking for detailed proposals from institutions which have an acknowledged reputation in American Studies and related fields with special expertise in handling international programs.

Objectives

The objective of the institute is to support and encourage the efforts of other countries to improve the quality of teaching about American society and culture at the secondary level. The program should be designed for teacher trainers, curriculum developers and secondary-level classroom teachers with responsibilities in curriculum planning and course and materials development whose teaching assignments require a general up-to-date knowledge of American civilization and culture. Many of these educators will be involved in the teaching of English as a foreign language, though their academic preparation may be in the fields of American literature, government, history, society and culture, and geography.

Time Frame and General Description

The institute should be programmed to last approximately 45 days, beginning on or about Thursday, July 5, and ending on or about Saturday, August 18, 1990. The participants will arrive directly at the campus site from their home countries. The university program staff will be expected to make arrangements to have participants met upon arrival at the airport nearest the university campus. Few if any participants will have visited the United States previously. In view of this, an initial orientation to the U.S. and the campus should be considered an integral part of

the institute and should be held on the first two to three days of the program. The applicant is asked to design a two-part program:

(a) A four-week academic program at the university and

(b) A two-week escorted tour of different regions of the United States.

The tour segment should be planned, arranged and conducted by the Program Director and principal university staff and should be seen as an integral part of the program, complementing and reinforcing the academic material. It should not be a whirlwind tour of the U.S. In addition to two or three other cities, the tour should include a three-to-four-day visit to Washington, DC at the end of the tour before participants depart for their home countries. Programming in Washington should include a half-day briefing session at the U.S. Information Agency.

Program Objectives

The institute should be a graduate level academic program aimed at improving the participant's understanding of American society and institutions and contemporary issues most relevant to shaping of these institutions. The program should provide an intellectual framework and an organizing principle for understanding and teaching about the U.S. For the purpose of the institute, American studies is understood to include aspects of American history, literature, society and culture, geography and political science. The institute should address the diversity and complexity of American contemporary life and the underlying unity of social and political institutions. The program should provide a basic overview of American institutions, current issues, and the social and political response to these issues. In addition, academic instruction should address a range of views of American values and character; social, economic and literary history; geographical features; forms of creative expression; and education, religion, industry and technology. The academic program should maintain a relative balance among plenary sessions, lectures, workshops and practicums. Academic activities should reinforce and provide opportunities to clarify the central themes and objectives of the program. Lengthy lecture sessions should be avoided whenever possible, or associated with workshop or small group discussion periods. The proposal should include a detailed syllabus outlining the focus of the subject matter with specific readings required for each unit.

Activities should include an orientation to the U.S. and the university community, field trips to places of local interest, home stays with families in the area (other secondary educators if possible), and events which will bring the participants into contact with Americans from different walks of life. These encounters will give the participants a chance to experience American society, its institutions and language, and observe the variety of attitudes that constitute one of our country's most striking characteristics.

In addition to the substantive presentations and discussions about American society, the institute should focus upon pedagogical concerns, materials and curricular development in the context of teaching about the U.S. Samples of secondary school curricula, materials and topical bibliographies in American studies fields should be provided or developed during the program. It should be noted that program participants will not only come from several different disciplines but also from a variety of educational systems. Most systems have rigorous teacher training programs for certification and classroom methods evaluated and approved by regional inspectors. Similarly, some systems require adherence to an assigned textbook while others allow significant flexibility to teachers in determining what materials they will use in presenting a lesson. The variety of approaches and experiences should provide the basis for interaction which will be both culturally and professionally stimulating to the entire group.

Program Administration

All programming and administrative logistics, management of the academic program and cultural tour will be the responsibility of the university. A project secretary and/or project assistant is required to carry out clerical and administrative duties required for the smooth operation of the institute during the program grant period, from the planning period to the completion of required reports to USIA. USIA will be responsible for all communications to and from participating Fulbright Commissions and the U.S. Information Agency posts abroad (USIS). The Fulbright Commissions and USIS posts are responsible for all international travel arrangements for participants. The USIA Program Officer will be available to offer advice and guidance to the university. To assist the university with programming facilitative services during the tour, there is a possibility of utilizing the programming and hospitality services of volunteer community groups across the country that are affiliated with the National Council for International Visitors, a nationwide network that provides hospitality and program assistance to foreign visitors.

If your university decides to submit a proposal, it should provide a detailed plan in response to the needs and priorities outlined above. Applicants should draw imaginatively on the full range of resources offered by their universities but may involve oustanding professionals from other universities and organizations. The proposal must clearly demonstrate quality on-site management capabilities for both the residential and the tour programs. The overall effectiveness of the institute hinges upon good administrative and organizational capabilities to manage the interactions between foreign educators and Americans. The university should indicate the tour sites, not to exceed three cities in addition to Washington, DC.

Budget Guidelines

For your guidance, our experience with similar institutes indicates that the cost to organize and administer the 45-day academic and group tour segments of the Institute would range from $1,500–$1,600 per person based on a group of 30 to 35 participants, excluding international and domestic air travel expenses and cost for room and board on campus and hotel and meals on tour.

The proposal should provide a detailed line-item budget outlining specific expenditures and source(s) from which funds are anticipated. The budget should include any in-kind and cash contributions to the program from universities, contributions, cost-sharing, or private sector.

Included in the budget worksheet for each budget line-item should be an explanation detailing how costs were computed (in parentheses), i.e., each salary line-item should include position title, annual salary, and per cent of effort used for this program.

The budget should include and elaborate on the following information:

I. University Costs

Administrative

(1) Salaries, benefits, and services (including support staff) for the program.

(2) Administrative costs, area ground transportation (including meeting participants at the airport nearest the campus upon arrival), office expenses, and any other costs covering the

academic activities during the four-week university program.

Program

(1) Miscellaneous costs, such as honoraria, film rental, and educational support material on campus, etc.

(2) Group admission costs for all cultural and tour activities during the course of the on-site university institute and weekend tour(s).

(3) Escort tour costs: university escort travel and expenses such as per diem, ground transportation costs for group activities, admission to cultural and tur activities (excluding domestic air travel costs). Per diem cannot exceed the official U.S. Government rate for individual cities.

(4) Group ground transportation, including airport transfer buses to and from airports and other education group program costs during the tour (excluding domestic air travel costs).

Indirect Costs

Indirect costs should be calculated based on the above budget items only. Indirect costs are not allowed on domestic air travel for university escorts and for participants and on participant living and incidental expenses disbursed by the university. A copy of the indirect cost rate of the cognizant agency should be included.

Universities which were awarded grants to conduct the American studies summer institutes in the past have accepted a level of 8% indirect cost. Universities have considered cost-sharing the amount in excess of 8%.

II. Per Capita Participant Costs (not subject to indirect costs, included as an addendum to the main budget)

(1) Lodging and Meals: Each foreign participant will receive a per diem payment for the 45-day program. This should be sufficient to cover the costs of room, board and incidentals while on campus and during the tour which should be based upon government allowable rate. Campus housing and meals should be shown as separate items.

(2) Required books.

(3) Ground transportation for individual or small group special events on campus and during the tour (such as train or bus fares to and from campus and hotels) not included in the main budget as a group project, only if applicable.

(4) Program and tour admission costs and other incidental costs for group activities on tour not included in the university program budget.

(5) Departure travel allowance not to exceed $70.

(6) A modest cultural allowance, not to exceed $100.

Domestic Air Travel

The university is required to book all domestic program tour flights through a U.S. carrier. If domestic air tickets are issued in the U.S., they should be booked and purchased through the Agency-approved Travel Management Center or a private travel agency using Government Transportation Requests, which allow access to government discount air fares. This applies to all domestic travel for university escorts and participants.

If domestic air tickets are issued abroad as is the case when Fulbright Commissions fully fund grantees, domestic travel must be booked with a U.S. airline that provides Visit USA fares.

Note: Total participant living costs and domestic air travel (not subject to indirect costs as noted above) should be based on the per capita breakdown multiplied by the number of participants, estimated at 35, and included in the budget totals.

For Institutional Recipients of Previous Grants Only

If your university was funded for a similar program last year, the budget should include last year's detailed line-item budget. Significant differences for each item must be noted and justified.

Funding Arrangements

A USIA grant will be issued to the university selected to conduct the institute covering university administrative and program costs in item I. The university will disburse participant living costs and other authorized allowances approved by the program for participants selected and funded by the USIA directly. These costs will be added to the grant through an amendment, when the number of grants are determined. For participants funded by Fulbright Commissions, certain program costs, determined by the Program Director and the USIA Program Officer, will be paid directly to the university by the participating Fulbright Commissions. Participant living expenses, per diem and other allowances for Fulbright grantees will be issued to the participants prior to leaving their home country.

International Travel

Round-trip international travel arrangements from home country to the campus and return from the last tour city (which may be Washington, DC) will be made and paid by Fulbright Commissions or USIA posts abroad. Participants receiving a USIA grant disbursed by the university in the U.S. will be given a modest travel allowance before departure from their home country. If a USIA post cannot issue U.S. dollars, the contracting institution may be requested to provide this allowance. The grant will be amended to cover such authorized costs.

Selection Criteria

A panel of senior USIA officers experienced in American studies, the exchange of international educators, and foreign affairs will use the following criteria when evaluating proposals:

(1) Quality and imaginative design of the institute;

(2) Quality, rigor, and appropriateness of proposed syllabus to goals of the institute;

(3) Clear evidence of the ability to deliver a substantive academic and pedagogical American studies program;

(4) Demonstrated high quality American studies programs—experience with foreign teachers is desirable;

(5) Provision for a useful evaluation at the conclusion of the institute;

(6) Evidence of strong on-site administrative and managerial capabilities for international visitors with specific discussion of how managerial and logistical arrangements will be undertaken;

(7) The experience of professionals and staff assigned to the program;

(8) The availability of local and state resources for the orientation and institute;

(9) A well-thought out and comprehensive cultural tour to complement the academic program;

(10) Cost-effectiveness.

Agreement Dates

The agreement period should begin one and a-half to two months prior to the beginning of the project date, July 5, for which period only minimal administrative assistance costs will be allowed. The termination date should include a 60- to 90-day period to cover the required end-of-project report.

Mailing of the Proposal

Applicants should submit *ten copies each* of a 500-word summary statement and a detailed proposal not to exceed 20 typed, double-spaced pages addressing the points outlined above and following the detailed budget guidelines. Interested institutions should request a USIA grant cover sheet, an Assurance of Compliance form, and Certification Regarding Drug-Free Workplace Requirements and Debarment at the address below. Final proposals along with the forms requested must be received in the Agency by COB September 29, 1989. The proposal package should be submitted to: Division for the Study of the U.S., Office of Academic Programs, Bureau of Educational and Cultural Affairs, U.S. Information Agency, Attn: Katherine Passias, E/AAS, Rm. 256, 301 4th Street SW., Washington DC 20547, Phone (202) 485–2557.

Date: June 14, 1989.

Guy Story Brown,

Director, Office of Academic Programs.

[FR Doc. 89–15404 Filed 6–28–89; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Intent To Prepare an Enviromental Impact Statement for a New Medical Center in Honolulu, HI

AGENCY: Department of Veterans Affairs.

ACTION: Notice of intent.

SUMMARY: The Department of Veterans Affairs (VA) intends to prepare an Environmental Impact Statement (EIS) on the proposed establishment of a new medical center in Hawaii on the island Oahu.

ADDRESS: Individuals are invited to submit comments on this notice to: Director of Environmental Affairs (088B4), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420.

FOR FURTHER INFORMATION CONTACT: Jon E. Baer, Director, Landscape Architectural Service (088B4), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–2922.

SUPPLEMENTARY INFORMATION: An EIS is required because the scope of the proposed project could exceed the VA threshold for an EIS established in 38 CFR Part 26. Therefore, in accordance with section 102(2)(C) of the National Environmental Policy Act, VA is publishing this notice of intent pursuant to 40 CFR 1501.7.

The proposed medical center, if ultimately approved as a project by VA, could involve land acquisition, site preparation, building and road construction, and possibly would have traffic, economic and ecological impacts on the local area. Major environmental issues have not been identified as of the date of this notice.

Possible alternatives for the medical center have not been firmly identified but will depend upon demographic and physical requirements, available sites, and acquisition methods.

This notice is part of the process used for scoping the pertinent environmental issues for the EIS. Participation in the scoping process is invited by individuals, private organizations and local, State and Federal agencies. Comments received will be used by VA in its efforts to further identify and clarify significant environmental issues. Scoping meetings will be announced in local newspapers.

Approved: June 21, 1989.

Edward J. Derwinski,

Secretary of Veterans Affairs.

[FR Doc. 89–15306 Filed 6–28–89; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 124
Thursday, June 29, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

DATE: July 12 and 13, 1989.

PLACE: Embassy Suites Hotel, Delegate Room, 1250 22nd Street, NW., Washington, DC 20037.

STATUS:

July 12, 1989, 1:00 p.m.–2:00 p.m.—Closed Sec. 1703.202 (2) and (6) of the Code of Federal Regulations, 45 CFR Part 1703
July 12, 1989, 2:00 p.m.–5:00 p.m.—Open
July 13, 1989, 9:00 a.m.–5:00 p.m.—Open

MATTERS TO BE DISCUSSED:

Chairman's Report
Executive Director's Report
NCLIS Committee Reports:
- Budget and Finance
- Governance
- Indian Library Services
- Information Age International
- Legislative
- Program Review
- Public Affairs
- Recognition Award
- School Media
- White House Conference on Library and Information Services II

Report on Academic Libraries:
- Dr. Joanne Harrar, Director, McKeldon Library, University of Maryland

Report on NCLIS/AASL Information Literacy Symposium
White House Conference on Library and Information Services II Advisory Committee Report
Discussion on:
- National Library Card Sign-Up Month
- *National Information Policy* Report
- Directory of Associations and Organizations
- 1990 Commission Meeting Sites

Special provisions will be made for handicapped individuals by calling Jane McDuffie (202) 254–3100, no later than one week in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Susan K. Martin, NCLIS Executive Director, 1111 18th Street, NW., Suite 310, Washington, DC 20036, (202) 254–3100.

Dated: June 26, 1989.

Jane D. McDuffie,

Staff Assistant.

[FR Doc. 89–15533 Filed 6–27–89; 1:31 pm]

BILLING CODE 7527-01-M

UNITED STATES POSTAL SERVICE

Board of Governors

Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold a meeting at 8:30 a.m. on Tuesday, July 11, 1989, in the Benjamin Franklin Room at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., Washington, DC. The meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

There will also be a session of the Board on Monday, July 10, 1989, but it will consist entirely of briefings and is not open to the public.

Agenda

Tuesday Session

July 11—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, June 5–6, 1989.
2. Remarks of the Postmaster General.
3. Report on Operations Support Group Programs. (John G. Mulligan, Senior Assistant Postmaster General, Operations Support Group).
4. Review of MLOCR National Directory Development. (Peter A. Jacobson, Assistant Postmaster General, Engineering and Technical Support Department).
5. Tentative Agenda for August 14–15, 1989, meeting in San Francisco, California.

David F. Harris,

Secretary.

[FR Doc. 89–15536 Filed 6/27/89; 1:32 pm]

BILLING CODE 7715-15-M

federal register

Thursday
June 29, 1989

Part II

Environmental Protection Agency

40 CFR Parts 141 and 142

Drinking Water; National Primary Drinking Water Regulations; Filtration, Disinfection; Turbidity, Giardia lamblia, Viruses, Legionella, and Heterotrophic Bacteria; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[WH-FRL-3607-7]

Drinking Water; National Primary Drinking Water Regulations; Filtration, Disinfection; Turbidity, Giardia lamblia, Viruses, Legionella, and Heterotrophic Bacteria

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This notice, issued under the Safe Drinking Water Act, publishes maximum contaminant level goals for *Giardia lamblia* viruses, and *Legionella;* and promulgates national primary drinking water regulations for public water systems using surface water sources or ground water sources under the direct influence of surface water that include (1) criteria under which filtration (including coagulation and sedimentation, as appropriate) are required and procedures by which the States are to determine which systems must install filtration, and (2) disinfection requirements. The filtration and disinfection requirements are treatment technique requirements to protect against the potential adverse health effects of exposure to *Giardia lamblia*, viruses, *Legionella*, and heterotrophic bacteria, as well as many other pathogenic organisms that are removed by these treatment techniques. This notice also includes certain limits on turbidity as criteria for (1) determining whether a public water system is required to filter; and (2) determining whether filtration, if required, is adequate.

DATES: This regulation is effective December 31, 1990. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of December 31, 1990.

ADDRESSES: A copy of the public record for this rulemaking, including public comments on the rule and supporting documents, is available for review at the EPA Drinking Water Docket, Room EB15, 401 M Street, SW., Washington, DC 20460. For access to the docket materials, call (202) 382–3027 between 9 a.m. and 3:30 p.m. Major supporting documents cited in the reference section of this notice are available for inspection at the Drinking Water Supply Branches in EPA's Regional Offices, listed below.

I. JFK Federal Bldg., Room 2203, Boston, MA 02203, Phone: (617) 565–3610, Jerome Healey
II. 26 Federal Plaza, Room 824, New York, NY 10278, Phone: (212) 264–1800, Walter Andrews
III. 841 Chestnut Street, Philadelphia, PA 19107, Phone: (215) 597–9873, Jon Capacasa
IV. 345 Courtland Street, Atlanta, GA 30365, Phone: (404) 347–2913, Michael Leonard
V. 230 S. Dearborn Street, Chicago, IL 60604, Phone: (312) 353–2650, Joseph Harrison
VI. 1445 Ross Avenue, Dallas, TX 75202, Phone: (214) 655–7155, Thomas Love
VII. 726 Minnesota Avenue, Kansas City, KS 66101, Phone: (913) 236–2815, Ralph Langemeier
VIII. One Denver Place, 999 18th Street, Suite 1300, Denver, CO 80202–2413, Phone: (303) 293–1424, Marc Alston
IX. 215 Fremont Street, San Francisco, CA 94105, Phone: (415) 974–0763, William Thurston
X. 1200 Sixth Avenue, Seattle, WA 98101, Phone: (206) 442–1225, Richard Thiel

Copies of the latest draft Guidance Manual for Compliance with the Surface Water Treatment Requirements for Public Water Systems ("Guidance Manual"), Regulatory Impact Analysis: Benefits and Costs of the Final Surface Water Treatment Rule, Health Advisory for *Legionella*, Technology and Costs for the Treatment of Microbial Contaminants in Potable Water Supplies, and health criteria documents for *Giardia lamblia*, viruses, *Legionella*, and turbidity are available for a fee from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161. The toll-free number is (800) 336–4700; the local number is (703) 487–4650.

FOR FURTHER INFORMATION CONTACT: The Safe Drinking Water Hotline, telephone (800) 426–4791 (except Alaska) or (202) 382–5533 in the Washington, DC metropolitan area or Alaska, or Stig Regli, Environmental Engineer, Science and Technology Branch, Criteria and Standards Division, Office of Drinking Water (WH–550D), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, telephone (202) 382–7379.

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Abbreviations Used In This Notice

CFR: Code of Federal Regulations
CWS: Community Water System
CT: Residual Disinfectant Concentration in mg/l ("C") × Disinfectant Contact Time in min ("T")
CTcalc: Calculated CT Value
$CT_{99.9}$: CT Value Necessary to Achieve 99.9 Percent Inactivation
EPA: Environmental Protection Agency
HPC: Heterotrophic Plate Count
MCL: Maximum Contaminant Level
MCLG: Maximum Contaminant Level Goal
NIPDWR: National Interim Primary Drinking Water Regulation
NPDWR: National Primary Drinking Water Regulation
NTU Nephelometric Turbidity Unit
PWS: Public Water System
RIA: Regulatory Impact Analysis
RMCL: Recommended Maximum Contaminant Level
SDWA or "The Act": Safe Drinking Water Act, as amended in 1986

I. Legal Authority

EPA is promulgating this regulation under the authority of Secs. 1401, 1412, 1413, 1414, 1415, 1416, 1445, and 1450 of the Safe Drinking Water Act, as amended. 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300j–4, and 300j–9.

II. Background

A. Statutory Requirements

The 1986 amendments to the Safe Drinking Water Act ("SDWA" or "the Act"), Pub. L. 99–339, require EPA to promulgate a national primary drinking water regulation (NPDWR) specifying criteria under which "filtration" (defined in section 1412(b)(7)(C)(i) as including pretreatment measures such as coagulation and sedimentation, as appropriate) is required as a treatment technique for public water systems supplied by surface water sources. In establishing these criteria, EPA must consider source water quality, protection afforded by watershed management, treatment practices such as disinfection and length of water storage, and other factors relevant to protection of health.

In lieu of provisions for obtaining a variance from the filtration requirements under section 1415 of the Act, EPA must instead specify procedures which the State is to use to determine which public systems must use filtration based on the criteria that EPA establishes in this regulation.

Note: Throughout this preamble, the term "State" is used to mean a State with primary enforcement responsibility for public water systems or "primacy," and to mean EPA in the case of a State that has not obtained primacy.

States may require the public water system to provide studies or other information to assist in this determination. The procedures for determining whether filtration is required must provide notice and opportunity for public hearing.

EPA was to promulgate this NPDWR by December 19, 1987. In March 1988, the Bull Run Coalition in Portland, Oregon sued the Agency for failure to issue the rule by the statutory deadline. On January 17, 1989, a consent decree committing EPA to promulgate this rule by June 19, 1989 was filed in the District Court of Oregon.

Within 18 months after EPA promulgates the NPDWR specifying filtration requirements, a State with primary enforcement responsibility for public water systems must adopt any regulations necessary to implement the requirements of this NPDWR. Within 12 months of the adoption of such regulations, the State must make determinations regarding filtration for all public water systems supplied by surface waters within its jurisdiction. If the State determines that filtration by a public water system is required, the State must prescribe a schedule for that system that requires compliance within 18 months of the determination.

The 1986 amendments to the Safe Drinking Water Act also required EPA, by June 19, 1989, to: (1) Promulgate a NPDWR requiring disinfection as a treatment technique for all public water systems (including those served by surface water and those served by ground water) and a rule specifying criteria by which variances to this requirement may be granted; and (2) publish maximum contaminant level goals and promulgate NPDWRs for 83 contaminants listed in the Advance Notices of Proposed Rulemaking published at 47 FR 9352 (March 4, 1982) and 48 FR 45502 (October 5, 1983). This list of contaminants includes turbidity and five microbiological contaminants: *Giardia lamblia* ("*Giardia*"), viruses, *Legionella*, Heterotrophic Plate Count bacteria ("heterotrophic bacteria" or "HPC"), and total coliforms.

B. Regulatory History

In the Advance Notice of Proposed Rulemaking published on October 5, 1983, EPA discussed issues pertaining to regulation of turbidity, *Giardia lamblia*, viruses, *Legionella*, and HPC, as well as filtration treatment for surface water and disinfection requirements for all systems (48 FR 45502). On November 13, 1985, EPA proposed MCLGs for turbidity, *Giardia lamblia*, and viruses and solicited comment on the appropriateness of establishing MCLGs and NPDWRs for *Legionella* and HPC (50 FR 46936). (In this rule "viruses" means viruses of fecal origin which are infectious to humans by waterborne transmission. "*Legionella*" means a genus of bacteria, some species of which have caused a type of pneumonia called Legionnaires disease; the etiologic agent of most cases of Legionnaires disease examined has been *L. pneumophila.*) Public comments on these two Federal Register notices and EPA's responses to the comments are included in the Response to Comments document in the public docket for this rulemaking (USEPA, 1989d).

On November 3, 1987, EPA: (1) Reproposed MCLGs for *Giardia lamblia* and viruses, and proposed an MCLG for *Legionella*; (2) proposed a national primary drinking water regulation specifying (a) criteria under which filtration (including coagulation and sedimentation, as appropriate) is required as a treatment technique for public water systems using surface water sources and procedures by which the State must determine which systems must install filtration and (b) disinfection treatment technique requirements for public water systems using surface water sources (52 FR 42178). The proposed filtration and disinfection requirements were intended to protect against the potential adverse health effects of exposure to *Giardia lamblia*, viruses, *Legionella*, and heterotrophic bacteria, as well as many other pathogenic organisms that are removed by these treatment techniques. The November 3, 1987, notice also withdrew the November 13, 1985, proposed MCLG for turbidity and proposed certain limits on turbidity as criteria for: (1) Determining whether a public water system is required to filter; and (2) determining whether filtration, if required, is adequate.

On January 7, 1988, EPA published a notice extending the public comment period on these proposed surface water treatment requirements (53 FR 1892). On

May 6, 1988, EPA published a Notice of Availability which solicited specific data, discussed alternatives to the proposed surface water treatment requirements and solicited comment on these alternative options, and designated July 5, 1988, as the end of the public comment period (53 FR 16348).

C. Regulatory Framework

As explained in greater detail in the proposal, this rule fulfills the following statutory requirements:

(1) The requirement that EPA promulgate a NPDWR specifying criteria under which filtration (including coagulation and sedimentation, as appropriate) is required as a treatment technique for public water systems using surface water sources, including procedures by which the State will determine which systems must install filtration. *See* section 1412(b)(7)(C).

(2) The requirement that EPA promulgate a NPDWR requiring disinfection as a treatment technique for public water systems using surface water sources (EPA intends to promulgate additional regulations specifying disinfection requirements for systems using ground water sources at a later date). *See* section 1412(b)(8).

(3) The requirement that EPA regulate *Giardia lamblia*, viruses, *Legionella*, heterotrophic plate count bacteria, and turbidity. *See* section 1412(b)(1). (Coliforms are regulated in a separate rule published elsewhere in today's **Federal Register**.)

(a) *Giardia lamblia* cysts pose significant risks to health for systems using surface waters, but usually not for systems using ground water, because these protozoan cysts are removed from water by natural filtration processes in the course of the water's passage through the ground. The turbidity level, which is a measure of particulate matter in water, is an indicator of the effectiveness of treatment processes that control pathogens, including *Giardia*, in systems using surface water. Turbidity is not a useful indicator of treatment effectiveness for most ground water systems since most particulates are already being removed by natural filtration processes in the course of the water's passage through the ground. Because natural filtration processes remove turbidity and *Giardia* from ground water, EPA believes that promulgation of this regulation, which applies to public water systems using surface water sources (or, as explained later, ground water sources under the direct influence of surface water) and includes turbidity requirements, is adequate to control these contaminants, so additional NPDWRs to regulate *Giardia* and turbidity in ground water are unnecessary. Thus, it is EPA's position that today's regulation fulfills the SDWA requirement to regulate *Giardia lamblia* and turbidity.

(b) This rule also provides protection from viruses, *Legionella*, and HPC in surface water and thereby complies with the SDWA requirement to regulate these contaminants in surface water systems. EPA intends to promulgate NPDWRs to control the levels of viruses, *Legionella*, and HPC in drinking water derived from ground water sources. These regulations will be included in the disinfection requirements for ground water sources.

The criteria in this final rule are designed to control microbiological contamination in general, not just *Giardia lamblia*, viruses, *Legionella*, and HPC. Since no waterborne disease outbreaks have been identified in properly designed, well-operated systems, i.e., systems that meet these criteria, EPA believes that compliance with this rule will provide significant protection from most waterborne pathogens, including those not specifically covered by this rule. For instance, EPA believes that filtered systems which comply with the requirements of this rule for such systems will provide significant protection from *Cryptosporidium*, a protozoan recently implicated in waterborne disease outbreaks. However, because of the current uncertainty of the effectiveness of disinfection for inactivating *Cryptosporidium*, the degree of protection from this protozoan for systems which choose to comply with the requirements of this rule for unfiltered systems may be more limited. EPA is currently conducting studies to determine whether additional regulations may be necessary to control for *Cryptosporidium*.

III. Response to Major Issues

In this section, EPA describes the major comments it received on the proposed criteria, which provisions of the final rule have been changed in response to those comments, and the rationale for those changes. EPA's more detailed responses to the public comments appear in the Response to Comments document in the public docket. (USEPA, 1989b.) This section is presented prior to the description of the final rule (Section IV) and assumes the reader is familiar with the proposed rule. Therefore, depending on interest and background, the reader may prefer to either skip this section or read Section IV first.

A. Determination of Source Water Type

Under the proposed rule, "surface water" was defined as

> All water (1) open to the atmosphere and subject to surface runoff, or (2) which is directly influenced by surface water, as defined in (1), which may include springs, infiltration galleries, or wells. Whether there is direct influence by surface water must be determined on a case-by-case basis. Direct influence may be indicated by: (i) significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH (which may also change in ground water but at a much slower rate) which closely correlate to climatologic or surface water conditions, or (ii) the presence of insects or other macroorganisms, algae, organic debris, or large-diameter pathogens such as *Giardia lamblia*.

Some commenters supported the definition because it would allow States to require treatment to control for *Giardia* cysts, if such contamination were apparent, in systems using sources traditionally classified as ground water. Other commenters objected to the definition because it included aquifers, depending upon how the term "direct influence by surface water" was interpreted. Aquifers, for the most part, are protected from contaminants, such as *Giardia* cysts, which are characteristic of surface water supplies; thus, they argue, it is not necessary to subject these systems to this rule. Many commenters were concerned that the proposed definition would require States to evaluate all ground water systems to determine whether they were under the direct influence of surface water within 30 months following the promulgation of the rule. Commenters considered this impractical because of the limited resources available to States.

EPA agrees that most systems using sources traditionally defined as ground water are not at risk from contamination by *Giardia* cysts or other contaminants typically found in surface water. The rate of reported waterborne outbreaks of giardiasis in systems using ground water (as traditionally defined, i.e., water not open to the atmosphere) is about 1/43 of that in filtered and disinfected surface water supplies and about 1/326 of that in unfiltered surface water supplies (Craun, 1989). However, *Giardia* cysts do occur in some ground water supplies due to contamination by surface water (e.g., springs, infiltration galleries, and wells; Hibler, 1987a). Therefore, EPA believes it is appropriate that all ground water systems be evaluated, on a case-by-case basis, for the potential of contamination by *Giardia* cysts. EPA believes that a system at significant risk from

contamination of *Giardia* cysts, i.e., a ground water system under the direct influence of surface water where the structure of the system cannot be altered to reduce this risk, should be required to comply with the treatment requirements of this rule to ensure adequate protection of public health.

Based on information provided in public comments and further consideration, EPA agrees that the statutory timeframe for States to make filtration decisions (i.e., 30 months from promulgation of this rule) does not provide adequate time for States to evaluate which ground water systems are under the direct influence of surface water. In addition, EPA believes the most practical approach for States is to make these determinations when sanitary surveys are conducted pursuant to the NPDWR for total coliforms (published elsewhere in today's **Federal Register**) and/or when ground water systems are evaluated for adequacy of treatment under the forthcoming disinfection requirements for ground water systems.

EPA is also concerned that if a system using a ground water source were reclassified as a "surface water source" because the State determines it is under the direct influence of surface water, as described in the proposal, such a system also would be required to comply with other regulations pertaining to surface water supplies (e.g., under other NPDWRs, surface water supplies have different monitoring requirements than ground water supplies). This may or may not be appropriate, depending upon the characteristics of the system.

EPA has addressed the above concerns by making the following changes in the final rule:

a. The definition of surface water has been shortened to "all water open to the atmosphere and subject to surface runoff."

b. The final rule defines a new term, "ground water under direct influence of surface water," as:

> Any water beneath the surface of the ground with (i) significant occurrence of insects or other macroorganisms, algae, or large-diameter pathogens such as *Giardia lamblia*, or (ii) significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions. Direct influence must be determined for individual sources in accordance with criteria established by the State. The State determination of direct influence may be based on an evaluation of site-specific measurements of water quality and/or well construction characteristics and geology with field evaluation.

c. When the State revises its drinking water regulations to adopt today's rule, the revisions must include a program for determining which systems using ground water as a source are under the direct influence of surface water (i) within 5 years following the promulgation date of this rule for community water systems, and (ii) within 10 years following the promulgation date of this rule for non-community water systems. These timeframes are consistent with the schedule for conducting sanitary surveys under the total coliform rule, promulgated elsewhere in today's **Federal Register**. EPA believes these time frames are reasonable because the sanitary surveys will provide much of the information necessary to make the determination.

d. All unfiltered ground water systems that the State determines are under the direct influence of surface water must (i) begin monitoring 6 months following the determination to demonstrate they are meeting the criteria to avoid filtration and comply with the requirements for avoiding filtration beginning 18 months following the determination, unless the State determines that filtration is required, or (ii) install filtration and comply with the monitoring and treatment requirements for filtered systems beginning 18 months following the determination that filtration is required. This schedule is explained in more detail in the section entitled "Compliance," below.

Guidance for evaluating whether ground water systems are under the direct influence of surface water will be available in the final Guidance Manual. EPA recommends that infiltration galleries, springs, and shallow wells be evaluated first, then, depending upon aquifer characteristics, wells in increasing depth. EPA believes that, for most ground water systems, only minimal analysis will be necessary to make this determination. Simply put, if a ground water system is subject to *Giardia* contamination (unless the contamination originates within the distribution system), States should classify it as a source under the direct influence of surface water and thus subject to the treatment requirements of this rule. It is important to note that the intent of this rule is not to regulate viral and bacterial contamination in systems using ground water, unless *Giardia* cysts are also associated with such occurrence. Thus, if there is little likelihood for *Giardia* cysts to occur in a system using ground water, but there is potential for bacterial and viral contamination, EPA does not expect the State to classify this source as a ground water source under the direct influence of surface water. Compliance with the NPDWR for total coliforms (published elsewhere in today's **Federal Register**) and/or the forthcoming disinfection requirements for disinfection of ground water systems will require adequate treatment to address these other concerns.

EPA anticipates that while some ground water systems, such as infiltration galleries, springs, and shallow wells, may be under direct influence of surface water in their current configuration, in many cases, it may be possible to make structural modifications to prevent the direct influence of surface water and eliminate the potential for *Giardia* cyst contamination, thereby avoiding the requirements of this rule.

Note: Throughout the remainder of this preamble, unless otherwise noted, we use the term "surface water systems" and related terms to include both public water systems using a surface water source and public water systems using a ground water source under the direct influence of surface water.

B. 99.9 Percent Removal and/or Inactivation of Giardia Cysts

EPA proposed to require all systems using surface water to achieve at least a 99.9 percent (3-log) removal and/or inactivation of *Giardia lamblia* cysts. Many commenters thought it inappropriate to require the same minimum percent removal requirement for all systems, regardless of differences in source water quality and potential risk. Several commenters suggested that EPA allow exceptions to this minimum treatment performance requirement based on source water quality (e.g., low occurrence of *Giardia* cysts) and/or epidemiological evidence of low risk. Some commenters thought that EPA should base the treatment requirement upon some level of acceptable risk in the finished water.

EPA continues to support the rationale presented in the preamble to the proposed rule for setting the minimum performance criteria of 99.9 percent removal and/or inactivation of *Giardia* cysts (52 FR 42194–42195). Furthermore, additional information has become available to support these criteria.

Table III.1 indicates peak and average *Giardia* cyst concentrations in polluted and pristine source waters of public drinking water supplies (Rose, 1988), where waters contaminated with sewage and agricultural wastes were characterized as "polluted" and waters originating from protected watersheds with no significant sources of microbiological contamination from human activities were classified as "pristine." The indicated concentration

levels reflect actual counts of cysts detected without adjustment for inefficiencies in recovery (recovery efficiencies were unknown for most samples). These data indicate that, even though average cyst concentrations can be significantly higher in polluted than in pristine source waters, at least part of the year peak cyst concentration levels in pristine waters can be the same order of magnitude as the levels in polluted supplies. Occasional high concentrations of *Giardia* cysts in source waters with protected watersheds may occur due to contamination from animal populations. Thus, during the part of the year when the water is most contaminated, i.e., the concentrations of *Giardia* are the highest, approximately the same level of treatment performance is necessary for a pristine water source as is necessary for a polluted source to provide the same level of protection.

TABLE III.1—GIARDIA CYST DENSITIES IN SOURCES OF DRINKING WATER [1]

Type of water	Number of samples	Number of sites	Percent [2] positive for Giardia	Cysts/100 liters		
				Peak	Range of mean concentrations [3]	Mean of all concentrations [3]
Waters polluted with human and agricultural wastes	135	8	43	625	0.33–104	33
Pristine waters	283	7	10	114	0.6–5	0.9
Waters of unknown quality	1,226	18	26.4	100	0.005–2.95	0.61

[1] Rose, 1988.
[2] Percent of the samples.
[3] Geometric mean.

To date, in each reported waterborne disease outbreak of giardiasis, at least 0.5 percent or greater of the population (50 or more per 10,000 people or 5×10^{-3}) were infected (Rose, 1988). EPA believes that public water supplies should provide much greater protection than simply that necessary to avoid this level of risk from waterborne disease. EPA believes that providing treatment to ensure less than one case of microbiologically caused illness per year per 10,000 people is a reasonable goal. This is comparable to other acceptable microbiological risk levels (Regli et al., 1988).

Based on a recent risk analysis, which assumes all cysts found are viable and infectious to humans, the incidence of infection from *Giardia* was predicted as a function of exposure to cyst concentrations in drinking water (Rose, 1988). Tables III.2 and III.3 indicate the daily and annual risk from *Giardia* infection for people consuming finished water with different *Giardia* cyst concentrations. The tables also specify the level of treatment (i.e., 3-, 4- or 5-log removal and/or inactivation of *Giardia* cysts) needed for source water with different cyst concentrations to ensure that the indicated daily and annual risk per person are not exceeded.

Comparing Table III.2 with Table III.1, it appears that water treatment plants which provide 3-log removal and/or inactivation of *Giardia* cysts would generally ensure exposure to risk of giardiasis of less than 10^{-4} (i.e., less than one in 10,000 people infected) during days of worst case *Giardia* cyst occurrence (defined as 250 cysts/100 liters). Comparing Table III.3 with Table III.1, it appears that water treatment plants which provide 3- to 5-log removal and/or inactivation of *Giardia* cysts, depending on source water quality (e.g., for waters with less than 0.7 cysts/100 liters and 3-log removal and/or inactivation, or water with less than 70 cysts/100 liters and 5-log removal and/or inactivation), would generally ensure that the risk of giardiasis is less than 10^{-4} per year. Although EPA recognizes that the above analysis may be conservative, it is not unreasonable since the cyst occurrence levels, as indicated in Table III.1, may actually be much higher due to poor efficiencies of recovery. EPA believes that 3- to 5-log removal and/or inactivation of *Giardia* cysts represents a reasonable level of protection for the range of source water contamination expected to occur in the United States. Therefore, the final rule requires that all systems achieve at least a 3-log removal and/or inactivation of *Giardia* cysts. In the final Guidance Manual, EPA will recommend specific minimum performance levels in the 3- to 5-log range, depending upon the expected degree of cyst contamination in the source water.

TABLE III.2—ESTIMATED DAILY RISK OF GIARDIA INFECTIONS FROM VARIOUS LEVELS OF CYST CONTAMINATION IN DRINKING WATER USING AN EXPONENTIAL RISK ASSESSMENT MODEL [1]

Daily risk per person [2]	Cyst concentration in 100 liters of finished water	Allowable Cyst concentration in 100 liters of source water to achieve given treatment reductions		
		3=log	4=log	5=log
$10^{-3.5}$	[3] 0.75	7.5×10^{2}	7.5×10^{3}	7.5×10^{4}
10^{-4}	0.25	2.5×10^{2}	2.5×10^{3}	2.5×10^{4}
$10^{-4.5}$	0.075	75	7.5×10^{2}	7.5×10^{3}
10^{-5}	0.025	25	2.5×10^{2}	2.5×10^{3}

[1] Rose, 1988.
[2] Assumes 2 liters of water consumed per day.
[3] Level of cysts detected during waterborne outbreaks of giardiasis.

TABLE III.3—ESTIMATED ANNUAL RISK OF GIARDIA INFECTIONS FROM VARIOUS LEVELS OF CYST CONTAMINATION IN DRINKING WATER USING AN EXPONENTIAL RISK ASSESSMENT MODEL [1]

Annual risk per person [2]	Geometric mean cyst concentration in 100 liters of finished water for one year	Allowable Cyst concentration in 100 liters of source water to achieve given treatment reductions		
		3=log	4=log	5=log
$10^{-3.5}$	2×10^{-3}	2.0	20	200
10^{-4}	7×10^{-4}	0.7	7.0	70
$10^{-4.5}$	2×10^{-4}	0.2	2.0	20
10^{-5}	7×10^{-5}	0.07	0.7	7.0

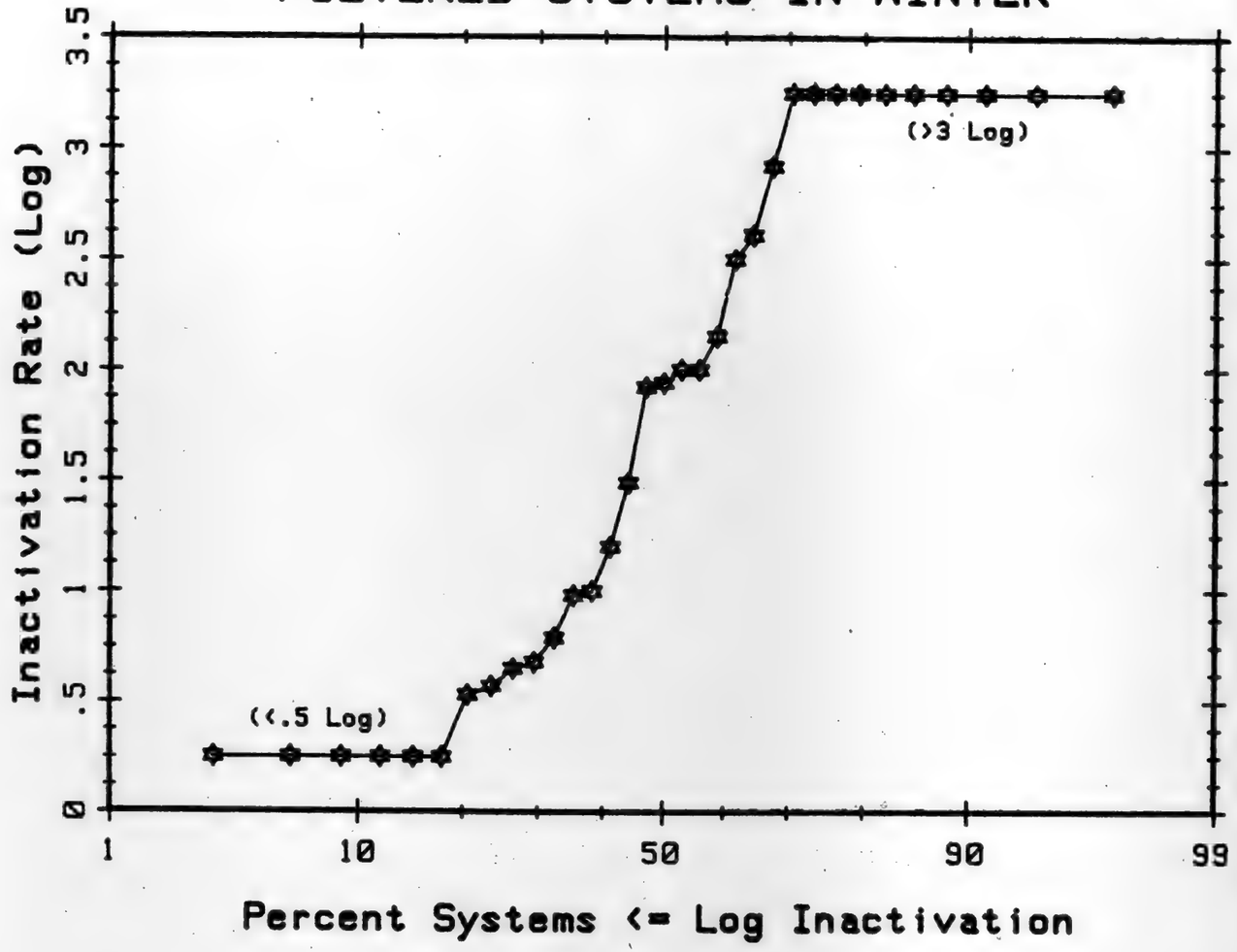
[1] Rose, 1988.
[2] Assumes 2 liters of water consumed per day.

The treatment performance levels cited above are consistent with what is currently being achieved by well-operated systems in the U.S. Figures III.1 and III.2 illustrate levels of *Giardia* cyst inactivation achieved by disinfection alone during winter and summer months, respectively, by typical filtered water supplies in the U.S. (based on data from AWWA (1987)). Assuming a 2- to 3-log removal of *Giardia* cysts by conventional treatment (which is used by most of the utilities represented in Figures III.1 and III.2) without disinfection, a total of at least 3- to 5-log removal and/or inactivation of *Giardia* cysts from filtration and disinfection combined is generally achieved in well-operated water treatment plants in the U.S.

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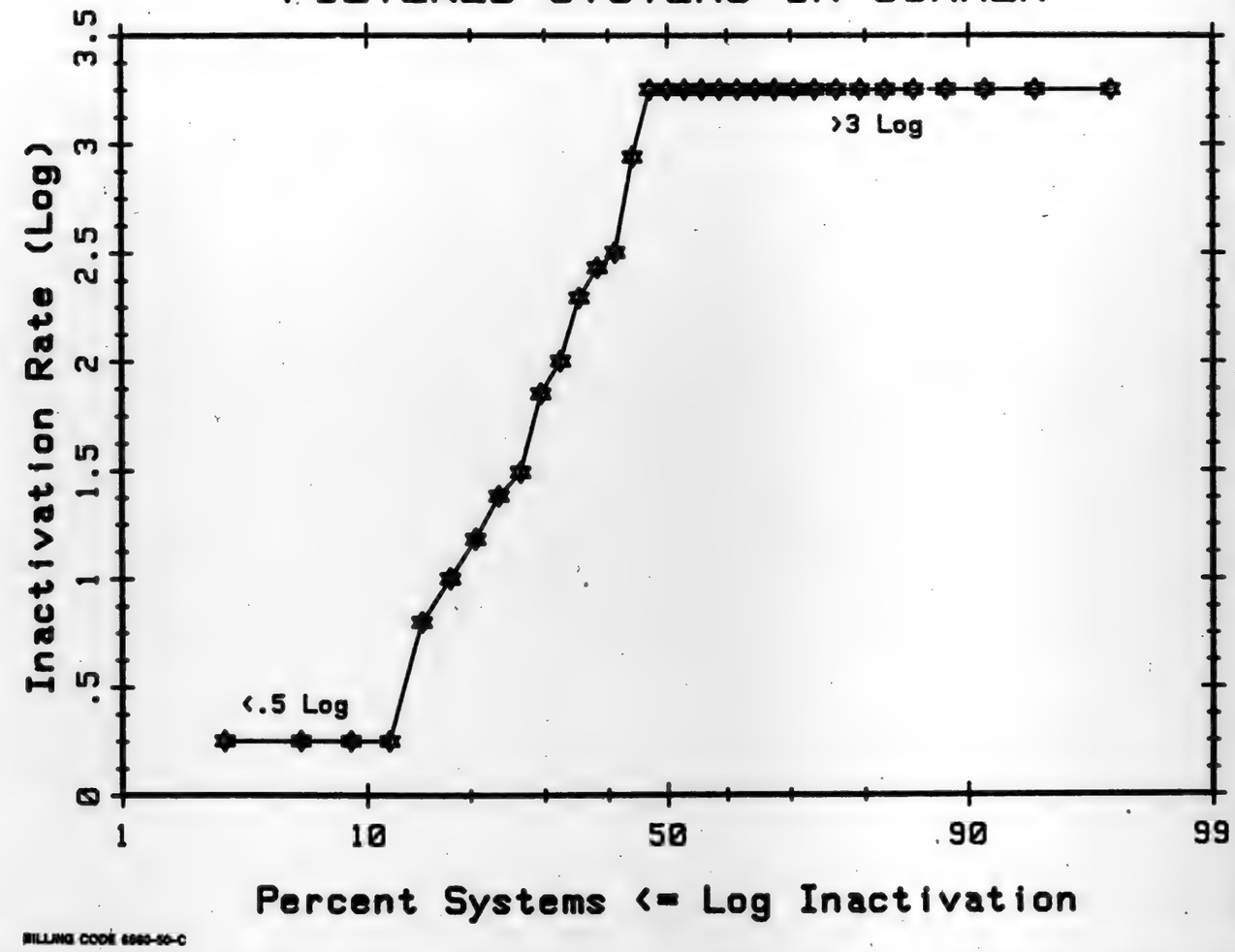
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Figure III.1
INACTIVATION OF GIARDIA CYSTS
BY DISINFECTION IN
FILTERED SYSTEMS IN WINTER



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Figure III.2
INACTIVATION OF GIARDIA CYSTS
BY DISINFECTION IN
FILTERED SYSTEMS IN SUMMER



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EPA believes it is inappropriate for the rule to specify different levels of treatment for different source water qualities because it is generally not feasible to confidently quantify *Giardia* cyst concentrations. As explained in the proposal, there is no analytical method for measuring *Giardia lamblia* cysts for which the precision, efficiency, and sensitivity have been adequately defined; no reliable validation procedures or laboratory certification procedures are available; and very large numbers of samples would be needed to accurately quantify levels of cyst occurrence.

Although some systems might not actually need a 3-log removal and/or inactivation of *Giardia* cysts to provide adequately safe water to their customers, EPA believes it is not feasible for a system to demonstrate with assurance, e.g., with water quality monitoring results, that lower removals and/or inactivations would be adequately protective of public health. Nor is the historical absence of a waterborne disease outbreak a sufficiently sensitive indicator that adequate treatment is in place. For example, assuming that at least 0.5 percent of the population must become ill within less than one month to detect an outbreak, the ongoing absence of an outbreak simply indicates that fewer than 5 people per thousand become ill during any month. EPA also believes that generally it cannot be demonstrated with confidence that low levels of waterborne illness (e.g., less than one in 10,000 people per year) are being avoided based on epidemiological analysis of reported illnesses to the medical community, since only illnesses with a significant adverse symptomatic response tend to be reported and such reports only represent levels of illness among non-transient populations. Also, levels of illness may vary significantly from year to year depending on the level of contamination and variations in pathogen strains which might occur in the source water, and the level of treatment provided. Therefore, to assure that adequate protection will be provided, the final rule does not allow systems to achieve less than a 3-log removal and/or inactivation of *Giardia* cysts.

C. Continuous Disinfection at the Entry Point to the Distribution System

EPA proposed to require that all systems using surface water (both unfiltered and filtered) disinfect their water and continuously monitor the disinfectant residual entering the distribution system. Under the proposal, each system would record the lowest disinfectant residual concentration entering the system each day. Any time the residual was less than 0.2 mg/1, the system would be in violation of a treatment technique requirement. This violation would be considered "acute," thus requiring the system, under the public notification requirements in 40 CFR 141.32, to notify the public of the violation within 72 hours via electronic media, as well as provide subsequent written notice, if it were a community water system; non-community water systems could substitute posting or hand delivery of notices. In response to this proposed requirement, EPA received the following comments:

- The short-term absence of a disinfectant residual at the entry point to the distribution system should not automatically trigger immediate public notification since the actual health risks, depending upon site-specific circumstances, may not be significant.
- Continuous monitoring equipment is subject to failure; such failures are generally beyond the control of the operator. Thus, such failure should not be classified as either a monitoring violation or a treatment technique violation.
- Continuous monitoring is unnecessary to demonstrate effective ongoing disinfection and it will not result in any increased health benefit. Grab sample monitoring every four hours is sufficient for large systems; one sample per day is adequate and reasonable for small systems.
- The cost for very small systems to install continuous monitoring equipment is excessive (cited as about $5,000 for one analyzer and continuous recorder or $10,000 with another unit as a backup) and maintenance would be difficult.

In response to the comments on the proposal, in the May 6, 1988, notice of availability, EPA solicited comments on various options for revising the continuous disinfection requirement. Most commenters addressing these options supported the changes. Based on these comments, and the reasons explained below, EPA has modified the proposed disinfection requirements in the final rule as follows:

- If the residual is less than 0.2 mg/l for any period of time, the system must notify the State as soon as possible but no later than by the end of the next business day after it is first detected.
- If the residual measured is less than 0.2 mg/l and it has not been restored to 0.2 mg/l or higher within four hours of the first measurement, then the system is in violation of a treatment technique requirement. Under the final rule, this violation is a Tier 1 violation (see the public notification rules at 40 CFR 141.32) but is not defined as posing an "acute" health risk, so immediate public notification by electronic media, posting, or hand delivery (depending on system type) is not required unless the State determines it is appropriate.
- If there is a failure in continuous monitoring equipment, grab sampling every four hours may be conducted for up to five working days following the failure of the equipment. Failure to use continuous monitoring equipment after the five days have passed is a monitoring violation.
- Systems serving 3,300 people or fewer may take grab samples, at the frequencies described below, in lieu of performing continuous monitoring.

System size by population	Samples/day [1]
<500	1
501 to 1,000	2
1,001 to 2,500	3
2,501 to 3,300	4

[1] The day's samples cannot be taken at the same time. The sampling intervals are subject to State review and approval.

Note: If the residual is less than 0.2 mg/l in any sample, the system must take another grab sample within four hours of the first sample. If the residual has not been restored to 0.2 mg/l or higher, the system must continue to sample at least every four hours until the residual is restored to 0.2 mg/l or higher.

EPA believes the revised criteria will prevent unnecessary public notification. The Agency recognizes that some systems may have very clean source water and/or achieve excellent microbiological removal by filtration and other treatment processes, without always maintaining a disinfectant residual of 0.2 mg/l or higher. Some systems that experience a brief reduction in their disinfection process, depending on source water quality and whether other treatment processes are in place, may expose the population to significant health risk while others may not. Thus, EPA agrees that it is inappropriate to categorically define a short-term reduction in the disinfection residual as a violation which poses an "acute" health risk, thus requiring immediate public notification via electronic media, posting, or hand delivery (depending on system type). Instead, EPA believes that States should make these determinations as appropriate. Similarly, since all systems are prone to operational failure at some time, but not all such situations pose a significant health risk, EPA believes that some time interval should be allowed for systems to restore the disinfectant residual rather than categorically defining this absence as a treatment technique violation. EPA believes that once the system becomes aware that the disinfectant concentration level is low or absent, four hours is a reasonable maximum time interval for operators to adjust and/or repair the disinfection or monitoring equipment or to bring backup disinfection or monitoring units on-line.

EPA agrees with the commenters that, for some small systems, it may not be practical to keep monitoring units in continuous operation. Therefore, in the final rule, EPA is allowing grab sampling for small systems. EPA believes that requiring a minimum of one grab sample daily will ensure that the operator checks on the disinfection process at least once a day.

In the May 6, 1988, notice, EPA suggested that grab sample monitoring once per day be allowed for systems serving 500 people or fewer. EPA also solicited comment on whether grab sampling should be allowed for some larger systems as well. Several commenters suggested that the rule allow grab sampling for systems serving fewer than 3,300 people, but at higher frequencies than required for systems serving fewer than 500 people. EPA considers this suggestion reasonable and has modified the criteria in the final rule accordingly.

D. Disinfectant Residual in the Distribution System

EPA proposed to require all systems using surface water (both filtered and unfiltered) to maintain at least a 0.2 mg/l disinfection residual in greater than or equal to 95 percent of the distribution system samples taken each month. If a system failed to comply with this requirement for any two consecutive months, it would be in violation of a treatment technique requirement. Also, unfiltered systems failing to meet this criterion would be required to filter. The purpose of this criterion was to:

- Ensure that the distribution system is properly maintained and identify and limit contamination from outside the distribution system when it might occur;
- Limit growth of heterotrophic bacteria and *Legionella* within the distribution system; and
- Provide a quantitative limit which, if exceeded, would trigger remedial action.

EPA proposed a minimum disinfectant residual of 0.2 mg/l because it believed that maintenance of such levels are generally feasible for most well-operated systems. However, public comments indicate that, for many systems which are well-operated (as evidenced by low levels of HPC in routine monitoring), it is not feasible to maintain the proposed minimum disinfectant residual without significantly changing existing disinfection practice (e.g., increasing existing chlorine dosages or switching to chloramine disinfection for the distribution system).

Based on these comments and additional information about current disinfection practice, EPA has revised the proposal. The final rule requires "detectable" residuals in lieu of residuals of at least 0.2 mg/l. In addition, sites that do not have "detectable" residuals, but have HPC measurements of 500/ml or less, are considered equivalent to sites with "detectable" residuals for purposes of determining compliance. Thus, under the final rule, a system may measure for either disinfectant residual or HPC at any sampling location. EPA solicited comments on these options in the May 6, 1988, notice of availability (53 FR 16352), and most commenters responding to this issue supported these alternatives.

EPA believes the absence of a disinfectant residual, rather than the presence of a disinfectant residual below some specific level, is a more accurate indicator of potential contamination at a site. The absence of a residual at a site within the distribution system indicates that the disinfectant level has been reduced, possibly as a result of localized contamination from outside the distribution system (e.g., via cross-connections or back siphonage) or from organic or inorganic materials within the distribution system (such materials, especially in the absence of a residual, may be of concern because they can serve as nutrients that enhance microbial growth). However, EPA recognizes that the absence of a disinfectant residual at a distribution system site does not necessarily indicate microbiological contamination; such contaminants simply may not be present, even in the absence of a disinfectant residual. In other words, if microbial populations are low, the lack of a disinfectant residual is not a concern. Therefore, in the final rule, sites with HPC populations of 500/ml or less are considered equivalent to sites with detectable disinfectant residuals for purposes of determining compliance. EPA believes the 500/ml HPC limit is generally feasible for most well-operated systems with well-maintained distribution systems and that water below this limit is unlikely to be subject to localized contamination or significant microbial growth.

In addition to the changes described above, EPA has added several other provisions to the final rule. Some commenters thought the proposed requirement was inappropriate for systems which introduce both undisinfected ground water and disinfected surface water into the same distribution system because dilution by the ground water (which is presumably clean and thus need not be disinfected) might lower the residual concentration below 0.2 mg/l. In this case, they argued, the requirement was both inappropriate and very difficult to meet. Therefore, for systems which have both ground and surface waters entering the distribution system, the State may allow monitoring for disinfectant residuals at points other than the sampling locations for total coliforms if such points are more representative of the treated (disinfected) surface water within the distribution system.

For systems which cannot maintain a disinfectant residual in the distribution system, if the State determines, based on site-specific considerations, that a system has no means for having a sample transported and analyzed for HPC by a certified laboratory under the requisite conditions (i.e., if analysis cannot begin within 8 hours on samples maintained at temperatures below 4° C. with the maximum elapsed time between collection and analysis under 30 hours; APHA, 1985), and adequate disinfection is provided by that system, this disinfection requirement does apply. The State's judgment might be based upon knowledge of the public water system's distribution system, maintenance of a cross-connection control program, source water quality, and/or past coliform monitoring results.

EPA added this provision for systems which cannot monitor for HPC for the following reasons:

- The option of measuring HPC usually is not available to small systems because they generally do not have in-house laboratory capability to perform the analysis themselves and it is generally not feasible to take samples and send them to a private laboratory within the specified time limit, under the prescribed conditions.
- The integrity of the distribution system is much easier to assess in a small system than in larger systems. Also, the residence time in the distribution system of a small system is expected to be much lower than in larger systems, thereby minimizing the time for bacterial populations to grow in the water.

Under the proposed rule, a system would be required to filter if it failed to

meet the criteria for maintaining a disinfectant residual in the distribution system. Commenters objected to this criterion as a condition for avoiding filtration because the failure to meet this criterion might be caused by contamination entering the piping network within the distribution system rather than by source water contamination and failure to provide filtration. EPA has modified the proposed rule to address this concern. Under the final rule, systems are only required to filter if the failure to meet the disinfection requirements for the distribution system is caused by a deficiency in treatment of the source water. However, any failure to meet the disinfection requirements for the distribution system, regardless of cause, is still considered a violation of a treatment technique requirement.

EPA believes that the revised criteria fulfill the same objectives of the proposed criteria, but are more sensitive to site-specific considerations. Compared to the proposed rule, the requirements in the final rule allow systems to use less disinfectant in the distribution system, thus minimizing adverse effects from disinfectants and disinfection by-products. In addition, total costs will be lower because fewer systems will need to institute major changes in current treatment to meet the requirements of the final rule.

E. Watershed Control and On-Site Inspection Requirements

Under the proposed rule, to avoid filtration, systems would be required to maintain a watershed control program which minimized the potential for contamination by *Giardia lamblia* cysts and viruses in the source water that was satisfactory to the State. To avoid filtration, systems also were required to have an on-site sanitary survey performed each year that indicated to the State's satisfaction that the disinfection treatment process and watershed control program were adequately designed and maintained.

Some commenters thought that these requirements should be more detailed so as to be more easily enforceable. EPA agrees. Thus the final rule includes additional criteria which were taken from EPA's October 8, 1987 draft Guidance Manual ("draft Guidance Manual"), as suggested by public commenters. EPA believes that these revisions to the proposal make the criteria more objective and therefore more enforceable.

EPA has also changed the term "sanitary survey" to "on-site inspection" in the final rule. Under the existing National Primary Drinking Water Regulations, i.e., 40 CFR 141.2(f), a sanitary survey is defined as "an onsite review of the water source, facilities, equipment, operation and maintenance of a public water system for the purpose of evaluating the adequacy of such sources, facilities, equipment, operation and maintenance for producing and distributing safe drinking water." EPA believes that, for the purpose of avoiding filtration, it is not necessary for systems to address concerns which relate to the distribution system; it is sufficient that they consider criteria which relate to the effectiveness of the watershed control program and reliability of the disinfection treatment processes. Accordingly, the term "on-site inspection" in the final rule refers to the evaluation of the watershed control program and disinfection treatment process.

Although this rule only requires an on-site inspection rather than a sanitary survey to avoid filtration, EPA believes that all public water systems, including the systems covered by today's rule, should periodically undergo the more comprehensive sanitary survey, as defined in § 141.2(f), to ensure regular evaluations of the distribution system as well as watershed and treatment characteristics. Many States already have programs in place for conducting sanitary surveys, but at less frequent intervals than are required for on-site inspections in this rule. Under the total coliform rule, published elsewhere in today's **Federal Register**, EPA is requiring small systems, i.e., those collecting fewer than five total coliform samples/month, to have periodic sanitary surveys. Therefore, for unfiltered small systems, during the years when the sanitary survey is conducted, the sanitary survey will fulfill both the sanitary survey requirement of the coliform rule and the on-site inspection requirement of this rule. In the final Guidance Manual, EPA will provide guidelines for conducting both on-site inspections and sanitary surveys.

In an effort to streamline the regulatory implementation process for all the new NPDWRs promulgated under the SDWA amendments, EPA is developing guidelines for States to use in making comprehensive vulnerability assessments of all public water supplies. The purpose of such an assessment would be to evaluate the vulnerability of a system for all potential contamination (i.e., microbiological, inorganic, and organic contamination in the source water, contamination within the treatment train itself because of chemical addition, and contamination within the distribution system) and to obtain information for determining the most efficient strategy for bringing the system into compliance with all pertinent drinking water regulations. The on-site inspections required under this rule for unfiltered supplies would constitute one aspect of the comprehensive vulnerability assessment.

F. Design and Operating Requirements

Under the proposed rule, all systems would have been required to meet design and operating requirements specified by the State. Failure to meet any such requirement would be considered a violation of a treatment technique or monitoring requirement. Under § 141.32, all treatment technique and monitoring violations require public notification.

Most commenters thought it was unnecessary to classify design operating requirements as Federal treatment technique requirements since States already have such requirements (in fact, most States have permit systems in place), and if the system does not meet the State-specified design and operating requirements, the system is not allowed to operate. Many people commenting on this issue thought that EPA should allow States broad discretion to determine when public notification would be appropriate if a system failed to meet design and operating criteria imposed by the State. As an example, one commenter pointed out that, under the proposal, if a State required a public water system to monitor and meet turbidity performance criteria at each individual filter (rather than requiring that the system only monitor the combined effluent of all filtered water), and one filter of many within the system failed to meet the criteria, or the turbidity monitoring equipment for one filter failed, this would be a violation. The commenter argued that it would not be appropriate to require public notification in such situations.

EPA agrees with commenters that there are likely to be many design and operating criteria specified by the State which, if not met, would not warrant public notification. Therefore, EPA has deleted from the final rule the requirement that systems comply with design and operating conditions specified by the State. However, EPA has retained the proposed revision to Part 142 requiring States to specify enforceable design and operating criteria on a Statewide or system-by-system basis. Thus, while failure to comply with State-specified design and operating criteria does not constitute a treatment technique violation, and public notification is not required, such a failure is a violation of State law.

G. CT Values

EPA received extensive public comments regarding the basis for the proposed CT values, the method of their calculation, and whether they should be included in the rules or just published as guidance. Major issues that were raised and how they have been addressed in the final rule are discussed in this section.

1. Unfiltered Systems

(a) *Calculation of CT values.* Under the proposal, a system would be required to calculate CT, where "T" is disinfectant contact time, the time in minutes it takes the water to move between the point of disinfectant application and a point before or at the first customer during peak hourly flow, and "C" is the residual disinfectant concentration in mg/l before or at the first customer but at or after the point contact time is measured. Many commenters thought this method of calculation was overly conservative because (a) significantly greater disinfectant residuals might be present at previous points in the treatment train, (b) most customers will receive water that has a much greater disinfectant contact time than does water at or prior to the first customer, and (c) applying criteria in the draft Guidance Manual, which states that contact time should be determined based on the time it takes water with 10 percent of the tracer concentration to appear at the sampling site, will result in much shorter contact times than under less conservative guidelines (e.g., contact time defined as the time it takes 50 percent of the tracer concentration to appear at the sampling site), and that such criteria are unnecessarily stringent.

In the May 6, 1988, notice of availability, EPA solicited comments on a different methodology to determine CT values for systems using ozone. All the commenters who addressed this issue supported the adoption of this provision in the final rule. In addition, many commenters suggested applying this provision to all disinfectants. EPA agrees that this methodology, which allows systems to determine incremental contributions to the total percent inactivation based on a series of CT measurements prior to the first customer, results in a more accurate representation of actual disinfection conditions, especially in systems having source waters with a high oxidant demand, and those systems using ozone (because it dissipates very rapidly). Accordingly, EPA has adopted this methodology for all disinfectants in the final rule.

Thus, the revised methodology for calculating CT in the final rule is as follows: Systems may measure "C" at different points along the treatment train and use this value, with the corresponding "T", to calculate the total percent inactivation. In determining the total percent inactivation, the system may calculate the CT at each point where "C" was measured and compare this with the $CT_{99.9}$ value (the CT value necessary to achieve 99.9 percent inactivation) in the rule for specified conditions (pH, temperature, and residual disinfectant concentration). Each calculated CT value (CTcalc) must be divided by the appropriate $CT_{99.9}$ value found in Tables 1.1–3.1 in the rule to determine the inactivation ratio. If the sum of the inactivation ratios, or

$$\sum \frac{CTcalc}{CT_{99.9}}$$

at each point prior to the first customer where CT was calculated is equal to or greater than 1.0, i.e., there was a total of at least 99.9 percent inactivation of *Giardia lamblia*, the system is in compliance with the performance requirement.

EPA expects the final Guidance Manual to retain the recommendation that systems determine contact time based on the time it takes water with 10 percent of the tracer concentration (T_{10}) to appear at the sampling site at peak hourly flow. This approach is supported by EPA's Science Advisory Board (1988). EPA does not believe that using a T_{10} value, which was recommended by many commenters, rather than a T_{10} value, would provide an adequate margin of safety since only 50 percent of the water, rather than 90 percent, would receive the contact time necessary to achieve the percent inactivation the CT value represents.

(b) *CT values for chlorine.* The CT values in the proposed rule were based on animal infectivity data (Hibler et al., 1987b) and application of a regression model to these data (Clark et al., 1987; Regli, 1987). To provide a margin of safety, the CT values to achieve 99.9 percent inactivation in the proposed rule were set equal to the CT values needed to achieve 99.99 percent inactivation under experimental conditions.

Many commenters recommended that EPA consider data obtained from disinfection studies using *in vitro* excystation of *Giardia lamblia* (specifically, data developed by Jarroll et al. (1981)) to develop the CT values in the final rule. Commenters indicated that CT values based on the Jarroll et al. data would be significantly lower than those in the proposed rule.

The CT values in the final rule are based on a statistical analysis (Clark et al., 1988), which considered both animal infectivity studies (Hibler et al., 1987b) and excystation studies (Jarroll et al., 1981; Rice et al., 1982; Rubin, 1988c). A multiplicative model (the one previously developed for the animal infectivity data alone, which formed the basis for CT values in the proposed rule, Clark et al., 1987) was selected to best represent the chemical reactions during the inactivation process. This model was applied to each of the data sets described above, and in various combinations (Clark et al., 1988). The animal infectivity data (Hibler et al., 1987b) were included in each of the combinations studied. The animal infectivity data were considered essential for inclusion in all the combined data sets because, unlike the other data sets, these data represented inactivation levels greater than 99.9 percent. Because of limitations with the excystation methodology, only data on conditions necessary for achieving less than 99.9 percent inactivation were available from these studies. Data at these lower inactivation levels were included in the analysis since the CT values in the rule may be used for calculating partial inactivation levels (i.e., less than 99.9 percent) which, in total, are considered in determining whether the overall minimum level of inactivation of 99.9 percent is met.

Statistical analysis indicated that combining the Hibler et al. (1987b) and Jarroll et al. (1981) data (and excluding the Rice et al. (1982) and Rubin et al. (1988c) data formed the best fit model for predicting CT values for different levels of inactivation. As a conservative regulatory strategy, Clark et al. (1988) recommended that CT values for different levels of inactivation be determined by applying first order kinetics to the 99 percent upper confidence interval of the $CT_{99.9}$ values predicted by the model. For CT values above 5 °C, where data were limited, the authors recommended that for every increase of 10 °C, the CT value be lowered by one half. This concept, which was applied for determining the CT values in the proposed rule, is also supported by Hoff (1986).

Accordingly, the best fit model (based on the Hibler et al. (1987b) and Jarroll et al. (1981) data) was applied, using the above two concepts, to determine the $CT_{99.9}$ values in the final rule. The $CT_{99.9}$ values in the final rule are between zero

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and 10 percent lower than what was proposed.

(c) *CT values for ozone.* The CT values for ozone in the proposed rule were based on disinfection studies using *in vitro* excystation of *Giardia lamblia* (Wickramanayake *et al.*, 1985). CT_{99} values at 5 °C and pH 7 for ozone ranged from 0.46 to 0.64. No data on CT values were available for other pHs at 5 °C. Therefore, to obtain these data, the highest CT_{99} value, 0.64, was extrapolated using first order kinetics and multiplied by a safety factor of 3 to obtain the other $CT_{99.9}$ values in the proposed rule, as follows:

$CT_{99.9}=0.64\times3\times3/2=2.9$

CT values at temperatures above 5 °C were estimated using the same multiplier assumed for free chlorine, as discussed above. CT values at 1 °C or lower, for which no data were available, were estimated by multiplying the $CT_{99.9}$ value at 5 °C by 1.5.

A much larger safety factor was applied to the CT values for ozone than was used to determine the proposed CT values for chlorine because:

- Fewer data were available for ozone than for chlorine.
- The data available for ozone, because of the limitations of the excystation procedure, only reflect up to or slightly more than 99 percent inactivation, while the data for chlorine was based on animal infectivity studies indicating inactivation at 99.99 percent (Hibler et al., 1987b; Clark et al., 1988). Thus, extrapolation of data to determine CT values for 99.9 percent inactivation using ozone involved greater uncertainty than the determination of CT values for 99.9 percent inactivation using chlorine.
- The determination of CT at the water treatment plant also involves greater uncertainty for ozone than for chlorine because contact time and residual concentration cannot be monitored as precisely for ozone.
- EPA believed that the proposed CT values, even with a large safety factor, would be practical to achieve.

EPA applied a safety factor of two instead of three to the laboratory data to obtain the CT values in the final rule, i.e., the CT values for ozone in the final rule are two-thirds of those in the proposed rule, because:

- The laboratory data which formed the basis for the CT values used the Iodometric method for measuring ozone. The Iodometric method measures total oxidants present, not just ozone alone (e.g., this method measures ozonation by-products such as hydrogen peroxide, which is a much weaker disinfectant than ozone). The final rule requires systems to measure ozone using the Indigo method; this method measures ozone but not other oxidants. At the time of these experiments, the Iodometric method was the only prescribed method for measuring ozone in Standard Methods (16th edition, 1985). In the forthcoming 17th edition of Standard Methods, however, the Indigo method, rather than the Iodometric method, will be the recommended method for measuring ozone. Since the original CT values were based on a "C" which may have included the measurement of other oxidants in addition to ozone, the CT values from these experiments are conservative, i.e., they are probably somewhat higher than if ozone had been measured using the Indigo method.
- According to public comments received and further analysis by the Agency, the proposed CT values for ozone in the proposed rule could only be achieved at very high costs.

Depending upon source water characteristics, EPA believes that it will be feasible for many systems to use ozone to meet the revised CT values, and that these values provide an adequate margin of safety.

(d) *CT values for chlorine dioxide.* The CT values for chlorine dioxide in the proposed rule were based on disinfection studies using *in vitro* excystation of *Giardia muris* cysts (Leahy, 1985). CT_{99} values at 5 °C and pH 7 ranged from 7 to 18. The highest CT_{99} value, 18, was used as the basis for extrapolation, using the same principles as discussed for ozone, to obtain the $CT_{99.9}$ values in the proposed rule.

Limited data (i.e., at 25 °C only) indicate that chlorine dioxide is more effective for inactivating *Giardia muris* cysts at pH 9 than at pH 7 (Leahy, 1985). Because the data are limited, however, EPA proposed the same CT values for all other pHs.

Since the proposal, more data on the conditions necessary for achieving 99 percent inactivation of *Giardia muris* cysts, using *in vitro* excystation, has become available at 1 °C, 5 °C, and 15 °C (Rubin, 1988b). These new data, plus the data used to develop the CT values in the proposal, were used to develop the CT values in the final rule. The average CT_{99} value at each temperature (27.9 at 1 °C, 11.8 at 5 °C, 8.5 at 15 °C, and 4.7 at 25 °C) was extrapolated using first order kinetics and multiplied by a safety factor of 1.5 to obtain the $CT_{99.9}$ values. Thus $CT_{99.9}$ at 1 °C$=27.9\times1.5\times1.5=63$. Because of the limited data available at different pHs, the same CT values are specified for all pHs. Although most of the CT_{99} data were determined at pH 7, it is known that chlorine dioxide is more effective at pH 9. Thus, the CT values in the rule are more conservative for higher pHs than for lower pHs.

The CT values for chlorine dioxide in the final rule are about one-third less than those in the proposed rule. EPA believes the revised CT values in the rule provide an adequate margin of safety because of the additional data that was used, and because *Giardia muris* cysts, rather than *Giardia lamblia* cysts (which is the organism of concern in public water systems), were used in the laboratory experiments. Since *Giardia muris* appears to be more resistant than *Giardia lamblia* to chlorine (Leahy et al., 1987) and ozone (Wickramanayake et al., 1985), it is reasonable to assume it is more resistant to chlorine dioxide as well.

(e) *CT values for chloramines*—(1) *Inactivation of Giardia cysts.* The CT values for chloramines, based on disinfection studies using preformed chloramines and *in vitro* excystation of *Giardia muris* cysts (Rubin, 1988a; Regli, 1987), are the same in the proposed and final rules. No safety factor was applied to the laboratory data on which the CT values were based since EPA believes that chloramination, conducted in the field, is more effective than using preformed chloramines.

In the draft Guidance Manual, EPA stated that animal infectivity studies could be used to determine the CT values necessary to achieve 99.9 percent inactivation of *Giardia* cysts. EPA believes that other methodologies also may be appropriate. Therefore, in the final Guidance Manual, EPA will recommend that States also allow systems to use the methodology based on *in vitro* excystation discussed by Hoff et al., 1985, and more specifically, to determine CT values for achieving greater than or equal to 99.9 percent inactivation of *Giardia* cysts using chloramines. In addition, EPA will recommend in the final Guidance Manual that *Giardia muris* cysts be used as a model for *Giardia lamblia* cysts when conducting excystation studies because, as noted earlier, disinfection studies using excystation to measure viability indicate that *Giardia muris* cysts are more resistant to inactivation than *Giardia lamblia* cysts and thus provide a conservative estimate of disinfection effectiveness (Hoff, 1985); also, *Giardia muris* cysts are apparently not pathogenic to humans, and are thus safer to work with.

(2) *Inactivation of viruses.* Under the proposed rule, if a system used chlorine, ozone, or chlorine dioxide and achieved 99.9 percent inactivation of *Giardia* cysts (i.e., they achieved the CT values

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in the rule), it was assumed that it would also achieve greater than 99.99 percent inactivation of viruses. However, the proposal explained that if a system used chloramines and was able to achieve the CT values for 99.9 percent inactivation of *Giardia* cysts, it could not be assumed that 99.99 percent or greater inactivation of viruses was also achieved.

No minimum CT values for achieving 99.99 percent inactivation of viruses were included in the proposed rule. Instead, under the proposal, systems using chloramines for primary disinfection would be required to conduct on-site challenge studies to demonstrate that they achieved at least 99.99 percent inactivation of viruses.

Since the proposal, new data have become available which indicate that Hepatitis A virus is more sensitive than *Giardia* cysts to inactivation by preformed chloramines (Sobsey, 1988). Thus, the CT values required to achieve 99.99 percent inactivation of Hepatitis A with preformed chloramines are lower than those needed to achieve 99.9 percent inactivation of *Giardia* cysts. These data contrast with other data which indicate that rotavirus is more resistant than *Giardia* cysts to preformed chloramines (Hoff, 1986). However, rotavirus is very sensitive to inactivation by free chlorine, much more so than Hepatitis A (Hoff, 1986; Sobsey, 1988). If chlorine is applied prior to ammonia, the short-term presence of free chlorine would be expected to provide at least 99.99 percent inactivation of rotavirus prior to the addition of ammonia and subsequent formation of chloramines. Thus, EPA believes it is appropriate to use the Hepatitis A data, in lieu of the rotavirus data, as a surrogate for determining minimum CT values for inactivation of viruses by chloramines, provided that chlorine is added to the water prior to the addition of ammonia.

Thus, under the final rule, a system which achieves a 99.9 percent or greater inactivation of *Giardia* cysts with chloramines is considered to be achieving at least 99.99 percent inactivation of viruses, provided that chlorine is added to the water prior to the addition of ammonia. If ammonia is added first, the CT values in the rule for achieving 99.9 percent inactivation of *Giardia* cysts cannot be considered adequate for achieving 99.99 percent inactivation of viruses. Thus, under the final rule, like the proposal, such systems must demonstrate, based on on-site challenge studies, that the system is achieving at least a 99.99 percent inactivation of viruses. Guidance for conducting such studies will be provided in the final Guidance Manual.

The proposed rule included a provision that excluded systems with no sources of human viruses within the watershed from the 99.99 percent virus inactivation requirement. This provision was based on the fact that there were no data available to indicate that viruses excreted by animals are pathogenic to humans. However, one commenter cited a study by Markwell and Shortridge (1981) indicating that a cycle of waterborne transmission and maintenance of influenza virus may exist within duck communities in southern China, and that it is conceivable that virus transmission could occur in this manner to other susceptible animals, including humans. Based on the results of this study, the exclusion in the proposal has been removed. Thus, the final rule requires that all systems, even if there is no human activity within the watershed, achieve the minimum inactivation requirements for viruses.

(f) *Alternative means for demonstrating adequate disinfection.* In the May 6, 1988, notice of availability, EPA explained why CT values were included in the proposed rule for unfiltered supplies but not for filtered supplies (52 FR 16557). EPA solicited comments on whether this rationale was reasonable. Specifically, EPA asked whether CT values for unfiltered systems should be placed in guidance rather than in the rule.

Most commenters thought that all CT values should be placed in guidance rather than in the rule to more easily allow for changes in CT values based upon new data, and to allow States flexibility in their application.

EPA has retained the CT values for unfiltered systems in the final rule because (a) the inclusion of CT values for unfiltered systems makes the rule "self-implementing" and directly enforceable, i.e., a system that does not meet the CT values must install filtration, regardless of whether the State has determined whether filtration is required for a given system (see the section entitled "Compliance," below); (b) in general, unfiltered supplies are at much greater risk to waterborne disease than are filtered supplies (from 1971 through 1985, reported waterborne disease outbreaks and illnesses were 8 and 15 times higher, respectively, in unfiltered supplies with disinfection than in filtered supplies with disinfection), so it is important to have self-implementing, directly enforceable requirements in the rule for such systems; (c) without CT values in the rule for unfiltered supplies, there would be no self-implementing, directly enforceable provision to ensure an adequate level of disinfection is provided (in contrast, filtered systems have self-implementing, directly enforceable turbidity performance criteria that indicate, at least in part, the efficiency of *Giardia* cyst and virus removal); and (d) for free chlorine, which is by far the most widely used disinfectant, especially for unfiltered supplies, EPA does not believe new data will soon become available to provide a basis for concluding that lower CT values that will achieve the required levels of *Giardia* cyst and virus inactivation.

However, EPA agrees with commenters that the CT values for chlorine dioxide, ozone, and chloramines in the final rule are based on limited data compared to the more extensive data that provide the basis for the chlorine CT values and that, for these disinfectants, new data are more likely to become available in the near future that may support different CT values or other means for determining what percent inactivation of *Giardia* cysts and viruses a disinfectant achieves. For example, pilot plant studies may show that the disinfection efficiency of ozone, because of its rapid rate of dissipation, may be better characterized by operational parameters other than CT. Also, a combination of ozone with ultraviolet light may be shown to be more effective than ozone alone in achieving the required inactivation efficiencies. As another example, for chloramines, use of on-site formation rather than preformed chloramines may prove to be significantly more efficient than the laboratory conditions in place during the studies that are the basis for the CT values in this rule, in which case, lower CT values may be appropriate (Hoff, 1986).

Recognizing that research in this field is ongoing, EPA has included a provision in the final rule which allows an unfiltered system using a disinfectant other than chlorine (i.e., chloramines, ozone, or chlorine dioxide) to demonstrate, by whatever means allowed by the State, that it is consistently meeting the 99.9 and 99.99 percent removal and/or inactivation requirements on a daily basis, instead of meeting the CT values in the rule. This method need not include use of CT values. For example, the efficiency of ozonation, under which disinfection occurs very rapidly, may best be indicated by different operational conditions (e.g., applied dosage and

energy mixing efficiencies) in place of, or in addition to, CT values. This provision is not provided for systems using only chlorine because: (1) A large data base was used for deriving the CT values in the rule and EPA believes that new data are unlikely to become available soon to support the basis for other CT values; and (2) the laboratory experiments on which the CT values are based more closely simulate field conditions for chlorine than they do for chloramines, ozone, or chlorine dioxide.

2. Filtered Systems

EPA proposed that filtered systems disinfect their water, and that the overall treatment (i.e., filtration and disinfection) achieve at least 99.9 percent removal and/or inactivation and 99.99 percent removal and/or inactivation of *Giardia lamblia* cysts and viruses, respectively. The State would determine whether the system complied with this treatment performance requirement. In the draft Guidance Manual, EPA recommended that, in general, filtration (with any pretreatment appropriate for the specific technology used) should be assumed to achieve 99 percent (2-log) to 99.9 (3-log) removal of *Giardia lamblia* cysts and 90 percent (1-log) to 99.9 percent (3-log) removal of viruses. Using this assumption, EPA recommended that, to achieve at least 99.9 percent and 99.99 percent removal and/or inactivation of *Giardia lamblia* cysts and viruses, respectively, with considerable margin of safety, a system that filters should provide disinfection which achieves at least a 90 percent (1-log) inactivation of *Giardia lamblia* cysts and a 99.9 percent (3-log) inactivation of viruses (higher levels of inactivation were recommended for systems with source waters having significant fecal contamination). For most systems, i.e., those which use chlorine, CT values which achieve greater than a 90 percent inactivation of *Giardia lamblia* cysts can be expected to achieve greater than a 99.99 percent inactivation of viruses. Thus, a system which uses chlorine and achieves greater than 90 percent inactivation of *Giardia lamblia* cysts would be assumed to satisfy the overall minimum performance requirement for viruses.

Most of the comments on CT values and the method of their calculation pertaining to unfiltered supplies also pertain to filtered supplies. Thus, most commenters thought that EPA's recommended procedures for calculating CT and the actual CT values in the draft Guidance Manual were overly conservative. According to a survey conducted by the American Water Works Association (AWWA, 1987), only 18 percent of the filtered systems participating in the survey would be able to comply year-round with the CT values recommended in the draft Guidance Manual, when calculated as recommended. Many commenters thought that systems should get credit for inactivation of *Giardia* and viruses with disinfection prior to filtration, regardless of the level of turbidity (rather than limiting such credit to systems with low turbidity), because these organisms are contained within particulate matter, and therefore are subsequently removed by either sedimentation or filtration. Some commenters thought that States should have broad discretion in how they apply the CT values in the Guidance Manual for evaluating percent inactivations for filtered supplies until the numbers are field tested and evaluated on the basis of actual experience. In contrast, however, other commenters stated that, for filtered systems, EPA should establish minimum disinfection performance standards, in the form of minimum CT values, in the rule (rather than simply making recommendations in the Guidance Manual) in order to assure uniform nationwide standards.

From 1971 through 1985, there were three reported waterborne disease outbreaks in filtered systems attributed to inadequate or interrupted disinfection versus 10 outbreaks due to inadequte filtration or pretreatment (in contrast to unfiltered supplies where there were 42 reported outbreaks due to inadequate or interrupted disinfection) (Craun, 1988). Although EPA strongly believes these statistics reflect only a small proportion of the disease outbreaks and illnesses actually occurring, EPA also believes that these data indicate, in general, that most filtered systems, when well-operated, are providing adequate levels of disinfection to protect from waterborne disease. Based on a review of these data and public comments, EPA has concluded that the many safety factors that it recommended in the draft Guidance Manual for estimating the total removal and/or inactivation of *Giardia* cysts and viruses in filtered systems, like the safety factors built into the requirements for unfiltered systems were, in total, overly conservative.

In response, the following changes will be made in the final Guidance Manual to address these concerns:

- In the draft Guidance Manual, EPA had recommended that credit toward *Giardia* and virus inactivation in the water prior to filtration be allowed only if the turbidity of that water is less than 5 and 1 NTU, respectively. The final Guidance Manual will recommend that credit be given for disinfection of *Giardia* cysts and viruses prior to filtration regardless of the turbidity level. This recommendation is based on the assumption that any pathogens present in the source water will be either removed by filtration or directly exposed to disinfection.
- The final Guidance Manual will recommend that, in general, systems using conventional treatment which are able to achieve turbidity levels of less than 0.5 NTU in the filtered water in 95 percent of the samples be assumed to achieve 2.5-log removal of *Giardia* cysts and 2-log inactivation of viruses, provided that coagulation and flocculation conditions are optimized for turbidity removal by filtration. These systems would thus only need to achieve a 0.5-log inactivation of *Giardia lamblia* cysts and a 2-log inactivation of viruses with disinfection to satisfy the overall 3-log and 4-log minimum performance requirements. EPA believes that these revisions are appropriate since sedimentation and filtration (preceded by coagulation) provide more removal of *Giardia* cysts and viruses than does filtration (preceded by coagulation) alone. This conclusion is based on two recent studies. In pilot plant studies using Ohio River water, Logsdon (1985) has shown that sedimentation achieves 0.5- to 1-log removal of *Giardia* cysts. Since filtration provides 2-log removal, it is appropriate to assume that sedimentation and filtration together provide at least 2.5-log removal. In addition, in pilot plant studies using Lake Houston water, Rao et al. (1988) have shown that sedimentation (preceded by coagulation) achieves generally greater than 90 percent removal of viruses and that sedimentation and filtration together generally achieve greater than 99 percent removal of viruses.
- The CT values for free chlorine have been lowered up to 10 percent, for the same reasons discussed above for unfiltered supplies.
- The CT values for ozone and chlorine dioxide have been lowered by about one-third, for the same reasons discussed above for unfiltered supplies.
- Regarding the use of chloramines, the final Guidance Manual will recommend that, in general, for the reasons discussed above for unfiltered systems, filtered systems which add chlorine to the water prior to ammonia addition be assumed to be achieving 99.99 percent removal and/or inactivation of viruses if they are achieving 99.9 percent removal and/or inactivation of *Giardia lamblia* cysts.

This is a change from the draft Guidance Manual which recommended that all systems using chloramines for primary disinfection demonstrate the adequacy of virus inactivation based on on-site challenge studies. For systems which add ammonia to the water prior to chlorine, the final Guidance Manual will continue to recommend on-site challenge studies to determine the adequacy of disinfection for virus inactivation.

Figures III.1 and III.2 indicate the levels of *Giardia lamblia* cyst inactivation that filtered systems in the U.S. are currently achieving from disinfection alone, assuming the criteria in the final rule and final Guidance Manual for calculating percent inactivation were implemented. EPA estimates that 10 to 20 percent of filtered systems will need to augment existing disinfection in order to comply with this final rule and to meet the criteria recommended in the final Guidance Manual. This is a large reduction from AWWA's estimates that 82 percent of filtered systems would need to enhance their current disinfection practice to meet the criteria in the proposed rule and the draft Guidance Manual (AWWA, 1987).

H. Potential Conflict Between Today's Rule and Future Rules for Disinfectants and Disinfection By-Products

EPA intends to promulgate national primary drinking water regulations to regulate levels of disinfectants and disinfectant by-products for all systems when it promulgates disinfection requirements for groundwater systems. Many commenters expressed concern that changes that systems might need to make in their disinfection practice in order to comply with today's final rule might be inconsistent with the treatment changes necessary to comply with these forthcoming regulations for disinfectants and disinfection by-products.

EPA believes that many of the specific concerns expressed by commenters have been substantially mitigated by the changes in the final rule and planned changes in the final Guidance Manual discussed previously. As a result of these changes, EPA believes that many systems already are in compliance with today's rule, so changes in disinfection practice will not be necessary. In addition, under the final rule, the State has discretion to determine what disinfection conditions are needed for filtered systems to meet the 3- and 4-log removal and/or inactivation requirements for *Giardia lamblia* cysts and viruses (or any higher level of performance that might be specified by the State, depending upon source water quality conditions). In exercising this discretion, the State could take into account any potential conflict with forthcoming regulations for disinfectants and disinfection by-products. For example, if a system using conventional treatment is well-designed and is optimizing its clarification processes for turbidity removal, and is achieving very low filtered water turbidities, it may be appropriate for the State to give that system 3 logs of credit for *Giardia* cyst removal (in lieu of the generally recommended 2.5-log credit); in this way, the system can avoid substantial (if any) upgrades in disinfection practice and, in turn, potential increases in health risks from higher levels of disinfection by-products. In the final Guidance Manual, EPA expects to recommend that States give credit for 3 logs of *Giardia* cyst removal by conventional treatment only if: (a) The total treatment train achieves at least 99 percent turbidity removal, or filtered water turbidities are consistently less than 0.5 NTU, whichever results in lower levels; and (b) the level of HPC in the finished (disinfected) water entering the distribution system is consistently less than 10/ml.

In general, EPA believes that filtered systems need to achieve 0.5- to 1-log inactivation of *Giardia lamblia* cysts (depending on the type of filtration used) to achieve an overall 3-log removal and/or inactivation. However, it may be appropriate to allow more credit for filtration and thus require less disinfection, e.g., less than 0.5 logs for conventional treatment, until regulations for disinfectants and disinfection by-products are promulgated and the optimum treatment for achieving compliance with both regulations can be determined. However, EPA recommends that these lower levels of disinfection only be allowed if the source water is expected to have concentrations of less than one *Giardia* cyst/100 l. Likewise, for systems using slow sand filtration and diatomaceous earth filtration, EPA believes it would not be unreasonable for States to allow 2.5 or 3 logs of credit for *Giardia* cyst removal in lieu of the generally recommended guideline of 2 logs of credit, depending upon source water quality and concerns about disinfection by-products. Pilot plant studies have demonstrated (USEPA, 1988b) that these technologies, when well-operated, generally achieve these removals or better. Assuming these technologies achieve only a 2-log removal, as generally recommended by EPA for the purpose of determining the appropriate level of disinfection necessary for the system to meet the overall treatment performance standard, provides a very conservative margin of safety to control for microbiological concerns. However, EPA recognizes this assumption may not always be appropriate depending upon source water quality, reliability of system operation, and potential increased health risks from disinfection by-products. Thus, the final rule does not dictate how the State must calculate treatment efficiencies for filtered systems; it is left to State discretion.

In the final Guidance Manual EPA plans to recommend that States allow, for the interim (i.e., between now and the time EPA promulgates regulations for disinfectants and disinfection by-products), more credit for *Giardia* cyst removal (and, in turn, virus removal) only if it determines that a system is not currently at significant risk from microbiological concerns at the existing level of disinfection, and that a deferral is necessary for the system to upgrade its disinfection process to achieve compliance with this rule as well as the forthcoming regulations for disinfectants and disinfection by-products. Since EPA intends to regulate disinfectants and disinfection by-products by 1991 (*see* 53 FR 1899), and compliance with today's final rule for filtered systems is not required until June 1993, it is anticipated that most of such systems will have sufficient time to optimally address the requirements of both rules.

EPA does not believe that the same discretion discussed above for filtered systems is appropriate for unfiltered systems since (a) they are at much greater risk from waterborne disease than are filtered systems, (b) SDWA requires that the State determine whether filtration is required within 30 months following the promulgation of this rule, and the State cannot make the decision whether filtration is necessary without knowing what disinfection will be in place. Also, the installation of filtration by an unfiltered supply allows a system to use much lower levels of disinfection than is necessary in a system without filtration; as a result, levels of disinfectants and disinfectant by-products are lower in filtered systems, assuming the same source water quality conditions.

I. Turbidity Monitoring and Performance Criteria

1. Unfiltered Systems

EPA proposed that, to avoid filtration, a system demonstrate on an ongoing basis that the turbidity of the water prior to disinfection does not exceed 5 NTU, based on measurements at least

every four hours. Under the proposal, a system would not be required to filter if it occasionally exceeded the 5 NTU limit (although such an exceedance would be considered a violation of the treatment technique requirements which posed an acute risk to human health). Specifically, a system could exceed the 5 NTU limit no more than two periods during twelve consecutive months or five periods during 120 consecutive months, provided that (a) the system informed its customers and the State of the violation, as soon as possible but in no case later than 72 hours after the violation occurred, and customers were instructed to boil their water before consumption until it was determined that the water was safe, and (b) the State determined that the exceedance occurred because of unusual or unpredictable circumstances. A "period" would be defined as a series of consecutive days in which at least one turbidity measurement each day exceeded 5 NTU.

Some commenters were opposed to allowing any periods when turbidities exceeded 5 NTU since systems are most vulnerable to microbiological risk at such times. Others thought that the periods in which turbidity could exceed 5 NTU should be limited in duration. Some commenters stated that an absolute limit for turbidity was inappropriate since the significance of turbidity levels as an indicator of possible interference with disinfection depends on the size and chemical composition of the particulate matter present. Other commenters supported the proposed turbidity limits. Some commenters opposed the proposal to classify an exceedance of 5 NTU as an acute health risk since high turbidity does not necessarily indicate a health hazard, depending on the nature of the particulate matter present. Similarly, they objected to the proposal that systems issue a boil water notice to the public whenever the turbidity exceeded 5 NTU; many thought that such a requirement should be left to State discretion based upon an evaluation of actual health risk.

In the final rule, EPA has retained the provision that allows unfiltered systems to exceed the turbidity limit of 5 NTU a limited number of times, i.e., no more than two events during 12 consecutive months or five events during 120 consecutive months, as long as the State is informed of each exceedance and determines that it was caused by unusual or unpredictable circumstances. (In the final rule, EPA uses the term "event" rather than "period.") EPA believes that the other requirements for avoiding filtration in the rule ensure a high probability that adequate treatment is still being provided if the turbidity were to exceed 5 NTU for short periods of time. These include the requirements to (a) comply with fecal or total coliform source water quality limits; (b) maintain disinfection conditions sufficient to achieve at least 99.9 and 99.99 percent inactivation of *Giardia lamblia* cysts and viruses, respectively, as indicated by meeting the CT requirements; (c) comply with the total coliform MCL (the coliform rule, published elsewhere in today's **Federal Register**, requires unfiltered surface waters to take coliform measurements at or near the first customer on days when the turbidity exceeds 1 NTU and to include these measurements in the MCL compliance determination); and (d) maintain a watershed control program to restrict human activities. The requirement to have a watershed control program reduces the probability that human viruses will be present in large numbers, so there is less concern about turbidity interfering with disinfection of viruses. In addition, there is much less concern about turbidity interfering with inactivation of *Giardia* cysts by disinfection than viruses or bacteria since *Giardia* cysts are much larger than viruses and bacteria and are less likely to be occluded or protected by particulate matter.

The final rule does not specify a maximum duration for a turbidity event, as a condition for avoiding filtration, since other requirements (discussed above) must also be met to avoid filtration; EPA expects that, if the duration of an event is long, and the system is at risk (which will depend on the nature of the particulate matter causing the high turbidity level, and the source water quality), one of the other requirements for avoiding filtration is likely to be exceeded, thereby requiring the system to install filtration.

EPA agrees with public commenters who stated that interference with disinfection by turbidity will depend on the nature of the particulate matter that is present. However, as discussed in the proposal, EPA believes an upper limit of 5 NTU is appropriate. Increases in turbidity occurrence levels from less than 1 NTU to greater than 5–10 NTUs have been shown to correlate with decreases in disinfection effectiveness in unfiltered source waters (Le Chevalier et al., 1981). In addition, high turbidity waters may be unaesthetic in appearance and cause consumers to avoid use of the public water supply and possibly choose less safe waters.

The requirement that systems inform their customers to boil their water before consumption when source water turbidities exceed 5 NTU has been deleted from the final rule. EPA agrees with the commenters that States should determine if such an order should be issued, since certain site-specific factors might not warrant such action. Also, in the final rule, an exceedance of the turbidity limit of 5 NTU is considered a violation of a treatment technique requirement, but not, as proposed, one which poses an acute risk to human health. Therefore, violation of the 5 NTU limit does not require a system to notify the public via electronic media, posting, or hand delivery, depending on system type, within 72 hours. (Only written notice is required, as specified for Tier 1 violations. *See* the public notification regulations at 40 CFR 141.32.)

2. Filtered Systems

EPA proposed to require systems that filter to measure the turbidity level of a representative sample of filtered water every four hours when water is being delivered to the distribution system. For a system using conventional treatment or direct filtration, EPA proposed to require that the turbidity level of the system's filtered water be less than or equal to 0.5 NTU in at least 95 percent of the measurements taken each month. For a system using slow sand or diatomaceous earth filtration, EPA proposed to require that the turbidity level be less than 1 NTU in at least 95 percent of the measurements taken each month. Under the proposal, for systems using conventional treatment or direct filtration, if the State determined that on-site studies demonstrated at least 99.9 percent overall removal and/or inactivation of *Giardia* cysts, the State could specify a higher turbidity limit, up to 1 NTU in 95 percent of the samples in a month.

Many commenters, especially those representing small systems, favored retaining the current turbidity monitoring requirements in the interim regulations, i.e., one sample per day (40 CFR 141.22). Commenters claimed that monitoring of turbidity every four hours, or by continuous monitoring and recording equipment, is not feasible for small systems. In addition, many commenters objected to the 0.5 NTU limit for systems using conventional treatment or direct filtration; they favored retaining the existing standard of 1 NTU. Some commenters stated there is no evidence that the more stringent turbidity criteria EPA proposed would result in increased health protection, i.e., fewer waterborne disease outbreaks, compared to the existing turbidity MCL. Commenters

stated that many systems, especially smaller systems, would incur significant costs to make treatment changes to comply with the proposed turbidity criteria. In a survey by AWWA (1987), which sampled mostly large systems, 24 percent of the filtered systems which responded did not have filtered water with turbidity less than 0.5 NTU 95 percent of the time.

Some commenters supported the 0.5 NTU limit, claiming it would significantly improve the quality of drinking water nationwide. Other commenters supported the 0.5 NTU limit but only for large systems; they suggested EPA promulgate a separate limit of 1 NTU for small systems. Still other commenters favored the 0.5 NTU limit but thought the rule should allow the State to increase the limit if there was evidence of effective removal of *Giardia* cysts or *Giardia* cyst-sized particles at higher turbidities.

In response to these comments, EPA requested comment on alternatives to the proposed turbidity provisions in the May 6, 1988, notice of availability (53 FR 16354). Most commenters responding to this issue supported these changes. As a result, many have been included in the final rule. These changes are described below.

The final rule allows the State to reduce the monitoring frequency for turbidity to one grab sample per day for systems serving 500 or fewer people if the State finds that the historical performance and operation of the system indicates effective particulate removal under the variety of conditions expected to occur in that system. EPA believes this provision for reduced monitoring is appropriate because, for very small systems, grab sample monitoring every four hours of operation may not be feasible (i.e., it is economically infeasible to provide the degree of operator attention necessary to conduct such monitoring; likewise, it is costly to install and impractical to maintain automated turbidity monitoring equipment). At the reduced monitoring frequency, the same performance criteria would apply. Thus, for instance, if two or more of the 30 samples taken in one month exceed the turbidity limit, then less than 95 percent of the samples would meet the turbidity performance criterion, and the system would be in violation of a treatment technique requirement.

EPA believes that it is feasible for most systems using conventional treatment or direct filtration to achieve the turbidity performance criterion of 0.5 NTU (see 52 FR 42200, 42205–42206). EPA believes it is generally necessary for systems using conventional treatment or direct filtration to meet this turbidity limit to achieve at least 99.9 percent removal and/or inactivation of *Giardia* cysts with filtration and disinfection. EPA recognizes that many existing filtered systems currently may not be meeting the proposed turbidity limit; however, EPA believes that most of these systems can meet these limits with treatment modifications that involve very low costs (*see* Table VI–3).

EPA recognizes that it may be possible for some systems that currently are not meeting the turbidity performance criterion, depending upon raw water quality and other treatment characteristics, to still achieve the overall minimum (or better) removal and/or inactivation of *Giardia* cysts. Therefore, the final rule allows a system to operate at higher filtered turbidities, up to 1 NTU in at least 95 percent of the measurements, if the State determines that the system is achieving the minimum performance requirement of 99.9 percent removal and/or inactivation of *Giardia* cysts at the higher turbidity level. Unlike the proposal, the final rule does not require the system to actually demonstrate (e.g., with pilot plant study results) it is achieving the minimum performance requirements at the higher turbidity level to be allowed to operate at this level. Instead, the State's determination may be based upon an analysis of existing design and operating conditions (e.g., adequacy of treatment prior to filtration, percent turbidity removal across the entire treatment train, stringency of disinfection) and/or performance relative to certain water quality characteristics (e.g., microbiological analysis of the filtered water, particle size counts in water before and after filtration). The State may wish to consider such factors as source water quality and system size in determining the extent of analysis necessary. The final Guidance Manual will provide additional guidance to the States for determining when a higher turbidity limit might be appropriate.

For any filtration technology, EPA believes that filtered water turbidities should generally be less than 1 NTU in order to prevent interference with disinfection of viruses. Allowing an average turbidity of less than 1 NTU, as some commenters suggested, would allow systems to exceed 1 NTU a high percentage of the time, during which time there might be interference with disinfection. Therefore, EPA has set an upper limit for turbidity of 1 NTU in 95 percent of the measurements, rather than specifying an average. As in the proposal, exceptions to this limit are allowed for slow sand filtration, up to 5 NTU, but at no time exceeding 5 NTU, if the system demonstrates to the State that there is no interference with disinfection, because studies demonstrate that slow sand filters can achieve greater than 99.9 percent removal of *Giardia* cysts by filtration alone at turbidities exceeding 1 NTU (Bellamy et al., 1985a, b).

The additional flexibility in the final rule will allow States to apply engineering judgment, as appropriate, to determine what information is necessary for demonstrating adequate treatment performance. EPA anticipates that this added flexibility will reduce costs, especially for small systems, while still ensuring that adequate treatment is in place.

IV. Description of the Final Rule

EPA believes that all surface waters and ground water under the direct influence of surface water are at risk, at least to some degree, from contamination by *Giardia lamblia* and other protozoa, viruses, and pathogenic bacteria and that public water systems using such source waters should provide minimum levels of treatment to ensure protection from illness caused by these contaminants. Therefore, this rule applies to all public water systems (both community and non-community) which use a surface water source or a ground water source under the direct influence of surface water.

This rule defines "surface water" as all water open to the atmosphere and subject to surface runoff (e.g., rivers, lakes, streams, reservoirs, impoundments). This rule defines "ground water under the direct influence of surface water" as:

> any water beneath the surface of the ground with (i) significant occurrence of insects or other macroorganisms, algae, or large-diameter pathogens such as *Giardia lamblia*, or (ii) significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions. Direct influence must be determined for each individual source in accordance with criteria established by the State. The State determination of direct influence may be based on site-specific measurements of water quality and/or documentation of well construction characteristics and geology with field evaluation.

The State is responsible for determining whether a system uses ground water under the direct influence of surface water and is, therefore, subject to the requirements of this rule. Determinations of whether a ground water system is under the direct influence of surface water must be made within 5 years following the

promulgation date of this rule for community water supplies and within 10 years following the promulgation date of this rule for non-community water systems. Procedures that may be used for determining whether there is direct influence by surface water will be included in the final Guidance Manual. States may choose to apply general guidelines based on source characteristics to expedite the determination for easily characterized sources, and to apply more specific criteria, including microbiological analysis, for sources more difficult to characterize. For systems which use mixed source water supplies (i.e., ground water not under the direct influence of surface water and surface water), this rule applies only to the water originating from the surface water source.

A. Operator Personnel Requirements

Under the final rule, all systems using surface water or ground water under the direct influence of surface water must be operated by personnel that meet qualifications specified by the State. As described later, States must develop operator qualifications if they do not already have them and require that systems be operated by personnel who meet these qualifications. The appropriate criteria for determining if an operator is qualified depend upon the type and size of the system. EPA encourages States which do not yet have operator license certification programs in effect to develop such programs.

B. Treatment Requirements

1. Summary

Under this rule, all community and non-community public water systems using any surface water source must treat their surface water source(s) to achieve at least 99.9 percent removal and/or inactivation of *Giardia lamblia* cysts, and at least 99.99 percent removal and/or inactivation of viruses. A system is deemed to be in compliance with this requirement if it complies with the treatment technique requirements specified in this rule. At a minimum, the treatment required for any surface water must include disinfection.

Thus, systems with very clean and protected source waters that meet the source water quality criteria (including low total coliform or fecal coliform levels and low turbidity levels, as specified in the rule) and certain site-specific criteria (including an effective watershed control program), are required to use only disinfection to achieve 99.9 percent and 99.99 percent inactivation of *Giardia lamblia* cysts and viruses, respectively. If such systems can continually meet the applicable CT values specified in the rule (or, if a disinfectant other than chlorine is used, other criteria specified by the State), the system is considered to be in compliance with the required removal and/or inactivation requirements for *Giardia lamblia* and viruses without monitoring for these organisms. Systems which cannot meet the source water quality criteria and site-specific criteria of this rule are required to filter their water.

Systems required to filter can use a variety of treatment technologies to meet the minimum 99.9 and 99.99 percent performance levels. A system with filtration that achieves certain turbidity levels and meets specified disinfection requirements is deemed to be in compliance with these performance requirements.

For most source waters in the United States, EPA considers conventional treatment (which includes coagulation, flocculation, sedimentation, rapid granular filtration, and disinfection) to be the best technology for controlling microbiological contaminants because of the multiple barriers of protection that it provides. Conventional treatment has been demonstrated to achieve at least 99.9 percent removal and/or inactivation of *Giardia lamblia* cysts and 99.99 percent removal and/or inactivation of viruses under appropriate design and operating conditions (USEPA, 1988b); it is the benchmark against which water treatment decisions should be judged. Direct filtration (which includes coagulation), slow sand filtration, and diatomaceous earth filtration, each with disinfection, also have been demonstrated to achieve at least 99.9 percent removal and/or inactivation of *Giardia lamblia* cysts and 99.99 percent removal and/or inactivation of viruses under appropriate design and operating conditions (USEPA, 1988b).

Under the final rule, a public water system also may use a filtration technology other than the four specified above if it demonstrates to the State using pilot plant challenge studies, or other appropriate means, that the filtration technology, in combination with disinfection, achieves at least 99.9 percent and 99.99 percent removal and/or inactivation of *Giardia lamblia* cysts and viruses, respectively. In addition, the State may approve a technology demonstrated to be effective at one site for use at another site if the source water quality conditions at the two sites are similar.

In determining the appropriate technology to be used, source water quality, site-specific factors (e.g., available land, location of the treatment plant relative to the water source, waste-disposal concerns), and cost effectiveness need to be considered. In general, the level of treatment provided should be commensurate with the potential for pathogen contamination in the source water. Table IV–1 provides guidelines for selecting filtration technology(ies) to be used based on source water quality. EPA recommends conducting pilot plant studies to help determine the most appropriate filtration technology and the optimum design conditions. More detailed guidelines for determining the appropriate technology and design conditions will be included in the final Guidance Manual.

TABLE IV–1.—GENERALIZED CAPABILITY OF FILTRATION SYSTEMS TO ACCOMMODATE VARIOUS RAW WATER QUALITY CONDITIONS

Treatment technology	General constraints (i.e., indicated values occasionally could be exceeded)		
	Total coliforms (#/100 ml)	Turbidity (NTU) [1]	Color (CU) [2]
Conventional Treatment	<20,000	no restrictions	<75
(with no predisinfection)	<5,000	no restrictions	<75
Direct Filtration	<500	<7–14	<40

TABLE IV–1.—GENERALIZED CAPABILITY OF FILTRATION SYSTEMS TO ACCOMMODATE VARIOUS RAW WATER QUALITY CONDITIONS—Continued

Treatment technology	General constraints (i.e., indicated values occasionally could be exceeded)		
	Total coliforms (#/100 ml)	Turbidity (NTU) [1]	Color (CU) [2]
Slow Sand Filtration	<800	<10	<5
Diatomaceous Earth Filtration	<50	<5	<5

[1] Nephelometric turbidity units.
[2] Colorimetric units.

2. Criteria for Determining if Filtration Is Required

Under the final rule, a public water system using surface water must use filtration unless it meets the following criteria:

Source Water Quality Criteria
- Coliforms
- Turbidity

Site-specific Criteria
- Disinfection
- Watershed control
- On-site inspection
- Absence of waterborne disease outbreaks
- Total coliform maximum contaminant level (MCL)
- Total trihalomethanes (TTHMs) MCL

These criteria are described in detail below.

(a) *Source Water Quality Criteria*—(1) *Coliform limits.* To avoid filtration, a system must meet one of the following criteria: (1) The fecal coliform concentration in water prior to disinfection is equal to or less than 20/100 ml in at least 90 percent of the samples; or (2) the total coliform concentration in water prior to disinfection is equal to or less than 100/100 ml in at least 90 percent of the samples. If a system monitors for both parameters, it may exceed the total coliform limit, but not the fecal coliform limit, and still avoid filtration, while a system that meets the total coliform limit, but not the fecal coliform limit, must install filtration. Minimum sampling frequencies for different system sizes are as follows:

Population served	Samples/week [1]
<500	1
501 to 3,300	2
3,301 to 10,000	3
10,001 to 25,000	4
>25,000	5

[1] Must be taken on separate days.

This sampling must include one measurement on every day during which the turbidity exceeds 1 NTU (unless the State determines that the system, for logistical reasons outside the system's control, cannot have the sample analyzed within 30 hours of collection). This sample counts towards the total number that must be taken each week.

The coliform limits are an ongoing requirement; at the end of each month, the system must evaluate the data collected for the preceding six months the system served water to the public and determine if this source water quality condition is still being met. If the criterion has not been met, the system must install filtration.

(2) *Turbidity limits.* To avoid filtration, the turbidity of the water prior to disinfection cannot exceed 5 NTU, on an ongoing basis, based on grab samples collected every four hours (or more frequently) that the system is in operation. A system may substitute continuous turbidity monitoring for grab sample monitoring if it validates such measurements for accuracy with grab sample measurements on a regular basis, as specified by the State. If a public water system uses continuous monitoring, it must use turbidity values recorded every four hours (or some shorter regular time interval) to determine whether it meets the turbidity limit for raw water. A system occasionally may exceed the 5 NTU limit and still avoid filtration as long as (a) the State determines that each event occurred because of unusual or unpredictable circumstances and (b) as a result of this event, there have not been more than two such events in the past twelve months the system served water to the public or more than five such events in the past 120 months the system served water to the public. An "event" is defined as a series of consecutive days in which at least one turbidity measurement each day exceeds 5 NTU.

It is important to note that every event, i.e., exceedance of the 5 NTU limit, regardless of whether the system must filter as a consequence, constitutes a violation of a treatment technique requirement. For example, if the turbidity exceeded 5 NTU in at least one measurement each day for three consecutive days, this would constitute one event and one treatment technique violation. If this was the third event in the past 12 months the system served water to the public, or the sixth event in the past 120 months the system had served water to the public, the system also would be required to install filtration. In all cases, the system must inform the State when the turbidity exceeds 5 NTU as soon as possible, but no later than the end of the next business day.

(b) *Site-Specific Criteria*—(1) *Disinfection requirements.* To avoid filtration, this rule requires that a system practice disinfection and have either (a) redundant disinfection capability, including an auxiliary power supply with automatic start-up and alarm, to ensure that continuous disinfection is provided; or (b) automatic shut-off of delivery of water to the distribution system whenever the disinfectant residual is less than 0.2 mg/l in the water. A system that fails to meet either of these requirements must install filtration. The option of automatic shut-off is not permitted if the State determines that this action could cause an unreasonable risk to health (e.g., automatic shut-off is not appropriate if it results in negative pressures within the distribution system or inadequate water supplies for fire protection).

(i) *Maintenance of a disinfectant residual at the point of entry.* To avoid filtration, the disinfectant residual in water entering the distribution system cannot be less than 0.2 mg/l for more than four hours, with one exception noted below. Systems serving more than 3,300 persons must monitor continuously. If there is a failure in the continuous monitoring equipment, the system may substitute grab sampling every four hours for up to five working days following the failure of the equipment. Systems serving 3,300 or fewer people may monitor continuously

or take grab samples at the frequencies prescribed below:

System size by population	Samples/day [1]
<500	1
50 to 1,000	2
1,001 to 2,500	3
2,501 to 3,300	4

[1] Samples cannot be taken at the same time. The sampling intervals are subject to State review and approval.

If at any time the residual disinfectant concentration falls below 0.2 mg/l in a system using grab sample monitoring, the system must continue to take a grab sample every four hours until the residual disinfectant concentration is equal to or greater than 0.2 mg/L. For all systems, if the residual concentration is not restored to at least 0.2 mg/l within four hours after a value of less than 0.2 mg/l is observed, the system is in violation of a treatment technique requirement, and must install filtration. However, if the State finds that the exceedance was caused by an unusual and unpredictable circumstance, the State may choose not to require filtration. EPA expects the States to use this provision sparingly; it is intended to encompass catastrophic events, not infrequent large storm events. In addition, any time the residual concentration falls below 0.2 mg/l, the system must notify the State. Notification must occur as soon as possible, but no later than by the end of the next business day. The system also must notify the State by the end of the next business day whether or not the residual was restored within four hours.

(ii) *Minimum percent inactivation requirements.* To avoid filtration, a system must maintain disinfection operational conditions which inactivate 99.9 percent of *Giardia lamblia* cysts and 99.99 percent of viruses. To make this demonstration, the system must determine disinfectant residual(s), disinfectant contact time(s), pH, and water temperature, and use these data to calculate whether it is meeting the minimum total percent inactivation requirements in the rule. (The CT values necessary to achieve 99.9 percent inactivation of *Giardia lamblia* cysts and 99.99 percent inactivation of viruses by various disinfectants and under various conditions are specified in the rule.) A system is deemed in compliance with the inactivation requirements if the CT value(s) calculated for its disinfection conditions meet (or exceed) the relevant CT value specified in the rule. The system must make this determination each day that it is delivering water to its customers. For disinfectants other than chlorine, a system may demonstrate, through use of a State-approved protocol for on-site disinfection challenge studies or other information satisfactory to the State, that disinfection conditions other than those specified in the rule are adequate for meeting the minimum levels of inactivation.

For the purpose of calculating CT values, disinfection contact time (in minutes) is the time it takes the water, during peak hourly flow, to move between the point of disinfectant application (or the previous point of measurement) to a point before or at the point where the residual disinfectant concentration (in mg/l) is measured (which in turn must be before or at the first customer). The point of disinfectant application is defined as the point where the disinfectant is applied and water downstream of that point is not subject to recontamination by surface water runoff. Contact time in pipelines must be calculated based on "plug flow" (i.e., where all water moves homogeneously in time between two points) by dividing the internal volume of the pipeline by the peak hourly flow rate through that pipeline. Contact time within mixing basins and storage reservoirs must be determined by tracer studies or an equivalent demonstration.

Under this rule, systems with only one point of disinfectant application may measure "C" at any number of points within the treatment train, determine each corresponding "T" and thereby calculate the CTs for each sequence to determine the percent inactivation achieved. The total inactivation ratio achieved is the sum of all the fractional inactivations calculated for each point where disinfectant residual was measured. To determine the total inactivation ratio achieved using this method, the system must calculate the CT for each point where "C" was measured (CTcalc) and compare this with the $CT_{99.9}$ value (the CT value required to achieve 99.9 percent inactivation of *Giardia* cysts) given in the rule for the particular conditions (pH, temperature, and residual disinfectant concentration) at that point. Specifically, the system must divide each calculated CT value by its corresponding $CT_{99.9}$ value in the rule to determine the inactivation ratio for each point where "C" was measured. If the sum of the inactivation ratios, or

$$\sum \frac{CTcalc}{CT_{99.9}}$$

is equal to or greater than 1.0 (i.e., the sum of all the sequences for which CT was calculated before or at the first customer provides 99.9 percent or more inactivation of *Giardia lamblia* cysts), the system is meeting the disinfection performance requirement. In other words, if: $C_1T_1/CT_{99.9} + C_2T_2/CT_{99.9} + C_3T_3/C\ T_{99.9} + \ldots + C_nT_n/CT_{99.9} > 1.0$ (where $CT_{99.9}$ is specified in the rule for each combination of C_1, C_2, C_3, . . . C_n; temperature; and pH), the system is meeting the disinfection performance requirement.

Systems need only calculate one CT (CTcalc) each day for a point before or at the first customer. Alternatively, systems have the option of calculating multiple CTs after the point of disinfectant application but before or at the first customer to determine the inactivation ratio. If one CT is calculated (CTcalc) and this exceeds the applicable $CT_{99.9}$, the system is meeting the disinfection performance requirement; this may be all that is necessary for systems with very low oxidant demand in the water or systems where it is obvious they will achieve at least 99.9 percent inactivation.

For systems with multiple points of disinfectant application (e.g., ozone followed by chlorine, or chlorine applied at two different points in the treatment train), the inactivation ratio of each disinfectant sequence before or at the first customer must be used to determine the total inactivation ratio. The disinfectant residual of each disinfection sequence and the corresponding contact time must be determined at some point prior to the subsequent disinfection application point(s) to determine the inactivation ratio for that sequence, and whether the total inactivation ratio of 1.0 or greater is achieved. For example, if the first disinfection sequence provided an inactivation ratio of ⅗ (or 99 percent inactivation) and the second disinfection sequence provided an inactivation ratio of ½ (or 90 percent inactivation), the total inactivation ratio would equal 1.0 (⅗ + ½ = 1). The total percent inactivation could also be determined as follows:

$$\% \text{ inactivation} = 100 - \frac{100}{10^y}$$

$$\text{where } y = \sum \frac{(CTcalc)}{(CT_{99.9})} \times 3$$

If the system fails to achieve at least 99.9 percent inactivation (i.e., the inactivation ratio is less than 1.0) any two or more days in one month, the system is in violation of a treatment technique requirement for that month. If this violation occurs during a second month in any 12 consecutive months the system serves water to the public, the system must install filtration, unless the State determines that at least one of these violations was caused by circumstances that were unusual and unpredictable. A third violation in 12 months, regardless of the cause, triggers filtration.

Guidance for determining the percent inactivation of *Giardia* cysts and viruses under different conditions will be provided in the final Guidance Manual.

(iii) *Maintenance of a disinfectant residual in the distribution system.* To avoid filtration, the disinfectant residual in the distribution system cannot be undetectable in more than five percent of the samples in a month, for any two consecutive months that the system serves water to the public. Systems may measure HPC instead of disinfectant residual. Sites with HPC concentrations of less than or equal to 500/ml are considered equivalent to sites with detectable residuals for the purpose of determining compliance. Public water systems must monitor for the presence of a disinfectant residual (or HPC levels) at the same frequency and locations as total coliform measurements taken pursuant to the total coliform regulation published elsewhere in today's **Federal Register**. However, if the State determines, based on site-specific considerations, that a system has no means for having a sample transported and analyzed for HPC by a certified laboratory within the requisite time and temperature conditions (Method 907, APHA, 1985), but that the system is providing adequate disinfection in the distribution system, this requirement does not apply to that system.

For systems which use both surface and ground water sources, the State may allow the system to take disinfectant residual or HPC samples at points other than the total coliform sampling locations if the State determines that such points are more representative of treated (disinfected) water quality within the distribution system.

If a system fails to maintain a detectable disinfectant residual or an HPC level of less than or equal to 500/ml in more than 5 percent of the samples during a month, for any two consecutive months the system serves water to the public, the system is in violation of a treatment technique requirement. In addition, this system must install filtration unless the State determines that the violation was not due to a deficiency in treatment of the source water (e.g., the violation was due to a deficiency in the distribution system, such as cross-connection contamination or failure in the pipeline).

(2) *Watershed control requirements.* To avoid filtration, systems must establish and maintain an effective watershed control program to minimize the potential contamination by *Giardia lamblia* cysts and viruses in the source water.

The State must determine whether the watershed control program is adequate to limit potential contamination by *Giardia lamblia* cysts and viruses. In making this determination, the State must consider the comprehensiveness of the watershed review; the effectiveness of the system's program to monitor and control activities occurring in the watershed that could have an adverse effect on water quality; and the extent to which the system has maximized land ownership and/or control of land use within the watershed. At a minimum, the watershed control program must: (1) Characterize the watershed hydrology and land ownership; (2) identify watershed characteristics and activities which may have an adverse effect on source water quality; and (3) monitor the occurrence of activities which may have an adverse effect on source water quality. The public water system must demonstrate through ownership or written agreements with landowners in the watershed, or a combination of both, that it controls all human activities which may have an adverse effect on the microbiological quality of the source water. The system must submit an annual report to the State that identifies any special concerns about the watershed and how they are being handled; describes activities in the watershed that affect water quality; and projects what adverse activities are expected to occur in the future and describes how the public water system intends to address them. For systems using a ground water source under the direct influence of surface water, an approved wellhead protection program developed under section 1428 of the Safe Drinking Water Act may be used, if the State deems it appropriate, to meet these requirements. Guidance for developing and maintaining an effective watershed control program will be included in the final Guidance Manual.

(3) *On-site inspection requirements.* To avoid filtration, a system must have an annual on-site inspection conducted by the State, or by a party approved by the State, which demonstrates that the system is maintaining an adequate watershed control program and reliable disinfection treatment. The purpose of the on-site inspection is to identify all microbiological health hazards and assess their present and future importance. The on-site inspection must include:

(a) A review of the effectiveness of the watershed control program;

(b) A review of the physical condition of the source intake and how well it is protected;

(c) A review of the system's equipment maintenance program to ensure that there is low probability for failure of the disinfection process;

(d) An inspection of the disinfection equipment for physical deterioration;

(e) A review of operating procedures;

(f) A review of data records to insure that all required tests are being conducted and results recorded, and that disinfection is effectively practiced; and

(g) Identification of any improvements which are needed in the equipment, system maintenance and operation, or data collection.

The on-site inspection must be conducted by a competent individual(s) such as a sanitary or civil engineer, sanitarian, or technician who has experience in and knowledge about the operation and maintenance of a water system, and who has a sound understanding of public health principles and waterborne diseases. A report of the on-site inspection summarizing all findings must be prepared every year. The State will review the report and determine whether the system is maintaining an adequate watershed control program and reliable disinfection treatment. EPA will include detailed suggestions for conducting an on-site inspection and interpreting the results in the final Guidance Manual.

(4) *Absence of waterborne disease outbreaks.* To avoid filtration, a system cannot have been identified as a source of waterborne disease outbreak, or if it has been so identified, the system must have been modified sufficiently to prevent another such occurrence, as determined by the State. An unfiltered system that has a waterborne disease outbreak is in violation of a treatment technique requirement which poses an acute risk to health. A "waterborne disease outbreak" is defined as a significant occurrence of acute infectious illness that the State or local health agency has determined to be epidemiologically associated with the ingestion of water from a public water system that is deficient in treatment.

(5) *Compliance with the total coliform maximum contaminant level (MCL).* To

avoid filtration, a system must comply with the MCL for total coliforms, published elsewhere in today's **Federal Register**, at least 11 out of the previous 12 months the system served water to the public on an ongoing basis, unless the State determines that failure to meet this requirement was not caused by a deficiency in treatment of the source water. If the State makes such a determination, the system is not required to install filtration. The total coliform rule requires systems using surface water or ground water under the influence of surface water which do not filter to collect a sample at or near the first customer each day that the turbidity level exceeds 1 NTU within 24 hours of learning of the result and to analyze the sample for the presence of total coliforms. (If the State determines that it is not possible for the system to have such a sample analyzed within 24 hours, this time limit may be extended on a case-by-case basis.) This sample may be used to fulfill the routine compliance monitoring requirements of the total coliform rule. The results of the additional sample must be included in determining whether the system is in compliance with the monthly MCL for total coliforms.

(8) *Compliance with the total trihalomethane MCL.* To avoid filtration, a system must comply with the total trihalomethane (TTHM) regulation (40 CFR 141.12 and 141.30). An unfiltered system that violates the TTHM regulation must install filtration. Currently, this requirement only applies to systems serving more than 10,000 people. When new regulations for disinfection by-products are promulgated, EPA expects they will apply to smaller systems as well as these larger systems. At that time, those smaller systems would be required to comply with these requirements to avoid filtration.

3. Criteria for Determining if Treatment is Adequate for Filtered Systems

Systems which fail to meet one or more of the above criteria for avoiding filtration must install filtration. This section describes the performance criteria for these systems which must install filtration, as well as systems that already are filtering their water

(a) *Disinfection requirements.* Under this final rule, the requirements for maintaining a disinfectant residual at the entry point to the distribution system and in the distribution system described above for unfiltered systems also apply to filtered systems. The State must determine the level of disinfection required for each system to ensure that the total treatment process (i.e. filtration and disinfection) achieves at least a 99.9 percent (3-log) and 99.99 percent (4-log) removal and/or inactivation of *Giardia lamblia* cysts and viruses, respectively. The final Guidance Manual will recommend different levels of disinfection as a function of different treatment technologies and source water qualities.

(b) *Turbidity monitoring requirements.* Under this rule, systems serving more than 500 people which use conventional treatment, direct filtration, or diatomaceous earth filtration must monitor the turbidity of representative filtered water by grab sample every four hours (or more frequently) that the system is in operation. A system may substitute continuous turbidity monitoring for grab sampling if it validates such measurements for accuracy with grab sample measurements on a regular basis, as specified by the State. If a system uses continuous monitoring, it must use the turbidity value for every four-hour interval (or some shorter regular time interval) to determine compliance with the turbidity performance criterion.

For systems using slow sand filtration or technologies other than conventional treatment, direct filtration, or diatomaceous earth filtration (such as cartridge filtration), the State may reduce the sampling frequency for turbidity to one sample per day if the State determines that less frequent monitoring is sufficient to indicate effective filtration performance.

For systems serving 500 or fewer people, the State may reduce the sampling frequency to once per day, regardless of the type of filtration treatment used, if the State determines that less frequent monitoring is sufficient to indicate effective filtration performance.

(c) *Turbidity performance criteria*—(1) *Conventional treatment or direct filtration.* For systems using conventional treatment or direct filtration, the final rule requires that the filtered water turbidity level be less than or equal to 0.5 NTU in 95 percent of the measurements taken every month, and at no time exceed 5 NTU. The system must inform the State when the turbidity exceeds 5 NTU as soon as possible, but not later than the end of the next business day.

The State may allow any system an alternate turbidity limit, up to 1 NTU in 95 percent of the measurements, if the State determines that the system is achieving the minimum overall performance requirement of 99.9 percent removal and/or inactivation of *Giardia lamblia* cysts at the higher turbidity level. Such a determination may be based upon an analysis of existing design and operating conditions (e.g., adequacy of treatment prior to filtration, percent turbidity removal across the entire treatment train, and level of disinfection), and/or filtration effectiveness relative to certain water quality measurements (e.g., microbiological analysis of the filtered water, particle size counting before and after the filter). Under this provision, the State may consider such factors as source water quality, extent of treatment, and system size to determine the analysis necessary to justify the higher turbidity limit. In the final Guidance Manual, EPA will provide additional information for determining when it may be appropriate to allow higher turbidity performance criteria.

All systems are expected to optimize their treatment so as to achieve the lowest turbidities feasible at all times. This will promote optimal removal of *Giardia lamblia* cysts and other pathogens, and provide optimal conditions for disinfection.

(2) *Slow sand filtration.* For systems using slow sand filtration, the final rule requires that the filtered water turbidity be 1 NTU or less in 95 percent of the measurements taken each month and at no time exceed 5 NTU. However, the State may allow a turbidity value greater than 1 NTU, but below 5 NTU, in 95 percent of the measurements if the State determines there is no significant interference with disinfection at the higher turbidity level. The system must inform the State when the turbidity exceeds 5 NTU as soon as possible, but not later than the end of the next business day.

(3) *Diatomaceous earth filtration.* For systems using diatomaceous earth filtration, the filtered water turbidity must be less than or equal to 1 NTU in at least 95 percent of the measurements taken each month. At no time may the turbidity exceed 5 NTU. The system must inform the State when the turbidity exceeds 5 NTU as soon as possible, but not later than the end of the next business day.

(4) *Other filtration technologies.* A public water system may use a filtration technology other than one described above if it demonstrates to the State, using pilot plant studies, conducted on-site or at another site with similar source conditions, that the alternative filtration technology, together with disinfection, consistently achieves 99.9 percent removal and/or inactivation of *Giardia lamblia* cysts and 99.99 percent removal and/or inactivation of viruses. The system must meet the same turbidity limits prescribed for slow sand filtration.

C. Reporting Requirements

Reporting requirements for all public water systems which use a surface water source or a ground water source under the influence of surface water are specified in § 141.75 of the final rule. These reports are designed to document compliance with the treatment and monitoring requirements in §§ 141.71, 141.72, 141.73, and 141.74 (described above). Separate requirements are specified for systems which do not use filtration and systems which do use filtration.

1. Unfiltered Systems

Systems which do not use filtration are required to report to the State on a monthly basis whether they are meeting the treatment and monitoring requirements for avoiding filtration, for each month they serve water to the public. The report must include a summary of the results of source water monitoring for total or fecal coliforms (if the system monitors for both, only fecal coliforms must be reported) and turbidity, to demonstrate compliance with § 141.71(a). The specific items to be reported are listed in § 141.75(a)(1).

Each system that does not use filtration must report disinfection conditions monthly to demonstrate that: (1) It met the 99.9 percent *Giardia lamblia* cyst and 99.99 percent virus inactivation performance criteria; (2) there was not less than 0.2 mg/l disinfectant residual in the water supplied to the distribution system for more than four hours; (3) it met the requirement to have a detectable disinfectant residual or an HPC level less than or equal to 500/ml. The specific information about disinfection to be reported is listed in § 141.75(a)(2). After a system reports this information for one year, the State may waive most of the disinfection reporting requirements.

Other reporting requirements for systems which do not provide filtration include:

- An annual report which summarizes the system's compliance with all watershed control program requirements specified in § 141.71(b)(2).
- An annual report summarizing results of the on-site inspection which evaluated the effectiveness of the watershed control program and the reliability of the disinfection process, unless the on-site inspection was conducted by the State. If the inspection is conducted by the State, the State must provide a copy of its report to the public water system.
- Reports of waterborne disease outbreaks, turbidity measurements over 5 NTU, and failure to maintain a disinfectant residual of 0.2 mg/1 at the point of entry to the distribution system for more than 4 hours.

2. Filtered Systems

Public water systems which use filtration must report to the State on a monthly basis information regarding filtered water turbidity, disinfectant residual concentration in the water entering the distribution system, and disinfectant residual concentrations and/or HPC measurements in the distribution system. Turbidity reporting requirements vary depending upon the filtration technology used. Reporting requirements pertaining to disinfection requirements at the point of entry to the distribution system and within the distribution system are the same for filtered and unfiltered systems. The specific requirements are set out in § 141.75(b).

Systems must also report waterborne disease outbreaks, turbidity measurements over 5 NTU, and failure to maintain a disinfectant residual of 0.2 mg/1 at the point of entry to the distribution system for more than 4 hours.

D. Compliance

1. Compliance Transition with Current Turbidity Requirements

The existing (interim) NPDWR for turbidity, including the MCL in § 141.13 and the monitoring requirements in § 141.22 will continue in effect for unfiltered systems using a surface water source until 30 months after promulgation of this rule. However, there is an exception to this requirement. If the State determines that a system must filter (in writing, in accordance with section 1412(b)(7)(C)(iii)) earlier than 30 months from the promulgation date, that system must continue to comply with the interim turbidity rule until 48 months from promulgation or until filtration is installed, whichever is later. Thus, if the system installs filtration before 48 months from promulgation, it would comply with the interim turbidity requirements until 48 months from promulgation, and the turbidity requirements for filtered systems promulgated today in § 141.73 and § 141.74(c) would apply after that date.

It is important to note that, for awhile, unfiltered systems will be subject to both the interim turbidity MCL and monitoring requirements, and the turbidity monitoring requirements for unfiltered systems promulgated in § 141.74(b)(2), at the same time. This is appropriate because the monitoring required under § 141.22 is different from that required under § 141.74(b)(2): § 141.22, requires that samples be taken daily at a representative entry point to the distribution system, while § 141.74(b)(2) requires that samples be taken every four hours prior to the point of disinfectant application. Thus, the former is a measure of finished water, while the latter is a measure of source water quality.

The interim requirements for turbidity under §§ 141.13 and 141.22 will apply to filtered systems using a surface water source until 48 months after the promulgation of this rule. Beginning 48 months after the promulgation of this rule, the turbidity performance criteria for filtered systems in § 141.73 and the monitoring requirements under § 141.74(c), both promulgated today, will apply.

2. Systems Using a Surface Water Source (Not Including Systems Using a Ground Water Source Under the Direct Influence of Surface Water)

As required by SDWA, within 18 months following the promulgation of this rule, States must promulgate any regulations necessary to implement this rule. Under section 1413, these rules must be at least as stringent as those required by EPA. Within 30 months following promulgation of this rule, each State must determine which systems are required to install filtration. If filtration is required, it must be installed within 48 months following the promulgation of this rule. If it is not feasible for a system to install filtration within this time, the State may allow for a longer period under the exemption provisions of section 1416, as discussed in Section IV.G, below. Procedures for State implementation of today's rule appear in Section V, below.

As described above, today's rule specifies (a) conditions systems must meet to avoid filtration (and other criteria for unfiltered systems), and (b) requirements that apply to filtered systems. Regardless of whether the State complies with the statutory schedule for adopting the criteria and applying them to determine which systems must install filtration, each system using a surface water source must comply with one or the other, i.e., either the criteria for avoiding filtration and other requirements for unfiltered systems or the requirements for filtered systems, by the relevant statutory deadline. Thus, beginning 30 months after promulgation of this rule, the requirements for avoiding filtration

specified in § 141.71 (a) and (b) and the requirements of § 141.71(c) and § 141.72(a) go into effect unless the State already has determined that filtration is required; a system that fails to meet any one of the criteria for avoiding filtration in § 141.71 (a) and (b) must install filtration and comply with all the requirements for filtered systems (the general requirements in § 141.73 and the disinfection requirements in § 141.72(b)) within 48 months of promulgation. Likewise, beginning 30 months after promulgation, if a system fails to meet any one of the criteria for avoiding filtration, even if the system was meeting all the criteria up to that point, it must install filtration and comply with the requirements for filtered systems within 18 months of the failure. In either case, whenever a State determines that filtration is required, it may specify interim requirements for the period prior to installation of filtration treatment.

To obtain the information necessary to determine whether an unfiltered system is meeting the criteria for avoiding filtration in § 141.71 (a) and (b), the rule includes monitoring and reporting requirements for unfiltered systems (*see* §§ 141.74(b) and 141.75(a), respectively). These requirements go into effect 18 months after promulgation of this rule, unless the State has already determined that filtration is required.

In reviewing these data, it is up to the State to determine how it will weigh the data gathered during the first 30 months following promulgation in deciding whether filtration is required. Thus, for instance, a system may not meet the specified CT requirements for the first four months of monitoring (i.e., months 19–23), upgrade its disinfection practice and then begin meeting the CT values in subsequent months. In this case, the State could conclude that the system would be able to meet this criterion for avoiding filtration, even though the system did not meet the criterion 11 out of the 12 previous months, as specified in § 141.71(b)(1). In other words, the time periods specified in the criteria for avoiding filtration (e.g., six months for total coliforms, one year and ten years for turbidity, one year for CT requirements) do not begin until 30 months from the date of promulgation (unless the State specifies an earlier date).

All systems with filtration in place must meet the treatment technique requirements specified in § 141.73 (filtration criteria) and § 141.72(b) (disinfection criteria), and the monitoring and reporting requirements specified in §§ 141.74(c) and 141.75(b), respectively, beginning 48 months after promulgation.

The above compliance dates are different from what were proposed. Under the proposed rule, all monitoring, reporting, and treatment technique requirements for unfiltered and filtered systems would have gone into effect beginning 48 months after promulgation of this rule. EPA believes that this schedule would not have been consistent with the intent of the SDWA. First, EPA believes that the statutory schedule (i.e., States make filtration decisions within 30 months and systems install filtration 18 months later) contemplates that systems which meet the criteria for avoiding filtration will meet them beginning no later than 30 months from promulgation, since this is the date by which all filtration decisions are to be made. Accordingly, EPA changed the compliance date in the rule. Second, it is clear that States will need monitoring information to determine whether systems are meeting the criteria for avoiding filtration. Therefore, the final rule requires unfiltered systems to begin monitoring 18 months from promulgation (unless the State has already determined that filtration is required).

3. Systems Using a Ground Water Source Under the Direct Influence of Surface Water

As explained in the section on State Implementation, below, the State's program revisions to adopt this final rule must include procedures for determining, for each system in the State served by a ground water source, whether that source is under the direct influence of surface water. Within five and ten years following the promulgation of this rule (i.e., by June 29, 1994 and June 29, 1999 each State must determine which community and non-community public water systems, respectively, use ground water which is under the direct influence of surface water. EPA recommends that these determinations be made in conjunction with related activities required by other regulations (e.g., sanitary surveys pursuant to the final coliform rule, vulnerability assessments pursuant to the volatile organic chemicals rule, assessment requirements in the forthcoming disinfection rule for ground water systems). In addition, section 1428 of the Safe Drinking Water Act requires States to develop wellhead protection programs for ground-water supply wells. EPA-approved wellhead protection programs may contain methods and criteria for determining zones of contribution, assessments of potential contamination, and management of sources of contamination. These programs may be used as a partial basis for determining (a) whether a system is under the direct influence of surface water and (b) if direct influence exists, whether current watershed controls are adequate to meet the watershed control requirement for avoiding filtration (§ 141.71(b)(2)). Guidelines for developing and implementing a State wellhead protection program are found in "Guidelines for Applicants for State Wellhead Protection Program Assistance Funds under the Safe Drinking Water Act" (U.S. EPA, 1987d).

A system using a ground water source under the influence of surface water that does not have filtration in place must begin monitoring and reporting in accordance with §§ 141.74(b) and 141.75(a), respectively, to determine whether it meets the criteria for avoiding filtration in § 141.71 (a) and (b) beginning 18 months after promulgation or six months after the State determines that the ground water source is under the influence of surface water, whichever is later. Within 18 months following the determination that a system is under the direct influence of surface water, the State must determine, using the same criteria that apply to systems using a surface water source, whether the system must provide filtration treatment. (The 18-month period was derived by adding the six months until monitoring begins to the 12 months SDWA provides States to make the filtration decision for systems using a surface water source.) Beginning 30 months after promulgation of this rule, or 18 months after the determination that a system is under the direct influence of surface water, whichever is later, the criteria for avoiding filtration in § 141.71 (a) and (b) and the requirements for unfiltered systems in § 141.71(c) and § 141.72(a) go into effect, unless the State has determined that filtration is required. Thus, a system using a ground water source under the influence of surface water that fails to meet any one of the criteria for avoiding filtration after the relevant date must install filtration and comply with all of the requirements for filtered systems (the general requirements in § 141.73 and the disinfection requirements in § 141.72(b)) 48 months after promulgation of this rule, or within 18 months of the failure to meet the criteria for avoiding filtration, whichever is later. As with systems using a surface water source, subsequent failure to comply with any one of the criteria for avoiding filtration also requires the installation of filtration treatment. Thus, beginning 30 months after promulgation

or 18 months after the State determines that a system is using a ground water source under the direct influence of surface water, whichever is later, if that system fails to meet any one of those criteria (even if the system was meeting the criteria for avoiding filtration up to that point), it must install filtration and comply with the requirements for filtered systems within 18 months of the failure. As with systems using a surface water source, in reviewing the data collected by an unfiltered system using ground water under the influence of surface water, for the first 18 months following the determination, it is up to the State to determine how it will weigh the data in deciding whether filtration is required.

Any system using a ground water source that the State determines is under the direct influence of surface water that already has filtration in place at the time of the State determination must meet the treatment technique requirements specified in § 141.73 (filtration criteria) and § 141.72(b) (disinfection criteria) and the monitoring and reporting requirements specified in §§ 141.74(c) and 141.75(b), respectively, beginning 48 months after promulgation or 18 months after the State determination, whichever is later.

4. Strategies for Implementation

To comply with this final rule, a system that uses surface water and does not currently disinfect its water must begin disinfection, and possibly filtration. While the system is being evaluated to determine what treatment needs to be installed (e.g., disinfection without filtration; disinfection first and filtration later because of time differences needed for construction; or filtration and disinfection at the same time), the State may determine that interim measures to reduce risk to health (e.g., notice to consumers that water should be boiled before use or distribution of bottled water) might be appropriate.

Similarly, for systems which are already disinfecting, but do not meet one or more of the requirements for avoiding filtration, the State may determine that interim measures are necessary to reduce risk to health (e.g., maintaining more stringent disinfection conditions until filtration is installed).

Some systems already have filtration and disinfection in place. While many such systems are already in compliance with all the requirements of the rule, other systems will require significant upgrades in treatment to meet all the performance criteria. As discussed earlier, filtration without disinfection, with proper pretreatment where appropriate, can be expected to achieve 99 to 99.9 percent (2- to 3-log) removal of *Giardia* cysts and 90 to 99.9 percent (1- to 3-log) removal of viruses (Logsdon, 1987). Some disinfection will be necessary to supplement filtration so that the overall treatment achieves the minimum treatment requirements of the rule, i.e., 99.9 percent removal and/or inactivation of *Giardia* cysts and 99.99 percent removal and/or inactivation of viruses. To achieve these performance criteria with a substantial margin of safety, EPA recommends different minimum levels of disinfection, depending upon the filtration technology in place. Table IV–2 summarizes the level of *Giardia* cyst and virus removal that EPA recommends generally be assumed for different filtration technologies (assuming they are well-operated), and the corresponding recommended minimum levels of disinfection needed for such systems to meet the overall minimum performance requirements. CT values for achieving 1-log inactivation of *Giardia* cysts are indicated in Table IV–3. CT values to achieve 0.5-log inactivation are one-half those indicated in Table IV.3. Recommended CT values for achieving different levels of virus inactivation are indicated in Table IV–4.

TABLE IV–2. RECOMMENDED MINIMUM LEVEL OF DISINFECTION AND ASSUMED LOG REMOVALS BY FILTRATION METHOD

Treatment	Assumed log removals		Recommended minimum level of disinfection	
	Giardia	Viruses	*Giardia*	Viruses
Conventional	2.5	2.0	0.5	2.0
Direct filtration	2.0	1.0	1.0	3.0
Slow sand filtration	2.0	2.0	1.0	2.0
Diatomaceous earth filtration	2.0	1.0	1.0	3.0

TABLE IV–3.—CT VALUES FOR ACHIEVING 1-LOG INACTIVATION OF GIARDIA LAMBLIA [1]

	pH	Temperature			
		0.5 °C	5 °C	10 °C	15 °C
Free Chlorine [2]	6	49	35	26	19
	7	70	50	37	26
	8	101	72	54	36
	9	146	146	78	59
Ozone		0.97	0.63	0.48	0.32
Chlorine Dioxide		21	8.4	7.4	6.3
Chloramines (preformed)		1,270	730	620	500

[1] From 3/31/89 draft Guidance Manual. Values to achieve 0.5-log inactivation are one half those shown in the table.
[2] CT values will vary depending on the concentration of free chlorine. Indicated CT values are for 2.0 mg/l free chlorine. (For other free chlorine concentrations, *see* the final Guidance Manual.)

TABLE IV-4.—CT VALUES FOR ACHIEVING INACTIVATION OF VIRUSES AT PHS 6 THROUGH 9 [1]

	Log inactivation	Temperature			
		0.5 °C	5 °C	10 °C	15 °C
Free chlorine	2	6	4	3	2
	3	9	6	4	3
Ozone	2	0.9	0.6	0.5	0.3
	3	1.4	0.9	0.8	0.5
Chlorine Dioxide [2]	2	8.4	5.6	4.2	2.8
	3	25.6	17.1	12.8	8.6
Chloramines [3]	2	1,243	857	643	428
	3	2,063	1,423	1,067	712

[1] CT values for free chlorine, ozone, and chlorine dioxide include safety factors. CT values for chloramines are based on laboratory data using preformed chloramine to inactivate Hepatitis A and do not include a safety factor (Sobsey, 1988).

[2] CT values for chlorine dioxide were based on laboratory studies at pH 6 (Sobsey, 1988). Based on limited data, chlorine dioxide appears much more effective at higher pHs. Procedures for demonstrating if lower CT values may be appropriate will be included in the final Guidance Manual.

[3] CT values for chloramines are only applicable if chlorine is added prior to ammonia. Procedures for demonstrating that lower CT values are appropriate will be included in the final Guidance Manual.

Systems using chlorine with CT values that achieve the recommended minimum level of inactivation for *Giardia* cysts will also achieve the recommended minimum level of inactivation for viruses. However, for other disinfectants, depending upon the filtration technology in place, the CT values for achieving the recommended minimum level of virus inactivation may in some cases be higher than those necessary to achieve the minimum recommended level of *Giardia* cyst inactivation. Guidance for making these determinations will be included in the final Guidance Manual.

The degree of disinfection should be commensurate with the degree of potential pathogen contamination in the source water and the type of clarification and filtration. For example, the system should provide higher levels of disinfection (e.g., 99 or 99.9 percent inactivation of *Giardia* cysts) when there is evidence of significant *Giardia* cyst contamination in the source water. Guidelines for providing an appropriate level of disinfection as a function of source water quality conditions and the extent of treatment processes will be available in the final Guidance Manual.

E. Public Notification

On October 29, 1987, EPA promulgated regulations to revise the existing public notification requirements in 40 CFR 141.32 to implement the 1986 amendments to the public notification provisions in section 1414(c) of the Safe Drinking Water Act. These regulations specify general notification requirements, including the frequency, manner, and content of notices, and require the inclusion of EPA-specified health effects information in each public notice. The public notification regulations divide violations into two tiers based on the seriousness of the violation, with each tier having different public notification requirements. Tier 1 violations include violations of an MCL, a treatment technique requirement, or a variance or exemption schedule. Some Tier 1 violations are designated as violations posing an "acute" risk to health. Tier 2 violations include violation of a monitoring requirement, failure to comply with a testing procedure prescribed by a NPDWR, and operating under a variance or exemption. Under this rule, §§ 141.70, 141.71(c), 141.72, and 141.73 prescribe treatment technique requirements. Thus, violation of these requirements are classified as Tier 1 violations. Violations of § 141.74, which prescribes testing procedures and monitoring requirements, are classified as Tier 2 violations. Violations of § 141.75 (reporting requirements) do not require public notification.

All of the requirements of § 141.32, the general public notification requirements, including the manner and frequency of notification, apply to violations of this final rule. The mandatory language to be included in public notices for violations of the filtration and disinfection requirements of this rule (i.e., §§ 141.70, 141.71(c), 141.72, and 141.73), including an acute violation (i.e., a waterborne disease outbreak in an unfiltered supply), is specified below:

Microbiological contaminants (for use when there is a violation of the treatment technique requirements for filtration and disinfection in Subpart H of this part). The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that the presence of microbiological contaminants are a health concern at certain levels of exposure. If water is inadequately treated, microbiological contaminants in that water may cause disease. Disease symptoms may include diarrhea, cramps, nausea, and possibly jaundice, and any associated headaches and fatigue. These symptoms, however, are not just associated with disease-causing organisms in drinking water, but also may be caused by a number of factors other than your drinking water. EPA has set enforceable requirements for treating drinking water to reduce the risk of these adverse health effects. Treatment such as filtering and disinfecting the water removes or destroys microbiological contaminants. Drinking water which is treated to meet EPA requirements is associated with little to none of this risk and should be considered safe.

The above mandatory public notification language was changed from what was proposed. Types of disease, namely hepatitis, giardiasis, and gastroenteritis, which might be caused by consumption of inadequately treated water, have been deleted. Also, wording has been added which indicates that symptoms which may be associated with consumption of inadequately treated water may be caused by other factors not associated with drinking water. These changes were made in response to public comments which expressed concern that the general public would not be familiar with disease names such as giardiasis and gastroenteritis, and that most of the symptoms mentioned in the notice are so common that the water treatment plant might be considered responsible without justification.

F. Variances

Section 1415 allows States to grant variances from national primary drinking water regulations under certain conditions. However, section 1412(b)(7)(C)(ii) of the Safe Drinking Water Act states that, in lieu of the variance provisions of section 1415, EPA is to specify criteria by which States will determine which public water systems will be required to filter. This notice promulgates these filtration criteria.

Accordingly, the rule does not permit variances from the filtration requirements. As for the disinfection requirements in this rule, due to the acute nature and high risk associated with poor disinfection of surface waters, no variances are allowed.

G. Exemptions

Section 1416 of the Safe Drinking Water Act allows a State to exempt any public water system within its jurisdiction from any treatment technique requirement imposed by a national primary drinking water regulation upon a finding that:

1. Due to compelling factors (which may include economic factors), the public water system is unable to comply with the treatment technique requirement;

2. The public water system was in operation on the effective date of the treatment technique requirement or, for a system that was not in operation by that date, only if no reasonable alternative source of drinking water is available to the new system; and

3. The granting of the exemption will not result in an unreasonable risk to health.

If a State grants a public water system an exemption, the State must prescribe, at the time the exemption is granted, a schedule for:

1. Compliance (including increments of progress) by the public water system with each treatment technique requirement with respect to which the exemption was granted; and

2. Implementation by the system of such control measures as the State may require during the period the exemption is in effect.

Before prescribing a schedule, the State must provide notice and opportunity for a public hearing on the schedule. The schedule prescribed must require compliance by the public water system with the treatment technique requirement as expeditiously as practicable, but in no case later than one year after the exemption is issued (except that, if the system meets certain requirements, the final date for compliance may be extended for a period not to exceed three years from the date the exemption is granted). For systems serving fewer than 500 service connections, and meeting certain additional requirements, the State may renew the exemption for one or more additional two-year periods.

Under this rule, no exemptions are allowed from the requirement to provide disinfection for surface water systems, for the same reason variances are not allowed. However, exemptions are available to reduce the degree of disinfection required. Exemptions from the filtration requirements are available as well. For example, under certain conditions, it might be appropriate for an unfiltered system to receive an exemption, for a limited time, if it achieves only 99 percent inactivation of *Giardia lamblia* cysts (i.e., it did not meet the 99.9 percent inactivation requirement). Guidance for determining conditions under which an exemption might be appropriate is provided in the final Guidance Manual.

V. State Implementation of the Surface Water Treatment Requirements

A. General

Section 1413 of the Safe Drinking Water Act establishes requirements a State must meet to have primary enforcement responsibility for public water systems ("primacy"). These include: (1) Adopting drinking water regulations no less stringent than the NPDWRs in effect under sections 1412(a) and 1412(b) of the Act; (2) adopting and implementing adequate procedures for enforcement; (3) keeping records and making such reports with respect to its activities as EPA may require by regulation; (4) issuing variances and exemptions (if allowed at all by the State) under conditions no less stringent than allowed by sections 1415 and 1416; and (5) adopting and being able to implement an adequate plan for the provision of safe drinking water under emergency situations.

40 CFR Part 142 sets out the specific program implementation requirements for States to obtain primacy for the public water system supervision (PWSS) program as authorized under Section 1413 of SDWA. EPA first promulgated these regulations on January 20, 1976. Since 1976, however, much has happened in the PWSS program, and portions of the implementation regulations at 40 CFR Part 142 have become outdated. In response, on August 2, 1988, the Agency proposed revisions to 40 CFR Part 142, Subpart B which take into account the program's evolution since 1976, as well as the new legislative mandates (53 FR 29194). These regulations, when promulgated, will specify the procedures and timing for States to follow to obtain approval of program changes to adopt new or revised regulations that EPA promulgates.

When today's regulations for surface water treatment were proposed on November 3, 1987 (52 FR 42178), the schedule for revising the implementation regulations (40 CFR Part 142) was not known. Consequently, the implementation portion of the proposed surface water treatment requirements included a complete list of requirements for States to meet to obtain approval of their program revisions, including both general requirements applicable to all program revisions (e.g., regulations that are no less stringent than the NPDWRs that EPA promulgates in Part 141), as well as specific requirements applicable only to the surface water treatment provisions. However, EPA expects to promulgate the revised implementation regulations shortly. These implementation regulations will specify procedures, timing, and other general requirements a State must meet to retain primary enforcement responsibility. For instance, these final rules will make it clear that each time EPA adopts (or revises) an NPDWR under section 1412, primacy States must adopt drinking water regulations that are no less stringent than the new regulations. Therefore, today's amendments to Part 142 only address "special primacy requirements," i.e., requirements that are unique to the surface water treatment requirements promulgated in Part 141; general primacy requirements applicable to all NPDWRs are not addressed in today's amendment of 40 CFR Part 142.

In some respects, the State implementation of the regulations in 40 CFR Part 141, Subpart H—Filtration and Disinfection, is different from implementation of other NPDWRs. The surface water treatment requirements promulgated today consist of both objective, uniform criteria and criteria that provide the primacy State broad discretion to decide whether to implement them (and if so, how), considering the objectives of the regulations and the variability encountered in surface water treatment throughout the diverse geographical areas of the United States

As a condition of primacy, States must promulgate regulations that incorporate requirements that are no less stringent than these objective criteria in the surface water treatment requirements. Since the general primacy rule will require all State program revisions to include requirements that are no less stringent than Federal requirements, today's amendments to Part 142 do not list each provision of the surface water treatment requirements for which the State must adopt a corresponding revision which is no less stringent. (However, to assist States developing program revisions to adopt today's regulations, Section V.B.1. below identifies such provisions.)

Where it was not possible to develop uniform national criteria or where States

are provided flexibility to modify the national criteria to account for site-specific circumstances, the surface water treatment requirements give the States discretion to adopt appropriate requirements. For purposes of implementation, EPA has divided these areas of State discretion into two categories. For items in the first category, the State must demonstrate that it has adopted enforceable requirements in the form of State rules, regulations, and/or permit requirements. For items in the second category, the State need only describe the practices or procedures it will use to implement those parts of its program. The specific items in these two categories are listed in Sections V.B.2 and 3 below.

Where the State must have enforceable rules, regulations, and/or permit requirements, i.e., elements in the first category, EPA review of this portion of the State program revision will generally be limited to a determination that the State requirements are enforceable, rather than a detailed evaluation of the content of the requirements per se. For items in the second category, where the State only is required to describe the practices or procedures it will use in exercising the discretion provided in the surface water treatment requirements, EPA review of the State program revision will generally be even more limited. It will consider whether the State practices or procedures are clear and unambiguous. In both cases, however, EPA will consider whether the State's provisions can be reasonably expected to accomplish the objectives of the surface water treatment requirements.

B. Specific Primacy Requirements for States to Adopt 40 CFR Part 141 Subpart H—Filtration and Disinfection

The three types of provisions States must adopt are described in greater detail below.

1. General Primacy Requirements—State Requirements Must Be No Less Stringent than Federal Requirements

As explained above, for those portions of the surface water treatment requirements promulgated today which establish objective criteria, primacy States must adopt equivalent, i.e., no less stringent, requirements. Although these objective criteria are not listed in the revisions to Part 142 for the reasons described in the previous section, EPA has, for convenience, summarized these criteria below. (Some of these criteria allow exceptions on a case-by-case basis, as described in Part 141, Subpart H. These exceptions are listed in § 142.16(b)(2) (iii) and (iv) of the rule and Section V.B.3 of this preamble. For each provision that allows exceptions, States may choose to simply adopt the requirement as listed here (allowing for exceptions), or permit the exceptions described in the later section.) At a later date, specific guidance will be developed and provided to States to assist them in preparing their program revisions.

(a) Section 141.2—New definitions.

(b) Section 141.32(a)(1)(iii)(D)—Waterborne disease public notification requirements.

(c) Section 141.32(e)(10)—Mandatory health effects language for microbiological contaminants.

(d) Section 141.70(a)(1)—Requirement for 99.9 percent removal and/or inactivation of *Giardia lamblia* cysts.

(e) Section 141.70(a)(2)—Requirement for 99.99 percent removal and/or inactivation of viruses.

(f) Section 141.70(b)—Compliance requirements for public water systems that filter and systems that do not filter.

(g) Section 141.70(c)—Requirement that public water systems be operated by qualified personnel.

(h) Section 141.71—Deadlines for installation of filtration and compliance with filtration requirements for systems using a surface water source or ground water under the direct influence of surface water which do not meet all the requirements for avoiding filtration; deadlines for meeting criteria for avoiding filtration for systems which choose not to filter.

(i) Section 141.71(a)—Source water quality conditions for public water systems that choose to avoid filtration, including:

(1) Section 141.71(a)(1)—Coliform limits.

(2) Section 141.71(a)(2)—Turbidity limits.

(j) Section 141.71(b)—Site-specific conditions for public water systems that wish to avoid filtration, including:

(1) Section 141.71(b)(1)—Disinfection compliance requirements.

(2) Section 141.71(b)(2)—Requirement to have, and mandatory elements of, a watershed control program.

(3) Section 141.71(b)(3)—Requirement that system have an annual on-site inspection that includes the elements specified.

(4) Section 141.71(b)(4)—Requirement that system has not been identified as a source of a waterborne disease outbreak (or, if it was, that the system has been sufficiently modified to prevent recurrence).

(5) Section 141.71(b)(5)—Requirement that system be in compliance with the total coliform MCL for 11 of the last 12 consecutive months.

(6) Section 141.71(b)(6)—Requirement that system comply with total trihalomethane monitoring and MCL requirements.

(k) Section 141.71(c)—Treatment technique requirements whose failure does not trigger filtration for public water systems which do not filter.

(l) Section 141.72—Deadlines for compliance with disinfection requirements for systems that filter and those that do not.

(m) Section 141.72(a)—Disinfection requirements for systems which do not filter, including:

(1) Section 141.72(a)(1)—Requirement for 99.9 and 99.99 percent removal of *Giardia lamblia* cysts and viruses, respectively, as determined by CT calculations;

(2) Section 141.72(a)(2)—Requirement for either redundant components or automatic shutoff;

(3) Section 141.72(a)(3)—Requirement that water entering the distribution system have at least a 0.2 mg/l disinfectant residual concentration; and

(4) Section 141.72(a)(4)(i)—Requirement for a detectable residual or certain HPC levels in the distribution system.

(n) Section 141.72(b)—Disinfection requirements for systems which filter, including:

(1) Section 141.72(b)(1)—Requirement for 99.9 and 99.99 percent removal of *Giardia lamblia* cysts and viruses, respectively, by the combined treatment processes of the system;

(2) Section 141.72(b)(2)—Requirement that water entering the distribution system have at least 0.2 mg/l disinfectant residual concentration; and

(3) Section 141.72(b)(3)(i)—Requirement for a detectable residual or certain HPC levels in the distribution system.

(o) Section 141.73—Requirements (including deadlines for compliance) for systems that provide filtration treatment including:

(1) Section 141.73—Deadlines for installation of filtration equipment;

(2) Section 141.73(a)—Turbidity limits for systems using conventional or direct filtration;

(3) Section 141.73(b)—Turbidity limits for systems using slow sand filtration;

(4) Section 141.73 (c)—Turbidity limits for systems using diatomaceous earth filtration; and

(5) Section 141.73(d)—If the State allows alternative filtration technologies, the requirement that such technologies, at a minimum, meet the turbidity limits for systems using slow sand filtration.

(p) Section 141.74(a)—Requirement that only EPA-approved analytical methods be used to demonstrate compliance; requirement that analyses for total coliforms, fecal coliforms, and heterotrophic bacteria be conducted by certified laboratories, and that remaining measurements (pH, temperature, turbidity, residual disinfectant concentration) be made by a party approved by the State.

(q) Section 141.74(b)—Monitoring requirements for systems that do not provide filtration treatment, including:

(1) Section 141.74(b)—Deadlines for compliance with monitoring requirements;

(2) Section 141.74(b)(1)—Coliform monitoring requirements;

(3) Section 141.74(b)(2)—Turbidity monitoring requirements;

(4) Section 141.74(b)(3)—Monitoring requirements and methods for calculating CT values;

(5) Section 141.74(b)(4)—Method for calculating inactivation ratios;

(6) Section 141.74—Tables 1.1–1.6, 2.1, and 3.1 (CT values);

(7) Section 141.74(b)(5)—Disinfectant residual monitoring requirements for water entering the distribution system; and

(8) Section 141.74(b)(6)(i)—Disinfectant residual monitoring requirements for water in the distribution system.

(r) Section 141.74(c)—Monitoring requirements for systems that provide filtration treatment, including:

(1) Section 141.74(c)—Deadlines for compliance with monitoring requirements;

(2) Section 141.74(c)(1)—Turbidity monitoring requirements;

(3) Section 141.74(c)(2)—Disinfectant residual monitoring requirements for water entering the distribution system; and

(4) Section 141.74(c)(3)(i)—Disinfectant residual monitoring requirements for water in the distribution system.

(s) Section 141.75(a)—Reporting requirements for systems which do not filter, including:

(1) Section 141.75(a)—Deadlines for compliance with reporting requirements;

(2) Section 141.75(a)(1)—Source water quality reporting requirements;

(3) Section 141.75(a)(2)—Disinfection reporting requirements;

(4) Section 141.75(a)(3)—Watershed control program reporting requirements;

(5) Section 141.75(a)(4)—On-site inspection reporting requirements; and

(6) Section 141.75(a)(5)—Reporting requirements when there is a waterborne disease outbreak, certain turbidity violations, and failure to maintain a disinfectant residual entering the distribution system.

(t) Section 141.75(b)—Reporting requirements for public water systems that filter, including:

(1) Section 141.75(b)—Deadlines for compliance with reporting requirements;

(2) Section 141.75(b)(1)—Turbidity reporting requirements;

(3) Section 141.75(b)(2)—Disinfection reporting requirements; and

(4) Section 141.75(b)(3)—Reporting requirements when there is a waterborne disease outbreak, certain turbidity violations, and failure to maintain a disinfectant residual entering the distribution system.

(u) Section 142.64—Limits on State issuance of variances and exemptions.

(v) SDWA section 1412(b)(7)(C)(ii)—Requirement for procedures to provide notice and opportunity for public hearing for determination of whether a public water system shall adopt filtration.

2. Special Primacy Requirements—State Requirements Must Be Enforceable

State program revisions to adopt the surface water treatment requirements promulgated today in Part 141, Subpart H must include enforceable requirements that specify design and operating conditions for all disinfection and filtration treatment processes and/or equipment used by public water systems to comply with 40 CFR 141.70, 141.71, 141.72 and 141.73. Alternatively (or in combination with enforceable design and operating conditions), the State may establish a procedure for setting enforceable design and operating requirements on a system-by-system basis (e.g., a permit system).

3. Special Primacy Requirements—State Must Establish Practices or Procedures

An application for approval of a State program revision must describe the practices or procedures that the State will use to implement provisions of the surface water treatment requirements that provide the State flexibility with respect to how the objectives of the regulation are to be achieved. Examples include the authority to modify certain monitoring, analytical, performance, and reporting requirements; approve alternate disinfection processes or technologies; determine whether the combination of treatments provided achieve the required level of removal and/or disinfection; establish qualifications for public water system operators and parties conducting on-site inspections; and determine which systems supplied by ground water are under the direct influence of surface water.

It is important to note that these provisions take two forms: Provisions in Part 141, Subpart H, that give the States full implementation discretion and provisions that allow the State to modify the stated requirements under certain circumstances if the State so chooses. The corresponding primacy requirements depend on the category of the provision.

For each of the provisions in § 142.16(b)(2)(i), which fall in the first category, State program revisions must include a description of the practices and procedures (or regulations, if they cover these items) that explain how the State will exercise its discretion. Likewise, States which allow public water systems to avoid filtration by meeting the requirements of § 141.71 must also submit the practices and procedures (or regulations) describing how they will exercise their discretion for each of the provisions listed in § 142.16(b)(2)(ii).

Provisions in the second category are listed in § 142.16(b)(2)(iii) (which are options available to all States) and in § 142.16(b)(2)(iv) (which are options available to States that allow systems to avoid filtration by meeting the requirements of § 141.71). For each of the provisions in this second category, the State needs to submit procedures and practices (or regulations) that explain how it will exercise the discretion allowed only for those options it plans to exercise. For instance, if the State does not plan to set alternative turbidity limits under § 141.73 (a)(1) or (b)(1), its program revision need not address this provision, i.e., it need not submit anything under § 142.16(b)(2)(iii)(C).

C. State Reporting and Recordkeeping Requirements

Today's notice amends 40 CFR Part 142 to require States with primary enforcement responsibility to retain records and report information to EPA sufficient to ensure adequate oversight of the States' activities to implement the surface water treatment requirements. Specifically, States must:

(1) Retain for not less than one year records of microbiological analyses, i.e., analyses for total coliforms, fecal coliforms, and heterotrophic plate count (in both finished water and source water), in a form which makes possible comparison with the total coliform, fecal coliform, and heterotrophic plate count limits specified in 40 CFR 141.63, 141.71, and 141.72.

(2) Retain for not less than one year records of disinfectant residual monitoring and other parameters necessary to document disinfection

effectiveness in accordance with § 141.72. Reports submitted by public water systems must comply with § 141.75.

(3) Retain for not less than one year records of turbidity monitoring necessary to document filtration effectiveness in accordance with § 141.73. Reports submitted by public water systems must comply with § 141.75.

(4) Retain, for specified periods, records of determinations made by the State where the State has exercised discretionary authority allowed by § 142.16(b). This discretionary authority includes modified monitoring, analytical, performance, and reporting requirements, as well as authority to qualify operators or approve on-site inspectors. Where such decisions are made on a system-by-system or case-by-case basis, the State must keep a record in its files which documents that decision. A State is required to provide a formal, written notice of certain determinations to the system (e.g., reduced monitoring and substitute turbidity limits), and it may want to do so in other instances to prevent confusion on the part of the system or other party. Appropriate cases could include notification of qualified operators and approved on-site inspectors. A list of determinations for which these records must be kept is included in the rule promulgated today in § 142.14(a)(4)(ii).

(5) Retain indefinitely records of any determination under § 141.71 that a public water system using a surface water source or a ground water source under the direct influence of surface water is not required to provide filtration treatment.

(6) Report annually the name and PWS identification number of each public water system using a surface water source or a ground water source under the direct influence of surface water that the State has determined need not provide filtration treatment, and the date that the State made the determination for each such system.

(7) Report annually the name and PWS identification number and date of each determination of each public water system supplied by a surface water source or a ground water source under the direct influence of surface water that the State determined is providing adequate disinfection even if the system is not meeting the criteria for residual disinfectant concentration specified by § 141.72(a)(4)(i) or 141.72(b)(3)(i).

(8) Notify EPA within 60 days of the end of each calendar quarter of any determination that a public water system using a surface water source or a ground water source under the direct influence of surface water is not required to provide filtration treatment.

D. EPA Oversight of State Decisions Regarding Filtration Requirements

EPA intends to periodically review States' decisions as to whether public water systems supplied by a surface water source or a ground water source under the direct influence of surface water are required to provide filtration. EPA will use procedures similar to those spelled out in Section 1415(a)(1)(F) of the Act for EPA oversight of variances issued by States. EPA considers this to be an appropriate procedure for review of filtration decisions since (1) the Act links filtration determinations and decisions on variances by requiring EPA to specify "in lieu of the variance requirements of Section 1415" procedures by which States are to determine which public water systems must adopt filtration, and (2) the filtration and variance decisions are similar in nature. Essential elements of this procedure which appears at 40 CFR Part 142, Subpart I include: (1) Reporting by States of filtration decisions; (2) periodic review, preceded by Federal Register notice, of State filtration decisions by EPA; (3) notice to the State if the Administrator finds the State has abused its discretion in making filtration decisions; (4) an opportunity for the State to take corrective action; (5) a public hearing conducted by a hearing officer to review testimony; and (6) a final decision by the Administrator that upholds or rescinds the finding that the State has abused its discretion. In the event the Administrator finds that the State has abused its discretion, (s)he would revoke decisions with regard to filtration made by the State and/or revoke any compliance schedule approved by the State.

It is important to note that EPA need not undergo these procedures prior to taking an enforcement action against a specific public water system for failure to comply with today's rule, if, for instance, the State has determined that the system is not required to filter, but the system is not complying with the requirements for avoiding filtration. Likewise, promulgation of the procedures in Part 142, Subpart I does not preclude EPA from using other appropriate means to ensure that the State exercises its discretion properly. Such measures may include grant conditions or initiation of primacy revocation procedures when there is evidence that a State is not making appropriate filtration decisions.

E. Response to Comments on Proposed Requirements for State Implementation of the Surface Water Treatment Requirements

Commenters on the proposed surface water treatment requirements and the associated proposed implementation regulations at 40 CFR 142.16 (52 FR 42178, November 3, 1987) generally focused on the requirements addressed to public water systems in the primary regulation (i.e., the Part 141 provisions) rather than the proposed State implementation requirements. However, some commenters did express concern that the proposed SWTR implementation regulations would require them to adopt enforceable regulations, which EPA could disapprove, without EPA having to propose and receive comment on the appropriate criteria for approving such revisions. Some commenters also expressed concern that EPA, through the primacy review process, would attempt to establish uniform national criteria for treatment requirements that would not account for local variability. Finally, some commenters were concerned that the proposed amendments to § 142.17 (special primacy requirements, promulgated today in § 142.16) implied that States must adopt provisions to exempt some systems using surface water sources from the filtration requirements. Other commenters suggested that EPA was asking for too much information from both systems and States.

In the final rule, EPA has revised the State implementation requirements in response to commenters' concerns. First, EPA expects to promulgate revised general implementation regulations shortly; these revised provisions will establish standard procedures, timing, and other requirements States must meet to revise their programs following promulgation by EPA of new or revised national primary drinking water regulations. Accordingly, the general State program revision requirements in the November 3, 1987, notice are not included in today's final rule. Since the forthcoming amendments of the primacy rule will require that, whenever EPA adopts new or revised NPDWRs, States adopt requirements no less stringent than these NPDWRs, it is not necessary to list each new requirement promulgated in Part 141 in Part 142 as well. As a result, the list of special primacy requirements to adopt this regulation has been significantly reduced. Special primacy requirements are limited to those included in 40 CFR 142.16(b), promulgated today (and described earlier).

Today's implementation provisions (in both the regulation and preamble) make it clear that EPA is not establishing uniform national treatment requirements through the program revision process. States are given a great deal of discretion in implementation; many provisions in the final rule may be modified by the States in appropriate circumstances. Also, the language promulgated in § 142.16(b)(2) clearly indicates that States have the option to require that all public water systems using surface water sources or ground water directly influenced by surface water provide filtration treatment.

Finally, the amount of public water system reporting to States has been reduced to the lowest level practicable. This reduces the State recordkeeping requirements as well. In addition, the number and frequency of reports States are required to provide EPA has been reduced. Those that remain are considered essential for EPA to perform its oversight function.

VI. Economic Analysis

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. This action constitutes a "major" regulatory action because it will have a major financial or adverse impact on the regulated community of over $100 million per year. Therefore, EPA prepared a Regulatory Economic Impact Analysis for both the proposed and final rules and submitted them to the Office of Management and Budget for review. In the draft RIA (USEPA, 1987c), the capital cost was estimated to be $2.0 billion, and the annualized cost, $338 million.

In response to public comments on the estimated cost of complying with the rule as proposed, EPA made several changes in its estimating methodology which resulted in a significant increase in the projected compliance cost. The nature of these changes, and their corresponding effects on the original cost estimates, are described below.

1. *Land, piping, and pumping costs in newly installed filtration plants.* These items were not included in the earlier analysis because they are highly site-specific. Including these costs increases EPA's previous estimate by $695 million for capital, or $121 million/year on an annualized basis. It should be borne in mind, however, that the costs used are extremely rough estimates.

2. *Disinfection for filtered systems.* At the time of proposal, EPA did not include any costs for upgrading disinfection practices because the Agency believed that most systems were already complying with disinfection standards similar to those in the proposed rule (e.g., the "Ten-State Standards"). Subsequently, EPA learned that, in fact, many systems will need to upgrade their disinfection practice to comply with the disinfection requirements of this rule, and has adjusted its cost estimate accordingly. EPA expects systems to expend an estimated $258 million in capital costs for improved disinfection. On an annualized basis, this amounts to an additional $27 million/year.

Other costs which commenters suggested EPA should include in the estimate have not been estimated, as explained below:

1. *Covering open distribution reservoirs.* Apparently, some commenters thought this was a requirement of the proposed rule. This is incorrect. Such a requirement was not part of the proposed rule and is not required in the final rule, either. Therefore, the cost of covering reservoirs is not considered to be a compliance cost imposed by this rule.

2. *Preparation of environmental impact statements and mitigation of environmental impacts.* Costs for these items are highly site-specific. To project them with any degree of accuracy would require an engineering cost study of each system in the U.S. Clearly, this is not possible. Also, relative to other costs, these costs are not expected to be significant. Therefore, the final RIA (USEPA, 1989a) does not assess these costs.

3. *Installation of meters and correction of leaks in the distribution system.* EPA agrees that, in systems experiencing high rates of leakage, it may well make good economic sense to correct excessive leaks in view of the higher cost of produced water resulting from compliance with this rule. Likewise, unmetered systems tend to encourage extravagant use and the additional costs imposed by this rule might cause operators to feel that the provision of unmetered water can no longer be justified. Nevertheless, the correction of leaks and installation of meters are economy measures and are not required to achieve compliance with the rule. Therefore, their cost is not properly attributable to these requirements. (Even if such costs were attributable to the rule, they should be offset by the savings from the reduction in leakage and wasteful use. In fact, it is conceivable that, over the long run, such savings could largely offset the cost of compliance with this rule.) Finally, the cost of correcting leaks is highly site specific and EPA knows of no way to make a reasonably accurate estimate of such costs other than performing engineering studies at each affected location, which clearly is not feasible. Based upon these considerations, EPA has not included any costs for leak correction and meter installation.

The following sections summarize EPA's detailed cost analysis provided elsewhere (USEPA, 1987c, 1989a).

A. Total Cost of the Final Rule

The filtration and disinfection requirements of this rule will impose costs on four groups of public water systems using surface water sources:

1. An estimated 1,346 community water systems that are currently unfiltered.

2. An estimated 1,536 non-community water systems that are currently unfiltered (non-community water systems include systems serving transient and non-transient populations).

3. An estimated 4,611 community water systems that are currently filtered.

4. An estimated 2,308 non-community water systems that are currently filtered.

There are, therefore, an estimated total of 2,882 water systems that are currently unfiltered and 6,919 systems that are currently filtered which will be affected by this rule. All 2,882 unfiltered surface water systems will incur some costs under this rule. However, systems that meet the specified requirements for avoiding filtration will not incur the costs associated with installing filtration.

Of the estimated 6,919 filtered surface water systems, EPA estimates that about 5,128 will incur total annualized costs of $113 million per year to upgrade their systems from their current level of performance to meet the new turbidity requirements. Were all of them in compliance with the existing (interim) national primary drinking water regulations at this time, the annualized cost to the nation would be only $95 million per year. However, EPA estimates that 1,409 systems are not. Thus, these systems will have to do more than those in compliance with the interim rule to meet the new requirements. For these deficient systems, the additional cost of meeting the new regulations is $18 million per year. The annualized cost of $95 million is considered to be the "incremental" cost of this rule because it is based on a comparison between the cost of complying with the new requirements and the cost of complying with the interim regulations (assuming 100 percent compliance). The annualized

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cost of $113 million is considered to be the "total" cost of today's rule because it takes into account the additional expense to be incurred by systems not presently complying with the interim regulations.

The same 6,919 filtered water systems will also be subject to the disinfection performance requirements. As discussed earlier, at the time of proposal, these costs were not believed to be significant and thus were not included in the estimates. It is now estimated that approximately 1,200 of these systems will have to upgrade their disinfection practices, at a cost of $27 million/year. EPA also has estimated compliance costs for systems using a ground water source under the direct influence of surface water. These systems will incur capital costs of $164 million and annualized costs of $11 million per year.

All systems subject to this rule, except those which are able to avoid filtration, will incur incremental annualized monitoring costs of $17 million. The total annualized monitoring cost of $18 million takes into account the additional expense to be incurred by systems not currently complying with the interim monitoring regulations. Monitoring costs for systems that meet the criteria for avoiding filtration were counted as costs of treatment for unfiltered systems. States will incur annualized implementation costs of $12 million.

The estimated costs of the proposed and final surface water treatment requirements are presented in Table VI–1.

TABLE VI–1.—PROJECTED COST OF THE PROPOSED AND FINAL SURFACE WATER TREATMENT REQUIREMENTS

Cost category	Costs under the proposed rule		Current estimate	
	Capital cost ($mil)	Annualized cost ($mil/yr.)	Capital cost ($mil)	Annualized cost ($mil/yr.)
Treatment Requirements				
Unfiltered Systems (installing or avoiding filtration)	1613	216	2308	337
Filtered Systems				
Turbidity Reduction				
Incremental	333	95	333	95
Total	NA	NA	403	113
Disinfection	0	0	258	27
Surface-influenced Ground Water Systems	0	0	164	11
Monitoring Requirements				
All Surface Systems Except Those Able to Avoid Filtration [1]	58	20	30	17
Incremental	NA	NA	30	18
Total	0	7	0	12
State Program Costs				
Cost of Rule				
Incremental	2004	338	3093	499
Total	NA	NA	3163	518

NA = not applicable.
[1] For the projected 16 percent of systems able to avoid filtration, the monitoring costs associated with meeting the criteria for avoiding filtration are included as costs of treatment for unfiltered systems.

B. Concepts of Cost Analysis

Capital, operating, and annualized costs for individual filtration and disinfection technologies appear in "Technologies and Costs for the Removal of Microbiological Contaminants from Potable Water Supplies" (USEPA, 1988b). The annualizing procedure used in that document is intended to reflect the actual financing cost that a typical water system might face in capital markets, i.e., it is an estimate of the "market" cost. However, the total annual cost estimate of $518 million discussed above (see Table VI–1) is intended to represent the total "social" cost to the nation for purposes of making benefit/cost comparisons. It is computed using a different discount rate. The discount rate used to assess "market" cost is ten percent. This is made up of three components: (1) A risk premium (reflecting the market's assessment of the risk of default); (2) an inflation premium (reflecting the market's expectations about the economy); and, (3) the true carrying cost of capital (the time value of money). The first two components are financial concepts while the third is both a financial and an economic concept. The "social" discount rate consists only of the third of these three components because the benefits to which costs are being compared are a risk-free, inflation-free economic concept. Three percent was selected for use in these analyses.

An analysis of costs based on the financing options a typical system might face in capital markets appears in Figure VI–1.

C. Costs of Compliance for Currently Unfiltered Surface Water Systems

EPA based its estimates of the number of community and non-community water systems that are currently unfiltered on a survey conducted by the Association of State Drinking Water Administrators (ASDWA, 1986). EPA estimated the total national cost of compliance for the 2,682 currently unfiltered systems using a straightforward procedure for forecasting likely compliance choices. Predicted compliance choices for the 2,667 systems which each serves fewer than 100,000 people, appear in Table VI–2.

TABLE VI–2.—PREDICTED COMPLIANCE CHOICES FOR UNFILTERED SYSTEMS

Number of systems	Projected action
457	Meet requirements for avoiding filtration.
899	Switch to an alternate water source (ground or purchased).
221	Install a package treatment plant.
58	Install conventional treatment.
89	Install direct filtration.
115	Install diatomaceous earth filtration.
990	Install slow sand filtration.
36	Install ultrafiltration.

EPA based the forecasts of compliance choices largely on the comparative costs of the different options. The Agency predicted that slow sand filtration, switching to an alternate source, and package treatment plants would be popular solutions due to the relatively low costs of these technologies compared to other technologies and the preponderance of small water systems among those affected (over 90 percent of currently unfiltered water systems serve fewer than 10,000 people).

It is important to note that a large proportion of total costs for currently unfiltered systems is attributable to a small group of fifteen unfiltered systems which each serves more than 100,000 people. These fifteen systems account for approximately 40 percent of the $518 million total annualized cost. However, these fifteen systems also serve approximately 16 million of the estimated 21.4 million people exposed to unfiltered surface water (75 percent).

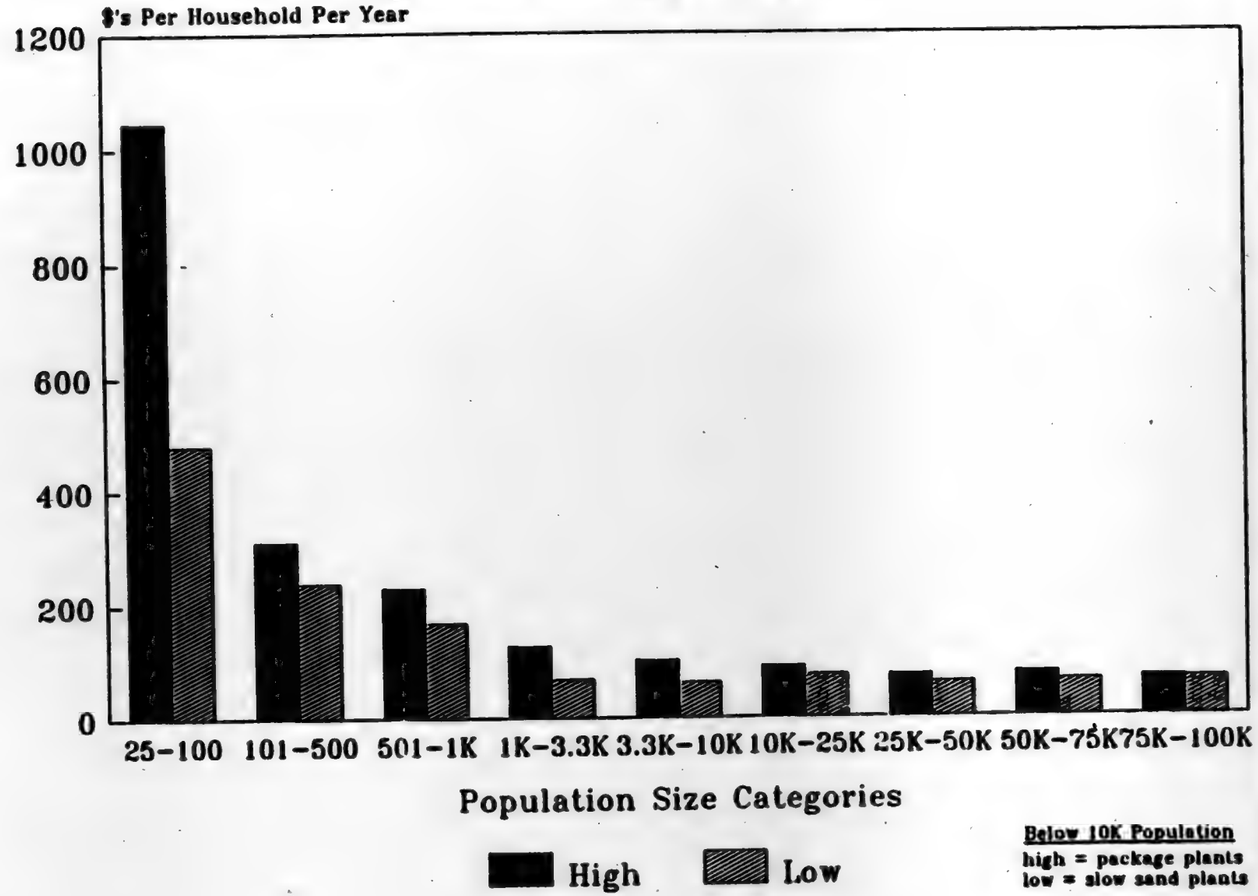
As discussed above, the cost estimates presented with the proposed rule did not include certain site-specific cost elements, such as land costs and costs of additional piping and pumping, due to the difficulty of assessing these site-specific factors. EPA believes these costs could increase the total cost of installing filtration on the order of $695 million, or $121 million per year on an annualized basis, over the original estimate.

Figure VI–1 illustrates the system level market costs of complying with the filtration requirement for system size categories serving fewer than 100,000 persons. The costs shown represent the approximate high and low extremes of the cost of installing filtration. For systems serving fewer than 10,000 people, EPA used slow sand filtration as the basis for the low-cost estimate and package treatment as the basis for the high-cost estimate. For systems serving between 10,000 and 100,000 people, EPA used direct filtration to represent the low-cost case and conventional treatment for the high-cost estimate. System level costs for installing filtration in the 15 large systems, i.e., the systems which serve more than 100,000 persons and not represented in Figure VI–1, were based on a case-by-case assessment of the actual types and sizes of filter plants that might be built in those cities. These costs ranged from $0.37 to $0.72 per thousand gallons of water produced.

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FIGURE VI-1

Cost of Installing Filtration in Systems Serving < 100,000



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D. Costs of Compliance for Currently Filtered Surface Water Systems

EPA estimated the total national cost of the turbidity performance requirements for filtered systems using a methodology which utilized survey data from a random sample of over 500 water systems, stratified by system size. The survey data provide a profile of the type of filtration technologies currently in place and their turbidity performance. A summary of the survey data is presented elsewhere (ASDWA, 1986).

EPA estimates that the average monthly turbidity in the water industry is currently 0.7 NTU. For the purposes of the Regulatory Impact Analysis, EPA assumed that the turbidity performance requirement in this final rule (less than 0.5 NTU, 95 percent of the time) for systems using rapid granular media filtration, i.e., direct filtration or conventional treatment (systems using diatomaceous earth or slow sand have less stringent turbidity performance requirements), is equivalent to a monthly average of about 0.3 NTU. From the survey data, EPA estimated that approximately 5,128 systems exceed this average. Of these, 1,409 are estimated to be in violation of the interim turbidity requirement, which is a monthly average of 1 NTU.

EPA further subdivided the systems which currently do not meet the turbidity performance requirements in the final rule by size and type of filtration process currently in place. A forecast of the likely compliance choices of systems in each subcategory was developed. The compliance choices evaluated include various combinations of the following:

- Hiring a consulting engineer to do a diagnostic analysis;
- Improving operation and maintenance practices;
- Adding rapid mix;
- Adding pH adjustment capability;
- Replacing filter media;
- Adding polymer;
- Adding alum or $FeCl_3$;
- Adding flocculation or contact chambers.

The system-level cost of each of the above compliance options is estimated elsewhere (USEPA, 1987c, 1988a). Average system-level costs based on various combinations of these options, are shown in Table VI–3. The total national capital cost, based on predicted compliance choices, is $403 million. The total annualized cost is $113 million.

TABLE VI–3.—COSTS OF UPGRADING TO MEET TURBIDITY PERFORMANCE REQUIREMENTS

System size (by population served)	Costs (¢/1,000 gallons)
25 to 100	78
101 to 500	32
501 to 1,000	27
1,001 to 3,300	15
3,301–10,000	7
10,001–25,000	3
25,001–50,000	2
>50,000	<2

These national cost estimates for compliance with the turbidity requirements may be on the high side because the turbidity performance profile which underlies the analysis is based on survey results which embody a certain amount of statistical error. The foremost concern is that the survey solicited data on monthly average turbidity. Under the interim turbidity requirement, it is conceivable that there are many water systems that are monitoring well enough to document they are below a 1 NTU monthly average, but not well enough to document lower levels with precision. Measurement in the 0.3 NTU range would require greater care. Thus, some of the systems believed to be above a monthly average of 0.3 NTU may require no more than better monitoring to demonstrate compliance.

On the basis of data developed in a survey conducted by the American Water Works Association (AWWA, 1987), EPA estimates that approximately 1,163 filtered surface water systems currently do not meet the disinfection performance requirements of this final rule and will have to undertake modifications to upgrade their disinfection practices.

To meet the inactivation levels specified in the final rule, systems are expected to choose from among several compliance options, including:

- Increasing the chlorine or ozone dose;
- Baffling clearwells;
- Relocating the point(s) of ammoniation/chlorination;
- Adding storage to increase disinfectant contact time;
- Applying ozone or chlorine dioxide as alternate disinfectants;
- Combinations of the above.

From this mix of compliance options, assumptions were made regarding the ones which will be selected by systems in different size categories, and the average cost of compliance estimated. The results are presented in Table VI–4.

TABLE VI–4.—COSTS OF UPGRADING TO MEET DISINFECTION PERFORMANCE REQUIREMENTS

System size (by population served)	Costs (¢/1,000 gallons)
25 to 100	61
101 to 500	22
501 to 1,000	10
1,001 to 3,300	5
3,301 to 10,000	4
10,001 to 25,000	3
25,001 to 50,000	2
50,001 to 100,000	2
>100,000	1

E. Benefits

In the November 3, 1987 proposal, EPA estimated there are between 212,000 and 470,000 cases of waterborne disease annually in the United States among persons served by surface water systems, as described below.

- First, EPA used data collected over a 15-year period by the Centers for Disease Control (CDC) on the number of reported outbreaks (106) and the number of cases of disease (34,436) to obtain an estimate of the average number of illnesses per outbreak (325).
- Second, to compensate for widespread underreporting in the number of outbreaks, the reported number above (106) was multiplied by a factor of four.
- Third, the adjusted number of outbreaks per year (424 divided by 15) was multiplied by the average number of cases per outbreak (325) to obtain an estimate of the number of cases of disease per year attributable to waterborne disease outbreaks. EPA considered this result (9,183 cases of illness) the "lower bound" estimate.
- Next, the "upper bound" estimate of cases of illness was calculated. To compensate for underreporting in the number of cases of illness in systems serving 100,000 or fewer people, it was assumed that half of the population exposed during an outbreak episode became ill. (This assumption replaced the estimate of 325 cases of illness per outbreak.) Using this approach, the number of cases of illness per year was estimated to be 50,740.
- In addition, for systems serving more than 100,000 people, it was assumed that there would be two outbreaks per year—one in a large filtered system, and one in a large unfiltered system. Assuming an average of 6,000 cases of illness per outbreak in large systems, based upon CDC data of recent record, EPA estimated that there would be 12,000 cases of illness per year

attributable to outbreaks in systems serving more than 100,000 people.

• Finally, the 50,740 and 12,000 cases, calculated above, were added together to obtain a total of 62,740 cases of illness, taking into account underreporting of the number of cases.

In addition to illnesses observed during an outbreak, there are waterborne illnesses occurring throughout the year, but not at sufficiently high rates to attract attention as an outbreak. These endemic illnesses were estimated using a different methodology, as follows:

• First, it was assumed that the rate of giardiasis in unfiltered systems was similar to that observed in townships adjacent to Luzerne County, Pennsylvania, (i.e., one percent) at the time a significant outbreak occurred in 1983. For populations served by unfiltered systems, it was assumed that the rate ranged from a maximum of one percent to a minimum of one-quarter of one percent. For filtered systems, it was assumed that the rates were half those of unfiltered systems.

• Next, EPA applied these rates to the population served by filtered and unfiltered systems to obtain an estimate of the upper and lower bounds of the number of endemic cases of illness per year (see Table VI-5).

TABLE VI-5.—BASELINE NUMBER OF ENDEMIC CASES PER YEAR AS ESTIMATED IN THE DRAFT REGULATORY IMPACT ANALYSIS (USEPA, 1987c)

Endemic analysis	Assumed endemic rate		Population exposed	Lower bound endemic cases/yr	Upper bound endemic cases/yr
	Lower bound	Upper bound			
Unfiltered systems:					
Large systems (>100,000)	0.0025	0.005	16,000,000	40,000	80,000
Small systems (<100,000)	0.005	0.01	5,649,353	28,247	56,494
Total, unfiltered			21,649,353	68,247	136,494
Filtered systems:					
Large systems (>100,000)	0.00125	0.0025	34,268,580	42,861	85,721
Small systems (<100,000)	0.0025	0.005	36,764,700	91,912	183,824
Total, filtered			71,053,280	134,773	269,545
Total, filtered and unfiltered			92,702,633	203,020	406,039

• Finally, the lower bound estimates of cases of illness from outbreaks (9,183) and endemic illnesses (203,020) were added together to obtain the lower end of the range of illnesses (212,203). Doing the same for the upper bound estimates (62,740 + 406,039) resulted in an estimate of 468,779 total cases of waterborne illness.

Based on information submitted by several commenters, new data on the occurrence of *Giardia*, and a revised methodology for the estimation of the number of endemic cases of illness, these estimates have been substantially revised. EPA now estimates that currently there are approximately 89,000 cases of waterborne disease annually in systems using surface water. This figure was derived as follows:

• Using data on occurrence of *Giardia* in source water from Rose (1988) and estimates of treatment efficiences, EPA estimated the present exposure to *Giardia* of people served by filtered and unfiltered systems in different size categories.

• Next, these data were applied to a dose-response model (Rose, 1988) to determine the daily individual risk of disease associated with the above exposure.

• The daily individual risk was then converted to an annual risk and applied to the population served to estimate the number of cases of endemic illness per year from giardiasis in the absence of the treatment requirements of this rule.

• Then, based on an analysis of the relative rates of all waterborne disease, this value was adjusted upwards by 85 percent to take into account diseases other than giardiasis.

• Finally, the number of cases of disease which will be avoided by compliance with the rule was estimated based on the increase in removal and/or inactivation of pathogenic microorganisms expected from implementation of today's requirements.

Using this methodology, EPA estimated that this final rule will prevent 79,854 endemic cases of disease per year. In addition, 9,294 outbreak cases will be avoided as a result of compliance with this rule. This number was estimated using the same methodology employed in the draft Regulatory Impact Analysis (USEPA, 1987c) but is slightly higher (9,294 versus 9,183 for the lower bound estimate) because of revisions to the data base since the rule was proposed.

The total number of cases avoided per year, 89,148, represents EPA's best point estimate, or best single value, of the benefits of the rule. The Agency also calculated an upper and lower bound, based on the 95 percent confidence interval around the dose-response curve. By this method, the number of endemic cases could be as high as 149,181, or as low as 36,980. Thus, the total cases avoided per year could range from 46,274 to 158,475. In addition, EPA believes that many more cases than the number given may be avoided by implementation of this rule because the number of cases per outbreak is understated (it was not adjusted, as was done for underreporting in the number of outbreaks). By one account, the underreporting in cases per outbreak could be on the order of twenty-five times the actual levels reported (Hauschild, A.F. and Bryan, F., 1980).

EPA also examined the net benefits of installing filtration at the individual water system level. Net benefits were analyzed for systems of various sizes by estimating the annual expected value of economic damages resulting from various levels of endemic and outbreak disease incidence in communities of various sizes and subtracting the annual cost of installing filtration.

It is important to note that it is difficult to estimate the value of the benefits associated with reducing the endemic and outbreak incidence of waterborne disease, because there are many benefits which cannot be quantified. As described at length previously (USEPA, 1987c), EPA's analysis is structured upon hypothetical

assumptions which have been developed on the basis of the insights gained in two documented case studies: A 1981 outbreak of viral gastroenteritis in Eagle-Vail, Colorado (Hopkins, 1986), and a 1983 outbreak of giardiasis in Luzerne County, Pennsylvania (Harrington, 1985). The damage functions derived from these studies consist primarily of two types of costs: (1) Direct costs of medical treatment and the value of lost work, and (2) costs incurred due to "averting behavior" such as boiling water or purchasing bottled water undertaken in the event of an outbreak. While it is difficult to generalize from the results of case studies, it is currently the best means of estimating damages.

Another shortcoming with the net benefits analysis at the time of proposal, and perhaps the biggest one, is the degree of uncertainty in the assumptions made regarding both the endemic and outbreak incidence of waterborne disease. It was estimated (Craun, 1987) that the annual probability of outbreak incidence in unfiltered surface water systems—averaging all such systems together—is roughly once in every one hundred years. Data with which to assess the endemic level of waterborne disease (the sub-outbreak, baseline level of disease) were not available at the time of the November 1987 proposal. Therefore, the net benefits analysis was conducted in a manner intended to show what assumptions regarding the endemic level of disease would have to hold true in order to produce net benefits near the margin (i.e., the point where net benefits approach zero), indicating that filtration is a breakeven or better proposition.

In the draft Regulatory Impact Analysis (USEPA, 1987c), an assumption of an endemic level of disease of 0.5 percent of the exposed population was required to produce marginally positive or marginally negative net benefits in the fifteen unfiltered systems serving more than 100,000 persons, assuming a one percent annual probability of an outbreak (once every 100 years). An endemic level assumption of 1.0 percent was required to produce marginally positive or marginally negative net benefits in systems serving between 1,000 and 100,000 persons. It was not possible to produce positive net benefit estimates near the margin for systems serving fewer than 1,000 persons. (Endemic level assumptions significantly above 1.0 percent were required; such levels would probably begin to become associated with epidemic, rather than endemic, incidence.)

The breakeven assumptions regarding the probability of outbreak and the endemic level of waterborne disease were the subject of extensive comments on the proposed rule.

Several large systems stated that the probability of outbreak, computed by averaging all unfiltered systems together, yields an estimate which overstates the risk of outbreak in large systems that have diligent watershed management and disinfection programs. It has been contended that such systems can reduce the risk of outbreak to a level comparable to that achieved by filtered systems (the reported outbreak risk in filtered systems is 1/750 years according to Craun, 1987). This perception of outbreak risk in large systems is consistent with the rationale for providing criteria to avoid filtration for such systems in the proposed rule. On the other hand, two systems among the fifteen unfiltered surface systems serving more than 100,000 persons have experienced outbreaks since 1982, suggesting there may be some large systems for which the probability of an outbreak is greater than 1/750.

Many commenters expressed the view that the endemic levels of waterborne disease assumed in the net benefits analysis (5×10^{-3} for systems >100,000; 1×10^{-2} for systems <100,000) are much higher than the levels actually occurring.

As explained earlier, since publication of the proposed rule, new information has become available which has made it possible to assess the validity of the endemic level assumptions using a toxicological, or dose/response, approach to estimation. The average concentration of *Giardia* cysts in water sources with "pristine," or protected, watersheds has been estimated to be 9×10^{-3} cysts per liter (Rose, 1988). An EPA study (USEPA, 1988a) of disinfection practices at unfiltered systems shows that systems are currently achieving an average of 1.34 logs of inactivation. Thus, the implied average dose to consumers is 4×10^{-4} cysts/liter. A recently developed dose/response function (Rose, 1988) indicates that this exposure results in a daily risk of 1.65×10^{-5} and is equivalent to an annual endemic rate of 3×10^{-3}. This estimated average endemic level is relatively close to the range of 5×10^{-3} to 1×10^{-2} originally assumed to be the endemic level in the net benefits analysis at the time of proposal, lending support to the validity of the assumption.

The above risk assessment indicates that unfiltered systems achieving average levels of inactivation may be facing greater risk of outbreak and incurring higher levels of endemic disease than may be evident from the number of cases reported. It should be noted however that, since this estimate is based on average influent levels and average inactivation rates, actual levels will vary. Systems achieving higher inactivation rates are probably correct in their assessment that they are not experiencing endemic levels on the order of 10^{-3} or 10^{-2}. On the other hand, by definition, there also is variation on the other side of the average estimate, indicating that there may be systems which are experiencing endemic levels higher than 3×10^{-3}. In addition, it must be kept in mind that *Giardia* is not the only pathogen that contributes to the overall endemic incidence of waterborne disease. Data reported to the Centers for Disease Control indicate there are 0.85 cases of other types of waterborne disease for every case of giardiasis. Thus, while it is true that some systems are not experiencing the levels of outbreak risk and endemic incidence that are associated with breakeven benefit/cost economics, it is also clear that there are other water systems which may fall within the range of the breakeven assumptions. Most importantly, there may be many water systems in which it is not possible to make a definitive assessment of the risk.

If the *Giardia* occurrence data presently available to EPA is representative of unfiltered systems, the treatment requirements will, by requiring a minimum of 3-log removal and/or inactivation of *Giardia*, reduce the maximum daily risk—the risk on days of peak occurrence—to 4.56×10^{-5}; the average daily risk to 3.6×10^{-7}; and the average annual endemic level to 6.57×10^{-5}. These levels provide virtually complete assurance against outbreaks caused by *Giardia* cysts, as well as most other pathogens, and assure negligible levels of endemic incidence. A significant additional benefit of the treatment requirements, therefore, is the confidence derived from knowing they factor in an adequate margin of safety.

As stated earlier, the estimated cost of this rule is approximately 50 percent greater than that estimated at the time of proposal. When combined with substantially fewer cases of illness avoided, the net benefits for systems in different size categories necessarily become less advantageous than previously estimated. But the way to best generalize about the effect on public water systems is not unequivocal. On the one hand, an analysis focusing on the typical system in each size category and using EPA's best estimate

of the benefits (Exhibit 5-10 of the Regulatory Impact Analysis) leads to the conclusion that household net benefits may be negative for currently unfiltered systems required to install filtration, possibly as much as $262 per household per year (in systems serving fewer than 100 people). However, this interpretation is not entirely valid because this result applies to the typical system in each of these size categories, not to all systems. Moreover, the benefit analysis did not include all business benefits; benefits accruing from the avoidance of pain and suffering; and benefits from reduced anxiety over the safety of the water. Since EPA's calculation is only a partial measure of benefits it is reasonable to conclude that actual net benefits in all size categories may be greater. In addition, small systems unable to meet the criteria to avoid filtration would probably investigate less expensive options than filtration, such as conversion to ground water or connection to a larger regional water system, which will increase the net benefits. Under SDWA, exemptions are also available. Under this provision, a system might use interim alternatives such as bottled water and point-of-use devices, with State approval, thereby incurring lower compliance costs (at least temporarily), and thus experience concomitant higher net benefits. In the case of systems which do not serve more than 500 service connections and which need financial assistance for the necessary improvements, the SDWA permits the exemption to be renewed for one or more additional two-year periods if the system establishes that it is taking all practical steps and there is no unreasonable risk to health, thereby further reducing cost impacts.

Another way of evaluating the benefits of these requirements is to consider the percent of the population experiencing positive and negative net benefits. This is presented in Table VI-6. For the estimate of outbreak probability most in keeping with available data (once in one hundred years), systems serving approximately 90 percent of the population will achieve positive net benefits, predominantly because currently filtered systems will incur small costs to comply with the rule. In most of the remaining systems, customers will generally pay only up to about $20 more than the value of the benefits quantified. Less than one percent of the affected population is expected to incur household net benefits of minus $40 or more, and these would only occur in systems serving fewer than 1,000 people. And these percentages would be even lower if all of the benefits had been captured in the analysis, and alternatives to filtration considered.

TABLE VI-6.—PERCENT OF AFFECTED POPULATION INCURRING VARYING LEVELS OF POSITIVE AND NEGATIVE NET HOUSEHOLD BENEFITS WHERE THE PROBABILITY OF AN OUTBREAK IS 1/100 YEARS

Net household benefits ($/HH/Yr)	Approximate percent of the affected population
Greater than 0	90
−20 to 0	8
−40 to −20	1
Less than −40	<1

VII. Other Requirements

A. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 602 *et seq.*, requires EPA to explicitly consider the effect of proposed regulations on small entities. If there is a significant effect on a substantial number of small systems, the Agency must seek means to minimize the effects. EPA has concluded that this final rule will not have a significant effect on a substantial number of small entities, for purposes of the Regulatory Flexibility Act.

The Small Business Administration defines a "small water utility" as one which serves fewer than 50,000 people. There are about 199,000 public water systems using surface and ground water supplies which are considered small systems under this definition. Of those, about 11,000 systems are expected to incur total annualized costs of $333 to $439 million per year to comply with the rule. Compared to total operating expenses of $14.7 billion per year for this group, the cost of compliance amounts to an increase of 2.3 percent to 3.0 percent over current operating costs. EPA believes that an increase of this magnitude is not a substantial economic impact within the meaning of the Regulatory Flexibility Act. However, EPA recognizes that today's action could have a substantial effect on some small systems. Therefore, the Agency has attempted to provide less burdensome alternatives to achieve the rule's goals for small systems wherever possible. To illustrate:

- With respect to monitoring of the disinfectant residual at the entry point to the distribution system, systems serving fewer than 3,300 people may take grab samples in lieu of using continuous-monitoring equipment;
- With respect to disinfectant residuals in the distribution system, systems which are unable to maintain such residuals will still be considered in compliance if the State determines that it is not feasible for that system to monitor for HPC, and that disinfection is adequate, based on a review of site-specific considerations (e.g., source water quality, past coliform monitoring results);
- With respect to the turbidity monitoring, for filtered systems serving fewer than 500 people, the State may reduce the number of samples to one per day if it finds that the historical performance and operation of the system indicates effective particle removal under the conditions expected to occur in that system.

In addition, many of the provisions of this rule allow the State to modify the stated requirements in appropriate cases, regardless of system size. Although not specifically aimed at reducing the burden on small systems, these systems may avail themselves of such flexibility in the same manner as their larger counterparts.

B. Paperwork Reduction Act

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The information collection requirements are not effective until OMB approves them and a technical amendment to that effect is published in the **Federal Register.**

The public reporting burden on public water systems for this collection of information is estimated to average 0.1 hours per response (i.e., sample taken, or report submitted to the State or EPA), including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

C. National Drinking Water Advisory Council and Science Advisory Board

In accordance with section 1412 (d) and (e) of the Safe Drinking Water Act, EPA consulted with the Secretary and the National Drinking Water Advisory Council and requested comments from the Science Advisory Board in the course of developing these MCLGs and NPDWRs.

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List of Subjects in 40 CFR Parts 141 and 142

Chemicals, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Water supply, Administrative practice and procedure.

Dated: June 19, 1989.

William K. Reilly,
Administrator.

For the reasons set forth in the preamble, Title 40 of the Code of Federal Regulations is amended as follows:

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

1. The authority for Part 141 is revised to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, and 300j–9.

2. In § 141.2, the following definitions are added and arranged alphabetically to read as follows:

§ 141.2 Definitions.

* * * * *

"Coagulation" means a process using coagulant chemicals and mixing by which colloidal and suspended materials are destabilized and agglomerated into flocs.

"Conventional filtration treatment" means a series of processes including coagulation, flocculation, sedimentation, and filtration resulting in substantial particulate removal.

* * * * *

"CT" or "CTcalc" is the product of "residual disinfectant concentration" (C) in mg/l determined before or at the first customer, and the corresponding "disinfectant contact time" (T) in minutes, i.e., "C" x "T". If a public water system applies disinfectants at more than one point prior to the first customer, it must determine the CT of each disinfectant sequence before or at the first customer to determine the total percent inactivation or "total inactivation ratio." In determining the total inactivation ratio, the public water system must determine the residual disinfectant concentration of each disinfection sequence and corresponding contact time before any subsequent disinfection application point(s). "$CT_{99.9}$" is the CT value required for 99.9 percent (3-log) inactivation of *Giardia lamblia* cysts. $CT_{99.9}$ for a variety of disinfectants and conditions appear in Tables 1.1–1.6, 2.1, and 3.1 of § 141.74(b)(3).

$$\frac{\text{CTcalc}}{\text{CT}_{99.9}}$$

is the inactivation ratio. The sum of the inactivation ratios, or total inactivation ratio shown as

$$\sum \frac{\text{(CTcalc)}}{\text{(CT}_{99.9}\text{)}}$$

is calculated by adding together the inactivation ratio for each disinfection sequence. A total inactivation ratio equal to or greater than 1.0 is assumed to provide a 3-log inactivation of *Giardia lamblia* cysts.

"Diatomaceous earth filtration" means a process resulting in substantial particulate removal in which (1) a precoat cake of diatomaceous earth filter media is deposited on a support membrance (septum), and (2) while the water is filtered by passing through the cake on the septum, additional filter media known as body feed is continuously added to the feed water to maintain the permeability of the filter cake.

"Direct filtration" means a series of processes including coagulation and filtration but excluding sedimentation resulting in substantial particulate removal.

* * * * *

"Disinfectant contact time" ("T" in CT calculations) means the time in minutes that it takes for water to move from the point of disinfectant application or the previous point of disinfectant residual measurement to a point before or at the point where residual disinfectant concentration ("C") is measured. Where only one "C" is measured, "T" is the time in minutes that it takes for water to move from the point of disinfectant application to a point before or at where residual disinfectant concentration ("C") is measured. Where more than one "C" is measured, "T" is (a) for the first measurement of "C", the time in minutes that it takes for water to move from the first or only point of disinfectant application to a point before or at the point where the first "C" is measured and (b) for subsequent measurements of "C", the time in minutes that it takes for water to move from the previous "C" measurement point to the "C" measurement point for which the particular "T" is being calculated. Disinfectant contact time in pipelines must be calculated based on "plug flow" by dividing the internal volume of the pipe by the maximum hourly flow rate through that pipe. Disinfectant contact time within mixing basins and storage reservoirs must be determined by tracer studies or an equivalent demonstration.

"Disinfection" means a process which inactivates pathogenic organisms in water by chemical oxidants or equivalent agents.

* * * * *

"Filtration" means a process for removing particulate matter from water by passage through porous media.

"Flocculation" means a process to enhance agglomeration or collection of smaller floc particles into larger, more easily settleable particles through gentle stirring by hydraulic or mechanical means.

"Ground water under the direct influence of surface water" means any water beneath the surface of the ground with (1) significant occurrence of insects or other macroorganisms, algae, or large-diameter pathogens such as *Giardia lamblia*, or (2) significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions. Direct influence must be determined for individual sources in accordance with criteria established by the State. The State determination of direct influence may be based on site-specific measurements of water quality and/or documentation of well construction characteristics and geology with field evaluation.

* * * * *

"*Legionella*" means a genus of bacteria, some species of which have caused a type of pneumonia called Legionnaires Disease.

"Point of disinfectant application" is the point where the disinfectant is applied and water downstream of that point is not subject to recontamination by surface water runoff.

"Residual disinfectant concentration" ("C" in CT calculations) means the concentration of disinfectant measured in mg/l in a representative sample of water.

* * * * *

"Sedimentation" means a process for removal of solids before filtration by gravity or separation.

"Slow sand filtration" means a process involving passage of raw water through a bed of sand at low velocity (generally less than 0.4 m/h) resulting in substantial particulate removal by physical and biological mechanisms.

* * * * *

"Surface water" means all water which is open to the atmosphere and subject to surface runoff.

* * * * *

"Waterborne disease outbreak" means the significant occurrence of acute infectious illness, epidemiologically associated with the ingestion of water from a public water system which is deficient in treatment, as determined by the appropriate local or State agency.

"Virus" means a virus of fecal origin which is infectious to humans by waterborne transmission.

3. Section 141.13 is amended by adding introductory text to read as follows:

§ 141.13 Maximum contaminant levels for turbidity.

The requirements in this section apply to unfiltered systems until December 30, 1991, unless the State has determined prior to that date, in writing pursuant to § 1412(b)(7)(C)(iii), that filtration is required. The requirements in this section apply to filtered systems until June 29, 1993. The requirements in this section apply to unfiltered systems that the State has determined, in writing pursuant to § 1412(b)(7)(C)(iii), must install filtration, until June 29, 1993, or until filtration is installed, whichever is later.

* * * * *

4. Section 141.22 is amended by adding introductory text to read as follows:

§ 141.22 Turbidity sampling and analytical requirements.

The requirements in this section apply to unfiltered systems until December 30,1991, unless the State has determined prior to that date, in writing pursuant to section 1412(b)(7)(iii), that filtration is required. The requirements in this section apply to filtered systems until June 29, 1993. The requirements in this section apply to unfiltered systems that the State has determined, in writing pursuant to section 1412(b)(7)(C)(iii), must install filtration, until June 29, 1993, or until filtration is installed, whichever is later.

* * * * *

5. Section 141.32 is amended by adding new paragraphs (a)(1)(iii)(D) and (e)(10) to read as follows:

§ 141.32 Public notification.

* * * * *

(a) * * *
(1) * * *
(iii) * * *

(D) Occurrence of a waterborne disease outbreak, as defined in § 141.2, in an unfiltered system subject to the requirements of Subpart H of this part, after December 30, 1991 (see § 141.71(b)(4)).

* * * * *

(e) * * *

(10) *Microbiological contaminants* (for use when there is a violation of the treatment technique requirements for filtration and disinfection in Subpart H of this part). The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that the presence of microbiological contaminants are a health concern at certain levels of exposure. If water is inadequately treated, microbiological contaminants in that water may cause disease. Disease symptoms may include diarrhea, cramps, nausea, and possibly jaundice, and any associated headaches and fatigue. These symptoms, however, are not just associated with disease-causing organisms in drinking water, but also may be caused by a number of factors other than your drinking water. EPA has set enforceable requirements for treating drinking water to reduce the risk of these adverse health effects. Treatment such as filtering and disinfecting the water removes or destroys microbiological contaminants. Drinking water which is treated to meet EPA requirements is associated with little to none of this risk and should be considered safe.

6. In Part 141, a new § 141.52 is added to read as follows:

§ 141.52 Maximum contaminant level goals for microbiological contaminants.

MCLGs for the following contaminants are as indicated:

Contaminant	MCLG
(1) *Giardia lamblia*	zero
(2) Viruses	zero
(3) *Legionella*	zero

7. A new Subpart H is added to read as follows:

Subpart H—Filtration and Disinfection

Sec.

141.70 General requirements.
141.71 Criteria for avoiding filtration.
141.72 Disinfection.
141.73 Filtration.
141.74 Analytical and monitoring requirements.
141.75 Reporting and recordkeeping requirements.

Subpart H—Filtration and Disinfection

§ 141.70 General requirements.

(a) The requirements of this Subpart H constitute national primary drinking water regulations. These regulations establish criteria under which filtration is required as a treatment technique for public water systems supplied by a surface water source and public water systems supplied by a ground water source under the direct influence of surface water. In addition, these regulations establish treatment technique requirements in lieu of maximum contaminant levels for the following contaminants: *Giardia lamblia*, viruses, heterotrophic plate count bacteria, *Legionella*, and turbidity. Each public water system with a surface water source or a ground water source under the direct influence of surface water must provide treatment of that source water that complies with these treatment technique requirements. The treatment technique requirements consist of installing and properly operating water treatment processes which reliably achieve:

(1) At least 99.9 percent (3-log) removal and/or inactivation of *Giardia lamblia* cysts between a point where the raw water is not subject to recontamination by surface water runoff and a point downstream before or at the first customer; and

(2) At least 99.99 percent (4-log) removal and/or inactivation of viruses between a point where the raw water is not subject to recontamination by surface water runoff and a point downstream before or at the first customer.

(b) A public water system using a surface water source or a ground water source under the direct influence of surface water is considered to be in compliance with the requirements of paragraph (a) of this section if:

(1) It meets the requirements for avoiding filtration in § 141.71 and the disinfection requirements in § 141.72(a); or

(2) It meets the filtration requirements in § 141.73 and the disinfection requirements in § 141.72(b).

(c) Each public water system using a surface water source or a ground water source under the direct influence of surface water must be operated by qualified personnel who meet the requirements specified by the State.

§ 141.71 Criteria for avoiding filtration.

A public water system that uses a surface water source must meet all of the conditions of paragraphs (a) and (b) of this section, and is subject to

paragraph (c) of this section, beginning December 30, 1991, unless the State has determined, in writing pursuant to § 1412(b)(7)(C)(iii), that filtration is required. A public water system that uses a ground water source under the direct influence of surface water must meet all of the conditions of paragraphs (a) and (b) of this section and is subject to paragraph (c) of this section, beginning 18 months after the State determines that it is under the direct influence of surface water, or December 30, 1991, whichever is later, unless the State has determined, in writing pursuant to § 1412(b)(7)(C)(iii), that filtration is required. If the State determines in writing pursuant to § 1412(b)(7)(C)(iii) before December 30, 1991, that filtration is required, the system must have installed filtration and meet the criteria for filtered systems specified in §§ 141.72(b) and 141.73 by June 29, 1993. Within 18 months of the failure of a system using surface water or a ground water source under the direct influence of surface water to meet any one of the requirements of paragraphs (a) and (b) of this section or after June 29, 1993, whichever is later, the system must have installed filtration and meet the criteria for filtered systems specified in §§ 141.72(b) and 141.73.

(a) *Source water quality conditions.* (1) The fecal coliform concentration must be equal to or less than 20/100 ml, or the total coliform concentration must be equal to or less than 100/100 ml (measured as specified in § 141.74 (a)(1) and (2) and (b)(1)), in representative samples of the source water immediately prior to the first or only point of disinfectant application in at least 90 percent of the measurements made for the 6 previous months that the system served water to the public on an ongoing basis. If a system measures both fecal and total coliforms, the fecal coliform criterion, but not the total coliform criterion, in this paragraph must be met.

(2) The turbidity level cannot exceed 5 NTU (measured as specified in § 141.74 (a)(4) and (b)(2)) in representative samples of the source water immediately prior to the first or only point of disinfectant application unless: (i) the State determines that any such event was caused by circumstances that were unusual and unpredictable; and (ii) as a result of any such event, there have not been more than two events in the past 12 months the system served water to the public, or more than five events in the past 120 months the system served water to the public, in which the turbidity level exceeded 5 NTU. An "event" is a series of consecutive days during which at least one turbidity measurement each day exceeds 5 NTU.

(b) *Site-specific conditions.* (1)(i) The public water system must meet the requirements of § 141.72(a)(1) at least 11 of the 12 previous months that the system served water to the public, on an ongoing basis, unless the system fails to meet the requirements during 2 of the 12 previous months that the system served water to the public, and the State determines that at least one of these failures was caused by circumstances that were unusual and unpredictable.

(ii) The public water system must meet the requirements of § 141.72(a)(2) at all times the system serves water to the public.

(iii) The public water system must meet the requirements of § 141.72(a)(3) at all times the system serves water to the public unless the State determines that any such failure was caused by circumstances that were unusual and unpredictable.

(iv) The public water system must meet the requirements of § 141.72(a)(4) on an ongoing basis unless the State determines that failure to meet these requirements was not caused by a deficiency in treatment of the source water.

(2) The public water system must maintain a watershed control program which minimizes the potential for contamination by *Giardia lamblia* cysts and viruses in the source water. The State must determine whether the watershed control program is adequate to meet this goal. The adequacy of a program to limit potential contamination by *Giardia lamblia* cysts and viruses must be based on: the comprehensiveness of the watershed review; the effectiveness of the system's program to monitor and control detrimental activities occurring in the watershed; and the extent to which the water system has maximized land ownership and/or controlled land use within the watershed. At a minimum, the watershed control program must:

(i) Characterize the watershed hydrology and land ownership;

(ii) Identify watershed characteristics and activities which may have an adverse effect on source water quality; and

(iii) Monitor the occurrence of activities which may have an adverse effect on source water quality.

The public water system must demonstrate through ownership and/or written agreements with landowners within the watershed that it can control all human activities which may have an adverse impact on the microbiological quality of the source water. The public water system must submit an annual report to the State that identifies any special concerns about the watershed and how they are being handled; describes activities in the watershed that affect water quality; and projects what adverse activities are expected to occur in the future and describes how the public water system expects to address them. For systems using a ground water source under the direct influence of surface water, an approved wellhead protection program developed under section 1428 of the Safe Drinking Water Act may be used, if the State deems it appropriate, to meet these requirements.

(3) The public water system must be subject to an annual on-site inspection to assess the watershed control program and disinfection treatment process. Either the State or a party approved by the State must conduct the on-site inspection. The inspection must be conducted by competent individuals such as sanitary and civil engineers, sanitarians, or technicians who have experience and knowledge about the operation and maintenance of a public water system, and who have a sound understanding of public health principles and waterborne diseases. A report of the on-site inspection summarizing all findings must be prepared every year. The on-site inspection must indicate to the State's satisfaction that the watershed control program and disinfection treatment process are adequately designed and maintained. The on-site inspection must include:

(i) A review of the effectiveness of the watershed control program;

(ii) A review of the physical condition of the source intake and how well it is protected;

(iii) A review of the system's equipment maintenance program to ensure there is low probability for failure of the disinfection process;

(iv) An inspection of the disinfection equipment for physical deterioration;

(v) A review of operating procedures;

(vi) A review of data records to ensure that all required tests are being conducted and recorded and disinfection is effectively practiced; and

(vii) Identification of any improvements which are needed in the equipment, system maintenance and operation, or data collection.

(4) The public water system must not have been identified as a source of a waterborne disease outbreak, or if it has been so identified, the system must have been modified sufficiently to prevent another such occurrence, as determined by the State.

(5) The public water system must comply with the maximum contaminant level (MCL) for total coliforms in § 141.63 at least 11 months of the 12 previous months that the system served water to the public, on an ongoing basis, unless the State determines that failure to meet this requirement was not caused by a deficiency in treatment of the source water.

(6) The public water system must comply with the requirements for trihalomethanes in §§ 141.12 and 141.30.

(c) *Treatment technique violations.* (1) A system that (i) fails to meet any one of the criteria in paragraphs (a) and (b) of this section and/or which the State has determined that filtration is required, in writing pursuant to § 1412(b)(7)(C)(iii), and (ii) fails to install filtration by the date specified in the introductory paragraph of this section is in violation of a treatment technique requirement.

(2) A system that has not installed filtration is in violation of a treatment technique requirement if:

(i) The turbidity level (measured as specified in § 141.74(a)(4) and (b)(2)) in a representative sample of the source water immediately prior to the first or only point of disinfection application exceeds 5 NTU; or

(ii) The system is identified as a source of a waterborne disease outbreak.

§ 141.72 Disinfection.

A public water system that uses a surface water source and does not provide filtration treatment must provide the disinfection treatment specified in paragraph (a) of this section beginning December 30, 1991, unless the State determines that filtration is required in writing pursuant to § 1412 (b)(7)(C)(iii). A public water system that uses a ground water source under the direct influence of surface water and does not provide filtration treatment must provide disinfection treatment specified in paragraph (a) of this section beginning December 30, 1991, or 18 months after the State determines that the ground water source is under the influence of surface water, whichever is later, unless the State has determined that filtration is required in writing pursuant to § 1412(b)(7)(C)(iii). If the State has determined that filtration is required, the system must comply with any interim disinfection requirements the State deems necessary before filtration is installed. A system that uses a surface water source that provides filtration treatment must provide the disinfection treatment specified in paragraph (b) of this section beginnng June 29, 1993, or beginning when filtration is installed, whichever is later. A system that uses a ground water source under the direct influence of surface water and provides filtration treatment must provide disinfection treatment as specified in paragraph (b) of this section by June 29, 1993, or beginning when filtration is installed, whichever is later. Failure to meet any requirement of this section after the applicable date specified in this introductory paragraph is a treatment technique violation.

(a) *Disinfection requirements for public water systems that do not provide filtration.* Each public water system that does not provide filtration treatment must provide disinfection treatment as follows:

(1) The disinfection treatment must be sufficient to ensure at least 99.9 percent (3-log) inactivation of *Giardia lamblia* cysts and 99.99 percent (4-log) inactivation of viruses, every day the system serves water to the public, except any one day each month. Each day a system serves water to the public, the public water system must calculate the CT value(s) from the system's treatment parameters, using the procedure specified in § 141.74(b)(3), and determine whether this value(s) is sufficient to achieve the specified inactivation rates for *Giardia lamblia* cysts and viruses. If a system uses a disinfectant other than chlorine, the system may demonstrate to the State, through the use of a State-approved protocol for on-site disinfection challenge studies or other information satisfactory to the State, that $CT_{99.9}$ values other than those specified in Tables 2.1 and 3.1 in § 141.74(b)(3) or other operational parameters are adequate to demonstrate that the system is achieving minimum inactivation rates required by paragraph (a)(1) of this section.

(2) The disinfection system must have either (i) redundant components, including an auxiliary power supply with automatic start-up and alarm to ensure that disinfectant application is maintained continuously while water is being delivered to the distribution system, or (ii) automatic shut-off of delivery of water to the distribution system whenever there is less than 0.2 mg/l of residual disinfectant concentration in the water. If the State determines that automatic shut-off would cause unreasonable risk to health or interfere with fire protection, the system must comply with paragraph (a)(2)(i) of this section.

(3) The residual disinfectant concentration in the water entering the distribution system, measured as specified in § 141.74(a)(5) and (b)(5), cannot be less than 0.2 mg/l for more than 4 hours.

(4)(i) The residual disinfectant concentration in the distribution system, measured as total chlorine, combined chlorine, or chlorine dioxide, as specified in § 141.74(a)(5) and (b)(6), cannot be undetectable in more than 5 percent of the samples each month, for any two consecutive months that the system serves water to the public. Water in the distribution system with a heterotrophic bacteria concentration less than or equal to 500/ml, measured as heterotrophic plate count (HPC) as specified in § 141.74(a)(3), is deemed to have a detectable disinfectant residual for purposes of determining compliance with this requirement. Thus, the value "V" in the following formula cannot exceed 5 percent in one month, for any two consecutive months.

$$V = \frac{c+d+e}{a+b} \times 100$$

where:

a = number of instances where the residual disinfectant concentration is measured;

b = number of instances where the residual disinfectant concentration is not measured but heterotrophic bacteria plate count (HPC) is measured;

c = number of instances where the residual disinfectant concentration is measured but not detected and no HPC is measured;

d = number of instances where the residual disinfectant concentration is measured but not detected and where the HPC is >500/ml; and

e = number of instances where the residual disinfectant concentration is not measured and HPC is >500/ml.

(ii) If the State determines, based on site-specific considerations, that a system has no means for having a sample transported and analyzed for HPC by a certified laboratory under the requisite time and temperature conditions specified by § 141.74(a)(3) and that the system is providing adequate disinfection in the distribution system, the requirements of paragraph (a)(4)(i) of this section do not apply to that system.

(b) *Disinfection requirements for public water systems which provide filtration.* Each public water system that provides filtration treatment must provide disinfection treatment as follows.

(1) The disinfection treatment must be sufficient to ensure that the total treatment processes of that system achieve at least 99.9 percent (3-log) inactivation and/or removal of *Giardia lamblia* cysts and at least 99.99 percent

(4-log) inactivation and/or removal of viruses, as determined by the State.

(2) The residual disinfectant concentration in the water entering the distribution system, measured as specified in § 141.74 (a)(5) and (c)(2), cannot be less than 0.2 mg/l for more than 4 hours.

(3)(i) The residual disinfectant concentration in the distribution system, measured as total chlorine, combined chlorine, or chlorine dioxide, as specified in § 141.74 (a)(5) and (c)(3), cannot be undetectable in more than 5 percent of the samples each month, for any two consecutive months that the system serves water to the public. Water in the distribution system with a heterotrophic bacteria concentration less than or equal to 500/ml, measured as heterotrophic plate count (HPC) as specified in § 141.74(a)(3), is deemed to have a detectable disinfectant residual for purposes of determining compliance with this requirement. Thus, the value "V" in the following formula cannot exceed 5 percent in one month, for any two consecutive months.

$$V = \frac{c+d+e}{a+b} \times 100$$

where:

a = number of instances where the residual disinfectant concentration is measured;
b = number of instances where the residual disinfectant concentration is not measured but heterotrophic bacteria plate count (HPC) is measured;
c = number of instances where the residual disinfectant concentration is measured but not detected and no HPC is measured;
d = number of instances where no residual disinfectant concentration is detected and where the HPC is >500/ml; and
e = number of instances where the residual disinfectant concentration is not measured and HPC is >500/ml.

(ii) If the State determines, based on site-specific considerations, that a system has no means for having a sample transported and analyzed for HPC by a certified laboratory under the requisite time and temperature conditions specified in § 141.74(a)(3) and that the system is providing adequate disinfection in the distribution system, the requirements of paragraph (b)(3)(i) of this section do not apply.

§ 141.73 Filtration.

A public water system that uses a surface water source or a ground water source under the direct influence of surface water, and does not meet all of the criteria in § 141.71 (a) and (b) for avoiding filtration, must provide treatment consisting of both disinfection, as specified in § 141.72(b), and filtration treatment which complies with the requirements of paragraph (a), (b), (c), (d), or (e) of this section by June 29, 1993, or within 18 months of the failure to meet any one of the criteria for avoiding filtration in § 141.71 (a) and (b), whichever is later. Failure to meet any requirement of this section after the date specified in this introductory paragraph is a treatment technique violation.

(a) *Conventional filtration treatment or direct filtration.* (1) For systems using conventional filtration or direct filtration, the turbidity level of representative samples of a system's filtered water must be less than or equal to 0.5 NTU in at least 95 percent of the measurements taken each month, measured as specified in § 141.74 (a)(4) and (c)(1), except that if the State determines that the system is capable of achieving at least 99.9 percent removal and/or inactivation of *Giardia lamblia* cysts at some turbidity level higher than 0.5 NTU in at least 95 percent of the measurements taken each month, the State may substitute this higher turbidity limit for that system. However, in no case may the State approve a turbidity limit that allows more than 1 NTU in more than 5 percent of the samples taken each month, measured as specified in § 141.74 (a)(4) and (c)(1).

(2) The turbidity level of representative samples of a system's filtered water must at no time exceed 5 NTU, measured as specified in § 141.74 (a)(4) and (c)(1).

(b) *Slow sand filtration.* (1) For systems using slow sand filtration, the turbidity level of representative samples of a system's filtered water must be less than or equal to 1 NTU in at least 95 percent of the measurements taken each month, measured as specified in § 141.74 (a)(4) and (c)(1), except that if the State determines there is no significant interference with disinfection at a higher turbidity level, the State may substitute this higher turbidity limit for that system.

(2) The turbidity level of representative samples of a system's filtered water must at no time exceed 5 NTU, measured as specified in § 141.74 (a)(4) and (c)(1).

(c) *Diatomaceous earth filtration.* (1) For systems using diatomaceous earth filtration, the turbidity level of representative samples of a system's filtered water must be less than or equal to 1 NTU in at least 95 percent of the measurements taken each month, measured as specified in § 141.74 (a)(4) and (c)(1).

(2) The turbidity level of representative samples of a system's filtered water must at no time exceed 5 NTU, measured as specified in § 141.74 (a)(4) and (c)(1).

(d) *Other filtration technologies.* A public water system may use a filtration technology not listed in paragraphs (a)–(c) of this section if it demonstrates to the State, using pilot plant studies or other means, that the alternative filtration technology, in combination with disinfection treatment that meets the requirements of § 141.72(b), consistently achieves 99.9 percent removal and/or inactivation of *Giardia lamblia* cysts and 99.99 percent removal and/or inactivation of viruses. For a system that makes this demonstration, the requirements of paragraph (b) of this section apply.

§ 141.74 Analytical and monitoring requirements.

(a) *Analytical requirements.* Only the analytical method(s) specified in this paragraph, or otherwise approved by EPA, may be used to demonstrate compliance with the requirements of §§ 141.71, 141.72, and 141.73. Measurements for pH, temperature, turbidity, and residual disinfectant concentrations must be conducted by a party approved by the State. Measurements for total coliforms, fecal coliforms, and HPC must be conducted by a laboratory certified by the State or EPA to do such analysis. Until laboratory certification criteria are developed for the analysis of HPC and fecal coliforms, any laboratory certified for total coliform analysis by EPA is deemed certified for HPC and fecal coliform analysis. The following procedures shall be performed in accordance with the publications listed in the following section. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of the methods published in *Standard Methods for the Examination of Water and Wastewater* may be obtained from the American Public Health Association et al., 1015 Fifteenth Street, NW., Washington, DC 20005; copies of the Minimal Medium ONPG–MUG Method as set forth in the article "National Field Evaluation of a Defined Substrate Method for the Simultaneous Enumeration of Total Coliforms and *Escherichia coli* from Drinking Water: Comparison with the Standard Multiple Tube Fermentation Method" (Edberg et al.), Applied and Environmental Microbiology, Volume 54, pp. 1595–1601, June 1988 (as amended under Erratum, Applied and Environmental Microbiology, Volume 54, p. 3197, December, 1988), may be obtained from the American Water Works Association Research Foundation, 6666 West Quincy Avenue, Denver, Colorado, 80235; and copies of the Indigo Method as set forth in the article "Determination of Ozone in Water by the Indigo Method" (Bader and Hoigne), may be obtained from Ozone Science & Engineering, Pergamon Press Ltd., Fairview Park, Elmsford, New York 10523. Copies may be inspected at the U.S. Environmental Protection Agency, Room EB15, 401 M Street, SW., Washington, DC 20460 or at the Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, DC.

(1) Fecal coliform concentration—Method 908C (Fecal Coliform MPN Procedures), pp. 878–880, Method 908D (Estimation of Bacterial Density), pp. 880–882, or Method 909C (Fecal Coliform Membrane Filter Procedure), pp. 898–898, as set forth in *Standard Methods for the Examination of Water and Wastewater*, 1985, American Public Health Association et al., 16th edition.

(2) Total coliform concentration—Method 908A (Standard Total Coliform Multiple—Tube (MPN) Tests), pp. 872–876, Method 908B (Application of Tests to Routine Examinations), pp. 876–878, Method 908D (Estimation of Bacterial Density), pp. 880–882, Method 909A (Standard Total Coliform Membrane Filter Procedure), pp. 887–894, or Method 909B (Delayed—Incubation Total Coliform Procedure), pp. 894–896, as set forth in *Standard Methods for the Examination of Water and Wastewater*, 1985, American Public Health Association et al., 16th edition; Minimal Medium ONPG–MUG Test, as set forth in the article "National Field Evaluation of a Defined Substrate Method for the Simultaneous Enumeration of Total Coliforms and *Escherichia coli* from Drinking Water: Comparison with the Standard Multiple Tube Fermentation Method" (Edberg et al.), Applied and Environmental Microbiology, Volume 54, pp. 1595–1601, June 1988 (as amended under Erratum, Volume 54, p. 3197, December, 1988).

[Note: The Minimal Medium ONPG–MUG Test is sometimes referred to as the Autoanalysis Colilert System). Systems may use a five-tube test or a ten-tube test.

(3) Heterotrophic Plate Count—Method 907A (Pour Plate Method), pp. 864–866, as set forth in *Standard Methods for the Examination of Water and Wastewater*, 1985, American Public Health Association et al., 16th edition.

(4) Turbidity—Method 214A (Nephelometric Method—Nephelometric Turbidity Units), pp. 134–136, as set forth in *Standard Methods for the Examination of Water and Wastewater*, 1985, American Public Health Association et al., 16th edition.

(5) Residual disinfectant concentration—Residual disinfectant concentrations for free chlorine and combined chlorine (chloramines) must be measured by Method 408C (Amperometric Titration Method), pp. 303–306, Method 408D (DPD Ferrous Titrimetric Method), pp. 308–309, Method 408E (DPD Colorimetric Method), pp. 309–310, or Method 408F (Leuco Crystal Violet Method), pp. 310–313, as set forth in *Standard Methods for the Examination of Water and Wastewater*, 1985, American Public Health Association et al., 16th edition. Residual disinfectant concentrations for free chlorine and combined chlorine may also be measured by using DPD colorimetric test kits if approved by the State. Residual disinfectant concentrations for ozone must be measured by the Indigo Method as set forth in Bader, H., Hoigne, J., "Determination of Ozone in Water by the Indigo Method: A Submitted Standard Method"; Ozone Science and Engineering, Vol. 4, pp. 169–176, Pergamon Press Ltd., 1982, or automated methods which are calibrated in reference to the results obtained by the Indigo Method on a regular basis, if approved by the State.

Note: This method will be published in the 17th edition of *Standard Methods for the Examination of Water and Wastewater*, American Public Health Association et al.; the Iodometric Method in the 16th edition may not be used.

Residual disinfectant concentrations for chlorine dioxide must be measured by Method 410B (Amperometric Method) or Method 410C (DPD Method), pp. 322–324, as set forth in *Standard Methods for the Examination of Water and Wastewater*, 1985, American Public Health Association et al., 16th edition.

(6) Temperature—Method 212 (Temperature), pp. 126–127, as set forth in *Standard Methods for the Examination of Water and Wastewater*, 1985, American Public Health Association et al., 16th edition.

(7) pH—Method 423 (pH Value), pp. 429–437, as set forth in *Standard Methods for the Examination of Water and Wastewater*, 1985, American Public Health Association, 16th edition.

(b) *Monitoring requirements for systems that do not provide filtration.* A public water system that uses a surface water source and does not provide filtration treatment must begin monitoring, as specified in this paragraph (b), beginning December 31, 1990, unless the State has determined that filtration is required in writing pursuant to § 1412(b)(7)(C)(iii), in which case the State may specify alternative monitoring requirements, as appropriate, until filtration is in place. A public water system that uses a ground water source under the direct influence of surface water and does not provide filtration treatment must begin monitoring as specified in this paragraph (b) beginning December 31, 1990, or 6 months after the State determines that the ground water source is under the direct influence of surface water, whichever is later, unless the State has determined that filtration is required in writing pursuant to § 1412(b)(7)(C)(iii), in which case the State may specify alternative monitoring requirements, as appropriate, until filtration is in place.

(1) Fecal coliform or total coliform density measurements as required by § 141.71(a)(1) must be performed on representative source water samples immediately prior to the first or only point of disinfectant application. The system must sample for fecal or total coliforms at the following minimum frequency each week the system serves water to the public:

System size (persons served)	Samples/week[1]
<500	1
501 to 3,300	2
3,301 to 10,000	3
10,001 to 25,000	4
>25,000	5

[1] Must be taken on separate days.

Also, one fecal or total coliform density measurement must be made every day the system serves water to the public and the turbidity of the source water exceeds 1 NTU (these samples count towards the weekly coliform sampling requirement) unless the State determines that the system, for logistical reasons outside the system's control, cannot have the sample analyzed within 30 hours of collection.

(2) Turbidity measurements as required by § 141.71(a)(2) must be performed on representative grab samples of source water immediately prior to the first or only point of disinfectant application every four hours (or more frequently) that the system serves water to the public. A public water system may substitute continuous turbidity monitoring for grab sample monitoring if it validates the continuous measurement for accuracy on a regular basis using a protocol approved by the State.

(3) The total inactivation ratio for each day that the system is in operation

must be determined based on the $CT_{99.9}$ values in Tables 1.1–1.6, 2.1, and 3.1 of this section, as appropriate. The parameters necessary to determine the total inactivation ratio must be monitored as follows:

(i) The temperature of the disinfected water must be measured at least once per day at each residual disinfectant concentration sampling point.

(ii) If the system uses chlorine, the pH of the disinfected water must be measured at least once per day at each chlorine residual disinfectant concentration sampling point.

(iii) The disinfectant contact time(s) ("T") must be determined for each day during peak hourly flow.

(iv) The residual disinfectant concentration(s) ("C") of the water before or at the first customer must be measured each day during peak hourly flow.

(v) If a system uses a disinfectant other than chlorine, the system may demonstrate to the State, through the use of a State-approved protocol for on-site disinfection challenge studies or other information satisfactory to the State, that $CT_{99.9}$ values other than those specified in Tables 2.1 and 3.1 in this section other operational parameters are adequate to demonstrate that the system is achieving the minimum inactivation rates required by § 141.72(a)(1).

TABLE 1.1—CT VALUES ($CT_{99.9}$) FOR 99.9 PERCENT INACTIVATION OF GIARDIA LAMBLIA CYSTS BY FREE CHLORINE AT 0.5 °C OR LOWER [1]

Residual (mg/l)	pH						
	≤6.0	6.5	7.0	7.5	8.0	8.5	≤9.0
≤0.4	137	163	195	237	277	329	390
0.6	141	168	200	239	286	342	407
0.8	145	172	205	246	295	354	422
1.0	148	176	210	253	304	365	437
1.2	152	180	215	259	313	376	451
1.4	155	184	221	266	321	387	464
1.6	157	189	226	273	329	397	477
1.8	162	193	231	279	338	407	489
2.0	165	197	236	286	346	417	500
2.2	169	201	242	297	353	426	511
2.4	172	205	247	298	361	435	522
2.6	175	209	252	304	368	444	533
2.8	178	213	257	310	375	452	543
3.0	181	217	261	316	382	460	552

[1] These CT values achieve greater than a 99.99 percent inactivation of viruses. CT values between the indicated pH values may be determined by linear interpolation. CT values between the indicated temperatures of different tables may be determined by linear interpolation. If no interpolation is used, use the $CT_{99.9}$ value at the lower temperature and at the higher pH.

TABLE 1.2— CT VALUES ($CT_{99.9}$) for 99.9 PERCENT INACTIVATION OF GIARDIA LAMBLIA CYSTS BY FREE CHLORINE AT 5.0 °C[1]

Free residual (mg/l)	pH						
	≤6.0	6.5	7.0	7.5	8.0	8.5	≤9.0
≤0.4	97	117	139	166	198	236	279
0.6	100	120	143	171	204	244	291
0.8	103	122	146	175	210	252	301
1.0	105	125	149	179	216	260	312
1.2	107	127	152	183	221	267	320
1.4	109	130	155	187	227	274	329
1.6	111	132	158	192	232	281	337
1.8	114	135	162	196	238	287	345
2.0	116	138	165	200	243	294	353
2.2	118	140	169	204	248	300	361
2.4	120	143	172	209	253	306	368
2.6	122	146	175	213	258	312	375
2.8	124	148	178	217	263	318	382
3.0	126	151	182	221	268	324	389

[1] These CT values achieve greater than a 99.99 percent inactivation of viruses. CT values between the indicated pH values may be determined by linear interpolation. CT values between the indicated temperatures of different tables may be determined by linear interpolation. If no interpolation is used, use the $CT_{99.9}$ value at the lower temperature, and at the higher pH.

TABLE 1.3— CT VALUES ($CT_{99.9}$) for 99.9 PERCENT INACTIVATION OF GIARDIA LAMBLIA CYSTS BY FREE CHLORINE AT 10.0 °C[1]

Free residual (mg/l)	pH						
	≤6.0	6.5	7.0	7.5	8.0	8.5	≤9.0
≤0.4	73	88	104	125	149	177	209
0.6	75	90	107	128	153	183	218
0.8	78	92	110	131	158	189	226
1.0	79	94	112	134	162	195	234
1.2	80	95	114	137	166	200	240
1.4	82	98	116	140	170	206	247
1.6	83	99	119	144	174	211	253
1.8	86	101	122	147	179	215	259

TABLE 1.3— CT VALUES ($CT_{99.9}$) for 99.9 PERCENT INACTIVATION OF GIARDIA LAMBLIA CYSTS BY FREE CHLORINE AT 10.0 °C[1]—Continued

Free residual (mg/l)	pH						
	≤6.0	6.5	7.0	7.5	8.0	8.5	≤9.0
2.0	87	104	124	150	182	221	265
2.2	89	105	127	153	186	225	271
2.4	90	107	129	157	190	230	276
2.6	92	110	131	160	194	234	281
2.8	93	111	134	163	197	239	287
3.0	95	113	137	166	201	243	292

[1] These CT values achieve greater than a 99.99 percent inactivation of viruses. CT values between the indicated pH values may be determined by linear interpolation. CT values between the indicated temperatures of different tables may be determined by linear interpolation. If no interpolation is used, use the $CT_{99.9}$ value at the lower temperature, and at the higher pH.

TABLE 1.4— CT VALUES ($CT_{99.9}$) for 99.9 PERCENT INACTIVATION OF GIARDIA LAMBLIA CYSTS BY FREE CHLORINE AT 15.0 °C[1]

Free residual (mg/l)	pH						
	≤6.0	6.5	7.0	7.5	8.0	8.5	≤9.0
≤0.4	49	59	70	83	99	118	140
0.6	50	60	72	86	102	122	145
0.8	52	61	73	88	105	126	151
1.0	53	63	75	90	108	130	156
1.2	54	64	76	92	111	134	160
1.4	55	65	78	94	114	137	165
1.6	56	66	79	96	116	141	169
1.8	57	68	81	98	119	144	173
2.0	58	69	83	100	122	147	177
2.2	59	70	85	102	124	150	181
2.4	60	72	86	105	127	153	184
2.6	61	73	88	107	129	156	188
2.8	62	74	89	109	132	159	191
3.0	63	76	91	111	134	162	195

[1] These CT values achieve greater than a 99.99 percent inactivation of viruses. CT values between the indicated pH values may be determined by linear interpolation. CT values between the indicated temperatures of different tables may be determined by linear interpolation. If no interpolation is used, use the $CT_{99.9}$ value at the lower temperature, and at the higher pH.

TABLE 1.5—CT Values ($CT_{99.9}$) FOR 99.9 PERCENT INACTIVATION OF GIARDIA LAMBLIA CYSTS BY FREE CHLORINE AT 20 °C[1]

Free residual (mg/l)	pH						
	< 6.0	6.5	7.0	7.5	8.0	8.5	< 9.0
< 0.4	36	44	52	62	74	89	105
0.6	38	45	54	64	77	92	109
0.8	39	46	55	66	79	95	113
1.0	39	47	56	67	81	98	117
1.2	40	48	57	69	83	100	120
1.4	41	49	58	70	85	103	123
1.6	42	50	59	72	87	105	126
1.8	43	51	61	74	89	108	129
2.0	44	52	62	75	91	110	132
2.2	44	53	63	77	93	113	135
2.4	45	54	65	78	95	115	136
2.6	46	55	66	80	97	117	141
2.8	47	56	67	81	99	119	143
3.0	47	57	68	83	101	122	146

[1] These CT values achieve greater than a 99.99 percent inactivation of viruses. CT values between the indicated pH values may be determined by linear interpolation. CT values between the indicated temperatures of different tables may be determined by linear interpolation. If no interpolation is used, use the $CT_{99.9}$ value at the lower temperature, and at the higher pH.

TABLE 1.6—CT Values ($CT_{99.9}$) FOR 99.9 PERCENT INACTIVATION OF GIARDIA LAMBLIA CYSTS BY FREE CHLORINE AT 25 °C[1] AND HIGHER

Free residual (mg/l)	pH						
	< 6.0	6.5	7.0	7.5	8.0	8.5	< 9.0
< 0.4	24	29	35	42	50	59	70
0.6	25	30	36	43	51	61	73
0.8	26	31	37	44	53	63	75
1.0	26	31	37	45	54	65	78
1.2	27	32	38	46	55	67	80
1.4	27	33	39	47	57	69	82

TABLE 1.6—CT Values ($CT_{99.9}$) for 99.9 Percent Inactivation of Giardia Lamblia Cysts by Free Chlorine at 25 °C[1] and Higher—Continued

Free residual (mg/l)	pH						
	< 6.0	6.5	7.0	7.5	8.0	8.5	< 9.0
1.6	28	33	40	48	58	70	84
1.8	29	34	41	49	60	72	86
2.0	29	35	41	50	61	74	88
2.2	30	35	42	51	62	75	90
2.4	30	36	43	52	63	77	92
2.6	31	37	44	53	65	78	94
2.8	31	37	45	54	66	80	96
3.0	32	38	46	55	67	81	97

[1] These CT values achieve greater than a 99.99 percent inactivation of viruses. CT values between the indicated pH values may be determined by linear interpolation. CT values between the indicated temperatures of different tables may be determined by linear interpolation. If no interpolation is used, use the $CT_{99.9}$ value at the lower temperature, and at the higher pH.

TABLE 2.1—CT Values ($CT_{99.9}$) for 99.9 Percent Inactivation of Giardia Lamblia Cysts by Chlorine Dioxide and Ozone[1]

	Temperature					
	< 1 °C	5 °C	10 °C	15 °C	20 °C	> 25 °C
Chlorine dioxide	63	26	23	19	15	11
Ozone	2.9	1.9	1.4	0.95	0.72	0.48

[1] These CT values achieve greater than 99.99 percent inactivation of viruses. CT values between the indicated temperatures may be determined by linear interpolation. If no interpolation is used, use the $CT_{99.9}$ value at the lower temperature for determining $CT_{99.9}$ values between indicated temperatures.

TABLE 3.1—CT Values ($CT_{99.9}$) for 99.9 Percent Inactivation of Giardia Lamblia Cysts By Chloramines[1]

Temperature					
< 1 °C	5 °C	10 °C	15 °C	20 °C	25 °C
3,800	2,200	1,850	1,500	1,100	750

[1] These values are for pH values of 6 to 9. These CT values may be assumed to achieve greater than 99.99 percent inactivation of viruses only if chlorine is added and mixed in the water prior to the addition of ammonia. If this condition is not met, the system must demonstrate, based on on-site studies or other information, as approved by the State, that the system is achieving at least 99.99 percent inactivation of viruses. CT values between the indicated temperatures may be determined by linear interpolation. If no interpolation is used, use the $CT_{99.9}$ value at the lower temperature for determining $CT_{99.9}$ values between indicated temperatures.

(4) The total inactivation ratio must be calculated as follows:

(i) If the system uses only one point of disinfectant application, the system may determine the total inactivation ratio based on either of the following two methods:

(A) One inactivation ratio (CTcalc/$CT_{99.9}$) is determined before or at the first customer during peak hourly flow and if the CTcalc/$CT_{99.9}$ > 1.0, the 99.9 percent *Giardia lamblia* inactivation requirement has been achieved; or

(B) Successive CTcalc/$CT_{99.9}$ values, representing sequential inactivation ratios, are determined between the point of disinfectant application and a point before or at the first customer during peak hourly flow. Under this alternative, the following method must be used to calculate the total inactivation ratio:

(1) Determine $\frac{CTcalc}{CT_{99.9}}$ for each sequence.

(2) Add the $\frac{CTcalc}{CT_{99.9}}$ values together $\left(\sum \frac{(CTcalc)}{CT_{99.9}} \right)$

(3) If $\sum \left(\frac{CTcalc}{CT_{99.9}} \right)$ >1.0, the 99.9 percent *Giardia lamblia* inactivation requirement has been achieved.

(ii) If the system uses more than one point of disinfectant application before or at the first customer, the system must determine the CT value of each disinfection sequence immediately prior to the next point of disinfectant application during peak hourly flow. The CTcalc/$CT_{99.9}$ value of each sequence and

$$\sum \frac{CTcalc}{CT_{99.9}}$$

must be calculated using the method in paragraph (b)(4)(i)(B) of this section to determine if the system is in compliance with § 142.72(a).

(iii) Although not required, the total percent inactivation for a system with one or more points of residual disinfectant concentration monitoring may be calculated by solving the following equation:

$$\text{Percent inactivation} = 100 - \frac{100}{10^z}$$

where $z = 3 \times \sum \left(\frac{CTcalc}{CT_{99.9}} \right)$

(5) The residual disinfectant concentration of the water entering the distribution system must be monitored continuously, and the lowest value must be recorded each day, except that if there is a failure in the continuous monitoring equipment, grab sampling every 4 hours may be conducted in lieu of continuous monitoring, but for no more than 5 working days following the failure of the equipment, and systems serving 3,300 or fewer persons may take grab samples in lieu of providing continous monitoring on an ongoing basis at the frequencies prescribed below:

System size by population	Samples/day[1]
< 500	1
501 to 1,000	2
1,001 to 2,500	3
2,501 to 3,300	4

[1] The day's samples cannot be taken at the same time. The sampling intervals are subject to State review and approval.

If at any time the residual disinfectant concentration falls below 0.2 mg/l in a system using grab sampling in lieu of continuous monitoring, the system must take a grab sample every 4 hours until the residual concentration is equal to or greater than 0.2 mg/l.

(6)(i) The residual disinfectant concentration must be measured at least at the same points in the distribution system and at the same time as total coliforms are sampled, as specified in § 141.21, except that the State may allow a public water system which uses both a surface water source or a ground water source under direct influence of surface water, and a ground water source, to take disinfectant residual samples at points other than the total coliform sampling points if the State determines that such points are more representative of treated (disinfected) water quality within the distribution system. Heterotrophic bacteria, measured as heterotrophic plate count (HPC) as specified in paragraph (a)(3) of this section, may be measured in lieu of residual disinfectant concentration.

(ii) If the State determines, based on site-specific considerations, that a system has no means for having a sample transported and analyzed for HPC by a certified laboratory under the requisite time and temperature conditions specified by paragraph (a)(3) of this section and that the system is providing adequate disinfection in the distribution system, the requirements of paragraph (b)(6)(i) of this section do not apply to that system.

(c) *Monitoring requirements for systems using filtration treatment.* A public water system that uses a surface water source or a ground water source under the influence of surface water and provides filtration treatment must monitor in accordance with this paragraph (c) beginning June 29, 1993, or when filtration is installed, whichever is later.

(1) Turbidity measurements as required by § 141.73 must be performed on representative samples of the system's filtered water every four hours (or more frequently) that the system serves water to the public. A public water system may substitute continuous turbidity monitoring for grab sample monitoring if it validates the continuous measurement for accuracy on a regular basis using a protocol approved by the State. For any systems using slow sand filtration or filtration treatment other than conventional treatment, direct filtration, or diatomaceous earth filtration, the State may reduce the sampling frequency to once per day if it determines that less frequent monitoring is sufficient to indicate effective filtration performance. For systems serving 500 or fewer persons, the State may reduce the turbidity sampling frequency to once per day, regardless of the type of filtration treatment used, if the State determines that less frequent monitoring is sufficient to indicate effective filtration performance.

(2) The residual disinfectant concentration of the water entering the distribution system must be monitored continuously, and the lowest value must be recorded each day, except that if there is a failure in the continuous monitoring equipment, grab sampling every 4 hours may be conducted in lieu of continuous monitoring, but for no more than 5 working days following the failure of the equipment, and systems serving 3,300 or fewer persons may take grab samples in lieu of providing continuous monitoring on an ongoing basis at the frequencies each day prescribed below:

System size by population	Samples/day[1]
<500	1
501 to 1,000	2
1,001 to 2,500	3
2,501 to 3,300	4

[1] The day's samples cannot be taken at the same time. The sampling intervals are subject to State review and approval.

If at any time the residual disinfectant concentration falls below 0.2 mg/l in a system using grab sampling in lieu of continuous monitoring, the system must take a grab sample every 4 hours until the residual disinfectant concentration is equal to or greater than 0.2 mg/l.

(3)(i) The residual disinfectant concentration must be measured at least at the same points in the distribution system and at the same time as total coliforms are sampled, as specified in § 141.21, except that the State may allow a public water system which uses both a surface water source or a ground water source under direct influence of surface water, and a ground water source to take disinfectant residual samples at points other than the total coliform sampling points if the State determines that such points are more representative of treated (disinfected) water quality within the distribution system. Heterotrophic bacteria, measured as heterotrophic plate count (HPC) as specified in paragraph (a)(3) of this section, may be measured in lieu of residual disinfectant concentration.

(ii) If the State determines, based on site-specific considerations, that a system has no means for having a sample transported and analyzed for HPC by a certified laboratory under the requisite time and temperature conditions specified by paragraph (a)(3) of this section and that the system is providing adequate disinfection in the distribution system, the requirements of paragraph (c)(3)(i) of this section do not apply to that system.

§ 141.75 Reporting and recordkeeping requirements.

(a) A public water system that uses a surface water source and does not provide filtration treatment must report monthly to the State the information specified in this paragraph (a) beginning December 31, 1990, unless the State has determined that filtration is required in writing pursuant to section 1412(b)(7)(C)(iii), in which case the State may specify alternative reporting requirements, as appropriate, until filtration is in place. A public water system that uses a ground water source under the direct influence of surface water and does not provide filtration treatment must report monthly to the State the information specified in this paragraph (a) beginning December 31, 1990, or 6 months after the State determines that the ground water source is under the direct influence of surface water, whichever is later, unless the State has determined that filtration is required in writing pursuant to § 1412(b)(7)(C)(iii), in which case the State may specify alternative reporting requirements, as appropriate, until filtration is in place.

(1) Source water quality information must be reported to the State within 10

days after the end of each month the system serves water to the public. Information that must be reported includes:

(i) The cumulative number of months for which results are reported.

(ii) The number of fecal and/or total coliform samples, whichever are analyzed during the month (if a system monitors for both, only fecal coliforms must be reported), the dates of sample collection, and the dates when the turbidity level exceeded 1 NTU.

(iii) The number of samples during the month that had equal to or less than 20/100 ml fecal coliforms and/or equal to or less than 100/100 ml total coliforms, whichever are analyzed.

(iv) The cumulative number of fecal or total coliform samples, whichever are analyzed, during the previous six months the system served water to the public.

(v) The cumulative number of samples that had equal to or less than 20/100 ml fecal coliforms or equal to or less than 100/100 ml total coliforms, whichever are analyzed, during the previous six months the system served water to the public.

(vi) The percentage of samples that had equal to or less than 20/100 ml fecal coliforms or equal to or less than 100/100 ml total coliforms, whichever are analyzed, during the previous six months the system served water to the public.

(vii) The maximum turbidity level measured during the month, the date(s) of occurrence for any measurement(s) which exceeded 5 NTU, and the date(s) the occurrence(s) was reported to the State.

(viii) For the first 12 months of recordkeeping, the dates and cumulative number of events during which the turbidity exceeded 5 NTU, and after one year of recordkeeping for turbidity measurements, the dates and cumulative number of events during which the turbidity exceeded 5 NTU in the previous 12 months the system served water to the public.

(ix) For the first 120 months of recordkeeping, the dates and cumulative number of events during which the turbidity exceeded 5 NTU, and after 10 years of recordkeeping for turbidity measurements, the dates and cumulative number of events during which the turbidity exceeded 5 NTU in the previous 120 months the system served water to the public.

(2) Disinfection information specified in § 141.74(b) must be reported to the State within 10 days after the end of each month the system serves water to the public. Information that must be reported includes:

(i) For each day, the lowest measurement of residual disinfectant concentration in mg/l in water entering the distribution system.

(ii) The date and duration of each period when the residual disinfectant concentration in water entering the distribution system fell below 0.2 mg/l and when the State was notified of the occurrence.

(iii) The daily residual disinfectant concentration(s) (in mg/l) and disinfectant contact time(s) (in minutes) used for calculating the CT value(s).

(iv) If chlorine is used, the daily measurement(s) of pH of disinfected water following each point of chlorine disinfection.

(v) The daily measurement(s) of water temperature in °C following each point of disinfection.

(vi) The daily CTcalc and CTcalc/$CT_{99.9}$ values for each disinfectant measurement or sequence and the sum of all CTcalc/$CT_{99.9}$ values ((CTcalc/$CT_{99.9}$)) before or at the first customer.

(vii) The daily determination of whether disinfection achieves adequate *Giardia* cyst and virus inactivation, i.e., whether (CTcalc/$CT_{99.9}$) is at least 1.0 or, where disinfectants other than chlorine are used, other indicator conditions that the State determines are appropriate, are met.

(viii) The following information on the samples taken in the distribution system in conjunction with total coliform monitoring pursuant to § 141.72:

(A) Number of instances where the residual disinfectant concentration is measured;

(B) Number of instances where the residual disinfectant concentration is not measured but heterotrophic bacteria plate count (HPC) is measured;

(C) Number of instances where the residual disinfectant concentration is measured but not detected and no HPC is measured;

(D) Number of instances where the residual disinfectant concentration is detected and where HPC is >500/ml;

(E) Number of instances where the residual disinfectant concentration is not measured and HPC is >500/ml;;

(F) For the current and previous month the system served water to the public, the value of "V" in the following formula:

$$V = \frac{c+d+e}{a+b} \times 100$$

where

a = the value in paragraph (a)(2)(viii)(A) of this section,

b = the value in paragraph (a)(2)(viii)(B) of this section,

c = the value in paragraph (a)(2)(viii)(C) of this section,

d = the value in paragraph (a)(2)(viii)(D) of this section, and

e = the value in paragraph (a)(2)(viii)(E) of this section.

(G) If the State determines, based on site-specific considerations, that a system has no means for having a sample transported and analyzed for HPC by a certified laboratory under the requisite time and temperature conditions specified by § 141.74(a)(3) and that the system is providing adequate disinfection in the distribution system, the requirements of paragraph (a)(2)(viii)(A)–(F) of this section do not apply to that system.

(ix) A system need not report the data listed in paragraphs (a)(2)(i), and (iii)–(vi) of this section if all data listed in paragraphs (a)(2) (i)–(viii) of this section remain on file at the system, and the State determines that:

(A) The system has submitted to the State all the information required by paragraphs (a)(2) (i)–(viii) of this section for at least 12 months; and

(B) The State has determined that the system is not required to provide filtration treatment.

(3) No later than ten days after the end of each Federal fiscal year (September 30), each system must provide to the State a report which summarizes its compliance with all watershed control program requirements specified in § 141.71(b)(2).

(4) No later than ten days after the end of each Federal fiscal year (September 30), each system must provide to the State a report on the on-site inspection conducted during that year pursuant to § 141.71(b)(3), unless the on-site inspection was conducted by the State. If the inspection was conducted by the State, the State must provide a copy of its report to the public water system.

(5)(i) Each system, upon discovering that a waterborne disease outbreak potentially attributable to that water system has occurred, must report that occurrence to the State as soon as possible, but no later than by the end of the next business day.

(ii) If at any time the turbidity exceeds 5 NTU, the system must inform the State as soon as possible, but no later than the end of the next business day.

(iii) If at any time the residual falls below 0.2 mg/l in the water entering the distribution system, the system must notify the State as soon as possible, but no later than by the end of the next business day. The system also must notify the State by the end of the next business day whether or not the residual was restored to at least 0.2 mg/l within 4 hours.

(b) A public water system that uses a surface water source or a ground water source under the direct influence of surface water and provides filtration treatment must report monthly to the State the information specified in this paragraph (b) beginning June 29, 1993, or when filtration is installed, whichever is later.

(1) Turbidity measurements as required by § 141.74(c)(1) must be reported within 10 days after the end of each month the system serves water to the public. Information that must be reported includes:

(i) The total number of filtered water turbidity measurements taken during the month.

(ii) The number and percentage of filtered water turbidity measurements taken during the month which are less than or equal to the turbidity limits specified in § 141.73 for the filtration technology being used.

(iii) The date and value of any turbidity measurements taken during the month which exceed 5 NTU.

(2) Disinfection information specified in § 141.74(c) must be reported to the State within 10 days after the end of each month the system serves water to the public. Information that must be reported includes:

(i) For each day, the lowest measurement of residual disinfectant concentration in mg/l in water entering the distribution system.

(ii) The date and duration of each period when the residual disinfectant concentration in water entering the distribution system fell below 0.2 mg/l and when the State was notified of the occurrence.

(iii) The following information on the samples taken in the distribution system in conjunction with total coliform monitoring pursuant to § 141.72:

(A) Number of instances where the residual disinfectant concentration is measured;

(B) Number of instances where the residual disinfectant concentration is not measured but heterotrophic bacteria plate count (HPC) is measured;

(C) Number of instances where the residual disinfectant concentration is measured but not detected and no HPC is measured;

(D) Number of instances where no residual disinfectant concentration is detected and where HPC is >500/ml;

(E) Number of instances where the residual disinfectant concentration is not measured and HPC is >500/ml;

(F) For the current and previous month the system serves water to the public, the value of "V" in the following formula:

$$V = \frac{c+d+e}{a+b} \times 100$$

where

a = the value in paragraph (b)(2)(iii)(A) of this section,

b = the value in paragraph (b)(2)(iii)(B) of this section,

c = the value in paragraph (b)(2)(iii)(C) of this section,

d = the value in paragraph (b)(2)(iii)(D) of this section, and

e = the value in paragraph (b)(2)(iii)(E) of this section.

(G) If the State determines, based on site-specific considerations, that a system has no means for having a sample transported and analyzed for HPC by a certified laboratory within the requisite time and temperature conditions specified by § 141.74(a)(3) and that the system is providing adequate disinfection in the distribution system, the requirements of paragraph (b)(2)(iii)(A)–(F) of this section do not apply.

(iv) A system need not report the data listed in paragraph (b)(2)(i) of this section if all data listed in paragraphs (b)(2)(i)–(iii) of this section remain on file at the system and the State determines that the system has submitted all the information required by paragraphs (b)(2)(i)–(iii) of this section for at least 12 months.

(3)(i) Each system, upon discovering that a waterborne disease outbreak potentially attributable to that water system has occurred, must report that occurrence to the State as soon as possible, but no later than by the end of the next business day.

(ii) If at any time the turbidity exceeds 5 NTU, the system must inform the State as soon as possible, but no later than the end of the next business day.

(iii) If at any time the residual falls below 0.2 mg/l in the water entering the distribution system, the system must notify the State as soon as possible, but no later than by the end of the next business day. The system also must notify the State by the end of the next business day whether or not the residual was restored to at least 0.2 mg/l within 4 hours.

PART 142—NATIONAL PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION

1. The authority citation for Part 142 is revised to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, and 300j–9.

2. Section 142.14 is amended by revising paragraph (a) introductory text, (a)(1)(iii), (a)(3) introductory text, (a)(4) and redesignating it as paragraph (a)(6), and by adding new paragraphs (a)(4) and by adding and reserving paragraph (a)(5) to read as follows:

§ 142.14 Records kept by States.

(a) Each State which has primary enforcement responsibility shall maintain records of tests, measurements, analyses, decisions, and determinations performed on each public water system to determine compliance with applicable provisions of State primary drinking water regulations.

(1) * * *

(iii) The analytical results, set forth in a form which makes possible comparison with the limits specified in §§ 141.63, 141.71, and 141.72 of this chapter.

* * * * *

(3) Records of turbidity measurements shall be kept for not less than one year. The information retained must be set forth in a form which makes possible comparison with the limits specified in §§ 141.71 and 141.73 of this chapter. Until June 29, 1993, for any public water system which is providing filtration treatment and until December 30, 1991, for any public water system not providing filtration treatment and not required by the State to provide filtration treatment, records kept must be set forth in a form which makes possible comparison with the limits contained in § 141.13.

(4)(i) Records of disinfectant residual measurements and other parameters necessary to document disinfection effectiveness in accordance with §§ 141.72 and 141.74 of this chapter and the reporting requirements of § 141.75 of this chapter shall be kept for not less than one year.

(ii) Records of decisions made on a system-by-system and case-by-case basis under provisions of Part 141, Subpart H, shall be made in writing and kept at the State.

(A) Records of decisions made under the following provisions shall be kept for 40 years (or until one year after the decision is reversed or revised) and a copy of the decision must be provided to the system:

(*1*) Section 141.73(a)(1)—Any decision to allow a public water system using conventional filtration treatment or direct filtration to substitute a turbidity limit greater than 0.5 NTU;

(*2*) Section 141.73(b)(1)—Any decision to allow a public water system using

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slow sand filtration to substitute a turbidity limit greater than 1 NTU;

(3) Section 141.74(b)(2)—Any decision to allow an unfiltered public water system to use continuous turbidity monitoring;

(4) Section 141.74(b)(6)(i)—Any decision to allow an unfiltered public water system to sample residual disinfectant concentration at alternate locations if it also has ground water source(s);

(5) Section 141.74(c)(1)—Any decision to allow a public water system using filtration treatment to use continuous turbidity monitoring; or a public water system using slow sand filtration or filtration treatment other than conventional treatment, direct filtration or diatomaceous earth filtration to reduce turbidity sampling to once per day; or for systems serving 500 people or fewer to reduce turbidity sampling to once per day;

(6) Section 141.74(c)(3)(i)—Any decision to allow a filtered public water system to sample disinfectant residual concentration at alternate locations if it also has ground water source(s);

(7) Section 141.75(a)(2)(ix)—Any decision to allow reduced reporting by an unfiltered public water system; and

(8) Section 141.75(b)(2)(iv)—Any decision to allow reduced reporting by a filtered public water system.

(B) Records of decisions made under the following provisions shall be kept for one year after the decision is made:

(1) Section 141.71(b)(1)(i)—Any decision that a violation of monthly CT compliance requirements was caused by circumstances that were unusual and unpredictable.

(2) Section 141.71(b)(1)(iv)—Any decision that a violation of the disinfection effectiveness criteria was not caused by a deficiency in treatment of the source water;

(3) Section 141.71(b)(5)—Any decision that a violation of the total coliform MCL was not caused by a deficiency in treatment of the source water;

(4) Section 141.74(b)(1)—Any decision that total coliform monitoring otherwise required because the turbidity of the source water exceeds 1 NTU is not feasible, except that if such decision allows a system to avoid monitoring without receiving State approval in each instance, records of the decision shall be kept until one year after the decision is rescinded or revised.

(C) Records of decisions made under the following provisions shall be kept for the specified period or 40 years, whichever is less.

(1) Section 141.71(a)(2)(i)—Any decision that an event in which the source water turbidity which exceeded 5 NTU for an unfiltered public water system was unusual and unpredictable shall be kept for 10 years.

(2) Section 141.71(b)(1)(iii)—Any decision by the State that failure to meet the disinfectant residual concentration requirements of § 141.72(a)(3)(i) was caused by circumstances that were unusual and unpredictable, shall be kept unless filtration is installed. A copy of the decision must be provided to the system.

(3) Section 141.71(b)(2)—Any decision that a public water system's watershed control program meets the requirements of this section shall be kept until the next decision is available and filed.

(4) Section 141.70(c)—Any decision that an individual is a qualified operator for a public water system using a surface water source or a ground water source under the direct influence of surface water shall be maintained until the qualification is withdrawn. The State may keep this information in the form of a list which is updated periodically. If such qualified operators are classified by category, the decision shall include that classification.

(5) Section 141.71(b)(3)—Any decision that a party other than the State is approved by the State to conduct on-site inspections shall be maintained until withdrawn. The State may keep this information in the form of a list which is updated periodically.

(6) Section 141.71(b)(4)—Any decision that an unfiltered public water system has been identified as the source of a waterborne disease outbreak, and, if applicable, that it has been modified sufficiently to prevent another such occurrence shall be kept until filtration treatment is installed. A copy of the decision must be provided to the system.

(7) Section 141.72—Any decision that certain interim disinfection requirements are necessary for an unfiltered public water system for which the State has determined that filtration is necessary, and a list of those requirements, shall be kept until filtration treatment is installed. A copy of the requirements must be provided to the system.

(8) Section 141.72(a)(2)(ii)—Any decision that automatic shut-off of delivery of water to the distribution system of an unfiltered public water system would cause an unreasonable risk to health or interfere with fire protection shall be kept until rescinded.

(9) Section 141.72(a)(4)(ii)—Any decision by the State, based on site-specific considerations, that an unfiltered system has no means for having a sample transported and analyzed for HPC by a certified laboratory under the requisite time and temperature conditions specified by § 141.74(a)(3) and that the system is providing adequate disinfection in the distribution system, so that the disinfection requirements contained in § 141.72(a)(4)(i) do not apply, and the basis for the decision, shall be kept until the decision is reversed or revised. A copy of the decision must be provided to the system.

(10) Section 141.72(b)(3)(ii)—Any decision by the State, based on site-specific conditions, that a filtered system has no means for having a sample transported and analyzed for HPC by a certified laboratory under the requisite time and temperature conditions specified by § 141.74(a)(3) and that the system is providing adequate disinfection in the distribution system, so that the disinfection requirements contained in § 141.72(b)(3)(i) do not apply, and the basis for the decision, shall be kept until the decision is reversed or revised. A copy of the decision must be provided to the system.

(11) Section 141.73(d)—Any decision that a public water system, having demonstrated to the State that an alternative filtration technology, in combination with disinfection treatment, consistently achieves 99.9 percent removal and/or inactivation of *Giardia lamblia* cysts and 99.99 percent removal and/or inactivation of viruses, may use such alternative filtration technology, shall be kept until the decision is reversed or revised. A copy of the decision must be provided to the system.

(12) Section 141.74(b), Table 3.1—Any decision that a system using either preformed chloramines or chloramines formed by the addition of ammonia prior to the addition of chlorine has demonstrated that 99.99 percent removal and/or inactivation of viruses has been achieved at particular CT values, and a list of those values, shall be kept until the decision is reversed or revised. A copy of the list of required values must be provided to the system.

(13) Section 141.74(b)(3)(v)—Any decision that a system using a disinfectant other than chlorine may use $CT_{99.9}$ values other than those in Tables 2.1 or 3.1 and/or other operational parameters to determine if the minimum total inactivation rates required by § 141.72(a)(1) are being met, and what those values or parameters are, shall be kept until the decision is reversed or revised. A copy of the list of required values or parameters must be provided to the system.

(14) Section 142.16(b)(2)(i)(B)—Any decision that a system using a ground water source is under the direct influence of surface water.

(iii) Records of any determination that a public water system supplied by a surface water source or a ground water source under the direct influence of surface water is not required to provide filtration treatment shall be kept for 40 years or until withdrawn, whichever is earlier. A copy of the determination must be provided to the system.

(5) [Reserved]

(6) Records of analyses for contaminants other than microbiological contaminants (including total coliform, fecal coliform, and heterotrophic plate count), residual disinfectant concentration, other parameters necessary to determine disinfection effectiveness (including temperature and pH measurements), and turbidity, must be retained for not less than 40 years and shall include at least the following information:

(i) Date and place of sampling.

(ii) Date and results of analyses.

* * * * *

3. Section 142.15 is amended by adding paragraphs (b)(3) and (4) and paragraph (e) to read as follows:

§ 142.15 Reports by States.

* * * * *

(b) * * *

(3) A list identifying the name, PWS identification number and date of the determination for each public water system supplied by a surface water source or a ground water source under the direct influence of surface water, which the State has determined is not required to provide filtration treatment.

(4) A list identifying the name and PWS identification number of each public water system supplied by a surface water source or ground water source under the direct influence of surface water, which the State has determined, based on an evaluation of site-specific considerations, has no means of having a sample transported and analyzed for HPC by a certified laboratory under the requisite time and temperature conditions specified in § 141.74(a)(3) and is providing adequate disinfection in the distribution system, regardless of whether the system is in compliance with the criteria of § 141.72(a)(4)(i) or (b)(3)(i) of this chapter, as allowed by § 141.72(a)(4)(ii) and (b)(3)(ii). The list must include the effective date of each determination.

* * * * *

(e) Notification within 60 days of the end of the calendar quarter of any determination that a public water system using a surface water source or a ground water source under the direct influence of surface water is not required to provide filtration treatment. The notification must include a statement describing the system's compliance with each requirement of the State's regulations that implement § 141.71 and a summary of comments, if any, received from the public on the determination. A single notification may be used to report two or more such determinations.

4. Section 142.16 is amended by adding paragraph (b) to read as follows:

§ 142.16 Special primacy requirements.

* * * * *

(b) *Requirements for States to adopt 40 CFR Part 141, Subpart H Filtration and Disinfection.* In addition to the general primacy requirements enumerated elsewhere in this part, including the requirement that State provisions are no less stringent than the federal requirements, an application for approval of a State program revision that adopts 40 CFR Part 141, Subpart H Filtration and Disinfection, must contain the information specified in this paragraph (b), except that States which require without exception all public water systems using a surface water source or a ground water source under the direct influence of surface water to provide filtration need not demonstrate that the State program has provisions that apply to systems which do not provide filtration treatment. However, such States must provide the text of the State statutes or regulations which specifies that all public water systems using a surface water source or a ground water source under the direct influence of surface water must provide filtration.

(1) *Enforceable requirements.* In addition to adopting criteria no less stringent than those specified in Part 141, Subpart H of this chapter, the State's application must include enforceable design and operating criteria for each filtration treatment technology allowed or a procedure for establishing design and operating conditions on a system-by-system basis (e.g., a permit system).

(2) *State practices or procedures.* (i) A State application for program revision approval must include a description of how the State will accomplish the following:

(A) Section 141.70(c) (qualification of operators)—Qualify operators of systems using a surface water source or a ground water source under the direct influence of surface water.

(B) Determine which systems using a ground water source are under the direct influence of surface water by June 29, 1994 for community water systems and by June 29, 1999 for non-community water systems.

(C) Section 141.72(b)(1) (achieving required *Giardia lamblia* and virus removal in filtered systems)—Determine that the combined treatment process incorporating disinfection treatment and filtration treatment will achieve the required removal and/or inactivation of *Giardia lamblia* and viruses.

(D) Section 141.74(a) (State approval of parties to conduct analyses)—approve parties to conduct pH, temperature, turbidity, and residual disinfectant concentration measurements.

(E) Determine appropriate filtration treatment technology for source waters of various qualities.

(ii) For a State which does not require all public water systems using a surface water source or ground water source under the direct influence of surface water to provide filtration treatment, a State application for program revision approval must include a description of how the State will accomplish the following:

(A) Section 141.71(b)(2) (watershed control program)—Judge the adequacy of watershed control programs.

(B) Section 141.71(b)(3) (approval of on-site inspectors)—Approve on-site inspectors other than State personnel and evaluate the results of on-site inspections.

(iii) For a State which adopts any of the following discretionary elements of Part 141 of this chapter, the application must describe how the State will:

(A) Section 141.72 (interim disinfection requirements)—Determine interim disinfection requirements for unfiltered systems which the State has determined must filter which will be in effect until filtration is installed.

(B) Section 141.72(a)(4)(ii) and (b)(3)(ii) (determination of adequate disinfection in system without disinfectant residual)—Determine that a system is unable to measure HPC but is still providing adequate disinfection in the distribution system, as allowed by § 141.72(a)(4)(ii) for systems which do not provide filtration treatment and § 141.72(b)(3)(ii) for systems which do provide filtration treatment.

(C) Section 141.73(a)(1) and (b)(1) (alternative turbidity limit)—Determine whether an alternative turbidity limit is appropriate and what the level should be as allowed by § 141.73(a)(1) for a system using conventional filtration treatment or direct filtration and by § 141.73(b)(1) for a system using slow sand filtration.

(D) Section 141.73(d) (alternative filtration technologies)—Determine that a public water system has demonstrated that an alternate filtration technology, in

combination with disinfection treatment, achieves adequate removal and/or disinfection of *Giardia lamblia* and viruses.

(E) Section 141.74(a)(5) (alternate analytical method for chlorine)—Approve DPD colorimetric test kits for free and combined chlorine measurement or approve calibration of automated methods by the Indigo Method for ozone determination.

(F) Section 141.74 (b)(2) and (c)(1) (approval of continuous turbidity monitoring)—Approve continuous turbidity monitoring, as allowed by § 141.74(b)(2) for a public water system which does not provide filtration treatment and § 141.74(c)(1) for a system which does provide filtration treatment.

(G) Section 141.74 (b)(6)(i) and (c)(3)(i) (approval of alternate disinfectant residual concentration sampling plans)—Approve alternate disinfectant residual concentration sampling plans for systems which have a combined ground water and surface water or ground water and ground water under the direct influence of a surface water distribution system, as allowed by § 141.74(b)(6)(i) for a public water system which does not provide filtration treatment and § 141.74(c)(3)(i) for a public water system which does provide filtration treatment.

(H) Section 141.74(c)(1) (reduction of turbidity monitoring)—Decide whether to allow reduction of turbidity monitoring for systems using slow sand filtration, an approved alternate filtration technology or serving 500 people or fewer.

(I) Section 141.75 (a)(2)(ix) and (b)(2)(iv) (reduced reporting)—Determine whether reduced reporting is appropriate, as allowed by § 141.75(a)(2)(ix) for a public water system which does not provide filtration treatment and § 141.75(b)(2)(iv) for a public water system which does provide filtration treatment.

(iv) For a State which does not require all public water systems using a surface water source or ground water source under the direct influence of surface water to provide filtration treatment and which uses any of the following discretionary provisions, the application must describe how the State will:

(A) Section 141.71(a)(2)(i) (source water turbidity requirements)—Determine that an exceedance of turbidity limits in source water was caused by circumstances that were unusual and unpredictable.

(B) Section 141.71(b)(1)(i) (monthly CT compliance requirements)—Determine whether failure to meet the requirements for monthly CT compliance in § 141.72(a)(1) was caused by circumstances that were unusual and unpredictable.

(C) Section 141.71(b)(1)(iii) (residual disinfectant concentration requirements)—Determine whether failure to meet the requirements for residual disinfectant concentration entering the distribution system in § 141.72(a)(3)(i) was caused by circumstances that were unusual and unpredictable.

(D) Section 141.71(b)(1)(iv) (distribution system disinfectant residual concentration requirements)—Determine whether failure to meet the requirements for distribution system residual disinfectant concentration in § 141.72(a)(4) was related to a deficiency in treatment.

(E) Section 141.71(b)(4) (system modification to prevent waterborne disease outbreak)—Determine that a system, after having been identified as the source of a waterborne disease outbreak, has been modified sufficiently to prevent another such occurrence.

(F) Section 141.71(b)(5) (total coliform MCL)—Determine whether a total coliform MCL violation was caused by a deficiency in treatment.

(G) Section 141.72(a)(1) (disinfection requirements)—Determine that different ozone, chloramine, or chlorine dioxide $CT_{99.9}$ values or conditions are adequate to achieve required disinfection.

(H) Section 141.72(a)(2)(ii) (shut-off of water to distribution system)—Determine whether a shut-off of water to the distribution system when the disinfectant residual concentration entering the distribution system is less than 0.2 mg/1 will cause an unreasonable risk to health or interfere with fire protection.

(I) Section 141.74(b)(1) (coliform monitoring)—Determine that coliform monitoring which otherwise might be required is not feasible for a system.

(J) Section 141.74(b), Table 3.1 (disinfection with chloramines)—Determine the conditions to be met to insure 99.99 percent removal and/or inactivation of viruses in systems which use either preformed chloramines or chloramines for which ammonia is added to the water before chlorine, as allowed by Table 3.1.

5. New § 142.64 is added to read as follows:

§ 142.64 Variances and exemptions from the requirements of Part 141, Subpart H—Filtration and Disinfection.

(a) No variances from the requirements in Part 141, Subpart H are permitted.

(b) No exemptions from the requirements in § 141.72(a)(3) and (b)(2) to provide disinfection are permitted.

6. Subpart I is added to read as follows:

Subpart I—Administrator's Review of State Decisions that Implement Criteria Under Which Filtration Is Required

Sec.
142.80 Review procedures.
142.81 Notice to the State.

Subpart I—Administrator's Review of State Decisions that Implement Criteria Under Which Filtration Is Required

§ 142.80 Review procedures.

(a) The Administrator may initiate a comprehensive review of the decisions made by States with primary enforcement responsibility to determine, in accordance with § 141.71 of this chapter, if public water systems using surface water sources must provide filtration treatment. The Administrator shall complete this review within one year of its initiation and shall schedule subsequent reviews as (s)he deems necessary.

(b) EPA shall publish notice of a proposed review in the **Federal Register**. Such notice must:

(1) Provide information regarding the location of data and other information pertaining to the review to be conducted and other information including new scientific matter bearing on the application of the criteria for avoiding filtration; and

(2) Advise the public of the opportunity to submit comments.

(c) Upon completion of any such review, the Administrator shall notify each State affected by the results of the review and shall make the results available to the public.

§ 142.81 Notice to the State.

(a) If the Administrator finds through periodic review or other available information that a State (1) has abused its discretion in applying the criteria for avoiding filtration under § 141.71 of this chapter in determining that a system does not have to provide filtration treatment, or (2) has failed to prescribe compliance schedules for those systems which must provide filtration in accordance with section 1412(b)(7)(C)(ii) of the Act, (s)he shall notify the State of these findings. Such notice shall:

(1) Identify each public water system for which the Administrator finds the State has abused its discretion;

(2) Specify the reasons for the finding;

(3) As appropriate, propose that the criteria of § 141.71 of this chapter be applied properly to determine the need for a public water system to provide filtration treatment or propose a revised schedule for compliance by the public water system with the filtration treatment requirements;

(b) The Administrator shall also notify the State that a public hearing is to be held on the provisions of the notice required by paragraph (a) of this section. Such notice shall specify the time and location of the hearing. If, upon notification of a finding by the Administrator that the State has abused its discretion under § 141.71 of this chapter, the State takes corrective action satisfactory to the Administrator, the Administrator may rescind the notice to the State of a public hearing.

(c) The Administrator shall publish notice of the public hearing in the **Federal Register** and in a newspaper of general circulation in the involved State, including a summary of the findings made pursuant to paragraph (a) of this section, a statement of the time and location for the hearing, and the address and telephone number of an office at which interested persons may obtain further information concerning the hearing.

(d) Hearings convened pursuant to paragraphs (b) and (c) of this section shall be conducted before a hearing officer to be designated by the Administrator. The hearing shall be conducted by the hearing officer in an informal, orderly, and expeditious manner. The hearing officer shall have the authority to call witnesses, receive oral and written testimony, and take such other action as may be necessary to ensure the fair and efficient conduct of the hearing. Following the conclusion of the hearing, the hearing officer may make a recommendation to the Administrator based on the testimony presented at the hearing and shall forward any such recommendation and the record of the hearing to the Administrator.

(e) Within 180 days after the date notice is given pursuant to paragraph (b) of this section, the Administrator shall:

(1) Rescind the notice to the State of a public hearing if the State takes corrective action satisfactory to the Administrator; or

(2) Rescind the finding for which the notice was given and promptly notify the State of such rescission; or

(3) Uphold the finding for which the notice was given. In this event, the Administrator shall revoke the State's decision that filtration was not required or revoke the compliance schedule approved by the State, and promulgate, as appropriate, with any appropriate modifications, a revised filtration decision or compliance schedule and promptly notify the State of such action.

(f) Revocation of a State's filtration decision or compliance schedule and/or promulgation of a revised filtration decision or compliance schedule shall take effect 90 days after the State is notified under paragraph (e)(3) of this section.

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federal register

Thursday,
June 29, 1989

Part III

Environmental Protection Agency

40 CFR Parts 141 and 142

Drinking Water; National Primary Drinking Water Regulations; Total Coliforms (Including Fecal Coliforms and E. Coli); Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[WH-FRL-3540]

Drinking Water; National Primary Drinking Water Regulations; Total Coliforms (Including Fecal Coliforms and E. Coli)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule, promulgated under the Safe Drinking Water Act (42 U.S.C. 300f *et seq.*), amends the current national primary drinking water regulation (NPDWR), including the maximum contaminant level, monitoring requirements, and analytical requirements, for total coliform bacteria ("total coliforms"), including fecal coliforms and *Escherichia coli* (*E. coli*). This rule applies to all public water systems. In this notice, EPA is also publishing a maximum contaminant level goal of zero for total coliforms, including fecal coliforms and *E. coli*.

EFFECTIVE DATE: This rule is effective December 31, 1990. The incorporation by reference of certain publications listed in the rule was approved by the Director of the Federal Register as of December 31, 1990.

ADDRESSES: Public comments on the proposal, the comment/response document, applicable Federal Register notice, other major supporting documents, and a copy of the index to the public docket for this rulemaking are available for review at EPA's Drinking Water Docket; 401 M Street, SW.; Washington, DC 20460. For access to docket materials call (202) 382–3027 between 9 a.m. and 3:30 p.m. In addition, criteria documents for total coliforms and heterotrophic bacteria are available from the National Technical Information Center, 5285 Port Royal Road, Springfield, VA 22161. The toll-free number is (800) 336–4700; the local number is (703) 487–4650. Major supporting documents cited in the reference section of this notice are available for inspection at the Drinking Water Supply Branches in EPA's Regional Offices, listed below.

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Seattle, WA 98101,
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FOR FURTHER INFORMATION CONTACT: Paul S. Berger, Ph.D., Microbiologist, Office of Drinking Water (WH–550D), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, telephone (202) 382–3039. Information also may be obtained from the EPA Safe Drinking Water Hotline. Callers within the United States (except Washington, DC and Alaska), Puerto Rico, and the Virgin Islands may reach the Safe Drinking Water Hotline at (800) 426–4791; callers in the Washington, DC area and Alaska may reach the Hotline at (202) 382–5533. The Safe Drinking Water Hotline is open Monday through Friday, excluding Federal holidays, from 8:30 a.m. to 4:00 p.m. Eastern Time.

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Abbreviations Used in This Notice

BAT: Best Available Technology
CWS: Community Water System
EIA: Economic Impact Analysis
HPC: Heterotrophic Plate Count
MCL: Maximum Contaminant Level
MCLG: Maximum Contaminant Level Goal
MF: Membrane Filter
MMO–MUG Test: Minimal Medium ONPG–MUG Test (previously referred to as the Colilert System)
MTF: Multiple Tube Fermentation
NCWS: Non-community Water System
NIPDWR: National Interim Primary Drinking Water Regulation
NPDWR: National Primary Drinking Water Regulation
PWS: Pulic Water System
RMCL: Recommended Maximum Contaminant Level
SDWA or "The Act": Safe Drinking Water Act, as amended in 1986

I. Statutory Authority

The Safe Drinking Water Act ("SDWA" or "the Act"), as amended in 1986 (Pub. L. No. 99–339, 100 Stat. 642), requires EPA to publish "maximum contaminant level goals" (MCLGs) for contaminants which, in the judgment of the Administrator, "may have any adverse effect on the health of persons and which are known or anticipated to occur in public water systems." Section 1412(b)(3)(A). MCLGs are to be set at a level at which "no known or anticipated adverse effects on the health of persons occur and which allows an adequate margin of safety." Section 1412(b)(4).

At the same time EPA publishes an MCLG, which is a non-enforceable health goal, it also must promulgate a national primary drinking water regulation (NPDWR) which includes either (1) a maximum contaminant level (MCL), or (2) a required treatment technique. Section 1401(1), 1412(a)(3), and 1412(b)(7)(A). A treatment technique may be set only if it is not "economically or technologically feasible" to ascertain the level of a contaminant. Sections 1401 (1) and 1412(b)(7)(A). An MCL must be set as close to the MCLG as feasible. Section 1412(b)(4). Under the Act, "feasible" means "feasible with the use of the best technology, treatment techniques and other means which the Administrator finds, after examination for efficacy under field conditions and not solely under laboratory conditions, are available (taking cost into consideration)." Section 1412(b)(5). The legislative history of SDWA indicates that EPA is to base MCLs on treatment technology affordable by large public water systems with relatively clean source water supplies. 132 *Cong. Rec.* S6287 (daily ed., May 21, 1986). Each NPDWR which establishes an MCL must list the best available technology, treatment techniques, and other means which are feasible for meeting the MCL (BAT). Section 1412(b)(6). NPDWRs including monitoring and analytical requirements, specifically, "criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels . . ." Section 1401(1)(D). Section 1445 also authorizes EPA to promulgate monitoring requirements.

Section 1414(c) requires each owner or operator of a public water system to give notice to persons served by it of (1) any failure to comply with a maximum contaminant level, treatment technique, or testing procedure required by a NPDWR; (2) any failure to comply with any monitoring required pursuant to section 1445 of the Act; (3) the existence of a variance of exemption; or (4) any failure to comply with the requirements of any schedule prescribed pursuant to a variance of exemption.

Under the 1986 amendments to the SDWA, EPA was to promulgate NPDWRs for 83 contaminants, in three phases, by June 19, 1989. A group of related bacteria known as total coliforms is one of the 83 contaminants which EPA must regulate. Total coliforms include fecal coliforms and *E. coli*.

II. Summary of Final Rule

EFFECTIVE DATE: December 31, 1990. Current rule remains in force until December 31, 1990.

Maximum Contaminant Level Goal: Zero.

Maximum Contaminant Level

- Compliance is based on presence/absence of total coliforms in sample, rather than on an estimate of coliform density.
- MCL for systems analyzing at least 40 samples/month: no more than 5.0 percent of the monthly samples may be total coliform-positive.
- MCL for systems analyzing fewer than 40 samples/month: no more than 1 sample/month may be total coliform-positive.
- A public water system must demonstrate compliance with the MCL for total coliforms each month it is required to monitor.
- MCL violations must be reported to the State no later than the end of the next business day after the system learns of the violation.

Monitoring Requirements for Total Coliforms

- Each public water system must sample according to a written sample siting plan. Plans are subject to State review and revision. The State must establish a process which ensures the adequacy of the sample siting plan for each system.
- Monthly monitoring requirements are based on population served (see Table 1).
- A system must collect a set of repeat samples for each total coliform-positive routine sample (see Table 2) and have it analyzed for total coliforms. At least one repeat sample must be from the same tap as the original sample; other repeat samples must be collected from within five service connections of the original sample. At least one must be upstream and another downstream. The system must collect all repeat samples within 24 hours of being notified of the original result, except where the State waives this requirement on a case-by-case basis. If a total coliform-positive sample is at the end of the distribution system, or one away from the end of the distribution system, the State may waive the requirement to collect at least one repeat sample upstream or downstream of the original sampling site.
- If total coliforms are detected in any repeat sample, the system must collect another set of repeat samples, as before, unless the MCL has been violated and the system has notified the State (in which case the State may reduce or eliminate the requirement to take the remaining repeat samples).
- If a system has only one service connection, the State has the discretion to allow the system to either collect the required set of repeat samples at the same tap over a four-day period or to collect a larger volume repeat samples(s) (e.g., a single 400-ml sample).
- If a system which collects fewer than five routine samples/month detects total coliforms in any routine or repeat sample (and the sample is not invalidated by the State), it must collect a set of five routine samples the next month the system provides water to the public, except that the State may waive this requirement if (1) it performs a site visit to evaluate the contamination problem, or (2) it has determined why the sample was total coliform-positive and (a) this finding is documented in writing, along with what action the system has taken or will take to correct this problem before the end of the next month the system serves water to the public, (b) this document is signed by the supervisor of the State official who makes the finding, (c) the documentation is made available to EPA and the public, and (d) in certain cases (described in the rule), the system collects at least one additional sample.
- Unfiltered surface water systems and systems using unfiltered ground water under the direct influence of surface water must analyze one coliform sample each day the turbidity of the source water exceeds one NTU. (This sample counts toward the system's minimum monitoring requirements.)
- Tables 1 and 2 summarize the routine and repeat sample monitoring requirements for total coliforms.

TABLE 1.—TOTAL COLIFORM SAMPLING REQUIREMENTS, ACCORDING TO POPULATION SERVED

Population served	Minimum number of routine samples per month[1]
25 to 1,000[2]	1
1,001 to 2,500	2
2,501 to 3,300	3
3,301 to 4,100	4

TABLE 1.—TOTAL COLIFORM SAMPLING REQUIREMENTS, ACCORDING TO POPULATION SERVED—Continued

Population served	Minimum number of routine samples per month[1]
4,101 to 4,900	5
4,901 to 5,800	6
5,801 to 6,700	7
6,701 to 7,600	8
7,601 to 8,500	9
8,501 to 12,900	10
12,901 to 17,200	15
17,201 to 21,500	20
21,501 to 25,000	25
25,001 to 33,000	30
33,001 to 41,000	40
41,001 to 50,000	50
50,001 to 59,000	60
59,001 to 70,000	70
70,001 to 83,000	80
83,001 to 96,000	90
96,001 to 130,000	100
130,001 to 220,000	120
220,001 to 320,000	150
320,001 to 450,000	180
450,001 to 600,000	210
600,001 to 780,000	240
780,001 to 970,000	270
970,001 to 1,230,000	300
1,230,001 to 1,520,000	330
1,520,001 to 1,850,000	360
1,850,001 to 2,270,000	390
2,270,001 to 3,020,000	420
3,020,001 to 3,960,000	450
3,960,001 or more	480

[1] In lieu of the frequency specified in this table, a non-community water system using only ground water (except ground water under the direct influence of surface water) and serving 1,000 persons or fewer may monitor at a lesser frequency specified by the State (in writing) until a sanitary survey is conducted and the State reviews the results. Thereafter, such systems must monitor in each calendar quarter during which the system provides water to the public, unless the State determines (in writing) that some other frequency is more appropriate. Beginning June 29, 1994 such systems must monitor at least once/year.

A non-community water system using surface water, or ground water under the direct influence of surface water, regardless of the number of persons served, must monitor at the same frequency as a like-sized community water system, i.e., the frequency specified in the table. A non-community water system using ground water (which is not under the direct influence of surface water) and serving more than 1,000 persons during any month must monitor at the same frequency as a like-sized community water system, i.e., the frequency specified in the table, except that the State may reduce the monitoring frequency (in writing) for any month the system serves 1,000 persons or fewer. However, in no case may the State reduce the sampling frequency to less than once/year.

[2] Includes public water systems which have at least 15 service connections, but serve fewer than 25 persons.

[3] For a community water system serving 25–1,000 persons, the State may reduce this sampling frequency (in writing), if it has no history of coliform contamination in its current configuration and a sanitary survey conducted in the past five years indicates that the system is supplied solely by a protected groundwater source and is free of sanitary defects. However, in no case may the State reduce the sampling frequency to less than once/quarter.

TABLE 2.—MONITORING REQUIREMENTS FOLLOWING A TOTAL COLIFORM-POSITIVE ROUTINE SAMPLE

No. routine samples/month	No. repeat samples[1]	No. routine samples next month[2]
1/mo or fewer	4	5/mo.
2/mo	3	5/mo.
3/mo	3	5/mo.
4/mo	3	5/mo.
5/mo or more	3	Table 1[3].

[1] Number of repeat samples in the same month for each total coliform-positive routine sample.

[2] Except where State has invalidated the original routine sample, or where State substitutes an on-site evaluation of the problem, or where the State waives the requirement on a case-by-case basis. See 40 CFR 141.21a(b)(5) for more detail.

[3] Systems need not take any additional samples beyond those it is required to take according to Table 1.

Invalidation of Total Coliform-Positive Samples

• Each total coliform-positive sample counts in compliance calculations, unless it has been invalidated by the State. Invalidated samples do not count toward the minimum monitoring frequency.

• A State may invalidate a sample only if: (1) The analytical laboratory acknowledges that improper sample analysis caused the positive result; (2) the system determines that the contamination is a domestic or other non-distribution system plumbing problem on the basis that one or more repeat samples taken at the same tap as the original total coliform-positive sample is total coliform-positive, but all repeat samples at nearby sampling locations are total coliform-negative; or (3) the State has substantial grounds to believe that a total coliform-positive result is due to some circumstance or condition which does not reflect water quality in the distribution system, if (a) the basis for this determination is documented in writing, (b) this document is signed and approved by the supervisor of the State official who makes this determination, and (c) the documentation is made available to EPA and the public.

Variances and Exemptions: None allowed.

Sanitary Surveys:

• Periodic sanitary surveys are required for all systems collecting fewer than 5 samples/month, according to the schedule in Table 3:

TABLE 3.—SANITARY SURVEY FREQUENCY FOR PUBLIC WATER SYSTEMS COLLECTING FEWER THAN FIVE SAMPLES/MONTH [1]

System type	Initial survey completed by	Frequency of subsequent surveys
Community water system.	June 29, 1994	Every 5 years.
Non-community water system.	June 29, 1999	Every 5 years. [2]

[1] Annual on-site inspection of the system's watershed control program and reliability of disinfection practice is also required by 40 CFR 141.71(b) for systems using unfiltered surface water or ground water under the direct influence of surface water. The annual on-site inspection, however, is not equivalent to the sanitary survey. Thus, compliance with 40 CFR 141.71(b) alone does not constitute compliance with the sanitary survey requirements of the coliform rule (141.21a(d), but a sanitary survey during a year can substitute for the annual on-site inspection for that year.

[2] For a non-community water system which uses only protected and disinfected ground water, the sanitary survey may be repeated every ten years, instead of every five years.

Fecal Coliforms/E. coli; Heterotrophic Bacteria (HPC)

• If any routine or repeat sample is total coliform-positive, the system must analyze that total coliform-positive culture to determine if fecal coliforms are present, except that the system may test for *E. coli* in lieu of fecal coliforms. If fecal coliforms or *E. coli* are detected, the system must notify the State before the end of the same business day, or, if detected after the State office is closed, by the end of the next business day.

• If any repeat sample is fecal coliform-or *E. coli*-Positive, or if a fecal coliform-or *E. coli*-positive original sample is followed by a total coliform-positive repeat sample, and the original total coliform-positive sample or the repeat sample is not invalidated, the system is in violation of the MCL for total coliforms. This is an acute violation of the MCL for total coliforms.

• The State has the discretion to allow a water system, on a case-by-case basis, to forgo fecal coliform or *E. coli* testing on total coliform-positive samples if the system treats every total coliform-positive sample as if it contained fecal coliforms, i.e., the system complies with all requirements which apply when a sample is fecal coliform-positive.

• State invalidation of a total coliform-positive sample invalidates subsequent fecal coliform or *E. coli*-positive results on the same sample.

• Heterotrophic bacteria can interfere with total coliform analysis. Therefore, if the total coliform sample produces: (1) A turbid culture in the absence of gas production using the Multiple Tube Fermentation (MTF) Technique; (2) a turbid culture in the absence of an acid reaction using the Presence-Absence (P–A) Coliform Test; or (3) confluent growth or a colony number that is "too numerous to count" using the Membrance Filter (MF) Technique, the sample is invalid (unless total coliforms are detected, in which case, the sample is valid) and the system must, within 24 hours of being notified of the result, collect another sample from the same location as the original sample and have it analyzed for total coliforms. In such cases, EPA recommends using media less prone to interference from heterotrophic bacteria for analyzing the replacement sample. The Sate may waive the 24-hour time limit on a case-by-case basis.

Analytical Methodology

• Total coliform analyses are to be conducted using the 10-tube MTF Technique, the MF Technique, the Presence-Absence (P–A) Coliform Test, or the Minimal Media ONPG–MUG (MMO–MUG) Test (Autoanalysis Colilert System). A system may also use the 5-tube MTF Technique (using 20-ml sample portions) of a single culture bottle containing the MTF medium, as long as a 100-ml water sample is used in the analysis.

• A 100-ml standard sample volume must be used in analyzing for total coliforms, regardless of the analytical method used.

• Fecal coliform analysis must be conducted using the method set out in the rule.

• EPA will promulgate analytical methods of *E. coli* before the effective date of this rule.

III. Background

A. Regulatory Background

As required by the SDWA of 1974, on December 24, 1975, EPA published National Interim Primary Drinking Water Regulations (NIPDWRs). The NIPDWRs (renamed "national primary drinking water regulations"(NPDWRs) by the 1986 amendments to the Act) include requirements for total coliforms. See 40 CFR 141.14 and 141.21. EPA based these requirements, including the MCL and the monitoring frequency, on the U.S. Public Health Service drinking water regulations of 1962. The NPDWR for coliforms, which is still in effect, applies to both community water systems (systems which serve year-round residents) and non-community water systems (all other systems). Currently there are approximately 60,000 community water systems and 143,000 non-community water systems.

Despite existing drinking water regulations, waterborne disease outbreaks continue to occur. For example, between 1971 and 1983 there were 427 reported outbreaks with over 100,000 cases of waterborne disease. However, EPA believes the vast majority of waterborne disease outbreaks and cases are not reported. Few States have an active outbreak surveillance program, and disease outbreaks are often not recognized in a community or, if recognized, are not traced to the drinking water source. One EPA-funded study in Colorado found that only about one-quarter of the waterborne disease outbreaks were being recognized and reported (Hopkins et al., 1985).

The under-reporting may be even more serious, according to the results of several other studies. For instance, Hauchild and Bryan (1980) report that the ratio of all outbreaks to reported outbreaks for waterborne and foodborne disease may be 25:1. Another study (Archer and Kvenberg, 1985) suggests under-reporting of an order of magnitude even greater than Hauchild and Bryan.

EPA believes that a major factor in the failure to recognize waterborne disease outbreaks is that the vast majority of people experiencing gastroenteritis, some of which may be waterborne in origin, do not seek medical attention, and physicians generally cannot attribute gastroenteritis to any specific source. The Agency also understands that, in some States, a lack of communication between agencies responsible for public health and water supply creates an obstacle to reliable waterborne disease outbreak recognition and reporting.

Based on this information, EPA believes that the number of cases of waterborne disease is much higher (as many as ten to several hundred-fold higher) than is actually recognized and recorded. The Agency believes that the number of actual outbreaks and cases of disease is unacceptably higher and therefore additional measures are needed for further control. Some of these measures are incorporated into the revised coliform rule described in this notice. Other measures are incorporated into the surface water treatment requirements, also promulgated in today's **Federal Register**. EPA believes that this revised total coliform rule, including the revised MCL and requirements for monitoring, sanitary surveys for systems collecting fewer than five samples/month, State review of sample siting plans, and fecal coliform or *E. coli* testing, together with the surface water treatment requirements, and forthcoming groundwater disinfection requirements (also required by the 1986 SDWA amendments) will decrease the risk of waterborne illness, compared to the current rule.

On November 3, 1987, EPA proposed to amend the national primary drinking water regulation for total coliforms (52 FR 42224). On May 6, 1988, EPA solicited specific data, offered additional regulatory options for comment, and clarified and corrected statements made in the November 3, 1987, proposal (53 FR 16348). The public comment period closed on July 5, 1988. Three public hearings were held, two in Washington, DC, on November 23, 1987 and June 27, 1988, and one in Denver, Colorado on December 2–3, 1987. On September 28, 1988, EPA made available to the public draft outline which summarized the provisions which the Agency was considering including in the final rule for total coliforms (53 FR 37801).

B. Public Comments on the Proposal

EPA requested comments on all aspects of both the November 3, 1987, proposal and May 6, 1988, notice of availability. The description of the final rule provisions in the following sections includes summaries of the major public comments and the Agency's response to the issues raised. A detailed recitation of the comments and the Agency's responses are presented in the "Comment/Response Document for the Proposed Coliform Rule," which is available in the public docket.

IV. Explanation of Final Provisions

A. Maximum Contaminant Level Goal (MCLG)

As explained in the November 3, 1987, notice, total coliform levels have been used for decades as the primary measure of the microbial quality of drinking water. Coliforms are usually present in water contaminated with human and animal feces and are often associated with outbreaks of disease. Although total coliforms are usually not pathogenic themselves, their presence in drinking water indicates that fecal pathogens may also be present. EPA believes that treatment which provides total coliform-free water will reduce fecal pathogens to minimal levels.

On November 13, 1985 (50 FR 46902), EPA proposed a recommended maximum containment level (RMCL), renamed maximum contaminant level goal (MCLG) by the 1986 SDWA amendments, for total coliforms of zero. Since then, the 1986 amendments

streamlined the rulemaking process. Under the amended Act, EPA must propose both the MCLG and the NPDWR for a contaminant simultaneously, and it then must publish the MCLG and promulgate the NPDWR simultaneously. Section 1412(a)(3). To bring the rulemaking for total coliforms in line with the amended process, in the November 3, 1987 notice, EPA reproposed the RMCL as an MCLG at the same level, i.e., zero, on the same basis set out in the November 1985 notice and in the Criteria Document for Total Coliforms (USEPA, 1984).

The majority of comments addressing the proposed MCLG supported the proposed value of zero. No commenter suggested another value. Some commenters questioned the rationale for using total coliforms as the primary tool to assess the microbiological quality of drinking water; a few of these commenters stated that it was inappropriate to set an MCLG for coliforms since coliforms are not generally pathogenic.

After reviewing the comments in response to both the November 1985 and November 1987 proposals, EPA has decided to promulgate an MCLG of zero for total coliforms, as proposed. Because fecal coliforms and *E. coli* are a subset of the total coliform group, the MCLG for total coliforms includes these organisms. The Agency is not aware of any data in the scientific literature supporting a particular value for coliform density, below which there are no known or anticipated adverse health effects, with an adequate margin of safety. In fact, waterborne disease outbreaks and specific pathogen levels have been associated with coliform densities from less than one/100 ml to very high levels.

It is important to note that SDWA specifically requires EPA to regulate total coliforms, and that coliform analysis, along with sanitary surveys, have been the foundation of programs to assure a sanitary water supply for many decades. By proposing and publishing an MCLG of zero, EPA is stating that, conceptually, coliforms should not be present in drinking water, because they may indicate the presence of pathogenic organisms in the water.

Regulation of total coliforms is not the only tool EPA is using to assess and assure the microbiological quality of water. For example, the Agency is also using specified surface water treatment requirements (published elsewhere in today's **Federal Register**), and the forthcoming groundwater disinfection requirements for this purpose.

B. Maximum Contaminant Level

1. Presence-Absence Concept

The November 3, 1987, notice proposed that coliform MCLs be based on their presence or absence in a water sample rather than on an estimation of coliform density, as is the case with the current coliform rule. The Agency received a number of comments on this issue. Many commenters supported the presence-absence concept over a density determination. Almost all of those commenters who opposed the presence-absence concept prefer to retain the current coliform rule because they believe it has been effective (e.g., they believe there have been no or few waterborne disease outbreaks in their State or community). However, as stated above, EPA believes that the number of outbreaks and cases of waterborne disease is much higher than is recognized and recorded, and therefore more effective measures are needed for further control.

As explained in the November 3, 1987, notice, EPA believes the presence-absence concept is simpler and mathematically more precise than the current density standard for total coliforms, and therefore has decided to use presence-absence as the basis for the coliform MCL in this revised rule. The advantages of the presence-absence concept include the following: (1) It is easier to determine the presence or absence of coliforms than to determine their density, (2) the presence-absence determination is less influenced by sample transit time than a density determination, and (3) use of the presence-absence concept eliminates calculation difficulties implicit in the statistical methodology of coliform density calcualtions.

2. Monthly MCL

The November 3, 1987, notice proposed a monthly MCL for all community and non-community public water systems. The monthly MCL was designed to prevent adverse health effects by providing high quality water on a consistent basis. Under the proposal, for public water systems that analyzed fewer than 40 samples/month for total coliforms, more than one total coliform-positive sample/month would violate the monthly MCL. For systems that analyzed 40 or more samples/month for total coliforms, the occurrence of total coliforms in more than five percent of the samples would violate the monthly MCL.

The majority of commenters supported the proposed monthly MCL, while a few preferred retention of the current MCLs, which are based on coliform density. For the reasons explained in the November 3 notice, EPA believes the proposed monthly MCL is more scientifically defensible than the current coliform MCLs. As explained in that notice, given that total coliforms are ubiquitous in water, EPA believes that an infrequent single coliform-positive sample does not necessarily represent a health risk. For this reason, the Agency has decided to promulgate the monthly MCL as proposed. EPA has concluded that the final MCL is as close to the final MCLG of zero as is feasible.

EPA has clarified rounding-off procedures for the MCL by specifying that no more than 5.0 percent, rather than 5 percent, of the samples analyzed during a month may be total coliform-positive for systems collecting at least 40 samples/month to be in compliance. Thus, a system which collects 75 samples/month would violate the MCL if four samples were coliform-positive, i.e., 4/75 = 5.3 percent, because it is greater than 5.0 percent.

EPA has also more clearly defined the compliance period for this rule by specifying that a public water system must demonstrate compliance with the MCL for total coliforms each month it is required to monitor. Thus, a system which collects fewer than 40 samples/month will be in compliance with the MCL if fewer than two samples during a month are total coliform-positive. On the other hand, if one sample is total coliform-positive during each of two or more consecutive months, the system remains in compliance with the MCL.

3. Long-term MCL

In the November 3, 1987, notice, EPA proposed a long-term MCL in addition to the monthly MCL. For systems collecting fewer than 60 samples/year, no more than five percent of the most recent 60 samples could be total coliform-positive. For systems collecting at least 60 samples/year, no more than five percent of the total number of samples collected during the most recent 12 months could be total coliform-positive. The rationale for the proposed long-term MCL was presented in the November 3, 1987, notice. The May 6, 1988, notice requested public comment on various alternatives to the long-term MCL, including limiting the time-frame for determining compliance with the long-term MCL to one year for all systems and deleting the long-term MCL entirely but specifying that the States require systems to take one or more specific actions (e.g., perform a sanitary survey, issue a boil water notice, disinfect continuously), on a case-by-case basis, whenever the number of total coliform-positive samples from a system exceeded five percent of the total number of samples during a specified time period.

The majority of commenters addressing the proposed long-term MCL opposed it; primarily, they were concerned that long-term compliance tracking of small systems by the State would be difficult, and that a small system might find itself in violation of the long-term MCL long after a transient contamination problem had been corrected. The Agency believes that control of intermittent contamination (i.e., across several compliance periods) is important for ensuring safe drinking water, and that national regulations to address this problem may be appropriate. However, it is difficult to devise a practical approach for collecting and processing the amount of data necessary to detect intermittent contamination. Thus, EPA has decided not to promulgate a long-term MCL at this time. It is important to note, however, that other measures, such as the surface water treatment requirements in Part 141, Subpart H (published elsewhere in today's **Federal Register**), will reduce intermittent contamination. Similarly, the forthcoming Congressionally-mandated regulation requiring disinfection as a treatment technique for all public water systems using ground water will also reduce intermittent contamination. Moreover, as described below, today's rule requires a system to perform additional monitoring after it detects a total coliform-positive sample, which will have the effect of identifying systems with intermittent contamination. In addition, the State has the authority to establish additional requirements to identify systems with intermittent contamination and to require corrective action.

C. Monitoring Requirements

A system which has failed to comply with a coliform monitoring requirement (including, but not limited to, a sample siting plan requirement, a sanitary survey requirement, a routine sample requirement, a repeat sample requirement, and a fecal coliform/*E. coli* test requirement) must report the monitoring violation to the State within ten days after the system discovers the violation, and notify the public in accordance with § 141.32 (the general public notification requirements).

1. Basis: Population Served vs. Other Alternatives

The November 3, 1987, notice proposed to retain population as the basis for setting monitoring frequency. There were very few public comments on this issue. Most of the commenters who discussed the basis for monitoring frequency, however, supported the concept proposed. Based on the public comments and the reasons explained in the November 3, 1987, notice, EPA has retained population as the basis for setting monitoring frequency.

2. Sampling Sites

The interim regulations state that samples are to be taken at points representative of conditions within the distribution system. The November 3, 1987, notice proposed to refine this provision by requiring systems to collect samples from at least three times the number of sites every year as the number of monthly samples required or the total number of service connections. In addition, EPA recommended, but did not propose, that systems select new sampling sites every year. The intent of these provisions was to insure that the system would eventually collect samples from all major sections of the distribution system.

EPA received numerous comments on this issue. Most commenters opposed the proposed requirement. Many commenters claimed that the increase in the number of sampling sites would force systems to use private homes, with possible problems of access, or that the requirement would preclude systems from monitoring water quality at specific representative sites over time, which would prevent collection of historical data and trend information. A number of commenters recommended that EPA allow all, or at least some, sampling sites, to be fixed.

EPA has decided to replace the proposed approach with an alternative presented in the May 6, 1988, notice. This alternative, which would require the system to use a sample siting plan acceptable to the State, was supported by many commenters. Thus, under the final rule, each system must develop and monitor according to a written sample siting plan, which is subject to State review and revision. The State must develop and implement a process which ensures the adequacy of the sample siting plan for each public water system in the State, including periodic review of each system's plan. For the vast majority of systems, EPA expects the State will conduct this periodic review as part of the periodic sanitary survey. The siting plan should ensure that the system will eventually detect contamination in any portion of the distribution system if it is present. While reviewing the siting plan, the State should also review the sample collection timing patterns for each system to determine whether the system should collect samples on a regular basis throughout the month, or whether it is acceptable to collect some or all required samples at the same time.

3. Sanitary Surveys

In the November 3, 1987, **Federal Register** notice, EPA proposed to require all systems that exercised the Agency's option for collecting fewer than five samples/month to have a periodic sanitary survey at the frequency shown in Table 1 of the proposed rule. The May 6, 1988, notice requested public comment on whether EPA should specify a date by which the initial sanitary surveys were to be performed, and, if so, what this date should be, and whether this initial time period or the time period between sanitary surveys should depend on system size or system type.

Many commenters supported the concept of a periodic sanitary survey. Although the proposed rule put the burden to complete the sanitary survey on the system rather than the State, many of these commenters assumed that many States would very likely choose to perform all or most sanitary surveys themselves, and they questioned whether resources would allow the State to perform the sanitary surveys in the time frame specified in the proposed rule. Some commenters indicated that sanitary surveys should be performed no less than every five years. Others suggested that the frequency of sanitary surveys be left to State discretion. Some commenters thought that, given resource limitations, EPA or the States should set priorities among different categories of systems for completing sanitary surveys.

EPA believes that sanitary surveys and action to correct any defects identified in the course of the surveys are indispensable for assuring the long-term quality and safety of drinking water in systems which collect fewer than five samples/month. Monitoring and sanitary surveys complement each other to achieve this result. Therefore, to ensure that sanitary surveys are performed regularly, in this final rule, EPA is specifying the maximum allowable time for the system to complete both the initial sanitary survey and subsequent surveys. EPA expects that many States will perform most or all of the sanitary surveys themselves, and recognizes that, because of resource constraints, they cannot perform the

surveys all at once; thus, it is appropriate to set priorities. Moreover, because the final rule generally retains the monitoring frequency of the interim rule, rather than adopting the frequency in the proposed rule, EPA anticipates that many more systems will sample fewer than five times/month than was contemplated under the proposed rule. Thus, the Agency believes it appropriate to increase the time between sanitary surveys, compared to what was proposed, and stagger the deadlines because of State resource constraints. The sanitary survey requirements of the final rule appear in Table 3.

As Table 3 indicates, the initial sanitary surveys must be completed within five years of promulgation of this rule for community water systems, and within ten years of promulgation for non-community water systems. Table 3 also shows the schedule for subsequent surveys, which is either every five or ten years, depending on the type of system.

The sanitary survey frequencies in Table 3 take into account the fact that there is lower potential health risk associated with ground water systems which disinfect than with other systems. This schedule also takes into account that there are two to three times as many non-community water systems as community water systems and, as a result, more time will be necessary to complete sanitary surveys for the non-community systems. Although sanitary surveys are already being performed in many States (EPA data indicate that in FY 1987, States collectively performed about 35,000 on-site evaluations), EPA recognizes that a number of States will need some period of time to establish a mechanism for ensuring that sanitary surveys are conducted for the thousands of affected systems in the State. Given these considerations, EPA believes the required frequencies for sanitary surveys are reasonable.

Under this rule, the system is responsible for insuring that the sanitary survey is accomplished. Only the State or an agent approved by the State may conduct a sanitary survey. States are required to review the results of each sanitary survey to determine whether the existing monitoring frequency is still appropriate, and if not, what the new frequency should be, and whether the system needs to undertake any specific measures to improve water quality. EPA intends to provide guidance on the design and implementation of sanitary surveys and other site-specific evaluations.

4. Invalidation of Total Coliform-Positive Samples

The November 3, 1987 notice proposed that all coliform-positive samples be used in determining MCL compliance, unless the laboratory establishes that improper sample analysis caused the positive result. Several commenters suggested that the State be allowed to invalidate total coliform-positive samples in certain other situations as well.

EPA is aware that a number of States and systems currently invalidate a total coliform-positive sample on the basis of subsequent "check" samples which are total coliform-negative. In other words, when subsequent repeat samples at the same and/or nearby taps/service connections are total coliform-negative, it is assumed that the original total coliform-positive sample resulted from a domestic or other non-distribution system plumbing problem or improper sample collection and handling. Consequently, they invalidate the original total coliform-positive sample. EPA believes there is no valid justification for using coliform-negative check samples alone to invalidate an initial coliform-positive sample.

As indicated in the November 3, 1987, notice, Pipes and Christian (1982) and Christian and Pipes (1983) have shown that the distribution of coliforms in the distribution system is far from being uniform. Hence, repeat samples alone are not adequate to determine the validity of a total coliform-positive sample. Even if a repeat sample is taken from the same sampling tap as the total coliform-positive sample, the results of the analysis of the repeat sample will not necessarily be representative of conditions when the original sample was taken. Therefore, under this final rule, States may not invalidate a total coliform-positive sample simply because a subsequent sample taken at the same tap and/or nearby taps/service connections are total coliform-negative. However, EPA believes that if any repeat sample is total coliform-positive at the same tap as the original total coliform-positive sample, but all repeat samples at nearby service connections are total coliform-negative, this is a strong indication of a domestic or other non-distribution system plumbing problem. Therefore, in this case, the final rule allows the State to invalidate the original total coliform-positive sample. When the State determines that a coliform-positive result is a domestic or other non-distribution system plumbing problem rather than a distribution system problem, EPA recommends that the State instruct the system to inform all consumers at the affected location of the problem and to advise them to boil their drinking water until the problem is corrected.

This rule also provides the State discretion to invalidate a total coliform-positive sample when it determines that a total coliform-positive result is due to a circumstance or condition which does not reflect water quality in the distribution system. States should use their discretion to invalidate a sample on this basis sparingly. They should hesitate to assume that an error by the sample collector is responsible for a total coliform-positive sample, and thus invalidate the sample, since Pipes and Christian (1982) have shown that contamination by a sample collector is unlikely to be the cause of a total coliform-positive result, i.e., it is unlikely that a person who collects samples can unintentionally render a sample total coliform-positive. Whenever a State official invalidates a sample for this reason, the basis for this determination must be documented in writing, signed by the supervisor of the State official who makes this determination, and the documentation must be made available to EPA and the public. The written documentation must include the specific cause of the total coliform-positive sample, and what action the system has taken, or will take, to correct this problem. The State cannot invalidate a total coliform-positive sample under this provision unless all repeat samples are total coliform-negative. States cannot invalidate a total coliform-positive sample *solely* on the grounds that all repeat samples are total coliform-negative.

The final rule also allows the State to invalidate a total coliform-positive sample if the laboratory establishes that improper sample analysis caused the positive result.

The State may not invalidate a total coliform-positive sample for any other reason than those described above. A total coliform-positive sample invalidated for any of the above reasons does not count towards meeting the minimum monitoring requirements.

5. Monitoring Frequency

a. *Monitoring frequency for small community water systems and all non-community water systems*—(1) *General.* The November 3, 1987, notice proposed to require all public water systems serving 3,300 persons or fewer to collect and analyze a minimum of five total coliform samples/month. As explained in that notice, EPA's primary rationale for this higher level of monitoring, compared to the requirements of the current total coliform rule, is based on the study which demonstrated that coliforms are distributed very unevenly in distribution systems (Pipes and Christian, 1982; Christian and Pipes, 1983). To reduce the economic burden of additional monitoring on small systems, while still assuring reasonable protection of public health, EPA proposed to allow certain systems to monitor less frequently than five samples/month, if the State, or an agent acceptable to the State, performed a periodic sanitary survey and the results of that survey were acceptable to the State.

EPA received numerous comments on this issue. The vast majority opposed the proposed monitoring frequency, primarily because they believed the requirement would be too expensive, too inconvenient, and/or unnecessary because their systems had never had a waterborne disease outbreak or any other contamination problem. The Agency continues to believe, however, given the scientific data, that the monitoring requirements of the interim regulations, alone, are not adequate to fully assess the microbiological quality of drinking water. In response to the extensive comments, therefore, EPA solicited comments in the May 6, 1988, notice on several additional options for ensuring adequate monitoring, without a large increase in costs.

In response to the public comments on the two notices, the Agency has decided, for small systems, to place less emphasis on collecting many routine samples every month when there is no apparent problem (based on the results of the sanitary survey, historical monitoring data, and other considerations) and greater emphasis on evaluating the severity and extent of any contamination problem when it does occur and the success of any corrective action (as indicated by coliform monitoring results). To this end, EPA has generally retained the monitoring frequency specified in the interim rule (40 CFR 141.21) for systems serving 4100 persons or fewer (see Table 1), except that increased monitoring is required, at least temporarily, when contamination is found. Thus, under the final rule, when contamination is found, i.e., there is a total coliform-positive sample in the community or non-community water system normally collecting fewer than five samples/month, that system must collect three or four repeat samples, depending on the system's size (see Section IV.C.5.c, below) and, if the original sample is not invalidated, at least five routine samples the next month the water system is in operation. If these repeat and additional routine samples are total coliform-negative, the system may revert to the regular frequency of less than five samples/month. (The State, or an agent of the State, may perform an on-site evaluation in lieu of the system taking five routine samples the next month, as explained in greater detail below.) By retaining the current monitoring frequency for small systems, and requiring additional samples only when a system detects contamination, systems and States can concentrate their limited resources on identifying and correcting problems, rather than simply requiring that many more samples are collected across the board.

An integral part of this approach is the periodic sanitary survey requirement. The Agency believes that a system collecting fewer than five samples/month does not have an adequate grasp on the quality of its drinking water unless this limited sampling is supplemented by a periodic sanitary survey, and the results are reviewed by the State. These sanitary surveys, along with additional information such as the system's history of coliform monitoring results, should provide the State with sufficient information to judge whether a system is adequately constructed and operated or has a potential contamination problem. For systems collecting fewer than five samples/month, the total coliform samples will serve as a periodic check of the findings of the most recent sanitary survey. States would be expected to increase the monitoring frequency and/or require various preventive measures for a particular system if coliforms are detected or if the most recent sanitary survey reveals deficiencies. EPA believes this approach will minimize the financial burden to small systems which do not have an apparent contamination problem, while safeguarding public health, by ensuring these systems are subject to periodic sanitary surveys and increasing the monitoring requirements for systems with demonstrated problems.

Regarding the appropriate timing for collecting water samples, in the November 3, 1987, notice, EPA proposed to require systems to collect water samples at regular time intervals throughout the month, except that systems which used ground water exclusively and which served 3,300 persons or fewer could collect up to five samples from different parts of the distribution system on a single day. Very few commenters addressed this issue. EPA has decided to promulgate this provision as proposed for the reasons given in the November 3 notice, except that, to be consistent with the population categories used in this final rule, the rule provides that systems using ground water and serving 4,900 persons or fewer may collect all required samples from different parts of the distribution system on a single day.

(2) *Non-community water systems.* The interim regulations at § 141.21(c) provide the State discretion to allow a non-community public water system to monitor less than quarterly, based on the results of a sanitary survey. The final rule retains this provision only for non-community water systems which use ground water and which serve 1,000 persons or fewer. The Agency, believes, however, that all systems must perform at least some monitoring to insure the continuing validity of the most recent sanitary survey results and the actual absence of coliforms. Thus, the final rule requires non-community systems using ground water and serving 1,000 persons or fewer to collect at least one total coliform sample per year. The Agency believes this requirement is reasonable, and represents the bare minimum that is adequate for protection of public health. EPA also believes that this provision will not impose a financial burden on non-community systems or on States which collect and analyze samples for non-community systems. For States already requiring at least quarterly monitoring for such systems, the Agency encourages them to continue this policy. Some States, however, have not required their non-community systems to monitor at all under the interim regulations, while others require monitoring less frequently than annually, and thus will probably need some lead time to develop resources to implement the new provision requiring, at a minimum, annual monitoring. For this reason EPA is phasing in the new monitoring frequency requirements. A non-community water system using ground water (which is not under the direct influence of surface water) and serving 1,000 persons or fewer must begin monitoring no later than five years from June 29, 1989, and at least annually thereafter. The Agency believes this phase-in period is ample for States and systems to implement this requirement.

EPA believes these small groundwater systems, which tend to have good quality source water and be simpler in configuration, are less likely to develop contamination problems. EPA is not allowing surface water systems to monitor only annually, however, because surface water often varies in quality and is much more likely to contain coliforms; thus reduced

monitoring is unwarranted. Accordingly, non-community water systems using surface water must monitor at the same frequency as a like-sized community water system, i.e., at the frequency specified in Table 1. For the same reason, non-community water systems using ground water under the direct influence of surface water must also monitor at the same frequency as a like-sized community water system. The final rule allows such a groundwater system six months after the State determines that the system is under the direct influence of surface water to begin monitoring at this frequency.

EPA is also requiring non-community systems using ground water serving more than 1,000 persons during any months to monitor at the same frequency as a like-sized community public water system since a greater number of people are at risk if there is contamination of the system, and since these systems are likely to be larger and more complex, resembling community water systems in size and configuration. Under this rule, however, the State may reduce the monitoring frequency, as appropriate, for such a system for any month the system serves 1,000 persons or fewer.

TABLE 4.—MONITORING FREQUENCY FOR NON-COMMUNITY WATER SYSTEMS [1]

Water source	Population served	Minimum monitoring frequency	Effective date of requirement
Surface	any	Same as CWS [2]	Beginning December 31, 1990.
Ground	1>1,000	Same as CWS [2 3]	Beginning December 31, 1990.
Ground	>1,000	State discretion	December 31, 1990 until June 29, 1994.
Ground	>1,000	State discretion [4]	After June 29, 1994.
Ground water under direct influence of surface water.	Any	Same as CWS [2]	Within one year of State of State classification.

[1] Includes both transient and non-transient non-community water systems.
[2] System must monitor at same frequency as a like-sized community water system.
[3] State may reduce the monitoring frequency for any month the system serves 1,000 persons or fewer.
[4] State may not permit a system to monitor less than once per year.

b. *Monitoring frequency for large community water systems.* The November 3, 1987, notice proposed to retain the current monitoring frequency for systems which serve greater than 3,300 persons, except that EPA proposed to reduce the number of population size categories for communities above 10,000 from 84 to 43 to simplify and streamline the monitoring frequency requirements.

As a consequence of consolidation, some systems would have been required to take a few more samples than they are currently taking. Although there were very few public comments on this issue, a few commenters stated that there was no need for these additional samples. EPA agrees. Therefore, in the final rule, EPA has modified the categories so no system is required to increase its routine sampling frequency above that in the interim coliform rule. With this modification, shown in Table 1, the monitoring scheme in this rule is even simpler; the total number of population categories has been reduced from 84 to 34.

c. *Repeat samples/additional routine samples.* The November 3, 1987, notice proposed that public water systems collect five repeat samples for each total coliform-positive routine or repeat sample if the positive routine or repeat sample did not contain fecal coliforms. The May 6, 1988, notice described several alternatives to the requirement for five repeat samples, including four repeat samples, two repeat samples, and four repeat samples for systems collecting fewer than five samples/month and two repeat samples for systems collecting at least five samples/month.

EPA received many comments on the required number of repeat samples. Most commenters who addressed this issue opposed the requirement for five repeat samples because of the cost or because they thought that five repeat samples were simply unnecessary. Many of these commenters thought that two repeat samples, as specified in the current rule, are adequate.

As stated in the November 3, 1987, proposal, given the non-uniform distribution of total coliforms in the distribution system, EPA does not believe that two repeat samples are sufficient to assess the extent or degree of contamination. Furthermore, as described above, the fact that a total coliform-positive sample is followed by two negative samples at the same or nearby sampling point does not necessarily mean there is no contamination in the system and, thus, that the original positive sample is invalid. Yet, EPA also recognizes that five repeat samples for systems collecting more than five samples/month probably is unnecessary, given that such systems are likely to detect and confirm the presence of any contamination in the course of the more frequent routine monitoring required by the rule. For this reason, EPA has decided to require these larger systems to collect only three repeat samples, one at the same tap as the original coliform-positive sample, one at a tap within five service connections upstream, and one at a tap within five service connections downstream of the original sampling site. EPA believes that, for these systems, these extra samples, in conjunction with routine monitoring, will allow the system and the State to determine the source and extent of any contamination.

In addition, EPA has decided to require systems collecting two, three, or four routine samples/month to collect three repeat samples, and systems collecting one sample/month or fewer to collect four repeat samples, for a total of five or more samples, whenever a total coliform-positive sample is found. Also, as indicated previously, whenever a total coliform-positive sample is detected and the State does not invalidate it, any system collecting fewer than five routine samples/month ("small system") must collect at least five routine samples the next month it serves water to the public, even if the MCL is not violated. To meet this requirement, a small system may count any routine sample it normally collects the next month it serves water to the public toward this set of five routine samples, i.e., if a small system normally collects one sample/month, it need only collect four additional routine samples the next month it serves water to the public; if a system normally collects five or more samples/month, it need not collect any additional samples the next month it serves water to the public. Under these requirements, a small system with a total coliform-positive sample will have the results from at least five samples during the month when the total coliform-positive sample was detected, and five more the next month is serves water to the public, for a total of ten samples over the two-month period. This repeat sample requirement should not be a burden to most systems, since repeat samples count toward the monthly monitoring requirement. (Routine samples differ from repeat samples in that systems may collect routine samples at any tap in the distribution system, consistent with the sampling siting plan, while repeat samples must be collected at specific locations.)

The primary reason for requiring a contaminated small system to collect at least ten samples during a two-month period is based on the statistical analysis described in the November 3, 1987, notice which indicates that, for example, if 60 or more samples are collected and 95 percent or more are total coliform-negative, there is a 95 percent confidence that the fraction of water with coliforms present is less than 10 percent. By collecting at least five samples (routine plus repeat samples) during the month when a total coliform-positive sample is found, and five additional routine samples the next month the system serves water to the public, these small systems will more quickly collect an increasingly valid number of samples upon which to assess both the effectiveness of any corrective action taken and the current microbiological quality of its water, even in the absence of a recent sanitary survey. The Agency believes this would also provide the system a larger, and thus more valid, data set than most systems would have taken under the proposed requirement (which would have required five samples/month but allowed reductions based on sanitary survey results). EPA concludes that it is important to temporarily require increased monitoring for small systems where the water quality is suspect (especially since sanitary surveys will be performed only every five years or less), and that these requirements are consistent with comments suggesting that increased monitoring is not necessary in systems that are not experiencing problems.

In addition, these provisions have many of the same benefits of the proposed long-term MCL. EPA is concerned that, in small systems, intermittent contamination could go undetected if a system monitors infrequently, and regularly has one total coliform-positive sample, since this would not result in an MCL violation. However, a contaminated small system which collects a set of repeat samples during the same month it finds a total coliform-positive sample and at least five routine samples the next month it serves water to the public has a higher probability of detecting more than one total coliform-positive sample during a month, and thus incurring an MCL violation. As a result, this monitoring scheme is more likely to result in the discovery and correction of intermittent contamination problems.

The final rule allows the State to waive the requirement for a small system to collect five routine samples the next month it serves water to the public if the State, or an agent approved by the State, performs a site visit before the end of the month during which the system would otherwise be required to collect the five routine samples. The site visit need not be a complete or formal sanitary survey; the purpose is to investigate first-hand the reason for the total coliform-positive result, and decide whether any additional monitoring and corrective action is needed. The State cannot approve an employee of the system to perform this site visit, even if the employee is an agent approved by the State to perform sanitary surveys.

The rule also allows the State to waive the requirement that a small system take five routine samples the next month it serves water to the public after it has a total coliform-positive sample if the State has determined why the sample was total coliform-positive, and establishes that the system has corrected the problem or will correct the problem before the end of the next month the system serves water to the public. In this case, the State must document this decision to waive the monitoring requirement in writing. This document must be signed by the supervisor of the State official who recommends such a decision, and made available to EPA and the public. The written documentation must state the specific cause of the total coliform-positive sample, and what action the system has taken or will take to correct this problem before the end of the next month the system serves water to the public. The State cannot waive the requirement for a small system to collect five routine samples the next month after it has a total coliform-positive sample solely on the grounds that all repeat samples were total coliform-negative. In addition, the State cannot waive the requirement for a system to collect repeat samples the same month the system has a total coliform-positive sample.

For systems collecting fewer than five routine samples/month, if the State decides to waive the requirement for that system to collect five routine samples the next month the system serves water to the public under the provision described in the previous paragraph, the system must still collect at least one routine sample before the end of the next month the system serves water to the public if the system collected the required set of repeat samples before the problem was corrected. This routine sample, which counts in determining compliance with the MCL, will assist the system in determining whether the corrective action has been successful. If such a system collects the required repeat samples after correcting the problem, and all repeat samples are total coliform-negative, then the system need not collect a routine sample the next month it serves water to the public. In this case, EPA believes the repeat sample results are sufficient to indicate the success of any corrective action. If any repeat sample is total coliform-positive, the system is out of compliance with the MCL for total coliforms.

Table 2 summarizes the follow-up (both repeat and routine) sampling requirements for a system which detects total coliforms in a sample.

The November 3, 1987, notice proposed that data from all routine samples and repeat samples be included in the calculations to determine MCL compliance. A number of commenters approved this approach, but the majority opposed it. Reasons given for opposing this approach included the following: (1) Repeat samples should not be used to determine compliance, but only to confirm the results of an original coliform-positive sample; (2) the use of results from repeat samples to determine compliance would reduce the level of monitoring in the rest of the system, since all of the samples collected at or near the problem tap would fulfill (or nearly fulfill) the monthly monitoring requirements; and (3) contamination in a single location of the distribution system might result in an MCL violation if one or more repeat samples were total coliform-positive, even though there might not be a system-wide problem.

EPA believes the first comment is invalid because, as described above and in the November 3, 1987, notice, total coliforms are not distributed uniformly in the distribution system, and thus, repeat samples cannot be used to confirm a total coliform-positive routine sample. As for the other two reasons, EPA believes it makes sense to focus sampling at or near the site of the original total coliform-positive sample, given the documented non-uniform

distribution of coliforms, and to consider all samples that are not invalidated in determining whether a system is in compliance with the MCL. Hence, for the reasons discussed above and in the November 3, 1987, notice, the Agency has incorporated the proposed method for calculating compliance, i.e., inclusion of all samples, into the final rule. For the purposes of calculating compliance, a system must count all repeat sample results in the same month as the routine total coliform-positive sample which prompted those repeat samples. States have the authority to increase the number of required samples if they determine that it is necessary to assure that the water is safe.

The November 3, 1987, notice also proposed that systems collect repeat samples from the same sampling point as the original sample, except that some could be collected at the next service connection above and/or below the original sampling point. The intent was to allow systems to determine the source and extent of contamination, i.e., whether the contamination was a distribution system problem or not. A few commenters suggested that systems be allowed to collect repeat samples at any nearby site rather than just the adjacent sites; they were concerned that sampling adjacent sites only might be difficult (e.g., if residents are not home or they refuse entry). EPA recognizes that systems may sometimes have difficulty sampling at adjacent service connections. To account for this potential problem, the final rule allows systems to collect repeat samples up to five service connections away, in either direction, from the contaminated tap. EPA believes this broader repeat sampling range will still allow the system to determine the source and extent of contamination, while allowing it flexibilty to find sufficient sampling points. The final rule requires the system to collect at least one repeat sample from the same tap as the original total coliform-positive sample, at least one repeat sample upstream, *and* at least one repeat sample downstream. This provision will provide information to the system as to whether the contamination is a domestic or other non-distribution system plumbing problem.

Some commenters opposed the proposed requirement that systems collect all repeat samples within 24 hours of being notified of a coliform-positive result. EPA continues to believe that the 24-hour limit for collecting repeat samples is necessary to protect public health. Repeat samples are necessary to determine the severity and extent of contamination. Because of the nature of the analytical methods for coliforms, the positive finding may not be recognized for up to 96 hours after the sample is taken. Thus, time already is lost, so rapid collection of repeat samples is essential. The Agency does recognize, however, that some systems may have certain logistical problems in obtaining repeat samples promptly that are outside their control, e.g., a laboratory may not be available every day to ship empty sample bottles or receive water samples. To provide some allowance for such situations, while still safeguarding public health, the final rule allows the State to waive the 24-hour limit on a case-by-case basis. The State must grant any such waiver before the 24-hour period has passed; it cannot excuse late sampling after the fact. In this case, the State must specify the time by which the system must collect these repeat samples. In such cases, the Agency encourages the State to require repeat sampling as soon as possible.

A State cannot invalidate a total coliform-positive sample on the basis of repeat sample results in systems consisting of a single service connection, since they cannot collect upstream and downstream samples and demonstrate the problem was not in the distribution system. Thus, the primary reason for requiring such a system to collect repeat samples is to determine the effectiveness of any corrective actions. Since a system with a single service connection cannot collect repeat samples at different locations as other systems can, the final rule allows the State to authorize such systems to collect the required set of repeat samples over four days, rather than within 24 hours, after being notified of a total coliform-positive result. The final rule also provides the State discretion to allow such systems to collect a larger volume repeat sample(s) (e.g., a single 400-ml repeat sample or two 200-ml repeat samples) in one or more sample containers of any size, as long as the total volume collected is at least 400 ml (300 ml for systems which collect more than one routine sample/month). In addition, under the final rule, if a total coliform-positive sample is at the end of the distribution system, or one away from the end of the distribution system, the State may waive the requirement to collect at least one repeat sample upstream or downstream of the original sampling site.

As noted above, the final rule requires systems with more than one service connection to collect the repeat samples within 24 hours of obtaining a total coliform-positive result from an original sample. EPA is not allowing such systems to collect repeat samples over a period of days as a routine matter because these systems usually serve more people than a system with one service connection, and thus more people would be at risk if contamination were to be present in the distribution system; these larger systems need to evaluate and eliminate any contamination quickly before it causes waterborne illness in a large population. For the same reason EPA encourages States to require larger and more complex systems with single service connections to sample quickly whenever they detect a total coliform-positive sample to ascertain the nature of a contamination problem and the effectiveness of any corrective action.

Some systems may collect one or more routine samples from within five adjacent service connections of a previously collected routine sample. If the previously collected routine sample(s) is later found to be total coliform-positive, then the system may count the subsequent routine sample as a repeat sample. (However, in such instances, a system may not count this sample(s) twice in compliance calculations, i.e., as both a routine sample and a repeat sample.) This provision will slightly reduce the cost burden to the system, since it can decrease the number of repeat samples a system needs to collect after it learns of a total coliform-positive result.

Some commenters opposed the proposal to require systems to collect and analyze another set of repeat samples if any repeat sample were total coliform-positive. The Agency, however, believes that, whenever a repeat sample is total coliform-positive, sampling should continue in order to clarify the extent of the contamination, and to assure that the problem is corrected; total coliform-positive repeat samples are of no less concern than total coliform-positive routine samples. Based on this conclusion, EPA has adopted the proposed provision in the final rule. Thus, whenever a system has one or more total coliform-positive repeat samples (and neither the original total coliform-positive sample nor the total coliform-positive repeat sample(s) is invalidated), the system must collect another set of repeat samples (either three or four, as specified in the rule). The system must collect this additional set of repeat samples within 24 hours of being notified of the total coliform-positive result(s), as before. This requirement should not be a burden to most systems, since repeat samples count toward the monthly monitoring requirement. Furthermore, smaller systems are not required to collect any additional sets of repeat samples once they notify the State that they are in violation of the MCL for total coliforms. Thus, for a system which collects fewer than 40 samples/month, a total coliform-positive repeat sample (which is not invalidated) constitutes an MCL violation, so no additional repeat samples are required that month (unless the State requires otherwise), once the State is notified of the violation.

d. *Additional monitoring for unfiltered surface water systems.* The November 3, 1987, total coliform notice proposed to require each system using unfiltered surface water to collect one coliform sample near the first service connection within 24 hours after determining that its source water turbidity exceeds 1 NTU. Under the proposal, this coliform sample would count toward the total number required. EPA received very few comments on this issue. Thus, the Agency has incorporated this requirement into the final rule, for the reasons given in the November 3, 1987, notice. This requirement also applies to unfiltered groundwater systems under the direct influence of surface water. To improve clarity, EPA is specifying that systems collect this coliform sample within 24 hours of the first time during a day that the turbidity exceeds 1 NTU. Systems need only collect a single coliform sample near the first service connection once/day, even if the turbidity exceeds 1 NTU more than once/day.

The Agency recognizes that some systems which collect a sample within 24 hours after exceeding a turbidity level of 1 NTU may not be able to have the samples analyzed within 30 hours of collection for logistical reasons outside their control (e.g., the laboratory is closed during a weekend). To accommodate such situations, the State may waive the requirement, on a case-by-case basis, for a system to collect the coliform sample when the turbidity exceeds 1 NTU. The rationale for allowing States to provide this waiver is that high turbidity events are often short-lived; if the system were to collect the coliform sample more than 24 hours after such an event in order to ensure analysis within 30 hours of collection, it is unlikely that the sample would provide useful information about the disinfection conditions during that event. Thus, EPA believes it more appropriate to allow the State to waive the requirement on a case-by-case basis, rather than to extend the 24-hour limit.

EPA also has defined the term "near the first service connection" to mean one of the 20 percent of all service connections in the entire system that are nearest the water supply treatment facility, as measured by the water transport time within the distribution system. This requirement is discussed more fully in the final rule promulgating the surface water treatment requirements, published elsewhere in today's **Federal Register.**

e. *Chlorine substitution policy.* The interim coliform rule (40 CFR 141.21(h)) allows systems to substitute the use of chlorine residual monitoring results for up to 75 percent of the coliform samples required to be taken. In the November 3, 1987, notice, EPA did not propose to include this "chlorine substitution policy" in the revised coliform regulations for the reasons given in that notice. For the same reasons, this final rule does not include a chlorine substitution policy. However, as noted in the proposal, EPA will consider incorporating this concept in the upcoming groundwater disinfection rule which EPA must promulgate under section 1412(b)(8) of SDWA.

6. Fecal Coliform and E. coli Requirements

As explained in the November 3, 1987, notice, the presence of fecal coliforms in drinking water is strong evidence of recent sewage contamination. The presence of fecal coliforms indicates that an urgent public health problem probably exists, since human pathogens often co-exist with fecal coliforms. Therefore, EPA proposed to require that public water systems analyze each total coliform-positive sample (whether an original or repeat sample) to determine if it contains fecal coliforms. Under the proposal, if fecal coliforms were detected, the system would be in violation of the monthly MCL for total coliforms and would be required to notify the State within 48 hours of the violation. The violation would be considered "acute," requiring immediate public notification (i.e., within 72 hours) via electronic media, as well as written follow-up notification, in the case of a community water system (a non-community water system may choose an alternative method of immediate notification).

In the May 6, 1988, notice, EPA presented an alternative option which would require the system to report a fecal coliform-positive result to the State immediately instead of within 48 hours, and collect repeat samples. Then, if the system detected fecal coliforms in any repeat sample taken at the same location or an immediately adjacent service connection, the system would be in violation of the monthly MCL for total coliforms.

Many commenters opposed the classification of a single fecal coliform-positive sample as an acute violation, thus requiring immediate public notification. They stated that some fecal coliform-positive samples are due to "false-positives" (i.e., bacteria other than *E. coli*) and that some fecal coliform-positive samples might reflect a domestic or other non-distribution system plumbing problem, rather than a problem in the distribution system. Commenters also stated that it is common for systems which collect many samples to detect a fecal coliform-positive sample occasionally without any known adverse health effect, and that notifying the public in every such case might eventually cause indifference to public notices. In fact, several large, well-operated community water supplies have submitted data to EPA showing that they occasionally detect a fecal coliform-positive sample in the distribution system, among the hundreds or thousands of samples collected annually.

Under these circumstances, EPA agrees that it would be unnecessarily burdensome to require systems to provide immediate public notification each time a fecal coliform-positive result occurs, especially since EPA is also requiring systems to notify the State of any fecal coliform-positive result, so the State can require any measures necessary in appropriate circumstances. Nevertheless, the Agency still believes that any total coliform-positive sample which is not invalidated and which contains fecal coliforms very likely represents a serious health risk to the community. Therefore, under the final rule, a system must analyze each total coliform-positive sample to determine if it contains fecal coliforms. A system is in violation of the MCL for total coliforms whenever (1) any repeat sample is fecal coliform-positive, or (2) a fecal coliform-positive original sample is followed by a total coliform-positive repeat sample. This violation is "acute," as defined in 40 CFR 141.32(a)(1)(iii) (the public notification requirements) and as such, requires public notification by electronic media within 72 hours and subsequent written notification in the case of a community water system, as specified in 40 CFR 141.32 (a non-community system may choose an alternative method of immediate notification but the time limit is still 72 hours). EPA believes that this approach strikes a balance among the desirability of confirming analyses before acting on the results, the serious nature of fecal coliform-positive contamination, and the decreasing effectiveness of frequent,

urgent notifications of occasional localized distribution system problems.

The final rule provides the State with discretion to allow a public water system, on a case-by-case basis, to assume that a total coliform-positive sample is fecal coliform-positive without requiring it to be actually tested for fecal coliforms. This provision might reduce the cost of analysis. The Agency, however, does not believe that States should implement this waiver provision broadly, since States that did so would be unable to distinguish, and thus focus their limited resources on, systems which pose a major acute risk to the public. A State should limit implementation of this provision to special circumstances, e.g., to water systems which are known to be vulnerable to fecal contamination. If a system assumes that a total coliform-positive sample is also fecal coliform-positive, the system must comply with all requirements in the rule concerning fecal coliforms. If any repeat sample is total coliform-positive, then the system is in violation of the MCL for total coliforms and must notify the public of an acute risk to health.

On a related issue, in the November 3, 1987, and May 6, 1988, notices, EPA requested public comment on whether it would be appropriate to allow an analysis for the presence of *E. coli* in lieu of fecal coliforms whenever the system has a total coliform-positive sample. The vast majority of commenters who addressed this issue favored *E. coli* testing as an alternative to fecal coliform testing.

One reason commenters support *E. coli* testing in lieu of fecal coliform testing is that the fecal coliform test may produce a fecal coliform-positive result for *E. coli*, some thermotolerant strains of *Klebsiella*, and several thermotolerant strains in other genera. Many commenters pointed out that only *E. coli* is a contaminant of concern, not the other thermotolerant strains. In addition, as explained in the November 3, 1987, notice, several bathing beach studies have found that densities of *E. coli* were more closely related to gastroenteritis than were densities of fecal coliforms. Yet fecal coliform testing is very simple and inexpensive, and systems and laboratories are familiar with this test and thus may prefer to use it. In addition, any false-positive error is on the side of safety. For these reasons, the final rule allows the system to test for either *E. coli* or fecal coliforms whenever the system finds a total coliform-positive sample.

In the November 3, 1988, notice, EPA proposed to require a system to notify the State of a fecal coliform-positive sample within 48 hours. Some commenters indicated that this might be difficult to do on weekends, when State offices are closed. The Agency agrees. Therefore, under the final rule, systems must notify the State of a fecal coliform- or *E. coli*-positive sample by the end of the same business day that the system learns of it, or no later than the end of the next business day if the coliform-positive result becomes known after the close of State business for the day. However, EPA strongly encourages States to establish (or use existing) round-the-clock emergency response programs to obtain immediate reports of, and respond to, fecal coliform- and *E. coli*-positive results.

7. Heterotrophic Bacteria Interference

In the November 3, 1987, notice, EPA proposed that if a laboratory observed evidence of interference with the total coliform analysis caused by high levels of heterotrophic bacteria, as defined in that notice, the public water system would be required to: (1) Declare the sample total coliform-positive and collect the required number of repeat samples, or (2) invalidate the sample, collect another sample from the same location, and have the sample analyzed within eight hours (or 30 hours, if the sample was refrigerated) for both the presence or absence of total coliforms and the density of heterotrophic bacteria. Under the second option, if the sample contained greater than 500 colonies/ml, as measured by the heterotrophic plate count analytical method, then the sample would be counted as a total coliform-positive sample, even if total coliforms were not detected.

EPA received numerous comments on this proposed requirement. A number of commenters indicated that many systems would have difficulty meeting the eight-hour limit between sample collection and analysis. Several suggested that EPA should simply require a system to collect another coliform sample when the laboratory indicates there may have been interference with the first coliform analysis, and not require the system to enumerate heterotrophic bacteria, nor count a high level of heterotrophic bacteria as a total coliform-positive sample.

Based on the public comments, EPA has concluded that a sizable number of small systems would find it very difficult to meet the eight-hour limit between sample collection and analysis, and that refrigeration of these samples would be very costly and impractical for these systems. The Agency believes that, as a result, a large number of systems would end up declaring the sample as total coliform-positive when there was not necessarily a heterotrophic bacteria problem or total coliforms in the sample. This was not EPA's intent. The Agency's primary intent was to prevent a system from using total coliform-negative results in compliance calculations when those results were derived from a culture showing evidence of interference from high levels of heterotrophic bacteria, and thus were potentially unreliable. In response, the final rule does not require that public water systems test for levels of heterotrophic bacteria when there are indications of interference with total coliform measurements, nor do samples with high levels of heterotrophic bacteria count as total coliform-positive samples.

Instead, under the final rule, the system must invalidate any sample which has visual evidence of interference (*unless* total coliforms are detected), collect another sample from the same location as the original sample within 24 hours of being notified of the interference problem, and have it analyzed for total coliforms. In testing these replacement samples, the system should minimize sample transit time and transit temperature, and the laboratory should consider using an analytical method which is less vulnerable to interference by high levels of heterotrophic bacteria (e.g., the Minimal Medium ONPG-MUG test, described below). The results of the second sample must be included in compliance calculations, unless the laboratory reports that interference has again occurred, in which case the sample is invalid. The system must continue to re-sample within 24 hours and have the samples re-analyzed, as described above, until it obtains a valid result.

EPA believes that this requirement will help ensure that coliforms in a contaminated system will eventually be detected, and thereby protect the population served, without imposing a severe burden on small systems.

D. Analytical Methodology

1. Analytical Methods for Total Coliforms

In the November 3, 1987, notice, EPA proposed that analysis for total coliforms be conducted using either the Membrane Filter (MF) Technique, the 10-tube Multiple Tube Fermentation (MTF) Technique, or the Presence-Absence (P–A) Coliform Test. EPA also proposed that a standard volume of 100 ml be analyzed, regardless of the methodology employed. Only the

presence or absence of coliforms in a sample would be reported. In the May 6, 1988 notice, EPA also proposed a fourth analytical method for monitoring the presence or absence of total coliforms, the Colilert System, referred to in this rule by the more generic name, the Minimal Medium ONPG–MUG or MMO–MUG, test.

EPA received a number of comments on the proposed analytical methodologies. Most commenters supported the proposed methodologies and agreed that the use of a standard volume was appropriate. Some commenters, however, were opposed to the elimination of the 5-tube MTF Technique, using a sample 50 ml (a currently EPA-approved method). For the reasons stated in the November 3, 1987, notice, EPA is promulgating the 10-tube test, rather than the 5-tube test. However, under this final rule, it is permissible to run the 10-tube MTF Technique using only five tubes if the laboratory uses larger tubes which collectively analyze a 100-ml water sample. Likewise, the laboratory may use a single bottle containing the MTF medium if it is of sufficient volume to determine the presence or absence of coliforms in a 100-ml water sample.

If a system with a single service connection provides a laboratory with a large volume repeat sample(s), i.e., 200 ml or greater, the laboratory must analyze separate 100-ml portions, as required by the analytical methods. EPA is not allowing analysis of larger sample volumes because of the likelihood of interference with the analytical methodology by high densities of heterotrophic bacteria and turbidity.

Based on ample validity data, described in the record for this rule, which support the use of the proposed methodologies, EPA is promulgating all four of the proposed methods for use in monitoring the presence or absence of coliforms in a 100-ml sample of water.

2. Analytical Methods for Fecal Coliforms and E. coli

In the November 3, 1987, notice, EPA proposed to require the use of EC medium for determining the presence of fecal coliforms in a total coliform-positive culture. The ingredients and preparation of this medium are described in Standard Methods (APHA, 1985). The Agency also proposed a procedure for transferring growth from a total coliform-positive culture to EC medium. There were no significant public comments on this issue; EPA has decided to promulgate these provisions as proposed.

As explained above, EPA has decided to allow systems to test for *E. coli* in lieu of fecal coliforms. The Agency will propose analytical methods for *E. coli* in a subsequent **Federal Register** notice, and promulgate those methods before the effective date of this rule.

E. Laboratory Certification

Currently, analysis of drinking water samples to determine compliance with the MCLs for coliforms must be analyzed by a laboratory approved by the EPA or a State, as specified by 40 CFR 142.10(b)(4) and 141.28. In the November 3, 1987, notice, EPA solicited comment on, but did not propose, field inoculation and analysis as an alternate approach to requiring the use of certified laboratories for total coliform analysis. Under this approach, a system operator could either send the water sample to a certified laboratory or conduct the analysis on-site by adding a 100-ml water sample to a bottle containing commercially pre-sterilized medium, incubating the sample, and analyzing and recording the results.

Almost all commenters who addressed this issue opposed the field inoculation and analysis option for sample analysis. Commenters were concerned about the significantly greater potential for unreliable results and abuse compared to analysis performed in a certified laboratory, and lack of operator training in analytical methodology. EPA shares these concerns. For this reason, this final rule requires that systems use laboratories which are certified by EPA or a State to analyze compliance samples for total coliforms, fecal coliforms, and *E. coli*. This requirement, however, does not preclude systems from inoculating samples in the field and submitting these inoculated samples to a certified laboratory for incubation and analysis, whenever the analytical methods approved by EPA is 40 CFR 141.21a(f)(2) of the rule permit it.

The Agency is in the process of developing regulations under 40 CFR Parts 141 and 142 to improve State laboratory certification programs and prescribe other quality assurance measures for compliance samples and data management; the issue of self-analysis of compliance samples for total coliforms and other microbial and chemical contaminants will be evaluated as part of this process.

This rule has no specific laboratory certification criteria. EPA will allow any laboratory already certified by the Agency to perform total coliform analysis under the current rule to perform analysis for total coliforms, fecal coliforms, and *E. coli* under this rule until the Agency has established laboratory certification criteria for use with this rule, and has certified it to analyze for total coliforms and fecal coliforms and/or *E. coli* under those criteria. The Agency recommends that States use the same approach for State-certified laboratories. EPA believes this approach is reasonable, since the analytical methods being promulgated for the detection of total coliforms and fecal coliforms are similar to current methods. Furthermore, EPA expects that methods which will be promulgated for *E. coli* will be similar to current methods. Consequently, laboratories currently certified for the enumeration of total coliforms should be capable of making all analytical measurements required in this rule.

V. Variances and Exemptions

In the November 3, 1988, notice, EPA proposed that neither variances nor exemptions to the coliform rule be permitted.

Few commenters addressed this issue. Some agreed that variances and exemptions should not be allowed. Others stated that States should be allowed to issue variances or exemptions to small systems when: (1) The system has had a long record of compliance before development of the problem; (2) the system is in a sparsely populated area; and (3) the system is in an area where the geological formation is known to produce safe water.

As EPA explained in the November 3, 1978, notice, coliforms are the primary indicator of the microbiological quality of water. To the extent a variance or exemption would permit the continued presence of coliforms, the potential for pathogens to be present also would remain. EPA believes that water which exceeds the MCL for total coliforms generally poses an unreasonable risk to health. Therefore, EPA believes States would be unable to make the required determination that no unreasonable risk to health (URTH) would result from a variance or exemption, since a variance or exemption would permit the continued presence of total coliforms in drinking water above the MCL. In addition, in judging whether variances or exemptions are appropriate, it is important to recognize that the final coliform rule already provides some latitude by allowing coliforms to be present in a few, i.e., five percent, of the samples taken for larger systems and one sample per month for systems collecting fewer than 40 samples per month. Accordingly, EPA has concluded that variances and exemptions should not be allowed. However, the Agency is aware of systems where persistent coliforms are present due to distribution

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system problems, but apparently are not associated with fecal or pathogenic contamination or with waterborne disease. EPA intends to study these cases to determine whether generic URTH criteria can be developed that could be used as the basis for permitting variances and exemptions under limited circumstances in the future.

Section 141.4 is being revised to reflect the Agency's conclusion that no variances or exemptions to the MCL for total coliforms are allowed. This revision to § 141.4 also prohibits variances from the treatment technique requirements of the surface water treatment requirements in Part 141, Subpart H, promulgated elsewhere in today's **Federal Register**. The rationale for not allowing variances from the treatment technique requirements is set out in that notice.

VI. Best Available Technologies (BATs) for Total Coliforms

In the November 3, 1987, notice EPA proposed the following BATs for total coliforms: protection of wells from contamination by coliforms by appropriate placement and construction; maintenance of a disinfectant residual of at least 0.2 mg/l throughout the distribution system; proper maintenance of the distribution system including appropriate pipe replacement and repair procedures, main flushing programs, proper operation andmaintenance of storage tanks and reservoirs, and continual maintenance of positive water pressure in all parts of the distribution system; and filtration and/or disinfection of surface water, as defined in 40 CFR Part 141, Subpart H (promulgated elsewhere in today's **Federal Register**), or disinfection of ground water using strong oxidants such as chlorine, chlorine dioxide, or ozone.

Since there is a very long history of success of these methods for significantly reducing coliform levels (especially when used together, where appropriate), no more effective technologies were identified by commenters, and they are "available" (taking cost into consideration). EPA is promulgating the proposed BATs in the final coliform rule, without changes. However, the Agency, while continuing to recommend that systems maintain a disinfectant residual, is not specifying a particular concentration value for that residual, since optimum values vary according to the disinfectant used, as well as other factors. Appropriate disinfectant residual concentrations for surface water systems are described in the surface water treatment requirements (published elsewhere in today's **Federal Register**) and also will be examined in the development of the forthcoming groundwater disinfection rule.

An additional means for achieving compliance with the MCL for total coliforms includes the development and implementation of an EPA-approved State Wellhead Protection Program under section 1428 of the Act. This program, which has been included as BAT in the final rule, is described in section IX below.

The technologies listed above for removal of microbial contamination are discussed extensively in *Technologies and Costs for the Treatment of Microbial Contaminants in Potable Water Supplies* (USEPA, 1988). Filtration, disinfection, and maintenance of the distribution system also will be discussed in EPA's forthcoming *Guidance Manual for Compliance with the Filtration and Disinfection Requirements for Public Water Systems Using Surface Water Sources*. The methods listed above represent the technology, treatment technique, and other means which EPA finds to be feasible for purposes of meeting the MCL for total coliforms, in accordance with section 1412(b)(6) of SDWA, but this regulation does not require the use of the above methods; if treatment is necessary, systems are free to meet the requirements of this regulation using the methods of their choice (provided they are acceptable to the State.)

VII. Reporting, Recordkeeping, and Public Notification

A. Reporting and Recordkeeping

In the November 3, 1987, notice, EPA proposed to require that a public water system report a violation of the total coliform MCL or coliform monitoring requirement (e.g., a failure to monitor) to the State within 48 hours. EPA also proposed to require a system that detected fecal coliforms in any sample (which was considered an MCL violation under the proposal) to report this violation to the State within 48 hours of its discovery. The Agency also proposed that systems report violations of the long-term coliform MCL to the State.

EPA received very few comments on this proposed reporting requirement. Some commenters indicated that the 48-hour time limit would sometimes be difficult to meet on weekends, when State employees are not at work. EPA agrees, and instead is requiring that systems notify the State of any MCL violation not later than the end of the next business day after the system has been notified of the analytical result which results in the violation. EPA is also requiring that a system notify the State of any monitoring violation, including a failure to complete a sanitary survey within the specified time frame, within ten days after the system learns of the violation. To implement this reporting requirement, EPA is revising § 141.31(b), which currently requires systems to report a violation of a national primary drinking water regulation to the State within 48 hours.

The Agency is not promulgating the proposed reporting requirements for a violation of the long-term MCL, since the proposed long-term MCL is not included in this final rule.

Systems must continue to comply with 40 CFR 141.33, which specifies recordkeeping requirements.

B. Public Notification Language: Total Coliforms

The revised public notification regulations at 40 CFR 141.32 require that notices of an MCL violation describe any adverse health effects. The description must include, at a minimum, language specified by EPA for that contaminant. In the November 3, 1987, notice, EPA proposed language for public notices for a violation of either the monthly or long-term MCL for total coliforms.

Several commenters opposed the proposed language. Some stated that it is too extreme and could cause undue alarm and undermine customer confidence in the water supply. Others claimed that the proposed wording implies that the presence of any total coliforms found in the drinking water will automatically produce disease, and were concerned that all diarrhea, nausea, headaches, etc. will be attributed to drinking water. Some commenters suggested specific changes in the wording of the public notice (primarily the deletion of references to specific diseases and disease symptoms).

EPA appreciates the concern that many individuals might blame the water system whenever they experience the disease symptoms listed in the public notice. Nevertheless, the Act requires public notices to identify what adverse health effects may result when a system exceeds the MCL, and EPA believes customers should be fully informed of possible consequences of a violation. Thus, the mandatory language promulgated today retains the list of potential symptoms. To address the concerns expressed by commenters, however, the Agency has added a statement in the public notice language that notes that factors other than drinking water may also cause the

symptoms noted. The Agency believes such a statement is warranted in the public notice for total coliforms even though it was not included in the public notice language promulgated for volatile organic chemicals and fluoride. The difference is that the chronic effects these other contaminants can cause, such as cancer, occur much less frequently than the acute effects associated with coliform contamination such as headaches and diarrhea; most people experience these symptoms at least several times per year. Thus, a public notice for total coliforms without the qualifying language may lead many individuals to blame the water system as the cause of their illness when this may not be appropriate. With the addition of this explanation, EPA does not believe that the mandatory language is too extreme.

In response to the public comments, EPA has revised the public notice to read as follows:

> The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that the presence of total coliforms is a possible health concern. Total coliforms are common in the environment and are generally not harmful themselves. The presence of these bacteria in drinking water, however, generally is a result of a problem with water treatment or the pipes which distribute the water, and indicates that the water may be contaminated with organisms that can cause disease. Disease symptoms may include diarrhea, cramps, nausea, and possibly jaundice, and any associated headaches and fatigue. These sysptoms, however, are not just associated with disease-causing organisms in drinking water, but also may be caused by a number of factors other than your drinking water. EPA has set an enforceable drinking water standard for total coliforms to reduce the risk of these adverse health effects. Under this standard, no more than 5.0 percent of the samples collected during a month can contain these bacteria, except that systems collecting fewer than 40 samples/month that have one total coliform-positive sample per month are not violating the standard. Drinking water which meets this standard is usually not associated with a health risk from disease-causing bacteria and should be considered safe.

C. Public Notification Language: Fecal Coliforms/E. coli

In the November 3, 1987, and May 6, 1988, notices, EPA explained that it believes that the presence of fecal coliforms or *E. coli* in treated water is cause for grave concern and probably poses an acute risk to human health because when fecal coliforms or *E. coli* are detected, if is likely that human pathogens are present. For this reason, EPA believes that more urgent public notice language is needed when fecal coliforms or *E. coli* are detected, compared to when total coliforms are detected. Thus, in the November 3, 1987, notice, EPA proposed separate mandatory health effects language for public notices when fecal coliforms are detected.

The majority of individuals who commented on the proposed language for the two public notices did not distinguish between them. In these cases, EPA assumed that the commenters were referring to both notices. Regarding the comments expressing concern that all diarrhea, nausea, headaches, etc., will be attributed to drinking water, the Agency's position for the fecal coiform/*E. coli* notice is the same as for the total coliform notice, for the same reasons described above. In addition, some commenters thought erroneously that EPA had proposed to require systems to issue a boil water notice as part of the public notice whenever they were notified that a sample contained fecal coliforms; the Agency has clarified this point of confusion by omitting any reference to boiling the water in the mandatory language. Based on its evaluation of the comments, EPA has revised the mandatory health effects language for fecal coliforms/*E. coli* to read as follows:

> The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that the presence of fecal coliforms or *E. coli* is a serious health concern. Fecal coliforms and *E. coli* are generally not harmful themselves, but their presence in drinking water is serious because they usually are associated with sewage or animal wastes. The presence of these bacteria in drinking water is generally a result of a problem with water treatment or the pipes which distribute the water, and indicates that the water may be contaminated with organisms that can cause disease. Disease symptoms may include diarrhea, cramps, nausea, and possibly jaundice, and associated headaches and fatigue. These symptoms, however, are not just associated with disease-causing organisms in drinking water, but also may be caused by a number of factors other than your drinking water. EPA has set an enforceable drinking water standard for fecal coliforms and *E. coli* to reduce the risk of these adverse health effects. Under this standard all drinking water samples must be free of these bacteria. Drinking water which meets this standard is associated with little or none of this risk and should be considered safe. State and local health authorities recommend that consumers take the following precautions: [To be inserted by the public water systems, according to instrucitons from State or local authorities].

EPA is requiring the water system to include information at the end of the mandatory public notice on what precautions the public should take. The Agency believes that it is important to provide all of the system's consumers with specific information on the problem and suggestions for dealing with it; consumers should not have to take additional steps to obtain this information elsewhere.

VIII. Costs and Benefits of Complying With the NPDWR for Total Coliforms

A. Costs

The estimated cost of this rule consists of costs for routine and repeat monitoring and periodic sanitary surveys. Many commenters though that remedial action costs should be included as well. For accounting purposes, EPA is allocating the cost of remedial actions to the surface water treatment requirements, published elsewhere in today's **Federal Register**, or the forthcoming groundwater disinfection rule, rather than the total coliform rule, because the interrelationships between them make it impossible to clearly distinguish which costs should be attributed to each rule. Occasionally, as a result of meeting the provisions of the total coliform rule, a system may discover a contamination problem not addressed by the surface water treatment requirements and groundwater disinfection rule (e.g., cross-connections, biofilm problems in the presence of disinfectants). EPA believes that the cost of remedial action in these cases is negligible. Moreover, in these cases, while State or local requirements may dictate remedial action, this regulation does not. For these reasons, EPA has not attributed these remedial costs to this final rule.

Assuming that a commercial laboratory is used for all required analyses, EPA has estimated the increment of additional monitoring for all systems to cost from $20.5 to $31.5 million/year. This estimate is based on an average collection cost of $4/sample for large systems, and $10.50/sample for small systems. For small systems, depending on whether they are located in rural areas or near large metropolitan areas, collection costs are estimated to range from $4/sample to $17/sample. For the purposes of economic analysis, sample analysis costs for total coliforms are estimated at $12/sample. Fecal coliform or *E. coli* testing of total coliform-positive cultures is estimated to cost an additional $12/sample. This cost information is found in the Economic Impact Analysis (EIA) for this rule (USEPA, 1989).

Sanitary surveys for systems collecting fewer than five samples/

month must be performed at five-year intervals (except for systems using protected and disinfected ground water for which the interval is ten years). EPA estimates the total cost of these surveys, annualized over 20 years and assuming a three percent interest rate, at $28 million per year. In sum, the incremental cost of this rule over the interim rule is estimated to range from $64 to $76 million per year, including an incremental cost of $16 million which will be incurred by the States for implementing this revised rule. Systems already are also incurring costs to comply with the MCLs for total coliforms under the interim rule, which are estimated to be $67 million per year. When added to the incremental costs associated with today's rule, the total cost for systems to comply with the revised coliform requirements is estimated to range from $131 to $142 million per year (Table 5). These estimates are more fully discussed in the EIA (USEPA, 1989).

TABLE 5—NATIONAL COSTS OF THE TOTAL COLIFORM RULE

(In millions of dollars/year)

	Total		Incremental increase over interim requirements	
	Lower bound	Upper bound	Lower bound	Upper bound
Routine monitoring	67	67	1.5	1.5
Sanitary surveys	28	28	28	28
Repeat monitoring	20	31	19	30
State program costs	[1] 16	[1] 16	16	16
Total	131	142	64	76

[1] Baseline information is unknown. Therefore, only the incremental increase is listed.

B. Benefits

The benefit of the coliform rule is the identification of public water systems that are contaminated or vulnerable to contamination. The rule identifies such systems by requiring routine monitoring by all systems, requiring periodic sanitary surveys for small systems, requiring additional monitoring for systems which detect contamination, clarifying when a State may invalidate a total coliform-positive sample, requiring fecal coliform or *E. coli* testing on all total coliform-positive cultures, and requiring systems to develop (subject to State review and revision) the sample siting plan for each system. EPA believes that these elements of this revised total coliform rule will identify a significant number of water systems which will need to take action to improve the microbial quality of their water and others where preventive action will avoid future problems.

The remedial measures necessary to comply with the total coliform rule will also fulfill some or all of the surface water treatment requirements or the forthcoming groundwater disinfection requirements. As with costs, for accounting purposes, EPA is attributing all health benefits resulting from compliance with this rule to the surface water treatment requirements and the disinfection rule for groundwater systems, rather than the total coliform rule, because the interrelationships among them make it impossible to clearly distinguish which benefits are attributable to each rule.

IX. State Implementation of Total Coliform Requirements

A. General Primacy Requirements

Section 1413 of the SDWA establishes requirements a State must meet in order to receive primary enforcement responsibility (primacy) for public water systems. These include: (1) Adopting drinking water regulations no less stringent than the NPDWRs in effect under sections 1412(a) and 1412(b); (2) adopting and implementing adequate procedures for enforcement; (3) keeping records and making such reports with respect to its activities as EPA may require by regulation; (4) issuing variances and exemptions (if allowed at all by the State) under conditions no less stringent than allowed by sections 1415 and 1416; and (5) adopting and being able to implement an adequate plan for the provision of safe drinking water emergency situations.

40 CFR Part 142 sets out the specific program implementation requirements for States to obtain primacy for the public water system supervision (PWSS) program as authorized under section 1413 of the SDWA. EPA first promulgated these regulations on January 20, 1976. Since 1976, however, much has happened in the PWSS program, and portions of the implementation regulations at 40 CFR Part 142 have become outdated. In response, on August 2, 1988, the Agency proposed revisions to 40 CFR Part 142, Subpart B which take into account the program's evolution since 1976, as well as the new legislative mandates (53 FR 29194). The revised implementation regulations will be promulgated shortly. These implementation regulations will specify procedures, timing, and other general section 1413 requirements a State must meet to retain primary enforcement responsibility, including the requirement that primary States adopt drinking water regulations that are no less stringent than new or revised national primary drinking water regulations promulgated under SDWA section 1412. Since these general requirements will apply to States adopting this revised coliform rule, today's amendment of 40 CFR Part 142 only addresses primacy criteria that are unique to the total coliform rule.

For objective criteria in the NPDWRs, including the revised coliform rule, i.e., requirements that do not involve an exercise of discretion, States, as a condition of obtaining or maintaining (as appropriate) primacy, must promulgate regulations that incorporate requirements that are no less stringent than the national regulations. For the discretionary criteria, i.e., those which the State has discretion to choose how they will be implemented, the State, as part of its program revision, generally need only describe the practices or procedures it will use to implement those portions of its program. Both types of criteria are described below.

B. Special Primacy Requirements

As described above, an application for approval of a State program revision must describe the practices or procedures that the State will use to implement provisions of the total coliform regulations that provide State flexibility with respect to how the objectives of the regulation are to be achieved, e.g., sample invalidation procedures. These optional discretionary elements are listed in § 142.16(c)(12). With the exception of the requirements of 40 CFR 142.16(c)(1) (the sample siting plan approval procedure, which is a mandatory element of a program revision), however, a State need only submit the practices or procedures associated with implementing the elements it intends to use. Thus, for a particular element listed, if the State does not plan to exercise the discretion provided in the total coliform rule, the program revision need not address this element.

Where the State is only required to describe the practices or procedures it will use in exercising the discretion provided in the total coliform regulation, EPA review of that portion of the State program revision will generally be limited. It will consider whether the State practices or procedures are clear and unambiguous, and whether they can be reasonably expected to accomplish the objectives of the regulations.

C. State Recordkeeping and Reporting Requirements

Today's notice amends 40 CFR Part 142 to add requirements for States with primary enforcement responsibility to retain records and report information to EPA to ensure adequate oversight of the States' activities to implement the revised total coliform regulations. No previously required reporting requirements are deleted. States must:

(1) Retain records of determinations made on a system-by-system or case-by-case basis where the State has exercised its discretionary authority under the provisions of § 142.16(c). The list of records of determinations which must be kept is contained in § 142.14(a)(5). Some of these decisions are only required to be put in writing and placed in the affected system's file (e.g., waiving the 24-hour limit for collecting total coliform repeat samples under certain specified conditions). Other decisions require that the system be notified in writing (e.g., reduced routine total coliform monitoring for a public water system) in addition to a record of determination being placed in the system's file. The requirement to have a record of decision in writing is necessary to determine compliance. Without this record, a file review might show a system to be out of compliance when in fact the State had used its discretionary authority to modify the requirements that the system had to meet.

(2) Submit a report by January 1 of each year which consists of a list of public water systems which the State has determined are allowed to monitor less frequently than once per month for community water systems or less frequently than once per quarter for non-community water systems in accordance with § 141.21a(a). The list must include effective dates for systems which did not have such a determination in place for the entire preceding federal fiscal year.

D. State Wellhead Protection Program

Section 1428 of the SDWA contains requirements for the development and implementation of State Wellhead Protection (WHP) Programs to protect wells and wellfields which are used, or may be used, to provide source water to public water systems. Under section 1428, each State must adopt and submit to EPA for approval a WHP Program that, at a minimum:

(1) Specifies the duties of State agencies, local governments, and public water systems in the development and implementation of the WHP Program;

(2) For each wellhead, determines the wellhead protection area (WHPA), as defined in section 1428(e) of SDWA, based on all reasonably available hydrogeologic information on ground-water flow, recharge, and discharge and other information the State deems necessary to adequately determine the WHPA;

(3) Identifies within each WHPA all potential human sources of contaminants which may have any adverse health effect;

(4) Describes provisions for technical assistance, financial assistance, implementation of control measures, and education, training, and demonstration projects to protect the water supply within WHPAs from such contaminants;

(5) Includes contingency plans for the location and provision of alternate drinking water supplies for each public water system in the event of well or wellfield contamination by such contaminants;

(6) Requires that State and local governments and public water systems consider all potential sources of human contamination within the expected wellhead area of a new water well which serves a public water system; and

(7) Requires public participation in developing the WHP Program.

SDWA required all States to submit a WHP program to EPA by June 19, 1989, for EPA review and approval. EPA has prepared the following technical guidance documents to assist States in developing WHP programs: "Guidance for Applicants for State Wellhead Protection Program Assistance Funds under the Safe Drinking Water Act" (Office of Ground-Water Protection, 1987) and "Guidelines for Delineation of Wellhead Protection Areas" (Office of Ground-Water Protection, 1987). States may wish to use the WHP Program to help assess the vulnerability of a ground-water system to microbial and chemical contamination; such information would be useful to the State in determining the frequency with which a system must sample and conduct sanitary surveys under this revised coliform rule.

X. Other Statutory and Executive Order Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the Regulatory Impact Analysis (RIA) requirement. This action does not constitute a "major" regulatory action because it will have a financial impact on the regulated community of under $100 million per year. Therefore, EPA prepared an Economic Impact Analysis (USEPA, 1989) (rather than an RIA) during regulation development and submitted it to the Office of Management and Budget for review. Results of the analysis are presented above in section VIII.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act requires EPA to explicitly consider the effect of proposed regulations on small entities. If there is a significant effect on a substantial number of small systems, means should be sought to minimize the effects.

The Small Business Administration defines a "small water utility" as one which serves fewer than 50,000 people. All systems in this size category will be subject to this final total coliform rule, but EPA expects the average incremental cost increase for such systems due to the new requirements of this rule, compared to the total cost of producing water, to be quite small, about 0.6–0.7 percent. Consequently, the rule is not expected to have a significant economic effect on a substantial number of small systems within the meaning of the Regulatory Flexibility Act. Although EPA anticipates that some small entities may have some financial difficulty in achieving compliance with the rule, the Agency has adopted a number of measures, many in response to public comments, to mitigate this burden. As a result, this final rule is less burdensome on small systems than the proposed rule would have been. These measures include retaining the current monitoring frequency for small systems (the proposal would have increased it) and reducing the frequency of sanitary surveys (compared to the proposal). EPA believes that further measures to reduce cost could significantly jeopardize public health.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* The information collection requirements are not effective until OMB approves them and a technical amendment to that effect is published in the **Federal Register**.

The public reporting burden on public water systems for this collection of information, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and

completing and reviewing the collection of information, is estimated to average 0.4 hour more per response than the interim total coliform rule. The annual public reporting burden on each State program for this collection of information is estimated to average 10,077 hours per response more than the current total coliform rule.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

D. Science Advisory Board and National Drinking Water Advisory Council

In accordance with section 1412(d) of the Safe Drinking Water Act, the Agency consulted with the Secretary and the National Drinking Water Advisory Council before proposing and promulgating these regulations, and considered their comments. In addition, in accordance with section 1412(e) of the Safe Drinking Water Act, EPA requested comments from the Science Advisory Board before proposing this MCLG and NPDWR, and took its comments into consideration in developing the proposed and final rule.

List of Subjects in 40 CFR Parts 141 and 143

Microorganisms, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Water supply, Administrative practice and procedure.

Dated: June 19, 1989.

William K. Reilly,

Administrator.

XI. References

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USEPA. 1984. U.S. Environmental Protection Agency, Office of Drinking Water. Drinking water criteria document for total coliforms. PB 86–118148. National Technical Information Service, 5285 Port Royal Rd., Springfield, VA 22161.

USEPA. 1988. U.S. Environmental Protection Agency. Office of Drinking Water. Technologies and costs for the treatment of microbial contaminants in potable water supplies.

USEPA. 1989. U.S. Environmental Protection Agency. Economic Impact Analysis: Benefits and costs of final total coliform rule.

USEPA. ——. U.S. Environmental Protection Agency. Office of Drinking Water. Guidance manual for compliance with the filtration and disinfection requirements for public water systems using surface water sources (draft).

For the reasons set forth in the preamble, Title 40, Chapter I of the Code of Federal Regulations is amended as follows:

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

1. The authority for Part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, and 300j–9.

§ 141.2 [Corrected]

2. FR Doc. 88–21685 published September 26, 1988, beginning at page 37396 is corrected at page 37410, second column, for Part 141 by removing the paragraph designations (d) and (h) in § 141.2, and changing the amendatory instruction to read as follows: "2. In § 141.2 the definitions for 'Person" and 'State' are revised to read as follows:".

2a. In § 141.2, the following new definitions are added and arranged alphabetically to read as follows:

§ 141.2 Definitions.

* * * * *

"Confluent growth" means a continuous bacterial growth covering the entire filtration area of a membrane filter, or a portion thereof, in which bacterial colonies are not discrete.

* * * * *

"Domestic or other non-distribution system plumbing problem" means a coliform contamination problem in a public water system with more than one service connection that is limited to the specific service connection from which the coliform-positive sample was taken.

* * * * *

"Near the first service connection" means at one of the 20 percent of all service connections in the entire system that are nearest the water supply treatment facility, as measured by water transport time within the distribution system.

* * * * *

"System with a single service connection" means a system which supplies drinking water to consumers via a single service line.

"Too numerous to count" means that the total number of bacterial colonies exceeds 200 on a 47-mm diameter membrane filter used for coliform detection.

* * * * *

3. Section 141.4 is revised to read as follows:

§ 141.4 Variances and exemptions

Variances or exemptions from certain provisions of these regulations may be granted pursuant to sections 1415 and 1416 of the Act by the entity with primary enforcement responsibility, except that variances or exemptions from the MCL for total coliforms and variances from any of the treatment technique requirements of Subpart H of this part may not be granted.

§ 141.14 [Removed]

4. Section 141.14 is removed.

5. Section 141.21 is revised to read as follows:

§ 141.21 Coliform sampling.

(a) *Routine monitoring.* (1) Public water systems must collect total coliform samples at sites which are representative of water throughout the distribution system according to a written sample siting plan. These plans are subject to State review and revision.

(2) The monitoring frequency for total coliforms for community water systems is based of the population served by the system, as follows:

TOTAL COLIFORM MONITORING FREQUENCY FOR COMMUNITY WATER SYSTEMS

Population served	Minimum number of samples per month
25 to 1,000 [1]	1
1,001 to 2,500	2
2,501 to 3,300	3
3,301 to 4,100	4
4,101 to 4,900	5
4,901 to 5,800	6
5,801 to 6,700	7
6,701 to 7,600	8
7,601 to 8,500	9
8,501 to 12,900	10
12,901 to 17,200	15
17,201 to 21,500	20
21,501 to 25,000	25
25,001 to 33,000	30
33,001 to 41,000	40
41,001 to 50,000	50
50,001 to 59,000	60
59,001 to 70,000	70
70,001 to 83,000	80
83,001 to 96,000	90
96,001 to 130,000	100
130,001 to 220,000	120
220,001 to 320,000	150
320,001 to 450,000	180
450,001 to 600,000	210
600,001 to 780,000	240
780,001 to 970,000	270
970,001 to 1,230,000	300
1,230,001 to 1,520,000	330
1,520,001 to 1,850,000	360
1,850,001 to 2,270,000	390
2,270,001 to 3,020,000	420
3,020,001 to 3,960,000	450
3,960,001 or more	480

[1] Includes public water systems which have at least 15 service connections, but serve fewer than 25 persons.

If a community water system serving 25 to 1,000 persons has no history of total coliform contamination in its current configuration and a sanitary survey conducted in the past five years shows that the system is supplied solely by a protected groundwater source and is free of sanitary defects, the State may reduce the monitoring frequency specified above, except that in no case may the State reduce the monitoring frequency to less than one sample per quarter. The State must approve the reduced monitoring frequency in writing.

(3) The monitoring frequency for total coliforms for non-community water systems is as follows:

(i) A non-community water system using only ground water (except ground water under the direct influence of surface water, as defined in § 141.2) and serving 1,000 persons or fewer must monitor each calendar quarter that the system provides water to the public, except that the State may reduce this monitoring frequency, in writing, if a sanitary survey shows that the system is free of sanitary defects. Beginning June 29, 1994 the State cannot reduce the monitoring frequency for a non-community water system using only ground water (except ground water under the direct influence of surface water, as defined in § 141.2) and serving 1,000 persons or fewer to less than once/year.

(ii) A non-community water system using only ground water (except ground water under the direct influence of surface water, as defined in § 141.2) and serving more than 1,000 persons during any month must monitor at the same frequency as a like-sized community water system, as specified in paragraph (a)(2) of this section, except the State may reduce this monitoring frequency, in writing, for any month the system serves 1,000 persons or fewer. The State cannot reduce the monitoring frequency to less than once/year. For systems using ground water under the direct influence of surface water, paragraph (a)(3)(iv) of this section applies.

(iii) A non-community water system using surface water, in total or in part, must monitor at the same frequency as a like-sized community water system, as specified in paragraph (a)(2) of this section, regardless of the number of persons it serves.

(iv) A non-community water system using ground water under the direct influence of surface water, as defined in 141.2, must monitor at the same frequency as a like-sized community water system, as specified in paragraph (a)(2) of this section. The system must begin monitoring at this frequency beginning six months after the State determines that the ground water is under the direct influence of surface water.

(4) The public water system must collect samples at regular time intervals throughout the month, except that a system which uses ground water (except ground water under the direct influence of surface water, as defined in § 141.2), and serves 4,900 persons or fewer, may collect all required samples on a single day if they are taken from different sites.

(5) A public water system that uses surface water or ground water under the direct influence of surface water, as defined in § 141.2, and does not practice filtration in compliance with Subpart H must collect at least one sample near the first service connection each day the turbidity level of the source water, measured as specified in § 141.74(b)(2), exceeds 1 NTU. This sample must be analyzed for the presence of total coliforms. When one or more turbidity measurements in any day exceed 1 NTU, the system must collect this coliform sample within 24 hours of the first exceedance, unless the State determines that the system, for logistical reasons outside the system's control, cannot have the sample analyzed within 30 hours of collection. Sample results from this coliform monitoring must be included in determining compliance with the MCL for total coliforms in § 141.63.

(6) Special purpose samples, such as those taken to determine whether disinfection practices are sufficient following pipe placement, replacement, or repair, shall not be used to determine compliance with the MCL for total coliforms in § 141.63. Repeat samples taken pursuant to paragraph (b) of this section are not considered special purpose samples, and must be used to determine compliance with the MCL for total coliforms in § 141.63.

(b) *Repeat monitoring.* (1) If a routine sample is total coliform-positive, the public water system must collect a set of repeat samples within 24 hours of being notified of the positive result. A system which collects more than one routine sample/month must collect no fewer than three repeat samples for each total coliform-positive sample found. A system which collects one routine sample/month or fewer must collect no fewer than four repeat samples for each total coliform-positive sample found. The State may extend the 24-hour limit on a case-by-case basis if the system has a logistical problem in collecting the repeat samples within 24 hours that is beyond its control. In the case of an extension, the State must specify how much time the system has to collect the repeat samples.

(2) The system must collect at least one repeat sample from the sampling tap where the original total coliform-positive sample was taken, and at least one repeat sample at a tap within five service connections upstream and at least one repeat sample at a tap within five service connections downstream of the original sampling site. If a total coliform-positive sample is at the end of the distribution system, or one away from the end of the distribution system, the State may waive the requirement to collect at least one repeat sample upstream or downstream of the original sampling site.

(3) The system must collect all repeat samples on the same day, except that the State may allow a system with a single service connection to collect the required set of repeat samples over a four-day period or to collect a larger volume repeat sample(s) in one or more sample containers of any size, as long as the total volume collected is at least 400 ml (300 ml for systems which collect more than one routine sample/month).

(4) If one or more repeat samples in the set is total coliform-positive, the public water system must collect an additional set of repeat samples in the manner specified in paragraphs (b)(1)–(3) of this section. The additional samples must be collected within 24 hours of being notified of the positive result, unless the State extends the limit as provided in paragraph (b)(1) of this section. The system must repeat this process until either total coliforms are not detected in one complete set of repeat samples or the system determines that the MCL for total coliforms in § 141.63 has been exceeded and notifies the State.

(5) If a system collecting fewer than five routine samples/month has one or more total coliform-positive samples and the State does not invalidate the sample(s) under paragraph (c) of this section, it must collect at least five routine samples during the next month the system provides water to the public, except that the State may waive this requirement if the conditions of paragraph (b)(5) (i) or (ii) of this section are met. The State cannot waive the requirement for a system to collect repeat samples in paragraphs (b)(1)–(4) of this section.

(i) The State may waive the requirement to collect five routine samples the next month the system provides water to the public if the State, or an agent approved by the State, performs a site visit before the end of the next month the system provides water to the public. Although a sanitary survey need not be performed, the site visit must be sufficiently detailed to allow the State to determine whether additional monitoring and/or any corrective action is needed. The State cannot approve an employee of the system to perform this site visit, even if the employee is an agent approved by the State to perform sanitary surveys.

(ii) The State may waive the requirement to collect five routine samples the next month the system provides water to the public if the State has determined why the sample was total coliform-positive and establishes that the system has corrected the problem or will correct the problem before the end of the next month the system serves water to the public. In this case, the State must document this decision to waive the following month's additional monitoring requirement in writing, have it approved and signed by the supervisor of the State official who recommends such a decision, and make this document available to the EPA and public. The written documentation must describe the specific cause of the total coliform-positive sample and what action the system has taken and/or will take to correct this problem. The State cannot waive the requirement to collect five routine samples the next month the system provides water to the public solely on the grounds that all repeat samples are total coliform-negative. Under this paragraph, a system must still take at least one routine sample before the end of the next month it serves water to the public and use it to determine compliance with the MCL for total coliforms in § 141.63, unless the State has determined that the system has corrected the contamination problem before the system took the set of repeat samples required in paragraphs (b)(1)–(4) of this section, and all repeat samples were total coliform-negative.

(6) After a system collects a routine sample and before it learns the results of the analysis of that sample, if it collects another routine sample(s) from within five adjacent service connections of the initial sample, and the initial sample, after analysis, is found to contain total coliforms, then the system may count the subsequent sample(s) as a repeat sample instead of as a routine sample.

(7) Results of all routine and repeat samples not invalidated by the State must be included in determining compliance with the MCL for total coliforms in § 141.63.

(c) *Invalidation of total coliform samples.* A total coliform-positive sample invalidated under this paragraph (c) does not count towards meeting the minimum monitoring requirements of this section. (1) The State may invalidate a total coliform-positive sample only if the conditions of paragraph (c)(1)(i), (ii), or (iii) of this section are met.

(i) The laboratory establishes that improper sample analysis caused the total coliform-positive result.

(ii) The State, on the basis of the results of repeat samples collected as required by paragraphs (b) (1) through (4) of this section, determines that the total coliform-positive sample resulted from a domestic or other non-distribution system plumbing problem. The State cannot invalidate a sample on the basis of repeat sample results unless all repeat sample(s) collected at the same tap as the original total coliform-positive sample are also total coliform-positive, and all repeat samples collected within five service connections of the original tap are total coliform-negative (e.g., a State cannot invalidate a total coliform-positive sample on the basis of repeat samples if all the repeat samples are total coliform-negative, or if the public water system has only one service connection).

(iii) The State has substantial grounds to believe that a total coliform-positive result is due to a circumstance or condition which does not reflect water quality in the distribution system. In this case, the system must still collect all repeat samples required under paragraphs (b) (1) through (4) of this section, and use them to determine compliance with the MCL for total coliforms in § 141.63. To invalidate a total coliform-positive sample under this paragraph, the decision with the rationale for the decision must be documented in writing, and approved and signed by the supervisor of the State official who recommended the decision. The State must make this document available to EPA and the public. The written documentation must state the specific cause of the total coliform-positive sample, and what action the system has taken, or will take, to correct this problem. The State may not invalidate a total coliform-positive sample solely on the grounds that all repeat samples are total coliform-negative.

(2) A laboratory must invalidate a total coliform sample (unless total coliforms are detected) if the sample produces a turbid culture in the absence of gas production using an analytical method where gas formation is examined (e.g., the Multiple-Tube Fermentation Technique), produces a turbid culture in the absence of an acid reaction in the Presence-Absence (P–A) Coliform Test, or exhibits confluent growth or produces colonies too numerous to count with an analytical method using a membrane filter (e.g., Membrane Filter Technique). If a laboratory invalidates a sample because of such interference, the system must collect another sample from the same location as the original sample within 24 hours of being notified of the interference problem, and have it analyzed for the presence of total coliforms. The system must continue to re-sample within 24 hours and have the samples analyzed until it obtains a valid result. The State may waive the 24-hour time limit on a case-by-case basis.

(d) *Sanitary surveys.* (1)(i) Public water systems which do not collect five or more routine samples/month must undergo an initial sanitary survey by June 29, 1994 for community public water systems and June 29, 1999 for non-community water systems. Thereafter, systems must undergo another sanitary survey every five years, except that non-community water systems using only protected and disinfected ground water, as defined by the State, must undergo subsequent sanitary surveys at least every ten years after the initial sanitary survey. The State must review the results of each sanitary survey to determine whether the existing monitoring frequency is adequate and what additional measures, if any, the system needs to undertake to improve drinking water quality.

(ii) In conducting a sanitary survey of a system using ground water in a State having an EPA-approved wellhead protection program under section 1428 of the Safe Drinking Water Act, information on sources of contamination within the delineated wellhead protection area that was collected in the course of developing and implementing the program should be considered instead of collecting new information, if the information was collected since the last time the system was subject to a sanitary survey.

(2) Sanitary surveys must be performed by the State or an agent approved by the State. The system is responsible for ensuring the survey takes place.

(e) *Fecal coliforms/Escherichia coli (E. coli) testing.* (1) If any routine or repeat sample is total coliform-positive, the system must analyze that total coliform-positive culture medium to determine if fecal coliforms are present, except that the system may test for *E. coli* in lieu of fecal coliforms. If fecal coliforms or *E. coli* are present, the system must notify the State by the end of the day when the system is notified of the test result, unless the system is notified of the result after the State office is closed, in which case the system must notify the State before the end of the next business day.

(2) The State has the discretion to allow a public water system, on a case-by-case basis, to forgo fecal coliform or *E. coli* testing on a total coliform-positive sample if that system assumes that the total coliform-positive sample is fecal coliform-positive of *E. coli*-positive. Accordingly, the system must notify the State as specified in paragraph (e)(1) of this section and the provisions of § 141.63(b) apply.

(f) *Analytical methodology.* (1) The standard sample volume required for total coliform analysis, regardless of analytical method used, is 100 ml.

(2) Public water systems need only determine the presence or absence of total coliforms; a determination of total coliform density is not required.

(3) Public water systems must conduct total coliform analyses in accordance with one of the following analytical methods:

(i) Multiple-Tube Fermentation (MTF) Technique, as set forth in *Standard Methods for the Examination of Water and Wastewater*, 1985, American Public Health Association *et al.*, 16th edition, Method 908, 908A, and 908B—pp. 870–878, except that 10 fermentation tubes must be used; or *Microbiological Methods for Monitoring the Environment, Water and Wastes*, U.S. EPA, Environmental Monitoring and Support Laboratory, Cincinnati, Ohio 45268 (EPA–600/8–78–017, December 1978, available from ORD Publications, CERI, U.S. EPA, Cincinnati, Ohio 45268), Part III, Section B.4.1–4.6.4, pp. 114–118 (Most Probable Number Method), except that 10 fermentation tubes must be used; or

(ii) Membrance Filter (MF) Technique, as set forth in *Standard Methods for the Examination of Water and Wastewater*, 1985, American Public Health Association *et al.*, 16th edition, Method 909, 909A and 909B—pp. 886–896; or *Microbiological Methods for Monitoring the Environment, Water and Wastes*, U.S. EPA, Environmental Monitoring and Support Laboratory, Cincinnati, Ohio 45268 (EPA–600/8–78–017, December 1978, available from ORD Publications, CERI, U.S. EPA, Cincinnati, Ohio 45268), Part III, Section B.2.1–2.6, pp. 108–112; or

(iii) Presence-Absence (P–A) Coliform Test, as set forth in *Standard Methods for the Examination of Water and Wastewater*, 1985, American Public Health Association *et al.*, 16th edition, Method 908E—pp. 882–886; or

(iv) Minimal Medium ONPG–MUG (MMO–MUG) Test, as set forth in the article "National Field Evaluation of a Defined Substrate Method for the Simultaneous Detection of Total Coliforms and *Escherichia coli* from Drinking Water: Comparison with Presence-Absence Techniques" (Edberg et al.), Applied and Environmental Microbiology, Volume 55, pp. 1003–1008, April 1989. (Note: The MMO–MUG Test is sometimes referred to as the Autoanalysis Colilert System.)

(4) In lieu of the 10-tube MTF Technique specified in paragraph (f)(3)(i) of this section, a public water system may use the MTF Technique using either five tubes (20-ml sample portions) or a single culture bottle containing the culture medium for the MTF Technique, i.e., lauryl tryptose broth (formulated as described in *Standard Methods for the Examination of Water and Wastewater*, 1985, American Public Health Association *et al.*, 16th Edition, Method 908A—pp. 872), as long as a 100-ml water sample is used in the analysis.

(5) Public water systems must conduct fecal coliform analysis in accordance with the following procedure. When the MTF Technique or Presence-Absence (P–A) Coliform Test is used to test for total coliforms, shake the lactose-positive presumptive tube or P–A bottle vigorously and transfer the growth with a sterile 3-mm loop or sterile applicator stick into brilliant green lactose bile broth and EC medium to determine the presence of total and fecal coliforms, respectively. For EPA-approved analytical methods which use a membrance filter, remove the membrane containing the total coliform colonies from the substrate with a sterile forceps and carefully curl and insert the membrane into a tube of EC medium. (The laboratory may first remove a small portion of selected colonies for verification.) Gently shake the inoculated EC tubes to insure adequate mixing and incubate in a waterbath at 44.5 ±0.2 °C for 24 ± 2 hours. Gas production of any amount in the inner fermentation tube of the EC medium indicates a positive fecal coliform test. The preparation of EC medium is described in *Standard Methods for the Examination of Water and Wastewater*, American Public Health Association, 16th Edition, Method 908C—pp. 879, paragraph 1a. Public water systems need only determine the presence or absence of fecal coliforms; a determination of fecal coliform density is not required.

(6) These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of the analytical methods cited in *Standard Methods for the Examination of Water and Wastewater* may be obtained from the American Public Health Association *et al.*; 1015 Fifteenth Street, NW.; Washington, DC 20005. Copies of the methods set forth in *Microbiological Methods for Monitoring the Environment, Water and Wastes* may be obtained from ORD Publications, U.S. EPA, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268. Copies of the MMO–MUG Test as set forth in the article "National Field Evaluation of a Defined Substrate Method for the Simultaneous Enumeration of Total Coliforms and *Escherichia coli* from Drinking Water: Comparison with the Standard Multiple Tube Fermentation Method" (Edberg *et al.*) may be obtained from the American Water Works Association Research Foundation, 6666 West Quincy Avenue, Denver, CO 80235. Copies may be inspected at EPA's Drinking Water Docket; 401 M Street, SW.; Washington,

DC 20460, or at the Office of the Federal Register; 1100 L Street, NW.; Room 8401; Washington, DC 20408.

(g) *Response to violation.* (1) A public water system which has exceeded the MCL for total coliforms in § 141.63 must report the violation to the State no later than the end of the next business day after it learns of the violation, and notify the public in accordance with § 141.32.

(2) A public water system which has failed to comply with a coliform monitoring requirement, including the sanitary survey requirement, must report the monitoring violation to the State within ten days after the system discovers the violation, and notify the public in accordance with § 141.32.

6. Section 141.31 is amended by revising paragraph (b) to read as follows:

§ 141.31 Reporting requirements.

* * * * *

(b) Except where a different reporting period is specified in this part, the supplier of water must report to the State within 48 hours the failure to comply with any national primary drinking water regulation (including failure to comply with monitoring requirements) set forth in this part.

* * * * *

7. Section 141.32 is amended to add paragraphs (a)(1)(iii)(C), (e)(11) and (12) to read as follows:

§ 141.32 General public notification requirements.

(a) * * *

(1) * * *

(iii) * * *

(C) Violation of the MCL for total coliforms, when fecal coliforms or *E. coli* are present in the water distribution system, as specified in § 141.63(b).

* * * * *

(e) * * *

(11) *Total coliforms* (To be used when there is a violation of § 141.63(a), and not a violation of § 141.63(b)) The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that the presence of total coliforms is a possible health concern. Total coliforms are common in the environment and are generally not harmful themselves. The presence of these bacteria in drinking water, however, generally is a result of a problem with water treatment or the pipes which distribute the water, and indicates that the water may be contaminated with organisms that can cause disease. Disease symptoms may include diarrhea, cramps, nausea, and possibly jaundice, and any associated headaches and fatigue. These symptoms, however, are not just associated with disease-causing organisms in drinking water, but also may be caused by a number of factors other than your drinking water. EPA has set an enforceable drinking water standard for total coliforms to reduce the risk of these adverse health effects. Under this standard, no more than 5.0 percent of the samples collected during a month can contain these bacteria, except that systems collecting fewer than 40 samples/month that have one total coliform-positive sample per month are not violating the standard. Drinking water which meets this standard is usually not associated with a health risk from disease-causing bacteria and should be considered safe.

(12) *Fecal Coliforms/E. coli* (To be used when there is a violation of § 141.63(b) or both § 141.63(a) and (b)) The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that the presence of fecal coliforms or *E. coli* is a serious health concern. Fecal coliforms and *E. coli* are generally not harmful themselves, but their presence in drinking water is serious because they usually are associated with sewage or animal wastes. The presence of these bacteria in drinking water is generally a result of a problem with water treatment or the pipes which distribute the water, and indicates that the water may be contaminated with organisms that can cause disease. Disease symptoms may include diarrhea, cramps, nausea, and possibly jaundice, and associated headaches and fatigue. These symptoms, however, are not just associated with disease-causing organisms in drinking water, but also may be caused by a number of factors other than your drinking water. EPA has set an enforceable drinking water standard for fecal coliforms and *E. coli* to reduce the risk of these adverse health effects. Under this standard all drinking water samples must be free of these bacteria. Drinking water which meets this standard is associated with little or none of this risk and should be considered safe. State and local health authorities recommend that consumers take the following precautions: [To be inserted by the public water system, according to instructions from State or local authorities].

8. Section § 141.52 is amended by adding a new entry "(4)" to the table to read as follows:

§ 141.52 Maximum contaminant level goals for microbiological contaminants

* * * * *

Contaminant	MCLG
* * * * *	
(4) Total coliforms (including fecal coliforms and *Escherichia coli*).	Zero.

9. A new 141.63 is added to Subpart G to read as follows:

§ 141.63 Maximum contaminant levels (MCLs) for microbiological contaminants.

(a) The MCL is based on the presence or absence of total coliforms in a sample, rather than coliform density.

(1) For a system which collects at least 40 samples per month, if no more than 5.0 percent of the samples collected during a month are total coliform-positive, the system is in compliance with the MCL for total coliforms.

(2) For a system which collects fewer than 40 samples/month, if no more than one sample collected during a month is total coliform-positive, the system is in compliance with the MCL for total coliforms.

(b) Any fecal coliform-positive repeat sample or *E. coli*-positive repeat sample, or any total coliform-positive repeat sample following a fecal coliform-positive or *E. coli*-positive routine sample constitutes a violation of the MCL for total coliforms. For purposes of the public notification requirements in § 141.32, this is a violation that may pose an acute risk to health.

(c) A public water system must determine compliance with the MCL for total coliforms in paragraphs (a) and (b) of this section for each month in which it is required to monitor for total coliforms.

(d) The Administrator, pursuant to section 1412 of the Act, hereby identifies the following as the best technology, treatment techniques, or other means available for achieving compliance with the maximum contaminant level for total coliforms in paragraphs (a) and (b) of this section:

(1) Protection of wells from contamination by coliforms by appropriate placement and construction;

(2) Maintenance of a disinfectant residual throughout the distribution system;

(3) Proper maintenance of the distribution system including appropriate pipe replacement and repair procedures, main flushing programs, proper operation and maintenance of storage tanks and reservoirs, and continual maintenance of positive water pressure in all parts of the distribution system;

(4) Filtration and/or disinfection of surface water, as described in Subpart H, or disinfection of ground water using strong oxidants such as chlorine, chlorine dioxide, or ozone; or

(5) The development and implementation of an EPA-approved State Wellhead Protection Program under section 1428 of the SDWA.

PART 142—NATIONAL PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION

1. The authority citation for Part 142 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, and 300j–9.

2. Section 142.14 is amended by revising paragraph (a)(2) and adding a new paragraph (a)(5) to read as follows:

§ 142.14 Records kept by States.

(a) * * *

(2) Records of microbiological analyses of repeat or special samples shall be retained for not less than one year in the form of actual laboratory reports or in an appropriate summary form.

* * * * *

(5) Records of each of the following decisions made pursuant to the total coliform provisions of Part 141 shall be made in writing and retained by the State.

(i) Records of the following decisions must be retained for 5 years.

(A) Section 141.21(b)(1)—Any decision to waive the 24-hour time limit for collecting repeat samples after a total coliform-positive routine sample if the public water system has a logistical problem in collecting the repeat sample that is beyond the system's control, and what alternative time limit the system must meet.

(B) Section 141.21(b)(5)—Any decision to allow a system to waive the requirement for five routine samples the month following a total coliform-positive sample. If the waiver decision is made as provided in § 141.21(b)(5), the record of the decision must contain all the items listed in that paragraph.

(C) Section 141.21(c)—Any decision to invalidate a total coliform-positive sample. If the decision to invalidate a total coliform-positive sample as provided in § 141.21(c)(1)(iii) is made, the record of the decision must contain all the items listed in that paragraph.

(ii) Records of each of the following decisions must be retained in such a manner so that each system's current status may be determined.

(A) Section 141.21(a)(2)—Any decision to reduce the total coliform monitoring frequency for a community water system serving 1000 persons or fewer, that has no history of total coliform contamination in its current configuration and had a sanitary survey conducted within the past five years showing that the system is supplied solely by a protected groundwater source and is free of sanitary defects, to less than once per month, as provided in § 141.21(a)(2); and what the reduced monitoring frequency is. A copy of the reduced monitoring frequency must be provided to the system.

(B) Section 141.21(a)(3)(i)—Any decision to reduce the total coliform monitoring frequency for a non-community water system using only ground water and serving 1,000 persons or fewer to less than once per quarter, as provided in § 141.21(a)(3)(i), and what the reduced monitoring frequency is. A copy of the reduced monitoring frequency must be provided to the system.

(C) Section 141.21(a)(3)(ii)—Any decision to reduce the total coliform monitoring frequency for a non-community water system using only ground water and serving more than 1,000 persons during any month the system serves 1,000 persons or fewer, as provided in § 141.21(a)(3)(ii). A copy of the reduced monitoring frequency must be provided to the system.

(D) Section 141.21(a)(5)—Any decision to waive the 24-hour limit for taking a total coliform sample for a public water system which uses surface water, or ground water under the direct influence of surface water, and which does not practice filtration in accordance with Part 141, Subpart H, and which measures a source water turbidity level exceeding 1 NTU near the first service connection as provided in § 141.21(a)(5).

(E) Section 141.21(d)(1)—Any decision that a non-community water system is using only protected and disinfected ground water and therefore may reduce the frequency of its sanitary survey to less than once every five years, as provided in § 141.21(d), and what that frequency is. A copy of the reduced frequency must be provided to the system.

(F) Section 141.21(d)(2)—A list of agents other than the State, if any, approved by the State to conduct sanitary surveys.

(G) Section 141.21(e)(2)—Any decision to allow a public water system to forgo fecal coliform of *E. coli* testing on a total coliform-positive sample if that system assumes that the total coliform-positive sample is fecal coliform-positive or *E. coli*-positive, as provided in § 141.21(e)(2).

* * * * *

3. Section 142.15 is amended by adding a new paragraph (b)(5) to read as follows:

§ 142.15 Reports by States.

* * * * *

(b) * * *

(5) A list of public water systems which the State is allowing to monitor less frequently than once per month for community water systems or less frequently than once per quarter for non-community water systems as provided in § 141.21a, including the effective date of the reduced monitoring requirement for each system.

4. Section 142.16 is amended by adding a new paragraph (c) to read as follows:

§ 142.16 Special primacy requirements.

* * * * *

(c) *Total coliform requirements.* In addition to meeting the general primacy requirements of this part, an application for approval of a State program revision that adopts the requirements of the national primary drinking water regulation for total coliforms must contain the following information.

(1) The application must describe the State's plan for determining whether sample siting plans are acceptable (including periodic reviews), as required by § 141.21(a)(1).

(2) The national primary drinking water regulation for total coliforms in Part 141 gives States the option to impose lesser requirements in certain circumstances, which are listed below. If a State chooses to exercise any of these options, its application for approval of a program revision must include the information listed below (the State need only provide the information listed for those options it has chosen to use).

(i) Section 141.21(a)(2) (Reduced monitoring requirements for community water systems serving 1,000 or fewer persons)—a description of how the State will determine whether it is appropriate to reduce the total coliform monitoring frequency for such systems using the criteria in § 141.21(a)(2) and how it will determine the revised frequency.

(ii) Section 141.21(a)(3)(i) (Reduced monitoring requirements for non-community water systems using ground water and serving 1000 persons or fewer) A description of how the State will determine whether it is appropriate to reduce the total coliform monitoring frequency for such systems using the criteria in § 141.21(a)3)(i) and how it will determine the revised frequency.

(iii) Section 141.21(a)(3)(ii) (Reduced monitoring for non-community water systems using ground water and serving more than 1000 persons) A description of how the State will determine whether it is appropriate to reduce the total coliform monitoring frequency for non-

community water systems using only ground water and serving more than 1000 persons during any month the system serves 1000 persons or fewer and how it will determine the revised frequency.

(iv) Section 141.21(a)(5) (Waiver of time limit for sampling after a turbidity sampling result exceeds 1 NTU) A description of how the State will determine whether it is appropriate to waive the 24-hour time limit.

(v) Section 141.21(b)(1) (Waiver of time limit for repeat samples) A description of how the State will determine whether it is appropriate to waive the 24-hour time limit and how it will determine what the revised time limit will be.

(vi) Section 141.21(b)(3) (Alternative repeat monitoring requirements for systems with a single service connection) A description of how the State will determine whether it is appropriate to allow a system with a single service connection to use an alternative repeat monitoring scheme, as provided in § 141.21(b)(3), and what the alternative requirements will be.

(vii) Section 141.21(b)(5) (Waiver of requirement to take five routine samples the month after a system has a total coliform-positive sample) A description of how the State will determine whether it is appropriate to waive the requirement for certain systems to collect five routine samples during the next month it serves water to the public, using the criteria in § 141.21(b)(5).

(viii) Section 141.21(c) (Invalidation of total coliform-positive samples) A description of how the State will determine whether it is appropriate to invalidate a total coliform-positive sample, using the criteria in § 141.21(c).

(ix) Section 141.21(d) (Sanitary surveys) A description of the State's criteria and procedures for approving agents other than State personnel to conduct sanitary surveys.

(x) Section 141.21(e)(2) (Waiver of fecal coliform or *E. coli* testing on a total coliform-positive sample) A description of how the State will determine whether it is appropriate to waive fecal coliform or *E. coli* testing on a total coliform-positive sample.

5. A new § 142.63 is added to read as follows:

§ 142.63 Variances and exemptions from the maximum contaminant level for total coliforms.

No variances or exemptions from the maximum contaminant level in § 141.63 of this chapter are permitted.

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Part IV

Department of Education

Office of Special Education and Rehabilitative Services

National Institute on Disability and Rehabilitation Research; Invitation for Applications for New Awards Under Certain Programs for Fiscal Year 1990; Notice

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

[CFDA Nos. 84.133A, 84.133B, 84.133C, 84.133D, 84.133E, 84.133F, 84.133G, 84.133N, and 84.133P]

National Institute on Disability and Rehabilitation Research; Notice Inviting Applications for New Awards Under Certain Programs for Fiscal Year 1990

Note to Applicants

This notice is a complete application package. The notice contains information, application forms, and instructions needed to apply for a grant under these competitions. The priorities for those programs in which the National Institute on Disability and Rehabilitation Research (NIDRR) sets the priorities were published in the **Federal Register** on April 25, 1989 at 54 FR 17896. NIDRR intends to publish a separate application package for the State Grants for Technology-Related Assistance for Individuals with Disabilities program; application information and forms for all other NIDRR programs for fiscal year 1990 are included in this notice.

The estimates of funding levels in this notice do not bind the Department of Education to make awards in any of these categories, or to any specific number of awards or funding levels, unless otherwise specified in statute.

Applicable Regulations

The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 80, 81, and 85; and the following program regulations:

Research and Demonstration Program (CFDA No. 84.133A) 34 CFR Parts 350 and 351.

Rehabilitation Research and Training Centers (CFDA No. 84.133B) 34 CFR Parts 350 and 352.

Innovation Grants Program (CFDA No. 84.133C) 34 CFR Parts 350 and 358.

Knowledge Dissemination and Utilization Program (CFDA No. 84.133D) 34 CFR Parts 350 and 355.

Rehabilitation Engineering Centers Program (CFDA No. 84.133E) 34 CFR Parts 350 and 353.

Rehabilitation Research Fellowships (CFDA No. 84.133F) 34 CFR Part 356.

Field-Initiated Research (CFDA No. 84.133G) 34 CFR Parts 350 and 357.

Model Demonstrations for Spinal Cord Injury (CFDA No. 84.133N) 34 CFR Part 359.

Research Training Grants (CFDA No. 84.133P) 34 CFR Parts 350 and 360.

PROGRAM TITLE: RESEARCH AND DEMONSTRATION PROGRAM APPLICATION NOTICES FOR FISCAL YEAR 1990

CFDA No.	Program title	Funding priority	Deadline for transmittal of applications	Estimated no. of awards	Estimated size of award (per year)	Project period (months)
84.133A	Research and Demonstration	Supported employment for persons with long-term mental illness.	12-18-89	1	$175,000	36
		Studies in rehabilitation of individuals with low back pain.	12-18-89	1	175,000	36
		Community-based rural projects	12-18-89	1	175,000	36
		Effective client-counselor interaction in vocational rehabilitation.	12-18-89	1	175,000	36
		Developing vocational rehabilitation programming for low-incidence geographically dispersed disabled populations.	12-18-89	1	175,000	36
		Supported employment and maximized human potential.	12-18-89	1	175,000	36
		Stress and disability management	12-18-89	1	175,000	36

Purpose: Research and Demonstration Projects support research and demonstrations in single project areas on problems encountered by individuals with disabilities in their daily activities. These projects may conduct research on rehabilitation techniques and services, including analysis of medical, industrial, vocational, social, psychiatric, psychological, recreational, economic, and other factors to improve the rehabilitation of individuals with disabilities.

Selection Criteria: The Secretary uses the following selection criteria to evaluate applications under this program.

(a) *Potential Impact of Outcomes:* Importance of Program (Weight 3.0). The Secretary reviews each application to determine to what degree—

(1) The proposed activity relates to the announced priority;

(2) The research is likely to produce new and useful information (research activities only);

(3) The need and target population are adequately defined:

(4) The outcomes are likely to benefit the defined target population;

(5) The training needs are clearly defined (training activities only);

(6) The training methods and developed subject matter are likely to meet the defined need (training activities only); and

(7) The need for information exists (utilization activities only).

(b) *Potential Impact of Outcomes: Dissemination/Utilization* (Weight 3.0). The Secretary reviews each application to determine to what degree—

(1) The research results are likely to become available to others working in the field (research activities only);

(2) The means to disseminate and promote utilization by others are defined;

(3) The training methods and content are to be packaged for dissemination and use by others (training activities only); and

(4) The utilization approach is likely to address the defined need (utilization activities only).

(c) *Probability of Achieving Proposed Outcomes; Program/Project Design* (Weight 5.0). The Secretary reviews each application to determine to what degree—

(1) The objectives of the project(s) are clearly stated;

(2) The hypothesis is sound and based on evidence (research activities only);

(3) The project design/methodology is likely to achieve the objectives;

(4) The measurement methodology and analysis is sound;

(5) The conceptual model (if used) is sound (development/demonstration activities only);

(6) The sample populations are correct and significant (research and development/demonstration activities only);

(7) The human subjects are sufficiently protected (research and development/demonstration activities only);

(8) The device(s) or model system is to be developed in an appropriate environment;

(9) The training content is comprehensive and at an appropriate level (training activities only);

(10) The training methods are likely to be effective (training activities only);

(11) The new materials (if developed) are likely to be of high quality and uniqueness (training activities only);

(12) The target populations are linked to the project (utilization activities only); and

(13) The format of the dissemination medium is the best to achieve the desired result (utilization activities only).

(d) *Probability of Achieving Proposed Outcomes:* Key Personnel (Weight 4.0). The Secretary reviews each application to determine to what degree—

(1) The principal investigator and other key staff have adequate training and/or experience and demonstrate appropriate potential to conduct the proposed research, demonstration, training, development, or dissemination activity;

(2) The principal investigator and other key staff are familiar with pertinent literature and/or methods;

(3) All required disciplines are effectively covered;

(4) Commitments of staff time are adequate for the project; and

(5) The applicant is likely, as part of its nondiscriminatory employment practices, to encourage applications for employment from persons who are members of groups that traditionally have been underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(ii) Women;

(iii) Handicapped persons; and

(iv) The elderly.

(e) *Probability of Achieving Proposed Outcomes: Evaluation Plan* (Weight 1.0). The Secretary reviews each application to determine to what degree—

(1) There is a mechanism to evaluate plans, progress and results;

(2) The evaluation methods and objectives are likely to produce data that are quantifiable; and

(3) The evaluation results, where relevant, are likely to be assessed in a service setting.

(f) *Program/Project Management: Plan of Operation* (Weight 2.0). The Secretary reviews each application to determine to what degree—

(1) There is an effective plan of operation that insures proper and efficient administration of the project(s);

(2) The applicant's planned use of its resources and personnel is likely to achieve each objective;

(3) Collaboration between institutions, if proposed, is likely to be effective; and

(4) There is a clear description of how the applicant will include eligible project participants who have been traditionally underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(ii) Women;

(iii) Handicapped persons; and

(iv) The elderly.

(g) *Program/Project Management: Adequacy of Resources* (Weight 1.0). The Secretary reviews each application to determine to what degree—

(1) The facilities planned for use are adequate;

(2) The equipment and supplies planned for use are adequate; and

(3) The commitment of the applicant to provide administrative support and adequate facilities is evident.

(h) *Program/Project Management: Budget and Cost Effectiveness* (Weight 1.0). The Secretary reviews each application to determine to what degree—

(1) The budget for the project(s) is adequate to support the activities;

(2) The costs are reasonable in relation to the objectives of the project(s); and

(3) The budget for subcontracts (if required) is detailed and appropriate.

Eligible Applicants

Parties eligible to apply for grants under this program are public and private nonprofit and for-profit agencies and organizations, including institutions of higher education and Indian tribes and tribal organizations.

Program Authority: 29 U.S.C. 761a and 762.

PROGRAM TITLE: REHABILITATION RESEARCH AND TRAINING CENTERS APPLICATION NOTICES FOR FISCAL YEAR 1990

CFDA No.	Program title	Funding priority	Deadline for transmittal of applications	Estimated No. of awards (per year)	Estimated size of award	Project period (months)
84.133B	Rehabilitation research and training centers.	Rehabilitation for persons with long-term mental illness.	Dec. 8, 1989	1	$500,000	60
		Improving management effectiveness in independent living.	do	1	400,000	60
		Research in policy issues in independent living.	do	1	400,000	60
		Community integration for persons with mental retardation.	do	1	400,000	60

Purpose: Rehabilitation Research and Training Centers conduct coordinated and advanced programs of rehabilitation research, provide training—including undergraduate, graduate, and in-service training—to research and other rehabilitation personnel, and assist individuals to more effectively provide rehabilitation services.

Selection Criteria: The Secretary uses the following selection criteria to evaluate applications under this program.

(a) *Relevance and Importance of the Research Program (20 points).* The Secretary reviews each application to determine to what degree—

(1) The proposed activities are responsive to a priority established by the Secretary and address a significant need of a disabled target population and rehabilitation service providers;

(2) The overall research program of the Center includes appropriate interdisciplinary and collaborative research activities, is likely to lead to new and useful knowledge in the priority area, and is likely to become a nationally recognized source of scientific knowledge; and

(3) The applicant demonstrates that all component activities of the center are related to the overall objective of the Center, and will build upon and complement each other to enhance the likelihood of solving significant rehabilitation problems.

(b) *Quality of the research design (35 points).* The Secretary review each application to determine to what degree—

(1) The applicant proposes a comprehensive research program for the entire project board, including at least three interrelated research projects;

(2) The research design and methodology of each proposed activity are meritorious in that—

(i) The literature review is appropriate and indicates familiarity with current research in the field;

(ii) The research hypotheses are important and scientifically relevant;

(iii) The sample populations are appropriate and significant;

(iv) The data collection and measurement techniques are appropriate and likely to be effective;

(v) The data analysis methods are appropriate; and

(vi) The applicant assures that human subjects, animals, and the environment are adequately protected.

(3) The application discusses the anticipated research results and demonstrates how these results would satisfy the original hypotheses and could be used for planning future research, including generation of new hypotheses where applicable.

(c) *Quality of the Training and Dissemination program (25 points).* The Secretary reviews each application to determine the degree to which—

(1) The proposed plan for training and dissemination provides evidence that research results will be effectively disseminated and utilized based on the identification of appropriate and accessible target groups; the proposed training materials and methods are appropriate; the proposed activities are relevant to the regional and national needs of the rehabilitation field; and the training materials and dissemination packages will be developed in alternate media that are usable by people with various types of disabilities.

(2) The proposed plan for training and dissemination provides for—

(i) Advanced training in rehabilitation research;

(ii) Training rehabilitation service personnel and other appropriate individuals to improve practitioner skills based on new knowledge derived from research;

(iii) Training packages that make research results available to service providers, researchers, educators, disabled individuals, parents, and others;

(iv) Technical assistance or consultation that is responsive to the concerns of service providers and consumers; and

(v) Dissemination of research findings through publication in professional journals, textbooks, and consumer and other publications, and through other appropriate media such as audiovisual materials and telecommunications.

(d) *Qualtiy of the Organization and Management (20 points).* The Secretary reviews each application to determine the degree to which—

(1) The staffing plan for the Center provides evidence that the project director, research director, training director, principal investigators, and other personnel have appropriate training and experience in disciplines required to conduct the proposed activities; the commitment of staff time is adequate to conduct all proposed activities; and the Center, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping conditions;

(2) The budgets for the Center and for each component project are reasonable, adequate, and cost-effective for the proposed activities;

(3) The facilities, equipment, and other resources are adequate and are appropriately accessible to persons with disabilities;

(4) The plan of operators is adequate to accomplish the Center's objectives and to ensure proper and efficient management of the Center;

(5) The proposed relationships with Federal, State, and local rehabilitation service providers and consumer organizations are likely to ensure that the Center program is relevant and applicable to the needs of consumers and service providers;

(6) The past performance and accomplishments of the applicant indicate an ability to complete successfully the proposed scope of work;

(7) The application demonstrates appropriate commitment and support by the host institution and opportunities for interdisciplinary activities and collaboration with other institutions; and

(8) The plan for evaluation of the Center provides for an annual assessment of the outcomes of the research, the impact of the training and dissemination activities on the target populations, and the extent to which the overall objectives have been accomplished.

Eligible Applicants

Universities and agencies in affiliation with universities, including Indian tribes and tribal organizations, are eligible to apply for awards under this program.

Program Authority: 29 U.S.C. 762.

PROGRAM TITLE: KNOWLEDGE DISSEMINATION AND UTILIZATION PROJECTS APPLICATION NOTICES FOR FISCAL YEAR 1990

CFDA No.	Program title	Funding priority	Deadline for transmittal of applications	Estimated No. of awards (per year)	Estimated size of award	Project period (months)
84.133D	Knowledge dissemination and utilization	Demographic data analysis	Dec. 18, 1989	1	$200,000	36
		International exchange of experts in rehabilitation.	do	2	200,000	36

Purpose: The Knowledge Dissemination and Utilization Program is designed to support activities that will ensure that rehabilitation knowledge generated from projects and centers funded by the Institute and other sources is fully utilized to improve the lives of individuals with disabilities.

Selection Criteria: To evaluate applications under this program, the Secretary uses the same selection criteria as those published above under the Research and Demonstration Program, 84.133A.

Program Authority: 29 U.S.C. 761(a), 762(a), and 762(b)(5).

PROGRAM TITLE: REHABILITATION ENGINEERING CENTERS APPLICATION NOTICES FOR FISCAL YEAR 1990

CFDA No.	Program Title	Funding Priority	Deadline for Transmittal of Applications	Estimated No. of Awards	Estimated Size of Award (Per year)	Project Period (Months)
84.133E	Rehabilitation engineering centers	Blindness and low-vision sensory aids	Aug. 31, 1989	1	$600,000	60
		Applications of technology to the rehabilitation of children with orthopedic disabilities.	do	1	500,000	60

Purpose: Rehabilitation Engineering Centers (REC) conduct coordinated programs of advanced research of an engineering or technological nature, in order to develop and test new engineering solutions to problems of disability, to develop systems for the exchange of technical and engineering information and to improve the distribution of technological devices and equipment to individuals with disabilities. Each REC must be located in a clinical rehabilitation setting and is encouraged to collaborate with institutions of higher education.

Selection Criteria: The Secretary uses the following selection criteria to evaluate applications under this program.

(a) *Relevance and Importance of the Research Program* (25 points). The Secretary reviews each application to determine to what degree—

(1) The proposed activities are responsive to a priority established by the Secretary and address a significant need of a disabled target population and rehabilitation service providers;

(2) The overall research program of the Center includes appropriate interdisciplinary and collaborative research activities, is likely to lead to new and useful knowledge in the priority area and to the development of new technology or new applications of existing technology, and is likely to become a nationally recognized source of information on technology in the priority area; and

(3) The applicant demonstrates that all component activities of the Center are related to the overall objectives of the Center, and will build upon and complement each other to enhance the likelihood of finding solutions to significant rehabilitation problems.

(b) *Quality of the Research Design* (25 points). The Secretary reviews each application to determine to what degree—

(1) The applicant proposes a comprehensive program of research for the total project period, including at least three interrelated research projects;

(2) The research design and methodology of each proposed activity are meritorious in that—

(i) The literature review is appropriate and indicates familiarity with the state-of-the-art and current research in rehabilitation technology;

(ii) The research hypotheses are important and scientifically relevant;

(iii) The sample populations are appropriate and significant;

(iv) The data collection and measurement techniques are appropriate and likely to be effective;

(v) The data analysis methods are appropriate; and

(vi) The applicant assures that human subjects, animals, and the environment are adequately protected;

(3) The plan for development, clinical testing, and evaluation of new devices and technology is likely to yield significant products; and

(4) The application discusses the anticipated research results and demonstrates how those results would satisfy the original hypotheses and could be used for planning additional research, including the generation of new hypotheses where applicable.

(c) *Quality of the Dissemination and Utilization Program* (25 points). The Secretary reviews each application to determine the degree to which—

(1) The proposed plan for dissemination provides evidence that research results will be effectively disseminated and utilized based on the identification of appropriate and accessible target groups; the proposed activities are relevant to the regional and national needs of the rehabilitation field; and dissemination packages will be prepared in a form usable by individuals with all types of disabilities;

(2) The proposed plan for dissemination and utilization of the research and development provides for—

(i) Orientation programs for rehabilitation service personnel to improve the application of rehabilitation technology;

(ii) Programs which specifically demonstrate means for utilizing rehabilitation technology;

(iii) Technical assistance and consultation that are responsive to concerns of service providers and consumers; and

(iv) Dissemination of research findings through publication in professional journals, textbooks, and consumer and other publications, and through other appropriate media such as audiovisual materials and telecommunications, in an effort to make research results accessible to manufacturers, rehabilitation service providers, and researchers, educators, disabled individuals and their families, and others; and

(3) There is an appropriate plan to ensure the distribution and utilization of new devices and technology.

(d) *Quality of the Organization and Management* (25 points). The Secretary reviews each application to determine the degree to which—

(1) The staffing plan for the Center provides evidence that the principal investigator and other personnel have appropriate training and experience in disciplines required to conduct the proposed activities; the commitment of time for all staff is adequate to conduct all proposed activities; and the Center, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) The budget for the Center and each of the proposed activities are reasonable, adequate, and cost-effective for the proposed activities;

(3) The facilities, equipment, and other resources are adequate and are appropriately accessible to persons with disabilities;

(4) The plan of operations is adequate to accomplish the Center's objectives and to ensure proper and efficient management of the Center;

(5) The proposed relationships with Federal, State, and local rehabilitation service providers and consumer organizations are likely to ensure that the Center program is relevant and applicable to the needs of consumers and service providers;

(6) The past performance and accomplishments of the applicant indicate an ability to complete successfully the proposed scope of work;

(7) The application demonstrates appropriate commitment and support by the host institution and opportunities for interdisciplinary activities and collaboration with other institutions; and

(8) The plans for evaluation of the Center will assess annually the outcomes of the discrete and interrelated research projects, the impact of the training and dissemination activities on the target populations, and the extent to which the overall objectives have been accomplished.

Program Authority: 29 U.S.C. 760, 762(b)(2).

NATIONAL INSTITUTE ON DISABILITY AND REHABILITATION RESEARCH INFORMATION FOR TRANSMITTAL OF APPLICATIONS UNDER CERTAIN PROGRAMS FOR FISCAL YEAR 1990

CFDA No.	Program title	Deadline for transmittal of applications	Estimated available funds	Estimated No. of awards	Estimated range of awards	Estimated average award	Project period (months)
84.133G	Field-Initiated Research	Nov. 17, 1989	$2,500,000	25	$75,000–125,000	$100,000	36
84.133P	Research training grants	Oct. 30, 1989	500,000	3	125,000–185,000	165,000	36
84.133F	Research fellowships	Dec. 1, 1989	300,000	10	26,000–31,000	30,000	12
84.133N	Spinal cord injury model demonstrations	Apr. 2, 1990	5,000,000	13	350,000–400,000	384,000	36
84.133C	Innovation	May 4, 1990	900,000	19	50,000	50,000	12

Title of Program: Innovation Grants.

Purpose: This program is designed to provide financial support to projects that: (a) test new concepts and innovative ideas; (b) demonstate research results of high potential benefits; (c) purchase and evaluate prototype aids and devices; (d) develop unique rehabilitation training curricula; and (e) conduct feasibility, planning, and evaluation studies and conferences, and other activities to disseminate specific research findings.

Selection Criteria: The Secretary uses the following selection criteria to evaluate applications under this program.

(a) *Importance of the Project (50 points).* The Secretary reviews each application to determine to what degree the proposed activity will address a significant need of the target population and will meet the purpose of this part.

(b) *Project Design or Methodology (25 points).* The Secretary reviews each application to determine to what degree the underlying hypothesis of conceptual model is sound; the project design is likely to achieve the desired objectives; and the evaluation plan is appropriate.

(c) *Plan of Operation (25 points).* The Secretary reviews each application to determine the extent to which the qualifications and background of the key personnel, the management and financial plan, and the capability and resources of the applicant organization demonstrate that the applicant will be able to carry out the proposed project.

Eligible Applicants

Public and private organizations, including institutions of higher education and Indian tribes and tribal organizations are eligible to apply for awards in this program.

Program Authority: 29 U.S.C. 762(b)(13).

Program Title: Rehabilitation Research Fellowships.

Purpose: The purpose of this program is to build research capacity by providing support to highly qualified individuals to perform research on the rehabilitation of disabled persons.

Selection Criteria: The Secretary evaluates applications for fellowships according to the following criteria in 34 CFR 356.30.

(a) Quality and level of formal education, previous work experience, and recommendations of present or former supervisors or colleagues that include an indication of the applicant's ability to work creatively in scientific research; and

(b) The quality of a research proposal of no more than 12 pages containing the following information:

(1) The importance of the problem to be investigated to the purpose of the Act and the mission of NIDRR.

(2) The research hypotheses or related objectives and the methodology and design to be followed.

(3) Assurance of the availability of any necessary data resources, equipment, or institutional support, including technical consultation and support where appropriate, required to carry out the proposed activity.

Eligible Applicants

Individuals only are eligible to apply for research fellowships under this program.

Program Authority: 29 U.S.C. 761a(d).

Program Title: Field-Initiated Research.

Purpose: This program is designed to encourage eligible parties to originate valuable ideas for research and demonstration, development, or knowledge dissemination projects to improve the lives of individuals with disabilities, and to support research and demonstration, development, or knowledge dissemination projects as described in program regulations that address important activities not supported by Institute-funded research or that complement that research in a promising way.

Selection Criteria: The Secretary uses the following criteria to evaluate an application under this program.

(a) *Importance of the Problem.* (20 points) The Secretary reviews each application to determine the extent to which—

(1) The proposed project addresses a problem that is significant to persons with disabilities or to those who provide services to them; and

(2) The proposed project is likely to produce new and useful knowledge, techniques, or devices that will develop or disseminate solutions to problems confronting persons with disabilities.

(b) *Design of the Project.* (45 points)

(1) The Secretary reviews each application for a research and demonstration project to determine the extent to which—

(i) The review of the literature is appropriate and indicates familiarity with the relevant current research;

(ii) The research hypotheses are theoretically sound and based on current knowledge;

(iii) The sample populations are adequate and appropriately selected;

(iv) The data collection instruments and methods are appropriate and likely to be successful;

(v) The data analysis measures are appropriate; and

(vi) The application discusses the anticipated research results and demonstrates how those results would satisfy the original hypotheses.

(2) The Secretary reviews each application for a knowledge dissemination project to determine the extent to which—

(i) The need for the information has been demonstrated;

(ii) The target populations are appropriately specified;

(iii) The dissemination methods are appropriate to the target population;

(iv) The materials for dissemination are prepared in media accessible to the target population;

(v) There are adequate means of documenting and evaluating the effectiveness of the dissemination activity.

(3) The Secretary reviews each application for a development project to determine the extent to which—

(i) The proposed project will use the most effective and appropriate technology available in developing the new device or technique;

(ii) The proposed development is based on a sound conceptual model that demonstrates an awareness of the state-of-the-art in technology;

(iii) Devices or techniques will be developed and tested in an appropriate environment;

(iv) The applicant considers the cost-effectiveness and usefulness of the device or technique to be developed for persons with disabilities; and

(v) The applicant discusses the potential for commercial or private manufacture, marketing, and distribution of the product.

(c) *Personnel.* (20 points) The Secretary reviews each application to determine the extent to which—

(1) The key personnel have adequate training and experience in the required discipline to conduct the proposed activities;

(2) The allotment of staff time is adequate to accomplish the proposed activities; and

(3) The applicant ensures that personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping conditions.

(d) *Management and Evaluation.* (15 points) The Secretary reviews each application to determine the extent to which—

(1) The resources of the applicant are adequate, appropriate, and accessible to individuals with disabilities;

(2) The proposed budget is adequate and appropriate for the activities to be carried out;

(3) There is a plan, appropriate to the type of field-initiated project, to evaluate the effectiveness of the project in accomplishing its goals and objectives;

(4) The applicant provides a plan of operations, appropriate to the type of field-initiated project, indicating that it will achieve the project objectives in a timely and effective manner; and

(5) Appropriate collaboration with other agencies is assured.

Eligible Applicants

Public and private organizations, including institutions of higher education and Indian tribes and tribal organizations, are eligible to apply for awards under this program.

Program Authority: 29 U.S.C. 762.

Title of Program: Special Projects and Demonstrations for Spinal Cord Injuries.

Purpose: The Special Projects and Demonstrations for Spinal Cord Injuries program provides assistance to establish innovative projects for the delivery, demonstration, and evaluation of comprehensive medical, vocational, and other rehabilitation services to meet the wide range of needs of individuals with spinal cord injuries. Recipients of awards under this program must establish a multidisciplinary service system, demonstrate and evaluate both the services and the costs and benefits of those services, establish a research environment within the system, demonstrate and evaluate the application of improved methods and equipment, and participate as directed by the Secretary in national studies of the benefits of a spinal cord injury service system.

Selection Criteria: The Secretary uses the following criteria to evaluate an application under this model SCI Systems program.

(a) *Project Design (20 points).* The Secretary reviews each application to determine to what degree—

(1) There is a clear description of how the objectives of the project relate to the purpose of the program;

(2) The research is likely to produce new and useful information;

(3) The need and target population are adequately defined; and

(4) The outcomes are likely to benefit the defined target population.

(b) *Service Comprehensiveness (20 points).* The Secretary reviews each application to determine to what degree—

(1) The services to be provided within the project are comprehensive in scope and include emergency medical services, intensive and acute medical care, rehabilitation management, psychosocial and community reintegration, and follow up;

(2) A broad range of vocational and other rehabilitation services will be available to severely handicapped individuals within the project; and

(3) Services will be coordinated with those services provided by other appropriate community resources.

(c) *Plan of Operation (15 points).* The Secretary reviews each application to determine to what degree—

(1) There is an effective plan of operation that ensures proper and efficient administration of the project;

(2) The applicant's planned use of its resources and personnel is likely to achieve each objective;

(3) Collaboration between institutions, if proposed, is likely to be effective; and

(4) There is a clear description of how the applicant will include eligible project participants who have been traditionally underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(ii) Women;

(iii) Handicapped persons; and

(iv) The elderly.

(d) *Quality of Key Personnel (10 points).* The Secretary reviews each application to determine to what degree—

(1) The principal investigator and other key staff have adequate training or experience, or both, in spinal cord injury care and rehabilitation and demonstrate appropriate potential to conduct the proposed research, demonstration, training, development, or dissemination activity;

(2) The principal investigator and other key staff are familiar with pertinent literature or methods, or both;

(3) All the disciplines necessary to establish the multi-disciplinary system described in § 359.11(a) are effectively represented;

(4) Commitments of staff time are adequate for the project; and

(5) The applicant is likely, as part of its nondiscriminatory employment practices to encourage applications for employment from persons who are members of groups that traditionally have been underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(ii) Women;

(iii) Handicapped persons; and

(iv) The elderly.

(e) *Adequacy of Resources (10 points).* The Secretary reviews each application to determine to what degree—

(1) The facilities planned for use are adequate;

(2) The equipment and supplies planned for use are adequate; and

(3) The commitment of the applicant to provide administrative and other necessary support is evident.

(f) *Budget/Cost Effectiveness (10 points).* The Secretary reviews each application to determine to what degree—

(1) The budget for the project is adequate to support the activities;

(2) The costs are reasonable in relation to the objectives of the project; and

(3) The budget for subcontracts (if required) is detailed and appropriate.

(g) *Dissemination/Utilization (5 points).* The Secretary reviews each application to determine to what degree—

(1) There is clearly defined plan for dissemination and utilization of project findings;

(2) The research results are likely to become available to others working in the field;

(3) The means to disseminate and promote utilization by others are defined; and

(4) The utilization approach is likely to address the defined need.

(h) *Evaluation Plan (10 points).* The Secretary reviews each application to determine to what degree—

(1) There is a mechanism to evaluate plans, progress and results;

(2) The evaluation methods and objectives are likely to produce data that are quantifiable; and

(3) The evaluation results, where relevant, are likely to be assessed in a service setting.

Eligible Applicants

Under this program, awards are made to public and private nonprofit and for-profit agencies and organizations and institutions of higher education.

Program Authority: 29 U.S.C. 762(b)(3).

Program Title: Research Training Grants.

Purpose: The purpose of this program is to expand capability in the field of rehabilitation research by supporting projects that provide advanced training in rehabilitation research. These projects provide research training and experience at an advanced level to individuals with doctorates or similar advanced degrees who have clinical or other relevant experience, including experience in management or basic science research, in fields pertinent to rehabilitation, in order to qualify those individuals to conduct independent research on problems related to disability and rehabilitation.

Selection Criteria: The Secretary uses the following criteria in 34 CFR 360.31 to evaluate applications under this program.

(a) *Importance and Potential Contribution.* (20 points) The Secretary reviews each application to determine to what degree—

(1) The applicant is responsive to any priority established under § 360.32;

(2) The applicant proposes to provide training in a rehabilitation discipline or area of study in which there is a shortage of qualified researchers, or to provide training to a trainee population in which there is a need for more qualified researchers, such as clinicians in rural areas, or clinicians who are directly experienced with underserved populations; and

(3) The applicant is likely to make a significant increase in the number of trained rehabilitation researchers.

(b) *Quality of Proposed Training Program.* (40 points) The Secretary reviews each application to determine to what degree—

(1) The applicant's proposed recruitment program is likely to be effective in recruiting highly qualified trainees;

(2) The proposed didactic and classroom training programs emphasize scientific methodology are multidisciplinary, comprehensive, and appropriate to the level of the trainees, and are likely to produce qualified independent researchers;

(3) The quality and extent of the academic mentorship, guidance, and supervision to be provided to each individual trainee are of a high level and are likely to produce highly qualified researchers;

(4) The type, extent, and quality of the proposed clinical and laboratory research experience, including the opportunity to participate in research on meaningful topics at an advanced level, are likely to develop individuals with the capacity to perform independent research; and

(5) The opportunities for collegial and collaborative activities, exposure to outstanding scientists in the field, and opportunities to participate in the preparation of scholarly or scientific publications and presentations are extensive and appropriate.

(c) *Personnel and Resources Committed to the Project.* (30 points) The Secretary evaluates each application to determine to what degree—

(1) The activities of the project will be implemented by sufficient and qualified staff who are outstanding scientists in the field;

(2) The project director and other key staff are experienced in the delivery of advanced research training as well as knowledgable about the methodology and literature of pertinent subject areas;

(3) All required disciplines are effectively included; and

(4) The applicant possesses the appropriate facilities, laboratories, and access to clinical populations and organizations representing persons with disabilities to support the conduct of advanced clinical rehabilitation research.

(d) *Management and Operating Plans.* (10 points) The Secretary evaluates each application to determine to what degree—

(1) There is an effective plan of operation that ensures proper and efficient administration of the project;

(2) There is an effective plan for collaboration with other institutions of higher education and organizations whose participation is necessary to ensure effective classroom and clinical research training;

(3) The applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected without regard to race, color, national origin, gender, age or handicapping condition;

(4) The applicant has provided an adequate plan for the use of facilities, resources, supplies and equipment;

(5) The budget for the project is reasonable and adequate to support the proposed activities; and

(6) The applicant provides an appropriate plan for the evaluation of all phases of the project.

Eligible Applicants

Institutions of higher education are eligible to receive awards under this program.

Program Authority: 29 U.S.C. 761(a)(k).

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to:

U.S. Department of Education,
Application Control Center, Attention: (CFDA #_____), Washington, DC 20202–4725

or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to:

U.S. Department of Education,
Application Control Center, Attention: (CFDA #_____), Room #3633,
Regional Office Building #3, 7th and D Streets, S.W., Washington, DC

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes.—(1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped, self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this application is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 424A) and instructions.

Part III: Application Narrative.

Additional Materials

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification regarding Debarment, Suspension, and Other Responsibility Matters: Primary Covered Transactions (ED Form GCS–008) and instructions.

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (Ed Form GCS–009) and instructions. (Note: Ed Form GCS–009 is intended for use of grantees and should not be transmitted to the Department.)

Certfication Regarding Drug-Free Workplace Requirements: Grantees Other than Individuals (Ed 80–0004).

Certification Regarding Drug-Free Workplace Requirements: Grantees Who Are Individuals (Ed 80–0005).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an *original signature.* No grant may be awarded unless a completed application form has been received.

Further Information Contact

The National Institute on Disability and Rehabilitation Research, 400 Maryland Avenue SW., Washington, DC 20202. Telephone: (202) 732–1141; deaf and hearing impaired persons may call (202) 732–1198 for TDD services.

Authority: 29 U.S.C. 760–762.

Dated: June 22, 1989.

Patricia McGill Smith,

Acting Assistant Secretary, Office of Special Education and Rehabilitative Services.

Appendix

Application Forms and Instructions

Applicants are advised to reproduce and complete the application forms in this Section. Applicants are required to submit an original and two copies of each application as provided in this Section.

Frequent Questions

1. *Can I get an extension of the due date?*

No! On rare occasions the Department of Education may extend a closing date for all applicants. If that occurs, a notice of the revised due date is published in the **Federal Register**. However, there are no extensions or exceptions to the due date made for individual applicants.

2. *What should be included in the application?*

The application should include a project narrative, vitae of key personnel, and a budget, as well as the Assurances forms included in this package. Vitae of staff or consultants should include the individual's title and role in the proposed project, and other information that is specifically pertinent to this proposed project. The budgets for both the first year and subsequent project years should be included.

If collaboration with another organization is involved in the proposed activity, the application should include assurances of participation by the other parties, including written agreements or assurances of cooperation. It is not useful to include general letters of support or endorsement in the application.

If the applicant proposes to use unique tests or other measurement instruments that not widely known in the field, it would be helpful to include the instrument in the application.

BEST COPY AVAILABLE

Many applications contain voluminous appendices that are not helpful and in many cases cannot even be mailed to the reviewers. It is generally not helpful to include such things as brochures, general capability statements of collaborating organizations, maps, copies of publications, or descriptions of other projects completed by the applicant.

3. *What format should be used for the application?*

NIDRR generally advises applicants that they may organize the application to follow the selection criteria that will be used. The specific review criteria vary according to the specific program, and are contained in this Consolidated Application Package.

4. *May I submit applications to more than one program competition NIDRR or more than one application to a program?*

Yes, you may submit applications to any program for which they are responsive to the program requirements. You may submit the same application to as many competitions as you believe appropriate. You may also submit more than one application in any given competition.

5. *What is the allowable indirect cost rate?*

The limits on indirect costs vary according to the program and the type of application.

Applications that are for training activities, including all applications in the Research Training grants program, should limit indirect charges to the lesser of the actual indirect costs or eight percent of the total direct costs of the program, as noted in the Education Department General Administrative Regulations (EDGAR). The statutory limit for indirect charges in the Rehabilitation Research and Training Centers program is 15 percent of total project costs.

All other applicants in the R&D, D&U, REC, FIR, Innovation grants, and Spinal Cord Injury programs should limit indirect charges to the organization's approved rate. If the organization does not have an approved rate, the application should include an estimated actual rate.

6. *Can profitmaking businesses apply for grants?*

Yes. However, for-profit organizations will not be able to collect a fee or profit on the grant, and in some programs will be required to share in the costs of the project.

7. *Can individuals apply for grants?*

No. Only organizations are eligible to apply for grants under NIDRR programs.

8. *Is there a cost-sharing or matching requirement?*

Cost-sharing is required in the Research and Demonstration Projects program, with certain exceptions noted in the law; and the Knowledge Dissemination and Utilization program. For the Rehabilitation Engineering Centers, the Secretary has the option to require matching. It is generally the practice of the agency to require cost-sharing under this program.

There is no set rate for cost-sharing. The cost-sharing is negotiated at the time an award is made and is not part of the evaluation of the application.

9. *Can NIDRR staff advise me whether my project is of interest to NIDRR or likely to be funded?*

No. NIDRR staff can advise you of the requirements of the program in which you propose to submit your application. However, staff cannot advise you of whether your subject area or proposed approach is likely to receive approval.

10. *How do I assure that my application will be referred to the most appropriate panel for review?*

Applicants should be sure that their applications are referred to the correct competition by clearly including the competition title and CFDA number, including alphabetical code, on the Standard Form 424, and including the title of the priority to which they are responding.

11. *How soon after submitting my application can I find out if it will be funded?*

The time from closing date to grant award date varies from program to program. Generally speaking, NIDRR endeavors to have awards made within five to six months of the closing date. Unsuccessful applicants generally will be notified within that time frame as well. For the purpose of estimating a project start date, the applicant should estimate approximately six months from the closing date, but no later than the following September 30.

12. *Can I call NIDRR to find out if my application is being funded?*

No! When NIDRR is able to release information on the status of grant applications, it will notify applicants by letter. The results of the peer review cannot be released except through this formal notification.

13. *If my application is successful, can I assume I will get the requested budget amount in subsequent years?*

No. Those budget projections are necessary and helpful for planning purposes. However, a complete budget and budget justification must be submitted for each year of the project and there will be negotiations on the budget each year.

14. *Will all approved applications be funded?*

No. It often happens that the peer review panels approve for funding more applications than NIDRR can fund within available resources. Applicants who are approved but not funded are encouraged to consider submitting similar applications in future competitions.

BILLING CODE 4000-01-M

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION: *Application* ☐ Construction ☒ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name: | Organizational Unit:

Address (give city, county, state, and zip code): | Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State; B. County; C. Municipal; D. Township; E. Interstate; F. Intermunicipal; G. Special District; H. Independent School Dist.; I. State Controlled Institution of Higher Learning; J. Private University; K. Indian Tribe; L. Individual; M. Profit Organization; N. Other (Specify): _____

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award; B. Decrease Award; C. Increase Duration; D. Decrease Duration; Other (specify): _____

9. NAME OF FEDERAL AGENCY: Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐.☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: — "New" means a new assistance award. — "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. — "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

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BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION (Attach additional Sheets if Necessary)	
21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j – Show the amount of indirect cost.

Line 6k – Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

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Research and Demonstration (84.133A)
Rehabilitation Research and Training Centers (84.133B)
Innovation Grants (84.133C)
Knowledge Dissemination and Utilization (84.133D)
Research Engineering Centers (84.133E)
Research Fellowships (84.133F)
Field-Initiated Research (84.133G)
Special Demonstrations for Spinal Cord Injuries (84.133N)
Research Training Grants (84.133P)

Public reporting burden for these collections of information is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the date needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing this burden, to: the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project 1820–0027, Washington, DC 20503.

(Information collection approved under OMB control number 1820–0027. Expiration date: September 30, 1990)

BILLING CODE 4000-01-M

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

Certification Regarding
Debarment, Suspension, and Other Responsibility Matters
Primary Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the U.S. Department of Education, Grants and Contracts Service, 400 Maryland Avenue, S.W. (Room 3633 GSA Regional Office Building No. 3), Washington, D.C. 20202-4725, telephone (202) 732-2505.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name | PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature | Date

ED Form GCS-008, (REV.12/88)

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion–Lower Tier Covered Transactions," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

ED Form GCS-008, (REV. 12/88)

Certification Regarding
Debarment, Suspension, Ineligibility and Voluntary Exclusion
Lower Tier Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the person to which this proposal is submitted.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name — PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature — Date

ED Form GCS-009, (REV. 12/88)

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered in it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion–Lower Tier Covered Transactions," without modification, in all low tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possess by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

ED Form GCS-009, (REV. 12/88)

Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988, 34 CFR Part 85, Subpart F. The regulations, published in the January 31, 1989 Federal Register, require certification by grantees, prior to award, that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the agency determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment (see 34 CFR Part 85, Sections 85.615 and 85.620).

The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;
(2) The grantee's policy of maintaining a drug-free workplace;
(3) Any available drug counseling, rehabilitation, and employee assistance programs; and
(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and
(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination; or
(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

Organization Name — PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature — Date

ED 80-0004

Certification Regarding Drug-Free Workplace Requirements
Grantees Who Are Individuals

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988, 34 CFR Part 85, Subpart F. The regulations, published in the January 31, 1989 Federal Register, require certification by grantees, prior to award, that their conduct of grant activity will be drug-free. The certification set out below is a material representation of fact upon which reliance will be placed when the agency determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment (see 34 CFR Part 85, Sections 85.615 and 85.620).

The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity with the grant.

Organization Name (As Appropriate) — PR/Award Number or Project Name

Printed Name

Signature — Date

ED 80-0005

federal register

Thursday
June 29, 1989

Part V

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

Requirements for Single Family Mortgage Instruments; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-89-1948; FR-2607]

Requirements for Single Family Mortgage Instruments

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of policy.

SUMMARY: This Notice announces a new approach for creating mortgage instruments for HUD single family mortgage insurance programs. HUD will no longer print or distribute single family mortgage forms and will not approve the text of a complete form for each state. Mortgagees are responsible for developing or procuring their own instruments with provisions required by HUD and any additional provisions needed to produce a legally enforceable instrument conforming to the law of the state in which the property is located.

EFFECTIVE DATE: This Notice is effective June 29, 1989, but compliance is optional until a date or dates to be later announced in the **Federal Register**. See further discussion under "SUPPLEMENTARY INFORMATION."

FOR FURTHER INFORMATION CONTACT: Donald B. Alexander, Home Mortgage Division, Office of General Counsel, Department of Housing and Urban Development, Room 9262, 451 7th Street, SW., Washington, DC 20410, telephone no. (202 755-7070). (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: This Notice changes HUD policy regarding the manner in which single family mortgage instruments are produced. Mortgage instruments will not be available from HUD. However, mortgagees must use instruments meeting HUD requirements to qualify for insurance. Once a mortgage is insured, section 203(e) of the National Housing Act provides that the validity of the contract of insurance held by an approved mortgagee is incontestable, except for mortgagee fraud or misrepresentation. Thus, assuming no such fraud or misrepresentation has occurred, any errors in complying with HUD's requirements for mortgage instruments will not affect insurance which has been issued on a particular mortgage. As with other violations of administrative requirements, however, a mortgagee's failure to use mortgage instruments meeting HUD's requirements could result in a particular mortgage being rejected for insurance, and could form a basis for appropriate administrative sanctions.

Background

On July 6, 1988, HUD published a Notice of Proposed Policy entitled "Requirements for Single Family Mortgage Instruments," 53 FR 25434. That Notice set forth and explained a proposed new approach for creating mortgage instruments for HUD single family mortgage insurance programs, under which mortgagees would develop or procure their own instruments meeting certain HUD requirements. The details of the proposed new requirements were contained in an Appendix to the Notice. Public comments on the Notice were due September 6, 1988.

In anticipation of publication of a final Notice of Policy which would set forth the new requirements, taking public comments into account, HUD also published a final rule making related technical changes to existing single family regulations. For example, the requirement of the former 24 CFR 203.17(a) that a mortgage "shall be executed upon a form approved by the Commissioner for use in the jurisdiction in which the property covered by the mortgage is situated" was replaced with a more general requirement that a mortgage "shall be in a form meeting the requirements of the Commissioner." See the new 24 CFR 203.17(a)(2)(i), 53 FR 34282 (September 6, 1988). Similar changes were made to other single family regulations. The final rule took effect on October 6, 1988. See 53 FR 40221 (October 14, 1988). Although the amended regulations remove the implication that the Federal Housing Commissioner must prescribe complete mortgage instruments for each jurisdiction, they permit the Commissioner to do so until such time as other requirements might be adopted. Until today, no new requirements have been issued, and HUD has continued to require use of its approved mortgage forms as the sole means of compliance with 24 CFR 203.17(a) and similar regulations. By this Notice of Policy, HUD is announcing its new requirements for single family mortgage instruments. This Notice is based on the July 6, 1988, Notice of Proposed Policy.

Paperwork Requirements

The information collection requirements contained in this Notice have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**. Public reporting burden for the collection of information requirements contained in this rule are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided below. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., Room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Description of information collection	Section of 24 CFR affected	Number of respondents	Number of responses per respondents	Total annual responses	Hours per responses	Total hours
To complete a Single Family Mortage Instrument	203.17(a)	8,300	90	747,000	0.25	186,750

Public Comments

HUD received eight sets of public comments on the Notice of Proposed Policy—four from trade associations, three from financial institutions, and one from a law firm. Most of the commenters expressed concern that the proposed requirements would be difficult for mortgagees to implement because of the large amount of discretion left to mortgagees. Although HUD proposed to require verbatim use of ten HUD-drafted mortgage paragraphs, and seven HUD-drafted promissory note paragraphs, HUD proposed that the mortgagees assume responsibility for preparing the provisions which would vary among states, as well as for "boilerplate" provisions on such subjects as governing law and manner of giving notice. Where appropriate, provisions in the mortgage instruments approved by the Federal National Mortgage Association (FNMA) and the Federal Home Loan Mortgage Corporation (FHLMC) were identified as suitable models, but their use was generally not required. In addition, commenters suggested some uncertainty about the extent to which variation by particular lenders was allowed.

The commenters identified a number of adverse consequences which could result from the perceived lack of precision in HUD's proposed requirements. The potential proliferation of differing forms for insured mortgages, according to several commenters, would interfere with the orderly operation of the secondary mortgage market, which depends on uniform standards. According to one commenter, the absence of specific FHA approval of forms could also impair the efficiency of the secondary market by eliminating the assurance that all insured mortgages are alike and therefore fungible. One commenter asserted that the new proposal would be costly for a mortgagee to implement, and might result in a defective instrument leading to technical problems during foreclosure. Another commenter mentioned the legal cost which mortgagees would incur due to the need to prepare new instruments, and the difficulty in training staff, particularly staff of mortgagees purchasing possibly differing instruments from several other mortgagees. The same commenter argued that the burden of implementing the new proposal would fall heaviest on small mortgagees, since larger mortgagees could better bear the demand on resources involved in forms production and distribution.

We received no objections to the requirement that mortgagees be responsible for the expenses of reproduction and distribution of mortgage instruments; all adverse comments on expenses and staff burden on mortgagees were directed to the burden surrounding the original drafting process and the transition to a new system. Many commenters expressly recognized, and did not object to, HUD's desire to reduce the costs and administrative burden involved in the current HUD approach to single family mortgage forms. They suggested other ways HUD could achieve these objectives.

Two commenters suggested that HUD change only the manner of distribution. Currently, HUD makes copies of its approved mortgage instruments available free of charge to all mortgagees, although many mortgagees prefer to reproduce the forms at their own expense or to purchase supplies from private forms companies. The commenters suggest that HUD continue to approve mortgage forms, but provide to each mortgagee only a "camera-ready copy" of each form. Each mortgagee could then have the camera-ready copy reproduced in quantities meeting its requirements. The Department has been informed that FNMA/FHLMC mortgage forms are provided to mortgagees in this manner.

Three commenters suggested use of the appropriate FNMA/FHLMC form, with additional HUD language. One of these commenters also suggested, as its first preference, the VA policy under which no specific mortgage instrument is required. VA regulatory requirements are considered to supersede any inconsistent provisions appearing in mortgage instruments.

HUD has carefully considered these comments. We have adopted a modified approach which should achieve many of the benefits of the suggested alternatives and which should remove or mitigate many of the problems perceived by commenters. However, the approach adopted in this notice differs in some respects from the various approaches advocated by the commenters. The final requirements appear as the Appendix to this Notice. The requirements now are represented primarily in terms of a model mortgage form and model note form set out as Exhibits A and B, respectively, to the Appendix. The model mortgage form is a complete form with two exceptions: the mortgagee must complete Paragraph 17, Foreclosure Procedures, in accordance with state law requirements, and the mortgagee must add language taken verbatim from certain specified paragraphs of the approved FNMA/FHLMC mortgage form for the jurisdiction. Footnotes to the model form explain other specific changes needed for particular states. Other changes are not permitted, unless needed to comply with state law. The model note form is a complete form with footnotes explaining specific changes needed for particular states, with no other changes permitted, unless needed to comply with state law. The revised requirements also include the mortgage riders and note allonges needed to adapt the model forms to special situations, such as non-fixed payment mortgages (adjustable rate, graduated payment or growing equity mortgages), condominiums and planned unit developments, and tax-exempt financing. We believe that this revised means of presenting our new requirements will be easier for mortgagees to follow, will result in a large degree of uniformity among mortgagees, and will substantially reduce the burden on mortgagees which choose to develop their own forms rather than procure them from other private sources.

The requirements identify a number of specific adaptations of the model forms needed to comply with state laws. We received no public comments indentifying any need to alter the mandatory mortgage and note language to comply with state law, although such comments were specifically requested. We have used the current FNMA/FHLMC forms as the principal basis of identifying state adaptations. HUD does not have blanket authority to exempt insured mortgages from relevant state laws, however, and it is possible that other state law provisions currently exist which are not reflected in the requirements, or that relevant state laws may be enacted in the future. Mortgagees aware of such laws should bring them to HUD's attention so that the requirements may be updated or the local HUD Office may issue a Circular Letter reflecting additional state law requirements. However, the enforceability of mortgage instruments will depend on compliance with state law whether or not such law is reflected in these requirements. For this reason, the requirements emphasize the need for a mortgagee to use instruments in compliance with state law. It should be noted that this is not a new position of HUD. However, it has not been clearly set forth before as a generally-applicable policy, although specific publications (e.g., the Growing Equity Mortgage Handbook and the Mortgagee Letters on Adjustable Rate Mortgages and Graduated Payment Mortgages) have recognized the need for possible adaptation of HUD-prescribed language to meet state requirements.

Many of the comments appeared to assume that all or most mortgages would produce their own forms, with a resulting wide variety of documentation for insured loans. Although any mortgagee may produce its own form in conformity with HUD requirements, HUD expects that a small number of

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forms suppliers will prepare and market forms meeting HUD requirements, and that few mortgagees will find it advantageous to produce their own forms due to some of the concerns expressed in the comments—expense, possible technical defects in mortgagee-prepared instruments, and demand for uniformity by the secondary market. The revised requirements also allow almost no room for variation, so that a lender has little incentive to enter the forms drafting and production business. HUD will not attempt to review individual mortgagees' forms in advance of actual use, but we do expect to be receptive to requests for advance review of forms which are reasonably expected to be made available to a larger number of mortgagees (see later discussion).

HUD had previously considered each of the three basic alternatives proposed in the comments. The suggestion of supplying camera-ready copies for mortgagee use was not pursued since HUD would continue to retain the considerable burden and expense of maintaining and updating the current inventory of more than 150 separate note and mortgage forms. Much of the expense of actual printing and distribution of forms has already been assumed voluntarily by mortgagees. The requirements HUD is now adopting, unlike the camera-ready copy approach, will enable HUD to focus its efforts on one set of uniform provisions which can be more easily kept up to date than the current HUD inventory of forms. HUD believes that the mortgage lending industry is competent to undertake the additional responsibilities provided in these requirements, and that the resulting mortgage and note instruments will be superior to those in the current HUD inventory.

HUD had also considered use of the FNMA/FHLMC forms with additional language in a rider to conform the instruments to HUD requirements. That approach was discussed in the Notice of Proposed Policy (53 FR 25435) as a possible way of creating a form which would comply with the new HUD requirements. However, that approach was discouraged because of the extra recording costs involved and the impaired readability of an instrument in which much of the printed text was altered or removed by a rider. We recognize that the transition to a "rider" approach might be easier than a transition to the requirement HUD is adopting. However, once supplies of forms meeting these requirements are produced, we see no major long-term advantages of the rider approach over the new requirements set forth in this Notice. HUD expects mortgages to comply with the requirements by creating (or purchasing) completely new forms rather than tacking additional language onto existing FNMA/FHLMC forms. If an FHA-approved rider form were created, it might provide greater assurance of uniformity among mortgages. However, HUD believes that the fact that a mortgage has been insured should provide the same assurance of uniformity for all substantive matters, since no mortgages will be insured without a certification of compliance with HUD requirements (discussed below) and these requirements do not permit substantive variations by mortgagees.

The VA approach, suggested by one commenter, was not pursued since it would require a major revision of the single family regulations, and could lead to use of mortgage instruments with no necessary relationship to actual rights of borrowers with insured mortgages. As well, the VA approach could be less flexible than the requirements in this Notice if all future adjustments in mortgage form requirements could only be implemented through notice-and-comment rulemaking.

In addition to the comments on the general approach to mortgage instruments described in the Notice of Proposed Policy, there were a number of comments on specific features of the proposed mortgage language.

Other Significant Changes From Notice of Proposed Policy

A commenter suggested that the provisions in the note and the mortgage be interchangeable in each document. The proposed requirements allowed note provisions to be included in the mortgage; mortgage provisions, however, could not be inserted into the note. The suggestion for the interchangeability of note and mortgage provisions has been rejected since the insertion of any mortgage provision into the note may impair the negotiability of the note. (See section 3–104(1)(b) of the Uniform Commercial Code regarding requirements for a negotiable instrument.) The same commenter also suggested that the required mortgage document size be 8½" x 14". The final requirements are silent on document size, allowing the lender to use whatever size or sizes are acceptable for the jurisdiction. We see no need to limit industry flexibility in determining document size.

A second commenter suggested that the use of the term "in trust" in the provisions that allow the lender to hold amounts collected for taxes, insurance premiums and other charges could imply a different relationship than intended. We rejected the commenter's suggestion since the phrase "in trust" is used in this context in all current insured single family mortgages and has caused no problems. The trust relationship created by this provision would be subject to and regulated by applicable state laws regarding the manner in which trust issues will be determined. We doubt that use of the "in trust" term would imply, as suggested, that the borrower could be entitled to an amount in the escrow funds as interest. If the language has such a result, in a particular state, however, HUD does not object to that result.

The same commenter suggested that we change our proposed language in Paragraph 6 of the mortgage referring to property inspection. It could be argued, as the commenter noted, that the inspection requirements prior to foreclosure would impose an affirmative duty on the lender to the borrower that is extremely unusual and problematic. The commenter suggested the following change:

Lenders *may* inspect *the* property if the property is vacant or abandoned *or* the loan is in default *or at* any *other reasonable time.* Lender *may* take reasonable action to protect and preserve such vacant or abandoned property. (Delete rest of sentence.)

The underlining (represented by italics) indicated changes from the language proposed by HUD. We believe the proposed language more fully explains the borrower's agreement to permit the lenders to inspect the property when appropriate. We have accepted the proposed change, in part, and will insert it where applicable. This change also responds to another commenter who suggested the lender should be able to forego inspection. We will delete conflicting language. We are not including the language allowing inspection "at any reasonable time." Such inspections have not been part of servicing for HUD-insured or HUD-held mortgages, and go beyond the requirements for inspection in 24 CFR 203.377.

The second commenter also recommended that the provisions allowing for acceleration of the indebtedness be expanded. The commenter's concern focused on the mortgage which identified breaches of paragraphs 1 through 7 of the mortgage as the basis for foreclosure. The proposed mortgage language was based on the premise that the mortgage provisions in paragraphs 1 through 7 covered all the major obligations of the borrower. We have concluded that the specific reference to paragraphs 1 through 7 is unnecessary, and incomplete in some cases (such as when riders are used), and have removed the reference. In addition, the same commenter suggested that the mortgage language should clarify when the borrower's rights to reinstatement end. We reject the commenter's suggestion. At present, HUD regulations adequately address the borrower's right to reinstatement, and the mortgage repeats the regulations. As long as it is possible under state law to restore the relationship that existed between the borrower and lender, then HUD concludes that the borrower should be permitted to bring the account current, subject to three exceptions provided in the regulations and the mortgage.

Another commenter suggested that mortgage language referring to charges for processing a purchaser's application for credit approval be inserted. We have generalized the commenter's suggestion to read as follows: "The Lender may collect fees and charges authorized by the Secretary." (New paragraph 8 of the mortgage.) This modification will provide greater flexibility.

The same commenter also proposed inserting language in the mortgage that would require an investor to pay the principal balance down to 75 percent of the property value if the mortgagor is released. We did not accept the commenter's recommendation because the new section 203(r) of the National Housing Act added by section 406 of the Housing and Community Development Act of 1987 achieves the same result. Current HUD practice is to require approval of a substitute mortgagor before a mortgagee may release the mortgagor from personal liability, and section 203(r) would prevent HUD from granting approval in case of sale to an investor unless the mortgage is paid down to 75 percent. In addition, the language proposed by the commenter may be misleading by suggesting that the mortgage sets forth all conditions of release. HUD's policy on release is based on 24 CFR 203.258, which may be altered based on future conditions that are not currently known.

A commenter representing a trade association suggested that HUD "specifically include the new FHA assumption policy in its entirety, as well as the restrictions on assumptions by persons without approved credit." We believe the model mortgage form (Exhibit A to the Appendix) under paragraph 9(b) includes the necessary information to fully understand the assumption requirements. In addition, the same commenter suggested that HUD monitor and establish standards for fees charged to mortgagors in order to prevent possible abuse. Our current practice under 24 CFR 203.552 is to permit the HUD field offices to establish "reasonable and customary" fees for that locality; this ability to establish maximum fees will prevent the possible abuse the commenter mentioned. The new paragraph 8 of the mortgage (discussed above) only allows fees to be collected if authorized by HUD.

A commenter made specific suggestions to eliminate language referring to regulations issued by the Secretary in the default section of the mortgage instrument as well as other similar references. The commenter noted that such language would create foreclosure proceedings that would be more time consuming and expensive. The borrower's attorneys could commence exhaustive discovery to determine whether the lender met all of the servicing requirements. We rejected the commenter's suggestions that the references to regulations by the Secretary will impair the lender's ability to successfully defend a suit. HUD does not intend to create a conflict between the mortgage language and regulations, and there should be no adverse impact of informing the borrower that some regulations procedures exist which limit a lender's rights to foreclose.

We note that the proposed mortgage language does not incorporate all of HUD's servicing requirements into the mortgage, but simply prevents acceleration and foreclosure on the basis of the mortgage language when foreclosure would not be permitted by HUD regulations. For example, 24 CFR 203.606 specifically prohibits a mortgagee from foreclosing unless three full monthly payments due on the mortgage are unpaid. As long as this requirement remains in the regulations, we do not expect mortgagees to violate it even though the mortgage fails to repeat the requirement, and we believe that a borrower could appropriately raise the regulatory violation in his or her defense. If a mortgagee has violated parts of the servicing regulations which do not specifically state prerequisites to acceleration or foreclosure, however, the reference to regulations in the mortgage would not be applicable. HUD retains the general position recited in 24 CFR 203.500, that whether a mortgagee's refusal or failure to comply with servicing regulations is a legal defense is a matter to be determined by the courts.

In addition to changes suggested in public comments, HUD is adopting some other changes to its proposal. HUD is eliminating its long-standing disparity in policy concerning dues and assessments by condominium associations and homeowner (PUD) associations. Previously, the mortgage could only contain a borrower covenant to pay dues and assessments for condominium assessments. The new mandatory PUD rider (Exhibit J to the Appendix) also contains such a covenant. Further, both the PUD rider and the condominium rider (Exhibit I to the Appendix) permit the mortgagee to advance funds for delinquent dues and assessments, with such advances being secured by the mortgage, and due and payable with interest on demand. HUD believes these provisions will eliminate the incentive for mortgagees to leave dues and assessments unpaid until they can receive reimbursement through insurance benefits under 24 CFR 203.402(j).

The proposed notice instructed mortgagees to include a mortgage paragraph 12 titled "Lender in Possession" which was subsequently the same as paragraph 20 of the FNMA/FHLMC "non-uniform covenants" for the jurisdiction. The corresponding paragraph in the model mortgage form, paragraph 16, is titled "Assignment of Rents" and is based on paragraph F of the FNMA/FHLMC "1–4 Family Rider."

The proposed requirements anticipated a separate note form for each state. The final requirements will permit use of a multistate note form except where special state provisions may be required by state statutes, including situations indicated in the footnotes to Exhibit B of the Appendix.

The Adjustable Rate Mortgage (ARM) Rider and Note Allonge (Exhibits C and D to the Appendix) have been amended to reflect two changes to the HUD Arm regulations published at 54 FR 110 (January 4, 1989) which eliminated reference to carryovers and reduced to 25 days the required notice period for interest rate adjustments. An effective date for the regulations changes will be announced by separate notice in the **Federal Register**. Any mortgagees intending to follow the Appendix requirements for an ARM before the regulation effective date is issued should request advice from the HUD office listed below.

Other Information

It is anticipated that a notice will be published in the **Federal Register** within 60 days announcing the dates upon which the requirements set forth in the Appendix to this notice will become mandatory. Except for Puerto Rico, Virgin Islands and Guam, any date set will not be earlier than December 1, 1989. For Puerto Rico, the Virgin Islands

and Guam the date will not be earlier than June 1, 1990.

In general, mortgagees should not seek advance approval of forms from either HUD Headquarters or HUD Field Offices. Mortgagees are responsible for determining that the mortgage and note comply with HUD requirements. Mortgagees are reminded that the underwriter's certification required for each direct endorsement case contains a certification that the mortgage is on a form meeting HUD requirements. (See Handbook 4000.4 REV–1, Appendix 4, Certification No. 1.) The certification for all prior approval cases processed by HUD also certifies compliance with HUD regulatory requirements, which include the mortgage form requirements.

Questions on interpretation of the requirements in the Appendix should be directed to:

Assistant General Counsel for Home Mortgages, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, (202–755–7070).

On a very limited basis, requests for review of forms directed to the above address will be honored if the forms will be made available for use by a large number of mortgagees (for example, forms developed by or for forms companies or trade associations). HUD's ability to honor such requests will depend on the number of requests and the quality of the forms submitted. HUD review and comment on a form will not relieve each mortgagee of responsibility for certifying that its mortgage instruments meet HUD requirements, and will not be the same as HUD approval.

In the past, some mortgagees have received approval from HUD to make specific changes to HUD-approved forms. Such previously approved changes will not necessarily be acceptable when applied to the new mortgage language required by the Appendix. New approval must be received from the HUD Assistant General Counsel for Home Mortgages, at the address shown above, if a mortgagee desires to make changes not authorized by the new requirements.

The requirements in the Appendix will be updated from time to time as needed through Mortgagee Letters, notices in the **Federal Register**, or both.

This Notice is exempt from the requirements of the National Environmental Policy Act under 24 CFR 50.20(k), so that a Finding of No Significant Impact is not required.

Dated: May 1, 1989.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

Appendix—Requirements for Single Family Mortgage Instruments

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Part I—General Instructions

A. The term "mortgage" as used below includes any form of security instrument commonly used in a jurisdiction in connection with loans secured by a one- to four-family residential property. The term "note" as used below includes any form of credit instrument commonly used in a jurisdiction to evidence such loans.

B. HUD will not provide mortgage and note forms for use with its single family mortgage insurance programs. A mortgagee must develop or procure mortgage and note forms which comply with form and substance with both these requirements and all applicable state and local requirements for a recordable and enforceable mortgage and an enforceable note. The note must be a negotiable instrument or, in the case of adjustable rate notes, must meet all requirements for negotiability except that interest rates will be determined by reference to an index. The model note form, Exhibit B, is intended to be a negotiable instrument but it has not been reviewed for compliance with all state laws which could affect negotiability. The mortgage and note must be separate documents.

C. Model mortgage and note language for fixed-rate fixed-payment loans is explained in Parts II and III. Permitted variation from the model language is explained in those Parts. Additional requirements for other loans and special situations are explained in Part IV.

D. A mortgage or note may include the mortagee's business name and/or logotype on the top of the form. Although layout and format are within the discretion of mortgagees where not specified in these requirements, size and style or typeface or print should be similar to the FNMA/FHLMC mortgages and notes. The exhibits to these requirements use underlining instead of blanks to indicate required insertions, but mortgagees may use blanks to facilitate use of computerized systems.

E. These requirements do not supersede HUD regulations. They are intended to supersede anything contained in HUD administrative issuances, such as Handbooks, Notices or Mortgagee Letters, that prescribes the form and content of a mortgage or note and conflicts directly with these requirements.

F. Some of the mortgage or note language required or permitted by these requirements may result in a mortgagor granting broad rights to a mortgagee while the exercise of those rights is limited by HUD regulations or administrative issuances. These requirements do not supersede any such limitations on mortgagees, and a mortgagee's rights under the mortgage and note may be exercised only in a manner consistent with all relevant HUD requirements.

G. HUD field offices have authority to impose additional requirements regarding mortgage and note provisions, for consistency with state laws appropriate to their jurisdictions, and to advise mortgagees of any such requirements through a Circular Letter. In states served by more than one HUD field office, issuance of such Circular Letters must be coordinated with the Regional Office.

Part II—Mortgage Provisions

A. Mortgagees must use the model form, Exhibit A, and the footnotes accompanying the model form, with only such adaptation as may be necessary to conform to state or local requirements. Some required state variations are explained in the footnotes and in Part IV of these requirements, based on the state variations in FNMA/FHLMC forms, but HUD has not necessarily explained all required variation. However, paragraphs 1–10 must be used verbatim; HUD must be consulted if the mortgagee concludes that they do not meet state or local requirements, but the mortgagee shall make no changes without prior HUD approval.

B. In preparing these requirements, HUD has made heavy use of the approved FNMA/FHLMC mortgage forms. The provisions preceding the numbered paragraphs in the model mortgage form, with state variations explained in the footnotes, are the same as the provisions preceding the "uniform covenants" in the December 1983 FNMA/FHLMC mortgages (except New York), with the addition of a state reference and FHA case number on the front page. Unlike FNMA/FHLMC, HUD is not requiring a special "plain English" form for New York. (HUD also has made no use of the FHLMC March 1985 "plain English" mortgage for Maine, which FNMA does not require; all references to a FNMA/FHLMC Maine mortgage are to the December 1983 edition.)

C. The numbered paragraphs in the model mortgage form must be used rather than the FNMA/FHLMC "uniform covenants," which contain some substantial differences from HUD policy. However, paragraphs 11, 12, 13, 14 and 15 of the model form are based on paragraphs 10, 11, 14, 15 and 16 of the FNMA/FHLMC "uniform covenants," the "Rider" paragraph is based on the final numbered paragraph in the FNMA/FHLMC "non-uniform covenants," and paragraph 16 is based on paragraph F of the FNMA/FHLMC "1–4 Family Rider."

D. Paragraph 17 of the model mortgage form ("Foreclosure Procedure") will need adaption for each state, as explained in footnote 7 to the form.

E. Following paragraph 17 of the model mortgage form, a mortgagee shall insert additional numbered paragraphs required to adapt the mortgage for a particular state. The text of these paragraphs shall be the same as the text of the paragraphs following paragraph 20 (except the paragraph titled "Riders to this Security Instrument") in the "non-uniform covenants" of the most recent approved FNMA/FHLMC mortgage form for the appropriate jurisdiction. (The reference should be to Paragraph *18* for Guam, the Virgin Islands and Puerto Rico, and FNMA/FHLMC Paragraph 20 should be omitted for these jurisdictions.) See Part IV, Section B.8, for special instructions regarding New York.

Part III—Note Provisions

Mortgagees must use the model form, Exhibit B, and the footnotes accompanying the form, with only such adaptation as may be necessary to conform to state or local requirements. Some required state variations are explained in the footnotes and in Part IV of these requirements, based on the state variations in FNMA/FHLMC forms, but HUD has not necessarily explained all required variation.

Part IV—Other Requirements

A. Special Situations

As special situations arise, additional language may be required for a mortgage and/or note. Mandatory requirements to be followed in special situations are set forth in this Part IV. The following prescribed forms of mortgage rider and/or allonge are provided and must be used when applicable:

Model Mortgage Form
Model Note Form
Adjustable Rate Rider
Adjustable Rate Allonge Amending Note
Graduated Payment Rider
Graduated Payment Allonge Amending Note
Growing Equity Allonge Amending Note
Condominium Rider
Planned Unit Development Rider
Tax-Exempt Financing Rider
Rider for Section 248 Mortgage

In other cases, whenever additional language is to be added, the addition may be printed or typed in the body of the instrument or incorporated through use of a rider, addendum or similar document.

1. *Adjustable Rate Mortgoge (ARM).* These instructions supersede the instructions regarding ARM instruments in Attachment I to Mortgagee Letter 84–16 or any sucessor Mortgagee Letter. For an ARM, the mortgagee must use the model mortgage form and the Adjustable Rate Rider (Exhibit C), and the model note form and the Adjustable Rate Allonge Amending Note (Exhibit D).

2. *Graduated Payment Mortgage (GPM).* These instructions supersede the instructions in Handbook 4240.2 Revised, Appendix 4. For a GPM, the mortagee must use the model mortgage form and the Graduated Payment Rider (Exhibit E), and the model note form and the Graduated Payment Allonge Amending Note (Exhibit F).

3. *Growing Equity Mortgage (GEM).* These instructions supersede the instructions in Attachment 5 to Mortgagee Letter 85–3. For a GEM, the mortgagee must use the model note form and the Growing Equity Allonge Amending Note (Exhibit G).

There is no prescribed Growing Equity rider for a GEM. The mortgage shall contain a payment schedule, consistent with the schedule set forth in the Growing Equity Allonge, if required by state law or as otherwise needed to ensure the enforceability and priority of the mortgage. Otherwise, the mortgagee may include such a schedule at its option. Mortgagees may recite the Note verbatim in a rider.

4. *Rehabilitation Loans* (Section 203(k) of the National Housing Act). These instructions supersede instructions in Handbook 4240.4, regarding mortgage forms. If the loan involves releases from the Rehabilitation Escrow Account, the mortgagee must use the model note form and the Rehabilitation Loan Rider (Exhibit H). In those cases where the Security Instrument is a second lien, the following language should be typed in the form:

> Notwithstanding any other provision to the contrary, this mortage is superior to all liens on the property, other than a mortgage dated _____, 19____, and published in book _____ at _____.

5. *Condominiums.* These instructions do not supersede the instructions in Handbook 4265.1, except as follows: (i) The provisions in Paragraph 4–2 of the Handbook shall not be added to the mortgage and note, (ii) the "Resolution of Inconsistency" in Paragraph 12–8 (10) shall not be contained in the mortgage, and (iii) the mortgagee shall use the model mortgage form and the Condominum Rider (Exhibit I). The FNMA/FHLMC Multistate Condominium Rider shall not be used for an insured mortgage.

6. *Cooperatives.* No special uniform language has been devised for single family mortgages for use with cooperatives. The instructions in Handbook 4240.3, Paragraph 1–12, continue to apply for mortgages insured under section 203(n).

7. *Planned Unit Development (PUD).* The mortgagee shall use the model mortgage form and the Planning Unit Development Rider (Exhibit J).

8. *Tax-exempt Financing.* A memorandum dated July 8, 1987, from Assistant Secretary Thomas T. Demery

to HUD Field Offices permits the mortgage to contain an addendum (Attachment I to the memorandum) setting forth a due-on-sale clause concerning tax-exempt financing. The due-on-sale provision may be used whenever the mortgage loan is funded, directly or indirectly, from proceeds of Qualified Mortgage Bonds (QMBS) issued by a state or local agency. Under the July 8, 1987 memorandum, the provision may be attached as an addendum to the mortgage, or it may be included in the body of the mortgage after the uniform provisions.

The addendum is now replaced by the Tax-Exempt Financing Rider (Exhibit K), which shall be used with the model mortgage form whenever the addendum to the July 8, 1987, memorandum would have been used.

9. *Open-end Advances.* Nothing in these instructions is applicable to open-end advances. Relevant requirements are set forth in 24 CFR 203.44(h) and 234.70(h).

10. *Purchase of Fee Simple Title from Lessors (Section 240).* For instructions on a mortgage for the purchase of fee simple title from a lessor (section 240 of the National Housing Act), see Handbooks 4000.2, Rev. 1, Paragraph 2–42c and 4270.1 Rev. The instructions in Handbook 4270.1 Rev. are not superseded by these requirements, except that the sample text of the mortgage used in Appendix 1 of the Handbook is superseded by the model mortgage form, and the terms used in the Leasehold Rider in Appendix 2 of the Handbook shall conform to the terms used in the model form.

11. *Junior Mortgages to HUD—Section 235 and TMAP.* These instructions do not supersede the instructions in Handbook 4330.1 concerning junior mortgages to HUD to secure repayment of Section 235 assistance. The form of junior mortgage shall be the mortgage approved by HUD for the jurisdiction before these requirements take effect, but modified as required by Paragraph 183 of Handbook 4330.1 (see Appendix 26 of the Handbook). No instructions concerning mortgages and notes for the temporary Mortgage Assistance Payments (TMAP) program have yet been devised.

12. *Home Equity Conversion Mortgage.* Special instructions for mortgages and notes to be used in the Home Equity Conversion Mortgage insurance program (section 255 of the National Housing Act), when that program is implemented, will be contained in HUD Handbook 4235.1.

13. *Price Level Adjusted Mortgage.* Special instructions will be issued for mortgages and notes to be used in the Price Level Adjusted Mortgage insurance program (section 245(c) of the National Housing Act), when that program is implemented.

B. Special Requirements for Particular States and Localities

In addition to special requirements for particular states identified in the footnotes to Exhibits A and B (model mortgage and note forms), and any special instructions issued by a HUD field Office, the following special requirements need to be followed.

1. *Colorado.* Colorado law provides for a Public Trustee. For Colorado deeds of trust the first two sentences in the model mortgage form should be replaced with this sentence: "THIS DEED OF TRUST ("Security Instrument") is made on _____, 19_____, among the grantor, _____ ("Borrower"), the Public Trustee of _____ county ("Trustee") and the beneficiary, _____, which is organized and existing under the laws of _____, and whose address is _____ ("Lender")."

2. *Georgia.* For Georgia security deeds, the first two sentences in the model mortgage form should be replaced with the following: "THIS SECURITY DEED ("Security Instrument") is given on _____, 19_____. The grantor is _____ ("Borrower"). This Security Instrument is given to _____, which is organized and existing under the laws of _____, and whose address is _____."

3. *Hawaiian Home Lands.* If the mortgage is on a Hawaiian Home Lands leasehold, "Hawaiian Home Lands" shall be added to the title at the top of the first page of the mortgage.

4. *Northern Mariana Islands and American Samoa.* Exhibits A and B will not be immediately applicable to the Commonwealth of the Northern Mariana Islands. Until further notice, existing HUD-approved mortgage and note forms for the Northern Mariana Islands shall continue to be used with an assumption rider, instead of Exhibits A and B. Insured mortgages in American Samoa will also use HUD-approved forms until further notice.

5. *Puerto Rico.* Mortgages and notes in Puerto Rico, and all riders and allonges, shall be written in English and interlineated with Spanish in the same manner as the FNMA/FHLMC forms for Puerto Rico. A Spanish translation of required language will be available from HUD before these requirements become mandatory for Puerto Rico.

6. *Indian Reservations* (Section 248 of the National Housing Act). Mortgagee Letter 88–11 required a special rider for use with a mortgage covering single family property located on Indian reservations, pursuant to Section 248 of the National Housing Act. Mortgagees shall now use the Rider for Section 248 Mortgage (Exhibit L).

7. *Redemption periods—Iowa, North Dakota, South Dakota and Wisconsin.* Requirements concerning deficiency judgments are provided in Note 7. to the model mortgage form. Iowa, North Dakota and Wisconsin are excepted from those requirements because these states permit short-term redemption periods after foreclosure if mortgagees waive their rights to deficiency judgments. Since it may be in the Department's interest to have a short-term redemption period, HUD requires that mortgages in these states shall contain the short-term redemption provisions set forth in the "non-uniform covenants" of the current approved FNMA/FHLMC mortgage forms, in Paragraph 23 for Iowa and 22 for North Dakota and Wisconsin. In addition, the North Dakota mortgage *must* include in the title the words "Short Term Mortgage Redemption," in boldface type.

The South Dakota mortgage must include in the title the words "Mortgage—One Hundred Eighty Day Redemption" in bold type, and immediately following Paragraph 17 the following must appear in bold type: **NOTICE—THE PARTIES AGREE THAT THE PROVISIONS OF THE ONE HUNDRED EIGHTY DAY REDEMPTION MORTGAGE ACT GOVERN THIS MORTGAGE.** After this notice, the following language should be included:

Borrower agrees that in the event of a foreclosure of this Security Instrument by action the holder of the certificate of sale issued as a result of the foreclosure may apply to the appropriate court for a reduction of the redemption period if the mortgaged property has been abandoned by Borrower. Borrower agrees that if, after such notice to the parties as the court may direct, the court finds that the mortgaged property has been abandoned, then the redemption period may be reduced to a period of not less than 60 days from the date of recording of the certificate of sale issued as a result of the foreclosure of this Security Instrument.

8. *New York.* The New York FNMA/FHLMC mortgage term is written in a "plain English" style which sometimes uses "I" instead of "Borrower."

When Paragraphs 21 and 22 from the New York FNMA/FHLMC form are added to the model mortgage form, "I" should be changed to "Borrower" and any necessary changes in verb form required by this change should also be made.

BILLING CODE 4210-27-M

EXHIBIT A

MODEL MORTGAGE FORM

[Space Above This Line For Recording Data]

State of _____[1]

FHA Case No.

MORTGAGE[2]

THIS MORTGAGE ("Security Instrument") is given on , 19 .
The Mortgagor is

whose address is ,
("Borrower"). This Security Instrument is given to

which is organized and existing under the laws of , and whose address is ,
("Lender"). Borrower owes Lender the principal sum of

Dollars (U.S. $). This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on . This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications; (b) the payment of all other sums, with interest, advanced under paragraph 6 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender[3], the following described property located in

County[4]:

which has the address of [Street] , [City],
[State] [Zip Code], ("Property Address");

TOGETHER WITH[5] all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, rents, royalties, mineral, oil and gas rights and profits, water rights and stock and all fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey[5a] the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

1. Payment of Principal, Interest and Late Charge. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and late charges due under the Note.

2. Monthly Payments of Taxes, Insurance and Other Charges. Borrower shall include in each monthly payment, together with the principal and interest as set forth in the Note and any late charges, an installment of any (a) taxes and special assessments levied or to be levied against the Property, (b) leasehold payments or ground rents on the Property, and (c) premiums for insurance required by Paragraph 4.

Each monthly installment for items (a), (b) and (c) shall equal one-twelfth of the annual amounts, as reasonably estimated by Lender, plus an amount sufficient to maintain an additional balance of not more than one-sixth of the estimated amounts. The full annual amount for each item shall be accumulated by Lender within a period ending one month before an item would become delinquent. Lender shall hold the amounts collected in trust to pay items (a), (b) and (c) before they become delinquent.

If at any time the total of the payments held by Lender for items (a), (b), and (c), together with the future monthly payments for such items payable to Lender prior to the due dates of such items, exceeds by more than one-sixth the estimated amount of payments required to pay such items when due, and if payments on the Note are current, then Lender shall either refund the excess over one-sixth of the estimated payments or credit the excess over one-sixth of the estimated payments to subsequent payments by Borrower, at the option of Borrower. If the total of the payments made by Borrower for item (a), (b), or (c) is insufficient to pay the item when due, then Borrower shall pay to Lender any amount necessary to make up the deficiency on or before the date the item becomes due.

As used in this Security Instrument, "Secretary" means the Secretary of Housing and Urban Development or his or her designee. Most Security Instruments insured by the Secretary are insured under programs which require advance payment of the entire mortgage insurance premium. If this Security Instrument is or was insured under a program which did not require advance payment of the entire mortgage insurance premium, then each monthly payment shall also include either: (i) an installment of the annual mortgage insurance premium to be paid by Lender to the Secretary, or (ii) a monthly charge instead of a mortgage insurance premium if this Security Instrument is held by the Secretary. Each monthly installment of the mortgage insurance premium shall be in an amount sufficient to accumulate the full annual mortgage insurance premium with Lender one month prior to the date the full annual mortgage insurance premium is due to the Secretary, or if this Security Instrument is held by the Secretary, each monthly charge shall be in an amount equal to one-twelfth of one-half percent of the outstanding principal balance due on the Note.

If Borrower tenders to Lender the full payment of all sums secured by this Security Instrument, Borrower's account shall be credited with the balance remaining for all installments for items (a), (b) and (c) and any mortgage insurance premium installment that Lender has not become obligated to pay to the Secretary, and Lender shall promptly refund any excess funds to Borrower. Immediately prior to a foreclosure sale of the Property or its acquisition by Lender, Borrower's account shall be credited with any balance remaining for all installments for items (a), (b) and (c).

3. Application of Payments. All payments under paragraphs 1 and 2 shall be applied by Lender as follows:
First, to the mortgage insurance premium to be paid by Lender to the Secretary or to the monthly charge by the Secretary instead of the monthly mortgage insurance premium, unless Borrower paid the entire mortgage insurance premium when this Security Instrument was signed;
Second, to any taxes, special assessments, leasehold payments or ground rents, and fire, flood and other hazard insurance premiums, as required;
Third, to interest due under the Note;
Fourth, to amortization of the principal of the Note;
Fifth, to late charges due under the Note.

4. Fire, Flood and Other Hazard Insurance. Borrower shall insure all improvements on the Property, whether now in existence or subsequently erected, against any hazards, casualties, and contingencies, including fire, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. Borrower shall also insure all improvements on the Property, whether now in existence or subsequently erected, against loss by floods to the extent required by the Secretary. All insurance shall be carried with companies approved by Lender. The insurance policies and any renewals shall be held by Lender and shall include loss payable clauses in favor of, and in a form acceptable to, Lender.

In the event of loss, Borrower shall give Lender immediate notice by mail. Lender may make proof of loss if not made promptly by Borrower. Each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Lender,

instead of to Borrower and to Lender jointly. All or any part of the insurance proceeds may be applied by Lender, at its option, either (a) to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts applied in the order in Paragraph 3, and then to prepayment of principal, or (b) to the restoration or repair of the damaged property. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments which are referred to in Paragraph 2, or change the amount of such payments. Any excess insurance proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

In the event of foreclosure of this Security Instrument or other transfer of title to the Property that extinguishes the indebtedness, all right, title and interest of Borrower in and to insurance policies in force shall pass to the purchaser.

5. Preservation and Maintenance of the Property, Leaseholds. Borrower shall not commit waste or destroy, damage or substantially change the Property or allow the Property to deteriorate, reasonable wear and tear excepted. Lender may inspect the property if the property is vacant or abandoned or the loan is in default. Lender may take reasonable action to protect and preserve such vacant or abandoned property. If this Security Instrument is on a leasehold, Borrower shall comply with the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and fee title shall not be merged unless Lender agrees to the merger in writing.

6. Charges to Borrower and Protection of Lender's Rights in the Property. Borrower shall pay all governmental or municipal charges, fines and impositions that are not included in Paragraph 2. Borrower shall pay these obligations on time directly to the entity which is owed the payment. If failure to pay would adversely affect Lender's interest in the Property, upon Lender's request Borrower shall promptly furnish to Lender receipts evidencing these payments.

If Borrower fails to make these payments or the payments required by Paragraph 2, or fails to perform any other covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, for condemnation or to enforce laws or regulations), then Lender may do and pay whatever is necessary to protect the value of the Property and Lender's rights in the Property, including payment of taxes, hazard insurance and other items mentioned in Paragraph 2.

Any amounts disbursed by Lender under this Paragraph shall become an additional debt of Borrower and be secured by this Security Instrument. These amounts shall bear interest from the date of disbursement, at the Note rate, and at the option of Lender, shall be immediately due and payable.

7. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in place of condemnation, are hereby assigned and shall be paid to Lender to the extent of the full amount of the indebtedness that remains unpaid under the Note and this Security Instrument. Lender shall apply such proceeds to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts applied in the order provided in Paragraph 3, and then to prepayment of principal. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments, which are referred to in Paragraph 2, or change the amount of such payments. Any excess proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

8. Fees. Lender may collect fees and charges authorized by the Secretary.

9. Grounds for Acceleration of Debt.

(a) Default. Lender may, except as limited by regulations issued by the Secretary in the case of payment defaults, require immediate payment in full of all sums secured by this Security Instrument if:

(i) Borrower defaults by failing to pay in full any monthly payment required by this Security Instrument prior to or on the due date of the next monthly payment, or

(ii) Borrower defaults by failing, for a period of thirty days, to perform any other obligations contained in this Security Instrument.

(b) Sale Without Credit Approval. Lender shall, with the prior approval of the Secretary, require immediate payment in full of all the sums secured by this Security Instrument if:

(i) All or part of the Property is sold or otherwise transferred (other than by devise, descent or operation of law) by the Borrower,

(ii) The sale or other transfer is pursuant to a contract of sale (or by deed, if there is no contract of sale) executed no later than 12 months (24 months if the Property is not the principal or secondary residence of the Borrower) after the date on which this Security Instrument is executed, and

(iii) The credit of the purchaser or grantee has not been approved in accordance with the requirements of the Secretary.

(c) No Waiver. If circumstances occur that would permit Lender to require immediate payment in full, but Lender does not require such payments, Lender does not waive its rights with respect to subsequent events.

(d) Regulations of HUD Secretary. In many circumstances regulations issued by the Secretary will limit Lender's rights, in the case of payment defaults, to require immediate payment in full and foreclose if not paid. This Security Instrument does not authorize acceleration or foreclosure if not permitted by regulations of the Secretary.

10. Reinstatement. Borrower has a right to be reinstated if Lender has required immediate payment in full because of Borrower's failure to pay an amount due under the Note or this Security Instrument. This right applies even after foreclosure proceedings are instituted. To reinstate the Security Instrument, Borrower shall tender in a lump sum all amounts required to bring Borrower's account current including, to the extent they are obligations of Borrower under this Security Instrument, foreclosure costs and reasonable and customary attorney's fees and expenses properly associated with the foreclosure proceeding. Upon reinstatement by Borrower, this Security Instrument and the obligations that it secures shall remain in effect as if Lender had not required immediate payment in full. However, Lender is not required to permit reinstatement if: (i) Lender has accepted reinstatement after the commencement of foreclosure proceedings within two years immediately preceding the commencement of a current foreclosure proceeding, (ii) reinstatement will preclude foreclosure on different grounds in the future, or (iii) reinstatement will adversely affect the priority of the lien created by this Security Instrument.

11. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time of payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successor in interest. Lender shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

12. Successors and Assigns Bound; Joint and Several Liability; Co-Signers. The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and borrower, subject to the provisions of paragraph 9.b. Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument but does not execute the Note: (a) is co-signing this Security Instrument only to mortgage, grant and convey that Borrower's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the term of this Security Instrument or the Note without that Borrower's consent.

13. Notices. Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.

14. Governing Law; Severability. This Security Instrument shall be governed by Federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable.

15. Borrower's Copy. Borrower shall be given one conformed copy of this Security Instrument.

16. Assignment of Rents. Borrower unconditionally assigns and transfers to Lender all the rents and revenues of the Property. Borrower authorizes Lender or Lender's agents to collect the rents and revenues and hereby directs each tenant of the Property to pay the rents to Lender or Lender's agents. However, prior to Lender's notice to Borrower of Borrower's breach of any covenant or agreement in the Security Instrument, Borrower shall collect and receive all rents and revenues of the Property as trustee for the benefit of Lender and Borrower. This assignment of rents constitutes an absolute assignment and not an assignment for additional security only.

If Lender gives notice of breach to Borrower: (a) all rents received by Borrower shall be held by Borrower as trustee for benefit of Lender only, to be applied to the sums secured by the Security Instrument; (b) Lender shall be entitled to collect and receive all of the rents of the Property; and (c) each tenant of the Property shall pay all rents due and unpaid to Lender or Lender's agent on Lender's written demand to the tenant.

Borrower has not executed any prior assignment of the rents and has not and will not perform any act that would prevent Lender from exercising its rights under this paragraph 16.

Lender shall not be required to enter upon, take control of or maintain the Property before or after giving notice of breach to Borrower. However, Lender or a judicially appointed receiver may do so at any time there is a breach. Any application of rents shall not cure or waive any default or invalidate any other right or remedy of Lender. This assignment of rents of the Property shall terminate when the debt secured by the Security Instrument is paid in full.

17. Foreclosure Procedure. [For illustration only. Needs state adaptation.] If Lender requires immediate payment in full under paragraph 9,[6] Lender may invoke the power of sale and any other remedies provided in this paragraph 17, including, but not limited to, reasonable attorney's fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall give notice of sale to Borrower in the manner provided in paragraph 13. Lender shall publish and post the notice of sale, and the Property shall be sold in the manner prescribed by applicable law. Lender or its designee may purchase the Property at any sale. The proceeds of the sale shall be applied in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable attorney's fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

[Add any state-specific provisions in accordance with Part II.E. of the requirements]

[Number as final paragraph or leave unnumbered but place after numbered paragraphs.] **Riders to this Security Instrument.** If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were in a part of this Security Instrument. [Check applicable box(es)].

☐ Condominium Rider ☐ Adjustable Rate Rider ☐ Growing Equity Rider

☐ Planned Unit Development Rider ☐ Graduated Payment Rider ☐ Other

BY SIGNING BELOW[7], Borrower accepts and agrees to the terms contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

Witnesses:

_____ _____ (Seal)
Borrower

_____ _____ (Seal)
Borrower

_____ [Space Below This Line For Acknowledgement][8] _____

BILLING CODE 4210-27-C

Footnotes for Model Mortgage Form

1. Substitute the appropriate jurisdiction and use "Commonwealth of" or "Territory of" if appropriate.

2. Substitute "Deed of Trust" or "Security Deed" when appropriate for the jurisdiction. For deeds of trust (except Colorado—see instructions in Part IV, Section A.1.), the first two sentences should be replaced with the following: "THIS DEED OF TRUST ("Security Instrument") is made on _____, 19__. The grantor (or "trustor," if commonly used in the jurisdiction) is _____ ("Borrower"). The trustee is _____ ("Trustee"). The beneficiary is _____ which is organized and existing under the laws of _____, and whose address is _____ ("Lender"). For a security deed (Georgia), see instructions in Part IV, Section A.2.).

3. For deeds of trust, substitute "Trustee with power of sale," for "Lender." For mortgages, where applicable, "with power of sale" may be added. The phrase "mortgage, grant and convey" may be replaced with other language appropriate to the jurisdiction, such as "irrevocably grant and convey," "grant and convey," and "mortgage and hypothecate." The FNMA/FHLMC form for the jurisdiction may be used for guidance.

4. For Louisiana and Alaska, "Parish" and "Judicial District," respectively shall be substituted for "County." In the District of Columbia, Guam, Hawaii, Virgin Islands, Virginia and Puerto Rico, a county designation is not required.

5. Add "to have and to hold this property unto Lender and Lender's successors and assigns, Forever," immediately preceding "Together with" for the following states: Alabama, Connecticut, Georgia, Maine, North Carolina, South Carolina, or Vermont.

5.a. The phrase "mortgage, grant and convey" may be placed with other language appropriate to the jurisdiction, such as "irrevocably grant and convey," "grant and convey," or "Mortgage and hypothecate." The FNMA/FHLMC form for the jurisdiction may be used for guidance.

6. Following the introductory phrase (up to the footnote), Paragraph 17 *must* be adapted to conform to applicable law of the jurisdiction. (The model form is an example of paragraph 17 designed for use in Michigan). Paragraph 17 must include the mortgagee's right to a public sale of the mortgage, including a power of sale if legally permissible. All rights to a deficiency judgment must be preserved to the extent legally permissible, except as provided in Part IV, section B.7. for Iowa, North Dakota, and Wisconsin. Paragraph 17 may require the mortgagor, in the event of foreclosure, to pay costs and reasonable and customary attorney's fees and trustee's fees, which may bear interest from the date of disbursement (not to exceed the note rate) and may be immediately due and payable. Mortgagees should use the foreclosure provisions in Paragraph 19 of the current approved FNMA/FHLMC mortgage form for the jurisdiction (Paragraph 18 for Guam, the Virgin Islands and Puerto Rico) with any necessary adaption to conform to these instructions. (The initial sentences of FNMA/FHLMC Paragraph 19 concerning notice and acceleration should be omitted; except for Georgia and New York, the foreclosure language begins in the middle of the fourth sentence, paragraph 19.)

7. For Oklahoma, the following provisions shall be included in *bold print* at the end of the mortgage immediately before "BY SIGNING BELOW":

Notice to Borrower

A Power of Sale has been granted in this Security Instrument. A Power of Sale may allow the Lender to take the property and sell it without going to court in a foreclosure action upon default by Borrower under this Security Instrument.

8. Any legally valid form of acknowledgement may be used.

BILLING CODE 4210-27-M

EXHIBIT B

MODEL NOTE FORM

State of _____[1]

NOTE

FHA Case No.

_____

, 19

[Property Address]

1. PARTIES

"Borrower" means each person signing at the end of this Note, and the person's successors and assigns. "Lender" means

and its successors and assigns.

2. BORROWER'S PROMISE TO PAY; INTEREST

In return for a loan received from Lender, Borrower promises to pay the principal sum of

Dollars (U.S. $), plus interest, to the order of Lender. Interest will be charged on unpaid principal, from the date of disbursement of the loan proceeds by Lender, at the rate of per cent (%) per year until the full amount of principal has been paid.

3. PROMISE TO PAY SECURED

Borrower's promise to pay is secured by a mortgage, deed of trust or similar security instrument that is dated the same date as this Note and called the "Security Instrument." That Security Instrument protects the Lender from losses which might result if Borrower defaults under this Note.

4. MANNER OF PAYMENT

(A) Time

Borrower shall make a payment of principal and interest to Lender on the first day of each month beginning on , 19 . Any principal and interest remaining on the first day of 20 , will be due on that date, which is called the maturity date.[2]

(B) Place

Payment shall be made at

or at such other place as Lender may designate in writing.

(C) Amount

Each monthly payment of principal and interest will be in the amount of $. This amount will be part of a larger monthly payment required by the Security Instrument, that shall be applied to principal, interest and other items in the order described in the Security Instrument.

(D) Allonge to this note for payment adjustments

If an allonge providing for payment adjustments is executed by Borrower together with this Note, the covenants of the allonge shall be incorporated into and shall amend and supplement the covenants of this Note as if the allonge were a part of this Note. [Check applicable box.]

☐ Adjustable Rate Allonge
☐ Growing Equity Allonge
☐ Graduated Payment Allonge
☐ Other

5. BORROWER'S RIGHT TO PREPAY

Borrower has the right to pay the debt evidenced by this Note, in whole or in part,without charge or penalty, on the first day of any month.

6. BORROWER'S FAILURE TO PAY

(A) Late Charge for Overdue Payments

If Lender has not received the full monthly payment required by the Security Instrument, as described in Paragraph 4(C) of this note, by the end of fifteen calendar days after the payment is due, Lender may collect a late charge in the amount of percent (%) of the overdue amount of each payment.[3]

(B) Default

If Borrower defaults by failing to pay in full any monthly payment, then Lender may, except as limited by regulations of the Secretary in the case of payment defaults, require immediate payment in full of the principal balance remaining due and all accrued interest. Lender may choose not to exercise this option without waiving its rights in the event of any subsequent default. In many circumstances regulations issued by the Secretary will limit Lender's rights to require immediate payment in full in the case of payment defaults. This Note does not authorize acceleration when not permitted by HUD regulations. As used in this Note, "Secretary" means the Secretary of Housing and Urban Development or his or her designee.

(C) Payment of Costs and Expenses

If Lender has required immediate payment in full, as described above, Lender may require Borrower to pay costs and expenses including reasonable and customary attorney's fees for enforcing this Note. Such fees and costs shall bear interest from the date of disbursement at the same rate as the principal of this Note.

7. WAIVERS

Borrower and any other person who has obligations under this Note waive the rights of presentment and notice of dishonor. "Presentment" means the right to require Lender to demand payment of amounts due. "Notice of dishonor" means the right to require Lender to give notice to other persons that amounts due have not been paid.

8. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to Borrower under this Note will be given by delivering it or by mailing it by first class mail to Borrower at the property address above or at a different address if Borrower has given Lender a notice of Borrower's different address.

Any notice that must be given to Lender under this Note will be given by first class mail to Lender at the address stated in Paragraph 4(B) or at a different address if Borrower is given a notice of that different address.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. Lender may enforce its rights under this Note against each person individually or against all signatories together. Any one person signing this Note may be required to pay all of the amounts under this Note.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Note.[4,5]

_____ (SEAL)
Borrower

_____ (SEAL)
Borrower

Footnotes for Model Note Form

1. Use either the appropriate jurisdiction or substitute "Multistate."

2. For Maryland, the Note may be amended if the borrower does not voluntarily elect to pay interim interest at closing. The following must be inserted at the beginning of subsection 4(A): "Borrower shall pay $_____ as interest due on the unpaid principal for the period between the date of this Note and the first day of the next month on the first day of _____, 19__. Thereafter,".

3. The late charge may be printed in the form but shall not exceed 4%.

4. Include any required or customary form of authentication.

5. The model note is a multistate form which requires adaption for the following jurisdictions:

a. *Alaska.* Add the Borrower's Post Office address, if different from the property address.

b. *Kansas.* Delete "including reasonable and customary attorney's fees" from Paragraph 6(c).

c. *Kentucky.* The first sentence of Paragraph 6(c) should be changed to read:

If Lender has required immediate payment in full, as described above, Lender may require Borrower to pay $500.00 for costs and expenses for enforcing this Note.

d. *Louisiana.* Add the following text following the Borrower's signature lines:

'NE VARIETUR' for identification with a mortgage given before me on _____, 19__.

Notary qualified in _____
Parish, Louisiana

e. *Puerto Rico.* See Part IV, Paragraph B.5.

f. *Vermont.* At the end of the Note immediately before "BY SIGNING BELOW", add the following notice in at least ten point type:

Notice to Co-Signer

Your signature on this Note means that you are equally liable for repayment of this loan. If Borrower does not pay, Lender has a legal right to collect from you.

g. *Virginia.* The first sentence of Paragraph 7 should be changed to read:

"Borrower and any other person who has obligations under this Note waive the rights of presentment and notice of dishonor and waive the homestead exemption."

After the Borrower's signature lines, add:

This is to certify that this is the Note described in and secured by a Deed of Trust dated _____, 19__ on the Property located in _____, Virginia.

My Commission expires:

Notary Public

h. *West Virginia.* Add to the end of Paragraph 6(A): "but not more than $_____."

BILLING CODE 4210-27-M

EXHIBIT C

ADJUSTABLE RATE RIDER

THIS ADJUSTABLE RATE RIDER is made this day of , 19 , and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust or Security Deed ("Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Note ("Note") to

(the "Lender") of the same date and covering the property described in the Security Instrument and located at:

[Property Address]

THE NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN THE INTEREST RATE AND THE MONTHLY PAYMENT. THE NOTE LIMITS THE AMOUNT THE BORROWER'S INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE THE BORROWER MUST PAY.

ADDITIONAL COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

1. Under the Note, the initial stated interest rate of per centum (%) per annum ("Initial Interest Rate") on the unpaid principal balance is subject to change, as hereinafter described. When the interest rate changes, the equal monthly installments of principal and interest also will be adjusted, as hereinafter provided, so that each installment will be in an amount necessary to fully amortize the unpaid principal balance of the Note, at the new adjusted interest rate, over the remaining term of the Note.

2. The first adjustment to the interest rate (if any adjustment is required) will be effective on the first day of , 19 (which date will not be less than twelve months nor more than eighteen months from the due date of the first installment payment under the Note), and thereafter each adjustment to the interest rate will be made effective on that day of each succeeding year during the term of the Security Instrument ("Change Date").

3. Each adjustment to the interest rate will be made based upon the following method of employing the weekly average yield on United States Treasury Securities adjusted to a constant maturity of one year ("Index"; the Index is published in the Federal Reserve Bulletin and made available by the United States Treasury Department in Statistical Release H.15 (519)). As of each Change Date, it will be determined whether or not an interest rate adjustment must be made, and the amount of the new adjusted interest rate, if any, as follows:

   (a) The amount of the Index will be determined, using the most recently available figure, thirty (30) days before the Change Date ("Current Index").

   (b) percentage points (%; the "Margin") will be added to the Current Index and the sum of this addition will be rounded to the nearest one-eighth of one percentage point (0.125%). The rounded sum, of the Margin plus the Current Index, will be called the "Calculated Interest Rate" for each Change Date.[1]

   (c) The Calculated Interest Rate will be compared to the interest rate being earned immediately prior to the current Change Date (such interest rate being called the "Existing Interest Rate"). Then, the new adjusted interest rate, if any, will be determined as follows:

      (i) If the Calculated Interest Rate is the same as the Existing Interest Rate, the interest rate will not change.

      (ii) If the difference between the Calculated Interest Rate and the Existing Interest Rate is less than or equal to one percentage point, the new adjusted interest rate will be equal to the Calculated Interest Rate (subject to the maximum allowable change over the term of the Security Instrument of five percentage points, in either direction, from the Initial Interest Rate, herein called the "5% Cap").

      (iii) If the Calculated Interest Rate exceeds the Existing Interest Rate by more than one percentage point, the new adjusted interest rate will be equal to one percentage point higher than the Existing Interest Rate (subject to the 5% Cap).

      (iv) If the Calculated Interest Rate is less than the Existing Interest Rate by more than one percentage point, the new adjusted interest rate will be equal to one percentage point less than the Existing Interest Rate (subject to the 5% Cap).

   (d) Notwithstanding anything contained in this Adjustable Rate Rider, in no event will any new adjusted interest rate be more than five percentage (5%) points higher or lower than the Initial Interest Rate. If any increase or decrease in the Existing Interest Rate would cause the new adjusted interest rate to exceed the 5% Cap, the new adjusted interest rate will be limited to five percentage (5%) points higher or lower, whichever is applicable, than the Initial Interest Rate.

   (e) Lender will perform the functions required under Subparagraphs 3(a), (b) and (c) to determine the amount of the new adjusted rate, if any. Any such new adjusted rate will become effective on the Change Date and thereafter will be deemed to be the Existing Interest Rate. The new Existing Interest Rate will remain in effect until the next Change Date on which the interest rate is adjusted.

   (f) If the Index is no longer available, Lender will be required to use any index prescribed by the Department of Housing and Urban Development. Lender will notify Borrower in writing of any such substitute index (giving all necessary information for Mortgagor to obtain such index) and after the date of such notice the substitute index will be deemed to be the Index hereunder.

4. (a) If the Existing Interest Rate changes on any Change Date, Lender will recalculate the monthly installment payments of principal and interest to determine the amount which would be necessary to repay in full, on the maturity date, the unpaid principal balance (which unpaid principal balance will be deemed to be the amount due on such Change Date assuming there has been no default in any payment on the Note but that all prepayments on the Note have been taken into account), at the new Existing Interest Rate, in equal monthly payments. At least 25 days before the date on which the new monthly payment at the new level is due, Lender will give Borrower written notice ("Adjustment Notice") of any change in the Existing Interest Rate and of the revised amount of the monthly installment payments of principal and interest, calculated as provided above. Each Adjustment Notice will set forth (i) the date the Adjustment Notice is given, (ii) the Change Date, (iii) the new Existing Interest Rate as adjusted on the Change Date, (iv) the amount of the adjusted monthly installment payments, calculated as provided above, (v) the Current Index and the date it was published, (vi) the method of calculating the adjustment to the monthly installment payments, and (vii) any other information which may be required by law from time to time.

   (b) Borrower agrees to pay the adjusted monthly installment amount beginning on the first payment date which occurs at least twenty-five (25) days after Lender has given the Adjustment Notice to Borrower. Borrower will continue to pay the adjusted monthly installment amount set forth in the last Adjustment Notice given by Lender to Borrower until the first payment date which occurs at least twenty-five (25) days after Lender has given a further Adjustment Notice to Borrower. Notwithstanding anything to the contrary contained in this Adjustable Rate Rider or the Security Instrument, Borrower will be relieved of any obligation to pay, and Lender will have forfeited its right to collect, any increase in the monthly installment amount (caused by the recalculation of such amount under Subparagraph 4(a)) for any payment date occurring less than twenty-five (25) days after Lender has given the applicable Adjustment Notice to Borrower.

(c) Notwithstanding anything contained in this Adjustable Rate Rider, in the event that (i) the Existing Interest Rate was reduced on a Change Date, and (ii) Lender failed to give the Adjustment Notice when required, and (iii) Borrower, consequently, has made any monthly installment payments in excess of the amount which would have been set forth in such Adjustment Notice ("Excess Payments"), then Borrower, at Borrower's sole option, may either (1) demand the return from Lender (who for the purposes of this sentence will be deemed to be the lender, or lenders, who received such Excess Payments, whether or not any such lender subsequently assigned the Security Instrument) of all or any portion of such Excess Payments, with interest thereon at a rate equal to the sum of the Margin and the Index on the Change Date when the Existing Interest Rate was so reduced, from the date each such Excess Payment was made by Borrower to repayment, or (2) request that all or any portion of such Excess Payments, together with all interest thereon calculated as provided above, be applied as payments against principal.

5. Nothing contained in this Adjustable Rate Rider will permit Lender to accomplish an interest rate adjustment through an increase (or decrease) to the unpaid principal balance. Changes to the Existing Interest Rate may only be reflected through adjustment to Borrower's monthly installment payments of principal and interest, as provided for herein.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Adjustable Rate Rider.

_____ (SEAL)
Borrower

_____ (SEAL)
Borrower

[ADD ANY NECESSARY ACKNOWLEDGEMENT PROVISIONS]

[1]The mortgagee may omit "and the sum of this addition will be rounded to the nearest one-eighth of one percentage point (0.125%)" in the first sentence of 3(b) and "rounded" in the second sentence of 3(b) for loans which will not be included in GNMA pools.

EXHIBIT D

ADJUSTABLE RATE ALLONGE AMENDING NOTE

THIS ADJUSTABLE RATE ALLONGE is an AMENDMENT made this day of , 19 , and is incorporated into and shall be deemed to amend and supplement the Note ("Note") of the same date given by the undersigned ("Borrower") to evidence Borrower's indebtedness to

("Lender"), which indebtedness is secured by a Mortgage, Deed of Trust or Security Deed ("Security Instrument"), of the same date and covering the property described in the Security Instrument and located at:

[Property Address]

Notwithstanding anything to the contrary set forth in the Note, Borrower hereby agrees to the following:

1. The interest rate stated in the Note, of per centum (%) per annum ("Initial Interest Rate"), is subject to change as hereinafter provided. Borrower promises to pay, on the unpaid principal amount, interest at the rate in effect from time to time, as adjusted in accordance with the provisions of this Amendment, in monthly installments of principal and interest as provided in Paragraph 4. When the interest rate changes, the equal monthly installments of principal and interest also will be adjusted, as hereinafter provided, so that each installment will be in an amount necessary to fully amortize the unpaid principal balance of the Note, at the new adjusted interest rate, over the remaining term of the Note. Borrower agrees to pay to the order of Lender the amount of all such adjusted monthly installments, provided that Borrower is notified of such adjustments as hereinafter required.

2. The first adjustment to the interest rate (if any adjustment is required) will be effective on the first day of , 19 (which date will not be less than twelve months nor more than eighteen months from the due date of the first installment payment under the Note), and thereafter each adjustment to the interest rate will be made effective on that day of each succeeding year during the term of the Note ("Change Date").

3. Each adjustment to the interest rate will be made based upon the following method of employing the weekly average yield on United States Treasury Securities adjusted to a constant maturity of one year ("Index"; the Index is published in the Federal Reserve Bulletin and made available by the United States Treasury Department in Statistical Release H. 15 (519)). As of each Change Date, it will be determined whether or not an interest rate adjustment must be made, and the amount of the new adjusted interest rate, if any, as follows:

   (a) The amount of the Index will be determined, using the most recently available figure, thirty (30) days before the Change Date ("Current Index").

   (b) percentage points (%; the 'Margin") will be added to the Current Index and the sum of this addition will be rounded to the nearest one-eighth of one percentage point (0.125%). The rounded sum, of the Margin plus the Current Index, will be called the "Calculated Interest Rate" for each Change Date.[1]

   (c) The Calculated Interest Rate will be compared to the interest rate being earned immediately prior to the current Change Date (such interest rate being called the "Existing Interest Rate"). Then, the new adjusted interest rate, if any, will be determined as follows:

      (i) If the Calculated Interest Rate is the same as the Existing Interest Rate, the interest rate will not change.

(ii) If the difference between the Calculated Interest Rate and the Existing Interest Rate is less than or equal to one percentage point, the new adjusted interest rate will be equal to the Calculated Interest Rate (subject to the maximum allowable change over the term of the Note of five percentage points, in either direction, from the Initial Interest Rate, herein called the "5% Cap").

(iii) If the Calculated Interest Rate exceeds the Existing Interest Rate by more than one percentage point, the new adjusted interest rate will be equal to one percentage point higher than the Existing Interest Rate (subject to the 5% Cap).

(iv) If the Calculated Interest Rate is less than the Existing Interest Rate by more than one percentage point, the new adjusted interest rate will be equal to one percentage point less than the Existing Interest Rate (subject to the 5% Cap).

(d) Notwithstanding anything contained in this Amendment, in no event will any new adjusted interest rate be more than five percentage (5%) points higher or lower than the Initial Interest Rate. If any increase or decrease in the Existing Interest Rate would cause the new adjusted interest rate to exceed the 5% Cap, the new adjusted interest rate will be limited to five percentage (5%) points higher or lower, whichever is applicable, than the Initial Interest Rate.

(e) Lender will perform the functions required under Subparagraphs 3(a), (b) and (c) to determine the amount of the new adjusted interest rate, if any. Any such new adjusted interest rate will become effective on the Change Date and thereafter will be deemed to be the Existing Interest Rate. The new Existing Interest Rate will remain in effect until the next Change Date on which the interest rate is adjusted.

(f) If the Index is no longer available, Lender will be required to use any index prescribed by the Department of Housing and Urban Development. Lender will notify Borrower in writing of any such substitute index (giving all necessary information for Borrower to obtain such index) and after the date of such notice the substitute index will be deemed to be the Index hereunder.

4. (a) If the Existing Interest Rate changes on any Change Date, Lender will recalculate the monthly installment payments of principal and interest to determine the amount which would be necessary to repay in full, on the maturity date, the unpaid principal balance (which unpaid principal balance will be deemed to be the amount due on such Change Date assuming there has been no default in any payment on the Note but that all prepayments on the Note have been taken into account), at the new Existing Interest Rate, in equal monthly payments. At least 25 days before the date on which the new monthly payment at the new level is due, Lender will give Borrower written notice ("Adjustment Notice") of any change in the Existing Interest Rate and of the revised amount of the monthly installment payments of principal and interest, calculated as provided above. Each Adjustment Notice will set forth (i) the date the Adjustment Notice is given, (ii) the Change Date, (iii) the new Existing Interest Rate as adjusted on the Change Date, (iv) the amount of the adjusted monthly installment payments, calculated as provided above, (v) the Current Index and the date it was published, (vi) the method of calculating the adjustment to the monthly installment payments, and (vii) any other information which may be required by law from time to time.

(b) Borrower agrees to pay the adjusted monthly installment amount beginning on the first payment date which occurs at least twenty-five (25) days after Lender has given the Adjustment Notice to Borrower. Borrower will continue to pay the adjusted monthly installment amount set forth in the last Adjustment Notice given by Lender to Borrower until the first payment date which occurs at least twenty-five (25) days after Lender has given a further Adjustment Notice to Borrower. Notwithstanding anything to the contrary contained in this Amendment of the Note, Borrower will be relieved of any obligation to pay, and Lender will have forfeited its right to collect, any increase in the monthly installment amount (caused by the recalculation of such amount under Subparagraph 4(a)) for any payment date occurring less than twenty-five (25) days after Lender has given the applicable Adjustment Notice to Borrower.

(c) Notwithstanding anything contained in this Amendment, in the event that (i) the Existing Interest Rate was reduced on a Change Date, and (ii) Lender failed to give the Adjustment Notice when required, and (iii) Borrower has, consequently, made any monthly installment payments in excess of the amount which would have been set forth in such Adjustment Notice ("Excess Payments"), then Borrower, at Borrower's sole option, may either (1) demand the return from Lender (who for the purposes of this sentence will be deemed to be the lender, or lenders, who received such Excess Payments, whether or not any such lender subsequently assigned the Note and Security Instrument) of all or any portion of such Excess Payments, with interest thereon at a rate equal to the sum of the Margin and the Index on the Change Date when the Existing Interest Rate was so reduced, from the date each such Excess Payment was made by Borrower to repayment, or (2) request that all or any portion of such Excess Payments, together with all interest thereon calculated as provided above, be applied as payments against principal.

5. Nothing contained in this Amendment will permit the Lender to accomplish an interest rate adjustment through an increase (or decrease) to the unpaid principal balance. Changes to the Existing Interest Rate may only be reflected through adjustment to Borrower's monthly installment payments of principal and interest, as provided for herein.

6. If more than one person has signed the Note and this Amendment, each person is jointly and severally liable for all of the obligations under the Note as modified by this Amendment and, therefore, each person is fully and personally obligated to fulfill all of the promises made in the Note and this Agreement, including, without limitation, payment of the entire amount owed (except as provided under Subparagraph 4(b)).

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this amendment.

_____ (SEAL)
Borrower

_____ (SEAL)
Borrower

[1]The mortgagee may omit "and the sum of this addition will be rounded to the nearest one-eighth of one percentage point (0.125%)" in the first sentence of 3(b) and "rounded" in the second sentence of 3(b) for loans which will not be included in GNMA pools.

BEST COPY AVAILABLE

EXHIBIT E

GRADUATED PAYMENT RIDER

THIS GRADUATED PAYMENT RIDER is made this day of , 19 , and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust or Security Deed ("Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Graduated Payment Note to

("Lender") of the same date ("Note") and covering the property described in the Security Instrument and located at:

[Property Address]

THE NOTE PROVIDES FOR DEFERRED INTEREST AND INCREASING MONTHLY INSTALLMENTS ACCORDING TO A SCHEDULE IN THE NOTE. DEFERRAL OF INTEREST MAY INCREASE THE PRINCIPAL BALANCE TO $.[1]

The payment in the schedule in the Note is as follows:

$ during the 1st note year.
$ during the 2nd note year.

$ during the note year and thereafter.[2]

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Graduated Payment Rider.

_____ (SEAL)
Borrower

_____ (SEAL)
Borrower

[1]Insert maximum principal balance, not the amount by which the principal balance may be increased.
[2]Complete schedule until payments stop increasing. This paragraph is optional; it should be included if required by state law or as otherwise needed to ensure the enforceability and priority of the mortgage. Mortgagees may recite the Note verbatim in this rider.

EXHIBIT F

GRADUATED PAYMENT ALLONGE AMENDING NOTE

THIS GRADUATED PAYMENT ALLONGE is made this day of , 19 , and is incorporated into and shall be deemed to amend and supplement the Note ("Note") of the same date, given by the undersigned ("Borrower") to evidence Borrower's indebtedness to

("Lender"), which evidence is secured by a Mortgage, Deed of Trust or Security Deed ("Security Instrument") of the same date and covering the property described in the Security Instrument and located at:

[Property Address]

Notwithstanding anything to the contrary set forth in the Note, Borrower hereby agrees to the following

1. AS AMENDED, THE NOTE PROVIDES FOR DEFERRED INTEREST AND INCREASING MONTHLY INSTALLMENTS. DEFERRED INTEREST SHALL BE ADDED TO THE PRINCIPAL MONTHLY AND SHALL INCREASE THE PRINCIPAL BALANCE TO NOT MORE THAN $.[1]

2. The payment amount in Paragraph 4(C) of the Note is applicable only during the first note year. The schedule of monthly payments of principal and interest is as follows:

$ during the 1st note year.
$ during the 2nd note year.
$ during the 3rd note year.
$ during the 4th note year.

$ during the note year and thereafter.[2]

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Amendment.

_____ (SEAL)
Borrower

_____ (SEAL)
Borrower

[1]Insert maximum principal balance, not the amount by which the principal balance may be increased.
[2]Complete schedule until payments stop increasing, through the 6th note year for Plans I, II and III and through the 11th note year for Plans IV and V.

EXHIBIT G

GROWING EQUITY ALLONGE AMENDING NOTE

THIS GROWING EQUITY ALLONGE is an AMENDMENT made this day of , 19 , and is incorporated into and shall be deemed to amend and supplement the Note ("Note") of the same date, given by the undersigned ("Borrower") to evidence Borrower's indebtedness to

("Lender"), which evidence is secured by a Mortgage, Deed of Trust or Security Deed ("Security Instrument") of the same date and covering the property described in the Security Instrument and located at:

[Property Address]

Notwithstanding anything to the contrary set forth in the Note, Borrower hereby agrees to the following:

1. AS AMENDED, THE NOTE PROVIDES FOR INCREASING MONTHLY INSTALLMENTS.

2. The payment amount in Paragraph 4(C) of the Note is applicable only during the first note year. This schedule of monthly payments of principal and interest is as follows:

$ during the 1st note year.
$ during the 2nd note year.
$ during the 3rd note year.
$ during the 4th note year.
(Continue this schedule for each of the remaining note years.)

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Amendment.

_____ (SEAL)
Borrower

_____ (SEAL)
Borrower

EXHIBIT H

REHABILITATION LOAN RIDER

THIS REHABILITATION LOAN RIDER is made this day of , 19 , and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust or Security Deed ("Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Note ("Note") to

("Lender") of the same date and covering the property described in the Security Instrument and located at:

[Property Address]

ADDITIONAL COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. Loan proceeds are to be advanced for the premises in accordance with the Rehabilitation Loan Agreement dated , 19 , between Borrower and Lender. This agreement is incorporated by reference and made a part of this Security Instrument. No advances shall be made unless approved by the Secretary of Housing and Urban Development.

B. If the rehabilitation is not properly completed, performed with reasonable diligence, or is discontinued at any time except for strikes or lockouts, the lender is vested with full authority to take the necessary steps to protect the rehabilitation improvements and property from harm, continue existing contracts or enter into necessary contracts to complete the rehabilitation. All sums expended for such protection, exclusive of the advances of the principal indebtedness, shall be added to the principal indebtedness, and secured by the Security Instrument and be due and payable on demand with interest as set out in the Note.

C. If Borrower fails to perform any obligation under the loan, including the commencement, progress and completion provisions of the Rehabilitation Loan Agreement, and such failure continues for a period of 30 days, the loan shall, at the option of Lender, be in default.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Rehabilitation Loan Rider.

_____ (SEAL)
Borrower

_____ (SEAL)
Borrower

[ADD ANY NECESSARY ACKNOWLEDGEMENT PROVISIONS]

EXHIBIT I

CONDOMINIUM RIDER

THIS CONDOMINIUM RIDER is made this day of , 19 , and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust or Security Deed ("Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Note ("Note") to

("Lender") of the same date and covering the property described in the Security Instrument and located at:

[Property Address]

The Property Address includes a unit in, together with an individual interest in the common elements of, a condominium project known as:

[Name of Condominium Project]

("Condominium Project"). If the owners association or other entity which acts for the Condominium Project ("Owners Association") holds title to property for the benefit or use of its members or shareholders, the Property also includes Borrower's interest in the Owners Association and the uses, proceeds and benefits of Borrower's interest.

CONDOMINIUM COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring all property subject to the condominium documents, including all improvements now existing or hereafter erected on the Property, and such policy is satisfactory to Lender and provides insurance coverage in the amounts, for the periods, and against the hazards Lender requires, including fire and other hazards included within the term "extended coverage," and loss by flood, to the extent required by the Secretary, then: (i) Lender waives the provision in Paragraph 2 of this Security Instrument for the monthly payment to Lender of one-twelfth of the yearly premium installments for hazard insurance on the Property, and (ii) Borrower's obligation under this Paragraph 4 to maintain hazard insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners' Association policy. Borrower shall give Lender prompt notice of any lapse in required hazard insurance coverage and of any loss occurring from a hazard. In the event of a distribution of hazard insurance proceeds in lieu of restoration or repair following a loss to the Property, whether to the condominium unit or to the common elements, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender for application to the sums secured by this Security Instrument, with any excess paid to the entity legally entitled thereto.

B. Borrower promises to pay Borrower's allocated share of the common expenses or assessments and charges imposed by the Owners Association, as provided in the condominium documents.

C. If Borrower does not pay condominium dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph C shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and provisions contained in this Condominium Rider.

_____ (SEAL)
Borrower

_____ (SEAL)
Borrower

[Add any necessary acknowledgement provisions]

EXHIBIT J

PLANNED UNIT DEVELOPMENT RIDER

THIS PLANNED UNIT DEVELOPMENT RIDER is made this day of , 19 , and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust or Security Deed ("Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Note ("Note") to

("Lender") of the same date and covering the property described in the Security Instrument and located at:

[Property Address]

The Property is a part of a planned unit development ("PUD") known as

[Name of Planned Unit Development]

PUD COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. So long as the Owners Association (or equivalent entity holding title to common areas and facilities), acting as trustee for the homeowners, maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the property located in the PUD, including all improvements now existing or hereafter erected on the mortgaged premises, and such policy is satisfactory to Lender and provides insurance coverage in the amounts, for the periods, and against the hazards Lender requires, including fire and other hazards included within the term "extended coverage," and loss by flood, to the extent required by the Secretary, then: (i) Lender waives the provision in Paragraph 2 of this Security Instrument for the monthly payment to Lender of one-twelfth of the yearly premium installments for hazard insurance on the Property, and (ii) Borrower's obligation under this Paragraph 4 to maintain hazard insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy. Borrower shall give Lender prompt notice of any lapse in required hazard insurance coverage and of any loss occurring from a hazard. In the event of a distribution of hazard insurance proceeds in lieu of restoration or repair following a loss to the Property or to common areas and facilities of the PUD, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender for application to the sums secured by this Security Instrument, with any excess paid to the entity legally entitled thereto.

B. Borrower promises to pay all dues and assessments imposed pursuant to the legal instruments creating and governing the PUD.

C. If Borrower does not pay PUD dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph C shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and provisions contained in this PUD Rider.

_____ (SEAL)
Borrower

_____ (SEAL)
Borrower

[Add any necessary acknowledgement provisions]

EXHIBIT K

TAX-EXEMPT FINANCING RIDER

THIS TAX-EXEMPT FINANCING RIDER is made this day of , 19 , and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust or Security Deed ("Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Note ("Note") to

("Lender") of the same date and covering the property described in the Security Instrument and located at:

[Property Address]

In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

Lender, or such of its successors or assigns as may be separate instrument assume responsibility for assuring compliance by the Borrower with the provisions of this Tax Exempt Financing Rider, may require immediate payment in full of all sums secured by this Security Instrument if:

(a) All or part of the Property is sold or otherwise transferred (other than by devise, descent or operation of law) by Borrower to a purchaser or other transferee:

(i) Who cannot reasonably be expected to occupy the property as a principal resident within a reasonable time after the sale or transfer, all as provided in Section 143(c) and (i)(2) of the Internal Revenue Code; or

(ii) Who has had a present ownership interest in a principal residence during any part of the three-year period ending on the date of the sale or transfer, all as provided in Section 143(d) and (i)(2) of the Internal Revenue Code (except that "100 percent" shall be substituted for "95 percent or more" where the latter appears in Section 143(d)(1)); or

(iii) At an acquisition cost which is greater than 90 percent of the average area purchase price (greater than 110 percent for targeted area residences), all as provided in Section 143(e) and (i)(2) of the Internal Revenue Code; or

(iv) Whose family income exceeds 115 percent of applicable median family income (140 percent for a family in a targeted area residence), all as provided in Section 143(f) and (i)(2) of the Internal Revenue Code; or

(b) Borrower fails to occupy the property described in the Security Instrument without prior written consent of Lender or its successors or assigns described at the beginning of this Tax Exempt Financing Rider, or

(c) Borrower omits or misrepresents a fact that is material with respect to the provisions of Section 143 of the Internal Revenue Code in an application for the loan secured by this Security Instrument.

References are to the 1986 Internal Revenue Code in effect on the date of execution of the Security Instrument and are deemed to include the implementing regulations.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and provisions in this Tax-Exempt Financing Rider.

_____ (SEAL)
Borrower

_____ (SEAL)
Borrower

[Add any necessary acknowledgement provisions]

EXHIBIT L

RIDER FOR SECTION 248 MORTGAGE

THIS RIDER FOR SECTION 248 MORTGAGE is made this day of , 19 , and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust or Security Deed ("Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Note ("Note") to

("Lender") of the same date and covering the property described in the Security Instrument and located at:

[Property Address]

ADDITIONAL COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. The interests of the Borrower in the property described above were created by a lease agreement from as lessor dated , 19 . Any reference to the "Property" shall be construed as referring only to the interests of Borrower created by such lease or any replacement lease.

B. If the Security Instrument is assigned to the Secretary of Housing and Urban Development ("Secretary"), any foreclosure proceeding may take place in a tribal court, Federal district court, or other court of competent jurisdiction. Section 248(f)(5) of the National Housing Act grants to any such court the jurisdiction to convey to the Secretary the remaining life of a lease on the property and to order eviction of the delinquent Borrower.

C. Any purchaser at foreclosure sale other than the Secretary must receive the written consent of the lessor or, if lessor is not an Indian tribe, the tribe of which lessor is a member. The purchaser shall receive a new lease for the remaining term of the existing lease unless the tribe consents to an assumption of the existing lease.

D. This Security Instrument may be assumed, subject to credit approval by the Lender and the consent of the tribe to an assumption of the existing lease or the grant of the new lease. Assumption shall not cause an adjustment of the interest rate.

E. A sale of property subject to the Security Instrument without an assumption of the Security Instrument may be made if a new lease for the remaining term of the existing lease is granted.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Rider for Section 248 Mortgage.

_____ (SEAL)
Borrower

_____ (SEAL)
Borrower

[ADD ANY NECESSARY ACKNOWLEDGEMENT PROVISIONS]

[FR Doc. 89-15325 Filed 6-28-89; 8:45 am]
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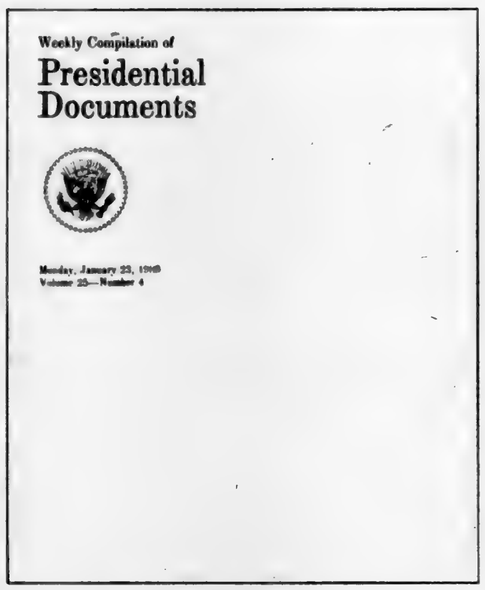
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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 672]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 672 establishes the quantity of fresh California-Arizona lemons that my be shipped to market at 375,000 cartons during the period July 2 through July 8, 1989. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 672 (§ 910.972) is effective for the period July 2 through July 8, 1989.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 475–3861.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small business will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601–674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee (Committee) and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the California-Arizona lemon marketing policy for 1988–89. The Committee met publicly on June 27, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that overall demand for lemons is good. However, inventories are building up in the eastern United States, and July 2–July 8 is a short shipping week.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.972 is added to read as follows:

Note.—This section will not appear in the Code of Federal Regulations.

§ 910.972 Lemon Regulation 672.

The quantity of lemons grown in California and Arizona which may be handled during the period July 2, 1989, through July 8, 1989, is established at 375,000 cartons.

Dated: June 28, 1989.

Eric M. Forman,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 89–15628 Filed 6–29–89; 8:45 am]
BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 89–109]

Tuberculosis in Cattle and Bison; State Designation

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the regulations concerning the interstate movement of cattle and bison because of tuberculosis by raising the designation of Mississippi from a modified accredited State to an accredited-free State. We have determined that Mississippi meets the criteria for designation as an accredited-free State.

DATES: Interim rule effective June 30, 1989. Consideration will be given only to comments received on or before August 29, 1989.

ADDRESSES: To help ensure that your comments are considered, send an original and three copies of written comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 89–109. Comments received may be inspected at USDA, Room 1141, South Building, 14th and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Ralph L. Hosker, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, Room 729, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–5533.

SUPPLEMENTARY INFORMATION:

Background

The "Tuberculosis" regulations contained in 9 CFR Part 77 (referred to below as the regulations) regulate the interstate movement of cattle and bison because of tuberculosis. The requirements of the regulations concerning the interstate movement of cattle and bison not known to be affected with, or exposed to, tuberculosis are based on whether the cattle and bison are moved from jurisdictions designated as accredited-free States, modified accredited States, or nonmodified accredited States.

The criteria for determining the status of States (the term State is defined to mean any State, territory, the District of Columbia, or Puerto Rico) or portions of States are contained in a document captioned "Uniform Methods and Rules—Bovine Tuberculosis Eradication," 1985 edition, which has been made part of the regulations via incorporation by reference. The status of either States or portions of States is based on the rate of tuberculosis infection present and the effectiveness of a tuberculosis control and eradication program.

Before publication of this interim rule, Mississippi was designated in § 77.1 of the regulations as a modified accredited State. However, Mississippi now meets the requirements for designation as an accredited-free State. Therefore, we are amending the regulations by removing Mississippi from the list of modified accredited States in § 77.1 and adding it to the list of accredited-free States in that section.

Immediate Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. It is necessary to change the regulations so that they accurately reflect the current tuberculosis status of Mississippi as an accredited-free State. This will provide prospective cattle and bison buyers with accurate and up-to-date information, which may affect the marketability of cattle and bison since some prospective buyers prefer to buy cattle and bison from accredited-free States.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 to make it effective upon publication in the **Federal Register**. We will consider comments that are received within 60 days of publication of this interim rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**, including a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Cattle and bison moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of Mississippi may affect the marketability of cattle and bison from the State, since some prospective cattle and bison buyers prefer to buy cattle and bison from accredited-free States. This may result in some beneficial economic impact on some small entities. However, based on our experience in similar designations of other States, the impact should not be significant.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Transportation, Tuberculosis.

Accordingly, we are amending 9 CFR Part 77 as follows:

PART 77—TUBERCULOSIS

1. The authority citation for Part 77 continues to read as follows:

Authority: 21 U.S.C. 111, 114, 114a, 115–117, 120, 121, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 77.1 [Amended].

2. Section 77.1, paragraph (2) of the definition for "Modified accredited state" is amended by removing "Mississippi,".

3. Section 77.1, paragraph (2) of the definition for "Accredited-free state" is amended by adding "Mississippi," immediately before "Missouri.".

Done in Washington, DC, this 27th day of June 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–15523 Filed 6–29–89; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88–NM–175–AD; Amdt. 39–6252]

Airworthiness Directives; Boeing Model 757 and 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive, applicable to Boeing Model 757 and 767 series airplanes, which requires inspection of motor-driven fuel valve actuators and replacement with actuators that have been modified to reduce corrosion and improve sealing around mating joints. This amendment is prompted by reports of Boeing Model 767 fuel crossfeed and APU fuel shutoff valve failures that were caused by corrosion of the fuel valve actuator housing that allowed moisture to enter the actuator assembly around mating joint seals, which subsequently froze in flight after cold soaking. These actuators are used for all of the fuel tank valves installed on Boeing Model 757 and 767 airplanes, including the engine shutoff valves, APU isolation and shutoff valves, the fuel crossfeed valve, and the defuel valves. This condition, if not corrected, could lead to the inability to shut off fuel to an engine or the APU in the event of fire, to correct fuel tank imbalance, or to allow use by either engine of all of the usable fuel on board the airplane after an engine inflight shutdown.

EFFECTIVE DATE: August 2, 1989.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Clark, Propulsion Branch, ANM–140S, telephone (206) 431–1963.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to certain Boeing Model 757 and 767 series airplanes, which requires inspection of motor-driven fuel valve actuators and replacement with actuators that have been modified to reduce corrosion and improve sealing around mating joints, was published in the **Federal Register** on January 10, 1989 (54 FR 830).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Comments were received from the Air Transport Association (ATA) of America and Japan Airlines (JAL).

One ATA member requested that the inspection requirements of the proposed rule be deleted for those airplanes that are subject to the daily fuel crossfeed valve checks required by AD 88–21–03–R1, Amendment 39–6077 (53 FR 46605; November 18, 1988). The FAA does not concur. AD 88–21–03–R1 applies to various two-engine transport category airplanes, including the Boeing Model 757 and 767 series, which are used in "extended range," "EROP," or "ETOP" operations. The intent of AD 88–21–03–R1 is to detect a latent crossfeed valve failure condition on airplanes flying ETOP operations that otherwise may not be detected. This final rule addresses a known valve actuator corrosion problem, applicable to all fuel tank valves utilizing this actuator, which necessitates an initial inspection to identify corroded actuators before a failure occurs.

The same ATA member noted that the Boeing service bulletins referenced in the NPRM specify an inspection within 1,000 flight hours and an additional inspection 1,000 hours after the initial inspection; however, the proposed rule makes no reference to the repeat inspection. The FAA deliberately did not incorporate the second inspection referenced in the Boeing service bulletins as a requirement in the proposed rule. The FAA determined that the initial inspection accomplished within 60 days would ensure an adequate level of safety until all of the actuators are replaced within one year after the effective date of the final rule.

JAL commented that, in addition to the corrosion described in the NPRM, it has experienced moderate to severe corrosion on the actuator electrical connector on all eight actuators removed from one airplane. JAL recommended that the AD should include a requirement to address this type of corrosion, which is different from the aluminum oxide corrosion around joint mating surfaces that was addressed in the NPRM. The FAA does not concur. The FAA has determined that the type of corrosion encountered by JAL on the actuator electrical connector would not result in the type of actuator failure condition being addressed by this AD action. Furthermore, it is expected that any corrosion in the connector would be detected when the actuators are changed and would be repaired in accordance with existing maintenance manual procedures.

JAL also commented that the AD should provide an alternate means to dispatch an airplane when a corroded actuator is found rather than replacing the actuator prior to flight. The FAA does not concur. The final rule does allow a corroded actuator detected in the initial inspection to be exchanged with a non-corroded actuator from a defuel valve position. There are up to three defuel valves that are not covered by the initial inspection requirement of this AD.

Both JAL and ATA members made various requests for extensions to the inspection and/or replacement compliance time based on a common concern about the availability of replacement parts. The FAA does not concur with the requests. At the time the NPRM was issued, the FAA determined that an adequate supply of replacement valve actuators would be available to meet any expected replacement demand during the proposed compliance period.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 211 Model 757 series airplanes and 249 Model 767 series airplanes of the affected design in the worldwide fleet. It is estimated that 126 Model 757 and 112 Model 767 airplanes of U.S. registry will be affected by this AD, that it will take approximately 18 manhours per Model 757 airplane and 8 manhours per Model 767 airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $126,560.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the

national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities, under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. Section 39.13 is amended by adding the following new airworthiness directive:

§ 39.13 [Amended]

Boeing: Applies to Model 757 and 767 series airplanes, identified in Boeing Alert Service Bulletins 757-28A0018 and 767-28A0020, both dated September 15, 1988, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent freezing of motor-driven fuel valve actuators caused by moisture ingress around corroded mating joint seals, accomplish the following:

A. For Model 757 series airplanes: Within the next 60 days after the effective date of this AD, visually inspect the left and right engine fuel shutoff valve actuators, engine fuel crossfeed valve actuator, and Auxiliary Power Unit (APU) fuel shutoff valve actuator for aluminum oxide corrosion residue on actuator screw heads and joining surfaces of the actuator body, in accordance with Boeing Alert Service Bulletin 757-28A0018, dated September 15, 1988. Any corroded actuator found must be replaced, prior to further flight, with a serviceable part; or as an alternative, a corroded actuator may be exchanged with a non-corroded actuator from a defuel valve position.

B. For Model 767 series airplanes: Within the next 60 days after the effective date of this AD, visually inspect the left and right engine fuel shutoff valve actuators, engine fuel crossfeed valve actuator, Auxiliary Power Unit (APU) fuel shutoff valve actuator, and APU fuel isolation valve actuator for aluminum oxide corrosion residue on actuator screw heads and joining surfaces of the actuator body, in accordance with Boeing Alert Service Bulletin 767-28A0020 dated September 15, 1988. Any corroded actuator found must be replaced, prior to further flight, with a serviceable part; or as an alternative, a corroded actuator may be exchanged with a non-corroded actuator from a defuel valve position.

C. Within one year after the effective date of this AD, replace all fuel valve actuators with modified valve actuators, in accordance with Boeing Alert Service Bulletin 757-28A0018 dated September 15, 1988, for Model 757 series airplanes, and Boeing Alert Service Bulletin 767-28A0020 dated September 15, 1988, for Model 767 series airplanes.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective August 2, 1989.

Issued in Seattle, Washington, on June 16, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-15486 Filed 6-29-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-192-AD; Amdt 39-6255]

Airworthiness Directives; British Aerospace Model BAC 1-11 200 and 400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to British Aerospace Model BAC 1-11 200 and 400 series airplanes, which currently requires repetitive visual and eddy current inspections of the fuselage longitudinal skin splices. That action was prompted by reports of loose rivets and cracks extending from the splice rivet holes. This amendment requires additional inspections of the fuselage skin lap splices on airplanes which have accumulated more than 50,000 landings, revises various inspection intervals, and requires repair of any identified cracks or loose rivets prior to further flight. This amendment is prompted by results of the manufacturer's structural audit, which revealed loose rivets and cracks extending from the splice rivet holes. This condition, if not corrected, could lead to structural failure of the fuselage.

EFFECTIVE DATE: August 7, 1989.

ADDRESSES: The applicable service information may be obtained from British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 431-1565. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations by revising AD 83-15-08, Amendment 39-4697 (48 FR 34731; August 1, 1983), applicable to British Aerospace Model BAC 1-11 200 and 400 series airplanes, which requires additional inspections of the fuselage skin lap splices on airplanes which have accumulated more than 50,000 landings, revises various inspection intervals, and requires repair of any damage prior to further flight, was published in the **Federal Register** on February 21, 1989 (54 FR 7443).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

Both commenters supported the rule, but one commenter suggested that paragraph B. of the final rule be revised to clarify the intent of the words "cracks or damage." The commenter suggested this phrase be revised to specify "identified cracks or corrosion damage." The commenter stated that "identified cracks" would refer to cracks for which the length can be measured using the eddy current crack length measuring procedure in the applicable BAe Alert Service Bulletin (ASB). FAA has reviewed crack lengths that are expected to be detected by the inspection method specified in the ASB, and the lengths of cracks that can also be measured by the method specified in the ASB. The FAA agrees that repair of all cracks that are long enough for the length to be measured by the eddy current method specified in the ASB (i.e., identified cracks) will provide the needed level of safety. Accordingly, paragraph B. of the final rule has been revised to read "identified cracks."

The FAA does not concur with the suggestion to change the word "damage" to "corrosion damage." It is the FAA's intent to require inspections for the types of damage addressed in British Aerospace BAC 1-11 Alert Service Bulletin 53-A-PM5726. Since that service bulletin addresses cracks and loose rivets, paragraph B. of the AD has been revised to read "repair any identified cracks or loose rivets * * *"

The commenter also proposed a simplified procedure wherein airplanes with lap joint cracks would be allowed to continue operation for up to 3,700 landings (depending on individual and cumulative crack lengths when discovered) after initial crack detection prior to repair of the cracks. Fracture mechanics data supported by test information, indicate the airplane would be able to continue to carry ultimate pressurization loads with the most severe cracking that would exist when the cracks would be required to be repaired in this simplified approach. BAC 1-11 Alert Service Bulletin 53-A-PM5726 currently has a complicated procedure involving repetitive inspections to measure crack lengths that allows continued operation indefinitely as long as individual and cumulative crack lengths are not exceeded. FAA experience shows that, when multiple site damage is involved, as it is in these lap joints, undetected damage, in conjunction with the known damage, may weaken the structure beyond acceptable limits. Additionally, FAA experience shows that when there is a high probability of cracks occurring over an extended period of time and inspection for these cracks involves inspection of a large number of sites using tedious inspection methods, an unacceptably high probability of cracks not being found exists. Also, the FAA has determined there is the risk of oversight when an operator's inspection records system is relied on for extended periods of time (in this case 3,700 landings could be 2 to 3 years or more for some operators) to remind maintenance personnel to repair a crack found previously. Therefore, the FAA does not concur with the commenter's proposal and has determined that repair of identified cracks prior to further flight is appropriate.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously noted. These changes will neither increase the economic burden on any operator nor increase the scope of the rule.

It is estimated that 70 airplanes of U.S. registry will be affected by this AD, that it will take approximately 12 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $33,600.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities, under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. Section 39.13 is amended by revising AD 83-15-08, Amendment 39-4697 (48 FR 34731; August 1, 1983) as follows:

§ 39.13 [Amended]

British Aerospace: Applies to all Model BAC 1-11 200 and 400 series airplanes, certificated in any category. Compliance is required as indicated unless previously accomplished.

To prevent structural failure of the fuselage, accomplish the following:

A. Perform initial and repetitive visual and eddy current inspections of fuselage skin lap joints for cracks and loose rivets at the intervals shown in Table I of this AD, in accordance with Section 2, of the Accomplishment Instructions, of British Aerospace Alert Service Bulletin 53-A-PM5726, Issue 3, dated May 26, 1988.

TABLE I

Airplanes affected	AD 83-15-08 previously complied with?	Initial inspection threshold for this AD	Repetitive inspection interval
Airplanes operated only at standard cabin pressure of 7.5 psi max cabin differential pressure.	No	Whichever occurs later: Within 1,250 landings after September 6, 1983 (effective date of AD 83-15-08); or Upon accumulating the number of landings determined by Figure 1 of British Aerospace Alert Service Bulletin 53-A-PM5726, Revision 3, dated May 26, 1988	For airplanes with less than 50,000 landings: Visual Inspection: Every 1,250 landings. Eddy Current Inspection: Every 3,750 landings. For airplanes with 50,000 or more landings: Visual Inspection: Every 1,875 landings. Eddy Current Inspection: Every 3,750 landings
	Yes	Visual Inspection: Within 1,250 landings after the last visual inspection in accordance with AD 83-15-08 Eddy Current Inspection: Within 3,750 landings after the last eddy current inspection in accordance with AD 83-15-08	
Airplanes operated at increased cabin pressure of 7.75 psi max cabin differential pressure.	No	Whichever occurs later: Within 1,250 landings after September 6, 1983 (effective date of AD 83-15-08); or Upon accumulation of 35,000 landings	Visual Inspection: Every 1,600 landings. Eddy Current Inspection: Every 3,200 landings
	Yes	Visual Inspection: Within 1,600 landings after the last visual inspection in accordance with AD 83-15-08 Eddy Current Inspection: Within 3,200 landings after the last eddy current inspection in accordance with AD 83-15-08	
Airplanes operated at increased cabin pressure of 8.2 psi max cabin differential pressure.	No	Whichever occurs later: Within 1,250 landings after September 6, 1983 (effective date of AD 83-15-08); or Upon accumulation of 30,000 landings	Visual Inspection: Every 1,250 landings Eddy Current Inspection: Every 2,500 landings.
	Yes	Visual Inspection: Within 1,250 landings after the last visual inspection in accordance with AD 83-15-08 Eddy Current Inspection: Within 2,500 landings after the last eddy current inspection in accordance with AD 83-15-08	
Airplanes for which cabin max operating pressure is reduced to 6.0 PSI max cabin differential pressure.	No or Yes (as applicable).	Visual Inspection: The same as shown above for the max cabin differential pressure applicable to the airplane in question. Eddy Current Inspection: The same as shown above for the max cabin differential pressure applicable to the airplane in question	For all airplanes: Visual Inspection: Every 1,875 landings. Eddy Current Inspection: Every 5,600 landings.

B. Repair any identified cracks or loose rivets prior to further flight, in accordance with paragraph 2.4.2 of British Aerospace Alert Service Bulletin 53-A-PM5726, Issue 3, dated May 26, 1988; or Chapter 53-02-0, Figure 88, of the BAC 1-11 Structural Repair Manual, whichever is appropriate; or in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

The Amendment amends AD 83-15-08, Amendment 39-4697.

This Amendment becomes effective August 7, 1989.

Issued in Seattle, Washington, on June 22, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-15487 Filed 6-29-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 95

[Docket No. 25645; Amdt. No. 351]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. These regulatory actions are needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

DATES: Effective July 27, 1989.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Manager, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 95 of the Federal Aviation Regulations (14 CFR Part 95) prescribes new, amended, suspended, or

revoked IFR altitudes governing the operation of all aircraft in IFR flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in Part 95. The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances which create the need for this amendment involve matters of flight safety, operational efficiency in the National Airspace System, and are related to published aeronautical charts that are essential to the user and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment is unnecessary, impracticable, and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Index

List of Subjects in 14 CFR Part 95

Aircraft, Airspace.

Issued in Washington, DC on June 20, 1989.

Robert L. Goodrich,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly and pursuant to the authority delegated to me by the Administrator, Part 95 of the Federal Aviation Regulations (14 CFR Part 95) is amended as follows effective at 0901 G.m.t.:

1. The authority citation for Part 95 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354 and 1510; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 95 is amended to read as follows:

BILLING CODE 4910-13-M

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS

AMENDMENT 351 EFFECTIVE DATE, JULY 27, 1989

FROM	TO	MEA
§95.6003 VOR FEDERAL AIRWAY 3		
IS AMENDED TO READ IN PART		
VINNY, MD FIX	MODENA, PA VORTAC	3500
§95.6004 VOR FEDERAL AIRWAY 4		
IS AMENDED TO READ IN PART		
LAMME, IN FIX	*APALO, IN FIX	**3000
*4500 - MRA		
**1800 - MOCA		
APALO, IN FIX	DOWNS, KY FIX	*3000
*2200 - MOCA		
DOWNS, KY FIX	LOUISVILLE, KY VORTAC	*2600
*2000 - MOCA		
KESSEL, WV VOR/DME	ARMEL, VA VORTAC	5000
§95.6019 VOR FEDERAL AIRWAY 19		
IS AMENDED TO READ IN PART		
CIMARRON, NM VORTAC	GOSIP, CO FIX	*11000
*10200 - MOCA		
PUEBLO, CO VORTAC	HANKO, CO FIX	8900
KIOWA, CO VORTAC	DENVER, CO VORTAC	8100
§95.6020 VOR FEDERAL AIRWAY 20		
IS AMENDED TO READ IN PART		
ELECTRIC CITY, SC VORTAC	ELLID, SC FIX	3000
ELLID, SC FIX	CLEVA, SC FIX	3400
CLEVA, SC FIX	TUXDO, NC FIX	5000
TUXDO, NC FIX	SUGARLOAF MOUNTAIN, NC VORTAC	6000
SUGARLOAF MOUNTAIN, NC VORTAC	VAESE, NC FIX	6000
VAESE, NC FIX	BARRETTS MOUNTAIN NC VOR/DME	*5000
*4000 - MOCA		
BARRETTS MOUNTAIN, NC VOR/DME	PROVE, NC FIX	3500
PROVE, NC FIX	SOUTH BOSTON, VA VORTAC	3000
§95.6024 VOR FEDERAL AIRWAY 24		
IS AMENDED TO READ IN PART		
WATERTOWN, SD VORTAC	REDWOOD FALLS, MN VORTAC	3800
§95.6028 VOR FEDERAL AIRWAY 28		
IS AMENDED TO READ IN PART		
LINDEN, CA VORTAC	*KATSO, CA FIX	5000
*4000 - MCA KATSO FIX, NE BND		
KATSO, CA FIX	*SPOOK, CA FIX	10500
*9000 - MCA SPOOK FIX, NE BND		
SPOOK, CA FIX	*RICHY, CA FIX N BND	**13000
	S BND	**15000
*15000 - MCA RICHY FIX, N BND		
**12000 - MOCA		
RICHY, CA FIX	*MUSTANG, NV VORTAC	13000
*10500 - MCA MUSTANG VORTAC, S BND		
§95.6083 VOR FEDERAL AIRWAY 83		
IS AMENDED TO READ IN PART		
ALAMOSA, CO VORTAC	BLOKE, CO FIX E BND	*14000
	W BND	*10400
*10100 - MOCA		
PUEBLO, CO VORTAC	HANKO, CO FIX	8900
§95.6085 VOR FEDERAL AIRWAY 85		
IS AMENDED TO READ IN PART		
DRAKO, CO FIX	*BENAM, CO FIX	11500
*15300 - MCA BENAM FIX, NW BND		
ESTUS, CO FIX	MEDICINE BOW, WY VORTAC	16000
§95.6087 VOR FEDERAL AIRWAY 87		
IS AMENDED TO READ IN PART		
SAN FRANCISCO, CA VOR/DME	SCAGGS ISLAND, CA VORTAC	4000
§95.6089 VOR FEDERAL AIRWAY 89		
IS AMENDED TO READ IN PART		
CHILT, CO FIX	*SILOW, CO FIX	12000
*11400 - MCA SILOW FIX, S BND		
§95.6092 VOR FEDERAL AIRWAY 92		
IS AMENDED TO READ IN PART		
GRANTSVILLE, MD VOR/DME	ARMEL, VA VORTAC	5000
§95.6101 VOR FEDERAL AIRWAY 101		
IS AMENDED TO READ IN PART		
GILL, CO VORTAC	*LIBEL, CO FIX	10000
*13400 - MCA LIBEL FIX, W BND		

FROM	TO	MEA
§95.6113 VOR FEDERAL AIRWAY 113		
IS AMENDED TO READ IN PART		
LINDEN, CA VORTAC	*KATSO, CA FIX	5000
*4000 - MCA KATSO FIX, NE BND		
KATSO, CA FIX	*SPOOK, CA FIX	10500
*9000 - MCA SPOOK FIX, NE BND		
SPOOK, CA FIX	*RICHY, CA FIX N BND	**13000
	S BND	**15000
*15000 - MCA RICHY FIX, N BND		
**12000 - MOCA		
RICHY, CA FIX	*MUSTANG, NV VORTAC	13000
*10500 - MCA MUSTANG VORTAC, S BND		
§95.6134 VOR FEDERAL AIRWAY 134		
IS AMENDED TO READ IN PART		
GRAND JUNCTION, CO VORTAC	TRACI, CO FIX NE BND	11000
	SW BND	9000
PACES, CO FIX	*MCKVR, CO FIX	13000
*15000 - MRA		
MCKVR, CO FIX	GLENO, CO FIX	13000
RED TABLE, CO VOR/DME	HERLS, CO FIX E BND	16000
	W BND	14000
§95.6143 VOR FEDERAL AIRWAY 143		
IS AMENDED TO READ IN PART		
GIZMO, NC FIX	GREENSBORO, NC VORTAC	3000
§95.6144 VOR FEDERAL AIRWAY 144		
IS AMENDED TO DELETE		
LINDEN, VA VORTAC	BLUES, VA FIX	5000
§95.6160 VOR FEDERAL AIRWAY 160		
IS AMENDED TO READ IN PART		
SMITY, CO FIX	CRITT, CO FIX	*11000
*7000 - MOCA		
§95.6169 VOR FEDERAL AIRWAY 169		
IS AMENDED TO READ IN PART		
TOBE, CO VORTAC	HUGO, CO VORTAC	8000
HUGO, CO VORTAC	THURMAN, CO VORTAC	*7200
*6600 - MOCA		
§95.6174 VOR FEDERAL AIRWAY 174		
IS AMENDED TO DELETE		
ELKINS, WV VORTAC	*KNEAD, WV FIX	**6000
*6800 - MRA		
**5500 - MOCA		
KNEAD, WV FIX	SHAWNEE, VA VORTAC	*6800
*6300 - MOCA		
§95.6187 VOR FEDERAL AIRWAY 187		
IS AMENDED TO READ IN PART		
RIZAL, CO FIX	*MANCA, CO FIX	10900
*10700 - MCA MANCA FIX, N BND		
HERRM, CO FIX	*GRAND JUNCTION, CO VORTAC	12000
*10300 - MCA GRAND JUNCTION VORTAC, S BND		
GRAND JUNCTION, CO VORTAC	*TESSY, CO FIX	10000
*10700 - MCA TESSY FIX, N BND		
TESSY, CO FIX	RACER, CO FIX	*12000
*11000 - MOCA		
RACER, CO FIX	*RENAE, CO FIX	**13000
*13000 - MRA		
**10700 - MOCA		
§95.6211 VOR FEDERAL AIRWAY 211		
IS AMENDED TO READ IN PART		
BRAZO, NM FIX	*DURANGO, CO VOR/DME	*13000E *11200W
*9000-E BND MCA	*9100-W BND MCA	
DURANGO, CO VOR/DME	CORTEZ, CO VOR/DME	1100
§95.6214 VOR FEDERAL AIRWAY 214		
IS AMENDED TO READ IN PART		
GALLS, PA FIX	GRANTSVILLE, MD VOR/DME	5000
GRANTSVILLE, MD VOR/DME	MARTINSBURG, WV VORTAC	*5000
*4500 - MOCA		
§95.6220 VOR FEDERAL AIRWAY 220		
IS AMENDED BY ADDING		
GRAND JUNCTION, CO VORTAC	TRACI, CO FIX SW BND	9000
	NE BND	11000
TRACI, CO FIX	PACES, CO FIX	*11000
*10100 - MOCA		
PACES, CO FIX	*MCKVR, CO FIX	13000
*15000 - MRA		
MCKVR, CO FIX	MEEKER, CO VORTAC	*15000
*13000 - MOCA		
§95.6235 VOR FEDERAL AIRWAY 235		
IS AMENDED BY ADDING		
PEACH SPRINGS, AZ VORTAC	MORMON MESA, NV VORTAC	10000

FROM	TO	MEA
§95.6243 VOR FEDERAL AIRWAY 243		
IS AMENDED TO READ IN PART		
BOWLING GREEN, KY VORTAC	RENRO, KY FIX	*3000
*2400 - MOCA		
RENRO, KY FIX	HUNTINGBURG, IN VOR/DME	*4500
*2000 - MOCA		
HUNTINGBURG, IN VOR/DME	TERRE HAUTE, IN VORTAC	*2400
*2000 - MOCA		
§95.6263 VOR FEDERAL AIRWAY 263		
IS AMENDED TO READ IN PART		
CIMARRON, NM VORTAC	TOBE, CO VORTAC	*11600
*10700 - MOCA		
§95.6266 VOR FEDERAL AIRWAY 266		
IS AMENDED TO READ		
ELECTRIC CITY, SC VORTAC	PELZE, SC FIX	2800
PELZE, SC FIX	SPARTANBURG, SC VORTAC	2900
GREENSBORO, NC VORTAC	REIDE, NC FIX	2500
REIDE, NC FIX	SOUTH BOSTON, VA VORTAC	2500
SOUTH BOSTON, VA VORTAC	HARVY, VA FIX	*2300
*1800 - MOCA		
HARVY, VA FIX	LAWRENCEVILLE, VA VORTAC	6000
LAWRENCEVILLE, VA VORTAC	FRANKLIN, VA VORTAC	2000
FRANKLIN, VA VORTAC	*SUNNS, NC FIX	**2000
*5000 - MCA SUNNS FIX, SE BND		
**1500 - MOCA		
SUNNS, NC FIX	ELIZABETH CITY, NC VOR/DME	*5000
*4000 - MOCA		
ELIZABETH CITY, NC VOR/DME	WRIGHT BROTHERS, NC VOR/DME	4000
§95.6267 VOR FEDERAL AIRWAY 267		
IS AMENDED TO READ IN PART		
BAXLY, GA FIX	DUBLIN GA VORTAC	*3000
*2300 - MOCA		
§95.6283 VOR FEDERAL AIRWAY 283		
IS AMENDED TO READ IN PART		
LUCER, CA FIX	HECTOR CA VORTAC	*9000
*8000 - MOCA		
HECTOR, CA VORTAC	*WHIGG CA FIX	10000
*12000 - MRA		
WHIGG, CA FIX	BOULDER CITY NV VORTAC	10000

FROM	TO	MEA
§95.6296 VOR FEDERAL AIRWAY 296		
IS AMENDED TO READ IN PART		
HUSTN, NC FIX	RAEFO, NC FIX	*5000
*2000 - MOCA		
RAEFO, NC FIX	FAYETTEVILLE NC VOR/DME	2400
§95.6386 VOR FEDERAL AIRWAY 386		
IS AMENDED TO READ IN PART		
SAN MARCUS, CA VORTAC	*OHIGH, CA FIX	8000
*9000 - MRA		
OHIGH, CA FIX	*FILLMORE, CA VORTAC	8000
*6100 - MCA FILLMORE VORTAC, W BND		
§95.6389 VOR FEDERAL AIRWAY 389		
IS AMENDED TO READ IN PART		
CIMARRON, NM VORTAC	FOGLE, NM FIX	*11600
*10700 - MOCA		
§95.6391 VOR FEDERAL AIRWAY 391		
IS AMENDED TO READ IN PART		
DOVE CREEK, CO VORTAC	*GRAND JUNCTION, CO VORTAC	12000
*10300 - MCA GRAND JUNCTION VORTAC S BND		
§95.6398 VOR FEDERAL AIRWAY 398		
IS AMENDED TO READ IN PART		
WATERTOWN, SD VORTAC	REDWOOD FALLS, MN VORTAC	3800
§95.6408 VOR FEDERAL AIRWAY 408		
IS AMENDED TO READ IN PART		
ROBRT, MD FIX	VINNY, MD FIX	5000
VINNY MD FIX	MODENA, PA VORTAC	3500
§95.6409 VOR FEDERAL AIRWAY 409		
IS AMENDED TO READ IN PART		
LOCAS, NC FIX	LIBERTY NC VORTAC	2300
LIBERTY NC VORTAC	RALEIGH/DURHAM NC VORTAC	2800
§95.6454 VOR FEDERAL AIRWAY 454		
IS AMENDED TO READ IN PART		
GIZMO NC FIX	LIBERTY NC VORTAC	3000

FROM	TO	MEA
§95.6528 VOR FEDERAL AIRWAY 528		
IS AMENDED TO READ IN PART		
SALT RIVER, AZ VORTAC	*TENTS, AZ FIX	**11000
*13000 - MCA TENTS FIX, E BND		
**9200 - MOCA		
TENTS, AZ FIX	PAYSO, AZ FIX	*14000
*9700 - MOCA		
PAYSO, AZ FIX	ST JOHNS, AZ VORTAC	*13000
*9800 - MOCA		
§95.6587 VOR FEDERAL AIRWAY 587		
IS ADDED TO READ		
HOMELAND, CA VOR	*LUCER, CA FIX	10500
*9300 - MCA LUCER FIX, SW BND		
LUCER, CA FIX	BULGY, CA FIX	*9000
*8000 - MOCA		
BULGY, CA FIX	DAGGETT, CA VORTAC	8000
DAGGETT, CA VORTAC	*WHIGG, CA FIX	10000
*12000 - MRA		
WHIGG, CA FIX	BOULDER CITY, NV VORTAC	10000
§95.6591 VOR FEDERAL AIRWAY 591		
IS AMENDED TO READ IN PART		
GRAND JUNCTION, CO VORTAC	TRACI, CO FIX	
	NE BND	11000
	SW BND	9000
PACES, CO FIX	*MCKVR, CO FIX	13000
*15000 - MRA		
MCKVR, CO FIX	GLENO, CO FIX	13000
§95.6593 VOR FEDERAL AIRWAY 593		
IS ADDED TO READ		
PUEBLO, CO VORTAC	HANKO, CO FIX	8900
HANKO, CO FIX	*AUDRY, CO FIX	9000
*9500 - MRA		
AUDRY, CO FIX	DENVER, CO VORTAC	9500
§95.6402 HAWAII VOR FEDERAL AIRWAY 2		
IS AMENDED TO READ IN PART		
HONOLULU, HI VORTAC	PALAY, HI FIX	3500
HARPO, HI FIX	MAKEN, HI FIX	7000
MAKEN, HI FIX	UPOLU POINT, HI VORTAC	*7000
*6000 - MOCA		

FROM	TO	MEA
§95.6402 HAWAII VOR FEDERAL AIRWAY 2—Continued		
UPOLU POINT, HI VORTAC	WAPIO, HI FIX	*7000
*6000 - MOCA		
WAPIO, HI FIX	PARIS, HI FIX	
	E BND	*4500
	W BND	*6000
*4000 - MOCA		
PARIS, HI FIX	*ARBOR, HI FIX	**4000
*8000 - MRA		
**3000 - MOCA		
§95.6404 HAWAII VOR FEDERAL AIRWAY 4		
IS AMENDED TO READ IN PART		
GECKO, HI FIX	HONOLULU, HI VORTAC	*4000
*2800 - MOCA		
§95.6407 HAWAII VOR FEDERAL AIRWAY 7		
IS AMENDED TO READ IN PART		
MOANA, HI FIX	*ROWIN, HI FIX	4000
*5500 - MCA ROWIN FIX, N BND		
§95.6411 HAWAII VOR FEDERAL AIRWAY 11		
IS AMENDED TO READ IN PART		
PULPS, HI FIX	BARBY, HI FIX	5400
BARBY, HI FIX	MAUI, HI VORTAC	5000
§95.6412 HAWAII VOR FEDERAL AIRWAY 12		
IS AMENDED TO READ IN PART		
LEANE, HI FIX	*KEOLA, HI FIX	
	W BND	16000
	E BND	5000
*5000 - MRA		
§95.6416 HAWAII VOR FEDERAL AIRWAY 16		
IS AMENDED TO READ IN PART		
GRAIL, HI FIX	*KEOLA, HI FIX	5000
*5000 - MRA		

FROM	TO	MEA	MAA
§95.7030 JET ROUTE NO. 30			
	IS AMENDED TO READ IN PART		
KESSEL, WV VOR/DME	TRIXY, VA FIX	19000	29000
§95.7034 JET ROUTE NO. 34			
	IS AMENDED TO READ IN PART		
KESSEL, WV VOR/DME	TRIXY, VA FIX	19000	29000
§95.7148 JET ROUTE NO. 148			
	IS AMENDED BY ADDING		
O NEILL, NE VORTAC	MASON CITY, IA VORTAC	18000	45000
§95.7212 JET ROUTE NO. 212			
	IS AMENDED TO READ IN PART		
BUCKEYE, AZ VORTAC	PALM SPRINGS, CA VORTAC	26000	45000

§95.8003 VOR FEDERAL AIRWAYS CHANGEOVER POINTS

AIRWAY SEGMENT		CHANGEOVER POINTS	
FROM	TO	DISTANCE	FROM
	V-87		
	IS AMENDED BY ADDING		
SAN FRANCISCO, CA VOR/DME	SCAGGS ISLAND, CA VORTAC	19	SAN FRANCISCO
	V-174		
	IS AMENDED TO DELETE		
ELKINS, WV VORTAC	SHAWNEE, VA VORTAC	52	ELKINS
	V-243		
	IS AMENDED BY ADDING		
HUNTINGBURG, IN VOR/DME	TERRE HAUTE, IN VORTAC	36	HUNTINGBURG

6

[FR Doc. 89-15484 Filed 6-29-89; 8:45 am]
BILLING CODE 4910-13-C

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 81

[Docket No. 78N-0366]

Provisional Listing of FD&C Red No. 3 in Cosmetics and Externally Applied Drugs and of Its Lakes in Food, Drugs, and Cosmetics; Postponement of Closing Date

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is postponing the closing date for the provisional listing of FD&C Red No. 3 for use in coloring cosmetics and externally applied drugs and of the lakes of this color additive for use in coloring food, drugs, and cosmetics. The new closing date for the provisional listing of this color additive will be August 29, 1989. This postponement will permit the uninterrupted use of this color additive and its lakes while FDA prepares appropriate **Federal Register** documents to announce the agency's decision on the regulatory status of this color additive and its lakes.

DATES: Effective June 30, 1989. The new closing date for FD&C Red No. 3 and its lakes will be August 29, 1989.

FOR FURTHER INFORMATION CONTACT: Gerad L. McCowin, Center for Food Safety and Applied Nutrition (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5676.

SUPPLEMENTARY INFORMATION: Under Title II of the Color Additive Amendments of 1960 (the transitional provisions) (Pub. L. 86-618, sec. 203 (21 U.S.C. 376, note)), FDA is authorized to postpone the closing date of the provisional listing of a color additive. The standard for issuing such postponements is well established: "Such postponements must be consistent with the public health, and the Commissioner must judge that the scientific investigations are going forward in good faith and will be completed as soon as reasonably practicable." (*McIlwain* v. *Hayes*, 690 F.2d 1041, 1047 (D.C. Cir. 1982) and *Public Citizen* v. *Young*, 831 F.2d 1108, 1122 (D.C. Cir. 1987).)

In the **Federal Register** of August 30, 1988 (53 FR 33147), FDA proposed to postpone the closing date for FD&C Red No. 3. FDA proposed the postponement to allow the agency time to complete its evaluation of new data submitted by the Certified Color Manufacturers' Association (CCMA). The postponement was intended to allow the agency to complete its evaluation of the sale and use data on FD&C Red No. 3, to make a final decision with respect to the status of FD&C Red No. 3 under the color additive amendments, and to prepare the appropriate **Federal Register** documents for the regulation of this color additive. In the **Federal Register** of October 28, 1988 (53 FR 43685), FDA published a final rule to establish a closing date for FD&C Red No. 3 of June 30, 1989.

FDA has completed its review of the data submitted by CCMA. In order to provide the agency with sufficient time to prepare the **Federal Register** documents setting forth the agency's decision on the regulatory status of the color additive and its lakes (Refs. 1 and 2), FDA is postponing the closing date for FD&C Red No. 3 and its lakes to August 29, 1989, by publication of this final rule. Accordingly, the order set forth below would amend 21 CFR 81.1(a) and 81.27(d) to postpone the closing date to August 29, 1989, to provide sufficient time for the agency to take final action in this matter.

The agency believes that postponement of the closing date for the provisionally listed uses of FD&C Red No. 3 and its lakes is appropriate and consistent with the standard for issuing such postponements. In particular, FDA believes that the continued use of these color additives for an additional period not to exceed 60 days will not pose a hazard to the public health. To the extent that there are risks from the use of FD&C Red No. 3 and its lakes, these risks result from chronic exposure to the color additive. Thus, a postponement of the closing date of only 60 days will not have any measurable effect on the public health. In addition, the agency has completed its review of the scientific data and will complete the **Federal Register** documents announcing the agency's decision as soon as practicable. These actions represent the final steps of the agency's evaluation of the investigations on the safety of the provisionally listed uses of FD&C Red No. 3. Accordingly, this brief postponement of the closing date for FD&C Red No. 3 and its lakes is consistent with the standard articulated in *McIlwain* v. *Hayes*, supra, and *Public Citizen* v. *Young*, supra.

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

FDA has determined that extending the provisional listing of these color additives requires no change in the current industry practice concerning the manufacture or use of these ingredients. Therefore, FDA certifies, in accordance with section 605(b) of the Regulatory Flexibility Act, that no significant economic impact on a substantial number of small entities would derive from this action. Further, the economic effects of this final rule have been analyzed and it has been determined that it is not a major rule as defined in Executive Order 12291.

References

The following references have been placed on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Letter dated May 2, 1989, from Gerad L. McCowin, Division of Food and Color Additives, Center for Food Safety and Applied Nutrition, FDA, to E. Edward Kavanaugh, Cosmetic, Toiletry, and Fragrance Association.

2. Letter dated May 2, 1989, from Gerad L. McCowin, Division of Food and Color Additives, Center for Food Safety and Applied Nutrition, FDA, to Daniel R. Thompson, Counsel to Certified Color Manufacturers' Association.

List of Subjects in 21 CFR Part 81

Color additives, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 81 is amended as follows:

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

1. The authority citation for 21 CFR Part 81 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055-1056 as amended, 74 Stat. 399-407 as amended (21 U.S.C. 371, 376); Title II, Pub. L. 86-618; sec. 203, 74 Stat. 404-407 (21 U.S.C. 376, note); 21 CFR 5.10.

§ 81.1 [Amended]

2. Section 81.1 *Provisional lists of color additives* is amended in the table of paragraph (a) by revising the closing date for the entry "FD&C Red No. 3" to read "August 29, 1989."

§ 81.27 [Amended]

3. Section 81.27 *Conditions of provisional listing* is amended in the table, appearing in the introductory text of paragraph (d), by revising the closing date for the entry "FD&C Red No. 3" to read "August 29, 1989."

Dated: June 21, 1989.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-15309 Filed 6-29-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 15

RIN 1219-AA23

Requirements for Approval of Explosives and Sheathed Explosive Units; Correction

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final rule; corrections.

SUMMARY: This notice corrects typographical errors in the final rule for requirements for approval of explosives and sheathed explosive units in Title 30 of the Code of Federal Regulations (53 FR 46748). This document corrects typographical errors in this rule.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances. MSHA, phone (703) 235-1910.

SUPPLEMENTARY INFORMATION: On November 18, 1988, the Mine Safety and Health Administration (MSHS) published a final rule to revise its requirements for approval of explosives and sheathed explosive units in Title 30 of the Code of Federal Regulations (53 FR 46748). This document corrects typographical errors in that rule.

1. On page 46749, in the second column, under the heading "Subpart A—General Provisions," in the first full paragraph, the 7th line, after sheathed, "explosives" should read "explosive".

2. On page 46752, in the third column, in the first full paragraph, in the 12th line, first word, "explosive" should read "explosives".

3. On page 46754, in the third column, in the last paragraph, in the 11th line from the bottom of the page, "air gap", before sensitivity should read "air-gap".

4. On page 46755, in the third column, in the first full paragraph, in the 9th line, between "safety and health", "and" should read "or".

5. On page 46756, in the first column, in the last paragraph, in the 3rd line, "product" should be inserted between "minimum" and "firing".

6. On page 46760 in the second column, in the last line at the bottom of the page, "units" should be inserted after "sheathed".

7. On page 46761 in the first column, in the third full paragraph, first word in the second line should read "holders".

§ 15.7 [Corrected]

8. On page 46763, in the first column, in paragraph (a) of § 15.7, in the third line, the last word "test" should read "trade".

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: June 27, 1989.

[FR Doc. 89-15558 Filed 6-29-89; 8:45 am]

BILLING CODE 4510-43-M

30 CFR Part 75

RIN 1219-AA16

Safety Standards for Explosives and Blasting

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final rule; corrections.

SUMMARY: This notice corrects typographical errors in the final rule of safety standards for explosives and blasting in underground coal mines which appeared in the **Federal Register** on November 18, 1988 (53 FR 46768).

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances. MSHA, phone (703) 235-1910.

SUPPLEMENTARY INFORMATION: On November 18, 1988, the Mine Safety and Health Administration (MSHA) published a final rule to revise its safety standards for explosives and blasting in Title 30 of the Code of Federal Regulations (53 FR 46768). This document corrects typographical errors in that rule.

1. On page 46770, in the second column, in the 15th line from the top of the page, "purpose" should read "purposes".

2. On page 46781, in the third column, in the 5th line from the top of the page, "FHR" should read "RFH".

3. On page 46786, in the first column, in the 12th line from the top of the page, after Subchapter, "N" should read "O".

§ 75.1323 [Corrected]

4. On page 46789, in the second column, in paragraph (d)(1) of § 75.1323, "guage" should read "gauge".

5. On page 46789, in the second column, in paragraph (f)(3) of § 75.1323, "guage" should read "gauge".

6. On page 46789, in the second column, in paragraph (i) of § 75.1323, after "round" in the second line, insert a comma.

§ 75.1327 [Corrected]

7. On page 46789, in the third column, in the introductory text of paragraph (b) of § 75.1327, after "disposed", insert "of".

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: June 27, 1989.

[FR Doc. 89-15559 Filed 6-29-89; 8:45 am]

BILLING CODE 4510-43-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[OGD 05-88-52]

Special Local Regulations for Marine Events; Philadelphia Freedom Festival; Delaware River, Philadelphia, PA

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of 33 CFR 100.509.

SUMMARY: This notice implements 33 CFR 100.509 for the fireworks portion of the Philadelphia Freedom Festival. The display will be launched from barges anchored off pier 30S, Delaware River, Philadelphia, Pennsylvania from 10:00 p.m. to 11:00 p.m., July 1, 1989. The regulations in 33 CFR 100.509 are needed to control vessel traffic in the immediate vicinity of the event due to the confined nature of the waterway and expected spectator craft congestion during the event. The regulations restrict general navigation in the area for the safety of life and property on the navigable waters during the event.

EFFECTIVE DATE: The regulations in 33 CFR 100.509 are effective from 9:00 p.m. to Midnight, July 1, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Billy J. Stephenson, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004, (804) 398-6204.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Lieutenant Commander Robin K. Kutz, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

Pyrodyne Aerial Productions, of Tacoma, Washington, submitted an application to hold a fireworks display in conjunction with the Philadelphia Freedom Festival to be held on July 1, 1989. The display will be launched from barges anchored off pier 30S, Delaware River, Philadelphia, Pennsylvania. Since many spectator vessels are expected to be in the area to watch the fireworks, the regulations in 33 CFR 100.509 are being implemented for this event.

The fireworks will be launched from within the regulated area. The waterway will be closed during the display. Since the closure will not be for an extended period, commercial traffic should not be severely disrupted.

These regulations are implemented by publication of this implementing notice in the **Federal Register** and by notice in the Fifth District Local Notice to Mariners.

Date: June 21, 1989.

A.D. Breed,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 89-15507 Filed 6-29-89; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD8-89-02]

Drawbridge Operation Regulations; Terrebonne Bayou, LA

AGENCY: U.S. Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Louisiana Department of Transportation and Development (LDOTD), the Coast Guard is changing the regulations governing the operations of two state-owned drawbridges over Terrebonne Bayou, Louisiana, as follows:

(1) The vertical lift span bridge, mile 22.2, on LA 58 at Montegut, Terrebonne Parish, Louisiana, will open on at least four hours advance notice from 9 p.m. to 5 a.m.

(2) The swing span (Daigleville) bridge, mile 35.5, on LA 57 at Houma, Terrebonne Parish, Louisiana, will be permitted to open on at least four hours advance notice from 10 p.m. to 6 a.m., in addition to the present regulation which states that the draw of this bridge need not be opened from 7 to 8:30 a.m. and from 4:30 to 6 p.m., Monday through Friday except holidays.

The bridges will open on signal at all other times. These changes are being made because of infrequent requests to open the draw of the bridges during the prescribed four-hour advance notice periods.

EFFECTIVE DATE: These regulations become effective on July 31, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. John Wachter, Bridge Administration Branch, Eighth Coast Guard District, telephone (504) 589-2965.

SUPPLEMENTARY INFORMATION. On 28 February 1989, the Coast Guard published a proposed rule (54 FR 8348) concerning this amendment. The Commander, Eighth Coast Guard District, also published the proposal as a Public Notice dated 10 March 1989. In each notice interested parties were given until 14 April 1989 to submit comments.

Drafting Information

The drafters of these regulations are Mr. John Wachter, project officer, and Commander J. A. Unzicker, project attorney.

Discussion of Comments

Three letters of comment were received in response to public notification of the proposed rule change. The National Marine Fisheries Service and the Federal Emergency Management Agency offered no objection to the proposed change. Mr. Percy Boudeois, Jr., advised us that it would be somewhat of an inconvenience to him because he sometimes needs to pass the bridge during the advance notice period. The Coast Guard has carefully considered the comment and believes that while the lone objector may be slightly inconvenienced by the regulated openings, he will still have the opportunity to pass through the bridge with a minimal amount of planning. Therefore, in the absence of significant objection to the proposal as published in (54 FR 8348) on 28 February 1989, the final rule is unchanged from the proposed rule.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034: February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that, with some planning by vessel operators that use the waterway, openings on a regulated basis will cause only minimal delay, or no delay, for boaters. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05-1(g).

2. Section 117.505 is amended by redesignating paragraphs (a) and (b) as paragraphs (b) and (c), respectively, and by adding new paragraphs (a), (d), and (e) to read as follows:

§ 117.505 Terrebonne Bayou.

(a) The draw of the S58 bridge, mile 22.2 at Montegut, shall open on signal; except that from 9 p.m to 5 a.m. the draw shall open on signal if at least four hours notice is given.

* * * * *

(d) The draw of the Daigleville bridge, mile 35.5 at Houma, shall open on signal; except that, the draw need not open for passage of vessels Monday through Friday except holidays from 7 a.m. to 6:30 a.m. and 4:30 p.m. to 6 p.m. From 10 p.m. to 6 a.m. the draw shall open on signal if at least four hours notice is given.

(e) During advance notice periods, the draws of the bridges listed in this section shall open on less than four hours notice for an emergency and shall open on signal should a temporary surge in waterway traffic occur.

Dated: June 13, 1989.

W. F. Merlin,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 89-15508 Filed 6-29-89; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180, 185, and 186

[OPP-300200; FRL-3610-5]

Updating of Pesticide Names; Technical Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendments.

SUMMARY: This document updates the names of five pesticides currently listed in 40 CFR Parts 185 and 186 to reflect common names which are used in Part 180 for these pesticides. These are merely technical amendments that impose no new regulatory requirements; therefore, advance notice and public comment are unnecessary.

EFFECTIVE DATE: June 30, 1989.

FOR FURTHER INFORMATION CONTACT:

Richard D. Schmitt, Health Effects Division (H7509C), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Office location and telephone number: Room 810, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557-7324.

SUPPLEMENTARY INFORMATION: This document amends three food additive regulations in 40 CFR Part 185 and four feed additive regulations in Part 186 to reflect the pesticides' common names as used in Part 180. The common name of each pesticide will appear in the heading of the regulation; the text of the regulation will include both the common name and the chemical name of the pesticide.

In addition, 40 CFR 180.400, 180.422, 185.3300, 185.5450, and 186.3300 are being revised and updated to reflect the appropriate chemical name.

Each regulation discussed in this document is being further amended to include the Chemical Abstracts Service (CAS) registry number for the pesticide.

No new regulatory requirements are being added. The changes being made are merely technical amendments.

List of Subjects in 40 CFR Parts 180, 185, and 186

Pesticides and pests, Food additives, Animal feeds, Reporting and recordkeeping requirements.

Dated: June 16, 1989.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

Therefore, the following technical amendments are made to 40 CFR Parts 180, 185, and 186:

PART 180—[AMENDED]

1. In Part 180:

a. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. In § 180.400, the introductory text is revised to read as follows:

§ 180.400 Flucythrinate; tolerances for residues.

Tolerances are established for residues of the insecticide flucythrinate ((*RS*)-cyano-(3-phenoxyphenyl)methyl (*S*)-4-(difluoromethoxy)-alpha-(1-methylethyl)benzeneacetate; CAS Reg. No. 70124-77-5) in or on the following raw agricultural commodities:

* * * * *

c. In § 180.422, the introductory text is revised to read as follows:

§ 180.422 Tralomethrin; tolerances for residues.

Tolerances are established for the combined residues of the insecticide tralomethrin ((*S*)-alpha-cyano-3-phenoxybenzyl (1*R*,3*S*)-2,2-dimethyl-3-[(*RS*)-1,2,2,2-tetrabromethyl]cyclopropanecarboxylate; CAS Reg. No. 66841-25-6) and its metabolites (*S*)-alpha-cyano-3-phenoxybenzyl (1*R*,3*R*)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate and (*S*)-alpha-cyano-3-phenoxybenzyl (1*S*, 3*R*)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate calculated as the parent in or on the following raw agricultural commodities:

* * * * *

d. In § 180.436, the introductory text is revised to read as follows:

§ 180.436 Cyfluthrin; tolerances for residues.

Tolerances are established for residues of the insecticide cyfluthrin (cyano(4-fluoro-3-phenoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate; CAS Reg. No. 68359-37-5) in or on the following raw agricultural commodities:

* * * * *

PART 185—[AMENDED]

2. In Part 185:

a. The authority citation for Part 185 continues to read as follows:

Authority: 21 U.S.C. 346.

b. In § 185.1250, the section heading is revised and in paragraphs (a), (b), and the introductory text of (c), "cyano(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl 2,2-dimethylcyclopropanecarboxylate" is revised to read "cyfluthrin (cyano(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethylcylcopropanecarboxylate; CAS Reg. No. 68359-37-5)" in each place it appears. The section heading, as revised, reads as follows:

§ 185.1250 Cyfluthrin.

* * * * *

c. In § 185.3300, the section heading and the introductory text are revised, to read as follows:

§ 185.3300 Flucythrinate.

Tolerances are established for residues of the insecticide flucythrinate ((*RS*)-cyano-(3-phenoxyphenyl)methyl (*S*)-4-(difluoromethoxy)-alpha-(1-methylethyl)benzeneacetate; CAS Reg. No. 70124-77-5) in or on the following food commodities, resulting from application of the insecticide to the growing crop:

* * * * *

d. In § 185.5450, the section heading and the introductory text are revised to read as follows:

§ 185.5450 Tralomethrin.

Tolerances are established for the combined residues of the insecticide tralomethrin ((*S*)-alpha-cyano-3-phenoxybenzyl-(1*R*,3*S*)-2,2-dimethyl-3-[(*RS*)-1,2,2,2-tetrabromoethyl]cyclopropanecarboxylat CAS Reg. No. 66841-25-6]) and its metabolites (*S*)-alpha-cyano-3-phenoxybenzyl (1*R*,3*R*)-3-(2,2-dibromovinyl)-2,2-dimethylcylopropanecarboxylate and (*S*)-alpha-cyano-3-phenoxybenzyl (1*S*, 3*R*)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate calculated as the parent in or on the following food commodities when present as a result of application of the insecticide to the growing crops:

* * * * *

PART 186—[AMENDED]

3. In Part 186:

a. The authority citation for Part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

b. In § 186.1250, the section heading is revised and in paragraphs (a), (b), and the introductory text of (c), "cyano(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethyl-cyclopropanecarboxylate" is revised to

read "cyfluthrin (cyano(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate; CAS Reg. No. 68359-37-5)" in each place it appears. The section heading, as revised, reads as follows:

§ 186.1253 Cyfluthrin.

* * * * *

c. Section 186.1875 is revised to read as follows:

§ 186.1875 Propanil.

Tolerances are established for the combined residues of the herbicide propanil (3',4'-dichloropropionanilide; CAS Reg. No. 709-98-8) and its metabolites (calculated as the parent compound) in or on the following processed feeds when present therein as a result of application of the herbicide to the growing crops:

Commodities	Parts per million
Rice bran	10
Rice hulls	10
Rice polishings	10
Rice mill fractions	10

d. Section 186.2775 is revised to read as follows:

§ 186.2775 Ethofumesate.

Tolerances are established for combined residues of the herbicide ethofumesate (2-ethoxy-2,3-dihydro-3,3-dimethyl-5-benzofuranyl methanesulfonate; CAS Reg. No. 26225-79-6) and its metabolites 2-hydroxy-2,3-dihydro-3,3-dimethyl-5-benzofuranyl methanesulfonate and 2,3-dihydro-3,3-dimethyl-2-oxo-5-benzofuranyl methanesulfonate (both calculated as the parent compound) in or on the following processed feeds when present therein as a result of application of the herbicide to the growing crops:

Commodities	Parts per million
Sugar beet molasses	0.5

e. In § 186.3300, the introductory text is revised to read as follows:

§ 186.3300 Flucythrinate.

Tolerances are established for residues of the insecticide flucythrinate ((*RS*)-cyano-(3-phenoxyphenyl)methyl (*S*)-4-(difluoromethoxy)-alpha-(1-methylethyl)benzeneacetate; CAS Reg. No. 70124-77-5) in or on the following processed feeds when present therein as a result of application of the herbicide to growing crops:

* * * * *

[FR Doc. 89-15546 Filed 6-29-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3610-6]

40 CFR 271

Florida; Schedule of Compliance for Modification of Hazardous Waste Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Florida Compliance Schedule to Adopt Program Modifications.

SUMMARY: On September 22, 1986, EPA promulgated amendments to the deadlines for State program modifications, and published requirements for States to be placed on a compliance schedule to adopt the necessary program modifications. EPA is today publishing a compliance schedule for Florida to modify its program in accordance with § 271.21(g) to adopt the Federal program modifications.

FOR FURTHER INFORMATION CONTACT: Otis Johnson, Jr., Chief, Waste Planning Section, RCRA Branch, Waste Management Division, U.S. Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365, (404) 347-3016.

SUPPLEMENTARY INFORMATION:

A. Background

Final authorization to implement the Federal hazardous waste program within the State is granted by EPA if the Agency finds that the State program (1) is "equivalent" to the Federal program, (2) is "consistent" with the Federal program and other State programs, and (3) provides for adequate enforcement (Section 3006(b), 42 U.S.C. 6226(b)). EPA regulations for final authorization appear at 40 CFR 271.1 through 271.24. In order to retain authorization, a State must revise its program to adopt new Federal requirements by the cluster deadlines and procedures as specified in 40 CFR 271.21. See 51 FR 33712, September 22, 1986 for a complete discussion of these procedures and deadlines.

B. Florida

Florida initially received final authorization of its hazardous waste program on February 12, 1985 (50 FR 3908, January 29, 1985). Florida submitted a final program revision application for non-HSWA requirements promulgated through June 30, 1985 (non-HSWA Cluster I).

Florida received final authorization for these revisions on March 1, 1988 (53 FR 127, January 5, 1988). Florida was placed on a schedule of compliance to obtain program modifications for Section 3006(f), Availability of Information (AOI) of the HSWA (52 FR 26013, July 10, 1987). Florida submitted a final revision application for non-HSWA requirements promulgated through June 30, 1986 (non-HSWA Cluster II). Florida received final authorization for non-HSWA II and AOI on January 2, 1989 (53 FR 50529, December 16, 1988). Today EPA is publishing a compliance schedule for Florida to obtain program modifications for authority to regulate Radioactive Mixed Waste as per 51 FR 24504, July 3, 1986.

The State has agreed to obtain the needed program revisions according to the following schedule or earlier if practicable:

Date	Interim milestones
1 July '89	Florida Department of Environmental Regulation (FDER) sends draft Memorandum of Understanding (MOU) to the Florida Department of Health & Rehabilitative Services (FDHRS) for comment.
1 September '89	Draft MOU submitted to EPA for review.
2 October '89	EPA's comments on the MOU are received by the State.
1 November '89	MOU is finalized by FDER.
8 December '89	Draft program revision application for radioactive mixed waste is submitted to EPA.
5 January '90	EPA's comments on draft program revision application are sent to the State.

Florida expects to submit a final application to EPA for authorization for Radioactive Mixed Waste by March 1, 1990.

Authority: Secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, and 6974(B).

Dated: June 22, 1989.

Joe R. Franzmethis

Acting Regional Administrator.

[FR Doc. 89-15547 Filed 6-29-89; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF ENERGY

48 CFR Ch. 9

Acquisition Regulation; Miscellaneous Amendments

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy is amending the Department of Energy Acquisition Regulation (DEAR) to clarify and update certain policy and procedural requirements. These revisions include the update of approval authorities for particular actions, use of a standard small purchase form, update of addresses for certain submissions, changes in property recordkeeping requirements and asset codes, correction of some typographical errors, and clarification regarding several contract clauses.

DATE: This rule will be effective July 31, 1989.

FOR FURTHER INFORMATION CONTACT:
Cherlyn Seckinger, Procurement and Assistance Management (MA-421), Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9737.
Edward Weber, Office of the Assistant General Counsel for Procurement and Finance (GC-34), Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-1526.

SUPPLEMENTARY INFORMATION:

I. Procedural Requirements
A. Review Under Executive Order 12291
B. Review Under the Regulatory Flexibility Act
C. Review Under the Paperwork Reduction Act
D. Review Under Executive Order 12612
E. National Environmental Policy Act
II. Comments on Proposed Rule

I. Procedural Requirements

A. Review Under Executive Order 12291

This executive order, entitled "Federal Regulations," requires that certain regulations be reviewed by Office of Management and Budget prior to their promulgation. The OMB has concluded its review and has no objections to the changes.

B. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96-354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. This rule will have no impact on interest rates, tax policies or liabilities, the cost of goods or services, or other direct economic factors. It will also not have any indirect economic consequences, such as changed construction rates. The Department of Energy certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

C. Review Under the Paperwork Reduction Act

The information collections in this rule have been cleared by the OMB under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), and OMB's implementing regulations at 5 CFR Part 1320.

D. Review Under Executive Order 12612

Executive Order 12612, 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the national government and the States, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

Today's final rule will revise certain policy and procedural requirements, for purpose of clarification and updating. States which contract with the DOE will be subject to the revisions. However, the DOE has determined that none of the revisions will have a substantial direct effect on the institutional interests or traditional function of States.

E. National Environmental Policy Act

The DOE has concluded that promulgation of this rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 432 et seq.) (1976) or the Council on Environmental Quality Regulations (40 CFR Part 1020) and, therefore, does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

II. Comments on Proposed Rule

The DOE issued a proposed rule (54 FR 1735, January 17, 1989) to clarify and update certain policy and procedural requirements such as approval authorities for particular actions, addresses for certain submissions, changes in property recordkeeping requirements and asset codes, and clarification regarding several contract clauses. Comments were requested through March 3, 1989.

The DOE received no public comments on the proposed rule. During internal review, several recommendations were made for clarification or consistency purposes and include the following changes:

(1) At 913.505-3(B), the term "contracting officer" has been replaced by "HCA or designee."

(2) At 916.301-3(C) "may" has been replaced by "shall" and HCA's are given discretion regarding any additional approval requirements.

(3) At 970.3102-16, the introductory language has been reworded.

(4) At 970.5204-27, the date of the clause has been changed from "January 1989" to "May 1989."

List of Subjects in 48 CFR Ch. 9

Government procurement.

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is amended as set forth below.

Issued in Washington, DC, June 26, 1989.

Berton J. Roth,

Deputy Assistant Secretary for Procurement and Assistance Management.

1. The authority citation for Chapter 9 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

PART 901—[AMENDED]

2. Subpart 901.6 is amended by adding a new section 901.602-3 as follows, removing the existing 901.603-71, and by redesignating subsections 901.603-72 and 901.603-73 as subsections 901.603-71 and 901.603-72, respectively.

901.602-3 Ratification of unauthorized commitments.

(b) (2) The Procurement Executive is authorized to ratify an unauthorized commitment.

(3) The ratification authority of the Procurement Executive in subparagraph (b)(2) of this section is delegated to the Heads of Contracting Activities (HCAs) for individual unauthorized commitments $25,000 or under. The ratification authority of the HCA is nondelegable.

(c) Limitations.

(7) *Procedures.* The following procedures shall be followed for ratification of unauthorized commitments:

(i) Whenever it is discovered that any person is performing or has performed

work as a result of an unauthorized commitment, the Contracting Officer shall advise that person that the work is unauthorized and performance is at the person's own risk.

(ii) The Government representative who made the unauthorized commitment shall furnish the contracting officer, through the Director of the cognizant Program Office at the contracting activity, or comparable official, all records and documents concerning the commitment and a complete, written statement of facts, including, but not limited to, a statement as to why authorized procurement procedures were not used, why the contractor was selected, a list of other sources considered, description of work to be performed or products to be furished, estimated or agreed upon contract price, citation of appropriation available, a statement as to whether the contractor has commenced performance and status of work. To preclude recurrence, the Director of the Program Office will include in the package recommendations for corrective action. If the Government representative who made the unauthorized commitment is no longer available, appropriate program personnel shall provide the information described in this paragraph to the contracting officer, along with the name of the employee who made the commitment.

(iii) The contracting officer shall evaluate this information, make a determination with respect to reasonableness of price and recommend whether payment should be made (see FAR 1.602-3(c)), and forward the documentation to the HCA.

(iv) For individual unauthorized commitments $25,000 or less, local procedures may require legal counsel concurrence, but such concurrence is not a requirement of this subsection. The HCA is responsible for assuring the implementation and monitoring of a corrective action plan. A copy of each ratification action by an HCA, along with supporting documentation, shall be provided to the Director, Business Clearance Division, MA-441, Headquarters.

(v) For individual unauthorized commitments involving amounts in excess of $25,000, the HCA or designee will evaluate the information assembled pursuant to subsection 901.602-3(c)(7)(ii) above, including the corrective action plan, and, if the HCA concurs, forward the package with HCA concurrence to the Procurement Executive.

(vi) The Procurement Executive may ratify the unauthorized commitment after coordinating with the Office of General Counsel and, when deemed necessary, obtaining the concurrence of the Senior Program Official. The Procurement Executive or designee shall monitor the implementation of the corrective action plan.

(vii) If the Procurement Executive does not ratify the action, the file will be returned to the HCA with an explanation of the decision not to ratify.

(viii) If an unauthorized commitment is ratified, the supporting documentation will be included as part of the official contract file. If an unauthorized commitment is not ratified, the documentation will be maintained for audit purposes as a separate file by the cognizant contracting office.

901.603-71 [Removed]

901.603-72 and 901.603-73 [Redesignated as 901.603-71 and 901.603-72]

PART 904—[AMENDED]

3. Section 904.404 is amended by revising paragraph (d)(3) to read as follows:

904.404 Contract clause.

(d) * * *

(3) *Sensitive foreign nation controls, 952.204-71.* This clause is required in unclassified research contracts which may involve making unclassified information about nuclear technology available to certain sensitive foreign nations. The contractor shall be provided at the time of award the listing of nations included in DOE 1240.2, Attachment 4, and any subsequent changes. (The attachment referred to in the clause shall set forth the applicable requirements of the DOE regulations on dissemination of unclassified published and unpublished technical information to foreign nations.)

PART 908—[AMENDED]

4. Section 908.303-70 is revised to read as follows:

908.303-70 Exemption.

The provisions of FAR 6.303-1 do not apply to Special Research Contracts and extensions thereof entered into under DEAR 917.71, which are subject to separate justification.

PART 908—[AMENDED]

5. Section 908.7121 is revised to read as follows:

908.7121 Special materials.

This section covers the purchase of materials peculiar to the DOE program. While purchases of these materials are unclassified, the specific quantities, destination or use may be classified. See appropriate sections of the Classification Guide. Contracting activities shall require authorized contractors to obtain the special materials identified in the following subsections in accordance with the procedures stated therein.

(a) *Heavy water.* The Senior Program Official or designee controls the acquisition and production of heavy water for a given program. Request for orders shall be placed directly with the cognizant Senior Program Official or designee.

(b) *Precious metals.* The Oak Ridge Operations Office is responsible for maintaining the DOE supply of precious metals. These metals are platinum, palladium, iridium, osmium, rhodium, ruthenium, gold and silver. Oak Ridge Operations Office has assigned management of these metals to Westinghouse Materials Company of Ohio (WMCO), P.O. Box 398704, Cincinnati, Ohio 45239. DOE offices and authorized contractors shall coordinate with WMCO regarding the availability of the above metals prior to the purchase of these metals on the open market.

(c) *Lithium.* Lithium is available at no cost other than normal packing, handling, and shipping charges from Oak Ridge. The excess quantities at Oak Ridge are to be considered as the first source of supply prior to procurement of lithium compounds from any other source.

PART 912—[AMENDED]

6. Section 913.505 is amended by adding a new subsection 913.505-3 to read as follows:

913.505-3 Standard Form (SF) 44, Purchase Order Invoice-Voucher.

(b)(1) Where necessary, the HCA or designee may authorize personnel to use the SF 44 to make small purchases under $1000.

(d)(1) HCA's shall ensure that local procedures are issued which provide adequate safeguards regarding the use of this type of small purchase method, control of forms, the designation of employees authorized to use SF-44's, and accounting for purchases.

(d)(2) Employees authorized to use Standard Form (SF) 44's are responsible for books of SF 44's issued to them. They are also responsible, when purchasing an item, for assuring that funds are available for the purchase, the form is properly processed, and purchases are limited to those items not prohibited by law or regulation.

PART 16—[AMENDED]

7. Paragraph (c) of subsection 916.301-3 is amended by deleting the first sentence, and by adding in its place two new sentences, to read as set forth below:

916.301-3 Limitations

(c) The contracting officer shall execute the determination and findings required by FAR 16.301-3(c). Local procedures may require approval of the determination and findings at a level above the contracting officer, but such approval is not a requirement of this section. * * *

PART 935—[AMENDED]

935.014 [Removed]

8. Part 935 is amended by removing section 935.014.

PART 942—[AMENDED]

9. Section 942.1004 is revised to read as follows:

942.1004 Location of negotiators in a central office.

The central office within the DOE for negotiating independent research and development/bid and proposal (IR&D/B&P) advance agreements, as required in accordance with FAR 42.1004, is established in the Oak Ridge Operations Office. The DOE contracting officers should advise offerors, suppliers, potential contractors, and contractors that are required, or expect they will be required, to establish advance agreements for allowability of IR&D/B&P cost. When the DOE is to be the lead negotiating agency in accordance with FAR 42.1003, IR&D/B&P proposals and/or other correspondence shall be submitted to DOE, Oak Ridge Operations Office, Chief, Systems and Cost Analysis Branch, P.O. Box E, Oak Ridge, TN 37831.

PART 945—[AMENDED]

10. Section 945.101 is revised to read as follows:

945.101 Definitions.

"Personal property," as used in this part, means property of any kind or interest therein, except real property; records of the Federal Government; and nuclear and special source materials, atomic weapons, and by-product materials.

"Capital equipment," as used in this part, means personal property items having a unit acquisition cost of $5,000 or more and an anticipated service life in excess of two years, regardless of type of funding, and having the potential for maintaining their integrity as capital items; i.e., not expendable due to use.

11. Subpart 945.5 is amended by revising subsection 945.505-5.

945.505-5 Records of plant equipment.

The property record requirements of FAR 45.505-5 shall include the DOE asset type for reporting purposes.

11. a. Subsection 945.505-14 is amended by revising paragraph (b), and by revising the table entries for asset code numbers 610, 615, 620, 665, 670, 680, 715, 720, 730, 735, 745, 750, 755, 770, 775, 780, 799, and 800.

945.505-14 Reports of Government property.

* * * * *

(b) The contractor shall submit the report of physical inventory of capital equipment (see 945.508(b)) as a minimum, with the fourth semiannual report after either the last physical inventory report or the inception of the contract.

DOE Plant And Equipment Asset Types

* * * * *

Asset type code No.	Name and definition
610	*Communication Systems.* Includes the cost of lines, poles, cable, and conduits; built-in radio transmitting and receiving equipment; and any installed equipment, otherwise portable, which has been so installed that it cannot be removed without damaging the equipment or damaging the building or structure in which it has been installed. Personal property such as telephones, intercommunication, and teletype equipment should be included in asset code 730.
615	*Electric Generation, Transmission and Distribution Systems.* Includes the cost of all electric generation equipment; boiler plant equipment primarily used to supply steam to steam-electric generation equipment; transmission and distribution lines, poles, towers, grounding systems, substations, transformers, controls, cables, conduits, services, meters, and protective devices; lighting fixtures, wire, poles, standards and related accessories supplying electric lighting service to roads, walks, and fences. Personal property, such as portable generators, are included in asset code 799.
620	*Fire Alarm System.* Includes the cost of central office equipment necessary for receiving and transmitting alarms, including control wiring, both cable and open, and other associated overhead and underground equipment. Portable equipment which is not permanently connected to permanent wiring and which may be removed without affecting operation of the fire alarm system is included in asset code 750.
665	*NPR Crude Oil Extraction and Distribution System.* Includes the cost of real property and related personal property necessary for crude oil extraction distribution such as the well casings, piping, and integrated equipment in the piping system; oil storage facilities and support buildings and structures. Does not include any personal property, which should be included in the appropriate asset code (710-799) for personal property.
670	*Process System.* (Real or related personal property) Includes the cost of equipment used specifically in product manufacturing and processing, including associated measurement and control instruments, which are integral to the operation of real property, or which are so affixed to real property that removal of the equipment would significantly diminish the economic value of the real property or the equipment itself.
680	*Reactors and Accelerators.* (Real or related personal property) Includes the cost of reactors, proton synchrotrons, electron sychrotrons, cyclotrons, linear accelerators, Van De Graaf generators and other similar facilities, as well as the related equipment which is an integral part of the facility or related to, designed for, or specially adapted to the functional or productive capacity of the real property, and removal of this equipment would significantly diminish the economic value of the real property or the equipment itself. Reactors with significant electrical generation should be identified with asset type 655.
715	*Hospital and Medical Equipment.* Includes the cost of hospital, clinical, and dental equipment such as hospital beds, dentist chairs, instruments, sterilizers, and other scientific equipment used by dentists and doctors. Built-in or installed equipment which is an integral part of real property or is related to, designed for, or specially adapted to the functional or productive capacity of the real property, removal of which would significantly diminish the economic value of the real property, or the equipment itself, must be included in the appropriate real property asset code (400 through 699 and 800).
720	*Laboratory Equipment.* Includes the cost of laboratory equipment such as microscopes, analytical balances, electronanalyzers oecillographs, refractometers, light sources, vibrometers, and other scientific equipment usually associated with laboratories. The cost of furniture and fixtures and shop equipment are included in codes 730 and 755. Built-in or installed equipment which is an integral part of real property or related to, designed for, or specially adapted to the functional or productive capacity of the real property, removal of which would significantly diminish the economic value of the real property, or the equipment itself, must be included in the appropriate real property asset code (400 through 599 and 800).

Asset type code No.	Name and definition
•	• • • •
730	*Office Furniture and Equipment.* Includes the cost of office furniture and equipment such as machines, desks, drafting sets, safes, photographic equipment, printing equipment and other office equipment regardless of where located. The cost of automatic data processing equipment is included in code 770. Built-in or installed equipment which is an integral part of real property or related to, designed for, or specially adapted to the functional or productive capacity of the real property, removal of which would significantly diminish the economic value of the real property, or the equipment itself, must be included in the appropriate real property asset code (400 through 699 and 800).
735	*Process Equipment.* Includes the cost of equipment used specifically in product manufacturing and processing, including associated measurement and control instruments. Built-in or installed equipment which is an integral part of real property or related to, designed for, or specially adapted to the functional or productive capacity of the real property, removal of which would significantly diminish the economic value of the real property, or the equipment itself, must be included in the appropriate real property asset code 670.
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745	*Reactors and Accelerators.* Includes the cost of accessory equipment, including associated measurement and control instruments, which are not real property.
750	*Security and Protection Equipment.* Includes the cost of equipment used for security, police, and fire protection purposes, except that all associated automotive vehicles are included in code 725. Built-in or installed equipment which is an integral part of real property or related to, designed for, or specially adapted to the functional or productive capacity of the real property, removal of which would significantly diminish the economic value of the real property, or the equipment itself, must be included in the appropriate real property asset code (400 through 699 and 800).
755	*Shop Equipment.* Includes the cost of shop equipment such as lathes, drilling machines, rolling mills, hoists, grinders, forges, pipe cutting machines, presses, saws, shapers, and other equipment usually associated with shops, garages, and service stations. Similar equipment used in laboratories and other areas for research purposes should also be identified by this code. Built-in or installed equipment which is an integral part of real property or related to, designed for, or specially adapted to the functional or productive capacity of the real property, removal of which would significantly diminish the economic value of the real property, or the equipment itself, must be included in the appropriate real property asset code (400 through 699 and 800).
770	*Automatic Data Processing Equipment.* Includes the cost of all equipment used in automatic data processing, such as (1) punched card and/or tape equipment, whether used alone or in conjunction with electronic computers; (2) electronic computers and all peripheral or auxiliary equipment; (3) data transmission systems employing devices communicating or transmitting data from place to place for processing in an ADP system; (4) all other equipment that is used in automatic data processing in conjunction with punched card equipment or electronic computers; and (5) the initial package of software that is required to make the system operational. Equipment such as flexowriters, IBM typewriters, and equipment reading the results of experiments, shall be classified as ADP equipment when used primarily in conjunction with an ADP system. Excluded are the costs of equipment such as analog computers card and/or tape file cabinets, and air-conditioning for the processing room. Also, excluded are the costs of automatic data recording or electronic control systems, including the computers, themselves, used to furnish operating guidance for control of machine tools, equipment used in process operations, reactors, accelerators, etc., or equipment used to operate energy monitoring and control systems (EMCS). The cost of this type of equipment is included in the asset code for the equipment or system to which it furnishes operating guidance in conjunction with electronic computers; (2) electronic computers and all peripheral or auxiliary equipment; (3) data transmission systems employing devices communicating or transmitting data from place to place for processing in an ADP system; (4) all other equipment that is used in automatic data processing in conjunction with punched card equipment or electronic computers; and (5) the initial package of software that is required to make the system operational.
775	*Automatic Data Processing Software.* Includes the cost of the initial package of software that is required to make the system operational. Excludes the cost of application programs.
780	*Portable Communications Electronics Equipment.* Includes the cost of such equipment as portable transceivers (handi-talkies, walkie-talkies, paging units, etc.), vehicle radio units, base station and remote control units, portable audio public address systems, telephones, and portable video systems.
799	*Miscellaneous Equipment.* Includes the cost of furniture and fixtures for hotels, dormitories, and apartments; laundry equipment; restaurant, cafeteria and canteen equipment; and other miscellaneous equipment not included in other codes. Built-in or installed equipment which is an integral part of real property or related to, designed for, or specially adapted to the functional or productive capacity of the real property, removal of which would significantly diminish the economic value of the real property, or the equipment itself, must be included in the appropriate real property asset code (400 through 699 and 800).
800	*Improvement to Property of Others.* Includes the cost of betterments made by DOE to land, land improvements (roads, runway, etc.), and improvements to existing buildings, structures, building services, and utility systems not owned by DOE. New construction such as plants, laboratories and similar facilities built by DOE on land owned by others should be classified in Asset Type Code 501.
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12. Subpart 945.6 is amended by revising section 945.607–2 and by adding a new subsection 945.608–6 to read as follows:

945.607–2 Recovering precious metals.

(b) Contractors generating contractor inventory containing precious metals shall identify and promptly report such items to the contracting officer for review, approval and reporting to the DOE precious metals pool. This includes all precious metals in any form, including shapes, scrap or radioactively contaminated, except for silver. Only high grade nonradioactively contaminated silver should be reported to the precious metals pool. The Oak Ridge Operations Office is responsible for maintaining the DOE pool. Precious metals scrap will be reported to the DOE precious metals pool, operated by Westinghouse Materials Company of Ohio (WMCO), P.O. Box 398704, Cincinnati, Ohio 45239.

945.608–6 Waiver of screening requirements.

(a) The Director of the Office of Review and Analysis, Procurement and Assistance Management, is the designee who may authorize exceptions from screening requirements in accordance with the provisions of FAR 45.608–6.

(b) A request to the Director of the Office of Review and Analysis for the waiver of screening requirements must be submitted by the HCA with a justification setting forth the compelling circumstances warranting the exception.

PART 970—[AMENDED]

970.3102–16(c)(4) [AMENDED]

13. Subsection 970.3102–16(c)(4) is amended by substituting "or" for "of."

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970.5204–13 [AMENDED]

14. Subsection 970.5204–13 is amended by making the following corrections:

a. In the last sentence in paragraph (c), "not simply" should read "not imply."

b. In the second sentence of paragraph (d)(8), "personal appendix" should read "personnel appendix."

c. In the first sentence in paragraph (d)(8)(i), "50 percent or more or" should read "50 percent or more of."

15. Subsection 970.5204–27 is amended by (1) in paragraph b, removing the phrase "for an organization in the atomic energy field other than a DOE cost-type contractor" in the fourth sentence of the clause, Consultant or Other Comparable Employment Service; and (2) substituting (May 1989) for (April 1984) in the title of the clause.

[FR Doc. 89–15540 Filed 6–29–89; 8:45 am]

BILLING CODE 6450–01–M

Proposed Rules

Federal Register
Vol. 54, No. 125
Friday, June 30, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

Prevailing Rate System

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is reissuing proposed regulations that govern the establishment of Federal Wage System (FWS) schedules in wage areas that have a dominant Federal specialized industry. The proposal will limit the use of private sector specialized data that is obtained outside a wage area and then combined with local survey data to compute a wage schedule. This change will result in wage schedules that are closer to local prevailing rates, which is the fundamental pay setting principle of the FWS.

DATES: Comments must be submitted on or before July 31, 1989.

ADDRESS: Send or deliver written comments to Barry E. Shapiro, Deputy Assistant Director for Pay Programs, Personnel Systems and Oversight Group, Office of Personnel Management, Room 7H28, 1900 E Street, NW, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Allan Summers, (202) 632-7630.

SUPPLEMENTARY INFORMATION: The FWS law (Pub. L. 92-392), codified in subchapter IV of chapter 53, Title 5, United States Code, enacted the longstanding policies and principles of the Coordinated Federal Wage System, which had been established by Presidential memorandum. Fundamental to both the FWS and its predecessor is the principle that rates of pay for Federal trades, crafts, and labor occupations be set according to local prevailing rates. Section 534(d)(2) provides for an exception to the prevailing rate principle. The exception applies when there are an insufficient number of positions in the local private industry that are comparable to the principal types of positions for which the survey is made. If the data are insufficient, the wage schedule for the area is established on the basis of local prevailing rates *and* the rates paid for comparable positions in private industry in the nearest similar wage area. This exception is commonly referred to as the "Monroney Amendment." The regulations implementing Monroney are found in Part 532 of Title 5 of the Code of Federal Regulations.

On October 8, 1985, OPM published proposed regulations [50 FR 40979] to revise § 532.313(a) of the regulations to limit the quantity of job matches brought in from outside the local wage area. On November 8, 1985, one month after the proposed regulations were published, the President signed Public Law 99-145 which, in part, amended section 5343(d)(2) of title 5, United States Code to preclude the use of out-of-area data in establishing wage schedules for employees of the Department of Defense (DoD). DoD employees constituted the vast majority of wage employees covered by Monroney. Because of this major change to Monroney, OPM decided to delay implementation of the regulations. Lead agencies were directed to continue to make Monroney determinations, to gather and apply out-of-area data in compliance with OPM regulations, but to issue two schedules in Monroney areas, one for DoD employees using local data only for one for non-DoD employees using local data and imported Monroney data.

Since out-of-area data is continuing to be applied to schedules for non-DoD employees, OPM has decided to proceed and issue the regulation. However, because of the long delay since the regulation was first proposed, OPM is reissuing the regulation, without change, as a proposed regulation with a 30 day comment period. Since the regulation has already been issued with a 60 day comment period, we feel that a further 30 day comment period will be sufficient. We are repeating in the following paragraphs the explanatory material from the earlier proposed regulations.

The current regulations in 5 CFR 532.313(a) limit the quantity of job matches from the nearest similar wage area to no more than the quantity of job matches obtained in the local wage area. This means that up to half of the wage data used in computing local wage schedules in the Monroney areas may be from outside the local wage area. The proposed change to the regulations would limit the quantity of job matches from the nearest similar wage area to the amount required by the adequacy criteria, prescribed in 5 CFR 532.309, which is used to determine if there are sufficient specialized industry data within a local wage area. The exact adequacy criteria of local sufficiency of data, which have been unchanged since 1971, are as follows:

APPROPRIATED FUND SURVEYS

No. and category of jobs	Grades of jobs	Unweighted matches
1 regular	WG-01—04	20
Do.	WG-05—08	20
Do.	WG-09—15	20
1 special	WG-08—15 [1]	20
3 regular or special	WG-01—15	3 at 10
Total		110

[1] For the ammunition specialized industry only, the 20 special job matches must be at grades WG-05—08.

NONAPPROPRIATED FUND SURVEYS

No. and category of jobs	Grades of jobs	Unweighted matches
1 regular	NA-01—04	10
Do.	NA-05—15	5
Do.	NA-01—15	5
Total		20

Under the proposal, data from a reference area will be selected on the basis of the most populous survey jobs as determined by the weighted job matches found in the dominant industry in the selected reference area. In selecting survey jobs, the jobs required at limited grade ranges (e.g., WG-1—4) will be selected before jobs in the unlimited grade range (WG-1—15). The highest graded job will be selected first when there is a tie in the selection procedures.

The proposed regulatory change will provide for a more reasonable balance between the principle of setting pay on the basis of local prevailing rates and the unique provisions of section 5343(d)(2) of Title 5. The sufficiency standard in § 532.309 provides the minimum amount of wage data needed in the reference area to adequately reflect the specialized industry in the reference area.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they are changes which will affect only employees of the Federal Government.

List of Subjects in 5 CFR Part 532

Administrative practices and procedure, Government employees, Wages.

U.S. Office of Personnel Management.

James M. Stock,

Acting Director.

Accordingly, OPM is proposing to amend 5 CFR Part 532 as follows:

PART 532—[AMENDED]

1. The authority citation for Part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346.

2. In § 532.313 paragraphs (a)(2) and (a)(3) are revised and paragraph (a)(4) is added to read as follows:

§ 532.313 Use of data from the nearest similar area.

(a) * * *

(2) The total number of job matches obtained from the nearest similar wage area shall not exceed the amount of data required for adequacy in § 532.309(a) (2) and (3) of this subpart for appropriated fund surveys and § 532.309(b)(2) of this subpart for nonappropriated fund surveys.

(3) Data shall be selected for inclusion on the basis of the most populous survey jobs as determined by the weighted job matches found in the dominant industry in the selected reference area. In identifying survey jobs for which reference area samples will be included, the jobs required at limited grade ranges shall be selected before jobs in the unlimited grade range. When there is a tie in the selection procedure, the highest graded job shall be selected first.

(4) If there are two dominant industries for which data are obtained from nearest similar areas, the procedures described in paragraph (a)(2) of this section shall be applied independently for each of the specalized industries.

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[FR Doc. 89-15500 Filed 6-29-89; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-75-AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which would require replacement of the trailing edge flap track fail-safe straps and/or replacement of the strap attachment bolts. This proposal is prompted by a report of a failure of the fail-safe strap, which resulted in the outboard end of the affected flap contacting the runway during landing. This condition, if not corrected, could lead to separation of the flap during flight, resulting in partial loss of the controllability of the airplane and possible secondary damage to the airplane.

DATES: Comments must be received no later than August 17, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-75-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Richard H. Yarges, Airframe Branch, ANM-120S; telephone (206) 431-1925. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-75-AD." The post card will be date/time stamped and returned to the commenter.

Discussion: On June 7, 1978, a Boeing Model 747 airplane experienced a failure of a flap track fail-safe strap during landing, which resulted in the affected flap contacting the runway. Upon examination of the failed parts, it was discovered that the fuse bolt, for which the strap is intended to provide fail-safety, had been failed for some time prior to the incident, although it could not be determined for exactly how long. The FAA issued AD 78-25-06, Amendment 39-3366, on December 1, 1978, which requires certain procedures to correct the fuse bolt cracking problem (which was the primary cause of the incident). Since the issuance of that AD, there have been no further occurrences of fuse pin failures or other failures for which the strap is intended to provide fail-safety.

While the fail-safe strap was not previously the subject of an AD, based on a recent FAA reassessment of the Model 747 flap structure, it has been determined that the proper functioning of this fail-safe device is necessary in the remote event of another fuse bolt failure or forward flap track lug failure. Additionally, some operators have detected corrosion in this area during

periodic maintenance inspections and this could lead to failure. Even though the airplane is certified to be controllable in the event of the loss of a flap, adverse weather conditions could aggravate an incident, the separating flap could cause unforeseen damage to the airplane, or an incident could occur near landing touchdown, making safe control recovery difficult.

The manufacturer of the airplane has incorporated stronger fail-safe straps on more recently manufactured airplanes. These improved straps are more resistant to the repeated loading imposed on the strap subsequent to a primary failure. With these improved straps, it is more likely that the primary failure would be detected before the fail-safe strap fails.

Early fail-safe strap modification kits supplied to operators by the manufacturer to reinforce existing airplanes did not incorporate attachment bolts having the correct grip length. Airplanes modified with these kits may have fail-safe strap attachment bolts with a grip length that is too short, with the result that the threads of these bolts may be in bearing with the strap assembly. The use of short grip length bolts would reduce the intended durability of the redesigned fail-safe strap and could defeat its purpose.

The FAA has reviewed and approved Boeing Service Bulletin 747-57-2187, Revision 2, dated December 15, 1982, which describes the replacement of old design fail-safe straps with ones of the improved design. The service bulletin also describes replacement of bolts having a short grip length with bolts having the correct grip length on certain later Model 747's that already had the improved design fail-safe straps incorporated during the original manufacture.

Since the older design straps exist on Model 747's currently in service and have been shown incapable of supporting the repeated flap track loads between flap track inspection intervals, an AD is proposed which would require replacement of the old design fail-safe straps with improved design fail-safe straps within 2 years, in accordance with the service bulletin previously described. Replacement of attachment bolts having a grip length which is too short is also required, since the FAA has determined that such replacement will assure the durability of the strap support structure.

There are approximately 565 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 150 airplanes of U.S. registry would be affected by this AD, that it would take approximately 80 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Required parts would cost approximately $20,000 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $3,480,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows: Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes, listed in Boeing Service Bulletin 747-57-2187, Revision 2, dated December 15, 1982, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent failure of the trailing edge flap track fail-safe straps, accomplish the following:

A. Within two years from the effective date of this AD, replace old design trailing edge flap track fail-safe straps, if installed, with improved fail-safe straps, and replace bolts having a grip length which is too short with bolts having the correct grip length, as applicable, in accordance with Boeing Service Bulletin 747-57-2187, Revision 2, dated December 15, 1982.

B. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on June 16, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-15488 Filed 6-29-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-73-AD]

Airworthiness Directives; McDonnell Douglas Model DC-9-10 Through -80, Model MDBB, and C-9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to McDonnell Douglas Model DC-9-10 through -80, MD88 and C-9 (Military) series airplanes, which would require inspection and replacement or repair, as necessary, of the rudder control sector. This proposal is prompted by reports of cracks at the cotter pin hole near the ball end of the rudder control cable. This condition, if not corrected, could lead to disengagement of the rudder cable and loss of rudder control.

DATES: Comments must be received no later than August 17, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-73-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, Cl-165 (54-60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Salas, Aerospace Engineer, Airframe Branch, ANM-120L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5324.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-73-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

McDonnell Douglas reported finding eight rudder control sectors cracked at the cotter pin hole near the ball end of the control cable on certain McDonnell Douglas Model DC-9 series airplanes. A fracture of the rudder sector could disengage the cable and result in loss of rudder control. Those parts found cracked have a material thickness near the cotter pin hole that is below the allowable tolerance. None of the parts have shown crack propagation to the cable ball land area where the material thickness is much greater. Tests on cracked parts have shown that the part can carry loads much greater than those expected in service without propagation of the crack. However, there is no assurance that a crack will not eventually propagate to beyond the cable ball land area. While there have been no service reports to date of a rudder cable disengagement, this condition, if not corrected, could result in rudder cable disengagement and loss of some rudder control.

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin A27-302, dated February 17, 1989, which describes procedures for inspection and repair, if necessary, of the rudder control sector in the aft accessory compartment.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require an initial inspection and, if cracks are found, repair or replacement of the part, in accordance with the service bulletin previously described. In addition, operators would be required to submit a report of their inspection findings to the FAA.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

There are approximately 1,431 Model DC-9 series airplanes of the affected design in the worldwide fleet. It is estimated that 861 airplanes of U.S. registry would be affected by this AD, that it would take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $275,520.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-9-10 through -80, Model MD88, and C-9 (Military) series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To preclude failure of the rudder control sector, accomplish the following:

A. Within 60 days after the effective date of this airworthiness directive (AD), visually inspect the rudder control sector for cracks and acceptable wall thickness, in accordance with Figure 2 of McDonnell Douglas Alert Service Bulletin A27-302, dated February 17, 1989.

1. If cracks or a wall thickness of .020 inch or less is found, before further flight, perform either a permanent repair or replacement of the rudder control sector, in accordance with the accomplishment instructions of McDonnell Douglas Service Bulletin A27-302, N/C, dated February 17, 1989.

2. If no cracks are found and the wall thickness is more than .020 inch, no further action is required.

B. Within 15 days after the inspection required by paragraph A., above, submit a report of findings, positive or negative, to the Los Angeles Aircraft Certification Office, Attention: ANM-161L, FAA, Northwest Mountain Region, 3229 East Spring Street, Long Beach, California 90806-2425.

C. An alternate means of compliance or adjustment of the compliance times, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-165 (54-60). These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

Issued in Seattle, Washington, on June 16, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-15485 Filed 6-29-89; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 414

Trade Regulation Rule; Deception as to Transistor Count of Receiving Sets, Including Transceivers

AGENCY: Federal Trade Commission.

ACTION: Correction of deadline for submission of comments and requests for a public hearing concerning notice of proposed rulemaking.

SUMMARY: On June 6, 1989, page 24191, the Federal Trade Commission announced the commencement of a rulemaking proceeding to determine whether to repeal the trade regulation rule concerning deception as to the transistor count of radio receiving sets, including transceivers ("Transistor Rule" or "Rule") (16 CFR Part 414). The notice erroneously stated that comments and requests for a public hearing would be accepted until July 6, 1989. This notice announces a corrected deadline for the submission of comments and requests for a hearing.

DATE: Written comments and requests for a public hearing will be accepted until July 24, 1989.

ADDRESS: Comments and requests for a public hearing should be submitted to Henry B. Cabell, Presiding Officer, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580. All comments and requests should be captioned: "NPR Comment—Transistor Rule."

FOR FURTHER INFORMATION CONTACT: Robert E. Easton, Esq., Special Assistant—Enforcement, (202) 326-3029, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Supplementary information about the Rule and the rulemaking proceeding can be found in the Commission's notice of June 6, 1989. The notice was published at 54 FR 24191-93.

List of Subjects in 16 CFR Part 414

Transistor, Trade practices.

Donald S. Clark,

Secretary.

Issued: June 27, 1989.

[FR Doc. 89-15518 Filed 6-29-89; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05-89-51]

Special Local Regulations for Marine Events; Cambridge Classic Powerboat Regatta; Hambrooks Bay, Choptank River, Cambridge, MD

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing special local regulations for the Cambridge Classic Powerboat Regatta to be held in Hambrooks Bay, Choptank River, Cambridge, Maryland on July 29 and 30, 1989. These regulations will govern vessel activity during the actual races. The regulations are necessary due to the potential danger to waterway users, the confined nature of the waterway, and expected spectator craft congestion during the event.

DATE: Comments must be received on or before July 17, 1989.

ADDRESSES: Comments should be mailed or hand-carried to Commander (bb), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004. The comments will be available for inspection and copying at Room 209 of this address. Normal office hours are between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Billy J. Stephenson, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004, (804) 398-6204.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD 05-89-51) and the specific section of the proposal to which their comments apply. Reasons should be given for each comment. All comments received before the expiration of the comment period will be considered before final action is taken. The regulations may be changed because of comments received. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process. The receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

Drafting Information

The drafters of this notice are Mr. Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Fifth Coast Guard District, and Lieutenant Commander Robin K. Kutz, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Proposed Regulations

The Cambridge Powerboat Regatta Assn., Inc. is the sponsor of this event. The event will consist of approximately 30 powerboats, ranging from 13 to 21 feet in length, racing on a designated course within the regulated area. The races will be conducted in Hambrooks Bar, located on the Choptank River, between Great Marsh Point and Hambrooks Bay. Hambrooks Bay will be closed during the actual races. The Coast Guard Patrol Commander may allow vessel traffic to transit the area between heats. Since Hambrooks Bay is outside the main channel, waterborne traffic should not be severely disrupted.

Economic Assessment and Certification

These proposed regulations are not considered major under Executive Order 12291 on Federal Regulation nor significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Impact

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and has been placed in the rulemaking docket.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations as follows:

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section 100.35-0551 is added to read as follows:

§ 100.35-0551 Hambrooks Bay, Choptank River, Maryland.

(a) *Definitions:*

(1) *Regulated area.* The waters of Hambrooks Bay and Choptank River bounded by the arc of a circle with a radius of 1,200 yards and with its center located at latitude 38°35'20.0" North, longitude 76°05'20.0" West.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer who has been designated by the Commander, Group Baltimore.

(b) *Special Local Regulations.*

(1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the immediate vicinity of this area shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(3) Any spectator vessel may anchor outside of the regulated area specified in paragraph (a)(1) of this section but may not block a navigable channel.

(c) *Effective periods.* The regulations are effective for the following periods:

9:00 a.m. to 6:00 p.m., July 29, 1989.
9:00 a.m. to 6:00 p.m., July 30, 1989.

Dated: June 21, 1989.

A.D. Breed,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 89-15508 Filed 6-29-89; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF DEFENSE

48 CFR Part 246

Department of Defense Federal Acquisition Regulation Supplement; DFARS Warranties

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule and request for comment.

SUMMARY: The Defense Acquisition Regulatory (DAR) Council is considering changes to DFARS Part 246 to add DFARS 246.770-2(c) and to add 246.770-10(b) to specify that a contractor's warranty shall specifically state whether or not redesign is an available remedy under the warranty.

DATE: Comments concerning the proposed rule must be received by July 31, 1989 to be considered in formulating a final rule. Please cite DAR Case 89-62 in all correspondence related to this issue.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Charles W. Lloyd, Executive Secretary, DAR Council, ODASD (P)/DARS, c/o OASD (P&L) (M&RS), Room 3D139, The Pentagon, Washington, DC 20301-3062.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, telephone (202) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Background

The General Accounting Office recently conducted a review of warranty provisions in a number of DoD contracts and stated that the majority of the warranties they reviewed did not identify redesign as an available remedy. The DAR Council is proposing to change DFARS 246.770-2 and 246.770-10 to specify that a contractor's warranty shall specifically state whether or not redesign is an available remedy under the warranty.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact upon a substantial number of small entities, within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because it applies only to contracts for the production of a weapon system with a unit weapon system cost of $100,000 or for which the eventual total procurement cost is in excess of $10,000,000. These types of contracts are usually not awarded to small entities. An Initial Regulatory Flexibility Analysis has therefore not been performed. Comments from small entities concerning the affected DFARS Subpart will also be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DAR Case 89-610D in correspondence.

C. Paperwork Reduction Act

The proposed rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Part 246

Government procurement.

Owen Green,

Acting Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, it is proposed that 48 CFR Part 246 be amended as follows:

PART 246—QUALITY ASSURANCE

1. The authority citation for 48 CFR Part 246 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

2. Section 246.770-2 is amended by adding paragraph (c) to read as follows:

246.770-2 Policy.

* * * * *

(c) When essential performance requirements are warranted, the warranty shall specifically identify redesign as a remedy available to the Government.

3. Section 246.770-10 is amended by adding paragraph (b) to read as follows:

246.770-10 Special contract clauses

* * * * *

(b) Each clause describing a contractor's warranty shall specifically state whether or not redesign is an available remedy under the warranty (see 246.770-2).

[FR Doc. 89-15438 Filed 6-29-89; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 650

[Docket No. 90624-9124]

Atlantic Sea Scallop Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of withdrawal of an amendment to a fishery management plan.

SUMMARY: NOAA issues this notice of withdrawal of Amendment 3 (Amendment) to the Fishery Management Plan for Atlantic Sea Scallops (FMP). The New England Fishery Management Council (Council) voted to withdraw the Amendment because changes made to the proposed rule implementing the Amendment may not have been fully considered by the Council and the public. No final rule will be published at this time.

DATE: The Council voted to withdraw the Amendment on May 24, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia A. Kurkul, Resource Policy Analyst, (508) 281-9331.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act) (16 U.S.C. 1801 *et seq.*) requires each Regional Fishery Management Council to submit any fishery management plan or amendment it prepares to the Secretary of Commerce (Secretary) for review, approval and implementation. The Act also requires the Secretary, upon receiving the plan or amendment, to publish immediately a notice of availability and to publish within 15 days the proposed regulations for public review and comment. Amendment 3 to the FMP was submitted by the New England Fishery Management Council (Council) on April 7, 1989. The notice of availability was published on April 20, 1989 (54 FR 15958) and the proposed regulations were published on May 19, 1989 (54 FR 21640).

Amendment 3 proposed the requirement that all vessels must offload sea scallops within a 12-hour time window each day. The intent of the amendment was to improve enforcement of the meat count/shell height management standards of the FMP. After receipt of the proposed amendment package, however, NOAA General Counsel and NMFS Enforcement determined that the proposed regulations could not be efficiently enforced and thus would not effectively implement Amendment 3. Consequently, under authority of section 304(a)(1)(D)(i) of the Magnuson Act, as amended, 16 U.S.C. 1854(a)(1)(D)(i), the changes necessary for implementation of the amendment were made to the proposed regulations.

These changes to the proposed regulations prompted the Council to question whether the amendment sufficiently addressed the impact of the revised measures, whether all the affected sectors of the fishing industry were included in the public hearing process, and whether the burden of the revised regulations were justified. To allow sufficient time for these questions to be answered, the Council voted to withdraw the Amendment pending further analysis.

List of Subjects in 50 CFR Part 650

Fish, Fisheries.

Dated: June 26, 1989.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-15520 Filed 6-29-89; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register

Vol. 54, No. 125

Friday, June 30, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Puerto Rican Cigar-Filler (Type 46) Tobacco; Marketing Quota Referendum Results; 1989 Through 1991 Crops of Tobacco.

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Notice of Results of Marketing Quota Referendum for 1989 through 1991 Crops of Puerto Rican Cigar-Filler (type 46) Tobacco.

SUMMARY: This notice proclaims the results of a marketing quota referendum for Puerto Rican Cigar-Filler (type 46) Tobacco which was held March 29, 1989, in accordance with section 312(c) of the Agricultural Adjustment Act of 1938, as amended (the "1938 Act"). The referendum was conducted in order to determine whether producers of this kind of tobacco favor or oppose marketing quotas.

EFFECTIVE DATE: June 30, 1989.

FOR FURTHER INFORMATION CONTACT: Dennis Daniels, Program Specialist, Tobacco and Peanuts Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013, telephone (202) 382-0200.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Department Regulation No. 1512-1 and has been classified as "not major." It has been determined that this notice will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises, to compete with foreign-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

The title and number of the Federal Assistance Program to which this notice applies are: Commodity Loan and Purchases; 10.051, as found in the catalog of Federal Domestic Assistance.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Discussion of Notice of Proclamation of Marketing Quota Referendum Results: On March 1, 1989, the Secretary of Agriculture announced that marketing quotas would be in effect for Puerto Rican Cigar-Filler (type 46) Tobacco for the three marketing years beginning on October 1, 1989, subject to approval by producers of this kind of tobacco in a referendum.

On March 29, 1989, a referendum was conducted in the Commonwealth of Puerto Rico for Puerto Rican Cigar-Filler (type 46) Tobacco. Section 312(c) of the 1938 Act provides that, if more than one-third of such producers voting in the referendum oppose national marketing quotas, such results shall be proclaimed by the Secretary and marketing quotas shall not be in effect.

Accordingly, the results of such referendum are set forth below:

Notice

Results of the Marketing Quota Referendum for the 1989 Through 1991 Crops of Puerto Rican Cigar-Filler (type 46) Tobacco.

(1) *Referendum Period.* The marketing quota referendum for the 1989-1990, 1990-1991, and 1991-1992 marketing years for Puerto Rican Cigar-Filler (type 46) Tobacco was held March 29, 1989, in accordance with 7 CFR Part 717.

(2) *Farmers Voting.* The following is a summary, by voting district, of the results of the referendum in the Commonwealth of Puerto Rico:

PUERTO RICAN CIGAR-FILLER (TYPE 46) TOBACCO [1]

District	Yes	No	Total
Comerio	9	1	10
Orocovis	11	0	11
Utuado	18	0	18
Total	38	1	39

[1] Of those voting, 38 producers, or 97.44 percent, favored marketing quotas for Puerto Rican Cigar-Filler (type 46) Tobacco, and 1 producer, or .0256 percent, opposed quotas.

(3) Marketing quotas will be in effect for the 1989 through 1991 crops of Puerto Rican Cigar-Filler (type 46) Tobacco. Since less than one-third of the producers of Puerto Rican Cigar-Filler (type 46) Tobacco voting in the referendum voted to disapprove marketing quotas and since marketing quotas have not previously been in effect, marketing quotas shall be in effect for Puerto Rican Cigar-Filler (type 46) Tobacco for the marketing years 1989-1990, 1990-1991, and 1991-1992.

(7 U.S.C. 1312(c))

Signed at Washington, DC, on June 23, 1989.

Keith D. Bjerke,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 89-15522 Filed 6-29-89; 8:45 am]

BILLING CODE 3410-05-M

Economic Research Service

National Agricultural Cost of Production Standards Review Board; Meeting

The National Agricultural Cost of Production Standards Review Board will meet at the Economic Research Service, U.S. Department of Agriculture, Washington, DC on July 20-21, 1989.

The purpose of this meeting is to discuss general issues related to USDA's estimation of enterprise costs of production. All meetings will be held in room 332, 1301 New York Avenue, NW. The morning sessions on July 20-21 will convene at 9:00 a.m. and the afternoon sessions will convene at 1:30 p.m. Meetings will end at approximately 4 p.m. both days.

All sessions will be open to members of the public who wish to observe. Written comments may be submitted before or after the meeting to Kenneth

Deavers, Director, ARED–ERS–USDA, Room 314, 1301 New York Avenue, NW., Washington, DC 20005.

For further information, contact Robert Dismukes at (202) 786–1801.

John E. Lee, Jr.,

Administrator.

[FR Doc. 89–15481 Filed 6–29–89; 8:45 am]

BILLING CODE 3410–18–M

Forest Service

Draft Supplement to the Final Environmental Impact Statement for the Shawnee National Forest Land and Resource Management Plan

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a supplement to an environmental impact statement.

SUMMARY: The Forest Service will prepare a Draft and Final Supplement (DSEIS and SEIS respectively) to the Environmental Impact Statement (EIS) previously prepared for the Shawnee National Forest Land and Resource Management Plan (Shawnee Plan). The supplement will describe alternatives to and environmental effects of a proposed action to: (1) Increase the width of filter strips and provide additional management direction for riparian areas and filter strips to assure soil and watershed protection and to maintain the value of these areas for recreation and wildlife; (2) identify desired locations for about 286 miles of travelways for all-terrain vehicle (ATV) and off-highway motorcycle use and add guidelines for designation, monitoring and enforcement; (3) identify 20 areas as Forest Interior Management Units (FIMU's) with management direction designed to provide habitat for neo-tropical migrant birds and other species that use large blocks of contiguous forest with a closed canopy of trees; (4) manage the Cave Valley area with emphasis on providing habitat for the Swainson's Warbler and other species of non-game birds; (5) manage the Camp Hutchins area to maintain its ecological integrity pending further study of resource and ecological values and the area's potential for timber production; (6) recommend wilderness study for the Ripple Hollow and Burke Branch areas and manage these areas to maintain or enhance wilderness values; (7) provide specific guidance for selecting timber harvest methods; (8) increase the use of uneven-aged sivicultural practices; (9) reduce the annual allowable sale quantity of timber; (10) establish priorities for the conversion of pine stands to hardwood; (11) revise guidelines for the management of permanent wildlife openings, herbaceous openlands, and old field successional lands; (12) recommend Hutchins Creek as a candidate for inclusion in the National Wild and Scenic River System and revise guidelines for all candidate rivers as needed to be in conformance with provisions of the agreement between the USDA Forest Service and American Rivers, Inc.; (13) provide additional guidelines for natural areas management; (14) identify corridors for a Forest-wide equestrian and hiker trail system and establish priorities for construction; (15) grant the Secretary of Agriculture's consent to oil and gas leasing of the federally-owned mineral estate in the Forest and establish conditions (lease stipulations) under which the leases may be issued; (16) identify areas where the Forest Service desires to consolidate National Forest System lands through purchase, exchange, or donation; (17) revise the listing and guidelines for managing habitat of federally listed threatened or endangered species, candidate sensitive species, and forest listed species of plants and animals; and (18) clarify guidelines for public notification and implementation of project decisions.

In addition, the agency gives notice that a complete environmental analysis and decision-making process will occur on the proposal so that interested persons are aware of how they may participate and contribute to the final decision.

Public participation will be welcome throughout the analysis, but is especially important at several points. The first point is during the scoping process (40 CFR 1501.7). The agency is seeking written comments and suggestions on the scope of the analysis. Comments relevant to scoping include: (1) identifying potential issues, (2) identifying those issues to be analyzed in depth, (3) eliminating insignificant issues or those which have been covered by a previous environmental analysis, (4) identifying additional alternatives to the proposed action that should be considered, (5) identifying potential environmental effects of the proposed action and alternatives, and (6) determining potential cooperating agencies and task assignments. General notice to the public concerning the scope of the analysis will be provided by mailings, news releases and/or public meetings.

DATE: Comments related to the scope of the analysis should be received by July 30, 1989 to ensure timely consideration.

ADDRESS: Submit written comments and suggestions related to the scope of analysis to Rodney K. Sallee, Forest Supervisor, Shawnee National Forest, 901 S. Commercial St., Harrisburg, IL 62946.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and SEIS to Sam Emmons, Shawnee National Forest Planning Staff Officer, Shawnee National Forest, Harrisburg, IL 62946, (phone 618–253–7114).

SUPPLEMENTARY INFORMATION: The Shawnee Plan was approved by Regional Forester Floyd J. Marita on November 24, 1986. Several administrative appeals challenging the Shawnee Plan were filed. A working group was formed to represent the various parties to the appeals in a negotiation process. In April of 1988, formal negotiation began under the direction of a professional mediator. After four months of negotiations, the parties executed a Settlement Agreement on August 15, 1988. This proposed action will incorporate specific provisions of the Settlement Agreement into the Shawnee Plan. In addition, this opportunity to amend the Shawnee Plan will be used to fulfill agency obligations established by the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (30 U.S.C. 226, et seq.) to identify and offer for lease National Forest System lands suitable oil and gas exploration and development. A final reason for this amendment is to make changes and additions that were recommended through monitoring and evaluation of the Shawnee Plan. Specifically, these include revisions needed to reflect changes in federal and state listings of threatened and endangered species, recommendations for changes in guidelines for management of these species, and the need to clearly display where consolidation of National Forest System lands is desired.

Until the SEIS is issued, the Forest will continue to be managed according to the terms and conditions of the Shawnee Plan. Those aspects of the Settlement Agreement that are consistent with the Shawnee Plan may be implemented in the interim.

A range of possible alternatives to the proposed action will be evaluated. Only one alternative has been identified at this time. That is the "no action" alternative which would continue management under the current Shawnee Plan. Other alternatives will be developed based on the results of scoping. A preferred alternative will be identified in the DSEIS.

The analysis will address major issues and concerns about the proposed action and alternatives. The following tentative issues have been identified: (1) Protection of riparian areas and water quality—There is concern that further restrictions on management practices and uses are needed to assure protection of riparian areas and water quality; (2) Hardwood timber practices and output—There are concerns about how removing land from the suitable timber base, restrictions on harvest, and uneven-aged management will affect hardwood timber outputs, the economic feasibility of even-aged versus uneven-aged management, and the environmental effects of various methods and amounts of timber harvest practices; (3) Regeneration of oak/hickory—There are concerns that uneven-aged management practices will not produce satisfactory regeneration of oak and hickory; (4) Wildlife Habitat—There are concerns about the mix of habitat for game and nongame species provided on the Forest and the management practices prescribed to achieve wildlife objectives. (5) Dispersed Recreation Opportunities—There are concerns that the Shawnee Plan should more specifically state where travelways for ATV and off-highway motorcycle would be located, and concerns about how this use can be managed to provide recreation opportunities while avoiding environmental impacts and conflicts with other uses. There is also concern that a Forest-wide approach to planning for equestrian and hiking trails is needed. Another issue that will be addressed in the analysis is how the proposed nonmotorized management prescriptions for Burke Branch, Ripple Hollow, and Camp Hutchins affect the mix of recreation opportunities on the Forest; and (6) Oil and Gas Leasing—There is concern about what areas should be considered suitable for oil and gas leasing and what restrictions should be stipulated for development.

The DSEIS is expected to be filed with the Environmental Protection Agency and to be available for public review in November of 1989. At that time, the Environmental Protection Agency will publish a notice of availability of the draft supplement in the **Federal Register**.

The comment period on the draft environmental impact statement will be 90 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.*, v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 90-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible.

It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.).

After the comment period ends on the DSEIS, the comments will be analyzed and considered by the agency in preparing the final supplement.

The SEIS is scheduled to be completed and available to the public approximately 5 months following the close of the review period for the DSEIS. The responsible Forest Service official will document the decision and the reasons supporting it in a Record of Decision. That decision will be subject to appeal pursuant to 36 CFR 217.

The Forest Service official responsible for approving the proposed action is Regional Forester Floyd J. Marita, Eastern Region, 310 W. Wisconsin Ave., Rm. 500, Milwaukee, WI, 53203.

Date: June 26, 1989.

Floyd J. Marita,

Regional Forester.

National Forest System Law Enforcement Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: The National Forest System Law Enforcement Advisory Council will hold a meeting in Reno, Nevada, August 1 and 2, 1989, at the Peppermill Hotel. The first meeting of the Council was held in March. At that meeting, Council members were given an orientation to the Forest Service law enforcement program and an overview of current issues. The Council also decided to reach and study several law enforcement topics including: Organizational structure, standards, the role of law enforcement officers and special agents, collateral duties, career paths, training, budget, cooperative agreements, and user groups. The purpose of the August meeting is to discuss the information Council members have gathered since the last meeting and develop recommendations concerning the law enforcement program. The meeting is open to public attendance; however, participation is limited to Forest Service personnel and Council members. The public is invited to submit written suggestions or comments on any issues or concerns that the Council should consider at this or future meetings.

DATES: The meeting will be held August 1 and 2, 1989. The deadline for submitting written suggestions for discussion topics at the meeting is July 21, 1989.

ADDRESSES: The meeting will be held at the Peppermill Hotel, 2707 South Virginia Street, Reno, Nevada 89502, (702–826–2121). Send written comments to: Deputy Chief for Administration (5300), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090.

FOR FURTHER INFORMATION CONTACT: Susan Sea, Fiscal and Public Safety Staff, (703) 235–3527.

Charles R. Hartgraves,

Associate Deputy Chief for Administration.

Date: June 26, 1989.

[FR Doc. 89–15527 Filed 6–29–89; 8:45 am]

BILLING CODE 3410–11–M

BEST COPY AVAILABLE

Soil Conservation Service

Smithfield Farm Irrigation, RC&D Measure Plan, Utah

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact for a supplemental environmental assessment.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture gives notice that an environmental impact statement is not being prepared for the Smithfield Farm Irrigation Measure Plan, Bear River Resource Conservation and Development (RC&D) Area, Cache County, Utah.

FOR FURTHER INFORMATION CONTACT: Francis T. Holt, State Conservationist, Soil Conservation Service, P.O. Box 11350, 125 South State Street, Salt Lake City, Utah, 84147, telephone 801–524–5050.

SUPPLEMENTARY INFORMATION: The supplemental environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Francis T. Holt, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project. The original Environmental Assessment and Finding of No Significant Impacts were filed on January 3, 1989. The supplement was prepared to address a significant reduction in the impacts addressed in the original Environmental Assessment.

The supplemental measures concern plans for the installation of originally planned high pressure, gravity head sprinkler irrigation system and a reduction of impacts related to combining of irrigation diversion points. The supplemental plan does not change the upper irrigation diversions from the present condition. The supplemental planned work of improvement includes installation of various size plastic pipelines from 3–21 inches, concrete pipe inlet structures and appurtenances and accelerated technical assistance for irrigation water management.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Francis T. Holt.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

This is for RC&D:
"(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development Program. Executive Order 12372 regarding state and local clearinghouse review of Federal and federally assisted programs is applicable.)"

Norman W. Priest,

Deputy State Conservationist.

Date: June 21, 1989.

[FR Doc. 89–15529 Filed 6–29–89; 8:45 am]

BILLING CODE 3410–16–M

COMMISSION ON CIVIL RIGHTS

California Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the California Advisory Committee to the Commission will convene at 8:30 a.m. and adjourn at 5 p.m. on July 18, 1989, at the Marriott-Marina Hotel, 200 Marina Boulevard, Berkeley, California 94710. The purpose of the meeting is to hold a public forum on violence and bigotry on the University of California campus.

Persons desiring additional information, or planning a presentation to the committee, should contact Committee Chairperson, Deborah Hesse or Philip Montez, Director of the Western Regional Division (213) 894–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 21, 1989.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 89–15530 Filed 6–29–89; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 420]

Resolution and Order Approving the Application of the Lake Charles Harbor and Terminal District for a Subzone at the Citgo Petroleum Corp. Refinery in Calcasieu Parish, LA

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Lake Charles Harbor and Terminal District, grantee of FTZ 87, filed with the Foreign-Trade Zones Board (the Board) on December 30, 1987, requesting special-purpose subzone status for the crude oil refinery of Citgo Petroleum Corporation located in Calcasieu Parish, Louisiana, adjacent to the Lake Charles Customs port of entry, the Board finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations would be satisfied, and that the proposal would be in the public interest, if approval is subject to certain conditions, approves the application subject to the following conditions:

1. Foreign crude oil used as fuel for the refinery shall be dutiable.

2. Citgo shall elect privileged foreign status on foreign crude oil and other foreign merchandise admitted to the subzone.

3. The U.S. Customs Service shall inform the Foreign-Trade Zones Board on or before July 1, 1991, that a satisfactory control system has been implemented so that the revenue can be fully protected; otherwise, the authority under this grant shall expire on that date.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Whereas, By an act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes", as amended (19 U.S.C. 81a–81u (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, The Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, The Lake Charles Harbor and Terminal District, grantee of Foreign-Trade Zone No. 87, has made application (filed December 30, 1987, FTZ Docket 48–87, 53 FR 783) in due and proper form to the Board for authority to establish a special-purpose subzone at the oil refinery of Citgo Petroleum Corporation (Citgo) located in Calcasieu Parish, Louisiana;

Whereas, Notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and

Whereas, The Board has found that the requirements of the Act and the Board's regulations would be satisfied and that the proposal would be in the public interest if approval is given subject to the conditions in the resolution accompanying this action;

Now, therefore, In accordance with the application filed December 30, 1987, the Board hereby authorizes the establishment of a subzone at the Citgo refinery, designated on the records of the Board as Foreign-Trade Subzone No. 87B, at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the Regulations issued thereunder, and those stated in the resolution accompanying this action, and also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, State, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and District Army Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, The Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, DC, this 21st day of June, 1989, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Eric I. Garfinkel,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 89–15427 Filed 6–29–89; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

Quarterly Update of Foreign Government Subsidies on Articles of Quota Cheese

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Publication of Quarterly Update of Foreign Government Subsidies on Articles of Quota Cheese.

SUMMARY: The Department of Commerce, in consultation with the Secretary of Agriculture, has prepared a quarterly update to its annual list of foreign government subsidies on articles of quota cheese. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: July 1, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup of Paul J. McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION: Section 702(a) of the Trade Agreements Act of 1979 ("the TAA") requires the Department of Commerce ("the Department") to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of quota cheese, as defined in section 701(c)(1) of the TAA, and to publish an annual list and quarterly updates of the type and amount of those subsidies.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(h)(2) of the TAA) being provided either directly or indirectly by foreign governments on articles of quota cheese.

In the current quarter the Department has determined that the subsidy amounts have changed for each of the countries for which subsidies were identified in the last quarterly update to our January 1, 1989 annual subsidy list. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amount of each subsidy on which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of quota cheese to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the TAA (19 U.S.C. 1202 note).

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

Date: June 21, 1989.

APPENDIX—QUOTA CHEESE SUBSIDY PROGRAMS

Country	Program(s)	Gross [1] subsidy (cents per pound)	Net [2] subsidy (cents per pound)
Belgium	European Community (EC) Restitution Payments	36.8	36.8
Canada	Export Assistance on Certain Types of Cheese	29.4	29.4

APPENDIX—QUOTA CHEESE SUBSIDY PROGRAMS—Continued

Country	Program(s)	Gross [1] subsidy (cents per pound)	Net [2] subsidy (cents per pound)
Denmark	EC Restitution Payments	47.6	47.6
Finland	Export Subsidy	123.1	123.1
	Indirect Subsidies	22.7	22.7
		145.8	145.8
France	EC Restitution Payments	38.5	38.5
Greece	EC Restitution Payments	0.0	0.0
Ireland	EC Restitution Payments	42.1	42.1
Italy	EC Restitution Payments	56.0	56.0
Luxembourg	EC Restitution Payments	36.8	36.8
Netherlands	EC Restitution Payments	39.1	39.1
Norway	Indirect (Milk) Subsidy	17.9	17.9
	Consumer Subsidy	39.6	39.6
		57.5	57.5
Portugal	EC Restitution Payments	35.8	35.8
Spain	EC Restitution Payments	40.1	40.1
Switzerland	Deficiency Payments	68.5	68.5
U.K.	EC Restitution Payments	39.1	39.1
W. Germany	EC Restitution Payments	45.0	45.0

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1667(6).

[FR Doc. 89-15430 Filed 6-29-89; 8:45 am]
BILLING CODE 3510-DS-M

[C-533-066]

Certain Fasteners from India; Intent to Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of intent to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the countervailing duty order on certain industrial fasteners from India. Interested parties who object to this revocation must submit their comments in writing not later than July 31, 1989.

EFFECTIVE DATE: June 30, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup or Paul J. McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On July 21, 1980, the Department of Commerce ("the Department") published a countervailing duty order on certain fasteners from India (45 FR 48607). The Department has not received a request to conduct an administrative review of the countervailing duty order on certain industrial fasteners from India for the past four consecutive annual anniversary months. This year is the fifth anniversary.

The Department may revoke an order if the Secretary of Commerce concludes that an order is no longer of interest to interested parties. Accordingly, as required by § 355.25(d)(4) of the Commerce Department's regulations published in the **Federal Register** on December 27, 1988 (53 FR 52358) (to be codified at 19 CFR 355.25(d)(4)), the Department is notifying the public of its intent to revoke this countervailing duty order.

Opportunity to Object

Not later than July 31, 1989, interested parties, as defined in § 355.2(i) of the Department's regulations, may object to the Department's intent to revoke this order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review or object to the Department's intent to revoke by July 31, 1989, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with § 355.25(d)(4) of the Department's regulations.

Joseph A. Spetrini,
Deputy Assistant Secretary for Import Administration.

Date: June 26, 1989.

[FR Doc. 89-15428 Filed 6-29-89; 8:45 am]
BILLING CODE 3510-DS-M

[C-408-046]

Sugar From the European Community; Intent To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the countervailing duty order on sugar from the European Community. Interested parties who object to this revocation must submit their comments in writing not later than July 31, 1989.

EFFECTIVE DATE: June 30, 1989.

FOR FURTHER INFORMATION CONTACT: Al Jemmott or Ilene Hersher, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On July 31, 1978, the Department of Commerce ("the Department") published a countervailing duty order on sugar from the European Community (43 FR 33237). The Department has not received a request to conduct an administrative review of the countervailing duty order on sugar from the European Community for the past four consecutive annual anniversary months. This year is the fifth anniversary.

The Department may revoke an order if the Secretary of Commerce concludes that an order is no longer of interest to interested parties. Accordingly, as required by § 355.25(d)(4) of the Commerce Department's regulations published in the **Federal Register** on December 27, 1988 (53 FR 52358) (to be codified at 19 CFR 355.25 (d)(4)), the Department is notifying the public of its intent to revoke this countervailing duty order.

Opportunity to Object

Not later than July 31, 1989, interested parties, as defined in § 355.2(i) of the Department 's regulations, may object to the Department's intent to revoke this order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review or object to the Department's intent to revoke by July 31, 1989, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with § 355.25(d)(4) of the Department's regulations.

Joseph A. Spetrini,
Deputy Assistant Secretary for Import Administration.

Date: June 26, 1989.

[FR Doc. 89-15429 Filed 6-29-89; 8:45 am]
BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Permits; Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of issuance of an experimental fishing permit.

SUMMARY: This notice announces the issuance of an experimental fishing permit (EFP) to a mid-water trawl vessel that will delay sorting salmon from catches of Pacific whiting until the whiting harvest has been delivered to a dockside facility. An EFP allows the delayed sorting practice, which otherwise would be prohibited by Federal regulations.

EFFECTIVE DATES: April 1, 1989 to August 31, 1989.

ADDRESSES: Send comments to E.C. Fullerton, Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731; or to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, WA 98155.

FOR FURTHER INFORMATION CONTACT: James J. Morgan, Fisheries Management and Analysis Branch, Southwest Region, National Marine Fisheries Service, 213-514-6667; or William L. Robinson, Fisheries Management, Northwest Region, National Marine Fisheries Service, 206-526-6140.

SUPPLEMENTARY INFORMATION: The Pacific Coast Groundfish Fishery Management Plan (FMP) and implementing regulations at 50 CFR Part 663 state that experimental fishing permits may be issued to authorize fishing that otherwise would be prohibited by the FMP. The procedures for issuing EFPs are at 50 CFR 663.10.

A notice of the NMFS receiving an application from Eureka Fisheries Inc. for experimental permits for three mid-water trawl vessels was published in the **Federal Register** on June 22, 1988 (53 FR 23436). The purpose of obtaining the permits is to delay sorting of the harvest by the trawlers until the fish is delivered to port. This shortens the time between harvest of Pacific whiting and placing the fish in refrigerated seawater. Whiting deteriorates rapidly when caught; therefore, rapid refrigeration is necessary to maintain product quality.

The harvest of approximately 3,000 metric tons of whiting would most likely involve an incidential catch of Pacific salmon. Since 50 CFR 663.7(b) prohibits the retention of any species of salmonid, an experimental permit is needed to conduct an effective shore-based whiting fishery.

After public comments and review by the Pacific Fishery Management Council (Council) on November 18, 1988, the Council recommended that the incidental catch of salmon not exceed the limits placed on the joint venture fishery, which is 0.2 salmon per metric ton. The Council also did not want the retained salmon to have any effect on the salmon market; therefore, arrangements have been made to dispose of the fish to charitable organizations. These conditions, in addition to reporting and recordkeeping requirements, were included in the permits.

Since the application has been received and reviewed, two vessels have withdrawn, and only one vessel remains; therefore, a permit has been issued to the owner of the one remaining vessel, *Fishwish*. Fishing operations under the conditions of the permit may be conducted from Apil 1, 1989 to August 31, 1989. A copy of the permit may be obtained from the NMFS Regional Director at the above address.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 27, 1989.

Richard H. Schaefer,
Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-15521 Filed 6-29-89; 8:45 am]
BILLING CODE 3510-22-M

Marine Mammals; Permit Program Review; Extension of Comment Period

AGENCY: National Marine Fisheries Service (NOAA Fisheries), NOAA, Commerce.

ACTION: Notice.

SUMMARY: Notice extending the period for submission of written comments on the permit program review Discussion Paper to August 25, 1989. (See 54 FR 13099, March 30, 1989.)

DATE: Written comments on the Discussion Paper are requested on or before August 25, 1989.

ADDRESSES: Comments should be addressed to Nancy Foster, Ph.D., Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Art Jeffers of the Permits Division at the address above; telephone 301/427-2289.

SUPPLEMENTARY INFORMATION: The National Marine Fisheries Service (NOAA) Fisheries) published a notice in the **Federal Register**, 54 FR 13099, March 30, 1989, stating its intent to conduct a review of NOAA Fisheries' program and policies for issuing permits to take marine mammals for purposes of scientific research and public display pursuant to the Marine Mammal Protection Act and the Endangered Species Act. As a part of the permit program review, NOAA Fisheries distributed a Discussion Paper that describes the permit program and summarizes questions relevant to the review. To allow an adequate period of time for public review and comment on the Discussion Paper, NOAA Fisheries has determined that an extension of the period for submission of written comments is necessary. Anyone wishing to receive a copy of the Discussion Paper should send a written request to the above address.

Date: June 21, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89-15439 Filed 6-29-89; 8:45 am]

BILLING CODE 3510-22-M

COMMISSION FOR THE IMPROVEMENT OF THE FEDERAL CROP INSURANCE PROGRAM

Meeting

Under the Federal Crop Insurance Commission Act of 1988 (7 U.S.C. 1506 note), notice is hereby given of the following meeting of the Commission for the Improvement of the Federal Crop Insurance Program:

Date: July 6-7, 1989.

Time: 10:00 a.m.—Noon, 1:00-5:30 p.m., July 6; 8:00 a.m.—1:00 p.m., July 7.

Place: Embassy Suites Hotel, 1250 22nd Street, NW., Washington, DC, 20037. Telephone: (202) 857-3388.

Type of Meeting: Open to the public.

Comments: The public may file written comments before or after the meeting with the contact person listed below.

Purpose: To continue discussions on the development of recommendations to improve the Federal crop insurance program.

At this meeting, the Commission hopes to complete the drafting of its principal report to the Secretary of Agriculture and the Congressional agriculture committees. The report will include: (1) Recommendations for legislation to improve the Federal crop insurance program; (2) a status report on the improvement of program administration by the Secretary based on the recommendations contained in the interim report of the Commission that was filed in April with the Secretary and the Congressional agriculture committees; and (3) findings and recommendations setting forth means by which participation in the program may be increased and natural disaster protection for producers of agricultural commodities may be improved.

Contact Person: Kellye A. Eversole, Executive Director, Commission for the Improvement of the Federal Crop Insurance Program, 1256 23rd Street, NW., Suite 880, Washington, DC, 20037. Telephone: (202) 857-6700.

Done at Washington, DC, this 27th day of June 1989.

Kellye A. Eversole,

Executive Director.

[FR Doc. 89-15518 Filed 6-29-89; 8:45 am]

BILLING CODE 3410-FN-M

COMMISSION ON RAILROAD RETIREMENT REFORM

Meeting

ACTION: Meeting.

SUMMARY: The Commission Railroad Retirement Reform ("the Commission") will hold a meeting on Tuesday, July 18, 1989. The Commission was established by section 2101 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203, enacted December 22, 1987.

Date, Time and Place: July 18, 1989, 9:00 AM—3 PM, Association of American Railroads, 50 F Street NW., Washington, DC (4th Floor Conference Center).

Agenda: The open meeting will include presentations on long-term railroad employment projections, the 17th Actuarial Valuation, and Railroad Retirement coverage of employees of the National Railroad Passenger Corporation (AMTRAK).

FOR ADDITIONAL INFORMATION: Contact Maureen Kiser, 202-254-3223, Commission on Railroad Retirement Reform, 1111 18th Street, N.W., Washington, D.C. 20036.

SUPPLEMENTARY INFORMATION: See Federal Register, volume 54FR, No. 40, Thursday, March 2, 1989, Page 8858.

Kenneth J. Zell,

Executive Director.

[FR Doc. 89-15540 Filed 6-29-89; 8:45 am]

BILLING CODE 6820-63-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Indonesia

June 23, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for a new agreement year.

EFFECTIVE DATE: July 3, 1989.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535-9480. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current bilateral textile agreement between the Governments of the United States and Indonesia establishes limits for the period beginning July 1, 1989 and extending through June 30, 1990. The limits for certain categories include an additional 5 percent for traditional folklore products made of handloomed fabrics, as provided for the agreement.

A copy of the agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647-1898.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 53 FR 44937, published on November 7, 1988).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 23, 1989.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated September 25 and October 3, 1985, as amended, between the Governments of the United States and Indonesia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972; as amended, you are directed to prohibit, effective on July 3, 1989, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Indonesia and exported during the twelve-month period which begins on July 1, 1989 and extends through June 30, 1990, in excess of the following levels of restraint:

Category	12-mo restraint limit
Group I:	
219, 313-315, 317/617/326, 331, 334-336, 338/339, 340 341, 347/348, 351, 369-S [1], 445/446, 604-A [2], 613/614/615, 625/626, 635, 638/639, 640, 641, 645/646, 647 and 648, as a group.	243,792,884 square meters equivalent.
Sublevels within Group I:	
219	5,395,552 square meters.
313	9,790,176 square meters.
314	34,184,644 square meters.
315	16,928,965 square meters.
317/617/326	15,191,511 dozen.
331	504,991 dozen pairs.
334	35,350 dozen.
335	90,898 dozen.
336	86,164 dozen.
338/339	681,738 dozen.
340	467,116 dozen.
341	530,241 dozen.
347/348	883,734 dozen.
351	138,872 dozen.
369-S	515,393 Kilograms.
445/446	52,030 dozen.
604-A	400,859 Kilograms.
613/614/615	13,500,530 square meters.
625/626	14,895,296 square meters.
635	94,686 dozen.
638/639	871,109 dozen.
640	462,049 dozen.
641	1,344,177 dozen.
645/646	441,867 dozen.
647	552,069 dozen.
648	1,342,450 dozen.
Group II:	
200, 201, 218, 220, 222-227, 229, 237, 239, 300, 301, 330, 332, 333, 342/642, 345, 349, 350, 352-354, 359, 360-363, 369-D [3], 369-O [4], 400-444, 447-469, 600, 603, 604-O [5], 606, 607, 611, 618-622, 624, 627-629, 630, 631-634, 636, 643, 644, 649, 650, 651, 652-654, 659, 665, 666, 669, 670, 831-836, 838, 839, 840, 842-847, 850-852, 858 and 859, as a group.	67,017,022 square meters equivalent.
Sublevels within Group II:	
237	249,518 dozen.
342/642	200,092 dozen.
345	244,158 dozen.
350	72,533 dozen.
369-D	459,205 kilograms.
631	872,709 dozen pairs.
636	262,619 dozen.
651	128,809 dozen.
Subgroup of Group II:	
400-444 and 447-469, as a group.	2,739,452 square meters equivalent.

[1] In Category 369-S, only HTS number 6307.10.2005.

[2] In Category 604-A, only HTS number 5509.32.0000.

[3] In Category 369-D, only HTS numbers 6302.60.0010 and 6302.91.0020.

[4] In Category 369-O, all HTS numbers except 6302.91.0020 in Category 369-D; and 6307.10.2005 in Category 369-S.

[5] In Category 604-O, all HTS numbers except 5509.32.0000.

Imports charged to these category limits for the periods July 1, 1988 through June 30, 1989 and January 1, 1989 through June 30, 1989 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for those periods have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The foregoing limits may be adjusted in the future under the provisions of the current bilateral agreement between the Governments of the United States and Indonesia.

The conversion factor for Categories 638/639 is 13.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-15425 Filed 6-29-89; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of Import Limit and Sublimit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Mexico

June 26, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: June 27, 1989.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports Posted on the bulletin boards of each Customs port or call (202) 535-9481. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit and sublimit for cotton and man-made fiber textile products in Categories 342/642 from Mexico are being increased for swing, carryover and unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 52461, published on December 28, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 26, 1989.

Commissioner of Customs, Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 22, 1988 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Mexico and exported during the period which began on January 1, 1989 and extends through December 31, 1989.

Effective on June 27, 1989, the directive of December 22, 1988 is amended further to increase the limit and sublimit for Categories 342/642, as provided under the provisions of the current bilateral agreement between the Governments of the United States and the United Mexican States:

Category	Adjusted 12-month limit [1]
342/642	350,436 dozen
Non-Special Regime Category Sublimit:	
342/642	70,087 dozen

[1] The limits have not been adjusted to account for any imports exported after December 31, 1988.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
Auggie D Tantillo,
Chairman, Committee for the Implementation of Textile Agreements.
[FR Doc. 89-15485 Filed 6-29-89; 8:45 am]
BILLING CODE 3510-DR-M

Announcement of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Turkey

June 23, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for a new agreement year.

EFFECTIVE DATE: July 3, 1989.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6582. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: *Authority.* Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current bilateral textile agreement between the Governments of the United States and the Republic of Turkey establishes limits for the period beginning July 1, 1988, and extending through June 30, 1990. The limits for Categories 338/339, 341 and 369-S have been adjusted for carryforward used; the limit for Category 604 has been adjusted to account for overshipments of a previous limit.

A copy of the agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647-1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,
Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 23, 1989.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton and Man-Made Fiber Textile Agreement, effected by exchange of notes dated October 19, 1988 and November 16, 1988, as amended, between the Governments of the United States and the Republic of Turkey; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on July 3, 1989, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Turkey and exported during the twelve-month period which begins on July 1, 1989, and extends through June 30, 1990, in excess of the following levels of restraint:

Category	12-mo. restraint limit
Fabric Group:	
219, 313, 314, 315, 317, 326, 617, 625, 626, 627 and 628.	85,970,815 square meters of which not more than 19,941,638 square meters shall be in 219. 24,373,113 square meters shall be in 313. 14,180,720 square meters shall be in 314. 19,955,343 square meters shall be in 315. 19,941,638 square meters shall be in 317. 2,215,738 square meters shall be in 326. 13,294,425 square meters shall be in 617. 2,215,738 square meters shall be in 625. 2,215,738 square meters shall be in 626. 2,215,738 square meters shall be in 627. 2,215,738 square meters shall be in 628.
Limits not in a Group:	
200	721, 212 kilograms.
237	132,508 dozen.
300/301	3,511,533 kilograms.
335	86,580 dozen.
338/339	1,300,000 dozen of which not more than 910,000 dozen shall be in other than T-shirts and tank tops in Categories 338-S/339-S [1].
340/640	561,000 dozen of which not more than 224,640 dozen shall be in shirts made from fabric of two or more colors in the warp and/or the filling in Categories 340-Y/640-Y [2].
341	514,580 dozen of which not more than 180,075 dozen shall be in blouses made from fabric of two or more colors in the warp and/or the filling in Category 341-Y [3].
342/642	297,754 dozen.
347/348	1,404,500 dozen of which not more than 702,250 dozen shall be in trousers in Categories 347-T/348-T [4].
350	147,340 dozen.
361	530,000 numbers.
369-S [5]	739,358 kilograms.
604	764,795 kilograms.

[1] In Categories 338-S/339-S, only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.3010, 6109.10.0035, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.0068, 6112.11.0030 and 6114.20.0005, in Category 338-S; and 6104.22.0060, 6104.29.2046, 6106.10.0010, 6106.10.0030, 6106.90.2010, 6106.99.3010, 6109.10.0070, 6110.20.1030, 6110.29.2045, 6110.20.2075, 6110.90.0070, 6112.11.0040, 6114.20.0010 and 6117.90.0022 in Category 339-S.

[2] In Categories 340-Y/640-Y, only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060 in Category 340-Y; and 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060 in Category 640-Y.

[3] In Category 341-Y, only HTS numbers 6204.22.3060, 6206.30.3010 and 6206.30.3030.

[4] In Categories 347-T/348-T, only HTS numbers 6103.19.2015, 6103.19.4020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.3010, 6112.11.0050, 6113.00.0035, 6203.19.1020, 6203.19.4020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.3020, 6210.40.2030, 6211.20.1520, 6211.20.3010 and 6211.32.0040 in Category 347-T; and 6104.12.0030, 6104.19.2030, 6104.22.0040, 6104.29.2034, 6104.62.2010, 6104.62.2025, 6104.69.3022, 6112.11.0060, 6113.00.0040, 6117.90.0042, 6204.12.0030, 6204.19.3830, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.3010, 6204.69.9010, 6210.50.2030, 6211.20.1550, 6211.20.6010, 6211.42.0030 and 6217.90.0050 in Category 348-T.

[5] In Category 369-S only HTS number 6307.10.2005.

Imports charged to these category limits for the periods July 1, 1988 through June 30, 1989, and September 30, 1988 through June 30, 1989, shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for those periods have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
Auggie D. Tantillo,
Chairman, Committee for the Implementation of Textile Agreements.
[FR Doc. 89-15428 Filed 6-29-89; 8:45 am]
BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1989; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List 1989 services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: July 31, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On May 5 and 12, 1989, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (54 FR 19429 and 20628) of proposed additions to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018).

No comments were received concerning the proposed additions to the Procurement List. After considertion of the material presented to it concerning capability of qualified workshops to produce the commodity and provide the services at fair market prices and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the services listed.

c. The actions will result in authorizing small entities to provide the services procured by the Government.

Accordingly, the following services are hereby added to Procurement List 1989:

Commissary Shelf Stocking
Naval Air Station, Cecil Field, Florida
Janitorial/Custodial
U.S. Army Reserve Center, 360 West California Avenue, Memphis, Tennessee.

Beverly L. Milkman,
Executive Director.
[FR Doc. 89-15537 Filed 6-29-89; 8:45 am]
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Procurement List 1989; Proposed Addition and Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Addition to and Deletions from Procurement List.

SUMMARY: The Committee has received proposals to add to and delete from Procurement List 1989 services to be provided by workshops for the blind and other severely handicapped.

Comments must be received on or before: July 31, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: E.R. Alley, Jr. (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide intersted persons an opportunity to submit comments on the possible impact of the proposed actions.

Addition

If the Committee approves the proposed addition, all entities of the Federal Government will be required to procure the service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following service to Procurement List 1989, which was published November 15, 1988 (53 FR 46018):

Janitorial/Custodial
U.S. Army Corps of Engineers at the following Yakima, Washington locations: Fort Lewis Resident Office, Project Office adjacent to Building 810, Yakima Firing Center.

Deletions

It is proposed to delete the following services from Procurement List 1989, which was published November 15, 1988 (53 FR 46018):

Commissary Shelf Stocking
Naval Construction, Battalion Center, Gulfport, Mississippi.
Janitorial/Custodial
Naval and Marine, Reserve Center, Jackson, Mississippi.

Beverly L. Milkman,
Executive Director.
[FR Doc. 89-15538 Filed 6-29-89; 8:45 am]
BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Department of the Army

Updated Proposed Program for Qualifying Freight Motor Carriers

AGENCY: Military Traffic Management Command (MTMC), Department of the Army, DOD.

ACTION: Updated, proposed program for qualifying DOD freight motor carriers.

SUMMARY: Item was previously published in the issue of Thursday, May 19, 1988 (53 FR 17970). MTMC requests public comment on its proposed Freight Carrier Qualification Program. Subject to certain exceptions, the program will apply to all freight motor carriers intending to participate in transportation of all freight administered by MTMC's Directorate of Inland Traffic (except used household goods, hazardous, or secret materials, and sensitive weapons and munitions). The program will commence at a date announced in the final publication of the program in the **Federal Register**. Carriers without rates on file as of the effective date will have to qualify prior to MTMC's acceptance of their service offers. Carriers with rates on file as of the effective date will be required to submit qualification data when requested by MTMC. All carriers will be required to meet these qualification standards within 2 years of the implementation of this program.

Carriers interested in qualifying or remaining qualified will submit the data described below to the appropriate area command (Bayonne, NJ or Oakland, CA) based on the carrier's headquarters domicile. The area command will schedule a meeting with the carrier to clarify any qualification elements. The carrier must attend and provide an oral presentation on its company. The carrier may also receive guidance on how to do business with the DOD. The area command will then evaluate the data to determine whether the carrier has the equipment, facilities, personnel and finances necessary to handle the carrier's proposed scope of operations. The area commands will then forward

the application to HQMTMC for approval.

If the carrier is approved and signs the agreement, HQMTMC will then accept (or in the case of existing carriers continue to accept) tenders, tariffs or similar rate submissions. Carriers disapproved will be notified of the problems found and may reapply for approval once the problems have been corrected.

DATES: Comments must be received by July 31, 1989.

ADDRESS: Comments may be addressed to: Headquarters, Military Traffic Management Command, 5611 Columbia Pike, ATTN: MT–INFF, Room 607, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: Ms. Rose Sharpe or Ms. Patricia McCormick at (703) 756–1062.

SUPPLEMENTARY INFORMATION: MTMC's proposed qualification criteria are as follows:

a. Safety Ratings. Carrier will not have an "unsatisfactory" safety rating with the Federal Highway Administration, Department of Transportation, and if it is an intrastate motor carrier, with the appropriate state agency. Carriers with "conditional" or "insufficient information" ratings may be used to transport DOD general commodities provided that such carriers certify in writing that they are now in full compliance with Department of Transportation safety requirements.

b. Operating Authorities. Carriers will submit copies of all certificates authorizing operations as a common carrier (interstate and intrastate) needed to transport DOD traffic.

c. Insurance—Public Liability and Cargo

(1) Public Liability. Motor carriers will submit proof of their public liability insurance to MTMC on a certificate of insurance form issued by the insurance company. Expiration dates and deductible will not be reflected on the certificate. The insurance underwriter must have a policyholder's rating of "A" or better in Best's Insurance Guide. The certificate holder block of the form will identify HQMTMC, 5611 Columbia Pike, Falls Church, Virginia 22041–5050, ATTN: MT–INFF, to be notified, in writing, 30 days in advance of any change or cancellation. Self-Insurance will not be accepted. The public liability requirements are specified by 49 CFR 387.9 and are summarized as follows based on the commodities transported:

Property (nonhazardous)	$750,000
Oil; hazardous waste, materials and substances not in bulk	1,000,000

(2) Cargo. Motor carriers will be required to have their insurance company provide proof of cargo insurance to MTMC on a certificate of insurance form. Expiration dates and deductible will not be reflected on the certificate. The insurance underwriter must have a policyholder's rating of "A" or better in Best's Insurance Guide. The certificate holder block of the form will identify HOMTMC, 5611 Columbia Pike, Falls Church, Virginia 22041–5050, ATTN: MT–INFF, to be notified in writing, 30 days in advance of any change or cancellation. DOD's minimum cargo insurance requirements are $150,000 for loss and damage of Government freight and/or $20,000 per vehicle transported (e.g., automobile transporters or vehicles in haulaway service) in the form of certificate(s) of insurance. Self-Insurance will not be accepted.

d. Financial Records. Motor carriers will provide copies of their balance sheet and income statements for the last 3 taxable years. Motor carriers in existence less than 3 years but more than 12 months must provide copies of all balance sheets and income statements from the date business was commenced. Carriers in business less than 12 months must provide a balance sheet showing all assets and liabilities. All carriers must also state their extent of financial interests in other transportation companies or their affiliation with any person or firm holding interests in other transportation companies.

e. Carriers will provide the following information:

(1) A listing of company's officers.

(2) A listing of the company's owners and the percentage owned by each.

(3) Company background and history including the year the company was formed.

(4) A list by type and quantity of equipment owned and leased.

(5) The number of company drivers employed and number of drivers under lease.

(6) Copies of interline agreements, long-term and short-term lease agreements, and equipment leases.

(7) A list of terminal locations including the street address and telephone numbers, and descriptions of the terminal facilities.

(8) Three reference letters from the shippers they served during the previous 12 months.

(9) Proposed services by type of service, traffic lane, or geographical area.

(10) Copies of driver hiring, screening, and training procedures.

(11) Disadvantaged (Minority) and women-owned business certification (if applicable).

f. Annual Performance Bond. Motor carriers will provide HQMTMC with an Annual Performance Bond. The bond must be issued by a surety company listed in the Fiscal Service, Treasury Department Circular No. 570. Initially, the penal sum of the bond shall be no less than $100,000. Thereafter, the requirement will be 2.5% of the carrier's annual gross income derived from all DOD shipments, or $100,000, whichever is greater. The Annual Performance Bond secures performance and fulfillment of the contractor obligation. It will cover default, inability to perform, bankruptcy and overcharges.

g. Carriers meeting the above qualification requirements will be required to sign the following agreement:

Basic Agreement Between the Military Traffic Management Command and Motor Common Carriers for Approval To Transport General Commodities for the Department of Defense

1. The undersigned, who is duly authorized and empowered to act on behalf of_____, hereinafter called the carrier, as a prerequisite for approval to transport general commodities for the account of the Department of Defense (DOD) and the Military Traffic Management Command (MTMC), hereinafter called the Government, agrees to comply with all requirements and conditions as set forth in this Agreement. This Agreement governs the transportation of all DOD freight administered by the Directorate of Inland Traffic, MTMC (except used household goods, hazardous or secret materials, and sensitive weapons and munitions). Noncompliance by the carrier with any provision of this Agreement may result in termination by MTMC of approval to participate in this traffic. If the carrier's approval is revoked, the carrier may be prohibited from participation in any DOD freight traffic for up to 1 year.

2. Approval and Revocation.

a. Carrier understands that its initial approval and retention of approval are contingent on establishing and maintaining, to MTMC's satisfaction, sufficient resources to support its proposed scope of operations and services. Sufficient resources include the equipment, personnel, facilities, and finances to handle the traffic anticipated by DOD/MTMC under the carrier's proposed scope of operations in accordance with the service requirements of the shipper.

b. The carrier understands that MTMC may revoke approval at any time upon discovery of grounds for ineligibility or disqualification. The carrier further understands that it is not authorized to submit tenders for shipments requiring a Transportation Protective Service until it has served DOD in an approved status for 12 continuous months.

c. In addition to the initial evaluation, the carrier agrees that it will cooperate with MTMC follow-up evaluations at any time subsequent to signing this agreement to confirm continued eligibility.

3. Lawful Performance. Transportation for the DOD will be performed in accordance with all applicable Federal, State, municipal, and other local laws and regulations. No fines, charges, or assessments for overloaded vehicles or other violations of applicable laws and regulations will be passed to or be paid by any agency of the Federal Government.

4. Operating Authority. Carrier will maintain valid motor common carrier operating certificates for its scope of operations. Any carrier found to be, in fact, involved in the brokerage of DOD freight traffic will have its approval revoked.

5. Insurance.

a. Minimum public liability insurance requirements are prescribed in Title 49 of the Code of Federal Regulations, § 387.9. Carriers will ensure that their insurance company(s) file with the Interstate Commerce Commission proof of public liability insurance, in the form of a BMC 91 or 91X, or MCS 90, in accordance with sections 29 and 30 of the Motor Carrier Act of 1980. Further, the motor carrier will provide MTMC with a certificate of insurance form. The certificate holder block of the form will identify HQMTMC, 5611 Columbia Pike, Falls Church, Virginia 22041–5050, ATTN: MT–INFF, to be notified in writing, 30 days in advance of any change or cancellation. Expiration dates and deductables will not be reflected on the certificate. The insurance underwriter must have a policyholder's rating of "A" or better in Best's Insurance Guide. Self-Insurance will not be accepted.

b. The carrier will also file with MTMC proof of $150,000 per incident minimum cargo insurance for loss and damage of Government freight. If transporting automobiles or vehicles in haulaway service using automobile transporters or trailers, the carrier will file proof of minimum cargo insurance of $20,000 per vehicle.

c. The insurance, carried in the name of the carrier, will be in force at all times while this Agreement is in effect or until such time as the carrier cancels all tenders. The carrier will ensure that the policies include a provision requiring the insurer to notify in writing, HQMTMC 30 days prior to any change or cancellation of the policies. Proof of insurance must also be on file with HQMTMC prior to any performance of service by the carrier. Changes, renewals and cancellation notices must also be sent to HQMTMC at the address in paragraph 19. Self-insurance will not be accepted. This requirement applies to both interstate and intrastate carriers. Carrier's insurance policy(s) must cover all equipment used to transport DOD freight.

6. Annual Performance Bond. Carriers will provide HQMTMC with an Annual Performance Bond at no cost to the Government. The bond secures performance and fulfillment of the contractor obligation. It will cover default, inability to perform, bankruptcy and overcharges. The bond must be issued by a surety company listed in the Fiscal Service, Treasury Department Circular No. 570. Initially, the penal sum of the bond shall be no less than $100,000. Thereafter, the requirement will be 2.5% of the carrier's annual gross income derived from all DOD shipments, or $100,000 whichever is greater. The Annual Performance Bond must be completed on the form provided by HQMTMC.

7. Safety.

a. Carrier will not have an "unsatisfactory" safety rating with the Federal Highway Administration, Department of Transportation, and, if it is an intrastate motor carrier, with the appropriate state agency. The carrier further agrees to allow unannounced safety inspections of its facilities, terminals, equipment, employees, operations, and procedures by DOD civilian, military, or contract employees. These inspections may include in transit surveillance of vehicles and drivers. Carrier will provide evidence of an active driver safety training and evaluation program that fulfills the requirements set forth at 49 CFR Parts 390–396. Inspection of carrier equipment, driver's records, route plans, and inspection reports will be allowed during pickup and delivery of shipments and in coordination with police or other authorities while in transit. Upon request, the carrier agrees to furnish sufficient information to permit MTMC to verify or inspect carrier and driver records.

b. The carrier will have, in place, a company-wide safety management program. Carrier safety programs will comply with applicable Federal, State and local statutes or requirements. Safety programs at the company wide or terminal level may be subject to evaluation by a DOD representative.

c. The carrier will notify the consignor and consignee named on the Government bill of lading (GBL) or Commercial bill of lading (CBL) of cargo loss, damage, or unusual delay. Information reported will include origin/destination, GBL/CBL number, shipping paper information, and time and place of occurrence, and other pertinent accident details. When requested, carrier will furnish to MTMC a copy of accident reports submitted to Department of Transportation on Form MCS 50–T (Property).

8. Driver Requirements. Any driver used by carriers to transport DOD freight must possess a valid driver's license issued by his or her state of domicile. Drivers must have, at a minimum, 1 year's experience driving equipment similar to that used to transport DOD freight or have graduated from an accredited motor carrier driving school.

9. Equipment. The carrier is prohibited from using trip-leased equipment or drivers, except upon prior approval from HQMTMC. Leases of less than 30 days are considered trip leases.

10. Shipment. The carrier agrees to provide the status of any shipment within 24 hours after an inquiry is made at no additional cost to the Government. Further, the carrier will not divulge any information to unauthorized persons concerning the nature and movement of any DOD shipment.

11. Documentation.

a. Carrier agrees to accept GBLs and CBLs on which freight charges will be paid by the Government and will be bound by all terms and conditions stated on SF 1103 regardless of the type of bill of lading tendered.

b. The carrier will comply with the documentation prelodge procedures in effect at Military Ocean Terminals when cargo is consigned for further movement overseas. (Prelodging is the submission of advance shipment documents which identifies the shipment to the Military Ocean Terminal prior to delivery of the cargo at the terminal.) Instructions will be provided by the consignor to furnish certain data at least 24 hours in advance of cargo delivery to the terminal.

12. Loss or Damage. The carrier will be liable for loss or damage to cargo in accordance with the provisions of Title 49, United States Code, Section 11707 (the Carmack Amendment to the Interstate Commerce Act). Carrier agrees to promptly settle uncontested claims for loss or damage.

13. Standard Tender of Service.

a. The carrier will comply with the preparation and filing instructions and applicable freight traffic rules publications issued by MTMC. Carrier understands that tenders not in compliance with these instructions will be rejected by MTMC.

b. Carrier will provide MTMC with a street address where the company office is located in lieu of a post office box number. Carrier will provide the address prior to or in conjunction with submission of any tenders or other rate schedules. The carrier will also advise MTMC of any change in address prior to the effective date of the change. Failure to do so is grounds to discontinue the use of the carrier.

c. Carrier understands that tenders inadvertently accepted and distributed for use and not in compliance with this agreement, the provisions contained in the Standard Tender of Freight Services (MT Form 364–R), or the applicable MTMC Freight Traffic Rules Publication, and supplements thereof, will be subject to immediate removal. The issuing carrier will be advised when tenders are removed under these circumstances. The carrier may also be placed in a nonuse status pending correction of the tenders.

14. Rates. Carrier agrees to transport Government shipments at its lowest applicable rate whether or not the rate tender is referenced on the GBL/CBL.

15. Carrier Performance. Carrier's equipment, performance, and standards of service will conform with its obligations under Federal, State, and local law and regulation as well as with the guidelines found in the Defense Traffic Management Regulation and this Agreement. The carrier fully understands its obligation to remain current in its knowledge of service standards. The carrier accepts the Government's right to revoke approval, declare ineligible, nonuse, or disqualify the carrier for unsatisfactory service subsequent to approval or for any other operating deficiency, or for noncompliance with terms of the Agreement or terms of negotiated agreements, tariffs, tenders, bills of lading or similar arrangements determining the relationship of the parties, or for the publication or

assessment of unreasonable rates, charges, rules, descriptions, classifications, practices, or other unreasonable provisions of tariffs/tenders.

16. General Provisions. The carrier agrees to have a valid Standard Carrier Alpha Code (SCAC) and use it on all DOD billing documents, and correspondence pertaining to the shipment of freight. If different operating divisions of a carrier desire to file tenders with the DOD, the carrier agrees to maintain a separate agreement and SCAC with MTMC for each division.

17. Terms of the Agreement.

a. The terms of this Agreement will be applicable to each shipment.

b. This Agreement shall be effective from the date of acknowledgment by MTMC until terminated upon receipt of written notice by either party.

c. Nothing in this Agreement will be construed as a guarantee by the Government of any particular volume of traffic.

d. The carrier will immediately notify MTMC of any changes in ownership, changes in affiliations, executive officers, and/or board members, and carrier name change.

18. Additional Specialized Requirements. The terms of this Agreement will not prevent different or additional requirements with respect to negotiated agreements or added requirements for any other types of service and/or commodities.

19. Inquiries. Inquiries may be referred to: Commander, Military Traffic Management Command, Attention: MT–INFF, 5611 Columbia Pike, Falls Church, VA 22041–5050.

20. Carrier Acknowledgment and Acceptance. The certifying carrier official will ensure all company officials and employees are familiar with the requirements of this Agreement and are in full compliance with the applicable provisions contained herein.

Any information found to be falsely represented in the Motor Carrier Qualification Form, the attachments, or during the qualification procedures shall be grounds for automatic cancellation of this agreement and immediate nonuse of the carrier, the affiliated companies, divisions and entities.

I, (Typed Name and Title of Carrier Official), understand the requirements of this agreement and on behalf of (Typed Name of Carrier), agree to comply with the terms and conditions contained herein.

Name of Carrier _____

Carrier Address _____

_____

_____

Telephone Number ( ) _____

24 Hr Emergency Number ( ) _____

_____

Signature of Carrier Official

_____

Date

SCAC _____

Interstate Operating Authority Certificate Number—MC _____

Intrastate Operating Authority

Certificate Number(s) _____

(Include Issuing State

e.g. PA—#12345) _____

Military Traffic Management Command Acknowledgment/Acceptance

Signature _____

Title _____

Date _____

Kenneth L. Denton,

Department of the Army, Alternate Liaison Officer with the Federal Register.

[FR Doc. 89–15367 Filed 6–29–89; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers, Department of the Army

Intent to Prepare Environmental Impact Statement for Operation of Prado Dam for Water Conservation

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent to prepare draft environmental impact statement.

SUMMARY: 1. Proposed Action. Prado Dam is located on the Santa Ana River upstream from Orange County, California. Its primary purpose is for flood control, although it is authorized for incidential water conservation. Various recreation users and wildlife resources are present in the basin. Alternatives considered for detailed study are (1) Flood season storage (incidental) from October 1 to March 1 to elevation 494' (with forecasting); from March 1 to August 1 seasonal storage will be investigated for elevations 495', 500' and 505', and (2) Only seasonal water conservation from March 1 to August 1 for elevations 495', 500' and 505'. Seasonal expanded water conservation would provide recharge water for the spreading facilities downstream of the dam. Three alternative conservation pool maximum elevations as well as present operation are considered. Primary areas of impact are to biological resources, cultural and historic resources, and recreation use of the basin. The least Bell's vireo, an endangered species, is present in the basin at elevations that would be inundated by water.

2. Scoping Process. Individuals, organizations and government agencies are invited to participate in the scoping process. This will assist the U.S. Army in identifying potential impacts on the quality of the environment resulting from acquisition and utilization of the additional lands. The date, time and place of the first scoping meetings will be announced at a later date through invitations in publications and newspapers in regular circulation in the area. The Draft EIS is expected to be available to the public in May 1990. Comments received on the Draft EIS will be considered in the preparation of the Final EIS. Persons desiring to be placed on the mailing list to receive the Draft EIS, require further information or have comments regarding this action, are directed to Mr. Gray Gunther, Water Resources Branch, U.S. Army Corps of Engineers, Los Angeles District, P.O. Box 2711, Los Angeles, California 90053–2325, (213) 894–3825 or the Public Affairs Office.

Dated: June 2, 1989.

Tadahiko Ono,

Colonel, Corps of Engineers, District Engineer.

Kenneth L. Denton,

Department of the Army Alternate Liaison Officer With the Federal Register.

[FR Doc. 89–15626 Filed 6–29–89; 8:45 am]

BILLING CODE 3710–08–M

Department of the Air Force

Intent To Prepare an Environmental Impact Statement of the Proposed Construction and Operation of the Dynamic Coherent Measurement System (DYCOMS) at White Sands Missile Range, NM

The Department of the Air Force is proposing to construct and operate the Dynamic Coherent Measurement System (DYCOMS) at White Sands Missile Range (WSMR), New Mexico, to test Department of Defense long-range radars and associated radar target vehicles. The proposed location of DYCOMS is at North Oscura Peak (NOP) in the northern portion of WSMR, approximately eight miles west of the east WSMR boundary. The Department of the Army, White Sands Missile Range, is a cooperating agency in this effort.

NOP was selected as the preferred alternative after a lengthy siting process where 10 locations were evaluated. The other sites evaluated were (1) Trigo Peak, Yuma Proving Grounds, AZ; (2) Superstition Mountain, El Centro Naval Air Facility, CA: (3) Hurricane Mesa, UT; (4) Winnemuca, NV; (5) Fort Huachuca, AZ; (6) Mountain Home Air Force Base, ID: (7) Green River, UT: (8) Parrot Point, China Lake, CA; (9) Luhmens Ridge, Edwards Air Force Base, CA and (10) NOrth Oscura Peak, White Sands Missile Range, NM. Each site was evaluated based on operational considerations to include quiet radio frequency environment, low radar clutter levels and Department of Defense (DoD) restricted air space. Sites 1 through 7 were eliminated from consideration because they presented unacceptable degradation of operational effectiveness. The remaining three are potential sites with NOP being the most operationally suitable. A more detailed description of the siting process will be addressed in the EIS documentation.

Four alternatives are being considered. The first and preferred alternative is to install the proposed DYCOMS at North Oscura Peak, WSMR. The second alternative would be to install DYCOMS at China Lake Naval Weapons Center, CA. The third alternative would be to install DYCOMS at Edwards AFB, CA. The fourth alternative is to do nothing. The No Action alternative would preclude all adverse and beneficial environmental and economic impacts; however, it also would preclude accomplishment of radar tests and measurements critical to National Defense.

Locating a DYCOMS complex at WSMR would require installation of eight new radars, construction of one new building at NOP, construction of one new building in the north central portion of WSMR, and refurbishment of four existing buildings at NOP. Installation of the new radars and erection of new buildings are necessary to meet specific target engagement objectives which cannot be met with other existing facilities.

Operating DYCOMS, for the most part, would utilize existing NOP buildings and facilities, and would use available flight test corridors and assigned frequencies. Aerial flights would originate from various military airfields located off of WSMR. For the first year of operation, flight activity would be one 2 hour sortie each day, 3 days per week. After the first year, sortie activity would increase to 2 per day, each lasting 2 hours, 5 days per week. Sortie activity at WSMR would be during early morning hours or after sunset at flight levels between 1,000 feet above ground level (AGL) and 25,000 feet AGL. The airspace required would be primarily within the WSMR airspace corridors around North Oscura Peak. Airspace would be scheduled through WSMR range control. Varied fighter and bomber aircraft in the DoD inventory would be tested.

Locating a DYCOMS complex at China Lake Naval Weapons Center, CA would require installation of eight new radars, construction of multiple new buildings at Parrot Point, significant improvement of the access roads and upgrade of power systems to include stringing of lines from an origination point other than the proposed immediate location. Installation of the new radars and erection of new buildings are necessary to meet specific target engagement objectives which cannot be met with existing facilities. Aerial activity would be similar to that of WSMR.

Locating a DYCOMS complex at Edwards AFB, CA would require installation of eight new radars, construction of multiple new buildings at Luhmens Ridge, considerable grading to the site and possible blasting for building foundations, sewer and power upgrades to include stringing of additional power lines from an origination point other than the proposed immediate location. Installation of the new radars and erection of new buildings are necessary to meet specific target engagement objectives which cannot be met with existing facilities. Aerial activity would be similar to that of WSMR.

The Department of the Air Force will hold a public scoping meeting to solicit inputs of significant environmental issues associated with the construction and operation of DYCOMS at WSMR. This scoping meeting is scheduled for July 12, 1989, at the Carbine Auditorium, Physical Sciences Laboratory, New Mexico State University, Corner of Espina and Stewart Streets, Las Cruces, NM, from 7:00–10:00 p.m. In addition to this scoping meeting, written inputs to the scoping process are solicited. Comments in response to this NOI or as part of the scoping process are requested in writing within 30 calendar days from publication of this notice in the **Federal Register**.

Questions concerning the proposed action or the National Environmental Policy Act (NEPA) process for the action, comments on this NOI, or written inputs to the scoping process should be mailed to the contracted consulting firm, Physical Sciences Laboratory,

ATTENTION: Mr. Roy A. Cunniff, Box 30001, New Mexico State University, Las Cruces, NM 88003–0001. Telephone inquiries should be directed to Mr. Cunniff at (515) 522–9100.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89–15512 Filed 6–29–89; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF EDUCATION

Bilingual Education and Minority Languages Affairs; Direct Grant Programs

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year 1990.

SUMMARY: The Secretary invites applications for new awards for fiscal year (FY) 1990 under most of the bilingual Education direct grant programs and announces deadline dates for the transmittal of applications under these programs. This combined application notice contains fiscal and programmatic information for potential applicants.

DATES: The deadline dates for transmitting applications under these programs are listed in the chart in Part I of this notice.

These programs are subject to Executive Order (EO) 12372 (Intergovernmental Review of Federal Programs). The deadline dates for the transmittal of State Process Recommendations by State Single Points of Contact (SPOCs) and comments by other interested parties are also listed in the chart.

In addition, the chart lists the dates on which applications will be available.

ADDRESSES: The addresses for obtaining applications for, or further information about, individual programs or competitions are in the respective announcements for those programs in Part II of this notice.

The address for transmitting recommendations and comments under intergovernmental review, together with the addressses of individual SPOCs, is in the application package for those programs.

SUPPLEMENTARY INFORMATION:

Organization of Notice

This notice is organized in two parts.

Part I is a chart containing the names of all the programs covered by this notice in order of deadline date for transmittal of applications. The chart contains the following information:

- The Catalog of Federal Domestic Assistance (CFDA) number and the name of the corresonding program.
- The deadline date for the transmittal of applications.
- The date of availability of applications.
- The deadline date for transmitting comments under intergovernmental review.
- The estimated range of awards.
- The estimated average size of awards.
- The estimated number of awards.
- The project period in months.

Readers should note that the Department is not bound by estimates in this notice.

Part II contains additional fiscal and programmatic details for each program, including—

- A brief statement of the purpose of the program;
- A list of regulations applicable to the program;
- Information regarding priorities, if any;
- The name, address, and telephone number of the person at the Department to contact for applications or information; and
- A citation of the statutory authority for the program.

PART I.—NEW AWARDS UNDER BILINGUAL EDUCATION DIRECT GRANT PROGRAMS

CFDA No.	Name of program	Deadline date	Applications available	Deadline for intergovernmental review	Estimated range of awards	Estimated average size of awards	Estimated number of awards	Project period (in months)
84.003L	Special Populations Program	Oct. 16, 1989	July 27, 1989	Dec. 15, 1989	$120,000–$180,000	$150,000	10	36.
84.003A	Transitional Bilingual Education Program.	Nov. 3, 1989	do	Jan. 2, 1990	$40,000–$500,000	$150,000	75	36.
84.003E	Special Alternative Instructional Prog..	do	do	do	$40,000–$500,000	$150,000	75	36.
84.003G	Academic Excellence Program	Nov. 20, 1989	do	Jan. 19, 1990	$150,000–$225,000	$175,000	14	36.
84.003S	Training Development and Improvement Prog..	Dec. 8, 1989	do	Feb. 6, 1990	$40,000–$100,000	$70,000	4	12, 24, or 36.
84.003V	Short-Term Training Program	do	do	do	$50,000–$100,000	$75,000	12	12, 24 or 36.
84.003Q	State Educational Agency Program	Jan. 29, 1990	July 31, 1989	Mar. 30, 1990	NA.	NA.	[illegible]	12 or 36.
84.003J	Family English Literacy Program	Feb. 26, 1990	July 27, 1989	Apr. 27, 1990	$100,000–$150,000	$125,000	[illegible]	36.

Part II—Additional Fiscal and Programmatic Information

84.003L—Special Populations Program

Purpose of Program: Provides grants to eligible applicants to establish, operate, or improve preparatory or supplementary preschool, special education, and gifted and talented programs for limited English proficient (LEP) children.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, and 85; and (b) The regulations for this program in 34 CFR Parts 500 and 526.

Priorities: The Secretary gives preference to applications that meet one or more of the following competitive priorities:

(1) Historically underserved—§ 525.32(a)(1) (4 points). The need to assist LEP children who have been historically underserved by programs for limited English proficient persons.

(2) Geographical distribution—§ 525.32(a)(2) (4 points). The need to provide assistance in proportion to the distribution of LEP children throughout the Nation and within each of the States.

(3) Need—§ 525.32(a)(3) (4 points). The need for financial assistance to establish, operate, or improve programs for limited English proficient persons.

(4) Relative number and proportion of children from low-income families—§ 525.32(a)(4) (3 points). The relative numbers of children from low-income families sought to be benefited by the program.

Under 34 CFR 75.105(c)(2)(i), 525.32(b), and 526.31(b) the Secretary awards up to 15 points to an application that meets one or more of these competitive priorities in a particularly effective way. These points are in addition to any points the application earns under the selection criteria for the program in 34 CFR 526.32.

For Applications or Information Contact: Ms. Barbara Wells, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5086, Mary E. Switzer Building, Washington, DC 20202–6510. Telephone: (202) 732–1643.

Program Authority: 20 U.S.C. 3291(a)(6).

84.003A—Transitional Bilingual Education Program

Purpose of Program: Provides grants to local educational agencies (LEAs) and institutions of higher education applying jointly with one or more LEAs to establish, operate, and improve

programs of transitional bilingual education for limited English proficient (LEP) children.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, and 85; and (b) The regulations for this program in 34 CFR Parts 500 and 501.

Priorities: The Secretary gives preference to applications that meet one or more of the following competitive priorities:

(1) Historically underserved—§ 501.32(a)(1) (4 points). The need to assist LEP children who have been historically underserved by programs for limited English proficient persons.

(2) Relative need—§ 501.32(a)(2) (4 points). The relative need of the particular LEA(s) for the proposed program.

(3) Geographical distribution—§ 501.32(a)(3) (3 points). The need to provide assistance in proportion to the distribution of LEP children throughout the Nation and within each of the States.

(4) Relative number and proportion of children from low-income families—§ 501.32(a)(4) (4 points). The number and proportion of children from low-income families to be benefited by the program.

Under 34 CFR 75.105(c)(2)(i) and 501.32(b) the Secretary awards up to 15 points to an application that meets one or more of these competitive priorities in a particularly effective way. These points are in addition to any points the application earns under the selection criteria for the program in 34 CFR 501.31.

For Applications or Information Contact: Mr. Luis A. Caterineau, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5086, Mary E. Switzer Building, Washington, DC 20202–6510. Telephone: (202) 732–1843.

Program Authority: 20 U.S.C. 3291(a)(1).

84.003E—Special Alternative Instructional Program

Purpose of Program: Provides grants to local educational agencies (LEAs) and institutions of higher education applying jointly with one or more LEAs to establish, operate, and improve special alternative instructional programs for limited English proficient (LEP) children.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, and 85; and (b) The regulations for this program in 34 CFR Parts 500 and 501.

Priorities: The Secretary gives preference to applications that meet one or more of the following competitive priorities:

(1) Historically underserved—§ 501.32(a)(1) (4 points). The need to assist LEP children who have been historically underserved by programs for limited English proficient persons.

(2) Relative need—§ 501.32(a)(2) (4 points). The relative need of the particular LEA(s) for the proposed program.

(3) Geographical distribution—§ 501.32(a)(3) (3 points). The need to provide assistance in proportion to the distribution of LEP children throughout the Nation and within each of the States.

(4) Relative number and proportion of children from low-income families—§ 501.32(a)(4) (4 points). The number and proportion of children from low-income families to be benefited by the program.

Under 34 CFR 75.105(c)(2)(i) and 501.32(b) the Secretary awards up to 15 points to an application that meets one or more of these competitive priorities in a particularly effective way. These points are in addition to any points the application earns under the selection criteria for the program in 34 CFR 501.31.

For Applications or Information Contact: Mr. Robert Trifiletti, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5086, Mary E. Switzer Building, Washington, DC 20202–6510. Telephone: (202) 732–1843.

Program Authority: 20 U.S.C. 3291(a)(3).

84.003G—Academic Excellence Program

Purpose of Program: Provides grants to local educational agencies, institutions of higher education, and private nonprofit organizations to disseminate effective bilingual education practices for limited English proficient (LEP) students.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, and 85; and (b) The regulations for this program in 34 CFR Parts 500 and 524.

Priorities: The Secretary gives preference to applications that meet one or more of the following competitive priorities:

(1) Historically underserved—§ 524.32(a)(1)(i) (6 points). The need to assist LEP children who have been historically underserved by programs for limited English proficient persons.

(2) Geographical distribution—§ 524.32(a)(1)(ii) (6 points). The need to provide funding according to the distribution of LEP children throughout the Nation and within each of the States.

(3) Relative number and proportion of children from low-income families—§ 524.32(a)(2) (3 points). The relative numbers of children from low-income families likely to be benefited by the project.

Under 34 CFR 75.105(c)(2)(i) and 524.32(b) the Secretary awards up to 15 points to an application that meets one or more of these competitive priorities in a particularly effective way. These points are in addition to any points the application earns under the selection criteria for the program in 34 CFR 524.31.

For Applications or Information Contact: Dr. Mary T. Mahony, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5086, Mary E. Switzer Building, Washington, DC 20202–6510. Telephone: (202) 732–1843.

Program Authority: 20 U.S.C. 3291(a)(4).

84.003S—Training Development and Improvement Program

Purpose of Program: Provides grants to institutions of higher education to encourage reform, innovation, and improvement in higher education programs related to programs for limited English proficient persons.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 81, and 85; and (b) The regulations for this program in 34 CFR Parts 500 and 573.

For Applications or Information Contact: Ms. Cynthia Ryan, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5086, Mary E. Switzer Building, Washington, DC 20202–6510. Telephone: (202) 732–1843.

Program Authority: 20 U.S.C. 3321(a)(3).

84.003V—Short-Term Training Program

Purpose of Program: Provides grants to eligible applicants to improve the skills of educational personnel and parents participating in programs for limited English proficient persons.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, and 85; and (b) The regulations for this program in 34 CFR Parts 500 and 574.

Priorities: The Secretary gives preference to applications that meet the following competitive priority: training designed to improve the instructional competence of teachers in carrying out their responsibilities in programs for limited English proficient (LEP) persons—§§ 574.10(a) and 574.30.

Under 34 CFR 75.105(c)(2)(ii) an application that meets this competitive priority is selected by the Secretary over applications of comparable merit that do not meet the priority.

In addition, the Secretary gives preference to applications that meet one or both of the following competitive priorities:

(1) Evidence of prior participant's success in serving LEP children in accordance with needs identified in the prior project—§ 574.33(a)(1) (15 points).

(2) Evidence of demonstrated capacity and cost effectiveness as provided in § 574.32 (d) and (f)—§ 574.33(a)(2) (5 points).

Under 34 CFR 75.105(c)(2)(i) and 574.33(b) the Secretary awards up to 10 points to an application that meets one or both of these competitive priorities in a particularly effective way. These points are in addition to any points the application earns under the selection criteria for the program in 34 CFR 574.32.

For Applications or Information Contact: Ms. Petraine Johnson, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5086, Mary E. Switzer Building, Washington, DC 20202–6510. Telephone: (202) 732–1843.

Program Authority: 20 U.S.C. 3321(a)(4)–(5).

84.003Q—State Educational Agency Program

Purpose of Program: Provides grants to State educational agencies to collect, analyze, and publish data on limited English proficient persons and improve the effectiveness of bilingual education programs.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, and 85; and (b) The regulations for this program in 34 CFR Parts 500 and 548.

For Applications or Information Contact: Mr. Luis A. Caterineau, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5086, Mary E. Switzer Building, Washington, DC 20202–6510. Telephone: (202) 732–1843.

Program Authority: 20 U.S.C. 3302.

84.003J—Family English Literacy Program

Purpose of Program: Provides grants to local educational agencies, institutions of higher education, and private nonprofit organizations to establish, operate, and improve family English literacy programs for limited English proficient (LEP) persons.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, and 85; and (b) The regulations for this program in 34 CFR Parts 500 and 525.

Priorities: The Secretary gives preference to applications that meet one or more of the following competitive priorities:

(1) Historically underserved—§ 525.32(a)(1) (4 points). The need to assist LEP children who have been historically underserved by programs for limited English proficient persons.

(2) Geographical distribution—§ 525.32(a)(2) (4 points). The need to provide assistance in proportion to the distribution of LEP children throughout the Nation and within each of the States.

(3) Financial need—§ 525.32(a)(3) (4 points). The need for financial assistance to establish, operate, or improve programs for limited English proficient persons.

(4) Relative number and proportion of children from low-income families—§ 525.32(a)(4) (3 points). The relative numbers of children from low-income families sought to be benefited by the program.

Under 34 CFR 75.105(c)(2)(i) and 525.32(b) the Secretary awards up to 15 points to an application that meets one or more of these competitive priorities in a particularly effective way. These points are in addition to any points the application earns under the selection criteria for the program in 34 CFR 525.31.

For Applications or Information Contact: Dr. Mary T. Mahony, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5086, Mary E. Switzer Building, Washington, DC 20202–6510. Telephone: (202) 732–1843.

Program Authority: 20 U.S.C. 3291(a)(5).

Dated: June 22, 1989.

Alicia Coro,

Acting Director, Office of Bilingual Education and Minority Lanaguage Affairs.

[FR Doc. 89–15461 Filed 6–29–89; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No.: 84.999A]

Independent Evaluation of the National Assessment of Educational Progress (NAEP) Trial State Assessment, Notice Inviting Applications for New Awards for Fiscal Year 1989

Purpose of Program: To conduct, through a nationally recognized organization, an independent evaluation of the National Assessment of Educational Progress Trial State Assessment of eighth grade mathematics in 1990, and fourth and eighth grade mathematics in 1992 and fourth grade reading in 1992.

Additional Information: Section 406(i)(2)(c)(v) of the General Education Provisions Act, as amended by Title III, Part C, section 3403 of Pub. L. 100–297 requires that the Commissioner of Education Statistics provide for an independent evaluation of the trial state assessments conducted by "a nationally recognized organization (such as the National Academy of Sciences or the National Academy of Education)." However, other nationally recognized organizations are eligible to compete for the grant.

Deadline for Transmittal of Applications: July 31, 1989.

Applications Available: June 30, 1989.

Available Funds: $146,000 in Fiscal Year 1989 (Budget Period August 1989 to August 1990).

Estimated Size of Award: $1,200,000 for five years.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 5 years.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), Part 81 (General Education Provisions Act—Enforcement), and Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

Selection Criteria: Under EDGAR, 34 CFR 75.210(c), the Secretary is authorized to distribute an additional 15 points among the criteria to bring the total to a maximum of 100 points. For the purpose of this competition, the Secretary will distribute the additional points as follows:

Plan of operation. (§ 75.210(b)(3)) Ten (10) additional points will be included for a possible total of 25 points for this criterion.

Quality of key personnel. (§ 75.210(b)(4)) Five (5) additional points will be included for a possible total of 12 points for this criterion.

For Applications or Information Contact: Steven Gorman or Gary Phillips, National Center for Education Statistics, Office of Educational Research and Improvement, Room 516, 555 New Jersey Avenue NW., Washington, DC 20208–5653. Phone: (202) 357–6937.

Program Authority: 20 U.S.C. 1221e–1.

Dated: June 26, 1989.

Bruno V. Manno,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 89–15499 filed 6–29–89; 8:45 am]

BILLING CODE 4000–01–M

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Reading Committee of the National Assessment Governing Board. Notice of this meeting ie required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: July 12, 1989.

ADDRESS: Hyatt Regency Hotel; 400 New Jersey Avenue NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Roy Truby, Executive Staff Director, National Assessment Governing Board, U.S. Department of Education, Suite 4060, Mary E. Switzer Building, 330 C Street, SW., Washington, DC 20202–7583. Telephone: (202) 732–1824.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under Section 406(i) of the General Education Provisions Act (GEPA) as amended by Section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), Title 2III–C of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 21988 (Pub. L. 100–297); 20 USC 1221E–1).

The Board is established to advise the Commissioner for Education Statistics on policies and actions needed to improve the form and use of the National Assessment of Education Progress, and develop specifications for the design, methodology, analysis and reporting of test results. The Board also is responsible for selecting subject areas to be assessed, identifying the objectives for each age and grade tested, and establishing standards and procedures of interstate and national comparisons.

The Reading Committee of the National Assessment Governing Board will meet in Washington, DC on July 12, 1989 from 6:00 P.M. until the completion of business. The proposed agenda includes development of plans for the Board's regional public hearings on reading objectives for the 1992 National Assessment.

Records are kept of all Board proceedings, and until a permanent office site for the Board has been established, are available for public inspection at the U.S. Department of Education, Office of Educational Research and Improvement, 555 New Jersey Avenue NW., Room 600, Washington, DC from 8:30 a.m. to 5:00 p.m.

Dated: June 27.1989.

Bruno V. Manno,

Acting Assisstant Secretary for Educational Research and Improvement.

[FR Doc. 89–15497 Filed 6–29–89; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act (Pub. L. 96–511, 44 U.S.C. 3501 et seq.)

The listing does not include information collection requirements contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, or management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, or extension; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden, and (13) A brief abstract describing the proposed collection and the respondents.

DATE: Comments must be filed on or before July 31, 1989.

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards, at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards (EI–73), Energy Information Administration, M.S. 1H–023, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585 (202) 586–2171.

SUPPLEMENTARY INFORMATION: If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the OMB DOE Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the DOE contact listed above.)

The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission.
2. FERC–16.
3. 1902–0025.
4. Report of Gas Supply and Requirements.
5. Extension.
6. Semi-annually.
7. Mandatory.
8. Business or other for-profit.
9. 58 respondents.
10. 116 responses.
11. 60 hours per response.
12. 9,280 hours (total).
13. Form 16 data are used by the Commission in analyzing the natural gas supplies and requirements of interstate pipelines. The data also are used to evaluate certificate applications for construction and for pipeline rate cases.

Statutory Authority: Sections 5(a), 5(b), 13(b), and 52, Public Law 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Yvonne M. Bishop,

Director Statistical Standards Energy Information Administration.

[FR Doc. 89–15542 Filed 6–29–89; 8:45 am]

BILLING CODE 6450–01–M

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act (Pub. L. 96–511, 44 U.S.C. 3501 et seq.).

The listing does not include information collection requirements contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, or management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, or extension; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden, and (13) A brief abstract describing the proposed collection and the respondents.

DATE: Comments must be filed on or before July 31, 1989.

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards, at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards (EI–73), Energy Information Administration, M.S. 1H–023, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–2171.

SUPPLEMENTARY INFORMATION: If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the OMB DOE Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the DOE contact listed above.)

The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission.
2. FERC–531.
3. 1902–0052.
4. Gas Producer Certificates: New Service/Amendments.
5. Extension.
6. On Occasion.
7. Mandatory.
8. Business or other for-profit.
9. 210 respondents.
10. 315 responses.
11. 3.0 hours per response.
12. 945 hours (total).
13. FERC–531 is used by the Commission to perform its regulatory function in determining whether to authorize sales by certain independent producers of natural gas under section 7 of the Natural Gas Act as well as certain sections of the Natural Gas Policy Act of 1978.

Statutory Authority: Sections 5(A), 5(b), 13(b), and 52, Public Law 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 89–15543 Filed 6–29–89; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER89-491-000 et al.]

Canal Electric Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Canal Electric Co.

[Docket No. ER89-491-000]

June 20, 1989.

Take notice that on June 9, 1989, Canal Electric Company (Canal) filed a Power Contract which implements the terms of the Capacity Acquisition Agreement (Rate Schedule FERC No. 21) and the Capacity Acquisition Commitment for Seabrook Station (Supplement No. 1 to Canal's Rate Schedule FERC No. 21). Such Power Contract provides the terms and conditions pursuant to which Canal will sell and its customers Cambridge Electric Light Company and Commonwealth Electric Company will purchase and pay for Canal's share of the output of Seabrook Unit No. 1 plus the transmission costs associated therewith. Canal is currently recovering charges associated with the transmission facilities according to the terms of the settlement agreement in Docket No. ER88-505-000.

Pursuant to the proposed Power Contract Canal will sell to Cambridge and Commonwealth the test power produced by Seabrook Unit No. 1 during precommercial operation and the capacity and energy associated with Canal's ownership in the unit during its commercial lifespan. The rate impact associated with test power produced by Seabrook Unit No. 1 is expected to be extremely small. The rate impact associated with full commercial operation of Seabrook Unit No. 1 is projected to be 12.3 percent.

Canal proposes an effective date of the earlier of August 9, 1989 or the date on which test power is first generated and requests that its filing be suspended for no more than one day.

Comment date: July 7, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Utah Power & Light Company

[Docket No. ER89-494-000]

June 20, 1989.

Take notice that on June 12, 1989, Utah Power & Light Company (Utah) tendered for filing a Wholesale for Resale Rate Filing and Transmission Rate Filing pursuant to the Federal Power Act and Opinion Nos. 318 and 318-A issued in Docket No. EC88-2-000.

Utah requests that the notice requirements of 18 CFR 35.3 be waived as provided in 18 CFR 35.11, and that the Rate Filings be made effective on June 12, 1989, as provided in Opinion Nos. 318 and 318-A.

Copies of this filing were served on all of Utah's wholesale and transmission customers, and the state regulatory commissions of Utah, Idaho, Wyoming, Colorado, and Arizona.

Comment date: July 7, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Exxon Company, U.S.A. (a Division of Exxon Corporation)

[Docket No. QF89-268-000]

June 20, 1989.

On June 5, 1989, Exxon Company, U.S.A. (a division of Exxon Corporation) (Applicant), of 3400 E. Second Street, Benicia, California, 94510-1097, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located within the Exxon Benicia Refinery Complex in Benicia, California. The facility will consist of two combustion turbine generating units and two heat recovery boilers. Steam produced by the facility will be used for refining and processing crude oil into finished petroleum products. The net electric power production capacity of the facility will be 46 MW. The primary energy sources will be natural gas and refinery by-product gas. Installation of the facility is scheduled to begin in February 1990.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

4. Panda Energy Corproation

[Docket No. QF89-241-000]

June 22, 1989.

On June 12, 1989, Panda Energy Corporation (Applicant), 4100 Spring Valley, Suite 1001, Dallas, Texas 75244, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Roanoke Rapids North Carolina. The facility will consist of two combustion turbine generators, two heat recovery steam generators, and a steam turbine generator. Thermal energy recovered from the facility will be utilized by the Bibb Company textile mill for process use. The net electric power production capacity of the facility will be 156,350 KW. The primary source of energy will be natural gas. Construction of the facility is scheduled to begin August 1989.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

5. Cleveland Electric Illuminating Company

[Docket No. ER88-123-000]

June 22, 1989.

Take notice that on June 7, 1989, Cleveland Electric Illuminating Company (CEI) tendered for filing its compliance refund report in this docket showing billing determinants, revenue receipt dates, and revenues under the prior and settlement rates, and the monthly revenue refund.

Comment date: July 7, 1989, in accordance with Standard Paragraph at the end of this notice.

6. Northern States Power Company

[Docket No. ER89-500-000]

June 22, 1989.

Take notice that on June 14, 1989, Northern States Power Company (NSP) tendered for filing Amendment No. 1 to the Interconnection and Interchange Agreement among Northern States Power Company-Minnesota, and Northern States Power Company-Wisconsin, and Northern Central Power Co., Inc.

Comment date: July 7, 1989, in accordance with Standard Paragraph E at the end of this notice.

7. Northern States Power Company

[Docket No. ER89-499-000]

June 22, 1989.

Take notice that on June 14, 1989, Northern States Power Company (NSP) tendered for filing Amendment No. 1 to the Interconnection and Interchange Agreement among Northern States Power Company—Minnesota, Northern States Power Company—Wisconsin and Northwestern Wisconsin Electric Company.

Comment date: July 7, 1989, in accordance with Standard Paragraph E at the end of this notice.

8. Florida Power Corporation

[Docket No. ER89-357-000]

June 22, 1989.

Take notice that on June 15, 1989, Florida Power Corporation (Florida Power) tendered for filing an amendment to its May 1, 1989 filing in this docket in order to clarify the charges under Schedule D, Long Term Firm Interchange for Kissimmee Utility Authority, the City of St. Cloud, and the Sebring Utility Commission. Florida Power also amends its May 1 filing in order to supplement the filing with letters of commitment establishing the term of service for these three customers. Florida Power further supplements the May 1 filing with a letter of commitment with Sebring Utility Commission with respect to service taken under Schedule H, Reserve Interchange Service and Schedule I, Regulating Interchange Service.

According to Forida Power, the filing has been served on each of the affected utilities and the Florida Public Service Commission.

Comment date: July 7, 1989, in accordance with Standard Paragraph E at the end of this notice.

9. Southeastern Power Administration

[Docket No. EF88-3011-001]

June 22, 1989.

Take notice that on June 12, 1989, the Administrator of Southeastern Power Administration (SEPA) tendered for filing a request for reapproval of rate schedule MISS-1-E for the period June 1, 1988, through May 31, 1989. The rate schedule has been corrected and results in a refund to the South Mississippi Electric Power Association in the amount of $109,800.00.

Comment date: July 10, 1989, in accordance with Standard Paragraph E at the end of this notice.

10. Louisville Gas and Electric Company

[Docket No. ER89-482-000]

June 22, 1989.

Take notice that Louisville Gas and Electric Company (Louisville) tendered for filing on June 16, 1989, four substitute pages to the Seventh Supplemental Agreement dated March 14, 1989, to the Interconnection Agreement between Louisville and East Kentucky Power Cooperative.

The substitute pages are submitted to clarify certain price provisions of the Seventh Supplemental Agreement.

Concurrent with this amendment, and in response to the Commission's Staff request, Louisville is submitting four substitute pages to the Initial Interconnection Agreement between Louisville and Indiana Municipal Power Agency (IMPA), dated February 7, 1989 (Docket No. ER89-293-000), in order to also clarify certain price provisions contained in that initial agreement.

Copies of this amended filing were served on East Kentucky, IMPA, and the Public Service Commission of Kentucky.

Comment date: July 7, 1989, in accordance with Standard Paragraph E at the end of this notice.

11. New York State Electric & Gas Corporation

[Docket No. ER89-502-000]

June 22, 1989.

Take notice that on June 15, 1989, New York State Electric & Gas Corporation (NYSEG) tendered for filing a proposed change in the commencement date whereby NYSEG delivers Preference Power to the County of Tompkins, a municipal corporation of the State of New York, (Tompkins County). The contract is revised to permit delivery of Preference Power starting on April 28, 1989 instead of May 1, 1989. All other terms of the initial contract remain unchanged and in effect.

NYSEG states that copies of this filing have been served by mail upon Tompkins County, the New York State Public Service Commission, the Municipal Electric Utilities Association of New York State, and the Power Authority of the State of New York, from whom Tompkins County is purchasing the hydroelectric power and energy to be sold by Tompkins County to its customers.

Comment date: July 7, 1989, in accordance with Standard Paragraph E at the end of this notice.

12. Washington Water Power Company

[Docket No. ER89-385-000]

June 22, 1989.

Take notice that on June 16, 1989, the Washington Water Power Company (Washington) amended its filing in this docket a firm capacity and energy sale which Washington refers to as a Letter Agreement between Washington and Sierra Pacific Power Company (SPP). Washington states that energy deliveries associated with capacity deliveries will be made available to SPP from December 27, 1988 through January 2, 1989 and January 23 through December 31, 1989.

Washington requests that the requirements of prior notice be waived and the effective date be made retroactive to December 27, 1988.

Comment date: July 7, 1989, in accordance with Standard Paragraph E at the end of this notice.

13. Pacific Gas and Electric Company

[Docket Nos. ER86-107-005 and ER86-327-002]

June 22, 1989.

Take notice that on June 16, 1989, Pacific Gas and Electric Company (PG&E) tendered for filing a compliance report regarding issues raised in Docket Nos. ER86-107-001 and ER86-327-001. These dockets pertain to Rate Schedule FERC No. 84, the Interconnection Agreement between PG&E and Northern California Power Agency (NCPA).

By Notices dated February 7, 1989 and June 9, 1989, the Commission granted PG&E extensions of time until June 16, 1989, to file compliance reports regarding five issues related to: (1) Transmission charges on a sale from NCPA to the Turlock Irrigation District (TID), (2) the effective date for rerating two NCPA geothermal plants, (3) transmission charges for a purchase by NCPA from the California Department of Water Resources (DCWR), (4) provision of Emergency Power and (5) capacity credit for NCPA's combustion turbines. The first four issues have not been resolved. Issues (1) and (3) are the subject of Docket No. EL89-34-000, a complaint and request for declaratory relief filed by NCPA against PG&E on May 31, 1989. A compliance report showing the rebilling of the fifth issue was tendered for filing.

Comment date: July 7, 1989, in accordance with Standard Paragraph E at the end of this notice.

14. Cincinnati Gas & Electric Company

[Docket No. ER89-375-000]

June 22, 1989.

Take notice that the Cincinnati Gas & Electric Company (Cincinnati) tendered for filing June 9, 1989 four substitute pages to the Eighth Supplemental Agreement dated as of May 1, 1989 to the Interconnection Agreement dated July 15, 1969, between Cincinnati and the Louisville Gas and Electric Company.

The substitute pages are submitted to clarify the Eighth Supplemental Agreement. There is no estimate of increased revenues since transactions will occur only as load and capacity conditions dictate. A May 1, 1989 effective date has been requested.

A copy of the filing was served upon Louisville Gas and Electric Company, the Public Utilities Commission of Ohio and the Public Service Commission of Kentucky.

Comment date: July 7, 1989, in accordance with Standard Paragraph E at the end of this notice.

BEST COPY AVAILABLE

15. Duke Power Company

[Docket No. ER89-497-000]

June 22, 1989.

Take notice that Duke Power Company (Duke or Company) on June 13, 1989, tendered for filing a revision in Service Schedule C *Sales of Power and Energy* to its Interconnection Agreement dated October 17, 1983 with Yadkin, Inc., which Agreement was originally accepted for filing by the Commission on February 24, 1984. Service Schedule C provides for interruptible rates with no demand charge for off-peak sales. Rates under Service Schedule C are updated annually as of July 1. Based on the 12-month period ending April 30, 1990, Duke estimates that the proposed change in rates will decrease annual revenues to Duke from Yadkin by approximately $95,767.

Duke requests an effective date of July 1, 1989.

Copies of this filing were served on the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: July 7, 1989, in accordance with Standard Paragraph E at the end of this notice.

16. Idaho Power Company

[Docket No. ER89-496-000]

June 22, 1989.

Take notice that on June 14, 1989, Idaho Power Company (IPC) tendered for filing, pursuant to Section 205 of the Federal Power Act, Amendment No. 1 to the Short-term Agreement for Supply of Power and Energy (Amendment No. 1) dated May 17, 1989, between Sierra Pacific Power Company and Idaho Power Company. The term of the Agreement is from June 1, 1989, to October 31, 1989.

IPC has requested waiver of the notice provisions of Section 35.3 of the Commission's regulations in order to permit the agreement to become effective on June 1, 1989, in accordance with its terms.

Comment date: July 7, 1989, in accordance with Standard Paragraph end of this notice.

17. Northeast Utilities Service Company

[Docket No. ER89-492-000]

June 22, 1989.

Take notice that on June 12, 1989, Northeast Utilities Service Company (NUSCO), as agent for the Connecticut Light and Power Company (CL&P) and Western Massachusetts Electric Company (WMEC), tendered for filing notices of termination for a number of different transmission rate schedules between CL&P, WMEC and other utilities. NUSCO states in its filing that the rate schedules are to be terminated because they are no longer being utilized by the parties to the Agreements and have terminated in accordance with their terms.

Comment date: July 7, 1989, in accordance with Standard Paragraph end of this notice.

18. PacifiCorp, doing business as Pacific Power & Light Company

[Docket No. ER89-493-000]

June 23, 1989.

Take notice that PacifiCorp, doing business as Pacific Power & Light Company (Pacific), on June 12, 1989, tendered for filing in compliance with Opinions Nos. 318 and 318-A in Docket No. EC88-2-000 and EC88-2-003, and in accordance with sections 35.12 and 35.13 of the Commission's Regulations, repectively, a Pacific Division initial firm transmission service price under PacifiCorp's FERC Electric Tariff, Original Volume No. 5, Service Schedules TS-1 and TS-2 (Transmission Tariff) and a revised FERC Electric Tariff, Original Volume No. 4, Service Schedule PPL-4 including revised Binder Page and sheet Nos. 1 through 9.

The initial firm transmission service price is the rate which Pacific Proposes to charge utilities for Tier 2 wheeling under Service Schedules TS-1 and TS-2, of Pacific's FERC Electric Tariff, Original Volume No. 5.

Pacific requests that the notice requirements of 18 CFR 35.3 be waived as provided in 18 CFR 35.11, and that the Filings be made effective on June 12, 1989, as provided in Opinion Nos. 318 and 318-A.

Copies of the filing were served upon all parties hereto and the Wyoming Public Service Commission.

Comment date: July 7, 1989, in accordance with Standard Paragraph E at the end of this notice.

19. South Carolina Public Service Authority

[Docket No. ES89-27-000]

June 23, 1989.

Take notice that on June 15, 1989, South Carolina Public Service Authority filed an application with the Federal Energy Regulatory Commission (the "Commission"), pursuant to Section 204 of the Federal Power Act, seeking authority to issue up to $50 million in Electric System Expansion Revenue Bonds in one or more issues. The Authority asks, in the alternative, an order dismissing the application for the lack of jurisdiction. The bonds are to be sold by the Authority to residents of South Carolina, customers and employees of the Authority, and members and employees of electric cooperatives in South Carolina. The proceeds will be used to fund ongoing capital improvements to the system.

Comment date: July 14, 1989, in accordance with standard Paragraph E at the end of this notice.

20. Union Electric Company

[Docket No. ES89-28-000]

June 23, 1989.

Take notice that on June 19, 1989, Union Electric Company filed an application with the Federal Energy Regulatory Commission, pursuant to section 204 of the Federal Power Act, seeking an order authorizing the issuance of short-term, unsecured promissory notes in the aggregate amount of up to $600,000,000 at any one time, of which up to $450,000,000 at any one time may be in the form of commercial paper.

Comment date: July 18, 1989, in accordance with standard Paragrpah E at the end of this notice.

21. Union Electric Company

[Docket No. ER89-505-000]

June 26, 1989.

Take notice that Union Electric Company, (Union Electric) on June 19, 1989, tendered for filing a Letter Agreement dated as of May 18, 1989, between City of Columbia, Missouri, and Union Electric Company.

Union Electric states the purpose of the Letter Agreement is to revise the rate formula Transmission Service.

Comment date: July 10, 1989, in accordance with standard Paragraph E at the end of this notice.

22. Southern Company Services, Inc.

[Docket No. ER89-503-000]

June 26, 1989.

Take notice that on June 16, 1989, Southern Company Services, Inc. (SCS) tendered for filing a contract for Short-Term Power between Southern Companies and Virginia Electric and Power Company. Under the terms of the contract Virginia Power will purchase and Southern Companies will sell 300 megawatts of capacity during the two week period beginning June 18, 1989 and ending July 1, 1989, and possibly additional weekly periods (as mutually agreed to by the parties) thereafter through December 16, 1989, if the capacity is needed by Virginia Power and Southern Companies make a determination that capacity is available for sale during such weeks.

Comment date: July 10, 1989, in accordance with Standard Paragraph E at the end of this notice.

23. Southern California Edison Company

[Docket No. ER89-504-000]

June 26, 1989.

Take notice that on June 19, 1989, Southern California Edison Company (Edison) tendered for filing, as an initial rate schedule, the following agreement, executed on March 8, 1989, by Edison and Washington Water Power Company (WWP):

Edison-Washington

Economy Energy Agreement between Southern California Edison Company and Washington Water Power Company

The filed Economy Energy Agreement establishes the terms and conditions under which Economy Energy may be sold to WWP.

The Agreement is effective as of February 1, 1989, and terminates on thirty (30) days advance written notice by either Party. Economy Energy is sold at one of three rates agreed upon by the Parties prior to delivery: (1) A ceiling rate based on incremental productions costs (designated as the "Incremental Energy Rate"); (2) a "Share-the-Savings" rate; or (3) a rate for energy subject to recall.

Edison requests waiver of the notice provision under Section 35.3 of the Commission's regulations. Edison further requests the assignment of an effective date of February 1, 1989, to coincide with the effective date in the Agreement.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: July 10, 1989, in accordance with Standard Paragraph E at the end of this notice.

24. Florida Power & Light Company

[Docket No. ER89-490-000]

June 26, 1989.

Take notice that on June 8, 1989, Florida Power & Light Company (FP&L) tendered for filing a notice of cancellation of Rate Schedule FERC No. 101. FP&L requests an effective date of March 24, 1989.

Comment date: July 10, 1989, in accordance with standard Paragraph E at the end of this notice.

25. Gulf States Utilities Company

[Docket No. ER89-495-000]

June 26, 1989.

Take notice that Gulf States Utilities Company (Gulf States) on June 12, 1989, tendered for filing a letter agreement between Gulf States and Cajun Electric Power Cooperative, Inc., permitting either Cajun or Gulf States to purchase energy from the other party's portion of a jointly-owned generating unit, Big Cajun II, Unit 3. The rate for the sales will be $3.50 per MWh with the purchasing party supplying the fuel resources. Gulf States requests an effective date for the agreement of April 21, 1989.

Copies of the filing were served on Cajun Electric Power Cooperative, Inc., and the Louisiana Public Service Commission.

Comment date: July 10, 1989, in accordance with Standard Paragraph E at the end of this notice.

26. Citizens Energy Corporation

[Docket No. ER89-501-000]

June 26, 1989.

Take notice that on June 15, 1989, Ciizens Energy Corporation (Citizens) tendered for filing a notice of termination of FERC Rate Schedule No. 3 and Supplement No. 1 to FERC Rate Schedule No. 3, effective March 31, 1989.

Comment date: July 10, 1989, in accordance with Standard Paragraph end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell.

Secretary.

[FR Doc. 89-15463 Filed 6-29-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP89-46-000]

Compression Allowances and Protest Procedures Under NGPA Section 110

June 23, 1989.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Publication of pipeline filings made pursuant to Order No. 473.

SUMMARY: In Order No. 473, 52 F.R. 21,660 (June 9, 1987), the Federal Energy Regulatory Commission amended its regulations to provide parties an opportunity to protest allowances for delivery of natural gas which were heretofore presumed authorized by "area rate" clauses in gas sales contracts. Order No. 473 amended 18 CFR 271.1104(h) to require all interstate pipelines to provide a listing of those producers that have claimed an entitlement to delivery allowances pursuant to an "area rate" clause. The interstate pipelines were required to indicate whether they concurred in the producers claim for delivery allowances.

Attached is a list filed under Docket No. RM86-7-000 by KN Energy, Inc. (KN), on December 28, 1988, as required by 18 CFR 271.1104(h) (1987). The list includes the names of producer-sellers asserting the contractual authority to collect delivery allowances pursuant to an area rate clause in a gas purchase contract with KN. It is KN's opinion that all of the producers-sellers hereinafter identified, with the exception of Southland Royalty Company (Southland), have the contractual authority to collect delivery allowances under their respective gas purchase contracts with KN as permitted under 18 CFR 271.1104. In KN's opinion, Southland did not have the contractual authority under its gas purchase contract with KN to collect delivery allowances.

DATES: As provided in 18 CFR 271.1104(h)(4)(i)(1987), any protest must be filed by September 28, 1989. Because Order No. 473 provided no mechanism for adding producers-sellers to service lists, KN is requested to submit the names and addresses of the producers-sellers in this proceeding so that they can be added to the official service list. This material must be filed by the date protests are due.

ADDRESSES: An original and 14 copies of each protest must be filed with the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Edward G. Gingold, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (202) 357-9114.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this notice during

normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357–8997. A copy of KN's filings may be obtained from CIPS up to 10 days following the date of issuance by the Commission. The complete text of this notice on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 Noth Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,
Secretary.

KN Energy, Inc.—Submission of List of Producers in Compliance with 18 CFR 271.1104(h)

In compliance with the Commission's regulations at 18 CFR 271.1104(h), KN Energy, Inc. (KN) does hereby submit the following list of producers-sellers asserting the contractual authority to collect delivery allowances pursuant to an area rate clause in a gas purchase contract with KN. It is KN's opinion that all of the producers-sellers hereinafter identified, with the exception of Southland Royalty Company (Southland), have the contractual authority to collect delivery allowances under their respective gas purchase contracts with KN as permitted under 18 CFR 271.1104. In KN's opinion, Southland did not have the contractual authority under its gas purchase contract with KN to collect delivery allowances.

Producer-seller	Gas purchase contract date and KN's reference No.	Rate schedule
Oxy-Cities Service, NGL, Inc. (Successor-in-interest to Cities Service Oil Company).	Residue Gas Purchase Contract, Dated March 10, 1987 KN. Ref. No. P-332.	216
T rra Resources, Inc.	Contract Amendment to Gas Purchase Contract, Dated June 5, 1974 KN Ref. No. P-875.	4
W.E. Sauer Oil and Gas, *et al.*	Gas Purchase Contract, Dated June 3, 1980 KN Ref. No. P-5018.	N/A
Centennial Energy and Allied Production (Successor-in-interest to Benson Mineral Group).	Gas Purchase Contract, Dated November 12, 1979 KN Ref. No. P-1068.	N/A
Stream, Inc.	Gas Purchase Contract, Dated May 10, 1979 KN Ref. No. P-4222.	N/A
Puckett-Warren Oil, *et al.* (Successor-in-interest to E. Lyle Johnson).	Gas Purchase Contract, Dated July 19, 1968 KN Ref. No. P-4093.	N/A
Mobil Oil Corporation.	Contract Amendment to Gas Purchase Contract, Dated July 8, 1974 KN Ref. No. P-6007.	382
Southland Royalty Company*.	Gas Purchase Contract, dated July 27, 1977 KN Ref. No. P-815.	99

* KN denied Southland's claim for reimbursement of delivery allowances on a well which did not originally qualify for connection under the subject gas purchase contract.

[FR Doc. 89–15462 Filed 6–29–89; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. ST89–3297–000]

Kentucky West Virginia Gas Co.; Self-Implementing Transactions

June 26, 1989.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's Regulations, Sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA) and section 5 of the Outer Continental Shelf Lands Act.[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction. A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to § 284.102 of the Commission's Regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's Regulations and section 311(a)(2) of the NGPA. In those cases where Commission approval of a transportation rate is sought pursuant to § 284.123(b)(2), the table lists the proposed rate and the expiration date of the 150-day period for staff action. Any person seeking to participate in the proceeding to approve a rate listed in the table should file a motion to intervene with the Secretary of the Commission on or before July 17, 1989.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 824.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to Section 284.163 of the Commission's Regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.222 and a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G–S" indicates transportation by interstate pipelines on behalf of shippers other than interstate pipelines—pursuant to § 284.223 and a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G–LT" or "G–LS" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.224 of the Commission's Regulations.

A "G–HT" or "G–HS" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.224 of the Commission's Regulations.

A "K" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.303 of the Commission's Regulations.

A "K–S" indicates transportation of natural gas on the Outer Continental Shelf by an intrastate pipeline on behalf of shippers other than interstate pipelines—pursuant to § 284.303 of the Commission's Regulations.

Lois D. Cashell,
Secretary.

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's Regulations.

Docket No. and Transporter/Seller [1]	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (¢/MMBTU)
ST89–3297 Kentucky West Virginia Gas Co	Equitable Gas. Co	05–01–89	B		
ST89–3298 Enogex, Inc	El Paso Natural Gas Co., et al	05–01–89	C	09–28–89	43.57
ST89–3299 Louisiana Resources Co	Louisiana Gas Marketing Co.	05–01–89	C	09–28–89	26.43
ST89–3300 Louisiana Resources Co	Louisiana Gas Marketing Co.	05–01–89	C	09–28–89	26.43
ST89–3301 Algonquin Gas Transmission Co	Central Hudson Gas and Electric Co	05–01–89	B		
ST89–3302 Algonquin Gas Transmission Co	Orange and Rockland Utilities, Inc	05–01–89	B		
ST89–3303 Panhanbdle Eastern Pipe Line Co	City of Waverly	05–01–89	G–S		
ST89–3304 Southern Natural Gas Co	TXG Gas Marketing Co	05–01–89	G–S		
ST89–3305 Southern Natural Gas Co	Florida Gas Transmission Co	05–01–89	G–S		
ST89–3306 Southern Natural Gas Co	South Caroline Gas Pipeline Corp	05–01–89	B		
ST89–3307 Columbia Gulf Transmission Co	Baltimore Gas And Electric Co	05–01–89	B		
ST89–3308 Columbia Gulf Transmission Co	East Tennessee Natural Gas Co	05–01–89	G		
ST89–3309 Columbia Gulf Transmission Co	Stellar Gas Co	05–01–89	B		
ST89–3310 Arkla Energy Resources	AER Intrastate	05–01–89	B		
ST89–3311 Natural Gas Pipeline Co. of America	Northern Illinois Gas Co	05–01–89	B		
ST89–3312 Natural Gas Pipeline Co. of America	Pontchartrain Natural Gas System	05–01–89	B		
ST89–3313 Natural Gas Pipeline Co. of America	Amoco Gas Co	05–01–89	B		
ST89–3314 Phillips Gas Pipeline Co	Phillips Natural Gas Co	05–01–89	B		
ST89–3315 Transcontinental Gas Pipe Line Corp	Philadelphia Gas Works, Inc	05–01–89	B		
ST89–3316 Paiute Pipeline Co	Basic, Inc	05–01–89	G–S		
ST89–3317 Pelican Interstate Gas System	Natural Gas Pipeline Co. of America	05–01–89	K		
ST89–3318 Pelican Interstate Gas System	Natural Gas Pipeline Co. of America	05–01–89	K		
ST89–3319 Pelican Interstate Gas System	Natural Gas Pipeline Co. of America	05–01–89	K		
ST89–3320 Pelican Interstate Gas System	Natural Gas Pipeline Co. of America	05–01–89	K		
ST89–3321 Pelican Interstate Gas System	Natural Gas Pipeline Co. of America	05–01–89	K		
ST89–3322 Questar Pipeline Co	Western Gas Processors, Inc	05–01–89	G–S		
ST89–3323 Stingray Pipeline Co	Excel Intrastate Pipeline Co	05–01–89	B		
ST89–3324 Stingray Pipeline Co	Louisex Energy, Inc	05–01–89	K–S		
ST89–3325 Stingray Pipeline Co	Penzoil Gas Marketing Co	05–01–89	K–S		
ST89–3326 Stingray Pipeline Co	Midcon Marketing Corp	05–01–89	K–S		
ST89–3327 Corpus Christi Transmission Co	Transcontinental Gas Pipel Line Corp	05–01–89	C		
ST89–3328 Transwestern Pipeline Co	Southern California Gas Co	05–01–89	B		
ST89–3329 Transwestern Pipeline Co	Cabot Gas Supply Corp	05–01–89	B		
ST89–3330 Corpus Christi Transmission Co	Transcontinental Gas Pipe Line Corp	05–01–89	C		
ST89–3331 El Paso Natural Gas Co	Meridian Oil Trading, Inc	05–01–89	G–S		
ST89–3332 El Paso Natural Gas Co	Meridian Oil Trading, Inc	05–01–89	G–S		
ST89–3333 Williston Basin Interstate P/L CO	MGTC, Inc	05–01–89	B		
ST89–3334 Northern Natural Gas Co	Coastal States Gas Transmission Co	05–01–89	B		
ST89–3335 Northern Natural Gas Co	Northern Intrastate Pipeline Co	05–01–89	B		
ST89–3336 Texas Gas Transmission Corp	Interstate Gas Marketing, Inc	05–01–89	G–S		
ST89–3337 Texas Gas Transmission Corp	System Supply for End-Users, Inc	05–01–89	G–S		
ST89–3338 Texas Gas Transmission Corp	System Supply for End-Users, Inc	05–01–89	G–S		
ST89–3339 Texas Gas Transmission Corp	Phillips Natural Gas Co	05–01–89	B		
ST89–3340 Texas Gas Transmission Corp	Ohio River Pipeline Corp	05–01–89	B		
ST89–3341 Transcontinental Gas Pipe Line Corp	Pennsylvania Gas and Water Co	05–02–89	B		
ST89–3342 Transcontinental Gas Pipe Line Corp	Elizabethtown Gas Co	05–02–89	B		
ST89–3343 Natural Gas Pipeline Co. of America	Lone Star Gas Co	05–02–89	B		
ST89–3344 Delhi Gas Pipeline Corp	Texas Eastern Transmission Corp	05–02–89	C		
ST89–3345 Delhi Gas Pipeline Corp	Cincinnati Gas and Electric Co	05–01–89	C		
ST89–3346 Delhi Gas Pipeline Corp	Panhandle Eastern Pipeline Co	05–02–89	C	09–29–89	35.00
ST89–3347 Delhi Gas Pipeline Corp	Natural Gas Pipeline Co. of America	05–02–89	C	09–29–89	35.00
ST89–3348 Delhi Gas Pipeline Corp	Panhandle Eastern Pipeline Co	05–02–89	C	09–29–89	35.00
ST89–3349 Sabine Pipe Line Co	Northern Indiana Fuel & Light Co	05–02–89	B		
ST89–3350 Sabine Pipe Line Co	Louisiana Resources Co	05–02–89	B		
ST89–3351 Texas Gas Transmission Corp	Centran Corp	05–01–89	G–S		
ST89–3352 Stingray Pipeline Co	NGC Intrastate Pipeline Co	05–01–89	B		
ST89–3353 Tennessee Gas Pipeline Co	East Ohio Gas Co	05–03–89	B		
ST89–3354 Tennessee Gas Pipeline Co	Energy Transportation Management, Inc	05–03–89	G–S		
ST89–3355 Moraine Pipeline Co	Wisconsin Natural Gas Co	05–03–89	B		
ST89–3356 Natural Gas Pipeline Co. of America	OXY NGL, Inc	05–04–89	G–S		
ST89–3357 Cabot Gas Supply Corp	Northern Natural Gas Co., et al	05–04–89	C		
ST89–3358 Gas Co. of NM (Div. Public Serv. Co. NM)	El Paso Natural Gas Co	05–04–89	G–HT		
ST89–3359 ANR Pipeline Co	Michigan Consolidated Gas Co	05–04–89	B		
ST89–3360 ANR Pipeline Co	Michigan Consolidated Gas Co	05–04–89	B		
ST89–3361 ANR Pipeline Co	Williams Gas Marketing Co	05–04–89	G–S		
ST89–3362 ANR Pipeline Co	Seagull Louisiana Intra. Pipeline Co	05–04–89	B		
ST89–3363 ANR Pipeline Co	Marathon Oil Co	05–04–89	G–S		
ST89–3364 ANR Pipeline Co	Odeco Oil & Co	05–04–89	G–S		
ST89–3365 ANR Pipeline Co	Meridian Oil Trading, Inc	05–04–89	G–S		
ST89–3366 ANR Pipeline Co	Wisconsin Public Service Corp	05–04–89	B		
ST89–3367 ANR Pipeline Co	Consumers Power Co	05–04–89	B		
ST89–3368 ANR Pipeline Co	Sun Gas Transmission LP	05–04–89	B		
ST89–3369 ANR Pipeline Co	Louisex Energy, Inc	05–04–89	G–S		

Docket No. and Transporter/Seller [1]	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (¢/MMBTU)
ST89-3370 ANR Pipeline Co	Access Energy Pipeline Co	05-04-89	B		
ST89-3371 ANR Pipeline Co	Coastal Gas Marketing Co	05-04-89	G-S		
ST89-3372 ANR Pipeline Co	Cornerstone Production Corp	05-04-89	G-S		
ST89-3373 ANR Pipeline Co	NML Development Corp	05-04-89	G-S		
ST89-3374 ANR Pipeline Co	Unifield Natural Gas Group, L.P	05-04-89	G-S		
ST89-3375 Enogex, Inc	Phillips Gas Pipeline Co, et al	05-04-89	C	10-01-89	43.57
ST89-3376 Columbia Gulf Transmission Co	Columbia Gas of KY. Inc., et al	05-04-89	B		
ST89-3377 Valero Transmission , L.P	United Gas Pipeline Co	05-04-89	C		
ST89-3378 Valero Interstate Transmission Co	Valero Transmission, L.P	05-04-89	B		
ST89-3379 Valero Transmission, L.P	Texas Eastern Transmission Corp	05-04-89	C		
ST89-3380 Valero Transmission, L.P	Transcontinental Gas Pipe Line Corp	05-04-89	C		
ST89-3381 Valero Transmission, L.P	Valero Interstate Transmission Co	05-04-89	C		
ST89-3382 Trans Texas Pipeline	Transcontinental Gas Pipe Line Corp	05-04-89	C		
ST89-3383 Valero Transmission, L.P	Natural Gas Pipeline Co. of America	05-04-89	C		
ST89-3384 Trans Texas Pipeline	El Paso Natural Gas Co	05-04-89	C		
ST89-3385 Neches Pipeline System	Natural Gas Pipeline Co. of America	05-05-89	C		
ST89-3386 Red River Pipeline	El Paso Natural Gas Co	05-05-89	C	10-02-89	36.00
ST89-3387 BP Gas Transmission Co	ANR Pipeline Co., et al	05-05-89	C	10-02-89	13.70
ST89-3388 Transcontinental Gas Pipe Line Corp	Sonat Marketing Co	05-05-89	G-S		
ST89-3389 Transcontinental Gas Pipe Line Corp	Industrial Energy Services Co	05-05-89	G-S		
ST89-3390 Transcontinental Gas Pipe Line Corp	Fort Hill Natural Authority	05-05-89	B		
ST89-3391 Transcontinental Gas Pipe Line Corp	Alabama Gas Corp	05-05-89	B		
ST89-3392 Transcontinental Gas Pipe Line Corp	End Users Supply System	05-05-89	G-S		
ST89-3393 Transcontinental Gas Pipe Line Corp	Catamount Natural Gas, Inc	05-05-89	G-S		
ST89-3394 Transcontinental Gas Pipe Line Corp	Public Service Co. of N. Carolina	05-05-89	B		
ST89-3395 Transcontinental Gas Pipe Line Corp	Union Gas Co	05-05-89	B		
ST89-3396 Panhandle Eastern Pipe Line Co	City of Monroe City	05-05-89	G-s		
ST89-3397 Panhandle Eastern Pipe Line Co	Amarillo Natural Gas Co., Inc	05-05-89	G-S		
ST89-3398 Transok, Inc	Willotex Pipeline Co	05-05-89	C	10-02-89	32.50
ST89-3399 Northern Natural Gas Co	Arco Oil & Gas Co	05-05-89	G-S		
ST89-3400 Northern Natural Gas Co	MESA Operating Ltd. Partnership	05-05-89	G-S		
ST89-3401 Northern Natural Gas Co	Yates Petroleum Corp	05-05-89	G-S		
ST89-3402 Northern Natural Gas Co	Excalibur Energy Corp	05-06-89	G-S		
ST89-3403 United Gas Pipe Line Co	DeSoto Pipeline Co	05-05-89	B		
ST89-3404 United Gas Pipe Line Co	Catamount Natural Gas, Inc	05-05-89	G-S		
ST89-3405 United Gas Pipe Line Co	Arkla Energy Marketing	05-05-89	G-S		
ST89-3406 K-M Mississippi	Transcontinental Gas Pipe Line Corp	05-05-89	C	10-02-89	09.10
ST89-3407 Acadian Gas Pipeline System	Texas Eastern Transmission Corp	05-08-89	C		
ST89-3408 Transwestern Pipeline Co	Yates Petroleum Corp	05-08-89	G-S		
ST89-3409 El Paso Natural Gas Co	Colony Pipeline Corp	05-08-89	B		
ST89-3413 United Gas Pipe Line Co	FRM, Inc	05-08-89	G-S		
ST89-3414 United Gas Pipe Line Co	NGC Instrastate Pipeline Co	05-08-89	B		
ST89-3415 United Gas Pipe Line Co	Louisex Energy, Inc	05-08-89	G-S		
ST89-3416 United Gas Pipe Line Co	Louisiana Intra. Gas Corp., et al	05-08-89	B		
ST89-3417 United Gas Pipe Line Co	Conoco, Inc	05-08-89	G-S		
ST89-3418 Sea Robin Pipeline Co	Bridgeline Gas Distribution Co	05-08-89	B		
ST89-3419 Sea Robin Pipeline Co	Coastal States Gas Transmission Co	05-08-89	B		
ST89-3420 Sea Robin Pipeline Co	LGS Instrastate, Inc	05-08-89	B		
ST89-3421 Natural Gas Pipeline Co. of America	ANR Pipeline Co	05-08-89	G		
ST89-3422 Natural Gas Pipeline Co. of America	Iowa-Illinois Gas & Electric Co	05-08-89	B		
ST89-3423 Natural Gas Pipeline Co. of America	North Shore Gas Co	05-08-89	B		
ST89-3424 Natural Gas Pipeline Co. of America	Illinois Power Co	05-08-89	B		
ST89-3425 Natural Gas Pipeline Co. of America	Cabot Energy Marketing Corp	05-08-89	G-S		
ST89-3426 Texas Gas Transmission Corp	System Supply for End-Users, Inc	05-08-89	G-S		
ST89-3427 Texas Gas Transmission Corp	System Supply for End-Users, Inc	05-08-89	G-S		
ST89-3428 Texas Gas Transmission Corp	Bishop Pipeline Corp	05-08-89	G-S		
ST89-3429 Texas Gas Transmission Corp	Manville Sales Corp	05-08-89	G-S		
ST89-3430 Arkla Energy Resources	AER Intrastate Pipeline	05-08-89	B		
ST89-3431 Colorado Interstate Gas Co	Cominco American, Inc	05-08-89	G-S		
ST89-3432 Columbia Gulf Transmission Co	Acadian Gas Pipeline System	05-08-89	B		
ST89-3433 Algonquin Gas Transmission Co	Southern Connecticut Gas Co	05-08-89	B		
ST89-3434 Algonquin Gas Transmission Co	City of Middleborough	05-08-89	B		
ST89-3435 Algonquin Gas Transmission Co	North Attleboro Gas Co	05-08-89	B		
ST89-3436 Algonquin Gas Transmission Co	City of Norwich	05-08-89	B		
ST89-3437 Algonquin Gas Transmission Co	Providence Gas Co	05-08-89	B		
ST89-3438 Algonquin Gas Transmission Co	Providence Gas Co	05-08-89	B		
ST89-3439 Algonquin Gas Transmission Co	Fall River Gas Co	05-08-89	B		
ST89-3440 BP Gas Transmission Co	ANR Pipeline Co	05-09-89	C	10-06-89	13.70
ST89-3441 Transcontinental Gas Pipe Line Corp	Atlanta Gas Light Co	05-09-89	B		
ST89-3442 Tennessee Gas Pipeline Co	NGC Intrastate Pipeline Co	05-09-89	B		
ST89-3443 Tennessee Gas Pipeline Co	Connecticut Light & Power Co	05-09-89	B		
ST89-3444 Tennessee Gas Pipeline Co	Granite State Gas Transmission, Inc	05-09-89	G		
ST89-3445 Tennessee Gas Pipeline Co	Alabama-Tennessee Natural Gas Co	05-09-89	G		
ST89-3446 Tennessee Gas Pipeline Co	Pennsylvania Gas and Water Co	05-09-89	B		
ST89-3447 Tennessee Gas Pipeline Co	Valley Gas Co	05-09-89	B		
ST89-3448 Tennessee Gas Pipeline Co	City of Ripley	05-09-89	B		
ST89-3449 Tennessee Gas Pipeline Co	North Alabama Gas District	05-09-89	B		
ST89-3450 Tennessee Gas Pipeline Co	Orange and Rockland Utilities, Inc	05-09-89	B		
ST89-3451 Tennessee Gas Pipeline Co	New York State Electric and Gas Corp	05-09-89	B		

Docket No. and Transporter/Seller [1]	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (¢/MMBTU)
ST89-3452 Tennessee Gas Pipeline Co	Colonial Gas Company	05-09-89	B		
ST89-3453 Texas Eastern Transmission Corp	Bridgeline Gas Distribution Co	05-09-89	B		
ST89-3454 Texas Eastern Transmission Corp	Olympic Pipeline Co	05-09-89	B		
ST89-3455 Texas Eastern Transmission Corp	Rockland Pipeline Corp	05-09-89	B		
ST89-3456 United Gas Pipe Line Co	Victoria Gas Corp	05-10-89	G-S		
ST89-3457 United Gas Pipe Line Co	Phoenix Gas Pipeline Co	05-10-89	G-S		
ST89-3458 United Gas Pipe Line Co	Texaco Gas Marketing, Inc	05-10-89	G-S		
ST89-3459 United Gas Pipe Line Co	Seagull Marketing	05-10-89	G-S		
ST89-3460 Natural Gas Pipeline Co. of America	American Central Gas Marketing Co	05-10-89	G-S		
ST89-3461 Northern Natural Gas Co	Horizon Gas Co	05-10-89	G-S		
ST89-3462 Trunkline Gas Co	Columbia Gas of Ohio, Inc	05-10-89	B		
ST89-3463 Trunkline Gas Co	PSI, Inc	05-10-89	G-S		
ST89-3464 Trunkline Gas Co	BP Gas Transmission Co	05-10-89	B		
ST89-3465 ANR Pipeline Co	Peoples Natural Gas Co	05-10-89	B		
ST89-3466 ANR Pipeline Co	Coastal States Gas Transmission Co	05-10-89	B		
ST89-3467 ANR Pipeline Co	Ohio Gas Co	05-10-89	B		
ST89-3468 ANR Pipeline Co	Wisconsin public service corp	05-10-89	B		
ST89-3469 Northwest Pipeline Corp	Shell Oil Co	05-11-89	G-S		
ST89-3470 Northwest Pipeline Corp	Portland General Electric Co	05-11-89	G-S		
ST89-3471 Columbia Gulf Transmission Co	Alabama-Tennessee Natural Gas Co	05-11-89	B		
ST89-3472 Columbia Gulf Transmission Co	Terre Haute Gas Corp	05-11-89	B		
ST89-3473 Columbia Gulf Transmission Co	Illinois Power Co	05-11-89	B		
ST89-3474 Columbia Gulf Transmission Co	CNG Transmission Corp	05-11-89	G		
ST89-3475 Columbia Gulf Transmission Co	Columbia Gas of Pennsylvania, Inc	05-11-89	B		
ST89-3476 Transwestern Pipeline Co	Phanhandle Eastern Pipe Line Co	05-11-89	G		
ST89-3477 Moraine Pipeline Co	Wisconsin Natural Gas Co	05-11-89	B		
ST89-3478 Natural Gas Pipeline Co of America	Pontchartrain Natural Gas System	05-11-89	B		
ST89-3479 Transcontinental Gas Pipe Line Corp	Philadelphia Electric Co	05-11-89	B		
ST89-3480 Northern Border Pipeline Co	MGTC, Inc	05-11-89	B		
ST89-3481 Sea Robin Pipeline Co	City Gas Co	05-11-89	B		
ST89-3482 Sea Robin Pipeline Co	Peoples Gas Light and Coke Co., et al	05-11-89	B		
ST89-3483 El Paso Natural Gas Co	Apache Corp	05-11-89	G-S		
ST89-3484 Carnegie Natural Gas Co	Philadelphia Electric Co	05-11-89	B		
ST89-3485 Carnegie Natural Gas Co	USS A Division of USX	05-11-89	G-S		
ST89-3486 Colorado Interstate Gas Co	Questar Energy Co	05-11-89	G-S		
ST89-3487 United Gas Pipe Line Co	Laser Marketing Co	05-11-89	G-S		
ST89-3488 United Gas Pipe Line Co	LL & E Gas Marketing, Inc	05-11-89	G-S		
ST89-3489 United Gas Pipe Line Co	Olympic Pipeline Co	05-11-89	B		
ST89-3490 United Gas Pipe Line Co	Sabine-Desoto Pipeline Co., Inc	05-11-89	B		
ST89-3491 United Gas Pipe Line Co	Marathon Oil Co	05-11-89	G-S		
ST89-3492 United Gas Pipe Line Co	Fina Oil and Chemical Co	05-11-89	G-S		
ST89-3493 United Gas Pipe Line Co	MGC Intrastate Pipeline Co	05-11-89	B		
ST89-3494 United Gas Pipe Line Co	Columbia Gas of Ohio, Inc., et al	05-11-89	B		
ST89-3495 United Gas Pipe Line Co	Texas Eastern Gas Services Co	05-11-89	G-S		
ST89-3496 United Gas Pipe Line Co	Laser Marketing Co	05-11-89	G-S		
ST89-3497 Gas Gathering Corp	Sonat Marketing Co	05-12-89	G-S		
ST89-3498 Columbia Gulf Transmission Co	American Central Gas Marketing Co	05-12-89	G-S		
ST89-3499 Columbia Gulf Transmission Co	Tennessee Gas Pipeline Co	05-12-89	G		
ST89-3500 Columbia Gulf Transmission Co	Enron Gas Marketing, Inc	05-12-89	G-S		
ST89-3502 Northwest Pipeline Corp	ARCO Oil & Gas Co	05-12-89	G-S		
ST89-3503 United Gas Pipe Line Co	Exxon Corp	05-12-89	G-S		
ST89-3504 United Gas Pipe Line Co	Midcon Marketing Corp	05-12-89	G-S		
ST89-3505 Trunkline Gas Co	NGC Intrastate Pipeline Co	05-12-89	B		
ST89-3506 Trunkline Gas Co	Louisiana Gas System, Inc	05-12-89	B		
ST89-3507 Natural Gas Pipeline Co. of America	Willow Tex Pipeline Co	05-12-89	B		
ST89-3508 Natural Gas Pipeline Co. of America	Illinois Power Co	05-12-89	B		
ST89-3509 Natural Gas Pipeline Co. of America	United Cities Gas Co	05-12-89	B		
ST89-3510 Natural Gas Pipeline Co. of America	Wisconsin Natural Gas Co	05-12-89	B		
ST89-3511 Cavallo Pipeline Co	Texas Eastern Transmission Corp	05-15-89	C		
ST89-3512 Equitrans, Inc	Texas Ohio Gas, Inc	05-15-89	G-S		
ST89-3513 Equitrans, Inc	O & R Energy Development, Inc	05-15-89	G-S		
ST89-3514 ONG Transmission Co	Natural Gas Pipeline Co. of America	05-15-89	C	10-12-89	24.32
ST89-3515 ONG Transmission Co	Kansas Power and Light Co	05-15-89	C	10-12-89	24.32
ST89-3516 El Paso Natural Gas Co	Cabot Energy Marketing Corp	05-15-89	G-S		
ST89-3517 El Paso Natural Gas Co	Union Oil Co. of CA	05-15-89	G-S		
ST89-3518 El Paso Natural Gas Co	Exxon Corp	05-15-89	G-S		
ST89-3519 ANR Pipeline Co	Texper Energy, Inc	05-15-89	G-S		
ST89-3520 ANR Pipeline Co	American Central Gas Marketing Co	05-15-89	G-S		
ST89-3521 ANR Pipeline Co	BP Gas Transmission Co	05-15-89	B		
ST89-3522 ANR Pipeline Co	Stellar Pipeline Co	05-15-89	B		
ST89-3523 ANR Pipeline Co	Iowa-Illinois Gas & Electric Co	05-15-89	B		
ST89-3524 ANR Pipeline Co	UGI Corp	05-15-89	B		
ST89-3525 ANR Pipeline Co	Centran Corp	05-15-89	G-S		
ST89-3526 ANR Pipeline Co	Cornerstone Production Corp	05-15-89	G-S		
ST89-3527 ANR Pipeline Co	Quivira Gas Co	05-15-89	B		
ST89-3528 Tennessee Gas Pipeline Co	Interstate Gas Marketing, Inc	05-15-89	G-S		
ST89-3529 Tennessee Gas Pipeline Co	Chevron U.S.A., Inc	05-15-89	G-S		
ST89-3530 Southern Natural Gas Co	Louisiana State Gas Corp	05-15-89	G-S		
ST89-3531 Southern Natural Gas Co	OXY U.S.A., Inc	05-15-89	G-S		

Docket No. and Transporter/Seller [1]	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (¢/MMBTU)
ST89-3532 Southern Natural Gas Co	Heartland Gas Marketing, Inc	05-15-89	G-S		
ST89-3533 United Gas Pipe Line Co	Access Energy Pipeline Corp	05-15-89	B		
ST89-3534 United Gas Pipe Line Co	OXY U.S.A., Inc	05-15-89	G-S		
ST89-3535 United Gas Pipe Line Co	Energy Transportation Management, Inc	05-15-89	G-S		
ST89-3536 United Gas Pipe Line Co	Mississippi Fuel Co	05-15-89	B		
ST89-3537 United Gas Pipe Line Co	PSI, Inc	05-15-89	G-S		
ST89-3538 United Gas Pipe Line Co	Entex, Inc	05-15-89	B		
ST89-3539 Northern Natural Gas Co	Exxon Corp	05-15-89	G-S		
ST89-3540 Northern Natural Gas Co	BP Gas Transmission Co	05-15-89	B		
ST89-3541 Northern Natural Gas Co	DYCO Gas Marketing	05-15-89	G-S		
ST89-3542 Psiute Pipeline Co	IGI Resources, Inc	05-16-89	G-S		
ST89-3543 Tennessee Gas Pipeline Co	West Ohio Gas Pipeline	05-16-89	B		
ST89-3544 Tennessee Gas Pipeline Co	Texas Hydrocarbons Co	05-16-89	G-S		
ST89-3545 Texas Gas Transmission Corp	James River Corp	05-17-89	G-S		
ST89-3546 Texas Gas Transmission Corp	Xebec Gas Co	05-17-89	G-S		
ST89-3547 Texas Gas Transmission Corp	Conoco, Inc	05-17-89	G-S		
ST89-3548 Texas Gas Transmission Corp	James River Corp.-South Glens Falls	05-17-89	G-S		
ST89-3549 Texas Gas Transmission Corp	Enron Gas Marketing, Inc	05-17-89	G-S		
ST89-3550 Texas Gas Transmission Corp	Texas Eastern Gas Services Co	05-17-89	G-S		
ST89-3551 Texas Gas Transmission Corp	Baltimore Speciality Steels Corp	05-17-89	G-S		
ST89-3552 United Gas Pipe Line Co	Amoco Production Co	05-17-89	G-S		
ST89-3553 Texas Eastern Transmission Corp	Equitable Gas Co	05-17-89	B		
ST89-3554 Texas Eastern Transmission Corp	Philadelphia Electric Co	05-17-89	B		
ST89-3555 Texas Eastern Transmission Corp	Amoco Gas Co	05-17-89	B		
ST89-3556 Natural Gas Pipeline Co. of America	Santa Fe International Corp	05-17-89	G-S		
ST89-3557 Natural Gas Pipeline Co. of America	Williams Natural Gas Co	05-17-89	G		
ST89-3558 Colorado Interstate Gas Co	Consumers Power Co	05-17-89	B		
ST89-3559 Colorado Interstate Gas Co	PSI, Inc	05-17-89	G-S		
ST89-3560 Colorado Interstate Gas Co	Questar Energy Co	05-17-89	G-S		
ST89-3561 Williston Basin Interstate P/L Co	Montana-Dakota Utilities Co	05-17-89	B		
ST89-3562 Williston Basin Interstate P/L Co	Longhorn Pipeline Co	05-17-89	B		
ST89-3563 Williston Basin Interstate P/L Co	Quivira Gas Co	05-17-89	B		
ST89-3564 Williston Basin Interstate P/L Co	Montana-Dakota Utilities Co	05-17-89	B		
ST89-3565 Rocky Mountain Natural Gas Co., Inc	Questar Pipeline Co	05-18-89	G		
ST89-3566 Rocky Mountain Natural Gas Co., Inc	Colorado Springs Dept. of Utilities	05-18-89	G		
ST89-3567 Texas Eastern Transmission Corp	Arkansas Western Gas Co	05-18-89	B		
ST89-3568 Northwest Pipeline Corp	Georgia-Pacific, Inc	05-18-89	G-S		
ST89-3569 ANR Pipeline Co	Sun Operating Limited Partnership	05-18-89	G-S		
ST89-3570 Gulf Energy Pipeline Co	Natural Gas Pipeline Co. of America	05-19-89	C		
ST89-3571 Natural Gas Pipeline Co. of America	Wisconsin Southern Gas Co., Inc	05-19-89	B		
ST89-3572 Natural Gas Pipeline Co. of America	Peoples Gas Light & Coke Co	05-19-89	B		
ST89-3573 Natural Gas Pipeline Co. of America	Northern Indiana Public Service Co	05-19-89	B		
ST89-3574 Natural Gas Pipeline Co. of America	Iowa Electric Light & Power Co	05-19-89	B		
ST89-3575 Natural Gas Pipeline Co. of America	Central Illinois Light Co	05-19-89	B		
ST89-3576 Natural Gas Pipeline Co. of America	Illinois Power Co	05-19-89	B		
ST89-3577 Natural Gas Pipeline Co. of America	North Shore Gas Co	05-19-89	B		
ST89-3578 Natural Gas Pipeline Co. of America	PSI, Inc	05-19-89	G-S		
ST89-3579 Natural Gas Pipeline Co. of America	Wisconsin Natural Gas Co., et al	05-19-89	B		
ST89-3580 Natural Gas Pipeline Co. of America	Columbia Gas Distribution Companies	05-19-89	B		
ST89-3581 Columbia Gulf Transmission Co	Elizabethtown Gas Co	05-19-89	B		
ST89-3582 Northwest Pipeline Corp	Simpson Tacoma Kraft Co	05-19-89	G-S		
ST89-3583 Texas Eastern Transmission Corp	Excel Intrastate Pipeline Co	05-19-89	B		
ST89-3584 Texas Eastern Transmission Corp	Dayton Power and Light Co	05-19-89	B		
ST89-3585 Texas Eastern Transmission Corp	Columbia Gas of Ohio, Inc	05-19-89	B		
ST89-3586 Arkla Energy Resources	Enron Industrial Natural Gas Co	05-19-89	B		
ST89-3587 Arkla Energy Resources	B&A Pipeline Co	05-19-89	B		
ST89-3588 Arkla Energy Resources	Board of Public Util., Springfield	05-19-89	B		
ST89-3589 Arkla Energy Resources	Sarvic Gas Co	05-19-89	B		
ST89-3590 Gulf Energy Pipeline Co	Trunkline Gas Co	05-22-89	C		
ST89-3591 Phillips Gas Pipeline Co	Phillips Natural Gas Co	05-22-89	B		
ST89-3592 Tennessee Gas Pipeline Co	Central Hudson Gas and Electric Co	05-22-89	B		
ST89-3593 Tennessee Gas Pipeline Co	East Tennessee Natural Gas Co	05-22-89	G		
ST89-3594 Tennessee Gas Pipeline Co	Columbia Gas of Ohio, Inc., et al	05-22-89	B		
ST89-3595 Tennessee Gas Pipeline Co	PSI, Inc	05-22-89	G-S		
ST89-3596 Texas Gas Transmission Corp	Phibro Distributors Corp	05-22-89	G-S		
ST89-3597 Texas Gas Transmission Corp	Union Pacific Resources Co	05-22-89	G-S		
ST89-3598 Texas Gas Transmission Corp	Reed Minerals Div. Harsco Corp	05-22-89	G-S		
ST89-3599 Texas Gas Transmission Corp	Hanley and Bird	05-22-89	B		
ST89-3600 Texas Gas Transmission Corp	Xebec Gas Co	05-22-89	G-S		
ST89-3601 Sng Intrastate Pipeline Inc		05-22-89	C	10-19-89	49.23
ST89-3602 Stingray Pipeline Co	Entrade Corp	05-22-89	K-S		
ST89-3603 Stingray Pipeline Co	Union Gas Limited	05-22-89	B		
ST89-3604 Crosstex Pipeline Co	United Gas Pipe Line Co., et al	05-18-89	C	10-15-89	27.00
ST89-3605 Crosstex Pipeline Co	United Gas Pipe Line Co	05-18-89	C	10-15-89	27.00
ST89-3606 Crosstex Pipeline Co	United Gas Pipe Line Co	05-18-89	C	10-15-89	27.00
ST89-3607 Rotherwood Eastex Gas Storage Services	Tennessee Gas Pipeline Co	05-22-89	C		
ST89-3608 Columbia Gulf Transmission Co	Pennsylvania Gas and Water Co	05-22-89	B		
ST89-3609 Transcontinental Gas Pipe Line Corp	Transco Energy Marketing Co	05-22-89	G-S		
ST89-3610 Panhandle Eastern Pipe Line Co	Tarpon Gas Marketing Ltd	05-22-89	G-S		

Docket No. and Transporter/Seller [1]	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (¢/MMBTU)
ST89-3611 [3] Natural Gas Pipeline Co. of America	Illinois Power Co	05-23-89	B		
ST89-3612 Colorado Interstate Gas Co	Union Pacific Resources Co	05-23-89	G-S		
ST89-3613 Michigan Gas Storage Co	Consumers Power Co	05-24-89	B		
ST89-3614 Transok, Inc	Williams Natural Gas Co	05-24-89	C	10-21-89	32.50
ST89-3615 Natural Gas Pipeline Co. of America	Yuma Gas Corp	05-24-89	G-S		
ST89-3616 Natural Gas Pipeline Co. of America	North Shore Gas Co	05-24-89	B		
ST89-3617 Natural Gas Pipeline Co. of America	Peoples Gas Light and Coke Co	05-24-89	B		
ST89-3618 Natural Gas Pipeline Co. of America	Nothern Indiana Public Service Co	05-24-89	B		
ST89-3619 United Gas Pipe Line Co	Kogas, Inc	05-24-89	G-S		
ST89-3620 Ong Transmission Co	Anr Pipeline Co	05-25-89	C	10-22-89	24.32
ST89-3621 El Paso Natural Gas Co	Cabot Gas Supply Corp	05-25-89	B		
ST89-3622 El Paso Natural Gas Co	Meridian Oil Hydrocarbons, Inc	05-25-89	G-S		
ST89-3623 El Paso Natural Gas Co	CAbot Gas Supply Corp	05-25-89	B		
ST89-3624 Webb/Duval Gatherers	Tennessee Gas Pipeline Co	05-25-89	C		
ST89-3625 Columbia Gulf Transmission Co	Bridgeline Gas Distribution Co	05-25-89	B		
ST89-3626 Natural Gas Pipeline Co. of America	Exxon Corp	05-25-89	G-S		
ST89-3627 Natural Gas Pipeline Co. of America	Wisconsin Southern Gas Co	05-25-89	B		
ST89-3628 Natural Gas Pipeline Co. of America	Reliance Pipeline Co	05-25-89	B		
ST89-3629 Natural Gas Pipeline Co. of America	South West Gas Co	05-25-89	B		
ST89-3630 Natural Gas Pipeline Co. of America	Northern Indiana Public Service Co	05-25-89	B		
ST89-3631 Natural Gas Pipeline Co. of America	Illinois Power Co	05-25-89	B		
ST89-3632 Natural Gas Pipeline Co. of America	Iowa-Illinois Gas & Elections Co	05-25-89	B		
ST89-3633 Natural Gas Pipeline Co. of America	Southern California Gas Co	05-25-89	B		
ST89-3634 Natural Gas Pipeline Co. of America	Iowa Electric Light & Power Co	05-25-89	B		
ST89-3635 CNG Transmission Corp	Riley Natural Gas Co	05-25-89	G-S		
ST89-3636 CNG Transmission Corp	O & R Energy Co	05-25-89	G-S		
ST89-3637 CNG Transmission Corp	O & R Energy Co	05-25-89	G-S		
ST89-3638 CNG Transmission Corp	Interstate Gas Marketing, Inc	05-25-89	G-S		
ST89-3639 CNG Transmission Corp	Goetz Energy Corp	05-25-89	G-S		
ST89-3640 CNG Transmission Corp	Rochester Gas & Electric Corp	05-25-89	B		
ST89-3641 CNG Transmission Corp	Woodward Marketing, Inc	05-25-89	G-S		
ST89-3642 CNG Transmission Corp	TXG Marketing	05-25-89	G-S		
ST89-3643 CNG Transmission Corp	Public Service Co. of N. Carolina	05-25-89	B		
ST89-3644 United Texas Transmission Co	Natural Gas P/L Co. of America, et al	05-26-89	C		
ST89-3645 Tennessee Gas Pipeline Co	FEC Marketing	05-26-89	G-S		
ST89-3646 Tennessee Gas Pipeline Co	BP Gas Inc	05-26-89	G-S		
ST89-3647 Tennessee Gas Pipeline Co	Ladd Gas Marketing	05-26-89	G-S		
ST89-3648 Panhandle Eastern Pipe Line Co	Oxy U.S.A., Inc	05-26-89	G-S		
ST89-3649 Panhandle Eastern Pipe Line Co	Citizens Gas Supply Corp	05-26-89	G-S		
ST89-3650 Panhandle Eastern Pipe Line Co	Mobil Natural Gas, Inc	05-26-89	G-S		
ST89-3651 Moraine Pipeline Co	Natural Gas Pipeline Co. of America	05-26-89	G		
ST89-3652 Natural Gas Pipeline Co. of America	Exxon Corp	05-26-89	G-S		
ST89-3653 Natural Gas Pipeline Co of America	Peoples Gas Light and Coke Co	05-26-89	B		
ST89-3654 Natural Gas Pipeline Co of America	Northern Indiana Public Service Co	05-26-89	B		
ST89-3655 Natural Gas Pipeline Co. of America	Northern Illinois Gas Co	05-26-89	B		
ST89-3656 United Gas Pipeline Co	City of Vicksburg, et al	05-26-89	B		
ST89-3657 Questar Pipeline Co	Northern Natural Gas Co	05-26-89	G		
ST89-3658 Questar Pipeline Co	Mountain Fuel Supply Co	05-26-89	B		
ST89-3659 Louisiana Resources Co	Louisiana Gas Marketing Co	05-26-89	C	10-23-89	26.43
ST89-3660 Transok, Inc	Panhandle Eastern Pipe Line Co	05-26-89	C	10-23-89	32.50
ST89-3661 Acadian Gas Pipeline System	Sabine Pipeline Co	05-30-89	C		
ST89-3662 Acadian Gas Pipeline System	Tennessee Gas Pipeline Co	05-30-89	C		
ST89-3663 Northern Natural Gas Co	Lone Star Gas Co	05-30-89	B		
ST89-3664 Transcontinental Gas Pipe Line Corp	South Jersey Gas Co	05-30-89	B		
ST89-3665 Transcontinental Gas Pipe Line Corp	Enron Gas Marketing, Inc	05-30-89	G-S		
ST89-3666 Tenngasco Gas Supply Co	Tennessee Gas Pipeline Co	05-30-89	C		
ST89-3667 Tennessee Gas Pipeline Co	Natural Gas Clearinghouse, Inc	05-30-89	G-S		
ST89-3668 Tennessee Gas Pipeline Co	Ball-Icon Glass Packaging Corp	05-30-89	G-S		
ST89-3669 BP Gas Transmission Co	ANR Pipeline Co., et al	05-30-89	C	10-27-89	13.70
ST89-3670 BP Gas Transmission Co	Texas Eastern Transmission Corp., et al	05-30-89	C	10-27-89	16.56
ST89-3671 Valero Interstate Transmission Co	Valero Transmission, L.P	05-30-89	B		
ST89-3672 Texas Gas Transmission Corp	East Ohio Gas Co., et al	05-30-89	B		
ST89-3673 El Paso Natural Gas Co	Adobe Gas Co	05-30-89	B		
ST89-3674 El Paso Natural Gas Co	Grace Petroleum Corp	05-30-89	G-S		
ST89-3675 Transwestern Pipeline Co	Exxon Corp	05-30-89	G-S		
ST89-3676 Transwestern Pipeline Co	Panhandle Eastern Pipeline Co	05-30-89	G		
ST89-3677 Transwestern Pipeline Co	Prairie Gas Transportation Co	05-30-89	B		
ST89-3678 Transwestern Pipeline Co	Cabot Gas Supply Corp	05-30-89	B		
ST89-3679 Stingray Pipeline Co	Texas-Ohio Gas, Inc	05-30-89	K-S		
ST89-3680 Stingray Pipeline Co	Public Service Electric & Gas Co	05-30-89	B		
ST89-3681 Stingray Pipeline Co	Fuel Services Group	05-30-89	K-S		
ST89-3682 Stingray Pipeline Co	Sun Operating Ltd Partnership	05-30-89	K-S		
ST89-3683 Stingray Pipeline Co	Elf Aquitaine Operating, Inc	05-30-89	K-S		
ST89-3684 Algonquin Gas Transmission Co	Providence Gas Co	05-30-89	B		
ST89-3685 Algonquin Gas Transmission Co	Commonwealth Gas Co	05-30-89	B		
ST89-3686 Algonquin Gas Transmission Co	Colonial Gas Co	05-30-89	B		
ST89-3687 Algonquin Gas Transmission Co	Connecticut Light and Power Co	05-30-89	B		
ST89-3688 Algonquin Gas Transmission Co	Connecticut Light and Power Co	05-30-89	B		
ST89-3689 Algonquin Gas Transmission Co	Providence Gas Co	05-30-89	B		

Docket No. and Transporter/Seller [1]	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (¢/MMBTU)
ST89-3690 Algonquin Gas Transmission Co	Providence Gas Co	05-30-89	B		
ST89-3691 Trunkline Gas Co	Alabama Gas Corp., et al	05-30-89	B		
ST89-3692 Trunkline Gas Co	Southern Industrial Gas Corp	05-30-89	G-S		
ST89-3693 Trunkline Gas Co	Louisiana Gas Marketing, Inc	05-30-89	B		
ST89-3694 Trunkline Gas Co	James River—kvp group	05-30-89	G-S		
ST89-3695 Trunkline Gas Co	Consumers Power Co	05-30-89	B		
ST89-3696 Trunkline Gas Co	Columbia Gas of Ky, Inc., et al	05-30-89	B		
ST89-3697 Trunkline Gas Co	Consumers Power Co	05-30-89	B		
ST89-3698 Trunkline Gas Co	Transtate Gas Service Co	05-30-89	G-S		
ST89-3699 Panhandle Eastern Pipe Line Co	Mountain Iron & Supply Co	05-30-89	G-S		
ST89-3700 Panhandle Eastern Pipe Line Co	Emtrade Corp	05-30-89	G-S		
ST89-3701 Panhandle Eastern Pipe Line Co	Midland cogeneration venture, L.P	05-30-89	G-S		
ST89-3702 Louisiana Resources Co	ANR Pipeline Co., et al	05-30-89	C	10-27-89	32.32
ST89-3703 Lone Star Gas Co	Natural Gas Pipeline Co., of America	05-31-89	C		
ST89-3704 Southern Natural Gas Co	American Central Gas Companies	05-31-89	G-S		
ST89-3705 Northern Natural Gas Co	West Texas Gas, Inc	05-31-89	G-S		
ST89-3706 Northern Natural Gas Co	Vantage Pipeline Systems, Inc	05-31-89	G-S		
ST89-3707 Northern Natural Gas Co	PSI Inc	05-31-89	G-S		
ST89-3708 Northern Natural Gas Co	Hunt Oil Co	05-31-89	G-S		
ST89-3709 K N Energy, Inc	Minnegasco, Inc	05-31-89	B		
ST89-3710 K N Energy, Inc	Associated Intrastate Pipeline	05-31-89	B		
ST89-3711 K N Energy, Inc	Northern Gas of Wyoming	05-31-89	B		
ST89-3712 K N Energy, Inc	Northern Gas of Wyoming	05-31-89	B		
ST89-3713 K N Energy, Inc	Northwestern Public Service Co	05-31-89	B		
ST89-3714 K N Energy, Inc	Minnegasco, Inc	05-31-89	B		
ST89-3715 BP Gas Transmission Co	ANR Pipeline Co., et al	05-31-89	B	10-28-89	13.70
ST89-3716 BP Gas Transmission Co	Texas Gas Transmission Corp	05-31-89	C	10-28-89	18.66
ST89-3717 Transok, Inc	Arida Energy Resources	06-01-89	C	10-29-89	
ST89-3718 Natural Gas Pipeline Co. of America	Baltimore Gas & Electric Co	05-31-89	B		
ST89-3719 BP Gas Transmission Co	ANR Pipeline Co., et al	05-31-89	C	10-28-89	13.70
ST89-3720 BP Gas Transmission Co	ANR Pipeline Co., et al	05-31-89	C	10-28-89	13.70
ST89-3721 United Gas Pipe Line Co	Entrade Corp	05-31-89	G-S		
ST89-3722 ANR Pipeline Co	Coastal Gas Marketing Co	05-31-89	G-S		
ST89-3723 ANR Pipeline Co	Union Light, Heat and Power Co	05-31-89	B		
ST89-3724 ANR Pipeline Co	Wisconsin Public Service Corp	05-31-89	B		
ST89-3725 ANR Pipeline Co	Xebec Gas Co	05-31-89	G-S		
ST89-3726 ANR Pipeline Co	Fuel Service Group	05-31-89	G-S		
ST89-3727 ANR Pipeline Co	Corning Natural Gas Corp	05-31-89	B		
ST89-3728 ANR Pipeline Co	General Motors Corp	05-31-89	G-S		
ST89-3729 ANR Pipeline Co	Unicorp Energy, Inc	05-31-89	G-S		
ST89-3730 ANR Pipeline Co	City of Grant City	05-31-89	B		
ST89-3731 Panhandle Eastern Pipe Line Co	Transtate Gas Service Co	05-31-89	G-S		
ST89-3732 Panhandle Eastern Pipe Line Co	Anadarko Trading Co	05-31-89	G-S		
ST89-3733 Southern Natural Gas Co	Chemical Products Corp	05-31-89	G-S		
ST89-3734 Southern Natural Gas Co	Hadson Gas Systems, Inc	05-31-89	G-S		
ST89-3735 Stingray Pipeline Co	Brooklyn Interstate Natural Gas Corp	05-31-89	K-S		
ST89-3736 Stingray Pipeline Co	Coastal Gas Marketing Co	05-31-89	K-S		
ST89-3737 United Gas Pipe Line Co	City of Gulf Breeze	06-01-89	G-S		
ST89-3738 Delhi Gas Pipeline Corp	Natural Gas Pipeline Co. of America	05-31-89	C		
ST89-3739 Delhi Gas Pipeline Corp	Transwestern Pipeline Co	05-31-89	C		
ST89-3740 Delhi Gas Pipeline Corp	Philadelphia Gas Works	05-31-89	C		
ST89-3741 Delhi Gas Pipeline Corp	Natural Gas Pipeline Co. of America	05-31-89	C	10-28-89	35.00

[1] Notice of transactions does not constitute a determination that filings comply with Commission Regulations in accordance with Order No. 436 (Final Rule and Notice Requesting Supplemental Comments, 50 FR 42,372, 10/16/85).

[2] The intrastate Pipeline has sought Commission approval of its Transportation Rate pursuant to Section 284.123(B)(2) of the Commission's Regulations (18 CFR 284.123(B)(2)). Such rates are deemed fair and equitable if the Commission does not take action by the date indicated.

[FR Doc. 89-15465 Filed 6-29-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-1615-000, et al.]

Texas Gas Transmission Corp. et al. Natural gas certificate filings

Take notice that the following filings have been made with the Commission:

1. Texas Gas Transmission Corporation

[Docket No. CP89-1615-000]

June 19, 1989.

Take notice that on June 13, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-1615-000 an application pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Conoco Inc. (Conoco), under Texas Gas' blanket certificate issued in Docket No. CP86-686-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas proposes to transport, on an interruptible basis, up to 8,000 MMBtu per day for Conoco. Texas Gas states that construction of facilities would not be required to provide the proposed service.

Texas Gas further states that the maximum day, average day, and annual transportation volumes would be approximately 8,000 MMBtu, 3,000 MMBtu and 1,100,000 MMBtu respectively.

Texas Gas advises that service under Section 284.223(a) commenced May 1, 1989, as reported in Docket No. ST89-3547.

Comment date: August 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

Texas Gas Transmission Corporation

[Docket No. CP89-1612-000]

June 22, 1989.

Take notice that on June 13, 1989, Texas Gas Transmission Corporation (Texas Gas) P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP89-1612-000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon 639 feet of 8-inch pipeline located at the tailgate of the Claiborne Gasoline Plant in Claiborne Parish, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Gas states that the pipeline segment proposed for abandonment is part of a gas supply receipt point which is no longer needed, because there is no gas supply behind the Claiborne Plant which would require this particular segment of pipeline. It is stated that the segment of pipeline proposed for abandonment was installed in 1947, is now obsolete, and its abandonment is part of Texas Gas' plan to modernize and reorganize its gas supply facilities. It is asserted that the abandonment would be partially in place and partially by removal. It is explained that the abandonment would have no negative impact on customers of Texas Gas. It is estimated that the removal cost would be $750.

Comment date: July 13, 1989, in accordance with Standard Paragraph F at the end of this notice.

3. Colorado Interstate Gas Company

[Docket No. CP89-1567-000]

June 22, 1989.

Take notice that on June 5, 1989, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP89-1567-000 an application pursuant to Section 7(c) of the Natural Gas Act, and the Commission's Regulations for a certificate of public convenience and necessity for authority to increase the General Daily entitlement and Total Annual Entitlement for a CIG jurisdictional sales customer, K N Energy, Inc. (K N), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CIG proposes to increase K N's General Daily Entitlement from 4,000 Mcf per day to 11,000 Mcf per day and the Annual Entitlement from 1,022 MMcf to 3,000 MMcf. In addition, CIG proposes to make changes to its Maximum Daily Volume obligation to include transportation and sales volumes at certain delivery points, use an existing transportation delivery point as a sales point, construct and operate three new meter stations for delivery to K N, and extend the term of the existing sales service to September 30, 1996.

It is stated that the authority requested would be effective on or before October 1, 1989.

Comment date: July 13, 1989, in accordance with Standard Paragraph F at the end of this notice.

Northwest Pipeline Corporation

[Docket No. CP89-1649-000]

June 22, 1989.

Take notice that on June 16, 1989, Northwest Pipeline Corporation (Northwest) 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-1649-000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon the sale to and tranportation of natural gas for Questar Pipeline Company (Questar) under Northwest's Rate Schedules X-27, X-30 and X-44 of Northwest's FERC Gas Tariff, Volume No. 2, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that under Northwest's Rate Schedule X-27 certificated in docket No. CP75-369, Northwest is authorized to deliver up to 800 Mcf per day to Questar for transportation from the Martin Draw Area located in Daggett County, Utah and to sell and transport to Questar up to 25 percent of the gas so tendered. Under Rate Schedule X-30 Northwest, certificated in Docket No. CP76-350, is authorized to deliver up to 1,500 Mcf per day to Questar for transportation from the Salt Wells South Unit Area located in Sweetwater County, Wyoming and to sell and transport to Questar up to 25 percent of the gas tendered. Under Rate Schedule X-44, certificated in Docket No. CP78-152, Northwest is authorized to deliver up to 10,000 Mcf per day to Questar for transportation from the Stateline Area located in Carbon County, Wyoming and Moffat County, Colorado and to sell and transport to Questar upt to 25 percent of the gas tendered.

Northwest states that by contract amendments dated January 27, 1987 (Docket No. CP75-369, Rate Schedule X-27), April 4, 1988 (Docket No. CP76-350, Rate Schedule X-30) and April 4, 1988 (Docket No. CP78-152, Rate Schedule X-44), Northwest and Questar deleted the contractual provision allowing Questar the option to elect to purchase up to 25 percent of the volumes tendered by Northwest to Questar under the Gas Purchase, Transportation, and Gas Exchange Agreements. Consistent with these contract amendments, Northwest requests permission and approval to abandon its presently authorized gas sales to Questar under Rate Schedule Nos. X-27, X-30 and X-44 and the associated transportation of the sales gas to Questar.

Comment date: July 13, 1989, in accordance with Standard Paragraph F at the end of this notice.

5. Trunkline Gas Company

[Docket No. CP89-1477-000]

June 22, 1989.

Take notice that on May 22, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1477-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to (1) transport natural gas for BP Gas Marketing Company (BP), a shipper and marketer of natural gas, and (2) operate certian facilities in order to effect the transportation, under Trunkline's blanket certificate issued in Docket No. CP86-586-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Trunkline states that pursuant to a Transportation Agreement dated March 23, 1989, between Trunkline and BP (Agreement), it would transport up to 30,000 dekatherms (Dt.) per day equivalent of natural gas, on an interruptible basis, for BP. Trunkline indicates that the Agreement provides for Trunkline to receive the natural gas from Ewin Bank Block 826, offshore Louisiana. Trunkline would then transport and redeliver the natural gas, less fuel and unaccounted-for line loss, to Southern Natural Gas Company in St. May Parish, Louisiana.

Trunkline states that the estimated daily and estimated annual quantities that would be transported would be 8,000 Dt. and 2,920,000 Dt., respectively.

Trunkline also requests authorization to operate as a facility subject to the jurisdiction of the Commission under Section 7 of the Natural Gas Act a 16-inch lateral from the Standard Oil Production Company production platform in Ewing Bank Block 826 to a subsea tie-in point in Trunkline's pipeline in South Timbalier 176, which was originally constructed to effect deliveries of natural gas under Section 311 of the Natural Gas Policy Act.

Comment date: August 7, 1989, in accordance with Standard Paragraph F at the end of this notice.

6. Tennessee Gas Pipeline Company

[Docket No. CP89-1650-000]

June 22, 1989.

Take notice that on June 16, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in docket no. CP89-1650-000 a request pursuant to § 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for PSI, Inc. (PSI), a marketing company, under Tennessee's blanket certificate issued in docket No. CP87-115-000 on June 18, 1987, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee states that pursuant to a transportaton agreement and amendment, both dated April 13, 1989, it proposes to transport natural gas for PSI from designated receipt points for redelivery to points on Tennessee's system, located in various states. Tennessee further states that the volumes of gas to be transported are 100,000 dt-equivalent on an average day, 100,000 dt-equivalent on a peak day, and 36,500,000 dt-equivalent on an annual basis under the contract. It is stated that service under § 284.223(a) commenced April 21, 1989, as reported in Docket No. ST-89-3595 (filed May 22, 1989).

Comment date: August 7, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. United Gas Pipe Line Company

[Docket No. CP89-1617-000]

June 22, 1989.

Take notice that on June 13, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in docket No. CP89-1617-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to provide firm transportation service on behalf of The City of Gulf Breeze, Florida, a local distribution Company of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000 pursuant to Section 7 of the Natural Gas act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that it would transport 2,000 MMbtu on a peak and average day and 731,000 MMbtu on an annual basis.

United further states that it has commenced service under the 120-day automated authorization and reported such service in Docket No. ST89-3737, pursuant to § 284.223(a) of the Regulations.

Comment date: August 7, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. Stingray Pipeline Company

[Docket No. CP89-1654-000]

June 22, 1989.

Take notice that on June 19, 1989, Stingray Pipeline Company (Stingray), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1654-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Texas-Ohio Gas, Inc. (Texas-Ohio), a marketer, under the blanket certificate issued by the Commission's Order No. 509, Pursuant to Section 7 of the Natural Gas Act, corresponding to the rates, terms and conditions filed in Docket No. RP89-70-000, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Stingray states that pursuant to a transportation agreement dated April 24, 1989, under its Rate Schedule ITS, it proposes to transport up to 5,000 dekatherms (dt) equivalent per day of natural gas for Texas-Ohio. Stingray states that it would transport the gas from various receipt points on its system as shown in Exhibit "A" of the transportation agreement and would deliver the gas, less fuel used and unaccounted for line loss, to Holly Beach and OXY-NGL plant, both located in Cameron Parish, Louisiana, and Stingray-HIOS Exchange (EHI-A330) located offshore Texas.

Stingray advises that service under § 284.223 (a) commended May 1, 1989, as reported in Docket No. ST89-3679. Stingray further advises that it would transport 5,000 dt on an average day and 1,825 dt annually.

Comment date: August 7, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. Tennessee Gas Pipeline Company

[Docket No. CP89-1652-000]

June 22, 1989.

Take notice that on June 16, 1989, Tennessee Gas Pipeline Company (Tennessee), 1010 Milam, Houston, Texas 77002, filed in Docket No. CP89-1652-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Delta Pipeline Company (Delta), a marketer of natural gas, under Tennessee's blanket certificate, issued in Docket No. CP87-115-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee proposes to transport up to 50,000 dt equivalent of natural gas on a peak day for Delta, 50,000 dt equivalent on an average day and 18,250,000 dt equivalent on an annual basis. It is stated that Tennessee would receive the gas for Delta's account at points on Tennessee's system located in Louisiana and offshore Louisiana and would deliver equivalent volumes to Texas Eastern Transmission Corporation and Alabama-Tennessee Natural Gas in Colbert County, Alabama. It is asserted that the transportation service would be effected using existing facilities and that no construction of additional facilities would be required. It is explained that the transportation service commenced May 8, 1989, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-3816.

Comment date: August 7, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. Stingray Pipeline Company

[Docket No. CP89-1658-000]

June 22, 1989.

Take notice that on June 19, 1989, Stingray Pipeline Company (Stingray), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1658-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Fuel Services Group (FSG), a marketer, under the blanket certificate issued by the Commission's Order No. 509, pursuant to Section 7 of the Natural Gas Act, corresponding to the rates, terms and conditions filed in Docket No. RP89-70-000, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Stingray states that pursuant to a transportation agreement dated April 20, 1989, under its Rate Schedule ITS, it proposes to transport up to 15,600 dekatherms (dt) per day equivalent of natural gas for FSG. Stingray states that it would transport the gas from various receipt points on its system as shown in Exhibit "A" of the transportation agreement and would deliver the gas, less fuel used and unaccounted for line loss, to Holly Beach and the OXY-NGL plant, both located in Cameron Parish, Louisiana, and Stingray-HIOS Exchange (EHI-A330) located offshore Texas.

Stingray advises that service under § 284.223(a) commenced May 1, 1989, as reported in Docket No. ST89-3681-000.

Stingray further advises that it would transport 10,000 dt on an average day and 3,650,000 dt annually.

Comment date: August 7, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1641-000]

June 22, 1989.

Take notice that on June 15, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1641-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Oxy USA, Inc. (Oxy), a producer of natural gas, under Panhandle's blanket certificate issued in Docket No. CP86-585-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Pursuant to a gas transportation agreement dated April 11, 1989, Panhandle requests authority to transport up to 150,000 Dt. of natural gas per day, on an interruptible basis, on behalf of Oxy. Panhandle states that the agreement provides for it to receive gas from various existing points of receipts along its system and deliver the gas, less fuel used and unaccounted for line loss, to Haven Pool at an existing point of delivery located in Reno County, Kansas. Oxy has informed Panhandle that it expects to have the full 150,000 Dt. transported on an average day and, based thereon, estimates that the annual transportation quantity would be 54,750,000 Dt. Panhandle advises that the transportation service commenced on May 1, 1989, as reported in Docket No. ST89-3648, pursuant to § 284.223 of the Commission's Regulations.

Comment date: August 7, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. Texas Gas Transmission Corporation

[Docket No. CP89-1634-000]

June 23, 1989.

Take notice that on June 15, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-1634-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for Texas Eastern Gas Services Company (Texas Eastern Services) under its blanket certificate issued in Docket No. CP88-686-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Gas states that it would receive the gas for Texas Eastern Services at an existing point of receipt in offshore Louisiana and would redeliver the gas for Texas Eastern Services at an existing interconnection located in offshore Louisiana.

Texas Gas further states that the maximum daily, average daily and annual quantities that it would transport for Texas Eastern Services would be 5,000 MMBtu equivalent of natural gas, 3,000 MMBtu equivalent of natural gas and 1,095,000 MMBtu equivalent of natural gas, respectively.

Texas Gas indictes that in filing made with the Commission in Docket No. ST89-3550, it reported that transportation service for Texas Eastern Services commenced on May 1, 1989 under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: August 7, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. Tennessee Gas Pipeline Company

[Docket No. CP89-1651-000]

June 23, 1989.

Take notice that on June 16, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-1651-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport gas for Ladd Gas Marketing, Inc. (Ladd) a marketer of natural gas, under Tennessee's blanket certificate issued in Docket No. CP87-115-000 under Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee states that it proposes to transport natural gas for Ladd, on an interruptible basis, from points of receipt located offshore Louisiana, Texas, Tennessee, Louisiana and New York to multiple delivery points located off Tennessee's system. The location of the ultimate delivery points of the gas are Connecticut, Kentucky, Massachusetts, New Jersey, New York, Ohio, Pennsylvania, Tennessee and West Virginia. Tennessee indicates that the total volume of gas to be transported for Ladd on a peak day would be 150,000 dekatherms; on an average day would be 150,000 dekatherms; and an annual basis would be 54,750,000 dekatherms. Tennessee indicates it would perform the proposed transportation service for Ladd pursuant to a service agreement dated November 16, 1988, as amended, between Tennessee and Ladd.

Tennessee states that it commenced the transportation of natural gas for Ladd on May 1, 1989, at Docket No. ST89-3647-000 for a 120-day period, pursuant to § 284.223(a)(1) of the Commission's Regulations. Tennessee further states existing facilities would be used in order to provide this transportation service.

14. El Paso Natural Gas Company

[Docket No. CP89-1599-000]

June 23, 1989.

Take notice that on June 12, 1989, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed a request for authorization at Docket No. CP89-1599-000, pursuant to §§ 157.205 of the Commission's Regulations under the Natural Gas Act, and El Paso's blanket certificate issued in Docket No. CP82-435-000 for authorization to: (1) Add a new delivery point to permit the delivery of natural gas to Southern Union Gas Company (SUG) for resale in Ward County, Texas; and (2) abandon an existing minor tap facility and a related sale for resale service to SUG in Ward County, Texas, all as more fully set forth in the request for authorization on file with the Commission and open to public inspection.

It is stated that certificate authorizations for the operation of El Paso's then existing facilities and for its sale for resale to SUG were issued at Docket No. CP64-211. El Paso further states that El Paso and SUG are parties to the currently effective Service Agreement dated February 1, 1971, which provides, *inter alia*, for the sale and delivery by El Paso and the purchase and receipt by SUG of natural gas for distribution and resale to consumers situated in various communities and areas in the State of Texas.

El Paso also states that it has received a request from SUG for (1) natural gas service at an existing interconnection point on El Paso's line in Ward County, Texas within the existing certificated entitlements of SUG: and (2) abandonment of an existing minor tap facility and related service, located on El Paso's line in Ward County, Texas. The request further states that El Paso has been advised by SUG that the requested volumes of natural gas would be utilized to serve existing residential, small commercial, irrigation and interruptible industrial requirements of consumers in Ward County, Texas. It is

maintained that initial deliveries of natural gas would begin in the second quarter of 1989. It is further maintained that the peak day and annual deliveries at the proposed delivery point are expected to be 8,000 Mcf and 824,100 Mcf, respectively.

Comment date: August 7, 1989, in accordance with Standard Paragraph G at the end of this notice.

15. Williams Natural Gas Company

[Docket No. CP89-1627-000]

June 23, 1989.

Take notice that on June 14, 1989, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed an application in Docket No. CP89-1627-000 pursuant to Sections 7 (b) and (c) of the Natural Gas Act (NGA), as amended, and part 157 of the Commission's Regulations for a (1) certificate of public convenience and necessity under Section 7(c) of the NGA authorizing WNG to provide on a self-implementing basis both firm and interruptible contract storage service under new Rate Schedule FSS and Rate Schedule ISS, respectively, and blanket authorization, with pregranted abandonment, for shippers under WNG's Rate Schedules FTS and ITS to utilize services under Rate Schedules FSS and/or ISS, respectively, in conjunction with their transportation service, and (2) authorization under Section 7(b) of the NGA for WNG to abandon and cancel such rate schedule effective on the later of March 31, 1990, or the date WNG offers service under new Rate Schedule ISS, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

WNG states that the firm and interruptible contract storage services for which authorization is requested would enhance the transportation services WNG presently offers under its Part 284 blanket certificate and are consistent with the Commission's goal of making unbundled pipeline services available to shippers as a means of promoting competition. WNG further states that such storage services under new Rate Schedules FSS and ISS would be available to WNG's transportation customers on a first-come, first-served basis and that these new storage services would ensure the full utilization of WNG's system storage capacity which is expected to become available as a result of conversions to transportation capacity by WNG's sales customers. WNG indicates that no new facilities are required to implement the new storage service.

In addition, WNG states that the interruptible storage service under Rate Schedule ISS proposed in this docket would be provided in lieu of the interruptible deferred delivery service under WNG's existing Rate Schedule IDDS. WNG states that in compliance with the February 2, 1989, Stipulation and Agreement filed by WNG in Docket Nos. RP87-33-000 and TA88-1-43-000, WNG had filed in Docket No. CP89-752-000 an application for interruptible storage service to be provided in lieu of service under Rate Schedule IDDS. WNG states that the blanket certificate requested in this docket would allow WNG to offer its shippers more enhanced storage services under Rate Schedules FSS and ISS than those presently provided under Rate Schedule IDDS or contemplated in the February 2, 1989, stipulation and WNG's pending application in Docket No. CP89-752-000.

Moreover, WNG states that because the enhanced storage services proposed in this docket expand upon the interruptible storage service contemplated in the February 2 stipulation to replace IDDS service, it also requests authorization to terminate existing service under Rate Schedule IDDS and to abandon and cancel such rate schedule effective on the later of March 31, 1990, or the date WNG offers service under Rate Schedule ISS.

WNG indicates that whenever it determines that it can make available storage service under Rate Schedule ISS or FSS, the company would conduct a 15-day open season beginning after notification that such storage service is available, with all complete requests received during the open season treated as if they had been received on the last day of the open season. WNG indicates that if requests for firm storage service exceed the firm capacity available, the available capacity would be assigned *pro rata*. For ISS service, WNG states that once a customer has prepaid for capacity, it would receive priority of service up to the level of capacity paid. WNG notes that if the total interruptible capacity is less than the capacity prepaid, the interruptible capacity would be reduced *pro rata*. WNG also indicates that, if any upon expiration of the open season, storage capacity is available, reserved capacity would be allocated according to nominations received on a first come-first served basis.

WNG proposes the following rates for storage service under the FSS Rate Schedule: (a) A maximum deliverability reservation rate of $0.7726 per dt equivalent of natural gas of the maximum daily withdrawal quantity (MDWQ) and a minimum rate of 0; (b) a maximum capacity reservation rate of $.2091 per dt equivalent of natural gas of one twelfth (1/12) of the maximum storage quantity and minimum rate of 0; and (c) an injection/withdrawal commodity rate of $.0080 per dt equivalent of natural gas actually injected or withdrawn from storage during the month. WNG states that should the quantities withdrawn on any day of the month exceed the MDWQ, the rate shall also include a deliverability overrun charge equal to the product of the deliverability reservation charge and the quantities withdrawn in excess of the MDWQ. In addition WNG advised that any storage gas balance remaining on April 1 of any year shall be subject to a 1 percent retention charge.

For ISS service, WNG proposes the following rates: (a) An injection rate of $.0080 applied per dt equivalent of natural gas delivered into storage, (b) a withdrawal charge of $.0080 applied per dt equivalent of natural gas withdrawn from storage and (c) a maximum storage capacity quantity rate of $.3945 applied per dt equivalent of natural gas of the maximum storage capacity quantity incrementally used during the month and a minimum charge of 0. It is indicated that the remaining storage gas balance under Rate Schedule ISS shall be specified to be the initial injection for the next storage cycle and subject to the storage capacity quantity charge under Rate Schedule ISS.

It is also indicated that shippers under both the ISS and FSS Rate Schedules may elect to reimburse WNG for fuel and system losses in kind or pay the applicable fuel charges as shown on Tariff Sheet No. 7 of Volume No. 1 in Exhibit P of the application. WNG also requests authority to discount rates between requested maximum and minimum rates.

Comment date: July 14, 1989 in accordance with Standard Paragraph F at the end of the notice.

16. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1476-000]

June 23, 1989.

Take notice that on May 22, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1476-000 a request pursuant to § 157.205, 157.211(b)(1), and 284.223(c)(5) of the Commission's Regulations under the Natural Gas Act for authorization to construct a sales tap and provide interruptible transportation service for Stahl Specialty Company (Stahl) a shipper and end-user of natural gas, under the blanket certificates issued in Docket Nos. CP86-585-000 and CP83-83-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Panhandle states that it proposes to transport up to 350 dekatherms (dt) per day equivalent of natural gas for Stahl's behalf. Panhandle also states that it would transport the gas from various receipt points on its system, and deliver such gas, less fuel used and unaccounted for line loss, to Stahl at a sales tap, proposed herein to be constructed in Johnson County, Missouri, at a cost of $25,000 for which Panhandle will be reimbursed.

Panhandle further advises that it would transport 300 dt on an average day and 109,500 dt annually, and such transportation would commence upon construction of the proposed tap.

Comment date: August 7, 1989, in accordance with Standard Paragraph G at the end of this notice.

17. United Gas Pipe Line Company

[Docket No. CP89-1660-000]

June 23, 1989.

Take notice that on June 19, 1989, United Gas Pipe Line Company (United), P.O. Box 1478 Houston, Texas 77251-1478, filed in Docket No. CP89-1660-000 a request pursuant to Section 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide transportation service on behalf of Ergon Refining Inc., an end-user of natural gas, on an interruptible basis, under United's blanket certificate, issued in Docket No. CP88-6-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United states that the Interruptible Gas Transportation Agreement TI-21-2005, dated December 9, 1988, proposes to transport 7,210 MMBtu equivalent on an average day, 7,210 MMBtu equivalent on a peak day, and 2,631,650 MMBtu equivalent on an annual basis to Ergon, and that service commenced May 5, 1989, as reported in Docket No. ST89-3779, pursuant to § 284.223(a) of the Commission's Regulations.

Comment date: August 7, 1989, in accordance with Standard Paragraph G at the end of this notice.

18. United Gas Pipe Line Company

[Docket No. CP89-1662-000]

June 23, 1989.

Take notice that on June 20, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1662-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Seagull Marketing (Seagull), a marketer, under the blanket certificate issued in Docket No. CP88-6-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

United states that pursuant to a transportation agreement dated October 1, 1988, as amended on April 17, 1989, under its Rate Schedule ITS, it proposes to transport up to 515,000 MMBtu per day equivalent of natural gas for Seagull. United states that it would transport the gas from multiple receipt points as shown in Exhibit "A" of the transportation agreement and would deliver the gas to multiple delivery points shown in Exhibit "B" of the agreement.

United advises that service under § 284.223(a) commenced April 24, 1989, as reported in Docket No. ST89-3751-000 (filed June 1, 1989). United further advises that it would transport 515,000 MMBtu on an average day and 187,975,000 MMBtu annually.

Comment date: August 7, 1989, in accordance with Standard Paragraph G at the end of this notice.

19. Stingray Pipeline Company

[Docket No. CP89-1655-000]

June 23, 1989.

Take notice that on June 19, 1989, Stingray Pipeline Company (Stingray), Post Office Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1655-000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas for Brooklyn Interstate Natural Gas Corporation (BINGC), a shipper and marketer of natural gas, pursuant to Stingray's blanket certificate issued by the Commission's Order No. 509 and Section 7 of the Natural Gas Act, corresponding to the rates, terms and conditions filed in Docket No. RP89-70-000, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Specifically, Stingray requests authority to transport up to 100,000 Dt. per day on an interruptible basis on behalf of BINGC pursuant to a Transportation Agreement dated April 24, 1989 between Stingray and BINGC (Transportation Agreement). The Transportation Agreement provides for Stingray to receive gas from various existing points of receipt on its system. Stingray will then transport and redeliver subject gas, less fuel used and unaccounted for line loss, to Holly Beach and OXY-NGL Plant located in Cameron, Parish, Louisiana and Stingray-HIOS Exchange (EHI-A330) located offshore Texas.

The Shipper states that the estimated daily and estimated annual quantities would be 30,000 Dt. and 10,950,000 Dt., respectively. Service under § 284.223(a) commenced on May 1, 1989, as reported in Docket No. ST89-3735.

Comment date: August 7, 1989, in accordance with Standard Paragraph G at the end of this notice.

20. El Paso Natural Gas Company

[Docket No. CP89-1632-000]

June 23, 1989.

Take notice that on June 15, 1989, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas, 79978, filed a request for authorization at Docket No. CP89-1632-000, pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act, and El Paso's blanket certificate issued in Docket No. CP82-435-000 for authorization to install and operate a sales tap, in Maricopa County, Arizona, to permit the delivery of natural gas to Southwest Gas Corporation (Southwest) for resale to U.S. Homes in Maricopa County, Arizona, all as more fully set forth in the request for authorization on file with the Commission and open for public inspection.

It is stated that by order issued at Docket No. CP85-379-000, the Commission granted El Paso certificate authorization for, *inter alia*, the construction and operation of certain facilities and the delivery and sale of natural gas to Southwest for resale to consumers situated in various communities and environs in the State of Arizona.

El Paso states that it would install a 2-inch tap at such location at an estimated cost of $2,650. El Paso also states that peak day and annual deliveries at the proposed delivery point in the third full year of operation are expected to be 184 Mcf and 12,804 Mcf, respectively.

Comment date: August 7, 1989, in accordance with Standard Paragraph G at the end of this notice.

21. Trunkline Gas Company

[Docket No. CP89-1624-000]

June 23, 1989.

Take notice that on June 14, 1989, Trunkline Gas Company (Trunkline),

P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP89–1624–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of James River—KVP group (James River), under Trunkline blanket certificate issued in Docket No. CP86–586–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Trunkline requests authorization to transport, on an interruptible basis, up to a maximum of 30,000 dekatherms of natural gas per day for James River from receipt points located in Illinois, Louisiana and Texas to Elkhart County, Indiana. Trunkline anticipates transporting an annual volume of 10,950,000 dekatherms.

Trunkline states that the transportation of natural gas for James River commenced May 1, 1989, as reported in Docket No. ST89–3694–000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Trunkline in Docket No. CP86–586–000.

Comment date: August 7, 1989, in accordance with Standard Paragraph G at the end of this notice.

22. Stingray Pipeline Company

[Docket No. CP89–1650–000]

June 23, 1989.

Take Notice that on June 19, 1989, Stringray Pipeline Company (Stringray), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP89–1649–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Coastal Gas Marketing Company (Coastal), a shipper and marketer of natural gas, under the blanket certificate issued by the Commission's Order No. 509, pursuant to Section 7 of the Natural Gas Act, corresponding to the rates, terms and conditions filed in Docket No. RP89–70–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Stingray states that pursuant to a transportation agreement dated April 28, 1989, under its Rate Schedule ITS, it proposes to transport up to 400,000 dekatherms (dt) per day equivalent of natural gas for Coastal. Stingray states that it would transport the natural gas from various receipt points on its system in offshore Louisiana and would deliver the natural gas, less fuel and unaccounted-for line loss, to Holly Beach and OXY–NGL plant, both located in Cameron Parish, Louisiana, and Stingray-HIOS Exchange (EHI–A330) located offshore Texas. Stingray indicates that it would transport 400,000 dt on an average day and 146,000,000 dt annually.

Stingray advises that service under § 284.223(a) of the Commission's Regulations (18 CFR 284.223(a) commenced on May 1, 1989, as reported in Docket No. ST89–3736.

Comment date: August 7, 1989, in accordance with Standard Paragraph G at the end of this notice.

23. Natural Gas Pipeline Company of America

[Docket No. CP89–1630–000]

June 23, 1989.

Take notice that on June 15, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89–1630–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport gas on an interruptible basis for Brooklyn Interstate Natural Gas Corporation (Brooklyn) under the blanket certificate issued in Docket No. CP86–582–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Natural states that pursuant to a Transportation Agreement dated November 10, 1988, as amended January 25, 1989, April 7, 1989, April 21, 1989 and May 24, 1989, it proposes to transport, on an interruptible basis, up to a maximum of 100,000 MMbtu, plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS, for Brooklyn. The receipt points are located in Texas, Offshore Texas, Oklahoma, Illinois, Louisiana, Offshore Louisiana, New Mexico, Kansas, Arkansas, Iowa, and Nebraska and the delivery points Louisiana, Oklahoma, Missouri, New Mexico, Iowa, Kansas, Arkansas, and Nebraska.

Natural also states that it will transport approximately 20,000 MMbtu on an average day and approximately 7,300,000 MMbtu on an annual basis.

Natural further states it commended this service, as reported in Docket No. ST89–3893–000.

Comment date: August 7, 1989, in accordance with Standard Paragraph G at the end of this notice.

24. Natural Gas Pipeline Company of America

[Docket No. CP89–1668–000]

June 23, 1989.

Take notice that on June 21, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89–1668–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible service for Total Minatome Corporation (Total), a producer, under the blanket certificate issued in Docket No. CP86–582–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Natural states that pursuant to a Transportation Agreement dated April 14, 1989, under its Rate Schedule ITS, it proposes to transport, up to 300,000 MMbtu per day equivalent of natural gas for Total. Natural states that it would transport the gas (plus any additional volumes accepted to the overrun provisions of Natural's Rate Schedule ITS) from multiple receipt points in Illinois, Louisiana, offshore Louisiana, Oklahoma, Texas, Offshore Texas, Kansas and Iowa, as shown in Exhibit "A" of the transportation agreement, and would deliver the gas to multiple delivery points in Kansas, Illinois, Louisiana, offshore Louisiana, Texas, Oklahoma, Missouri, New Mexico, Iowa, Arkansas and Nebraska, as shown in Exhibit "B" of the agreement.

Natural advises that service under § 284.223(a) commenced April 14, 1989, as reported in Docket No. ST89–3967. Natural further advises that it would transport 20,000 MMBtu on an average day and 7,300,000 MMBtu annually.

Comment date: August 7, 1989, in accordance with Standard Paragraph G at the end of this notice.

25. El Paso Natural Gas Company

[Docket No. CP89–1629–000]

June 23, 1989.

Take notice that on June 15, 1989, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas, 79978, filed a request for authorization at Docket No. CP89–1629–000, pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act, and El Paso's blanket certificate issued in Docket No. CP82–435–000 for authorization to utilize an existing sales tap, located in Maricopa County, Arizona, to sell additional volumes of natural gas to Southwest Gas Corporation (Southwest) for resale to new customers in Maricopa County, Arizona, all as more fully set forth in the request for authorization on file with the Commission and open for public inspection.

It is stated that by order issued at Docket No. G–13107, the Commission granted El Paso certificate authorization for *inter alia*, the construction and operation of certain facilities and the delivery and sale of natural gas to Southwest for resale to consumers situated in various communities and environs in the State of Arizona.

El Paso states that it has received a request from Southwest to utilize the existing tap in Mesa, Arizona to allow Southwest to serve certain new customers. El Paso also states that it would install a relief valve at such location which would increase the delivery from 35 psig to 50 psig at the Edgar Smoke Sales Tap and permit the delivery of additional volumes of natural gas to Southwest for resale. The estimated cost of the installation of the relief valve at the existing sales tap is $350.

Comment date: August 7, 1989, in accordance with Standard Paragraph G at the end of this notice.

26. Natural Gas Pipeline Company of America

[Docket No. CP89–1661–000]

June 23, 1989.

Take notice that on June 20, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89–1661–000 a request pursuant to § 157–205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of MidCon Marketing Corp. (MidCon), a marketer of natural gas, under its blanket authorization issued in Docket No. CP86–582–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Natural would perform the proposed interruptible transportation service for MidCon, pursuant to an interruptible transportation service agreement dated April 13, 1989, as amended April 18, 1989. The transportation agreement is effective for a primary term ending December 31, 1990, and shall continue month to month thereafter unless terminated by five days prior notice by either party. Natural proposes to transport up to a maximum of 100,000 MMBtu of natural gas per day (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS). MidCon advised Natural that the volume anticipated to be transported on an average day is 100,000 MMBtu; and based on that average day figure, the annual volume to be transported is 36,500,000 MMBtu. Natural proposes to receive the subject gas at various points located in the States of Colorado, Illinois, Iowa, Kansas, Nebraska, New Mexico, Oklahoma and Texas. It is stated that the delivery point is the interconnection with Valero Transmission Company on Natural's Permian Basin Mainline in Sec. 119, Block 34, H.&T.C.R.R. Survey, Ward County, Texas. Natural avers that no new facilities are required to provide the proposed service.[1]

It is explained that the proposed service is currently being performed pursuant to the 120-day self-implementing provision of § 284.223(a)(1) of the Commission's Regulations. Natural commenced such self-implementing service on April 15, 1989, as reported in Docket No. ST89–3951–000.

Comment date: August 7, 1989, in accordance with Standard Pargraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriation action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89–15464 Filed 6–29–89; 8:45 am]

BILLING CODE 6717–01–M

[1] Natural states that the exhibit to the transportation agreement lists the existing Receipt Point No. 185 (ENCO-NGPL/BECKHAM), Beckham County, Oklahoma, as a 'proposed' point. This point was originally constructed as a facility to be utilized solely for transportation authorized by Section 311 of the NGPA. Natural states that use of this point for jurisdictional service was reported in its Annual Report for Blanket Certificate Activities in Docket No. CP82–402–000 filed May 1, 1989. Also, Natural states that Receipt Point No. 566 (Southern Union/Hutchinson), Hutchinson County, Texas and Receipt Point No. 624 (Western Farmers-NGPL/Woodward), Woodward County, Oklahoma, have been included in the transportation agreement at MidCon's request. According to Natural, these points were constructed as facilities to be utilized solely for transportation authorized by Section 311. Natural states it currently has no authorization to utilize these points for its jurisdictional transportation service for MidCon as proposed herein. Therefore, Natural states that these points will not be used under this transportation agreement until appropriate authorization has been obtained.

Office of Hearings and Appeals

Issuance of Proposed Decision and Order Issued the Period of May 15 through June 9, 1989

During the period of May 15 through June 9, 1989, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of

the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purpose of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objections within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

June 23, 1989.

Thomas L. Wieker,

Acting Director, Office of Hearings and Appeals.

Proposed Decision and Order

Farmington Gas Co., Inc. Farmington, NH, KEE-0175 Reporting Requirement

Farmington Gas Co., Inc. (Farmington) filed an Application for Exception from the provisions of Energy Information Administration (EIA) reporting requirements. The exception request, if granted, would relieve Farmington of the requirement to file Form EIA-782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report". On June 8, 1989, the Department of Energy (DOE) issued a Proposed Decision and Order which determined that the exception request be denied.

[FR Doc. 89-15544 Filed 6-29-89; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy has adopted the final procedures to be followed in refunding to adversely affecteed parties $90,000, plus accrued interest, obtained through a plea bargaining agreement between the U.S. Department of Justice and F. Lee Thorne and Charles Pabian of Elias Oil Company, a firm that operated a number of service stations in Florida. The money is currently being held in escrow.

DATE AND ADDRESS: Applications for Refund must be filed in duplicate, postmarked no later than March 15, 1990, and addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Applications should conspicuously display a reference to case number KEF-0022.

FOR FURTHER INFORMATION CONTACT: Thomas L. Wieker, Deputy Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2400.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy (DOE), notice is hereby given of the issuance of the Decision and Order set out below. The Decision sets forth procedures and standards that the DOE has adopted to distribute to adversely affected parties $90,000, plus accrued interest, obtained by the DOE through plea bargaining agreements between the U.S. Department of Justice and two individuals: F. Lee Thorne (Thorne) and Charles Pabian (Pabian). Thorne was the owner of Elias Oil Company (Elias) and Pabian was the Atlanta Regional Manager for CITCO, Elias' diesel fuel supplier. Both Thorne and Pabian made restitution to the Department of Energy for willful violation of 10 CFR 205.22 by falsely certifying on Form FEO-17 the figures of Elias' historical purchases of diesel fuel.

The Office of Hearings and Appeals has determined that the funds should be distributed to CITCO customers that purchased diesel fuel during the months of February 1974, April 1974, and June 1975 (the settlement period). In order to be considered for a portion of the funds remitted by Thorne and Pabian, a claimant must indicate, for each month of the settlement period, its base period allocation of diesel fuel and the number of gallons actually purchased from CITCO, and the base period allocation and gallons purchased from other suppliers.

Applications for Refund should be filed in duplicate and must be postmarked no later than March 15, 1990. All applications will be available for public inspection between 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: June 14, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

June 14, 1989.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Elias Oil Company.
Date of Filing: March 26, 1986.
Case Number: KEF-0022.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. *See* 10 CFR Part 205, Subpart V. Such procedures enable the DOE to refund monies to those injured by violations of the DOE regulations. On March 26, 1986, the ERA requested that the OHA formulate and implement procedures to distribute $90,000 (the settlement fund) which it received in accordance with two plea bargaining agreements. This Decision and Order sets forth the procedures that the OHA has formulated to govern the distribution of the settlement fund.

The monies involved in this proceeding were obtained through plea agreements that became final on August 17, 1983 between the U.S. Department of Justice and two individuals: F. Lee Thorne (Thorne) and Charles Pabian (Pabian). Thorne was the owner of Elias Oil Company (Elias), a firm that operated a number of service stations in Florida. Pabian was the Atlanta regional manager for Cities Services Oil Company (CITCO), Elias' diesel fuel supplier. In a criminal action brought against Thorne and Pabian, the U.S. Attorney and the U.S. Department of Justice charged that Thorne falsely certiried on Form EEO-17 that Elias' statements of its purchases of diesel fuel

during the months of February 1974, April 1974, and June 1975 (hereinafter referred to as the settlement period) were accurate, although he knew these figures to be substantially inflated. Thorne's action resulted in an increase in Elias' diesel fuel allocation. Furthermore, Pabian, the regional manager of CITCO, falsely certified Elias' FEO-17 forms as true. Thorne and Pabian pleaded guilty to the charges against them for the settlement period. As part of the plea, Thorne paid $80,000 and Pabian paid $10,000 to the DOE

This Decision and Order concerns the distribution of the settlement fund, which has been placed in an interest-bearing escrow account. On April 28, 1989, the OHA issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of the settlement fund. In order to give notice to all potentially affected parties, a copy of the PD&O was published in the **Federal Register** and comments regarding the proposed refund procedures were solicited. 54 FR 19610 (May 8, 1989). We received no comments concerning the proposed procedures for the distribution of the settlement fund. Consequently, these procedures will be adopted as proposed.

As indicated in the PD&O, we will distribute the settlement fund to any firm or individual demonstrating injury as a result of Thorne's and Pabian's actions. We do not have a record of CITCO's diesel fuel customers during the settlement period. Therefore, we invite claims from any purchaser of CITCO diesel fuel during the settlement period who can demonstrate that it was injured by Thorne's and Pabian's actions. We will therefore adopt the following standards and presumptions to assess the claims of these customers.[1]

First, we will generally assume that all purchasers of CITCO diesel fuel during the settlement period were injured by Thorne's and Pabian's actions. This assumption is based on the evidence that during the settlement period, all of CITCO's diesel fuel customers were unable to receive a portion of their adjusted base period allocations because of Elias' artificially inflated diesel fuel allocation. Therefore, we will adopt the presumption that all CITCO purchasers of diesel fuel, with the exception of Elias, were injured with respect to any gallons of diesel fuel to which they were entitled, but did not receive from CITCO during the settlement period.[2]

Second, we will adopt a volumetric method to divide the settlement fund among applicants who demonstrate that they are eligible to receive refunds. Under this methodology, we will presume that all customers experienced an equal amount of loss per gallon as a result of not receiving the correct adjusted base period allocation of diesel fuel from CITCO during the settlement period. *See Gibbs Industries, Inc.*, 14 DOE ¶ 85,460 (1986) (*Gibbs*). As we have stated in prior cases, allocating refunds on a volumetric basis is efficient, treats all firms similarly, and avoids detailed examination of the impact of the violation on each firm. *See Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,199 (1982).

Utilizing the volumetric refund presumption will also further our goal of granting restitution to as many claimants as possible by simplifying the process through which refund applications are prepared and analyzed. In this case, the volumetric refund amount will be calculated by dividing the settlement amount ($90,000) by the total estimated volume of diesel fuel sold by CITCO during the settlement period (141,876,000 gallons), yielding a per gallon volumetric refund amount, exclusive of interest, of $0.0006 ($90,000/141,876,000 gallons = $0.0006 per gallon).[3] We recognize that dividing by gallons not supplied by CITCO would also be a reasonable method of calculating a volumetric. *Gibbs*, 14 DOE at 88,846. However, in this case, that number is not reasonably determinable and would leave refund applicants in the difficult position of showing the gallons not received. Also the amount allocated to each customer under either method should be identical. Therefore, each claimant's allocable share will be determined by multiplying the volumetric refund amount by the number of CITCO gallons it purchased during the settlement period.[4] In addition, successful applicants will receive a pro rata share of the interest that has accrued since the deposit of the funds into an escrow account.

In addition, an applicant must demonstrate injury by showing a contemporaneous complaint to the DOE or other evidence that the firm was unable to make up the supply shortfall or other evidence of injury. An applicant attempting to indicate injury by showing a supply shortfall might make the showing by substantiating its base period allocation of diesel fuel from CITCO, as well as the number of gallons actually purchased from CITCO, and the base period allocation and gallons purchased from all other suppliers.

As in previous cases, only claims for at least $15 will be processed. This minimum has been adopted in prior refund cases because the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982). *See also* 10 CFR 205.286(b). The same principle applies here.

We have determined that the procedures described in the PD&O are the most equitable and efficacious means of distributing the settlement fund. Accordingly, we shall now accept Applications for Refund from eligible purchasers of CITCO diesel fuel during the settlement period. The following information should be included in all Applications for Refund:

(1) The name of the proceeding, Elias Oil Company, the case number, KEF-0022, and the applicant's name should be prominently displayed on the first page.

(2) The name, position, and telephone number of a person who may be contacted by the OHA for additional information concerning the Application.

(3) A schedule of the applicant's purchases of diesel fuel from CITCO during the months of February 1974, April 1974, and June 1975, and its adjusted base period allocation from CITCO and other suppliers for those months. In the alternative, an applicant may submit a statement certifying that during those months it has a supplier-purchaser relationship with CITCO and did not receive diesel fuel from another supplier.

(4) A statement of whether there has been any change in ownership of the entity that purchased the diesel fuel from CITCO since the end of the settlement period. If so, the name and

[1] Presumptions in refund cases are specifically authorized by § 205.282(e) of the DOE procedural regulations in order that refund applications may be considered in an efficient and equitable manner.

[2] This presumption will not apply to firms that were able to obtain sufficient quantities of diesel fuel elsewhere during the settlement period. The acquisition of product from other sources would have mitigated the injury that such customers experienced as a result of CITCO's failure to supply them with their full allocation because of Thorne's and Pabian's actions. However, a claimant that purchased product from alternate sources during the settlement period will still be eligible for a refund, if, for example, it shows that it paid a signficantly higher price for the product and was not able to pass the higher price through to its customers.

[3] CITCO's diesel fuel sales were estimated from a 1979 CITCO annual report that details its product sales for the settlement period.

[4] Some customers may claim that they suffered an allocation shortfall greater than that which has been approximated by the volumetric refund amount. These claimants must demonstrate an injury from that shortfall.

address of the current (or former) owner should be provided.

(5) A statement of whether the applicant is or has been involved as a party in any DOE or private Section 210 enforcement actions. If these actions have been terminated, the applicant should furnish a copy of any final order issued in the matter. If the action is ongoing, the applicant should describe the action and its current status. The applicant is under a continuing obligation to keep the OHA informed of any change in status during the pendency of its Application for Refund *See* 10 CFR 205.9(d).

(6) The following signed statement:

I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief.

All Applications for Refund must be filed in duplicate and must be postmarked no later than March 5, 1990. A copy of each Application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals, Forrestal Building, Room 1E-234, 1000 Independence Avenue SW., Washington, DC. Any applicant that believes that its Application contains confidential information must so indicate on the first page of its Application and submit two additional copies of its Application from which the material alleged to be confidential has been deleted, together with a statement specifying why the information is alleged to be confidential. All Applications should be sent to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

In the event that money remains after all refund claims from the settlement fund have been analyzed, the funds in that account will be disbursed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986, H.R. 5400, Title III, 99th Cong., 2d Session, Cong. Rec. H11319-21 (Daily E. October 17, 1986).

It is Therefore Ordered That:

(1) Applications for Refund from the funds remitted to the Department of Energy by Elias Oil Company pursuant to the plea bargaining agreements finalized on August 17, 1983, may now be filed.

(2) All Applications for Refund must be postmarked no later than March 15, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

Date: June 14, 1989.

[FR Doc. 89-15545 Filed 6-29-89; 8:45 am]

BILLING CODE 6450-01-M

Office of Strategic Petroleum Reserve

Solicitation of Statements of Interest in acquiring the Strategic Petroleum Reserve's Sulphur Mines, Louisiana, Crude Oil Storage Facility

AGENCY: Office of the Strategic Petroleum Reserve; U.S. Department of Energy.

ACTION: Solicitation of statements of interest to assist the Office of the Strategic Petroleum Reserve in identifying prospective offerors for purchase of part or all of the Strategic Petroleum Reserve's Sulphur Mines crude oil storage facility located in Calcasieu Parish, Louisiana, with or without an exchange of the 28 million barrels of oil contained therein, in the event that the Secretary pursues a sale of the facility.

SUMMARY:

Introduction

The Department of Energy (DOE), Office of the Strategic Petroleum Reserve (OSPR), is soliciting expressions of interest regarding the potential purchase of the SPR's Sulphur Mines oil storage facility (Facility) located in Calcasieu Parish, Louisiana. The Facility is one of six SPR underground crude oil storage sites located in Louisiana and Texas. Sulphur Mines was identified as a candidate SPR storage site in Amendment No. 2 to the SPR Plan which was transmitted to Congress and became effective in 1978, under the Energy Policy and Conservation Act (EPCA), Public Law 94-163. DOE acquired the site in 1979, and converted the existing brine caverns, having a total capacity of 26 million barrels, to oil storage. The Facility currently contains approximately 26 million barrels of crude oil and is in a standby mode of operation.

The continued utilization of the facility in the SPR program has been under review for a number of years. Because of the Facility's relatively small storage capacity when compared to other SPR sites, it has the highest operating costs on a per-barrel basis of all SPR sites. Consolidation of the Facility's stored oil and storage capacity into other SPR sites would result in significant savings for the SPR program. In addition, the Facility's drawdown capability is significantly constrained; the Facility has a drawdown capability of approximately 100,000 barrels per day, currently about 3 percent of the SPR's total drawdown capability, and would have to share pipeline capacity during drawdown with the SPR's West Hackberry site. In light of these and other factors, DOE plans to decommission the Facility and expand the storage capacity at other SPR sites by an equivalent volume (26 million barrels). The DOE is preparing an Environmental Assessment for this action in compliance with the NEPA review process.

This solicitation is issued under section 159(f)(D) of the EPCA, 42 U.S.C. 6239(f)(D), which authorizes the Secretary to "sell or otherwise dispose of storage * * * facilities" of the SPR. In connection with a sale of the Facility under the EPCA, DOE also could exchange the 26 million barrels of oil stored therein for an equivalent quantity of other oil of suitable quality for storage in other SPR facilities.

It should be emphasized that DOE is *not*, with this announcement, soliciting proposals for the purchase of the Sulphur Mines facility. Further, submission of a Statement of Interest to this Solicitation does not commit a submitter to respond to an invitation for offers to purchase the Facility.

Objective

The objective of this solicitation is to assist DOE in determining what interest exists in purchasing the Facility, with its existing improvements, for use as a hydrocarbon storage facility, or for brine production. DOE will take this information into account in deciding whether a sale of the site, with the existing improvements, for these or related commercial purposes would be an effective means of recovering as much as possible of the Government's investment in the site. However, DOE reserves the right to consider other disposal options.

Facility Location and Description

The SPR's Sulphur Mines storage facility is situated on 174 acres owned by DOE in Calcasieu Parish in Southwestern Louisiana, 12 miles west of Lake Charles and 2 miles west of the town of Sulphur, both in Louisiana. The site is situated on the southwest section of the Sulphur Mines salt dome. Bordering the DOE land are industrial brine production and petroleum product (ethylene) storage operations carried out by PPG Industries and Union Texas Petroleum Corporation. There are five SPR crude oil storage caverns in this salt dome at depths between 2450 and 3400 feet. All of the caverns (numbered 2, 4, 5, 6, and 7) originally were developed through industrial brine operations. Three caverns (Nos. 2, 4, and 5) have coalesced as a result of brining operations prior to DOE's acquisition of the site; their combined capacity is approximately 13 million barrels. The remaining two caverns have capacities of approximately 6 and 7 million barrels. The quantity and quality of oil stored in each cavern is shown below:

Cavern	Quantity (Million Barrels)	Sulfur Content (Weight %)	Average API Gravity
2-4-5	12.58	1.60	32.90
6	6.48	1.60	32.70
7	6.37	1.80	32.50

Oil Handling System

The crude oil handling system consists of a series of pipes, valves, meters, pumps and other equipment for transporting crude oil between caverns and to and from the site via a DOE-owned 16-inch pipeline, which is connected to a DOE-owned 42-inch pipeline running from the SPR's West Hackberry, Louisiana storage facility to the Sun Marine Terminal at Nederland, Texas. The 42-inch pipeline is not subject to sale. The DOE has a perpetual easement (assignable) for the 16-inch pipeline.

Raw Water System

The DOE-owned raw water intake structure, located on the Sabine River Diversion Channel, 1.8 miles east of the site, is connected to the Sulphur Mines site by a DOE-owned 12-inch pipeline for which the DOE has a perpetual easement (assignable). There are two raw-water, diesel-driven horizontal pumps located at the Diversion Channel raw water intake structure, each of which is capable of moving water to the site's two 100,000 barrel-capacity brine/raw water ponds at a rate of 4,285 barrels per hour, or about 100,000 barrels per day. Three low-pressure vertical raw water/brine booster pumps take suction from the ponds and supply raw water to three high-pressure injection pumps which supply water to the wellheads for leaching.

Brine System

The brine handling system utilizes the raw water system of ponds, pumps and associated piping and valves, to transport brine via a 16-inch DOE-owned pipeline, for which the DOE has a perpetual easement (assignable), to four brine injection wells located on 68 acres of DOE-owned land approximately two miles to the southwest of the main site. Brine is injected through screened wells into several saline aquifers that lie between depths of approximately 4500-4900 feet. Each well is designed to accept brine at an average rate of 20,000 barrels per day, a total sustained rate of 80,000 barrels per day.

Other Equipment

The Facility has a fire protection system consisting of a 500,000 gallon flush/fire water tank and associated pumps and piping. The Facility also includes a sewage treatment plant, a potable water system, and an extensive electrical system with an uninterruptable power supply. In addition, the Facility has a main control building consisting of approximately 5,000 square feet of office and control-monitoring space.

All underground crude oil pipelines are coated with coal tar epoxy and are protected from external corrosion by anode beds. Appropriate measures have been taken to protect all pipelines from internal corrosion.

Environmental Permitting Status

A total of 24 Federal, state and local permits for facility operations have been issued to the DOE to insure compliance with appropriate regulations. A listing of all permits and their status is included in documents that are available in the public reading rooms identified below.

Statement of Interest

Submitters of Statements of Interest under this announcement are encouraged to provide specific information regarding their interest in the Facility in order to enable DOE to assess the extent of private sector interest in acquiring the Facility. Statements of Interest should identify the appropriate person or persons to be contacted by DOE regarding the submission. In addition, Statements of Interest may include:

(1) A description of proposed uses of the Facility which the submitter is considering.

(2) An expression of interest in acquiring the 26 million barrels of oil stored therein, in exchange for other oil that would be supplied to the SPR.

(3) Any options, alternatives, etc., which the submitter believes DOE might wish to consider in structuring a sale of the Facility.

(4) A discussion of any issues (*e.g.* operating costs of the Facility) that the submitter believes need to be addressed in order to enable the submitter to submit a proposal to purchase the Facility.

(5) A statement of the estimated time that it would take the submitter to prepare a formal proposal in response to an invitation for offers to purchase the Facility.

(6) A description of any equipment tests or facility inspections that the submitter may want to arrange in connection with consideration of possible acquisition of the Facility.

(7) Identification of documents, data or information not listed below in the "Documents Available for Review" section of this notice, which the submitter believes will be helpful to a consideration of a potential acquisition of the Facility.

Proprietary Information

A submitter shall designate on each and every page of its submission, any data or information, including the fact that a Statement of Interest has been submitted, which the submitter does not want disclosed to the public or used by the Government for any purpose other than evaluation for the purposes described herein.

Information Sources

Additional detailed information may be found at the following DOE Public Reading Rooms and public library locations:

- Public Reading Room, U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue SW, Wshington, DC 20585, Room No. 1E-190. Telephone: (202) 586-6020, 9:00 a.m.-4:00 p.m., Monday thru Friday.
- Public Reading Room, U.S. Department of Energy, Building 850, SPR Library, 850 Commerce Road East (Harahan), New Orleans, Louisiana 70123. Telephone: (504) 734-4802, 7:30 a.m.-4:30 p.m., Monday thru Friday.
- Calcasieu Parish Library, 3900 Ernest Street, Lake Charles, Louisiana 70605. Telephone: (318) 477-1358, 9:00 a.m.-9:00 p.m., Monday thru Thursday; 9:00 a.m.-5:30 p.m. Friday; 9:00 a.m.-5:00 p.m. Saturday; 2:00 p.m.-5:00 p.m., Sunday.
- Calcasieu Parish Library, Sulphur Branch, 232 Ash Street, Sulphur, Louisiana 70663. Telephone: (318) 527-7200, 9:00 a.m.-6:00 p.m., Monday thru Thursday; 9:00 a.m.-5:30 p.m. Friday; 9:00 a.m.-1:00 p.m. Saturday.

Documents Available for Review

The following are the types of documents that are available in the listed DOE Public Reading Rooms:

BEST COPY AVAILABLE

(1) Environmental Impact Statement
(2) Legal Description of Sulphur Mines Property (Including Tracts)
(3) Estate (Description of Interest Acquired)
(4) Segment maps
(5) Accommodation Agreement
(6) List of Permits
(7) Description of Permanent Improvements
(8) Sulphur Mines Underground Storage Facility Description
(9) Strategic Petroleum Reserve Annual Report (1988)

Submission Preparation Costs

The Department is under no obligation to pay for any costs associated with the preparation of Statements of Interest.

DATE

The deadline date for receipt of submissions at the address identified below is August 15, 1989.

FOR FURTHER INFORMATION CONTACT:

U.S. Department of Energy, Office of the Strategic Petroleum Reserve, Mail Stop FE-42, 1000 Independence Avenue SW., Washington, DC 20585. Attention: Richard E. Smith (202-586-4068).

J. Allen Wampler,
Assistant Secretary for Fossil Energy.

[FR Doc. 89-15541 Filed 6-29-89; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3610-4]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075. Availability of Environmental Impact Statements Filed June 19, 1989 Through June 23, 1989 Pursuant to 40 CFR 1506.9.

EIS No. 890167, Draft, AFS, MT, Wilson Creek Gold Project, Exploration and Mining Operating Plan Approval, Elkhorn Mountain Range, Helena National Forest, Helena County, MT, Due: August 14, 1989, Contact: Bill Straley (406) 449-5201.

EIS No. 890168, Draft, AFS, OK, AR, Ozark/Ouachita Mountains Vegetation Management Plan, Implementation, Ouachita, Ozark and St. Francis National Forests, AR and McCurtain and LeFlore Counties, OK, Due: September 7, 1989, Contact: Steve McCorquodale (404) 347-7076.

EIS No. 890169, Final, FHW, CA, CA-76 Bypass Expressway Construction, I-5 to Mission Avenue Near Frontier Drive, Funding and 404 Permit, City of Oceanside, San Diego County, CA, Due: July 31, 1989, Contact: Susan Klekar (916) 551-1307.

EIS No. 890170, Final, FHW, AL, Corridor X Highway Construction, Walker/Jefferson County Line to US 31, Funding and Possible 404 Permit, Birmingham Metropolitan Area, Jefferson County, ASL, Due: July 31, 1989, Contact: Joe Wilkerson (205) 832-7370.

EIS No. 890171, Craft, AFS, CA, Bear Creek Timber Sale and Road Construction, Pattison Roadless Area, Shasta-Trinity National Forest, Trinity County, CA, Due: August 17, 1989, Contact: Dan Angello (916) 628-5227.

EIS No. 890172, Draft, BOP, SC, Estill Minimum Security Federal Prison Camp, Construction and Operation, Estill, Hampton County, SC, Due: August 14, 1989, Contact: William Patrick (202) 272-6871.

EIS No. 890173, Draft, AFS, ID, Valbois Destination Resort Village, Special Permit and Land Use/Resource Management Plans Amendments, Cascade Lake, Boise National Forest, Valley County, ID, Due: August 14, 1989, Contact: Greg Spangenberg (208) 364-4104.

EIS No. 890174, Final, AFS, NM, Las Huertas Canyon Land and Resource Management Plan, Implementation, Cibola National Forest, Bernalillo and Sandoval Counties, NM, Due: July 31, 1989, Contact: Jimmy Hibbetts (505) 275-5207.

Amended Notices

EIS No. 890100, Draft, COE, CA, Batiquitos Lagoon Enhancement Project, Restoration and Improvement, Implementation, City of Carlsbad, San Diego County, CA, Due: June 12, 1989, Contact: David J. Castanon (213) 894-5606.

Published FR 4-28-89—Review period extended.

Dated: June 27, 1989.

Richard E. Sanderson,
Director, Office of Federal Activities.

[FR Doc. 89-15557 Filed 6-29-89; 8:45 am]
BILLING CODE 6560-50-M

[PF 520; FRL-3610-9]

Petition Proposing Revocation of Food Additive Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of receipt of petition proposing revocation.

SUMMARY: This document provides notice of receipt of a petition proposing that all food additive regulations for the pesticides benomyl, chlordimeform, dichlorvos (DDVP), dicofol, mancozeb, phosmet, and trifluralin be revoked. The petition was filed by the State of California, the Natural Resources Defense Council, Public Citizen, the AFL-CIO, and several individuals.

DATE: Comments, identified by the document control number (PF 520), must be received on or before August 29, 1989.

ADDRESS: By mail, submit, written comments to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 246, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with the procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

FOR FURTHER INFORMATION CONTACT: Jack E. Housenger, Special Review Branch, Special Review and Reregistration Division (H7508C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and Telephone Number: Room 1006, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA (703 577-7400).

SUPPLEMENTARY INFORMATION: On May 25, 1989, EPA received a petition under section 409(h) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 348(h), to revoke the food additive regulations for the pesticides benomyl, chlordimeform, dichlorvos (DDVP) dicofol, mancozeb, phosmet, and trifluralin. The petition was filed by the State of California, the Natural Resources Defense Council, Public Citizen, the AFL-CIO, and several individuals. The petition is published in full below.

Before the United States Environmental Protection Agency

No.

Petition to Protect the Public Health by Repealing the Food Additive Regulations.

Introduction

This is a petition under section 409(h), 21 U.S.C. 348(h), of the Federal Food, Drug and Cosmetic Act ("FDC Act") to revoke the food additive regulations for seven pesticides: Benomyl, Chlordimeform, Dichlorvos (DDVP), Dicofol, Mancozeb, Phosmet and Trifluralin. The petition is based on the ground that after section 409 food additive regulations were initially adopted for these pesticides in the absence of any data showing that the pesticides caused cancer, EPA determined that they are indeed carcinogens. The subsequent determination triggers application of the Delaney Anti-Cancer Amendment and requires that EPA revoke the existing regulations that permit these carcinogens in processed foods.

Since the EPA has already determined that these pesticides are animal carcinogens, 53 FR 41104, October 19, 1988, there are no diputed facts that are material to this petition. Therefore, it is unnecessary for the EPA to hold a hearing or any other prolonged proceeding prior to acting on this petition. Instead, the only issue for EPA to decide is whether the Delaney clause requires these pesticides to be used in processed foods be revoked.

In the October 19, 1988 **Federal Register** notice, EPA announced its view that the Delaney clause applies prospectively only and is not applicable to currently registered pesticides. Although EPA claims that this policy is of a longstanding nature, the October 19, 1988 statement is the first normal expression of the policy.

This petition is based on a different interpretation of the law than that advanced by EPA in the October 19, 1988 **Federal Register** notice. We contend that the Delaney clause applies to processed foods regardless of when the carcinogenicity was discovered. If EPA adheres to its view that the Delaney clause does not apply retrospectively, then it should promptly deny the petition. On the other hand, if EPA agrees with the petitioners that the Delaney clause apples to currently-registered pesticides that are animal carcinogens, then it should promptly grant the petition, revoke the relevant regulations, and simultaneously initiate steps to expeditiously revoke the October 19, 1988 **Federal Register** policy statement. In any event, petitioners request that EPA act expeditiously.[1]

Petitioners

Petitioner John K. Van de Kamp, Attorney General of the State of California, is the chief law enforcement officer of the State of California and is charged with the authority to file actions he deems necessary to safeguard the public interest and people of the State, and specifically, to protect the environment and natural resources of the State. Cal. Const., art. V, section 13; Cal. Gov. Code sections 12511, 12600-12612. He is participating in this proceedings on behalf of the People of California.

Petitioner Public Citizen is a nonprofit, public interest organization supported by annual contributions from approximately 60,000 members throughout the United States. Since 1971, Public Citizen and its Health Research Group have engaged in research and advocacy to promote safe food and specifically to prohibit carcinogenic and other hazardous chemicals from entering the food supply. Public Citizen petitions on behalf of its members.

Petitioner American Federation of Labor and Congress of Industrial Organizations ("AFL-CIO") is a federation of 101 national and international unions with a total membership of approximately 14.5 million working men and woman that is headquartered in Washington, DC. Nearly all of the AFL-CIO affiliates' members consume processed foods regulated by EPA. Among the purposes of the AFL-CIO is to make the members of its affiliates aware of potential adverse health and safety risks, including risks resulting from exposure to pesticides and to enable its affiliates to take appropriate steps to protect those members. AFL-CIO petitions on behalf of its members.

Petitioner National Resources Defense Council (NRDC) is a nonprofit, environmental organization with over 100,000 members and contributors nationwide. NRDC has a longstanding interest in improving EPA's regulation of pesticides and other toxic chemicals and in ensuring that pesticide residue levels in food are restricted in order to protect the public health. NRDC petitions on behalf of its members.

Petitioner Kathleen E. Les, the mother of Frances Les Thomas, age one, joins the petitions individually and on behalf of her child. Each is exposed to pesticides daily through pesticides in processed food regulated by defendants. Kathleen E. Les and Frances Les Thomas reside in Sacramento, California.

Petitioner Manuel Jesus Perez Morales is a 29-year-old California farmworker and the father of petitioner David R. Perez, age seven, and Manuel R. Perez, age two. Each regularly consumes processed foods which contain pesticides regulated by defendants. Because Manuel Jesus Perez Morales lives in an agricultural community, he is additionally exposed to pesticides as a result of air and water contamination. Also, he is exposed on the job. Most recently, he was employed as a pesticide applicator. In August 1987, he was so severely exposed to a series of pesticides that he has since been unable to work.

Facts

In the October 19, 1988 **Federal Register** notice, EPA identified 66 pesticides for which it has evidence of carcinogenicity (53 FR 41108 Appendix B). Each of those pesticides is classified into a group depending on the strength of the evidence of its carcinogenicity. The two groups that are relevant to this petition are Groups B2 and C. Group B2 identifies pesticides that EPA has classified as "Probable Human Carcinogen[s]" based at least in part on "sufficient evidence of carcinogenicity from animal studies." *Id.* at 41118. Group C identifies pesticides that are "Possible Human Carcinogen[s]" on the basis of "[l]imited evidence of carcinogenicity in animals in the absence of human data." *Id.* EPA has determined that both groups are animal carcinogens, although there is less evidence that the pesticide is a human carcinogen if the pesticide is in Group C than if it is in Group B2.

Using EPA's own list petitioners have identified seven pesticides that fall within Group B2 or Group C and which also have section 409 processed food tolerances that are greater than their tolerances are identified on the chart below.

Pesticide [2]	Class	Section 408 tolerance (parts per million)	Section 409 tolerance (parts per million)
Benomyl	C	10.0 grapes, 5.0 tomatoes (40 CFR 180.294)	50 raisins, 50 tomato products, (21 CFR 193.30; 40 CFR 185.350).
Chlordimeform	B2	4.0 plums/fresh prunes (40 CFR 180.285)	15.0 dried prunes (21 CFR 193.60; 21 CFR 185.170).

[1] In addition to the authorities cited, petitioners are relying on, and hereby incorporate by reference, the report of the National Academy of Sciences, *Regulating Pesticides in Food, and the Delaney Paradox* (National Academy Press, 1987 ("NAS Report").

Pesticide [1]	Class	Section 408 tolerance (parts per million)	Section 409 tolerance (parts per million)
Dichlorvos (DDVP)	B2	0.1 figs, 0.05 tomatoes (40 CFR 180.235)	0.5 dried figs, 0.5 nonperishable, bagged, packaged processed food (21 CFR 193.140; 40 CFR 185.1900).
Dicofol	C	No tolerance for tea	45 dried tea (40 CFR 185.410).
Mancozeb	B2	7.0 grapes, 5.0 barly grain, 5.0 oat grain, 5.0 rye wheat, 5.0 wheat grain (40 CFR 180.176).	28.0 raisins, 20.0 bran of barely oats, rye, wheat (21 CFR 193.460; 40 CFR 185.6300).
Phosmet	C	0.1 cottonseed (40 CFR 180.261)	0.2 cottonseed oil (40 CFR 185.350).
Trifluralin	C	0.05 spearmint, peppermint hay (40 CFR 180.207)	2.0 spearmint, peppermint oil (21 CFR 193.400; 40 CFR 185.5900).

[1] The petition does not request relief with respect to Alar (daminozide) because it is subject to a separate legal proceeding that is now pending. As the undersigned attorneys for Public Citizen and NRDC have argued in a May 11, 1989 submission supporting the objections of Henry Gluckstern, EPA is legally required to grant the objections to the extension of the tolerance for Alar on apples, which would have the effect of immediately banning its use.

Since the time each of these pesticides was placed on the market, EPA has determined on the basis of newly developed evidence that the pesticide induces cancer in animals, within the meaning of the Delaney clause. Nevertheless, each pesticide has a section 409 tolerance that permits greater residues in processed foods than are permitted on the raw agricultural product. Therefore, this petition raises no factual issues, and the issue for EPA to resolve is whether the Delaney clause applies in such circumstances.[2]

Discussion

1. Applicable Statutory Provisions

Pesticides are subject to a number of different statutes, including the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), 7 U.S.C. 136 *et seq.*, the Pesticide Amendment to the Federal Food, Drug and Cosmetic Act ("FDC Act"), 21 U.S.C. 346a, and the Food Additives Amendment to the FDC Act, 21 U.S.C. 348.

Before a pesticide is permitted to be sold in the United States, certain tests must be conducted and submitted to EPA for review, including tests for carcinogenicity. *See* FIFRA, sections 3(c)(1)(B), 3(c)(2)(A), 7 U.S.C. 136a(c)(1)(B), 136a(c)(2)(A). Such test data is also used to set residue tolerances under section 408 of the FDC Act, 21 U.S.C. 346a, and food additive tolerances for processed foods under section 409 of the Act, 21 U.S.C. 348.

Section 409 applies to all substances that qualify as "food additives," within the meaning of section 201(s), 21 U.S.C. 321. If a pesticide use qualifies as a "food additive," then EPA may not approve it unless it is "safe" within the meaning of section 409. Under the Delaney clause, EPA may not find any food additive pesticide to be "safe" where the pesticide, regardless of the level of risk, is "found to induce cancer when ingested by man or animal." (Section 409(c)(3)(A), 21 U.S.C. 348(c)(3)(A)).

Section 201(s) defines "food additives" as "any substance which either becomes a component or otherwise affect[s] the characteristics of food," unless it is "a pesticide chemical in or on a *raw* agricultural commodity." (21 U.S.C. 321(s)(1) (emphasis added); *see also* section 201(s)(2), 21 U.S.C. 321(s)(2)). Therefore, pesticides in *processed* foods are subject to the Food Additives Amendment and the Delaney clause.

Section 402(a)(2)(C) provides the legal basis for enforcement actions with respect to adulterated food sold in violation of the Food Additives Amendment, which is therefore subject to seizure. 21 U.S.C. 342(a)(2)(C); *see also* sections 301–304, 21 U.S.C. 331–334. However, section 402(a)(2)(C) also provides "where a particular chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under section 408" and when the product has been processed, then the product shall "not be deemed unsafe" if the residue "has been removed to the extent possible" and if the concentration of the residue "is not greater than the tolerance prescribed on the raw agricultural commodity." (21 U.S.C. 342(a)(2)(C)). Thus, the effect of all these provisions is that pesticides used in processed foods that may concentrate at levels above the section 408 residue allowed in raw products are illegal unless permitted pursuant to a food additive regulation pursuant to section 409. Such a regulation must comply with the Delaney clause.

2. The October 19, 1988 Policy Statement

Since Federal regulation of pesticide use first began, scientific standards for assessing the risk of their use have become considerably more sophisticated and accurate. For example, prior to 1963, no tests were required regarding a pesticide's potential cancer-causing properties, and it was not until 1978 that EPA adopted final carcinogenicity data requirements. Therefore, when residue tolerances were initially established for many pesticides, no consideration was given to carcinogenicity.

Since 1972, however, EPA has been reviewing the safety of all pesticides registered prior to that time. During the course of the review, it became clear that a large number of pesticides are carcinogens and, because they concentrate in processed foods, are being sold in violation of the Delaney clause. Therefore, in February 1985, EPA requested the National Academy of Sciences (NAS) to conduct a study of the likely impact of the Delaney clause on the regulation of pesticides. The NAS issued its report in May 1987 which both discussed the high risk levels of many pesticides used in foods today and recommended legislative changes in the pesticide laws, including the Delaney clause.

Rather than following the NAS's recommendation, in October 1988, EPA issued its policy statement, unilaterally declaring that the Delaney clause does not apply to pesticides found to induce cancer in animals after being registered, but that the Delaney clause applies, if at all, only to newly registered pesticides.

In support of this argument, EPA points out that the Delaney clause is contained in section 409(c), which is the provision applicable to petitions to list new food additives (53 FR 41108). EPA claims that section 409(h), which governs the amendment or repeal of existing section 409 regulations, "does not expressly require repeal of food additives regulations when new data indicate that the pesticide induces cancer." (53 FR 41108). That characterization of the statute is wrong.

Section 309(h) requires EPA to issue regulations governing amendment or repeal of food additive regulations, and it further states that "such procedures shall conform to the procedure provided in this section for the promulgation of such regulations." (21 U.S.C. 348(h)). The "procedure provided in this section" for new food additive regulations is contained in sections 409(b) and 409(c), and the latter contains the Delaney clause (21 U.S.C. 348(c)(3)(A)). Thus, section 409(h) requires EPA to use the same standard in revoking tolerances that it uses in granting them. Therefore, the language and structure of the statute demonstrate that the Delaney clause applies to pesticides that are currently on the market.

The FDA, which administers section 409 with respect to non-pesticide food additives, has consistently interpreted section 409(h) as incorporating the Delaney clause and therefore as requiring it to ban food additives that were determined to be animal carcinogens *after* they had been sold for a long period of time. Thus, in 1977, it relied on the Delaney clause to support its proposal to ban saccharin, although that decision was ultimately overruled by special congressional legislation. *See* 42 FR 19996, April 15, 1977. Recently, in considering whether to repeal the section 409 food additive regulation governing the use of methylene chloride in decaffeinated coffee, the FDA considered the Delaney clause to be applicable (50 FR 51551 December 18, 1985).

As the United States Court of Claims held in *California Canners & Growers Association* v. *United States*, 9 Cl. Ct. 774, 782 (1986), in considering damage claims based on the FDA's ban of cyclamates, the "statute contemplates carcinogenicity known at the time an application for approval is filed, but it is undisputed that the Secretary has a statutory obligation to declare unsafe approved products that are subsequently found to endanger public health and safety." Although cyclamates had been marketed without a food additive petition on the ground that the substance was generally recognized as safe, the court's statement and the reasoning behind it apply fully to food additives (including pesticides in processed foods) that have tolerances.

Since the Delaney Clause's enactment in 1958, the FDA has interpreted its proscriptions as equally applicable to new and old food additives which are found to be carcinogenic. The FDA and its parent agency, the Department of Health, Education and Welfare, played a key role in drafting the Food Additives Amendment of 1958, and were the sole Federal authority responsible for implementing the statute until EPA was created in 1970. Accordingly, its interpretation of the statute is entitled to great weight. *Norwegian Nitrogen Products Co.* v. *U.S.*, 288 U.S. 294, 315 (1933); *Community Nutrition Institute* v. *Young*, 108 S.Ct. 2360 (1988); *Chevron* v. *Natural Resources Defense Council*, 467 U.S. 837 (1984). Similarly, in its Report, the National Academy of Sciences concluded that the Delaney Clause is applicable to pesticides that are currently on the market and that qualify as "food additives" under the FDC Act (NAS Report, p. 91). Indeed, the Report identified a number of processed food tolerances, including the seven at issue in this petition, which it concluded "appear to conflict with the Delaney Clause." *Id.* at 5.

In *Environmental Defense Fund* v. *EPA*, 428 F.2d 1083 (1970), the United States Court of Appeals for the District of Columbia Circuit considered this issue in evaluating a petition to amend the tolerances for the pesticide DDT. The provision at issue there, section 408(m) of the Pesticide Amendments to the FDC Act, 21 U.S.C. 346a(m), is analogous to section 409(h) of the Food Additives Amendment to the Act, 21 U.S.C. 348(h), the provision at issue here. According to the D.C. Circuit,

> Once new evidence bearing on the safety of pesticide residues has been adduced or cited sufficient to justify reopening the issue of the validity of existing tolerances, as in the present case, the burden of establishing the safety of any tolerance remains on those who seek to permit a residue. *In this connection we note that the statute itself explicitly requires that the procedures for amending or repealing tolerances should be the same as those for establishing tolerances.* 21 U.S.C. 346a(m).

Id. at 1092 n.27 (emphasis added). In its use of the term "procedures," the Court was referring to the substantive standard, which is applicable both at the time the initial tolerances is adopted and when it is amended or repealed.

Thus, the foregoing demonstrates that the NAS Report was correct in concluding that there is "no convincing legal or scientific basis for the EPA * * * to avoid applying the standards of section 409, including the Delancy Clause, to currently registered compound." (NAS Report, p. 91).

Conclusion

For the foregoing reasons, petitioners urge that the section 409 tolerances for Benomyl, Chlordimeform, Dichlorvos (DDVP), Dicofol, Mancozeb, Phosmet, and Trifluralin be repealed. Petitioners also urge that EPA waive any applicable fees since they are acting in the public interest.

Respectfully submitted,

John K. Van D. Kamp,
Attorney General of the State of California.
Andrea Sheridan Ordin,
Chief Assistant Attorney General.
Theodora Berger,
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Attorney for Natural Resources Defense Council, Kathleen E. Les and Frances Les Thomas

Ralph Santiago Abascal,
California Rural Legal Assistance, Inc., 2111 Mission, Suite 401, San Francisco, CA 94110, (415) 864–3405.

Attorney for Daniel R. Perez, Manual Jesus Perez and Manual R. Perez

May 24, 1989.

All written comment will be available for public inspection from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays in the Public Docket and Freedom of Information Section, Field Operations Division, (H7506C), Office of Pesticide Programs, Environmental Protection Agency, Room 246, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202. Telephone: 703/557–2805.

Dated: June 27, 1989.

Douglas D. Campt,
Director, Office of Pesticide Programs.

[FR Doc. 89–15560 Filed 6–29–89; 8:45 am]
BILLING CODE 6560–50–M

[2] If the Agency determines that any of the seven pesticides does not induce cancer within the meaning of the Delaney clause, that determination should not delay the resolution of the legal issues raised as to the pesticides for which it is undisputed that cancer is induced. In that event, we request that EPA act promptly on the petition with respect to the pesticides that it agrees induce cancer in animals.

[FRL-3610-7]

Availability and Review of Proposed Enforcement Agreements; Ocean Dumping of Sewage Sludge

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and review.

SUMMARY: EPA announces the availability of proposed judicial consent decrees and enforcement agreements (Agreements) for the City of New York and the County of Westchester. These agreements are now available for public review and comment in accordance with the requirements of the Ocean Dumping Ban Act of 1988.

EPA has received complete applications from the following New Jersey and New York sewage sludge generators: [1] Bergen County Utilities Authority, Joint Meeting of Essex and Union Counties, Linden Roselle Sewerage Authority, Middlesex County Utilities Authority, Passaic Valley Sewerage Commissioners, Rahway Valley Sewerage Authority, New York City Department of Environmental Protection (NYCDEP), and Westchester County Department of Environmental Facilities (WCDEF) for issuance of special permits to transport and dispose of sewage sludge under the Marine Protection, Research, and Sanctuaries Act of 1972, 33 U.S.C. 1401. In conjunction with preparing permit conditions for each applicant and making a tentative determination to issue these permits for a term ending on March 17, 1991, EPA has drafted Enforcement Agreements to ensure that the applicants agressively pursue through completion the implementation of alternative disposal methods as required by the Ocean Dumping Ban Act. All of the New York applicants have now accepted these Agreements. EPA and the State of New York have accepted their cessation schedules. We have not reached agreement with the New Jersey authorities.

DATES: Comments must be received on or before July 12, 1989.

ADDRESSES: Send comments to: Bruce Kiselica, Chief, Ocean Dumping Task Force, EPA, Regioin II, 26 Federal Plaza, Room 813, New York, New York 10278–0000.

[1] A complete application was also received from Nassau County Department of Public Works (NCDPW). Its Agreement was noticed in the Federal Register on June 20, 1989.

These proposed Agreements are available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Bruce Kiselica, Chief, Ocean Dumping Task Force, EPA, Region II, 26 Federal Plaza, Room 813, New York, New York 10278–0090, (212) 264–5693.

Public meeting sessions regarding these documents have been scheduled as follows:

July 5—Long Branch Municipal Building, Second Floor, Council Chamber, 344 Broadway, Long Branch, New Jersey

July 6—Jacob K. Javits Federal Building, 26 Federal Plaza, Room 305C, New York, New York

July 7—Nassau County Executive Building, Fifth Floor, Board of Supervisors' Meeting Room, 1 West Street, Mineola, New York

Afternoon meeting sessions will be held at each of the above locations commencing at 1:00 PM. Additionally, evening sessions will be held on July 5 and 7, 1989, commencing at 6:00 PM.

SUPPLEMENTARY INFORMATION: NCDPW's Agreement was published in the **Federal Register** on June 20, 1989 (54 FR 25902). This notice today discusses two of the other eight ocean dumpers. The only major differences among the various Agreements are the specific interim schedules for ceasing ocean disposal and long term schedules for implementing final alternatives to ocean disposal, provisions concerning special masters, and varying amounts of stipulated penalties depending on the size of the dumping operation. The applicants have developed the following plans for their sludges as part of the Agreements. The New York applicants proposes to dewater and out-of-state landfill or use a private vender on an interim basis. They are each investigating the full range of sludge management alternatives for use on a long term basis. The applicants propose to implement their plans by the following dates:

Applicant	Interim plan		Long-term plan	
	Date	Percent	Date	Percent
NYCDEP	12/31/91	20	12/31/96	>50
	6/30/92	100	6/30/98	100
WCDEF	12/31/91		9/15/95	

As noted in the **Federal Register** notice published on June 20, 1989, NCDPW plans to cease ocean dumping 50% of its sludge by June 30, 1991 and 100% by December 31, 1991 using interim measures. Its long term alternative will be implemented by December 31, 1994.

The proposed enforcement agreements may be inspected, and arrangements made for copying, at the above office between 9:00 a.m. and 4:00 p.m., Monday through Friday, except federal holidays. The file supporting the related proposed permits required under the Marine Protection, Research, and Sanctuaries Act is also available for public inspection at the above address. The proposed permits were similarly available during a separate comment period, which closed on April 28, 1989.

Dated: June 23, 1989.

James R. Marshall,

Acting Regional Administrator for Region II.

[FR Doc. 89–15546 Filed 6–29–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL ELECTION COMMISSION

Filing Dates for California Special Election

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for california special election.

SUMMARY: California has scheduled special elections in the Congressional District to fill the seat that was held by Tony Coelho. There are two possible elections, but only one may be necessary.

- Primary Election: September 12, 1989. If no candidate wins a majority of votes in the Special Primary, the top vote-getter of each party will participate in a Special General.
- General Election: November 7, 1989.

FOR FURTHER INFORMATION CONTACT: Ms. Bobby Werfel, Public Information Office, 999 E St., NW., Washington, DC 20463, Telephone: (202) 376–3120; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION: Principal campaign committees of candidates who participate in these California Special Elections must file reports according to the schedules given in Charts 1 through 3. The committee treasurer should consult the chart that corresponds to the candidate's situation. Party committees and PACs that make contributions or expenditures in connection with the Special Election during the coverage dates listed in the charts must file the appropriate reports. Monthly filers, however, do not file Special Pre- and Post-Election reports.

CALENDAR OF REPORTING DATES FOR CALIFORNIA SPECIAL ELECTION

Report	Period covered	Reg./cert. mailing date [1]	Filing date
Chart 1: If only one election is held; Special Primary (9/12/89):			
Pre-Primary	07/01/89 to 08/23/89	08/26/89	08/31/89
Post-Election	08/24/89 to 10/02/89	10/12/89	10/12/89
Year-End	10/03/89 to 12/31/89	01/31/90	01/31/90
Chart 2: If two elections are held, and the committee is involved in both; Special Primary (9/12/89) and Special General (11/7/89):			
Pre-Primary	07/01/89 to 08/23/89	08/26/89	08/31/89
Pre-General	08/24/89 to 10/18/89	10/23/89	10/26/89
Post-General	10/19/89 to 11/27/89	12/07/89	12/07/89
Year-End	11/28/89 to 12/31/89	01/31/90	01/31/90
Chart 3: If two elections are held, but a committee is involved in only the first; Special Primary (9/12/89):			
Pre-Primary	07/01/89 to 08/23/89	08/28/89	08/31/89
Year-End	08/24/89 to 12/31/89	01/31/90	01/31/90

[1] Reports sent by registered or certified mail must be postmarked by the mailing date. Otherwise, they must be received by the filing date.
[2] The close of books of the last report filed, if closing date is after June 30, 1989. If no previous reports filed, the date of the committee's first activity.
Note: If no candidate achieves a majority of the vote in the Special Primary Election, the top vote-getters of each party go to a Special General Election.

Danny L. McDonald,

Chairman, Federal Election Commission.

Dated: June 26, 1989.

[FR Doc. 89–15437 Filed 6–29–89; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

National Board Plan for Carrying Out Emergency Food and Shelter Program

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice sets out the text of the Plan by which the National Board, authorized by Pub. L. 100–77 (and funded by Pub. L. 100–404) will conduct a program for distributing $114,000,000 to local private voluntary organizations and units of local government for the purpose of delivering emergency food and shelter to needy individuals in localities determined by the Board as being in high need. The distribution formula for selecting these localities, the listing of the localities, and the award amounts for each follow the Plan text.

DATE: The Award to the National Board was made October 3, 1988.

FOR FURTHER INFORMATION CONTACT: Francis X. McCarthy, Individual Assistance Division, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3652.

1.1 Purpose

The Emergency Food and Shelter (EFS) National Board Program has been charged through the Stewart B. McKinney Homeless Assistance Act of 1988 (Pub. L. 100–77) to "* * * supplement and expand ongoing efforts to provide shelter, food, and supportive services for homeless individuals * * *"

The Program's operating principles are:

—fast response
—allocations to areas of high need
—public/private sector cooperative efforts
—minimum, but accountable reporting
—local decisionmaking

We are also continuing the State Set-Aside (SSA) Program, which provides greater flexibility in selecting additional jurisdictions for funding. The National Board asks, however, that prior to choosing these areas for funding that the SSA Committee consider:

—areas that *demonstrate* high levels of need
—non-qualifying areas with identifiable populations of homeless or poor people
—areas previously qualifying under the National Board program
—areas experiencing recent economic changes, such as plant closings, farm foreclosures, or
—rural areas with unusually high levels of unemployment or poverty which do not meet the minimum 1,000 cut-off.

Local recipient organizations (LROs) failing to report and document expenditures under the previous programs will be required to provide audit materials to the National Board as a condition for continued funding eligibility.

1.0 Background and Introduction

Preamble

The Stewart B. McKinney Homeless Assistance Act has been passed to continue the provision of emergency food and shelter services to needy individuals. These services were originally authorized on March 24, 1983, when the President signed the "Jobs Stimulus Bill," Pub. L. 98–8. The Bill provided $50 million for emergency food and shelter to the Federal Emergency Management Agency (FEMA) for allocation by a National Board between March 1983 and March 1984. The Board, chaired by FEMA, consisted of representatives of United Way of America; The Salvation Army; the National Council of Churches in Christ in the USA; Catholic Charities, USA; the Council of Jewish Federation, Inc.; and The American Red Cross.

Congress designated these agencies because of their history of involvement in human service programs. This funding was provided to address emergency needs which had become evident in recent years.

Due to the continuing high need for emergency food and shelter services, an additional $439 million in funds were appropriated from November 1983 through December 1987. On July 22, 1987, the Stewart B. McKinney Homeless Assistance Act was signed by the President, authorizing the Emergency Food and Shelter National Board Program.

The National Board has once again adopted the following operating principles:

- Speedy administration and funding
- Awards to areas of greatest need
- Local decisionmaking
- Public/private sector cooperation
- Minimum but accountable reporting.

As in past phases, grant awards from this program are designed to address emergency needs. This program is not intended to address or correct structural

poverty or long-standing problems. Rather, this appropriation is intended for the purchase of food and shelter, to supplement and extend current available resources and not to substitute or reimburse ongoing programs and services.

The National Board expects State Committees, Local Boards, and LROs to abide by the stated rules of this plan and to focus on the following concerns and principles mandated by the National Board.

- Serve *needy* individuals without discrimination and avoid duplication of benefits by *supplementing* food and shelter services individuals might currently be receiving, as well as to aid those who are receiving no assistance. Individuals who received assistance under previous programs may again be recipients, providing they meet local eligibility requirements.
- Refuse to authorize the spending of funds on costs that differ from those allowed by the National Board, unless a written request is made in advance and approved by the National Board.
- Restrict shelter rehabilitation to minimum work required to bring the facility into compliance with local building codes and for emergency repairs only to keep the facility open during the program year ($5,000—limit). Avoid decorative or nonessential repairs and purchases as this is outside the intent of this program. The benefit of rehabilitation to provide service should be carefully weighed against the response to needs that exist at this time. Emphasis should be placed on currently existing needs.

The National Board is mandated, as are State Committees, Local Boards, and LROs, to carry out the intent of the law. We must ensure that as decisions are made, we not only question if a specific expenditure falls within the guidelines of eligible costs, but if making this expenditure would fulfill the *intent* of the program and the law.

2.0 Concept of Operations

A. United Way of America will act as the National Board's Secretariat and fiscal agent and perform the necessary administrative duties that the Board must accomplish.

B. Funds distributed by the National Board will be to areas of greatest need.

C. National Board funds will be distributed to LROs certified by Local Boards.

D. There is an administrative allowance limitation of two percent (2%) for local jurisdictions, one-half on one percent (.5%) for State Boards (when in operation), and one percent (1%) for the National Board.

Local administrative funds are intended for use by LROs and not for reimbursement of program or administrative costs any recipient's parent organization (its State or regional offices) might incur as a result of this additional funding.

E. The National Board will notify qualifying jurisdictions of award eligibility within 60 days following allocation by the Federal Emergency Management Agency (FEMA). Unused or recaptured funds will be reallocated by the National Board, except in the case of SSA counties whose funds may be reallocated by the respective State Committees.

F. All funds shall be paid out by LROs and spending shall cease by their jurisdiction's selected date. Local Boards have until one month following their end date to submit final reports and complete documentation of expenses (for specified LROs only) to the National Board.

Those LROs not required to submit documentation to the National Board still must satisfy the Local Board that all funds have been expended in accordance with National Board guidelines. (Note: Local Boards and LROs are reminded that although documentation may not be required to be submitted with their final report, they are subject to random audits which may require the submission of documentation at a later date.)

2.1 Roles and Responsibilities

A. FEMA's Responsibilities

1. Constitute a National Board consisting of individuals affiliated with United Way of America; The Salvation Army; the National Council of Churches of Christ in the USA; Catholic Charities, USA; the Council of Jewish Federations, Inc.; the American Red Cross; and the Federal Emergency Management Agency.
2. Chair the National Board, using Parliamentary procedures and consensus by the National Board as the mode of operation.
3. Provide guidance, coordination, and staff assistance to the National Board.
4. Award the grant to the National Board.
5. Assist the Secretariat in implementing the National Board Program.
6. Report to Congress on the year's program activities.
7. Conduct an audit of funds.
8. Initiate Federal collection procedures to collect funds due when the efforts of the National Board have not been successful.

B. National Board Responsibilities

1. Select jurisdictions of highest need for food and shelter assistance and determine amount to be distributed to each.
2. Notify national organizations interested in emergency food and shelter to publicize the availability of funds.
3. Develop the operational manual for distributing funds and establish criteria for expenditure of funds.
4. In jurisdictions that received previous awards, notify the former Local Board chair that new funds are available. In areas newly selected for funding, notify the local United Way, American Red Cross, Salvation Army, or local government official.
5. Provide copies of award notification materials to National Board member affiliates and other interested parties.
6. Secure certification forms from Local Boards that funds will be used in accordance with established criteria.
7. Distribute funds to selected LROs.
8. Hear appeals and grant waivers.
9. Establish an equitable system to accomplish the reallocation of unclaimed or unused funds.
10. Ensure that funds are properly accounted for, and that funds due are collected.
11. Provide consultation and technical assistance to local jurisdictions as necessary to monitor program compliance.
12. Submit end-of-program report on jurisdictions' use of funds to FEMA.
13. The National Board will conduct an audit of food and shelter expenditures made under this program for specified LROs. FEMA's Inspector General may also conduct an audit of these funds.

C. Local Recipient Organization Responsibilities

1. Maintain records according to guidelines set forth in the plan. Consult your Local Board chair/staff on matters requiring interpretation or clarification prior to incurring an expense or entering into a contract. It is important to have a thorough understanding of these guidelines to avoid ineligible expenditures and consequent repayment of funds.
2. Provide services within the intent of the program. Funds are to be used to supplement and extend or initiate food and shelter services, not as a substitute for other program funds. LROs should take the most cost effective approach in buying or leasing eligible items/services and should limit purchases to essential items within the $300 limit for equipment, unless the approval has been granted by the National Board.
3. Deposit funds for this program in a Federally insured bank account. Maintain proper documentation for all expenditures under this program according to the guidelines. LROs' expenditures and documentation will be subject to review for program compliance by the Local Board, National Board, and/or Federal authorities. Maintain records for a 3-year period.
4. Submit reports to the Local Board by their due date. LROs must complete all portions of the report form, return two copies to the Local Board, and retain a copy for their records.
5. Work with the Local Board to quickly clear up any problems related to audit exception(s) at the end of the program.
6. Contact the Local Board regarding technical assistance, interpretation of guidelines and resources from other Federal programs, such as U.S.D.A. surplus food.

Local Boards are charged with ongoing monitoring of LROs' program expenditures and services. Local decisionmaking is an operating principle of this emergency effort. (Note: Local Boards can reallocate funds at their discretion.)

Funds can be reallocated as a result of gross negligence, inadequate use of funds, failure to use funds for purposes intended, and any other violation of the National Board Plan. Local Boards may also reallocate funds in response to changes in the priority need of their community.

D. Local Board's Responsibility

1. Each area designated by the National Board to receive funds shall constitute a Local Board.Where, in a local community, there are affiliates of the voluntary organizations represented on the National Board, they must be invited to serve on the Local Board. The National Board encourages the inclusion of Native American representation on the Local Board. The County Executive/ Mayor, appropriate head of local government, or his/her designee, will replace the FEMA member. Local Boards are encouraged to expand participation/ membership by inviting or notifying other private nonprofit organizations. The members of each Local Board will elect a chair.
2. If a locality has previously received National Board funding, the previous chair of the Local Board will be contacted regarding any new funding the locality is designated to receive. The Local Board may elect a new chair.

If a locality has not previously received funding and is now designated as being in high-need, the National Board has designated the local United Way to constitute and convene a Local Board as described above. In the event there is no local United Way, or it does not convene the board, the local American Red Cross, the local Salvation Army, or government official will be responsible for convening the initial meeting of the Local Board.

3. Local Boards will have 25 working days after notification of award selection by the National Board in which to:

Advertise and promote the program and consider all private voluntary and public organizations for participation, including those on Indian reservations, providing or capable of providing emergency food and shelter services, not only those represented on the Local Board or affiliates of State and national organizations.

4. Select and recommend which local organizations should receive grants and the amounts of the grants.

Note: The minimum grant per LRO is $300.

5. Complete and return all required forms to the National Board.
6. Secure and retain signed forms from each LRO certifying that program guidelines have been read and understood, and that the LROs will comply with cost eligibility and reporting requirements.
7. Notify National Board of changes in Local Board, chair, staff contact, or LRO contacts, including complete addresses and phone numbers.
8. Local Boards which determine that they can better utilize their resources by merging with neighboring boards may do so. The head of government or his/her designee for each jurisdiction must sit on the merged board, along with agency representatives from each jurisdiction. The merged Local Board must ensure that the award amount designated for each civil jurisdiction is used to provide assistance to individuals within that jurisdiction.
9. Provide technical assistance to service providers.
10. Establish an appeals process to address participation or funding including, where deemed appropriate, the involvement of individuals not a part of the dispute in the decision; hear and resolve appeals made by funded or nonfunded organizations; and investigate complaints made by individuals or organizations. Appeals should be handled promptly. Those cases that cannot be handled locally or that involve fraud or other misuse of Federal funds should be referred in writing to the National Board giving details on action that has been taken.
11. The Local Board chair will be the central point of contact between the National Board and the LROs selected to receive assistance for emergency food and shelter programs. To facilitate program coordination, the Local Board chair will contact the State agencies through which surplus food and other Federal assistance is provided.
12. Local Boards will be responsible for monitoring programs carried out by organizations they have selected to receive funds. Local Boards should work with LROs to ensure that funds are being used to meet immediate food and shelter needs on an ongoing basis.

Local Boards may not alter or change National Board cost eligibility or approve expenditures outside of the National Board's criteria without National Board permission.

13. The Local Board should reallocate funds whenever it determines that the original allocations plan does not reflect the actual need for services or if an LRO is unable to effectively utilize its full award. Funds may also be reallocated if an LRO makes ineligible expenditures or uses funds for items which have clearly not been approved by the Local Board. Funds held in escrow for LROs which have unresolved audit problems can be reallocated or may be reclaimed by the National Board.

The Local Board may approve reallocation of funds between LROs which have already been approved by the National Board. However, the National Board must be notified in writing. The Local Board may also return funds to the National Board for reissuance to another LRO or request reallocation of remaining funds before they are released by the National Board (e.g., second checks). Refer to Annex 1.6 for preferred format to use in notifying the National Board of reallocations.

If the Local Board wishes to reallocate funds to an agency which was not approved on the original board plan, a request for approval must be made to the National Board. An LRO must be approved by the National Board prior to receipt of funds.

If a Local Board is unable to satisfy the National Board that it can utilize funds in accordance with this plan, the National Board may reallocate the funds to other jurisdictions.

14. To prevent fraud or misuse of funds, Local Boards might wish to create a central clearinghouse for all organizations providing similar assistance to individuals so information can be shared daily. When misuse of funds has been found, the Local Board is advised to reallocate funds from the LRO in question to other LROs. The

Local Board must report suspected fraud to local authorities and must notify the National Board of such cases in writing.

15. Submit reports to the National Board on LROs' expenditures as of the date each LRO's second check is requested and a final report is due one month after the "end-of-program" date.

16. After close of program, review for accuracy all recipient organizations' reports and documentation. Forward documentation for specified LROs to the National Board as requested. In the event of expenditures violating the eligible costs under this award, the Local Board must require reimbursement of the National Board.

17. Local Boards are required to remain in operation until all program and audit requirements of the National Board have been satisfied. All records related to the program must be retained for three (3) years.

2.2 General Guidelines

A. Grant Award Process

United Way of America has been designated as the fiscal agent for the National Board and as such will process all Local Board plans. Checks will be written to organizations recommended by Local Boards for funding. Local Boards have the right to reallocate funds throughout the program period, as they determine necessary. When a Local Board reallocation between two or more LROs occurs, the Local Board must promptly notify the National Board in writing so that the National Board's records can be updated accordingly.

To ensure greater accountability and reporting, awards totalling less than $100,000 will be paid in two equal installments. Awards totalling $100,000 or more will be paid in three equal installments.

The National Board will distribute second/third checks once the jurisdiction's audit is completed for the previous program period. Second/third checks will be held in escrow until all audit exceptions are satisfied by the LRO.

The first check will be mailed directly to the LRO and second and third checks will be mailed to the Local Board Chair, upon his/her written request, along with the LRO's interim report. The Local Board will distribute second/third checks once they are assured that the organization is implementing the current program as intended and according to the guidelines in the plan.

B. Designation of Target Areas

Local jurisdictions will be selected to receive funds from the National Board based upon average unemployment statistics from the Department of Labor for the period June 1987 through May 1988 and poverty statistics from the 1980 Census. The Board adopted this combined approach in order to more effectively target funds for high-need areas. Funds designated for a particular jurisdiction must be used to provide services within that jurisdiction.

Jurisdictions with a minimum of 1,000 unemployed may qualify for an award based upon their rate of unemployment *or* their rate of poverty. Once a jurisdiction's eligibility is established, the National Board will determine its fund distribution based on a ratio calculated as follows: the average number of unemployed within an eligible area divided by the average number of unemployed covered by the national program equals the area's portion of the award (less National Board administrative costs, and less that portion of program funds required to fulfill designated State awards).

Area's Average Number Unemployed

Average number unemployed eligible areas = Area's percent of the award (less National Board's administrative costs and designated State awards)

A notice will be placed in the **Federal Register** listing civil jurisdictions that are selected and the dollar amount each has been awarded.

Puerto Rico and U.S. Territories will receive a percentage of the total award based on the decisions of the National Board.

C. State Set-Aside (SSA)

The SSA Program has been adopted to allow greater flexibility in selection of jurisdictions and is intended to target pockets of homelessness or poverty in nonqualifying jurisdictions, areas experiencing drastic economic changes (such as plant closings), areas with high levels of unemployment or poverty which do not meet the minimum 1,000 unemployed, or jurisdictions which have documented measures of need which are not adequately reflected in unemployment and poverty data.

The distribution of funds to SSA Committees will be based on a ratio calculated as follows: the State's average number of unemployed in nonfunded jurisdictions divided by the average number of unemployed in nonfunded jurisdictions nationwide equals the State's percentage of the total amount available for SSA awards.

A SSA Committee in each State will recommend high-need jurisdictions and award amounts to the National Board. Priority consideration is to be given to jurisdictions otherwise not meeting criteria for funding, although funded jurisdictions are not exempt from receiving additional funding. SSA Committees should also consider the special circumstances of jurisdictions that qualified in previous funding phases but are not eligible in the current phase. The State Committees may wish to provide these jurisdictions with an allocation so that the abrupt change in funding status is not disruptive to local providers.

Responsibility of SSA

1. Constitute a State Committee. In each State, the State United Way (or United Way in the capital city) will be notified of the award amount available to the SSA Committee. Where, in a State, there are affiliates of the voluntary organizations represented on the National Board, they must be invited to serve on the State Committee. If no single State affiliate exists, an appropriate representative should be selected. The Governor, or his/her representative, will replace the FEMA member. State Boards are encouraged to expand participation by inviting or notifying other private nonprofit organizations on the State level. The National Board encourages the inclusion of Native American representation on the State Committee.

Members of the SSA Committee shall elect a chair.

2. SSA Committees are charged with recommending high-need jurisdictions and award amounts within the State. The SSA Committee has 25 working days to notify the National Board in writing of its selections and the appropriate contact person for each area. (Note: The minimum award amount for a single jurisdiction is $1,000.)

3. Notify the National Board of selection criteria used to determine jurisdictions to receive funds.

4. The National Board will then notify these jurisdictions directly.

5. In the event of funds not claimed by SSA Counties, SSA Committees may recommend jurisdictions to receive the reallocated funds.

D. Selection of LROs

1. In selecting LROs to receive funds, the Local Board must consider the demonstrated ability of an organization to provide food and shelter assistance. Local participation in the program is not limited to organizations that are part of any State or national organization. LROs residing on Indian reservations are eligible to receive FEMA monies, if they meet LRO requirements as set forth in the program plan. Organizations that received awards from previous

legislation may again be eligible providing the organization still meets eligibility requirements. The Local Board should be prepared to justify an allocation of ⅓ or more of its total award to a single recipient organization.

2. *For a local organization to be eligible for funding, it must:*

- be nonprofit or an agency of government;
- have an accounting system; conduct an annual audit;
- practice nondiscrimination (those agencies with a religious affiliation must agree not to refuse services to an applicant based on religion or require attendance at religious services as a condition of assistance, nor will such groups engage in any religious proselytizing in any program receiving Emergency Food and Shelter Program funds); and,
- for private voluntary organizations, have a voluntary board.

Each LRO will be responsible for certifying in writing to the Local Board that it has read and agrees to abide by the cost eligibility and reporting standards of this publication and any other requirements of the Local Board.

3. Where there is a local nonprofit organization which does not have an adequate accounting system but meets all other criteria, the Local Board may authorize funds to be channeled through another agency which has been designated as the fiscal agent. Fiscal agents will be held accountable for compliance with program requirements.

Note: All agencies funded must be listed separately. Each agency receiving funds through a fiscal agent must be separately listed on the board plan. Checks will be made out to the fiscal agent on behalf of the recipient organization.

4. Client Eligibility

The National Board does not set client eligibility criteria. Local Boards may choose to set such criteria. If the Local Board does not set eligibility criteria, the LRO may use its existing criteria or set criteria for assistance under this award. However, the LRO's criteria must provide for assistance to needy individuals without discrimination (age, race, sex, religion, national origin, or handicap).

The National Board does not mandate nor recommend the use of any particular existing criteria (i.e., food stamp guidelines, welfare guidelines, or income guidelines).

2.3 Eligibility of Costs

The intent of this appropriation is for the purchase of food and shelter, to supplement and extend current available resources and not to substitute or reimburse ongoing programs and services. Interpretation questions should be cleared by the recipient organization with the Local Board prior to action. Local Boards unsure of the meaning of these guidelines should contact the National Board staff for clarification prior to advising the LRO.

A. Eligible program costs include, but are not limited to:

1. Food (hot meals, groceries, food vouchers). An allowance for maintenance fees charged by food banks can be granted by a Local Board at the prevailing rate. EFS Program funds cannot be used to pay such a maintenance fee twice: by a food bank and by the food pantry it is serving.

2. Transportation expenses related to the provision of food and/or shelter; limited to actual fuel costs, contracted services or public transportation.

3. Purchase of consumable supplies essential to mass feeding (i.e., plastic cups, utensils, detergent, etc.) and/or mass shelters of five or more beds (i.e., soap, toothbrushes, toothpaste, cleaning material, etc.).

4. Purchase of small equipment not exceeding $300 per item and essential to mass feeding (i.e., pots, pans, toasters, blenders, etc.) and/or mass shelters (i.e., cots, blankets, linens, etc.).

5. Leasing, only for the program period, of capital equipment associated with mass feeding or mass shelters (i.e., stoves, freezers, vans, etc., with costs over $300 per item) only if approved in advance by the Local Board.

Lease-purchasing agreements for equipment costing over $300 per item only if:

a. The cost of the lease for the program period remaining as of the date of the agreement (i.e., date of the agreement up to jurisdiction's end-of-program) would exceed the purchase price; and,

b. The agreement is approved in advance by the Local Board; and,

c. The equipment is related to providing mass food or shelter services.

7. Direct expenses associated with new or expanded services or to prevent closings of mass shelters or feeding operations only during program period (i.e., rent, cleaning, pest control, utilities, garbage pickup, etc.).

Note: This can only be done for one program period only.

8. Increased utility costs due to expanded services for mass shelters and mass feeding centers. NOTE: This is not intended for reimbursement of normal operating costs.

9. Limited emergency rent or mortgage assistance for individuals or families provided:

a. All other resources have been exhausted and;

b. Payment is limited to one month's cost for each individual or family and;

c. Assistance is provided only once in each award phase for each individual or family.

Late fees, but not deposits, are eligible.

10. First month's rent may be paid when an individual or family:

a. Is transient and plans to stay in the area for an extended period of time, or;

b. Is moving from a temporary shelter to a more permanent arrangement, or;

c. Client is being evicted because one month payment will not forestall eviction.

Cannot be provided in addition to assistance provided under Item 9 above.

All provisions of Item 9 above apply.

Can be provided in addition to assistance provided in Item 11 below.

11. Off-site emergency lodging in a hotel or motel, provided:

a. No on-site shelter is available; and

b. Each individual or family is limited to 30-days assistance during the program period. (Note: Assistance may be extended in extreme cases with prior Local Board written approval. A copy of this approval should accompany LROs' documentation.)

Note: An LRO may not operate as a vendor for other LROs, except for shared maintenance for food banks.

12. Per diem allowance of exactly $10 per person, per night for mass shelter (five beds or more) providers, only if:

a. Approved in advance by the Local Board; and,

b. LRO's total mass shelter award is expended in this manner.

Note: The $10 per diem if elected may be expended by the LRO for any related cost; it is not limited to otherwise eligible items.

13. Limited utility assistance (including gas, electricity, oil, water, firewood) for individuals or families provided:

a. All other resources have been exhausted (i.e., State's Low Income Home Energy Assistance Program); and,

b. Payment is limited to one month's cost for each utility for each individual or family; and,

c. Each utility can be paid only once in each award phase to any individual or family.

d. Reconnect fees, but not deposits are eligible, but again only a one month payment for each utility for each individual or family in each award phase.

14. Limited amounts of basic first aid supplies (i.e., aspirin, band-aids, cough syrup) for mass shelter providers and mass feeding sites only.

15. Emergency repairs or repairs required by local building codes of a mass feeding facility or mass shelter, provided:

a. The facility is owned by a not-for-profit organization (profit-making facilities, government facilities, and individual residences are not eligible);

b. The emergency repairs or repairs required by local building codes and the contract detailing work to be done and material and equipment to be used or purchased is approved by the Local Board prior to the start of the emergency repair; and,

c. The emergency repairs or repairs required by local building codes are limited to:

1. Bring facility into compliance with local building codes, or

2. Keep the facility open for the program period.

d. No award funds are used for decorative or nonessential purposes or routine maintenance/ repairs.

e. All emergency repair work is completed and paid for by the end of the jurisdiction's award phase. (Expenses which occur after that date will not be accepted as eligible costs.)

f. Emergency/building code repairs are limited to a $5,000-maximum expenditure. Expenditures over that amount must be approved by the National Board along with extension of time.

Note: Refer to the Preamble of this plan for further detail on the National Board's intent with regard to shelter repairs.

Local Boards may further restrict the allowable costs mentioned above as they deem necessary.

B. *Ineligible program costs:* Purposes for which funds CANNOT BE USED, include, but are not limited to:

1. Rental security.
2. Deposits of any kind.
3. Payment of more than one month's rent.
4. Payment of more than one month's mortgage.
5. Payment of more than one month's portion of an accumulated utility bill.
6. Payments made directly to a client.
7. Cash payments of any kind including checks made out to cash.
8. Real property (land or buildings) costing more than $300.
9. Equipment costing more than $300 per item (i.e., vehicles, office equipment, freezers, washers, etc.), except as provided in Section 2.3, A.6.
10. Emergency repairs or repairs required by local building codes or rehabilitation to government-owned or profit-making facilities.
11. Repairs of any kind to an individual's house or apartment.
12. Purchase of supplies or equipment for an individual's home or private use.
13. Lease-purchase agreements, except as provided in Section A–6.
14. Administrative cost reimbursement to State or regional offices of governmental or voluntary organizations.
15. Lobbying efforts.
16. Expenditures made prior to beginning of jurisdiction's program.
17. Expenditures made after end of jurisdiction's program.
18. Client-owned transportation.
19. Purchase of prescription medication and related medical supplies, except as provided in Section 2.3, A.14.
20. Purchase of clothing (except underwear/diapers for clients of mass shelters, if necessary).
21. Payments for expenses not incurred (i.e., where no goods or services have been provided during new program period).
22. Telephone costs, except as administration allowance and limited to the total allowance (2%).
23. Salaries, except as administration allowance and limited to the total allowance (2%).
24. Encumberment of funds for shelter, emergency repairs, utilities; that is, payments for goods and/or services which are purchased and to be delivered at a later date; unless it is intended that these goods and/or services are received on or before the end of the jurisdiction's program.

C. Administration Allowance

There is an administration allowance limitation of two percent (2%) of total funds received by the Local Board excluding any interest earned. This allowance is a part of the total award—not in addition to the award.

The local administration allowance is intended for use by LROs and not for reimbursement of program or administrative costs a recipient's parent organization (its State or regional offices) might incur as a result of this additional funding.

The Local Board may elect to use, for its own administrative costs, all or any portion of the 2% allowance.

The decision on distribution of the allowance among local LROs rests with the Local Board. No LRO may receive an allowance greater than 2% of that LRO's award amount unless the LRO is providing the administrative support for the Local Board and it is approved by the National Board.

The State Committee, when in operation, may utilize a maximum of one-half of one percent (.5%) for its administrative costs in allocating the SSA grant. As with Local Board awards, this administrative allowance is part of the total award, not in addition to the award.

Any of the administrative allowance not used must be put back into program funds for additional service.

3.0 Reporting Requirements

Local Boards will monitor LROs' expenditures and eligible cost compliance throughout the program period. An interim report of expenditures is due to the National Board with each LRO's second check request. A final report (accompanied by financial documentation for specified LROs) is due one month after end of each jurisdiction's program.

The National Board will provide forms for all required reports. The National Board advises Local Boards to request at least one other report from their LROs, at a time deemed appropriate by each Local Board.

LROs which successfully completed previous program audits and are receiving funds under this program will not be required to submit documentation with their final reports unless specifically asked to do so by the National Board. Documentation will be required for LROs not funded in previous phases of the program.

Failure of an LRO to comply with the National Board's reporting requirements may result in its funds being held in escrow. Funds will be held until all reporting requirements have been satisfied. If an LRO does not comply in a timely manner, the Local Board or National Board may reclaim and reallocate the funds being held in escrow.

The National Board will compile the reports it receives from the Local Boards and submit a detailed accounting of use of all program monies in the form of a report to FEMA.

4.0 Waivers

Local Boards may receive requests for variance in the budgets they have approved for LROs. Local Boards may allow such changes provided that the requested items are eligible under this program. If there is any doubt on the part of the Local Board as to eligibility, they should contact the National Board for clarification.

In the event that an expenditure requested by an LRO falls outside the program guidelines the Local Board, if supportive, may request a written waiver from the National Board in advance of the expenditure.

Waivers requested because of an audit exception must be submitted to the National Board with copy to the Local Board chair. A waiver request will not be accepted if the guidelines clearly state that an item is ineligible, such as the purchase of supplies or equipment for an individual's home or private use. A waiver to release the LRO from submitting canceled checks must be submitted before any expenditures are made.

The waiver request from the Local Board should clearly state the need for this exception, approximate costs, timelines, or any other pertinent information they deem necessary for the National Board to make their decision.

5.0 Amendments to Plan

The National Board reserves the right to amend this Plan at any time.

Supplementary Information

The following listing of jurisdictions that qualified for awards were chosen based on the following criteria:

1. Most current 12-month National unemployment rates.

2. Jurisdictions with a minimum of 1,000 people unemployed.

3. Jurisdictions with 18,000+ unemployed and a 4.9% rate of unemployment.

4. Jurisdictions with 1,000 to 17,999 unemployed and 7.5% rate of unemployment.

5. Jurisdictions with 1,000 or more unemployed and an 11% rate of poverty.

Dated: June 22, 1989.

Grant C. Peterson,

Associate Director State and Local Programs and Support.

EMERGENCY FOOD AND SHELTER PROGRAM ALLOCATIONS

Alabama	
7-0032-00 Baldwin County	52,616.00
7-0038-00 Blount County	21,412.00
7-0044-00 Calhoun County	64,499.00
7-0050-00 Chilton County	22,162.00
7-0054-00 Clarke County	22,911.00
7-0060-00 Coffee County	19,008.00
7-0062-00 Colbert County	37,912.00
7-0068-00 Covington County	21,813.00
7-0072-00 Cullman County	40,943.00
7-0074-00 Dale County	22,928.00
7-0076-00 Dallas County	50,282.00
7-0078-00 DeKalb County	36,291.00
7-0080-00 Elmore County	21,743.00
7-0082-00 Escambia County	27,458.00
7-0084-00 Etowah County	60,073.00
7-0088-00 Franklin County	24,984.00
7-0098-00 Houston County	37,250.00
7-0102-00 Jackson County	35,211.00
7-0104-00 Jefferson County	358,087.00
7-0110-00 Lauderdale County	48,139.00
7-0112-00 Lawrence County	24,322.00
7-0114-00 Lee County	33,347.00
7-0116-00 Limestone County	32,058.00
7-0122-00 Madison County	112,498.00
7-0128-00 Marion County	26,099.00
7-0130-00 Marshall County	51,031.00
7-0132-00 Mobile County	284,076.00
7-0138-00 Montgomery County	111,244.00
7-0142-00 Morgan County	63,540.00
7-0152-00 Russell County	25,029.00
7-0156-00 Shelby County	31,883.00
7-0154-00 St.Clair County	21,081.00
7-0160-00 Talladega County	51,153.00
7-0162-00 Tallapoosa County	20,698.00
7-0164-00 Tuscaloosa County	68,836.00
7-0168-00 Walker County	49,045.00
7-0174-00 Winston County	20,437.00
7-0176-00 State set-aside committee, AL	166,115.00
	2,219,214.00
Alaska	
7-0188-00 Anchorage Borough	154,748.00
7-0196-00 Fairbanks North Star Boro	70,318.00
7-0202-00 Kenai Peninsula Borough	45,142.00
7-0210-00 Matanuska-Susitna Census	45,560.00
7-0232-00 State set-aside committee, AK	54,081.00
	369,849.00
Arizona	
7-0242-00 Apache County	40,926.00
7-0244-00 Cochise County	49,742.00
7-0246-00 Coconino County	59,080.00
7-0248-00 Gila County	25,907.00
7-0256-00 Maricopa County	854,788.00
7-0268-00 Mohave County	36,649.00
7-0270-00 Navajo County	56,937.00
7-0272-00 Pima County	258,099.00
7-0276-00 Pinal County	64,255.00
7-0278-00 Santa Cruz County	20,472.00
7-0280-00 Yavapai County	36,518.00
7-0282-00 Yuma County	141,158.00
7-0284-00 State set-aside committee, AZ	12,460.00
	1,657,191.00
Arkansas	
7-0310-00 Benton County	33,643.00
7-0322-00 Clark County	18,311.00
7-0334-00 Craighead County	33,817.00
7-0336-00 Crawford County	24,583.00
7-0338-00 Crittenden County	35,960.00
7-0348-00 Faulkner County	40,664.00
7-0354-00 Garland County	48,975.00
7-0358-00 Greene County	22,998.00
7-0362-00 Hot Spring County	24,409.00
7-0366-00 Independence County	23,521.00
7-0370-00 Jackson County	20,384.00
7-0372-00 Jefferson County	54,654.00
7-0390-00 Lonoke County	20,141.00
7-0396-00 Miller County	25,298.00
7-0398-00 Mississippi County	49,062.00
7-0408-00 Ouachita County	20,437.00
7-0412-00 Phillips County	27,458.00
7-0416-00 Poinsett County	17,858.00
7-0420-00 Pope County	25,838.00
7-0424-00 Pulaski County	211,581.00
7-0434-00 Saline County	38,190.00
7-0440-00 Sebastian County	54,916.00
7-0432-00 St. Francis County	47,076.00
7-0450-00 Union County	28,643.00

EMERGENCY FOOD AND SHELTER PROGRAM ALLOCATIONS—Continued

7-0454-00 Washington County	41,727.00
7-0456-00 White County	47,477.00
7-0462-00 State set-aside committee, AR	224,915.00
	1,262,536.00
California	
7-0646-00 Oakland City	212,469.00
7-0634-00 Alameda County	330,787.00
7-0654-00 Butte County	94,100.00
7-0660-00 Contra Costa County	320,681.00
7-0464-00 Fresno County/City	543,813.00
7-0676-00 Glenn County	17,911.00
7-0678-00 Humboldt County	63,575.00
7-0680-00 Imperial County	157,169.00
7-0684-00 Kern County	397,863.00
7-0688-00 Kings County	55,613.00
7-0690-00 Lake County	29,549.00
7-0695-00 Los Angeles County/City	3,990,737.00
7-0760-00 Madera County	58,436.00
7-0768-00 Mendocino County	50,125.00
7-0770-00 Merced County	133,544.00
7-0776-00 Monterey County	223,794.00
7-0786-00 Orange County	706,105.00
7-0820-00 Riverside County	441,559.00
7-0824-00 Sacramento County	453,232.00
7-0828-00 San Benito County	35,873.00
7-0830-00 San Bernardino County	466,961.00
7-0840-00 San Diego County	825,310.00
7-0858-00 San Francisco City/County	306,586.00
7-0860-00 San Joaquin County	320,663.00
7-0864-00 San Luis Obispo County	67,304.00
7-0876-00 Santa Barbara County	140,339.00
7-0880-00 Santa Clara County	586,080.00
7-0892-00 Santa Cruz County	140,583.00
7-0896-00 Shasta County	86,246.00
7-0900-00 Siskiyou County	32,075.00
7-0902-00 Solano County	140,095.00
7-0912-00 Stanislaus County	314,983.00
7-0916-00 Sutter County	52,790.00
7-0918-00 Tehama County	26,360.00
7-0922-00 Tulare County	237,035.00
7-0926-00 Tuolumne County	24,374.00
7-0928-00 Ventura County	314,809.00
7-0938-00 Yolo County	79,395.00
7-0940-00 Yuba County	36,030.00
7-0942-00 State set-aside committee, CA	342,028.00
	12,858,981.00
Colorado	
7-0968-00 Adams County	216,703.00
7-0990-00 Boulder County	122,045.00
7-1012-00 Denver City/County	345,874.00
7-1022-00 El Paso County	269,546.00
7-1026-00 Fremont County	22,545.00
7-1028-00 Garfield County	19,792.00
7-1056-00 La Plata County	21,552.00
7-1058-00 Larimer County	105,546.00
7-1068-00 Mesa County	68,175.00
7-1074-00 Montezuma County	17,562.00
7-1076-00 Montrose County	22,754.00
7-1092-00 Pueblo County	82,096.00
7-1116-00 Weld County	89,988.00
7-1122-00 State set-aside committee, CO	455,095.00
	1,859,273.00
Connecticut	
7-1422-00 Fairfield County	246,583.00
7-1438-00 Hartford County	242,105.00
7-1458-00 New Haven County	228,062.00
7-1478-00 State set-aside committee, CT	105,341.00
	822,091.00
Delaware	
7-1480-00 Kent County	32,859.00
7-1482-00 New Castle County	116,979.00
7-1486-00 Sussex County	29,915.00
7-1488-00 State set-aside committee, DE	68,247.00
	250,000.00
District of Columbia	
7-1492-00 District of Columbia	333,591.00
	333,591.00
Florida	
7-1556-00 Alachua County	52,059.00
7-1562-00 Bay County	90,737.00
7-1566-00 Brevard County	159,720.00
7-1570-00 Broward County	456,484.00
7-1586-00 Citrus County	32,720.00
7-1590-00 Collier County	53,470.00
7-1592-00 Columbia County	27,824.00
7-1598-00 Miami City	239,927.00
7-1594-00 Dade County	650,543.00
7-1608-00 Duval County	329,532.00
7-1612-00 Escambia County	125,095.00
7-1620-00 Gadsden County	17,510.00
7-1632-00 Hendry County	20,228.00
7-1634-00 Hernando County	37,372.00
7-1636-00 Highlands County	24,583.00
7-1638-00 Hillsborough County	372,042.00
7-1644-00 Indian River County	51,153.00
7-1646-00 Jackson County	20,768.00
7-1652-00 Lake County	57,442.00
7-1654-00 Lee County	87,566.00
7-1656-00 Leon County	68,436.00
7-1666-00 Manatee County	62,338.00
7-1668-00 Marion County	74,900.00
7-1670-00 Martin County	38,992.00
7-1672-00 Monroe County	20,260.00
7-1674-00 Nassau County	22,406.00
7-1676-00 Okaloosa County	64,115.00
7-1680-00 Orange County	295,139.00
7-1684-00 Osceola County	36,187.00
7-1686-00 Palm Beach County	360,387.00
7-1694-00 Pinellas County	293,624.00
7-1702-00 Polk County	256,531.00
7-1706-00 Putnam County	31,291.00
7-1712-00 Santa Rosa County	34,497.00
7-1714-00 Sarasota County	73,350.00
7-1710-00 St Lucie County	95,598.00
7-1708-00 St. Johns County	35,176.00
7-1728-00 Volusia County	117,220.00
7-1738-00 State set-aside committee, FL	224,562.00
	5,107,814.00
Georgia	
7-1740-00 Atlanta/Dekalb, Fulton Counties	618,068.00
7-1796-00 Bartow County	27,580.00
7-1806-00 Burke County	19,095.00
7-1816-00 Carroll County	32,423.00
7-1822-00 Chatham County	111,662.00
7-1832-00 Clarke County	29,758.00
7-1840-00 Cobb County	151,576.00
7-1844-00 Colquitt County	21,639.00
7-1850-00 Coweta County	21,064.00
7-1870-00 Dougherty County	78,594.00
7-1892-00 Floyd County	41,518.00
7-1906-00 Glynn County	26,552.00
7-1908-00 Gordon County	19,461.00
7-1932-00 Houston County	33,138.00
7-1956-00 Laurens County	24,688.00
7-1966-00 Lowndes County	32,981.00
7-1742-00 Macon/Bibb,Jones Counties	77,531.00
7-1994-00 Muskogee County	81,886.00
7-1998-00 Newton County	22,179.00
7-2026-00 Richmond County	95,058.00
7-2036-00 Spalding County	27,946.00
7-2056-00 Thomas County	23,085.00
7-2066-00 Troup County	33,312.00
7-2076-00 Walker County	27,528.00
7-2078-00 Walton County	17,457.00
7-2080-00 Ware County	24,357.00
7-2094-00 Whitfield County	36,047.00
7-2104-00 State set-aside committee, GA	763,185.00
	2,519,368.00

EMERGENCY FOOD AND SHELTER PROGRAM ALLOCATIONS—Continued

Hawaii	
7-2108-00 Hawaii County	51,153.00
7-2116-00 State set-aside Committee, HI	198,847.00
	424,632.00
Idaho	
7-2134-00 Bannock County	43,522.00
7-2140-00 Bingham County	26,848.00
7-2146-00 Bonner County	18,398.00
7-2156-00 Canyon County	62,948.00
7-2184-00 Kootenai County	49,898.00
7-2198-00 Nez Perce County	19,322.00
7-2212-00 Twin Falls County	32,249.00
7-2218-00 State set-aside committee, ID	171,447.00
	424,632.00
Illinois	
7-2342-00 Adams County	41,292.00
7-2348-00 Boone County	29,880.00
7-2352-00 Bureau County	25,420.00
7-2360-00 Champaign County	65,439.00
7-2364-00 Christian County	25,507.00
7-2370-00 Clinton County	27,719.00
7-2372-00 Coles County	28,016.00
7-2378-00 Chicago County	1,984,402.00
7-2374-00 Cook County	1,206,430.00
7-2402-00 Dekalb County	27,423.00
7-2414-00 Edgar County	17,562.00
7-2420-00 Fayette County	18,520.00
7-2424-00 Franklin County	48,052.00
7-2426-00 Fulton County	29,862.00
7-2432-00 Grundy County	34,288.00
7-2442-00 Henry County	36,570.00
7-2444-00 Iroquois County	20,524.00
7-2446-00 Jackson County	39,410.00
7-2450-00 Jefferson County	45,020.00
7-2464-00 Kankakee County	75,945.00
7-2468-00 Knox County	43,766.00
7-2474-00 La Salle County	101,556.00
7-2478-00 Lee County	22,144.00
7-2490-00 Macon County	95,215.00
7-2494-00 Macoupin County	34,863.00
7-2496-00 Madison County	176,421.00
7-2498-00 Marion County	42,424.00
7-2484-00 Mc Donough County	19,130.00
7-2512-00 Montgomery County	24,932.00
7-2518-00 Ogle County	34,131.00
7-2520-00 Peoria County	108,038.00
7-2524-00 Perry County	26,500.00
7-2536-00 Randolph County	24,200.00
7-2540-00 Rock Island County	107,376.00
7-2546-00 Saline County	29,009.00
7-2542-00 St. Clair County	192,468.00
7-2562-00 Tazewell County	74,795.00
7-2564-00 Union County	17,771.00
7-2566-00 Vermilion County	84,517.00
7-2574-00 Wayne County	18,381.00
7-2576-00 White County	20,541.00
7-2578-00 Whiteside County	37,946.00
7-2580-00 Will County	236,982.00
7-2586-00 Williamson County	61,484.00
7-2588-00 Winnebago County	192,711.00
7-2594-00 State set-aside committee, IL	765,443.00
	6,420,025.00
Indiana	
7-2622-00 Allen County	134,259.00
7-2656-00 Delaware County	66,241.00
7-2662-00 Elkhart County	72,026.00
7-2666-00 Fayette County	19,566.00
7-2678-00 Grant County	46,832.00
7-2680-00 Greene County	23,277.00
7-2690-00 Henry County	30,228.00
7-2696-00 Jackson County	24,374.00
7-2708-00 Knox County	20,925.00
7-2716-00 Gary City	113,108.00
7-2714-00 Lake County	166,351.00
7-2722-00 Lawrence County	26,482.00

EMERGENCY FOOD AND SHELTER PROGRAM ALLOCATIONS—Continued

7-2724-00 Madison County	66,763.00
7-2728-00 Marion County	365,127.00
7-2736-00 Miami County	20,576.00
7-2738-00 Monroe County	37,615.00
7-2770-00 Randolph County	18,869.00
7-2776-00 St. Joseph County	116,627.00
7-2794-00 Tippecanoe County	40,804.00
7-2800-00 Vanderburgh County	93,507.00
7-2806-00 Vigo County	52,007.00
7-2816-00 Wayne County	46,536.00
7-2826-00 State set-aside committee, IN	543,265.00
	2,165,365.00
Iowa	
7-2858-00 Blackhawk County	72,182.00
7-2952-00 Johnson County	19,810.00
7-2962-00 Lee County	28,956.00
7-3038-00 Wapello County	22,911.00
7-3052-00 Woodbury County	55,544.00
7-3060-00 State set-aside committee, IA	516,363.00
	715,766.00
Kansas	
7-3116-00 Crawford County	17,492.00
7-3124-00 Douglas County	25,836.00
7-3206-00 Montgomery County	18,398.00
7-3244-00 Riley County	17,597.00
7-3296-00 Wyandotte County	123,230.00
7-3300-00 State set-aside committee, KS	399,552.00
	602,107.00
Kentucky	
7-3324-00 Barren County	29,688.00
7-3328-00 Bell County	24,756.00
7-3334-00 Boyd County	34,026.00
7-3336-00 Boyle County	23,068.00
7-3358-00 Carter County	29,601.00
7-3362-00 Christian County	26,138.00
7-3364-00 Clark County	19,374.00
7-3374-00 Daviess County	73,767.00
7-3386-00 Floyd County	37,850.00
7-3400-00 Graves County	21,883.00
7-3402-00 Grayson County	19,095.00
7-3406-00 Greenup County	24,548.00
7-3410-00 Hardin County	35,906.00
7-3412-00 Harlan County	30,751.00
7-3418-00 Henderson County	36,570.00
7-3424-00 Hopkins County	27,528.00
7-3426-00 Jefferson County	440,653.00
7-3434-00 Johnson County	20,855.00
7-3436-00 Kenton County	69,830.00
7-3442-00 Knox County	20,193.00
7-3446-00 Laurel County	31,692.00
7-3454-00 Letcher County	20,628.00
7-3384-00 Lexington/Fayette	91,695.00
7-3458-00 Lincoln County	22,440.00
7-3472-00 Madison County	25,803.00
7-8476-00 Marshall County	20,297.00
7-3466-00 Mccracken County	35,647.00
7-3494-00 Montgomery County	24,461.00
7-3498-00 Muhlenberg County	24,287.00
7-3500-00 Nelson County	25,942.00
7-3504-00 Ohio County	19,409.00
7-3514-00 Perry County	24,548.00
7-3516-00 Pike County	70,927.00
7-3520-00 Pulaski County	32,611.00
7-3548-00 Warren County	72,461.00
7-3556-00 Whitley County	23,346.00
7-3562-00 State set-aside committee, KY	426,202.00
	2,040,180.00
Louisiana	
7-3574-00 Acadia Parish	57,704.00
7-3576-00 Allen Parish	21,534.00
7-3578-00 Ascension Parish	59,829.00
7-3580-00 Assumption Parish	26,446.00
7-3582-00 Avoyelles Parish	47,808.00
7-3584-00 Beauregard Parish	28,536.00
7-3586-00 Calcasieu Parish	162,483.00
7-3610-00 Concordia Parish	26,099.00
7-3612-00 De Soto Parish	26,134.00
7-3614-00 East Baton Rouge Parish	274,424.00
7-3622-00 Evangeline Parish	31,413.00
7-3624-00 Franklin Parish	21,813.00
7-3626-00 Iberia Parish	73,489.00
7-3630-00 Iberville Parish	32,998.00
7-3636-00 Jefferson Davis Parish	32,563.00
7-3634-00 Jefferson Parish	349,253.00
7-3640-00 Lafayette Parish	145,304.00
7-3644-00 Lafourche Parish	73,297.00
7-3650-00 Livingston Parish	74,656.00
7-3652-00 Madison Parish	17,492.00
7-3654-00 Morehouse Parish	31,518.00
7-3655-00 Natchitoches Parish	26,852.00
7-3658-00 New Orleans City/Orleans	405,250.00
7-3660-00 Ouachita Parish	119,659.00
7-3664-00 Plaquemines Parish	19,775.00
7-3666-00 Pointe Coupee Parish	23,120.00
7-3668-00 Rapides Parish	101,313.00
7-3674-00 Richland Parish	22,493.00
7-3564-00 Shreveport/Bossier, Caddo Parishes	300,017.00
7-3678-00 St Bernard Parish	64,446.00
7-3680-00 St Charles Parish	34,357.00
7-3684-00 St James Parish	24,008.00
7-3686-00 St John Baptist Parish	32,946.00
7-3688-00 St Landry Parish	96,068.00
7-3690-00 St Martin Parish	41,518.00
7-3692-00 St Mary Parish	76,520.00
7-3694-00 St Tammany Parish	99,413.00
7-3696-00 Tangipahoa Parish	91,173.00
7-3700-00 Terrebonne Parish	87,636.00
7-3702-00 Union Parish	17,667.00
7-3704-00 Vermilion Parish	57,355.00
7-3706-00 Vernon Parish	30,211.00
7-3708-00 Washington Parish	96,587.00
7-3710-00 Webster Parish	44,515.00
7-3712-00 West Baton Rouge Parish	18,590.00
7-3714-00 West Carroll Parish	19,461.00
7-3720-00 State set-aside committee, LA	186,048.00
	3,693,795.00
Maine	
7-3726-00 Androscoggin County	41,657.00
7-3728-00 Aroostook County	53,418.00
7-3730-00 Cumberland County	55,804.00
7-3736-00 Hancock County	21,047.00
7-3738-00 Kennebec County	42,180.00
7-3744-00 Oxford County	19,688.00
7-3746-00 Penobscot County	48,766.00
7-3752-00 Somerset County	26,500.00
7-3756 Washington County	23,346.00
7-3760-00 State set-aside committee, ME	50,269.00
	382,675.00
Maryland	
7-3774-00 Allegany County	58,331.00
7-3822-00 Baltimore County	427,081.00
7-3790-00 Dorchester County	20,263.00
7-3794-00 Garrett County	19,478.00
7-3812-00 Somerset County	19,566.00
7-3818-00 Wicomico County	37,267.00
7-3820-00 Worcester County	25,995.00
7-3824-00 State set-aside committee, MD	527,787.00
	1,180,768.00
Massachusetts	
7-4482-00 Bristol County	183,094.00
7-4490-00 Essex County	201,962.00
7-4502-00 Hampden County	115,634.00
7-4508-00 Hampshire County	33,277.00
7-4510-00 Middlesex County	323,990.00
7-4540-00 Plymouth County	115,216.00
7-4550-00 Suffolk County	181,805.00
7-4554-00 Worcester County	181,892.00
7-4558-00 State set-aside committee, MA	133,965.00
	1,470,835.00
Michigan	
7-4638-00 Alpena County	28,660.00
7-4646-00 Barry County	28,790.00
7-4648-00 Bay County	87,618.00
7-4652-00 Berrien County	95,128.00
7-4654-00 Branch County	23,852.00
7-4656-00 Calhoun County	91,782.00
7-4660-00 Cass County	24,217.00
7-4664-00 Cheboygan County	27,441.00
7-4666-00 Chippewa County	28,469.00
7-4674-00 Delta County	26,294.00
7-4682-00 Emmet County	21,256.00
7-4684-00 Genesee County	480,603.00
7-4692-00 Grand Traverse County	46,292.00
7-4694-00 Gratiot County	33,451.00
7-4696-00 Hillsdale County	31,465.00
7-4698-00 Houghton County	16,137.00
7-4700-00 Huron County	29,556.00
7-4708-00 Ionia County	35,072.00
7-4714-00 Isabella County	27,841.00
7-4716-00 Jackson County	84,883.00
7-4718-00 Kalamazoo County	105,302.00
7-4724-00 Kent County	277,036.00
7-4560-00 Lansing/Eaton, Ingham Counties	243,985.00
7-4734-00 Lapeer County	70,004.00
7-4738-00 Lenawee County	70,457.00
7-4744-00 Mackinac County	22,858.00
7-4746-00 Macomb County	531,390.00
7-4756-00 Manistee County	17,684.00
7-4760-00 Marquette County	38,382.00
7-4762-00 Mason County	18,520.00
7-4764-00 Mecosta County	19,984.00
7-4772-00 Monroe County	83,716.00
7-4774-00 Montcalm County	39,497.00
7-4778-00 Muskegon County	109,641.00
7-4780-00 Newaygo County	27,685.00
7-4782-00 Oakland County	668,471.00
7-4796-00 Oceana County	18,851.00
7-4814-00 Saginaw County	141,942.00
7-4822-00 Sanilac County	35,978.00
7-4826-00 Shiawassee County	67,582.00
7-4820-00 St. Joseph County	45,839.00
7-4818-00 St. Clair County	118,439.00
7-4828-00 Tuscola County	45,142.00
7-4830-00 Van Buren County	50,578.00
7-4832-00 Washtenaw County	113,822.00
7-4844-00 Detroit City	975,963.00
7-4836-00 Wayne County	629,044.00
7-4854-00 Wexford County	20,419.00
7-4856-00 State set-aside committee, MI	329,241.00
	6,209,199
Minnesota	
7-4902-00 Becker County	18,137.00
7-4904-00 Beltrami County	17,841.00
7-4906-00 Benton County	14,722.00
7-4914-00 Carlton County	17,614.00
7-4924-00 Clay County	19,618.00
7-4932-00 Crow Wing County	23,799.00
7-4950-00 Hennepin County	392,514.00
7-4968-00 Itacsa County	27,737.00
7-5004-00 Morrison County	19,060.00
7-5020-00 Otter Tail County	27,772.00
7-5028-00 Polk County	19,496.00
7-5054-00 Sherburne County	19,287.00
7-5048-00 St. Louis County	122,690.00
7-5058-00 Steams County	53,731.00
7-5082-00 Winona County	19,357.00
7-5088-00 State set-aside committee, MN	534,953.00
	1,348,326.00
Mississippi	
7-5090-00 Adams County	29,862.00
7-5092-00 Alcorn County	32,894.00
7-5100-00 Bolivar County	33,852.00
7-5116-00 Coahoma County	27,336.00

EMERGENCY FOOD AND SHELTER PROGRAM ALLOCATIONS—Continued

7-5118-00 Copiah County	22,562.00
7-5122-00 De Soto County	35,037.00
7-5124-00 Forrest County	37,511.00
7-5126-00 George County	19,182.00
7-5134-00 Hancock County	18,503.00
7-5136-00 Harrison County	109,606.00
7-5138-00 Hinds County	153,458.00
7-5142-00 Holmes County	20,350.00
7-5150-00 Jackson County	101,034.00
7-5158-00 Jones County	40,717.00
7-5166-00 Lauderdale County	48,975.00
7-5172-00 Lee County	38,730.00
7-5174-00 Leflore County	34,288.00
7-5176-00 Lincoln County	24,148.00
7-5178-00 Lowndes County	38,243.00
7-5180-00 Madison County	32,145.00
7-5182-00 Marion County	21,891.00
7-5184-00 Marshall County	26,517.00
7-5186-00 Monroe County	21,395.00
7-5198-00 Panola County	24,270.00
7-5200-00 Pearl River County	24,601.00
7-5204-00 Pike County	30,788.00
7-5212-00 Rankin County	36,483.00
7-5224-00 Sunflower County	30,472.00
7-5232-00 Tishomingo County	18,921.00
7-5240-00 Warren County	43,400.00
7-5242-00 Washington County	68,802.00
7-5254-00 Yazoo County	17,701.00
7-5256-00 State set-aside committee, MS	267,325.00
	1,530,779.00
Missouri	
7-5290-00 Boone County	34,358.00
7-5294-00 Buchanan County	46,431.00
7-5298-00 Butler County	24,043.00
7-5306-00 Cape Girardeau County	25,785.00
7-5348-00 Franklin County	52,512.00
7-5354-00 Greene County	79,952.00
7-5380-00 Jasper County	41,065.00
7-5258-00 Kansas City/Clay, Jackson, Platte County	442,308.00
7-5428-00 Newton County	20,123.00
7-5442-00 Pettis County	16,886.00
7-5486-00 Scott County	20,994.00
7-5474-00 St. Francois County	29,706.00
7-5516-00 St. Louis City	304,077.00
7-5498-00 Taney County	22,667.00
7-5506-00 Washington County	16,015.00
7-5518-00 State set-aside committee, MO	819,953.00
	2,000,875.00
Montana	
7-5558-00 Flathead County	44,497.00
7-5560-00 Gallatin County	25,158.00
7-5592-00 Missoula County	45,351.00
7-5610-00 Ravalli County	18,921.00
7-5622-00 Silver Bow County	22,996.00
7-5644-00 State set-aside committee, MT	170,498.00
	327,423.00
Nebraska	
7-5722-00 Douglas County	192,364.00
7-5828-00 Scotts Bluff County	25,263.00
7-5858-00 State set-aside committee, NE	191,438.00
	409,065.00
Nevada	
7-5868-00 Clark County	365,004.00
7-5906-00 State set-aside committee, NV	101,849.00
	466,853.00
New Hampshire	
7-5942-00 State set-aside committee, NH	250,000.00
	250,000.00
New Jersey	
7-5948-00 Atlantic County	115,495.00
7-5954-00 Camden County	179,174.00
7-5962-00 Cumberland County	74,899.00
7-5974-00 Newark City	184,819.00
7-5966-00 Essex County	172,972.00
7-5978-00 Hudson County	301,307.00
7-5988-00 Mercer County	94,780.00
7-6018-00 Passaic County	189,854.00
7-6028-00 Salem County	26,099.00
7-6034-00 Union County	196,545.00
7-6042-00 State set-aside committee, NJ	560,604.00
	2,096,548.00
New Mexico	
7-6044-00 Bernalillo County	285,871.00
7-6050-00 Chaves County	29,636.00
7-6052-00 Cibola County	20,733.00
7-6056-00 Curry County	24,845.00
7-6060-00 Dona Ana County	72,078.00
7-6064-00 Eddy County	39,201.00
7-6074-00 Lea County	35,072.00
7-6082-00 McKinley County	39,427.00
7-6086-00 Otero County	26,901.00
7-6090-00 Rio Arriba County	44,933.00
7-6096-00 San Juan County	62,548.00
7-6098-00 San Miguel County	22,597.00
7-6094-00 Sandoval County	34,985.00
7-6100-00 Santa Fe County	58,592.00
7-6108-00 Taos County	44,741.00
7-6114-00 Valencia County	26,343.00
7-6116-00 State set-aside committee, NM	57,742.00
	946,245.00
New York	
7-6120-00 Albany County	70,422.00
7-6126-00 Allegany County	19,444.00
7-6130-00 Broome County	63,645.00
7-6136-00 Cattaraugus County	36,622.00
7-6138-00 Cayuga County	37,981.00
7-6140-00 Chatauqua County	58,244.00
7-6142-00 Chemung County	27,685.00
7-6144-00 Chenango County	18,416.00
7-6146-00 Clinton County	37,180.00
7-6150-00 Cortland County	20,228.00
7-6160-00 Buffalo City	180,690.00
7-6156-00 Erie County	220,170.00
7-6168-00 Essex County	18,607.00
7-6170-00 Franklin County	28,138.00

EMERGENCY FOOD AND SHELTER PROGRAM ALLOCATIONS—Continued

7-6172-00 Fulton County	34,628.00
7-6180-00 Herkimer County	29,131.00
7-6182-00 Jefferson County	59,359.00
7-6190-00 Madison County	34,270.00
7-6192-00 Monroe County	217,452.00
7-6202-00 Nassau County	365,214.00
7-6314-00 New York City	2,875,377.00
7-6212-00 Niagara County	107,062.00
7-6216-00 Oneida County	84,935.00
7-6220-00 Onandaga County	205,483.00
7-6232-00 Oswego County	80,946.00
7-6234-00 Otsego County	19,200.00
7-6240-00 Rensselaer County	44,881.00
7-6258-00 Schenectady County	44,940.00
7-6254-00 St. Lawrence County	56,136.00
7-6268-00 Steuben County	37,511.00
7-6270-00 Suffolk County	407,341.00
7-6282-00 Sullivan County	20,994.00
7-6286-00 Tompkins County	18,311.00
7-6288-00 Ulster County	44,062.00
7-6290-00 Warren County	26,256.00
7-6292-00 Washington County	19,391.00
7-6296-00 Westchester County	248,115.00
7-6312-00 State set-aside committee, NY	297,401.00
	6,220,088.00
North Carolina	
7-6332-00 Beaufort County	22,684.00
7-6338-00 Brunswick County	28,834.00
7-6340-00 Buncombe County	59,133.00
7-6352-00 Carteret County	25,454.00
7-6366-00 Cleveland County	26,796.00
7-6368-00 Columbus County	23,642.00
7-6370-00 Craven County	23,137.00
7-6372-00 Cumberland County	82,862.00
7-6386-00 Duplin County	16,991.00
7-6388-00 Durham County	51,222.00
7-6392-00 Edgecombe County	29,462.00
7-6394-00 Forsyth County	87,828.00
7-6398-00 Franklin County	18,729.00
7-6400-00 Gaston County	61,240.00
7-6418-00 Halifax County	23,555.00
7-6420-00 Harnett County	24,548.00
7-6422-00 Haywood County	19,217.00
7-6424-00 Henderson County	19,531.00
7-6316-00 High Point/ Guilford, Davidson Countie	147,483.00
7-6436-00 Johnston County	32,685.00
North Carolina	
7-6440-00 Lee County	21,203.00
7-6442-00 Lenoir County	23,974.00
7-6454-00 Mecklenburg County	146,263.00
7-6464-00 Nash County	33,695.00
7-6466-00 New Hanover County	62,913.00
7-6470-00 Onslow County	21,970.00
7-6472-00 Orange County	21,134.00
7-6482-00 Person County	20,768.00
7-6484-00 Pitt County	31,779.00
7-6490-00 Richmond County	20,019.00
7-6492-00 Robeson County	57,826.00
7-6494-00 Rockingham County	36,797.00
7-6498-00 Rutherford County	19,357.00
7-6500-00 Sampson County	22,022.00
7-6506-00 Stokes County	18,451.00
7-6508-00 Surry County	24,636.00
7-6518-00 Vance County	24,409.00
7-6520-00 Wake County	111,697.00
7-6530-00 Wayne County	32,650.00
7-6532-00 Wilkes County	16,416.00
7-6534-00 Wilson County	47,041.00
7-6540-00 State set-aside committee, NC	354,892.00
	1,998,945.00
North Dakota	
7-6596-00 Grand Forks County	23,730.00
7-6670-00 State set-aside committee, ND	226,270.00
	250,000.00
Ohio	
7-6678-00 Adams County	18,137.00
7-6684-00 Ashtabula County	80,980.00
7-6686-00 Athens County	28,939.00
7-6690-00 Belmont County	52,860.00
7-6692-00 Brown County	24,148.00
7-6694-00 Butler County	141,890.00
7-6702-00 Clark County	65,962.00
7-6706-00 Clinton County	22,336.00
7-6710-00 Columbiana County	64,986.00
7-6672-00 Columbus/ Fairfield, Franklin Counties	478,094.00
7-6712-00 Coshocton County	22,040.00
7-6714-00 Crawford County	29,775.00
7-6716-00 Cuyahoga County	717,046.00
7-6730-00 Defiance County	25,036.00
7-6740-00 Fayette County	17,858.00
7-6746-00 Fulton County	26,782.00
7-6748-00 Gallia County	20,437.00
7-6754-00 Guernsey County	32,302.00
7-6756-00 Hamilton County	410,007.00
7-6762-00 Hardin County	16,747.00
7-6766-00 Henry County	16,764.00
7-6768-00 Highland County	21,865.00
7-6770-00 Hocking County	18,555.00
7-6774-00 Huron County	47,111.00
7-6776-00 Jackson County	23,764.00
7-6778-00 Jefferson County	46,222.00
7-6780-00 Knox County	25,890.00
7-6784-00 Lawrence County	37,563.00
7-6788-00 Logan County	21,395.00
7-6790-00 Lorain County	152,988.00
7-6796-00 Lucas County	269,528.00
7-6802-00 Mahoning County	174,174.00
7-6806-00 Marion County	44,445.00
7-6815-00 Montgomery County	271,095.00
7-6828-00 Muskingum County	59,376.00

EMERGENCY FOOD AND SHELTER PROGRAM ALLOCATIONS—Continued

7-6832-00 Ottawa County	31,012.00
7-6836-00 Perry County	34,235.00
7-6840-00 Pike County	19,304.00
7-6846-00 Putnam County	21,796.00
7-6848-00 Richland County	75,910.00
7-6852-00 Ross County	39,480.00
7-6854-00 Sandusky County	45,787.00
7-6856-00 Scioto County	53,714.00
7-6858-00 Seneca County	35,316.00
7-6862-00 Stark County	227,644.00
7-6866-00 Summit County	292,177.00
7-6870-00 Trumbull County	164,138.00
7-6884-00 Washington County	42,476.00
7-6894-00 State set-aside committee, OH	796,812.00
	5,412,898.00
Oklahoma	
7-6916-00 Caddo County	21,012.00
7-6922-00 Carter County	27,092.00
7-6924-00 Cherokee County	22,656.00
7-6938-00 Comanche County	43,835.00
7-6946-00 Creek County	43,435.00
7-6962-00 Grady County	25,907.00
7-6990-00 Le Flore County	23,974.00
7-6992-00 Lincoln County	19,461.00
7-7010-00 Mayes County	24,688.00
7-7002-00 Mccurtain County	21,743.00
7-7014-00 Muskogee County	49,341.00
7-6896-00 Oklahoma City/Canadian, Mc Lain, Okla	476,857.00
7-7028-00 Okmulgee County	27,996.00
7-7034-00 Ottawa County	22,615.00
7-7038-00 Payne County	24,932.00
7-7040-00 Pittsburg County	36,936.00
7-7042-00 Pontotoc County	19,931.00
7-7052-00 Rogers County	36,361.00
7-7054-00 Seminole County	19,986.00
7-7056-00 Sequoyah County	17,475.00
7-7058-00 Stephens County	26,012.00
7-7064-00 Tulsa County	327,406.00
7-7068-00 Wagoner County	26,761.00
7-7078-00 State set-aside committee, OK	434,221.00
	1,820,817.00
Oregon	
7-7090-00 Benton County	22,562.00
7-7096-00 Clatsop County	18,065.00
7-7098-00 Columbia County	21,796.00
7-7100-00 Coos County	42,204.00
7-7106-00 Deschutes County	47,250.00
7-7108-00 Douglas County	58,314.00
7-7118-00 Jackson County	76,660.00
7-7122-00 Josephine County	31,378.00
7-7124-00 Klamath County	36,709.00
7-7126-00 Lane County	134,624.00
7-7132-00 Lincoln County	20,750.00
7-7134-00 Linn County	55,944.00
7-7080-00 Portland/Clackamas, Multnomah, Washington	526,755.00
7-7082-00 Salem/Marion, Polk Counties	136,244.00
7-7156-00 Umatilla County	45,926.00
7-7172-00 State set-aside committee, OR	214,755.00
	1,488,956.00
Pennsylvania	
7-7180-00 Allegheny County	607,318.00
7-7184-00 Armstrong County	43,539.00
7-7186-00 Beaver County	105,842.00
7-7188-00 Bedford County	28,678.00
7-7190-00 Berks County	140,618.00
7-7194-00 Blair County	73,506.00
7-7198-00 Bradford County	27,528.00
7-7208-00 Cambria County	84,291.00
7-7214-00 Centre County	57,146.00
7-7218-00 Clarion County	27,719.00
7-7220-00 Clearfield County	56,183.00
7-7222-00 Clinton County	25,054.00
7-7224-00 Columbia County	33,242.00
7-7226-00 Crawford County	50,438.00
7-7230-00 Dauphin County	108,856.00
7-7242-00 Erie County	151,890.00
7-7246-00 Fayette County	98,438.00
7-7254-00 Greene County	27,894.00
7-7256-00 Huntingdon County	28,817.00
7-7258-00 Indiana County	57,599.00
7-7260-00 Jefferson County	28,643.00
7-7264-00 Lackawanna County	109,937.00
7-7268-00 Lancaster County	142,656.00
7-7282-00 Luzerne County	205,587.00
7-7290-00 Mifflin County	27,214.00
7-7174-00 Bethlehem/Northampton, Lehigh Counties	212,296.00
7-7306-00 Northumberland County	62,634.00
7-7310-00 Philadelphia City/County	755,706.00
7-7320-00 Somerset County	46,919.00
7-7324-00 Susquehanna County	20,001.00
7-7326-00 Tioga County	19,165.00
7-7334-00 Washington County	116,718.00
7-7336-00 Wayne County	17,998.00
7-7338-00 Westmoreland County	234,979.00
7-7344-00 State set-aside committee, PA	777,097.00
	4,614,151.00
Rhode Island	
7-7354-00 Providence County	206,754.00
7-7368-00 State set-aside committee, RI	58,918.00
	265,672.00
South Carolina	
7-7372-00 Aiken County	58,244.00
7-7376-00 Anderson County	60,143.00
7-7382-00 Beaufort County	22,824.00
7-7384-00 Berkeley County	37,406.00
7-7388-00 Charleston County	113,612.00
7-7394-00 Cherokee County	20,019.00
7-7396-00 Chester County	17,998.00

EMERGENCY FOOD AND SHELTER PROGRAM ALLOCATIONS—Continued

7-7396-00 Chesterfield County	17,998.00
7-7400-00 Clarendon County	18,172.00
7-7402-00 Colleton County	18,241.00
7-7404-00 Darlington County	36,466.00
7-7406-00 Dillon County	18,276.00
7-7408-00 Dorchester County	22,388.00
7-7414-00 Florence County	59,533.00
7-7416-00 Georgetown County	35,107.00
7-7418-00 Greenville County	108,212.00
7-7422-00 Greenwood County	33,765.00
7-7426-00 Horry County	85,719.00
7-7430-00 Kershaw County	19,391.00
7-7432-00 Lancaster County	25,576.00
7-7434-00 Laurens County	23,869.00
7-7442-00 Marion County	25,071.00
7-7444-00 Marlboro County	21,953.00
7-7448-00 Oconee County	27,563.00
7-7450-00 Orangeburg County	54,376.00
7-7454-00 Richland County	98,142.00
7-7460-00 Spartanburg County	81,398.00
7-7462-00 Sumter County	42,807.00
7-7466-00 Williamsburg County	23,712.00
7-7468-00 York County	53,261.00
7-7470-00 State set-aside committee, SC	107,197.00
	1,388,439.00
South Dakota	
7-7580-00 Pennington County	27,319.00
7-7614-00 State set-aside committee, SD	222,681.00
	250,000.00
Tennessee	
7-7616-00 Anderson County	29,409.00
7-7624-00 Blount County	39,044.00
7-7626-00 Bradley County	35,333.00
7-7628-00 Campbell County	26,796.00
7-7632-00 Carroll County	20,141.00
7-7634-00 Carter County	30,542.00
7-7644-00 Cocke County	32,580.00
7-7646-00 Coffee County	22,022.00
7-7650-00 Cumberland County	18,991.00
7-7652-00 Davidson County	195,203.00
7-7660-00 Dickson County	18,381.00
7-7662-00 Dyer County	20,661.00
7-7670-00 Gibson County	33,957.00
7-7676-00 Greene County	49,271.00
7-7680-00 Hamblen County	33,417.00
7-7682-00 Hamilton County	123,509.00
7-7692-00 Hawkins County	19,775.00
7-7698-00 Henry County	32,214.00
7-7708-00 Jefferson County	20,262.00
7-7712-00 Knox County	134,677.00
7-7720-00 Lawrence County	25,820.00
7-7734-00 Madison County	47,929.00
7-7738-00 Marion County	18,642.00
7-7742-00 Maury County	28,259.00
7-7728-00 Mc Minn County	24,845.00
7-7730-00 Mc Nairy County	18,625.00
7-7746-00 Monroe County	20,559.00
7-7748-00 Montgomery County	39,323.00
7-7766-00 Putnam County	25,629.00
7-7768-00 Rhea County	17,597.00
7-7770-00 Roane County	25,054.00
7-7772-00 Robertson County	20,977.00
7-7774-00 Rutherford County	48,557.00
7-7780-00 Sevier County	46,571.00
7-7782-00 Shelby County	360,997.00
7-7790-00 Sullivan County	83,524.00
7-7804-00 Warren County	19,775.00
7-7806-00 Washington County	45,055.00
7-7818-00 State set-aside committee, TN	306,873.00
	2,160,816.00
Texas	
7-7820-00 Abilene/Jones, Taylor Counties	80,754.00
7-7856-00 Anderson County	35,612.00
7-7860-00 Angelina County	46,971.00
7-7868-00 Atascosa County	20,210.00
7-7824-00 Austin/Travis, Williamson Counties	456,316.00
7-7876-00 Bastrop County	22,127.00
7-7880-00 Bee County	16,451.00
7-7882-00 Bell County	105,912.00
7-7886-00 Bexar County	797,433.00
7-7896-00 Bowie County	57,495.00
7-7900-00 Brazoria County	131,854.00
7-7902-00 Brazos County	51,745.00
7-7912-00 Brown County	21,099.00
7-7920-00 Calhoun County	18,137.00
7-7924-00 Cameron County	243,393.00
7-7934-00 Cass County	26,901.00
7-7940-00 Cherokee County	24,235.00
7-7972-00 Coryell County	24,827.00
7-7826-00 Dallas/Collin, Dallas, Denton Counties	1,375,359.00
7-8028-00 Ector County	84,534.00
7-8036-00 El Paso County	447,918.00
7-8034-00 Ellis County	60,840.00
7-8044-00 Fannin County	18,973.00
7-8066-00 Galveston County	194,575.00
7-8092-00 Guadelupe County	28,625.00
7-8094-00 Hale County	19,165.00
7-8104-00 Hardin County	35,647.00
7-8122-00 Hays County	34,915.00
7-8126-00 Henderson County	39,410.00
7-8128-00 Hidalgo County	463,215.00
7-8138-00 Hopkins County	18,573.00
7-7828-00 Houston/Fort Bend, Harris Counties	2,122,344.00
7-8142-00 Howard County	20,489.00
7-8146-00 Hunt County	43,678.00
7-8158-00 Jasper County	31,709.00
7-8162-00 Jefferson County	200,359.00
7-8170-00 Jim Wells County	35,803.00

BEST COPY AVAILABLE

EMERGENCY FOOD AND SHELTER PROGRAM ALLOCATIONS—Continued

7-8180-00 Kaufman County	31,082.00
7-8196-00 Kleberg County	21,395.00
7-8200-00 Lamar County	31,256.00
7-8214-00 Liberty County	43,574.00
7-8830-00 Longview/Gregg, Harrison Counties	137,969.00
7-8226-00 Lubbock County	117,028.00
7-8248-00 Matagorda County	45,874.00
7-8250-00 Maverick County	67,199.00
7-8234-00 Mc Lennan County	130,095.00
7-8256-00 Midland County	57,251.00
7-8268-00 Montgomery County	109,205.00
7-8276-00 Nacogdoches County	30,995.00
7-8278-00 Navarro County	31,539.00
7-8284-00 Nueces County	253,169.00
7-8292-00 Orange County	93,472.00
7-8294-00 Palo Pinto County	17,701.00
7-8304-00 Polk County	19,322.00
7-8306-00 Potter County	71,416.00
7-8336-00 Rusk County	32,145.00
7-8344-00 San Patricio County	56,726.00
7-8358-00 Smith County	110,355.00
7-8364-00 Starr County	99,762.00
7-8376-00 Tarrant County	731,766.00
7-8402-00 Titus County	18,938.00
7-8404-00 Tom Green County	46,052.00
7-8416-00 Upshur County	25,489.00
7-8420-00 Uvalde County	23,068.00
7-8422-00 Val Verde County	37,424.00
7-8424-00 Van Zandt County	22,301.00
7-8426-00 Victoria County	52,335.00
7-8430-00 Walker County	19,130.00
7-8438-00 Webb County	119,990.00
7-8442-00 Wharton County	27,859.00
7-8446-00 Wichita County	73,245.00
7-8452-00 Willacy County	21,891.00

EMERGENCY FOOD AND SHELTER PROGRAM ALLOCATIONS—Continued

7-8464-00 Wood County	18,747.00
7-8472-00 Zavala County	20,611.00
7-8474-00 State set-aside committee, TX	2,068,392.00
	12,407,296.00
Utah	
7-8480-00 Cache County	20,541.00
7-8510-00 Salt Lake County	320,489.00
7-8528-00 Utah County	98,264.00
7-8540-00 Weber County	86,956.00
7-8544-00 State set-aside committee, UT	116,500.00
	642,750.00
Vermont	
7-8568-00 Rutland County	19,095.00
7-8576-00 State set-aside committee, VT	230,905.00
	250,000.00
7-8610-00 Buchanan County	26,970.00
7-878-00 Chesapeake City	49,080.00
7-8792-00 Danville City	24,252.00
7-866-00 Halifax County	18,050.00
7-8806-00 Hampton City	57,617.00
7-8814-00 Lynchburg City	28,155.00
7-8702-00 Montgomery County	29,183.00
7-8822-00 Newport News City	64,307.00
7-8824-00 Norfolk City	86,608.00
7-8828-00 Petersburg City	20,210.00
7-8720-00 Pittsylvania County	34,497.00
7-8832-00 Portsmouth City	55,055.00
7-8836-00 Richmond City	92,845.00
7-8838-00 Roanoke City	43,905.00
7-8742-00 Russell County	23,033.00
7-8748-00 Smyth County	20,559.00
7-8846-00 Suffolk City	28,991.00
7-8760-00 Tazewell County	31,796.00
7-8764-00 Washington County	24,618.00
7-8768-00 Wise County	25,768.00
7-8856-00 State set-aside committee, VA	622,687.00
	1,408,186.00
Washington	
7-8862-00 Benton County	79,621.00

EMERGENCY FOOD AND SHELTER PROGRAM ALLOCATIONS—Continued

7-8864-00 Chelan County	49,742.00
7-8866-00 Clallam County	36,448.00
7-8868-00 Clark County	138,718.00
7-8872-00 Cowlitz County	54,916.00
7-8874-00 Douglas County	18,329.00
7-8878-00 Franklin County	30,768.00
7-8882-00 Grant County	48,191.00
7-8884-00 Grays Harbor County	49,167.00
7-8890-00 King County	778,722.00
7-8896-00 Kittitas County	20,384.00
7-8900-00 Klickitat County	20,715.00
7-8902-00 Lewis County	45,386.00
7-8906-00 Mason County	18,573.00
7-8908-00 Okanogan County	34,758.00
7-8914-00 Pierce County	315,942.00
7-8920-00 Skagit County	62,791.00
7-8924-00 Snohomish County	235,154.00
7-8926-00 Spokane County	203,026.00
7-8932-00 Stevens County	20,437.00
7-8938-00 Walla Walla County	34,375.00
7-8940-00 Whatcom County	84,813.00
7-8944-00 Yakima County	183,112.00
7-8948-00 State set-aside committee, WA	137,817.00
	2,701,905.00
West Virginia	
7-8956-00 Berkeley County	25,890.00
7-8958-00 Boone County	28,800.00
7-8974-00 Fayette County	38,643.00
7-8980-00 Greenbrier County	31,552.00
7-8988-00 Harrison County	66,064.00
7-8950-00 Huntington/Wayne, Cabell Counties	85,823.00
7-8990-00 Jackson County	21,918.00
7-8994-00 Kanawha County	149,730.00
7-9000-00 Lincoln County	21,343.00
7-9002-00 Logan County	37,615.00
7-9004-00 McDowell County	44,672.00

EMERGENCY FOOD AND SHELTER PROGRAM ALLOCATIONS—Continued

7-9006-00 Marion County	45,578.00
7-9008-00 Marshall County	26,709.00
7-9010-00 Mason County	22,074.00
7-9012-00 Mercer County	46,065.00
7-9016-00 Mingo County	23,764.00
7-9018-00 Monongalia County	35,211.00
7-9024-00 Nicholas County	22,092.00
7-9026-00 Ohio County	31,483.00
7-9034-00 Preston County	19,653.00
7-9036-00 Putnam County	31,221.00
7-9038-00 Raleigh County	69,690.00
7-9040-00 Randolph County	24,165.00
7-9054-00 Upshur County	21,447.00
7-9066-00 Wood County	56,726.00
7-9068-00 Wyoming County	29,078.00
7-9070-00 State set-aside committee, WV	155,284.00
	1,212,312.00
Wisconsin	
7-9100-00 Barron County	24,374.00
7-9104-00 Brown County	100,755.00
7-9120-00 Clark County	19,827.00
7-9122-00 Columbia County	33,556.00
7-9126-00 Dane County	130,408.00
7-9132-00 Door County	28,225.00
7-9072-00 Eau Claire/Chippewa, Eau Clair County	67,843.00
7-9148-00 Grant County	23,311.00
7-9164-00 Kenosha County	59,324.00
7-9170-00 La Crosse County	42,320.00
7-9190-00 Milwaukee County	443,162.00
7-9216-00 Portage County	34,375.00
7-9220-00 Racine County	91,260.00
7-9226-00 Rock County	81,921.00
7-9244-00 Trempealeau County	17,562.00
7-9272-00 State set-aside committee, WI	604,375.00
	1,802,598.00
Wyoming	
7-9280-00 Campbell County	20,106.00

EMERGENCY FOOD AND SHELTER PROGRAM ALLOCATIONS—Continued

7-9288-00 Fremont County	24,357.00
7-9302-00 Natrona County	44,009.00
7-9316-00 Sweetwater County	29,723.00
7-9326-00 State set-aside committee, WY	131,805.00
	250,000.00
American Samoa	
7-9326-00 American Samoa	66,060.00
	66,060.00
Guam	
7-9330-00 Guam	62,730.00
	62,730.00
Northern Marianas	
7-9332-00 Northern Mariana Islands	39,414.00
	39,414.00
Puerto Rico	
7-9334-00 Puerto Rico	1,646,995.00
	1,646,995.00
Trust Territories	
7-9338-00 Trust Territories	221,021.00
	221,021.00
Virgin Islands	
7-9340-00 Virgin Islands	86,600.00
	86,600.00

THE FOLLOWING JURISDICTIONS AND AWARD AMOUNTS WERE DETERMINED BY THE STATE SET-ASIDE COMMITTEES IN THE RESPECTIVE STATES

State selection committee, AL	
7-0030-00 Autauga County	7,641.00
7-0034-00 Barbour County	10,465.00
7-0036-00 Bibb County	4,817.00
7-0040-00 Bullock County	5,482.00
7-0042-00 Butler County	7,974.00
7-0052-00 Choctaw County	7,309.00
7-0056-00 Clay County	4,153.00
7-0064-00 Conecuh County	6,478.00
7-0070-00 Crenshaw County	5,648.00
7-0086-00 Fayette County	4,817.00
7-0092-00 Greene County	6,645.00
7-0094-00 Hale County	7,973.00
7-0118-00 Lowndes County	8,306.00
7-0120-00 Macon County	10,964.00
7-0126-00 Marengo County	10,964.00
7-0136-00 Monroe County	8,306.00
7-0144-00 Perry County	8,472.00
7-0146-00 Pickens County	7,973.00
7-0148-00 Pike County	9,801.00
7-0158-00 Sumter County	7,641.00
7-0170-00 Washington County	5,648.00
7-0172-00 Wilcox County	8,636.00
State selection committee, AK	
7-0185-00 Southeast Alaska	20,000.00
7-0185-01 Southwest AK (Bethel/Kuskokwim/Bris.Bay)	9,694.00
7-0199-00 Interior Alaska	9,693.00
7-0213-00 Nome & Kotzebue	9,694.00
7-0224-00 Valdez-Cordova Census are	5,000.00
State selection committee, AZ	
7-0250-00 Graham County	6,355.00
7-0252-00 Greenlee County	2,615.00
7-0254-00 La Paz County	3,490.00
State selection committee, AR	
7-0306-00 Ashley County	10,000.00
7-0308-00 Baxter County	6,000.00
7-0314-00 Bradley County	10,000.00
7-0320-00 Chidot County	15,000.00
7-0324-00 Clay County	3,000.00
7-0326-00 Cleburne County	7,000.00
7-0330-00 Columbia County	8,000.00
7-0332-00 Conway County	13,000.00
7-0340-00 Cross County	10,000.00
7-0344-00 Desha County	15,000.00
7-0346-00 Drew County	12,000.00
7-0350-00 Franklin County	8,000.00
7-0352-00 Fulton County	10,000.00
7-0362-00 Hot Spring County	10,000.00
7-0376-00 Johnson County	8,000.00
7-0380-00 Lawrence County	10,000.00

7-0382-00 Lee County	18,000.00
7-0386-00 Logan County	8,000.00
7-0392-00 Madison County	5,000.00
7-0402-00 Montgomery County	4,000.00
7-0410-00 Perry County	5,000.00
7-0414-00 Pike County	5,000.00
STATE SET-ASIDE FUNDED JURISDICTIONS	
7-0418-00 Polk County	4,000.00
7-0432-00 St. Francis County	11,791.00
7-0448-00 Stone County	8,000.00
7-0462-00 State selection committee, AR	1,124.00
State selection committee, CA	
7-0464-00 Fresno City/County	13,700.00
7-0634-00 Alameda County	19,000.000
7-0652-00 Amador County	10,000.00
7-0656-00 Calaveas County	10,000.00
7-0658-00 Colusa County	8,000.00
7-0668-00 Del Norte County	10,000.00
7-0670-00 El Dorado County	14,000.00
7-0682-00 Inyo county	6,000.00
7-0692-00 Lassen County	6,400.00
7-0696-00 Los Angeles City/County	100,700.00
7-0766-00 Mariposa County	8,000.00
7-0774-00 Mono County	4,000.00
7-0780-00 Napa County	10,000.00
7-0784-00 Nevada County	12,000.00
7-0786-00 Orange County	17,800.00
7-0816-00 Placer County	18,000.00
7-0818-00 Plumas County	10,000.00
7-0880-00 Santa Clara County	14,800.00
7-0908-00 Sonoma County	40,000.00
7-0920-00 Trinity County	8,000.00
7-0942-00 State selection committee, CA	1,628.00
State selection committee, CO	
7-0960-00 Arapahoe County	57,810.00
7-0985-00 Arkansas Valley	39,000.00
7-0995-00 Central Rockies	35,700.00
7-1006-00 Custer County	1,000.00
7-1016-00 Douglas County	15,910.00
7-1019-00 Eastern Plains	59,000.00
7-1039-00 Huerfand-Las Animas	22,000.00
7-1042-00 Jefferson County	70,000.00
7-1079-00 Northern Rockies	43,000.00
7-1103-00 San Juan Forest	6,000.00
7-1105-00 San Luis Valley	54,925.00
7-1113-00 Uncompahgre Forest	34,000.00
7-1119-00 White River Forest	13,750.00
Fairfield census county	
7-1422-01 Fairfield Census/Bridgeport	113,428.00
7-1422-02 Fairfield Census/Danbury	34,522.00
7-1422-03 Fairfield Census/Norwalk	41,919.00
7-1422-04 Fairfield Census/Stamford	56,714.00
State selection committee, DE	
7-1480-00 Kent County	12,350.00
7-1482-00 New Castle County	44,700.00
7-1486-00 Sussex County	11,197.00
State selection committee, FL	
7-1560-00 Baker County	5,000.00
7-1564-00 Bradford County	5,000.00
7-1582-00 Calhoun County	5,000.00
7-1584-00 Charlotte County	10,000.00
7-1588-00 Clay County	10,000.00
7-1604-00 De Soto County	5,000.00
7-1606-00 Dixie County	5,000.00
7-1616-00 Flagler County	5,000.00
7-1618-00 Franklin County	5,000.00
7-1622-00 Gilchrist County	5,000.00
7-1624-00 Glades County	5,000.00
7-1626-00 Gulf County	5,000.00
7-1628-00 Hamilton County	5,000.00
7-1630-00 Hardee County	10,000.00
7-1642-00 Holmes County	5,000.00
7-1648-00 Jefferson County	5,000.00
7-1650-00 Lafayette County	5,000.00
7-1660-00 Levy County	10,000.00
7-1662-00 Liberty County	5,000.000
7-1664-00 Madison County	10,000.00
7-1678-00 Okeechobee County	5,000.00
7-1692-00 Pasco County	19,562.00
7-1718-00 Seminole County	15,000.00
7-1720-00 Sumter County	10,000.00
7-1722-00 Suwannee County	10,00.00
7-1724-00 Taylor County	10,000.00
7-1726-00 Union County	5,000.00
7-1732-00 Wakulla County	5,000.00
7-1734-00 Walton County	10,000.00
7-1736-00 Washington County	10,000.00
State selection committee, GA	
7-1772-00 Appling County	6,061.00
7-1774-00 Atkinson County	5,438.00
7-1776-00 Bacon County	5,507.00
7-1778-00 Baker County	5,247.00
7-1780-00 Baldwin County	6,202.00
7-1782-00 Banks County	5,252.00
7-1784-00 Barrow County	5,913.00
7-1786-00 Ben Hill County	5,907.00
7-1790-00 Berrien County	5,639.00
7-1796-00 Bleckley County	5,451.00
7-1798-00 Brantley County	5,412.00
7-1800-00 Brooks County	6,065.00
7-1802-00 Bryan County	5,494.00
7-1804-00 Bulloch County	6,619.00
7-1808-00 Butts County	5,536.00
7-1810-00 Calhoun County	5,378.00
7-1812-00 Camden County	5,714.00
7-1814-00 Candler County	5,459.00
7-1818-00 Catoosa County	6,034.00
7-1820-00 Charlton County	5,362.00
7-1825-00 Chattahoochee County	5,316.00
7-1828-00 Chattooga County	5,864.00
7-1830-00 Cherokee County	6,489.00
7-1834-00 Clay County	5,310.00
7-1836-00 Clayton County	12,000.00

7-1838-00 Clinch County	5,408.00
7-1842-00 Coffee County	6,495.00
7-1846-00 Columbia County	6,127.00
7-1848-00 Cook County	5,617.00
7-1852-00 Crawford County	5,338.00
7-1854-00 Crisp County	6,270.00
7-1856-00 Dade County	5,501.00
7-1858-00 Dawson County	5,224.00
7-1860-00 Decatur County	6,365.00
7-1866-00 Dodge County	6,061.00
7-1868-00 Dooly County	5,806.00
7-1874-00 Douglas County	6,211.00
7-1876-00 Early County	5,921.00
7-1878-00 Echols County	5,134.00
7-1880-00 Effingham County	5,757.00
7-1882-00 Elbert County	5,891.00
7-1884-00 Emanuel County	6,243.00
7-1886-00 Evans County	5,475.00
7-1888-00 Fannin County	5,825.00
7-1890-00 Fayette County	5,481.00
7-1894-00 Forsyth County	5,808.00
7-1896-00 Franklin County	5,704.00
7-1902-00 Gilmer County	5,529.00
7-1904-00 Glascock County	5,111.00
7-1910-00 Grady County	6,169.00
7-1912-00 Greene County	5,707.00
7-1914-00 Gwinnett Co	12,000.00
7-1916-00 Habersham County	5,823.00
7-1918-00 Hall County	7,115.00
7-1920-00 Hancock County	5,818.00
7-1922-00 Haralson County	5,688.00
7-1924-00 Harris County	5,637.00
7-1926-00 Hart County	5,724.00
7-1928-00 Heard County	5,266.00
7-1930-00 Henry County	6,016.00
7-1934-00 Irwin County	5,496.00
7-1936-00 Jackson County	5,884.00
7-1938-00 Jasper County	5,357.00
7-1940-00 Jeff Davis County	5,470.00
7-1942-00 Jefferson County	6,248.00
7-1944-00 Jenkins County	5,857.00
7-1946-00 Johnson County	5,505.00
7-1948-00 Jones County	5,590.00
7-1952-00 Lamar County	5,471.00
7-1954-00 Lanier County	5,358.00
7-1958-00 Lee County	5,485.00
7-1960-00 Liberty County	6,461.00
7-1962-00 Lincoln County	5,306.00
7-1964-00 Long County	5,249.00
7-1968-00 Lumpkin County	5,379.00
7-1970-00 McDuffie County	5,907.00
7-1972-00 McIntosh County	5,589.00
7-1974-00 Macon County	6,028.00
7-1976-00 Madison County	5,693.00
7-1978-00 Marion County	5,359.00
7-1980-00 Meriwether County	6,046.00
7-1982-00 Miller County	5,433.00
7-1984-00 Mitchell County	6,451.00
7-1986-00 Monroe County	5,563.00
7-1988-00 Montgomery County	5,351.00
7-1990-00 Morgan County	5,612.00
7-1992-00 Murray County	5,729.00
7-2000-00 Oconee County	5,313.00
7-2002-00 Oglethorpe County	5,405.00
7-2004-00 Paulding County	5,855.00
7-2006-00 Peach County	6,097.00
7-2008-00 Pickens County	5,472.00
7-2010-00 Pierce County	5,659.00
7-2012-00 Pike County	5,319.00
7-2014-00 Polk County	6,266.00
7-2016-00 Pulaski County	5,502.00
7-2018-00 Putnam County	5,558.00
7-2020-00 Quitman County	5,217.00
7-2022-00 Rabun County	5,422.00
7-2024-00 Randolph County	5,696.00
7-2026-00 Rockdale County	5,858.00
7-2030-00 Schley County	5,216.00
7-2032-00 Screven County	6,072.00
7-2034-00 Seminole County	5,483.00
7-2038-00 Stephens County	5,793.00
7-2040-00 Stewart County	5,507.00
7-2042-00 Sumter County	6,539.00
7-2044-00 Talbot County	5,324.00
7-2046-00 Taliaferro County	5,149.00
7-2048-00 Tatinall County	6,000.00
7-2050-00 Taylor County	5,509.00
7-2052-00 Telfair County	5,688.00
7-2054-00 Terrell County	5,853.00
7-2058-00 Tift County	6,864.00
7-2060-00 Toombs County	6,346.00
7-2062-00 Towns County	5,274.00
7-2064-00 Treutlen County	5,403.00
7-2068-00 Turner County	5,682.00
7-2070-00 Twiggs County	5,408.00
7-2072-00 Union County	5,550.00
7-2074-00 Upson County	5,819.00
7-2082-00 Warren County	5,419.00
7-2084-00 Washington County	6,064.00
7-2086-00 Wayne County	5,988.00
7-2088-00 Webster County	5,164.00
7-2090-00 Wheeler County	5,351.00
7-2092-00 White County	5,387.00
7-2096-00 Wilcox County	5,500.00
7-2098-00 Wilkes County	5,526.00
7-2100-00 Wilkinson County	5,425.00
7-2102-00 Worth County	6,017.00
7-2104-00 State selection committee, GA	3,815.00
State selection committee, HI	
7-2112-00 Kauai County	17,101.00
7-2114-00 Maui County	27,242.00
7-2115-00 Molokai, HI	11,135.00
7-2115-01 Oahu, HI	143,369.00
State selection committee, ID	
7-2128-00 Ada County	37,915.83
7-2132-00 Adams County	1,133.81

7-2136-00 Bear Lake County	1,666.90
7-2138-00 Benewah County	2,349.92
7-2142-00 Blaine County	3,931.52
7-2144-00 Boise County	1,000.00
7-2148-00 Bonneville County	14,060.16
7-2150-00 Boundary County	2,866.44
7-2152-00 Butte County	1,000.00
7-2154-00 Camas County	1,000.00
7-2158-00 Caribou County	1,950.10
7-2160-00 Cassia County	6,613.61
7-2162-00 Clark County	1,000.00
7-2164-00 Clearwater County	2,466.53
7-2166-00 Custer County	1,866.81
7-2168-00 Elmore County	7,629.81
7-2170-00 Franklin County	2,548.82
7-2172-00 Fremont County	3,799.25
7-2174-00 Gem County	3,648.86
7-2176-00 Gooding County	4,031.47
7-2178-00 Idaho County	4,031.47
7-2180-00 Jefferson County	5,447.49
7-2182-00 Jerome County	4,597.86
7-2186-00 Latah County	8,478.42
7-2188-00 Lemhi County	2,100.03
7-2190-00 Lewis County	1,033.86
7-2192-00 Lincoln County	1,333.72
7-2194-00 Madison County	10,428.52
7-2196-00 Minidoka County	6,663.59
7-2200-00 Oneida County	1,250.42
7-2202-00 Owyhee County	4,381.31
7-2204-00 Payette County	5,947.25
7-2206-00 Power County	2,000.08
7-2208-00 Shoshone County	4,031.47
7-2210-00 Teton County	1,350.38
7-2212-00 Twin Falls County	.00
7-2214-00 Valley County	1,716.87
7-2216-00 Washington County	3,316.14
7-2218-00 State selection committee, ID	857.24
State selection committee, IL	
7-2344-00 Alexander County	15,469.00
7-2346-00 Bond County	9,141.00
7-2354-00 Calhoun County	3,551.00
7-2356-00 Carroll County	8,612.00
7-2358-00 Cass County	6,799.00
7-2366-00 Clark County	8,763.00
7-2368-00 Clay County	9,896.00
7-2396-00 Crawford County	7,554.00
7-2400-00 Cumberland County	5,590.00
7-2404-00 De Witt County	7,857.00
7-2406-00 Dupage County	89,595.00
7-2418-00 Effingham County	11,160.00
7-2428-00 Gallatin County	6,044.00
7-2430-00 Greene County	12,994.00
7-2434-00 Hamilton County	6,648.00
7-2436-00 Hancock County	12,163.00
7-2438-00 Hardin County	4,608.00
7-2440-00 Henderson County	4,533.00
7-2452-00 Jersey County	7,026.00
7-2454-00 Jo Daviess County	8,234.00
7-2456-00 Johnson County	6,421.00
7-2458-00 Kane County	80,619.00
7-2470-00 Lake County	98,963.00
7-2476-00 Lawrence County	9,443.00
7-2480-00 Livingston County	12,691.00
7-2486-00 McHenry County	28,102.00
7-2488-00 McLean County	50,841.00
7-2596-00 Madison County	5,000.00
7-2500-00 Marshall County	4,533.00
7-2502-00 Mason County	9,821.00
7-2504-00 Massac County	10,198.00
7-2506-00 Menard County	4,004.00
7-2508-00 Mercer County	8,461.00
7-2514-00 Morgan County	16,620.00
7-2516-00 Moultrie County	5,515.00
7-2528-00 Pike County	12,994.00
7-2530-00 Pope County	3,928.00
7-2532-00 Pulaski County	11,785.00
7-2534-00 Putnam County	1,813.00
7-2538-00 Richland County	8,008.00
7-2548-00 Sangamon County	69,065.00
7-2552-00 Schuyler County	4,457.00
7-2556-00 Shelby County	11,256.00
7-2558-00 Stark County	2,871.00
7-2560-00 Stephenson County	15,638.00
7-2566-00 Wabash County	6,648.00
7-2570-00 Warren County	11,332.00
7-2592-00 Woodford County	8,159.00
State selection committee, IN	
7-2620-00 Adams County	6,871.50
7-2626-00 Bartholomew County	14,984.96
7-2630-00 Blackford County	5,680.44
7-2634-00 Brown County	3,583.36
7-2638-00 Cass County	11,147.10
7-2640-00 Clark County	24,869.74
7-2642-00 Clay County	6,505.02
7-2644-00 Clinton County	8,602.10
7-2646-00 Crawford County	4,407.94
7-2648-00 Daviess County	8,062.56
7-2650-00 Dearborn County	12,511.22
7-2652-00 Decatur County	5,527.74
7-2654-00 De Kalb County	13,101.66
7-2668-00 Floyd County	17,417.98
7-2670-00 Fountain County	5,761.88
7-2672-00 Franklin County	6,881.68
7-2674-00 Fulton County	4,906.76
7-2676-00 Gibson County	10,851.88
7-2686-00 Harrison County	7,665.54
7-2692-00 Howard County	29,939.38
7-2694-00 Huntington County	9,894.96
7-2700-00 Jay County	7,543.38
7-2702-00 Jefferson County	9,630.28
7-2704-00 Jennings County	5,660.08
7-2706-00 Johnson County	21,316.92

7-2712-00 Lagrange County	6,454.12
7-2720-00 La Porte County	32,199.34
7-2732-00 Marshall County	11,625.56
7-2734-00 Martin County	3,613.90
7-2744-00 Morgan County	16,176.02
7-2746-00 Newton County	4,010.92
7-2748-00 Noble County	11,717.18
7-2750-00 Ohio County	1,893.04
7-2752-00 Orange County	8,042.20
7-2754-00 Owen County	5,904.40
7-2756-00 Parke County	4,804.96
7-2758-00 Perry County	7,370.32
7-2760-00 Pike County	4,662.44
7-2762-00 Porter County	31,344.22
7-2764-00 Posey County	6,800.24
7-2766-00 Pulaski County	4,133.08
7-2772-00 Ripley County	6,769.70
7-2774-00 Rush County	6,647.547
7-2780-00 Scott County	7,848.78
7-2782-00 Shelby County	15,463.42
7-2784-00 Spencer County	6,769.70
7-2786-00 Starke County	7,400.86
7-2788-00 Steuben County	8,541.02
7-2790-00 Sullivan County	9,050.02
7-2792-00 Switzerland County	2,728.24
7-2798-00 Union County	1,893.04
7-2804-00 Vermillion County	6,983.48
7-2810-00 Wabash County	10,403.96
7-2812-00 Warren County	2,137.80
7-2814-00 Warrick County	11,656.10
7-2816-00 Washington County	7,370.32
7-2824-00 Whitley County	7,523.02
State selection committee, IA	
7-2846-00 Adair County	2,298.00
7-2848-00 Adams County	1,250.00
7-2850-00 Allamakee County	3,908.00
7-2852-00 Appanoose County	4,467.00
7-2854-00 Audubon County	1,750.00
7-2856-00 Benton County	4,858.00
7-2858-00 Blackhawk County	14,289.00
7-2862-00 Boone County	4,248.00
7-2864-00 Bremer County	3,596.00
7-2866-00 Buchanan County	4,775.00
7-2870-00 Butler County	3,390.00
7-2872-00 Calhoun County	2,316.00
7-2874-00 Carroll County	4,006.00
7-2876-00 Cass County	3,603.00
7-2878-00 Cedar County	3,441.00
7-2880-00 Cerro Gordo County	9,272.00
7-2882-00 Cherokee County	2,892.00
7-2884-00 Chickasaw County	3,456.00
7-2886-00 Clarke County	2,600.00
7-2890-00 Clayton County	5,326.00
7-2892-00 Clinton County	10,134.00
7-2894-00 Crawford County	4,704.00
7-2896-00 Dallas County	4,219.00
7-2898-00 Davis County	3,261.00
7-2900-00 Decatur County	2,751.00
7-2902-00 Delaware County	4,298.00
7-2904-00 Des Moines County	9,293.00
7-2908-00 Dubuque County	17,080.00
7-2914-00 Fayette County	4,943.00
7-2916-00 Floyd County	3,835.00
7-2918-00 Franklin County	2,834.00
7-2920-00 Fremont County	2,358.00
7-2922-00 Greene County	2,723.00
7-2924-00 Grundy County	1,971.00
7-2926-00 Guthrie County	2,722.00
7-2928-00 Hamilton County	2,955.00
7-2930-00 Hancock County	2,001.00
7-2932-00 Hardin County	4,464.00
7-2934-00 Harrison County	4,547.00
7-2936-00 Henry County	3,335.00
7-2938-00 Howard County	2,847.00
7-2940-00 Humboldt County	1,785.00
7-2942-00 Ida County	1,937.00
7-2944-00 Iowa County	2,223.00
7-2946-00 Jackson County	5,937.00
7-2948-00 Jasper County	5,971.00
7-2950-00 Jefferson County	3,614.00
7-2952-00 Johnson County	1,398.00
7-2956-00 Jones County	3,647.00
7-2958-00 Keokuk County	3,060.00
7-2960-00 Kossuth County	4,666.00
7-2962-00 Lee County	5,090.00
7-2964-00 Linn County	25,417.00
7-2968-00 Louisa County	2,524.00
7-2970-00 Lucas County	2,592.00
7-2972-00 Lyon County	2,550.00
7-2974-00 Madison County	2,963.00
7-2976-00 Mahaska County	4,413.00
7-2978-00 Marion County	4,791.00
7-2980-00 Marshall County	6,634.00
7-2982-00 Mills County	2,047.00
7-2984-00 Mitchell County	2,535.00
7-2986-00 Monona County	3,120.00
7-2988-00 Monroe County	2,351.00
7-2990-00 Montgomery County	2,263.00
7-2992-00 Muscatine County	7,641.00
7-2998-00 Page County	3,494.00
7-3002-00 Plymouth County	4,956.00
7-3006-00 Polk County	52,009.00
7-3010-00 Pottawattamie County	17,384.00
7-3014-00 Poweshiek County	3,640.00
7-3016-00 Ringgold County	2,181.00
7-3018-00 Sac County	2,872.00
7-3020-00 Scott County	31,409.00
7-3024-00 Shelby County	3,381.00
7-3026-00 Sioux County	4,896.00
7-3028-00 Story County	11,127.00
7-3030-00 Tama County	3,992.00
7-3032-00 Taylor County	2,163.00
7-3034-00 Union County	3,231.00
7-3036-00 Van Buren County	2,909.00
7-3038-00 Wapello County	4,586.00
7-3040-00 Warren County	4,987.00
7-3042-00 Washington County	4,646.00

7-3044-00 Wayne County	2,318.00
7-3046-00 Webster County	8,186.00
7-3048-00 Winnebago County	1,643.00
7-3050-00 Winneshiek County	5,579.00
7-3052-00 Woodbury County	12,089.00
7-3056-00 Worth County	1,666.00
7-3058-00 Wright County	2,915.00
7-3060-00 State selection committee, IA	2,522.00
State selection committee, KS	
7-3080-00 Allen County	6,427.00
7-3082-00 Anderson County	1,452.00
7-3084-00 Atchison County	5,610.00
7-3088-00 Barton County	11,189.00
7-3090-00 Bourbon County	6,893.00
7-3092-00 Brown County	6,079.00
7-3096-00 Chautauqua County	2,738.00
7-3100-00 Cherokee County	13,928.00
7-3106-00 Clay County	2,561.00
7-3110-00 Coffey County	1,884.00
7-3114-00 Cowley County	14,205.00
7-3122-00 Doniphan County	3,683.00
7-3130-00 Elk County	1,428.00
7-3136-00 Finney County	10,239.00
7-3138-00 Ford County	8,174.00
7-3142-00 Geary County	14,665.00
7-3148-00 Grant County	2,243.00
7-3154-00 Greenwood County	3,281.00
7-3160-00 Harvey County	6,751.00
7-3166-00 Jackson County	3,166.00
7-3168-00 Jefferson County	2,898.00
7-3176-00 Kearny County	1,174.00
7-3182-00 Labette County	11,065.00
7-3190-00 Linn County	2,921.00
7-3216-00 Neosho County	7,188.00
7-3222-00 Osage County	2,963.00
7-3228-00 Pawnee County	1,652.00
7-3238-00 Reno County	21,057.00
7-3242-00 Rice County	3,984.00
7-3248-00 Rooks County	1,393.00
7-3250-00 Russell County	1,948.00
7-3256-00 Sedgwick County	135,581.00
7-3260-00 Seward County	8,404.00
7-3262-00 Shawnee County	55,558.00
7-3268-00 Sherman County	2,803.00
7-3272-00 Stafford County	1,322.00
7-3284-00 Wabaunsee County	1,104.00
7-3288-00 Washington County	1,198.00
7-3292-00 Wilson County	4,881.00
7-3294-00 Woodson County	1,104.24
7-3300-00 State selection committee, KS	1,997.76
State selection committee, KY	
7-3316-00 Adair County	11,968.50
7-3326-00 Bath County	7,928.50
7-3340-00 Breathitt County	16,282.50
7-3342-00 Breckinridge County	10,880.00
7-3344-00 Bullitt County	13,804.00
7-3352-00 Campbell County	22,671.75
7-3360-00 Casey County	13,912.50
7-3366-00 Clay County	26,255.00
7-3368-00 Clinton County	9,875.25
7-3372-00 Cumberland County	6,093.75
7-3380-00 Elliott County	6,105.00
7-3382-00 Estill County	10,987.50
7-3390-00 Franklin County	13,200.00
7-3392-00 Fulton County	6,020.00
7-3404-00 Green County	7,383.00
7-3416-00 Hart County	12,246.00
7-3426-00 Jackson County	12,906.25
7-3438-00 Covington City	.00
7-3440-00 Knott County	16,008.00
7-3448-00 Lawrence County	12,348.00
7-3450-00 Lee County	6,980.00
7-3452-00 Leslie County	13,110.00
7-3456-00 Lewis County	12,389.50
7-3468-00 McCreary County	18,040.00
7-3474-00 Magoffin County	13,227.50
7-3476-00 Marion County	11,106.75
7-3480-00 Martin County	11,124.00
7-3486-00 Menifee County	4,213.50
7-3490-00 Metcalfe County	8,948.25
7-3492-00 Monroe County	7,460.75
7-3496-00 Morgan County	11,460.00
7-3510-00 Owsley County	7,070.00
7-3518-00 Powell County	8,167.50
7-3522-00 Robertson County	1,254.00
7-3524-00 Rockcastle County	13,320.00
7-3528-00 Russell County	11,766.00
7-3550-00 Washington County	6,528.00
7-3552-00 Wayne County	16,726.50
7-3558-00 Wolfe County	6,434.25
7-3558-00 State selection committee, MA	.00
State selection committee, LA	
7-3586-00 Bienville Parish	10,458.00
7-3602-00 Caldwell Parish	9,761.00
7-3604-00 Cameron Parish	6,175.00
7-3606-00 Catahoula Parish	13,944.00
7-3608-00 Claiborne Parish	9,362.00
7-3618-00 East Carroll Parish	15,900.00
7-3620-00 East Feliciana Parish	16,324.00
7-3626-00 Grant Parish	15,697.00
7-3632-00 Jackson Parish	7,868.00
7-3646-00 La Salle Parish	3,486.00
7-3648-00 Lincoln Parish	13,455.88
7-3672-00 Red River Parish	2,090.00
7-3676-00 Sabine Parish	13,485.88
7-3682-00 St. Helena Parish	5,876.00
7-3698-00 Tensas Parish	4,283.00
7-3716-00 West Feliciana Parish	4,980.00
7-3718-00 Winn Parish	6,972.00
7-3720-00 State selection committee, LA	25,930.24
State selection committee, MD	
7-3776-00 Anne Arundel County	62,109.00
7-3778-00 Baltimore County	109,524.00

7-3780-00 Calvert County	8,679.00
7-3782-00 Caroline County	6,399.00
7-3784-00 Carroll County	13,155.00
7-3786-00 Cecil County	15,370.00
7-3788-00 Charles County	17,654.00
7-3792-00 Frederick County	18,839.00
7-3796-00 Harford County	24,209.00
7-3798-00 Howard County	12,166.00
7-3800-00 Kent County	4,344.00
7-3802-00 Montgomery County	90,029.00
7-3806-00 Prince Georges County	116,800.00
7-3808-00 Queen Annes County	5,288.00
7-3810-00 St. Marys County	15,862.00
7-3814-00 Talbot County	6,514.00
7-3816-00 Washington County	37,742.00
7-3822-00 Baltimore City	8,104.00
State selection committee, MA	
7-3826-00 Barnstable, Dukes, Nantucket Cos.	23,863.00
7-4478-00 Berkshire County	21,597.00
7-4500-00 Franklin County	12,537.00
7-4532-00 Norfolk County	75,299.00
State selection committee, MI	
7-4632-00 Alcona County	6,799.00
7-4634-00 Alger County	4,314.00
7-4640-00 Antrim County	9,647.00
7-4642-00 Arenac County	14,338.00
7-4644-00 Baraga County	5,933.00
7-4650-00 Benzie County	7,321.00
7-4662-00 Charlevoix County	8,752.00
7-4668-00 Clare County	22,653.00
7-4672-00 Crawford County	8,525.00
7-4676-00 Dickinson County	12,616.00
7-4688-00 Gladwin County	17,474.00
7-4690-00 Gogebic County	12,402.00
7-4710-00 Iosco County	15,058.00
7-4712-00 Iron County	8,996.00
7-4722-00 Kalkaska County	9,557.00
7-4730-00 Keweenaw County	1,092.00
7-4732-00 Lake County	9,707.00
7-4736-00 Leelanau County	7,278.00
7-4742-00 Luce County	4,195.00
7-4766-00 Menominee County	10,950.00
7-4768-00 Midland County	37,022.00
7-4770-00 Missaukee County	7,390.00
7-4776-00 Montmorency County	6,998.00
7-4798-00 Ogemaw County	16,900.00
7-4800-00 Ontonagon County	5,449.00
7-4802-00 Osceola County	14,917.00
7-4804-00 Oscoda County	5,346.00
7-4806-00 Otsego County	7,317.00
7-4810-00 Presque Isle County	7,840.00
7-4812-00 Roscommon County	14,021.00
7-4824-00 Schoolcraft County	6,790.00
7-4856-00 State selection committee, MI	1,646.00
State selection committee, MN	
7-4858-00 Dakota, Ramsey, Washington Cos.	150,525.00
7-4859-00 Benton, Sherburne	13,111.00
7-4859-01 Clearwater, Pennington, Red Lake	9,666.00
7-4859-02 Goodhue, Wabasha, Rice	22,534.00
7-4859-03 Hubbard, Mahnomen	7,168.00
7-4859-04 Kittson, Roseau, Lake of Woods	7,223.00
7-4859-05 Lakes and Pines Area	22,552.00
7-4859-06 Marshall, Norman, Wilkin	8,406.00
7-4859-07 Minnesota Valley	41,537.00
7-4859-08 Mower, Fillmore, Houston, Dodge	23,512.00
7-4859-09 Prairie Five Area	15,808.00
7-4859-10 Scott, Carver	13,768.00
7-4859-11 Southwestern Minnesota	32,789.00
7-4859-12 West Central Minnesota	20,342.00
7-4900-00 Anoka County	31,343.00
7-4914-00 Carlton County	4,830.00
7-4918-00 Cass County	8,436.00
7-4944-00 Freeborn County	6,892.00
7-4974-00 Kandiyohi County	12,153.00
7-4978-00 Koochiching County	5,106.00
7-4982-00 Lake County	2,683.00
7-4990-00 Lyon County	6,587.00
7-5000-00 Meeker County	6,251.00
7-5016-00 Olmsted County	33,317.00
7-5024-00 Pine County	5,604.00
7-5040-00 Renville County	4,452.00
7-5072-00 Wadena County	4,549.00
7-5084-00 Wright County	11,135.00
7-5088-00 State selection committee, MN	2,674.00
State selection committee, MS	
7-5094-00 Amite County	12,131.00
7-5096-00 Attala County	10,269.00
7-5106-00 Chickasaw County	8,243.00
7-5110-00 Claiborne County	12,676.00
7-5114-00 Clay County	5,475.00
7-5120-00 Covington County	12,580.00
7-5130-00 Greene County	6,503.00
7-5132-00 Grenada County	9,700.00
7-5144-00 Humphreys County	9,876.00
7-5146-00 Issaquena County	2,209.00
7-5152-00 Jasper County	9,730.00
7-5154-00 Jefferson County	9,600.00
7-5156-00 Jefferson Davis County	9,294.00
7-5162-00 Lafayette County	8,091.00
7-5168-00 Lawrence County	9,149.00
7-5188-00 Montgomery County	14,285.00
7-5190-00 Neshoba County	9,891.00
7-5194-00 Noxubee County	.00
7-5196-00 Oktibbeha County	9,969.00
7-5210-00 Quitman County	7,303.00
7-5216-00 Sharkey County	7,651.00
7-5228-00 Tate County	7,025.00
7-5230-00 Tippah County	7,514.00
7-5234-00 Tunica County	9,714.00

7-5236-00 Union County	5,546.00
7-5238-00 Walthall County	5,252.00
7-5244-00 Wayne County	18,767.00
7-5248-00 Wilkinson County	8,101.00
7-5250-00 Winston County	10,512.00
7-5252-00 Yalobusha County	8,732.00
7-5256-00 State selection committee, MS	1,337.00
State selection committee, MO	
7-5269-01 District 1, MO	39,635.00
7-5269-02 District 2, MO	16,431.00
7-5269-03 District 3, MO	102,00.00
7-5269-04 District 4, MO	26,915.00
7-5269-05 District 5, MO	9,797.00
7-5269-06 District 6, MO	.00
7-5269-07 District 7	34,680.00
7-5269-09 District 9, MO	27,818.00
7-5269-10 District 10, MO	131,759.00
7-5269-11 District 11, MO	64,720.00
7-5269-12 District 12, MO	39,341.00
7-5269-13 District 13, MO	78,222.00
7-5269-14 District 14, MO	19,676.00
7-5269-15 District 15, MO	58,124.00
7-5269-16 District 16, MO	56,358.00
7-5269-17 District 17, MO	43,875.00
7-5269-19 District 19, MO	57,902.00
7-5282-00 Barton County	3,966.00
7-5402-00 McDonald County	8,712.00
State selection committee, MT	
7-5524-00 Anaconda/Deer Lodge Co	4,033.00
7-5528-00 Beaverhead County	2,968.00
7-5530-00 Big Horn County	5,302.00
7-5532-00 Blaine County	4,488.00
7-5534-00 Broadwater County	3,195.00
7-5536-00 Carbon County	3,625.00
7-5540-00 Cascade County	9,471.00
7-5544-00 Chouteau County	2,228.00
7-5546-00 Custer County	3,218.00
7-5548-00 Daniels County	1,541.00
7-5550-00 Dawson County	2,742.00
7-5554-00 Fallon County	2,243.00
7-5556-00 Fergus County	4,690.00
7-5562-00 Garfield County	1,450.00
7-5564-00 Glacier County	5,325.00
7-5566-00 Golden Valley County	2,538.00
7-5568-00 Granite County	3,104.00
7-5570-00 Hill County	4,169.00
7-5572-00 Jefferson County	1,926.00
7-5574-00 Judith Basin County	2,583.00
7-5576-00 Lake County	5,030.00
7-5578-00 Lewis and Clark County	4,215.00
7-5580-00 Liberty County	1,835.00
7-5582-00 Lincoln County	4,940.00
7-5584-00 McCone County	3,195.00
7-5586-00 Madison County	1,994.00
7-5588-00 Meagher County	2,379.00
7-5590-00 Mineral County	3,127.00
7-5594-00 Musselshell County	3,829.00
7-5596-00 Park County	4,011.00
7-5598-00 Petroleum County	1,541.00
7-5600-00 Phillips County	3,353.00
7-5602-00 Pondera County	3,376.00
7-5604-00 Powder River County	1,088.00
7-5606-00 Powell County	2,832.00
7-5608-00 Prairie County	2,334.00
7-5612-00 Richland County	3,852.00
7-5614-00 Roosevelt County	3,739.00
7-5616-00 Rosebud County	3,986.00
7-5618-00 Sanders County	4,056.00
7-5620-00 Sheridan County	2,334.00
7-5624-00 Stillwater County	3,082.00
7-5626-00 Sweet Grass County	2,289.00
7-5628-00 Teton County	2,243.00
7-5630-00 Toole County	3,036.00
7-5632-00 Treasure County	1,586.00
7-5634-00 Valley County	3,263.00
7-5636-00 Wheatland County	2,674.00
7-5638-00 Wibaux County	2,470.00
7-5640-00 Yellowstone County	9,290.00
7-5644-00 State selection committee, MT	852.00
State selection committee, NE	
7-5646-00 Central Nebraska Region	26,400.90
7-5649-00 Greater Lincoln/Saunders Co. Area	15,961.56
7-5650-00 Greater Omaha Area	13,788.00
7-5652-00 Mid-Nebraska Region	21,961.58
7-5654-00 Northeast Nebraska Region	26,165.88
7-5656-00 Northwest Nebraska Region	19,553.90
7-5658-00 Panhandle Region	23,737.31
7-5660-00 Southeast Region A	24,324.87
7-5662-00 Southeast Region B	18,566.81
7-5858-00 State selection committee, NE	957.19
State selection committee, NV	
7-5859-01 East Slope, NV	68,661.43
7-5859-02 50, Nevada	13,061.81
7-5859-03 I-80, Nevada	9,744.38
7-5908-00 State selection committee, NV	509.20
State selection committee, NH	
7-5908-00 Belknap, Merrimack Cos	39,150.00
7-5910-00 Coos, Carrolla, Grafton Cos	60,650.00
7-5921-00 Cheshire & Sullivan Counties	35,075.00
7-5926-00 Hillsborough County	53,375.00
7-5936-00 Rockingham County	37,550.00
7-5938-00 Strafford County	24,200.00
State selection committee, NJ	
7-5948-00 Atlantic County	13,170.30
7-5950-00 Bergen County	35,000.00
7-5952-00 Burlington County	35,000.00
7-5954-00 Camden County	13,170.30
7-5960-00 Cape May County	35,000.00
7-5962-00 Cumberland County	13,170.30
7-5966-00 Essex County	13,170.30
7-5974-00 Newark City	13,170.30
7-5976-00 Gloucester County	35,000.00
7-5978-00 Hudson County	13,170.30

7-5986-00 Hunterdon County	35,000.00
7-5988-00 Mercer County	13,170.30
7-5994-00 Middlesex county	35,000.00
7-6004-00 Monmouth county	35,000.00
7-6008-00 Morris county	35,000.00
7-6012-00 Ocean county	35,000.00
7-6018-00 Passa county	13,170.30
7-6028-00 Salem county	22,071.00
7-6030-00 Somerset county	35,000.00
7-6032-00 Sussex county	35,000.00
7-6034-00 Union county	13,170.30
7-6040-00 Warren county	35,000.00
State selection committee, NM	
7-6048-00 Catron county	4,742.00
7-6054-00 Colfax county	11,500.00
7-6058-00 De Baca county	2,500.00
7-6068-00 Guadalupe county	6,000.00
7-6070-00 Harding county	2,500.00
7-6080-00 Luna county	13,500.00
7-6084-00 Mora county	10,000.00
7-6110-00 Torrance county	7,000.00
State selection committee, NY	
7-6142-00 Chemung county	1,547.71
7-6146-00 Clinton county	1,500.00
7-6148-00 Columbia county	10,824.21
7-6152-00 Delaware county	14,133,00
7-6154-00 Dutchess county	29,687.19
7-6174-00 Genesee county	9,065.00
7-6176-00 Greene county	18,364.92
7-6178-00 Hamilton county	2,811.09
7-6180-00 Herkimer county	1,500.00
7-6186-00 Lewis county	13,837.32
7-6188-00 Livingston county	9,859.76
7-6200-00 Montgomery county	9,392.55
7-6226-00 Ontario county	12,148.83
7-6228-00 Orange county	45,635.97
7-6230-00 Orleans county	6,425.78
7-6236-00 Putnam county	5,329.76
7-6246-00 Rockland county	26,330.63
7-6256-00 Saratoga county	21,331.38
7-6262-00 Schoharie county	13,441.68
7-6264-00 Schuyler county	3,130.29
7-6266-00 Seneca county	4,625.36
7-6268-00 Steuben county	1,500.00
7-6282-00 Sullivan county	1,500.00
7-6284-00 Tioga county	7,345.18
7-6294-00 Wayne county	12,921.64
7-6308-00 Wyoming county	6,367.38
7-6310-00 Yates County	5,356.66
7-6312-00 State selection committee, NY	1,487.51
State selection committee, NC	
7-6320-00 Alamance county	18,000.00
7-6324-00 Alleghany county	1,000.00
7-6326-00 Anson county	5,000.00
7-6330-00 Avery county	2,000.00
7-6334-00 Bertie county	5,618.00
7-6346-00 Cabarrus county	4,000.00
7-6348-00 Caldwell county	18,000.00
7-6350-00 Camden county	9,000.00
7-6354-00 Caswell county	8,000.00
7-6356-00 Catawba county	19,000.00
7-6360-00 Cherokee county	7,000.00
7-6362-00 Chowan county	6,000.00
7-6376-00 Currituck county	6,000.00
7-6378-00 Dare county	10,000.00
7-6404-00 Gates county	6,000.00
7-6408-00 Granville county	10,000.00
7-6418-00 Halifax county	.00
7-6426-00 Heriford county	15,000.00
7-6428-00 Hoke county	17,500.00
7-6430-00 Hyde county	13,500.00
7-6432-00 Iredell county	13,000.00
7-6434-00 Jackson county	2,500.00
7-6438-00 Jones county	2,500.00
7-6446-00 McDowell county	16,000.00
7-6450-00 Madison county	5,000.00
7-6452-00 Martin county	8,000.00
7-6458-00 Mitchell county	3,000.00
7-6460-00 Montgomery county	5,000.00
7-6462-00 Moore county	16,000.00
7-6468-00 Northampton county	4,000.00
7-6474-00 Pamlico county	2,000.00
7-6476-00 Pasquotank county	18,000.00
7-6478-00 Pender county	8,000.00
7-6486-00 Polk county	6,000.00
7-6496-00 Rowan county	8,000.00
7-6502-00 Scotland county	12,000.00
7-6504-00 Stanly county	5,000.00
7-6510-00 Swain county	4,750.00
7-6512-00 Transyvania county	4,750.00
7-6514-00 Tyrrell county	4,000.00
7-6524-00 Warren county	5,000.00
7-6526-00 Washington county	3,000.00
7-6528-00 Watauga county	10,000.00
7-6538-00 Yancey county	5,000.00
7-6540-00 State selection committee, NC	1,774.00
State selection committee, ND	
7-6542-00 North Central North Dakota	34,243.00
7-6544-00 Northeastern, North Dakota	13,901.00
7-6546-00 Northern, North Dakota	23,040.00
7-6548-00 South Central, North Dakota	25,540.00
7-6550-00 South, North Dakota	51,419.00
7-6552-00 Southeast, North Dakota	45,204.00
7-6554-00 Western, North Dakota	32,673.00
7-6670-00 State selection committee, ND	250.00
State selection committee, OH	
7-6672-00 Columbus/Fairfield, Franklin COS	18,774.00
7-6678-00 Adams county	1,462.00
7-6680-00 Allen county	44,116.00
7-6682-00 Ashland county	8,792.00
7-6684-00 Ashtabula county	2,762.00

7-6686-00 Athens county	2,049.00
7-6688-00 Auglaize county	7,000.00
7-6690-00 Belmont County	2,410.00
7-6694-00 Butler County	4,107.00
7-6696-00 Carroll County	12,816.00
7-6700-00 Champaign County	7,666.00
7-6702-00 Clark County	3,607.00
7-6706-00 Clermont County	34,572.00
7-6710-00 Columbiana County	3,016.00
7-6714-00 Crawford County	1,123.00
7-6716-00 Cuyahoga County	45,968.00
7-6720-00 Darke County	11,861.00
7-6732-00 Delaware County	8,631.00
7-6734-00 Erie County	19,222.00
7-6746-00 Gallia County	1,349.00
7-6750-00 Geauga County	7,000.00
7-6752-00 Greene County	27,761.00
7-6754-00 Guernsey County	1,293.00
7-6756-00 Hamilton County	19,690.00
7-6760-00 Hancock County	10,039.00
7-6764-00 Harrison County	9,573.00
7-6772-00 Holmes County	7,000.00
7-6776-00 Jackson County	1,450.00
7-6778-00 Jefferson County	2,465.00
7-6782-00 Lake County	28,787.00
7-6784-00 Lawrence County	3,348.00
7-6786-00 Licking County	40,826.00
7-6790-00 Lorain County	5,834.00
7-6800-00 Madison County	7,000.00
7-6802-00 Mahoning County	8,889.00
7-6806-00 Marion County	1,676.00
7-6808-00 Medina County	14,449.00
7-6810-00 Meigs County	21,886.00
7-6812-00 Mercer County	7,000.00
7-6814-00 Miami County	19,712.00
7-6816-00 Monroe County	8,195.00
7-6815-00 Montgomery County	11,711.00
7-6824-00 Morgan County	9,312.00
7-6826-00 Morrow County	9,890.00
7-6828-00 Muskingum County	2,284.00
7-6830-00 Noble County	7,000.00
7-6834-00 Paulding County	7,000.00
7-6836-00 Perry County	1,089.00
7-6838-00 Pickaway County	16,665.00
7-6842-00 Portage County	36,508.00
7-6844-00 Preble County	10,640.00
7-6848-00 Richland County	2,397.00
7-6852-00 Ross County	1,867.00
7-6854-00 Sandusky County	1,206.00
7-6856-00 Scioto County	4,217.00
7-6858-00 Seneca County	1,170.00
7-6860-00 Shelby County	10,422.00
7-6862-00 Stark County	7,399.00
7-6866-00 Summit County	12,109.00
7-6870-00 Trumbull County	5,111.00
7-6874-00 Tuscarawas County	30,356.00
7-6876-00 Union County	7,000.00
7-6878-00 Van Wert County	7,000.00
7-6880-00 Vinton County	8,417.00
7-6882-00 Warren County	17,078.00
7-6884-00 Washington County	1,456.00
7-6886-00 Wayne County	19,891.00
7-6888-00 Williams County	7,000.00
7-6890-00 Wood County	17,534.00
7-6892-00 Wyandot County	7,000.00
7-6894-00 State selection committee, OH	3,984.00
State selection committee, OK	
7-6902-00 Adair County	1,000.00
7-6906-00 Atoka County	15,964.20
7-6910-00 Beckham County	24,974.53
7-6912-00 Blaine County	1,000.00
7-6914-00 Bryan County	1,000.00
7-6924-00 Cherokee County	1,000.00
7-6926-00 Choctaw County	24,974.53
7-6936-00 Coal County	11,952.36
7-6942-00 Cotton County	1,000.00
7-6944-00 Craig County	12,489.00
7-6950-00 Delaware County	22,751.70
7-6960-00 Garvin County	24,435.00
7-6966-00 Greer County	1,000.00
7-6968-00 Harmon County	2,001.00
7-6972-00 Haskell County	20,215.72
7-6974-00 Hughes County	28,776.20
7-6976-00 Jackson County	1,000.00
7-6978-00 Jefferson County	7,276.20
7-6980-00 Johnston County	4,419.60
7-6986-00 Kiowa County	1,000.00
7-6988-00 Latimer County	15,493.80
7-6996-00 Love County	1,000.00
7-7004-00 McIntosh County	1,000.00
7-7006-00 Major County	4,228.20
7-7008-00 Marshall County	5,115.60
7-7012-00 Murray County	17,596.53
7-7018-00 Nowata County	14,866.67
7-7020-00 Okfuskee County	12,543.30
7-7030-00 Osage County	18,026.40
7-7036-00 Pawnee County	26,782.14
7-7042-00 Pontotoc County	1,000.00
7-7044-00 Pottawatomie County	32,671.00
7-7048-00 Pushmataha County	9,040.95
7-7050-00 Roger Mills County	4,181.10
7-7062-00 Tillman County	5,011.20
7-7072-00 Washita County	11,131,50
7-7076-00 Woodward County	26,302.57
State selection committee, OR	
7-7082-00 Salem/ Marion, Polk Counties	39,800.00
7-7088-00 Baker County	2,000.00
7-7090-00 Benton County	2,400.00
7-7102-00 Crook County	7,000.00
7-7104-00 Curry County	10,000.00
7-7110-00 Gilliam County	2,000.00
7-7112-00 Grant County	4,000.00

7-7114-00 Harney County	5,000.00
7-7116-00 Hood River County	9,000.00
7-7120-00 Jefferson County	7,000.00
7-7126-00 Lake County	3,000.00
7-7128-00 Lane County	13,355.00
7-7134-00 Linn County	5,000.00
7-7135-00 Malheur County	21,000.00
7-7142-00 Morrow County	8,000.00
7-7152-00 Sherman County	3,000.00
7-7154-00 Tillamook County	10,000.00
7-7158-00 Union County	4,000.00
7-7160-00 Wallowa County	2,000.00
7-7162-00 Wasco County	10,000.00
7-7164-00 Washington County	19,400.00
7-7168-00 Wheeler County	2,000.00
7-7170-00 Yamhill County	25,800.00
State selection committee, PA	-
7-7200-00 Bucks County	94,917.00
7-7206-00 Butler County	37,419.00
7-7212-00 Carbon County	14,671.00
7-7234-00 Delaware County	127,258.00
7-7248-00 Forest County	2,025.00
7-7252-00 Fulton County	5,674.00
7-7262-00 Juniata County	7,996.00
7-7272-00 Lawrence County	33,468.00
7-7284-00 Lycoming County	39,596.00
7-7286-00 McKean County	16,391.00
7-7288-00 Mercer County	35,609.00
7-7272-00 Monroe County	19,394.00
7-7294-00 Montgomery County	106,437.00
7-7314-00 Potter County	8,025.00
7-7316-00 Schuylkill County	55,907.00
7-7322-00 Sullivan County	2,873.00
7-7330-00 Venango County	16,407.00
7-7342-00 York County	73,932.00
7-7344-00 State selection committee, PA	77,098.00
State selection committee, SC	
7-7370-00 Abbeville County	7,550.00
7-7374-00 Allendale County	7,870.00
7-7378-00 Bamberg County	5,743.00
7-7380-00 Barnwell County	8,933.00
7-7386-00 Calhoun County	7,338.00
7-7410-00 Edgefield County	5,530.00
7-7412-00 Fairfield County	7,870.00
7-7424-00 Hampton County	7,551.00
7-7428-00 Jasper County	6,168.00
7-7436-00 Lee County	6,168.00
7-7438-00 Lexington County	3,297.00
7-7440-00 McCormick County	10,963.00
7-7446-00 Newberry County	5,849.00
7-7452-00 Pickens County	4,996.00
7-7458-00 Saluda County	4,360.00
7-7464-00 Union County	7,009.00
State selection committee, TN	
7-7618-00 Bedford County	6,779.86
7-7620-00 Benton County	4,690.02
7-7622-00 Bledsoe County	2,610.17
7-7630-00 Cannon County	2,932.45
7-7636-00 Cheatham County	4,147.96
7-7638-00 Chester County	3,228.17
7-7640-00 Claiborne County	6,513.98
7-7642-00 Clay County	2,270.23
7-7648-00 Crockett County	4,556.17
7-7656-00 Decatur County	3,355.16
7-7658-00 De Kalb County	4,314.27
7-7664-00 Fayette County	8,241.91
7-7666-00 Fentress County	6,293.59
7-7668-00 Franklin County	7,546.48
7-7672-00 Giles County	6,711.54
7-7674-00 Grainger County	5,242.06
7-7678-00 Grundy County	5,006.60
7-7686-00 Hancock County	2,676.83
7-7688-00 Hardeman County	8,520.05
7-7690-00 Hardin County	7,480.61
7-7694-00 Haywood County	7,710.75
7-7696-00 Henderson County	6,870.28
7-7700-00 Hickman County	3,927.78
7-7702-00 Houston County	2,426.58
7-7704-00 Humphreys County	5,283.95
7-7706-00 Jackson County	3,163.88
7-7710-00 Johnson County	5,310.78
7-7716-00 Lake County	2,304.77
7-7718-00 Lauderdale County	7,570.95
7-7722-00 Lewis County	3,342.31
7-7724-00 Lincoln County	6,425.42
7-7726-00 Loudon County	6,779.47
7-7732-00 Macon County	5,134.03
7-7740-00 Marshall County	5,232.89
7-7742-00 Maury County	26,259.00
7-7744-00 Meigs County	2,781.41
7-7752-00 Moore County	1,000.00
7-7754-00 Morgan County	5,121.49
7-7756-00 Obion County	7,920.00
7-7758-00 Overton County	5,926.34
7-7760-00 Perry County	2,139.69
7-7762-00 Pickett County	1,947.20
7-7764-00 Polk County	4,894.94
7-7776-00 Scott County	8,257.70
7-7778-00 Sequatchie County	2,612.19
7-7786-00 Smith County	3,607.92
7-7788-00 Stewart County	2,854.91
7-7792-00 Sumner County	20,340.26
7-7794-00 Tipton County	9,034.78
7-7796-00 Trousdale County	1,349.71
7-7798-00 Unicoi County	4,840.71
7-7800-00 Union County	3,716.36
7-7802-00 Van Buren County	1,447.35
7-7808-00 Wayne County	5,247.35
7-7810-00 Weakley County	6,451.91
7-7812-00 White County	5,107.07
7-7814-00 Williamson County	9,048.53

7-7816-00 Wilson County	14,623.05
State selection committee, TX	
7-7820-00 Abilene/ Jones, Taylor Cos.	4,856.83
7-7824-00 Austin/ Travis, Williamson Cos.	30,146.51
7-7826-00 Dallas/ Collin, Dallas, Denton Cos.	101,134.99
7-7828-00 Houston/ Fort Worth Bend, Harris Cos	144,887.58
7-7830-00 Longview/ Gregg, Harrison Cos	6,847.31
7-7860-00 Angelina County	3,470.30
7-7862-00 Aransas County	15,792.00
7-7870-00 Austin County	15,731.84
7-7882-00 Bell County	8,942.14
7-7886-00 Bexar County	69,445.43
7-7892-00 Bowie County	4,836.28
7-7900-00 Brazoria County	9,810.11
7-7902-00 Brazo County	3,835.51
7-7910-00 Brooks County	9,174.40
7-7914-00 Burleson County	15,400.96
7-7916-00 Burnet County	13,987.20
7-7918-00 Caldwell County	16,288.64
7-7924-00 Cameron County	19,797.28
7-7930-00 Camp County	17,476.48
7-7938-00 Chambers County	15,731.84
7-7950-00 Coleman County	10,467.84
7-7962-00 Colorado County	11,069.44
7-7964-00 Comal County	55,166.72
7-7966-00 Comanche County	10,136.96
7-7970-00 Cooke County	22,620.16
7-7802-00 Dawson County	16,002.56
7-8004-00 Deaf Smith County	20,183.68
7-8016-00 De Witt County	14,257.92
7-8020-00 Dimmit County	22,680.32
7-8024-00 Duval County	19,937.36
7-8026-00 Eastland County	16,754.56
7-8029-00 Ector County	6,017.29
7-8034-00 Ellis County	4,477.39
7-8036-00 El Paso County	38,348.74
7-8040-00 Erath County	16,890.24
7-8042 Falls County	11,069.44
7-8046-00 Fayette County	13,084.80
7-8060-00 Freestone County	15,731.84
7-8062-00 Frio County	18,619.52
7-8064-00 Gaines County	11,881.60
7-8066-00 Galveston County	14,398.17
7-8078-00 Gonzales County	15,852.16
7-8080-00 Gray County	13,987.20
7-8084-00 Grayson County	88,826.24
7-8090-00 Grimes County	15,942.40
7-8126-00 Hidalgo County	36,671.30
7-8132-00 Hill County	23,703.04
7-8134-00 Hockley County	20,995.84
7-8136-00 Hood County	18,559.36
7-8140-00 Houston County	11,731.20
7-8146-00 Hunt County	3,530.57
7-8146-00 Hutchinson County	14,648.96
7-8162-00 Jefferson County	15,071.67
7-8172-00 Johnson County	74,869.12
7-8178-00 Karnes County	10,136.96
7-8202-00 Lamb County	10,467.84
7-8204-00 Lampasas County	9,926.40
7-8208-00 Lavaca County	14,588.80
7-8212-00 Leon County	13,776.64
7-8216-00 Limestone County	17,356.16
7-8226-00 Lubbock County	9,444.89
7-8232-00 McCullough County	9,595.52
7-8234-00 McClennan County	9,682.04
7-8242-00 Marion County	11,129.60
7-8250-00 Maverick County	4,942.21
7-8252-00 Medina County	19,371.52
7-8260-00 Milam County	21,056.00
7-8264-00 Mitchell County	11,731.20
7-8268-00 Montgomery County	7,922.39
7-8270-00 Moore County	13,024.64
7-8272-00 Morris County	26,816.64
7-8280-00 Newton County	16,122.88
7-8282-00 Nolan County	15,310.72
7-8284-00 Nueces County	17,971.23
7-8292-00 Orange County	7,152.44
7-8296-00 Panola County	23,883.52
7-8298-00 Parker County	40,367.36
7-8302-00 Pecos County	14,047.36
7-8306-00 Potter County	5,592.00
7-8314-00 Randall County	60,671.36
7-8322-00 Red River County	15,310.72
7-8324-00 Reeves County	21,747.84
7-8330-00 Robertson County	15,040.00
7-8332-00 Rockwall County	17,777.28
7-8342-00 San Jacinto County	12,543.36
7-8344-00 San Patricio County	3,873.45
7-8359-00 Scurry County	15,671.68
7-8354-00 Shelby County	23,823.36
7-8358-00 Smith County	8,727.12
7-8364-00 Starr County	4,814.15
7-8376-00 Tarrant County	58,017.96
7-8398-00 Terry County	10,738.56
7-8404-00 Tom Green County	4,240.24
7-8414-00 Tyler County	19,702.40
7-8426-00 Victoria County	3,810.21
7-8432-00 Waller County	18,920.32
7-8434-00 Ward County	13,235.20
7-8436-00 Washington County	16,002.56
7-8438-00 Webb County	8,241.75
7-8446-00 Wichita County	5,059.20
7-8450-00 Wilbarger County	10,678.40
7-8458-00 Wilson County	15,942.40
7-8462-00 Wise County	21,928.32
7-8468-00 Young County	18,499.20
7-8470-00 Zapata County	13,836.80
7-8474-00 State selection committee, TX	10,341.96
State selection committee, UT	
7-8475-00 Bear River Area	9,320.00
7-8491-00 Five County Area	27,960.00
7-8505-00 Mountainlands Area	5,825.00
7-8521-00 Six County Area	22,135.00
7-8521-00 Southeastern Area	32,620.00
7-8525-00 Duchesne, Daggett Counties	18,640.00

State selection committee, VA	
7-8584-00 Accomack County	19,847.00
7-8596-00 Arlington County	8,438.00
7-8602-00 Bedford City	2,620.00
7-8610-00 Buchanan County	5,161.00
7-8612-00 Buckingham County	7,261.00
7-8616-00 Caroline County	9,202.00
7-8618-00 Carroll County	13,544.00
7-8622-00 Charlotte County	9,507.00
7-8632-00 Cumberland County	5,903.00
7-8634-00 Dickenson County	11,359.00
7-8636-00 Dinwiddie County	9,067.00
7-8640-00 Fairfax County	20,214.00
7-8652-00 Giles County	8,222.00
7-8658-00 Grayson County	7,432.00
7-8664-00 Halifax County	4,120.00
7-8674-00 Isle of Wight County	9,928.00
7-8678-00 King and Queen County	3,272.00
7-8680-00 King George County	4,510.00
7-8686-00 Lee County	20,390.00
7-8688-00 Loudon County	2,874.00
7-8690-00 Louisa County	9,387.00
7-8698-00 Mecklenburg County	18,454.00
7-8702-00 Montgomery County	7,522.00
7-8704-00 Nelson County	6,900.00
7-8708-00 Northampton County	11,595.00
7-8716-00 Page County	9,219.00
7-8718-00 Patrick County	7,443.00
7-8720-00 Pittsylvania County	7,028.00
7-8724-00 Prince Edward County	9,957.00
7-8726-00 Prince George County	6,818.00
7-8728-00 Prince William County	5,808.00
7-8730-00 Pulaski County	13,121.00
7-8734-00 Richmond County	3,427.00
7-8742-00 Russell County	3,593.00
7-8744-00 Scott County	16,640.00
7-8748-00 Smyth County	3,385.00
7-8756-00 Surry County	4,290.00
7-8760-00 Tazewell County	5,375.00
7-8764-00 Washington County	4,962.00
7-8766-00 Westmoreland County	8,236.00
7-8768-00 Wise County	4,884.00
7-8770-00 Wythe County	11,812.00
7-8774-00 Alexandria City	7,064.00
7-8778-00 Bristol City	10,012.00
7-8780-00 Buena Vista City	2,210.00
7-8782-00 Charlottesville City	23,657.00
7-8784-00 Chesapeake City	9,230.00
7-8792-00 Danville City	4,508.00
7-8794-00 Emporia City	2,599.00
7-8802-00 Fredericksburg City	5,512.00
7-8804-00 Galax City	3,093.00
7-8806-00 Hampton City	10,206.00
7-8808-00 Harrisonburg City	8,233.00
7-8810-00 Hopewell City	9,558.00
7-8814-00 Lynchburg City	5,862.00
7-8820-00 Martinsville City	8,184.00
7-8822-00 Newport News City	13,581.00
7-8824-00 Norfolk City	31,873.00
7-8826-00 Norton City	2,756.00
7-8828-00 Petersburg City	5,563.00
7-8832-00 Portsmouth City	13,685.00
7-8834-00 Radford City	4,763.00
7-8836-00 Richmond City	27,311.00
7-8838-00 Roanoke City	11,200.00
7-8842-00 South Boston City	3,277.00
7-8846-00 Suffolk City	5,889.00
7-8848-00 Virginia Beach City	17,871.00
7-8852-00 Williamsburg City	2,908.00
7-8854-00 Winchester City	9,355.00
State selection committee, WA	
7-8858-00 Adams County	13,008.00
7-8860-00 Asotin County	9,973.00
7-8876-00 Ferry County	5,203.00
7-8896-00 Kitsap County	39,000.00
7-8910-00 Pacific County	11,057.00
7-8912-00 Pend Oreille County	7,383.00
7-8922-00 Skamania County	6,504.00
7-8934-00 Thurston County	45,000.00
7-8948-00 State Selection Committee, WA	669.00
State selection committee, WV	
7-8954-00 Barbour County	6,716.39
7-8960-00 Braxton County	7,003.74
7-8962-00 Brooke County	5,963.36
7-8968-00 Calhoun County	5,051.78
7-8970-00 Clay County	7,241.54
7-8972-00 Doddridge County	4,328.47
7-8976-00 Gilmer County	4,496.91
7-8976-00 Gilmer County	4,496.91
7-8978-00 Grant County	5,418.39
7-8982-00 Hampshire County	.00
7-8984-00 Hancock County	6,538.04
7-8986-00 Hardy County	5,022.06
7-8992-00 Jefferson County	6,964.10
7-8996-00 Lewis County	6,637.13
7-9014-00 Mineral County	7,221.72
7-9020-00 Monroe County	5,884.09
7-9022-00 Morgan County	4,596.14
7-9028-00 Pendleton County	4,328.47
7-9030-00 Pleasants County	3,565.52
7-9032-00 Pocahontas County	3,515.98
7-9042-00 Ritchie County	4,962.61
7-9044-00 Roane County	6,201.16
7-9046-00 Summers County	7,053.28
7-9048-00 Taylor County	5,685.92
7-9050-00 Tucker County	4,130.30
7-9052-00 Tyler County	4,417.64
7-9060-00 Webster County	7,023.55
7-9062-00 Wetzel County	6,240.79
7-9064-00 Wirt County	3,278.18
7-9070-00 State Selection Committee, WV	200.00
State selection committee, WI	
7-9074-00 Appleton City	12,107.87
7-9096-00 Adams County	6,305.88

7-9096-00 Ashland County	7,332.15
7-9202-00 Bayfield County	7,339.49
7-9106-00 Buffalo County	7,036.09
7-9110-00 Burnett County	7,229.42
7-9112-00 Calumet County	8,998.61
7-9124-00 Crawford County	8,080.89
7-9130-00 Dodge County	13,729.82
7-9134-00 Douglas County	10,151.20
7-9136-00 Dunn County	10,347.66
7-9142-00 Florence County	4,967.52
7-9144-00 Fond Du Lac County	16,012.14
7-9146-00 Forest County	7,253.64
7-9150-00 Green County	7,687.70
7-9152-00 Green Lake County	6,436.78
7-9154-00 Iowa County	7,887.86
7-9156-00 Iron County	5,836.32
7-9158-00 Jackson County	7,636.94
7-9160-00 Jefferson County	13,057.64
7-9162-00 Juneau County	7,941.12
7-9168-00 Kewaunee County	7,177.72
7-9174-00 Lafayette County	5,758.95
7-9176-00 Langlade County	7,258.39
7-9178-00 Lincoln County	8,178.34
7-9180-00 Manitowoc County	16,836.55
7-9182-00 Marathon County	21,709.24
7-9184-00 Marinette County	9,705.00
7-9186-00 Marquette County	5,496.04
7-9188-00 Menominee County	7,242.40
7-9196-00 Monore County	9,150.99
7-9200-00 Oconto County	9,031.54
7-9202-00 Oneida County	8,153.20
7-9204-00 Outagamie County	21,344.12
7-9206-00 Ozaukee County	8,840.68
7-9210-00 Pepin County	4,436.56
7-9212-00 Pierce County	8,227.13
7-9214-00 Polk County	9,203.33
7-9218-00 Price County	6,963.07
7-9224-00 Richland County	6,059.89
7-9230-00 Rusk County	7,705.59
7-9232-00 St. Croix County	8,793.46
7-9234-00 Sauk County	13,248.05
7-9236-00 Sawyer County	8,608.87
7-9238-00 Shawand County	9,029.28
7-9240-00 Sheboygan County	15,447.21
7-9242-00 Taylor County	8,843.99
7-9246-00 Vernon County	8,654.60
7-9248-00 Vilas County	6,914.28
7-9250-00 Walworth County	11,555.19
7-9252-00 Washburn County	6,972.05
7-9254-00 County	12,731.46
7-9256-00 Waukesha County	50,775.82
7-9262-00 Waupaca County	9,284.51
7-9264-00 Waushara County	7,314.51
7-9266-00 Winnebago County	32,553.97
7-9270-00 Wood County	17,159.41
7-9272-00 State Selection Committee, WI	3,021.87
State selection committee, WY	
7-9276-00 Albany County	7,342.00
7-9278-00 Big Horn County	4,731.00
7-9282-00 Carbon County	7,670.00
7-9284-00 Converse County	5,160.00
7-9286-00 Crook County	2,334.00
7-9290-00 Goshen County	4,900.00
7-9292-00 Hot Springs County	2,243.00
7-9296-00 Laramie County	39,961.00
7-9300-00 Lincoln County	6,946.00
7-9306-00 Niobrara County	1,374.00
7-9308-00 Park County	9,038.00
7-9310-00 Platte County	3,736.00
7-9312-00 Sheridan County	9,117.00
7-9314-00 Sublette County	2,956.00
7-9318-00 Teton County	4,674.00
7-9320-00 Uinta County	10,564.00
7-9322-00 Washakie County	4,018.00
7-9324-00 Weston County	2,458.00

[FR Doc. 89-15263 Filed 6-29-89; 8:45 am]
BILLING CODE 6716-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203-011160-008
Title: Agreement 11160
Parties:

n. v. CMB s.a.
Atlantic Container Line BV
Compagnie Generale Maritime (CGM)
Gulf Container Line (GCL), BV
Orient Overseas Container Line (UK) Ltd.
Hapag Lloyd AG
Johnson ScanStar
Lykes Bros. Steamship Co., Inc.
Nedlloyd Lijnen BV
P & O Containers (TFL) Limited
Polish Ocean Lines
Sea-Land Service, Inc.
South Atlantic Cargo Shipping NV
Deppe Linie GmbH & Co.
Incotrans BV
Mediterranean Shipping Co.

Synopsis: The proposed modification would delete n. v. CMB s.a. as a party to the Agreement.

Agreement No.: 212-011213-008
Title: Spain-Italy/Puerto Rico Island Pool Agreement
Parties:

Compania Trasatlantica Espanola, S.A.
Nordana Line AS
Sea-Land Service, Inc.

Synopsis: The proposed modification would suspend overcarriage and undercarriage payments for the second Pool Period.

By Order of the Federal Maritime Commission.

Joseph C. Polking,
Secretary.

Dated: June 26, 1989.

[FR Doc. 89-15420 Filed 6-29-89; 8:45 am]
BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and may request a copy of each agreement and the supporting statement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in section 560.7 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224-200260.
Title: Port of Longview Terminal Agreement.
Parties:

Port of Longview
International Raw Materials, Ltd. (IRM)

Filing party: T.S.L. Perlman, Attorney for the Port of Longview, Fort & Schlefer, 1401 New York Avenue NW., Washington, DC 20005.

Synopsis: The Agreement provides for IRM's exclusive use and operation of a bulk cargo handling facility for storing and handling designated dry bulk products. The initial term of the Agreement is for 12 years.

By Order of the Federal Maritime Commission.

Dated: June 26, 1989.

Joseph C. Polking,
Secretary.

[FR Doc. 89-15494 Filed 6-29-89; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

June 26, 1989.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulation on Controlling Paperwork Burdens on the Public).

For Further Information Contact: Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-3822). OMB Desk Officer—Gary Waxman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503 (202-395-7340).

Final approval under OMB delegated authority to implement the following report:

Report title: Report of Foreign (Non-U.S.) Currency Deposits
Agency form number: FR 2915
OMB Docket number: 7100-0237
Frequency: Monthly or quarterly
Reporters: Depository institutions
Annual reporting hours: 600
Estimated number of respondents: 100
Estimated average hours per response: 5
Small businesses are not affected.

General description of report: The Board of Governors of the Federal Reserve System has decided, in response to an inquiry forwarded to it by the Federal Reserve Bank of Chicago, not to object to issuance of foreign currency deposits at depository institutions in the United States after December 31, 1989. The Board does not expect such deposits to increase rapidly, or ultimately to accumulate to a large amount, given the existing availability of effectively similar instruments. However, to the extent that depository institutions issue foreign currency deposits, a procedure for converting the value of such deposits into dollars for reporting purposes and some limited additional reporting are necessary. The proposed new reporting form will enable the Federal Reserve to exclude foreign currency deposits from measures of the monetary aggregates.

This report is authorized by Federal law (12 U.S.C. 248(a)). Data reported will be given confidential treatment (5 U.S.C. 552(b)(4)).

Board of Governors of the Federal Reserve System, June 26, 1989.

William W. Wiles,
Secretary of the Board.

[FR Doc. 89-15476 Filed 6-29-89; 8:45 am]
BILLING CODE 6210-01-M

Compagnie Financiere de Suez, Paris, France; Proposal To Engage in Brokerage and Advisory Services Regarding Foreign Currency Options

Compagnie Financiere de Suez and its subsidiary, Banque Indosuez, both of Paris, France ("Applicants"), have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), for permission to engage *de novo* through their wholly-owned subsidiary, Carr Futures International, Inc., Chicago, Illinois ("Company"), in the execution and clearance of foreign currency option contracts traded on the Philadelphia Stock Exchange and in the provision of incidental investment advice with respect to such options. Company is currently authorized to engage in futures commission merchant ("FCM") activities and related advisory services pursuant to § 225.25 (b)(18) and (b)(19) of the Board's Regulation Y (12 CFR 225.25 (b)(18) and (b)(19)).

Company will not trade foreign currency options for its own account and will not extend credit to customers for the express purpose of meeting initial or maintenance margins. Company will furnish advice only to financially sophisticated persons that have significant dealings or holdings in foreign exchange. Company is registered with the Commodity Futures Trading Commission ("CFTC") as a futures commission merchant, and is a clearing member of the Chicago Mercantile Exchange ("CME"). Company is also registered with the Securities and Exchange Commission as a broker and has applied to become a member of the Philadelphia Stock Exchange. Company will also become a clearing member of the Options Clearing Corporation.

The Board has previously approved foreign currency options brokerage on an SEC-regulated exchange in combination with FCM activities. *See, e.g., Hongkong and Shanghai Banking Corporation*, 72 Federal Reserve Bulletin 345 (1986); *Citicorp*, 70 Federal Reserve Bulletin 591 (1984). The Board in *Citicorp* also approved the provision of investment advice in combination with brokerage activities for CFTC-regulated options on foreign currency.

This proposal raises issues concerning (1) the standard for determining which customers can be furnished with advice on SEC-regulated options on foreign currency that Company would broker and (2) what operational limitations should be placed on such activities. Applicants propose that the standard for determining which customers can be furnished with such services should be that of financially sophisticated persons that have significant dealings or holdings in foreign currency, rather than a standard based on net worth as in *National Westminster Bank PLC*, 72 Federal Reserve Bulletin 565 (1986) ("*Natwest*"), or an unrestricted approach as in *Bank of New England Corporation*, 74 Federal Reserve Bulletin 700 (1988) ("*BNEC*"). Moreover, Applicants believe that it would be inappropriate to provide commitments such as those made in *NatWest* or *BNEC* for the provision of advice on SEC-regulated options on foreign currency that are not imposed when advice is rendered with respect to options on foreign currency futures.

Section 4(c)(8) of the Act provides that a bank holding company may, with prior Board approval, engage directly or indirectly in any activities "which the Board after due notice and opportunity for hearing has determined [by order or regulation] to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity; that banks generally provide services that are operationally or functionally so similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n v. Board of Governors*, 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. 49 FR 806 (1984).

Applicants believe that the provision of investment advice in conjunction with brokering SEC-regulated foreign currency options is closely related to banking since banks currently engage in the proposed activities. Applicants also maintain that there is no difference, other than with regard to regulatory oversight, between CFTC-regulated options on foreign currency and SEC-regulated options on foreign currency.

In determining whether an activity meets the second, or proper incident to banking, test of section 4(c)(8), the Board must consider whether the performance of the activity by an affiliate of a holding company "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices."

Applicants believe that the proposed activities would permit Company to serve the hedging and investment needs of its customers more effectively and to provide added convenience to its customers. Applicants also state that the *de novo* entry of Company into the market for these services would increase the level of competition among providers of these services already in operation. Applicants maintain that these benefits outweigh any possible adverse effects.

Any views or requests for a hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than July 19, 1989. Any request for a hearing must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, June 23, 1989.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 89-15477 Filed 6-29-89; 8:45 am]
BILLING CODE 6210-01-M

CSB Acquisition Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 14, 1989.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *CSB Acquisition Corporation*, Louisville, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Crestwood Banking Company, Ltd., Crestwood, Kentucky, thereby indirectly acquire Crestwood State Bank, Crestwood, Kentucky.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Bank Maryland Corp.*, Towson, Maryland; to acquire 100 percent of the voting shares of Heritage International Bank, Inc., Bethesda, Maryland.

2. *Crescent Group*, Bethesda, Maryland, a wholly owned subsidiary of Bank Maryland Corp., Towson, Maryland; to acquire control and management of Heritage International Bank, Inc., Bethesda, Maryland.

C. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *FM Bancorp, Inc.*, Paxton, Illinois; to acquire 100 percent of the voting shares of Melvin State Bank, Melvin, Illinois.

2. *Northwest Illinois Bancorp, Inc.*, Freeport, Illinois; to acquire through NWIB Acquisition Corporation, Inc., 100 percent of the voting shares of First Galena Bancshares, Inc., Galena, Illinois; thereby indirectly acquire First National Bank of Galena, Galena, Illinois.

3. *NWIB Acquisition Corporation, Inc.*, Freeport, Illinois; to acquire 100 percent of the voting shares of First Galena Bancshares, Inc., Galena, Illinois; thereby indirectly acquire First National Bank of Galena, Galena, Illinois.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Stone County National Bancshares, Inc.*, Crane, Missouri; to become a bank holding company by acquiring at least 80 percent of the voting shares of Stone County National Bank, Crane, Missouri.

Board of Governors of the Federal Reserve System, June 23, 1989.

William W. Wiles,
Secretary of the Board.

[FR Doc. 89-15478 Filed 06-29-89; 8:45 am]
BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Daniel L. Goodwin et al.

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 14, 1989.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Daniel L. Goodwin*, Oak Brook, Illinois; to acquire 100 percent of the voting shares of Bellwood Bancorporation, Inc., Bellwood, Illinois, and thereby indirectly acquire Bank of Bellwood, Bellwood, Illinois, and First National Bank of Wheaton, Wheaton, Illinois.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Bernard Gruenes*, St. Cloud, Minnesota; to acquire an additional 16.0 percent for a cumulative total of 40 percent of the voting shares of Eden Valley Bancshares, Inc., Eden Valley, Minnesota, and thereby indirectly acquire State Bank of Eden Valley, Eden Valley, Minnesota.

Board of Governors of the Federal Reserve System, June 26, 1989.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 89-15479 Filed 6-29-89; 8:45 am]
BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Raymond E. Mason, Jr.; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 89-9574) published at page 16163 of the issue for Friday, April 21, 1989.

Under the Federal Reserve Bank of Atlanta, the entry for Raymond E. Mason, Jr., is amended to read as follows:

1. *Raymond E. Mason, Jr.*, Venice, Florida; to retain 19 percent of the voting shares of Florida Westcoast Banks, Inc., Venice, Florida ("Florida Westcoast Banks"), and to acquire an additional 6 percent of the voting shares of Florida Westcoast Banks, thereby indirectly acquiring First National Bank of Venice, Venice, Florida.

Comments on this Change in Bank Control Notice must be received by July 17, 1989.

Board of Governors of the Federal Reserve System, June 26, 1989.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 89-15480 Filed 6-29-89; 8:45 am]
BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 061289 AND 062389

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
The Morgan Stanley Leveraged Equity Fund II, L.P., Silgan Corporation, Silgan Corporaton	89-1763	06/12/89
Continental Cablevision, Inc., American Cablesystems of Florida, a Ltd. Partnership, American Cablesystems of Florida, a Ltd. Partnership	89-1805	06/12/89
Continental Cablevision, Inc., American Cablesystems Northeast, a Ltd. Partnership, American Cablesystems Northeast, a Ltd. Partnership	89-1806	06/12/89
Thrifty Rent-A-Car System, Inc., Mr. Sanford Miller, Snappy Car Rental, Inc.	89-1835	06/12/89
CoreStates Financial Corp., Empire of America FSA, Metroteller Systems Incorporated	89-1857	06/12/89
Citicorp, Empire of America Federal Savings Bank, Empire	89-1865	06/12/89
Sten Allan Olsson, Orient-Express Hotels Inc., Orient-Express Hotels Inc	89-1867	06/12/89
Tiphook plc, Orient-Express Hotels Inc., Orient-Express Hotels Inc	89-1869	06/12/89
First Interstate Bancorp, Financial Corporation of Santa Barbara, Santa Barbara Savings and Loan Association	89-1884	06/12/89
Sara Lee Corporation, PKC Merger Corporation, PKC Merger Corporation	89-1924	06/12/89
Pannill Family Limited Partnership, PKC Merger Corporation PKC Merger Corporation	89-1925	06/12/89
The Oklahoma Publishing Company, American City Business Journals, Inc., Shaw Publishing, Inc	89-1779	06/13/89
Noble Affiliates, Inc., Transco Exploration Company, TXP Operating Company	89-1780	06/13/89

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 061289 AND 062389—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
The News Corporation Limited, MPI Holdings U.S., Inc., MPI Holdings U.S., Inc.	89-1915	06/13/89
Electrolux Corporation, The Regina Company, Inc., The Regina Company, Inc.	89-1935	06/13/89
Super Valu Stores, Inc., Promodes S.A., Prairie Super Stores, Inc.	89-1757	06/14/89
Akzo N.V., Tyler Corporation, Tyler Corporation (Reliance Universal Inc.)	89-1768	06/14/89
Attwoods plc, John and Lillian Zuccarelli, National Waste Recycling, Inc.	89-1782	06/14/89
Hercules Inc., Henkel KGaA, WSP, Inc.	89-1846	06/14/89
Mitsubishi Corporation, Colplus Holdings, Inc., Colplus Holdings, Inc.	89-1916	06/14/89
C-TEC Corporation, Centel Corporation, Centel Cable Television Company of Michigan	89-1740	06/15/89
THORN EMI plc, Chrysalis Group plc, Terenright Records, Inc	89-1749	06/15/89
Dennis R. Washington, The Montana Power Company, The Montana Power Company	89-1806	06/15/89
Mark S. Steiner, Beverly Enterprises, Inc., Beverly Enterprises-Massachusetts, Inc.	89-1703	06/16/89
Warner Communications Inc., Daily Mail and General Trust PLC, American Lawyer Newspapers Group, Inc	89-1773	06/16/89
BICC plc, BRIntec Corporation, BRIntec Corporation	89-1810	06/16/89
National Education Corporation, McGraw-Hill, Inc., National Radio Institute	89-1870	06/16/89
Aon Corporation, BMF Services, Inc., BMS Services, Inc, Bayly, Martin & Fay, Inc.	89-1873	06/19/89
E.I. du Pont de Nemours and Company, Mesa Limited Partnership, Mesa Operating Limited Partnership	89-1880	06/19/89
Resource Housing of America, Inc., Geriatric & Medical Centers, Inc., Geriatric & Medical Services, Inc	89-1882	06/19/89
Legal & General Group PLC, The Continental Corporation, William Penn Life Insurance Company of New York	89-1883	06/19/89
KKR Associates, Interlec Publishing Corp., Interlec Publishing Corp.	89-1885	06/19/89
Carlyle Real Estate Limited Partnership-XV, Lake Springbrook Associates, Lake Springbrook Associates	89-1890	06/19/89
International Income Property Inc., Metropolitan Life Insurance Company, Metropolitan Life Insurance Company	89-1897	06/19/89
The Chase Manhattan Corporation, Michigan National Corporation, Michigan National Corporation	89-1903	06/19/89
DKM, Ltd., David A. Cunningham, Plaid Enterprises, Inc.	89-1907	06/19/89
Metro Mobile CTS Limited Partnership, Midwest Energy Company, Donovan Companies, Inc.	89-1908	06/19/89
Penn Virginia Corporation, Westmoreland Coal Company, Westmoreland Coal Company	89-1910	06/19/89
Toranomon Jitsugyo Kaihan Co., Ltd., Estate of Edward Bennet Williams, EBW Properties, Inc	89-1917	06/19/89
Mitsubishi Corporation, Hemisphere Holding and Trading Corporation, Pan American Trade Development Corporation	89-1919	06/19/89
Oce-van der Grinten N.V., Schlumberger Limited, Schlumberger Technologies, Inc.	89-1922	06/19/89
Smith Corona Corporation, Hanson PLC, Smith-Corona Private Limited	89-1930	06/19/89
Amerada Hess Corporation, The Louisiana Land and Exploration Company, Inexco Oil Company, LLOXY Production Financing Company	89-1931	06/19/89
LIT Holdings PLC, Richard F. Barnes, Barnes & Co. and Barnes Government Securities, Inc.	89-1950	06/19/89
Marriott Corporation, ADT Limited, United HealthServ, Inc. and ADT Facilities Management	89-1952	06/19/89
The Dai-Ichi Mutual Life Insurance Company, The Prudential Insurance Company of America, Sherman Oaks Galleria	89-1965	06/19/89
Payment Services Company, Barnett Banks, Inc., Barnett Merchant Services, Inc.	89-1966	06/19/89
Gale L. Galloway, The Louisiana Land and Exploration Company, The Louisiana Land and Exploration Company	89-1976	06/19/89
Sony Corporation, Sundstrand Corporation, Trans Com Division of Sundstrand Data Control, Inc.	89-1796	06/20/89
First Financial Management Corporation, Security Pacific Corporation, Security Pacific National Bank	89-1847	06/20/89
Avon Rubber p.l.c., Cadillac Rubber & Plastics, Inc., Cadillac Rubber & Plastics, Inc	89-1863	06/20/89
Stephen Adams, Northeastern Television Investors Limited Partnership, Northeastern Television Investors Limited Partnership	89-1898	06/20/89
Angelex Corporation, Energy Development Partners, Ltd., ENEX Resources Corporation	89-1899	06/20/89
Energy Development Partners, Ltd., Angelex Corporation, Quinoco Oil and Gas, Inc	89-1900	06/20/89
First Interstate Bancorp, State Home Savings Association, State Home Savings Association	89-1906	06/20/89
Blockbuster Entertainment Corporation, VSMI Limited Partnership, VSMI Limited Partnership	89-1939	06/20/89
Jeffrey J. Shearer, Blockbuster Entertainment Corporation, Blockbuster Entertainment Corporation	89-1940	06/20/89
Scott A. Beck, Blockbuster Entertainment Corporation Blockbuster Entertainment Corporation	89-1941	06/20/89
Mutsui O.S.K. Lines, Ltd., The Burmah Oil plc, Burmah M.O.L. Transport and Burmah LNG Shipping, INC	89-1949	06/20/89
Teleinvest AS, Telesoft, Telesoft	89-1953	06/20/89
Atmel Corporation, Honeywell Inc., Honeywell Solid State Electronic Division	89-1963	06/20/89
The 1984 Simmons Trust, Inland Steel Industries, Inc., Inland Steel Industries, Inc	89-1814	06/21/89
Swiss Aluminum Ltd., C.C. Packaging Inc., Cellu-Craft Inc	89-1841	06/21/89
Veba AG, Penn Virginia Corporation, Penn Virginia Corporation	89-1911	06/21/89
Parmount Communications Inc., R.E. Turner, Turner Broadcasting Systems, Inc	89-1955	06/21/89
The Mercade Group Inc., Robert Shipman, RJMJ, Inc.	89-1830	06/22/89
Berisford International plc, Siebe plc, Robicon Corporation	89-1838	06/22/89
Reynold Nebel, KAC, Inc., KAC, Inc	89-1901	06/22/89
Alliance Acquisition Corporation, Public Service Company of New Mexico, Alliance Telecommunication Corporation	89-1926	06/22/89
William O. Hunt, Public Service Company of New Mexico, Alliance Telecommunication Corporation	89-1927	06/22/89
Las Colinas Land Limited Partnership, Southland Financial Corporation, Las Colinas Corporation	89-1943	06/22/89
Wasserstein Perella Partners, L.P., The Gateway Corporation PLC, The Gateway Corporation PLC	89-2043	06/22/89
Wasserstein Perella Partners, L.P., The Gateway Corporation PLC, The Gateway Corporation PLC	89-2047	06/22/89
International Business Machines Corporation, Computer Task Group, Incorporated, Computer Task Group, Incorporated	89-1696	06/23/89
Kaydon Corporation, KD Holdings Corp., KDI Electro-Tec Corp	89-1938	06/23/89
ITT Corporation, Mark B. Herman, PICO Credit Corporation	89-1958	06/23/89
Bunzl plc, Advance Enterprises, Inc., Advance Enterprises, Inc	89-1971	06/23/89
Charterhouse Equity Partners L.P., Maxwell Communication Corporation plc, Gump's, Inc. (CA) & Gump's Inc. (TX)	89-1874	06/23/89
Merill Lynch Capital Appreciation Partnership No. B-I "Holdings", "Holdings"	89-1979	06/23/89
Dudley J. Hughes, Placer Dome, Inc., Prairie Producing Company	89-1984	06/23/89
Placer Dome, Inc., Dudley J. Hughes, Hughes Eastern Petroleum, Inc.	89-1985	06/23/89
Itel Corporation, Jeffrey Solomon, Paul Jeffrey Company, Inc., P.J. Equities, Steelway	89-1998	06/23/89
Itel Corporation, Jeffrey Solomon, Paul Jeffrey Company, Inc., P.J. Equities, Steelway	89-1999	06/23/89
GATX Corporation, NCNB Corporation, NCNB Texas National Bank	89-2000	06/23/89
Conrad Cairitz, CBC Holding Co., Charles Bassett Canter, Ltd	89-2004	06/23/89
Tollman-Hundley Acquisition Corp., Reliance Capital Group, L.P., Daye Corp.	89-2009	06/23/89
American Exploration Company, Plains Resources Inc., Plains Resources Inc.	89-2012	06/23/89
Capital Holding Corporation, Southlife Holding Company, Southlife Holding Company	89-2017	06/23/89
Buffalo Brass Company, Inc., Atlantic Richfield Company, Atlantic Richfield Company	89-2018	06/23/89
The St. Paul Companies, Inc., Pearco Realty Investors Limited Partnership, Pearco Realty Investors Limited Partnership	89-2024	06/23/89

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 061289 AND 062389—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
E.H. Arnold, General Mills, Inc., Vroman Foods, Inc., and Toledo Frigid Lines, Inc.	89-2025	06/23/89

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, DC 20580, (202) 326-3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 89-15519 Filed 6-29-89; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

On Fridays, the Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those information collections recently submitted to OMB.

1. Hill-Burton Community Services Assurance Report, Triennial IV—0990-0096—revision—The Community Services Assurance Report provides information on community services provided by Hill-Burton recipients. The Public Health Service Act (Titles VI and XVI) requires that this information be obtained periodically to enable assessment of the compliance of recipient Hill-Burton health facilities with their community services assurances. Respondents: State or local governments, non-profit institutions; Number of Respondents: 6300; Frequency of Response: Every 3 years; Annual Number of Responses: 2100; Average Burden per Response: 52.5 hours; Estimated Annual Burden: 110,250 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 245-6511. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Date: June 19, 1989.

James F. Trickett,

Deputy Assistant Secretary for Management and Acquisition.

[FR Doc. 89-15319 Filed 6-29-89; 8:45 am]

BILLING CODE 4150-04-M

Family Support Administration

Forms Submitted to the Office of Management and Budget for Clearance

The Family Support Administration (FSA) will publish on Fridays, information collection packages submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Since the last scheduled publication on June 9, 1989 the following packages were submitted to OMB:

(For a copy of packages, call the FSA, Reports Clearance Officer on 202-252-5598).

1. Refugee Program Expenditures—FSA-602—This form is used to issue quarterly Grant awards, make necessary adjustments to these awards, and to report to Congress on State Refugee assistance activities and expenditures. The level and frequency of State reporting is determined by high and low levels of refugee resettlement. States with a high level report quarterly, and States with a low level report annually. Respondents: States; Number of Respondents: 29 and 21; Frequency of Response: Quarterly and Annually; Average Burden per Response: ¾ hour and 2 hours; Estimated Annual Burden: 129 hours (87 hours plus 42 hours).

2. State Estimate Form—ORR-1—This form is used to ensure effective program planning and to meet legislative requirements of the Refugee Act of 1980, (Pub. L. 96-212). States are required to submit estimates of the nature, costs and provisions of services and assistance to refugees. Respondents: States; Number of Respondents: 50; Frequency of Response: 1; Average Burden per Response: 30 minutes; Estimated Annual Burden: 25 hours.

OMB Desk Officer: Justin Kopca.

Written comments and recommendations for the proposed information collection should be sent directly to the OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3201, 725 17th Street, NW., Washington, DC 20503.

Date: June 23, 1989.

Sylvia E. Vela,

Deputy Associate Administrator, Office of Management and Information Systems.

[FR Doc. 89-15363 Filed 6-29-89; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 89M-0197]

Alcon Laboratories; Premarket Approval of Polypropylene Suture, Nonabsorbable Surgical Suture, U.S.P. (Clear or Blue)

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Alcon Laboratories, Inc., Fort Worth, TX, for premarket approval, under the Medical Device Amendments of 1976, of the Alcon Polypropylene Suture, Nonabsorbable Surgical Suture, U.S.P. (Clear or Blue). This device is to be manufactured under an agreement with Sharpoint, Reading, PA, which has authorized Alcon Laboratories, Inc., to incorporate information contained in its approved premarket approval application for the Sharpoint Polypropylene Suture, Nonabsorbable Surgical Suture, U.S.P. (Clear or Blue) for ophthalmic use. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of May 31, 1989, of the approval of the application.

DATES: Petitions for administrative review by July 31, 1989.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

BEST COPY AVAILABLE

FOR FURTHER INFORMATION CONTACT: Kenneth A. Palmer, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7238.

SUPPLEMENTARY INFORMATION: On January 6, 1989, Alcon Laboratories, Inc., Fort Worth, TX 76115, submitted to CDRH an application for premarket approval of Polypropylene Suture, Nonabsorbable Surgical Suture, U.S.P. (Clear or Blue). The device is indicated for use in soft tissue approximation in ophthalmic surgery. The application includes authorization from Sharpoint, Reading, PA 19608, to incorporate information contained in its approved premarket approval application for the Sharpoint Polypropylene Suture, Nonabsorbable Surgical Suture, U.S.P. (Clear or Blue).

On May 31, 1989, CDRH approved the application by letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Kenneth A. Palmer (HFZ–410), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identity the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before July 31, 1989, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: June 22, 1989.

Walter E. Gundaker,

Acting Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 89–15492 Filed 6–29–89; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 89M–0193]

Cook, Inc.; Premarket Approval of the Cook Bird's Nest Vena Cava Filter

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Cook, Inc., Bloomington, IN, for premarket approval, under the Medical Device Amendments of 1976, of the Cook Bird's Nest Vena Cava Filter. After reviewing the recommendation of the Circulatory System Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of April 28, 1989, of the approval of the application.

DATE: Petitions for administrative review by July 31, 1989.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Shang W. Hwang, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7371.

SUPPLEMENTARY INFORMATION: On May 9, 1988, Cook, Inc., Bloomington, IN 47402, submitted to CDRH an application for premarket approval of the Cook Bird's Nest Vena Cava Filter. The filter is used for filtration of inferior vena cava blood to prevent pulmonary thromboembolism (PTE). The indications for use are: (1) In patients with PTE with anticoagulant therapy contraindications or complications; (2) in patients with PTE with anticoagulant failure, i.e., recurrent PTE despite anticoagulant therapy; (3) prophylactically in patients with deep vein thrombosis at great risk for PTE, or patients with a history of PTE about to undergo a surgical procedure.

On November 28, 1988, the Circulatory System Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On April 28, 1989, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Shang W. Hwang (HFZ–450), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before July 31, 1989, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: June 22, 1989.

Walter E. Gundaker,

Acting Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 89–15491 Filed 6–29–89; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 89M–0194]

Abbott Laboratories; Premarket Approval of Dextran HM 32%

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Abbott Laboratories, North Chicago, IL, for premarket approval, under the Medical Device Amendments of 1976, of the Dextran HM 32%. After reviewing the recommendation of the Obstetrics and Gynecology Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of May 30, 1989, of the approval of the application.

DATES: Petitions for administrative review by July 31, 1989.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Raju G. Kammula, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: On April 12, 1988, Abbott Laboratories, North Chicago, IL 60064, submitted to CDRH an application for premarket approval of the Dextran HM 32%. The Dextran HM 32% is a solution of 32 percent Dextran 70 in 10 percent dextrose and indicated for use with the hysteroscope as an aid in distending the uterine cavity and in irrigating and visualizing its surfaces.

On March 7, 1989, the Obstetrics and Gynecology Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On May 30, 1989, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file with the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Raju G. Kammula (HFZ–470), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before July 31, 1989, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: June 22, 1989.

Walter E. Gundaker,

Acting Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 89–15423 Filed 6–29–89; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 89M–0187]

Alcon Laboratories, Inc.; Premarket Approval of Models C318, C319, C329, C338, C339, C349, and C389 Posterior Chamber Intraocular Lenses

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of a supplemental application by Alcon Laboratories, Inc., Brentwood, TN, for premarket approval, under the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94–295, 90 Stat. 539, 583), of the Models C318, C319, C329, C338, C339, C349, and C389 Ultraviolet-Absorbing Posterior Chamber Intraocular Lenses. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of May 4, 1989, of the approval of the application.

DATES: Petitions for administrative review by July 31, 1989.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets

Management Branch (HFA 305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nancy C. Brogdon, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–8261.

SUPPLEMENTARY INFORMATION: On October 13, 1988, Alcon Laboratories, Inc., Brentwood, TN 37027, submitted to CDRH a supplemental application for premarket approval of the Models C318, C319, C329, C338, C339, C349, and C389 Ultraviolet-Absorbing Posterior Chamber Intraocular Lenses. The devices are intended for primary implantation for the visual correction of aphakia in patients 60 years of age or greater. They are designed for ciliary sulcus or capsular bag placement following the removal of a cataractous crystalline lens by extracapsular cataract extraction. The devices are available in a range of powers from 10 diopters (D) through 30 D in 0.5 D increments.

On January 26, 1989, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On May 4, 1989, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH. Under the amendments, intraocular lenses are regulated as class III devices (premarket approval).

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved final labeling is available for public inspection at CDRH—contact Nancy C. Brogdon (HFZ–460), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before July 31, 1989, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelagated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: June 22, 1989.

Walter E. Gundaker,

Acting Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 89–15424 Filed 6–29–89; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

[BERC–629–FNC]

RIN 0938–AE03

Medicare Program; Schedule of Limits on Home Health Agency Costs Per Visit for Cost Reporting Periods Beginning On or After July 1, 1989

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final notice with comment period.

SUMMARY: This final notice with comment period sets forth an updated schedule of limits on home health agency (HHA) costs that may be reimbursed under the Medicare program. This updated schedule of limits applies to cost reporting periods beginning on or after July 1, 1989. As required by section 4026(a) of the Ommibus Budget Reconciliation Act of 1987 as amended by section 411(d)(5) of the Medicare Catastrophic Coverage Act of 1988, the updated schedule of limits incorporates the use of an HHA specific wage index.

EFFECTIVE DATE: The schedule of limits is effective for cost reporting periods beginning on or after July 1, 1989.

Comment Date: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on August 29, 1989.

ADDRESSES: Mail comments to the following addresses:

Health Care Financing Administration, Department of Health and Human Services, Attn: BERC–629–FNC, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC.

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments.

In commenting, please refer to file code BERC–629–FNC. Comments will be available for public inspection as they are received, generally beginning about three weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202–245–7890).

FOR FURTHER INFORMATION CONTACT: Ann Pash, (301) 966–4601.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1861(v)(1)(A) of the Social Security Act (the Act) authorizes the Secretary to establish limits on allowable costs incurred by a provider of services that may be reimbursed under the Medicare program, based on estimates of the costs necessary for the efficient delivery of needed health services. The limits may be applied to direct or indirect overall costs or to the costs incurred for specific items or services furnished by the provider. This provision of the statute is implemented under regulations at 42 CFR 413.30. Additional provisions specifically governing the limits applicable to HHAs are contained in section 1861(v)(1)(L) of the Act.

Under this authority, we have maintained limits on home health agency (HHA) per visit costs since 1979. The current schedule of limits, published in the Federal Register on October 18, 1988 (53 FR 40771), is applicable to HHA costs for cost reporting periods beginning on or after July 1, 1988. That schedule of limits is based on cost per visit data from Medicare cost reports beginning on or after October 1, 1985. These data were adjusted using the most recent market basket factors to reflect cost increases occurring between the cost reporting periods contained in the data base and December 31, 1988. The HCFA hospital wage index is used to adjust for area wage differences. This final notice provides an updated schedule that uses an HHA-specific wage index to adjust for area wage differences and takes into account the effects of inflation on HHA operating costs. It is applicable to cost reporting periods beginning on or after July 1, 1989.

On December 22, 1987, the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203) was enacted. Section 4026(a) of Pub. L. 100–203 amended section 1861(v)(1)(L) of the Act to provide that, in establishing the schedule of limits for cost reporting periods beginning on or after July 1, 1988, the Secretary will use a wage index that is based on audited wage data obtained for HHAs and base the limits on the most recent data available which may be for cost reporting periods beginning no earlier than July 1, 1985. Section 411(d)(5) of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100–360), which was enacted on July 1, 1988, provides for an extension of the effective date of the amendments made by section 4026(a) of Pub. L. 100–203 to July 1, 1989 and amended section 1861(v)(1)(L)(iii) of the Act to provide that the data used to construct the HHA-specific wage index and the schedule of limits for cost reporting periods beginning on or after July 1, 1989 must be "verified" rather than "audited."

In addition, section 1861(v)(1)(L)(iii) of the Act was amended by section 411(d)(5)(A)(ii) of Pub. L. 100–360 to provide that in the case of an HHA that refuses to provide data or provides false data requested by the Secretary for purposes of constructing an HHA wage index, the Secretary may withhold up to five percent of the Medicare payment due that HHA until the data are satisfactorily provided. Implementation of these statutory provisions is discussed in detail below.

II. Update of Limits

The methodology used to develop the schedule of limits set forth in this final notice is the same as that used in setting the limits effective for cost reporting periods beginning on or after July 1, 1988. However, we are using a wage index based on HHA wage data as required by section 4026(a) of Pub. L. 100–203, and the cost limits have been updated to reflect the cost increases occurring between the cost reporting periods for the data contained in the data base and December 31, 1989.

A. Data Used

To develop the schedule of limits that was published in the Federal Register on October 18, 1988, we extracted actual cost per visit data from Medicare cost reports for periods beginning on or after October 1, 1985. We then adjusted the data using the latest available market basket factors to reflect cost increases occurring between the cost reporting periods contained in our data base and December 31, 1988. In this final notice, we have updated that data using the most recent market basket factors to reflect cost increases occurring between the cost reporting periods contained in the data base and December 31, 1989 (the midpoint of the first cost reporting period to which the limits will apply).

Even though these are the most recent data available, we recognize that Pub. L. 100–203 contains a provision the implementation of which may result in some HHAs incurring some costs that will not be reflected in the cost limits. Section 4021 of Pub. L. 100–203 requires changes in home health aide training and certification. The initial changes are effective July 1, 1989. It is not possible to estimate the overall impact, if any, this provision will have on an agency's total cost. However, this will present a problem only if the agency's costs exceed the cost limits because of these additional training requirements. In those instances in which an HHA's costs do exceed the cost limits because of these training requirements, an agency could apply for an exception to the cost limits under the exceptions process outlined in § 413.30. This situation could be recognized as an "extraordinary circumstance" as defined at § 413.30(f)(2).

B. Wage Index

The wage index is used to adjust the labor-related portion of the limits and the administrative and general (A&G) add-on to reflect differing wage levels among areas. In setting the current schedule of limits, we used the HCFA hospital wage index that was developed based on 1982 hospital salary data.

As discussed above, section 1861(v)(1)(L)(iii)(I) of the Act requires that, in establishing the HHA cost limits for cost reporting periods beginning on or after July 1, 1989, we use a wage index based on wage data obtained from HHAs. To meet this requirement, we instituted a special HHA data collection.

We obtained from our fiscal intermediaries copies of selected worksheets from the HHA Medicare cost reports for cost reporting periods beginning on or after October 1, 1985 and ending before September 1, 1987. We requested that intermediaries submit worksheets from desk-reviewed, settled, or field-audited cost reports only. If a desk-reviewed, settled, or field-audited cost report was not available for a particular HHA, the intermediary was instructed to ensure that the specific wage data on the cost report that was available were reasonable and properly reported.

We obtained wage data for 5,062 home health agencies. The data were edited for consistency. When errors were discovered, the intermediaries were contacted for corrected data. If corrected data could not be obtained, the data from that HHA were excluded from the data base. Also, short and long period cost reports (that is, those with fewer than 350 days or more than 380 days) were excluded from the data base before the wage index values were computed. Our final data base contained wage data for 4,253 HHAs.

We computed the HHA wage index using the data from the 4,253 HHAs as follows:

Step 1. For each HHA in the data base, the gross salaries were adjusted to account for actual and projected rates of increase in wages occurring between the midpoint of the HHA's cost reporting period and December 31, 1989. This adjustment was based on the rate of increase in the wage and salary portion of the HHA market basket, described below in section III.C. of this notice, and was done to eliminate any distortion in the data caused by differing HHA cost reporting years.

Step 2. For each HHA, the adjusted salaries were divided by total reported hours to obtain an adjusted hourly salary.

Step 3. HHAs with an aberrant hourly wage were excluded from the data base. An aberrant hourly wage was defined as less than $3.35 (the minimum wage) or greater than $24.89 (3.5 times the gross national average wage). The gross national average wage was computed

by dividing the total adjusted wages for all HHAs in the data base by the total reported hours for all HHAs in the data base.

Step 4. A national average hourly wage was then computed by dividing the total adjusted salaries of all remaining HHAs in the data base by the total reported hours of all remaining HHAs.

Step 5. All remaining HHAs were sorted by urban or rural location. An urban area is a Metropolitan Statistical Area (MSA) or a New England County Metropolitan Area (NECMA) and a rural area is any area outside an urban area. An average hourly wage was obtained for each location by dividing the total adjusted salaries for all HHAs within that location by their total reported hours.

Step 6. A wage index value was computed for each urban and rural area by dividing the average hourly wage for the area by the average national hourly wage.

Step 7. We used the following methodology to compute a wage index value for each of the four MSAs for which no HHA-reported wage data were included in the data base.

- If the nonreporting MSA is contiguous to only one other MSA, the wage index value for the contiguous MSA was used for the nonreporting MSA.
- If the nonreporting MSA is contiguous to more than one other MSA, we computed a weighted average hourly wage for HHAs in all of the contiguous MSAs by adding the wage and hour data for all of the contiguous MSAs and then dividing the combined wage data by the combined reported hours for the contiguous MSAs. The weighted average hourly wage was used to compute the wage index value for the nonreporting MSA in accordance with the computation in Step 6, above.
- If the nonreporting MSA is not contiguous to any other MSA, we computed a weighted average hourly wage for all HHAs within MSAs in that State by adding the wage and hour data for each of those MSAs and then dividing the combined wage data by the combined reported hours for those MSAs. The weighted average hourly wage was used to compute a wage index value for the nonreporting MSA in accordance with the computation set forth in Step 6 above.

We used this methodology to compute the wage index values for the following MSAs: Athens, GA; Florence, SC; Santa Cruz, CA; and Yuba City, CA.

The resulting HHA wage index, which we are using in establishing the schedule of limits for HHAs for cost reporting periods beginning on or after July 1, 1989, is published in Tables IVa and IVb of section VII, below.

C. Limitation on the Impact of the Change to an HHA-Specific Wage Index

The change from a wage index based on hospital wage data to an HHA-specific wage index results in some area wage index values increasing and some decreasing. While changes were to be expected, the magnitude of some of the changes is quite large. There are 43 MSAs in which the wage index value decreases by 20 percent or more. There are 36 MSAs in which the wage index value increases by 20 percent or more.

We recognize that such dramatic shifts create problems and believe that some measure is needed to mitigate the effects of abrupt changes in individual wage index values. We are limited, however, in what action we can take since we are required by law to use an HHA-specific wage index. We believe that the best approach to ease the transition is to mitigate the impact on the areas most affected. Therefore, we are placing a limit on the amount of the decrease or increase that an HHA may experience because of the change in wage indexes. We are placing a limit of 20 percent on the amount that the HHA's cost limit may increase or decrease when compared to the prior year's cost limit adjusted for inflation.

III. Provisions of the HHA Schedule of Limits

The schedule of limits set forth below was calculated using 112 percent of the mean cost of free-standing HHAs and is based on the latest cost data available at this time and adjusted by the latest estimates in the market basket index. The schedule of limits effective for cost reporting periods beginning on or after July 1, 1989 provides for the following:

A. A classification system based on whether an HHA is located within an MSA, a NECMA or a non-MSA area. (See Tables IVa and IVb in section VII, below, for the listing of MSA/NECMA areas.)

B. The use of a single schedule of limits for hospital-based and freestanding agencies. This single limit is based on the cost experience of freestanding agencies. For each hospital-based discipline, we will provide for an add-on adjustment of the freestanding HHA limit (which is equal to 12.20 percent of the mean cost for the MSA hospital-based group and 12.79 percent for the non-MSA hospital-based group) to account for the higher A&G costs resulting from Medicare cost allocation requirements. These percentages represent the relationship of the A&G costs stepped down from the hospital to total costs. (For a full discussion of the development of the add-on, see the September 29, 1982 notice, 47 FR 42904.) The labor-related portion of the add-on, adjusted by the appropriate wage index, plus the nonlabor portion, will be added to each freestanding limit to determine the per discipline limits for hospital-based agencies.

C. The use of the following market basket index developed from the price of goods and services purchased by HHAs to account for the impact of changing wage and price levels on HHA costs. The limit values contained in this schedule reflect the latest available actual and projected rates of inflation in HHA expenses. The categories used were identified through an analysis of 1977 Medicare cost reports and other available home health industry surveys. The categories of expenses are weighted according to the estimated proportion of HHA costs attributable to each category.

The categories used in the market basket contained in this schedule have not changed from those used for the July 1, 1988 schedule. However, the relative cost shares used change over time because of differences in the rate of increase in the various price variables. Categories with higher rates of price increases receive higher weights and categories with lower rates of price increases receive lower weights.

In developing the relative weights used in the market basket index contained in this schedule, we obtained historical and projected rates of increase in the resource prices for each category. The price variables and the source of the forecast for calendar years 1988 through 1990 are identified in the third and fourth columns of the updated market basket included in this final notice.

HOME HEALTH AGENCY INPUT PRICE INDEX: COST CATEGORIES, RELATIVE IMPORTANCE, FORECASTERS, AND PRICE VARIABLES USED

Cost categories	Relative [1] importance 1990	Forecaster of [2] percent (1988–1990)	Price variables used
Wages and salaries	68.014	DRI-CFS	Average hourly earnings of nonsupervisory private hospital workers (SIC 806). Source: U.S. Dept. of Labor, Bureau of Labor Statistics, Employment and Earnings (Monthly).
Employee benefits	7.358	DRI-TL	Supplements to wages and salaries per worker in nonagriculture establishments. Source: For supplements to wages and salaries—U.S. Dept. of Commerce, Bureau of Economic Analysis, Survey of Current Business (monthly). For total employment—U.S. Dept. of Labor, Bureau of Labor Statistics, Employment and Earnings (Monthly).
Transportation	4.042	DRI-TL	Transportation component of Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, Monthly Labor Review.
Office Costs	2.829	DRI-TL	Services Component of Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, Monthly Labor Review.
Medical nursing	2.524	HCFA-HHS	Medical equipment and supplies component of the supplies and rental Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, Monthly Labor Review.
Rent	1.156	DRI-CFS	Residential rent component of Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Statistics, Monthly Labor Review.
Nonrental space	1.062	DRI-TL	Composite Fuel and Other Utilities Index. Source: HHS-HCFA Community Hospital Price Index.
Miscellaneous	6.143	DRI-TL	Consumer Price Index for all items, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, Monthly Labor Review.
Contract services	6.872		Weighted mean of price variables for the preceding eight items.
Total	100.00		

[1] Relative cost weights were derived initially from special studies by HCFA using data primarily from 1976 HCFA Medicare cost reports and data from the Council of Home Health Agencies and Community Health Services. A Laspeyres price index was constructed using these 1976 weights and the price variables indicated in this table. The relative importance values have changed over time in accordance with price changes for each price variable. Cost categories with relatively higher price increases get higher relative importance values and vice versa.

[2] DRI-TL refers to Data Resources, Inc., Trendlong (TL 0189), 29 Hartwell Avenue, Lexington, Massachusetts 02173. DRI-CFS refers to Data Resources, Inc., Cost Forecasting Services (CFS-891), 1750 K Street NW., Washington, DC 20006.

D. An adjustment to the limits if the estimated market basket rate differs from the actual rate by more than 5/10 of one percentage point (that is, higher or lower).

E. The use of the HHA-specific wage index (see discussion above). The wage index is used to adjust the labor-related portion of the limits and the A&G add-on to reflect differing wage levels among the areas (MSA/NECMA and non-MSA) in which HHAs are located. The employee wage portion of the market basket index (68.014 percent) and the employee benefits portion (7.358 percent), plus a factor representing a proportionate share of contract services (5.562 percent), are used to determine the labor component (80.934 percent) of all HHA per visit costs used to set the limits.

F. Separate treatment of the labor-related and nonlabor components of per visit costs. The separate components of costs are calculated by obtaining actual HHA cost data for each agency for cost periods beginning on and after October 1, 1985 and increasing those data by the actual and projected increases in the HHA market basket. We then separate each HHA's per visit costs into labor and nonlabor portions, and divide the labor portion by the wage index value for the agency's location to control for the effect of geographic variations in prevailing wage levels. Separate means are computed for the labor and nonlabor components of per visit costs. For each comparison group, the resulting amounts are shown in Table II of section VI, below

G. The use of a cost of living adjustment to the nonlabor portion of the limit for HHAs in Alaska, Hawaii, Puerto Rico, and the Virgin Islands.

H. Limits that are determined for the per visit cost of each type of service: Skilled nursing care, physical therapy, speech pathology, occupation therapy, medical social services, and home health aide.

I. A limit of 20 percent in the amount that the HHA's cost limit may increase or decrease when compared to the prior year's cost limit adjusted for inflation. This adjustment is intended to mitigate the impact of converting to an HHA-specific wage index.

J. Application of the limits in the aggregate after the HHA's actual costs are adjusted. An HHA's actual costs are adjusted for individual items of cost that are found to be excessive under Medicare principles of provider reimbursement and for reimbursable costs that are not included in the limitation amount. The limits are applied in the aggregate to the costs remaining after these adjustments are made. Reimbursement will be limited to the lower of the actual costs or the cost limits.

IV. Methodology for Determining Cost Per Visit Limits

A. Data

For this final notice, the limit values were determined by extracting actual cost per visit data from Medicare cost reports for periods beginning on and after October 1, 1985 and ending before September 1, 1987. We then adjusted the data using the latest available market basket factors to reflect cost increases occurring between the cost reporting periods contained in our data base and December 31, 1989 (the midpoint of the first cost reporting period to which the limits will apply). The following annual percentage increases were used to compute the per visit costs:

Calendar year	Percent increase
1986	3.24 [1]
1987	4.35 [1]
1988	5.89 [2]
1989	6.20 [2]
1990	6.14 [2]
1991	5.98 [2]

[1] Final rule.

[2] Forecasted increases. The projected rate of increase in the market basket index will be adjusted to the actual inflation rate if the actual rate of increase differs from the estimated rate by more than 5/10 of one percentage point. We will notify the Medicare intermediaries of the actual rate of increase and advise them to adjust each HHA's cost limit at the time of final settlement.

B. Standardization for Wage Levels

After adjustment by the market basket index, we divided each HHA's per visit costs into labor and nonlabor portions. The labor portion of costs (80.934 percent) represents the 75.372 percent employee wage and benefit factor plus the 5.562 percent contract services factor from the market basket. We then divided the labor portion of per

visit costs by the wage index applicable to the HHA's location to arrive at an adjusted labor cost.

C. Adjustement for "Outliers"

We transformed all per visit cost data into their natural logarithms and grouped them by type of service and MSA/NECMA and non-MSA locations, in order to determine the mean cost and standard deviation for each group. We then eliminated all "outlier" costs, retaining only those per visit costs within two standard deviations from the mean in each service.

D. Basic Service Limit

A basic service limit equal to 112 percent of the mean labor and nonlabor portions of the per visit costs of freestanding HHAs is calculated for each type of service. (See Table II of section VI.)

V. Computing the Adjusted Limit

A. Adjustment of Limits by Wage Index

To arrive at the adjusted limit, which is to be applied to each service furnished by an HHA, the Medicare fiscal intermediary first multiplies the labor-related component of the limit for the comparison group by the appropriate wage index. (See Table II in section VI and Tables IVa and IVb in section VII.) The adjusted limit applicable to an HHA is the sum of the nonlabor component plus the adjusted labor-related component.

Example—Calculation of Adjusted Occupational Therapy Limit for a Freestanding HHA in Dallas, TX

Labor component (Table I)	$56.04
Wage index (Table IIIa)	X1.1906
Adjusted labor component	$66.72
Nonlabor component (Table I)	+14.29
Adjusted occupational therapy limit	$81.01

B. Adjustment for Reporting Year

If an HHA has a cost reporting period beginning on or after August 1, 1989, the adjusted per visit limit for each service is revised by a factor from Table V that corresponds to the month and year in which the cost reporting period begins. Each factor represents the compounded rate of monthly increase derived from the projected annual increase in the market basket index, and is used to account for inflation in costs that will occur after the date on which the limits become effective.

For example, an HHA's cost reporting period begins January 1, 1990. As calculated in the example in section V.A. of this final notice, the labor adjusted per visit limit for occupational therapy for this HHA's group is $81.01.

Computation of Revised Limit for Occupational Therapy

Adjusted per visit limit	$81.01
Adjustement factor from Table V	X 1.0305
Revised per visit limit	$83.48

In this example, the revised adjusted per visit limit for occupational therapy applicable to this HHA for the cost reporting period beginning January 1, 1990 is $83.48 per visit.

If an HHA uses a cost reporting period that is not 12 months in duration, a special calculation of the adjustment factor must be made. This results from the fact that projections are computed to the midpoint of the cost reporting period. For cost reporting periods of other than 12 months in duration, the calculation must be done for the midpoint of the specific cost reporting period. In such cases, the intermediary for the HHA must obtain this adustment factor from HCFA.

C. Adjustment for Hospital-Based Agencies

If an HHA participates in the Medicare program as part of a hospital that is required to file a HCFA–2552 cost report (hospital cost report) (see Chapters 12, 15, and 19 of the Provider Reimbursement Manual (HCFA Pub. 15–2)), and qualifies as hospital-based in accordance with the requirements specified in the schedule of limits published June 5, 1980 (45 FR 38014), the HHA is considered a hospital-based agency and is considered to be entitled to an adjustment of the per visit limit to account for higher A&G costs resulting from the Medicare cost allocation requirements. (See discussion of add-on in section III.B., above.) The intermediary will compute the adjusted cost limit as described in the example following Table III.

D. Comparison of the Limits With the Prior Year Cost Limits

The cost limits that result from the implementation of the provisions of this notice may not increase or decrease by more than 20 percent when compared to the cost limits for the cost reporting period beginning on and after July 1, 1988 and before July 1, 1989, adjusted for inflation. The instructions for computing the 1988 limits were published in the **Federal Register** on October 18, 1988 (53 FR 40771). The 1988 limits are adjusted for inflation using the factors published in Table 1, below.

Example 1: An HHA has a cost reporting period beginning January 1. Its 1988 occupational therapy limit was $69.56 (53 FR 40771). Its 1989 occupational therapy limit is $83.48 (section V.B. of this notice).

1988 limit	$69.56	
Inflation adjustment	× 1.0612	(TABLE 1)
Adjusted limit	73.82	
	× .20	
	$14.76	

The HHA's 1989 limit may not be more than $88.58 ($73.82 + $14.76) nor less than $59.06 ($73.82 − $14.76). Since its 1989 limit is $83.48, no adjustment is necessary.

Example 2: An HHA has a cost reporting period beginning October 1. Its 1988 skilled nursing limit was $60.73. Its 1989 skilled nursing limit is $85.92.

1988 limit	$60.73	
Inflation adjustment	× 1.0614	(TABLE 1)
Adjusted limit	$64.46	
	× .20	
	$12.89	

The HHA's 1989 limit may not be more than $77.35 ($64.46 + $12.89) nor less than $51.57 ($64.46 − $12.89). Since its 1989 limit would have been greater than $77.35 (that is, $85.92), the 1989 limit will be reduced to $77.35.

Example 3: An HHA has a cost reporting period beginning December 1. Its 1988 limit for home health aides was $45.46. Its 1989 limit for home health aides is $37.12.

1988 limit	$45.46	
Inflation adjustment	× 1.0613	(TABLE 1)
Adjusted limit	$48.25	
	× .20	
	$9.65	

The HHA's 1989 limit may not be more than $57.90 ($48.25 + $9.65) nor less than $38.60 ($48.25 − $9.65). Since its 1989 limit would have been less than $38.60 (that is, $37.12), the 1989 limit will be increased to $38.60.

TABLE I.—SPECIAL ADJUSTMENT FACTOR TO INFLATE COST LIMITS EFFECTIVE JULY 1, 1988 [1]

If the HHA cost reporting period begins—	The Adjustment factor is—
07/01/89	1.0615
08/01/89	1.0615
09/01/89	1.0614
10/01/89	1.0614

TABLE I.—SPECIAL ADJUSTMENT FACTOR TO INFLATE COST LIMITS EFFECTIVE JULY 1, 1988 [1]—Continued

If the HHA cost reporting period begins—	The Adjustment factor is—
11/01/89	1.0613
12/01/89	1.0613
01/01/90	1.0612
02/01/90	1.0612
03/01/90	1.0611
04/01/90	1.0611
05/01/90	1.0610
06/01/90	1.0610

[1] Based on projected market basket inflation rates of 6.20 for 1989, 6.14 percent for 1990, and 5.96 percent for 1991.

VI. Schedule of Limits

The schedule of limits set forth below will apply to cost reporting periods beginning on or after July 1, 1989. The intermediaries will compute the adjusted limits using the wage indexes published in Tables IVa and IVb of section VII and will notify each HHA they service of its applicable limits.

The HHA costs that are subject to the limits include the cost of medical supplies routinely furnished in conjunction with patient care. Durable medical equipment, orthotics, and prosthetics are reimbursed without regard to this schedule of limits. Payment for these items is made on the basis of a fee schedule and is excluded from the per visit cost. (See Chapter IV of the Home Health Agency Manual—HCFA Pub. 11).

The intermediary will determine the limit for each HHA by multiplying the number of Medicare visits for each type of service furnished by the HHA by the respective per visit cost limit. The sum of these amounts is compared to the HHA's total allowable cost.

Example: HHA A, a freestanding agency located in Richmond, Virginia made 5000 skilled nursing, 2000 physical therapy, and 4000 home health aide covered visits to Medicare beneficiaries during its 12-month cost reporting period beginning July 1, 1989.

The aggregate cost limit is determined as follows:

Type of visit	Visit	Nonlabor portion	Adjusted labor portion	Adjusted limit	Aggregate limit
Skilled nursing	5000	$14.05	$57.30	$71.35	$356,750
Physical therapy	2000	13.57	55.03	68.60	137,200
Home Health aide	4000	8.20	34.14	42.34	169,360
Aggregate cost limit					663,310

Before the limits are applied at cost settlement, the HHA's actual costs are reduced by the amount of individual items of cost (for example, administrative compensation or contract services) that are found to be excessive under Medicare principles of provider reimbursement. In this regard, the fiscal intermediaries review the various reported costs taking into account such other Medicare principles as the cost guidelines for physical therapy under arrangements (see § 413.106) and the limitation on costs that are substantially out of line with those of comparable agencies (see § 413.9).

TABLE II.—PER VISIT LIMITS FOR HOME HEALTH AGENCIES

Type of visit	Limit	Labor portion	Nonlabor portion [1]
MSA (NECMA) location:			
Skilled nursing care	$71.18	$57.13	$14.05
Physical therapy	68.43	54.86	13.57
Speech pathology	74.19	59.40	14.79
Occupational therapy	70.33	56.04	14.29
Medical social services	101.61	80.58	21.03
Home health aide	42.24	34.04	8.20
Non-MSA location:			
Skilled nursing care	74.34	61.54	12.80
Physical therapy	74.40	61.63	12.77
Speech pathology	80.16	66.20	13.96
Occupational therapy	81.25	66.91	14.34
Medical social services	114.39	94.00	20.39
Home health aide	38.28	31.74	6.54

[1] Nonlabor portion of limits for HHAs located in Alaska, Hawaii, Puerto Rico, and the Virgin Islands are increased by multiplying them by the following cost-of-living adjustment factors.

Location	Adjustment factor
Alaska	1.250
Hawaii:	
Oahu	1.225
Kauai	1.175
Maui, Lanai, and Molokai	1.200
Hawaii (island)	1.150
Puerto Rico	1.100
Virgin Islands	1.125

TABLE III.—ADD-ON AMOUNTS FOR HOSPITAL-BASED HOME HEALTH AGENCIES

Type of visit	A & G add-on	Labor portion	Nonlabor portion
MSA (NECMA) location:			
Skilled nursing care	$10.37	$8.26	$2.11
Physical therapy	8.76	6.96	1.80
Speech pathology	9.48	7.55	1.93
Occupational therapy	9.35	7.39	1.96
Medical social services	14.83	11.63	3.20
Home health aide	5.35	4.26	1.09
Non-MSA location:			
Skilled nursing care	11.05	9.16	1.89
Physical therapy	11.18	9.27	1.91
Speech pathology	11.06	9.13	1.93
Occupational therapy	12.39	10.09	2.30
Medical social services	17.15	14.01	3.14
Home health aide	5.38	4.47	0.91

Example

A hospital-based agency in Orlando, FL has a wage index of .9722. It provides the following services:
Skilled nursing
Physical therapy
Home health aides
The published limits for that agency are:

	Limit		Add-on	
	Labor portion	Nonlabor portion	Labor portion	Nonlabor portion
SN	$57.13	$14.05	$8.26	$2.11
PT	54.86	13.57	6.96	1.80
HHA	34.04	8.20	4.26	1.09

Calculation of Hospital-Based Limit With Add-On

	SN	PT	HHA
Limit labor portion	$57.13	$54.86	34.04
Add-on labor portion	+8.26	+6.96	+4.26
Total labor portion	$65.39	$61.82	$38.30
Wage index	×0.9722	×0.9722	×0.9722
Adjusted labor portion	$63.57	$60.10	$37.24
Limit nonlabor portion	14.05	13.57	8.20
Add-on nonlabor portion	+2.11	+1.80	+1.09
Adjusted limits	$79.73	$75.47	$46.53

VII. Wage Indexes

TABLE IVa.—WAGE INDEX FOR URBAN AREAS

Urban area (Constituent counties or county equivalents)	Wage index
Abilene, TX	0.8658
Taylor, TX	
Aguadilla, PR	0.4399
Aguada, PR	
Aguadilla, PR	
Isabella, PR	
Moca, PR	
Akron, OH	1.0768
Portage, OH	
Summit, OH	
Albany, GA	0.7969
Dougherty, GA	
Lee, GA	
Albany-Schenectady-Troy, NY	1.0394
Albany, NY	
Greene, NY	
Montgomery, NY	
Rensselaer, NY	
Saratoga, NY	
Schenectady, NY	
Albuquerque, NM	1.1832
Bernalillo, NM	
Alexandria, LA	0.8725
Rapides, LA	
Allentown-Bethlehem, PA–NJ	1.0405
Warren, NJ	
Carbon, PA	
Lehigh, PA	
Northampton, PA	
Altoona, PA	0.8736
Blair, PA	
Amarillo, TX	1.0207
Potter, TX	
Randall, TX	
Anaheim-Santa Ana, CA	1.3792
Orange, CA	
Anchorage, AK	1.4916
Anchorage, AK	
Anderson, IN	0.6965
Madison, IN	
Anderson, SC	0.9950
Anderson, SC	
Ann Arbor, MI	1.1513
Washtenaw, MI	
Anniston, AL	0.7908
Calhoun, AL	
Appleton-Oshkosh-Neenah, WI	0.7379
Calumet, WI	
Outagamie, WI	
Winnebago, WI	
Arecibo, PR	0.4609
Arecibo, PR	
Camuy, PR	
Hatillo, PR	
Quebradillas, PR	
Asheville, NC	0.8571
Buncombe, NC	
Athens, GA	1.0793
Clarke, GA	
Jackson, GA	
Madison, GA	
Oconee, GA	
Atlanta, GA	1.0793
Barrow, GA	
Butts, GA	
Cherokee, GA	
Clayton, GA	
Cobb, GA	
Coweta, GA	
De Kalb, GA	
Douglas, GA	
Fayette, GA	
Forsyth, GA	
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA	
Paulding, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
Atlantic City NJ	1.1921
Atlantic, NJ	
Cape May, NJ	
Augusta, GA–SC	1.0380
Columbia, GA	
McDuffie, GA	
Richmond, GA	
Aiken, CS	
Aurora-Elgin, IL	1.0383
Kane, IL	
Kendall, IL	
Austin, TX	1.1062
Hays, TX	
Travis, TX	
Williamson, TX	
Bakersfield, CA	1.4428
Kern, CA	
Baltimore, MD	1.2008
Anne Arundel, MD	
Baltimore, MD	
Baltimore City, MD	
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Annes, MD	
Bangor, ME	0.9261
Penobscot, ME	
Baton Rouge, LA	0.9000
Ascension, LA	
East Baton Rouge, LA	
Livingston, LA	
West Baton Rouge, LA	
Battle Creek, MI	0.8582
Calhoun, MI	
Beaumont-Port Arthur, TX	0.9064
Hardin, TX	
Jefferson, TX	
Orange, TX	
Beaver County, PA	1.1905
Beaver, PA	
Bellingham, WA	0.7568
Whatcom, WA	
Benton Harbor, MI	0.9500
Berrien, MI	
Bergen-Passaic, NJ	1.0125
Bergen, NJ	
Passaic, NJ	
Billings, MT	1.2197
Yellowstone, MT	
Biloxi-Gulfport, MS	0.8657
Hancock, MS	
Harrison, MS	
Binghamton, NY	0.9149
Broome, NY	
Tioga, NY	
Birmingham, AL	0.9570
Blount, AL	
Jefferson, AL	
Saint Clair, AL	
Shelby, AL	
Walker, AL	
Bismarck, ND	0.7104
Burleigh, ND	
Morton, ND	
Bloomington, IN	0.5329
Monroe, IN	
Bloomington-Normal, IL	1.1495
McLean, IL	
Boise City, ID	1.1529
Ada, ID	
Boston-Lawrence-Salem-Lowell-Brockton, MA	1.0613
Essex, MA	
Middlesex, MA	
Norfolk, MA	
Plymouth, MA	
Suffolk, MA	
Boulder-Longmont, CO	1.0746
Boulder, CO	
Bradenton, FL	1.0548
Manatee, FL	
Brazoria, TX	1.2914
Brazoria, TX	
Bremerton, WA	1.0505
Kitsap, WA	
Bridgeport-Stamford-Norwalk-Danbury, CT	1.0311
Fairfield, CT	
Brownsville-Harlingen, TX	0.5000
Cameron, TX	
Bryan-College Station, TX	0.9999
Brazos, TX	
Buffalo, NY	1.1739
Erie, NY	
Burlington, NC	1.0418
Alamance, NC	
Burlington, VT	0.8675
Chittenden, VT	
Grand Isle, VT	
Caguas, PR	0.5263
Caguas, PR	
Gurabo, PR	
San Lorenz, PR	
Aguas Buenas, PR	
Cayey, PR	
Cidra, PR	
Canton, OH	1.1396
Carroll, OH	
Stark, OH	
Casper, WY	0.8065
Natrona, WY	
Cedar Rapids, IA	0.7823
Linn, IA	
Champaign-Urbana-Rantoul, IL	0.9480
Champaign, IL	
Charleston, SC	0.8239
Berkeley, SC	
Charleston, SC	
Dorchester, SC	
Charleston, WV	1.0207
Kanawha, WV	
Putnam, WV	
Charlotte-Gastonia-Rock Hill, NC–SC	1.0538
Cabarrus, NC	
Gaston, NC	
Lincoln, NC	
Mecklenburg, NC	
Rowan, NC	
Union, NC	
York, SC	
Charlottesville, VA	1.5112
Albermarle, VA	
Charlottesville City, VA	
Fluvanna, VA	
Greene, VA	
Chattanooga, TN–GA	0.8399
Catoosa, GA	
Dade, GA	
Walker, GA	
Hamilton, TN	
Marion, TN	
Sequatchie, TN	
Cheyenne, WY	0.9589
Laramie, WY	
Chicago, IL	1.1772
Cook, IL	
Du Page, IL	
McHenry, IL	
Chico, CA	1.1031
Butte, CA	
Cincinnati, OH–KY–IN	1.1636
Dearborn, IN	
Boone, KY	
Campbell, KY	
Kenton, KY	
Clermont, OH	
Hamilton, OH	
Warren, OH	
Clarksville-Hopkinsville, TN–KY	1.0562
Christian, KY	
Montgomery, TN	
Cleveland, OH	1.0660
Cuyahoga, OH	
Geauga, OH	
Lake, OH	
Medina, OH	
Colorado Springs, CO	0.9701
El Paso, CO	
Columbia MO	0.8949
Boone, MO	
Columbia, SC	1.0096
Lexington, SC	
Richland, SC	
Columbus, GA–AL	0.5827
Russell, AL	
Chattanoochee, GA	
Muscogee, GA	
Columbia, OH	0.9053
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
Union, OH	
Curpus Christi, TX	0.9427
Nueces, TX	
San Patricio, TX	
Cumberland, MD–WV	0.9057
Allegany, MD	
Mineral, WV	
Dallas, TX	1.1906

TABLE IVa.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Kaufman, TX	
Rockwall, TX	
Danville, VA	1.0568
Danville City, VA	
Pittsylvania, VA	
Davenport-Rock Island-Moline, IA–IL	0.8467
Scott, IA	
Henry, IL	
Rock Island, IL	
Dayton-Springfield, OH	0.8738
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
Daytona Beach, FL	1.2374
Volusia, FL	
Decatur, AL	0.8151
Lawrence, AL	
Morgan, AL	
Decatur, IL	1.0379
Macon, IL	
Denver, CO	1.2361
Adams, CO	
Arapahoe, CO	
Denver, CO	
Douglas, CO	
Jefferson, CO	
Des Moines, IA	1.1227
Dallas, IA	
Polk, IA	
Warren, IA	
Detroit, MI	1.2097
Lapeer, MI	
Livingston, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
Saint Clair, MI	
Wayne, MI	
Dothan, AL	0.8508
Dale, AL	
Houston, AL	
Dubuque, IA	0.8726
Dubuque, IA	
Duluth, MN-WI	1.0027
St. Louis, MN	
Douglas, WI	
Eau Claire, WI	1.1216
Chippewa, WI	
Eau Claire, WI	
El Paso, TX	1.2656
El Paso, TX	
Elkhart-Goshen, IN	0.8843
Elkhart, IN	
Elmira, NY	1.4571
Chemung, NY	
Enid, OK	0.9724
Garfield, OK	
Erie, PA	1.0280
Erie, PA	
Eugene-Springfield, OR	1.3524
Lane, OR	
Evansville, IN-KY	0.9191
Posey, IN	
Vanderburgh, IN	
Warrick, IN	
Henderson, KY	
Fargo-Moorhead, ND-MN	0.9499
Clay, MN	
Cass, ND	
Fayetteville, NC	1.2244
Cumberland, NC	
Fayetteville-Springdale, AR	0.7779
Washington, AR	
Flint, MI	1.0526
Genesee, MI	
Florence, AL	0.8055
Colbert, AL	
Lauderdale, AL	
Florence, SC	1.0588
Florence, SC	
Fort Collins-Loveland, CO	1.0948
Larimor, CO	
Fort Lauderdale-Hollywood-Pompano Beach, FL	1.1717
Broward, FL	
Fort Myers-Cape Coral, FL	1.0372
Lee, FL	
Fort Pierce, FL	1.1381
Martin, FL	
St. Lucie, FL	
Fort Smith, AR-OK	0.8604
Crawford, AR	
Sebastian, AR	
Sequoyah, OK	
Fort Walton Beach, FL	0.8973
Okaloosa, FL	
Fort Wayne, IN	0.8482
Allen, IN	
De Kalb, IN	
Whitley, IN	
Fort Worth-Arlington, TX	0.5662
Johnson, TX	
Parker, TX	
Tarrant, TX	
Fresno, CA	1.0990
Fresno, CA	
Gadsden, AL	0.7963
Etowah, AL	
Gainesville, FL	1.2327
Alachua, FL	
Bradford, FL	
Galveston-Texas City, TX	1.2091
Galveston, TX	
Gary-Hammond, IN	0.8733
Lake, IN	
Porter, IN	
Glens Falls, NY	0.8824
Warren, NY	
Washington, NY	
Grand Forks, ND	1.0606
Grand Forks, ND	
Grand Rapids, MI	0.8473
Kent, MI	
Ottawa, MI	
Great Falls, MT	0.4004
Cascade, MT	
Greeley, CO	0.9482
Weld, CO	
Green Bay, WI	0.8727
Brown, WI	
Greensboro-Winston-Salem-High Point, NC	0.9795
Davidson, NC	
Davie, NC	
Forsyth, NC	
Guilford, NC	
Randolph, NC	
Stokes, NC	
Yadkin, NC	
Greenville-Spartanburg, SC	1.0329
Greenville, SC	
Pickens, SC	
Spartanburg, SC	
Hagerstown, MD	1.0527
Washington, MD	
Hamilton-Middletown, OH	1.1045
Butler, OH	
Harrisburg-Lebanon-Carlisle, PA	0.9066
Cumberland, PA	
Dauphin, PA	
Lebanon, PA	
Perry, PA	
Hartford-Middletown-New Britain-Bristol, CT	0.9889
Hartford, CT	
Middlesex, CT	
Tolland, CT	
Hickory, NC	1.0727
Alexander, NC	
Burke, NC	
Catawba, NC	
Honolulu, HI	0.8601
Honolulu, HI	
Houma-Thibodaux, LA	0.9462
Lafourche, LA	
Terrebonne, LA	
Houston, TX	1.0661
Fort Bend, TX	
Harris, TX	
Liberty, TX	
Montgomery, TX	
Waller, TX	
Huntington-Ashland, WV-KY-OH	0.8665
Boyd, KY	
Carter, KY	
Greenup, KY	
Lawrence, OH	
Cabell, WV	
Wayne, WV	
Huntsville, AL	1.1707
Madison, AL	
Indianapolis, IN	0.9903
Boone, IN	
Hamilton, IN	
Hancock, IN	
Hendricks, IN	
Johnson, IN	
Marion, IN	
Morgan, IN	
Shelby, IN	
Iowa City, IA	0.9418
Johnson, IA	
Jackson, MI	1.4639
Jackson, MI	
Jackson, MS	0.7499
Hinds, MS	
Madison, MS	
Rankin, MS	
Jackson, TN	0.8476
Madison, TN	
Jacksonville, FL	0.9438
Clay, FL	
Duval, FL	
Nassau, FL	
St. Johns, FL	
Jacksonville, NC	0.7687
Onslow, NC	
Janesville-Beloit, WI	0.8259
Rock, WI	
Jersey City, NJ	1.4063
Hudson, NJ	
Johnson City-Kingsport-Bristol, TN-VA	0.9747
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
Johnstown, PA	1.0053
Cambria, PA	
Somerset, PA	
Joliet, IL	0.8883
Grundy, IL	
Will, IL	
Joplin, MO	1.1946
Jasper, MO	
Newton, MO	
Kalamazoo, MI	1.2383
Kalamazoo, MI	
Kankakee, IL	1.0624
Kankakee, IL	
Kansas City, KS–MO	1.1709
Johnson, KS	
Leavenworth, KS	
Miami, KS	
Wyandotte, KS	
Cass, MO	
Clay, MO	
Jackson, MO	
Lafayette, MO	
Platte, MO	
Ray, MO	
Kenosha, WI	0.8752
Kenosha, WI	
Killeen-Temple, TX	0.7882
Bell, TX	
Coryell, TX	
Knoxville, TN	0.9363
Anderson, TN	
Blount, TN	
Grainger, TN	
Jefferson, TN	
Know, TN	
Sevier, TN	
Union, TN	
Kokomo, IN	0.8056
Howerd, IN	
Tipton, IN	
LaCrosse, WI	1.0596
LaCrosse, WI	
Lafayette, LA	0.9813
Lafayette, LA	
St. Martin, LA	
Lafayette, IN	0.8057
Tippecanoe, IN	
Lake Charles, LA	1.0879
Calcasieu, LA	
Lake County, IL	1.1453
Lake, IL	
Lakeland-Winter Haven, FL	1.0022
Polk, FL	
Lancaster, PA	0.8595
Lancaster, PA	
Lansing-East Lansing, MT	1.0493
Clinton, MI	
Eaton, MI	
Ingham, MI	
Laredo, TX	1.2215
Webb, TX	
Las Cruces, NM	0.7993
Dona, Ana, NM	
Las Vegas NV	1.2789
Clark, NV	
Lawrence, KS	0.7685
Douglas, KS	
Lawton, OK	1.1316
Comanche, OK	
Lewiston, Auburn, ME	0.8324
Androscoggin, ME	
Lexington-Fayette, KY	0.9420
Bourbon, KY	
Clark, KY	
Fayette, KY	
Jessamine, KY	
Scott, KY	
Woodford, KY	
Lima, OH	0.9012

TABLE IVa.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
Allen, OH	
Auglaize, OH	
Lincoln, NE	1.2683
Lancaster, NE	
Little Rock-North Little Rock, AR	0.8243
Faulkner, AR	
Lonoke, AR	
Pulaski, AR	
Saline, AR	
Longview-Marshall, TX	0.9199
Gregg, TX	
Harrison, TX	
Lorain-Elyria, OH	0.8843
Lorain, OH	
Los Angeles-Long Beach, CA	1.3039
Los Angeles, CA	
Louisville, KY–IN	0.8025
Clark, IN	
Floyd, IN	
Harrison, IN	
Bullitt, KY	
Jefferson, KY	
Oldham, KY	
Shelby, KY	
Lubbock, TX	0.8258
Lubbock, TX	
Lynchburg, VA	1.0648
Amherst, VA	
Campbell, VA	
Lynchburg City, VA	
Macon-Warner Robins, GA	0.7278
Bibb, GA	
Houston, GA	
Jones, GA	
Peach, GA	
Madison, WI	0.9620
Dane, WI	
Manchester-Nashua, NH	0.9961
Hillsborough, NH	
Mansfield, OH	1.5288
Richland, OH	
Mayaguez, PR	0.5741
Anasco, PR	
Cabo Rojo, PR	
Hormigueros, PR	
Mayaguez, PR	
San German, PR	
McAllen-Edinburg-Mission, TX	0.9086
Hidalgo, TX	
Medford, OR	1.2554
Jackson, OR	
Melbourne-Titusville, FL	1.0295
Brevard, FL	
Memphis, TN–AR–MS	0.9971
Crittenden, AR	
De Soto, MS	
Shelby, TN	
Tipton, TN	
Merced, CA	1.2127
Merced, CA	
Miami-Hialeah, FL	1.1718
Dade, FL	
Middlesex-Somerset-Hunterdon, NJ	1.1313
Hunterdon, NJ	
Middlesex, NJ	
Somerset, NJ	
Midland, TX	0.8784
Midland, TX	
Milwaukee, WI	0.9798
Washington, WI	
Ozaukee, WI	
Waukesha, WI	
Minneapolis-St. Paul, MN–WI	1.1181
Anoka, MN	
Carver, MN	
Chisago, MN	
Dakota, MN	
Hennepin, MN	
Isanti, MN	
Ramsey, MN	
Scott, MN	
Washington, MN	
Wright, MN	
St. Croix, WI	
Mobile AL	0.8201
Baldwin, AL	
Mobile, AL	
Modesto, CA	1.0481
Stanislaus, CA	
Monmouth-Ocean, NJ	1.0182
Monmouth, NJ	
Ocean, NJ	
Monroe, LA	0.8295
Ouachita, LA	
Montgomery, AL	0.8809
Autauga, AL	
Elmore, AL	
Montgomery, AL	
Muncie, IN	1.3537
Delaware, IN	
Muskegon, MI	0.8250
Muskegon, MI	
Naples, FL	1.1480
Collier, FL	
Nashville, TN	1.0373
Cheatham, TN	
Davidson, TN	
Dickson, TN	
Robertson, TN	
Rutherford, TN	
Sumner, TN	
Williamson, TN	
Wilson, TN	
Nassau-Suffolk, NY	1.2149
Nassau, NY	
Suffolk, NY	
New Bedford-Fall River-Attleboro, MA	0.7498
Bristol, MA	
New Haven-Waterbury-Meriden, CT	1.0739
New Haven, CT	
New London-Norwich, CT	0.9220
New London, CT	
New Orleans, LA	1.1311
Jefferson, LA	
Orleans, LA	
St. Bernard, LA	
St. Charles, LA	
St. John The Baptist, LA	
St. Tammany, LA	
New York, NY	1.2395
Bronx, NY	
Kings, NY	
New York City, NY	
Putnam, NY	
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	
Newark, NJ	1.0223
Essex, NJ	
Morris, NJ	
Sussex, NJ	
Union, NJ	
Niagara Falls, NY	1.0667
Niagara, NY	
Norfolk-Virginia Beach-Newport News, VA	0.9531

TABLE IVa.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
Chesapeake City, VA	
Gloucester, VA	
Hampton City, VA	
James City Co., VA	
Newport News City, VA	
Norfolk City, VA	
Poquoson, VA	
Portsmouth City, VA	
Suffolk City, VA	
Virginia Beach City, VA	
Williamsburg City, VA	
York, VA	
Oakland, CA	1.3490
Alameda, CA	
Contra Costa, CA	
Ocala, FL	1.0116
Marion, FL	
Odessa, TX	0.9932
Ector, TX	
Oklahoma City, OK	1.1917
Canadian, OK	
Cleveland, OK	
Logan, OK	
McClain, OK	
Oklahoma, OK	
Pottawatomie, OK	
Olympia, WA	1.2953
Thurston, WA	
Omaha, NE–IA	0.9245
Pottawattamie, IA	
Douglas, NE	
Sarpy, NE	
Washington, NE	
Orange County, NY	1.0001
Orange, NY	
Orlando, FL	0.9722
Orange, FL	
Osceola, FL	
Seminole, FL	
Owensboro, KY	0.9791
Daviess, KY	
Oxnard-Ventura, CA	1.0027
Ventura, CA	
Panama City, FL	0.9374
Bay, FL	
Parkersburg-Marietta, WV–OH	0.7803
Washington, OH	
Wood, WV	
Pascagoula, MS	0.8802
Jackson, MS	
Pensacola, FL	0.9178
Escambia, FL	
Santa Rosa, FL	
Peoria, IL	0.9768
Peoria, IL	
Tazewell, IL	
Woodford, IL	
Philadelphia, PA–NJ	1.0254
Burlington, NJ	
Camden, NJ	
Gloucester, NJ	
Bucks, PA	
Chester, PA	
Delaware, PA	
Montgomery, PA	
Philadelphia, PA	
Phoenix, AZ	1.4011
Maricopa, AZ	
Pine Bluff, AR	0.9066
Jefferson, AR	
Pittsburgh, PA	1.0669
Allegheny, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
Pittsfield, MA	0.8536

TABLE IVa.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
Berkshire, MA	
Ponce, PR	0.5223
Juana Diaz, PR	
Ponce, PR	
Portland, ME	0.8771
Cumberland, ME	
Portland, OR	1.2567
Clackamas, OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Portsmouth-Dover-Rochester, NH	0.7897
Rockingham, NH	
Strafford, NH	
Poughkeepsie, NY	1.3230
Dutchess, NY	
Providence-Pawtucket-Woonsocket, RI	1.0179
Bristol, RI	
Kent, RI	
Providence, RI	
Washington, RI	
Provo-Orem, UT	0.7814
Utah, UT	
Pueblo, CO	0.9452
Pueblo, CO	
Racine, WI	0.7963
Racine, WI	
Raleigh-Durham, NC	1.2616
Durham, NC	
Franklin, NC	
Orange, NC	
Wake, NC	
Rapid City, SD	1.0395
Pennington, SD	
Reading, PA	0.8999
Berks, PA	
Redding, CA	1.2165
Shasta, CA	
Reno, NV	1.1342
Washoe, NV	
Richland-Kennewick, WA	1.1836
Benton, WA	
Franklin, WA	
Richmond-Petersburg, VA	1.0030
Charles City Co., VA	
Chesterfield, VA	
Colonial Heights City, VA	
Dinwiddie, VA	
Goochland, VA	
Hanover, VA	
Henrico, VA	
Hopewell City, VA	
New Kent, VA	
Petersburg City, VA	
Powhatan, VA	
Prince George, VA	
Richmond City, VA	
Riverside-San Bernardino, CA	1.2088
Riverside, CA	
San Bernardino, CA	
Roanoke, VA	0.8428
Botetourt, VA	
Roanoke, VA	
Roanoke City, VA	
Salem City, VA	
Rochester, MN	1.2796
Olmsted, MN	
Rochester, NY	1.0984
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
Rockford, IL	0.9260
Boone, IL	
Winnebago, IL	
Sacramento, CA	1.1502

TABLE IVa.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
Eldorado, CA	
Placer, CA	
Sacramento, CA	
Yolo, CA	
Saginaw-Bay City-Midland, MI	1.0448
Bay, MI	
Midland, MI	
Saginaw, MI	
St. Cloud, MN	0.9675
Benton, MN	
Sherburne, MN	
Stearns, MN	
St. Joseph, MO	0.8114
Buchanan, MO	
St. Louis, MO–IL	1.1393
Clinton, IL	
Jersey, IL	
Madison, IL	
Monroe, IL	
St. Clair, IL	
Franklin, MO	
Jefferson, MO	
St. Charles, MO	
St. Louis, MO	
St. Louis City, MO	
Sullivan City, MO	
Salem, OR	1.2584
Marion, OR	
Polk, OR	
Salinas-Seaside-Monterey, CA	1.5932
Monterey, CA	
Salt Lake City-Ogden, UT	0.8467
Davis, UT	
Salt Lake, UT	
Weber, UT	
San Angelo, TX	1.1633
Tom Green, TX	
San Antonio, TX	1.0130
Bexar, TX	
Comal, TX	
Guadalupe, TX	
San Diego	1.2334
San Diego, CA	
San Francisco, CA	1.2659
Marin, CA	
San Mateo, CA	
San Francisco, CA	
San Jose, CA	1.2994
Santa Clara, CA	
San Juan, PR	0.5919
Barcelona, PR	
Bayoman, PR	
Canovanas, PR	
Carolina, PR	
Catano, PR	
Corozal, PR	
Dorado, PR	
Fajardo, PR	
Florida, PR	
Guaynabo, PR	
Humacao, PR	
Juncos, PR	
Los Piedras, PR	
Loiza, PR	
Luquillo, PR	
Manati, PR	
Naranjito, PR	
Rio Grande, PR	
San Juan, PR	
Toa Alta, PR	
Toa Baja, PR	
Trujillo Alto, PR	
Vega Alta, PR	
Vega Baja, PR	
Santa Barbara-Santa Maria-Lompoc, CA	1.1916
Santa Barbara, CA	
Santa Cruz, CA	1.2676

TABLE IVa.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
Santa Cruz, CA	
Santa Fe, NM	1.5054
Los Alamos, NM	
Santa Fe, NM	
Santa Rosa-Petaluma, CA	1.2010
Sonoma, CA	
Sarasota, FL	0.8768
Sarasota, FL	
Savannah, GA	0.8452
Chatham, GA	
Effingham, GA	
Scranton-Wilkes Barre, PA	0.9651
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Monroe, PA	
Wyoming, PA	
Seattle, WA	1.1760
King, WA	
Snohomish, WA	
Sharon, PA	1.2271
Mercer, PA	
Sheboygan, WI	0.7927
Sheboygan, WI	
Sherman-Denison, TX	0.9621
Grayson, TX	
Shreveport, LA	1.0868
Bossier, LA	
Caddo, LA	
Sioux City, IA–NE	0.8409
Woodbury, IA	
Dakota, NE	
Sioux Falls, SD	0.6215
Minnehaha, SD	
South Bend-Mishawaka, IN	0.8084
St. Joseph, IN	
Spokane, WA	1.1771
Spokane, WA	
Springfield, IL	0.9764
Menard, IL	
Sangamon, IL	
Springfield, MO	0.9176
Christian, MO	
Greene, MO	
Springfield, MA	0.8323
Hampden, MA	
Hampshire, MA	
State College, PA	0.9948
Centre, PA	
Steubenville-Weirton, OH–WV	0.8968
Jefferson, OH	
Brooke, WV	
Hancock, WV	
Stockton, CA	1.4377
Joaquin, CA	
Syracuse, NY	0.8689
Madison, NY	
Onondaga, NY	
Oswego, NY	
Tacoma, WA	1.2478
Pierce, WA	
Tallahassee, FL	1.1947
Gadsden, FL	
Leon, FL	
Tampa—St. Petersburg—Clearwater, FL	0.8972
Hernando, FL	
Hillsborough, FL	
Pasco, FL	
Pinellas, FL	
Terre Haute, IN	0.8987
Clay, IN	
Vigo, IN	
Texarkana-TX-Texarkana, AR	0.9507
Miller, AR	
Bowie, TX	
Toledo, OH	0.8226

TABLE IVa.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
Fulton, OH	
Lucas, OH	
Wood, OH	
Topeka, KS	0.9653
Shawnee, KS	
Trenton, NJ	1.1191
Mercer, NJ	
Tucson, AZ	1.4898
Pima, AZ	
Tulsa, OK	0.8693
Creeks, OK	
Osage, OK	
Rogers, OK	
Tulsa, OK	
Wagoner, OK	
Tuscaloosa, AL	0.8328
Tuscaloosa, AL	
Tyler, TX	1.2122
Smith, TX	
Utica-Rome, NY	0.8647
Herkimer, NY	
Oneida, NY	
Vallejo-Fairfield-Napa, CA	1.3656
Napa, CA	
Solano, CA	
Vancouver, WA	1.1130
Clark, WA	
Victoria, TX	0.5876
Victoria, TX	
Vineland-Millville-Bridgeton, NJ	1.0177
Cumberland, NJ	
Visalia-Tulare-Porterville, CA	1.4186
Tulare, CA	
Waco, TX	0.9580
McLennan, TX	
Washington, D.C.-MD-VA	1.2039
District of Columbia, DC	
Calvert, MD	
Charles, MD	
Frederick, MD	
Montgomery, MD	
Prince Georges, MD	
Alexandria, City, VA	
Arlington, VA	
Fairfax, VA	
Fairfax City, VA	
Falls Church City, VA	
Loudoun, VA	
Manassas City, VA	
Manassas Park City, VA	
Prince William, VA	
Stafford, VA	
Waterloo-Cedar Falls, IA	0.8255
Black Hawk, IA	
Bremer, IA	
Wausau, WI	0.6997
Marathon, WI	
West Palm Beach-Boca Raton-Delray Beach, FL	0.9488
Palm Beach, FL	
Wheeling, WV–OH	0.9488
Belmont, OH	
Marshall, WV	
Ohio, WV	
Wichita, KS	0.9404
Butler, KS	
Harvey, KS	
Sedgwick, KS	
Wichita Falls, TX	0.8554
Wichita, TX	
Williamsport, PA	0.8025
Lycoming, PA	
Wilmington, DE–NJ–MD	0.8497
New Castle, DE	
Cecil, MD	
Salem, NJ	
Wilmington, NC	0.8419

TABLE IVa.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
New Hanover, NC	
Worcester-Fitchburg-Leominster, MA	0.9170
Worcester, MA	
Yakima, WA	1.2270
Yakima, WA	
York, PA	0.8713
Adams, PA	
York, PA	
Youngstown-Warren, OH	1.2017
Mahoning, OH	
Trumbull, OH	
Yuba City, CA	1.1382
Sutter, CA	
Yuba, CA	

[1] Approximate value for area.

TABLE IVB.—WAGE INDEX FOR RURAL AREAS

Non-urban area	Wage index
Alabama	0.8864
Alaska	1.2647
Arizona	1.1810
Arkansas	0.8544
California	1.1433
Colorado	0.9711
Connecticut	0.9529
Delaware	1.0784
Florida	0.9079
Georgia	0.7550
Hawaii	1.2471
Idaho	1.0917
Illinois	0.8614
Indiana	0.9120
Iowa	0.7545
Kansas	0.8363
Kentucky	0.8290
Louisiana	0.8351
Maine	1.0133
Maryland	0.8695
Massachusetts	1.0253
Michigan	0.9842
Minnesota	0.8432
Mississippi	0.8836
Missouri	0.8642
Montana	0.9689
Nebraska	0.9158
Nevada	1.0607
New Hampshire	0.8953
New Jersey [1]	
New Mexico	0.8887
New York	0.9673
North Carolina	0.8542
North Dakota	0.9267
Ohio	0.9803
Oklahoma	0.9044
Oregon	1.1079
Pennsylvania	0.9129
Puerto Rico	0.4910
Rhode Island	0.8796
South Carolina	0.5876
South Dakota	0.9458
Tennessee	0.9140
Texas	0.8234
Utah	1.0403
Vermont	0.8248
Virginia	0.9606
Virgin Islands	1.0000
Washington	0.9913
West Virginia	0.9556
Wisconsin	0.9429
Wyoming	1.1135

[1] Approximate value for area.

[1] All counties within the State are classified urban.

TABLE V.—COST REPORTING YEAR ADJUSTMENT FACTORS [1]

If the HHA cost reporting period begins—	The adjustment factor is—
Aug. 1, 1989	1.0051
Sept. 1, 1989	1.0102
Oct. 1, 1989	1.0151
Nov. 1, 1989	1.0203
Dec. 1, 1989	1.0253
Jan. 1, 1990	1.0305
Feb. 1, 1990	1.0356
Mar. 1, 1990	1.0402
Apr. 1, 1990	1.0453
May 1, 1990	1.0503
June 1, 1990	1.0555

[1] Based on compounded projected market basket inflation rates of 6.14 percent for 1990 and 5.95 percent for 1991.

These adjustment factors are subject to change based on later estimates on cost increases.

If for any reason we do not publish a new schedule of limits to be effective on July 1, 1990, or do not announce other changes in the current schedule by that date, the current limits will continue in effect with the last adjustment factor above multiplied by 1.005 once for each month between June 1, 1990, and the month in which the cost reporting period begins, until a new schedule of limits or other provision is issued. For example, if a cost reporting period begins on August 1, 1990, 1.0555 will be multiplied by 1.005 twice and the resulting factor will equal 1.0661 (1.0555×1.005×1.005=1.0661).

VIII. Regulatory Impact Statement and Flexibility Analysis

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any final notice that meets one of the E.O. criteria for a "major rule"; that is, that will be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Additionally, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a final notice may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside of an MSA.

This final notice will implement the provisions of section 4026(a) of Pub. L. 100–203 and section 411(d)(5) of Pub. L. 100–360, both of which amended section 1861(v)(l)(L)(iii) of the Act. Section 1861(v)(l)(L)(iii) of the Act provides that in establishing the schedule of limits for cost reporting periods beginning on or after July 1, 1989, the Secretary must use a wage index that is based on verified wage data obtained for HHAs and base the limits on the most recent data available which may be for cost reporting periods beginning no nearlier than July 1, 1985.

We anticipate that this revised schedule of HHA limits will result in savings of $1 million in FY 1989, $30 million in FY 1990, and $40 million in FY 1991. These estimates are rounded to the nearest $10 million.

We believe that any effects of these provisions on the economy and public will be the result of the statute and not this final notice. Therefore, we do not believe this final notice meets E.O. 12291 criteria and a final regulatory impact analysis is not required. Also, we have determined, and the Secretary certifies, that this final notice will not have a significant economic impact on the operations of a substantial number of small rural hospitals.

B. Voluntary Regulatory Flexibility Analysis

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a final notice will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all HHAs are treated as small entities.

We are preparing a voluntary regulatory flexibility analysis for this final notice because of the large number of HHAs that will be affected by the provisions of this final notice, which implement the statute.

1. Affected Entities

As of November 1988, there were 5,670 HHAs. Of that number, approximately 21 percent (1,191) are voluntary and nonprofit; 34 percent (1,941) are proprietary; 26 percent (1,467) are government-controlled; and 19 percent (1,068) are classified as other.

We do not have sufficient data to predict exactly which HHAs would be most affected by this notice nor the magnitude of the impact upon individual HHAs. We believe that approximately 35 percent of HHAs would be affected negatively by the new cost limits. That is, they would be paid less under the new cost limits than under the old cost limits. For approximately three percent of HHAs, the new cost limits will allow them to be paid more since their costs exceeded the previous cost limits and do not exceed the new limits. An additional approximately 11 percent of HHAs are affected by both sets of cost limits; however, for those providers the new cost limits are higher than the old cost limits and, therefore, these HHAs should also receive higher payment under the new limits. The costs of approximately 51.5 percent of HHAs are less than both the old and new set of cost limits. Thus, the new cost limits do not affect them. Furthermore, it is certain that individual HHAs would be affected to a greater or lesser degree depending upon the extent to which their total reimbursement is derived from Medicare.

2. Conclusion

We believe that the use of an HHA-specific wage index results in cost limits that more accurately reflect an HHA's real cost of providing services and, on that basis, are reasonable. Furthermore, we believe our use of a 20 percent limit on the decrease or increase that an HHA may have in its cost limit will mitigate the impact of going from the hospital wage index to the HHA-specific wage index.

IX. Other Required Information

A. Final Notice With Comment Period and Waiver of 30-Day Delay in Effective Date

In adopting substantive rules, we ordinarily publish a notice of proposed rulemaking in the **Federal Register** with a 60-day period for public comment as required under section 1871(b)(1) of the Act. In addition, we normally publish notices of this kind 30 days before the effective date. Sectin 4039(g) of Pub. L. 100–203, however, provides that we may issue regulations on an interim or other basis as may be necessary to implement certain provisions of Pub. L. 100–203 relating to Medicare. We believe that this express legislative authority is fully applicable here with respect to implementation of section 4026(a) of Pub. L. 100–203. Consequently, in order to implement the provisions of section 4026(a) by July 1, 1989, we are eliminating the publication of a proposed notice, and are publishing this notice as a final notice with a 60-day comment period.

As previously discussed, section 4026(a) of Pub. L. 100–203 as amended by section 411(d)(5) of Pub. L. 100–360 requires that, in establishing the schedule of limits for cost reporting periods beginning on or after July 1, 1989, we use a wage index based on verified wage data obtained for HHAs, and base the limits on the most recent data available (which may be for cost reporting periods beginning no earlier than July 1, 1985.) We have acted expeditiously within the time frame imposed by Congress to institute a special HHA data collection, which resulted in an HHA specific wage index based on data from 4,253 HHAs (see detailed discussion in section II.B. of this notice above). We have also sought to expedite the process of internal agency consideration of the draft notice through the use of shortened time frames.

Because there is not now adequate time to publish a proposed notice of this schedule of limits and solicit public comment and then publish a final notice before July 1, 1989, nor is there time to allow a 30-day delay in effective date, we find good cause to waive the notice and comment procedures and the delay in effective date because they would be impracticable and contrary to the public interest attached to updating these limits. Nonetheless, we are providing a 60-day comment period as indicated at the beginning of this notice.

Because of the large number of items of correspondence we normally receive, we are not able to acknowledge or respond to them individually. However, in preparing the final notice, we will consider all comments that we receive by the date and time specified in the "Dates" section of this preamble of that notice.

B. Paperwork Reduction Act

This final notices does not impose information collection requirements. Consequently, it does not need to be reviewed by EOMB under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Section 1861(v)(1)(L) of the Social Security Act (42 U.S.C. 1395(f)(i) and 1395x(v)) and 42 CFR 413.30.

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance)

Dated: June 5, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

Approved: June 23, 1989.

Louis W. Sullivan,

Secretary.

[FR Doc. 89–15566 Filed 6–29–89; 8:45 am]

BILLING CODE 4120–01–M

[BQC–073–PN]

Medicaid Program; MMIS System Performance Review Revisions

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed notice.

SUMMARY: This notice proposes revisions to the system performance review standards, procedures and methodologies we use to evaluate State Medicaid Management Information Systems The changes would improve our ability to accurately assess State performance.

DATE: To be considered, comments must be mailed or delivered to the appropriate address, as provided below, and must be received by 5:00 p.m. on August 29, 1989.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BQC–073–PN, P.O. Box 28676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Ave. SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BQC–073–PN. Comments received timely will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in Room 309–G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202–245–7890).

FOR FURTHER INFORMATION CONTACT: Rick Friedman, (301) 966–3292.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1903(r) of the Social Security Act (the Act) requires the Medicaid program in most States to have in place a mechanized claims processing and information retrieval system as described in section 1903(a) of the Act. Section 1903(a) authorizes Federal matching funds at 75 percent for the operation of such a system, as long as it remains approved by HCFA. The system is popularly known as the Medicaid Management Information System, or MMIS. The purpose of this system is to provide for an effective, efficient and economical administration of the State Medicaid plans.

Section 1903(r) requires us to review each system at least once every three years to determine whether it meets our performance standards and systems requirements. Systems failing the system performance review (SPR) are subject to a reduction in Federal matching funds. States must be informed of any change in performance standards by the June 30th preceding the beginning of the Federal fiscal year in which we intend to apply the standards. We published the first set of performance standards on June 30, 1981 (46 FR 33653); there have been no other publications changing the performance standards.

The performance standards currently are statements of desired outcomes. They are made up of subordinate activities or specific tasks capable of direct measurement. Each standard consists of one or more elements, which, in turn, consist of two or more factors. The factors, which are very specific activities, are revised from year to year as needed.

In measuring performance under the current SPR we use a tiered scoring system. The MMIS must pass every standard in order to pass the SPR. In addition, the MMIS must receive a minimum score on each of the *elements* that make up the standard.

Our experience has shown that the current SPR has a number of shortcomings. In some instances specific activities we wanted to measure as indicative of the performance of the MMIS could not be logically classified under the standards as they are formatted or could arguably be placed under more than one standard. In other instances we felt it inappropriate to review activities under a particular standard because shifting program emphasis indicated that priorities be placed in other areas.

In June 1988, we notified State agencies of our intentions to revise the SPR and sent them a pilot SPR guide and solicited their comments. We are also testing the pilot project in five states as of October 1, 1988; we will review their systems against the proposed SPR.

II. Provisions of the Notice

In order to improve measurement of MMIS performances, we looked at the three components of the SPR: (1) The standards themselves as appropriate measures; (2) the application of the standards; that is, use of factors and elements tied rigidly to particular standards; and (3) the scoring system.

A. Performance Standards

We propose to retain unchanged the seven performance standards as published on June 30, 1988. In addition, we propose to add a new standard number 8, concerning third party liability, discussed below. The standards would consist of the following:

• Standard 1—Eligibility.

An accurate system of recipient eligibility information must be provided.

• Standard 2—Support files.

An accurate and accessible system of files must be provided to support system operations.

• Standard 3—Orderly and timely claims processing.

Claims must be processed in an orderly and timely manner from initial receipt through issuance of claims determinations.

• Standard 4—Accurate claims processing and review.

Claims data must be accurately processed and reviewed.

• Standard 5—Management and Administrative Reporting Subsystem (MARS).

The MARS must be efficiently and effectively operated in order to provide support to the management review, evaluation, and decision-making processes.

• Standard 6—Surveillance and Utilization Review Subsystem (SURS).

The operation of a SURS must provide comprehensive health care delivery and utilization data for program management, reveal defects in the quality of care, and reveal suspected instances of provider or recipient fraud or abuse.

• Standard 7—MMIS administration.

Overall effectiveness in carrying out MMIS administrative responsibilities must be demonstrated.

• Standard 8—Third party liability (TPL).

The MMIS must perform functions and provide data to support cost avoidance and the collection of payments from liable third parties and to assure that Medicaid is the payer of last resort.

Section 1903(r)(6)(J) of the Act requires us to develop and disseminate performance standards for assessing the State's third party collection efforts in accordance with section 1902(a)(25)(A)(ii) of the Act. We proposed a standard that would accomplish this purpose and several elements on March 3, 1987 (52 FR 6350) in a proposed rule concerning third-party liability. We received six comments from ten commenters on the TPL standard as proposed. All of the comments specifically addressed the proposed elements and not the proposed standards. Since we are proposing to eliminate elements, as discussed below, we are not responding to these comments. Proposed new standard 8 is essentially the same as included in our March 3, 1987, proposed rule, with only minor editorial changes.

B. Elements and Factors

The elements, as currently worded, are specifically written to measure the standards to which they are tied. Factors, in a similar fashion, are tied directly to the elements. We often find that the current system is inflexible as we develop new factors that measure a standard but do not measure any particular element. We also find that with shifting emphases some elements are no longer relevant, and, hence, have subordinate factors, that, similarly, are no longer appropriate to the given elements.

In order to correct the problems, we considered two possibilities: (1) Drop the current standards or elements (or both) and replace them with new categories that more accurately encompass the activities we wish to review; (2) abandon the use of categorization altogether. In considering the former option there was concern that new categories might appear perfectly workable now (just as the standards and elements did in 1981), but that they too could eventually become irrelevant. Furthermore, any ongoing of review factors would tend to continue separate scoring of the groups, a notion that we feel is not essential. Therefore, we propose to abandon classification of factors altogether.

We believe that measuring accomplishments in terms of factors would accurately determine whether a system meets performance standards. We do not believe that measurement of accomplishments in terms of elements is necessary or efficient or improves accuracy of what needs to be measured. We propose to delete the elements from the SPR.

The factors would not be directly associated with any particular standards; i.e., passing a given standard would not depend on passing a given grouping of factors.

Most of the factors that we intend to use in the SPR would be identical to those used in past SPRs. Factors are developed based on communication between the State agencies and HCFA. These factors are the accomplishments, outcomes, or purchases that we have determined promote the efficiency, effectiveness, and economy of the MMIS. States are given the factors and HCFA's expectations for performance levels that are necessary to pass the factors in the yearly SPR review package that is issued to States in June.

In order that commenters may evaluate the effect of our proposal, we have listed a number of illustrative factors. After them, in parentheses, we also list the numbers of the standards as they appear in section II.A. of this document to which the factor might apply.

Illustrative Factor—

The claims processing eligibility file must be updated with current recipient eligibility information at least once every 10 calendar days. (Standards 1, 7, 8)

Illustrative Factor—

Updates to the formulary pricing file and/or medical procedure fee schedule must be made accurately and timely. (Standards 2, 7)

Illustrative Factor—

Claims with unique identifier that incorporate the correct date of receipt must be identified, and claims must be accessible after entry to the claims processing system. (Standards 3, 7)

Illustrative Factor—

The HCFA-2082 and MEDSTAT data submissions must be received timely by HCFA's central office. (Standards 5, 7)

Illustrative Factor—

The SUR subsystem must be used in the performance of noninstitutional provider reviews, and minimum case review requirements must be met. (Standard 6)

Illustrative Factor—

The State must make effective use of its MMIS to support and enforce State and Federal policies, procedures, and guidelines, and the State policies, procedures, and guidelines must be in accordance with HCFA policy, Federal regulations, and title XIX of the Social Security Act. (Standards 4, 7)

Illustrative Factor—

The system must check for the presence of a health coverage indicator on the recipient eligibility or TPL file when processing claims; the system must appropriately cost avoid claims for recipients whose records show other coverage; and the system must consider the availability of payment from another health plan before paying claims for recipients who have other health coverage. (Standards 1, 2, 4, 8)

C. Scoring System

Under the new percentage scoring system, the sum of all factors (the final cumulative percentage score), would never exceed 100 percent. The system would determine the percent correct for each factor and would multiply that figure by a weight (either 1, 2, or 3) and a feature called a multiplier, which reflect the factors relative importance within the SPR. Then the system would add all the weighted factor scores together to produce a final cumulative percentage score for the SPR.

We believe that certain factors are so critical that it is important that the States achieve an acceptable level of performance for these factors. Therefore, we would designate a small number of factors as critical. These factors would get a higher weight than non-critical factors. We propose, a pool of potential critical factors from which we intend to choose at least five critical factors, the following:

• The MMIS must pay claims accurately; i.e., at the State approved fee or rate.

• The MMIS must determine if institutional claims are paid accurately; i.e., at the State-approved fee or rate.

• The MMIS must monitor the frequency with which clean practitioner claims are paid or denied timely; i.e., within 30 days of receipt.

• The MMIS must monitor the frequency with which clean practitioner claims are paid or denied timely; i.e., within 90 days of receipt.

• The MMIS must assure that edits are properly utilized in the processing of Medicaid claims.

• The MMIS must use duplicate detection edits and system logic sufficient to detect duplicate claims in all major claim categories; i.e., inpatient, outpatient, laboratory and x-ray, long term care, physician services and drugs.

• The MMIS must monitor the frequency with which claims other than clean practitioner claims are paid timely; i.e., within 30 days of receipt.

To be reapproved, each MMIS would have to achieve the above mentioned minimum cumulative percentage score and pass all critical factors. the State agencies would be notified of the designated critical factors by the June 30th preceding the beginning of the review period in which they are effective. This notification also would include the minimum acceptable performance levels (APLs) for all factors and those APLs would be used for producing the final cumulative percentage score.

We propose a reasonable number of factors to be 36, the total value of which would equal 100 percent. Of the 36 factors, at least five from the above pool would be identified as critical. A minimum cumulative percentage score would be established at 90 percent, and a minimum factor score (APL) of 90 percent would be established for each critical factor. If the minimum cumulative percentage score meets or exceeds 90 percent and the minimum factor score for each critical factor meets or exceeds 90 per cent, the system would be reapproved.

This departs from the current scoring system. the cumulative score was determined on a standard and element level for purposes of reapproval or disapproval. Under the proposed revisions we would eliminate scoring on the standard and element level.

With our departure from rigidly association each factor with one standard, and our proposal to score only the factors, the review and scoring would operate as outlined below.

By June 30 preceding the beginning of the review period to be evaluated, we would send States the following information:

• All the factors to be used in the SPR. (Some factors might not apply to all States, depending on the State's particular system).

• The relative weight applicable to each factor (we anticipate weights of 1, 2, or 3). The total score of all factors, after weighting and application of the multiplier, will never exceed 100 percent.

• The identification of factors designated as critical and the minimum APL for each critical factor.

• The minimum final cumulative percentage score needed to pass the SPR.

The review would be conducted for each individual factor. We would assess the State's performance under each factor and note the percentage of correct activities. For purposes of the final cumulative percentage score, each factor's percentage score would be weighted using the factor weight and multiplier, then added together to calculate overall performance. For critical factors the individual factor's percentage correct would be used to determine if the factor meets the minimum APL.

In some instances HCFA may determine that a factor is inapplicable to a State's MMIS. The weights assigned to factors that are inapplicable in a given State are excluded from the total of all the factor weights, and the total weighting and multipliers are readjusted so that maximum final cumulative percentage score is again 100 percent.

In summary, if the State agency achieves at least the minimum cumulative percentage score and passes all critical factors, its MMIS would be reapproved. If it fails to achieve the minimum score or fails one or more critical factors, its MMIS would be disapproved.

III. Availability of SPR Package

Anyone wishing to obtain a copy of the SPR package (for information or comment) that HCFA currently uses in several States to test the new scoring format may obtain it by addressing a request for it to: Frederick Harris, 273 EHR Bldg., HCFA, BQC, 6325 Security Blvd., Baltimore, MD 21207.

IV. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any proposed notice that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in—

• An annual effect on the economy of $100 million or more;

• A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

• Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

One potential impact of the changes this notice proposes is that a State agency may fail the SPR even though it currently passes it, or it may pass under the proposed scoring system although it currently fails it. While State Medicaid agencies with systems failing the SPR would be subject to a reduction in Federal matching funds, 42 CFR 433.113(b) requires that only a proportion of that part of a State's FFP that pertains to expenditures for compensation and training of skilled professional medical personnel and support staff and for general administration would be reduced. We have determined that neither these potential reductions nor any other effects from this proposed notice would meet any of the criteria of the Executive Order 12291. Thus, a regulatory impact analysis is not required.

B. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless

the Secretary certifies that a proposed notice would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all providers and suppliers are treated as small entities.

This proposed notice would not have a direct effect on providers and suppliers; however, it is possible that some of the standards may have an indirect effect on them. For example, a State agency's attempts to meet these standards may produce a more efficient process for eligibility determinations and orderly and timely claims processing. We would expect these indirect effects to be positive for providers and suppliers; however we do not expect these effects to be significant. For these reasons, we have determined, and the Secretary certifies, that this proposed notice would not have a significant economic impact on a substantial number of small entities. We have, therefore, not prepared a regulatory flexibility analysis.

C. Rural Hospital Impact Statement

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a proposed notice may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside of a Metropolitan Statistical Area.

We are not preparing a rural impact statement since we have determined and the Secretary certifies that this proposed notice would not have a significant impact on the operations of a substantial number of small rural hospitals.

V. Paperwork Burden

These changes do not impose paperwork collection requirements. Consequently, they need not be reviewed by the Executive Office Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

VI. Response to Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "Date" section of this preamble, and, if we proceed with a final notice, we will respond to the comments in the preamble of that notice.

(Section 1902(r) of the Social Security Act (42 U.S.C. 1396b(r))

(Catalog of Federal Domestic Assistance Program No. 13.714), Medical Assistance)

Dated: April 5, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 89-15585 Filed 6-29-89; 8:45 am]

BILLING CODE 4120-01-M

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of August 1989.

Name: Departments Review Committee.

Date and Time: August 29, 1989, 8:30 a.m.-1:00 p.m.

Place: The Pavilion Hotel, 5301 Montrose Road, Rockville, Maryland 20852.

Date and Time: August 29-31, 1989, 1:30 p.m. to 6:00 p.m.

Place: Conference Room J, K, and L, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open on August 29, 8:30 a.m.-9:30 a.m.

Closed for remainder of meeting.

Purpose: The Graduate Training in Family Medicine Review Committee shall review application from public or nonprofit private hospitals, and other public or nonprofit entities that plan, develop and operate or participate in approved graduate training programs in the field of family medicine; or supports trainees in such programs who plan to specialize or work in the practice of family medicine.

Agenda: The open portion of the meeting will cover welcome and opening remarks, financial management and legislative implementation updates, and overview of the review process. The meeting will be closed to the public on August 29, at 9:30 a.m. for the remainder of the meeting for the review of grant applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C. and the Determination by the Acting Administrator, Health Resources and Services Administration, pursuant to Pub. L. 92-463.

Anyone requiring information regarding the subject Council should contact Mrs. Sherry Wipple, Executive Secretary, Graduate Training in Family Medicine Review Committee, Room 4C-18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-6674.

Agenda items are subject to change as priorities dictate.

Date: June 27, 1989.

Jackie E. Bunn,

Advisory Committee Management Officer, HRSA.

[FR Doc. 89-15552 Filed 6-29-89; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

Notice of the National Eye Institute Policy Planning Forum

Pursuant to Pub. L. 92-463, notice is hereby given of a Policy Planning Forum sponsored by the Vision Research Program Planning Subcommittee of the National Advisory Eye Council. The Forum will be held on August 1, 1989, in Building 31C, Conference Room 6, National Institutes of Health, Bethesda, Maryland.

This entire meeting will be open to the public from 9:00 a.m. until 3:00 p.m. to discuss current policy issues and provide input and guidance to the Vision Research Program Planning Subcommittee concerning the development of Institute policies and programs. Attendance by the public will be limited to space available.

Ms. Lois DeNinno, Committee Management Officer, National Eye Institute, Building 31, Room 6A06, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-9110, will provide a summary of the meeting, roster of committee members, and substantive program information upon request.

(Catalog of Federal Domestic Assistance Programs, Nos. 13.867, Retinal and Choroidal Diseases Research; 13.868, Corneal Diseases Research; 13.869, Cataract Research; 13.870, Glaucoma Research; and 13.871, Sensory and Motor disorders of Visual Research; National Institutes of Health)

Dated: June 23, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-15539 Filed 6-29-89; 8:45 am]

BILLING CODE 4140-01-M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Pub. L. 96-511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the Federal Register on June 16, 1989.

Social Security Administration

(Call Reports Clearance Officer on (301) 965-4149 for copies of package)

1. Cessation or Continuance of Disability or Blindness Determination and Transmittal—Title XVI—0960-0443—The information collected on the form SSA-832 is used to document determinations as to whether an individual's disability benefits should be ceased or continued on the basis of his/her impairment. The respondents are the State Disability Determination Services.

Number of Respondents: 50
Frequency of Response: 1,300
Average Burden Per Response: 30 minutes
Estimated Annual Burden: 32,500 hours

2. Request For Change In Time/Place of Disability Hearing—0960-0348—The information collected on the form SSA-769 is used by the Social Security Administration to provide claimants with a structured format for exercising their right to request a change in the time/place of a scheduled disability hearing. The information collected via the SSA-779 will serve as the basis for granting or denying requests to reschedule disability hearings. The respondents are claimants who have been scheduled for disability hearings.

Number of Respondents: 12,809
Frequency of Response: 1
Average Burden Per Response: 8 minutes
Estimated Annual Burden: 1,708 hours

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address:

OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503

Dated: June 26, 1989.

Ron Compston,

Social Security Administration, Reports Clearance Officer.

[FR Doc. 89-15498 Filed 6-29-89; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N-89-2012]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: June 22, 1989.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Requirements for Single Family Mortgage Instruments.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: As the insurer for single family mortgages, HUD must ensure that the mortgage instruments have provisions that are compatible with the Department's requirements. In addition, these instruments must contain the specific provisions necessary to accomplish program objectives.

Form Number: None.

Respondents: Individuals or Households, Businesses or Other For-Profit, and Small Businesses or Organizations.

Frequency of Submission: Recordkeeping and Other.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Recording	8,300		90		.25		186,750

BEST COPY AVAILABLE

Total Estimated Burden Hours: 188,750.

Status: New.

Contact: Richard Harrington, HUD, (202) 755-5678; John Allison, OMB, (202) 395-6880.

Date: June 22, 1989.

[FR Doc. 89-15421 Filed 6-29-89; 8:45 am]

BILLING CODE 4210-01-M

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N-89-1960; FR-2618]

Fair Housing Initiatives Program, Competitive Solicitation

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of funding availability: Extenxion of time to file applications.

SUMMARY: On April 25, 1989, HUD published a notice soliciting applications for funding under the Education and Outreach Initiative and the Private Enforcement Initiative of HUD's Fair Housing Initiatives Program. Today's notice extends the application deadline to July 31, 1989.

FOR FURTHER INFORMATION CONTACT: Maxine B. Cunningham, Deputy Director, Office of Fair Housing Enforcement and Section 3 Compliance, Office of Fair Housing and Equal Opportunity, Room 5212, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 755-0455. (V and TDD) (This is not a toll-free number.) Application kits are available upon written or telephone request. To ensure a prompt response, it is suggested that requests for application kits be made by telephone.

DATES: Applications for funding must be submitted by July 31, 1989, unless the application qualifies for a late application exception as specified in the application kit and is received before funds are awarded.

SUPPLEMENTARY INFORMATION: On February 10, 1989 (54 FR 6492), HUD published a final rule implementing the Fair Housing Initiatives Program (FHIP) authorized under section 561 of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988). Under FHIP, HUD provides funding to State and local governments or their agencies, public or private nonprofit organizations, or other public or private entities formulating or carrying out programs to prevent or eliminate discriminatory housing practices.

A notice announcing the availability of funds under FHIP's Education and Outreach Initiative and Private Enforcement Initiative was published on April 25, 1989 (54 FR 17872). The notice stated that applications were due by June 16, 1989, unless the application is qualified for a late application exception as specified in the application kit and is received before funds are awarded. The original application deadline of June 16, 1989 was extended to June 30, 1989 in a notice published June 6, 1989 (54 FR 24595). Today's notice extends the application deadline to July 31, 1989. This extension will permit eligible applicants to review certain explanatory materials recently included in the amended applicaton package.

Authority: Sec. 561, Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988); titles VIII, Civil Rights Act of 1968 (42 U.S.C. 3600-20); sec 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: June 27, 1989.

Thomas D. Casey,

General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 89-15563 Filed 6-29-89; 8:45 am]

BILLING CODE 4210-28-M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-89-1971; FR-2606]

Unutilized and Underutilized Federal Buildings and Real Property Determined To Be Suitable for Use for Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATE: June 30, 1989.

ADDRESS: For further information, contact Morris Bourne, Department of Housing and Urban Development, Room 9140, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 755-9075; TDD number for the hearing- and speech-impaired (202) 426-0015. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless v. Veterans Administration*, No. 88-2503-OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized and underutilized Federal buildings and real property determined by HUD to be suitable for use for facilities to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable this week.

Dated: June 26, 1989.

John R. Ambrogne, Jr.,

Acting Deputy Assistant Secretary for Policy, Financial Management and Administration.

[FR Doc. 89-15528 Filed 6-29-89; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-050-4333-12]

Arizona; Closures to Camping and Off-Highway Vehicle Use

AGENCY: Bureau of Land Management, Interior.

ACTION: (1) Close an area near Quartzsite, Arizona, south of Tyson Wash and west of Highway 95 just north of the town of La Paz Valley, in La Paz County to camping and off-highway vehicle use.

SUMMARY: The following described lands are closed to all types of camping. The area affected by this closure contains 640 acres, more or less.

Gila and Salt River Meridian, Arizona

T. 3 N., R. 19 W.,
Sec. 20, all.

(2) Close an area near Quartzsite, Arizona, west of Kofa Drive and north of Interstate 10 in La Paz County, to camping.

SUMMARY: The following described lands, for a distance of ¼-mile west of Kofa Drive, are closed to all types of camping. The area affected by this closure contains 345 acres, more or less.

Gila and Salt River Meridian, Arizona

T. 4 N., R. 19 W.,
Sec. 17, E½E½;
Sec. 20, E½E½;
Sec. 29, N½NE¼NE¼, W½SW¼N E¼NE¼.

EFFECTIVE DATE: August 1, 1989.

FOR FURTHER INFORMATION CONTACT: Mary Barger, Acting Area Manager, Yuma Resource Area, 3150 Winsor Avenue, Yuma, Arizona 85365, 602-726-6300.

SUPPLEMENTARY INFORMATION: Authority for these actions is contained in 43 CFR 8364.1. Both areas are being closed to protect public health and safety and to prevent further environmental degradation. These closures to camping and off-highway vehicle use shall apply to all persons and shall remain in effect until further notice. Maps of these areas are available at the Yuma District Office, 3150 Winsor Avenue, Yuma, Arizona 85365.

Dated: June 21, 1989.

Herman L. Kast,

District Manager.

[FR Doc. 89-15531 Filed 6-29-89; 8:45 am]

BILLING CODE 4310-32-M

[OR-010-09-4410-13; GP9-258]

Lakeview District Multiple Use Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Lakeview District Multiple Use Advisory Council will meet on July 27 and 28, 1989. A tour has been planned to leave the Klamath Falls Resource Area office at 2795 Anderson, Building #25 at 10:00 a.m. on July 27. The tour will stop in areas which will highlight issues identified by the public as a result of the recent issue identification mailer and open house for the Klamath Falls Resource Management Plan/EIS.

On July 28 the Council will meet at the Klamath Falls Resource Area office from 8:00 a.m., until noon. The discussion will center around the RMP/EIS process and any questions resulting from the tour.

The public is invited to attend either or both days. In order to make arrangements for transportation, those wishing to go on the tour should contact the Lakeview District office by July 21.

FOR FURTHER INFORMATION CONTACT: Renee Snyder, Public Affairs Officer, Telephone (503) 947-2177.

Judy Ellen Nelson,

District Manager.

[FR Doc. 89-15441 Filed 6-29-89; 8:45 am]

BILLING CODE 4310-33-M

[AK-060-09-4230-23; F-86334]

Realty Action; Lease of Public Lands in Alaska for Airport Purposes

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The State of Alaska Department of Transportation and Public Facilities has requested an airport lease to improve and expand an existing landing strip located within Air Navigation Site (ANS 164). The State needs the lease in order to obtain Federal funds from the Federal Aviation Administration for the purpose of expanding the airport.

ADDRESSES: Written comments on this notice should be submitted to the District Manager, Bureau of Land Management, Steese/White Mountains District, 1150 University Avenue, Fairbanks, Alaska 99709.

FOR FURTHER INFORMATION CONTACT: Rod Everett, Realty Specialist, at the address given above or telephone Alaska, 907/474-2365.

SUPPLEMENTARY INFORMATION: The following described public lands in Boundary, Alaska are being considered for lease to the State of Alaska for airport purposes under the Act of May 24, 1928, as amended (49 U.S.C., Appendix 211-213):

Copper River Meridian, Alaska

T. 27 N., R. 22 E.,
Sec. 32: within NE ¼;
Sec. 33: within NW ¼.

The area described contains 45.46 acres.

The lands being considered will be leased to the State for the purpose of improving and expanding an existing landing strip. The subject lands are entirely surrounded by lands conveyed to private holders or the State of Alaska.

The above described lands have been, and remain, segregated from all appropriation under the public lands laws, including the mining laws but not the mineral leasing laws, subject to valid existing rights. The subject lands have been segregated by Air Navigation Site withdrawal (ANS 164), and selections by the State of Alaska (F-79645).

For a period of 45 days from the date of this publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager at the above address. Any adverse comments will be reviewed by the State Director, who may vacate, sustain, or modify the realty action and issue a final determination. In the absence of any objections, the final determination of the Department of the Interior will be made in accordance with this Notice.

Dated: June 20, 1989.

Jack C. Mellor,

Associate District Manager, Steese/White Mountains District.

[FR Doc. 89-15442 Filed 6-29-89; 8:45 am]

BILLING CODE 4310-JA-M

[AK-060-09-4230-23; F-86399]

Realty Action; Lease of Public Lands in Alaska for Airport Purposes

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The State of Alaska, Department of Transportation and Public Facilities has requested an airport lease to improve and expand an existing landing strip located within Air Navigation Site (ANS 154). The State needs the lease in order to obtain Federal funds from the Federal Aviation Administration for the purpose of expanding the airport.

ADDRESSES: Written comments on this notice should be submitted to the District Manager, Bureau of Land Management, Steese/White Mountains District, 1150 University Avenue, Fairbanks, Alaska, 99709.

FOR FURTHER INFORMATION CONTACT: Rod Everett, Realty Specialist, at the address given above or telephone 907/474-2365.

SUPPLEMENTARY INFORMATION: The following described public lands near Central, Alaska are being considered for lease to the State of Alaska for airport purposes under the Act of May 24, 1928, as amended (49 U.S.C., Appendix 211-213):

Fairbanks Meridian, Alaska

T. 9 N., R. 14 E.,
Sec. 26: Within SW ¼;
Sec. 27: Within SE ¼.

The area described contains 32.06 acres.

The lands being considered will be leased to the State for the purpose of improving and expanding an existing landing strip. The subject lands are entirely surrounded by lands conveyed to private holders or the State of Alaska.

The above described lands have been, and remain, segregated from all appropriation under the public land laws, including the mining laws but not the mineral leasing laws, subject to valid existing rights. The subject lands have been segregated by Air Navigation Site withdrawal (ANS 154), and selections by the State of Alaska (F-43788).

For a period of 45 days from the date of this publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager at the above address. Any adverse comments will be reviewed by the State Director, who may vacate, sustain, or modify the realty action and issue a final determination. In the absence of any objections, the final

determination of the Department of the Interior will be made in accordance with this Notice.

Dated: June 20, 1989.

Jack C. Meller,

Associate District Manager, Steese/White Mountains District.

[FR Doc. 89-15443 Filed 6-29-89; 8:45 am]

BILLING CODE 4310-JA-M

[AZ-020-4212-11; AZA-23604]

Arizona; Realty Action; Lease or Conveyance of Public Land for Recreation and Public Purposes

The following public land near the town of Black Canyon City, Yavapai County, Arizona has been found suitable for lease or conveyance to the Yavapai County Board of Supervisors for use as a public park and will be so classified under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 seq.):

Gila and Salt River Meridian, Arizona

T. 8N., R. 2E.,
Sec. 9, lot 2;
Sec. 10, SW¼NW¼NW¼, W½W½SE¼ NW¼NW¼.

Containing 18.14 acres, more or less.

The lands are not needed for federal purposes. Through the environmental assessment process, it has been determiend that the lease or conveyance of this land would not affect any BLM programs and would be in the public interest.

The lease or conveyance would be subject to the following conditions:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

Upon publication of this Notice in the **Federal Register**, this land shall be segregated from all forms of appropriation under the Public Land Laws, including the General Mining Laws, except for the lease or conveyance under the Recreation and Public Purposes Act. For a period of 45 days from the date of publication of the Notice, interested persons may submit comments regarding the lease/conveyance of classification of this land to the District Manager, Phoenix District, Bureau of Land Management, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Any objections will be reviewed by the State Director, who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior. Further information regarding this realty action can be obtained from the Phoenix Resource Area, Phoenix District (602) 863-4464.

Dated: June 19, 1989.

Henri R. Bisson,

District Manager.

[FR Doc. 89-15532 Filed 6-29-89;8:45am]

BILLING CODE 4333-12-M

[NM 010-3110-10-9202/GP9-0112]

Realty Action; Exchange of Federal Minerals for Private Minerals in New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action on proposed land exchange.

SUMMARY: The following described Federal mineral estate which is located under private surface estate within Cibola, Valencia, Catron and Socorro Counties has been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716.

New Mexico Principal Meridian

T. 4 N., R. 3 W.,
Section 24, NE¼, S½.
T. 5 N., R. 3 W.,
Section 18, Lots 1-4, E½, E½ W½;
Section 20, N½, SW¼.
T. 3 N., R. 4 W.,
Section 4, Lots 3, 4, S½ NW¼, SW¼;
Section 22, All;
Section 24, E½.
T. 3 N., R. 6 W.,
Section 4, S½ N½, S½.
T. 4 N., R. 6 W.,
Section 10, All (O&G only);
Section 12, NE¼, N½ NW¼, SE¼ NW¼ (O&G only);
Section 24, NW¼ (O&G only).
T. 3 N., R. 7 W.,
Section 4, SW¼;
Section 8, SE¼;
Section 10, E½;
Section 14, All.
T. 4 N., R. 7 W.,
Section 10, All;
Section 12, All.
T. 1 N., R. 12 W.,
Section 3, Lots 1-4, S½ N½, SW¼;
Section 4, Lots 1-4, S½ N½, S½;
Section 7, Lots 1-4, E½, E½ W½.
T. 3 N., R. 14 W.,
Section 22, All;
Section 23, All;
Section 25, All;
Section 26, N½;
Section 35, All.
T. 2 N., R. 15 W.,
Section 10, All.
T. 2 N., R. 15 W.,
Section 11, All;
Section 13, All;
Section 14, All;
Section 17, E½ E½ (O&G only), W½, W½ E½;
Section 20, N½;
Section 21, All;
Section 23, All;
Section 24, All;
Section 25, All;
Section 26, All;
Section 28, N½, SW¼;
Section 29, E½ SW¼, SW¼ SW¼, SE¼;
Section 30, Lots 1, 3, NE¼ NW¼;
Section 34, E½;
Section 35, All.
T. 9 N., R. 15 W.,
Section 10, All;
Section 12, All.

Containing 21,487.32 acres.

In exchange for this Federal mineral estate, the United States has selected approximately 18,506.20 acres of privately-owned minerals within Cibola County in the El Malpais National Conservation Area and National Monument as listed below:

New Mexico Principal Meridian

T. 6 N., R. 11 W.,
Section 31, Lots 1-4, E½, E½ W½;
Section 33, All.
T. 6 N., R. 12 W.,
Section 3, Lots 1-4, S½N½, S½;
Section 11, All;
Section 13, All;
Section 15, All;
Section 23, All;
Section 25, All.
T. 7 N., R. 12 W.;
Section 29, All;
Section 33, All.
T. 8 N., R. 12 W.,
Section 5, Lots 1-4, S½N½, S½;
Section 7, Lots 1-4, E½, E½W½;
Section 17, All;
Section 19, Lots 1-4, E½, E½W½.
T. 7 N., R. 13 W.
Section 1, Lots 1-4, S½N½, S½;
Section 3, Lots 1-4, S½N½, S½;
Section 11, All;
Section 13, All.
T. 8 N., R. 13 W.;
Section 1, Lots 1-4, S½N½, S½;
Section 11, All;
Section 13, All;
Section 15, All;
Section 21, All.
T. 8 N., R. 13 W.,
Section 23, All;
Section 25, All;
Section 27, All;
Section 29, All;
Section 33, All;
Section 35, All.

Upon completion of the final appraisal, the actual acreage exchanged will be adjusted to reflect equal values as much as possible. The purpose of the exchange is to consolidate Federal mineral ownership for the Federal government within El Malpais National Conservation Area (NCA) and National Monument (NM). This action is consistent with land ownership adjustments as set forth in the Record of Decision for the Rio Puerco Resource Management Plan (RMP) approved January 16, 1986 and the Socorro RMP approved February, 1989.

The purpose of this Notice of Realty Action is twofold. First, this notice will provide a response period of forty-five (45) days during which public comments will be accepted regarding this exchange proposal. Secondly, this action as provided in 43 CFR 2201.1 (b), shall segregate the Federal minerals as described in this Notice, to the extent that they will not be subject to appropriation under mineral leasing and mining laws, subject to any prior valid rights. The segregative effect shall terminate either upon publication in the **Federal Register** of a termination of the segregation or two years from the date of this publication, whichever occurs first.

SUPPLEMENTARY INFORMATION: Detailed information concerning the exchange is available at the Albuquerque District Office, 435 Montano NE., Albuquerque, New Mexico 87107.

For a period of forty-five (45) days after publication of this Notice interested parties may submit comments to the District Manager at the above address.

Dated: June 26, 1989.

Patricia E. McLean,

Associate District Manager.

[FR Doc. 89-15474 Filed 6-29-89; 8:45 am]

BILLING CODE 4310-FB-M

[CO-942-09-4520-12]

Colorado; Filing of Plats of Survey

June 20, 1989.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 a.m., June 20, 1989.

The plat representing the dependent resurvey of portions of the south boundary and subdivisional lines and Tracts 37 and 38, and the subdivision of section 32, T. 2. S., R. 101 W., Sixth Principal Meridian, Colorado, Group No. 855, was accepted May 31, 1989.

The plat representing the dependent resurvey of portions of the north and west boundaries, the subdivisional lines, and a portion of the subdivision of section 5, the subdivision of certain sections, and the metes-and-bounds survey in section 5, T. 1 N., R. 101 W., Sixth Principal Meridian, Colorado, Group No. 851, was accepted June 9, 1989.

The plat representing the dependent resurvey of a portion of the subdivisional lines, T. 8 N., R. 95 W., sixth Principal Meridian, Colorado, Group No. 835, was accepted June 1, 1989.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of section 26, Fractional T. 12 N., R. 87 W., Sixth Principal Meridian, Colorado, Group No. 837, was accepted June 1, 1989.

The plat representing the corrective dependent resurvey of a portion of the subdivisional lines and the corrective survey of the subdivision of sections 2, 3, and 10, T. 2 S., R. 74 W., Sixth Principal Meridian, Colorado, Group No. 694, was accepted June 9, 1989.

These surveys were executed to meet certain administrative needs of this Bureau.

The plat representing the dependent resurvey of a portion of the subdivisional lines of H.E.S. No. 51, T. 6 S., R. 74 W., Sixth Principal Meridian, Colorado, Group No. 897, was accepted June 12, 1989.

The plat representing the dependent resurvey of portions of the Eighth Standard Parallel North (south boundary), T. 33 N., R. 5 E., west boundary, and subdivisional lines, and the subdivision of section 6, T. 32 N., R. 5 E., New Mexico Principal Meridian, Colorado, Group No. 846, was accepted June 1, 1989.

The plat representing the dependent resurvey of portions of the east boundary of the Tierra Amarilla Grant (from Mile Corner Number 38+25.84 to Mile corner Number 42), the Eighth Standard Parallel North (south boundary), T. 33 N., R. 4 E., and the subdivisional lines, the completion survey of sections 2, 3, 10, and 11, and the subdivision of sections 1 and 2, Fractional T. 32 N., R. 4 E., New Mexico Principal Meridian, Colorado, Group No. 846, was accepted June 1, 1989.

The plat representing the corrective dependent resurvey of a portion of the subdivisional lines, T. 4 S., R. 73 W., Sixth Principal Meridian, Colorado, Group No. 690, was accepted May 31, 1989.

These surveys were executed to meet certain administrative needs of the Forest Service.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado, 80215.

Gary L. Gibson,

Acting Chief, Cadastral Survey for Colorado.

[FR Doc. 89-15466 Filed 6-29-89; 8:45 am]

BILLING CODE 4310-JB-M

Bureau of Reclamation

[INT-DES-89-7]

Westlands Water District Water Supply Replacement Project, Alameda County, CA (Formerly Delta-Mendota Canal/California Aqueduct Project—Westlands Intertie Project)

AGENCY: Bureau of Reclamation, Interior.

ACTION: Extension of comment period on the draft environmental impact report/environmental impact statement (DEIR/DEIS).

SUMMARY: The comment period for the Westlands Water District Water Supply Project Environmental Impact Statement (DEIS) has been extended to July 3, 1989, at the request of the Environmental Protection Agency. Comments on the DEIS may be submitted in writing to the Regional Director, Bureau of Reclamation, Mid-Pacific Region, Attention: MP-410, 2800 Cottage Way, Sacramento, California 95825-1898.

FOR FURTHER INFORMATION CONTACT: Mr. John Brooks (Environmental Specialist, Mid-Pacific Region, MP-410, 2800 Cottage Way, Sacramento, California 95825), telephone (916) 978-5049; or Mr. Lance Johnson (Project Engineer, Westlands Water District, 3130 Fresno Street, Fresno, California 93703), telephone (209) 224-1642.

Dated: June 26, 1989.

Joe D. Hall,

Deputy Commissioner.

[FR Doc. 89-15475 Filed 6-29-89; 8:45 am]

BILLING CODE 4310-09-M

Fish and Wildlife Service

Availability of an Environmental Assessment and Finding of No Significant Impact for Issuance of a Right of Way Permit to North Carolina Department of Transportation to Provide Access to Pea Island National Wildlife Refuge to Provide Protection to the South End of the Herbert C. Bonner Bridge and North Carolina Highway 12, Dare County, NC.

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This Notice advises the public that an Environmental Assessment and Finding of No Significant Impact for issuance of a Right-of-Way Permit to allow construction of bridge protection measures on Pea Island National Wildlife Refuge (Refuge) has been signed and made available to the public as of June 20, 1989. The U.S. Fish and Wildlife Service (Service) issued the permit to the North Carolina Department of Transportation to construct a revetment and an attached terminal groin and to conduct beach nourishment on the north end of the Refuge. This Permit includes conditions which make the project acceptable to the Service. The permit provides access to Refuge lands and waters, allows Refuge lands to be utilized for equipment and materials storage, and includes approval to obtain needed access to required work areas.

A number of alternatives, including "no action", were considered.

DATES: The permit was issued on June 20, 1989.

ADDRESS: Comments should be addressed to: Regional Director, U.S. Fish and Wildlife Service, 75 Spring Street, SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: L.K. Mike Gantt, Field Supervisor, U.S. Fish and Wildlife Service, P.O. Box 33726, Raleigh, North Carolina, 27636-3726; Commercial (919) 856-4520 or FTS 672-4520.

Dated: June 21, 1989.

James W. Pulliam, Jr.,

Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 89-15458 Filed 6-29-89; 8:45 am]

BILLING CODE 4310-AN-M

INTERNATIONAL BOUNDARY AND WATER COMMISSION

International Agreement for Improvement of Quality of Waters of Rio Grande at Laredo, Texas-Nuevo Laredo, Tamaulipas; Finding of No Significant Impact

AGENCY: United States Section, International Boundary and Water Commission, United States and Mexico.

ACTION: Notice of finding of no significant impact.

SUMMARY: Based on an environmental assessment, the U.S. Section finds that the proposed action that the United States Government enter into an agreement with the Government of Mexico through the International Boundary and Water Commission (Commission) to provide for a jointly funded project to improve the quality of the waters of the Rio Grande at Laredo, Texas and Nuevo Laredo, Tamaulipas is not a major federal action that would have a significant adverse effect on the quality of the human environment. Therefore, pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Final Regulations (40 CFR Parts 1500 through 1508); and the U.S. Section's Operational Procedures for Implementing Section 102 of NEPA, published in the **Federal Register** September 2, 1981 (46 FR 44083); the U.S. Section hereby gives notice that an environmental impact statement will not be prepared for the proposed project.

FOR FURTHER INFORMATION CONTACT: Mr. M.R. Ybarra, U.S. Section Secretary, International Boundary and Water Commission, United States and Mexico, U.S. Section, 4171 North Mesa Street, C-310, El Paso, Texas 79902. Telephone: 915/534-6698, FTS 570-6698.

SUPPLEMENTARY INFORMATION:

Proposed Action

The action proposed is that the United States Government enter into an agreement with the Government of Mexico through the Commission to provide for a jointly funded project to improve the quality of the waters of the Rio Grande at Laredo, Texas and Nuevo Laredo, Tamaulipas. The agreement provides for the jointly funded construction of a riverside interceptor and associated sewage collection system and international wastewater treatment plant. The United States will share in the operation and maintenance of the facilities. The project would stop the discharge of untreated sewage into the Rio Grande from Nuevo Laredo.

Alternatives Considered

Three alternatives were considered:

The Proposed Action Alternative. This alternative provides for construction of a riverside interceptor and associated sewage collection system and international wastewater treatment plant jointly funded by the United States and Mexico to handle the estimated sewage load generated by the Mexican city to the year 2000. The construction of the riverside interceptor and associated sewage collection system and the international wastewater treatment plant and their operation and maintenance will be under the supervision of the Commission and under the jurisdiction of the Mexican Section of the Commission. Other aspects of this alternative would require Mexico to prevent the discharge of untreated industrial wastewaters into the Rio Grande as well as discharge into the sewage collection system

The Treatment in the United States Alternative. Under this alternative, an international wastewater treatment plant would be constructed in the United States to handle the sewage load from Nuevo Laredo. A costly river crossing pipeline would be required. There would be the threat of washout from high flows that could result in serious pollution problems. The cost of construction of a treatment plant in the United States would be much greater than construction in Mexico. Finally, there are no assurances that all the sewage would be properly collected on the Mexican side since a plant on the United States side would not provide the opportunity of strong direct supervision of the collection system in Mexico through the Commission.

The No Action Alternative. Under this alternative, the discharge of untreated sewage into the Rio Grande would continue. There is a likelihood that future discharge points would be located upstream of the Laredo, Texas, water treatment plant. The volume of collected sewage is expected to increase in the future.

Elevated bacterial levels are evident in the waters of the Rio Grande about 40 miles downstream where the cities of San Ygnacio, Texas and San Ignacio, Tamaulipas obtain their domestic water supplies. The recreational values of the Falcon Reservoir are further diminished. The continued threat of pollution of Falcon Reservoir has a serious impact. There is also a likelihood of greater discharges without a joint project. Finally, there would be no assurances that Mexico would rehabilitate its sewage collection system. The result could be the spread of communicable diseases from that Mexican city into the United States which would seriously affect the service and tourism economies in both cities.

Environmental Assessment

The U.S. Section completed the Draft Environmental Assessment for the proposed agreement on June 15, 1989, and it is currently available for review and comment.

Finding of the Environmental Assessment

The Draft Environmental Assessment finds that the proposed action at Nuevo Laredo does not constitute a major federal action which would cause a significant local, regional, or national adverse impact on the environment based on the following:

1. The agreement would assure the earliest possible termination of discharge of untreated sewage from Nuevo Laredo and provide secondary treatment prior to discharge into the river.

2. The agreement would provide the United States Government assurances for the proper construction, operation, and maintenance of the sewage collection, the interceptor, and treatment works in Mexico.

3. The agreement would provide the United States Government assurances that the more stringent United States surface water quality standards are achieved. It would also assure that no unsafe waters would be diverted in this reach of the Rio Grande.

4. The agreement would preserve the water quality of Falcon Reservoir and would avoid adverse impacts to 1.5 million people and 1.2 million acres of irrigated farmlands downstream in both countries.

5. The agreement would reduce the threat of the spread of diseases attributed to contamination of water supplies in the area.

6. The agreement would significantly reduce potential detrimental economic impacts associated with drops in the tourism industry that could be associated with public health problems related to contamination of the Rio Grande.

7. The well-being of the people living and traveling in the Laredo/Nuevo Laredo area would be improved.

8. The improved sewage collection and treatment facilities in the Mexican city would benefit the growing maquiladora industry in Nuevo Laredo, which in turn has benefited the economies of Mexico and the United States;

9. The reduction in pollution in the area would have a beneficial effect on fish and wildlife including endangered and threatened species that might be found in the area.

10. The construction of works, entirely within Mexico, would not affect cultural resources in the United States listed on or proposed for nomination to both the National Register of Historic Places and the National Registry of Natural Landmarks.

On the basis of the Draft Environmental Assessment, the U.S. Section has determined that an environmental impact statement is not required for the United States Government to enter into an agreement with the Government of Mexico to provide for a jointly funded project to improve the quality of the waters of the Rio Grande at Laredo, Texas and Nuevo Laredo, Tamaulipas and hereby provides notice of a finding of no significant impact.

An environmental impact statement will not be prepared unless additional information which may affect this decision is brought to our attention within thirty (30) days of the date of this Notice.

The Draft Environmental Assessment and Draft finding of no significant impact have been forwarded to the Environmental Protection Agency and various Federal, State, and local agencies and interested parties. A limited number of copies of these documents are available to fill single copy requests at the above address.

Suzette Zaborski,

Staff Counsel.

Date: June 19, 1989.

[FR Doc. 89-15440 Filed 6-29-89; 8:45 am]

BILLING CODE 4710-03-M

INTERSTATE COMMERCE COMMISSION

[Section 5a Application No. 91; Amdt. 2 [1]]

Wyoming Trucking Association, Inc.; Agreement

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision and request for comment.

SUMMARY: Wyoming Trucking Association, Inc. (Association) has filed, under section 14(e) of the Motor Carrier Act of 1980 (MCA), an application for approval of its ratemaking agreement under 49 U.S.C. 10706(b). Since modifications are required before the agreement receives final approval, and because new and complex questions are involved in determining whether the agreement is consistent with the MCA, the Commission solicits public comment on its interpretation and application of specific rate bureau provisions.

DATES: Comments from interested persons are due on July 31, 1989. Replies are due 15 days thereafter.

ADDRESSES: An original and 10 copies, if possible, of comments referring to section 5a Application No. 91 should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Samuel S. Taylor, Jr., (202) 275-7161 or Richard Felder, (202) 275-7691

[1] Section 5 was recodified as section 10706.

[TDD for hearing impaired: (202) 275-1721.]

SUPPLEMENTARY INFORMATION: We have provisionally approved the Association's agreement as consistent with 49 U.S.C. 10706(b) and *Motor Carrier Rate Bureaus—Imp. P.L. 96-296*, 364 I.C.C. 464 (1980) and 364 I.C.C. 921 (1981) (*Rate Bureau*), subject to certain conditions and modifications in the following subject areas: identification and description of member carriers; right of independent action; rate bureau protests; employee docketing; open meetings; final disposition of cases; and zone of rate freedom and released rates. We have also offered comments and imposed requiremetns concerning the agreement generally. The Association has been directed to file a revised agreement conforming to the imposed conditions within 120 days after service of the decision, and to comply with the required revisions pending final approval.

In light of the complexity of interpretation involved in determining whether the agreement is consistent with the MCA and *Rate Bureau*, we request applicant and other interested parties to comment on our interpretation of the controlling statutory and administrative criteria generally, and their application to the Association's agreement.

A copy of any comments filed with the Commission must also be served on the Association, which will have 15 days from the expiration of the comment period to reply. These comments will be considered in conjunction with our review of the modifications that the Association must submit to the Commission as a condition precedent to final approval of its agreement.

Copies of the Association's proposed amended agreement are available for public inspection and copying at the Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423, and from the Association's representative: Sharon Nichols, P.O. Box 1909, Casper, WY 82601.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 275-7428. [Assistance for the hearing impaired is available thorugh TDD services (202) 275-1721.]

Authority: 49 U.S.C. 10321 and 10706 and 5 U.S.C. 553.

Decided: June 22, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners André, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89-15515 Filed 6-29-89; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. MC-177; MC-C-30090]

National Industrial Transportation League; Petition for a Declaratory Order on Negotiated Motor Common Carrier Rates

AGENCY: Interstate Commerce Commission.

ACTION: Notice of policy clarification.

SUMMARY: The Commission has reopened Ex Parte No. MC-177: (1) To clarify that it has primarily jurisdiction over unreasonable practice issues in negotiated rates cases; that its unreasonable practice determinations are thus binding; and that its determinations are subject to judicial review only to determine that they are not arbitrary or capricious; and (2) to announce that it will accept negotiated rates cases without court referrals. The Commission will continue to handle negotiated rates cases on a case-by-case basis and has held the petition in No. MC-C-30090 in abeyance pending experience with the measures taken here.

DATES: The Commission's decision is effective June 29, 1989.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 275-7691

or

Suzanne O'Malley (202) 275-7292 [TDD for hearing impaired: (202) 275-1721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275-1721.)

This action will not significantly affect the quality of the human environment or energy conservation.

This notice is issued pursuant to 5 U.S.C. 553, and 49 U.S.C. 10321 and 10701(a).

Decided: June 14, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips. Commissioners Andre and Phillips commented with separate expressions. Chairman Gradison dissented in part with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 89-15513 Filed 6-29-89; 8:45 am]

BILLING CODE 7035-01-M

Intent to Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office:

Giant Industries Inc., d/b/a TransWest Tanklines, 7227 North 16th Street, Phoenix, Arizona 85968.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of Incorporation:

a. Giant Industries Inc., d/b/a Giant Refining Co.—an Arizona corporation.
b. Ciniza Pipe Line Inc.—a New Mexico corporation;
c. Ciniza Production Company Inc.—a New Mexico corporation.

Noreta R. McGee,

Secretary.

[FR Doc. 89-15459 Filed 6-29-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-320X]

Upper Merion and Plymouth Railroad Co., Abandonment Exemption in Montgomery County, PA

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 1.23-mile line of railroad between the intersection of its Tracks Nos. 3 and 5 on the property of Keystone Coke Company at or near River Road and a point 450 feet west of Flint Hill Road (end of the line), in Upper Merion Township, Montgomery County, PA.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 30, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by July 10, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by July 20, 1989, with: Office of the Secretary Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Fritz R. Kahn, Esq., Verner, Liipfert, Bernhard, McPherson and Hand, Chartered, Suite 700, The McPherson Bldg., 901 15th Street, NW, Washington, DC 20005-2301.

If the notice of exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by July 10, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Acting Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: June 26, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-15480 Filed 6-29-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-290 (Sub-No. 58X)]

Norfolk and Western Railway Co.; Abandonment Exemption; in Toledo, OH

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903-10904 the abandonment by Norfolk and Western Railway Company of a 0.61-mile portion of its Cherry Street Branch extending between milepost T-0.00 and milepost T-0.61, in Toledo, OH, subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on August 1, 1989. Formal expressions of intent to file and offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by July 10, 1989, petitions to stay must be filed by July 17, 1989, and petitions for reconsideration must be filed by July 27, 1989. Requests for a public use condition must be filed by July 10, 1989.

ADDRESSES: Send pleadings referring to Docket No. AB-290 (Sub-No. 58X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) Petitioner's representative: Roger A. Petersen, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510-2191

FOR FURTHER INFORMATION CONTACT:

Joseph H. Dettmar, [202) 275-7245

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[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C.2d 400 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440-48446).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

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[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440-48446).

(TDD for hearing impaired: (202) 275-1721)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275-1721.).

Decided: June 23, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89-15514 Filed 6-29-89; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31474]

Central Railroad Co. of Indianapolis; Trackage Rights Exemption

Norfolk and Western Railroad Company (NW) has agreed to grant trackage rights to Central Railroad Company of Indianapolis (Central) over a 1.24-line of railroad in Tipton, IN, between milepost I-41.0 and milepost I-39.76, at a point where the affected line connects with NW's east/west line that runs between Cincinnati, OH, and Decatur, IL. The trackage rights will become effective on July 1, 1989, or when the Commission grants a petition for exemption in Finance Docket No. 31470, *Central Railroad Company of Indianapolis—Lease and Operation Exemption—Line of the Norfolk and Western Railway Company* and the lease is consummated, whichever date is later.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Thomas W. Ambler, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510-2191.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354, I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: June 27, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-15627 Filed 6-29-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-290 (Sub-No. 58)]

Norfolk and Western Railway Co.—Abandonment Between St. Marys and Minster in Auglaize County, OH; Findings

The Commission has issued a certificate of interim trail use or abandonment [CITU] authorizing Norfolk and Western Railway Company (N&W) to abandon its 9.1 mile rail line between St. Marys (milepost SM-1.0) and Minster (milepost SM-10.1) in Auglaize County, OH. The CITU authorizes N&W to discontinue service and salvage track and track materials 30 days after this publication or abandon the line if an interim trail use agreement is not reached within 180 days, unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.

Noreta R. McGee,

Secretary.

[FR Doc. 89-15397 Filed 6-29-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463 as amended), notice is hereby given of a meeting of the Steering Subcommittee for the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: July 11, 1989, 9:30 a.m., Rm. S4215 B&C Frances Perkins, Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC 20210

Purpose: To discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552(c)(1). The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

FOR FURTHER INFORMATION CONTACT: Fernand Lavallee, Director, Labor Advisory Committee Group, *Phone:* (202) 523–2752

Signed at Washington, DC, this 22nd day of June.

Leonard Bierman,

Acting Deputy Under Secretary International Affairs.

[FR Doc. 89–15444 Filed 6–29–89; 8:45 am]

BILLING CODE 4510–30–M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdividion of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 10, 1962.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 10, 1989.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 19th day of June 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition number	Articles produced
A.O. Smith, Electrical Products Co. (IBEW)	Tipp City, OH	6/19/89	6/6/89	23,050	Electrical Motors.
Aneco Trousers Corp. (Workers)	Hanover, PA	6/19/89	5/15/89	23,051	Mens' Coats and Pants and Ladies' Skirts.
Aneco Trousers Corp. (Workers)	Taneytown, MD	6/19/89	5/15/89	23,052	Mens' Coats and Pants and Ladies' Skirts.
(The) Atlantic Foundry Co. (USWA)	Akron, OH	6/19/89	6/2/89	23,053	Steel.
Cardinal Surveys, Co. (Company)	Odessa, TX	6/19/89	5/31/89	23,054	Oil & Gas.
Cardinal Surveys, Co. (Company)	Hobbs, NM	6/19/89	5/31/89	23,055	Do.
Gary Williams Energy Corp. (Workers)	Roosevelt, UT	6/19/89	6/1/89	23,056	Do.
Gold Star of America, Inc. (Workers)	Huntsville, AL	6/19/89	6/1/89	23,057	Microwave and T.V. Sets.
Keystone Lamp Mfg., Corp. (USWA)	Slatington, PA	6/19/89	5/31/89	23,058	Lamps.
Lone Star Logging Co., Inc. (Company)	Talpa, TX	6/19/89	5/28/89	23,059	Oil and Gas.
McCord Heat Transfer, Corp. (UAW)	Plymonth, IN	6/19/89	6/1/89	23,060	Radiators.
Montgomery Drilling Co. (Workers)	Roosevelt, UT	6/19/89	5/24/89	23,061	Oil and Gas.
Oryx Energy Co. (Formerly Sun Exploration & Production Co. (Company).	Dallas, TX	6/19/89	6/7/89	23,062	Do.
Pendleton Land & Exploration Inc.	Englewood, CO	6/19/89	5/30/89	23,063	Do.
Petroleum Information—Log Div. (Company)	Midland, TX	6/19/89	6/1/89	23,064	Do.
Plessey Electronic Systems Corp. (Workers)	Wayne, NJ	6/19/89	6/1/89	23,065	Electronic Systems.
Quintana Petroleum Corp. (Workers)	Denver, CO	6/19/89	6/2/89	23,066	Oil and Gas.
Roggen (Workers)	Roggen, CO	6/19/89	5/26/89	23,067	Do.
Schreiber Foods, Inc. (Workers)	Curwensville, PA	6/19/89	6/1/89	23,068	Cheese.
U.K. Dye Works (ACTWU)	Paterson, NJ	6/19/89	6/1/89	23,069	Yarn.
US-International/Smith Kline & French Labs (Workers)	Philadelphia, PA	6/19/89	5/30/89	23,070	Ethical Pharmaceuticals.
Wallace Crossley Corp. (Workers)	Miami, FL	6/19/89	5/30/89	23,071	Aluminum Doors and Windows.
Whirlpool Corp., Evansville, Div. (IUE)	Evansville, IN	6/19/89	6/1/89	23,072	Household Appliances.
Wichita River Oil Corp. (Workers)	Denver, CO	6/19/89	5/24/89	23,073	Oil and Gas.

[FR Doc. 89–15501 Filed 6–29–89; 8:45 am]

BILLING CODE 4510–30–M

Baroid Corp.; Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Correction

In the matter of TA–W–22, 876, Headquarters, Houston, Texas; TA–W–22, 877, Atlas Division, Houston, Texas; TA–W–22, 878, Baroid Division, Houston, Texas; TA–W–22, 879, Mwd Division, Houston, Texas; TA–W–22, 880, Shaffer Division, Houston, Texas; TA–W–22, 881, Sperry-Sun Drilling Baroid Logging Systems HQ., Houston, Texas.

This notice corrects the date of petition and date received for the subject petition numbers published on May 19, 1989 in the **Federal Register** in the Appendix of FR Document 89–12067 on page 21684.

In lines 3 through 9 of the Appendix the petition date is corrected to read "1/31/89" instead of "4/20/89" and the date received is corrected to read "2/6/89" instead of "5/8/89". Signed at Washington, DC, this 22nd day of June 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89–15445 Filed 6–29–89; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–22,724]

C.D.R. Footwear, Incorporated, Keene, New Hampshire; Negative Determination Regarding Application for Reconsideration

By an application dated June 2, 1989 the company requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on May 25, 1989 and will be published soon in the **Federal Register.**

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The company claims that there has been an eroding market and sales base for the past six years. The company stated that the time frame of 1987 and 1988 is not the total issue and that the damage began five to six years ago ending with the closure of the plant on April 3, 1989.

Workers at C.D.R. Footwear in Keene produced leather work and outdoor footwear. Investigation findings show that the increased import criterion for work footwear was not met. U.S. aggregate imports of work footwear decreased absolutely and relative to domestic production in 1988 compared to 1987. U.S. imports of nonrubber footwear decreased in January 1989 compared to January 1988.

Declines in sales, production and employment five to six years ago are out of scope for the current investigation. Section 223(b)(1) of the Trade Act states that workers cannot be certified eligible to apply for adjustment assistance for layoffs prior to one year of the date of the petition. The date of the subject petition is March 18, 1989.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 21st day of June 1989.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89–15446 Filed 6–29–89; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–22,382]

Johnson and Johnson Dental Care, East Windsor, New Jersey; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility To Apply for Worker Adjustment Assistance on March 30, 1989 applicable to all workers of Johnson and Johnson Dental Care, East Windsor, New Jersey.

Based on additional information from the company, additional production workers were laid off after the February 3, 1989 termination date. Final closing is scheduled to occur in late 1989. The notice, therefore, is amended by deleting the February 3, 1989 termination date set in the initial certification.

The amended notice applicable to TA–W–22,382 is hereby issued as follows:

All workers of Johnson and Johnson Dental Care, East Windsor, New Jersey who became totally or partially separated from employment on or after December 12, 1987 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 20th day of June 1989.

Barbara A. Farmer,

Director, Office of Program Management, UIS.

[FR Doc. 89–15447 Filed 6–29–89; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–22,406]

Muskogee Inspection Co., Muskogee, OK; Affirmative Determination Regarding Application for Reconsideration

The company requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers and former workers of Muskogee Inspection Company, Muskogee, Oklahoma. The negative determination was issued on March 30, 1989 and published in the **Federal Register** on April 25, 1989 (54 FR 17839).

On May 23, 1989, the company requested administrative reconsideration because it claims its services are fully integrated with its parent company whose workers produce an article and are currently certified under TA–W–22,374.

Conclusion

After careful review of the application, I conclude that the claims are of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 21st day of June 1989.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89–15448 Filed 6–29–89; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–21,945]

Retamco Operating, Inc.; San Antonio, TX; Affirmative Determination Regarding Application for Reconsideration

A company official, after two filing extensions, requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers and former workers of Retamco Operating, Inc., San Antonio, Texas. The negative determination was issued on February 10, 1989.

The company official claims that the Department's customer survey was inadequate and submitted an additional list of customers.

Conclusion

After careful review of the application, I conclude that the claims are of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, on this 20th day of June 1989.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89–15449 Filed 6–29–89; 8:45 am]

BILLING CODE 4510–30–M

[TA-W-21,151 et al]

Wilson Brothers Drilling Co.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of Wilson Brothers Drilling Company; TA-W-21,151—Lafayette, Louisiana; TA-W-21,151A—Seminole, Texas; TA-W-21,151B—Houston, Texas.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C., 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 8, 1988 applicable to all workers of Wilson Drilling Company, Lafayette, Louisiana. The Certification was amended on February 3, 1989 to include the Seminole and Houston, Texas locations.

The Certification is being amended to correct the name of the firm. New information from the company indicates that the correct name of the firm is Wilson Brothers Drilling Company also known as Wilson Drilling Company. The notice for Wilson Drilling Company, therefore, is amended by including the correct name of the firm.

The amended notice applicable to TA-W-21,151 is issued as follows:

All workers of Wilson Brothers Drilling Company in Lafayette, Louisiana; Seminole, Texas; and Houston, Texas who became totally or partially seperated from employment on or after October 1, 1985 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 20th day of June 1989.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-15430 Filed 6-29-89; 8:45 am]

BILLING CODE 4510-30-M

Federal-State Unemployment Compensation Program; Extended Benefits; Ending of Extended Benefit Period in the State of Alaska

This notice announces the ending of the Extended Benefit Period in the State of Alaska, effective on June 10, 1989.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. Under the Extended Benefit Program, individuals who have exhausted their rights to regular unemployment benefits (UI) under permanent State (and Federal) unemployment compensation laws may be eligible, during an Extended Benefit Period, to receive up to 13 weeks of extended unemployment benefits, at the same weekly rate of benefits as previously received under the State law. The Federal-State Extended Unemployment Compensation Act is implemented by State unemployment compensation laws and by Part 615 of Title 20 of the Code of Federal Regulations (20 CFR Part 615).

Extended Benefits are payable in a State during an Extended Benefit Period which is triggered "on" when the rate of insured unemployment in the State reaches the State trigger rate set in the Act and the State law. During an Extended Benefit Period, individuals are eligible for a maximum of up to 13 weeks of benefits, but the total of Extended Benefits and regular benefits together may not exceed 39 weeks.

The Act and the State unemployment compensation laws also provide that an Extended Benefit Period in a State will trigger "Off" when the rate of insured unemployment in the State is no longer at the trigger rate set in the law. A benefit period actually terminates at the end of the third week after the week for which there is an off indicator, but not less than 13 weeks after the benefit period began.

An Extended Benefit Period commenced in the State of Alaska on Feburary 19, 1989, and has now triggered off.

Determination of an "Off" Indicator

The head of the employment security agency of the State named above has determined that the rate of insured unemployment in the State for the period consisting of the week ending on May 20, 1989, and the immediately preceding twelve weeks, fell below the State trigger rate, so that for that week there was an "off" indicator in the State.

Therefore, the Extended Benefit Period in the State terminated with the week ending June 10, 1989.

Information for Claimants

The State employment security agency will furnish a written notice to each individual who is filing claims for Extended Benefits of the ending of the Extended Benefit Period and its effect on the individual's right to Extended Benefits. 20 CFR 615.13(d)(3).

Persons who wish information about their rights to Extended Benefits in the State named above should contact the nearest State employment service office in their locality.

Signed at Washington, DC on June 16, 1989.

Robert T. Jones,

Assistant Secretary of Labor.

[FR Doc. 89-15451 Filed 6-29-89; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions being added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page number(s).

Volume I:
Virginia:
VA89-41 ..... pp.1188kk-1188ll.
VA89-42 ..... pp.1188mm-1188nn.
VA89-43 ..... pp.1188oo-1188pp.
VA89-44 ..... pp.1188qq-1188rr.
VA89-45 ..... pp.1188ss-1188tt.
VA89-46 ..... pp.1188uu-1188vv.
VA89-47 ..... pp.1188ww-1188xx.
VA89-48 ..... pp.1188yy-1188zz.
VA89-49 ..... pp.1188aaa-1188bbb.
VA89-50 ..... pp.1188ccc-1188ddd.
VA89 51 ..... pp.1188eee-1188fff.
VA89-52 ..... pp.1188ggg-1188hhh.
VA89-53 ..... pp.1188iii-1188jjj.
VA89-54 ..... pp.1188kkk-1188lll.
VA89-55 ..... pp.1188mmm-1188ppp.
VA89-56 ..... pp.1188qqq-1188rrr.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I:
Connecticut, CT89-1 (Jan. 6, 1989). pp. 62, 64.
District of Columbia, DC89-1 (Jan. 6, 1989). pp. 78-85.
New Hampshire, NH89-1 (Jan. 6, 1989). p. 588.
New York:
NY89-2 (Jan. 6, 1989) ..... pp. 689-690, pp. 696-700.
NY89-4 (Jan. 6, 1989) ..... pp. 712-716.
NY89-7 (Jan. 6, 1989) ..... pp. 740-741, pp. 748-754.
NY89-8 (Jan. 6, 1989) ..... p. 756, pp. 759-760.
NY89-11 (Jan. 6, 1989) ..... pp. 782, 784.
NY89-12 (Jan. 6, 1989) ..... p. 791.
NY89-13 (Jan. 6, 1989) ..... p. 801.
NY89-17 (Jan. 6, 1989) ..... p. 820.
Listing by location (index) ..... pp. xliii-xliv.
Listing by decision (index) ..... pp. lvii-lx.

Volume II:
Ohio, OH89-2 (Jan. 6, 1989) ..... pp. 795-796, pp. 803-804.
Oklahoma:
OK89-14 (Jan. 6, 1989) ..... p. 953.
OK89-16 (Jan. 6, 1989) ..... p. 964.
OK89-17 (Jan. 6, 1989) ..... p. 968.

Volume III:
Alaska, AK89-1 (Jan. 6, 1989) ... pp. 2-47.
Oregon, OR89-1 (Jan. 6, 1989) .. pp. 308-313.
Washington, WA89-1 (Jan. 6, 1989). pp. 363-368, pp. 370-371, pp. 374-375.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 23rd day of June 1989.

Robert V. Setera,

Acting Director, Division of Wage Determinations.

[FR Doc. 89-15293 Filed 6-29-89; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

Summary of Decisions Granting in Whole or in Part Petitions for Modification

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of affirmative decisions issued by the Administrators for Coal Mine Safety and Health and Metal and Nonmetal Mine Safety and Health on petitions for modification of the application of mandatory safety standards.

SUMMARY: Under section 101(c) of the Federal Mine Safety and Health Act of 1977, the Secretary of Labor may modify the application of a mandatory safety standard to a mine if the Secretary determines either or both of the following: That an alternate method exists at a specific mine that will guarantee no less protection for the miners affected than that provided by the standard, or that the application of the standard at a specific mine will result in a diminution of safety to the affected miners.

Summaries of petitions received by the Secretary appear periodically in the **Federal Register**. Final decisions on these petitions are based upon the petitioner's statements, comments and information submitted by interested persons and a field investigation of the conditions at the mine. The Secretary has granted or partially granted the requests for modification submitted by the petitioners listed below. In some instances the decisions are conditioned upon compliance with stipulations stated in the decision.

FOR FURTHER INFORMATION CONTACT: The petitions and copies of the final decisions are available for examination

by the public in the Office of Standards, Regulations and Variances, MSHA, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: June 23, 1989.

Affirmative Decisions on Petitions for Modification

Docket No.: M–86–5–C
FR Notice: 51 FR 8379
Petitioner: Mid-Continent Resources, Inc.
Reg. Affected: 30 CFR 75.1105
Summary of Findings: Petitioner's proposal that whenever the configuration of intake air entries does not permit an underground transformer station to be ventilated by intake air that is coursed directly into a return aircourse, the station will be housed in a fire-proof structure equipped with fire-proof doors and a fire suppression system considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–87–C
FR Notice: 51 FR 39612
Petitioner: Western-Fuels Utah, Inc.
Reg. Affected: 30 CFR 77.1900
Summary of Findings: Application of the standard would result in a diminution of safety to the miners in that opening a cutout switch could result in injury to the person operating the switch. Petitioner's proposal that a qualified person will deenergize the trolley conductor in case of an emergency under specific procedures considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–92–C
FR Notice: 51 FR 30143
Petitioner: Three L Coal Company
Reg. Affected: 30 CFR 75.1400
Summary of Findings: Petitioner's proposal to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope above the main connecting device considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–169–C
FR Notice: 52 FR 46134
Petitioner: Clinchfield Coal Company
Reg. Affected: 30 CFR 75.1103–4(a)
Summary of Findings: Petitioner's proposal to install an early warning fire detection system using a low-level carbon monoxide (CO) detection system and to allow the velocity of air in the belt conveyor not to exceed 1,200 feet per minute considered acceptable alternate method. Granted with conditions.

Docket No.: M–86–170–C
FR Notice: 52 FR 46134
Petitioner: Clinchfield Coal Company
Reg. Affected: 30 CFR 75.1105
Summary of Findings: Petitioner's proposal to install an early warning fire detection system using a low-level carbon monoxide (CO) detection system and to allow the velocity of air in the belt conveyor not to exceed 1,200 feet per minute considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–87–C
FR Notice: 52 FR 13144
Petitioner: Chapperal Coal Corporation
Reg. Affected: 30 CFR 75.1103–4(a)
Summary of Findings: Petitioner's proposal to install a carbon monoxide (CO) system at the beginning and end of each belt flight and at intervals not to exceed 2,000 feet along the belts in lieu of a point-type system with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–108–C
FR Notice: 52 FR 25322
Petitioner: Buck Mountain Coal Company
Reg. Affected: 30 CFR 75.1405
Summary of Findings: The installation of automatic couplers on the track haulage cars would result in a diminution of safety to the miners affected due to the sharp radius curves in the track, the undulating pitch of the slopes, the different types of small lightweight cars, and the system of haulage. Granted with conditions.

Docket No.: M–87–113 C
FR Notice: 52 FR 34435
Petitioner: Gateway Coal Company
Reg. Affected: 30 CFR 75.1303
Summary of Findings: Petitioner's proposal to store explosives in underground storage facilities in excess of 48 hours considered acceptable alternate method. Granted with conditions.

Docket No.: M 87–125–C
FR Notice: 52 FR 20652
Petitioner: Consol Pennsylvania Coal Company
Reg. Affected: 30 CFR 75.503
Summary of Findings: Petitioner's proposal to use 800 foot long trailing cables on shuttle cars and 1,000 foot lengths when necessary to mine around oil and gas wells considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–133–C
FR Notice: 52 FR 23373
Petitioner: Krystal Coal Company No. 3
Reg. Affected: 30 CFR 75.313
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors in lieu of continuous methane monitors on three-wheel tractors with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–168–C
FR Notice: 52 FR 45402
Petitioner: Skidmore Coal Company
Reg. Affected: 30 CFR 75.1400
Summary of Findings: Petitioner's proposal to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope above the main connecting device considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–170–C
FR Notice: 52 FR 45397
Petitioner: Burnside Mining Company
Reg. Affected: 30 CFR 75.301
Summary of Findings: Proposed airflow reduction, which would maintain a safe and healthful atmosphere, considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–187 C
FR Notice: 52 FR 41790
Petitioner: Arch of Kentucky, Inc.
Reg. Affected: 30 CFR 77.803
Summary of Findings: Proposed use of a two-circuit grounding system for petitioner's high voltage power system considered acceptable alternate method of assuring ground continuity. Granted with conditions.

Docket No.: M–87–194–C
FR Notice: 53 FR 4912
Petitioner: Clinchfield Coal Company
Reg. Affected: 30 CFR 75.1710
Summary of Findings: Use of cabs or canopies on the mine's electric face equipment in specified low mining heights would result in a diminution of safety. Granted.

Docket No.: M–87–209–C
FR Notice: 52 FR 44648
Petitioner: Mountain View Coal Company
Reg. Affected: 30 CFR 75.301
Summary of Findings: Proposed airflow reduction, which would maintain a safe and healthful atmosphere, considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–215–C
FR Notice: 52 FR 41791
Petitioner: Quarto Mining Company
Reg. Affected: 30 CFR 75.1105
Summary of Findings: Petitioner's proposal to house the electrical equipment in a fireproof structure equipped with automatic closing fire doors activated by thermal devices with an activation temperature not greater than 165 degrees Fahrenheit

considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–220–C
FR Notice: 52 FR 46135
Petitioner: R.S. & W. Coal Company, Inc.
Reg. Affected: 30 CFR 75.1405
Summary of Findings: The installation of automatic couplers on the track haulage cars would result in a diminution of safety to the miners affected due to the sharp radius curves in the track, the undulating pitch of the slopes, the different types of small lightweight cars, and the systems of haulage. Granted with conditions.

Docket No.: M–87–223–C
FR Notice: 52 FR 2101
Petitioner: Loose Jaw Coal, No. 4, Inc.
Reg. Affected: 30 CFR 75.305
Summary of Findings: Due to two unintentional roof falls, certain areas of the mine cannot be safely traveled. Petitioner's proposal to establish check points on each side of the fall to measure the rate of airflow over the fall considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–226–C
FR Notice: 52 FR 42355
Petitioner: Old Ben Coal Company
Reg. Affected: 30 CFR 75.1002
Summary of Findings: Petitioner's proposal to use high voltage cables to supply power to longwall mining equipment inby the last open crosscut and within 150 feet of gob areas with specific conditions considered acceptable alternate method. Granted for longwall 1, panel 8, with conditions.

Docket No.: M–87–227–C
FR Notice: 52 FR 42354
Petitioner: Double L Coal Company
Reg. Affected: 30 CFR 75.305
Summary of Findings: Due to rock falls and poor roof conditions certain areas of the mine cannot be safely traveled. Petitioner's proposal to establish two monitoring stations where the quality and quantity of air will be monitored by a certified person on a weekly basis considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–241–C
FR Notice: 52 FR 45402
Petitioner: Pyro Mining Company
Reg. Affected: 30 CFR 75.305
Summary of Findings: Due to longwall abutment pressure and horizontal stress, the area leading to the seal is difficult and hazardous to examine. Petitioner's proposal to establish monitoring stations at specific locations where examinations for hazardous conditions will be made by a certified person on a weekly basis considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–242–C
FR Notice: 52 FR 46865
Petitioner: Dominion Coal Corporation
Reg. Affected: 30 CFR 75.326
Summary of Findings: Petitioner's proposal to use air from belt haulage entries to ventilate active working places and install a carbon monoxide type monitoring system to continually monitor the belt line considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–243–C
FR Notice: 52 FR 46865
Petitioner: Dominion Coal Corporation
Reg. Affected: 30 CFR 75.1103–4(a)
Summary of Findings: Petitioner's proposal to install a carbon monoxide (CO) monitoring system to monitor the belts along the belt line at intervals not to exceed 2,000 feet considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–244–C
FR Notice: 52 FR 46866
Petitioner: Dominion Coal Corporation
Reg. Affected: 30 CFR 75.1105
Summary of Findings: Petitioner's proposal to use air coursed over electrical installations to ventilate active working places and install carbon monoxide monitors to continually monitor the belt line considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–245–C
FR Notice: 52 FR 46866
Petitioner: Horsehead Coal Company
Reg. Affected: 30 CFR 75.1405
Summary of Findings: The installation of automatic couplers on the track haulage cars would result in a diminution of safety to the miners affected due to the sharp radius curves in the track, the undulating pitch of the slopes, the different types of small lightweight cars, and the systems of haulage. Granted with conditions.

Docket No.: M–87–246–C
FR Notice: 52 FR 46009
Petitioner: Jim Walter Resources, Inc.
Reg. Affected: 30 CFR 75.1002
Summary of Findings: Petitioner's proposal to use high-voltage cables to supply power to permissible longwall face equipment in or inby the last open crosscut with specific equipment and conditions considered acceptable alternate method. Granted for longwall panel No. 1 with conditions.

Docket No.: M–87–249–C
FR Notice: 52 FR 46864
Petitioner: Big Diamond Coal Company
Reg. Affected: 30 CFR 75.1400
Summary of Findings: Petitioner's proposal to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope above the main connecting device considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–254–C
FR Notice: 52 FR 47647
Petitioner: Walko Coal Company, Inc.
Reg. Affected: 30 CFR 75.313
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors in lieu of methane monitors on three-wheel tractors with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–256–C
FR Notice: 53 FR 1418
Petitioner: Arch on the North Fork, Inc.
Reg. Affected: 30 CFR 77.811
Summary of Findings: Petitioner's proposal to use a rubber-tired trailer-mounted portable generator to move large electric mining shovels and draglines using specific equipment and safety procedures considered acceptable alternate method. Granted.

Docket No.: M–87–258–C
FR Notice: 53 FR 963
Petitioner: The Helen Mining Company
Reg. Affected: 30 CFR 75.1105
Summary of Findings: Petitioner's proposal to house electric equipment in a fire-proof structure or area with automatic closing fire doors activated by thermal devices considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–262–C
FR Notice: 53 FR 965
Petitioner: White County Coal Corporation
Reg. Affected: 30 CFR 75.326
Summary of Findings: Petitioner's proposal to use the belt haulage entry as an intake aircourse and to install a low-level carbon monoxide detection system in all belt entries used as intake or return aircourses and at each belt drive and tailpiece located in intake aircourses considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–265–C
FR Notice: 53 FR 1419
Petitioner: B & S Coal Company, Inc.
Reg. Affected: 30 CFR 75.313
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors in lieu of methane monitors on three-wheel tractors with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–266–C
FR Notice: 53 FR 2549
Petitioner: Four G. Coal Company, Inc.

Reg. Affected: 30 CFR 75.313
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors in lieu of methane monitors on three-wheel tractors with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–267–C
FR Notice: 53 FR 1669
Petitioner: Perkins Coal Company, Inc.
Reg. Affected: 30 CFR 75.313
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors in lieu of methane monitors on three-wheel tractors with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–268–C
FR Notice: 53 FR 584
Petitioner: Poor Boy Coal Company, Inc.
Reg. Affected: 30 CFR 75.313
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors in lieu of methane monitors on three-wheel tractors with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–270–C
FR Notice: 53 FR 3276
Petitioner: Great Western Coal (Kentucky), Inc.
Reg. Affected: 30 CFR 75.1101–1
Summary of Findings: Petitioner's proposal to perform a weekly test of the deluge systems and record the results in lieu of installing and maintaining blow-off covers considered acceptable alternate method. Granted.

Docket No.: M–87–272–C
FR Notice: 53 FR 3276
Petitioner: Mount Vernon Coal Company
Reg. Affected: 30 CFR 75.1700
Summary of Findings: Petitioner's proposal to clean out and plug oil and gas wells using specific techniques and procedures considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–276–C
FR Notice: 53 FR 1421
Petitioner: Webster County Coal Corp.
Reg. Affected: 30 CFR 75.1103–4(a)
Summary of Findings: Petitioner's proposal to install an early warning fire detection system using a low-level carbon monoxide detection system with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–281–C
FR Notice: 53 FR 583
Petitioner: Christian Energies, Inc.
Reg. Affected: 30 CFR 75.313
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors in lieu of methane monitors on three-wheel tractors with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–282–C
FR Notice: 53 FR 2549
Petitioner: Lakeshore Equipment Co., Inc.
Reg. Affected: 30 CFR 75.313
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors in lieu of methane monitors on three-wheel tractors with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–285–C
FR Notice: 53 FR 1420
Petitioner: Scarlett Coal Company, Inc.
Reg. Affected: 30 CFR 75.313
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors in lieu of methane monitors on three-wheel tractors with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–287–C
FR Notice: 53 FR 1669
Petitioner: Consolidation Coal Company
Reg. Affected: 30 CFR 75.1103–4
Summary of Findings: Petitioner's proposal to use an early warning fire detection system using a low-level carbon monoxide detection system and to allow the velocity of air current in the belt conveyor entry to exceed 300 feet per minute considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–288–C
FR Notice: 53 FR 1669
Petitioner: Consolidation Coal Company
Reg. Affected: 30 CFR 75.326
Summary of Findings: Petitioner's proposal to use belt haulage entries as intake air courses to ventilate active working places and to allow the velocity of air current in the belt conveyor entry to exceed 300 feet per minute considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–289–C
FR Notice: 53 FR 1421
Petitioner: Wormy Coal Company
Reg. Affected: 30 CFR 75.313
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors in lieu of methane monitors on three-wheel tractors with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–299–C
FR Notice: 52 FR 4241
Petitioner: J & W Coal Company, Inc.
Reg. Affected: 30 CFR 75.313
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors in lieu of methane monitors on three-wheel tractors with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–303–C
FR Notice: 53 FR 13343
Petitioner: Kerr-McGee Coal Corp.
Reg. Affected: 30 CFR 75.902
Summary of Findings: Petitioner's proposal to use 480-volt, three-phase power distribution without the need of the ground check circuit in the No. 5 Seam bottom area and the No. 6 Seam fluids borehole area with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–306–C
FR Notice: 53 FR 7439
Petitioner: West Fork Energy, Inc.
Reg. Affected: 30 CFR 75.305
Summary of Findings: Due to an unintentional roof fall, certain areas of the mine cannot be safely traveled. Petitioner's proposal to establish check points on each side of the fall, to support the area so that it would be safe to examine the bleeder from the pillar works and to install a main door considered acceptable alternate method. Granted with conditions.

Docket No.: M–87–310–C
FR Notice: 53 FR 3800
Petitioner: Rushton Mining Company
Reg. Affected: 30 CFR 77.902
Summary of Findings: Petitioner's proposal to utilize a combination motor controller of adequate interrupting capacity to function as a suitable circuit breaker considered acceptable alternate method. Granted with conditions.

Docket No.: M–88–2–C
FR Notice: 53 FR 7432
Petitioner: Arch on The North Fork, Inc.
Reg. Affected: 30 CFR 75.305
Summary of Findings: Due to very poor conditions, roof falls, mud and water, certain areas of the mine are too hazardous to travel and efforts to rehabilitate would be hazardous. Petitioner's proposal to establish two monitoring stations where a certified person would make methane and air readings on a weekly basis considered acceptable alternate method. Granted with conditions.

Docket No.: M–88–5–C
FR Notice: 53 FR 9001
Petitioner: Whitaker Coal Corporation
Reg. Affected: 30 CFR 75.305
Summary of Findings: Due to hazardous roof conditions in the abandoned areas of the mine, certain areas are unsafe to travel. Petitioner's proposal to establish ventilation check points at specific locations considered acceptable alternate method. Granted with conditions.

Docket No.: M–88–6–C
FR Notice: 53 FR 8999
Petitioner: D. & F. Deep Mine Coal Company
Reg. Affected: 30 CFR 75.1405
Summary of Findings: Use of automatic couplers on the track haulage cars would result in a diminution of safety due to the sharp radius curves in the track, the undulating pitch of the slopes, the different types of small lightweight cars and the system of haulage. Granted with conditions.

Docket No.: M–88–8–C
FR Notice: 53 FR 7436
Petitioner: Marie Enterprises Inc.
Reg. Affected: 30 CFR 75.313
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors in lieu of methane monitors on three-wheel tractors with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–88–12–C
FR Notice: 53 FR 7434
Petitioner: Emco Coal Company, Inc.
Reg. Affected: 30 CFR 75.313
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors in lieu of methane monitors on three-wheel tractors with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–88–13–C
FR Notice: 53 FR 10166
Petitioner: Cyprus Empire Corporation
Reg. Affected: 30 CFR 75.1101–8
Summary of Findings: Petitioner's proposal to use a single line of automatic sprinklers for fire protection at main and secondary belt conveyor drives with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–88–15 C
FR Notice: 53 FR 7438
Petitioner: Summar Coal Inc.
Reg. Affected: 30 CFR 75.313
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors in lieu of methane monitors on three-wheel tractors with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–88–16–C
FR Notice: 53 FR 10167
Petitioner: Freeman United Coal Mining Company
Reg. Affected: 30 CFR 75.902
Summary of Findings: Petitioner's proposal to use 480-volt, three-phase power distribution in the underground surge bin feeder system without a ground check circuit with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–88–17–C
FR Notice: 53 FR 7439
Petitioner: Wolf-Creek Collieries Company
Reg. Affected: 30 CFR 75.1103–4(a)
Summary of Findings: Petitioner's proposal to install an early warning fire detection system using a low-level carbon monoxide detection system in all belt entries used as intake aircourses with specific conditions in lieu of point-type sensors considered acceptable alternate method. Granted with conditions.

Docket No.: M–88–18–C
FR Notice: 53 FR 7440
Petitioner: Wolf-Creek Collieries Company
Reg. Affected: 30 CFR 75.326
Summary of Findings: Petitioner's proposal to install an early warning fire detection system, using a low-level carbon monoxide detection system in all belt entries used as intake aircourses, with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–88–25–C
FR Notice: 53 FR 7434
Petitioner: Helvetia Coal Company
Reg. Affected: 30 CFR 75.1100–2(b)
Summary of Findings: During cold weather periods the waterlines used for fire protection along the slope belt freeze and becomes inoperative. Petitioner's proposal to utilize a dry waterline system from October 1 through May 1 with specific equipment and conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–88–30–C
FR Notice: 53 FR 9000
Petitioner: Diamond "S" Mining Company
Reg. Affected: 30 CFR 75.313
Summary of Findings: Petitioner's proposal to use hand-held continuous oxygen and methane monitors in lieu of methane monitors on three-wheel tractors with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–88–32–C
FR Notice: 53 FR 10166
Petitioner: Dominion Coal Corporation
Reg. Affected: 30 CFR 75.1701
Summary of Findings: Petitioner's proposed method of drilling boreholes in the face and rib considered acceptable alternate method. Granted with conditions.

Docket No.: M–88–37–C
FR Notice: 53 FR 9000
Petitioner: The Helen Mining Company
Reg. Affected: 30 CFR 75.1400(e)
Summary of Findings: Petitioner's proposal that persons operating the hoist have at least one year of experience and be required to complete an outlined training plan to have these persons qualified by MSHA considered acceptable alternate method. Granted.

Docket No.: M–88–40–C
FR Notice: 53 FR 10165
Petitioner: McElroy Coal Company (formerly Consolidation Coal Co.)
Reg. Affected: 30 CFR 75.305
Summary of Findings: Due to extremely poor roof conditions and a roof fall, certain areas of the mine cannot be safely traveled. Further rehabilitation of these areas would expose miners to hazardous conditions. Petitioner's proposal that a certified person make weekly examinations at specific locations with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–88–42–C
FR Notice: 53 FR 13342
Petitioner: Freeman United Coal Mining Company
Reg. Affected: 30 CFR 75.1700
Summary of Findings: Petitioner's proposal to clean out and plug oil and gas wells using specific techniques and procedures considered acceptable alternate method. Granted with conditions.

Docket No.: M–88–66–C
FR Notice: 53 FR 12461
Petitioner: Wolf-Creek Collieries Company
Reg. Affected: 30 CFR 75.1002
Summary of Findings: Petitioner's proposal to use high-voltage (not to exceed 2,400 volt) cables to supply power to permissible longwall face equipment in or inby the last open crosscut with specific equipment and conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M–88–84–C
FR Notice: 53 FR 20030
Petitioner: Eastern Associated Coal Corp.
Reg. Affected: 30 CFR 75.1701
Summary of Findings: Petitioner's proposed method of drilling boreholes

in the face and rib considered acceptable alternate method. Granted with conditions.

Docket No.: M-88-19-M
FR Notice: 49 FR 36175
Petitioner: Phelps Dodge Corporation
Reg. Affected: 30 CFR 56.9022
Summary of Findings: The use of berms or guards on the outer bank of elevated roadways would result in a diminution of safety. Petitioner's proposed traffic system considered acceptable alternate method. Granted with conditions.

Docket No.: M-88-14-M
FR Notice: 51 FR 40093
Petitioner: Tg Soda Ash, Inc. (formerly Texasgulf Chemicals)
Reg. Affected: 30 CFR 57.4761
Summary of Findings: Petitioner's proposal to use shop air to ventilate active working areas in the mine and to install carbon monoxide sensors at specific locations with specific conditions considered acceptable alternate method. Granted with conditions.

Docket No.: M-88-20-M
FR Notice: 52 FR 5217
Petitioner: Kennecott-Utah Copper Division
Reg. Affected: 30 CFR 56.9022
Summary of Findings: Use of berms or guards on all the roads of the UCD concentrator tailing pond would result in a diminution of safety. Petitioner's proposed road traffic system considered acceptable alternate method. Granted with conditions.

Docket No.: M-87-1 M
FR Notice: 52 FR 7946
Petitioner: Montana Resources, Inc.
Reg. Affected: 30 CFR 56.9087
Summary of Findings: Petitioner's proposal to equip all trucks with highly visible backup lights which operate automatically when trucks are in reverse and to require shovel operators and truck drivers to use audible horns to communicate considered acceptable alternate method. Granted with conditions.

Docket No.: M-87-44-M
FR Notice: 52 FR 7433
Petitioner: Cripple Creek & Victor Gold Mining Company
Reg. Affected: 30 CFR 56.14001
Summary of Findings: Petitioner's proposal to enclose the line shaft area in a fence with a locked gate with specific conditions in lieu of guarding each piece of equipment individually considered acceptable alternate method. Granted with conditions.

[FR Doc. 89-15456 Filed 6-29-89; 8:45 am]
BILLING CODE 4510-43-M

[Docket No. M-89-93-C]

Dominion Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Dominion Coal Corporation, P.O. Box 70, Vansant, Virginia 24656 has filed a petition to modify the application of 30 CFR 75.1701 (abandoned areas, adjacent mines; drilling of boreholes) to its Dominion Mine No. 7 (I.D. No. 44-06499) and its Dominion Mine No. 10 (I.D. No. 44-05160) both located in Buchanan County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that whenever any working place approaches within 50 feet of abandoned areas in the mine as shown by surveys made and certified by a registered engineer or surveyor, or within 200 feet of any other abandoned areas of the mine which cannot be inspected and which may contain dangerous accumulations of water or gas, or within 200 feet of any workings of an adjacent mine, a borehole or boreholes will be drilled to a distance of at least 20 feet in advance of the working place and will be continually maintained to a distance of at least 10 feet in advance of the advancing working face. When there is more than one borehole, they will be drilled sufficiently close to each other to ensure that the advancing working face will not accidentally hole through into abandoned areas or adjacent mines. Boreholes will also be drilled not more than 8 feet apart in the rib of such working place to a distance of at least 20 feet and at an angle of 45 degrees. Such rib holes will be drilled in one or both ribs of such working place as may be necessary for adequate protection of miners in such place.

2. Petitioner requests a modification of the standard to allow for a 20-foot cut to be taken in the face. In further support of this request, petitioner states that—

(a) The provision requiring 20-foot test holes to be drilled at a 45 degree angle at 8-foot intervals in the rib, restricts the depth of a cut that can be extracted with a continuous miner;

(b) A continuous mining machine is designed to take a 20-foot cut without the controls of the mining machine passing the last row of roof supports;

(c) Petitioner proposes to drill five holes in the face of the entry, spaced at 5-foot intervals; one hole in each corner of the entry 20 feet deep and 3 holes in the face of the entry 30 feet deep. The holes drilled in the corner of the entry would be at 30 degree angles to the rib. The hole drilled 5 feet from the left rib would be on a 105 degree angle to the face. The hole in the middle of the entry would be a 90 degree angle to the face and the hole drilled 5 feet from the right rib would be a 75 degree angle to the face with a margin of error of −5 degrees. This pattern would provide a 10-foot barrier in all directions to the cut to be taken; and

(d) It is more practical to drill a 30 degree angle as opposed to drilling a 45 degree angle due to the size of the drill and the length of the drill steel, as well as the restricted area available to maneuver the drilling machine.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 31, 1989. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,
Director, Office of Standards, Regulations and Variances.

Date: June 21, 1989.

[FR Doc. 89-15452 Filed 6-29-89; 8:45 am]
BILLING CODE 4510-43-M

[Docket No. M-89-94-C]

East Franklin Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

East Franklin Coal Company, 245 2nd Street, Joliett, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its Middle Split Slope (I.D. No. 36-07896) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cages, platforms or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.

2. Effective safety catches or other devices are not available for the conveyances used on the steeply pitching and undulating slopes with numerous curves and knuckles in the main haulage slopes of this anthracite mine.

3. If "makeshift" safety devices are installed, they would activate on knuckles and curves when no emergency exists and cause a tumbling effect on the conveyance.

4. As an alternate method, petitioner proposes to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat, and to the hoisting rope above the main connecting device. The hoisting ropes would have a factor of safety in excess of the design factor as determined by the formula specified in the American National Standard for Wire Rope for Mines.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 31, 1989. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,
Director, Office of Standards, Regulations and Variances.

Date: June 21, 1989.

[FR Doc. 89-15453 Filed 6-29-89; 8:45 am]
BILLING CODE 4510-43-M

[Docket No. M-89-95-C]

Inferno Coals, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Inferno Coals, Inc., P.O. Box 1270, Elkhorn City, Kentucky 41522 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Mine No. H-8 (I.D. No. 15-11529) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The mine ranges from 40 to 60 inches in height. The bottom is shale and varies from flat and dry to wet and uneven.

3. The use of cabs or canopies on the mine's electric face equipment would result in a diminution of safety to the miners affected because the cabs or canopies would:

(a) Limit the equipment operator's vision;

(b) Strike and dislodge roof supports;

(c) Strike or dislodge electrical cables creating an electrical fire hazard; and

(d) Would limit the equipment operator's seating position causing fatigue, therefore creating potential for an accident.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 31, 1989. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,
Director, Office of Standards, Regulations and Variances.

Date: June 21, 1989.

[FR Doc. 89-15454 Filed 6-29-89; 8:45 am]
BILLING CODE 4510-43-M

[Docket No. M-89-91-C]

Minton Hickory Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Minton Hickory Coal Company, P.O. Box 922, Barbourville, Kentucky 40906 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Mine No. 4 (I.D. No. 15-16621) located in Whitley County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on electric face cutting equipment, continuous mining machines, longwall face equipment and loading machines. The monitor is required to be properly maintained and frequently tested.

2. No methane has been detected in the mine.

3. The three-wheel tractors are permissible DC-powered machines, without hydraulics. The coal is hand loaded into a drag-type bucket. Approximately 20% of the time that the tractor is in use, it is used as a mantrip and supply vehicle.

4. As an alternate method, petitioner proposes to use handheld continuous oxygen and methane monitors instead of methane monitors on three-wheel tractors. In further support of this request, petitioner states that:

(a) Each three-wheel tractor would be equipped with a handheld continuous monitoring methane and oxygen detector and all persons would be trained in the use of the detector;

(b) Prior to allowing the coal loading tractor in the face area, a gas test would be performed to determine the methane concentration in the atmosphere. When the elapsed time between trips does not exceed 20 minutes, the air quality would be monitored continuously after each trip. This would provide continuous monitoring of the mine atmosphere for methane to assure the detection of any methane buildup between trips;

(c) If one percent methane is detected, the operator would manually deenergize the battery tractor immediately. Production would cease and would not resume until the methane level is lower than one percent;

(d) Each monitor would be removed from the mine at the end of the shift, and would be inspected and charged by a qualified person. The monitor would also be calibrated every 90 days;

(e) The hand-held methane and oxygen monitor would be mounted to allow for proper monitoring of the mine atmosphere.

5. For these reasons, petitioner request a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July

31, 1989. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: June 21, 1989.

[FR Doc. 89-15455 Filed 6-29-89; 8:45 am]

BILLING CODE 4510-43-M

Office of Workers' Compensation Programs

Report of Computer Matching Program Between Department of Labor and Department of Health and Human Services, Social Security Administration

Participating Agencies: The participating agencies in this computer matching program are the Department of Labor (DOL) and the Department of Health and Human Services, Social Security Administration (SSA).

Purpose of Match: DOL intends to conduct a computer matching program of DOL and SSA records of Black Lung benefit recipients. The goal of the match is to detect individuals who improperly receive dual Black Lung benefits from SSA and DOL. When a verified match occurs, the case will be referred to the proper DOL office for development to assure the validity of the match and to make any required benefit adjustments.

Authority for Conducting the Matching Program: Title IV of the Federal Mine Safety and Health Act, 30 U.S.C. 901, et seq.

Categories of Records and Individuals Covered: SSA, as the source agency, will provide DOL with its Black Lung Payment System HHS/SSA/OURV (47 FR 45610, October 13, 1982) which will be matched against DOL's Office of Workers' Compensation Programs, Black Lung Benefit Payments DOL/ESA-7 (47 FR 30378, July 13, 1982). The individuals covered will be DOL and SSA Black Lung beneficiaries.

Inclusive Dates of the Matching Program: The matching program will begin August 15, 1989 and end February 15, 1991.

Address for Receipt of Public Comment: Lawrence W. Rogers, Director, Office of Workers' Compensation Programs, 200 Constitution Avenue NW., Washington, DC 20210, Telephone: (202) 523-7503.

Signed at Washington, DC, this 23rd day of June, 1989.

Richard Staufenberger,

Acting Director, Office of Workers' Compensation Programs.

[FR Doc. 89-15457 Filed 6-29-89; 8:45 am]

BILLING CODE 4510-27-M

NUCLEAR REGULATORY COMMISSION

Proposed Availability of FY 90 Funds for Financial Assistance (Grants) to Support Research at Educational Institutions and the Exchange of Information

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice.

SUMMARY: The Nuclear Regulatory Commission (NRC), Office of Nuclear Regulatory Research, announces proposed availability of Fiscal Year (FY) 90 funds to support a limited number of research grants to educational institutions These funds may also be used to support professional meetings and conferences for the exchange and transfer of research concepts and findings related to the safety of nuclear power production.

The FY 90 ceiling for research grants to educational institutions is approximately $1,200,000. Of this amount, approximately $400,000 will be available for new grants. Because of this limitation, proposed grant budgets should be restricted to about $50,000 per year, with total project funding not exceeding $100,000 over a two-year period. Proposals for new FY 90 research grants should be submitted between October 1 and December 31, 1989. Proposals received after December 31, 1989 may or may not be considered for funding in FY 90 (October 1, 1989–September 30, 1990).

ADDRESS: Nuclear Regulatory Commission, ATTN: Grants Officer, Division of Contracts and Property Management, Office of Administration, Washington. DC 20555.

FOR FURTHER INFORMATION CONTACT: Mrs. Jeanne Cucura (301) 492-4297 or Mrs. Yvonne Terry (301) 492-4210.

SUPPLEMENTARY INFORMATION:

Background

On October 26, 1988 (53 FR 43305), the Nuclear Regulatory Commission (NRC) published in the **Federal Register** a notice that announced the proposed availability of FY 89 funds for the NRC Grant Program. The NRC is revising that notice to provide information on their grant program for FY 90.

Scope and Purpose of This Announcement

Pursuant to Section 31.a. and 141.b. of the Atomic Energy Act of 1954, as amended, the NRC's Office of Nuclear Regulatory Research proposes to support educational institutions, nonprofit entities, state and local governments, and professional societies through providing funds for expansion, exchange and transfer of knowledge, ideas, and concepts directed toward the NRC safety research program. The program includes, but is not limited to, support of professional meetings and conferences. In addition, the NRC has a limited amount for research grants to educational institutions (see topics below). The FY 90 ceiling for these grants is approximately $1,200,000, with approximately $400,000 of this amount available for new grants.

The purpose of this program is to stimulate research to provide a technological base for the safety assessment of system and subsystem technologies used in nuclear power applications. The results of this program will be to increase public understanding relating to nuclear safety, to pool the funds of theoretical and practical knowledge and technical information, and ultimately to enhance the protection of the public health and safety. In addition, each grant to an educational institution should contain elements which will potentially benefit the graduate research program of the institution, e.g., graduate student training.

The NRC encourages educational institutions to submit research grant proposals in the following areas:

1. Development of steady state and transient pump models for estimate code applications.
2. Advantages and disadvantages of water addition to a degraded core.
3. Behavior of hot hydrogen while exiting a break in the primary pressure boundary.
4. Modeling and experimentation on two-phase flow, interfacial relations, and heat transfer in reactor coolant systems.
5. Severe accident evaluation, including: high temperature chemistry of severe accident reactor radionuclides; advanced thermal hydraulic modeling of fluids including combustible gases and molten core materials in reactor primary systems during severe accidents.
6. Advanced demographic models or statistical methods to predict population density and distribution around future power reactor sites.
7. High temperature material interactions during severe accidents (e.g core/concrete, core debris/vessel components).
8. Human factors evaluation including criteria and guidelines to determine the risk reduction from application of human factors requirements on nuclear powerplant operations and maintenance.

9. Methods for the nuclear industry to use the growing pool of human performance data.
10. Development of methodology for Risk and Reliability Analysis of closed loop control systems, including advanced digital based control systems.
11. Develop and codify pragmatic, statistically valid, methods for updating severe accident frequency and consequence analysis to reflect results of new operational, experimental, and calculational data.
12. Develop merit of methods and procedures for establishing the degree to which Probabilistic Risk Assessment (PRA) results converge with operational data.
13. Development of methods to analyze and understand the aging effects, improved examination and testing methods for determining the condition of structures and components. and methods to assess residual lifetime of structures and components.
14. Development of methods for assuring component structural reliability and realistic methods to define the probabilities of radioactive release to earthquakes due.
15. Development of methods for assuring integrity of the primary system, i.e., pressure vessels, piping, steam generator tubing.
16. Development of methods to establish and validate decommissioning criteria and effects of water chemistry on the primary system integrity.
17. Development and/or validation of models to explain the tectonics of the Central and Eastern United States (east of 106 degrees W).
18. Development and/or validation of models to predict the propagation of seismic ground motions in the Central and Eastern United States or in a shallow soil column.
19. Investigations/studies including field observations of the paleoseismicity of the Central and Eastern United States.
20. Design of concepts to increase the safety of industrial radiography devices.
21. Long-term load deformation characteristics of a low-level waste disposal facility.
22. Simplified modeling of thermohydrologic phenomena in high-level waste geological repositories
23. Thermodynamic considerations in modeling groundwater flows in unsaturated media used for nuclear waste disposal.
24. Development of a continum approach for modeling unsaturated fractured rock.
25. Development of improved instrumentation or techniques for measuring activities, radiation dose, and dose rates, especially from small radioactive particles.
26. Development of methods for contamination prevention, measurement, and control; and improved radiological air sampling methodology.
27. Investigation of the types, sensitivity, and linearity of various biological effects of radiation that could be used as biological dosimeters.
28. Research on the metabolism of radionuclides and their compounds relative to the calculation of internal dose.
29. Investigation of the efficacy of radioactive protective agents.
30. Develop methodology for implementation of a nonprescriptive regulatory process, considering such factors as: (a) The most effective framework; (b) the pros/cons and practical aspects of its implementation and (c) the changes needed in current process and legislation to implement such a change.
31. Investigation of neutron polarization effects on reactivity control for advanced reactor application (use of a magnetic field to modulate neutron diffusion/core reactivity).

Eligible Applicants

Educational institutions, nonprofit entities, State and local governments, and professional societies are eligible to apply for a grant under this announcement.

Factors Generally Indicating Support Through Grants

The NRC's benefit from the results of grants should be no greater than for other interested parties, i.e., the public must be the primary beneficiary of the work performed. Surveys, studies, or research which provide specific information or data necessary for the NRC to exercise its regulatory or research mission responsibilities will not be funded by a grant. Applicants requesting support for work which has a direct regulatory application should submit their requests as an unsolicited proposal for consideration as a contract rather than a grant.

1. The primary purpose of NRC grants is to support the development of knowledge or understanding of the subject or phenomena under study.
2. The exact course of the work and its outcome are usually not defined precisely, and specific points in time for achievement of significant results need not be specified.
3. The NRC desires that the nature of the proposed investigation be such that the recipient will bear prime responsibility for the conduct of the research and exercise judgment and original thought toward attaining the scientific goals within broad parameters of the proposed research areas and the resources provided.
4. Meaningful technical reports (as distinguished from Semi-Annual Status Reports) can be prepared only as new findings are made, rather than on a predetermined time schedule.
5. Simplicity and economy in execution and administration are mutually desirable.

Proposal Format

Proposals should be concise and provide a thorough understanding of the proposed project. Neither unduly elaborate applications nor voluminous supporting documentation is desired.

State and local governments shall submit proposals utilizing the standard forms specified in Office of Management and Budget (OMB) Circular A-102 (Revised), (Paragraph 6.c.). Nonprofit organizations, universities, and professional societies shall submit proposals utilizing the standard forms stipulated in OMB Circular A-110, (Attachment M).

The format used for project proposals should give a clear presentation of the proposed project and its relation to the specific objectives contained in this notice. Each proposal should follow the format outlined below unless the NRC specifically authorizes exception.

1. Cover Page. The Cover Page should be typed according to the following format (submit separate cover pages if the proposal is multi-institutional):

Title of Proposal—To include the term "research," "study," "conference," "symposium," "workshop," or other similar designation to assist in the identification of the project;
Location and Dates for Conferences, Symposium, Workshop, etc.;
Names of Principal Researchers or Participants;
Total Cost of Proposal; (Identify Cost by Fiscal Year)
Period of Proposal;
Organization or Institution and Department;
Required Signatures:
Principal Participants:

Name:_____
Date:_____
Address:_____
Telephone No.:_____

Required Organization Approval:

Name:_____
Date:_____
Address:_____
Telephone No.:_____

Organization Financial Officer:

Name:_____

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Date: _____
Address: _____
Telephone No.: _____

2. Project Description. Each proposal shall provide, in ten pages or less, a complete and accurate description of the proposed project. This section should provide the basic information to be used in evaluating the proposal to determine its priority for funding. Applicants must identify other possible sources of financial support for a particular project, and list those sources from which financial support has been or will be requested.

The information provided in this section must be brief and specific. Detailed background information may be included as supporting documentation to the proposal.

The following format shall be used for the project description:

(a) *Project Goals and Objectives.* The project's objectives must be clearly and unambiguously stated. The proposal should justify the project including the problems it intends to clarify and the development it may stimulate.

(b) *Project Outline.* The proposal should show the project format and agenda, including a list of principal areas or topics to be addressed.

(c) *Project Benefits.* The proposal should indicate the direct and indirect benefits that the project seeks to achieve and to whom these benefits will accrue.

(d) *Project Management.* The proposal should describe the physical facilities required for the conduct of the project. Further, the proposal should include brief biographical sketches of individuals responsible for planning the project.

(e) *Project Costs.* Nonprofit organizations shall adhere to the cost principles set forth in OMB Circular A-122. Educational institutions shall adhere to the cost principles set forth in OMB Circular A-21, and state and local government shall adhere to the cost principles set forth in OMB Circular A-87.

The proposal must provide a detailed schedule of project costs, identifying in particular—

(1) Salaries—in proportion to the time or effort directly related to the project;

(2) Equipment (rental only);

(3) Travel and Per Diem/Subsistence in relation to the project;

(4) Publication Costs;

(5) Other Direct Costs (specify)—e.g., supplies or registration fees;

Note: Dues to organizations, federations or societies, exclusive of registration fees, are not allowed as a charge.

(6) Indirect Costs (attach negotiated agreement/cost allocation plan); and

(7) Supporting Documentation. The supporting documentation should contain any additional information that will strengthen the proposal.

Proposal Submission and Deadline

This notice is valid for Federal Government Fiscal Year 90 (October 1, 1989 to September 30, 1990). Potential grantees are advised, however, that due to the limited funding available for new research grants to educational institutions, such proposals received after December 31, 1989 may or may not be considered for funding in Fiscal Year 90.

Funds

For Fiscal Year 90, the U.S. Nuclear Regulatory Commission, Office of Nuclear Regulatory Research, anticipates making a total of approximately $1,200,000.00 available for funding research grants to educational institutions. Of this amount, approximately $400,000.00 will be available for new research grants in FY 90. Because of this limitation, proposed grant budgets should be restricted to about $50,000 per year, with total project funding not exceeding $100,000 over a period of two years.

Evaluation Process

All proposals received as a result of this announcement will be evaluated by an NRC review panel.

Evaluation Criteria

The award of NRC grants is discretionary. Generally, projects are supported in order of merit to the extent permitted by available funds.

Evaluation of proposals for research projects will employ the following criteria. No level of importance is implied by the order in which these criteria are listed.

1. Adequacy of the research design.
2. Scientific significance of proposal.
3. Technical adequacy of the investigators and their institutional base.
4. Relevance to a research area(s) described above.
5. Reasonableness of estimated cost in relation to the work to be performed and anticipated result.
6. Potential benefit of the project to the overall benefit of the institution's graduate research program.

Evaluation of proposals for professional meetings, conferences, symposia, etc., will employ the following criteria:

1. Potential usefulness of the proposed project for the advancement of scientific knowledge.
2. Clarity of statement of objectives, methods, and anticipated results.
3. Range of issues covered by the meeting agenda.
4. Qualifications and experience of project speakers.
5. Reasonableness of estimated cost in relation to anticipated results.

Disposition of Proposals

Notification of award will be made by the Grants Officer, and organizations whose proposals are unsuccessful will be so advised.

Proposal Instructions and Forms

Questions concerning the preceding information, copies of application forms, and applicable regulations shall be obtained from or submitted to (Grant application packages. Standard Form 424, must be requested in writing): U.S Nuclear Regulatory Commission, ATTN: Grants Officer, Division of Contracts and Property Management, Mail Stop P-1042, Office of Administration, Washington, DC 20555.

The address for hand-carried applications is: U.S. Nuclear Regulatory Commission, ATTN: Grants Officer, Division of Contracts and Property Management, Office of Administration, Mail Stop P-1042, 7920 Norfolk Avenue, Bethesda, MD 20614.

Note: Upon delivery of the application to the NRC guard desk (at the above address), the guard should be requested to telephone the Division of Contracts and Property Management (Extension 24297) for a pick-up of the application.

Nothing in this solicitation should be construed as committing the NRC to dividing available funds among all qualified applicants.

Dated at Bethesda, MD this 26th day of June, 1989.

For the U S. Nuclear Regulatory Commission.

Elois J. Wiggins,

Grant Officer, Contract Negotiation Branch No. 2, Division of Contracts and Property Management, Office of Administration.

[FR Doc. 89-15511 Filed 6-29-89; 8:45 am]

BILLING CODE 7590-01-M

Governors' Designees Receiving Advance Notification of Transportation of Nuclear Waste

On June 13, 1989, a notice was published (54 FR 25161) which listed the Governors' designees receiving advance notification of nuclear waste shipments.

The list was subsequently revised and is now published in final form.

On January 6, 1982, the Nuclear Regulatory Commission (NRC) published in the Federal Register, as final, certain amendments to 10 CFR Parts 71 and 73 (effective July 6, 1982), which require advance notification to Governors or their designees concerning transportation of certain shipments of nuclear waste and spent fuel. The advance notification covered in Part 73 is for spent nuclear reactor fuel shipments and the notification for Part 71 is for large quantity shipments of radioactive waste (and of spent nuclear reactor fuel not covered under the final amendment to 10 CFR Part 73).

The following list updates the names, addresses and telephone numbers of those individuals in each State who are responsible for receiving information on nuclear waste shipments. The list will be published annually in the Federal Register on or about June 30, to reflect any changes in information.

INDIVIDUALS RECEIVING ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS

States	Part 71	Part 73
Alabama	Col. Thomas H. Wells, Director, Alabama Department of Public Safety, P.O. Box 1511, Montgomery, AL 36192-0501, (205) 261-4378.	Same.
Alaska	Mr. Dennis Kelso, Commissioner, Alaska Department of Environmental Conservation, Pouch O, Juneau, AK 99811, (907) 465-2600.	Same.
Arizona	Charles F. Tedford, Director, Arizona Radiation Regulatory Agency, 4814 South 40 Street, Phoenix, AZ 85040, (602) 255-4845, After hours: (602) 998-4662.	Same.
Arkansas	Greta J. Dicus, Director, Division of Radiation Control and Emergency Management Programs, Arkansas Department of Health, 4815 West Markham Street, Little Rock, AR 72201, (501) 661-2301, After hours: (501) 661-2136 or 661-2000.	Same.
California	Robert P. Rengstarff, Chief, California Highway Patrol, P.O. Box 942898, Sacramento, CA 94298-0001, (916) 445-3253.	Same.
Colorado	Captain Lonnie J. Westphal, Officer in Charge, Administrative Branch Services, Colorado State Patrol, 700 Kipling Street, Denver, CO 80215, (303) 239-4560, After hours: (303) 239-4501.	Same.
Connecticut	The Honorable Leslie Carothers, Commissioner, Department of Environmental Protection, State Office Building, 165 Capitol Avenue, Hartford, CT 06106, (203) 566-2110.	Same.
Delaware	Patrick W. Murray, Secretary, Department of Public Safety, P.O. Box 818, Dover, DE 19903, (302) 736-4321	Same.
Florida	Harlan Keaton, Public Health Physicist Manager, Office of Radiation Control, Department of Health and Rehabilitation Services, P.O. Box 15490, Orlando, FL 32858, (305) 297-2095.	Same.
Georgia	Tom Doyal, Director, Transportation Division, Public Service Commission, 1007 Virginia Avenue, Hapeville, GA 30354, (404) 761-2229.	Same.
Hawaii	John Waihee, Governor, State of Hawaii, Honolulu, HI 96813, (808) 548-5420	Same.
Idaho	Ernest Ranieri, Radiation Physicist Supervisor, Division of Environment, 450 W. State, 3rd Floor, Boise, ID 83720, (208) 334-5879, After hours: (208) 344-4090.	Same.
Illinois	Dr. Terry Lash, Director, Illinois Department of Nuclear Safety, 1035 Outer Park Drive, 5th Floor, Springfield, IL 62704, (217) 785-9868, Emergency: (217) 782-6111, After hours: (217) 785-0600.	Same.
Indiana	Lloyd R. Jennings, Superintendent, Indiana State Police, 301 State Office Building, 100 North Senate Avenue, Indianapolis, IN 46204, (317) 232-8241, After hours: (317) 232-8246.	Same.
Iowa	Ellen M. Gordon, Director, Office of Disaster Services, Hoover State Office Building, Des Moines, IA 50319, (515) 281-3231.	Same.
Kansas	Leon H. Mannell, P.E., Administrator, Radiological Systems, The Adjutant General's Department, Division of Emergency Preparedness, P.O. Box C-300, Topeka, KS 66601, (913) 266-1409, After hours: (296-3176).	Same.
Kentucky	Donald R. Hughes, Sr., Manager, Radiation Control, Department for Health Services, 275 East Main Street, Frankfort, KY 40621, (502) 564-3700.	Same.
Louisiana	Capt. Bill Spencer, Louisiana State Police, 265 South Foster Drive, P.O. Box 66614, Baton Rouge, LA 70896, (504) 925-6113.	Same.
Maine	Chief of the State Police, Maine Dept. of Public Safety, 36 Hospital Street, Augusta, ME 04330, (207) 289-2155.	Same.
Maryland	Colonel James A. Jones, Chief, Services Bureau, Maryland State Police, 1201 Reisterstown Road, Pikesville, MD 21208, (301) 486-3101.	Same.
Masssachusetts	Robert M. Hallisey, Director, Radiation Control Program, Massachusetts Department of Public Health, 150 Tremont Street, 2nd Floor, Boston, MA 02111, (617) 727-6214.	Same.
Michigan	James E. Cox, Captain, Commanding Officer, Operations Division, Michigan Department of State Police, 714 S. Harrison Road, East Lansing, MI 48823 (517) 337-6100.	Same.
Minnesota	John R. Kerr, Natural Disaster Planner, Minnesota Division of Emergency Management, B5—State Capitol, St. Paul, MN 55155, (612) 296-2233, After hours: (612) 649-5451.	Same.
Mississippi	James E. Maher, Director, Mississippi Emergency Management Agency, P.O. Box 4501, Fondren Station, Jackson, MS 39296-4510, (601) 352-9100 (24 hours).	Same.
Missouri	Richard D. Ross, Director, State Emergency Management Agency, 1717 Industrial Drive, P.O. Box 116, Jefferson City, MO 65102, (314) 751-9779, After hours: (314) 751-2748.	Same.
Montana	Mr. Larry Lloyd, Administrator, Environmental Sciences Division, Department of Health and Environmental Sciences, Room A113, Cogswell Bldg., Helena, MT 59620, (406) 444-3948, After hours: (406) 442-1425.	F. Guy Yougblood, Administrator, Disaster and Emergency Services Divisior., P.O. Box 4789, Helena, MT 59604, (406) 444-6911
Nebraska	Harold W. LeGrande, Superintendent, Nebraska State Patrol, P.O. Box 94907, State House, Lincoln, NE 68509, (402) 471-2406, After hours: (402) 471-4545.	Same.
Nevada	Stanley R. Marshall, Supervisor, Radiological Health Section, Bureau of Regulatory Health Services, Nevada Division of Health, 505 East King Street, Room 202, Carson City, NV 89701, (702) 885-5394.	Same.
New Hampshire	Richard M. Flynn, Commissioner, New Hampshire Dept. of Safety, James H. Hayes Building, Hazen Drive, Concord, NH 03305, (603) 271-3636 (24 hours).	Same.
New Jersey	Kent Tosch, Chief, Department of Environmental Protection, Bureau of Nuclear Engineering, CN 411, Trenton, NJ 08625, (609) 530-4022.	Same.
New Mexico	Dr. Robert Kemble, Cabinet Secretary, Department of Public Safety, P.O. Box 1628, Santa Fe, NM 87504-1628, (505) 827-3370, After hours: (505) 827-9126.	Same.
New York	Donald A. DeVito, Director, State Emergency Mgmt. Office, Division of Military and Naval Affairs, Public Security Building, State Campus, Albany, NY 12226, (518) 457-2222.	Same.

INDIVIDUALS RECEIVING ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS—Continued

States	Part 71	Part 73
North Carolina	Major Walter K. Chapman, Director, Administrative Services, North Carolina Highway Patrol Headquarters, P.O. Box 27687, Raleigh, NC 27611, (919) 733-7952, After hours: (919) 733-3861.	Same.
North Dakota	Dana K. Mount, Director, Division of Environmental Engineering, Department of Health, 1200 Missouri Avenue, Box 5520, Bismarck, ND 58502-5520, (701) 224-2348, After hours: (701) 224-2121.	Same.
Ohio	James R. Williams, Chief of Staff, Ohio Emergency Management Agency, 2825 W. Grandville Road, Worthington, OH 43235-2712, (614) 889-7150.	Same.
Oklahoma	Clerd Dedek, Commissioner of Public Safety, Oklahoma Department of Public Safety, 3600 N. King Avenue, P.O. Box 11415, Oklahoma City, OK 73136-0145, (405) 425-2424 (24 hours).	Same.
Oregon	William T. Dixon, Administrator, Siting and Regulation, Oregon Department of Energy, 625 Marion Street, N.E., Salem, OR 97310, (503) 378-6469.	Same.
Pennsylvania	George M. Johnson, Director, Response and Recovery, Pennsylvania Emergency Management Agency, P.O. Box 3321, Harrisburg, PA 17105, (717) 783-8150, After hours: (717) 783-8150.	Same.
Rhode Island	William A. Maloney, Associate Administrator, MotorCarriers, Division of Public Utilities and Carriers, 100 Orange Street, Providence, RI 02903, (401) 277-3500.	Same.
South Carolina	Heyward G. Shealy, Chief, Bureau of Radiological Health, South Carolina Department of Health & Environmental Control, 2600 Bull Street, Columbia, SC 29201, (803) 734-4632, After hours: (803) 253-8497.	Same.
South Dakota	Robert D. Gunderson, Division Director, Emergency and Disaster Services, Capitol Building, Basement, Pierre, SD 57501, (605) 773-3231.	Same.
Tennessee	John White, Assistant Deputy Director, Tennessee Emergency Management Agency, State Emergency Operations Center, 3041 Sidco Drive., Nashville, TN 37204, (615) 252-3300, After hours: 1-800-258-3300.	Same.
Texas	Dr. Robert Bernstein, Commissioner, Texas Department of Health, Bureau of Radiation Control, 1100 West 49th Street, Austin, TX 78756, (512) 458-7375.	Col. Joe E. Milner, Director, Texas Department of Public Safety, 5805 N. Lamar Blvd., Austin, TX 78752, (512) 465-2000.
Utah	Larry F. Anderson, Director, Bureau of Radiation Control, 288 N. 1460 West, P.O. Box 16690, Salt Lake City, UT 84116-0690, (801) 538-6734, After hours: (801) 538-6333.	Same.
Vermont	Susan C. Campion, Secretary, Vermont Agency of Transportation, 133 State Street, Montpelier, VT 05602, (802) 828-2657.	Same.
Virginia	Michael M. Cline, Director of Operations, Department of Emergency Services, Commonwealth of Virginia, 310 Turner Road, Richmond, VA 23225, (804) 674-2400.	Same.
Washington	Curtis P. Eschels, Chairman, Energy Facility Site Evaluation Council, Mail Stop PY-11, Olympia, WA 98504, (206) 459-5480.	Same.
West Virginia	Colonel J.R. Buckalew, Superintendent, Department of Public Safety, 725 Jefferson Road, South Charleston, WV 25309, (304) 746-2111.	Same.
Wisconsin	BG (Ret.) Richard I. Braund, Administrator, Wisconsin Division of Emergency Government, 4802 Sheboygan Ave., Room 99A, P.O. Box 7865, Madison, WI 53707, (608) 266-3232.	Same.
Wyoming	Julius E. Hass, Jr., Chief, Radiological Health Services, Department of Health & Social Services, Hathaway Building, Cheyenne, WY 82002-0710, (307) 777-6015, After hours: (307) 777-7244.	Same.
District of Columbia	Norma J. Stewart, Program Manager, Pharmaceutical and Medical Devices Control Division, Department of Consumer and Regulatory Affairs, 614 H Street, NW., Washington, DC 20001, (202) 727-7219, After hours: (202) 727-6161.	Same.
Puerto Rico	Santos Rohena, Jr., Chairman, Environmental Quality Board, P.O. Box 11488, Santurce, PR 00910, (809) 722-1175 or (809) 725-5140.	Same.
Guam	Fred M. Castro, Administrator, Guam Environmental Protection Agency, P.O. Box 2999, Agana, Guam 96910, (671) 646-7579.	Same.
Trust Territory of the Pacific Islands.	R. Kent Harvey, Attorney General, Trust Territory of the Pacific Islands, Saipan, CM 96950, Saipan 9325 or 9354.	Same.
Virgin Islands	Honorable Juan Luis, Governor, Government House, Charlotte Amalie, St. Thomas, Virgin Islands 00801, (809) 774-0001.	Same.
American Samoa	Mr. Peri Faisi, Government Ecologist, Environmental Protection Agency, Office of the Governor, Pago Pago, American Samoa 96799, (684) 633-2304.	Same.
Commonwealth of the Northern Mariana Islands.	Nicolas M. Leon Guerrero, Director, Department of Natural Resources, Commonwealth of Northern Mariana Islands Government, Capitol Hill, Saipan, MP 96950, (670) 322-9830 or (670) 322-9834.	Same.

Questions regarding this matter should be directed to Mindy Landau at (301) 492-0308.

Dated at Rockville, MD, this 19th day of June, 1989.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Governmental and Public Affairs.

[FR Doc. 89-15422 Filed 6-29-89; 8:45 am]

BILLING CODE 7590-01-M

Appointments to Performance Review Board for Senior Executive Service

AGENCY: Nuclear Regulatory Commission.

ACTION: Appointment to performance review board for senior executive service.

SUMMARY: The Nuclear Regulatory Commission (NRC) has announced the following new appointments to the NRC Performance Review Board (PRB):

New Appointees

Robert F. Burnett, Director, Division of Safeguards and Transportation, Office of Nuclear Material Safety and Safeguards

Frank J. Congel, Director, Division of Radiation Protection and Emergency Preparedness, Office of Nuclear Reactor Regulation

James A. Fitzgerald, Assistant General Counsel for Adjudications and Opinions, Office of the General Counsel

James F. McDermott, Deputy Director, Office of Personnel

Patricia G. Norry, Director, Office of Administration

Carl J. Paperiello, Deputy Regional Administrator, Region III

Steven A. Varga, Director, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation

In addition to the above appointments, the following members are continuing on the PRB:

Joseph J. Fouchard, Director, Public Affairs, Office of Governmental and Public Affairs

Clemens J. Heltemes, Jr., Deputy Director, Office for Analysis and Evaluation of Operational Data

William C. Parler, General Counsel

William T. Russell, Regional Administrator, Region I

Brian W. Sheron, Director, Division of Systems Research, Office of Nuclear Regulatory Research

William B. Kerr, Director, Office of Small and Disadvantaged Business Utilization and Civil Rights, continues to serve as an ex officio nonvoting member.

The following are members of the NRC Performance Review Board Panel:

Harold R. Denton, Director, Office of Governmental and Public Affairs

James M. Taylor, Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations and Research, Office of the Executive Director for Operations

Hugh L. Thompson, Jr., Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support, Office of the Executive Director for Operations

All appointments are made pursuant to section 4314 of Chapter 43 of Title 5 of the United States Code.

EFFECTIVE DATE: June 30, 1989.

FOR FURTHER INFORMATION CONTACT: William C. Parler, Chairman, Performance Review Board, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 492-1743.

Dated at Rockville, Maryland, this 26th day of June, 1989.

For the Nuclear Regulatory Commission:

Victor Stello, Jr., *Chairman, Executive Resources Board.*

Dated: June 26, 1989.

[FR Doc. 89-15551 Filed 6-29-89; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-17027; 812-7322]

North American Security Life Insurance Co., et al.

June 23, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

Applicants: North American Security Life Insurance Company ("Security Life"), NASL Variable Account ("Variable Account"), NASL Financial Services, Inc. ("NASL Financial") and Wood Logan Associates Inc. ("Wood Logan").

Relevant 1940 Act Sections: Exemption requested under Section 6(c) from sections 26(a)(2)(C) and 27(c)(2).

Summary of Application: Applicants seek an order to the extent necessary to permit the deduction of a 1.25% mortality and expense risk charge from the assets of the Variable Account with respect to certain variable annuity contracts (the "Contracts").

Filing Date: The application was filed on May 18, 1989 and amended on June 15, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on July 18, 1989. Request a hearing in writing, giving the nature of your request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Ruth Ann Fleming, Esq., North American Security Life Insurance Company, 695 Atlantic Avenue, Boston, Massachusetts 02111.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Staff Attorney, at (202) 272-3046 or Clifford E. Kirsch, Special Counsel, at (202) 272-2061 (Division of Investment Management, Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the Public Reference Branch in person or the Commission's commercial copier which may be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. Security Life is a stock life insurance company organized under the laws of Delaware in 1979. The Variable Account is a separate account of Security Life established in 1984 under the laws of the State of Delaware. NASL Financial, a wholly-owned subsidiary of Security Life, will be the principal underwriter of the Contracts. Wood Logan, a Connecticut corporation registered as a broker-dealer under the 1934 Act, has entered into an agreement with Security Life and NASL Financial to serve as the exclusive promotional agent for the Contracts. Wood Logan will assist NASL Financial in signing registered representatives to agreements to sell the Contracts and will prepare advertising, marketing and educational materials to promote the sale of the Contracts.

2. The Contracts are flexible purchase payment individual deferred combination fixed and variable annuity contracts. The Variable Account is divided into subaccounts which invest in corresponding portfolios of NASL Series Trust (the "Trust").

3. As reimbursement for providing administrative services under the Contracts, Security Life charges contract owners an annual administration fee of $30 and deducts from the subaccounts each valuation period an administration charge equal to .15% of the subaccount assets on a annualized basis. Applicants represent that the fees are based upon Security Life's current estimates of the administrative costs attributable to the Contracts over their lifetime, are guaranteed never to be increased, and are not designed or expected to generate a profit. Applicants well rely on Rule 26a-1 under the Act for the necessary exemptive relief to change such fees.

4. No sales charge will be deducted from purchase payments as they are made. Instead, prior to the maturity date, a withdrawal charge (contingent deferred sales charge) will be assessed in circumstances where complete or partial withdrawals are attributed to purchase payments made within six years of the date of the withdrawal. The withdrawal charge is a percentage of the amount withdrawn which is subject to the charge, which percentage declines 6-6-5-4-3-2% over the first six years that a purchase payment has been in the Contract. Applicants represent that the withdrawal charge is intended to reimburse Security Life for

compensation paid to cover selling concessions to broker-dealers, preparation of sales literature and other expenses relating to sales activity. Applicants will rely on Rule 6c-8 under the Act for the necessary exemptive relief to permit imposition of the withdrawal charge.

5. To compensate it for assuming mortality and expense risks under the Contracts, Security Life deducts from such subaccount a charge each valuation period at an effective annual rate of 1.25%, consisting of .80% for the mortality risks and .45% for the expense risks. The rate of the mortality and expense risk charge cannot be increased.

6. The mortality risks assumed by Security Life under the Contracts is the risk that annuitants may live for a longer period of time than estimated. Security Life assumes this mortality risk by virtue of annuity rates incorporated into the Contract which cannot be changed. The expense risk assumed by Security Life is the risk that the administration fees, which cannot be increased, may be insufficient to cover actual expenses.

7. Applicants represent that the 1.25% mortality and expense risk charge is within the range of industry practice for comparable annuity products. Applicants state that this representation is based upon an analysis of publicly available information about selected similar industry products, taking into consideration such factors as the method used in charging sales loads, any contractual right to increase charges above current levels and the existence of charges against separate account assets for other than mortality and expense risks. Security Life will maintain at its principal office, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, the comparative survey made.

8. Applicants acknowledge that the withdrawal charge will be insufficient to cover all costs relating to the distribution of the Contracts and that if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be offset by distribution expenses not reimbursed by the withdrawal charge. Security Life has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements made with respect to the Contracts will benefit the Variable Account and the contract owners. The basis for such conclusion is set forth in a memorandum which will be maintained by Security Life at its principal office and will be available to the Commission.

9. Security Life represents that the Variable Account will invest only in an underlying mutual fund which undertakes, in the event it should adopt any plan under Rule 12b-1 to finance distribution expenses, to have such plan formulated and approved by a board of directors, a majority of the members of which are not "interested persons" of such fund within the meaning of section 2(a)(19) of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-15502 Filed 6-29-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17026; 812-7320]

Pay 'n Save Inc.; Application

June 23, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION. Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: Pay 'n Save Inc. ("Applicant").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from all provisions of the 1940 Act and under section 45(a).

Summary of Application: Applicant seeks a temporary order exempting it from all provisions of the 1940 Act during the period from June 29, 1989, through March 1, 1990. Applicant also seeks an order granting confidential treatment of certain information in the application regarding its efforts to purchase an operating company.

Filing Dates: The application was filed on May 12, 1989, and amended on June 15 and 21, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 17, 1989, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, c/o Sydney H. Mendelsohn, Esquire, Laxalt, Washington, Perito & Dubuc, 1120 Connecticut Avenue NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Regina Hamilton, Staff Attorney (202) 272-3024 or Stephanie Monaco, Branch Chief at (202) 272-3030 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee. One may obtain a copy by going to the SEC's Public Reference Branch or by telephoning the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant, a Delaware corporation, is a reporting company under the Securities Exchange Act of 1934. Its shares are traded over-the-counter. Through its wholly-owned subsidiary, PNS Inc., Applicant owns PSSC Inc., BMI Inc., and PDI Inc. Prior to June 29, 1988, PSSC Inc. and BMI Inc. operated retail stories that sold a variety of traditional drugstore and general merchandise items in the western United States.

2. On June 29, 1988, pursuant to a May 12, 1988 Agreement for the Purchase and Sale of Assets, PSSC Inc., PDI Inc., and BMI Inc. sold substantially all of their operating assets to Thrifty Corporation, a wholly-owned subsidiary of Pacific Enterprises (the "Asset Sale"). As consideration for such sale, Applicant received approximately 5.2 million shares of Pacific Enterprises common stock valued at approximately $231.6 million and constituting approximately 8% of the outstanding common stock of Pacific Enterprises (the "Consideration Shares"), $176,000 in cash, and the right to receive certain contingent cash payments.

3. As a result of the Asset Sale, Applicant essentially owns no operating assets. The Consideration Shares, Applicant's only investment securities (other than short-term investments of a cash-equivalent nature), constitute over 90% of Applicant's assets.

4. Between the date of the Asset Sale and May 1, 1989, the market value of the Consideration Shares decreased by $18.2 million. Applicant's principal source of revenue is dividends received from the Consideration Shares. Applicant's principal obligations are 7⅛% convertible debentures due July 15, 2006, in the aggregate principal amount of $132 million (the "Debentures") and

12⅛% senior subordinated notes due July 15, 1998, in the aggregate principal amount of $150 million (the "Senior Notes"). As reported in Applicant's Form 10-K Annual Report for the year ended October 29, 1988, interest expenses on the Debentures and Senior Notes exceeded dividend income by about $10 million.

5. Applicant has invested the cash received from the Asset Sale in securities solely to preserve its value pending application of such assets to an acquisition or merger. Since the Asset Sale, Pay 'n Save has invested the cash from the Asset Sale and the dividends received from the Consideration Shares only in short-term deposits. Applicant has not engaged in any speculative trading of securities.

6. Because Applicant's "investment security" assets as defined in the 1940 Act exceed 40% of the value of its assets other than government securities, cash and cash items, Applicant could be deemed to be an investment company under the definition contained in section 3(a)(3) of the 1940 Act. Thus on May 12, 1988, in anticipation of the Asset Sale, Applicant's Board of Directors adopted a resolution pursuant to Rule 3a-2 under the 1940 Act to self-effect a one-year temporary exemption from section 3(a).

7. Since June 29, 1988, Applicant has been committed to becoming engaged primarily in operating businesses as expeditiously as possible, and has been studying potential acquisitions of and mergers with 87 unaffiliated operating businesses. Discussions were held and due diligence reviews conducted with a substantial number of such businesses, although no transactions have been consummated to date. Unfavorable discoveries during due diligence, unsuccessful bidding competitions or negotiations, and non-performance by candidate companies have prevented consummation of any acquisitions or mergers. To facilitate consummation of a transaction, Applicant has engaged a nationally-recognized investment banking firm as a finder. Applicant continues to be engaged in ongoing studies and discussions with several potential acquisition and merger candidates.

8. Applicant's efforts to engage in an operating business and the results of such efforts are detailed in a separate part of the application for which Applicant seeks confidential treatment under section 45(a) of the 1940 Act. Aside from such efforts, Applicant's activity is limited to managing the receipt and short-term investment of dividends received on the Consideration Shares, paying interest on Applicant's debt, borrowing money to fund interest payments, and preparing and monitoring filings with the SEC.

9. The Conservation Shares are "restricted securities" since they were acquired directly from Pacific Enterprises in transactions not involving a public offering. Transferability of the Consideration Shares is further restricted by a private placement agreement with Pacific Enterprises, which gives Pacific Enterprises a right of first refusal to acquire the Consideration Shares. However, applicant has not viewed the foregoing restrictions as an impediment to the expeditious transfer of such shares in connection with a merger or acquisition. Because Applicant seeks to acquire an operating business primarily through a leveraged buyout, Applicant believes that restrictions relating to the sale of the Consideration Shares will not negatively affect Applicant's ability to acquire an operating business. Even if Applicant must sell the Consideration Shares to acquire a business, because of its demand and piggy-back registration rights under the agreement with Pacific Enterprises, management believes that the restrictions would not impede the sale of the shares.

10. Applicant has retained the Consideration Shares received to preserve the maximum value of its assets. Liquidation of such shares would produce an amount of profit less than the face amount of Applicant's Debentures and Senior Stock. The sale of Consideration Shares prior to an acquisition would make servicing of Applicant's debt more difficult, and may conceivably force Applicant into bankruptcy by accelerating payment of Pay 'n Save's debt before it becomes due. Moreover, Applicant expects the Consideration Shares to appreciate considerably as interest rates decline. However, Applicant has agreed to sell the shares if necessary to acquire an operating business, or if it has not acquired a suitable company by March 1, 1990.

11. Applicant anticipates that it can complete an acquisition, merger or other transaction by March 1, 1990. Applicant's resources remain committed to the acquisition of new operating business.

Applicant's Legal Analysis

A. Section 6(c)

1. The purchase of the Consideration Shares has caused over 90% of Applicant's assets to be "investment securities" within the meaning of the 1940 Act. Section 3(a)(3) of the 1940 Act defines an investment company to include any issuer that has more than 40% of its assets invested in investment securities. Because application of section 3(a)(3) may cause Applicant to be deemed an investment company under the 1940 Act, and because Applicant's one year safe harbor under Rule 3a-2 will expire on June 29, 1989, Applicant seeks the requested order to remove any uncertainty as to its status under the 1940 Act.

2. The inability of Applicant to complete its transition to new operating businesses within one year after the Asset Sale is due to factors beyond its control. Almost all of Applicant's efforts since June 29, 1988, have been committed to the acquisition of or the merger with operating businesses. Efforts to find an acquisition or merger candidate have taken longer than initially expected. The length of time required was not reasonably anticipated because of the abundance of potential candidates.

3. The actions of Applicant's management since the Asset Sale reflect its good-faith efforts to become primarily engaged in non-investment company businesses. Applicant's principal stockholders and directors have been devoting substantially all of their time and energy to identifying and exploring potential businesses to merge with or acquire.

4. Applicant has invested the cash received from the Asset Sale in securities solely to preserve its value pending application of such assets to an operating business. Other than its holdings of its direct, and indirect wholly-owned subsidiaries, the Consideration Shares comprise the only equity investment of Applicant. Moreover, following the Asset Sale, Applicant has invested only in very short-term Euro-time deposits. Applicant has continued to hold the Consideration Shares to preserve the maximum value of its assets. The sale by Applicant of its Consideration Shares would unnecessarily impose an unfair burden on Applicant's stockholders and debenture holders.

5. Applicant submits that the requested exemption is necessary and appropriate in the public interest. To require Applicant to register under the 1940 Act for an interim period would serve no regulatory purpose and would effectively penalize Applicant and its public stockholders.

6. Applicant also submits that the requested exemption would be consistent with the protection of Applicant's stockholders and investors. The stockholders and the investing public have been appraised of Applicant's intentions to become

engaged in an operating business, and have been informed of its progress in its Form 10–K's and periodic filings under the Securities Exchange Act of 1934. Applicant has steadfastly pursued its announced objective to become primarily engaged in operating company businesses, and has not engaged in trading investment securities.

7. Applicant concludes that the requested exemption would be consistent with the purposes fairly intended by the policy and provisions of the 1940 Act.

B. Section 45(a)

1. Disclosure of the information regarding Applicant's attempts to acquire an operating business is neither necessary nor appropriate in the public interest or for the protection of investors. Disclosure of such information will harm Applicant and its investors by making it more difficult in the future to find acquisition candidates who will be willing to enter into discussions with Applicant, since such discussions are generally entered into on a confidential basis.

2. No other public interest would be furthered by the disclosure of this information. While it is important for the SEC to review this information, public disclosure of this information would be inappropriate. The information regarding management's attempts to acquire an operating business should be considered Applicant's own proprietary information. By public disclosure, other persons may unfairly gain the benefit of this proprietary information belonging to Applicant. Moreover, such disclosure could result in a breach of confidentiality agreements with prospective acquisition or merger candidates.

Applicant's Conditions

Applicant will comply with the following conditions if the requested order is granted:

1. Applicant will not engage in the trading of investment securities for speculative purposes.

2. Applicant will continue its efforts to become primarily engaged in a non-investment company business as soon as reasonably possible.

3. Applicant will decrease the percentage of its total assets comprised of investment securities so as not to be an investment company with the meaning of the 1940 Act and the rules thereunder as soon as reasonably possible, and in any event, within the period during which the requested order is in effect.

4. Applicant agrees that on the extent the cash dividends it receives on the Consideration Shares or the proceeds of the sale of investment securities are not otherwise expended for valid business purposes, such proceeds will be held only in United States government securities, short-term high quality money market instruments or short-term Euro-time deposits. In no event will the proceeds of the sale of investment securities be used to purchase additional investment securities. However, Applicant may purchase its own debentures in order to improve its financial condition.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–15503 Filed 6–29–89; 8:45 am]

BILLING CODE 7990-01-M

[Rel. No. IC–17029; 812–7338]

Thomson McKinnon Investment Trust, et al.; Notice of Application

June 23, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: Thomas McKinnon Investment Trust ("TMIT"), Cash Accumulation Trust, Thomson McKinnon Accumulation Plan Trust (collectively, "Investment Companies"), Thomson McKinnon Asset Management L.P. ("TMAMLP" or "Investment Adviser), and Prudential Securities Group Inc. ("Acquiror").

Relevant 1940 Act Sections: Exemption requested under section 6(c) of the 1940 Act from the provisions of section 15(a) of the 1940 Act.

Summary of Application: Applicants seek an order: (i) Permitting the implementation without formal shareholder approval of new investment advisory agreements between the Investment Companies and TMAMLP, and new sub-advisory agreements between TMAMLP and the sub-advisers to two series of TMIT, in each case as approved by the Investment Companies' Boards of Trustees, (ii) permitting TMAMLP to receive from each Investment Company, subject to shareholder approval, fees earned under the new agreements from the date on which Acquiror first acquires more than 25% of the outstanding voting securities of Thomson McKinnon Inc., ("TMI") until the date the new advisory agreements and new sub-advisory agreements are approved or disapproved by shareholders of the respective Investment Companies ("Interim Period"), which period shall not exceed 120 days, and (iii) to permit the sub-advisers to receive, subject to shareholder approval, fees earned under new sub-advisory agreements implemented during the Interim Period.

Filing Date: The application was filed on June 14, 1989, and was amended and restated on June 23, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing request should be received by the SEC by 5:30 p.m. on July 14, 1989, and should state the nature of the requester's interest, the reason for the request, and the issues contested. Hearing requests also should be accompanied by proof of service on the Applicants in the form of affidavits or, for lawyers, certificates of service. Requests for notification of a hearing may be made by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, Washington, DC 20549. Applicants Investment Companies and TMAMLP, Financial Square, New York, New York 10005 and Acquiror, One Seaport Plaza, 199 Water Street, New York, New York, 10005.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Cathey Baker (202) 272–3033 or Branch Chief Karen L. Skidmore (202) 272–3023 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee. One may obtain a copy by going to the SEC's Public Reference Branch or by telephoning the SEC's commerical copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations

1. Each Investment Company is organized as a Massachusetts business trust, is registered under the 1940 Act as an open-end management investment company and is a "series company" as defined in Rule 18f–2 under the 1940 Act. TMAMLP serves as investment adviser to each Investment Company. Advisory fees paid to TMAMLP range from 0.325% per annum of average daily net assets to 0.75% per annum of average daily net assets of the various series of the Investment Companies. TMAMLP, a Delaware limited partnership, is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act"). All of the limited partnerhship interests of TMAMLP are publicly held and are traded on the New York Stock Exchange under the symbol "TMA." Thomson McKinnon Asset Management Inc. ("TMAM"), a wholly-owned subsidiary of TMI, holds all of the general partnership interest in TMAMLP. Acquiror is a wholly-owned subsidiary of The Prudential Insurance Company of America ("Parent"). Van Eck Associates Corporation ("Van Eck"), an investment adviser registered under the Advisers Act, serves as sub-adviser to one series of TMIT, and Warburg Investment Management ("Warburg") serves as sub-adviser to another series of TMIT. Under the sub-advisory agreements, TMAMLP pays to Van Eck and Warburg sub-advisory fees equal to 0.375% per annum and 0.40% per annum, respectively, of the average daily net assets of the applicable series of TMIT.

2. TMI has been seeking an infusion of long-term capital since mid-1988. Serious negotiations between TMI and Acquiror began in May 1989, but it was not until June 5, 1989 that TMI focused exclusively upon a sale of TMI to Acquiror. Negotiations intensified during the week of June 5 and on the evening of June 8, the President of TMAMLP, who had first learned of a possible sale of TMI in late April and who was the only officer of TMAMLP to know of the negotiations with Acquiror until June 8, met with the Chairman of the Independent Trustees of the Investment Companies to explain that an acquisition of TMI by Acquiror was a realistic possibility. On Friday, June 9, all of the Trustees and counsel to the independent Trustees were notified of a meeting of the Boards of Trustees of the Investment Companies to be held on the evening of Tuesday, June 13. Contingencies to the execution of a definitive agreement were not favorably resolved until the afternoon of June 13, and the transaction was not approved by Acquiror's Board of Directors until late afternoon. TMI announced the transaction at approximately 5:00 p.m.

3. A definitive Stock Purchase Agreement ("Stock Purchase Agreement") was executed as of June 13, 1989 providing, among other things, for the acquisition by Acquiror of the entire equity interest of TMI. Upon completion of the transactions contemplated by the Stock Purchase Agreement ("Acquisition"), Acquiror (or another direct or indirect wholly owned-subsidiary of Parent) is expected to own all or substantially all of the outstanding voting securities of TMI. Conditions to consummation of the Acquisition include, among others: (i) Receipt of an order of the Commission granting the requested relief; (ii) repurchase by TMI of all of the TMI securities owned by an institutional investor; (iii) receipt of clearance from the New Jersey Departments of Banking and Insurance; (iv) expiration of waiting periods applicable under the Hart-Scott-Rodino Antitrust Improvement Act of 1978; and (iv) completion by the parties of due diligence. It is anticipated that the Acquisition will be consummated on or about July 17, 1989, in the requested order of the Commission is received and if all other conditions to consummation have been fulfilled. Because the Acquisition may be deemed to result in an indirect change in control of TMAM, the sole general partner of TMAMLP, and/or a change in control of TMAMLP itself, the acquisition may be deemed to result in an assignment within the meaning of section 2(a)(4) of the 1940 Act of the existing investment advisory agreements of each of the Investment Companies with TMAMLP, terminating each investment advisory agreement and sub-advisory agreement pursuant to its terms.

4. The Board of Trustees of each Investment Company was notified within hours of the execution of the Stock Purchase Agreement. The Applicants state that notification prior to that time would have been premature, since the terms of the transactions had not been finalized and it was uncertain that the parties would in fact reach agreement. At the meetings held on June 13, 1989, the Boards of Trustees of each of the Investment Companies, including a majority of the Trustees who are not "interested persons" of the relevant Investment Company, as defined in section 2(a)(19) of the 1940 Act, met in person and concluded unanimously, with the advice of independent counsel, that it was in the best interests of each Investment Company and its shareholders to file the application as a necessary step in implementing new advisory and sub-advisory agreements during the Interim Period, so as to minimize the disruption in advisory services to each Investment Company. The Boards of Trustees have scheduled another in-person meeting on July 6, 1989 to consider further the advisability of entering into new agreements providing for advisory and sub-advisory services following the Acquisition. As part of that process, the Boards of Trustees, with the advice of independent counsel, will comply with the requirements of section 15(c) of the 1940 Act.

5. As soon as reasonably practicable, but within the Interim Period in any event, the Investment Companies will present for Board of Trustees and shareholder approval new agreements providing for advisory and sub-advisory services following the Acquisition. It is not possible for the Investment Companies to obtain such shareholder approval in accordance with section 15(a) of the 1940 Act prior to the anticipated consummation of the Acquisition on July 17, 1989. As noted above, the Investment Companies had no advance notice of the proposed transactions. Shares of the Investment Companies are beneficially held by more than 500,000 shareholders. Since a "majority of the outstanding voting securities," as defined in the 1940 Act, of each series of each Investment Company will be required to approve the new advisory arrangements, the Applicants believe that substantial time and effort will be necessary to obtain the required votes. Shareholders' meetings require the preparation of proxy materials and subsequent clearance by the staff of the Commission, as well as a solicitation period that is sufficient to obtain the requisite quorum. Although the Investment Companies are preparing these materials as quickly as possible, it will be impossible to hold special meetings of shareholders before the Acquisition, as there will not be an adequate solicitation period to assure a quorum of shareholders at the meetings.

Applicants' Legal Conclusions

The Applicants state that the requested order is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act for the reasons set forth below, as discussed more fully in the application.

6. The management of TMI and those shareholders who are parties to the Stock Purchase Agreement considered and rejected two other ways of dealing with the effect of the proposed Acquisition upon the advisory agreements between TMAMLP and each of the Investment Companies. First, consummation of the Acquisition might have been conditioned upon the approval of the shareholders of all the Investment Companies. This approach was rejected because it would have meant a delay of up to 2½ months in consummating the Acquisition, and such a delay would have adversely affected the interests of all parties. The Applicants note the likelihood, among

other things, that protracted uncertainty as to the future of TMI could cause substantial defections by the registered representatives of TMI's broker-dealer subsidiary, Thomson McKinnon Securities Inc. Such defections would adversely affect TMAMLP and the holders of its publicly-traded limited partnership units. Second, TMAMLP might have given the appropriate 60 days notice to the Investment Companies, so that the investment advisory agreements would terminate upon the change of control in TMAMLP. This approach was rejected because it would have delayed the consummation of the Acquisition for at least sixty days. In addition to the adverse consequences of delay noted above, the Investment Companies would have been required either to reengage TMAMLP or to find a suitable replacement, and to obtain shareholder approval, all within the 60-day period, in order to avoid a potential disruption in investment services.

7. It was decided that the interests of the shareholders of each of the Investment Companies, the stockholders of TMI and the unit holders of TMAMLP would be best served if the consummation of the Acquisition were made contingent upon the receipt of the relief requested in the application. The Applicants state that there will be no diminution in the scope and quality of services provided to the Investment Companies during the Interim Period. The new advisory and sub-advisory agreements to be implemented during this period will have the same terms and conditions as the existing agreements. Each Investment Company will receive the same investment advisory services as before, provided in the same manner, at the same fee levels, and, it is expected, by the same personnel. Advisory fees paid by an Investment Company during the Interim Period under a new advisory agreement will be maintained in an interest-bearing escrow account, and amounts in the account will be paid (a) to the Investment Adviser only upon approval by the shareholders of the Investment Company, or (b) absent such approval, to the Investment Company. The Applicants assert that this arrangement is in keeping with the provisions of Rule 15a-4 (other than the provisions limiting the ability of persons affiliated with the advisor to profit from the assignment transaction) and the purposes of Section 15 of the 1940 Act, since the Trustees of the Investment Companies will have approved the new advisory agreements prior to their implementation and since no fees will be paid unless the agreements are approved by the Investment Company shareholders.

8. The Applicants submit that circumstances which have given rise to the request for relief are similar to those of other types of assignments that are not reasonably foreseeable. The extremely rapid culmination of the Parent-TMI negotiations did not present, and the form of transaction deemed most appropriate by Parent and TMI did not permit, an opportunity to secure prior approval of new advisory and sub-advisory agreements by shareholders of the Investment Companies. The Applicants further submit that to deprive TMAMLP of its customary fees for the Interim Period because the Acquisition may technically result in an assignment of the Investment Companies' existing investment advisory agreements would be a harsh result and an unreasonable penalty to attach to the transaction. The Applicants believe that the requested 120-day Interim Period will facilitate an orderly consideration of the advisory and sub-advisory agreements by the Investment Companies' Boards of Trustees and shareholders. They assert that such an Interim Period is consistent with the provisions of Rule 15a-4 and the purposes of Section 15 of the 1940 Act, as well as the corporate governance objectives of the 1940 Act.

Applicants' Conditions

If the requested order is granted, the Applicants agree to the following conditions:

1. The new advisory agreements to be implemented during the Interim Period will have the same terms and conditions as the existing advisory agreements, and the new sub-advisory agreements to be implemented during the Interim Period will have the same terms and conditions as the existing sub-advisory agreements.

2. In considering new advisory and sub-advisory agreements to be implemented during the Interim Period, the Boards of Trustees of the Investment Companies, including a majority of members who are not "interested persons," will take any additional steps which may be necessary to comply with the requirements of section 15(c) of the 1940 Act. Upon completion of their review, the application will be amended promptly to reflect the Trustees' formal conclusions and the bases therefor.

3. Fees earned by the Investment Adviser and paid by an Investment Company during the Interim Period in accordance with the terms of a new advisory agreement will be maintained in an interest-bearing escrow account, and amounts in the account will be paid (a) to the Investment Adviser only upon approval by the shareholders of that Investment Company, or (b) in the absence of such approval, to the respective Investment Company.

4. Acquiror (or an affiliate of Acquiror) will pay the costs of preparing and filing the application and the costs of holding all special meetings of the Investment Companies' shareholders necessitated by the Acquisition, including the cost of proxy solicitations. Additionally, Acquiror (or an affiliate of Acquiror) will pay the incremental costs necessitated by the Acquisition in connection with meetings of the Investment Companies' shareholders.

5. TMAMLP will take all appropriate steps so that the scope and quality of advisory and other services provided to the Investment Companies during the Interim Period will be at least equivalent, in the judgment of the respective Boards of Trustees, including a majority of the Trustees who are not "interested persons," to the scope and quality of services previously provided. In the event of any material change in personnel providing services pursuant to the advisory or sub-advisory agreements, TMAMLP will apprise and consult with the Boards of Trustees of the affected Investment Companies in order to assure that they, including a majority of the Trustees who are not "interested persons," are satisfied that the services provided will not be diminished in scope or quality.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-15504 Filed 6-29-89; 8:45 am]

BILLING CODE 8010-01-M

TENNESSEE VALLEY AUTHORITY

Environmental Impact Statement; Land Between The Lakes Natural Resource Management Plan

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: TVA will prepare a draft Environmental Impact Statement (DEIS) on a revised Natural Resource Management Plan for the Land Between The Lakes (LBL) national recreation area. The LBL Natural Resource Management Plan sets forth policies, goals, objectives, and guidelines for management of forest, open lands, wildlife, fish, and water resources. The revision will incorporate more specific guidelines for enhancing and protecting soil and water quality, recreation, visual and cultural resources, and habitat for threatened and endangered plants and animals. TVA is inviting comments on the scope of the DEIS analysis. TVA also intends to conduct one or more public meetings to obtain review of and comments on the DEIS.

DATES: Comments on the scope of the EIS must be received on or before July 31, 1989.

ADDRESSES: Comments on the scope of the EIS should be sent to M. Paul Schmierbach, Manager of Environmental Quality, Tennessee Valley Authority, 400 West Summit Hill Drive, 201 Summer Place Building, Knoxville, Tennessee 37902-1499, phone (615) 632-6578.

FOR FURTHER INFORMATION CONTACT: R. Lynwood Smelser, Manager of Facilities and Land Management, Land Between The Lakes, Tennessee Valley Authority, 100 Van Morgan Drive, Golden Pond, Kentucky 42211-9001, phone (502) 924-5602.

SUPPLEMENTARY INFORMATION: In 1963, President Kennedy charged TVA with the responsibility of developing an area with limited natural resources into a national demonstration of outdoor recreation, environmental education, and resource management that would stimulate economic growth of the region.

To accomplish this mandate, TVA established a 170,000-acre national recreation area (LBL) in western Kentucky and Tennessee bounded by TVA's Kentucky Lake to the west and the Corps of Engineers' Lake Barkley to the east.

Under TVA's stewardship, the natural resources of LBL have been safeguarded and enhanced. The volume of standing timber in LBL has more than doubled. Reintroduction programs for previously extirpated species, such as bald eagles and osprey, have resulted in reproducing populations in and around the LBL region. LBL is known throughout the region for its white-tailed deer and Eastern wild turkey hunting opportunities. LBL currently contributes to a multimillion dollar tourism industry in the region by attracting nearly two million visitors annually for such purposes as camping, hiking, sightseeing, hunting, fishing, and interpretive center visits.

The Natural Resource Management Plan for LBL was written in 1966. LBL resource management programs to implement the Natural Resource Management Plan have been developed and refined through an interagency interdisciplinary team approach with input from a variety of outside professionals and conservation organizations. Although the original mission of Land Between The Lakes has not changed and the basics of the plan are still thought to be sound, obtaining widespread public review of and input into the plan would assist TVA in its stewardship of LBL's natural resources.

An internal agency scoping committee has developed the following list of issues to be addressed in the DEIS: forest, open land, wildlife and water resources management practices; protection of threatened and endangered species; protection of archaeological and cultural resources; participation in the International Man and the Biosphere program; use of pesticides and tick control measures at LBL; and protection of soil and water quality. TVA requests comments on whether these issues are an adequate scope for the DEIS and on any additional issues which may need to be evaluated.

Four general alternatives for management of LBL natural resources are proposed for evaluation in the DEIS:

1. No change from current practices (no action).

2. Modification of current practices to reflect increased public support for visual and other noncommodity resources.

3. Increased production and harvesting of natural resources such as timber and game to sustainable yield levels.

4. Cessation or substantial reduction of practices involving consumption of natural resources within LBL (this would substantially reduce or eliminate timber harvesting, hunting, fishing, and certain other recreational activities).

After reviewing any comments, the scope of the DEIS will be set and the DEIS will be prepared. Notice of the availability of the DEIS will be published in the **Federal Register** and will be provided to all individuals and organizations responding to this Notice of Intent. Notice of the availability of the DEIS will also be announced through newspapers, radio, and television in the LBL region.

M. Paul Schmierbach,

Manager of Environmental Quality.

[FR Doc. 89-15433 Filed 6-29-89; 8:45 am]

BILLING CODE 8120-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD1-89-062]

New York Harbor Traffic Management Advisory Committee; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of a meeting of the New York Harbor Traffic Management Advisory Committee to be held on July 27, 1989, in the Conference Room, second floor, U.S. Coast Guard Marine Inspection Office, Battery Park, New York, New York, beginning at 10:00 a.m.

The agenda for this meeting of the New York Harbor Traffic Management Advisory Committee is as follows:

1. Introductions.
2. Update Kill Van Kull Dredging Project, proposed new navigation rules.
3. Anchorage statistics.
4. Discontinuation of the present committee.
5. Topics from the floor.
6. Review of agenda topics and selection of date for next meeting.

The New York Harbor Traffic Management Advisory Committee has been established by Commander, First Coast Guard District to provide information, consultation, and advice with regard to port development, maritime trade, port traffic, and other maritime interests in the harbor. Members of the Committee serve voluntarily without compensation from the Federal Government.

Attendance is open to the interested public. With advance notice to the Chairperson, members of the public may make oral statements at the meeting. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Committee at any time.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander L. Brooks, USCG, Executive Secretary, NY Harbor Traffic Management Advisory Committee, Port Safety Ofice, Building 109, Governors Island, New York, NY 10004; or by calling (212) 668-7834.

Dated: June 21, 1989.

R. I. Rybacki,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 89-15509 Filed 6-29-89; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Proposed Advisory Circular 120-XX; Radiation Exposure of Air Carrier Crewmembers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of proposed Advisory Circular 120-XX, and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed advisory circular (AC) pertaining to radiation exposure of air carrier crewmembers. This notice is necessary to give all interested persons an opportunity to present their views on the proposed AC.

DATE: Comments must be received on or before August 29, 1989.

ADDRESS: Send all comments on the proposed AC to: Federal Aviation Administration, Attention: Rules Docket (AGC-204), Docket No. Comments may be inspected at the above address between 8:30 a.m. and 5:00 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Andrew Horne, Office of Aviation Medicine (AAM-240) at the Address above, telephone (202) 267-3401.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the draft AC may be obtained by contacting the person named above under "FOR FURTHER INFORMATION CONTACT." Interested persons are invited to comment on the proposed AC by submitting such written data, views or arguments as they may desire.

Commentors should identify AC 120-XX and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the Office of Aviation Medicine before issuing the final AC.

Background

Advisory Circular 120-XX provides guidance material for air carrier crewmembers on occupational radiation exposure related to air travel. In addition to discussions on cosmic radiation and radioactive cargo, health risks are addressed. Also provided is a table containing dose equivalents from galactic cosmic radiation received on representative air carrier flights. The purpose of this advisory information is to provide a basis for crewmember selection of schedules in accordance with their concern related to personal exposure to cosmic radiation.

Issued in Washington, DC, June 16, 1989.

John J. Jordan,

Deputy, Federal Air Surgeon, Office of Aviation Medicine.

[FR Doc. 89-15489 Filed 6-29-89; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA); Executive Committee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given for the Executive Committee Meeting to be held July 21, 1989, in the RTCA Conference Room, One McPherson Square, 1425 K Street NW., Suite 500, Washington, DC 20005, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's remarks and introductions; (2) approval of the minutes of meeting held May 19; (3) Executive Director's report; (4) Special Committee Activities Report for May-June; (5) Fiscal and Management Subcommittee Report on Mid-Year Review of RTCA 1989 Budget; (6) consideration of proposals to establish new Special Committees; (7) consideration of approval of Special Committee 161 Report, "Minimum Aviation System Performance Standards for Radiodetermination Satellite Service (RDSS)"; and (8) other business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 21, 1989.

Geoffrey R. McIntyre,

Designated Officer.

[FR Doc. 89-15482 Filed 6-29-89; 8:45 am]

BILLING CODE 4910-13

Radio Technical Commission for Aeronautics (RTCA), Special Committee 165—Minimum Operational Performance Standards for Aeronautical Mobile Satellite Services; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given for the third meeting of RTCA Special Committee 165 on Minimum Operational Performance Standards for Aeronautical Mobile Satellite Services to be held July 26-28, 1989, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's remarks; (2) approval of the second meeting's minutes, RTCA Paper No. 140-89/SC165-16; (3) technical presentations; (4) Working Group reports on Equipment Standards Working Group (WG-1) Report, Operation and Implementation Working Group (WG-2) Report, and Service Performance Criteria Working Group (WG-3) Report; (5) review of overall draft progress; (6) Work Group sessions; (7) assignment of tasks; (8) other business; and (9) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 22, 1989.

Geoffrey R. McIntyre,

Designated Officer.

[FR Doc. 89-15483 Filed 6-29-89; 8:45 am]

BILLING CODE 4910-13-M

Federal Railroad Administration

Petition for Exemption or Waiver of Compliance, National Passenger Railroad Corp.

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received requests for exemptions from or waivers of compliance with certain requirements of its safety standards. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment,

notification should be provided to FRA, in writing, before the end of the comment period and should specify the basis for the request.

All communications concerning these proceedings should reference the appropriate docket numbers and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administraton, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received before August 15, 1989, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

The individual petitions seeking an exemption or waiver of compliance are as follows:

National Railroad Passenger Corporation

Waiver Petition Docket Numbers RST-83-1 and RST-87-1

Note: These two docket numbers were assigned to cover serial requests for approval to adjust train speeds, New York to Washington and New Haven to Boston.)

Docket Number RST-83-1

The regulatory provision involved is § 213.57(b) of the Federal Track Safety Standards. This section presents the specific algebraic expression, one that is based on the following general formula, used to calculate permissible train speed for curved railroad track:

In the case of the Track Safety Standards, the term "μ", below, has the value of three inches. A definition of the concept of vehicle balance in curve negotiation appears on pages 38035 and following of the Federal Register, Volume 52, Number 197, October 13, 1987.

$$V_{max} = \sqrt{\frac{E_a + u}{.0007D}}$$

where:

E_a = actual elevation of outside rail (superelevation) in inches,

u = amount of superelevation unbalance in inches,

D = curvature in degrees of arc,

and

V_{max} = maximum allowable operating speed in miles per hour.

The petitioner requests that compliance with the three-inch underbalance limit be waived for passenger trains operating between New York City and Washington, DC and that the use of four inches be approved as the value of "u" in redefining passenger train curving speeds in this territory.

If FRA were to approve this request, the petitioner would be authorized to increase train speed by up to 15 miles per hour on certain curves along the route, New York to Washington. The majority of speed changes would be in the five to ten mile per hour range.

Docket Number RST-87-1

The same regulatory provision noted above is at issue in this case, but the route location differs, being New Haven, Connecticut to Boston, Massachusetts, and the requested value for the term "u" in the formula is five inches. Passenger trains now are authorized, pursuant to an existing FRA waiver to negotiate curves in this region at speeds producing four inches of superelevation unbalance.

The petitioner's objective in submitting these two waiver requests is the improvement of passenger train trip times between the two city-pairs.

Issued in Washington, DC, on June 20, 1989.

Phil Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 89-15510 Filed 6-29-89; 8:45 am]

BILLING CODE 4910-06-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 89-64]

Commercial Gauger Approval

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of Approval of a Commerical Gauge.

SUMMARY: Pursuant to §151.13 of the Customs Regulations (19 CFR151.13), Sabine Surveyors, 9509 Highway 69 Port Arthur, Texas, 77640 applied to Customs for aproval to gauge imported petroleum and petroleum products. Customs has determined that Sabine meets all of the requirements for approval as a commercial gauger.

In accordance with § 151.13(e) of the Customs Regulations, Sabine Surveyors, Inc., is hereby granted approval to guage the products named above in all Customs districts.

EFFECTIVE DATE: June 30, 1989.

FOR FURTHER INFORMATION CONTACT: Donald A. Cousins, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Avenue, NW, Washington, DC 20229 (202-566-2446)

Dated: June 23, 1989.

John B. O'Loughlin,

Director, Office of Laboratories and Scientific Service.

[FR Doc. 89-15432 Filed 9-29-89; 8:45 am]

BILLING CODE 4820-02-M

Fiscal Service

[Dept. Circ. 570, 1988—Rev., Supp. No. 19]

Surety Companies Acceptable on Federal Bonds; Termination of Authority; National General Fire & Casualty Insurance Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to National General Fire & Casualty Insurance Company, of Jackson, Mississippi, under the United States Code, Title 31, Sections 9304—9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 53 FR 25069, July 1, 1988.

With respect to any bonds currently in force with National General Fire & Casualty Insurance Company, bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the Company. In addition, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20227, telephone (202) 287-3921.

Mitchell A. Levine,

Assistant Commissioner, Comptroller, Financial Management Service.

Dated: June 26, 1989.

[FR Doc. 89-15493 Filed 6-29-89; 8:45 am]

BILLING CODE 4810-35-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 125
Friday, June 30, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 2:45 p.m., Thursday, June 29, 1989.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89-15632 Filed 6-28-89; 3:58 pm]

BILLING CODE 6351-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

INSTITUTE OF MUSEUM SERVICES

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the agenda of a forthcoming meeting of the National Museum Services Board. This notice also describes the functions of the Board. Notice of this meeting is required under the Government in the Sunshine Act (Public Law 94-409) and regulations of the Institute of Museum Services, 45 CFR 1180.84.

TIME AND DATE: 9:00 a.m., Friday, July 21st, 1989.

STATUS: Open and Closed.

ADDRESS: The National Gallery of Art, Constitution Avenue & Sixth Street, NW., Washington, DC 20565, (202) 737-4215.

FOR FURTHER INFORMATION CONTACT: William Laney, Executive Assistant to the National Museum Services Board, Room 510, 1100 Pennsylvania Avenue NW., Washington, DC 20506 (202) 786-0536.

SUPPLEMENTARY INFORMATION: The National Museum Services Board is established under the Museum Services Act, Title II of the Arts, Humanities, and Cultural Affairs Act of 1976, Public Law 94-462. The Board has responsibility for the general policies with respect to the powers, duties, and authorities vested in the Institute under the Museum Services Act.

The meeting of July 21, 1989 will be open to the public from 9 a.m. through discussion of agenda item number III, section (b), closed to the public through item number III, section (b), and open to the public through section IV. The meeting will be closed to the public for a review of agenda item number III, section (b) pursuant to paragraphs 6, 9, (b), and other relevant provisions of subsection (c) of Section 552 of Title 5, United States Code. The Board will consider information that may disclose: Information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of privacy; and information the disclosure of which might significantly impede implementation of proposed agency actions related to the grant award process.

If you should require special accommodations due to a disability, please contact: Institute of Museum Services, Room 510—1100 Pennsylvania Avenue, NW., Washington, DC 20506, (202) 786-0536, TDD (202) 682-5496 at least seven (7) days prior to the meeting date.

A True Copy, National Museum Services Board (NMSB), July 21, 1989 Meeting Agenda

I. NMSB Chairman's Report & Approval of Minutes of April 27, 1989 NMSB Meeting
II. IMS Director's Report
III. IMS Program Report (PARTIAL CLOSED SECTION)
(a) General Operating Support (GOS)
(b) Applications (*CLOSED SECTION*)
(c) Conservation Program (CP) & CAP
(d) Museum Assessment Program (MAP)
(e) Professional Services Program (PSP)
IV. General Operating Support Committee Report

Dated: June 26, 1989.

Lois Burke Shepard,

Director, Institute of Museum Services.

[FR Doc. 89-15615 Filed 6-28-89; 3:56 pm]

BILLING CODE 7036-01-M

UNITED STATES INSTITUTE OF PEACE

DATE: Thursday, July 6, 1989.

TIME: 9:15 a.m. to 5:30 p.m.

PLACE: The United States Institute of Peace, 1550 M Street, NW., ground floor (conference room).

STATUS: Open session—Thursday 9:15 a.m. to 5:30 p.m. (portions may be closed pursuant to subsection (c) of section 552(b) of title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Pub. L. (98-525).

AGENDA: (TENTATIVE): Meeting of the Board of Directors convened. Chairman's Report. President's Report. Committee Reports. Consideration of the Minutes of the Thirty-third meeting of the Board. Consideration of grant application matters.

CONTACT: Ms. Olympia Diniak. Telephone (202) 457-1700.

Dated: June 26, 1989.

Bernice J. Carney,

Administrative Officer, The United States Institute of Peace.

[FR Doc. 89-15580 Filed 6-28-89; 10:22 am]

BILLING CODE 2155-01-M

Corrections

Federal Register
Vol. 54, No. 125
Friday, June 30, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 371

[Docket No. 88-402]

Organization, Functions, and Delegations of Authority

Correction

In rule document 89-12914 beginning on page 23193 in the issue of Wednesday, May 31, 1989, make the following correction:

§ 371.12 [Corrected]

On page 23204, in the first column, in § 371.12(d)(2), in the sixth line, "waiver" should read "water".

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 518

[Army Reg. 340-17]

Release of Information and Records From Army Files; Special Designation of Initial Denial Authority

Correction

In rule document 89-5768 appearing on page 10541 in the issue of Tuesday, March 14, 1989, make the following correction:

§ 518.15 [Corrected]

In the second column, in § 518.15, the paragraph designated (a)(4)(viii) should be designated (a)(4)(xviii).

BILLING CODE 1505-01-D

DEPARTMENT OF EDUCATION

34 CFR Parts 75, 76, 77, 78, 200, and 204

Chapter 1 Program in Local Educational Agencies

Correction

In rule document 89-11807 beginning on page 21752 in the issue of Friday, May 19, 1989, make the following corrections:

1. On page 21752, in the third column, under **Major Changes from the NPRM**, in the eighteenth line, "In", should read "The".

2. On the same page, in the same column, under **Major Changes from the NPRM**, in the 23rd line, "officials" and "various" were misspelled.

3. On the same page, in the same column, under *What Definitions Apply to the Chapter 1 LEA Program? (§ 200.6)*, in the 14th line, insert "a" after "of".

4. On page 21753, in the second column, in the last line, "and" should read "an".

5. On the same page, in the 3rd column, in the 13th line, "commingly should read "commingling"; and in the 26th line, after "funds" insert "under".

6. On page 21754, in the 1st column, in the 12th line, "on" should read "of"; and in the 18th line, "if" should read "If".

7. On the same page, in the same column, in the first complete paragraph, in the third line, "and" should read "an".

8. On the same page, in the same column, in the second complete paragraph, in the ninth line, "and" should read "or".

9. On the same page, in the same column, in the same paragraph, in the 17th line, "either" was misspelled.

10. On the same page, in the 2nd column, in the 13th line, "approving" was misspelled.

PART 200-[CORRECTED]

11. On page 21756, in the second column, in the table of contents to Part 200, under Subpart D, in § 200.37, in the first line, insert "an" before "SEA'S".

§ 200.20 [Corrected]

12. On page 21759, in the third column, in § 200.20(b) introductory text, the second line should read "*application.* An application must be —".

§ 200.22 [Corrected]

13. On page 21760, in the first column, in § 200.22(b), in the fifth line, remove "4-".

§ 200.23 [Corrected]

14. On the same page, in the second column, in § 200.23(b)(1)(i), in the fifth line, the first "of" should read "to".

§ 200.25 [Corrected]

15. On the same page, in the third column, in § 200.25(a)(1)(i), in the second line, "country" should read "county".

16. On page 21761, in the first column, in § 200.25(b)(2)(ii), in the fifth line, "proposes" should read "purposes".

§ 200.30 [Corrected]

17. On the same page, in the third column, in § 200.30(a)(3) introductory text, in the first line, "fund" should read "funds".

18. On page 21762, in the first column, in § 200.30(b)(2)(ii)(A), in the ninth line, "are" should read "and".

§ 200.35 [Corrected]

19. On page 21764, in the third column, in § 200.35(a)(2)(ii), in the Example, in the fourth line, "springtesting" should read "spring-spring testing".

§ 200.37 [Corrected]

20. On page 21766, in the second column, in § 200.37(b)(1)(ii)(B), in the first line, after "Develop" insert "and".

§ 200.38 [Corrected]

21. On the same page, in the same column, in the heading to § 200.38, "involvement" should read "improvement".

22. On page 21768, in the first column, in § 200.38(d)(1)(ii), in the first line, "show" should read "shows".

§ 200.39 [Corrected]

23. On the same page, in the same column, in the heading to § 200.39, "many" should read, "may".

24. On the same page, in the same column, in § 200.39(a)(1), in the first line, "Similarly" was misspelled.

25. On the same page, in the second column, in § 200.39(a)(2)(i), in the second line, "similarly" was misspelled.

§ 200.41 [Corrected]

26. On the same page, in the same column, in § 200.41(a)(1), in the second line, "and" should read "an"; in the eighth line, "education" was misspelled;

and in the ninth line, "less" was misspelled.

27. On the same page, in the same column, in § 200.41(a)(2), in the third line, "preceding" was misspelled.

§ 200.42 [Corrected]

28. On page 21789, in the first column, in § 200.42(b)(2), in the Example, in the first line "and" should read "an".

§ 200.43 [Corrected]

29. On the same page, in the second column, in § 200.43(c)(2), in the second line, "and" should read "an".

§ 200.44 [Corrected]

30. On the same page, in the third column, in § 200.44(a), in the second line, "and" should read "an"; and in the fourth line, before "practicable" insert "extent ".

§ 200.45 [Corrected]

31. On the same page, in the same column, in § 200.45(a)(1)(ii), in the second line, remove "in".

§ 200.57 [Corrected]

32. On page 21772, in the first column, in § 200.57(c)(1)(i), in the third line "of" should read "or".

33. On the same page, in the same column, in § 200.57(c)(1)(ii), in the second line, "lease" should read "least"; and in the third line, the first "of" should read "or".

§ 200.58 [Corrected]

34. On the same page, in the same column, in § 200.58(a)(2), in the third line, the first "of" should read "or".

35. On the same page, in the same column, in § 200.58(c), in the second line, "receive" should read "received".

§ 200.70 [Corrected]

36. On the same page, in the third column, in § 200.70(e)(1)(ii), in the first line, "is" should read "in".

§ 200.71 [Corrected]

37. On the same page, in the same column, in the heading of § 200.71, in the first line, "pay" should read "paid".

38. On the same page, in the same column, in § 200.71(a), in the second line, "used" should read "use".

§ 200.73 [Corrected]

39. On page 21773, in the second column, in § 200.73, in the introductory text, in the first line, "procedure" should read "procedures".

§ 200.80 [Corrected]

40. On the same page, in the third column, in the heading of § 200.80, in the first line, "and" should read "an".

41. On the same page, in the same column, in § 200.80(a)(1)(ii), in the second line, "and" should read "an".

42. On the same page, in the same column, in § 200.80, in paragraph (a)(2), the paragraph designated (1)(A) should be designated (i)(A).

Appendix [Corrected]

43. On page 21777, in the Appendix, in the second column, the heading that reads "*Section 200.4 What King of Activities May an LEA Conduct?*" should read "*Section 200.4 What Kind of Activities May an LEA Conduct?*"

44. On page 21778, in the second column, in the third complete paragraph, in the sixth line, "Educational" should read "Education".

45. On the same page, in the third column, in the first *Comment* paragraph, in the tenth line, "recommended" was misspelled.

46. On the same page, in the same column, in the *Changes* paragraph, in the sixth line, "designed" should read "designated".

47. On page 21779, in the first column, in the second line, insert "a" before "grade".

48. On the same page, in the same column, in the second *Discussion* paragraph, in the seventh line, "This" should read "Thus".

49. On the same page, in the second column, in the first *Discussion* paragraph, in the fourth line, the first "of" should read "or".

50. On the same page, in the same column,in the third *Changes* paragraph, in the second line, insert "been" after "have".

51. On the same page, in the third column, in the first *Discussion* paragraph, in the second line, after "as" insert "a"; and in the fifth line, "district wide" should read "districtwide".

52. On page 21781, in the 3rd column, in the last *Discussion* paragraph, in the 10th line, "eligibility" was misspelled.

53. On page 21782, in the third column, in the first line, "provisions" should read "provision".

54. On the same page, in the same column, in the first *Discussion* paragraph, in the third line, "groups" should read "group".

55. On the same page, in the same column, in the first *Changes* paragraph, in the fifth line, "provisions" should read "provision".

56. On page 21784, in the 1st column, in the 2nd *Discussion* paragraph, in the 12th line, "number of" should read "number or".

57. On page 21785, in the third column, in the second *Comment* paragraph, in the second line, "recommend" should read "recommended".

58. On page 21787, in the 1st column, in the 2nd *Discussion* paragraph, in the 12th line, "Chapter program" should read "Chapter 1 program".

59. On page 21788, in the second column, in the first *Discussion* paragraph, in the third line, remove the colon and insert a semicolon.

60. On page 21789, in the second column, in the fourth line, "and" should read "are".

61. On the same page, in the third column, in the first line, "and SEA" should read "an SEA".

62. On page 21792, in the first column, in the fourth *Discussion* paragraph, in the first line, "Section 2001.36" should read "Section "200.36".

63. On the same page, in the third column, in the first *Discussion* paragraph, in the fifth line, "and" should read "an".

64. On the same page, in the same column, in the second *Changes* paragraph, in the fifth line, "the LEAs" should read "that LEAs".

65. On page 21793, in the first column, in the first *Comments* paragraph, in the third line, "§ 200.37(a)(iv)" should read "§ 200.37(a)(2)(iv)".

66. On the same page, in same column, in the 1st *Discussion* paragraph, in the 16th line, "the SEAs" should read "that SEAs".

67. On the same page, in the 3rd column, in the 17th line, "to these" should read "of these".

68. On page 21794, in the 1st column, in the 1st *Discussion* paragraph, in the 16th line, before "performance" insert "while".

69. On page 21795, in the 1st column, in the 2nd *Discussion* paragraph, in the 12th line, "the requirement" should read "that requirement".

70. On the same page, in the same column, in the second *Comment* paragraph, in the fourth line, "the" should read "that".

71. On the same page, in the 2nd column, in the 1st *Discussion* paragraph, in the 13th line, "It" should read "If".

72. On the same page, in the same column, in the second paragraph, in the third line, "certain" was misspelled.

73. On the same page, in the same column, in the *Changes* paragraph, in the first line, "Definition" should read "Definitions"; and in the third line, "has" should read "have".

74. On the same page, in the third column, in the second *Discussion* paragraph, in the third line, "the SEAs" should read "that SEAs".

75. On page 21797, in the 1st column, in the 1st *Discussion* paragraph, in the 2nd line, "LES" should read "LEA"; and in the 15th line, "allocation" should read "allocating".

76. On the same page, in the second column, in the first *Discussion* paragraph, in the second line, "and" should read "an".

77. On the same page, in the same column, in the second *Comment* paragraph, in the fourth line, "need" should read "needs".

78. On the same page, in the same column, in the second *Discussion* paragraph, in the ninth line, "two more" should read "two or more".

79. On the same page, in the 3rd column, in the 1st *Discussion* paragraph, in the 16th line, "student's needs" should read "students' needs"

80. On page 21802, in the first column, in the second *Discussion* paragraph, in the 12th line, remove the last "s".

BILLING CODE 1505-01-D

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

Correction

In notice document 89-14732 appearing on page 26249 in the issue of Thursday, June 22, 1989, make the following corrections:

1. In the second page-column, immediately after the second paragraph of the document, insert the following:

Agreement No.: 224-200256

2. In the same column, immediately above the fifth line from the bottom, insert the following:

Agreement No.: 224-200102-002

BILLING CODE 1505-01-D

GENERAL SERVICES ADMINISTRATION

41 CFR Subtitle F

[FTR Temporary Reg. 2]

Use of Contract Airline/Rail Passenger Service Between Selected Cities/Airports

Correction

In rule document 89-10883 beginning on page 20357 in the issue of Wednesday, May 10, 1989, make the following corrections:

1. On page 20358, in the first column, under "*Acting Administrator of General Services.*", insert "**Attachment A**".

2. On the same page, in the second column, in paragraph 3a, the last line should read "75-2/MCO P4600.14B/DLAR 4500.3.)"

3. On page 20359, in the first column, in paragraph d, in the fourth line, "CA" should read "—CA".

4. On the same page, in the third column, in paragraph b(2), in the third line, "consistent" chould read "inconsistent".

5. On the same page, in the same column, in paragraph c, in the 11th line, "or" should read "of".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-920-09-4212-13; A-23589]

Arizona; Exchange of Public and Private Lands in Mohave, Pinal and Yavapai Counties

Correction

In notice document 89-12006 appearing on page 21676 in the issue of Friday, May 19, 1989, make the following correction:

In the second column, under "*Parcel II—Surface Only*" in the second line, "E¼, E½W½" should read "E½, E½W½".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-940-09-4212-13; CACA 19657]

California; Realty Action; Exchange of Public and Private Lands in Lassen and Modoc Counties and Order Providing for Opening of Public Land

Correction

In notice document 89-9142 beginning on page 15565 in the issue of Tuesday, April 18, 1989, make the following corrections:

1. On page 15566, in the first column, under "Parcel No. 2" in the third line, "W½SE¼" should read "W½SW¼".

2. On the same page, in the 2nd column, in the 2nd complete paragraph, in the 8th line, "well tunnels" should read "wells, tunnels"; and in the 15th line, "well," should read "wells".

3. On the same page, in the same column, under "Parcel No. 1", the third line should read "Sec. 12, SW¼NE¼, E½SW¼, W½SE¼".

4. On the same page, in the third column, in the second complete paragraph, in the fourth line, "with in all" should read "with all".

BILLING CODE 1505-01-D

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA-256]

Certain Cryogenic Ultramicrotome Apparatus and Components Thereof; Determination Not To Review Initial Determination Terminating Investigation

Correction

In notice document 89-14148 beginning on page 25350 in the issue of Wednesday, June 14, 1989, the heading was incomplete and should appear as set forth above.

BILLING CODE 1505-01-D

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1152

[Ex Parte No. 274 (Sub-No. 20)]

Rail Abandonments—Avoidability of Property Tax Expense Under the Unit Method of Assessment

Correction

In rule document 89-14655 beginning on page 26045 in the issue of Wednesday, June 21, 1989, make the following corrections:

1. On page 26045, in the third column, in the first complete paragraph, in the seventh line, "and" should read "as".

§ 1152.32 [Corrected]

2. On page 26046, in the first column, the heading that reads "**§ 1152.31 [Amended]**" should read "**§ 1152.32 [Amended]**".

3. On the same page, in the same column, the paragraph designated (j)(i) should be designated (j)(1).

4. On the same page, in the second column, in § 1152.32(j)(2), in the second line, "such a" should read "such as".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD7 87-38]

Security Zone; Port Canaveral Harbor, Cape Canaveral, FL

Correction

In rule document 88-22715 appearing on page 33718 in the issue of Monday, October 3, 1988, make the following correction:

§ 165.705 [Corrected]

In the third column, in the heading to § 165.705, remove "is".

BILLING CODE 1505-01-D

federal register

Friday
June 30, 1989

Part II

Department of the Treasury

Fiscal Service

Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies; Notice

4810-35
4-00236

DEPARTMENT OF THE TREASURY

FISCAL SERVICE

(Dept. Circular 570; 1989 Rev.)

COMPANIES HOLDING CERTIFICATES OF AUTHORITY AS ACCEPTABLE SURETIES ON FEDERAL BONDS AND AS ACCEPTABLE REINSURING COMPANIES

Effective: July 1, 1989

This Circular is published annually, as of July 1, solely for the information of Federal bond-approving officers and persons required to give bonds to the United States. Copies of this Circular and other information pertinent to Federal sureties may be obtained from: Surety Bond Branch, Financial Management Service, Department of the Treasury, Washington, DC 20227. Telephone: (202) 287-3921. Interim changes are published in the FEDERAL REGISTER as they occur.

The following companies have complied with the law and the regulations of the Department of the Treasury and are acceptable as sureties and reinsurers on Federal bonds under Sections 9304 to 9308 of Title 31 of the United States Code (See Note a/).

Mitchell A. Levine
Assistant Commissioner, Comptroller
Financial Management Service

IMPORTANT INFORMATION IS CONTAINED IN THE NOTES AT THE END OF THIS CIRCULAR. PLEASE READ THE NOTES CAREFULLY.

ACCELERATION NATIONAL INSURANCE COMPANY. BUSINESS ADDRESS: 475 Metro Place North, P.O. Box 7000, Dublin, OH 43017. UNDERWRITING LIMITATION b/: $1,146,000. SURETY LICENSES c/: All except AK, AS, AR, CA, CT, FL, GU, HI, ME, MA, NH, NY, PR, VI. INCORPORATED IN: Ohio.

Accredited Surety and Casualty Company, Inc. BUSINESS ADDRESS: 918 South Orange Avenue, Orlando, FL 32806. UNDERWRITING LIMITATION b/: $391,000. SURETY LICENSES c/: AL, FL, GA, IN, LA, MS, VA. INCORPORATED IN: Florida.

The Aetna Casualty and Surety Company. BUSINESS ADDRESS: 151 Farmington Avenue, Hartford, CT 06156. UNDERWRITING LIMITATION b/: $170,183,000. SURETY LICENSES c/: All except AS. INCORPORATED IN: Connecticut.

Aetna Casualty and Surety Company of Illinois. BUSINESS ADDRESS: 1020 31st Street, Downers Grove, IL 60515. UNDERWRITING LIMITATION b/: $45,023,000. SURETY LICENSES c/: All except AS, GU, PR, VI. INCORPORATED IN: Illinois.

Aetna Life and Casualty Company. BUSINESS ADDRESS: 151 Farmington Avenue, Hartford, CT 06156. UNDERWRITING LIMITATION b/: $331,050,000. SURETY LICENSES c/: CT, DC. INCORPORATED IN: Connecticut.

Affiliated FM Insurance Company. BUSINESS ADDRESS: P.O. Box 7500, Johnston, RI 02919. UNDERWRITING LIMITATION b/: $4,561,000. SURETY LICENSES c/: All except AS, GU. INCORPORATED IN: Rhode Island.

Alaska Pacific Assurance Company. BUSINESS ADDRESS: 2525 "C" Street, Suite 400, Anchorage, AK 99503. UNDERWRITING LIMITATION b/: $2,382,000. SURETY LICENSES c/: AK, AL, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, MD, MI, MS, MO, NE, NM, SD, TX, UT, WV, WY. INCORPORATED IN: Alaska.

Allegheny Mutual Casualty Company. BUSINESS ADDRESS: P.O. Box 1116, Meadville, PA 16335. UNDERWRITING LIMITATION b/: $362,000. SURETY LICENSES c/: DC, FL, IL, IN, LA, MD, MI, NJ, OH, OK, PA, TN, TX, WI. INCORPORATED IN: Pennsylvania.

Allendale Mutual Insurance Company. BUSINESS ADDRESS: P.O. Box 7500, Johnston, RI 02919. UNDERWRITING LIMITATION b/: $40,339,000. SURETY LICENSES c/: All except AS, GU. INCORPORATED IN: Rhode Island.

Allied Mutual Insurance Company. BUSINESS ADDRESS: 701 Fifth Avenue, Des Moines, IA 50309. UNDERWRITING LIMITATION b/: $11,938,000. SURETY LICENSES c/: AZ, AR, CA, CO, ID, IL, IN, IA, KS, MN, MO, MT, NE, NV, NM, ND, OK, OR, SD, TX, UT, WA, WI, WY. INCORPORATED IN: Iowa.

Allstate Insurance Company. BUSINESS ADDRESS: Allstate Plaza, Northbrook, IL 60062. UNDERWRITING LIMITATION b/: $415,414,000. SURETY LICENSES c/: All except AS, GU, VI. INCORPORATED IN: Illinois.

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American Automobile Insurance Company. BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. UNDERWRITING LIMITATION b/: $9,820,000. SURETY LICENSES c/: All except AS, GU, MA, PR, VI. INCORPORATED IN: Missouri.

AMERICAN BANKERS INSURANCE COMPANY OF FLORIDA. BUSINESS ADDRESS: 11222 Quail Roost Dr., Miami, FL 33157. UNDERWRITING LIMITATION b/: $7,225,000. SURETY LICENSES c/: All except AS, GU, VI. INCORPORATED IN: Florida.

American Bonding Company. BUSINESS ADDRESS: 7470 North Figueroa Street, Los Angeles, CA 90041-1717. UNDERWRITING LIMITATION b/: $508,000. SURETY LICENSES c/: AK, AZ, AR, CA, CO, DC, HI, ID, IA, KS, MO, MT, NE, NV, NM, OK, OR, TX, UT, WA. INCORPORATED IN: Nebraska.

American Casualty Company of Reading, Pennsylvania. BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. UNDERWRITING LIMITATION b/: $14,800,000. SURETY LICENSES c/: All except AS, GU, VI. INCORPORATED IN: Pennsylvania.

American Economy Insurance Company. BUSINESS ADDRESS: 500 North Meridian Street, Indianapolis, IN 46204. UNDERWRITING LIMITATION b/: $25,113,000. SURETY LICENSES c/: All except AS, CT, GU, NH, NJ, PR, VI. INCORPORATED IN: Indiana.

American Employers' Insurance Company. BUSINESS ADDRESS: One Beacon Street, Boston, MA 02108. UNDERWRITING LIMITATION b/: $9,987,000. SURETY LICENSES c/: All except AS, GU, PR. INCORPORATED IN: Massachusetts.

American Fidelity Company. BUSINESS ADDRESS: P.O. Box 960, Manchester, NH 03107. UNDERWRITING LIMITATION b/: $1,073,000. SURETY LICENSES c/: AK, CT, DC, IA, ME, MD, MA, MS, NH, ND, OK, RI, SD, UT, VT, WV. INCORPORATED IN: Vermont.

American Fire and Casualty Company. BUSINESS ADDRESS: 136 North Third Street, Hamilton, OH 45025. UNDERWRITING LIMITATION b/: $6,992,000. SURETY LICENSES c/: AL, AR, CO, DC, FL, GA, KS, KY, LA, MD, MS, NC, OK, SC, TN, TX, VA. INCORPORATED IN: Florida.

American General Fire and Casualty Company. BUSINESS ADDRESS: P.O. Box 1502, Houston, TX 77001. UNDERWRITING LIMITATION b/: $3,537,000. SURETY LICENSES c/: AR, LA, NM, OK, TX. INCORPORATED IN: Texas.

American Guarantee and Liability Insurance Company. BUSINESS ADDRESS: 800 North Plaza Drive, Schaumburg, IL 60196. UNDERWRITING LIMITATION b/: $4,388,000. SURETY LICENSES c/: All except AS, GU, HI, PR, VI. INCORPORATED IN: New York.

See footnotes at end of Circular.

American Home Assurance Company. BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. UNDERWRITING LIMITATION b/: $58,542,000. SURETY LICENSES c/: All except AS. INCORPORATED IN: New York.

The American Insurance Company. BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. UNDERWRITING LIMITATION b/: $30,219,000. SURETY LICENSES c/: All except AS, MA. INCORPORATED IN: New Jersey.

American Manufacturers Mutual Insurance Company. BUSINESS ADDRESS: Long Grove, IL 60049. UNDERWRITING LIMITATION b/: $12,152,000. SURETY LICENSES c/: All except GU, PR. INCORPORATED IN: Illinois.

American Motorists Insurance Company. BUSINESS ADDRESS: Long Grove, IL 60049. UNDERWRITING LIMITATION b/: $31,535,000. SURETY LICENSES c/: All except GU, VI. INCORPORATED IN: Illinois.

American National Fire Insurance Company. BUSINESS ADDRESS: 580 Walnut Street, Cincinnati, OH 45202. UNDERWRITING LIMITATION b/: $1,247,000. SURETY LICENSES c/: All except AS, GU, PR, VI. INCORPORATED IN: New York.

American Re-Insurance Company. BUSINESS ADDRESS: 555 College Road East, P.O. Box 5241, Princeton, NJ 08543. UNDERWRITING LIMITATION b/: $36,297,000. SURETY LICENSES c/: All except AS, GU, VI. INCORPORATED IN: Delaware.

American Resources Insurance Co., Inc. BUSINESS ADDRESS: P.O. Box 91149, Mobile, AL 36691. UNDERWRITING LIMITATION b/: $335,000. SURETY LICENSES c/: IN, KY, TN. INCORPORATED IN: Alabama.

THE AMERICAN ROAD INSURANCE COMPANY. BUSINESS ADDRESS: P.O. Box 6027, Dearborn, MI 48121-6027. UNDERWRITING LIMITATION b/: $34,085,000. SURETY LICENSES c/1/: All except AS, CT, GU, MA, PR, VI, WI. INCORPORATED IN: Michigan.

American Southern Insurance Company. BUSINESS ADDRESS: P.O. Box 7369, Station C, Atlanta, GA 30357. UNDERWRITING LIMITATION b/: $1,544,000. SURETY LICENSES c/: AL, FL, GA, SC. INCORPORATED IN: Georgia.

American States Insurance Company. BUSINESS ADDRESS: 500 North Meridian Street, Indianapolis, IN 46204. UNDERWRITING LIMITATION b/: $71,675,000. SURETY LICENSES c/: All except AS, CT, GU, NH, NY, PR, VI. INCORPORATED IN: Indiana.

American Surety Company. BUSINESS ADDRESS: 7470 North Figueroa St., Los Angeles, CA 90041-1717. UNDERWRITING LIMITATION b/: $125,000. SURETY LICENSES c/: CA. INCORPORATED IN: California.

See footnotes at end of Circular.

American Surety and Casualty Company. BUSINESS ADDRESS: P.O. Box 10239, Jacksonville, FL 32247-0239. UNDERWRITING LIMITATION b/: $599,000. SURETY LICENSES c/: FL. INCORPORATED IN: Florida.

Amwest Surety Insurance Company. BUSINESS ADDRESS: P.O. Box 4500, Woodland Hills, CA 91365-4500. UNDERWRITING LIMITATION b/: $2,347,000. SURETY LICENSES c/: All except AS, CT, PR, VT, VI. INCORPORATED IN: California.

Antilles Insurance Company. BUSINESS ADDRESS: P.O. Box 3507, Old San Juan, PR 00904. UNDERWRITING LIMITATION b/: $1,246,000. SURETY LICENSES c/: PR. INCORPORATED IN: Puerto Rico.

ANVIL INSURANCE COMPANY. BUSINESS ADDRESS: 18021 Cowan Street, Irvine, CA 92714. UNDERWRITING LIMITATION b/: $972,000. SURETY LICENSES c/: AZ, CA, CO, ID, MT, NV, NM, OR, TX, UT, WA, WY. INCORPORATED IN: California.

Argonaut Insurance Company. BUSINESS ADDRESS: 250 Middlefield Road, Menlo Park, CA 94025-3507. UNDERWRITING LIMITATION b/: $29,714,000. SURETY LICENSES c/: All except AS, PR. INCORPORATED IN: California.

Arkwright Mutual Insurance Company. BUSINESS ADDRESS: 225 Wyman Street, Waltham, MA 02254-9198. UNDERWRITING LIMITATION b/: $53,633,000. SURETY LICENSES c/: All. INCORPORATED IN: Massachusetts.

Associated Indemnity Corporation. BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. UNDERWRITING LIMITATION b/: $3,821,000. SURETY LICENSES c/: All except AS, GU, MA, OK, VI. INCORPORATED IN: California.

ATLANTIC CASUALTY AND FIRE INSURANCE COMPANY. BUSINESS ADDRESS: P.O. Box 6108, Columbia, SC 29260-6108. UNDERWRITING LIMITATION b/: $1,138,000. SURETY LICENSES c/: All except AS, CO, DC, GU, HI, KY, ME, MI, NE, NH, NJ, NY, PR, VI, WA, WV, WI. INCORPORATED IN: South Carolina.

Atlantic Mutual Insurance Company. BUSINESS ADDRESS: Atlantic Building, 45 Wall Street, New York, NY 10005. UNDERWRITING LIMITATION b/: $25,880,000. SURETY LICENSES c/: All except AL, GU, VI. INCORPORATED IN: New York.

The Automobile Insurance Company of Hartford, Connecticut. BUSINESS ADDRESS: 151 Farmington Avenue, Hartford, CT 06156. UNDERWRITING LIMITATION b/: $3,716,000. SURETY LICENSES c/: All except AL, AS, DE, GU. INCORPORATED IN: Connecticut.

Auto-Owners Insurance Company. BUSINESS ADDRESS: P.O. Box 30660, Lansing, MI 48909. UNDERWRITING LIMITATION b/: $57,115,000. SURETY LICENSES c/: AL, AZ, CA, FL, GA, IL, IN, IA, MI, MN, MO, NE, NC, ND, OH, SC, SD, TN, TX, UT, VA, WI. INCORPORATED IN: Michigan.

See footnotes at end of Circular.

Balboa Insurance Company. BUSINESS ADDRESS: 3349 Michelson Drive, Irvine, CA 92713-9702. UNDERWRITING LIMITATION b/: $1,175,000. SURETY LICENSES c/: All except AS, IA, MA, PR. INCORPORATED IN: California.

Bankers Multiple Line Insurance Company. BUSINESS ADDRESS: 4810 North Kenneth Avenue, Chicago, IL 60630. UNDERWRITING LIMITATION b/: $1,915,000. SURETY LICENSES c/: All except AS, DE, GU, HI, ME, PR, VI. INCORPORATED IN: Iowa.

BITUMINOUS CASUALTY CORPORATION. BUSINESS ADDRESS: 320-18th Street, Rock Island, IL 61201. UNDERWRITING LIMITATION b/: $6,559,000. SURETY LICENSES c/: All except AK, AS, DE, FL, GU, HI, SC, VI. INCORPORATED IN: Illinois.

BOND SAFEGUARD INSURANCE COMPANY. BUSINESS ADDRESS: 246 E. Janata Blvd., Lombard, IL 60148. UNDERWRITING LIMITATION b/: $124,000. SURETY LICENSES c/: IL. INCORPORATED IN: Illinois.

Boston Old Colony Insurance Company. BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: $2,324,000. SURETY LICENSES c/: All except AS, GU. INCORPORATED IN: Massachusetts.

The Buckeye Union Insurance Company. BUSINESS ADDRESS: P.O. Box 1499, Columbus, OH 43216. UNDERWRITING LIMITATION b/: $38,268,000. SURETY LICENSES c/: DC, FL, IL, IN, KY, MI, NY, OH, PA, VA, WV. INCORPORATED IN: Ohio.

CBIC Bonding and Insurance Company.2/

CIM Insurance Corporation. BUSINESS ADDRESS: 3044 West Grand Blvd., Detroit, MI, 48202. UNDERWRITING LIMITATION b/: $1,407,000. SURETY LICENSES c/1/: AL, AK, DC, ID, IL, IA, ME, MD, MI, MN, MS, NV, NY, NC, ND, OH, RI, SC, SD, TN, TX, VT, WY. INCORPORATED IN: New York.

CNA CASUALTY OF PUERTO RICO. BUSINESS ADDRESS: Call Box 70128, San Juan, PR 00936. UNDERWRITING LIMITATION b/: $689,000. SURETY LICENSES c/: PR. INCORPORATED IN: Puerto Rico.

Capitol Indemnity Corporation. BUSINESS ADDRESS: P.O. Box 5900, Madison, WI 53705-0900. UNDERWRITING LIMITATION b/: $1,656,000. SURETY LICENSES c/: AZ, FL, ID, IL, IN, IA, LA, MI, MN, MO, MT, NM, ND, OK, OR, SD, TX, WI, WY. INCORPORATED IN: Wisconsin.

Centennial Insurance Company. BUSINESS ADDRESS: Atlantic Building, 45 Wall Street, New York, NY 10005. UNDERWRITING LIMITATION b/: $6,711,000. SURETY LICENSES c/: All except AL, GU, VI. INCORPORATED IN: New York.

Central Mutual Insurance Company. BUSINESS ADDRESS: 800 South Washington Street, Van Wert, OH 45891. UNDERWRITING LIMITATION b/: $4,892,000. SURETY LICENSES c/: All except AS, AR, CA, GU, HI, ND, OR, PR, SD, VI, WI. INCORPORATED IN: Ohio.

See footnotes at end of Circular.

Century Indemnity Company. BUSINESS ADDRESS: 1600 Arch Street, Philadelphia, PA 19103. UNDERWRITING LIMITATION b/: $1,035,000. SURETY LICENSES c/: All except AS, GU, OR. INCORPORATED IN: Connecticut.

Century Reinsurance Company. BUSINESS ADDRESS: One Franklin Plaza, Philadelphia, PA 19102. UNDERWRITING LIMITATION b/: $2,195,000. SURETY LICENSES c/: AL, AR, CA, DE, GA, HI, ID, IN, IA, KS, LA, MS, NV, NH, NJ, NY, TX, UT, WA. INCORPORATED IN: Delaware.

The Charter Oak Fire Insurance Company. BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. UNDERWRITING LIMITATION b/: $8,889,000. SURETY LICENSES c/: All except AS, GU, VI. INCORPORATED IN: Connecticut.

CHRYSLER INSURANCE COMPANY. BUSINESS ADDRESS: 901 Wilshire Drive, Troy, MI 48084. UNDERWRITING LIMITATION b/: $8,528,000. SURETY LICENSES c/: All except AS, GU, PR, VI. INCORPORATED IN: Michigan.

CIGNA Reinsurance Company. BUSINESS ADDRESS: One Franklin Plaza, Philadelphia, PA. 19102. UNDERWRITING LIMITATION b/: $15,298,000. SURETY LICENSES c/: All except AS, GU, VI. INCORPORATED IN: Delaware.

The Cincinnati Insurance Company. BUSINESS ADDRESS: P.O. Box 145496, Cincinnati, OH 45250-5496. UNDERWRITING LIMITATION b/: $42,252,000. SURETY LICENSES c/: All except AS, GU, ME, NH, VT, VI. INCORPORATED IN: Ohio.

Commercial Insurance Company of Newark, New Jersey. BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: $7,346,000. SURETY LICENSES c/: All except AS, GU, PR, VI. INCORPORATED IN: New Jersey.

Commercial Union Insurance Company. BUSINESS ADDRESS: One Beacon Street, Boston, MA 02108. UNDERWRITING LIMITATION b/: $21,135,000. SURETY LICENSES c/: All except AS, GU. INCORPORATED IN: Massachusetts.

Consolidated Insurance Company. BUSINESS ADDRESS: 115 North Pennsylvania Street, Indianapolis, IN 46204. UNDERWRITING LIMITATION b/: $1,880,000. SURETY LICENSES c/: FL, IL, IN, IA, KY, MI, OH, OR, TN, WA, WI. INCORPORATED IN: Indiana.

Continental Casualty Company. BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. UNDERWRITING LIMITATION b/: $240,652,000. SURETY LICENSES c/: All except AS, GU. INCORPORATED IN: Illinois.

The Continental Insurance Company. BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: $31,341,000. SURETY LICENSES c/: All except AS, GU. INCORPORATED IN: New Hampshire.

Continental Reinsurance Corporation. BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: $8,161,000. SURETY LICENSES c/: All except AS, CT, DE, GA, GU, KS, KY, ME, MD, MA, MN, MS, MO, NE, NH, ND, PA, RI, SC, SD, TN, VT, VI, WV, WI. INCORPORATED IN: California.

See footnotes at end of Circular.

Continental Western Insurance Company. BUSINESS ADDRESS: P.O. Box 1594, Des Moines, IA 50306. UNDERWRITING LIMITATION b/: $5,524,000. SURETY LICENSES c/: AZ, AR, CO, ID, IL, IN, IA, KS, KY, ME, MI, MN, MO, MT, NE, NV, NM, ND, OH, OK, SD, UT, WI, WY. INCORPORATED IN: Iowa.

Contractor's Bonding and Insurance Company.2/ BUSINESS ADDRESS: 1213 Valley Street, Seattle, WA 98109-0271. UNDERWRITING LIMITATION b/: $572,000. SURETY LICENSES c/: All except AS, CT, GU, ME, NH, NJ, NY, NC, PR, VT, VI, WI. INCORPORATED IN: Washington.

Cooperativa de Seguros Multiples de Puerto Rico. BUSINESS ADDRESS: G.P.O. Box 3846, San Juan, PR 00936. UNDERWRITING LIMITATION b/: $5,113,000. SURETY LICENSES c/: PR. INCORPORATED IN: Puerto Rico.

CUMBERLAND CASUALTY & SURETY COMPANY. BUSINESS ADDRESS. 1501 2nd Avenue, Tampa, FL 33605. UNDERWRITING LIMITATION b/: $1,001,000. SURETY LICENSES c/: TX. INCORPORATED IN: Texas.

Cumis Insurance Society, Inc. BUSINESS ADDRESS: P.O. Box 1084, Madison, WI 53701. UNDERWRITING LIMITATION b/: $7,455,000. SURETY LICENSES c/: All except AS, GU, VI. INCORPORATED IN: Wisconsin.

DAIRYLAND INSURANCE COMPANY. BUSINESS ADDRESS: P.O. Box 29410, Scottsdale, AZ 85038-9410. UNDERWRITING LIMITATION b/: $8,586,000. SURETY LICENSES c/: All except AS, GU, PR, VI, WV. INCORPORATED IN: Wisconsin.

DELTA CASUALTY COMPANY. BUSINESS ADDRESS: 4711 North Clark Street, Chicago, IL 60640. UNDERWRITING LIMITATION b/: $958,000. SURETY LICENSES c/: IL, IA. INCORPORATED IN: Illinois.

DEVELOPERS INSURANCE COMPANY. BUSINESS ADDRESS: 333 Wilshire Avenue, Anaheim, CA 92801. UNDERWRITING LIMITATION b/: $436,000. SURETY LICENSES c/: AZ, CA, NV, OR, WA. INCORPORATED IN: California.

Empire Fire and Marine Insurance Company. BUSINESS ADDRESS: 1624 Douglas Street, Omaha, NE 68102. UNDERWRITING LIMITATION b/: $3,817,000. SURETY LICENSES c/: All except AS, CT, DE, DC, GU, LA, MA, NY, OK, OR, PR, RI, TN, VA, VI, WV. INCORPORATED IN: Nebraska.

The Employers' Fire Insurance Company. BUSINESS ADDRESS: One Beacon Street, Boston, MA 02108. UNDERWRITING LIMITATION b/: $4,075,000. SURETY LICENSES c/: All except AS, GU, PR. INCORPORATED IN: Massachusetts.

EMPLOYERS INSURANCE OF WAUSAU A Mutual Company. BUSINESS ADDRESS: P.O. Box 8017, Wausau, WI 54402-8017. UNDERWRITING LIMITATION b/: $9,307,000. SURETY LICENSES c/: All except AS, GU, VI. INCORPORATED IN: Wisconsin.

See footnotes at end of Circular.

Employers Mutual Casualty Company. BUSINESS ADDRESS: P.O. Box 712, Des Moines, IA 50303-0712. UNDERWRITING LIMITATION b/: $17,217,000. SURETY LICENSES c/: All except AS, GU, VI. INCORPORATED IN: Iowa.

Employers Reinsurance Corporation. BUSINESS ADDRESS: 5200 Metcalf, P.O. Box 2991, Overland Park, KS 66201. UNDERWRITING LIMITATION b/: $104,527,000. SURETY LICENSES c/: All except AS, GU, HI, PR, VI. INCORPORATED IN: Missouri.

Erie Insurance Company. BUSINESS ADDRESS: 100 Erie Insurance Place, Erie, PA 16530. UNDERWRITING LIMITATION b/: $726,000. SURETY LICENSES c/: DC, IN, KY, MD, OH, PA, TN, VA, WV. INCORPORATED IN: Pennsylvania.

EVANSTON INSURANCE COMPANY. BUSINESS ADDRESS: Shand Morahan Plaza, Evanston, IL 60201. UNDERWRITING LIMITATION b/: $8,695,000. SURETY LICENSES c/: IL. INCORPORATED IN: Illinois.

THE EXPLORER INSURANCE COMPANY. BUSINESS ADDRESS: P.O. Box 60310, Phoenix, AZ 85008. UNDERWRITING LIMITATION b/: $575,000. SURETY LICENSES c/: AZ, CA. INCORPORATED IN: Arizona.

Farmers Alliance Mutual Insurance Company. BUSINESS ADDRESS: 1122 North Main Street, McPherson, KS 67460. UNDERWRITING LIMITATION b/: $4,535,000. SURETY LICENSES c/: AZ, CO, ID, IN, IA, KS, MN, MO, MT, NE, NM, ND, OK, SD, TX, WY. INCORPORATED IN: Kansas.

Farmland Mutual Insurance Company. BUSINESS ADDRESS: 1963 Bell Avenue, Des Moines, IA 50315. UNDERWRITING LIMITATION b/: $2,872,000. SURETY LICENSES c/: AR, CO, IL, IN, IA, KS, KY, MN, MO, MT, NE, NV, ND, OH, OK, SD, TX, UT, WI, WY. INCORPORATED IN: Iowa.

FAR WEST INSURANCE COMPANY. BUSINESS ADDRESS: P.O. Box 4500, Woodland Hills, CA 91365-4500. UNDERWRITING LIMITATION b/: $234,000. SURETY LICENSES c/: AK, CA, IN. INCORPORATED IN: California.

Federal Insurance Company. BUSINESS ADDRESS: 15 Mountain View Road, P.O. Box 1615, Warren, NJ 07061-1615. UNDERWRITING LIMITATION b/: $134,315,000. SURETY LICENSES c/: All except AS. INCORPORATED IN: New Jersey.

FEDERATED MUTUAL INSURANCE COMPANY. BUSINESS ADDRESS: 121 East Park Square, Owatonna, MN 55060. UNDERWRITING LIMITATION b/: $25,730,000. SURETY LICENSES c/: All except AK, AS, GU, HI, NH, PR, RI, VI. INCORPORATED IN: Minnesota.

The Fidelity and Casualty Company of New York. BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: $10,420,000. SURETY LICENSES c/: All except AS, GU, VI. INCORPORATED IN: New Hampshire.

See footnotes at end of Circular

Fidelity and Deposit Company. BUSINESS ADDRESS: Charles and Lexington Streets, Baltimore, MD 21203. UNDERWRITING LIMITATION b/: $410,000. SURETY LICENSES c/: IA, KS, MD, MO, TX. INCORPORATED IN: Maryland.

Fidelity and Deposit Company of Maryland. BUSINESS ADDRESS: Charles and Lexington Streets, Baltimore, MD 21203. UNDERWRITING LIMITATION b/: $19,383,000. SURETY LICENSES c/: All except AS. INCORPORATED IN: Maryland.

FIDELITY AND GUARANTY INSURANCE COMPANY. BUSINESS ADDRESS: 100 Light Street, P.O. Box 1138, Baltimore, MD 21203. UNDERWRITING LIMITATION b/: $1,229,000. SURETY LICENSES c/: All except AS, AR, GU, HI, MA, NH, PR, VI. INCORPORATED IN: Iowa.

Fidelity and Guaranty Insurance Underwriters, Inc. BUSINESS ADDRESS: 100 Light Street, P.O. Box 1138, Baltimore, MD 21203. UNDERWRITING LIMITATION b/: $ 4,884,000. SURETY LICENSES c/: All except AS, GU, PR, VI. INCORPORATED IN: Ohio.

Fireman's Fund Insurance Company. BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. UNDERWRITING LIMITATION b/: $123,767,000. SURETY LICENSES c/: All except AS, MA. INCORPORATED IN: California.

Firemen's Insurance Company of Newark, New Jersey. BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: $49,126,000. SURETY LICENSES c/: All except AS, GU, PR, VI. INCORPORATED IN: New Jersey.

First Financial Insurance Company. BUSINESS ADDRESS: 238 Smith School Road, Burlington, NC 27215. UNDERWRITING LIMITATION b/: $529,000. SURETY LICENSES c/: All except AS, CT, GU, LA, ME, NH, NJ, NY, NC, OK, PA, PR, SC, VT, VI. INCORPORATED IN: Illinois.

First Insurance Company of Hawaii, Ltd. BUSINESS ADDRESS: P.O. Box 2866, Honolulu, HI 96803. UNDERWRITING LIMITATION b/: $4,137,000. SURETY LICENSES c/: GU, HI. INCORPORATED IN: Hawaii.

First National Insurance Company of America. BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. UNDERWRITING LIMITATION b/: $3,107,000. SURETY LICENSES c/: All except AS, GU, HI, ME, NH, PR, VT, VI. INCORPORATED IN: Washington.

Fritz Insurance Company. BUSINESS ADDRESS: 1501 Woodfield Road, Suite 204S, Schaumburg, IL 60173. UNDERWRITING LIMITATION b/: $101,000. SURETY LICENSES c/: NM. INCORPORATED IN: New Mexico.

FRONTIER INSURANCE COMPANY. BUSINESS ADDRESS: 196 Broadway, Monticello, NY 12701. UNDERWRITING LIMITATION b/: $1,562,000. SURETY LICENSES c/: AZ, CO, DE, DC, FL, ID, IA, KY, MD, MS, MT, NJ, NM, NY, OH, SD, TX, VT, VA. INCORPORATED IN: New York.

GENERAL ACCIDENT INSURANCE COMPANY OF AMERICA. BUSINESS ADDRESS: 436 Walnut Street, Philadelphia, PA 19105-1109. UNDERWRITING LIMITATION b/: $111,678,000. SURETY LICENSES c/: All except AL, AS, AR, GU, ME, MA, SC, VI. INCORPORATED IN: Pennsylvania.

GENERAL ACCIDENT INSURANCE COMPANY (PUERTO RICO) LIMITED. BUSINESS ADDRESS: G.P.O. Box 3786, San Juan, PR 00936. UNDERWRITING LIMITATION b/: $1,710,000. SURETY LICENSES c/: PR, VI. INCORPORATED IN: Puerto Rico.

GENERAL CASUALTY COMPANY OF WISCONSIN. BUSINESS ADDRESS: One General Drive, Sun Prairie, WI 53596. UNDERWRITING LIMITATION b/: $9,763,000. SURETY LICENSES c/: IL, IN, IA, KS, MN, MO, NE, SD, WI. INCORPORATED IN: Wisconsin.

General Insurance Company of America. BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. UNDERWRITING LIMITATION b/: $31,056,000. SURETY LICENSES c/: All except AS. INCORPORATED IN: Washington.

General Reinsurance Corporation. BUSINESS ADDRESS: 695 East Main Street, P.O. Box 10350, Stamford, CT 06904-2350. UNDERWRITING LIMITATION b/: $221,835,000. SURETY LICENSES c/: All except AS, GU, HI, VI. INCORPORATED IN: Delaware.

The Glens Falls Insurance Company. BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: $2,323,000. SURETY LICENSES c/: All except AS, GU, VI. INCORPORATED IN: Delaware.

Global Surety & Insurance Co. BUSINESS ADDRESS: 160 Kiewit Plaza, Omaha, NE 68131. UNDERWRITING LIMITATION b/: $2,623,000. SURETY LICENSES c/: AZ, CA, CO, MT, NE, SD. INCORPORATED IN: Nebraska.

Globe Indemnity Company. BUSINESS ADDRESS: 9300 Arrowpoint Blvd. Charlotte, NC 28217-5599. UNDERWRITING LIMITATION b/: $12,082,000. SURETY LICENSES c/: All except AS. INCORPORATED IN: Delaware.

Grain Dealers Mutual Insurance Company. BUSINESS ADDRESS: P.O. Box 1747, Indianapolis, IN 46206. UNDERWRITING LIMITATION b/: $3,489,000. SURETY LICENSES c/: All except AL, AK, AS, CT, DE, DC, FL, GU, HI, ID, ME, MD, MA, MT, NH, NJ, NY, ND, PA, PR, RI, SC, UT, VT, VI, WV. INCORPORATED IN: Indiana.

GRAMERCY INSURANCE COMPANY. BUSINESS ADDRESS: 11111 Katy Freeway, Suite 1000, Houston, TX 77079. UNDERWRITING LIMITATION b/: $231,000. SURETY LICENSES c/: DE, IA, MD, NM, TX. INCORPORATED IN: Texas.

Granite State Insurance Company. BUSINESS ADDRESS: P.O. Box 960, Manchester, NH 03107. UNDERWRITING LIMITATION b/: $1,056,000. SURETY LICENSES c/: All except CT, DE, HI, PR, VI. INCORPORATED IN: New Hampshire.

See footnotes at end of Circular.

Great American Insurance Company. BUSINESS ADDRESS: 580 Walnut Street, Cincinnati, OH 45202. UNDERWRITING LIMITATION b/: $46,681,000. SURETY LICENSES c/: All except AS, GU, PR, VI. INCORPORATED IN: Ohio.

Great Northern Insurance Company. BUSINESS ADDRESS: 15 Mountain View Road, P.O. Box 1615, Warren, NJ 07061-1615. UNDERWRITING LIMITATION b/: $4,821,000. SURETY LICENSES c/: All except AS, CA, CT, DE, GU, ID, NC, PR, TN, VI. INCORPORATED IN: Minnesota.

Greater New York Mutual Insurance Company. BUSINESS ADDRESS: 215 Lexington Avenue, New York, NY 10016. UNDERWRITING LIMITATION b/: $7,798,000. SURETY LICENSES c/: All except AK, AS, GU, HI, VI. INCORPORATED IN: New York.

Gulf Insurance Company. BUSINESS ADDRESS: P.O. Box 1771, Dallas, TX 75221. UNDERWRITING LIMITATION b/: $14,209,000. SURETY LICENSES c/: All except AS, GU, PR, VI. INCORPORATED IN: Missouri.

The Hamilton Mutual Insurance Company of Cincinnati, Ohio. BUSINESS ADDRESS: 1520 Madison Road, Cincinnati, OH 45206. UNDERWRITING LIMITATION b/: $630,000. SURETY LICENSES c/: IL, KY, MI, OH. INCORPORATED IN: Ohio.

The Hanover Insurance Company. BUSINESS ADDRESS: 100 North Parkway, Worcester, MA 01605. UNDERWRITING LIMITATION b/: $39,026,000. SURETY LICENSES c/: All except AS, GU, PR, VI. INCORPORATED IN: New Hampshire.

HARCO NATIONAL INSURANCE COMPANY. BUSINESS ADDRESS: P.O. Box 68309, Schaumburg, IL 60168-0309. UNDERWRITING LIMITATION b/: $2,918,000. SURETY LICENSES c/: All except AS, GU, HI, PR, VI. INCORPORATED IN: New York.

Harleysville Mutual Insurance Company. BUSINESS ADDRESS: 355 Maple Avenue, Harleysville, PA 19438. UNDERWRITING LIMITATION b/: $19,298,000. SURETY LICENSES c/: CA, CO, DE, DC, GA, IL, IN, IA, KS, MD, MI, MS, MO, NJ, NM, NC, OH, OK, PA, SC, TN, TX, UT, VA, WV, WI. INCORPORATED IN: Pennsylvania.

Hartford Accident and Indemnity Company. BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. UNDERWRITING LIMITATION b/: $81,375,000. SURETY LICENSES c/: All except AS, GU, VI, WY. INCORPORATED IN: Connecticut.

Hartford Casualty Insurance Company. BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. UNDERWRITING LIMITATION b/: $14,673,000. SURETY LICENSES c/: All except AS, GU, IN, PR, VI, WY. INCORPORATED IN 3/: Indiana.

Hartford Fire Insurance Company. BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. UNDERWRITING LIMITATION b/: $196,817,000. SURETY LICENSES c/: All except AS, GU, IN, WY. INCORPORATED IN: Connecticut.

See footnotes at end of Circular.

Hartford Insurance Company of Connecticut. BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. UNDERWRITING LIMITATION b/: $1,816,000. SURETY LICENSES c/: AL, CT, NJ, PA. INCORPORATED IN: Connecticut.

Hartford Insurance Company of Illinois. BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. UNDERWRITING LIMITATION b/: $4,750,000. SURETY LICENSES c/: IL, PA. INCORPORATED IN: Illinois.

Hartford Insurance Company of the Midwest. BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. UNDERWRITING LIMITATION b/: $1,640,000. SURETY LICENSES c/: All except AL, AS, AZ, CO, DE, GU, HI, IN, ME, MA, MN, MS, MO, NV, NH, NC, OH, OK, PR, RI, TN, VT, VI, WY. INCORPORATED IN: Indiana.

Hartford Insurance Company of the Southeast. BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. UNDERWRITING LIMITATION b/: $1,539,000. SURETY LICENSES c/: FL, GA, LA, PA. INCORPORATED IN: Florida.

Hartford Underwriters Insurance Company.4/ BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. UNDERWRITING LIMITATION b/: $11,981,000. SURETY LICENSES c/: All except AS, GU, PR, VI. INCORPORATED IN: Connecticut.

THE HAWAIIAN INSURANCE & GUARANTY COMPANY, LIMITED. BUSINESS ADDRESS: P.O. Box 2255, Honolulu, HI 96804. UNDERWRITING LIMITATION b/: $1,119,000. SURETY LICENSES c/: AK, AZ, CA, HI, NV, OR, WA. INCORPORATED IN: Hawaii.

Heart of America Fire and Casualty Company. BUSINESS ADDRESS: 215 West Pershing Road, Kansas City, MO 64108-2540. UNDERWRITING LIMITATION b/: $411,000. SURETY LICENSES c/: AK, AZ, CO, DC, GA, ID, IN, IA, KS, KY, MS, MO, MT, NV, TX, UT, WY. INCORPORATED IN: Missouri.

Highlands Insurance Company. BUSINESS ADDRESS: 600 Jefferson Street, Houston, TX 77002-7392. UNDERWRITING LIMITATION b/: $19,776,000. SURETY LICENSES c/: All except AS, GU, VI. INCORPORATED IN: Texas.

Highlands Underwriters Insurance Company. BUSINESS ADDRESS: 600 Jefferson Street, Houston, TX 77002-7392. UNDERWRITING LIMITATION b/: $1,723,000. SURETY LICENSES c/: AL, AZ, AR, CA, FL, GA, LA, MS, NM, OK, TX. INCORPORATED IN: Texas.

The Home Indemnity Company. BUSINESS ADDRESS: 59 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: $7,310,000. SURETY LICENSES c/: All except AS, GU, PR, VI. INCORPORATED IN: New Hampshire.

The Home Insurance Company. BUSINESS ADDRESS: 59 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: $53,870,000. SURETY LICENSES c/: All except AS, GU, VI. INCORPORATED IN: New Hampshire.

Houston General Insurance Company. BUSINESS ADDRESS: P.O. Box 2932, Fort Worth, TX 76113-2932. UNDERWRITING LIMITATION b/: $4,785,000. SURETY LICENSES c/: All except AS, CT, GU, HI, ME, MA, MN, NE, NH, NJ, NC, PA, PR, RI, VT, VI, WV, WI. INCORPORATED IN: Texas.

See footnotes at end of Circular.

ITT Lyndon Property Insurance Company. BUSINESS ADDRESS: 12555 Manchester Road, St. Louis, MO 63131. UNDERWRITING LIMITATION b/: $6,759,000. SURETY LICENSES c/: All except AS, GU, ME, NH, NY, PR. INCORPORATED IN: Missouri.

Illinois National Insurance Co. BUSINESS ADDRESS: 133 South 4th Street, Springfield, IL 62703. UNDERWRITING LIMITATION b/: $1,998,000. SURETY LICENSES c/: AK, IL, IN, IA, KY, MD, MO, MT, NE, NH, NM, NY, ND, OH, SD, TX, UT, VT, WA. INCORPORATED IN: Illinois.

Indemnity Company of California. BUSINESS ADDRESS: 333 Wilshire Avenue, Anaheim, CA 92801. UNDERWRITING LIMITATION b/: $653,000. SURETY LICENSES c/: AZ, CA, NV, OR, WA. INCORPORATED IN: California.

Indemnity Insurance Company of North America. BUSINESS ADDRESS: 1600 Arch Street, Philadelphia, PA 19103. UNDERWRITING LIMITATION b/: $14,854,000. SURETY LICENSES c/: All except AS, GU. INCORPORATED IN: New York.

Indiana Insurance Company. BUSINESS ADDRESS: 115 North Pennsylvania Street, Indianapolis, IN 46204. UNDERWRITING LIMITATION b/: $12,202,000. SURETY LICENSES c/: FL, IL, IN, IA, KY, MI, OH, OR, TN, WA, WI. INCORPORATED IN: Indiana.

Indiana Lumbermens Mutual Insurance Company. BUSINESS ADDRESS: P.O. Box 68600, Indianapolis, IN 46268-1168. UNDERWRITING LIMITATION b/: $1,951,000. SURETY LICENSES c/: All except AS, CT, GU, HI, ME, MA, NH, NJ, NY, PR, RI, VT, VI. INCORPORATED IN: Indiana.

Inland Insurance Company. BUSINESS ADDRESS: P.O. Box 80468, Lincoln, NE 68501. UNDERWRITING LIMITATION b/: $2,181,000. SURETY LICENSES c/: AZ, CO, IA, KS, MN, MT, NE, ND, SD, WY. INCORPORATED IN: Nebraska.

Insurance Company of North America. BUSINESS ADDRESS: 1600 Arch Street, Philadelphia, PA 19103. UNDERWRITING LIMITATION b/: $45,565,000. SURETY LICENSES c/: All. INCORPORATED IN: Pennsylvania.

Insurance Company of the State of Pennsylvania. BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. UNDERWRITING LIMITATION b/: $16,003,000. SURETY LICENSES c/: All except GU. INCORPORATED IN: Pennsylvania.

Insurance Company of the West. BUSINESS ADDRESS: P.O. Box 85563, San Diego, CA 92138-5563. UNDERWRITING LIMITATION b/: $5,286,000. SURETY LICENSES c/: AZ, CA, CO, ID, MT, NV, NM, OK, OR, TX, UT, WA. INCORPORATED IN: California.

See footnotes at end of Circular.

Integon Indemnity Corporation. BUSINESS ADDRESS: P.O. Box 3199, Winston-Salem, NC 27152. UNDERWRITING LIMITATION b/: $1,081,000. SURETY LICENSES c/: All except AS, CA, CO, CT, DE, DC, GU, HI, IL, ME, MD, MA, MI, MN, MT, NH, NJ, NY, ND, PA, PR, SD, VT, VI, WI, WY. INCORPORATED IN: North Carolina.

INTEGRITY MUTUAL INSURANCE COMPANY. BUSINESS ADDRESS: 526 West Wisconsin Avenue, P.O. Box 539, Appleton, WI 54912-0539. UNDERWRITING LIMITATION b/: $763,000. SURETY LICENSES c/: DC, MN, WI. INCORPORATED IN: Wisconsin.

International Cargo and Surety Insurance Company. BUSINESS ADDRESS: 1501 Woodfield Road, Suite 204S, Schaumburg, IL 60173. UNDERWRITING LIMITATION b/: $464,000. SURETY LICENSES c/: IL, IN, MI, MO, NM, NY, OR, TN, TX, WI. INCORPORATED IN: New Mexico.

International Fidelity Insurance Company. BUSINESS ADDRESS: 24 Commerce Street, Suite 333, Newark, NJ 07102. UNDERWRITING LIMITATION b/: $1,173,000. SURETY LICENSES c/: All except AS, CA, GU, ME, NH, RI, VT, VI, WI. INCORPORATED IN: New Jersey.

ISLAND INSURANCE COMPANY, LIMITED. BUSINESS ADDRESS: P.O. Box 1520, Honolulu, HI 96813. UNDERWRITING LIMITATION b/: $4,124,000. SURETY LICENSES c/: HI. INCORPORATED IN: Hawaii.

John Deere Insurance Company. BUSINESS ADDRESS: 34th Avenue and 80th Street, Moline, IL 61265. UNDERWRITING LIMITATION b/: $11,887,000. SURETY LICENSES c/: All except AS, GU, PR. INCORPORATED IN: Illinois.

The Kansas Bankers Surety Company. BUSINESS ADDRESS: P.O. Box 1654, Topeka, KS 66601. UNDERWRITING LIMITATION b/: $943,000. SURETY LICENSES c/: CO, IL, IA, KS, MN, MO, NE, OK, SD, WI, WY. INCORPORATED IN: Kansas.

Kansas City Fire and Marine Insurance Company. BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: $1,450,000. SURETY LICENSES c/: All except AS, DE, GU, HI, PR, VI. INCORPORATED IN: Missouri.

Kentucky Central Insurance Company. BUSINESS ADDRESS: Kincaid Towers, Lexington, KY 40507. UNDERWRITING LIMITATION b/: $1,427,000. SURETY LICENSES c/: AL, IN, KY, MS, MO, OH, TN, VA, WV. INCORPORATED IN: Kentucky.

Lawyers Surety Corporation. BUSINESS ADDRESS: P.O. Box 569480, Dallas, TX 75356-9480. UNDERWRITING LIMITATION b/: $534,000. SURETY LICENSES c/: AL, AR, CA, FL, GA, KY, MS, NC, OK, SC, TN, TX. INCORPORATED IN: Texas.

Liberty Mutual Insurance Company. BUSINESS ADDRESS: 175 Berkeley Street, Boston, MA 02117. UNDERWRITING LIMITATION b/: $156,361,000. SURETY LICENSES c/: All except AS, GU, VI. INCORPORATED IN: Massachusetts.

See footnotes at end of Circular.

Lumbermens Mutual Casualty Company. BUSINESS ADDRESS: Long Grove, IL 60049. UNDERWRITING LIMITATION b/: $146,273,000. SURETY LICENSES c/: All except GU, PR, VI. INCORPORATED IN: Illinois.

MCA Insurance Company.5/ BUSINESS ADDRESS: 484 Central Avenue, Newark, NJ 07107. UNDERWRITING LIMITATION b/: $2,546,000. SURETY LICENSES c/: All except AS, CT, GU, PR, VI. INCORPORATED IN: New Jersey.

MIC Property and Casualty Insurance Corporation. BUSINESS ADDRESS: 3044 West Grand Boulevard, Detroit, MI 48202. UNDERWRITING LIMITATION b/: $4,241,000. SURETY LICENSES c/1/: All except AL, AS, CA, DE, GU, HI, IL, ME, NH, NC, OR, PR, RI, VT, VI, WY. INCORPORATED IN: Michigan.

Maine Bonding and Casualty Company. BUSINESS ADDRESS: P.O. Box 448, Portland, ME 04112. UNDERWRITING LIMITATION b/: $1,082,000. SURETY LICENSES c/: ME, MA, NH, RI, VT. INCORPORATED IN: Maine.

Maryland Casualty Company. BUSINESS ADDRESS: P.O. Box 1228, Baltimore, MD 21203. UNDERWRITING LIMITATION b/: $42,789,000. SURETY LICENSES c/: All except AS, GU. INCORPORATED IN: Maryland.

Massachusetts Bay Insurance Company. BUSINESS ADDRESS: 100 North Parkway, Worcester, MA 01605. UNDERWRITING LIMITATION b/: $1,036,000. SURETY LICENSES c/: All except AK, AS, GU, HI, ID, MT, PR, SD, VI, WY. INCORPORATED IN: Massachusetts.

The Mercantile and General Reinsurance Company of America. BUSINESS ADDRESS: 177 Madison Avenue, CN 1930, Morristown, NJ 07960. UNDERWRITING LIMITATION b/: $5,638,000. SURETY LICENSES c/: All except AL, AK, AS, AZ, DC, GU, HI, ME, MN, MO, MT, NM, NC, ND, OR, RI, SD, VA, VI. INCORPORATED IN: New York.

Merchants Bonding Company (Mutual). BUSINESS ADDRESS: 2100 Grand Avenue, Des Moines, IA 50312. UNDERWRITING LIMITATION b/: $567,000. SURETY LICENSES c/: AZ, CA, CO, FL, ID, IA, KS, LA, MI, MN, MO, NE, NV, NM, ND, OK, PA, SD, TX, UT, WA. INCORPORATED IN: Iowa.

Meritplan Insurance Company. BUSINESS ADDRESS: 3349 Michelson Drive, Irvine, CA 92715-1606. UNDERWRITING LIMITATION b/: $643,000. SURETY LICENSES c/: All except AK, AS, AR, CT, DC, GU, IL, ME, MA, MO, NH, NJ, ND, PA, PR, RI, SD, VT, VA, VI, WV, WY. INCORPORATED IN: California.

Michigan Millers Mutual Insurance Company. BUSINESS ADDRESS: P.O. Box 30060, Lansing, MI 48909. UNDERWRITING LIMITATION b/: $6,044,000. SURETY LICENSES c/: AZ, AR, CA, CO, DC, FL, ID, IN, KS, KY, MI, MO, NE, NJ, NY, NC, OH, OK, PA, TX, UT, VA, WA. INCORPORATED IN: Michigan.

Michigan Mutual Insurance Company. BUSINESS ADDRESS: P.O. Box 5110, Southfield, MI 48086-5110. UNDERWRITING LIMITATION b/: $16,238,000. SURETY LICENSES c/: All except AS, DE, DC, GU, HI, OR, PR, VI. INCORPORATED IN: Michigan.

See footnotes at end of Circular.

Mid-Century Insurance Company. BUSINESS ADDRESS: P.O. Box 2478, Terminal Annex, Los Angeles, CA 90051. UNDERWRITING LIMITATION b/: $2,717,000. SURETY LICENSES c/: AZ, AR, CA, CO, ID, IL, IN, IA, KS, MI, MN, MO, MT, NE, NV, NM, ND, OH, OK, OR, SD, TX, UT, WA, WI, WY. INCORPORATED IN: California.

MID-CONTINENT CASUALTY COMPANY. BUSINESS ADDRESS: P.O. Box 1409, Tulsa, OK 74101. UNDERWRITING LIMITATION b/: $4,007,000. SURETY LICENSES c/: AL, AZ, AR, CO, FL, IN, IA, KS, MN, MS, MO, MT, NE, NM, ND, OK, OR, SD, TN, TX, UT, WA, WY. INCORPORATED IN: Oklahoma.

The Millers Mutual Fire Insurance Company of Texas. BUSINESS ADDRESS: P.O. Box 2269, Fort Worth, TX 76113. UNDERWRITING LIMITATION b/: $4,755,000. SURETY LICENSES c/: CO, DC, ID, LA, NM, OK, OR, TX. INCORPORATED IN: Texas.

Millers' Mutual Insurance Association of Illinois. BUSINESS ADDRESS: 111 East Fourth Street, Alton, IL 62002. UNDERWRITING LIMITATION b/: $4,487,000. SURETY LICENSES c/: AL, AR, CO, DC, GA, IL, IN, IA, KS, LA, MN, MS, MO, MT, NE, NC, ND, OH, OK, SD, TN, WI. INCORPORATED IN: Illinois.

Minnesota Trust Company of Austin. BUSINESS ADDRESS: 107 West Oakland Avenue, P.O. Box 463, Austin, MN 55912. UNDERWRITING LIMITATION b/: $123,000. SURETY LICENSES c/: MN, MT, ND. INCORPORATED IN: Minnesota.

MOTOR CLUB OF AMERICA INSURANCE COMPANY.5/

MOTORS INSURANCE CORPORATION. BUSINESS ADDRESS: 3044 West Grand Boulevard, Detroit, MI 48202. UNDERWRITING LIMITATION b/: $68,101,000. SURETY LICENSES c/1/: All except AS, AZ, CA, CO, CT, GU, HI, KS, MA, MO, OH, PR, UT, VI. INCORPORATED IN: New York.

Munich American Reinsurance Company. BUSINESS ADDRESS: 560 Lexington Avenue, New York, NY 10022. UNDERWRITING LIMITATION b/: $19,991,000. SURETY LICENSES c/: All except AS, FL, GU, HI, ME, MD, MA, MN, NE, PR, RI, VT, VI, WY. INCORPORATED IN: New York.

National Automobile and Casualty Insurance Company. BUSINESS ADDRESS: P.O. Box 7040, Pasadena, CA 91109. UNDERWRITING LIMITATION b/: $569,000. SURETY LICENSES c/: AK, AZ, CA, NV, WA. INCORPORATED IN: California.

National-Ben Franklin Insurance Company of Illinois. BUSINESS ADDRESS: 200 South Wacker Drive, Chicago, IL 60606. UNDERWRITING LIMITATION b/: $13,617,000. SURETY LICENSES c/: DC, IL, IN, IA, KY, MI, MN, NY, NC, ND, WI. INCORPORATED IN: Illinois.

See footnotes at end of Circular.

National Fire Insurance Company of Hartford. BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. UNDERWRITING LIMITATION b/: $27,736,000. SURETY LICENSES c/: All except AS, GU, VI. INCORPORATED IN: Connecticut.

National Grange Mutual Insurance Company. BUSINESS ADDRESS: 55 West Street, Keene, NH 03431. UNDERWRITING LIMITATION b/: $5,603,000. SURETY LICENSES c/1/: CT, DE, DC, ME, MD, MA, NH, NY, OH, PA, RI, SC, TN, VT, VA, WV, WI. INCORPORATED IN: New Hampshire.

National Indemnity Company. BUSINESS ADDRESS: 3024 Harney Street, Omaha, NE 68131-3580. UNDERWRITING LIMITATION b/: $202,839,000. SURETY LICENSES c/: All except AL, AS, GU, HI, MA, NJ, NY, PR, VI. INCORPORATED IN: Nebraska.

NATIONAL REINSURANCE CORPORATION. BUSINESS ADDRESS: 777 Long Ridge Road, P.O. Box 10167, Stamford, CT 06904-2167. UNDERWRITING LIMITATION b/: $19,989,000. SURETY LICENSES c/: All except AL, AS, CT, GA, GU, LA, ME, MS, MO, NH, OR, SD, VI. INCORPORATED IN: Delaware.

National Surety Corporation. BUSINESS ADDRESS: 200 West Monroe Street, Chicago, IL 60606. UNDERWRITING LIMITATION b/: $10,812,000. SURETY LICENSES c/: All except AS, GU, MA, VI. INCORPORATED IN: Illinois.

National Union Fire Insurance Company of Pittsburgh, PA. BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. UNDERWRITING LIMITATION b/: $61,104,000. SURETY LICENSES c/: All except AS. INCORPORATED IN: Pennsylvania.

Nationwide Mutual Insurance Company. BUSINESS ADDRESS: One Nationwide Plaza, Columbus, OH 43216. UNDERWRITING LIMITATION b/: $222,152,000. SURETY LICENSES c/: All except AS, GU, NJ. INCORPORATED IN: Ohio.

The Netherlands Insurance Company. BUSINESS ADDRESS: 62 Maple Avenue, Keene, NH 03431. UNDERWRITING LIMITATION b/: $1,086,000. SURETY LICENSES c/: AZ, CA, DC, GA, ID, IN, IA, KY, ME, MD, MI, NV, NH, NJ, NY, NC, OH, RI, SC, UT, VT, VA, WA, WI. INCORPORATED IN: New Hampshire.

New Hampshire Insurance Company. BUSINESS ADDRESS: P.O. Box 960, Manchester, NH 03107. UNDERWRITING LIMITATION b/: $39,454,000. SURETY LICENSES c/: All. INCORPORATED IN: New Hampshire.

New South Insurance Company. BUSINESS ADDRESS: P.O. Box 3199, Winston-Salem, NC 27152. UNDERWRITING LIMITATION b/: $880,000. SURETY LICENSES c/: IA, MS, NC, OH, TX, VA, WA, WV. INCORPORATED IN: North Carolina.

See footnotes at end of Circular.

New York Underwriters Insurance Company.4/

Newark Insurance Company. BUSINESS ADDRESS: 9300 Arrowpoint Blvd., Charlotte, NC 28217-5599. UNDERWRITING LIMITATION b/: $2,812,000. SURETY LICENSES c/: All except AS. INCORPORATED IN: New Jersey.

North American Reinsurance Corporation. BUSINESS ADDRESS: 237 Park Avenue, New York, NY 10017. UNDERWRITING LIMITATION b/: $24,344,000. SURETY LICENSES c/: All except AS, GU, VI, WY. INCORPORATED IN: New York.

NORTH AMERICAN SPECIALTY INSURANCE COMPANY. BUSINESS ADDRESS: 650 Elm St., 6th floor, Manchester, NH 03101-2596. UNDERWRITING LIMITATION b/: $1,177,000. SURETY LICENSES c/: All except AS, CA, GU, HI, OK, PR, VI. INCORPORATED IN: New Hampshire.

North Star Reinsurance Corporation. BUSINESS ADDRESS: Morris Corporate Center 1, 300 Interpace Parkway, Parsippany, NJ 07054. UNDERWRITING LIMITATION b/: $8,132,000. SURETY LICENSES c/: All except AS, GU, HI, ME, NC, PR, VI, WY. INCORPORATED IN: Delaware.

Northbrook Property and Casualty Insurance Company. BUSINESS ADDRESS: Allstate Plaza, Northbrook, IL 60062. UNDERWRITING LIMITATION b/: $7,767,000. SURETY LICENSES c/: All except AS, GU, VI. INCORPORATED IN: Illinois.

The Northern Assurance Company of America. BUSINESS ADDRESS: One Beacon Street, Boston, MA 02108. UNDERWRITING LIMITATION b/: $11,106,000. SURETY LICENSES c/: All except AS, GU, PR. INCORPORATED IN: Vermont.

NORTHWESTERN PACIFIC INDEMNITY COMPANY. BUSINESS ADDRESS: 15 Mountain View Rd., P.O. Box 1615, Warren, NJ 07061-1615. UNDERWRITING LIMITATION b/: $1,598,000. SURETY LICENSES c/1/: CA, OK, OR, TX, WA. INCORPORATED IN: Oregon.

Oceanic Insurance and Surety Company. BUSINESS ADDRESS: 1501 Woodfield Road, Suite 204S, Schaumburg, IL 60173. UNDERWRITING LIMITATION b/: $109,000. SURETY LICENSES c/: NM. INCORPORATED IN: New Mexico.

The Ohio Casualty Insurance Company. BUSINESS ADDRESS: 136 North Third Street, Hamilton, OH 45025. UNDERWRITING LIMITATION b/: $45,214,000. SURETY LICENSES c/: All except AS, GU. INCORPORATED IN: Ohio.

Ohio Farmers Insurance Company. BUSINESS ADDRESS: Westfield Center, OH 44251. UNDERWRITING LIMITATION b/: $23,265,000. SURETY LICENSES c/: All except AK, AS, CT, GU, HI, KS, NH, PR, VI. INCORPORATED IN: Ohio.

See footnotes at end of Circular.

Oklahoma Surety Company. BUSINESS ADDRESS: P.O. Box 1409, Tulsa, OK 74101. UNDERWRITING LIMITATION b/: $573,000. SURETY LICENSES c/: KS, OK, TX. INCORPORATED IN: Oklahoma.

Old Republic Insurance Company. BUSINESS ADDRESS: P.O. Box 789, Greensburg, PA 15601. UNDERWRITING LIMITATION b/: $16,743,000. SURETY LICENSES c/: All except AS, GU, VI. INCORPORATED IN: Pennsylvania.

Old Republic Surety Company. BUSINESS ADDRESS: P.O. Box 1635, Milwaukee, WI 53201. UNDERWRITING LIMITATION b/: $1,327,000. SURETY LICENSES c/: DC, IL, IN, IA, MD, OR, PA, UT, WI. INCORPORATED IN: Wisconsin.

Omaha Property and Casualty Insurance Company. BUSINESS ADDRESS: 3102 Farnam Street, Omaha, NE 68131. UNDERWRITING LIMITATION b/: $1,747,000. SURETY LICENSES c/: All except AS, AR, GU, LA, ME, NH, NJ, OK, PR, RI, VI, WV. INCORPORATED IN: Delaware.

Pacific Employers Insurance Company. BUSINESS ADDRESS: 1600 Arch Street, Philadelphia, PA 19103. UNDERWRITING LIMITATION b/: $7,797,000. SURETY LICENSES c/: All except AS, GU. INCORPORATED IN: California.

Pacific Indemnity Company. BUSINESS ADDRESS: 15 Mountain View Road, P.O. Box 1615, Warren, NJ 07061-1615. UNDERWRITING LIMITATION b/: $24,425,000. SURETY LICENSES c/: All except AS, GU, PR, VI. INCORPORATED IN: California.

Pacific Insurance Company, Limited. BUSINESS ADDRESS: P.O. Box 1140, Honolulu, HI 96807. UNDERWRITING LIMITATION b/: $4,823,000. SURETY LICENSES c/: HI. INCORPORATED IN: Hawaii.

PACIFIC STATES CASUALTY COMPANY. BUSINESS ADDRESS: 5757 Wilshire Blvd., Suite 670, Los Angeles, CA 90036. UNDERWRITING LIMITATION b/: $1,651,000. SURETY LICENSES c/: AZ, CA. INCORPORATED IN: California.

Peerless Insurance Company. BUSINESS ADDRESS: 62 Maple Avenue, Keene, NH 03431. UNDERWRITING LIMITATION b/: $7,930,000. SURETY LICENSES c/: All except AS, GU, HI, MA, NJ, PR, VI. INCORPORATED IN: New Hampshire.

Pekin Insurance Company. BUSINESS ADDRESS: 2505 Court Street, Pekin, IL 61558. UNDERWRITING LIMITATION b/: $1,685,000. SURETY LICENSES c/: IL, IN, IA, WI. INCORPORATED IN: Illinois.

Pennsylvania Manufacturers' Association Insurance Company. BUSINESS ADDRESS: 925 Chestnut Street, Philadelphia, PA 19107. UNDERWRITING LIMITATION b/: $13,654,000. SURETY LICENSES c/: All except AL, AS, AR, CT, GU, HI, KS, ME, MN, ND, OR, PR, VI, WY. INCORPORATED IN: Pennsylvania.

See footnotes at end of Circular.

Pennsylvania Millers Mutual Insurance Company. BUSINESS ADDRESS: P.O. Box P, Wilkes-Barre, PA 18773-0016. UNDERWRITING LIMITATION b/: $3,456,000. SURETY LICENSES c/: CT, DC, FL, GA, ID, IN, KS, KY, ME, MD, MA, MS, MO, NH, NJ, NY, NC, ND, PA, RI, SC, TN, UT, VT, VA, WA. INCORPORATED IN: Pennsylvania.

Pennsylvania National Mutual Casualty Insurance Company. BUSINESS ADDRESS: 1900 Derry Street, Harrisburg, PA 17105. UNDERWRITING LIMITATION b/: $10,364,000. SURETY LICENSES c/: All except AS, CA, CT, GU, HI, NV, NH, ND, PR, VI, WY. INCORPORATED IN: Pennsylvania.

The Personal Service Insurance Co. BUSINESS ADDRESS: P.O. Box 1226, Columbus, OH 43216. UNDERWRITING LIMITATION b/: $1,897,000. SURETY LICENSES c/: IN, OH. INCORPORATED IN: Ohio.

Phoenix Assurance Company of New York. BUSINESS ADDRESS: 4 World Trade Center, New York, NY 10048. UNDERWRITING LIMITATION b/: $1,273,000. SURETY LICENSES c/: All except AS, VI. INCORPORATED IN: New Hampshire.

The Phoenix Insurance Company. BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. UNDERWRITING LIMITATION b/: $53,355,000. SURETY LICENSES c/: All except AS, GU. INCORPORATED IN: Connecticut.

PINNACLE INSURANCE COMPANY. BUSINESS ADDRESS: P.O. Box 1919, Carrollton, GA 30117. UNDERWRITING LIMITATION b/: $348,000. SURETY LICENSES c/: AL, AK, GA, IN, MD, MS, OH. INCORPORATED IN: Georgia.

PLANET INDEMNITY COMPANY. BUSINESS ADDRESS: 8 Greenway Plaza, Suite 1450, Houston, TX 77046. UNDERWRITING LIMITATION b/: $313,000. SURETY LICENSES c/: TX. INCORPORATED IN: Texas.

PLANET INSURANCE COMPANY. BUSINESS ADDRESS: 4 Penn Center Plaza, Philadelphia, PA 19103. UNDERWRITING LIMITATION b/: $518,000. SURETY LICENSES c/: All except MA. INCORPORATED IN: Wisconsin.

Progressive Casualty Insurance Company. BUSINESS ADDRESS: P.O. Box 5070, Cleveland, OH 44101. UNDERWRITING LIMITATION b/: $30,679,000. SURETY LICENSES c/: All except AS, GA, GU, HI, OK, PR, VI. INCORPORATED IN: Ohio.

The Progressive Mutual Insurance Company. BUSINESS ADDRESS: P.O. Box 5070, Cleveland, OH 44101. UNDERWRITING LIMITATION b/: $1,161,000. SURETY LICENSES c/: DC, KY, NJ, OH. INCORPORATED IN: Ohio.

See footnotes at end of Circular.

Protective Insurance Company. BUSINESS ADDRESS: 3100 North Meridian Street, Indianapolis, IN 46208. UNDERWRITING LIMITATION b/: $5,594,000. SURETY LICENSES c/: All except AS, GU. INCORPORATED IN: Indiana.

Prudential Reinsurance Company. BUSINESS ADDRESS: 100 Mulberry Street, Newark, NJ 07102. UNDERWRITING LIMITATION b/: $37,365,000. SURETY LICENSES c/: All except AS, GU, NV, NC, VI, WY. INCORPORATED IN: Delaware.

Puerto Rican-American Insurance Company. BUSINESS ADDRESS: P.O. Box S-112, San Juan, PR 00902. UNDERWRITING LIMITATION b/: $5,274,000. SURETY LICENSES c/: PR, VI. INCORPORATED IN: Puerto Rico.

Ranger Insurance Company. BUSINESS ADDRESS: P.O. Box 2807, Houston, TX 77252-2807. UNDERWRITING LIMITATION b/: $1,912,000. SURETY LICENSES c/: All except AS, GU, VI. INCORPORATED IN: Delaware.

REGENCY INSURANCE COMPANY. BUSINESS ADDRESS: P.O. Box 190, Hallandale, FL 33009-0190. UNDERWRITING LIMITATION b/: $183,000. SURETY LICENSES c/: FL. INCORPORATED IN: Florida.

Regent Insurance Company. BUSINESS ADDRESS: One General Drive, Sun Prairie, WI 53596. UNDERWRITING LIMITATION b/: $2,753,000. SURETY LICENSES c/: IL, IN, IA, KS, MN, MO, NE, ND, SD, WI. INCORPORATED IN: Wisconsin.

The Reinsurance Corporation of New York. BUSINESS ADDRESS: 80 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: $5,563,000. SURETY LICENSES c/: All except AS, GU, HI, PR, VI. INCORPORATED IN: New York.

Reliance Insurance Company. BUSINESS ADDRESS: 4 Penn Center Plaza, Philadelphia, PA 19103. UNDERWRITING LIMITATION b/: $40,296,000. SURETY LICENSES c/: All except MA. INCORPORATED IN: Pennsylvania.

Reliance Insurance Company of New York. BUSINESS ADDRESS: 4 Penn Center Plaza, Philadelphia, PA 19103. UNDERWRITING LIMITATION b/: $961,000. SURETY LICENSES c/: NY. INCORPORATED IN: New York.

REPUBLIC INSURANCE COMPANY. BUSINESS ADDRESS: P.O. Box 660560, Dallas, TX 75266-0560. UNDERWRITING LIMITATION b/: $13,834,000. SURETY LICENSES c/: All except AL, AS, FL, GU, HI, ME, MA, MT, NH, ND, RI, SD, VT, VI, WY. INCORPORATED IN: Delaware.

Republic Western Insurance Company. BUSINESS ADDRESS: 2721 North Central Avenue, Phoenix, AZ 85004. UNDERWRITING LIMITATION b/: $7,952,000. SURETY LICENSES c/: All except AS, CT, GU, HI, IN, ME, MN, NH, PR, VT, VI. INCORPORATED IN: Arizona.

Royal Indemnity Company. BUSINESS ADDRESS: 9300 Arrowpoint Blvd. Charlotte, NC 28217-5599. UNDERWRITING LIMITATION b/: $6,456,000. SURETY LICENSES c/: All except AS. INCORPORATED IN: Delaware.

See footnotes at end of Circular.

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Royal Insurance Company of America. BUSINESS ADDRESS: 9300 Arrowpoint Blvd., Charlotte, NC 28217-5599. UNDERWRITING LIMITATION b/: $18,867,000. SURETY LICENSES c/: All except AS. INCORPORATED IN: Illinois.

SAFECO Insurance Company of America. BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. UNDERWRITING LIMITATION b/: $43,342,000. SURETY LICENSES c/: All except AS, NY, PR, VT, VI. INCORPORATED IN: Washington.

SAFECO Insurance Company of Illinois. BUSINESS ADDRESS: 1900 West Hassell Rd., Hoffman Estates, IL 60196. UNDERWRITING LIMITATION b/: $4,738,000. SURETY LICENSES c/: AZ, CO, IL, KY, MD, MI, MN, MS, NE, NM, OH, OR, PA, TN, TX, UT, WI, WY. INCORPORATED IN: Illinois.

SAFECO National Insurance Company. BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. UNDERWRITING LIMITATION b/: $2,265,000. SURETY LICENSES c/: MO, NY. INCORPORATED IN: Missouri.

St. Paul Fire and Marine Insurance Company. BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. UNDERWRITING LIMITATION b/: $138,295,000. SURETY LICENSES c/: All except AS, GU. INCORPORATED IN: Minnesota.

ST. PAUL GUARDIAN INSURANCE COMPANY. BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. UNDERWRITING LIMITATION b/: $1,798,000. SURETY LICENSES c/: All except AS, GU, MA, NV, NJ, PA, PR, VI, WY. INCORPORATED IN: Minnesota.

St. Paul Mercury Insurance Company. BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. UNDERWRITING LIMITATION b/: $3,329,000. SURETY LICENSES c/: All except AS, GU, PR, VI. INCORPORATED IN: Minnesota.

SCOR REINSURANCE COMPANY. BUSINESS ADDRESS: 110 William Street, 14th Floor, New York, NY 10038. UNDERWRITING LIMITATION b/: $10,854,000. SURETY LICENSES c/: All except AK, AS, CA, CT, DC, GU, HI, KY, MI, MT, NH, NC, ND, OK, PR, RI, SD, TN, UT, VA, VI, WV, WI. INCORPORATED IN: New York.

Seaboard Surety Company. BUSINESS ADDRESS: Burnt Mills Road and Route 206, Bedminster, NJ 07921. UNDERWRITING LIMITATION b/: $6,453,000. SURETY LICENSES c/: All except AS. INCORPORATED IN: New York.

Security National Insurance Company. BUSINESS ADDRESS: P.O. Box 655028, Dallas, TX 75265-5028. UNDERWRITING LIMITATION b/: $979,000. SURETY LICENSES c/: AL, AR, CA, CO, IL, IN, KS, KY, NM, OH, OK, TX, WY. INCORPORATED IN: Texas.

Select Insurance Company. BUSINESS ADDRESS: P.O. Box 1771, Dallas, TX 75221. UNDERWRITING LIMITATION b/: $1,760,000. SURETY LICENSES c/: All except AS, CT, GU, HI, LA, ME, MA, NH, NJ, NY, ND, OK, PA, PR, RI, UT, VI. INCORPORATED IN: Texas.

See footnotes at end of Circular.

Selective Insurance Company of America. BUSINESS ADDRESS: Wantage Avenue, Branchville, NJ 07890. UNDERWRITING LIMITATION b/: $17,073,000. SURETY LICENSES c/: AL, DE, DC, FL, GA, MD, MS, NJ, NC, PA, SC, TX, VA. INCORPORATED IN: New Jersey.

SENTINEL INSURANCE COMPANY, LTD. BUSINESS ADDRESS: P.O. Box 1140, Honolulu, HI 96807. UNDERWRITING LIMITATION b/: $1,055,000. SURETY LICENSES c/: HI. INCORPORATED IN: Hawaii.

Sentry Insurance a Mutual Company. BUSINESS ADDRESS: 1800 North Point Drive, Stevens Point, WI 54481. UNDERWRITING LIMITATION b/: $48,674,000. SURETY LICENSES c/: All except AS, GU, PR, VI. INCORPORATED IN: Wisconsin.

Skandia America Reinsurance Corporation. BUSINESS ADDRESS: 280 Park Avenue, New York, NY 10017. UNDERWRITING LIMITATION b/: $24,988,000. SURETY LICENSES c/: AZ, CA, DE, DC, GA, IL, IN, IA, MI, MS, MT, NE, NY, OH, OK, PA, UT, VA, WA, WI. INCORPORATED IN: Delaware.

South Carolina Insurance Company. BUSINESS ADDRESS: P.O. Box 1, Columbia, SC 29202. UNDERWRITING LIMITATION b/: $7,304,000. SURETY LICENSES c/: All except AS, GU, HI, ME, NH, NJ, PR, RI, VT, VI. INCORPORATED IN: South Carolina.

The Standard Fire Insurance Company. BUSINESS ADDRESS: 151 Farmington Avenue, Hartford, CT 06156. UNDERWRITING LIMITATION b/: $29,967,000. SURETY LICENSES c/: All except AS, GU. INCORPORATED IN: Connecticut.

State Automobile Mutual Insurance Company. BUSINESS ADDRESS: 518 East Broad Street, Columbus, OH 43216. UNDERWRITING LIMITATION b/: $19,778,000. SURETY LICENSES c/: AL, AR, FL, GA, IL, IN, KS, KY, MD, MI, MS, MO, OH, PA, SC, SD, TN, WV, WI, WY. INCORPORATED IN: Ohio.

State Farm Fire and Casualty Company. BUSINESS ADDRESS: 112 East Washington Street, Bloomington, IL 61701. UNDERWRITING LIMITATION b/: $375,707,000. SURETY LICENSES c/: All except AS, GU, PR, VI. INCORPORATED IN: Illinois.

State Surety Company. BUSINESS ADDRESS: P.O. Box 1976, Des Moines, IA. 50306. UNDERWRITING LIMITATION b/: $467,000. SURETY LICENSES c/: AZ, CO, DC, ID, IL, IA, KS, MN, MO, MT, NE, NM, ND, OK, SD, WI, WY. INCORPORATED IN: Iowa.

Statewide Insurance Company. BUSINESS ADDRESS: P.O. Box 799, Waukegan, IL 60079. UNDERWRITING LIMITATION b/: $263,000. SURETY LICENSES c/: AZ, AR, IL. INCORPORATED IN: Illinois.

Surety Company of the Pacific. BUSINESS ADDRESS: P.O. Box 1067, Northridge, CA 91328. UNDERWRITING LIMITATION b/: $263,000. SURETY LICENSES c/: CA. INCORPORATED IN: California.

See footnotes at end of Circular.

TEXAS PACIFIC INDEMNITY COMPANY. BUSINESS ADDRESS: 15 Mountain View Road, P.O. Box 1615, Warren, NJ 07061-1615. UNDERWRITING LIMITATION b/: $491,000. SURETY LICENSES c/: AR, TX. INCORPORATED IN: Texas.

Transamerica Insurance Company. BUSINESS ADDRESS: 6300 Canoga Avenue, Woodland Hills, CA 91367. UNDERWRITING LIMITATION b/: $73,898,000. SURETY LICENSES c/: All except AS, PR, VI. INCORPORATED IN: California.

Transamerica Insurance Company of Michigan. BUSINESS ADDRESS: 103 West Michigan Avenue, Battle Creek, MI 49016. UNDERWRITING LIMITATION b/: $1,974,000. SURETY LICENSES c/: AR, IL, IN, IA, KS, MI, MN, MO, OH, SD, TX. INCORPORATED IN: Michigan.

Transamerica Premier Insurance Company. BUSINESS ADDRESS: 333 South Anita Drive, Orange, CA 92668. UNDERWRITING LIMITATION b/: $7,510,000. SURETY LICENSES c/: All except AS, NH, NY, PR, VI. INCORPORATED IN: California.

Transcontinental Insurance Company. BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. UNDERWRITING LIMITATION b/: $8,585,000. SURETY LICENSES c/: All except AS, GU, VI. INCORPORATED IN: New York.

Transportation Insurance Company. BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. UNDERWRITING LIMITATION b/: $3,445,000. SURETY LICENSES c/: All except AS, GU, PR, VI, WV. INCORPORATED IN: Illinois.

The Travelers Indemnity Company. BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. UNDERWRITING LIMITATION b/: $102,501,000. SURETY LICENSES c/: All except AS. INCORPORATED IN: Connecticut.

THE TRAVELERS INDEMNITY COMPANY OF AMERICA. BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. UNDERWRITING LIMITATION b/: $6,135,000. SURETY LICENSES c/: All except AS, GU, LA, MA, VI. INCORPORATED IN: Georgia.

The Travelers Indemnity Company of Illinois. BUSINESS ADDRESS: 200 West Madison Street, Chicago, IL 60606. UNDERWRITING LIMITATION b/: $2,204,000. SURETY LICENSES c/: All except AS, GU, PR, WY. INCORPORATED IN: Illinois.

The Travelers Indemnity Company of Rhode Island. BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. UNDERWRITING LIMITATION b/: $11,443,000. SURETY LICENSES c/: All except AS, GU. INCORPORATED IN: Rhode Island.

Trinity Universal Insurance Company. BUSINESS ADDRESS: P.O. Box 655028, Dallas, TX 75265-5028. UNDERWRITING LIMITATION b/: $57,785,000. SURETY LICENSES c/: AL, AZ, AR, CA, CO, GA, IL, IN, IA, KS, KY, LA, MN, MS, MO, NE, NM, OH, OK, OR, TX, WI, WY. INCORPORATED IN: Texas.

See footnotes at end of Circular.

Trinity Universal Insurance Company of Kansas, Inc. BUSINESS ADDRESS: P.O. Box 655028, Dallas, TX 75265-5028. UNDERWRITING LIMITATION b/: $536,000. SURETY LICENSES c/: AL, AZ, CO, KS, KY, LA, NE, OH, OK, TX. INCORPORATED IN: Kansas.

Tri-State Insurance Company of Minnesota. BUSINESS ADDRESS: One Roundwind Road, Luverne, MN 56156. UNDERWRITING LIMITATION b/: $3,003,000. SURETY LICENSES c/: IA, MN, NE, ND, SD, WI. INCORPORATED IN: Minnesota.

Twin City Fire Insurance Company. BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. UNDERWRITING LIMITATION b/: $6,200,000. SURETY LICENSES c/: All except AS, GU, PR, VI. INCORPORATED IN 6/: Indiana.

ULICO CASUALTY COMPANY. BUSINESS ADDRESS: 111 Massachusetts Avenue, NW, Washington, DC 20001. UNDERWRITING LIMITATION b/: $5,089,000. SURETY LICENSES c/: All except CA, FL, GU, ID, ME, MA, NH, NC, PR, RI, WY. INCORPORATED IN: Delaware.

Unigard Security Insurance Company. BUSINESS ADDRESS: 15805 N.E. 24th Street, Bellevue, WA 98008-2409. UNDERWRITING LIMITATION b/: $6,442,000. SURETY LICENSES c/1/: All except AS, GU, NJ, PR, VI. INCORPORATED IN: Washington.

Union Insurance Company. BUSINESS ADDRESS: P.O. Box 80439, Lincoln, NE 68501. UNDERWRITING LIMITATION b/: $5,977,000. SURETY LICENSES c/: CO, IA, KS, MN, MO, ND, OK, SD, TX, WY. INCORPORATED IN: Nebraska.

United Capitol Insurance Company. BUSINESS ADDRESS: 1400 Lake Hearn Drive, Atlanta, GA 30319. UNDERWRITING LIMITATION b/: $5,570,000. SURETY LICENSES c/7/: AZ, WI. INCORPORATED IN: Wisconsin.

United Fire & Casualty Company. BUSINESS ADDRESS: P.O. Box 4909, Cedar Rapids, IA 52407. UNDERWRITING LIMITATION b/: $7,160,000. SURETY LICENSES c/: All except AL, AS, CT, DE, DC, FL, GA, GU, HI, ME, MA, MI, NV, NH, NC, PA, PR, RI, TN, VT, VA, VI, WV. INCORPORATED IN: Iowa.

UNITED NATIONAL INSURANCE COMPANY. BUSINESS ADDRESS: 1737 Chestnut Street, Philadelphia, PA 19103. UNDERWRITING LIMITATION b/: $7,292,000. SURETY LICENSES c/: PA. INCORPORATED IN: Pennsylvania.

United Pacific Insurance Company. BUSINESS ADDRESS: 4 Penn Center Plaza, Philadelphia, PA 19103. UNDERWRITING LIMITATION b/: $17,589,000. SURETY LICENSES c/: All except MA. INCORPORATED IN: Washington.

United Pacific Insurance Company of New York. BUSINESS ADDRESS: 4 Penn Center Plaza, Philadelphia, PA 19103. UNDERWRITING LIMITATION b/: $1,128,000. SURETY LICENSES c/: NY. INCORPORATED IN: New York.

UNITED SOUTHERN ASSURANCE COMPANY. BUSINESS ADDRESS: P.O. Box 2648, Melbourne, FL 32902-2648. UNDERWRITING LIMITATION b: $1,562,000. SURETY LICENSES c/: All except AS, CT, GU, KS, ME, MA, MN, NH, NY, ND, PR, RI, VT, VI. INCORPORATED IN: Florida.

See footnotes at end of Circular.

United States Fidelity and Guaranty Company. BUSINESS ADDRESS: 100 Light Street, P.O. Box 1138, Baltimore, MD 21203. UNDERWRITING LIMITATION b/: $139,512,000. SURETY LICENSES c/: All except AS, GU, PR. INCORPORATED IN: Maryland.

UNIVERSAL INSURANCE COMPANY. BUSINESS ADDRESS: G.P.O. Box 71338, San Juan, PR 00936. UNDERWRITING LIMITATION b/: $2,051,000. SURETY LICENSES c/: PR. INCORPORATED IN: Puerto Rico.

Universal Surety Company. BUSINESS ADDRESS: P.O. Box 80468, Lincoln, NE 68501. UNDERWRITING LIMITATION b/: $905,000. SURETY LICENSES c/: AZ, CO, ID, IL, IA, KS, MI, MN, MO, MT, NE, NM, ND, OH, OR, SD, UT, WI, WY. INCORPORATED IN: Nebraska.

Universal Surety of America. BUSINESS ADDRESS: 1812 Durham, Houston, TX 77007. UNDERWRITING LIMITATION b/: $283,000. SURETY LICENSES c/: AR, CO, TX. INCORPORATED IN: Texas.

UNIVERSAL UNDERWRITERS INSURANCE COMPANY. BUSINESS ADDRESS: 6363 College Blvd., Overland Park, KS 66211. UNDERWRITING LIMITATION b/: $25,919,000. SURETY LICENSES c/: All except AS, GU, PR, VI. INCORPORATED IN: Missouri.

Utica Mutual Insurance Company. BUSINESS ADDRESS: P.O. Box 530, Utica, NY 13503. UNDERWRITING LIMITATION b/: $13,302,000. SURETY LICENSES c/: All except AS, GU, VI. INCORPORATED IN: New York.

Valley Forge Insurance Company. BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. UNDERWRITING LIMITATION b/: $6,856,000. SURETY LICENSES c/: All except AS, GU, HI, PR, VI. INCORPORATED IN: Pennsylvania.

VAN TOL SURETY COMPANY, INCORPORATED. BUSINESS ADDRESS: 424 Fifth Street, Brookings, SD 57006. UNDERWRITING LIMITATION b/: $142,000. SURETY LICENSES c/: SD. INCORPORATED IN: South Dakota.

Vigilant Insurance Company. BUSINESS ADDRESS: 15 Mountain View Road, P.O. Box 1615, Warren, NJ 07061-1615. UNDERWRITING LIMITATION b/: $12,347,000. SURETY LICENSES c/: All except AS, PR. INCORPORATED IN: New York.

Washington International Insurance Company. BUSINESS ADDRESS: 1930 Thoreau Drive, Suite 101, Schaumburg, IL 60173. UNDERWRITING LIMITATION b/: $563,000. SURETY LICENSES c/: AZ, CA, FL, GA, IL, IN, MD, MA, MO, NY, OH, OR, SC, TX, VA, WA. INCORPORATED IN: Arizona.

West American Insurance Company. BUSINESS ADDRESS: 136 North Third Street, Hamilton, OH 45025. UNDERWRITING LIMITATION b/: $44,570,000. SURETY LICENSES c/: All except AK, AS, CT, GU, HI, ME, MT, NH, PR, RI, VT, VI, WV. INCORPORATED IN: California.

See footnotes at end of Circular.

Westchester Fire Insurance Company. BUSINESS ADDRESS: 305 Madison Avenue, CN-1932, Morristown, NJ 07960. UNDERWRITING LIMITATION b/: $2,287,000. SURETY LICENSES: c/: All except AS, GU, VI. INCORPORATED IN: New York.

The Western Casualty and Surety Company. BUSINESS ADDRESS: 500 North Meridian St., Indianapolis, IN 46204. UNDERWRITING LIMITATION b/: $14,932,000. SURETY LICENSES c/: All except AS, CT, GU, HI, ME, MA, NH, NY, PR, RI, VT, VI. INCORPORATED IN: Kansas.

Western Surety Company. BUSINESS ADDRESS: 101 South Phillips Avenue, Sioux Falls, SD 57192. UNDERWRITING LIMITATION b/: $1,884,000. SURETY LICENSES c/: All except AS, GU, PR, VI. INCORPORATED IN: South Dakota.

Westfield Insurance Company. BUSINESS ADDRESS: Westfield Center, OH 44251. UNDERWRITING LIMITATION b/: $10,945,000. SURETY LICENSES c/: All except AK, AS, CT, GU, HI, ME, NH, PR, VI. INCORPORATED IN: Ohio.

Westfield National Insurance Company. BUSINESS ADDRESS: Westfield Center, OH 44251. UNDERWRITING LIMITATION b/: $3,493,000. SURETY LICENSES c/: IA, OH. INCORPORATED IN: Ohio.

See footnotes at end of Circular.

COMPANIES HOLDING CERTIFICATES OF AUTHORITY AS ACCEPTABLE REINSURING COMPANIES UNDER 31 CFR, Part 223.3(b) REVISED SEPTEMBER 1, 1978 (See Note (e))

Alliance Assurance Company, Limited, U.S. Branch. BUSINESS ADDRESS: 15 Mountain View Road, P.O. Box 1615, Warren, NJ 07061-1615. UNDERWRITING LIMITATION b/: $5,575,000.

Belvedere America Reinsurance Company. BUSINESS ADDRESS: 110 William Street, 30th Floor, New York, NY 10038. UNDERWRITING LIMITATION b/: $3,064,000.

Frankona Reinsurance Company, U.S. Branch. BUSINESS ADDRESS: P.O. Box 419069, Kansas City, MO 64141-6069. UNDERWRITING LIMITATION b/: $2,597,000.

The London Assurance, U.S. Branch. BUSINESS ADDRESS: 15 Mountain View Road, P.O. Box 1615, Warren, NJ 07061-1615. UNDERWRITING LIMITATION b/: $9,592,000.

Munich Reinsurance Company, U.S. Branch. BUSINESS ADDRESS: 560 Lexington Avenue, New York, NY 10022. UNDERWRITING LIMITATION b/: $25,062,000.

The Sea Insurance Company, Limited, U.S. Branch. BUSINESS ADDRESS: 15 Mountain View Road, P.O. Box 1615, Warren, NJ 07061-1615. UNDERWRITING LIMITATION b/: $5,683,000.

Sun Insurance Office, Limited, U.S. Branch. BUSINESS ADDRESS: 15 Mountain View Road, P.O. Box 1615, Warren, NJ 07061-1615. UNDERWRITING LIMITATION b/: $10,019,000.

Swiss Reinsurance Company, U.S. Branch. BUSINESS ADDRESS: 237 Park Avenue, New York, NY 10017. UNDERWRITING LIMITATION b/: $29,365,000.

The Tokio Marine and Fire Insurance Company, Limited, U.S. Branch. BUSINESS ADDRESS: 101 Park Avenue, New York, NY 10178. UNDERWRITING LIMITATION b/: $8,967,000.

Trans Pacific Insurance Company. BUSINESS ADDRESS: 101 Park Avenue, New York, NY 10178. UNDERWRITING LIMITATION b/: $614,000.

"Winterthur" Swiss Insurance Company, U.S. Branch. BUSINESS ADDRESS: Two World Financial Center, 225 Liberty Street, 42nd Floor, New York, NY 10281. UNDERWRITING LIMITATION b/: $14,247,000.

Zurich Insurance Company, U.S. Branch. BUSINESS ADDRESS: 800 North Plaza Drive, Schaumburg, IL 60196. UNDERWRITING LIMITATION b/: $33,912,000.

See footnotes at end of Circular.

FOOTNOTES

1/ License information is not current. Confirmation regarding whether a company is licensed for surety in a particular state may be obtained from that State's Department of Insurance.

2/ Contractor's Bonding and Insurance Company does business in the State of California as CBIC Bonding and Insurance Company.

3/ Effective July 1, 1987, Hartford Casualty Insurance Company changed its State of Domicile from New Jersey to Indiana.

4/ Effective July 1, 1988, New York Underwriters Insurance Company, a New York Corporation, merged into and with Hartford Underwriters Insurance Company, a Connecticut corporation. Hartford Underwriters is the surviving corporation.

5/ MCA Insurance Company does business in the State of Texas as MOTOR CLUB OF AMERICA INSURANCE COMPANY.

6/ Effective July 1, 1987, Twin City Fire Insurance Company changed its State of Domicile from Minnesota to Indiana.

7/ United Capitol Insurance Company is an approved surplus lines carrier in all fifty states. Such approval may indicate that the company is authorized to write surety in a particular state, even though the Company is not licensed in the State. Questions related to this, may be directed to the appropriate State Insurance Department.

NOTES

(a) All Certificates of Authority expire June 30, and are renewable July 1, annually. Companies holding Certificates of Authority as acceptable sureties on Federal bonds are also acceptable as reinsuring companies.

(b) Treasury requirements do not limit the penal sum (face amount) of bonds which surety companies may provide. However, when the penal sum exceeds a company's Underwriting Limitation, the excess must be protected by co-insurance, reinsurance, or other methods in accordance with Treasury Circular 297, Revised September 1, 1978 (31 CFR Section 223.10, Section 223.11). Treasury refers to a bond of this type as an Excess Risk. When Excess Risks on bonds in favor of the United States are protected by reinsurance, such reinsurance is to be effected by use of a Federal reinsurance form to be filed with the bond or within 45 days thereafter. In protecting such excess, the underwriting limitation in force on the day in which the bond was provided will govern absolutely.

(c) A surety company must be licensed in the State or other area in which it provides a bond, but need not be licensed in the State or other area in which the principal resides or where the contract is to be performed (28 Op. Atty. Gen. 127, Dec. 24, 1909; 31 CFR Section 223.5(b)). The term "other area" includes the District of Columbia, American Samoa, Guam, Puerto Rico, and the Virgin Islands.

(d) FEDERAL PROCESS AGENTS: Treasury approved surety companies are required to appoint Federal process agents in accord with 31 U.S.C. 9306 and 31 CFR 224 in the following districts: Where the principal resides; where the obligation is to be performed; and in the District of Columbia where the bond is returnable or filed. No process agent is required in the State or other area where the company is incorporated (31 CFR Section 224.2). The name and address of a particular surety's process agent in a particular Federal Judicial District may be obtained from the Clerk of the U.S. District Court in that district. (The appointment documents are on file with the clerks.) (NOTE: A surety company's underwriting agent who furnishes its bonds may or may not be its authorized process agent.)

SERVICE OF PROCESS: Process should be served on the Federal process agent appointed by a surety in a judicial district, except where the appointment of such agent is pending or during the absence of such agent from the district. Only in the event an agent has not been duly appointed, or the appointment is pending, or the agent is absent from the district, should process be served directly on the Clerk of the court pursuant to the provisions of 31 U.S.C. 9306.

(e) Companies holding Certificates of Authority as acceptable reinsuring companies are acceptable only as reinsuring companies on Federal bonds.

[FR Doc. 89-15302 Filed 6-29-89; 8:45 am]
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federal register

Friday
June 30, 1989

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commission

Fund Availability for Section 8 Existing Housing Certificate Program for Operation Bootstrap; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-89-2001; FR-2867]

Fund Availability for Section 8 Existing Housing Certificate Program for Operation Bootstrap

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of fund availability for Public Housing Agencies (PHAs) to participate in Operation Bootstrap.

SUMMARY: HUD is announcing the availability of Section 8 Certificates for PHAs wishing to participate in Operation Bootstrap. The Department is interested in encouraging communities to develop and implement innovative programs to enable unemployed or underemployed members of families to become economically independent through the cooperative efforts of the public and private sectors. Section 8 Existing Housing Certificates will be awarded to PHAs selected to participate in Operation Bootstrap.

DATE: Applications for participation must be received by the local Field Office (Attention: Operation Bootstrap) by 4:00 p.m. local time on August 4, 1989.

FOR FURTHER INFORMATION CONTACT: Lawrence Goldberger, Director, Office of Elderly and Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–8000, telephone (202) 755–5720. Hearing- or speech-impaired individuals may call HUD's TDD number (202) 426–0015. (These telephone numbers are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: On June 14, 1989 (54 FR 25426) the Department announced the substance of this Notice of Fund Availability in a document that indicated that details associated with the submission of applications would be separately announced following approval, by OMB, of the information collection requirements in the program.

The collection of information requirements for Operation Bootstrap were submitted to OMB for expedited review under section 3504(h) of the Paperwork Reduction Act of 1980, and were approved under OMB control number 2502–0402, expiration date June 30, 1992.

Accordingly, this document re-announces the program and invites applications, in accordance with the June 14, 1989 previous publication, by August 4, 1989.

I. Introduction

"Operation Bootstrap" is an initiative by HUD to encourage communities to develop and implement innovative programs to aid unemployed or underemployed members of low-income families to become economically independent through the cooperative efforts of the public and private sectors. The Department is initiating Operation Bootstrap to coordinate services to low-income families motivated to achieve economic independence, in conjunction with other Departmental goals.

Operation Bootstrap builds upon the Department's successful Project Self-Sufficiency demonstrations in 1984 and 1985, which confirmed the effectiveness of coordinating local resources toward the goal of economic independence for very low-income single parents. However, Operation Bootstrap includes modifications to reflect the current progress of welfare reform and lessons learned from the demonstration.

The Department will provide a special allocation of Section 8 Certificates to PHAs selected to participate in Operation Bootstrap. Approximately 3,000 Section 8 Certificates will be made available during Fiscal Year 1989 nationwide for this purpose. Certificates will be awarded according to the criteria described in this Notice. A PHA may apply for up to a maximum of 200 Certificates to be used for participants in the Operation Bootstrap programs, subject to the rules and regulations of 24 CFR Part 882. In addition to housing assistance, local Operation Bootstrap programs must provide other activities and assistance designed to enable families to achieve the goal of economic independence. HUD anticipates providing rental housing assistance resources for this purpose in Fiscal Year 1990.

II. Operation Bootstrap Objectives

The overall goal of Operation Bootstrap is to enable low-income families to become economically independent of government assistance programs. The specific objectives of the program are:

(a) To develop innovative local strategies that effectively coordinate public and private resources toward the goal of economic independence for low-income families.

(b) To integrate effectively the Section 8 Existing Housing Assistance Payments Program with other public and private benefit programs to assist low-income families achieve eventual independence from government assistance programs.

(c) To provide families with stable rental assistance support while participating in Operation Bootstrap, allowing them to participate in job training programs without undue concern for the welfare and safety of their families.

(d) To document the results of Operation Bootstrap and share the information with other communities.

Local communities may design Operation Bootstrap programs that reflect local needs and priorities, available resources, and the existing local public and private institutions to achieve the objectives described above. Local programs must contain the following components:

1. Coordinating Body. Each program must establish or use an existing local coordinating body to plan and implement its Operation Bootstrap program. The coordinating body must work with the PHA and other public and private agencies that have resources or programs available to assist low-income families. The coordinating body must develop an action plan outlining specific activities and services necessary to meet the problems of the target population; must secure commitments of local public and private resources; and must oversee the administration of the program.

The coordinating body must include representatives from the PHA, other local public and private agencies that have resources or programs available to assist low-income families, local businesses, and educational facilities. Communities are encouraged to involve the local Private Industry Council, if one exists, and to include members of the medical, religious, and financial communities in the coordinating body. The coordinating body should strive for equal representation from the private and public sectors.

2. Chief Executive Officer Support. The local Operation Bootstrap program must have the strong support and involvement of the chief executive officer of the community. Experience with the Project Self-Sufficiency demonstration indicated that this support and involvement was instrumental to program success.

3. Private Resources. Each program must utilize an active group of local private organizations that are willing to commit funds, staff, equipment, use of buildings and property, training assistance, housing, employment opportunities, and other services to the program. Such organizations may include businesses, employee organizations, religious organizations, neighborhood organizations, medical institutions, educational institutions, cultural and civic organizations, voluntary and nonprofit service groups, foundations and corporate philanthropies, and individuals.

4. Public Resources. Each community with an Operation Bootstrap program must commit the resources of its local agencies to provide appropriate support for the program. Such resources may include, but are not limited to: Community Development Block Grant funds; Job Training Partnership Act funds; Department of Health and Human Services funds; transportation; the use of publicly-owned buildings and property, local government staff, labor and equipment, and general revenues.

5. Action Plan. The coordinating body must assess the needs of the target population and develop an Action Plan of specific activities and services to meet those needs. The Action Plan must describe specific steps to be taken to deliver the program services and activities, specify a time frame for each step, show how public and private resources are to be integrated to implement the program, and delineate responsibilities for each step of implementation.

To the extent necessary or appropriate to local circumstances, the following activities and services should be included in the Action Plan:

(A) Child Care. The availability of quality child care services is considered an important element of a successful Operation Bootstrap program. Lack of quality child care or unreliable child care services can contribute to the failure of participants to take full advantage of the range of available support services or job training programs. Operation Bootstrap programs should take appropriate steps to assure that child care services are available for program participants.

(B) Transportation. Local Operation Bootstrap programs should give attention to the transportation needs of program participants. The Project Self-Sufficiency demonstration indicated a high correlation between the availability of transportation and the degree to which participants are able to take full advantage of the activities provided by the program.

(C) Personal and Career Counseling. Participants should be provided opportunities for counseling in basic life skills training that enhance the participants' ability to find and retain employment.

(D) Job Development and Placement. Local programs should identify and recruit potential employers early in the planning process, so that job training programs can be tailored to the needs of the job providers. Involving the private sector members of the Operation Bootstrap program is especially critical to this element of the program. The program should make use of a skilled placement officer to match individual participants with employment opportunities in the community.

(E) Other Activities and Services. Other activities and services that are important to the success of an Operation Bootstrap program are:

—Managing and monitoring the progress of individual participants to identify any problems and to make necessary adjustments to increase the potential for a participant's success in completing the program;
—General education training, such as GED programs;
—Support group discussions;
—Preventive health care training;
—Financial counseling;
—Household maintenance training; and
—Entrepreneurial training.

III. Operation Bootstrap Participants

The families selected for participation in Operation Bootstrap must be eligible for assistance under the Section 8 Certificate Program. Selected families must enroll in the Operation Bootstrap program before securing a Section 8 Certificate, except that the PHA may include current Certificate holders in the program. Families selected for participation using Certificates made available from this special allocation must be on the PHA's Section 8 waiting list.

To the extent possible, the PHA should assist program participants to locate suitable housing by providing them with a list of available units that facilitate participation in the Operation Bootstrap program, such as easy access to public transportation or job training sites. All housing must meet the program requirements for the Section 8 Existing Housing Program described in 24 CFR Part 882.

A community may find it feasible to encourage (but may not require) program participants to utilize the Certificates to obtain housing in a particular area if doing so would facilitate the coordination of other support services. However, participants in the Operation Bootstrap program may use the Certificates to rent housing anywhere in the PHA operating area. Consistent with a PHA's authority to use up to 15 percent of its total Certificate funding for project-based assistance, a PHA may choose to use some of the Operation Bootstrap Certificate funding for project-based assistance in accordance with HUD regulations, provided the projects do not consist of more than 100 assisted units each. Communities are also encouraged to use other available resources, including Community Development Block Grants, to provide additional suitable housing.

IV. Selection Criteria for PHAs

The following factors will be considered in selecting PHAs to receive an allocation of Section 8 Certificates for Operation Bootstrap:

(1) Coordination and Speed of Implementation. The community must establish or must utilize an existing coordinating body to develop and implement the program. Special consideration will be given to applications that evidence ability for rapid delivery of services for the participating families.

(2) Commitment of Private and Public Resources. Each participating community must demonstrate the commitment of the resources of private industry, profit and nonprofit groups, and local public agencies to provide services and assistance appropriate to the program.

(3) PHA Administrative Capability. Administrative capability of the PHA must be sufficient to administer the PHA's role in the program successfully within a reasonable period of time.

(4) Innovative Mechanism for Coordination and Delivery of Services. Preference will be given to applications that propose innovative means of developing: public and private cooperative activities; programs addressing the needs of homeless families on the PHA's waiting list; employment programs related to local or State free enterprize zone initiatives; entrepreneurial opportunities; homeownership opportunities through cooperatives; tenant management; neighborhood revitalization with the assistance of neighborhood groups; or coordination with agencies implementing the Jobs Program of the Family Support Act or the Job Training Partnership Act.

V. Application Procedures

Applications from PHAs for Section 8 Certificates to be used for participants in local Operation Bootstrap programs must contain the following:

(1) An original and two copies of a completed Form HUD–52515, Application for Existing Housing. For purposes of expediting the selection process, the PHA should encourage the chief executive officer of the unit of general local government to submit a letter with the PHA application commenting on the PHA's application, in

accordance with section 213 of the Housing and Community Development Act of 1974. (See 24 CFR Part 791 for specific requirements.) The section 213 letter should not only comment on the application and indicate that approval of the application is consistent with the community's housing assistance plan, where applicable, but should also state that HUD may consider the letter to be the final comments, and that no additional comments will be submitted by the unit of local government.

(2) Letters from the local chief executive officer and the coordinating body agreeing to participate in planning and implementation of Operation Bootstrap.

(3) Description of how the application meets the four selection factors identified in Section IV of this Notice.

VI. Selection and Approval Procedures

Applications must be received by local Field Offices by 4:00 p.m. local time on August 4, 1989. The HUD Field Offices will perform a preliminary review to determine that the application is complete, that the PHA is currently administering a Section 8 Certificate Program, and that the PHA is capable of implementing Operation Bootstrap. All approvable applications meeting these eligibility threshold requirements will be sent to the appropriate Regional Office, with comments on the four selection factors and recommendations for funding.

Regional Office staff will review all applications submitted through their Field Offices and may recommend to the Headquarters Office of Elderly and Assisted Housing up to 1½ times the Region's target allocation. The Field or Regional Office may recommend approval of a smaller number of units than were applied for by the PHA, and may review the applications on the basis of the reduced number. Applications will not be ranked by the Regional Office, but, for each application forwarded to Headquarters, the Regional Office will provide a narrative including a description of how each of the selection factors is met by the applicant. The metro and nonmetro contract and budget authority should be specified for each recommended application.

Each Region may submit applications in accordance with the following table:

Region	Target regional CA	Target regional BA	Target regional units	Maximum units to be recommended for funding
Boston	$1,294,067	$8,470,335	170	255
New York	3,367,321	18,836,605	548	819
Philadelphia	1,568,871	7,843,355	285	428
Atlanta	2,121,309	10,606,545	434	651
Chicago	2,586,433	12,992,165	493	740
Fort Worth	1,314,663	6,573,315	265	397
Kansas City	578,667	2,883,335	140	210
Denver	408,473	2,042,365	75	112
San Francisco	3,336,429	16,682,145	486	729
Seattle	578,667	2,883,335	106	159
Totals	$17,162,700	$85,813,500	3,000	4,500

Selections will be made in Headquarters where all applications will be ranked, taking into consideration Regional Office evaluations with respect to the selection criteria described in Section III of this Notice. Funding decisions will be announced by Headquarters by September 30, 1989.

PHAs selected to participate in Operation Bootstrap must comply with all applicable regulations and requirements for the Section 8 Certificate Program. The Certificates are to be made initially available to eligible families selected for participation in the community's Operation Bootstrap program to enable them to locate decent and affordable housing. The Certificate funding may be used to provide either tenant-based or project-based assistance.

PHAs selected to participate will be required to submit a revised Administrative Plan to the appropriate HUD Field Office. The revised Administrative Plan must include objective criteria for identifying motivated applicants. ACC execution by HUD will not take place until the revised Administrative Plan has been approved by HUD.

Other Matters

The General Counsel, as the Designated Official under Executive Order No. 12606—The Family, has determined that this program will not have a significant impact on family formation, maintenance, or well-being. The program will generally benefit participating families since it is designed to provide support and encouragement to upwardly mobile family units in their efforts to move toward economic self-sufficiency.

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12611—Federalism, has determined that this program does not involve the preemption of State law and does not have other negative implications associated with principles of Federalism. The program described in this Notice provides for a variety of means by which community leaders and public housing authorities may develop their own programs, with help from HUD in the form of additional housing assistance, aimed at the general goal of marshaling resources toward economic independence for low-income families. The program will be carried out within existing HUD regulations and in compliance with State and local laws.

Dated: June 23, 1989.

John R. Ambrogne, Jr.,

Acting Deputy Assistant Secretary for Policy, Financial Management and Administration.

[FR Doc. 89-15436 Filed 6-29-89; 8:45 am]
BILLING CODE 4210-27-M

federal register

Friday
June 30, 1989

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Transponder With Automatic Altitude Reporting Capability Requirement; Policy Statement

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

Transponder With Automatic Altitude Reporting Capability Requirement

AGENCY: Federal Aviation Administration, DOT.

ACTION: Policy statement.

SUMMARY: This action announces policy regarding portions of the Transponder with Automatic Altitude Reporting Capability Requirement final rule which provides for authorization to deviate from the requirements of the same rule.

EFFECTIVE DATE: This policy is effective June 30, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Reginald C. Matthews, Airspace-Rules and Aeronautical Information Division, ATO-200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-8783.

SUPPLEMENTARY INFORMATION: Effective July 1, a transponder with altitude encoding capability (Mode C transponder) is required for most operations conducted in the vicinity of terminal control areas (TCA) located at the Nation's most congested airports. This requirement, issued as a final rule (53 FR 23356; June 21, 1988), is designed to significantly reduce the danger of midair collisions by giving air traffic controllers additional information to assist them in identifying and resolving conflicts between controlled and noncontrolled aircraft operating near TCA's.

On June 16, 1989, the Federal Aviation Administration (FAA) published a final rule (54 FR 25680) that responded to a petition for rulemaking from the Aircraft Owners and Pilots Association (AOPA), the Experimental Aircraft Association (EAA), and the Helicopter Association International (HAI). The petitioners sought to modify the Federal Aviation Regulations regarding Mode C and Mode S transponder requirements. The pertinent part of that final rule denied the portion of that petition which sought to reduce the size of the area commonly referred to as the Mode C Veil (30-mile radius of a TCA primary airport) where aircraft are required to be equipped with a Mode C transponder.

The FAA has become aware that many pilots delayed their decision to purchase the required equipment pending the outcome of the FAA's decision on a petition filed by the EAA, the AOPA, and the HAI. Considering that the petition was denied only 14 days prior to the implementation date of the rule that was the subject of the petition, the FAA believes action is necessary to allow operators flexibility while transitioning to the new rule. Accordingly, the FAA has determined that a limited transition period can be established, without adversely affecting safety, in accordance with existing air traffic control (ATC) authorization provisions of the rule. This transition period should allow aircraft operators who have ordered or purchased Mode C equipment but have not been able to have the equipment installed, a reasonable period of time to meet the requirements of the rule. This period will also allow ATC facility managers additional time to process such requests.

To request an ATC authorization, aircraft operators should telephone the appropriate ATC facility listed below, Monday thru Friday, between the hours of 0900-1500 local time. Requests will not be accepted on ATC frequencies. Operators should be prepared to give the ATC facility the aircraft identification(s) and type(s), operator's name and daytime telephone number, reason for the request, and if appropriate, the expected date to be in compliance with the rule. The ATC facility will only authorize operations within its specific TCA Veil and will assign the operator a code number for each authorization. Unless requesting ATC services or specifically required by the authorization, operators need not establish two-way radio communications with the ATC facility while conducting authorized operations.

Other operators who conduct operations to/from/at airports on the fringe of the TCA Veil, in areas without radar coverage, or in aircraft not configured to handle the required equipment also fall under this policy. These operators may also qualify for an authorization for a period of time beyond this transition period. Operators qualifying for such a long-term authorization must submit written documentation to justify the additional authorization within the above-mentioned transition period.

It is anticipated that a reasonable period of time for aircraft operators to obtain the required equipment should not exceed 90 days. Therefore, operators who have a need for an authorization for a longer period will be expected to provide appropriate documentation during the time specified by the local ATC facility (not to exceed 90 days) to support their requests. While these initial ATC authorizations may be given verbally, subsequent authorizations responding to a long-term need will be issued in writing.

TCA Veils and Telephone Numbers

Atlanta, GA (404) 669-1203
Boston, MA (617) 567-6622
Chicago, IL (312) 601-5540
Cleveland, OH (216) 265-4800
Dallas/Fort Worth, TX (214) 453-4214
(Must use area code for all calls to Dallas/Fort Worth)
Denver, CO (303) 355-1610
Detroit, MI (313) 942-3349
Honolulu, HI (808) 836-1761
Houston, TX (713) 443-1333
Kansas City, MO (816) 243-3855
Las Vegas, NV (702) 388-6559
Los Angeles, CA (213) 215-2040
Miami, FL (305) 526-2648
Minneapolis, MN (612) 725-4417
New Orleans, LA (504) 466-9746
New York, NY (516) 683-2910
Philadelphia, PA (215) 492-4100
Pittsburgh, PA (412) 269-9247
St. Louis, MO (314) 427-4932
San Diego, CA (619) 557-6545
San Francisco, CA (415) 273-6005
Seattle, WA (206) 764-6614
Washington, DC (202) 557-2861.

Issued in Washington, DC, on June 26, 1989.

William H. Pollard,

Associate Administrator for Air Traffic.

[FR Doc. 89-15490 Filed 6-27-89; 11:36 am]

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federal register

Friday
June 30, 1989

Part V

Department of Justice

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners; Final Rules, Interim Rule With Request for Public Comment and Proposed Rules

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners; Manufacture, Sale, and Fraudulent Use of Credit Cards

AGENCY: United States Parole Commission.

ACTION: Final rule.

SUMMARY: The Parole Commission is amending its paroling guidelines at 28 CFR 2.20, Chapter Three, Subchapter D, section 331(f), to provide instruction as to how offenses involving the fraudulent manufacture, sale and use of credit cards should be rated. Currently, there is not a means to consistently assess these types of offenses which often involve some degree of sophistication, planning, and orchestration. The revised guidelines provide for three separate classes of credit card related offenses. This rule will provide a fair assessment of the relative seriousness of the types of offenses described.

DATES: Effective June 30, 1989.

FOR FURTHER INFORMATION CONTACT: Richard K. Preston, Attorney, Telephone (301) 492–5959.

SUPPLEMENTARY INFORMATION: Over the past few years, the Parole Commission has noted a significant increase in the fraudulent use and fraudulent manufacture of credit cards. In the past, rating the seriousness of an offense involving the use of a stolen credit card has been fairly straightforward. However, the recent trend of manufacturing fraudulent credit cards and the wholesale distribution or possession of multiple stolen credit cards has not been adequately addressed in the Commission's guidelines. Therefore, the Commission is making the following changes in order to more consistently assess the type of offenses involving credit cards.

The Commission published a proposed rule at 54 FR 15226–27 on April 17, 1989. The Commission received no public comment on the proposed change. The Commission adopted the proposed rule with one editorial change inserting the word "grade" at the beginning of the new subpart (4).

This proposed rule change will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

The Amendment

Accordingly, the Parole Commission amends part 2 of 28 CFR as follows:

PART 2—[AMENDED]

1. The authority citation for 28 CFR Part 2 continues to read:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. 28 CFR 2.20, Guidelines for Decisionmaking, Chapter Three, Subchapter D, Paragraph 331(f) is amended to add a new subpart (4). The revised paragraph will read as follows:

§ 2.20 Paroling policy guidelines: Statement of general policy.

* * * * *

Chapter Three Offenses Involving Property

Subchapter D—Theft and Related Offenses.

331 * * *

(f) *Exceptions:*

* * * * *

(4) Grade manufacture, sale, and fraudulent use of credit cards as follows:

(i) Grade the manufacture, distribution or possession of counterfeit or altered credit cards as not less than Category Four.

(ii) Grade the distribution or possession of multiple stolen credit cards as not less than Category Three.

(iii) Grade the distribution or possession of a single stolen credit card as not less than Category Two.

* * * * *

Date: June 13, 1989.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 89–15467 Filed 6–29–89; 8:45 am]

BILLING CODE 4410-01-M

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners; Disclosure Exemptions

AGENCY: United States Parole Commission.

ACTION: Final rule.

SUMMARY: The Parole Commission is revising its disclosure regulation, at 28 CFR 2.56 entitled "Disclosure of Parole Commission Regional Office File," with regard to the exemptions used to withhold material from a prisoner or parolee. The Commission will now use the exemptions to disclosure found in the Freedom of Information Act, Title 5, United States Code, Section 552 at subsection (b) (1)–(9). This change is intended to conform the Parole Commission's disclosure procedures with those used by other components of the Department of Justice.

EFFECTIVE DATE: October 1, 1989.

FOR FURTHER INFORMATION CONTACT: Janice G. McLeod, Attorney, U.S. Parole Commission, 5550 Friendship Boulevard, Chevy Chase, Maryland, Telephone (301) 492–5959.

SUPPLEMENTARY INFORMATION: At present, the Parole Commission's regulation for processing disclosure requests received from prisoners or parolees for materials maintained in files related to them, provides that material may be withheld to the extent that it contains those types of materials set out in the three exemptions to disclosure found at 18 U.S.C. 4208(c) of the Parole Commission and Reorganization Act of 1976 (PCRA). The Parole Commission is amending its disclosure regulation to provide for use of the nine Freedom of Information Act exemptions to disclosure found at 5 U.S.C. 552(b) (1)–(9) rather than the three PCRA exemptions when processing requests submitted by prisoners or parolees for materials from files of which they are the subject. This will conform the Parole Commission's disclosure procedures with that used by other components of the Department of Justice. This procedural change will be implemented by revision of the Commission's response letters to disclosure requestors. The response letters will include identification of the documents or portions thereof withheld, a listing of the Freedom of Information Act exemption or exemptions relied upon to withhold information, a brief explanation of the manner in which the exemption of exemptions apply to each record withheld as well as a statement advising the requestor of his administrative appeal rights.

This rule change will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Lists of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners; Procedures for Determining Release Dates for Prisoners Transferred Pursuant to Treaty Who Committed Their Offense on or After November 1, 1987

AGENCY: United States Parole Commission.

ACTION: Final rule.

SUMMARY: The Parole Commission has promulgated a final rule setting forth a procedure for conducting hearings for prisoners who are transferred to the United States pursuant to a treaty and who have been convicted in foreign countries for offenses committed after November 1, 1987. This rule implements the provisions of the Anti-Drug Abuse Act of 1988 which requires the Parole Commission to determine release dates for these prisoners as though the prisoners have been convicted in a United States District Court. See 18 U.S.C. 4106A.

DATES: Effective June 30, 1989.

FOR FURTHER INFORMATION CONTACT: Richard K. Preston, Attorney, United States Parole Commission, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815. Telephone (301) 492–5959.

SUPPLEMENTARY INFORMATION: The Parole Commission has jurisdiction over all prisoners and parolees who are transferred from foreign countries pursuant to treaty. Prior to the Sentencing Reform Act of 1984, the Parole Commission had authority, under 18 U.S.C. 4106, to make parole release decisions for all prisoners, and to supervise all parolees, transferred to the United States. 18 U.S.C. 4100–4115 (originally enacted October 28, 1977). The Sentencing Reform Act of 1984 removed all references to the Parole Commission in 18 U.S.C. 4106 and amended that provision to make all transferees subject to the sentencing guidelines (promulgated by the U.S. Sentencing Commission) after November 1, 1987.

The 1984 amendment to section 4106 left two important questions unanswered. First, it failed to make it clear whether the changes would apply to prisoners who committed their offenses prior to November 1, 1987 but were not transferred to U.S. jurisdiction until on or after November 1, 1987. Second, it failed to indicate which agency would determine the sentencing guidelines for the transferees.

The Sentencing Act of 1987 settled the first issue by stating that the old version of section 4106 would apply to all transferees who committed their offenses prior to November 1, 1987, regardless of when they were eventually transferred. The 1987 Act required the Parole Commission to determine parole release dates for all transferees who committed their offenses before November 1, 1987. The Anti-Drug Abuse Act of 1988 resolved the second question by creating a supplemental provision, 18 U.S.C. 4106A, which requires the Parole Commission to determine release dates for transferees who committed their offense after November 1, 1987. The 1988 Act requires the Parole Commission to apply the applicable sentencing guidelines "as though the offender were convicted in a United States District Court of a similar offense". 18 U.S.C. 4106A(b)(1)(A). It also permits an appeal of the Commission's decision to a U.S. Court of Appeals. The procedures published below are in response to the new obligations of the Commission required by the 1988 legislation.

The Parole Commission interprets the 1988 legislation as authorizing the Commission to determine release dates for transferred prisoners who committed their offenses after November 1, 1987, by way of procedures similar to those that have been used to determine release dates for parole eligible prisoners. The procedures published below, however, grant more procedural rights to a transferred prisoner who committed his offense after November 1, 1987, than are available to parole eligible prisoners. These procedures satisfy three objectives: (1) The need to produce a record that is similar to the record presented to a U.S. District Court of Appeals from a U.S. District Court sentencing guideline determination, (2) the need to have as many issues as possible resolved or put in focus prior to the hearing, and (3) the need to give the prisoner similar procedural rights he would have in a sentencing proceeding without departing the Commission's traditional reliance upon hearing examiners to make a recommended decision.

The Parole Commission interprets the 1988 legislation as requiring Parole Commissioners to make the release decision, but permitting its hearing examiners to conduct the special transferee hearings. In the Commission's view, Congress was aware of, and implicitly contemplated the use of, the Commission's existing statutory procedures for setting release dates for offenders with parolable offenses. These procedures permit delegation of

28 CFR Part 2 is amended as follows:

PART 2—[AMENDED]

1. The authority citation for 28 CFR Part 2 continues to read:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. 28 CFR 2.56 is amended by revising paragraphs (a), (c), and (g) to read as follows:

§ 2.56 Disclosure of parole commission regional office file.

(a) *Procedure.* Copies of disclosable records pertaining to a prisoner or a parolee which are contained in the prisoner's regional office file may be obtained by that prisoner or parolee upon written request pursuant to this section. Such requests shall be answered as soon as possible in the order of their receipt. Other persons may obtain copies of such documents only upon proof of authorization from the prisoner or parolee concerned or to the extent permissable under the Freedom of Information Act or the Privacy Act of 1974.

(c) *Exemptions to disclosure.* A document or segregable portion thereof may be withheld from disclosure to the extent it contains material exempt from disclosure under the Freedom of Information Act. 5 U.S.C. 552(b)(1)–(9).

* * * * *

(g) *Relation to other provisions.* Disclosure under this section is authorized by 28 CFR 16.85 under which the Parole Commission is exempt from the record disclosure provisions of the Privacy Act of 1974, as well as certain other provisions of the Act pursuant to 5 U.S.C. 552a(j)(2). Requests submitted under the Freedom of Information Act or the Privacy Act for the requester's own records will be processed under this section. In no event will the Commission consider satisfaction of a request under this section, the Freedom of Information Act, or the Privacy Act of 1974, to be a prerequisite to an adequate parole hearing under 18 U.S.C. 4208 (for which disclosure is exclusively governed by § 2.55 of this part) or to the exercise of a parole applicant's appeal rights under 18 U.S.C. 4215.

Dated: June 15, 1989.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 89–15472 Filed 6–29–89; 8:45 am]

BILLING CODE 4410-01-M

authority to hearing examiners to conduct hearings and to receive evidence. 18 U.S.C. 4203(c) (1976).

The regulation set forth below was first published as an interim regulation with a request for public comment. See 54 FR 11689–11691 (March 21, 1989). The Commission received no comment on the substance of the interim procedure. The Commission did, however, receive one comment from the Chief U.S. Probation Officer of the District of Vermont, James Dean, alerting the Commission to the fact that a senior U.S. Probation Officer in his district, Tommaso D. Rendino, serves as a liaison with the Province of Quebec, Canada. The comment suggests that the Commission make it known that Mr. Rendino can be of service to probation officers preparing post sentence report for prisoners transferred pursuant to treaty who committed their offense in Quebec, Canada.

Although no substantive comment was received, the Commission's experience with the interim procedures prompted the Commission to modify the procedures at the last Parole Commission meeting. Subsection (c) was divided into two sections creating a new subsection (d) entitled "opportunity to object". The Commission decided to increase the time for a transferee to submit his objections to the post-sentence report to the probation officer from ten days to thirty. It was determined that ten calendar days was insufficient time for a defense attorney to prepare objections. The new subsection (d) also indicates that probation officers must transmit copies of all documents relating to an objection to the post-sentence report, including any addendum to the report to the Parole Commission prior to a special transferee hearing.

The Commission's modification of the interim rule also included an expanded explanation as to the Commission's authority to set forth conditions of any period of supervised release imposed. Under subsection (i), a new subpart (4) was added and the language from subpart (3) with regard to additions of any period of supervised release was moved to the new subpart (4). The Commission decided, as a matter of policy, that it would presume that the recommended conditions of supervised release provided in section 5.B1.4(a) of the sentencing guidelines would be reasonably necessary in every case unless specifically found otherwise. Remaining changes to the interim rule involved converting all references to a presentence report to a post-sentence report and a renumbering of the subsections.

This final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2.

Administrative practice and procedure, Prisoners, Probation and parole.

PART 2—[AMENDED]

Accordingly, 28 CFR Part 2 is amended as follows:

1. The authority citation for Part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. The interim rule amending 28 CFR Part 2 by adding § 2.62 which was published at 54 FR 11689–11691 on March 21, 1989, is adopted as a final rule as revised. The revised § 2.62 reads as follows:

§ 2.62 Prisoners transferred pursuant to treaty.

(a) *Applicability and jurisdiction.* Prisoners transferred by treaty who committed their offenses on or after November 1, 1987 shall receive a special transferee hearing pursuant to the procedures found in this section and 18 U.S.C. 4106(A), as amended by the Anti-Drug Abuse Act of 1988. Prisoners transferred by treaty who committed their offenses prior to November 1, 1987, are immediately eligible for parole and shall recieve a parole hearing pursuant to procedures found at 28 CFR 2.13. The Commission's jurisdiction in either case is the limit of the sentence imposed by the foreign court, and the Commission shall treat the foreign conviction as though it were a lawful conviction in a United States District Court.

(b) *Interview upon entry.* Following the transferee's entry into the United States, the transferee shall, without unnecessary delay, be interviewed by a United States Probation Officer who shall inform the transferee of his rights under this regulation. The transferee shall be given the appropriate forms for appointment of counsel pursuant to 18 U.S.C. 3006(A) at the interview if appointment of counsel is requested.

(c) *Postsentence report.* A postsentence investigation report, which shall include an estimated sentencing classification and sentencing guideline range, shall be prepared by the probation office in the district of entry (or the transferee's home district). Disclosure of the postsentence report shall be made as soon as the report is completed, by delivery of a copy of the report to the transferee and his counsel (in any). Confidential material contained in the postsentence investigation report may be withheld pursuant to the procedures of 18 U.S.C. 4208(c).

(d) *Opportunity to object.* The transferee (or counsel) shall have thirty calendar days after disclosure of the postsentence report to transmit any objections to the report he may have, in writing, to the probation officer. The probation officer shall transmit a copy of all documents relating to any objection to the postsentence report, including any addendum to the report, to the Commission prior to the hearing. The Commission shall reveiw the report and may request that a corrected report or additional information be submitted by the probation officer. Any disputes of fact or disputes concerning the application of the sentencing guidelines that may remain following the probation officer's preparation of the addendum (if any) to the postsentence report shall be resolved at the Special Transferree Hearing.

(e) *Special transferee hearing.* A special transferee hearing shall be conducted within 60 days from the transferee's entry into the United States, or as soon as practicable following completion of the postsentence investigation report along with any corrections or addendum to that report and appointment of counsel for an indigent transferee.

(f) *Representation.* The transferee shall have the opportunity to be represented by counsel (retained by the transferee or, if financially unable to retain counsel, counsel shall be provided pursuant to 18 U.S.C. 3006(A)), at all stages of the proceeding set forth in this section. The transferee may select a non-lawyer representative as provided in 28 CFR 2.61.

(g) *Decisionmaking criteria.* The Commission shall apply the guidelines promulgated by the United States Sentencing Commission, as though the transferee were convicted in a United States District Court of a statutory offense most nearly similar to the offense of which the transferee was convicted in the foreign court.

(h) *Hearing procedures.* Special transferee hearings shall be conducted by a panel of examiners. Each special transferee hearing shall be recorded by a certified court reporter and the proceedings shall be transcribed if the determination of the Commission is appealed. The following procedures shall apply at a special transferee proceeding, unless waived by the transferee:

(1) The examiner panel shall inquire whether the transferee and his counsel have had an opportunity to read and discuss the postsentence investigation report and whether the transferee is prepared to go forward with the hearing. If not, the transferee shall be given the opportunity to continue the hearing.

(2) The transferee shall have an opportunity to present documentary evidence and to testify on his own behalf.

(3) Oral testimony of interested parties may be taken with prior advance permission of the Regional Commissioner.

(4) The transferee and his counsel shall be afforded the opportunity to comment upon the guideline estimate contained in the postsentence investigation report (and the addendum, if any), and to present arguments and information relating to the Commission's final guideline determination and decision.

(5) Disputes of material fact shall be resolved by a preponderance of the evidence, with written recommended findings by the panel unless the panel determines, on the record, not to take the controverted matter into account.

(6) The transferee shall be notified of the panel's recommended findings of fact, and its recommended determination and reasons therefore, at the conclusion of the hearing.

(i) *Final decision.* The Commission shall render a decision as soon as practicable and without unnecessary delay. The decision shall set a release date and a period and conditions of supervised release. The Commission may, in its discretion, defer a decision and order a rehearing, provided that a statement of the reason(s) for ordering a rehearing is issued to the transferee and his counsel (if any). The Commission's final decision shall be supported by a statement of reasons explaining:

(1) The similar offense selected as the basis for the Commission's decision;

(2) The basis for the guideline range applied;

(3) The reason for making a release determination at a particular point within range if the range exceeds twenty-four months, or the special reason for departing from the range if applicable. If the release determination is within a range that does not exceed twenty-four months, the Commission need not identify the reason for making its determination at a particular point within that range.

(4) The conditions of any period of supervised release imposed. The Commission presumes that the recommended conditions of supervised release provided in section 5B1.4(a) of the sentencing guidelines are reasonably necessary in every case, and those conditions shall be imposed unless the Commission finds otherwise. The Commission may also impose special conditions of supervised release whenever deemed reasonably necessary in an individual case.

(j) *Appeal.* The transferee shall be advised of his right to appeal the decision of the Commission to the United States Court of Appeals that has jurisdiction over the district in which the transferee is confined.

Dated: June 13, 1989.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 89-15469 Filed 6-29-89; 8:45 am]

BILLING CODE 4410-31-M

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28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners; Interim Procedures for Prisoners Serving Aggregated U.S. and D.C. Code Sentences

AGENCY: United States Parole Commission.

ACTION: Interim rule with request for public comment.

SUMMARY: The U.S. Parole Commission is publishing an interim rule establishing parole procedures for prisoners serving aggregated U.S. and D.C. Code sentences. These procedures apply to both parole and parole revocation decisions. The purpose of this interim rule is to achieve compliance with federal court decisions entitling D.C. Code Offenders housed in federal prisons to the benefit of D.C. parole laws and regulations. In the case of D.C. Code offenders who are serving both U.S. and D.C. Code sentences, the Commission has devised a policy to reconcile both sets of parole statutes and regulations within the framework of the aggregated sentence. The Commission is requesting public comment on the procedure set forth in the interim rule.

DATES: Effective August 1, 1989. Public comment must be received by September 1, 1989.

ADDRESSES: Comments should be sent to the Office of the General Counsel, U.S. Parole Commission, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815, Attn: Michael A. Stover, General Counsel.

FOR FURTHER INFORMATION CONTACT: Richard Preston, Staff Attorney, at (301) 492–5959.

SUPPLEMENTARY INFORMATION: Under 24 D.C. Code 209, the U.S. Parole Commission has jurisdiction over all District of Columbia Code offenders who are housed in federal prisons. This includes prisoners who are serving D.C. Code sentences that have been aggregated with U.S. Code sentences.

In recent years, numerous court decisions have required the U.S. Parole Commission to apply District of Columbia parole laws and regulations to D.C. Code offenders. These courts appear to have assumed that D.C. Code offenders who are serving simultaneous U.S. and D.C. Code sentences are at least entitled to the partial benefit of D.C. parole laws and regulations. See *Johnson* v. *Williford*, 821 F.2d 1279 (7th Cir. 1987). These offenders also make up a subclass in the class-action litigation of *Cosgrove* v. *Thornburgh*, Civil Action No. 80–5016 NHJ, in the U.S. District Court for the District of Columbia.

For this category of prisoner, the U.S. Bureau of Prisons is obliged to combine all sentences, and to take a "full aggregation approach" in calculating the parole eligibility date and the maximum term. *Chatman-Bey* v. *Meese*, 797 F.2d 987 (D.C. Cir. 1986). Therefore, the task for the Commission has been to devise a policy by which federal parole laws and regulations can be applied to the federal crimes and sentences, and D.C. parole laws and regulations can be applied to the D.C. crimes and sentences, all within the framework of a single aggregate sentence.

The policy set forth below requires separate accountability for each set of crimes the prisoner has committed (D.C. and U.S. Code).

The federal time is established according to the federal parole guidelines at 28 CFR 2.20. The federal time is always served first regardless of the actual sentence structure, because only the federal parole guidelines permit the Commission to establish at the initial hearing a definite number of months for the prisoner to serve. The D.C. parole guidelines require a decision to be made, either at the initial hearing or at a subsequent rehearing, to grant or deny parole. This decision is made pursuant to a point score system.

The minimum term of a D.C. Code sentence is always treated by the D.C. Board as the basic offense severity component of the D.C. parole guidelines. The D.C. Code minimum term is therefore considered by the Commission as establishing the guideline measure of offense severity for the D.C. Code crimes. This is referred to as the "D.C. minimum time." The prisoner must serve that time, to account for his D.C. crimes.

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before receiving the parole decision described above.

In determining how to combine the D.C. minimum time with the federal time, the Commission will employ the Multiple Separate Offenses Table in its own guidelines at 28 CFR 2.20. This table contains a graduated series of increases in punishment for multiple offenses. In this way, accountability for the seriousness of the D.C. crimes is not automatically concurrent or consecutive with the time required by the federal guidelines for the federal crimes, but may be concurrent, or partly consecutive, according to the formula established by the Multiple Separate Offenses Table. (In extremely aggravated cases, the Commission will order consecutive service.)

To use the table requires the Commission to convert the D.C. minimum time to an equivalent federal offense severity rating. This should not be construed as a substitution of federal punishment for the D.C. crime, because it is the D.C. minimum time, not federal guideline policies, that directly determines the offense severity rating used. This offense severity rating corresponds to the range of time on the federal guidelines that equals the minimum term of the D.C. Code sentence. This method gives the Commission a common denominator for application of the Multiple Separate Offenses Table to both U.S. and D.C. Code crimes.

If the inclusion of the equivalent offense severity rating for the D.C. Code offenses results in a higher range of time than the guideline range for the U.S. Code offenses, the prisoner must serve the difference between these guideline ranges, over and above the federal time. (This difference can never exceed the D.C. minimum time itself.)

When the offender has completed the time required to satisfy the federal guidelines, and has completed any additional time required by the table to satisfy basic offense accountability for his D.C. Code offense(s), the Commission then applies the point score of the D.C. Board of Parole to determine the prisoner's suitability for parole. This may be at, or after, the eligibility date of the aggregate sentence. A prisoner is not entitled to the benefit of the D.C. point score upon completion of the aggregate minimum term, because such a policy would require the Commission to ignore the guidelines applicable to the U.S. Code offenses.

Finally, the interim regulation set forth below continues to be subject to litigation in *Cosgrove* v. *Thornburgh*, and may be changed.

Implementation: The interim regulation will be applied to all prisoners serving aggregated U.S. and D.C. Code sentences as they come up for hearings or administrative appeals in the normal course of case processing. The Commission has voted to ensure that a prisoner receives a review hearing at eligibility on the aggregate sentence, even if previously given an initial parole hearing and continued to a date beyond his eligibility for the application of the D.C. point score.

The Commission welcomes public comment on the interim rule and will consider all timely-received comment prior to promulgating a final rule.

This interim rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

PART 2—[AMENDED]

Accordingly, 28 CFR Part 2 is amended as follows:

The authority citation for Part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. A new § 2.66 is added as follows:

§ 2.66 Paroling policy for prisoners serving aggregate U.S. and D.C. Code sentences.

(a) *Applicability.* This regulation applies to all prisoners serving any combination of U.S. and D.C. Code sentences that have been aggregated by the U.S. Bureau of Prisons. Such individuals are considered for parole on the basis of a single parole eligibility and mandatory release date on the aggregate sentence. Pursuant to § 2.5, every decision made by the Commission, including the grant, denial, and revocation of parole, is made on the basis of the aggregate sentence.

(b) *Basic policy.* The Commission shall apply the guidelines at § 2.20 to the prisoner's U.S. Code crimes, and the guidelines of the District of Columbia Board of Parole to the prisoner's D.C. Code crimes.

(c) *Determining the federal guideline range.* The Commission shall first consider the U.S. Code offenses pursuant to the guidelines at § 2.20, and shall determine the appropriate number of months to be served (the prisoner's "federal time"). The Commission shall deem the "federal time" to have commenced with the prisoner's initial commitment on the current aggregate sentence, including jail time.

(d) *Decisions above the federal guideline range.* The "federal time" thus determined may be a decision within, below or above the federal guidelines, but it shall not exceed the limit of the U.S. Code sentence, *i.e.*, the number of months that would be required by the statutory release date if the U.S. Code sentence is less than five years, or the two-thirds date if the U.S. Code sentence is five years or more. The D.C. Code criminal behavior may not be used as an aggravating offense factor, but may be used as predictive basis for exceeding the federal guideline range to account for the actual degree and/or seriousness of risk.

(e) *Determining the D.C. minimum time.* The Commission shall then determine the D.C. "minimum time," which shall be a period of time equal to the aggregate minimum term of the prisoner's D.C. Code sentences. This determination is made on the premise that the minimum term of the prisoner's D.C. Code sentence is the offense severity component of the applicable guidelines of the D.C. Board of Parole.

(f) *Combining the federal time and the D.C. minimum time.* The "federal time" will be combined with the D.C. "minimum time" in the following manner:

(1) The Commission will convert the D.C. minimum time into an equivalent offense severity rating on the federal guidelines at § 2.20. The Commission shall do so by referring to the guideline ranges that are applicable to the prisoner's salient factor score, and shall select the offense severity rating that corresponds to the highest guideline range that would be satisfied by service of the D.C. minimum time. For example, a D.C. minimum term of five years for a prisoner within a salient factor score of 5 would be converted to a Category Five offense severity rating because it falls within the guideline range of 48–60 months under the "good" parole prognosis category. If the D.C. minimum time is 40 months, it would be converted to a Category Four offense severity rating because the highest range it would satisfy would be 28–34 months.

(2) The Commission shall then determine an aggregate guideline range by reference to the Multiple Separate Offenses Table at § 2.20 (excluding any U.S. Code offenses to which the Table does not apply, *e.g.*, escape, failure to appear, and prison misconduct).

(3) If the resulting aggregate guideline range is the same as the basic federal guideline range (excluding escape, failure to appear, and prison misconduct), the Commission shall permit the federal time to be concurrent with the D.C. minimum time. The Commission shall then schedule a D.C. parole hearing to be held four months prior to completion of the federal time, or four months before the prisoner is eligible on the aggregate sentence, whichever is late. At that hearing, the Commission shall apply the point score system of the guidelines of the D.C. Board of Parole. This result shall be required if the D.C. Code conviction is for the same offense behavior as the U.S. Code conviction.

(4) If the aggregate guideline range is greater than the basic federal guideline range, the Commission shall require the prisoner to serve a number of months beyond the federal time that is equal to the difference between the minimum of the basic federal guideline range and the minimum of the aggregate guideline range. The Commission shall then schedule a D.C. parole hearing to be held four months prior to the date on which this additional period of time is completed (the "D.C. guideline date"), or the eligibility date, if later. At that hearing, the Commission shall apply the point score system of the guidelines of the D.C. Board of Parole.

(5) In no case shall the additional time derived from the Multiple Separate Offenses Table exceed the actual length of the D.C. minimum time.

(6) When appropriate, the Commission may exercise discretion to require the prisoner to serve the D.C. minimum time consecutively to the federal time in the case of an extremely aggravated D.C. Code offense behavior (*e.g.*, murder, rape, kidnapping, and the equivalent).

(g) *Granting parole.* Once the Commission applies the point score system of the District of Columbia parole regulations to determine whether the prisoner is suitable for release, the prisoner shall be presumed to have satisfied basic accountability for the D.C. Code offense or offenses, but the Commission may take into consideration any unusual circumstances pursuant to 24 D.C.M.R. 204.22. Such circumstances shall not be considerations that are relevant exclusively to accountability for the U.S. Code offenses or that have been adequately accounted for in a decision to exceed the federal guideline range.

(h) *Hearings.* The Commission shall, in accordance with § 2.12 of these regulations, conduct an initial hearing to determine the federal time and to determine when the D.C. minimum time shall be satisfied. This portion of the decision shall be subject to appeal pursuant to § 2.26 of these regulations. A D.C. parole hearing to determine the prisoner's suitability for parole under the D.C. guidelines shall be conducted as ordered at the initial hearing. Prior to the D.C. parole hearing, statutory interim hearings shall be conducted pursuant to § 2.14 of these regulations, including an interim hearing at eligibility on the aggregate sentence if no other interim hearing would be held. After the D.C. parole hearing, rehearings shall be conducted pursuant to the applicable schedule in the guidelines of the D.C. Board of Parole, if release on parole is not granted.

(i) *Revocation decisions.* Violations of parole are violations on the aggregate sentence, and a parole violation warrant is therefore issued under the authority of the aggregate sentence. With regard to the reparole decision, the Commission shall follow the guidelines at § 2.21 of these rules, but rehearings shall be scheduled according to the guidelines of the D.C. Board of Parole.

(j) *Forfeiture of street time.* All time on parole shall be forfeited if required under § 2.52(c) of these regulations. If not, the Commission shall divide the total time on parole (street time) according to the proportional relationship of the D.C. sentence to the U.S. sentence, and shall order the forfeiture of the portion corresponding to the D.C. sentence pursuant to D.C. Code 24–206(a). For example, if the prisoner is serving a two-year D.C. Code sentence and a three-year U.S. Code sentence, the D.C. sentence is two-fifths, or 40 percent, of the total aggregate sentence. If he was on parole 100 days, he therefore forfeits 40 days. "Street time" is measured from the date of release on parole to the execution of the warrant or confinement on other charges.

Dated: June 9, 1989.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 89–15406 Filed 6–29–89; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners; Drug Testing of Federal Parolees

AGENCY: United States Parole Commission.

ACTION: Proposed rule.

SUMMARY: The Parole Commission is proposing an amendment to the standard conditions of parole at 28 CFR 2.40, to provide that all parolees shall be subject to drug testing whenever ordered by a U.S. Probation Officer. Currently, persons on parole supervision are subject to drug testing only if the Commission has imposed a special drug aftercare condition. The Commission believes that drug abuse is so pervasive that all released prisoners under supervision should be subject to an immediate drug test whenever ordered by a U.S. Probation Officer.

DATES: Public comment must be received by August 29, 1989.

ADDRESSES: Comments should be addressed to: Richard K. Preston, General Counsel's Office, United States Parole Commission, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

FOR FURTHER INFORMATION CONTACT: Richard K. Preston, Attorney, Telephone (301) 492–5959.

SUPPLEMENTARY INFORMATION: Drug abuse among released criminal offenders is not limited to those with prior drug histories whose need for drug treatment and testing is clear. The Commission believes that a parolee who is subject to being tested for illicit drug use will more likely be deterred from illicit drug use than would be the case if he were not so subject. The potential for being drug tested will have a positive effect on the parolee's readjustment to the community, as well as diminishing the demand for illicit drugs. Intervention for sanction and treatment purposes is more possible if the probation officer has the authority to order an immediate drug test.

In February of 1989, the Commission formally adopted a "zero-tolerance" policy, by which parolees who use illegal drugs will be subject to some appropriate sanction, and their violations will not be overlooked. This policy, as well as the rule change proposed herein, are in accordance with the President's comprehensive program to combat crime, which includes drug testing as a mandatory condition of federal probation, parole or supervised release.

Whether or not this proposed legislation is enacted, the Commission believes that it presently has the authority to make federal parolees subject to drug testing as a mandatory condition of release, and that such a condition should be imposed.

This proposed rule change will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

The Proposed Amendment

Accordingly, the Parole Commission proposes to amend Part 2 of 28 CFR as follows:

PART 2—[AMENDED]

1. The authority citation for 28 CFR Part 2 continues to read:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. 28 CFR 2.40(a) is amended to add a new paragraph (14) to read as follows:

§ 2.40 Conditions of release.

(a) * * *

(14) The parolee shall submit to a drug test whenever ordered by his Probation Officer.

Date: June 15, 1989.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 89–15470 Filed 6–29–89; 8:45 am]

BILLING CODE 4410–01–M

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28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners; Interim Hearings for Youth Corrections Act Prisoners

AGENCY: United States Parole Commission, Justice.

ACTION: Proposed rule and request for comments.

SUMMARY: The Parole Commission proposes to amend its regulation at 28 CFR 2.65(c)(2) regarding the timing of interim hearings for prisoners sentenced pursuant to the repealed Youth Corrections Act (formerly 18 U.S.C. 5005 *et seq.*). The proposed modification would implement the provisions of a court order in the class action case of *Watts* v. *Belaski*, Civil Action No. 78–M–495 (D. Colo.), which authorizes the Commission to schedule YCA prisoners for interim hearings at intervals beyond the interval of six months provided by the Commission's present regulation. The court order allows the Commission to schedule an interim hearing every nine months for a prisoner sentenced to a YCA term of less than seven years, and every twelve months for a prisoner sentenced to a YCA term of seven years or more.

DATES: Public comment must be received by July 31, 1989.

ADDRESSES: Comments should be addressed to: Rockne Chickinell, Deputy General Counsel, Office of General Counsel, U.S. Parole Commission, 5550 Friendship Boulevard, Chevy Chase, Maryland, 20815, Telephone (301) 492–5959.

FOR FURTHER INFORMATION CONTACT: Rockne Chickinell, Office of General Counsel, U.S. Parole Commission, Telephone (301) 492–5959.

SUPPLEMENTARY INFORMATION: In January, 1989, the Parole Commission began implementing nationwide revised procedures for making parole determinations for prisoners sentenced under the repealed Youth Corrections Act. See 28 CFR 2.65, added in 53 FR 49853–56 (December 9, 1988). These procedures were initially developed by the Commission to satisfy court orders in the class action litigation of *Watts* v. *Belaski*, Civil Action No. 78–M–495 (D. Colo.). Section 2.65(c)(2) now provides that YCA prisoners should receive an interim hearing every six months. Prior to the issuance of the court order requiring interim hearings on this schedule, the Commission had contended that the YCA did not require such frequent parole hearings, and that it could properly evaluate a YCA prisoner's response to treatment and other new information in his case using a hearing schedule with an interval of more than six months. For comparison, the statute at 18 U.S.C. 4208(h) requires interim hearings every 18 or 24 months, depending on the length of the prisoner's sentence.

In December, 1988, the district court in Colorado issued an order allowing the Parole Commission to schedule interim hearings every nine months for a prisoner who has a YCA sentence of less than seven years (those sentenced under former 18 U.S.C. 5010(b)), and a hearing every twelve months for a prisoner who was sentenced under the YCA to a term of seven years or more

(those sentenced under former 18 U.S.C. 5010(c)). This order also permits the Commission to refrain from scheduling any further hearing for a YCA prisoner who is continued to the expiration of his sentence and who has less than twelve months remaining to be served prior to his release or prior to his scheduled transfer to a community treatment center.

Therefore, the Commission is proposing to adopt a rule which implements the order of the district court noted above. This proposed rule change will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Lists of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

PART 2—[AMENDED]

Accordingly, the Parole Commission proposes to amend Part 2 of 28 CFR as follows:

1. The authority citation for Part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. Section 2.65 is amended by revising paragraph (c)(2) to read as follows:

§ 2.65 Youth Corrections Act.

* * * * * *

(c) *Parole hearings and progress reports.* * * *

(2) An interim hearing must be scheduled for an inmate every nine months if the inmate is serving a sentence of less than seven years. If the inmate is serving a sentence of seven years or more, the interim hearing must be scheduled every twelve months. If the inmate has been continued to the expiration of his sentence, and he has less than twelve months remaining to be served prior to his release or his transfer to a community treatment center, no further hearing is required. In addition, within 60 days of receipt of any special progress report from the warden recommending parole, the prisoner shall be scheduled for a special interim hearing, unless the recommendation can be timely considered at a regularly scheduled interim hearing. An institutional staff member who has personal knowledge of the case shall be present to assist the examiners in their evaluation of the prisoner's conduct, program performance, and response to treatment.

* * * * * *

Dated: June 15, 1989.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 89–15471 Filed 6–29–89; 8:45 am]

BILLING CODE 4410–01–M

federal register

Friday
June 30, 1989

Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Flight Restrictions in the Vicinity of Prince William Sound, Alaska; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 25857; Special Federal Aviation Regulation (SFAR) No. 55–1]

Flight Restrictions in the Vicinity of Prince William Sound, AK

AGENCY: Federal Aviation Administration (FAA), Department of Transportation, (DOT).

ACTION: Final rule; amendment.

SUMMARY: This notice amends the procedures for operation of aircraft within designated airspace in the vicinity of Prince William Sound, Alaska, and other areas affected by the oil spill from the oil tanker Exxon Valdez. Specifically, this amendment: (1) Allows instrument flight rules (IFR) operations which were previously excluded; (2) allows the designation of an air traffic control (ATC) facility as a responsible agency; (3) relaxes the conditions under which operations within a designated area are conducted; and (4) extends the expiration date of the rule to December 31, 1989. The changes are necessary due to increased numbers of aircraft, involved in cleanup and support activities, operating in the vicinity of Valdez Airport.

DATE: June 30, 1989.

Expiration date: Special Federal Aviation Regulation No. 55–1 expires on December 31, 1989.

FOR FURTHER INFORMATION CONTACT: Richard K. Kagehiro, Air Traffic Rules Branch, ATO–230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Availability of Document

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the special rule number of this document.

Background

On March 24, 1989, the oil tanker Exxon Valdez went aground approximately 25 miles south of Valdez, Alaska, spilling over ten million gallons of crude oil into the Prince William Sound. The magnitude of the ensuing cleanup effort and the resultant high concentration of aircraft operating within a limited amount of airspace created an emergency condition which required the establishment of special rules. Accordingly, on March 30, 1989, the FAA issued SFAR No. 55 to: (1) Protect persons and property involved in relief-cleanup activities on the surface and in the air; (2) protect nonparticipating aircraft from potential oil fires and chemical contamination; (3) provide a safe environment for the operation of emergency support aircraft; and (4) prevent congestion of sightseeing and other aircraft over the oil-contaminated areas.

Extensive aircraft operations to and from cleanup areas in the Prince William Sound has resulted in traffic congestion along the arrival and departure routings to Valdez Airport. A special flight rules area encompassing the airspace around the Valdez Airport, Port Valdez, and the Valdez Arm is required so that the FAA can properly manage and control the movement of traffic through this highly utilized and congested air corridor. The special flight rules area must accommodate standard instrument arrival and departure routings through the airspace around Valdez Airport. Additionally, an appropriate agency must be designated to monitor aircraft operations in the Valdez Arm as well as near the airport. The facility that can best satisfy these requirements is Valdez Airport Traffic Control Tower.

However, Section 4c(3) of SFAR No. 55 requires all aircraft operations within a designated special flight rules area to be conducted under visual flight rules (VFR) at all times. Such a restriction is incompatible with existing IFR procedures into/out of Valdez Airport utilized by aircraft which transit the affected airspace. Additionally, Section 3 of SFAR No. 55 states that the agency responsible for monitoring aircraft operations within the special flight rules area may not be an ATC facility. This restriction does not allow the FAA to designate Valdez Tower, an ATC facility, as a responsible agency. Accordingly, SFAR No. 55 is being amended to provide the FAA with the flexibility to designate the appropriate facility as the responsible agency over the airspace affected by the emergency cleanup efforts.

Since the progress of the cleanup efforts has been slower than originally anticipated, those efforts are expected to continue for another one to two years. However, based on the information available at this time, a reduction in aircraft operations involved in the cleanup activities is expected at the end of this year. Accordingly, this amendment extends the expiration date of this rule to December 31, 1989.

Effective Date of Final Rule

Since the emergency cleanup efforts in the area of Prince William Sound, Alaska, are expected to continue at the present high level of activity through the end of this year, immediate action is required to maintain safety of flight until the emergency situation abates. In order to avoid any lapse in the effectiveness of flight rules essential to safety in the Valdez area, it is essential that the amendment take effect at the earliest possible time. Because the emergency conditions in the Valdez area still exist and still involve a potential hazard to both participants and nonparticipants in the relief/cleanup activities, immediate action is required to maintain safety of flight until the emergency situation abates. Accordingly, I find that the notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest. For the same reasons, I find that good cause exists for making this rule effective immediately upon issuance.

The FAA has determined that this action is not a major rule under Executive Order 12291, is not considered significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034: February 26, 1979), and does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal.

Federalism Determination

The amendment set forth herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this amendment will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 14 CFR Part 91

Aviation safety, Visual flight rules.

The Amendment

For the reasons set forth above, the Federal Aviation Administration is amending 14 CFR 91 as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

The authority citation for Part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 (as amended by Pub. L. 100–223), 1422 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 *et seq.*; E.O. 11514; Pub. L. 100–202; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. Special Federal Aviation Regulation (SFAR) No. 55 is amended by redesignating SFAR No. 55 as SFAR No. 55–1 and by revising the language of items 3 through 5 of SFAR No. 55–1 to read as follows:

SFAR No. 55–1—Flight Restrictions in the Vicinity of Prince William Sound, Alaska

3. *Definition.* For the purposes of this special rule:

"Responsible agency" means the U.S. Coast Guard, Valdez, Alaska, or other office or person designated by the Director, Air Traffic Operations Service, Federal Aviation Administration, as responsible for approval and monitoring of aircraft operations in an area designated by NOTAM under this special rule.

4. *Operating procedures.*

A. No person may operate an aircraft contrary to the requirements and terms of any Notice to Airmen issued under this special rule by the Director, Air Traffic Operations Service or his designee, unless otherwise authorized by the responsible agency.

B. No person may operate an aircraft in any area designated by NOTAM without receiving prior approval from the responsible agency, if the NOTAM establishes a prior approval requirement for that area.

C. No person may operate an aircraft within any area designated by NOTAM unless all of the following conditions are met:

(1) The operator complies with all instructions and special identification procedures issued by the responsible agency, including by NOTAM or by radio through the designated facility;

(2) The operator establishes and maintains two-way radio communications with the Coast Guard Cutter Rush or other communications facility designated by the responsible agency.

D. Operating procedures to and from established landing areas within the designated areas in support of communities (such as Ellamar, Tatitlek, and Perry Island) and/or existing commercial interests will be provided by the responsible agency.

5. *Expiration.* This special rule expires December 31, 1989.

Issued in Washington, DC, on June 27, 1989.

Robert E. Whittington,

Acting Administrator.

[FR Doc. 89–15561 Filed 6–29–89; 8:45 am]

BILLING CODE 4910–13–M

federal register

Friday
June 30, 1989

Part VII

Department of the Treasury

Fiscal Service

Regulations Governing Agencies for Issue of United States Savings Bonds and Payment By Banks and other Financial Institutions of United States Savings Bonds and Savings Notes (Freedom Shares); Notice

DEPARTMENT OF THE TREASURY

Fiscal Service

[Department of the Treasury Circulars, Public Debt Series No. 4–67 and Public Debt Series No. 750]

Regulations Governing Agencies for Issue of United States Savings Bonds and Payments By Banks and Other Financial Institutions of United States Savings Bonds and Savings Notes (Freedom Shares)

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Notice, amending fee schedules.

SUMMARY: This Notice sets forth new due dates in the schedules for the payment of fees by the Bureau of the Public Debt and Federal Reserve Banks, as fiscal agents of the United States, to issuing and paying agents of United States Savings Bonds and/or United States Savings Notes (Freedom Shares). These changes are applicable to fees paid on or after the effective date of this notice.

EFFECTIVE DATE: July 1, 1989.

FOR FURTHER INFORMATION CONTACT: Dean Adams, Assistant Chief Counsel, Bureau of the Public Debt, Parkersburg, West Virginia 26106–1328, (304) 420–6505.

SUPPLEMENTARY INFORMATION: 31 CFR 317.6(b) provides that each eligible issuing agent will be paid a fee for each savings bond issued and that a schedule of fees will be separately published in the **Federal Register**. The last schedule was published August 25, 1986.

31 CFR 321.23(a) provides that each qualified paying agent will be paid a fee for each security redeemed and that a payment schedule will also be separately published in the **Federal Register**. This schedule was last published September 26, 1988.

These fee schedules are referenced in all issuing and paying agent agreements.

As recent amendments to the Prompt Payment Act (31 U.S.C. 3901, *et. seq.*) have eliminated the 15-day grace period for late payments by a governmental agency without incurring an interest penalty, the Bureau needs to revise its fee payment schedules for issuing and paying agents. Based on a review of the timing of issue and redemption transmittals through Federal Reserve Banks, the Bureau has determined that fee payments can be made within fifty (50) days after the close of each quarter.

As Federal Reserve Banks now process and pay agents for redeemed securities through the EZ CLEAR system and the previous fee schedule was silent as to the due date for payments by the Federal Reserve Banks to paying agents, the Bureau has determined that such payments through the EZ CLEAR system in separately sorted cash letters can be made within forty-five (45) days after the close of each month.

Procedural Requirements

This notice is not rulemaking document, therefore, Executive Order 12291 does not apply and a regulatory impact analysis is not required.

The notice and public procedures of the Administrative Procedures Act are inapplicable, pursuant to 5 U.S.C. 553(a)(2). As no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et. seq.*) do not apply.

Dated: June 22, 1989.

Gerald Murphy,

Fiscal Assistant Secretary.

Accordingly, pursuant to the authority of Department of the Treasury Circular, Public Debt Series No. 4–67, First Revision (31 CFR Part 317), and Department of the Treasury Circular No. 750, Fourth Revision (31 CFR Part 321), the following notice is hereby published:

Notice of Payment Schedules

The fees due each issuing and paying agent for all savings bond issues and redeemed securities transmitted to the Bureau of the Public Debt through the Fiscal Agency Department of a Federal Reserve Bank will continue to be calculated as of the close of each calendar quarter. Payment will be made by the Bureau within fifty (50) days after the close of each quarter. The date of the check or electronic payment shall be deemed to be the payment date.

The fees due each paying agent for all redeemed securities transmitted to the Check Department of a Federal Reserve Bank in separately sorted cash letters will be calculated as of the close of each calendar month. Payment will be made by the Federal Reserve Bank within forty-five (45) days after the close of the month. The date on which the reserve account of the paying agent or a correspondent institution is credited with the payment shall be deemed to be the payment date.

[FR Doc. 89–15654 Filed 6–30–89; 8:45 am]

BILLING CODE 4810–40–M

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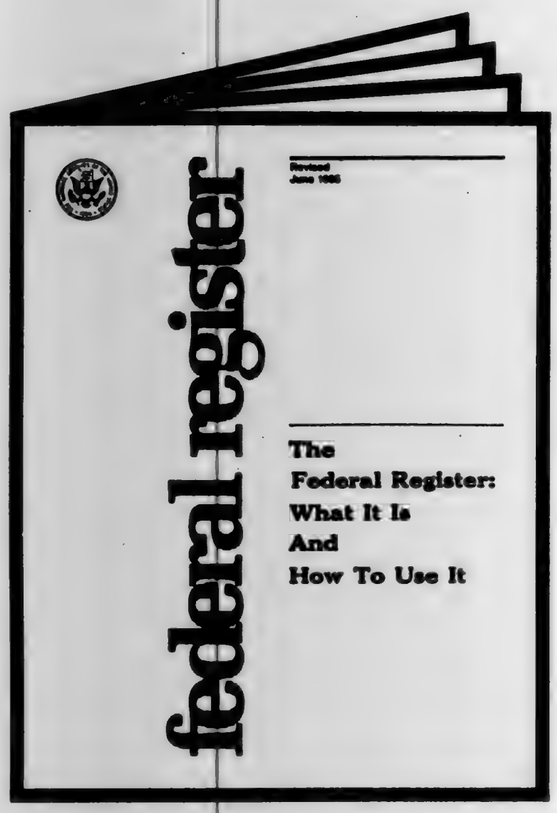
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List of CFR Sections Affected

March 1989

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Titles 1-16
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Parallel Table of Authorities and Rules



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Titles 1-16—as of Jan. 1
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PARALLEL TABLE OF AUTHORITIES AND RULES

Following Title 50 is an update to Table I—Parallel Table of Authorities and Rules found in the CFR Index and Finding Aids. This table contains authority citations added to or removed from Table I as a result of documents published in the Federal Register since January 1, 1989.

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A table is included at the end of this publication which identifies the inclusive page numbers and corresponding Federal Register issue dates for the period covered.

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INQUIRIES AND SUGGESTIONS

LaJuana D. Caldwell was Chief Editor of the LSA. The LSA was prepared under the direction of Richard L. Claypoole, assisted by Maxine L. Hill. INQUIRIES, telephone 202-523-5227.

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617.14 (a)(2) revised ... 32349
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631 Revised; interim ... 41589
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639.11 Amended; interim ... 13167
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654.4 (b) (1) and (2) amended ... 23347

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654.5 (b) revised 23347
654.11—654.14 (Subpart B) Authority citation added; section authority citations removed 23348

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802.105 (b) added 16519
802.202 Heading revised; (d) and (e) added 16519
802.301 (c) added 16519

Chapter VIII—Joint Board for the Enrollment of Actuaries

901.11 (a) amended; (d) through (n) added 34484

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1.24 (a)(6) (i), (ii), and (iii) amended 9033
1.96 (a)(3) amended 9033
2.19 Amended 9034
2.125 (d), (g), (h) (1) and (2) introductory text, and (i) amended 9034
5 Authority citation revised 26049
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5.10 (a)(29) added 26049
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5.22 (a)(7)(vi) removed; (a)(12) redesignated as (a)(13); (a)(7) (i) through (v), (9)(ii) and new (a)(13) (v) and (vi) revised 8315
(a)(12)(iv) corrected 11866
5.23 (b) and (e) revised 8315
5.24 Added 26049
5.25 (a) (1) and (3) revised; (a)(6) added 8316
5.26 Heading, (b), (c), and (d) revised; (g) redesignated as (h); new (g) added 8316
5.30 (a)(2) and (c)(3) revised; (a) (5) through (7) and (c) (6) through (9) redesignated as (a) (6) through (8) and (c) (7) through (10); new (a)(5) and (c)(6) added 8316
(c) introductory text amended 9034
5.31 (e)(2) amended; (f)(6) removed; (f)(7) added 6884
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5.35 (a)(1) revised 22293
5.37 (a)(1) revised; (a)(5) redesignated as (a)(6); new (a)(5) added 8317
5.44 (a)(1)(i), (ii), (b)(1) (i) through (iv), (c) (1) and (2) revised; (a)(1) (iii) and (iv) added; (c)(3) removed 8317

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5.45 (e) introductory text revised; (f) added 6518
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5.47 (a) (3) and (4) revised 8317
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5.53 (a)(2) and (b)(1)(ii) revised 8317
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5.55 (b) revised 8318
5.58 (c) (1) and (2) revised; (c)(3) removed 8318
5.59 (a)(2) revised 8318
5.63 (b) amended 9034
5.67 Introductory text revised 8318
5.68 Heading, (a), and (b) revised 8318
5.69 (a), (b), and (c) revised 8318
5.70 Revised 8318
5.71 (a) revised; (b) redesignated as (d); new (b) and (c) added 8318
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5.76 (a) through (d) revised 8319
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5.79 Removed 8319
5.80 Introductory text removed; (a), (b), (c)(1) (i), (ii), (2)(ii), (d) (1), and (2) revised 8319
5.82 Revised 8319
5.83 (d) (1) and (2) revised; (d)(3) added 17186
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5.93 Revised 18274
5.94 (a) and (b) revised; (c) removed 8320
5.100 Revised 11696
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10.40 (b)(1)(x) and (i)(1) amended 9034
10.45 (h) redesignated as (i); (i)(2)(i) amended; new (h) added 6886
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10.55 (c) amended 9035
10.80 (d)(2)(iii)(*b*) amended 9035
10.90 (b) (4) and (5) amended 9035
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10.206 (a) amended 9035
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193.481 Added 23387
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103.36 (b)(8) and (c) added 1167
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67 Revised 11945
68 Heading revised 49981
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10.101 (b) corrected 6520
10.156 (a) revised; (c) added 6660
15 Added 3976
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100 Removed 39734

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(c)(2)(vii) introductory text and (A) revised; (c)(2)(vii)(B) redesignated as (c)(2)(vii)(D); new (c)(2)(vii)(B) and (C) added 13176
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1.300 Added 25490
1.301 Added 25490
1.302 Added 25490
1.303 Added 25490
1.621 (a) revised; authority citation added 6521
2.6 (e) introductory text, (1) (i) and (ii) revised; (e)(1)(iii) removed 49879
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3.7 (x)(16) added 45907
3.101 Revised 5613
3.204 (c)(2)(iii) revised 5236
3.807 Introductory text, (a)(4), (b), and (d) (2) and (3) revised; cross references amended 46607
3.808 Introductory text, (c) and (d) revised; (b)(1)(iv) added 46607
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4.29 Introductory text and (a) revised; (c) and (g) amended 4281
4.30 Introductory text added; (a), (1), (2), and (3) revised 4281
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4 Appendixes B and C corrected 24938
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8.113 (e) and authority citation revised 5931
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14.514 Heading revised; (c) redesignated as (e); new (c) and (d) added 5614
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21.45 (a) and authority citation revised 50956
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21.62 (d)(4) removed 32620
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21.70 (b)(1)(i) and authority citation revised 50957

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4 Regulations at 52 FR 48023 confirmed; see regulation codified at 49 CFR 24 8912
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22 Authority citation revised 12371
22.01 (a)(4) revised 12371
23 Authority citation revised 29322
23.1 (c) added 29322
23.12 Added 29322
32 Heading and authority citation revised 4961
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32.320 (a) revised; interim 4962
32.600—32.630 (Subpart F) Added; interim 4962
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52.70 (c)(14) added 8537
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52.320 (c)(39) added 27859
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52.570 (c)(35) added 25330
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52.773 (b) amended; (h) added 33811
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52.795 (e) removed 2118
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52.1820 (c)(15) added 37759
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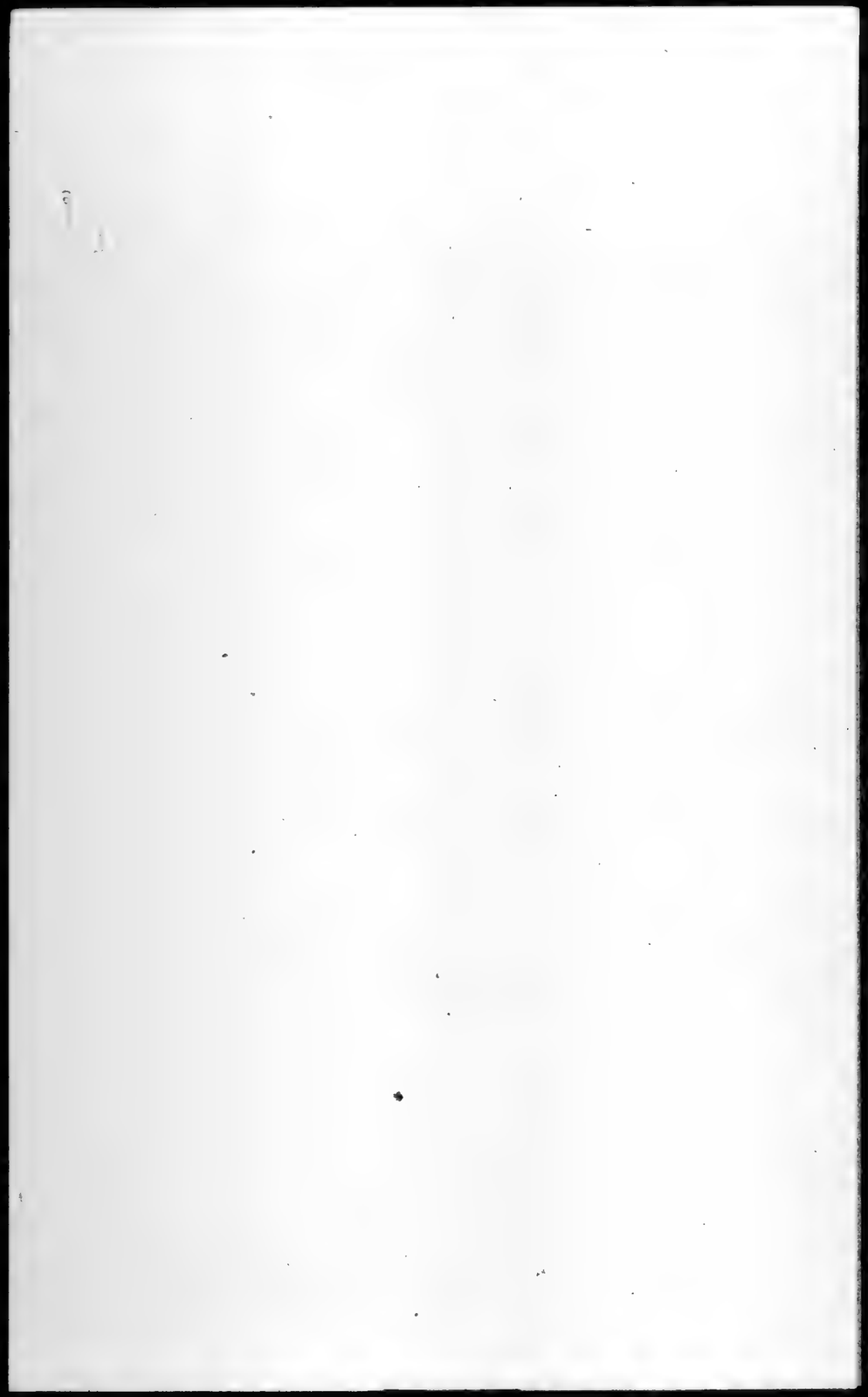
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INQUIRIES AND SUGGESTIONS

LaJuana D. Caldwell was Chief Editor of the LSA. The LSA was prepared under the direction of Richard L. Claypoole, assisted by Maxine L. Hill. INQUIRIES, telephone 202-523-5227.

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19.103 (a) revised 5613
19.152 (b) and cross-reference revised; (c) added 11375
19.159 (b) and (c) revised 11376
21.22 (a) introductory text and (2) authority citation revised 4283
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21.45 (a) and authority citation revised 50956
21.50 (b) (5) and (9) authority citation revised 50956
21.53 (e) and (f) revised 50956
21.57 (a) and (c) revised 50956
21.62 (d)(4) removed 32620
(b)(3) and authority citation revised 50956
21.70 (b)(1)(i) and authority citation revised 50957
21.74 (a), (c) (2), (3) and authority citation revised 50957
21.78 (b)(3), (b)(4) introductory text, (ii), and authority citation revised 4283
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21.148 (d) revised 4283
21.160 (c) (2), (4), and authority citation revised 50957
21.162 (b)(1) removed; (b) (2) through (5) redesignated as (b) (1) through (4); (a), (b) introductory text and heading, (2) and (c) revised 50957
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21.264 Heading, (a) introductory text, (1), (2), (3) authority citation, (b) (1), (3) authority citation, (c) introductory text, (3)(iii) authority citation, (d), and authority citation revised 4283
21.268 (b) revised 4284
21.272 (b)(1) revised; (b)(3) authority citation added 4284
21.276 (d), (e), and (g) revised 4284
21.294 (b)(2) revised; (b)(3) added 50958
21.320 (b)(3), authority citation, (d)(3), and authority citation revised 4284
21.330 (a) and authority citation revised 4284
21.334 Heading; (a), authority citation, (b) introductory text, (1), (2) authority citation, (c) introductory text, (2), (3), (4) authority citation, (d) (1), (2) and authority citation revised; (e) added 4284
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21.4007 Revised 4286
21.4136 (k)(4) added 28884
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21.4137 (h)(4) added 28884
21.4200 (g) and authority citation revised 48549
21.4201 (f)(1) amended; (f)(1)(ii) and (h) revised 4285
21.4270 (a) footnote 1 and revised 48548
21.4272 (g)(2) revised; authority citation added 13065
21.5021 (e)(5), (j)(4), (p), and (q) added 34495
21.5022 (a) revised 34495
21.5030 (c)(3) revised 34495
21.5040 (b)(1)(i) and (f)(1) revised 34496
21.5041 Revised 34496
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21.5072 (d) added 34497
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21.5103 Revised 34497
21.5131 Introductory text, (b) (1) and (2) revised 34497
21.5132 (a) revised 34498
21.5138 (b)(12) revised; (a)(3), (b) (13) and (14) added 34498
21.5145 Added 34498
21.5150 (a) revised 34499
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21.5270 (a) revised 34499
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21.5296 Added 34499
21.5820 (b) introductory text and (1)(ii) (A), (B) and (C), (2)(ii) (A), (B) and (C) revised 50521
21.5822 (b)(1) (i) and (ii) and (2) (i) and (ii) revised 50521
1.6180 (b)(2) revised 8189
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21.7500—21.7810 (Subpart L) Added 34740
25 Regulations at 52 FR 48022 confirmed; see regulation codified at 49 CFR 24 8912
36.4212 (a) revised 44401
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36.4232 (e) revised 27047
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36.4278 (e)(3) amended 34295
36.4279 (a), (b) and (d) revised 34295
36.4282 (b) amended 34296
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36.4311 (a), (b), and (c) revised 44401, 51551
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36.4319 (f) correctly revised 42950
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52.50 (c)(48) added 47689
52.70 (c)(14) added 8537
52.75 Revised 8537
52.120 (c)(54)(i) (D) and (E), (56)(i)(B), (58) through (62), (64) and (66) added 30223
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52.170 (c)(25) added 27517
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52.220 (c) (173) and (174) added 5449
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52.269 (b)(2)(ii) and (iii) added 5237
52.320 (c)(39) added 27859
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52.370 (c)(44) added 26257
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52.520 (c)(60) added 6126
52.570 (c)(35) added 25330
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52.726 (c) added 40426
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(c)(67)(i)(H) removed; (c)(71) added 50523
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52.795 (e) removed 2118
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52.870 (c)(21) added 31861
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52.879 Table revised 43692
52.884 (b) removed 15935
52.920 (c)(52) added 26256
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(c)(58) correctly designated 10214
(c)(59) added 15933
(c)(61) added 18103
52.930 (a) added 10983
52.970 (c)(45) added 36010
(c)(47) added 50961
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52.989 Removed 50961
52.990 Added 36010
52.1020 (c)(24) added 11525
52.1031 Table amended 11525
52.1034 Added 8190
52.1070 (c)(87) added 1691
52.1120 (c)(76) added 9213
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52.1167 Table amended 9213, 10148
52.1168a Added 36014
52.1170 (c)(78) added 31862
(c)(85) added 44191
(c)(86) added 9433
52.1320 (c)(64) added 31329

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(c)(67) added 13184
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52.1335 (a) table amended 31329
52.1370 (c)(23) added 48644
(c)(21) added 3780
52.1382 (c) added 48645
52.1420 (c)(36) added 7036
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52.1620 (c)(39) added 44192
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52.1670 (c)(78) added 35823
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52.1679 Table amended 9436
52.1683 (c) added 9437
52.1770 (c)(60) added 49882
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(c)(46) added 10985
52.1781 Existing text designated as (a); (b) added 9434
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52.1782 Removed 1934
52.1820 (c)(15) added 37759
(c)(16) added 45764
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52.1870 (c)(81) added 32394
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52.1885 (i) added 7548
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52.1970 (c)(83) added 47189
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52.1985 (b) removed 8539
52.2020 (c)(70) added 3030
52.2023 (h) removed 31330
52.2070 (c)(32) added 10146
52.2081 Table amended 10147
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52.2220 (c)(85) added 25331
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60.45 (c)(1) revised; (f)(3) amended 6662
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60.47a (f), (h), (i) introductory text, (1) and (2) revised; (j) added 6664
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60.643 (b) revised 6679
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61.64 (a)(2) corrected 36972
61.65 (c) corrected 36972
61.70 (c)(2)(v) and (4)(iv) corrected 36972
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61.153 (b)(1) corrected 36972
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61 Appendix B corrected 36972, 46976
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62.1700 Undesignated center heading and section added 9046
62.2350 (b)(2) and (c)(2) added 30053
62.2353—62.2354 Undesignated center heading added 30053
62.2353 Added 30053
62.2354 Added 30053
62.2600 (b)(3) added 38291
62.4875 Undesignated center heading and section added 9046
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62.5400 Undesignated center heading and section added 9047
62.6100 (b)(2) and (c)(3) added 7771
62.6122 Undesignated center heading and section added 7771
62.7400 Undesignated center heading and section added 9047
62.8350 (b)(5) added 31863
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62.11400 Undesignated center heading and section added 9047
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80 Authority citation revised 11883
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80.27 Added 11883
80.28 Added 11885
80 Appendix D added 11886
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81.316 Amended 5238
81.317 Table amended 14959
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81.323 Amended 15185
81.328 Table amended 50213
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81.336 Attainment status designations 47531
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81.341 Amended 38725
81.343 Amended 34508
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82.2 Added (effective date pending) 30598
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82.3 Added (effective date pending) 30598
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21.5072 (d) added 34497
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21.5103 Revised 34497
21.5131 Introductory text, (b) (1) and (2) revised 34497
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61.64 (a)(2) corrected 36972
61.65 (c) corrected 36972
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61 Appendix B corrected 36972, 46976
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62.2350 (b)(2) and (c)(2) added 30053
62.2353—62.2354 Undesignated center heading added 30053
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62.2600 (b)(3) added 38291
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702.170-13 (c)(4) amended 50630
704.404 Redesignated from 704.405 16122
704.405 Redesignated as 704.404 16122
709.503 (Subpart 709.5) Added 16122
725.2 Removed 16122
728.302 Removed 50630
728.305 Redesignated as 728.305-70 and heading revised 50630
728.305-70 Redesignated from 728.305 and heading revised 50630
(a) amended; (a)(2) revised 16122
728.307-2 Revised 50630
728.309 Added 50630
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728.370 Removed 50631
731.205-6 (a)(2) and (3)(i) revised 50631
731.371 (c)(1) revised 50631
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733.7001—733.7008 (Subpart 733.70) Revised 26597
733.7002 (b) removed; (c) and (d) redesignated as (b) and (c) and amended 50631
733.7003 (d) amended 50631
733.7004 (b) amended 50631
733.7005 (a) and (b) amended 50631
733.7007 (a) introductory text and (b) amended 50631
733.7008 (a) and (b) amended 50631
736.603 Amended 50631
742.770 Amended 50631
752.225-9 Amended 16122
752.228-3 Existing text designated as (a), (b) and (c); new (a) and (b) revised 16122
752.228-7 Amended 16122
752.228-70 Removed 50631
752.228-3 Added 50631
752.228-7 Added 50632
752.228-9 Added 50632
752.7001 Amended 50632
752.7004 Clause title and (g) revised 16123
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752.7028 Amended 50632
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817.102-1 Revised 9008
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817.402 Nomenclature change 9008
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952.232-72 Removed 9009
952.232-73 Removed 9009
952.251-70 Added 17737
970.5204-22 Corrected 1288
970.5204-53 Added 17738
970.7101 (c) corrected 1288
970.7103 Introductory text and (c)(3)(vii) corrected 1288
970.7104-30 Correctly designated 1288

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1428.306-70 (c)(1) revised 10989
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1804.676 Amended 51340
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NOTE: Boldface indicates 1989 page numbers.

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This table lists the sections of the U.S. Code, U.S. Statutes at Large, Public Laws, and Presidential documents which are being added to Table I as a result of authority citations carried in the **Federal Register** during January through April 1989. Recent legislation is carried by public law number.

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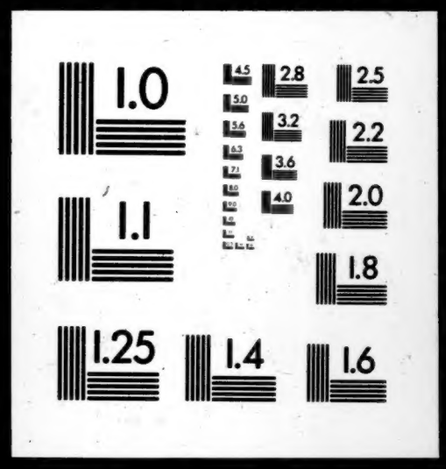
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